ROMAN LAW
IVS ROMANVM

COMPLETE EDITION IN LATIN AND ENGLISH TRANSLATION

Leges Rei Publicae • Gaius • Theodosian Code • Justinian

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ROMAN LAW & SOCIETY

Course Objectives

Legal systems provide crucial insight into the political, social, moral, and economic foundations of society, ancient as well as modern. This course will provide a survey of Roman Law, from the Twelve Tables to the great codifications of the Late Empire, with special attention to the political, moral, and economic roles of law in ancient Rome. We will survey the basic categories of law (public law, contract, delict, status, etc.), as well as their historical development from the earliest times to their reception into the medieval and modern world. Examination of original source material will provide insights into the detailed social conditions of ancient Rome and their development through the centuries.

Texts

Our basic text will be J.A. Crook, *Law and Life of Rome, 90 B.C. - A.D. 212* (Ithaca 1967), supplemented by handouts.

We will examine original Roman legal texts (in English), including the Law of the Twelve Tables, the Institutes of Gaius, and the Institutes of Justinian. Passages will be provided for discussion to deepen our understanding of how the Romans constructed their legal world.

Syllabus

A detailed syllabus of the class may be found here.

Assignments, Examinations and Grading

This course will consist partly of lectures, partly of discussion. The lectures will be supplementary to the readings. The discussions will be designed to probe various aspects of the law and the students are expected to have prepared (i.e., digested and pondered) the assigned legal text and to participate in a critique of its meaning and application. All views are welcome.

The students will also choose one article from a supplementary reading list (available here) and prepare a brief summary and critique of its contents. These articles are devoted to the "periphery" of Roman law, areas not well-covered in the standard texts. The critiques will be due approximately 2/3 through the semester. Students are welcome to suggest alternative readings if they have some special interest they wish to pursue. Suggested guidelines for the article critique may be found here.

There will be a mid-term and a final. These will consist of short essay and identification of substantive legal concepts. Students will choose their essay topics from subject matters announced in advance. The essays, accordingly, are expected to be well-organized and reasonably comprehensive. Guidelines for writing a good exam essay may be found here. The legal concepts (which students are expected to master) are found here. Those marked with one asterisk will be tested on the mid-term, those with two asterisks on the final. The exams will not be cumulative.

The article critique will count 20%, the mid-term 40% and the final 40%.

HONOR SYSTEM: George Mason University participates in an honor system which has existed in Virginia since 1842. The GMU Honor Code provides that a student's word is a declaration of good faith acceptable as truth in all academic matters. Specifically, the Honor Code applies to all your written work submitted for a grade. When you signed your application for admission to the university, you agreed to conform to its Honor Code. By putting your name to your exam, quiz, homework, or other written assignment, you certify that you are the only person who has produced the work you hand in. Both students and faculty are charged to report violations of the Honor Code to the Honor Committee. Enrollment in this class constitutes your acknowledgment that you have received fair warning that cheating, plagiarism, and other kinds of intellectual dishonesty will not be tolerated. In this course you are required to familiarize yourself with the rules and regulations of the Honor Code by consulting the appropriate pages in the current Catalog.

The Instructor

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The Links

There will be many handouts in class. Those that I create myself will always be posted here.

The basic legal texts of Roman Law:

The Law of the Twelve Tables

The Institutes of Gaius
The Institutes of Justinian

Here is our list of articles to choose from for your presentations:
The Supplementary Reading list.

If I have the time I will hand out additional information sheets to be used as study aids. So far, we have:
A Basic Glossary of Roman Legal Terms
Chronology of the Landmarks of Roman Law
A Short Chronology of Roman History
Landmarks of the Republican Constitution

Finally, here is a collection of Useful Links to Roman Law Materials.

Additional Information

Course Number: Classics 330
Title: Roman Law and Society
Class Times: TBD
Class Location: TBD

Disability Accommodations: If you are a student with a disability and you need academic accommodations, please see me and contact the Office of Disability Services (ODS) at 993-2474, http://ods.gmu.edu. All academic accommodations must be arranged through the ODS.

Electronic Devices: Cell phones, pagers, and other communicative devices are not allowed in this class. Please keep them stowed away and out of sight. Laptops or tablets (e.g., iPads) may be permitted for the purpose of taking notes only.

The Law of the Twelve Tables

(c. 450 B.C.)

Table I: Preliminaries to a Trial; Rules for Trial.

1. If plaintiff summons defendant to court, he shall go. If he does not go, plaintiff shall call witness thereto. Then only shall he take defendant by force.

2. If defendant shirks or takes to heels, plaintiff shall lay hands on him.

3. If disease or age shall be an impediment, he shall grant him a team (for transport); he should not spread with cushions a covered carriage if he shall not so desire.

4. For a landowner (*adsiduus*), a landowner shall be protector (*vindex*); but for a proletarian person, let any one who shall be willing be protector.

5. There shall be the same right, for a staunch person and for a person restored to allegiance, of bond (*nexum*) and conveyance *(mancipium*) with the Roman people.

6-9. When the parties compromise the matter, an official shall announce it. If they do not compromise, they shall state the outline of the case in the meeting place (*in comitio*) or market (*in foro*) before noon. They shall plead it out together in person. After noon, the judge shall adjudge the case to the party that is present. If both are present, sunset shall be the time limit (of the proceedings).

Table II: The Trial

1. 500 *as*-pieces shall be the sum when the object of dispute under solemn deposit is valued at 1,000 in bronze or more, 50 pieces when less. Concerning the liberty of a human being, 50 pieces shall be the solemn deposit under which the dispute should be undertaken.

2. . . . [serious disease] or else the day appointed with a stranger (*cum hoste*). If any of these be an impediment for the judge, referee, or party, on that account the day of trial shall be broken off.

3. Whoever is in need of evidence, he shall go on every third day to shout before the witness' doorway.

Table III: Debt

1-6. When debt has been acknowledged, or judgment about the matter had been pronounced in court, 30 days must be the legitimate time of grace. After that, then arrest of debtor may be made by laying on hands. Bring him into court. If he does not satisfy the judgment, or no one in court offers himself as surety on his behalf, the creditor may take the defaulter with him. He may bind him either in stocks or in chains; he may bind him with weight not less than fifteen pounds or with more if he shall so desire. The debtor, if he shall wish it, may live on his own. If he does not live on his own, the person [who shall hold him in bonds] shall give him one pound of grits for each day. He may give more if he shall so desire. On the third market day, creditors shall cut pieces (*partis secanto*). Should they have cut more or less than their due, it shall be with impunity.

7. Against a stranger (*adversus hostem*), title of ownership shall hold good forever.

Table IV: Rights of Fathers

1. A dreadfully deformed child shall be quickly killed.

2. If a father surrenders his son for sale three times, the son shall be free from his father.

3. [He has given orders for her] to mind her own affairs and has taken away her keys . . .

4. A child born after ten months since the father's death will not be admitted into a legal inheritance.

Table V: Succession and Guardianship

1. Females should remain in guardianship even when they have attained their majority . . . except the Vestal Virgins . . .

2. Conveyable possessions of a woman under the guardianship of agnates shall not rightfully be acquired by *usucapio* or long usage save such possession as have been delivered up by her with a guardian’s sanction.

4. If a person dies intestate, and has no self-successor (*suus heres*), the nearest agnate male kinsman shall have possession of the deceased’s household.

5. If there be no agnate male kinsman, the deceased’s clansmen (*gentiles*) shall have possession of his household.

6. To persons for whom a guardian has not been appointed by will, to them agnates are guardians.

7. If a man is raving mad, rightful authority over his person and chattels shall belong to his agnates or to his clansmen. A spendthrift is forbidden to exercise administration over his own goods and shall be under the guardianship of his agnates.

8. The inheritance of a Roman citizen-freedman shall be made over to his patron if the freedman has died intestate and having no self-successor.

Table VI: Acquisition; Possession.

1a. When a party shall made bond (*nexum*) or conveyance (*mancipium*), according as he has affirmed by word of mouth (*lingua nuncupassit*), so shall the right hold good.

1b. . . . *mancipationem et in iure cessionem* . . .

1c. Articles sold and handed over (*venditae et traditae*) are not acquired by a buyer otherwise than when he has paid the price to the seller of has satisfied him in some other way, that is, be providing a guarantor or a security.

2. . . . sufficient to make good such faults as had been affirmed by word of mouth, and for any flaws which the vendor had expressly denied, he should undergo a penalty of double damages . . .

3. *Usucapio* of movable things requires one year’s possession for its completion; but *usucapio* of an estate and buildings, two years.

4. Any woman who did not wish to be subjected in this manner to the hand (*in manum*) of her husband should be absent for 3 nights in succession every year, and so interrupt the *usucapio* of each year.

5. If parties lay on hands together in law . . .

7-9. A person shall not dislodge from its framework a beam fixed in buildings or vineyards . . . double amount of damage against the person found guilty of fixing such beam.

Table VII: Rights Concerning Land

1. . . . ownership within a 5-foot strip shall not be acquired by long usage (*usus capionem*).

5. If parties disagree . . . boundaries shall be marked by . . . three arbitrators.

6. The width of a road . . . 8 feet where it runs straight ahead, 16 round a bend . . .

7. Persons shall mend the roadway. If they keep it not laid with stones, [the holder of the servitude] may drive beasts where he shall wish.

8. If rainwater does damage . . . must be restrained according to an arbitrator’s order.

91. Branches of a tree may be lopped off all round to a height of more than 15 feet . . .

9b. Should a tree on a neighbor's farm be bent crooked by the wind and lean over your farm, you may take legal action for removal of that tree.

10. A man might gather up fruit that was falling down onto another man's farm.

Table VIII: Torts or Delicts

1a. If any person had sung or composed against another person a song such as was causing slander or insult to another . . . he should be clubbed to death.

1b. Person who shall have enchanted by singing an evil spell . . .

2. If a person has maimed another's limb, let there be retaliation in kind (*talio*) unless he makes agreement for composition with him.

3. If he has broken or bruised a freemen's bone with his hand or a club, he shall undergo a penalty of 300 pieces; if a slave's, 150.

4. If he has done simple harm, the penalty shall be 25 pieces.

6. If a four-footed animal shall be said to have caused loss, a legal action shall be had either for the surrender of the thing which damaged or for assessment of the damage.

8a. A person who has enchanted crops away . . .

8b. . . . or decoy not another's grain.

9. For pasturing on, or cutting secretly by night, another’s crops acquired by

tillage, an adult shall be hanged (*suspensum*) and put to death as a sacrifice to Ceres; and, in the case of a person under the age of puberty, either he shall be scourged or shall, for the harm done, make composition by paying double damages.

10. Any person who destroys by burning any building or heap of grain deposited alongside a house shall be bound, scourged, and put to death by burning at the stake provided that he has committed the said misdeed with malice aforethought; but if he shall have committed it by accident, that is, by negligence, it is ordained that he repair the damage or, if he be too poor to be competent for such punishment, he shall receive a lighter punishment.

11. Any person who has cut down another person's trees with harmful intent shall pay 25 pieces for every tree.

12. If the theft has been done by night, if the owner kills the thief, the thief shall be held to be lawfully killed.

13. (It is unlawful for a thief to be) killed by day . . . unless he defends himself with a weapon; even though he has come with a weapon, unless he shall use the weapon and fight back, you shall not kill him. And even if he resists, first call out (so that someone may hear and come up).

14. If a thief is caught in the act (*manifestis furibus*), if he is a freedman let him be flogged and adjudged (*addici*) to the person against whom the theft has been committed, provided that the malefactor has committed it by day and has not defended himself with a weapon. Slaves caught in the act of theft shall be flogged and thrown from the Rock. [Children under the age of puberty] shall, at the consul's discretion, be flogged and the damage done by them shall be repaired.

15. . . . with platter and loincloth (*lance et licio*).

16. If a persons pleads on case of theft, in which the thief shall be not caught in the act, the thief must compound for the loss by paying double damages.

17. A stolen thing is debarred from *usucapio*.

19. Arising out of a case concerning an article deposited, an action shall be granted for double damages.

21. If a patron shall have defrauded his client, he must be solemnly forfeited (*sacer esto*).

22. Whosoever shall have allowed himself to be called as a witness or shall

have been scales-balancer (*libripens*), if he does not as a witness pronounce his testimony, he must be deemed dishonored and incapable of acting as witness (*improbus intestablisque*).

23. A person who had been found guilty of giving false witness shall be hurled down from the Tarpeian Rock.

24. If a missile has sped from the hand, and the holder has not aimed it . . .

25. . . . poison . . .

26. No person shall hold meetings by night in the city.

Table IX: Public Law

1-2. Laws of personal exception (*privilegia*) must not be proposed; cases in which the penalty affects the *caput* or person of a citizen must not be decided except through the greatest assembly (*maximum comitiatum*) and through those whom the [censors] have placed upon the register of citizens.

3. . . . capital punishment on a judge or arbiter legally appointed who had been found guilty of receiving a bribe for giving a decision.

4. . . . investigators of murder *(quaestores parricidii*).

5. He who shall have roused up a public enemy or handed over a citizen to a public enemy must suffer capital punishment.

6. Putting to death . . . of any man, whosoever he might be, unconvicted is forbidden.

Table X: Sacred Law

1. A dead man shall not be buried or burned within the city.

2. One must not do more than this; one must not smooth the pyre with an axe . . .

3. . . .three veils, one small purple tunic, and 10 flute-players.

4. A woman must not tear her cheeks or hold a chorus of “Alas!” on account of a funeral.

5. When a man is dead, one must not gather bones whereby to make an

funeral after.

6. Anointing by slaves is abolished and every kind of drinking-bout. Let there be no costly sprinkling, . . . no long garlands, . . . no incense-boxes.

8-9. A person must not add gold (to the funeral pyre). But him whose teeth shall have been fastened together with gold, if a person shall bury or burn him along with that gold, it shall be with impunity.

Table XI: Supplementary Laws

1. [Marriages] should not take place between plebeians and patricians.

2. . . . intercalating into the calendar.

3. . . . days deemed favorable for official legal business . . .

Table XII: Supplementary Laws

1. . . . levying of distress (*pignoris capio*) against a person who had bought an animal for sacrifice and was a defaulter by nonpayment; likewise against a person who was a defaulter by nonpayment of the fee for a yoke-beat which any one had hired out for the purpose of raising therefrom money to spend on a sacred banquet . . .

2. If a slave shall have committed theft or done damage . . . Arising from delicts committed by children and slaves of a household . . actions for damages are appointed whereby the father or master shall be allowed either to undergo an assessment of damage or hand over the delinquent ot punishment . . .

3. If a person has taken a thing by false claim, if he should wish . . . official must grant three arbitrators; by their arbitration . . . defendant must compound for the loss caused by paying double damages from enjoyment of the article.

4. [A person is prohibited] from dedicating for consecrated use anything about which there is a controversy; otherwise we suffer a penalty of double the amount involved . . .

5. Whatever the people had last ordained should be held as binding by law.

Unplaced Fragments

6a. . . . fine, fetters, flogging, retaliation in kind (*talio*), civil disgrace, banishment, death, slavery . . .

(from E. H. Warmington, Remains of Old Latin III, pp. 424-515*)*

Roman Law Homepage   Rome Law Texts

THE INSTITUTES OF GAIUS

(c. 170 A.D.)

FIRST COMMENTARY.

I. CONCERNING CIVIL AND NATURAL LAW.

(1) All peoples who are ruled by laws and customs partly make use of their own laws, and partly have recourse to those which are common to all men; for what every people establishes as law for itself is peculiar to itself, and is called the Civil Law, as being that peculiar to the State; and what natural reason establishes among all men and is observed by all peoples alike, is called the Law of Nations, as being the law which all nations employ. Therefore the Roman people partly make use of their own law, and partly avail themselves of that common to all men, which matters we shall explain separately in their proper place.[1]

(2) The Civil Law of the Roman people consists of statutes, plebiscites, Decrees of the Senate, Constitutions of the Emperors, the Edicts of those who have the right to promulgate them, and the opinions of jurists.

[1] With the Romans the *Jus Gentium* and the *Jus Naturale* were practically synonymous. The greater number of ancient authorities made two divisions of jurisprudence, the Law of Nations and the Civil Law; some added another, the *Jus Privatum*, or *Familiœ*, that is to say, private law.

The precepts of morality, as in most human enactments, form the basis of this most comprehensive system of jurisprudence which all civilized peoples are presumed to acknowledge.

By what we designate the Law of Nature, the Roman jurists understood the rules by which all living beings were governed: "*Quod natura omnia animalia docuit*." The Law of Nations was known to them as *Jus Feciale*.

No lawyer of ancient or modern times has given such a lucid, comprehensive, and eloquent description of the Law of Nature as Cicero. In glowing language, eminently worthy of the distinguished scholar and jurist, he sets forth its constant and universal blessings; a law which summons all to the performance of their duties, and deters the hesitating from the commission of fraud; from whose observance even those highest in authority are not exempt; whose application is universal; whose precepts are eternal and immutable; which cannot be disregarded or abrogated with impunity; of which God is the originator, the interpreter, the proposer; and he who refuses to obey it flees from himself, and rejects the claims of humanity, by this very act rendering himself liable to the severest penalties, even if he be able to escape others which have been prescribed.

"*Est quidem vera lex recta ratio, naturæ congruens, diffusa in omnes, conBlans, sempiterna; quæ vocet ad officium jubendo, vetando a fraude deterreat, quæ tamen neque probos frustra jubet aut vetat, neque improbos jubendo aut vetando movet. Huic legi neque obrogari fas est, neque derogari ex hac aliquid licet, neque tota abrogari potest. Nec vero aut per senatum aut per populum solvi hac lege possumus: neque est quærendus explanator aut interpres ejus alius. Nec frit alia lex Romæ, alia Athenis, alia nunc, alia posthac; sed et omnes gentes et*

(3) A statute is what the people order and establish. A plebiscite is what the commonalty order and establish. Moreover, the commonalty is distinguished from the people by the fact that the entire body of citizens including the patricians, is designated by the appellation, "the people"; but the other citizens, exclusive of the patricians, are indicated by the term commonalty; for which reason the patricians formerly declared that they were not bound by plebiscites, as they were enacted without their sanction; but subsequently the *Lex Hortensia* was passed, by which it was provided that plebiscites should bind the entire people; and hence, in this way, they were placed on the same footing as laws.

(4) A Decree of the Senate is what the Senate orders and establishes, and therefore it obtains the force of law, although this formerly was disputed.

(5) An Imperial Constitution is what the Emperor establishes by a decree, an edict, or a letter, and there was never any doubt that it had the force of a law, as the Emperor himself derives his authority from a statute.

(6) The magistrates of the Roman people have the power of promulgating edicts, but the highest authority attaches to the edicts of the two prætors, the urban and the foreign, whose jurisdiction is vested in the governors of the provinces; as well as to the edicts of the curule Ædiles, whose jurisdiction the quæstors administer in the provinces of the Roman people, for quæstors are not appointed in the provinces of the Emperor and, therefore, the latter edict is not published in these provinces.

(7) The answers of jurists are the decisions and opinions of those who are authorized to define the law. If the opinions of all of them

omni tempore una lex et sempiterna, et immutabilis continebit; unusque erit communis quasi magister et imperator omnium Deus, ille legis hujus inventor, *disceptator, lator: cui qui non parebit ipse se fugiet et naturam hominis aspernabitur, atque hoc ipse luet maximas pœnas, etiamsi cætera, supplicia, quæ putantur, effugerit*." (De Repub. lib. III, cap. 22.)

The importance of considering man as an individual, distinct from his association with his fellows in communities, is emphasized by Montesquieu in determining the principles of the Law of Nature.

"*Avant toutes ces lois sont celles de la nature, ainsi nommées parce qu'elles dérivent uniquement de la constitution de notre être. Pour les connaître bien, il faut considérer un homme evant l'établissement des sociétés. Les lois de la nature seront celles qu'il recevroit dans un état pareil*."

"*Il songeroit à la conservation de son être, avant de chercher l'origine de son être." (De l'Esprit des Lois*, I, II, Page 191.)

The Law of Nations he concisely states to be based upon the bestowal of the greatest benefits in peace and the infliction of the least injury in war consistent with the public interests involved.

"*Le droit des gens est naturellement fondé sur ce principe, que les diverses nations doivent se faire dans la paix le plus de bien, et dans la guerre le moins de mal qu'il est possible, sans nuire à leurs véritables intérêts." (Ibid* I, II, 191.)

No ancient classic work on the Law of Nations has survived, if, indeed, one ever was written. The formulation and perfection of its rules as a science were worthily accomplished by the genius, learning, philosophical discernment, and industry of Grotius, Pufendorf, and Vattel. — ed.

concur, what they agree upon obtains the force of law; if, however, they disagree, the judge has a right to follow whichever opinion he may wish, and this is set forth in a rescript of the Divine Hadrian.[1]

II. CONCERNING THE DIVISIONS OF THE LAW.

(8) All the law which we make use of has reference either to persons, to things, or to actions. Let us first consider persons.

III. CONCERNING THE DIFFERENT CONDITIONS OF MEN.

(9) The principal division of the law of persons is the following, namely, that all men are either free or slaves.

(10) Again, men who are free are either freeborn or freedmen.

(11) Freeborn are those who are free by birth, freedmen are those who have been manumitted from legal slavery.

(12) Moreover, there are three classes of freedmen, namely, Roman citizens, Latins, and *dediticii*. Let us consider each of these separately, and, in the first place, *dediticii*.

IV. CONCERNING DEDITICII AND THE PROVISIONS OF THE LEX ÆLIA SENTIA.

(13) It is provided by the *Lex Ælia Sentia* that slaves who have been placed in chains by their masters, or have been branded, or have been subjected to torture for some offence and convicted, or have been delivered up to fight with others or with wild beasts, or to contend with gladiators, or have been thrown into prison and have afterwards been manumitted by the same, or by another master, shall become free, and belong to the same class as that of enemies who have surrendered at discretion.

[1] The *Responsa Prudentum* were at first only the opinions of eminent lawyers imparted to anyone who consulted them. Subsequently, by decrees of Augustus and other sovereigns, they were invested with legal validity, and obtained all the force of regularly enacted statutes. They were directly addressed to the judge, or, having been reduced to writing, were submitted to the court in the presence of witnesses who had seen them drawn up.
The *Responsa* formed one of the most important sources from whence was derived the maxims and principles of the Civil Law, and indeed, of all modern jurisprudence. The Digest is largely composed of them. From the fragments it contains we can form some idea of the vast knowledge and attainments possessed by these old Roman lawyers, whose works have perished, and whose names would hardly be known, were it not for the compilation of Justinian. As legal dicta they are, as a rule, models of perspicacity and conciseness. Their language is terse, comprehensive, elegant. The ingenuity with which their conclusions are formed is admirable. The dominating sentiments which pervade them are a love of truth and a reverence for justice, qualities, it is scarcely necessary to add, which do not always characterize modern legislation.

These opinions, originally intended to mitigate the severity of the Civil Law, whose basis was the harsh and inflexible collection of the Twelve Tables, by enabling the magistrate to modify his decisions, and evade the cruel legislation of a barbarous age, laid the foundation of equity jurisprudence. After the *Responsa* had, by Imperial sanction and general acceptance, acquired full legal effect, they were designated *sententiæ receptæ.* — ed.

V. CONCERNING ENEMIES WHO HAVE SURRENDERED AT DISCRETION.

(14) Those enemies are called *dediticii* who, having formerly taken up arms and fought against the Roman people afterwards have been conquered and have surrendered at discretion.

(15) From this it is evident that slaves who have been guilty of criminal acts of this kind, no matter in what way, or at what age they may have been manumitted, and even though their masters had complete authority over them, can never become either Roman citizens or Latins, but must always be classed among enemies who have surrendered at discretion.

(16) If, however, a slave has not been guilty of such criminality, we declare that by manumission he sometimes becomes a Roman citizen, and sometimes a Latin.

(17) Where the following three requisites are combined in the person of a slave, that is to say where he is over thirty years of age, where his master is invested with full civil rights, and he is set free by proper and lawful manumission through the intervention of the prætor, by enrollment on the register of the census, or by will, he becomes a Roman citizen; if, however, one of these requisites should be lacking, he will become a Latin.

VI. CONCERNING MANUMISSION, AND PROOF OF THE REASON FOR IT.

(18) The requisite of the age of the slave was introduced by the *Lex Ælia Sentia*, for this law did not permit slaves under the age of thirty years, who had been manumitted, to become Roman citizens unless they were set free by the wand of the prætor, after proof of good reason for the manumission had been established in the presence of the Council.

(19) A good reason for manumission exists where, for instance, anyone offers for manumission before the Council a natural son or daughter, or brother or sister, or foster-child or teacher, or a slave with the intention of appointing him a steward, or a female slave on account of prospective marriage.

VII. CONCERNING THE CONSTITUTION OF THE COUNCIL.

(20) The Council in the City of Rome consists of five senators and five Roman knights of the age of puberty. In the provinces it consists of twenty magistrates who are Roman citizens, and who are convoked on the last day of the term. At Rome, however, manumissions take place in the presence of the Council upon certain days. Slaves who are more than thirty years of age can

be manumitted at any time, and the ceremony can be performed even while walking in the streets, as for instance, when the prætor or the proconsul is on his way to the bath or the theatre.

(21) A slave, who was under the age of thirty years when manumitted, can become a Roman citizen if he was granted his freedom and appointed heir by the will of his master who died insolvent. . . .[1]

(22) Slaves manumitted in certain ways are called *Latini Juniani; Latini* for the reason that they are classed with Latin colonists, *Juniani* because they received their freedom under the terms of the *Lex Junia*, as before it was passed they were considered slaves.

(23) The *Lex Junia* does not, however, permit them either to make a will, or to take under the will of another, or to be appointed testamentary guardians.

(24) What we have said with reference to their being unable to take under a will must be understood to mean that they cannot take anything directly as heirs, or legatees, but, on the other hand, they have a right to take under the terms of a trust.

(25) Those, however, who belong to the class of *dediticii* can, under no circumstances, take under a will, any more than a foreigner; nor can they, in accordance with a majority of the decisions, themselves make a will.

(26) Hence, only the lowest degree of freedom is possessed by those who belong to the class of *dediticii* nor is any way afforded them of obtaining Roman citizenship either by a law, by a Decree of the Senate, or by an Imperial Constitution.

(27) Moreover, they are forbidden to dwell in the City of Rome or within the hundredth mile-stone of the Capitol; and if they should disobey, they and their property are ordered to be publicly sold under the condition that they shall remain slaves beyond the hundredth milestone of the City of Rome, and that they shall never be manumitted; and if they should be manumitted, they are ordered to become the slaves of the Roman people; and these things are included in the *Lex Ælia Sentia*.

IN WHAT WAY LATINS MAY OBTAIN ROMAN CITIZENSHIP.

(28) Latins obtain Roman citizenship in many ways.

(29) For, by the *Lex Ælia Sentia*, where slaves under the age of thirty years are manumitted and become Latins, if they marry either women who are Roman citizens or Latin colonists, or those who belong to the same condition as themselves, and prove this by the testimony of not less than seven Roman

citizens who have arrived at the age of puberty; and they have sons, and the latter are a year old, authority is granted them by this law to appear before the prætor — or, in the provinces before the governor — and prove that they have married wives in accordance with the terms of the *Lex Ælia Sentia*, and have sons by them who are a year old; and if the magistrate before whom this proof is adduced should declare it to be true, then the Latin and his wife, provided she and her son are of the same condition, are ordered to become Roman citizens.

(30) I added the clause, "If the son is of the same condition", for the reason that if the wife of the Latin aforesaid is a Roman citizen, her son is a Roman citizen by birth under the terms of the recent Decree of the Senate promulgated by the Divine Hadrian.

[1] Original manuscript illegible.

(31) This right of acquiring Roman citizenship, though at first only conferred upon those who had been manumitted under thirty years of age and had become Latins by the *Lex Ælia Sentia*, was afterwards, by a Decree of the Senate issued under the consulship of Pegasus and Pusio, granted to all Latins, even though they were more than thirty years of age at the time when they were manumitted.

(32) However, even if the Latin should die before he was able to prove that his son was a year old, the mother of the latter can prove his condition, and hence both she and her son (if she is a Latin) will become Roman citizens. If the mother should not be able to prove this, the son himself can do so when he reaches the age of puberty. If the son himself is a Roman citizen, for the reason that he is born of a mother who is a Roman citizen, he must still prove his condition in order to become the heir of his father.

(32a) What we have stated with reference to a son being a year old we also understood to apply to a daughter of the same age.

(32b) Moreover, by the *Lex Visellia*, persons become Roman citizens, where by manumission they have become Latins, when either under or over thirty years of age, if they have served for six years in the guards at Rome. A Decree of the Senate is said to have been subsequently enacted by which Roman citizenship was bestowed on Latins if they had served for three years in the army.

(32c) Likewise, by an Edict of the Divine Claudius, Latins obtain the rights of Roman citizens if they build a ship with a capacity not less than ten thousand measures of grain, and the said ship, or one substituted for it, should transport grain to Rome for the term of six years.

(33) Moreover, it was established in an Edict published by Nero that if a Latin who had property worth two hundred thousand sesterces, or more, should build a house in the City of Rome on which he expended not less than half his estate, he should obtain the right of Roman citizenship.

(34) Finally, the Divine Trajan decreed that if a Latin should exercise the calling of a miller in the City of Rome for the term of three years, and should grind each day not less than a hundred measures of grain, he could acquire Roman citizenship.

(35) Slaves who become Latins either because they are under thirty years of age when manumitted, or, being over that age, have been informally manumitted, may become Roman citizens by being again manumitted either by the wand of the prætor, or by inscription on the register of the census, or by will; and in either of these cases they become the freedmen of the party who manumitted them a second time. Therefore, if a slave forms part of your property by bonitarian right and belongs to me by quiritarian right, he can be made a Latin solely by you, and he can be manumitted a second time by me but not by you, and in this way he will become my freedman; and if he obtains the right of citizenship in other ways he still will be my freedman.

The possession of his estate at the time of his death is however granted to you, no matter in what way he may have obtained Roman citizenship. But, if he is manumitted by one who has in him both bonitarian and quiritarian rights he can be manumitted by the said party, and become both a Latin and a Roman citizen.

(36) Every one who desires to manumit a slave is not permitted to do so.

(37) For he who manumits a slave for the purpose of defrauding his creditors or his patron, commits an act which is void, for the reason that the *Lex Ælia Sentia* prevents the grant of freedom.

(38) Likewise, by the same law a minor owner under the age of twenty years is not permitted to manumit a slave, except by the intervention of the prætor, after proper cause has been shown for the manumission in the presence of the Council.

(39) The following are proper causes for manumission, for instance, where anyone manumits his father, his mother, his teacher, or his foster-brother. Moreover, the reasons which we have designated above with reference to a slave under thirty years of age may be adduced also in the case of which we speak; and likewise, on the other hand, the same reasons which we stated with reference to an owner under the age of twenty years may be advanced where the slave is less than thirty years old.

(40) Therefore, as a certain restriction on the manumission of slaves is imposed upon owners under the age of twenty years by the *Lex Ælia Sentia*, the result is that anyone who has completed his fourteenth year, although he can make a will, appoint an heir to his estate, and bequeath legacies, still, if he is under the age of twenty years, he cannot grant freedom to his slave.

(41) And even though an owner under the age of twenty years may desire to constitute a slave a Latin, he must, nevertheless, prove before the Council, that he has a good reason for doing so, and afterwards manumit the said slave in the presence of friends.

(42) Moreover, by the *Lex Fufia Caninia* a certain limit is established with reference to the manumission of slaves by a will.

(43) Hence, he who has more than two slaves and not more than ten, is permitted to manumit as many as half of that number. He, however, who has more than ten and not more than thirty slaves, is permitted to manumit a third of that number; and he who has more than thirty slaves and not more than a hundred, is granted authority to manumit one fourth of his slaves. Finally, he who has more than one hundred and not more than five hundred, is not permitted to manumit more than a fifth; and, no matter how many slaves a man may have, he is not permitted to manumit more than this, as the law prescribes that no one shall have the right to manumit more than a hundred. Still, where anyone has only one or two slaves, his case does not come under this law, and therefore he has free power of manumission.

(44) Nor does this law have any reference whatever to persons who manumit in any way except by will, and therefore those who do so either in the tribunal of the Prætor, or by enrollment on the registers of the census, or in the presence of friends, are permitted to liberate their entire bodies of slaves; provided however, that no other reason prevents their receiving their freedom.

(45) What we have stated with reference to the number of slaves which can be manumitted by will should be understood to mean that where a man has a right to liberate the half, the third, the fourth, or the fifth part of his entire body of slaves, he shall in no case be restricted to a smaller number than he would have been permitted to manumit had the estimate been made according to the next preceding scale. This provision is in accordance with reason, for it certainly would be absurd for any one to be permitted to liberate five out of his ten slaves, because he is granted authority to manumit half of that number; while another, having twelve slaves, would not be permitted to manumit more than four; and anyone who has more than ten and not more than thirty, under the same rule should be permitted also to manumit five, the same number which he who has ten is allowed to liberate.

(46) If freedom should be granted by a testator in his will to a greater number of slaves than is above mentioned, and the names are written in a circle so that no order of manumission can be ascertained, none of the said slaves shall become free; because the *Lex Fufia Caninia*, as well as other special Decrees of the Senate, have declared all testamentary provisions devised for the purpose 01 evading the law to be void.

(47) In conclusion, it should be noted that, as it is provided by the *Lex Ælia, Sentia* that slaves who have been manumitted for the purpose of defrauding a patron, or creditors, do not become free; for the Senate, at the suggestion of the Divine Hadrian, decreed that this rule should also apply to foreigners, while the other provisions of the same law do not apply to them.

(48) There is another division with reference to the law of persons, for some persons are their own masters, and some are subject to the authority of others.

(49) Again, of those persons who are subject to the authority of another, some are in his power, others are in his hand, and others are considered his property.

(50) Let us now consider those that are subject to the authority of another, for, when we ascertain who they are, we shall then understand what persons are their own masters.

(51) In the first place, let us examine those who are in the power of another.

(52) Slaves are in the power of their masters, and this power is acknowledged by the Law of Nations, for we know that among all nations alike the master has the power of life and death over his slaves, and whatever property is acquired by a slave is acquired by his master.

(53) At the present time, however, neither Roman citizens nor any other persons who are under the empire of the Roman people are permitted to employ excessive or causeless severity against their slaves; for by a constitution of the Most Holy Emperor Antoninus anyone who kills his slave, without good reason, is not less liable than one who kills the slave of another; and the excessive harshness of masters is restrained by another constitution of the same Emperor; for he, having been consulted by certain governors of provinces with reference to slaves who flee for refuge to the temples of the Gods or the statues of the Emperor,[1] ordered that if the cruelty of masters appeared to be intolerable, they should be compelled to sell their slaves; and in both cases he acted justly, for we should not make a bad use of our rights, in accordance with which principle the administration of their own property is forbidden to spendthrifts.

(54) But, as among Roman citizens, a double ownership may exist (for a slave is understood to be subject to bonitarian or quiritarian right or to belong to both these classes) so we merely say that a slave is in the power of his owner if he forms part of his property by bonitarian right, even if at the same time he may not belong to him by quiritarian right; for anyone who has the bare quiritarian right in a slave is not understood to have him in his power.

(55) In like manner, our children whom we have begotten in lawful marriage are under our control. This right is peculiar to Roman citizens, for there are hardly any other men who have such authority over their children as we have, and this the Divine Hadrian stated in the Edict which he published with reference to persons who petitioned for Roman citizenship for themselves and for their children, for he said: "It does not escape my knowledge that the Galatians hold that children are in the power of their parents."

(56) Roman citizens are understood to have contracted marriage according to the Civil Law and to have the children begotten by them in their power if they marry Roman citizens, or even Latins or foreigners whom they have the right to marry; for the result of legal marriage is that the children follow the condition of the father and not only are Roman citizens by birth, but also become subject to paternal authority.

(57) Therefore, certain veterans are usually granted permission by the Imperial Constitutions to contract civil marriage with those Latin or foreign women whom they first marry after their discharge, and the children born of such unions become Roman citizens by birth, and are subject to the authority of their fathers.

(57a) Marriage, however, cannot take place with persons of servile condition.

(58) Nor are we permitted to marry any free woman, as we should refrain from contracting matrimony with certain ones of this class.

[1] The right of asylum, derived by Rome from Greece, did not attach to all temples, or Imperial statues, but only to such as long continued custom had invested with that privilege, of which debtors, slaves, and violators of the law constantly availed themselves. The clergy, after the introduction of Christianity, being well aware of the financial and political advantages which would accrue to them by the perpetuation of this practice, encouraged and confirmed it, until the abuse of the right of sanctuary, through the immunity enjoyed by notorious criminals, became one of the worst scandals of mediæval times. — ED.

(59) For marriage cannot be contracted between persons who sustain to one another the relation of ascendants and descendants, nor can legal matrimony

exist between them; for instance, between father and daughter, mother and son, or grandfather and granddaughter; and if such persons form unions they are said to have contracted nefarious and incestuous marriages.

To such an extent does this rule apply that, although the relationship of parents and children may have been established by adoption, they cannot contract matrimony with one another, and even if the adoption has been dissolved, the same rule of law will continue to apply; so that I could not take as a wife a woman who sustains to me the relationship of daughter or granddaughter by adoption, even if I have emancipated her.

(60) This rule also applies to persons related in the collateral degree, but not to the same extent.

(61) Marriage is indeed prohibited between brother and sister, whether they are born of the same father or mother or merely of one of these parents in common; but although legal marriage cannot take place between me and my sister by adoption as long as the adoption continues to exist, still if the adoption is dissolved by emancipation I can marry her, and if I should be emancipated, no impediment to the marriage will exist.

(62) It is lawful for a man to marry the daughter of his brother, and this first became customary when the Divine Claudius married Agrippina, his brother's daughter, but it is not lawful for anyone to marry his sister's daughter, and this rule is stated in the Imperial Constitutions. It is likewise illegal for a man to take as his wife his paternal or maternal aunt.

(63) Moreover, I cannot marry my former mother-in-law or daughter-in-law, or my step-daughter or step-mother. We make use of the word "former," because if the marriage by which affinity of this kind was established is still in existence, there is another reason why I cannot marry her, for a woman cannot marry two men, nor can a man have two wives.

(64) Therefore, if anyone should contract a nefarious and incestuous marriage he is considered to have neither a wife nor children, hence the issue of such a union are considered to have a mother but no father, and for this reason are not subject to paternal authority, but resemble children whom the mother has conceived through promiscuous intercourse; and they, in like manner, are understood to have no father, as he also is uncertain; therefore they are ordinarily called illegitimate children, either from the Greek word meaning conceived indiscriminately, or because they are children without any father.

(65) It sometimes happens that children when born are not under the control of their fathers but are afterwards subjected to their authority.

(66) For instance, under the *Lex Ælia Sentia*, if a Latin, after having married, should have a son who is a Latin by a Latin mother, or who is a Roman citizen by a Roman mother, he will not have him under his control; but if he should afterwards obtain the right of Roman citizenship by the evidence required by law, his son will, at the same time, be brought under his power.

(67) Likewise, if a Roman citizen should marry a Latin or a foreign woman through ignorance, believing that she was a Roman citizen, and should have a son, the latter will not be under his control because he will not be a Roman citizen, but either a Latin or a foreigner; that is to say, he will belong to the same condition as his mother, as no child follows the condition of its father unless the right to legal marriage existed between its parents; but by a Decree of the Senate it is permitted to prove the cause of error, and in this way the wife and the son will both obtain Roman citizenship, and the son will, from that time, begin to be under the control of his father. The same rule applies where a Roman citizen marries a woman belonging to the class of the *dediticii*, except that the wife does not become a Roman citizen.

(68) Moreover, if a female Roman citizen should, through mistake, marry a foreigner under the impression that he was a Roman citizen, she will be permitted to prove the cause of error, and in this way both her son and her husband will obtain Roman citizenship, and, at the same time, the son will begin to be subject to the authority of the father. The same rule also applies if the woman marries a foreigner as a Latin under the terms of the *Lex Ælia Sentia*, as provision for a case of this kind is specially made by the Decree of the Senate. Again, the same rule applies to a certain extent if she should marry a man belonging to the class of the *dediticii*, as being either a Roman citizen or a Latin under the provisions of the *Lex Ælia Sentia*, except that her husband belonging to the class of the *dediticii* remains in the same condition, and therefore his son, although he becomes a Roman citizen, is not subjected to the authority of his father.

(69) Likewise, if a Latin woman should marry a foreigner believing him to be a Latin in accordance with the *Lex Ælia, Sentia*, on the birth of a son she can, under the Decree of the Senate, prove the cause of her error, and then all the parties will become Roman citizens, and the son will pass under the control of his father.

(70) The same rule has been established where a Latin man marries a woman who is a foreigner under the impression that she is either a Latin or a Roman citizen, with a view to taking advantage of the *Lex Ælia Sentia*.

(71) Moreover, a Roman citizen who thinks that he is a Latin, and for this reason marries a Latin woman, will be permitted to prove the cause of his error in case of the birth of a son, just as if he had married his wife under the

provisions of the *Lex Ælia Sentia*. Likewise, those who being Roman citizens think that they are foreigners and marry foreign women, are permitted by the Decree of the Senate, on the birth of a son, to prove the cause of their error; and this having been done, the wife becomes a Roman citizen, and the son not only obtains to Roman citizenship but also is brought under the authority of his father.

(72) Whatever we have said with reference to a son is also understood to apply to a daughter.

(73) And, so far as proving the cause of the error is concerned, as nothing with reference to this was provided by the Decree of the Senate, it makes no difference how old the son or daughter may be unless he or she should be a Latin; because it was also declared by the *Lex Ælia Sentia* that in this case if the son or daughter is less than a year old the cause cannot be proved. It has not escaped my observation that it was stated in a rescript of the Divine Hadrian, with reference to the proof of the cause of the error, that the child must be a year old, but the right did not seem to be of general application, as the Emperor issued the rescript under peculiar circumstances.

(74) If a foreigner, believing himself to be a Roman citizen, married a woman who is a Roman citizen, the question arises whether he could prove the cause of error under the Decree of the Senate. He could not do so, however, as this privilege is not granted by the Decree of the Senate to a foreigner, even though he, being mistaken, should have married a Roman citizen, unless this right was especially conferred upon him. But, when a foreigner married a woman who is a Roman citizen, and after a son was born, he obtained Roman citizenship in some other way, then when the question arose whether he could prove the cause of error, the Emperor Antoninus stated in a rescript that he could do so, just as if he had remained a foreigner; from which we gather that even a foreigner can prove the cause of error.

(75) From what we have said, it is apparent that where either a Roman citizen marries a foreign woman or a foreigner marries a woman who is a Roman citizen, the child born of the union is a foreigner. If, however, a marriage of this kind should have been contracted through mistake, the defect can be remedied in the manner which we explained above. But if no error took place, and the parties, aware of their condition, contracted marriage, the defect of an union of this kind can, under no circumstances, be remedied.

(76) We, however, are speaking of persons who have not the right to contract legal marriage; for, otherwise, if a Roman citizen should marry a foreign woman with whom civil marriage can be contracted as is stated above, a legal marriage takes place, and a son born to the parties is a Roman citizen, and will become subject to the authority of his father.

(77) Likewise, if a female Roman citizen should marry a foreigner who is entitled to contract a legal marriage, and a son is born, he will be an alien, and the lawful son of his father, just as if he had begotten him with a foreign woman. At the present time, however, by a Decree of the Senate enacted at the instance of the Divine Hadrian, even if the right of civil marriage did not exist between a woman who is a Roman citizen and a foreigner, the child born of the union is the lawful son of his father.

(78) What we have stated, however, with reference to a female Roman citizen marrying a foreigner, and their issue being an alien, is derived from the *Lex Minicia*, by which it is provided that where a child is born of an unequal marriage it follows the condition of the parent of inferior rank. On the other hand, it is provided by the same law that if a Roman citizen should marry a foreign woman with whom the right of legal marriage did not exist, the child born of this union will be a foreigner. The *Lex Minicia* was not especially necessary in a case of this kind, for, without this law, the child would have followed the condition of its mother, as this is the rule by the Law of Nations, among those between whom the right of civil marriage does not exist. This provision of the law which directs that the issue of a Roman citizen and a foreign woman shall be a foreigner seems to be superfluous, for even without this law this would be the case under the Law of Nations.

(79) Moreover, to such an extent does this rule apply that the issue of the marriage between a Roman citizen and a Latin woman follows the condition of its mother, for in the *Lex Minicia* not only are alien nations and peoples designated as "foreigners," but also those who are called Latins; and it also refers to other Latins who had their own peoples and states, and were included under the head of foreigners.

(80) On the other hand, by the same rule, the son of a Latin father and a mother who was a Roman citizen, whether the marriage was contracted under the provisions of the *Lex Ælia Sentia* or not, is born a Roman citizen. There were some authorities, however, who held that where a marriage was contracted under the *Lex Ælia Sentia* the child was born a Latin; for the reason that in this instance the right of legal marriage was conferred upon the parties by the *Lex Ælia Sentia et Junia*, and legal marriage always has the effect of giving the child the same condition as its father; for, if the marriage were otherwise contracted, the child, by the Law of Nations, would follow the condition of its mother, and for this reason would be a Roman citizen. We, however, make use of the rule established by the Decree of the Senate at the instance of the Divine Hadrian, by which it is declared that, under all circumstances, the child of a Latin man and a woman who is a Roman citizen is born a Roman citizen.

(81) In conformity with these provisions, the said Decree of the Senate, enacted at the instance of the Divine Hadrian, also prescribes that the issue of a Latin man and a foreign woman, as well as that of a foreign man and a Latin woman, follows the condition of the mother.

(82) The result of this is that the child of a female slave and a freeman is, by the Law of Nations, born a slave; and, on the other hand, the child of a free woman and a male slave is free by birth.

(83) We should note, however, whether any law or enactment having the force of law, in any case changes the rule of the Law of Nations.

(84) For example, under the Claudian Decree of the Senate, a woman who is a Roman citizen and has sexual intercourse with a slave belonging to another with the consent of his master will, in accordance with the agreement, remain free herself while she gives birth to a slave; for the contract entered into between her and the owner of the slave is declared to be valid by the Decree of the Senate. Afterwards, however, the Divine Hadrian, influenced by the injustice and impropriety of the law, restored the rule of the Law of Nations, so that as the woman herself remains free, her child is also born free.

(85) Likewise, by another law, children born of a female slave and a freeman could be born free; for it is provided by the said law that if anyone should have sexual intercourse with a female slave belonging to another and whom he believed to be free, and any male children should be born, they will be free; but any female children would be the property of him to whom their mother, the female slave, belonged. In this case, however, the Divine Vespasian, influenced by the impropriety of the law, restored the rule of the Law of Nations, so that, in every instance, even if female children should be born, they will become the slaves of the person who owned their mother.

(86) Another section of the same law remains in force, namely, that any children born to a free woman and a slave who is the property of another, and whom she knew to be a slave, are born slaves; hence among those who are not subject to this law, the child follows the condition of its mother[1] by the Law of Nations, and on this account is free.

(87) In those cases, however, where the child follows the condition of the mother and not that of the father, it is perfectly clear that it is not subject to the authority of his father, even though the latter may be a Roman citizen; and therefore we stated above that in certain instances where a marriage which was not lawful was contracted through a mistake, the Senate could intervene and remedy the defect of the marriage, and in this way generally bring it about that the son should be subjected to the authority of his father.

(88) If a female slave should conceive by a Roman citizen and afterwards, having been manumitted, should become a Roman citizen and a child should be born, although the latter would be a Roman citizen like its father, it would still not be under the control of the latter, for the reason that it was not conceived in lawful marriage, and because an union of this kind is not declared to be legal by any decree of the Senate.

(89) The decision which was made that if a female slave should conceive by a Roman citizen and then, after having been manumitted, her child should be born free, is in accordance with natural law, for children who are illegitimately conceived assume their status at the time when they are born, and therefore, if they are born of a free woman, they will be free, nor does it make any difference by whom their mother conceived them while she was a female slave; but those who are lawfully conceived assume their status at the time of conception.

(90) Therefore, where a female citizen at Rome, who is pregnant at the time, is interdicted from fire and water,[2] and for this reason having become a foreigner, gives birth to a child; many authorities make a distinction, and are of the opinion that, as she conceived in lawful marriage, her child is born a Roman citizen, but if she conceived as the result of promiscuous intercourse, her child will be an alien.

[1] This rule, as expressed in the maxim: "*Partus sequitur ventrem*," has always been recognized. It not only applied to slaves, but also to illegitimate children, with reference to whom it is everywhere in force to-day. — ed.

[2] Prohibition of the use of water and fire was a death penalty introduced by Sylla in the *Lex Cornelia*. The person upon whom it was imposed being by its terms excluded from the enjoyment of the absolute necessaries of life, was certain to perish miserably if the sentence had been literally executed, which it never was, in reality. It operated, however, as a forfeiture of civil rights, and was avoided by voluntary exile. Certain limits were prescribed within which the privileges of citizenship could not be exercised; and if the guilty party remained, he became a social outcast with whom all ordinary intercourse was prohibited, and whose acts were void in law. Those who were convicted of capital crimes either took refuge in foreign countries, or changed their residence beyond the radius prescribed by the sentence, trusting to good fortune or the efforts of their friends to have it annulled, and their disabilities removed by legislation, which was usually effected in the *Comitia Centuriata* where the trial had taken place. Many distinguished Romans were subjected to the interdiction from fire and water, among them Cicero, who was, in this way, banished four hundred miles from Rome. — ED.

(91) Likewise, where a woman who is a Roman citizen while pregnant, becomes a slave under the Claudian Decree of the Senate, for the reason that she had intercourse with a slave belonging to another, against the consent and protest of his master, many authorities make a distinction and hold that as the child was conceived in lawful marriage, it will be born a Roman citizen, but if it was conceived as the result of promiscuous intercourse, it will be born the slave of the person to whom his mother belongs.

(92) Again, if an alien woman should conceive as the result of promiscuous intercourse, and afterwards become a Roman citizen and bring forth a child, the latter will be a Roman citizen. If, however, she should conceive by an alien whom she married in accordance with foreign laws and customs, she will, under the terms of the Decree of the Senate enacted at the instance of the Divine Hadrian, be held to give birth to a Roman citizen, provided Roman citizenship has also been conferred upon the father.

(93) Where an alien has acquired Roman citizenship for himself and his children, the latter do not pass under the control of their father unless the Emperor should expressly cause them to do so; and this he only does when, after the case has been examined, he thinks that this would be advantageous to the children. He, moreover, makes a more diligent and minute investigation with reference to children who are under the age of puberty and absent; and this rule is set forth in an Edict of the Divine Hadrian.

(94) Likewise, where anyone with his wife, during her pregnancy, is presented with Roman citizenship, although the child, as we have mentioned above, is born a Roman citizen, he still does not pass under the control of his father; and this is stated in a rescript of the Divine Hadrian. For this reason if he knows that his wife is pregnant, and he petitions the Emperor for citizenship for himself and his wife, he should, at the same time, ask that his child shall be subjected to his authority.

(95) The rule is otherwise in the case of those who, together with their children, attain to Roman citizenship by the right of being Latins, for their children pass under their control.

(96) This right has been granted to certain foreign States, either by the Roman people, or by the Senate, or by the Emperor.

The right of Latinity is either greater or less. Greater Latinity is that of those who are elected decurions or administer any honorable office or magistracy, and by this means obtain Roman citizenship. The lesser right of Latinity is where only those who administer the office of magistrate or any other honorable employment attain to Roman citizenship; and this difference is referred to in many Imperial rescripts.

(97) Not only as we have stated are natural children in our power, but also those whom we adopt.

(98) Adoption takes place in two ways; either by the authority of the people, or by the command of the magistrate, as for instance, of the Prætor.

(99) We adopt, by the authority of the people, those who are their own masters, which kind of adoption is called arrogation, for the reason that he who adopts is asked, that is to say, interrogated, whether he desires to have the person whom he intends to adopt as his lawful son; and he who is adopted is asked whether he is willing to have this done; and the assembled people are asked whether they direct this to take place. By the command of the magistrate we adopt those who are under the control of their parents, whether they are in the first degree of descendants, as a son or a daughter, or whether they belong to an inferior degree, as a grandson or a granddaughter, a great-grandson or a great-granddaughter.

(100) Adoption by the people can only take place at Rome; and the other usually takes place in the provinces before the governors of the same.

(101) The better opinion is that women cannot be adopted by the voice of the people; but women may be adopted in the tribunal of the Prætor at Rome, or in the provinces in the tribunal of the proconsul or the lieutenant.

(102) The adoption of a child under the age of puberty by the vote of the people was at one time forbidden, and at another permitted; but at present, by the Epistle of the Emperor Antoninus addressed to the pontiffs, it is allowed under certain conditions, if there seems to be good cause for the adoption. We can, however, adopt persons of any age in the tribunal of the Prætor at Rome, or in the provinces in that of the proconsul, or the lieutenant.

(103) It is a rule common to both kinds of adoption that persons who are incapable of begetting children, such as eunuchs, can adopt.

(104) Women, however, cannot in any way adopt other persons, for the reason that they cannot exercise authority even over their natural children.

(105) Likewise, if anyone adopts another, either by the vote of the people, or by the consent of the Prætor or the governor of a province, he can give the son whom he has adopted in adoption to another.

(106) It is a question, however, with reference to both forms of adoption, whether a person can adopt another who is older than himself.

(107) It is peculiar to that kind of adoption which takes place by the vote of the people, that if he who gives himself to be arrogated has children under his

control, he will not only himself be subject to the authority of the arrogator, but his children will also be under the control of the latter, as grandchildren.

(108) Now let us consider those persons who are in our hand, which right is also peculiar to Roman citizens.

(109) Both males and females are under the authority of another, but females alone are placed in the hands.

(110) Formerly this ceremony was performed in three different ways, namely, by use, by confarreation, and by coemption.

(111) A woman came into the hand of her husband by use when she had lived with him continuously for a year after marriage; for the reason that she was obtained by usucaption, as it were, through possession for the term of a year, and passed into the family of her husband where she occupied the position of a daughter. Hence it is provided by the Law of the Twelve Tables that if a woman was unwilling to be placed in the hand of her husband in this way, she should every year absent herself for three nights, and in this manner interrupt the use during the said year; but all of this law has been partly repealed by legal enactments, and partly abolished by disuse.

(112) Women are placed in the hand of their husbands by confarreation, through a kind of sacrifice made to Jupiter Farreus, in which a cake is employed, from whence the ceremony obtains its name; and in addition to this, for the purpose of performing the ceremony, many other things are done and take place, accompanied with certain solemn words, in the presence of ten witnesses. This law is still in force in our time, for the principal flamens, that is to say, those of Jupiter, Mars, and Quirinus, as well as the chief of the sacred rites, are exclusively selected from persons born of marriages celebrated by confarreation. Nor can these persons themselves serve as priests without marriage by confarreation.

(113) In marriage by coemption, women become subject to their husbands by mancipation, that is to say by a kind of fictitious sale; for the man purchases the woman who comes into his hand in the presence of not less than five witnesses, who must be Roman citizens over the age of puberty, and also of a balance-holder.

(114) By this act of sale a woman can not only make a coemption to her husband but also to a stranger, that is to say, the sale takes place either on account of marriage or by way of trust; for a woman who disposes of herself in this way to her husband for the purpose of occupying the place of his daughter is said to have done so on account of matrimony; but where she does this for some other purpose, either to a husband or to a stranger, as for

instance in order to avoid a guardianship, she is said to have made a coemption by way of trust.

(115) The method by which this is done is as follows: If a woman wishes to get rid of her present guardians and obtain another in their stead, she makes this disposal of herself with their consent; and then the other party to the sale sells her again to him to whom she wishes to be her guardian, and he manumits her by the ceremony of the wand of the Prætor, and by this means becomes her guardian, and is designated a fiduciary guardian, as will hereafter appear.

(115a) Formerly a fiduciary coemption took place for the purpose of acquiring power to make a will, for women, with some exceptions, did not then have testamentary capacity unless they had made fictitious sales of this kind, and after having been resold, were manumitted; but the Senate, at the suggestion of the Divine Hadrian, abolished this necessity of making a fictitious sale.

(115b) Even if the woman makes a fiduciary sale of herself to her husband, she nevertheless occupies the place of his daughter; for if a wife comes into the hand of her husband for any reason whatsoever, it has been decided that she enjoys the rights of a daughter.

(116) It remains for us to explain what persons are subject to mancipation.

(117) All children of either the male or female sex who are under the control of their father can be mancipated by him in the same way as that in which slaves can be mancipated.

(118) The same rule of law applies to those persons who are in the hand of others, and they can be mancipated in the same way by those to whom they have been sold, just as children may be mancipated by their father; and while she who is married to the purchaser may only occupy the place of his daughter; still, though she may not be married to him, nor occupy the place of his daughter, she can still be mancipated by him.

(118a) Generally speaking, mancipation takes place either by parents or by those who obtain possession by coemption, when the parents and the so-called purchasers desire to release the persons from their authority, as will appear more clearly hereafter.

(119) Mancipation, as we have mentioned above, is a kind of fictitious sale, and the law governing it is peculiar to Roman citizens. The ceremony is as follows: After not less than five witnesses (who must be Roman citizens above the age of puberty) have been called together, as well as another person of the same condition who holds a brazen balance in his hand and is styled the

"balance holder," the so-called purchaser, holding a piece of bronze in his hands, says: "I declare that this man belongs to me by my right as a Roman citizen, and let him be purchased by me with this piece of bronze, and bronze balance." Then he strikes the scales with the piece of bronze, and gives it to the so-called vendor as purchase money.

(120) In this manner both slaves and free persons are mancipated, as well as such animals as are subject to sale, among which are included oxen, horses, mules, and asses, as well as urban and rustic estates; for instance, Italian lands are usually disposed of in the same manner.

(121) The sale of land differs from the mancipation of other things, in that both slaves and free persons, as well as animals subject to mancipation cannot be disposed of in this way unless they are present; as it is necessary for him who acquires the object by mancipation to be able to grasp it with his hands, and the ceremony is designated mancipation because the property is seized with the hands. Lands, however, are usually mancipated at a distance.

(122) A piece of brass and a balance are employed for the reason that in former times only brazen money was in circulation, and this consisted of asses, double asses, half asses, and quarter asses; nor was any gold or silver coin in circulation, as we learn by the Law of the Twelve Tables. The value of the purchasing power of these coins was not estimated by their number, but by their weight; hence an as consisted of a pound of bronze, a double as of two pounds (whence it derived its name, which is still retained), while the half-asses and quarter-asses were estimated by their respective parts of a pound. Therefore, in former times, those who paid out money to anyone did not count it but weighed it, and the slaves who were permitted to disburse money were called "weighers."

(123) If anyone should ask what is the difference between coemption and mancipation, the reply is that the first ceremony does not reduce the party to a servile condition; but persons of either sex mancipated by parents or others are reduced to the condition of slaves, to such an extent that they cannot take either an estate or a legacy under the will of the party by whom they have been mancipated, unless they have been ordered to be free by the terms of the same will; just as the law is with reference to the persons of slaves. The reason for this distinction is clear, as the words used by parents and so-called purchasers are the same as those employed in the mancipation of slaves, but in the coemption of women this is not the case.

(124) Let us now consider in what ways those who are subject to the authority of another are released from it.

(125) And, in the first place, let us examine those who are under the power of others.

(126) We can understand from what has been stated above with reference to the manumission of slaves, how they are freed from the power of their masters.

(127) Children who are under the authority of their father become their own masters at his death. The following distinction, however, must be made, namely: When a father dies, his sons and his daughters always become independent; but when a grandfather dies, his grandsons and granddaughters do not, under all circumstances, become independent, but only where, after the death of their grandfather, they do not again pass under the control of their father. Therefore, if at the time of the death of their grandfather their father was living and was under the control of his father, they pass under the control of their father after the death of their grandfather; but if, at the time of the death of their grandfather, their father was either dead or had been released from the control of his father, then the grandchildren, for the reason that they cannot pass under his control, will become their own masters.

(128) As a person who, on account of the commission of some crime, has been interdicted from water and fire under the *Lex Cornelia*, loses his Roman citizenship, and for this reason is excluded from the number of Roman citizens, his children cease to be under his control, just as if he were dead; for reason does not permit that a person of the condition of an alien should have a Roman citizen subject to this authority. In like manner, if anyone who is in the power of his father is interdicted from water and fire, he ceases to be under his control, as it is not reasonable that a man of the condition of an alien should be under the parental authority of a Roman citizen.

(129) Even if the father should be taken captive by the enemy and thereby become the enemy's slave, nevertheless, his authority over his children remains in abeyance under the law of *postliminium*, by which those who were captured by the enemy and return, recover all their former rights; and, therefore, if he should return, he will have his children in his power. If, however, he should die while in captivity, his children will become their own masters; but it may be doubted whether this took place at the time when the father died in the hands of the enemy, or at the time when he was captured. Likewise, if the son himself, or a grandson, should be taken captive by the enemy, we say that the authority of the father remains in abeyance on account of the law of *postliminium*.

(130) Moreover, male children are released from paternal authority if they are installed priests of Jupiter; and females, if they are chosen Vestal Virgins.

(131) In former times also, when the Roman people were accustomed to establish colonies in Latin territory, sons, who, by the order of their father, placed their names upon the roll of the Latin colony, ceased to be under the control of their father, because they became citizens of another State.

(132) Again, children cease to be under parental authority by means of mancipation. A son, however, by three mancipations, and other children either of the male or female sex by a single mancipation, are released from parental authority; for the Law of the Twelve Tables only mentions three mancipations with reference to a son, as follows: "If a father sells his son three times, let him be free from the control of his father." This ceremony takes place in the following manner. The father sells his son to a third party, and the latter manumits him by the wand of the prætor, and by doing so, he is restored to the control of his father; and the latter then sells him a second time, either to the same person or to another (but it is customary to sell him to the same person); and he again manumits him in the same way, and by this act the son is again placed in the power of his father; and the father then sells him a third time, either to the same person or to another (it is customary, however, for him to be sold to the same person), and by virtue of this sale he ceases to be under the control of his father, even though he has not yet been manumitted, but still remains in the condition of one who has been sold.

(133) It should, however, be noted that one who has a son, and by him a grandson under his control, has full power to release his son from his control, and still to retain authority over his grandson; or, on the other hand, he has the right to manumit his grandson, or to render both parties their own masters. We understand that this rule also applies to great-grandsons.

(134) Again, parents also lose their authority over their children by giving them in adoption. Where a son is given in adoption, three sales are required, and two intervening manumissions must take place, as is customary when the father releases a son from his authority, in order that he may become his own master. Then, the son is either resold to the father and he who adopts him claims him as his son before the prætor; and, if his natural father does not claim him, he is given by the prætor to the party who claims him by adoption; or, if he is not sold again to his father, he who adopts him claims him from him to whom he was sold for the third time. It is, however, more convenient for him to be resold to his natural father. In the case of other offspring of either sex, one sale is sufficient, whether a resale is made to the natural father or not. The same ceremony ordinarily takes place in the provinces, in the presence of the governor.

(135) When a grandson is conceived after the first or second sale of a son, although he may not be born until after the third sale of his father, he, nevertheless, remains under the control of his grandfather, and may be

emancipated, or given in adoption by him. A grandson, however, who is begotten after the third sale of a son, is not born under the control of his grandfather; but Labeo holds that he is born under the control of him to whom his father was sold. We, however, make use of the following rule, that as long as its father is in mancipation the right of the child remains in suspense; and if the father should be manumitted, the child will pass under his authority; but if he should die before the ceremony of mancipation has been completed, the child will become its own master.

(135a) We understand that the same rule applies to the case of a grandson who has been mancipated once, as it does to that of a son who has been mancipated three times, for, as we stated above, what three sales accomplished with reference to a son, one accomplishes in the case of a grandson.

(136) A woman placed in the hand of her husband by confarreation is not, for this reason, at present, released from paternal authority unless the ceremony of coemption has been performed; for it is provided by the *Lex Asinia Antistia* enacted during the Consulate of Cornelius Maximus and Tubero, with reference to priestesses of Jupiter being in the hand of their husbands as far as relates to the sacred rites; but in all other respects they are considered as not being under such restraint. Where, however, women are placed in the hand of their husbands by coemption, they are released from parental control; and it makes no difference whether they are placed in the hand of their husbands, or in that of strangers; although those alone are considered to occupy the place of daughters who are placed in the hand of their husbands.

(137) Women placed in the hand of their husbands by coemption cease to be subject to this authority in the same way as daughters under the control of their father; that is to say, either by the death of him in whose power they are, or because he has been interdicted from water and fire.

(137a) They also cease to be in the hand of their husbands by remancipation; and if emancipated after a single sale they become their own mistresses. A woman who has concluded a coemption with a stranger by way of trust, can compel him to sell her again to anyone whom she may select; but one who has been sold to her husband, in whose hand she is, cannot compel him to do so, any more than a daughter can compel her father, even though she may be an adopted daughter. A woman, however, can, by serving notice of repudiation, force her husband to release her, just as if she had never been married.

(138) As persons who have been sold in this way are considered to occupy the position of slaves, if they should be manumitted either by the prætor, or by enrollment in the census, or by will, they become their own masters.

(139) In this instance, however, the *Lex Ælia Sentia* does not apply. Therefore, we do not require the party who manumits, or the one who is manumitted, to be of any particular age; and no attention is paid to whether the party granting the manumission has either a patron or a creditor; and not even the number prescribed by the *Lex Fufia Caninia* is considered with reference to persons of this description.

(140) But even if the party having possession of the one who is sold should be unwilling, the latter can obtain his freedom by being enrolled on the register of the census; except in the case of one whom his father has mancipated under the condition that he should be again sold to him; for, in this instance, the father is considered to have reserved, to a certain extent, his own power for himself which he received by mancipation. And, indeed, he is not said to have received his freedom by enrollment on the register of the census, against the consent of the party who holds him in mancipation, if his father gave him up as the result of a noxal action; for instance, where his father has been condemned on account of a theft committed by his son and has surrendered him by mancipation to the plaintiff, for then the plaintiff holds him instead of the payment of a sum of money.

(141) In conclusion, we observe that no insulting act should be committed by us against persons whom we hold in mancipation; otherwise, we shall be liable to a suit for injury committed. And, indeed, men should not be retained for any length of time in this condition, but, for the most part, as a matter of form, and only for an instant, unless the parties are mancipated on account of a noxal action.

(142) Let us now pass to another division. For persons who are neither subject to paternal authority, nor are in the hand, nor are held in mancipation by another, may still be under guardianship or curatorship, or may be free from either of these restrictions. Let us first consider those who may be under guardianship and curatorship; for then we shall understand who the other persons are who are subject to neither of these restraints.

(143) And, first, let us examine those who are under guardianship.

(144) Parents are permitted to appoint testamentary guardians for their children who are subject to their authority, who are under the age of puberty, and of the male sex; and for those of the female sex, no matter what their age may be, and even if they are married; for the ancients required women, even if they were of full age, to remain under guardianship on account of the levity of their disposition.

(145) Therefore, if anyone appoints a guardian for his son and daughter by will, and both should arrive at the age of puberty, the son will cease to have a

guardian, but the daughter will nevertheless remain subject to guardianship; for it is only under the *Lex Julia et Papia* that women are released from guardianship by the birth of children. Those whom we speak of do not include Vestal Virgins, whom the ancients desired to be free on account of the honor of the priesthood; hence this was provided by the Law of the Twelve Tables.

(146) We can, however, only appoint testamentary guardians for grandsons and granddaughters, if after our death they do not again pass under the control of their father. Therefore, if my son was under my control at the time of my death, my grandsons by him cannot have a guardian appointed by my will, although they were under my control at the time; for the reason that by my death they were placed under the control of their father.

(147) As in many other instances posthumous children are considered as already born, in this case also it has been decided that testamentary guardians can be appointed for posthumous children, as well as for those previously born; provided, however, that if born during our lifetime, they would have been subject to our authority. We can also appoint them our heirs, but it is not permitted to appoint posthumous strangers heirs.

(148) A testamentary guardian can be appointed for a wife who is in the hand of the testator; just as if she were a daughter; and, likewise, one may be appointed for a daughter-in-law who is in the hand of a son, just as if she were a granddaughter.

(149) A guardian can most properly be appointed in the following manner, namely: "I appoint Lucius Titius guardian of my children." If, however, the appointment was made as follows: "Let Lucius Titius be the guardian of my children and my wife," it is understood to be legally made.

(150) The choice of a guardian may be left to a wife who is in the hand of the testator, that is to say, he can permit her to select any guardian whom she may choose, as follows: "I give to Titia, my wife, the selection of her guardian." In this instance, the wife is permitted to appoint a guardian either for the administration of all the property, or only of one or two things.

(151) Moreover, the choice may be granted either absolutely or with restrictions.

(152) It is ordinarily granted absolutely in the way that we have mentioned above. Where it is granted with restrictions, the following form is usually employed: "I grant to Titia, my wife, only one choice of a guardian"; or: "I only grant her the right to make two selections."

(153) These privileges of selection are very different, for she who has an unlimited right of choice, can choose a guardian twice or three times, or oftener; but she who has a limited right of choice cannot make more than one if only one is granted; and if only two are granted she has no right to make more than two selections.

(154) Guardians who are especially appointed by will are called "dative"; and those ta whom the selection of a guardian is left are called "optative."

(155) By the Law of the Twelve Tables the nearest agnates become the guardians of children for whom no guardian was appointed by will, and they are styled legal guardians.

(156) Agnates are blood relatives through the male sex, for instance, through the father; as a brother having the same father, the son of a brother, or a grandson by him, and also a paternal uncle and his son and grandson. Those who are related through the female sex are not agnates, but cognates, according to natural law. Therefore, agnation does not exist between a maternal uncle and a son or a sister, but cognation does. In like manner, the son of my maternal aunt, or the sister of my mother, is not my agnate, but my cognate; and, on the other hand, I am related to him by the same rule, because children follow the family of their father, and not that of their mother.

(157) Formerly, however, according to the Law of the Twelve Tables, females had agnates as legal guardians, but afterwards the *Lex Claudia*, which abolished the guardianship of agnates, so far as females were concerned, was enacted, and therefore a male child under the age of puberty has his brother, who is above the age of puberty, or his paternal uncle, as his guardian; but a female child cannot have a guardian of this kind.

(158) The right of agnation is extinguished by the loss of civil rights, but the right of cognation is not affected by it, for the reason that a civil law can abrogate civil rights, but cannot extinguish natural rights.

(159) The loss of civil rights is a change of former condition, and this takes place in three ways; it is either greatest, or less, which some call intermediate, or least.

(160) The greatest loss of civil rights occurs when anyone forfeits at the same time both his citizenship and his freedom, which happens to those who are not inscribed on the register of the census, and are in consequence ordered to be sold; which rule has for some time been abolished by disuse. Under the terms of the *Lex Ælia Sentia*, *dediticii* are liable to the same penalty for violation of its provisions

if they have established their domicile in the City of Rome. It also takes place where, under the Claudian Decree of the Senate, free women become the slaves of the owners of other slaves with whom they have cohabited against the consent and protest of their masters.

(161) Less, or intermediate, loss of civil rights occurs when citizenship is forfeited but freedom is retained, which happens when anyone is interdicted from fire and water.

(162) The least loss of civil rights results when both citizenship and freedom are retained, but a man's domestic condition is altered; which happens to those who are adopted, as well as to women subject to coemption, and also in the case of those who are given in mancipation and are afterwards manumitted; so that as often as anyone is mancipated, or remancipated, or manumitted, he suffers a loss of civil rights.

(163) The right of agnation is extinguished not only by the two greater losses of civil rights but also by the least; and therefore if a father should emancipate one of two children, neither can be the guardian of the other by the right of agnation after his death.

(164) When agnates have a right to guardianship, all of them are not entitled to that right at once, but only those in the nearest degree.

(165) By the same law of the Twelve Tables, the guardianship of freedwomen and freedmen under the age of puberty belongs to their patrons and the children of the latter. This kind of guardianship is also styled legal, not because special provision is made for it by this law, but for the reason that this has been accepted by interpretation just as if it had been expressly stated in the words of the statute; for as the law directed that the estates of freedmen and freedwomen who died intestate should belong to their patrons and the children of the latter, the ancient authorities held that the law intended that they should be entitled to their guardianship because it ordered that agnates whom it called to the succession should also be guardians.

CONCERNING FIDUCIARY GUARDIANSHIP.

(166) As in the case of patrons, another kind of guardianship which is also designated legal, has been established. For, if anyone should give in mancipation to another, under the condition that he would remancipate him to himself, either a son or a grandson by that son, who is under the age of puberty, or a daughter or a granddaughter by a son, and their descendants, whether they have arrived at the age of puberty or not; and he should manumit them after they have been remancipated, he will become their legal guardian.

(166a) There are other kinds of guardianship which are styled fiduciary, that is to say, such as we are entitled to for the reason that a free person has been mancipated by us, or by a relative, or by a party to coemption and afterwards has been manumitted.

(167) The guardianship of Latins of both sexes who are under the age of puberty does not invariably belong to those who manumit them, but to those to whom they belonged by quiritarian right before their manumission. Therefore, if a female slave who belonged to you by quiritarian right, but who was mine by bonitarian right, should be manumitted by me alone without your taking part in the ceremony, she would become a Latin, and her property will belong to me; but you will have the right to her guardianship, as provision for this is made by the *Lex Junia*. Hence, if the said slave should be made a Latin by one who had both the bonitarian and quiritarian rights, her property as well as her guardianship will belong to him.

(168) Agnates, patrons, and those who manumit free persons are permitted to transfer the guardianship of a female ward to another in court; it is not, however, permitted to transfer the guardianship of male wards, for the reason that this is not considered onerous, as it terminates at the age of puberty.

(169) He to whom a guardian is thus transferred is designated a cessionary guardian.

(170) If he dies, or loses his civil rights, the guardianship reverts to the party who transferred it;, and if the latter should be either dead or have forfeited his civil rights, the guardianship will leave the cessionary guardian and pass to the one next in degree to the party who transferred it.

(171) So far as agnates are concerned, however, cessionary guardianship does not at present exist, as guardianship of female wards by agnates was abolished by the *Lex Claudia*.[1]

(172) Certain authorities hold that fiduciary guardians also have no right to transfer their guardianship, as they themselves have voluntarily assumed the burdens of the same; but, although this has been decided, still in the case of a parent who have given either a daughter, granddaughter, or a great-granddaughter in mancipation to another under the condition that she shall be again mancipated to him, and, this having been done, he manumits her, the same rule should not apply; as he is considered a legal guardian, and the same privilege should be granted to him as to a patron.

(173) Moreover, by a Decree of the Senate, women are permitted to demand another guardian to take the place of one who is absent; and this having been

granted, the first guardian ceases to hold his office, nor does it make any difference how far he may be from home.

(174) An exception, however, is made in the case of an absent patron, as a freedwoman is not permitted in this instance to demand another guardian.

(175) Again, in the same class with the patron we have a parent who has obtained legal guardianship from the fact that he has manumitted his daughter, granddaughter, or great-granddaughter, who has previously been remancipated by himself. His sons, however, are only considered to occupy the places of fiduciary guardians, but those of a patron obtain the same guardianship which their father possessed.

[1] Prior to the enactment of the *Lex Claudia*, the *res mancipi* of a woman under the tutelary control of agnates, were not subject to usucaption, unless the transfer had previously been sanctioned by her guardian. — ed.

(176) Sometimes, however, it is permitted to demand a guardian to take the place of an absent patron; as for instance, where an estate is to be entered upon.

(177) The Senate decreed that the same rule should apply to the son of a patron who was himself a ward.

(178) For by the *Lex Julia*, enacted for the purpose of regulating marriages, a female who is under the legal guardianship of a ward is permitted to demand a guardian from the Prætor of the City for the purpose of constituting her dowry.

(179) For the son of a patron, even if he is under the age of puberty, becomes the guardian of a freedwoman, although he cannot perform any legal act, as he is not permitted to do anything without the authority of his guardian.

(180) Likewise, if any female is subject to the legal guardianship of a person who is insane, or dumb, she is permitted by the Decree of the Senate to demand a guardian for the purpose of constituting her dowry.

(181) In these instances, it is clear that the patron or the patron's son is unquestionably entitled to the guardianship.

(182) Moreover, the Senate decreed that, if the guardian of a male or female ward was suspected of maladministration, and was removed from the guardianship; or if he should be excused for some good reason, and another guardian be appointed in his stead; after this has been done, the former guardian shall lose the guardianship.

(183) All of these provisions are observed both at Rome and in the provinces, but at Rome application for the appointment of a guardian should be made to the Prætor, and in the provinces to the governor.

(184) Formerly, when the ancient mode of procedure was in use, a guardian was appointed for another reason, namely, where a suit was about to be brought between the guardian and the woman, or the ward; since because the guardian could not grant authority in his own case, another guardian was appointed by whom the legal proceedings were instituted; and he was called a prætorian guardian, because he was appointed by the Urban Prætor. Some authorities, however, think that, after the ancient mode of procedure was abolished, this method of appointing a guardian became obsolete, but it is held by others that it is still the practice where an action is to be brought.

(185) If there should be no lawful guardian for a person, one is appointed for him under the *Lex Atilia,* in the City of Rome by the Urban Prætor and a majority of the tribunes of the people, who is styled an "Atilian guardian"; and in the provinces he is appointed by the governor under the *Lex Julia et Titia*.

(186) Hence if a guardian is appointed of anyone by will under a condition, or from a certain day, a guardian can be appointed while the condition is pending, or before the time arrives. Likewise, if a guardian should be appointed absolutely, a guardian can be demanded under these laws, so long as no heir appears, and he will cease to hold his office as guardian when the one appointed by will acquires the right to act.

(187) When a guardian is captured by the enemy, a substitute should be demanded under these laws, and he will cease to be guardian if the one who was taken captive should return, for, on his return, he will recover the guardianship by the law of *postliminium*.[1]

(188) From this it is apparent how many different kinds of guardianships there are, and if we consider into how many classes they may be divided a long discussion will be required, for the ancient authorities entertained many doubts on this subject, and as we have examined it very carefully, both in the interpretation of the Edict and in the books which we have written on Quintus Mucius, it will be sufficient to state that certain jurists, for instance, Quintus Mucius, say that there are five classes, and others, like Servius Sulpicius, say that there are three; and still others, as Labeo, say that there are two; and

[1] The *jus postliminii* of the Civil Law, was the privilege enjoyed by prisoners of war of being, upon their return, restored to all the rights which they possessed previous to their captivity. By the effect of this legal fiction they were considered never to have been absent at all. "*Postliminium fingit eum qui captus est, in civitate semper fuisse*." The rule was also applicable to real, but

not to personal property, unless the latter was speedily retaken, and hence became readily susceptible of identification.

Under the Law of *Postliminium*, freemen were said to "return"; slaves to be "received"; and property to be "recovered". The *animus revertendi* was absolutely essential for the enjoyment of the rights which it conferred; if a prisoner of war was surrendered against his will, he was not entitled to them. Deserters were also excluded from participation in these advantages.

As long as a father was in captivity, the exercise of paternal control remained in abeyance, dating from the moment of capture, but the right again vested at the time of release. Marriage was voidable at the option of the parties interested; hence its suspension might be indefinitely prolonged. As a captive was temporarily *civiliter mortuus*, he could perform no legal act; but if he died while in the hands of the enemy his decease was presumed to have occurred in his own country, at the instant when he lost his liberty.

The general principles of the *jus postliminii* as laid down by the Romans, are recognized by all writers on international law. "*Per bellum capti, ubi manus hostium quocunqua modo evaserint, neque illis fide data sint obstricti, atque ad suos redierint, non modo pristinum statum, sed & omnia sua bona ac jura recuperent. Quod autem res attinet, quamdiu bellum durât, si hostibus iterum sint ereptæ sive per nos ipsos, sive per nostros cives aut milites, eas ad antiquos dominos redire par est, non immobiles tantum, sed & mobiles, modo liquido a nobis possint dignosci*." (Pufendorf, *De Jure Naturæ et Gentium*, VIII, VI, 25.)

"It is therefore with reason that movables or booty are excepted from the right of *postliminium*, unless retaken from the enemy immediately after his capture of them; in which case, the proprietor neither finds a difficulty in recognising his effects, nor is presumed to have relinquished them." (Vattel, *The Law of Nations*, III, XIV, Page 393.)

"The right of postliminy is founded upon the duty of every State to protect the persons and property of its citizens against the operations of the enemy. When, therefore, a subject who has fallen into the hands of the enemy is rescued by his State, he is restored to his former rights and condition under his State. So, of the property of a subject recaptured from the enemy by his State; it is no more the property of the State than it was before it fell into the hands of the enemy; it must, therefore, be restored to its former owner. But if, by the well-established rules of public law, the title to the captured property has become vested in the enemy captor, the former owner cannot claim its restoration from the recaptor, because his original title has been extinguished." (Baker, First Steps in International Law, XXXV, Pages 364, 365.) — ed.

others again, hold that there are as many kinds of guardianship as there are forms of the same.

(189) The law of all states declares that persons who have not reached puberty shall be under guardianship, because it is consonant with natural reason that one who is not of full age should be controlled by the guardianship of another. Indeed, there is scarcely any state in which parents are not permitted to appoint testamentary guardians for their children; although, as we have stated above, only Roman citizens are considered to have their children subject to paternal authority.

(190) There does not seem to be any good reason, however, why women of full age should be under guardianship, for the common opinion that because of their levity of disposition they are easily deceived, and it is only just that they should be subject to the authority of guardians, seems to be rather apparent than real; for women of full age transact their own affairs, but in certain cases, as a mere form, the guardian interposes his authority, and he is often compelled to give it by the Prætor, though he may be unwilling to do so.

(191) Therefore, a woman has no right of action under the guardianship against her guardian, but where guardians transact the business of their male and female wards, they must render an account of their guardianship in court, after their wards arrive at the age of puberty.

(192) The legal guardianship of patrons and parents are indeed understood to have a certain effect, for the reason that they cannot be forced to give their consent to the making of a will, to the alienation of property subject to mancipation, or to the assumption of obligations; unless there should be some urgent reason for the alienation of such property, or for undertaking the obligations aforesaid. These provisions have been made for their own benefit, in order that where the estates of persons who have died intestate belong to them, they can neither be excluded from them by will, nor have the estate come into their hands diminished in value on account of debts which have been incurred, or through the alienation of the most valuable part of the property.

(193) Women are not held in guardianship among foreigners as they are with us; still, they are generally, as it were, in a state of tutelage; as, for example, the law of the Bythinians directs that if a woman enters into a contract it must be authorized either by her husband or by a son who has reached the age of puberty.

(194) Moreover, a freeborn woman is released from guardianship if she is the mother of three children, and a freedwoman if she is the mother of four, and is under the legal guardianship of her patron. Those who have other kinds of

guardians, as, for instance, Atilian[1] or Fiduciary, are released from guardianship by having three children.

[1] The *tutor Atilianus* was appointed by the Prætor and the tribunes, under the *Lex Atilia,* when no guardian existed. This became necessary when there was a will, and the heir had not accepted the estate; or the designated guardian was incapacitated; or the testament from which he derived his authority was defective. — ed.

(195) A freedwoman may, however, have a guardian appointed in several other ways; for example, where she has been manumitted by a woman, for then she must demand a guardian under the *Lex Atilia,* or in the provinces under the *Lex Julia et Titia,* for she cannot be under the guardianship of a patroness.

(195a) Again, if she has been manumitted by a male and should enter into coemption with his consent, and then should be remancipated and manumitted, she ceases to have her patron as her guardian, and begins to have as a guardian the party by whom she was manumitted, who is designated a fiduciary guardian.

(195b) Likewise, if her patron, or his son, gives himself in adoption, a freedwoman should demand a guardian for herself either under the *Lex Atilia,* or the *Lex Julia et Titia*.

(195c) Likewise, under the same laws, a freedwoman should demand a guardian, where her patron dies and leaves no child of the male sex in the family.

(196) Again, when males reach the age of puberty they are released from guardianship. Sabinus and Cassius and our other preceptors hold that a person has arrived at the age of puberty who manifests this by the condition of his body, that is to say, if he is capable of procreation; but in the case of those who cannot show this condition, as for instance, eunuchs, their age should be considered to be that at which persons ordinarily reach puberty. Authorities belonging to another school, however, think that the age of puberty should be estimated by years; that is to say, they hold that a person has arrived at the age of puberty who has completed his thirteenth year. . . .[1]

(197) After having been released from guardianship, the affairs of a minor are administered by a curator until he reaches the age when he is qualified to transact his own business; and this rule is observed among foreign nations, as we have stated above.

(198) In cases of this kind, in the provinces, curators are usually appointed by the governor.

(199) In order to prevent the property of wards and persons who are under the charge of curators from being wasted or diminished in value by their guardians and curators, it is the duty of the Prætor to compel guardians and curators to furnish security for this purpose.

(200) This, however, is not always the case, for guardians appointed by will are not compelled to furnish security, because their fidelity and diligence have been approved by the testator himself; and curators who have not obtained their office by law, but who are appointed either by a consul, a Prætor, or the governor of a province, are, for the most part, not required to furnish security, for the reason that they have been chosen on account of their being considered sufficiently trustworthy.

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THE INSTITUTES OF GAIUS
(c. 170 A.D.)

SECOND COMMENTARY.

(1) In the former Commentary we explained the law of persons; now let us consider the law of things, which either form part of our property or do not form part of it.

(2) The principal division of things is under two heads, namely, those that are subject to divine right, and those that are subject to human right.

(3) Things which are subject to divine right are such as are sacred and religious.

(4) Sacred things are those which are consecrated to the gods above; religious things are those which are dedicated to the spirits of the departed.

(5) That only is considered sacred which has been consecrated by the authority of the Roman people; that is to say, by a law or a Decree of the Senate enacted for that purpose.

(6) We, however, render things religious by our own will, when we bury a body in our own ground, provided we have a right to conduct the funeral of the deceased.

(7) Moreover, it has been held by the greater number of authorities that, in the provinces, ground does not become religious, as the ownership of the same belongs to the Roman people or to the Emperor, and we are only considered to have the possession or the usufruct of the same, and though it may not actually be religious, it is regarded as such.

Likewise, in the provinces, while property which has not been consecrated by the authority of the Roman people is, properly speaking, not sacred, it is still considered as such.

(8) Holy places are those which are, to a certain extent, subject to divine right, as for instance, the walls and gates of a city.

(9) Again, things which are subject to divine right are not included among the possessions of any individual; that is to say, things which are subject to human right are, for the most part, included in the property of someone, they may,

however, belong to no one; for an estate before any heir appears is without an owner, as a rule.

(10) Things subject to human right are either public or private.

(11) Things which are public are considered to be the property of no individual, for they are held to belong to the people at large; things which are private are the property of individuals.

(12) Moreover, some things are corporeal and others are incorporeal.

(13) Corporeal things are those that can be touched, as, for instance, land, a slave, clothing, gold, silver, and innumerable other objects.

(14) Incorporeal things are such as are not tangible, and are those consisting merely of rights, as, for instance, inheritances, usufructs, and obligations, no matter in what way the latter may have been contracted. For while corporeal things are included in an estate, and the crops gathered from land are corporeal, and what is due to us

under the terms of some obligation is, for the most part, of a corporeal character, for example, land, slaves, money; still, the right of succession, the right of use and enjoyment, and the right of obligation, are incorporeal. To the same class belong rights attaching to urban and rustic estates, which are also called servitudes. Among these are the right to raise a building higher and obstruct the lights of a neighbor; the right to prevent a building from being raised, so that the lights of a neighbor may not be obstructed; the right to the use of streams, and to have rainwater fall upon the premises of another. . . .[1]

(14a) Things are either susceptible, or not susceptible of mancipation by sale.[2] Those susceptible of sale by mancipation are lands and houses in Italy, slaves, domestic animals and rustic servitudes; but servitudes attached to urban estates are not thus subject to sale.

(15) Likewise, estates subject to taxation and tribute are not subject to sale. According to what we have stated, cattle, horses, mules, and asses are held by some authorities to be susceptible of sale as soon as they are born; but Nerva, Proculus, and other jurists of a different school think that such animals are not subject to sale unless they have been tamed; and if this cannot be done on account of their extreme wildness, then they are considered to be salable when they reach the age at which others of the same kind are usually tamed.

(16) In like manner, wild beasts, as for instance, bears, lions, and those animals which can almost be classed as wild beasts, for example, elephants and camels, are not subject to sale; and therefore it makes no difference

whether these animals have been broken to harness or to carry burdens, for they were not even known at the time when some things were decided to be saleable and others were not.

(17) Again, almost all things which are incorporeal are not subject to sale, with the exception of servitudes attached to rustic estates; for it is established that these can be sold, although they are included in the number of incorporeal things.

(18) A great difference exists between things which are saleable by mancipation and things which are not.

(19) Things which are not saleable by mancipation become the property of others absolutely by mere delivery; if they are corporeal and on this account are capable of being delivered.

[1] Original manuscript illegible.

[2] The early Roman law divided property of every description into two classes, *res mancipi* and *res nec mancipi*. Ownership of the first could only be transferred by compliance with certain prescribed legal formalities, either involving a fictitious sale in the presence of witnesses and a balance-holder, or a public surrender of the property in court. The legal capacity to acquire *res mancipi* was vested only in those enjoying the privileges of Roman citizenship, who were said to obtain their title *ex jure quiritium*, by quiritarian right. Where neither of these formal methods of transfer was employed, the ownership did not pass until sufficient time had elapsed to establish title by prescription, and in the meantime, the property was considered to be *in bonis*, or merely in possession of the holder by bonitarian right. *Res nec mancipi*, which included everything not coming under the first head, and not belonging to the State, as set forth in the text, were transferable by mere delivery. The distinction between *res mancipi* and *res nec mancipi* which, for many years previously, had practically been ignored in business transactions, was abolished by Justinian. — ed.

(20) Therefore, if I deliver to you a garment, or some gold or silver, either by way of sale or donation, or for any other reason, the property immediately becomes yours, provided I am the owner of the same.

(21) To the same class belong lands in the provinces, some of which we designate as taxable, and others as tributary. Those are taxable which are situated in the provinces and are understood to be the property of the Roman people; those are tributary which are situated in the provinces and are considered the property of the Emperor.

(22) On the other hand, things susceptible of sale are such as are transferred to another by mancipation, from whence they are styled mancipable, and this has the same validity as a transfer in court.

(23) We explained mancipation and the manner in which it takes place in the preceding Commentary.

(24) A transfer of property in court takes place as follows: He to whom the property is to be conveyed appears before a magistrate of the Roman people, for example, the Prætor, and holding the property in his hands, says: "I declare that this slave belongs to me by quiritarian right." Then, after he makes this claim, the Prætor interrogates the other party to the transfer as to whether he makes a counter-claim, and if he does not do so, or remains silent, he adjudges the property to the party who claimed it. This is called an act of legal procedure, and it can even take place in a province before the governor of the same.

(25) For the most part, however, indeed almost always, we make use of sales by mancipation; for while we ourselves can transact our business in the presence of our friends, there is no reason or necessity for us to do so with greater difficulty before the Prætor, or the Governor of the province.

(26) If the property susceptible of alienation is neither sold nor transferred in court . . . .[1]

(26a) In the provinces, however, no private property in land exists, nor is there any free citizenship.

(27) Moreover, in this place we should note that where the property is merely attached to the soil of Italy, it is not attached to the soil of a province; for the term "attached" only applies where the property is mancipable, and land in a province is not saleable by mancipation. . . .[1]

(28) It is clear that incorporeal property is not susceptible of delivery.

(29) The rights of urban estates can only be transferred in court; those attached to rustic estates can also be sold.

(30) Usufruct is only susceptible of transfer in court, for the the owner of property can transfer the usufruct of the same to another so that the latter may have the usufruct, and he himself retain the bare ownership.

The usufructuary, by transferring his right to the owner of the property in court, causes himself to be divested of it, and the usufruct

[1] Original manuscript illegible.

to be merged in the ownership. Where, however, the right is transferred by him to another in court, it is, nevertheless, retained by the usufructuary, for such a transfer is held to be void.

(31) These proceedings only relate to lands in Italy, for only such lands can be transferred by mancipation, or surrendered in court. On the other hand, with reference to lands situated in the provinces, if anyone desires to create either the usufruct of the same, or the rights of way on foot, on horseback, and for vehicles; or of conducting water, or of raising houses to a greater height, or of preventing this from being done to avoid obstructing the lights of a neighbor, and other servitudes of this description, he can do so by means of agreements and stipulations, for the reason that the lands themselves are not susceptible of either mancipation or surrender in court.

(32) However, as an usufruct can be created in slaves and other animals, we must understand that the usufruct in them can also be created, even in the provinces, by a surrender of this right in court.

(33) But when we said that a usufruct could only be created by a surrender in court, this was not a rash statement, although it may be established by mancipation in such a way that in disposing of the property the usufruct of the same be reserved; for the usufruct itself is not sold but is reserved in the disposal of the property; and the result is that the usufruct is vested in one person and the ownership of the property in another.

(34) Estates also are only susceptible of alienation by a surrender in court.

(35) For if the party to whom an estate belongs as heir-at-law surrenders the same in court before it is entered upon, that is before any heir appears; the person to whom the surrender is made becomes the heir, just as if he himself had been called by law to the inheritance; but if he should surrender it after having incurred the obligation imposed by acceptance, he will, nevertheless, remain the heir, and for this reason will be responsible to the creditors. The debts will also be extinguished, and in this way the debtors of the estate will be benefited; and the corporeal property of the said estate will pass to him to whom the estate was surrendered, just as if separate portions of the same had been surrendered to him.

(36) A testamentary heir, by the surrender of an estate in court to another before it has been accepted, performs an act which is void; but if he should surrender it after he has entered upon it, what we recently stated with reference to one to whom the estate legally belongs by law as the heir of a person dying intestate will apply, if he surrenders the estate in court after assuming the obligations entailed by the acceptance of the same.

(37) The same opinion is held by the authorities of a different school with reference to necessary heirs, namely, that it appears to make no difference whether a party becomes an heir by entering on an estate, or whether he becomes heir-at-law without his own consent; which will be explained in its proper place. Our preceptors, however, hold that the act of a necessary heir is void when he surrenders the estate in court.

(38) Obligations, no matter how they may have been contracted, cannot be transferred in either of these ways; for if anything is due from someone to me, and I wish to transfer the claim to you, I cannot do this in any of the ways by which corporeal property is transferred to a third party; but it will be necessary for you to stipulate with the debtor under my direction, with the result that he will be released by me and becomes liable to you, which is called the novation of an obligation.

(39) Without this novation, you cannot sue in your own name, but you must bring your action in my name, as my agent or attorney.[1]

(40) In the next place, we should note that only one ownership exists for aliens, for any one of them is considered either to be the owner, or not the owner, of property. The Roman people, in former times, made use of this rule, for every one was either the owner under quiritarian right, or he was understood to have no ownership whatever; but subsequently, they established a division of ownership, so that one person could own property by quiritarian right and another could hold it by bonitarian right.

(41) But if I neither sell an article to you nor surrender it in court, but only deliver it to you, the said article becomes yours by bonitarian right, but still remains mine by quiritarian right, until you, through possession, acquire it by usucaption; for as soon as usucaption is completed, the article becomes absolutely yours, that is, the bonitarian and quiritarian rights vest in you, just as if it had been sold or surrendered in court.

(42) Usucaption of movable property, however, is completed within a year, that of lands and houses within two years; and this was provided by the Law of the Twelve Tables.

[1] Among the Romans, the origin of legal representation in court is directly traceable to the close relations existing between patron and client. The former, invariably of patrician rank, was, at all times, obliged to protect the interests of his illiterate and inexperienced dependents; and especially was this the ease when they became involved in litigation. This duty was not only a point of honor with the patron, but its observance was enforced by the infliction of severe penalties, and its violation incurred public reproach and infamy. A patron was never permitted to accept any compensation for his services, no

matter how important or valuable they were. His influence, however, in time declined, and as the study of the law developed, and men chose it as a profession, all classes of the people sought the advice and assistance of jurisconsults of acknowledged learning and ability, whose attainments had kept pace with the progress and technical requirements of legal procedure. Still, no fees were actually charged, but custom demanded that one styled an *honorarium*, should always be offered, the amount of this was subsequently fixed by law, and the provision of the *Lex Cincia*, prohibiting any remuneration for legal services — "*Ne quis ob causam orandam mercede aut donis emeretur" — was* abrogated. After the patron came the *procurator*, who was only an agent, or the attorney-in-fact of his constituent, and generally possessed of little or no legal knowledge. The *cognitor*, who was the original attorney-at-law, and the advocate, were those who usually tried and argued cases before the Roman tribunals. The *procurator* absolutely took the place of his principal, and became personally responsible if an adverse decision was rendered; but the *cognitor* merely appeared for his client, just as a modern lawyer does. — ed.

(43) Again, we are entitled to usucaption of property of this kind where it has been delivered to us by a party who is not its owner; and this rule applies whether the property is subject to sale or not, provided we received it in good faith, and believed that he who delivered it was the owner.

(44) This regulation seems to have been adopted to prevent the ownership of property from being uncertain for a long period of time, as the term of one or two years should be sufficient to enable the owner to inquire after his property, which time is granted to the possessor to acquire it by usucaption.

(45) Sometimes, however, a party who possesses property in the utmost good faith still cannot acquire the same by usucaption; for instance, where he has possession of an article which has been stolen or obtained by violence, for the Law of the Twelve Tables forbids stolen property to be acquired by usucaption, and the *Lex Julia et Plautia* makes the same provision with reference to property obtained by force.

(46) Likewise, lands situated in the provinces are not susceptible of usucaption.

(47) Again, in former times, property susceptible of mancipation which belonged to a woman under the guardianship of agnates could not be acquired by usucaption, unless it had been delivered by herself with the authority of her guardian; and this rule was established by the Law of the Twelve Tables.

(48) It is also clear that men who are free, as well as sacred and religious property, cannot be acquired by usucaption.

(49) The common saying that the usucaption of property which has been stolen or obtained by force is prohibited by law, does not mean that the thief himself, or the party who obtains possession by violence, cannot acquire it by usucaption (for he is not entitled to usucaption for another reason, namely, because he is a possessor in bad faith), but that no one else, even though he purchased the property in good faith, has the right to acquire it by usucaption.

(50) Wherefore, with reference to movable property, a possessor in good faith does not readily acquire it by usucaption, because a person who sells the property of another and delivers it, commits a theft; and the same thing happens if the property is delivered for any other reason. Sometimes, however, this is not the case, for if an heir believes that property which has been loaned, hired, or deposited with the deceased, belonged to the estate, and he should sell or give it away, he is not guilty of theft; and also if one to whom the usufruct of a female slave belongs, believing that her child was his, should sell or give it away, he does not commit a theft, for theft cannot be committed without the intention of stealing. This may also happen in other ways, as where anyone transfers property belonging to another to a third party, without the defect of theft, and enables it to be acquired by usucaption by the possessor of the same.

(51) Anyone can obtain possession of land belonging to another without the exertion of violence, if it either becomes vacant through the neglect of the owner, or because he died without leaving any heir, or was absent for a long time; and if he should transfer the said land to another who received it in good faith, the possessor can acquire it by usucaption. And although the party who obtained the land when vacant may be aware that it belongs to another, still, this does not in any way prejudice the right of usucaption of the possessor in good faith, as the opinion of those who held that land could be the subject of theft is no longer accepted.

(52) Again, on the other hand, it happens that anyone who knows that the property which he possesses belongs to another can acquire it by usucaption; as, for instance where someone has possession of property belonging to an estate of which the heir who is not yet born has not obtained possession; for he is permitted to acquire it in this manner, provided the said property is of a nature which admits of usucaption, and this kind of possession and usucaption is styled that of a person representing an heir.

(53) Usucaption of this kind is so readily granted that real property may be acquired by usucaption within the space of a single year.

(54) The reason why, in this instance, land can be acquired by usucaption in a single year, is because that, in former times, through the possession of property belonging to an estate the estate itself was considered to be acquired

by usucaption, that is to say, in a year; for, though the Law of the Twelve Tables establishes the term of two years for the usucaption of land and one year for that of other property, an estate "was considered to be included in the latter, as it is neither part of the soil nor corporeal; and although it was afterwards held that estates themselves were not capable of usucaption, still the right to usucaption with reference to all property belonging to an estate, even land, remained in force.

(55) The reason why such thoroughly dishonorable possession and usucaption was allowed was because the ancient authorities desired that estates should be entered upon more quickly, and that there should be persons to perform the sacred ceremonies to which, in those times, the greatest importance was attached; and also that the creditors might have someone from whom they might collect their claims.

(56) This species of possession and usucaption is called lucrative, for the party knows that he is profiting by the property of another.

(57) At the present time, however, it is not lucrative, for a Decree of the Senate, enacted at the instance of the Divine Hadrian, provided that usucaptions of this kind could be revoked; and therefore an heir can recover the property by bringing an action for the estate against him who acquired it by usucaption, just as if the usucaption had never taken place.

(58) Where there is a necessary heir, usucaption of this kind cannot take place under the law.

(59) A person can knowingly acquire the property of another by usucaption under other circumstances; for if anyone makes a fiduciary sale of the property of another or surrenders it in court to a third party, and the owner himself should obtain possession of the same, he can acquire it by usucaption, even in the case of land, after the expiration of a year. This species of usucaption is called a recovery by use, because property which we owned at a former time we recover in this way by usucaption.

(60) Fiduciary ownership, however, is contracted either where the creditor holds the property by way of pledge, or through a friend with whom our property is placed for safe-keeping; and, when the trust is contracted with a friend, recovery by use can, under all circumstances, take place; but where this is done with a creditor, the money must, by all means be paid, and when it has not yet been paid, the property can only be recovered in this way provided the debtor has not hired it from the creditor, or have obtained possession of it during pleasure; as in this instance lucrative usucaption will take place.

(61) Moreover, if the people should sell property pledged to satisfy a claim, and the owner should become possessed of it, recovery by use is permitted; but in this case land will be recovered after the lapse of two years. This is what is commonly called recovery of possession after public sale, for he who buys it from the people is called a purchaser of mortgaged land.

(62) It sometimes happens that an owner has not the power to alienate his property, and that one who is not the owner can do so.[1]

(63) For, by the *Lex Julia*, a husband was forbidden to alienate dotal land against the consent of his wife, although the land may have become his own either by sale to him as dowry, or by surrender in court, or by usucaption. It is doubtful whether this rule is applicable only to lands in Italy, or also to those in the provinces.

(64) On the other hand, an agnate who is the curator of an insane person can, by the Law of the Twelve Tables, alienate the property of the latter; and an agent can also, as well as a creditor, alienate that of his principal, if authorized to do so under an agreement, although the property does not belong to him. This may perhaps be considered to be done for the reason that the pledge is understood to be alienated with the consent of the debtor, who previously agreed that the creditor might be permitted to sell the pledge, if the money was not paid.

(65) Therefore, from what we have stated, it appears that certain property can be alienated by Natural Law; as, for instance, that which is transferred by mere delivery, and that other property can be alienated by the Civil Law, as through sale, surrender in court, and usucaption, for these rights are peculiar to Roman citizens.

(66) Property which becomes ours by delivery can be acquired by us not only by natural law but also by occupancy, and hence we become the owners of the same because it previously belonged to no one else; and in this class are included all animals which are taken on land, or in the water, or in the air.

(67) Therefore, if we should take captive any wild animal, bird, or fish, it is understood to be ours only as long as it is in our custody; for when it escapes from our control and recovers its natural liberty, it again becomes the property of the first occupant, because it ceases to be ours. It is considered to recover its natural liberty when it escapes from our vision, or, although it may be in our sight, its pursuit is difficult.

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[1] In the text, Sections 62, 63 and 64, follow immediately after Section 79. As there does not appear to be any reason for this and it evidently is an error, I have placed them in their regular order. — ed.

(68) In the case of those animals, however, which are accustomed to go away and return, as for instance pigeons, and bees, and also deer which are accustomed to go into the forests and return, we have adopted the rule which has come down to us from former times, namely, that if these animals should not have the intention to return, they also cease to be ours and become the property of the first occupant; and they are considered to have ceased to have the intention to return when they abandon their habit of returning.

(69) Property taken from the enemy also becomes ours by Natural Law.

(70) Land acquired by us through alluvion also becomes ours under the same law. This is held to take place when a river, by degrees, makes additions of soil to our land in such a way that we cannot estimate the amount added at any one moment of time; and this is what is commonly stated to be an addition made by alluvion, which is added so gradually as to escape our sight.[1]

(71) Therefore, if the river should carry away a part of your land and bring it to mine, that part will still continue to be yours.

(72) But, if an island rises in the middle of a river, it is the common property of those who possess land on both sides of the stream; but if it is not in the middle of the river, it will belong to those who have land on the nearest bank of the stream.

(73) Moreover, any building erected on our land by another, even though the latter may have erected it in his own name, is ours by Natural Law, for the reason that the surface is part of the soil.

(74) This rule applies with still greater force to trees planted on our soil by another, provided, however, they have taken root in the earth.

(75) The same rule also applies to grain which has been sowed by another upon our land.

(76) But if we bring an action against him to recover the land or the building, and we refuse to pay him the expenses he has incurred in constructing the building or in sowing the crop, we can be barred by

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[1] These rules regulating the acquisition and loss of the qualified ownership in animals *feræ natural,* as well as those relating to alluvial deposits, were adopted bodily from Roman jurisprudence by the early writers on the Common Law, and are in. force to-day. "*Omnia animalia que in terra & in mari & in cœlo & in aêre nascuntur vbicunq* (*ubicunque*); *capiantur, et cu capta fuerint incipiunt esse mea; quia mea custodia cœrcetur. & eadem ratione si euaserint custodiam meam & in naturalem libertatem se receperint,*

desinunt esse mea & rursus fiunt occupantis. Est autem alluuio latens incremetum. & p alluuione adjici dicitur quod ita paulatim adjicitur, quod intelligere non possis quo momento teporis adjicitur." Bracton, *De Leg. et Consuet. Ang*. II, I, 9. — ed.

an exception on the ground of fraud, that is to say, if he was a possessor in good faith.

(77) It is settled by the same rule that whatever anyone has written on my paper or parchment, even in letters of gold, is mine, because the letters are merely accessory to the paper or parchment; but if I should bring an action to recover the books or parchments, and do not reimburse the party for the expense incurred in writing, I can be barred by an exception on the ground of fraud.

(78) If, however, anyone paints anything on a tablet belonging to me, as for instance, a portrait, the contrary rule is adopted, for it is said that the tablet is accessory to the painting; but a good reason for this difference hardly exists. According to this rule it is certain that if you bring an action for the portrait as yours, while I am in possession of the same, and you do not pay me the value of the tablet, you can be barred by an exception on the ground of fraud. But, if, you are in possession, the result will be that I should be granted an equitable action against you, in which instance unless I pay the expenses of the painting, you can bar me by an exception on the ground of fraud, just as if you were a possessor in good faith. It is clear that if either you, or anyone else should steal the tablet, I will be entitled to an action of theft.

(79) Where the nature of the article is changed recourse to natural law is also required. Hence, if you make wine, oil, or grain, out of my grapes, olives, or heads of wheat, the question arises whether the said wine, oil, or grain is mine or yours. Likewise, if you manufacture a vase out of my gold or silver, or build a ship, a chest, or a bench with my lumber, or you make a garment out of my wool, or mead out of my wine and honey; or a plaster or eye-wash out of drugs belonging to me, the question arises whether what you have made out of my property is yours or mine. Certain authorities hold that the material or substance should be taken into consideration, that is to say, that the article manufactured should be deemed to be the property of him to whom the material belongs, and this opinion was adopted by Sabinus and Cassius. Others, however, hold that the article belongs to him who manufactured it, and this doctrine was approved by authorities of the opposite school, who also agreed that the owner of the material and substance was entitled to an action of theft against the party who had appropriated the property; and also that a personal action would not lie against him because property which has been destroyed cannot be recovered; but, notwithstanding this, personal actions can be brought against thieves and certain other possessors.

V. Whether or not wards can alienate property.

(80) We must next call attention to the fact that neither a woman nor a ward can alienate property by mancipation without the authority of their guardians, but a woman can alienate property not subject to mancipation without such authority, which a ward cannot do.

(81) Hence, if a woman lends money to anyone without the authority of her guardian, for the reason that she transfers it to him, and as money is not subject to sale, the borrower contracts an obligation.

(82) If, however, a ward should do this, as he does not transfer the money to the borrower, the latter does not contract an obligation; and therefore the ward can recover his money, provided it is in existence; that is to say he can claim it as his under quiritarian right, but a woman can only recover the money by an action for debt. Hence the question arises whether the ward who lent the money can, in any action whatever recover it from the person who borrowed it if it has been expended, as recovery must be had for a party in possession.

(83) On the other hand, all property, whether subject to sale or not, can be transferred to women and to wards without the authority of their guardians; and this is granted them because their condition is improved by the transaction.

(84) Hence if a debtor pays any money to a ward, he transfers the ownership of the same to him, but he himself is not released from liability, for the reason that a ward cannot release a debtor from an obligation without the authority of his guardian, as he is not permitted to alienate any property without his guardian's consent; still, if he receives any benefit from the money, and continues to demand payment of the debt, he can be barred by an exception on the ground of fraud.

(85) A woman, however, may be legally paid without the authority of her guardian; and he who makes payment is released from liability, because, as we have previously stated, women can, even without the authority of their guardians, alienate property not mancipable. Although this rule only applies where she actually received the money, still if she did not receive it, but merely says that she has, and wishes to discharge her debtor by giving him a formal release without the authority of her guardian, she cannot do so.

(86) Again, we acquire property not only by ourselves but through those whom we have under our control, in our hand, or in *mancipium*. We can also acquire it through slaves in whom we have the usufruct, as well as through freemen, and slaves belonging to others whom we have possessed in good faith. Let us now carefully examine these different cases.

(87) Anything which our children, who are under our control, as well as anything which our slaves acquire by sale, delivery, or stipulation, or in any other manner whatsoever, is acquired for us; for he who is subject to our authority can have nothing of his own. Hence if such a person should be appointed an heir he cannot enter on the estate without our order, and if he should do so under our direction the estate will be acquired for us, just as if we ourselves had been appointed heirs; and in accordance with this rule a legacy is acquired by such parties for us in the same manner.

(88) We should, however, note that where a slave belongs to one person by bonitarian right, to another by quiritarian right, in every instance whatever is acquired by him belongs to the party in whom the bonitarian right is vested.

(89) Not only is the ownership of property acquired for us by those whom we have under our control, but possession is also; for if they obtain possession of property we are considered to have possession of the same, hence property can even be acquired through them by usucaption.

(90) Ownership is indeed acquired for us, in every instance, through those persons whom we have in our hand or in *mancipium*, just as it is by those who are under our control; but whether possession is also acquired is a question, for the reason that we do not have possession of the said persons.

(91) Moreover, it has been decided with reference to slaves in whom we only have an usufruct that anything which they acquire by the employment of our own property, or by their labor, is acquired for our benefit; but what they acquire by any other means belongs to the owner of the property. Therefore, if a slave of this kind is appointed an heir, or a legacy should be left to him, it would not be acquired for my benefit, but for that of the owner of the property.

(92) The same rule applies to anyone who is possessed by us in good faith, whether he is free or the slave of another; for what has been decided with reference to an usufructuary also holds good with reference to a *bona fide* possessor; and hence any property which is acquired in any other way than the two above mentioned will belong to the party himself, if he is free, or to the owner, if he is a slave.

(93) But after a *bona fide* possessor has obtained a slave by usucaption,[1] for the reason that he becomes his owner in this way, any-

[1] Usucaption was originally only applicable to corporeal property, but was afterwards extended by custom so as to include incorporeal hereditaments. It differed from prescription in that good faith was absolutely essential to its operation; and was invented as a penalty to be inflicted upon the actual owner

for permitting his right to remain unexercised or unclaimed through gross and inexcusable negligence. Anyone who lost his property in this way was considered to have transferred it: "*Videtur alienare qui patitur usucapi*."

Usucaption, as such, was recognized by the Common Law, and the doctrine of the Twelve Tables, that it only applied to corporeal objects, was accepted in all its rigidity. "*Incorporealia verò possideri non poterunt, nec usucapi, nec sine corpore tradi, quia per se traditionem non patirentur. Quasi possidere tamen non poterunt per patientiam & per usum*." (Fleta, III, XV, 1.)

According to Bracton, no certain time for the title to vest was established by law, but this was left entirely to the discretion of the Court.

"*Rerum dominia transferuntur per usucaptionem s. p. longam, continuam et pacificam possessionem, ex diuturno tempore et sine traditione; sed quam longa esse debeat non definitur a jure, sed ex lustitiariorum discretione."* (Bracton *De Leg. et Consuet, Ang*. II, 22.)

Prescription, at Common Law, was based on the enjoyment of a right from time immemorial, and did not apply to land. It is now regulated by statute, and in England depends upon uninterrupted use for twenty years, where an easement is concerned. The ownership of immovable property is acquired in France by continuous possession for ten years, if the true owner resides within the jurisdiction of the Court of Appeal; and for twenty, if he does not. (Cod. *Civ*. Art. 2265); in Spain, for the same periods, when the parties are present, or absent, (*Cod. Civ*. Art. 1957); in Portugal, for five years where possession, and for ten years where the title of acquisition, is registered; in both cases from the date of registry. (Cod. *Civ*. Art. 526); in Italy, for ten years where all legal requirements have been corn-

thing which the slave may acquire will be for his benefit. An usufructuary, however, cannot acquire a slave by usucaption; first, because he does not have possession, but only the right of use and enjoyment; and second, because he knows that the slave belongs to another.

(94) It is a matter of doubt whether we can hold possession of property and acquire it by usucaption through a slave in whom we have the usufruct, because we are not in possession of the slave. There is no question, however, that we can both hold possession of property and acquire it by usucaption, through a slave of whom we have possession in good faith. But in both these cases we have reference to the distinction which we explained above; that is to say, where the slave acquires anything by means of our property, or by his own labor, it is acquired for our benefit.

(95) From this it is apparent that under no circumstances can property be acquired for our benefit through freemen who are not subject to our authority, and of whom we do not have possession in good faith, nor by slaves belonging to others in whom we neither have the usufruct, nor of whom we have legal possession. This is what is meant by the common saying that property cannot be acquired for us through a stranger; and the only question relating to possession is whether it can be acquired for our benefit through a person who is free.

(96) In conclusion, it should be remembered that nothing can be surrendered in court by persons who are under the control, or in the hand or mancipation of another, as nothing can belong to persons of this description; and the result is that they cannot claim anything as their own in court.

(97) Up to this point it is sufficient to have stated how separate property can be acquired by us; for we shall hereafter, and in a more suitable place discuss the law of legacies, by which also we acquire individual property. Now let us see in what ways property can be acquired by us in the aggregate.

(98) If we become the heirs of any person, or demand prætorian possession of an estate, or purchase the inheritance of anyone, or adopt anyone, or receive a wife in our hand; the entire property of any of said persons passes to us.

(99) And, first, let us discuss inheritances, the condition of which is twofold; for an inheritance either comes to us by will, or on account of intestacy.

(100) And first we shall examine what comes to us by will.

plied with. (Cod. *Civ*. Art. 2137); in Japan, for from ten to twenty years, where the party in interest has had undisturbed possession with the intention of owning the property. (Civ. Cod. of Japan, Arts. 162, 163.) By the Civil Code of Louisiana ten or twenty years are required to obtain a good title to immovable property by prescription, dependent upon whether the owner resides in or out of the State; and three years when title to chattels is involved. In former times, the right of ownership to slaves was lost by uninterrupted possession for half the time necessary for the acquisition of real-estate. Good faith was indispensable in the abovementioned cases, and was always presumed. (Civil Code of Louisiana, Arts. 3437, 3439, 3440, 3442, 3447.) —ed.

(101) Originally there were two kinds of wills; for parties either made a will at the *Comitia Calata*, which were assembled twice a year for that purpose; or in the face of the enemy, that is to say when the testator took up arms for the purpose of making war; for the term has reference to an army ready and armed

for service. Hence, persons made one kind of a will in time of peace and tranquillity, and another when about to go into battle.

(102) Afterwards, a third kind of will was introduced, which was executed by bronze and balance. Where a man who had not made a will at the *Comitia Calata* or in the face of the enemy was apprehensive of sudden death, he usually transferred his estate by sale to a friend, and requested him to distribute it to whomever he desired to have it after his death. This kind of testamentary disposition is styled a will by bronze and balance, because it is effected by the ceremony of mancipation.

(103) The two kinds of wills above mentioned have, however, fallen into disuse; and only the one effected by bronze and balance has been retained, but it is now changed from what it was in ancient times. For formerly the purchaser of the estate, that is to say the party who received it by a sale from the testator, occupied the place of the heir, and for this reason the testator directed him with reference to what he desired to be given to anyone after his death. Now, however, another person is appointed heir under the will who is charged with the distribution of legacies, and differs from the one who, as a matter of form and in imitation of the ancient law, represents the purchaser of the estate.

(104) This transaction takes place as follows: The party who executes the will having, as in the case of other sales, called together five Roman citizens of the age of puberty as witnesses, and a balance holder, and having reduced his will to writing, sells his estate as a matter of form to a certain person, and the said purchaser makes use of the following words: "Let your family and money pass into my charge and custody, and, in order that you may make your will properly in accordance with the public law, let them be purchased by me with this bronze" (or as some authorities add) "with this brazen balance." Then he strikes the balance with the piece of bronze, and delivers the latter to the testator as purchase money. Next the testator, holding the will in his hands, says, "I do give and bequeath, and declare that I do so, everything written in these tablets and this wax, and do you, Roman citizens bear witness to my act." This ceremony is called nuncupation, for this term means to declare publicly; and indeed what the testator specially stated in writing in his will is considered to have been declared and confirmed by this general affirmation.

(105) Anyone who is under the control of, or belongs to the family of the purchaser or to that of the testator himself, should not be one of the witnesses; because, in imitation of the ancient law, the entire transaction which takes place for the purpose of establishing the will is considered to be carried on between the purchaser of the estate and the testator; and in former times, as we stated above, anyone who pur-

chased the estate of the testator occupied the position of an heir, and therefore the testimony of persons belonging to the family taken in a proceeding of this kind was rejected.

(106) Wherefore, if the purchaser of the estate is under the control of his father, neither his father, nor anyone in the power of the latter, for instance his brother, can be a witness. If, however, a son under parental control, after his discharge from the army, should make a will disposing of his *castrense peculium*, neither his father, nor anyone who is subject to the authority of the latter, can be a witness.

(107) We understand that the same rules which have been established with reference to witnesses, also apply to the balance-holder, for he is included in the number of witnesses.

(108) Not only can he who is under the control of the heir or legatee, or who is also under the control of the same person as the heir or the legatee be a witness and a balance-holder, but the heir, or the legatee himself, has a right to act in this capacity. Still, so far as the heir is concerned, as well as with reference to him who is in his power, and the party under whose control he himself is, we should not, by any means, make use of this right.

Concerning military wills.

(109) The rigid observation of these rules in the making of wills is not required of soldiers, by the Imperial Constitutions on account of their extreme want of legal knowledge. For, even if they should not summon the lawful number of witnesses, or sell the property, or declare the will to be theirs, they nevertheless have the right of testamentary disposition.

(110) Moreover, they are permitted to appoint even aliens and Latins as their heirs or legatees; while under other circumstances aliens are forbidden by the Civil Law from receiving estates and legacies, and Latins are forbidden to do so by the *Lex Junta*.

(111) Unmarried persons who are prohibited by the *Lex Julia* from receiving estates or legacies, and likewise bereaved persons, that is to say those who have no children and upon whom the *Lex Papia* forbids to take more than half an estate or legacy, are not disqualified from taking all of it under a military will.

(112) A Decree of the Senate was enacted at the instance of the Divine Hadrian, by which women were permitted to make a will even without the ceremony of coemption; provided, however, they were not under twelve years

of age; and if they were not released from guardianship, they were required to execute their wills with the consent of their guardians.

(113) Females therefore appear to be in a better position than males, but a male under the age of fourteen cannot make a will, even with the authority of his guardian; but a female obtains the right of testamentary disposition with the consent of her guardian, after she has reached her twelfth year.

(114) Hence, if we wish to know whether or not a will is valid, we must ascertain in the first place whether the party who executed it had testamentary capacity, and next, if he had it, we must learn whether he made the will in accordance with the requirements of the Civil Law; with the exception of soldiers, who, as we have stated, are, on account of their want of legal knowledge, permitted to make a will in any way that they may desire, and in any way that they can.

(115) In order that a will may be valid under the Civil Law, it is not sufficient that the rule which we have laid down above with reference to the sale of an estate, the qualification of witnesses, and the declaration of the testator should be observed.

(116) But, above all things, it should be ascertained whether the appointment of the heir was made in regular form; for, where the appointment was made otherwise, it makes no difference whether the estate of the testator was sold, the witnesses assembled, and the declaration published in a proper manner, as we stated above.

(117) The regular appointment of an heir is as follows: "Let Titius be my heir." The following form at present seems to be approved, namely: "I order that Titius be my heir." This one, however, "I desire Titius to be my heir" is not recognized as correct; and the following expressions, "I appoint Titius my heir," and "I make Titius my heir," are not admitted as valid by the greater number of authorities.

(118) Moreover, it should be observed that if a woman, who is under guardianship, makes a will, she must do so with the consent of her guardian; otherwise her will is void by the Civil Law.

(119) The prætor, however, promises the heirs mentioned in the will to place them in possession of the estate in accordance with the provisions of the same, if the will is attested by the seals of seven witnesses, and if there is no one to whom the estate will belong as heir-at-law under the rule of intestacy; as, for example, a brother by the same father, or a paternal uncle, or the son of a brother, the heirs mentioned, in the will can retain the estate; "for the same rule of law applies as in the case where a will is not valid for some other

reason, for instance because the estate was not sold, or the testator did not utter the words required for the declaration.

(120) But let us consider, even if there should be a brother or a paternal uncle, whether the heirs mentioned in the will should be preferred to them; for it is stated in a rescript of the Emperor Antoninus that parties who have obtained prætorian possession of an estate in accordance with the terms of a will not properly executed, can, by means of an exception based on fraud defend themselves against parties claiming the estate on the ground of intestacy.

(121) It is certain that this rule applies to the wills of males as well as to those of females which were not properly executed, as, for example, where they did not make use of the mere formality of selling the estate, or of speaking the words required for the declaration; and we shall see whether this constitution also applies to the wills of women which have been executed without the authority of their guardians.

(122) We are not speaking, however, of those women who are under the legal guardianship of their parents or patrons, but of those who have guardians of another kind that are compelled, even if unwilling, to grant their consent; otherwise it is evident that a parent or a patron cannot be removed by a will made without his sanction.

(123) Again, anyone who has a son under his control must take care either to appoint him as his heir or to disinherit him by name; otherwise, if he passes him over in silence this renders his will void. To such an extent is this true, that our preceptors hold that even if the son should die during the lifetime of his father, no one can be an heir under the will, for the reason that the appointment was not valid in the beginning. Authorities of the other school, however, are of the opinion that although the son, if he is living at the time of his father's death, becomes his father's heir on the ground of intestacy, without being barred by the mention of the heirs in the will; still, if he should die before his father, they hold that the said heirs can enter on the estate under the will, without the son being any longer an impediment; for the reason that they think that the will was not valid from the beginning, on account of the son having been passed over.

(124) If, however, the testator should pass over others of her children, the testament is valid, but the persons who have been passed over will have a right, with the heirs mentioned therein, to equal shares of the estate, if they are proper heirs; and to half of it if they are strangers. For example, if anyone should appoint his three sons his heirs, but should pass over his daughter, the daughter will become a co-heir to a fourth part of the estate; and for this reason will obtain the same share that she would have been entitled to if her father had died intestate; but if he should appoint foreign heirs, and pass over

his daughter, the latter will be entitled to half of his estate. What we have mentioned with reference to a daughter we understand to apply to a grandson and to all the children of a son, of both sexes.

(125) What course then should be pursued? Although according to what we have stated the heirs mentioned in the will are only deprived of half the estate by the children of the testator, still, as the prætor promises to give the latter possession contrary to the provisions of the will, and according to this rule, foreign heirs arc excluded from the entire estate, and merely become heirs without obtaining any of the property,

(126) We formerly made use of this law as no difference between females and males existed; but the Emperor Antoninus recently stated in a rescript that women who were proper heirs could not obtain more by acquiring prætorian possession of an estate than they would by the right of accrual. This rule should also be observed in the case of daughters who have been emancipated; that is, they will obtain the same amount through prætorian possession of the property as they would have obtained by the right of accrual, if they had remained under the control of their father.

(127) A son, however, must be expressly disinherited by his father, otherwise he is not considered to have been disinherited. A son is held to be expressly disinherited when the following expressions are used, "Let my son Titius be disinherited"; or "Let my son be disinherited"; without mentioning his name.

(128) Other children of both sexes may be properly disinherited, among others, by the use of the following words: "Let all those remaining be disinherited"; which words are usually added after the appointment of the heirs. This, however, is only prescribed by the Civil Law.

(129) For the prætor requires all descendants of the male sex that is to say sons, grandsons, and great-grandsons, to be disinherited by name; but he considers it sufficient if descendants of the female sex, that is to say, daughters, granddaughters, and great-granddaughters, are either disinherited by name, or among others.

(130) Posthumous children must be either appointed heirs, or disinherited.

(131) In this respect the condition of all is the same, so that if a posthumous son, or any other child of either sex is passed over, the will is indeed valid; but after the birth of the posthumous child it will be broken, and for this reason will be absolutely void. Therefore, if a woman who is expected to give birth to a posthumous child should have an abortion, there will be nothing to prevent the heirs mentioned in the will from entering on the estate.

(132) Persons of the female sex are either expressly, or generally disinherited, but if they are disinherited with others, something must be bequeathed to them in order that they may not appear to have been passed over through forgetfulness. It has been decided, however, that persons of the male sex cannot legally be disinherited unless this is done expressly, for instance as follows: "Let any son who may be born to me be disinherited." . . . .[1]

(133) In the same category with posthumous children are placed those who, by succeeding as proper heirs, become such to their relatives, just as posthumous children are by birth. For example, if I have a son, and by him a grandson, or a granddaughter in his power, because the son precedes by a degree, he alone enjoys the rights of a proper heir; although the grandson and granddaughter by him are both under the same authority. If, however, my son should die during my lifetime, or should, for any reason whatsoever, be released from my control, the grandson and granddaughter will succeed to his place, and in this way acquire the rights of proper heirs just as if they were posthumous children.

(134) Therefore, to avoid my will being broken in this way, just as I must appoint either my son my heir, or expressly disinherit him, otherwise my will will not be valid; so it is necessary for me to appoint my grandson or granddaughter my heir, or disinherit them; lest, if my son should die during my lifetime, my said grandson or granddaughter, by succeeding to his place, may break my will in the same way as if they had been posthumous children. This is provided by the *Lex Junia Vellœa*, in which the method of disinheritance is prescribed, that is to say, posthumous children of the male sex shall be expressly disinherited, and those of the female sex shall be disinherited expressly, or generally with others; provided, however, that something is bequeathed to those who are disinherited with others.

(135) It is not necessary for children emancipated by the Civil Law to either be appointed heirs, or disinherited, for the reason that they are not proper heirs. The prætor, however, orders all children of both sexes to be disinherited if they are not appointed heirs; if they are of the male sex they must be expressly mentioned, and if of the female sex they must either be expressly mentioned, or disinherited among others; and if they are neither appointed heirs nor disinherited the prætor, as we have stated above, promises to grant them possession of the estate in opposition to the terms of the will.

(135a) Children who have been granted Roman citizenship along with their father, are not subject to his authority, if at the time citizenship was granted or afterwards, the father did not petition to retain them under his control — and the rule is the same if he did petition but did not succeed — for children who are placed under the control of their father by the Emperor differ in no respect from those who are subject to his authority from their birth.

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[1] Original manuscript illegible.

(136) Again, adopted children, as long as they remain in this condition, occupy the place of natural children; but when they have been emancipated by their adoptive father, they are not included among his children, either by the Civil Law, or by the Edict of the Prætor.

(137) On the other hand, for this reason it happens that as long as they remain in the adoptive family, they are considered as strangers so far as their natural father is concerned; but if they should be emancipated by their adoptive father, they will then be in the same condition as they would have been had they been emancipated by their natural father.

(138) If anyone, after having made a will, should either adopt a son, who is his own master, in an assembly of the people, or one who is under the control of his parent through the intervention of the Prætor, his testament will undoubtedly be broken, just as it would have been by the subsequent birth of a proper heir.

(139) The same rule applies where, after having made a will, a wife comes into the hand of the testator, or he marries a woman who is in his hand; for in this way she takes the place of a daughter, and becomes a proper heir.

(140) It makes no difference whether either of the parties adopted was appointed an heir by the will, for, so far as their disinheritance is concerned, the question would seem to be superfluous; as, at the time the will was made, they were not included in the number of proper heirs.

(141) Likewise, a son who has been manumitted after the first or second sale, breaks a will previously executed; for the reason that he is restored to the authority of his father, and it makes no difference whether he was appointed an heir, or disinherited by the said will.

(142) The same rule formerly applied to one for whose benefit proof of error is permitted by the Decree of the Senate, for the reason that he was born of an alien, or of a Latin woman who was married with the understanding that she was a Roman citizen; for, whether he was appointed heir, or disinherited by his father, or whether, during the lifetime of the latter, the error was proved, or this was done after his death; the will was absolutely broken, as by the birth of a posthumous child.

(143) Now, however, by a late Decree of the Senate enacted at the instance of the Divine Hadrian, if the error is proved during the lifetime of the father, the will is in every instance broken, as in former times; but where it is proved after the death of the father, if the son was passed over in silence, the will is broken. But if he was mentioned in it as the heir, or disinherited, the will is not broken, in order that carefully executed wills may not be rescinded at a time when they cannot be renewed.

(144) A former will is revoked by one subsequently executed; nor does it make any difference whether an heir ever appears or not, for it only is considered whether he might take under it if he did appear. Therefore, if the heir appointed by the last will, which was legally executed, is unwilling to take under the same; or if he should die during the lifetime of the testator, or after the death of the latter, and before he had entered upon the estate; or if he should be excluded for not having accepted the estate within the prescribed time, or on account of the condition under which he was appointed not having been complied with; or by the *Lex Julia* on account of celibacy; in all these cases the testator dies intestate; for the first will having been revoked by the subsequent one is not valid, and the last will also has no effect, as there is no heir under it.

(145) Wills legally executed may become void in another way, as for instance, when he who executed the will loses his civil rights, and how this may happen was stated in the First Commentary.

(146) Moreover, in a case of this kind we say that a will may become inoperative; for although wills which are revoked, and those which in the beginning are not legally executed are alike invalid, and those which have been properly executed become invalid on account of loss of civil rights, they, nevertheless, may be said to be rescinded; still, for the reason that it is more convenient for the different cases to be designated by different names, some of these wills are said not to have been legally executed, and others which have been legally executed are either broken or become void.

(147) However, wills which in the beginning were not legally executed, or if they were legally executed afterwards became void, or were revoked, are still not absolutely inoperative; for if they have been sealed with the signets of seven witnesses, the appointed heir can demand possession of the estate in accordance with the provisions of the will, provided the deceased testator was a Roman citizen and his own master at the time of his death; but if the will became inoperative, for example, because the testator lost his citizenship or his freedom, or gave himself in adoption, and he dies under the control of his adoptive

father, he cannot demand possession of the estate in accordance with the provisions of the will.

(148) Therefore, those who obtain prætorian possession of an estate in accordance with the provisions of a will which was not properly executed in the first place, or which if it was properly executed, was subsequently broken, or became void; provided they can establish their right to the estate can obtain actual possession of the same. If, however, they can be deprived of the estate by some one having a better claim they will be entitled only to nominal possession.

(149) For, if anyone has been appointed heir under the Civil Law by either a former or a subsequent will; or is the heir-at-law to an intestate estate, he can deprive the nominal possessor of the same; but, if no one else is an heir under the Civil Law, the possessor can retain the estate, nor will cognates, who have no legal title, have any right to deprive him of it.

(149a) Sometimes, however, as we have mentioned above, heirs who were appointed by will are preferred to heirs-at-law; for instance if the will was not legally executed either because the estate was not sold, or because the testator did not utter the formula of declaration; for if the agnates of the deceased should claim the estate they can be barred on the ground of fraud in accordance with the Constitution of the Divine Antoninus.

(150) Prætorian possessors of an estate are not excluded under the provisions of the *Lex Julia*, by which estates which have no heirs are ordered to escheat to the government, if the deceased left no successor of any kind.

(151) A will legally executed may be rendered void by the expression of a contrary intention, but it is evident that it cannot be rendered inoperative by such an intention alone; because after the testator was unwilling that it should stand, and even if he went so far as to cut the cord with which it was tied, it will, nevertheless, continue to be valid under the Civil Law. Moreover, if he should erase or burn the will, what he wrote will still be valid, although the proof of it may be difficult.

What then should be done? If anyone demands prætorian possession of an estate on the ground of intestacy, and he who is appointed by the will claims it, the latter may, in this instance, be excluded by an exception on the ground of fraud, provided it is proved to have been the intention of the testator that the estate should go to those entitled to the same as heirs-at-law; and this rule is set forth in a rescript of the Emperor Antoninus.

(152) Again, heirs are either designated necessary, or necessary and proper, or foreign heirs.

(153) A necessary heir is a slave appointed with the grant of his freedom; and he is so called because at the death of the testator, whether he is willing or unwilling, he at once becomes free and his heir.

(154) For this reason anyone who suspects that he is insolvent, usually appoints his slave his heir with the grant of his freedom as a substitute in the second or any inferior degree; so that, if his creditors are not satisfied in full, the property of his estate may be sold rather as belonging to the heir than to the testator himself, and the disgrace which results from the sale of the property of an insolvent estate may attach rather to the heir than to the testator; although as was held by Sabinus, according to Fufidius, that he ought not to suffer ignominy because the sale of the property of the estate was not caused by his fault but through the requirements of the law. We, however, adopt a different view.

(155) As a recompense for this inconvenience, the benefit is conferred upon the slave of acquiring for himself everything which 'he obtains after the death of his patron, whether it was reserved for him before or after the sale of the property; and although only a part of the claim may have been paid by the proceeds of the sale, his subsequently acquired property cannot again be sold on account of the debts of the estate, unless he should have acquired something on account of his being the heir, for example, the estate of a Latin freedman, and thereby have become more wealthy; while if the property of other persons when sold only pays a portion of the indebtedness, and they afterwards acquire any other property, the latter may be sold time and again.

(156) Proper and necessary heirs are, for instance, a son or a daughter, a grandson or a granddaughter by a son, and their descendants, provided they were under the control of the testator at the time of his death. In order, however, that a grandson or a granddaughter may become a proper heir, it is not sufficient for him or her to have been under the control of their grandfather at the time of his death, but it is necessary that their father should, during the lifetime of his father, have ceased to be a proper heir, either on account of death, or because of having been released from parental control in any other way whatsoever, for then the grandson or granddaughter will succeed to the place of his or her father.

(157) They are called proper heirs because they are family heirs, and even during the lifetime of their parent are to a certain extent considered to be joint owners of the estate, and therefore where anyone dies intestate, the first right to the succession belongs to his children. They are called necessary heirs for the reason that, under all circumstances, whether they are willing or unwilling, they become heirs in case of intestacy, as well as under the will.

(158) The prætor, however, permits them to relinquish the succession, in order that the estate of their father may be sold for the payment of debts.

(159) The same rule applies to the case of a wife who is in the hand of her husband, because she occupies the place of a daughter; as well as to a daughter-in-law who is in the hand of a son of the testator; for the reason that she occupies the place of a granddaughter.

(160) Moreover, the prætor gives the same power to reject an estate to one *in mancipium*, who has been appointed heir with the grant of freedom, although he is merely a necessary heir, and not a proper one, as is the case with a slave.

(161) Others who are not subject to the control of the testator are designated foreign heirs. Therefore, children who are not under our control when appointed heirs by us, are considered as strangers, for which reason children who are appointed heirs by their mother are also included in this class because women cannot have children subject to their authority. In like manner, slaves who are appointed heirs with the grant of their freedom, and are afterwards manumitted by their owner, are included in the same class.

(162) Moreover, power is granted to foreign heirs to deliberate whether they will, or will not, accept an estate.

(163) If, however, one who has the power to reject an estate should interfere with the property of the same, or one who is permitted to deliberate as to whether he will enter on an estate or not, should accept it, he has no power to reject it afterwards, unless he is a minor under twenty-five years of age; for the prætor comes to the relief of persons of this age when they rashly accept an estate which is injurious to them; as in all other cases where they are deceived. I remember that the Divine Hadrian even excused a person over the age of twenty-five years, where, after he had entered on an estate, a great debt was discovered, which at the time of the acceptance of the estate was not known to exist.

(164) Time to make up their minds, that is to say, a certain term for deliberation, is usually granted to foreign heirs in order that they may enter upon an estate within the prescribed period, and if they do not do so, they are barred from accepting it. Hence this is called "*cretio*," for the reason that the word "*cernere*" means, in one sense, to decide and to determine.[1]

(165) Therefore, after the following clause: "Titius, be my heir," we should add: "and within a hundred days after you learn of your appointment, and are able to do so, you must state whether you accept or not; and if you do not do so, you shall be disinherited."

(166) And if an heir appointed in this manner desires to accept, he should do so within the prescribed time, that is to say he should utter the following words: "As Publius Mævius appointed me his heir by his will, I decide to accept the estate"; but if he should not make such a declaration, after the time has elapsed he shall be excluded; nor will it be of any benefit to him to act as the heir, that is to say, for him to make use of the property of the estate just as if he were the heir.

(167) But if an heir should be appointed without giving him time for deliberation, or be called to the succession as heir-at-law on the ground of intestacy, he can, either by deliberating or as acting as the heir, or by the mere intention of accepting the estate, become the heir, and he will be free to accept at any time, when he may desire to do so; but the Prætor, on the demand of the creditors of the estate, usually fixes a time within which if the party may enter on it if he wishes; and if he does not, the creditors may be permitted to sell the property of the deceased.

(168) But, just as one who has been appointed heir with time for deliberation does not actually become the heir unless he formally accepts the estate, so he will not be excluded unless he fails to make the declaration to that effect within the prescribed time; and, therefore, although before the time has expired he may have decided not to accept the estate, still, by having changed his mind and declared that he will accept, before the time for deliberation has elapsed, he can become the heir.

(169) But just as he who was appointed heir without time for deliberation, or who was called to the succession as heir-at-law on the ground of intestacy, becomes heir by the mere expression of his will; so, by a contrary statement he is immediately excluded from the inheritance,

(170) Moreover, every period granted for deliberation has a prescribed limit, and in such cases a reasonable time is considered to be a hundred days. Still, by the Civil Law, a longer or a shorter period can be granted, though the Prætor sometimes shortens a longer one.

[1] By the Roman law, the beneficiary under a will was not permitted to accept or reject the estate until the death of the testator; before which event, of course, title to it could not vest. The *cretio* was adopted for the purpose of enabling creditors to present and collect their claims within a reasonable time. If the declaration of acceptance was not made within the period specified, the heir forfeited all his rights under the will. So long as the inheritance was not accepted, it was held, by a legal fiction, to personally represent the deceased, "*Personam defuncti sustinet*," who was presumed still to have possession. —ed.

(171) Although the time for deliberation is limited to certain days, still, one kind of limitation is designated common and the other certain; common, being that which we have described above, that is, where the following words: "When he has learned of it, and is able," are added; certain, is that in which other words are written instead of those above mentioned.

(172) A great difference exists between these two grants of time, for in the common one no days are computed except those during which the party knows that he has been appointed heir, and is able to decide; but where a certain time has been granted, notwithstanding the party may not know that he has been appointed heir, the days are reckoned continuously; and, likewise, if for any reason he is prevented from stating his decision, or, further, if he has been appointed heir under some condition, the time will still continue to be reckoned, and hence it is better and more convenient to make use of the common method.

(173) This certain period of computation is called continuous for the reason that the days are reckoned without cessation; but, still, on account of the harshness of this method, the other is ordinarily employed, and hence is styled common.

Concerning substitutions.

(174) Sometimes, we appoint two or more degrees of heirs in the following manner: "Lucius Titius, be my heir, and make your declaration within the next hundred days after you know of your appointment, and are able to do so; and if you should not announce your decision in this manner, you shall be disinherited. Then you, Mævius, be my heir, and announce your decision within a hundred days, etc." And afterwards we can make as many substitutions as we desire.

(175) We are permitted to substitute one or several persons in the place of one; and, on the other hand, to substitute one or several in the place of several.

(176) Therefore, where the heir is appointed in the first degree he becomes such by acceptance and the substitute is excluded; if he does not declare his acceptance, he will be excluded, even if he acts as heir, and the substitute will succeed in his stead; and if there are several degrees in succession, the same thing takes place under this rule in every instance.

(177) Where, however, the time for acceptance is fixed without mentioning disinheritance, that is to say as follows: "If you do not announce your acceptance of the estate, then let Publius Mævius be my heir," a different rule will apply; for if the party first appointed — even though he does not announce his acceptance — acts as heir, the substitute is only admitted to

share in the estate, and both parties become heirs to equal portions of the same; and if he neither announces his acceptance, nor acts as heir, he will then be excluded from the entire estate, and the substitute will succeed to the whole of it.

(178) It was held by Sabinus that a substitute is not admitted as long as the heir first in degree has the right to announce his decision, even though he should have acted as heir, and in that way have become the heir; but that when the time prescribed for making a decision has expired, the substitute could be admitted, instead of the party who had been acting as heir. It was held by others, however, that even while the term prescribed for making the decision was pending the heir, by the exertion of authority as such, would admit the substitute to share in the estate, and that the former could not again revert to his right to decide.

(179) As we have stated above, we can not only appoint a substitute for our children under the age of puberty, who are subject to our authority, that is, if we have another heir and they should fail to inherit; but also even if they should become our heirs and die before reaching the age of puberty, another may be their heir; as for example, "Let my son Titius be my heir; and if my son does not become my heir, or if he should do so and die before he becomes his own guardian, then let Seius be my heir."

(180) In this instance, if the son does not become the heir, the substitute will be the heir to the father; but if the son should become the heir and die before reaching puberty, the substitute will become the heir to the son himself. On this account there are, as it were, two wills, one that of the father, the other that of the son, just as if the son himself had appointed an heir; or, in fact, there is one will disposing of two estates.

(181) However, in order that the minor may not be subjected to the risk of treachery after the death of his parent, it is the usual practice to make the substitution publicly, that is to say, in the same part of the will in which we appoint the minor our heir; for as ordinary substitution only calls a substitute to the succession if the minor should not become the heir, which takes place where he dies while his parent is still living; in which instance we cannot suspect the substitute of being guilty of foul play, as during the lifetime of the testator everything which is contained in the will is unknown.

A substitution like the one above mentioned by which, even if the minor should become an heir but should die before attaining the age of puberty, we call the substitute to the succession, is one which we. write separately on tablets subsequently executed, and seal up by our own cord and wax after having provided in the first tablets that those written afterwards shall not be opened before he reaches the age of puberty.

It is much safer, however, for both kinds of substitution to be sealed up in different tablets subsequently executed, for if this should be done, or separate substitutions be made, as we have stated, it can be understood from the first that the same substitution is made in the second.

(182) Not only where children under the age of puberty are appointed heirs, can we make a substitution for them, so that, if they should die before attaining puberty, the person whom we designated shall be our heir, but this will even be the case if they are disinherited; therefore, in this instance, if anything should be acquired by the minor from the estates of relatives either by inheritance, legacies, or donations, it will all belong to the substitute.

(183) What we have stated with reference to the substitution for children under the age of puberty, whether they have been appointed heirs or disinherited, we understand also to apply to posthumous children.

(184) We cannot, however, appoint a substitute for a stranger who is appointed an heir in such a way that if the stranger should become the heir and die within a certain time, another shall be his heir; but we are only permitted to bind him by means of a trust to transfer our estate, either wholly or in part, and what this rule is we shall explain in its proper place.

(185) Freemen as well as slaves, whether they belong to us or to others, may be appointed heirs.

(186) A slave belonging to us must, however, be appointed heir and declared to be free at the same time, that is to say, in the following manner: "Let Stichus, my slave, be free and my heir," or "Let him be my heir and be free."

(187) For if he is appointed heir without the grant of his freedom, even if he should subsequently be manumitted by his owner, he cannot be the heir, because his appointment, in the first place, is not valid, and therefore although he may have been alienated, he cannot declare his acceptance of the estate, even by the order of his new master.

(188) When a slave is appointed with the grant of his freedom, and remains in the same condition he becomes free by the terms of the will, and hence is a necessary heir. If, however, he should be manumitted by the testator himself, he can use his own discretion as to entering on the estate. If he is alienated, he should enter on the estate by the order of his new master, for which reason the latter becomes the heir through him, as he himself cannot be either the heir, or free.

(189) When a slave belonging to another is appointed heir and he remains in the same condition, he should enter on the estate by the order of his master. If,

however, he has been alienated by him, either during the lifetime of the testator, or after the death of the latter, before he makes up his mind whether he will accept the estate or not, he must act by the order of his new master; but if he has been manumitted, he can use his own judgment as to the acceptance of the estate.

(190) If, however, a slave belonging to another is appointed heir with the period usually allowed for acceptance, it is understood only to date from the time when the slave himself knew that he had been appointed heir, and no obstacle existed to prevent him from notifying his master, in order that he might accept the estate by his order.

(191) Let us next consider legacies, a part of the law which does not seem to have any reference to the subject under consideration, for we are discussing these legal titles by which rights are acquired by us in the aggregate; but we have, at all events, to discuss wills and testamentary heirs, and it is not without reason that this legal subject should, in the next place be examined.

Concerning legacies.

(192) There are four kinds of legacies, for we either make bequests by asserting a claim, by condemnation, by permission, or by way of preference.

(193) We bequeath legacies by way of claim as follows: "I give and bequeath my slave Stichus to Lucius Titius"; or if only one of the expressions, "I give" or "I bequeath" be employed, the legacy is properly bequeathed by way of claim, and the prevailing opinion is that if the bequest was made in the following language: "Let him take," or "Let him have for himself," or "Let him seize"; the legacy will also be bequeathed as a claim.

(194) .A legacy bequeathed in this manner is so called because after the estate has been entered upon, the property immediately vests in the legatee by quiritarian right; and if the legatee claims the property from the heir, or from anyone else who has it in his possession, he should bring an action to recover it, that is to say, claim that the property is his by quiritarian right.

(195) Jurists differ only upon one point, namely, Sabinus, Cassius, and our other preceptors hold that what has been bequeathed in this manner becomes the property of the legatee as soon as the estate has been accepted, even if he is ignorant that the legacy was left to him; but that after he does know it, and has rejected it, the legacy will no longer be valid. Nerva, Proculus, and the authorities of the other

school, however, do not think that the bequest becomes the property of the legatee if he should refuse to accept it. But at present, in accordance with the terms of a Constitution of the Divine Pius Antoninus, the opinion of Proculus seems to be the one which has been adopted; for when a Latin was bequeathed to a colony in this manner, the Emperor said: "Let the decurions deliberate whether they wish him to be their property, just as if he had been bequeathed to an individual."

(196) Only those things can be legally bequeathed, subject to be claimed, which belonged to the testator himself by quiritarian right. It has been decided however, that those, which are estimated by weight, number, or measure are required to only belong to the testator by quiritarian right at the time of his death; as for instance, wine, oil, grain, and coin. It has also been held that other property must have belonged to the testator by quiritarian right at both times; that is to say, when he made the will, and when he died, otherwise the legacy will be void.

(197) This, however, is the rule only under the Civil Law. Subsequently a Decree of the Senate was enacted at the instance of the Emperor Nero, by which it was provided that if a testator bequeathed anything which had never belonged to him, the legacy would be valid just as if it had been left in the most approved manner, "the most approved manner" meaning where it is left by condemnation, m which way property belonging to another can be bequeathed, as will appear hereafter.

(198) If anyone should bequeath property belonging to him, and, after having made his will, should alienate it. the greater number of authorities hold that the legacy is not only void under the Civil Law, but that it does not become valid by the Decree of the Senate.

This opinion was promulgated for the reason that even if anyone should bequeath his property by condemnation, and afterwards should alienate it, many authorities think that although, by strict law, the legacy is still due, if the legatee demands it, he can be barred by an exception on the ground of fraud as claiming something contrary to the intention of the deceased.

(199) It has been established that if the same property is bequeathed by way of claim to two or more persons, whether jointly or severally, and all of them demand the legacy, each of them is only entitled to a certain portion of the same; and if any share is rejected it will vest in the co-legatee. A legacy bequeathed jointly as follows: "I do give and bequeath my slave Stichus to Titius and Seius"; severally, as follows: "I do give and bequeath my slave Stichus to Titius," "I do give and bequeath the same slave to Seius."

(200) Where a legacy is bequeathed as a claim, conditionally, the question arises to whom does it belong while the condition is pending? Our preceptors hold that it belongs to the heirs, as in the case of a slave to be conditionally

free, that is to say, a slave who has been ordered to be free by a will under a certain condition, and who, it is established, in the meantime belongs to the heir. The authorities of the other school however, think, that the property does not belong to anyone in the meantime; and they assert that this rule applies even more forcibly in the case where a legacy has been bequeathed absolutely, before the legatee has accepted it.

(201) We bequeath a legacy by condemnation, as follows: "Let my heir be condemned to give my slave Stichus"; or if it is only written, "Let him give my slave Stichus"; this is a legacy by condemnation.

(202) By this same form of a bequest property belonging to another can also be bequeathed, so that the heir will be obliged to purchase either the article referred to and deliver it, or pay its estimated value.

(203) Any property which is not yet in existence may be bequeathed by condemnation provided it comes into existence hereafter; as for instance, any crops which may be produced on such-and-such land, or any child which may be born from such-and-such a female slave.

(204) Any bequest made in this way, after an estate has been entered on, even though it has been made unconditionally, unlike a bequest left to be claimed, is not immediately acquired by the legatee, but still belongs to the heir, and therefore the legatee must bring an action to recover it, that is to say, he must allege that the heir is required to transfer it to him; and then if the property is subject to mancipation, the heir should either transfer it to him in this way, or surrender it in court, and give him possession. If, however, it is not subject to mancipation, it will be sufficient if he merely delivers it, for if he should only deliver but not sell anything susceptible of mancipation, the legatee will obtain complete ownership only by usucaption; and as we have mentioned in another place, usucaption of movable property is acquired after a year's possession, and real property after possession for the term of two years.

(205) Another distinction exists between a bequest by claim and one by condemnation; for where property is left to two or more persons by condemnation, and this is done jointly, each is entitled to a certain share, as in the case where a legacy is bequeathed by claim; but if the bequest is made severally the entire amount is due to each legatee, and the result is that the heir must deliver the article itself to one and pay its value to another. In a joint bequest, a share which has lapsed does not belong to the co-legatee, but remains a part of the estate.

(206) What we have stated with reference to the lapsed share of a legacy bequeathed by condemnation remaining as a part of the estate, and where it is left as a claim, accruing to the co-legatee, we should observe was established

by the Civil Law before the enactment of the *Lex Papia*; but after the *Lex Papia* a lapsed share of the legacy is considered to have no owner, and belongs to those who are mentioned in the will as having children.

(207) And although heirs who have children have the best right to a legacy which is considered to have no owner, and heirs who have no children have the next best right to the same; still, it is stated by the *Lex Papia* itself that a co-legatee who has children shall be preferred to heirs, even though they also may have them.

(208) It is held by the greater number of authorities with reference to the rights conferred upon joint legatees by the *Lex Papia*, that it makes no difference whether the legacy is bequeathed by claim or by condemnation.

(209) We make a bequest by permission as follows: "Let my heir be condemned to permit Lucius Titius to take and to have my slave as his own."

(210) This kind of a legacy has a broader application than one bequeathed by claim, but a narrower one than a bequest by condemnation, for in this way a testator can legally bequeath not only his own property, as well as that of his heirs; while by claim he can only bequeath his own property, and by condemnation he can bequeath any property belonging to any stranger whomsoever.

(211) If the property bequeathed belonged either to the testator himself or to his heirs at the time of his death, it is clear that the legacy is valid, even if at the time of making the will the property belonged to neither of them.

(212) If, after the death of the testator, the property vests in the heir, the question arises whether the legacy is valid; and most authorities hold that it is not. What then is the law? Although anyone can bequeath property which never belonged to the testator, and never after his death belonged to his heir, by the Decree of the Senate promulgated during the reign of Nero, all bequests are considered as having been left by condemnation.

(213) Just as property left by condemnation does not immediately belong to the legatee as soon as the estate has been entered upon, but remains the property of the heir until he transfers it to the legatee, either by delivery, sale, or surrender in court; so, in the form of bequest by permission the same rule applies; and therefore a personal action is also brought in the name of a legatee of this kind to recover or enforce, "Whatever the heir is required by the will to give or to perform."

(214) Nevertheless, some authorities are of the opinion that an heir is not bound by this kind of a legacy, either to sell the property, surrender it in court,

or deliver it; but that it will be sufficient for him to permit the legatee to take the property, because the testator did not order him to do anything else than to grant him permission, that is to say, to allow the legatee to have it for himself.

(215) A more important distinction arises with reference to a legacy of this description, where the same property is left separately to two or more persons; for some authorities hold that each one is entitled to the whole, as where a bequest is left by claim; and others think that the condition of the first occupant is the better one, because in this kind of a legacy the heir is condemned to permit the legatee to have the property, and the consequence is, that if he allows the first one to take it, and he does so, he will be secure against anyone who afterwards demands the legacy from him; for the reason that he neither has the property so as to permit it to be taken by the second claimant, nor was he guilty of fraud in order to avoid having possession of the same.

(216) We bequeath property by a preferred legacy as follows: "Let Lucius Titius have my slave Stichus as a preferred legacy."

(217) Our preceptors, however, hold that property cannot be bequeathed in this way to anyone except to a person who has been appointed heir to a certain share of an estate, for to take as a preferred legatee is to receive something more than what he is entitled to as heir; and he only can do so who has been appointed heir to a certain part of the estate, and is entitled to it as a preferred legacy over and above his share of the said estate.

(218) Therefore, if a legacy of this kind is bequeathed to a stranger, it will be void, and to such an extent is this true that Sabinus was of the opinion that the defect could not even be remedied by the Decree of the Senate of Nero; for he says that by this decree only those faults are corrected which render a bequest invalid under the Civil Law, and not such as have reference to the person of the legatee. It was, however, held by Julian and Sextus that, even in this instance, the legacy was rendered valid by the Decree of the Senate, for it might happen, in a case of this kind, that by the words employed a legacy would be void at civil law; and hence it is clear that a proper bequest could be made to the same person by other words, for example, by claim, by condemnation, or by permission, for then the legacy is not valid on account of the defect in the person of the legatee, as when it is bequeathed to one to whom it can, under no circumstances, be left, as for instance, to an alien who cannot receive anything by a will; in which case it is evident that the Decree of the Senate does not apply.

(219) Likewise, our preceptors are of the opinion that a bequest made in this manner can be recovered by the party to whom it was bequeathed, in no other way than by the action for partition of the estate, that is to say, for the purpose

of dividing the same; for it is part of the duty of the judge to decide with reference to the bequest of a preferred legacy.

(220) From this we understand that, according to the opinion of our preceptors, nothing can be left as a preferred legacy except what belongs to the testator; for no other property than that forming part of an estate can become the subject of this action. Hence, if a testator should, in this manner, bequeath property which is not his own, the bequest will be void by the Civil Law, but will be rendered valid by the Decree of the Senate. In one instance, however, they admit that property belonging to another may be left as a preferred legacy, as, for instance, where anyone bequeaths property which he has transferred to his creditors by a fiduciary sale; for they hold that it is the duty of the judge to compel the co-heirs to release the property from liability by payment of the debt, so that he to whom it has been bequeathed may be able to obtain it as a preferred legacy.

(221) Authorities of the other school are of the opinion that a preferred legacy may be bequeathed even to a stranger, just as if it were written in the will as follows: "Let Titius take my slave Stichus," and that the addition "as a preferred legacy" is superfluous; and therefore that the legacy would appear to be left by claim; and this opinion is said to be confirmed by a Constitution of the Divine Hadrian.

(222) Therefore, in accordance with this opinion, if the property belonged to the deceased by quiritarian right, it can be recovered by the legatee, whether he be an heir or a stranger; but if it only belonged to the testator by bonitarian right, the legacy will be valid under the Decree of the Senate even if left to a stranger, and must be delivered by the heir under an order of court in an action for partition of the estate. If, however, it did not belong to the testator by any title, it would be valid under the Decree of the Senate, whether it was left to the heir or to a stranger.

(223) Where the same property is left, either jointly or severally, to two or more legatees, each will be entitled to only proportionate shares, whether they are heirs, in accordance with the opinion of our preceptors, or whether they are strangers, in accordance with that of authorities belonging to the other school.[1]

On the falcidian law.

(224) Formerly, anyone was permitted to exhaust his entire estate by legacies and the enfranchisement of slaves, thus leaving nothing to his heir but an empty name; and the Law of the Twelve Tables, by which it is provided that a person may dispose of his property absolutely by will, seems to permit this to be done in the following words: "In whatever way a man may bequeath his

property it shall have legal effect"; and for this reason, those who were appointed heirs rejected the inheritance and therefore the majority of persons died intestate.

(225) Hence the *Lex Furia* was enacted, by the terms of which (except in the case of certain persons) it was not permitted to accept more than a thousand asses either as a legacy or as a donation in anticipation of death. This law, however, did not accomplish what was intended; for example, anyone who had an estate of five thousand asses, could leave to five men a thousand asses each, and, by doing so, exhaust the entire estate.

(226) In consequence of this, the *Lex Voconia* was subsequently passed, by which it was provided that no one could, as a legatee, *mortis causa*, take more than the heirs received. It is clear that by this law the heirs appeared to receive a part of the estate, but it still contained almost the same defect, for the testator could, in distributing his estate among many legatees, manage to leave so little to the heir that it would be of no advantage to him, for the sake of the profit, to assume the burdens of the entire estate.

(227) Then the *Lex Falcidia* was enacted, by which it was provided that no more than three-fourths of an estate could be bequeathed; and therefore it was necessary for the heir to have a fourth part of the same, and this is the law at the present time.

(228) The *Lex Fufia Caninia* also repressed inordinate license in the bestowal of grants of freedom to slaves, as we have stated in the First Commentary.

Concerning inoperative legacies.

(229) A bequest made before the appointment of an heir is void, for the reason that wills derive their force and effect from the appointment of an heir, and on this account the appointment of the heir is considered to be the beginning and foundation of the entire will.

(230) A grant of freedom cannot be made before the appointment of an heir, for the same reason.

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[1] The ancient forms of legacies described above were greatly modified by Nero and his successors, and were entirely abolished by Justinian, who decreed that no distinction, in this respect, should exist between bequests of every description. — ed.

(231) Our preceptors do not think that a guardian can be appointed under such circumstances, but Labeo and Proculus hold that a guardian can be appointed, because by such an appointment nothing is taken from the estate.

(232) A bequest made after the death of an heir is void, that is to say, if it is made as follows: "After my heir dies, I do give and bequeath," or "Let my heir give"; the following provision, however, is legal: "When my heir dies"; because it is not made after the death of the heir, but will become operative at the last instant of his life. Again, a bequest cannot be made as follows: "On the day before my heir dies," as this is not considered to be founded on any good reason.

(233) We understand that these rules also apply to the enfranchisement of slaves.

(234) Whether a guardian can be appointed after the death of an heir may perhaps give rise to the same doubt which arose with reference to his appointment before the institution of the heir.

(235) Legacies bequeathed by way of penalty are void. A legacy is considered to have been bequeathed by way of penalty, where it is left for the purpose of compelling the heir either to perform some act, or to refrain from doing so; as, for instance, where the bequest is made: "If my heir gives his daughter in marriage to Titius let him pay ten thousand sesterces to Seius"; or as follows: "If you do not give your daughter in marriage to Titius, you shall pay him ten thousand sesterces"; and again, for example, where the testator orders that if his heir did not build him a monument within the term of two years he should pay ten thousand sesterces to Titius, this bequest being by way of penalty; and finally, in accordance with this definition, we can suggest many similar cases of this kind.

(236) Freedom cannot be granted by way of penal bequest, although a question has arisen on this point.

(237) We cannot, however, raise any dispute with reference to the appointment of a guardian, because by such an appointment an heir cannot be compelled either to perform some act, or to refrain from performing it; and therefore, if a guardian is appointed by way of penalty, the appointment will appear rather to have been made under a condition, than by way of penalty.

(238) A legacy left to an uncertain person is void. An uncertain person is considered to be one of whom the testator has only an indistinct idea in his mind; as for example, where a bequest is made in the following terms: "Let my heir pay ten thousand sesterces to the first person who comes to my funeral." The same rule of law applies if he makes a bequest in general terms

to all, as: "Whoever comes to my funeral"; or where the bequest is left as follows: "Let my heir pay ten thousand sesterces to whoever gives his daughter in marriage to my son." It also applies where the bequest is in the following terms: "Whoever shall be the first consuls nominated after the execution of my will," for all these bequests are deemed to have been made to uncertain persons; and, finally, many other instances of this kind might be adduced. The bequest of a legacy is legal where the designation of the class to which the person belongs is described with certainty, but the individual to whom it is left is uncertain; as, for instance: "Let my heir pay ten thousand sesterces to that one of my relatives now living who comes first to my funeral."

(239) A testamentary grant of freedom, however, cannot be made to an uncertain person, because the *Lex Fufia Caninia* directs that slaves be enfranchised by name.

(240) A certain person must also be appointed a guardian.

(241) A legacy bequeathed to a posthumous stranger is void. A posthumous stranger is one, who, after his birth, will not be included among the proper heirs of the testator; and therefore a grandson born to an emancipated son is a posthumous stranger to his grandfather, and likewise the unborn child of a woman who is not considered a wife at Civil Law, is a posthumous stranger to his father.

(242) A posthumous stranger cannot even be appointed an heir, for he is an uncertain person.

(243) What we stated above properly has reference to legacies, although it was not unreasonably held by certain authorities that the appointment of an heir by way of penalty could not be made; as it makes no difference whether the heir is ordered to pay the legacy in case he should either perform or not perform some act, or whether a co-heir is appointed with him; for he is just as much compelled by the addition of a co-heir as by the payment of a legacy either to do, or not to do something contrary to his intention.

(244) It is a question whether we can legally bequeath a legacy to one who is in the power of him whom we have appointed the heir. Servius thinks that the legacy can be legally bequeathed, but that it will lapse if the legatee continues to be under control when the time arrives for the legacy to vest; and therefore, whether the bequest is absolute, and the party ceases to be under the control of the heir during the lifetime of the testator, or whether it is left under a condition, and this takes place before the condition is complied with; the legacy will be due.

Sabinus and Cassius think that a legacy can be legally bequeathed under a condition, but not absolutely; for, although the legatee may cease to be subject to the authority of the heir during the lifetime of the testator, still, the legacy must be understood to be void; because it would be considered as of no effect if the testator should die immediately after making his will, but that it would be valid if he should live longer would be absurd. The authorities of the other school, however, are of the opinion that a legacy left under a condition is inoperative, for the reason that we cannot be indebted any more conditionally than absolutely to those whom we have under our control.

(245) On the other hand, it is settled that if anyone under your control is appointed an heir, he can be charged with the payment of a legacy to you, but if you should become an heir through him the legacy will be extinguished, because you cannot owe yourself a legacy. If, however, your son should be emancipated, or your slave manumitted or transferred to another party, and he himself should become the heir, or make the other party his heir, the legacy will be due.

(246) Let us now pass to the consideration of trusts.

(247) And first let us examine trusts connected with estates.

(248) In the first place, it should be ascertained that the heir has been duly appointed according to law, and that he has been entrusted to transfer the estate to another; as otherwise, a will is void by which no one has legally been appointed an heir.

(249) The proper forms of words creating a trust, and employed are: "I beg, I ask, I wish, I entrust"; and these are just as binding when used separately as when they are united in a single phrase.

(250) Therefore, when we have written: "Let Lucius Titius be my heir," we can add: "I ask you, Lucius Titius, and I beg you, that as soon as you can enter on my estate you deliver and transfer it to Gaius Seius"; and we can also ask him to transfer a part of the same. It is likewise permitted to leave the trust under a condition, or absolutely, or after a certain day.

(251) After the estate has been transferred, he who transferred it will, nevertheless, continue to be the heir; and he who received the estate sometimes occupies the position of an heir, and sometimes that of a legatee.

(252) Formerly, however, he did not occupy the position of either heir or legatee, but rather that of a purchaser; for in those days it was customary for the party to whom the estate was transferred to give a coin as an evidence of the purchase of the same; and the stipulations usually entered into between the

vendor and the purchaser of an estate were accustomed to take place between the heir and the party to whom the estate was conveyed, that is to say, as follows: The heir stipulated with the party to whom the estate was transferred that he would be indemnified for anything which he might be compelled to pay on account of the estate, or might otherwise pay in good faith; and if anyone were to bring an action against him on account of the estate, that it would be properly defended; and, on the other hand, the party who received the estate stipulated that if anything should come into the hands of the heir which belonged to the estate it should be delivered to him, and also that he should be permitted, either as the agent or attorney of the heir, to bring any actions which the latter was entitled to bring in his own name.

(253) In subsequent times, however, during the Consulate of Trebellius Maximus and Annseus Seneca, a decree of the Senate was enacted, by which it was provided that where an estate was transferred under a trust, the actions to which the heir was entitled, and also those which could be brought against him under the Civil Law, should be granted for and against the beneficiary of the trust. Under this Decree of the Senate, the judicial securities formerly in use were abandoned, and the Prætor was accustomed to grant equitable actions both in favor of, and against the party who received the estate as heir, and these are set forth in the Edict.

(254) But again, for the reason that the appointed heirs when requested to transfer either all the estate, or nearly all of it, refused to accept it on account of the little or no advantage received, and hence the trusts were extinguished, it was afterwards decreed by the Senate during the Consulate of Pegasus and Pusio, that the heir who was requested to transfer an estate should be permitted to retain a fourth part of the same, just as he is permitted to do under the *Lex Falcidia*, in the case of legacies; and the same permission was granted where separate things were left under the terms of a trust. By the provisions of this Decree of the Senate, the heir himself sustains all the burdens of the estate, and he who receives the remainder of the estate as the beneficiary of the trust, occupies the position of a partial legatee; that is to say, of one to whom a portion of the property has been left; which species of legacy is called partition, because the legatee divides the estate with the heir. Hence, the result is that the stipulations usually entered into by the heir and the partial legatee also take place between the person who receives the estate as the beneficiary of the trust, and the heir; that is to say, that the profit and loss arising from the estate shall be divided among them *pro rata*.

(255) Therefore, if the appointed heir is asked to transfer no more than three-fourths of the estate, it will then be transferred under the Trebellian Decree of the Senate, and rights of action will be granted *pro rata* on both sides against the heir under the Civil Law, and against the beneficiary of the trust under the Decree of the Senate; for, although the heir continues to be such even with

reference to that part of the estate which he has transferred, and actions for the entire indebtedness of the estate can be brought against him; still, he cannot be made liable for anything more, nor can actions be granted against him for any further claims beyond the amount of interest which he has in the estate.

(256) If anyone is requested to transfer more than three-fourths of the estate, or all of it, there is ground for the application of the Pegasian Decree of the Senate.

(257) When, however, the heir has once entered upon the estate, provided he does so voluntarily — whether he retains a fourth of the same, or refuses to do so — he will be liable to the entire indebtedness of the estate; but if he retains a fourth, stipulations should be entered into between the partial legatee and the heir with reference to their respective shares; but if he transfers the entire estate, a stipulation should be entered into just as if the estate had been purchased and sold.

(258) But where the appointed heir refuses to enter on an estate for the reason that he says that he suspects it of being insolvent, it is provided by the Pegasian Decree of the Senate that, on the request of the party to whom he is asked to transfer it he may be compelled to accept and convey it, by order of the Prætor, and actions shall be granted both for and against him who received the estate as beneficiary of the trust, just as under the Trebellian Decree of the Senate. In this instance, no stipulations are required, because at the same time security is given to the party who transferred the estate, and rights of action with reference to the estate are transferred for and against the party who obtained it as beneficiary.

(259) It makes no difference, however, whether anyone who is appointed heir to the entire estate is asked to transfer all, or a portion of the same; or whether he who was appointed heir to a share is asked to transfer the entire share, or only a portion of it, for, in this instance also, the rule of the Pegasian Decree of the Senate is understood to apply to the fourth part of the share.

(260) Anyone can also leave single articles under a trust, as for instance, a tract of land, a slave, a garment, silver plate, money; and he may either charge the heir himself, or a legatee to deliver it, although a legatee cannot be charged with a legacy.

(261) Likewise, not only the property of the testator can be left under the terms of a trust, but also that of an heir, a legatee, or any other person whomsoever. Hence, a legatee may not only be charged to deliver the legacy bequeathed to him to another, but he may also be charged with the delivery of anything else belonging either to himself or to another; only it must be

observed that no one can be asked to deliver to others more than he himself received under the will, for any bequest in excess of this would be void.

(262) Moreover, when property belonging to another is left under the terms of a trust, it is necessary for the party who is asked to deliver it either to purchase and transfer the said property, or to pay its value; just as in the case where property belonging to another is bequeathed by condemnation. Still, there are some authorities who hold that if the owner refuses to sell property left under the terms of a trust, the trust will be extinguished; though the rule is different where a legacy is bequeathed by condemnation.

(263) Freedom can also be conferred upon a slave under the terms of a trust, and either the heir or the legatee may be charged to manumit him.

(264) Nor does it make any difference whether the testator makes the request with reference to one of his own slaves, or to one belonging to the heir himself, or to the legatee, or even to a stranger.

(265) Therefore, a slave belonging to another must be purchased and manumitted; but if his owner is unwilling to sell him, the grant of freedom is extinguished; because in this instance no computation of value can be made.

(266) When a slave is manumitted under the terms of a trust, he does not become the freedman of the testator, even though he may have been his slave, but of the person who manumitted him.

(267) Where a slave is ordered to be free by a direct provision of a will, for instance, as follows: "Let my slave Stichus be free," or "I order my slave Stichus to be free," he becomes the freedman of the testator himself. No other slave can obtain his freedom by a direct provision of the will but one who belonged to the testator by quiritarian right at both times, that is to say, the time when he executed the will, and when he died.

(268) A great difference exists between bequests made under the terms of a trust and those left directly.

(269) Hence a bequest may be left under a trust, to be discharged by the heir of the heir, while a bequest of this kind made in any other way in the beginning of a will is inoperative.

(270) Likewise, a person about to die intestate can charge his heir to deliver his estate to a third party under the terms of a trust, but on the other hand, he cannot charge him with the payment of a legacy.

(270a) Moreover, a legacy left by a codicil is not valid unless it has been confirmed by the testator, that is, unless the testator provided in his will that whatever he might insert in a codicil would be ratified; a trust, however, may be left without any confirmation of a codicil.

(271) Again, a legatee cannot be charged with a legacy, but the beneficiary of a trust can himself be charged with the execution of a trust in favor of another.

(272) Likewise, freedom cannot be left directly to a slave belonging to another, but this can be done under the terms of a trust.

(273) No one can be appointed an heir or disinherited by a codicil, even though it may have been confirmed by the will; but the testamentary heir may be asked by a codicil to transfer the estate either wholly or in part, to another, although the codicil may not have been confirmed by the will.

(274) Moreover, a woman appointed an heir by anyone who is registered in the census as possessing a hundred thousand sesterces, cannot take under the *Lex Voconia*; but she can still receive an estate left to her under a trust.

(275) Latins who are forbidden by the *Lex Junia* to receive estates or legacies directly under a will, can do so under the terms of a trust.

(276) Moreover, while the slave of a testator under the age of thirty years is prohibited by a decree of the Senate from being appointed an heir, and declared free; still, it is held by many authorities that we can direct him to become free when he reaches the age of thirty years, and that then the estate may be transferred to him.

(277) In like manner, although we cannot, after the death of a person who was our heir, appoint another in his stead, still, we can request him to transfer the entire estate, or a portion of the same, to another party when he dies; and for the reason that a trust may be created to take effect after the death of an heir, we may bring about the same result by inserting in the will: "When my heir Titius is dead, I desire my estate to belong to Publius Mævius"; and, whichever method is employed, Titius will leave his heir bound to transfer the estate under the terms of the trust.

(278) Moreover, we can sue for legacies under the Formulary System, but we enforce the performance of trusts, at Rome, either before the Consul or the Prætor, who is especially charged by the law with this duty; in the provinces, however, it is done by the Governor.

(279) Again, legal questions arising from trusts are decided in the City of Rome at all times, but those having reference to legacies only during the regular sessions of the tribunals.

(280) The interest and profits of property left in trust are payable, provided the party charged with the trust is in default, but the interest of legacies is not payable; and this is stated in a rescript of the Divine Hadrian. I am aware, however, that it was held by Julianus that, where a legacy was left under the form of permission, the same rule applies as in the case of trusts, and this opinion is the one accepted at the present time.

(281) Legacies bequeathed in the Greek language are not valid; trusts bequeathed in this way are valid.

(282) Moreover, where an heir disputes a legacy left by way of condemnation, an action can be brought against him for double the amount of the claim; but he can only be sued for simple damages where he acts as trustee.

(283) Likewise, where anyone, through mistake, pays more than was due under the terms of a trust, he can recover the excess; but where, in the case of a legacy by condemnation, payment is made for more than was due, through mistake, the excess cannot be recovered. The same rule of law applies where nothing at all was due, and through some mistake or other, payment has been made.

(284) There were formerly other differences which at present no longer exist.

(285) For instance, aliens could take as beneficiaries of a trust, and which was, generally speaking, the original cause of trusts, but this was subsequently prohibited, and now a Decree of the Senate, enacted at the instance of the Divine Hadrian, provides that trusts left for the benefit of aliens shall be claimed by the Treasury.

(286) Persons who are unmarried are, by the *Lex Julia*, relating to wills, prohibited from receiving estates and legacies, and formerly were considered capable of being the beneficiaries of a trust.

(286a) Likewise, persons who have no children, and who for this reason under the terms of the *Lex Papia* lose half of their estates and legacies, were formerly considered capable of receiving the full benefit of trusts. Afterwards, however, they were forbidden by the Pegasian Decree of the Senate to enjoy the benefit of trusts, just as in the case of legacies and estates; and the property passed to those named in the will who have children, and, if none of them have any, to the people; as in the law with reference to legacies and estates which, for this or a similar reason, are deemed to have no owners.

(287) Again, in former times, property could be left under the terms of a trust to an uncertain person, or to a posthumous stranger, although he could neither be appointed an heir nor a legatee; but, by a Decree of the Senate, enacted at

the instance of the Divine Hadrian, the same rule which applied to legacies and estates was adopted with reference to trusts.

(288) Likewise, there is no doubt that property cannot be left under a trust by way of penalty.

(289) Although in many branches of the law a much broader application to trusts exists than in the case of direct bequests, in other respects they are equally valid; still, a guardian cannot be appointed by will unless this is done directly, for instance, as follows: "Let Titius be the guardian of my child"; or "I appoint Titius guardian of my children"; but he cannot be appointed under a trust.

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THE INSTITUTES OF GAIUS

(c. 170 A.D.)

THIRD COMMENTARY.

(1) By the Law of the Twelve Tables, the estates of persons dying intestate belong to their proper heirs.

(2) Children who were under the control of the deceased at the time of his death are held to be proper heirs, as for instance, a son or a daughter; a grandson or a granddaughter by a son; a great-grandson or a great-granddaughter by a grandson; nor does it make any difference whether these children are natural or adopted. Provided, however, that a grandson or a granddaughter, and a great-grandson or a great-granddaughter, are to be classed as proper heirs only when the party in the preceding degree has ceased to be under the control of his parent, either by the death of the latter, or for some other reason, for instance, emancipation; for if the son was in the power of the deceased at the time of his death, the grandson by that son cannot be a proper heir; and we understand that the same rule applies to all other descendants.

(3) A wife who is in the hand of her husband is a proper heir because she occupies the position of his daughter; as well as a daughter-in-law who is in the hand of his son, for she occupies the place of a granddaughter; she will, however, only be a proper heir if the son in whose hand she is was not under the control of the father at the time of his death. We also say that the same rule applies to her who is in the hand of a grandson on account of marriage, for the reason that she occupies the place of granddaughter.

(4) Posthumous children also, who if born during the lifetime of their parent would have been under his control, are proper heirs.

(5) The same rule of law is applicable to those in whose cases proof of error has been established after the death of the father under the provisions of the *Lex Ælia Sentia*, or the Decree of the Senate; for, if the error had been proved during the lifetime of the father, they would have been under his control.

(6) We understand that the same rule also applies to a son who, having been mancipated once or twice, is manumitted after the death of his father.

(7) Therefore, when a son or a daughter, and grandchildren of both sexes by another son, are equally called to the succession, the one who is nearest in degree does not exclude the one who is more remote; for it seems to be just that grandchildren should succeed to the place and share of their father. Under the same rule, if there is a grandson or a granddaughter by a son, and great-grandchildren by a grandson, they are all called at once to the succession.

(8) And, as it was decided that grandchildren and great-grandchildren of both sexes should succeed to the place of their father, it seems to be proper that the estate should be divided not *per capita* but *per stirpes;* so that the son should have half of the estate, and that two or more grandchildren by another son the remaining half; and if there should be one or two children by one son, and three or four by the other, half of the estate should belong to the two grandchildren by the son, and the other half to the three or four grandchildren by the other.

(9) If there is no proper heir, then the estate by the same Law of the Twelve Tables belongs to the agnates.

(10) Those are called agnates who are connected by lawful relationship. Lawful relationship is that which unites persons through the male sex. Therefore, brothers by the same father are agnates to those who are of the same blood, and it is not even required that they should have the same mother. Hence a paternal uncle is the agnate of the son of a brother, and *vice versa*. The sons of brothers are included in the same category, that is to say, those who are descended from two brothers and are usually called cousins, according to which rule also we can compute several degrees of agnates.

(11) The Law of the Twelve Tables does not grant an estate to all agnates at once, but only to those who are the nearest in degree at the time when it is certain that the deceased died intestate.

(12) Succession does not exist under this right of descent; therefore, if the agnates nearest in degree should fail to accept the estate, or should die before entering on it, the agnates next in degree will not legally be entitled to it.

(13) Moreover, we require that agnates should be the next in degree, not at the time of death, but when it became certain that the party died intestate, because if anyone should die after having made a will, it seemed to be better to accept the agnate next in degree, when it is certain that no one will be an heir under the will.

(14) With reference to women, however, it has been decided that one rule applies to the taking of estates left by them, and another to the taking of the estates of others by them. For the estates of women pass to us by the right of

agnation, just as do those of males; but our estates do not belong to females who are beyond the degree of sisters by the same father. Therefore, the sister of a brother by the same father is his heir-at-law, but a father's sister and a brother's daughter cannot be the heir-at-law of one who occupies the place of a sister. A mother, or a stepmother, who passes into the hand of a father by marriage, is entitled to the same rights as a daughter.

(15) If the deceased leaves a brother and the son of another brother, as was previously stated, the brother is to be preferred, for the reason that he is nearest in degree; but another interpretation of the law is made in the case of proper heirs.

(16) If, however, no brother should survive the deceased, but there are children of more than one brother, the estate will belong to all of them; but the question arose if they were unequal in number, and one of the brothers left one or two, and the other three or four children, whether the estate shall be divided *per stirpes*, as is the rule among proper heirs, or *per capita*. It has, however, been long since decided that the estate shall be divided *per capita*; and therefore the estate shall be divided into as many portions as there are persons on both sides, so that each individual may have an equal share of the same.

(17) If there is no agnate, the same Law of the Twelve Tables calls *gentiles* to the inheritance. Who *gentiles* are we explained in the First Commentary, and as we called attention to the fact that the entire law relating to *gentiles* had fallen into disuse, it would be superfluous in this place to discuss the point with any degree of minuteness.

(18) The rules prescribed by the Law of the Twelve Tables with reference to the succession of intestate estates end here, and it is easy to understand how strict they were.

(19) For as soon as children were emancipated, they had no right to the estate of their parents under this law, as they had ceased to be proper heirs.

(20) The same rule applies to children who are not under the control of their father, for the reason that they, together with their father, had received Roman citizenship, and had not again been brought under his authority by the Emperor.

(21) Likewise, agnates who have suffered a loss of civil rights are, under this law, not admitted to the estate, for the reason that title by agnation is extinguished by the forfeiture of civil rights.

(22) Again, if the agnate next in degree should not enter on the estate, the one nearest to him is not legally admitted to the succession.

(23) Females agnates who are beyond the degree of sisters by the same father, have no right to succession under this law.

(24) In like manner, cognates who trace their relationship through persons of the female sex are not admitted; and, to such an extent does this rule apply, that even a mother and a son or daughter have no right reciprocally to an estate, unless by the mother having been placed in the hand of the husband by marriage, the rights of consanguinity should thereby have been established between them.

(25) But these unjust provisions of the law are now corrected by the Edict of the Prætor.

(26) For he calls to the succession all children whose legal title is defective, just as if they had been under the control of their father at the time of his death, whether they are alone, or there are also proper heirs; that is to say, they also come in with children who are under the control of their father.

(27) He does not, however, call agnates who have suffered a loss of civil rights and are not in the second degree after proper heirs; that is, he does not call them in the same degree in which they would be called by the law if they had not forfeited their civil rights, but in the third degree of proximity; for, although by forfeiture of civil rights they have lost their legal title, they certainly retain their rights of cognation. Hence, if there is anyone else who has an unimpaired right of agnation, he will be preferred, even though he may be in a more remote degree.

(28) The same rule applies, as some authorities hold, to the agnate who, if the next of kin should fail to accept the estate, would, nevertheless, be entitled to it by law. There are others, however, who hold that he should be called by the Prætor in the same order by which an estate is given to agnates under the law.

(29) It is certain that female agnates, who are beyond the degree of sisters, are called in the third degree; that is to say, where there is no proper heir, nor any other agnate.

(30) Those are also called in the same degree who are related through persons of the female sex.

(31) Also, children belonging to an adoptive family are called to the succession of their natural parents in this same order.

(32) Moreover, those whom the Prætor calls to a succession do not indeed become heirs by law, for the Prætor has no power to make heirs, and they become such only by some law, or some enactment which resembles a law; for example, by a Decree of the Senate, or an Imperial Constitution. When, however, the Prætor grants them possession of an estate they are placed in the position of heirs.

(33) In granting possession of an estate, the Prætor also takes cognizance of several other degrees, and he does this in order that no one may die without leaving a successor. We purposely do not treat of this matter in these Commentaries, as we have discussed this entire right in other Commentaries specially devoted to the subject.

(33a) It will be sufficient only to note the fact that, as we have already stated in the distribution of estates by law, cognation alone, as established by the Twelve Tables, would be of no advantage in taking an estate; and, therefore, unless a mother, in obtaining the estate of her children, has acquired the rights of consanguinity by being in the hand of her husband through marriage, she will have no right whatever under the law.

(34) Sometimes, however, the Prætor promises possession of an estate neither for the purpose of correcting or opposing the ancient law, but for the sake of confirming it; as he also grants possession of an estate in accordance with the provisions of the will to those persons who have been appointed heirs under a properly executed testament.

He also calls the proper heirs and agnates to the possession of an estate *ab intestato*. In this instance, the only benefit derived from his act is that he who, in this way, demands prætorian possession of the estate, can avail himself of the interdict which begins with the words: "Whatever portion of the property"; and the advantage of this interdict we shall explain in its proper place. On the other hand, if prætorian possession of the estate is not granted, it will belong to the said parties by the Civil Law.

(35) Moreover, possession of an estate is often granted to persons in such a way that they will not be able to obtain it, and possession of this kind is said to be inoperative.

(36) For example, if an heir is appointed by a properly executed will, and declares his acceptance of the estate, but refuses to demand prætorian possession of the same in accordance with the provisions of the will, being content with the fact that he is the heir under the Civil Law; still, those who, if a will had not been made, would have been entitled to the estate of the party who died intestate, can demand possession of the property, but the grant will be inoperative, as the testamentary heir can evict the estate.

(37) The same rule applies where a person having died intestate, his proper heir refuses to demand prætorian possession, being content with his title of heir-at-law, for an agnate will have a right to obtain possession of the estate; but the grant will be inoperative because the estate can be evicted by the proper heir. In like manner, if the estate should belong to an agnate by the Civil Law, and he should enter upon the same, but should fail to demand prætorian possession, a cognate in the nearest degree can demand it; but his possession of the estate will be inoperative for the same reason.

(38) There are other similar cases, some of which we have discussed in the preceding Commentaries.

(39) Let us now consider the estates of freedmen.

(40) Formerly, a freedman was permitted to pass over his patron in his will, with impunity, for the Law of the Twelve Tables only called a patron to the estate of his freedman, when the latter died intestate without leaving any heirs. Hence, if the freedman died intestate but left a proper heir, the patron was not entitled to any of his estate, but if he left a proper heir who was one of his natural children, no complaint could be made on this account. If, however, the proper heir was an adopted son or daughter, or a wife who was in his hand, it was evidently unjust that the patron should have no right to the estate.

(41) For this reason, this injustice of the law was afterwards corrected by the Edict of the Prætor, for if a freedman made a will, he is ordered to do so in such a way as to leave half of his estate to his patron; and if he left him either nothing, or less than half, the possession of half the estate is granted to the patron in opposition to the provisions of the will. If, however, the freedman died intestate, leaving as his heir an adopted son, or a wife who was in his own hand, or a daughter-in-law who was in the hand of his son; possession of half the estate is also granted to the patron as against these proper heirs. The fact that he has natural children will, however, permit the freedman to exclude his patron from the succession, not only with reference to the children whom he has under his control at the time of his death, but also those that have been emancipated, or given in adoption; provided any of them have been appointed to shares of the estate under the will, or if, having been passed over, they have, under the Edict, demanded prætorian possession contrary to the provisions of the will; for if they have been disinherited they do not, by any means, exclude the patron.

(42) Subsequently, by the *Lex Papia*, the rights of patrons were increased, so far as the wealthier freedmen were concerned; for it is provided by this law that where a freedman left an estate of a hundred thousand sesterces, or more, and had less than three children, an equal share of his estate was due to the patron, whether he made a will or died intestate. Therefore, if a freedman

should leave but one son or daughter, his patron will be entitled to half his estate, just as if he had died without leaving either a son or a daughter; and if he should leave two sons or two daughters, a third part of his estate will be due to the patron; but if he left three children, the patron will be excluded from the succession.

(43) By the ancient law, patrons suffered no injury so far as the estate of freedwomen were concerned; for, as the latter were under the legal guardianship of their patron, they could not make a will without the consent of their patron; and, therefore, if he agreed to the execution of the will, he would either be appointed the heir, or if he was not, it was his own fault; for, if he did not consent to the will being made and the freedwoman should die intestate, he would obtain her property, because a woman cannot have proper heirs; and formerly no other heir could exclude a patron from the estate of his freedwoman.

(44) Afterwards, however, by the *Lex Papia*, the birth of four children released the freedwoman from the guardianship of her patron; and, for this reason, she was permitted to make a will without the consent of her guardian; and the law provided that a share equal to that of each of the children whom the freedwoman had at the time of her death, should be due to her patron. Therefore, if a freedwoman left four children and no more, a fifth part of her estate — if she died before they did — belonged to her patron, and if any of her children died before her, the share of the patron would be proportionally greater; and if all of them died, her entire estate would pass to him at her death.

(45) What we have stated with reference to a patron we understand to apply as well to his son, and also to his grandson by a son, as well as to a great-grandson born to the grandson by a son.

(46) The daughter of a patron, a granddaughter by a son, and a great-granddaughter by a grandson, were entitled to the same rights as the patron, under the Law of the Twelve Tables. Children of the male sex, however, are only called by the Edict to the succession, but the daughter of a patron can demand the possession of half the property of the estate of a freedman contrary to the provisions of the will; or in case of intestacy, against an adoptive son, or wife or daughter-in-law who was in the hand of the deceased; and this was conceded by the *Lex Papia* on account of the woman having three children, otherwise the daughter would not have this right.

(47) But where a freedwoman who had four children died testate, a daughter of the patron was entitled to an equal share with each child; this rule was not, as some authorities hold, established on account of the children, but the words of the *Lex Papia* state that she is entitled to an equal portion, even if the

freedwoman should die intestate. If, however, a freedwoman dies after having made a will, the same right is granted the daughter of the patron as would be granted contrary to the provisions of the will of a freedman; that is, that the male children of patrons shall be entitled to possession of half the estate in opposition to the provisions of the will; although this part of the law has been written with very little care.

(48) From these observations it is apparent that the foreign heirs of patrons are far removed from the rights to which a patron is entitled, either with reference to the property of intestate children, or with reference to prætorian possession in opposition to the provisions of the will.

(49) Formerly, before the enactment of the *Lex Papia*, patronesses had only that right to the estates of their freedmen which was conferred upon patrons by the Law of the Twelve Tables; for they could not demand possession of half the estate of an ungrateful freedman contrary to the provisions of the will, or on the ground of intestacy, against an adopted son, a wife, or a daughter-in-law, which right was granted by the Prætor in the case of a patron and his children.

(50) The *Lex Papia* granted almost the same rights to a freeborn patroness, who had two children, and to a freedwoman who had three, which male patrons enjoy under the Edict of the Prætor. And the same rights were granted to a freeborn patroness if she had three children, as were conferred upon a male patron by the same law, but it did not bestow the same advantage upon a patroness who was a freedwoman.

(51) The *Lex Papia*, however, does not confer any new advantage upon a patroness on account of her children, so far as the estates of freedwomen are concerned, even if they should die intestate. Therefore, if neither the patroness herself, nor the freedwoman, has suffered a loss of civil rights, the estate will belong to her by the Law of the Twelve Tables, and the children of the freedwoman will be excluded, and this rule applies even if the patroness should have no children, for, as we stated above, women can never have a proper heir.

But, on the other hand, if either of them has suffered a loss of civil rights, the children of the freedwoman will exclude the patroness, for the reason that her title is legally destroyed on account of the forfeiture of civil rights, so that the children of the freedwoman obtain the preference by the right of relationship.

(52) Moreover, when a freedwoman dies after having made a will, a patroness, who has no right through children, cannot claim possession contrary to the provisions of the will of the freedman; but one who is entitled through her children, has the same right conferred on her by the *Lex Papia* as

a patron has under the Edict in opposition to the provisions of the will of his freedman.

(53) The same law bestows upon the son of a patroness almost the same rights as upon a patron; but in this instance a single son or daughter is sufficient to authorize the privilege.

(54) All that relates to this subject appears to have been sufficiently discussed up to this point; and a more minute explanation will be found in my Commentaries devoted to this subject.

(55) Let us in the next place examine the estates of Latin freedmen.

(56) In order that this branch of the law may become more clear, we should remember what we have stated elsewhere, namely, that those who are now styled *Latini Juniani* were formerly slaves under quiritarian right, but by the aid of the Prætor had been placed in a position of apparent freedom, so that their property belonged to their patron by the right of *peculium*. Afterwards, however, by the *Lex Junia*, all of those whom the Prætor had protected while in nominal freedom became actually free, and were styled *Latini Juniani; Latini*, because the law intended them to be free just as those Roman citizens were who, having left the City of Rome for Latin colonies, became Latin colonists; *Juniani*, because they were free under the *Lex Junia*, even though they did become Roman citizens. Hence the author of the *Lex Junia* understood that the result would be that by this fiction, the property of deceased *Latini* would no longer belong to their patrons, for the reason that, as they did not die slaves, their estates could not belong to their patrons by the right of *peculium*; nor could the property of a Latin freedman belong to his patron by the right of manumission, and he considered it necessary, in order to prevent the benefit granted to freedmen from becoming an injury to their patrons, to provide that their property should belong to those who manumitted them, just as if this law had not been enacted; and, therefore, the property of Latins by this law belongs as it were by the right of *peculium* to those who manumit them.

(57) Hence it happens that the title to the property of Latins under the *Lex Junia*, and that to the estates of freedmen who are Roman citizens, differ greatly.

(58) For the estate of a freedman who is a Roman citizen will, by no means, belong to the heirs of his patron; but it will belong absolutely to the son of the patron, and to his grandsons by a son, and to his great-grandsons by a grandson; even though they may have been disinherited by their father. Moreover, the estates of Latins will pass to the foreign heirs of a patron in the

same way as the *peculium* of slaves, and will not belong to the children of the person who manumitted them, if they are disinherited.

(59) Likewise, the estate of a freedman who is a Roman citizen belongs in equal parts to two or more patrons; although they may have had unequal shares in said slave, if they were his owners; but the estate of a Latin belongs to his patrons, according to the shares which each one owned in him when he was his master.

(60) Also, with reference to the estate of a freedman who is a Roman citizen, one patron would exclude the son of another, and the son of one patron will exclude the grandson of another; but the estates of Latins belong jointly to a patron and the heir of another patron, in proportion to the share which would have belonged to the person who manumitted the slave.

(61) Likewise, if one patron leaves three children, and another one, the estate of a freedman, who is a Roman citizen, is divided *per capita*, that is to say, the three brothers will take three shares, and the other heir the fourth share. The estate of a Latin, however, belongs to his successors in the same proportion as it would have belonged to the person who himself manumitted the slave.

(62) Again, if one of the patrons rejects his share to the estate of a freedman who is a Roman citizen, or dies before he formally accepts it, the entire estate will belong to the other; but the property of a Latin will belong to the people, so far as the share of the patron who refuses to accept it is concerned.

(63) Subsequently, during the Consulate of Lupus and Largus, the Senate decreed that the estate of Latins should belong, in the first place, to the party who manumitted them; and next to the children of the latter, who were not disinherited by name, according to their proximity; and then, by the ancient law, to the heirs of those who manumitted them.

(64) Certain authorities hold that, under this Decree of the Senate, the same rule applies to the estates of Latins as to those of freedmen, who are Roman citizens; and this was the opinion of Pegasus. This doctrine, however, is evidently incorrect, for the estate of a freedman who is a Roman citizen never belongs to the foreign heirs of his patron; while the estate of a Latin citizen under this very Decree of the Senate, where the party who manumitted him left no children, will belong to his foreign heirs. Likewise, with reference to the estate of a freedman who is a Roman citizen, disinheritance does not in any way

injure the children of the party who manumitted them; while in the case of the property of Latins, it is set forth in the said Decree of the Senate that where disinheritance is specifically made, they will be injured.

Hence, the only actual effect of this Decree of the Senate is, that the children of the party who manumitted the slave, and who are not disinherited by name, are preferred to foreign heirs.

(65) Therefore, an emancipated son of the patron who has been passed over, although he may not demand prætorian possession of his father's estate, in opposition to the provisions of the will, is still preferred to foreign heirs, so far as the estates of Latins are concerned.

(66) Moreover, a daughter and other proper heirs, although they may have been disinherited with others under the Civil Law, and entirely excluded from sharing in the estate of their father; still, in the case of the estates of Latins, unless they have been specifically disinherited by their father, they will be preferred to foreign heirs.

(67) Again, the estates of Latins will, nevertheless, belong to children who have refused to accept the estate of their father, for they also can not, by any means, be said to have been disinherited, any more than those who have been passed over in silence in a will.

(68) From all these examples, it is perfectly clear that if he who makes a Latin . . . .[1]

(69) It also seems to be settled that if a patron has appointed his children his sole heirs to unequal shares of his estate, the property of a Latin belongs to them in the same relative proportions, for the reason that where there is no foreign heir, the Decree of the Senate becomes inoperative.

(70) If a patron should appoint a foreign heir along with his children, Cælius Sabinus says that the entire estate will belong to the children of the deceased in equal shares; because when a foreign heir appears, the *Lex Junia* does not apply, but the Decree of the Senate does. Javolenus, however, holds that the children of the patron will, under the Decree of the Senate, only be entitled to equal shares in that portion of the property to which foreign heirs would have been entitled under the *Lex Junia*, before the enactment of the Decree of the Senate; and that the remaining shares will belong to them in proportion to their interest in the estate of their father.

(71) Again, the question arises whether this Decree of the Senate refers to those children of a patron who are born of a daughter or granddaughter; that is to say, whether my grandson by my daughter will have a better right to the estate of my Latin than a foreign heir. The question also arises, whether this Decree of the Senate applies to Latins who belong to a mother; that is, whether, in the distribution of the estate of a Latin who belongs to a mother, the son of a patroness shall be preferred to the foreign heir of the mother. It

was held by Cassius that, in both instances, there was ground for the application of the Decree of the Senate, but most authorities reject his opinion, for the reason that the Senate did not have in mind the children of female patrons who belong to another family, and this is evident from the fact that it excludes such as have been expressly disinherited; for it seems to have had in view those who are usually disinherited by their parent if they are not appointed heirs. For it is not necessary for a mother to disinherit her son or daughter, nor a maternal grandfather his grandson or granddaughter, if he or she did not appoint them heirs; whether we consult the Civil Law or the Edict of the Prætor, by which the possession of an estate is granted to children who are passed over contrary to the provisions of the will.

(72) Sometimes, however, a freedman who is a Roman citizen dies as a Latin; for example, where a Latin has obtained the right of Roman citizenship from the Emperor, with the reservation of the rights of his patron. For the Divine Trajan decided in a case of this kind that if a Latin obtained the right of Roman citizenship from the Emperor without the knowledge or consent of his patron, the said freedman resembles other Roman citizens, and can beget lawful children; but he will die a Latin, and his children cannot become his heirs, and also that he can only make a will in such a way as to appoint his patron his heir, and substitute another for him if he should refuse to accept the estate.

(73) And for the reason that the effect of this Constitution seems to be that men of this kind never die as Roman citizens, even though they may subsequently have acquired the right of Roman citizenship under the *Lex Ælia*, *Sentia* or the Decree of the Senate. The Divine Hadrian, induced by the injustice of this law, caused a Decree of the Senate to be enacted providing that freedmen who had obtained the right of Roman citizenship from the Emperor without the knowledge, or against the will, of their patrons, and afterwards availed themselves of the right by which, under the *Lex Ælia, Sentia* or the Decree of the Senate, they would have obtained Roman citizenship if they had remained Latins, should be considered to occupy the same position as if they had acquired Roman citizenship under the provisions of the *Lex Ælia Sentia,* or the Decree of the Senate.

(74) Moreover, the estates of those whom the *Lex Ælia Sentia* places in the class of *dediticii*, belong to their patrons, sometimes as if they were freedmen and Roman citizens, and sometimes as if they were Latins.

(75) For the estates of those who, had it not been for some offence which they perpetrated after having been manumitted, would have become Roman

[1] Original manuscript illegible.

citizens, are granted by this same law to their patrons, just as the estates of those who have become Roman citizens, for they have not the power to make a will; and this opinion was not unreasonably held by the greater number of authorities, for it seems incredible that the legislator intended to grant the right to make a will to men belonging to the lowest rank of freedmen.

(76) The estates of those who, if they had not committed some offence, would, after their manumission, have become Latins, are granted to their patrons, just as if they had died Latins. It has not escaped my observation, however, that the legislator did not express his intention in this manner in a way which is sufficiently clear.

(77) Let us now consider the succession to which we are entitled by the purchaser of property.

(78) The property of debtors may be sold either during their lifetime, or after their death. For example, it is sold during their lifetime when they conceal themselves for the purpose of defrauding their creditors, and are not defended while absent; and the same rule applies to those who surrender their property under the *Lex Julia*, or when judgment has been rendered against them after the time has elapsed which has been fixed for the payment of a debt, partly by the Law of the Twelve Tables, and partly by the Edict of the Prætor. The property of a debtor is sold after his death, for example, when it is certain that he has left no heirs, or persons entitled to prætorian possession, or any other legal successor.

(79) If the property of an insolvent debtor is sold during his lifetime, the Prætor orders it to be taken into possession and advertised for thirty consecutive days; but for fifteen days if he is dead. He afterwards orders the creditors to assemble, and select one of their number as their representative, that is, one by whom the estate may be sold. Therefore, where the property of a living debtor is sold, the Prætor orders the sale to take place within ten days, or if he is dead, within five days. If the debtor be living, he orders thirty days to be added, and if he is dead he orders twenty. The reason why he orders a longer time to elapse before the sale of the property of a living debtor, is for the purpose of showing more care for the interests of the living by preventing too easy a sale of his estate.

(80) Moreover, the ownership of property under prætorian possession, or of the property of a debtor which is sold, is not absolute, but only provisional. Ownership under quiritarian right is only acquired by usucaption. Sometimes, however, it happens that ownership by usucaption can not be acquired by purchasers of the property of a debtor, for example, when an alien is the purchaser. . . . .[1]

(81) Again, debts due to, or by the party from whom property is obtained, are not owed to, or by the prætorian possessor, or the purchaser of the property of the debtor; but can be collected by means of equitable actions, which we will explain in a subsequent Commentary.

(82) There are successions of other kinds which were not established by the Law of the Twelve Tables or by the Edict of the Prætor, but have been adopted by common consent.

(83) For when the head of a household gives himself in adoption, or a woman places herself in the hand of another, all their property, incorporeal and corporeal, as well as all debts due to them, are acquired by the adoptive father, or the purchaser, with the exception of those that are extinguished by the forfeiture of civil rights; as, for instance, usufructs, the obligation of the services of freedmen which is contracted by oath, and claims in legal actions where issue has been joined.

(84) On the other hand, any debt owed by the party who gave himself in adoption, or who came into the hand of another, does not pass to the purchaser or to the adoptive father, unless the indebtedness was hereditary; for then, because the adoptive father or the purchaser becomes the heir, they are directly liable; but he who gave himself in adoption, and the woman who came into the hand of another, cease to be heirs. But if the persons referred to are indebted in their own names, although neither the adoptive father nor the purchaser becomes liable, nor does he who gave himself in adoption, nor the woman who came into the hand of another remain bound, for the reason that they are released from liability by their loss of civil rights; still an equitable action is granted against both, on the ground that their forfeiture of civil rights has been rescinded, and if no defence is made to this action, the Prætor will permit all the property to be sold by the creditors which would have belonged to them, if they had not been subjected to the authority of another.

(85) Likewise, if an heir, before he declares his acceptance of the estate of an intestate, or acts as heir to the same, surrenders the estate in court, he to whom it was surrendered becomes the heir absolutely, just as if he himself had been legally called to the succession. If, however, the heir should surrender the estate after having accepted it, he will still remain the heir, and for this reason he will be liable to the creditors, and he must transfer the corporeal property belonging to the estate just as if he had surrendered the separate articles in court; but the debts are extinguished, and in this way the debtors to the estate profit by the transaction.

[1] Original manuscript illegible.

(86) The same rule of law applies where a testamentary heir accepts the estate, and then surrenders it in court; but if he surrenders the estate before entering on it, his act will be of no force or effect.

(87) The question arises whether a proper and necessary heir, by surrendering an estate in court, performs an act which is valid. Our preceptors hold that such an act is void; authorities of the other school, however, think that the same effect is produced as that caused by other heirs after the estate had been entered on; for it makes no difference whether a party becomes an heir either by declaring his acceptance, or as acting in the capacity of heir, or whether he is compelled by law to accept the estate.

(88) Let us now pass to other obligations, the principal division of which is into two classes, for every obligation either arises from a contract, or from an offence.

(89) And first, let us examine those which arise from contracts, of which there are four different kinds; for an obligation is contracted either by delivery of property, verbally, by writing, or by consent.

(90) An obligation by the delivery of property is contracted, for example, in the case of a loan for consumption. This generally takes place with reference to articles which are susceptible of being weighed, counted, or measured; such as money, wine, oil, grain, bronze, silver, and gold. This kind of property we transfer either by counting, measuring or weighing it with the understanding that it shall belong to him who receives it, and that, at some time or other, not the same article, but another of the same nature, shall be returned to us, and therefore

an obligation of this kind is called *mutuum*, because what was given to you by me, from being mine becomes yours.

(91) He also who received something that was not due from a person who paid him through mistake, is liable under a contract of this description, for a personal action can be brought against him under the formula, "If it appears that he was required to give"; just as if he had received the property as a loan for consumption. Hence certain authorities hold that a ward or a woman to whom payment was made of something which was not due, through mistake, and without the authority of his or her guardian, is not liable to a personal action; any more than they are for a loan for consumption. This species of obligation does not, however, appear to arise from a contract, for a party who gives with the intention of paying a debt, rather desires to discharge an obligation than to incur one.

(92) An obligation is verbally contracted by question and answer, as for instance: "Do you solemnly agree to give it to me?" "I do solemnly agree." "Will you give it?" "I will give it." "Do you promise?" "I do promise." "Do you pledge your faith?" "I do pledge my faith." "Do you guarantee?" "I do guarantee." "Will you do this?" "I will do it."

(93) The verbal obligation contracted by the expressions, "Do you solemnly agree to give?" "I do solemnly agree to give," is peculiar to Roman citizens; the others belong to the Law of Nations, and therefore they are valid among all men, whether they are Roman citizens or aliens. And even if they are uttered in the Greek language they are still valid, so far as Roman citizens are concerned, if they understand Greek; and on the other hand, although they may be stated in Latin, they will, nevertheless, be binding on foreigners, provided they are familiar with the Latin language. The obligation contracted by the words, "Do you solemnly agree to give?" "I do solemnly agree to give," is so peculiar to Roman citizens, that it cannot properly be expressed in the Greek language, although it is said to have been derived from the Greek.

(94) Therefore, it is said that there is one instance in which an alien may be bound by this phrase, that is to say, when our Emperor interrogates the ruler of a foreign people with reference to concluding peace, as follows: "Do you solemnly agree that peace shall exist?" or where the Emperor himself is interrogated in the same manner. This, however, is said to be too subtle a refinement, for if anything should be done to violate a treaty, an action is not brought under the stipulation, but the property is claimed by the law of war.

(95) It may be doubted if anyone . . . . .[1]

(95a) .... [1] a debtor, by the order of his wife, provided her guardian consents, may make a statement of the amount of dowry which he owes. Another, however, cannot be bound in this way, and therefore if any other person promises a dowry to the husband in behalf of his wife, he will be liable under the common law, provided the husband had previously stipulated.

[1] Original manuscript illegible.

(96) An obligation is likewise contracted by one of the parties speaking and promising the other without being interrogated; as where a freedman swears that he will give a present, or perform some labor or service for the benefit of his patron; and this is the sole instance in which an obligation is contracted by oath, for in no other are men rendered liable on account of having been sworn, as will be apparent if the Roman law is examined; although if we ascertain what the law is among aliens by searching the records of other states we might come to a different conclusion.

(97) If we stipulate that something shall be given to us which cannot be transferred, the stipulation is void; for example, if anyone stipulates for the transfer of a freeman whom he thinks to be a slave; or of a dead slave whom he believes to be living; or of a sacred or religious place which he supposes to be subject to human law.

(97a) Likewise, if anyone stipulates for something which cannot, in the nature of things, exist, as for instance, a hippocentaur, such a stipulation also is void.

(98) Moreover, if anyone stipulates under a condition which cannot take place, for example, if he should touch the sky with his finger, the stipulation is void. Our preceptors however, were of the opinion that a legacy bequeathed under an impossible condition should be paid, just as if it had been left unconditionally; but the authorities of the other school hold that a legacy is just as invalid as a stipulation, under such circumstances, and, indeed, no good reason can be given for establishing a distinction.

(99) Moreover, a stipulation is void if anyone ignorantly agrees that his own property shall be transferred to himself; as what already belongs to a person cannot be given to him. Finally, a stipulation is void where anyone stipulates as follows: "Do you solemnly agree to pay after my death?" or "Do you solemnly agree to give after your death?" The stipulation, however, is valid if anyone stipulates as follows, "Do you solemnly agree to give at the time of my death?" or "Do you solemnly agree to give when you die?" that is, the obligation is valid as it relates to the last moment of the life of the stipulator or promisor, for it has been considered contrary to legal principle to make the obligation attach to the person of the heir.

(100) Again, we cannot stipulate as follows, namely: "Do you solemnly agree to pay on the day before I die, or on the day before you die?" for the expression: "On the day before anyone dies," can only be ascertained after death has taken place; and, moreover, where death has occurred the stipulation becomes retrospective, and means the same as, "Do you solemnly agree to pay to my heir?" which is clearly void.

(101) What we have stated with reference to death must also be understood to apply to the loss of civil rights.

(102) A stipulation is also void when anyone does not answer the question which he was asked; for instance, if I stipulated for ten sesterces to be paid by you, and you promise five; or if I stipulate absolutely, and you promise conditionally.

(103) Moreover, a stipulation is void if we stipulate to pay a party to whose authority we are not subject. Hence the question arose to what extent the

stipulation would be valid if a person should agree to pay one to whose authority he is not subject. Our preceptors are of the opinion that it would be valid for the entire amount, and that he who stipulated would be entitled to all of it, just as if he had not added the name of a stranger. The authorities of the other school, however, think that only half is due to him, and that the stipulation is void so far as the other half is concerned.

(103a) The case is different where, for instance, I stipulate as follows: "Do you solemnly agree to pay my slave or my son who is under my control?" for then it is settled that the entire amount is due, and that I can collect it from the promisor and the result is the same when I only stipulate for payment to my son who is under my control.

(104) Again, the stipulation is void where I stipulate with one who is under my control, and also if he should stipulate with me. Still, a slave belonging to the household, a daughter under paternal authority, and a woman in the hand of her husband, cannot only not bind themselves to the persons to whose authority they are subject, but they cannot bind themselves to anyone else.

(105) It is clear that a dumb person can neither stipulate nor promise; and the same rule applies to one who is deaf, because he who stipulates must hear the words of the promisor, and he who promises must hear those of the stipulator.

(106) An insane person cannot transact any business, because he does not understand what he is doing.

(107) A ward can transact all kinds of business, provided, however, that, as the authority of his guardian is necessary it be granted, just as if he himself was bound; for he can render another liable to himself even without the authority of his guardian.

(108) The same rule of law applies to women who are under guardianship.

(109) Still, what we have stated with reference to a ward is only true of one who has some intelligence; for an infant, and a child who is almost an infant, do not differ greatly from an insane person, because minors of this age have no judgment; but in the case of such minors a more indulgent interpretation of the law is made on account of the benefit resulting to them.

(110) Although, as we have already stated, a party not subject to our authority cannot stipulate for us, we can associate another with us in the stipulation which we make, who also stipulates for the same thing, and who is commonly called a joint stipulator.

(111) He, also, has a right of action as well as ourselves, and payment can be made to him as well as to us, but he can be compelled by the action of mandate to transfer to us anything which he may recover.

(112) Again a joint stipulator can also make use of other words than those which we employ. Hence, for example, if I stipulate, as follows: "Do you solemnly agree to pay?" the joint stipulator may say,

"Do you pledge your faith for the same?" or "Do you guarantee the same?" or *vice versa*.

(113) Likewise, he may stipulate for less, but not for more, than the stipulator. Therefore, if I stipulate for ten sesterces, he can stipulate for five; but, on the other hand, he cannot stipulate for more. Moreover, if I stipulate absolutely, he can stipulate under a condition, but not *vice versa*. The term "more or less," is understood not only to refer to quantity, but also to time, for to make payment immediately is more, and to do so after a certain period is less.

(114) To this rule there are certain exceptions, for the heir of a joint stipulator has no right of action. Likewise, the act of a slave as joint stipulator is void, although in all other cases he acquires property for his master by a stipulation. The better opinion is, that, the same rule applies to a slave in domestic servitude, because he occupies the place of a slave. Moreover, a son who is under the control of his father can act as a joint stipulator, but he does not acquire anything for his father; although, under all other circumstances, by stipulating he makes acquisitions for his benefit. Nor will he be entitled to any right of action unless he has been released from paternal control without the forfeiture of civil rights; as, for instance, by the death of his father, or because he himself has been installed a priest of Jupiter. We understand that the same rule applies to a daughter under the control of her father, and a woman in the hand of her husband.

(115) Others are usually liable for the party who promises, some of whom we call sponsors, others guarantors, and others still, sureties.

(116) A sponsor is interrogated as follows: "Do you solemnly agree to pay the same?" a guarantor as follows: "Do you guarantee the same?" and a surety as follows, "Do you pledge your faith for the same?" We shall see what names should be properly applied to those who are interrogated, as follows, namely: "Will you give the same?" "Do you promise the same?" "Will you do the same?"

(117) We often accept sponsors, guarantors, and sureties, when we desire to be provided with additional security; and we rarely make use of a joint stipulator, except when we stipulate that something shall be paid after our

death. If we make such a stipulation ourselves, our act is void, and hence the joint stipulator is employed so that he may bring suit after our death; but if he should recover anything, he will be liable by an action of mandate to deliver it to our heir.

(118) The positions of a sponsor and a guarantor are similar, that of a surety is extremely unlike the others.

(119) For the former can enter into no obligations except verbal ones, although sometimes the party who promises is not bound, as for instance, where a ward or a woman without the authority of his or her guardian, promises to make a payment after his or her death. It is a question, however, if a slave or an alien should promise, whether his sponsor or guarantor will be liable.

A surety can enter into every kind of obligation, that is to say, whether it is contracted either by words, or by writing, or by consent,

and it makes no difference whether the obligation be a civil or natural one. To such an extent is this true, that he is also liable for a slave, whether it be a stranger who accepts him as security for the slave, or whether .it be the master himself who does so for a debt which is due to him.

(120) Moreover, the heir of a sponsor and a guarantor is not liable, unless we have reference to the heir of an alien guarantor, in whose State another rule than ours prevails; but the heir of a surety is also liable.

(121) Likewise, a sponsor and a guarantor are released by the *Lex Furia* from liability at the expiration of two years; and no matter what may be the number of the sureties at the time when the debt can be collected the obligation is divided into as many parts as there were sureties at that time, and each one of them is only liable for his respective share. Sureties, however, are perpetually liable, and no matter what may be their number, each of them is bound for the entire amount of the debt; and therefore the creditor is at liberty to collect the whole debt from any one of them whom he may select. But, now, according to a letter of the Divine Hadrian, a creditor is compelled to collect the proportionate part of the debt from each of the sureties who is solvent at the time. Hence, this letter differs from the *Lex Furia* in that if any one of the sponsors or guarantors should not be solvent, this does not increase the liability of the others; but if even only one of the sureties is solvent, the entire burden of all the others is imposed upon him.

But, as the *Lex Furia* only applies to Italy, the result is that in the other provinces both sponsors and guarantors, like "sureties, are perpetually liable;

and each one of them is bound for the entire amount of the debt, unless they are, to a certain extent, relieved by the letter of the Divine Hadrian.

(122) Moreover the *Lex Apuleia*, introduces a certain partnership between sponsors and guarantors; for if any of them should pay more than his share he will have a right of action against the others to recover the surplus. This law was enacted before the *Lex Furia*, and therefore the question arises whether, after the passage of the *Lex Furia*, the benefit of the *Lex Apuleia* still remains. This is certainly the case outside of Italy, for the *Lex Furia* is in force only in Italy, while the *Lex Apuleia* embraces also the other provinces; but whether the benefit of the *Lex Apuleia* still continues to exist in Italy, *is* a question. But the *Lex Apuleia* does not apply to sureties, and therefore, if a creditor recovers his entire debt from one surety the latter alone must suffer the loss, that is to say, if the party for whom he became surety is not solvent. But, as appears from what has been already stated, he whom a creditor sues for the entire amount of the debt can, under the letter of the Divine Hadrian, petition for the action to be brought against him only for his proportionate share.

(123) Moreover, it is provided by the *Lex Cicereia*, that a creditor who accepts sponsors or guarantors, must previously publish and declare the amount of the claim for which he receives security, and the number of sponsors or guarantors that he will accept as sureties for the obligation; and unless he does so, the sponsors and guarantors are permitted within the term of thirty days to demand a preliminary trial, by which it may be ascertained whether the declaration required under this law had been made, and if it should be decided that it had not been made, they shall be released from liability. No mention of sureties was made in this law, but it is customary when we receive sureties to make this statement.

(124) Moreover, the benefit of the *Lex Cornelia* is common to all, and by its provisions the same person is forbidden to become a surety for the same debtor to the same creditor, during the same year, for a larger sum of money than twenty thousand sesterces; and although sponsors or guarantors may bind themselves for a larger amount, for example, for a hundred thousand sesterces, they will still only be liable for twenty thousand. Again, we say that money which is lent under this law includes not only that which was actually loaned, but all certain to be due at the time that the obligation was contracted; that is to say, whatever is unconditionally included in the obligation, and therefore the money which we stipulate to be paid on a certain day comes under this provision, for the reason that it is certain that it will be due, although it cannot be collected until after the time has elapsed. All kinds of property are comprehended in this law under the term "money," and therefore, if we stipulate for wine, grain, land, or a slave, this law must be observed.

(125) In some cases, however, the law permits security to be taken to an indefinite amount; as for instance, for the purpose of dowry, or for what may be due to you under a will. Security may also be taken by an order of court. It is also provided by the *Lex Julia*, which imposes a tax of one twentieth on estates, that the *Lex Cornelia* shall not apply to the securities referred to in this law.

(126) Under this rule, also, the condition of all sponsors, guarantors, and sureties is the same, in that they cannot be liable for more than their principal owes; on the other hand, however, they may be liable for less, as we have stated with reference to a joint stipulator; for as is in his case, their liability is also accessory to the obligation of the principal, and the liability of the accessory cannot be greater than that of the principal.

(127) A further similarity exists between them in that, if the sureties should pay anything for the principal debtor, they will have a right to the action of mandate against him to recover it. Sponsors also, under the *Lex Publilia* are entitled to still another remedy, as they have a right to bring an action for double the amount, which is called the action to recover money expended.

(128) An obligation contracted by writing is made, for instance, by the entry of claims on an account book. Entries of this description are of two kinds; either from a thing to a person, or from a person to a person.

(129) The record from a thing to a person is made, for example, where what you owe me on account of a purchase, a lease, or a partnership, is entered upon my book as having been paid to you.

(130) The record of a claim from a person to a person is made, for instance, when the amount that Titius owes me is charged to you on my book; that is to say as if Titius had substituted you for himself to me.

(131) The case of those claims which are designated as cash is different, as the obligation for them has reference to the thing itself, and not to a charge in writing; although they are not valid unless the money has been actually paid; for the payment of money makes the obligation a legal one. For which reason we very properly say that the entry of a claim as cash does not constitute an obligation, but is merely evidence that the obligation has been contracted.

(132) Hence, it is not proper to say that aliens are also bound by claims as cash, because their liability does not depend upon the entry of the claim, but upon the payment of the money; and this kind of an obligation belongs to the Law of Nations.

(133) A reasonable doubt has arisen as to whether aliens are bound by claims which have been entered on an account book; for an obligation of this kind is, to a certain extent, one contracted under the Civil Law, which was the opinion of Nerva. It was, however, held by Sabinus and Cassius that if the entry was made as from a thing to a person, aliens would also be liable; but if it was entered as from a person to a person, this would not be the case.

(134) Moreover, an obligation by writing is considered to be created by written evidences of debt, or promises to pay; that is to say, where anyone states in writing that he owes a debt, or will make payment in such a way, of course, that a stipulation is not entered into on this account. This kind of obligation is peculiar to aliens.

(135) Obligations are created by consent, in purchase and sale, leasing and hiring, partnership and agency.

(136) Moreover, we say that obligations are contracted by consent in these different ways, because no form of words or writing is required, but it is sufficient for the parties to the transaction to have consented. Therefore, agreements of this kind can be entered into by persons who are absent, as for instance, by letter or by messenger; while, on the other hand, verbal obligations cannot be created between absent persons.

(137) Likewise, in contracts of this description the parties are reciprocally liable, because each is liable to the other to perform what is proper and just; while, on the other hand, in the case of verbal obligations one party stipulates and the other promises; and in the entry of claims one party creates an obligation by doing so, and the other becomes liable.

(138) An absent person can be charged in writing with the disbursement of money although a verbal obligation cannot be contracted with one who is absent.

(139) Purchase and sale are contracted as soon as the price is agreed upon, although the price may not have been paid,[1] or any earnest money given; for what is given by way of earnest money is only a proof of the conclusion of a contract of purchase and a sale.

(140) Moreover, the price must be certain; for, otherwise, if we agree that property shall be purchased for the amount at which Titius may estimate its value, Labeo denies that a transaction of this kind has any force or effect; and Cassius agrees with him. Ofilius holds that it is a purchase and sale, and Proculus adopts his opinion.

(141) Moreover, the price must consist of money, for it is seriously questioned whether it can consist of any other property, as for instance, a slave, a robe, or a tract of land. Our preceptors think that a price can consist of other property, and hence is derived the common opinion that purchase and sale are contracted by exchange of articles, and that this kind of purchase and sale is of the highest antiquity, and in proof of their contention, they adduce the statement of the Greek poet Homer, who somewhere says:

"Here landed Achæan ships in search of wine. They purchased it with copper and with iron; With hides, with horned cattle, and with slaves."

Authorities belonging to the other school dissent from this, and think that the exchange of articles is one thing, and purchase and sale another, as where property is exchanged it cannot be determined what is sold and what is given by way of price; and, on the other hand, it is absurd to consider that both articles are sold, and at the same time given by way of price. Cælius Sabinus says that if you have some property for sale, for example land, and I receive it, and give you a slave by way of price, the land should be considered to have been sold, and the slave given by way of price, as the land is what is received.

[1] The Mohammedan law provides that the declaration and acceptance by vendor and purchaser is all that is requisite to conclude a sale, and render it binding. It is considered preferable to make the statement in the past tense, and that both the articles and the price should be at hand. The amount of the purchase-money must be certain, but where an exchange — which is to be held to be a sale — takes place, absolute certainty is not necessary. "Sell anything that is in exchange for a different kind, in whatever manner you please, and without regard to the quality." (The Hedaya XVI, 1.) The Ottoman Code defines a sale to be "the interchange of one thing with another." (The Medjille, Art. 105.)

Under the Mosaic Law, payment of the purchase-money caused the title to the object of the sale to at once vest in the purchaser. The rule of the Talmud changed this, however, and the property passed as soon as the vendor obtained possession, whether the price was, or was not paid. Actual transfer of possession was therefore indispensable. (Mishnah, Introduction to Chap. IV.) In England, the transfer of title to specific articles depends upon the agreement of the parties; where they are not specified, it does not pass until their identity has been determined. Where the sale is for cash, the purchaser has no right to the property till he tenders the entire amount. (Stephen, Commentaries on the Laws of England II, II, V, 3.) It is of the essence of the contract of sale in American law that the price must be certain, the article capable of identification, and that both parties must concur in the agreement. The sale must be complete for the right of ownership to pass without question.

Delivery is not essential, as it was under the Roman system. (Parsons, The Law of Contracts, I, III, 4.) — ed.

(142) Moreover, leasing and hiring are governed by similar rules, for, unless the amount paid is certain, the contract of leasing and hiring is not considered to have been concluded.

(143) Hence, if the price is left to the judgment of another, for instance, at the amount that Titius may deem proper, the question arises whether the contract of leasing and hiring has been made. Therefore, if I give clothing to a fuller to be cleaned and taken care of, or to a tailor to be repaired, and the price was not stated at the time, but I was to pay the amount afterwards agreed upon between us, the question arises whether a contract for leasing and hiring has been entered into.

(144) Likewise, if I lend an article to you to be used, and I receive, in turn, another article to be used by myself, the question arises whether a contract of leasing and hiring has been made.

(145) Purchase and sale and leasing and hiring are considered to be so nearly related to one another that in certain cases the question arises whether the contract is one of purchase and sale, or one of leasing and hiring. For instance, if land is perpetually leased — which happens in the case of real property belonging to municipalities — under the condition that, as long as the rent is paid, neither the lessee nor his heir shall be deprived of the land; the better opinion is that this is a contract of leasing and hiring.

(146) Again, if I deliver gladiators to you under the condition that twenty *denarii* shall be paid to me for the exertions of every one who issues safe and sound from the arena; and a thousand *denarii* for every one who is killed or disabled; the question arises whether a contract of purchase and sale, or one of leasing and hiring has been made. The better opinion is that, in the case of those who come forth safe and sound, a contract of leasing and hiring was concluded; but so far as those who have been killed or disabled are concerned the contract is one of purchase and sale, for it is apparent that the contract depends upon circumstances taking place as it were under a condition; a contract of sale or hiring having been entered into with reference to each gladiator, for there is no doubt now that property can be sold or leased conditionally.

(147) Likewise, where it is agreed upon between a goldsmith and myself that he shall make me a number of rings of a certain weight and style out of his own gold, and shall receive, for example, two hundred *denarii;* the question arises whether a contract of purchase and sale, or one of leasing and hiring is made. Cassius says that the material is the object of purchase and sale, but that

the labor depends upon a contract of leasing and hiring; still, the greater number of authorities are of the opinion that the contract is one of purchase and sale. But if I furnish him with my own gold, and the price of the work is agreed upon, it is settled that the contract is one of leasing and hiring.

(148) We are accustomed to form a partnership either of all the property of the partners, or with reference to one certain business, for example, the purchase and sale of slaves.

(149) An important discussion arose, however, as to whether a partnership could be formed in such a way that one partner would have a greater share in the profits and be liable for a smaller amount of the losses. Quintus Mucius held that this was contrary to the nature of a partnership, but Servius Sulpicius, whose opinion has prevailed, thought that a partnership could be formed in such a way that one of the partners should not be liable for any of the losses, and be entitled to a part of the profits, provided that his services were so valuable as to make it just for him to be admitted into the partnership under such an agreement. For it is settled that a partnership can be formed in such a way that one partner shall furnish all the money and that the other shall not furnish any, and the profits nevertheless be equally divided among them; for frequently the services of a person are worth as much as money.

(150) It is certain, however, that if no agreement concerning the division of profit and loss should be made among the parties, the benefit and the disadvantage shall be equally shared between them. If the share of each should be stated, so far as the profit is concerned, but omitted with reference to the loss, the loss must be shared in the same way as the profit.

(151) Moreover, a partnership continues to exist as long as the partners give their consent, and when any one of them renounces the partnership, it is dissolved. It is clear, however, if a person renounces a partnership in order that he alone may obtain some pecuniary advantage, for instance, if a partner of mine in the entire property should be left an heir by anyone, and should renounce the partnership in order that he alone may profit by the estate, he can be compelled to share this gain with his partners. If, however, he obtains any profit, without intending to do so, it shall belong to him alone, and I will only be entitled to whatever may be acquired by him after he renounces the partnership.

(152) A partnership is also dissolved by the death of a partner, for he who enters into one selects a certain person for his associate.

(153) It is also said that a partnership is dissolved by forfeiture of civil rights, for the reason that under the rule of the Civil Law loss of civil rights is

considered as equivalent to death; but if the partners still consent to the continuance of the partnership a new one is considered to be formed.

(154) Likewise, a partnership is dissolved if the property of one of the partners is disposed of at either public or private sale. The kind of partnership, of which we are speaking, however, that is one which is formed by mere consent, belongs to the Law of Nations, and therefore continues to exist according to natural reason among all men.

(155) Agency is established whether we direct it to take place for our own benefit or for that of another; and hence whether I direct you to transact my business or that of another, the obligation of mandate is contracted, so that both of us will reciprocally be liable, for whatever you must do for me, or I must do for you, in good faith.

(156) If, however, I direct you to perform some act for your own benefit, the mandate will be to no purpose, for what you are about to do for your own advantage should depend on your own judgment, and not be done on account of my mandate. Therefore, if you have some idle money at home, and I advise you to lend it at interest, and you lend it to a party from whom you cannot collect it, you will not be entitled to an action of mandate against me. Again, if I advise you to purchase some article, even though it will not be to your advantage to do so, I will still not be liable to you in an action of mandate.

These rules have been so well established that the question arose whether a party is liable in an action of mandate who advised you to lend money to Titius. Servius denied that liability is incurred, and thought that an obligation could not arise in this instance, any more than in one where a person is generally advised to lend his money at interest. We, however, adopt the contrary opinion of Sabinus, for the reason, that you would not have lent money to Titius if you had not been advised to do so.

(157) It is evident that, where anyone directs an act to be done which is contrary to good morals, an obligation will not be contracted; for instance, if I direct you to commit a theft, or some injury against Titius.

(158) In like manner if I should be directed to perform some act after my death the mandate is void, for the reason that it has been generally decided that an obligation cannot begin to take place with an heir.

(159) Where a mandate was properly given and while the matter still remained unchanged was revoked, it is annulled.

(160) Again, if before a mandate was begun to be executed, the death of either of the parties should take place, that is the death of him who gave the

mandate, or of him who received it, the mandate is annulled. However, for the sake of convenience, the rule has been adopted that if the party who gave me the mandate should be dead, and I, being ignorant of his death, should execute the mandate, an action of mandate can be brought against me; otherwise a just and natural want of information would occasion me loss. Similarly to this, it has been decided by the greater number of authorities that if my debtor should, through ignorance, pay my steward who has been manumitted, he will be released from liability; although, otherwise, he could not be released under the strict rule of law, because he paid another than the one whom he should have paid.

(161) If the person to whom I gave a proper mandate exceeds his authority, I will be entitled to an action of mandate against him for the amount of my interest in having the mandate executed, provided he was able to execute it; but he cannot bring an action against me. Hence, for example, if I should direct you to purchase a tract of land for me for a hundred thousand sesterces, and you purchase it for a hundred and fifty thousand, you cannot bring an action of mandate against me, even though you are willing to convey the land to me for the price for which I directed you to purchase it; and this opinion was held by Sabinus and Cassius. If, however, you should purchase it for a smaller sum, you will certainly be entitled to an action against me; for anyone who directs land to be bought for a hundred thousand sesterces is understood also to direct that it be bought for less if this can be done.

(162) In conclusion, it must be remembered that when I give any material to be manufactured gratuitously, in which case, if I had fixed a price for the work performed, a contract for leasing and hiring would be made, an action of mandate will lie; for instance, when I give clothing to a fuller to be cleaned or pressed, or to a tailor to be repaired.

(163) Having explained the different kinds of obligations which arise from contracts, we should observe that obligations can not only be acquired by us by what we do ourselves, but also through those persons who are subject to our authority, or are in our hand, or under our control by mancipation.

(164) Obligations are also acquired by us through freemen, and the slaves of others of whom we have possession in good faith; but only in two instances, that is, where they acquire anything by their own labor, or by means of our property.

(165) An obligation is also acquired by us in the two cases above mentioned through a slave in whom we have the usufruct.

(166) Anyone, however, who has the mere quiritarian right in a slave, although he may be his owner, is still understood to have less right to what he

may acquire than an usufructuary, or a *bona fide* possessor, for it is established that, under no circumstances, can the slave acquire anything for himself; and to such an extent is this the rule, that even if the slave should expressly stipulate for something to be given to him, or should accept something in mancipation, in his name, some authorities hold that nothing is acquired for him.

(167) It is certain that a slave owned in common can acquire for his masters in proportion to their respective shares, except where by stipulating, or by accepting in mancipation expressly for one of them, he acquires for him alone. For example, if he should stipulate as follows: "Do you solemnly agree to pay to Titius, my master?" Or when he received by mancipation in the following manner: "I declare that this property belongs to my master Lucius Titius by quiritarian right, and let it be purchased for him with this piece of bronze and this bronze balance."

(167a) The question arises whether the addition of the name of one the masters, or the order of one of them, produces the same effect. Our preceptors hold that he alone will acquire who gave the order, just as if the slave had expressly stipulated, or had accepted in mancipation for the single master who was expressly mentioned. The authorities of the other school think that the acquisition will be made by all, as if no order had been given.

(168) An obligation is extinguished principally by the payment of what was due. Wherefore, the question arises that if anyone should pay something for another with the consent of his creditor, whether he would be released from liability by operation of law, and this opinion was held by our preceptors; or whether he remains bound by operation of law, but should defend himself by an exception on the ground of fraud against his creditor who brings the suit, which opinion was adopted by the authorities of the other school.

(169) An obligation is also extinguished by means of a release. A release is, as it were, a fictitious payment, for if I owe you something under a verbal obligation and you are willing to discharge me from liability, this can be done by permitting me to question you as follows: "Have you received what I promised you?" And you reply, "I have received it."

(170) In this manner, as we have already stated, only those obligations are discharged which have been contracted verbally, but no others; for it seems to be consistent that an obligation verbally contracted should be released by other words. Anything which is due for some other reason can be changed into a stipulation, and then be discharged by a release.

(171) But although we have stated that a release takes place by a fictitious payment, still a woman cannot make one without the authority of her

guardian; while, on the other hand, payment can be made to her without her guardian's authority.

(172) Likewise, a portion of what is due may be legally paid; but it is doubtful whether it can be partially released when paid.

(173) There is another kind of imaginary payment which is effected by bronze and balance; but this is used only in certain cases; as, for instance, where something is due on the ground that there has been a transaction by bronze and balance, or for the reason that something is due on account of a judgment.

(174) This transaction takes place as follows: Not less than five witnesses and a balance-holder must be present, and then the party who is to be released must say, "For the reason that I have been condemned to pay you so many thousand sesterces, I pay and discharge this amount by means of this piece of bronze and this bronze balance; and this is the first and last pound of bronze that I pay you in accordance with public law." Then he strikes the balance with the pound of bronze, and gives it to the party by whom he is released as if by payment.

(175) In the same way a legatee releases an heir from liability for a legacy which was left him by condemnation, except that, as the party against whom judgment was rendered mentions that he has been condemned; so the heir states that he has been charged by the terms of the will to pay the legacy. An heir, however, can only be released from liability in this way where the property constituting the legacy can be weighed or counted, and where the amount is certain. Some authorities hold that the same rule applies to articles which can be measured.

(176) Moreover, an obligation is extinguished by novation,[1] for instance, if I stipulate that what you owe me shall be paid by Titius; for *a* new obligation arises by the intervention of a new person, and the first obligation is annulled by being changed into the second one. To such an extent is this the case, that sometimes, although the subsequent stipulation may be void, still the first one is disposed of by novation; for example, if you owe me something and I stipulate that it shall be paid by Titius after his death, or by a woman, or a ward, without the authority of his or her guardian; in which case I lose my claim, for the first debtor is released from liability, and the subsequent obligation is void. The same rule of law does not apply if I stipulate with a slave, for then the former debtor remains liable, just as if I had not afterwards stipulated with anyone else.

[1] "*Novatio est veteris obligationis in novam translatio et transfusio*." — ed.

(177) When, however, I subsequently stipulate with the same person, novation only takes place where something new is contained in the subsequent stipulation, that is to say, if some condition, date, or sponsor should be either added or omitted.

(178) What we have stated with reference to a sponsor has, however, not been absolutely settled; for it has been held by authorities of the other school that neither the addition or omission of a sponsor has the effect of causing novation.

(179) Moreover, what we stated with reference to the introduction of a condition effecting novation, must be understood to mean that a novation would take place if the condition should be fulfilled; but if it should fail, the former obligation will continue to be operative. But let us see, whether a party who brings an action in a case of this kind can be barred on the ground of fraud, or informal agreement; for it seems to have been agreed upon by the parties that suit could only be brought for the recovery of the property if the condition of the subsequent stipulation should be fulfilled. Nevertheless, Servius Sulpicius thought that a novation took place immediately, while the condition was in suspense, and if it should fail that there would be no cause of action on either ground, and in this way that the claim would be extinguished. In consequence of this, he gave it as his opinion that if anyone should stipulate with a slave for a debt which Lucius Titius owed to him, a novation would be created, and the claim would be lost; because an action could not be brought against the slave. In both these instances, however, we make use of another rule; and novation is not produced under these circumstances any more than if I should stipulate for what you owe me with an alien, who is not allowed to participate as a sponsor, by using the expression, "Do you solemnly agree?"

(180) An obligation is also extinguished by a joinder of issue, provided the action brought is authorized by law; for then the original obligation is dissolved, and the defendant begins to be held liable by the joinder of issue. But if judgment is rendered against him, the obligation produced by the joinder of issue is disposed of, and he becomes liable under the judgment. This is the reason why it was stated by the ancient authorities that a debtor is compelled to make payment before issue has been joined; for, after this has been done, he will be liable if judgment should be rendered against him, and if he is condemned, he will be compelled to satisfy the judgment.

(181) Hence, if I bring a legally authorized action for the collection of a debt, I cannot afterwards, under the strict rule of law, sue a second time, as the statement that the defendant is required to pay me something will be without effect; for the reason that by joinder of issue he ceases to be obliged to make payment. The case is different if in the first place I brought an action derived from the authority of a magistrate; for then the obligation will still continue to

exist, and, therefore, by the strict rule of law, I can bring another action; but I can be barred by an exception grounded on a previous judgment, or on a former joinder of issue. We shall explain in a subsequent Commentary what actions are authorized by law, and what are derived from the authority of a magistrate.

(182) Let us now pass to obligations which arise from the commission of crime; for instance, where anyone perpetrates a theft or robbery, or damages property, or commits any injury; and the obligation growing out of all these matters is of one kind, while obligations arising from contracts are divided into four classes, as we already have explained.

(183) Servius Sulpicius and Masurius Sabinus state that there are four kinds of theft, manifest, non-manifest, the receiving of stolen property, and the delivery of stolen property to another. Labeo says that there are two, namely, manifest and non-manifest theft, for the receiving of stolen goods and their delivery to another rather give ground to actions connected with theft than are different kinds of theft, and this seems to be the more correct opinion, as will appear hereafter.

(184) Some authorities hold that manifest theft is "committed when the culprit is taken in the act; others, however, go further and say that it occurs when he is taken in the place where the theft was perpetrated, for instance, where olives are stolen from an olive orchard, or grapes from a vineyard, while the thief is in the olive orchard or the vineyard; or, if the theft was committed in a house, as long as the thief remains therein. Others go still further, and hold that manifest theft is committed until the thief has carried the stolen property to the place where he intends to leave it.

Others go even further, and say that theft was committed as long as the thief holds the property. This last view has not been adopted, and the opinion of those who hold that if the thief is taken before he has conveyed the stolen property to the place where he intends to leave it, it is manifest theft, should not be accepted; for the reason that great uncertainty may arise whether the time for his detection should be limited to one day or to several. This doubt arises because thieves often intend to transport stolen property to other cities or into other provinces. Therefore, the first and second opinions have been generally approved, and the greater number of authorities accept the second one.

(185) From what we have already said it will be understood what non-manifest theft is, for what does not belong to this class belongs to the other.

(186) The receiving of stolen property takes place when it is sought for and found in the possession of anyone, in the presence of witnesses; for even

though the party may not be the thief, a special action can be brought against him which is called a suit for the recovery of stolen property.

(187) Delivery of stolen goods is said to take place when the stolen property is offered to you by anyone in order that it may be found in your possession, and is given to you with the intention that it should be discovered on your premises rather than upon those of him who gave it to you. If the property should be found on your premises an action will lie in your favor against the party who gave it to you, even though he may not be the thief, which is called an action on account of the delivery of stolen property.

(188) An action for preventing the search for stolen goods may be brought against him who hinders anyone from searching for stolen property on his premises.

(189) The penalty for manifest theft was capital under the Law of the Twelve Tables, for a freeman, after having been scourged, was delivered up to the party against whom he committed the theft; and whether he became his slave by this proceeding, or was placed in the position of one against whom judgment had been rendered for a debt, was a matter of dispute among the ancient lawyers. The punishment of scourging was also inflicted upon a slave, but the harshness of the penalty was subsequently disapproved of, and in the case of a slave, as well as of that of a freeman, an action for fourfold damages was established by the Edict of the Prætor.

(190) The penalty for non-manifest theft was double damages by the Law of the Twelve Tables, and this the Prætor has preserved.

(191) The penalty for the concealment or delivery of stolen goods imposed by the Law of the Twelve Tables was triple damages, and this, in like manner, has been preserved by the Prætor.

(192) The action for preventing search, introduced by the Edict of the Prætor, requires the payment of fourfold damages. The ancient law, however, did not impose any penalty for this offence; but only prescribed that whoever desired to make search should do so naked, wearing a girdle, and carrying a dish; and if he found anything, it ordered that this should be considered manifest theft.

(193) The nature of the girdle was a matter of controversy, but the better opinion is that it was some kind of cloth by which the private parts were concealed. This entire rule is ridiculous, for anyone who would prevent a person from searching when clothed, would also do so if he were naked; and especially because, if anything were found under such circumstances he would be subjected to a more severe penalty. Then, whether he was ordered to have a dish in his hands for the reason that they being occupied, he might

bring nothing secretly into the house; or whether if he found anything, he might place it in the dish; neither of these provisions would have any effect if the property sought for was of such a size or description that it could neither be brought into the house or be placed in the dish. There is no doubt whatever that the requirements of the law were satisfied, no matter what material the dish consisted of.

(194) For the reason that the law, in a case of this kind, declared such an offence to be manifest theft, there are some writers who hold that manifest theft may be either that defined by law, or that established by nature; that defined by law being what we are discussing, and that established by nature being what we have previously explained. The better opinion, however, is that manifest theft should be understood to be that which has been actually committed, for the law cannot cause a non-manifest thief to become a manifest one, any more than it can cause one who is not a thief at all, to become a thief, or anyone who is not an adulterer, or a homicide, to become an adulterer, or a homicide. The law, however, can cause anyone to be liable to a penalty, just as if he had committed theft, adultery, or homicide, even though he had not been guilty of any of these crimes.

(195) Again, theft is committed not only when a person removes the property of another with the intention of appropriating it, but, generally speaking, when anyone handles the property of another without the consent of the owner.

(196) Therefore, if anyone makes use of property deposited with him for safe keeping, he commits theft, and if having received an article for the purpose of using it, he employs it for some other purpose, he becomes liable for theft; for example, if anyone being about to invite friends to supper borrows silver plate and takes it away with him to a distance; or if anyone borrows a horse to carry him to a certain place, and takes it much further away, or, as the ancient lawyers stated by way of example, if he takes the horse into battle.

(197) It was decided, however, that those who use property for another purpose than that for which they received it, commit theft, provided they know that they do this contrary to the will of the owner, and that he, if he knew of it, would not allow it; but if they believe that he would permit them to do so, this should not be considered theft. And the distinction is perfectly proper, as theft is not committed without unlawful intent.

(198) If anyone thinks that he is handling an article contrary to the will of the owner, but the owner is in fact willing for him to do so this is said not to be theft; and hence the question arose and was discussed, whether if Titius should solicit my slave to steal certain property belonging to me, and deliver it to him; and the slave should notify me, and I, desiring to detect Titius in the crime, should permit my slave to take the property to him, whether Titius

would be liable to me in the action of theft, or in the one for corrupting a slave, or whether he would be liable in neither. The answer is that he would be liable in neither action, for he would not be liable in the action of theft, for the reason that he did not handle the property contrary to my will; and he would not be liable in the action for corrupting the slave, for the reason that the slave was not rendered any worse.

(199) Sometimes, however, a theft of persons who are free is committed, for example where anyone of my children who is under my control, or a wife in my hand, or a judgment debtor, or a gladiator whom I have hired is secretly taken away.

(200) Anyone may even commit a theft of his own property, as for instance, where a debtor secretly removes an article which he has pledged to his creditor, or where I surreptitiously abstract my own property from a *bona fide* possessor of the same; and hence it has been decided that he who conceals the fact that a slave who is held by a *bona fide* possessor has returned to him, commits theft.

(201) Again, on the other hand, it is sometimes permitted to seize and acquire by usucaption property which belongs to another; and in such cases theft is not held to have been committed; as for instance, where property belonging to an estate of which the heir has not taken possession is seized, unless there is a necessary heir; for when there is a necessary heir, it has been decided that usucaption cannot take place in favor of a party acting as the heir. Likewise, in accordance with what we have stated in a former Commentary, a debtor who has transferred property to his creditor by mancipation or surrendered it in court on account of a trust, can take possession of the property, and acquire it by usucaption, without being guilty of theft.

(202) Sometimes a person is liable for theft who did not himself commit the offence; as is the case with one by whose aid and advice a theft has been perpetrated. To this class belongs a person who knocks money out of your hand in order that another may pick it up; or places himself in your way in order that another may seize it; or puts your sheep or oxen to flight in order that another may catch them, as in the example given by the ancient authorities, where a person put a herd of cattle to flight by means of a red cloth. If, however, this were done merely for the sake of amusement, and not for the purpose of committing a theft, we will examine whether an equitable action should be granted, as by the *Lex Aquilia*, which was enacted with reference to damages, even negligence may be punished.

(203) The action of theft will lie in favor of the party whose interest it is that the property shall be preserved, even though he may not be the owner; and

hence it will not lie in favor of the owner, unless he is interested in the property not being destroyed.

(204) Therefore, it is settled that when an article which was pledged has been stolen, the creditor can bring the action of theft, and to such an extent is this true, that even if the owner himself, that is to say the debtor, steals the property, the action of theft can still be brought by the creditor.

(205) Moreover, if a fuller receives clothes to be cleaned or pressed, or a tailor receives them to be repaired, for a certain compensation, and loses them by theft, he, and not the owner, will be entitled to bring the action; because the owner is not interested in their not being lost; as he can recover the value of the clothing in the action of leasing against the fuller, or tailor, provided the said fuller or tailor has sufficient property to make good the loss; for if he should not be solvent, then, for the reason that the owner is unable to recover what belongs to him, he can himself bring the action of theft, because, in this case, it is to his interest that the property should be saved.

(206) What we have stated with reference to a fuller and a tailor, we can likewise apply to one to whom we lend an article for use, for, as the former, on account of the compensation they received, are liable for the safe keeping of the property, the latter in consideration of the benefit he derives from using the article, also becomes responsible for its safe keeping.

(207) But as he with whom property is deposited for safe keeping is only responsible where he has committed fraud, in like manner, if the property should be stolen from him, for the reason that he is not required to make restitution by the action of deposit he is not, on that account, interested in its being preserved; and hence he cannot bring the action of theft, but this action will lie in favor of the owner.

(208) In conclusion, it should be noted, that it is a question whether a child under the age of puberty becomes guilty of theft by removing property belonging to another. It is held by the greater number of authorities that, as a theft consists in the intention, a child under the age of puberty is not liable for this offence, unless he is very near puberty, and for this reason can understand that he is committing a crime.

(209) Anyone who seizes the property of another by violence, is also liable for theft; for who handles the property of another more against the consent of the owner than he who seizes it by violence? Therefore, it has been very properly said that he is an impudent thief. The Prætor, however, introduced a peculiar action to be brought in the case of a crime of this kind, which is called the action for robbery with violence; and it may be brought within a year for quadruple damages, and, after a year has elapsed, for simple damages. This

action will lie even if the person took only one article, even of the smallest value, with violence.

(210) The action for unlawful damage was established by the *Lex Aquilia* in the first chapter of which it is provided that if anyone unlawfully kills a male or female slave, or any quadruped included in the cattle of another, he shall be required to pay to the owner of the same a sum equal to the highest value of the property during that year.

(211) To unlawfully kill is understood to mean where this happens with malicious intent or through the negligence of another; loss which results without the fault of the party who causes it not being punishable by any law, and therefore, he who occasions damage under any circumstances, without negligence or malicious intent will go unpunished.

(212) It is not only the body of the slave or of the animal which is appraised in the action brought under this law, but if by the death of the slave the owner sustained a greater loss than the value of the said slave amounted to; as for instance, if my slave was appointed heir by someone, and should be killed before he declared his acceptance of the estate by my order, not only his own value is taken into consideration, but also that of the estate which was lost. Likewise, if one of two twins, or one of a company of actors or musicians should be killed, an appraisement is not only made of the one who was killed, but also a computation of the depreciated value of those who remain. The same rule of law applies where one of a pair of mules, or one of a team of four chariot-horses is killed.

(213) Moreover, the person whose slave was killed has the choice either of prosecuting for a capital crime the person who killed him, or of bringing an action for damages against him under this law.

(214) The clause inserted in this law: "The greatest sum which the property was worth during the year," has the following effect. If the slave who was killed was crippled, or blind of an eye, but had been sound within a year, the estimate shall be made not of his value when he was killed, but of his greatest value during that year; the result of which is that sometimes the party will recover a larger amount than that of the loss which he sustained.

(215) By the provisions of the second chapter an action is granted for the amount of the claim against a joint stipulator who fraudulently released the payment of money due to the stipulator.

(216) It is clear that in this section of the law an action was introduced for the recovery of damages, although this provision was not necessary, as the action of mandate would have been sufficient for that purpose; except that under this

law a suit for double damages can be brought against the defendant, if he makes a contest.

(217) In the third chapter, provision is made for all other kinds of damage. Therefore, if anyone wounds a slave, or a quadruped included under the head of cattle; or even one which is not so included, as for instance, a dog; or wounds or kills a wild beast, for example, a bear, or a lion; an action is authorized by this chapter. With reference to other animals also, as well as to all property which is destitute of life, damages can be recovered for injury by this section of the law. An action is also provided therein, where anything has been burned, dashed to pieces, or broken, although the single term "broken" is sufficient in all these cases, for it is understood to mean spoiled in any way. Therefore, where anything is burned, dashed to pieces, or broken, and also cut, crushed, spilled, or injured to any extent, or destroyed or deteriorated, it is comprehended in this term.

(218) In this chapter, however, the person who committed the damage is responsible, not only for the value of the property within the past year, but also for what it was worth within the thirty preceding days and the words "highest value" are not added. Therefore, certain authorities hold that it should be in the discretion of the judge to determine whether the estimate of the property ought to be made with reference to its greatest value, or to any inferior value which it may have had within the last thirty days; but it was the opinion of Sabinus that the law should be construed just as if the word "highest" had been inserted; and that the legislator was satisfied because he had used the expression in the first chapter of the law.

(219) Moreover, it was decided that an action will only lie under this law where the party caused the damage by means of his own body, and hence where damage has resulted in some other way, equitable actions should be granted; for instance, where anyone shuts up a slave or a head of cattle belonging to another, and kills him or it by starvation; or where a beast of burden is driven so hard that it perishes; and also where anyone persuades the slave of another to climb a tree, or descend into a well, and, in doing so, he falls, and is either killed or sustains some bodily injury. If, however, anyone pushes a slave off of a bridge or bank into a stream, and he is drowned, the party who pushed him may readily be understood to have caused the damage by means of his body.

(220) Injury is committed, for example, not only where anyone strikes another with his fist, or with a stick or a whip, but where he reviles him in a loud voice, or where well knowing, that nothing is due to himself, he seizes and advertises for sale the property of another as his debtor; or where he writes prose or poetry defaming another; or persistently follows the mother of a family or a boy wearing the *prætexta*; and finally in many other ways.

(221) We consider that injury may be suffered not only by ourselves, but also in the persons of our children who are subject to our authority, as well as by our wives, although they may not be in our hand. Hence if you commit an outrage against my daughter, who is married to Titius, an action for injury can (not) only be brought against you in her name, but also in that of mine, as well as in that of Titius.

(222) It is understood that injury cannot be committed against a slave individually, but his master may be injured through him; not, however, in the same ways in which we are considered to suffer injury through our children or wives, but where some peculiarly atrocious act is committed, which clearly appears to have been perpetrated to insult the owner, for example, if anyone scourges a slave belonging to another; and a rule has been established to meet this case. If, however, anyone reviles a slave, or strikes him with his fist, no rule has been prescribed in this instance, and permission to bring an action would not readily be given.

(223) The penalties for injuries provided by the Law of the Twelve Tables were as follows: "For a broken limb, retaliation; for a bone broken, or crushed, three hundred asses, if the party was a freeman, but if he was a slave a hundred and fifty; and for all other injuries, twenty-five asses." These pecuniary penalties seemed to be sufficient compensation in those times of great indigence.

(224) At present, however, we make use of another rule; for we are permitted by the Prætor to estimate the damages ourselves, and the judge may either condemn the defendant for the amount of which we have estimated it, or for a smaller sum, as he may think proper. The Prætor usually fixes the amount of damages to be paid for an atrocious injury, and when he has once decided in what sum the defendant must give security to appear, he establishes this sum as the limit, and although the judge can render a decree for a smaller amount, still, as a rule, on account of his respect for the authority of the Prætor, he does not venture to do so.

(225) Again, an injury is rendered atrocious either by the act, as when anyone is wounded, beaten with rods, or severely whipped; or by the place, as for instance, where the injury is committed either in the theatre, or in the forum; or on account of the person, for example, where a magistrate is insulted, or an injury is inflicted upon a senator by a person of inferior rank.

THE INSTITUTES OF GAIUS
(c. 170 A.D.)

FOURTH COMMENTARY.

(1) It remains for us to speak of actions. And if we inquire how many kinds of actions there are, the better opinion seems to be that there are but two, real and personal; for those who say that there are four, and include such as arise from solemn agreements, do not perceive that some kinds of actions are subdivided into others.

(2) A personal action is one which we bring against anyone who is liable to us under a contract, or on account of a crime; that is, that (what) we claim is that he is bound to give something, to do something, or to perform some service.

(3) A real action is one in which we either claim some corporeal property to be ours, or that we are entitled to some particular right in the property, for instance, the right of use and enjoyment; or the right to walk or drive through the land of another; or to conduct water from his land; or to raise the height of a building, or to have the view unobstructed; or when a negative action is brought by the adverse party.

(4) Therefore, these actions being distinct, it is certain that we cannot make use of the following form to recover our property from another, namely: "If it appears that he should be required to transfer it." For what is ours cannot be transferred to us, as it is understood that what is given to us is given for the purpose that it may become ours, and property which already belongs to us cannot become ours any more than it now is. Through hatred of thieves, and for the purpose of making them liable to a greater number of actions, the rule has been adopted that, in addition to the penalty of double and quadruple the value of the property obtained, thieves are also liable to the form: "If it appears that the defendant should be required to transfer the property"; even though the action by which we seek to recover what belongs to us may also be brought against him.

(5) Moreover, real actions are styled suits for the recovery of property, but personal actions, by which we assert that something must be given, or some act be performed, are called *condictiones*.

(6) Again, we sometimes bring suit merely to recover property; sometimes only to recover the penalty; and sometimes to recover both.

(7) For example, we sue merely to recover property in actions brought under a contract.

(8) We bring suit only to recover a penalty, for example, in the actions of theft and of injury; and, according to the opinion of certain authorities, in an action for goods taken by violence; for we are entitled to recover the property by either a real or a personal action.

(9) Moreover, we bring suit to recover both the property and a penalty; for instance, in those cases in which we bring our action for double damages against a party who defends the case; and this happens in an action to recover a judgment debt; or expenses paid for a principal; or damages for injury under the *Lex Aquilia;* or to recover legacies; or a certain sum which has been bequeathed by condemnation.

(10) Moreover, there are some actions which refer to the ancient form of judicial procedure upon which they are based; and others become operative by their own force and power. In order that this may be clear, we must first treat of those which are based upon ancient judicial procedure.

(11) These actions which the ancients employed were so designated, either for the reason that they were provided by the law — although at that time the edicts of the Prætor, by means of which many new actions were introduced, had not come into use — or, because they followed the words of the law, and therefore, like the law itself, were observed without any alteration. Hence, it was decided that, a person who brought an action against another for cutting his vines, and in the pleadings called them "vines," should lose his case, as he ought to have called them "trees," because the Law of the Twelve Tables, under which the action for cutting vines was brought, speaks in general terms of the cutting of trees.

(12) Actions were brought in five ways under the ancient form of judicial procedure, and were called *Sacramentum, Judicis Postulatio, Condictio, Manus Injectio, Pignoris Capio*.[1]

(13) The action *Sacramentum* was a general one, for where no provision was made by the law in any other way for bringing suit with

[1] The *legis actiones* were the earliest forms of judicial procedure known to the Roman law for the collection of claims and the enforcement of obligations. As will be observed, they are of a very primitive character, and it is surprising, when taking into consideration the wonderful progress of the Roman people in intelligence and knowledge, that these antiquated and cumbersome methods survived for so long a period. They were based upon the Twelve Tables; upon customs which, by continuous usage, had acquired

full legal authority; upon the decision of the various popular tribunals; and upon statutes which were passed from time to time either for the purpose of explaining or confirming obscure or disputed points of ancient jurisprudence, that is, what was ordinarily designated the Civil Law. The extreme nicety with which the established forms were required to be observed, and which, if neglected in the slightest particular, caused the litigant to irretrievably lose his case, forcibly recalls the technical accuracy demanded by the old system of Common Law pleading that, for generations, exercised to the utmost the legal ingenuity and skill of the English practitioner. The equitable jurisdiction of the Prætor was expressly devised to remedy the abuses and relieve the distress to which rigid adherence to the rules of the *legis actiones* constantly gave rise. This innovation was deplored by the eminent jurisconsults of Rome, who regarded any change introduced into the existing judicial procedure as unnecessary, dangerous, and revolutionary; an example which was subsequently followed to the letter by the lawyers of England upon the establishment of the Court of Chancery, of which the Prætorian Tribunal was the prototype.

The *Sacramentum*, so called from the wager or forfeit, which involved the deposit by the parties in the hands of the Pontiffs, for the benefit of the *sacra publica*,

reference to certain property, it was done by means of an oath. This proceeding was attended with danger to the party swearing falsely; just as, at present, is the case in the action for the recovery of money lent, on account of the solemn agreement by which the defendant assumes a risk if he rashly denies the claim, and because of the counter engagement by which the plaintiff becomes liable if he did not recover the debt. Hence, the party who was defeated was obliged to pay the amount of money deposited by way of penalty, which was placed in the Public Treasury; and, for this reason, sureties were given to the Prætor; instead of, as at present, the amount deposited as penalty being for the benefit of the party who gained the case.

(14) The amount deposited by way of penalty in this proceeding was either five hundred, or fifty asses; five hundred were deposited when the property in question was worth a thousand or more asses, and fifty when it was worth less than a thousand; for this was provided by the Law of the Twelve Tables. When, however, the controversy was with reference to the freedom of a slave, although he may have been extremely valuable, still the amount deposited by way of penalty was only fifty asses. This was also provided by the Twelve Tables in favor of freedom, in order that the protector of the slave might not be unduly oppressed . . . . .[1]

(15) Moreover, when all these actions were brought to enforce an obligation, the parties, having furnished sureties, agreed to again appear for the

appointment of a judge; and having returned after thirty days, the judge was appointed in accordance with the *Lex Pinaria*; while before this law was enacted he was appointed immediately. We understand from what has been already stated, that if the property in dispute was worth less than a thousand asses, the amount deposited

and by way of security, of a quantity of bronze or copper equal in value to double that of the property in controversy, half of which was lost by the one who was defeated, was originally the only method of civil procedure among the Romans.

Little of the *Judicis Postulatio* is known to us but the name, which has reference to an application to the magistrate to appoint a judge or arbiter to hear the case, after joinder of issue; and therefore, that it made provision for arbitration.

The *Condictio* was strictly a personal action for the recovery of a certain sum of money which had either been loaned, or paid by mistake. It was introduced as a convenient substitute for the preceding and more complex forms. The plaintiff, by appearing before the Prætor, could force the defendant to agree (*condicere*) to have a judge appointed within thirty days.

The *Manus Injectio* enabled a surety who had paid the debt, to seize and imprison the principal until the latter had fully reimbursed him, if six months had elapsed after payment.

The *Pignoris Capio*, as stated in the text, lay for the enforcement of obligations to soldiers for subsistence and pay, as well as to enable magistrates to compel parties against whom judgments had been rendered to comply with them. In effect, it was almost identical with levying a distress under the English law. The last two of the *legis actiones*, rather belong to the category of legal processes or forms of execution, than to lawsuits, in the strict sense of the term.

We are indebted to Gaius for the most complete account of these curious old methods of judicial procedure and which, while far from satisfactory, is still more detailed than those of other Roman writers on jurisprudence, who, for the most part, only vaguely refer to the subject. The *legis actiones* were nominally abolished B. C. 167. — ed.

[1] Original manuscript illegible.

was usually only fifty, and not five hundred. Then, after the judge had been appointed, the parties gave notice to one another to appear before him on the third day following. Finally, when they came into court, and before the case was argued, it was customary to state it briefly, and in a concise manner; which was called the presentation of the case, which was, as it were, a mere summary of the same.

(16) When a real action was instituted, the movable property, and that which could move itself and be brought into court, was demanded as follows. The party making the claim, held a staff, and then grasping the object in dispute, as for instance, a slave, said: "I declare this slave to belong to me, on account of his condition, in accordance with quiritarian right. See! in accordance with what I have stated, I have placed my staff upon him"; and, at the same time, he laid the staff upon the slave. His opponent then said and did the same thing, and when both of them had asserted their claims, the Prætor said: "Both of you release your hold upon the slave"; and they did so. The one who first asserted his claim, then interrogated the other as follows: "I ask whether you will state on what ground you make this claim?" and he replied, "I asserted my right to him by placing my staff upon him." The first claimant than said, "As you have wrongfully claimed him I call upon you to deposit five hundred asses by way of forfeit," and his opponent then said, "I call upon you to do the same"; (that is if the property was worth more than a thousand asses five hundred were deposited but if it is worth less only fifty was the amount of the forfeiture).

After this the same proceedings took place as in a personal action, and then the Prætor made a temporary disposition of the property in favor of one of the parties, that is to say, he gave him possession of it for the time, and ordered him to furnish sureties to his adversary for the expenses of the suit as well as the mesne profits of the property which was the object of the action. The Prætor, moreover, took sureties for the forfeits, from both parties, for the benefit of the Public Treasury. The staff was employed instead of a spear, as an emblem of lawful ownership, for whatever was taken from an enemy a man considered to be absolutely his own; wherefore in cases tried before the *Centumviri*, a spear was placed in front of the tribunal.

(17) If the property was of such a nature that it could not be brought or led into court without inconvenience, as for instance, if it consisted of a column, or a drove of cattle of any kind, a certain portion was brought in, and then the claim was made for that portion just as if all of it was present. Therefore, if the property in dispute consisted of a flock of sheep or goats, a single sheep or goat was brought into court, or even a single tuft of wool was produced; or if it consisted of a ship, or a column, a small part was broken off; and, in like manner, if a tract of land or a building, or an estate was the subject of controversy, a small part was brought in, and a claim was made for it in the same manner as if all the property was there; as, for instance, a clod was taken from the land, or a tile was taken from the building;

and if the dispute was with reference to an estate, in like manner the property itself, or some part of it was produced in court . . . .[1]

(17a) . . . .[1] For they observed the same time and the same manner in appointing a judge, and agreed upon a day when they would be ready to receive the judge, for to "agree upon" meant originally "to notify".

(18) Therefore, this action was very properly styled a notification, for the plaintiff was accustomed to notify his adversary to appear before the court on the thirtieth day to receive a judge. At present, however, we do not properly call a suit of this kind by which we institute proceedings to have property conveyed to us a personal action, for now no notice is given for this purpose.

(19) This form of judicial procedure was established by the *Lex Silia* and the *Lex Calpurnia*; by the *Lex Silia*, to receive a certain sum of money, and by the *Lex Calpurnia*, to recover any other property which was certain.

(20) It has frequently been asked why this action was required when we could either by *Sacramentum* or *Judicis Postulatio*, obtain the transfer of property to which we are entitled.

(21) The proceeding of *Manus Injectio* was employed in certain cases, as for instance, by the Law of the Twelve Tables, when judgment had been obtained against a debtor. This was as follows: the party who brought the suit said, "As judgment has been rendered against you, or you have been condemned to pay me ten thousand sesterces, and you have not paid them, for this reason I lay my hands upon you, as being indebted to me under the judgment for ten thousand sesterces"; and at the same time he seized him by some part of the body, and the debtor was not permitted to resist, or to protect himself by law, but he appointed a defender, who conducted the case for him, or, if he did not do so, he was taken to his house by the plaintiff and placed in chains.

(22) Subsequently, certain laws in some other cases, permitted the arrest of debtors against whom judgment had been rendered; as the *Lex Publilia* against a party for whom his sponsor had paid the debt, if, within the next six months from the time when it was paid, he had not indemnified him; likewise, the *Lex Furia de Sponsu* against one who had collected from his sponsor more than his proportionate share; and finally, many other laws granted proceedings of this kind in numerous instances.

(23) Other enactments provided that, on certain grounds, proceedings could be instituted by the imposition of hands; but this was the simple act, and not authorized in the case of debtors against whom judgment had been rendered; for instance, the *Lex Furia Testamentaria* permitted this to be done against a party who, as a legatee or the recipient of a donation *mortis causa*, had

received more than a thousand asses, when he was not excepted under this law, and was entitled to receive more; also the *Lex Marcia* against money-lenders, so that if they collected interest, they could be compelled by this proceeding to refund it.

[1] Original manuscript illegible.

(24) By these laws and others similar to them, the defendant was permitted to resist arrest, and take legal measures to defend himself, for the plaintiff in this form of judicial procedure was not entitled to add the words, "On account of a judgment rendered"; but after having stated his cause of action, said: "For this reason I lay hands upon you"; just as he in whose favor proceedings were instituted on account of a judgment, after having stated his cause of action, said: "I arrest you on account of the judgment which has been rendered against you." It has not escaped my notice that in proceedings under the *Lex Furia Testamentaria* the words, "On account of the judgment rendered against you," were inserted, although they do not appear in the law itself; which seems to have been done without any reason.

(25) Afterwards, however, by the *Lex Vallia* all other defendants, except judgment debtors and principals whose debts had been paid by their sureties, were permitted to resist arrest, and avail themselves of the law for their defence, when this proceeding was instituted against them. Therefore, the party against whom judgment was rendered, and one whose debt had been paid by his surety were, even after this law, required to appoint a defender; and if they did not do so, were taken to the house of their creditor; and this rule was observed as long as the ancient forms of procedure were employed. Hence, in our times, anyone against whom proceedings have been brought in an action on judgment or to recover the amount of the debt paid by a surety is compelled to furnish security to satisfy the claim.

(26) *Pignoris Capio* was employed in some instances through custom, and in others by virtue of law.

(27) It was introduced through custom into military affairs; for a soldier was entitled to employ this proceeding against the paymaster for his pay, if he did not give it, which compensation was designated *æs militare*, and he could also distrain for money for the purpose of purchasing a horse, which was called *æs equestre*, as well as for money with which to purchase barley for his horse which was called *æs hordiarium*.

(28) The detention of property in this manner was also legally authorized, for instance, by the Law of the Twelve Tables against a party who bought a victim for sacrifice and did not pay for it; and likewise against one who did not pay the hire of a beast of burden which he had leased for the purpose of

raising money to meet the expenses of a festival, that is to say, of a sacrifice. In like manner, the right to distrain was granted by the law of Censors to the farmers of the revenue of the Roman people, against persons who owed taxes under any law.

(29) In all these instances the property was seized by the employment of certain words; and, on this account, it was held by most authorities that this proceeding was also a form of statute process.

Others, however, were of the contrary opinion; first, because it took place out of court, that is to say, not in presence of the Prætor, and usually also during the absence of the adverse party; while, on the other hand, other actions could not be made use of by any one except in the presence of both the Prætor, and the adverse party, and besides property could not be distrained on an unlawful day, that is to say, on one when it was not permitted to act under the law.

(30) All these forms of judicial procedure, however, gradually became unpopular on account of the extreme subtlety of the ancient legal authorities, so that the result was that anyone who committed the slightest error lost his case. Hence, by the *Lex Æbutia* and the two *Leges Julia*, proceedings under this law were abolished, and another form was substituted for them; so that at present in litigation we make use of written instructions, that is to say, formulas, for that purpose.

(31) In only two instances was permission granted to act under the ancient procedure, that is to say, those of threatened injury, and those before the Centumviral Tribunal. When application is made to the *Centumviri*, proceedings are first instituted by the deposit of forfeits before the Urban or the Foreign Prætor; but in the case of threatened injury, no one wishes to employ the ancient procedure, but prefers to bind his adversary by a stipulation provided for in the Edict; by which means his rights are more conveniently and thoroughly protected. By the seizure of property as security for debt . . . .[1] it is apparent.

(32) On the other hand, in the formula provided for the farmer of the revenue a fiction is inserted, ordering that the debtor be condemned to pay the same amount of money which he would have been compelled to pay in order to release his property, if it had been seized as security for the debt.

(33) No formula, however, is based on a fiction in a personal action for recovery; for whether we bring suit for a sum of money, or for any certain article of property as being due, we assert that the very thing itself should be transferred to us, and we do not add any fiction for the purpose of establishing the claim. Therefore, we understand these formulas to be those by which we allege that a definite sum of money, or certain specified property, should be

transferred to us, and that the claim is valid by its own force and power. Actions of loan for use, trust, business transacted, as well as innumerable others are of the same nature.

(34) We make use of other fictions in certain formulas, for instance, when a party who claims possession of the property of an estate brings an action as a fictitious heir; for as he succeeds to the deceased by the prætorian, and not by the Civil Law, he is not entitled to a direct action, and cannot allege that what belongs to the deceased is his; nor can he demand that what was due to the latter should be paid to him; and therefore, under the fiction that he is the heir, he asserts his claim as follows: "Let So-and-So be judge. If Aulus Agerius" (that is to say, the plaintiff, himself) "should be the heir of Lucius Titius, and it is found that the land in question ought to belong to him by quiritarian right;" or if, in the case of a debt, a similar fiction having been employed by the party, as heir, there is added: "If it should appear that Numerius Negidius should pay to Aulus Agerius ten thousand sesterces."

[1] Original manuscript illegible.

(35) Likewise, the purchaser of the property of a bankrupt estate may proceed under the fiction that he is the heir, and sometimes he can do so in a different way; for in his statement of the claim he may mention the person whose property he purchased and himself in the condemnation; that is to say, that his adversary may be condemned to pay him on this account what belonged to the former or was due to him. This species of proceeding is called Rutilian, because it was devised by the Prætor Publius Rutilius, who is said to have also introduced the sale of bankrupt estates. The kind of action mentioned above, by which the purchaser of the property of an insolvent estate pretends to be the heir, is called Servian.

(36) Likewise, there is a pretended usucaption in the action which is styled Publician. This action is granted to a party who claims property which has been delivered to him for some legal reason, and of which he lost possession before obtaining a title to it by usucaption; for because he cannot claim it as his under quiritarian right, the fiction is employed that he has acquired it by usucaption and hence, as it were, to have become its owner, by quiritarian right; for instance, as follows: "Let So-and-So be judge. If the slave whom Aulus Agerius purchased and who was delivered to him remained in his possession for a year, the said slave would then have lawfully belonged to the said Aulus Agerius by quiritarian right, etc."

(37) Likewise, Roman citizenship is feigned in the case of an alien, if he either sues or is sued in an action established by our laws; provided it is just that the said action may be extended to aliens. For example, if an alien sues or is sued for theft, or for aiding and abetting theft, the following formula should be

employed, "Let So-and-So be judge. If it appears that a gold cup was stolen from Lucius Titius by Dio the son of Hermæus, or with his aid and advice for which he would have been compelled to make restitution for theft if he had been a Roman citizen, then let the said Dio, the son of Hermæus be convicted, etc."

Again, if an alien brings the action of theft, or if, under the *Lex Aquilia* he sues or is sued for damage to property, he can avail himself of the fiction of Roman citizenship, and judgment can be rendered either for or against him.

(38) Moreover, sometimes we may feign that our adversary has not suffered a loss of civil rights; for if a man or a woman has become liable to us under a contract, and he or she has afterwards undergone forfeiture of civil rights — as, for instance, the woman by coemption, and the man by arrogation — he or she ceases to be indebted to us under the Civil Law, and we cannot directly claim that either is bound to transfer anything to us. In order, however, that the party may not have power to annul our rights, an equitable action is granted against him or her by a fictitious rescission of the loss of civil rights; that is to say, one in which it is feigned that the party had not suffered a disability of this kind.

(39) The divisions of the Formula are the following, the *Demonstratio*, the *Intentio*, the *Adjudicatio*, and the *Condemnatio*.

(40) The *Demonstratio* is that part of the Formula which designates the ground on which the case is brought, that is to say, the following part of the same: "For the reason that Aulus Agerius sold a slave to Numerius Negidius"; or "For the reason that Aulus Agerius left a slave in the keeping of Numerius Negidius".

(41) The *Intentio* is that part of the Formula in which the plaintiff states his claim; for instance, as follows: "If it appears that Numerius Negidius should pay ten thousand sesterces to Aulus Agerius"; or, "Whatever it appears that Numerius Negidius should pay to, or do for, Aulus Agerius"; likewise, "If it appears that the slave in dispute is the property of Aulus Agerius, by quiritarian right".

(42) *Adjudicatio* is that part of the Formula by which the judge is permitted to assign the property in question to one of the litigants; as for instance, where an action for the partition of an estate is brought between co-heirs; one for the division of common property between partners; one for the establishment of boundaries between neighbors. In cases of this kind, the following form is employed, namely: "Judge, award to Titius the amount to which he is entitled."

(43) *Condemnatio* is that part of the Formula by which authority is granted to the judge to condemn or discharge the defendant; for instance, as follows: "Judge, condemn Numerius Negidius to pay ten thousand sesterces to Aulus Agerius, and if the claim should not be proved, discharge him." Likewise, as follows: "Judge, condemn Numerius Negidius to pay to Aulus Agerius not more than ten thousand sesterces, and if the claim should not be proved, let him be discharged," or, as follows: "Judge, let Numerius Negidius be condemned to pay to Aulus Agerius"; etc., without adding the clause, "Not more than ten thousand sesterces".

(44) All these divisions are not found together but in every formula; where some of them appear, others do not, and in fact, sometimes the *Intentio* exists alone, as in prejudicial formulas, in which the question is whether a man is a freedman, or what the amount of a dowry may be, and numerous others. The *Demonstratio*. the *Adjudicatio,* and the *Condemnatio* are never found alone; for the *Demonstratio* without the *Intentio* and the *Condemnatio,* is of no effect; and, in like manner, the *Condemnatio* or the *Adjudicatio* has no force without the *Intentio,* and for this reason they are never found alone.

(45) We say that the formulas in which a question of right is involved, are founded in law; as for instance, when we assert that any property belongs to us by quiritarian right, or that the adverse party is obliged to pay us something, or make good a loss to us as a thief, for these formulas and others are those in which the claim is based on the Civil Law.

(46) We say that other formulas are based upon questions of fact, that is, where a claim of this kind is not made with reference to them; but, where a fact is stated in the beginning of a formula, words are added by which authority is given to the judge to condemn or discharge the defendant. This kind of a formula is employed by a patron against his freedman, when the latter brings him into court contrary to the Edict of the Prætor; for then it is in the following terms: "Let Soand-So be judges. If it is established that such-and-such a patron was brought into court by such-and-such a freedman, contrary to the edict of such-and-such a Prætor — judges, condemn the said freedman to pay to the said patron the sum of ten thousand sesterces. If the case should not be proved, discharge him."

The other formulas mentioned in the Edict with reference to the summoning of parties into court, refer to matters of fact; as for instance, against a person who, having been summoned into court, neither appeared nor appointed anyone to defend him; and also against one who rescued by force a party who was summoned to appear; and, in conclusion, innumerable other formulas of this description are set forth in the Register of the Prætor.

(47) In some instances, however, the Prætor permits formulas having reference to either law or fact to be employed; for example, in actions of deposit, and loan for use.

The following formula is one of law. "Let So-and-So be judge. Whereas Aulus Agerius deposited a silver table with Numerius Negidius, for which this action is brought, whatever Numerius Negidius is obliged to pay to, or do for, Aulus Agerius, in good faith, on this account, do you, judge, condemn Numerius Negidius to pay to, or do for Aulus Agerius, unless he makes restitution; and, if the case should not be proved, let him be discharged." The following formula: "Let Soand-So be judge. If it appears that Aulus Agerius deposited a silver table with Numerius Negidius, and, through the fraud of the said Numerius Negidius, the said table has not been restored to the said Aulus Agerius, do you, judge, condemn Numerius Negidius to pay to Aulus Agerius a sum of money equal to the value of the property, and if the case is not proved let him be discharged"; is one of fact. Similar formulas are employed in an action of loan for use.

(48) The condemnation clause of all formulas has reference to the pecuniary value of the property. Therefore if we claim any corporeal property, for instance, land, a slave, a garment, or gold or silver, the judge condemns the party against whom the suit was brought not to deliver the very thing itself, as was formerly the practice, but its estimated value in money.

(49) The judgment clause of the formula either mentions a certain, or an uncertain sum of money.

(50) The mention of a certain sum of money, for example, appears in the formula by which we demand the payment of a designated amount; for then the last part of the formula is as follows: "Judge, condemn Numerius Negidius to pay ten thousand sesterces to Aulus Agerius; and if the case is not proved, discharge him."

(51) A judgment for an uncertain sum of money has a two-fold signification. In the first instance, it is preceded by some restriction called a limiting clause, as, for instance, where we bring an action for an uncertain amount; for then in the last part of the formula the following words are employed: "Judge, condemn Numerius Negidius to pay not more than ten thousand sesterces to Aulus Agerius; and if the case should not be proved discharge him." If, however, the amount is uncertain, and there is no limit; for instance, where we bring suit for property belonging to us, which is in the possession of another, that is to say, if we institute proceedings for the production of property in court, the following words are used: "Judge, condemn Numerius Negidius to pay to Aulus Agerius a sum of money equal to the value of the property; and if the case is not proved let him be discharged."

(52) What then is the rule? If the judge decides against the defendant, he must require him to pay a certain sum of money even though no specified amount may have been mentioned in the judgment.

The judge should also be careful that, when a certain sum is stated in the judgment, not to require the defendant to pay a larger or a smaller amount, otherwise he makes the case his own. Again, if a limiting clause was inserted, he must take care not to condemn the defendant in a larger amount than is mentioned in said clause, otherwise, he will, in like manner, make the case his own; he is, however, permitted to render a judgment against him for a smaller sum; and even if there should be no limiting clause, he can condemn him in any amount that he may wish.

(52a) For the reason that the party who accepts the formula should state the amount which he claims, the judge is not required to render a decree for a larger sum; but the plaintiff cannot make use of the same formula a second time, and he should state in the condemnation the certain sum of money which he claims, in order that he may not recover less than he desires.

(53) If anyone claims more than he is entitled to he will lose his case, that is to say, he will lose his property, and he cannot obtain complete restitution through the Prætor; except in certain instances in which the Prætor does not permit all plaintiffs to suffer loss on account of their own errors; for he always comes to the relief of minors under the age of twenty-five years, as in other cases.

(53a) A plaintiff may demand more than he is entitled to in four ways; in the amount of property, in time, in place, and in the statement of his cause of action. He does so in the amount of property, if he demands twenty thousand sesterces, instead of ten thousand which are due to him; or, if he demands as his own, either the whole, or the greater part of the property, when he is only a joint owner.

He demands more in point of time, if he asks for payment before the debt is due.

He demands more in place, for instance, where payment is promised in a certain place, and he demands that it be made somewhere else, which was not mentioned in the contract; for example, if I stipulate with you as follows: "Do you solemnly agree to pay me ten thousand sesterces at Ephesus?" and afterwards bring suit at Rome under the formula, "If it appears by the stipulation that you are obliged to pay me ten thousand sesterces," I am understood to claim more than I am entitled to, for the reason that in this way I subject the promisor to more inconvenience than he would suffer if he paid at Ephesus. I can still absolutely demand payment at Ephesus, for this is not an additional place.

(53b) He demands too much in his statement of his cause of action, if he deprives the debtor of a choice which he had by the terms of the contract, for example, if anyone stipulates as follows: "Do you solemnly agree to either pay ten thousand sesterces, or deliver the slave Stichus?" as then he can demand either the one or the other. For although he may demand what is of lesser value, he still is considered to claim too much, because his adversary may sometimes more conveniently deliver what is not demanded.

Likewise, if anyone stipulates for a genus, and afterwards claims a species; for instance, if he stipulates for purple, in general terms, and afterwards expressly demands Tyrian purple, even though he may demand that of the least value the same rule will apply, for the reason which we have just mentioned.

The same rule also applies where anyone stipulates for a slave in general terms, and afterwards demands a particular slave, for example, Stichus; although he may be almost worthless. Therefore, the phraseology of the formula designating the claim must exactly coincide with what was set forth in the stipulation.

(54) It is perfectly evident that too large an amount cannot be claimed by an uncertain formula, because as a definite amount is not demanded, but it is merely stated that the adversary shall give, or do only what he is required, no one can claim more. The same principle applies where a real action is granted to recover an uncertain share of property; as for example, when a plaintiff demands that there shall be transferred to him the share of the land in question to which he is entitled, which kind of action is granted in very few instances.

(55) It is also evident that if anyone claims one thing instead of another, he will run no risk, as he can bring another suit, because he is not considered to have previously done anything which was legal; for instance, where a party who had a right to claim the slave Stichus, demands Eros; or where anyone states that he is entitled to property under a will, when in fact he is entitled to it under the terms of a stipulation; or where an agent or attorney claims that property should be transferred to him, instead of to his principal.

(56) To claim more than one is entitled to, as we have stated above, involves risk; but anyone is permitted to claim less. He is not permitted, however, to bring suit to recover the remainder in the jurisdiction of the same Prætor, for anyone who does so, is barred by the exception styled the exception against division of actions.

(57) If more is claimed in the condemnation than is proper, the plaintiff runs no risk; but as the defendant has made use of a formula which was unjust, he may obtain complete restitution, in order that the amount of the judgment may be reduced. If, however, less be set out in the condemnation than the plaintiff has a right to, he only obtains the amount which he sued for, as the entire claim was brought into court, and he will be limited by the amount stated in the condemnation which the judge cannot exceed. In a case of this kind the Prætor does not grant complete restitution, for he more readily comes to the relief of defendants than plaintiffs. We, however, except minors under the age of twenty-five years, for the Prætor always comes to the relief of such persons, where loss of property has been sustained by them.

(58) Where more or less than is due is set forth in the *Demonstratio*, no case is brought into court, and hence the matter remains unaltered; and this is what is meant when it is said that a right is not extinguished by a false statement of the cause of action.

(59) Still, there are some authorities, who hold that less than is due may be properly included in the *Demonstratio*; so that a party who has purchased both Stichus and Eros, is considered to have properly stated his cause of action as follows: "Whereas I purchased the slave Eros from you"; and, if he desires to do so, he may bring an action for the recovery of Stichus by means of another formula; because it is true that anyone who purchased both slaves also purchased each of them; and this was especially the opinion of Labeo. If, however, he who purchased one of them, should bring an action to recover both, he makes a full statement of his cause of action. The same rule is applicable to other actions, for instance, to those of Loan for Use, and Deposit.

(60) We have found it stated in certain writers that, in the action of Deposit — and indeed in all others in which, the condemned party is branded with infamy — anyone who demands more than he is entitled to in the statement of his cause of action, will lose his case; for instance, where he who had deposited one article, alleges in his statement that he had deposited two; or where he who was struck on the cheek with the fist, states in an action for injury sustained that he was also struck in some other part of the body. Let us carefully examine whether we should hold this opinion to be correct.

It is true that there are two formulas employed in the Action of Deposit, one based upon the law and the other upon fact, as we mentioned above. The one based on the law, in the first place, designates the cause of action in the manner in which this is usually done, and then sets out the claim as being based upon the law in the following terms: "Whatever the defendant should, on this account, give or perform." But in the formula based upon fact, the cause of action is set forth in the beginning without any previous statement, as follows, "If it appears that So-and-So deposited such-and-such property with Soand-So"; we should entertain no doubt that if anyone in a formula based on fact alleges that he has deposited more articles than was actually the case he will lose his suit, because he is considered to have included in his claim more than he was entitled to. . . .[1]

(61) Set-offs frequently take place in such a way that each party receives less than he would otherwise be entitled to. For, as in *bona fide* actions, the judge is considered to have full power to estimate how much should justly and properly be paid to the plaintiff; on the other hand, he also has authority to determine how much the plaintiff should pay in the same case, and to render judgment against the defendant for the remainder.

(62) *Bona fide* actions are such as the following: purchase and sale; leasing and hiring; the transaction of the business of others without authority; deposit; trust; partnership; guardianship; dotal property.

(63) The judge also has a right not to consider any set-off, at all, as he is not expressly directed to do so by the terms of the formula; but, for the reason that this seems to be proper in a *bona fide* action, it is therefore held to be part of his duty.

(64) The case of an action brought by a banker is different, for he is compelled to take account of a set-off, and to mention it in his statement; and to such an extent is this true, that he must make allowance for it in the first place, and only demand that the remainder shall be paid to him. For example, if he owes ten thousand sesterces to Titius, and Titius owes him twenty thousand, he should state his claim as follows: "If it appears that Titius owes him ten thousand sesterces more than he owes Titius."

(65) Again, the purchaser of the estate of a bankrupt is directed to make a deduction when he brings his action, so that his adversary will only have judgment rendered against him for the balance which remains after having deducted what the purchaser of the estate owes the defendant on account of the insolvent debtor.

(66) Between the set-off which is made against the claim of the banker, and the deduction to be taken from the claim of the purchaser of a bankrupt estate, there is this difference, namely: that property of the same kind and nature is only included in the set-off; as for instance, money is set-off against money; wheat against wheat; wine against wine; and it is even held by some authorities that wine cannot be set off against wine, or wheat against wheat,

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[1] Original manuscript illegible.

unless it is of the same nature and quality. In making the deduction, however, property is included which is not of the same kind. Hence, if the purchaser of the estate of a bankrupt brings an action for money due the latter, and he himself owes a certain quantity of grain or wine, after it has been deducted, suit shall be brought only for the remainder, whatever it may be.

(67) Deduction is also made of what will be due hereafter at a certain time, but set-off only takes place where the debt is already due.

(68) Moreover, the amount of the set-off is inserted in the statement of the claim, the result of which is that if the banker demands in the set-off a single sesterce more than he is entitled to, he will lose his case, and therefore his property as well. The deduction, however, is inserted in the judgment, in which place the claimant does not run any risk, for demanding too much; especially when the purchaser of a bankrupt estate brings a suit in which, although he makes a claim for a certain amount of money, he, nevertheless, sets out an uncertain amount in the condemnation.

(69) For the reason that we have previously mentioned the action brought against the *peculium* of sons under parental control and slaves, it is necessary for us to more clearly explain this, as well as the other actions, which are ordinarily brought against parents and masters, on account of their sons and slaves.

(70) In the first place, if a transaction was entered into with a son or a slave, by order of his father or his master, the Prætor will grant an action for the entire amount against the father or the master; and this is proper, because anyone who enters into a transaction of this kind takes into consideration their responsibility rather than that of the son, or the slave.

(71) For the same reason the Prætor grants two other actions, the *Actio Exercitoria*, and the *Actio Institoria*. The first will lie where the father or the master places his son or his slave in charge of a ship, and any business on this account is transacted by the party in charge. For whenever a debt has been contracted with the consent of the father or master, it appears to be perfectly just that an action for the entire amount should be granted against him. And even though a person appoints as the master of a ship either a slave belonging to another, or a freeman, the prætorian action will, nevertheless, be granted against him. This action is called "*Exercitoria*," for the reason that the party who obtains the daily returns from the ship is called "*Exercitor*."

The Institorial Formula is employed when anyone places his son or slave, or the slave of another or a freeman, in charge of his shop, or of any kind of business whatsoever; and where the party placed in charge of the same contracts any debt which has reference to the said business. It is called

"*Institoria*," for the reason that the party placed in charge of a shop is called "*Institor*"; and this formula is made use of for the collection of the entire amount which is due.

(72) In addition to these, the *Actio Tributoria* has been established against a father or a master, when his son or slave transacts some business with his *peculium*, with the knowledge of his father or his master. For if any contract having reference to said property should be made with either of them, the Prætor directs that whatever was invested in the said business, or any profits derived from the same, shall be distributed between the father or master, if anything is due to them, and among any other creditors, in proportion to their respective claims; and for the reason that he permits the distribution to be made to the father, or the master, if any creditor should complain of having received less than he was entitled to, he enables him to bring this action which is called "*Tributoria*."

(73) Moreover, the action *De Peculio* was introduced where any advantage accrued to the father, or the master; and although the business may have been transacted without the consent of either of them, still, whatever was expended for the benefit of their property should be paid in full; or if it was not expended for that purpose, payment should be made to the amount of the value of the *peculium*. It is supposed to have been expended for the benefit of the master's property

if the slave should have disbursed anything necessarily for the advantage of his master; for instance, if he should pay borrowed money to his creditors; or should prop up buildings which are about to fall; or should purchase grain for his household; or should buy a tract of land, or any other property which it was necessary to acquire. Therefore, for example, if out of ten sesterces which your slave borrowed from Titius, he should pay five to your creditor, and should expend the remaining five in any way whatsoever, you ought to have judgment rendered against you for five, and for the other five to the amount of the *peculium*.

From this it is apparent that if all of the ten sesterces were employed for the benefit of your property, Titius can recover the entire ten; for, although there is but one action having reference to the *peculium* to recover what was used for the benefit of the property of the father, or the master, still, he has the right to two judgments; and, therefore, the judge before whom the action is brought, should investigate in the first place, whether the expenditure was made for the benefit of the property of the father, or master; and should not pass to the estimation of amount of the *peculium*, unless either nothing was understood to have been expended for the benefit of the property of the father, or master, or that not all of it was so employed; as, when the estimate is made of the amount of the *peculium*, that should previously be deducted which is due to the father or the master, by the son, or the slave who is under his control; and the remainder shall only be considered as *peculium*. Sometimes, however, the amount due by the son, or the slave, as aforesaid, is not deducted from the *peculium*; for instance, if he who owes it himself forms a part of the said *peculium*.

(74) But there is no doubt that either the *Actio Exercitoria*, or the *Actio Institoria* will lie in favor of anyone who has entered into a contract with a son or a slave, by the order of his father or master; and that he can bring the action of *peculium*, or that based on the employment of property for the benefit of another. No one, however, when he could undoubtedly obtain the whole amount of the debt by means of either of the above mentioned actions, would be so foolish as to take the trouble to prove that the party with whom he contracted had a *peculium*, and that his claim could be satisfied out of it; or that the money which he demanded had been employed for the benefit of the father, or master.

(74a) Again, he who is entitled to bring the *Actio Tributoria*, can also bring the *Actio de Peculio*, as well as the one for the recovery of money employed for the benefit of another: and it will generally be more advantageous for him to make use of this action than of the *Actio Tributoria*, for in the latter only the account of the *peculium* is considered which the son, or the slave made use of in the business in which he was engaged, and the profits of the same; in the *Actio de Peculio*, however, the entire *peculium* is involved; and anyone may transact business with a third or a fourth of it, or even with a smaller portion, and have the greater part of his *peculium* otherwise invested. This is even more true, and he should certainly have recourse to this action if it can be proved that what the party who contracted with the son or the slave gave was used for the benefit of the father or the master; for, as we stated above, the same formula is employed both in the action having reference to the *peculium*, and in the one to recover property used for the benefit of another.

(75) Noxal actions are granted on account of offences committed by sons under paternal control, or by slaves; as, for instance, where they commit theft or injury; so that the father or master is permitted either to pay the damages assessed, or to surrender the culprit by way of reparation; for it would be unjust for the misconduct of a son or a slave to cause any loss to his parent, or his master, except by the forfeiture of the body of the son or the slave.

(76) Moreover, noxal actions were established either by law or by the Edict of the Prætor; by law, for instance, in the action of theft under the provision of the Twelve Tables; the action for wrongful damage by the *Lex Aquilia*; the action for injury, and that for property taken with violence by the Edict of the Prætor.

(77) All noxal actions follow the person of the culprit. Hence, if your son, or your slave commits a wrongful act while he is under your control, an action will lie against you; if he conies under the power of another, an action can be brought against the latter; if he becomes his own master, a direct action can be brought against him, and his surrender by way of reparation is extinguished.

On the other hand, a direct action may become a noxal one; for if the head of a household commits a wrongful act and he gives himself in arrogation to you, or becomes your slave; what we stated in the First Commentary might happen in certain cases takes place; that is to say, a noxal action can be brought against you, when, formerly, a direct action would lie against the offender himself.

(78) If, however, a son commits a wrongful act against his father, or a slave against his master, no right of action will arise; for no obligation can, under any circumstances, be created between me and one who is under my control. Hence, although he may pass under the control of another, or becomes his own master, an action will lie neither against himself, nor against the party under whose control he now is. Therefore, the question arises where the son or the slave of another commits a wrongful act against me, and subsequently is subjected to my authority; whether, on this account the action is extinguished, or remains in suspense. Our preceptors hold that it is extinguished, because conditions have become such that it cannot be brought; and, therefore, if the party should be freed from my control, I cannot bring suit.

The authorities of the other school are of the opinion that as long as he is in my power, the action remains in suspense, for the reason that I cannot sue myself; but that when he is no longer subject to my authority the action is revived.

(79) Moreover, when a son under paternal control is transferred by mancipation, on account of some wrongful act which he has committed, the authorities of the other school think that he should be sold three times, because it is provided by the Law of the Twelve Tables that a son cannot be released from the authority of his father unless he has been three times sold. Sabinus, Cassius, and the other authorities of our school, however, hold that one sale is sufficient, and that the three mentioned by the Law of the Twelve Tables only refer to voluntary sales.

(80) So much with reference to those persons who are under the control of their fathers and masters whether the controversy relates to their contracts, or their crimes. But with reference to such persons as are in hand, or are liable to mancipation, the law is said to be that when an action founded on contract is brought against them, unless they are defended against the entire amount by the party to whose authority they are subject, any property which would be

theirs, if they had not been under control, shall be sold. When, however, their forfeiture of civil rights having been rescinded, an action based on the judicial power of the magistrate is brought against them and is not defended, the woman herself can be sued, while she is in the hand of her husband, because, in this instance the authority of the guardian is not necessary. . . .[1]

(81) What course then should be pursued? Although we stated that it was not permitted to surrender dead persons by way of reparation for the commission of a wrongful act; still, if anyone should surrender the body of such a person who had died, he will (be) legally released from liability.

(82) In the next place we should note that we can either sue in our own names, or in that of another, as for instance, our agent, attorney, guardian, or curator, while formerly, when the *legis actionis* were employed, a man could not bring an action in the name of another, except in certain cases.

(83) Moreover, the attorney in an action is appointed by prescribed forms of words in the presence of the adverse party. The plaintiff appoints an attorney as follows: "Whereas, I am bringing an action against you (for example) to recover a certain tract of land; I appoint Lucius Titius my attorney against you in this matter." The adverse party makes his appointment as follows: "Whereas, you have brought an action against me to recover a tract of land, I appoint Publius Mævius my attorney against you in this matter." The plaintiff may make use of the following words: "Whereas, I desire to bring an action against you, I appoint Lucius Titius my attorney in this matter." The defendant says: "Whereas, you desire to bring an action against me, I appoint Publius Mævius my attorney in this matter."

It makes no difference whether the attorney appointed is present, or absent; but if an absent person is appointed, he will only become the attorney if he accepts and undertakes the duties of the office.

(84) An agent, however, is substituted in the case without the use of any special forms of words, merely by mandate alone, and his appointment can be made during the absence, and without the knowledge of the adverse party. Moreover, there are some authorities who hold that one can become an agent, without having been directed to do so,

[1] Original manuscript illegible.

provided he attends to the business in good faith, and gives security that his principal will ratify his acts; although he to whom the mandate was given is generally required to furnish security, because the mandate is frequently concealed in the beginning of the proceedings and is afterwards disclosed in court.

(85) We have stated in the First Commentary in what manner guardians and curators are appointed.

(86) He who brings an action in the name of another makes the claim in the name of his principal, and mentions his own name in the condemnation. If, for instance, Lucius Titius brings suit for Publius Mævius, the formula is in the following words: "If it appears that Numerius Negidius should pay to Publius Mævius ten thousand sesterces, Judge, condemn Numerius Negidius to pay ten thousand sesterces to Lucius Titius, and if his indebtedness should not be established discharge him from liability." Again, in a real action, the claim is made that the property belongs to Publius Mævius by quiritarian right, and the representative is mentioned in the condemnation.

(87) When anyone intervenes in behalf of the party against whom the action is brought, and the claim is made that "the principal should make payment," the condemnation is stated in the name of the representative of the party sued. In the case of a real action, however, the name of the party defendant is not mentioned in the claim, either when he appears in person, or by a representative; for the claim merely states that the property in question belongs to the plaintiff.

(88) Let us now consider under what circumstances either the defendant or the plaintiff may be compelled to give security.

(89) Hence, for example, if I bring a real action against you, you should furnish me security, for it appears to be but just as you are permitted to retain possession of the property, and it is doubtful whether it belongs to you, or not, that you should give security that if you are defeated, and do not restore the property itself, or refuse to pay its value, I may have the power to proceed against you, or your sponsors.

(90) There is all the more reason that you should furnish me security, if you are acting as the representative of another in the case.

(91) Moreover, a real action is of a twofold nature; for it is either brought by a formula stating the claim, or by one based on a solemn engagement; and, if it is made in the manner first mentioned, the stipulation called "security for the payment of a judgment" will apply; but if it is based on a solemn engagement, that form of stipulation styled "security for the property in dispute and the profits derived from the same," is the one made use of.

(92) The formula which states the claim contains the allegation of the plaintiff that the property belongs to him.

(93) In the proceeding based upon a solemn engagement, we proceed as follows, and we make this demand upon the adverse party:'"If the slave in dispute is mine by quiritarian right, do you promise to pay me twenty-five sesterces?" And then we state the formula by which we claim that the sum mentioned in the promise should be paid to us; but we can only gain our case by means of this formula if we prove that the property is ours.

(94) The sum mentioned in the promise is not exacted, for it is not penal, but merely prejudicial, and is used only for the purpose of deciding the right to the property; therefore even the party against whom the action is brought does not make another stipulation with the plaintiff. Moreover, this kind of a stipulation instead of security for the property in dispute and for the profits of the same, was so called because it took the place of personal sureties who formerly, when proceedings were instituted under the *legis actiones*, were given by the party in possession to the plaintiff, for the restoration of the property itself and the mesne profits of the same.

(95) When, however, the suit is brought before the *Centumviri*, we do not demand the sum mentioned in the solemn engagement, by the formula, but under the ancient form of procedure; for then we challenge the defendant by the deposit, and the promise of a hundred and twenty-five sesterces is made by virtue of the *Lex* . . . .[1]

(96) If a party brings a real action in his own name, he does not furnish security.

(97) And even if an action is brought by an agent, no security is required from him, or his principal, for he has been substituted for his principal by a prescribed and, as it were, solemn form of words; and he is very properly considered to occupy the place of his principal.

(98) If, however, an agent brings the action, he is ordered to give security that his principal will ratify his acts; for there is danger that, otherwise, the principal might bring a second action with reference to the same property, which danger does not exist where the suit was brought by an agent; for the reason that anyone who sues by an agent has no greater right of action than if he brought the suit himself.

(99) The terms of the Edict compel guardians and curators to furnish security in the same way as agents; sometimes, however, they are not required to do so.

(100) So much with reference to real actions. In the case of personal actions, when inquiry is made now and when security should be furnished by the plaintiff, we repeat what we have already said with reference to real actions.

(101) But with respect to the party against whom the action is brought, where anyone intervenes in his behalf, he must, by all means, furnish security, for the reason that no one is understood to be a proper defender of another's affairs without security. If the action is brought against an attorney, his principal is required to furnish security, but if brought against an agent, the latter must furnish it himself. The same rule applies to guardians and curators.

(102) If, however, a party undertakes his own defence in a personal action he usually gives security to pay the judgment, in certain cases which are indicated by the Prætor. In these cases there are two reasons why security is exacted; for this is either done on account of the nature of the action, or because the character of the defendant is suspicious. It is required on account of the nature of the action, for instance, where it is one to compel the payment of a judgment, or to collect money expended for a principal; or where the morals of a wife are involved. It is required on account of the suspicious character of the defendant, where he has squandered his property; or his creditors have obtained possession of it, or advertised it for sale; or when proceedings have been instituted against an heir whom the Prætor considers liable to suspicion.

(103) Actions are either founded upon law, or are derived from the authority of a magistrate.

(104) Actions founded upon law are those which are brought in the City of Rome, or within the first mile-stone from that city, between Roman citizens before a single judge. Those brought under the *Lex Julia Judiciaria* expire after the lapse of a year and six months, unless they have been previously decided; and this is the reason why it is commonly stated that under the *Lex Julia* a case dies after a year and six months have elapsed.

(105) Actions derived from the authority of a magistrate are those brought before several judges, or before a single judge, if either the latter or one of the litigants is an alien. These actions belong to the same class as those which are brought beyond the first mile-stone from the City of Rome; whether the parties litigant are Roman citizens or aliens. Cases of this kind are said to be derived from the authority of the magistrate, for the reason that the proceedings are only valid as long as he who directed them to be instituted retains his office.

(106) Where an action is brought under the authority of a magistrate, whether it is real or personal, or whether it was based upon a formula of fact, or a statement of law, it is not by operation of law a bar to subsequent proceedings

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[1] Original manuscript illegible.

having reference to the same matter, and therefore it is necessary to plead an exception on the ground that a decision has already been rendered, or that issue has been joined in the case.

(107) If, however, a personal action based on a legal statement has been brought by the formula relating to claims under the Civil Law, an action cannot subsequently be maintained with reference to the same matter by operation of law, and for this reason an exception will be superfluous. If, however, a real action, or an equitable personal action based upon fact, should be brought, proceedings may nevertheless subsequently be instituted, by operation of law; and on this account an exception on the ground that the question has already been decided, or that issue has been joined, will be necessary.

(108) The rule was formerly different when the ancient method to procedure was employed, for when proceedings concerning a matter had once been instituted, no legal action could be taken with reference to it, nor was the employment of exceptions in those times customary, as it is now.

(109) Moreover, an action may be founded upon law, and yet not be legal; and, on the other hand, it may not be founded upon law, but still be legal. For example, proceedings based upon the *Lex Aquilia*, *Publilia*, or *Furia*, when instituted in the provinces, are derived from the authority of the magistrate, and the rule is the same if we bring an action before several judges, or before a single judge if one of the parties is an alien; and, on the other hand, if an action in which all the parties are Roman citizens is brought at Rome before a single judge, for the same cause for which a right of action is granted to us by the Prætor, it will be legal.

(110) In this place we should note that those actions which are based upon a statute or a decree of the Senate are usually granted by the Prætor in perpetuity; but that those which are dependent upon the jurisdiction of the Prætor himself are only granted within a year from the time when the cause of action arose.

(111) Sometimes, however, he also grants such actions in perpetuity, as, for instance, those in which the Civil Law is imitated; such as the actions which he grants to the prætorian possessors of estates, and to other persons who occupy the place of an heir. The action of manifest theft, although it is derived from the jurisdiction of the Prætor himself, is granted without limitation of time, and this is reasonable, as a pecuniary penalty has been established instead of a capital one.

(112) All actions which lie against anyone, either by operation of law, or because they are granted by the Prætor, do not also lie against his heir, nor are

usually granted by the Prætor; for this rule is so positive that penal actions arising from criminal offences do not lie, and are not usually granted against an heir; as, for instance, the action of theft, of the robbery of property by violence, or of injury, or of unlawful damage.

Actions of this kind will, however, lie in favor of heirs, and will not be refused them by the Prætor, with the exception of the action for injury, and any other of the same description if it can be found.

(113) Sometimes, however, even an action based upon a contract will not lie for or against an heir; since the heir of a joint stipulator has no right of action, and the heir of a sponsor or guarantor is not liable.

(114) It remains for us to consider whether, if the party against whom the action was brought before judgment had been rendered but after issue had been joined, should satisfy the plaintiff, what course the judge should pursue; whether he has authority to discharge him from liability, or whether he should rather decide against him for the reason that at the time of the joinder of issue he was in such a position that he should have been condemned. Our preceptors think that he should be discharged, and that it makes no difference what kind of a judgment is rendered; and this is the reason why it is commonly said that it was the opinion of Sabinus and Cassius that a discharge from liability could be granted in all actions.

The authorities of the other school agree in this point with reference to *bona fide* actions; because in cases of this kind no restraint is placed upon the judge; and their opinion is the same with reference to real actions, for the reason that there is an express provision of this kind stated in the terms of the formula, so that if the defendant should restore the property he shall be discharged from liability. This, of course, applies where the action was brought under the formula making the claim, in which the party is sued in such a way that the property is dispute is demanded, and the words above referred to are repeated in the beginning of the condemnation; for sometimes . . . .[1] personal actions of this kind are brought in which it is not permitted ... .[1]

(115) In the next place let us examine exceptions.[2]

(116) Exceptions have been introduced for the purpose of defending those against whom actions have been brought; for it often happens that a party is liable by the Civil Law, when it would be unjust for a judgment to be rendered against him.

For example, if I stipulate for a sum of money from you on account of my having advanced it to you, when I never did so; as it is certain that I can bring an action against you for the money and you would be obliged to pay it as you are liable under the stipulation, but because it would be unjust for judgment to be rendered against you on this account, it is settled that you can defend yourself by the exception on the ground of fraud.

Likewise, if I make an informal agreement with you not to bring suit for a debt which you owe me; I can nevertheless, bring an action against you for the amount, and you will be obliged to pay me because the obligation is not extinguished by a mere agreement, but if I should sue you, it is established that you can bar me by an exception on the ground of an agreement entered into.

(117) Again, exceptions can be pleaded in actions which are not personal; for example, if you compel me through fear, or induce me through fraud, to sell any property to you, and then you sue me for the said property, an exception will be granted me by which you will be barred, if I can prove that you have been guilty of intimidation or fraud.

Likewise, if knowing that a case involving the title to a tract of land was pending in court, and you buy the land from a party who is not in possession, and claim it from one who is in possession, an exception can be pleaded against you by which you will be absolutely barred.

[1] Original copy illegible.

[2] The *exceptio*, or exception, was the answer of the defendant, and while by means of it he could traverse the plaintiff's allegations, this was not usually done; but the practice was to set forth circumstances, which, if they did not directly contravene the statements of the plaintiff — and they even sometimes admitted them — rendered these of no effect, by alleging bad faith, fraud, or flagrant injustice. Hence the *exceptio* almost exactly coincided with the English plea of confession and avoidance. — ed.

(118) The Prætor mentions other exceptions in his Edict, and he grants still others after having taken cognizance of the case. All of them are either based upon law or what is equivalent to it, or they are derived from the jurisdiction of the Prætor.

(119) Moreover, all exceptions are drawn up in language which is the opposite of what the party against whom the action is brought alleges. For if the defendant states that the plaintiff is guilty of fraud, for the reason that he brings suit for money which he never advanced, the exception is stated in the following words: "If in this matter no fraud was, or is committed by Aulus Agerius."

Likewise, if he states that the action was brought in opposition to an agreement not to demand the money, it is set forth as follows: "If it was not agreed between Aulus Agerius and Numerius Negidius that the said money should not be demanded"; and similar terms are ordinarily employed in other cases. Hence, because every exception is an objection made by the defendant but is inserted in the formula in such a way as to render the condemnation conditional, that is, the judge must not condemn the defendant unless no fraud was committed by the plaintiff with reference to the matter in question, the judge shall not render a decree against him if no informal agreement[1] was entered into not to bring suit to recover the money.

(120) Exceptions are said to be either peremptory or dilatory.

(121) Peremptory exceptions are those which are always valid, and cannot be avoided; for instance, the exception on the ground of intimidation or fraud, or of a violation of the law; or of a decree of the Senate; or because the case has already been decided; or that issue has been joined; or that an informal agreement was entered into "that suit should not, under any circumstances, be brought to recover the money.

(122) Dilatory exceptions are such as are only valid for a time; for instance, the exception based on an informal agreement that suit shall not be brought within five years, and after that time has expired the exception cannot be pleaded. The exception of a divided claim, or that of a residual claim, is similar to this; for if anyone brings an action for a part of a debt, and should then bring another for the remainder in the same prætorship, he will be barred by the exception which is called that of a divided claim. In like manner, if one who has several claims against the same person brings suit on some of them, and defers doing so with reference to the remainder in order that they may be brought before other judges, and he then brings an action within the same prætorship, to recover those which he postponed, he will be barred by the exception styled that of a residual claim.

(123) It should be observed, however, that the party against whom a dilatory exception may be pleaded ought to defer his action, otherwise, if he proceeds and the exception be pleaded against him, he will lose his claim; as if issue had been joined, and his case has been lost by this exception,

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[1] *Pactum conventum*. An agreement of this kind was not absolutely binding unless authorized by the Prætor who, however, rarely refused his sanction. When this was obtained, no difference existed between this kind of obligation and the *contractus*, or formal convention, so far as their legal requirements were concerned. — ed.

he has no longer any power to sue after the time during which, if matters had remained unchanged, he could have avoided the effect of the exception.

(124) Exceptions are understood to be dilatory not only with reference to time, but also with regard to persons; and to this class belong those which are connected with the position of attorney; for instance, where a party who, under the terms of the Edict, has no right to appoint an attorney acts through one; or, if he has a right to appoint an attorney, but appoints one who is not legally qualified to undertake the duties of the *office*. If the exception to an attorney is pleaded, and the party himself is such a person that he cannot appoint an attorney, he himself can bring the action; if, however, the attorney is not permitted to assume the duties of the office, his principal has the power to bring the suit, either by another attorney, or in his own proper person, and he can, in either one of these ways, avoid the exception; but if he should pay no attention to this disability, and conduct the case by the attorney he will lose it.

(125) If the defendant, through mistake, should not avail himself of a peremptory exception, he can obtain complete restitution, by adding the exception to the pleadings; but if he should not make use of a dilatory exception, it is a question whether he will be entitled to complete restitution.

(126) It sometimes happens that an exception which, at first sight, appears to be just, will cause injury to the plaintiff, and when this is the case an addition is required to the pleadings for the purpose of affording protection to the plaintiff, which addition is called a *Replicatio*, because by means of it the force of the exception is weakened and destroyed. If, for example, I made an informal agreement with you not to sue you for money which you owe me, and afterwards we entered into a contrary agreement, that is to say, that I might be permitted to sue you, and then if I do sue you, you plead the exception against me that judgment should only be rendered against you where no agreement had been made that I should not bring suit for the money, this exception on the ground of an informal agreement prejudices my claim, as the first agreement still retains its force, even though we made a contrary one subsequently; but because it is unjust for me to be barred by an exception, a replication based on the subsequent agreement is granted me as follows: "If no agreement was entered into afterwards that I might be permitted to bring an action to recover the money."

(126a) Likewise, if a banker brings suit for the price of property sold at auction, the exception may be pleaded against him that judgment is only to be rendered against the purchaser where the property which he bought had been delivered; and this is apparently a just exception. If, however, the condition was imposed at the auction that the property should not be delivered to the purchaser until he had paid the price of the same, the broker can make use of the following replication: "Or if it was previously stated at the sale that the property would not be delivered to the purchaser before he paid the purchase money."

(127) Sometimes, however, it happens that a replication which, at first sight, appears to be equitable, unjustly inflicts an injury on the defendant; and when this takes place, an addition to the pleadings is required for the purpose of protecting the defendant, which is styled *Duplicatio*.

(128) Again, if this, though it appears at first sight to be just, for some reason or other injures the plaintiff, another addition to the pleadings is required by which the plaintiff may be protected, and this is called a *Triplicatio*.

(129) Sometimes the multiplicity of affairs requires the use of additional exceptions to those which we have already mentioned.[1]

(130) Let us now consider Prescriptions,[2] which have been adopted for the benefit of the plaintiff.

(131) For it is frequently the case that, under the same obligation a party is required to do something for us at present, and something more at a future time. For instance, where we have stipulated for the payment of a certain sum of money every year, or every month, and, at the end of the year or month, a sum of money is required to be paid to us for this time; and with reference to years to come, although an obligation is understood to have been contracted, the time of payment has not yet arrived. Therefore, if we desire to bring an action to recover what is now due, and to proceed to joinder of issue and leave the future discharge of the obligation unimpaired, it is necessary, when we bring suit, to make use of the following prescription: "Let the proceedings have reference only to what is at present due." Otherwise, if we bring suit without making use of this prescription, under the formula by which we sue for an uncertain amount, the statement of the claim is expressed as follows: "Whatever it appears that Numerius Negidius should transfer to, or do for Aulus Agerius," brings the entire obligation, that is to say, also what is due in the future, into court; and no matter what may be due hereafter it cannot be collected, nor can an action subsequently be brought to recover the remainder.

(131a) Likewise, where for example, we bring an action on purchase, in order that land may be conveyed to us by sale, we must state the prescription as follows: "Let the proceedings only have reference to the sale of the land"; and, afterwards, if we desire vacant posses-

[1] These terms and the order of their employment are strongly suggestive of the ancient forms of Common Law pleading, the Reply, Rejoinder, Surrejoinder, Rebutter and Surrebutter. Under both the Roman and English systems, the pleadings could be indefinitely multiplied, until joinder of issue was attained, but it was not customary to extend them beyond the *Triplicatio*, or Surrejoinder. — ed.

[2] *Præscriptio*. This was equivalent to an exception, or a demurrer, which took the place of the *Demonstratio*, and was inserted in the beginning of the Formula. It was subsequently known as the *Actio Præscriptis Verbis*, and operated as a limitation of the right of action. To have legal effect, it was essential that it should be specially pleaded. — ed.

sion be delivered to us, we will be entitled to an action under the stipulation, or to one under the contract of purchase to compel its delivery. If we neglect to make use of this prescription, the obligation of our entire right embraced in the uncertain claim: "Whatever on this account Numerius Negidius. should give to, or do for Aulus Agerius," is disposed of by the statement of the claim in the former suit; so that afterwards we will not be entitled to any action to any action to compel the delivery of vacant possession, if we should desire to bring one.

(132) Prescriptions are so called for the reason that they precede the formulas, which fact is perfectly obvious.

(133) At the present time, however, as we mentioned above, all prescriptions proceed from the plaintiff, while formerly some of them were pleaded in behalf of the defendant, as for instance, the following prescription: "Let this point be determined, if it does not prejudice the estate"; which is now changed into a species of exception, and is used when the claimant of the estate prejudices the right to the same by bringing another kind of action, for example, if he brings suit for certain articles belonging to the estate; for it would be unjust to render the result of an action involving the entire estate dependent upon a decision having reference to only a portion of the same . . . .[1]

(134) If suit is brought under a stipulation entered into by a slave, and the *Intentio* states to whom the amount is to be paid, that is to say, that what the slave stipulated for should be paid to his master; the allegations in the prescription should be true in accordance with their natural meaning.

(135) Moreover, what we have said with reference to slaves we understand to be applicable to all other persons subject to our authority.

(136) Again, we should observe that when we bring an action against a party who promised something which was uncertain, the formula should be drawn up so as to include a prescription, instead of a statement of the cause of action, as follows: "Let So-and-So be judge. For the reason that Aulus Agerius stipulated for something uncertain from Numerius Negidius, payment of which is now due, whatever on this account Numerius Negidius should transfer to, or do for, Aulus Agerius, etc."

(137) When an action is brought against a sponsor or surety, it is the practice, in the case of the sponsor, to employ the following form of prescription: "Let the action be tried on the ground that Aulus Agerius stipulated for something of uncertain amount from Lucius Titius, for which Numerius Negidius is sponsor for the amount which is now due." In the case of a surety, the following form is employed: "Let the case be tried on the ground that Numerius Negidius became surety for Lucius Titius for an uncertain amount, which is now due"; and then the formula is added.[2]

[1] Original manuscript illegible.

[2] The Formulary System of the Romans contributed much of value and importance to both the principles and forms of the Common Law. The maxims of

(138) It remains for us to examine interdicts.

(139) The Prætor, or the Proconsul, interposes his authority directly in certain cases for the purpose of putting an end to controversies. This he especially does when there is a dispute between the parties with reference to possession or quasi possession; and, in short, he either orders something to be done, or forbids it to be done. Moreover, the formulas and the clauses made use of in this proceeding are styled interdicts and decrees.

(140) They are called decrees when he commands something to be done, for instance when he directs that something be produced in court, or restored; they are called interdicts when he forbids something to be done; for instance when he directs that no violence be employed against the party who is in possession without any defect; or that nothing be done on consecrated ground. Hence, all interdicts have reference to restitution, production, or prohibition.

(141) Still, when he orders that something shall be done, or prohibits some act from being performed, the affair is not immediately concluded, but recourse is had to one or more judges, and the formulas having been issued, an inquiry is held as to whether anything has been done, or some act which he ordered has not been performed, in opposition to the Edict of the Prætor. In a proceeding of this kind sometimes a penalty is involved, and sometimes it is not; it is

penal, for instance, where a formal promise is concerned, and it is not where an arbiter is demanded. It is the practice to proceed under prohibitory interdicts always by way of solemn promise, and, in the case of orders for restitution or production, this is either done by way of formal promise or by means of the formula styled "arbitrary".

(142) Hence, the original division of interdicts is into prohibitory, or for restriction, or for production.

(143) The next division is into those instituted for the purpose of obtaining, retaining, or recovering possession.

(144) An interdict issued to the prætorian possessor of an estate for the purpose of obtaining possession begins: "Whatever portion of the property"; and its force and effect is that the possession of property held by anyone, as heir, or possessor, or who has fraudulently relinquished possession, shall be restored to the party to whom possession is granted by the interdict. He is considered to possess the property as heir, not only when he is the actual heir, but also when he thinks that he is the heir. He holds the property as the mere possessor who has anything belonging to an estate, or the entire estate, without any title to the same, knowing that he is in possession of something that does not belong to him.

The interdict for the purpose of obtaining possession is so called because it is only advantageous to him who now, for the first time, attempts to acquire possession of the property; therefore, if anyone having obtained possession should lose it, the interdict ceases to be of any benefit to him.

the great lawyers of that age are still quoted authoritatively in our courts. The ancient writs of English legal procedure were directly derived from the Formula. As equity jurisprudence traces its origin to the broad and indulgent interpretation permitted the Prætorian Tribunal, so the modern bill in equity bears many striking resemblances to the instruments by means of which parties litigant were enabled to maintain their rights and protect their persons before the most powerful and distinguished of the Roman magistrates.

The *formulæ* were almost infinite in number and variety, and the party to a suit who failed to elect the one applicable to his case paid the penalty of his ignorance or negligence with the loss of his right of action. The abuses which grew out of the inflexible adherence to certain rules and forms which, encouraging chicanery and oppression, were often productive of gross injustice, eventually caused the abolition of the system. — ed.

(145) Again, an interdict is granted to the purchaser of a bankrupt estate, which some authorities call a possessory interdict.

(146) In like manner, an interdict of the same kind is granted to one who purchases confiscated property at a public sale, which is called *Sectorium* for the reason that those who purchase such property at public sale, are designated *Sectores*.

(147) The interdict called *Salvianum* was also one devised for the purpose of obtaining possession; and the owner of land can make use of it against the property of the tenant which the latter has pledged to him as security for the future payment of rent.

(148) It is the practice for interdicts for the purpose of retaining possession to be granted when a controversy arises between two parties with reference to the ownership of property; and it must be previously ascertained which one of the litigants should have possession, and which one should have a right to demand it; and it is for this purpose that the interdicts *Uti Possidetis* and *Utribi* has been established.

(149) The interdict *Uti Possidetis* is granted with reference to the possession of land or buildings; the interdict *Utrubi* with reference to the possession of movable property.

(150) If the interdict has reference to land or houses, the Prætor orders that party to have the preference who, at the time when the interdict was issued, obtained possession from his adversary, neither by force nor clandestinely, nor with his acquiescence.

When, however, it has reference to movable property, he orders that party to have the preference who, for the greater part of that year, has held possession against his adversary neither by force, nor clandestinely, or with his acquiescence; and this is sufficiently apparent from the terms of the interdicts themselves.

(151) But, in the interdict *Utrubi*, not only is the possession of every one a benefit to him, but that of another party which may be properly treated as accessory to it; for instance, that of a deceased person whose heir he is, and that of anyone from whom he has purchased property, or acquired it by means of a donation or a dowry. Hence, if the lawful possession of another party is added to our own, and it exceeds the possession of our adversary, we will be successful in the proceeding under that interdict.

The accession of time is not granted, and cannot be granted to one who has no possession of his own, for whatever does not exist can have nothing added to it. If, however, a party should have defective possession, that is to say, if it had been acquired from his adversary either by violence, or clandestinely, or by mere acquiescence, no accession is granted, for his own possession is of no advantage to him.

(152) Moreover, the year is reckoned backward, and hence, for example, if you had possession eight months before I did, and I had it during the seven following months, I will be entitled to the preference, because your possession for the first three months would be of no advantage to you under this interdict, as the possession was in another year,

(153) We consider a party to be in possession not only where we ourselves possess, but also where anyone is in possession in our name, although he may not be subject to our authority; as, for instance, a tenant or a lessee. We are also considered to have possession by means of those with whom we have deposited property, or lent it for use, or to whom we have granted gratuitous lodging, or the usufruct or use; and this is what is commonly called the power of retaining possession of property by anyone who possesses it in our name.

Again, many authorities hold that possession can be retained merely by intention; that is to say, that though we ourselves may not be in possession, nor anyone else in our name, still, if there be no intention of relinquishing possession, and we leave the property, intending afterwards to return, we are deemed to have retained possession of it. We stated in the Second Commentary by what persons we could obtain possession, nor is there any doubt that we cannot obtain it by mere intention.

(154) The interdict for the purpose of recovering possession is usually granted where anyone has been ejected by violence, for the interdict which is issued begins as follows: "In the place from which you have been forcibly ejected"; and by means of it the party who ejected the other is compelled to restore possession of the property to him, provided the latter did not himself obtain possession either by violence, or clandestinely, or by permission from the former; hence, I can eject with impunity anyone who has obtained possession from me either by violence, or clandestinely, or by permission.

(155) Sometimes, however, even though I should forcibly eject the party who obtained possession from me either by violence, or clandestinely, or by permission, I can be compelled to restore possession to him; for instance, if I should eject him by force of arms, for, on account of the atrocity of the crime, I am liable to have proceedings instituted against me by which I shall be absolutely obliged to reinstate him in possession. We understand by the expression, "force of arms," not only the use of shields, swords, and helmets, but also that of sticks and stone.

(156) The third division of interdicts is into simple and double.

(157) Simple interdicts are, for instance, those in which one party is plaintiff and the other defendant, and of this description are all those established for the restitution or the production of property; for he is the plaintiff who demands that the property be either produced or restored, and he is the defendant from whom it is demanded that he produce or restore it.

(158) Of prohibitory interdicts some are double, and others simple.

(159) Simple interdicts are, for instance, those by which the Prætor forbids a defendant to perform any illegal act on consecrated ground, or in a public stream, or on its bank; for the plaintiff is he who demands that the act shall not be committed, and the defendant is he who attempts to commit it.

(160) Double interdicts are such, for instance, as *Uti Possidetis* and *Utrubi*. They are called double because the position of both litigants in them is the same, and neither is exclusively understood to be defendant or plaintiff, but both of them sustain the parts of defendant and plaintiff. In fact the Prætor addresses both in the same language, for the form of these interdicts is as follows: "I forbid force to be employed to prevent you from having possession of the property which you now possess." The terms of the other are as follows: "I forbid violence to be employed to prevent the party from removing the slave in dispute, and who has been in his possession for the greater part of the year."

(161) The different kinds of interdicts having been" explained, let us next consider their order and effects, and we shall begin with those which are simple.

(162) Therefore, if an interdict for the restitution or the production of property is issued; for instance, for the restitution of possession to one who has been forcibly ejected, or for the production of a freedman whose services his patron desires to claim, the proceedings are sometimes brought to a conclusion without the risk of incurring the penalty, and sometimes with that risk.

(163) For, if he against whom the case is brought should demand an arbiter, he receives the formula which is called "arbitrary," and if, by the award of the judge, he is required to restore or produce any property, he either produces or restores it without any penalty, and thus is discharged from liability; or if he does not restore or produce it, he is compelled to indemnify the plaintiff for the loss sustained through his disobedience. The plaintiff, however, can, without incurring a penalty, bring an action against one who is not required to produce or restore any property, unless an action for vexatious litigation is brought against him to recover the tenth part of the property in question;

although it is said to have been held by Proculus that an action for vexatious litigation should be refused to him who demands arbitration, because he is considered to have, as it were, admitted that he ought to restore or produce the property. We, however, make use of another rule, and very properly; for anyone who demands an arbiter rather shows his intention to litigate in a more moderate manner, than for the reason that he admits the validity of the claim of his adversary.

(164) It should be observed that he who desires to demand an arbiter must do so before leaving court, that is before he departs from

the tribunal of the Prætor, for if such a demand is made later it will not be granted.

(165) Hence, if he does not demand an arbiter, but leaves the tribunal without doing so, the affair is brought to a conclusion at the risk of the parties; for the plaintiff challenges his adversary to deposit the forfeit which shall be paid if, in disobedience to the Edict of the Prætor, he does not produce or restore the property; and the defendant restipulates in opposition to the demand for a forfeit by his opponent. The plaintiff then delivers to his adversary the formula of the forfeit to be deposited, and the latter in his turn delivers that of the restipulation.

The plaintiff, however, adds to the formula of the promise of a forfeit another action for the restipulation or the production of the property in question, so that if he should be successful, and the property is not either reduced or restored to him . . . . [1]

(166) When a double interdict has been granted, the mesne profits are sold at auction and the highest bidder is placed in possession of the property, provided he furnishes his adversary security under the stipulation for the enjoyment of the profits; the force and effect of which is that if judgment should be rendered against him with reference to possession, he shall pay his adversary the sum provided for in the stipulation.

This bidding between the parties is designated the bidding for the profits, because they contend with one another for the profits of the property during the preliminary proceedings. After this, each one of them challenges the other to deposit the forfeit to be -paid by the promisor, if he has by violence interfered with the possession of his adversary, and hence has violated the Edict of the Prætor; and each of them mutually bind themselves, or the two stipulations being united so that one promise is made between them, and also one restipulation is entered into by one party against the other, which is the more convenient way of proceeding, and therefore the one most generally in use.

(166a) Then, after the necessary formulas of all the promises and restipulations have been filed by both parties, the judge before whom the case is tried must examine the point introduced by the Prætor in the interdict; that is to say, which of the parties was in possession of the land or the house at the time when the interdict was issued, and that he did not obtain possession of it by violence, or clandestinely, or with the permission of the adverse party. When the judge has investigated this, and has, perhaps, decided in my favor, he condemns my adversary to pay the penal sums called for by the promise and the restipulation which I made with him, and in consequence discharges me from liability for the promise and restipulation which were made with me. Further, if my adversary had possession of the property for the reason that he made the highest bid for the profits of the same, and he does not restore possession to me, he can have judgment rendered against him in the action styled Cascellian or Secutorian.

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(167) Therefore, if he who is the highest bidder does not prove that he is entitled to possession, he is ordered to pay the sums mentioned in the promise and restipulation, as well as the amount he offered in his bid for the mesne profits at auction, by way of penalty, and to restore possession of the property; and, in addition to this, he must return the profits which, in the meantime he has collected; for the sum of money mentioned in the bid for the profits is not the price of the same, but is paid as a penalty because the party attempted to retain possession belonging to another, for this time, and also to enjoy the profits derived from the property.

(168) Moreover, if he who made a lower bid for the profits at the auction does not prove that he is entitled to possession, he should only be required to pay the amount of the promise and restipulation by way of penalty.

(169) We should observe, however, that the unsuccessful bidder, without availing himself of the stipulation for the enjoyment of the profits, has a right to bring an action on the sale at auction, just as by the Cascellian or Secutorian action he can sue for the recovery of possession. A special action has been introduced for this purpose, which is called "fructuary," by means of which the plaintiff receives satisfaction for his judgment. This action is also called Secutorian, because it follows the advantage of the promise, but it is not also called Cascellian.

(170) But, for the reason that, after an interdict has been issued, some of the parties are unwilling to institute other proceedings under it, and on this account matters cannot be expedited, the Prætor made provision for a case of this kind, and introduced interdicts which we call "secondary"; because they are issued in the second place, under such circumstances. The force and effect

of these is that he who does not institute further proceedings under the interdict, for example, one who does not forcibly eject the other party; or does not make a bid for the mesne profits of the property; or does not furnish security for the same; or does not participate in the promise, or defend the case; shall, if he is in possession of the property, restore it to his adversary; for if he is not in possession, he shall not use violence against the other party who is. Hence, although, otherwise, he might have been able to succeed under the interdict *Uti Possidetis*, if he could have complied with the other requirements imposed by it, and did not do so, he will still lose his case by means of a secondary interdict . . . . [1]

(171) For the purpose of avoiding vexatious litigation, the parties are sometimes deterred by pecuniary penalties, and sometimes by an oath which is imposed by the Prætor. In certain cases an action for double damages is brought against a defendant; for instance, in the collection of a judgment debt, or for money expended for a principal, or for unlawful damage to property, or where proceedings are instituted to collect legacies left by condemnation. In some instances, the deposit of a forfeit is permitted to be made, for example, in an action for a certain sum of money which has been lent, or to collect a debt formerly incurred. Where suit is brought to collect a loan, the amount is one-third of the sum in question; and in the case of the acknowledgment of a balance due, it is one-half.

(172) If no deposit was made as a forfeit, and the penalty of double damages was not imposed upon the party against whom the action was brought, and under it, from the beginning, no more than simple damages can be collected; the Prætor permits the plaintiff to require the defendant to swear that he has not made a denial for the purpose of annoyance. Hence, although the heirs and those who are considered to occupy the position of heirs, are not subject to a penalty, and women and wards are exempted from the penalty of a forfeit, the Prætor, nevertheless, orders them to be sworn.

(173) Moreover, in some cases from the beginning an action for more than simple damages will lie; as in an action of manifest theft a fourfold penalty, in non-manifest theft a double penalty, and when stolen property has been delivered to another a threefold penalty can be collected; for in these and some other instances, the suit is for more than simple damages, whether the party denies, or admits the claim.

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(174) Vexatious litigation by the plaintiff is also restrained sometimes by the action for this purpose, sometimes by the contrary action, sometimes by oath, and sometimes by a counter stipulation.

(175) The action of vexatious litigation is applicable as against all other actions, and is for the tenth part of the claim, but for the third part when brought against a joint stipulator.

(176) The party sued, however, has the right to choose whether he will bring the action of vexatious litigation, or exact an oath from his adversary that he has not brought suit for the purpose of causing annoyance.

(177) The counter action, however, is only applicable in certain cases; for instance, where suit is brought for injury, and where one is brought against a woman on the ground that having been placed in possession on account of her unborn child, she transferred it fraudulently to some other party; or where anyone brings an action alleging that he has been placed in possession by the Prætor and is refused admission by another. In the case of an action of injury it is granted for the tenth part of the amount in dispute; in the two others for the fifth.

(178) But, the most severe restraint is that produced by the counter action. For no one is condemned in the action of vexatious litigation to pay the tenth part of the amount in dispute, unless he knew that he had no right to bring suit, and did so only for the purpose of annoying his adversary and relies for success rather upon the error or injustice of the judge, than on account of the merits of his cause; for vexatious litigation, like the crime of theft, depends upon intention. In the contrary action, however, the plaintiff will, under all circumstances, be condemned if he should not prevail in the former action, although he had good reason to believe that he had a right to bring suit.

(179) Still, in all those cases in which the contrary action can be brought, the action for vexatious litigation will also lie; but it is only permitted to have recourse to one or the other of these proceedings. For which reason if an oath should be exacted that the action has not been brought for the purpose of annoyance, just as the action for vexatious litigation will not lie, so the contrary action should not be granted.

(180) The penalty of the counter engagement is usually required in certain cases, and, as in the contrary action the plaintiff is condemned under all circumstances if he should not gain his case, nor is it necessary for him to know that he had no good cause of action; so the penalty of the counter engagement must, under all circumstances, be paid by the plaintiff if he was unable to gain his case.

(181) Moreover, when anyone undergoes the penalty of the counter engagement neither the action for vexatious litigation can be brought against him, nor can the oath be administered, for it is clear that in cases of this kind the contrary action will not lie.

(182) In certain actions persons who are condemned become infamous, as in those of theft, robbery with violence, and injury, also in cases of partnership, trust, guardianship, mandate, and deposit. In actions of theft, robbery with violence, and injury, not only are the persons convicted branded with infamy, but also where a compromise is made, as is stated in the Edict of the *Prætor*; and this is proper, for it makes a great deal of difference whether anyone becomes a debtor on account of the commission of a crime, or under a contract. But while it is not expressly stated in any part of the Edict that a party is to become infamous, still he is said to be infamous who is forbidden to represent another in court, or to appoint, give, or have an agent or attorney, or to intervene as agent or attorney in a case.

(183) In conclusion, it should be noted that a person who desires to bring an action against another must summon him to appear in court, and if the party summoned does not appear, he will be liable to a penalty under the Edict of the Prætor. It is, however, not permitted to summon certain persons without the permission of the Prætor; for instance, parents, patrons, patronesses, and the children or parents of a patron or patroness; and anyone who violates this provision is liable to a penalty.

(184) However, when the adversary who has been summoned appears in court, and the business cannot be finished on the same day, the defendant must furnish security; that is to say he must promise to appear on some other designated day.

(185) Security in certain instances is simple, that is, given without sureties; and in others it is given with sureties; in still other instances, it is given by oath; and in some cases a reference is made to judges, that is to say, if the party does not appear, he may be immediately condemned to pay the amount of the security by the judges; and all these things are explained at length in the Edict of the *Prætor*.

(186) If proceedings have been instituted for the collection of a judgment, or for money expended for a principal, the amount of the security is equal to the value of the property in dispute. But in other cases the amount is that which the plaintiff swears that he has not brought suit for with the intention of causing annoyance; provided that the security is not more than half the sum in question, or more than a hundred thousand sesterces. Hence, if the property in dispute is valued at a hundred thousand sesterces, and the action is not for the

collection of a judgment, or money expended for a principal, the amount of the security cannot be more than fifty thousand sesterces.

(187) Those persons whom we cannot summon to appear in court without the permission of the Prætor, we cannot compel to furnish security for their future appearance; unless the Prætor, after having been applied to, grants permission.

END OF THE INSTITUTES OF GAIUS.

Roman Law Homepage   Rome Law Texts

The Institutes of Justinian
(A.D.535)

BOOK I. OF PERSONS

I. Justice and Law.

Justice is the constant and perpetual wish to render every one his due.

1. Jurisprudence is the knowledge of things divine and human; the science of the just and the unjust.

2. Having explained these general terms, we think we shall commence our exposition of the law of the Roman people most advantageously, if we pursue at first a plain and easy path, and then proceed to explain particular details with the utmost care and exactness. For, if at the outset we overload the mind of the student, while yet new to the subject and unable to bear much, with a multitude and variety of topics, one of two things will happen---we shall either cause him wholly to abandon his studies, or, after great toil, and often after great distrust to himself (the most frequent stumbling block in the way of youth), we shall at last conduct him to the point, to which, if he had been led by an easier road, he might, without great labor, and without any distrust of his own powers, have been sooner conducted.

3. The maxims of law are these: to live honestly, to hurt no one, to give every one his due.

4. The study of law is divided into two branches; that of public and that of private law. Public law regards the government of the Roman empire; private law, the interest of the individuals. We are now to treat of the latter, which is composed of three elements, and consists of precepts belonging to the natural law, to the law of nations, and to the civil law.

II. Natural, Common, and Civil Law.

The law of nature is that law which nature teaches to all animals. For this law does not belong exclusively to the human race, but belongs to all animals, whether of the earth, the air, or the water. Hence comes the union of the male and female, which we term matrimony; hence the procreation and bringing up of children. We see, indeed, that all the other animals besides men are considered as having knowledge of this law.

1. Civil law is thus distinguished from the law of nations. Every community governed by laws and customs uses partly its own law, partly laws common to all mankind. The law which a people makes for its own government belongs exclusively to that state and is called the civil law, as being the law of the particular state. But the law which natural reason appoints for all mankind obtains equally among all nations, because all nations make use of it. The people of Rome, then, are governed partly by their own laws, and partly by the laws which are common to all mankind. We will take notice of this distinction as occasion may arise.

2. Civil law takes its name from the state which it governs, as, for instance, from Athens; for it would be very proper to speak of the laws of Solon or Draco as the civil law of Athens. And thus the law which the Roman people make use of is called the civil law of the Romans, or that of the Quirites; for the Romans are called Quirites from Quirinum. But whenever we speak of civil law, without adding the name of any state, we mean our own law; just as the Greeks, when "the poet" is spoken of without any name being expressed, mean the great Homer, and we Romans mean Virgil.

The law of the nations is common to all mankind, for nations have established certain laws, as occasion and the necessities of human life required. Wars arose, and in their train followed captivity and then slavery, which is contrary to the law of nature; for by that law all men are originally born free. Further, by the law of nations almost all contracts were at first introduced, as, for instance, buying and selling, letting and hiring, partnership, deposits, loans returnable in kind, and very many others.

3. Our law is written and unwritten, just as among the Greeks some of their laws were written and others were not written. The written part consists of leges (lex), plebiscita, senatusconsulta, constitutiones of emperors, edicta of magistrates, and responsa of jurisprudents [i.e., jurists].

4. A lex is that which was enacted by the Roman people on its being proposed by a senatorian magistrate, as a consul. A plebiscitum is that which was enacted by the plebs on its being proposed by a plebeian magistrate, as a tribune. The plebs differ from the people as a species from its genus, for all the citizens, including patricians and senators, are comprehended in the populi (people); but the plebs only included citizens [who were] not patricians or senators. Plebiscita, after the Hortensian law had been passed, began to have the same force as leges.

5. A senatusconsultum is that which the senate commands or appoints: for, when the Roman people was so increased that it was difficult to assemble it together to pass laws, it seemed right that the senate should be consulted in

place of the people.

6. That which seems good to the emperor has also the force of law; for the people, by the Lex Regia, which is passed to confer on him his power, make over to him their whole power and authority. Therefore whatever the emperor ordains by rescript, or decides in adjudging a cause, or lays down by edict, is unquestionably law; and it is these enactments of the emperor that are called constitutiones. Of these, some are personal, and are not to be drawn into precedent, such not being the intention of the emperor. Supposing the emperor has granted a favor to any man on account of his merit, or inflicted some punishment, or granted some extraordinary relief, the application of these acts does not extend beyond the particular individual. But the other constitutiones, being general, are undoubtedly binding on all.

7. The edicts of the praetors are also of great authority. These edicts are called the ius honorarium, because those who bear honors [i.e., offices] in the state, that is, the magistrates, have given them their sanction. The curule aediles also used to publish an edict relative to certain subjects, which edict also became a part of the ius honorarium.

8. The answers of the jurisprudenti are the decisions and opinions of persons who were authorized to determine the law. For anciently it was provided that there should be persons to interpret publicly the law, who were permitted by the emperor to give answers on questions of law. They were called jurisconsulti; and the authority of their decision and opinions, when they were all unanimous, was such, that the judge could not, according to the constitutiones, refuse to be guided by their answers.

9. The unwritten law is that which usage has established; for ancient customs, being sanctioned by the consent of those who adopt them, are like laws.

10. The civil law is not improperly divided into two kinds, for the division seems to have had its origin in the customs of the two states, Athens and Lacedaemon. For in these states it used to be the case, that the Lacedaemonians rather committed to memory what they observed as law, while the Athenians rather observed as law what they had consigned to writing, and included in the body of their laws.

11. The laws of nature, which all nations observe alike, being established by a divine providence, remain ever fixed and immutable. But the laws which every state has enacted, undergo frequent changes, either by the tacit consent of the people, or by a new law being subsequently passed.

III. The Law of Persons.

All our law relates either to persons, or to things, or to actions. Let us first speak of persons; as it is of little purpose to know the law, if we do not know the persons for whose sake the law was made. The chief division in the rights of persons is this: men are all either free or slaves.

1. Freedom, from which men are said to be free, is the natural power of doing what we each please, unless prevented by force or by law.

2. Slavery is an institution of the law of nations, by which one man is made the property of another, contrary to natural right.

3. Slaves are denominated servi, because generals order their captives to be sold, and thus preserve them, and do not put them to death. Slaves are also called mancipia, because they are taken from the enemy by the strong hand.

4. Slaves either are born or become so. They are born so when their mother is a slave; they become so either by the law of nations, that is, by captivity, or by the civil law, as when a free person, above the age of twenty, suffers himself to be sold, that he may share the price given for him.

5. In the condition of slaves there is no distinction; but there are many distinctions among free persons; for they are either born free, or have been set free.

IV. The Free-born.

A person is ingenuus who is free from the moment of his birth, by being born in matrimony, of parents who have been either both born free, or both made free, or one of whom has been born and the other made free; and when the mother is free, and the father a slave, the child nevertheless is born free; just as he is if his mother is free, and it is uncertain who is his father; for he had then no legal father. And it is sufficient if the mother is free at the time of the birth, although a slave when she conceived; and on the other hand, if she be free when she conceives, and is a slave when she gives birth to her child, yet the child is held to be born free; for the misfortune of the mother ought not to prejudice her unborn infant. The question hence arose, if a female slave with child is made free, but again becomes a slave before the child is born, whether the child is born free or a slave? Marcellus thinks it is born free, for it is sufficient for the unborn child, if the mother has been free, although only in the intermediate time; and this is true.

1. When a man has been born free he does not cease to be ingenuus, because he has been in the position of a slave, and has subsequently been enfranchised; for it has been often settled that enfranchisement does not prejudice the rights of birth.

V. Freedmen.

Freedmen are those who have been manumitted from just servitude. Manumission is the process of freeing from "the hand." For while any one is in slavery, he is under "the hand" and power of another, but by manumission he is freed from this power. This institution took its rise from the law of nations; for by the law of nature all men were born free; and manumission was not heard of, as slavery was unknown. But when slavery came in by the law of nations, the boon of manumission followed. And whereas all were denominated by the one natural name of "men," the law of nations introduced a division into three kinds of men, namely, freemen, and in opposition to them, slaves; and thirdly, freedmen who had ceased to be slaves.

1. Manumission is effected in various ways; either in the face of the Church, according to the imperial constitutiones, or by vindicta, or in the presence of friends, or by letter, or by testament, or by any other expression of a man's last will. And a slave may also gain his freedom in many other ways, introduced by the constitutiones of former emperors, and by our own.

2. Slaves may be manumitted by their masters at any time; even when the magistrate is only passing along, as when a praetor, or praeses, or proconsul is going to the baths, or the theater.

3. Freedmen were formerly divided into three classes. For those who were manumitted sometimes obtained a complete liberty, and became Roman citizens; sometimes a less complete, and became Latini under the lex Julia Norbana; and sometimes a liberty still inferior, and became dedititii, by the lex Aelia Sentia. But this lowest class, that of the dedititii, has long disappeared, and the title of Latinus become rare; and so in our benevolence, which leads us to complete and improve everything, we have introduced a great reform by two constitutiones, which re-established the ancient usage; for in the infancy of the state there was but one liberty, the same for the enfranchised slave as for the person who manumitted him; excepting, indeed, that the person manumitted was freeborn. We have abolished the class of dedititii by a constitutio published among our decisions, by which, at the suggestion of the eminent Tribonian, quaestor, we have put an end to difficulties arising from the ancient law. We have also, at his suggestion, done away with the Latini Juniani, and everything relating to them, by another constitutio, one of the most remarkable of our imperial constitutiones. We have made all freedmen whatsoever Roman citizens, without any distinction as to the age of the slave, or the interest of the manumittor, or the mode of manumission. We have also introduced many new methods by which slaves may become Roman citizens, the only kind of liberty that now exists.

VIII. Slaves.

We now come to another division relative to the rights of persons; for some persons are independent, some are subject to the power of others. Of those, again, who are subject to others, some are in the power of parents, others in that of masters. Let us first treat of those who are subject to others; for, when we have ascertained who these are, we shall at the same time discover who are independent. And first let us consider those who are in the power of masters.

1. Slaves are in the power of masters, a power derived from the law of nations: for among all nations it may be remarked that masters have the power of life and death over their slaves, and that everything acquired by the slave is acquired for the master.

2. But at the present day none of our subjects may use unrestrained violence towards their slaves, except for a reason recognized by law. For, by a constitutio of the Emperor Antoninus Pius, he who without any reason kills his own slave is to be punished equally with one who has killed the slave of another. The excessive severity of masters is also restrained by another constitutio of the same emperor. For, when consulted by certain governors of provinces on the subject of slaves, who fly for sanctuary either to temples, or to the statues of the emperors, he decided that if the severity of masters should appear excessive, they might be compelled to make sale of their slaves upon equitable terms, so that the masters might receive the value; and this was a very wise decision, as it concerns the public good, that no one should misuse his own property. The following are the terms of this rescript of Antoninus, which was sent to Laelius Marcianus: The power of masters over their slaves ought to be preserved unimpaired, nor ought any man to be deprived of his just right. But it is for the interest of all masters themselves, that relief prayed on good grounds against cruelty, the denial of sustenance, or any other intolerable injury, should not be refused. Examine, therefore, into the complaints of the slaves who have fled from the house of Julius Sabinus, and taken refuge at the statue of the emperor; and, if you find that they have been too harshly treated, or wantonly disgraced, order them to be sold, so that they may not fall again under the power of their master; and, if Sabinus attempt to evade my constitutio, I would have him know, that I shall severely punish his disobedience.

IX. The Power of Parents.

Our children, begotten in lawful marriage, are in our power.

1. Marriage, or matrimony, is a binding together of a man and woman to live in an indivisible union.

2. The power which we have over our children is peculiar to the citizens of Rome; for no other people have a power over their children, such as we have over ours.

3. The child born to you and your wife is in your power. And so is the child born to your son of his wife, that is, your grandson or granddaughter; so are your great-grandchildren, and all your other descendants. But a child born of your daughter is not in your power, but in the power of its own father.

X. Marriage.

Roman citizens are bound together in lawful matrimony when they are united according to law, the males having attained the age of puberty, and the females a marriageable age, whether they are fathers or sons of a family; but, of the latter, they must first obtain the consent of their parents, in whose power they are. For both natural reason and the law require this consent; so much so, indeed, that it ought to precede the marriage. Hence the question has arisen, whether the daughter of a madman could be married, or his son marry? And as opinions were divided as to the son, we decided that as the daughter of a madman might, so may the son of a madman marry without the intervention of the father, according to the mode established by our constitutio.

1. We may not marry every woman without distinction; for with some, marriage is forbidden. Marriage cannot be contracted between persons standing to each other in the relation of ascendant and descendant, as between a father and daughter, a grandfather and his granddaughter, a mother and her son, a grandmother and her grandson; and so on, ad infinitum. And, if such persons unite together, they only contract a criminal and incestuous marriage; so much so, that ascendants and descendants, who are only so by adoption, cannot intermarry; and even after the adoption is dissolved, the prohibition remains. You cannot, therefore, marry a woman who has been either your daughter or granddaughter by adoption, although you may have emancipated her.

2. There are also restrictions, though not so extensive, on marriage between collateral relations. A brother and sister are forbidden to marry, whether they are the children of the same father and mother, or of one of the two only. And, if a woman becomes your sister by adoption, you certainly cannot marry; but, if the adoption is destroyed by emancipation, you may marry her; as you may also, if you yourself are emancipated. Hence it follows, that if a man would adopt his son-in-law, he ought first to emancipate his daughter; and if he would adopt his daughter-in-law, he ought previously to emancipate his son.

3. A man may not marry the daughter of a brother, or a sister, nor the granddaughter, although she is in the fourth degree. For when we may not

marry the daughter of any person, neither may we marry the granddaughter. But there does not appear to be any impediment to marrying the daughter of a woman whom your father has adopted; for she is no relation to you, either by natural or civil law.

4. The children of two brothers or two sisters, or of a brother and sister, may marry together.

5. So, too, a man may not marry his paternal aunt, even though she be so only by adoption; nor his maternal aunt; because they are regarded in the light of ascendants. For the same reason, no person may marry his great-aunt, either paternal or maternal.

6. There are, too, other marriages from which we must abstain, from regard to the ties created by marriage; for example, a man may not marry his wife's daughter, or his son's wife, for they are both in the place of daughters to him; and this must be understood to mean those who have been our stepdaughters or daughters-in-law; for if a woman is still your daughter-in-law, that is if she is still married to your son, you cannot marry her for another reason, as she cannot be the wife of two persons at once. And if your step-daughter, that is, if her mother is still married to you, you cannot marry her, because a person cannot have two wives at the same time.

7. Again, a man is forbidden to marry his wife's mother, and his father's wife, because they hold the place of mothers to him; a prohibition which can only operate when the affinity is dissolved; for if your step-mother is still your step-mother, that is, if she is still married to your father, she would be prohibited from marrying you by the common rule of law, which forbids a woman to have two husbands at the same time. So if your wife's mother is still your wife's mother, that is, if her daughter is still married to you, you cannot marry her, because you cannot have two wives at the same time.

8. The son of a husband by a former wife, and the daughter of a wife by a former husband, or the daughter of a husband by a former wife, and the son of a wife by a former husband, may lawfully contract marriage, even though they have a brother or sister born of the second marriage.

9. The daughter of a divorced wife by a second husband is not your step-daughter; and yet Julian says we ought to abstain from such a marriage. For the betrothed wife of a son is not your daughter-in-law; nor your betrothed wife your son's step-mother; and yet it is more decent and more in accordance with law to abstain from such marriage.

10. It is certain that the relationship of slaves is an impediment to marriage, even if the father and daughter or brother and sister, as the case may be, have

been enfranchised.

11. There are other persons also, between whom marriage is prohibited for different reasons, which we have permitted to be enumerated in the books of the Digests or Pandects, collected from the old law.

12. If persons unite themselves in contravention of the rules thus laid down, there is no husband or wife, no nuptials, no marriage, nor marriage portion, and the children born in such a connection are not in the power of the father. For, with regard to the power of a father, they are in the position of children conceived in prostitution, who are looked upon as having no father, because it is uncertain who he is; and are therefore called spurii, either from a Greek word sporadan, meaning "at hazard," or as being sine patre, without a father. On the dissolution of such a connection there can be no claim made for the demand of a marriage portion. Persons who contract prohibited marriages are liable also to further penalties set forth in our imperial constitutiones.

13. It sometimes happens that children who at their birth were not in the power of their father are brought under it afterwards. Such is the case of a natural son, who is given to the curia, and then becomes subject to his father's power. Again, a child born of a free woman, with whom marriage was not prohibited by any law, but with whom the father only cohabited, will likewise become subject to the power of his father if at any time afterwards instruments of dowry are drawn up according to the provisions of our constitutio. And this constitutio confers the same benefits on any children who may be subsequently born of the same marriage.

XI. Adoption.

Not only are our natural children, as we have said, in our power, but those also whom we adopt.

1. Adoption takes place in two ways, either by imperial rescript, or by the authority of the magistrate. The imperial rescript gives power to adopt persons of either sex who are sui juris; and this species of adoption is called arrogatio. By the authority of the magistrate we adopt persons in the power of an ascendant, whether in the first degree, as sons and daughters, or in an inferior degree, as grandchildren or great-grandchildren.

2. But now, by our constitutio, when a filiusfamilias is given in adoption by his natural father to a stranger, the power of the natural father is not dissolved; no right passes to the adoptive father, nor is the adopted son in his power, although we allow such son the right of succession to his adoptive father dying intestate. But if a natural father should give his son in adoption, not to a stranger, but to the son's maternal grandfather; or, supposing the natural father

has been emancipated, if he gives the son in adoption to the son's paternal grandfather, or to the son's maternal great-grandfather, in this case, as the rights of nature and adoption concur in the same person, the power of the adoptive father, knit by natural ties and strengthened by the legal bond of adoption, is preserved undiminished, so that the adopted son is not only in the family, but in the power of his adoptive father.

3. When any one, under the age of puberty, is arrogated by the imperial rescript, the arrogatio is only allowed when inquiry has been made into the circumstances of the case. It is asked what is the motive leading to the arrogatio, and whether the arrogatio is honorable and expedient for the pupil. And the arrogatio is always made under certain conditions: the arrogator is obliged to give security before a public person, that is, before a notary, that if the pupil should die within the age of puberty, he will restore all the property to those who would have succeeded him if no adoption had been made. Nor, again, can the arrogator emancipate the person arrogated, unless, on examination into the case, it appears that the latter is worthy of emancipation; and, even then, the arrogator must restore the property belonging to the person he emancipates. Also, even if the arrogator, on his death-bed, has disinherited his arrogated son, or, during his life, has emancipated him without just cause, he is obliged to leave him the fourth part of all his goods, besides what the son brought to him at the time of arrogatio, or acquired for him afterwards.

4. A younger person cannot adopt an older; for adoption imitates nature; and it seems unnatural that a son should be older than his father. Anyone, therefore, who wishes either to adopt or arrogate a son should be the elder by the term of complete puberty, that is, by eighteen years.

5. A person may adopt another as grandson or granddaughter, great-grandson or great-granddaughter, or any other descendant, although he has no son.

6. A man may adopt the son of another as his grandson, and the grandson of another as his son.

7. If a man adopts a grandson to be the son of a man already adopted, or of a natural son in his power, the consent of this son ought first to be obtained, that he may not have a suus heres given him against his will. But, on the contrary, if a grandfather gives his grandson by a son in adoption, the consent of the son is not necessary.

8. He who is either adopted or arrogated is assimilated, in many points, to a son born in lawful matrimony; and therefore, if any one adopts a person who is not a stranger by imperial rescript, or before the praetor, or the praeses of a province, he can afterwards give in adoption to another the person whom he has adopted.

9. It is a rule common to both kinds of adoption, that persons, although incapable of procreating, as, for instance, impotent persons, may, but those who are castrated cannot adopt.

10. Women, also, cannot adopt; for they have not even their own children in their power; but, by the indulgence of the emperor, as a comfort for the loss of their own children, they are allowed to adopt.

11. Adoption by the rescript of the emperor has this peculiarity. If a person, having children under his power, should give himself in arrogatio, not only does he submit himself to the power of the arrogator, but his children are also in the arrogator's power, being considered his grandchildren. It was for this reason that Augustus did not adopt Tiberius until Tiberius had adopted Germanicus; so that directly the adoption was made, Germanicus became the grandson of Augustus.

12. Cato, as we learn from the ancients, has with good reason written that slaves, when adopted by their masters, are thereby made free. In accordance with which opinion, we have decided by one of our constitutiones that a slave to whom his master by a solemn deed gives the title of son is thereby made free, although he does not require thereby the rights of a son.

XII. Freeing From Power.

Let us now inquire into the different ways in which persons in the power of others are freed from it. How slaves are freed from the power of their masters may be learnt from what we have already said with regard to manumission. Those who are in the power of a parent became independent at his death; a rule, however, which admits of a distinction. For when a father dies, his sons and daughters become undoubtedly independent; but when a grandfather dies, his grandchildren do not necessarily become independent, but only if on the grandfather's death they do not fall under the power of their father. Therefore, if their father is alive at the death of their grandfather, and was in his power, then, on the grandfather's death, they become subject to the power of their father. But, if at the time of the grandfather's death their father is either dead, or has already passed out of the grandfather's power by emancipation, as they do not fall under the power of their father, they become independent.

1. If a man, convicted of some crime, is deported to an island, he loses the rights of a Roman citizen; whence it follows, that the children of a person thus banished cease to be under his power, exactly as if he were dead. Equally, if a son is deported, does he cease to be under the power of his father? But, if by favor of the emperor anyone is restored, he regains his former position in every respect.

2. A father who is merely banished by relegatio still retains his children in his power: and a child who is relegated still remains in the power of his father.

3. When a man becomes a "slave of punishment" he ceases to have his sons in his power. Persons become "slaves of punishment" who are condemned to the mines, or exposed to wild beasts.

4. A son, though he becomes a soldier, a senator, or a consul, still remains in the power of his father, from which neither military service nor consular dignity can free him. But by our constitutio the supreme dignity of the patriciate frees the son from the power of his father immediately on the grant of the imperial patent. It is obviously absurd that a parent could emancipate his son from the tie of his power, and that the majesty of the emperor should not be able to release from the power of another, one whom he had chosen to be a father of the state.

5. If a parent is taken prisoner, although he become the slave of the enemy, yet his paternal power is only suspended, owing to the ius postliminii; for captives, when they return, are restored to all their former rights. Thus, on his return, the father will have his children in his power; for the postliminium supposes that the captive has never been absent. If, however, a prisoner dies in captivity, the son is considered to have been independent from the time when his father was taken a prisoner. So, too, if a son, or grandson, is taken prisoner, the power of the parent, by means of the ius postliminii, is only in suspense. The term postliminium is derived from post and limen. We therefore say of a person taken by the enemy, and then returning into our territory, that he is come back by postliminium. For, just as the threshold forms the boundary of a house, so the ancients have termed the boundary of the empire a threshold. Whence limes also is derived, and is used to signify a boundary and limit. Thence comes the word postliminium, because the prisoner returned to the same limits whence he had been lost. The prisoner, also, who is retaken on the defeat of the enemy, is considered to have come back by postliminium.

6. Children, also, cease to be under the power of their parents by emancipation. Formerly emancipation was effected, either adopting the process of the ancient law, consisting of imaginary sales, each followed by a manumission, or by imperial rescript; but we, in our wisdom, have introduced a reform on this point by one of our constitutiones. The old fictitious process is now done away with, and parents may now appear directly before a proper judge or magistrate, and free from their power their children, or grandchildren, or other descendants. And then, according to the praetorian edict, the parent has the same rights over the goods of those whom he emancipates, as the patron has over the goods of his freedman. And, further, if the child or

children emancipated are within the age of puberty, the parent, by the emancipation, becomes their tutor.

7. It is also to be observed that a parent having in his power a son, and by that son a grandson or granddaughter, may emancipate his son, and retain in his power his grandson or granddaughter; or, conversely, he may emancipate his grandson or granddaughter, and retain his son in his power; or, he may make them all independent. And it is the same in the case of a great-grandson, or a great-granddaughter.

8. If a father has a son in his power, and gives him in adoption to the son's natural grandfather or great-grandfather, in conformity with our constitutiones enacted on this subject, that is, if he declares his intention in a formal act before a competent judge, in the present and without the dissent of the person adopted, and also in the presence of the person who adopts, then the right of paternal power is extinguished as to the natural father, and passes from him to the adoptive father; with regard to whom, as we have before observed, adoption preserves all its effects.

9. It must be observed, that if your daughter-in-law becomes pregnant, and if during her pregnancy you emancipate your son, or give him in adoption, the child will be born in your power; but if the child is conceived subsequently to the emancipation or adoption, he is born in the power of his emancipated father, or his adoptive grandfather. Children, natural or adoptive, have almost no means of compelling their parents to free them from their power.

XIII. Guardianship.

Let us now proceed to another division of persons. Of those who are not in the power of a parent, some are under a tutor, some under a curator, some under neither. Let us treat, then, of the class of those persons who are under a tutor or curator; for we shall thus ascertain who are they who are not subject to either. And first of persons under a tutor.

1. Tutelage, as Servius has defined it, is an authority and power over a free person, given and permitted by the civil law, in order to protect one whose tender years prevent him defending himself.

2. Tutors are those who have this authority and power, and they take their name from the nature of their office; for they are called tutors, as being protectors [i.e., tuitores] and defenders, just as those who have the care of the sacred edifices are called aeditui.

3. Parents may give tutors by testament to such of their children as have not attained the age of puberty, and are under their power. And this, without any

distinction, in the case of all sons and daughters. But grandfathers can only give tutors to their grandchildren when these will not fall under the power of their father on the death of the grandfather. Hence, if your son is in your power at the time of your death, your grandchildren by that son cannot have a tutor appointed them by your testament, although they were in your power; because, at your decease, they will fall under the power of their father.

4. Posthumous children, as in many other respects, so also in this respect, are considered as already born before the death of their fathers; and tutors may be given by testament to posthumous children, as well as to children already born, provided that the posthumous children, had they been born in the lifetime of their father, would have been sui heredes, and in their father's power.

5. But if a father gives a tutor by testament to his emancipated son, the appointment must be confirmed by the sentence of the praeses in all cases, that is, without inquiry.

XV. Agnate Tutorship.

They to whom no tutor has been appointed by testament, have their agnati as tutors, by the law of the Twelve Tables, and such testators are called "legal tutors."

1. Agnati are those who are related to each other through males, that is, are related through the father, as, for instance, a brother by the same father, or the son of a brother, or the son of such a son; or, again, a father's brother, or a father's brother's son, or the son of such a son. But those who are related to us through the females are not agnati, but merely cognati by their natural relationship. This the son of a father's sister is related to you not by agnatio, but by cognatio, and you are also related to him by cognatio; as children belong to the family of their father, and not to that of their mother.

XVI. Change of Station.

The capitis deminutio is a change of status, which may happen in three ways: for it may be the greatest capitis deminutio, or the less, also called the middle, or the least.

1. The greater capitis deminutio is, when a man loses both his citizenship and his liberty; as they do who by a terrible sentence are made "the slaves of punishment;" and freedmen, condemned to slavery for ingratitude towards their patrons; and all those who suffer themselves to be sold in order to share the price obtained.

2. The less or middle capitis deminutio is, when a man loses his citizenship, but retains his liberty; as is the case when anyone is forbidden the use of fire and water, or is deported to an island.

3. The least capitis deminutio is when a person's status is changed without forfeiture either of citizenship or liberty; as when a person sui juris becomes subject to the power of another, or a person alieni juris becomes independent.

4. A slave who is manumitted is not said to be capite manutus, as he has no "caput," or civil existence.

5. Those whose dignity rather than their status is changed, do not suffer a capitis deminutio, as those, for instance, who are removed from the senatorial dignity.

6. In saying that the right of cognatio remains in spite of a capitis deminutio, we were speaking only of the least deminutio, after which the cognatio subsists. For, by the greater deminutio, as, for example, if one of the cognati becomes a slave, the right of cognatio of wholly destroyed, so as not to be recovered even by manumission. So, too, the right of cognatio is lost by the less or middle deminutio, as, for example, by deportation to an island.

7. The right to be tutor, which belongs to the agnati, does not belong to all at the same time, but to the nearest in degree only; or, if there are many in the same degree, then to all in that degree. Several brothers, for instance, in the same degree, are all equally called to be tutor.

XVII. Patron Guardianship.

By the same law of the Twelve Tables, the tutelage of freedmen and freedwomen belongs to their patrons, and to the children of their patrons; and this tutelage is called legal tutelage, not that the law contains any express provision on the subject, but because it has been as firmly established by interpretation, as if it had been introduced by the express words of the law. For, as the law had ordered that patrons and their children should succeed to the inheritance of their freedmen or freedwomen who should die intestate, the ancients were of opinion that the intent of the law was that the tutelage also belonged to them; since the law which calls agnati to the inheritance, also appoints them to be tutors, because, in most cases, where the advantage of the succession is, there also ought to be the burden of the tutelage. We say "in most cases," because if a person below the age of puberty is manumitted by a female, she is called to the inheritance, although another person is tutor.

XX. Appointing of Tutors.

If any one had no tutor at all, one was given him, in the city of Rome by the praetor urbanus, and a majority of the tribunes of the plebs, under the lex Atilia; in the provinces, by the praesides under the lex Julia et Titia.

1. Again, if a testamentary tutor had been appointed conditionally, or for a certain time, until the completion of the condition or arrival of the time fixed, another tutor might be appointed under the same laws. Also, if a tutor had been given unconditionally, yet, as long as no one had accepted the inheritance, as heir by the testament, another tutor might be appointed for the interval. But this office ceased when the condition was accomplished, when the time arrived, or the inheritance was entered upon.

2. If, again, a tutor was taken prisoner by the enemy, application could be made, under the same laws, for another tutor, whose office ceased when the first tutor returned from captivity; for on his return he resumed the tutelage by the ius postliminii.

3. But tutors have ceased to be appointed under these laws, since they have been appointed to pupils of either sex, first by the consuls, after inquiry into the case, and afterwards by the praetors under imperial constitutiones. For the above-mentioned laws required no security from the tutors for the safety of the pupil's property, nor did they contain any provisions to compel them to accept the office.

4. Under our present system tutors are appointed at Rome by the prefect of the city, or the praetor, according to his jurisdiction, and, in the provinces, by the praesides after inquiry; or by an inferior magistrate, at the command of the praeses, if the property of the pupil is only small.

5. But by one of our constitutiones, to do away with these distinctions of different persons, and to avoid the necessity of waiting for the order of the praeses, we have enacted, that if the property of the pupil or adult does not exceed five hundred solidi, tutors or curators shall be appointed by the defensores of the city, acting in conjunction with the holy bishop, or by other public persons, that is, by the magistrates, or, in the city of Alexandria, by the judge; and legal security must be given according to the terms of the same constitutio, that is to say, at the risk of those who receive it.

6. It is agreeable to the law of nature that the persons under the age of puberty should be under tutelage, so that persons of tender years may be under the government of another.

7. As tutors administer the affairs of their pupils, they may be compelled to account, by the actio tutela, when their pupils arrive at puberty.

XXI. Authority of Tutors.

In some cases it is necessary that the tutor should authorize the acts of the pupil, in others not. When, for instance, the pupil stipulates for something to be given him, the authorization of the tutor is not requisite; but if the pupil makes the promise, it is requisite; for the rule is, that pupils may make their condition better, but may not make it worse, without the authorization of their tutor. And therefore in all cases of reciprocal obligation, as in contracts of buying, selling, letting, hiring, bailment, and deposit, if the tutor does not authorize the pupil to enter into the contract, the person who contracts with the pupil is bound, but the pupil is not bound.

1. Pupils, however, cannot, without the authorization of the tutor, enter on an inheritance, demand the possession of goods, or take an inheritance given by a fideicommissum, even though to do so would be to their gain, and could involve them in no risk.

2. A tutor who wishes to authorize any act, which he esteems advantageous to his pupil, should do so at once while the business is going on, and in person, for his authorization is of no effect if given afterwards or by letter.

3. When a suit is to be commenced between a tutor and his pupil, as the tutor cannot give authority with regard to his own case, a curator, and not, as formerly, a praetorian tutor, is appointed, with whose intervention the suit is carried on, and who ceases to be curator when the suit is determined.

XXII. Freedom from Guardianship.

Pupils, both male and female, are freed from tutelage when they attain the age of puberty. The ancients judged of puberty in males, not only by their years, but also by the development of their bodies. But we, from a wish to conform to the purity of the present times, have thought it proper, that what seemed even to the ancients to be indecent towards females, namely, the inspection of the body, should be thought no less so towards males; and, therefore, by our sacred constitutio, we have enacted that puberty in males should be considered to commence immediately on the completion of their fourteenth year; while, as to females, we have preserved the wise rule adopted by the ancients, by which they are esteemed fit for marriage on the completion of their twelfth year.

1. Tutelage is also determined if the pupil, before attaining the age of puberty, is either arrogated, or suffers deportation, or is reduced to slavery, or becomes a captive.

2. Again, if a person is appointed by testament to be tutor until a condition is

accomplished, he ceases to be tutor on the accomplishment of the condition.

3. Tutelage ends also by the death of the tutor, or of the pupil.

4. When a tutor, by a capitis deminutio, loses his liberty or his citizenship, his tutelage is in every case at an end. But, if he undergo only the least capitis deminutio, as when a tutor gives himself in adoption, then only legal tutelage is ended, and not the other kinds; but any capitis deminutio of the pupil, even the least, always puts an end to the tutelage.

5. A tutor, again, who is appointed by testament to hold office during a certain time, lays down his office when the time is expired.

6. They also cease to be tutors who are removed from their office on suspicion, or who excuse themselves on good grounds from the burden of the tutelage, and rid themselves of it according to the rules we will give hereafter.

XXIII. Curatorship.

Males arrived at the age of puberty, and females of a marriageable age, receive curators, until they have completed their twenty-fifth year; for, although they have attained the age of puberty, they are still of an age which makes them unfit to protect their own interests.

1. Curators are appointed by the same magistrates who appoint tutors. A curator cannot be appointed by testament, but if appointed, he may be confirmed in his office by a decree of the praetor of praeses.

2. No adolescent is obliged to receive a curator against his will, unless in case of a lawsuit, for a curator may be appointed for a particular special purpose.

3. Madmen and prodigals, although past the age of twenty-five, are yet placed under the curatorship of their agnati by the law of the Twelve Tables. But, ordinarily, curators are appointed for them, at Rome, by the prefect of the city or the praetor: in the provinces, by the praesides, after inquiry into the circumstances has been made.

4. Persons who are of unsound mind, or who are deaf, mute, or subject to any perpetual malady, since they are unable to manage their own affairs, must be placed under curators.

5. Sometimes even pupils receive curators; as, for instance, when the legal tutor is unfit for the office; for a person who already has a tutor cannot have another given him; again, if a tutor appointed by testament, or by the praetor or praeses is unfit to administer the affairs of his pupil, although there is

nothing fraudulent in the way he administers them, it is usual to appoint a curator to act conjointly with him. It is also usual to assign curators in the place of tutors excused for a time only.

6. If a tutor is prevented by illness or otherwise from administering the affairs of his pupil, and his pupil is absent, or an infant, then the praetor or praeses of the province will, at the tutor's risk, appoint by decree some one to be the agent of his pupil.

XXIV. Security by Guardians.

To prevent the property of pupils and persons placed under curators being wasted or destroyed by tutors or curators, the praetor sees that tutors and curators give security against such conduct. But this is not always necessary; a testamentary tutor is not compelled to give security, as his fidelity and diligence have been recognized by the testator. And tutors and curators appointed upon inquiry are not obliged to give security, because they have been chosen as being proper persons.

1. If two or more are appointed by testament, or by a magistrate, after inquiry, as tutors or curators, any of them, by offering security for the indemnification of the pupil or adolescent, may be preferred to his co-tutor or co-curator, so that he may either alone administer the property, or may oblige his co-tutor or co-curator to give security, if he wishes to obtain the preference, and become the sole administrator. He cannot directly demand security from his co-tutor or co-curator; he must offer it himself, and so give his co-tutor or co-curator the choice to receive or to give security. If no tutor or curator offers security, the person appointed by the testator to manage the property shall manage it; but if no such person be appointed, then the administration will fall to the person whom a majority of the tutors shall choose, as is provided for the praetorian edict. If the tutors disagree in their choice, the praetor must interpose. And in the same way, when several are appointed after inquiry by a magistrate, a majority is to determine who shall administer.

2. It should be observed that it is not only tutors and curators who are responsible for their administration to pupils, minors, and the other persons we have mentioned, but, as a last safeguard, a subsidiary actio may be brought against the magistrate who has accepted the security as sufficient. The subsidiary actio may be brought against a magistrate who has wholly omitted to take security, or has taken insufficient security; and the liability to this actio, according to the responses of the jurisprudenti as well as the imperial constitutiones, extends also to the heirs of the magistrate.

3. The same constitutiones also expressly enact that tutors and curators who do not give security, may be compelled to do so by seizure of their goods as

pledges.

4. Neither the prefect of the city, nor the praetor, nor the praeses of a province, nor any one else to whom the appointment of tutors belongs, will be liable to this actio, but only those whose ordinary duty is to exact the security.

XXV. Excusal of Tutors or Curators.

Tutors and curators are excused on different grounds; most frequently on account of the number of their children, whether in their power or emancipated. For anyone who at Rome has three children living, in Italy four, or in the provinces five, may be excused from being tutor or curator as from other offices, for the office of both a tutor and a curator is considered a public one. Adopted children will not avail the adopter, but though given in adoption are reckoned in favor of their natural father. Grandchildren by a son may be reckoned in the number, so as to take the place of their father, but not grandchildren by a daughter. It is only those children who are living that can be reckoned to excuse any one from being tutor or curator, and not those who are dead. It has been questioned, however, whether those who have perished in war may not be reckoned; and it has been decided, that those who die in battle may, but they only, for glory renders those immortal who have fallen for their country.

1. The Emperor Marcus declared by rescript in his Semestria, that a person engaged in administering the property of the fiscus is excused from being tutor or curator while his administration lasts.

2. Persons absent on the service of the state are excused from being tutors or curators; and if those who have already been appointed either as tutors or curators should afterwards be absent on the public service, they are excused during their absence, and meanwhile curators are appointed in their place. On their return, they must again take upon them the burden of the tutelage; and, according to Papinian's opinion, expressed in the fifth book of his answers, are not entitled to the privilege of a year's vacation, which is only allowed them when they are called to a new tutelage.

3. By a rescript of the Emperor Marcus, all persons invested with magisterial power may excuse themselves; but they cannot abandon the office of tutor, which they have already undertaken.

4. No tutor or curator can excuse himself by alleging a lawsuit with the pupil or adult; unless the suit embraces the whole of the goods, or the property, or is for an inheritance.

5. Three tutelages or curatorships, if unsolicited, serve as an excuse from

filling any other such office, while the holder continues to discharge duties. But the tutelage of several pupils, or the curatorship of an undivided property, as where the pupils or adults are brothers, is reckoned as one only.

6. Poverty is a sufficient excuse, when it can be proved such as to render a man incapable of the burden imposed upon him, according to the rescripts given both by the imperial brothers together, and by the Emperor Marcus singly.

7. Illness also, if it prevents a man from superintending his own affairs, affords a ground of excuse.

8. So, too, a person who cannot read must be excused, according to the rescript of the Emperor Antoninus Pius; but persons who cannot read are sometimes considered capable of administering.

9. If it is through enmity that the father appoints by testament any one as tutor, this circumstance itself will afford a sufficient excuse; just as, on the other hand, they who have promised the father of the pupils to fill the office of tutor, cannot be excused.

10. That the tutor was unknown to the father of a pupil is not of itself to be admitted as a sufficient excuse, as is decided by a rescript of the imperial brothers.

11. Enmity against the father of the pupil or adult, if of a deadly character, and no reconciliation has taken place, is usually considered as an excuse from being tutor or curator.

12. So, too, he whose status has been called in question by the father of the pupil, is excused from the office of tutor.

13. Persons above seventy years of age may be excused from being tutors of curators. Persons under the age of twenty-five were formerly excused, but, by our constitutio, they are now prohibited from aspiring to these offices, so that excuses are become unnecessary. This constitutio provides that neither pupils nor adults shall be called to a legal tutelage. For it is absurd that persons who are themselves governed, and are known to need assistance in the administration of their own affairs, should become the tutors or curators of others.

14. The same rule holds good also as to military persons. They cannot, even though they wish it, be admitted to the office of tutor or curator.

15. Grammarians, rhetoricians, and physicians at Rome, and those who

exercise such professions in their own country, and are within the number authorized, are exempted from being tutors or curators.

16. If a person wishes to excuse himself, and has several excuses, even supposing some are not admitted, there is nothing to prevent him employing others, providing he does so within the prescribed time. Those who wish to excuse themselves are not to appeal, but whatever kind of tutors they may be, that is, however they may have been appointed, must offer their excuses within the fifty days next after they have known of their appointment, if they are within a hundred miles of the place when they were appointed. If they are at a greater distance they are allowed a day for every twenty miles, and thirty days besides; but the time should, as Scaevola said, be so calculated as never to be less than fifty days in the whole.

17. The tutor who is appointed is considered as appointed for the whole patrimony.

18. A person who has discharged the office of tutor is not compelled against his will to become the curator of the same person; so much so, that although the father, after appointing a tutor by testament, adds that he also appoints the same person to be curator, the person so appointed if unwilling cannot be compelled to take the office of curator; so it has been decided by the rescript of the Emperors Severus and Antoninus.

19. The same emperors have decided by rescript, that a husband appointed as curator to his wife may excuse himself from the office, even after he has intermeddled with her affairs.

20. If any one has succeeded by false allegations in getting himself excused from the office of tutor, he is not discharged from the burden of the office.

XXVI. Suspected Guardians.

The right of accusing a suspected tutor or curator is derived from the law of the Twelve Tables.

1. The power of removing suspected tutors belongs at Rome to the praetor; in the provinces to the praesides, or to the legate of the proconsul.

2. We have shown what magistrates may take cognizance of suspected persons: let us now inquire, what persons may become suspected. All tutors may become so, whether testamentary, or others; thus even a legal tutor may be accused. But what is the case with a patron? He, too, may be accused; but we must remember that his reputation must be spared, although he be removed as suspected.

3. Let us inquire, by whom suspected persons may be accused. Now an accusation of this sort is in a measure public, that is, it is open to all. Nay, by a rescript of the Emperors Severus and Antoninus, even women are admitted to be accusers; but only those who are induced to do so through feelings of affection, as a mother, a nurse, or a grandmother, or a sister, who may all become accusers. But the praetor will admit any other woman to make the accusation, in whom he recognizes a real affection, and who, without overstepping the modesty of her sex, is impelled by this affection not to endure the pupil suffering harm.

4. No person below the age of puberty can bring an accusation against his tutor as suspected: but those who have attained that age may, under the advice of their near relations, accuse their curators. Such is the decision given in a rescript of the Emperors Severus and Antoninus.

5. A tutor is suspected who does not faithfully execute his trust, although perfectly solvent, as Julian writes, who also thinks that even before he enters on his office, a tutor may be removed, as suspected; and a constitutio has been made in accordance with this opinion.

6. A suspected person, if removed on account of fraud, is infamous, but not if for neglect only.

7. If an actio is brought against any one as suspected, his administration, according to Papinian, is suspended while the accusation is pending.

8. If a process is commenced against a tutor or curator, as suspected, and he dies while it is going on, the process is at an end.

9. If a tutor fails to appear, that a certain amount of maintenance may be fixed on for his pupil, it is provided by a rescript of the Emperors Severus and Antoninus that the pupil shall be put into the possession of the effects of the tutor, and that after a curator has been appointed, those things, which are perishable, may be sold. Therefore, a tutor who does not afford maintenance to his pupil may be removed, as suspected.

10. But if the tutor appears, and denies that maintenance can be allowed in consequence of the smallness of the pupil's estate; if he says this falsely, he shall be handed over to the prefect of the city, to be punished, just as a person is handed over who has purchased a tutelage by bribery.

11. Also a freedman, who is proved to have been guilty of fraud, when acting as tutor to the son or grandson of the patron, is handed over to the prefect of the city to be punished.

12. Lastly, it must be known that they who are guilty of fraud in their administration must be removed, although they offer sufficient security. For giving security makes no change in the malevolent purpose of the tutor, but only procures him a longer opportunity of injuring the estate.

13. We also deem every man suspected, whose conduct is such that we cannot but suspect him. A tutor or curator who is faithful and diligent is not to be removed as a suspected person merely because he is poor.

BOOK II. OF THINGS.

I. Divisions of Things.

In the preceding book we have treated of the law of persons. Let us now speak of things, which either are in our patrimony, or not in our patrimony. For some things by the law of nature are common to all; some are public; some belong to corporate bodies, and some belong to no one. Most things are the property of individuals who acquire them in different ways, as will appear hereafter.

1. By the law of nature these things are common to mankind---the air, running water, the sea, and consequently the shores of the sea. No one, therefore, is forbidden to approach the seashore, provided that he respects habitationes, monuments, and buildings which are not, like the sea, subject only to the law of nations.

2. All rivers and ports are public; hence the right of fishing in a port, or in rivers, is common to all men.

3. The seashore extends as far as the greatest winter flood runs up.

4. The public use of the banks of a river is part of the law of nations, just as is that of the river itself. All persons, therefore, are as much at liberty to bring their vessels to the bank, to fasten ropes to the trees growing there, and to place any part of their cargo there, as to navigate the river itself But the banks of a river are the property of those whose land they adjoin; and consequently the trees growing on them are also the property of the same persons.

5. The public use of the seashore, too, is part of the law of nations, as is that of the sea itself; and, therefore, any person is at liberty to place on it a cottage, to which he may retreat, or to dry his nets there, and haul them from the sea; for the shores may be said to be the property of no man, but are subject to the same law as the sea itself, and the sand or ground beneath it.

6. Among things belonging to a corporate body, not to individuals, are, for instance, buildings in cities, theaters, race-courses, and other similar places belonging in common to a whole city.

7. Things sacred, religious, and holy belong to no one; for that which is subject to divine law is not the property of any one.

8. Things are sacred which have been duly consecrated by the pontiffs, as sacred buildings and offerings, properly dedicated to the service of God, which we have forbidden by our constitutio to be sold or mortgaged, except for the purposes of purchasing the freedom of captives. But, if any one consecrates a building by his own authority, it is not sacred, but profane. But ground on which a sacred edifice has once been erected, even after the building has been destroyed, continues to be sacred, as Papinian also writes.

9. Any man at his pleasure makes a place religious by burying a dead body in his own ground; but it is not permitted to bury a dead body in land hitherto pure, which is held in common, against the wishes of a co-proprietor. But when a sepulcher is held in common, any one co-proprietor may bury in it, even against the wishes of the rest. So, too, if another person has the usufructus, the proprietor may not, without the consent of the usufructuary, render the place religious. But a dead body may be laid in a place belonging to another person, with the consent of the owner; and even if the owner only ratifies the act after the dead body has been buried, yet the place is religious.

10. Holy things also, as the walls and gates of a city, are to a certain degree subject to divine law, and therefore are not part of the property of any one. The walls of a city are said to be holy, inasmuch as any offence against them is punished capitally; so, too, those parts of laws by which punishments are established against transgressors, we term sanctions.

11. Things become the property of individuals in various ways; of some we acquire the ownership by natural law, which, as we have observed, is also termed the law of nations; of others by the civil law. It will be most convenient to begin with the more ancient law; and it is very evident that the law of nature, established by nature at the first origin of mankind, is the more ancient, for civil laws could then only begin to exist when states began to be founded, magistrates to be created, and laws to be written.

12. Wild beasts, birds, fish and all animals, which live either in the sea, the air, or the earth, so soon as they are taken by anyone, immediately become by the law of nations the property of the captor; for natural reason gives to the first occupant that which had no previous owner. And it is immaterial whether a man takes wild beasts or birds upon his own ground, or on that of another.

Of course any one who enters the ground of another for the sake of hunting or fowling, may be prohibited by the proprietor, if he perceives his intention of entering. Whatever of this kind you take is regarded as your property, so long as it remains in your power, but when it has escaped and recovered its natural liberty, it ceases to be yours, and again becomes the property of him who captures it. It is considered to have recovered its natural liberty, if it has either escaped out of your sight, or if, though not out of your sight, it yet could not be pursued without great difficulty.

13. It has been asked, whether, if you have wounded a wild beast, so that it could be easily taken, it immediately becomes your property. Some have thought that it does become yours directly you wound it, and that it continues to be yours while you continue to pursue it, it then ceases to be yours, and again becomes the property of the first person who captures it. Others have thought that it does not become your property until you have captured it. We confirm this latter opinion, because many accidents may happen to prevent your capturing it.

14. Bees also are wild by nature. Therefore, bees that swarm upon your tree, until you have hived them, are no more considered to be your property than the birds which build their nests on your tree; so, if any one hive them, he becomes their owner. Any one, too, is at liberty to take the honeycombs the bees may have made. But of course, if, before anything has been taken, you see any one entering on your land, you have a right to prevent his entering. A swarm which has flown from your hive is still considered yours as long as it is in your sight and may easily be pursued; otherwise it becomes the property of the first person that takes it.

15. Peacocks, too, and pigeons, are naturally wild, nor does it make any difference that they are in the habit of flying out and then returning again, for bees, which without doubt are naturally wild, do so too. Some persons have deer so tame, that they will go into the woods, and regularly again return; yet no one denies that deer are naturally wild. But, with respect to animals which are in the habit of going and returning, the rule has been adopted, that they are considered yours as long as they have the intention of returning, but if they cease to have this intention, they cease to be yours, and become the property of the first person that takes them. These animals are supposed to have lost the intention, when they have lost the habit, of returning.

16. But fowls and geese are not naturally wild, which we may learn from there being particular kinds of fowls and geese which we term wild. And, therefore, if your geese or fowls should be frightened, and take flight, they are still regarded as yours wherever they may be, although you may have lost sight of them; and whoever detains such animals with a view to his own profit, commits a theft.

17. The things we take from our enemies become immediately ours by the law of nations, so that even freemen thus become our slaves; but if they afterwards escape from us, and return to their own people, they regain their former condition.

18. Precious stones, gems, and other things found upon the seashore become immediately, by natural law, the property of the finder.

19. All that is born of animals of which you are the owner, becomes by the same law your property.

20. Moreover, the alluvial soil added by a river to your land becomes yours by the law of nations. Alluvion is an imperceptible increase; and that is added so gradually that no one can perceive how much is added at any one moment of time.

21. But if the violence of a river should bear away a portion of your land and unite it to the land of your neighbor, it undoubtedly still continues yours. If, however, it remains for long united to your neighbor's land, and the trees, which it swept away with it, take root in his ground, these trees from that time become part of your neighbor's estate.

22. When an island is formed in the sea, which rarely happens, it is the property of the first occupant; for before occupation, it belongs to no one. But when an island is formed in a river, which frequently happens, if it is placed in the middle of it, it belongs in common to those who possess the lands near the banks on each side of the river, in proportion to the extent of each man's estate adjoining the banks. But, if the island is nearer to one side than the other, it belongs to those persons only who possess lands contiguous to the bank on that side. If a river divides itself and afterwards unites again, thus giving to any one's land the form of an island, the land still continues to belong to the person to whom it belonged before.

23. If a river, entirely forsaking its natural channel, begins to flow in another direction, the old bed of the river belongs to those who possess the lands adjoining its banks, in proportion to the extent that their respective estates adjoin the banks. The new bed follows the condition of the river, that is, it becomes public. And, if, after some time, the river returns to its former channel, the new bed again becomes the property of those who possess the lands contiguous to its banks.

24. The case is quite different if anyone's land is completely inundated; for the inundation does not alter the nature of the land, and therefore, when the waters have receded, the land is indisputably the property of its former owner.

25. When one man has made anything with materials belonging to another, it is often asked which, according to natural reason, ought to be considered the proprietor, whether he who gave the form, or he rather who owned the materials. For instance, suppose a person has made wine, oil, or wheat from the grapes, olives, or ears of corn belonging to another; has cast a vessel out of gold, silver, or brass, belonging to another; has made mead with another man's wine and honey; has composed a plaster, or eye-salve, with another man's medicaments; has made a garment with another man's wool; or a ship, or a bench, with another man's timber. After a long controversy between the Sabinians and Proculians, a middle opinion has been adopted based on the following distinction. If the thing made can be reduced to its former rude materials, then the owner of the materials is also considered the owner of the thing made; but, if the thing cannot be so reduced, then he who made it is the owner of it. For example, a vessel when cast, can easily be reduced to its rude materials of brass, silver, or gold; but wine, oil, or wheat, cannot be reconverted into grapes, olives, or ears of corn; nor can mead be resolved into wine and honey. But, if a man has made anything, partly with his own materials and partly with the materials of another, as if he has made mead with his own wine and another man's honey, or a plaster or eye-salve, partly with his own, and partly with another man's medicaments, or a garment with his own and also with another man's wool, then in such cases, he who made the thing is undoubtedly the proprietor; since he not only gave his labor, but furnished also a part of the materials.

26. If, however, any one has woven purple belonging to another into his own vestment, the purple, although the more valuable, attaches to the vestment as an accession, and its former owner has an actio of theft and a condictio against the person who stole it from him, whether it was he or some one else who made the vestment. For although things which have perished cannot be reclaimed by vindicatio, yet this gives ground for a condictio against the thief, and against many other possessors.

27. If materials belonging to two persons are mixed together by their mutual consent, whatever is thence produced is common to both, as if, for instance, they have intermixed their wines, or melted together their gold or silver. And although the materials are different which are employed in the admixture, and thus a new substance is formed, as when mead is made with wine and honey, or electrum by fusing together gold and silver, the rule is the same; for in this case the new substance is undoubtedly common. And if it is by chance, and not by intention of the proprietors, that materials, whether similar or different, are mixed together, the rule is still the same.

28. If the wheat of Titius is mixed with yours, when this takes place by mutual consent, the mixed heap belongs to you in common because each body, that is,

each grain, which before was the property of one or other of you, has by your mutual consent been made your common property; but, if the intermixture were accidental, or made by Titius without your consent, the mixed wheat does not then belong to you both in common; because the grains still remain distinct, and retain their proper substance. The wheat in such a case no more becomes common to you both, than a flock would be, if the sheep of Titius were mixed with yours; but, if either of you keep the whole quantity of mixed wheat, the other has a real actio for the amount of wheat belonging to him, but it is in the province of the judge to estimate the quality of the wheat belonging to each.

29. If a man builds upon his own ground with the materials of another, he is considered the proprietor of the building, because everything built on the soil accedes to it. The owner of the materials does not, however, cease to be owner; only while the building stands he cannot claim the materials, or demand to have them exhibited, on account of the law of the Twelve Tables, providing that no one is to be compelled to take away the tignum of another which has been made part of his own building, but that he may be made, by the actio de tigno injuncto, to pay double the value; and under the term tignum all materials for building are comprehended. The object of this provision was to prevent the necessity of buildings being pulled down. But if the building is destroyed from any cause, then the owner of the materials, if he has not already obtained the double value, may reclaim the materials, and demand to have them exhibited.

30. On the contrary, if anyone builds with his own materials on the ground of another, the building becomes the property of him to whom the ground belongs. But in this case the owner of the property, because he is presumed to have voluntarily parted with them, that is, if he knew he was building upon another's land; and, therefore, if the building should be destroyed, he cannot, even then, reclaim the materials. Of course, if the person who builds is in possession of the soil, and the owner of the soil claims the building, but refuses to pay the price of the materials and the wages of the workmen, the owner may be repelled by an exception of dolus malus, provided the builder was in possession bona fide. For if he knew that he was not the owner of the soil, it may be said against him that he was wrong to build on ground which he knew to be the property of another.

31. If Titius places another man's plant in ground belonging to himself, the plant will belong to Titius; on the contrary, if Titius places his own plant in the ground of Maevius, the plant will belong then to Maevius---that is if, in either case, the plant has taken root; for before it has taken root, it remains the property of its former owner. But from the time it has taken root, the property in it is changed; so much so, that if the tree of a neighbor presses so closely on the ground of Titius as to take root in it, we pronounce that the tree becomes

the property of Titius. For reason does not permit that a tree should be considered the property of anyone else than of him in whose ground it has taken root; and, therefore, if a tree, planted near a boundary extends its roots into the lands of a neighbor, it becomes common.

32. As plants rooted in the earth accede to the soil, so, in the same way, grains of wheat which have been sown are considered to accede to the soil. But as he who has built on the ground of another may, according to what we have said, defend himself by an exception of dolus malus, if the proprietor of the ground claims the building, so also he may protect himself by the aid of the same exception, who, at his own expense and acting bona fide, has sown another man's land.

33. Written characters, although of gold, accede to the paper or parchment on which they are written, just as whatever is built on, or sown in, the soil, accedes to the soil. And, therefore, if Titius has written a poem, a history, or an oration, on your paper or parchment, you, and not Titius, are the owner of the written paper. But, if you claim your books or parchments from Titius, but refuse to defray the cost of the writing, then Titius can defend himself by an exception of dolus malus; that is, if it was bona fide that he obtained possession of the papers or parchments.

34. If a person has painted on the tablet of another, some think that the tablet accedes to the picture, others, that the picture, of whatever quality it may be, accedes to the tablet. It seems to us the better opinion that the tablet should accede to the picture; for it is ridiculous that a painting of Apelles or Parrhasius should be but the accessory of a thoroughly worthless tablet. But if the owner of the tablet is in possession of the picture, the painter, should he claim it from him, but refuse to pay the value of the tablet, may be repelled by the exception of dolus malus. If the painter is in possession of the picture, the law permits the owner of the tablet to bring a utilis actio against him; and in this case, if the owner of the tablet does not pay the cost of the picture, he may also be repelled by an exception of dolus malus; that is, if the painter obtained possession bona fide. If the tablet has been stolen, whether by the painter or by any one else, the owner of the tablet may bring an actio of theft.

35. If any person has, bona fide, purchased land from another, whom he believed to be the true owner, when in fact he was not, or has, bona fide, acquired it from such person by gift or by other good title, natural reason demands that the fruits which he has gathered shall be his in return for his care and culture. And, therefore, if the real owner afterwards appears and claims his land, he can have no actio for fruits which the possessor has consumed. But the same allowance is not made to him who has knowingly been in possession of another's estate, and, therefore, he is compelled to restore, together with the lands, all the fruits, although they may have been consumed.

36. The usufructuary of land is not owner of the fruits until he has himself gathered them; and, therefore, if he should die while the fruits, although ripe, are yet ungathered, they do not belong to his heirs, but are the property of the owner of the soil. And nearly the same may be said of the colonus.

37. In the fruits of animals are included their young, as well as their milk, hair and wool; and, therefore, lambs, kids, calves, colts, and young pigs immediately on their birth become, by the law of nature, the property of the usufructory, but the offspring of a female slave is not considered a fruit, but belongs to the owner of the property. For it seemed absurd that man should be reckoned as a fruit, when it is for man's benefit that all fruits are provided by nature.

38. The usufructuary of a flock ought to replace any of the flock that may happen to die by supplying the deficiency out of the young, as also Julian was of opinion. So, too, the usufructuary ought to supply the place of dead vines or trees. For he ought to cultivate with care, and to use everything as a good father of a family would use it.

39. The Emperor Hadrian, in accordance with natural equity, allowed any treasure found by a man in his own land to belong to the finder, as also any treasure found by chance in a sacred or religious place. But treasure found without any express search, but by mere chance, in a place belonging to another, he granted half to the finder, and half to the proprietor of the soil. Consequently, if anything is found in a place belonging to the emperor, half belongs to the finder, and half to the emperor. And hence it follows, that if a man finds anything in a place belonging to the fiscus, the public, or a city, half ought to belong to the finder, and half to the fiscus or the city.

40. Another mode of acquiring things according to natural law is traditional; for nothing is more conformable to natural equity than that the wishes of a person, who is desirous to transfer his property to another, should be confirmed; and, therefore, corporeal things, of whatever kind, may be so passed by tradition, and when so passed by their owner, are made the property of another. In this way are alienated stipendiary and tributary lands, that is, lands in the provinces, between which and Italian lands there is now, by our constitutio, no difference, so that when tradition is made of them for purpose of a gift, a marriage portion, or any other object, the property in them is undoubtedly transferred.

41. But things sold and delivered are not acquired by the buyer until he has paid the seller the price, or satisfied him in some way or other, as by procuring some one to be security, or by giving a pledge. And, although this is provided by a law of the Twelve Tables, yet it may be rightly said to spring from the

law of nations, that is, the law of nature. But if the seller has accepted the credit of the buyer, the thing then becomes immediately the property of the buyer.

42. It is immaterial whether the owner deliver the thing himself, or some one else by his desire.

43. Hence, if any one is instructed by an owner with the uncontrolled administration of all his goods, and he sells and delivers anything which is a part of these goods, he passes the property in it to the person who receives the thing.

44. Sometimes, too, the mere wish of the owner, without tradition, is sufficient to transfer the property in a thing, as when a person has lent, or let to you anything, or deposited anything with you, and then afterwards sells or gives it to you. For, although he has not delivered it to you for the purpose of the sale or gift, yet by the mere fact of his consenting to it becoming yours, you instantly acquire the property in it, as fully as if it had actually been delivered to you for the express purpose of passing the property.

45. So, too, anyone who has sold goods deposited in a warehouse, as soon as he has handed over the keys of the warehouse to the buyer, transfers to the buyer the property in the goods.

46. Nay, more, sometimes the intention of an owner, although directed only towards an uncertain person, transfers the property in a thing. For instance, when the praetors and consuls throw their largesse to the mob, they do not know what each person in the mob will get; but as it is their intention that each should get what he gets, they make what each gets immediately belong to him.

47. Accordingly, it is true to say that anything which is seized on, when abandoned by its owners, becomes the property of the person who takes possession of it. And anything is considered as abandoned which its owner has thrown away with a wish no longer to have it as a part of his property, as it therefore immediately ceases to belong to him.

48. It is otherwise with respect to things thrown overboard in a storm, to lighten a vessel; for they remain the property of their owners; as it is evident that they were not thrown away through a wish to get rid of them, but that their owners and the ship itself might more easily escape the dangers of the sea. Hence, anyone who, with a view to profit himself by these, takes them away when washed on shore, or found at sea, is guilty of theft. And much the same may be said as to things which drop from a carriage in motion without the knowledge of their owners.

II. Incorporeal Things.

Certain things, again, are corporeal, others incorporeal.

1. Corporeal things are those which are by their nature tangible, as land, a slave, a garment, gold, silver, and other things innumerable.

2. Incorporeal things are those which are not tangible, such as are those which consist of a right, as an inheritance, a usufructus, usus, or obligations in whatever way contracted. Nor does it make any difference that things corporeal are contained in an inheritance; fruits, gathered by the usufructuary, are corporeal; and that which is due to us by virtue of an obligation, is generally a corporeal thing, as a field, a slave, or money; while the right of inheritance, the right of usufructus, and the right of obligation, are incorporeal.

3. Among things incorporeal are the rights over estates, urban and rural, which are also called servitutiones.

III. Servitutiones.

The servitutiones of rural immovables are, the right of passage, the right of passage for beasts or vehicles, the right of way, the right of passage for water. The right of passage is the right of going or passing for a man, not of driving beasts or vehicles. The right of passage for beasts or vehicles is the right of driving beasts or vehicles over the land of another. So a man who has the right of passage simply has not the right of passage for beasts or vehicles; but if he has the latter right he has the former, and he may use the right of passing without having any beasts with him. The right of way is the right of going, of driving beasts or vehicles, and of walking; for the right of way includes the right of passage, and the right of passage for beasts or vehicles. The right of passage for water is the right of conducting water through the land of another.

1. The servitutiones of urban immovables are those which appertain to buildings, and they are said to be servitutiones of urban immovables, because we term all edifices urban immovables, although really built in the country. Among these servitutiones are the following: that a person has to support the weight of an adjoining house, that a neighbor should have the right of inserting a beam into his wall, that he has to receive or not to receive the water that drops from the roof, or that runs from the gutter of another man's house on to his building, or into his court or drain; or that he is not to raise his house higher, or not to obstruct his neighbor's lights.

2. Some think that among the servitutiones of rural estates are rightly included

the right of drawing water, of watering cattle, of feeding cattle, of burning lime or digging sand.

3. These servitutiones are called the servitutiones of immovables, because they cannot exist without immovables. For no one can acquire or owe a servitude of a rural or urban immovable, unless he has an immovable belonging to him.

4. If anyone wishes to create a right of this sort in favor of his neighbor, he must effect it by agreements and stipulations. A person can also, by testament, oblige his heir not to raise his house higher, not to obstruct his neighbor's lights, to permit a neighbor to insert a beam into his wall, or to receive the water from an adjoining roof; or, again, he may oblige his heir to allow a neighbor to go across his land, or to drive beasts or vehicles, or to conduct water across it.

IV. Usufructus.

Usufructus is the right of using, and taking the fruits of things belonging to others, so long as the substance of the things used remains. It is a right over a corporeal thing, and if this thing perish, the usufructus itself necessarily perishes also.

1. The usufructio is detached from the property; and this separation takes place in many ways; for example, if the usufructus is given to anyone as a legacy; for the heir has then the bare ownership, and the legatee has the usufructus; conversely, if the estate is given as a legacy, subject to the deduction of the usufructus, the legatee has the bare ownership, and the heir has the usufructus. Again, the usufructus may be given as a legacy to one person, and the estate minus this usufructus may be given to another. If any one wishes to constitute a usufructus otherwise than by testament, he must effect it by pacts and stipulations. But, lest the property should be rendered wholly profitless by the usufructus being forever detached, it has been thought right that there should be certain ways in which the usufructus should become extinguished, and revert to the property.

2. A usufructus may be constituted not only of lands and buildings, but also of slaves, of beasts of burden, and everything else except those which are consumed by being used, for they are susceptible of a usufructus neither by natural nor by civil law. Among these things are wine, oil, garments, and we may almost say coined money; for it, too, is in a manner consumed by usus, as it continually passes from hand to hand. But the senate, thinking such a measure would be useful, has enacted that a usufructus even of these things may be constituted, if sufficient security be given to the heir; and, therefore, if the usufructus of money is given to a legatee, the money is considered to be

given to him in complete ownership; but he has to give security to the heir for the repayment of an equal sum in the event of his death or his undergoing a capitis deminutio. All other things, too, of the same kind are delivered to the legatee so as to become his property; but their value is estimated and security is given for the payment of the amount at which they are valued, in the event of the legatee dying or undergoing a capitis deminutio. The senate has not then, to speak strictly, created a usufructus of these things, for that was impossible, but, by requiring security, has established a right analogous to a usufructus.

3. The usufructus terminates by the death of the usufructuary, by two kinds of capitis deminutio, namely, the greatest and the middle, and also by not being used according to the manner and during the time fixed; all which points have been decided by our constitutio. The usufructus is also terminated if the usufructuary surrenders it to the owner of the property (a cession to a stranger would not have this effect); or, again, by the usufructuary acquiring the property, which is called consolidatio. Again, if a building is consumed by fire, or thrown down by an earthquake, or falls down through decay, the usufructus of it is necessarily destroyed, nor does there remain any usufructus due even of the soil on which it stood.

4. When the usufructus is entirely extinguished, it is reunited to the property; and the person who had the bare ownership begins thenceforth to have full power over the thing.

V. Usus and Habitatio.

The naked usus is constituted by the same means as the usufructus; and is terminated by the same means that make the usufructus to cease.

1. The right of usus is less extensive than that of usufructus; for he who has the naked usus of lands, has nothing more than the right of taking herbs, fruit, flowers, hay, straw, and wood, sufficient for his daily supply. He is permitted to establish himself upon the land, so long as he neither annoys the owner, nor hinders those who are engaged in the cultivation of the soil. He cannot let, or sell, or give gratuitously his right to another, while a usufructuary may.

2. He who has the usus of a house, has nothing more than the right of inhabiting it himself; for he cannot transfer this right to another; and it is not without considerable doubt that it has been thought allowable that he should receive a guest in the house, but he may live in it with his wife and children, and freedmen, and other free persons who may be attached to his service no less than his slaves are. A wife, in the same way, if it is she who has the usus of the house, may live in it with her husband.

3. So, too, he who has the usus of a slave, has only the right of himself using the labor and services of the slave: for he is not permitted in any way to transfer his right to another. And it is the same with regard to beasts of burden.

4. If the usus of a flock or herd, as, for instance, of a flock of sheep, be given as a legacy, the person who has the usus cannot take the milk, the lambs, or the wool, for these are among the fruits. But he may certainly make use of the flock to manure his land.

5. If the right of habitatio is given to anyone, either as a legacy or in any other way, this does not seem a usus or a usufructus, but a right that stands as it were by itself. From a regard to what is useful, and conformably to an opinion of Marcellus, we have published a decision, by which we have permitted those who have this right of habitatio, not only themselves to inhabit the place over which the right extends, but also to let to others the right of inhabiting it.

6. Let if suffice to have said thus much concerning servitutiones, usufructus, usus and habitatio. We shall treat of inheritances and obligationes in their proper places. We have already briefly explained how things are acquired by the law of nations; let us now examine how they are acquired by the civil law.

VI. Title Through Possession.

By the civil law it was provided, that if anyone by purchase, gift, or any other legal means, had bona fide received a thing from a person who was not the owner, but whom he thought to be so, he should acquire this thing by use if he held it for one year, if it were moveable, wherever it might be, or for two years, if it were an immoveable, but this if it were in the solum Italicum; the object of this provision being to prevent the ownership of things remaining in uncertainty. Such was the decision of the ancients, who thought the times we have mentioned sufficient for owners to search for their property, but we have come to a much better decision, from a wish to prevent owners being despoiled of their property too quickly, and to prevent the benefit of this mode of acquisition being confined to any particular locality. We have, accordingly, published a constitutio providing that movables be acquired by a usus extending for three years, and immovables by the "possession of long time," that is, ten years for persons present, and twenty years for persons absent; and that by these means, provided a just cause of possession precede, the ownership of things may be acquired, not only in Italy, but in every country subject to our empire.

1. Sometimes, however, although the thing be possessed with perfect good faith, yet use, however long, will never give the property; as, for instance, when the possession is of a free person, a thing sacred or religious, or a

fugitive slave.

2. Things stolen, or seized by violence, cannot be acquired by use, although they have been possessed bona fide during the length of time above prescribed; for such acquisition is prohibited, as to things stolen, by the law of the Twelve Tables, and by the lex Atinia; as to things seized by violence, by the lex Julia et Plautia.

3. When it is said that the acquisition by use of things stolen or seized by violence is prohibited by these laws, it is not meant that the thief himself, or he who possesses himself of the thing by violence, is unable to acquire the property, for another reason prevents them, namely, that their possession is mala fide; but no one else, although he has in good faith purchased or taken away from them, is able to acquire the property in use. Whence, as to movables, it does not often happen that a bona fide possessor gains the property in them by use. For whenever any one sees, or makes over for any other reason, a thing belonging to another, it is a theft.

4. Sometimes, however, it is otherwise; for, if an heir, supposing a thing lent or let to the deceased, or deposited with him, to be a part of the inheritance, sells or gives it as a gift or dowry to a person who receives it bona fide, there is no doubt that the person receiving it may acquire the property in it by use; for the thing is not tainted with the vice of theft, as the heir who has bona fide alienated it as his own, has not been guilty of a theft.

5. So if the usufructuary of a female slave sells or gives away her child, believing it to be his property, he does not commit theft; for there is no theft without the intention to commit theft.

6. It may also happen in various other ways, that a man may transfer a thing belonging to another without committing a theft, so that the possessor acquires the property in it by use.

7. As to movables, it may more easily happen that a person may, without violence, take possession of a place vacant by the absence or negligence of the owner, or his having died without a successor; and although his possession is mala fide, since he knows that he has seized on land not belonging to him, yet if he transfers it to a person who receives it bona fide, this person will acquire the property in it by long possession, as the thing he receives has neither been stolen nor seized by violence. The opinion of the ancients, who thought that there could be a theft of a piece of land or a place, is now abandoned, and there are imperial constitutiones which provide that no possessor of an immoveable shall be deprived of the benefit of a long and undoubted possession.

8. Sometimes even a thing stolen or seized by violence may be acquired by use; for instance, if it has come back into the power of its owner, for then, the vice being purged, the acquisition by use may take place.

9. Things belonging to our fiscus cannot be acquired by use. But Papinian has given his opinion that if, before bona vacantia have been reported to the fiscus, a bona fide purchaser receives any of them, he can acquire the property by use. And the Emperor Antoninus Pius, and the Emperors Severus and Antoninus, have issued rescripts in accordance with this opinion.

10. Lastly, it is to be observed that a thing must be tainted with no vice, that the bona fide purchaser or person who possesses it from any other just cause may acquire it by use.

11. But if a mistake is made as to the cause of possession, and it is wrongly supposed to be just, there is no usucapion. As, for instance, if any one possesses in the belief that he has bought, when he has not bought, or that he has received a gift, when no gift has really been made to him.

12. Long possession, which has begun to reckon in favor of the deceased, is continued in favor of the heir or bonorum possessor, although he may know that the immoveable belongs to another person; but if the deceased commenced his possession mala fide, the possession does not profit the heir or bonorum possessor, although ignorant of this. And our constitutio has enacted the same with respect to usucapions, in which the benefit of possession is to be in like manner continued.

13. Between the buyer and the seller, too, the Emperors Severus and Antoninus have decided by rescript that their several times of possession shall be reckoned together.

14. It is provided by an edict of the Emperor Marcus, that a person who has purchased from the fiscus a thing belonging to another person, may repel the owner of the thing by an exception, if five years have elapsed since the sale. But a constitutio of Zeno of sacred memory has completely protected those who receive anything from the fiscus by sale, gift, or any other title, by providing that they themselves are to be at once secure, and made certain of success, whether they sue or are themselves sued in an actio, while they who think that they have a good ground of action as owners or mortgagees of the things alienated may bring an actio against the sacred treasury within four years. An imperial constitutio, which we ourselves have recently published, extends to those who have received as a gift anything from our palace, or that of the empress, the provisions of the constitutio of Zeno relative to the alienations of the fiscus.

X. The Making of Wills.

The word testament is derived from testatio mentis; it testifies the determination of the mind.

1. That nothing belonging to antiquity may be altogether unknown, it is necessary to observe, that formerly there were two kinds of testaments in use: the one was employed in times of peace, and was named calatic comitiis, the other was employed at the moment of setting out in battle, and was termed procinctum. A third species was afterwards added, called per aes libram; being effected by mancipatio, that is, an imaginary sale in the presence of five witnesses, and the libripens, all citizens of Rome, above the age of puberty, together with him who was called the emptor familiae. The two former kinds of testament fell into disuse even in ancient times; and that made per aes libram also, although it has continued longer in practice, has now in part ceased to be made use of.

2. These three kinds of testament belonged to the civil law, but afterwards another kind was introduced by the edict of the praetor. By the ius honorarium no sale was necessary but the seals of seven witnesses were sufficient. The seals of witnesses were not required by the civil law.

3. But when the progress of society and the imperial constitutiones had produced a fusion of the civil and the praetorian law, it was established that the testament should be made all at one time, in the presence of seven witnesses (two points required by the civil law), with the subscription of the witnesses (a formality introduced by the constitutiones), and with their seals appended, according to the edict of the praetor. Thus the law of testament seems to have had a triple origin. The witnesses, and their presence at one continuous time for the purpose of giving the testament the requisite formality, are derived from the civil law; the subscriptions of the testator and witnesses, from the imperial constitutiones; and the seals of the witnesses and their number, from the edict of the praetor.

4. To all these formalities we have enacted by our constitutio, as an additional security for the genuineness of testaments, and to prevent fraud, that the name of the heir shall be written in the handwriting either of the testator or of the witnesses; and that everything shall be done according to the tenor of that constitutio.

5. All the witnesses may seal the testament with the same seal; for, as Pomponius says, what if the engraving on all seven seals were the same? And a witness may use a seal belonging to another person.

6. Those persons can be witnesses with whom there is testamenti factio. But

women, persons under the age of puberty, slaves, madmen, dumb persons, deaf persons, prodigals restrained from having their property in their power, and persons declared by law to be worthless and incompetent to witness, cannot be witnesses.

7. A witness, who was thought to be free at the time of making the testament, was afterwards discovered to be a slave, and the Emperor Hadrian, in his rescript to Catonius Verus, and afterwards the Emperors Severus and Antoninus by rescript, declared, that they would aid such a defect in a testament, so that it should be considered as valid as if made quite regularly; since, at the time when the testament was sealed, this witness was commonly considered a free man, and there was no one to contest his status.

8. A father, a son under his power, or two brothers under the power of the same father, may be witnesses to the same testament; for nothing prevents several persons of the same family being witnesses in a matter which only concerns a stranger.

9. But no person under power of the testator can be a witness. And if a filiusfamilias makes a testament giving his castrense peculium, after leaving the army, neither his father, nor any one in power of his father, can be a witness. For, in this case, the law does not allow the testimony of a member of the same family.

10. No person instituted heir, nor any one in subjection to him, nor his father, in whose power he is, nor his brothers under power of the same father, can be witnesses; for the whole business of making a testament is in the present day considered a transaction between the person who has purchased from the testator and the heir. But formerly there was great confusion; for although the ancients would never admit the testimony of the familiae emptor, nor of any one connected with him by the ties of patria potestas, yet they admitted that of the heir, and of persons connected with him by the ties of patria potestas, only exhorting them not to abuse their privilege. We have corrected this, making illegal what they endeavored to prevent by persuasion. For, in imitation of the old law respecting the familiae emptor, we refuse to permit the heir, who now represents the ancient familiae emptor, or any of those connected with the heir by the tie of patria potestas, to be, so to speak, witness in their own behalf; and accordingly we have not suffered the constitutiones of preceding emperors on the subject to be inserted in our code.

11. But we do not refuse the testimony of legatees, or persons taking fideicommissa, or of persons connected with them, because they do not succeed to the rights of the deceased. On the contrary, by one of our constitutiones we have specially granted them this privilege; and we give it still more readily to persons in their power, and to those in whose power they

are.

12. It is immaterial whether a testament be written upon a tablet, upon paper, parchment, or any other substance.

13. Any person may execute any number of duplicates of the same testament, each, however, being made with prescribed forms. This may be sometimes necessary; as, for instance, when a man who is going on a voyage is desirous to carry with him, and also to leave at home, a memorial of his last wishes; or for any other of the numberless reasons that may arise from the various necessities of mankind.

14. Thus much may suffice concerning written testaments. But if any one wishes to make a testament, valid by the civil law, without writing, he may do so, in the presence of seven witnesses, verbally declaring his wishes, and this will be a testament perfectly valid according to the civil law, and confirmed by imperial constitutiones.

BOOK III. INTESTATE SUCCESSION.

A person dies intestate, who either has made no testament at all, or has made one not legally valid; or if the testament he has made is revoked, or made useless; or if no one becomes heir under it.

1. The inheritances of intestates, by the law of the Twelve Tables, belong in the first place to the sui heredes.

2. And, as we have observed before, those as sui heredes who, at the death of the deceased, were under his power; as a son or a daughter, a grandson or a granddaughter by a son, a great-grandson or great-granddaughter by a grandson of a son; nor does it make any difference whether these children are natural or adopted. We must also reckon among them those, who, though not born in lawful wedlock, nevertheless, according to the tenor of the imperial constitutiones, acquire the rights of sui heredes by being presented to the curiae of their cities; as also those to whom our own constitutiones refer, which enact that, if any person has lived with a woman not originally intending to marry her, but whom he is not prohibited to marry, and shall have children by her, and shall afterwards, feeling towards her the affection of a husband, enter into an act of marriage with her, and have by her sons or daughters, not only those born after the settlement of the dowry shall be legitimate, and in the power of the father, but also those born before, who gave occasion to the legitimacy of the children born after. And this law shall obtain, although no children are born subsequent to the making of the act of dowry, or those born are all a great-grandson or great-granddaughter, are not reckoned the sui heredes, unless the person preceding them in degree has

ceased to be under the power of the decedent, either by death, or some other means, as by emancipation. For, if a son, when the grandfather died, was under the power of his father, the grandson cannot be suus heres of his grandfather; and so with regard to all other descendants. Posthumous children, also, who would have been under the power of their father, if they had been born in his lifetime, are sui heredes.

3. Sui heredes may become heirs, without their knowledge, and even though insane; for in every case in which inheritances may be acquired without our knowledge, they may also be acquired by the insane. At the death of the father, ownership in an inheritance is at once continued; accordingly, the authority of a tutor is not necessary, as inheritances may be acquired by sui heredes without their knowledge: neither does an insane person acquire by assent of his curator, but by operation of law.

4. But sometimes a child becomes a suus heres, although he was not under power at the death of his parent; as when a person returns from captivity after the death of his father. He is then made a suus heres by the ius postliminii.

5. On the contrary, it may happen that a child who, at the death of his parent, was under his power, is not his suus heres: as when a parent after his decease, is adjudged to have been guilty of treason. and his memory is thus made infamous. He can then have no suus heres, as it is the fiscus that succeeds to his estate. In this case it may be said that there has in law been a sui heres, but that he has ceased to be so.

6. A son, or a daughter, and a grandson or granddaughter by another son, are called equally to the inheritance; nor does the nearer in degree exclude the more remote; for it seems just that grandsons and granddaughters should succeed in the place of their father. For the same reason, a grandson or granddaughter by a son, and a great-grandson or great-granddaughter by a grandson, are called together. And since grandsons and granddaughters, great-grandsons and great-granddaughters, succeed in place of their parent, it appeared to follow that inheritances should not be divided per capita, but per stirpes; so that a son should possess one-half, and the grandchildren, whether two or more, of another son, the other half of the inheritance. So, where there were grandchildren by two sons, one or two perhaps by the one, and three or four by the other, the inheritance will belong half to the grandchild or the two grandchildren by the one son, and half to the three or four grandchildren by the other son.

7. When it is asked whether such a person is a suus heres, we must look to the time at which it was certain that the deceased died without a testament, including therein the case of the testament being abandoned. Thus, if a son is disinherited and a stranger is instituted heir, and after the death of the son it

becomes certain that the instituted heir will not be heir, either because he is unwilling or unable to be so, in this case the grandson of the deceased becomes the suus heres of his grandfather; for, at the time when it was certain that the deceased died intestate, there exists only the grandchild, and of this there can be no doubt.

8. And although a child is born after the death of his grandfather, yet, if he was conceived in the lifetime of his grandfather, he will, if his father is dead, and his grandfather's testament abandoned, become the suus heres of his grandfather. But a child both conceived and born after the death of his grandfather, could not become the suus heres, although his father should die and the testament of his grandfather be abandoned; because he was never allied to his grandfather by any tie of relationship. Neither is a person adopted by an emancipated son to be reckoned among the children of the father of his adoptive father. And not only are these adoptive children of an emancipated son incapable of taking the inheritance as children of the deceased grandfather, but they cannot demand possession of the goods as the nearest agnati. Thus much concerning sui heredes.

9. Emancipated children by the civil law have no right to the inheritance of their father; being no longer under the power of their parent, they are not his sui heredes, nor are they called to inherit by any other right under the law of the Twelve Tables. But the praetor, obeying natural equity, grants them the possession of goods called unde liberi, as if they had been under the power of their father at the time of his death, and this, whether they stand alone, or whether there are also others, who are sui heredes. Thus, when there are two children, one thus emancipated, and the other under power at his father's death, the latter, by the civil law, is alone the heir, and alone the suus heres: but, as the emancipated son, by the indulgence of the praetor, is admitted to his share, the suus heres becomes heir only of a part.

10. But those who, after emancipation, have given themselves in adoption, are not admitted as children to the possession of the effects of their natural father, that is if, at the time of his death, they are still in their adoptive family. But, if, in the lifetime of their natural father, they have been emancipated by their adoptive father, they are then admitted to receive the goods of their natural father exactly as if they had been emancipated by him, and had never entered into the adoptive family. Accordingly, with regard to their adoptive father, they become from that moment strangers to him. But if they are emancipated by their adoptive father after the death of their natural father, they are equally considered as strangers to the adoptive father; and yet do not gain the position of children with regard to the inheritance of their natural father. This has been so laid down because it was unreasonable that it should be in the power of an adopter to determine to whom the inheritance of a natural father should belong, whether to his children, or to the agnati.

11. The rights of adoptive children are therefore less than those of natural children, who, even after emancipation, retain the rank of children by the indulgence of the praetor, although they lose it by the civil law. But adopted children, when emancipated, lose the rank of children by the civil law, and are not aided by the praetor. And the distinction between the two cases is very proper, for the civil law cannot destroy natural rights; and children cannot cease to be sons and daughters, grandsons and granddaughters, because they cease to be sui heredes. But adopted children, when emancipated, become instantly strangers; for the rights and title of son or daughter, which they have only obtained by adoption, may be destroyed by another ceremony of the civil law, that, namely, of emancipation.

12. The same rules are observed in the possession of goods which the praetor gives contra tabulas to children who have been passed over, that is, who have neither been instituted heirs, nor properly disinherited. For the praetor calls to this possession of goods those children under the power of their father at the time of his death, and those also who are emancipated; but he excludes those who are in an adoptive family at the decease of their natural father. So, too, adoptive children emancipated by their adoptive father, as they are not admitted to succeed their adoptive father ab intestato, much less are they admitted to possess the goods of their adoptive father contrary to his testament, for they cease to be included in the number of his children.

13. It is, however, to be observed that children still remaining in an adoptive family, or who have been emancipated by their adoptive father, after the decease of their natural father, who dies intestate, although not admitted by the part of the edict calling children to the possession of goods, are admitted by another part, by which the cognati of the deceased are called. They are, however, only thus admitted in default of sui heredes, emancipated children, and agnati. For the praetor first calls the children, both the sui heredes and those emancipated, then the legitimi heredes, and then the cognati.

14. Such were the rules that formerly obtained; but they have received some emendation from our constitutio relating to persons given in adoption by their natural parents. For cases have occurred in which sons have lost by adoption their succession to their natural parents, and, the tie of adoption being easily dissolved by emancipation, have lost the right of succeeding to either parent. Correcting, therefore, as usual, what is wrong, we have promulgated a constitutio enacting that when a natural father has given his son in adoption, the rights of the son shall be preserved exactly as if he had still remained in the power of his natural father, and no adoption had taken place; except only in this, that the person adopted may succeed to his adoptive father if he dies intestate. But, if the adoptive father makes a testament, the adoptive son can neither by the civil law nor under the praetorian edict obtain any part of the

inheritance, whether he demands possession of the effects contra tabulas, or alleges that the testament is inofficious: for an adoptive father is under no obligation to institute or disinherit his adopted son, there being no natural tie between them, not even if the adopted son has been chosen among three brothers, according to the senatusconsultum Sabinianus, for even in this case the son does not obtain the fourth part of his adoptive father's effects, nor has he any actio whereby to claim it. But persons adopted by an ascendant are excepted in our constitutio; for, as natural and civil rights both concur in their favor, we have thought proper to preserve to this adoption its effect under the old law, as also to the arrogatio of a paterfamilias. But this, in all its details, may be collected from the tenor of the above-mentioned constitutio.

15. The ancient law, favoring descendants from males, called only grandchildren so descended to the succession as sui heredes, in preference to the agnati, while grandchildren born of daughters, and great-grandchildren born of granddaughters, were reckoned among cognati, and succeeded only after the agnati to their maternal grandfather and great-grandfather, or to their grandmother, or great grandmother, maternal or paternal. But the emperors would not suffer such a violence against nature to continue without an adequate alteration; and, inasmuch as the name of the grandchild and great-grandchild is common, as well to descendants by females as by males, they gave all the same right and order of succession. But, that persons whose privileges rested not only on nature but also on the ancient law might enjoy some peculiar advantage, they thought it right that the portions of grandchildren, great-grandchildren, and other lineal descendants of a female should be somewhat diminished, so that they should not receive so much by a third part as their mother or grandmother would have received, or, when the succession is the inheritance of a woman, as their father or grandfather, paternal or maternal would have received; and, although there were no other descendants, if they entered on the inheritance, the emperors did not call the agnati to the succession. And as, upon the decease of a son, the law of the Twelve Tables calls the grandchildren and great-grandchildren, male and female, to represent their father in the succession to their grandfather, so the imperial constitutiones calls them to take in succession the place of their mother or grandmother, subject only to the above-mentioned deduction of a third part.

16. But, as there still remained matter of dispute between the agnati and the above-mentioned grandchildren, the agnati claiming the fourth part of the estate of the deceased by virtue of a constitutio, we have rejected this constitutio, and have not permitted it to be inserted into our code from that of Theodosius. And in the constitutio we have ourselves promulgated we have completely departed from the provisions of those former constitutiones, and have enacted that agnati shall take no part in the succession of the deceased, when there are grandchildren born of a daughter, or great-grandchildren born

of a granddaughter, or any other descendants from a female in the direct line; as those in a collateral line ought not to be preferred to direct descendants. This constitutio is to prevail from the date of its promulgation in its full force, as we here again enact. And as the old law ordered, that between the sons of the deceased and his grandsons by a son, every inheritance should be divided per stirpes, and not per capita, so we also ordain that a similar distribution shall be made between sons and grandsons by a daughter, and between grandsons and granddaughters, great-grandsons and great-granddaughters, and all other descendants in a direct line; so that the children of either branch may receive the share of their mother or father, their grandmother or grandfather, without any diminution; and, if of the one branch there should be one or two children, and of the other branch three or four, then the one or two shall have one-half, and the three or four the other half of the inheritance.

XIII. Obligationes.

Let us now pass to obligationes. An obligation is a tie of law, which binds us, according to the rules of our civil law, to render something.

1. The principal division of obligationes is into two kinds, civil and praetorian. Civil obligationes are those constituted by the laws, or, at least, recognized by the civil law. Praetorian obligationes are those which a praetor has established by his own authority; they are also called honorary.

2. A further division separates them into four kinds, for they arise ex contractu or quasi ex contractu, ex maleficio or quasi ex maleficio. Let us first treat of those which arise from a contract; which again are divided into four kinds, according as they are formed by the thing, by word of mouth, by writing, or by consent. Let us examine each kind separately.

XIV. Other Ways of Contracting an Obligatio.

An obligatio may be contracted by the thing, as, for example, by giving a mutuum. This always consists of things which may be weighed, numbered, or measured, as wine, oil, corn, coin, brass, silver, or gold. In giving these things by number, measure or weight, we do so that they may become the property of those who receive them. The identical things lent are not returned, but only others of the same nature and quality; and hence the term mutuum, because what I give from being mine becomes yours. From this contract arises the actio termed condictio.

1. A person, also, who receives a payment which is not due to him, and which is made by mistake, is bound re, i. e., by the thing; and the plaintiff may have against him an actio condictitia to recover what he has paid. For the condictio Si paret eum dare oportere may be brought against him, exactly as if he had

received a mutuum. Thus a pupil, to whom a payment has been made by mistake without the authorization of his tutor, is not subject to a condictio indebitti, any more than he would be by the gift of a mutuum. This species of obligatio, however, does not seem to arise from a contract, since he, who gives in order to acquit himself of something due from him, intends rather to dissolve than to make a contract.

2. A person, too, to whom a thing is given as a commodatum, i. e., is given that he may make use of it, is bound re, and is subject to the actio commodati. But there is a wide difference between him and a person who has received a mutuum; for the thing is not given him that it may become his property, and he therefore is bound to restore the identical thing he received. And, again, he who has received a mutuum, if by any accident, as fire, the fall of a building, shipwreck, the attack of thieves or enemies, he loses what he received, still remains bound. But he who has received a thing lent for his use, is indeed bound to employ his utmost diligence in keeping and preserving it; nor will it suffice that he should take the same care of it, which he was accustomed to take of his own property, if it appear that a more careful person might have preserved it in safety; but he has not to answer for loss occasioned by superior force, or extraordinary accident, provided the accident is not due to any fault of his. If, however, you take with you on a journey the thing lent you to make use of, and you lose it by the attack of enemies or robbers, or by shipwreck, you are undoubtedly bound to restore it. A thing is properly said to be commodatum when you are permitted to enjoy the use of it, without any recompense being given or agreed on; for, if there is any recompense, the contract is that of locatio, as a thing, to be a commodatum, must be lent gratuitously.

3. A person with whom a thing is deposited is bound re, and is subject to the actio depositi, and must give back the identical thing which he received. But he is only answerable if he is guilty of fraud, and not for a mere fault, such as carelessness or negligence; and he cannot, therefore, be called to account if the thing deposited, being carelessly kept, is stolen. For he who commits his property to the care of a negligent friend, should impute the loss to his own want of caution.

4. A creditor, also, who has received a pledge, is bound re, for he is obliged to restore the thing he has received, by the actio pigneratitia. But, inasmuch as a pledge is given for the benefit of both parties, of the debtor that he may borrow more easily, and of the creditor that repayment may be better secured, it has been decided that it will suffice if the creditor employs his utmost diligence in keeping the thing pledged; if, notwithstanding this care, it is lost by some accident, the creditor is not accountable for it, and he is not prohibited from suing for his debt.

XV. Verbal Obligationes.

An obligatio by word of mouth is contracted by means of a question and an answer, when we stipulate that anything shall be given to, or done for us. It gives rise to two actiones---the conditio, when the stipulation is certain, and the actio ex stipulatu, when it is uncertain. The term stipulatio is derived from stipulum, a word employed by the ancients to mean "firm," and coming perhaps from stipes, the trunk of a tree.

1. Formerly, the words used in making this kind of contract were as follows---Spondes? do you engage yourself? Spondeo, I do engage myself. Promittis? do you promise? Promitto, I do promise. Fidepromittis? do you promise on your good faith? Fidepromitto, I do promise on my good faith. Fideiubes? do you make yourself fideiussor? Fideiubeo, I do make myself fideiussor. Dabis? will you give? Dabo, I will give. Facies? will you do? Faciam, I will do. And it is immaterial whether the stipulatio is in Latin or in Greek, or in any other language, so that the parties understand it; nor is it necessary that the same language should be used by each person, but it is sufficient if the answer agree with the question. So two Greeks may contract in Latin. Anciently, indeed, it was necessary to use the solemn words just mentioned, but the constitutio of the Emperor Leo was afterwards enacted, which makes unnecessary this solemnity of the expressions, and only requires the apprehension and consent of each party, in whatever words it may be expressed.

2. Every stipulatio is made simply, or with the introduction of a particular time, or conditionally. Simply, as "Do you engage to give five aurei?" in this case the money may be instantly demanded. With the introduction of a particular time, as when a day is mentioned on which the money is to be paid, as "Do you engage to give me aurei on the first of the kalends of March?" that which we stipulate to give at a particular time becomes immediately due, but cannot be demanded before the day arrives, nor can it even be demanded on that day, for the whole of the day is allowed to the debtor for payment, as it is never certain that payment has not been made on the day appointed until that day is at an end.

3. But, if you stipulate thus "Do you engage to give me ten aurei annually, as long as I live?" the obligatio is understood to be made simply, and is perpetual; for a debt cannot be due for a time only; but the heir, if he demands payment, will be repelled by the exceptio pacti.

4. A stipulatio is made conditionally, when the obligatio is made subject to the happening of some uncertain event, so that it takes effect if such a thing happens, or does not happen, as, for instance, "Do you engage to give five aurei, if Titius is made consul?" Such a stipulatio as "Do you engage to give five aurei if I do not go up to the Capitol?" is in effect the same as if the

stipulatio had been, that five aurei should be given to the stipulator at the time of his death. From a conditional stipulatio, there arises only a hope that the thing will become due; and this hope we transmit to our heirs, if we die before the condition is accomplished.

5. It is customary to insert a particular place in a stipulatio, as, for instance, "Do you engage to give me at Carthage?" and this stipulatio, although it appears to be made simply, yet necessarily implies a delay sufficient to enable the person who promises to pay the money at Carthage. And therefore, if anyone at Rome stipulates thus "Do you engage to give to me this day at Carthage?" the stipulatio is useless, because the thing promised is impossible.

6. Conditions, which relate to time present or past, either instantly make the obligatio void, or do not suspend it in any way; as, for instance, "If Titius has been consul, or if Maevius is alive, do you engage to give me?" If the thing mentioned is not really the case, the stipulatio is void; if it is the case, the stipulatio is immediately valid. Things certain, if regarded in themselves, although uncertain as far as our knowledge is concerned, do not delay the formation of the obligatio.

7. Not only things, but acts, may be the subject of a stipulatio: as when we stipulate that something shall, or shall not, be done. And, in these stipulationes, it will be best to subjoin a penalty, lest the amount included in the stipulatio should be uncertain, and the plaintiff should therefore be obliged to prove how great his interest is. Therefore, if any one stipulates that something shall be done, a penalty ought to be added as thus: "If the thing is not done, do you engage to give ten aurei by way of penalty?" But, if by one single question a stipulatio is made that some things shall be done, and that other things shall not be done, there ought to be added some such clause as this: "If anything is done contrary to what is agreed on, or anything agreed on is not done, then do you engage to give ten aurei by way of penalty?"

XVI. Obligatio By Consent.

Obligationes are formed by the mere consent of the parties in the contracts of sale, of letting to hire, of partnership, and of mandatum. An obligatio is, in these cases, said to be made by the mere consent of the parties, because there is no necessity for any writing, nor even for the presence of the parties: nor is it requisite that anything should be given to make the contract binding, but the mere consent of those between whom the transaction is carried on suffices. Thus these contracts may be entered into by those who are at a distance from each other by means of letters, for instance, or of messengers. In these contracts each party is bound to the other to render him all that equity demands, while in verbal obligationes one party stipulates and the other promises.

XVII. Buying & Selling.

The contract of sale is formed as soon as the price is agreed upon, although it has not yet been paid, nor even an earnest given; for what is given as an earnest only serves as proof that the contract has been made. This must be understood of sales made without writing; for with regard to these we have made no alteration in the law. But, where there is a written contract, we have enacted that a sale is not to be considered completed unless an instrument of sale has been drawn up, being either written by the contracting parties, or at least signed by them, if written by others; or if drawn up by a tabellio, it must be formally complete and finished throughout; for as long as anything is wanting, there is room to retreat, and either the buyer or seller may retreat, without suffering loss; that is, if no earnest has been given. If earnest has been given, then, whether the contract was written or unwritten, the purchaser, if he refuses to fulfill it, loses what he has given as earnest, and the seller, if he refuses, has to restore double; although no agreement on the subject of the earnest was expressly made.

1. It is necessary that a price should be agreed upon, for there can be no sale without a price. And the price must be fixed and certain. If the parties agree that the thing shall be sold at the sum at which Titius shall value it, it was a question much debated among the ancients, whether in such a case there is a sale or not. We have decided, that when a sale is made for a price to be fixed by a third person, the contract shall be binding under this condition---that if this third person does fix a price, the price to be paid shall be determined by that which he fixes, and that according to his decision the thing shall be delivered and the sale perfected. But if he will not or cannot fix a price, the sale is then void, as being made without any price being fixed on. This decision, which we have adopted with respect to sales, may reasonably be made to apply to contracts of letting to hire.

2. The price should consist in a sum of money. It has been much doubted whether it can consist in anything else, as in a slave, a piece of land, or a toga. Sabinus and Cassius thought that it could. And it is thus that it is commonly said that exchange is a sale, and that this form of sale is the most ancient. The testimony of Homer was quoted, who says that part of the army of the Greeks procured wine by an exchange of certain things. The passage is this:-

The long-haired Achaeans procured wine,
some by giving copper, others by giving shining steel,
others by giving hides, others by giving oxen, others by giving slaves.

The authors of the opposite school were of a contrary opinion: they thought that exchange was one thing and sale another, otherwise, in an exchange, it would be impossible to say which was the thing sold, and which the thing given as the price; for it was contrary to reason to consider each thing as at once sold, and given as the price. The opinion of Proculus, who maintained that exchange is a particular kind of contract distinct from sale, has deservedly prevailed, as it is supported by other lines from Homer, and by still more weighty reasons adopted by preceding emperors: it has been fully treated in our Digests.

3. As soon as the sale is contracted, that is, in the case of a sale made without writing, when the parties have agreed on the price, all risk attaching to the thing sold falls upon the purchaser, although the thing has not yet been delivered to him. Therefore, if the slave dies or receives an injury in any part of the body, or a whole or a portion of the house is burnt, or a whole or a portion of the land is carried by the force of a flood, or is diminished or deteriorated by an inundation, or by a tempest making havoc with the trees, the loss falls on the purchaser, and although he does not receive the thing, he is obliged to pay the price, for the seller does not suffer for anything which happens without any design or fault of his. On the other hand, if after the sale the land is increased by alluvion, it is the purchaser who receives the advantage, for he who bears the risk of harm ought to receive the benefit of all that is advantageous. If a slave who has been sold runs away or is stolen, without any fraud or fault on the part of the seller, we must inquire whether the seller undertook to keep him safely until he was delivered over; if he undertook this, what happens is at his risk; if he did not undertake it, he is not responsible. The same would hold in the case of any other animal or any other thing, but the seller is in any case bound to make over to the purchaser his right to a real or personal actio, for the person who has not delivered the thing is still its owner; and it is the same with regard to the actio of theft, and the actio damni iniuria.

4. A sale may be made conditionally or unconditionally; conditionally, as, for example, "If Stichus suits you within a certain time, he shall be purchased by you as such a price."

5. A sale is void when a person knowingly purchases a sacred or religious place, or a public place, such as a forum or basilica. If, however, deceived by the vendor, he has supposed that what he was buying was profane or private, as he cannot have what he purchased, he may bring an actio ex empto to recover whatever it would have been worth to him not to have been deceived. It is the same if he has purchased a freeman, supposing him to be a slave.

BOOK IV. OBLIGATIONES ARISING FROM DELICTA.

As we have treated in the preceding book of obligationes arising ex contractu and quasi ex contractu, we have now to treat of obligationes arising ex maleficio. Of the obligationes treated of in the last book, there were, as we have said, four kinds; of those we are now to treat of, there is but one kind, for they all arise from the thing, that is, from the delictum, as, for example, from theft, from robbery, or damage, or injury.

1. Theft is the fraudulent dealing with a thing itself, with its use, or its possession; an act which is prohibited by natural law.

2. The word furtum comes either from furvum, which means "black," because it is committed secretly, and often in the night; or from fraus; or from ferre, that is "taking away," or from the Greek word phor meaning a thief, which again comes from pherin, to carry away.

3. Of theft there are two kinds, theft manifest and theft not manifest; for the thefts termed conceptum and oblatum are rather kinds of actiones attaching to theft than kinds of theft, as will appear below. A manifest theft is one whom the Greek term ep= autophors, being not only, one taken in the fact, but also one taken in the place where the theft is committed; as, for example, before he has passed through the door of the house where he has committed a theft, or in a plantation of olives, or a vineyard where he has been stealing. We must also extend manifest theft to the case of a thief seen or seized by the owner or any one else in a public or private place, while still holding the thing he has stolen, before he has reached the place where he meant to take and deposit it. But if he once reaches his destination, although he is afterwards taken with the thing stolen on him, he is not a manifest thief. What we mean by a not manifest thief may be gathered from what we have said, for a theft which is not a manifest theft is a not manifest theft.

4. There is what is termed conceptum furtum, when a thing stolen has been sought and found in the presence of witnesses in any one's house; for although this person may not be the actual thief, he is liable to a special actio termed concepti. There is what is termed furtum oblatum, if a thing stolen has been placed in your hands and then seized in your house; that is, if the person who placed it in yours hands did so, that it might be found rather in your house than in his. For you, in whose house it had been seized, would have against him who placed it in your hands, although he were not the actual thief, a special actio termed oblati. There is also the actio prohibiti furti against a person who prevents another who wishes to seek in the presence of witnesses for a thing stolen; there is, too, by means of the actio furti non exhibiti, a penalty provided by the edict of the praetor against a person who has not produced a thing stolen which has been searched for and found in his possession. But these actiones, concepti, oblati, furti, prohibitii and furti non exhibiti, have fallen into disuse; for search for things stolen is not now made according to the ancient practice, and therefore these actiones have naturally ceased to be in use, as all who knowingly have received and concealed a thing

stolen are liable to the actio furti nec manifesti.

5. The penalty for manifest theft is quadruple the value of the thing stolen, whether the thief be a slave or a freeman; that for theft not manifest is double.

6. It is theft, not only when anyone takes away a thing belonging to another, in order to appropriate it, but generally when anyone deals with the property of another contrary to the wishes of its owner. Thus, if the creditor uses the thing pledged or the depository the thing deposited, or the usuary employs the thing for another purpose than that for which it is given, it is a theft; for example, if anyone borrows plate on the pretense of intending to invite friends to supper, and then carries it away with him to a distance, or if anyone borrows a horse, as for a ride, and takes it much farther than suits such a purpose, or, as we find supposed in the writings of the ancients, takes it into battle.

7. A person, however, who borrows a thing, and applies it to a purpose other than that for which it was lent, only commits theft, if he knows that he is acting against the wishes of the owner, and that the owner, if he were informed, would not permit it; for if he really thinks the owner would permit it, he does not commit a crime; and this is a very proper distinction, for there is no theft without the intention to commit theft.

8. And even if the borrower thinks he is applying the thing borrowed contrary to the wishes of the owner, yet if the owner as a matter of fact approves of the application, there is, it is said, no theft. Whence the following question arises: Titius has urged the slave of Maevius to steal from his master certain things, and to bring them to him; the slave informs his master, who, wishing to seize Titius in the act, permits his slave to take certain things to Titius; is Titius liable to an actio furti, or to one servi corrupti, or to neither? This doubtful question was submitted to us, and we examined the conflicting opinions of the ancient jurists on the subject, some of whom thought Titius was liable to both these actiones, while others thought he was only liable to the actio of theft; and to prevent subtleties, we have decided that in this case both these actiones may be brought. For, although the slave has not been corrupted, and the case does not seem therefore within the rules of the actio servi corrupti, yet the intention to corrupt the slave is indisputable, and he is therefore to be punished exactly as if the slave had been really corrupted, lest his impunity should incite others to act in the same criminal way towards a slave more easy to corrupt.

9. Sometimes there may be a theft of free persons, as if one of our children in our power is carried away.

10. A man may even commit a theft of his own property, as, if a debtor takes from a creditor a thing he has pledged to him.

11. A person may be liable to an actio of theft, although he has not himself committed a theft, as for instance, a person who has lent his aid and planned the crime. Among such is one who makes your money fall from your hand that another may seize upon it; or has placed himself in your way that another may carry off something belonging to you; or has driven your sheep or oxen that another may make away with them, or, to take an instance given by the old advocati, frightens the herd with a piece of scarlet cloth. But if such acts are only the fruits of reckless folly, with no design of assisting in the commission of a theft, the proper actio is one in factum. But if Maevius assists Titius to commit a robbery, both are liable to an actio of theft. A person, again, assists in a theft who places ladders under a window, or breaks a window or a door, that another may commit a theft; or who lends tools to break a door, or ladders to place under a window, knowing the purpose to which they are to be applied. But a person who does not actually assist, but only advises and urges the commission of a theft, is not liable to an actio of theft.

12. Those who are in the power of a parent or master, if they steal anything belonging to the person in whose power they are, commit a theft. The thing stolen, in such a case, is considered to be furtiva, and therefore no right in it can be acquired by usucapion before it has returned into the hands of the owner; but no actio of theft can be brought, because the relation of the parties is such that no actio whatever can arise between them. But if the theft has been committed by the assistance and advice of another, as a theft is actually committed, this person will be subject to the actio of theft as a theft is undoubtedly committed through his means.

13. An actio may be brought by any one who is interested in the safety of the thing, although he is not the owner; and the proprietor, consequently, cannot bring this actio unless he is interested in the thing not perishing.

14. Hence, a creditor may bring this actio if a thing pledged to him is stolen, although his debtor is solvent, because it may be more advantageous to him to rely upon his pledge than to bring an actio against his debtor personally; so much so, that although it is the debtor himself that has stolen the thing pledged, yet the creditor can bring an actio of theft.

15. So, too, if a fuller receives clothes to clcan, or a tailor receives them to mend for a certain fixed sum, and has them stolen from him, it is he and not the owner who is able to bring an actio of theft, for the owner is not considered as interested in their safety, having an actio locati, by which he may recover the thing stolen against the fuller or tailor. But if a thing is stolen from a bona fide purchaser, he is entitled, like a creditor, to an actio of theft, although he is not the proprietor. But an actio of theft is not maintainable by

the fuller or tailor unless he is solvent, that is, unless he is able to pay the owner the value of the thing lost; for if the fuller or tailor is insolvent, then the owner, as he cannot recover anything from them, is allowed to bring an actio of theft, as he has in this case an interest in the safety of the thing. And it is the same although the fuller or tailor is partially solvent.

16. What we have said of the fuller and tailor is applied by the ancients to the borrower. For, as the fuller by accepting a sum for his labor makes himself answerable for the safe-keeping of the thing, so does a borrower by accepting the use of the thing he borrows. But our wisdom has introduced in our decisions an improvement on this point, and the owner may now bring an actio commodati against the borrower, or of theft against the thief; but when once his choice is made, he cannot change his mind and have recourse to the other actio. If he elects to sue the thief, the borrower is quite freed; if he elects to sue the borrower, he cannot bring an actio of theft against the thief, but the borrower may, that is, provided that the owner elects to sue the borrower knowing that the thing has been stolen. If he is ignorant or uncertain of this, and therefore sues the borrower, and then subsequently learns the true state of the case, and wishes to have recourse to an actio of theft, he will be permitted to sue the thief without any difficulty being thrown in his way, for it was in ignorance of the real fact that he sued the borrower; unless, indeed, his claim has been satisfied by the borrower, for then the thief is quite free from any actio of theft on the part of the owner, but the borrower takes the place of the owner in the power of bringing this actio. On the other hand, it is very evident that if the owner originally brings an actio commodati, in ignorance that the thing has been stolen, and, afterwards learning this, prefers to proceed against the real thief, the borrower is thereby entirely freed, whatever may be the issue of the actio against the thief; as in the previous case, the thief would be freed as against the lender, whether the borrower was wholly or only partially able to satisfy the claim against him.

17. A depository is not answerable for the safe-keeping of the thing deposited, but is only answerable for wilful wrong; therefore, if the thing is stolen from him, as he is not bound by the contract of deposit to restore it, and has no interest in its safety, he cannot bring an actio of theft, but it is the owner alone who can bring this actio.

18. It should be observed that the question has been asked whether, if a person under the age of puberty, takes away the property of another, he commits a theft. The answer is that it is the intention that makes the theft; such a person is only bound by the obligation springing from the delictum if he is near the age of puberty, and consequently understands that he commits a crime.

19. The actio of theft, whether brought to recover double or quadruple, has no other object than the recovery of the penalty. For the owner has also a means

of recovering the thing itself, either by a vindicatio or a condictio. The former may be brought against the possessor, whether the thief or anyone else; the latter may be brought against the thief or the heir of the thief, although not in possession of the thing stolen.

II. Goods Taken by Force.

A person who takes a thing belonging to another by force is liable to an actio of theft, for who can be said to take the property of another more against his will than he who takes it by force? And he is therefore rightly said to be an improbus fur. The praetor, however, has introduced a peculiar actio in this case, called vi bonorum raptorum; by which, if brought within a year after the robbery, quadruple the value of the thing taken may be recovered; but if brought after the expiration of a year, then the single value only may be brought even against a person who has only taken by force a single thing, and one of the most trifling value. But this quadruple of the value is not altogether a penalty, as in the actio furtum manifestum; for the thing itself is included, so that, strictly, the penalty is only three times the value. And it is the same, whether the robber was or was not taken in the actual commission of the crime. For it would be ridiculous that a person who uses force should be in a better condition than he who secretly commits a theft.

1. As, however, this actio can only be brought against a person who robs with the intention of committing a wilful wrong, if anyone takes by force a thing, thinking himself, by a mistake, to be the owner, and, in ignorance of the law, believing it permitted an owner to take away, even by force, a thing belonging to himself from persons in whose possession it is, he ought to be held discharged of this actio, nor in such a case would he be liable to an actio of theft. But lest robbers, under cover of such an excuse, find means of gratifying their avarice with impunity, the imperial constitutiones have made a wise alteration, by providing that no one may carry off by force a thing that is moveable, or moves itself, although he thinks himself the owner. If any one acts contrary to these constitutiones, he, if the thing is his, ceases to be owner of it; if it is not, he is not only to restore the thing taken, but also to pay its value. The constitutiones have declared these rules applicable, not only in the case of moveables of a nature to be carried off by force, but also to the forcible entries made upon immovables, in order that every kind of violent robbery may be prevented.

2. In this actio it is not necessary that the thing should have been a part of the goods of the plaintiff; for whether it has been a part of his goods or not, yet if it has been taken from among his goods, the actio may be brought. Consequently, if anything has been let, lent or given in pledge to Titius, or deposited with him, so that he has an interest in its not being taken away by force, as, for instance, he has engaged to be answerable for any fault

committed respecting it; or if he possesses it bona fide, or has the usufructus of it, or has any other legal interest in its not being taken away by force, this actio may be brought, not to give him the ownership in the thing, but merely to restore him what he has lost by the thing being taken away from out of his goods, that is, from out of his property. And generally, we may say, that the same causes which would give rise to an actio of theft, if the theft is committed secretly, will give rise to this actio, if it is committed with force.

III. The Lex Aquilia

The actio damni iniuriae is established by the lex Aquilia, of which the first head provides that if anyone shall have wrongfully killed a slave, or a four-footed beast, being one of those reckoned among cattle belonging to another, he shall be condemned to pay the owner the greatest value which the thing has possessed at any time within a year previous.

1. As the law does not speak generally of four-footed beasts, but only of those which are reckoned among cattle, we may consider its provision as not applying to dogs or wild animals, but only to animals which may be properly said to feed in herds, as horses, mules, asses, sheep, oxen, goats, and also swine, for they are included in the term "cattle," for they feed in herds. Thus Homer says, as Laelius Marcianus quotes in his Institutes:

You will find him seated by his swine,
and they are feeding by the rock of Corax,
near the spring Arethusa.

2. To kill wrongfully is to kill without any right: consequently, a person who kills a thief is not liable to this actio, that is, if he could not otherwise avoid the danger with which he was threatened.

3. Nor is a person made liable by this law who has killed by accident, provided there is no fault on his part, for this law punishes fault as well as wilful wrong-doing.

4. Consequently, if anyone playing or practicing with a javelin pierces with it your slave as he goes by, there is a distinction made; if the accident befalls a soldier while in the camp, or other places appropriated to military exercises, there is no fault in the soldier, but there would be in anyone else besides a soldier, and the soldier himself would be in fault if he inflicted such an injury in any other place than one appropriated to military exercises.

5. If, again, anyone, in pruning a tree, by letting a bough fall, kills your slave who is passing, and this takes place near a public way, or a way belonging to a neighbor, and he has not cried out to make persons take care, he is in fault; but

if he has called out, and the passer-by would not take care, he is not to blame. He is also equally free from blame if he was cutting far from any public way, or in the middle of a field, even though he has not called out, for by such a place no stranger has a right to pass.

6. So, again, a physician who has performed an operation on your slave, and then neglected to attend to his cure, so that the slave dies, is guilty of a fault.

7. Unskillfulness is also a fault, as, if a physician kills your slave by unskillfully performing an operation on him, or by giving him wrong medicines.

8. So, too, if a muleteer, through his want of skill, cannot manage his mules, and runs over your slave, he is guilty of a fault. As, also, he would be if he could not hold them on account of his weakness, provided that a stronger man could have held them in. The same decisions apply to an unskillful or infirm horseman, unable to manage his horse.

9. The words above quoted "the greatest value the thing has possessed at any time within a year previously," mean that if your slave is killed, being at the time of his death lame, maimed, or one-eyed, but having been within a year quite sound and of considerable value, the person who kills him is bound to pay not his actual value, but the greatest value he ever possessed within the year. Hence, this actio may be said to be penal, as a person is bound under it not only for the damage he has done, but for much more; and, therefore, the actio does not pass against his heir, as it would have done if the condemnation had not exceeded the amount of the actual damage.

10. It has been decided not by virtue of the actual wording of the law, but by interpretation, that not only is the value of the thing perishing to be estimated as we have said, but also the loss which in any way we incur by its perishing; as, for instance, if your slave having been instituted heir by some one is killed before he enters at your command on the inheritance, the loss of the inheritance should be taken account of. So, too, if one pair of mules, or a set of four horses, or one slave of a band of comedians, is killed, account is to be taken not only of the value of the thing killed, but also of the diminished value of what remains.

11. The master of a slave who is killed may bring a private actio for the damages given by the lex Aquilia, and also bring a capital actio against the murderer.

12. The second head of the lex Aquilia is not now in use.

13. The third head provides for every kind of damage; and therefore, if a

slave, or a four-footed beast, of those reckoned among cattle, is wounded, or a four-footed beast of those not reckoned among cattle, as a dog or wild beast, is wounded or killed, an actio may be brought under the third head. Compensation may also be obtained under it for all wrongful injury to animals or inanimate things, and, in fact, for anything burnt, broken, or fractured, although the word broken ("ruptum") would have sufficed for all these cases; for a thing is ruptum which in any way is spoilt ("corruptum"), so that not only things fractured or burnt, but also things cut, bruised, split, or in any way destroyed or deteriorated may be said to be rupta. It has also been decided that any one who mixes anything with the oil or wine of another, so as to spoil the goodness of the wine or oil, is liable under this head of the lex Aquilia.

14. It is evident that as a person is liable under the first head, if by wilful injury or by his fault he kills a slave or a four-footed beast, so by this head a person is liable for every other damage if there is wrongful injury or fault in what he does. But in this case the offender is bound to pay the greatest value the thing has possessed, not within the year next preceding, but the thirty days next preceding.

15. Even the word plurimi, i. e., of the greatest value, is not expressed in this case. But Sabinus was rightly of opinion that the estimation ought to be made as if this word was in the law, since it must have been that the plebeians, who were the authors of this law on the motion of the tribune Aquilius, thought it sufficient to have used the word in the first head of the law.

16. But the direct actio under this law cannot be brought if anyone has, with his own body, done damage, and consequently utiles actiones are given against the person who does damage in any other way, as, for instance, a utilis actio is given against one who shuts up a slave or a beast, so as to produce death by hunger; who drives a horse so fast as to knock him to pieces, or drives cattle over a precipice, or persuades another man's slave to climb a tree, or go down in a well, and the slave in climbing or descending is killed or maimed. But if any one has flung the slave of another from a bridge or a bank into a river, and the slave is drowned, then, as he has actually flung him down, there can be no difficulty in deciding that he has caused the damage with his own body, and consequently he is directly liable under the lex Aquilia. But if no damage has been done by the body, nor to the body, but damage has been done in some other way, the actio directa and the actio utilis are both inapplicable, and an actio in factum is given against the wrongdoer; for instance, if any one through compassion has loosed the fetters of a slave, to enable him to escape.

IV. Injuria.

Injuria, in its general sense, signifies every action contrary to law; in a special sense, it means, sometimes, the same as contumelia ("outrage"), which is derived from contemnere, the Greek ubris; sometimes the same as culpa ("fault"), in Greek adikama as in the lex Aquilia, which speaks of damage done injuria; sometimes it has the sense of iniquity, injustice, or in Greek adikia; for a person against whom the praetor or judge pronounces an unjust sentence is said to have received an injuria.

1. An injuria is committed not only by striking with the fists, or striking with clubs or the lash, but also by shouting until a crowd gathers around any one; by taking possession of anyone's goods pretending that he is a debtor to the inflictor of the injury who knows he has no claim on him; by writing, composing, or publishing a libel or defamatory verses against anyone, or by maliciously contriving that another does any of these things; by following after an honest woman, or a young boy or girl; by attempting the chastity of any one; and in short, by numberless other acts.

2. A man may receive an injuria, not only in his own person, but in that of his children in his power, and even in that of his wife, according to the opinion that has prevailed. If, therefore, you injure a daughter in the power of her father, but married to Titius, the actio for the injury may be brought not only in the name of the daughter herself, but also in that of the father or. husband. But, if a husband has sustained an injuria, the wife cannot bring the actio injuriarum, for the husband is the protector of the wife, not the wife of the husband. The father-in-law may also bring this actio in the name of his daughter-in-law, if her husband is in his power.

3. An injuria cannot, properly speaking, be done to a slave, but it is the master who, through the slave, is considered to be injured; not, however, in the same way as through a child or wife, but only when the act is of a character grave enough to make it a manifest insult to the master, as if a person has flogged severely the slave of another, in which case this actio is given against him. But a master cannot bring an actio against a person who has collected a crowd round his slave, or struck him with his fist.

4. If an injuria has been done to a slave held in common, equity demands that it shall be estimated not according to their respective shares in him, but according to their respective position, for it is the masters who are injured.

5. If Titius has the usufructus, and Maevius the property in a slave, the injuria is considered to be done rather to Maevius than to Titius.

6. If the injury has been done to a free man, who serves you bona fide, you have no actio, but he can bring an actio in his own name, unless he has been injured merely to insult you, for, in that case, you may bring the actio injuriarum. So, too, with regard to a slave of another who serves you bona

fide, you may bring this actio whenever the slave is injured for the purpose of insulting you.

7. The penalty for injuries under the law of the Twelve Tables was a limb for a limb, but if only a bone was fractured, pecuniary compensation being exacted proportionate to the great poverty of the times. Afterwards, the praetor permitted the injured parties themselves to estimate the injury, so that the iudex should condemn the defendants to pay the sum estimated, or less, as he may think proper. The penalty appointed by the Twelve Tables has fallen into desuetude, but that introduced by the praetors, and termed honorary, is adopted in the administration of justice. For, according to the rank and character of the person injured, the estimate is greater or less; and a similar gradation is observed, not improperly, even with regard to a slave, one amount being paid in the case of a slave who is a steward, a second in that of a slave holding an office of the intermediate class, and a third in that of one of the lowest rank, or one condemned to wear fetters.

8. The lex Cornelia also speaks of injuriae, and introduced an actio injuriarum, which may be brought when anyone alleges that he has been struck or beaten, or that his house has been broken into. And the term "his house" includes one which belongs to him and in which he lives, or one he hires, or one in which he is received gratuitously or as a guest.

9. An injuria is said to be of a grave character, either from the nature of the act, as if any one is wounded or beaten with clubs by another, or from the nature of the place, as when an injury is done in a theater, a forum, or in the presence of the praetor; sometimes from the quality of the person, as when it is a magistrate that has received the injuria, or a senator has sustained it at the hands of a person of low condition, or a parent or patron at the hands of a child or freedman. For the injuria done to a senator a parent or a patron is estimated differently from an injury done to a person of low condition or to a stranger. Sometimes it is the part of the body injured that gives the character to the injuria as if any one had been struck in the eye. Nor does it make any difference whether such an injuria has been done to a paterfamilias or a filiusfamilius, it being in either case considered of a grave character.

10. Lastly, it must be observed that in every case of injuria he who has received it may bring either a criminal or a civil actio. In the latter, it is a sum estimated, as we have said, that constitutes the penalty; in the former, the iudex, in the exercise of his duty, inflicts on the offender an extraordinary punishment. We must, however, remark that a constitutio of Zeno permits men of the rank of illustris, or any higher rank, to bring or defend the actio injuriarum if brought criminally by a procurator, as may be seen more clearly by reading the constitutio itself.

11. Not only is he liable to the actio injuriarum who has inflicted the injury, as, for instance, the person who has struck the blow; but he also who has maliciously caused or contrived that any one should be struck in the face with the fist.

12. This actio is extinguished by a person dissembling to have received the injury; and therefore, a person who has taken no account of the injury, that is, who immediately on receiving it has shown no resentment at it, cannot afterwards change his mind and resuscitate the injury he has allowed to rest.

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GLOSSARY OF ROMAN LAW

accusatio - the bringing of a criminal charge, normally (until the early Empire) by a private citizen who, acting as the accuser (*delator*) lodged a complaint with a magistrate. If accepted, the magistrate would register the charge (*inscriptio*), which could not then be withdrawn without permission of the court.

actio in factum - an action given by the praetor on the facts of the case alone where no standard civil law action was applicable.

******adoptio*** - an adoption where a dependent person (*alieni iuris*) is transferred to one family to another, involving the change of *paterfamilias*.

******adrogatio*** - an adoption where an independent person (*sui iuris*) is transferred from one family to another, coming under the *patria potestas* of the *pater familias* of his adoptive family. This could be done only to save a family from extinction.

***agnates** - relatives through the male line, descended from a common male ancestor without any artificial break in the line of relationship (such as emancipation). Persons of either sex may be agnates, but the line could only be transmitted through males. If the common male ancestor (*pater familias*) was alive, the agnates were all in his *patria potestas*. Agnatic relations existed through adoption as fully as through blood.

*******bonae fidei iudicia*** - "actions of good faith" granted by the praetor for certain contractual relationships in which the *iudex* was required to take account of what ought to be done or given in good faith by the parties. Defenses (*exceptiones*) could be raised by the court even when not pled by the defendant.

****bonitary ownership** - possession protected by the praetor even though the formalities of transfer have not been followed.

***cognates** - all relatives, whether traced through the male or female lines.

******cognitio extra ordinem*** - a proceeding before an imperial magistrate rather than before the praetor and *iudex*. It replaced the classical formulary system in the 3rd century A.D.

****condictio*** **-** a type of action alleging a debt without specifying the precise basis of the claim. It was available in both contractual and quasi-contractual claims.

****constitutio*** **-** general term for imperial legislation of all types.

****conubium*** **-** the right to contract a civil law marriage, possessed generally only by Roman citizens.

****curator*** **-** guardian for young persons over the age of puberty and under 25; and for the insane and the spendthrift.

****cursus honorum*** **-** the chain of offices in the political career at Rome: quaestor, aedile, tribune, praetor, consul, censor.

****deportatio*** **-** perpetual banishment, the most severe form of exile involving confinement at a fixed location, confiscation of property, and loss of citizenship.

dolus **-** trickery, fraud.

****edictum*** **-** a proclamation of a magistrate. The praetor's Edict in particular contained the various *formulae* for causes of action he intended to recognize during his tenure of office. The Edict became standardized and was given final form in the *Edictum Perpetuum* issued by Iulianus under the emperor Hadrian. It formed the basis of the *ius honorarium*.

****emancipatio*** **-** voluntary release from the *patria potestas*, breaking the agnatic relationship and conferring independence (*sui iuris*) on the person involved.

exceptio **-** a clause of defense allowed by the praetor in a defendant’s response under the Formulary system.

***Formulary system -** civil procedure introduced in the mid-Republic and continuing until the 3rd cent. A.D. (when it was superseded by *cognitio* system). The procedure was introduced by the praetors, who required the parties to formulate the issues in a case by a formal statement (*formula*), which was then passed on to the *iudex* for a determination of the facts. The various kinds of *formulae* recognized by the praetor would be set forth in his Edict.

****heres suus*** **-** a person who, upon death of a *pater familias*, became *sui iuris*.

****honestiores / humiliores*** **-** during the Empire, the populace was divided broadly into two classes. The *honestiores* were persons of status and property, the *humiliores* persons of low social status. Only the latter were subject to certain kinds of punishment (crucifixion, torture, and corporal punishment).

impubes - a person under the age of puberty (age 12 for girls, 14 for boys). They lacked full legal capacity and, if independent (*sui iuris*) had to be in tutelage.

****infamia*** - a condition of disgrace, involving significant legal disabilities, resulting from immoral or wrong conduct (conviction for a crime, condemnation in delictal actions, and actions involving breach of trust).

in iure - the initial proceedings of a trial, held before the praetor, at which the issues were framed for decision. It concluded with a "joinder of issue" (*litis contestatio*). The matter then went to the *iudex* for trial (*apud iudicem*).

****in iure cessio*** - a formal transfer of property in open court before the consul or praetor.

interdict - an order issued by the praetor or other magistrate, usually giving rise to further proceedings if disregarded. It was used especially as a procedural device to determine property rights; but it was also the normal way to start proceedings for the protection of both public and private interest. The particular circumstances under which an *interdictum* would be issued were set forth in the praetor's *Edictum*.

iudex - the "judge," an unpaid private person chosen from the list (*album*) drawn up according to wealth to decide a case referred to him by the praetor. If the case was heard by a panel of *iudices*, they were known as *recuperatores*.

ius civile - the law applying to Roman citizens.

****ius gentium*** - the law common to all peoples.

ius honorarium - the law developed in edicts issued by the praetors during the Republic and early Empire, aiding, supplementing or amending existing rules or procedures of the *ius civile*. It was finalized in the 2nd century A.D. in the *Edictum Perpetuum*. The procedures developed by the praetors (the formulary system) were superseded in the 3rd century by the *cognitiones*.

legis actio - any action at law. Also, the "causes of action" in early Roman law.

****maiestas*** - the term applied to a number of criminal offenses against the state, including treason, sedition, desertion from the army and, later, offenses against the emperor and his family.

*****mancipatio*-** the formal transfer of property by bronze and scales (*per aes et libram*). Only *res mancipi* may be so transferred. It was also the procedure for making a will, for the passing of a woman into marital subordination, for bringing people into bondage for the purpose of adoption or emancipation, or as the result of a noxal action.

*****manumissio* -** the freeing of a slave. Also used for the release from bondage following *emancipatio*.

****manus* -** the power of the *pater familias* over his wife and his sons' wives.

****minor* -** a person over the age of puberty (cf. *impubes*) but under the age of 25. If *sui iuris* they had full legal capacity, though they could be protected by a grant of *restitutio in integrum* (the right to rescind transactions) under certain circumstances.

****noxal surrender -** the handing over of a slave or animal as compensation to the victim of a delict committed by him.

***obligatio consensu contracta* -** a contract entered into by mere agreement.

***obligatio litteris contracta* -** a contract entered into by writing.

***obligatio re contracta* -** a contract entered into by conduct.

***obligatio verbis contracta* -** a contract entered into by words.

***occupatio* -** acquisition of ownership by possession of a thing not previously owned or a thing abandoned by its owner.

****pater familias* -** the "head of the household," holding the *patria potestas* over all descendants, male and female, through the male line (i.e., the agnatic family). He also had power over those in bondage through *mancipatio* (*i.e.,* adopted sons and wives). Persons in his power were subject to his control in many matters, including life or death and marriage. They were incapable of owning property and everything they acquired passed to the *pater familias*. The powers of a *pater familias* did not cease until his death.

****patria potestas* -** the right of the *pater familias* over the persons and property of the members of his agnatic family and slaves. It included the right to put to death and entitlement to virtually all property and contractual rights acquired by his dependents.

****patronus* -** the former master of a slave. He had many rights over the freed slave (*libertinus*), including the performance of services (*opera*) and certain rights of inheritance. The freedman was obliged to show respect (*obsequium*) to his patron and was barred from bringing criminal actions against him or actions involving *infamia*.

****peculium*** - personal fund of a son or slave allowed by the *pater familias* (who retained full ownership of the money). A son did have full control over the *peculium castrense* (funds acquired while on military service).

****per aes et libram*** - the weighing out of copper or bronze necessary for a formal sale.

perigrinus - anyone not a Roman citizen and therefore not entitled, normally, to the benefits of the *ius civile*.

pignus - a pledge by which a creditor obtained possession of property. Ownership remained with the debtor, but the creditor had certain rights upon default.

****quaestiones perpetuae*** - permanent criminal courts, each dealing with one class of offense. The basic system was established by a series of laws under Sulla's dictatorship in 81 B.C.

****relegatio*** - exile for a fixed period or in perpetuity, but without loss of citizenship of confiscation of property.

****res mancipi*** - property subject to transfer by *mancipatio* (*i.e.*, land subject to Roman ownership, slaves, beasts of draft and burden, and rustic servitudes belonging to land subject to Roman ownership). All other property is *res nec mancipi* and can be transferred by mere *traditio*.

****stipulatio*** - an enforceable verbal contract created by simple question ("Do you promise to pay me 10,000 sesterces?") and answer ("I promise."). No witnesses or writing are required, but both were customary. The normal action on a *stipulatio* was a *condictio*.

sui iuris - a person who is not in the power of another. A person is in another’s power (*alieni iuris*) if he or she is *in manu*, *in mancipio*, or *in patria potestate*. All other persons are *sui iuris* and, if male, are *patres familias*. Persons *sui iuris* who were *impubes* (under age 14 for boys, 12 for girls) were subject to a *tutor*, those who were *minores* (under age 25) were subject to a *curator*.

****traditio*** - simple transfer of property, effective for acquiring ownership of all property except *res mancipi*.

tutor - guardian for independent children under the age of puberty (*impubes*) and for independent women of any age.

****usucapio*** - acquisition of ownership by long usage.

****usufructus*** - the right to use of the property of another and take its fruits or profit (*fructus*) without diminishing its capital value.

usus - the right to use the property of another without taking its fruits or profits. Also, a formless acquisition of marital power (*manus*) over the wife through an uninterrputed cohabitation for one year with the intention of living as husband and wife.

****vindicatio*** - an action for claiming ownership of property.

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LANDMARKS OF ROMAN LAW

THE REPUBLIC:

c. 500 (?) *Ius Papirianum*
Pontifical law.

451 Law of the Twelve Tables

304 *Ius civile Flavianum*
Publication of the *legis actiones*.

287 *Lex Hortensia*
Plebiscita given force of law.

286 *Lex Aquilia*
Foundation of the law of delict.

253 Ti. Coruncanius first plebeian *pontifex maximus*
Primus profiteri coepit. (Digest 1.2.2.38).

c. 198 *Ius Aelianum*
Collection of *legis actiones* by Sex. Aelius Paetus (cos. 198).

c. 150-100 Three "founders" of the *ius civile*.
P. Mucius Scaevola (cos. 133 and *pontifex maximus*)
M. Junius Brutus (pr.)
M'. Manilius (cos. 149)

c. 149-125 *Lex Aebutia*
Permitted use of written *formulae* in place of ritual *legis actiones.*

c. 100 Flourishing of the *ius honorarium.*
Edicts of magistrates expand legal remedies by *interpretatio*.
Edicta perpetua (tralaticia).

c. 95 Q. Mucius Scaevola (cos. 95)
Libri XVIII de iure civili.

67 Praetors prohibited from deviating from their *edicta*.

c. 51 Ser. Sulpicius Rufus (cos. 51)

Nearly 180 books on the *ius civile.*

c. 39 P. Alfenus Varus (cos. 39)
Digesta in 40 books.

THE PRINCIPATE:

17 *Lex Iulia*
Formulary procedure made compulsory for all but a few actions.

c. 25 B.C. Growth of the *cognitio extraordinaria*.

M. Antistius Labeo (“founder” of the Proculiani School)
400 works on the law.

C. Ateius Capito (“founder” of the Sabiniani School)

Augustus grants the *ius respondeni ex auctoritate principis*.

c. A.D. 50
Proculus
Massurius Sabinus
C. Cassius Longinus

c. 125 *Edictum Perpetuum*
Julianus draws up Praetorian Edict in final form.

c. 161 *Institutiones* of Gaius

Early 200’s
Papinianus
Ulpianus
Paulus
Modestinus

212 Edict of Caracalla grants Roman citizenship to entire Empire.

THE DOMINATE:

320’s Constantine “abolishes” and “confirms” certain legal works.

425 The Law of Citations

439 Code of Theodosius

Early 500’s
    Visigothic Code (506)
    Burgundian Code (c. 500)
    Theodoric the Great’s *Edictum* (c. 508)

530’s Justinian’s *Corpus Iuris Civilis*

1100’s Rebirth of Roman Law in Western Europe
    School of Bologna (“Glossators”)

1900 German Civil Code abolishs the validity of Roman Law in Germany.

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A Short Chronology of Roman History

The Monarchy:

c. 753 B.C. Founding of Rome (April 21, 753)

The Republic:

c. 509 B.C. Republic established (Res Publica)

c. 509-350 B.C. Wars with surrounding tribes (Etruscans, Latins, Gauls, etc.)

c. 490-281 B.C. The Struggle of the Orders (Patricians vs. Plebeians)

c. 450 B.C. Law of the Twelve Tables

c. 390 B.C. Rome captured by the Gauls

c. 350-338 B.C. Rome subdues the Latin League

341-264 Rome's conquest of Italy

341-280 B.C. The Samnite Wars

264-146 B.C. Rome's conquest of the Mediterranean world

264-146 B.C. Wars with Carthage:
- 1st Punic War (Conquest of Sicily): 264-241 B.C.
- 2d Punic War (Hannabalic War): 218-202 B.C.
- 3rd Punic War (Carthage destroyed): 149-146 B.C.

200-146 B.C. Wars in the East:
- 1st Macedonian War: 215-206 B.C.
- 2d Macedonian War: 200-196 B.C.
- War with Antiochus the Great of Syria: 191-188 B.C.
- 3rd Macedonian War: 171-167 B.C.
- Achaean War (Corinth destroyed) 146 B.C.

133-31 B.C. The "Roman Revolution" (from Republic to Empire)

133-121 B.C. The Gracchi brothers attempt reforms - murdered

112-31 B.C. Foreign Wars of the Late Republic:
  Jugurthine War (112-105 B.C.)
  Cimbric Wars (113-101 B.C.)
  Wars against Mithridates of Pontus (89-63 B.C.)
  Caesar’s Conquest of Gaul (58-50 B.C.)

88-82 B.C. First Period of Civil Wars (Marius and Sulla)

49-45 B.C. Second Period of Civil Wars (Caesar and Pompey)

44 B.C. Caesar assassinated (March 15, 44 B.C.)

43-31 B.C. Third Period of Civil Wars (Octavian, Brutus, Antony)

31 B.C. Battle of Actium (Octavian defeats Antony) - end of Civil Wars

The Empire:

27 B.C.-A.D. 68 The Julio-Claudian Emperors (Augustus, Tiberius, Caligula, Claudius, Nero)

69 “Year of the Four Emperors” (Galba, Otho, Vitellius, Vespasian)

69-96 The Flavian Emperors (Vespasian, Titus, Domitian)

96-180 The “Five Good Emperors” (Nerva, Trajan, Hadrian, Antoninus Pius, Marcus Aurelius)

180-193 Commodus, Pertinax, Didius Julianus (Empire auctioned off by Praetorian Guard)

193-235 The Severan Dynasty (Septimius Severus, Caracalla, Severus Alexander)

235- c. 270 The "Time of Troubles"
  Germanic tribes breach northern frontiers
  Persians seize East (Zenobia of Palmyra)
  Gaul breaks free into separate empire
  Economy collapses.

270-275 Aurelian - “Restitutor orbis”

284-305 **Diocletian** and the “Tetrarchy” - Four co-emperors rule Empire

312-337 **Constantine** the Great reunites the Empire

330 Constantinople founded

376 Visigoths cross the Danube.
Battle of Adrianople - death of Emperor Valens (378)

378-395 Theodosius the Great - last ruler of united Empire

406 Germanic tribes invade the Western Empire

476 Last Roman emperor in the West deposed (Romulus Augustulus)

527-565 **Justinian the Great**

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1453 The Ottoman Turks capture Constantinople
May 29, 1453 - Death of Constantine XI

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LEGES REI PVBLICAE ET SENATVS CONSVLTA

DUODECIM TABULARUM LEGES

TABULA I

Si in ius vocat, ito. Ni it, antestamino. Igitur em capito.

Si calvitur pedemve struit, manum endo iacito.
Si morbus aevitasve vitium escit, iumentum dato.
Si nolet, arceram ne sternito.

Assiduo vindex assiduus esto.
Proletario iam civi quis volet vindex esto.

nex . . . forti sanati . . .

Rem ubi pacunt, orato. Ni pacunt, in comitio aut in foro ante meridiem caussam coiciunto.
Com peroranto ambo praesentes. Post meridiem praesenti litem addicito. Si ambo praesentes,
solis occasus suprema tempestas esto.

vades . . . subvades . . .

TABULA II

<Actor dicito:> ex sponsione te mihi . . . dare oportere aio. Quando tu negas, te praetor iudicem sive arbitrum postulo uti des.

. . . morbus sonticus . . . aut status dies cum hoste . . . quid horum fuit unum iudici arbitrove reove, eo dies diffissus esto.

Cui testimonium defuerit, is tertiis diebus ob portum obvagulatum ito.

TABULA III

Aeris confessi rebusque iure iudicatis XXX dies iusti sunto.

Post deinde manus iniectio esto. In ius ducito. Ni iudicatum facit aut quis endo eo in iure vindicit,
secum ducito, vincito aut nervo aut compedibus XV pondo, ne maiore aut si volet minore vincito.

Si volet suo vivito, ni suo vivit, qui eum vinctum habebit, libras faris endo dies dato. Si volet, plus dato.

Tertiis nundinis partis secanto. Si plus minusve secuerunt, se fraude esto adversus hostem aeterna auctoritas <esto>.

(Aulus Gellius, 20 I 46: Erat autem ius interea paciscendi ac nisi pacti forent habebantur in vinculis dies LX. Inter eos dies trinis nundinis continuis ad praetorem in comitium producebantur, quantaeque pecuniae iudicati essent, praedicabatur. Tertiis autem nundinis capite poenas dabant,aut trans Tiberim peregre venum ibant.)

TABULA IV

Si pater filium ter venum duit, filius a patre liber esto.

TABULA V

Uti legassit super pecunia tutelave suae rei, ita ius esto. Si intestato moritur, cui suus heres nec escit, adgnatus proximus familiam habeto. Si adgnatus nec escit, gentiles familiam habento.

(Gaius I .155: Quibus testamento...tutor datus non sit, iis lege XII [Tabularum] agnati sunt tutores.)

Si furiosus escit, adgnatum gentiliumque in eo pecuniaque eius potestas esto. . . . ast ei custos nec escit . .

Ex ea familia . . . in eam familiam.

TABULA VI

Cum nexum faciet mancipiumque, uti lingua nuncupassit, ita ius esto.

Si qui in iure manum conserunt tignum iunctum aedibus vineave sei concapit ne solvito . . .. duplione . . . quandoque sarpta, donec dempta erunt.

(Gaius, I, 111: Lege XII tabularum cautum est, ut si qua nollet usu in manum mariti convenire, ea quotannis trinoctio abesset atque eo modo cuiusque anni [usum] interrumperet.)

TABULA VII

. . . ambitus . . . sestertius pes . . .

Si iurgant . . . tres arbitri . . .

Viam muniunto: ni sam delapidassint, qua volet iumento agito.

Si aqua pluvia nocet . . .

TABULA VIII

Qui malum carmen incantassit . . .

Si membrum rup<s>it, ni cum eo pacit, talio esto.

Manu fustive si os fregit libero, CCC <assium>, si servo, CL <assium> poenam subito si iniuriam faxsit, viginti quinque poenae <asses> sunto.

. . . rup<s>it . . . sarcito.

Qui fruges excantassit . . . neve alienam segetem pellexeris . . . <capite>. . . si nox furtum faxsit, si occisit, iure caesus esto.

Luci . . . si se telo defendit, . . . endoque plorato.

Lance et licio <ito>.

Si adorat furto, quod nec manifestum erit . . ., <duplione damnum decidito>.

Patronus si clienti fraudem fecerit, sacer esto.

Qui se sierit testarier libripensve fuerit, ni testimonium fatiatur, inprobus intestabilisque esto.

Si telum manu fugit magis quam iecit, <arietem subicito>.

TABULA IX

<privilegia ne inroganto.>

<de capite civis nisi per maximum comitiatum . . . ne ferunto.>

TABULA X

Hominem mortuum in urbe ne sepelito neve urito.

. . . hoc plus ne facito: rogum ascea ne polito.

Mulieres genas ne radunto neve lessum funeris ergo habento.

Homine mortuo ne ossa legito, quo post funus faciat.

Qui coronam parit ipse pecuniave eius honoris virtutisve ergoduitur ei . . .

Neve aurum addito. At cui auro dentes iuncti escunt. Ast in cum illo sepeliet uretve, se fraude esto.

TABULA XI

<conubia plebi cum patribus>

(Cicero. De Republica, II 36-37: Qui [Xviri] cum X tabulas summa legum aequitate prudentiaque conscripsissent, in annum posterum Xviros alios subrogaverunt...qui duabus tabulis iniquarum legum additis...conubia haec illi ut ne plebei cum patribus essent, inhumanissima lege sanxerunt.)

. . . dies intercalandi . . .

. . . dies fasti . . .

TABULA XII

Si servo furtum faxit noxiamve no<x>it.

Si vindiciam falsam tulit, si velit is . . . tor arbitros tris dato, eorum arbitrio . . . fructus duplione damnum decidito.

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SENATUS CONSULTUM DE BACCANALIBUS

(1) [Q(uintus)] Marcius L(uci) f(ilius), S(purius) Postumius L(uci) f(ilius) co(n)s(ules) senatum consoluerunt n(onis) Octob(ribus), apud aedem (2) Duelonai. Sc(ribundo) arf(uerunt) M(arcus) Claudi(us) M(arci) f(ilius), L(ucius) Valeri(us) P(ubli) f(ilius), Q(uintus) Minuci(us) C(ai) f(ilius)

De Bacanalibus quei foideratei (3) esent, ita exdeicendum censuere:

«Neiquis eorum [B]acanal habuise velet. seiques (4) esent, quei sibei deicerent necesus ese Bacanal habere, eeis utei ad pr(aitorem) urbanum (5) Romam venirent, deque eeis rebus, ubei eorum v[e]r[b]a audita esent, utei senatus (6) noster decerneret, dum ne minus senator[i]bus C adesent, [quom e]a res cosoleretur. (7) Bacas vir nequis adiese velet ceivis Romanus neve nominus Latini neve socium (8) quisquam, nisei pr(aitorem) urbanum adiesent, isque [d]e senatuos sententiad, dum ne (9) minus senatoribus C adesent, quom ea res cosoleretur, iousisent.

Ce[n]suere.

(10)| sacerdos nequis uir eset. Magister neque uir neque mulier quisquam eset. (11) neve pecuniam quisquam eorum comoine[m h]abuise velet. Neve magistratum, (12) neve pro magistratu[d], neque virum [neque mul]ierem qui[s]quam fecise velet. (13) Neve post hac inter sed conioura[se nev]e comvovise neve conspondise (14) neve conpromesise velet, neve quisquam fidem inter sed dedise velet. (15) Sacra in [o]quoltod ne quisquam fecise velet. Neve in poplicod neve in (16) preivatod neve exstrad urbem sacra quisquam fecise velet, nisei (17) pr(aitorem) urbanum adieset, isque de senatuos sententiad, dum ne minus (18) senatoribus C adesent, quom ea res cosoleretur, iousisent.

Censuere.

(19) Homines plous V oinvorsei virei atque mulieres sacra ne quisquam (20) fecise velet, neve inter ibei virei plous duobus, mulieribus plous tribus (21) arfuise velent, nisei de pr(aitoris) urbani senatuosque sententiad, utei suprad (22) scriptum est.»

Haice utei in coventionid exdeicatis ne minus trinum (23) noundinum, senatuosque sententiam utei scientes esetis, eorum (24) sententia ita fuit: «Sei ques esent, quei arvorsum ead fecisent, quam suprad (25) scriptum est, eeis rem caputalem faciendam censuere». atque utei (26) hoce in tabolam ahenam inceideretis, ita senatus aiquom censuit, (27) uteique eam figier ioubeatis, ubei facilumed gnoscier potisit. Atque (28) utei ea Bacanalia, sei qua sunt, exstrad quam sei quid ibei sacri est, (29) ita utei suprad scriptum est, in diebus X, quibus vobeis tabelai datai (30) erunt, faciatis utei dismota sient.

In agro Teurano.

(1) Q. Marcius Luci filius, Spurius Postumius Luci filius consules senatum consuluerunt Nonis Octobribus apud aedem (2) Bellonae. Scribendo adfuerunt M. Claudius Marci filius, L. Valerius Publi filius, Q. Minucius Gai filius.

De Bacchanalibus, qui foederati (3) essent, ita edicendum censuere:

«Ne quis eorum Bacchanal habuisse vellet. Si qui (4) essent, qui sibi dicerent necesse esse Bacchanal habere, ei ut ad praetorem urbanum (5) Romam venirent, deque eis rebus, ubi eorum verba audita essent, ut senatus (6) noster decerneret, dum ne minus senatoribus centum adessent, cum ea res consuleretur. (7) Bacchas vir ne quis adisse vellet civis Romanus neve nominis Latini neve sociorum (8) quisquam, nisi praetorem urbanum adissent, isque de senatus sententia, dum ne (9) minus senatoribus centum adessent, cum ea res consuleretur, iussissent.

Censuere.

(10) Sacerdos ne quis vir esset. magister neque vir neque mulier quisquam esset. (11) Neve pecuniam quisquam eorum communem habuisse vellet. Neve magistratum (12) neve pro magistratu neque virum neque mulierem quisquam fecisse vellet. (13) Neve posthac inter se coniurasse neve convovisse neve conspondisse (14) neve compromisisse vellet, neve quisquam fidem inter se dedisse vellet. (15) Sacra in occulto ne quisquam fecisse vellet. Neve in publico neve in (16) privato neve extra urbem sacra quisquam fecisse vellet, nisi (17) praetorem urbanum adisset isque de senatus sententia, dum ne minus (18) senatoribus centum adessent, cum ea res consuleretur, iussissent.

Censuere.

(19) Homines plus quinque universi, viri atque mulieres, sacra ne quisquam (20) fecisse vellet, neve interibi viri plus duobus, mulieribus plus tribus (21) adfuisse vellent, nisi de praetoris urbani senatusque sententia, ut supra (22) scriptum est.»

Haec ut in contione edicatis ne minus trinum (23) nundinum, senatusque sententiam ut scientes essetis, eorum (24) sententia ita fuit: «Si qui essent, qui adversum ea fecissent, quam supra (25) scriptum est, eis rem capitalem faciendam censuere»; atque ut (26) hoc in tabulam aeneam incideretis, ita senatus aequum censuit, (27) utque eam figi iubeatis, ubi facillime nosci possit. Atque (28) ut ea Bacchanalia, si qua sunt, extra quam si quid ibi sacri est, (29) ita ut supra scriptum est, in diebus decem, quibus vobis tabellae datae (30) erunt, faciatis, ut dimota sint.

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EDICTUM ADVERSUS LATINOS RHETORES

Cn. Domitius Ahenobarbus L. Licinius Crassus censores ita edixerunt:

Renuntiatum est nobis esse homines, qui novum genus disciplinae instituerunt, ad quos iuventus in ludum conveniat; eos sibi nomen imposuisse Latinos rhetoras; ibi homines adulescentulos dies totos desidere.

Maiores nostri, quae liberos suos discere et quos in ludos itare vellent, instituerunt. haec nova, quae praeter consuetudinem ac morem maiorum fiunt, neque placent neque recta videntur.

Quapropter et iis, qui eos ludos habent, et iis, qui eo venire consuerunt, videtur faciundum, ut ostenderemus nostram sententiam, nobis non placere.

GAI INSTITVTIONVM COMMENTARIVS PRIMVS

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 10 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 110 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200

[I. De iure civili et naturali.] 1. Omnes populi, qui legibus et moribus reguntur, partim suo proprio, partim communi omnium hominum iure utuntur: Nam quod quisque populus ipse sibi ius constituit, id ipsius proprium est vocaturque ius civile, quasi ius proprium civitatis; quod vero naturalis ratio inter omnes homines constituit, id apud omnes populos peraeque custoditur vocaturque ius gentium, quasi quo iure omnes gentes utuntur. Populus itaque Romanus partim suo proprio, partim communi omnium hominum iure utitur. Quae singula qualia sint, suis locis proponemus.

2. Constant autem iura populi Romani ex legibus, plebiscitis, senatus consultis, constitutionibus principum, edictis eorum, qui ius edicendi habent, responsis prudentium. 3. Lex est, quod populus iubet atque constituit. Plebiscitum est, quod plebs iubet atque constituit. Plebs autem a populo eo distat, quod populi appellatione universi cives significantur, connumeratis et patriciis; plebis autem appellatione sine patriciis ceteri cives significantur; unde olim patricii dicebant plebiscitis se non teneri, quia sine auctoritate eorum facta essent; sed postea lex Hortensia lata est, qua cautum est, ut plebiscita universum populum tenerent: Itaque eo modo legibus exaequata sunt.

4. Senatus consultum est, quod senatus iubet atque constituit; idque legis vicem optinet, quamvis [de ea re] fuerit quaesitum. 5. Constitutio principis est, quod imperator decreto vel edicto vel epistula constituit. Nec umquam dubitatum est, quin id legis vicem optineat, cum ipse imperator per legem imperium accipiat.

6. Ius autem edicendi habent magistratus populi Romani. Sed amplissimum ius est in edictis duorum praetorum, urbani et peregrini, quorum in provinciis iurisdictionem praesides earum habent; item in edictis aedilium curulium, quorum iurisdictionem in provinciis populi Romani quaestores habent; nam in provincias Caesaris omnino quaestores non mittuntur, et ob id hoc edictum in his provinciis non proponitur. 7. Responsa prudentium sunt sententiae et opiniones eorum, quibus permissum est iura condere. Quorum omnium si in unum sententiae concurrunt, id, quod ita sentiunt, legis vicem optinet; si vero dissentiunt, iudici licet quam velit sententiam sequi; idque rescripto divi Hadriani significatur.

[II. De iuris divisione.] 8. Omne autem ius, quo utimur, vel ad personas pertinet vel ad res vel ad actiones. Sed prius videamus de personis.

[III. De condicione hominum.] 9. Et quidem summa divisio de iure personarum haec est, quod omnes homines aut liberi sunt aut servi. 10. Rursus liberorum hominum alii ingenui sunt, alii libertini. 11. lngenui sunt, qui liberi nati sunt; libertini, qui ex iusta servitute manumissi sunt. 12. Rursus libertinorum tria sunt genera: Nam aut cives Romani aut Latini aut dediticiorum numero sunt. De quibus singulis dispiciamus; ac prius de dediticiis.

[IIII. De dediticiis vel lege Aelia Sentia.] 13. Lege itaque Aelia Sentia cavetur, ut, qui servi a dominis poenae nomine vincti sunt, quibusve stigmata inscripta sunt, deve quibus ob noxam quaestio tormentis habita sit et in ea noxa fuisse convicti sunt, quive ut ferro aut cum bestiis depugnarent traditi sint, inve ludum custodiamve coniecti fuerint, et postea vel ab eodem domino vel ab alio manumissi, eiusdem condicionis liberi fiant, cuius condicionis sunt peregrini dediticii.

[V. De peregrinis dediticiis.] 14. Vocantur autem peregrini dediticii hi, qui quondam adversus populum Romanum armis susceptis pugnaverunt, deinde victi se dediderunt. 15. Huius ergo turpitudinis servos quocumque modo et cuiuscumque aetatis manumissos, etsi pleno iure dominorum fuerint, numquam aut cives Romanos aut Latinos fieri dicemus, sed omni modo dediticiorum numero constitui intellegemus.

16. Si vero in nulla tali turpitudine sit servus, manumissum modo civem Romanum modo Latinum fieri dicemus. 17. Nam in cuius persona tria haec concurrunt, ut maior sit annorum triginta, et ex iure Quiritium domini, et iusta ac legitima manumissione liberetur, id est vindicta aut censu aut testamento, is civis Romanus fit; sin vero aliquid eorum deerit, Latinus erit.

[VI. De manumissione vel causae probatione.] 18. Quod autem de aetate servi requiritur, lege Aelia Sentia introductum est. Nam ea lex minores XXX annorum servos non aliter voluit manumissos cives Romanos fieri, quam si vindicta, apud consilium iusta causa manumissionis adprobata, liberati fuerint. 19. Iusta autem causa manumissionis est, veluti si quis filium flliamve aut fratrem sororemve naturalem aut alumnum aut paedagogum aut servum procuratoris habendi gratia aut ancillam matrimonii causa apud consilium manumittat.

[VII. De consilio adhibendo.] 20. Consilium autem adhibetur in urbe Roma quidem quinque senatorum et quinque equitum Romanorum puberum, in provinciis autem viginti recuperatorum civium Romanorum. Idque fit ultimo die conventus; sed Romae certis diebus apud consilium manumittuntur. Maiores vero triginta annorum servi semper manumitti solent, adeo ut vel in transitu manumittantur, veluti cum praetor aut pro consule in balneum vel in theatrum eat.

21. Praeterea minor triginta annorum servus manumissus potest civis Romanus fieri, ei ab eo domino, qui solvendo non erat, testamento eum liberum et heredem relictum * 22. Homines Latini Iuniani appellantur; Latini ideo, quia adsimulati sunt Latinis coloniariis; Iuniani ideo, quia per legem Iuniam libertatem acceperunt, cum olim servi viderentur esse. 23. Non tamen illis permittit lex Iunia vel ipsis testamentum facere vel ex testamento alieno capere vel tutores testamento dari. 24. Quod autem diximus ex testamento eos capere non posse, ita intellegemus, ne quid inde directo hereditatis legatorumve nomine eos posse capere dicamus; alioquin per fideicommissum capere possunt.

25. Hi vero, qui dediticiorum numero sunt, nullo modo ex testamento capere possunt, non magis quam quilibet peregrinus; quin nec ipsi testamentum facere possunt secundum id quod magis placuit. 26. Pessima itaque libertas eorum est, qui dediticiorum numero sunt; nec ulla lege aut senatus consulto aut constitutione principali aditus illis ad civitatem Romanam datur. 27. Quin etiam in urbe Roma vel intra centesimum urbis Romae miliarium morari prohibentur; et si qui contra ea fecerint, ipsi bonaque eorum publice venire iubentur ea condicione, ut ne in urbe Roma vel intra centesimum urbis Romae miliarium serviant neve umquam manumittantur; et si manumissi fuerint, servi populi Romani esse iubentur. Et haec ita lege Aelia Sentia conprehensa sunt.

[Quibus modis Latini ad civitatem Romanam perveniant.] 28. Latini vero multis modis ad civitatem Romanam perveniunt. 29. Statim enim ex lege Aelia Sentia minores triginta annorum manumissi et Latini facti si uxores duxerint vel cives Romanas vel Latinas coloniarias vel eiusdem condicionis, cuius et ipsi essent, idque testati fuerint adhibitis non minus quam septem testibus civibus Romanis puberibus et filium procreaverint, cum is filius anniculus esse coeperit, datur eis potestas per eam legem adire praetorem vel in provinciis praesidem provinciae et adprobare se ex lege Aelia Sentia uxorem duxisse et ex ea filium anniculum habere: Et si is, apud quem causa probata est, id ita esse pronuntiaverit, tunc et ipse Latinus et uxor eius, si et ipsa eiusdem condicionis sit, et filius eius, si et ipse eiusdem condicionis sit, cives Romani esse iubentur. 30. Ideo autem in [persona filii] adiecimus 'si et ipse eiusdem condicionis sit', quia si uxor Latini civis Romana est, qui ex ea nascitur, ex novo senatus consulto, quod auctore divo Hadriano factum est, civis Romanus nascitur. 31. Hoc tamen ius adipiscendae civitatis Romanae etiamsi soli minores triginta annorum manumissi et Latini facti ex lege Aelia Sentia habuerunt, tamen postea senatus consulto, quod Pegaso et Pusione consulibus factum est, etiam maioribus triginta annorum manumissis Latinis factis concessum est. 32. Ceterum etiamsi ante decesserit Latinus, quam anniculi filii causam probarit, potest mater eius causam probare, et sic et ipsa fiet civis Romana, si Latina fuerit * etiamsi ipse filius civis Romanus sit, quia ex cive Romana matre natus est, tamen debet causam probare, ut suus heres patri fiat. 32a. Quae vero diximus de filio anniculo, eadem et de filia annicula dicta intellegemus. 32b. Praeterea ex lege Visellia tam maiores quam minores XXX annorum manumissi et Latini facti ius Quiritium adipiscuntur, id est fiunt cives Romani, si Romae inter vigiles sex annis militaverint. Postea dicitur factum esse senatus consultum, quo data est illis civitas Romana, si triennium militiae expleverint. 32c. Item edicto Claudii Latini ius Quiritium consecuntur, si navem marinam aedificaverint, quae non minus quam decem milia modiorum frumenti capiat, eaque navis vel quae in eius locum substituta sit, sex annis frumentum Romam portaverit. 33. Praeterea a Nerone constitutum est, ut, si Latinus, qui patrimonium sestertium CC milium plurisve habebit, in urbe Roma domum aedificaverit, in quam non minus quam partem dimidiam patrimonii sui impenderit, ius Quiritium consequatur. 34. Denique Traianus constituit, ut si Latinus in urbe triennio pistrinum exercuerit, quod in dies singulos non minus quam centenos modios frumenti pinseret, ad ius Quiritium perveniat * 35. Praeterea possunt maiores triginta annorum manumissi et Latini facti iteratione ius Quiritium consequi. Quo * triginta annorum manumittant * manumissus vindicta aut censu aut testamento et civis Romanus et eius libertus fit, qui eum iteraverit. Ergo si servus in bonis tuis, ex iure Quiritium meus erit, Latinus quidem a te solo fieri potest, iterari autem a me, non etiam a te potest et eo modo meus libertus fit. Sed et ceteris modis ius Quiritium consecutus meus libertus fit. Bonorum autem, quae *, cum is morietur, reliquerit, tibi possessio datur, quocumque modo ius Quiritium fuerit consecutus. Quod si cuius et in bonis et ex iure Quiritium sit, manumissus ab eodem scilicet et Latinus fieri potest et ius Quiritium consequi. 36. Non tamen cuicumque volenti manumittere licet. 37. Nam is, qui in fraudem creditorum vel in fraudem patroni manumittit, nihil agit, quia lex Aelia Sentia inpedit libertatem. 38. Item eadem lege minori XX annorum domino non aliter manumittere permittitur, quam si [vindicta] apud consilium iusta causa manumissionis adprobata fuerit. 39. Iustae autem causae manumissionis sunt, veluti si quis patrem aut matrem aut paedagogum aut conlactaneum manumittat. Sed et illae causae, quas superius in servo minore XXX annorum exposuimus, ad hunc quoque casum, de quo loquimur, adferri possunt. Item ex diverso hae causae, quas in minore XX annorum domino rettulimus, porrigi possunt et ad servum minorem XXX annorum. 40. Cum ergo certus modus manumittendi minoribus XX annorum dominis per legem Aeliam Sentiam constitutus sit, evenit, ut qui XIIII annos aetatis explevnerit, licet testamentum facere possit et in eo heredem sibi instituere legataque relinquere possit, tamen si adhuc minor sit annorum XX, libertatem servo dare non possit. 41. Et quamvis Latinum facere velit minor XX annorum dominus, tamen nihilo minus debet apud consilium causam probare et ita postea inter amicos manumittere.

42. Praeterea lege Fufia Caninia certus modus constitutus est in servis testamento manumittendis. 43. Nam ei, qui plures quam duos neque plures quam decem servos habebit, usque ad partem dimidiam eius numeri manumittere permittitur; ei vero, qui plures quam X neque plures quam XXX servos habebit, usque ad tertiam partem eius numeri manumittere permittitur. At ei, qui plures quam XXX neque plures quam centum habebit, usque ad partem quartam potestas manumittendi datur. Novissime ei, qui plures quam C habebit nec plures quam D, non plures manumittere permittitur quam quintam partem; neque plures quam D habentis ratio habetur, ut ex eo numero pars definiatur, sed praescribit lex, ne cui plures manumittere liceat quam C. Quod si quis unum servum omnino aut duos habet, ad hanc legem non pertinet, et ideo liberam habet potestatem manumittendi. 44. Ac ne ad eos quidem omnino haec lex pertinet, qui sine testamento manumittunt. Itaque licet iis, qui vindicta aut censu aut inter amicos manumittunt, totam familiam suam liberare, scilicet si alia causa non inpediat libertatem. 45. Sed quod de numero servorum testamento manumittendorum diximus, ita intellegemus, ne umquam ex eo numero, ex quo dimidia aut tertia aut quarta aut quinta pars liberari potest, pauciores manumittere liceat quam ex antecedenti numero licuit. Et hoc ipsa ratione provisum est: Erat enim sane absurdum, ut X servorum domino quinque liberare liceret, quia usque ad dimidiam partem eius numeri manumittere ei conceditur, XII servos habenti non plures liceret manumittere quam IIII; at eis, qui plures quam X neque *

46. Nam et si testamento scriptis in orbem servis libertas data sit, quia nullus ordo manumissionis invenitur, nulli liberi erunt, quia lex Fufia Caninia, quae in fraudem eius facta sint, rescindit. Sunt etiam specialia senatus consulta, quibus rescissa sunt ea, quae in fraudem eius legis excogitata sunt.

47. In summa sciendum est, quod lege Aelia Sentia cautum sit, ut creditorum fraudandorum causa manumissi liberi non fiant, hoc etiam ad peregrinos pertinere, [senatus ita censuit ex auctoritate Hadrani] cetera vero iura eius legis ad peregrinos non pertinere.

48. Sequitur de iure personarum alia divisio. Nam quaedam personae sui iuris sunt, quaedam alieno iuri sunt subiectae. 49. Sed rursus earum personarum, quae alieno iuri subiectae sunt, aliae in potestate, aliae in manu, aliae in mancipio sunt. 50. Videamus nunc de iis, quae alieno iuri subiectae sint: Nam si cognoverimus, quae istae personae sint, simul intellegemus, quae sui iuris sint. 51. Ac prius dispiciamus de iis, qui in aliena potestate sunt. 52. In potestate itaque sunt servi dominorum. Quae quidem potestas iuris gentium est: Nam apud omnes peraeque gentes animadvertere possumus dominis in servos vitae necisque potestatem esse, et quodcumque per servum adquiritur, id domino adquiritur. 53. Sed hoc tempore neque civibus Romanis nec ullis aliis hominibus, qui sub imperio populi Romani sunt, licet supra modum et sine causa in servos suos saevire: Nam ex constitutione sacratissimi imperatoris Antonini, qui sine causa servum suum occiderit, non minus teneri iubetur, quam qui alienum servum occiderit. Sed et maior quoque asperitas dominorum per eiusdem principis constitutionem coercetur: Nam consultus a quibusdam praesidibus provinciarum de his servis, qui ad fana deorum vel ad statuas principum confugiunt, praecepit, ut si intolerabilis videatur dominorum saevitia, cogantur servos suos vendere. Et utrumque recte fit: Male enim nostro iure uti non debemus; qua ratione et prodigis interdicitur bonorum suorum administratio. 54. Ceterum cum apud cives Romanos duplex sit dominium (nam vel in bonis vel ex iure Quiritium vel ex utroque iure cuiusque servus esse intellegitur), ita demum servum in potestate domini esse dicemus, si in bonis eius sit, etiamsi simul ex iure Quiritum eiusdem non sit: Nam qui nudum ius Quiritium in servo habet, is potestatem habere non intellegitur.

55. Item in potestate nostra sunt liberi nostri, quos iustis nuptiis procreavimus. Quod ius proprium civium Romanorum est (fere enim nulli alii sunt homines, qui talem in filios suos habent potestatem, qualem nos habemus) idque divi Hadriani edicto, quod proposuit de his, qui sibi liberisque suis ab eo civitatem Romanam petebant, significatur. Nec me praeterit Galatarum gentem credere in potestate parentum liberos esse. 56. Iustas autem nuptias contraxisse liberosque iis procreatos in potestate habere cives Romani ita intelleguntur, si cives Romanas uxores duxerint vel etiam Latinas peregrinasve, cum quibus conubium habeant: Cum enim conubium id efficiat, ut liberi patris condicionem sequantur, evenit, ut non solum cives Romani fiant, sed et in potestate patris sint. 57. Unde et veteranis quibusdam concedi solet principalibus constitutionibus conubium cum his Latinis peregrinisve, quas primas post missionem uxores duxerint; et qui ex eo matrimonio nascuntur, et cives Romani et in potestatem parentum fiunt. 58. Nec tamen omnes nobis uxores ducere licet: Nam a quarundam nuptiis abstinere debemus. 59. Inter eas enim personas, quae parentum liberorumve locum inter se optinent, nuptiae contrahi non possunt, nec inter eas conubium est, velut inter patrem et filiam vel inter matrem et filium vel inter avum et neptem; et si tales personae inter se coierint, nefarias et incestas nuptias coutraxisse dicuntur. Et haec adeo

ita sunt, ut quamvis per adoptionem parentum liberorumve loco sibi esse coeperint, non possint inter se matrimonio coniungi, in tantum, ut etiam dissoluta adoptione idem iuris maneat; itaque eam, quae mihi per adoptionem filiae seu neptis loco esse coeperit, non potero uxorem ducere, quamvis eam emancipaverim. 60. Inter eas quoque personas, quae ex transverso gradu cognatione iunguntur, est quaedam similis observatio, sed non tanta. 61. Sane inter fratrem et sororem prohibitae sunt nuptiae, sive eodem patre eademque matre nati fuerint sive alterutro eorum: Sed si qua per adoptionem soror mihi esse coeperit, quamdiu quidem constat adoptio, sane inter me et eam nuptiae non possunt consistere; cum vero per emancipationem adoptio dissoluta sit, potero eam uxorem ducere; sed et si ego emancipatus fuero, nihil inpedimento erit nuptiis. 62. Fratris filiam uxorem ducere licet: Idque primum in usum uenit, cum divus Claudius Agrippinam, fratris sui filiam, uxorem duxisset: Sororis vero filiam uxorem ducere non licet. Et haec ita principalibus constitutionibus significantur. 63. Item amitam et materteram uxorem ducere non licet. Item eam, quae mihi quondam socrus aut nurus aut privigna aut noverca fuit. Ideo autem diximus 'quondam', qula, si adhuc constant eae nuptiae, per quas talis adfinitas quaesita est, alia ratione mihi nupta esse non potest, quia neque eadem duobus nupta esse potest neque idem duas uxores habere. 64. Ergo si quis nefarias atque incestas nuptias contraxerit, neque uxorem habere videtur neque liberos: Itaque hi, qui ex eo coitu nascuntur, matrem quidem habere videntur, patrem vero non utique, nec ob id in potestate eius sunt, quales sunt ii, quos mater vulgo concepit: Nam et hi patrem habere non intelleguntur, cum is etiam incertus sit; unde solent spurii filii appellari vel a Graeca voce quasi spor£dhn concepti nel quasi sine patre filii.

65. Aliquando autem evenit, ut liberi, qui statim ut nati sunt, parentum in potestatem non fiant, ii postea tamen redigantur in potestatem. 66. Velut si Latinus ex lege Aelia Sentia uxore ducta filium procreaverit aut Latinum ex Latina aut civem Romanum ex cive Romana, non habebit eum in potestate; sed si postea causa probata civitatem Romanam consecutus fuerit, simul eum in potestate sua habere incipit. 67. Item si civis Romanus Latinam aut peregrinam uxorem duxerit per ignorantiam, cum eam civem Romanam esse crederet, et filium procreaverit, hic non est in potestate eius, quia ne quidem civis Romanus est, sed aut Latinus ant peregrinus, id est eius condicionis, cuius et mater fuerit, quia non aliter quisque ad patris condicionem accedit, quam si inter patrem et matrem eius conubium sit: Sed ex senatus consulto permittitur causam erroris probare, et ita uxor quoque et filius ad civitatem Romanam perveniunt, et ex eo tempore incipit filius in potestate patris esse. Idem iuris est, si eam per ignorantiam uxorem duxerit, quae dediticiorum numero est, nisi quod uxor non fit civis Romana. 68. Item si civis Romana per errorem nupta sit peregrino tamquam civi Romano, permittitur ei causam erroris probare, et ita filius quoque eius et maritus ad civitatem Romanam perveniunt, et aeque simul incipit filius in potestate patris esse. Idem iuris est,

si peregrino tamquam Latino ex lege Aelia Sentia nupta sit; nam et de hoc specialiter senatus consulto cavetur. Idem iuris est aliquatenus, si ei, qui dediticiorum numero est, tamquam civi Romano aut Latino e lege Aelia Sentia nupta sit; nisi quod scilicet qui dediticiorum numero est, in sua condicione permanet, et ideo filius, quamuis fiat civis Romanus, in potestatem patris non redigitur. 69. Item si Latina peregrino, cum eum Latinum esse crederet, e lege Aelia Sentia nupserit, potest ex senatus consulto fllio nato causam erroris probare: Et ita omnes fiunt cives Romani, et filius in potestate patris esse incipit. 70. Idem constitutum est et si Latinus per errorem peregrinam quasi Latinam aut civem Romanam e lege Aelia Sentia uxorem duxerit. 71. Praeterea si civis Romanus, qui se credidisset Latinum esse, ob id Latinam uxorem duxerit, permittitur ei filio nato erroris causam probare, tamquam si e lege Aelia Sentia uxorem duxisset: Item his, qui cum cives Romani essent, peregrinos se esse credidissent et peregrinas uxores duxissent, permittitur ex senatus consulto fllio nato causam erroris probare. Quo facto fiet uxor civis Romana, et filius ******* non solum ad civitatem Romanam pervenit, sed etiam in potestatem patris redigitur.

72. Quaecumque de filio esse diximus, eadem et de filia dicta intellegemus. 73. Et quantum ad erroris causam probandam attinet, nihil interest, cuius aetatis filius sit * si minor anniculo sit filius filiave, causa probari non potest. Nec me praeterit in aliquo rescripto divi Hadriani ita esse constitutum, tamquam quod ad erroris q * dedit. 74. Si peregrinus civem Romanam uxorem duxerit, an ex senatus consulto causam probare possit, quaesitum est. * hoc ei specialiter concessum est. Sed cum peregrinus civem Romanam uxorem duxisset et filio nato alias civitatem Romanam consecutus esset, deinde cum quaereretur, an causam probare posset, rescripsit imperator Antoninus proinde posse eum causam probare, atque si peregrinus mansisset. Ex quo colligimus etiam peregrinum causam probare posse. 75. Ex iis, quae diximus, apparet, sive civis Romanus peregrinam sive peregrinus civem Romanam uxorem duxerit, eum qui nascitur peregrinum esse, sed si quidem per errorem tale matrimonium contractum fuerit, emendari vitium eius ex senatus consulto secundum ea, quae superius diximus. Si vero nullus error intervenerit, sed scientes suam condicionem ita coierint, nullo casu emendatur vitium eius matrimonii.

76. Loquimur autem de his scilicet, inter quos conubium non sit; nam alioquin si civis Romanus peregrinam, cum qua ei conubium est, uxorem duxerit, sicut supra quoque diximus, iustum matrimonium contrahitur, et tunc ex iis qui nascitur, civis Romanus est et in potestate patris erit. 77. Item si civis Romana peregrino, cum quo ei conubium est, nupserit, peregrinus sane procreatur et is iustus patris filius est, tamquam si ex peregrina eum procreasset. Hoc tamen tempore e senatus consulto, quod auctore divo Hadriano sacratissimo factum est, etiamsi non fuerit conubium inter civem Romanam et peregrinum, qui naseitur, iustus patris filius est. 78. Quod autem diximus inter civem

Romanum peregrinamque nisi conubium sit, qui nascitur, peregrinum esse, lege Minicia cavetur, ut is quidem deterioris parentis condicionem sequatur. Eadem lege autem ex diverso vavetur, ut si peregrinus, cum qua ei conubium non sit, uxorem duxerit civem Romanam, peregrinus ex eo coitu nascatur. Sed hoc maxime casu necessaria lex Minicia fuit; nam remota ea lege diversam condicionem sequi debebat, quia ex eis, inter quos non est conubium, qui nascitur, iure gentium matris condicioni accedit. Qua parte autem iubet lex ex cive Romano et peregrina peregrinum nasci, supervacua videtur; nam et remota ea lege hoc utique iure gentium futurum erat. 79. Adeo autem hoc ita est, ut ex cive Romano et Latina qui nascitur, matris condicioni accedat; nam in lege Minicia quidem peregrinorum nomine comprehenduntur non solum exterae nationes et gentes, sed etiam qui Latini nominantur; sed ad alios Latinos pertinet, qui proprios populos propriasque civitates habebant et erant peregrinorum numero. 80. Eadem ratione ex contrario ex Latino et cive Romana sive ex lege Aelia Sentia sive aliter contractum fuerit matrimonium, civis Romanus nascitur. Fuerunt tamen, qui putaverunt ex lege Aelia Sentia contracto matrimonio Latinum nasci, quia videtur eo casu per legem Aeliam Sentiam et Iuniam conubium inter eos dari, et semper conubium efficit, ut qui nascitur, patris condicioni accedat; aliter vero contracto matrimonio eum, qui nascitur, iure gentium matris condicionem sequi et ob id esse civem Romanum. Sed hoc iure utimur ex senatus consulto, quod auctore diuo Hadriano significat, ut quoquomodo ex Latino et cive Romana natus civis Romanus nascatur. 81. His convenienter et illud senatus consultum divo Hadriano auctore significavit, ut ex Latino et peregrina, item contra ex peregrino et Latina qui nascitur, is matris condicionem sequatur. 82. Illud quoque his consequens est, quod ex ancilla et libero iure gentium servus nascitur, et contra ex libera et servo liber nascitur. 83. Animadvertere tamen debemus , ne iuris gentium regulam vel lex aliqua vel quod legis vicem optinet, aliquo casu commutaverit. 84. Ecce enim ex senatus consulto Claudiano poterat civis Romana, quae alieno servo volente domino eius coiit, ipsa ex pactione libera permanere, sed servum procreare; nam quod inter eam et dominum istius servi convenerit ex senatus consulto ratum esse iubetur. Sed postea divus Hadrianus iniquitate rei et inelegantia iuris motus restituit iuris gentium regulam, ut cum ipsa mulier libera permaneat, liberum pariat. 85. Item e lege * ex ancilla et libero poterant liberi nasci; nam ea lege cavetur, ut si quis cum aliena ancilla, quam credebat liberam esse, coierit, siquidem masculi nascantur, liberi sint, si vero feminae, ad eum pertineant, cuius mater ancilla fuerit. Sed et in hac specie divus Vespasianus inelegantia iuris motus restituit iuris gentium regulam, ut omni modo, etiamsi masculi nascantur, servi sint eius, cuius et mater fuerit. 86. Sed illa pars eiusdem legis salva est, ut ex libera et servo alieno, quem sciebat servum esse, servi nascantur. Itaque apud quos talis lex non est, qui nascitur, iure gentium matris condicionem sequitur et ob id liber est.

87. Quibus autem casibus matris et non patris condicionem sequitur qui nascitur, iisdem casibus in potestate eum patris, etiamsi is civis Romanus sit, non esse plus quam manifestum est. Et ideo superius rettulimus quibusdam casibus per errorem non iusto contracto matrimonio senatum intervenire et emendare vitium matrimonii eoque modo plerumque efficere, ut in potestatem patris filius redigatur. 88. Sed si ancilla ex cive Romano conceperit, deinde manumissa civis Romana facta sit et tunc pariat, licet civis Romanus sit qui nascitur, sicut pater eius, non tamen in potestate patris est, quia neque ex iusto coitu conceptus est, neque ex ullo senatus consulto talis coitus quasi iustus constituitur.

89. Quod autem placuit, si ancilla ex cive Romano conceperit, deinde manumissa pepererit, qui nascitur, liberum nasci, naturali ratione fit; nam hi, qui illegitime concipiuntur, statum sumunt ex eo tempore, quo nascuntur; itaque si ex libera nascuntur, liberi fiunt, nec interest, ex quo mater eos conceperit, cum ancilla fuerit: at hi, qui legitime concipiuntur, ex conceptionis tempore statum sumunt. 90. Itaque si cui mulieri civi Romanae praegnati aqua et igni interdictum fuerit, eoque modo peregrina facta tunc pariat, conplures distinguunt et putant, si quidem ex iustis nuptiis conceperit, civem Romanum ex ea nasci, si vero volgo conceperit, peregrinum ex ea nasci. 91. Item si qua mulier civis Romana praegnas ex senatus consulto Claudiano ancilla facta sit ob id, quod alieno servo invito et denuntiante domino eius coierit, conplures distinguunt et existimant, si quidem ex iustis nuptiis conceptus sit, civem Romanum ex ea nasci, si vero volgo conceptus sit, servum nasci eius, cuius mater facta esset ancilla. 92. Peregrina quoque si volgo conceperit, deinde civis Romana facta tunc pariat, civem Romanum parit; si vero ex peregrino secundum leges moresque peregrinorum conceperit, ita videtur ex senatus consulto, quod auctore divo Hadriano factum est, civem Romanum parere, si et patri eius civitas Romana donetur.

93. Si peregrinus sibi liberisque suis civitatem Romanam petierit, non aliter filii in potestate eius fiunt, quam si imperator eos in potestatem redegerit: Quod ita demum is facit, si causa cognita aestimaverit hoc filiis expedire: Diligentius autem exactiusque causam cognoscit de impuberibus absentibusque: Et haec ita edicto divi Hadriani significantur. 94. Item si quis cum uxore praegnante civitate Romana donatus sit, quamvis is, qui nascitur, ut supra dixi, civis Romanus sit, tamen in potestate patris non fit: Idque subscriptione divi sacratissimi Hadriani significatur qua de causa, qui intellegit uxorem suam esse praegnantem, dum civitatem sibi et uxori ab imperatore petit, simul ab eodem petere debet, ut eum, qui natus erit, in potestate sua habeat. 95. Alia causa est eorum, qui Latii iure cum liberis suis ad civitatem Romanam perveniunt; nam horum in potestate fiunt liberi.

96. Quod ius quibusdam peregrinis civitatibus datum est vel a populo Romano vel a senatu vel a Caesare * aut maius est Latium aut minus; maius est Latium,

cum et hi, qui decuriones leguntur, et ei, qui honorem aliquem aut magistratum gerunt, civitatem Romanam consecuntur; minus Latium est, cum hi tantum, qui vel magistratum vel honorem gerunt, ad civitatem Romanam perveniunt. Idque conpluribus epistulis principum significatur. 97. Non solum tamen naturales liberi secundum ea, quae diximus, in potestate nostra sunt, verum et hi, quos adoptamus. 98. Adoptio autem duobus modis fit, aut populi auctoritate aut inperio magistratus velut praetoris. 99. Populi auctoritate adoptamus eos, qui sui iuris sunt: Quae species adoptionis dicitur adrogatio, quia et is, qui adoptat, rogatur, id est interrogatur, an velit eum, quem adoptaturus sit, iustum sibi filium esse; et is, qui adoptatur, rogatur, an id fieri patiatur; et populus rogatur, an id fieri iubeat. Imperio magistratus adoptamus eos, qui in potestate parentium sunt, sive primum gradum liberorum optineant, qualis est filius et filia, sive inferiorem, qualis est nepos neptis, pronepos proneptis. 100. Et quidem illa adoptio, quae per populum fit, nusquam nisi Romae fit; at haec etiam in provinciis apud praesides earum fieri solet. 101. Item per populum feminae non adoptantur, nam id magis placuit; apud praetorem vero vel in provinciis apud proconsulem legatumve etiam feminae solent adoptari. 102. Item inpuberem apud populum adoptari aliquando prohibitum est, aliquando permissum est: Nunc ex epistula optimi imperatoris Antonini, quam scripsit pontificibus, si iusta causa adoptionis esse videbitur, cum quibusdam condicionibus permissum est. Apud praetorem vero et in provinciis apud proconsulem legatumve cuiuscumque aetatis adoptare possumus. 103. Illud vero utriusque adoptionis commune est, quod et hi, qui generare non possunt, quales sunt spadones, adoptare possunt. 104. Feminae vero nullo modo adoptare possunt, quia ne quidem naturales liberos in potestate habent. 105. Item si quis per populum sive apud praetorem vel apud praesidem provinciae adoptaverit, potest eundem alii in adoptionem dare. 106. Sed et illud, de quo quaestio est, an minor natu maiorem natu adoptare possit, utriusque adoptionis commune est. 107. Illud proprium est eius adoptionis, quae per populum fit, quod is, qui liberos in potestate habet, si se adrogandum dederit, non solum ipse potestati adrogatoris subicitur, sed etiam liberi eius in eiusdem fiunt potestate tanquam nepotes.

108. Nunc de his personis videamus, quae in manu nostra sunt. Quod et ipsum ius proprium civium Romanorum est. 109. Sed in potestate quidem et masculi et feminae esse solent; in manum autem feminae tantum conveniunt. 110. Olim itaque tribus modis in manum conveniebant: usu, farreo, coemptione. 111. Usu in manum conveniebat, quae anno continuo nupta perseverabat; quia enim velut annua possessione usucapiebatur, in familiam viri transibat filiaeque locum optinebat. Itaque lege duodecim tabularum cautum est, ut si qua nollet eo modo in manum mariti convenire, ea quotannis trinoctio abesset atque eo modo cuiusque anni usum interrumperet. Sed hoc totum ius partim legibus sublatum est, partim ipsa desuetudine obliteratum est. 112. Farreo in manum conveniunt per quoddam genus sacrificii, quod Iovi Farreo fit; in quo farreus panis adhibetur, unde etiam

confarreatio dicitur; complura praeterea huius iuris ordinandi gratia cum certis et sollemnibus verbis praesentibus decem testibus aguntur et fiunt. Quod ius etiam nostris temporibus in usu est: Nam flamines maiores, id est Diales, Martiales, Quirinales, item reges sacrorum, nisi ex farreatis nati non leguntur: Ac ne ipsi quidem sine confarreatione sacerdotium habere
possunt. 113. Coemptione vero in manum conveniunt per mancipationem, id est per quandam imaginariam venditionem: Nam adhibitis non minus quam V testibus civibus Romanis puberibus, item libripende, emit vir mulierem, cuius in manum convenit. 114. Potest autem coemptionem facere mulier non solum cum marito suo, sed etiam cum extraneo; scilicet aut matrimonii causa facta coemptio dicitur aut fiduciae; quae enim cum marito suo facit coemptionem, ut apud eum filiae loco sit, dicitur matrimonii causa fecisse coemptionem; quae uero alterius rei causa facit coemptionem aut cum viro suo aut cum extraneo, velut tutelae evitandae causa, dicitur fiduciae causa fecisse coemptionem. 115. Quod est tale: Si qua velit quos habet tutores deponere et alium nancisci, illis auctoribus coemptionem facit; deinde a coemptionatore remancipata ei, cui ipsa velit, et ab eo vindicta manumissa incipit eum habere tutorem, a quo manumissa est; qui tutor fiduciarius dicitur, sicut inferius apparebit. 115a. Olim etiam testamenti faciendi gratia fiduciaria fiebat coemptio: Tunc enim non aliter feminae testamenti faciendi ius habebant, exceptis quibusdam personis, quam si coemptionem fecissent remancipataeque et manumissae fuissent; sed hanc necessitatem coemptionis faciendae ex auctoritate divi Hadriani senatus remisit. * 115b. fiduciae causa cum viro suo fecerit coemptionem, nihilo minus filiae loco incipit esse: Nam si omnino qualibet ex causa uxor in manu viri sit, placuit eam filiae iura nancisci.

116. Superest, ut exponamus, quae personae in mancipio sint. 117. Omnes igitur liberorum personae, sive masculini sive feminini sexus, quae in potestate parentis sunt, mancipari ab hoc eodem modo possunt, quo etiam servi mancipari possunt. 118. Idem iuris est in earum personis, quae in manu sunt: Nam feminae a coemptionatoribus eodem modo possunt mancipari, quo liberi a parente possunt, adeo quidem, ut quamvis ea sola apud coemptionatorem filiae loco sit. Quae ei nupta sit, tamen nihilo minus etiam quae ei nupta non sit nec ob id filiae loco sit, ab eo mancipari possit. 118a. Sed plerumque solum et a parentibus et a coemptionatoribus mancipantur, cum velint parentes coemptionatoresque ex suo iure eas personas dimittere, sicut inferius evidentius apparebit. 119. Est autem mancipatio, ut supra quoque diximus, imaginaria quaedam venditio: Quod et ipsum ius proprium civium Romanorum est; eaque res ita agitur: Adhibitis non minus quam quinque testibus civibus Romanis puberibus et praeterea alio eiusdem condicionis, qui libram aeneam teneat, qui appellatur libripens, is, qui mancipio accipit, rem tenens ita dicit: HUNC EGO HOMINEM EX IURE QUIRITIUM MEUM ESSE AIO ISQUE MIHI EMPTUS ESTO HOC AERE AENEAQUE LIBRA; deinde aere percutit libram idque aes dat ei, a quo

mancipio accipit, quasi pretii loco. 120. Eo modo et serviles et liberae personae mancipantur; animalia quoque, quae mancipi sunt, quo in numero habentur boves, equi, muli, asini; item praedia tam urbana quam rustica, quae et ipsa mancipi sunt, qualia sunt Italica, eodem modo solent mancipari. 121. In eo solo praediorum mancipatio a ceterorum mancipatione differt, quod personae serviles et liberae, item animalia, quae mancipi sunt, nisi in praesentia sint, mancipari non possunt; adeo quidem, ut eum, qui mancipio accipit, adprehendere id ipsum, quod ei mancipio datur, necesse sit; unde etiam mancipatio dicitur, quia manu res capitur: Praedia vero absentia solent mancipari. 122. ldeo autem aes et libra adhibetur, quia olim aereis tantum nummis utebantur; et erant asses, dipundii, semisses, quadrantes, nec ullus aureus vel argenteus nummus in usu erat, sicut ex lege XII tabularum intellegere possumus; eorumque nummorum vis et potestas non in numero erat, sed in pondere; ************ asses librales erant, et dipondii ************ unde etiam dupondius dictus est, quasi duo pondo: Quod nomen adhuc in usu retinetur. Semisses quoque et quadrantes pro rata scilicet portione ad pondus examinati erant. Tunc igitur et qui dabat alicui pecuniam, non numerabat eam, sed appendebat; unde servi, quibus permittitur administratio pecuniae, dispensatores appellati sunt. 123. * Illa quidem, quae coemptionem facit, non deducitur in servilem condicionem, at a parentibus et a coemptionatoribus mancipati mancipataeve servorum loco constituuntur, adeo quidem, ut ab eo, cuius in mancipio sunt, neque hereditatem neque legata aliter capere possint, quam si simul eodem testamento liberi esse iubeantur, sicuti iuris est in persona servorum. Sed differentiae ratio manifesta est, cum a parentibus et a coemptionatoribus isdem verbis mancipio accipiantur, quibus servi; quod non similiter fit in coemptione.

124. Videamus nunc, quo modo ii, qui alieno iuri subiecti sunt, eo iure liberentur.

125. Ac prius de his dispiciamus, qui in potestate sunt. 126. Et quidem servi quemadmodum potestate liberentur, ex his intellegere possumus, quae de servis manumittendis superius exposuimus. 127. Hi uero, qui in potestate parentis sunt, mortuo eo sui iuris fiunt. Sed hoc distinctionem recipit; nam mortuo patre sane omni modo filii filiaeve sui iuris efficiuntur; mortuo vero avo non omni modo nepotes neptesve sui iuris fiunt, sed ita si post mortem avi in patris sui potestatem recasuri non sunt. Itaque si moriente avo pater eorum et vivat et in potestate patris fuerit, tunc post obitum avi in patris sui potestate fiunt; si vero is, quo tempore avus moritur, aut iam mortuus est aut exiit de potestate patris, tunc hi, quia in potestatem eius cadere non possunt, sui iuris fiunt. 128. Cum autem is, cui ob aliquod maleficium ex lege Cornelia aqua et igni interdicitur, civitatem Romanam amittat, sequitur, ut quia eo modo ex numero civium Romanorum tollitur, proinde ac mortuo eo desinant liberi in potestate eius esse: Nec enim ratio patitur, ut peregrinae condicionis homo civem Romanum in potestate habeat. Pari ratione et si ei, qui in potestate

parentis sit, aqua et igni interdictum fuerit, desinit in potestate parentis esse, quia aeque ratio non patitur, ut peregrinae condicionis homo in potestate sit civis Romani parentis. 129. Quod si ab hostibus captus fuerit parens, quamvis servus hostium fiat, tamen pendet ius liberorum propter ius postliminii, quo hi, qui ab hostibus capti sunt, si reversi fuerint, omnia pristina iura recipiunt; itaque reversus habebit liberos in potestate: Si vero illic mortuus sit, erunt quidem liberi sui iuris; sed utrum ex hoc tempore, quo mortuus est apud hostes parens, an ex illo, quo ab hostibus captus est, dubitari potest. Ipse quoque filius neposve si ab hostibus captus fuerit, similiter dicemus propter ius postliminii potestatem quoque parentis in suspenso esse. 130. Praeterea exeunt liberi virilis sexus de parentis potestate, si flamines Diales inaugurentur, et feminini sexus, si virgines Vestales capiantur. 131. Olim quoque, quo tempore populus Romanus in Latinas regiones colonias deducebat, qui iussu parentis in coloniam Latinam nomen dedissent, desinebant in potestate parentis esse, quia efficerentur alterius civitatis cives. 132. Praeterea emancipatione desinunt liberi in potestate parentum esse. Sed filius quidem tribus mancipationibus, ceteri vero liberi sive masculini sexus sive feminini una mancipatione exeunt de parentium potestate: Lex enim XII tabularum tantum in persona filii de tribus mancipationibus loquitur his verbis: 'Si pater ter filium venum duit a patre fliius liber esto'. Eaque res ita agitur: Mancipat pater filium alicui; is eum vindicta manumittit: Eo facto revertitur in potestatem patris; is eum iterum mancipat vel eidem vel alii (sed in usu est eidem mancipari) isque eum postea similiter vindicta manumittit; eo facto rursus in potestatem patris revertitur; tertio pater eum mancipat vel eidem vel alii (sed hoc in usu est, ut eidem mancipetur) eaque mancipatione desinit in potestate patris esse, etiamsi nondum manumissus sit, sed adhuc in causa mancipii. * 133. Admonendi autem sumus liberum esse arbitrium ei, qui filium et ex eo nepotem in potestate habebit, filium quidem de potestate dimittere, nepotem vero in potestate retinere: Vel ex diverso filium quidem in potestate retinere, nepotem vero manumittere, vel omnes sui iuris efficere. Eadem et de pronepote dicta esse intellegemus.

134. Praeterea parentes etiam liberos in adoptionem datos in potestate habere desinunt. Et in filio quidem, si in adoptionem datur, tres mancipationes et duae intercedentes manumissiones proinde fiunt, ac fieri solent, cum ita eum pater de potestate dimittit, ut sui iuris efficiatur. Deinde aut patri remancipatur, et ab eo is, qui adoptat, vindicat apud praetorem filium suum esse, et illo contra non vindicante a praetore vindicanti filius addicitur, aut non remancipatur patri, sed ab eo vindicat is, qui adoptat, apud quem in tertia mancipatione est: Sed sane commodius est patri remancipari. In ceteris vero liberorum personis, seu masculini seu feminini sexus, una scilicet mancipatio sufficit, et aut remancipantur parenti aut non remancipantur. Eadem et in provinciis apud praesidem provinciae solent fieri. 135. Qui ex filio semel iterumve mancipato conceptus est, licet post tertiam mancipationem patris sui nascatur, tamen in avi potestate est, et ideo ab eo et emancipari et in

adoptionem dari potest. At is, qui ex eo filio conceptus est, qui in tertia mancipatione est, non nascitur in avi potestate: Sed eum Labeo quidem existimat in eiusdem mancipio esse, cuius et pater sit: Utimur autem hoc iure, ut quamdiu pater eius in mancipio sit, pendeat ius eius, et si quidem pater eius ex mancipatione manumissus erit, cadat in eius potestatem, si vero is, dum in mancipio sit, decesserit, sui iuris fiat. 135a. Eadem scilicet * ut supra diximus, quod in filio faciunt tres mancipationes, hoc facit una mancipatio in nepote. 136. * Maximi et Tuberonis cautum est, ut haec quod ad sacra tantum videatur in manu esse, quod vero ad ceteras causas proinde habeatur, atque si in manum non convenisset. Eae vero mulieres, quae in manum conveniunt per coemptionem, potestate parentis liberantur; nec interest, an in viri sui manu sint an extranei, quamvis hae solae Ioco filiarum habeantur, quae in viri manu sunt.

137. * desinunt in manu esse, et si ex ea mancipatione manumissae fuerint, sui iuris efficiuntur. 137a. * nihilo magis potest cogere, quam et filia patrem. Sed filia quidem nullo modo patrem potest cogere, etiam si adoptiva sit: Haec autem virum repudio misso proinde compellere potest, atque si ei numquam nupta fuisset.

138. Ii, qui in causa mancipii sunt, quia servorum loco habentur, vindicta, censu, testamento manumissi sui iuris fiunt. 139. Nec tamen in hoc casu lex Aelia Sentia locum habet: Itaque nihil requirimus, cuius aetatis sit is, qui manumittit et qui manumittitur; ac ne illud quidem, an patronum creditoremve manumissor habeat; ac ne numerus quidem lege Fufia Caninia finitus in his personis locum habet. 140. Quin etiam invito quoque eo, cuius in mancipio sunt, censu libertatem consequi possunt, excepto eo, quem pater ea lege mancipio dedit, ut sibi remancipetur; nam quodam modo tunc pater potestatem propriam reservare sibi videtur eo ipso, quod mancipio recipit. Ac ne is quidem dicitur invito eo, cuius in mancipio est, censu libertatem consequi, quem pater ex noxali causa mancipio dedit, veluti quod furti eius nomine damnatus est et eum mancipio actori dedit: Nam hunc actor pro pecunia habet. 141. In summa admonendi sumus adversus eos, quos in mancipio habemus, nihil nobis contumeliose facere licere; alioquin iniuriarum tenebimur. Ac ne diu quidem in eo iure detinentur homines, sed plerumque hoc fit dicis gratia uno momento; nisi scilicet ex noxali causa mancipantur.

142. Transeamus nunc ad aliam divisionem. Nam ex his personis, quae neque in potestate neque in manu neque in mancipio sunt, quaedam vel in tutela sunt vel in curatione, quaedam neutro iure tenentur. Videamus igitur, quae in tutela, quae in curatione sint: Ita enim intellegemus ceteras personas, quae neutro iure tenentur. 143. Ac prius dispiciamus de his, quae in tutela sunt. 144. Permissum est itaque parentibus liberis, quos in potestate sua habent, testamento tutores dare: Masculini quidem sexus inpuberibus, feminini vero inpuberibus puberibusque, vel cum nuptae sint. Veteres enim

voluerunt feminas, etiamsi perfectae aetatis sint, propter animi levitatem in tutela esse. 145. Itaque si quis filio filiaeque testamento tutorem dederit, et ambo ad pubertatem pervenerint, filius quidem desinit habere tutorem, filia vero nihilo minus in tutela permanet: Tantum enim ex lege Iulia et Papia Poppaea iure liberorum a tutela liberantur feminae. Loquimur autem exceptis virginibus Vestalibus, quas etiam veteres in honorem sacerdotii liberas esse voluerunt: Itaque etiam lege XII tabularum cautum est. 146. Nepotibus autem neptibusque ita demum possumus testamento tutores dare, si post mortem nostram in patris sui potestatem iure recasuri non sint. Itaque si filius meus mortis meae tempore in potestate mea sit, nepotes ex eo non poterunt ex testamento meo habere tutorem, quamvis in potestate mea fuerint; scilicet quia mortuo me in patris sui potestate futuri sunt. 147. Cum tamen in compluribus aliis causis postumi pro iam natis habeantur, et in hac causa placuit non minus postumis quam iam natis testamento tutores dari posse, si modo in ea causa sint, ut si vivis nobis nascantur, in potestate nostra fiant. Hos enim etiam heredes instituere possumus, cum extraneos postumos heredes instituere permissum non sit. 148. Uxori, quae in manu est, proinde ac filiae, item nurui, quae in filii manu est, proinde ac nepti tutor dari potest. 149. Rectissime autem tutor sic dari potest: LUCIUM TITIUM LIBERIS MEIS TUTOREM DO vel UXORI MEAE TUTOREM DO. Sed et si ita scriptum sit: LIBERIS MEIS vel UXORI MEAE TITIUS TUTOR ESTO, recte datus intellegitur. 150. In persona tamen uxoris, quae in manu est, recepta est etiam tutoris optio, id est ut liceat ei permittere, quem velit ipsa, tutorem sibi optare, hoc modo: TITIAE UXORI MEAE TUTORIS OPTIONEM DO. Quo casu licet uxori tutorem optare vel in omnes res vel in unam forte aut duas. 151. Ceterum aut plena optio datur aut angusta. 152. Plena ita dari solet, ut proxime supra diximus. Angusta ita dari solet: TITIAE UXORI MEAE TUTORIS OPTIONEM DUMTAXAT SEMEL DO aut DUMTAXAT BIS DO. 153. Quae optiones plurimum inter se differunt: Nam quae plenam optionem habet, potest semel et bis et ter et saepius tutorem optare; quae vero angustam habet optionem, si dumtaxat semel data est optio, amplius quam semel optare non potest, si tantum bis, amplius quam bis optandi facultatem non habet. 154. Vocantur autem hi, qui nominatim testamento tutores dantur, dativi, qui ex optione sumuntur, optivi. 155. Quibus testamento quidem tutor datus non sit, iis ex lege XII tabularum agnati sunt tutores, qui vocantur legitimi. 156. Sunt autem agnati per virilis sexus personas cognatione iuncti, quasi a patre cognati, veluti frater eodem patre natus, fratris filius neposve ex eo, item patruus et patrui filius et nepos ex eo. At hi, qui per feminini sexus personas cognatione coniunguntur, non sunt agnati, sed alias naturali iure cognati. Itaque inter avunculum et sororis filium non agnatio est, sed cognatio. Item amitae, materterae filius non est mihi agnatus, sed cognatus, et invicem scilicet ego illi eodem iure coniungor, quia qui nascuntur, patris, non matris familiam secuntur. 157. Sed olim quidem, quantum ad legem XII tabularum attinet, etiam feminae agnatos habebant tutores. Sed postea lex Claudia lata est, quae, quod ad feminas attinet, agnatorum tutelas sustulit: Itaque masculus quidem inpubes fratrem puberem aut patruum habet tutorem; femina vero talem habere tutorem non potest. 158. Sed adgnationis quidem ius kapitis diminutione perimitur, cognationis vero ius eo modo non commutatur, quia civilis ratio civilia quidem iura corrumpere potest, naturalia vero non potest. 159. Est autem kapitis diminutio prioris status permutatio: Eaque tribus modis accidit: Nam aut maxima est kapitis diminutio aut minor, quam quidam mediam vocant, aut minima. 160. Maxima est kapitis diminutio, cum aliquis simul et civitatem et libertatem amittit; quae accidit incensis, qui ex forma censuali venire iubentur: Quod ius *, qui contra eam legem in urbe Roma domicilium habuerint; item feminae, quae ex senatus consulto Claudiano ancillae fiunt eorum dominorum, quibus invitis et denuntiantibus cum servis eorum coierint. 161. Minor sive media est kapitis diminutio, cum civitas amittitur, libertas retinetur; quod accidit ei, cui aqua et igni interdictum fuerit. 162. Minima est capitis diminutio, cum et civitas et libertas retinetur, sed status hominis conmutatur; quod accidit in his, qui adoptantur, item in his, quae coemptionem faciunt, et in his, qui mancipio dantur quique ex mancipatione manumittuntur; adeo quidem, ut quotiens quisque mancipetur aut manumittatur, totiens capite diminuatur. 163. Nec solum maioribus capitis diminutionibus ius adgnationis corrumpitur, sed etiam minima; et ideo si ex duobus liberis alterum pater emancipaverit, post obitum eius neuter alteri agnationis iure tutor esse poterit. 164. Cum autem ad agnatos tutela pertineat, non simul ad omnes pertinet, sed ad eos tantum, qui proximo gradu sunt. *

165. Ex eadem lege XII tabularum libertarum et inpuberum libertorum tutela ad patronos liberosque eorum pertinet; quae et ipsa tutela legitima vocatur, non quia nominatim ea lege de hac tutela cavetur, sed quia proinde accepta est per interpretationem, atque si verbis legis introducta esset: Eo enim ipso, quod hereditates libertorum libertarumque, si intestati decessissent, iusserat lex ad patronos liberosve eorum pertinere, crediderunt veteres voluisse legem etiam tutelas ad eos pertinere, quia et agnatos, quos ad hereditatem vocavit, eosdem et tutores esse iusserat.

[De fiduciaria tutela.] 166. Exemplo patronorum recepta est et alia tutela, quae et ipsa legitima vocatur. Nam si quis filium nepotemve aut pronepotem inpuberes, vel filiam neptemve aut proneptem tam puberes quam inpuberes alteri ea lege mancipio dederit, ut sibi remanciparentur, remancipatosque manumiserit, legitimus eorum tutor erit. 166a. Sunt et aliae tutelae, quae fiduciariae vocantur, id est quae ideo nobis competunt, quia liberum caput mancipatum nobis vel a parente vel a coemptionatore manumiserimus. 167. Sed Latinarum et Latinorum impuberum tutela non omni modo ad manumissores libertinorum pertinet, sed ad eos, quorum ante manumissionem ex iure Quiritium fuerunt: Unde si ancilla ex iure Quiritium tua sit, in bonis mea, a me quidem solo, non etiam a te manumissa Latina fieri potest, et bona eius ad me pertinent, sed eius tutela tibi competit; nam ita lege

Iunia cavetur. Itaque si ab eo, cuius et in bonis et ex iure Quiritium ancilla fuerit, facta sit Latina, ad eundem et bona et tutela pertinent.

168. Agnatis et patronis et liberorum capitum manumissoribus permissum est feminarum tutelam alii in iure cedere; pupillorum autem tutelam non est permissum cedere, quia non videtur onerosa, cum tempore pubertatis finiatur. 169. Is autem, cui ceditur tutela, cessicius tutor vocatur. 170. Quo mortuo aut kapite diminuto revertitur ad eum tutorem tutela, qui cessit; ipse quoque, qui cessit, si mortuus aut kapite diminutus sit, a cessicio tutela discedit et revertitur ad eum, qui post eum, qui cesserat, secundum gradum in ea tutela habuerit. 171. Sed quantum ad agnatos pertinet, nihil hoc tempore de cessicia tutela quaeritur, cum agnatorum tutelae in feminis lege Claudia sublatae sint. 172. Sed fiduciarios quoque quidam putaverunt cedendae tutelae ius non habere, cum ipsi se oneri subiecerint. Quod etsi placeat, in parente tamen, qui filiam neptemve aut proneptem alteri ea lege mancipio dedit, ut sibi remanciparetur, remanicipatamque manumisit, idem dici non debet, cum is et legitimus tutor habeatur et non minus huic quam patronis honor praestandus sit.

173. Praeterea senatus consulto mulieribus permissum est in absentis tutoris locum alium petere, quo petito prior desinit; nec interest, quam longe absit is tutor. 174. Sed excipitur, ne in absentis patroni locum liceat libertae tutorem petere. 175. Patroni autem loco habemus etiam parentem, qui ex eo, quod ipso sibi remancipatam filiam neptemve aut proneptem manumisit, legitimam tutelam nanctus est. Sed huius quidem liberi fiduciarii tutoris loco numerantur; patroni autem liberi eandem tutelam adipiscuntur, quam et pater eorum habuit. 176. Sed aliquando etiam in patroni absentis locum permittitur tutorem petere, veluti ad hereditatem adeundam. 177. Idem senatus censuit et in persona pupilli patroni filii. 178. Nam et lege Iulia de maritandis ordinibus ei, quae in legitima tutela pupilli sit, permittitur dotis constituendae gratia a praetore urbano tutorem petere. 179. Sane patroni filius, etiamsi inpubes sit, tamen libertae efficietur tutor, quamquam in nulla re auctor fieri potest, cum ipsi nihil permissum sit sine tutoris auctoritate agere. 180. Item si qua in tutela legitima furiosi aut muti sit, permittitur ei senatus consulto dotis constituendae gratia tutorem petere. 181. Quibus casibus salvam manere tutelam patrono patronique filio manifestum est. 182. Praeterea senatus censuit, ut si tutor pupilli pupillaeve suspectus a tutela remotus sit sive ex iusta causa fuerit excusatus, in locum eius alius tutor detur, quo facto prior tutor amittit tutelam. 183. Haec omnia similiter et Romae et in provinciis observantur, scilicet ut in provinciis a praeside provinciae tutor peti debeat. 184. Olim cum legis actiones in usu erant, etiam ex illa causa tutor dabatur, si inter tutorem et mulierem pupillumve lege agendum erat: Nam quia ipse tutor in re sua auctor esse non poterat, alius dabatur, quo auctore legis actio perageretur: Qui dicebatur praetorius tutor, quia a praetore urbano dabatur. Sed post sublatas

legis actiones quidam putant hanc speciem dandi tutoris in usu esse desisse; aliis autem placet adhuc in usu esse, si legitimo iudicio agatur.

185. Si cui nullus omnino tutor sit, ei datur in urbe Roma ex lege Atilia a praetore urbano et maiore parte tribunorum plebis, qui Atilianus tutor vocatur; in provinciis vero a praesidibus provinciarum ex lege Iulia et Titia. 186. Et ideo si cui testamento tutor sub condicione aut ex die certo datus sit, quamdiu condicio aut dies pendet, tutor dari potest; item si pure datus fuerit, quamdiu nemo heres existat, tamdiu ex his legibus tutor petendus est; qui desinit tutor esse, posteaquam aliquis ex testamento tutor esse coeperit. 187. Ab hostibus quoque tutore capto ex his legibus tutor peti debet; qui desinit tutor esse, si is, qui captus est, in civitatem reversus fuerit: Nam reversus recipit tutelam iure postliminii. 188. Ex his apparet, quot sint species tutelarum. Si vero quaeramus, in quot genera hae species diducantur, longa erit disputatio: Nam de ea re valde veteres dubitaverunt. Nosque diligentius hunc tractatum exsecuti sumus et in edicti interpretatione et in his libris, quos ex Quinto Mucio fecimus: Hoc solum tantisper sufficit admonuisse, quod quidam quinque genera esse dixerunt, ut Quintus Mucius; alii tria, ut Servius Sulpicius; alii duo, ut Labeo; alii tot genera esse crediderunt, quot etiam species essent. 189. Sed inpuberes quidem in tutela esse omnium civitatium iure contingit; quia id naturali rationi conueniens est, ut is, qui perfectae aetatis non sit, alterius tutela regatur, nec fere ulla civitas est, in qua non licet parentibus liberis suis inpuberibus testamento tutorem dare; quamvis, ut supra diximus, soli cives Romani videantur tantum liberos suos in potestate habere. 190. Feminas vero perfectae aetatis in tutela esse fere nulla pretiosa ratio suasisse videtur: Nam quae vulgo creditur, quin levitate animi plerumque decipiuntur et aequum erat eas tutorum auctoritate regi, magis speciosa videtur quam vera; mulieres enim, quae perfectae aetatis sunt, ipsae sibi negotia tractant, et in quibusdam causis dicis gratia tutor interponit auctoritatem suam; saepe etiam invitus auctor fieri a praetore cogitur. 191. Unde cum tutore nullum ex tutela iudicium mulieri datur: At ubi pupillorum pupillarumve negotia tutores tractant, eis post pubertatem tutelae iudicio rationem reddunt. 192. Sane patronorum et parentum legitimae tutelae vim aliquam habere intelleguntur eo, quod hi neque ad testamentum faciendum neque ad res mancipi alienandas neque ad obligationes suscipiendas auctores fieri coguntur, praeterquam si magna causa alienandarum rerum mancipi obligationisque suscipiendae interveniat. Eaque omnia ipsorum causa constituta sunt, ut quia ad eos intestatarum mortuarum hereditates pertinent, neque per testamentum excludantur ab hereditate, neque alienatis pretiosioribus rebus susceptoque aere alieno minus locuples ad eos hereditas perveniat. 193. Apud peregrinos non similiter, ut apud nos, in tutela sunt feminae; sed tamen plerumque quasi in tutela sunt: Ut ecce lex Bithynorum, si quid mulier contrahat, maritum auctorem esse iubet aut filium eius puberem.

194. Tutela autem liberantur ingenuae quidem trium liberorum iure, libertinae vero quattuor, si in patroni liberorumve eius legitima tutela sint; nam et ceterae, quae alterius generis tutores habent, velut Atilianos aut fiduciarios, trium liberorum iure tutela liberantur. 195. Potest autem pluribus modis libertina tutorem alterius generis habere, veluti si a femina manumissa sit; tunc enim e lege Atilia petere debet tutorem, vel in provincia e lege Iulia et Titia: Nam in patronae tutela esse non potest. 195a. Item si sit a masculo manumissa et auctore eo coemptionem fecerit, deinde remancipata et manumissa sit, patronum quidem habere tutorem desinit, incipit autem habere eum tutorem, a quo manumissa est, qui fiduciarius dicitur. 195b. Item si patronus eiusve filius in adoptionem se dedit, debet liberta lege Atilia vel Iulia et Titia tutorem petere. 195c. Similiter ex iisdem legibus petere debet tutorem liberta, si patronus decesserit nec ullum virilis sexus liberorum in familia reliquerit. 196. Masculi autem cum puberes esse coeperint, tutela liberantur: Puberem autem Sabinus quidem et Cassius ceterique nostri praeceptores eum esse putant, qui habitu corporis pubertatem ostendit, id est eum, qui generare potest; sed in his, qui pubescere non possunt, quales sunt spadones, eam aetatem esse spectandam, cuius aetatis puberes fiunt; sed diversae scholae auctores annis putant pubertatem aestimandam, id est eum puberem esse existimant, qui XIIII annos explevit. * 197. * aetatem pervenerit, in qua res suas tueri possit, sicuti apud peregrinas gentes custodiri superius indicavimus. 198. Ex iisdem causis et in provinciis a praesidibus earum curatores dari volunt. 199. Ne tamen et pupillorum et eorum, qui in curatione sunt, negotia a tutoribus curatoribusque consumantur aut deminuantur, curat praetor, ut et tutores et curatores eo nomine satisdent. 200. Sed hoc non est perpetuum; nam et tutores testamento dati satisdare non coguntur, quia fides eorum et diligentia ab ipso testatore probata est; et curatores, ad quos non e lege curatio pertinet, sed qui vel a consule vel a praetore vel a praeside provinciae dantur, plerumque non coguntur satisdare, scilicet quia satis honesti electi sunt.

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GAI INSTITVTIONVM COMMENTARIVS SECVNDVS

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1. Superiore commentario de iure personarum exposuimus; modo uideamus de rebus: quae uel in nostro patrimonio sunt uel extra nostrum patrimonium habentur.

2. Summa itaque rerum diuisio in duos articulos diducitur: nam aliae sunt diuini iuris, aliae humani.

3. Diuini iuris sunt ueluti res sacrae et religiosae.

4. Sacrae sunt, quae diis superis consecratae sunt; religiosae, quae diis Manibus relictae sunt.

5. Sed sacrum quidem hoc solum existimatur, quod ex auctoritate populi Romani consecratum est, ueluti lege de ea re lata aut senatus consulto facto.

6. Religiosum uero nostra uoluntate facimus mortuum inferentes in locum nostrum, si modo eius mortui funus ad nos pertineat.

7. Sed in prouinciali solo placet plerisque solum religiosum non fieri, quia in eo solo dominium populi Romani est uel Caesaris, nos autem possessionem tantum et usumfructum habere uidemur; utique tamen, etiamsi non sit religiosum, pro religioso habetur: item quod in prouinciis non ex auctoritate populi Romani consecratum est, proprie sacrum non est, tamen pro sacro habetur.

8. Sanctae quoque res, uelut muri et portae, quodam modo diuini iuris sunt.

9. Quod autem diuini iuris est, id nullius in bonis est: id uero, quod humani iuris est, plerumque alicuius in bonis est; potest autem et nullius in bonis esse: nam res hereditariae, antequam aliquis heres existat, nullius in bonis sunt [. . . . . vv. fere 8 . . . .]ue domino.

10. Hae autem res, quae humani iuris sunt, aut pu-blicae sunt aut priuatae.

11. Quae publicae sunt, nullius uidentur in bonis esse; ipsius enim uniuersitatis esse creduntur. priuatae sunt, quae singulorum hominum sunt.

12. Quaedam praeterea res corporales sunt, quaedam incorporales.

13. Corporales hae sunt, quae tangi possunt, uelut fundus, homo, uestis, aurum, argentum et denique aliae res innumerabiles.

14. Incorporales sunt, quae tangi non possunt, qualia sunt ea, quae in iure consistunt, sicut hereditas, ususfructus, obligationes quoquo modo contractae. nec ad rem pertinet, quod in hereditate res corporales continentur, et fructus, qui ex fundo percipiuntur, corporales sunt, et id, quod ex aliqua obligatione nobis debetur, plerumque corporale est, ueluti fundus, homo, pecunia: nam ipsum ius successionis et ipsum ius utendi fruendi et ipsum ius obligationis incorporale est. eodem numero sunt iura praediorum urbanorum et rusticorum. [. . . . . vv. 2 1/4 . . . .] non extollendi, ne luminibus uicini officiatur: item fluminum et stillicidiorum idem ius ut [. . . . . vv. 5 . . . .]

14a. Res praeterea aut mancipi sunt aut nec mancipi. [. . . . . vv. 5 . . . .] seruitutes praediorum urbanorum nec mancipi sunt. item stipendiaria praedia et tributaria nec mancipi sunt.

15. Sed quod diximus ea animalia, quae domari solent, mancipi esse, n[. . . . . vv. 1 3/4 . . . .] statim ut nata sunt, mancipi esse putant; Nerua uero et Proculus et ceteri diuersae scholae auctores non aliter ea mancipi esse putant quam si domita sunt; et si propter nimiam feritatem domari non possunt, tunc uideri mancipi esse incipere, cum ad eam aetatem peruenerint, in qua domari solent.

16. At ferae bestiae nec mancipi sunt, uelut ursi, leones, item ea animalia, quae ferarum bestiarum numero sunt, uelut elefanti et cameli, et ideo ad rem non pertinet, quod haec animalia etiam collo dorsoue domari solent; nam ne notitia quidem eorum animalium illo tempore fuit, quo constituebatur quasdam res mancipi esse, quasdam nec mancipi.

17. Sed item fere omnia, quae incorporalia sunt, nec mancipi sunt, exceptis seruitutibus praediorum rusticorum; nam eas mancipi esse constat, quamuis sint ex numero rerum incorporalium.

18. Magna autem differentia est inter mancipi res et nec mancipi.

19. Nam res nec mancipi ipsa traditione pleno iure alterius fiunt, si modo corporales sunt et ob id recipiunt traditionem.

20. Itaque si tibi uestem uel aurum uel argentum tradidero siue ex uenditionis causa siue ex donationis siue quauis alia ex causa, statim tua fit ea res, si modo ego eius dominus sim.

21. In eadem causa sunt prouincialia praedia, quorum alia stipendiaria, alia tributaria uocamus: stipendiaria sunt ea, quae in his prouinciis sunt, quae propriae populi Romani esse intelleguntur; tributaria sunt ea, quae in his prouinciis sunt, quae propriae Caesaris esse creduntur.

22. Mancipi uero res sunt, quae per mancipationem ad alium transferuntur; unde etiam mancipi res sunt dictae. quod autem ualet mancipatio, idem ualet et in iure cessio.

23. Et mancipatio quidem quemadmodum fiat, superiore commentario tradidimus.

24. In iure cessio autem hoc modo fit: apud magistratum populi Romani uelut praetorem urbanum [aut praesides prouinciae] is, cui res in iure ceditur, rem tenens ita dicit: HVNC EGO HOMINEM EX IVRE QVIRITIVM MEVM ESSE AIO; deinde postquam hic uindicauerit, praetor interrogat eum, qui cedit, an contra uindicet; quo negante aut tacente tunc ei, qui uindicauerit, eam rem addicit; idque legis actio uocatur. hoc fieri potest etiam in prouinciis apud praesides earum.

25. Plerumque tamen et fere semper mancipationibus utimur: quod enim ipsi per nos praesentibus amicis agere possumus, hoc non interest nec necesse cum maiore difficultate apud praetorem aut apud praesidem prouinciae agere.

26. Quod si neque mancipata neque in iure cessa sit res mancipi [. . . . . vv. 8 . . . . . .] 27. Praeterea admonendi sumus, quod ueteres dicebant soli Italici nexum esse, prouincialis soli nexum non esse, hanc habere significationem: solum Italicum mancipi esse, prouinciale nec mancipi esse. aliter enim ueteri lingua actus uocatur, et quod illis nexus, idem nobis est mancipatio.

28. Res incorporales traditionem non recipere manifestum est.

29. Sed iura praediorum urbanorum in iure cedi tantum possunt; rusticorum uero etiam mancipari possunt.

30. Ususfructus in iure cessionem tantum recipit: nam dominus proprietatis alii usumfructum in iure cedere potest, ut ille usumfructum habeat et ipse nudam proprietatem retineat. ipse usufructuarius in iure cedendo domino proprietatis usumfructum efficit, ut a se discedat et conuertatur in proprietatem; alii uero in iure cedendo nihilo minus ius suum retinet: creditur enim ea cessione nihil agi.

31. Sed haec scilicet in Italicis praediis ita sunt, quia et ipsa praedia mancipationem et in iure cessionem recipiunt. alioquin in prouincialibus praediis siue quis usumfructum siue ius eundi agendi aquamue ducendi uel altius tollendi aedes aut non tollendi, ne luminibus uicini officiatur, ceteraque similia iura constituere uelit, pactionibus et stipulationibus id efficere potest; quia ne ipsa quidem praedia mancipationem aut in iure cessionem recipiunt.

32. Sed cum ususfructus et hominum et ceterorum animalium constitui possit, intellegere debemus horum usumfructum etiam in prouinciis per in iure cessionem constitui posse.

33. Quod autem diximus usumfructum in iure cessionem tantum recipere, non est temere dictum, quamuis etiam per mancipationem constitui possit eo, quod in mancipanda proprietate detrahi potest; non enim ipse ususfructus mancipatur, sed cum in mancipanda proprietate deducatur, eo fit, ut apud alium ususfructus, apud alium proprietas sit.

34. Hereditas quoque in iure cessionem tantum recipit.

35. Nam si is, ad quem ab intestato legitimo iure pertinet hereditas, in iure eam alii ante aditionem cedat, id est antequam heres extiterit, proinde fit heres is, cui in iure cesserit, ac si ipse per legem ad hereditatem uocatus esset: post obligationem uero si cesserit, nihilo minus ipse heres permanet et ob id creditoribus tenebitur, debita uero pereunt, eoque modo debitores hereditarii lucrum faciunt; corpora uero eius hereditatis proinde transeunt ad eum, cui cessa est hereditas, ac si ei singula in iure cessa fuissent.

36. Testamento autem scriptus heres ante aditam quidem hereditatem in iure cedendo eam alii nihil agit; postea uero quam adierit si cedat, ea accidunt, quae proxime diximus de eo, ad quem ab intestato legitimo iure pertinet hereditas, si post obligationem in iure cedat.

37. Idem et de necessariis heredibus diuersae scholae auctores existimant, quod nihil uidetur interesse, utrum aliquis adeundo hereditatem fiat heres an

inuitus existat. quod quale sit, suo loco apparebit: sed nostri praeceptores putant nihil agere necessarium heredem, cum in iure cedat hereditatem.

38. Obligationes quoquo modo contractae nihil eorum recipiunt: nam quod mihi ab aliquo debetur, id si uelim tibi deberi, nullo eorum modo, quibus res corporales ad alium transferuntur, id efficere possum; sed opus est, ut iubente me tu ab eo stipuleris; quae res efficit, ut a me liberetur et incipiat tibi teneri. quae dicitur nouatio obligationis.

39. Sine hac uero nouatione non poteris tuo nomine agere, sed debes ex persona mea quasi cognitor aut procurator meus experiri.

40. Sequitur, ut admoneamus apud peregrinos quidem unum esse dominium; nam aut dominus quisque est aut dominus non intellegitur. quo iure etiam populus Romanus olim utebatur: aut enim ex iure Quiritium unusquisque dominus erat aut non intellegebatur dominus. sed postea diuisionem accepit dominium, ut alius possit esse ex iure Quiritium dominus, alius in bonis habere.

41. Nam si tibi rem mancipi neque mancipauero neque in iure cessero, sed tantum tradidero, in bonis quidem tuis ea res efficitur, ex iure Quiritium uero mea permanebit, donec tu eam possidendo usucapias: semel enim impleta usucapione proinde pleno iure incipit, id est et in bonis et ex iure Quiritium tua res esse, ac si ea mancipata uel in iure cessa esset.

42. Vsucapio autem mobilium quidem rerum anno completur, fundi uero et aedium biennio; et ita lege XII tabularum cautum est.

43. Ceterum etiam earum rerum usucapio nobis conpetit, quae non a domino nobis traditae fuerint, siue mancipi sint eae res siue nec mancipi, si modo eas bona fide acceperimus, cum crederemus eum, qui traderet, dominum esse.

44. Quod ideo receptum uidetur, ne rerum dominia diutius in incerto essent, cum sufficeret domino ad inquirendam rem suam anni aut biennii spatium, quod tempus ad usucapionem possessori tributum est.

45. Sed aliquando etiamsi maxime quis bona fide alienam rem possideat, non tamen illi usucapio procedit, uelut si quis rem furtiuam aut ui possessam possideat; nam furtiuam lex XII tabularum usucapi prohibet, ui possessam lex Iulia et Plautia.

46. Item prouincialia praedia usucapionem non recipiunt.

47. Item olim mulieris, quae in agnatorum tutela erat, res mancipi usucapi non poterant, praeterquam si ab ipsa tutore auctore traditae essent: id ita lege XII tabularum cautum erat.

48. Item liberos homines et res sacras et religiosas usucapi non posse manifestum est.

49. Quod ergo uulgo dicitur furtiuarum rerum et ui possessarum usucapionem per legem XII tabularum prohibitam esse, non eo pertinet, ut ne ipse fur quiue per uim possidet, usucapere possit (nam huic alia ratione usucapio non competit, quia scilicet mala fide possidet), sed nec ullus alius, quamquam ab eo bona fide emerit, usucapiendi ius habeat.

50. Vnde in rebus mobilibus non facile procedit, ut bonae fidei possessori usucapio competat, quia qui alienam rem uendidit et tradidit, furtum committit; idemque accidit etiam, si ex alia causa tradatur. sed tamen hoc aliquando aliter se habet; nam si heres rem defuncto commodatam aut locatam uel apud eum depositam existimans eam esse hereditariam, uendiderit aut donauerit, furtum non committit; item si is, ad quem ancillae ususfructus pertinet, partum etiam suum esse credens uendiderit aut donauerit, furtum non committit; furtum enim sine affectu furandi non committitur. aliis quoque modis accidere potest, ut quis sine uitio furti rem alienam ad aliquem transferat et efficiat, ut a possessore usucapiatur.

51. Fundi quoque alieni potest aliquis sine ui possessionem nancisci, quae uel ex neglegentia domini uacet, uel quia dominus sine successore decesserit uel longo tempore afuerit: quam si ad alium bona fide accipientem transtulerit, poterit usucapere possessor; et quamuis ipse, qui uacantem possessionem nactus est, intellegat alienum esse fundum, tamen nihil hoc bonae fidei possessori ad usucapionem nocet, cum inprobata sit eorum sententia, qui putauerint furtiuum fundum fieri posse.

52. Rursus ex contrario accidit, ut qui sciat alienam rem se possidere, usucapiat, uelut si rem hereditariam, cuius possessionem heres nondum nactus est, aliquis possederit; nam ei concessum est usucapere, si modo ea res est, quae recipit usucapionem. quae species possessionis et usucapionis pro herede uocatur.

53. Et in tantum haec usucapio concessa est, ut et res, quae solo continentur, anno usucapiantur.

54. Quare autem hoc casu etiam soli rerum annua constituta sit usucapio, illa ratio est, quod olim rerum hereditariarum possessione ipsae hereditates usucapi credebantur, scilicet anno: lex enim XII tabularum soli quidem res biennio usucapi iussit, ceteras uero anno: ergo hereditas in ceteris rebus uidebatur esse, quia soli non est [quia neque corporalis est]; et quamuis postea creditum sit ipsas hereditates usucapi non posse, tamen in omnibus rebus hereditariis, etiam quae solo tenentur, annua usucapio remansit.

55. Quare autem omnino tam inproba possessio et usucapio concessa sit, illa ratio est, quod uoluerunt ueteres maturius hereditates adiri, ut essent, qui sacra facerent, quorum illis temporibus summa obseruatio fuit, ut et creditores haberent, a quo suum consequerentur.

56. Haec autem species possessionis et usucapionis etiam lucratiua uocatur: nam sciens quisque rem alienam lucrifacit.

57. Sed hoc tempore iam non est lucratiua: nam ex auctoritate diui Hadriani senatus consultum factum est, ut tales usucapiones reuocarentur; et ideo potest heres ab eo, qui rem usucepit, hereditatem petendo proinde eam rem consequi, atque si usucapta non esset.

58. Suo et necessario tamen herede extante nihil ipso iure pro herede usucapi potest.

59. Adhuc etiam ex aliis causis sciens quisque rem alienam usucapit: nam qui rem alicui fiduciae causa mancipio dederit uel in iure cesserit, si eandem ipse possederit, potest usucapere, anno scilicet, si mobilis sit, biennio, soli si sit. quae species usucapionis dicitur usureceptio, quia id, quod aliquando habuimus, recipimus per usucapionem.

60. Sed cum fiducia contrahitur aut cum creditore pignoris iure aut cum amico, quo tutius nostrae res apud eum essent, si quidem cum amico contracta sit fiducia, sane omni modo conpetit usus receptio; si uero cum creditore, soluta quidem pecunia omni modo conpetit, nondum uero soluta ita demum competit, si neque conduxerit eam rem a creditore debitor neque precario rogauerit, ut eam rem possidere liceret; quo casu lucratiua usus capio conpetit.

61. Item si rem obligatam sibi populus uendiderit eamque dominus possederit, concessa est usus receptio: sed et hoc casu praedium biennio usurecipitur: et hoc est, quod uolgo dicitur ex praediatura possessionem usurecipi: nam qui mercatur a populo, praediator appellatur.

62. Accidit aliquando, ut qui dominus sit, alienandae rei potestatem non habeat, et qui dominus non sit, alienare possit

63. Nam dotale praedium maritus inuita muliere per legem Iuliam prohibetur alienare, quamuis ipsius sit uel mancipatum ei dotis causa uel in iure cessum uel usucaptum. quod quidem ius utrum ad Italica tantum praedia an etiam ad prouincialia pertineat, dubitatur.

64. Ex diuerso agnatus furiosi curator rem furiosi alienare potest ex lege XII tabularum; item procurator [. . . . . versus dimidius legi nequit . . . .] est; item creditor pignus ex pactione, quamuis eius ea res non sit. sed hoc forsitan

ideo uideatur fieri, quod uoluntate debitoris intellegitur pignus alienari, qui olim pactus est, ut liceret creditori pignus uendere, si pecunia non soluatur. 65. Ergo ex his, quae diximus, adparet quaedam naturali iure alienari, qualia sunt ea, quae traditione alienantur, quaedam ciuili; nam mancipationis et in iure cessionis et usucapionis ius proprium est ciuium Romanorum.

66. Nec tamen ea tantum, quae traditione nostra fiunt, naturali nobis ratione adquiruntur, sed etiam quae occupando ideo adepti erimus, quia antea nullius essent, qualia sunt omnia, quae terra mari caelo capiuntur.

67. Itaque si feram bestiam aut uolucrem aut piscem ceperimus, simul atque captum fuerit hoc animal, statim nostrum fit, et eo usque nostrum esse intellegitur, donec nostra custodia coerceatur; cum uero custodiam nostram euaserit et in naturalem se libertatem receperit, rursus occupantis fit, quia nostrum esse desinit: naturalem autem libertatem recipere uidetur, cum aut oculos nostros euaserit, aut licet in conspectu sit nostro, difficilis tamen eius persecutio sit.

68. In iis autem animalibus, quae ex consuetudine abire et redire solent, ueluti columbis et apibus, item ceruis, qui in siluas ire et redire solent, talem habemus regulam traditam, ut si reuertendi animum habere desierint, etiam nostra esse desinant et fiant occupantium: reuertendi autem animum uidentur desinere habere, cum reuertendi consuetudinem deseruerint.

69. Ea quoque, quae ex hostibus capiuntur, naturali ratione nostra fiunt.

70. Sed et id, quod per alluuionem nobis adicitur, eodem iure nostrum fit: per alluuionem autem id uidetur adici, quod ita paulatim flumen agro nostro adicit, ut aestimare non possimus, quantum quoquo momento temporis adiciatur: hoc est, quod uolgo dicitur per adluuionem id adici uideri, quod ita paulatim adicitur, ut oculos nostros fallat.

71. Itaque si flumen partem aliquam ex tuo praedio resciderit et ad meum praedium pertulerit, haec pars tua manet.

72. At si in medio flumine insula nata sit, haec eorum omnium communis est, qui ab utraque parte fluminis prope ripam praedia possident; si uero non sit in medio flumine, ad eos pertinet, qui ab ea parte, quae proxuma est, iuxta ripam praedia habent.

73. Praeterea id, quod in solo nostro ab aliquo aedificatum est, quamuis ille suo nomine aedificauerit, iure naturali nostrum fit, quia superficies solo cedit.

74. Multoque magis id accidit et in planta, quam quis in solo nostro posuerit, si modo radicibus terram complexa fuerit.

75. Idem contingit et in frumento, quod in solo nostro ab aliquo satum fuerit.

76. Sed si ab eo petamus fundum uel aedificium et inpensas in aedificium uel in seminaria uel in sementem factas ei soluere nolimus, poterit nos per exceptionem doli mali repellere, utique si bonae fidei possessor fuerit.

77. Eadem ratione probatum est, quod in cartulis siue membranis meis aliquis scripserit, licet aureis litteris, meum esse, quia litterae cartulis siue membranis cedunt: itaque si ego eos libros easue membranas petam nec inpensam scripturae soluam, per exceptionem doli mali summoueri potero.

78. Sed si in tabula mea aliquis pinxerit ueluti imaginem, contra probatur: magis enim dicitur tabulam picturae cedere. cuius diuersitatis uix idonea ratio redditur: certe secundum hanc regulam si me possidente petas imaginem tuam esse nec soluas pretium tabulae, poteris per exceptionem doli mali summoueri; at si tu possideas, consequens est, ut utilis mihi actio aduersum te dari debeat; quo casu nisi soluam inpensam picturae, poteris me per exceptionem doli mali repellere, utique si bonae fidei possessor fueris. illud palam est, quod siue tu subripueris tabulam siue alius, conpetit mihi furti actio.

79. In aliis quoque speciebus naturalis ratio requiritur: proinde si ex uuis aut oliuis aut spicis meis uinum aut oleum aut frumentum feceris, quaeritur, utrum meum sit id uinum aut oleum aut frumentum an tuum. item si ex auro aut argento meo uas aliquod feceris uel ex tabulis meis nauem aut armarium aut subsellium fabricaueris, item si ex lana mea uestimentum feceris uel si ex uino et melle meo mulsum feceris siue ex medicamentis meis emplastrum aut collyrium feceris, quaeritur, utrum tuum sit id, quod ex meo effeceris, an meum. quidam materiam et substantiam spectandam esse putant, id est, ut cuius materia sit, illius et res, quae facta sit, uideatur esse, idque maxime placuit Sabino et Cassio; alii uero eius rem esse putant, qui fecerit, idque maxime diuersae scholae auctoribus uisum est: sed eum quoque, cuius materia et substantia fuerit, furti aduersus eum, qui subripuerit, habere actionem; nec minus aduersus eundem condictionem ei competere, quia extinctae res, licet uindicari non possint, condici tamen furibus et quibusdam aliis possessoribus possunt. [De pupillis an aliquid a se alienare possunt.]

80. Nunc admonendi sumus neque feminam neque pupillum sine tutoris auctoritate rem mancipi alienare posse; nec mancipi uero feminam quidem posse, pupillum non posse.

81. Ideoque si quando mulier mutuam pecuniam alicui sine tutoris auctoritate dederit, quia facit eam accipientis, cum scilicet pecunia res nec mancipi sit, contrahit obligationem.

82. At si pupillus idem fecerit, quia non facit accipientis sine tutoris auctoritate pecuniam, nullam contrahit obligationem: unde pupillus uindicare quidem nummos suos potest, sicubi extent, id est eos petere, [. . . . . vv. 5 1/2 . . . .]

83. Et ex contrario omnes res tam mancipi quam nec mancipi mulieribus et pupillis sine tutoris auctoritate solui possunt, quoniam meliorem condicionem suam facere eis etiam sine tutoris auctoritate concessum est.

84. Itaque si debitor pecuniam pupillo soluat, facit quidem pecuniam pupilli, sed ipse non liberatur, quia nullam obligationem pupillus sine tutoris auctoritate dissoluere potest, quia nullius rei alienatio ei sine tutoris auctoritate concessa est; sed tamen si ex ea pecunia locupletior factus sit et adhuc petat, per exceptionem doli mali summoueri potest.

85. Mulieri uero etiam sine tutoris auctoritate recte solui potest: nam qui soluit, liberatur obligatione, quia res nec mancipi, ut proxume diximus, a se dimittere mulieres etiam sine tutoris auctoritate possunt: quamquam hoc ita est, si accipiat pecuniam; at si non accipiat, sed habere se dicat et per acceptilationem uelit debitorem sine tutoris auctoritate liberare, non potest.

86. Adquiritur autem nobis non solum per nosmet ipsos, sed etiam per eos, quos in potestate manu mancipioue habemus; item per eos seruos, in quibus usumfructum habemus; item per homines liberos et seruos alienos, quos bona fide possidemus: de quibus singulis diligenter dispiciamus.

87. Igitur quod liberi nostri, quos in potestate habemus, item quod serui nostri mancipio accipiunt uel ex traditione nanciscuntur siue quid stipulentur uel ex aliqualibet causa adquirunt, id nobis adquiritur: ipse enim, qui in potestate nostra est, nihil suum habere potest; et ideo si heres institutus sit, nisi nostro iussu hereditatem adire non potest; et si iubentibus nobis adierit, hereditas nobis adquiritur, proinde atque si nos ipsi heredes instituti essemus; et conuenienter scilicet legatum per eos nobis adquiritur.

88. Dum tamen sciamus: si alterius in bonis sit seruus, alterius ex iure Quiritium, ex omnibus causis ei soli per eum adquiritur, cuius in bonis est.

89. Non solum autem proprietas per eos, quos in potestate habemus, adquiritur nobis, sed etiam possessio; cuius enim rei possessionem adepti fuerint, id nos possidere uidemur; unde etiam per eos usucapio procedit.

90. Per eas uero personas, quas in manu mancipioue habemus, proprietas quidem adquiritur nobis ex omnibus causis sicut per eos, qui in potestate nostra sunt; an autem possessio adquiratur, quaeri solet, quia ipsas non possidemus.

91. De his autem seruis, in quibus tantum usumfructum habemus, ita placuit, ut quidquid ex re nostra uel ex operis suis adquirunt, id nobis adquiratur; quod uero extra eas causas, id ad dominum proprietatis pertineat: itaque si iste seruus heres institutus sit legatumue quid ei aut donatum fuerit, non mihi, sed domino proprietatis adquiritur.

92. Idem placet de eo, qui a nobis bona fide possidetur, siue liber sit siue alienus seruus: quod enim placuit de usufructuario, idem probatur etiam de bonae fidei possessore: itaque quod extra duas istas causas adquiritur, id uel ad ipsum pertinet, si liber est, uel ad dominum, si seruus est.

93. Sed bonae fidei possessor cum usucepit seruum, quia eo modo dominus fit, ex omni causa per eum sibi adquirere potest. usufructuarius uero usucapere non potest; primum quia non possidet, sed habet ius utendi fruendi; deinde quia scit alienum seruum esse.

94. De illo quaeritur: an per eum seruum, in quo usumfructum habemus, possidere aliquam rem et usucapere possumus, quia ipsum non possidemus? per eum uero, quem bona fide possidemus, sine dubio et possidere et usucapere possumus. loquimur autem in utriusque persona secundum definitionem, quam proxume exposuimus; id est, si quid ex re nostra uel ex operis suis adquirant, id nobis adquiritur.

95. Ex his apparet per liberos homines, quos neque iuri nostro subiectos habemus neque bona fide possidemus, item per alienos seruos, in quibus neque usumfructum habemus neque iustam possessionem, nulla ex causa nobis adquiri posse. et hoc est, quod uulgo dicitur per extraneam personam nobis adquiri non posse; tantum de possessione quaeritur, an per liberam personam nobis adquiratur.

96. In summa sciendum est his, qui in potestate manu mancipioue sunt, nihil in iure cedi posse; cum enim istarum personarum nihil suum esse possit, conueniens est scilicet, ut nihil suum esse in iure uindicare possint.

97. Hactenus tantisper admonuisse sufficit, quemadmodum singulae res nobis adquirantur: nam legatorum ius, quo et ipso singulas res adquirimus, opportunius alio loco referemus. uideamus itaque nunc, quibus modis per uniuersitatem res nobis adquirantur.

98. Si cui heredes facti sumus siue cuius bonorum possessionem petierimus siue cuius bona emerimus siue quem adoptauerimus siue quam in manum ut uxorem receperimus, eius res ad nos transeunt.

99. Ac prius de hereditatibus dispiciamus, quarum duplex condicio est: nam uel ex testamento uel ab intestato ad nos pertinent.

100. Et prius est, ut de his dispiciamus, quae nobis ex testamento obueniunt.

101. Testamentorum autem genera initio duo fuerunt: nam aut calatis comitiis testamentum faciebant, quae comitia bis in anno testamentis faciendis destinata erant, aut in procinctu, id est, cum belli causa arma sumebant: procinctus est enim expeditus et armatus exercitus. alterum itaque in pace et in otio faciebant, alterum in proelium exituri.

102. Accessit deinde tertium genus testamenti, quod per aes et libram agitur: qui enim neque calatis comitiis neque in procinctu testamentum fecerat, is, si subita morte urguebatur, amico familiam suam, id est patrimonium suum, mancipio dabat eumque rogabat, quid cuique post mortem suam dari uellet. quod testamentum dicitur per aes et libram, scilicet quia per mancipationem peragitur. 103. Sed illa quidem duo genera testamentorum in desuetudinem abierunt; hoc uero solum, quod per aes et libram fit, in usu retentum est. sane nunc aliter ordinatur, quam olim solebat; namque olim familiae emptor, id est, qui a testatore familiam accipiebat mancipio, heredis locum optinebat, et ob id ei mandabat testator, quid cuique post mortem suam dari uellet; nunc uero alius heres testamento instituitur, a quo etiam legata relinquuntur, alius dicis gratia propter ueteris iuris imitationem familiae emptor adhibetur.

104. Eaque res ita agitur: qui facit testamentum, adhibitis, sicut in ceteris mancipationibus, V testibus ciuibus Romanis puberibus et libripende, postquam tabulas testamenti scripserit, mancipat alicui dicis gratia familiam suam; in qua re his uerbis familiae emptor utitur: FAMILIAM PECVNIAMQVE TVAM ENDO MANDATELA TVA CVSTODELAQVE MEA ESSE AIO, EAQVE, QVO TV IVRE TESTAMENTVM FACERE POSSIS SECVNDVM LEGE PVBLICAM, HOC AERE, et ut quidam adiciunt, AENEAQVE LIBRA, ESTO MIHI EMPTA; deinde aere percutit libram idque aes dat testatori uelut pretii loco; deinde testator tabulas testamenti manu tenens ita dicit: HAEC ITA VT IN HIS TABVLIS CERISQVE SCRIPTA SVNT, ITA DO ITA LEGO ITA TESTOR, ITAQVE VOS, QVIRITES, TESTIMONIVM MIHI PERHIBETOTE; et hoc dicitur nuncupatio: nuncupare est enim palam nominare, et sane quae testator specialiter in tabulis testamenti scripserit, ea uidetur generali sermone nominare atque confirmare.

105. In testibus autem non debet is esse, qui in potestate est aut familiae emptoris aut ipsius testatoris, quia propter ueteris iuris imitationem totum hoc negotium, quod agitur testamenti ordinandi gratia, creditur inter familiae emptorem agi et testatorem; quippe olim, ut proxime diximus, is, qui familiam testatoris mancipio accipiebat, heredis loco erat; itaque reprobatum est in ea re domesticum testimonium.

106. Unde et si is, qui in potestate patris est, familiae emptor adhibitus sit, pater eius testis esse non potest; ac ne is quidem, qui in eadem potestate est, uelut frater eius. sed et si filius familias ex castrensi peculio post missionem faciat testamentum, nec pater eius recte testis adhibetur nec is, qui in potestate patris est.

107. De libripende eadem, quae et de testibus, dicta esse intellegemus: nam et is testium numero est.

108. Is uero, qui in potestate heredis aut legatarii est, cuiusue heres ipse aut legatarius in potestate est, quique in eiusdem potestate est, adeo testis et libripens adhiberi potest, ut ipse quoque heres aut legatarius iure adhibeantur. sed tamen quod ad heredem pertinet quique in eius potestate est cuiusue is in potestate erit, minime hoc iure uti debemus. [De testamentis militum.]

109. Sed haec diligens obseruatio in ordinandis testamentis militibus propter nimiam inperitiam constitutionibus principum remissa est: nam quamuis neque legitimum numerum testium adhibuerint neque uendiderint familiam neque nuncupauerint testamentum, recte nihilo minus testantur.

110. Praeterea permissum est iis et peregrinos et Latinos instituere heredes uel iis legare; cum alioquin peregrini quidem ratione ciuili prohibeantur capere hereditatem legataque, Latini uero per legem Iuniam.

111. Caelibes quoque, qui lege Iulia hereditates legataque capere uetantur, item orbi, id est qui liberos non habent, quos lex [. . . . . fol. deperd., vv. 21 exceptis frustulis paucis legi nequeunt . . . .]

112. [. . . .] ex auctoritate diui Hadriani senatus consultum factum est, quo permissum est ********s feminis etiam sine coemptione testamentum facere, si modo non minores essent annorum XII; scilicet ut quae tutela liberatae non essent, tutore auctore testari deberent.

113. Videntur ergo melioris condicionis esse feminae quam masculi; nam masculus minor annorum XIIII testamentum facere non potest, etiamsi tutore auctore testamentum facere uelit, femina uero potest; facta enim XII annorum testamenti faciundi ius nanciscitur.

114. Igitur si quaeramus, an ualeat testamentum, inprimis aduertere debemus, an is, qui id fecerit, habuerit testamenti factionem: deinde si habuerit, requiremus, an secundum iuris ciuilis regulam testatus sit, exceptis militibus, quibus propter nimiam inperitiam, ut diximus, quomodo uelint uel quomodo possint, permittitur testamentum facere.

115. Non tamen, ut iure ciuili ualeat testamentum, sufficit ea obseruatio, quam supra exposuimus de familiae uenditione et de testibus et de nuncupatione.

116. Sed ante omnia requirendum est, an institutio heredis sollemni more facta sit; nam aliter facta institutione nihil proficit familiam testatoris ita uenire testesque ita adhibere et ita nuncupare testamentum, ut supra diximus.

117. Sollemnis autem institutio haec est: TITIVS HERES ESTO; sed et illa iam conprobata uidetur: TITIVM HEREDEM ESSE IVBEO; at illa non est conprobata: TITIVM HEREDEM ESSE VOLO; sed et illae a plerisque inprobatae sunt: TITIVM HEREDEM INSTITVTO, item: HEREDEM FACIO.

118. Obseruandum praeterea est, ut si mulier, quae in tutela est, faciat testamentum, tutore auctore facere debeat: alioquin inutiliter iure ciuili testabitur.

119. Praetor tamen, si septem signis testium signatum sit testamentum, scriptis heredibus secundum tabulas testamenti bonorum possessionem pollicetur, et si nemo sit, ad quem ab intestato iure legitimo pertineat hereditas, uelut frater eodem patre natus aut patruus aut fratris filius, ita poterunt scripti heredes retinere hereditatem: nam idem iuris est et si alia ex causa testamentum non ualeat, uelut quod familia non uenierit aut nuncupationis uerba testator locutus non sit.

120. Sed uideamus, an etiam si frater aut patruus extent, potiores scriptis heredibus habeantur; rescripto enim imperatoris Antonini significatur eos, qui secundum tabulas testamenti non iure factas bonorum possessionem petierint, posse aduersus eos, qui ab intestato uindicant hereditatem, defendere se per exceptionem doli mali.

121. Quod sane quidem ad masculorum testamenta pertinere certum est; item ad feminarum, quae ideo non utiliter testatae sunt, quod uerbi gratia familiam non uendiderint aut nuncupationis uerba locutae non sint: an autem et ad ea testamenta feminarum, quae sine tutoris auctoritate fecerint, haec constitutio pertineat, uidebimus.

122. Loquimur autem de his scilicet feminis, quae non in legitima parentium aut patronorum tutela sunt, sed [de his] quae alterius generis tutores habent,

qui etiam inuiti coguntur auctores fieri. alioquin parentem et patronum sine auctoritate eius facto testamento non summoueri palam est.

123. Item qui filium in potestate habet, curare debet, ut eum uel heredem instituat uel nominatim exheredet; alioquin si eum silentio praeterierit, inutiliter testabitur: adeo quidem, ut nostri praeceptores existiment, etiam si uiuo patre filius defunctus sit, neminem heredem ex eo testamento existere posse, scilicet quia statim ab initio non constiterit institutio; sed diuersae scholae auctores, si quidem filius mortis patris tempore uiuat, sane impedimento eum esse scriptis heredibus et illum ab intestato heredem fieri confitentur; si uero ante mortem patris interceptus sit, posse ex testamento hereditatem adiri putant, nullo iam filio impedimento; quia scilicet existimant non statim ab initio inutiliter fieri testamentum filio praeterito.

124. Ceteras uero liberorum personas si praeterierit testator, ualet testamentum: sed praeteritae istae personae scriptis heredibus in partem adcrescunt, si sui heredes sint, in uirilem, si extranei, in dimidiam: id est, si quis tres uerbi gratia filios heredes instituerit et filiam praeterierit, filia adcrescendo pro quarta parte fit heres et ea ratione id consequitur, quod ab intestato patre mortuo habitura esset; at si extraneos ille heredes instituerit et filiam praeterierit, filia adcrescendo ex dimidia parte fit heres. quae de filia diximus, eadem et de nepote deque omnibus ceteris liberorum personis seu masculini seu feminini sexus dicta intellegemus.

125. Quid ergo est? licet hae secundum ea, quae diximus, scriptis heredibus dimidiam partem modo detrahant, tamen praetor eis contra tabulas bonorum possessionem promittit, qua ratione extranei heredes a tota hereditate repelluntur et efficiuntur sine re heredes.

126. Et hoc iure utebamur, quasi nihil inter feminas et masculos interesset; sed nuper imperator Antoninus significauit rescripto suas non plus nancisci feminas per bonorum possessionem, quam quod iure adcrescendi consequerentur. quod in emancipatarum quoque personis obseruandum est, ut nimirum hae quoque, quod adcrescendi iure habiturae essent, si in potestate fuissent, id ipsum etiam per bonorum possessionem habeant.

127. Sed si quidem filius a patre exheredetur, nominatim exheredari debet; alioquin non prodest eum exheredari. nominatim autem exheredari uidetur, siue ita exheredetur: TITIVS FILIVS MEVS EXHERES ESTO, siue ita: FILIVS MEVS EXHERES ESTO, non adiecto proprio nomine.

128. Ceterae uero liberorum personae uel feminini sexus uel masculini satis inter ceteros exheredantur, id est his uerbis: CETERI OMNES EXHEREDES SVNTO, quae uerba statim post institutionem heredum adici solent. sed hoc ita est iure ciuili.

129. Nam praetor omnes uirilis sexus liberorum personas, id est nepotes quoque et pronepotes [. . . . . 2 1/3 versus legi nequeunt . . . .]

130. Postumi quoque liberi nominatim uel heredes institui debent uel exheredari.

131. Et in eo par omnium condicio est, quod et in filio postumo et in quolibet ex ceteris liberis siue feminini sexus siue masculini praeterito ualet quidem testamentum, sed postea adgnatione postumi siue postumae rumpitur, et ea ratione totum infirmatur. ideoque si mulier, ex qua postumus aut postuma sperabatur, abortum fecerit, nihil impedimento est scriptis heredibus ad hereditatem adeundam.

132. Sed feminini quidem sexus personae uel nominatim uel inter ceteros exheredari solent, dum tamen, si inter ceteros exheredentur, aliquid eis legetur, ne uideantur per obliuionem praeteritae esse: masculini uero sexus liberorum personas placuit non aliter recte exheredari, nisi nominatim exheredentur, hoc scilicet modo QVICVMQVE MIHI FILIVS GENITVS FVERIT EXHERES ESTO. [. . . . . vv. 9 1/2 . . . .]

133. Postumorum autem loco sunt et hi, qui in sui heredis locum succedendo quasi adgnascendo fiunt parentibus sui heredes: ut ecce si filium et ex eo nepotem neptemue in potestate habeam, quia filius gradu praecedit, is solus iura sui heredis habet, quamuis nepos quoque et neptis ex eo in eadem potestate sint; sed si filius meus me uiuo moriatur aut qualibet alia ratione exeat de potestate mea, incipit nepos neptisue in eius locum succedere, et eo modo iura suorum heredum quasi adgnatione nanciscuntur.

134. Ne ergo eo modo rumpatur mihi testamentum, sicut ipsum filium uel heredem instituere uel exheredare debeo, ne non iure faciam testamentum, ita et nepotem neptemue ex eo necesse est mihi uel heredem instituere uel exheredare, ne forte, me uiuo filio mortuo, succedendo in locum eius nepos neptisue quasi adgnatione rumpat testamentum: idque lege Iunia Vellaea prouisum est, in qua simul exheredationis modus notatur, ut uirilis sexus nominatim, feminini uel nominatim uel inter ceteros exheredentur, dum tamen iis, qui inter ceteros exheredantur, aliquid legetur.

135. Emancipatos liberos iure ciuili neque heredes instituere neque exheredare necesse est, quia non sunt sui heredes: sed praetor omnes tam feminini quam masculini sexus, si heredes non instituantur, exheredari iubet, uirilis sexus nominatim, feminini uel nominatim uel inter ceteros: quod si neque heredes instituti fuerint neque ita, ut supra diximus, exheredati, praetor promittit eis contra tabulas bonorum possessionem.

135a In potestate patris non sunt, qui cum eo ciuitate Romana donati sunt nec in accipienda ciuitate Romana pater petiit statim a principe, ut eos in potestate haberet, aut si petiit, non impetrauit; nam qui in potestatem patris ab imperatore rediguntur, nihil differunt ab his, qui ita nati sunt.

136. Adoptiui filii, quamdiu manent in adoptione, naturalium loco sunt; emancipati uero a patre adoptiuo neque iure ciuili neque quod ad edictum praetoris pertinet inter liberos numerantur.

137. Qua ratione accidit, ut ex diuerso, quod ad naturalem parentem pertinet, quamdiu quidem sint in adoptiua familia, extraneorum numero habeantur; si uero emancipati fuerint ab adoptiuo patre, tunc incipiant in ea causa esse, qua futuri essent, si ab ipso naturali patre emancipati fuissent.

138. Si quis post factum testamentum adoptauerit sibi filium aut per populum eum, qui sui iuris est, aut per praetorem eum, qui in potestate parentis fuerit, omni modo testamentum eius rumpitur quasi agnatione sui heredis.

139. Idem iuris est, si cui post factum testamentum uxor in manum conueniat, uel quae in manu fuit, nubat: nam eo modo filiae loco esse incipit et quasi sua.

140. Nec prodest, siue haec siue ille, qui adoptatus est, in eo testamento sit institutus institutaue: nam de exheredatione eius superuacuum uidetur quaerere, cum testamenti faciundi tempore suorum heredum numero non fuerint.

141 Filius quoque, qui ex prima secundaue mancipatione manumittitur, quia reuertitur in potestatem patriam, rumpit ante factum testamentum; nec prodest, si in eo testamento heres institutus uel exheredatus fuerit.

142. Simile ius olim fuit in eius persona, cuius nomine ex senatus consulto erroris causa probatur, quia forte ex peregrina uel Latina, quae per errorem quasi ciuis Romana uxor ducta esset, natus esset: nam siue heres institutus esset a parente siue exheredatus, siue uiuo patre causa probata siue post mortem eius, omni modo quasi adgnatione rumpebat testamentum.

143. Nunc uero ex nouo senatus consulto, quod auctore diuo Hadriano factum est, si quidem uiuo patre causa probatur, aeque ut olim omni modo rumpit testamentum; si uero post mortem patris, praeteritus quidem rumpit testamentum, si uero heres in eo scriptus est uel exheredatus, non rumpit testamentum, ne scilicet diligenter facta testamenta rescinderentur eo tempore, quo renouari non possent.

144. Posteriore quoque testamento, quod iure factum est, superius rumpitur; nec interest, an extiterit aliquis ex eo heres an non extiterit: hoc enim solum

spectatur, an existere potuerit: ideoque si quis ex posteriore testamento, quod iure factum est, aut noluerit heres esse aut uiuo testatore aut post mortem eius, antequam hereditatem adiret, decesserit aut per cretionem exclusus fuerit aut condicione, sub qua heres institutus est, defectus sit aut propter caelibatum ex lege Iulia summotus fuerit ab hereditate, [quibus casibus pater familias intestatus moritur: nam] et prius testamentum non ualet ruptum a posteriore, et posterius aeque nullas uires habet, cum ex eo nemo heres extiterit.

145. Alio quoque modo testamenta iure facta infirmantur, uelut cum is, qui fecerit testamentum, kapite deminutus sit; quod quibus modis accidat, primo commentario relatum est.

146. Hoc autem casu inrita fieri testamenta dicemus, cum alioquin et quae rumpuntur, inrita fiant, et quae statim ab initio non iure fiunt, inrita sint; sed et ea, quae iure facta sunt et postea propter capitis deminutionem inrita fiunt, possunt nihilo minus rupta dici. sed quia sane commodius erat singulas causas singulis appellationibus distingui, ideo quaedam non iure fieri dicuntur, quaedam iure facta rumpi uel inrita fieri.

147. Non tamen per omnia inutilia sunt ea testamenta, quae uel ab initio non iure facta sunt uel iure facta postea inrita facta aut rupta sunt. nam si septem testium signis signata sint testamenta, potest scriptus heres secundum tabulas bonorum possessionem petere, si modo defunctus testator et ciuis Romanus et suae potestatis mortis tempore fuerit. nam si ideo inritum factum sit testamentum, quod puta ciuitatem uel etiam libertatem testator amisit aut quia in adoptionem se dedit et mortis tempore in adoptiui patris potestate fuit, non potest scriptus heres secundum tabulas bonorum possessionem petere.

148. Qui autem secundum tabulas testamenti, quae aut statim ab initio non iure factae sunt aut iure factae postea ruptae uel inritae erunt, bonorum possessionem accipiunt, si modo possunt hereditatem optinere, habebunt bonorum possessionem cum re; si uero ab his auocari hereditas potest, habebunt bonorum possessionem sine re.

149. Nam si quis heres iure ciuili institutus sit uel ex primo uel ex posteriore testamento uel ab intestato iure legitimo heres sit, is potest ab iis hereditatem auocare; si uero nemo sit alius iure ciuili heres, ipsi retinere hereditatem possunt, nec ullum ius aduersus eos habent cognati, qui legitimo iure deficiuntur.

149a. Aliquando tamen, sicut supra quoque notauimus, etiam legitimis quoque heredibus potiores scripti habentur, ueluti si ideo non iure factum sit testamentum, quod familia non uenierit aut nuncupationis uerba testator locutus non sit; **** si adgnati petant hereditatem [. . . .]

150. [. . . . . vv. 3 1/2 . . . .] ea lege bona caduca fiunt et ad populum deferri iubentur, si defuncto nemo heres uel bonorum possessor sit.

151. Potest, ut iure facta testamenta contraria uoluntate infirmentur. apparet autem non posse ex eo solo infirmari testamentum, quod postea testator id noluerit ualere, usque adeo, ut si linum eius inciderit, nihilo minus iure ciuili ualeat. quin etiam si deleuerit quoque aut combusserit tabulas testamenti, non ideo minus desinent ualere, quae ibi fuerunt scripta, licet eorum probatio difficilis sit.

151a. Quid ergo est? si quis ab intestato bonorum possessionem petierit et is, qui ex eo testamento heres est, petat hereditatem, [. . . . . vv. 2 1/4 . . . .], perueniat hereditas: et hoc ita rescripto imperatoris Antonini significatur.

152. Heredes autem aut necessarii dicuntur aut sui et necessarii aut extranei.

153. Necessarius heres est seruus cum libertate heres institutus, ideo sic appellatus, quia siue uelit siue nolit, omni modo post mortem testatoris protinus liber et heres est.

154. Unde qui facultates suas suspectas habet, solet seruum suum primo aut secundo uel etiam ulteriore gradu liberum et heredem instituere, ut si creditoribus satis non fiat, potius huius heredis quam ipsius testatoris bona ueneant, id est, ut ignominia, quae accidit ex uenditione bonorum, hunc potius heredem quam ipsum testatorem contingat; quamquam apud Fufidium Sabino placeat eximendum eum esse ignominia, quia non suo uitio, sed necessitate iuris bonorum uenditionem pateretur; sed alio iure utimur.

155. Pro hoc tamen incommodo illud ei commodum praestatur, ut ea, quae post mortem patroni sibi adquisierit, siue ante bonorum uenditionem siue postea, ipsi reseruentur; et quamuis pro portione bona uenierint, iterum ex hereditaria causa bona eius non uenient, nisi si quid ei ex hereditaria causa fuerit adquisitum, uelut si ex eo, quod Latinus adquisierit, locupletior factus sit; cum ceterorum hominum, quorum bona uenierint pro portione, si quid postea adquirant, etiam saepius eorum bona uenire soleant.

156. Sui autem et necessarii heredes sunt uelut filius filiaue, nepos neptisue ex filio et deinceps ceteri, qui modo in potestate morientis fuerunt: sed uti nepos neptisue suus heres sit, non sufficit eum in potestate aui mortis tempore fuisse, sed opus est, ut pater quoque eius uiuo patre suo desierit suus heres esse aut morte interceptus aut qualibet ratione liberatus potestate; tum enim nepos neptisue in locum sui patris succedunt.

157. Sed sui quidem heredes ideo appellantur, quia domestici heredes sunt et uiuo quoque parente quodam modo domini existimantur; unde etiam si quis

intestatus mortuus sit, prima causa est in successione liberorum. necessarii uero ideo dicuntur, quia omni modo, siue uelint siue nolint, tam ab intestato quam ex testamento heredes fiunt.

158. Sed his praetor permittit abstinere se ab hereditate, ut potius parentis bona ueneant.

159. Idem iuris est et in uxoris persona, quae in manu est, quia filiae loco est, et in nuru, quae in manu filii est, quia neptis loco est.

160. Quin etiam similiter abstinendi potestatem facit praetor etiam ei, qui in causa [id est mancipato] mancipii est, si cum libertate heres institutus sit, cum necessarius, non etiam suus heres sit, tamquam seruus.

161. Ceteri, qui testatoris iuri subiecti non sunt, extranei heredes appellantur: itaque liberi quoque nostri, qui in potestate nostra non sunt, heredes a nobis instituti sicut extranei uidentur; qua de causa et qui a matre heredes instituuntur, eodem numero sunt, quia feminae liberos in potestate non habent. serui quoque, qui cum libertate heredes instituti sunt et postea a domino manumissi, eodem numero habentur.

162. Extraneis autem heredibus deliberandi potestas data est de adeunda hereditate uel non adeunda.

163. Sed siue is, cui abstinendi potestas est, inmiscuerit se bonis hereditariis, siue is, cui de adeunda deliberare licet, adierit, postea relinquendae hereditatis facultatem non habet, nisi si minor sit annorum XXV: nam huius aetatis hominibus, sicut in ceteris omnibus causis deceptis, ita etiam si temere damnosam hereditatem susceperint, praetor succurrit. scio quidem diuum Hadrianum etiam maiori XXV annorum ueniam dedisse, cum post aditam hereditatem grande aes alienum, quod aditae hereditatis tempore latebat, apparuisset.

164. Extraneis heredibus solet cretio dari, id est finis deliberandi, ut intra certum tempus uel adeant hereditatem uel, si non adeant, temporis fine summoueantur: ideo autem cretio appellata est, quia cernere est quasi decernere et constituere.

165. Cum ergo ita scriptum sit: HERES TITIVS ESTO, adicere debemus: CERNITOQVE IN CENTVM DIEBVS PROXVMIS, QVIBVS SCIES POTERISQVE. QVOD NI ITA CREVERIS, EXHERES ESTO.

166. Et qui ita heres institutus est, si uelit heres esse, debebit intra diem cretionis cernere, id est haec uerba dicere: QVOD ME PVBLIVS MEVIVS TESTAMENTO SVO HEREDEM INSTITVIT, EAM HEREDITATEM

ADEO CERNOQVE. quod si ita non creuerit, finito tempore cretionis excluditur; nec quicquam proficit, si pro herede gerat, id est, si rebus hereditariis tamquam heres utatur.

167. At is, qui sine cretione heres institutus sit aut qui ab intestato legitimo iure ad hereditatem uocatur, potest aut cernendo aut pro herede gerendo uel etiam nuda uoluntate suscipiendae hereditatis heres fieri: eique liberum est, quocumque tempore uoluerit, adire hereditatem; sed solet praetor postulantibus hereditariis creditoribus tempus constituere, intra quod, si uelit, adeat hereditatem, si minus, ut liceat creditoribus bona defuncti uendere.

168. Sicut autem qui cum cretione heres institutus est, nisi creuerit hereditatem, non fit heres, ita non aliter excluditur, quam si non creuerit intra id tempus, quo cretio finita sit; itaque licet ante diem cretionis constituerit hereditatem non adire, tamen paenitentia actus superante die cretionis cernendo heres esse potest.

169. At is, qui sine cretione heres institutus est quiue ab intestato per legem uocatur, sicut uoluntate nuda heres fit, ita et contraria destinatione statim ab hereditate repellitur.

170. Omnis autem cretio certo tempore constringitur. in quam rem tolerabile tempus uisum est centum dierum: potest tamen nihilo minus iure ciuili aut longius aut breuius tempus dari; longius tamen interdum praetor coartat.

171. Et quamuis omnis cretio certis diebus constringatur, tamen alia cretio uulgaris uocatur, alia certorum dierum: uulgaris illa, quam supra exposuimus, id est, in qua adiciuntur haec uerba: QVIBVS SCIET POTERITQVE: certorum dierum, in qua detractis his uerbis cetera scribuntur.

172. Quarum cretionum magna differentia est: nam uulgari cretione data nulli dies conputantur, nisi quibus scierit quisque se heredem esse institutum et possit cernere; certorum uero dierum cretione data etiam nescienti se heredem institutum esse numerantur dies continui; item ei quoque, qui aliqua ex causa cernere prohibetur, et eo amplius ei, qui sub condicione heres institutus est, tempus numeratur; unde melius et aptius est uulgari cretione uti.

173. Continua haec cretio uocatur, quia continui dies numerantur; sed quia tamen dura est haec cretio, altera magis in usu habetur; unde etiam uulgaris dicta est. [De substitutionibus.]

174. Interdum duos pluresue gradus heredum facimus, hoc modo: L. TITIVS HERES ESTO CERNITOQVE IN DIEBVS CENTVM PROXIMIS, QVIBVS SCIES POTERISQVE. QVOD NI ITA CREVERIS, EXHERES ESTO. TVM

MEVIVS HERES ESTO CERNITOQVE IN DIEBVS CENTVM et reliqua; et deinceps in quantum uelimus, substituere possumus.

175. Et licet nobis uel unum in unius locum substituere pluresue, et contra in plurium locum uel unum uel plures substituere.

176. Primo itaque gradu scriptus heres hereditatem cernendo fit heres, et substitutus excluditur; non cernendo summouetur, etiamsi pro herede gerat, et in locum eius substitutus succedit; et deinceps si plures gradus sint, in singulis simili ratione idem contingit.

177. Sed si cretio sine exheredatione sit data, id est in haec uerba: SI NON CREVERIS, TVM PVBLIVS MEVIVS HERES ESTO, illud diuersum inuenitur, quod si prior omissa cretione pro herede gerat, substitutum in partem admittit, et fiunt ambo aequis partibus heredes; quod si neque cernat neque pro herede gerat, tum sane in uniuersum summouetur, et substitutus in totam hereditatem succedit.

178. Sed Sabino quidem placuit, quamdiu cernere et eo modo heres fieri possit prior, etiamsi pro herede gesserit, non tamen admitti substitutum; cum uero cretio finita sit, tum pro herede gerentem admittere substitutum: aliis uero placuit etiam superante cretione posse eum pro herede gerendo in partem substitutum admittere et amplius ad cretionem reuerti non posse.

179. Liberis nostris inpuberibus, quos in potestate habemus, non solum ita, ut supra diximus, substituere possumus, id est, ut si heredes non extiterint, alius nobis heres sit; sed eo amplius ut, etiamsi heredes nobis extiterint et adhuc inpuberes mortui fuerint, sit iis aliquis heres, uelut hoc modo: TITIVS FILIVS MEVS MIHI HERES ESTO. SI FILIVS MEVS MIHI HERES NON ERIT, SIVE HERES MIHI ERIT ET IS PRIVS MORIATVR QVAM IN SVAM TVTELAM VENERIT, TVNC SEIVS HERES ESTO.

180. Quo casu si quidem non extiterit heres filius, substitutus patris fit heres; si uero heres extiterit filius et ante pubertatem decesserit, ipsi filio fit heres substitutus. quam ob rem duo quodam modo sunt testamenta, aliud patris, aliud filii, tamquam si ipse filius sibi heredem instituisset; aut certe unum est testamentum duarum hereditatum.

181. Ceterum ne post obitum parentis periculo insidiarum subiectus uideretur pupillus, in usu est uulgarem quidem substitutionem palam facere, id est eo loco, quo pupillum heredem instituimus; nam uulgaris substitutio ita uocat ad hereditatem substitutum, si omnino pupillus heres non extiterit; quod accidit, cum uiuo parente moritur, quo casu nullum substituti maleficium suspicari possumus, cum scilicet uiuo testatore omnia, quae in testamento scripta sint, ignorentur: illam autem substitutionem, per quam, etiamsi heres extiterit

pupillus et intra pubertatem decesserit, substitutum uocamus, separatim in inferioribus tabulis scribimus easque tabulas proprio lino propriaque cera consignamus et in prioribus tabulis cauemus, ne inferiores tabulae uiuo filio et adhuc inpubere aperiantur. sed longe tutius est utrumque genus substitutionis separatim in inferioribus tabulis consignari, quia si ita consignatae uel separatae fuerint substitutiones, ut diximus, ex priore potest intellegi in altera quoque idem esse substitutus.

182. Non solum autem heredibus institutis inpuberibus liberis ita substituere possumus, ut si ante pubertatem mortui fuerint, sit is heres, quem nos uoluerimus, sed etiam exheredatis: itaque eo casu si quid pupillo ex hereditatibus legatisue aut donationibus propinquorum adquisitum fuerit, id omne ad substitutum pertinet.

183. Quaecumque diximus de substitutione inpuberum liberorum uel heredum institutorum uel exheredatorum, eadem etiam de postumis intellegemus.

184. Extraneo uero heredi instituto ita substituere non possumus, ut si heres extiterit et intra aliquod tempus decesserit, alius ei heres sit; sed hoc solum nobis permissum est, ut eum per fideicommissum obligemus, ut hereditatem nostram totam uel ex parte restituat; quod ius quale sit, suo loco trademus.

185. Sicut autem liberi homines, ita et serui tam nostri quam alieni heredes scribi possunt.

186. Sed noster seruus simul et liber et heres esse iuberi debet, id est hoc modo: STICHVS SERVVS MEVS LIBER HERESQVE ESTO, uel: HERES LIBERQVE ESTO.

187. Nam si sine libertate heres institutus sit, etiamsi postea manumissus fuerit a domino, heres esse non potest, quia institutio in persona eius non constitit; ideoque licet alienatus sit, non potest iussu domini noui cernere hereditatem.

188. Cum libertate uero heres institutus si quidem in eadem causa durauerit, fit ex testamento liber et inde necessarius heres: si uero ab ipso testatore manumissus fuerit, suo arbitrio hereditatem adire potest; quod si alienatus sit, iussu noui domini adire hereditatem debet, qua ratione per eum dominus fit heres: nam ipse neque heres neque liber esse potest.

189. Alienus quoque seruus heres institutus, si in eadem causa durauerit, iussu domini hereditatem adire debet; si uero alienatus ab eo fuerit aut uiuo testatore aut post mortem eius, antequam cernat, debet iussu noui domini cernere: si uero manumissus est, suo arbitrio adire hereditatem potest.

190. Si autem seruus alienus heres institutus est uulgari cretione data, ita intelle-gitur dies cretionis cedere, si ipse seruus scierit se heredem institutum esse nec ullum impedimentum sit, quo minus certiorem dominum faceret, ut illius iussu cernere possit.

191. Post haec uideamus de legatis. quae pars iuris extra propositam quidem materiam uidetur: nam loquimur de his iuris figuris, quibus per uniuersitatem res nobis adquiruntur: sed cum omni modo de testamentis deque heredibus, qui testamento instituuntur, locuti simus, non sine causa sequenti loco poterit haec iuris materia tractari. [De legatis.]

192. Legatorum itaque genera sunt quattuor: aut enim per uindicationem legamus aut per damnationem aut sinendi modo aut per praeceptionem.

193. Per uindicationem hoc modo legamus: TITIO uerbi gratia HOMINEM STICHVM DO LEGO; sed et si alterum uerbum positum sit, ueluti DO aut LEGO, aeque per uindicationem legatum est: item, ut magis uisum est, et si ita legatum fuerit: SVMITO uel ita: SIBI HABETO uel ita: CAPITO, aeque per uindicationem legatum est.

194. Ideo autem per uindicationem legatum appellatur, quia post aditam hereditatem statim ex iure Quiritium res legatarii fit; et si eam rem legatarius uel ab herede uel ab alio quocumque, qui eam possidet, petat, uindicare debet, id est intendere suam rem ex iure Quiritium esse.

195. In eo solo dissentiunt prudentes, quod Sabinus quidem et Cassius ceterique nostri praeceptores, quod ita legatum sit, statim post aditam hereditatem putant fieri legatarii, etiamsi ignoret sibi legatum esse, sed postea quam scierit et spreuerit legatum, proinde esse atque si legatum non esset; Nerua uero et Proculus ceterique illius scholae auctores non aliter putant rem legatarii fieri, quam si uoluerit eam ad se pertinere: sed hodie ex diui Pii Antonini constitutione hoc magis iure uti uidemur, quod Proculo placuit; nam cum legatus fuisset Latinus per uindicationem coloniae, 'Deliberent', inquit, 'decuriones, an ad se uelint pertinere, proinde ac si uni legatus esset'.

196. Eae autem solae res per uindicationem legantur recte, quae ex iure Quiritium ipsius testatoris sunt; sed eas quidem res, quae pondere, numero, mensura constant, placuit sufficere, si mortis tempore sint ex iure Quiritium testatoris, ueluti uinum, oleum, frumentum, pecuniam numeratam; ceteras res uero placuit utroque tempore testatoris ex iure Quiritium esse debere, id est, et quo faceret testamentum, et quo moreretur; alioquin inutile est legatum.

197. Sed sane hoc ita est iure ciuili. postea uero auctore Nerone Caesare senatus consultum factum est, quo cautum est, ut si eam rem quisque legauerit, quae eius numquam fuerit, proinde utile sit legatum, atque si optimo

iure relictum esset. optumum autem ius est per damnationem legati, quo genere etiam aliena res legari potest, sicut inferius apparebit.

198. Sed si quis rem suam legauerit, deinde post testamentum factum eam alienauerit, plerique putant non solum iure ciuili inutile esse legatum, sed nec ex senatus consulto confirmari. quod ideo dictum est, quia et si per damnationem aliquis rem suam legauerit eamque postea alienauerit, plerique putant, licet ipso iure debeatur legatum, tamen legatarium petentem posse per exceptionem doli mali repelli, quasi contra uoluntatem defuncti petat.

199. Illud constat, si duobus pluribusue per uindicationem eadem res legata sit, siue coniunctim siue disiunctim, et omnes ueniant ad legatum, partes ad singulos pertinere et deficientis portionem collegatario adcrescere. coniunctim autem ita legatur: TITIO ET SEIO HOMINEM STICHVM DO LEGO; disiunctim ita: LVCIO TITIO HOMINEM STICHVM DO LEGO. SEIO EVNDEM HOMINEM DO LEGO.

200. Illud quaeritur, quod sub condicione per uindicationem legatum est, pendente condicione cuius esset: nostri praeceptores heredis esse putant exemplo statuliberi, id est eius serui, qui testamento sub aliqua condicione liber esse iussus est, quem constat interea heredis seruum esse; sed diuersae scholae auctores putant nullius interim eam rem esse; quod multo magis dicunt de eo, quod sine condicione pure legatum est, antequam legatarius admittat legatum.

201. Per damnationem hoc modo legamus: HERES MEVS STICHVM SERVVM MEVM DARE DAMNAS ESTO; sed et si DATO scriptum fuerit, per damnationem legatum est.

202. Eoque genere legati etiam aliena res legari potest, ita ut heres rem redimere et praestare aut aestimationem eius dare debeat.

203. Ea quoque res, quae in rerum natura non est, si modo futura est, per damnationem legari potest, uelut fructus, qui in illo fundo nati erunt, aut quod ex illa ancilla natum erit.

204. Quod autem ita legatum est, post aditam hereditatem, etiamsi pure legatum est, non, ut per uindicationem legatum, continuo legatario adquiritur, sed nihilo minus heredis est: et ideo legatarius in personam agere debet, id est intendere heredem sibi dare oportere, et tum heres rem, si mancipi sit, mancipio dare aut in iure cedere possessionemque tradere debet; si nec mancipi sit, sufficit, si tradiderit. nam si mancipi rem tantum tradiderit nec mancipauerit, usucapione demum pleno iure fit legatarii. completur autem usucapio, sicut alio quoque loco diximus, mobilium quidem rerum anno, earum uero, quae solo teneantur, biennio.

205. Est et illa differentia huius et per uindicationem legati, quod si eadem res duobus pluribusue per damnationem legata sit, si quidem coniunctim, plane singulis partes debentur, sicut in per uindicationem legato diximus; si uero disiunctim, singulis solida debetur; ita fit, ut scilicet heres alteri rem, alteri aestimationem eius praestare debeat; et in coniunctis deficientis portio non ad collegatarium pertinet, sed in hereditate remanet.

206. Quod autem diximus deficientis portionem in per damnationem quidem legato in hereditate retineri, in per uindicationem uero collegatario accrescere, admonendi sumus ante legem Papiam hoc iure ciuili ita fuisse; post legem uero Papiam deficientis portio caduca fit et ad eos pertinet, qui in eo testamento liberos habent.

207. Et quamuis prima causa sit in caducis uindicandis heredum liberos habentium, deinde si heredes liberos non habeant, legatariorum liberos habentium, tamen ipsa lege Papia significatur, ut collegatarius coniunctus, si liberos habeat, potior sit heredibus, etiamsi liberos habebunt.

208. Sed plerisque placuit, quantum ad hoc ius, quod lege Papia coniunctis constituitur, nihil interesse, utrum per uindicationem an per damnationem legatum sit.

209. Sinendi modo ita legamus: HERES MEVS DAMNAS ESTO SINERE LVCIVM TITIVM HOMINEM STICHVM SVMERE SIBIQVE HABERE.

210. Quod genus legati plus quidem habet quam per uindicationem legatum, minus autem quam per damnationem: nam eo modo non solum suam rem testator utiliter legare potest, sed etiam heredis sui, cum alioquin per uindicationem nisi suam rem legare non potest, per damnationem autem cuiuslibet extranei rem legare potest.

211. Sed si quidem mortis testatoris tempore res uel ipsius testatoris sit uel heredis, plane utile legatum est, etiamsi testamenti faciendi tempore neutrius fuerit.

212. Quod si post mortem testatoris ea res heredis esse coeperit, quaeritur, an utile sit legatum: et plerique putant inutile esse. quid ergo est? licet aliquis eam rem legauerit, quae neque eius umquam fuerit neque postea heredis eius umquam esse coeperit, ex senatus consulto Neroniano proinde uidetur, ac si per damnationem relicta esset.

213. Sicut autem per damnationem legata res non statim post aditam hereditatem legatarii efficitur, sed manet heredis eo usque, donec is tradendo uel mancipando uel in iure cedendo legatarii eam fecerit, ita et in sinendi modo legato iuris est; et ideo huius quoque legati nomine in personam actio

est QVIDQVID HEREDEM EX TESTAMENTO DARE FACERE OPORTET.

214. Sunt tamen, qui putant ex hoc legato non uideri obligatum heredem, ut mancipet aut in iure cedat aut tradat, sed sufficere, ut legatarium rem sumere patiatur; quia nihil ultra ei testator imperauit, quam ut sinat, id est patiatur, legatarium rem sibi habere.

215. Maior illa dissensio in hoc legato interuenit, si eandem rem duobus pluribusue disiunctim legasti; quidam putant utrisque solidam deberi, sicut per damnationem: nonnulli occupantis esse meliorem condicionem aestimant, quia, cum eo genere legati damnetur heres patientiam praestare, ut legatarius rem habeat, sequitur, ut si priori patientiam praestiterit et is rem sumpserit, securus sit aduersus eum, qui postea legatum petierit, quia neque habet rem, ut patiatur eam ab eo sumi, neque dolo malo fecit, quo minus eam rem haberet.

216. Per praeceptionem hoc modo legamus: LVCIVS TITIVS HOMINEM STICHVM PRAECIPITO.

217. Sed nostri quidem praeceptores nulli alii eo modo legari posse putant nisi ei, qui aliqua ex parte heres scriptus esset. praecipere enim esse praecipuum sumere; quod tantum in eius persona procedit, qui aliqua ex parte heres institutus est, quod is extra portionem hereditatis praecipuum legatum habiturus sit.

218. Ideoque si extraneo legatum fuerit, inutile est legatum, adeo ut Sabinus existimauerit ne quidem ex senatus consulto Neroniano posse conualescere: 'nam eo', inquit, 'senatus consulto ea tantum confirmantur, quae uerborum uitio iure ciuili non ualent, non quae propter ipsam personam legatarii non deberentur'. sed Iuliano et Sexto placuit etiam hoc casu ex senatus consulto confirmari legatum; nam ex uerbis etiam hoc casu accidere, ut iure ciuili inutile sit legatum, inde manifestum esse, quod eidem aliis uerbis recte legaretur, uelut per uindicationem, per damnationem, sinendi modo; tunc autem uitio personae legatum non ualere, cum ei legatum sit, cui nullo modo legari possit uelut peregrino, cum quo testamenti factio non sit. quo plane casu senatus consulto locus non est.

219. Item nostri praeceptores, quod ita legatum est, nulla alia ratione putant posse consequi eum, cui ita fuerit legatum, quam iudicio familiae erciscundae, quod inter heredes de hereditate erciscunda, id est diuidunda, accipi solet: officio enim iudicis id contineri, ut ei, quod per praeceptionem legatum est, adiudicetur.

220. Unde intellegimus nihil aliud secundum nostrorum praeceptorum opinionem per praeceptionem legari posse, nisi quod testatoris sit. nulla enim

alia res quam hereditaria deducitur in hoc iudicium. itaque si non suam rem eo modo testator legauerit, iure quidem ciuili inutile erit legatum, sed ex senatus consulto confirmabitur. aliquo tamen casu etiam alienam rem per praeceptionem legari posse fatentur: ueluti si quis eam rem legauerit, quam creditori fiduciae causa mancipio dederit; nam officio iudicis coheredes cogi posse existimant soluta pecunia luere eam rem, ut possit praecipere is, cui ita legatum sit.

221. Sed diuersae scholae auctores putant etiam extraneo per praeceptionem legari posse, proinde ac si ita scribatur: TITIVS HOMINEM STICHVM CAPITO, superuacuo adiecta PRAE syllaba; ideoque per uindicationem eam rem legatam uideri: quae sententia dicitur diui Hadriani constitutione confirmata esse.

222. Secundum hanc igitur opinionem, si ea res ex iure Quiritium defuncti fuerit, potest a legatario uindicari, siue is unus ex heredibus sit siue extraneus; quod si in bonis tantum testatoris fuerit, extraneo quidem ex senatus consulto utile erit legatum, heredi uero familiae herciscundae iudicis officio praestabitur; quod si nullo iure fuerit testatoris, tam heredi quam extraneo ex senatus consulto utile erit.

223. Siue tamen heredibus secundum nostrorum opinionem siue etiam extraneis secundum illorum opinionem duobus pluribusue eadem res coniunctim aut disiunctim legata fuerit, singuli partes habere debent. [Ad legem Falcidiam.]

224. Sed olim quidem licebat totum patrimonium legatis atque libertatibus erogare nec quicquam heredi relinquere praeterquam inane nomen heredis; idque lex XII tabularum permittere uidebatur, qua cauetur, ut quod quisque de re sua testatus esset, id ratum haberetur, his uerbis: "VTI LEGASSIT SVAE REI, ITA IVS ESTO". qua de causa, qui scripti heredes erant, ab hereditate se abstinebant, et idcirco plerique intestati moriebantur.

225. Itaque lata est lex Furia, qua exceptis personis quibusdam ceteris plus mille assibus legatorum nomine mortisue causa capere permissum non est. sed [et] haec lex non perfecit, quod uoluit: qui enim uerbi gratia quinque milium aeris patrimonium habebat, poterat quinque hominibus singulis millenos asses legando totum patrimonium erogare.

226. Ideo postea lata est lex Voconia, qua cautum est, ne cui plus legatorum nomine mortisue causa capere liceret, quam heredes caperent. ex qua lege plane quidem aliquid utique heredes habere uidebantur; sed tamen fere uitium simile nascebatur. nam in multas legatariorum personas distributo patrimonio poterat testator adeo heredi minimum relinquere, ut non expediret heredi huius lucri gratia totius hereditatis onera sustinere.

227. Lata est itaque lex Falcidia, qua cautum est, ne plus ei legare liceat quam dodrantem: itaque necesse est, ut heres quartam partem hereditatis habeat: et hoc nunc iure utimur.

228. In libertatibus quoque dandis nimiam licentiam conpescuit lex Fufia Caninia, sicut in primo conmentario rettulimus. [De inutiliter relictis legatis.]

229. Ante heredis institutionem inutiliter legatur, scilicet quia testamenta uim ex institutione heredis accipiunt, et ob id uelut caput et fundamentum intellegitur totius testamenti heredis institutio.

230. Pari ratione nec libertas ante heredis institutionem dari potest.

231. Nostri praeceptores nec tutores eo loco dari posse existimant: sed Labeo et Proculus tutorem posse dari, quod nihil ex hereditate erogatur tutoris datione.

232. Post mortem quoque heredis inutiliter legatur, id est hoc modo: CVM HERES MEVS MORTVVS ERIT, DO LEGO, aut DATO. ita autem recte legatur: CVM HERES MEVS MORIETVR, quia non post mortem heredis relinquitur, sed ultimo uitae eius tempore. rursum ita non potest legari: PRIDIE QVAM HERES MEVS MORIETVR; quod non pretiosa ratione receptum uidetur.

233. Eadem et de libertatibus dicta intellegemus.

234. Tutor uero an post mortem heredis dari possit, quaerentibus eadem forsitan poterit esse quaestio, quae de eo agitatur, qui ante heredum institutionem datur. [De poenae causa relictis legatis.]

235. Poenae quoque nomine inutiliter legatur. poenae autem nomine legari uidetur, quod coercendi heredis causa relinquitur, quo magis heres aliquid faciat aut non faciat, uelut quod ita legatur: SI HERES MEVS FILIAM SVAM TITIO IN MATRIMONIVM COLLOCAVERIT, X MILIA SEIO DATO, uel ita: SI FILIAM TITIO IN MATRIMONIVM NON COLLOCAVERIS, X MILIA TITIO DATO; sed et si heredem, si uerbi gratia intra biennium monumentum sibi non fecerit, X milia Titio dari iusserit testator, poenae nomine legatum est. et denique ex ipsa definitione multas similes species cir-cumspicere possumus.

236. Nec libertas quidem poenae nomine dari potest, quamuis de ea re fuerit quaesitum. De tutore uero nihil possumus quaerere, quia non potest datione tutoris heres conpelli quidquam facere aut non facere. ideoque_datur poenae nomine tutor datus fuerit, magis sub condicione quam poenae nomine datus uidebitur.

238. Incertae personae legatum inutiliter relinquitur. incerta autem uidetur persona, quam per incertam opinionem animo suo testator subicit, uelut cum ita legatum sit: QVI PRIMVS AD FVNVS MEVM VENERIT, EI HERES MEVS X MILIA DATO; idem iuris est, si generaliter omnibus legauerit: QVICVMQVE AD FVNVS MEVM VENERIT; in eadem causa est, quod ita relinquitur: QVICVMQVE FILIO MEO IN MATRIMONIVM FILIAM SVAM CONLOCAVERIT, EI HERES MEVS X MILIA DATO; illud quoque [in eadem causa est], quod ita relinquitur: QVI POST TESTAMENTVM SCRIPTVM PRIMI CONSVLES DESIGNATI ERVNT, aeque incertis personis legari uidetur; et denique aliae multae huiusmodi species sunt. sub certa uero demonstratione incertae personae recte legatur, uelut: EX COGNATIS MEIS, QVI PRIMVS AD FVNVS MEVM VENERIT, EI X MILIA HERES MEVS DATO.

239. Libertas quoque non uidetur incertae personae dari posse, quia lex Fufia Caninia iubet nominatim seruos liberari.

240. Tutor quoque certus dari debet.

241. Postumo quoque alieno inutiliter legatur. est autem alienus postumus, qui natus inter suos heredes testatori futurus non est: ideoque ex emancipato quoque filio conceptus nepos extraneus postumus est; item qui in utero est eius, quae iure ciuili non intellegitur uxor, extraneus postumus patris intellegitur.

242. Ac ne heres quidem potest institui postumus alienus: est enim incerta persona.

243. Cetera uero, quae supra diximus, ad legata proprie pertinent; quamquam non inmerito quibusdam placeat poenae nomine heredem institui non posse. nihil enim interest, utrum legatum dare iubeatur heres, si fecerit aliquid aut non fecerit, an coheres ei adiciatur, quia tam coheredis adiectione quam legati datione compellitur, ut aliquid contra propositum suum faciat aut non faciat.

244. An ei, qui in potestate sit eius, quem heredem instituimus, recte legemus, quaeritur. Seruius recte legari putat, sed euanescere legatum, si quo tempore dies legatorum cedere solet, adhuc in potestate sit; ideoque siue pure legatum sit et uiuo testatore in potestate heredis esse desierit, siue sub condicione et ante condicionem id acciderit, deberi legatum. Sabinus et Cassius sub condicione recte legari, pure non recte putant; licet enim uiuo testatore possit desinere in potestate heredis esse, ideo tamen inutile legatum intellegi oportere, quia quod nullas uires habiturum foret, si statim post testamentum factum decessisset testator, hoc ideo ualere, quia uitam longius traxerit, absurdum esset. sed diuersae scholae auctores nec sub condicione recte legari,

quia quos in potestate habemus, eis non magis sub condicione quam pure debere possumus.

245. Ex diuerso constat ab eo, qui in potestate tua est, herede instituto recte tibi legari; sed si tu per eum heres extiteris, euanescere legatum, quia ipse tibi legatum debere non possis; si uero filius emancipatus aut seruus manumissus erit uel in alium translatus, et ipse heres extiterit aut alium fecerit, deberi legatum.

246. Nunc transeamus ad fideicommissa.

247. Et prius de hereditatibus uideamus.

248. Inprimis igitur sciendum est opus esse, ut aliquis heres recto iure instituatur eiusque fidei committatur, ut eam hereditatem alii restituat; alioquin inutile est testamentum, in quo nemo recto iure heres instituitur.

249. Verba autem utilia fideicommissorum haec [recte] maxime in usu esse uidentur: PETO, ROGO, VOLO, FIDEI COMMITTO, quae proinde firma singula sunt, atque si omnia in unum congesta sint.

250. Cum igitur scripserimus: LVCIVS TITIVS HERES ESTO, possumus adicere: ROGO TE, LVCI TITI, PETOQVE A TE, VT CVM PRIMVM POSSIS HEREDITATEM MEAM ADIRE, GAIO SEIO REDDAS RESTITVAS. Possumus autem et de parte restituenda rogare; et liberum est uel sub condicione uel pure relinquere fideicommissa uel ex die certa.

251. Restituta autem hereditate is, qui restituit, nihilo minus heres permanet; is uero, qui recipit hereditatem, aliquando heredis loco est, aliquando legatarii.

252. Olim autem nec heredis loco erat nec legatarii, sed potius emptoris. tunc enim in usu erat ei, cui restituebatur hereditas, nummo uno eam hereditatem dicis causa uenire; et quae stipulationes inter uenditorem hereditatis et emptorem interponi solent, eaedem interponebantur inter heredem et eum, cui restituebatur hereditas, id est hoc modo: heres quidem stipulabatur ab eo, cui restituebatur hereditas, ut quidquid hereditario nomine condemnatus fuisset siue quid alias bona fide dedisset, eo nomine indemnis esset, et omnino si quis cum eo hereditario nomine ageret, ut recte defenderetur; ille uero, qui recipiebat hereditatem, inuicem stipulabatur, ut si quid ex hereditate ad heredem peruenisset, id sibi restitueretur, ut etiam pateretur eum hereditarias actiones procuratorio aut cognitorio nomine exequi.

253. Sed posterioribus temporibus Trebellio Maximo et Annaeo Seneca consulibus senatus consultum factum est, quo cautum est, ut si cui hereditas ex fideicommissi causa restituta sit, actiones, quae iure ciuili heredi et in

heredem conpeterent, ei et in eum darentur, cui ex fideicommisso restituta esset hereditas; per quod senatus consultum desierunt illae cautiones in usu haberi. praetor enim utiles actiones ei et in eum, qui recepit hereditatem, quasi heredi et in heredem dare coepit, eaeque in edicto proponuntur.

254. Sed rursus quia heredes scripti, cum aut totam hereditatem aut paene totam plerumque restituere rogabantur, adire hereditatem ob nullum aut minimum lucrum recusabant atque ob id extinguebantur fideicommissa, postea Pegaso et Pusione consulibus senatus censuit, ut ei, qui rogatus esset hereditatem restituere, proinde liceret quartam partem retinere, atque e lege Falcidia in legatis retinendi ius conceditur: ex singulis quoque rebus, quae per fideicommissum relincuntur, eadem retentio permissa est. per quod senatus consultum ipse heres onera hereditaria sustinet; ille autem, qui ex fideicommisso reliquam partem hereditatis recipit, legatarii partiarii loco est, id est eius legatarii, cui pars bonorum legatur; quae species legati partitio uocatur, quia cum herede legatarius partitur hereditatem. unde effectum est, ut quae solent stipulationes inter heredem et partiarium legatarium interponi, eaedem interponantur inter eum, qui ex fideicommissi causa recipit hereditatem, et heredem, id est, ut et lucrum et damnum hereditarium pro rata parte inter eos commune sit.

255. Ergo si quidem non plus quam dodrantem hereditatis scriptus heres rogatus sit restituere, tum ex Trebelliano senatus consulto restituitur hereditas, et in utrumque actiones hereditariae pro rata parte dantur, in heredem quidem iure ciuili, in eum uero, qui recipit hereditatem, ex senatus consulto Trebelliano; quamquam heres etiam pro ea parte, quam restituit, heres permanet eique et in eum solidae actiones competunt; sed non ulterius oneratur, nec ulterius illi dantur actiones, quam apud eum commodum hereditatis remanet.

256. At si quis plus quam dodrantem uel etiam totam hereditatem restituere rogatus sit, locus est Pegasiano senatus consulto.

257. Sed is, qui semel adierit hereditatem, si modo sua uoluntate adierit, siue retinuerit quartam partem siue noluerit retinere, ipse uniuersa onera hereditaria sustinet; sed quarta quidem retenta quasi partis et pro parte stipulationes interponi debent tamquam inter partiarium legatarium et heredem; si uero totam hereditatem restituerit, ad exemplum emptae et uenditae hereditatis stipulationes interponendae sunt.

258. Sed si recuset scriptus heres adire hereditatem ob id, quod dicat eam sibi suspectam esse quasi damnosam, cauetur Pegasiano senatus consulto, ut desiderante eo, cui restituere rogatus est, iussu praetoris adeat et restituat, proindeque ei et in eum, qui receperit, actiones dentur, ac iuris esset ex senatus consulto Trebelliano. quo casu nullis stipulationibus opus est, quia

simul et huic, qui restituit, securitas datur, et actiones hereditariae ei et in eum transferuntur, qui receperit hereditatem.

259. Nihil autem interest, utrum aliquis ex asse heres institutus aut totam hereditatem aut pro parte restituere rogetur, an ex parte heres institutus aut totam eam partem aut partis partem restituere rogetur. nam et hoc casu de quarta parte eius partis ratio ex Pegasiano senatus consulto haberi solet.

260. Potest autem quisque etiam res singulas per fideicommissum relinquere, uelut fundum, hominem, uestem, argentum, pecuniam, et uel ipsum heredem rogare, ut alicui restituat, uel legatarium, quamuis a legatario legari non possit.

261. Item potest non solum propria testatoris res per fideicommissum relinqui, sed etiam heredis aut legatarii aut cuiuslibet alterius. itaque et legatarius non solum de ea re rogari potest, ut eam alicui restituat, quae ei legata sit, sed etiam de alia, siue ipsius legatarii siue aliena sit. [sed] hoc solum obseruandum est, ne plus quisquam rogetur aliis restituere, quam ipse ex testamento ceperit; nam quod amplius est, inutiliter relinquitur.

262. Cum autem aliena res per fideicommissum relinquitur, necesse est ei, qui rogatus est, aut ipsam redimere et praestare aut aestimationem eius soluere, sicut iuris est, si per damnationem aliena res legata sit. sunt tamen, qui putant, si rem per fideicommissum relictam dominus non uendat, extingui fideicommissum; sed aliam esse causam per damnationem legati.

263. Libertas quoque seruo per fideicommissum dari potest, ut uel heres rogetur manumittere uel legatarius.

264. Nec interest, utrum de suo proprio seruo testator roget an de eo, qui ipsius heredis aut legatarii uel etiam extranei sit.

265. Itaque et alienus seruus redimi et manumitti debet. quod si dominus eum non uendat, sane extinguitur fideicommissa libertas, quia hoc casu pretii computatio nulla interuenit.

266. Qui autem ex fideicommisso manumittitur, non testatoris fit libertus, etiamsi testatoris seruus fuerit, sed eius, qui manumittit.

267. At qui directo testamento liber esse iubetur, uelut hoc modo: STICHVS SERVVS MEVS LIBER ESTO, uel hoc: STICHVM SERVVM MEVM LIBERVM ESSE IVBEO, is ipsius testatoris fit libertus. nec alius ullus directo ex testamento libertatem habere potest, quam qui utroque tempore testatoris ex iure Quiritium fuerit, et quo faceret testamentum et quo moreretur.

268. Multum autem differunt ea, quae per fideicommissum relincuntur, ab his, quae directo iure legantur.

269. Nam ecce per fideicommissum [. . . . .] heredis relinqui potest: cum alioquin legatum [. . . . .] inutile sit.

270. Item intestatus moriturus potest ab eo, ad quem bona eius pertinent, fideicommissum alicui relinquere; cum alioquin ab eo legari non possit.

270a. Item legatum codicillis relictum non aliter ualet, quam si a testatore confirmati fuerint, id est, nisi in testamento cauerit [. . . . .] testator, ut quidquid in codicillis scripserit, id ratum sit; fideicommissum uero etiam non confirmatis codicillis relinqui potest. 271. Item a legatario legari non potest, sed fideicommissum relinqui potest. quin etiam ab eo quoque, cui per fideicommissum relinquimus, rursus alii per fideicommissum relinquere possumus.

272. Item seruo alieno directo libertas dari non potest, sed per fideicommissum potest.

273. Item codicillis nemo heres institui potest neque exheredari, quamuis testamento confirmati sint; at is, qui testamento heres institutus est, potest codicillis rogari, ut eam hereditatem alii totam uel ex parte restituat, quamuis testamento codicilli confirmati non sint.

274. Item mulier, quae ab eo, qui centum milia aeris census est, per legem Voconiam heres institui non potest, tamen fideicommisso relictam sibi hereditatem capere potest.

275. Latini quoque, qui hereditates legataque directo iure lege Iunia capere prohibentur, ex fideicommisso capere possunt.

276. Item cum senatus consulto prohibitum sit proprium seruum minorem annis XXX liberum et heredem instituere, plerisque placet posse nos iubere liberum esse, cum annorum XXX erit, et rogare, ut tunc illi restituatur hereditas.

277. Item quamuis non possimus post mortem eius, qui nobis heres extiterit, alium in locum eius heredem instituere, tamen possumus eum rogare, ut, cum morietur, alii eam hereditatem totam uel ex parte restituat; et quia post mortem quoque heredis fideicommissum dari potest, idem efficere possumus et si ita scripserimus: CVM TITIVS HERES MEVS MORTVVS ERIT, VOLO HEREDITATEM MEAM AD PVBLIVM MAEVIVM PERTINERE. utroque autem modo, tam hoc quam illo, Titius heredem suum obligatum relinquit de fideicommisso restituendo.

278. Praeterea legata per formulam petimus; fideicommissa uero Romae quidem apud consulem uel apud eum praetorem, qui praecipue de fideicommissis ius dicit, persequimur, in prouinciis uero apud praesidem prouinciae.

279. Item de fideicommissis semper in urbe ius dicitur, de legatis uero, cum res aguntur.

280. Item fideicommissorum usurae et fructus debentur, si modo moram solutionis fecerit, qui fideicommissum debebit; legatorum uero usurae non debentur, idque rescripto diui Hadriani significatur. scio tamen Iuliano placuisse in eo legato, quod sinendi modo relinquitur, idem iuris esse, quod in fideicommissis; quam sententiam et his temporibus magis optinere uideo.

281. Item legata Graece scripta non ualent; fideicommissa uero ualent.

282. Item si legatum per damnationem relictum heres infitietur, in duplum cum eo agitur; fideicommissi uero nomine semper in simplum persecutio est.

283. Item quod quisque ex fideicommisso plus debito per errorem soluerit, repetere potest; at id, quod ex causa falsa per damnationem legati plus debito solutum sit, repeti non potest. idem scilicet iuris est de eo legato, quod non debitum uel ex hac uel ex illa causa per errorem solutum fuerit.

284. Erant etiam aliae differentiae, quae nunc non sunt.

285. Ut ecce peregrini poterant fideicommissa capere, et fere haec fuit origo fideicommissorum. sed postea id prohibitum est, et nunc ex oratione diui Hadriani senatus consultum factum est, ut ea fideicommissa fisco uindicarentur.

286. Caelibes quoque, qui per legem Iuliam hereditates legataque capere prohibentur, olim fideicommissa uidebantur capere posse.

286a. Item orbi, qui per legem Papiam ob id, quod liberos non habent, dimidias partes hereditatum legatorumque perdunt, olim solida fideicommissa uidebantur capere posse. sed postea senatus consulto Pegasiano proinde fideicommissa quoque ac legata hereditatesque capere posse prohibiti sunt; eaque translata sunt ad eos, qui in eo testamento liberos habent, aut si nulli liberos habebunt, ad populum, sicuti iuris est in legatis et in hereditatibus, quae eadem aut simili ex causa caduca fiunt.

287. Item olim incertae personae uel postumo alieno per fideicommissum relinqui poterat, quamuis neque heres institui neque legari ei posset. sed senatus consulto, quod auctore diuo Hadriano factum est, idem in fideicommissis, quod in legatis hereditatibusque constitutum est.

288. Item poenae nomine iam non dubitatur nec per fideicommissum quidem relinqui posse.

289. Sed quamuis in multis iuris partibus longe latior causa sit fideicommissorum quam eorum, quae directo relincuntur, in quibusdam tantundem ualeant, tamen tutor non aliter testamento dari potest quam directo, ueluti hoc modo: LIBERIS MEIS TITIVS TVTOR ESTO, uel ita: LIBERIS MEIS TITIVM TVTOREM DO; per fideicommissum uero dari non potest.

GAI INSTITVTIONVM COMMENTARIVS TERTVS

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 10 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 110 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225

[. . . . . fol. deperd. . . . .] 1. Intestatorum hereditates ex lege XII tabularum primum ad suos heredes pertinent.

2. Sui autem heredes existimantur liberi, qui in potestate morientis fuerunt, ueluti filius filiaue, nepos neptisue ex filio, pronepos proneptisue ex nepote filio nato prognatus prognataue. nec interest, utrum naturales sint liberi an adoptiui. ita demum tamen nepos neptisue et pronepos proneptisue suorum heredum numero sunt, si praecedens persona desierit in potestate parentis esse, siue morte id acciderit siue alia ratione, ueluti emancipatione; nam si per id tempus, quo quis moriatur, filius in potestate eius sit, nepos ex eo suus heres esse non potest. idem et in ceteris deinceps liberorum personis dictum intellegemus.

3. Vxor quoque, quae in manu eius, qui moritur, est, ei sua heres est, quia filiae loco est. item nurus, quae in filii manu est, nam et haec neptis loco est. sed ita demum erit sua heres, si filius, cuius in manu fuerit, cum pater moritur, in potestate eius non sit. idemque dicemus et de ea, quae in nepotis manu matrimonii causa sit, quia proneptis loco est.

4. Postumi quoque, qui si uiuo parente nati essent, in potestate eius futuri forent, sui heredes sunt.

5. Idem iuris est de his, quorum nomine ex lege Aelia Sentia uel ex senatus consulto post mortem patris causa probatur: nam et hi uiuo patre causa probata in potestate eius futuri essent.

6. Quod etiam de eo filio, qui ex prima secundaue mancipatione post mortem patris manumittitur, intellegemus.

7. Igitur cum filius filiaue et ex altero filio nepotes neptesue extant, pariter ad hereditatem uocantur; nec qui gradu proximior est, ulteriorem excludit. aequum enim uidebatur nepotes neptesue in patris sui locum portionemque succedere. pari ratione et si nepos neptisue sit ex filio et ex nepote pronepos proneptisue, simul omnes uocantur ad hereditatem.

8. Et quia placebat nepotes neptesue, item pronepotes proneptesue in parentis sui locum succedere, conueniens esse uisum est non in capita, sed in stirpes hereditatem diuidi, ita ut filius partem dimidiam hereditatis ferat et ex altero filio duo pluresue nepotes alteram dimidiam, item si ex duobus filiis nepotes extent et ex altero filio unus forte uel duo, ex altero tres aut quattuor, ad unum aut ad duos dimidia pars pertineat et ad tres aut quattuor altera dimidia.

9. Si nullus sit suorum heredum, tunc hereditas pertinet ex eadem lege XII tabularum ad adgnatos.

10. Vocantur autem adgnati, qui legitima cognatione iuncti sunt. legitima autem cognatio est ea, quae per uirilis sexus personas coniungitur. itaque eodem patre nati fratres agnati sibi sunt, qui etiam consanguinei uocantur, nec requiritur, an etiam matrem eandem habuerint. item patruus fratris filio et inuicem is illi agnatus est. eodem numero sunt fratres patrueles inter se, id est qui ex duobus fratribus progenerati sunt, quos plerique etiam consobrinos uocant; qua ratione scilicet etiam ad plures gradus agnationis peruenire poterimus.

11. Non tamen omnibus simul agnatis dat lex XII tabularum hereditatem, sed his, qui tum, cum certum est aliquem intestatum decessisse, proximo gradu sunt.

12. Nec in eo iure successio est. ideoque si agnatus proximus hereditatem omiserit uel, antequam adierit, decesserit, sequentibus nihil iuris ex lege competit.

13. Ideo autem non mortis tempore quis proximus fuerit, requirimus, sed eo tempore, quo certum fuerit aliquem intestatum decessisse, quia si quis testamento facto decesserit, melius esse uisum est tunc demum requiri proximum, cum certum esse coeperit neminem ex eo testamento fore heredem.

14. Quod ad feminas tamen attinet, in hoc iure aliud in ipsarum hereditatibus capiendis placuit, aliud in ceterorum [bonis] ab his capiendis. nam feminarum hereditates proinde ad nos agnationis iure redeunt atque masculorum, nostrae uero hereditates ad feminas ultra consanguineorum gradum non pertinent. itaque soror fratri sororiue legitima heres est, amita uero et fratris filia legitima heres esse non potest; sororis autem nobis loco est etiam mater aut

nouerca, quae per in manum conuentionem apud patrem nostrum iura filiae nancta est.

15. Si ei, qui defunctus erit, sit frater et alterius fratris filius, sicut ex superioribus intellegitur, frater prior est, quia gradu praecedit. sed alia facta est iuris interpretatio inter suos heredes.

16. Quod si defuncti nullus frater extet, sed sint liberi fratrum, ad omnes quidem hereditas pertinet; sed quaesitum est, si dispari forte numero sint nati, uelut ex uno unus uel duo, ex altero tres uel quattuor, utrum in stirpes diuidenda sit hereditas, sicut inter suos heredes iuris est, an potius in capita. iam dudum tamen placuit in capita diuidendam esse hereditatem. itaque quotquot erunt ab utraque parte personae, in tot portiones hereditas diuidetur, ita ut singuli singulas portiones ferant.

17. Si nullus agnatus sit, eadem lex XII tabularum gentiles ad hereditatem uocat. qui sint autem gentiles, primo commentario rettulimus; et cum illic admonuerimus totum gentilicium ius in desuetudinem abisse, superuacuum est hoc quoque loco de eadem re iterum curiosius tractare.

18. Hactenus lege XII tabularum finitae sunt intestatorum hereditates. quod ius quemadmodum strictum fuerit, palam est intellegere.

19. Statim enim emancipati liberi nullum ius in hereditatem parentis ex ea lege habent, cum desierint sui heredes esse.

20. Idem iuris est, si ideo liberi non sint in potestate patris, quia sint cum eo ciuitate Romana donati nec ab imperatore in potestatem redacti fuerint.

21. Item agnati kapite deminuti non admittuntur ex ea lege ad hereditatem, quia nomen agnationis capitis deminutione perimitur.

22. Item proximo agnato non adeunte hereditatem nihilo magis sequens iure legitimo admittitur.

23. Item feminae agnatae, quaecumque consanguineorum gradum excedunt, nihil iuris ex lege habent.

24. Similiter non admittuntur cognati, qui per feminini sexus personas necessitudine iunguntur, adeo quidem, ut nec inter matrem et filium filiamue ultro citroque hereditatis capiendae ius conpetat, praeterquam si per in manum conuentionem consanguinitatis iura inter eos constiterint.

25. Sed hae iuris iniquitates edicto praetoris emendatae sunt. 26. Nam eos omnes, qui legitimo iure deficiuntur, uocat ad hereditatem, proinde ac si in

potestate parentis mortis tempore fuissent, siue soli sint, siue etiam sui heredes, id est qui in potestate patris fuerunt, concurrant.

27. Adgnatos autem capite deminutos non secundo gradu post suos heredes uocat, id est, non eo gradu uocat, quo per legem uocarentur, si kapite minuti non essent, sed tertio proximitatis nomine. licet enim capitis deminutione ius legitimum perdiderint, certe cognationis iura retinent. itaque si quis alius sit, qui integrum ius agnationis habebit, is potior erit, etiamsi longiore gradu fuerit.

28. Idem iuris est, ut quidam putant, in eius agnati persona, qui proximo agnato omittente hereditatem nihilo magis iure legitimo admittitur; sed sunt, qui putant hunc eodem gradu a praetore uocari, quo etiam per legem agnatis hereditas datur.

29. Feminae certe agnatae, quae consanguineorum gradum excedunt, tertio gradu uocantur, id est, si neque suus heres neque agnatus ullus erit.

30. Eodem gradu uocantur etiam eae personae, quae per feminini sexus personas copulatae sunt.

31. Liberi quoque, qui in adoptiua familia sunt, ad naturalium parentum hereditatem hoc eodem gradu uocantur.

32. Quos autem praetor uocat ad hereditatem, hi heredes ipso quidem iure non fiunt: nam praetor heredes facere non potest; per legem enim tantum uel similem iuris constitutionem heredes fiunt, uelut per senatus consultum et constitutionem principalem: sed cum eis praetor dat bonorum possessionem, loco heredum constituuntur.

33. Adhuc autem etiam alios conplures gradus praetor facit in bonorum possessionibus dandis, dum id agit, ne quis sine successore moriatur. de quibus in his commentariis consulto non agimus, quia hoc ius totum propriis commentariis exsecuti sumus. 33a Hoc solum admonuisse sufficit, [. . . . . vv. 3 exceptis frustulis legi nequeunt . . . .] per in manum conuentionem iura consanguinitatis nacta [. . . . . vv. 29 . . . .]

34. Aliquando tamen neque emendandi neque impugnandi ueteris iuris, sed magis confirmandi gratia pollicetur bonorum possessionem. nam illis quoque, qui recte facto testamento heredes instituti sunt, dat secundum tabulas bonorum possessionem: item ab intestato heredes suos et agnatos ad bonorum possessionem uocat. quibus casibus beneficium eius in eo solo uidetur aliquam utilitatem habere, ut is, qui ita bonorum possessionem petit, interdicto, cuius principium est QVORVM BONORVM, uti possit, cuius

interdicti quae sit utilitas, suo loco proponemus; alioquin remota quoque bonorum possessione ad eos hereditas pertinet iure ciuili.

35. Ceterum saepe quibusdam ita datur bonorum possessio, ut is, cui data sit, non optineat hereditatem; quae bonorum possessio dicitur sine re.

36. Nam si uerbi gratia iure facto testamento heres institutus creuerit hereditatem, sed bonorum possessionem secundum tabulas testamenti petere noluerit, contentus eo, quod iure ciuili heres sit, nihilo minus ii, qui nullo facto testamento ad intestati bona uocantur, possunt petere bonorum possessionem; sed sine re ad eos [hereditas] pertinet, cum testamento scriptus heres euincere hereditatem possit.

37. Idem iuris est, si intestato aliquo mortuo suus heres noluerit petere bonorum possessionem, contentus legitimo iure. nam et agnato competit quidem bonorum possessio, sed sine re, quia euinci hereditas a suo herede potest. et illud conuenienter dicetur: si ad agnatum iure ciuili pertinet hereditas et is adierit hereditatem, sed bonorum possessionem petere noluerit, et si quis ex proximis cognatis petierit, sine re habebit bonorum possessionem propter eandem rationem.

38. Sunt et alii quidam similes casus, quorum aliquos superiore commentario tradidimus.

39. Nunc de libertorum bonis uideamus.

40. Olim itaque licebat liberto patronum suum impune testamento praeterire. nam ita demum lex XII tabularum ad hereditatem liberti uocabat patronum, si intestatus mortuus esset libertus nullo suo herede relicto. itaque intestato quoque mortuo liberto, si is suum heredem reliquerat, nihil in bonis eius patrono iuris erat; et si quidem ex naturalibus liberis aliquem suum heredem reliquisset, nulla uidebatur esse querella; si uero uel adoptiuus filius filiaue uel uxor, quae in manu esset, suus uel sua heres esset, aperte iniquum erat nihil iuris patrono superesse.

41. Qua de causa postea praetoris edicto haec iuris iniquitas emendata est. siue enim faciat testamentum libertus, iubetur ita testari, ut patrono suo partem dimidiam bonorum suorum relinquat, et si aut nihil aut minus quam partem dimidiam reliquerit, datur patrono contra tabulas testamenti partis dimidiae bonorum possessio; si uero intestatus moriatur suo herede relicto adoptiuo filio uel uxore, quae in manu ipsius esset, uel nuru, quae in manu filii eius fuerit, datur aeque patrono aduersus hos suos heredes partis dimidiae bonorum possessio. prosunt autem liberto ad excludendum patronum naturales liberi, non solum quos in potestate mortis tempore habet, sed etiam emancipati et in adoptionem dati, si modo aliqua ex parte heredes scripti sint aut praeteriti

contra tabulas testamenti bonorum possessionem ex edicto petierint; nam exheredati nullo modo repellunt patronum.

42. Postea lege Papia aucta sunt iura patronorum, quod ad locupletiores libertos pertinet. cautum est enim ea lege, ut ex bonis eius, qui sestertium centum milibus amplius patrimonium reliquerit et pauciores quam tres liberos habebit, siue is testamento facto siue intestato mortuus erit, uirilis pars patrono debeatur; itaque cum unum filium unamue filiam heredem reliquerit libertus, proinde pars dimidia patrono debetur, ac si sine ullo filio filiaue moreretur; cum uero duos duasue heredes reliquerit, tertia pars debetur; si tres relinquat, repellitur patronus.

43. In bonis libertinarum nullam iniuriam antiquo iure patiebantur patroni. cum enim hae in patronorum legitima tutela essent, non aliter scilicet testamentum facere poterant quam patrono auctore; itaque siue auctor ad testamentum faciendum factus erat, aut de se queri debebat, quod heres a liberta relictus non erat, aut ipsum ex testamento, si heres ab ea relictus erat, sequebatur hereditas. si uero auctor ei factus non erat et intestata liberta moriebatur, ad eundem, quia suos heredes femina habere non potest, hereditas pertinebat: nec enim ullus olim alius iure ciuili heres erat, qui posset patronum a bonis libertae intestatae repellere.

44. Sed postea lex Papia cum quattuor liberorum iure libertinas tutela patronorum liberaret et eo modo concederet eis etiam sine tutoris auctoritate testamentum facere, prospexit, ut pro numero liberorum, quos liberta mortis tempore habuerit, uirilis pars patrono debeatur; ergo ex bonis eius, quae [. . . . . vv. 2 1/2 legi nequeunt . . . .] hereditas ad patronum pertinet.

45. Quae diximus de patrono, eadem intellegemus et de filio patroni, item de nepote ex filio et de pronepote ex nepote filio nato prognato.

46. Filia uero patroni et neptis ex filio et proneptis ex nepote filio nato prognata olim quidem habebant idem ius, quod lege XII tabularum patrono datum est; praetor autem non nisi uirilis sexus patronorum liberos uocat; filia uero ut contra tabulas testamenti liberti aut ab intestato contra filium adoptiuum uel uxorem nurumue, quae in manu fuerit, bonorum possessionem petat, trium liberorum iure lege Papia consequitur; aliter hoc ius non habet.

47. Sed ut ex bonis libertae testatae quattuor liberos habentis uirilis pars ei debeatur, ne liberorum quidem iure consequitur, ut quidam putant; sed tamen intestata liberta mortua uerba legis Papiae faciunt, ut ei uirilis pars debeatur; si uero testamento facto mortua sit liberta, tale ius ei datur, quale datum est contra tabulas testamenti liberti, id est, quale et uirilis sexus patronorum liberi contra tabulas testamenti liberti habent, quamuis parum diligenter ea pars legis scripta sit.

48. Ex his apparet extraneos heredes patronorum longe remotos esse ab omni eo iure, quod uel in intestatorum bonis uel contra tabulas testamenti patrono competit.

49. Patronae olim ante legem Papiam hoc solum ius habebant in bonis libertorum, quod etiam patronis ex lege XII tabularum datum est. nec enim ut contra tabulas testamenti ingrati liberti uel ab intestato contra filium adoptiuum uel uxorem nurumue bonorum possessionem partis dimidiae peterent, praetor similiter ut de patrono liberisque eius curabat.

50. Sed lex Papia duobus liberis honoratae ingenuae patronae, libertinae tribus eadem fere iura dedit, quae ex edicto praetoris patroni habent; trium uero liberorum iure honoratae ingenuae patronae ea iura dedit, quae per eandem legem patrono data sunt; libertinae autem patronae non idem iuris praestitit.

51. Quod autem ad libertinarum bona pertinet, si quidem intestatae decesserint, nihil noui patronae liberis honoratae lex Papia praestat; itaque si neque ipsa patrona neque liberta kapite deminuta sit, ex lege XII tabularum ad eam hereditas pertinet, et excluduntur libertae liberi; quod iuris est, etiam si liberis honorata non sit patrona; numquam enim, sicut supra diximus, feminae suum heredem habere possunt. si uero uel huius uel illius kapitis deminutio interueniat, rursus liberi libertae excludunt patronam, quia legitimo iure kapitis deminutione perempto euenit, ut liberi libertae cognationis iure potiores habeantur.

52. Cum autem testamento facto moritur liberta, ea quidem patrona, quae liberis honorata non est, nihil iuris habet contra libertae testamentum; ei uero, quae liberis honorata sit, hoc ius tribuitur per legem Papiam, quod habet ex edicto patronus contra tabulas liberti.

53. Eadem lex patronae filio liberis honorato . . . patroni iura dedit; sed in huius persona etiam unius filii filiaeue ius sufficit.

54. Hactenus omnia iura quasi per indicem tetigisse satis est. alioquin diligentior interpretatio propriis commentariis exposita est.

55. Sequitur, ut de bonis Latinorum libertinorum dispiciamus.

56. Quae pars iuris ut manifestior fiat, admonendi sumus, id quod alio loco diximus, eos, qui nunc Latini Iuniani dicuntur, olim ex iure Quiritium seruos fuisse, sed auxilio praetoris in libertatis forma seruari solitos; unde etiam res eorum peculii iure ad patronos pertinere solita est. postea uero per legem Iuniam eos omnes, quos praetor in libertate tuebatur, liberos esse coepisse et appellatos esse Latinos Iunianos: Latinos ideo, quia lex eos liberos proinde esse uoluit, atque si essent ciues Romani ingenui, qui ex urbe Roma in Latinas

colonias deducti Latini coloniarii esse coeperunt; Iunianos ideo, quia per legem Iuniam liberi facti sunt, etiamsi non essent ciues Romani. legis itaque Iuniae lator cum intellegeret futurum, ut ea fictione res Latinorum defunctorum ad patronos pertinere desinerent, quia scilicet neque ut serui decederent, ut possent iure peculii res eorum ad patronos pertinere, neque liberti Latini hominis bona possent manumissionis iure ad patronos pertinere, necessarium existimauit, ne beneficium istis datum in iniuriam patronorum conuerteretur, cauere [uoluit], ut bona eorum proinde ad manumissores pertinerent, ac si lex lata non esset. itaque iure quodam modo peculii bona Latinorum ad manumissores ea lege pertinent.

57. Unde accidit, ut longe differant ea iura, quae in bonis Latinorum ex lege Iunia constituta sunt, ab his, quae in hereditate ciuium Romanorum libertorum obseruantur.

58. Nam ciuis Romani liberti hereditas ad extraneos heredes patroni nullo modo pertinet; ad filium autem patroni nepotesque ex filio et pronepotes ex nepote filio nato prognatos omni modo pertinet, etiamsi a parente fuerint exheredati; Latinorum autem bona tamquam peculia seruorum etiam ad extraneos heredes pertinent et ad liberos manumissoris exheredatos non pertinent.

59. Item ciuis Romani liberti hereditas ad duos pluresue patronos aequaliter pertinet, licet dispar in eo seruo dominium habuerint; bona uero Latinorum pro ea parte pertinent, pro qua parte quisque eorum dominus fuerit.

60. Item in hereditate ciuis Romani liberti patronus alterius patroni filium excludit, et filius patroni alterius patroni nepotem repellit; bona autem Latinorum et ad ipsum patronum et ad alterius patroni heredem simul pertinent, pro qua parte ad ipsum manumissorem pertinerent.

61. Item si unius patroni tres forte liberi sunt et alterius unus, hereditas ciuis Romani liberti in capita diuiditur, id est tres fratres tres portiones ferunt et unus quartam; bona uero Latinorum pro ea parte ad successores pertinent, pro qua parte ad ipsum manumissorem pertinerent.

62. Item si alter ex [is] patronis suam partem in hereditate ciuis Romani liberti spernat uel ante moriatur, quam cernat, tota hereditas ad alterum pertinet; bona autem Latini pro parte deficientis patroni caduca fiunt et ad populum pertinent.

63. Postea Lupo et Largo consulibus senatus censuit, ut bona Latinorum primum ad eum pertinerent, qui eos liberasset; deinde ad liberos eorum non nominatim exheredatos, uti quisque proximus esset; tunc antiquo iure ad heredes eorum, qui liberassent, pertinerent.

64. Quo senatus consulto quidam id actum esse putant, ut in bonis Latinorum eodem iure utamur, quo utimur in hereditate ciuium Romanorum libertinorum. idque maxime Pegaso placuit; quae sententia aperte falsa est. nam ciuis Romani liberti hereditas numquam ad extraneos patroni heredes pertinet; bona autem Latinorum etiam ex hoc ipso senatus consulto non obstantibus liberis manumissoris etiam ad extraneos heredes pertinent. item in hereditate ciuis Romani liberti liberis manumissoris nulla exheredatio nocet, in bonis Latinorum nocere nominatim factam exheredationem ipso senatus consulto significatur. uerius est ergo hoc solum eo senatus consulto actum esse, ut manumissoris liberi, qui nominatim exheredati non sint, praeferantur extraneis heredibus. 65. Itaque emancipatus filius patroni praeteritus, quamuis contra tabulas testamenti parentis sui bonorum possessionem non petierit, tamen extraneis heredibus in bonis Latinorum potior habetur.

66. Item filia ceterique sui heredes licet iure ciuili inter ceteros exheredati sint et ab omni hereditate patris sui summoueantur, tamen in bonis Latinorum, nisi nominatim a parente fuerint exheredati, potiores erunt extraneis heredibus.

67. Item ad liberos, qui ab hereditate parentis se abstinuerunt, nihilo minus tamen bona Latinorum pertinent; scilicet quia exheredati nullo modo dici possunt, non magis quam qui testamento silentio praeteriti sunt.

68. Ex his omnibus satis illud apparet, si is, qui Latinum fecerit, [. . . . . vv. 21 exceptis frustulis legi nequeunt . . . .]

69. Item illud quoque constare uidetur, si solos liberos ex disparibus partibus patronus [. . . . . vv. 1 1/3 legi nequeunt . . . .] tant, ad eos pertinere, quia nullo interueniente extraneo herede senatus consulto locus non est.

70. Sed si cum liberis suis etiam extraneum heredem patronus reliquerit, Caelius Sabinus ait tota bona pro uirilibus partibus ad liberos defuncti pertinere, quia cum extraneus heres interuenit, non habet lex Iunia locum, sed senatus consultum; Iauolenus autem ait tantum eam partem ex senatus consulto liberos patroni pro uirilibus partibus habituros esse, quam extranei heredes ante senatus consultum lege Iunia habituri essent, reliquas uero partes pro hereditariis partibus ad eos pertinere.

71. Item quaeritur, an hoc senatus consultum ad eos patroni liberos pertineat, qui ex filia nepteue procreantur, id est, ut nepos meus ex filia potior sit in bonis Latini mei quam extraneus heres; item an ad maternos Latinos hoc senatus consultum pertineat, quaeritur, id est, ut in bonis Latini materni potior sit patronae filius quam heres extraneus matris. Cassio placuit utroque casu locum esse senatus consulto; sed huius sententiam plerique inprobant, quia senatus de his liberis patronorum nihil sentiat, qui aliam familiam sequerentur; idque ex eo adparere, quod nominatim exheredatos summoueat; nam uidetur

de his sentire, qui exheredari a parente solent, si heredes non instituantur; neque autem matri filium filiamue neque auo materno nepotem neptemue, si eum eamue heredem non instituat, exheredare necesse est, siue de iure ciuili quaeramus siue de edicto praetoris, quo praeteritis liberis contra tabulas testamenti bonorum possessio promittitur.

72. Aliquando tamen ciuis Romanus libertus tamquam Latinus moritur, uelut si Latinus saluo iure patroni ab imperatore ius Quiritium consecutus fuerit. nam, ut diuus Traianus constituit, si Latinus inuito uel ignorante patrono ius Quiritium ab imperatore consecutus sit, [quibus casibus], dum uiuit iste libertus, ceteris ciuibus Romanis libertis similis est et iustos liberos procreat, moritur autem Latini iure, nec ei liberi eius heredes esse possunt; et in hoc tantum habet testamenti factionem, ut patronum heredem instituat eique, si heres esse noluerit, alium substituere possit.

73. Et quia hac constitutione uidebatur effectum, ut ne umquam isti homines tamquam ciues Romani morerentur, quamuis eo iure postea usi essent, quo uel ex lege Aelia Sentia uel ex senatus consulto ciues Romani essent, diuus Hadrianus iniquitate rei motus auctor fuit senatus consulti faciundi, ut qui ignorante uel recusante patrono ab imperatore ius Quiritium consecuti essent, si eo iure postea usi essent, quo ex lege Aelia Sentia uel ex senatus consulto, si Latini mansissent, ciuitatem Romanam consequerentur, proinde ipsi haberentur, ac si lege Aelia Sentia uel senatus consulto ad ciuitatem Romanam peruenissent.

74. Eorum autem, quos lex Aelia Sentia dediticiorum numero facit, bona modo quasi ciuium Romanorum libertorum modo quasi Latinorum ad patronos pertinent.

75. Nam eorum bona, qui si in aliquo uitio non essent, manumissi ciues Romani futuri essent, quasi ciuium Romanorum patronis eadem lege tribuuntur. non tamen hi habent etiam testamenti factionem. nam id plerisque placuit, nec inmerito. nam incredibile uidebatur pessimae condicionis hominibus uoluisse legis latorem testamenti faciundi ius concedere.

76. Eorum uero bona, qui si non in aliquo uitio essent, manumissi futuri Latini essent, proinde tribuuntur patronis, ac si Latini decessissent. nec me praeterit non satis in ea re legis latorem uoluntatem suam uerbis expressisse.

77. Videamus autem et de ea successione, quae nobis ex emptione bonorum competit.

78. Bona autem ueneunt aut uiuorum aut mortuorum: uiuorum, uelut eorum, qui fraudationis causa latitant nec absentes defenduntur; item eorum, qui ex lege Iulia bonis cedunt; item iudicatorum post tempus, quod eis partim lege

XII tabularum, partim edicto praetoris ad expediendam pecuniam tribuitur. mortuorum bona ueneunt uelut eorum, quibus certum est neque heredes neque bonorum possessores neque ullum alium iustum successorem existere.

79. Et si quidem uiui bona ueneant, iubet ea praetor per dies continuos XXX possideri et proscribi, si uero mortui, per dies XV postea iubet conuenire creditores et ex eo numero magistrum creari, id est eum, per quem bona ueneant. itaque si uiui bona ueneant, in diebus X legem bonorum uendundorum fieri iubet, si mortui, in dimidio. diebus tandem uiui bona XXX, mortui uero XX emptori addici iubet. quare autem tardius uiuentium bonorum uenditionem compleri iubet, illa ratio est, quia de uiuis curandum erat, ne facile bonorum uenditiones paterentur.

80. Neque autem bonorum possessorum neque bonorum emptorum res pleno iure fiunt, sed in bonis efficiuntur; ex iure Quiritium autem ita demum adquiruntur, si usuceperunt. interdum quidem bonorum emptoribus ne usus quidem capio contingit, uelut si pereos ******* bonorum emptor [. . . . . vv. 2 1/2 legi nequeunt . . . .]

81 Item quae debita sunt ei, cuius fuerunt bona, aut ipse debuit, neque bonorum possessor neque bonorum emptor ipso iure debet aut ipsis debentur, et ideo de omnibus rebus utilibus actionibus et agunt et conueniuntur, quas in sequenti commentario proponemus.

82 Sunt autem etiam alterius generis successiones, quae neque lege XII tabularum neque praetoris edicto, sed eo iure, quod tacito consensu receptum est, introductae sunt.

83. Etenim cum pater familias se in adoptionem dedit mulierue in manum conuenit, omnes eius res incorporales et corporales, quaeque ei debitae sunt, patri adoptiuo coemptionatoriue adquiruntur exceptis his, quae per capitis deminutionem pereunt, quales sunt ususfructus, operarum obligatio libertorum, quae per iusiurandum contracta est, et lites contestatae legitimo iudicio.

84. Ex diuerso quod is debuit, qui se in adoptionem dedit quaeue in manum conuenit, non transit ad coemptionatorem aut ad patrem adoptiuum, nisi si hereditarium aes alienum fuerit; de eo enim, quia ipse pater adoptiuus aut coemptionator heres fit, directo tenetur iure, is uero, qui se adoptandum dedit, quaeue in manum conuenit, desinit esse heres; de eo uero, quod proprio nomine eae personae debuerint, licet neque pater adoptiuus teneatur neque coemptionator et ne ipse quidem, qui se in adoptionem dedit, uel ipsa, quae in manum conuenit, maneat obligatus obligataue, quia scilicet per capitis diminutionem liberetur, tamen in eum eamue utilis actio datur rescissa capitis deminutione, et, si aduersus hanc actionem non defendantur, quae bona eorum

futura fuissent, si se alieno iuri non subiecissent, uniuersa uendere creditoribus praetor permittit.

85. Item si legitimam hereditatem heres, antequam cernat aut pro herede gerat, alii in iure cedat, pleno iure fit ille heres, cui cessa est hereditas, proinde ac si ipse per legem ad hereditatem uocaretur; quod si postea quam heres extiterit, cesserit, adhuc heres manet et ob id creditoribus ipse tenebitur; sed res corporales transferet, proinde ac si singulas in iure cessisset, debita uero pereunt, eoque modo debitores hereditarii lucrum faciunt.

86. Idem iuris est, si testamento scriptus heres, postea quam heres extiterit, in iure cesserit hereditatem; ante aditam uero hereditatem cedendo nihil agit.

87. Suus autem et necessarius heres an aliquid agant in iure cedendo, quaeritur. nostri praeceptores nihil eos agere existimant; diuersae scholae auctores idem eos agere putant, quod ceteri post aditam hereditatem; nihil enim interest, utrum aliquis cernendo aut pro herede gerendo heres fiat an iuris necessitate hereditati adstringatur.

88. Nunc transeamus ad obligationes, quarum summa diuisio in duas species diducitur: omnis enim obligatio uel ex contractu nascitur uel ex delicto.

89. Et prius uideamus de his, quae ex contractu nascuntur. harum autem quattuor genera sunt: aut enim re contrahitur obligatio aut uerbis aut litteris aut consensu.

90. Re contrahitur obligatio uelut mutui datione; mutui autem datio proprie in his fere rebus contingit, quae res pondere, numero, mensura constant, qualis est pecunia numerata, uinum, oleum, frumentum, aes, argentum, aurum; quas res aut numerando aut metiendo aut pendendo in hoc damus, ut accipientium fiant et quandoque nobis non eaedem, sed aliae eiusdem naturae reddantur. unde etiam mutuum appellatum est, quia quod ita tibi a me datum est, ex meo tuum fit.

91. Is quoque, qui non debitum accepit ab eo, qui per errorem soluit, re obligatur; nam proinde ei condici potest SI PARET EVM DARE OPORTERE, ac si mutuum accepisset. unde quidam putant pupillum aut mulierem, cui sine tutoris auctoritate non debitum per errorem datum est, non teneri condictione, non magis quam mutui datione. sed haec species obligationis non uidetur ex contractu consistere, quia is, qui soluendi animo dat, magis distrahere uult negotium quam contrahere.

92. Verbis obligatio fit ex interrogatione et responsione, uelut DARI SPONDES? SPONDEO, DABIS? DABO, PROMITTIS? PROMITTO, FIDEPROMITTIS? FIDEPROMITTO, FIDEIVBES? FIDEIVBEO,

FACIES? FACIAM. 93. Sed haec quidem uerborum obligatio DARI SPONDES? SPONDEO propria ciuium Romanorum est; ceterae uero iuris gentium sunt, itaque inter omnes homines, siue ciues Romanos siue peregrinos, ualent. et quamuis ad Graecam uocem expressae fuerint, uelut hoc modo "dØseis; dØsØ, homologeis; homologØ, pistei keleueis; pistei keleuØ, poi seis; poi sØ", etiam hae tamen inter ciues Romanos ualent, si modo Graeci sermonis intellectum habeant; et e contrario quamuis Latine enuntientur, tamen etiam inter peregrinos ualent, si modo Latini sermonis intellectum habeant. at illa uerborum obligatio DARI SPONDES? SPONDEO adeo propria ciuium Romanorum est, ut ne quidem in Graecum sermonem per interpretationem proprie transferri possit, quamuis dicatur a Graeca uoce figurata esse.

94. Unde dicitur uno casu hoc uerbo peregrinum quoque obligari posse, uelut si imperator noster principem alicuius peregrini populi de pace ita interroget: PACEM FVTVRAM SPONDES? uel ipse eodem modo interrogetur. quod nimium subtiliter dictum est, quia si quid aduersus pactionem fiat, non ex stipulatu agitur, sed iure belli res uindicatur.

95. Illud dubitari potest, si quis [. . . . . vv. 13 . . . .]

95a. [. . . . . .] si debitor mulieris iussu eius, dum [. . . . .] doti dicat quod debet. alius autem obligari eo modo non potest. et ideo si quis alius pro muliere dotem uiro promittat, communi iure obliga [. . . . .]. 96. Item uno loquente et sine interrogatione alii promittente contrahitur obligatio, si libertus patrono aut donum aut munus aut operas se daturum esse iurauit, etsi haec sola causa est, ex qua iureiurando contrahitur obligatio. sane ex alia nulla causa iureiurando homines obligantur, utique cum quaeritur de iure Romanorum. nam apud peregrinos quid iuris sit, singularum ciuitatium iura requirentes aliud intellegere poterimus [. . . . .].

97. Si id, quod dari stipulamur, tale sit, ut dari non possit, inutilis est stipulatio, uelut si quis hominem liberum, quem seruum esse credebat, aut mortuum, quem uiuum esse credebat, aut locum sacrum uel religiosum, quem putabat humani iuris esse, dari stipuletur.

97a. Item si quis rem, quae in rerum natura esse non potest, uelut hippocentaurum, stipuletur, aeque inutilis est stipulatio.

98. Item si quis sub ea condicione stipuletur, quae existere non potest, uelut 'si digito caelum tetigerit', inutilis est stipulatio. sed legatum sub inpossibili condicione relictum nostri praeceptores proinde deberi putant, ac si sine condicione relictum esset; diuersae scholae auctores nihilo minus legatum inutile existimant quam stipulationem. et sane uix idonea diuersitatis ratio reddi potest.

99. Praeterea inutilis est stipulatio, si quis ignorans rem suam esse dari sibi eam stipuletur; quippe quod alicuius est, id ei dari non potest.

100. Denique inutilis est talis stipulatio, si quis ita dari stipuletur: POST MORTEM MEAM DARI SPONDES? uel ita: POST MORTEM TVAM DARI SPONDES? ualet autem, si quis ita dari stipuletur: CVM MORIAR, DARI SPONDES?uel ita: CVM MORIERIS, DARI SPONDES? id est, ut in nouissimum uitae tempus stipulatoris aut promissoris obligatio conferatur: nam inelegans esse uisum est ab heredis persona incipere obligationem. rursum ita stipulari non possumus: PRIDIE QVAM MORIAR, aut PRIDIE QVAM MORIERIS, DARI SPONDES? quia non potest aliter intellegi 'pridie quam aliquis morietur', quam si mors secuta sit; rursus morte secuta in praeteritum reducitur stipulatio et quodam modo talis est: HEREDI MEO, DARI SPONDES? quae sane inutilis est.

101. Quaecumque de morte diximus, eadem et de capitis diminutione dicta intellegemus.

102. Adhuc inutilis est stipulatio, si quis ad id, quod interrogatus erit, non responderit, uelut si sestertia X a te dari stipuler, et tu nummum sestertium V milia promittas, aut si ego pure stipuler, tu sub condicione promittas.

103. Praeterea inutilis est stipulatio, si ei dari stipulemur, cuius iuri subiecti non sumus. unde illud quaesitum est, si quis sibi et ei, cuius iuri subiectus non est, dari stipuletur, in quantum ualeat stipulatio. nostri praeceptores putant in uniuersum ualere et proinde ei soli, qui stipulatus sit, solidum deberi, atque si extranei nomen non adiecisset. sed diuersae scholae auctores dimidium ei deberi existimant; pro altera uero parte inutilem esse stipulationem.

103a. Alia causa est, [. . . . .] DARI SPONDES [. . . . .] solidum deberi et me sol [. . . . .] etiam [. . . . .]

104. Praeterea inutilis est stipulatio, si ab eo stipuler, qui iuri meo subiectus est, item si is a me stipuletur. seruus quidem et qui in mancipio est et filia familias et quae in manu est, non solum ipsi, cuius iuri subiecti subiectaeue sunt, obligari non possunt, sed ne alii quidem ulli.

105. Mutum neque stipulari neque promittere posse palam est. idem etiam in surdo receptum est; quia et is, qui stipulatur, uerba promittentis, et qui promittit, uerba stipulantis exaudire debet.

106. Furiosus nullum negotium gerere potest, quia non intellegit, quid agat.

107. Pupillus omne negotium recte gerit, ut tamen, sicubi tutoris auctoritas necessaria sit, adhibeatur, uelut si ipse obligetur; nam alium sibi obligare etiam sine tutoris auctoritate potest.

108. Idem iuris est in feminis, quae in tutela sunt.

109. Sed quod diximus de pupillo, utique de eo uerum est, qui iam aliquem intellectum habet; nam infans et qui infanti proximus est non multum a furioso differt, quia huius aetatis pupilli nullum intellectum habent. sed in his pupillis propter utilitatem benignior iuris interpretatio facta est.

110. Possumus tamen ad id, quod stipulamur, alium adhibere, qui idem stipuletur, quem uulgo adstipulatorem uocamus.

111. Et huic proinde actio conpetit proindeque ei recte soluitur ac nobis; sed quidquid consecutus erit, mandati iudicio nobis restituere cogetur.

112. Ceterum potest etiam aliis uerbis uti adstipulator, quam quibus nos usi sumus. itaque si uerbi gratia ego ita stipulatus sim: DARI SPONDES? ille sic adstipulari potest: IDEM FIDE TVA PROMITTIS? uel: IDEM FIDE IVBES? uel contra.

113. Item minus adstipulari potest, plus non potest. itaque si ego sestertia X stipulatus sim, ille sestertia V stipulari potest; contra uero plus non potest. item si ego pure stipulatus sim, ille sub condicione stipulari potest; contra uero non potest. non solum autem in quantitate, sed etiam in tempore minus et plus intellegitur; plus est enim statim aliquid dare, minus est post tempus dare.

114. In hoc autem iure quaedam singulari iure obseruantur. nam adstipulatoris heres non habet actionem. item seruus adstipulando nihil agit, qui ex ceteris omnibus causis stipulatione domino adquirit. idem de eo, qui in mancipio est, magis placuit; nam et is serui loco est. is autem, qui in potestate patris est, agit aliquid, sed parenti non adquirit, quamuis ex omnibus ceteris causis stipulando ei adquirat; ac ne ipsi quidem aliter actio conpetit, quam si sine kapitis diminutione exierit de potestate parentis, ueluti morte eius aut quod ipse flamen Dialis inauguratus est. eadem de filia familias et quae in manu est, dicta intellegemus.

115. Pro eo quoque, qui promittit, solent alii obligari, quorum alios sponsores, alios fidepromissores, alios fideiussores appellamus.

116. Sponsor ita interrogatur: IDEM DARI SPONDES? fidepromissor ita: IDEM FIDEPROMITTIS? fideiussor ita: IDEM FIDE TVA ESSE IVBES?uidebimus de his autem, quo nomine possint proprie adpellari, qui ita interrogantur: IDEM DABIS? IDEM PROMITTIS? IDEM FACIES?

117. Sponsores quidem et fidepromissores et fideiussores saepe solemus accipere, dum curamus, ut diligentius nobis cautum sit; adstipulatorem uero fere tunc solum adhibemus, cum ita stipulamur, ut aliquid post mortem nostram detur; quia enim ut ita nobis detur stipulando nihil agimus, adhibetur adstipulator, ut is post mortem nostram agat; qui si quid fuerit consecutus, de restituendo eo mandati iudicio heredi meo tenetur.

118. Sponsoris uero et fidepromissoris similis condicio est, fideiussoris ualde dissimilis.

119. Nam illi quidem nullis obligationibus accedere possunt nisi uerborum, quamuis interdum ipse, qui promiserit, non fuerit obligatus, uelut si mulier aut pupillus sine tutoris auctoritate aut quilibet post mortem suam dari promiserit. at illud quaeritur, si seruus aut peregrinus spoponderit, an pro eo sponsor aut fidepromissor obligetur.

119a. Fideiussor uero omnibus obligationibus, id est siue re siue uerbis siue litteris siue consensu contractae fuerint obligationes, adici potest. at ne illud quidem interest, utrum ciuilis an naturalis obligatio sit, cui adiciatur; adeo quidem, ut pro seruo quoque obligetur, siue extraneus sit, qui a seruo fideiussorem accipiat, siue ipse dominus in id, quod sibi debeatur.

120. Praeterea sponsoris et fidepromissoris heres non tenetur, nisi si de peregrino fidepromissore quaeramus et alio iure ciuitas eius utatur; fideiussoris autem etiam heres tenetur.

121. Item sponsor et fidepromissor per legem Furiam biennio liberantur, et quotquot erunt numero eo tempore, quo pecunia peti potest, in tot partes diducetur inter eos obligatio, et singuli in uiriles partes uocabuntur; fideiussores uero perpetuo tenentur, et quotquot erunt numero, singuli in solidum obligantur. itaque liberum est creditori, a quo uelit, solidum petere. sed nunc ex epistula diui Hadriani compellitur creditor a singulis, qui modo soluendo sint, partes petere. eo igitur distat haec epistula a lege Furia, quod si quis ex sponsoribus aut fidepromissoribus soluendo non sit, hoc onus ad ceteros non pertinet, si uero ex fideiussoribus, ad ceteros quoque pertinet.

121a. Sed cum lex Furia tantum in Italia locum habeat, euenit, ut in ceteris prouinciis sponsores quoque et fidepromissores proinde ac fideiussores in perpetuum teneantur et singuli in solidum obligentur, nisi ex epistula diui Hadriani hi quoque adiuuentur in parte.

122. Praeterea inter sponsores et fidepromissores lex Apuleia quandam societatem introduxit. nam si quis horum plus sua portione soluerit, de eo, quod amplius dederit, aduersus ceteros actiones constituit. quae lex ante legem Furiam lata est, quo tempore in solidum obligabantur. unde quaeritur, an post

legem Furiam adhuc legis Apuleiae beneficium supersit; et utique extra Italiam superest. nam lex quidem Furia tantum in Italia ualet, Apuleia uero etiam in ceteris prouinciis. sed an etiam in Italia beneficium legis Apuleiae supersit, ualde quaeritur. ad fideiussores autem lex Apuleia non pertinet. itaque si creditor ab uno totum consecutus fuerit, huius solius detrimentum erit, scilicet si is, pro quo fideiussit, soluendo non sit. sed ut ex supra dictis apparet, is, a quo creditor totum petit, poterit ex epistula diui Hadriani desiderare, ut pro parte in se detur actio.

123. Praeterea lege Cicereia cautum est, ut is, qui sponsores aut fidepromissores accipiat, praedicat palam et declaret, et de qua re satis accipiat et quot sponsores aut fidepromissores in eam obligationem accepturus sit; et nisi praedixerit, permittitur sponsoribus et fidepromissoribus intra diem XXX. praeiudicium postulare, quo quaeratur, an ex ea lege praedictum sit; et si iudicatum fuerit praedictum non esse, liberantur. qua lege fideiussorum mentio nulla fit; sed in usu est, etiam si fideiussores accipiamus, praedicere.

124. Sed beneficium legis Corneliae omnibus commune est. qua lege idem pro eodem apud eundem eodem anno uetatur in ampliorem summam obligari creditae pecuniae quam in XX milia; et quamuis sponsores uel fidepromissores in amplam pecuniam, uelut in sestertium C milia se obligauerint, tamen dumtaxat in XX milia tenentur. pecuniam autem creditam dicimus non solum eam, quam credendi causa damus, sed omnem, quam tum, cum contrahitur obligatio, certum est debitum iri, id est, quae sine ulla condicione deducitur in obligationem; itaque et ea pecunia, quam in diem certum dari stipulamur, eodem numero est, quia certum est eam debitum iri, licet post tempus petatur. appellatione autem pecuniae omnes res in ea lege significantur; itaque et si uinum uel frumentum aut si fundum uel hominem stipulemur, haec lex obseruanda est.

125. Ex quibusdam tamen causis permittit ea lex in infinitum satis accipere, ueluti si dotis nomine uel eius, quod ex testamento tibi debeatur, aut iussu iudicis satis accipiatur. et adhuc lege uicesima hereditatium cauetur, ut ad eas satisdationes, quae ex ea lege proponuntur, lex Cornelia non pertineat.

126. In eo quoque iure par condicio est omnium, sponsorum, fidepromissorum, fideiussorum, quod ita obligari non possunt, ut plus debeant, quam debet is, pro quo obligantur. at ex diuerso, ut minus debeant, obligari possunt, sicut in adstipulatoris persona diximus; nam ut adstipulatoris, ita et horum obligatio accessio est principalis obligationis, nec plus in accessione esse potest quam in principali reo.

127. In eo quoque par omnium causa est, quod si quid pro reo soluerint, eius reciperandi causa habent cum eo mandati iudicium; et hoc amplius sponsores ex lege Publilia propriam habent actionem in duplum, quae appellatur depensi.

128. Litteris obligatio fit ueluti in nominibus transscripticiis. fit autem nomen transscripticium duplici modo, uel a re in personam uel a persona in personam.

129. A re in personam transscriptio fit, ueluti si id, quod tu ex emptionis causa aut conductionis aut societatis mihi debeas, id expensum tibi tulero.

130. A persona in personam transscriptio fit, ueluti si id, quod mihi Titius debet, tibi id expensum tulero, id est si Titius te pro se delegauerit mihi.

131. Alia causa est eorum nominum, quae arcaria uocantur. in his enim rei, non litterarum obligatio consistit, quippe non aliter ualent, quam si numerata sit pecunia; numeratio autem pecuniae rei facit obligationem. qua de causa recte dicemus arcaria nomina nullam facere obligationem, sed obligationis factae testimonium praebere.

132. Unde non proprie dicitur arcariis nominibus etiam peregrinos obligari, quia non ipso nomine, sed numeratione pecuniae obligantur; quod genus obligationis iuris gentium est.

133. Transscripticiis uero nominibus an obligentur peregrini, merito quaeritur, quia quodam modo iuris ciuilis est talis obligatio; quod Neruae placuit. Sabino autem et Cassio uisum est, si a re in personam fiat nomen transscripticium, etiam peregrinos obligari; si uero a persona in personam, non obligari.

134. Praeterea litterarum obligatio fieri uidetur chirografis et syngrafis, id est, si quis debere se aut daturum se scribat, ita scilicet, si eo nomine stipulatio non fiat. quod genus obligationis proprium peregrinorum est.

135. Consensu fiunt obligationes in emptionibus et uenditionibus, locationibus conductionibus, societatibus, mandatis.

136. Ideo autem istis modis consensu dicimus obligationes contrahi, quod neque uerborum neque scripturae ulla proprietas desideratur, sed sufficit eos, qui negotium gerunt, consensisse. unde inter absentes quoque talia negotia contrahuntur, ueluti per epistulam aut per internuntium, cum alioquin uerborum obligatio inter absentes fieri non possit.

137. Item in his contractibus alter alteri obligatur de eo, quod alterum alteri ex bono et aequo praestare oportet, cum alioquin in uerborum obligationibus alius stipuletur alius promittat et in nominibus alius expensum ferendo obliget alius obligetur.

138. [sed absenti expensum ferri potest, etsi uerbis obligatio cum absente contrahi non possit.] [De emptione et uenditione.]

139. Emptio et uenditio contrahitur, cum de pretio conuenerit, quamuis nondum pretium numeratum sit ac ne arra quidem data fuerit. nam quod arrae nomine datur, argumentum est emptionis et uenditionis contractae.

140. Pretium autem certum esse debet. nam alioquin si ita inter nos conuenerit, ut quanti Titius rem aestimauerit, tanti sit empta, Labeo negauit ullam uim hoc negotium habere; cuius opinionem Cassius probat. Ofilius et eam emptionem et uenditionem esse putauit; cuius opinionem Proculus secutus est.

141. Item pretium in numerata pecunia consistere debet. nam in ceteris rebus an pretium esse possit, ueluti homo aut toga aut fundus alterius rei pretium esse possit, ualde quaeritur. nostri praeceptores putant etiam in alia re posse consistere pretium; unde illud est, quod uulgo putant per permutationem rerum emptionem et uenditionem contrahi, eamque speciem emptionis uenditionisque uetustissimam esse; argumentoque utuntur Graeco poeta Homero, qui aliqua parte sic ait:

"enthen ar' oinizonto kar komoØntes Achaioi, alloi men chalkØi, alloi d' aithØni sid rØi, alloi de rhinois, alloi d' aut isi boessin," alloi d' andrapodessi, (Hom. Il. 7, 472-475) et reliqua. diuersae scholae auctores dissentiunt aliudque esse existimant permutationem rerum, aliud emptionem et uenditionem; alioquin non posse rem expediri permutatis rebus, quae uideatur res uenisse et quae pretii nomine data esse, sed rursus utramque rem uideri et uenisse et utramque pretii nomine datam esse absurdum uideri. sed ait Caelius Sabinus, si rem tibi uenalem habenti, ueluti fundum, [acceperim et] pretii nomine hominem forte dederim, fundum quidem uideri uenisse, hominem autem pretii nomine datum esse, ut fundus acciperetur.

142. Locatio autem et conductio similibus regulis constituitur; nisi enim merces certa statuta sit, non uidetur locatio et conductio contrahi.

143. Unde si alieno arbitrio merces permissa sit, uelut quanti Titius aestimauerit, quaeritur, an locatio et conductio contrahatur. qua de causa si fulloni polienda curandaue, sarcinatori sarcienda uestimenta dederim nulla statim mercede constituta, postea tantum daturus, quanti inter nos conuenerit, quaeritur, an locatio et conductio contrahatur.

144. Item si rem tibi utendam dederim et inuicem aliam rem utendam acceperim, quaeritur, an locatio et conductio contrahatur.

145. Adeo autem emptio et uenditio et locatio et conductio familiaritatem aliquam inter se habere uidentur, ut in quibusdam causis quaeri soleat, utrum emptio et uenditio contrahatur an locatio et conductio, ueluti si qua res in perpetuum locata sit. quod euenit in praediis municipum, quae ea lege

locantur, ut, quamdiu [id] uectigal praestetur, neque ipsi conductori neque heredi eius praedium auferatur; sed magis placuit locationem conductionemque esse.

146. Item si gladiatores ea lege tibi tradiderim, ut in singulos, qui integri exierint, pro sudore denarii XX mihi darentur, in eos uero singulos, qui occisi aut debilitati fuerint, denarii mille, quaeritur, utrum emptio et uenditio an locatio et conductio contrahatur. et magis placuit eorum, qui integri exierint, locationem et conductionem contractam uideri, at eorum, qui occisi aut debilitati sunt, emptionem et uenditionem esse; idque ex accidentibus apparet, tamquam sub condicione facta cuiusque uenditione aut locatione. iam enim non dubitatur, quin sub condicione res uenire aut locari possint.

147. Item quaeritur, si cum aurifice mihi conuenerit, ut is ex auro suo certi ponderis certaeque formae anulos mihi faceret et acciperet uerbi gratia denarios CC, utrum emptio et uenditio an locatio et conductio contrahatur. Cassius ait materiae quidem emptionem uenditionemque contrahi, operarum autem locationem et conductionem; sed plerisque placuit emptionem et uenditionem contrahi. atqui si meum aurum ei dedero mercede pro opera constituta, conuenit locationem conductionem contrahi.

148. Societatem coire solemus aut totorum bonorum aut unius alicuius negotii, ueluti mancipiorum emendorum aut uendendorum.

149. Magna autem quaestio fuit, an ita coiri possit societas, ut quis maiorem partem lucretur, minorem damni praestet. quod Quintus Mucius contra naturam societatis esse censuit. sed Seruius Sulpicius, cuius etiam praeualuit sententia, adeo ita coiri posse societatem existimauit, ut dixerit illo quoque modo coiri posse, ut quis nihil omnino damni praestet, sed lucri partem capiat, si modo opera eius tam pretiosa uideatur, ut aequum sit eum cum hac pactione in societatem admitti. nam et ita posse coiri societatem constat, ut unus pecuniam conferat, alter non conferat et tamen lucrum inter eos commune sit; saepe enim opera alicuius pro pecunia ualet.

150. Et illud certum est, si de partibus lucri et damni nihil inter eos conuenerit, tamen aequis ex partibus commodum ut incommodum inter eos commune esse; sed si in altero partes expressae fuerint, uelut in lucro, in altero uero omissae, in eo quoque, quod omissum est, similes partes erunt.

151. Manet autem societas eo usque, donec in eodem sensu perseuerant; at cum aliquis renuntiauerit societati, societas soluitur. sed plane si quis in hoc renuntiauerit societati, ut obueniens aliquod lucrum solus habeat, ueluti si mihi totorum bonorum socius, cum ab aliquo heres esset relictus, in hoc renuntiauerit societati, ut hereditatem solus lucri faciat, cogetur hoc lucrum communicare; si quid uero aliud lucri fecerit, quod non captauerit, ad ipsum

solum pertinet. mihi uero, quidquid omnino post renuntiatam societatem adquiritur, soli conceditur.

152. Soluitur adhuc societas etiam morte socii, quia qui societatem contrahit, certam personam sibi eligit.

153. Dicitur etiam kapitis deminutione solui societatem, quia ciuili ratione kapitis deminutio morti coaequatur; sed utique si adhuc consentiant in societatem, noua uidetur incipere societas.

154. Item si cuius ex sociis bona publice aut priuatim uenierint, soluitur societas. sed ea quidem societas, de qua loquimur, id est, quae nudo consensu contrahitur, iuris gentium est; itaque inter omnes homines naturali ratione consistit.

154a. Est autem aliud genus societatis proprium ciuium Romanorum. olim enim mortuo patre familias inter suos heredes quaedam erat legitima simul et naturalis societas quae appellabatur ercto non cito, id est dominio non diuiso: erctum enim dominium est, unde erus dominus dicitur: ciere autem diuidere est: unde caedere et secare [et diuidere] dicimus.

154b. Alii quoque qui uolebant eandem habere societatem, poterant id consequi apud praetorem certa legis actione. in hac autem societate fratrum ceterorumue, qui ad exemplum fratrum suorum societatem coierint, illud proprium erat, [unus] quod uel unus ex sociis communem seruum manumittendo liberum faciebat et omnibus libertum adquirebat: item unus rem communem mancipando eius faciebat, qui mancipio accipiebat.

155. Mandatum consistit, siue nostra gratia mandemus siue aliena; itaque siue ut mea negotia geras siue ut alterius, mandauerim, contrahitur mandati obligatio, et inuicem alter alteri tenebimur in id, quod uel me tibi uel te mihi bona fide praestare oportet.

156. Nam si tua gratia tibi mandem, superuacuum est mandatum; quod enim tu tua gratia facturus sis, id de tua sententia, non ex meo mandatu facere debes; itaque si otiosam pecuniam domi tuae te habentem hortatus fuerim, ut eam faenerares, quamuis iam ei mutuam dederis, a quo seruare non potueris, non tamen habebis mecum mandati actionem. item si hortatus sim, ut rem aliquam emeres, quamuis non expedierit tibi eam emisse, non tamen tibi mandati tenebor. et adeo haec ita sunt, ut quaeratur, an mandati teneatur, qui mandauit tibi, ut Titio pecuniam faenerares. Seruius negauit: non magis hoc casu obligationem consistere putauit, quam si generaliter alicui mandetur, uti pecuniam suam faeneraret. sed sequimur Sabini opinionem contra sentientis, quia non aliter Titio credidisses, quam si tibi mandatum esset.

157. Illud constat, si quis de ea re mandet, quae contra bonos mores est, non contrahi obligationem, ueluti si tibi mandem, ut Titio furtum aut iniuriam facias.

158. Item si quis quid post mortem meam faciendum mihi mandet, inutile mandatum est, quia generaliter placuit ab heredis persona obligationem incipere non posse.

159. Sed recte quoque contractum mandatum, si dum adhuc integra res sit, reuocatum fuerit, euanescit.

160. Item si adhuc integro mandato mors alterutrius alicuius interueniat, id est uel eius, qui mandarit, uel eius, qui mandatum susceperit, soluitur mandatum; sed utilitatis causa receptum est, ut si mortuo eo, qui mihi mandauerit, ignorans eum decessisse exsecutus fuero mandatum, posse me agere mandati actione; alioquin iusta et probabilis ignorantia damnum mihi [non] adferet. et huic simile est, quod plerisque placuit, si debitor meus manumisso dispensatori meo per ignorantiam soluerit, liberari eum, cum alioquin stricta iuris ratione non posset liberari eo, quod alii soluisset, quam cui soluere deberet.

161. Cum autem is, cui recte mandauerim, egressus fuerit mandatum, ego quidem eatenus cum eo habeo mandati actionem, quatenus mea interest inplesse eum mandatum, si modo implere potuerit; at ille mecum agere non potest. itaque si mandauerim tibi, ut uerbi gratia fundum mihi sestertiis C emeres, tu sestertiis CL emeris, non habebis mecum mandati actionem, etiamsi tanti uelis mihi dare fundum, quanti emendum tibi mandassem; idque maxime Sabino et Cassio placuit. quod si minoris emeris, habebis mecum scilicet actionem, quia qui mandat, ut C milibus emeretur, is utique mandare intellegitur, uti minoris, si posset, emeretur.

162. In summa sciendum est, quotiens faciendum aliquid gratis dederim, quo nomine si mercedem statuissem, locatio et conductio contraheretur, mandati esse actionem, ueluti si fulloni polienda curandaue uestimenta dederim aut sarcinatori sarcienda.

163. Expositis generibus obligationum, quae ex contractu nascuntur, admonendi sumus adquiri nobis non solum per nosmet ipsos, sed etiam per eas personas, quae in nostra potestate, manu mancipioue sunt.

164. Per liberos quoque homines et alienos seruos, quos bona fide possidemus, adquiritur nobis; sed tantum ex duabus causis, id est, si quid ex operis suis uel ex re nostra adquirant.

165. Per eum quoque seruum, in quo usumfructum habemus, similiter ex duabus istis causis nobis adquiritur.

166. Sed qui nudum ius Quiritium in seruo habet, licet dominus sit, minus tamen iuris in ea re habere intellegitur quam usufructuarius et bonae fidei possessor. nam placet ex nulla causa ei adquiri posse, adeo ut, etsi nominatim ei dari stipulatus fuerit seruus mancipioue nomine eius acceperit, quidam existiment nihil ei adquiri.

167. Communem seruum pro dominica parte dominis adquirere certum est, excepto eo, quod uni nominatim stipulando aut mancipio accipiendo illi soli adquirit, uelut cum ita stipuletur: TITIO DOMINO MEO DARI SPONDES? aut cum ita mancipio accipiat: HANC REM EX IVRE QVIRITIVM LVCII TITII DOMINI MEI ESSE AIO, EAQVE EI EMPTA ESTO HOC AERE AENEAQVE LIBRA.

167a. Illud quaeritur, an quod nomen domini adiectum efficit, idem faciat unius ex dominis iussum intercedens. nostri praeceptores proinde ei, qui iusserit, soli adquiri existimant, atque si nominatim ei soli stipulatus esset seruus mancipioue quid accepisset; diuersae scholae auctores proinde utrisque adquiri putant, ac si nullius iussum interuenisset.

168. Tollitur autem obligatio praecipue solutione eius, quod debeatur. unde quaeritur, si quis consentiente creditore aliud pro alio soluerit, utrum ipso iure liberetur, quod nostris praeceptoribus placuit, an ipso iure maneat obligatus, sed aduersus petentem per exceptionem doli mali defendi debeat, quod diuersae scholae auctoribus uisum est.

169. Item per acceptilationem tollitur obligatio. acceptilatio autem est ueluti imaginaria solutio. nam quod ex uerborum obligatione tibi debeam, id si uelis mihi remittere, poterit sic fieri, ut patiaris haec uerba me dicere: QVOD TIBI EGO PROMISI, HABESNE ACCEPTVM? et tu respondeas: HABEO.

170. Quo genere, ut diximus, tolluntur illae obligationes, quae in uerbis consistunt, non etiam ceterae; consentaneum enim est uisum uerbis factam obligationem posse aliis uerbis dissolui. sed id, quod ex alia causa debeatur, potest in stipulationem deduci et per acceptilationem dissolui.

171. Quamuis autem acceptilatio ueluti imaginaria solutio sit, tamen mulier sine tutore auctore acceptilationem facere non potest, cum alioquin solui ei sine tutore auctore possit.

172. Item quod debetur, pro parte recte soluitur; an autem in partem acceptilatio fieri possit, quaesitum est.

173. Est et alia species imaginariae solutionis, per aes et libram; quod et ipsum genus certis ex causis receptum est, ueluti si quid eo nomine debeatur, quod per aes et libram gestum sit, siue quid ex iudicati causa debeatur.

174. Adhibentur non minus quam quinque testes et libripens; deinde is, qui liberatur, ita oportet loquatur: QVOD EGO TIBI TOT MILIBVS SESTERTIORVM IVDICATVS uel DAMNATVS SVM EO NOMINE ME A TE SOLVO LIBEROQVE HOC AERE AENEAQVE LIBRA. HANC TIBI LIBRAM PRIMAM POSTREMAMQVE EXPENDO SECVNDVM LEGEM PVBLICAM. deinde asse percutit libram eumque dat ei, a quo liberatur, ueluti soluendi causa.

175. Similiter legatarius heredem eodem modo liberat de legato, quod per damnationem relictum est, ut tamen scilicet, sicut iudicatus condemnatum se esse significat, ita heres testamento se dare damnatum esse dicat. de eo tamen tantum potest heres eo modo liberari, quod pondere numero constet, et ita, si certum sit. quidam et de eo, quod mensura constat, idem existimant.

176. Praeterea nouatione tollitur obligatio ueluti si quod tu mihi debeas, a Titio dari stipulatus sim; nam interuentu nouae personae noua nascitur obligatio et prima tollitur translata in posteriorem, adeo ut inter-dum, licet posterior stipulatio inutilis sit, tamen prima nouationis iure tollatur, ueluti si quod mihi debes, a Titio post mortem eius uel a muliere pupilloue sine tutoris auctoritate stipulatus fuero; quo casu rem amitto; nam et prior debitor liberatur, et posterior obligatio nulla est. non idem iuris est, si a seruo stipulatus fuero; nam tunc prior proinde adhuc obligatus tenetur, ac si postea a nullo stipulatus fuissem.

177. Sed si eadem persona sit, a qua postea stipuler, ita demum nouatio fit, si quid in posteriore stipulatione noui sit, forte si condicio uel dies aut sponsor adiciatur aut detrahatur.

178. Sed quod de sponsore diximus, non constat. nam diuersae scholae auctoribus placuit nihil ad nouationem proficere sponsoris adiectionem aut detractionem.

179. Quod autem diximus, si condicio adiciatur, nouationem fieri, sic intellegi oportet, ut ita dicamus factam nouationem, si condicio extiterit; alioquin si defecerit, durat prior obligatio. sed uideamus, num is, qui eo nomine agat, doli mali aut pacti conuenti exceptione possit summoueri, quia uidetur inter eos id actum, ut ita ea res peteretur, si posterioris stipulationis exstiterit condicio. Seruius tamen Sulpicius existimauit statim et pendente condicione nouationem fieri, et si defecerit condicio, ex neutra causa agi posse et eo modo rem perire; qui consequenter et illud respondit, si quis id, quod sibi L. Titius deberet, a seruo fuerit stipulatus, nouationem fieri et rem perire, quia cum seruo agi non

posset. sed in utroque casu alio iure utimur. nec magis his casibus nouatio fit, quam si id, quod tu mihi debeas, a peregrino, cum quo sponsus communio non est, SPONDES uerbo stipulatus sim.

180. Tollitur adhuc obligatio litis contestatione, si modo legitimo iudicio fuerit actum. nam tunc obligatio quidem principalis dissoluitur, incipit autem teneri reus litis contestatione. sed si condemnatus sit, sublata litis contestatione incipit ex causa iudicati teneri. et hoc est, quod apud ueteres scriptum est ante litem contestatam dare debitorem oportere, post litem contestatam condemnari oportere, post condemnationem iudicatum facere oportere.

181. Unde fit, ut si legitimo iudicio debitum petiero, postea de eo ipso iure agere non possim, quia inutiliter intendo DARI MIHI OPORTERE, quia litis contestatione dari oportere desiit, aliter atque si imperio continenti iudicio egerim; tunc enim nihilo minus obligatio durat, et ideo ipso iure postea agere possum, sed debeo per exceptionem rei iudicatae uel in iudicium deductae summoueri. quae autem legitima sint iudicia et quae imperio continentia, sequenti commentario referemus.

182. Transeamus nunc ad obligationes, quae ex delicto nascuntur, ueluti si quis furtum fecerit, bona rapuerit, damnum dederit, iniuriam commiserit. quarum omnium rerum uno genere consistit obligatio, cum ex contractu obligationes in IIII genera diducantur, sicut supra exposuimus.

183. Furtorum autem genera Ser. Sulpicius et Masurius Sabinus IIII esse dixerunt, manifestum et nec manifestum, conceptum et oblatum; Labeo duo, manifestum et nec manifestum; nam conceptum et oblatum species potius actionis esse furto cohaerentes quam genera furtorum; quod sane uerius uidetur, sicut inferius apparebit.

184. Manifestum furtum quidam id esse dixerunt, quod dum fit, deprehenditur. alii uero ulterius, quod eo loco deprehenditur, ubi fit, uelut si in oliueto oliuarum, in uineto uuarum furtum factum est, quamdiu in eo oliueto aut uineto fur sit; aut si in domo furtum factum sit, quamdiu in ea domo fur sit. alii adhuc ulterius eo usque **** manifestum furtum esse dixerunt, donec perferret eo, quo perferre fur destinasset. alii adhuc ulterius, quandoque eam rem fur tenens uisus fuerit; quae sententia non optinuit. sed et illorum sententia, qui existimauerunt, donec perferret eo, quo fur destinasset, deprehensum furtum manifestum esse, ideo non uidetur probari, quia magnam recipit dubitationem, utrum unius diei an etiam plurium dierum spatio id terminandum sit; quod eo pertinet, quia saepe in aliis ciuitatibus surreptas res in alias ciuitates uel in alias prouincias destinant fures perferre. ex duabus itaque superioribus opinionibus alterutra adprobatur; magis tamen plerique posteriorem probant.

185. Nec manifestum furtum quid sit, ex iis, quae diximus, intellegitur. nam quod manifestum non est, id nec manifestum est.

186. Conceptum furtum dicitur, cum apud aliquem testibus praesentibus furtiua res quaesita et inuenta est. nam in eum propria actio constituta est, quamuis fur non sit, quae appellatur concepti.

187. Oblatum furtum dicitur, cum res furtiua tibi ab aliquo oblata sit eaque apud te concepta sit, utique si ea mente data tibi fuerit, ut apud te potius quam apud eum, qui dederit, conciperetur. nam tibi, apud quem concepta est, propria aduersus eum, qui optulit, quamuis fur non sit, constituta est actio, quae appellatur oblati.

188. Est etiam prohibiti furti actio aduersus eum, qui furtum quaerere uolentem prohibuerit.

189. Poena manifesti furti ex lege XII tabularum capitalis erat. nam liber uerberatus addicebatur ei, cui furtum fecerat; utrum autem seruus efficeretur ex addictione an adiudicati loco constitueretur, ueteres quaerebant. in seruum aeque uerberatum animaduertebatur. sed postea inprobata est asperitas poenae, et tam ex serui persona quam ex liberi quadrupli actio praetoris edicto constituta est.

190. Nec manifesti furti poena per legem XII tabularum dupli inrogatur, eamque etiam praetor conseruat.

191. Concepti et oblati poena ex lege XII tabularum tripli est, eaque similiter a praetore seruatur.

192. Prohibiti actio quadrupli est ex edicto praetoris introducta. lex autem eo nomine nullam poenam constituit; hoc solum praecipit, ut qui quaerere uelit, nudus quaerat, licio cinctus, lancem habens; qui si quid inuenerit, iubet id lex furtum manifestum esse.

193. Quid sit autem licium, quaesitum est; sed uerius est consuti genus esse, quo necessariae partes tegerentur.

193a. Quae [res] lex tota ridicula est; nam qui uestitum quaerere prohibet, is et nudum quaerere prohibiturus est, eo magis quod ita quaesita re et inuenta maiori poenae subiciatur. deinde quod lancem siue ideo haberi iubeat, ut manibus occupatis nihil subiciat, siue ideo, ut quod inuenerit, ibi imponat, neutrum eorum procedit, si id, quod quaeratur, eius magnitudinis aut naturae sit, ut neque subici neque ibi inponi possit. certe non dubitatur, cuiuscumque materiae sit ea lanx, satis legi fieri.

194. Propter hoc tamen, quod lex ex ea causa manifestum furtum esse iubet, sunt, qui scribunt furtum manifestum aut lege intellegi aut natura: lege id ipsum, de quo loquimur, natura illud, de quo superius exposuimus. sed uerius est natura tantum manifestum furtum intellegi; neque enim lex facere potest, ut qui manifestus fur non sit, manifestus sit, non magis quam qui omnino fur non sit, fur sit, et qui adulter aut homicida non sit, adulter uel homicida sit; at illud sane lex facere potest, ut proinde aliquis poena teneatur, atque si furtum uel adulterium uel homicidium admisisset, quamuis nihil eorum admiserit.

195. Furtum autem fit non solum, cum quis intercipiendi causa rem alienam amouet, sed generaliter, cum quis rem alienam inuito domino contrectat.

196. Itaque si quis re, quae apud eum deposita sit, utatur, furtum committit; et si quis utendam rem acceperit eamque in alium usum transtulerit, furti obligatur, ueluti si quis argentum utendum acceperit, quasi amicos ad cenam inuitaturus, et id peregre secum tulerit, aut si quis equum gestandi gratia commodatum longius aliquo duxerit, quod ueteres scripserunt de eo, qui in aciem perduxisset.

197. Placuit tamen eos, qui rebus commodatis aliter uterentur quam utendas accepissent, ita furtum committere, si intellegant id se inuito domino facere eumque, si intellexisset, non permissurum; at si permissurum credant, extra furti crimen uideri, optima sane distinctione, quod furtum sine dolo malo non committitur.

198. Sed et si credat aliquis inuito domino se rem contrectare, domino autem uolente id fiat, dicitur furtum non fieri. unde illud quaesitum [et probatum] est: cum Titius seruum meum sollicitauerit, ut quasdam res mihi subriperet et ad eum perferret, et seruus id ad me pertulerit, ego, dum uolo Titium in ipso delicto deprehendere, permiserim seruo quasdam res ad eum perferre, utrum furti an serui corrupti iudicio teneatur Titius mihi, an neutro? responsum neutro eum teneri, furti ideo, quod non inuito me res contrectarit, serui corrupti ideo, quod deterior seruus factus non sit.

199. Interdum autem etiam liberorum hominum furtum fit, uelut si quis liberorum nostrorum, qui in potestate nostra sint, siue etiam uxor, quae in manu nostra sit, siue etiam iudicatus uel auctoratus meus subreptus fuerit.

200. Aliquando etiam suae rei quisque furtum committit, ueluti si debitor rem, quam creditori pignori dedit, subtraxerit, uel si bonae fidei possessori rem meam possidenti subripuerim. unde placuit eum, qui seruum suum, quem alius bona fide possidebat, ad se reuersum celauerit, furtum committere.

201. Rursus ex diuerso interdum alienas res occupare et usucapere concessum est nec creditur furtum fieri, uelut res hereditarias, quarum heres non est

nactus possessionem, nisi necessarius heres extet; nam necessario herede extante placuit nihil pro herede usucapi posse. item debitor rem, quam fiduciae causa creditori mancipauerit aut in iure cesserit, secundum ea, quae in superiore commentario rettulimus, sine furto possidere et usucapere potest.

202. Interdum furti tenetur, qui ipse furtum non fecerit, qualis est, cuius ope consilio furtum factum est. in quo numero est, qui nummos tibi excussit, ut eos alius surriperet, uel opstitit tibi, ut alius surriperet, aut oues aut boues tuas fugauit, ut alius eas exciperet. et hoc ueteres scripserunt de eo, qui panno rubro fugauit armentum; sed si quid per lasciuiam et non data opera, ut furtum committeretur, factum sit, uidebimus, an utilis actio dari debeat, cum per legem Aquiliam, quae de damno lata est, etiam culpa puniatur.

203. Furti autem actio ei conpetit, cuius interest rem saluam esse, licet dominus non sit. itaque nec domino aliter conpetit, quam si eius intersit rem non perire.

204. Unde constat creditorem de pignore subrepto furti agere posse; adeo quidem, ut quamuis ipse dominus [id est ipse debitor] eam rem subripuerit, nihilo minus creditori conpetat actio furti.

205. Item si fullo polienda curandaue aut sarcinator sarcienda uestimenta mercede certa acceperit eaque furto amiserit, ipse furti habet actionem, non dominus, quia domini nihil interest ea non periisse, cum iudicio locati a fullone aut sarcinatore suum consequi possit, si modo is fullo aut sarcinator rei praestandae sufficiat; nam si soluendo non est, tunc quia ab eo dominus suum consequi non potest, ipsi furti actio conpetit, quia hoc casu ipsius interest rem saluam esse.

206. Quae de fullone aut sarcinatore diximus, eadem transferemus et ad eum, cui rem commodauimus. nam ut illi mercedem capiendo custodiam praestant, ita hic quoque utendi commodum percipiendo similiter necesse habet custodiam praestare.

207. Sed is, apud quem res deposita est, custodiam non praestat tantumque in eo obnoxius est, si quid ipse dolo malo fecerit; qua de causa si res ei subrepta fuerit, quia restituendae eius nomine depositi non tenetur nec ob id eius interest rem saluam esse, furti [itaque] agere non potest, sed ea actio domino conpetit.

208. In summa sciendum est quaesitum esse, an impubes rem alienam amouendo furtum faciat. plerisque placet, quia furtum ex adfectu consistit, ita demum obligari eo crimine impuberem, si proximus pubertati sit et ob id intellegat se delinquere.

209. Qui res alienas rapit, tenetur etiam furti. quis enim magis alienam rem inuito domino contrectat quam qui ui rapit? itaque recte dictum est eum improbum furem esse; sed propriam actionem eius delicti nomine praetor introduxit, quae appellatur ui bonorum raptorum, et est intra annum quadrupli [actio], post annum simpli. quae actio utilis est, etsi quis unam rem licet minimam rapuerit.

210. Damni iniuriae actio constituitur per legem Aquiliam, cuius primo capite cautum est, ut si quis hominem alienum alienamue quadrupedem, quae pecudum numero sit, iniuria occiderit, quanti ea res in eo anno plurimi fuerit, tantum domino dare damnetur.

211. Iniuria autem occidere intellegitur, cuius dolo aut culpa id acciderit, nec ulla alia lege damnum, quod sine iniuria datur, reprehenditur; itaque inpunitus est, qui sine culpa et dolo malo casu quodam damnum committit.

212. Nec solum corpus in actione huius legis aestimatur; sed sane si seruo occiso plus dominus capiat damni, quam pretium serui sit, id quoque aestimatur, uelut si seruus meus ab aliquo heres institutus, antequam iussu meo hereditatem cerneret, occisus fuerit; non enim tantum ipsius pretium aestimatur, sed et hereditatis amissae quantitas. item si ex gemellis uel ex comoedis uel ex symphoniacis unus occisus fuerit, non solum occisi fit aestimatio, sed eo amplius id quoque conputatur, quod ceteri, qui supersunt, depretiati sunt. idem iuris est etiam, si ex pari mularum unam uel etiam ex quadrigis equorum unum occiderit.

213. Cuius autem seruus occisus est, is liberum arbitrium habet uel capitali crimine reum facere eum, qui occiderit, uel hac lege damnum persequi.

214. Quod autem adiectum est in hac lege 'quanti in eo anno plurimi ea res fuerit', illud efficit, si clodum puta aut luscum seruum occiderit, qui in eo anno integer fuerit, ut non quanti clodus aut luscus, sed quanti integer fuerit, aestimatio fiat; quo fit, ut quis plus interdum consequatur, quam ei damnum datum est.

215. Capite secundo aduersus adstipulatorem, qui pecuniam in fraudem stipulatoris acceptam fecerit, quanti ea res est, tanti actio constituitur.

216. Qua et ipsa parte legis damni nomine actionem introduci manifestum est; sed id caueri non fuit necessarium, cum actio mandati ad eam rem sufficeret; nisi quod ea lege aduersus infitiantem in duplum agitur.

217. Capite tertio de omni cetero damno cauetur. itaque si quis seruum uel eam quadrupedem, quae pecudum numero est, uulnerauerit siue eam quadrupedem, quae pecudum numero non est, uelut canem, aut feram bestiam,

uelut ursum, leonem, uulnerauerit uel occiderit, hoc capite actio constituitur. in ceteris quoque animalibus, item in omnibus rebus, quae anima carent, damnum iniuria datum hac parte uindicatur. si quid enim ustum aut ruptum aut fractum fuerit, actio hoc capite constituitur, quamquam potuerit sola rupti appellatio in omnes istas causas sufficere; ruptum enim intellegitur, quod quoquo modo corruptum est; unde non solum usta aut rupta aut fracta, sed etiam scissa et collisa et effusa et quoquo modo uitiata aut perempta atque deteriora facta hoc uerbo continentur.

218. Hoc tamen capite non quanti in eo anno, sed quanti in diebus XXX proxumis ea res fuerit, damnatur is, qui damnum dederit. ac ne 'plurimi' quidem uerbum adicitur; et ideo quidam putauerunt liberum esse iudici ad id tempus ex diebus XXX aestimationem redigere, quo plurimi res fuit, uel ad id, quo minoris fuit. sed Sabino placuit proinde habendum ac si etiam hac parte 'plurimi' uerbum adiectum esset; nam legis latorem contentum fuisse, quod prima parte eo uerbo usus esset.

219. Ceterum etiam placuit ita demum ex ista lege actionem esse, si quis corpore suo damnum dederit, ideoque alio modo damno dato utiles actiones dantur, uelut si quis alienum hominem aut pecudem incluserit et fame necauerit, aut iumentum tam uehementer egerit, ut rumperetur; item si quis alieno seruo persuaserit, ut in arborem ascenderet uel in puteum descenderet, et is ascendendo aut descendendo ceciderit et aut mortuus fuerit aut aliqua parte corporis laesus sit. item contra si quis alienum seruum de ponte aut ripa in flumen proiecerit et is suffocatus fuerit, hic quoque corpore suo damnum dedisse eo, quod proiecerit, non difficiliter intellegi potest.

220. Iniuria autem committitur non solum, cum quis pugno puta aut fuste percussus uel etiam uerberatus erit, sed etiam si cui conuicium factum fuerit, siue quis bona alicuius quasi debitoris sciens eum nihil sibi debere proscripserit siue quis ad infamiam alicuius libellum aut carmen scripserit siue quis matrem familias aut praetextatum adsectatus fuerit et denique aliis pluribus modis.

221. Pati autem iniuriam uidemur non solum per nosmet ipsos, sed etiam per liberos nostros, quos in potestate habemus, item per uxores nostras, quamuis in manu nostra non sint; itaque si ueluti filiae meae, quae Titio nupta est, iniuriam feceris, non solum filiae nomine tecum agi iniuriarum potest, uerum etiam meo quoque et Titii nomine.

222. Seruo autem ipsi quidem nulla iniuria intellegitur fieri, sed domino per eum fieri uidetur; non tamen iisdem modis, quibus etiam per liberos nostros uel uxores iniuriam pati uidemur, sed ita, cum quid atrocius commissum fuerit, quod aperte in contumeliam domini fieri uidetur, ueluti si quis alienum seruum uerberauerit, et in hunc casum formula proponitur; at si quis seruo

conuicium fecerit uel pugno eum percusserit, non proponitur ulla formula nec temere petenti datur.

223. Poena autem iniuriarum ex lege XII tabularum propter membrum quidem ruptum talio erat; propter os uero fractum aut conlisum trecentorum assium poena erat, si libero os fractum erat; at si seruo, CL; propter ceteras uero iniurias XXV assium poena erat constituta. et uidebantur illis temporibus in magna paupertate satis idoneae istae pecuniae poenae esse.

224. Sed nunc alio iure utimur. permittitur enim nobis a praetore ipsis iniuriam aestimare, et iudex uel tanti condemnat, quanti nos aestimauerimus, uel minoris, prout illi uisum fuerit; sed cum atrocem iniuriam praetor aestimare soleat, si simul constituerit, quantae pecuniae eo nomine fieri debeat uadimonium, hac ipsa quantitate taxamus formulam, et iudex, qui possit uel minoris damnare, plerumque tamen propter ipsius praetoris auctoritatem non audet minuere condemnationem.

225. Atrox autem iniuria aestimatur uel ex facto, uelut si quis ab aliquo uulneratus aut uerberatus fustibusue caesus fuerit; uel ex loco, uelut si cui in theatro aut in foro iniuria facta sit; uel ex persona, uelut si magistratus iniuriam passus fuerit, uel senatori ab humili persona facta sit iniuria.

GAI INSTITVTIONVM COMMENTARIVS QUARTUS

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 10 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 110 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187

1. Superest, ut de actionibus loquamur. et si quaeramus, quot genera actionum sint, uerius uidetur duo esse, in rem et in personam. nam qui IIII esse dixerunt ex sponsionum generibus, non animaduerterunt quasdam species actionum inter genera se rettulisse.

2. In personam actio est, qua agimus, quotiens litigamus cum aliquo, qui nobis uel ex contractu uel ex delicto obligatus est, id est, cum intendimus DARE FACERE PRAESTARE OPORTERE.

3. In rem actio est, cum aut corporalem rem intendimus nostram esse aut ius aliquod nobis conpetere, uelut utendi aut utendi fruendi, eundi, agendi aquamue ducendi uel altius tollendi prospiciendiue, aut cum actio ex diuerso aduersario est negatiua.

4. Sic itaque discretis actionibus certum est non posse nos rem nostram ab alio ita petere: SI PARET EVM DARE OPORTERE; nec enim quod nostrum est, nobis dari potest, cum scilicet id dari nobis intellegatur, quod ita datur, ut nostrum fiat; nec res, quae nostra iam est, nostra amplius fieri potest. plane odio furum, quo magis pluribus actionibus teneantur, receptum est, ut extra poenam dupli aut quadrupli rei recipiendae nomine fures etiam hac actione teneantur: SI PARET EOS DARE OPORTERE, quamuis sit etiam aduersus eos haec actio, qua rem nostram esse petimus.

5. Appellantur autem in rem quidem actiones uindicationes, in personam uero actiones, quibus dari fieriue oportere intendimus, condictiones.

6. Agimus autem interdum, ut rem tantum consequamur, interdum ut poenam tantum, alias ut rem et poenam.

7. Rem tantum persequimur uelut actionibus, quibus ex contractu agimus.

8. Poenam tantum persequimur uelut actione furti et iniuriarum et secundum quorundam opinionem actione ui bonorum raptorum; nam ipsius rei et uindicatio et condictio nobis conpetit.

9. Rem uero et poenam persequimur uelut ex his causis, ex quibus aduersus infitiantem in duplum agimus; quod accidit per actionem iudicati, depensi, damni iniuriae legis Aquiliae, aut legatorum nomine, quae per damnationem certa relicta sunt.

10. Quaedam praeterea sunt actiones, quae ad legis actionem exprimuntur, quaedam sua ui ac potestate constant. quod ut manifestum fiat, opus est, ut prius de legis actionibus loquamur.

11. Actiones, quas in usu ueteres habuerunt, legis actiones appellabantur uel ideo, quod legibus proditae erant, quippe tunc edicta praetoris, quibus conplures actiones introductae sunt, nondum in usu habebantur, uel ideo, quia ipsarum legum uerbis accommodatae erant et ideo immutabiles proinde atque leges obseruabantur. unde eum, qui de uitibus succisis ita egisset, ut in actione uites nominaret, responsum est rem perdidisse, quia debuisset arbores nominare, eo quod lex XII tabularum, ex qua de uitibus succisis actio conpeteret, generaliter de arboribus succisis loqueretur.

12. Lege autem agebatur modis quinque: sacramento, per iudicis postulationem, per condictionem, per manus iniectionem, per pignoris capionem.

13. Sacramenti actio generalis erat. de quibus enim rebus ut aliter ageretur, lege cautum non erat, de his sacramento agebatur: eaque actio proinde periculosa erat falsi ******** atque hoc tempore periculosa est actio certae creditae pecuniae propter sponsionem, qua periclitatur reus, si temere neget, et restipulationem, qua periclitatur actor, si non debitum petat. nam qui uictus erat, summam sacramenti praestabat poenae nomine; eaque in publicum cedebat praedesque eo nomine praetori dabantur, non ut nunc sponsionis et restipulationis poena lucro cedit aduersarii, qui uicerit.

14. Poena autem sacramenti aut quingenaria erat aut quinquagenaria. nam de rebus mille aeris plurisue quingentis assibus, de minoris uero quinquaginta assibus sacramento contendebatur; nam ita lege XII tabularum cautum erat. at si de libertate hominis controuersia erat, etiamsi pretiosissimus homo esset, tamen ut L assibus sacramento contenderetur, eadem lege cautum est fauore scilicet libertatis, ne onerarentur adsertores. [. . . . . vv. 11 . . . .]

15. [. . . . .] istae omnes actiones [. . . . . vv. 5 . . . .] captus [. . . . . vv. 5 . . . .] ad iudicem accipiundum uenirent. postea uero reuersis dabatur. ut autem die XXX. iudex detur, per legem Pinariam factum est; ante

eam autem legem statim dabatur iudex. illud ex superioribus intellegimus, si de re minoris quam M aeris agebatur, quinquagenario sacramento, non quingenario eos contendere solitos fuisse. postea tamen quam iudex datus esset, comperendinum diem, ut ad iudicem uenirent, denuntiabant; deinde cum ad iudicem uenerant, antequam apud eum causam perorarent, solebant breuiter ei et quasi per indicem rem exponere; quae dicebatur causae coniectio quasi causae suae in breue coactio.

16 Si in rem agebatur, mobilia quidem et mouentia, quae modo in ius adferri adduciue possent, in iure uindicabantur ad hunc modum: qui uindicabat, festucam tenebat; deinde ipsam rem adprehendebat, uelut hominem, et ita dicebat: HVNC EGO HOMINEM EX IVRE QVIRITIVM MEVM ESSE AIO SECVNDVM SVAM CAVSAM; SICVT DIXI, ECCE TIBI, VINDICTAM INPOSVI, et simul homini festucam inponebat. aduersarius eadem similiter dicebat et faciebat. cum uterque uindicasset, praetor dicebat: MITTITE AMBO HOMINEM, illi mittebant. qui prior uindicauerat, ita alterum interrogabat: POSTVLO, ANNE DICAS, QVA EX CAVSA VINDICAVERIS? ille respondebat: IVS FECI, SICVT VINDICTAM INPOSVI. deinde qui prior uindicauerat, dicebat: QVANDO TV INIVRIA VINDICAVISTI, QVINGENTIS ASSIBVS SACRAMENTO TE PROVOCO; aduersarius quoque dicebat similiter: ET EGO TE; aut si res infra mille asses erat, quinquagenarium scilicet sacramentum nominabant. deinde eadem sequebantur, quae cum in personam ageretur. postea praetor secundum alterum eorum uindicias dicebat, id est interim aliquem possessorem constituebat, eumque iubebat praedes aduersario dare litis et uindiciarum, id est rei et fructuum; alios autem praedes ipse praetor ab utroque accipiebat sacramenti causa, quia id in publicum cedebat. festuca autem utebantur quasi hastae loco, signo quodam iusti dominii, quando iusto dominio ea maxime sua esse credebant, quae ex hostibus cepissent; unde in centumuiralibus iudiciis hasta proponitur.

17. Si qua res talis erat, ut sine incommodo non posset in ius adferri uel adduci, uerbigratia si columna aut nauis aut grex alicuius pecoris esset, pars aliqua inde sumebatur eaque in ius adferebatur, deinde in eam partem quasi in totam rem praesentem fiebat uindicatio; itaque ex grege uel una ouis siue capra in ius adducebatur, uel etiam pilus inde sumebatur et in ius adferebatur; ex naue uero et columna aliqua pars defringebatur; similiter si de fundo uel de aedibus siue de hereditate controuersia erat, pars aliqua inde sumebatur et in ius adferebatur, et in eam partem proinde atque in totam rem praesentem fiebat uindicatio, uelut ex fundo gleba sumebatur et ex aedibus tegula, et si de hereditate controuersia erat, aeque res uel rei pars aliqua inde sumebatur.

[. . . . . Fol. deperditum in codice Veronensi . . . .] Que legis actione restitutum est.

17a. Per iudicis postulationem agebatur, si qua de re ut ita ageretur lex iussisset sicuti lex XII tabularum de eo quod ex stipulatione petitur. eaque res talis fere erat. qui agebat sic dicebat: EX SPONSIONE TE MIII X MILIA SESTERTIORVM DARE OPORTERE AIO: ID POSTVLO AIAS AN NEGES. aduersarius dicebat non oportere. actor dicebat: QVANDO TV NEGAS, TE PRAETOR IVDICEM SIVE ARBITRVM POSTVLO VTI DES. itaque in eo genere actionis sine poena quisque negabat. item de hereditate diuidenda inter coheredes eadem lex per iudicis postulationem agi iussit. idem fecit lex Licinnia, si de aliqua re communi diuidenda ageretur. itaque nominata causa ex qua agebatur statim arbiter petebatur.

17b. Per condictionem ita agebatur: AIO TE MIHI SESTERTIORVM X MILIA DARE OPORTERE: ID POSTVLO, AIAS AVT NEGES. aduersarius dicebat non oportere. actor dicebat: QVANDO TV NEGAS, IN DIEM TRICENSIMVM TIBI IVDICIS CAPIENDI CAVSA CONDICO. deinde die tricensimo ad iudicem capiendum praesto esse debebant. condicere autem denuntiare est prisca lingua. . 18 Itaque haec quidem actio proprie condictio uocabatur. nam actor aduersario denuntiabat, ut ad iudicem capiendum die XXX. adesset; nunc uero non proprie condictionem dicimus actionem in personam esse, qua intendimus dari nobis oportere. nulla enim hoc tempore eo nomine denuntiatio fit.

19. Haec autem legis actio constituta est per legem Siliam et Calpurniam, lege quidem Silia certae pecuniae, lege uero Calpurnia de omni certa re.

20. Quare autem haec actio desiderata sit, cum de eo, quod nobis dari oportet, potuerit aut sacramento aut per iudicis postulationem agi, ualde quaeritur.

21. Per manus iniectionem aeque de his rebus agebatur, de quibus ut ita ageretur, lege aliqua cautum est, uelut iudicati lege XII tabularum. quae actio talis erat: qui agebat, sic dicebat: QVOD TV MIHI IVDICATVS siue DAMNATVS ES SESTERTIVM X MILIA, QVANDOC NON SOLVISTI, OB EAM REM EGO TIBI SESTERTIVM X MILIVM IVDICATI MANVM INICIO, et simul aliquam partem corporis eius prendebat; nec licebat iudicato manum sibi depellere et pro se lege agere, sed uindicem dabat, qui pro se causam agere solebat. qui uindicem non dabat, domum ducebatur ab actore et uinciebatur.

22. Postea quaedam leges ex aliis quibusdam causis pro iudicato manus iniectionem in quosdam dederunt, sicut lex Publilia in eum, pro quo sponsor dependisset, si in sex mensibus proximis, quam pro eo depensum esset, non soluisset sponsori pecuniam; item lex Furia de sponsu aduersus eum, qui a sponsore plus quam uirilem partem exegisset, et denique conplures aliae leges in multis causis talem actionem dederunt.

23. Sed aliae leges ex quibusdam causis constituerunt quasdam actiones per manus iniectionem, sed puram, id est non pro iudicato, uelut lex Furia testamentaria aduersus eum, qui legatorum nomine mortisue causa plus M assibus cepisset, cum ea lege non esset exceptus, ut ei plus capere liceret; item lex Marcia aduersus faeneratores, ut si usuras exegissent, de his reddendis per manus iniectionem cum eis ageretur.

24. Ex quibus legibus et si quae aliae similes essent cum agebatur, manum sibi depellere et pro se lege agere reo licebat. nam et actor in ipsa legis actione non adiciebat hoc uerbum PRO IVDICATO, sed nominata causa, ex qua agebat, ita dicebat: OB EAM REM EGO TIBI MANVM INICIO; cum hi, quibus pro iudicato actio data erat, nominata causa, ex qua agebant, ita inferebant: OB EAM REM EGO TIBI PRO IVDICATO MANVM INICIO nec me praeterit in forma legis Furiae testamentariae PRO IVDICATO uerbum inseri, cum in ipsa lege non sit; quod uidetur nulla ratione factum.

25. Sed postea lege Vallia, excepto iudicato et eo, pro quo depensum est, ceteris omnibus, cum quibus per manus iniectionem agebatur, permissum est sibi manum depellere et pro se agere. itaque iudicatus et is, pro quo depensum est, etiam post hanc legem uindicem dare debebant et, nisi darent, domum ducebantur. istaque, quamdiu legis actiones in usu erant, semper ita obseruabantur; unde nostris temporibus is, cum quo iudicati depensiue agitur, iudicatum solui satisdare cogitur.

26. Per pignoris capionem lege agebatur de quibusdam rebus moribus, de quibusdam rebus lege.

27. Introducta est moribus rei militaris. nam [et] propter stipendium licebat militi ab eo, qui aes tribuebat, nisi daret, pignus capere; dicebatur autem ea pecunia, quae stipendii nomine dabatur, aes militare. item propter eam pecuniam licebat pignus capere, ex qua equus emendus erat; quae pecunia dicebatur aes equestre. item propter eam pecuniam, ex qua hordeum equis erat conparandum; quae pecunia dicebatur aes hordiarium.

28. Lege autem introducta est pignoris capio uelut lege XII tabularum aduersus eum, qui hostiam emisset nec pretium redderet; item aduersus eum, qui mercedem non redderet pro eo iumento, quod quis ideo locasset, ut inde pecuniam acceptam in dapem, id est in sacrificium, inpenderet; item lege censoria data est pignoris capio publicanis uectigalium publicorum populi Romani aduersus eos, qui aliqua lege uectigalia deberent.

29. Ex omnibus autem istis causis certis uerbis pignus capiebatur, et ob id plerisque placebat hanc quoque actionem legis actionem esse; quibusdam autem placebat legis actionem non esse, primum quod pignoris capio extra ius peragebatur, id est non apud praetorem, plerumque etiam absente aduersario,

cum alioquin ceteris actionibus non aliter uti quis posset quam apud praetorem praesente aduersario; praeterea quod nefasto quoque die, id est, quo non licebat lege agere, pignus capi poterat.

30. Sed istae omnes legis actiones paulatim in odium uenerunt. namque ex nimia subtilitate ueterum, qui tunc iura condiderunt, eo res perducta est, ut uel qui minimum errasset, litem perderet; itaque per legem Aebutiam et duas Iulias sublatae sunt istae legis actiones, effectumque est, ut per concepta uerba, id est per formulas, litigaremus.

31. Tantum ex duabus causis permissum est [id legis actionem facere] lege agere, damni infecti et si centumuirale iudicium futurum est; sane cum ad centumuiros itur, ante lege agitur sacramento apud praetorem urbanum uel peregrinum; damni uero infecti nemo uult lege agere, sed potius stipulatione, quae in edicto proposita est, obligat aduersarium suum, idque et commodius ius et plenius est. per pignoris capionem [. . . . . tota pag. . . . .] apparet.

32. Contra in ea forma, quae publicano proponitur, talis fictio est, ut quanta pecunia olim, si pignus captum esset, id pignus is, a quo captum erat, luere deberet, tantam pecuniam condemnetur.

33. Nulla autem formula ad condictionis fictionem exprimitur. siue enim pecuniam siue rem aliquam certam debitam nobis petamus, eam ipsam dari nobis oportere intendimus nec ullam adiungimus condictionis fictionem; itaque simul intellegimus eas formulas, quibus pecuniam aut rem aliquam nobis dari oportere intendimus, sua ui ac potestate ualere. eiusdem naturae sunt actiones commodati, fiduciae, negotiorum gestorum et aliae innumerabiles.

34. Habemus adhuc alterius generis fictiones in quibusdam formulis, uelut cum is, qui ex edicto bonorum possessionem petiit, ficto se herede agit. cum enim praetorio iure is, non legitimo, succedat in locum defuncti, non habet directas actiones et neque id, quod defuncti fuit, potest intendere suum esse neque id, quod ei debebatur, potest intendere dari sibi oportere; itaque ficto se herede intendit, uelut hoc modo: IVDEX ESTO. SI AVLVS AGERIVS, id est si ipse actor, LVCIO TITIO HERES ESSET, TVM SI FVNDVM, DE QVO AGITVR, EX IVRE QVIRITIVM EIVS ESSE OPORTERET; et si [. . . . .] praeposita simili fictione heredis ita subicitur: TVM SI NVMERIVM NEGIDIVM AVLO AGERIO SESTERTIVM X MILIA DARE OPORTERET.

35. Similiter et bonorum emptor ficto se herede agit. sed interdum et alio modo agere solet. nam ex persona eius, cuius bona emerit, sumpta intentione conuertit condemnationem in suam personam, id est, ut quod illius esset uel illi dari oporteret, eo nomine aduersarius huic condemnetur. quae species

actionis appellatur Rutiliana, quia a praetore Publio Rutilio, qui et bonorum uenditionem introduxisse dicitur, conparata est. superior autem species actionis, qua ficto se herede bonorum emptor agit, Seruiana uocatur.

36. Item usucapio fingitur in ea actione, quae Publiciana uocatur. datur autem haec actio ei, qui ex iusta causa traditam sibi rem nondum usu cepit eamque amissa possessione petit; nam quia non potest eam ex iure Quiritium suam esse intendere, fingitur rem usu cepisse, et ita, quasi ex iure Quiritium dominus factus esset, intendit uelut hoc modo: IVDEX ESTO. SI QVEM HOMINEM AVLVS AGERIVS EMIT ET IS EI TRADITVS EST, ANNO POSSEDISSET, TVM SI EVM HOMINEM, DE QVO AGITVR, EIVS EX IVRE QVIRITIVM ESSE OPORTERET et reliqua.

37. Item ciuitas Romana peregrino fingitur, si eo nomine agat aut cum eo agatur, quo nomine nostris legibus actio constituta est, si modo iustum sit eam actionem etiam ad peregrinum extendi. uelut si furti agat peregrinus aut cum eo agatur, formula ita concipitur: IVDEX ESTO. SI PARET LVCIO TITIO A DIONE HERMAEI FILIO OPEVE CONSILIO DIONIS HERMAEI FILII FVRTVM FACTVM ESSE PATERAE AVREAE, QVAM OB REM EVM, SI CIVIS ROMANVS ESSET, PRO FVRE DAMNVM DECIDERE OPORTERET et reliqua; item si peregrinus furti agat, ciuitas ei Romana fingitur. similiter si ex lege Aquilia peregrinus damni iniuriae agat aut cum eo agatur, ficta ciuitate Romana iudicium datur.

38. Praeterea aliquando fingimus aduersarium nostrum kapite deminutum non esse. nam si ex contractu nobis obligatus obligataue sit et kapite deminutus deminutaue fuerit, uelut mulier per coemptionem, masculus per adrogationem, desinit iure ciuili debere nobis, nec directo intendi potest sibi dare eum eamue oportere; sed ne in potestate eius sit ius nostrum corrumpere, introducta est contra eum eamue actio utilis rescissa kapitis deminutione, id est, in qua fingitur kapite deminutus deminutaue non esse.

39. Partes autem formularum hae sunt: demonstratio, intentio, adiudicatio, condemnatio.

40. Demonstratio est ea pars formulae, quae principio ideo inseritur, ut demonstretur res, de qua agitur, uelut haec pars formulae: QVOD AVLVS AGERIVS NVMERIO NEGIDIO HOMINEM VENDIDIT, item haec: QVOD AVLVS AGERIVS APVD NVMERIVM NEGIDIVM HOMINEM DEPOSVIT.

41. Intentio est ea pars formulae, qua actor desiderium suum concludit, uelut haec pars formulae: SI PARET NVMERIVM NEGIDIVM AVLO AGERIO SESTERTIVM X MILIA DARE OPORTERE; item haec: QVIDQVID PARET NVMERIVM NEGIDIVM AVLO AGERIO DARE FACERE

OPORTERE; item haec: SI PARET HOMINEM EX IVRE QVIRITIVM AVLI AGERII ESSE.

42. Adiudicatio est ea pars formulae, qua permittitur iudici rem alicui ex litigatoribus adiudicare, uelut si inter coheredes familiae erciscundae agatur aut inter socios communi diuidundo aut inter uicinos finium regundorum. nam illic ita est: QVANTVM ADIVDICARI OPORTET, IVDEX, Titio ADIVDICATO.

43. Condemnatio est ea pars formulae, qua iudici condemnandi absoluendiue potestas permittitur, uelut haec pars formulae: IVDEX, NVMERIVM NEGIDIVM AVLO AGERIO SESTERTIVM X MILIA CONDEMNA. SI NON PARET, ABSOLVE; item haec: IVDEX, NVMERIVM NEGIDIVM AVLO AGERIO DUMTAXAT X MILIA CONDEMNA, SI NON PARET, ABSOLVITO; item haec: IVDEX, NVMERIVM NEGIDIVM AVLO AGERIO CONDEMNATO et reliqua, ut non adiciatur DVMTAXAT X MILIA.

44. Non tamen istae omnes partes simul inueniuntur; sed quaedam inueniuntur, quaedam non inueniuntur. certe intentio aliquando sola inuenitur, sicut in praeiudicialibus formulis, qualis est, qua quaeritur, aliquis libertus sit, uel quanta dos sit, et aliae complures; demonstratio autem et adiudicatio et condemnatio numquam solae inueniuntur; nihil enim omnino demonstratio sine intentione uel condemnatione ualet; item condemnatio sine intentione uel adiudicatio sine demonstratione nullas uires habet et ob id numquam solae inueniuntur.

45. Sed eas quidem formulas, in quibus de iure quaeritur, in ius conceptas uocamus, quales sunt, quibus intendimus nostrum esse aliquid ex iure Quiritium aut nobis dari oportere aut pro fure damnum decidi oportere; sunt et aliae, in quibus iuris ciuilis intentio est.

46. Ceteras uero in factum conceptas uocamus, id est, in quibus nulla talis intentio concepta est, sed initio formulae nominato eo, quod factum est, adiciuntur ea uerba, per quae iudici damnandi absoluendiue potestas datur; qualis est formula, qua utitur patronus contra libertum, qui eum contra edictum praetoris in ius uocauit. nam in ea ita est: RECVPERATORES SVNTO. SI PARET ILLVM PATRONVM AB ILLO [PATRONO] LIBERTO CONTRA EDICTVM ILLIVS PRAETORIS IN IVS VOCATVM ESSE, RECVPERATORES, ILLVM LIBERTVM ILLI PATRONO SESTERTIVM X MILIA CONDEMNATE. SI NON PARET, ABSOLVITE. ceterae quoque formulae, quae sub titulo DE IN IVS VOCANDO propositae sunt, in factum conceptae sunt, uelut aduersus eum, qui in ius uocatus neque uenerit neque uindicem dederit; item contra eum, qui ui exemerit eum, qui in

ius uocaretur; et denique innumerabiles eius modi aliae formulae in albo proponuntur.

47. Sed ex quibusdam causis praetor et in ius et in factum conceptas formulas proponit, ueluti depositi et commodati. illa enim formula, quae ita concepta est: IVDEX ESTO. QVOD AVLVS AGERIVS APVD NVMERIVM NEGIDIVM MENSAM ARGENTEAM DEPOSVIT, QVA DE RE AGITVR, QVIDQVID OB EAM REM NVMERIVM NEGIDIVM AVLO AGERIO DARE FACERE OPORTET EX FIDE BONA, EIVS, IVDEX, NVMERIVM NEGIDIVM AVLO AGERIO CONDEMNATO. SI NON PARET, ABSOLVITO, in ius concepta est. at illa formula, quae ita concepta est: IVDEX ESTO. SI PARET AVLVM AGERIVM APVD NVMERIVM NEGIDIVM MENSAM ARGENTEAM DEPOSVISSE EAMQVE DOLO MALO NVMERII NEGIDII AVLO AGERIO REDDITAM NON ESSE, QVANTI EA RES ERIT, TANTAM PECVNIAM, IVDEX, NVMERIVM NEGIDIVM AVLO AGERIO CONDEMNATO. SI NON PARET, ABSOLVITO, in factum concepta est. similes etiam commodati formulae sunt.

48. Omnium autem formularum, quae condemnationem habent, ad pecuniariam aestimationem condemnatio concepta est. itaque et si corpus aliquod petamus, uelut fundum, hominem, uestem, aurum, argentum, iudex non ipsam rem condemnat eum, cum quo actum est, sicut olim fieri solebat, sed aestimata re pecuniam eum condemnat.

49. Condemnatio autem uel certae pecuniae in formula proponitur uel incertae.

50. Certae pecuniae uelut in ea formula, qua certam pecuniam petimus; nam illic ima parte formulae ita est: IVDEX, NVMERIVM NEGIDIVM AVLO AGERIO SESTERTIVM X MILIA CONDEMNA. SI NON PARET, ABSOLVE.

51. Incertae uero condemnatio pecuniae duplicem significationem habet. est enim una cum aliqua praefinitione, quae uulgo dicitur cum taxatione, uelut si incertum aliquid petamus; nam illic ima parte formulae ita est: EIVS, IVDEX, NVMERIVM NEGIDIVM AVLO AGERIO DVMTAXAT SESTERTIVM X MILIA CONDEMNA. SI NON PARET, ABSOLVE. uel incerta est et infinita, uelut si rem aliquam a possidente nostram esse petamus, id est, si in rem agamus uel ad exhibendum. nam illic ita est: QVANTI EA RES ERIT, TANTAM PECVNIAM, IVDEX, NVMERIVM NEGIDIVM AVLO AGERIO CONDEMNA. SI NON PARET, ABSOLVITO. quid ergo est? iudex, si condemnet, certam pecuniam condemnare debet, etsi certa pecunia in condemnatione posita non sit.

52. Debet autem iudex attendere, ut cum certae pecuniae condemnatio posita sit, neque maioris neque minoris summa posita condemnet, alioquin litem suam facit; item si taxatio posita sit, ne pluris condemnet quam taxatum sit; alias enim similiter litem suam facit. minoris autem damnare ei permissum est. at si etiam [. . . . . vv. 1 1/2 . . . .] qui formulam accipit, intendere debet, nec amplius [. . . . .] certa condemnatione constringi [. . . . . vv. 2 . . . .] usque uelit.

53. Si quis intentione plus conplexus fuerit, causa cadit, id est rem perdit, nec a praetore in integrum restituitur, exceptis quibusdam casibus, in quibus praetor non patitur [. . . . . vv. 2 . . . .]

53a. Plus autem quattuor modis petitur: re, tempore, loco, causa. re, uelut si quis pro X milibus, quae ei debentur, XX milia petierit, aut si is, cuius ex parte res esset, totam eam aut maiore ex parte suam esse intenderit.

53b. Tempore, ueluti si quis ante diem uel ante condicionem petierit.

53c. Loco, ueluti si, quod certo loco dari promissum est, id alio loco sine commemoratione eius loci petatur, uelut si is, qui ita stipulatus fuerit: EPHESI DARE SPONDES? deinde Romae pure intendat dari sibi oportere. [. . . . . vv. 1 . . . .] DARE MIHI OPORTERE [. . . . . vv. 2 1/2 . . . .] petere, id est non adiecto loco.

53d. Causa plus petitur, uelut si quis in intentione tollat electionem debitoris, quam is habet obligationis iure, uelut si quis ita stipulatus sit: SESTERTIVM X MILIA AVT HOMINEM STICHVM DARE SPONDES? deinde alterutrum eorum [ex his] petat; nam quamuis petat, quod minus est, plus tamen petere uidetur, quia potest aduersarius interdum facilius id praestare, quod non petitur. similiter si quis genus stipulatus sit, deinde speciem petat, uelut si quis purpuram stipulatus sit generaliter, deinde Tyriam specialiter petat; quin etiam licet uilissimam petat, idem iuris est propter eam rationem, quam proxime diximus. idem iuris est, si quis generaliter hominem stipulatus sit, deinde nominatim aliquem petat, uelut Stichum, quamuis uilissimum. itaque sicut ipsa stipulatio concepta est, ita et intentio formulae concipi debet.

54. Illud satis apparet in incertis formulis plus peti non posse, quia cum certa quantitas non petatur, sed QVIDQVID PARET aduersarium DARE FACERE OPORTERE intendatur, nemo potest plus intendere. idem iuris est, et si in rem incertae partis actio data sit, uelut talis: QVANTAM PARTEM PARET IN EO FVNDO, QVO DE AGITUR, actoris ESSE. quod genus actionis in paucissimis causis dari solet.

55. Item palam est, si quis aliud pro alio intenderit, nihil eum periclitari eumque ex integro agere posse, quia nihil ante uidetur egisse, uelut si is, qui

hominem Stichum petere deberet, Erotem petierit, aut si quis ex testamento dari sibi oportere intenderit, cui ex stipulatu debebatur, aut si cognitor aut procurator intenderit sibi dari oportere.

56. Sed plus quidem intendere, sicut supra diximus, periculosum est; minus autem intendere licet. sed de reliquo intra eiusdem praeturam agere non permittitur; nam qui ita agit, per exceptionem excluditur, quae exceptio appellatur litis diuiduae.

57. At si in condemnatione plus positum sit, quam oportet, actoris quidem periculum nullum est; sed reus, cum iniquam formulam acceperit, in integrum restituitur, ut minuatur condemnatio. si uero minus positum fuerit, quam oportet, hoc solum consequitur actor, quod posuit; nam tota quidem res in iudicium deducitur, constringitur autem condemnationis fine, quam iudex egredi non potest. nec ex ea parte praetor in integrum restituit; facilius enim reis praetor succurrit quam actoribus. loquimur autem exceptis minoribus XXV annorum; nam huius aetatis hominibus in omnibus rebus lapsis praetor succurrit.

58. Si in demonstratione plus aut minus positum sit, nihil in iudicium deducitur, et ideo res in integro manet; et hoc est, quod dicitur falsa demonstratione rem non perimi.

59. Sed sunt, qui putant minus recte conprehendi, ut qui forte Stichum et Erotem emerit, recte uideatur ita demonstrare: quod ego de te hominem Erotem emi, et si uelit, de Sticho alia formula iterum agat, quia uerum est eum, qui duos emerit, singulos quoque emisse; idque ita maxime Labeoni uisum est. sed si is, qui unum emerit, de duobus egerit, falsum demonstrat. idem et in aliis actionibus est, uelut commodati et depositi.

60. Sed nos apud quosdam scriptum inuenimus in actione depositi et denique in ceteris omnibus, ex quibus damnatus unusquisque ignominia notatur, eum, qui plus quam oporteret demonstrauerit, litem perdere, uelut si quis una re deposita duas pluresue se deposuisse demonstrauerit, aut si is, cui pugno mala percussa est, in actione iniuriarum etiam aliam partem corporis percussam sibi demonstrauerit; quod an debeamus credere uerius esse, diligentius requiremus. certe cum duae sint depositi formulae, alia in ius concepta, alia in factum, sicut supra quoque notauimus, et in ea quidem formula, quae in ius concepta est, initio res, de qua agitur, demonstratorio modo designetur, deinde inferatur iuris intentio his uerbis: QVIDQVID OB EAM REM ILLVM ILLI DARE FACERE OPORTET, in ea uero, quae in factum concepta est, statim initio intentionis alio modo res, de qua agitur, designetur his uerbis: SI PARET ILLVM APVD ILLVM REM ILLAM DEPOSVISSE, dubitare non debemus, quin si quis in formula, quae in factum composita est, plures res designauerit,

quam deposuerit, litem perdat, quia in intentione plus posuisse uidetur. [. . . . . pag. 210 et 211 . . . .]

61. [. . . . .] continetur, ut habita ratione eius, quod inuicem actorem ex eadem causa praestare oporteret, in reliquum eum, cum quo actum est, condemnare.

62. Sunt autem bonae fidei iudicia haec: ex empto uendito, locato conducto, negotiorum gestorum, mandati, depositi, fiduciae, pro socio, tutelae, rei uxoriae.

63. Liberum est tamen iudici nullam omnino inuicem conpensationis rationem habere; nec enim aperte formulae uerbis praecipitur, sed quia id bonae fidei iudicio conueniens uidetur, ideo officio eius contineri creditur.

64. Alia causa est illius actionis, qua argentarius experitur. nam is cogitur cum conpensatione agere, et ea conpensatio uerbis formulae exprimitur, adeo quidem, ut statim ab initio conpensatione facta minus intendat sibi dari oportere. ecce enim si sestertium X milia debeat Titio, atque ei XX debeantur, sic intendit: SI PARET TITIVM SIBI X MILIA DARE OPORTERE AMPLIVS QVAM IPSE TITIO DEBET.

65. Item bonorum emptor cum deductione agere iubetur, id est ut in hoc solum aduersarius eius condemnetur, quod superest deducto eo, quod inuicem ei bonorum emptor defraudatoris nomine debet.

66. Inter conpensationem autem, quae argentario opponitur, et deductionem, quae obicitur bonorum emptori, illa differentia est, quod in conpensationem hoc solum uocatur, quod eiusdem generis et naturae est; ueluti pecunia cum pecunia conpensatur, triticum cum tritico, uinum cum uino, adeo ut quibusdam placeat non omni modo uinum cum uino aut triticum cum tritico conpensandum, sed ita si eiusdem naturae qualitatisque sit. in deductionem autem uocatur et quod non est eiusdem generis; itaque si pecuniam petat bonorum emptor et inuicem frumentum aut uinum is debeat, deducto quanti id erit, in reliquum experitur.

67. Item uocatur in deductionem et id, quod in diem debetur; conpensatur autem hoc solum, quod praesenti die debetur.

68. Praeterea conpensationis quidem ratio in intentione ponitur; quo fit, ut si facta conpensatione plus nummo uno intendat argentarius, causa cadat et ob id rem perdat. deductum uero ad condemnationem ponitur, quo loco plus petenti periculum non interuenit, utique bonorum emptore agente, qui licet de certa pecunia agat, incerti tamen condemnationem concipit.

69. Quia tamen superius mentionem habuimus de actione, qua in peculium filiorum familias seruorumque ageretur, opus est, ut de hac actione et de ceteris, quae eorundem nomine in parentes dominosue dari solent, diligentius admoneamus.

70. In primis itaque si iussu patris dominiue negotium gestum erit, in solidum praetor actionem in patrem dominumue comparauit, et recte, quia qui ita negotium gerit, magis patris dominiue quam filii seruiue fidem sequitur.

71. Eadem ratione comparauit duas alias actiones, exercitoriam et institoriam. tunc autem exercitoria locum habet, cum pater dominusue filium seruumue magistrum naui praeposuerit et quid cum eo eius rei gratia, cui praepositus fuerit, [negotium] gestum erit. cum enim ea quoque res ex uoluntate patris dominiue contrahi uideatur, aequissimum esse uisum est in solidum actionem dari; quin etiam licet extraneum quisque magistrum naui praeposuerit, siue seruum siue liberum, exercitoria actio in eum redditur. ideo autem exercitoria actio appellatur, quia exercitor uocatur is, ad quem cotidianus nauis quaestus peruenit. institoria uero formula tum locum habet, cum quis tabernae aut cuilibet negotiationi filium seruumue suum uel quemlibet extraneum, siue seruum siue liberum, praeposuerit et quid cum eo eius rei gratia, cui praepositus est, contractum fuerit. ideo autem institoria uocatur, quia qui tabernae praeponitur, institor appellatur. quae et ipsa formula in solidum est.

72. Praeterea tributoria quoque actio in patrem dominumue constituta est, cum filius seruusue in peculiari merce sciente patre dominoue negotietur; nam si quid eius rei gratia cum eo contractum fuerit, ita praetor ius dicit, ut quidquid in his mercibus erit, quod inde receptum erit, id pater dominusue inter se, si quid debebitur, et ceteros creditores pro rata portione distribuant et si creditores querantur minus sibi distributum, quam oporteret, in id quod deest hanc eis actionem pollicetur, quae ut diximus, tributoria uocatur. 72a. Est etiam de peculio et de in rem uerso actio a praetore constituta. licet enim negotium ita gestum sit cum filio seruoue, ut neque uoluntas neque consensus patris dominiue interuenerit, si quid tamen ex ea re, quae cum illis gesta est, in rem patris dominiue uersum sit, quatenus in rem eius uersum fuerit, eatenus datur actio. [uersum autem quid sit, eget plena interpretatione]. at si nihil sit uersum, praetor dat actionem DVMTAXAT DE PECVLIO, et edictum utitur his uerbis. quod edictum loquitur et de eo, qui dolo malo peculium ademerit. si igitur uerbi gratia ex HS - X, quae seruus tuus a me mutua accepit, creditori tuo HS - V soluerit aut rem necessariam, puta familiae cibaria, HS - V emerit et reliqua V quolibet modo consumpserit, pro V quidem in solidum damnari debes, pro ceteris V eatenus, quatenus in peculio sit. ex quo scilicet apparet, si tota HS - X in rem tuam uersa fuerint, tota te HS - X consequi posse; licet enim una est formula, qua de peculio deque eo, quod in rem (patris) domini(ue) uersum sit, agitur, tamen duas habet condemnationes. itaque iudex, apud quem ea formula agitur, ante dispicere solet, an in rem (patris)

domini(ue) uersum sit, nec aliter ad peculii aestimationem transit, quam si aut nihil in rem (patris) domini(ue) uersum intellegatur aut non totum. 73. Cum autem quaeritur, quantum in peculio sit, ante deducitur, quod patri dominoue quique in eius potestate sit, a filio seruoue debetur, et quod superest, hoc solum peculium esse intellegitur. aliquando tamen id, quod ei debet filius seruusue, qui in potestate patris dominiue sit, non deducitur ex peculio, uelut si is, cui debet, in huius ipsius peculio sit.

74. Ceterum dubium non est, quin et is, qui iussu patris dominiue contraxit cuique exercitoria uel institoria formula competit, de peculio aut de in rem uerso agere possit; sed nemo tam stultus erit, ut qui aliqua illarum actionum sine dubio solidum consequi possit, uel in difficultatem se deducat probandi habere peculium eum, cum quo contraxerit, exque eo peculio posse sibi satis fieri uel id, quod persequitur, in rem patris dominiue uersum esse.

74a. Is quoque, cui tributoria actio conpetit, de peculio uel de in rem uerso agere potest. sed huic sane plerumque expedit hac potius actione uti quam tributoria. nam in tributoria eius solius peculii ratio habetur, quod in his mercibus est, in quibus negotiatur filius seruusue quodque inde receptum erit, at in actione peculii, totius. et potest quisque tertia forte aut quarta uel etiam minore parte peculii negotiari, maximam uero partem peculii in aliis rebus habere; longe magis, si potest adprobari id, quod dederit qui contraxit, in rem patris dominiue uersum esse, ad hanc actionem transire debet; nam, ut supra diximus, eadem formula et de peculio et de in rem uerso agitur. 75. Ex maleficio filiorum familias seruorumque, ueluti si furtum fecerint aut iniuriam commiserint, noxales actiones proditae sunt, uti liceret patri dominoue aut litis aestimationem sufferre aut noxae dedere. erat enim iniquum nequitiam eorum ultra ipsorum corpora parentibus dominisue damnosam esse.

76. Constitutae sunt autem noxales actiones aut legibus aut edicto praetoris: legibus, uelut furti lege XII tabularum, damni iniuriae lege Aquilia; edicto praetoris, uelut iniuriarum et ui bonorum raptorum.

77. Omnes autem noxales actiones caput sequuntur. nam si filius tuus seruusue noxam commiserit, quamdiu in tua potestate est, tecum est actio; si in alterius potestatem peruenerit, cum illo incipit actio esse; si sui iuris coeperit esse, directa actio cum ipso est, et noxae deditio extinguitur. ex diuerso quoque directa actio noxalis esse incipit. nam si pater familias noxam commiserit et is se in adrogationem tibi dederit aut seruus tuus esse coeperit, quod quibusdam casibus accidere primo commentario tradidimus, incipit tecum noxalis actio esse, quae ante directa fuit.

78. Sed si filius patri aut seruus domino noxam commiserit, nulla actio nascitur. nulla enim omnino inter me et eum, qui in potestate mea est, obligatio nasci potest; ideoque et si in alienam potestatem peruenerit aut sui

iuris esse coeperit, neque cum ipso neque cum eo, cuius nunc in potestate est, agi potest. unde quaeritur, si alienus seruus filiusue noxam commiserit mihi et is postea in mea esse coeperit potestate, utrum intercidat actio an quiescat. nostri praeceptores intercidere putant, quia in eum casum deducta sit, in quo ab initio consistere non potuerit, ideoque licet exierit de mea potestate, agere me non posse. diuersae scholae auctores, quamdiu in mea potestate sit, quiescere actionem putant, quia ipse mecum agere non possum, cum uero exierit de mea potestate, tunc eam resuscitari.

79. Cum autem filius familias ex noxali causa mancipio datur, diuersae scholae auctores putant ter eum mancipio dari debere, quia lege XII tabularum cautum sit, ne aliter filius de potestate patris exeat, quam si ter fuerit mancipatus; Sabinus et Cassius ceterique nostrae scholae auctores sufficere unam mancipationem crediderunt et illas tres legis XII tabularum ad uoluntarias mancipationes pertinere.

80. Haec ita de his personis, quae in potestate sunt, siue ex contractu siue ex maleficio earum controuersia sit. quod uero ad eas personas, quae in manu mancipioue sunt, ita ius dicitur, ut cum ex contractu earum agatur, nisi ab eo, cuius iuri subiectae sint, in solidum defendantur, bona, quae earum futura forent, si eius iuri subiectae non essent, ueneant. sed cum rescissa capitis deminutione cum iis imperio continenti iudicio agitur, [. . . . . initium paginae 219 . . . .]

81. Quid ergo est? etiamsi ** , de qua re modo diximus, quoque non permissum fuerit ei mortuos homines dedere, tamen et si quis eum dederit, qui fato suo uita excesserit, aeque liberatur.

82. Nunc admonendi sumus agere nos aut nostro nomine aut alieno, ueluti cognitorio, procuratorio, tutorio, curatorio, cum olim, quo tempore legis actiones in usu fuissent, alieno nomine agere non liceret, praeterquam ex certis causis.

83. Cognitor autem certis uerbis in litem coram aduersario substituitur. nam actor ita cognitorem dat: QVOD EGO A TE uerbi gratia FVNDVM PETO, IN EAM REM LVCIVM TITIVM TIBI COGNITOREM DO; aduersarius ita: QVIA TV A ME FVNDVM PETIS, IN EAM REM TIBI PVBLIVM MEVIVM COGNITOREM DO. potest, ut actor ita dicat: QVOD EGO TECVM AGERE VOLO, IN EAM REM COGNITOREM DO; aduersarius ita: QVIA TV MECVM AGERE VIS, IN EAM REM COGNITOREM DO; nec interest, praesens an absens cognitor detur. sed si absens datus fuerit, cognitor ita erit, si cognouerit et susceperit officium cognitoris.

84. Procurator uero nullis certis uerbis in litem substituitur, sed ex solo mandato et absente et ignorante aduersario constituitur; quin etiam sunt, qui

putant eum quoque procuratorem uideri, cui non sit mandatum, si modo bona fide accedat ad negotium et caueat ratam rem dominum habiturum; quamquam et ille, cui mandatum est, plerumque satisdare debet, quia saepe mandatum initio litis in obscuro est et postea apud iudicem ostenditur.

85. Tutores autem et curatores quemadmodum constituantur, primo commentario rettulimus.

86. Qui autem alieno nomine agit, intentionem quidem ex persona domini sumit, condemnationem autem in suam personam conuertit. nam si uerbi gratia L. Titius pro P. Meuio agat, ita formula concipitur: SI PARET NVMERIVM NEGIDIVM PVBLIO MEVIO SESTERTIVM X MILIA DARE OPORTERE, IVDEX, NVMERIVM NEGIDIVM LVCIO TITIO SESTERTIVM X MILIA CONDEMNA. SI NON PARET, ABSOLVE; in rem quoque si agat, intendit: PVBLII MEVII REM ESSE EX IVRE QVIRITIVM, et condemnationem in suam personam conuertit.

87. Ab aduersarii quoque parte si interueniat aliquis, cum quo actio constituitur, intenditur dominum DARE OPORTERE, condemnatio autem in eius personam conuertitur, qui iudicium acceperit; sed cum in rem agitur, nihil in intentione facit eius persona, cum quo agitur, siue suo nomine siue alieno aliquis iudicio interueniat; tantum enim intenditur rem actoris esse.

88. Videamus nunc, quibus ex causis is, cum quo agitur, uel hic, qui agit, cogatur satisdare.

89. Igitur si uerbi gratia in rem tecum agam, satis mihi dare debes; aequum enim uisum est te ideo, quod interea tibi rem, quae an ad te pertineat dubium est, possidere conceditur, cum satisdatione mihi cauere, ut si uictus sis nec rem ipsam restituas nec litis aestimationem sufferas, sit mihi potestas aut tecum agendi aut cum sponsoribus tuis.

90. Multoque magis debes satisdare mihi, si alieno nomine iudicium accipias.

91. Ceterum cum in rem actio duplex sit, aut enim per formulam petitoriam agitur aut per sponsionem, si quidem per formulam petitoriam agitur, illa stipulatio locum habet, quae appellatur IVDICATVM SOLVI si uero per sponsionem, illa, quae appellatur PRO PRAEDE LITIS ET VINDICIARUM.

92. Petitoria autem formula haec est, qua actor intendit rem suam esse.

93. Per sponsionem uero hoc modo agimus: prouocamus aduersarium tali sponsione: SI HOMO, QVO DE AGITVR, EX IVRE QVIRITIVM MEVS EST, SESTERTIOS XXV NVMMOS DARE SPONDES? deinde formulam

edimus, qua intendimus sponsionis summam nobis dari oportere; qua formula ita demum uincimus, si probauerimus rem nostram esse.

94. Non tamen haec summa sponsionis exigitur. non enim poenalis est, sed praeiudicialis, et propter hoc solum fit, ut per eam de re iudicetur; unde etiam is, cum quo agitur, non restipulatur. ideo autem appellata est PRO PRAEDE VINDICIARUM stipulatio, quia in locum praedium successit, quia olim, cum lege agebatur, pro lite et uindiciis, id est pro re et fructibus, a possessore petitori dabantur praedes.

95. Ceterum si apud centumuiros agitur, summam sponsionis non per formulam petimus, sed per legis actionem sacramento *** reo prouocato; eaque sponsio sestertiorum CXXV nummum fieri solet propter legem Crepereiam.

96. Ipse autem, qui in rem agit, si suo nomine agat, satis non dat.

97. Ac nec si per cognitorem quidem agat, ulla satisdatio uel ab ipso uel a domino desideratur. cum enim certis et quasi sollemnibus uerbis in locum domini substituatur cognitor, merito domini loco habetur.

98. Procurator uero si agat, satisdare iubetur ratam rem dominum habiturum. periculum enim est, ne iterum dominus de eadem re experiatur; quod periculum non interuenit, si per cognitorem actum fuerit, quia de qua re quisque per cognitorem egerit, de ea non magis amplius actionem habet, quam si ipse egerit.

99. Tutores et curatores eo modo, quo et procuratores, satisdare debere uerba edicti faciunt; sed aliquando illis satisdatio remittitur.

100. Haec ita, si in rem agatur; si uero in personam, ab actoris quidem parte, quando satisdari debeat, quaerentes eadem repetemus, quae diximus in actione, qua in rem agitur.

101. Ab eius uero parte, cum quo agitur, si quidem alieno nomine aliquis interueniat, omni modo satisdari debet, quia nemo alienae rei sine satisdatione defensor idoneus intellegitur; sed si quidem cum cognitore agatur, dominus satisdare iubetur, si uero cum procuratore, ipse procurator. idem et de tutore et de curatore iuris est.

102. Quod si proprio nomine aliquis iudicium aliquid accipiat in personam, certis ex causis satisdare solet, quas ipse praetor significat. quarum satisdationum duplex causa est; nam aut propter genus actionis satisdatur aut propter personam, quia suspecta sit: propter genus actionis, uelut iudicati depensiue aut cum de moribus mulieris agitur; propter personam, uelut si cum

eo agitur, qui decoxerit cuiusue bona a creditoribus possessa proscriptaue sunt, siue cum eo herede agatur, quem praetor suspectum aestimauerit.

103. Omnia autem iudicia aut legitimo iure consistunt aut imperio continentur.

104. Legitima sunt iudicia, quae in urbe Roma uel intra primum urbis Romae miliarium inter omnes ciues Romanos sub uno iudice accipiuntur; eaque e lege Iulia iudiciaria, nisi in anno et sex mensibus iudicata fuerint, expirant. et hoc est, quod uulgo dicitur e lege Iulia litem anno et sex mensibus mori.

105. Imperio uero continentur recuperatoria et quae sub uno iudice accipiuntur interueniente peregrini persona iudicis aut litigatoris; in eadem causa sunt, quaecumque extra primum urbis Romae miliarium tam inter ciues Romanos quam inter peregrinos accipiuntur. ideo autem imperio contineri iudicia dicuntur, quia tamdiu ualent, quamdiu is, qui ea praecepit, imperium habebit.

106. Et si quidem imperio continenti iudicio actum fuerit, siue in rem siue in personam, siue ea formula, quae in factum concepta est, siue ea, quae in ius habet intentionem, postea nihilo minus ipso iure de eadem re agi potest; et ideo necessaria est exceptio rei iudicatae uel in iudicium deductae.

107. Si uero legitimo iudicio in personam actum sit ea formula, quae iuris ciuilis habet intentionem, postea ipso iure de eadem re agi non potest, et ob id exceptio superuacua est; si uero uel in rem uel in factum actum fuerit, ipso iure nihilo minus postea agi potest, et ob id exceptio necessaria est rei iudicatae uel in iudicium deductae.

108. Alia causa fuit olim legis actionum. nam qua de re actum semel erat, de ea postea ipso iure agi non poterat; nec omnino ita, ut nunc, usus erat illis temporibus exceptionum.

109. Ceterum potest ex lege quidem esse iudicium, sed legitimum non esse; et contra ex lege non esse, sed legitimum esse. nam si uerbi gratia ex lege Aquilia uel Ollinia uel Furia in prouinciis agatur, imperio continebitur iudicium; idemque iuris est, et si Romae apud recuperatores agamus uel apud unum iudicem interueniente peregrini persona; et ex diuerso si ex ea causa, ex qua nobis edicto praetoris datur actio, Romae sub uno iudice inter omnes ciues Romanos accipiatur iudicium, legitimum est.

110. Quo loco admonendi sumus eas quidem actiones, quae ex lege senatusue consultis proficiscuntur, perpetuo solere praetorem accommodare, eas uero, quae ex propria ipsius iurisdictione pendent, plerumque intra annum dare.

111. Aliquando tamen et perpetuo eas dat, uelut quibus imitatur ius legitimum, quales sunt eae, quas bonorum possessoribus ceterisque, qui heredis loco sunt,

accommodat. furti quoque manifesti actio, quamuis ex ipsius praetoris iurisdictione proficiscatur, perpetuo datur; et merito, cum pro capitali poena pecuniaria constituta sit.

112. Non omnes autem actiones, quae in aliquem aut ipso iure conpetunt aut a praetore dantur, etiam in heredem aeque conpetunt aut dari solent. est enim certissima iuris regula ex maleficiis poenales actiones in heredem nec conpetere nec dari solere, uelut furti, ui bonorum raptorum, iniuriarum, damni iniuriae. sed heredi ****dem [uidelicet actoris] huiusmodi actiones competunt nec denegantur, excepta iniuriarum actione et si qua alia similis inueniatur actio.

113. Aliquando tamen etiam ex contractu actio neque heredi neque in heredem conpetit. nam adstipulatoris heres non habet actionem, sed et sponsoris et fidepromissoris heres non tenetur.

114. Superest, ut dispiciamus, si ante rem iudicatam is, cum quo agitur, post acceptum iudicium satisfaciat actori, quid officio iudicis conueniat, utrum absoluere an ideo potius damnare, quia iudicii accipiendi tempore in ea causa fuerit, ut damnari debeat. nostri praeceptores absoluere eum debere existimant; nec interesse, cuius generis sit iudicium. et hoc est, quod uolgo dicitur Sabino et Cassio placere omnia iudicia absolutoria esse. [. . . . .] de bonae fidei autem iudiciis idem sentiunt, quia in eiusmodi iudiciis liberum est officium iudicis. tantumdem et de in rem actionibus putant, quia formulae uerbis id ipsum exprimatur [. . . . . vv. 7 . . . .] sunt etiam in personam tales actiones in quibus ex-primitur [. . . . . vv. 7 . . . .] actum fuit.

115. Sequitur, ut de exceptionibus dispiciamus.

116. Conparatae sunt autem exceptiones defendendorum eorum gratia, cum quibus agitur. saepe enim accidit, ut quis iure ciuili teneatur, sed iniquum sit eum iudicio condemnari. uelut si stipulatus sim a te pecuniam tamquam credendi causa numeraturus nec numerauerim. nam eam pecuniam a te peti posse certum est. dare enim te oportet, cum ex stipulatu tenearis; sed quia iniquum est te eo nomine condemnari, placet per exceptionem doli mali te defendi debere. item si pactus fuero tecum, ne id, quod mihi debeas, a te petam, nihilo minus id ipsum a te petere possum dari mihi oportere, quia obligatio pacto conuento non tollitur; sed placet debere me petentem per exceptionem pacti conuenti repelli.

117. In his quoque actionibus, quae non in personam sunt, exceptiones locum habent. uelut si metu me coegeris aut dolo induxeris, ut tibi rem aliquam mancipio dem, tua est; sin eam rem a me petas, datur mihi exceptio, per quam, si metus causa te fecisse uel dolo malo arguero, repelleris. item si fundum

litigiosum sciens a non possidente emeris eumque a possidente petas, opponitur tibi exceptio, per quam omni modo summoueris.

118. Exceptiones autem alias in edicto praetor habet propositas, alias causa cognita accommodat. quae omnes uel ex legibus uel ex his, quae legis uicem optinent, substantiam capiunt uel ex iurisdictione praetoris proditae sunt.

119. Omnes autem exceptiones in contrarium concipiuntur, quam adfirmat is, cum quo agitur. nam si uerbi gratia reus dolo malo aliquid actorem facere dicat, qui forte pecuniam petit, quam non numerauit, sic exceptio concipitur: SI IN EA RE NIHIL DOLO MALO AVLI AGERII FACTVM SIT NEQVE FIAT; item si dicat contra pactionem pecuniam peti, ita concipitur exceptio: SI INTER AVLVM AGERIVM ET NVMERIVM NEGIDIVM NON CONVENIT, NE EA PECVNIA PETERETUR; et denique in ceteris causis similiter concipi solet, ideo scilicet, quia omnis exceptio obicitur quidem a reo, sed ita formulae inseritur, ut condicionalem faciat condemnationem, id est, ne aliter iudex eum, cum quo agitur, condemnet, quam si nihil in ea re, qua de agitur, dolo actoris factum sit; item ne aliter iudex eum condemnet, quam si nullum pactum conuentum de non petenda pecunia factum fuerit.

120. Dicuntur autem exceptiones aut peremptoriae aut dilatoriae.

121. Peremptoriae sunt, quae perpetuo ualent nec euitari possunt, uelut quod metus causa aut dolo malo aut quod contra legem senatusue consultum factum est aut quod res iudicata est uel in iudicium deducta est, item pacti conuenti, quod factum est, ne omnino pecunia peteretur. 122. Dilatoriae sunt exceptiones, quae ad tempus ualent, ueluti illius pacti conuenti, quod factum est uerbi gratia, ne intra quinquennium peteretur; finito enim eo tempore non habet locum exceptio. cui similis exceptio est litis diuiduae et rei residuae. nam si quis partem rei petierit et intra eiusdem praeturam reliquam partem petat, hac exceptione summouetur, quae appellatur litis diuiduae; item si is, qui cum eodem plures lites habebat, de quibusdam egerit, de quibusdam distulerit, ut ad alios iudices eant, si intra eiusdem praeturam de his, quas distulerit, agat, per hanc exceptionem, quae appellatur rei residuae, summouetur.

123. Obseruandum est autem ei, cui dilatoria obicitur exceptio, ut differat actionem; alioquin si obiecta exceptione egerit, rem perdit; non enim post illud tempus, quo integra re eam euitare poterat, adhuc ei potestas agendi superest re in iudicium deducta et per exceptionem perempta.

124. Non solum autem ex tempore, sed etiam ex persona dilatoriae exceptiones intelleguntur, quales sunt cognitoriae, uelut si is, qui per edictum cognitorem dare non potest, per cognitorem agat, uel dandi quidem cognitoris ius habeat, sed eum det, cui non licet cognituram suscipere. nam si obiciatur

exceptio cognitoria, si ipse talis erit, ut ei non liceat cognitorem dare, ipse agere potest; si uero cognitori non liceat cognituram suscipere, per alium cognitorem aut per semet ipsum liberam habet agendi potestatem, et tam hoc quam illo modo euitare potest exceptionem. quod si dissimulauerit eam et per cognitorem egerit, rem perdit. 125. Sed peremptoria quidem exceptione si reus per errorem non fuerit usus, in integrum restituitur adiciendae exceptionis gratia. dilatoria uero si non fuerit usus, an in integrum restituatur, quaeritur.

126. Interdum euenit, ut exceptio, quae prima facie iusta uideatur, inique noceat actori. quod cum accidit, alia adiectione opus est adiuuandi actoris gratia. quae adiectio replicatio uocatur, quia per eam replicatur atque resoluitur uis exceptionis. nam si uerbi gratia pactus sum tecum, ne pecuniam, quam mihi debes, a te peterem, deinde postea in contrarium pacti sumus, id est ut petere mihi liceat, et, si agam tecum, excipias tu, ut ita demum mihi condemneris, si non conuenerit, ne eam pecuniam peterem, nocet mihi exceptio pacti conuenti; namque nihilo minus hoc uerum manet, etiam si postea in contrarium pacti sumus; sed quia iniquum est me excludi exceptione, replicatio mihi datur ex posteriore pacto hoc modo: AVT SI POSTEA CONVENIT, VT MIHI EAM PECVNIAM PETERE LICERET.

126a. Item si argentarius pretium rei, quae in auctionem uenerit, persequatur, obicitur ei exceptio, ut ita demum emptor damnetur, si ei res, quam emerit, tradita est, et est iusta exceptio. sed si in auctione praedictum est, ne ante emptori res traderetur, quam si pretium soluerit, replicatione tali argentarius adiuuatur: AVT SI PRAEDICTVM EST, NE ALITER EMPTORI RES TRADERETVR, QVAM SI PRETIVM EMPTOR SOLVERIT.. 127 Interdum autem euenit, ut rursus replicatio, quae prima facie iusta sit, inique reo noceat; quod cum accidit, adiectione opus est adiuuandi rei gratia, quae duplicatio uocatur.

128. Et si rursus ea prima facie iusta uideatur, sed propter aliquam causam inique actori noceat, rursus adiectione opus est, qua actor adiuuetur, quae dicitur triplicatio.

129. Quarum omnium adiectionum usum interdum etiam ulterius, quam diximus, uarietas negotiorum introduxit.

130. Videamus etiam de praescriptionibus, quae receptae sunt pro actore.

131. Saepe enim ex una eademque obligatione aliquid iam praestari oportet, aliquid in futura praestatione est, uelut cum in singulos annos uel menses certam pecuniam stipulati fuerimus. nam finitis quibusdam annis aut mensibus huius quidem temporis pecuniam praestari oportet, futurorum autem annorum sane quidem obligatio contracta intellegitur, praestatio uero adhuc nulla est; si ergo uelimus id quidem, quod praestari oportet, petere et in iudicium

deducere, futuram uero obligationis praestationem in integro relinquere, necesse est, ut cum hac praescriptione agamus: EA RES AGATVR, CVIVS REI DIES FVIT. alioquin si sine hac praescriptione egerimus, ea scilicet formula, qua incertum petimus, cuius intentio his uerbis concepta est: QVIDQVID PARET NVMERIVM NEGIDIVM AVLO AGERIO DARE FACERE OPORTERE, totam obligationem, id est etiam futuram, in hoc iudicium deducimus, et quae ante tempus obligati [. . . . . vv. 1 3/4 . . . .]

131a. Item si uerbi gratia ex empto agamus, ut nobis fundus mancipio detur, debemus hoc modo praescribere: EA RES AGATVR DE FVNDO MANCIPANDO, ut postea, si uelimus uacuam possessionem nobis tradi, [. . . . . vv. 1 1/4 . . . .] re sumus, totius illius iuris obligatio illa incerta actione: QVIDQVID OB EAM REM NVMERIVM NEGIDIVM AVLO AGERIO DARE FACERE OPORTET, per intentionem consumitur, ut postea nobis agere uolentibus de uacua possessione tradenda nulla supersit actio.

132. Praescriptiones scilicet appellatas esse ab eo, quod ante formulas praescribuntur, plus quam manifestum est.

133. Sed his quidem temporibus, sicut supra quoque notauimus, omnes praescriptiones ab actore proficiscuntur. olim autem quaedam et pro reo opponebantur, qualis illa erat praescriptio: EA RES AGATVR, SI IN EA RE PRAEIVDICIVM HEREDITATI NON FIAT, quae nunc in speciem exceptionis deducta est et locum habet, cum petitor hereditatis alio genere iudicii praeiudicium hereditati faciat, uelut cum singulas res petat; est enim iniquum per unius [. . . . . fol. deperd. . . . .]

134. [. . . . . .] in intentione formulae de iure quaeritur, id est, cui dari oporteat; et sane domino dari oportet, quod seruus stipulatur; at in praescriptione de facto quaeritur, quod secundum naturalem significationem uerum esse debet.

135. Quaecumque autem diximus de seruis, eadem de ceteris quoque personis, quae nostro iuri subiectae sunt, dicta intellegemus.

136. Item admonendi sumus, si cum ipso agamus, qui incertum promiserit, ita nobis formulam esse propositam, ut praescriptio inserta sit formulae loco demonstrationis hoc modo: IVDEX ESTO. QVOD AVLVS AGERIVS DE NVMERIO NEGIDIO INCERTVM STIPVLATVS EST, CVIVS REI DIES FVIT, QVIDQVID OB EAM REM NVMERIVM NEGIDIVM AVLO AGERIO DARE FACERE OPORTET et reliqua.

137. At si cum sponsore aut fideiussore agatur, praescribi solet in persona quidem sponsoris hoc modo: EA RES AGATVR, QVOD AVLVS AGERIVS DE LVCIO TITIO INCERTVM STIPVLATVS EST, QVO NOMINE NVMERIVS NEGIDIVS SPONSOR EST, CVIVS REI DIES FVIT; in

persona uero fideiussoris: EA RES AGATVR, QVOD NVMERIVS NEGIDIVS DE LVCIO TITIO INCERTVM FIDE SVA ESSE IVSSIT, CVIVS REI DIES FVIT; deinde formula subicitur.

138. Superest, ut de interdictis dispiciamus.

139. Certis igitur ex causis praetor aut proconsul principaliter auctoritatem suam finiendis controuersiis interponit. quod tum maxime facit, cum de possessione aut quasi possessione inter aliquos contenditur; et in summa aut iubet aliquid fieri aut fieri prohibet. formulae autem et uerborum conceptiones, quibus in ea re utitur, interdicta decretaue uocantur.

140. Vocantur autem decreta, cum fieri aliquid iubet, uelut cum praecipit, ut aliquid exhibeatur aut restituatur, interdicta uero, cum prohibet fieri, uelut cum praecipit, ne sine uitio possidenti uis fiat, neue in loco sacro aliquid fiat. unde omnia interdicta aut restitutoria aut exhibitoria aut prohibitoria uocantur.

141. Nec tamen cum quid iusserit fieri aut fieri prohibuerit, statim peractum est negotium, sed ad iudicem recuperatoresue itur et ibi editis formulis quaeritur, an aliquid aduersus praetoris edictum factum sit uel an factum non sit, quod is fieri iusserit. et modo cum poena agitur modo sine poena: cum poena, uelut cum per sponsionem agitur, sine poena, uelut cum arbiter petitur; et quidem ex prohibitoriis interdictis semper per sponsionem agi solet, ex restitutoriis uero uel exhibitoriis modo per sponsionem, modo per formulam agitur, quae arbitraria uocatur.

142. Principalis igitur diuisio in eo est, quod aut prohibitoria sunt interdicta aut restitutoria aut exhibitoria.

143. Sequens in eo est diuisio, quod uel adipiscendae possessionis causa conparata sunt uel retinendae uel reciperandae.

144. Adipiscendae possessionis causa interdictum accommodatur bonorum possessori, cuius principium est QVORUM BONORVM; eiusque uis et potestas haec est, ut quod quisque ex his bonis, quorum possessio alicui data est, pro herede aut pro possessore possidet doloue fecit, quo minus possideret, id ei, cui bonorum possessio data est, restituatur. pro herede autem possidere uidetur tam is, qui heres est, quam is, qui putat se heredem esse; pro possessore is possidet, qui sine causa aliquam rem hereditariam uel etiam totam hereditatem sciens ad se non pertinere possidet. ideo autem adipiscendae possessionis uocatur, quia ei tantum utile est, qui nunc primum conatur adipisci rei possessionem; itaque si quis adeptus possessionem amiserit, desinit ei id interdictum utile esse.

145. Bonorum quoque emptori similiter proponitur interdictum, quod quidam possessorium uocant.

146. Item ei, qui publica bona emerit, eiusdem condicionis interdictum proponitur, quod appellatur sectorium, quod sectores uocantur, qui publice bona mercantur.

147. Interdictum quoque, quod appellatur Saluianum, apiscendae possessionis causa comparatum est, eoque utitur dominus fundi de rebus coloni, quas is pro mercedibus fundi pignori futuras pepigisset.

148. Retinendae possessionis causa solet interdictum reddi, cum ab utraque parte de proprietate alicuius rei controuersia est et ante quaeritur, uter ex litigatoribus possidere et uter petere debeat. cuius rei gratia comparata sunt VTI POSSIDETIS et VTRVBI.

149. Et quidem VTI POSSIDETIS interdictum de fundi uel aedium possessione redditur, VTRVBI uero de rerum mobilium possessione.

150. Et si quidem de fundo uel aedibus interdicitur, eum potiorem esse praetor iubet, qui eo tempore, quo interdictum redditur, nec ui nec clam nec precario ab aduersario possideat; si uero de re mobili, eum potiorem esse iubet, qui maiore parte eius anni nec ui nec clam nec precario ab aduersario possederit; idque satis ipsis uerbis interdictorum significatur.

151. Sed in VTRVBI interdicto non solum sua cuique possessio prodest, sed etiam alterius, quam iustum est ei accedere, uelut eius, cui heres extiterit, eiusque, a quo emerit uel ex donatione aut dotis nomine acceperit. itaque si nostrae possessioni iuncta alterius iusta possessio exsuperat aduersarii possessionem, nos eo interdicto uincimus. nullam autem propriam possessionem habenti accessio temporis nec datur nec dari potest. nam ei, quod nullum est, nihil accedere potest. sed et si uitiosam habeat possessionem, id est aut ui aut clam aut precario ab aduersario adquisitam, non datur accessio; nam ei possessio sua nihil prodest.

152. Annus autem retrorsus numeratur. itaque si tu uerbi gratia VIII mensibus possederis prioribus et ego VII posterioribus, ego potior ero, quod trium priorum mensium possessio nihil tibi in hoc interdicto prodest, quod alterius anni possessio est.

153. Possidere autem uidemur non solum, si ipsi possideamus, sed etiam si nostro nomine aliquis in possessione sit, licet is nostro iuri subiectus non sit, qualis est colonus et inquilinus. per eos quoque, apud quos deposuerimus aut quibus commodauerimus aut quibus gratuitam habitationem praestiterimus, ipsi possidere uidemur. et hoc est, quod uolgo dicitur retineri possessionem

posse per quemlibet, qui nostro nomine sit in possessione. quin etiam plerique putant animo quoque retineri possessionem, id est ut, quamuis neque ipsi simus in possessione neque nostro nomine alius, tamen si non relinquendae possessionis animo, sed postea reuersuri inde discesserimus, retinere possessionem uideamur. apisci uero possessionem per quos possimus, secundo commentario rettulimus; nec ulla dubitatio est, quin animo possessionem apisci non possimus.

154. Reciperandae possessionis causa solet interdictum dari, si quis ex possessione ui deiectus sit. nam ei proponitur interdictum, cuius principium est VNDE TV ILLVM VI DEIECISTI, per quod is, qui deiecit, cogitur ei restituere rei possessionem, si modo is, qui deiectus est, nec ui nec clam nec precario ab eo possideret. namque eum, qui a me ui aut clam aut precario possidet, inpune deicio.

155. Interdum tamen etsi eum ui deiecerim, qui a me ui aut clam aut precario possideret, cogor ei restituere possessionem, uelut si armis eum ui deiecerim. nam propter atrocitatem delicti in tantum patior actionem, ut omni modo debeam ei restituere possessionem. armorum autem appellatione non solum scuta et gladios et galeas significari intellegemus, sed et fustes et lapides. 156. Tertia diuisio interdictorum in hoc est, quod aut simplicia sunt aut duplicia.

157. Simplicia sunt, [uelut] in quibus alter actor, alter reus est, qualia sunt omnia restitutoria aut exhibitoria. namque actor est, qui desiderat aut exhiberi aut restitui, reus is est, a quo desideratur, ut exhibeat aut restituat.

158. Prohibitoriorum autem interdictorum [interdum] alia duplicia, alia simplicia sunt.

159. Simplicia sunt, uelut quibus prohibet praetor in loco sacro aut in flumine publico ripaue eius aliquid facere reum. nam actor est, qui desiderat, ne quid fiat, reus is, qui aliquid facere conatur.

160. Duplicia sunt uelut VTI POSSIDETIS interdictum et VTRVBI. ideo autem duplicia uocantur, quod par utriusque litigatoris in his condicio est, nec quisquam praecipue reus uel actor intellegitur, sed unusquisque tam rei quam actoris partes sustinet; quippe praetor pari sermone cum utroque loquitur. nam summa conceptio eorum interdictorum haec est: VTI NUNC POSSIDETIS, QVO MINVS ITA POSSIDEATIS, VIM FIERI VETO; item alterius: VTRVBI HIC HOMO, DE QVO AGITVR, [APVD QVEM] MAIORE PARTE HVIVS ANNI FVIT, QVO MINVS IS EVM DVCAT, VIM FIERI VETO. 161. Expositis generibus interdictorum sequitur, ut de ordine et de exitu eorum dispiciamus; et incipiamus a simplicibus.

162. Si igitur restitutorium uel exhibitorium interdictum redditur, uelut ut restituatur ei possessio, qui ui deiectus est, aut exhibeatur libertus, cui patronus operas indicere uellet, modo sine periculo res ad exitum perducitur, modo cum periculo.

163. Namque si arbitrum postulauerit is, cum quo agitur, accipit formulam, quae appellatur arbitraria, et iudicis arbitrio si quid restitui uel exhiberi debeat, id sine periculo exhibet aut restituit et ita absoluitur; quod si nec restituat neque exhibeat, quanti ea res est, condemnatur. sed et actor sine poena experitur cum eo, quem neque exhibere neque restituere quicquam oportet, praeterquam si calumniae iudicium ei oppositum fuerit decimae partis. quamquam Proculo placuit non esse permittendum calumniae iudicio uti ei, qui arbitrum postulauerit, quasi hoc ipso confessus uideatur restituere se uel exhibere debere. sed alio iure utimur et recte; potius enim ut modestiore uia litiget, arbitrum quisque petit, quam quia confitetur.

164. Ceterum obseruare debet is, qui uult arbitrum petere, ut statim petat, antequam ex iure exeat, [id est antequam a praetore discedat]; sero enim petentibus non indulgetur.

165. Itaque si arbitrum non petierit, sed tacitus de iure exierit, cum periculo res ad exitum perducitur. nam actor prouocat aduersarium sponsione, quod contra edictum praetoris non exhibuerit aut non restituerit; ille autem aduersus sponsionem aduersarii restipulatur; deinde actor quidem sponsionis formulam edit aduersario, ille huic inuicem restipulationis. sed actor sponsionis formulae subicit et aliud iudicium de re restituenda uel exhibenda, ut si sponsione uicerit, nisi ei res exhibeatur aut restituatur, [. . . . . pag. 242 et 243 . . . .]

166. [. . . . .] fructus licitando, is tantisper in possessione constituitur, si modo aduersario suo fructuaria stipulatione cauerit, cuius uis et potestas haec est, ut si contra eum de possessione pronuntiatum fuerit, eam summam aduersario soluat. haec autem licendi contentio fructus licitatio uocatur, scilicet quia [. . . . . vv. 1 1/2 . . . .] postea alter alterum sponsione prouocat, quod aduersus edictum praetoris possidenti sibi uis facta sit, et inuicem ambo restipulantur aduersus sponsionem: [. . . . .] una inter eos sponsio itemque restipulatio una [. . . . .] ad eam fit. [. . . . . vv. 2 1/2 . . . .]

166a. [. . . . .] iudex, apud quem de ea re agitur, illud scilicet requirit, quod praetor interdicto conplexus est, id est, uter eorum eum fundum easue aedes per id tempus, quo interdictum redditur, nec ui nec clam nec precario possideret. cum iudex id explorauerit et forte secundum me iudicatum sit, aduersarium mihi et sponsionis et restipulationis summas, quas cum eo feci, condemnat et conuenienter me sponsionis et restipulationis, quae mecum factae sunt, absoluit; et hoc amplius si apud aduersarium meum possessio est, quia is fructus licitatione uicit, nisi restituat mihi possessionem, Cascelliano siue secutorio iudicio condemnatur.

167. Ergo is, qui fructus licitatione uicit, si non probat ad se pertinere possessionem, sponsionis et restipulationis et fructus licitationis summam poenae nomine soluere et praeterea possessionem restituere iubetur et hoc amplius fructus, quos interea percepit, reddit; summa enim fructus licitationis non pretium est fructuum, sed poenae nomine soluitur, quod quis alienam possessionem per hoc tempus retinere et facultatem fruendi nancisci conatus est.

168. Ille autem, qui fructus licitatione uictus est, si non probauerit ad se pertinere possessionem, tantum sponsionis et restipulationis summam poenae nomine debet.

169. Admonendi tamen sumus liberum esse ei, qui fructus licitatione uictus erit, omissa fructuaria stipulatione, sicut Cascelliano siue secutorio iudicio de possessione reciperanda experitur, ita similiter de fructus licitatione agere. in quam rem proprium iudicium conparatum est, quod appellatur fructuarium, quo nomine actor iudicatum solui satis accipit. dicitur autem et hoc iudicium secutorium, quod sequitur sponsionis uictoriam; sed non aeque Cascellianum uocatur.

170. Sed quia nonnulli interdicto reddito cetera ex interdicto facere nolebant atque ob id non poterat res expediri, praetor in eam rem prospexit et comparauit interdicta, quae secundaria appellamus, quod secundo loco redduntur. quorum uis et potestas haec est, ut qui cetera ex interdicto non faciat, uelut qui uim non faciat aut fructus non liceatur aut qui fructus licitationis satis non det aut si sponsiones non faciat sponsionumue iudicia non accipiat, siue possideat, restituat aduersario possessionem, siue non possideat, uim illi possidenti non faciat. itaque etsi alias potuerit interdicto VTI POSSIDETIS uincere, si cetera ex interdicto fecisset [. . . . .], tamen per interdictum secundarium uincitur. [. . . . . vv. 4 . . . .] Sabinus et Cassius secuti fuerint [. . . . . vv. 33 . . . .] 171. [. . . . . . .] pecuniaria poena modo iurisiurandi religione coercen[. . . . .]. eaque praetor [. . . . .] ideo [. . . . .] aduersus infitiantes ex quibusdam causis dupli actio constituitur, uelut si iudicati aut depensi aut damni iniuriae aut legatorum per damnationem relictorum nomine agitur. ex quibusdam causis sponsionem facere permittitur, uelut de pecunia certa credita et pecunia constituta, sed certae quidem creditae pecuniae tertiae partis, constitutae uero pecuniae partis dimidiae.

172. Quod si neque sponsionis neque dupli actionis periculum ei, cum quo agitur, iniungatur ac ne statim quidem ab initio pluris quam simpli sit actio, permittit praetor iusiurandum exigere NON CALVMNIAE CAVSA INFITIAS IRE. unde quamuis heredes uel qui heredum loco habentur [. . . . . .

. . .] obligati sint, item feminae pupillique eximantur periculo sponsionis, iubet tamen eos iurare.

173. Statim autem ab initio pluris quam simpli actio est uelut furti manifesti quadrupli, nec manifesti dupli, concepti et oblati tripli: nam ex his causis et aliis quibusdam, siue quis neget siue fateatur, pluris quam simpli est actio.

174. Actoris quoque calumnia coercetur modo calumniae iudicio, modo contrario, modo iureiurando, modo restipulatione.

175. Et quidem calumniae iudicium aduersus omnes actiones locum habet et est decimae partis, praeterquam quod aduersus adsertorem tertiae partis est.

176. Liberum est autem ei, cum quo agitur, aut calumniae iudicium opponere aut iusiurandum exigere NON CALVMNIAE CAVSA AGERE.

177. Contrarium autem iudicium ex certis causis constituitur, uelut si iniuriarum agatur et si cum muliere eo nomine agatur, quod dicatur uentris nomine in possessionem missa dolo malo ad alium possessionem transtulisse, et si quis eo nomine agat, quod dicat se a praetore in possessionem missum ab alio quo admissum non esse. sed aduersus iniuriarum quidem actionem decimae partis datur, aduersus uero duas istas quintae.

178. Seuerior autem coercitio est per contrarium iudicium. nam calumniae iudicio X. partis nemo damnatur nisi qui intellegit non recte se agere, sed uexandi aduersarii gratia actionem instituit potiusque ex iudicis errore uel iniquitate uictoriam sperat quam ex causa ueritatis. calumnia enim in adfectu est, sicut furti crimen. contrario uero iudicio omni modo damnatur actor, si causam non tenuerit, licet aliqua opinione inductus crediderit se recte agere.

179. Vtique autem ex quibus causis contrario iudicio agi potest, etiam calumniae iudicium locum habet; sed alterutro tantum iudicio agere permittitur. qua ratione si iusiurandum de calumnia exactum fuerit, quemadmodum calumniae iudicium non datur, ita et contrarium non dari debet.

180. Restipulationis quoque poena ex certis causis fieri solet; et quemadmodum contrario iudicio omni modo condemnatur actor, si causam non tenuerit, nec requiritur, an scierit non recte se agere, ita etiam restipulationis poena omni modo damnatur actor, si uincere non potuerit.

181. Qui autem restipulationis poenam patitur, ei neque calumniae iudicium opponitur neque iurisiurandi religio iniungitur; nam contrarium iudicium ex his causis locum non habere palam est.

182. Quibusdam iudiciis damnati ignominiosi fiunt, uelut furti, ui bonorum raptorum, iniuriarum, item pro socio, fiduciae, tutelae, mandati, depositi. sed furti aut ui bonorum raptorum aut iniuriarum non solum damnati notantur ignominia, sed etiam pacti, ut in edicto praetoris scriptum est; et recte. plurimum enim interest, utrum ex delicto aliquis an ex contractu debitor sit. nec tamen ulla parte edicti id ipsum nominatim exprimitur, ut aliquis ignominiosus sit, sed qui prohibetur et pro alio postulare et cognitorem dare procuratoremue habere, item procuratorio aut cognitorio nomine iudicio interuenire, ignominiosus esse dicitur.

183. In summa sciendum est eum, qui cum aliquo consistere uelit, in ius uocare oportere et eum, qui uocatus est, si non uenerit, poenam ex edicto praetoris committere. quasdam tamen personas sine permissu praetoris in ius uocare non licet, uelut parentes patronos patronas, item liberos et parentes patroni patronaeue; et in eum, qui aduersus ea egerit, poena constituitur.

184. Cum autem in ius uocatus fuerit aduersarius neque eo die finiri potuerit negotium, uadimonium ei faciendum est, id est ut promittat se certo die sisti.

185. Fiunt autem uadimonia quibusdam ex causis pura, id est sine satisdatione, quibusdam cum satisdatione, quibusdam iureiurando, quibusdam recuperatoribus suppositis, id est, ut qui non steterit, is protinus a recuperatoribus in summam uadimonii condemnetur; eaque singula diligenter praetoris edicto significantur.

186. Et si quidem iudicati depensiue agetur, tanti fit uadimonium, quanti ea res erit; si uero ex ceteris causis, quanti actor iurauerit non calumniae causa postulare sibi uadimonium promitti: nec tamen pluris quam partis dimidiae nec pluribus quam sestertium C milibus fit uadimonium. itaque si centum milium res erit nec iudicati depensiue agetur, non plus quam sestertium quinquaginta milium fit uadimonium.

187. Quas autem personas sine permissu praetoris inpune in ius uocare non possumus, easdem nec uadimonio inuitas obligare nobis possumus, praeterquam si praetor aditus permittat.

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CTh.1.1.1 [=brev.1.1.1]

Imp. constantinus a. ad lusitanos. si qua posthac edicta sive constitutiones sine die et consule fuerint deprehensa, auctoritate careant. dat. vii. kal. aug. sabariae, probiano et iuliano vv. cc. coss.

interpretatio. quaecumque* leges sine die et consule fuerint prolatae, non valeant

CTh.1.1.2 [=brev.1.1.2]

Imppp. valentin., theodos. et arcad. aaa. flaviano pf. p. illyrici et italiae. perpensas serenitatis nostrae longa deliberatione constitutiones nec ignorare quemquam, nec dissimulare permittimus. dat. vi. kal. iun. vincentiae, tatiano et symmacho coss.

interpretatio. leges nescire nulli liceat, aut quae sunt statuta contemnere

CTh.1.1.3 [=brev.1.1.3]

Iidem aaa. aureliano pf. u. omnia constituta non praeteritis calumniam faciunt, sed futuris regulam ponunt. dat. iii. kal. mart. constantinopoli, d.N. theodos. a. iii. et abundantio v.C. coss.

interpretatio. omnes leges non ea, quae anteriore tempore acta sunt, damnant, sed in futurum observanda constituunt

CTh.1.1.4 [=brev.1.1.4]

Iidem aaa. victorio proconsuli asiae. generale praeceptum beneficio speciali anteferendum est. dat. xii. kal. sept. constantinopoli, theodos. a. iii. et abundantio v.C. coss.

interpretatio. legem, quae communiter omnes tenet, unius persona vel una causa non vacuet

CTh.1.1.5

Impp. theodosius et valentinianus aa. ad senatum. ad similitudinem gregoriani atque hermogeniani codicis cunctas colligi constitutiones decernimus, quas constantinus inclitus et post eum divi principes nosque tulimus, edictorum viribus aut sacra generalitate subnixas. et primum tituli, que negotiorum sunt certa vocabula, separandi ita sunt, ut, si capitulis diversis expressis ad plures titulos constitutio una pertineat, quod ubique aptum est, collocetur; dein, quod in utramque dici partem faciet varietas, lectionum probetur ordine non solum reputatis consulibus et tempore quaesito imperii, sed ipsius etiam compositione operis validiora esse, quae sunt posteriora, monstrante; post haec, ut constitutionum ipsa etiam verba, quae ad rem pertinent, reserventur, praetermissis illis, quae sanciendae rei non ex ipsa necessitate adiuncta sunt. sed cum simplicius iustiusque sit praetermissis eis, quas posteriores infirmant, explicari solas, quas valere conveniet, hunc quidem codicem et priores diligentioribus compositos cognoscamus, quorum scholasticae intentioni tribuitur nosse etiam illa, quae mandata silentio in desuetudinem abierunt, pro sui tantum temporis negotiis valitura. ex his autem tribus codicibus, et per singulos titulos cohaerentibus prudentium tractatibus et responsis, eorundem opera, qui tertium ordinabunt, noster erit alius, qui nullum errorem, nullas patietur ambages, qui nostro nomine nuncupatus sequenda omnibus vitandaque monstrabit. ad tanti consummationem operis et contexendos codices - quorum primus omni generalium constitutionum diversitate collecta nullaque extra se, quam iam proferri liceat, praetermissa inanem verborum copiam recusabit, alter omni iuris diversitate exclusa magisterium vitae suscipiet - deligendi viri sunt singularis fidei, limatioris ingenii; qui, cum primum codicem nostrae scientiae et publicae auctoritati obtulerint, adgredientur alium, donec dignus editione fuerit, pertractandum. electos vestra amplitudo cognoscat: antiochum virum illustrem, exquaestore et praefectum elegimus, antiochum virum illustrem quaestorem sacri palatii, theodorum virum spectabilem comitem et magistrum memoriae, eudicium et eusebium viros spectabiles magistros scriniorum, iohannem virum spectabilem ex comite nostri sacrarii, comazontem atque eubulum viros spectabiles ex magistris scriniorum et apellem virum disertissimum scholasticum. hos a nostra perennitate electos eruditissimum quemque adhibituros esse confidimus, ut communi studio vitae ratione deprehensa iura excludantur fallacia. in futurum autem si quid promulgari placuerit, ita in coniunctissimi parte alia valebit imperii, ut non fide dubia nec privata adsertione nitatur, sed ex qua parte fuerit constitutum, cum sacris transmittatur adfatibus in alterius quoque recipiendum scriniis et cum edictorum sollemnitate vulgandum. missum enim suscipi et indubitanter optinere conveniet, emendandi vel revocandi potestate nostrae clementiae reservata. declarari autem invicem oportebit nec admittenda aliter. et cetera. dat. vii kal. april. constantinopoli florentio et dionysio conss. (429 mart. 26).

CTh.1.1.6pr.

Idem aa. omnes edictales generalesque constitutiones vel in certis provinciis seu locis valere aut proponi iussae, quas divus constantinus posterioresque principes ac nos tulimus, indicibus rerum titulis distinguantur, ita ut non solum consulum dierumque supputatione, sed etiam ordine compositionis apparere possint novissimae. ac si qua earum in plura sit divisa capita, unumquodque eorum, diiunctum a ceteris apto subiciatur titulo et circumcisis ex quaque constitutione ad vim sanctionis non pertinentibus solum ius relinquatur. (435 dec. 20).

CTh.1.1.6.1

Quod ut brevitate constrictum claritate luceat, adgressuris hoc opus et demendi supervacanea verba et adiciendi necessaria et demutandi ambigua et emendandi incongrua tribuimus potestatem, scilicet ut his modis unaquaeque illustrata constitutio emineat. (435 dec. 20).

CTh.1.1.6.2

Erunt contextores huius theodosiani codicis antiochus amplissimus adque gloriosissimus praefectorius ac consularis eubulus illustris ac magnificus comes et quaestor noster maximinus vir illustris insignibus quaestoriae dignitatis ornatus; sperantius, martyrius, alypius, sebastianus, apollodorus, theodorus, eron spectabiles comites consistoriani maximinus, epigenes, diodorus, procopius spectabiles comites et magistri sacrorum scriniorum; erotius vir spectabilis ex vicariis iuris doctor; neoterius vir spectabilis ex.... (435 dec. 20).

CTh.1.1.6.3

Quorum si quis aut humano praepeditus casu aut aliqua rei publicae detentus sollicitudine ab iniuncto fuerit abstractus negotio, alius in locum eius, si ita fuerit visum, nostro substituetur arbitrio; ut absolutionem codicis in omnibus negotiis iudiciisque valituri nullumque extra se novellae constitutioni locum relicturi, nisi quae post editionem huius fuerit promulgata, nullum possit inhibere obstaculum. dat. xiii k. ian. constantinopoli, dd. nn. theodosio a. xv et valentiniano iiii a. conss. (435 dec. 20).

CTh.1.2.0. De diversis rescriptis

CTh.1.2.1

Imp. constantinus a. iulio antiocho praefecto vigilum. annotationes nostras sine rescriptione admitti non placet, ideoque officium gravitatis tuae observet, sicut semper est custoditum, ut rescripta vel epistulas potius nostras quam adnotationes solas existimes audiendas. dat. iii k. ian. treviris volusiano et anniano conss. (314 [?] dec. 30).

CTh.1.2.2 [=brev.1.2.1]

Imp. constantinus a. ad populum. contra ius rescripta non valeant, quocumque* modo fuerint impetrata. quod enim publica iura praescribunt, magis sequi iudices debent. pp. iv. kal. sept. romae, constantino a. iv. et licinio iv. caes. coss.

interpretatio. quaecumque* contra leges a principibus fuerint obtenta, non valeant

CTh.1.2.3

Idem a. septimio basso praefecto urbi. ubi rigorem iuris placare aut lenire specialiter exoramur, id observetur, ut rescripta ante edictum propositum impetrata suam habeant firmitatem, nec rescripto posteriore derogetur priori. quae vero postea sunt elicita, nullum robur habeant, nisi consentanea sint legibus publicis; maxime cum inter aequitatem iusque interpositam interpretationem, nobis solis et oporteat et liceat inspicere. dat. iii non. decemb. sabino et rufino conss. (316 [immo 317/8] dec. 3).

CTh.1.2.4 [=brev.1.2.2]

Idem a. crepereio donatiano. rescripta, quibus usi non fuerint, qui in fata concedunt, heredes possunt allegare, ut congrue impetrata successoribus emolumenta conquirantur. pp. id. dec. constantino a. v. et licinio v. caes. coss.

interpretatio. beneficia principum, quae illi, qui meruerunt, interveniente morte, non fuerint consecuti, successoribus eorum exsequi liceat, ut beneficia heredes ab auctoribus suis impetrata percipiant

CTh.1.2.5 [=brev.1.2.3]

Idem a. severo pf. u. quoties rescripto nostro praeiudicium vel moratoria praescriptio remittitur, aditus supplicandi pandatur: quod autem totius negotii cognitionem tollit et vires principalis negotii exhaurit, sine gravi partis alterius dispendio convelli non potest. nec praescriptionis igitur peremptoriae* relaxatio petatur, nec contra edictum supplicetur. dat. x. kal. iun. nicaeae, paulino et iuliano vv. cc. coss.

interpretatio. moratoria praescriptio dicitur, quae causam prolongat, id est, quando induciae a litigatore petuntur a principe: peremptoria*, quae causam principalem tollit, id est, si litigator beneficio principis sine iudicio causam velit exstingui. et ideo moratoria praescriptio per rescriptum principis supplicantibus concedi potest; peremptoria* concedi non potest, et si concessa fuerit a principe, non valebit

CTh.1.2.6 [=brev.1.2.4]

Idem a. ad barbarum pompeianum consularem campaniae. etsi non cognitio, sed exsecutio mandatur, de veritate precum inquiri oportet, ut, si fraus intervenit, de omni negotio cognoscatur. dat. iii. id. nov. aquis, dalmatio et zenophilo vv. cc. coss.

interpretatio. quicquid non vera, sed falsa petitio a principe obtinuerit, quia fraus intervenit, non valebit

CTh.1.2.7 [=brev.1.2.5]

Idem a. et iulianus caesar ad taurum pf. p. mulctabuntur iudices, qui rescripta contempserint* aut distulerint. dat. iii. non. iul. mediolano, constantio a. viii. et iuliano caes. coss.

interpretatio. feriantur iudices damno, qui data secundum leges principis praecepta contempserint* aut colludio quocumque* distulerint

CTh.1.2.8 [=brev.1.2.6]

Impp. grat., valentin. et theodos. aaa. floro pf. p. universa rescripta, quae in debitorum causis super praestandis dilationibus impetrata sunt, rescindantur, cum sit acerbius perurgendus, qui, mansuetudinis nostrae pudore fatigato, non quid utilitatibus publicis, sed quid suis fraudibus conveniret, adspexit. dat. viii. kal. mart. constantinopoli, antonio et syagrio vv. cc. coss.

interpretatio. si cuiuslibet rei debitor convictus, propter differendam solutionem a principe inducias impetraverit, beneficium, quod obtinuerit, non valebit, sed cautionem suam implere cogatur

CTh.1.2.9

Idem aaa. principio praefecto praetorio. in fraudem annonariae rei ac devotionis publicae elicitum damnabili subreptione rescriptum, manifestum est vires non posse sortiri. circa omnes igitur par atque aequalis illationis forma teneatur. dat. viii kalend. octob. aquileiae arcadio a. i et bautone v. c. conss.

interpretatio. si quis principis beneficio impetraverit, ut cum reliquis possessoribus tributa non solvat, haec impetratio penitus non valebit: circa omnes enim possessores leges aequalem illationis formam servare praecipiunt. (385 sept. 24)

CTh.1.2.10 [=brev.1.2.7]

Impp. arcad. et honor. aa. remigio pf. augustali. dubium non est, contestationem intelligi etiam, si nostrae fuerint tranquillitati preces oblatae, easque adversus heredem quoque eius, in quem porrectae sunt, vel ab herede eius, qui meruerit, exerceri. nam sicut ex causis numerosis etiam haec actio transmittitur ad heredem, quae testatori competiisse monstratur, sic et e diverso definitione iuris consultorum omnium consona responsione firmatur, ab herede actionem non incipere, quae non competierit testatori. dat. iii. kal. april. constantinopoli, arcadio iv. et honorio iii. aa. coss.

interpretatio. si quis principi de negotio suo preces obtulerit, litem contestatus esse cognoscitur. et si defunctus fuerit is, qui preces obtulerit, vel is, contra quem obtulit, actio et heredibus defuncti et contra heredes pulsati salva permaneat: quia causa actione contestata, ea, quae competebat defuncto, competit et heredi. si vero auctor quolibet ordine repetitionem suam praesens non publicaverit, heres eius, unde auctor actionem non proposuit, agere prohibetur

CTh.1.2.11

Impp. arcadius et honorius aa. eutychiano praefecto praetorio. rescripta ad consultationem emissa vel emittenda, in futurum his tantum negotiis opitulentur, quibus effusa docebuntur. et cetera. dat. viii id. decemb. constantinopoli honorio a. iiii et eutychiano conss. (398 dec. 6).

CTh.1.2.12

Impp. honorius et theodosius aa. iohanni praefecto praetorio. post alia. nulli habetur ambiguum etiam ab heredibus et pro heredibus posse scripta nostri numinis allegari nec excludi temporibus nec aboleri casibus impetratum. et cetera. dat. xiii kal. mart. ravenna post consulatum honorii viiii et theodosii v aa. (413 febr. 17).

CTh.1.3.0. [=brev.1.3.0.] De mandatis principum.

CTh.1.3.1 [=brev.1.3.1]

Imppp. grat., valentin. et theodos. aaa. ad eusignium proconsulem africae. si quis asserat, cum mandatis nostris se venire secretis, omnes sciant, nemini quicquam, nisi quod scriptis probaverit, esse credendum, nec ullius dignitate terreri, sive ille tribuni sive notarii sive comitis praeferat potestatem, sed sacras nostras literas esse credendas. dat. xv. kal. iul. verona. accepta prid. kal. aug. merobaude iterum et saturnino coss.

interpretatio. si quis asserat, cum mandatis dominorum se venire secretis, omnes sciant, nemini quicquam, nisi quod scriptis probaverit, esse credendum, nec ullius dignitate terreri, sed in omnibus scriptis principis esse credendum

CTh.1.4.0. De responsis prudentum

CTh.1.4.1

Imp. constantinus a. ad maximum praefectum urbi. perpetuas prudentium contentiones eruere cupientes ulpiani ac pauli in papinianum notas, qui, dum ingenii laudem sectantur, non tam corrigere eum, quam depravare maluerunt, aboleri praecipimus. dat. iiii k. oct. crispo et constantino conss. (321/4 [321] sept. 28).

CTh.1.4.2

Idem a. ad maximum praefectum praetorio. universa, quae scriptura pauli continentur, recepta auctoritate firmanda sunt et omni veneratione celebranda. ideoque sententiarum libros plenissima luce et perfectissima elocutione et iustissima iuris ratione succinctos in iudiciis prolatos valere minime dubitatur. dat. v k. oct. treviris constantio et maximo conss. (327 [?] sept. 27).

CTh.1.4.3 [=brev.1.4.1]

Impp. theodos. et valentin. aa. ad senatum urbis romae. post alia: papiniani, pauli, gaii, ulpiani atque modestini scripta universa firmamus ita, ut gaium quae paulum, ulpianum et cunctos comitetur auctoritas, lectionesque ex omni eius opere recitentur. eorum quoque scientiam, quorum tractatus atque sententias praedicti omnes suis operibus miscuerunt, ratam esse censemus, ut scaevolae, sabini, iuliani atque marcelli, omniumque, quos illi celebrarunt, si tamen eorum libri, propter antiquitatis incertum, codicum collatione firmentur. ubi autem diversae sententiae proferuntur, potior numerus vincat auctorum, vel, si numerus aequalis sit, eius partis praecedat auctoritas, in qua excellentis ingenii vir papinianus emineat, qui, ut singulos vincit, ita cedit duobus. notas etiam pauli atque ulpiani in papiniani corpus factas, sicut dudum statutum est, praecipimus infirmari. ubi autem pares eorum sententiae recitantur, quorum par censetur auctoritas, quod sequi debeat, eligat moderatio iudicantis. pauli quoque sententias semper valere praecipimus etc. dat. viii. id. nov. ravenna, dd. nn. theodos. xii. et valentin. ii. aa. coss.

interpretatio. haec lex ostendit, quorum iuris conditorum sententiae valeant; hoc est, papiniani, pauli, gaii, ulpiani, modestini, scaevolae, sabini, iuliani atque marcelli: quorum si fuerint prolatae diversae sententiae, ubi maior numerus unum senserit, vincat. quod si forsitan aequalis numerus in utraque parte sit, eius partis praecedat auctoritas, in qua papinianus cum aequali numero senserit: quia ut singulos papinianus vincit, ita et cedit duobus. scaevola, sabinus, iulianus atque marcellus in suis corporibus non inveniuntur, sed in praefatorum opere tenentur inserti. gregorianum vero et hermogenianum ideo lex ista praeteriit, quia suis auctoritatibus confirmantur ex lege priore, sub titulo de constitutionibus principum et edictis. sed ex his omnibus iuris consultoribus, ex gregoriano, hermogeniano, gaio, papiniano et paulo, quae necessaria causis praesentium temporum videbantur, elegimus

CTh.1.5.0. De officio praefectorum praetorio

CTh.1.5.1

Imp. constantinus a. ad constantium praefectum praetorio. edicto omnes provinciales monemus, ut, si interpellantes proprios praesides contempti fuerint, gravitatem tuam interpellent, ut, si id culpa vel neglegentia praesidum admissum esse constiterit, ilico ad scientiam nostram referat gravitas tua, quo possint congrue coerceri. dat. iiii k. sept. antiochiae paulino et iuliano conss. (325 aug. 29).

CTh.1.5.2

Idem a. ad maximum praefectum praetorio. qui de statutis praesidalibus conqueruntur, cum ea in detrimentum legum prolata arbitrantur, ad tuae auctoritatis iudicium pervenire faciant, ut fractis atque convulsis quae perperam inpressa sunt ne nomen quidem sententiae possint retinere. dat. xii k. feb. constantio et maximo conss. (327 [?] ian. 21).

CTh.1.5.3 [=brev.1.5.1]

Imp. constantinus a. ad bassum pf. p. super his, qui a praeside vel a quolibet alio iudice sententiam dictam infirmari deposcunt, sub eo fine sublimitatis tuae succedat examen, ut, si internis negotii usquequaque decursis ex evidenti claruerit, sententiam a iure iustitiaque discedere, ea penitus explosa, controversia de aequitate terminum capiat. quod si consentanea sit legibus iam prompta* sententia, eius pronuntiationis improbus oppugnator, si patrimonio circumfluit, biennio in insulam relegatione plectatur, eiusque bonorum media portio fiscalibus compendiis addicta cedat: quod si agrestis vitae sit aut etiam egentis, ad biennii tempus in metallum detrudendus est. quam legem in annotationibus quoque nostris de iterando post sententiam iudicio custodire debebis. dat. xiii. kal. nov. basso et ablavio coss.

interpretatio. quicumque* causa dicta discussoque negotio a quocumque* fuerit superatus et hanc ipsam litem postea reparare tentaverit, si pro ipso, qui antea addictus est, fuerit legibus lata sententia, prius iudicium non valebit. nam si et apud alium iudicem fuerit superatus, si digna idoneaque persona est, biennio in exsilium deputetur, et medietatem facultatum suarum fiscus acquirat. si vero indigna et pauperior persona est, in metallum biennio deputetur

CTh.1.5.4

Imp. constantius a. ad leontium praefectum praetorio. moneantur iudices, qui provocationes vitantes sub praetextu relationis differunt causas civiles, coepta negotia terminare, ut, si quis appellandum crediderit, in auditorio sacro aput auctoritatem tuam vel eos, qui de appellationibus iudicant, negotium audiatur. dat. iii k. aug. constantio iii et constante ii aa. conss. (342 iul. 30).

CTh.1.5.5

Impp. constantius et constans aa. ad taurum praefectum praetorio. inter cetera solita perpetrari plerique dividere arbitrio suo annonarias species deteguntur, quod nulli omnino fas est praeter sublime fastigium praefecturae. nullus igitur iudex sine auctoritate tua in speciebus annonariis erogandis habeat facultatem. dat. xv k. aug. mediolani arbitione et lolliano conss. (355 iul. 18).

CTh.1.5.6

Idem aa. musoniano praefecto praetorio. nullum patimur praefectorum in aliena dioecesi emolumenta annonaria erogare. dat. vii id. iun. haerbillo datiano et cereale conss. (358 iun. 7).

CTh.1.5.7

Idem aa. musoniano praefecto praetorio. citra nostra praecepta nulli annonas cognoscas esse praebendas. dat. iiii id. iun. mediolani indictione xv. (357 [358] iun. 10).

CTh.1.5.8

Imppp. valens, gratianus et valentinianus aaa. ad marinum praefectum urbi. ex eorum corpore atque ordine, qui sacris cognitionibus praesunt propriamque apparitionem hanc potissimum sustinent, ut speciali officio eminentiae tuae iudiciis obsecundent, cum interposita in aliis iudiciis provocatione definiendi negotii suscipiant curam, eos, qui ad proximatum perveniant vel militiae ordine vel exercitationis merito, deligere debebis, submotis ceteris, quos extra sortem positos et aliunde venientes secreto ordini non oportet adiungi. dat. vii id. mart. valente vi et valentiniano ii aa. conss. (378 mart. 9).

CTh.1.5.9

Imppp. valentinianus, theodosius et arcadius aaa. tatiano praefecto praetorio. si quos iudices corpore marcentes et neglegentes desidiae somniis oscitantes, si quos servilis furti aviditate degeneres vel similium vitiorum labe sublimitas tua reppererit involutos, in eos vindictam publicae ultionis exaggeret et amotis vicarios subroget, ut ad nostrae mansuetudinis scientiam non crimina, sed vindicta referatur. dat. vi. non. mart. mediolano timasio et promoto conss. (389 mart. 2).

CTh.1.5.10

Idem aaa. addeo comiti et magistro utriusque militiae. de ordinario iudice semper illustris est cognitio praefecturae, licet militari viro ab eo facta fuerit iniuria. dat. prid. id. ian. constantinopoli theodosio a. iii et abundantio conss. (393 ian. 12).

CTh.1.5.11

Impp. arcadius et honorius aa. vincentio praefecto praetorio. omnes, qui provincias regunt, reliqua sui temporis deposita administratione compellant; possessores vero, quos ad implendas necessitates nulla potest verecundia conmovere, conventi intra annum trina vice, nisi omnes impleverint functiones, duplatum debitum per officium magnificentiae tuae impleant. dat. iii id. feb. mediolano honorio a. iiii et eutychiano conss. (398 feb. 11).

CTh.1.5.12

Idem aa. messalae praefecto praetorio. per omnes provincias dioeceses tuae per africam largitionalium titulorum comitum submotis dispositionibus magnificentiae tuae huius tituli curam necessitatemque permittimus amotis palatinis omnibus. sciant itaque omnes vicarii vel ordinarii iudices ad se, si dissimulata fuerit exactio, culpam esse referendam. dat. v id. octob. theodoro v. c. cons. (399 oct. 11).

CTh.1.5.13

Idem aa. messalae praefecto praetorio. iam dudum e provinciis arceri iussimus palatinos, cum omnis exactio ad diligentiam magnificentiae tuae et virorum spectabilium vicariorum nec non et ordinariorum iudicum sollicitudinem debeat pertinere: et nunc eadem confirmantes decernimus, ut, si quis palatinus ex officio viri illustris comitis sacrarum largitionum per provincias repertus fuerit, qui exactionem sibi audeat vindicare, ad audientiam viri illustris comitis sacri aerarii ferro obrutus derigatur vel si est idoneus, curiae vindicetur. eos sane palatinos, qui a viro illustri comite rei privatae cum publicis litteris destinantur ad commonitionem iudicis, quo facilius ex praediis rei nostrae conferantur debitae pensiones, cum summa degere praecipimus disciplina: de quorum nominibus, si temere versati fuerint, ad sublimitatem tuam referri per ordinarios iudices oportebit, ut in eos severissime vindicetur. dat. v k. dec. mediolano stilichone et aureliano conss. (400 nov. 27).

CTh.1.5.14

Imppp. arcadius, honorius et theodosius aaa. anthemio praefecto praetorio. si qui posthac velut indebitis oneribus gravati ad preces crediderint convolandum sive de naviculariis rationibus sive de transvectionibus sive de lustralis auri argentive collatione, de omnibus his atque huiusmodi ordinationibus rescripta quae emitti contigerit, ad sedem sublimitatis tuae rescribantur. dat. vii id. dec. constantinopoli stilichone ii et anthemio conss. (405 dec. 7).

CTh.1.6.0. De officio praefecti urbis

CTh.1.6.1

Imp. constantius a. ad senatum. cum appellatio interposita fuerit per bithyniam, paphlagoniam, lydiam, hellespontum, insulas etiam ac phrygiam salutarem, europam ac rhodopam et haemimontum, praefecturae urbi iudicium sacrum appellator observet. dat. v non. mai. tauro et florentio consul. (361 mai. 3).

CTh.1.6.2

Impp. valentinianus et valens aa. ad symmachum praefectum urbi. sacrae definitionis ius magnificentiae tuae detulimus, cum ab urbis romae vicario interposita provocatio nostrae cognitionis opperiri videbitur dignitatem. dat. vi id. iun. mediolano divo ioviano et varroniano consul. (364 iun. 8).

CTh.1.6.3

Idem aa. severo vicario urbis. si quando provocatio interposita adversus sententias vicariae potestatis nostrae cognitionis videatur arbitrium opperiri, nulla itineris fatigatione laedatur sed vir magnificus praefectus urbi rite sollemnibus ordinatis vicem nostram sustinens sacrae disceptationis arbitrium suscepto litis examine terminabit. dat. vi k. iul. constantinopoli divo ioviano et varroniano conss. (364 iul. [?] 26).

CTh.1.6.4

Idem aa. ad symmachum praefectum urbi. si quid sacer ac venerabilis populus deferri aliquibus consideratione vetustatis et gratia postularit, id non ante praebeatur, quam tranquillitatis nostrae fuerit consulta sententia. dat. vi id. mart. valentiniano et valente consulibus. (365 mart. 9).

CTh.1.6.5

Idem aa. ad volusianum praefectum urbi. studentibus nobis statum urbis et rationem annonariam aliquando firmare in animo subiit eiusdem annonae curam non omnibus deferre potestatibus. ac ne praefectura urbis abrogatum sibi aliquid putaret, si totum ad officium annonarium redundasset, eidem praefecturae sollicitudinis ac diligentiae necessitatem mandamus, sed non ita, ut lateat officium annonariae praefecturae, sed ut ambae potestates, in quantum sibi est negotii, tueantur annonam sitque societas muneris ita, ut inferior gradus meritum superioris agnoscat atque ita superior potestas se exserat, ut sciat ex ipso nomine, quid praefecto debeatur annonae. dat. ii non. april. mediolano valentiniano et valente aa. ii consul. (368 [365] apr. 4).

CTh.1.6.6

Idem aa. ad praetextatum praefectum urbi. illustris sinceritas tua quasi in speculis tuebitur, quemadmodum singuli, quibus intra urbem romam publicum munus iniungimus, credito sibi famulentur officio: et si aliquis indignum administratione se gesserit, referre non differat, ut veritate comperta continuo alium idoneum vel tuae celsitudinis testimonio vel nostro dirigamus arbitrio. dat. xii k. oct. novo mansione valentiniano et valente consul. (368 sept. 20).

CTh.1.6.7

Imppp. valens, gratianus et valentinianus aaa. ad rufinum praefectum praetorio. suis partibus annonae praefectura moderatur, sed ita, ut ex veterum more praefecto urbis per publicum incedente honoris eius et loci gratia expensio panis habeatur. eatenus tamen praefecturam annonae cedere volumus dignitatis fastigio, ut curandi partibus non cedat. neque tamen apparitoribus urbanae praefecturae annonarium officium inseratur, sed apparitorum aemulatione secreta ministerio suo annonae praefectura fungatur, non ut potentiae subiecta, sed ut negotii sui diligens tantumque se a contemptu vindicans, quantum non pergat in contumeliam superioris. praefectura autem urbis cunctis, quae intra urbem sunt, antecellat potestatibus, tantum ex omnibus parte delibans, quantum sine iniuria ac detrimento alieni honoris usurpet. dat. iii id. iul. valente v et valentiniano aa. consul. (376 iul. 13).

CTh.1.6.8

Imppp. gratianus, valentinianus et theodosius aaa. ad bassum praefectum urbi. apparitoribus tuis stationes, quas habuere antiquitus, statuimus esse reddendas. igitur pristino more servato ad omnes provincias, quas vel divi constantini constitutio dederat vel probus vir illustris permissa sibi a patre nostro potestate reddiderat, praecelsa sinceritas tua principes destinabit; qui sane meminerint nihil morae in his, quae primipili nomine res poscuntur, esse faciendum. dat. x k. dec. mediolano antonio et syagrio consul. (382 nov.[?] 22).

CTh.1.6.9

Imppp. valentinianus, theodosius et arcadius aaa. ad. symmachum praefectum urbi. disputari de principali iudicio non oportet: sacrilegii enim instar est dubitare, an is dignus sit, quem elegerit imperator. si quis igitur iudicum fuerit repertus, qui supercilium suum principali aestimet iudicio praeferendum, quinque libras auri eius officium, nisi formam nostrae sanctionis suggesserit, decem ipse fisci viribus inferre cogatur. dat. v k. mai. mediolano post consulatum richomeris et clearchi vv. cc. (385 apr. 27).

CTh.1.6.10

Idem aaa. neoterio praefecto praetorio. sacrum iudicium praefecti urbis aeternae paucis dabat reddebatque regionibus: et ideo huic bithyniam atque paphlagoniam nec non phrygiam salutarem credidimus deputandas, ut appellationes suas ad illud mittant examen illudque expectent iudicium in sacrae cognitionis eventu. dat. ulpianis ad iulianam. accepta ii id. a. crago. (.....).

CTh.1.6.11

Impp. honorius et theodosius aa. consulibus, praetoribus, tribunis plebis, senatui suo salutem dicunt. post alia: nihil sibi intra urbem agendum praesumat executio militaris, ac si quid erit forte praeceptum, in notitiam prius urbanae veniat praefecturae quae aut compleat congrua iuri mandata aut contra ius imposita depellat. itaque decernimus, ut, si quis in privato negotio adversus senatorem aut aliquem sacratissimae urbis corporatum seu qui in urbe larem locaverit, sive intra urbem sive per provincias exsecutionem poposcerit militarem, litis, etiam si bona sit, careat eventu: et si quis cuiuslibet honoris aut militiae intra urbem sacratissimam vel in provinciis etiam in actu publico apparitionem habuerit militarem et senatorem vel corporatum urbis aeternae seu in urbe seu in provinciis levi saltem conventione pulsaverit aut iudex non vindicaverit, in perpetuum honore privetur, ita ut salvis de urbano foro praescriptionibus negotia universa dicantur et contra omnem exhibitionis iniuriam non modo senatorem, sed quemvis romanis corporibus insertum leges tueantur. quodsi in his tuendis vir illustris praefectus urbi neglegentia aut trepidatione defuerit, careat dignitate, quam nescit tueri; eos autem, qui armato officio deputati desiderii temeritatem secuti sunt, adflictos supplicio corporali praefecti vigilibus obsequio praefecturae urbanae sententia deputabit, ita ut perpetua eius officii apparitione devincti mutandae militiae ademptam sibi intellegant potestatem, supplicio maiore retinendi, si quolibet genere ad id quod prohibetur irrepserint. dat. viii id. aug. ravenna asclepiodoto et mariniano consul. (423 aug. 6).

CTh.1.6.12

Imp. theodosius a. constantio praefecto urbi. primicerius adiutorum tuae sedis officii per biennium, quod in eodem gradu ex consuetudine priscae ordinationis emeruit, curam insuper personarum usurpatione omni atque ambitione cessante suscipiat, hoc etiam adiecto, ut, si quis ex memorato ordine vel condicionis humanae fine praeventus vel alia quacumque ratione militiae gradum propriae amisisse monstrabitur, solitae ambitionis iniuria vacante locum is, qui iuxta matriculae veritatem sequitur, obtineat. dat. xiii k. ian. constantinopoli victore v. c. consul. (424 dec. 20).

CTh.1.7.0. De officio magistri militum

CTh.1.7.1

Imp. constantius a. et iulianus caes. hermogeni praefecto praetorio. de cetero, quotiens aliqua necessitas depoposcerit transferri de loco milites ad alium locum, communicato tractatu cum magistro equitum ac peditum id fieri oportebit, ut ad ea loca, quae publica utilitas depoposcerit, transferantur. dat. v k. iun. sirmio eusebio et hypatio conss. (359 mai. 28).

CTh.1.7.2

Imppp. theodosius, arcadius et honorius aaa. addeo comiti et magistro utriusque militiae. corrector quidem provinciae augustamnicae ob illatam duci contumeliam, ut cum officio suo condemnaretur, meruit; a sede autem sublimitatis tuae usurpari iudicii pars ista non debuit, quia semper de ordinario iudice illustris est cognitio praefecturae. dat. ii id. ian. constantinopoli theodosio a. iii et abundantio consul. (393 ian. 12).

CTh.1.7.3

Impp. arcadius et honorius stilichoni magistro militum. sicut clarissimis viris comitibus et ducibus diversarum provinciarum et limitum, ita et viro spectabili comiti per africam principes et numerarii ex officio magisteriae potestatis mittantur, sub ea tamen condicione, ut emenso unius anni spatio singuli qui designati sunt intra africam officio functi et actuum suorum et fidei, quam exhibuerint rei publicae, reddendam sibi non ambigant rationem. dat. id. sept. mediolano honorio a. iiii et eutychiano consul. (398 sept. 13).

CTh.1.7.4

Impp. honorius et theodosius aa. ad hypatium magistrum militum per orientem. apparitores officii tuae praestantiae ad aliud iudicium trahi ex auctoritate sacrorum rescriptorum minime oportebit, etiamsi quis id a nostra clementia vel exposita vel suppressa veritate meruerit. sciat igitur illustris magnificentia tua sub te, sive civiliter sive criminaliter appetuntur, eos litigare debere. dat. id. dec. constantinopoli constantio et constante vv. cc. consul. (414 dec. 13).

CTh.1.8.0. De officio quaestoris

CTh.1.8.1

Impp. honorius et theodosius aa. florentio magistro militum. viro illustri quaestore eustathio suggerente cognovimus per innovationem quorundam a minore laterculo praeposituras fuisse sublatas, quod iam in alteram consuetudinem derivatum ex integro revocare noluimus. quadraginta vero praeposituras minori laterculo pro infra scripta instructione eius restitui praecipimus, ut de scrinio memoriae de cetero emittantur, observaturo sublimitatis tuae officio, ut nihil de memorato numero sibi usurpet, quo pro parte habeat inconcussum quod contra rationem fuerat immutatum. dat. id. oct. constantinopoli honorio x et theodosio vi aa. consul. scripta eodem exemplo sapricio magistro militum, helioni magistro officiorum et eustathio quaestori. (415 oct. 15).

CTh.1.8.2

Imp. theodosius a. sallustio, viro illustri comiti et quaestori. laterculi curam totius scias ad tuae sublimitatis sollicitudinem pertinere, ita ut tuo arbitratu ex scrinio memoriae totius minoris laterculi dignitates, hoc est praepositurae omnes, tribunatus et praefecturae iuxta consuetudinem priscam clementiae meae auctoritate deinceps emittantur. dat. vii k. mai. constantinopoli victore v. c. consule. (424 apr. 25).

CTh.1.8.3

Idem a. helioni comiti et magistro officiorum. omnes minoris laterculi dignitates, quae sub cura quidem ac sollicitudine viri illustris quaestoris esse antea videbantur, postea vero vel universae vel mediae ad magistrorum militum potestatem dispositionemque transierant, placuit nunc clementiae meae vetusti temporis more renovato ad prisca deinceps iura revocare. dat. iii k. mai. constantinopoli victore v. c. consule. (424 apr. 29).

CTh.1.9.0. De officio magistri officiorum

CTh.1.9.1

Imp. constantius a. et iulianus caes. ad agentes in rebus. universi, qui indignis natalibus et conversatione deterrima ad scholam agentium in rebus adspiraverunt vel translati sunt, cognoscente viro clarissimo comite et magistro officiorum vestro consortio secernantur, ut ita vos privilegiis dudum indultis frui possitis. ad ducenam etiam et centenam et biarchiam nemo suffragio, sed per laborem unusquisque perveniat, usus omnium testimonio: principatum vero adipiscatur matricula decurrente, ita ut ad curas agendas et cursum illi exeant, quos ordo militiae vocat et labor. adiutor praeterea, in quo totius scholae status et magistri securitas constituta est, omni schola testimonium praebente, idoneus probitate morum ac bonis artibus praeditus nostris per magistrum obtutibus offeratur, ut nostro ordinetur arbitrio, data omnibus contra dicendi licentia, si hanc legem quisquam violare temptet. dat. et proposita romae in foro traiani k. nov. eusebio et hypatio consulibus. (359 nov. 1).

CTh.1.9.2

Imppp. valentinianus, theodosius et arcadius aaa. ad principium magistrum officiorum. nefas est a minoribus maiora vel posci vel sperari: ideoque nemo a nobis postulet agentum in rebus aliquem militiae potiori sociari, nisi quem tua acceptio probari debere significat, ita ut petitorem constet loco esse potiorem. ordinem vero militiae atque stipendia nemo praevertat, etiamsi nostri numinis per obreptionem detulerit indultum: ac si formam istius modi docebitur obtulisse, in locum, ex quo indecenter emerserat, revertatur, ut is gradu ceteros antecedat, quem stipendia longiora vel labor prolixior fecerit anteire. proposita hadrumeti vii id. mart. post consulatum arcadi a. i et bautonis v. c. (386 mart. 9).

CTh.1.9.3

Imppp. arcadius, honorius et theodosius aaa. aemiliano magistro officiorum. magnificentia tua matriculam scholae agentum in rebus ex nostra auctoritate tractabit atque perficiet, ut sedula inspectione laboriosi segnibus, praesentes absentibus ac sibi perpetuo vacantibus praeferantur: ii quoque, quos sua virtus cum nostra munificentia gradibus honoravit sive dignos effecit, praemiorum sibi delatorum competenti firmitate potiantur, quo secreta ignobili turba multorum industrius quisque et labore non minus quam genere nobilis obsequiis nostris inhaereat. dat. k. aug. ancyrae stilichone ii. et anthemio consul. (405 aug. 1).

CTh.1.10.0. De officio comitis sacrarum largitionum

CTh.1.10.1

Imppp. gratianus, valentinianus et theodosius aaa. ad syagrium praefectum praetorio. palatinos strenuos regionibus singulis attributos iubemus eam in cunctis adhibere sollertiam, ut non modo abire e provincia non sinatur qui canonem propriae administrationis exactum certissimis nequeat adprobare documentis, verum etiam mansuetudinis nostrae instructa cognitio eum graviore vindicta censeat corrigendum. dat. iii non. iul. viminacio syagrio et eucherio consul. (381 iul. 5).

CTh.1.10.2

Imppp. valentinianus, theodosius et arcadius aaa. trifolio comiti sacrarum largitionum. palatini monitores frequentissimi ad profligandos largitionales titulos iudicibus ordinariis semper adsistant, deinde, si alicuius remissior super hoc fuerit cura detecta, tamdiu unusquisque iudex a palatinis intra provinciam a se administratam peracto iam honore teneatur, quamdiu per eum id quod debitum fuerit exigatur. dat. vii id. april. constantinopoli arcadio a. et bautone coss. (385 apr. 7).

CTh.1.10.3

Idem aaa. ad florentium comitem sacrarum largitionum. in omnibus causis ita cognitioni iurgiorum operam dabis, ut extra ordinem ac sine temporibus recognoscens mature, cum ratione tulerit, ac rursus severius, si iustitia persuaserit, definitivam scias promendam esse sententiam. dat. v k. dec. arcadio a. i et bautone conss. (385 nov. 25).

CTh.1.10.4

Idem aaa. severino comiti sacrarum largitionum. comperimus inconsulto praefecto urbis ac penitus ignorante raptos ad supplicium mercatores corporalibus affectos iniuriis, gravis insuper multae acerbitate nudatos. cum igitur omnia corporatorum genera, quae in constantinopolitana urbe versantur, universos quoque cives atque populares praefecturae urbanae regi moderamine recognoscas, si cuiuspiam fortasse personam fisci flagitabit examen vel in aliquem horum similis posthac redundabit invidia, is non per officium palatinum, sed per apparitionem sedis urbanae cognoscendo negotio praeparatus ad eum cognitorem, cui urbs tota subiacet, deducetur, ut ab eo possit audiri aut, si necessitas suaserit, ad iudicium tuum te petente transmitti. dat. xvii k. mai. mediolano tatiano et symmacho consul. (391 apr. 15).

CTh.1.10.5

Impp. arcadius et honorius aa. anthemio comiti sacrarum largitionum. quia per neglegentiam iudicantis quidam se perperam queruntur esse deiectos, cunctos, qui in hac iniuria continentur, locis debitis praecipimus reddi debere; illos vero, qui sine commeatu aut sine officii publici necessitate per provincias divagantur, tuo examini praesentatos arbitrio celsitudinis tuae condemnatione percelli, deinde militia sententiae tuae, prout visum tibi fuerit, auctoritate privari, hos vero, qui hanc secuti militiam cohortalina officia deseruerunt, a perperam quaesita militia prohiberi. dat. vii k. sept. constantinopoli stilichone et aureliano consul. (400 aug. 26).

CTh.1.10.6

Idem aa. hadriano praefecto praetorio. in exactionibus largitionalium titulorum iuxta veterem consuetudinem palatinorum iudicibus incumbat instantia: ad hoc enim tantum videntur emitti, ut rectoribus vigilanter immineant. et cetera. dat. iii k. mart. mediolano vincentio et fravito consul. (401 febr. 27).

CTh.1.10.7

Idem aa. limenio comiti sacrarum largitionum. observandum esse censemus, ut bini in singulis indictionibus per singulas provincias palatini dirigantur, ita ut singularum librarum auri adiutores per singulos multa constringat, si legis nostrae definitiones neglexerint vel minus idoneos destinaverint. quibus haec cura debet esse praecipua, ut periculo proprio notoriis destinatis super neglegentia iudicum, si ita res exegerit, conquerantur, ne eorum sit impunita desidia. iudices quoque de eorum nominibus referre convenit, quos commodis propriis magis quam utilitatibus publicis studere praeviderint: breves etiam quadrimenstruos ad officium palatinum noverint dirigendos aurumque exactum ad sacras largitiones sine ulla dilatione mittatur. dat. iii k. mart. mediolano vincentio et fravito consul. (401 febr. 27).

CTh.1.10.8

Impp. theodosius et valentinianus aa. ad volusianum praefectum praetorio. non amplius quam semel intra eandem provinciam quicquam publici muneris palatinus exerceat, sed adiutoris suggestio gestis expressa teneatur, quae et nomen palatini et ei, qui dirigendus est, in eandem provinciam nihil ante commissum evidenter expromat. quod si aut huiusmodi sollemnitate neglecta aut repetito actu ad provinciam missus fuerit palatinus, adiutorem officii et primicerium atque secundicerium triginta librarum auri poena percellat, nec uti licebit his fortasse praestigiis, quod eidem, non eadem tamen, possint gerenda committi: eundem enim palatinum intra eandem provinciam quicquam publici muneris iterum procurare non licet. palatini vero scient sibi cum provincialibus nihil esse commune. iudicibus sane oportebit insistere et si inter eos breves, quos ad provinciam deferent, et eos, qui a provinciarum tabulariis proferuntur, fuerit aliqua diversitas, adscitis sibi in consilium ex provincia quinque honoratis inter palatinum ac tabularium provinciae moderator cognoscat et discussa brevium fide accelerari exactionem iubebit aut censurae legum veterum subiacebit. noverint sane provinciarum moderatores nullam prorsus exactionis partem ad palatinum officium pertinere nec umquam his adminicula praebenda. sed nec susceptori quidem aut tabulario provinciae palatinus incumbet, neque a susceptore summam illatorum neque nominatorios breves a tabulario postulabit, cum haec omnis sollicitudo sit iudicis. comitibus quoque titulorum, si quando eos ad provinciam mitti ratio necessitatis exegerit, nulla adminicula de palatino dari iubemus officio, sed sola eis provincialis apparitio parebit, poena viginti librarum auri comitem titulorum et officium feriente palatinum, si quis palatinorum cuilibet comiti titulorum fuerit adiunctus. dat. iii k. mart. ravennae felice et tauro consul. (428 febr. 27).

CTh.1.11.0. De officio comitis rei privatae

CTh.1.11.1

Impp. arcadius et honorius aa. minervio comiti rei privatae. manentibus fideiussorum atque subsignationum meritis et possessoribus in eadem, qua nunc habentur, conductione durantibus ad palatinorum curam et ad rationalium officia omnium rerum nostrarum et totius perpetuarii, iuris exactio revertatur nihilque omnino de exactione reddita, hoc est perpetuarii iuris vel sacratissimae domus ad ordinarios iudices pertineat. meminerint autem officia ordinariorum iudicum non leve fortunis suis imminere dispendium, nisi omnia reliqua praeteriti temporis curaverint exigenda, quae penes conductores ipsorum desidia aut coniventia resederunt. dat. x k. ian. mediolano caesario et attico consul. (397 dec. 23).

CTh.1.11.2

Impp. arcadius et honorius aa. firmino, comiti sacrarum largitionum. divae memoriae valentiniano iuniori subreptum est, ut ordinariorum iudicum officiis actores seu conductores dominicos conveniendi licentia negaretur; et idcirco ad rationales privatae rei exigendorum fiscalium debitorum ex illo tempore cura translata est. ad hanc tamen inutilem praecepti novitatem etiam illud adiectum est, ut, si quid in rei privatae nostrae praediis sceleris esset admissum, quod pro sua atrocitate ulcisci potestas, nisi ferro accincta, non posset, exhibendorum reorum, nisi qui per dominicos deducerentur et defenderentur actores, ordinario iudici copia non pateret. quod ne deinceps fiat, hac sanctione prohibemus. dat. viiii k. iun. mediolano, honorio a. iiii et eutychiano consul. (398 mai 24).

CTh.1.12.0. De officio proconsulis et legati

CTh.1.12.1

Imp. constantinus a. aeliano proconsuli africae. omnes civiles causas et praecipue eas, quae fama celebriores sunt, negotia etiam criminalia publice audire debebis tertia, vel ut tardissime quarta vel certe quinta die acta conficienda iussurus. quae omnia legati quoque coercitione commoniti observabunt. dat. iii k. nov. treviris, constantino a. iiii et licinio iiii coss. (315 [313] oct. 30).

CTh.1.12.2

Idem a. ad proculum. et publicae disciplinae interest et proconsulari convenit dignitati, ut publicarum exactionum ceterarumque rerum curam et notitiam ad tuam redigas potestatem, ita ut non officialium instructione et voce fraudulenta contentus sis, sed ipsorum iudicum curam responsionemque condiscas praefecti annonae et rationalium, si fidelis est ea instructio. ita enim provincialibus contra iniquas exactiones poterit subveniri. dat. vii k. ian. constantino a. v et licinio caes. consul. (319 dec. 26).

CTh.1.12.3

Idem a. aeliano proconsuli africae. legati non solum civiles, sed et criminales causas audiant, ita ut, si sententiam in reos ferendam perviderint, ad proconsules eos transmittere non morentur: ab omnibus enim iudicibus hoc observari oportet, ut supputato tempore competenti, quo necessaria causae criminalis instructio poterit adhiberi, maturam vel nocens poenam vel absolutionem innocens consequatur. dat. k. oct. constantino a. et constantio consul. (....[313?] oct. 1).

CTh.1.12.4

Imppp. valentinianus, theodosius et arcadius aaa. flacciano proconsuli africae. officio, quod tuis meritis obsecundat, non curialem quemquam nec plebeia stirpe progenitum volumus adgregari: ac si qui erunt inter apparitores huiusmodi, restitui eos debitis muniis mox iubemus. veteranorum filios militare permittimus, ut, licet diversa condicione, paternam tamen teneant sub cingulo viliore fortunam. dat. non. octob. constantinopoli theodosio a. iii et abundantio consul. (393 oct. 7).

CTh.1.12.5

Impp. arcadius et honorius aa. simplicio proconsuli asiae. officium hellesponti consularis aeternae recordationis patrem serenitatis nostrae adiit et expositis suis incommodis, quibus a vicarianis apparitoribus urgebatur, oravit sub tuae sublimitatis agere potestate. cuius allegationes humanae proclivius pium principem commoverunt. dat. viii k. april. constantinopoli arcadio a. iiii et honorio a. consul. (396 mart. 25).

CTh.1.12.6

Idem aa. victorio proconsuli africae et dominatori vicario africae. apparitioni tuae et legatorum quadringentos de his dumtaxat, quos rei publicae membra non querentur sibi esse detractos, censuimus deputandos, ita ut, si modum hunc quisquam vitio temeritatis excesserit, quinis libris auri per singulos neglegentia iudicum, denis autem officium sine dilatione multetur. quisquis igitur vel ex curiis vel ex ceteris corporibus in officio repertus fuerit, origini suae reddatur. quod si praeter statutum numerum aliqui fuerint, quos ab omni nexu liberos vel curiae vel collegia forte non vindicent, arbitrii tui officiique publicas necessitates instruant, ita ut idem circa statutum numerum officii tui permaneat annonarum numerus, qui hucusque servatus est. dat. xii k. iun. mediolano, honorio a. iiii et eutychiano consul. (398 mai. 21).

CTh.1.12.7

Idem aa. messalae praefecto praetorio et praefecto annonae. post alia: antiquam exigendi consuetudinem in omni annonario ac superindicto canone servandam esse censemus, ut submotis omnibus exactoribus, qui de diversis officiis extra morem nunc usque directi sunt, officium proconsulare postulet, quod exigere consuevit, nec alienis se partibus impudenter inserat. et cetera. dat. iii k. octob. altino theodoro v. c. consul. (399 sept. 28).

CTh.1.12.8

Idem aa. pompeiano proconsuli africae. pravam licentiam iudicum his cancellis severitatis includimus, ut, si quis proconsulum vicem propriae postestatis in legatum suum velut ingratus nostro beneficio repraesentaverit, triginta librarum auri illatione multetur eademque condemnatione legatus feriatur. primates quoque officii par poena contineat, nisi deferentibus illicita et ambientibus obviaverint. dat. pridie k. ian. mediolano stilichone et aureliano consul. (400 dec. 31).

CTh.1.13.0. De officio comitis orientis

CTh.1.13.1

Imppp. theodosius, arcadius et honorius aaa. rufino praefecto praetorio orientis. in officio comitis orientis non amplius quam dc apparitores habeantur, quos quidem publicis necessitatibus adeo novimus abunde suppetere, ut per eos patrimonialium per orientem possessionum maturetur exactio. dat. iii k. ian. heracleae arcadio iii et honorio ii aa. consul. (394 mai. [?] 30).

CTh.1.14.0. De officio praefecti augustalis

CTh.1.14.1

Imppp. valentinianus, theodosius et arcadius aaa. florentio praefecto augustali. per thebaidam atque augustamnicam provincias officium tuum et officia iudicum competentium omnia tributa exigere suscipere postremo compellere iubemus, ita ut, si qui militares possessores in memoratis provinciis fuerint, hi in tantum per militare officium exigantur. iam si qui de provincialibus nostris ad inferenda quae debent audaces extiterint, ad nostram clementiam referes, ut, ubi nos iusserimus, per castrenses milites exigantur. dat. xiii k. mart. constantinopoli honorio n. p. et evodio consul. (386 febr. 17).

CTh.1.14.2

Impp. arcadius et honorius aa. rufino praefecto praetorio. praefectus augustalis ordinariorum sub se iudicum examinandi flagitia ac super his referendi, non amovendi vel puniendi habeat potestatem. dat. pridie non. dec. constantinopoli olybrio et probino consul. (395 dec.[?] 4).

CTh.1.15.0. De officio vicarii

CTh.1.15.1

Imp. constantinus a. ad silvium paulum mag italiae. post alia: ne tua gravitas occupationibus aliis districta huiusmodi rescriptorum cumulis oneretur, placuit has solas causas gravitati tuae iniungere, in quibus persona potentior inferiorem aut minorem iudicem premere potest aut tale negotium emergit, quod in praesidali iudicio terminari fas non est, vel quod per eosdem praesides diu tractatum apud te debeat terminari. dat. v k. mart. nicomediae paulino et iuliano consul. (325 febr. 25.).

CTh.1.15.2

Imp. constantius a. ad caesonianum vicarium africae. relationes iudicum, qui provincias regunt, nec non et rationalium ceterorumque, qui aliquid scientiae nostrae relatum cupiunt, susceptas tua sublimitas nobis celeriter intimare debebit. dat. iiii k. oct. philippo et salia consulibus. (348 sept. 28).

CTh.1.15.3

Idem a. ilico consulari numidiae. cum aliquid rectores provinciarum ad nos referre voluerint, id prius ad vicarium referatur, cui scriptum est, ut suggestiones vel relationes per prosecutores ad comitatum meum transmittendas suscipiat et, quod faciendum viderit, expleat, quippe hoc praeter alia cursus quoque publicus magna relevatione firmabitur. dat. iii non. dec. sirmio constantio a. vi et constante c. consul. (353 [352?] dec. 3).

CTh.1.15.4

Imp. iulianus a. ad mamertinum praefectum praetorio. rectores provinciarum sublimitas tua conveniat, ut cunctis de rebus, de quibus ad nos et ad vestram scientiam crediderint referendum, vicarios esse participandos sciant. accepta viii id. iun. mamertino et nevitta consul. (362 iun. 6.).

CTh.1.15.5

Impp. valentinianus et valens aa. ad dracontium vicarium africae. officium vicariae per africam praefecturae intra eum numerum colligatur, ut trecentos minime possit excedere, sicuti ceterorum vicariorum esse praecepimus. dat. viii k. feb. mediolano valentiniano et valente aa. consul. (365 ian. 25).

CTh.1.15.6

Idem aa. ad crescentem vicarium africae. si quando ex allectis vel susceptoribus aut tabulariis quispiam ratiocinio sive fraude perhibetur obnoxius, non officialis ad exhibitionem eius dirigatur, sed rectori provinciae rei indago mandetur. ubi primum tamen sinceritas tua provinciam introierit, requirat attente, quam ordinarius iudex iniunctis rebus diligentiam efficaciamque detulerit: qui eorum titulorum, de quibus instructus est, non ad plenum vel discussionem egisse vel satisfactionem deprehenditur curasse, fas erit eum pro neglectu utilitatis publicae dignam commonitionis subire censuram. dat. iiii k. mart. treviris modesto et arintheo consul. (372 feb. 27).

CTh.1.15.7

Imppp. valens, gratianus et valentinianus aaa. antonio praefecto praetorio. in civilibus causis vicarios comitibus militum convenit anteferri, in militaribus comites vicariis anteponi: quotiensque societas in iudicando contigerit, priore loco vicarius ponderetur, comes adiunctus accedat; si quidem, cum praefecturae meritum ceteris dignitatibus antestet, vicaria dignitas ipso nomine eius se trahere indicet portionem et sacrae cognitionis habeat potestatem et iudicationis nostrae soleat repraesentare reverentiam. dat. viii id. ian. gratiano a. iiii et merobaude consul. (377 ian. 6).

CTh.1.15.8

Idem aaa. ad hesperium praefectum praetorio. relationes vicariorum, si quando usus attulerit, ad nostram mansuetudinem deferantur; nam etsi plura sunt, quibus etiam illustris censura tua inconsultis quoque nobis potest dare responsum, scimus tamen aliquanta esse, quae nisi auctoritas principalis oraculi solvere non potest. et relationes iudicum libenter audimus, ne administratorum decrescere videatur auctoritas, si eorum consulta veluti profanorum preces a nostris adytis repellamus. dat. xii k. feb. gratiano a. iiii et merobaude consul. (377 [379?] ian. 21.).

CTh.1.15.9

Idem aaa. ad alypium. omnes largitionales titulos laudabilitatis tuae officium more pristino curabit implere speciali cura et periculo, ut utique post hanc praeceptionem culpam cum rationalis officio communicare non possit, a quo etiam curam alienam esse cognoscat. dat. k. iun. treviris. accepta non. iul. valente vi et valentiniano ii aa. consul. (378 iun. 1.).

CTh.1.15.10

Imppp. gratianus, valentinianus et theodosius aaa. ad syagrium. vicario africae aditus provinciae proconsularis inhibendus est tantumque ei consilii gratia in thevestinam civitatem accessus pateat. canoni autem cogendo annonae praefectus immineat. vestes largitionales sinceritatis tuae cogat officium, cui negotio etiam rationalis insistat, ita tamen, ut principe loco apparitores tuos maneat et coactionis instantia et deceptionis invidia. vectigalia sane apud karthaginem constituta vicariae praefecturae apparitio procuret. pp. karthagine. dat. vii k. sept. auxonio et olybrio consul. (379 aug. 26.).

CTh.1.15.11

Iidem aa. iustiano vicario ponticae. cornicularios officii, quod meritis tuis paret, institutam antiquitus ordinationem militiae repetisse cognovimus, ut peracto corniculario agentium in rebus numero conectantur. sed divalia statuta obsistunt, quibus comperimus virorum quoque illustrium praefectorum praetorio cornicularios, comitis quin etiam orientis camelorum gregibus praecepto sic temporis praefici, quo vicariorum omnium cornicularii variae erogationis in urbe constantinopolitana constat impositam functionem. dat. ii non. april. thessalonicae gratiano v et theodosio i aa. conss. (380 apr. 4).

CTh.1.15.12

Imppp. valentinianus, theodosius et arcadius aaa. omnibus vicariis. singuli vicarii per dioeceses sibi creditas ter centenos tantum noverint militare debere, ita ut, quicumque maiorum nexu curiis debentur, municipum functionibus dentur et nemo privilegii alicuius praetextu aut annositatis se defendat obstaculo. dat. vi k. nov. honorio n. p. et evodio v. c. consul. (386 oct. 27).

CTh.1.15.13

Idem aaa. have tatiane karissime nobis. officium dioeceseos asianae, cuius octo provinciarum ambitus per spatia latiora tenduntur, ducentorum niti apparitione praecipimus. dat. iiii k. mai. mediolano timasio et promoto consul. (389 apr. 28).

CTh.1.15.14

Impp. arcadius et honorius aa. eusebio praefecto praetorio. cavendum est, ne qua ob canonem africae fiat frumenti deceptio. vicarium itaque virum spectabilem per africam volumus in proconsulari provincia exactionis et transmissionis necessitates arripere. dat. xiiii k. ian. romae olybrio et probino consul. (395 dec. 19).

CTh.1.15.15

Idem aa. ad vincentium praefectum praetorio. virum spectabilem vicarium septem provinciarum reliqua praeteriti temporis exigere iubemus, recentia vero debita ordinarios iudices maturare decernimus, quibus tamen vicarium convenit imminere. dat. xiiii k. iul. mediolano stilichone et aureliano consul. (400 iun. 18).

CTh.1.15.16

Idem aa. vigilio vicario hispaniarum. nullum penitus honoratorum publica salutatione sine chlamydis indumento vicariam potestatem adire oportet. officium itaque decem librarum auri multa tenebitur, si quis nostra statuta violare temptaverit. dat. iiii id. sept. mediolano vincentio et fravito consul. (401 sept. 10).

CTh.1.15.17

Iidem aa. messalae praefecto praetorio. virum spectabilem vicarium africae quem totius collationis ac transmissionis cura constringit, iudicibus volumus imminere, ut, quantum singulis quibusque mensibus collatum sit quidve transmissum, maiore cautione disquirat, in eos procul dubio vindicaturus, quorum fuerit indicata desidia. et cetera. dat. iii k. octob. altino vincentio et fravito conss. (401 sept. 29).

CTh.1.16.0. De officio rectoris provinciae

CTh.1.16.1

Imp. constantinus a. rufino octaviano correctori lucaniae et brittiorum. quicumque extraordinarium iudicium praefectorum vel vicariorum elicuerit vel qui iam consecutus est, eius adversarios et personas causae necessarias minime ad officium praefectorum vel vicarii pergere aut transire patiaris, sed de omni causa in tuo iudicio praesentibus partibus atque personis ita his temporibus ipse cognosce, quae ex eo die computabis, ex quo causa in tuo iudicio coeperit inchoari, ut tunc demum, si ei, qui extraordinarium iudicium postulaverit, tua sententia displicebit, iuxta ordinem legum interposita eam provocatio suspendat atque ad suum iudicem transitum faciat. dat. iii non. aug. treviris constantino iiii et licinio iiii consul. (315 aug. 3).

CTh.1.16.2

Idem a. ad bassum. decreta provincialium non prius ad comitatum perferri oportet, quam singuli quique iudicantes ea inspexerint atque probaverint suaque adscriptione signaverint. si quid fiat contrarium, competens ultio exerceatur. proposita viii k. oct. carali gallicano et basso consul. (317 sept. 24).

CTh.1.16.3

Idem a. ad felicem praesidem corsicae. cum sex menses transcurrerint, breves omnium negotiorum ab officio tuo descripti commeent ad scrinia eminentissimae praefecturae, ut his recensitis et ad scrinia nostra perlatis pandatur, quis iudicum et in quibus discingendis causis fidelem operam praestiterit, quo vel dignus praemium mereatur vel neglegens coercitionem incurrat: adeundi tuum iudicium de neglegentia vel avaritia tui officii data provincialibus facultate. de eo sane, qui pretio depravatus aut gratia perperam iudicaverit, ei vindicta quem laeserit non solum existimationis dispendiis, sed etiam litis discrimine praebeatur. dat. viiii k. nov. sirmio constantino a. v et licinio caes. consul. (319 oct. 24).

CTh.1.16.4

Idem a. ad maximum. praesides provinciarum oportet, si quis potiorum extiterit insolentior et ipsi vindicare non possunt aut examinare aut pronuntiare nequeunt, de eius nomine ad nos aut certe ad gravitatis tuae scientiam referre, quo provideatur, qualiter publicae disciplinae et laesis minoribus consulatur. et cetera. dat. iiii k. ian. treviris ianuarino et iusto consul. (328 [?] dec. 29).

CTh.1.16.5

Idem a. secundo praefecto praetorio orientis. ordinarii iudicis provinciarum rectoris seu vicaria potestas ut speculatrix debet prave gesta corrigere. sed officiales vestrae celsitudinis et vicariae potestatis placet ab exactionibus amoveri et per provincialia officia atque rectores cunctos exigi titulos. nam si exactio minime impleatur, ante tribunal nostrum exhibitus capitis fortunarumque omnium periculum sustinebit. dat. xiiii k. mai. constantinopoli constantino a. viii et constantio iiii conss. (329 [362/3] apr. 18).

CTh.1.16.6

Idem a. ad provinciales. praesides publicas notiones exerceant frequentatis per examina tribunalibus, nec civiles controversias audituri secretariis sese abscondant, ut iurgaturus conveniendi eos nisi pretio facultatem impetrare non possit, et cum negotiis omnibus, quae ad se delata fuerint, exhibuerint audientiam et frequens praeconis, ut adsolet fieri, inclamatio nullum, qui postulare voluerit, deprehenderit, expletis omnibus actibus publicis privatisque sese recipiant. iustissimos autem et vigilantissimos iudices publicis adclamationibus collaudandi damus omnibus potestatem, ut honoris eis auctiores proferamus processus, e contrario iniustis et maleficis querellarum vocibus accusandis, ut censurae nostrae vigor eos absumat; nam si verae voces sunt nec ad libidinem per clientelas effusae, diligenter investigabimus, praefectis praetorio et comitibus, qui per provincias constituti sunt, provincialium nostrorum voces ad nostram scientiam referentibus. propostia k. nov. constantinopoli basso et ablavio consul. (331 nov. 1).

CTh.1.16.7 [=brev.1.6.1]

Imp. constantinus a. ad provinciales. cessent iam nunc rapaces officialium manus, cessent inquam: nam si moniti non cessaverint, gladiis praecidentur. non sit venale iudicis velum, non ingressus redempti*, non infame licitationibus secretarium, non visio ipsa praesidis cum pretio: aeque aures iudicantis pauperrimis ac divitibus reserentur. absit ab inducendo eius, qui officii princeps dicitur, depraedatio. nullas litigatoribus adiutores eorundem officii principum concussiones adhibeant; centurionum aliorumque officialium, parva magnaque poscentium, intolerandi impetus oblidantur, eorumque, qui iurgantibus acta restituunt, inexpleta aviditas temperetur. semper invigilet industria praesidalis, ne quicquam a praedictis generibus hominum de litigatore sumatur. qui si de civilibus causis quicquam putaverint esse poscendum, aderit armata censura, quae nefariorum capita cervicesque detruncet, data copia universis, qui concussi fuerint, ut praesidum instruant notionem. qui si dissimulaverint, super eodem conquerendi vocem omnibus aperimus apud comites cunctos provinciarum aut apud praefectum praetorio, si magis fuerit in vicino, ut his referentibus edocti, super talibus latrociniis supplicia proferamus. dat. kal. nov. constantinopoli, basso et ablavio vv. cc. coss.

interpretatio. officiales omnium iudicum venales esse non audeant, neque pretium de introitu occurrentium aut litigantium vel egressu requirant. sed interpellantes tam divites, quam sine ullo praemio pauperes audiantur. quod si rapaces esse voluerint, gladio puniantur, aut certe de eorum rapacitate dominicis auribus referatur

CTh.1.16.8

Imp. iulianus a. secundo praefecto praetorio. quaedam sunt negotia, in quibus superfluum est moderatorem exspectari provinciae: ideoque pedaneos iudices, hoc est qui negotia humiliora disceptent, constituendi damus praesidibus potestatem. dat. v kal. aug. antiochiae mamertino et nevitta conss. (362 iul. 28).

CTh.1.16.9 [=brev.1.6.2]

Impp. valentin. et valens aa. have arthemi, carissime nobis. iudex sibi hanc praecipuam curam in audiendis ac discingendis litibus impositam esse non ambigat, ita ut non in secessu domus de statu hominum vel patrimoniorum sententiam ferat, sed apertis secretarii foribus, intro vocatis omnibus, aut pro tribunali locatus et civiles et criminales controversias audiat, ne congruae ultionis animadversio cohibeatur. absit autem, ut iudex, popularitati et spectaculorum editionibus mancipatus, plus ludicris curae tribuat quam seriis actibus. dat. kal. oct. aquileia, divo ioviano et varroniano coss.

interpretatio. iudex hanc sibi praecipuam curam in audiendis litibus impendendam esse cognoscat, ut litigantium causas iugiter, adhibita aequitate, discutiat: sciturus, non se in secretis domus aut in quibuscumque* angulis finitivam sententiam prolaturum, sed apertis domus suae ianuis intromissisque turbis, ut neminem lateat, quicquid secundum legum vel veritatis ordinem fuerit iudicatum

CTh.1.16.10 [=brev.1.6.3]

Iidem aa. ad valerianum vicarium hispaniarum. libellos iudicibus, postquam se receperint, vetamus offerri, ne super alienis causis vel statu pronuntient, quando ab officii conspectu atque ab oculis publicis recesserint. praelata vi. id. sept. veronae, valentin. et valente aa. coss.

interpretatio. iudices, postquam se de consessu publico in domum suam receperint, libellos a litigatoribus non accipiant, nec sine officio suo de causis alienis vel de statu aliquid cognoscant

CTh.1.16.11 [=brev.1.6.4]

Imppp. valentin., valens et grat. aaa. ad probum pf. p. provinciis praesidentes per omnium villas sensim atque usitatim vicosque cunctos discurrant et ultro rimentur a singulis, quid unusquisque compulsor insolenter egisset aut cupide. is enim, de quo aliqua ad nos querela pervenerit, ad ultimam poenam rapietur. dat. kal. april. treviris, valentin. n. p. et victore v.C. coss.

interpretatio. iudices provinciarum operam dare debebunt, ut per singulos agros et loca sollicita inquisitione discurrant et per se, qualiter in solutione publici debiti cum possessoribus agatur, agnoscant. cuius rei curam si implere neglexerint, querelam civium non dubitent in se severissime vindicandam

CTh.1.16.12 [i,16,11 h.]

Idem aaa. ad viventium praefectum praetorio. unusquisque iudex in his locis sedem constituat, in quibus oportet omnibus praesto esse rectorem, non deverticula deliciosa sectetur. addimus sane, ut eius, qui provinciae praesidentem propria possessione susceperit, ager, quem diversorium habuerit praedictus in transitu, fisci viribus vindicetur. ita enim iudices mansiones instruere et instaurare nitentur. dat. kal. apr. trev. valentiniano n. p. et victore conss. (369 apr. 1).

CTh.1.16.13

Imppp. valens, gratianus et valentinianus aaa. ad antonium praefectum praetorio. ne quis domum iudicis ordinarii postmeridiano tempore ex occasione secreti ingredi familiariter affectet eiusdem dumtaxat provinciae, sive notus iudici sive etiam ignotus, gesti tamen honoris auctoritatem praeferens. dat. v kal. aug. mogontiaco gratiano a. iiii et merobaude conss.

interpretatio. ne quis notus aut ignotus, eius tamen provinciae homo meridianis horis aut secretis iudicem videat. (377 iul. 28)

CTh.1.16.14 [=brev.1.6.5]

Impp. honor. et theodos. aa. theodoro pf. p. moderatores provinciae curam gerere iubemus, ne quid potentium procuratores perperam illiciteque committant. dat. viii. kal. dec. ravenna, basso et philippo vv. cc. coss.

interpretatio. iudices provinciarum summam sollicitudinem habere debent, ne actores potentum aliquid circa inferiores personas illicite iniusteque committant

CTh.1.17.0. De officio rationalis summarum et rei privatae

CTh.1.18.0. De officio praefecti vigilum

CTh.1.19.0. De officio tribuni voluptatum

CTh.1.20.0. [=brev.1.7.0.] De officio iudicum civilium.

CTh.1.20.1 [=brev.1.7.1]

Imppp. arcad., honor. et theodos. aaa. curtio pf. p. honorati, qui lites habere noscuntur, his horis, quibus causarum merita vel facta panduntur, residendi cum iudice non habeant facultatem: nec meridianis horis a litigatoribus iudices videantur. quina itaque pondo auri tam iudici, quam eius officio et honoratis parem mulctam adscribendam esse cognoscas, si quis contra praeceptum huiusmodi venire tentaverit. dat. iii. non. febr. roma, basso et philippo vv. cc. coss.

interpretatio. honorati provinciarum (id est, ex curiae corpore), si et ipsi in lite sunt constituti, tempore, quo causae aliorum a iudicibus ventilantur, cum iudice non resideant: et litigatores meridianis horis iudicem non salutent. si aliud praesumpserint*, mulctam supra scriptae legis exsolvant

CTh.1.21.0. [=brev.1.8.0.] De officio iudicum militarium.

CTh.1.21.1 [=brev.1.8.1]

Imppp. theodos., arcad. et honor. aaa. comitibus et magistris utriusque militiae. numquam* omnino negotiis privatorum vel tuitio militis vel exsecutio tribuatur. dat. prid. id. febr. constantinopoli, theodos. a. iii. et abundantio v.C. coss.

interpretatio. nulli penitus in civilibus causis militaris vel tuitio vel exsecutio deputetur

CTh.1.22.0. De officio iudicum omnium

CTh.1.22.1 [=brev.1.9.1]

Imp. constantinus a. ad domitium celsum vicarium. nemo iudex officialem ad eam domum, in qua materfamilias agit, cum aliquo praecepto existimet esse mittendum, ut eandem in publicum protrahat, quum certum sit, debita eius, quae intra domum, considerato sexu, semet contineat, domus eius vel cuiuscumque* rei habita distractione, publicis necessitatibus posse servari. quod si quis in publicum matremfamilias posthac crediderit protrahendam, inter maximos reos, citra ullam indulgentiam, capitali poena vel exquisitis potius exitiis suppliciisque plectatur. dat. iii. id. ian. treviris, sabino et rufino coss.

interpretatio. nullus iudicum matronam in domo sua residentem per quemcumque* apparitorem ad publicum existimet protrahendam, sed circa eam, pro sexus reverentia, conventio honesta servetur: quum, si quid eam debere constiterit, constrictis eius auctoribus possit exsolvi. nam si quis contra fecerit, summo supplicio se afficiendum esse cognoscat

CTh.1.22.2 [=brev.1.9.2]

Idem a. andronico. si contra pupillos, viduas vel morbo fatigatos et debiles impetratum fuerit lenitatis nostrae iudicium, memorati a nullo nostrorum iudicum compellantur comitatui nostro sui copiam facere. quin imo intra provinciam, in qua litigator et testes vel instrumenta sunt, experiantur iurgandi fortunam, atque omni cautela servetur, ne terminos provinciarum suarum cogantur excedere. quod si pupilli vel viduae aliique fortunae iniuria miserabiles iudicium nostrae serenitatis oraverint, praesertim cum alicuius potentiam perhorrescunt, cogantur eorum adversarii examini nostro sui copiam facere. dat. xv. kal. iul. constantinopoli, optato et paulino coss.

interpretatio. quicumque* adversus pupillos, viduas et aegrotos nostra praecepta meruerit, eos de locis suis commovendi vel extra provinciam suam usquam penitus protrahendi licentiam summovemus, ut ibi causam suam dicant, ubi instructiores esse et testimonia possint facilius invenire. sane si ipsi, quorum fatigationi consulimus, nos crediderint expetendos, huic voluntati eorum veniendi aditum non negamus; ita ut adversarii eorum sub praesentia principis adesse per rectorem provinciae compellantur

CTh.1.22.3

Imp. iulianus a. ad mamertinum. conventis rectoribus a sublimitate tua edi non minus criminalia acta quam civilia iubemus, his videlicet, quorum salus ad discrimen vocatur. dat. xi kal. dec. antiochiae iuliano a. iiii et sallustio conss. (363 nov. 21).

CTh.1.22.4pr. [=brev.1.9.3pr.]

Imppp. grat., valentin. et theodos. aaa. pars actorum habitorum in consistorio gratiani augusti. grat. augustus dixit: det operam iudex, ut praetorium suum ipse componat.

CTh.1.22.4.1 [=brev.1.9.3.1]

Ceterum neque comiti, neque rectori provinciae plus aliquid praestabitur, quam nos concessimus in annonis seu cellariis etc. actum in consistorio, merobaude ii. et saturnino coss.

interpretatio. iudicem praetorium suum de proprio debere componere et nihil a provincialibus aliquid amplius petere, quam ei in annonis vel cellariis a principe fuerit deputatum

CTh.1.27.0. De episcopali definitione

CTh.1.27.1

Imp. constantinus a. iudex pro sua sollicitudine observare debebit, ut, si ad episcopale iudicium provocetur, silentium accommodetur et, si quis ad legem christianam negotium transferre voluerit et illud iudicium observare, audiatur, etiamsi negotium apud iudicem sit inchoatum, et pro sanctis habeatur, quidquid ab his fuerit iudicatum: ita tamen, ne usurpetur in eo, ut unus ex litigantibus pergat ad supra dictum auditorium et arbitrium suum enuntiet. iudex enim praesentis causae integre habere debet arbitrium, ut omnibus accepto latis pronuntiet. data viiii kal. iulias constantinopoli ..... a. et crispo caes. conss. (.... iun. 23).

CTh.1.27.2

Imppp. arcadius, honorius et theodosius aaa. theodoro praefecto praetorio. episcopale iudicium sit ratum omnibus, qui se audiri a sacerdotibus adquieverint. cum enim possint privati inter consentientes etiam iudice nesciente audire, his licere id patimur, quos necessario veneramur eamque illorum iudicationi adhibendam esse reverentiam, quam vestris deferri necesse est potestatibus, a quibus non licet provocare. per publicum quoque officium, ne sit cassa cognitio, definitioni exsecutio tribuatur. dat. id. dec. basso et philippo conss. (408 dec. 13).

CTh.1.28.0. De defensoribus senatus.

CTh.1.28.1

Imp. constantius a. ad senatum. mandanda defensio sit his, quorum fides probabilis aestimatur, ut in singulis quibusque provinciis obsistant, ne quid contra morem atque iustitiam aut competentem pensionum modum a senatoribus postuletur; praesertim cum ea tantum solvi oporteat, quae vel in delegatione manu nostrae mansuetudinis adnotantur vel a praefectura pro rerum necessitatibus postulantur. dat. v non. mai. tauro et florentio conss. (361 mai. 3).

CTh.1.28.2

Impp. valentinianus et valens aa. ad clearchum vicarium asiae. habeant senatores potestatem deligendi ex corpore suo singulos vel binos per singulas quasque provincias, qui omnium patrimonia optentu sui ac munitione defendant, depensae quoque capitationis relevatione. nam commodum principalem divalis iuliani quod ad solos decuriones per gratiam iudicum pervenisse dicitur, non ad curiales tantum, sed ad cunctarum lassas gentium utilitates iubemus communi lege transire. dat. prid. non. mai. nicomedia divo ioviano et varroniano conss. (364 mai. 6).

CTh.1.28.3

Imppp. valens, gratianus et valentinianus aaa. ad vindaonium magnum praefectum urbi. quotiens fiscalium functionum dispositio tractatur, absente senatus defensore nihil sibi praesumant vel curiales vel iudices ordinare, ne quid contra commodum coetus amplissimi iustitiae ratione despecta temerariae usurpationis decernat audacia, cum etiam hanc licentiam defensoribus dederimus, ut, si forte in contumeliam senatus divalis fuerit forma neglecta, referre festinent. dat. iiii k. iun. antiochia valente v et valentiniano aa. conss. (376 mai. 29).

CTh.1.28.4

Imppp. theodosius, arcadius et honorius aaa. aureliano praefecto urbi. defensores senatorum per provincias constitutos suscepti officii tenere convenit libertatem. qua de re, si quando ab ordinario cognitore privilegia amplissimi ordinis deteruntur ac renitendi sibi copia denegatur, ad nos referre non dubitent, ne singulorum diffidentia cunctorum crescat iniuria. dat. iii kal. mart. constantinopoli theodosio a. iii et abundantio v. c. conss. (393 febr. 27).

CTh.1.29.0. De defensoribus civitatum

CTh.1.29.1

Impp. valentinianus et valens aa. ad probum praefectum praetorio. admodum utiliter edimus, ut plebs omnis illyrici officiis patronorum contra potentium defendatur iniurias. super singulas quasque praedictae dioeceseos civitates aliquos idoneis moribus quorumque vita anteacta laudatur tua sinceritas ad hoc eligere curet officium, qui aut provinciis praefuerunt aut forensium stipendiorum egere militiam aut inter agentes in rebus palatinosque meruerunt. decurionibus ista non credat; his etiam, qui officio tui culminis vel ordinariis quibuscumque rectoribus aliquando paruerint, non committat hoc munus; referatur vero ad scientiam nostram, qui in quo oppido fuerint ordinati. dat. v k. mai. divo ioviano et varroniano conss. (364 [immo 368 posteave] apr. 27).

CTh.1.29.2

Id. aa. senecae. si quis de tenuioribus ac minusculariis interpellandum te esse crediderit, in minoribus causis acta conficias: scilicet ut, si quando quis vel debitum iustum vel servum qui per fugam fuerit elapsus vel quod ultra delegationem dederit postulaverit vel quodlibet horum tua disceptatione restituas; ceteras vero, quae dignae forensi magnitudine videbuntur, ordinario insinuato rectori. et cetera. dat. v k. iul. tyr valentiniano et valente aa. conss. (365 iun. 27).

CTh.1.29.3

Id. aa. probo praefecto praetorio. cum multa pro plebe a nobis studiose statuta sint, nihil providisse nos credidimus, nisi defensores idoneos dederimus. igitur non ex decurionum corpore, sed ex alio, videlicet ex administratoribus, qui vel consulares fuerint administratione vel praesides, aut ex palatinis vel agentibus in rebus vel his, qui principatus culminis vestri vicariorumque gesserunt, vel ex scholasticis huic officio deputentur. dat. iii non. nov. valentiniano et valente aa. conss. (368? 370? 373? nov. 3).

CTh.1.29.4

Imppp. valentinianus, valens et gratianus aaa. ad probum praefectum praetorio. qui ex schola agentum in rebus sedi culminis vestri munere principatus nostro quodammodo nomine paruerint, inter ceteros honoratos iussione nostra diversarum urbium plebibus constituantur patroni, ita ut, si quos ex his auctoritas tua putaverit eligendos, eadem his tutela mandetur, ab his autem eos repraesentet inmunes. dat. viii id. nov. treviris valentiniano et valente ii aa. conss. (368 nov. 6).

CTh.1.29.5

Idem aaa. ad senatum. utili ratione prospectum est, ut innocens et quieta rusticitas peculiaris patrocinii beneficio fruatur, ne forensis iurgii fraudibus fatigata, etiam cum ultionem posceret, vexaretur; dum aut avarior instruitur advocatus aut obsessor liminis maioribus princeps praemiis exoratur, dum acta ab exceptoribus distrahuntur, dum commodi nomine amplius ab eo qui vicerit intercessor exposcit quam redditurus est ille qui fuerit superatus. hoc fieri dignitas non patitur senatoris, sed exortas contentiones cita definitione compescet; nam erepta perperam amota dilatione restituit ordin....Sine dubio rectoris habeatur auctoritas, quae meliore in bonos condicione retinetur; nam ille patitur humani cruoris horrorem, hic innoxiam sibi vindicat potestatem. dat. iiii id. aug. hierapoli valentiniano et valente iii aa. conss. (370 aug. 10).

CTh.1.29.6 [=brev.1.10.1]

Imppp. valentin., theodos. et arcad. aaa. eusignio pf. p. hi potissimum constituantur defensores, quos decretis elegerint civitates. quod si quis ad locum defensionis ambitione pervenerit, confestim eum sinceritas tua reiectum quinque libras auri fisci utilitatibus cogat inferre. dat. viii. kal. feb. post consulatum honorii n. p. et euodii v.C.

interpretatio. hi instituantur civitatum defensores, quos consensus civium et subscriptio universorum elegisse cognoscitur. quod si quis defensorum ad hanc rem cupiditate propria, non interveniente decreto, pervenisse probabitur, pro hac praesumptione* quinque libras auri fisco inferre cogatur

CTh.1.29.7 [=brev.1.10.2]

Iidem aaa. potamio praefecto augustali. defensores nihil sibi insolenter, nihil indebitum vindicantes, nominis sui tantum fungantur officio: nullas infligant mulctas, nullas exerceant quaestiones. plebem tantum vel decuriones ab omni improborum insolentia et temeritate tueantur, et id tantum, quod esse dicuntur, esse non desinant. dat. iii. non. mart. constantinopoli, arcadio a. ii. et rufino v.C. coss.

interpretatio. defensores secundum suum nomen curiam vel plebem sibi commissam cum omni iustitia et aequitate defendant; nullum de innocentibus aut condemnare aut verberare praesumant

CTh.1.29.8 [=brev.1.10.3]

Iidem aaa. tatiano pf. p. per omnes regiones, in quibus fera et periculi sui nescia latronum fervet insania, probatissimi quique atque districtissimi defensores adsint disciplinae et quotidianis actibus praesint, qui non sinant crimina impunitate coalescere. removeantur patrocinia, quae favorem reis et auxilium scelerosis impertiendo, maturari scelera fecerunt. dat. v. id. april. constantinopoli, arcadio a. ii. et rufino v.C. coss.

interpretatio. per omnes provincias tales pro studio disciplinae iudices ordinentur, ut cum omni sollicitudine in reos et latrones, remotis potentum patrociniis, districtionem debitam exercere non differant: ne per negligentiam suam aut venalitatem crimina, quae debent puniri, proficiant

CTh.1.30.0. De curatoribus civitatum

CTh.1.31.0. De administratiunculis intra urbem

CTh.1.31.1

.......Tuis adnitentibus reformetur. volumus enim eum morem sicut in omnibus etiam in hac administratione durare, quem priscorum virorum providentia consiliumque firmavit neque aliquid, quod ex sollemnitate eius procurationis et honesta consuetudine manarat, invidentium studiis derogari. dat. iiii k. mart. valentiniano et valente aa. conss. (365? 368? 370? 372? febr. 26).

CTh.1.31.2

Idem aa. ad olybrium praefectum urbi. vetustate consuetudinis ius titulo addendi aliquid lucelli minusculi intra urbem administrationum officiis fuerat adtributum; sed de cetero omnis haec dandi accipiendique consuetudo desistat, ut omnino de usu id quod vocatur formale tollatur. sit sane in arbitrio dantium, non in potestate accipientium, an aliquid his administrati singulis velint pro sumptuum consideratione largiri. quod si quemquam hac causa dedisse aliquid invitum nec ad iudicium detulisse constiterit, publica continuo severitas non minus in dantem quam in accipientem vehemens exeratur. dat. prid. non. april. treviris valentiniano et valente aa. conss. (368? 370? apr. 4).

CTh.1.32.0. De procuratoribus gynaecei et metallorum

CTh.1.32.1

Imp. constantinus a. ad felicem. procuratores rei privatae bafii et gynaecei, per quos et privata nostra substantia tenuatur et species in gynaeceis confectae conrumpuntur, in bafiis etiam admixta temeratio inquinatae naevum adluvionis adducit, suffragiis, per quae memoratas administrationes adipiscuntur, abstineant vel si contra hoc fecerint, numero civium romanorum exempti gladio feriantur. dat. ... k. nov. aquileiae dalmatio et zenofilo conss. (333 oct. nov.).

CTh.1.32.2

Imppp. valens, gratianus et valentinianus aaa. ad hesperium proconsulem africae. officiis rerum salutisque volumus propositum esse discrimen, quod non ambigant per se domus nostrae compensanda esse dispendia, nisi eiusmodi fideiussoribus datis administratores admiserint, quorum sint idoneae facultates, ad quas facto recursu iacturam declinare possumus, si quid in detrimentum rei privatae nostrae administratorum fraus et avaritia conmiserint. dat. viii id. iul. treviris p. c. valentis v et valentiniani aa. (377 iul. 8).

CTh.1.32.3pr.

Idem aaa. ad eucherium comitem sacrarum largitionum. quicumque in largitionibus nostris quocumque nomine atque apparitiones procurans nanctus fuerit administrationem ratiociniis obnoxiam, primum maxime idoneis satisdatoribus datis adfectatum munus incipiat; deinde abiens intra triginta dies in his thesauris, qui negotii sunt minoris, intra quinquaginta autem in his, qui maiorum sunt, chartas et ratiocinia cuncta restituat; plane conscriptum susceptoribus tradat, quid susceperit, quid erogaverit, quid in thesauris conditum maneat. (377 mart. 29).

CTh.1.32.3.1

Quamvis autem ilico tradi suscepta conveniat, tamen quoniam quibusdam casibus po....Scriptum et pecuniam minorem intra triginta dies, cetera intra quattuor menses, quae in conditis esse oportet, successori, qui advenerit, adnumerari conveniet. quod si tantulum aliquid repperietur etiam per eum, qui decedit, fuisse dilatum, specie honoris exactus exauctoratusque omni pristina dignitate verberum supplicia digna et pro moribus tormenta sustineat, eo usque deformia et pudenda passurus, donec omnis integritas largitionum nostrarum conditis inferatur. (377 mart. 29).

CTh.1.32.3.2

Quae condicio ad procuratores textrinorum et monetariorum et vectigalium praepositos pertinebit. dat. iiii kal. april. treviris gratiano a. iiii et merobaude conss. (377 mart. 29).

CTh.1.32.4

Impp. gratianus, valentinianus et theodosius aaa. ad arborium comitem. qui ex apparitione palatina tuae sinceritatis actibus obsecundant, in speculis esse curabunt, ubi quis eam administrationem, quae praede indiget, sortietur, nequaquam sponsorem decurionem offerens audiatur. dat. v non. mai. auxonio et olybrio conss. (379 mai. 3).

CTh.1.32.5

Idem aaa. ad eusignium praefectum praetorio. cum procuratores metallorum intra macedoniam daciam mediterraneam moesiam seu dardaniam soliti ex curialibus ordinari, per quos sollemnis profligetur exactio, simulato hostili metu huic se necessitati subtraxerint, ad implendum munus retrahantur ac nulli deinceps licentia laxetur prius indebitas expetere dignitates, quam subeundam procurationem fideli sollertique exactione compleverint. dat. iiii k. aug. mediolano honorio n. p. et evodio v. c. conss. (386 iul. 29).

CTh.1.32.6

Imppp. valentinianus, theodosius et arcadius aaa. cynegio praefecto praetorio. procuratores nostri perfectissimatus honore donati ab iniuriis vindicentur, ita ut his et introeundi secretarium ordinariorum iudicum pro suggestionum opportunitate facultas plena servetur. dat. prid. k. ian. thessalonica valentiniano a. iii et eutropio conss. (387 dec. 31).

CTh.1.32.7

Id. aaa. cynegio praefecto praetorio. nec consuetudinis putamus esse nec legis alicuius, ut procuratores domorum nostrarum vocentur ad instaurationem operum publicorum. proposita beryto theodosio a. ii et cynegio v. c. conss. (388 ....).

CTh.1.33.0. De primiceriis

CTh.1.34.0. De adsessoribus, domesticis et cancellariis

CTh.1.34.1

Impp. arcadius et honorius aa. caesario praefecto praetorio. si qui iudicum vel cives eius provinciae, quam regit, vel certe peregrinos consiliarium sibi voluerit adsciscere, tantum quattuor sibi menses ad retinendum eum, quem ex eadem provincia sumpserit, tributos esse cognoscat, donec ab aliis evocatum locis suis actibus adhibuerit, ita ut emensis quattuor mensibus crimini detur, si quis ultra hoc tempus consiliarium crediderit retinendum. dat. vi id. dec. constantinopoli stilicone et aureliano conss. (400 [396/7] dec. 8).

CTh.1.34.2 [=brev.1.11.1]

Impp. honor. et theodos. aa. eustathio pf. p. post alia: velut castrense peculium filiifamilias assessores post patris obitum vindicent, qui consiliis propriis administratores iuvare consueverunt, si quid licitis honestisque lucris coadunare potuerint. dat. x. kal. april. constantinopoli, dd. nn. honorio xiii. et theodos. x. aa. coss.

interpretatio. si quis vivo patre cuiuscumque* iudicis consilio adhaeserit, quicquid ex iustis et bonis causis acquisierit, hoc sibi sic vindicat, sicut et ille filius, qui aliquid vivo patre in armis constitutus acceperit

CTh.1.34.3 [=brev.1.11.2]

Iidem aa. asclepiodoto pf. p. nullus iudicum ad provinciam sibi commissam quemquam secum ducere audeat, cui domestici vel cancellarii nomen imponat, nec profectum ad se undecumque* suscipiat, ne famae nota cum bonorum publicatione plectatur. periculo enim primatum officii, cancellarios sub fide gestorum electos iudicibus applicari iubemus, ita ut post depositam administrationem per continuum triennium nec militiam deserant, et provincialibus praesentiam sui exhibeant, quo volentibus sit accusandi eos facilitas. si enim idonea causa exegerit, ad detegenda iudicis flagitia et quaestioni eos subdi oportet etc. dat. pridie kal. iun. constantinopoli, asclepiodoto et mariniano vv. cc. coss.

interpretatio. omnes iudices evidenter agnoscant, nullum in provinciam sibi commissam, de eadem, de qua venit, provincia vel alia regione, sibi cancellarium aut domesticum fortasse coniungere, nisi qui ei publice fuerit civium electione deputatus. ita ut postquam fuerit iudex ille remotus, is qui consiliarii vel domestici gessit officium, triennium sub alio iudice de provincia non discedat, ut, si quis accusator fortasse exstiterit, reddat accusantibus rationem. et si forte facta iudicis celare usquequaque voluerit, subdatur publicae quaestioni

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CTh.2.1.0. De iurisdictione, et ubi quis conveniri debeat.

CTh.2.1.1 [=brev.2.1.1]

Imp. constantius a. ad eustathium pf. p. iudices provinciarum volumus vim debitae auctoritatis assumere, ut una actores ceterosque rei privatae nostrae, quae provinciales, teneat disciplina. sceleratos convictosque carceres teneant, tormenta dilacerent, gladius ultor interimat. eo enim modo licentia inveteratae desperationis inhibetur, si intelligant, uno sibi ac pari studio vivendum esse cum ceteris etc. dat. viii. id. mart. limenio et catulino coss.

interpretatio. quicumque* in provinciis iudices ordinati sunt, hoc sibi sciant esse permissum, ut, si aliquos rei dominicae servos vel colonos reatus involverit, sicuti et privatos, comprehendendi eos et puniendi, ut culpa exegerit, nullo contradicente patrimoniorum nostrorum ordinatore, habeant liberam potestatem

CTh.2.1.2 [=brev.2.1.2]

Idem a. ad taurum pf. p. definitum est, provinciarum rectores in civilibus causis litigia terminare, etsi militantes exceperint iurgia vel moverint. ne igitur usurpatio iudicia legesque confundat aut iudicibus ordinariis adimat propriam notionem, ad provinciarum rectores transferantur iurgia civilium quaestionum. in criminalibus etiam causis, si miles poposcerit reum, provinciae rector inquirat. si militaris aliquid admisisse firmetur, is cognoscat, cui militaris rei cura mandata est. dat. viii. kal. aug. mediolano, arbetione et lolliano coss.

interpretatio. etsi civilia negotia ad provinciarum rectores iussimus pertinere, tamen, quoties criminalis actio intercesserit inter illos, qui in armis nostris militant, atque privatos, si militans privatum in iudicium vocaverit, rector provinciae audiendi et iudicandi habeat potestatem. si vero privatus servientem nobis in armis vel militantem forte pulsaverit, ille causam audiat, ad cuius ordinationem is respicit, qui militat, vel cui arma tenuerit

CTh.2.1.3 [=brev.2.1.3]

Idem a. et iulianus c. ad taurum pf. p. non solum in agentes in rebus, sed in alios etiam cuiuslibet homines condicionis* competentes vigoris aculei exserantur, si modo fuerit declaratum, delicto eos obnoxios detineri. quicumque* igitur aliquid improbe turpiterque commiserit aut libidinis macula forte polluerit pudicitiam, debet ad eum ultio severitatis congruae propagari: quum tamen direptionem videantur esse conquesti, qui gravia testantur esse admissa, quae obnoxios claruerit invasisse, in duplum restituere compellantur. data et accepta viii. kal. oct. constantio a. ix. et iuliano c. ii. coss.

interpretatio. in omnibus personis, quas etiam praesentiae nostrae dignitas comitatur, hanc volumus observari sententiam: ut, si quis cuiuscumque* pudicitiam violaverit, poenam statutam iure suscipiat. et quicumque* direptionem admiserit, in duplum violenter praesumpta* restituat

CTh.2.1.4 [=brev.2.1.4]

Impp. valentin. et valens aa. ad terentium correctorem tusciae. actor rei forum sequatur, ita ut, si senatores aliquid a provincialibus poscunt, eo, qui provinciam regit, cognitore confligant. si vero provincialis non suscipiat, sed inferat actiones, praefecto urbis disceptante decertet. dat. kal. iun. med., divo ioviano et varroniano coss.

interpretatio. si quis alium crediderit lite pulsandum, apud provinciae illius iudicem, ubi is habitat, quem pulsat, negotium suum noverit proponendum

CTh.2.1.5 [=brev.2.1.5]

Iidem aa. ad felicem vicarium macedoniae. si quis rem nostram coeperit lite pulsare, rationali praesente confligat: quo defensante et controversia omnis agitetur, et iudex eam sententiam decernat, quam iuris aequitas postulaverit. dat. kal. dec. valentin. et valente aa. coss. interpretatio. quoties a fisco nostro aliqua repetuntur, res apud provinciae iudicem sub praesentia nostri ordinatoris agatur: ut illo praesente, quicquid iustitiae ordo suaserit, iudicetur

CTh.2.1.6 [=brev.2.1.6]

Imppp. grat., valentin. et theodos. aaa. neoterio pf. p. exceptis his, quibus extra ordinem subvenitur, omnes iacturam litis incurrant, qui non ante in proprio foro iurgaverint, si quidem possint venire ad altioris iudicis notionem, quum iudicatum, quod displicet, appellatio excluserit: ita ut, si quis litigator se vel fastidio vel gratia cognitoris aut non auditum aut dilatum docuerit, et eius litis, quae protracta est, aestimationem fisco nostro iudex praestet, et in primores officii poena deportationis illico depromatur. dat. prid. kal. mart. mediolano, arcadio a. i. et bautone v.C. coss.

interpretatio. quicumque* apud alium et non apud suum iudicem negotium, quod habuerit, in initio litis crediderit proponendum, exceptis aetate minoribus, quibus lege consultum est, litis ipsius, de qua agitur, actione damnetur: nisi forsitan contra sententiam, quae adversus eum dicta fuerit, crediderit appellandum, ut apud maioris dignitatis iudices audiatur. sane si quis causam habens, a iudice suo se vel per superbiam vel propter amicitiam adversarii sui probaverit non auditum, iudicem tantum, quantum res, de qua agitur, valuerit, fisco nostro iubemus exsolvere: et qui consiliis suis adhaerent, exilii poenam pro districtione sustineant

CTh.2.1.7 [=brev.2.1.7]

Impp. theodos. et arcad. aa. martiniano comiti orientis. mulieres honore maritorum erigimus, genere nobilitamus. iisdem forum ex eorum persona statuimus et domicilia mutamus. dat. iv. id. nov. constantinopoli, arcadio a. ii. et rufino coss.

interpretatio. feminas secundum honorem, quem mariti earum meruerunt, volumus appellari, ut, ad cuius domum nupta transierit, eius proficiat dignitate et pro negotiis suis in eodem foro, ubi est maritum secuta, respondeat

CTh.2.1.8pr. [=brev.2.1.8pr.]

Impp. arcad. et honor. aa. pasiphilo suo salutem. causas plurimi instituentes de fugaci servo, aut manifesto furto aut non manifesto, direpti etiam animalis, servi, vel rei mobilis ac moventis, vel vi bonorum raptorum, parvulae etiam terrae, finium et parvulae casae, sub specie criminis tuum pulsant iudicium.

CTh.2.1.8.1 [=brev.2.1.8.1]

Momentariae etiam possessionis interdictum, quod non semper ad vim publicam pertinet vel privatam, ut mox audiri, interdum etiam sine inscriptione, mereatur, abacti etiam animalis causa proponitur.

CTh.2.1.8.2 [=brev.2.1.8.2]

Quum igitur de his rebus parvis ac minimis tuae sit iniuria potestatis iudicare, decretum est, eas tantum causas criminales a sinceritate tua audiri, quas dignus et meritus horror inscriptionis impleverit, quae magnitudinem videlicet criminis tempusque designat, ut alterutram partem digna legum tenere possit austeritas.

CTh.2.1.8.3 [=brev.2.1.8.3]

Quod statutum si fuerit forte contempt+um, hi, qui ex officio ingrediuntur secretarium, quinque librarum auri condemnatione feriantur. dat. viii. kal. ian. mediolano, olybrio et probino coss.

interpretatio. quoties de parvis criminibus, id est, unius servi fuga, aut sublati iumenti, aut modicae terrae, seu domus invasae, vel certi furti, id est, detenti aut praeventi, sub criminis nomine actio fortasse processerit, ad mediocres iudices, qui publicam disciplinam observant, id est, aut defensores aut assertores pacis, vindictam eius rei decernimus pertinere. ad rectorem vero provinciae illud negotium criminale perveniat, ubi de personarum inscriptione agitur, vel maior causa est, quae non nisi ab ordinario iudice, recitata legis sententia debeat terminari. quod praeceptum si fuerit praetermissum, officiales, qui negotia intromittunt, quinque libras auri se noverint esse damnandos

CTh.2.1.9 [=brev.2.1.9]

Iidem aa. archelao praefecto augustali. si quis neglectis iudicibus ordinariis sine coelesti oraculo causam civilem ad militare iudicium crediderit deferendam, praeter poenas ante promulgatas intelligat, se deportationis sortem excepturum, nihilominus et advocatum eius decem librarum auri condemnatione feriendum. dat. viii. kal. dec. constantinopoli, caesario et attico coss.

interpretatio. quisquis contempto provinciae iudice, ad illos, qui armatis praeesse noscuntur, causam suam crediderit transferendam, exilio se deputandum esse cognoscat, et eum, qui causam illius susceperit proponendam, decem libras auri esse damnandum

CTh.2.1.10 [=brev.2.1.10]

Iidem aa. ad eutychianum pf. p. iudaei romano et communi iure viventes in his causis, quae non tam ad superstitionem eorum, quam ad forum et leges ac iura pertinent, adeant solenni more iudicia omnesque romanis legibus inferant et excipiant actiones: postremo sub legibus nostris sint. sane si qui per compromissum, ad similitudinem arbitrorum, apud iudaeos vel patriarchas ex consensu partium, in civili dumtaxat* negotio, putaverint litigandum, sortiri eorum iudicium iure publico non vetentur: eorum etiam sententias provinciarum iudices exsequantur, tanquam ex sententia cognitoris arbitri fuerint attributi. dat. iii. non. febr. constantinopoli, honorio a. iv. et eutychiano v.C. coss.

interpretatio. iudaei omnes, qui romani esse noscuntur, hoc solum apud religionis suae maiores agant, quod ad religionis eorum pertinet disciplinam, ita ut inter se, quae sunt hebraeis legibus statuta, custodiant. alia vero negotia, quae nostris legibus continentur et ad forum respiciunt, apud iudicem provinciae eo, quo omnes, iure confligant. sane si apud maiores legis suae consentientes ambae partes, de solo tamen civili negotio audiri voluerint, quod, interveniente compromisso, arbitrali iudicio terminatur, tale sit, quasi ex praecepto iudicis fuerit definitum

CTh.2.1.11 [=brev.2.1.11]

Iidem aa. theodoro pf. p. post alia: minime provinciae rector exspectet in reos criminosos actorem dominicum, sed habeat exhibendis noxiis potestatem: utatur legibus nullo interposito rationali. e latebris reus potestate ordinarii iudicis protrahatur, ne per colludium actorum iudiciorum fiat dilatio. dat. ix. kal. iun. mediolano, honorio a. iv. et eutychiano coss.

interpretatio. si quis in domibus dominicis criminosus potuerit inveniri, provinciae iudex praesentiam non exspectet actoris, sed mox reum comprehensum, ne aliquo colludio effugiat, subdi iubeat publicae disciplinae

CTh.2.1.12 [=brev.2.1.12]

Impp. honor. et theodos. aa. consulibus, praetoribus, tribunis plebis, senatui suo salutem dicunt. post alia: in criminalibus causis senatus, statuta iam dudum quinqueviralis iudicii forma servabitur. in quo quum perfacile esse credamus, optimos legere de summis, sortito tamen ad iudicium vocabuntur, ne de capite atque innocentia alterius iudicio electi iudicent etc. dat. viii. id. aug. ravenna, asclepiodoto et mariniano coss.

interpretatio. quum pro obiecto crimine aliquis audiendus est, quinque nobiles viri iudices de reliquis sibi similibus missis sortibus eligantur: ne studio videantur electi et de capitali re aut innocentia alterius videatur facile iudicari

CTh.2.2.0. Ne in sua causa quis iudicet.

CTh.2.2.1 [=brev.2.2.1]

Imppp. valens, grat. et valentin. aaa. ad gracchum pf. u. promiscua generalitate decernimus, neminem sibi esse iudicem debere. quum enim omnibus in re propria dicendi testimonii facultatem iura summoverint, iniquum admodum est, licentiam tribuere sententiae. lecta kal. dec. valente v. et valentin. aa. coss.

interpretatio. omnes praeceptio nostra constringat, ut nullus in sua causa iudex sit: quia, sicut testimonium unusquisque pro se dicere non potest, ita nec pro se poterit iudicare

CTh.2.3.0. De omissa actionis impetratione.

CTh.2.3.1 [=brev.2.3.1]

Impp. theodos. et valentin. aa. hierio pf. p. post alia: nulli prorsus non impetratae actionis in maiore vel in minore iudicio agenti opponatur exceptio, si aptam rei et proposito negotio competentem eam esse constiterit etc. dat. x. kal. mart. constantinopoli, felice et tauro coss.

interpretatio. nullus per hoc praeiudicium negotii videatur incurrere, quod in cuiuscumque* audientia causae suae actio non pervenerit ad effectum. solum est, ut vox sua rationabilis, quum proposuerit, approbetur

CTh.2.4.0. De denuntiatione vel editione rescripti.

CTh.2.4.1pr. [=brev.2.4.1pr.]

Imp. constantinus a. ad symmachum. si quando minoribus vel adultis inferenda lis erit, vel ab ipsis minoribus vel adultis cuidam quaestio movenda sit, non alias cursus temporis inchoetur, nisi ab universis, quos officii sollicitudo constringit, hoc est tutoribus, sive testamento sive decreto dati sunt, vel curatoribus, per quos minores defenduntur, vel iisdem omnibus solenni more lis fuerit intimata.

CTh.2.4.1.1 [=brev.2.4.1.1]

Quod si divisum administrationis periculum per provincias sit, his tantum omnibus insinuari convenit, et ab ipsis inferri litem, qui in ea provincia tutelae vel curae officium sustinent, ne de aliis provinciis defensores minorum ad iudicia producantur. dat. prid. non febr. sirmio. accepta viii. id. mart. corinthi, constantino a. v. et licinio caes. coss.

interpretatio. si quis contra eos, qui in annis minoribus constituti sunt, litem forte commoverit, aut si a parte ipsorum reus aliquis arguatur, ex eo tempora computanda sunt, ex quo tutor sive curator minoris aut per iudicem aut per curiam intulerit seu exceperit actionem: ita tamen, ut si in diversis provinciis istius officii homines sunt, id est, curatores vel tutores, qui minorum causas tueantur, qui in eadem provincia fuerint, ubi intentio nata probatur, ipsi aut ingerant aut excipiant actiones: quia nolumus, ut ad aliam provinciam defensores minorum pro audientiae necessitate ducantur. hic de iure adiectum est

CTh.2.4.2 [=brev.2.4.2]

Idem a. ad maximum pf. u. denuntiari vel apud provinciarum rectores vel apud eos, quibus actorum conficiendorum ius est, decernimus, ne privata testatio, mortuorum aut in diversis terris absentium aut eorum, qui nusquam gentium sint, scripta nominibus, falsam fidem rebus non gestis affingat. dat. x. kal. iun. sirmio, probiano et iuliano coss.

interpretatio. contestari apud rectores provinciae vel defensores aut omnes, apud quos gesta conficiuntur, litem iubemus, ne ullus nomen absentis aut mortui vel qui non potuerit inveniri, in litis contestatione recipiat, ne falsitatis inveniatur occasio

CTh.2.4.3 [=brev.2.4.3]

Imppp. valentin., valens et grat. aaa. ad ampelium pf. u. exigendae denuntiationis locus non est, quum quis ad luendum debitum evidenti chirographo convenitur. dat. iv. kal. aug. contionaci, gratiano a. ii. et probo coss.

interpretatio. contestatio locum habere non potest, quando aliquis ad solvendum debitum certa cautione convincitur

CTh.2.4.4 [=brev.2.4.4]

Imppp. valentin., theodos. et arcad. aaa. ad romulum consularem aemiliae et liguriae. post celebratam denuntiationem, editione rescripti (quod tamen iure sit impetratum) lis exordium auspicatur, inter iustas videlicet legitimasque personas. et si quis perennitatis nostrae pendentibus temporibus responsa protulerit, non modo tempora, quorum erunt curricula, non dilatentur, sed et quicquid elicitum erit, frivolum iudicetur. dat. xiii. kal. iul. mediolano, arcadio a. i. et bautone v.C. coss.

interpretatio. posteaquam per scripturam lis fuerit contestata, et per publicam conventionem, quisquis ille est, qui pulsatur, agnoverit, tunc lis inchoata dicatur, si tamen litigantium perfectae probantur aetates. nam si quis principis beneficio contra rationem legis causae suae tempora supplicaverit prolongari, quicquid pro hac re meruerit, non valebit

CTh.2.4.5 [=brev.2.4.5]

Iidem aaa. ad claudium consularem tusciae. universa quidem negotia, quae ex rescriptorum auctoritate sortiuntur exordium, ad cursum temporum pertinere, decretum est: ante omnia vero procurandum est, ne pervasionibus improborum protelandae cognitionis praebeatur occasio. idcirco, si quis possessione deiectus auxilium nostri poscat oraculi, nullis eum temporum, quae ex rescriptorum editione defluunt, moris esse ludendum, hac lege decernimus, ne iuris suffragium, quod in celeri reformatione consistit, beneficiorum imperialium decreta suspendant. dat. vi. non. mai. mediolano, timasio et promoto coss.

interpretatio. licet in negotiis, quae per actionem elicitam inchoari videntur, legitimus ad respondendum temporum semper cursus observandus sit, specialiter eos, qui aliqua pervaserint, non patimur per quamcumque* occasionem differre negotium. ideoque quum ille, qui fuerit de possessione deiectus, audientiam impetraverit, iuxta iuris ordinem intra annum ad recipienda, quae perdidit, nullatenus differatur. nec aliqua pervasori dilatio concedatur, etiamsi pro hac re differenda beneficium principis potuerit obtinere

CTh.2.4.6 [=brev.2.4.6]

Imppp. arcad., honor. et theodos. aaa. aemiliano pf. u. si quis debiti, quod ex foenore vel mutuo data pecunia sumpsit* exordium vel ex alio quolibet titulo in literarum obligationem facta cautione translatum est, seu fideicommissi dirigat actionem, aut momentariam possessionem pervasione violatam vel quodlibet interdictum efflagitet, seu inofficiosum arguat testamentum, vel tutelae seu negotiorum actionem intendat, ruptis denuntiationum ambagibus, inter ipsa cognitionum auspicia rationem exprimere ac suas allegationes iubeatur proponere, denuntiatione et temporum observatione remota, quam in ceteris civilibus causis, quarum tamen aestimatio centum solidorum summam excedat, volumus custodiri. dat. xiii. kal. aug. constantinopoli, arcadio a. vi. et probo v.C. coss.

interpretatio. pro repetendo debito, unde certa scriptura profertur, seu de eo, quod alicui fideicommissum est, ut daretur, aliquis agat, aut aliquid sibi alleget fuisse pervasum, aut quodlibet intra annum beneficium momenti requirat, aut testamentum dicat non esse legitimum, vel de tutela aliquid proponat, non exspectetur, ut prius, quod repetit, apud acta proponat, aut ordo ipsius causae petatur scriptus, sed mox apud iudicem sine ulla temporum mora, quae per hoc videtur afferri, causam suam proponat et omnes partes suae probationis exhibeat. quam rem etiam in civilibus negotiis praecipimus observari, quae tamen minus quam centum solidorum summam valere constiterit. hoc de iure adiectum est

CTh.2.4.7 [=brev.2.4.7]

Impp. honor. et theodos. aa. iovio pf. p. post alia: quaecumque* forte ecclesiae venerabilis negotia sunt, vel esse poterunt actiones, celeri, legum ordine servato, iudicantum disceptatione finiantur. nec enim decet, defensione loci nominisque venerabilis suscepta, publica diu secretaria praestolari. dat. vi. kal. iul. ravenna, honorio viii. et theodos. iii. aa. coss.

interpretatio. ecclesiarum negotia, pro reverentia sanctitatis ac fidei, oportet, quum ad publicum prolata fuerint, sine aliqua dilatione finiri. nec debent defensores loci venerabilis ulla tarditate suspendi

CTh.2.5.0. De dominio rei quae poscitur vel consortibus ab eo, cui denuntiatum fuerit, nominandis

CTh.2.5.1

Imp. constantinus a. ...... petitor quem voluerit de consortibus pulset et quem vult per suam voluntatem praetereat, ea tamen condicione, ut qui pulsati non fuerint nullum de his quae iudicata fuerint praeiudicium patiantur, sed cum voluerint suas instituant actiones. (....).

CTh.2.5.2 [=brev.2.5.1]

Imp. iulianus a. secundo pf. p. post alia: explosis atque reiectis praescriptionibus, quas litigatores sub obtentu consortium, studio protrahendae disceptationis, excogitare consueverunt, sive unius fori omnes sint, sive in diversis provinciis versentur, nec adiuncta praesentia consortis vel consortium, agendi vel respondendi iurgantibus licentia pro parte pandatur. et amputata constitutione constantini, patrui mei, quae super consortibus promulgata est, antiquum ius, quantum pertinet ad huiusmodi disceptationes, cum omni firmitate servetur, ut, interruptis artificiosis obstaculis, possidentum astutia comprimatur. dat. iii. non. sept. antiochiae, mamertino et nevitta coss.

interpretatio. remotis obiectionibus, quibus se consortes ad respondendum invicem excusabant, ut si non in una provincia vel sub uno iudice omnes essent, dum praesentiam suam non simul esse causantur, repetentes videbantur illudere: unde dilationem hanc removentes, quam patruus noster constantinus consortibus in hac parte praestiterat, iubemus secundum antiqui iuris ordinem, quicumque* pulsatus fuerit, pro sua parte vel persona respondeat, nec diutius sub hac occasione repetentem differat ille, qui possidet

CTh.2.6.0. De temporum cursu et reparationibus denuntiationum.

CTh.2.6.1 [=brev.2.6.1]

Imp. constantinus a. iulio vero praesidi tarraconensi. quum semel negotium necessitate vel casu temporibus fuerit exemptum*, ac postea per indulgentiam clementiae nostrae redintegratio praestetur, intra quattuor* menses iudicantis arbitrium, non ulterius litigatoribus praeberi oportet, etiamsi per obreptionem aliquid a nobis iterata supplicatione meruerint. dat. prid. non. mai. vienna, sabino et rufino coss.

interpretatio. quando aliqua causa, necessitate intercedente vel casu, promissum tempus excesserit, et principali beneficio eam litigator meruerit reparare, non amplius ad definiendum negotium iudices quam quattuor* menses litigatoribus praestent. quibus exactis, etiamsi aliud dominorum beneficio obtinuerint, nullatenus audiantur

CTh.2.6.2 [=brev.2.6.2]

Idem a. ad felicem praesidem corsicae. post alia: si petitores probaverint, interpellantes se saepius esse dilatos, atque ita lapsum temporis incurrisse per negligentiam atque desidiam, gravitate tua audientiam differente, indemnitas petitorum pro modo litis, quae in altercationem fuerit adducta, de tuis facultatibus sarciatur. dat. ix. kal. nov. sirmio, constantino a. v. et licinio caes. coss.

interpretatio. si repetentem iudex per negligentiam usque eo distulerit, ut causam suam transactis legitimis temporibus perdat, omnia, quaecumque* in illius iudicio iuste sibi potuit vindicare, ei de ipsius iudicis facultatibus, habita aestimatione, reddantur

CTh.2.6.3 [=brev.2.6.3]

Idem a. ad bassum pf. p. altero ex litigatoribus in lite defuncto cursum temporis esse reparandum, latis iam dudum legibus continetur. dat. xiii. kal. iun. sirmio, crispo ii. et constantino ii. caess. coss.

interpretatio. si unus ex litigatoribus, sive pulsatus sive petitor, intra constitutum per scripturam tempus fortasse defecerit, tempora, quae fuerant statuta, successoribus renoventur

CTh.2.6.4 [=brev.2.6.4]

Imppp. constantinus, constantius et constans aaa. ad acyndinum pf. p. si quis iurgantium ante litis terminum ultimum diem obierit, non, ut ante statuimus, a decedentium primo die cursus temporis observari oportet, si successor legitimae aetatis sit, sed ex die petitae bonorum possessionis vel aditae hereditatis ei tempora renovari: ita tamen, ut ea res non lateat possidentem, nec clam, ut fraudem tempori faciat, pertentetur. quod si successor minoris aetatis sit, postquam datus tutor sive curator solennia susceptae defensionis impleverit, tempus dinumerari conveniet. dat. et pp. vi. kal. ian. antiochiae, urso et polemio coss.

interpretatio. si quis de litigatoribus ab hac luce discesserit, heredi eius non ex die, qua ille defunctus est, sed ex quo hereditatem acceperit, actionis tempora, quae auctori ad litem constituta fuerant, renoventur: ita tamen, ut fraus tempori, ex quo res est possessa, non fiat, sed sciat, se rem tenere, qui petitur. quod si heres in annis sit minoribus constitutus, tutori vel curatori ex eo tempora supputentur, ex quo pro minore firmam personam defensionis accepit et rem tenuit

CTh.2.6.5 [=brev.2.6.5]

Impp. constantius et constans aa. ad petronium vic. africae. inter privatos et fiscum, si privatus actionem intendat, quattuor* mensium tempora custodienda sunt: quum vero fiscus privato inferet aliquam quaestionem, sex mensium curricula serventur, utrique parti petendae dilationis per defensores suos copia non neganda, si hoc commoditatis ratio postulaverit. dat. v. id. april. aquileia, acyndino et proculo coss.

interpretatio. quando inter fiscum et privatum possessorem de repetitione aliqua fuerit orta contentio, si privatus fiscum repetat, quattuor* menses ad respondendum actor fiscalis habebit inducias: si vero fiscus aliquid a possessore crediderit repetendum, sex mensium ad respondendum dilatio non negetur, dummodo ad praestandas inducias iusta ratio cognoscatur

CTh.2.7.0. De dilationibus

CTh.2.7.1

Imp. constantinus a. ad ursum vicarium. si quando quis rescriptum ad extraordinarium iudicem reportaverit, dilatio ei penitus neganda est. illi autem, qui in iudicium vocatur, danda est ad probanda precum mendacia vel proferenda aliqua instrumenta vel testes, quoniam instructus esse non potuit, qui praeter spem ad alienum iudicem trahebatur. dat. prid. non. mart. volusiano et anniano conss.

interpretatio. quando ab aliquo principe praeceptio fuerit surrepta, ut ad alium iudicem quam cui commissus est, adversarium suum pertrahat audiendum, sicut ille, qui petitor est, indutias si petierit, accipere non debuit, ita illi, qui ad iudicium adducitur, dilatio debita non negetur, ut facilius aut per scripturam aut per testes probare vale at illum a quo pulsatus est falsa supplicatione meruisse, quod petiit. (314 mart. 6)

CTh.2.7.2pr.

Idem a. ad iulianum praefectum urbi. petendae in integrum restitutionis temporibus, ut iam constitutum est, observatis si dilatio ab actore petatur, quae intra metas lege comprehensas valeat artari, eandem quocumque flagitante causis cognitis tribui oportebit: sin vero eiusmodi postulentur curricula, quae intra spatium lege receptum angustari non queunt, quippe si in confinio praedicti temporis petuntur et eius terminos prorogabunt, dilationem petitori denegari conveniet; in eius enim arbitrio fuerat tunc inferre litigium, cum petitae dilationis mora spatio superstite posset includi. (327 iul. 19).

CTh.2.7.2.1

Quod si defensio possidentium dilationis suffragia postulaverit, eandem adserta causa citra obstaculum temporis deferri sancimus, quia nequaquam in ipsius steterat potestate, quando litigio pulsaretur. dari igitur debet, etsi impetrata dimensio sese ultra constitutionis regulam proferat. qua dilatione, si a possessore impetretur, etiam petitor in requirendis probationibus uti minime prohibetur. dat. xiiii kal. aug.; proposita romae constantio et maximo conss.

interpretatio. liquet quattuor mensibus constitutum, ut petentibus pro requirenda omni instructione indutiae concedantur. unde si illud spatium requiratur, quod indultum est, id est, quod quattuor menses non possit excedere, praestari conveniet. si vero tales petantur indutiae, quae tempus lege constitutum excedant, petitori debet dilatio denegari, qui scire debuit actionem suam constituto tempore finiendam. quod si ille spatium, qui rem possidet, fortasse petierit, dari sine impedimento temporis, quod petentibus datum est, omnino debebit: quia scire non potuit, quando ab adversario provocaretur ad causam, et quando possessor spatium, ut respondere possit, acceperit, etiam petitor suis partibus poterit necessaria providere. (327 iul. 19)

CTh.2.7.3 [=brev.2.7.1]

Impp. arcad. et honor. aa. messalae pf. p. post alia: de statu atque patrimonio litigantibus in transmarina etiam dilatione mensium novem spatia creditur posse sufficere etc. dat. xii. kal. dec. theodoro v.C. cos.

interpretatio. quoties de statu ingenuitatis vel de patrimoniis causa vertitur, si necessaria negotii in transmarinis partibus litigatores habere se dixerint, novem mensium spatium indubitanter accipiant

CTh.2.8.0. De feriis

CTh.2.8.1 [=brev.2.8.1]

Imp. constantinus a. elpidio. sicut indignissimum videbatur, diem solis, veneratione sui celebrem, altercantibus iurgiis et noxiis partium contentionibus occupari, ita gratum ac iucundum est, eo die, quae sunt maxime votiva, compleri. atque ideo emancipandi et manumittendi die festo cuncti licentiam habeant, et super his rebus acta non prohibeantur. pp. v. non. iul. caralis, crispo ii. et constantino ii. caess. coss.

interpretatio. quamvis sancto die dominico omnes lites ac repetitiones quiescere iusserimus, emancipare tamen ac manumittere minime prohibemus, et de his rebus gesta confici pari ordinatione permittimus

CTh.2.8.18

(imppp. gratianus, valentinianus et theodosius aaa. ad principium praefectum praetorio. solis die, quem dominicum rite dixere maiores, omnium omnino litium, negotiorum, conventionum quiescat intentio; debitum publicum privatumque nullus efflagitet; nec apud ipsos quidem arbitros vel iudiciis flagitatos vel sponte delectos ulla sit agnitio iurgiorum. et non modo notabilis, verum etiam sacrilegus iudicetur, qui a sanctae religionis instinctu rituve deflexerit. proposita iii non. nov. aquileiae, accepta viii k. dec. romae honorio n. p. et evodio conss. (386 nov. 3).

CTh.2.8.19pr. [=brev.2.8.2pr.]

Imppp. valentin., theodos. et arcad. aaa. albino pf. u. omnes dies iubemus esse iuridicos. illos tantum manere feriarum dies fas erit, quos geminis mensibus ad requiem laboris indulgentior annus accepit, aestivis fervoribus mitigandis et autumnis foetibus decerpendis.

CTh.2.8.19.1 [=brev.2.8.2.1]

Kalendarum quoque ianuariarum consuetos dies otio mancipamus.

CTh.2.8.19.2 [=brev.2.8.2.2]

His adiicimus natalitios dies urbium maximarum, romae atque constantinopolis, quibus debent iura deferre, quia et ab ipsis nata sunt.

CTh.2.8.19.3 [=brev.2.8.2.3]

Sacros quoque paschae dies, qui septeno vel praecedunt numero vel sequuntur, in eadem observatione numeramus, nec non et dies solis, qui repetito in se calculo revolvuntur.

CTh.2.8.19.4 [=brev.2.8.2.4]

Parem necesse est haberi reverentiam nostris etiam diebus, qui vel lucis auspicia vel ortus imperii protulerunt. dat. vii. id. aug. roma, timasio et promoto coss.

interpretatio. causas per anni spatium omnibus diebus secundum leges audiri praecipimus. et licet lex quattuor* menses ad fructus colligendos indulserit, sed ita pro provinciarum qualitate et pro praesentia dominorum credidimus faciendum, ut a die viii. kalendarum iuliarum usque in kalendas augusti messivae feriae concedantur, et de kalendis augusti usque in x. kalend. septembris agendarum causarum licentia tribuatur. a x. autem kalend. septemb. usque in idus octobr. vindemiales feriae concedantur. dies etiam dominicarum, qui feriati sunt, ab audiendis negotiis vel exigendis debitis sequestramus. sanctos etiam paschae dies, id est septem qui antecedunt, et septem qui sequuntur. nec non et dies natalis domini nostri vel epiphaniae sine forensi strepitu volumus celebrari. natalem etiam principis vel initium regni pari reverentia convenit observari

CTh.2.8.20

Idem aaa. proculo praefecto urbi. festis solis diebus circensium sunt inhibenda certamina, quo christianae legis veneranda mysteria nullus spectaculorum concursus avertat, praeter clementiae nostrae natalicios dies. dat. xv k. mai. constantinopoli arcadio a. ii et rufino conss. (392 apr. 17).

CTh.2.8.21

Idem aaa. tatiano praefecto praetorio. actus omnes seu publici seu privati diebus quindecim paschalibus sequestrentur. dat. vi k. iun. constantinopoli arcadio a. ii et rufino conss. (392 mai. 27).

CTh.2.8.22

Impp. arcadius et honorius aa. heracliano correctori paflagoniae. sollemnes paganorum superstitionis dies inter feriatos non haberi olim lege reminiscimur imperasse. dat. v non. iul. constantinopoli olybrio et probino conss. (395 iul. 3).

CTh.2.8.23

Idem aa. ad aurelianum praefectum praetorio. die dominico, cui nomen ex ipsa reverentia inditum est, nec ludi theatrales nec equorum certamina nec quicquam, quod ad molliendos animos repertum est, spectaculorum in civitate aliqua celebretur. natalis vero imperatorum, etiamsi die dominico inciderit, celebretur. dat. vi k. sept. constantinopoli theodoro v.C. cons. (399 aug. 27).

CTh.2.8.24

Idem aa. hadriano praefecto praetorio. religionis intuitu cavemus atque decernimus, ut septem diebus quadragesimae, septem paschalibus, quorum observationibus et ieiuniis peccata purgantur, natalis etiam die et epifaniae spectacula non edantur. dat. prid. non. feb. ravenna stilichone et aureliano conss. (400 [405] febr. 4).

CTh.2.8.25

Impp. honorius et theodosius aa. iovio praefecto praetorio. post alia: dominica die, quam vulgo solis appellant, nullas edi penitus patimur voluptates, etsi fortuito in ea aut imperii nostri ortus redeuntibus in semet anni metis obfulserit aut natali debita sollemnia deferantur. dat. kal. april. ravenna honorio viii et theodosio iii aa. conss. (409 apr. 1).

CTh.2.8.26 [=brev.2.8.3]

Impp. honor. et theodos. aa. ioanni pf. p. post alia: die sabbato ac reliquis, sub tempore, quo iudaei cultus sui reverentiam servant, neminem aut facere aliquid aut ulla ex parte conveniri debere praecipimus: quum fiscalibus commodis et litigiis privatorum constat reliquos dies posse sufficere etc. dat. vii. kal. aug. ravenna, dd. nn. honorio viii. et theodos. iii. aa. coss.

interpretatio. die sabbati nullum iudaeorum aut pro fiscali utilitate aut pro quolibet negotio volumus conveniri, quia religionis eorum dies non debet actione aliqua perturbari

CTh.2.9.0. De pactis et transactionibus

CTh.2.9.1

Imp. constantinus a. ad rufinum praefectum praetorio. post alia: litigia sententiis vel transactionibus terminata non sinimus restaurari. dat. iiii id. mai. ipso a. v et licinio c. conss. (319 [352] mai. 12).

CTh.2.9.2

Imppp. gratianus, valentinianus et theodosius aaa. eutropio praefecto praetorio. ubi pactum conscriptum est atque aquilianae stipulationis vinculis firmitas iuris innexa, aut gestis secundum legem adcommodandus est consensus aut poena una cum his, quae data probabuntur, ante cognitionem causae inferenda est. dat. iii non. iun. constantinopoli eucherio et syagrio conss. (381 iun. 3).

CTh.2.9.3pr. [=brev.2.9.1pr.]

Impp. arcad. et honor. aa. rufino pf. p. si quis maior annis adversum pacta vel transactiones nullo cogentis imperio, sed libero arbitrio et voluntate confecta putaverit esse veniendum, vel interpellando iudicem, vel supplicando principibus, vel non implendo promissa ea, quae invocato dei omnipotentis nomine, eo auctore, solidaverit, non solum inuratur infamia, verum etiam actione privatus, restituta poena, quae pactis probatur inserta, earum rerum et proprietate careat et emolumento, quod ex pacto vel transactione illa fuerit consecutus. quae omnia eorum mox commodo deputabuntur, qui intemerata pacti iura servaverint.

CTh.2.9.3.1 [=brev.2.9.1.1]

Eos etiam huius litis vel iactura dignos iubemus esse vel munere, qui nomina nostra placitis inserentes, salutem principum confirmationem initarum esse iuraverint pactionum. dat. v. id. oct. constantinopoli, olybrio et probino coss.

interpretatio. si quis post xxv. aetatis suae annum adversus pactionem vel definitionem suam, quam nulla potestate constrictus emisit, sed voluntate propria fecisse dignoscitur, aut interpellare iudices aut potestatum animos contra hoc, quod fecit, precibus adire praesumpserit* aut implere neglexerit ea, quae sub sacramenti interpositione definitionis suae scriptura testatur: non solum ex hoc facto pronuntietur infamis, sed nec causam ipsam agere permittatur et poenam, quam in pacto constituit, cogatur exsolvere: et quicquid partibus suis per eandem scripturam fuerit deputatum, illis continuo conferatur, qui emissae pactionis definitionem sine aliqua contrarietate servaverint. illos quoque praecipimus similis poenae condicione* constringi, qui dominorum nomina placitis inserentes, definita implere neglexerint: quod illis pro munere conservatae pactionis accrescat, qui sacramenta et definita servaverint

CTh.2.10.0. De postulando

CTh.2.10.1

Imp. constantinus a. antiocho praefecto vigilum. iussione subversa, qua certus advocatorum numerus singulis tribunalibus praefinitus est, omnes licentiam habeant, ut quisque ad huius industriae laudem in quo voluerit auditorio pro ingenii sui virtute nitatur. dat. k. nov. serdicae constantino a. v et licinio c. conss. (319 nov. 1).

CTh.2.10.2

Idem a. ad antiochum praefectum vigilum. destituuntur negotia et temporibus suis excidunt, dum advocati per multa officia et diversa secretaria rapiuntur; ideoque censuimus, ne hi, qui semel protestati fuerint, quod apud te causas acturi sunt, apud alium iudicem agendi habeant potestatem. proposita k. nov. serdicae constantino a. v. et licinio c. conss. (319 nov. 1).

CTh.2.10.3

Idem a. helladio. saepius claruit quosdam ex advocatis existimationi suae inmensa atque illicita compendia praetulisse nomine honorariorum. (325 mart. 30).

CTh.2.10.4 [=brev.2.10.1]

Imp. constantinus a. ad bassum pf. p. advocatos, qui consceleratis depectionibus suae opis egentes spoliant atque denudant, non iure causae, sed fundorum, pecorum et mancipiorum qualitate rationeque tractata, dum eorum praecipua poscunt coacta sibi pactione transscribi, ab honestorum coetu iudiciorumque conspectu segregari praecipimus. pp. viii. id. mart. constantinopoli, constantino a. viii. et constantio caes. coss.

interpretatio. advocati, id est causas agentes, qui per iniquam cupiditatem susceptos, quorum causas acturi sunt, prius cogunt de rebus suis taliter scriptura intercedente pacisci, ut omnia, quae meliora sunt in agris aut in mancipiis aut in pecoribus, ad eos sub promissa defensione perveniant, et ideo qui tam scelerati in eos, quibus patrocinium promittunt, fuerint deprehensi, et a conventu honestorum virorum et iudiciorum communione praecipimus segregari

CTh.2.10.5 [=brev.2.10.2]

Impp. valentin. et valens aa. olybrio pf. u. quisquis vult esse causidicus, ipsam solam sumat in causas agendo personam, nec idem in eodem negotio defensor sit et quaesitor, quoniam aliquem inter arbitros et patronos oportet esse delectum. acc. xii. kal. sept. ipsis aa. coss.

interpretatio. quicumque* causas suscipere vel agere voluerit alienas, hoc sibi noverit vindicandum, ne velit in eo negotio, quod susceperit, et iudicis et assertoris habere personam

CTh.2.10.6 [=brev.2.10.3]

Impp. honor. et theodos. aa. eustathio pf. p. [de re necessaria ad locum.] altero beneficio non solum per forum tuae magnitudinis, sed in universis iudiciis valituro, ut filiifamilias, quicquid ex huiuscemodi professione vel ipsius occasione conquisierint, id post patris obitum praecipuum, veluti peculium castrense, proprio dominio valeant vindicare: sub tali forma, quam militantibus, ex iure procinctis, cinguli praerogativa detulit. dat. x. kal. april. constantinopoli, dd. nn. honorio xiii. et theodos. x. aa. coss.

interpretatio. quicquid vivo patre filius advocatus de causarum susceptione acquisierit, sibi noverit vindicandum, sicut castrense peculium, quod in armis constituti filii probantur acquirere vel illi, qui iudiciariam vivis parentibus meruerint potestatem

CTh.2.11.0. De erroribus advocatorum.

CTh.2.11.1 [=brev.2.11.1]

Imp. constantinus a. furio felici. advocatorum errores in competenti iudicio litigatoribus non praeiudicant. dat. v. kal. aug. constantino a. vi. et constantino caes. coss.

interpretatio. advocatus, si in suscepti causa aliquid in praeiudicium per errorem dixerit, praeiudicare ei, a quo adhibitus est, nullatenus debet: si continuo de ipso errore fuerit reclamatum

CTh.2.12.0. De cognitoribus et procuratoribus.

CTh.2.12.1 [=brev.2.12.1]

Imp. iulianus a. secundo pf. p. nulla dubitatio est, post causam in iudicio publicatam, utpote dominum litis procuratorem effectum, etiam post excessum eius, qui defensionem mandaverat, posse inchoatam litem iurgiumque finire: quippe quum et procuratorem posse eum instituere et ad heredes suos inchoata transmittere, veteres iuris voluerunt conditores. lecta apud acta prid. non. febr. iuliano a. iv. et sallustio coss.

interpretatio. qui dominus et procurator de cuiuslibet rei petitione fuerit institutus et susceptam litem vivo mandatore per actionem repetendo fuerit contestatus, etiamsi ille, qui ei mandatum tale fecerat, de hac luce discedat, liceat ei rem, quam repetendam susceperat, sibimet ipsi defensare et alium procuratorem in hac causa, si voluerit, qui repetat, ut dominus ordinare atque actionem ad heredes suos successoresque transmittere: quia sicut in rebus, quae possidentur, procuratores tantum adversus pulsantes nec non et domini possunt firmiter ordinari, ita in rebus, quae repetuntur, dominos procuratoresque facere is, qui pulsat ac repetit, iure permittitur. solum est, ut mandatum ad vicem donationis factum, actis habeatur insertum

CTh.2.12.2 [=brev.2.12.2]

Impp. valentin. et valens aa. sallustio pf. p. commune negotium et quibusdam absentibus agi potest, si praesentes rem ratam dominum habiturum cavere parati sunt, vel si, quod ab his petitur, iudicatum solvi satisdatione firmaverint. pp. vi. id. dec. divo ioviano et varroniano coss.

interpretatio. communes causas absentibus consortibus alii consortes agere possunt, si illi, qui praesentes fuerint, caveant acceptum esse illis, qui absentes sunt, quicquid fuerit iudicatum, aut in praesenti fideiussorem dederint, ut omnia, quae definita fuerint, implere non differant

CTh.2.12.3 [=brev.2.12.3]

Imppp. grat., valentin. et theodos. aaa. pancratio pf. u. in principio quaestionis persona debet inquiri, et utrum ad agendum negotium mandato utatur accepto. quibus rite et solenniter constitutis, potest esse sententia: praeteritis autem his, nec dici controversiae solent, nec potest esse iudicium etc. dat. prid. non. april. constantinopoli, antonio et syagrio coss.

interpretatio. quum primum ad iudicem causa fuerit intromissa, personarum firmitas requiratur, ut is, qui causam alterius prosequitur, mandatum eius, cuius causam agendam susceperat, proferre procuret

CTh.2.12.4 [=brev.2.12.4]

Imppp. theodos., arcad. et honor. aaa. victorio proconsuli asiae. procurator, licet maritus sit, id solum exsequi debet, quod procuratio emissa praescripserit. dat. v. kal. iul. theodos. a. iii. et abundantio v.C. coss.

interpretatio. qui uxoris suae negotium fuerit prosecutus, quamvis maritus sit, nihil aliud agat, nisi quod ei agendum per mandatum illa commiserit

CTh.2.12.5 [=brev.2.12.5]

Iidem aaa. rufino pf. p. nullo pacto feminae aut amplius, quam sibi competit, agere aut pro aliis possunt intervenire personis. dat. iv. kal. oct. constantinopoli, theodos. a. iii. et abundantio v.C. coss.

interpretatio. nulla ratione feminae amplius quam suas agendi causas habeant potestatem: nec alicuius causam a se noverint prosequendam

CTh.2.12.6 [=brev.2.12.6]

Impp. arcad. et honor. aa. andromacho pf. u. post alia: nemo militantium fiat susceptor defensorve causarum, nec ad cognitionem alieni iurgii suffragator accedat etc. dat. prid. non. iul. mediolano, olybrio et probino coss.

interpretatio. militantes non permittuntur legibus lites suscipere alienas, nec procuratores fieri possunt

CTh.2.12.7 [=brev.2.12.7]

Imp. theodos. a. et valentin. caes. asclepiodoto pf. p. si lite contestata procuratorem vel cognitorem, qui litis minister est ordinatus, mori contigerit, minime eius quaerantur heredes, ne supervacua domino causae laboris occasio protendatur, sed statim ad eum migrent omnes, qui dominus causae fuerat, actiones. et successoribus procuratoris nulla super eo petitio relinquatur, nisi tantum expensarum nomine vel factorum litis causa sumptuum*. nec sane videtur incongruum cognitori, quum manifestum sit, si cognitor vel praesentis procurator usus fuerit in iudicio prosperiore fortuna, vel eadem non flante devictus, iudicati actionem sine ulla cunctatione in dominum dari vel domino. et haec quidem in actoris persona de litis ministro edixisse sufficiat; ceterum in rei quoque idem licere, non dubium est, quamvis abunde legum veterum observatione munita sit, quae, si in rem quoque suam cognitor vel procurator quis fuerit ordinatus, simili modo nihil novi requirere patiuntur etc. dat. xviii. kal. dec. constantinopoli, victore v.C. cos.

interpretatio. procurator est, cui per mandatum causa committitur. cognitor est, cui sine mandato causam suam agendam praesens praesente iudice litigator iniungit. si procurator aut cognitor tantummodo, non dominus et procurator effectus, post litem contestatam quolibet casu de hac luce discesserit, de mandato sibi negotio ad suum nihil transmittit heredem: nisi tantum sumptuum* vel expensarum repetitionem, quam auctorem suum in suscepta causa fecisse probaverit: lis vero ad mandatorem redit. si praesentis procurator vincatur aut vincat, in dominum vel domino, non in procuratorem vel procuratori actio tribuetur iudicati. idem est et in pulsati possessoris procuratore servandum, si aut vincatur aut vincat. et si in rem suam quis factus fuerit dominus et procurator, et procuratorem ipse pro sua utilitate iam fecerit, similiter exitus rei iudicatae dominum respiciet, non actorem

CTh.2.13.0. De actionibus ad potentes translatis.

CTh.2.13.1 [=brev.2.13.1]

Impp. honor. et theodos. aa. ioanni pf. p. post alia: si cuiuscumque* modi cautiones ad potentum fuerint delatae personas, debiti creditores iactura mulctentur. aperta enim credentium videtur esse voracitas, qui alios actionum suarum redimunt exactores etc. dat. v. id. iul. ravenna, dd. nn. honorio xiii. et theodos. x. aa. coss.

interpretatio. qui cautiones exigendas potentibus dederint, omne debitum perdant: quia, ubi potest esse repetitio, potestas ad exigendum non debet a creditoribus invitari

CTh.2.14.0. De his, qui potentiorum nomina in lite praetendunt aut titulos praediis affigunt.

CTh.2.14.1 [=brev.2.14.1]

Impp. arcad. et honor. aa. messalae pf. p. animadvertimus, plurimos iniustarum desperatione causarum potentium titulos et clarissimae privilegia dignitatis his, a quibus in ius vocantur, opponere. ac ne in fraudem legum adversariorumque terrorem his nominibus abutantur et titulis, qui huiusmodi dolo scientes connivent, afficiendi sunt publicae sententiae nota. quod si nullum in hac parte consensum praebuerint, ut libelli aut tituli eorum nominibus aedibus affigantur alienis, eatenus in eos, qui fecerint, vindicetur, ut, affecti plumbo, perpetuis metallorum suppliciis deputentur. quisquis igitur lite pulsatus, quum ipse et rei sit possessor et iuris, et titulum illatae solenniter pulsationis exceperit, contradictoriis libellis aut titulis alterius nomen crediderit inserendum, eius possessionis aut causae, quam sub hac fraude aut retinere aut evitare tentaverit, amissione mulctetur, nec repetendae actionis, etiamsi ei vel probabilis negotii merita suffragantur, habeat facultatem. eos sane, qui se sponte alienis litibus inseri patiuntur, quum his neque proprietas, neque possessio competat, veluti famae suae prodigos et calumniarum redemptores* notari oportebit. dat. v. kal. dec. mediolano, stilicone v.C. et aureliano coss.

interpretatio. cognovimus, multos causas suas per potentium personas excusare vel prosequi, ita ut libellos vel titulos eorum nominibus, qui dignitate praeclari sunt, quo facilius terreant possessores, in his domibus, quae ab eis repetuntur, affigant, aut certe, si aliquid repetatur, nomine magnorum et clarissimorum virorum prolatis libellis contradictoriis se specialiter excusare. quod si ex eorum voluntate factum fuerit, quorum nomina libelli testantur, publice debet dignitas eorum pro omni vilitate notari. illi vero, qui causas suas tali fraude agere praesumpserint*, plumbatis caesi, in metallum damnati perdurent. unde quicumque* de re conventus, in qua dominus esse dignoscitur, si alterius nomine se voluerit defensare aut alium alterius nomine inquietare praesumpserit*, causam perdat: et rei, de qua agitur, seu possessionem seu repetitionem amittat, quamvis boni meriti negotium possit habere

CTh.2.15.0. De dolo malo.

CTh.2.15.1 [=brev.2.15.1]

Imp. constantinus a. ad symmachum v.C. optimum duximus, non ex eo die, quo se quisque admissum dolum didicisse memoraverit, neque intra anni utilis tempus, sed potius ex eo die, quo asseritur commissus dolus, intra continuum tempus anni, eis, quibus esse decertandi ius invenitur, eiusmodi actionem causa cognita deferri; ita ut, si forte is, contra quem res agitur, longius ullo genere discesserit, nec denuntiandi necessitate petitor oneretur, nec eius, qui aberit, praesentia postuletur. nec tamen assistere, si velit, quisquam prohibeatur examini, contra quem decernenda intentio huiusmodi fuerit expetita: ita ut, impetrata doli actione, lis ad suum iudicem translata intra biennii spatium decidatur, ratione temporis custodita, quum legitime fuerit apud suum iudicem coepta, exemplo litium ceterarum. perpetuo vero silentio conquiescat, nisi ex die, quo impetrata fuerit actio, intra continuum biennium, quod sequitur, omnis lis fuerit decisa. omnes igitur sciant, neque incipiendae post biennium, neque ante completum biennium coeptae, post biennium finiendae doli actionis concessam licentiam. dat. viii. kal. aug. naisso, constantino a. v. et licinio caes. coss.

interpretatio. dolus malus est, quoties per aliquam scripturam vel fraudem ea, quae definita sunt, per scripturae argumenta mutantur. vel si quis per chartarum suppositionem aut per surreptionem aliquam id, quod contra se futurum sit, ut consentire videatur, inducitur, vel quum his similia discutiente iudice probantur admissa. et ideo ille, qui queritur, dolo se fuisse gravatum, intra biennium suas et incipiat et definiat actiones: ultra sibi nec ad inchoandum, nec ad definiendum tempus noverit esse concessum. nam si aut illum, qui dolum admisisse dicitur, aut illum, qui pertulit, absentem esse contigerit, a tempore, quo apud iudicem agere coeperit, biennium ad definiendam actionem sciat sibi esse permissum

CTh.2.16.0. De integri restitutione.

CTh.2.16.1 [=brev.2.16.1]

Imp. constantinus a. ad populum. in integrum restitutione minoribus adversus commentitias venditiones et adversus tutorum insidias sanctionum praesidio cautum esse, non dubium est: ac si quid forte iidem de suo in fraudem tutelae alienasse docerentur, fraudatorio interdicto prospectum esse minoribus declaratur. dat. iii. id. mart. sirmio, ipso a. vii. et constantio caes. coss.

interpretatio. in annis minoribus constitutis multum legibus constat esse prospectum. et ideo adversus tutorum fraudes vel venditiones, quas minoribus aliquibus commentis extorserint, aut quicquid sub tutelae nomine iniuste egerint, noverint legis beneficio revocandum

CTh.2.16.2pr. [=brev.2.16.2pr.]

Idem a. ad bassum pf. p. placuit, post completum quintum et vicesimum annum, ex eo, quo vicesimi et sexti anni dies illuxerit, ad interponendam contestationem in urbe roma usque ad anni tricesimi extremum diem spatia prorogari, et intra centesimum urbis romae milliarium, si tamen ab his iudicibus, qui romae sunt, fuerit iudicandum: per omnem vero italiam usque ad finem anni vicesimi et noni: in ceteris omnibus provinciis usque ad completum annum vicesimum et octavum. quo transacto tempore manifeste omnes sciant, legum sibi deinceps praesidia denegari, quandoquidem, contestationis necessitate depulsa, finiendas integri restitutionum decidendasque causas certo genere clauserimus.

CTh.2.16.2.1 [=brev.2.16.2.1]

Eandem autem custodiri temporum convenit rationem, si forte quis beneficio nostro aetatis veniam fuerit consecutus, ex eo die, quo indulgentia nostra in iudicio competenti fuerit intimata, eique administratio rei propriae reserata, ut ad persequendas in integrum restitutiones finiendasque causas iuge tempus habeat praestitutum.

CTh.2.16.2.2 [=brev.2.16.2.2]

Si quando sane in minoris iura successerit minor, minime prohibeatur, quum quintum et vicesimum aetatis suae annum transierit, integri restitutionis beneficio uti, tempore illibato.

CTh.2.16.2.3 [=brev.2.16.2.3]

Quod si maioris fuerit minor iura nactus, quantum ad eas pertinet actiones, quas ex persona maioris fuerit consecutus, tantum temporis ad exponendas integri restitutiones decidendasque causas accipere debebit, quantum defuncto, cuius heres aut bonorum possessor docebitur exstitisse, reliquum fuerat.

CTh.2.16.2.4 [=brev.2.16.2.4]

Quum vero maior successionem fuerit adeptus minoris, siquidem civili iure ab intestato vel ex testamento successerit, mox quum creta fuerit vel adita hereditas, si vero honorario iure, ex quo bonorum possessio fuerit accepta, examinando integri restitutionis negotio solida, sine ulla deminutione, tempora supputentur, quae non pro locis, regionibus atque provinciis, in quibus morantur, qui heredes aut bonorum possessores sunt, observari iubemus, sed in quibus defuncti domicilia collocaverant. dat. viii. kal. aug. naisso. pp. romae non. oct., constantino a. viii. et constantino caes. coss.

interpretatio. iustum videtur, ut post xxv. annum, ubi xxvi. annus fuerit ingressus, deposita apud iudicem contestatione petat, qui sibi voluerit ea, quae in annis minoribus aut per se aut per tutores vel curatores vitio male acta sunt, salva et integra pro aetatis infirmitate restitui. in his dumtaxat* provinciis, usque ad xxviii. annum, si contestatus fuerit, integra ei, salvo principali negotio, quae male amiserat, reformentur. nam et qui serenitati nostrae pro venia aetatis crediderit supplicandum, hoc sibi noverit esse concessum, ut sine praeiudicio indulgentiae nostrae, quod in sequenti lege comprehensum est, usque ad constitutum superius tempus liberum habeat in rerum, quas male gesserat, proprietatem restitui. quod si forsitan minor annis in illius hereditate successerit, qui et ipse in annis minoribus ab hac luce discessit, non prohibendus est, quum ad xxvi. annum pervenerit, ut sibi, unde illi competebat, reparationem agendarum rerum interposita contestatione requirat. sin vero minor hereditatem illius, qui plena et integra aetate defecit, acceperit, mox in integrum fuerit restitutus, ea tempora in negotiis prosequatur, quae defuncto maiori legibus competebant. quum autem maior minori seu ex testamento seu ex quocumque* iure successerit, quum primum ad eum hereditas defuncti pervenerit, quicquid pupillo potuit pro integri restitutione competere, in illius transeat actionem: ita ut illius provinciae forum sequatur, in qua defunctus minor habitasse dignoscitur

CTh.2.16.3 [=brev.2.16.3]

Impp. honor. et theodos. aa. iuliano ii. proconsuli africae. et mulieribus et minoribus in his, quae vel praetermiserint vel ignoraverint, innumeris auctoritatibus constat esse consultum. dat. prid. non. mart. ravenna, constantio et constante vv. cc. coss.

interpretatio. minoribus mulieribus, sicut et viris ita in causis omnibus subvenitur. maioribus vero mulieribus, pro fragilitate sexus in multis rebus, quas per ignorantiam praetermiserint, sicut lex ipsa loquitur, iubet esse consultum; id est, ut si fideiussores pro quibuscumque* accesserint, pro ipsa fideiussione non teneantur obnoxiae. et si in difficilioribus causis ius vel leges nescientes, mandati chartulam pro negotiis suis forte subscripserint, ut earum, cui mandaverint, negotium exsequatur, et ille in charta non solum procuratorem, sed et dominum si se scripserit, deceptis per hanc fraudem mulieribus subvenitur. reliqui autem contractus, quos firma aetate publice et solennibus scripturis gesserint, in sua firmitate perdurent

CTh.2.17.0. De his, qui veniam aetatis impetrarunt.

CTh.2.17.1pr. [=brev.2.17.1pr.]

Imp. constantinus a. ad verinum. omnes adolescentes, qui honestate morum praediti paternam frugem vel maiorum patrimonia urbana vel rustica conversatione rectius gubernare cupiunt, et imperiali auxilio indigere coeperint, ita demum aetatis veniam impetrare audeant, quum vicesimi anni clausa aetas adolescentiae patefacere sibi ianuam coeperit ad firmissimae iuventutis ingressum: ita ut, post impetratam aetatis veniam, iidem ipsi principale beneficium allegantes, non solum praescriptorum annorum numerum probent, sed etiam testibus advocatis, honesta aut simili aut potiore dignitate praeditis, morum suorum instituta probitatemque animi testimonio vitae honestioris edoceant. quod quum ea condicione* effecerint, in alienatione praediorum ius tantum aetatis obtinebunt, quantum per annorum dimensiones ac temporum leges et natura singulis quibusque deferre consuevit.

CTh.2.17.1.1 [=brev.2.17.1.1]

Feminas quoque, quarum aetas biennio viros non sera pubertate praecedit, servato etiam in hoc temporis intervallo, decem et octo annos egressas ius aetatis legitimae mereri posse sancimus: sed eas, quas morum honestas mentisque solertia, quas certa fama commendat. has vero propter pudorem ac verecundiam in coetu publico demonstrari testibus non cogimus, sed percepta aetatis venia annos tantum probare tabulis vel testibus misso procuratore concedimus: ut etiam ipsae in omnibus contractibus tale ius habeant, quale viros habere praescripsimus.

CTh.2.17.1.2 [=brev.2.17.1.2]

Ita ut senatores apud gravitatis tuae officium de suis moribus et honestate perdoceant, perfectissimi apud vicariam praefecturam, equites romani et ceteri apud praefectum vigilum, navicularii apud praefectum annonae.

CTh.2.17.1.3 [=brev.2.17.1.3]

Cui aetati, quoniam inter plenam perfectamque adolescentiam et robustissimam iuventutem media est, firmatae aetatis appellationem imponimus, ut prima aetas pueritiae sit, sequens adolescentiae, firmata haec tertia, quarta legitima, quinta senectus habeatur.

CTh.2.17.1.4 [=brev.2.17.1.4]

In ipsis etiam contractibus hac appellatione consignanda, ut non nudum nomen venditoris inseratur tabulis emptionum*, sed ab illo, qui firmatae aetatis sit et honestus vir habeatur, emisse illum significetur, et venditorem esse firmatae aetatis: ita tamen, ut, quia spes adempta* perfidiae est, et in vendendis praediis diligentiores esse persistant, qui beneficium meruerunt principale, nec praedia sine decreto alienent. dat. v. id. april. thessal. pp. iii. kal. iun. romae, crispo ii. et constantio ii. caess. coss.

interpretatio. adolescentes, qui honestis moribus esse probantur et ad gubernandas facultates suas idoneam cupiunt habere personam, oportet eos primum, antequam ad legitimam aetatem perveniant, id est, ubi vir viginti annorum esse coeperit, auxilium principis implorare, et accepto huius rei beneficio, eo ordine apud testificationem publicam allegare, ut probent, se viginti annorum implesse curricula et honesta conversatione transigere, et sic praedia sua in aliena iura cum decreti tamen interpositione, transferre liberam habeant potestatem. feminae vero, sicut biennio in pubertate minores sunt, ita et transacto biennio, ubi ad xviii. annum pervenerint, eas tamen, quas morum et honestatis commendat opinio, non in publico annos probare suos cogendae sunt, sed misso procuratore per scripturam annos eos, quos superius diximus, se habere demonstrent et similem, quam viri in contractibus habeant facultatem: ita ut qualis vel quam digna persona sit, apud talem iudicem haec, quae dicta sunt, debeat approbare. ergo quum fuerint post adolescentiam hac aetate firmati, in ipsis quoque scripturis vel venditionum instrumentis, honestos se et firmatos aetate conscribant. hoc tamen illis liceat, qui beneficium, ut diximus, principis pro confirmanda aetate meruerint, ne praedia sua sine iussu iudicis vel decreto, quod ex praecepto iudicum vel consensu curialium datur, alienare praesumant

CTh.2.18.0. De iudiciis

CTh.2.18.1 [=brev.2.18.1]

Imp. constantinus a. ad maximum. iudicantem oportet cuncta rimari et ordinem rerum plena inquisitione discutere, interrogandi ac proponendi adiiciendique patientia praebita ab eo: ut, ubi actio partium limitata sit, contentiones non occursu iudicis, sed satietate altercantium metas compresserint, saepius requiratur, et crebra interrogatione iudicis frequentetur, num quid novi resideat, quod annecti allegationibus in iudiciaria contentione conveniat? quum ad alterutrum hoc proficiat, sive definienda sit causa per iudicem, sive ad nostram scientiam referenda. nec ad nos mittatur aliquid, quod plena instructione indigeat. dat. prid. id. ian. sirmio, crispo ii. et constantino ii. caess. coss.

interpretatio. iudex quum causam audire coeperit, litigatorum assertiones vel responsiones patienter accipiat et omnia plena discussione perquirat. nec prius litigantibus sua sententia velit obviare, nisi quando ipsi peractis omnibus, iam nihil amplius in contentione habuerint, quod proponant: et tam diu actio ventiletur, quousque rei veritas invenitur. frequenter interrogari oportet, ne aliquid praetermissum fortasse remaneat: quia si apud ipsum finienda causa est, totum debet agnoscere. sin vero ita res exigit, ut ad principis notitiam deferatur, plena discussis omnibus data relatione debet esse suggestio etc

CTh.2.18.2

Idem a. ad maximum praefectum urbi. eum, qui sciens iudicio adesse neglexerit, ut contumacem iudex poena multabit. dat. x k. iun. sirmio probiano et iuliano conss. (322 mai. 23).

CTh.2.18.3 [=brev.2.18.2]

Idem a. ad severum pf. u. nulli prorsus audientia praebeatur, qui causae continentiam dividit et ex beneficii praerogativa id, quod in uno eodemque iudicio poterat terminari, apud diversos iudices voluerit ventilare: poena proposita, si quis contra hanc supplicaverit sanctionem atque alium super possessione, alium super principali quaestione iudicem postulaverit, ut, rei, quae petatur, integra aestimatione subducta, quintam portionem reipublicae eius civitatis inferat, in cuius finibus res, de qua agitur, constituta est. pp. iii. kal. aug. iuliano et paulino coss.

interpretatio. nullus penitus audiatur, qui unius causae propositionem apud duos iudices partiri voluerit, ut apud unum de negotio principali proponat, et ab alio sibi momenti beneficio rem postulet consignari. quod si quis hoc facere fortasse praesumpserit*, eiusmodi poena se noverit condemnandum, ut nec illud, quod repetit, ulla ratione recipiat, et quintam portionem facultatum suarum, de quantum ibi possederit, reipublicae civitatis illius cedat, in cuius finibus res, de qua agitur, fuerit constituta

CTh.2.19.0. De inofficioso testamento.

CTh.2.19.1 [=brev.2.19.1]

Imp. constantinus a. ad lucrium verinum. fratres uterini ab inofficiosis actionibus arceantur, et germanis tantummodo fratribus adversus eos dumtaxat* institutos heredes, quibus inustas constiterit esse notas detestabilis turpitudinis, agnatione durante, sine auxilio praetoris, petitionis aditus reseretur. dat. id. april. sirmio, constantino a. v. et licinio caes. coss.

interpretatio. fratribus uterinis, id est diversis patribus et una matre natis, non liceat de inofficioso contra testamentum fratris agere. sed germanis fratribus praetermissis, id est uno patre natis, si turpibus personis, id est infamibus fuerit hereditas derelicta, hoc est aut pro libidine meretricibus, aut pro inhonesto affectu naturalibus aut certe thymelicis, vel de libertis suis, agendi contra testamentum licentia reservatur: si tamen is ipse germanus non pro crimine suo exilio fuerit deputatus, aut per captivitatem fuerit servus effectus, aut per emancipationem successionis vel actionis iura perdiderit

CTh.2.19.2 [=brev.2.19.2]

Idem a. ad claudium praesidem daciae. licet legum auctoritas filiorum potius quam matrum personis voluit laborem incumbere, ut de inofficioso agentes intra praefinita tempora doceant, nullo suo vitio factum, nec offensionem se parentibus praestitisse, sed iugiter obsecutos, ut naturae ipsius religio flagitabat, disciplinam illaesam inoffensamque servasse, ut his probatis removeant parentum voluntatem: tamen si mater contra filii testamentum inofficiosi actionem instituat, inquiri diligenter iubemus, utrum filius nulla ex iusta causa laesus matrem novissima laeserit voluntate, nec luctuosam ei nec legitimam reliquerit portionem, ut testamento remoto matri successio deferatur, si tamen defuncto consanguinei agnati non sunt superstites: an mater inhonestis factis atque indecentibus votis filium forte obsedit, insidiisque eum vel clandestinis vel manifestis appetiit, vel inimicis eius suas amicitias copulavit, atque in aliis sic versata est, ut inimica potius quam mater crederetur: hoc probato, invita etiam acquiescat filii voluntati. dat. viii. id. febr. serdica, crispo caes. ii. et constantino caes. ii. coss.

interpretatio. quamvis leges filiis, si praetermissi testamento fuerint, maiorem quam matribus agendi dederint potestatem, ut de inofficioso matris testamento proponant, id est, si quarta debitae portionis suae filio dimissa non fuerit: ita tamen, si probare potuerint, quod matris in nullo laeserint pietatem, sed se obsequium, ut decuit, praestitisse: sic testamentum matris, in quo praetermissi fuerint, non valebit. nam si mater contra testamentum filii, quod inofficiosum dixerit, agat, debet diligenter requiri, si contra filium mater nihil egisse probatur, aut si nullis insidiis vel publice vel secrete eum laedere fortasse tentaverit: nec forsitan consilium adversus filium inimicis suis, quod impium est, auxiliumque praestiterit. quod si factum non fuerit, potest removere praetermissa mater, quia ei quartam de rebus suis portionem filius non dimisit, quod filius fecerat testamentum: si tamen filio fratres consanguinei agnati, id est uno patre nati, aut eorum filii per virilem sexum non esse probantur. nam si mater, ut superius dictum est, pro manifestis inimicitiis suis praetermissa docebitur, invita acquiescat laesi filii voluntati

CTh.2.19.3 [=brev.2.19.3]

Idem a. ad concilium byzacenorum. servus necessarius heres instituendus est, quia non magis patrimonium quam infamiam consequi videtur. unde claret, actionem inofficiosi fratribus relaxatam, quum infamiae aspergitur vitiis is, qui heres exstitit, omniaque fratribus tradi, quae per turpitudinem aut aliquam levem notam capere non potest institutus. ita in hac quoque parte, si quando libertis heredibus institutis fratres fuerint alieni, inofficiosi actione proposita praevaleant in omnibus occupandis facultatibus defuncti, quas ille perperam ad libertos voluerat pertinere. dat. vii. kal. aug. coloniae agrippinae, pacatiano et hilariano coss.

interpretatio. si servo pro necessitate debiti a domino cum libertate hereditas fuerit dimissa, quia huiusmodi persona videtur infamis, germanis fratribus, qui praetermissi sunt, agendi contra testamentum datur facultas: ut remota infami persona, salva tamen, quam meruit, libertate, hereditatem germani fratres ad se debeant revocare. nam et si praetermissis fratribus liberti per testamentum heredes fuerint instituti, simili modo germani defuncti eos a bonis fraternae hereditatis excludent, sibique omnia, quae reliquerit, vindicabunt

CTh.2.19.4 [=brev.2.19.4]

Imp. constantius a. et iulianus caesar olybrio. quum scribit moriens, ut arbitratu boni viri, si quid minus filiis sit relictum, quam modus quartae, quae per successionem bonis tantum liberis debetur, efflagitat, id ipsum ab herede eisdem in pecunia compleatur, manifestum est, nullam iam prorsus nec super testamento, nec super donationibus querelam remanere, praesertim quum universam eadem repellat et reprimat, quae ad pecuniam redigit, iusta taxatio. dat. xiv. kal. iun. tauro et florentio coss.

interpretatio. quoties pater filiis per testamentum de facultatibus a se dimissis quartam dari praeceperit portionem, et hoc in nummo fieri bonorum virorum arbitrio crediderit committendum, seu hoc testamento sive donatione conscripserit, nullam contra voluntatem patris filius habeat actionem, dummodo quartam portionis suae, quam erat habiturus de omnibus, quae tempore mortis suae pater reliquerit, consequatur in nummo

CTh.2.19.5 [=brev.2.19.5]

Imppp. grat., valentin. et theodos. aaa. hypatio pf. p. intra quinquennium, quod inofficiosis actionibus constitutum est, liberis quoque, parentum iudicia inofficiosa causantibus, eadem temporis curricula praestituta sunt. dat. v. kal. iun. patavio, merobaude ii. et saturnino coss.

interpretatio. intra quinque annos a die mortis defuncti, quicumque* inofficiosum dicere voluerit testamentum, inchoandae actionis licentiam se noverit habiturum. quod temporis spatium etiam filii sibi, si contra parentum testamenta ac voluntatem agere voluerint, agnoscant esse concessum. quo transacto, si repetitio inchoata non fuerit, omnium personarum de inofficioso intentio conquiescat. ceterum intra quinquennium inchoata, usque ad tricennium obtineat actionem

CTh.2.19.6 [=brev.2.19.6]

Impp. honor. et theodos. aa. ioanni pf. p. adversus iudicium omnibus integris atque servatis, quibus inofficiosi actio aut de immodicis donationibus coeperit forte competere, vel qui se praeteritum esse testatur. nos enim ita huiusmodi institutiones firmandas esse concessimus, ut competentibus actionibus viam minime clauderemus. dat. xvi. kal. mart. ravenna, post consulatum honorii ix. et theodosii v. aa.

interpretatio. contra voluntatem defuncti ita omnia, quae superiore lege sunt statuta, serventur, ut et de inofficioso agere liceat, et, si quis se praeteritum dixerit, audiatur. sed ita haec omnia observari praecipimus, ut, si qua alia propositio fuerit de testamento vel donatione, quae possit opponi, in omnibus audiatur

CTh.2.19.7 [=brev.2.19.7]

Imp. theodos. a. asclepiodoto pf. p. si quis defuncti agnoverit voluntatem, de inofficioso agere prohibetur. dat. vii. kal. mart. constantinopoli, victore v.C. cos.

interpretatio. qui per testamentum sibi aliquid derelictum acceperit aut vindicaverit et voluerit contra voluntatem defuncti agere, licentiam penitus non habebit

CTh.2.20.0. De inofficiosis donationibus.

CTh.2.20.1 [=brev.2.20.1]

Imp. constantius a. et iulianus caesar olybrio. illud omnino dubitare non convenit, quod immodicarum donationum omnis querela ad similitudinem inofficiosi testamenti legibus fuerit inducta, et sit in hoc actionis utriusque vel una causa vel similis aestimanda, vel idem et temporibus et moribus. dat. xiv. kal. iun. tauro et florentio coss.

interpretatio. certum est, quod donatio facta de inofficioso testamento querelae similis iudicatur, contra quam similiter praetermissus, etsi ei minus, cui haec actio competit, quam quartae portionis suae modus est, dimittatur, intra quinquennium superius constitutum agere permittitur. et sicut de inofficioso testamento, ita potest agere, ut donatio evacuetur

CTh.2.21.0. De inofficiosis dotibus.

CTh.2.21.1 [=brev.2.21.1]

Imp. constantius a. ad maximum praesidem ciliciae. quum omnis hereditas dote dicatur exhausta, concordare legibus promptum est, ut ad exemplum inofficiosi testamenti adversus dotem immodicam exercendae actionis copia tribuatur, et filiis conquerentibus emolumenta debita deferantur. dat. xiv. kal. ian. sirmio, datiano et cereale coss.

interpretatio. quoties per dotem ita omnis hereditas evacuata probatur, ut quarta hereditatis ipsius non fuerit reservata, liceat filiis ad similitudinem inofficiosi testamenti contra dotem agere et debitam sibi portionem ex lege repetere

CTh.2.21.2 [=brev.2.21.2]

Idem a. et iulianus caesar pomponiano. dote ab uxore marito data, filios ex priore matrimonio, si neque ultra dodrantem, neque in fraudem legis papiae constituatur, de hac repetenda nullam habere constat actionem. dat. xvi. kal. ian. sirmio, ipso augusto x. et iuliano caes. iii. coss.

interpretatio. si mulier marito secundo dotem dederit, et ex priore marito filios habuerit, et non eis tres uncias, id est quartam portionem de rebus suis reservaverit, dos, quae contra legem papiam secundo marito data est, non valebit. hic de iure addendum, quid sit lex papia

CTh.2.22.0. De hereditatis petitione.

CTh.2.22.1 [=brev.2.22.1]

Imp. constantinus a. et caesar ad maximum pf. u. si is, qui dignitate romanae civitatis amissa latinus fuerit effectus, in eodem statu munere lucis excesserit, omne peculium eius a patrono vel a patroni filiis sive nepotibus, qui nequaquam ius agnationis amiserint, vindicetur. nec ad disceptationem veluti hereditariae controversiae filiis liceat accedere, quum eius potissimum status ratio tractanda sit, non quem beneficio libertatis indultae sortitus acceperit, sed is, in quo munere lucis excesserit. dat. iii. kal. febr. serdica, ipso augusto vii. et caes. coss.

interpretatio. si quis civis romanus libertus, intercedente culpa, latinus libertus fuerit effectus, si in eadem latinitate, sine reparatione prioris status, ab hac luce discesserit, facultates illius patronus vel patroni filii vel nepotes, qui tamen per virilem lineam descendunt et emancipati non fuerint, sibimet vindicabunt. nec si filios, quos civis romanus generavit, fortasse dimiserit, aliquid de eius hereditate praesumant: quia non quaerendum est, in qua libertate nati fuerint, sed in qua pater eorum positus condicione* defecerit

CTh.2.23.0. De rei vindicatione.

CTh.2.23.1pr. [=brev.2.23.1pr.]

Impp. honor. et theodos. aa. crispino comiti et magistro equitum. quisquis armatae militiae stipendiis communitus in solo publico vel aedificium aliquod construxerit vel septis quibuslibet spatia certa concluserit, perpetuo iure et firmo dominio eadem ex nostra generali auctoritate possideat, nec per surreptionem aliquis postea eadem loca a nostra clementia audeat postulare.

CTh.2.23.1.1 [=brev.2.23.1.1]

Illud quoque sancimus, si quisquam militum simili condicione* ante hoc tempus loca publica possidenda detinuit, ac postea eadem per alias competitionum nebulas detectus fuerit amisisse, reformari eadem; ita tamen, si probatum fuerit, a nullo antea possessum solum hac, qua ostendimus, a milite ratione detentum: vel si, in alios forte eorum militum voluntate translatum fuisse, quod tenuerant, potuerit edoceri.

CTh.2.23.1.2 [=brev.2.23.1.2]

Ne quis sane post hanc definitionem nostri numinis surripiendo postulare audeat haec spatia, de quibus praesens oraculi nostri forma comprehendit, poenam viginti librarum auri iubemus adscribi. dat. v. kal. mart. ravenna, asclepiodoto et mariniano coss.

interpretatio. quicumque* militans in solo publico aedificium fortasse exstruxerit aut aliquid pro utilitate sua crediderit faciendum, per nullius calumniam penitus repellatur, sed hoc perpetuo in eius iure permaneat. idem miles nostris utilitatibus serviens, si locum publicum construxerit vel ad excolendum fortasse tenuerit, si hoc tamen nullus antea tenuit, cui miles ipse pervasor exstiterit, simili ratione possideat. contra quam rem etiamsi surreptum principi fuerit, non solum impetrata non valeant, verum etiam improbus petitor viginti libras auri fisco cogatur exsolvere

CTh.2.24.0. De familiae herciscundae.

CTh.2.24.1 [=brev.2.24.1]

Imp. constantinus a. ad verinum. quum dividendae res erunt, dubitari non potest, ab heredibus suis consensum sine ulla controversia commodandum. quod vero ad huiusmodi spectat scripturas, in quibus talis defunctorum fuisse mens invenitur, ut de testamento intelligatur tantummodo cogitatum, etsi repugnare ius videatur, huiusmodi quoque conscriptiones inter suos dumtaxat* heredes valere oportet, quemadmodum valent scripturae simpliciter inchoatae, quas nulla solennitatis adminicula defendunt, solis nixae radicibus voluntatis. licet enim sub testamenti vocabulo coeptae, quum perfectae non sint, neque appellari aliter ullo modo possint, evanuisse videntur, tamen dispositiones ultimae, coloratam iuris imaginem referentes, iustius in se legum proclivem favorem debent provocare. quamobrem, quum filiis ac nepotibus civili iure vel auxilio praetoris ut suis heredibus defuncti successio deferatur, etiamsi coeptum, neque impletum testamentum esse memoretur, vel si ab utilitate verborum vel solennitate iuris inanis scriptura esse dicatur, considerari specialiter voluntatem placet, et obsecundari protinus, quum res dividentur, nec retineri amplius, quam quod singulorum personis detegetur adscriptum, ut et memoria defuncti non violetur parentis, et occasiones litium dirimantur. dat. iv. kal. sept. crispo ii. et constantino ii. caess. coss.

interpretatio. quando facultas patris inter filios vel nepotes dividitur, specialiter voluntas patris vel avi paterni debet in omnibus custodiri, cuius testamentum etiamsi non fuerit perfectum, aut si non legitimo numero testium subscribatur, nec gestis allegetur, tamen si agnoscitur defunctus, de quo supra dictum est, de facultate sua aliquid ordinasse, quicquid unumquemque de filiis ac nepotibus cuiuscumque* sexus habere voluerit, hoc sibi sine consortis repetitione defendat: nec praesumat aliquis, quod alteri consorti auctor ille dimiserit. sed hoc inter filios ac nepotes ex filiis masculis observetur, quod voluntate auctoris per quamcumque* scripturam probabitur ordinatum

CTh.2.24.2 [=brev.2.24.2]

Idem a. ad constantium pf. p. nulli quidem de bonis usurpandis vivorum, nec dividendi contra bonos mores concessa licentia est: sed si praecipiente matre bona eius inter se liberi diviserunt, placuit omnifariam nobis, huiusmodi divisionem durare, si modo usque ad extremum eius vivendi spatium voluntas eadem perseverasse doceatur. dat. iii. id. iun. constantinopoli, constantino et maximo coss.

interpretatio. licet vivorum bona, ut dividantur, iniustum sit, tamen si mater vivens facultates suas filiis praeceperit et permiserit dividendas, et usque ad exitum vitae suae in eadem voluntate perstiterit, divisio inter filios facta perduret

CTh.2.25.0. De communi dividundo.

CTh.2.25.1 [=brev.2.25.1]

Imp. constantinus a. gerulo rationali trium provinciarum. in sardinia fundis patrimonialibus vel emphyteuticariis per diversos nunc dominos distributis, oportuit sic possessionum fieri divisiones, ut integra apud possessorem unumquemque servorum agnatio permaneret. quis enim ferat, liberos a parentibus, a fratribus sorores, a viris coniuges segregari? igitur qui dissociata in ius diversum mancipia traxerunt, in unum redigere eadem cogantur: ac si cui propter redintegrationem necessitudinum servi cesserunt, vicaria per eum, qui eosdem susceperit, mancipia reddantur. et invigilandum, ne per provinciam aliqua posthac querela super divisis mancipiorum affectibus perseveret. dat. iii. kal. mai. proculo et paulino coss.

interpretatio. in divisione patrimoniorum seu fiscalium domorum sive privatorum observari specialiter debet, ut, quia iniustum est, filios a parentibus vel uxores a maritis, quum ad quemcumque* possessio pervenerit, sequestrari, mancipia, quae permixta fuerint, id est uxor cum filiis et marito suo, datis vicariis, ad unum debeant pertinere, cui necesse fuerit commutare, quod sollicitudo ordinantium debet specialiter custodire, ut separatio fieri omnino non possit

CTh.2.26.0. De finium regundorum

CTh.2.26.1

Imp. constantinus a. ad tertullianum virum perfectissimum comitem dioeceseos asianae. si quis super invasis sui iuris locis prior detulerit querimoniam, quae finali cohaeret cum proprietate controversiae, prius super possessione quaestio finiatur et tunc agrimensor ire praecipiatur ad loca, ut patefacta veritate huiusmodi litigium terminetur. quod si altera pars locorum adepta dominium subterfugiendo moras attulerit, ne possit controversia definiri locorum ordine, electus agrimensor dirigatur ad loca, ut, si fidelis inspectio tenentis locum esse probaverit, petitor victus abscedat; at si controversia eius claruerit, qui primo iudiciis detulerit causam, ut invasor ille poena teneatur edicti, si tamen vi ea loca eundem invasisse constiterit. nam si per errorem aut incuriam domini loca ab aliis possessa sunt, ipsis solis cedere debent. dat. viii k. mart. bessi gallicano et symmacho conss. (330 febr. 22).

CTh.2.26.2 [=brev.2.26.1]

Imp. constantinus a. ad bassum pf. p. si constiterit, eum, qui finalem detulerit quaestionem, priusquam aliquid sententia determinetur, rem sibi alienam usurpare voluisse, non solum id, quod male petebat, amittat, sed quo magis unusquisque contentus suo rem non expetat iuris alieni, is, qui irreptor agrorum fuerit in lite superatus, tantum agri modum, quantum diripere tentavit, amittat. lecta apud acta xii. kal. iul. gallicano et symmacho coss.

interpretatio. si quis pervasor finium fuerit approbatus, eo quod, priusquam aliquid iudicio finiretur, id, quod alter tenuerat, invasisset, non solum illud, quod male praesumpsit*, amittat, sed ut non unusquisque rem alienam occupet, quum fuerit in causa devictus pervasor iuris alieni, tantum spatii restituat, quantum praesumpsit* invadere

CTh.2.26.3

Idem a. ad universos provinciales. post alia: si finalis controversia fuerit, tum demum arbiter non negetur, cum intra quinque pedes locum, de quo agitur apud praesidem, esse constiterit; cum de maiore spatio causa, quoniam non finalis, sed proprietatis est, apud ipsum praesidem debeat terminari. et si socius quid petat a socio, ante praeses iudicet, an praestari aliquid oporteat et tunc demum illud per arbitros restituatur, quod constiterit esse solvendum. dat. k. aug. basso et ablavio conss. (331 aug. 1).

CTh.2.26.4

Imppp. valentinianus, theodosius et arcadius aaa. neoterio praefecto praetorio. quinque pedum praescriptione summota finalis iurgii vel locorum libera peragatur intentio. sola sit igitur huiusmodi litibus una praescriptio, quae improbi petitoris refrenare possit invidiam, si veteribus signis limes inclusus finem congruum erudita arte praestiterit. nec vero prolixioris temporis in huiusmodi iurgiis locum habebit ulla praescriptio, cum diuturno otio alienum rus quis se asserat diligentius coluisse, quando omne huiusmodi iurgium solo praecipimus iure discingi, quo artis huius peritis omnem commisimus sub fideli arbitrio notionem. dat. vii k. aug. arcadio a. i et bautone conss. (385 iul. 26).

CTh.2.26.5

Imppp. theodosius, arcadius et honorius aaa. rufino praefecto praetorio. cunctis molitionibus et machinis amputatis finalibus iurgiis ordinem modumque praescripsimus ac de eo tantum spatio, hoc est pedum quinque, qui veteri iure praescripti sunt, sine observatione temporis arbitros iussimus iudicare. quod si loca in controversiam veniant, sollemniter de his iudices recognoscent et seu civilis seu criminalis actio competet, tribuetur ita, ut causa cognita et redhibitioni obnoxius decernatur nec poenam convictus aufugiat. dat. prid. non. novemb. constantinopoli arcadio a. ii et rufino conss. (392 nov. 4).

CTh.2.27.0. Si certum petatur de chirographis.

CTh.2.27.1pr. [=brev.2.27.1pr.]

Imppp. honor., theodos. et constantius aaa. palladio pf. p. super chirographis mortuorum hanc servari volumus perpetua observatione sententiam, ut, qui inter absentes intra hoc iuge quinquennium, inter praesentes vero biennium iudiciis competentibus non publicaverit cautiones, nec convenerit debitoris heredes, actione privetur.

CTh.2.27.1.1 [=brev.2.27.1.1]

Hic tamen si intra tempora constituta processerit, absque ullo sequestrationis obiectu prius manum defuncti probare iubeatur: hoc enim toto iure cantatum est, ut scripturam prolator affirmet; quam tamen adstrui non sola manus collatione conveniet (quid enim aliud falsarius agit, quam ut similitudinem veritatis imitetur?), sed aliis multiplicibus documentis, ut probet, magnae securitatis fuisse, quod siluit. nam si publicam iudiciorum aditionem amicitiarum forsitan impedivit affectio, privatam saltem conventionem testis audivit, libertus aut servus agnovit, admonere etiam potuit sub mortis vicinitate languentem.

CTh.2.27.1.2 [=brev.2.27.1.2]

Quod si se forsitan causetur absentem, maioribus adstrui potest conventio longinqua documentis, promissaeque solutionis epistolare rescriptum. ac ne id ipsum, qui cautionem fingit, imitetur, producat in medium portitores, qui alternae partis scripta confirment, a quibus tamen verum vel sacramento dignitas vel suppliciis terror exploret: quamvis ad illuminandam hereditarii debiti fidem et causas oporteat foenoris approbari, et pecuniae baiulos hinc inde produci. his ac talibus si destituetur taciturnitas longinqua documentis, in evidenti est, veteratorum calumnias non solum repetitione privandas, verum etiam severitate cohibendas.

CTh.2.27.1.3 [=brev.2.27.1.3]

Sed si viventis ante hanc legem facta cautio proferatur, quam suam neget ille, qui petitur, sequestret pecuniam litigaturus ex falso. cavendum est enim, ne inficiandi fomitem ministremus obnoxiis. quod tamen tunc conveniet custodiri, si inter praesentes utrosque viventes necdum viginti anni, inter absentes necdum triginta doceantur emensi. alioquin, si chirographi fides sub silentio iudiciariae conventionis statutum tempus excesserit, probari prius debitum conveniet, tunc reposci, sequestrationis necessitate summota.

CTh.2.27.1.4 [=brev.2.27.1.4]

Sin vero suam quidem manum fateatur obnoxius, sed nihil sibi numeratum pro hac obligatione causetur, tunc chirographi discuti oportebit aetatem, ut, si iure delata contestationibus tempora debitor taciturnus exegit, cavillationis istius perdat obstaculum.

CTh.2.27.1.5 [=brev.2.27.1.5]

De cetero vero sancimus, ut omnes deinceps cautiones intra duodecennium vim contestationis accipiant, quam debitor facta novatione promittat.

CTh.2.27.1.6 [=brev.2.27.1.6]

Sed si mediis temporibus peregrinetur obnoxius, quo novationi longior obsit absentia, volumus, creditorem ante duodecennium praestitutum aditis iudiciis edictum mereri auctoritatemque postibus debitoris affigere, domesticas etiam convenire personas: nullus enim per tanta contestationum poterit documenta mentiri. quod ideo ante duodecennium iubemus agitari, ut per intervalla temporis longioris inclamatus advertat, confutari debere, si fides non agnoscitur petitorum, nec obesse iam post adscripta tempora creditori, si post has contestationum voces longa debitoris absentia vel redhibitio proteletur, vel novatio iusta ludatur. et quamvis nescire promulgata non liceat, per omnem hunc annum pendere iubemus edictum. dat. v. kal. aug. ravenna, eustathio et agricola coss.

interpretatio. de cautionibus mortuorum hoc praecipimus observari, ut, si debitor absens defunctus fuerit, et mortuum eum creditor esse cognoverit, cautionem suam intra quinquennium iudici non differat publicare. si vero praesente creditore defecerit, intra biennium defuncti publicet cautionem: ita tamen, ut manus mortui conferatur, et agnosci possit illius esse subscriptio, aut convenisse illum, dum viveret, aliquibus scientibus valeat approbare: et causas ipsius debiti, unde pecuniam contraxit, exponat. quod si supra personam mortui detegitur fortasse mentiri, non solum pecuniam non recipiat, sed etiam severitatem legis incurrat. nam de reliquo inter vivorum personas haec observanda decernimus, ut omnes cautiones debitorum intra duodecim annos debeant contestari: ita ut a debitoribus renoventur. quod si forsitan ante duodecim annos debitorem peregrinari contigerit, iudicis mereatur edictum, quod in postibus debitoris sui pro contestatione debeat affigere, et homines illius convenire non desinat, ut quum fuerit taliter debitum contestatum, excusationem, qui peregrinatur, longi temporis habere non possit. nec ideo se excuset, quod non renovaverit cautionem. sane si debitor suam esse dixerit cautionem, sed nihil se de ipsa cautione asserat accepisse, tempus debet inspici cautionis, ut, si intra quinquennium cautio conscripta cognoscitur, et probatum fuerit, quod in cautione continetur acceptum, debitor suam impleat cautionem. si vero, quae in cautione scripta sunt, intra quinquennium tradita non probantur, is, cuius cautio est, non teneatur obnoxius: nam transacto quinquennio, si de cauta et non consignata pecunia debitor dixerit, nullatenus audiatur

CTh.2.28.0. De pecuniae sequestratione prohibita.

CTh.2.28.1 [=brev.2.28.1]

Impp. honor. et theodos. aa. ioanni pf. p. post alia: quoties ex quolibet contractu pecunia postulatur, sequestrationis necessitas conquiescat: oportet enim debitorem primo convinci et sic solutioni succumbere. quam rem quum iuris ratio, tum ipsa aequitas persuadet, ut probationes secum afferat debitoremque convincat pecuniam petiturus etc. dat. v. id. iul. ravenna, honorio xiii. et theodos. x. aa. coss.

interpretatio. quoties ab aliquo pecunia repetitur, non prius cogatur sequestrare pecuniam ille, qui petitur, quam ille, qui repetit, debitorem suum certa prius probatione convincat, et sic pecuniam, quam se dedisse convicerit, adhibita probatione recipiat

CTh.2.29.0. Si certum petatur de suffragiis.

CTh.2.29.1 [=brev.2.29.1]

Imp. iulianus a. ad populum. foedis commentis, quae bonorum merito deferuntur, quidam occupare meruerunt et quum meruissent in republica quolibet pacto versari, repetendam sibi pecuniam, quam inhoneste solverant, imprudentius atque inhonestius arbitrantur: alii etiam, quae tunc donaverant vel potius proiecerant ob immeritas causas, invadenda denuo crediderunt. sed quia leges romanae huiusmodi contractus penitus ignorant, omnem repetendi eorum, quae prodige nefarieque proiecerunt, copiam prohibemus. qui itaque repetere nititur vel repetiisse convincitur, et, quod dedit, apud suffragatorem eius manebit vel extortum restituet, et alterum tantum fisci viribus inferre cogatur. dat. kal. febr. constantinopoli, mamertino et nevitta coss.

interpretatio. aliquanti pro sua voluntate suffragia dedisse probantur, et postea, quum ad militiam pervenerunt, ea, quae dederant, repetere vel auferre contra rationem inhoneste et illicite praesumpserunt*. ideoque praecipimus, ut quicumque* aliquid pro praestandis sibi, quae petiit, dedisse dignoscitur, non habeat licentiam repetendi: qui vero repetere fuerit conatus, hoc ille habeat, qui accepit, aut certe, si sublatum ei fuerit, reformetur, et aliud tantum ille, qui abstulit, fisco cogatur inferre

CTh.2.29.2pr. [=brev.2.29.2pr.]

Imppp. theodos., arcad. et honor. aaa. rufino pf. p. si qui desideria sua explicare cupientes ferri sibi a quoquam suffragium postularint, et ob referendam vicem se sponsione constrinxerint, promissa restituant, quum ea, quae optaverint, consequantur: si artibus moras nectent, ad solutionem debiti coarctandi sunt.

CTh.2.29.2.1 [=brev.2.29.2.1]

Sed si quid eo nomine in auro vel argento vel in ceteris mobilibus datum fuerit, traditio sola sufficiat, et contractus habebit perpetem firmitatem, quoniam collatio rei mobilis inita integra fide hac ratione cumulatur.

CTh.2.29.2.2 [=brev.2.29.2.2]

Quod si praedia rustica vel urbana placitum continebit, scriptura, quae ea in alium transferat, emittatur, sequatur traditio corporalis, et rem fuisse completam, gesta testentur; aliter enim ad novum dominum transire non possunt, neque de veteri iure discedere.

CTh.2.29.2.3 [=brev.2.29.2.3]

Quod si quis, dum solo commonitorio de suffragio nititur, bona duxerit occupanda, reus temeritatis ac violentiae retinebitur, atque in statum pristinum possessio reducetur, eo a petitione excluso, qui non dubitavit invadere, quod petere debuisset. dat. iv. non. mart. constantinopoli, arcadio iii. et honorio ii. aa. coss.

interpretatio. si quis, dum necessitates suas expedire desiderat, aliquid se commodi daturum esse promiserit, perceptis, quae voluit, constrictus hoc sine ulla dilatione implere cogatur. quod si aliquid in auro vel in argento vel in ceteris rebus mobilibus obtulerit, firmum sine scriptura permaneat: quia res mobiles in suffragiis scripturam penitus non requirunt, sed sola traditione firmantur. quod si loca urbana vel rustica dare placuerit, scriptura sequatur atque traditio, et de completis omnibus vel re tradita gesta confecta proferantur, nam aliter possessio ad alterum dominum transire non poterit. sane si quis sine tali scriptura possessionem alterius crediderit occupandam, reus violentiae teneatur, et integrum, quod invaserit, reddat, omni sua repetitione damnata

CTh.2.30.0. De pignoribus.

CTh.2.30.1 [=brev.2.30.1]

Imp. constantinus a. ad universos provinciales. intercessores a rectoribus provinciarum dati ad exigenda debita ea, quae civiliter poscuntur, servos aratores aut boves aratorios pignoris causa de possessionibus abstrahunt, ex quo tributorum illatio retardatur. si quis igitur intercessor aut creditor vel praefectus pacis vel decurio in hac re fuerit detectus, a rectoribus provinciarum capitali sententiae subiugetur. dat. iv. non. iun. sirmio, constantino a. iv. et licinio iv. coss.

interpretatio. multi pro fiscali debito servos cultores aut boves aratorios de possessionibus causa pignoris auferre praesumunt, de quorum laboribus tributa redduntur, et ideo si quis creditor vel curator pacis vel curialis aut quicumque* exactor hoc facere praesumpserit*, a provinciae iudice puniatur

CTh.2.30.2 [=brev.2.30.2]

Impp. honor. et theodos. aa. ioanni pf. p. post alia: nexum non faciat praediorum nisi persona, quae iure potuit obligari. per servum autem vel procuratorem, colonum vel actorem seu conductorem praeiudicium possessioni invito vel inscio domino imponi non posse, et iuris et legum auctoritatibus decantatur etc. dat. v. id. iul. ravenna, honorio xiii. et theodos. x. aa. coss.

interpretatio. non obliget possessionem nisi ille, qui proprius dominus esse dignoscitur: nam neque per servum, neque per procuratorem sive colonum aut actorem aut conductorem, si res fuerit obligata, praeiudicium domino poterit exhiberi

CTh.2.31.0. Quod iussu.

CTh.2.31.1

Impp. honor. et theodos. aa. ioanni pf. p. post alia: dominos ita constringi manifestum est actione praetoria, quae appellatur quod iussu, si certam numerari praeceperint servo actorive pecuniam. igitur in perpetuum edictali lege sancimus, ut, qui servo, colono, conductori, procuratori actorive possessionis pecuniam commodat, sciat, dominos possessionum cultoresve terrarum obligari non posse. neque familiares epistolas, quibus homines plerumque commendantur absentium, in id trahere convenit, ut pecuniam quoque, quam non rogatus fuerat, impendisse se pro praediis mentiatur: quum, nisi specialiter, ut pecuniam commodet, a domino fuerit postulatus, idem dominus teneri non possit; creditaque quantitate mulctari volumus creditores, si huiusmodi personis non iubente domino, nec fideiussoribus specialiter acceptis fuerit commodata pecunia. dat. v. id. iul. ravenna, honorio xiii. et theodos. x. aa. coss.

interpretatio. nullus dominum ad reddendum debitum, sicut hucusque fiebat, adstringat, nisi servo suo vel actori pecuniam rogante domino praestitisse convicerit. et ideo si quis servo, colono, conductori, procuratori vel actori pecuniam non rogante domino dederit, sciat, dominos terrarum propter hoc debitum nullatenus posse teneri; sed qui non rogante domino pecuniam talibus personis crediderint aut fideiussores non acceperint, ea, quae commodata sunt, se noverint perdituros, nec a domino posse reposci

CTh.2.32.0. De peculio.

CTh.2.32.1 [=brev.2.32.1]

Impp. honor. et theodos. aa. ioanni pf. p. post alia: hoc quoque creditoribus non negamus, ut, si liber a rationibus fuerit, quas regebat, inventus actor, servus procuratorve praediorum, utilis actio pateat de peculio etc. dat. v. id. iul. ravenna, honorio xiii. et theodos. x. aa. coss.

interpretatio. hoc sane creditoribus volumus esse praestandum, ut actor vel servus sive procurator possessionis, qui pecuniam a creditore susceperit, si nihil de rationibus suis domino debuerit, pro pecunia, quam accepit, de peculio, quod habet, creditoribus reddat

CTh.2.33.0. De usuris.

CTh.2.33.1 [=brev.2.33.1]

Imp. constantinus a. ad dracilianum agentem vices pf. p. quicumque* fruges humidas vel arentes indigentibus mutuas dederint, usurae nomine tertiam partem superfluam consequantur, id est ut, si summa crediti in duobus modiis fuerit, tertium modium amplius consequantur. quod si conventus creditor propter commodum usurarum debitum recipere noluerit, non solum usuris, sed etiam debiti quantitate privandus est. quae lex ad solas pertinet fruges: nam pro pecunia ultra singulas centesimas creditor vetatur accipere. pp. caesareae xv. kal. mai., paulino et iuliano coss.

interpretatio. quicumque* fruges humidas, id est vinum et oleum, vel quodcumque* annonae genus alteri commodaverit, non plus ab eo propter usuram quam tertiam partem accipiat, id est ut supra duos modios, qui accepit, tertium reddat. quod si conventus fuerit ille, qui commodat, et pro maiore usura noluerit debitum suum, adiecto tertio modio, a debitore recipere, etiam debitum perdat. quam rem ad solas fruges praecipimus pertinere. nam quando pecunia fuerit commodata, nisi unam tantum centesimam a creditoribus exigi non iubemus

CTh.2.33.2 [=brev.2.33.2]

Imppp. valentin., theodos. et arcad. aaa. cynegio pf. p. quicumque* ultra centesimam iure permissam quicquid sub occasione necessitatis eruerit, quadrupli poenae obligatione constrictus, sine cessatione, sine requie protinus ablata redhibebit. hi vero, qui antea pari furore grassati uspiam detegentur, in duplum extorta restituant. dat. viii. kal. nov. constantinopoli, honorio nb. p. et evodio v.C. coss.

interpretatio. si quis plus, quam legitima centesima continet, hoc est tres siliquas in anno per solidum, amplius a debitore sub occasione necessitatis accipere vel auferre praesumpserit*, post datam legem sine ulla dilatione ea, quae amplius accepit, constrictus quadrupli poena restituat. ea vero, quae ante legem tali ratione data sunt, in duplum volumus reformari

CTh.2.33.3 [=brev.2.33.3]

Impp. arcad. et honor. aa. eutychiano pf. p. frustra debitores in annis minoribus constitutorum usuras se restituere non debere contendunt, quia senatoria eos dignitate praeditos esse testantur. unde sortem cum usuris in stipulationem deductis restituant. dat. viii. kal. dec. constantinopoli, caesario et attico coss.

interpretatio. sine causa senatoribus in annis minoribus constitutis debitum cum usuris reddere dissimulant debitores, propter hoc, quod senatorio genere nati debitum cum usuris integris recipere non iubentur: et ideo, quod cautione per stipulationem promissum est, reformetur

CTh.2.33.4 [=brev.2.33.4]

Imppp. arcad., honor. et theodos. aaa. optato pf. u. senatores sub medietate centesimae usurae ad contractum creditae pecuniae censemus admitti. itaque omnes intelligant, nullum florentissimo coetui sociatum, foenus exercentem, ultra medietatem centesimae vel iure stipulari vel petere posse usuram: quin etiam, si quid praeter moderatam nostri numinis definitionem fuerit flagitatum, imminuendae sorti pro huius legis auctoritate cessurum. dat. prid. id. iun. nicaea, stilicone ii. et anthemio v.C. coss.

interpretatio. senatores, qui pecuniam ad centesimam praestare voluerint, non amplius usurae nomine quam medietatem legitimae centesimae a debitoribus suis accipiant, nec amplius ut caveant aut se cautione constringant, qui commodatam suscipiunt pecuniam, forte cogantur. nam si ab eis amplius fuerit requisitum, sciant se senatores hoc, quod commodaverint, perdituros

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CTh.3.30.0. De administratione et periculo tutorum et curatorum
CTh.3.31.0. De excusatione tutorum
CTh.3.32.0. De praediis minorum sine decreto non alienandis

CTh.3.1.0. De contrahenda emptione

CTh.3.1.1 [=brev.3.1.1]

Imp. constantinus a. ad profuturum pf. annonae. venditionis atque emptionis* fidem, nulla circumscriptionis violentia facta, rumpi minime decet. nec enim sola pretii vilioris querela contractus sine ulla culpa celebratus litigioso strepitu turbandus est. pp. id. aug. constantino a. v. et licinio caes. coss.

interpretatio. quum inter ementem et vendentem res fuerit definito pretio comparata, quamvis plus valeat, quam ad praesens venditur, hoc tantummodo requirendum est, si nihil fraudis vel violentiae egit ille, qui comparasse probatur. et si voluerit revocare, qui vendidit, nullatenus permittatur

CTh.3.1.2pr. [=brev.3.1.2pr.]

Idem a. ad gregorium. qui comparat, censum rei comparatae cognoscat: neque liceat alicui, rem sine censu vel comparare vel vendere. inspectio autem publica vel fiscalis esse debebit hac lege, ut, si aliquid sine censu venierit, et id ab alio deferetur, venditor quidem possessionem, comparator vero id, quod dedit pretium, fisco vindicante, perdat.

CTh.3.1.2.1 [=brev.3.1.2.1]

Id etiam placuit, neminem ad venditionem rei cuiuslibet accedere, nisi eo tempore, quo inter venditorem et emptorem* contractus solenniter explicatur, certa et vera proprietas a vicinis demonstretur; usque eo legis istius cautione currente, ut, etiamsi subsellia vel, ut vulgo aiunt, scamna vendantur, ostendendae proprietatis probatio compleatur.

CTh.3.1.2.2 [=brev.3.1.2.2]

Nec inter emptorem* et venditorem solennia in exquisitis cuniculis celebrentur, sed fraudulenta venditio penitus sepulta depereat. dat. prid. non. febr. constantinopoli, feliciano et titiano coss.

interpretatio. quicumque* villam comparat, tributum rei ipsius, sicuti et ius possessionis se comparasse cognoscat, quia non licet ulli agrum sine tributo vel solutione fiscali aut comparare aut vendere. quod si suppressa fiscali solutione aliquis vendere ausus fuerit vel comparare praesumpserit*, noverint, inter quos talis fuerit secreta transactione contractus, quod et ille pretium perdat, qui emptor* accesserit, et venditor possessionem amittat, quia iubetur, ut vicini rei, quae venditur, testes esse debeant et praesentes, in tantum, ut etiam de mediocribus rebus si quid in usum venditur, ostendi vicinis placeat, et sic comparari, ne aliena vendantur

CTh.3.1.3 [=brev.3.1.3]

Imp. iulianus a. ad iulianum comitem orientis. patrui mei constantini constitutionem iubemus aboleri, qua praecepit, minores feminas consortio virorum copulatas sine decreti interpositione venditiones posse celebrare, si viri earum consensum pariter atque subscriptionem instrumentis putaverint esse praebendam, quoniam absurdum est, maritos eis interdum inopes obligari, quum possint, venditionis iure ipso non valente, res proprias recipere ab iis, qui se illicitis contractibus miscuerunt. vetus igitur ius revocamus, ut omnis venditio, quaecumque* fuerit a minore, viro sive femina, sine decreti interpositione celebrata, nulla ratione subsistat. dat. viii. id. dec. antiochia, mamertino et nevitta coss.

interpretatio. constantini imperatoris fuerat lege praeceptum, ut minores aetate feminae, si maritos haberent, cum illorum consensu possent de facultatibus suis aliqua vendere. sed hoc praesenti lege remotum est, atque id observandum erit, ut in annis minoribus constituti, seu vir seu femina, si ita necessitas exegerit, ut aliquid vendere velint, qui comparare voluerit, auctoritate iudicis aut consensu curiae muniatur: nam aliter a minoribus facta venditio non valebit

CTh.3.1.4 [=brev.3.1.4]

Imppp. grat., valentin. et theodos. aaa. ad hypatium pf. p. quisquis maior aetate atque administrandis familiarum suarum curis idoneus comprobatus praedia, etiam procul posita, distraxerit, etiamsi praedii forte totius quolibet casu minime facta distractio est, repetitionis in reliquum, pretii nomine vilioris, copiam minime consequatur. neque inanibus immorari sinatur obiectis, ut vires sibimet locorum causetur incognitas, qui familiaris rei scire vires vel merita atque emolumenta debuerit. dat. vi. non. mai. mediolano, merobaude ii. et saturnino coss.

interpretatio. quaecumque* persona iam perfecta aetate domum suam regere potest, si villam, domum vel quodlibet aliud, habita pretii definitione, vendiderit, et forsitan postea opponere velit, quod minus pretii acceperit, quam res valebat, quia forte agrum, quem vendidit, longe positus ignorasse se dicat, non ideo venditio poterit revocari: quia aetas perfecta potuit scire, quid venderet, aut quo pretio res vendenda valere potuisset

CTh.3.1.5 [=brev.3.1.5]

Iidem aaa. cynegio pf. p. ne quis omnino iudaeorum christianum comparet servum neve ex christiano iudaicis sacramentis attaminet. quod si factum publica indago compererit, et servi abstrahi debent, et tales domini congruae atque aptae facinori poenae subiaceant: addito eo, ut, si qui apud iudaeos vel adhuc christiani servi vel ex christianis iudaei reperti fuerint, soluto per christianos competenti pretio ab indigna servitute redimantur. accepta x. kal. oct. rhegio, richomere et clearcho coss.

interpretatio. convenit ante omnia observari, ut nulli iudaeo servum christianum habere liceat, certe nullatenus audeat, ut christianum, si habuerit, ad suam legem transferre praesumat. quod si fecerit, noverit se sublatis servis poenam dignam tanto crimine subiturum: nam ante legem datam id fuerat statutum, ut pro christiano servo, si inquinatus fuisset pollutione iudaica, sciret sibi pretium, quod dederat, a christianis esse reddendum, ut servus in christiana lege permaneret

CTh.3.1.6 [=brev.3.1.6]

Iidem aaa. flaviano pf. p. illyrici et italiae. dudum proximis consortibusque concessum erat, ut extraneos ab emptione* removerent, neque homines suo arbitratu vendenda distraherent. sed quia gravis haec videtur iniuria, quae inani honestatis colore velatur, ut homines de rebus suis facere aliquid cogantur inviti, superiore lege cassata, unusquisque suo arbitratu quaerere vel probare possit emptorem*. dat. vi. kal. iun. vincentiae, tatiano et symmacho coss.

interpretatio. prior ordinatio legis fuerat, ut si unus ex consortibus pro quacumque* necessitate rem vendere voluisset, extraneus emendi licentiam non haberet. sed hoc melius probatur indultum, ut quicumque* de rebus suis libero utatur arbitrio, et praetermissis consortibus vel propinquis, cui voluerit, vendendi liberam habeat facultatem

CTh.3.1.7 [=brev.3.1.7]

Iidem aaa. remigio pf. augustali. semel inter personas legitimas initus empti* contractus et venditi ob minorem annumeratam pretii quantitatem nequeat infirmari. dat. iii. kal. april. constantinopoli, arcadio a. iv. et honorio a. iii. coss.

interpretatio. quum inter duas quascumque* personas de pretio cuiuscumque* rei convenerit, quamvis vilius, quam valebat, res fuerit comparata, nullatenus revocetur

CTh.3.1.8 [=brev.3.1.8]

Iidem aaa. messalae pf. p. post alia: hi, qui imposita fuga munera civitatis provinciarumque destituunt et ineundos furtim existimant esse contractus, intelligant, sibi nihil haec profutura esse commenta, et pretio emptorem* mulctandum esse, quod dederit etc. dat. xii. kal. sept. theodoro v. c. cos.

interpretatio. quicumque* debita curiae servitia aut patriae suae fugientes, res suas occulte vendere voluerint, sciant non posse valere, quod fecerint, et se ipsos ad debita servitia revocandos, et illos, qui emerint, pretium perdituros

CTh.3.1.9 [=brev.3.1.9]

Impp. honor. et theodos. aa. ad populum. venditiones, donationes, transactiones, quae per potentiam extortae sunt, praecipimus infirmari. dat. xiii. kal. mart. constantinopoli, honorio x. et theodos. vi. aa. coss.

interpretatio. sciant omnes, quaecumque* a potentioribus personis oppressi aut donaverint aut vendiderint, posse revocari

CTh.3.1.10

Honorius et theodosius aa. palladio praefecto praetorio. in administratione et in militia positis emendi licentiam denegatam superflua nonnullorum dicitur esse persuasio, cum lex divi honorii ad palladium praefectum praetorio missa in theodosianum redacta corpus hanc copiam talibus legatur dedisse personis. (.......).

CTh.3.2.0. De commissoria rescindenda.

CTh.3.2.1 [=brev.3.2.1]

Imp. constantinus a. ad populum. quoniam inter alias captiones praecipue commissoriae legis crescit asperitas, placet infirmari eam et in posterum omnem eius memoriam aboleri. si quis igitur tali contractu laborat, hac sanctione respiret, quae cum praeteritis praesentia quoque depellit et futura prohibet. creditores enim, re amissa, iubemus recipere, quod dederunt. dat. prid. kal. febr. serdica, constantino a. vi. et constantino caes. coss.

interpretatio. commissoriae cautiones dicuntur, in quibus debitor creditori suo rem, ipsi oppignoratam ad tempus, vendere per necessitatem conscripta cautione promittit: quod factum lex ista revocat et fieri penitus prohibet: ita ut, si quis creditor rem debitoris sub tali occasione visus fuerit comparare, non sibi de instrumentis blandiatur, sed quum primum voluerit ille, qui oppressus debito vendidit, pecuniam reddat et possessionem suam recipiat

CTh.3.3.0. De patribus, qui filios distraxerunt.

CTh.3.3.1 [=brev.3.3.1]

Imppp. valentin., theodos. et arcad. aaa. tatiano pf. p. omnes, quos parentum miseranda fortuna in servitium, dum victum requirit, addixit, ingenuitati pristinae reformentur. nec sane remunerationem pretii debet exposcere, cui non minimi temporis spatio satisfecit ingenuus. dat. v. id. mart. mediolano, tatiano et symmacho coss.

interpretatio. si quemcumque* ingenuum pater faciente egestate vendiderit, non poterit in perpetua servitute durare, sed ad ingenuitatem suam, si servitio suo satisfecerit, non reddito etiam pretio, revertatur

CTh.3.4.0. De aediliciis actionibus.

CTh.3.4.1 [=brev.3.4.1]

Imppp. valentin., theodos. et arcad. aaa. nebridio pf. u. habito semel bonae fidei contractu mancipioque suscepto et pretio dissoluto, ita demum repetendi pretii potestas est ei, qui mancipium comparaverit, largienda, si illud, quod dixerit fugitivum, potuerit exhibere. hoc enim non solum in barbaris, sed etiam in provincialibus servis iure praescriptum est. dat. iii. kal. iul. constantinopoli, honorio n. p. et evodio v. c. coss.

interpretatio. quum inter emptorem* ac venditorem de mancipii pretio convenerit et fuerit conscripta venditio, nullatenus poterit revocari, nisi forte ille, qui emit mancipium, probaverit fugitivum, et tunc habebit licentiam pretium recipere, si mancipium reddiderit venditori

CTh.3.5.0. De sponsalibus et ante nuptias donationibus

CTh.3.5.1 [=brev.3.5.1]

Imp. constantinus a. ad rufinum pf. p. pater noster nullam voluit liberalitatem valere, si actis inserta non esset. nos etiam inter sponsos ac sponsas omnesque personas eam solam donationem ex promulgatae legis tempore valere sancimus, quam testificatio actorum secuta est. dat. iv. id. mai. sirmio, constantino a. v. et licinio caes. coss.

interpretatio. ante tempus legis istius donationes etiam sine gestorum testificatione valebant. nunc vero post hanc legem nec nuptialis nec quaelibet alia inter quascumque* personas donatio, de quibuscumque* rebus, valere potest, si gestis non fuerit allegata

CTh.3.5.2pr. [=brev.3.5.2.pr.]

Idem a. ad maximum pf. u. quum veterum sententia displiceat, quae donationes in sponsam nuptiis quoque non secutis decrevit valere, ea, quae largiendi animo inter sponsos et sponsas iure celebrantur, redigi ad huiusmodi condiciones* iubemus, ut, sive in potestate patris degere sive ullo modo proprii videantur esse iuris, et tanquam futuri causa matrimonii aliquid sibi ipsi vel consensu parentum mutuo largiantur, siquidem sponte vir sortiri noluerit uxorem, id, quod ab eo donatum fuerit, nec repetatur traditum, et si quid apud donatorem resedit, ad sponsam summotis ambagibus transferatur.

CTh.3.5.2.1 [=brev.3.5.2.1]

Quod si matrimonii non contrahendi causa ab sponsa, vel in cuius agit potestate, detegatur exstitisse, tunc sponso eiusque heredibus sine aliqua deminutione redhibeatur.

CTh.3.5.2.2 [=brev.3.5.2.2]

Quae similiter observari oportet, et si ex parte sponsae in sponsum donatio facta sit; nullis causis ulterius requirendis, ne forte mores aut origo dicatur, vel quicquam aliud opponatur, quod sibi quisquam non convenire existimat, quum longe ante, quam sponsalia contrahantur, haec cuncta prospici debuerint. sola igitur indagetur voluntas, et mutata animi sententia ad restitutionem seu repetitionem rerum donaturum sufficiat, quum universis cautionibus pulsis, nihil amplius constare debeat, nisi ut appareat, qui sibi contrahendum matrimonium dixerit displicere.

CTh.3.5.2.3 [=brev.3.5.2.3]

Et quoniam fieri potest, ut moriatur alter adhuc incolumi voluntate prius, quam nuptiae contrahantur, congruum duximus, eo, in quem fuerat facta donatio, ante matrimonii diem functo, quae sponsaliorum titulo vel data vel ullo genere donata sunt, ad eum, qui donaverat, revocari: eo etiam, qui donaverat, ante nuptias mortuo, mox infirmari donationem, et ad eius heredes sine aliqua difficultate retrahi res donatas.

CTh.3.5.2.4 [=brev.3.5.2.4]

Quod beneficium usque ad personam patris aut matris, filiorum etiam, si qui de priore matrimonio fuerint, stare decernimus, si quocumque* modo ex his persona aliqua defuncto successerit. quod si ex his nulla persona defuncti heres habetur, sed ex reliquis gradibus quisquam succedat, donationes convenit etiam non insecutis ex causa mortis nuptiis convalescere, quoniam illis tantum personis credimus consulendum. dat. xvii. kal. nov. prop. vi. kal. sstas roma, constantino a. v. et licinio caes. coss.

interpretatio. quoties inter sponsos et sponsas de futuris nuptiis specialiter fuerit definitum, et donationem sponsaliciae* largitatis vir in sponsam suam aut ex consensu parentum aut ipse, si sui iuris est, propria voluntate conscripserit et omni eam scripturarum solennitate firmaverit, ita ut et gesta legitime facta doceantur, et introductio locorum vel rerum traditio subsequatur: quicquid tali et tam solenni donatione ad ius dominiumque sponsae transierit, si vir sponte eam, quam depectus est factis supra scriptis solennibus chartis, accipere noluerit uxorem, omnia, quae sunt tradita, non reposcat. et si quid de nominatis tam solenniter rebus et traditis apud se habere dignoscitur, ad sponsae dominium, quam accipere noluit, sine dilatione aliqua transferatur. reliquum legis istius opus non fuit explanare, quia sequentibus legibus vacuatur

CTh.3.5.3 [=brev.3.5.3]

Idem a. valeriano agenti vicariam praefecturam. quamvis in lucro nec feminis ius ignorantibus subveniri soleat, contra aetatem adhuc imperfectam locum hoc non habere, retro principum statuta declarant. ne igitur soluta matrimonii caritate inhumanum aliquid statuatur, censemus, si futuris coniugibus tempore nuptiarum intra aetatem constitutis res fuerint donatae et traditae, non ideo eas posse revocari, quia actis consignare donationem quondam maritus noluit. dat. iv. kal. mai. gallicano et symmacho coss.

interpretatio. quamquam et feminis, quae per fragilitatem interdum excusari possunt, in aliquibus causis, si negligentes fuerint, lex subvenire noluerit, hic tamen specialiter voluit esse consultum, ut, si qua in pupillaribus annis marito fuerit copulata, et sponsaliciam* largitatem per negligentiam actis non allegaverit, huius legis beneficio, etsi gesta desint, inviolabilem in suo dominio donationem noverit permanere

CTh.3.5.4

Idem a. pacatiano praefecto praetorio. si is, qui puellam suis nuptiis pactus est, intra biennium exsequi nubtias supersederit eiusque spatii fine decurso in alterius postea coniunctionem puella pervenerit, nihil fraudis ei sit, quae nuptias maturando vota sua diutius ludi non passa est. dat. prid. id. april. marcianopoli pacatiano et hilariano conss. (332 apr. 12).

CTh.3.5.5 [=brev.3.5.4]

Idem a. ad pacatianum pf. u. patri puellae aut tutori aut curatori aut cuilibet eius affini non liceat, quum prius militi puellam desponderit, eandem alii in matrimonium tradere. quod si intra biennium, ut perfidiae reus in insulam relegetur. quod si pactis nuptiis, transcurso biennio, qui puellam desponderit, alteri eandem sociaverit, in culpam sponsi potius quam puellae referatur, nec quicquam noceat ei, qui post biennium puellam marito alteri tradidit. dat. prid. id. april. martianopoli, pacatiano et hilariano coss.

interpretatio. si quis aut privatus aut militans, postquam sponderit, cum patre, tutore vel curatore puellae vel propinquis de puellae coniunctione definierit, debet post definitionem intra biennium nuptias celebrare. quod si tarditate aut negligentia sponsi biennii tempus excesserit, et alio viro se puella coniunxerit, absoluta erit a calumnia, vel ipsa, vel quicumque* suorum eam tradiderit: quia culpa est illius, qui differendo coniunctionem suam alteri nubendi locum patefecit. nam si intra biennium data fuerit, quid observetur, evidentius sequente lege cognoscetur

CTh.3.5.6pr. [=brev.3.5.5pr.]

Idem a. ad tiberianum vicarium hispaniarum. si ab sponso rebus sponsae donatis interveniente osculo ante nuptias hunc vel illam mori contigerit, dimidiam partem rerum donatarum ad superstitem pertinere praecipimus, dimidiam ad defuncti vel defunctae heredes, cuiuslibet gradus sint et quocumque* iure successerint, ut donatio stare pro parte media et solvi pro parte media videatur: osculo vero non interveniente, sive sponsus sive sponsa obierit, totam infirmari donationem et donatori sponso sive heredibus eius restitui.

CTh.3.5.6.1 [=brev.3.5.5.1]

Quod si sponsa, interveniente vel non interveniente osculo, sponsaliorum titulo, quod raro accidit, fuerit aliquid sponso largita, et ante nuptias hunc vel illam mori contigerit, omni donatione infirmata, ad donatricem sponsam sive eius successores donatarum rerum dominium transferatur. dat. id. iul. constantinopoli. accepta xiiii. kal. mai. hispali, nepotiano et facundo coss.

interpretatio. si quando sponsalibus celebratis, interveniente osculo, sponsus aliquid sponsae donaverit, et ante nuptias sponsus forsitan moriatur, tunc puella, quae superest, mediam donatarum solenniter rerum portionem poterit vindicare, et dimidiam mortui heredes acquirunt, quocumque* per gradum successionis ordine venientes. si vero osculum non intervenerit, sponso mortuo nihil sibi puella de rebus donatis vel traditis poterit vindicare. si vero a puella sponso aliquid donatum est, et mortua fuerit, quamvis aut intercesserit aut non intercesserit osculum, totum parentes puellae sive propinqui, quod puella donaverat, revocabunt

CTh.3.5.7

.... dumtaxat servata oblatio habeat integrum robur, etsi nulla se testationi fides adcommodavit actorum; quippe satis est idoneus testium convocatorum in haec vota conventus: dummodo in ceteris universis donationibus secundum constituta divi patris nostri actorum confectio requiratur. dat. v id. iv agrippinae amantio et albino conss. (345 iun. 9 vel iul. 11).

CTh.3.5.8

Imp. iulianus a. ad hypatium vicarium urbis romae. quotiens sponsae in minori constitutae aetate futurae coniugi aliqua collata in praediis italicis vel stipendiariis seu tributariis intercedente stipulatione donantur, largitas perpeti firmitate subsistat, etiamsi traditionis sollemnitas defuisse videatur, ita tamen, ut etiam in his donationibus, quae in minores conferuntur, actorum confectio omnifariam flagitetur. dat. viiii k. mart. antiochiae iuliano a. iiii et sallustio conss. (363 febr. 21).

CTh.3.5.9

Imppp. valentinianus, valens et gratianus aaa. ad probum praefectum praetorio. multa ante nuptias sponsaliorum nomine pro sollemnitate traduntur, quae nequaquam in damnum debent dantis accrescere, sed mortua in matrimonio puella ad dantis commodum revocari, veteri scilicet iure neglecto. patris igitur explosa persona propinquorumque his personis, quae ante coeptum matrimonium videntur optulisse, incunctanter ea redhiberi oportet. dat. iii id. iul. treviris valentiniano et valente aa. conss. (368? 370? 373? iul. 13).

CTh.3.5.10

Imppp. gratianus, valentinianus et theodosius aaa. ad.... (380/1...).

CTh.3.5.11pr. [=brev.3.5.6pr.]

Imppp. grat., valentin. et theodos. aaa. eutropio pf. p. patri, matri, tutori vel cuicumque*, ante decimum puellae annum datis sponsalibus, quadrupli poenam remittimus, etsi nuptiae non sequantur. et si interea puella decesserit, sponsalia iubemus sponso restitui.

CTh.3.5.11.1 [=brev.3.5.6.1]

Quod si decimo anno vel ultra pater quisve alius, ad quem puellae ratio pertinet, ante duodecim annos, id est usque ad undecimi metas, suscepta crediderit pignora esse retinenda, deinceps adventante tempore nuptiarum a fide absistens quadrupli fiat obnoxius.

CTh.3.5.11.2 [=brev.3.5.6.2]

Viduae autem ratio diversa est, cui auxilium non suffragatur aetatis, scilicet ut ea, matrimonium non implens, ad quadruplum ex veteri constitutione teneatur.

CTh.3.5.11.3 [=brev.3.5.6.3]

Duodecimo autem anno impleto quisquis de nuptiis paciscitur, si quidem pater, semet ipsum obliget, sive mater curatorve aut alii parentes, puella fiat obnoxia.

CTh.3.5.11.4 [=brev.3.5.6.4]

Cui quidem contra matrem, tutorem, curatorem eumve parentem actio ex bono et aequo integra reservetur eorum pignorum, quae ex propriis, iuxta poenam iuris, reddiderit facultatibus, si ad consensum accipiendarum arrarum ab his se ostenderit fuisse compulsam. dat. xv. kal. iul. thessalonica, gratiano a. v. et theodos. a. i. coss.

interpretatio. pater vel mater puellae, aut si pater defuerit, tutor, curator vel aliquis ex propinquis, si, antequam decimum annum puella contingat, de nuptiis pacti fuerint et sponsalia susceperint, si postea mutata voluntate renuere voluerint, quem prius susceperant, non addicuntur ad quadruplum, sed ea tantum, quae sunt suscepta, restituant: nam et si puella mortua fuerit, hoc tantum, quod acceperant, reddunt. sin vero iam puella decimum agens annum usque ad undecimum plenum susceptas arras vel ipsa vel parentes, tutores curatoresve tenuerint, id observandum est, ut, si fidem placiti mutare voluerint et illum renuant, cuius sponsalia suscepit, ad quadrupli poenam sine dubio teneatur persona, quaecumque* de puellae nuptiis placitum fecit. quod si antequam annus undecimus compleatur, pignora suscepta reddiderint, nullam de susceptis arris calumniam pertimescant. nam si vidua fuerit, nihil per aetatem poterit excusare, si animum alibi diverterit et priorem sponsum renuere voluerit. tunc quaecumque* suscepit sponsaliorum titulo, in quadruplum reddat. puella vero post duodecimum aetatis suae annum, si pater de nuptiis illius aliud facere voluerit, quam promisit, ad quadrupli poenam et ipse tenendus est. si pater mortuus est, et de nuptiis puellae mater, tutor aut curator aut propinquus aliquis definierit, et puella alteri nubere maluerit, ipsa sponso priori de propriis facultatibus satisfaciat in quadruplum, quod accepit: hac tamen condicione* servata, ut postmodum contra praedictas personas agere possit, si illius arras, quem renuit, illis cogentibus invita suscepit

CTh.3.5.12 [=brev.3.5.7]

Impp. honor. et theodos. aa. ad marinianum pf. p. post alia: si pater pactum de filiae nuptiis inierit et humana sorte consumptus* ad vota non potuerit pervenire, id inter sponsos firmum ratumque permaneat, quod a patre docebitur definitum, nihilque permittatur habere momenti, quod cum defensore, ad quem minoris commoda pertinebunt, docebitur fuisse transactum. periniquum est enim, ut contra patriam voluntatem redempti* forsitan tutoris aut curatoris admittatur arbitrium, quum plerumque etiam ipsius feminae adversus commoda propria inveniatur laborare consilium etc. dat. iv. non. nov. ravenna, dd. nn. honorio xiii. et theodos. x. aa. coss.

interpretatio. ubi de coniunctione filiae patris sententia fuerit definitum, si humano casu, antequam puella iungatur, mortuus fuerit pater, mutari placitum nulla poterit ratione, nec habebit puella licentiam aliud faciendi, etiamsi mater aut tutor aut curator vel propinqui alium fortasse voluerint suscipere, quam pater elegit. sed patris promissio circa sponsum, quem ipse suscepit, firma permaneat: nec ipsi puellae suo consilio contra voluntatem patris aliud velle ulla ratione permittitur

CTh.3.5.13 [=brev.3.5.8]

Impp. theodos. et valentin. aa. hierio pf. p. post alia: si donationis instrumentum ante nuptias actorum solennitate firmatum sit, de traditione, utrum nuptias antecesserit an secuta sit vel penitus praetermissa, minime perquiratur: in illa donatione, quae in omnibus intra ducentorum solidorum est quantitatem, nec actorum confectione quaerenda. haec enim commoda nec mariti fraude, nec successorum eius improbitate, nec scrupulositate iuris, si et imperite vel callide rerum offerendarum in dotem habeat donatio mentionem, denegari uxoribus deceptis patimur vel his, qui in earum iura succedunt, sed a marito vel ab heredibus eius exacta restitui; illa manente lege, quae minoribus aetate feminis etiam actorum testificatione omissa, si patris auxilio destitutae sint, iuste consuluit etc. dat. x. kal. mart. constantinopoli, tauro et felice coss.

interpretatio. si donatio sponsalicia* ante nuptias gestis inseritur, etiamsi res donata non traditur, non potest infirmari. in illa vero donatione, cuius summa infra ducentorum solidorum pretium invenitur, etiamsi gesta defuerint, nulla feminis poterit sub quacumque* calliditate aut obiectione calumnia commoveri, sed qualiscumque* cum die et tempore scriptura sufficiet. et ideo seu illa donatio, quae sine traditione gestis habetur inserta, seu illa, quae infra ducentorum solidorum summam consistit, nullis calumniarum argumentis in aliquo vacuentur, sed a marito vel ab heredibus eius feminis iubentur exacta restitui: illo tamen beneficio legis circa eas feminas, quae in minoribus annis defuncto patre nuptae sunt, permanente, ut de quantalibet summa fuerit conscripta donatio, etiamsi gestis allegata non fuerit, omni firmitate subsistat

CTh.3.5.14

.....Ion.O akindunon einai thn parabas[in] th mnhsth kai tw mnhsthri all en tw g bibliw tou veodosianou kwdikoj titlw ie h ie tou titlou diatacij kratunei taj peri sustasewj twn gamwn poenas kai mexri tou diploi.

CTh.3.6.0. Si provinciae rector vel ad eum pertinentes sponsalia dederint.

CTh.3.6.1 [=brev.3.6.1]

Imppp. grat., valentin. et theodos. aaa. eutropio pf. p. post alia: si quis in potestate publica positus atque honore administrandarum provinciarum, qui parentibus aut tutoribus aut curatoribus aut ipsis, quae matrimonium contracturae sunt, potest esse terribilis, sponsalia dederit, iubemus, ut deinceps, sive parentes sive eaedem mutaverint voluntatem, non modo iuris laqueis liberentur poenaeque expertes sint, quae quadruplum statuit, sed extrinsecus data pignora lucrativa habeant, si ea non putent esse reddenda. quod ita late patere volumus, ut non solum circa administrantes, sed et circa administrantium filios, nepotes, propinquos, participes domesticosque censeamus, quibus tamen administrator operam dederit. impleri autem id postea matrimonium non vetamus, quod tempore potestatis ob eas personas, de quibus locuti sumus, arris fuerat obligatum, si sponsarum consensus accedat. dat. xv. kal. iul. thessalonica, dd. nn. gratiano a. v. et theodos. a. i. coss.

interpretatio. iudex provinciae cuiuslibet vel quicumque* in administratione constitutus, si habeant aliqui adultos secum filios in praedicto honore positi aut propinquos vel qui ipsis in consortio administrationis videntur adiuncti, si per potestatem aut comminando parentibus aut terrendo forte tutores sive curatores vel ipsas quoque puellas sponsaliorum nomine aut arrarum ad obligandam cuiuslibet domum aliqua dederint, si contra hanc voluntatem aut parentes aut ipsae puellae resultare voluerint, habeant liberam facultatem renuere, quod ita suscepisse videntur. nec poenam sibi noverint quadrupli exigendam, sed etiam ea, quae sub terrore visae sunt accepisse, in lucrum suum, si voluerint, retinebunt, nec constringi possunt, nisi forte ex suo arbitrio reddere voluerint. nam si post administrationem aut parentum aut puellarum circa eos, qui sponsalia dederint, voluntas nubendi permanserit, sequatur electa coniunctio

CTh.3.7.0. De nuptiis.

CTh.3.7.1pr. [=brev.3.7.1pr.]

Imppp. valentin., valens et grat. aaa. ad senatum. viduae intra vicesimum et quintum annum degentes etiamsi emancipationis libertate gaudent, tamen in secundas nuptias non sine patris sententia conveniant aut in oppignerationem. cessent itaque sequestres atque interpretes, taciti nuntii renuntiique corrupti. nuptias nobiles nemo redimat, nemo sollicitet, sed publice consulatur affinitas, adhibeatur frequentia procerum.

CTh.3.7.1.1 [=brev.3.7.1.1]

Quod si in condicionis* delectu mulieris voluntas certat sententiae propinquorum, placet admodum, ut in pupillarum coniunctionibus sanctum est, habendo examini auctoritatem quoque iudiciariae cognitionis adiungi, ut, si pares sunt genere ac moribus petitores, is potior aestimetur, quem sibi consulens mulier approbaverit.

CTh.3.7.1.2 [=brev.3.7.1.2]

Sed ne forte hi, qui gradu proximo ad viduarum successiones vocantur, etiam honestas nuptias impediant, si huius rei suspicio processerit, eorum volumus auctoritatem iudiciumque succedere, ad quos, etiamsi fatalis sors intercesserit, tamen hereditatis commodum pervenire non possit. dat. xvii. kal. aug. gratiano a. ii. et probo v. c. coss.

interpretatio. viduae intra vicesimum et quintum annum si fuerint constitutae et adhuc vivis patribus, tametsi emancipatione acquisierint libertatem, si ad secundas nuptias venire voluerint, noverint coniunctionem suam in patrum potestate, non in propria voluntate consistere, et eorum electione, non quorumcumque* amicorum aut familiarium sequendum esse consensum. si vero patres mortui sunt, nec sic quoque ex suo singulariter arbitrio nubendi habeant potestatem, sed pro honestate coniunctionis iudicium sequendum est propinquorum. quod si duo petitores exstiterint, consulendi sunt quidem parentes, nec praetermittendus est etiam iudex, qui voluntatem feminae pro honestiore dumtaxat* parte prospiciat. nec illis tantum propinquis praestet assensum, qui suspicione hereditatis utuntur, qui forte, dum nuptias differunt, pro successione hereditatis mulieris mortem exspectare videntur: sed illorum magis, si talis condicio* intercedit, electio sequenda est, qui nihil possunt de ipsius hereditate conquirere

CTh.3.7.2 [=brev.3.7.2]

Imppp. valentin., theodos. et arcad. aaa. cynegio pf. p. ne quis christianam mulierem in matrimonium iudaeus accipiat, neque iudaeae christianus coniugium sortiatur. nam si quis aliquid huiusmodi admiserit, adulterii vicem commissi huius crimen obtinebit, libertate in accusandum publicis quoque vocibus relaxata. dat. prid. id. mart. thessalonica, theodos. a. ii. et cynegio v. c. coss.

interpretatio. legis huius severitate prohibetur, ut nec iudaeus christianae matrimonio utatur, nec christianus homo iudaeam uxorem accipiat. quod si aliqui contra vetitum se tali coniunctioni miscuerint, noverint se ea poena, qua adulteri damnantur, persequendos, et accusationem huius criminis non solum propinquis, sed etiam ad persequendum omnibus esse permissam

CTh.3.7.3 [=brev.3.7.3]

Impp. theodos. et valentin. aa. hierio pf. p. si donationum ante nuptias vel dotis instrumenta defuerint, pompa etiam aliaque nuptiarum celebritas omittatur, nullus aestimet, ob id deesse recte alias inito matrimonio firmitatem, vel ex eo natis liberis iura posse legitimorum auferri, si inter pares honestate personas, nulla lege impediente, fiat consortium, quod ipsorum consensu atque amicorum fide firmatur etc. dat. x. kal. mart. constantinopoli, felice et tauro coss.

interpretatio. si occasio talis emerserit, ut nuptiae solennitate debita careant, aut etiam donationes sponsaliciae* fieri aut dos celebrari non possit, sed convenientibus animis se matrimonio copulaverint, sufficiet aequalibus personis conveniens electio atque consensus, sic tamen, ut conscientia intercedat amicorum, et tunc, si ita res cesserit, et coniunctio stabilis et filii legitimi probabuntur

CTh.3.8.0. De secundis nuptiis.

CTh.3.8.1 [=brev.3.8.1]

Imppp. grat., valentin. et theodos. aaa. eutropio pf. p. si qua ex feminis perdito marito intra anni spatium alteri festinaverit iam nubere (parvum enim temporis post decem menses servandum adiicimus, tametsi id ipsum exiguum putemus), probrosis inusta notis, honestioris nobilisque personae et decore et iure privetur, atque omnia, quae de prioris mariti bonis vel iure sponsaliorum vel iudicio defuncti coniugis consecuta fuerat, amittat et sciat, nec de nostro beneficio vel annotatione sperandum sibi esse subsidium. dat. iii. kal. iun. constantinopoli, eucherio et syagrio coss.

interpretatio. mulier, quae post mortem mariti intra annum alteri viro nupserit, sciat se infamiae subiacere et notabilem usque adeo reddi, ut quaecumque* sponsalicia* largitate percepit, vel si per testamentum ipsi aliquid prior maritus donavit, amittat, et totum illius filiis cedat: si filii non fuerint, illis profuturum personis, qui priori marito gradu proximiori iunguntur et hoc sibi per successionem poterunt vindicare

CTh.3.8.2pr. [=brev.3.8.2pr.]

Iidem aaa. floro pf. p. feminae, quae susceptis ex priori matrimonio filiis ad secundas transierint nuptias, quicquid ex facultatibus priorum maritorum sponsaliorum iure, quicquid etiam nuptiarum solennitate perceperint, quicquid aut mortis causa donationibus factis aut testamenti iure directo aut fideicommissi vel legati titulo vel cuiuslibet munificae liberalitatis praemio ex bonis maritorum fuerint assecutae, id totum, ita ut perceperint, integrum ad filios, quos ex praecedenti coniugio habuerint, transmittant vel ad quemlibet ex filiis (dummodo ex his tantum, quos tali successione dignissimos iudicamus), in quem contemplatione meritorum liberalitatis suae iudicium mater crediderit dirigendum. nec quicquam eaedem feminae ex iisdem facultatibus abalienandi in quamlibet extraneam personam vel successionem ex alterius matrimonii coniunctione susceptam praesumant, atque habeant potestatem possidendi tantum in diem vitae, non etiam abalienandi facultate concessa. nam si quid ex iisdem rebus per fraudem scaevioris animi in alium quemlibet fuerit a possidente translatum, maternarum redintegrabitur compensationibus facultatum, quo illibata ad hos, quos statuimus, heredes bona et incorrupta perveniant.

CTh.3.8.2.1 [=brev.3.8.2.1]

Illud etiam addimus legi, ut, si aliquis ex iisdem filiis, quos ex priore matrimonio susceptos esse constabit, forte decesserit, qui sorores vel sororem, non etiam fratrem relinquens, senatusconsulti beneficio matri simul ac sororibus successionis locum fecisse videatur, seu etiam filia, quae, nullo exsistente fratre et superstitibus matre ac sororibus tantum, adeundae hereditatis locum matri pro dimidia portione servabit, quod successionis beneficio mater videbitur consecuta, in diem vitae pro sibi debita portione sola tantum possessione delata, omne his, qui supererunt ex priore suscepti matrimonio, filiis relinquat, nec super istiusmodi facultatibus testandi in quamlibet aliam extraneam personam vel quicquam abalienandi habeat potestatem.

CTh.3.8.2.2 [=brev.3.8.2.2]

Quod si nullam ex priore matrimonio habuerit successionem, vel natus native decesserint, omne, quod quoquomodo percepit, pleni proprietate iuris obtineat, atque ex iis nanciscendi dominii et testandi, circa quem voluerit, liberam habeat potestatem.

CTh.3.8.2.3 [=brev.3.8.2.3]

Similiter etiam admoneri maritos volumus et pietatis et legis exemplo quos, etsi vinculo non adstringimus, velut impositae severius sanctionis, religionis tamen iure cohibemus, ut sciant id a se promptius sperari contemplatione iustitiae, quod necessitate propositae observationis matribus imperatur: ne, si ita necessitas persuaserit, circa eorum personam subsidio sanctionis exigi ab eis oporteat, quod optari interim sperarique condeceat. dat. xv. kal. iun. constantinopoli, antonio et syagrio coss.

interpretatio. mulieres, quae amissis maritis ad alias postea nuptias legitimo tempore, id est expleto anno, venerint, si ex priori marito filios habuerint, quicquid per sponsaliciam* largitatem vel nuptiarum tempore consecutae sunt, totum filiis conservabunt, nec in alias vel extraneas personas noverint transferendum. quicquid vero prior maritus per testamentum seu fideicommissum seu legati titulo vel mortis causa uxori donaverit, de his rebus, quas tali mulier donatione percepit, seu omnibus filiis seu in unum pro merito servitii si conferre voluerit, habebit liberam facultatem, ita ut ei de bonis prioris mariti a filiis ipsius quicquam alienare non liceat. quod si praesumpserit*, de propriis facultatibus noverit compensandum. hoc specialius huic legi credidit inserendum, ut mulieri, quum ad alias nuptias venerit, si de filiis, quos ex matrimonio priore susceperat, masculus moriatur, eo casu, ut matrem et sorores aut certe sororem superstitem dimittat et fratrem non dimittat, qui matrem possit excludere, tunc beneficio legis mater cum filiabus vel filia aequali sorte succedat. si vero filia moriatur et matrem et sorores tantum dimittat, dimidiam defunctae filiae hereditatem mater acquirat, et media sororibus, seu una seu plures sint, proficiat: ea tamen ratione, ut dum advixerit mater, acquisitam ex hac filii aut filiae medietatem tantummodo in usufructu possideat, et reliquis, si supererunt ex priore matrimonio, filiis post obitum derelinquat, ad alias personas in transferendo nec per testamentum, nec per donationem habitura licentiam. cui mulieri si de priore marito filii non supersint, tunc quaecumque*, quae sub hac occasione percepit, sibi velut propriam vindicet facultatem et in quemcumque* voluerit, iure transmittat. in hac etiam lege similem et patribus mortuis uxoribus condicionem*, si ad alias nuptias venerint, voluit observari, ut, si de priore uxore filii vel filiae fuerint, ex quibus aliqui moriantur, et in suam portionem locum patri faciant, post illis obitum fratribus vel sororibus, qui supererunt de ipso coniugio, portio relicta proficiat, nec poterit per patriam potestatem ad alias transire personas

CTh.3.8.3 [=brev.3.8.3]

Impp. honor. et theodos. aa. ioanni pf. p. nulli videatur ambiguum, eorum, quae nuptiarum tempore mulieres accipiunt, etiamsi ad secundas nuptias, exstantibus ex priore matrimonio liberis, emenso tempore forte migraverint, in diem vitae usumfructum circa eas debere durare, salva iis proprietate, quibus ius integrum post earum obitum leges sacratissimae reservarunt, ut manifestum est, quod delatum ex priori coniugio liberis constat. dat. x. kal. iul. ravenna, dd. nn. honorio ix. et theodos. v. aa. coss.

interpretatio. notissimum valde est, has facultates, quas tempore nuptiarum mulieres a maritis accipiunt, suo dominio vindicare: et si maritum mori contigerit, qui tamen filios derelinquat, et post transacta luctus tempora legitime ad alias nuptias venerint, in diem vitae suae donatarum rerum teneant usumfructum. post obitum vero earum ad prioris mariti filios omnia revertantur, nec exinde aliquid matribus vivis filiis in aliorum iura transferre permissum est

CTh.3.9.0. Si secundo nupserit mulier, cui maritus usumfructum reliquerit.

CTh.3.9.1 [=brev.3.9.1]

Impp. arcad. et honor. aa. asterio comiti orientis. aperta definitione signamus, longe aliud esse, quod de rebus ante nuptias a nostra mansuetudine constitutum est, aliud, quod de iis, quae ex patrimonio proprio vir suo arbitrio ad usumfructum uxori dereliquit. nam in eo usufructu, quem vir extremam constituens voluntatem de rebus propriis uxori dimiserit, statim post secundas nuptias mulieri volumus imminere iacturam, secundum eam legem, quae de hoc articulo non dubitatur emissa: de usufructu vero rerum ante nuptias donatarum ea servari, quae saluberrima lex anterior plena definitione decrevit. dat. xvi. kal. mart. constantinopoli, honorio a. iv. et eutychiano coss.

interpretatio. clara interpretatione has duas sententias explanavit, ut praeter sponsaliciam* donationem, si maritus moriens de patrimonio suo usumfructum reliquit uxori, iuxta voluntatem eius relicta possideat, ita ut si mulier postea alio viro nupserit, mox usumfructum ex testamento acquisitum filiis eius refundat, a quo usumfructum fuerat consecuta: usumfructum vero de sponsalicia* largitate usque ad obitum suum, sicuti superius alia lex locuta est, merito retinebit: unde haec ipsa post obitum matris ad illius mariti filios, qui donavit, proprietas reditura est

CTh.3.10.0. Si nuptiae ex rescripto petantur.

CTh.3.10.1 [=brev.3.10.1]

Impp. honor. et theodos. aa. theodoro pf. p. quidam, vetusti iuris ordine praetermisso, obreptione precum nuptias, quas se intelligunt non mereri, de nobis aestimant postulandas, se habere puellae consensum confingentes. quapropter tale sponsalium genus praesentis legis definitione prohibemus. si quis igitur contra hanc definitionem nuptias precum surreptione meruerit, amissionem bonorum et poenam deportationis subiturum se esse non ambigat, et amisso iure matrimonii, quod prohibita usurpatione meruerit, filios se iuste hac ratione susceptos non habiturum, nec umquam* postulatae indulgentiae annotationisve principis indulto efficacem se veniae effectum meruisse: exceptis his, quos consobrinorum, hoc est quarti gradus, coniunctionem lex triumphalis memoriae patris nostri, exemplo indultorum, supplicare non vetavit, exceptisque his, qui parentum sponsionem de nuptiis filiarum impleri desiderant, vel sponsalia, hoc est arrarum data nomine, reddi sibi praecepto legum cum quadrupli poena deposcunt. nos enim peti de nobis nuptias supplicatione prohibemus, quas deceat de voluntate parentum vel de ipsis adultis puellis aut mulieribus impetrari. nam si negato coniugio, quod fuerat ante promissum, lis aliqua legum praecepto nascatur, de iure nos consuli non vetamus. dat. kal. febr. ravenna, dd. nn. honorio viii. et theodos. iii. aa. coss.

interpretatio. fit aliquoties a quibusdam, ut obliti severitatem legum, obrepere principis audeant maiestati et coniugia sibi expetant ex praecepto, quae consequi non merentur, ut de consensu parentum vel puellae mentiantur: qua de causa huiusmodi audaciam interdicit. quicumque* ergo sub tali obreptione matrimonium se obtinere putaverit, et amissione bonorum et exsilii relegatione se noverit esse damnandum: nec matrimonium, quod taliter quaesierit, habiturum, nec filios tali ordine et ambitione susceptos legitimos appellandos: nec etiam per supplicationem huius praesumptionis* veniam promereri. his vero, quos in quartum gradum originis coniunctio praesumptiva* copulaverit, quia notabile est, tamen si supplicaverint, veniam relaxabit. nec his interdici, ut praeceptum expetant maiestatis, qui parentum placito copulantur. illi vero, qui, pactis sibi vivis parentibus puellis, ab ipsis puellis post parentum obitum contemnuntur, praecepti tenore in quadruplum arrarum nomine data vel donata recipiant; nam de reliquo si ante definita non fuerint, per supplicationem coniugia postulari omni severitate prohibuit. ceterum si cum parentibus puellae aut cum ipsa puella quis de nuptiis pactus fuerit, et unus ex his voluerit de placitis resilire, nos ab eo, qui despicitur, consuli non vetamus. reliqua pars legis istius alibi iam habetur exposita

CTh.3.11.0. Si quacumque* praeditus potestate nuptias petat invitae.

CTh.3.11.1pr. [=brev.3.11.1pr.]

Imppp. grat., valentin. et theodos. aaa. neoterio pf. p. si quis ordinaria vel qualibet praeditus potestate circa nuptias invitis ipsis vel parentibus contrahendas, sive pupillae sive apud patres virgines sive viduae erunt sive et sui iuris viduae, denique cuiuscumque* sortis, occasione potestatis utatur, et minacem favorem suum invitis iis, quorum utilitas agitur, exhibere aut exhibuisse detegitur, hunc et mulctae librarum auri decem obnoxium statuimus, et, quum honore abierit, peractam dignitatem usurpare prohibemus: tali scilicet poena, ut, si circa honorem eum, quo male usus est, vindicandum statuti nostri sanctioni parere noluerit, semper eam provinciam, in qua sibi hoc usurpaverit, habitare per iuge biennium non sinatur.

CTh.3.11.1.1 [=brev.3.11.1.1]

Quia tamen contra latentem malitiam praeterea quasdam domos vel quosdam parentes intelligimus muniendos, iubemus, ut, quicumque* iis et quaecumque* erit latentibus per iudicem promissis minisve tentata, ad id matrimonium, cui adspernatur, praestare consensum, confestim, contestatione proposita, cum sua suorumque domo ad iurisdictionem eius desinat pertinere: curaturis hoc uniuscuiusque civitatis vindicibus et eiusdem iudicis apparitoribus. equidem si haec pravitas ordinarii iudicis erit, universa eius domus ratio atque omnia vel civilia vel criminalia negotia, quamdiu idem in administratione fuerit, vicario competant; sin autem vicarius vel similis potestatis vim in huiusmodi contrahendo matrimonio molietur, vicissim ordinarius iudex intercessor exsistat; si erunt uterque suspecti, ad illustrem praefecturam specialiter talium domorum, quamdiu idem administraverit, tutela pertineat. dat. xv. kal. iul. thessalonica, gratiano a. v. et theodos. a. i. coss.

interpretatio. si aliquis de his iudicibus, qui provincias administrant, vel etiam his, quibus civitates vel loca commissa sunt, per potentiam invitis parentibus virgines aut etiam viduas, si sui iuris sint, per potestatem ad nuptias suas addixerint, aut si pupillae sint, et earum utilitatibus obviantes per terrorem aut per quorumcumque* colludium addicantur, ut his personis, de quibus loquitur, invitae iungantur: quicumque* hoc praesumpserit*, decem pondo auri se noverit condemnandum, et in ea provincia, in qua iudex fuerit, dignitate amissa, biennio prohibeatur accedere. beneficium tamen lex ista adversus eiusmodi homines parentibus vel ipsis mulieribus, quae in suo iure sunt, vel qui minorum aetates tuentur, indulsit, ut contestationes ad alios iudices vel civitates proximas deferant et eorum patrociniis defendantur: ut, si in eadem provincia sit alia potestas, utpote si sint duo iudices, unus privata et alius dominica iura gubernans, si ab altero sub hac condicione* quaecumque* persona prematur, alterius tutela debeat defensari, aut certe ad magnificam potestatem, quae principis auribus hoc possit intimare, recurrat

CTh.3.12.0. De incestis nuptiis

CTh.3.12.1

Impp. constantius et constans aa. ad provinciales foenices. si quis filiam fratris sororisve faciendam crediderit abominanter uxorem aut in eius amplexum non ut patruus aut avunculus convolaverit, capitalis sententiae poena teneatur. dat. prid. kal. apr. antiochiae constantio iii et constante ii aa. conss.

interpretatio. quicumque hominum cum fratris filia vel sororis incestam coniunctionem se habere crediderit, capitale periculum se noverit incursurum. (342 mart. 31)

CTh.3.12.2 [=brev.3.12.1]

Impp. constantinus et constans aa. et iulianus caesar ad volusianum vicarium urbis. etsi licitum veteres crediderunt, nuptiis fratris solutis ducere fratris uxorem, licitum etiam, post mortem mulieris aut divortium contrahere cum eiusdem sorore coniugium, abstineant huiusmodi nuptiis universi, nec aestiment, posse legitimos liberos ex hoc consortio procreari: nam spurios esse convenit, qui nascentur. dat. prid. kal. mai. roma, arbetione et lolliano coss.

interpretatio. fratris uxorem ducendi vel uni viro duas sorores habendi penitus licentia denegatur; nam ex tali coniugio procreati filii legitimi non habentur

CTh.3.12.3 [=brev.3.12.2]

Impp. arcad. et honor. aa. eutychiano pf. p. manente circa eos sententia, qui post latam dudum legem quoquomodo absoluti sunt aut puniti, si quis incestis posthac consobrinae suae vel sororis aut fratris filiae uxorisve vel eius postremo, cuius vetitum damnatumque coniugium est, sese nuptiis funestarit, designato quidem lege supplicio, hoc est ignium et proscriptionis, careat, proprias etiam, quamdiu vixerit, teneat facultates: sed neque uxorem neque filios ex ea editos habere credatur, ut nihil prorsus praedictis, ne per interpositam quidem personam, vel donet superstes vel mortuus derelinquat. dos, si qua forte solenniter aut data aut dicta aut promissa fuerit, iuxta ius antiquum fisci nostri commodis cedat. testamento suo extraneis nihil derelinquat, sed sive testato sive intestato legibus ei et iure succedant, si qui forte ex iusto et legitimo matrimonio editi fuerint, hoc est de descendentibus filius, filia, nepos, neptis, pronepos, proneptis, de ascendentibus* pater, mater, avus, avia, de latere frater, soror, patruus, amita. testandi sane ita demum habeat facultatem, ut his tantum personis pro iuris ac legum, quod voluerit, arbitrio relinquat, quas succedere imperialis praecepti tenore mandavimus; ita tamen, ut hereditate defuncti penitus arceatur, si quis ex his, quos memoravimus, in contrahendis incestis nuptiis participatum atque consilium iniisse monstrabitur, successuro in locum illius, qui post eum gradum proximus invenitur. id sane, quod de viris cavimus, etiam de feminis, quae praedictorum se consortiis commaculaverint, custodiatur. memoratis vero personis non exstantibus, fisco locus pateat. ad cuius legis nexum et condicionem* pertinere iubemus, si qui forte iam dudum ante promulgationem huiusce legis illicitis memoratarum nuptiarum sceleribus commaculati quoquo modo latere potuerunt. dat. vi. id. dec. constantinopoli, arcadio iv. et honorio iii. aa. coss.

interpretatio. post prioris legis sententiam, quae de talibus personis lata est, id praecipit observari, ut districtione legis, supplicio et proscriptione liberi, quisque ille aut sororis aut fratris filiam aut certe ulterioris gradus consobrinam aut fratris uxorem sceleratis sibi nuptiis iunxerit, huic poenae subiaceat, ut de tali consortio separetur. atque etiam si filios habuerint, non habeantur legitimi nec heredes, sed infamia sint notatae utrimque personae, ita ut possidere tantum proprias facultates principis beneficio videantur. ceterum nullum praesumant subire contractum, donandi atque testandi facultate summota: sed nec ipsis feminis, quas taliter sortiti sunt, aliquid conferant, et si etiam aliquid tempore nuptiarum sibi dederint, revocetur ad fiscum: aut etiamsi filios habuerint, non per suppositam aut per aliam personam aut per commenticiam donationem ad illos quicquam ex eorum facultate perveniat, sed ipsis mortuis ad legitimos heredes, quoscumque* gradus admittit, usque ad certum originis locum ab intestato ipsi succedunt. testandi etiam eis in his tantum personis, quibus lege concessum est, permissa potestas, ita ut ex his, quos elegerint, scribant heredes, ita tamen, ut, si qui in tali consortio consensum cum his habuisse docentur, hereditate exclusi, aliis in proximo gradu venientibus locum faciant: nam si desunt personae propinquorum, quos ad successionem vocat lex, tunc in eorum facultatibus fiscus accedat

CTh.3.12.4 [=brev.3.12.3]

Impp. honor. et theodos. aa. aureliano ii. pf. p. tanquam incestum commiserit, habeatur, qui post prioris coniugis amissionem sororem eius in matrimonium proprium crediderit sortiendam; pari ac simili ratione etiam, si qua post interitum mariti in germani eius nuptias crediderit adspirandum: illo sine dubio insecuturo, quod ex hoc contubernio nec filii legitimi habebuntur, nec in sacris patris erunt, nec paternam ut sui suscipient hereditatem. dat. xvii. kal. iun. constantinopoli, dd. nn. honorio x. et theodos. vi. aa. coss.

interpretatio. quaecumque* mulier sororis suae maritum post illius mortem acceperit, vel si quis ex viris, mortua uxore, sororem eius aliis nuptiis sibi coniunxerit, noverint tali consortio se esse notabiles, et filii, qui exinde fuerint procreati, ex successione excluduntur, nec inter filios habebuntur

CTh.3.13.0. De dotibus.

CTh.3.13.1 [=brev.3.13.1]

Impp. constantius et constans aa. ad philippum pf. p. de moribus actio ultra personam extendi non potest, nec in heredem dabitur, nec tribuetur heredi. dat. xii. kal. oct. limenio et catulino coss.

interpretatio. si de moribus maritus uxorem accusat, hoc est in maleficio, in adulterio, similibus aliisque criminibus, si mortua uxor fuerit, heredes eius accusari non possunt, quia crimina cum auctore deficiunt: tamen et si maritus mortuus fuerit, quia accusabat uxorem, ab herede mariti mulier non potest accusari

CTh.3.13.2 [=brev.3.13.2]

Imp. iulianus a. ad mamertinum pf. p. in dote reddenda et retentiones ex iure venientes et pacta, quae legibus consentanea esse monstrantur, placet, etiam ex huius sanctionis auctoritate intemerata inviolataque servari. dat. iv. kal. mart. iuliano a. iv. et sallustio coss.

interpretatio. pacta inter maritum et uxorem, quae de dote inita sunt et cum lege concordant, haec lex sicut reliquas pactiones valere praecepit. de retentionibus vero, quia hoc lex ista non evidenter ostendit, in iure, hoc est in pauli sententiis sub titulo de dotibus requirendum aut certe in pauli responsis sub titulo de re uxoria

CTh.3.13.3pr. [=brev.3.13.3pr.]

Impp. honor. et theodos. aa. mariniano pf. p. post alia: si constante matrimonio maritus fatali fuerit sorte consumptus*, dos, quae data dicitur vel promissa ex eius uxoris facultatibus, ad feminam revertatur, nihilque sibi ex hoc defuncti heres audeat vindicare, quod ad mulierem recurrere fecit obitus maritalis.

CTh.3.13.3.1 [=brev.3.13.3.1]

Et si fortasse constante matrimonio a marito uxori dos refusa est, quod legibus stare non potest, quia donationis instar perspicitur obtinere, eadem uxore defuncta marito ab eius heredibus cum fructibus ex die refusae dotis restituatur, ita ut proprietas eiusdem a liberis ex eadem susceptis alienari a marito non possit etc. dat. iv. non. nov. ravenna, honorio xiii. et theodos. x. aa. coss.

interpretatio. si contigerit, ut maritus uxore superstite moriatur, quaecumque* a muliere marito in dotem data fuerant, ad suum dominium femina revocabit, nec heredes defuncti mariti hoc vindicare praesumant: nam si maritus, dum adviveret, hoc ipsum, quod a muliere in dote perceperat, fortasse refuderit, quia similitudo donationis est refusio, nullam obtinet firmitatem. si mortua fuerit mulier, non poterunt eius heredes hoc sibimet vindicare, sed marito etiam cum fructibus hoc iubetur debere restitui: sic tamen, ut, si erunt filii, non sibi hoc, dum advixerit pater eorum, quasi ex bonis maternis vindicent, nec pater aliquid aliud nisi usumfructum exinde habere debebit, nec transferendi in aliam personam habebit liberam potestatem, sed omnia post eius obitum ad communes filios revertantur

CTh.3.13.4 [=brev.3.13.4]

Impp. theodos. et valentin. aa. hierio pf. p. post alia: ad exactionem dotis, quam semel praestari placuit, qualiacumque* sufficere verba censemus, etiamsi dictio vel stipulatio in pollicitatione rerum dotalium minime fuerit subsecuta etc. dat. x. kal. mart. constantinopoli, felice et tauro coss.

interpretatio. ad implendam vel exigendam dotem, hoc est, quae a muliere tempore nuptiarum viro datur, etiamsi desit stipulatio promittentis et verba iuridica, dos valere iubetur

CTh.3.14.0. De nuptiis gentilium.

CTh.3.14.1 [=brev.3.14.1]

Impp. valentin. et valens aa. ad theodosium magistrum equitum. nulli provincialium, cuiuscumque* ordinis aut loci fuerit, cum barbara sit uxore coniugium, nec ulli gentilium provincialis femina copuletur. quod si quae inter provinciales atque gentiles affinitates ex huiusmodi nuptiis exstiterint, quod in iis suspectum vel noxium detegitur, capitaliter expietur. dat. v. kal. iun. valentin. et valente aa. coss.

interpretatio. nullus romanorum barbaram cuiuslibet gentis uxorem habere praesumat, neque barbarorum coniugiis mulieres romanae in matrimonio coniungantur. quod si fecerint, noverint se capitali sententiae subiacere

CTh.3.15.0. De fideiussoribus dotium.

CTh.3.15.1 [=brev.3.15.1]

Impp. theodos. et arcad. aa. martiniano comiti orientis. omnium sponsorum vel fideiussorum deinceps in cavenda dotis sponsione promissiones absolvimus. dat. iv. id. nov. constantinopoli, arcadio a. ii. et rufino coss.

interpretatio. si quis implendae dotis causa pro muliere fideiussor accesserit, pro hac fideiussione non teneatur obnoxius

CTh.3.16.0. De repudiis.

CTh.3.16.1 [=brev.3.16.1]

Imp. constantinus a. ad ablavium pf. p. placet, mulieri non licere propter suas pravas cupiditates marito repudium mittere exquisita causa, velut ebrioso aut aleatori aut mulierculario, nec vero maritis per quascumque* occasiones uxores suas dimittere, sed in repudio mittendo a femina haec sola crimina inquiri, si homicidam vel medicamentarium vel sepulcrorum dissolutorem maritum suum esse probaverit, ut ita demum laudata omnem suam dotem recipiat. nam si praeter haec tria crimina repudium marito miserit, oportet eam usque ad acuculam capitis in domo mariti deponere, et pro tam magna sui confidentia in insulam deportari. in masculis etiam, si repudium mittant, haec tria crimina inquiri conveniet, si moecham vel medicamentariam vel conciliatricem repudiare voluerit. nam si ab his criminibus liberam eiecerit, omnem dotem restituere debet et aliam non ducere. quod si fecerit, priori coniugi facultas dabitur, domum eius invadere et omnem dotem posterioris uxoris ad semet ipsam transferre pro iniuria sibi illata. dat. iii. non. mai. basso et ablavio coss.

interpretatio. certis rebus et probatis causis, inter uxorem et maritum repudiandi locus patet; nam levi obiectione matrimonium solvere prohibentur. quod si forte mulier dicat maritum suum aut ebriosum aut luxuriae deditum, non propterea repudiandus est, nisi forte eum aut homicidam aut maleficum aut sepulcri violatorem esse docuerit, quibus criminibus convictus sine culpa mulieris merito videtur excludi, et mulier recepta dote discedit: nam si haec crimina mulier non potuerit approbare, hac poena mulctatur, ut et dotem, quam dederat vel pro ipsa data fuerat, et donationem, quam percepit, amittat atque etiam exsilii relegatione teneatur. quod si a viro mulier repellatur, nec ipse, nisi certis criminibus ream docuerit, pro levi, ut assolet, iurgio repudiare non permittitur, nisi fortasse adulteram aut maleficam aut conciliatricem eam probare sufficiat. quod si docere non potuerit, dotem mulieri restituat et aliam ducere non praesumat uxorem. quod si forte tentaverit, habebit mulier liberam facultatem, quae innocens eiecta est, domum mariti sui atque omnem eius substantiam sibimet vindicare. quod dignoscitur ordinatum, ut etiam secundae uxoris dotem repudiata iniuste mulier iubeatur acquirere

CTh.3.16.2pr. [=brev.3.16.2pr.]

Imppp. honor., theodos. et constantius aaa. palladio pf. p. mulier, quae repudii a se dati oblatione discesserit, si nullas probaverit divortii sui causas, abolitis donationibus, quas sponsa perceperat, etiam dote privetur, deportationis addicenda suppliciis: cui non solum secundi viri copulam, verum etiam postliminii ius negamus. sin vero morum vitia ac mediocres culpas mulier matrimonio reluctata convicerit, periura dotem donationemque viro refundat, nullius umquam* penitus socianda coniugio: quae ne viduitatem stupri procacitate commaculet, accusationem repudiato marito iure deferimus. restat, ut, si graves causas atque involutam magnis criminibus conscientiam probaverit, quae recedit, dotis suae compos, sponsalem quoque obtineat largitatem, atque a repudii die post quinquennium nubendi recipiat potestatem; tunc enim videbitur sui magis viri id exsecratione quam alieni appetitione fecisse.

CTh.3.16.2.1 [=brev.3.16.2.1]

Sane si divortium prior maritus obiecerit ac mulieri grave crimen intulerit, persequatur legibus accusatam impetrataque vindicta et dote potiatur, et suam recipiat largitatem et ducendi mox alteram liberum sortiatur arbitrium. si vero morum est culpa, non criminum, donationem recipiat et dotem relinquat, aliam post biennium ducturus uxorem. quod si matrimonium solo maluerit separare dissensu, nullisque vitiis peccatisque gravetur exclusa, et donationem vir perdat et dotem, ac perpetuo coelibatu insolentis divortii poenam de solitudinis moerore sustineat, mulieri post anni metas nuptiarum potestate concessa.

CTh.3.16.2.2 [=brev.3.16.2.2]

Super retentionibus autem dotium propter liberos iuris antiqui praecepimus cauta servari. dat. vi. id. mart. ravenna, eustathio et agricola coss.

interpretatio. si mulier prior repudium marito intulerit et statutas lege non docuerit causas, amittat sponsaliciam largitatem, nec repetat, quod marito in dotem dedit, atque insuper exsilio relegata nec nubendi locum habeat nec ad propria revertendi. nam si leves culpas edocuerit, quibus divortium videatur appetere, et dote careat et donationem refundat, neque alteri viro nubendi habeat potestatem. si vero postea maritum dimittens adulterio se forte miscuerit, maritus etiam post repudium habeat licentiam persequendi. quod si mulier, quae discedit, in virum gravia crimina et certa probaverit, et dotem revocabit et quod ei maritus in sponsaliciam largitatem contulerat, vindicabit et post quinquennium nubendi habebit liberam facultatem. nam si maritus repudium prior intulerit, probatis causis, vindicta percepta expulsae uxoris dotem vindicet donationemque recipiat et continuo, si voluerit, aliam ducat uxorem: nam si crimina certa non fuerint, sed, ut solet fieri, femina morum levitate displiceat, maritus donationem suam revocet et illi, quicquid ab ea perceperat, mox refundat et post biennium aliam ducat uxorem. quod si nec morum culpa docebitur, et sola est dissensio animorum, mulier, quae innocens expulsa est a marito, et donationem a viro factam sibi vindicet et suam dotem revocet; ille vero in perpetuum solitarius permanebit, nec praesumat alterius mulieris coniugio sociari: mulier vero post annum ad aliud coniugium, si voluerit, transire permittitur. propter communes vero liberos, si fuerint, ea praecepit observari, quae in iure de retentionibus statuta pro numero filiorum, quod paulus in libro responsorum dicit sub titulo de re uxoria

CTh.3.17.0. De tutoribus et curatoribus creandis.

CTh.3.17.1 [=brev.3.17.1]

Imp. constantinus a. et caes. ad bassum pf. p. in universis litibus placet non prius puberem iustam habere personam, nisi interposito decreto aut administrandi patrimonii gratia aut ad litem fuerit curator datus; ut iuxta praecedentia nostrae provisionis statuta legitime initiatae litis agitatae in iudiciis controversiae finiantur. dat. iv. id. oct. aquileia, constantino a. v. et licinio caes. coss.

interpretatio. si pupillis actio inferatur, quamvis adulti videantur, ad litem venire non possunt, nisi forte aetas eorum curiae testificatione firmetur, aut certe provisus curator patrimonium pupilli vel negotium tueatur

CTh.3.17.2 [=brev.3.17.2]

Idem a. et caes. ad populum. in feminis tutelam legitimam et consanguineus patruus non recuset. dat. prid. kal. ian. ipso a. vii. et caes. coss. ista lex expositione non indiget.

CTh.3.17.3pr. [=brev.3.17.3pr.]

Imppp. valentin., theodos. et arcad. aaa. proculo pf. u. illustris praefectus urbis adhibitis decem viris e numero senatus amplissimi et praetore clarissimo viro, qui tutelaribus cognitionibus praesidet, tutores curatoresve ex quolibet ordine idoneos faciat retentari. et sane id libero iudicio expertesque damni constituent iudicantes, et si regendis pupillaribus censibus singuli creandorum pares esse non possunt, plures ad hoc secundum leges veteres conveniet advocari, ut, quem coetus ille administrandis negotiis pupillorum dignissimum iudicarit, sola sententia obtineat praefecturae. itaque hoc modo remoti a metu, qui consilio adfuerint, permanebunt, et parvulis adultisque iusta defensio sub hac prudentium deliberatione proveniet.

CTh.3.17.3.1 [=brev.3.17.3.1]

Quod tamen circa eorum personas censuisse nos palam est, quibus neque testamentarii defensores, neque legitimi vita, aetate, facultatibus suppetunt. nam ubi forte huiuscemodi homines offeruntur, si nihil ad defensionem sui privilegiis comparabunt, ut teneri possint, iure praescribimus.

CTh.3.17.3.2 [=brev.3.17.3.2]

Ceterum alia, quae in causis minorum antiquis legibus cauta sunt, manere intemerata decernimus. dat. vi. kal. ian. mediolani, timasio et promoto coss.

interpretatio. quoties de pupillorum tutela tractatur, debent primi patriae cum iudice, secundum aetates minorum, aut tutorem aut curatorem eligere, ut ille, qui susceperit tutelam tali electione, possit esse securus. quae tamen electio circa eas personas observabitur, quae nec testamento decretae sunt, nec propinquitate ad id officium adducuntur. de aliis sane minorum commodis legum priorum statuta praecepit observari

CTh.3.17.4pr. [=brev.3.17.4pr.]

Iidem aaa. tatiano pf. p. matres, quae amissis viris tutelam administrandorum negotiorum in liberos postulant, priusquam confirmatio officii talis in eas iure veniat, fateantur actis, ad alias se nuptias non venire.

CTh.3.17.4.1 [=brev.3.17.4.1]

Sane in optione huiuscemodi nulla cogitur, sed libera in condiciones*, quas praestituimus, voluntate descendat; nam si malunt alia optare matrimonia, tutelas filiorum administrare non debent.

CTh.3.17.4.2 [=brev.3.17.4.2]

Sed ne sit facilis in eas post tutelam iure susceptam irruptio, bona eius primitus, qui tutelam gerentis affectaverit nuptias, in obligationem venire et teneri obnoxia rationibus parvulorum praecipimus, ne quid incuria, ne quid fraude depereat.

CTh.3.17.4.3 [=brev.3.17.4.3]

His illud adiungimus, ut mulier, si aetate maior est, tum demum petendae tutelae ius habeat, quum tutor legitimus defuerit, vel privilegio a tutela excusetur, vel suspecti genere summoveatur, vel ne suis quidem per animi aut corporis valetudinem administrandis facultatibus idoneus inveniatur.

CTh.3.17.4.4 [=brev.3.17.4.4]

Quod si feminae tutelas refugerint et praeoptaverint nuptias, neque quisquam legitimus ad pares possit causas vocari, tum demum vir illustris praefectus urbi, adscito praetore, qui impertiendis tutoribus praesidet, sive iudices, qui in provinciis iura restituunt, de alio ordine per inquisitionem dari minoribus defensores iubebunt. dat. xii. kal. febr. mediolano, valentin. a. iv. et neoterio coss.

interpretatio. mulieres mortuis maritis, si ipsae voluerint tutelam suscipere filiorum, priusquam hoc assumant, actis profiteantur, se non esse nupturas. sed hoc ipsum non extorquendum est; sed si maluerint, hoc voluntate propria fateantur: nam si ad alias nuptias migrare voluerint, tutelam filiorum administrare non possunt. sciant hoc etiam viri, qui sibi iungendas matres postulant parvulorum, quod, si mulieres tutelam administrare coeperint filiorum et postea nupserint, ille, qui in consortio recipitur maritali, bona sua noverit obligata et se ad rationem reddendam minoribus obnoxium esse futurum. additur etiam illud, quod mulier, nisi maior aetate fuerit, tutelam suscipere prohibetur. de his vero, qui cum lege veniunt ad tutelam, si quis ex his videbitur aut deceptus facultatibus aut moribus vilis, admitti non poterit, ne minorum bona depereant: sed illi accedant in tutelam, qui integritate mentis et certa propinquitate iunguntur. nam si defuerint personae, quas diximus, et mater tutelam suscipere noluerit, tunc, sicut prius constitutum est, electio iudicis vel provincialium tutores minoribus deputabit

CTh.3.18.0. Qui petant

CTh.3.18.1 [=brev.3.18.1]

Imp. constantius a. et iulianus caes. have orfite carissime nobis. avos quoque et avias tutoris necessitas postulandi teneat obligatos, si nepotibus pupillaris aetatis testamentaria vel legitima tutela defuerit. nam si tutor forte petitus non fuerit, secundum ea, quae priscis legibus statuta sunt, emolumentum successionis amittant, ad quos poterat hereditas pervenire. dat. id. iul. constantio a. ix. et iuliano caes. ii. coss.

interpretatio. si avus paternus defuerit, avos maternos etiam atque avias, tam paternas quam maternas iubet ad tutores parvulorum petendos legis praeceptione constringi, si tamen testamentarii vel legitimi deesse probantur. quod si nepotibus parvulis tutores providere despexerint, iubet eos huiusmodi dispendio subiacere, ut, si forte cesserit luctuosa hereditas, de successione minorum, quibus tutores aut non petierint aut noluerint providere, habeantur extranei

CTh.3.18.2

Idem a. si mater defensorem legitimum filiis non poposcit vel tutor pupillis inventarium rerum propria avaritia vel temeritate non conscripserit, ita plectantur infamiae, ut nec testandi nec donandi habeant libertatem. dat. prid. k. april. mosto cons. expositione non egit. (.......).

CTh.3.30.0. De administratione et periculo tutorum et curatorum

CTh.3.30.1 [=brev.3.19.1]

Imp. constantinus a. pro officio administrationis tutoris vel curatoris bona, si debitores exsistant, tanquam pignoris titulo obligata, minores sibimet vindicare minime prohibentur. dat. vii. kal. april. treviris, volusiano et anniano coss.

interpretatio. quicumque* tutor sive curator negligentia administrationis suae debitor minoribus comprobatur, noverit facultates suas ita obligatas, ut, si non satisfecerit, ratione deducta, bona sua a minoribus loco pignoris teneantur

CTh.3.30.2 [=brev.3.19.2]

Idem a. ad maximum pf. u. post alia: minorum defensores, si per eos donationum condicio* neglecta est, rei amissae periculum praestent etc. dat. iii. non. febr. roma, sabino et rufino coss.

interpretatio. si in his, quae minoribus donari possunt, per tutoris negligentiam sive colludium donationis solennitas vel condicio* impleta non fuerit, id, quod minori deperierit, de proprio cogitur exsolvere

CTh.3.30.3

(326 mart. 15).

CTh.3.30.3.6

...Vel curatore sollicito, ut easdem inspiciat frequenti recognitione incolumes. (326 mart. 15).

CTh.3.30.3.7

Animalia quoque supervacua minorum veneant, non vetamus. dat. id. mart. sirmio constantino a. vii et constantio c. conss. (326 mart. 15).

CTh.3.30.4

Idem a. ad universos provinciales. post alia: minorum defensores, hoc est tutores vel curatores, si participes rei, quae lite poscitur, ita, ut iussum est, edere detractaverint eosdemque contra verum nominaverint, quoniam pupillo nihil vel adulto perire oportet, in quolibet litis eventu tantum de proprio pecuniae fisco inferant, quantum aestimatione habita ex tertia parte colligitur. quodsi pauperes sint, capitis deminutione plectantur et desinant cives esse romani, ita ut ius integrum ipsis minoribus reservetur. et cetera. dat. k. aug. basso et ablabio conss. (331 aug. 1).

CTh.3.30.5 [=brev.3.19.3]

Idem a. felici. quoniam per negligentiam seu proditionem tutorum et curatorum possessiones iuris emphyteutici, vitio intercedente commissi, e minorum fortunis avelluntur, placet, ut tutor curatorve, cuius officio manente possessio minoris iuris emphyteutici praerogativam, commissi offensa, perdiderit, tantum de facultatibus propriis, censura imminente, minoribus restituat, quanto rem valere potuisse constabit. dat. xiv. kal. mai. constantinopoli, dalmatio et zenophilo coss.

interpretatio. si forte cesserit, ut minores possessionem iuris emphyteutici, hoc est, quod ex fisci bonis parentes eorum habere meruerant, sub qualibet praestatione tenuerint, et hoc per negligentiam sive proditionem tutoris aut imminutum fuerit aut certe sublatum, quicquid perierit, a tutore vel curatore esse reddendum

CTh.3.30.6pr. [=brev.3.19.4pr.]

Impp. arcad. et honor. aa. eutychiano pf. p. tutores eodem momento, quo fuerint ordinati, mox adeant cognitores, ut praesentibus primatibus, defensore, officiis etiam publicis, inventario solenniter facto, omne aurum argentumque et quicquid vetustate temporis non mutatur, si in pupilli substantia reperiatur, iudicum ac senatorum, officiorum etiam publicorum inustum signaculis, in tutissima, publicae auctoritate sententiae, sine spe aliqua usurarum, custodia collocetur; non prius qualibet occasione mutandum, quam adultus, legitimam ingressus aetatem, non tam litibus vacare incipiat, quam integro se mox gaudeat patrimonio restitutum.

CTh.3.30.6.1 [=brev.3.19.4.1]

Et quoniam etiam mediocris pensanda fortuna est, si cui forte in hereditate mobilia tantum, non etiam immobilia relinquantur, nec aliqui fundorum reditus supputentur, ex quibus vel familia pupilli sustentari valeat vel pupillus, ex mobilibus aut praedia idonea comparentur, aut, si forte, ut assolet, idonea non potuerint inveniri, iuxta antiqui iuris formam usurarum crescat accessio; ut et hic, unde fundorum reditus non sperantur, ex incremento rei mobilis minoris necessitas adiuvetur, et ibi sine periculo tutoris usurae penitus non petantur. dat. vi. kal. mart. constantinopoli, arcadio iv. et honorio iii. aa. coss.

interpretatio. mox ad tutelam quis accesserit, adhibitis continuo primatibus civitatis vel defensore cum officio suo, suscepta pupilli bona facto rerum conscribat inventario: et si quid erit in pecunia vel argento, vel quae non possunt vetustate perire, praedictorum annulis obsignata reponat, et nulla occasione minuatur, neque id pupillo, dum in annis minoribus fuerit, pro litibus aut aliis causis noverint committendum, sed usque ad perfectam aetatem omni integritate servetur: in reliquis rebus proficiente diligentia. nam si minores eius sunt facultates, ut non sit patrimonium illis, et tantummodo substantia in rebus mobilibus invenitur, sciant tutores sibi esse permissum, ut vendere praesumant mobilia et agros comparare, ut minoribus in ea parte prospiciant; si vero non est eiusmodi substantia, unde praedium comparetur, hanc iubentur habere diligentiam, ut pecunia colligatur, et compendiis usurarum aut quibuslibet aliis rebus commodum pupillis acquirant; aut si forte tenuitas substantiae erit, exinde salva re pupillis substantia ministretur; et si ita egerint, a tutore pupillus non erit quaesiturus usuram

CTh.3.31.0. De excusatione tutorum

CTh.3.31.1

Impp. arcadius et honorius aa. flaviano praefecto urbi. post alia: excusationem naviculariis tutelae sive curae hactenus ipsis tribuimus, ut in huiusmodi officiis minoribus sui tantum corporis obligentur. dat. iii non. mart. mediolano stilichone et aureliano conss. (400 mart. 5).

CTh.3.32.0. De praediis minorum sine decreto non alienandis

CTh.3.32.1

Imp. constantinus a. ad severum. minores, qui intra viginti quinque annorum aetatem sunt, praedium vel mancipium rusticum sine decreti interpositione alienatum, etiam non petita in integrum restitutione, poterunt vindicare; ita ut, si hac lege proposita tantum ad metas vicesimi et quinti anni supererit, ut coepta lis intra eiusdem anni finem terminari non possit, inchoata lis possit protendi. sed et ii, quos eadem lex exacto vicensimo et quinto anno intra viginti et sex annos deprehenderit, incoare petitiones suas non morentur, quoniam usque ad vicensimum et sextum annum ita inchoatae litis tempora concluduntur. qui vero post hoc tempus agere temptaverit, expellatur, ut iam certus securusque possessor sit. dat. xv k. ian. serdicae probiano et iuliano conss. (322 [325?] dec. 18).

CTh.3.32.2

Impp. etsi minores vel ex patris nomine vel ex suo, debitis dumtaxat fiscalibus ingruentibus, vel ex privatis contractibus repperientur obnoxii, decreti interpositio a constantiniano praetore celebranda est, probatis examussim causis, ut patefacta rerum fide firma venditio perseveret. haec cum ita sint, etiam suspecti tutores sub eius debent examine postulari, contraria quoque actione tribuenda; scilicet ut tunc demum ad experientiam tuam servatis legibus recurratur, si apud utrumque praetorem, dum quaestio ventilatur, ab aliqua parte auxilium provocationis fuerit obiectum, ut provocationis merita sublimis disceptator expendas. dat. (....).

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CTh.4.1.0. De cretione vel bonorum possessione.

CTh.4.1.1 [=brev.4.1.1]

Impp. theodos. et valentin. aa. ad senatum. post alia: patrem aliqua ex parte minorem esse matribus, non sinemus. nam quum etiam infantis filii morientis mater bonorum solatia consequatur, cur de aetate eius pater graves patiatur tendiculas, non videmus; et quum legitima successio non modo in matre, verum etiam in successoribus longius constitutis non bonorum possessionis petitionem, non cretionis solennitatem cogitur custodire, qualicumque* contenta aditae vel adeundae hereditatis indicio, quanto magis pater talibus est vinculis exuendus? atque ideo hac oratione sancimus, ut pater etiam infantis filii successionem, sive ille matre eius moriente adeundae hereditatis vel petendae bonorum possessionis fuerit exsecutus officium, sive ista neglexerit, morienti filio infanti in qualibet aetate sine ambiguitate succedat. dat. viii. id. nov. ravenna, dd. nn. theodos. xii. et valentin. ii. aa. coss.

interpretatio. cretio et bonorum possessio antiquo iure a praetoribus petebatur: quod explanari opus non est, quia legibus utrumque sublatum est. et ideo infans, licet loqui non possit, tamen hereditatem sibi debitam capit, cui morienti pater aut is, qui proximus fuerit, ex lege succedit

CTh.4.2.0. Unde liberi.

CTh.4.2.1 [=brev.4.2.1]

Impp. arcad. et honor. aa. aureliano pf. p. filia, quae dote a patre suscepta matrimonio sociata est, intestato patre mortuo, si hereditatem velit adire cum fratribus, dotem, quam susceperat, miscere cogatur paternae substantiae atque ita in subeunda hereditate sociari cum fratribus. dat. prid. non. oct. constantinopoli, arcadio iv. et honorio iii. aa. coss.

interpretatio. filia, si tempore nuptiarum a patre fuerit dotata, et postea pater intestatus moriatur, si in reliqua patris substantia vult cum aliis fratribus aequalis accedere, dotem vel quicquid accepit tempore nuptiarum hereditati paternae cum fratribus dividendam confundat. quod si noluerit, sit his, quae percepit, pro sua portione contenta

CTh.4.3.0. De carboniano edicto.

CTh.4.3.1 [=brev.4.3.1]

Imppp. valentin., theodos. et arcad. aaa. rufino pf. p. carbonianum edictum sub personis legitimis indubitato matrimonio, custodito partu et probata legitima successione defertur: scilicet ut in possessione novus heres locatus usque ad pubertatis annos sine inquietudine rebus utatur interdum alienis. dat. iv. kal. oct. constantinopoli, theodos. a. iii. et abundantio coss.

interpretatio. si quis moriens ex legitimo matrimonio praegnantem reliquerit uxorem, iubet lex, mulierem a propinquis, quo usque ad partum veniat, custodiri: quae quum legitimo tempore ediderit, is, qui natus fuerit, pro sua portione in patris hereditate succedat et usque ad quintum et decimum aetatis suae annum, quae a patre derelicta sunt, sine ullius repetitione possideat: futurum, ut suas postmodum per curatorem aut excipiat aut exserat actiones

CTh.4.4.0. De testamentis et codicillis.

CTh.4.4.1 [=brev.4.4.1]

Imp. constantinus a. et constantius caes. pf. u. in codicillis, quos testamentum non praecedit, sicut in voluntatibus testamenti septem testium vel quinque interventum non deesse oportet: sic enim fiet, ut testantium successiones sine aliqua captione serventur. si quando igitur testium numerus defecerit, instrumentum codicilli habeatur infirmum. quod et in ceteris voluntatibus placuit observari. dat. xi. kal. ian. constantino a. vii. et constantio caes. coss.

interpretatio. si quis non fecerit testamentum, sed vice testamenti fecerit codicillum, in quo codicillo legitima heredis institutio teneatur, et hunc ipsum eodem numero testium, hoc est septem aut quinque subscriptionibus faciat confirmari: si minus quam quinque, valere non poterit, sicuti et ceterae voluntates. nam secundum superiorem legem, si condito testamento postea factus fuerit codicillus, et in eo alium, quam in testamento fecerat, heredem voluerit nominare, in eo codicillo heredis institutio non valebit

CTh.4.4.2pr. [=brev.4.4.2pr.]

Imppp. valentin., theodos. et arcad. aaa. proculo pf. u. quae codicillis aut epistolis nobis necessitudinibusve nostris relinquuntur, non admittimus; sit ille usus inter privatos ratus. et sane hoc loco praebemus licentiam, ut civiliter sive criminaliter, ut actor elegerit, super prolata epistola requiratur, et incumbat probatio ei primitus, qui scripturam obtulerit. ceterum quod ad nos nostrosque attinet, codicillos et epistolas adeo refutamus, ut ex illis, etiamsi veras eas esse quaestionum regula approbarit, quicquid nobis relictum nostrisve constiterit, ad liberos defuncti vel, si hi non sint, ad proximum quemque iudicii nostri humanitate pertineat.

CTh.4.4.2.1 [=brev.4.4.2.1]

Testamenti vero scripturam legitimam vel nuncupationem, quae in nomen nostrum forte processerit, iure capiemus, nec in ea re distare ius nostrum a privatis heredibus profitemur. dat. mediolani x. kal. febr., timasio et promoto coss.

interpretatio. si quis moriens principi vel propinquis vel amicis eius aliquid per codicillum aut per epistolam crediderit relinquendum, pietatis intuitu id praecipit non valere: sed si quid tali modo privatis fuerit derelictum, et de talibus chartulis orta fuerit fortasse contentio, in iudicis discussione consistat, utrum possit scriptura prolata iure subsistere. ceterum principi vel eius proximis, quicquid testamento aut nuncupatione dimittitur, hoc sibi legibus valere permittitur

CTh.4.4.3pr. [=brev.4.4.3pr.]

Impp. arcad. et honor. aa. aeternali proconsuli asiae. testamentum non ideo infirmari debebit, quod diversis hoc deficiens nominibus appellavit, quum superflua non noceant. praetermissa namque necessaria, non abundans cautela vel contractus imminuit vel testatoris officit voluntati.

CTh.4.4.3.1 [=brev.4.4.3.1]

Nec patimur fidem conditi arbitrii ob hoc debere convelli, si aut maiorem in principio signatorum aut minorem aut nullum numerum conditor suae praedixerit voluntati, quum quinque huic non ignari subscripserint testamento, licet non eisdem series fuerit recensita, sed hic, qui extremum disponit arbitrium, obsignandum porrexerit testamentum.

CTh.4.4.3.2 [=brev.4.4.3.2]

Nec enim novum promulgamus, sed divi constantini sanctionem et inclytae recordationis sententiam patris serenitatis nostrae nostraque super huiusmodi causa, quae sunt ex antiquioribus propagata, secuti decreta statuimus, iis, qui extremas ordinant voluntates, haec esse servanda, ut et praesentes videant subscriptores, et ii, cur venerint, non ignorent, etiamsi iisdem scripturae continentia non fuerit intimata.

CTh.4.4.3.3 [=brev.4.4.3.3]

Nec si quid ex munificentia morientis fuerint consecuti, infructuosum subscribentes facient testamentum, quum hoc auctorem prudentissimum iurisconsultorum non sit ambiguum scaevolam comprobasse. dat. xii. kal. april. arcadio iv. et honorio iii. aa. coss.

interpretatio. si moriens, quum scribit aut dictat chartulam testamenti, praetermiserit forsitan vocabulum ponere, aut civilis, id est, quod quinque testium, aut praetorii iuris, quod septem testium erit subscriptione firmandum; aut si maiorem vel minorem testium numerum se testator in principio dixerit evocasse, usque ad quinque subscriptorum numerum, etiamsi non relegant testamentum, valere permissum est, ita ut, sicut minor numerus impedit voluntatem, sic, quicquid superfuerit, non noceat testamento: quia et lex ipsa constituit, quod superflua iuri impedire non debeant. hoc etiam observandum, ut testator signandum testibus offerat testamentum, nec ideo habeatur infirmum, si alicui de subscriptoribus testator aliquid legati nomine derelinquit

CTh.4.4.4 [=brev.4.4.4]

Iidem aa. africano pf. u. testamenta omnium ceteraque, quae apud officium censuale publicari solent, in eodem reserventur, nec usquam permittatur fieri ulla translatio. mos namque retinendus est fidelissimae vetustatis, quem si quis in hac urbe voluerit immutare, irritam tmoruorum < mortuorum> videri faciet voluntatem. dat. vi. kal. oct. constantinopoli, caesario et attico coss.

interpretatio. testamenta omnia vel reliquas scripturas apud censuales in urbe roma voluit publicari, hoc est, ut in reliquis regionibus apud curiae viros testamenta, vel quaecumque* scripturae actis firmari solent, gestorum allegatione muniantur. si vero mortuorum voluntates actis reservatae non fuerint, nihil valebunt

CTh.4.4.5 [=brev.4.4.5]

Impp. honorii et theodosii aa. edictum ad populum urbis constantinopolitanae et ad omnes provinciales. nolumus convelli deficientium scriptas iure ac solenniter voluntates, dum quoddam morientis supremum et non adscriptum processisse confirmatur arbitrium, tanquam patrimonium suum ad nos deficiens maluerit pertinere. omnibus enim privatis et militantibus interdicimus, ne huiusmodi perhibeant testimonia, et falsi criminis reos teneri praecipimus, si, quum scriptae iure ac solenniter deficientium exstiterint voluntates, non scriptum aliquid sub nostrorum nominum mentione falso adstruere moliantur. nemo itaque relictus heres vel legibus ad successionem vocatus nostrum vel potentium nomen horrescat; nemo ferre testimonia in hunc modum vel suscipere gestis huiusmodi voces audeat nostro vel etiam privatorum potentium nomine. maneat arbitrium, quod vera et solennis scriptura commendat; excludatur, si quid adversus eam vel deficientis animum sub deferenda hereditate nostrae perennitati per testimonia non scripta et falso contexta asseveratur; nemo scriptis proprium auferat robur et non scriptis sub praetextu nostri vel potentium nominis ingerat firmamentum. dat. iv. id. mart. constantinopoli, theodos. a. vii. et palladio coss.

interpretatio. placuit, voluntatem defunctorum ea ratione servari, ut, si deficiens quis non perfecerit testamentum, non potest quicumque* pro perfecto uti, quod imperfectum resedit. nec admittit hanc testificationem principis clementia, si forte dicat aliquis: audivi morientem velle hoc principi vel etiam his personis, quae potestati adiunctae sunt, vel cuiuscumque* potentis taliter deputatum: hanc vocem admitti non patitur. et sicuti legitimas scripturas vel in suam personam vel in quascumque* alias potestates sive in privatos valere mandavit, ita imperfectam et sub tali testificatione prolatam penitus valere non voluit

CTh.4.4.6 [=brev.4.4.6]

Iidem aa. palladio pf. p. ne quis post diem mortis scriptis ante decennium testamentis praestetur assensus, nullisque penitus viribus scriptura huiusmodi tempore antiquata taxetur: praesertim quum, si voluntas continuata perstiterit, brevis mora sit, recentibus vetustatem innovare temporibus. vix enim fieri potest, ut per haec tempora, quae fidei amore contraximus, omnem testium conscientiam mors coniurata surripiat, et revera nefas est, ut antiquae deliberationis ordinatio voluntas postrema dicatur. dat. x. kal. iul. ravenna, dd. nn. honorio xii. et theodos. viii. aa. coss.

interpretatio. si quis condito testamento decennio superstes fuerit et suam non mutaverit voluntatem, quod ante decennium factum est, vacuum remanebit

CTh.4.4.7pr. [=brev.4.4.7pr.]

Imp. theodos. a. asclepiodoto pf. p. si quis agere ex testamento, quolibet modo, sive scripto, sive sine scriptura confecto, de hereditate voluerit, ad fideicommissi persecutionem adspirare cupiens, minime permittatur. tantum enim abest, ut aditum cuiquam pro suo migrandi desiderio concedamus, ut etiam illud sanciamus, ut, si testator faciens testamentum in eodem pro codicillis etiam id valere complexus sit, qui hereditatem petit ab ipsis intentionis exordiis, utrum velit, eligendi habeat potestatem, sciens, se unius electione alterius sibi aditum praeclusisse; ita ut, sive bonorum possessionem secundum tabulas vel secundum nuncupationem ceterasque similes postularit, aut certe ex edicto divi hadriani se mitti ad possessionem ex more petierit, statim inter ipsa huius iuris auspicia propositum suae intentionis explanet. sic enim, si quis defuncti agnoverit voluntatem, de inofficioso agere prohibetur, et patronus, liberti muneribus electis et operis, contra tabulas bonorum possessione repellitur: sic mulier in edicto, quod de alterutro est, quum suam explanaverit optionem, ne poenitentia possit ad aliud transire, etiam satisdatione cogetur praecavere, nisi si aetatis iuvetur auxilio.

CTh.4.4.7.1 [=brev.4.4.7.1]

Illud quoque pari ratione servandum est, ut testator, qui decreverit facere testamentum, si id implere nequiverit, intestatus videatur esse defunctus, nec traducere liceat ad fideicommissi interpretationem, velut ex codicillis ultimam voluntatem, nisi si id ille complexus sit, ut vim etiam codicillorum scriptura debeat obtinere; illo iure electionis videlicet perdurante, ut, qui ex testamento agere voluerit, ad fideicommissum migrare non possit.

CTh.4.4.7.2 [=brev.4.4.7.2]

Si quis vero ex parentibus utriusque sexus ac liberis usque ad gradum quartum agnationis vinculis alligatus vel cognationis nexu constrictus ad tertium usque scriptus heres fuerit vel nuncupatus, in eo videlicet testamento, quod testator vicem quoque codicillorum voluit obtinere, licebit ei, si de hereditate ex testamento secundum mortui voluntatem agens fuerit forsitan superatus, vel certe ipse sponte voluerit, ad fideicommissi subsidium convolare. non enim par eademque ratio videtur, amittere debita et lucra non capere. [in omni autem genere testamenti, sive id praetorio iure sive civili consistat, seu codicilli conscribantur, sive non scripta voluntas ultima praetendatur, id volumus observari, ut eodem die, quo coeptum quid eorum fuerit, ad perfectum sui plenitudine sortiatur, nihilque eius in diem alterum differatur; quod quidem nullam habeat firmitatem, nisi aut septem aut quinque vel rogati aut qui fortuitu venerint, possint iure testimonium perhibere, videlicet ut post hanc sanctionem divinis et liquescentibus apicibus, qui trium testium numero sint contenti.] dat. x. kal. mart. constantinopoli, victore v. c. cos.

interpretatio. si quis per scripturam condiderit testamentum et postmodum sine scriptura, hoc est per nuncupationem suam iterandam crediderit voluntatem, vel si codicillis, quod est fideicommissum, potestatem heredi suo commiserit, ut, ex qua voluerit, testatoris ordinatione succedat: tunc in primordio adeundae hereditatis suam publicare non desinat voluntatem, utrum ex testamento, an per nuncupationem, an per fideicommissum hereditatem sibi eligat vindicandam. quod si prima electio eius fuerit superata, ad alteram ei transire non liceat: quia unius petitione concessa, de reliquis se noverit excludendum, quia una petitio alias aperte et evidenter excludit. extrema pars legis istius ideo non habetur scripta vel exposita, quia novella lege calcatur

CTh.4.5.0. De litigiosis.

CTh.4.5.1pr. [=brev.4.5.1pr.]

Imp. constantinus a. ad provinciales. post alia: lite pendente illud, quod in controversiam devocatur, in coniunctam personam vel extraneam donationibus vel emptionibus* vel quibuslibet aliis contractibus minime transferri oportet, tanquam nihil factum sit lite nihilominus peragenda.

CTh.4.5.1.1 [=brev.4.5.1.1]

Quod si tutelae causa vertitur, post examen iudicis in supplementum pronuntiationis dentur arbitri, qui non iam arbitri, sed exsecutores putandi sunt etc. dat. kal. aug. basso et ablavio coss.

interpretatio. res, quae proposita actione repetitur, transferri a possidente ad alterum nullis contractibus potest; neque inde aliqua fieri scriptura permittitur, nisi prius lis, de qua agitur, fuerit iudicio definita

CTh.4.6.0. De naturalibus filiis et matribus eorum

CTh.4.6.2

...........Ri fecit vel si ipsorum nomine comparavit, totum legitima suboles recipiat. quod si non sint filii legitimi nec frater consanguineus aut soror aut pater, totum fisci viribus vindicetur. itaque liciniani etiam filio, qui per rescriptum sanctissimum dignitatis culmen ascendit, omnis substantia auferatur et secundum hanc legem fisco adiudicetur, ipso verberato compedibus vinciendo, ad suae originis primordia redigendo. lect. iii k. mai. carthagine nepotiano et facundo conss. (336 apr. 29).

CTh.4.6.3

Idem a. ad gregorium. senatores seu perfectissimos, vel quos in civitatibus duumviralitas vel quinquennalitas vel flamonii vel sacerdotii provinciae ornamenta condecorant, placet maculam subire infamiae et peregrinos a romanis legibus fieri, si ex ancilla vel ancillae filia vel liberta vel libertae filia, sive romana facta seu latina, vel scaenica vel scaenicae filia, vel ex tabernaria vel ex tabernari filia vel humili vel abiecta vel lenonis vel harenarii filia vel quae mercimoniis publicis praefuit, susceptos filios in numero legitimorum habere voluerint aut proprio iudicio aut nostri praerogativa rescripti, ita ut, quidquid talibus liberis pater donaverit, sive illos legitimos seu naturales dixerit, totum retractum legitimae suboli reddatur aut fratri aut sorori aut patri aut matri. sed et uxori tali quodcumque datum quolibet genere fuerit vel emptione collatum, etiam hoc retractum reddi praecipimus: ipsas etiam, quarum venenis inficiuntur animi perditorum, si quid quaeritur vel commendatum dicitur, quod his reddendum est, quibus iussimus, aut fisco nostro, tormentis subici iubemus. sive itaque per ipsum donatum est qui pater dicitur vel per alium sive per suppositam personam sive ab eo emptum vel ab alio sive ipsorum nomine comparatum, statim retractum reddatur quibus iussimus, aut, si non existunt, fisci viribus vindicetur. quod si existentes et in praesentia rerum constituti agere noluerint pacto vel iureiurando exclusi, totum sine mora fiscus invadat. quibus tacentibus et dissimulantibus a defensione fiscali duum mensuum tempora limitentur, intra quae si non retraxerint vel propter retrahendum rectorem provinciae interpellaverint, quidquid talibus filiis vel uxoribus liberalitas impura contulerit, fiscus noster invadat, donatas vel commendatas res sub poena quadrupli severa quaestione perquirens. licinniani autem filius, qui fugiens comprehensus est, compedibus vinctus ad gynaecei carthaginis ministerium deputetur. lecta xii k. aug. carthagine nepotiano et facundo conss. (336 iul. 21).

CTh.4.6.4 [=brev.4.6.1]

Imppp. valentin., valens et grat. aaa. ad ampelium pf. u. placuit, manentibus ceteris, quae de naturalibus liberis constantinianis legibus cauta sunt, haec tantummodo temperare, ut is, qui heredem heredesve filios ex legitimo matrimonio vel nepotes, qui filiorum loco habendi sunt, patrem quoque matremve dimittit, si ex consortio cuiuslibet mulieris naturales susceperit, unam tantum bonorum suorum et hereditatis unciam naturalibus vel mulieri donandi aut relinquendi habeat facultatem. si quis vero nullo ex his, quos excipimus, superstite morietur, atque ex muliere, quam sibi adiunxerat, naturalem pluresve dimittet, usque ad tres tantum, si volet, uncias tam in mulierem quam in naturales, quo maluerit iure, transscribat. dat. xvii. kal. sept. contionaci, gratiano a. ii. et probo coss.

interpretatio. observandum de naturalibus filiis lex ista constituit, ut, si quis habens ex legitimo matrimonio filios vel filias, sive masculos nepotes ex filiis, vel patrem aut matrem ex quacumque* muliere, id est ingenua nata vel facta susceperit naturales, non amplius quam unciam unam de facultatibus suis noverit naturalibus conferendam. nam si defuerint ex omni parte personae superius nominatae, tunc naturalibus filiis vel mulieri, de qua nascuntur, tres uncias tantum, non amplius noverit, quisquis ille est, se posse conferre

CTh.4.6.5

Impp. arcadius et honorius aa. petronio vicario hispaniarum. legibus constantini et genitoris nostri praeceptis edocti praecipimus, ut exclusis naturalibus filiis ad fiscum transferatur, quod ab ipsorum persona decidit, sin ci .... cipitur, et omne, quod legitimis competit, legis .... tia non negatur. dat. iiii k. mai. mediolano caesario et attico conss. (397 apr. 28).

CTh.4.6.6

Idem aa. et theodosius a. anthemio praefecto praetorio. damus patrum arbitrio, si tamen legitima prole careant nec filios vel nepotes ex filio matremve habeant, naturales filios, quos ex quolibet susceperint contubernio, eorumve matrem, tres usque bonorum suorum uncias largitate prosequi seu ultima voluntate: matre vero vel ceteris personis, quae ex iustis? sunt, hoc est legitimis filiis vel nepotibus ex filio uno pluribusve existentibus, pater bonorum suorum unam tantum unciam naturalibus filiis eorumque genetrici largiendi vel relinquendi habeat potestatem. dat. id. nov. constantinopoli stilichone ii et anthemio conss. (405 nov. 13).

CTh.4.6.7

Impp. theodosius et valentinianus aa. ad bassum praefectum praetorio. naturalium his nomen sancimus imponi, quos sine honesta celebratione matrimonii procreatos legitima coniunctio fuderit in lucem; servos autem ex ancillae utero ipso iure generari patet, quamvis per vim naturae ne illis quidem possit naturalium nomen auferri. in hereditariis tamen cor........... naturales sane, si ex ancilla nati fuerint et non manumittuntur a domino, inter hereditaria mancipia computantur. quod si aut de ingenua fuerint naturales aut de liberta aut certe libertina, ultra sescunciam matri cum naturalibus filiis dari amplius non licebit, hac ratione, ut donatio nuptialis in hereditatis supputatione non veniat, sed de eo, quod supra donationem nuptialem fuerit, inde sescuncia deputata naturalibus iure debetur. quod si aliquid ultra aut per donationem aut per testamentum aut per suppositam quamcumque personam illis fuerit derelictum, ab herede legitimo legibus revocetur. (426....).

CTh.4.6.8 [=brev.4.6.2]

Impp. theodos. et valentin. aa. hierio pf. p. post alia: naturales liberi eorumque matres nec parentum arbitrio in successionibus ceterisque modis, quibus rei mobilis vel immobilis dominium confirmatur, passim et sine legis distinctione congrua permittantur, nec tamen legis, quae nuper lata est, asperitate premantur, quum satis sit, eos secundum priorem constitutionem, aut exstantibus iustis liberis aut etiam non exstantibus, id tantum consequi, si patris deferatur arbitrio, quod per eam iusta moderatione decretum est; ceteris, quae de eorum matribus, libertis libertinisque per novam constitutionem decreta sunt, in sua manentibus firmitate. dat. x. kal. mart. constantinopoli, tauro et felice coss.

interpretatio. haec lex interpretatione non indiget, quia ad hoc solum intromissa est, quia posterior omnibus est et priorem, quae a posteriore damnata fuerat, confirmavit

CTh.4.7.0. De manumissionibus in ecclesia.

CTh.4.7.1pr. [=brev.4.7.1pr.]

Imp. constantinus a. osio episcopo. qui religiosa mente in ecclesiae gremio servulis suis meritam concesserint libertatem, eandem eodem iure donasse videantur, quo civitas romana solennibus decursis dari consuevit. sed hoc dumtaxat* iis, qui sub adspectu antistitum dederint, placuit relaxari.

CTh.4.7.1.1 [=brev.4.7.1.1]

Clericis autem amplius concedimus, ut, quum suis famulis tribuunt libertatem, non solum in conspectu ecclesiae ac religiosi populi plenum fructum libertatis concessisse dicantur, verum etiam quum postremo iudicio libertates dederint, seu quibuscumque* verbis dari praeceperint ita ut ex die publicatae voluntatis, sine aliquo iuris teste vel interprete, competat directa libertas. dat. xiv. kal. mai. crispo ii. et constantino ii. coss.

interpretatio. qui manumittendi in sacrosancta ecclesia habuerit voluntatem, tantum est, ut sub praesentia sacerdotum servos suos velit absolvere, noverit eos, suscepta libertate cives esse romanos: nam si clerici suis mancipiis dare voluerint libertatem, etiamsi extra conspectum fecerint sacerdotum vel sine scriptura verbis fuerint absoluti, manebit, sicut civibus romanis, integra et plena libertas

CTh.4.8.0. De liberali causa

CTh.4.8.4

Imp. constantinus a. ad maximum praefectum urbi. ....Uxisset, eorum omnium iudicio fieret copia. quod quidam ita interpretati sunt, ut contractis in litem omnibus et adsertionibus iam ordinatis et profligatis exactisque paene iudiciis, si cui earum personarum, quae in quaestione sunt, partus accidisset, quasi accessione absentiae necessariae spectataeque personae novari tempora iuris esse adfirment. sed cum aliud sit abesse, aliud necdum natum esse, placuit eos qui nascuntur matrum condicionibus et iure uti, quarum mox visceribus exponuntur, neque ideo, quod natus quidam est, tempora iudicii renovari. ante litem vero nati suo omnes nomine in quaestionem vocentur, quoniam hos solos, qui in lite nati erunt, omnem fortunam matrum complecti oportet et aut iustis tradi dominis aut libertate frui cum lucis auctoribus, cum eorum nulla propria veriorve possit esse defensio quam matrum. dat. prid. id. iun. sermio probiano et iuliano conss. (322 iun. 12).

CTh.4.8.5pr. [=brev.4.8.1pr.]

Imp. constantinus a. ad maximum pf. u. si quis libertate utentes eiusque compotes inopinatos in discrimen ingenuitatis adducat, si eos forte assertio defecerit, circumductio praebeatur, assertorem quaeri titulo per literas indicante; ne causa per silentium ignoretur vel absurde etiam proclametur: ut, qui comperissent, vellent asserere, vel cunctantes etiam cogerentur; neu, si assertor defuerit, vincti, multis eos scientibus liberos, a dominis ducantur.

CTh.4.8.5.1 [=brev.4.8.1.1]

Ideoque sancimus: si quis assertoris inops atque ignotus, circumlustratis provinciae populis, desertus tradatur ei, qui servum dixerit, non infracta, sed dilata libertate, assertore invento vires recolligat, et suis renovatis defensionibus resistat in iudicio, possessoris iure privilegiisque subnixus, quamquam de domo illius processerit. neque enim illa possessio est in tempus accepti, sed exspectatio assertoris in tempore non reperti; ita ut, si instaurata lite restitutisque in sua iura partibus, pro libertate fuerit lata sententia, iniuriae impudentiaeque causa adversarius pari numero servorum mulctetur, quotquot erunt, qui in servitutem petiti sunt: iis vero non condemnatur, qui in ipsa fuerint lite progeniti.

CTh.4.8.5.2 [=brev.4.8.1.2]

Quod si quis ante assertorem repertum vel ante sententiam fuerit mortuus, heredibus causam status probantibus mulctaticius servus tradetur: et heredes eius, qui libertatem temerabat, si implacabilem animum indicant, eadem maneat mancipiorum lex atque condicio*; si liberos sinent, quos clausos repererint, occidunt cum personis delicta.

CTh.4.8.5.3 [=brev.4.8.1.3]

Minorum defensores eadem manebit mancipiorum mulcta: ac iudicio his, quos defenderant, reposcentibus, rei male gestae dabitur aestimatio.

CTh.4.8.5.4 [=brev.4.8.1.4]

Quum id proprio periculo fecerit assertor, ut rem salvam fore promittit, ita satis accipiat de mulctae redhibitione.

CTh.4.8.5.5 [=brev.4.8.1.5]

Libertatem victis hostibus victorum dominatio abstulit; leges vero iniuriosos poena afficiunt et fama spoliant, dictumque in iurgio in adversarium immodestius iactatum petulantiusque fusum poenam subire cogitur: atque non erit impunita labefactatio atque oppugnatio libertatis, quae in convictis quoque punitur. iniustum est autem, alienum ad servum recepisse, et alterius servi abductione condemnatur. dat. xiii. kal. aug. sirmio, probiano et iuliano coss.

interpretatio. si aliquis in libertate positum ad servitium conetur addicere, iubet pulsatum ex ordinatione iudicis per populos et per publicum duci, ut defensorem sui status inveniat et inventum assertorem per chartam petat a iudice, ne silentio ingenuitas opprimatur. quod si aut ipse sibi adesse aut assertorem non potuerit invenire, tradatur domino repetenti ad servitium, non ad poenale supplicium: ita ut non per hanc traditionem ex integro spem libertatis amittat, nisi quum habuerit locum, invento assertore libertatis suae statum asserat legibus audiendus. quod si tali ordine reparata lite, qui pulsantur, ingenuos se esse docuerint, tunc ille, a quo ingenuitas iniuste fuerat appetita, tot mancipia his, quos ad servitutem vocabat, eius aetatis et sexus dare cogatur, illis in condemnatione non annumerandis his, qui, dum causa protrahitur, in lite nati esse probantur. quod si ex his, qui ad servitutem vocantur, dum per assertorem requirendum aut alia occasione causa protrahitur, aliqui moriantur, et heredes eorum statum ingenuitatis obtinuerint, pro illius persona, quae in lite mortua est, heredibus suis eius compensatio, sicut et pro vivis, a pulsante reddenda est. si vero ille moriatur, qui liberos conabatur addicere, et filios aut heredes dimittat, si persequi voluerint causam, quam pater aut auctor inchoaverat, et victi fuerint, ad supra scriptam satisfactionem tenendi sunt, ut alia tot mancipia male pulsatis satisfaciant. si vero agere noluerint, nec persequi eos tentaverint, sed etiam in custodiam ab auctore redactos absolverint, erunt a mulctae condemnatione securi, quia non in auctoris sui vitio perstiterunt. quod si forte minores sint, et tutor eorum vel curator causas eorum adversus ingenuitatem prosequi velit, et fuerit superatus, ipse de propria facultate ad satisfactionem tenendus est. si vero post secundam reparationem assertor inventus periculo suo addicti causam crediderit replicandam, ut, si vincatur, peculium aut servitia susceptorum vel ipsos reddere debeat: similiter et ille, qui pulsat, dato fideiussore promittat se praedictum numerum vel meritum mancipiorum, vel quod ab his in peculio reposcit, satisfacere, quum fuerit superatus

CTh.4.8.6pr. [=brev.4.8.2pr.]

Idem a. ad maximum pf. u. libertati a maioribus tantum impensum est, ut patribus, quibus ius vitae in liberos necisque potestas permissa est, eripere libertatem non liceret.

CTh.4.8.6.1 [=brev.4.8.2.1]

Si quisquam minor venumdatus actum maior administravit, quoniam minoris emptio* scientiam non obligat, eum ad libertatem venientem emptionis* actusque a maiore administrati praescriptio non tenebit:

CTh.4.8.6.2 [=brev.4.8.2.2]

Nec vero ille, qui apud quempiam pro servo educatur, ac maior effectus vendenti veluti domino acquievit actuque administrato iam paene extremam relegit libertatem, (quoniam neque maior effectus originem suam noverat, neque eam, quam ignoraverat, venditionem patiens deseruisse iudicandus est) minori similis, eadem emptionis* atque actus administrati praescriptione non alligabitur, sed utrique dabitur assertio.

CTh.4.8.6.3 [=brev.4.8.2.3]

Paria etiam in libertinis erunt, qui quaestu quodam in eandem rursus servitutem relabuntur. sed eorum hac exceptione causa distinguenda est, ut, qui impuberes intra annum quartum decimum manumissi ac deinceps in servitio retenti ignorata libertate non utantur, maioresque venumdati actum gerant, ab assertione non arceantur: quum illi aetati tributae libertatis ignoratio aut oblivio concessa est. qui vero memoria firma venditioni post factae non nescius innectitur, huius legis beneficio carebit.

CTh.4.8.6.4 [=brev.4.8.2.4]

Et quoniam vicissim etiam ipsis, qui his rem commiserunt, medendum est, si quisquam omnium, qui supra comprehensi sunt, in libertatem proclamaverit, id, quod apud se esse eius, qui se dominum dicit, profitebitur, quoniam de eo non dubitatur, reddi ac referri iudex protinus pronuntiabit.

CTh.4.8.6.5 [=brev.4.8.2.5]

Quod vero petitur, si id fuerit negotiatione controversum, per cautionem assertoris, ut alia lege comprehensum est, conservabitur, ac petitio differetur, ut, si fuerit approbata propria libertas, gestarum rerum ab eodem ratio atque omne, quod debebitur, reposcatur, ut servitute depulsus, qui pro domino quondam fuerat, habeat, quod ut servo domini iure largitus est, et quae ex earum rerum quaestu ac fructibus conciliata sunt, et quae de furtivis compendiis obscure capta ac parta sunt, quum liberum esse non oporteat, quod apud servum dominus peculii nomine collocaverat.

CTh.4.8.6.6 [=brev.4.8.2.6]

Ea vero, quae testamento aut donatione quaesita sunt, aut quae ex earum rerum emolumentis empta* confectaque sunt, eidem ingenuo deputentur.

CTh.4.8.6.7 [=brev.4.8.2.7]

Quae tamen universa exacto libertatis iudicio, quo a supra dictis rebus discernuntur, in sequestri esse oportet, ut, his ab utroque deductis atque in medio iure locatis, ad eorum proprietatem uterque contendat. dat. xv. kal. mart. thessalonica, severo et rufino coss.

interpretatio. minor venditus, si post viginti et quinque aetatis suae annos iam maior effectus servierit aut in rebus emptoris* actor aut cuiuslibet rei ordinator fuerit constitutus, quum de ingenuitate sua proclamaverit, sine praeiudicio servitii, quod gesserit, audiatur, nec hoc ei praeiudicium generet, quod eius, a quo emptus* est, domum aut utilitates in annis maioribus positus visus est ordinasse. hoc etiam de libertis lex haec praecepit custodiri, ut, qui intra quattuordecim* annos fuerint manumissi et actum in maiore aetate positi gesserint patronorum, libertati eorum actus non praeiudicet servitutis, sed quum voluerint, suas aut de ingenuitate aut de libertinitate, intra tempora legibus constituta, proferant actiones. sic etiam, si quis minor ingenuus a quolibet fuerit educatus et, liberum se esse nesciens, fuerit a nutritore distractus et actum vel utilitatem illius, a quo emptus* est, ut servus gesserit, priusquam triginta annorum praeiudicio teneatur, potestatem habeat reclamandi, et quasi minor is, priusquam tempora suppleantur, amissam recipiat libertatem. quicquid vero eis ille, a quo empti* sunt, vel tradidit vel donavit vel quaecumque* ex rei suae administratione profecit, totum retinendi ac revocandi habeat potestatem. si vero huiusmodi personis aliquid a quibuscumque* aliis aut testamento aut donatione collatum est, id solum sibi iam liberi vindicent: nam quod de re patroni libertus vel emptoris* ingenuus, dum serviret, profecit, libertati redditus libertus patrono, ingenuus emptori* restituat. hi vero, qui in annis maioribus constituti sunt, scientes se esse ingenuos vel libertinos, si vendi acquieverint, in ea, ad quam scientes sua voluntate transeunt, servitute permaneant

CTh.4.8.7 [=brev.4.8.3]

Idem a. ad bassum pf. p. legis promulgatio, quae per sedecim annos bona fide in libertate durantes contra eos, qui inquietant, praescriptione defendit, non opitulatur his, qui ex ancillis matribus et ingenuis patribus orti per id tempus in libertatis affectu cum parentibus perdurarint, quandoquidem, nullo praecedente iusto legitimae possessionis initio, usurpatio libertatis nuda iactetur, quum neque redemptio* a servitute neque vicarii traditio servuli vel peculii assignatio valeat demonstrari; qui tituli possint famulatus nexibus liberare eum, qui convenitur, si quo ex iis genere usus in libertate esset per annos sedecim demoratus. iure enim communi maternam condicionem* natum sequi necesse est, ita ut, etsi herilem lectulum ancilla ascenderit*, non liberorum domino, sed servorum partum suscipiat. dat. prid. kal. mart. basso et ablavio coss.

interpretatio. lex aliquando fuerat promulgata, ut, si quis sedecim annos sine ulla molestia, nullo repetente vel pulsante, vixisset, et postea in servitium non veniret. sed hoc illis prodesse non poterit, quos de ingenuis patribus et colonis mulieribus vel ancillis constiterit procreatos, nisi forte patres eorum pro filiorum capite dominis, quorum ancillas in consortio habent, aut vicaria mancipia cum peculiis aut redemptionem* status eorum solverint. si vero patres hoc se persolvisse non doceant, non poterunt matrum condicionem* mutare, aut mancipia dominis deperire, etiamsi de propriis dominis nascantur, nisi per manumissionem servili condicione* carere non possunt. si quis in libertate positus ancillam sibi copulaverit in coniugium, si filii ex ipsis nati fuerint, origo matrem sequatur: simili modo, si liberta servum duxerit maritum, agnatio servum sequatur, quia ad inferiorem personam vadit origo

CTh.4.8.8

...........Si post adsertionem defensionemque ordinatam alius in iudicium acciri petiverit, adsertio quidem et defensio inter omnes ordinetur, ipse vero tot mancipia, quot petebat, fisco cogatur inferre. quod si adsertor defecerit, vel praedictam multam agnoscat vel, si per inopiam id implere non possit, in metallum detrudetur: eadem circa minorum defensores, cum liberalis causa agitur, forma servanda. et cetera. dat. vii k. novemb. constantinopoli pacatiano et hilariano conss.

interpretatio. si post adsertionem defensionemque dispositam alius in iudicium qui se dominum dicit petierit exhiberi, inter omnes quidem ordinabitur adsertio, sed ipse ad certam poenam tenebitur. idem est in adsertore vel defensoribus minorum. (332 oct. 26)

CTh.4.8.9 [=brev.4.8.4]

Imppp. theodos., arcad. et honor. aaa. rufino pf. p. si cui super statu suo quaestio moveatur, qui diuturno tempore, hoc est per viginti annorum spatia in libertatis possessione duravit, vel quem asserant suffragia munerum et privilegia meritorum, quive iis praesentibus, qui dominos se esse contendunt, in hominum erit celebritate versatus, nulla ei dandi assertoris necessitas imponatur, sed liber assistat et statum suum ipse tueatur, calumniantem repellat, redarguat persequentem, ne fluctuet dubius, si de alieno necesse habebit pendere fastidio. de aliis vero, quos nec honor aliquis, nec superscriptione praedicti temporis privilegium militare defendit, antiqui iuris forma servetur. dat. iv. kal. oct. constantinopoli, theodos. a. iii. et abundantio coss.

interpretatio. qui viginti annos non occulte, sed publice in libertate duraverint et aliquid officii vel militiae, praesente et tacente petitore, gesserint, assertorem quaerendi eos necessitas non manebit, sed ipsi per se, si voluerint, adversus petitorem, quod libertati eorum competit, exsequentur. circa alios vero, qui nescientibus dominis latuerint, prioris legis ordo servabitur

CTh.4.9.0. De his, qui a non domino manumissi sunt.

CTh.4.9.1 [=brev.4.9.1]

Imp. constantinus a. ad bassum. si a non dominis libertas detur mancipio alieno, si quidem ab his iudicibus impetrabitur, quibus dandi ius est, sine ulla trepidatione poenae facilis dissolutio est. si vero iubentibus nobis quicquam lege actum esse doceatur, et non dominus, ut alienum mancipium manumitteretur, petiisse, tunc eodem, qui in conspectu nostro libertatem monstrabitur consecutus, ei protinus, ad cuius proprietatem pertinet, restituto, is, qui mancipium alienum fallendo principis conscientiam manumisit, mancipia duo cogatur domino eius dare, cuiusmodi sexus, aetatis atque artis constiterit esse manumissum, et alia tria fisco eademque ratione similia. quae mulcta non semper imponitur, sed potius conquiescit, si forte manumissus inferentem sibi quaestionem status obiecta legitima praescriptione potuerit excludere; quum sibi amissi mancipii damna debeat imputare, qui in perniciem suam gesta taciturnitate firmaverit. prop. id. iul. constantino a. v. et licinio caes. coss.

interpretatio. si aliquis mancipium manumittere praesumpserit* alienum et id sub praesentia principis vel in ecclesia fecerit, hac poena tenebitur, ut et manumissus a domino revocetur, et alia duo mancipia eiusdem aetatis aut sexus aut certe artificii, quod ille, qui est manumissus, scierit, dare cogatur. si vero ille, qui manumissus dicitur, repetentem dominum sub hac praescriptione superaverit, ut iam firmitatem status sui temporibus tueatur, tunc ille, qui manumisit, non est constringendus ad poenam, dum ille, qui repetit, praeiudicium domini sui incurrerit aut taciturnitate nutrierit

CTh.4.10.0. De libertis et eorum liberis

CTh.4.10.1 [=brev.4.10.1]

Imp. constantinus a. ad concilium byzacenorum. libertis ingratis in tantum iura adversa sunt, ut, si quadam iactantia vel contumacia cervices erexerint aut levis offensae contraxerint culpam, a patronis rursus sub imperia dicionemque* mittantur. dat. vi. kal. aug. coloniae agrippinae, pacatiano et hilariano coss.

interpretatio. quaecumque* persona servilis a domino suo fuerit consecuta libertatem, si postea superbire coeperit aut patronum, id est manumissorem suum laeserit, amissa libertate, quam meruit, in servitium revocetur

CTh.4.10.2pr.

Impp. honorius et theodosius aa. consulibus, praetoribus, tribunis plebis, senatui suo salutem dicunt. post alia: liberti non modo adversus patronos non audiantur, verum etiam eandem quam patronis ipsis reverentiam praestent heredibus patronorum, quibus ingrati actio sic ut ipsis manumissoribus deferetur, si illi datae sibi libertatis immemores nequitiam receperint servilis ingenii. (423 aug. 6).

CTh.4.10.2.1

Quod si delatores accusatoresve manumissorum heredumve esse praesumpserint, eodem quo servi supplicio tenebuntur, luituri poenas ante adhibitae delationis exordium. et cetera. dat. viii id. aug. ravenna asclepiodoto et mariniano conss.

interpretatio. libertos non solum contra patronos, sed et contra patroni audiendos heredes non esse: ingratos etiam ab heredibus in servitutem revocari: delatores etiam contra patronorum heredes, antequam audiantur, puniendos. (423 aug. 6)

CTh.4.10.3

Impp. theodosius et valentinianus aa. basso praefecto praetorio. post alia: libertinae condicionis homines numquam ad honores vel palatinam adspirare militiam permittimus. sane hanc distinctionem volumus custodiri, ut ex manumissis nati ad locum usque proximum protectoris licitum nullatenus adire mereantur ita, ut patronis patronorumve heredibus reverentiae privilegia conserventur. nam si militantes etiam docebuntur ingrati, ad servitutis nexum procul dubio reducentur. ipsos vero, qui manumissi sunt, nulla ratione ad ullum quamvis humilis militiae locum sinimus admitti. dat. iii. kal. april. ravenna theodosio a. xii et valentiniano a. ii conss.

interpretatio. libertos ad nullos honores militiamque adspirare: eorum filios ingenuos usque ad protectoris locum posse conscendere: etiam militantes ingratos in servitutem revocari. (426 mart. 30)

CTh.4.11.0. De longi temporis praescriptione

CTh.4.11.1 [= 13,1 h.]

Idem a. ad. vettium rufinum praefectum urbi. ex donatione principum aut quocumque modo rem ad fiscum pertinentem usque ad nostra decennalia sine aliqua interpellatione possidentes, secundum ius enim haec intelligitur esse possessio, securi possideant. proposita x k. iun. romae sabino et rufino conss. (316 dec. [?] 23).

CTh.4.11.2 [= 13,2 h.]

Impp. constantius et constans aa. argyrio praesidi. annorum quadraginta praescriptio, quam vetustatem leges ac iura nuncupare voluerunt, admittenda non est, cum actio personalis intenditur. quare in praesenti et in ceteris causis id potissimum servabis atque custodies, nisi iure veteri comprehensum sit actionem, quae movetur, propter vetustatem non debere moveri. sed quamvis actio pecuniae postulatae exceptione temporis non finiatur, iudex tamen debet inspicere, quae temporis intervalla nullis iustis causis exsistentibus fluxerint, et instrumenti vetustatem, ut diligentius his consideratis ex officio iudicantis, quid pronuntiari super huiusmodi actionibus oporteat, aestimetur. dat. x kal. iul. limenio et catullino conss.

interpretatio. quamvis indebito longi tem.... (349 iun. 22)

CTh.4.12.0. Ad senatus consultum claudianum

CTh.4.12.1pr. [= 11,1 h.]

Imp. constantinus a. ad probum. si quae mulieres liberae vel a servis vel a quolibet alio vim perpessae contra voluntatem suam servilis condicionis hominibus iunctae sint, competenti legum severitate vindictam consequantur. (314 apr. 1).

CTh.4.12.1.1 [= 11,1 h.]

Si qua autem mulier suae sit immemor honestatis, libertatem amittat atque eius filii servi sint domini, cuius se contubernio coniunxit. quam legem et de praeterito custodiri oportet. proposita kal. april. volusiano et anniano conss.

interpretatio. per vim contra voluntatem servo iuncta alieno et vindictam consequitur. si vero sponte fit ancilla, et eius filii servi sunt. (314 apr. 1)

CTh.4.12.2 [= 11,2 h.]

.............Dat. v kal. febr. gallicano et basso conss.

interpretatio. septem testibus civibus romanis praesentibus tertio ex senatus consulto claudiano denuntiandum. (317 ian. 28)

CTh.4.12.3 [= 11,3 et 4 h.]

Idem a. ad populum. cum ius vetus ingenuas fiscalium servorum contubernio coniunctas ad decoctionem natalium cogat nulla vel ignorantiae venia tributa vel aetati, placet coniunctionum quidem talium vincula vitari, sin vero mulier ingenua vel ignara vel etiam volens cum servo fiscali convenerit, nullum eam ingenui status damnum sustinere, subolem vero, quae patre servo fiscali, matre nascetur ingenua, mediam tenere fortunam, ut servorum liberi et liberarum spurii latini sint, qui, licet servitutis necessitate solvantur, patroni tamen privilegio tenebuntur. quod ius et in fiscalibus servis et in patrimoniorum fundorum originariis et ad emphyteuticaria praedia et qui ad privatarum rerum nostrarum corpora pertinent servari volumus. nihil enim rebus publicis ex antiquo iure detrahimus nec ad consortium huius legis copulamus urbium quarumcumque servitia; volumus ut civitates integram teneant nec [imminutam] interdicti veteris potestatem. si vel error improvidus vel simplex ignorantia vel aetatis infirmae lapsus in has contubernii plagas depulerit, haec nostris sanctionibus sit excepta. dat. vi kal. sept. serdicae constantino a. vii et constantio conss.

interpretatio. ingenua, quae se fiscali servo iunxerit, sive sciens sive ignara, ipsa manebit libera, filii vero eius et latini et spurii erunt, qui, quamvis liberi sint, iuri tamen obtingunt patronorum. idem est et si servo emphyteuticario se sociarit ingenua vel patrimoniali aut ex privata re principum excepto iure rei publicae, quod lex praesens voluit conservatum. (320 [?] ian. 27 [31?])

CTh.4.12.4 [= 11,5 h.]

Idem a. quaecumque mulierum post hanc legem servi contubernio se miscuerit, et non conventa per denuntiationes, sicut ius statuebat antiquum, statum libertatis amittat. dat. prid. non. oct. basso et ablabio conss. (331 oct. 6).

CTh.4.12.5 [= 11,6 h.]

Imp. iulianus a. secundo praefecto praetorio. senatusconsultum claudianum firmum esse censemus omnibus constitutionibus, quae contra id latae sunt, penitus infirmatis, ut libera mulier, sive procuratori sive actori privato sive alii cuilibet servili condicione polluto fuerit sociata, non aliter libertate amissa nexu condicionis deterrimae adstringatur, nisi trinis fuerit denuntiationibus ex iure pulsata. quod quidem circa privatas personas convenit observari; nam eas mulieres, quae fiscalibus vel civitatis servis sociantur, ad huius sanctionis auctoritatem minime pertinere sancimus. dat. et proposita in foro traiani viii id. dec. mamertino et nevitta conss.

interpretatio. senatus consulti claudiani auctoritas confirmatur etiam circa eas, quae procuratoribus et actoribus privatorum iunguntur, exceptis his, quae servis fiscalibus vel civitatum sociantur. (362 dec. 6)

CTh.4.12.6 [= 11,7 h.]

Imppp. valentinianus, valens et gratianus aaa. ad secundum praefectum praetorio. si apud libidinosam mulierem plus valuit cupiditas quam libertas, ancilla facta est non bello, non praemio, sed conubio, ita ut eius fili iugo servitutis subiaceant. manifestum est enim ancillam esse voluisse eam, quam liberam esse paenituit. dat. prid. non. april. triveris gratiano n. p. et dagalaifo conss.

interpretatio. si mulier ex contubernio servi fiat ancilla, filii quoque eius servi erunt. (366 [?] apr. 4)

CTh.4.12.7 [= 11,8 h.]

Impp. arcadius et honorius aa. ad anatolium praefectum praetorio illyrici. cuncti provinciales agnoscant, nisi trinis denuntiationibus liberae feminae servorum consortiis arceantur, nullo modo posse eas ad servitium detineri. dat. non. mart. constantinopoli honorio a. iiii et eutychiano conss.

interpretatio. sine trina denuntiatione mulier servo iuncta non fit ancilla. (398 mart. 7)

CTh.4.13.0. De vectigalibus et commissis

CTh.4.13.1 [=brev.4.11.1]

Imp. constantinus a. ad iunium rufum consularem aemiliae. penes illum vectigalia manere oportet, qui superior in licitatione exstiterit, ita ut non minus quam triennii fine locatio concludatur, nec ullo modo interrumpatur tempus exigendis vectigalibus praestitutum. quo peracto tempore, licitationum iura conductionumque recreari oportet, ac simili modo aliis collocari; capitali sententia subiugando, quem plus aliquid, quam statutum est, a provincialibus exegisse constiterit. dat. kal. iul. crispo ii. et constantino ii. coss.

interpretatio. vectigalia sunt, quae fisco vehiculorum subvectione praestantur, hoc est aut in litoreis locis navibus aut per diversa vehiculis merces deportant, cuius rei conductelam apud strenuas personas triennio esse praecipit, et continuo hanc exactionem aliis iterum permittendam, qui maiorem summam praestationis obtulerint. ex qua conductione aut exactione, si quis plus, quam praeceptum fuerit, exigere tentaverit, ita ut mercatorem vel provincialem sub hac exactione gravare coeperit, periculo capitis se noverit esse damnandum

CTh.4.13.2 [= 12,2 h.]

Idem a. menandro. universi provinciales pro his rebus, quas ad usum proprium vel ad fiscum inferunt vel exercendi ruris gratia revehunt, nullum vectigal a stationariis exigantur. ea vero, quae extra praedictas causas vel negotiationis gratia portantur, solitae praestationi subiugamus. dat. iii id. iul. crispo ii et constantino conss. (321 iul. 13).

CTh.4.13.3 [= 12,3 h.]

Idem a. menandro. rusticanos usibus propriis vel culturae ruris necessaria revehentes vectigal exigi non sinimus: capitali poena proposita stationariis et urbanis militibus et tertiis augustanis, quorum avaritia id temptari firmatur. pro ceteris autem rebus, quas quaestus gratia comparant vendituri, solitum eos oportet vectigal agnoscere. dat. k. aug. crispo ii et constantino conss. (321 aug. 1).

CTh.4.13.4 [= 12,4 h.]

Imp. constantius a. ad proclianum proconsulem africae. praestatio vectigalis maximam continens utilitatem tanta debet diligentia custodiri, ut adsiduis licitationibus sumat augmentum. gravitas igitur tua vetustae praestationis augmenta viribus fisci de titulis vectigalium servari iubebit. dat. xiiii k. feb. constantinopoli constantio a. viii et iuliano c. conss. (356 [360] ian. 19).

CTh.4.13.5 [= 12,5 h.]

Idem a. ad martinianum vicarium africae. divalibus iussis addimus firmitatem et vectigalium quartam provincialibus et urbibus africanis hac ratione concedimus, ut ex his moenia publica restaurentur vel sarcientibus tecta substantia ministretur. epistula ad virum clarissimum vicarium prid. id. iul. cilio datiano et cereale conss. (358 iul. 14).

CTh.4.13.6 [= 12,6 h.]

Imppp. valentinianus, valens et gratianus aaa. ad archelaum comitem orientis. ex praestatione vectigalium nullius omnino nomine quicquam minuatur, quin octavas solite constitutas omne hominum genus, quod commerciis voluerit interesse, dependat, nulla super hoc militarium exceptione facienda. proposita beryto iiii k. feb. post cons. valentiniani et valentis aa. conss. (366 [368] ian. 29).

CTh.4.13.7 [= 12,7 h.]

Idem aaa. ad constantium proconsulem africae. ex reditibus rei publicae omniumque titulorum ad singulas quasque pertinentium civitates duae partes totius pensionis ad largitiones nostras perveniant, tertia probabilibus civitatum deputetur expensis. dat. vii id. sept. mogontiaci p. c. gratiani a. iii et equiti v. c. conss. (375 [374] sept. 7).

CTh.4.13.8 [= 12,8 h.]

Imppp. gratianus, valentinianus et theodosius aaa. palladio comiti sacrarum largitionum. a legatis gentium devotarum ex his tantum speciebus, quas de locis propriis, unde conveniunt, huc deportant, octavari vectigal accipiant; quas vero ex romano solo, quae sunt tamen lege concessae, ad propria deferunt, has habeant a praestatione immunes ac liberas. dat. prid. non. iul. constantinopoli, accepta xii k. aug. syagrio et eucherio conss. (381 iul. 6).

CTh.4.13.9 [= 12,9 h.]

Idem aaa. palladio comiti sacrarum largitionum. ad virum clarissimum aegypti comitem litteras dedimus committentes, ut sciant usurpationem totius licentiae submo............. (381-386...).

CTh.4.14.0. [=brev.4.12.0.] De actionibus certo tempore finiendis.

CTh.4.14.1pr. [=brev.4.12.1pr.]

Imp. theodos. a. asclepiodoto pf. p. sicut in rem speciales, ita ad universitatem ac personales actiones ultra triginta annorum spatium minime protendantur. sed si qua res vel ius aliquod postuletur, vel persona qualicumque* actione vel persecutione pulsetur, nihilominus erit agenti triginta annorum praescriptio metuenda: eodem etiam in eius valente persona, qui pignus vel hypothecam non a suo debitore, sed ab alio possidente nititur vindicare. nam petitio finium regundorum in eo scilicet, quo nunc est, iure durabit.

CTh.4.14.1.1 [=brev.4.12.1.1]

Quae ergo ante non motae sunt actiones, triginta annorum iugi silentio, ex quo competere iure coeperunt, vivendi ulterius non habeant facultatem. nec sufficiat precibus oblatis speciale quoddam, licet per annotationem, meruisse responsum vel etiam iudiciis allegasse, nisi, allegato sacro rescripto aut in iudicio postulatione deposita, fuerit subsecuta conventio. in eandem rationem illis procul dubio recasuris, quae post litem contestatam, in iudicium actione deducta habitoque inter partes de negotio principali conflictu, triginta denuo annorum devoluto curriculo, tradita oblivioni ex diuturno silentio comprobantur.

CTh.4.14.1.2 [=brev.4.12.1.2]

Non sexus fragilitate, non absentia, non militia contra hanc legem defendenda, sed pupillari aetate dumtaxat*, quam diu sub tutoris defensione consistit, huic eximenda sanctioni. nam quum ad eos annos pervenerit, qui ad sollicitudinem pertinent curatoris, necessario ei, similiter ut aliis, annorum triginta intervalla servanda sunt.

CTh.4.14.1.3 [=brev.4.12.1.3]

Hae autem actiones annis triginta continuis exstinguantur, quae perpetuae videbantur, non illae, quae antiquitus fixis temporibus limitantur.

CTh.4.14.1.4 [=brev.4.12.1.4]

Annorum autem curricula ita numerari conveniet, ut et illa in demensionem tempora reducantur, quae ante nostrae mansuetudinis sanctionem iugi taciturnitate fluxerunt.

CTh.4.14.1.5 [=brev.4.12.1.5]

Verum ne qua otioso nimis ac desidi querimonia relinquatur, ei, qui se fiducia perpetuitatis actionem non movisse commemorat, decem post hanc legem annorum spatia continua superioribus addi praecipimus, ut, si quidem ante sanctionem hac lege praefinitos annos decurrisse patuerit, praeter ea tempora, quae manarunt, decem actori annorum spatia prorogentur, ita ut tempus illi hoc continuum ex legis tempore numeretur. quod si decem illi anni superesse videbuntur aut amplius, ulterius eum nihil desiderare conveniet, sed proprio lapsu temporis decurrente ad triginta usque consummationem debere suo spatio esse contentum; si annos quidem restare non dubium est, sed infra decem eorum intervalla concludi, nihilominus etiam sic eum spatium tantum oportebit accipere, ut decem integer numerus compleatur; postquam hac definitione nulli movendi ulterius facultatem patere censuimus, etiamsi se legis ignorantia excusare tentaverit. dat. xviii. kal. dec. constantinopoli, victore v. c. cos.

interpretatio. haec lex, licet in reliquis rebus fuerit abrogata, propter hoc tamen ut poneretur oportuit, quia de tricennio loquitur, quod pupillis, quam diu sub tutoribus agunt, non debeat imputari, sed, ubi ad eos annos pervenerint, quibus curatores habere possent, id est vir ad quintum decimum et puella ad tertium decimum annum, ex eo in causis eorum tricennalis actio, quemadmodum omnibus, supputetur: sicut et novella valentiniani testatur, quae videtur haec obscurius inter cetera posuisse, quae tamen ita dicit: "excepto privilegio pupillaris aetatis, quod divae memoriae patris nostri theodosii lege concessum est, intra eadem tempora terminetur." nam et hoc lex ista evidenter exponit, ut, sicut illa, quae perpetua erant, ad tricennium iussa sunt revocari, ita omnes causae, quibus infra tricennium tempora constituta sunt, suis quibusque locis et temporibus observentur, hoc est ut, quaecumque* seu de vicennio seu de decennio seu de quinquennio seu de anni spatio posita sunt et his similia, nullatenus ad tricennium perducantur

CTh.4.15.0 [=brev.4.13.0.] De quinquennii praescriptione.

CTh.4.15.1 [=brev.4.13.1]

Impp. honor. et theodos. aa. palladio pf. p. post alia: competitorem quinquennii possessor eliminet: debet enim iuxta constantinianae legis indultum hoc privilegio petitor arceri, quo fiscus noster excluditur. quod si quando fortassis emerserit, ordinarios iudices, competitionis obreptione rescissa, tuitionem pulsatis praestare iubemus enixam, quibus tamen lustralis aderit absque interpellatione possessio. dat. viii. id. iul. ravenna, eustathio et agricola coss.

interpretatio. quicumque* rem fiscalem per quinquennium possedisse probatur, ita ut a nullo exinde fuerit expulsus, et hanc ipsam rem aliquis sibi petere a principe voluerit, possidenti in tantum lege consultum est, ut etiam tuitionem ferre possessori iudicem iusserit et competitionis constitutionem ordinaverit rescindendam, si tamen ille, qui possedit, sine ulla inquietudine per quinquennium se docuerit possidere, quia hoc spatio temporis ab eo, qui sine molestia possedit, etiam fiscum suum iussit excludi

CTh.4.16.0. De re iudicata

CTh.4.16.1

Imp. constantinus a. ad proculum. preces et impetrata rescripta non placet admitti, si decisae semel causae fuerint iudiciali sententia, quam provocatio nulla suspendit, sed eos, qui tale rescriptum meruerint, etiam limine iudiciorum expelli. dat. vii kal. ian. constantino a. v. et licinio c. conss. (319 dec. 26).

CTh.4.16.2 [=brev.4.14.1]

Imppp. grat., valentin. et theodos. aaa. ad potitum vicarium. post alia: in privatorum causis huiusmodi forma servetur, ne quemquam litigatorum sententia non a suo iudice dicta constringat. dat. x. kal. oct. rom., ausonio et olybrio coss.

interpretatio. in causis privatorum talis ratio observetur, ut nullus alterius iudicis nisi sui sententia teneatur

CTh.4.17.0. De sententiis ex periculo recitandis

CTh.4.17.1

Imppp. valentinianus, valens et gratianus aaa. ad probum praefectum praetorio. statutis generalibus iusseramus, ut universi iudices, quibus reddendi iuris in provinciis permittimus facultatem, cognitis causis ultimas definitiones de scripti recitatione proferant. huic adicimus sanctioni, ut sententia, quae dicta fuerit, cum scripta non esset, ne nomen quidem sententiae habere mereatur, nec ad rescissionem perperam decretorum appellationis sollemnitas requiratur. dat. iii non. dec. treviris gratiano a. iii et equitio v. c. conss. (374 dec. 3).

CTh.4.17.2 [= 3 h.]

Idem aaa. ad clearchum praefectum praetorio. iudex in proferenda sententia quae iurgantibus prosit, ad plenum recenseat, quidquid negotii fuerit illatum, quod senserit scribat et relegat, ne per errorem iudicis iterum a primordio novae litis sortiantur eventus. dat. x kal. sept. constantinopoli antonio et syagrio conss. (382 aug. 23).

CTh.4.17.3 [=brev.4.15.1; 2 h.]

Imppp. grat., valentin. et theodos. aaa. clearcho pf. p. parere sublimitatem tuam nostris legibus convenit, ut in omnibus negotiis ex periculo promatur deliberationis plena sententia. dat. xvi. kal. iun. constantinopoli, antonio et syagrio coss.

interpretatio. observare iudices specialiter debent, ut in omnibus causis sententia, quae deliberata fuerit, constitutis pariter partibus recitetur, ut ab his, a quibus causa dicta est, ad integrum, quae data fuerit sententia, cognoscatur

CTh.4.17.4

Idem aaa. ad symmachum praefectum urbi. sententia non valeat, quae ex libello data non fuerit. dat. iii kal. dec. mediolano richomere et clearcho conss. (384 nov. 29).

CTh.4.17.5 [=brev.4.15.2]

Iidem aaa. timasio comiti et magistro equitum. condicio* praeceptorum partibus praesentibus habita non potest immutari. dat. x. kal. april. constantinopoli, honorio n. p. et evodio coss.

interpretatio. quicquid praesentibus partibus in causis fuerit ordinatum, plenissimam habebit firmitatem, nec poterit immutari

CTh.4.18.0. [=brev.4.16.0.] De fructibus et litis expensis.

CTh.4.18.1 [=brev.4.16.1]

Impp. valentin. et valens aa. olybrio pf. u. litigator victus, quem invasorem alienae rei praedonemve constabit, sed et qui post conventionem rei incubarit alienae, non in sola rei redhibitione teneatur, nec tantum simplorum fructuum praestationem aut eorum, quos ipse percepit, agnoscat, sed duplos fructus et eos, quos percipi oportuisse, non quos eum redegisse constabit, exsolvat. et praedoni quidem ratio a die invasi loci usque ad exitum litis habeatur; ei vero, qui simpliciter tenet, ex eo, quo, re in iudicium deducta, scientiam malae possessionis accepit. heredis quoque succedentis in vitium par habenda fortuna est. addimus etiam, ut impensas sumptusque* litis, re ad finem deducta, petitoribus praestent. ac ne ipsos quidem petitores, qui inanes lites et iurgia non movenda ingerunt possidentibus, ab istius cautionis merito segregamus iubemus enim, ut, si intentio petitoris improba iudicetur, praestet possessori sumptus*, praestet impensas, quas eum toto litis tempore sustinuisse claruerit, etiamsi super hac re expressior cesset sententia iudicantis. dat. vii. kal. mai. treviris, valentin. n. p. et victore coss.

interpretatio. quisquis rem alienam male possederit, si in iudicio fuerit superatus, quod rem sibi non debitam occupare praesumpsit*: sed et ille, qui conventus a certo domino reddere pervasa noluerit, non solum pro hac ipsa re reddenda, quum superatus fuerit, teneatur, sed fructus rei ipsius duplos ex eo tempore, quo res pervasa est, cogatur exsolvere, non quales se ipse dixerit collegisse, sed quales per diligentem culturam consequi proprii domini utilitas potuisset. ille etiam, qui rem alienam scienter usurpare praesumpserit*, a die invasi loci usque ad consummatam litem simili ratione exigatur. nam qui simpliciter sine praesumptione* aliquam rem tenuerit, ex eo similiter solvat, ex quo, re in iudicium deducta, quod rem male possideat, conscientiam ipsius coeperit non latere. heredes quoque eorum in his damnis, si victi fuerint, quibus auctor ipsorum, simili modo succumbant. addimus quoque, eiusmodi personis ut et sumptus* et expensas litis ex eo die, a quo de tali re coeperint litigare, usque dum finiatur, pulsantibus reddant: nam et ipsi, qui alios possidentes pulsare tentaverint, si ea in iudicio repetant, quae sua probare non possint, similiter sumptus* et expensas litis pulsatis possessoribus reddant, quantum eos toto litis tempore perdidisse constiterit

CTh.4.18.2 [=brev.4.16.2]

Impp. honor. et theodos. aa. asclepiodoto pf. p. terminato transactoque negotio posthac nulli actio, neque ex rescripto, super sumptuum* repetitione praestetur, nisi cognitor, qui de principali negotio sententiam promulgavit, cominus partibus constitutis iuridica pronuntiatione signaverit: victori causae restitui debere expensas, aut: super his querelam iure competere. post absolutum enim dimissumque iudicium nefas est, litem alteram consurgere ex litis primae materia. dat. iii. kal. april. constantinopoli, asclepiodoto et mariniano coss.

interpretatio. posteaquam inter partes fuerit definitum iudicio intercedente negotium, quaecumque* actio propter repetendos sumptus* vel expensas litis obtenta fuerit, nullam habeat firmitatem, quam iudicati forma non continet: quia quicumque*, quod in iudicio adversario praesente non petiit, postea de eadem re litem aliam non poterit inchoare

CTh.4.19.0. [=brev.4.17.0.] De usuris rei iudicatae.

CTh.4.19.1pr. [=brev.4.17.1pr.]

Imppp. grat., valentin. et theodos. aaa. eutropio pf. p. qui post iudicii finem, exceptis duobus mensibus, quibus per leges solutionum nonnumquam* est concessa dilatio, moram afferent solutioni, a die patrati iudicii, quo obnoxii redditi sunt, in duplicium centesimarum conveniantur usuras [extrinsecus scilicet medietatem debiti, de quo litigatum est, sicut prius constitutum est, inferentes] usque in id tempus, quo debitum solutione diluerint. quod a nobis exemplo aequabili ex iuris prisci est formulis introductum, ut, quia malae fidei possessores in fructus duplos conveniuntur, aeque malae fidei debitores simile damni periculum persequatur.

CTh.4.19.1.1 [=brev.4.17.1.1]

Sed tamen creditor, ternis interiectis mensibus post sententiam, contestari moram debebit adhibitae tarditatis, ut ei centesimarum duplicium fructus possit acquiri. cavendum quippe ex diverso est etiam contra illam malitiam creditorum, ne, iudicatis ad solutionem cunctantibus, incipiant spe dupli foenoris imminere; quamquam iudicatum, si hanc poenam a se removere festinet, contractam pecuniam vel apud iudices obsignatam locare vel iudicio conveniat offerre, ut periculum duplicium usurarum incurrere ex ea die, qua obnoxius esse coeperit, desistat.

CTh.4.19.1.2 [=brev.4.17.1.2]

Distinguendum vero hoc quoque arbitrati sumus, ut, si contractus debiti ex stipulatione descendit, et casu usurae per annorum curricula summam capitis impleverint (scilicet ut quantitas sortis quantitati foenoris adaequetur), post sententiam usurae duplices non utriusque debiti currant, sed capitis quidem duplae, usurarum vero simplae. dat. xv. kal. iul. thessalonica, gratiano v. et theodos. i. aa. coss.

interpretatio. debitor, qui post emissum iudicium, a quo victus fuerit, debiti summam implere neglexerit, transactis duobus mensibus, duplam centesimam debiti ipsius usque in diem solutionis se noverit redditurum; ita tamen, ut medietatem rei iudicatae mox cogatur inferre: quia non immerito sicut malae fidei possessor duplos fructus, ita et qui post iudicium tardior ad reddendum fuerit, duplam centesimam reddat. sed tamen et hoc contra creditorum malitiam, quibus debitores addicti fuerint, ordinamus, ut non velint pro spe duplicandae centesimae suo vitio tardius exsequi, quod fuerit iudicatum: unde debebit creditor, ternis interiectis mensibus, post datum iudicium contestari, ut sic duplam centesimam possit exigere. nam si collectam pecuniam habuerit debitor et oblatam; et ille, qui vicit, noluerit pro lucro duplandarum centesimarum accipere, signatam eam debitor apud idoneas faciat sequestrari personas, ut damnum usurarum postea non possit incurrere. hoc quoque praecipimus observari, ut, si debitoris cautio cum omni firmitate proferatur, et usurae per annos plures cum capitali debito se aequaverint, a debitore amplius non petatur. sane post iudicium duplam centesimam, quam reddi iussimus, taliter solvat, ut de capitali debito tantum duplae usurae reddantur: de illo vero, quod in usuris ante iudicium crevit, simpla tantum centesima detur

CTh.4.20.0. Qui bonis ex lege iulia cedere possunt

CTh.4.20.1 [=brev.4.18.1]

Imppp. grat., valentin. et theodos. aaa. ad basilium comitem s. l. ne quis omnino vel fisci debitor vel alienae rei in auro atque in argento diversisque mobilibus retentator ac debitor bonorum faciens cessionem, liberum a repetitione plenissima nomen effugiat; sed ad redhibitionem debitae quantitatis congrua atque dignissima suppliciorum acerbitate cogatur: nisi forte propriorum dilapidationem bonorum aut latrociniis abrogatam aut fortasse naufragiis incendioque conflatam vel quolibet maioris impetus infortunio atque dispendio docuerit afflictam. pp. romae prid. id. oct., ausonio et olybrio coss.

interpretatio. nullus, qui aut fiscali debito aut privato probatur obnoxius, si aurum, argentum vel mobile quodcumque* debuerit, ob hoc se credat a debito excusandum, quod dicat, de rebus suis se facere cessionem, sed poenis afflictus, quaecumque* debuerit, cogatur exsolvere: nisi forte eiusmodi persona sit, quae se probet omnem substantiam suam aut naufragio aut latrocinio aut incendio aut cuiuslibet maioris violentiae impetu perdidisse

CTh.4.20.2

Idem aaa. floro praefecto praetorio. professio uniuscuiusque inmutari contra statuta legum nostrarum pro calumniantium inconstantia et varietate non poterit. dat. iii kal. iun. constantinopoli antonio et syagrio conss. (382 mai. 30).

CTh.4.20.3 [=brev.4.18.2]

Apud acta imp. theodos. a. dixit: in omni cessione professio sola quaerenda est. idem dixit: in omni cessione sufficit voluntatis sola professio. dat. kal. mai. honorio n. p. et evodio coss.

interpretatio. quaecumque* aliquis alteri cesserit, profiteatur, se tantum rem cessisse vel causam, hoc est aut gestis aut scriptura aut testibus, et sola voluntatis illius professio pro omni firmitate sufficiat

CTh.4.20.4

Cessionis ita firmitatem subsistere, si cuius rei per evidentem professionem voluntaria et evidens cessio teneatur, hoc est, ut cessionis nomine scriptura cuiuslibet rei cedentis voluntaria professione et subscriptione firmetur. quod si de vi et metu is qui cessit queri voluerit, intra annum similiter institutam peragat actionem. (...........).

CTh.4.21.0. [=brev.4.19.0.] Quorum bonorum.

CTh.4.21.1pr. [=brev.4.19.1pr.]

Impp. arcad. et honor. aa. petronio vicario hispaniarum. quid iam planius, quam ut heredibus traderentur, quae in ultimum usque diem defuncti possessio vindicasset, etiamsi quod possit tribui de proprietate luctamen?

CTh.4.21.1.1 [=brev.4.19.1.1]

Constat autem, virum ab intestatae uxoris bonis, superstitibus consanguineis, esse extraneum, quum prudentium omnium responsa, tum lex ipsa naturae successores eos faciat.

CTh.4.21.1.2 [=brev.4.19.1.2]

Insuper etiam mansura perpetua sanctione iubemus, ut, omnibus frustrationibus amputatis, in petitorem corpora transferantur, secundaria actione proprietatis non exclusa. dat. vi. kal. aug. mediolano, olybrio et probino coss.

interpretatio. iustum esse decernimus, ut, quodcumque* auctor usque in diem vitae suae tenuerit, petentibus heredibus debeat consignari, illi postea, cui competit, actione servata. virum quoque intestatae uxoris suae facultatem, quae sine filiis recessit, consanguineis eius, qui legitimi sunt, tradere mox sine ulla dilatione praecipimus et maritum proponere minime prohibemus, si quas sibi competere putaverit actiones

CTh.4.22.0. [=brev.4.20.0.] Unde vi.

CTh.4.22.1 [=brev.4.20.1]

Imp. constantinus a. severo. iudices absentium, qui cuiuslibet rei possessione privati sunt, suscipiant in iure personam, et auctoritatis suae formidabile ministerium obiiciant, atque ita tueantur absentes. hos tamen iudices, quos absentium iussimus subire personam, intra hos terminos ministerii retinemus, ut, illibatis atque omnibus integris causae principalis internis, id solum diligenter inquirant, utrum eius, quolibet pacto, qui peregrinatur, possessio ablata est, quam propinquus vel amicus vel servulus quolibet titulo retinebat. nec hos, qui deiecti sunt, absentium nomine possidentes, quia minime ipsis dictio causae mandata sit, ab experiunda re secludant, nec si servi sint, eorum reiiciant in iure personas, quia huiuscemodi condicionis* hominibus causas orare fas non sit; sed post elapsa quoque spatia recuperandae possessionis legibus praestituta litigium eis inferentibus largiri conveniet, ut eos momentariae perinde possessioni restituant, ac si reversus dominus litigasset. cui tamen, quolibet tempore reverso, actionem recuperandae possessionis indulsimus, quia fieri potest, ut restitutio propter servulos infideles vel negligentes propinquos vel amicos et colonos interea differatur. absenti enim officere non debet tempus emensum, quod recuperandae possessioni legibus praestitutum est, sed reformato statu, qui per iniuriam sublatus est, omnia, quae supererunt, ad disceptationem litigii immutilata permaneant; iudicio reservato iustis legitimisque personis, quum valde sufficiat, possessionem tenentibus absentium nomine contra praesentium violentiam subveniri. dat. x. kal. nov. mediolano, constantino a. vii. et constantio caes. coss.

interpretatio. omnes iudices specialiter admonemus, ut nullus, absentibus dominis, res eorum praesumat invadere, sed contra improbos homines omnia per personam iudicis vindicentur, salvo principali negotio. quod si quis se adversus absentem negotium habere causatur, et si, cui illi, qui peregrinantur, rem suam commiserint gubernandam, nec actor nec procurator eorum aut aliquis servorum ad dicendam causam domino aut absente aut non iubente cogatur, sed si quid eis fuerit sublatum, mox his, qui domino absente exclusi sunt, quum interpellaverint, reformetur. ipse vero dominus, si forte per negligentiam servorum res recepta non fuerit, quum de peregrinis redierit, possessionem suam momenti beneficio, etiamsi annus excesserit, nullatenus recipere prohibetur, sed restitutis in integrum omnibus, quae eo absente sublata sunt, integra causae actio proponatur, inter legitimas dumtaxat* et integra aetate personas: quia dignum est, ut contra malitiam eorum, qui praesentes sunt, taliter absentibus iubeamus esse consultum

CTh.4.22.2 [=brev.4.20.2]

Imppp. grat., valentin. et theodos. aaa. ad potitum vicarium urbis. quisquis neque vulgato rescripto neque adversario solenniter intimato possessorem quietum dominio suo huiusmodi terrore turbaverit, ea in perpetuum lite mulctetur, quam praeoccupaverit violentia, quum precibus poposcisset audiri. quae non minus etiam eum tenebit condicio*, qui, iudicis interlocutione suppressa, sub specie iudicati ius alienum improba temeritate pervasit, ita ut neuter reparationem interfecti hoc pacto semel negotii audeat postulare. si autem, habito plerumque colludio, curatores vel tutores minorum his rem debitam ea occasione pervadant, ut pupillis vel adultis iurgandi copia et fructus adimatur, his eatenus subvenimus, ut eosdem non atterat damno culpa temeritatis alienae, sed illico quidem possessio ei, a quo est ablata, reddatur curatores autem vel tutores aeterna deportatione punitos bonorum quoque publicatio persequatur. dat. prid. id. oct. treviris, syagrio et eucherio coss.

interpretatio. quicumque* causam suam non ita agere voluerit, ut adversarium suum publice patefacta actione conveniat, et dominium possessoris illa ratione conturbaverit, ita negotio ipso careat, ut eam causam numquam* valeat reparare, qui prius rem voluit auferre, quam sperare a iudice, ut deberet audiri. similiter et ille omni causa privetur, qui iudicis ordinatione suppressa, iudicium se habere dicens, alienam possessionem sua praesumptione* pervaserit. quod si tutores etiam vel curatores minorum colludio aliquo pro eorum negotiis alienam rem sub ea, qua diximus, temeritate pervaserint, ut minorum causa depereat, nullum minoribus praeiudicium fieri ex tutorum vel curatorum temeritate permittimus, sed proprietatem suam sine dilatione recipiant; curatores autem vel tutores, amissis rebus suis, perpetuo exsilio deputentur

CTh.4.22.3 [=brev.4.20.3]

Imppp. valentin., theodos. et arcad. aaa. ad messianum comitem r. p. plerosque detectum est rem privatam nostram, quam publicatio celebrata quaesiverat, invasisse: quam nos a retentatoribus ereptam sociari iubemus aerario, punientes contumacius, quam decus publicum sinebat, erectos, ut, qui litem inferre potuissent, nollent exspectare iudicium ac spernerent victoriam, quam iustitiae praescripsisset eventus, et amplecterentur, quod dedisset audacia. cadat igitur lite, quisquis operiri noluerit litis eventum, et quod recipere lege potuisset, contempt+or examinis violentus amittat. illi vero, quos in tantum furorem provexit audacia, ut, quod iurgaturi apud examinis fidem sperare non possent, ante eventum iudicialis arbitrii illicita praesumptione* temerarent, aestimationem rei, de qua litigari convenerat, cogantur exsolvere. quod quidem etiam in privatis observandum negotiis generali lege sancimus. illud autem ab officio magnificentiae tuae cavendum esse decernimus, ut sacratissima domus nostra exspectare litem, non inferre cogatur, neque expetat, sed patiatur examen. dat. xviii. kal. iul. treviris, timasio et promoto coss.

interpretatio. cognovimus, rem fisci nostri violenter aliquos invasisse, sed nos evidenti lege praecipimus, ut, si quis aut fiscalem rem aut privatam ante sententiam a iudice prolatam invaserit et noluerit exspectare litis eventum, perdat negotium, qui contempsit* exspectare iudicium. ille vero, qui hoc praesumpsit* invadere, quod per iustitiam apud iudicem non poterat obtinere, habita aestimatione, talem rem aliam illi domino restituat, qualem noscitur ante iudicium pervasisse

CTh.4.22.4 [=brev.4.20.4]

Impp. arcad. et honor. aa. arriano consulari liguriae. legis iteranda sunt beneficia, quae tantum absentibus detulerunt, ut, si perturbatus possessionis status sit vel direptum aliquid, ad repetendum momentum redintegrationemque fortunae servis etiam praebeatur facultas, amicis praeterea, parentibus, proximis vel libertis. iudicem quoque absentium commoda tueri oportet atque in his, quae comprobantur ablata, celeri redhibitione consulere, nec iudicium dilatione suspendi. sub quocumque* igitur nomine vel titulo possidenti repetendi copia praebeatur, qui utendae rei habuit facultatem, ut, quae in militia constitutis vel absentibus erepta esse constiterit, sub cuiuslibet personae repetitione reddantur. dat. xv. kal. ian. mediolano, arcadio iv. et honorio iii. aa. coss.

interpretatio. propter absentes legem volumus iterare, ut, quicquid fuerit iis a qualibet persona sublatum, totum amicis eorum vel proximis vel servis, quum iudicem interpellaverint, sine dilatione reddatur: ut res, quam discedens dominus in sua proprietate dimisit, integra ab actoribus domini, quousque redeat, vindicetur. quaecumque* autem in militia constitutis vel absentibus pervasa fuerint, sine aliqua iubemus dilatione restitui

CTh.4.22.5pr. [=brev.4.20.5pr.]

Iidem aa. petronio vicario hispaniarum. nec imperiale rescriptum, quod supplicatio litigatoris obtinuit, nec interlocutio cognitoris interpellare possessionis statum eo, qui rem tenet, absente permittitur, quia negotiorum merita partium assertione panduntur.

CTh.4.22.5.1 [=brev.4.20.5.1]

Vitia autem a maioribus contracta perdurant, et successorem auctoris sui culpa comitatur etc. dat. xv. kal. ian. mediolano, caesario et attico coss.

interpretatio. nec per principis praeceptionem, si a litigatore fuerit obtenta, nec per responsum iudicis, si fuerit interpellatus, absente domino possessio ullius auferatur, quia prius conveniri debet ille, qui possidet, et nisi inter praesentes iudicium dari non potest, nec negotium terminari. nam quicumque* alienam vel absentis rem crediderit occupandam, noverit, etiam heredes suos similiter pro hac auctoris praesumptione* obnoxios esse mansuros

CTh.4.22.6 [=brev.4.20.6]

Impp. honor. et theodos. aa. iuliano ii. proconsuli africae. momenti actio exerceri potest per quamcumque* personam. sub colore autem adipiscendae possessionis obrepta petitio alteri obesse non debet, maxime quum absque conventione personae legitimae initiatum iurgium videatur. nihil autem opituletur conventio circa minorem habita, quum id rectius circa curatorem debuerit custodiri. dat. prid. non. mart. ravenna, constantio et constante coss.

interpretatio. ad recipiendum momentum, id est infra anni spatium cuiuslibet persona agere potest. si per obreptionem fuerit facta petitio, alterius parti praeiudicare non poterit. praeterea quum legitima persona non sit, nihil valeat actio contra aetatem minorem, quae contra curatorem suum potius debuit iusta ratione proponi

CTh.4.23.0. [=brev.4.21.0.] Utrubi.

CTh.4.23.1 [=brev.4.21.1]

Impp. arcad. et honor. aa. vincentio pf. p. galliarum. post alia: si coloni, quos bona fide quisque possedit, ad alios fugae vitio transeuntes, necessitatem condicionis* propriae declinare tentaverint, bonae fidei possessori primum oportet et celeri reformatione succurri, tunc causam originis et proprietatis agitari, non exspectatis temporibus nec denuntiatione solenni, quae locum in his negotiis non habebunt etc. dat. iii. kal. iul. mediolano, stilicone et aureliano coss.

interpretatio. si coloni rei alienae ad alios dominos forte confugerint, primum est, ut fugitivos suos, de cuius re exisse noscuntur, momenti beneficio possessor sine dilatione recipiat, et sic de eorum origine audiatur, nec requiratur in iudicio, ut prius titulum litis petitor scribat, quia initium litis ad momentariam non pertinet actionem

CTh.4.24.0. De aedificiis privatis et publicis

CTh.4.24.1

De servitute luminis vel aeris similiter constitutum est, ut inter privatorum fabricas decem pedes, inter publicas quindecim dimittantur. (....).

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CTh.5.1.1 [=brev.5.1.1]

Imp. constantinus a. ad bassum pf. p. matri ius liberorum non habenti, interveniente licet patruo ceterisque, inter quos agnationis incorrupta iura per ordinem porriguntur, et quicumque* deinceps agnati erunt, a quibus consanguinitatis iure mater poterat excludi, placet omnium filii bonorum, quotiescumque* ab intestato venitur, deferri tertiam portionem etiam patruo eiusque filio et dumtaxat* nepoti, agnatione minime durante (si forte per emancipationem cuiusquam fuerit consanguinitas diminuta), beneficio pari deferri tertiam portionem, licet habeat mater ius liberorum. nec immerito, si quando supra dicto subnixa mater fuerit privilegio, agnatione dirempta* ultra nepotis gradum nostrum beneficium minime placuit extendi, ne, multis personis vocatis, plus ablatum matri, minus additum videretur. sive igitur unus exstiterit pluresve patrui, eorumque filius aut etiam filii et nepotes neptesve, non amplius quam sola tertia universorum bonorum simul omnibus vel singulis pro suis quibusque gradibus deferenda est. et eodem genere, si plures erunt, a quibus mater possit excludi, non plus quam tertia bonorum matri adversus omnes competere debebit. supra dictae ergo originis existentibus personis agnatis in infinitum, matri adversus omnes censuimus subveniendum, licet non omnibus adversus matrem, sed certis superius comprehensis personis hoc auxilium tribuatur; ita ut, nec petita bonorum possessione (quoniam huius legis, non praetoris est beneficium), illico, ut sibi delatae portionis dies exstiterit, aditione simplici, arrepto rerum quolibet corpore vel animi destinatione patefacta, plenum dominium delatae sibi portionis consequantur, facultate eis perpetua, dum advixerint, tribuenda in adeunda concessa sibi parte successionis. nec enim ad eos, qui eorundem successores erunt, nisi ipsis prius, quos indulgentiae nostrae ratio complectitur, quaesita fuerit hereditas, transire quicquam iubemus, sed penes eos manere, apud quos ante istam legem residere potuisset. dat. xiv. kal. iun. sirmii, crispo ii. et constantino ii. caess. coss.

interpretatio. si mater ius liberorum non habeat, hoc est, si ingenua tres partus vivos et libertina quattuor* non ediderit et unicum filium intestatum fortasse perdiderit, et filius moriens patruum unum vel plures aut certe patrui vel patruorum filios vel nepotes plures cum matre reliquerit, qui tamen emancipati non fuerint, mater in tertia portione in filii intestati hereditate succedat, et duas partes patruus, vel si plures patrui fuerint, aut filii vel nepotes sibimet vindicabunt. quod si mater liberorum ius habeat, et patruus vel patrui cum matre superfuerint, etiamsi emancipati sunt, duas partes de bonis filii intestati morientis mater consequatur, quae ius liberorum habet, et tertiam patruus vel patrui: qui si defuerint, filii patruorum, quanti fuerint, aequales sibi per capita faciant portiones. quod si filii patruorum defuerint, simili etiam nepotes patruorum divisione succedant. sed in hac successione sola constitutio praesens sufficit, ut inter matrem, patruos eorumque filios et nepotes bonorum possessio praesumatur; quae si fortasse adita non fuerit hereditas, et hi, qui adire debuerant, moriuntur, heredes eorum a successione non aditae hereditatis excludit: quia evidenter haec lex constituit, ut non adita hereditas non transeat ad heredes. hic de iure addendum est

CTh.5.1.2 [=brev.5.1.2]

Impp. valent. et valens aa. ad ausonium pf. p. quia non solum filius consanguineus, sed etiam per adoptionem quaesitus, nulla capitis deminutione intercedente eius, matrem excludit; si quidem patiatur mater defunctorum excludi a fratribus consanguineis, exsistentibus, quibus ipsa praeferatur intercedente capitis deminutione, proximior gradus ineatur. nam constitutio divi constantini ad bassum praefectum praetorio emissa patrui tantummodo ius antiquum temperavit, ut, si unus patruus seu duo pluresve sint, sive filius filiive eorum usque ad nepotem exstiterint, beneficio constitutionis in partem tertiam componant; de consanguineis vero fratribus nullam fuisse mentionem cognovimus. evidenter licet antiquo iure servato, ac divalis memoriae constantini constitutione comprobata, prospectum esse videatur a nostra clementia, ut in huiusmodi litibus, qui frater consanguineus debet excludi secundum ius antiquum, praeferatur iuxta memoratam destinationem; vel certe, si patrui persona intercesserit, usque ad nepotem ius constitutionis temperatum suum teneat robur atque firmitatem. dat. iv. kal. ian. constantinopoli, valentin. n. p. et victore v. c. coss.

interpretatio. si moriatur quis et relinquat matrem et fratrem consanguineum, id est uno patre natum vel etiam adoptivum, id est gestis ante curiam affiliatum, qui consanguinei loco habendus est, consanguineus frater vel adoptivus matrem in totum a successione mortui fratris excludunt. quod si emancipatus fuerit consanguineus aut adoptivus, et moriatur frater, superstitibus emancipatis fratribus et matre, patruos eorumque filios vel nepotes etiam emancipati fratres evidenter excludunt: ita tamen, ut, si ius liberorum mater habuerit, duas partes de morientis filii hereditate praesumat et tertiam emancipati fratres, quos constat esse superstites. quod si mater ius liberorum non habuerit, tertiam mater consequetur, et duas partes etiam emancipati filii, exclusis patruis, possidebunt

CTh.5.1.3 [=brev.5.1.3]

Imppp. grat., valent. et theodos. aaa. ad hilarium pf. p. quoties de emancipatae filiae successione tractatur, seu eam fiduciae nomen obstrinxit, seu etiam nulla comitantur suffragia liberorum, filiis ex ea genitis, etiamsi talis occasus avo vivente contingat, intacta pro solido successio deferatur, neque ulla defunctae patri matrique concedatur intestatae successionis hereditas, quum satis superque sufficiat adversus omnes legitimo gradu ad successionem venientes in hereditatibus matrum, incolumes ac superstites optabili sorte genitoris, successio liberorum. dat. xi. kal. mart. mediolano, merobaude ii. et saturnino coss.

interpretatio. filia, quam fiduciatam nominavit, hoc est emancipata, si intestata moriatur et relinquat superstitem patrem, matrem et filios, excluso patre et matre, etiamsi ius liberorum defuncta non habeat, filii soli in eius hereditate succedunt. hic de iure addendum, quid sit fiducia

CTh.5.1.4pr. [=brev.5.1.4pr.]

Imppp. valent., theodos. et arcad. aaa. constantiano pf. p. galliarum. si defunctus cuiuscumque* sexus aut numeri reliquerit filios et ex filia defuncta cuiuscumque* sexus aut numeri nepotes, eius partis, quam defuncti filia, superstes patri, inter fratres suos fuisset habitura, duas partes consequantur nepotes ex eadem filia, tertia pars fratribus sororibusve eius, quae defuncta est, id est filiis filiabusque eius, de cuius bonis agitur, avunculis scilicet sive materteris eorum, quorum commodo legem sancimus, accrescat.

CTh.5.1.4.1 [=brev.5.1.4.1]

Quod si hic defunctus, de cuius bonis loquimur, habebit ex filia nepotes, et praeterea filios non habebit, sed qui praeferri nepotibus possint, habebit agnatos, in quandam falcidiam et in dodrantem nepotes iure succedant.

CTh.5.1.4.2 [=brev.5.1.4.2]

Haec eadem, quae de avi materni bonis constituimus, de aviae maternae sive etiam paternae simili aequitate sancimus; nisi forte avia elogia inurenda impiis nepotibus iusta semotis ratione monstraverit.

CTh.5.1.4.3 [=brev.5.1.4.3]

Non solum autem, si intestatus avus aviave defecerit, haec nepotibus, quae sancimus, iura servamus, sed et si avus vel avia, quibus huiusmodi nepotes erant, testati obierint et praeterierint nepotes aut exheredaverint eosdem, et de iniusto avorum testamento, et si quae filiae poterant vel de re vel de lite competere actiones nepotibus deferimus, secundum iustum nostrae legis modum, quae de parentum inofficiosis testamentis competunt filiis. dat. v. kal. mart. mediolano, timasio et promoto coss.

interpretatio. si aliquis moriatur intestatus et filios vel filias superstites vel nepotes ex filia mortua derelinquat, filii in sua portione succedunt nepotes ex filia de portione matris suae tertiam perdunt, quae superstitibus avunculis eius et materteris proficit. si vero quis moriatur intestatus et relinquat ex filia nepotes et filios non dimittat, sed fratrem et sororem superstites derelinquat, tres partes hereditatis avi materni sibi nepotes vel neptes ex filia vindicabunt, quartam frater vel soror avi defuncti iuxta legis huius ordinem consequentur. si vero mulier, id est paterna vel materna avia intestata moriatur et relinquat filios et ex mortuo filio vel filia nepotes, aequaliter de patris vel matris portione nepotes vel neptes tertiam perdunt, quam patruis et amitis ex aviae paternae bonis, avunculis et materteris ex aviae maternae bonis, sicut et de avi materni conquirunt. nam si patruus et amita vel avunculus et matertera fortasse defuerint, ad fratres vel sorores aviarum tres unciae et ad nepotes novem perveniant: nam in avi paterni hereditate nepotes vel neptes ex filio mortuo de patris sui portione nihil perdunt. si vero avus vel avia nepotes ac neptes ex filia in testamento suo praeterierint aut non probatis causis exheredaverint, actio illis de inofficioso contra testamentum avi vel aviae, quae matri eorum competere potuit, legis beneficio tribuetur

CTh.5.1.5 [=brev.5.1.5]

Impp. arcad. et honor. aa. aureliano pf. p. nepotes ex filia avis pro rata parte hac condicione* succedant, qua et matres, si viverent, hereditatem patrum sibi cum fratribus vindicarent, scilicet ut mixtis matrum suarum dotibus avi hereditatem pro rata parte, quam lex divalis censuit, cum avunculis partiantur; nec amplius his quicquam de avitis facultatibus tribuatur, quam legis dudum latae sanctio comprehendit, scilicet detracta tertia partis eius, quae eorum matri, si dotem iungeret, debebatur. si vero dotem matris miscere noluerint, maternis et paternis facultatibus oportet esse contentos, quos constat alienae iam familiae esse procreatos. dat. prid. non. oct. constantinopoli, arcadio iv. et honorio iii. aa. coss.

interpretatio. haec lex similis est superiori: sed hoc amplius habet, quod dotem pro filia in generum factam, vel quicquid ipsa filia accepit tempore nuptiarum, post mortem avi intestati nepotes confundere iubet, ita ut de dote in hereditatem confusa duas partes de eo, quod mater eorum erat habitura, percipiant: aut, si noluerint confundere nepotes, sint acceptis tempore nuptiarum rebus vel sola dote contenti

CTh.5.1.6 [=brev.5.1.6]

Impp. honor. et theodos. aa. maximo pf. u. ubi aviarum successio occasu interveniente discutitur, capitis deminutio materna quaerenda non est. tunc enim in huiusmodi hereditatibus filiorum status aut persona spectatur, quoties de eius bonis, qui potestatem familiae potuit habere, tractatur. dat. v. kal. oct. ravenna, theodos. a. ix. et constantio iii. coss.

interpretatio. in bonis aviae emancipatio patris aut matris nepotibus non impediat: sed perdito triente, in ea, quam lex eis tribuit, portione succedant

CTh.5.1.7pr. [=brev.5.1.7pr.]

Impp. theodos. et valent. aa. albino pf. u. sicut mater, quae liberorum iure subnixa est, patruo capite deminuto dare iussa est tertiam portionem, ita etiam, quae nullo huiusmodi fulcitur auxilio, patruo quattuor* cedat unciis facultatum.

CTh.5.1.7.1 [=brev.5.1.7.1]

In illa quoque parte matris non est privilegium transeundum, in qua constantinianae legis potissimum constitutum tenendum esse censemus, ut, sicuti nulli umquam* vel ex prioris generis parte venientium vel ex consequenti sanguine probatorum agnationis compositionisve nomine de successione filii iusta cum matre potuit esse contentio, praeterquam patruo, filio patrui et eius nepoti, ita contra omnes reliquos, sicut custoditum hactenus arbitramur, persona potior matris habeatur.

CTh.5.1.7.2 [=brev.5.1.7.2]

Emancipati quoque fratris merita tractamus, qui, ut agnationis iure integro matrem in totum a successione filii decedentis excludit, ita capite deminutus nihil penitus consequitur. exemplo igitur patrui etiam huic cum matre hanc volumus esse rationem, ut quattuor* uncias hereditatis accipiat.

CTh.5.1.7.3 [=brev.5.1.7.3]

Laxa vero decernimus sanctione, ut statuta nostra non solum futurarum ambigua quaestionum, verum etiam pendentium negotiorum hoc ordine fata discingant. dat. iii. kal. febr. roma, theodos. xii. et valentin. ii. aa. coss.

interpretatio. similis est haec lex superiori, sed quia evidentior est, et istam inseruimus. nam illa hoc amplius habet, quod et de adoptivo filio loquitur

CTh.5.1.8 [=brev.5.1.8]

Iidem aa. ad senatum urbis romae. post alia: mater, quae habens ius liberorum defuncto filio sine liberis filiave cum eius sorore succedit, pari sortis paternae teneatur exemplo, ut, si torum priorem secundo non mutarit amplexu, omnia filii morte delata pleno iure conquirat; si vero alterius elegerit coniugium mariti, extrinsecus quidem quaesita filio filiaeve simili firmitate possideat, rerum vero paternarum defuncti solo usufructu humanitatis contemplatione potiatur, proprietatem fratribus transmissura defuncti. si vero filius, qui moritur, filium vel filiam derelinquit, omnimodo patri suo matrive ipso iure succedant. quod sine dubio et de pronepotibus observandum esse censemus etc. dat. vii. id. novemb. ravennae, dd. nn. theodos. xii. et valentin. ii. aa. coss.

interpretatio. mater ius liberorum habens, mortuo filio vel filia, si superstites alias filias habuerit et filium non habuerit, cum filiabus aequali sorte succedat, hoc est ut mater mediam et filiae, quantae fuerint, mediam vindicent portionem: ita ut, si alium maritum non acceperit, portionem, quam consecuta est, faciendi de ea, quod voluerit, habeat potestatem; si vero alium maritum acceperit, quicquid filius vel filia mortui aliunde acquisitum reliquerint, mater perpetuo iure vindicet. de bonis vero prioris mariti portionem, quam ex hereditate filii morientis fuerit consecuta, sorores mortuorum fratrum sibi post matris obitum vindicabunt. quod si filius vel filia, qui moriuntur, matrem ius liberorum habentem superstitem dimiserint et sorores, sed tamen filios habeant, filii eorum in integra patris vel matris facultate succedunt, ita ut mater vel sorores ab hac successione habeantur extraneae. hoc et de nepotibus et pronepotibus filiorum lex ista constituit

CTh.5.1.9 [=brev.5.1.9]

Iidem aa. hierio pf. p. pridem latae constitutionis pars quaedam abroganda est, ne ullis parentibus aut propinquis, quos naturae legisque pariter praerogativa defendit, in capiendis ab intestato hereditatibus praeferantur coniuges vel etiam comparentur; quum, si sanctitas inter eos sit digna foedere coniugali, non ita laboriosa vel sumptuosa* est testandi occasio, ut desiderio suo quisquam subvenire differat, quod interdum ita sensu leviore concipitur, ut antiqui nec, quod extraneis ac saepe ignotis in donationibus successionibusque tribuatur, coniugibus concesserint, reprimendum inter hos potius, ut in loco ancipiti, quam incitandum favorem mutuum arbitrati. verum lex alia, quam pridem tulimus, ut matrimoniis auxilium impartiret, deficientis hoc totum credidit arbitrio permittendum. nunc vero parentibus exstantibus vel propinquis ab intestato venire coniuges prohibemus. itaque nulla mentio prioris legis sit, si qua hoc medio brevique tempore contigisse alicui dicatur coniugis ab intestato hereditas; et lege proposita divulgetur, omnem huiusmodi spem successionis, quae ab intestato deferatur, coniugibus deponendam, nisi si ille casus emerserit, ut nemo de propinquis successionem mortui vindicare possit ex lege, quum fisco nostro qualiacumque* iura matrimonii praeponamus etc. dat. x. kal. mart. constantinopoli, tauro et felice coss.

interpretatio. haec lex id constituit, ut omnes propinqui uxorem ab intestati mariti successione prohibeant et maritum similiter a successione intestatae uxoris excludant. sed si propinqui omnino defuerint, tunc sibi invicem, excluso fisco, maritus vel uxor succedant

CTh.5.2.0. De bonis decurionum.

CTh.5.2.1 [=brev.5.2.1]

Imp. constantinus a. rufino pf. p. si decurio sine liberis intestatus diem vitae solverit, cui neque voluntas postrema legibus fulta, neque alio iure gradu proximo heres exstiterit, bona eius curiae suae commodis cedant, id est ordinis utilitati proficiant, cuius corpori fatali necessitate exemptus* est, nulli praebenda licentia postulandi haec bona ut vacantia de nostra clementia, etiamsi revera et testamentum et successor deesse legitimus approbetur; omni etiam beneficio, si quod fuerit impetratum, protinus infirmando. dat. kal. dec. sirmio, constantino a. v. et licinio caes. coss.

interpretatio. si curialis intestatus moriens neque filios neque proximos derelinquat, curia, cuius ordini subducitur, quicquid reliquerit, vindicabit, ita ut nullus audeat ea quasi bona caduca a principibus postulare. quod si fecerit, non valebit: nam testamentum faciendi curialibus lex ista tribuit potestatem

CTh.5.3.0. De bonis clericorum et monachorum.

CTh.5.3.1 [=brev.5.3.1]

Impp. theodos. et valent. aa. ad taurum pf. p. et patricium. si quis episcopus aut presbyter aut diaconus aut diaconissa aut subdiaconus vel cuiuslibet alterius loci clericus aut monachus aut mulier, quae solitariae vitae dedita est, nullo condito testamento decesserit, nec ei parentes utriusque sexus vel liberi, vel si qui agnationis cognationisve iure iunguntur vel uxor exstiterit, bona, quae ad eum pertinuerint, sacrosanctae ecclesiae vel monasterio, cui fuerat destinatus, omnifariam socientur [exceptis iis facultatibus, quas forte censibus adscripti vel iuri patronatus subiecti vel curiali condicioni* obnoxii clerici vel monachi cuiuscumque* sexus relinquunt. nec enim iustum est, bona seu peculia, quae aut patrono legibus debentur aut domino possessionis, cui quis eorum fuerat adscriptus, aut ad curias pro tenore dudum latae constitutionis sub certa forma pertinere noscuntur, ab ecclesiis detineri; actionibus videlicet competenter sacrosanctis ecclesiis reservatis, si quis forte praedictis condicionibus* obnoxius aut ex gestis negotiis aut ex quibuslibet aliis ecclesiasticis actibus obligatus obierit]: ita ut, si qua litigia ex huiusmodi competitionibus in iudiciis pendent, penitus sopiantur, nec liceat petitori post huius legis publicationem iudicium ingredi vel oeconomis aut monachis aut procuratoribus inferre molestiam, ipsa petitione antiquata, et bonis, quae relicta sunt, religiosissimis ecclesiis vel monasteriis, quibus dedicati fuerant, consecratis. dat. xviii. kal. ian. ariovindo et aspare coss.

interpretatio. si quis episcopus, vel quos lex ipsa commemorat, aut quilibet religiosi vel religiosae intestati sine filiis, propinquis vel uxore decesserint, qui tamen nec curiae quicquam debuerint nec patrono, quicquid dereliquerint, ad ecclesias vel monasteria, quibus obsecuti fuerint, pertinebit. qui si testari voluerint, habebunt liberam potestatem

CTh.5.6.0. De bonis militum

CTh.5.6.1 [=brev.5.4.1]

Imp. constantius a. ad bonosum magistrum equitum. universis tam legionibus quam vexillationibus comitatensibus seu cuneis insinuare debebis, uti cognoscant, quum aliquis fuerit rebus humanis exemptus* atque intestatus sine legitimo herede decesserit, ad vexillationem, in qua militaverit, res eiusdem necessario pervenire. dat. v. id. mai. hierapoli, rufino et eusebio coss.

interpretatio. si milites sine legitimo herede intestati decesserint et proximos non habuerint, eorum bona, qui in eodem officio militant, vindicabunt

CTh.5.6.2

Impp. honorius et theodosius aa. anthemio praefecto praetorio. iussimus dudum, ut quos captivos reperietur miles recepta barbarorum praeda et ereptis manubiis noster provincialis promeruisse, domum suam reportaret ita, ut quoscumque libertate conspicuos aut servos vel iam traxit vel deinceps a suis sedibus hostis depulerit, si interea eo depulso defendi potuerint, minime sub detestandae praedae occasione teneantur, sed iudiciarius vigor liberos quidem patriis naturalibus, servos autem dominis pro recenti legis intercessione consignet. dat. x kal. april. honorio viii et theodosio iii aa. conss. (409 mart. 23).

CTh.5.6.3

Idem aa. anthemio praefecto praetorio. scyras barbaram nationem maximis chunorum, quibus se coniunxerunt, copiis fusis imperio nostro subegimus. ideoque damus omnibus copiam ex praedicto genere hominum agros proprios frequentandi, ita ut omnes sciant susceptos non alio iure quam colonatus apud se futuros nullique licere ex hoc genere colonorum ab eo, cui semel adtributi fuerint, vel fraude aliquem abducere vel fugientem suscipere, poena proposita, quae recipientes alienis censibus adscriptos vel non proprios colonos insequitur. opera autem eorum terrarum domini libera utantur ac nullus sub acta peraequatione vel censui ...Acent nullique liceat velut donatos eos a iure census in servitutem trahere urbanisve obsequiis addicere, licet intra biennium suscipientibus liceat pro rei frumentariae angustiis in quibuslibet provinciis transmarinis tantummodo eos retinere et postea in sedes perpetuas collocare, a partibus thraciae vel illyrici habitatione eorum penitus prohibenda et intra quinquennium dumtaxat intra eiusdem provinciae fines eorum traductione, prout libuerit, concedenda, iuniorum quoque intra praedictos viginti annos praebitione cessante. ita ut per libellos sedem tuam adeuntibus his qui voluerint per transmarinas provincias eorum distributio fiat. dat. prid. id. april. constantinopoli honorio viii et theodosio iii conss. (409 apr. 12).

CTh.5.7.0. [=brev.5.5.0.] De postliminio.

CTh.5.7.1 [=brev.5.5.1]

Imppp. valent., valens et grat. aaa. ad severianum ducem. si quos forte necessitas captivitatis abduxit, sciant, si non transierunt, sed hostilis irruptionis necessitate transducti sunt, ad proprias terras festinare debere recepturos iure postliminii ea, quae in agris vel mancipiis ante tenuerunt, sive a fisco nostro possideantur, sive in aliquem principali liberalitate transfusa sunt. nec timeat quisquam alicuius contradictionis moram, quum hoc solum requirendum sit, utrum aliquis cum barbaris voluntate fuerit an coactus. dat. xvi. kal. iul. remis, gratiano a. et dagalaipho coss.

interpretatio. quicumque* necessitate captivitatis ducti sunt et non sua voluntate, sed hostili depraedatione ad adversarios transierunt, quaecumque* in agris vel mancipiis antea tenuerunt, sive a fisco possideantur, sive aliquid ex his per principem cuicumque* donatum est, sine ullius contradictione personae tempore, quo redierint, vindicent ac praesumant, si tamen cum adversariis non sua voluntate fuerint, sed captivitate se detentos esse probaverint

CTh.5.7.2pr. [=brev.5.5.2pr.]

Impp. honor. et theodos. aa. theodoro pf. p. diversarum homines provinciarum cuiuslibet sexus, condicionis*, aetatis, quos barbarica feritas captiva necessitate transduxerat, invitos nemo retineat, sed ad propria redire cupientibus libera sit facultas.

CTh.5.7.2.1 [=brev.5.5.2.1]

Quibus si quicquam in usum vestium vel alimoniae impensum est, humanitati sit praestitum, nec maneat victualis sumptus* repetitio: exceptis iis, quos barbaris vendentibus emptos* esse docebitur, a quibus status sui pretium propter utilitatem publicam emptoribus* aequum est redhiberi. ne quando enim damni consideratio in tali necessitate positis negari faciat emptionem*, decet redemptos* aut datum pro se pretium emptoribus* restituere aut labore, obsequio vel opere quinquennii vicem referre beneficii, habituros incolumem, si in ea nati sunt, libertatem.

CTh.5.7.2.2 [=brev.5.5.2.2]

Reddantur igitur sedibus propriis sub moderatione, qua iussimus, quibus iure postliminii etiam veterum responsis incolumia cuncta servata sunt.

CTh.5.7.2.3 [=brev.5.5.2.3]

Si quis itaque huic praecepto fuerit conatus obsistere actor, conductor procuratorque, dari se metallis cum poena deportationis non ambigat; si vero possessionis dominus, rem suam fisco noverit vindicandam seque deportandum.

CTh.5.7.2.4 [=brev.5.5.2.4]

Et ut facilis exsecutio proveniat, christianos proximorum locorum volumus huius rei sollicitudinem gerere. curiales quoque proximarum civitatum placuit admoneri, ut emergentibus talibus causis sciant, legis nostrae auxilium deferendum; ita ut noverint rectores universi, decem libras auri a se et tantundem a suis apparitionibus exigendum, si praeceptum neglexerint. dat. iv. id. dec. ravenna, honorio viii. et theodos. iii. aa. coss.

interpretatio. hi, qui ab hostibus tempore captivitatis ducti sunt, si ab aliquibus vel ad victum vel ad vestitum aliquid acceperunt, quum redire ad propria voluerint, minime aliquid pro eorum requiratur expensis. tamen si pretium pro captivo suo praedator acceperit, quod dedisse emptor* probaverit, sine dubitatione recipiat. quod si pretium non habuerit, quinquennio serviat captivus emptori* et post quinquennium sine pretio ingenuitati reddatur, qui, quum ad propria redierit, omnia sua integra et salva recipiat. si quis itaque huic tam iustae praeceptioni resistere tentaverit, noverit se in exsilio deputandum: si vero possessor fuerit, facultatem suam fisci viribus addicendam. sane christianos, qui redemptioni* studere debent, pro captivis volumus esse sollicitos. ad curiales etiam ista sollicitudo pertineat, ita ut omnes iudices sciant, decem libras auri fisco se daturos, qui huius legis praecepta neglexerint

CTh.5.8.0. [=brev.5.6.0.] De ingenuis, qui tempore tyranni servierunt.

CTh.5.8.1 [=brev.5.6.1]

Imp. constantinus a. ad volusianum. universi devotionis studio contendant, si quos ingenuis natalibus procreatos sub tyranno ingenuitatem amisisse aut propria contenti conscientia aut aliorum indiciis recognoscunt, natalibus suis restituere, nec exspectata iudicis interpellatione. nam si quis contra conscientiam suam vel certissima testimonia plurimorum in eadem avaritiae tenacitate permanserit, severissima poena mulctabitur. placet autem, etiam eos periculo subiugari, qui scientes ingenuos servitutis necessitatem per iniuriam sustinere dissimulant. prop. viii. kal. mai. romae, volusiano et anniano coss.

interpretatio. ingenui, qui tyranni temporibus addicti sunt servituti, ingenuitati reddantur. quod si quis sciens hoc ordine addictum ingenuum in servitute tenuerit, noverit in se legibus vindicandum

CTh.5.9.0. [=brev.5.7.0.] De expositis.

CTh.5.9.1 [=brev.5.7.1]

Imp. constantinus a. ad ablavium pf. p. quicumque* puerum vel puellam proiectam de domo, patris vel domini voluntate scientiaque, collegerit ac suis alimentis ad robur provexerit, eundem retineat sub eodem statu, quem apud se collectum voluerit agitare, hoc est sive filium sive servum eum esse maluerit: omni repetitionis inquietudine penitus summovenda eorum, qui servos aut liberos scientes propria voluntate domo recens natos abiecerint. dat. xv. kal. mai. constantinopoli, basso et ablavio coss.

interpretatio. quicumque* expositum recenti partu, sciente patre vel matre vel domino, collegerit ac suo labore educaverit, in illius, a quo collectus est, potestate consistat, seu ingenuum seu servum, quem nutrivit, esse voluerit, et si adoptare voluerit in filium vel libertum aut in servitium permanere, propria utatur potestate

CTh.5.9.2 [=brev.5.7.2]

Impp. honor. et theodos. aa. melitio pf. p. nullum dominis vel patronis repetendi aditum relinquimus, si expositos quodammodo ad mortem voluntas misericordiae amica collegerit (nec enim dicere suum poterit, quem pereuntem contempsitit*); si modo testes episcopalis subscriptio fuerit subsecuta, de qua nulla penitus ad securitatem possit esse cunctatio. dat. xiv. kal. april. ravenna, honorio ix. et theodos. v. aa. coss.

interpretatio. qui expositum puerum vel puellam, sciente domino vel patrono, misericordiae causa collegerit, in eius dominio permanebit: si tamen contestationi de collectione eius episcopus clericique subscripserint, quem postea suum dicere quisquam non poterit, quem proiecisse probatur ad mortem

CTh.5.10.0. [=brev.5.8.0.] De his, qui sanguinolentos emptos* vel nutriendos acceperint.

CTh.5.10.1 [=brev.5.8.1]

Imp. constantinus a. italis suis. secundum statuta priorum principum, si quis infantem a sanguine quoquo modo legitime comparaverit vel nutriendum putaverit, obtinendi eius servitii habeat potestatem: ita ut, si quis post seriem annorum ad libertatem eum repetat vel servum defendat, eiusdem modi alium praestet aut pretium, quod potest valere, exsolvat. qui enim pretium competens instrumento confecto dederit, ita debet firmiter possidere, ut et distrahendi pro suo debito causam liberam habeat: poenae subiiciendis iis, qui contra hanc legem venire tentaverint. dat. xv. kal. sept. serdica, constantino a. viii. et constantino caes. iv. coss.

interpretatio. si quis infantem a sanguine emerit et nutrierit, habendi eum et possidendi liberam habeat potestatem. sane si nutritum dominus vel pater recipere voluerit, aut eiusdem meriti mancipium nutritori dabit, aut pretium nutritor, quantum valuerit, qui nutritus est, consequatur

CTh.5.11.0. ....

CTh.5.11.7 [= v,15,7 h.]

(?)................... el emeritis veteranis vel gentibus dividamus. dat. xvii k. feb. mediolano valentiniano et valente aa. conss. (365 ian. 16).

CTh.5.11.8 [= v,15,8 h.]

Idem aa. ad rufinum praefectum praetorio. quicumque possidere loca ex desertis voluerint, triennii immunitate potiantur. qui vero ex desertis nonnihil agrorum sub certa professione perceperunt, si minorem modum professi sunt, quam ratio detentae possessionis postulat, usque ad triennium ex die latae legis in ea tantum possessione permaneant, quam ipsi sponte obtulerunt exacto autem hoc tempore sciant ad integrae iugationis pensitationem se esse cogendos. itaque qui hoc sibi incommodum iudicarit, e vestigio restituat possessionem, cuius in futurum onera declinat. dat. viii id. aug. mediolano valentiniano et valente aa. conss. (365 aug. 6).

CTh.5.11.9 [= v,15,9 h.]

Idem aa. ad mamertinum praefectum praetorio. per italiam afanticiae iugerationis onere consistentibus patrimoniis superfuso unumquemque tributarium adiectionem alieni debiti baiulare non dubium est; ideoque deserta iugatio, quae personis caret, hastis subiciatur, ut licitationis competitione futuros dominos sortiatur. ea enim .... (364/5 ...).

CTh.5.11.11 [= v,15,11 h.]

.........Ua...Babuntur, diu tracta et iam paene sine debitoribus debita condonentur; ea tamen ratione servata, ut prius domini longioribus temporum metis edictis celeberrimis evocentur, quo facilius spe impunitatis ad avitos lares et propria tecta revocentur: ac tum demum, si intra maium mensem, quod spatium dissitis idoneum et volentibus longum est, non advenerint, quicumque se sponte optulerit, non obligandus de onere praeterito pro portione hoc modo possessionis in futurum annonarii canonis vectigal expendat, de iure dominii et perpetuitate securus. dat. viii k. oct. constantinopoli honorio n. p. et evodio conss. (386 sept. 24).

CTh.5.11.12 [= v,15,12 h.]

Idem aaa. tatiano praefecto praetorio orientis. qui agros domino cessante desertos vel longe positos vel in finitimis ad privatum pariter publicumque compendium excolere festinat, voluntati suae nostrum noverit adesse responsum: ita tamen, ut, si vacanti ac destituto solo novus cultor insederit ac vetus dominus intra biennium eadem ad s (388-392 ...).

CTh.5.12.0. De fundis patrimonialibus et saltuensibus et emphyteuticis et eorum conductoribus

CTh.5.12.1 [= v,13,37 h.]

...........Manentibus indulgentiis a nobis praestitis, ut in fiscum inferatur, quidquid exactum fuerit amplissima ......Cae. dat. iii non. nov. ravenna honorio viii et theodosio iiii aa. conss. (409 nov. 3).

CTh.5.12.2 [= v,13,38 h.]

Idem aa. aureliano praefecto praetorio. nulli penitus liceat, sive salvo canonis servato iure sive cum imminutione canonis patrimonialis, vel limitotrofos sive saltuenses per orientem vel fundos patrimoniales postulare. nemo potiatur his ne si subreptiva quidem id promeruerit petitione per speciale beneficium, vel exquisita fraude vel quo alio artificio ultro in quemquam liberalitas nostra processerit, quandoquidem nec emphyteuticario mutari proprium ius per petitionem huiusmodi censemus nec canoni aliquid detrahi vel imminui, et cum praedium ipsum revocari debuerit. futuras prohibere contec... improbas petitiones arcemus, ut a principio nec suscipi nec instrui eas generali sanctione mandemus, quo praediorum labor emfyteuticarius per orientem propriam praerogativam retineat nec novus possessor iura aliena perturbet. dat. non. aug. constantinopoli honorio a. x et theodosio a. vi conss. (415 aug. 5).

CTh.5.12.3 [= v,13,39 h.]

Impp. theodosius et valentinianus aa. tauro praefecto praetorio et patricio. possessores vel emphyteuticarii patrimoniales, qui fundos minime nunc usque compararunt, eodem largitatis modo nequaquam ad eorum comparationem urgueantur, sed tamquam pretiis depensis sic eis nostri numinis beneficio potiantur, ut, quod iuris alter inferendo pretium consecutus est, hoc nostra liberalitate praedictus emphyteuticarius habeat: illud quoque ius, in quibus coluit praediis, quod aut ex successione aut ex comparatione privata aut nostri numinis liberalitate aut quocumque modo possedit, sciat illibatum intemeratumque servari. et quia praestitis a nostra pietate indulgentiis usque ad undecimam nuper transactam indictionem leuata reliquorum sarcina universis concessa est, pro his quoque annis, qui post decimam indictionem secuti sunt ad hoc usque tempus, in quod patrimonialium fundorum ....Exsistit, nullum reliquorum exactio premat. nam cum praedia quae colebat minime eua.Ur comparare, sancimus nullum pristinum colonum vel possessorem super reliquis temporis subsecuti molestiam aut inquietudinem sustinere. dat. xiiii k. iul. constantinopoli ariovindo et aspare conss. (434 iun. 18).

CTh.5.13.0. De fundis rei privatae et saltibus divinae domus

CTh.5.13.1 [= v,14,1 h.]

Impp. constantius et constans aa. ad edictum heliopolitanorum. universi cognoscant has possessiones, quas de fisco nostro comparasse noscuntur, nullo a nobis iure retrahi: sed propria firmitate possessas etiam ad posteros suos dominii perpetis durabilitate demitti. dat. prid. id. feb. antiochiae marcellino et probino conss. (341 febr. 12).

CTh.5.13.2 [= v,14,2 h.]

Idem aa. ad euprycium rationalem. comperimus aliquorum iugationem, quam hastis decursis a fisco legitime compararunt, in medium produci ac retractari, cum deceat quemque iure comparatas possessiones vel villas serenitatis nostrae tempore firmius optinere atque ad posteros suos transmittere. dat. prid. id. feb. antiochiae marcellino et probiano conss. (341 febr. 12).

CTh.5.13.3 [= v,14,3 h.]

Impp. valentinianus et valens aa. ad mamertinum praefectum praetorio. universa, quae ex patrimonio nostro per arbitrium divae memoriae iuliani in possessionem sunt translata templorum, sollicitudine sinceritatis tuae cum omni iure ad rem privatam nostram redire mandamus. dat. x kal. ian. mediolano divo ioviano et varroniano conss. (364 dec. 23).

CTh.5.13.4 [= v,14,4 h.]

Idem aa. ad florianum comitem rerum privatarum. provincialium opibus rei privatae possessiones concedimus, videlicet, ut de fundis ad eius dominium pertinentibus eligat unus quisque quem velit eumque perpetuo iure suscipiat, palatiis tantum omnifariam in rei privatae sollicitudine retentandis. hi vero, quos commoditas praediorum ad eadem postulanda sollicitat, adeant tuae dicationis officium et modum suae deliberationis indicent per libellos certumque habeant pro unaquaque villa, cum ea dote vel forma, cui nunc habetur obnoxia, ad novi domini iura migraverit, si quid adiecerit sumptus cura sollertia, quidquid mancipiorum vel pecoris adcreverit, capitationis aut canonis augmenta non patiatur, sed solis dominis heredibusque dominorum sit cessura felicitas. quin etiam neque ad glebam senatus neque ad collationes auri sive argenti iidem cum ceteris tenebuntur, sed ea sola devotione fungentur, quam annonaria ...Census publici ratione canon sollemnis efflagitat. si quis autem in annis singulis non solverit debitum, ex re ipsius cetera, quod in reliquis remansisse claruerit, sine aliquibus dependere cogetur indutiis. sane si quem postea minus (a. ...).

CTh.5.14.0. De diversis praediis urbanis et rusticis et de omni reditu civili

CTh.5.14.30 [= v,13,30 h.]

Imppp. valentinianus, theodosius et arcadius aaa. cynegio praefecto praetorio. quicumque defectum fundum patrimonialem exercuerit instruxerit fertilem idoneumque praestiterit, salvo patrimoniali canone perpetuo ac privato iure defendat velut domesticum et avita successione quaesitum sibi habeat, suis relinquat, neque eum aut promulgatione rescripti aut reverentia sacrae adnotationis quisquam a fructu impensi operis excludat. ceterum eos, qui opimas ac fertiles retinent terras aut etiamnunc sibi aestimant eligendas, pro defecta scilicet portione summam debiti praesentis iubemus implere: eos etiam, qui emphyteuticario nomine nec ad plenum idoneas nec omnimodis vacuas detinent, sic ex illis quoque, quae praesidio indigent, iustam ac debitam quantitatem debere suscipere, ut indulto temporis spatio post biennium decretum canonem solvendum esse meminerint. hi autem, qui proprio voluntatis adsensu nunc quod diximus elegissent neque sibi nunc opimum aliquid et conducibile vindicarent, sed tantum nuda et relicta susceperunt, triennii immunitate permissa debitum canonem inferant. nemo tamen qualibet meriti et potestatis obiectione submoveatur, quominus ad diacatochiae vicem defectas possessiones patrimonialis iuris accipiat, earum tributa et canonem soluturus: illud speciali observantia procurans, ut primum vicinas et in eodem territorio sortiatur, dehinc si neque finitimas neque in iisdem locis reppererit constitutas, tunc demum etiam longius positas, sed in quantum fieri valet pro interiecto spatio sibimet cohaerentes, pro modo et aequitate suscipiat, ut consensu omnium fiat quod omnibus profuturum est. dat. viii kal. nov. constantinopoli honorio n. p. et evodio conss. (386 oct. 25).

CTh.5.14.31 [= v,13,31 h.]

Idem aaa. floro praefecto praetorio. saltuenses fundi iurisque patrimonii in orientis regionibus siti turbata exactione dispositionis annuae maximo dicuntur dispendio fatigari et inmanissima opprimi mole reliquorum, eo, quod ad ordinarios sollicitatio transducta latiorem depraedandi praebuit facultatem. illustris itaque auctoritas tua memoratos fundos ad rationalium curam praecipiat revocari. dat. viiii kal. ...Constantinopoli timasio et promoto conss. (389 [?] ...).

CTh.5.14.32 [= v,13,32 h.]

Idem aaa. rufino praefecto praetorio. fundos patrimoniales semel expetitos et traditos refundere conductoribus omnino non liceat: et si huiusmodi facultatem quolibet tempore, qualibet auctoritate meruerunt, impetratis in fraudem publicam non stabitur. dat. xvii k. aug. constantinopoli theodosio a. iii et abundantio conss. (393 iul. 16).

CTh.5.14.33 [= v,13,33 h.]

Idem aaa. rufino praefecto praetorio. ius emphyteuticum, quo iuris patrimonialis vel rei publicae praedia possessoribus sunt adiudicata perpetuariis, ita inconcussum cum nostris tum maiorum nostrorum iussibus esse retinemus, ut, quod semel traditum fuerit, nec a nobis umquam possit nec ab alio aliis possidentibus occupari. sed quia improborum inpotentia factum est, ut optimis quibusque lucri cupiditati et quaestui servientibus deteriores agri provinciales relicti sint, quos nemo eorum dignatus fuerit obtinere, sublimis magnificentia tua iudicibus, officiis ac defensoribus eam poenam constituet, ut, nisi desertis ac deterioribus fundis utilium confusione mixta subvenerint, sciant a se multam aut poenam, quae proposita fuerit, sustinendam. dat. iii kal. aug. constantinopoli d. n. theodosio a. iii et abundantio conss. (393 iul. 30).

CTh.5.14.34 [= v,13,34 h.]

Idem aaa. rufino praefecto praetorio orientis. qui fundos patrimoniales iure privato salvo canone susceperunt, hanc omnes sine ullius exceptione personae propositam intellegant optionem, ut aut ea loca, quibus minor est soli fecunditas, cum his, ex quibus fructus uberes capiunt, suscipere et tenere non abnuant, aut, si eorum refugiunt sterilitatem, opimioribus cedant. dat. viii id. nov. tyro metropoli arcadio iii et honorio ii aa. conss. (394 nov. 6).

CTh.5.14.35 [= v,13,35 h.]

Impp. arcadius et honorius aa. hadriano comiti sacrarum largitionum. restaurationi moenium publicorum tertiam portionem eius canonis, qui ex locis fundisve rei publicae annua praestatione confertur, certum est satis posse sufficere. de vectigalibus itaque publicis, quae semper ex integro nostri aerarii conferebant expensas, nihil omnino decerpi nomine civitatum permittimus. dat. viii id. aug. olybrio et probino conss. (395 aug. 6).

CTh.5.14.36 [= v,13,36 h.]

Idem aa. eutychiano praefecto praetorio. repetitae legis iussione mandamus, ut, quicumque patrimoniales fundos detinere detegatur, aut domum se aput constantinopolitanam urbem habere ...Re perdoceat aut, si non habet vel talem habere monstratur in fraudem legis locum si velit praedae numerari, qui nobilissimae urbi deformitati sit potius quam decori, ad extructionem eiusdem intra annum, si possessionibus se carere non patitur, magnificentiae tuae vigore cogatur. pari etiam illos iubemus condicione retinendos, qui iuxta legem divi patris nostri nonnulla ex praedicto iure fundorum..................... (396-405 ...).

CTh.5.15.0. De omni agro deserto et quando steriles fertilibus imponantur

CTh.5.15.14 [= v,13,14 h.]

..........Fundorum obligatione securitatis publicae firmaverunt cautionem, susceptos scilicet semel fundos post emensa inmunitatis spatia inconvulsa a se vectigalium pensione retinendos. dat. vii k. iun. divo ioviano et varroniano conss. (364 mai. 26).

CTh.5.15.15 [= v,13,15 h.]

Idem aa. ad mamertinum praefectum praetorio. emphyteutica praedia, quae senatoriae fortunae viris, praeterea variis ita sunt per principes veteres elocata, ut certum vectigal annuum ex his aerario penderetur, cessante licitatione, quae recens statuta est, sciat magnifica auctoritas tua a priscis possessoribus sine incremento licitandi esse retinenda ita, ut quaecumque in commissi fortunam inciderint ac pleno dominio privatis occupationibus retentantur a leontii et sallustii consulatu, ius pristinum rursus adgnoscant. dat. iiii kal. aug. sirmio divo ioviano et varroniano conss. (364 iul. 29).

CTh.5.15.16 [= v,13,16 h.]

Idem aa. ad provinciales byzacenos. nequaquam emphyteuticos fundos ante commissi vitium ad alterum transire debere sancimus. et cetera. dat. prid. id. sept. aquileia divo ioviano et varroniano conss. (364 sept. 12).

CTh.5.15.17 [= v,13,17 h.]

Idem aa. ad mamertinum praefectum praetorio. super fundis emphyteuticis seu patrimonialibus divus iulianus legem consultissimam dedit, scilicet ut, qui ex his vel ad privatorum iura transissent vel minuto canone condicionis fisco locationibus tenerentur, ad statum retraherentur antiquum. hanc legem quidam iudicum interpretati pravius sunt quam utilitas publica postulabat, ut eiusmodi praedia ex rebus privatis nostris eruentes ibi tantummodo satisfacerent legi, ubi non intererat fisci vectigalibus, utrumne privato iure an emphyteutico possideret. quamquam igitur animadvertimus esse consultius in eodem statu fundi maneant, in quo ante legem divi iuliani fuerant, de quibus tamen nihil specialiter statuit, ab his, quibus omnia deinceps erogata sunt, auctoritas tua redhiberi eos maturo iubebit auxilio. erga ceteros sane fundos, quos recentium principum effusio aut perpetuo iure donavit aut deminuto canone concessit emphyteuticariis obtinendos, edictum comprehensi principis auctoritas tua valere praecipiat. dat. et proposita romae vi k. nov. divo ioviano et varroniano conss. (364 oct. 27).

CTh.5.15.18 [= v,13,18 h.]

Idem aa. ad florianum comitem. quotienscumque emphyteutici iuris praedia in vitium delapsa commissi actis legitimis ac voci fuerint subicienda praeconis, super facto licitationis et augmento nostra perennitas consulatur, nec prius eius dominio, qui ceteros oblatione superavit, perpetuae firmitatis robur accedat, quam si super pensionis modo, conductoris nomine, enthecae quantitate nostrae tranquillitatis arbitrium fideli ratione consultum observanda praescripserit. dat. iiii k. mart. triveris valentiniano et valente aa. conss. (368? 370? 373? febr. 26).

CTh.5.15.19 [= v,13,19 h.]

Idem aa. ad germanianum comitem sacrarum largitionum. fundi emphyteutici patrimonialisque iuris in antiquum ius praestationemque redeant, ne quoquo modo exempti ab emphyteutico patrimonialique titulo veluti privato iure teneantur, rectoribus provinciarum et rationalibus monendis, ut sciant contra commoda largitionum nostrarum specialia non admittenda esse rescripta, his tantummodo exceptis, quos in re privata nostra secundum legem datam iam dudum in hoc nomine manere praecepimus. dat. v. k. aug. valentiniano et valente aa. conss. (365? 368? iul. 28).

CTh.5.15.20 [= v,13,20 h.]

Idem aa. ad germanianum comitem sacrarum largitionum. placuit, ut emphyteuticorum fundorum patrimonialiumque possessores, quo voluerint, quo potuerint tempore et quantum habuerint pensionis paratum, dummodo non amplius quam in tribus per singulos annos vicibus, officio rationalis adsignent ac de suscepto ab eodem securitatem eodem die pro more percipiant, modo ut intra ianuariarum iduum diem omnis summa ratiociniis publicis inferatur: gravissimae poenae subdendo officio, si cuiquam quolibet anni tempore, dummodo nequaquam numerum trinae illationis excedat, solutionem facere gestienti negaverit susceptionis officium vel si moram fecerit in chirografo securitatis edendo. super quo possessores apud curatores vel magistratus aut quicumque in locis fuerit, qui conficiendorum actorum habeat potestatem, conveniet contestari, ut et de officii insolentia constet, in quod exercenda vindicta est, et his possit esse consultum. dat. xiiii k. iun. remis gratiano n. p. et dagalaifo conss. (366 mai. 19).

CTh.5.15.21 [= v,13,21 h.]

Idem aa. ad auxonium praefectum praetorio. si fundos patrimoniales vel emphyteuticos quispiam postularit, super nomine suo ad nostram clementiam sciat esse referendum, ut temeritatis notam subeat. sane si rationalis vel eius officium per coniventiam fundum huiusmodi tradendum esse crediderit, summo supplicio sese adficiendum esse cognoscat, ademptis facultatibus. dat. prid. .... (a. 368-370 ...).

CTh.5.16.0. De agricolis et mancipiis dominicis vel fiscalibus sive rei privatae?

CTh.5.16.29 [= v,14,5 h.]

................Praeter eas, quarum agit curam officium rei privatae canonis emphyteutici annonas sacris largitionibus pendantur, illud etiam, quod his fundis vel iuris rei publicae praeter antiquum canonem peraequatio imposuit, privatis largitionibus inferatur. dat. v kal. iul. theodoro v. c. cons. (399 iun. 27).

CTh.5.16.30 [= v,14,6 h.]

Imppp. arcadius, honorius et theodosius aaa. silvano comiti rerum privatarum. qui praedia domus nostrae perpetuo iure detentant, iuxta tenorem praesentis iussionis maturius exigantur, tum etiam omnia reliqua, quae huc usque officii palatini neglegentia resederunt, pari cura compulsa, protinus privato aerario nostro inferantur. dat. iii non. oct. ravenna stilichone et anthemio conss. (405 oct. 5).

CTh.5.16.31 [= v,14,7 h.]

Idem aaa. volusiano comiti rerum privatarum. quidquid praediorum ex tempore, quo clementiae nostrae pater iam humanam in caelestem aeternitatem mutavit, de re privata nostra vel donatum iure directo pervenire monstratur ad quamcumque personam, auferendum serenitas nostra decernit. dat. iii k. dec. ravenna basso et filippo conss. (408 nov. 29).

CTh.5.16.32 [= v,14,8 h.]

Impp. honorius et theodosius aa. cereali comiti rerum privatarum. ne omni patrimonio domus aeternalis venditionibus denudetur, praeceptione praeteriti temporis antiquata distractionem volumus conquiescere, atque in domo aeternali universa praedia, quae ex promulgatae auctoritatis die reliqua fuerint, retineri. illud tamen sollicita praecipimus ordinatione constitui, ut, si pretia, quae ab emptoribus illata sunt, intra provincias retinentur nec ad sacratissimum...........

CTh.5.16.33 [om. h.]

.........Us propositis super data forma cognoverint, eadem emptoribus intra anni spatium praebeantur, nulli qui hoc tempus excesserit, in emptionem praerogativam sibimet vindicantes. verum nullus ambigat quae compararit penes se propriosque successores in perpetua hac praestatione canonis firmiter esse mansura. dat. id. iun. constantinopoli d. n. theod. a. iiii et qui fuerit nuntiatus. (412 iun. 13).

CTh.5.16.34 [= v,14,9 h.]

Impp. theodosius a. et valentinianus c. valerio comiti rerum privatarum. thebaide qui...Bricalis emit ad rem dominicam pertinentem ex a.. deinceps quibuscumque eiusdem condicionis, qui iuxta p...Turae constitutionis tenorem emit, fundos tute liceat possideri, ita ut fideiussores ab huiusmodi mercatu extranei quidam ea proprium patrimonium ..... non de eiusdem possessionis ac iuris incor..R....Tur quam de re nequaquam in m.....Es.... tributum solvendo divinam dom...... verum quotiens alicui colonorum agrum privati patrimonii nostri placuerit venundari, non unus tantum, qui forte consortibus suis gravis ac molestus existat, sed alii quoque duo vel plures ex simili origine ac iure venientes in supra dicta emptione socientur. dat. id. dec. constantinopoli theod. a. xi et valentiniano c. conss. (425 dec. 13).

CTh.5.16.35 [= v,14,10 h.]

Idem aa. iohanni comiti rerum privatarum. praedia, quae ad ius privatum divinae domus pertinent, venundari censemus exceptis palatiis atque his possessionibus.................

CTh.5.17.0. De fugitivis colonis, inquilinis et servis

CTh.5.17.1pr. [=brev.5.9.1pr.]

Imp. constantinus a. ad provinciales. apud quemcumque* colonus iuris alieni fuerit inventus, is non solum eundem origini suae restituat, verum super eodem capitationem temporis agnoscat.

CTh.5.17.1.1 [=brev.5.9.1.1]

Ipsos etiam colonos, qui fugam meditantur, in servilem condicionem* ferro ligari conveniet, ut officia, quae liberis congruunt, merito servilis condemnationis compellantur implere. dat. iii. kal. nov. pacatiano et hilariano coss.

interpretatio. si quis alienum colonum sciens in domo sua retinuerit, ipsum prius domino restituat et tributa eius, quam diu apud eum fuerit, cogatur exsolvere: ipse vero, qui noluit esse, quod natus est, in servitium redigatur

CTh.5.17.2 [=brev.5.9.2]

Imppp. valent., theodos. et arcad. aaa. cynegio pf. p. quisquis colonum iuris alieni aut sollicitatione susceperit aut occultatione celaverit, pro eo, qui privatus erit, sex auri uncias, pro eo, qui patrimonialis, libram auri cogatur inferre. dat. viii. kal. nov. constantinopoli, honorio n. p. et evodio coss.

interpretatio. si quis colonum alienum aut sollicitaverit aut occultaverit, si privati hominem sua sollicitatione susceperit, sex auri uncias domino reddat; si fiscalem sollicitatum tenuit, libram auri cogatur implere

CTh.5.17.3

........Ad florentium comitem sacrarum largitionum. quod si dominus servum aut colonum alienum regionis dumtaxat nostrae sciens in domo vel in agro suo consistentem iudicibus non praesentat aut admonitus a fugitivi domino eum adsignare dissimulat, multam retentatoris incurrat. (........).

CTh.5.18.0. [=brev.5.10.0.] De inquilinis et colonis.

CTh.5.18.1pr. [=brev.5.10.1pr.]

Impp. honor. et theodos. aa. palladio pf. p. si quis colonus originalis vel inquilinus ante hos triginta annos de possessione discessit, neque ad solum genitale silentii continuatione repetitus est, omnis ab ipso, vel a quo forte possidetur, calumnia penitus excludatur quem annorum numerum futuris quoque temporibus volumus observari.

CTh.5.18.1.1 [=brev.5.10.1.1]

Quod si quis originarius intra hos triginta annos de possessione discessit, sive per fugam lapsus, seu sponte seu sollicitatione transductus, neque de eius condicione* dubitatur, eum, contradictione summota, loco, cui natus est, cum origine iubemus sine dilatione restitui.

CTh.5.18.1.2 [=brev.5.10.1.2]

Quod si forte ipse, de cuius proprietate certatur, fatali sorte consumptus* est, eius posteritatem agrorum iuri cum omni peculio atque mercedibus, velut eo superstite, qui decessit, celeri iubemus exsecutione revocari.

CTh.5.18.1.3 [=brev.5.10.1.3]

In feminis sane observationem volumus esse diversam. itaque mulierum, quae fuisse originariae docebuntur, si ante vicesimum annum de solo, cui debebantur, abscesserint, universa repetitio cesset; earum vero, quarum intra comprehensum tempus discessio comprobatur ac de condicione* nulla dubitatio est, prorsus dominis perire non sinimus, ea tamen condicione* servata, ut vicaria cum agnatione partis tertiae non negetur, quae de colono suscepta est alieno, ita ut pro filiis quoque contrarii praebeantur.

CTh.5.18.1.4 [=brev.5.10.1.4]

Quod si non ad alienum praedium, sed cuiuscumque* liberi hominis ac sui iuris secuta consortium in urbibus vel in quibuscumque* locis victura consistit, si modo intra praefinitum tempus reposcitur, eius omnem originem secundum vetera constituta conveniet revocari.

CTh.5.18.1.5 [=brev.5.10.1.5]

Contestatas autem lites, si tamen quisquam docebitur solenniter fuisse conventus, salvas repetentibus esse decernimus. dat. vi. kal. iul. ravenna, monaxio et plinta coss.

interpretatio. si quis colonum alienum in re sua vel in fuga lapsum vel sua voluntate migrantem triginta annos habuerit, ac si suum vindicet. qui si intra triginta annos inventus fuerit a domino, cum filiis secundum legem sibi debitis et omni peculio revocetur. quod si forte mortuus fuerit, filii eius cum mercedibus suis vel patris mortui a domino revocentur. colona etiam si viginti annis in alieno dominio et iure permanserit, a priore domino non requiratur; si tamen intra viginti annos inventa fuerit et de alieno colono filios susceperit, cum agnationis parte tertia revocetur: quia colonum duae partes agnationis sequuntur. sane ne separatio coniugii fiat, illum, cuius colonus est, vicariam mulierem et pro tertia agnatione mulieris domino compensare praecipimus. si vero mulier iuris alieni ingenuum maritum duxerit, omnis mulieris agnatio ad eius dominium pertinebit. quod hic minus est de colonae agnatione, in novellis legibus invenitur

CTh.5.19.0. [=brev.5.11.0.] Ne colonus inscio domino suum alienet peculium vel litem inferat ei civilem.

CTh.5.19.1 [=brev.5.11.1]

Impp. valent. et valens aa. ad clearchum vicarium asiae. non dubium est, colonis arva, quae subigunt, usque adeo alienandi ius non esse, ut, et si qua propria habeant, inconsultis atque ignorantibus patronis in alteros transferre non liceat. dat. vi. kal. febr. valentin. et valente aa. coss.

interpretatio. in tantum dominis coloni in omnibus tenentur obnoxii, ut nescientibus dominis nihil colonus neque de terra neque de peculio suo alienare praesumat

CTh.5.20.0. [=brev.5.12.0.] De longa consuetudine.

CTh.5.20.1 [=brev.5.12.1]

Imp. iulianus a. ad maximum. venientium est temporum disciplina, instare veteribus institutis. ideoque quam nihil per causam publicam intervenit, quae diu servata sunt, permanebunt. dat. iv. kal. mart. constantinopoli, iuliano a. iv. et sallustio coss.

interpretatio. longa consuetudo, quae utilitatibus publicis non impedit, pro lege servabitur

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CTh.6.1.1

(.............).

CTh.6.2.0. De senatoria dignitate

CTh.6.2.1-11

(?) ....

CTh.6.2.12

Legata ree caelesti sententia.... glebalis necessitas auferatur. quod non solum circa viros dinoscitur constitutum, verum etiam circa filias simili condicione servandum dat. xviii kal. ... hierapoli gratiano a. iiii et merobaude conss. (? = 7) (377....).

CTh.6.2.13

Imppp. gratianus, valentinianus et theodosius aaa. ad hypatium.... si quis, senatorium consecutus nostra largitate fastigium vel generis felicitate sortitus, possessionis alicuius professionem senatui crediderit occulendam, praedium fisco noverit vindicandum, quodcumque subtractum publicis iure compendiis erit. quique consularitatis insignia fuerit adsecutus, dignitatis obeundae atque exercendae administrationis huius copiam non habeat, nisi propria adnotatione digesserit se senatorium nomen agnoscere et larem habitationemque vel sedes certas in provincia atque oppido collocasse nihilque amplius quam certum professionis modum varias intra provincias possidere, cuius indicio palatinis scriniis quaesito quam primum omnis instructio facile declaret, quibus quantisve nominibus quove in modo perennis aerarii emolumenta subcreverint. duorum vero follium maneat cunctos indiscreta professio, etiam si possessiones forte non habeant, quos dignitas consularis vel clarior atque sublimior potestas ulla provexerit, nemine ad insignia potestatis admittendo, nisi professionem vinxerit, et his tantum a necessitate huiusmodi segregandis, quos palatinae honore militiae et stipendiis adprobatos debita potius quam postulata senatorii ordinis societas advocaverit. dat. iiii id. ian. merobaude ii et saturnino conss. (? = 8) (383 ian. 10).

CTh.6.2.14

Idem aaa. clearcho praefecto urbi. omnes, qui ex macedoniae partibus amplissimo constantinopolitanae urbis ordini allecti sunt, ad thracum similitudinem senatorum glebali iubemus praestatione reddi immunes. dat. ....Sept. constantinopoli richomere et clearcho conss. (? = 9) (384 aug./sept.).

CTh.6.2.15

Imppp. valentinianus, theodosius et arcadius aaa. ad aurelianum praefectum urbi. quod ad eorum querimonias, qui se glebalia non posse ferre onera testabuntur, amplissimorum virorum consilio definitum est, scilicet ut septenos quotannis solidos pro sua portione conferret, qui praebitionem implere follium non valeret, eatenus .... confirmamus, ut omnes, quibus est census angustia, contemplatis patrimonii sui viribus liberam habeant optionem, quatenus, si collatio ista non displicet, a consortio amplissimi ordinis non retendant. sin vero grave, id est damnosum videtur, dignitatem senatoriam non requirant. dat. prid. kal. sept. constantinopoli theodosio aug. iii et abundantio vr cl conss. (? = 10) (393 aug. 31).

CTh.6.2.16

Impp. arcadius et honorius aa. florentio praefecto urbi. omnes senatores, qui in sacratissima urbe consistunt, licet habeant per longinquas provincias atque diversas possessiones, aurum oblaticium in urbe persolvant, quod a procuratoribus et actoribus suis ad urbem reditus perferuntur. sane his senatoribus, qui in provinciis larem fovent, per provincias censuales, qui plenam habent notitiam, inmineant, quo cognoscant sine dilatione aurum profuturum aerario nostro quantocius inferendum. dat. xviii kal. oct. olybrio et probino conss. (? = 11) (395 sept. 14).

CTh.6.2.17

Idem aa. ad senatum et populum. post alia: censuales nostros, quibus onerosa glebae adfirmatur esse exactio, ab ipso quidem negotio summovemus. sed quia praecipuam eis scimus harum rerum esse notitiam, et disquisitionis curam et rationem manifestae instructionis eis imponimus. dat. xvii kal. mai. mediolano caesario et attico consulibus. (? = 12) (397 apr. 15).

CTh.6.2.18

Idem aa. ad senatum et populum. post alia: si senator patrimonium proprium in quemcumque qualibet ratione transtulerit, inminutio licet consignationis tempore probata non valet nisi causa prius erit actis provincialibus adprobata. dat. xvii kal. mai. mediolano caesario et attico conss. (? = 13) (397 apr. 15).

CTh.6.2.19

Idem aa. caesario praefecto praetorio. qui in sacro mansuetudinis nostrae palatio militarint, si coetui senatus consortioque fuerint sociati, iuxta latam dudum legem glebalem tantum sustineant functionem, ad praeturae vero functionem atque onera non vocentur. dat. iii kal. mai. constantinopoli caesario et attico conss. (? = 14) (397 apr. 29).

CTh.6.2.20

Id. aa. florentino praefecto urbi. dudum praecepimus, ut aurum oblaticium senatores, qui in sacratissima urbe degunt, in urbe complerent, ii vero, qui in provinciis larem foverent, per censualium officia in provinciis solverent. sed quoniam cognovimus praedictum officium non posse exsecutioni sufficere, ad praedictum negotium auxilia congrua ab ordinariis iudicibus volumus ministrari. dat. vii kal. ian. mediolano caesario et attico conss. (? = 15) (397 dec. 26).

CTh.6.2.21

Iidem aa. felici praefecto urbi. glebam possessionum, non personarum esse perspicimus, ac propterea necesse est, ut illis immineat exactio qui ex re eadem reditus consecuntur. nam cum censibus deferatur, non potest auri professio perire domino. hac itaque sanctione decernimus, ut hispaniae in praesens tantum tempus beneficiis indultis utantur servaturi posthac in solvendis functionibus provinciarum consuetudinem ceterarum. dat. iiii kal. april. mediolano honorio a. iiii et eutychiano conss. (? = 16) (398 mart. 29).

CTh.6.2.22

Idem aa. patroino comiti sacrarum largitionum. a collatione glebalis auri vel i..N .... ii tituli ne domum quidem nostram inmunem .... esse praecepimus. proposita iiii kal. mart. mediolano vincentio et fravito vv. cc. conss. (? = 17) (401 febr. 26).

CTh.6.2.23

Impp. honorius et theodosius aa. ad monaxium praefectum urbi. si quis .....Is.I.S tota impleta militia ad proximatum et comitivam dispositionum vel magisterium admissionum pervenerit, nulla penitus functione vel glebatione senatoria tum primum ob dignitatem vicariam fatigetur sitque inmunis a septem quoque solidorum praestatione, quae tenuissimos senatorum adsolet obligare. dat. vi id. mai. constantinopoli constantio et constante conss. (? = 18) (414 mai. 10).

CTh.6.2.24

Idem aa. sebastio comiti. si quis desertam possessionem sub peraequationis sorte perceperit, eum a praestatione glebae senatoriae, etiamsi antiquitus hoc onus fundum manebat, alienum esse praecepimus. illa vero praedia, quae navalem sustinent functionem et in desertis huc usque iacuerunt meliore condicione in omnibus titulis convenit relevari, ut gravis sors pro ea qua resederit portiuncula navalis esse non possit, cum aliis fuerit dispendiis liberata. dat. prid. id. mai. ravenna honorio a. xi et constantio ii conss. (? = 19) (417 mai. 14).

CTh.6.2.25

Impp. theodosius et valentinianus aa. ad senatum urbis romae. post alia: oblationem nobis amplissimi ordinis prompta liberalitate promissam partim remittimus vobis, partim patriae communi urbique largimur. dat. vi kal. mai. romae, recitata in senatu per theodosium primicerium notariorum dd. nn. theodosio xii et valentiniano ii aa. conss. (? = 20) (426 apr. 26).

CTh.6.2.26

Idem aa. proculo praefecto urbi. post alia: praeter eos, qui notariorum nostrorum scholae praeclaro sunt sacrati collegio vel ...Rum praerogativa nostrorum aut etiam sacri consistorii decurionum militia muniuntur, item qui e schola agentum in rebus expletis stipendiis ad principatum ducenae pervenerunt, togati quoque praetorianae atque etiam urbicariae praefecturae ceterique omnes, qui delatis sibi senatoriis dignitatibus fruuntur, pro suis viribus glebales tantum functiones agnoscant: palatinis sacrarum et privatarum largitionum, quoniam renuntiandum senatoriae dignitati adita nostra clementia crediderunt, senatoriis functionibus eximendis et, quamvis a senatorum consortio segregentur, in omni securitate mansuris, nec non etiam filiis eorum atque nepotibus, secundum divi constantini atque constantii constitutiones: ita ut omne beneficium omnisque adnotatio specialis super immunitate contra huius sanctionis formam a quocumque officio persona schola vel professione elicita nullam habeat firmitatem, sed allegata quoque et ab amplissimo, si ita contigerit, suscepta ordine denuo, cum libuerit, retractetur: totius temporis, quod interea fluxerit, ab eo, qui hoc impetrare studuerit, descriptionibus extorquendis, etsi hoc idem praeiudicium adnotationis tenore elicitae remittatur. dat. prid. kal. feb. constantinopoli felice et tauro conss. (? = 21) (428 ian. 31).

CTh.6.3.0. De praediis senatorum

CTh.6.3.1

Imppp. theodosius, arcadius et honorius aaa. aureliano praefecto urbi. si quid syriarchiae a senatoriis possessionibus annua collatione confertur, iubemus aboleri. dat. iii kal. mart. constantinopoli theodosio a. iii et abundantio conss. (393 febr. 27).

CTh.6.3.2

Impp. arcadius et honorius aa. caesario praefecto praetorio. senatoriae functionis curiaeque sit nulla coniunctio et ne laedendi curialibus praebeatur occasio per apparitores rectorum provinciae de senatorum fundis fiscalia postulentur habeatque hanc disponendi curam, cui defendendi senatus sollicitudo mandata erit. si curia sibi censitorem vel peraequatorem voluerit postulare, sibi postulet, non senatui. dat. prid. id. aug. constantinopoli arcadio iiii et honorio iii aa. conss. (396 aug. 12).

CTh.6.3.3

Idem aa. africano praefecto urbi. a curialibus terris senatoria gleba discreta sit nec ulla fiat in possidendo clarissimarum domorum curialiumque coniunctio nec ullo exactionis genere vinciantur, idque curent ii, qui per civitates defensorum senatus officium susceperint, quorum periculo teneatur, si quid dispositum fuerit in dispendium senatorum. sin vero curiales censitorem vel peraequatorem suis terris voluerint postulare, ab eorum petitione sit senatus alienus. dat. prid. id. aug. constantinopoli arcadio iiii et honorio iii aa. conss. (396 aug. 12).

CTh.6.3.4

Idem aa. eutychiano praefecto praetorio. docuit tua sublimitas exactionem tributorum senatus non posse concurrere, adeo ut in nonnullis provinciis senatorii canonis medietas in debitis resideret. atque ideo ceteris in prioris legis serie permanentibus id solum corrigi atque emendari iubemus, ut senatorii fundi non per officia, sed per curiales potius exigantur ad eosque iterum sollicitudo recurrat. dat. prid. non. sept. ancyra caesario et attico conss. (397 sept. 4).

CTh.6.4.0. De praetoribus et quaestoribus

CTh.6.4.1

Imp. constantinus a. aeliano praefecto urbi. religiosis vocibus senatus amplissimi persuasi decernimus, ut quaestores ea praerogativa utantur, qua consules et praetores, ita ut, si quis intra annum sextum decimum nominatus fuerit absens, cum editio muneris celebratur, condemnationis frumentariae nexibus minime teneatur, quoniam memoratae aetati placet hoc privilegium suffragari. dat. vii. id. mart. sirmi constantino a. vi et constantio caes. conss. (320 [326?] mart. (?) 9 (?)).

CTh.6.4.2

Idem a. iuliano praefecto urbi. minores xx annis aetatis contemplatione infirmae hoc etiam remedio sublevamus, ut eius necessitudinis titulo minime teneantur, cuius laqueis vinciuntur ii, qui post vicensimum aetatis suae annum trans mare positi et in provinciis commorantes nequaquam ludis circensibus ac scaenicis exhibendis sui copiam faciunt et ideo certo generi multationis obiecti sunt. dat. prid. non. mart., acc. romae constantio et maximo conss. (327 mart. 6).

CTh.6.4.3

Imp. constantius a. ad mecilium hilarianum praefectum praetorio. post alia: praetores et quibus inminet iudicandi necessitas modo ruris adscripta ne parvo quidem tempore copiam sortiantur abeundi ex urbe: qui aliter fecerit, multae obnoxius sit, quae iam pridem divo principi placuit, et perscriptam omnem summam mox inferre cogatur. dat. viii ... april. constantio ii et constante aa. conss. (339 mart. apr.).

CTh.6.4.4

Idem a. ad mecilium hilarianum praefectum praetorio. omnes clarissimi, qui per dioecesim sublimitatis tuae degunt, nostri auctoritate praecepti ad urbem romam venire cum impensis, quas ludi scaenicorum vel circensium vel muneris ratio poscit, cogantur. et cetera. dat. iiii kal. iul. constantio ii a. et constante conss. (339 iun. 28).

CTh.6.4.5

Idem a. ad senatum. primae praeturae, quae flaviali nuncupatione signatur, viginti et quinque milium follium et quinquaginta librarum argenti erogationem sumptusque praescripsimus. in secunda vero constantiniana viginti milia follium et quadraginta libras argenti largiendas esse censemus. tertia triumphalis quindecim milia follium ac triginta argenti libras sine inconmodo editoris expendat. dat. v id. sept. antiochiae post cons. constantii ii et constantis. (340 sept. 9).

CTh.6.4.6

Idem a. ad senatum. pro eo, quem absentem tempus editionis invenerit, erogationem debitam fiscus expendat, post adventum cuncta, quae praerogata fuerint, soluturo. dat. v id. sept. antiochiae post cons. d. n. constanti ii et constantis. (340 sept. 9).

CTh.6.4.7

Idem a. ad orfitum praefectum urbi. litteris ad hilarianum praefectum praetorio destinatis praecepimus senatores ad urbem romam venire compelli, ut muneribus iniunctis operam possint praestare sollemnem et professionem edere compellantur; eos autem editores, qui tempore praestituto praesentes esse neglexerint, iuxta leges venerabiles divi constantini quinquagena milia modiorum tritici urbis romae horreis inferre compelli. dat. prid. id. mart. constantio a. vi et constantio caes. ii conss. (353 [354] mart. 14).

CTh.6.4.8

Idem a. ad senatum. hac lege sancimus arbitrio vestro nominationes solitas fieri usurpatione iudicum cessante. dat. iii id. april. mediolano, lecta ab araxio proconsule die vi id. mai. constantio a. viii et iuliano caes. i conss. (356 apr. 11).

CTh.6.4.9

Idem a. ad senatum. placet, ne minus quinquaginta clarissimi veniant in senatum: certum est namque hoc numero large abundare substantiam virtuti omnimodae. dat. iii id. april. mediolano, lecta ab araxio proconsule die vii id. mai. constantio a. viii et iuliano caes. i conss (356 apr. 11).

CTh.6.4.10pr.

Idem a. ad senatum. die natali meo constanti a. id. aug. ac deinceps designationibus curiam operam dare sancimus. quod si forsitan dies unus alterve non sufficit, tot haec utilitas occupet, quot esse monstraverit necessarios negotii magnitudo. (356 mai. 9).

CTh.6.4.10.1

Et quicumque forsitan impetraverit pretio functorum coetibus adgregari, indulta ei cessent; allectionis quaerendus est honor. secernimus enim ab his, patres conscripti, quibus meriti suffragatio conciliat nostra beneficia et quicumque cessante suffragio illustribus meritis praetorii vel aliam meruerit dignitatem, praesidio muneris nostri perpetuo perfruatur. (356 mai. 9).

CTh.6.4.10.2

Nemo sane in filium transferat vel nepotem aliumve quemlibet, quod personae eius incumbit, sed honorem suum capiat, designatus expleat munus impositum. dat. vii id. mai. constantio aug. viii et iuliano caes. i conss. (356 mai. 9).

CTh.6.4.11

Idem a. ad senatum. si quos in urbe roma perfunctos esse claruerit magistratibus, ad nulla editionum genera devocentur. urbis autem romae curiam callide declinantes clarissimo praeditos nomine per achaiam, macedoniam totumque illyricum iussimus quaeri raro vel numquam sedem dignitatis propriae frequentantes, quibus locorum grata confinia possint esse iucunda, ut carens mora longinquae peregrinationis debea dignitas concupisci. lecta prid. id. aug. constantio a. viiii et iuliano c. ii conss. (357 aug. 12).

CTh.6.4.12

Idem a. ad senatum. praetores designentur senatus consulto legitime celebrato, ita ut adsint decem e procerum numero, qui ordinarii consules fuerint quique praefecturae gesserint dignitatem, proconsulari etiam honore sublimes, themistius quoque philosophus, cuius auget scientia dignitatem, et iam his praesentibus qui praeturae insignia honoremque ante susceperint latis per ordinem sententiis designentur, ita ut, si qui forte medio tempore humana sorte decesserint, alii in eorum locum, qui eandem dignitatem, ut utamur veterum verbis, subsortiti fuerant, subrogentur, scilicet ut, qui sequenti post eum anno eandem suscepturus praeturam fuerat, in demortui locum senatus consulto et sententiis substitutus praeturae insignia dignitatemque suscipiat. dat. v non. mai. gyfyrae tauro et florentio conss. (361 mai. 3).

CTh.6.4.13pr.

Idem a. ad senatum. ex quinque praetoribus, qui sollemniter designati editionem celebrare consuerunt, tres numero editionis necessitati et populi voluptatibus operam dent, duo vero argentum inferant eiusdem urbis fabricis provida ratione profuturum. namque constantiniana, quae prior est, ita deputari fabricis debet, ut mille libras argenti praetor expendat flavialis vero, quae tertia est, quingentas operibus eiusdem urbis exhibeat. (361 mai. 3).

CTh.6.4.13.1

Quod si qui ex his, qui praetores fuerint designati, ad editionem subeundam venire non potuerint vel aetate vel aegritudine retardati, cum pondere, sicut nobis moderantibus conditum est, ad officium praefecti urbi procuratorem debebunt ilico destinare, scilicet ut sub eius praesentia opus, quod ex eo pondere coeptum fuerit, construatur, hac pollicitatione dumtaxat, ut eidem operi ex eius nomine titulus inscribatur. (361 mai. 3).

CTh.6.4.13.2

In potestate censualium denominatio non sit, sed ante decennium legitimo senatus consulto praetores designati editionem praeturasque ipsas senatus arbitrio sortiantur, ita ut, si conventi iidem venire neglexerint, dimidium plus, quam quanti sumptuum necessitas postulat, vel in argento vel in ipsis pigneribus ad praefecti urbi officium destinetur: quod quidem pondus operibus publicis debebit adscribi sine ulla conmendatione atque inscriptione eius nominis, qui officia dignitatis per contumaciam detrectarit. (361 mai. 3).

CTh.6.4.13.3

Quod si iudices, qui praefecti urbi fuerint inscriptione conventi, rem segnius exsecuntur et nequaquam aut ipsos ad urbem aut pignera destinarint, per singulos praetores ipsi iudices denas auri libras, officia vero eorum quinas denas inferre debebunt, ita ut exerto vigore praefecti urbis nostrae auri pondus exactum operibus faciat mancipari. nec ulla protrahendi sit causa, cum in tantum praefecturae urbi dignitatem auctam esse velimus, ut haec condemnatio ob segnitiem conventionis inflicta missis ab eodem praefecto urbi officialibus debeat postulari. (361 mai. 3).

CTh.6.4.13.4

Quod si qui forte vicaria potestate perfuncti praeturam hinc acceptam ferri student, statutum pondus argenti viribus inferre nostrae urbis adigantur, videlicet ut tantum inferant, quantum eos praetores inferre iussimus, qui editionis necessitate cessante argentum fabricarum contemplatione praebituri sunt. dat. v non. mai. gyfyrae tauro et florentio conss. (361 mai. 3).

CTh.6.4.14

Idem aa. ad senatum. placuit, patres conscripti, eos solos designare praetores, qui aliquibus editionibus functi sunt, sic videlicet, ut praevaleat numerus isque praedictum suscipiat magistratum, quem plures crediderint eligendum. dat. xi kal. iun. sirmio eusebio et hypatio conss. (359 mai. 22).

CTh.6.4.15

Idem a. ad senatum. meministis profecto, patres conscripti, nec ullius temporis avellet oblivio, quod facundus ex proconsule et arsenius ex vicariis praetorum insignibus splenduerunt, nec quisquam horum putavit esse praeturam intra propriam dignitatem. quid autem illustrius his repperitur exemplis? debuerat profecto res ista, debuerat alios etiam conmonere proconsulari ac vicariae praefecturae praeditos potestate non esse praeturam minorem propriis meritis. oportuit adpeti splendidos fasces, decuit tanti nominis gloriam concupisci, nec aliquem omnino fas erat nominationibus reluctari, quas nec ratio prohibet et exempla confirmant. a vobis ergo praetores placuit designari et vestro eligi arbitrio iussimus, qui suscipiant fasces editionibus operam praebituri, nec ad notitiam nostram praefective praetorio clarissimi viri super nominationibus ullis referri. dat. xi kal. iun. sirmio eusebio et hypatio conss. (359 mai. 22).

CTh.6.4.16

Idem a. ad senatum. praetori defertur haec iurisdictio sancientibus nobis, ut liberale negotium ipse disceptator examinet adsertionibus ordinatis, quas iuxta ordinem iuris convenit celebrari. sane interponi ab eo decreta conveniet, ut, sive in integrum restitutio deferenda est, probatis dumtaxat causis ab eodem interponatur decretum, seu tutoris dandi seu ordinandi curatoris, impleatur ab eo interpositio decretorum: quippe cum aput eum quoque adipisci debeat patronorum iudicio sedula servitus libertatem, nec sane debita filiorum votis patrum vota cessabunt, ut patente copia liberos suos exuant potestate, magis propriis obsequiis mancipatos, cum sese intellegant his obsequii plus debere, a quibus sese meminerunt vinculis curiae exutos. dat. iii kal. ian. eusebio et hypatio conss. (359 dec. 30).

CTh.6.4.17

Impp. valentinianus et valens aa. ad olybrium praefectum urbi. divinum parentem nostrum constantinum sanxisse perspeximus, ut, quando vivo patre atque omnia cognoscente munera senatoria eundem nominatum praetorem diem functum esse proponeretur ac superstites viderentur esse filiae masculorum natura minime extante, nullam executionem haberent feminae. igitur quando evenerit non solum masculos successores esse patri suo, verum etiam feminas hereditario iure succedentes advenire, tam praeturam quam etiam oblationes, universas personis earundem nullo modo concedas, sive plenae aetatis sive adultae constitutae fuerint. sed iuxta portionem hereditariam singularum personarum adtributa paterna subire et ipsas compellere curabis. etsi iniustum enim atque dedecus videtur mulieres ad laticlavum atque insignia procedere, tamen car..Nariam praeturam iuxta glebam paternae substantiae cognoscere poterunt. dat. xiiii kal. feb. ipsis aa. conss. (368? 370? ian. 19).

CTh.6.4.18

Idem aa. ad volusianum praefectum urbi. legem divae memoriae constantini, qua editores munerum sive ludorum, si editionis tempore abesse voluissent, condemnari pro dignitatis gradu certa tritici quantitate praecepti sunt, fixam atque inviolabilem volumus permanere. sinceritas tua igitur absque his, quibus liberum conmeatum clementia nostra concesserit, in omnes reliquos promulgatam legem extendat. data..... mediolano, accepta iiii kal. iul. constantinopoli valentiniano et valente aa. conss. (365 iun. [?] 28).

CTh.6.4.19

Idem aa. ad senatum. satos de frygiae gregibus equos quattuor subiugandos quadrigis, hoc est simul octo, duobus maximarum editionum praetoribus dari sancimus. dat. id. april. antiochiae modesto et arintheo conss. (372 apr. 13).

CTh.6.4.20

Idem aa. clearcho praefecto urbi. ineundi magistratus unum omnium diem praetoribus quattuor esse oportet, ianuariarum scilicet kalendarum. et si quis vel differendum vel contemnendum esse crediderit, non solum statum editionis pretium cogatur exsolvere, verum etiam multae quoque nomine dimidium extrinsecus pretii cogatur inferre. dat. viii id. mai. modesto et arintheo conss. (372 mai. 8).

CTh.6.4.21pr.

Imppp. valentinianus, valens et gratianus aaa. ad bapponem praefectum urbi. tempore, quo temonarii designantur, etiam so... nominatio celebretur fiatque conventio, quam per officiales praefecti urbi curari oportet, ut, si ita res expetit, omissis officiis provinciarum ad pervestigandum fideliore possis uti quam commodato. ipsi potissimum super designatorum nominibus consulamur, quo missis viris strenuis obligatisque iudicibus non modo temonarii, verum complices quoque eorum in exhibitionem proprii muneris urgueantur. fingamus enim posse fieri, ut designati primo et secundo vel tertio anno subterfugere inquirentium sollicitudinem possint; certe septem reliquis haut dubie poterunt repperiri. (372 aug. 22).

CTh.6.4.21.1

Denique, ut prius statuimus, eorum, qui per annos singulos ad candidatum atque honores certos nominantur, in scientiam nostram post designationem debitam insinuatione fida vocabula deferantur. (372 aug. 22).

CTh.6.4.21.2

Idem et in subrogandis certis quibus in diem functorum locum ordo teneatur. (372 aug. 22).

CTh.6.4.21.3

Et licentia inolita derogetur officiis, quae ex denuntiatione huiusmodi quaestum saepe secuta sunt. (372 aug. 22).

CTh.6.4.21.4

Simul provinciales nostri aut animentur spe levioris impensae, aut certe, si editionis suae tempore conmunem patriam declinarint, metu congruae severitudinis urgueantur. (372 aug. 22).

CTh.6.4.21.5

Nec sane excipimus eos, quos ad praesens labor publicus officiumve detentat, providentia secutura, ut aut conventi a nobis in vicem propriam idoneos dirigant, aut ipsi, quia res exigit, sumpto temporarie conmeatu romam ire deproperent. (372 aug. 22).

CTh.6.4.21.6

Super provisione autem senatus egregii atque consulto, quo definiri a nobis reverentissime depoposcit, ut duo vel tres de his, qui nominantur candidati arcae, possint in certo argenti pondere sociari, tunc melius aestimare poterimus, cum duos folles aut quattuor aut certe amplius in professionem habebunt, quid sustinere in muneribus possint aut debeant quive editionis ordo sit. cum enim sedulo fuerit intimatum, collata a nobis editionis necessitate cum subsidiis facultatum et professionis modo rite poterit definiri, quid unusquisque expensae pro captu virium debeat sustinere. (372 aug. 22).

CTh.6.4.21.7

Sane eorum arbitrio nulla lege praescripsimus, qui pro consideratione patrimonii nataliumque merito secundum splendorem honoris proprii enormitatem impendii non recusant. his enim providendum nos hac oratione censemus, qui non solum admonendi sunt, ne muneri suo desint, verum praescriptorum sumptuum vilitate ac moderatione provocandi. dat. xi kal. sept. nasonaci modesto et arintheo conss. (372 aug. 22).

CTh.6.4.22pr.

Idem aaa. ad senatum. ante x annos cuiuslibet editionis praetorem nominari et intra quinque menses designatum iussimus conmoneri, ut aut editurus praestet adsensum aut, si praeferet contrariam voluntatem, futuri examinis iudicium non moretur. (373 iun. 9).

CTh.6.4.22.1

Nam intra septem menses adcelerandae cognitionis terminus constitutus dilationis licentiam imperio fundatae definitionis excludit. nec enim allegationibus cuiusquam ulla poterit esse reparatio per ignaviam, si silentii pigrioris definitum tempus fuerit evolutum, si posthabita taciturnitate serae voluerit merita defensionis ostendere. (373 iun. 9).

CTh.6.4.22.2

Decem vero auri libras ab universo officio per singulas nominationes iubemus inferri, si designatus praetor intra quinque menses nulla fuerit admonitione conventus: ita ut cum praefecto urbi electi ex ordine candidato, cum allegationes suas praetor nominatus exponit, suscipiant officium, audirique singulos cupimus patienter, et, si admittenda sunt quae dicuntur, arbitrio iustitiae vindicari, sin vero inanis probatur adsertio, improbas voces severioris sententiae auctoritate compesci. disceptandi ergo moderatio cuncta componat; cesset potentia ac similiter ambitionis patrocinium repellatur: nullum inique temporibus nostris a quoquam vel opprimi patimur vel defendi. (373 iun. 9).

CTh.6.4.22.3

Quod si quisquam iudicum haec praecepta transscenderit vel novae praesumptionis insania, quae sunt sanctionibus consecrata, violarit, ut hostis publicus atque expugnator utilitatis inventae contra senatus consulta importuni furoris temeritate congredietur, et arbitrio nostro et vestro iudicio notam perpetrati criminis sortietur; similis culpae insimulatione plectendis, qui cum eodem residentes propriae nobilitatis obliti adulantis gratiae turpissimam praetexerint vilitatem. nec sane fas erit huiuscemodi reis veniam relaxari, qui per patrocinia iudicum distrahentes et senatus temptaverint infamare collegium et sub auctione vendiderint ius romanum. (373 iun. 9).

CTh.6.4.22.4

Nominatores autem praetorum iudices esse non patimur, qui, dum arbitrium suum cupiunt adprobari, insolentius aliquid, quam moderatio patitur, sui contemplatione decernunt. (373 iun. 9).

CTh.6.4.22.5

Si quem vero ex nominatis praetoribus pro huius auctoritate gravior condemnatio sauciaverit, ab editionis eum placet onere submoveri, duabus, videlicet existentibus causis, quod vel erogationi idoneus esse non valeat vel suscipere qui culpam meruit non debeat dignitatem. cavendum est autem, ne sub hac permissione concessa etiam illis, qui levi fuerint emendatione correcti, huiusce patrocinii gratia deferatur, cum his utique tantum debeat provideri, quos gravissimi dispendii mole fatigatos subitum pondus obpressit. quod si probabilis fuerit et iusta conquestio, relevatae necessitatis gratiam consequatur. dat. v id. iun. valentiniano et valente iiii aa. conss. (373 iun. 9).

CTh.6.4.23

Idem aaa. ad senatum. ab illis editionis peti ordinem non debere iustitia pariter et consuetudo declarat, qui consulares ac praetorios codicillos suo excellenti merito ac nostro sunt beneficio consecuti. lecta v id. iun. valentiniano et valente iiii aa. conss. (373 iun. 9).

CTh.6.4.24

Imppp. valens, gratianus et valentinianus aaa. ad senatum. ne quis praetorum semel praestitutae expensionis transeat modum; sed nec officiis aliquid largiatur. dat. iii kal. iun. antiochiae valente v et valentiniano iuniore aa. conss. (376 mai. 30).

CTh.6.4.25pr.

Imppp. gratianus, valentinianus et theodosius aaa. ad senatum. praetores quattuor vobis tot addimus, quot fuerunt. prima igitur, patres conscripti, constantiniani et constantiani nominis est praetura; theodosianum enim et arcadia num praetores primis praetoribus addidistis. veteres triumphalem praetorem bellicae felicitatis causa reppererunt; nos iniunximus augustalem. his omnibus honorum insignibus romani nominis praetura sociatur; huic sociavimus laureatum. (384 oct. 23).

CTh.6.4.25.1

Constantiniana et constantiana praetura per duos danda libris argenti mille, theodosiana vero et arcadiana item libris argenti mille, triumphalis vero et augustalis libris argenti quadringentis et quinquaginta, romana vero et laureata libris argenti ducentis et quinquaginta peragantur, ita tamen, ut ad unamquamque praeturam convenientis summae medietas a singulis, ut iam diximus, conferatur ac bini posthac incipiant agnoscere, quod singuli antea transigebant. dat. x kal. nov. constantinopoli richomere et clearcho conss. (384 oct. 23).

CTh.6.4.26

Imppp. theodosius, arcadius et honorius aaa. aureliano praefecto urbi. nominandorum praetorum sollicitudinem illustris magnificentia tua ad officium censuale sciat esse revocandam. dat. iii kal. mart. constantinopoli theodosio aug. iii et abundantio viro clarissimo conss. (393 febr. 27).

CTh.6.4.27

Impp. arcadius et honorius aa. dextro praefecto praetorio. cunctos quaestores et praetores, qui in agris degunt, susceptum et promissum munus pro notitia officii censualis pro eorum dignitate, vel quod spontanea voluntate professi sunt, dare praecepimus. dat. kal. nov. brixiae olybrio et probino viris clarissimis conss. (395 nov. 1).

CTh.6.4.28

Idem aa. simplicio praefecto praetorio. post alia: qui ducatum administrarunt, ad editionem vel nominationem praeturae pertineant praeter eos, qui gravissimam armatae militiae sollicitudinem longa temporum serie pertulerunt et eos, qui sacri consistorii nostri arcanis interesse meruerunt. hos enim a praeturae munere alienos esse censemus. dat. x kal. ian. constantinopoli arcadio iiii et honorio iii augg. conss. (396 dec. 23).

CTh.6.4.29

Idem aa. .... praefecto urbi. nuper quidem huiusmodi praecesserat sanctio principalis, ut theatralis per praetores facienda depensio in aquaeductus fabricam verteretur; nunc vero iusta moderatione facias custodiri, ut praetores romanus et laureatus natalibus nostri numinis scaenicas populo praebeant voluptates. dat. iiii kal. ian. constantinopoli arcadio iiii et honorio iii aa. conss. (396 dec. 29).

CTh.6.4.30

Idem aa. eutychiano praefecto praetorio. ex quinque praetoribus, qui aquaeductui theodosiaco fuerant deputati, unum, qui centum librarum argenti munificentiam suam definita erogatione praecludit, aeterni principis ac fratris mei honorii natalium festivitatibus praecipio deputari. dat. prid. kal. ian. constantinopoli arcadio iiii et honorio iii aa. conss. (396 [?] dec. 31).

CTh.6.4.31

Idem aa. ad senatum et populum. post alia: neminem editorum, quos votivi sumptus designarit electio, responsum nostrae tranquillitatis solvat, sed designationum ordo servetur. et cetera. dat. xvii kal. mai. mediolano caesario et attico conss. (397 apr. 15).

CTh.6.4.32

Idem aa. .... praetor divini numinis nostri pro his praetoribus, qui primae editioni fuerant adtributi, praebeat populo voluptates. dat. vi kal. iul. nicomedia, acc. prid. kal. aug. constantinopoli caesario et attico conss. (397 iun. 26).

CTh.6.4.33

Idem aa. severo praefecto urbi. praetores, qui loco primo sunt, trecentas libras argenti in explicando munere non cogantur excedere: hi vero, qui primos sequuntur, centum quinquaginta libras argenti depensuros esse cognoscant: at vero hi, qui loco tertio numerantur, centum libras argenti dependant nec cuiquam profundendi licentia tribuatur. quia vero theatralibus et circensibus ludis per annos singulos celebrandis unus praetor nutu nostrae clementiae quingentarum librarum argenti nuper fuerat deputatus, nunc vero hanc quantitatem constat in prioribus praetoribus..... (a. 398?...).

CTh.6.4.34

.............It praeiudicium fieri non patimur, cum his in severi examine iudicii constitutis, quod quidem actorum intra tempus exhibitorum tenore monstrabitur, occupatio amplissimi senatus vel quaelibet ratio iudiciariae dilationis nocere nequeat. itaque hac amota formidine causa cuiusque pro suo merito ventiletur, ut si quid in huiusmodi causa iam de praeiudicio temporis ex sententia statuatur, firmum permaneat. in...Alis vero, nisi intra quinque menses nominatos admonuerint, intra septem etiam causas excusationis cognosci propere instanter monendo perfecerint, poenam lege divi valentis statutam inminere praecipimus. et quia multis rei familiaris angustiae in hac editione dilationem necessariam faciunt et triennii dilatio, quae lege hisdem concessa fuerat ob reparationem nimirum muneris, exolevit, quia scilicet in curando eo non tam longis ad reparationem spatiis indigent, curae iam id magnitudinis tuae atque ordinis amplissimi dandum statuimus, ut consideratis allegationibus et fortunis hominum his, quibus merito deferri potest, biennii vel triennii aut etiam quinquennii, si res exegerit, indutiae praebeantur, quod quidem necessitatis est vel etiam mediocritatis sollacium, non voluntariae ac deliciosae voluptatis vacatio, ut copiosi etiam adfluentes divitiis iis indutiis perfruantur. dat. prid. id. iun. constantinopoli basso et filippo conss. (408 iun. 12).

CTh.6.5.0. Ut dignitatum ordo servetur.

CTh.6.5.1 [=brev.6.1.1]

Imppp. grat., valent. et theodos. aaa. ad clearchum pf. u. nihil est tam iniuriosum in conservandis et custodiendis gradibus dignitatum quam usurpationis ambitio. perit enim omnis praerogativa meritorum, si absque respectu et contemplatione vel qualitate etiam provectionis emeritae custodiendi honoris locus praesumitur potius quam tenetur, ut aut potioribus eripiatur id, quod est debitum, aut inferioribus prosit, quod videtur indebitum. dat. iv. kal. iun. constantinopoli, merobaude ii. et saturnino coss.

interpretatio. nemo sibi honores vel dignitatem, quam a principe ipse non meruerit, praesumat, quia, sicut eis, qui meruerunt, dignitas ornamentum est, ita nota maculandi sunt, qui praesumunt

CTh.6.5.2 [=brev.6.1.2]

Iidem aaa. ad praetextatum pf. p. coelestis recordationis valent., genitor nominis nostri, singulis quibusque dignitatibus certum locum meritumque praescripsit. si quis igitur indebitum sibi locum usurpaverit, nulla se ignoratione defendat, sitque plane sacrilegii reus, qui divina praecepta neglexerit. dat. xii. kal. iun. mediolano, richomere et clearcho vv. cc. coss.

interpretatio. si quis praesumpserit*, quam non meruerit a principe dignitatem, sacrilegii reus habeatur. hic de iure addendum, quae sit poena sacrilegii

CTh.6.6.0. De consulibus, praefectis, magistris militum et patriciis

CTh.6.6.1

Imppp. gratianus, valentinianus et theodosius aaa. ad severum praefectum urbi. universa culmina dignitatum consulatui cedere evidenti auctoritate decernimus. sed ut consulatus anteponendus est omnibus fastigiis dignitatum, in omni etiam curiae senatoriae actu sententia coetu, si quis consulatu et praefectura vel culmine militari conspicuus est, pridem consulari praeferendus haud dubio est. porro si contigerit, ut ad duas has praerogativas etiam patriciatus splendor addatur, quis dubitet huiusmodi virum praeter ceteros eminere? neque enim unus tantum honor potest duobus aut pluribus anteferri, dummodo consulatui ex his, quae designatae sunt, dignitas quaecumque societur. dat. kal. april. antonio et syagrio vv. cc. conss. (382 apr. 1).

CTh.6.7.0. De praefectis praetorio sive urbis et magistris militum

CTh.6.7.1

Imppp. valentinianus, valens et gratianus aaa. ad ampelium praefectum urbi. praefectos urbi, praefectos praetorio, magistros equitum ac peditum indiscretae ducimus dignitatis, usque adeo videlicet, ut, cum ad privatam secesserint vitam, eum loco velimus esse potiorem, qui alios promotionis tempore et codicillorum adeptione praecesserit. quocirca expressum ordinem dignitatum illic potissimum volumus custodiri, ubi intra secretaria extraordinariosque conventus subest ratio visendi salutandive iudicis. ceterum in amplissimo curiae nostrae legitimoque consessu digestae ordinationibus priscis obtineant dignitates. dat. iii non. iul. nasonaci, acc. iii non. sept. modesto et arintheo conss. (372 iul. 5).

CTh.6.7.2

Imppp. gratianus, valentinianus et theodosius aaa. restuto praefecto urbi. quisquis magisterium equitum peditumque susceperit et gesserit ante captam a quoquam praefecturam, is, cum privatus erit honoremve deposuerit, expraefectis qui post provecti fuerint praeferatur. sit igitur sedes prior ante provectis, locus conspectior, decernendi loquendique facultas antiquior, cui est splendor adepti magistratus vetustior. et cetera. dat. viii kal. iul. thessalonica gratiano v et theodosio i aa. conss. (380 iun. 24).

CTh.6.8.0. De praepositis sacri cubiculi

CTh.6.8.1

Impp. honorius et theodosius aa. florentio praefecto urbi. qui sacri cubiculi nostri fuere praepositi vel nunc esse coeperunt vel quos postea sors ad adscendendi huius gradum fastigii devocarit, ea dignitate fungantur, qua sunt praediti, qui eminentissimam praetorianam vel urbanam meruerint praefecturam aut certe militarom magisteriam potestatem, ita ut sit inter eos post depositas administrationes nulla discretio, sive nostrae serenitatis adoraturi admittuntur imperium sive pro suo arbitrio sollemnes festivitates et coetus vel salutationes vel quaelibet alia officia frequentent, ut in sedibus et consessu is eis ordo servetur, quem ordo provectionis ostenderit, sub habitu ipsis videlicet consueto, cum manifeste decretum sit eum esse qui praecesserit potiorem, vel illum subsequi, quem recentius probavit examen. sed ut nos ad hanc promulgationem macrobi viri illustris merita provocarunt, ita observationem quoque legis ab eius volumus sumere provectione auspicium, ut, qui ante ipsum fuerunt, sub hac condicione praestituto honore laetentur, ut non suae promotionis tempora ad legis usurpationem revolvant nec praeferri se postulent his, qui praetorianam vel urbanam praefecturam vel militare magisterium post eorum provectionem sortiti sunt, sed perinde habeantur, ac si nunc coeperint, et in eodem ordine permanentes, in quo nunc eos liberalitas nostra constituit, provectionis viri illustris macrobii tempora metiantur, ut ex huius administrationis exordio, prout quisque provectus est vel fuerit provehendus, suae locum vindicet dignitatis. dat. viii id. nov. constantinopoli, honorio xiii et theodosio x aa. conss. (422 nov. 6).

CTh.6.9.0. De quaestoribus, magistris officiorum, comite sacrarum largitionum et rerum privatarum

CTh.6.9.1

Imppp. valentinianus, valens et gratianus aaa. ad ampelium praefectum urbi. post alia: eorum honores, qui sacrario nostro explorata sedulitate oboediunt, hac volumus observatione distingui, ut quaestor atque officiorum magister nec non duo largitionum comites proconsularium honoribus praeferantur. et cetera. dat. iii non. iul. nasonaci, acc. iii non. sept. modesto et arintheo conss. (372 iul. 5).

CTh.6.9.2pr.

Imppp. gratianus, valentinianus et theodosius aaa. restuto praefecto urbi. post alia: qui exquaesturae honore aut efficaci magisterio aut comitiva utriusque aerarii nostri attonito splendore viguerunt, adclamatione excipiantur solita, nec praetereantur ut incogniti atque, ut non aequandi illis, qui gesserint praefecturas, sed eo observentur cultu omni coetu omnique conventu. neque enim inpar est ratio meriti, etiamsi intervenit dilatio ulla. (380 mai. 25).

CTh.6.9.2.1

Quoniam cohaerent is dignitatibus, quae isdem iure debentur, intersit aliquid inter tempora magistratuum vitamque privatam actus depositi dignitas pares eos viros praestet atque honore consimiles. quid enim in his quattuor dignitatibus non ex congrua diversitate putemus esse conmune? quod cum ita sit, hos viros haberi volumus, non ut qui meruerint tantum, sed quasi qui gesserint praefecturas, cum non privilegiis temporis praeferantur, sed honoris aequalitate laetentur. dat. viii kal. iun. thessalonicae gratiano v et theodosio i aa. conss. (380 mai. 25).

CTh.6.10.0. De primicerio et notariis

CTh.6.10.1

Imppp. gratianus, valentinianus et theodosius aaa. eutropio praefecto praetorio. praecipua est nostrae pietatis intentio circa notariorum nomen, atque ideo, si umquam huius ordinis viri laborem quiete mutaverint vel senectute posuerint seu cum alia dignitate post hanc qualibet usi sunt, non omittant prioris vocabulum militiae, sed compendium sequentis honoris adsumant. et si quis ex officio vel praecipue sublimitatis tuae temerarius ad census discussiones peraequationes, aliam denique ullam rem inquietator extiterit, officium suum norit vel levis culpae offensione detecta gravis multae discrimine fatigandum et numerariorum corpus extincto iniuriae auctore minuendum. dat. xvii kal. iul. thessalonica gratiano v et theodosio i aa. conss. (380 iun. 16 [?]).

CTh.6.10.2

Idem aaa. ad valerianum praefectum urbi. notariorum primicerios, si, prout eorum voluntas fuerit, de consistorio nostro sine administratione discesserint, non solum vicariis anteponi, sed etiam proconsulibus aequari sancimus, ita ut nihil nisi tempus intersit. eodem honore atque eodem ordine sequens primicerium tribunus ac notarius perfruetur. alios porro notarios et tribunos vicariis iubemus aequari ac, si priores id vocari coeperint, anteferri. at vero domesticos et notarios consularibus simili ratione componimus. et cetera. dat. iiii kal. april., acc. xii kal. maii syagrio et eucherio viris clarissimis conss. (381 mart. 29).

CTh.6.10.3

Idem aaa. floro praefecto praetorio. notariorum primicerium in numero proconsulum habemus, tamquam comitis ei semper fasces cum curulibus dederimus. praetorianos non longe ab hoc abducimus, ut qui ad tribunatum nominis huius accesserint, orientis sive aegypti comitivae videantur infulas consecuti. tribunos residui nominis nemo dubitet vicariis exaequandos et praeferendos his, quos adepti honoris praecesserint; reliquos vero, quos domesticum inter notarios et familiares nobis nomen insinuat, parem gradum cum consularibus obtinere sancimus. et cetera. dat. id. dec. constantinopoli syagrio et eucherio conss. (381 dec. 13).

CTh.6.10.4

Impp. theodosius a. et valentinianus caes. hierio praefecto praetorio orientis. post alia: qui ex primiceriis notariorum ad illustrem meruerint magistri a vigiliis atque laboribus procedere summitatem, minime redigendi sunt in ordinem ceterorum, quo honorarios meruerint codicillos, quoniam et res ipsa, quod primum locum sint militiae nobilis adsecuti, et publica saepe impleta commoditas numquam otiosos fuisse testatur. et cetera. dat. x kal. oct. topiso theodosio a. xi et valentiniano caes. conss. (425 sept. 22).

CTh.6.11.0. De magistris scriniorum

CTh.6.11.1

Imppp. valentinianus, valens et gratianus aaa. ad ampelium praefectum urbi. post alia: magistros scriniorum nostrorum praeferri volumus vicarianae potestati. et cetera. dat. iii non. iul. nasonaci, acc. iii non. sept. modesto et arintheo conss. (372 iul. 5).

CTh.6.12.0. De comitibus consistorianis

CTh.6.12.1

Impp. arcadius et honorius aa. severino praefecto urbi. comasii nos et clearchi virorum spectabilium dignitas admonuit, ut eos, qui tranquillitatis nostrae consistorii dici comites meruerunt, proconsularibus aequari generaliter iuberemus, ut eorum emenso ordine ante omnes alios ipsi vindicent dignitatem. dat. vii kal. oct. constantinopoli theodoro v. c. conss. (399[?] sept.25)

CTh.6.13.0. De comitibus et tribunis scholarum

CTh.6.13.1

Impp. honorius et theodosius aa. prisciano praefecto urbi. praepositos ac tribunos scholarum, qui et divinis epulis adhibentur et adorandi principis facultatem antiquitus meruerunt, inter quos tribunus etiam sacri stabuli et cura palatii numerantur, si primi ordinis comitivam cum praepositura meruerint et casu ad altiora non pervenerint, deposito sacramento inter eos, qui comites aegypti vel ponticae dioeceseos fuerint, quorum par dignitas est, haberi praecipimus. sin absque honore comitivae cuiuslibet scholae regimen fuerint nancti, absolutos militia inter eos, qui duces fuerint provinciarum, numerari iubemus. et cetera. dat. xii kal. april. constantinopoli lucio v. c. cons. (413 mart. 21).

CTh.6.14.0. De comitibus rei militaris

CTh.6.14.1

Imppp. valentinianus, valens et gratianus aaa. ampelio praefecto urbi. post alia: qui contemplatione meritorum ducto intra provincias transmarinas strenuissime milite primi ordinis comitivam fuerint consecuti, ea reverentia altissimarum dignitatum viris subiungantur, ut his locum praestent, qui proconsulatus insignibus adornantur. et cetera. dat. iii non. iul. nasonnaci modesto et arintheo conss. (372 iul. 5).

CTh.6.14.2

Impp. arcadius et honorius aa. florentino praefecto urbi. post alia: neminem militaris corporis virum revocari ad curiam liceat post primi ordinis comitivam, dummodo tam probata merita sudati diu laboris quam fructum anteacti operis adsequatur. ceterum si a quoquam haec fuerint sine usu prioris militiae vel prima vel sola dedecorando ambitu turpiter impetrata, quia videntur in fraudem quaesita, non proderunt. diutius tamen repeti non licebit, etiam cum secundi ordinis comitivam praemiis impetrarit. et cetera. dat. xii kal. ian. mediolano caesario et attico conss. (397 dec. 21).

CTh.6.14.3

Impp. honorius et theodosius aa. prisciano praefecto urbi. post alia: eos, qui sub comitivae primi ordinis dignitate peculiariter ad quamlibet provinciam vel provincias defendendas milite credito auctoritate nostri numinis destinantur, et eos, qui vicem illustrium virorum magistrorum militum susceperint peragendam, ducibus, qui praeter aegyptum et ponticam in aliis provinciis administraverint, adaequamus. dat. xii kal. april. constantinopoli lucio viro clarissimo cons. (413 mart. 21).

CTh.6.15.0. De comitibus, qui illustribus agentibus adsident

CTh.6.15.1

Impp. honorius et theodosius aa. ad priscianum praefectum urbi. post alia: adsessores, qui cum primi ordinis comitiva virorum illustrium in actu positorum sive in provinciis sive in sacro comitatu iuverunt consilia vel iuvabunt, inter eos, qui vicariam praefecturam administrando meruerint, haberi post militiam iubemus depositam, quoniam absurdum est primi ordinis comitiva decoratos inferiores esse vicariis sedis excelsae, quorum crescit dignitas, cum vicaria potestate comitis primi ordinis insignibus decorentur. et cetera. dat. xv kal. april. constantinopoli lucio v. c. cons. (413 mart. 18).

CTh.6.16.0. De comitibus et archiatris sacri palatii

CTh.6.16.1

Impp. honorius et theodosius aa. prisciano praefecto urbi. post alia: archiatros intra palatium militantes si comitivae primi ordinis nobilitaverit gradus, inter vicarios taxari praecipimus, sive iam pridem deposuerunt militiam sive postea deposuerint, ita ut inter vicarios et duces qui administraverint et hos qui comitivam primi ordinis meruerint nihil intersit nisi tempus, quo quis administraverit vel comitivae est in deptus insignia. et cetera. dat. xii kal. april. constantinopoli lucio v. c. cons. (413 mart. 21).

CTh.6.17.0. De comitibus, qui provincias regunt

CTh.6.17.1

Impp. honorius et theodosius aa. prisciano praefecto urbi. post alia: silentio non praeterimus hos, qui in administratione civili ac provinciae gubernaculis sub iurisdictionis licentia comites quoque primi ordinis esse meruerint. nam hos quoque vicariae dignitatis post depositam administrationem privilegiis frui oportet. et cetera. dat. xii kal. april. constantinopoli lucio v. c. cons. (413 mart. 21).

CTh.6.18.0. De comitibus vacantibus

CTh.6.18.1

Impp. honorius et theodosius aa. epifanio praefecto urbi. nullam honorabiles viri in publicis salutationibus patiantur iniuriam neve se illis ullus anteponat, qui primi ordinis comitivam aut pretio impetravit aut gratia. licet enim unum nomen sit, tamen est meritis aestimandum, eosque solos tempora observare conveniet, qui post probatos labores in nostro palatio comites esse meruerunt. ac ne impune ullius temeritas contra statutum nostrum possit audere, decem librarum auri officiis omnibusque, quos salutationis cura constringit, damnum praecipimus imminere. dat. id. oct. ravenna honorio viiii et theodosio v aa. conss. (412 oct. 15).

CTh.6.19.0. De consularibus et praesidibus

CTh.6.19.1

Impp. arcadius et honorius aa. messalae praefecto praetorio. eos, qui consularitatis functi sunt dignitate, comitibus italicianorum et gallicianorum iure praeferimus, si quidem haud exiguus sit titulus meritorum regere et gubernare provincias. dat. iii kal. oct. aquileia stilichone et aureliano vv. cc. conss. (400 sept. 29).

CTh.6.20.0. De comitibus ordinis primi artium diversarum

CTh.6.20.1

Impp. honorius et theodosius aa. prisciano praefecto urbi. post alia: hi, quos aut vulgaris artis cuiuslibet obsequium aut operis publici cura temporalis iniuncta aut rerum publicarum procuratio levis commissa adeo conmendarit, ut comitivae primi ordinis dignitate donentur, sciant se inter eos qui consulares fuerint amoto officio quod susceperant nominandos, nisi forte emolumentis contenti, quae tempore militiae perceperunt, spreto nomine et dignitatem consularis viri duxerint respuendam, ne collationis onus sustineant vel frequentare senatum aliosque huiuscemodi conventus, qui honoratorum frequentiam flagitant, compellantur. et cetera. dat. xii kal. april. constantinopoli lucio v. c. cons. (413 mart. 21).

CTh.6.21.0. De professoribus, qui in urbe constantinopolitana docentes ex lege meruerint comitivam

CTh.6.21.1

Imp. theodosius a. et valentinianus caes. theofilo praefecto urbi. grammaticos graecos helladium et syrianum, latinum theofilum, sofistas martinum et maximum et iuris peritum leontium placuit honorari codicillis comitivae ordinis primi iam nunc a nostra maiestate perceptis, ita ut eorum qui sunt ex vicariis dignitate potiantur. qua in re quicumque alii ad id doctrinae genus, quod unusquisque profitetur, ordinati prodentur, si laudabilem in se probis moribus vitam esse monstraverint, si docendi peritiam facundiamque dicendi, interpretandi subtilitatem, copiam disserendi se habere patefecerint et coetu amplissimo iudicante digni fuerint aestimati, qui in memorato auditorio professorum fungantur officio, hi quoque, cum ad viginti annos observatione iugi ac sedulo docendi labore pervenerint, isdem, quibus praedicti viri, dignitatibus perfruantur. dat. id. mart. constantinopoli theodosio aug. xi et valentiniano caesare conss. (425 mart. 15).

CTh.6.22.0. De honorariis codicillis

CTh.6.22.1

Imp. constantinus a. ad severum praefectum urbi. si quis iudicio nostro se adeptum codicillos adstruxerit et idem vel superna codicillorum inpressio vel scriptura adstipuletur interior, tamen si ad hoc pecuniam constabit speratam, nihilominus reiectus in plebem, quo plus extorquere conatus est, abdicetur. hos enim solos, qui intra palatium versati sunt vel administrationibus functi, ad honores excipi oportebit ceteris cunctis exemptis et curiis restitutis. si qui tamen bonorum virorum suffragio nulla data pecunia vel provinciae legatione suscepta nostris sunt obtutibus illustrati, hi duumviratus, curas, flamonium provinciae lucrati cetera munerum publicorum obire non abnuant. qui vero coemptis procurationum administrationibus post lucra de fisco captata vacationem meruerunt, sive perfectissimi sunt sive inter egregiorum ordinem locumque constiterint, decuriones nominentur. quibus illi quoque addendi sunt, qui neque ex administrationibus sunt et tamen ut perfectissimi delitescunt. dat. x kal. feb. sirmio, acc. non. april. crispo ii et constantino ii cc. conss. (321 [immo 325/6] ian. 23).

CTh.6.22.2

Imp. constantius a. aconio vicario africae. ab honoribus mercandis per suffragia vel qualibet ambitione quaerendis certa multa prohibuit. cui addimus, ut quicumque fugientes obsequia curiarum umbram et nomina adfectaverint dignitatum, tricenas libras argenti inferre cogantur, manente illa praeterea illatione auri, qua perpetua lege constricti sunt. proposita v kal. dec., acc. xvii kal. ian. thamugadi urso et polemio conss. (338 nov. 27).

CTh.6.22.3

Idem a. ad marcellinum praefectum praetorio. cuncti, qui per suffragia praesidum aut rationalium adepti sunt dignitatem, a iudicibus iniuncta protinus exsequi debent. nam si saepe de palatio serenitatis nostrae ad exactiones mittuntur neque his honor, in quo sunt positi, opem praestet utilitate publica praevalente, tanto magis oportet iussis obsequi, parere praeceptis, inservire mandatis eos, qui dignitatis fructum, antequam mererentur, adepti sunt, praesertim cum et statum suarum noverint civitatum et nullius exactionis rationem ignorent. illos autem ad huiusmodi officia minime devocari oportet, quicumque in re publica provinciarum adsecuti sunt debitas dignitates et per administrationis seriem atque actus in summo splendore versati sunt. dat. iiii kal. iul. acindyno et proculo conss. (340 iun. 28).

CTh.6.22.4

Imppp. valentinianus, valens et gratianus aaa. ampelio praefecto urbi. post alia: qui contemplatione meritorum honorarios magisterii equitum adepti sunt codicillos, ea reverentia altissimarum dignitatum viris subiungantur, ut his locum praestent, qui proconsulatus insignibus adornantur. et cetera. dat. iiii. non. iun. nasonnaci modesto et arintheo conss. (372 iun. 2).

CTh.6.22.5

Imppp. gratianus, valentinianus et theodosius aaa. ad valerianum praefectum urbi. post alia: omnes, qui extra palatium constituti codicillis proconsularibus vel epistulis vicariorum vel insignibus consularium emendicatis atque adsimulaticiis vestiuntur, his, quos administratio vel militia provexit, volumus esse postpositos. dat. iiii kal. april. mediolano syagrio et eucherio viris clarissimis conss. (381 mart. 29).

CTh.6.22.6

Idem aaa. floro praefecto praetorio. post alia: officiis publicis atque militiae muneribus expertes, quos habent secretae quietis umbracula, quibus honorum omnium species suffragio est magis parta quam merito, inter se potius volumus de tempore agitare discrimen quam cum his ulla usurpatione coniungere, quos non adumbratis honoribus, sed in actu positis inmortalitati coniunximus. dat. id. dec. constantinopoli syagrio et eucherio conss. (381 dec. 13).

CTh.6.22.7pr.

Idem aaa. postumiano praefecto praetorio. in honoribus hunc ordinem volumus custodiri, ne singulorum quorumque codicillariae dignitates his, qui insignia administrationis gesserint, praeferantur, scilicet ut, quoniam sublimis apicem praefecturae ordo proconsularium sequitur dignitatum, quisquis vicariae potestatis administratione perfunctus ex praefectis impetraverit codicillos, intellegat sibi omnimodis non usurpandum, ut inter eos, qui gestae gaudent amplitudine praefecturae, ordinem salutationis officiumque praesumat, sed inter proconsulares viros, qui tamen eiusdem potestatis securem meruerint fascesque susceperint, in publicis officiis rite praebendum locum sibi patere cognoscat, his tamen anteferendum se, qui impetratis forte proconsularibus codicillis absque administrationis privilegio imaginarias tantum atque honorarias meruerint dignitates. et id quidem circa illos censemus esse servandum, qui vicarias gesserint potestates. (383 mai. 29).

CTh.6.22.7.1

Ceterum quisquis ex numero ordinariarum potestatum, seu consularis administrationis seu nominis praesidalis, ex praefectis aut etiam ex proconsulibus honorarios impetraverit codicillos, praestitutum in deferendis obsequiis ordinem post eos sibi intellegat esse servandum, qui administrando vicarias gesserint potestates; hac tamen, quantum ad ordinariarum potestatum spectat meritum, discretione servata, ut his, qui praesidalis administrationis gesserint dignitates, seu epistulas ex vicariis sive ex proconsulibus seu, quod adpeti intempestivius solet, ex praefectis meruerint codicillos, cessante omni ambitionis studio, debeat anteferri, qui perfunctae privilegio administrationis susceptas in provinciis consularitatis gesserit dignitates. (383 mai. 29).

CTh.6.22.7.2

Memor quisque tamen honorum, memor quisque meritorum ex his, qui qualibet administratione perfuncti sunt, eum gradum honorariae aditionis petat, quem proximiore confinio loco ordinis sui cognoscit esse contiguum. quod si quis neglexerit ordinem constitutum vel amplius in hisdem honorariis dignitatibus usurpandum impetrandumque crediderit, quam proprii loci ratio et forma permittit, sciat se non solum eo, quod contra legem impetraverit, esse privandum, sed viginti quoque auri libris multandum. dat. iiii kal. iun. constantinopoli merobaude ii et saturnino conss. (383 mai. 29).

CTh.6.22.8pr.

Imp. theodosius a. et valentinianus caes. hierio praefecto praetorio. lege avita probatum est, si quis per gradus suo ordini competentes impetratis honorariis codicillis ad summum praefecturae pervenisset usque fastigium, non praerogativa temporis uteretur nec adversus eum, qui indeptus insignia magistratus re ipsa quod meruisset implesset, quia intervallo fuisset forte praegressus aut praevenisset imaginario eandem, quam ille actu illustravit, apice dignitatem, sibi crederet adrogandum, sed modis omnibus sciret se in officiis publicis ei postferendum, qui eundem locum positus in potestate gessisset. hoc nos quoque volumus custodiri, ne quis sibi adpetat, sive imaginarios sive inter agentes codicillos acceperit, ut ei qui egerit ratione temporis praeferatur. (425 sept. 22).

CTh.6.22.8.1

Quin et de consistorianis comitibus hoc nobis universi placere cognoscant, ut his, qui vel absentes sunt facti vel testimonialibus tantum adepti sunt dignitatem, praecedant qui admitti intra consistorii arcanum meruerunt et actibus interesse et nostra adire responsa, praeterquam si de aliquibus professionum et militiae meritis scriniorumque sacrorum emensis sudoribus lege specialiter est statutum, quod et avi nostri sanctio promulgavit et nostra mansuetudo constituit. ita ut omnibus conventibus, officiis atque consessibus legem executioni tradi tua celsitudo provideat, id est ut prior sit semper ille, qui loci sui administratione perfunctus est nec umquam honor delatus ex debito ei qui ad similitudinem tribuitur comparetur. nemo igitur sibi arbitretur annorum adnumeratione plaudendum, quod inter eos tantummodo valere decernimus, qui se aut actibus subsecuntur aut codicillorum parili imagine fulciuntur. non alias adspiraturo quoquam ad consistorianorum comitum dignitatem, nisi ad eius claritudinem viam sibi ex constitutionis avitae norma praestruxerit. dat. x kal. oct. topiso theodosio a. xi et valentiniano c. conss. (425 sept. 22).

CTh.6.23.0. De decurionibus et silentiariis

CTh.6.23.1

Impp. honorius et theodosius aa. urso praefecto urbi et aureliano praefecto praetorio orientis et strategio praefecto praetorio illyrici. decuriones nostri palatii post emensum fideliter obsequium, post deposita sacramenta militiae, ex quo haec sanximus, inter eos, qui ex ducibus sunt, tamquam et ipsi administraverint, esse praecipimus in adoranda nostra serenitate, ut in salutandis administratoribus et reliquis praedicti honoris privilegiis, sed ita, ut in amplissimo et venerabili ordine inter allectos et inmunes a senatoriis distributionibus habeantur nec descriptio glebalis eos in eo adtineat. dat. prid. kal. nov. constantinopoli honorio x et theodosio vi aa. conss. (415 oct. 31).

CTh.6.23.2

Idem aa. venantio praefecto praetorio. unusquisque decurio vel silentiarius, sive post hanc militiam honoratam quietem elegisse fuerit adprobatus sive ad superiorem gradum successu meliore transcenderit, nihil, quod honoratis pro rerum necessitate iniungitur, cogatur exsolvere; sed a tironum et equorum praestatione habeantur inmunes, nudam collationem quae plerumque poscitur solvant, nihil his ulla potestas iniungat aut necessitas imponat. dat. vii id. mart. ravenna asclepiodoto et mariniano conss. (423 mart. 9).

CTh.6.23.3

Impp. theodosius et valentinianus aa. flaviano praefecto praetorio. decurionibus et silentiariis vel his, qui post hanc militiam honoratae quietis otio perfruuntur vel ad superiorem gradum successu meliore transcendunt, omnia privilegia, quae iam dudum divorum principum iudicio meruerunt, legis istius praeceptione noveris esse firmata. illa quoque, quae prioribus indultis omissa videntur, adicienda esse censemus, ne angarias vel parangarias sive paraveredos ulla eis amplissimae praeceptionis imponat auctoritas. a sordidis quoque muneribus, excoctione calcis et superindicticiis titulis, non praeiudicatura quacumque generalitate pragmatici, peculiari eos beneficio esse iubemus alienos, permissa veniendi ad comitatum licentia praeter evocatoriae securitatem, et multa x librarum auri iudicibus provinciarum eorumque officiis infligenda, si statuta numinis nostri crediderint esse temnenda. dat. viiii kal. april. ravenna aetio et valerio conss. (432 mart. 24).

CTh.6.23.4pr.

Idem aa. dario viro illustri praefecto praetorio orientis. decurionum et silentiariorum meritis provocati collata in eos beneficia, quae dominus ac filius noster valentinianus semper augustus erga eos contulit, confirmamus, specialibus eosdem privilegiis honorantes, ut eorum videlicet possessiones nullas angarias sive parangarias vel etiam paraveredos alicuius calumnia dare cogantur nec sordidis sint adstricti muneribus. omni quoque eos excoctione calcis, omni superindicti gravamine liberamus, licentiam post militiam tribuentes, ut, ubi eis fuerit visum, etiam accedendi ad sacratissimum comitatum habeant facultatem, provinciarum rectoribus eorumque apparitionibus denarum librarum auri dispendio feriendis, si mansuetudinis nostrae statuta violare temptaverint. (437 mart. 16).

CTh.6.23.4.1

His addimus, ut, cum optatam quietem acceperint et inter senatores coeperint numerari, honore curiae sine aliqua functione laetentur inmunitatisque gaudio plena dignitatis laetitia potiantur, nec praetoriano nomine pulsandi nec glebali onere praegravandi, sed ut dignitatem solam habeant ex senatu. domos quoque eorum vel in hac sacratissima urbe vel in qualibet alia positas civitate immunes ab omni hospitum cuiuslibet dignitatis inquietudine vindicamus: sub hac videlicet definitione, ut triginta tantummodo numero haec privilegia consequantur, decuriones quoque tres, quos numquam plures fieri inveterata consuetudo permisit. (437 mart. 16).

CTh.6.23.4.2

Sed eos tum demum potiri decernimus beneficiis supra scriptis, cum continuos tredecim annos inculpatas excubias peregerint. illustris auctoritas tua statuta nostrae clementiae edictis propositis ad omnium notitiam faciet pervenire. dat. xvii kal. april. constantinopoli post consulatum isidori et senatoris vv. cc. (437 mart. 16).

CTh.6.24.0. De domesticis et protectoribus

CTh.6.24.1

Imp. iulianus a. secundo praefecto praetorio. scias senum capitum domesticis per singulas quasque scholas, quinquagenis iussis in praesenti esse, iuxta morem debere praestari, ceteris, qui ultra numerum in praesenti esse voluerint, neque annonarias neque capitum esse mandandum, sed omnes cogendos ad plurimos suos ac terras redire. dat. xv. kal. sept. antiochiae mamertino et nevitta conss. (362 aug. 18).

CTh.6.24.2

Impp. valentinianus et valens aa. ad severum comitem domesticorum. domesticorum filios vel propinquos parvos vel impuberes domesticorum coetibus adgregamus, ita ut non solum matriculis inserantur, verum etiam annonarum subsidiis locupletentur. quaternas etenim annonas eos, quos armis gestandis et procinctibus bellicis idoneos adhuc non esse constiterit, in sedibus iubemus adipisci his condicionibus, ut annonae, quae amplius insumuntur vel per tractorias deferuntur, recidantur. dat. xiiii kal. sept. divo ioviano et varroniano conss. (364 aug. 19).

CTh.6.24.3

Idem aa. ad severum comitem domesticorum. sicuti variis itineribus protectorum domesticorum schola comprehensos ad eam venire perspicimus, ita etiam sportularum diversa esse debebit insumptio. grave enim admodum est viros post emensum laborem, qui nullius rei cupidiores fuere quam gloriae, huiuscemodi erogationibus fatigari; eos tamen penitus solummodo inter quinos et denos solidos sportularum nomine primatibus distribuere praecipimus. eos autem, qui vel suffragio vel potentium gratia sacram purpuram adorare pervenerint, quinquagenos solidos volumus insumere. dat. xiiii kal. sept. mediolano divo ioviano et varroniano conss. (364 aug. [?] 19).

CTh.6.24.4

Imppp. valentinianus, theodosius et arcadius aaa. ad eusignium praefectum praetorio. domestici ac protectores osculandi, cum salutaverint, vicarios tui culminis habeant potestatem. poena enim sacrilegii similis erit, si his honorificentia non deferatur, qui contingere nostram purpuram digni sunt aestimati. dat. prid. non. mart. mediolano valentiniano a. iii et eutropio conss. (387 mart. 6).

CTh.6.24.5

Idem aaa. addeo comiti domesticorum. omnes, qui domesticorum iniuncti nomini numquam nostris obsequiis inhaeserunt neque certis quibusque officiis deputati publicas exsecuti sunt iussiones, protinus matriculis eximantur. deinde hi, qui amissam militiam nostro iudicio receperunt, si quidem post unius anni sive biennii spatium loco sunt pristino restituti, in suo ordine permanentes fructum beneficii non amittant. sin vero longo post tempore ambitione atque suffragiis ut rursus sociarentur enisi sunt, ita novissimorum numero iungantur, non ut nunc sternantur extremi, sed ut eum unusquisque optineat locum, in quo esse eo tempore potuit ultimus, cum esset post biennium restitutus. dat. prid. kal. ian. constantinopoli theodosio a. iii et abundantio viro clarissimo conss. (393 dec. 31 [392 ...]).

CTh.6.24.6

Impp. arcadius et honorius aa. addeo comiti et magistro utriusque militiae. divale praeceptum, quod supplicantibus domesticis dudum devotissimis laboriosos praetulit otiosis et abuti prohibuit temporis privilegio eos, qui sibi potius quam rei publicae omni militiae suae tempestate vixissent, erga protectores quoque valere praecipimus ac volumus inconcussum aeternumque durare, ut semper renovari possit. illustris itaque auctoritas tua et eos militia solvere non morabitur, quos nihil umquam vel necessitatibus nostris vel expeditionibus bellicis profuisse constiterit et his locum priorem auctoritate huius legis decernat, quos viderit otiosis oportere praeferri. dat. v non. oct. constantinopoli olybrio et probino conss. (395 oct. 3).

CTh.6.24.7

Impp. honorius et theodosius aa. epifanio praefecto urbi. domestici atque protectores cum primum ad decemprimatus gradum ordine militiae temporis prolixitate pervenerint, statim sibi praeter primicerium decem sequentes senatoriam vindicent dignitatem seque cum allectione clarissimos nostro iudicio gratulentur, recedentibusque proceribus succedens sibi per matriculae ordinem usque ad praescriptum modum vindicet, quisquis accedit. ad nullas praeterea senatorii ordinis vocentur expensas, quibus non ambitio, sed meritum et nostrum spontaneum cognoscitur iudicium detulisse. dat. vi kal. ian. ravenna constantio et constante conss. (414 dec. 27).

CTh.6.24.8

Idem aa. monaxio praefecto praetorio. devotissimis domesticis, quos nobis, ut indicio nominis apparet, familiarius militando ..... optatam protulimus sanctionem, ut praeter primicerios decem primo eorum, cum ad memoratum decemprimatus gradum pervenerint, statim clarissimo nomine decorentur et inter allectos velut exconsulares habiti senatoria se praeditos gaudeant dignitate, ad eundem clarissimatus honorem sequentibus, cum priores exierint, accessuris, ita tamen, ut inmunes senatoriis functionibus penitus habeantur. dat. xv kal. dec. constantinopoli theodosio a. vii et palladio conss. (416 nov. 17).

CTh.6.24.9

Idem aa. monaxio praefecto praetorio. devotissimos protectores, qui armatam militiam subeuntes non solum defendendi corporis sui, verum etiam protegendi lateris nostri sollicitudinem patiuntur, unde etiam protectorum nomen sortiti sunt, inglorios esse non patimur, sed ut devotissimis nuper protectoribus domesticis, ita his quoque honorem congruum condonamus, ut praeter primicerium decem primi eorum clarissimatus dignitate fulciantur et per ordinem primis exeuntibus qui ad decem primorum numerum vocante gradu subierint, continuo cum ipsa loci accessione clarissimatus sibimet vindicent dignitatem et in amplissimo ordine inter allectos velut ex consularibus habeantur, nullis senatoriis muneribus adstringendi. dat. xv kal. ian. constantinopoli theodosio a. vii et palladio conss. (416 dec. 18).

CTh.6.24.10

Impp. theodosius et valentinianus aa. hierio praefecto praetorio. praeter primicerios protectorum domesticorum decem primi scholarum, cum ad huius vocabuli dignitatem devote ac strenue militando pervenerint, statim clarissimatus honore decorati inter allectos veluti ex consularibus esse mereantur, ita ut et a senatoriis functionibus penitus habeantur inmunes nulloque extrinsecus onere praegraventur, ceteris quoque, ubi egressis prioribus ad praedictum suo ordine numerum locumque conscenderint, privilegiis paribus honorandis. dat. xvii kal. april. hierio et ardabure conss. (427 mart. 16).

CTh.6.24.11

Idem aa. heliodoro praefecto urbi. constantinopolitani amplissimi coetus consensu nostroque iudicio domestici decursis gradus stipendiis sub eo sint genere senatores, ut primicerius quidem post acceptum tribunatum inter eos dignitate potiatur, qui ducatum agere meruerunt, alii vero, qui decursis stipendiis ab eodem decem usque numero subsequuntur, his quibus iam ante decretum est dignitatibus perfruantur, sed ita, ut inter eos sine dubio censeantur, qui inmunitatem sibi laboribus redemerunt. ut fructus domesticis impio termino consequenti, etiamsi mortalitas intervenerit, perire non possint, sed quodammodo superstes illis solacii servetur occasio ac, si primicerii limen ingressi in ipsa desideratae spei longa expectatione fructus interruperit fati necessitas, non statim qui praecerpat eos, quem vocat secundus ordo succedat, sed liberis successoribusque tantum gradu venientibus agnatorum, quorum maxime cura emolumentorum perceptione gaudebat, residui temporis usque ad annum quae debentur, sollemniter colligantur. dat. iii id. iun. constantinopoli valerio et aetio viris clarissimis conss. (432 iun. 11).

CTh.6.25.0. De praepositis labarum

CTh.6.25.1

Impp. honorius et theodosius aa. monaxio praefecto praetorio. qui ex devotissimis domesticorum scholis praepositi labarum nostro iudicio et stipendiorum sudoribus promoventur, ad similitudinem decem primorum domesticorum clarissimi sint inter allectos, ita ut ex consularibus habeantur. nam et senatorio nomine et inmunitate digni sunt, quos nostri lateris comitatus illustrat. dat. iii id. nov. constantinopoli theodosio a. vii et palladio conss. (416 nov. 11).

CTh.6.26.0. De proximis, comitibus dispositionum ceterisque, qui in sacris scriniis militant

CTh.6.26.1

Imp. iulianus a. ad secundum praefectum praetorio. in rebus prima militia est, secundus in litterarum praesidiis pacis ornatus. ideoque scriniorum nostrorum merita perpendentes secundum eis in privilegiis locum tribuimus, ut omnes, qui quindecim annis in scriniis laboraverunt memoriae ac dispositionibus epistularum ac libellorum, licet patre vel avo ceterisque maioribus curialibus orti ac proditi sint, tamen ab omni hac necessitate habeantur immunes nec ad curiam devocentur. dat. vii kal. oct. antiochiae, acc. v id. nov. ..Isis mamertino et nevitta v. c. conss. (362 sept. 25).

CTh.6.26.2

Imppp. gratianus, valentinianus et theodosius aaa. ad valerianum praefectum urbi. clarissimos viros proximos scriniorum et magistros dispositionum vicariorum ordini copulamus, ita ut haud prior aliunde provectus palatinis honorariis praeferatur, ut prius e palatio cum huiusmodi dignitate dimissus priorem locum aliis post, etiam vera administratione, venientibus sortiatur. dat. iiii kal. april. mediolano syagrio et eucherio conss. (381 mart. 29).

CTh.6.26.3

Idem aaa. ad hypatium praefectum praetorio. obsecundatoribus sacrorum scriniorum, quorum mentibus ingeniisque committimus, quidquid in alios quoque perennium saepe proferimus sanctionum, equorum ad militare subsidium ab honoratis proxime venire iussorum missam facimus. nullis igitur vel aetate praesenti vel in relicum tale si quicquam emerserit, aut equorum oblationibus aut quibuscumque praeterea de collativo omnium postulatis parere cogantur. dat. xviii kal. ian. patavi antonio et syagrio conss. (382 dec. [?] 15).

CTh.6.26.4

Idem aaa. cynegio praefecto praetorio. proximos memoriae, epistularum ac libellorum ita vicariorum honore cumulamus, ut inter eos merito dignitatis habeantur, qui pro praefectis dioeceses sibi creditas temperarunt, ex eo tempore, ex quo eos splendor indepti proximatus ostentat, insequentibus praeponendi, qui vicarias postea administraverint. dat. prid. kal. mai. constantinopoli honorio nobilissimo puero et evodio conss. (386 apr. 30 [febr. 28]).

CTh.6.26.5

Imppp. valentinianus, theodosius et arcadius aaa. constantio praefecto praetorio. in sacris scriniis nostris militantes ordinarii iudices a salutatione non arceant, etiam inviti in consessum accipiant; scituris vel principe vel corniculario vel capitibus officii ternas libras auri ex suis facultatibus eruendas, si consistorium nostrum saepe ingredientibus secretarii iudicum non patuerit ingressus aut reverentia non fuerit in salutatione delata aut sedendi cum iudice societas denegata. dat. vi id. nov. treviris timasio et promoto viris clarissimis conss. (389 nov. 8).

CTh.6.26.6

Impp. arcadius et honorius aa. hosio magistro officiorum. de his, qui in sacris ..... scriniorum proximi transacto biennio conquiescant dentque locum ceteris, qui ad cupitum gradum pervenire festinant. eos sane, qui ante hoc statutum in locis memoratis inventi sunt, ad metas triennii concedimus pervenire. dat. xv kal. feb. arcadio iiii et honorio iii aa. conss. (396 ian. 18).

CTh.6.26.7

Idem aa. caesario praefecto praetorio. privilegia, quae divae memoriae iulianus in sacris scriniis militantibus tribuit, et illum honorem, quem augustae memoriae valentinianus isdem detulit, confirmantes, scilicet ut ingrediendi sponte sine ullo nuntio secretarium iudicantum, considendi etiam iudicibus habeant potestatem, id etiam nostra moderatione decernimus, ut xx annis in militia scriniorum memoriae epistularum libellorumque versatus consularis inter allectos dignitate cumulatus abscedat eumque honorem vel aput rectorem vel in coetu amplissimi senatus obtineat. ita autem eos post militiam esse volumus otiosos, ut ab omni publica molestia habeantur inmunes nec iniungendi quicquam quis in eos habeat potestatem. dat. xvi kal. mart. constantinopoli arcadio iiii et honorio iii aa. conss. (396 febr. 14).

CTh.6.26.8

Idem aa. claudio praefecto urbi. in scriniis palatii militantes post viginti annos transactae militiae si discedendum sibi esse decreverint, consulari honore fulti inter allectos habeantur huncque honorem dignitatis in senatu teneant, qui exconsularibus deferri consueverit nec eos quisquam iniungendo aliquid vel iubendo possit ab impertito otio separare. dat. xv kal. mart. constantinopoli arcadio iiii et honorio iii aa. conss. (396 febr. 15).

CTh.6.26.9

Idem aa. caesario praefecto praetorio. inter alia: his, a quibus dispositionum nostrarum norma seriesque servatur, eadem privilegia honoresque peractae militiae tribuimus, quae scriniorum nostrorum meritis nuper praecepimus custodiri. dat. vi id. april. constantinopoli caesario et attico conss. (397 apr. 8).

CTh.6.26.10

Idem aa. caesario praefecto praetorio. ad similitudinem proximorum, qui in scriniis militantes comitum dignitatibus adornantur, ii quoque, qui priores in scrinio dispositionum fuerint et comitis acceperint dignitatem, ex eo die, quo promoti in scriniis fuerint, eorum numero socientur, qui potestates vicarias perceperunt, scilicet ut a nestorio viro clarissimo, qui nunc in loco memorato versatur, dignitatis huius sumatur exordium. dat. viiii kal. iul. constantinopoli caesario et attico conss. (397 iun. 23).

CTh.6.26.11

Idem aa. hadriano magistro officiorum. per omnia scrinia nostra singulis annis emensis qui sunt in capite constituti uno anno teneant proximatum, locum per ordinem succedentibus dantes, manente penes eos nihilominus dignitate, quam divus pater noster huius ordinis viris singularis meritorum arbiter dedit, scilicet ut quicumque ex proximo post stipendia tandem acta discesserit, vicariis conferatur, ac si eam ipsam egerit dignitatem, integris omnibus privilegiis, quae cunctis scriniis omnes retro principes diversis legibus praestiterunt. atque ut nulla posthac de statuto tempore possit esse contentio, genuinus natalis nostri dies quotannis comitivam proximatus mansura in longum aetate celebrabit, ut expeti ambitione non possit, quod laboris praemium speciali munere aestimavimus. dat. iii non. iul. mediolano caesario et attico conss. (397 iul. 5).

CTh.6.26.12

Idem aa. clearcho praefecto urbi. omnes, qui ex proximis venerando coetui senatus fuerint adgregati, sive ii de scrinio memoriae sive epistularum vel libellorum sive dispositionum comites fuerint, ad septenos dumtaxat annuos solidos teneantur nullaque extrinsecus collatione vexentur nec molem promissionis nec scriptionis iniuriam perhorrescant. dat. prid. id. sept. constantinopoli vincentio et fravito conss. (401 sept. 12).

CTh.6.26.13

Idem aa. et theodosius a. sicut iampridem a praetura inmunitatem tribuimus his, quos post emeritam in armis militiam ad honorem ducatus nostrae serenitatis provexit iudicium, ita nostrorum scriniorum proximi etiam deposita militia praeturae immunitate potiantur. dat. viii kal. feb. constantinopoli honorio vii et theodosio ii aa. conss. (407 ian. 25).

CTh.6.26.14pr.

Idem aaa. epifanio praefecto urbi. quamvis innumeris legibus scriniorum gloria decoretur, iubemus tamen, ut primo omnium sit eorum secura possessio ab omnibus sordidis muneribus excusata, superindictum non timeant, venalicium non petantur solumque canonicae indictionis praestent tributum, glebalis auri solutionem nesciat labore dignitas conquisita, extraordinarium munus ignoret nec ullam temonis patiatur iniuriam, equorum tironumque praestationem nullus agnoscat, qui honorem proximi et comitivam primi dispositionum longi temporis sudore quaesivit. et haec quidem patrimoniis censuimus deferenda, quibus omnia illibata servamus, quaecumque divi genitoris nostri et cunctorum principum statuta detulerunt. (407 [412] oct. 15).

CTh.6.26.14.1

Ipsis vero veniendi ad comitatum liberam licentiam perpetuamque praestamus nec in eorum personis expectari augustam praecipimus iussionem. (407 [412] oct. 15).

CTh.6.26.14.2

Quod autem omnibus constat deferri, adiectu alterius dignitatis perire non patimur, ut, etiamsi prosperioris fortunae iudicio ad honoris ornamenta processerint, vetera tamen eis scrinii labore privilegia quaesita serventur et integrum circa eos eorumque facultates semper maneat, quod anterioris aetatis industria conquisivit. et cetera. dat. id. oct. ravenna honorio vii et theodosio ii aa. conss. (407 [412] oct. 15).

CTh.6.26.15

Impp. honorius et theodosius aa. melitio praefecto praetorio. quotiens equorum aliarumque rerum procedit indictio, in sacris scriniis militantes inmunes ac segreges habeantur, ita ut neque in militia neque post militiam huius sollicitudinis molestiam sustineant, quibus exceptis circa alios, cum ratio flagitaverit, indictio postulabitur; scientibus iudicibus eorumque apparitionibus decem librarum auri multa se subiciendos, si ab eorum in futurum conventionibus non temperarint. dat. xvi kal. dec. ravenna varane v. c. cons. (410 nov. 16).

CTh.6.26.16

Idem aa. faustino praefecto praetorio. peculiari praeceptionis nostrae favore praestamus, ut in scriniis memoriae epistularum libellorumque ab exceptoribus usque ad mello proximos dignitatem clarissimorum honoremque percipiant, et sicuti reliqui, qui in isdem scriniis militant, liberum cum ordinariis iudicibus ingressum in secretarium consessumque habere legibus meruerunt, ii quoque, in quos hanc stipendiorum meritis clarissimatus conferimus dignitatem, cum spectabilibus etiam sese habere reverentiam recognoscant, ut consedendi ingrediendique secretarium sciant a nobis licentiam contributam, sub multae interminatione, quam officio sanctio dudum indulta constituit. dat. viii id. ian. ravenna lucio v. c. cons. (413 [410?] ian. [?] 6).

CTh.6.26.17pr.

Idem aa. eustathio viro illustri quaestori et helioni viro illustri magistro officiorum. pro biennio annum solum agere deinceps decernimus eos, qui in tribus scriniis memoriae epistularum libellorumque ordine ac merito stipendiorum ad gradum pervenerint proximorum. sed inter cetera privilegia, quae divalibus beneficiis sacris scriniis adtributa sunt quaeque salva atque intemerata in perpetuum manere decernimus, ut eorum, qui potestatem vicariam administraverint, pro tenore veterum et nostrarum sanctionum hi, qui proximatum egerint, honore censeantur. (416 febr. 6).

CTh.6.26.17.1

Secundi etiam ordinis comitivae codicillos accipiant, cum eum locum nancti fuerint, in quo hactenus tertiae comitivae gradu fruebantur, ita ut ex lege iam debitos atque sollemnes codicillos genuino die natalis meae clementiae in posterum, dum agunt proximatum, singulis quibusque annis accipiant, post depositum actum inter eos, qui vicariam potestatem egerint, honorandi. quam legem secundum ipsorum petitionem praeter tres melloproximos, id est benagium, hypatium et theodorum, circa omnes alios valere praecipimus. dat. viii id. febr. constantinopoli theodosio a. vii et palladio conss. (416 febr. 6).

CTh.6.26.18

Impp. theodosius et valentinianus aa. acacio comiti sacrarum largitionum. tam proximo scriniorum quam comiti dispositionum pro delata eis comitivae secundi ordinis dignitate vestem ex integro in posterum praeberi tua celsitudo disponat. dat. vii kal. dec. constantinopoli dd. nn. theodosio xii et valentiniano ii pp. aa. conss. (426 nov. 25).

CTh.6.27.0. De agentibus in rebus.

CTh.6.27.1

Imp. constantius a. ad praefectos praetorio. post alia: de agentibus in rebus si quis annos viginti transierit in obsequio, minime eum ad curiam revocari. quod et circa scrinia nostra et cancellarios et largitionales et officiales comitum rerum privatarum volumus observari. et cetera. dat. viii id. mart. constantio a. vii et constante caes. conss. (354 [353] mart. 8).

CTh.6.27.2

Imp. iulianus a. secundo praefecto praetorio. ex his, qui in palatio agentes in rebus militaverint, post tertium annum militiae nemo curiae tradatur, nec ille, qui in consulatu meo quarto missione donatus est. proposita beryto pridie kal. mart. iuliano a. iiii et sallustio conss. (363 febr. 28 [?]).

CTh.6.27.3pr.

Imppp. gratianus, valentinianus et theodosius aaa. ad florum magistrum officiorum. non plures in aliquem gradum honoris ascendant, quam quantos singuli quique anni ex agentum in rebus schola ad finem emeriti laboris ductant, ita dumtaxat, ut per singulos gradus binorum nobis tantum addendorum extra ordinem servetur potestas, quorum eximius labor ut vim hanc legis excedamus extorserit: quod quidem servandum usque ad circitores erit. nam ut sterni continuo quisque possit, sine quaestione aliqua et sine praescripto numero sola adnotatione nostra sufficiat impetrari. in ceteris autem etiamsi adnotatio specialis extiterit, quae tamen duorum numerum transeat, eam esse iubemus infirmam, ita ut ne insequenti quidem anno habeat firmitatem, nisi insequens annus nullos numero duos, qui ex adnotatione nostra augmentum accipere debeant honoris, invenerit. (380 iun. 16).

CTh.6.27.3.1

Quod si post antiquam aliquis missionem veteremque militiam praepostera sacramentorum cupiditate per ambitionem ad stipendia redire temptaverit, hac proposita optione socientur, ut ultimos se militaturos noverint equitum. quod de universis quibusque officiis specialiter cavemus, a quibus nonnulli ad agentum in rebus scholam cum propria dignitate transierint, ut scilicet hi ex quacumque militia sinantur excedere. quod in posterum custodiendum ita ratum sit, ut periculum se et adiutor et subadiuvae subituros esse cognoscant, si huius sanctionis nostrae normam umquam etiam insequentibus magistris desierint intimare, dat. xvi kal. iul. thessalonica gratiano v et theodosio i aa. conss. (380 iun. 16).

CTh.6.27.4pr.

Idem aaa. palladio magistro officiorum. in schola agentum in rebus nemo facile sub nostra quoque adnotatione speciali prorumpat, nisi sub maiore scholae parte, quisque advenerit, probandus adsistat, qualis moribus sit, unde domo, quam officiorum originem ac sortem fateatur. (382 mart. 21).

CTh.6.27.4.1

Novi quinquennio vacent a primi quoque honoris auspiciis; ante missionibus crebris futuris parent prodanturque nominibus; dehinc per singulos gradus iusta et firma praecedentium dimissione succedant. sane sic militantibus probeque in actu rei publicae diversatis singulorum graduum, quos meruerint, non negamus accessum, ita ut ipsis quoque sit praecedentium ordo venerabilis ac sub maiore parte scholae etiam de huius gradu bonorum adtestatio et consensus accedat. dat. xii kal. april. constantinopoli antonio et syagrio conss. (382 mart. 21).

CTh.6.27.5

Idem aa. et arcadius a. cynegio praefecto praetorio. quoniam agentibus in rebus huiusmodi praestitimus codicillos, ut post principatum in amplissimo ordine inter allectos consulares habeantur, id etiam huius legis auctoritate praestringimus, ut eodem gradu vel ordine ab universis iudicibus honorentur. dat. iii non. mart. constantinopoli honorio nobilissimo puero et evodio conss. (386 mart. 5).

CTh.6.27.6

Imppp. valentinianus, theodosius et arcadius aaa. proculo praefecto urbi. privilegia erga eum, qui ex agente in rebus princeps fuerit, antiqua custodiri praecipimus; sit senator et merito consularibus adgregetur, sed ut eum functio ulla non teneat, collatio non defraudet. dat. vi kal. dec. mediolano valentiniano a. iiii et neoterio conss. (390 nov. 26).

CTh.6.27.7

Impp. arcadius et honorius aa. hosio magistro officiorum. agentes in rebus, quos divae memoriae pater noster expeditionem secutos unius gradus dicitur adiectione cumulasse, delato honore potiri praecipimus, ita ut usque ad centenam dignitatem hic ordo servetur. si quis centenarius est secutus, quoniam primis non patimur praeiudicari, quos constat ad hunc locum longo tempore et probato labore venisse, his praeponatur, quos merito praecedit. quisquis autem adipiscitur gradum, hoc honore contentus praeponi his, qui ordine priores meruerint, non laboret. dat. vi kal. iun. constantinopoli olybrio et probino viris clarissimis conss. (395 [396/8] mai. 27).

CTh.6.27.8pr.

Idem aa. hosio magistro officiorum. in numero agentum in rebus crescant, quos comitum secundi ordinis vel cubiculariorum nostrorum primi dumtaxat loci vel tribunorum urbanicianorum petitio fecerit militare, ita ut urbanicianis semel tantum per anni totius spatia suffragandi licentia sit: ceteros diversorum officiorum ab omni copia huius petitionis excludimus. (396 ian. 26).

CTh.6.27.8.1

Celsioris vero militiae ac fastigii viros numerari non necessarium fuit, cum eos, quos superius numeravimus, inserendo non unde incipere, sed quousque procedere quod inferioribus denegatum est, curaverimus exprimere. (396 ian. 26).

CTh.6.27.8.2

Sed et sumentibus ducenariis principatum hanc tribuimus facultatem, ut his pro se liberos ac fratres suos in eadem militia serenitatis nostrae nutu liceat collocare. dat. vii kal. febr. constantinopoli arcadio iiii et honorio iii aa. conss. (396 ian. 26).

CTh.6.27.9

Idem aa. hosio magistro officiorum. is, qui nutu nostro in schola agentum in rebus augmenta perceperit, in eo gradu, in quo promotus est, ultimus habeatur nec praeponatur alteri, qui in eodem gradu militiae primus antea militavit. emissa prid. kal. feb. constantinopoli arcadio iiii et honorio iii aa. conss. (396 ian. 31).

CTh.6.27.10

Idem aa. caesario praefecto praetorio. inter eos, qui consularitatis gesserint dignitatem, et eos, qui meruerint principatum, is gradu potior habeatur, qui prior locum dignitatis acceperit. quam sanctionem omnia debebunt officia custodire, non defutura poena quindecim librarum auri, quam in contumaces olim divalis sanctio definivit. dat. iiii kal. mart. constantinopoli arcadio iiii et honorio iii aa. conss. (396 febr. 27).

CTh.6.27.11

Idem aa. hadriano magistro officiorum. consultissima definitione statuimus, ut exsecutionem agentis in rebus inconsultis nobis nemo mereatur, concessam vero quisquam revocare non audeat. dat. xvii kal. april. mediolano theodoro v. c. cons. (399 mart. 16).

CTh.6.27.12

Idem aa. theodoro praefecto praetorio. agentum in rebus schola nobis maxime necessaria nullo beneficio impetrati muneris utitur, quo sibi in ordinem splendidissimae curiae praestitam humanitate licentiam vindicaret, cum divae memoriae pater noster isdem agentibus in rebus voluerit esse consultum. magnificentia igitur tua ordinum iudices admonebit, ut his lex divae memoriae patris nostri inviolata servetur. dat. viii kal. nov. mediolano theodoro v. c. cons. (399 oct. 25).

CTh.6.27.13

Idem aa. et theodosius a. hadriano praefecto praetorio. agentibus in rebus, qui post iugis militiae tempus veluti praemium laboris exacti gesserint principatum, etiam illud beneficio nostrae liberalitatis adiungimus, ut collatione iuniorum, qui nuper honoratis indicti sunt, ea dumtaxat condicione habeantur exortes, si post principatus officium nulla ulterius honoris fuerint administratione perfuncti. dat. kal. iul. ravenna theodosio a. i et rumorido conss. (403 iul. 1).

CTh.6.27.14

Idem aaa. anthemio magistro officiorum. nullus de schola agentum in rebus de cetero locum mortui conetur invadere, sed is, qui ordine stipendiorum et laborum merito ad gradum militiae sequebatur, statim atque illum fata subduxerint, in eius praemia percipienda succedat omni obreptione cessante. dat. prid. kal. iul. constantinopoli honorio a. vi et aristaeneto conss. (404 iun. 30).

CTh.6.27.15

Impp. honorius et theodosius aa. namatio magistro officiorum. omnes omnino agentes in rebus, quibus vel spatium commeatus vel iniuncti negotii tempus emensum est, ad comitatum reversi adprobent causas necessariae tarditatis, ut diligenti constet examine, qui ordinem suum tenere mereantur. quod nisi intra diem kalendarum februariarum fecerint, in perpetuum matriculis eximentur. meminerint igitur rectores provinciarum per singulos agentes in rebus senas auri uncias eruendas, si in provincia sibi credita quemquam huiusmodi desertorum post diem praestitutum latere permiserint. ideoque sub prosecutione latitantes transmittant, ut tandem aliquando ad comitatum retractos non sola percellat iactura militiae. dat. vii id. dec. ravenna dd. nn. honorio viiii et theodosio v aa. conss. (412 dec. 7).

CTh.6.27.16pr.

Idem aa. anthemio praefecto praetorio. nemo post insignia principatus, quae stipendiis ac sudore promeruit, nec revocari ad originem, si forte natus est curialis, nec nominari, quod nefas quidem dictu est, perhorrescat. in medio sane militiae tempore si quem huiusmodi lis iurgiumque perculerit, sua defensione nitatur, nec enim ordines civitatum suis decurionibus passim spoliari oportet. (413 oct. 8).

CTh.6.27.16.1

Quod si forte quis, ut adsolet, honorarii principatus insignibus impetratis isdem privilegiis uti voluerit, ita impetrata largitate fruatur, si incassum se pulsari sub iudiciaria cognitione probaverit, nisi forte annosa militia et longa stipendiorum mole vexatus et in ordine non temnendae militiae constitutus principatum non ut laborum compendium voluit expectare, sed ut portum quietis maluit indipisci. (413 oct. 8).

CTh.6.27.16.2

Quod etiam in his custodiri oportet, qui armata militia perfruuntur, ita ut divi valentiniani constitutio valeat potianturque et ipsi fructu stipendiorum suorum, si eadem sine ullo naevo excusationis incurrere valuerunt. (413 oct. 8).

CTh.6.27.16.3

Sed his addimus, ut, si quis ex lucrativa causa de substantia aliquid perceperit curialis, pro contingenti portione onera, quae huiusmodi facultates secuntur, et universas descriptiones sustineat. dat. viii id. oct. lucio v. c. cons. (413 oct. 8).

CTh.6.27.17

Idem aa. helioni magistro officiorum. merito magnificentia tua concessam sibi pridem a nostra maiestate licentiam pro removendis his, quorum consortio agentum in rebus schola laborabat, ad nostram denuo auctoritatem credidit revocandam. nulli igitur posthac sine nostrae maiestatis auctoritate discingendi agentem in rebus, nulli eximendi pateat copia, nam probata schola et animadversionem vereri iudicis et nullam debet timere contumeliam vilitatis. dat. iii id. nov. constantinopoli honorio x et theodosio vi aa. conss. (415 nov. 11).

CTh.6.27.18

Idem aa. helioni magistro officiorum. ad scholam agentum in rebus passim plurimi velut ad quoddam asylum convolarunt, quos vita culpabiles et origo habet ignobiles et ex servili faece prorupisse demonstrat. et quoniam sublimitati tuae adnuimus eam, quam quaesierat, potestatem, adhibenda est competens medicina, ut exploratione diligenter agitata discingendo abicias puniasque cohercendos, quo remotis abiectis pessimis criminosis, spectata militia in statum pristinum revocata bonorum virorum collegio frequentetur. dat. xiii kal. feb. constantinopoli theodosio a. vii et palladio conss. (416 ian. 20).

CTh.6.27.19

Idem aa. helioni magistro officiorum. agentum in rebus indiscreta merita esse non sinimus nec indignos frui privilegiis laborantum. ideoque sancimus, ut nullus ex his emendicato suffragio ad honorem principatus audeat adspirare, nisi quem ordo militiae ac laborum testimonium ad hunc honoris gradum provexerit. quod si quis corporis inbecillitate quassatus eoque modo laboris impatiens longam militiae seriem tolerare non patitur, is non ante dignitatem principatus honorariam mereatur, quam si xx annorum stipendia complevisse scholae totius adtestatione docuerit. hos sane, qui quoquomodo per ambitionem sine ullo stipendiorum suffragio memoratam principatus adepti sunt dignitatem, post eos, qui laborum merito consecuti sunt, numerari decernimus. dat. v kal. dec. constantinopoli honorio a. xi et constantio ii v. c. conss. (417 nov. 27).

CTh.6.27.20

Impp. theodosius et valentinianus aa. helioni patricio et magistro officiorum. qui ex agentum in rebus numero militiae ordine ac labore decurso ducenae dignitatis meruerit principatum, aut qui viro illustri magistro officiorum ut probatus fuerit adiutor eo tempore, quo iam honoratis viris coeperit adgregari, eorum, qui vicariam egerint praefecturam, honore potiatur, conservatis sine dubio veteribus privilegiis divorum in eos principum largitate collatis. dat. x kal. ian. constantinopoli theodosio xii et valentiniano ii aa. conss. (426 dec. 23).

CTh.6.27.21

Idem aa. hierio praefecto praetorio. quicumque impleto militiae suae ordine ac labore finito ad ducenae pervenerit principatum, quisque magistri officiorum iudicio probatus adiutor extiterit tempore, quo iam honoratorum virorum coetibus inseritur, eorum, qui vicariam egerint praefecturam, infulis perfruantur, privilegiis procul dubio isdem, quibus antehac usi videntur, reservatis. dat. x kal. ian. theodosio xii et valentiniano ii aa. conss. (426 dec. 23).

CTh.6.27.22

Idem aa. proculo praefecto urbi. agentum in rebus schola, quae nostro iudicio vicarianam dignitatem adepta est, id quidem suos primates post stipendiorum finem mereri non ambigat. verum amplissimi ordinis adsertioni pareat, ut quoniam ii, quos militiae finis ad principatus honorem adduxit, senatoriis se aestimant functionibus eximendos, in priore dignitate permaneant, cuius inmunitatem amplexi sunt. et cetera. dat. prid. kal. feb. constantinopoli tauro et felice conss. (428 ian. 31).

CTh.6.27.23

Idem aa. paulino magistro officiorum. cuncta, quae super agentum in rebus militia ordine loco numero statuisti, amplectimur. illustris igitur auctoritas tua, quae novellae matriculae super statutorum numero vel ordine confirmando quaeque de reliquis ordinandis huius legis sanctione decernimus, naviter servanda et custodienda cognoscat, videlicet ut statutorum numero in mille centum septuaginta quattuor nominibus adsignato, qui recenti matricula definitus esse cognoscitur, reliqui, qui extra memoratum statutorum numerum positi esse noscuntur, ita concessa potiantur militia, ut ii quoque certis locis laborum ac stipendiorum meritis collocati vacantes praeeuntium gradus obsequendi ordine mereantur. nec tamen ii, qui plurimis iustissimisque causis matricula videntur exclusi, militia, quae eis humanitatis intuitu sub huiusmodi forma indulta est, tamquam penitus spreti aut abiecti deiciantur. quibus beneficii loco ponendum est, quod, cum ter edicto vocati non venerint, tamen eis militare permissum est. dat. xvi kal. mai. constantinopoli theodosio a. xiii et qui fuerit nuntiatus. (430 apr. 16).

CTh.6.28.0. De principibus agentum in rebus

CTh.6.28.1

Imppp. gratianus, valentinianus et theodosius aaa. ad potitum vicarium urbis. nemo officialium in munus aliquod nisi principe ordinante mittatur. si quis autem scriniariorum vel cuiusquam alterius loci quemquam officialium in aliquod munus principe nesciente direxerit, trium librarum auri condemnatione plectetur. dat. prid. non. aug. treveris, acc. vii id. sept. romae auxonio et olybrio conss. (379 aug. [?] 4).

CTh.6.28.2

Idem aaa. ad probum praefectum praetorio. agentes in rebus, si principatus sorte deposita forsitan provinciae gubernacula isdem non evenerint, par erit salutationis loco his quidem, qui praesidatum gesserint, cedere, sed eos, qui rationales fuerint, praevenire. proposita iiii id. mart. hadrumeto dd. nn. gratiano a. v et theodosio a. i conss. (380 mart. 12).

CTh.6.28.3

Idem aa. et arcadius a. cynegio praefecto praetorio. agentes in rebus post palmam laboris emeriti principatus honore muneramus. atque ideo officialis tam ad necessitates publicas quam privatas non nisi principe mittatur auctore nullarumque sine ipso cuiquam mandetur exhibitio personarum. dat. prid. kal. mart. constantinopoli honorio nob. p. et evodio conss. (386 febr. 28).

CTh.6.28.4

Imppp. valentinianus, theodosius et arcadius aaa. ad pinianum praefectum. nulla exsecutio sine adnotatione principis usurpatione officii concedatur, hoc adiecto, ut, etiamsi intercessio in locis degentis officii fuerit impertita, adscriptio tamen principis executionem fieri oportere demandet. quae definitio si fuerit praeterita, decem libras auri fisco nostro ab officio sinceritatis tuae statim iubemus inferri. qua admonitione etiam causarum patronos volumus esse conventos, ne ignorante principe ullam postulationem introducant neve sub unius persona susceptis fraude quadam aliena negotia inserenda esse pertemptent. dat. vi id. sept. mediolano valentiniano a. iii et eutropio conss. (387 sept. 8).

CTh.6.28.5

Impp. arcadius et honorius aa. theodoto praefecto urbi. omnia citatoria, omnium scilicet causarum atque personarum, licet sint senatoriae dignitatis, ad principes specialiter revocari praecipimus, actus vero ceteros, qui in sacratissimo coetu senatus tractari consuerunt, censualium sollicitudine celebrari nec aliquid praeiudicii ex subreptivo rescripto supplicibus inferri. dat. xii kal. iun. constantinopoli olybrio et probino consulibus. (395 mai. 21).

CTh.6.28.6

Idem aa. ad anatolium praefectum illyrici. crebrae a nobis legis missae sunt, ut sine notione principum, qui de agentum in rebus numero ad gubernanda officia diriguntur, nulla urgentium rerum praeceptio, quae de iudicio prolata fuerit, impleatur, siquidem deceat diuturno fatigatos obsequio hac saltem consolatione fulciri, ut adiuti commodis de principatu discedant. dat. prid. id. nov. theodoro v. c. cons. (399 nov. 12).

CTh.6.28.7

Impp. honorius et theodosius aa. palladio proconsuli africae. proconsularis apicis dignitatis adiectione principes agentes in rebus praecipimus decorari. dat. vii kal. oct. ravenna varane v. c. cons. (410 sept. 25).

CTh.6.28.8pr.

Impp. theodosius et valentinianus aa. valerio magistro officiorum. ex agentibus in rebus principibus domesticos in suis actibus habere liceat eos, quorum fidem industriamque probatam sibi aestimant, etsi saepe eodem officio fuerint ante perfuncti. (435 ian. 29).

CTh.6.28.8.1

Et si qui agens in rebus post xxv annorum curricula ob adversam corporis valitudinem militiae finem minime valuerit expectare, sed ad honorariam ex principe dignitatem testimonio scholae prosilierit, isdem eum privilegiis muniri censemus, quibus ii, qui ad principatus actum progressi sunt, potiuntur. (435 ian. 29).

CTh.6.28.8.2

Sed in salutationibus iudicum consessibusque priores eos, qui per longae militiae metas ad principatus actum pervenerint, etsi actus tempore posteriores sint, esse praecipimus, nihil censualibus vel apparitoribus adversus privilegia eorum excogitantibus, tamquam in actu principatus fuerint versati, vicenarum librarum auri condemnatione proposita. dat. iiii kal. feb. constantinopoli theodosio a. xv et qui fuerit nuntiatus. eodem exemplo isidoro praefecto praetorio, regino praefecto praetorio illyrici, leontio praefecto urbi, theodoto comiti aegypti, abthartio comiti orientis, cleopatro praefecto augustali, hesychio proconsuli achaiae, eustathio vicario asiae, nectario vicario ponticae. (435 ian. 29).

CTh.6.29.0. De curiosis

CTh.6.29.1

Imp. constantius a. ad lollianum praefectum praetorio. ii, quos curagendarios sive curiosos provincialium consuetudo appellat, proprio arbitrio quos esse reos putaverint, feralibus carcerum tenebris mancipare non dubitant. memorati igitur curiosi et stationarii vel quicumque funguntur hoc munere crimina iudicibus nuntianda meminerint et sibi necessitatem probationis incumbere, non citra periculum sui, si insontibus eos calumnias nexuisse constiterit. cesset ergo prava consuetudo, per quam carcari aliquos inmittebant. dat. xi kal. aug. mediolano, acc. xii kal. sept. arbitione et lolliano conss. (355 iul. 22).

CTh.6.29.2pr.

Idem a. et iulianus caes. ad taurum. agentes in rebus in curis agendis et evectionibus publici cursus inspiciendis nostrorum memores praeceptorum credimus in omnibus velle profutura rei publicae. sed accedunt ex officio mirandae prudentiae tuae, qui parem sibi licentiam vindicent; contigit etiam, ut vicarii quoque mittant ex officiis suis huiusmodi negotiis operam praebituros. adimatur ergo haec licentia facinoribus et officiis universis curarum publici cursus copia denegetur, nam solos agentes in rebus in hoc genere iussimus obsequium adhibere. (357 apr. 17).

CTh.6.29.2.1

Nec vero multos esse per singulas provincias iussimus, quippe sufficit duos tantummodo curas gerere et cursum publicum gubernare, ut, licet in canalibus publicis haec necessitas explicetur, numerus tamen amplior esse non debeat. (357 apr. 17).

CTh.6.29.2.2

Hi vero pervigili diligentia providebunt, ne quis citra evectionis auctoritatem moveat cursum vel amplius postulet, quam concessit evectio, ut habens unius copiam raedae flagitet duas, aut raedam usurpet, cui birotum vel veredum postulare permissum est. quisquis igitur aliquid tale perpetrare temptaverit, improbi coepti privetur effectu. (357 apr. 17).

CTh.6.29.2.3

Demonstretur etiam iudicibus vel curiosis evectio, etsi quis nobis iubentibus festinare memoret in obsequium necessarium, nec praevaleat contumacia vel dignitas. (357 apr. 17).

CTh.6.29.2.4

Contingit etiam in cursu clavulari, ut forte quis pro animalibus minime praebitis pecunias pendere cogatur lucro eius qui cursui praesederit, improbe vindicandas. ergo nummum vetamus exposci pro animalibus in cursu minime constitutis. quod si forte aliquis aestimaverit perpetrandum, eius quadruplum quod accepit inferre cogatur. dat. xv kal. mai. mediolano constantio a. viiii et iuliano c. ii conss. (357 apr. 17).

CTh.6.29.3

Idem a. ad agentes in rebus. per id tempus, quo cursus tuendi sollicitudinem sustinetis, condemnationes praefectorum praetorio erga eos solos irritae sunt futurae, qui servaverint honestatem erga eos vero, qui inhoneste et contra decus saeculi vel honorem militiae versabuntur, non solum condemnatio mansura est, verum etiam, si ad nostrae serenitatis notitiam culpabilia gesta pervenerint, in eos erit acrius vindicandum. proposita prid. kal. dec. eusebio et hypatio conss. (359 nov. 30).

CTh.6.29.4

Idem a. ad agentes in rebus. cesset omnis ambitio atque suffragium in schola vestra. etenim cuncti ita agere debebitis, quatenus labore atque ordine ad cursum regendum et ad curas agendas iudicio scholae et ordinis merito dirigamini, ita ut nihil vestri principis ex his, quae geri in re publica videritis, notitiae subtrahatis, scientes poenis eum debitis subiugari, qui tantum facinus ausus fuerit perpetrare. proposita eodem die iisdem conss. (359 nov. 30).

CTh.6.29.5pr.

...... in his dumtaxat provinciis, in quibus cursus a provincialibus exhibetur, quoniam avaritiae occurri paene iam non potest, singulos solidos per singulas raedas, id est quas quadrigas vel flagella appellant, percipiatis per id tempus, quo curarum et cursus tuendi sollicitudinem sustinebitis. (359 oct. 31).

CTh.6.29.5.1

E cursu vero clavulari singulas angarias, in his scilicet stationibus, in quibus cursus est collocatus, ad exhibendam humanitatem venientibus excusetis. nec quis audeat contra praeceptum hoc amplius accipere aut sperare quicquam aut aliquid excusare ultra, quam continet forma praecepti. dat. prid. kal. nov. eusebio et hypatio conss. (359 oct. 31).

CTh.6.29.6

Imppp. gratianus, valentinianus et theodosius aaa. ad florum magistrum officiorum. felicis natalis nostri die iidem ut principis primi quoque scholarum mittantur ad provincias curiosi anniversarium munus acturi, ita caute atque ita sollerter, ut sub binorum tantum copia veredorum, ultra usurpatione cessante, ne capita contrahantur, remotas quoque peragrent stationes et callida machinamenta commeantium ac simulatae observationis ingenia et fraudes depellant. dat. iii non. feb. constantinopoli eucherio et syagrio conss. (381 febr. 3).

CTh.6.29.7

Imppp. valentinianus, theodosius et arcadius aaa. neoterio praefecto praetorio. quia vel honore militiae vel fiducia iussionis agentibus in rebus maiorem ad obsistendum remur futuram esse constantiam, ex his, quos in eminentioribus tantum urbibus sollicitudinem cursualem agere mandavimus, magnificentia tua noscat unum esse considerandis transeuntium evectionibus relictum neque eos quicquam ultra hanc formam in cursum habere commune. dat. v kal. iun. valentiniano a. iiii et neoterio conss. (390 mai. 28).

CTh.6.29.8

Impp. arcadius et honorius aa. marcello magistro officiorum. agentes in rebus singulos per singulas provincias mittendos esse censemus, quibus tamen inspiciendarum evectionum tantum debeat cura mandari, ut nihil prorsus commune aut cum iudicibus aut provincialibus habeant. nec naves debebunt illicita concussione vexare nec libellos aut contestationes suscipere aut in carcarem quemquam trudere, sed cursui solum vacare. dat. ... kal. iun. constantinopoli olybrio et probino conss. (395 mai. ...).

CTh.6.29.9pr.

Idem aa. euchario proconsuli africae. cursus publici praepositos scire praecipimus, si sibi et militiae suae consulunt, nihil eos contra veterem disciplinam debere praesumere: cui cum generatur iniuria, haut dubie sacrilegii crimine obligantur. (412 febr. 29).

CTh.6.29.9.1

Libera quin etiam facultas mancipi sit contemplatione proprii discriminis coempta sanitate robusta usui cursus animalia sua sollicitudine praeparare. et cetera. dat. prid. kal. mart. honorio viiii et theodosio v. aa. conss. (412 febr. 29).

CTh.6.29.10

Impp. honorius et theodosius aa. synesio. constitutione cessante, qua super curiosis ex viri illustris comitis et magistri officiorum iudicio dirigendis intra certum numerum forma concluditur, antiqua consuetudo servetur, ut curiosi idonei per diversas regiones atque provincias, litora insuper portusque et loca alia transmittantur, conmonitoriis competentibus atque mandatis instructi pro administratione tuae sublimitati commissa proque huius legis auctoritate. ad quod nos ablatarum imperialium specierum movit occasio, ut impensiorem sollicitudinem adhiberi magnopere iuberemus, quo idoneus quisque a tua magnificentia destinatus inter alia adiuncta et congrue procuranda haec quoque studeat observare. dat. v id. nov. constantinopoli honorio viiii et theodosio v aa. conss. (412 nov. 9).

CTh.6.29.11

Idem aa. hadriano praefecto praetorio. post alia: curiosos praecepimus removeri. curialibus insuper et naviculariis omnibusque corporibus ita subveniri volumus, ut nihil apparitoribus universorum iudicum liceat, qui ex collecta provincialium praeda ad maiores militias festinant. dat. v non. mart. ravenna constantio et constante conss. (414 mart. 3).

CTh.6.29.12

Idem aa. palladio praefecto praetorio. dalmatiae litora omnesque insulas eorum qui sibi curas vindicant enormibus commodis praegravari compertum est, ut nullus audeat ad loca tutiora etiam acerbitate temporis cogente succedere. atque ideo omnes omnino ex memoratis partibus censemus removendos, ut securitas antiqua vel consistentibus vel conmeantibus reparetur. si qui igitur ausus fuerit post hanc praeceptionum formam id officium, a quo depulsus est, usurpasse, ferro vinctus ad vindictam cura iudicum dirigatur ad sacratissimum comitatum. dat. vi id. ian. ravenna honorio x et theodosio vi aa. conss. (415 ian. 8).

CTh.6.30.0. De palatinis sacrarum largitionum et rerum privatarum

CTh.6.30.1

Imppp. gratianus, valentinianus et theodosius aaa. have aselle karissime nobis. palatini omnes, quos consistorii nostri comites propter diversas necessitates ad provincias dirigendos putaverint, sine ullo metu iudiciariae commotionis propter quae diriguntur impleant; conveniendis iudicibus more sollemni. dat. vi kal. mart. sirmio ausonio et olybrio conss. (379 febr. 24).

CTh.6.30.2

Idem aaa. pancratio comiti rerum privatarum. prisco iam nunc ordine revocato de palatino potius officio ad gerendum principatum officii comitis domorum per cappadociam mittantur, quales comes etiam domorum, si secus se gesserit, vereatur. idoneos itaque singulis annis e numero mittendariorum ad hoc eligere debebis et mittere. dat. prid. non. iul. scopis ausonio et olybrio conss. (379 iul. 6).

CTh.6.30.3

Idem aaa. catervio comiti sacrarum largitionum. primicerii scriniorum, receptoriorum etiam, per triennium iuxta instar sacrorum scriniorum administratione fungantur, ita ut nullus ambitu tempora aevi longioris usurpet. dat. xiiii kal. sept. bauxare auxonio et olybrio conss. (379 aug. 19).

CTh.6.30.4pr.

Idem aaa. ad hesperium praefectum praetorio. nihil omnino ullis iudicibus cum palatinis nostrae clementiae, quicumque a consistorianis comitibus diriguntur, commune atque coniunctum sit, sed excepta reverentia, quae non solum ab inferioribus, sed etiam a maioribus rectori provinciae debetur atque defertur, suis quisque necessitatibus obsecundet. (379 dec. [?] 6).

CTh.6.30.4.1

Nec temere apparitor provincialis debiti reum, quem rationalis officium ad solutionem cogit, abducat. dat. viii id. dec. sirmio auxonio et olybrio conss. (379 dec. [?] 6).

CTh.6.30.5

Idem aaa. nebridio comiti rerum privatarum. quidam post impletum ordinem militiae palatinae, quam gesserant, honoremque transactum ad exceptorum scrinia transire nituntur. hac igitur lege sancimus, ut nulli prorsus dehinc ista audendi relinquatur occasio, sed unusquisque eius scrinii, quod primum militando delegit, ordinem persequatur nec in alterius loco finem militiae requirat, qui iam proprii ordinis transegerit principatum. dat. v id. oct. constantinopoli merobaude ii et saturnino conss. (383 oct. 11).

CTh.6.30.6

Idem aaa. ad probum praefectum praetorio. ab officiis palatinorum excellentia tua sciat ita penitus recedendum, ut neque ipsa postmodum licitum sibi credat isdem aliquid iniungere et praeterea provinciarum rectores prohibeat quicquam ulterius tale conari. dat. vii kal. nov. mediolano post cons. merobaudis ii et saturnini. (384 oct. 26).

CTh.6.30.7pr.

Idem aaa. trifolio comiti sacrarum largitionum. scriniis omnibus largitionum comitatensium infra scriptas decernimus dignitates, ut his contenti ambiendi sibi aditum interclusum esse cognoscant, etiamsi speciale beneficium emendicato suffragio quisquam valuerit impetrare. annonas etiam iuxta definitum dignitatum modum volumus postulari nec amplius quicquam praesumi. (384 iun. 10).

CTh.6.30.7.1

Brevis. quas dignitates per singula scrinia officium sacrarum largitionum habere statutum est. scrinium exceptores perf. ord. p. n. i. ducenarii n. ii. scrin. tabulariorum perf. ord. iii. centenarii n. ii. perfectiss. ord. iii. n. i. perfectiss. cum consulares n. ii. epistularii n. ii. ducenarius n. i. ducenarius n. i. .. forma prim. n. iii. centenarius n. i. centenarii n. ii. form. sec. n. ii. epistulares n. iii epistulari n. iii. form. iii. n. ii. forma i. n. iii. forma prim. n. vi. scrinia can. form. sec. n. iii. mittendarii form. sec. n. v. perfectiss. sal. n. iii. ducenarii n. ii.

formae tertiae n. iii. centenarii n. ... centenarii n. vi. scriniarii numeror. epistulares n. iii. epistular. n. xii. perf. ord. secundi n. i. formam prim. n. iiii. form. prim. n. x .. form. sec. n. iiii. form. sec. n. xlii. dat. iiii id. iun. heracliae richomere et clearcho conss. (384 iun. 10).

CTh.6.30.8

Idem aaa. trifolio comiti sacrarum largitionum. placuit iusta et omnibus mittendariis palatini officii profutura suggestio, qua insinuasti, ut ex isdem annui singuli ex ducenariis, terni ex centenariis habito provisionis intuitu cingulo liberentur. dat. iiii id. mart. constantinopoli arcadio a. i et bautone v. c. consulibus. (385 mart. 12).

CTh.6.30.9

Idem aaa. trifolio comiti sacrarum largitionum. de mittendariis palatinis annui singuli ex ducenariis, terni ex centenariis habito provisionis intuitu cingulo liberentur et prioribus decedentibus locus sequentibus detur. dat. iiii id. mart. constantinopoli arcadio a. i et bautone conss. (385 mart. 12).

CTh.6.30.10

Idem aaa. ad principium praefectum praetorio. si quis iudicum palatino vel profligationem debitorum putaverit esse mandandam vel eius impertiendum litigatori auxilium in lite privata, tam ipse quam eius officium per singulos, quibus vetita curanda commiserit, quinas auri libras fisci viribus inferre cogatur. dat. prid. kal. sept. aquileia arcadio a. i et bautone conss. (385 aug. 31).

CTh.6.30.11

Idem aaa. proculo comiti sacrarum largitionum. olim statuimus, ut ultra definitas dignitates nullus nec annonas nec strenas perciperet. sed quia plerosque de diversis palatinis officiis sub occasione indepti honoris strenas et vestes ceteraque sollemnia ultra statutum numerum percepisse cognovimus, et id quod ex superfluo praebitum est exigi facias et deinceps ultra statutas dignitates nihil praeberi permittas. dat. non. mai. constantinopoli, acc. a valerio comite sacrarum largitionum honorio nob. p. et evodio conss. (386 mai. 7).

CTh.6.30.12

Imppp. valentinianus, theodosius et arcadius aaa. severo comiti et castrensi. nullus eorum, qui palatinis intra aulam obsequiis deputandi sunt, ad aliquod munus debet admitti, nisi cui adnotatio nostra sortiendae talis militiae copiam patefecerit. dat. xviii kal. feb. mediolano valentiniano a. iiii et neoterio conss. (390 ian. 15).

CTh.6.30.13

Impp. arcadius et honorius aa. hosio comiti sacrarum largitionum. officium, quod sublimitatis tuae iussionibus obsecundat, eas tantummodo teneat dignitates, quas divae recordationis valentis constitutio comprehendit. nihil ultra nec peti convenit nec sperari. dat. iiii kal. dec. constantinopoli olybrio et probino conss. (395 nov. 28).

CTh.6.30.14

Idem aa. martiniano comiti sacrarum largitionum. officiorum palatinorum scriniorumque primicerii biennio transacto discedant nec ulterius in eadem militia conmorentur. eos sane, qui ante hoc statutum in locis memoratis inventi sunt, ad metas triennii concedimus pervenire. dat. xv kal. feb. constantinopoli arcadio iiii et honorio iii aa. conss. (396 ian. 18).

CTh.6.30.15pr.

Idem aa. constantio comiti sacrarum largitionum. his abiectis de officio palatino, qui inconsiderate ac vulgo sunt congregati, statutos ducentos viginti quattuor, supernumerarios sescentos decem electissimos inhaerere praecipimus et iuxta instructionem eminentiae tuae, quae adnexa est, singulis scriniis vel rectoribus definitum numerum supernumerariorum deputari. (399 ...).

CTh.6.30.15.1

Si quis sane ad memoratam militiam accedere voluerit, discussa generis fide tunc demum adnotatione nostri numinis palatinorum coetui societur. dat. xiii kal. ... constantinopoli theodoro v. c. cons. (399 ...).

CTh.6.30.16

Idem aa. messalae praefecto praetorio. salutari definitione censuimus dxl et vi de officio comitis sacrarum largitionum, trecentos privatarum, qui tamen nullis sunt corporibus obligati reliquos suis officiis et ordinibus esse reddendos singulis, tamen ita matriculis retinendos, ut patriae provincia pariter conscribatur, iudicibus admonendis de numero statuto, ut ceteri ad sua officia retrahantur nec posthac sub specie militiae intra provinciam possit delitiscere qui sibi nec indultum commeatum nec publicam necessitatem docuerit esse mandatam. curialem suum municipes vindicent, collegiatum proprium corpus adstringat, nec iudicem suum apparitor quondam desertor evadat. sibi quisque, iure tamen, obnoxium exsequatur, adiutoribus quoque, qui matriculas tractant, supplicium deportationis cum amissione facultatum subeuntibus, si quemquam ultra numerum praestitutum siverint militare. dat. xi kal. ian. mediolano theodoro v. c. cons. (399 dec. 22).

CTh.6.30.17

Idem aa. longiniano comiti sacrarum largitionum. serenitas nostra salubri sanctione disposuit, ut quingenti quadraginta sex, qui tamen nullis sunt corporibus obligati, palatini .... sint, supernumerarii autem, ex quibus in decedentium locum quos ratio invenerit singuli subrogentur, ad originem tractis desertoribus: sciente adiutore officii palatini, si qui supra statutum numerum vel coniventia vel neglegentia eius irrepserit, avaritiam eius proscriptione omnium facultatum ac deportatione plectendam. reliquos autem, qui superflui fuerint, provinciis sine dilatione datis auctoritatibus restitue. dat. x kal. ian. mediolano theodoro v. c. cons. (399 dec. 23).

CTh.6.30.18

Idem aa. nestorio comiti rerum privatarum. non aliter quilibet in officio sacrarum privatarum cingulum militiae sibi sumendum existimet, nisi nostrae mansuetudinis adnotationem meruerit. dat. prid. id. aug. ancyrae stilichone ii et anthemio conss. (405 aug. 12).

CTh.6.30.19

Idem aa. et theodosius a. monaxio praefecto praetorio. domninum ex primiceriis sacrarum largitionum speciali beneficio ex vicariis ad similitudinem proximorum sacrorum scriniorum esse praecipimus. ceteros primicerios scriniorum et qui post illum primicerii totius erunt officii palatini, ex consularibus inter allectos esse decernimus. dat. xvi kal. feb. constantinopoli basso et philippo viris clarissimis conss. (408 ian. 17).

CTh.6.30.20

Impp. honorius et theodosius aa. iohanni praefecto praetorio. palatinos, qui sacrarum remunerationum rationem tractantes inculpatim ad calcem terminumque militiae pervenerint, nec non etiam adiutorem et primicerios diversorum officiorum praecepimus ea habere privilegia, quae nuper agentum in rebus scholae a nostra sunt mansuetudine contributa, scilicet ut a tironum praebitione memorati reddantur exortes ceteraque onera non agnoscant, quae antea, cum nihil de hac re statuissemus, ad dignitatis dispendium sustinebant. dat. vii id. iun. ravenna post cons. honorii viiii et theodosii v aa. (413 iun. 7).

CTh.6.30.21

Idem aa. anysio comiti sacrarum largitionum et tauro comiti rerum privatarum. ad similitudinem sanctionis, quam de proximis sacrorum promulgavimus scriniorum, etiam in officio sacrarum largitionum atque privatarum pro biennio annum sub perpetua observatione praecipimus custodiri. in venerabili natali perennitatis meae theodosii exemplo proximorum annus suscipiat exordium promotionis, et privilegia, quae huiusmodi officiis vel primicerio sacris legibus deferuntur, integra illibataque serventur. dat. iii kal. iul. constantinopoli theodosio a. vii et palladio conss. (416 iun. 29).

CTh.6.30.22

Idem aa. anysio comiti sacrarum largitionum. cessantibus cunctis, quae super biennio de actu mittendariorum olim statuta sunt, ad similitudinem exceptorum eiusdem militiae completo anno recedere eos subituris eundem locum sequentibus praecipimus, illis, qui nunc agunt, biennii actum, ex quo coeperunt, complentibus. dat. iiii non. mai. constantinopoli monaxio et plinta conss. (419 mai. 4).

CTh.6.30.23

Idem aa. asclepiodoto comiti sacrarum largitionum. quattuor mittendarios, qui per annos singulos ex officio palatino exire sollemniter consuerunt, beneficiis, quibus tuo culmini visum fuerit, ex his videlicet, quae suae iurisdictionis esse nec aliis ex consuetudine caelitus deputata cognoverit, tua sublimitas prosequatur: etiam in posterum hac consuetudine permansura, ut circumventione damnata prolixa stipendia sive debita solacia consequantur. dat. iii kal. mai. constantinopoli honorio xiii et theodosio x aa. conss. (422 apr. 29).

CTh.6.30.24

Imp. theodosius a. et valentinianus c. hierio praefecto praetorio. nostrae moderationis arbitrio praestitutum est, ut privatiani privilegia largitionalis officii perpetuo consequantur, hoc est ut tam primicerius officii privatarum quam alii quattuor reliquorum primicerii scriniorum eiusdem contemplatione militiae ex consularibus inter allectos esse mereantur et tam in hac alma urbe quam in provinciis honore potiantur, cum illustres viri memoratarum comites dignitatum ita simili iugiter infularum splendore decorentur, ut non culmine distinguantur aequali, sed tempore. dat. xv kal. dec. constantinopoli theodosio a. xi et valentiniano c. conss. (425 nov. 17).

CTh.6.31.0. De stratoribus

CTh.6.31.1

Impp. valentinianus et valens aa. ad zosimum praesidem novae epiri. per omnes provincias edictum generale misimus, ut ab stratoribus unus tantum solidus probae nomine posceretur et in offerendis equis certam formam staturam aetatem provinciales nostri custodiendam esse cognoscerent. quos etiam fisco certo solidorum modo obnoxios fecimus, si, quod stratores petere numquam metuunt, illi dare stratoribus non timerent. officium quoque gravitatis tuae centum argenti libras multabitur, si sciens praedictam rem gestam fuisse non ilico eam severitati iudiciariae prodidisset. dat. xiii kal. iul. apolloniae valentiniano et valente aa. conss. (365? 368? 370? 373? iun. 19).

CTh.6.32.0. De castrensianis

CTh.6.32.1

Impp. honorius et theodosius aa. narsi viro spectabili comiti et castrensi sacri palatii. in officio spectabilitatis tuae secundum formam divalium responsorum post completum tempus praefinitum, id est biennium, prioribus decedentibus insequentes ad locum pro merito laborum stipendiorumque succedant. nec ulla licentia tribuatur his, qui impletum deposuerint officium, denuo ad eandem militiam vel sollicitudinem remeandi. dat. vi id. feb. constantinopoli theodosio a. vii et qui fuerit nuntiatus. (416 febr. 8).

CTh.6.32.2

Idem aa. scholastico viro spectabili comiti et castrensi sacri palatii. nonnulli divinis impetratis apicibus primae vel secundae formae sacri ministerii supernumerarii ordinati sunt, quibus interpositis et locum qui vacaverit occupantibus statuti secundae vel tertiae formae de superioribus gradibus excluduntur. ideoque decernimus, ut, qui in prima vel secunda forma divino beneficio supernumerarii repperiuntur, statuti quin etiam secundae vel tertiae formae, alternis vicibus, hoc est per vicissitudines, promoveantur, ut nunc unus ex isto, nunc alter ex illo ordine ad superiorem statutorum locum, si vacaverit, progrediatur. de cetero observando, ut, si quis primae vel secundae vel tertiae formae specialiter inter statutos gradum caelitus valuerit impetrare, supernumerarius ultimus formae tertiae in matriculis habeatur. dat. prid. id. ian. constantinopoli honorio xiii et theodosio x aa. conss. (422 ian. 12).

CTh.6.33.0. De decanis

CTh.6.33.1

Impp. honorius et theodosius aa. helioni comiti et magistro officiorum. quattuor, qui ex corpore decanorum ad primum militiae gradum pervenerint, biennii spatio primiceriatus gerant officium, neque ulterius cuiquam hoc loco liceat immorari, ut omni gratia et ambitione cessante post duorum annorum curricula succedant prioribus subsequentes. dat. prid. non. nov. constantinopoli theodosio a. vii et palladio v. c. conss. (416 nov. 4).

CTh.6.34.0. De mensoribus

CTh.6.34.1

Imppp. arcadius, honorius et theodosius aaa. aemiliano magistro officiorum. primicerius mensorum ad instar scriniorum biennio expleto agentis in rebus ultimi militiam sortiatur. dat. x kal. aug. ancyrae stilichone ii et anthemio conss. (405 iul. 23).

CTh.6.35.0. De privilegiis eorum, qui in sacro palatio militarunt

CTh.6.35.1

Imp. constantinus a. palatinis bene meritis suis salutem. a palatinis tam his, qui obsequiis nostris inculpata officia praebuerunt, quam illis, qui in scriniis nostris, id est memoriae epistularum libellorumque, versati sunt, procul universas calumnias sive nominationes iubemus esse summotas, idque beneficium ad filios eorum atque nepotes ipso ordine sanguinis pervenire atque inmunes eos a cunctis muneribus sordidis et personalibus permanere cum universis mobilibus et mancipiis urbanis, neque iniurias eis ab aliquibus inferri, ita ut, qui haec contempserit, indiscreta dignitate poenas debitas exigatur. dat. iiii kal. nov. treviris volusiano et anniano conss. (314 oct. 29).

CTh.6.35.2

Idem a. ad proculum proconsulem africae. si ex memorialibus vel ex palatinis nostris aliquis ad agendas curas rei publicae vel alterius officii fuerit destinatus, minime ab eo repraesentatio postuletur equorum. qui autem in palatio obsequia non praebuerunt, sed ex alio hominum genere sunt, equos sollemnes pro huiusmodi actu repraesentent. dat. vi kal. aug. constantino a. iiii et licinio conss. (315 [319] iul. 27).

CTh.6.35.3pr.

Idem a. ad rufinum praefectum praetorio. de cubiculis nostris vacatione donatos vel diversis obsequiis palatinis aut scriniis memoriae epistularum libellorumque vel officio largitionum comitatensium singularumve urbium, sed et officio admissionum ad legum nostrarum privilegia volumus pertinere, ut nec ipsi nec filii nec nepotes eorum ad curiam vel honores vel munera municipalia devocentur. meritoque his iungimus largitionales urbium singularum, ne privilegio separentur quos dignitas propemodum similis copulavit, memorati namque palatinorum matriculis adtinentur, quique sub castrensi militant. quibus omnibus condonamus, ne exactorum vel turmariorum, quos capitularios vocant, curam subeant vel obsequium temonariorum vel prototypiae. nam beneficiis nostris ita digni sunt, ut etiamsi quis ad diversas administrationes post obsequia palatina pervenerit, isdem debeat uti privilegiis, quoniam maior dignitas nulli debet praeiudicium facere. (319 [immo 352] apr. 27).

CTh.6.35.3.1

Nemo igitur ex filiis praedictorum vel servis castrensi peculio conquisitis professionibus censualibus inseratur vel numero adcrescentium locove deficientium subrogetur, si non fuerit innexus voluminibus censualibus. (319 [immo 352] apr. 27).

CTh.6.35.3.2

Personalibus etiam et corporalibus muneribus liberentur, sive adhuc in palatio observant, siv optata quiete donati sunt. (319 [immo 352] apr. 27).

CTh.6.35.3.3

Quibus omnibus privilegiis coniungimus agentes in rebus, licet meritis militaribus videantur esse subnixi. dat. v kal. mai. sirmio constantino a. v. et licinio c. conss. (319 [immo 352] apr. 27).

CTh.6.35.4

Idem a. ad iulium verum vicarum italiae. palatinis nostris, qui ob spectatum laborem otio donati sunt, sub obtentu pensitationum, quae repraesentari consuerunt, tolerantia munerum sordidorum atque indigni oneris quorundam temeritate imponitur. quod facinus licet graviore poena plectendum est, tamen ita volumus emendari, ut gravitas tua ex officio rationum aeris speciem postulet et in tabulas ei formatae legis huius apices imprimat, ut, si quid tale sustineant, ad eas illico quasi ad praesentia remedia perfugiant atque ab intentato onere liberentur. proposita id. mart. crispo ii et constantino ii cc. conss. (321 mart. 15).

CTh.6.35.5

Idem a. ad universos palatinos. ab his, qui post impleta officia fidelis obsequii administrationes publicas meruerunt, concessa quidam conantur privilegia detorquere nec intellegunt fastigiis promotionum in sublime provectos ab inmunitate legitima exire minime oportere. ideoque praecipimus, ut palatini nostri expleto munere fidelis obsequii, cum ad dignitatum cumulos elati fuerint, nihil de concessis privilegiis perdant, sed incrementis dignitatum utilis augeatur immunitas. de qua re ad praefectos praetorio et ad praefectum urbis scripta direximus. dat. ... non. iul. ysco ianuarino et iusto conss. (328 iul. ...).

CTh.6.35.6

Impp. valentinianus et valens aa. have, artemi, karissime nobis. mirati admodum sumus te non consideratis privilegiis palatinorum quosdam ex eorum numero susceptoribus velle coniungere, cum id minime legis nostrae sententia comprehendat. et cetera. dat. xiii kal. oct. aquileia divo ioviano et varroniano conss. (364 sept. 19).

CTh.6.35.7

Idem aa. ad praetextatum praefectum urbi. omnes, qui intra consistorii secreta veneranda notariorum funguntur officio quique in scriniis militant quique inter agentes in rebus plenum vigiliarum munus exercent, admissionales etiam et qui sub castrensi officio sive comitatensibus sive privatis largitionibus obsecundant, cum pro merito probitatis et fidei accessu istius fuerint splendoris ornati constetque eos tunc temporis honoratos, cum a palatinis mitterentur obsequiis, a primis quibusque gradibus usque ad perfectissimatus ordinem, tametsi prosecutoriarum adiumenta non habeant, praerogativa concessi honoris utantur. comitibus autem, quorum iam celsior locus est, et tribunis ita demum prosit allectio, si sacra ad urbanae officium praefecturae scripta pertulerint, quibus eorum vita laudetur. haec peculiariter romae serventur, ut habito loci honorisque delectu, habito etiam virium fortunarumque discrimine, et laboribus singulorum congrua praemia rependantur et hi ad impetratam adlectionem pertineant, quos post gloriosum laborem exhauriri senatoriis sumptibus non oportet. dat. xiiii kal. dec. treviris, acc. iiii id. dec. lupicino et iovino conss. (367 nov. 18).

CTh.6.35.8

Idem aa. ad probum praefectum praetorio. circa palatinos nostros quies illibata permaneat, quo intellegant cuncti nec officia impunitum habere nec iudices, si inquietentur hi, quibus post documenta fidelis obsequii sub nostris acta conspectibus plena est impertienda tranquillitas. dat. iii kal. sept. brisiaci valentiniano nobilissimo puero et victore conss. (369 aug. 30).

CTh.6.35.9

Imppp. gratianus, valentinianus et theodosius aaa. ad arborium praefectum urbi. omnes, qui e palatio sacro vel privilegiis ambiuntur vel provinciali administratione donati sunt, nullis volumus conventionibus fatigari. quisquis igitur agentem in rebus aliumve palatina dignitate subfultum, qui vel post administratam provinciam honorati auctoritate fulcitur vel testimonii nostri adsertione confidit frequenter super dignitate sua, interpellatione pulsaverit, quinque librarum auri illatione tenebitur. dat. xv kal. mart. treviris gratiano v et theodosio i aa. conss. (380 febr. 15).

CTh.6.35.10

Idem aaa. ad probum praefectum praetorio. rectores provinciarum illicitum esse cognoscant quemquam, qui e palatio gloriosa administratione perfunctus seu vacatione donatus sit, ulli necessitati extra ordinem subiugandum praeterquam semel ad professionem proprii honoris, non modo ulla conventione cogendum, verum levi saltem conmonitione pulsandum. quod si quis iudex hoc praeceptum temerare contenderit, eius officium, penes quod culpam neglectae iussionis haerere manifestum est, quinque librarum auri condemnatione multandum est. dat. v kal. iul. aquileia gratiano v et theodosio i aa. conss. (380 [?] iun. 27).

CTh.6.35.11

Idem aaa. eutropio praefecto praetorio. ab omnibus ex aula nostra decedentes viri iniunctis habeantur inmunes; numerariorum fastus vel rapaces quaestus tamquam experientes et idonei non patiantur nec post emeritam missionem ad ministeria senes debiles seu vacantes oblitterata laboris exacti consideratione revocentur. dat. iii non. feb. constantinopoli eucherio et syagrio viris clarissimis conss. (381 febr. 3).

CTh.6.35.12

Idem aaa. ad cynegium comitem sacrarum largitionum. quoscumque palatinae militiae officiis deputatos per decem annorum spatia quisquam ad ordinem sibi debitum repetere cessaverit, postea super petitione personae agere nihil poterit. dat. iii non. mart. constantinopoli merobaude ii et saturnino viris clarissimis conss. (383 mart. 5).

CTh.6.35.13

Imppp. valentinianus, theodosius et arcadius aaa. ad pinianum praefectum urbi. omnes, qui in palatio militando diversis actibus paruerunt, secundum legem domini germani nostri in tantum eius dignitatis, cuius meruerint missionem, optinere norint insignia, ut his omnibus praeferantur in ordine atque consessu, qui posteriore tempore regendas provincias dignitatesque susceperint palatinas. hoc autem generale decretum si quisquam temeraria usurpatione violare temptaverit, sacrilegii reus legibus censeatur. dat. prid. non. iul. mediolano, acc. iiii kal. sept. honorio n. p. et evodio conss. (386 iul. 6).

CTh.6.35.14pr.

Impp. honorius et theodosius aa. ad asclepiodotum praefectum praetorio. qui intra nostra scrinia vel agentum in rebus vel palatinorum tam comitis largitionum quam comitis privatarum, vel ad apparitionis amplissimae praefecturae praetorianae sacramenta se devoverit et quindecennii transcurso curriculo nulla fuerit a collegis conventione pulsatus, adsumpti cinguli honore laetetur nec emensa militia relictae originis invidia quatiatur. (423 mai. 18).

CTh.6.35.14.1

In cohortalinorum autem militia praedicta tempora propaganda censemus, non quod maiores in ipsis rei publicae vires sint quam in curialibus constitutae, sed quod non isdem privilegiis inferioris sortis homines debeant honorari. ideoque decernimus, ut, si in ea militia, ad quam transire conati sunt, viginti quinque annos sine ulla fortunae suae conventione peregerint et in officiis sine inquietudine et intermissione permanserint, quibus se quamvis illicite sociarunt, ipsi quoque securi sint et a prioris condicionis macula liberentur. (423 mai. 18).

CTh.6.35.14.2

Liberos autem curialium vel cohortalium quandoque susceptos, sive ante praerogativam et tempora expressa praesumptae militiae sive post decursa stipendia, originalem sequi condicionem oportet, quoniam satis est parentibus eorum vacationem a nostra clementia pro remuneratione fuisse concessam. (423 mai. 18).

CTh.6.35.14.3

Haec autem lex non ad illos pertinet, qui vel curiis vel suis officiis per sententias iudicum traditi sunt, quos quidem propriam necesse est, cui addicti sunt, fortunam amplecti, sed ad eos, de quorum condicione in iudiciis quaestio vertitur, ut datam formam cognitores observent. dat. xv kal. iun. constantinopoli asclepiodoto et mariniano conss. (423 mai. 18).

CTh.6.36.0. De castrensi omnium palatinorum peculio

CTh.6.36.1 [35,15]

Imp. constantinus a. ad severum praefectum urbi. omnes palatinos, quos edicti nostri iam dudum certa privilegia superfundunt, rem, si quam, dum in palatio nostro morantur, vel parsimonia propria quaesiverint vel donis nostris fuerint consecuti, ut castrense peculium habere praecipimus. quid enim tam ex castris est, quam quod nobis consciis ac prope sub conspectibus nostris adquiritur? sed nec alieni sunt a pulvere et labore castrorum, qui signa nostra comitantur, qui praesto sunt semper actibus, quos intentos eruditis studiis itinerum prolixitas et expeditionum difficultas exercet. ideoque palatini nostri, qui privilegiis edicti uti potuerint, peculia sua praecipua retineant, quae, dum in palatio constituti sunt, aut labore, ut dictum est, proprio aut dignatione nostra quaesiverint. proposita x kal. iun. constantino a. vi et constantio caes. conss. (320 [326] mai. 23).

CTh.6.37.0. De equestri dignitate

CTh.6.37.1 [36,1]

Impp. valentinianus et valens aa. ad mamertinum praefectum praetorio. equites romani, quos secundi gradus in urbe omnium optinere volumus dignitatem, ex indigenis romanis et civibus eligantur, vel his peregrinis, quos corporatis non oportet adnecti. et quia vacuos huiusmodi viros esse privilegiis non oportet, corporalium eos iniuriarum et prosecutionum formido non vexet, ab indictionibus quoque, quae senatorium ordinem manent, habebuntur immunes. dat. prid. kal. nov. philippopoli divo ioviano et varroniano conss. (364 oct. [?] 31).

CTh.6.38.0. De perfectissimatus dignitate

CTh.6.38.1 [37,1]

Imp. constantinus a. ad paternum valerianum. codicillis perfectissimatus fruantur qui impetraverint, si abhorreant a condicione servili vel fisco aut curiae obnoxii non sint vel si pistores non fuerint, vel non in aliquo .... (313-337 ...).

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CTh.7.1.0. De re militari

CTh.7.1.1 [=brev.7.1.1]

Imp. constantinus a. et caesar .... si quis barbaris scelerata factione facultatem depraedationis in romanos dederit, vel si quis alio modo factam diviserit, vivus comburatur. dat. iv. kal. mai. severo et rufino coss.

interpretatio. si quis cum quibuslibet hostibus praedas egerit aut praedam cum praedonibus diviserit, incendio concremetur

CTh.7.1.2

Imp. constantius a. ad silvanum comitem et magistrum equitum et peditum. si quis miles per commeatum dimissus fuerit a tribuno vel praeposito aut inconsulto eodem ab obsequio militari signisque discesserit, per singulos milites tribuni et praepositi quina pondo auri fisco inferant. dat. vi kal. iun. sirmio limenio et catullino conss. (349 [?] mai. 27).

CTh.7.1.3

Idem a. ad titianum praefectum praetorio. quicumque militum ex nostra auctoritate familias suas ad se venire meruerint, non amplius quam coniugia liberos, servos etiam de peculio castrensi emptos neque adscriptos censibus ad eosdem excellentia tua dirigi faciat. dat. iii kal. iun. limenio et catullino conss. (349 mai. 30).

CTh.7.1.4

Idem a. ad cretionem virum clarissimum comitem. quamvis omni tempore opera dari debuerit, ne sacramentis militaribus spretis otio traderentur qui nec stipendiorum numero nec contraria corporis valetudine quiete perfrui debent, tamen prudentiae tuae prosecutione admissa, quae apud nos verbis facta est, praecipimus, ut, qui ante stipendia emensa vel integra corporis valetudine otio mancipati sunt, restituantur pristinis numeris. dat. v kal. iul. sergio et nigriniano conss. (350 iun. 27).

CTh.7.1.5

Impp. valentinianus et valens aa. eorum liberos, qui armis inhaeserunt, ad usum bellicum et castra revocantes eis quoque eorum stipendiorum copiam deferemus, qui alterius gradus militia salutarem maxime rei publicae operam persecuntur. quod si quosdam aut inbecillitas valitudinis aut habitudo corporis aut mediocritas proceritatis ab armatae militiae condicione submoverit, eos iubemus in officiis ceteris militare. nam si post definitam a nobis aetatem ignobile otium adamaverint, curiis obnoxii erunt sine controversia pro virium qualitate, ita ut ii, quos debilitas fortuita aut morbus et corporis valitudo confecta ita enervaverit, ut ad usum castrorum militiaeque idonei esse non possint, vacationem perpetuam depulsis curialium munerum sollicitudinibus consequantur. et cetera. dat. iii k. mai. hadrianopoli divo ioviano at varroniano conss. (364 apr. 29).

CTh.7.1.6pr.

Idem aa. mauris sitifensibus. si quis armatae sacramenta militiae impigro quinquennii labore pertulerit, avo licet ac patre sit decurione progenitus, ab omni nexu curiali personam dumtaxat propriam vindicaverit. (? 368? 370? 373? apr. 23).

CTh.7.1.6.1

Diversis autem officiis servientes quinque et viginti annis in militia decursis pari securitate donamus. et cetera. dat. viiii k. mai. treveris valentiniano et valente aa. conss. (? 368? 370? 373? apr. 23).

CTh.7.1.7

Idem aa. iovio magistro equitum et peditum. plures de diversis numeris ante impleta stipendia ad indebitos honores suffragiorum ambitione perveniunt. sive igitur eos purpuram adorasse constabit sive excepisse aliquas dignitates, eo quem ceperint honore solvantur, ita ut, qui ceteros in labore positos festina cupiditate transierint, nec testimonium quidem emeriti laboris accipiant. quod si aliquibus fortasse rationibus adtinentur impliciti, ad eos numeros, de quibus per ambitionem exierant, revertantur. dat. prid. kal. iun. mediolano valentiniano et valente aa. conss. (365 mai. 31).

CTh.7.1.8

Idem aa. ad edquitium comitem et magistrum militum. omnibus omnino veteranis auctoritas tua denuntiet, quod, si quis filium suum armorum honore condignum non propria voluntate militiae, quam ipse sudarit, obtulerit, nostrae sit legis laqueis implicandus. dat. viii kal. oct. heracleae valentiniano et valente aa. conss. (365 sept. 24).

CTh.7.1.9

Idem aa. ad iovinum magistrum equitum. tam duces quam etiam comites et quibus rheni est mandata custodia sinceritas tua protinus admonebit, ut neque regalibus neque legatis sua milites iumenta subpeditent. etenim cum propriis animalibus eo usque veniendum est, ubi obsequium cursuale succedit. sane sollicitudinem competentem auctoritas tua iubebit adhiberi, ut eorum pecoribus, ubi collocaverint mansionem, alimenta non desint. dat. iiii kal. feb. remis lupicino et iovino conss. (367 ian. 29).

CTh.7.1.10

Idem aa. ad iovinum magistrum militum. plerique milites secum homines condicionis ingenuae propinquitate simulata vel condicione lixarum frequenter abducunt: ideoque, ut numerosissima pube crescat exercitus, moneantur, ut ipsi sponte huiuscemodi homines, quos penes se esse meminerint, tribunis suis sive praepositis offerant ad tuum officium dirigendos, aut sciant se non absque devotionis nota et morsu honoris alieni commilitonibus esse postponendos. etenim his, qui occultatores perfidos publicaverint, pro praemio huius indicii gradus unus addetur, hi vero ad inferiorem ordinem revolventur, qui castris idoneos iuvenes studio inertis obsequii putaverint occulendos. dat. xvi kal. mart. remis lupicino et iovino conss. (367 febr. 14).

CTh.7.1.11

Idem aa. ad severum magistrum militum. ii, qui inter adcrescentes matriculis adtinentur, tamdiu alimoniam a parentibus sumant, quoad gerendis armis idonei fuerint aestimati, ita ut cesset super eorum nomine praebitio fiscalis annonae. dat. viii kal. mai. treviris modesto et arintheo conss. (372 apr. 24).

CTh.7.1.12

Imppp. gratianus, valentinianus et theodosius aaa. cynegio praefecto praetorio. tribuni vel milites nullam evagandi per possessiones habeant facultatem; cum signis propriis in mansionibus solitis ac publicis maneant: aut si quis tam necessaria scita contempserit, de eo ac tribuno eius ad nostram scientiam rectorum ac defensorum relationibus protinus deferatur. dat. iiii id. april. constantinopoli richomere et clearcho conss. (384 apr. 10).

CTh.7.1.13

Idem aaa. richomeri comiti et magistro utriusque militiae. cum supra virentes fluminum ripas omnis legionum multitudo consistit, id provida auctoritate decernimus, ut nullus omnino inmundo fimo sordidatis fluentis commune poculum polluat neve abluendo equorum sudore deproperus publicos oculos nudatus incestet atque ita et turbido potum caeno misceat et confundat aspectum, sed procul a cunctorum obtutibus in inferioribus partibus fluviorum, id est infra tentoria vagos natatus animalium, prouti libitum videtur, exerceat. sublimis igitur magnificentia tua id sollicitudinis studio et admonitionis praecepto faciet custodiri, ut unusquisque tribunus agnoscat gravi se subdendum esse supplicio, in cuius parte neglectum probabitur quod agnoscit imperatum. dat. vi kal. iun. vincentiae tatiano et symmacho conss. (391 mai. 27).

CTh.7.1.14

Imppp. theodosius, arcadius et honorius aaa. theodoto magistro officiorum. quicumque infantes vel pueri militare coeperunt, sterni eos inter ultimos iussimus, ita ut ex eo tempore, ex quo parere coeperint, locum sibi incipiant vindicare, ut laborum suffragiis incrementa militiae consequantur. dat. iii kal. mai. constantinopoli arcadio iii et honorio ii aa. conss. (394 apr. 29).

CTh.7.1.15

Impp. arcadius et honorius aa. remistheo duci armeniae. si quis posthac militem in privato obsequio repertus fuerit retinere, quinque libras auri multae nomine feriatur. dat. xii kal. mart. constantinopoli arcadio iiii et honorio iii aa. conss. (396 febr. 18).

CTh.7.1.16

Idem aa. theofilo vicario asiae. si quos milites per provincias relictis propriis numeris passim vagari cognoveris, correptos facias custodiri, donec de his clementiae nostrae auribus intimetur et quid fieri oporteat decernamus; ita ut, si quis miles in provincia sine suo numero repertus fuerit ac post elapsus esse nuntiabitur, facultatum suarum, periculo totius officii, condemnatione gravissime vindicetur. dat. v kal. feb. constantinopoli honorio a. iiii et eutychiano conss. (398 ian. 28).

CTh.7.1.17pr.

Idem aa. romuliano praefecto urbi. si qui miles ex his, qui praesentes divino obsequio nostrae clementiae deputati sunt et qui in hac esse urbe praesente comitatu concessi sunt quive de aliis numeris vel legionibus sunt, repertus fuerit vel sibi vacans vel alieno obsequio contentus, nobis ilico nuntietur, ita ut conscii, qui talium praesentiam non praebuerint, viginti libras auri sciant esse se multandos. (398 febr. 1).

CTh.7.1.17.1

Sin vero quisquam missus a numero vel a tribuno ad comitatum serenitatis nostrae pervenerit, ilico se viris illustribus comitibus offerre festinet et causas profectionis exponat, ut et responsum caeleste mereatur et citam remeandi accipiat facultatem. dat. kal. feb. constantinopoli honorio a. iiii et eutychiano conss. (398 febr. 1).

CTh.7.1.18

Idem aa. stilichoni magistro militum. contra publicam utilitatem nolumus a numeris ad alios numeros milites nostros transferri. sciant igitur comites vel duces, quibus regendae militiae cura commissa est, non solum de comitatensibus ac palatinis numeris ad alios numeros militem transferri non licere, sed ne de ipsis quidem pseudocomitatensibus legionibus seu de ripariensibus castricianis ceterisque cuiquam eorum transferendi militem copiam adtributam, quia honoris augmentum non ambitione, sed labore ad unumquemque convenit devenire. quod si qui contra fecerint, per singulos milites singulas auri libras a se noverint exigendas. dat. xiiii kal. april. mediolano stilichone et aureliano conss. (400 mart. 19).

CTh.7.2.0. Quid probare debeant ad quamcumque militiam venientes

CTh.7.2.1

Imppp. gratianus, valentinianus et theodosius aaa. postumiano praefecto praetorio. quotiescumque se aliquis militiae crediderit offerendum, statim de natalibus ipsius ac de omni vitae condicione examen habeatur, ita ut domum genus non dissimulet et parentes. nec tamen huic ipsi rei nisi honestissimorum hominum testimonio adstipulante credatur: ita enim fiet, ut et curias nemo declinet et ad militiam nullus adspiret, nisi quem penitus liberum aut genere aut vitae condicione inquisitio tam cauta deprehenderit. dat. xiiii kal. aug. constantinopoli merobaude ii et saturnino conss. (383 iul. 19).

CTh.7.2.2

Idem aaa. ad neoterium praefectum praetorio. quisquis cinguli sacramenta desiderat, in ea urbe, qua natus est vel in qua domicilium collocat, primitus acta conficiat et se ostendat non patre, non avo esse municipe penitusque ab ordinis necessitatibus alienum, sciturus se in perpetuum revocandum nec temporis nec militiae praerogativa, si ita non gesserit, defendendum. ordines etiam urbium noverint, si cuiquam praestitisse se gratiam doceantur ac non vera actis promendo per mendacium quemquam abire permiserint, se periculo subiacere. dat. vi id. iul. mediolano arcadio a. i et bautone conss. (385 iul. 10).

CTh.7.3.0. Quis in gradu praeferatur

CTh.7.3.1

Imppp. theodosius, arcadius et honorius aaa. rufino praefecto praetorio. in omnibus, qui militiae nomen dederunt, ratio est habenda meritorum, ut is potissimum potiorem adipiscatur gradum, qui meruerit de labore suffragium, nec quaeratur, quis militarit primus, sed quis manserit in studio apparitionis adsiduus. dat. prid. id. feb. constantinopoli theodosio a. iii et abundantio v. c. conss. (393 febr. 12).

CTh.7.3.2

Impp. honorius et theodosius aa. anthemio praefecto praetorio. cum alios in altiores militiae gradus iugis observatio, nonnullos in eadem militiae statione caeleste pervexisset oraculum ac tempore provehendae dignitatis exoreretur contentio, quisnam prior incederet quisve subsequeretur, cum uterque pari eiusdem gradus niteretur auspicio, non inmerito placuit, ut, quotiens codicillis vel sacris affatibus ullus ex alio ad alium gradum cum isdem stipendiis emigrarit, triennio ei postponatur, quem sors militiae in eum progressum duxerit. dat. x kal. oct. honorio viii et theodosio iii aa. conss. (409 sept. 22).

CTh.7.4.0. De erogatione militaris annonae

CTh.7.4.1

Imp. constantinus a. have felix karissime nobis. tribunos sive praepositos, qui milites nostros curant, annonas per dies singulos scriptionis indicio sibi debitas in horreis derelinquere non oportet, ut procuratores seu susceptores vel praepositi pagorum et horreorum eam comparent: hinc enim fit, ut a provincialibus non annonas, sed pecunias postulent memorati ipsis etiam speciebus remanentibus vitiatis adque corruptis. constituimus igitur derelictae annonae fisco compendium vindicari, subscribendario et optione gladio feriendis, quoniam fieri non potest, ut vel provinciales iterata collatione graventur vel militibus corruptae species dividantur detrectantibus memoratis ad diem sumere annonas suae congruas dignitati. in qua culpa si quis fuerit adprehensus, nec personae merito nec honoris fastigio defendendus est. dat. xiiii kal. nov. aquis paulino et iuliano conss. (325 oct. 19).

CTh.7.4.2

Imp. constantius a. ad taurum. cum militibus per africam constitutis laridum vel recens forsitan caro deinceps erogabitur, ungulas orisque tantummodo summitatem praecidi amputarique praecipimus, ne porcina integra separetur, sed erogationi proficiat annonariae. dat. viii id. april. arbitione et lolliano conss. (355 apr. 6).

CTh.7.4.3

Idem a. et iulianus caes. ad taurum. comes militaris rei per africam constitutus contra vetitum species annonarias de conditis arbitrio suo dicitur usurpasse. hoc de cetero citra vicarii arbitrium fieri non potest, si vicarius comitis scriptione conventus didicerit, qui numerus annonarum et quibus debet erogari, atque id fieri oportere censuerit. dat. xv kal. ian. sirmio constantio a. viiii et iuliano c. conss. (357 dec. 18).

CTh.7.4.4

Idem a. helpidio. cum in expeditione milites degant, biduo expeditionalem annonam, tertio die panem consequantur ac vinum. dat. iiii kal. ian. doridae datiano et cereale conss. (358 [360/1] dec. 29).

CTh.7.4.5

Idem a. helpidio praefecto praetorio. expeditionalem annonam ex horreis milites viginti dierum debent suscipere, ut eam transvehant propriis in expeditione necessitatibus profuturam. dat. prid. id. mart. constantinopoli eusebio et hypatio conss. (359 [360/1?] mart. 14).

CTh.7.4.6

Idem a. et iulianus caesar helpidio praefecto praetorio. repetita consuetudo monstravit expeditionis tempore buccellatum ac panem, vinum quoque atque acetum, sed et laridum, carnem verbecinam etiam, milites nostros ita solere percipere: biduo buccellatum, tertio die panem; uno die vinum, alio die acetum; uno die laridum, biduo carnem verbecinam. dat. xvi kal. iun. hierapoli constantio x et iuliano c. iii conss. (360 mai. 17).

CTh.7.4.7

Imp. iulianus a. sallustio praefecto praetorio. milites ad vicensimum lapidem capitum petere iussimus. dat. viii id. ian. mamertino et nevitta conss. (362 [?] ian. 6).

CTh.7.4.8

Idem a. secundo praefecto praetorio. militibus ad kalendas augustas capitatio denegetur, ex kalendis augustis praebeatur. dat. kal. aug. nicomediae mamertino et nevitta vv. cc. conss. (362 aug [?] 1).

CTh.7.4.9

Imp. iovianus a. secundo praefecto praetorio. e vicensimo non amplius lapide milites sibi iubemus paleas convectare. dat. v kal. oct. aedesa ioviano et varroniano conss. (364 [?] sept. 27).

CTh.7.4.10

Impp. valentinianus et valens aa. ad symmachum praefectum urbi. protectores fori rerum venalium iuxta veteris moris observantiam in annonarum suarum conmoda pretia consequantur. dat. x kal. mai. antiochiae divo ioviano et varroniano conss. (364 apr. 22).

CTh.7.4.11

Idem aa. ad mamertinum praefectum praetorio. susceptor antequam diurnum pittacium authenticum ab actuariis susceperit, non eroget. quod si absque pittacio facta fuerit erogatio, id quod expensum est damnis eius potius subputetur. in qua re officium gravitatis tuae in speculis esse debebit, non sine detrimento propriarum facultatum id futurum sciens, si neglexerit, ut praescriptae formae tenor custodiatur; nec prius de horreis species proferantur et maxime capitationis, quam, ut dictum est, ad diem pittacia authentica fuerint prorogata. dat. id. dec. treviris divo ioviano et varroniano conss. (364 [?] dec. 13).

CTh.7.4.12

Idem aa. ad victorem magistrum militum. in provinciis statione militum adfici possidentes ursicini comitis suggestione cognovimus, a quibus superstatutorum grave atque inusitatum quoddam nomen cenaticorum fuerit introductum. quod magnifica auctoritas tua missis competentibus litteris in omnibus provinciis iubebit aboleri, ut milites recordentur commoda sua, quae in annonarum perceptione adipiscuntur, extrinsecus detrimentis provincialium non esse cumulanda. dat. vi kal. ian. bonamansione divo ioviano et varroniano conss. (364 nov. 26 [mai. 27]).

CTh.7.4.13

Idem aa. ad populum. actuarii per singulos vel ut multum binos dies authentica pittacia prorogent, ut hoc modo inmissis pittaciis species capitum annonarumve ex horreis proferantur. quod nisi fuerit custoditum, actuarius et susceptor, sed et officium iudicantis, quod non institerit huic iussioni, statutae obnoxium tenebitur. dat. kal. oct. aquileia valentiniano et valente aa. conss. (365 oct. 1).

CTh.7.4.14

Idem aa. secundo praefecto praetorio. riparienses milites mensibus novem in ipsa specie consequantur annonam, pro tribus pretia percipiant. acc. kal. dec. calchedone valentiniano et valente aa. conss. (365 dec. 1).

CTh.7.4.15

Idem aa. ad auxonium praefectum praetorio. sicut fieri per omnes limites salubri prospectione praecipimus, species annonarias a vicinioribus limiti provincialibus ordinabis ad castra conferri. et in vicinioribus castris constituti milites duas alimoniarum partes ibidem de conditis sumant nec amplius quam tertiam partem ipsi vehere cogantur. dat. v non. mai. marcianopoli valentiniano n. p. et victore conss. (369 mai. 3).

CTh.7.4.16

Imppp. valentinianus, valens et gratianus aaa. ad probum praefectum praetorio. actuarii nisi expleto triginta dierum spatio pittacia authentica confestim tradiderint, species, quas ex fiscalibus conditis dissimularint excludere vel numero, cuius ratiocinia pertractant, supersederint erogare, de propriis facultatibus vel militibus ipsis vel fiscalibus horreis adigantur inferre. dat. vi id. april. sirmio valentiniano et valente aa. conss. (370 vel 373 apr. 8).

CTh.7.4.17

Idem aaa. ad modestum praefectum praetorio. fortissimi ac devotissimi milites, familiae quoque, sed et ceteri quibuscumque praediti dignitatibus annonas et capitum singulis diebus aut certe competenti tempore, id est priusquam annus elabatur, de horreis consequantur, aut si perceptionem suam ac si debitam studio voluerint protelare, id, quod competenti tempore minime perceperint, fisci nostri commodis vindicetur. dat. prid. non. april. antiochiae gratiano a. iiii et merobaude v. c. conss. (377 apr. 4).

CTh.7.4.18

Imppp. valentinianus, theodosius et arcadius aaa. abundantio, stilichoni et ceteris comitibus et magistris utriusque militiae. ne quis pro speciebus annonariis pretia temptet exigere: vel, si contra legem datam venire temptaverit, nec illud, quod in pretio expetit, permittatur exigere nec illud, quod suo tempore accipere in speciebus neglexerit, consequatur. dat. iiii kal. aug. constantinopoli theodosio a. iii et abundantio v. c. conss. (393 iul. 29).

CTh.7.4.19

Idem aaa. tatiano praefecto praetorio. officiorum annonas dispositione providentissima his provinciis distributas, quae nec transvectioni publicae nec arcae possunt aliquod deferre compendium, conprobamus. dat. prid. kal. aug.

constantinopoli theodosio a. iii et abundantio v. c. conss. (393 [388-392] iul. 31).

CTh.7.4.20

Idem aaa. rufino praefecto praetorio. nulli militarium pro his annonis, quae in provinciis delegantur, repudiata ad tempus specierum copia et inopiae occasione captata pretia liceat postulare, ita ut, si quis propter anni abundantiam suscipere oblata neglexerit ac postea impositis pro necessitate rerum pretiis repudiata taxaverit, neque id, quod contra hanc legem expetit, sinatur exigere neque illud, quod accipere dissimulaverit, consequatur. dat. iii kal. aug. constantinopoli theodosio a. iii et abundantio v. c. conss. (393 iul. 30).

CTh.7.4.21

Impp. arcadius et honorius aa. caesario praefecto praetorio. si a militaribus provinciales quaelibet damna pertulerint ac non ipsas species, quae in provinciis a possessoribus congregantur, fuerint consecuti, ilico interpellato iudice admissum crimen ad nostram clementiam perferatur, ut admissum crimen congrue vindicetur. sin vero tantum nefas simili taciturnitate contexerint, praeter eam multam, quam rectores officiaque subire conveniet, etiam detrimentorum quantitas in duplum de eorum facultatibus exigetur reddenda ac restituenda his, qui dispendia talia pertulerunt. dat. xv kal. mai. arcadio iiii et honorio iii aa. conss. (396 apr. 17).

CTh.7.4.22pr.

Idem aa. hilario praefecto praetorio. neque scholae neque vexillationes comitatenses aut palatinae neque legiones ullae neque auxilia, qualeslibet ad provincias delegatorias de specierum praebitione pertulerint, audiantur, si pretia poscant ultra ea, quae generali lege divi patris senioris valentiniani constituta sunt. nec enim fas est, ut exigendis annonis militum nostrorum servientes nova possessoribus pro arbitrio proprio indicant. (396 mai. 30).

CTh.7.4.22.1

Sine mentione etiam pretiorum nullam delegationem valere praecipimus. dat. iii kal. iun. mediolano arcadio iiii et honorio iii aa. conss. (396 mai. 30).

CTh.7.4.23

Idem aa. hilario praefecto praetorio. provincialium commodis nos convenit subvenire. ad omnium utique numerorum sive vexillationum aut etiam scholarum tribunos per viros illustres comites sublimitas tua faciat pervenire, ut meminerint faenum militibus isdem capitibus praestandum iuxta legem divi valentiniani de quinta decima indictione nec tamen ad oppidum deferendum. dat. xvi kal. iul. arcadio iiii et honorio iii aa. conss. (396 iun. 16).

CTh.7.4.24

Idem aa. excellentia tua erogationis per susceptores factae modum quantitati brevium conferri perficiat, ita ut, ex quo die numeris datum sit, diligentius exploretur ac si quod amplius actuarios vel optiones accepisse constiterit, quam brevium datorum scriniis nostris veritas continet, memorati in duplum reddere compellantur, susceptoribus ea summa imputanda, quam semel flagitantibus isdem erogasse monstraverint. nam ad illustres quoque magistros utriusque militiae sacri apices cucurrerunt, quibus provida sanctione decrevimus, ut breves ante indictionis principium summa fide ac veritate confecti ad nostra scrinia dirigantur, secundum quos a susceptoribus erogatio celebretur. dat. viii kal. april. constantinopoli honorio a. iiii et eutychiano v. c. conss. (398 mart. 25).

CTh.7.4.25

Idem aa. eutychiano praefecto praetorio. quoniam clementia nostra poscenti epifanis ordini consensit, ut novembri mense novellum vinum militi praeberetur, propterea quod veteris dispendiosa videtur erogatio, illustris auctoritas tua per omnes provincias cunctis numeris ac militibus a novembri mense de novello vino annonam dari disponat. dat. x kal. iun. constantinopoli honorio a. iiii et eutychiano v. c. conss. (398 mai. 23).

CTh.7.4.26

Idem aa. provincialibus provinciae proconsularis. opinatoribus nullum sit cum provinciali conmercium, ita ut a iudicibus vel officio provinciali omnis summa debiti postuletur intra anni spatium conferenda. dat. prid. kal. april. mediolano vincentio et fravito conss. (401 mart. 31).

CTh.7.4.27

Idem aa. et theodosius a. anthemio praefecto praetorio. nullus protectorum vel domesticorum, cui aut tuitio locorum aut quaedam longior est commissa necessitas aut certe iudicum nostrorum praeceptis iussus obtemperat, annonas vel emolumenta percipiat, nisi circumacto anni tempore post completum consulatum in alterius anno consulis conmonitorium reparare curaverit. dat. kal. april. constantinopoli arcadio a. vi et probo v. c. conss. (406 apr. 1).

CTh.7.4.28pr.

Imppp. arcadius, honorius et theodosius aaa. anthemio praefecto praetorio. a provinciarum rectoribus caveatur, ut tam numeris quam familiis nec non et impedimentis praeter eas annonas, quae adaerantur, id tantum in specie praebeatur, quod militis flagitarit inspectio, ne actuariorum fraudibus ulla relinquatur superpostulationis occasio, cum per praepositos pistorum et diadotas legis forma caveatur, ut nulli omnino nulla in specie praebeatur annona, nisi quem substantem adque in praesenti constitutum postulare constiterit. (406 apr. 9).

CTh.7.4.28.1

Hoc quoque legis auctoritate complexo, ut semper dierum, per quas resistentes tribuni emolumenti gratia sollemniter stillaturae nomine consecuntur species, non aliter adaerentur, nisi ut in foro rerum venalium distrahuntur. dat. v id. april. constantinopoli arcadio a. vi et probo v. c. conss. (406 apr. 9).

CTh.7.4.29

Impp. honorius et theodosius aa. anthemio praefecto praetorio. si quas sub gratia donationis a militibus auferunt quam merentur annonas duces seu tribuni, iuxta nummaria defixa pretia sine ulla dubitatione percipiant. dat. iiii non. mai. constantinopoli honorio vii et theodosio ii aa. conss. (407 mai. 4).

CTh.7.4.30

Idem aa. anthemio praefecto praetorio. limitanei militis et possessorum utilitate conspecta per primam, secundam ac tertiam palaestinam huiuscemodi norma processit, ut pretiorum certa taxatione depensa specierum intermittatur exactio. sed ducianum officium sub versamini et moenoeni castri nomine salutaria statuta conatur evertere. ideoque lege repetita censemus, ut, si quis interclusam specierum exactionem refricare temptaverit vel adaerationes statutas ausus fuerit inmutare, tam vir spectabilis dux centum librarum auri quam etiam eius officium pari condemnationis summa quatiatur, adiecta sacrilegii poena, quae divalium scitorum violatores palam insequitur. dat. x kal. april. constantinopoli honorio viii et theodosio iii aa. conss. (409 mart. 23).

CTh.7.4.31

Idem aa. ad anthemium praefectum praetorio. militaribus commodis prospicientes adaeratarum annonarum, quae familiis apud orientem vel aegyptum praeberi consuerunt, certa ac distincta locis et numero pretia statuimus. verum quia in hoc et provincialium nobis habenda est cura praecipua, ne nimia festinatione poscendi collatorum vires adteri videantur, certum constitui tempus placet, quo eadem pretia debeant praeberi poscentibus. quapropter uniuscuiusque indictionis annonariam in pretiis rationem transacta ea sequentis indictionis mense novembri completo praeberi praecipimus. dat. prid. kal. dec. constantinopoli honorio viii et theodosio iii aa. conss. (409 nov. 30).

CTh.7.4.32

Idem aa. leontio viro illustri praefecto illyrici. procuratores curiarum annonarum et cellariensium specierum gratia minime fatigentur, quas in dignitatibus constituti, id est rectores provinciarum et comites solent accipere. nam cum adaerationis aestimatio prius per centum et viginti capita exactione solidi teneretur, per sexaginta recens redegit aviditas exindeque iam nutrita licentia ad tredecim tributarios non dubitavit artare, procuratore damnum, quo ipse subditus fuisset, provincialibus infligente. ideoque per cornicularium cuiuscumque provincialis officii hanc sollicitudinem impleri conveniet, ita ut nulla ab eodem exactionis molestia provincialibus inferatur, sed erogandas species ex horreis publicis et cellariensium nomine aurum ex titulo manifesto eidem delegatum pro erogationis qualitate suscipiat, etiam pretium his, qui adaerare voluerint, depensurus iuxta nundinationem, quae aut foro rerum venalium continetur aut amplissimae praefecturae est culmini deputata: nec enim queri poterunt, qui vel species accipient debitas dignitati vel, si auri perceptione laetentur, aequari se tanto culmini non debebunt: temerantium etiam audacia punienda officio tui culminis quinquaginta librarum auri multa continuo percellendo, si rite disposita observare neglexerit. dat. xvi kal. sept. constantinopoli honorio viiii et theodosio iiii aa. conss. (412 aug. 17).

CTh.7.4.33

Idem aa. hadriano praefecto praetorio. ne interiecti aequoris tractu querellae provincialium pereant, flavianum et caecilianum viros illl. per africam audientiam cunctis praebere decernimus. militarem quoque annonam, quae intra africam contubernalibus erogatur, eorum diligentia indagari praecipimus, ut nihil his post eorum examen addatur. et cetera. dat. v non. mart. ravenna constantio et constante vv. cc. conss. (414 mart. 3).

CTh.7.4.34

Idem aa. constantio magistro militum. his scholaribus, quibus laborum intuitu regendos numeros dederimus, de aerariis annonis singulos solidos per opinatores, caballationis quoque rationem pro administrato tempore debitam, quando militibus erogatur, sine mora praeberi oportet, vel, si quis eorum antequam accipiat in fata concesserit, quod ex utraque causa ei debebatur, heredibus eius restitui. dat. xiii kal. dec. constantio et constante vv. cc. conss. (414 nov. 19).

CTh.7.4.35

Idem aa. asclepiodoto praefecto praetorio. annonas omnes, quae universis officiis atque sacri palatii ministeriis et sacris scriniis ceterisque cunctarum adminiculis dignitatum adsolent delegari quasque ii, qui ad earum exactionem mittuntur, pro cupiditate ac libidine sua graviter ex provincialium visceribus eruebant, ad similitudinem militum, quibus aerariae praebentur annonae, adaerari praecipimus, ut omnibus superius designatis emolumenta debita in pretiis dispositio culminis tui pro publica auctoritate taxatis praecipiat erogari. dat. xvi kal. mart. constantinopoli asclepiodoto et mariniano conss. (423 febr. 14).

CTh.7.4.36

Idem aa. procopio magistro militiae per orientem. si quando tribuni sive comites vel praepositi numerorum per provincias annonas voluerint, hoc est quas pro dignitate sua consequuntur, in aere percipere, non aliis eas pretiis, nisi quae in foro rerum venalium habeantur, adaerandas esse cognoscant. si alias annonas, quae non suae dignitatis erunt, sed alio modo, dum tamen licito, suis commodis adquisitas in auro sibi dari duces sive tribuni voluerint, illis pretiis contenti sint, quae in forma aerariarum annonarum universis militibus sollemni observatione praebentur. sanctionis temerator sciat se et administratione simul et dignitate spoliandum et facultatum suarum percellendum dispendio. dat. iii non. dec. constantinopoli victore v. c. cons. (424 dec. 3).

CTh.7.5.0. De excoctione et translatione annonarum

CTh.7.5.1

Impp. arcadius et honorius aa. stilichoni comiti et magistro utriusque militiae. opinatores, quibus species in diversis provinciis delegantur, ut pretium maiore taxatione deposcant, contra omnem consuetudinem nullis consistentibus familiis excoctionem panis efflagitant. illustris igitur auctoritas tua novam usurpationem congrua auctoritate percellat, ut, cum opinatores in provinciis delegantur, vetus consuetudo servetur. dat. id. sept. mediolano theodoro v. c. cons. (399 sept. 13).

CTh.7.5.2

Idem aa. et theodosius a. ad hadrianum praefectum praetorio. in excoctione buccellati, quod devotissimis militibus convenit praeparari, in translatione etiam annonae nullius excipiatur persona, videlicet ut ne nostra quidem domus ab his habeatur immunis. et si quisquam, quod non opinamur, implere quae sunt praecepta neglexerit, in procuratorem eius severissime vindicetur, ita ut, si huiusmodi contumaciae dominum conscium esse constiterit, quadruplum id, quod pro eius capitatione poscitur, posthabita dilatione solvatur. dat. viiii kal. april. romae honorio a. vi et aristaeneto conss. (404 mart. 24).

CTh.7.6.0. De militari veste

CTh.7.6.1

Impp. valentinianus et valens aa. ad mamertinum praefectum praetorio. sive ex principalium sive ex honoratorum numero susceptor vestium nominetur, exceptis videlicet his, qui palatinae militiae privilegiis fulciuntur vel qui officiis ac ministeriis perfuncti merito stipendiorum consecuti sunt dignitates, et vir spectabilis proconsul africae moneatur, ut ad excludendas fraudes uno anno, non plus, haec necessitas procuretur, ita tamen ut creationis periculum a proconsulari officio non recedat. dat. xiiii kal. mai. mediolano valentiniano et valente aa. conss. (365 apr. 18).

CTh.7.6.2

Idem aa. auxonio praefecto praetorio. omnem canonem vestium ex kalendis sept. ad kal. april. nostris largitionibus tradi praecipimus, proposita rectori provinciae vel eius officio condemnationis, quae tuae iustitiae videbitur, poena. dat. xiiii kal. dec. marcianopoli valentiniano et valente conss. (368 nov. 18).

CTh.7.6.3

Imppp. valens, gratianus et valentinianus aaa. modesto praefecto praetorio. provinciae thraciarum per viginti iuga seu capita conferant vestem: scythia et moesia in triginta iugis seu capitibus interim annua solutione dependant: per aegyptum et orientis partes in triginta terrenis iugis, per asianam vero et ponticam dioecesim ad eundem numerum in capitibus seu iugis annua vestis collatio dependatur, ita ut per orientem provinciae in titulo auri comparaticii, quod per iugationem redditur, compensationis gratia perfruantur exceptis osroene et isauria nam easdem constat aurum comparaticium minime redhibere. dat. v id. aug. hierapoli gratiano a. iiii et merobaude v. c. conss. (377 aug. 9).

CTh.7.6.4

Impp. arcadius et honorius aa. martiniano comiti sacrarum largitionum. fortissimis militibus nostris per illyricum non binos tremisses pro singulis chlamydibus, sed singulos solidos dari praecipias. dat. xvi kal. feb. constantinopoli arcadio iiii et honorio iii aa. conss. (396 ian. 17).

CTh.7.6.5

Impp. honorius et theodosius aa. asclepiodoto praefecto praetorio. militaris adaeratio vestis a collatoribus exigatur sacratissimis videlicet largitionibus inferenda, ita ut quinque eius partes fortissimis militibus erogentur in pretio, sexta vero portio a gynaeceariis clementiae nostrae absque ulla vel ipsorum vel publica incommoditate pro eadem contextione suscepta iunioribus gregariisque militibus in ipsa, quam maxime eos desiderare constitit, specie praebeatur. dat. vii id. mart. constantinopoli asclepiodoto et mariniano conss. (423 mart. 9).

CTh.7.7.0. De pascuis

CTh.7.7.1

Imppp. valentinianus et valens aa. ad germanianum comitem sacrarum largitionum. dedimus litteras ad viros clarissimos praefectos praetorio, ut ab his conventi rectores provinciarum scirent in locis rei privatae augmenta pensionum non esse facienda neque sinerent pascua animalium ex rebus privatis nostris provincialium licitatione praeberi. dat. v kal. feb. romae valentiniano et valente aa. conss. (368? ian. 28).

CTh.7.7.2

Idem aa. ad rufinum praefectum praetorio. cum nulla ratio sit, cur in pascuis saltibus rei privatae pensio debeat ampliari, nequaquam pro libidine ordinum augmenta facienda sunt. etenim idcirco graviorem pensionem imponi ab ordinibus accipimus, ut animalia ex rebus privatis nostris a locorum pastibus arceantur, quod fieri non oportere divae memoriae iulianus prorogata iussione constituit. quare excellens auctoritas tua conventis rectoribus provinciarum non eam licitationis necessitatem patiatur inferri, quam repentinam faciunt civitates, sed eam manere decernet, quam statuit antiquitas. dat. viiii kal. oct. luceriae valentiniano et valente aa. conss. (365 sept. 23).

CTh.7.7.3

Impp. arcadius et honorius aa. simplicio comiti et magistro utriusque militiae. insignis auctoritas tua hac condicione a publicis pratis apamenis animalia militum prohiberi praecipiat, ut universi cognoscant de emolumentis eorum tuique officii facultatibus duodecim libras auri fisci commodis exigendas, si quisquam posthac memorate prata mutilare temptaverit, non minore decernenda poena, si etiam prata privatorum antiochenorum fuerint devastata, ita tamen, ut sine laesione provincialium provideant curiales, quo pacto animalium militarium pastui consulatur. dat. v id. mart. constantinopoli honorio a. iiii et eutychiano v. c. conss. (398 mart. 11).

CTh.7.7.4

Impp. honorius et theodosius aa. aureliano praefecto praetorio et patricio. possessores nihil plus debent, quam quod nostro arbitrio nostrae perennitatis et magnificae sedis tuae dispositione per annos singulos iubentur inferre. nec vero milites aliquid praesumere debent, nisi quod largitate nostri numinis consequentur. ideoque possessores vel coloni super pratis nullam molestiam patiantur. dat. non. sept. dd. nn. honorio x et theodosio vi aa. conss. (415 sept. 5).

CTh.7.7.5

Idem aa. comitibus et magistris militum. prata provincialium nostrorum perniciosum est militum molestia fatigari. ideoque lege ad amplissimam praefecturam promulgata censuimus, ne hoc deinceps usurpetur. super qua re universos quorum interest convenire tua magnificentia non moretur, ne permittant possessores vel colonos pratorum gratia qualibet importunitate vexari. dat. non. sept. honorio x et theodosio vi aa. conss. (415 sept. 5).

CTh.7.8.0. De metatis

CTh.7.8.1

Imp. constantius a. ad senatum. invitis senatoribus nostris in eorum domibus nullus hospitali iure commaneat. dat. v non. mai. tauro et florentio conss. (361 mai. 3).

CTh.7.8.2

Impp. valentinianus et valens aa. remigio magistro officiorum. in synagogam iudaeicae legis hospitii velut merito irruentes iubeas emigrare, quos privatorum domus, non religionum loca habitationum merito convenit adtinere. dat. prid. non. mai. treviris valentiniano et valente aa. conss. (368? 370? 373? mai. 6).

CTh.7.8.3

Imppp. gratianus, valentinianus et theodosius aaa. palladio magistro officiorum. ab hospitalitatis munere domum privatorum nullus excuset praeter eos, qui ex praefectis summum sibi fastigium dignitatis agendo pepererunt, et ex magistris equitum ac peditum, quos decursi actus illustrat auctoritas, adque ex comitibus consistorianis, qui participantes augusti pectoris curas agendo claruerunt, ex praepositis quoque sacri cubiculi, quos tanta et tam adsidua nostri numinis cura inter primas posuit dignitates; ea tamen lege, ut singulas domos sibi ad manendum quas voluerint teneant, hospitibus vero ceteras solito iure praebeant. dat. xvi kal. oct. constantinopoli richomere et clearcho conss. (384 sept. 16).

CTh.7.8.4

Imppp. valentinianus, theodosius et arcadius aaa. theodoto magistro officiorum. si quis mensorum nostrorum manum, qua deputatas singulis quibusque domus enotant et postibus hospitaturi nomen adscribunt, delere non dubitaverit, ad instar falsi reus ex hac auctoritate teneatur. dat. vi kal. nov. constantinopoli d. n. theodosio a. iii et abundantio v. c. conss. (393 oct. 27).

CTh.7.8.5pr.

Impp. arcadius et honorius aa. hosio magistro officiorum. in qualibet vel nos ipsi urbe fuerimus vel ii qui nobis militant commorentur, omni tam mensorum quam etiam hospitum iniquitate summota duas dominus propriae domus, tertia hospiti deputata, eatenus intrepidus ac securus possideat portiones, ut in tres domu divisa partes primam eligendi dominus habeat facultatem, secundam hospes quam voluerit exequatur, tertia domino relinquenda. plenum enim aequitate atque iustitia est, ut qui aut successione fruitur aut empto vel extructione gaudet electam praecipue iudicio suam rem teneat et relictam. (398 febr. 6).

CTh.7.8.5.1

Ergasteria vero, quae mercimoniis deputantur, ad praedictae divisionis iniuriam non vocentur, sed quieta sint et libera et ab omni hospitantium iniuria defensata solis dominis conductoribusque deserviant. sane si stabulum, ut adsolet, militari viro in tertia domus parte defuerit, ex ergasteriis, nisi id dominus qualibet occasione providerit, pro animalium numero vel domus qualitate deputabitur. (398 febr. 6).

CTh.7.8.5.2

Illustribus sane viris non tertiam partem domus, sed mediam hospitalitatis gratia deputari decernimus ea dumtaxat condicione servata, ut alter ex his quilibet quive maluerit divisionem arbitrii aequitate faciat, alter eligendi habeat optionem. (398 febr. 6).

CTh.7.8.5.3

Et firmissimum perpetuo quod iussimus perseveret, ita ut triginta libras auri qui illustri sunt praediti dignitate fisco nostro se illaturos esse cognoscant, ceteri vero militia sciant se esse privandos, si generale praeceptum amplius usurpando quam iussimus reprehensibili temeritate violaverint. dat. viii id. feb. constantinopoli honorio iiii et eutychiano conss. (398 febr. 6).

CTh.7.8.6

Idem aa. vincentio praefecto praetorio. cunctos iudices scire volumus a praetoriis ordinariorum iudicum his praesentibus abstinendum. dat. xvi kal. feb. mediolano stilichone et aureliano vv cc conss. (400 ian. 17).

CTh.7.8.7

Idem aa. pompeiano proconsuli africae. praedia ex gildonis hostis publici et satellitum eius bonis sociata domui nostrae ne transeuntes hospitii gratia intrent, decernimus, ut sciant omnes a possessoribus nostris penitus abstinendum, quinque auri libras multae nomine inferre cogendo, quisquis praedium nostrum manendi causa importunus intraverit. dat. vi id. iun. mediolano stilichone et aureliano conss. (400 iun. [ian.?] 8).

CTh.7.8.8

Idem aa. aemiliano magistro officiorum. secuti suggestionem tuam a fabricensium domibus omnem molestiam hospitum praecipimus amoveri. de qua re et ad illustrem virum comitem et magistrum militum per orientem sacras litteras dedimus, ut det antiochenae civitatis fabricensibus excusandorum hospitiorum facultatem, absente scilicet sacro comitatu, quo et antiochensibus et ceterarum civitatum fabricis similis domorum excusatio praebeatur. dat. xi kal. feb. constantinopoli stilichone et aureliano conss. (400 [405] ian. 22).

CTh.7.8.9

Impp. honorius et theodosius aa. sapidiano. licet proxime iusserimus quinque librarum auri condemnatione proposita praedia, quae ex gildonis bonis ad nostrum aerarium delata sunt, ab hospitibus excusari, nunc etiam praecipimus, ut omnes domus ex eodem iure venientes, in quibuslibet civitatibus sunt constitutae, ab hospitibus excusentur, quo possint conductores facilius inveniri. si quis igitur contra nostram fecerit iussionem, multa pridem ferietur inflicta. proposita karthagine viii id. aug. honorio viii et theodosio iii aa. conss. (409 aug. 6).

CTh.7.8.10pr.

Idem aa. iohanni praefecto praetorio. devotum possessorem ab omni inquietudine liberamus. (413 iun. 12).

CTh.7.8.10.1

Primo igitur omnium ad nullum praedium per africam vel publicum vel privatum domus nostrae vel cuiuscumque iuris nullus metator accedat, si a quoquam fuerit destinatus. licentiam enim domino actori ipsique plebi serenitas nostra conmisit, ut eum, qui praeparandi gratia ad possessionem venerit, multandi expellendi habeat facultatem nec crimen aliquod pertimescat, cum sibi arbitrium ultionis suae sciat esse concessum recteque sacrilegium arceat qui primus invenerit. administrantem vero eiusque officii proceres, quorum praecepto inhibitam personam ad agrum aliquem destinarit, in tempore proscribi debere censemus. (413 iun. 12).

CTh.7.8.10.2

Solam sane hospitalitatem sub hac observatione concedimus, ut nihil ab hospite, quod vel hominum vel animalium pastui necessarium creditur, postuletur omniumque sit adceleratum iter atque continuum nec ulli liceat residere, ne diuturnitas conmanentium ulla ex parte praedium vexet. decem etiam librarum auri multa ferietur, quisquis administrator togatus apparitor ullus aut militans vel iter agens ullo in loco aliquid ab hospite postularit. in tantum enim inhiberi sceleratum morem iubemus, ut ipsis quoque praebentibus impunitum esse non patiamur, si quid vel sponte contra praeceptum nostrum probati fuerint obtulisse. dat. prid. id. iun. ravenna post cons. honori viiii et theodosii v aa. (413 iun. 12).

CTh.7.8.11

Idem aa. probo comiti sacrarum largitionum. post alia: de hospitalitate iudicum et omnium personarum quid sibi etiam ipse possessor praesumere debeat quave censura omnia, quae ad sui dispendium pertinebunt, submota sint, iam missa super hac re auctoritas declaravit. praelata litteris ad eutychianum praef. urbi die iiii id. ian. constantio et constante vv cc conss. (414 ian. 10).

CTh.7.8.12

Idem aa. hadriano praefecto praetorio. africae hoc prospectum est, ut infausta hospitalitatis praebitio tolleretur, nec privatum quisque a domino aedium postulet. et cetera. dat. v non. mart. ravenna constantio et constante conss. (414 mart. 3).

CTh.7.8.13

Idem aa. eustathio praefecto praetorio. devotissimos milites ex procinctu redeuntes vel proficiscentes ad bella muri novi sacratissimae urbis singulae turres in pedeplanis suis suscipiant. nec aliquis possessorum graviter ferat quasi illa dispositione, quae super publicis aedificiis processerat, violata, cum privatae quoque domus tertiam partem talis rei gratia soleant exhibere. dat. v non. mart. constantinopoli honorio xiii et theodosio x aa. conss. (422 mart. 3).

CTh.7.8.14

Impp. theodosius et valentinianus aa. helioni patricio et magistro officiorum. universi cuiuslibet ordinis, cuiuslibet etiam dignitatis, si quidem felicibus pro salute rei publicae expeditionibus occupati aliarum provinciarum aliarumque urbium domiciliis detinemur, propriis domibus nullo vetante pro dignitatibus suis vel praestitis sibi beneficiis perfruantur; si vero secundum communia vota securi intra huius florentissimae urbis tecta residemus, nullius specialiter domum illustrium quoque, etiamsi ad summa conscenderint fastigia dignitatum, praeter singulas tantum, in quibus eosdem manere constiterit, excusari ab hospitibus praecipimus cessante omni beneficio principali. dat. x kal. iul. constantinopoli hierio et ardabure vv cc conss. (427 iun. 22).

CTh.7.8.15

Idem aa. iohanni comiti et magistro officiorum. nemo in hac alma urbe, qui propriae domus possessione laetatur, militari sacramento munitus alterius domum infestare pertemptet, sed aut sua contentus abstineat aliena aut certe in suis recipiat, qui in alterius sibi metatum existimat vindicandum. nec enim videtur esse conveniens, cum illustribus viris unam, in qua ipsi habitant, domum excusare concessum sit, alios et suas omnibus domus extruere et alienis aedibus inferre molestiam. dat. viii kal. mart. constantinopoli theodosio a. xiii et qui fuerit nuntiatus. (430 febr. 22).

CTh.7.8.16pr.

Idem aa. valerio magistro officiorum et ex consule ordinario. consulares viri binas proprias domos in hac alma urbe ab hospitum molestia habeant sibi inmunes. sin vero fati munus expleverint adque ad liberos vel parentes, fratres sororesve, uxores etiam domus eorum fuerint delatae, una e duabus aliena sit a metatorum molestia. sed et si unam quis eorum dereliquerit domum, illa ipsa in memoratorum excusetur personis. (435 mart. 12).

CTh.7.8.16.1

His vero, qui praefecturae dignitatem habent aut ipsius apicis administratione aut actu magisteriae militum potestatis aut quod praepositi sacri nostri cubiculi fuerint aut quod honorarios eiusdem praefecturae meruerint codicillos, cum priore lege una domus excusaretur, alterius etiam, si habere in hac alma urbe eos contigerit, dimidiam partem nostra liberalitate, dum in vita versantur, ita excusari decernimus, ut de altera parte dimidia pars tertia hospitibus deputetur: post fata vero si ad parentes liberos fratres sorores uxoresve fuerint delatae, duas ab una domo partes ipsis electionem habentibus metatorum molestia liberari, tertiae videlicet partis parte tertia hospitibus praestanda. aliis sane illustribus viris, quibus una domus honoris excusatur gratia, hoc praebendum esse censemus, ut, si ipsi decesserint et eorum domus ad supra scriptas personas pervenerint, medietatem domus, quam ipsi elegerint, habeant excusatam, altera videlicet parte dimidia hospitiorum praebitioni in parte tertia subicienda. dat. iiii id. mart. constantinopoli d. n. theodosio a. xv et qui fuerit nuntiatus. (435 mart. 12).

CTh.7.9.0. De salgamo hospitibus non praebendo

CTh.7.9.1

Impp. constantius et constans aa. ad provinciales. quicumque propria voluntate eum, quem domum receperit, necessariis rebus, oleo et ligno aliisve huiusmodi voluerit adiuvare, facultatem sibi istius rei sciat esse concessam. quod si quis contra interdictum nostrum eadem ipsa a vobis violenter voluerit usurpare, interpellandi praepositum habebitis copiam deque iniuria conquerendi liberam facultatem, ut nec spontanea in vobis humanitas retardetur nec contra voluntatem vestram ac patronorum vestrorum familiaris res adteratur. dat. prid. id. aug., acc. capuae acyndino et proculo conss. (340 aug. 12).

CTh.7.9.2

Idem aa. leontio praefecto praetorio. ne quis comitum vel tribunorum aut praepositorum aut militum nomine culcitas lignum oleum a suis extorqueat hospitibus nec volentibus, vel magistratibus vel hospitibus in praedictis speciebus aliquid auferant, sed provinciales sint nostri ab hac praebitione securi, comitibus tribunis vel certe praepositis militibusque gravi vexationi subiacentibus. dat. v id. oct. ...... conss. (a. 340/361 oct. 11).

CTh.7.9.3

Imppp. valentinianus, theodosius et arcadius aaa. abundantio, stilichoni et ceteris comitibus utriusque militiae. nemo militum a suo hospite salgami aliquid nomine postulet, id est ne lignum aut oleum culcitaeve poscantur. dat. iiii kal. aug. constantinopoli theodosio a. iii et abundantio v c conss. (393 iul. 29).

CTh.7.9.4

Impp. honorius et theodosius aa. aureliano ii praefecto praetorio. nullus eorum, qui per quaslibet aedes habitaculi causa recepti fuerint, vel oleum et ligna flagitare contendat, nam et sic militibus nostrae sufficient largitates et collatoribus annua tantummodo semper imminebit indictio. dat. vi id. mai. theodosio a. vii et palladio viro clarissimo conss. (416 mai. 10).

CTh.7.10.0. Ne quis in palatiis maneat

CTh.7.10.1pr.

Imppp. arcadius, honorius et theodosius aaa. ad anthemium praefectum praetorio. nulli manendi intra palatia nostra in qualibet civitate vel mansione facultas pateat, sed ea provinciarum rectores et vicarios illustrissimae praefecturae per dioeceses, quas sortiti sunt, maneat cura, ut ab eorum usurpatione, qui in his transeuntes manere consueverant, sacrae domus serventur inmunes, et eorundem provisione nulla neglegentia vel senio quatiantur. (405 iul. 10).

CTh.7.10.1.1

Quod nisi omni instantia fuerit observatum, triginta libras a vicariis, xx a consularibus seu praesidibus totidemque ab eorum officiis multae nomine profligentur, ita ut ne curiales quidem a condemnatione se cognoscant inmunes futuros. (405 iul. 10).

CTh.7.10.1.2

Ii quoque, qui huiusmodi sibi mansionem prava temeritate praesumpserint, si vel dignitate aliqua vel fortunis nituntur, xx librarum auri condemnationi subiaceant: qui humilioris fortunae sunt, exilio tradantur. (405 iul. 10).

CTh.7.10.1.3

Equos sane non nostros ab stabulis prohiberi palatiorum supervacuum iudicamus. dat. vi id. iul. ancyrae stilichone ii et anthemio conss. (405 iul. 10).

CTh.7.10.2

Idem aaa. anthemio praefecto praetorio. ordinarii iudices in remotis ab aggere publico civitatibus, si praetoria non sint, metu legis adempto, quae de palatiis lata est, in aedibus, etiamsi palatii nomine nuncupentur, commanendi habeant facultatem. dat. viiii kal. dec. constantinopoli honorio vii et theodosio ii aa. conss. (407 nov. 23).

CTh.7.11.0. Ne comitibus et tribunis lavacra praestentur.

CTh.7.11.1

Imppp. arcadius, honorius et theodosius aaa. anthemio praefecto praetorio. omnem vel ex pristini severitate decreti vel ex hoc sacro praecepto, quod sub eadem poena profertur, inquietudinem a curiis et civitatibus praecipimus prohiberi nec ullas privatas ab his succendi balneas ad tribunorum sive ad minorum comitum usus, sed illustribus tantum viris comitibus ac magistris militum, si tamen id voluerint, concessum esse cognoscant hoc ministerium. dat. v kal. dec. constantinopoli arcadio a. vi et probo v c conss. (406 nov. 27).

CTh.7.11.2

Impp. honorius et theodosius aa. monaxio praefecto praetorio. lege dudum lata, quae omnem licentiam exigendi ab provincialibus lavacra tribunis et comitibus inferioribus denegavit, duces limitis eufratensis diurnos tremisses pro lignis et balneis exegisse comperimus. ideoque praecipimus memorati limitis duces, quos abhinc triennio talia sibi contra legem lucra vindicasse constiterit, in duplum ea redhibere et in posterum sub eiusdem poenae metu hanc exactionis licentiam prohiberi. dat. v kal. aug. constantinopoli honorio a. xi et constantio ii v c conss. (417 iul. 28).

CTh.7.12.0. De commeatu

CTh.7.12.1

Imp. constantinus a. et c. ne cui liceat praepositorum vel decurionum vel tribunorum cohortium quocumque genere cuiquam de militibus a castris atque signis vel his etiam locis, quibus praetendant, discedendi commeatum dare. si quis vero contra legem facere ausus fuerit et militem contra interdictum commeatu dimiserit atque id temporis nulla eruptio erit, tunc deportatione cum amissione bonorum adficiatur; sin vero aliqua barbarorum incursio extiterit et tunc, cum praesentes in castris atque aput signa milites esse debeant, quisquam afuerit, capite vindicetur. dat. iiii kal. mai. severo et rufino conss. (323 apr. 28).

CTh.7.12.2

Imppp. gratianus, valentinianus et theodosius aaa. ad syagrium magistrum officiorum. quicumque de scriniis aut agentibus in rebus vel etiam ex officiis palatinis, his videlicet, qui sacrarum et privatarum remunerationum comitibus obsecundant, sex mensum spatium supra diem commeatus aut iussionem evectionis afuerit, is in inferiorem locum quinque antelatis posterioribus revolvatur, is vero, qui anni vacationem arbitratu proprio iudiciarii praecepti oblitus adsumpserit, a decem post se militantibus transeatur, ac deinde, cum iam aliquis desidia quadriennii officium proprium adire neglexerit, quadraginta de sequentibus postferatur, qui vero ne post quadriennii quidem tempus, militantum non inmerito matriculis auferatur. dat. kal. oct. auxonio et olybrio conss. (379 oct. 1).

CTh.7.12.3

Impp. arcadius et honorius aa. ad andromachum praefectum urbi. post alia: hi, qui vacationem temporariam, ut saepe adsolet, impetrarint, nihil sibi necessitatis usurpent, nullorum actibus misceantur. quorum si quis post exactum commeatus diem indultum beneficium morando corruperit, nihil agere intra provinciam possit, intellegens se praeterea praecepto rectoris provinciae ea tenendum legis poena, qua desides gradus proprii deminutione puniti sunt. dat. prid. non. iun. mediolano olybrio et probino conss. (395 iun. 4).

CTh.7.13.0. De tironibus

CTh.7.13.1

Imp. constantius a. ad praefectos praetorio. post alia: quotiens iuniores exhibendi sunt, non ante probentur, nisi praesentibus decurionibus origo eorum quaeratur, ita tamen, ut decurionibus haec fiducia denegetur, ne forte quis fugiens militiam addito nomine decurionis e militia abscedat: de auxiliaribus sane cuneis minime ducibus licentia concedatur, nisi prius certus redditus iudex rescribat, utrum minime decurio sit: ita ut ab anno decimo et nono ad militiam eligantur. dat. pridie non. iul. constantio a. vi et c. conss. (353 iul. 6).

CTh.7.13.2

Impp. valentinianus et valens aa. ad fortunatianum. domum nostram ad exhibenda tironum corpora per eas provincias, a quibus corpora flagitantur, nolumus perurgueri: ceterum sinimus conveniri, in quibus pretia postulantur, ita ut ex certa praebitione redituum vicem concessionis istius repensemus. dat. prid. kal. feb. marcianopoli valentiniano et valente aa. conss. (368? 370? ian. 31).

CTh.7.13.3

Idem aa. ad magnum vicarium urbis romae. in quinque pedibus et septem unciis usualibus delectus habeatur. dat. v kal. mai. lupicino et iovino conss. (367 apr. 27).

CTh.7.13.4

Idem aa. ad magnum vicarium urbis romae. eos, qui amputatione digitorum castra fugiunt, secundum divi constantini decretum tua sinceritas non sinat manus deformatione defendi, si quidem possint in quacumque rei publicae parte prodesse qui se sponte truncaverunt. dat. v kal. mai. lupicino et iovino conss. (367 apr. 27).

CTh.7.13.5

Idem aa. ad viventium praefectum praetorio galliarum. si quis ad fugienda sacramenta militiae fuerit inventus truncatione digitorum damnum corporis expedisse, et ipse flammis ultricibus concremetur et dominus eius, qui non prohibet, gravi condemnatione feriatur. dat. vi kal. mai. treviris valentiniano et valente aa. conss. (368? 370? 373? apr. 26).

CTh.7.13.6pr.

Idem aa. ad modestum praefectum praetorio. si oblatus iunior fuerit, qui censibus tenetur insertus, ex eo tempore, quo militiae sacramenta susceperit, proprii census caput excuset ac, si quinquennii tempus fida obsequii devotione compleverit, uxoriam quoque capitationem merito laborum praestet inmunem, ea scilicet servanda ratione, ut, quam sibi uxorem copulaverat affectu et in priore lare derelictam memorarit, improbata census sarcinam sustineat. (370 sept. 18).

CTh.7.13.6.1

Nullus vero tironem vagum aut veteranum possit offerre, cum ad spontaneam singuli militiam propositae inmunitatis commodis invitentur. circa eos enim legis iubemus valere beneficium, qui indigenas atque ipsius provinciae finibus innutritos vel adfixos censibus vel adcrescentibus suis obtulerint iuniores; neque enim convenit illum inmunitate gaudere, qui vana oblatione vagi atque fugitivi vel veterani filii statum futurae conventionis inviserit. (370 sept. 18).

CTh.7.13.6.2

Quod hactenus decernimus custodiri, ut oblatus numerus ex adcrescentibus primitus reparetur ac, si compensatio non potuerit convenire neque ex minoribus modus, qui oblatus fuerit, quiverit reparari, ita demum de publicis fascibus hi, qui ex superfluo veniunt, eximantur. dat. xiiii kal. oct. hieropoli valentiniano et valente iii aa. conss. (370 sept. 18).

CTh.7.13.7pr.

Imppp. valentinianus, valens et gratianus aaa. ad modestum praefectum praetorio. tironum praebitio in patrimoniorum viribus potius quam in personarum muneribus collocetur, ut proto.. munus, quod provinciarum interna depascitur, ab imis, ut dicitur, radicibus eruatur. nam inter reliqua vitia haec duo vel maxime intolerabilia iudicamus, quod aurum saepe pro corporibus inmane deposcitur atque advenarum coemptio iuniorum insolentius quam convenit aestimatur. contra haec sane reperta est et facilitas et commoditas exigendi, cum neque excusari quisquam poterit, ut ante privilegio consueta fuerat hominis vindicatio, nec ullus, qui relevandus fuerit, perpetuae ingravationi addici. (375 iun. 2).

CTh.7.13.7.1

Illud etiam similiter definitum est, ut ii tantum a consortibus segregentur, quorum iugatio ita magna est, ut accipere non possit adiunctum, cum pro suo numero in exhibendo tirone solus ipse respondeat. inter quos vero possessionis exiguae necessitas coniunctionem postulat, functionis annorum et praebitionis vicissitudo servetur, quippe ut senatores ceterique, qui primo anno et suo et consortis nomine tironem dederint, insequenti vice habeantur immunes illique in praebitione succedant, a quorum conventione fuerit ante cessatum. quem ordinem, cum corpora postulantur, conveniet custodiri. sin vero aurum fuerit pro tironibus inferendum, unumquemque pro modo capitationis suae debitum redhibere oportet. (375 iun. 2).

CTh.7.13.7.2

Ne aliquid dubium relinquatur, et solidorum numerum, qui temonario inferendus est, designamus, ut, sive senator honoratus principalis decurio vel plebeius tironem suo ac sociorum nomine ex agro ac domo propria oblaturus est, ita se a coniunctis accepturum solidos noverit, ut integri pretii modus in triginta tantummodo et sex solidis colligatur, ut deducta portione, quae parti ipsius competit, reliquum consequatur, sex tironi gratia vestis ac sumptuum praebiturus. (375 iun. 2).

CTh.7.13.7.3

Ipsorum etiam, qui militaturi sunt, privilegiis accedentibus facilius devotio provocatur, videlicet ut universi, qui militaria sacramenta susceperint, eo anno, quo fuerint numeris adgregati, si tamen in suscepto labore permanserint, inmunes propriis capitibus mox futuri sint. completis vero quinque annorum stipendiis qui comitatensibus numeris fuerit sociatus, patris quoque et matris nec non et uxoris suae capitationem meritis suffragantibus excusabit. ii vero, qui in ripa per cuneos auxiliaque fuerint constituti, cum proprio capite uxorem suam tantum post quinque annos, ut dictum est, praestent inmunem, si tamen eos censibus constiterit adtineri. et quia publica utilitas quoque cogitanda est, ne sub hac indulgentia insertae capitationis numerus minuatur, ex incensitis adque adcrescentibus in eorum locum, qui defensi militia fuerint, alios praecipimus subrogari. dat. iiii non. iun. antiochiae post consulatum gratiani a. iii et equitii viri clarissimi. (375 iun. 2).

CTh.7.13.8

Imppp. gratianus, valentinianus et theodosius aaa. edictum ad provinciales. inter optimas lectissimorum militum turmas neminem e numero servorum dandum esse decernimus neve ex caupona ductum vel ex famosarum ministeriis tabernarum aut ex cocorum aut pistorum numero vel etiam eo, quem obsequii deformitas militia secernit, nec tracta de ergastulis nomina. poenam etenim gravis dispendii nulla excusatione fugituri sunt, si hoc cuiusdam indicio illustribus viris magistris equitum peditum fuerit intimatum. sed cum illum animadversio dura damnavit offerentem, tum triplicata nobilioris tironis fatigabit illatio. dat. iiii. kal. feb. constantinopoli gratiano a. v et theodosio a. i conss. (380 ian. 29).

CTh.7.13.9

Idem aaa. neoterio praefecto praetorio. ex opportunis regionibus supplementa numeris mansuetudo nostra decrevit agitari: in id delectos quosque viros atque ab omni suspicione pravitatis alienos iussimus destinari. in his, si male se gesserint, corrigendis non mediocrem fore denuntiamus severa animadversione sententiam, cum iudices supplicium existimationis extremum et ultio inexpiabilis exceptura videatur, ne his quidem provincialibus temperatura, quos in officium ministeriumque praedarum vel capiendi ubertas vel formido simulata deduxerit. proposita vi kal. mai. antiochia gratiano v et theodosio i aa. conss. (380 apr. 26).

CTh.7.13.10

Idem aaa. eutropio praefecto praetorio. qui spurca amputatione digiti usum declinat armorum, non evadat illa quae vitat, sed insignitus macula ferat impositum militiae laborem qui declinaverit dignitatem. ipsis quin etiam provincialibus, qui ex horum ausis iuniorum saepe patiuntur penuriam praebendorum, haec optio inmobilis decernatur, ut tempore dilectus agitandi, ubi conmune coeperint conveniri, duos mutilos iuniores pro uno integro eminentiae tuae dispositionibus offerant. dat. non. sept. hadrianopoli eucherio et syagrio conss. (381 sept. 5).

CTh.7.13.11

Idem aaa. quisquis mancipium iuris alieni in tirocinium militiae duxerit offerendum, convictus ac proditus auri libram aerario nostro cogatur inferre. dat. id. mai. tyro metropoli, proposita beryto antonio et syagrio conss. (382 mai. 15).

CTh.7.13.12

Impp. arcadius et honorius aa. hyperechio comiti rerum privatarum. publica suasit utilitas iuniores in arma conscribere, ideoque ne patrimonium quidem nostrum a praestatione praesenti inmune esse patimur. igitur per omnes provincias, per quas res nostra distenditur, ex patrimonio sacro maturitate qua convenit praeberi volumus iuniores. dat. xv kal. iul. mediolano caesario et attico viris clarissimis conss. (397 iun. 17).

CTh.7.13.13

Idem aa. theodoro praefecto praetorio. amplissimi ordinis petitionibus adnuit nostra clementia, ut pro tironibus pretia inferantur. damus itaque optionem, ut quod conducibile senatui videtur eligendi habeat potestatem, id est aut tirones aptos officiis militaribus praestent aut pro singulis viginti quinque solidos numerent post initam videlicet sumptuum rationem et vestium et pastus. quod si aurum dare maluerint, mox ad nostrum aerarium deferatur. dat. viii kal. oct. patavi caesario et attico viris clarissimis conss. (397 sept. 24).

CTh.7.13.14pr.

Idem aa. minervio comiti rerum privatarum. aeternae urbis merita reverendam nobis amplissimi senatus efficient voluntatem. ideoque pro tironibus in corporibus postulatis pretia conferri iubemus ab amplissimo ordine. (397 nov. 12).

CTh.7.13.14.1

Quod in fundis etiam perpetuariis nostrae rei privatae servari praecipimus. dat. prid. id. nov. caesario et attico conss. (397 nov. 12).

CTh.7.13.15

Idem aa. decio praefecto urbi. ad collationem iuniorum eos tantum oportet adtineri, quos constat dignitates legitimas beneficiis consecutos, non tamen si iusta privilegia suffragantur. dat. viii id. dec. ravenna arcadio a. v et honorio a. v conss. (402 dec. 6).

CTh.7.13.16

Imppp. arcadius, honorius et theodosius aaa. provincialibus. contra hostiles impetus non solas iubemus personas considerari, sed vires, et licet ingenuos amore patriae credamus incitari, servos etiam huius auctoritate edicti exhortamur, ut quamprimum se bellicis sudoribus offerant, praemium libertatis, si apti ad militiam arma susceperint, pulveratici etiam nomine binos solidos accepturi: praecipue sane eorum servos, quos militia armata detentat, foederatorum nihilo minus et dediticiorum, quoniam ipsos quoque una cum dominis constat bella tractare. dat. xv kal. mai. ravenna arcadio a. vi et probo viro clarissimo conss. (406 apr. 17).

CTh.7.13.17

Idem aaa. provincialibus. provinciales pro inminentibus necessitatibus omnes invitamus edicto, quos erigit ad militiam innata libertas. ingenui igitur, qui militiae obtentu arma capiunt amore pacis et patriae, sciant se denos solidos patratis rebus de nostro percepturos aerario, quibus tamen ternos ex summa supra dicta iam nunc solidos praeberi mandavimus, nam optimos futuros confidimus, quos virtus et utilitas publica necessitatibus obtulit. dat. xiii kal. mai. ravenna arcadio a. vi et probo conss. (406 apr. 19).

CTh.7.13.18

Idem aaa. stilichoni comiti et magistro militum. iuniorum collatione, vel qui proxime in pretio ab honoratis pro rerum necessitate petiti sunt vel si umquam tale aliquid rei publicae ratio flagitaverit, inmunes haberi oportere decernimus, qui militiae praerogativa ad tribunatus praepositurasve pervenerint. dat. xi kal. april. honorio vii et theodosio ii aa. conss. (407 mart. 22).

CTh.7.13.19

Impp. honorius et theodosius aa. comiti sacrarum largitionum. tirones in scholis loco semper posteriore ponantur. nec enim patimur quemquam celsiorem gradum obtinere, nisi cui et laborum adsiduitas et stipendiorum prolixitas suffragatur. dat. vii kal. dec. ravenna basso et philippo conss. (408 nov. 25).

CTh.7.13.20

Idem aa. macedonio comiti rerum privatarum. tirones tricenis solidis aestimatos ab omnibus officiis iudicum africae, exemplo praecedentis temporis, postulamus; quod simul etiam ab honoratis memoratarum provinciarum nec non sardiniae siciliae et corsicae. eos sane honores excipi ab his conveniet, quibus aut praesenti tempore publicum munus iniunctum est aut in italiae sive urbis solo barbara vastitate depulsi sunt. dat. vi id. feb. ravenna varane v. c. cons. (410 febr. 8).

CTh.7.13.21

Idem aa. hadriano praefecto praetorio. tempore tironatus eorum procuratores, qui refugas occultandos putaverint aut non ipsi sponte produxerint, in iudicio praesententur ac poenas veluti rebelles ac decretorum temeratores compellantur exsolvere. dat. iii kal. feb. theodosio a. vii et palladio v. c. conss. (416 [?] ian. 30).

CTh.7.13.22

Impp. theodosius et valentinianus aa. volusiano praefecto praetorio. mansura in saeculum auctoritate praecipimus proconsularis provinciae non eandem sacerdotalium, quae est de ceteris, in praebendis tironibus habendam esse rationem. non inique si quidem ea potissimum ab hoc officio provincia videtur excepta, quae omnium intra africam provinciarum obtinet principatum cuiusque maioribus sacerdotes fatigantur expensis, in quarum solacium indemnem esse convenit dignitatem. dat. v kal. mart. ravenna felice et tauro vv. cc. conss. (428 febr. 25).

CTh.7.14.0. De burgariis

CTh.7.14.1

Impp. arcadius et honorius aa. vincentio praefecto praetorio. post alia: in burgariis eadem volumus observari, quae de mulionibus lex nostra praecepit, ut ii quoque, qui intra hispanias vel in quibuscumque locis ausi fuerint burgarios vel sollicitare vel receptare, eodem modo teneantur, similisque eos, qui publicis vestibus deputatos sollicitaverint vel receperint, et de coniunctione et de agnatione et de peculiis et de cunctis rebus quas in illis deprehendimus poena cohibeat. dat. xi kal. mart. mediolano honorio a. iiii et eutychiano conss. (398 febr. 19).

CTh.7.15.0. De terris limitaneis

CTh.7.15.1

Impp. honorius et theodosius aa. gaudentio vicario africae. terrarum spatia, quae gentilibus propter curam munitionemque limitis atque fossati antiquorum humana fuerant provisione concessa, quoniam comperimus aliquos retinere, si eorum cupiditate vel desiderio retinentur, circa curam fossati tuitionemque limitis studio vel labore noverint serviendum ut illi, quos huic operi antiquitas deputarat. alioquin sciant haec spatia vel ad gentiles, si potuerint inveniri, vel certe ad veteranos esse non inmerito transferenda, ut hac provisione servata fossati limitisque nulla in parte timoris esse possit suspicio. dat. iii kal. mai. ravenna honorio viii et theodosio iii aa. conss. (409 apr. 29).

CTh.7.15.2

Idem aa. asclepiodoto praefecto praetorio et consuli ordinario. quicumque castellorum loca quocumque titulo possident, cedant ac deserant, quia ab his tantum fas est possideri castellorum territoria, quibus adscripta sunt et de quibus iudicavit antiquitas. quod si ulterius vel privatae condicionis quispiam in his locis vel non castellanus miles fuerit detentator inventus, capitali sententia cum bonorum publicatione plectatur. dat. non. mart. constantinopoli asclepiodoto et mariniano conss. (423 mart. 7).

CTh.7.16.0. De litorum et itinerum custodia

CTh.7.16.1

Impp. honorius et theodosius aa. theodoro praefecto praetorio. hostis publicus stilicho novum adque insolitum reppererat, ut litora et portus crebris vallaret excubiis, ne cuiquam ex oriente ad hanc imperii partem pateret accessus. huius iniquitate rei moti et ne rarior sit diversarum mercium commeatus, praecipimus hac sanctione, ut litorum desistat ac portuum perniciosa custodia et eundi ad redeundi libera sit facultas. dat. iiii id. dec. ravenna basso et philippo conss. (408 dec. 10).

CTh.7.16.2

Idem aa. anthemio praefecto praetorio. omnes stationes navium portus litora, omnes abscessus provinciarum, abdita quin etiam loca et insulae tuae magnificentiae dispositione sollerti custodiantur indagine, ut nullus vel vi vel clam, vel aperto vel etiam occulto nostri possit imperii regiones irrepere, qui non aut interiectis prohibeatur obicibus aut, cum accesserit, ilico teneatur, nisi sacros apices a domino patruo meo honorio ad me perferre apertissima ratione monstraverit: cum eadem diligentia observando, ut, si ad alium quemquam a memorato principe dixerit habere affatus, portitore detento sacrae litterae cum omnibus chartis signatae ad meam clementiam transmittantur. hoc enim et tyrannici furoris et barbaricae feritatis occasio persuadet et inter me domnumque et patruum meum honorium vicissim recurrente admonitione convenit. dat. viii kal. mai. constantinopoli varane v c cons. (410 apr. 24).

CTh.7.16.3

Idem aa. eustathio praefecto praetorio. saluberrima sanctione decrevimus, ne merces illicitae ad nationes barbaras deferantur, et quaecumque naves ex quolibet portu seu litore dimittuntur, nullam concussionem vel damna sustineant, gestis apud defensorem locorum praesente protectore seu duciano, qui dispositus est, sub hac observatione confectis, ut, et ad quas partes navigaturi sunt et quod nullam concussionem pertulerunt, apud acta deponant: quorum authenticum nauclerus sive mercator habebit scheda apud defensorem manente. dat. xiiii kal. oct. constantinopoli d. n. theodosio a. viiii et qui fuerit nuntiatus. (420 sept. 18).

CTh.7.17.0. De lusoriis danuvii

CTh.7.17.1

Impp. honorius et theodosius aa. constanti magistro militum per thracias. nonaginta recenti fabricatione contextas, decem his adiectas ex veterum reparatione lusorias limiti mysiaco, centum vero decem novas additis antiquarum instauratione quindecim scythico, qui in latius diffusiusque porrigitur, sub hac deputari condicione sancimus, ut per singulos annos veterum renovatione curanda quattuor iudiciariae in mysiaco limite et decem agrarienses, in scythico vero quinque iudiciariae et duodecim agrarienses novae de integro constructae instrumentisque suis universis armatae ducis instantia apparitionisque eius periculo contexantur, ut hoc supplemento per septennium integri numeri constituti reparatio maturetur, sublimitate tua pro sua industria disponente, unde earum contextio vel constructio debeat procurari. quod quidem iam recte credimus constitutum nobisque indicari praecipimus. nam si memoratus lusoriarum numerus cum omni suo instrumento non fuerit apparatus, dux quidem, cuius tempore dispositio fuerit ista neglecta, triginta librarum auri, officium vero eius quinquaginta procul dubio multabitur, etiam sublimitatis tuae officio quinquaginta libras auri condemnationi subiciendo, si non per singulos annos aut completum numerum aut certe neglegentia praetermissum magisteriae potestati suggesserit. illo nihilo minus observando, ut, istis secundum dispositionem tuae praestantiae ad belli aleam praeparatis adque in conflictus specula munitissimam stationem vel discursus opportunitatem deligentibus hae dumtaxat, quaecumque ex veteribus fuerint reformatae, transvectioni speciei annonariae secernantur. dat. v kal. feb. constantinopoli d. n. theodosio a. v. et qui fuerit nuntiatus. (412 ian. 28).

CTh.7.18.0. De desertoribus et occultatoribus eorum

CTh.7.18.1

Impp. valentinianus et valens aa. edicta pro per italiam et alpes. unusquisque, apud quem desertor fuerit deprehensus, si plebeiae et humilioris condicionis est, metalli se sciat supplicio puniendum, qui autem superioris cuiuscumque loci dignitatisve sit, media se bonorum parte cognoscat esse multandum. in hac poena sit et officium uniuscuiusque iudicis, quod forte desertores in consortio sui probatos habet nec eos prodit. dat. vii kal. april. mediolano valentiniano et valente aa. conss. (365 mart. 26).

CTh.7.18.2

Imppp. gratianus, valentinianus et theodosius aaa. ad hesperium praefectum praetorio. actor eius fundi, in quo alienigena vel idoneus militiae vel ante iam traditus latuerit, ultima flammarum animadversione consumatur. hoc interim nos constituisse sufficiat, nam si parum profecerit in servos interminatio constituta, in dominos peccatum deinceps emendatura decernet. dat. vi non. iul. aquileia auxonio et olybrio vv cc conss. (379 iul. 2/5).

CTh.7.18.3

Idem aaa. neoterio praefecto praetorio. si temonarius prodiderit desertorem, protostasiae onere biennio relevetur. proposita iii kal. mai. antiochiae gratiano v et theodosio i aa. conss. (380 apr. 29).

CTh.7.18.4pr.

Idem aaa. ad syagrium praefectum praetorio. si quis latebram praebuerit desertori, possessionis, in qua latuerit, amissione multatus etiam graviorem sententiam pertimescat. porro actorem flammis subiciendum esse non dubitet, qui in perniciem fortasse domini aut sceleris participatione confovit aut dissimulatione neglexit. (380 iul. 15).

CTh.7.18.4.1

At vero si desertorem servus prodiderit, libertate donetur si mediocris loci ingenuus, immunitate potiatur. (380 iul. 15).

CTh.7.18.4.2

Neque solum eos loquimur, qui proxime signis felicibus adplicati militiae rudimenta timuerunt, verum qui stipendiis militaribus degenerem latebram praebuisse monstrantur. (380 iul. 15).

CTh.7.18.4.3

Desertor autem habebitur, quisquis belli tempore aberit a signis. horum qui sponte processerit, peccati anterioris supplicium non timebit. sin vero flagitiosa ignavia delitescat, per eum, in cuius domo fuerit, invigilantibus forinsecus quoque officiis publicis, ubicumque correptus severitati iudicis offeratur, degeneri morte gladium subiturus. (380 iul. 15).

CTh.7.18.4.4

Si autem rector provinciae propositam severitatem vel gratia vel dissimulatione distulerit, patrimonii atque existimationis damno subiciatur et in officii primores capitaliter vindicetur. proposita id. iul. romae gratiano v et theodosio i aa. conss. (380 iul. 15).

CTh.7.18.5

Idem aaa. neoterio praefecto praetorio. si quis forte desertorem agro tectoque susceperit atque aput se diu passus fuerit delitiscere, actor quidem vel procurator loci, qui hoc sciens prudensque conmiserit, capitali supplicio subiugetur, dominus vero, si huius rei conscius fuerit, praedii, in quo latuerit desertor, amissione puniatur. dat. xvii kal. feb. eucherio et syagrio viris clarissimis conss. (381 ian. 16).

CTh.7.18.6pr.

Idem aaa. ad severum praefectum praetorio. desertorum iugiter pretia vindicamus, quos intra annui temporis metas inter ipsa traditionis exordia deseruisse constiterit. ipsorum quippe est providentiae, quos huiusmodi munus amplectitur, militaturis potius quam fugacibus instruere necessaria supplementa. (382 apr. 2).

CTh.7.18.6.1

Si vero in desertoribus occulendis actorum scelus atque conmissum sit, flammis scelera puniantur. si dominum quoque conscientia talis involverit, praediis, quae latebram praestiterunt, sacro patrimonio vindicatis gravioris exitii dominum quoque casus involvat. proposita romae iiii non. april. antonio et syagrio conss. (382 apr. 2).

CTh.7.18.7pr.

Idem aaa. constantiano vicario dioecesis ponticae. quisquis in fundo suo desertores vel latrones habere se meminerit, nisi eos ex die constitutionis emissae in sex menses prodiderit aut comprehensos etiam severitati iudiciariae obtulerit, sciat dissimulatione convictus fundum ipsum, in quo praedicti postea potuerint inveniri, fisci nostri viribus esse nectendum. (383 iul. 12).

CTh.7.18.7.1

Quod si forte contigerit, ut inscio domino memorati latuisse videantur, pari constituti temporis dimensione servata actores capite damnentur. quam condicionem et circa actores rerum nostrarum volumus custodiri. dat. iiii id. iul. constantinopoli merobaude ii et saturnino conss. (383 iul. 12).

CTh.7.18.8pr.

Idem aaa. ad flavianum praefectum praetorio. quisquis desertorem vel a se receptum vel in suo latitantem cognoscit, nisi eum ex die publicati huius edicti intra duos menses adhibita inquisitione correptum ordinario iudici offerre curaverit, detectus in crimine pro qualitate ordinis atque personae incurrat in legem. et si quidem potuerit corporali iniuriae subiacere, servata ex iure substantia et fustibus coerceatur vel metallo operi publico deputetur et nonnumquam se ulterius erigente censura exilio perpetuae relegationis plectatur. quod si eiusmodi fortasse fuerit, ut iniuria corporali intuitu generis aut honoris excipiatur, non procrastinata auctoritate sententiae per singula capita eorum, quos contra interdictum retinere atque occultare non timuit, denos iuniores maxime idoneos militiae offerat aut quinquaginta pondo argenti restituat. (383 [391?] febr. 27).

CTh.7.18.8.1

Quod si procurator possessionis sive actor vel etiam colonus latebram desertori domino ignorante praestiterit, detectus in crimine capitali supplicio mancipetur. ceteros quoque similis conscientiae exemplum triste deterreat illorum: tantummodo probationibus evidenter ostensis innoxiis relinquatur habitatio, quos iam dudum fiscus adaeravit. (383 [391?] febr. 27).

CTh.7.18.8.2

Oblati autem iudicibus, nisi in contigua quacumque provincia vel tuae praestantia potestatis vel ii dumtaxat ordinis militaris vir, qui possint de capite eorum ferre sententiam, degere videbuntur, interrogati et severitati necessariae subiaceant et ad sinceritatem tuam per ordinarii iudicis exsecutionem vel officia rectoris dirigantur cum prosecutione. et cetera. dat. iii kal. mart. merobaude ii et saturnino conss. (383 [391?] febr. 27).

CTh.7.18.9pr.

Impp. arcadius et honorius aa. ad populum. quisquis in domo patrimoniove suo vel qualibet abstrusa et longissime a se possessione discreta desertorem latere cognoscit, ad eos, quibus cura indagandi mandata est vel, si forte defuerint, ad rectorem provinciae protinus spontanea oblatione deducat veniam delicti veteris habiturus. exactis enim quattuor mensibus, postquam edictum nostrum intra eam urbem, quam quisque habitat, fuerit publicatum, si quis noluerit moderationi praesentis oboedire praecepti, haec in eum poena imponetur, ut et qui occultatus fuerit eruatur et latebrae auctor pro uno desertore vel duas praeter eum auri libras vel duos iuniores militaris roboris ac staturae cogatur fisco abscisa spe totius defensionis inferre. (396 apr. 26).

CTh.7.18.9.1

Et quoniam plurimos cognovimus, priusquam victricibus aquilis sociarentur, vel illuc, unde electi fuerant, vel quo placuerit abire, alios autem litterarum initiatos auspicio, quamquam necdum dicantur meruisse sub signis, praecipimus, ut post tempus definitum quicumque ex iunioribus fuerit retentus, praeter eum vel duos tiorens per singulos vel duas auri libras malo coactus fisco nostro adnumeret. (396 apr. 26).

CTh.7.18.9.2

Qui vero causarias vel honestas indepti sunt missiones, ab invidia et formidine desertionis amoveantur, etsi haec sunt tyrannico tempore consecuti, dummodo eos eas meruisse vel peracto militiae labore vel probata debilitate pateat. (396 apr. 26).

CTh.7.18.9.3

Si qui etiam ex servorum numero militiae se sociarunt, quos dominis suis legitima iudicum reformavit auctoritas, sine metu legis ab his, quibus recte docentur redditi, tenebuntur. dat. vi kal. mai. mediolano arcadio iiii et honorio iii aa. conss. (396 apr. 26).

CTh.7.18.10

Idem aa. vincentio praefecto praetorio galliarum. protectores, qui ad inquisitionem vagorum per provincias diriguntur. nullas in retinendis fugitivis dumtaxat indigenis iniurias possessoribus parent, quia hoc illis tantum permittitur, ut desertores veteranorum filios ac vagos et eos, quos militiae origo consignat, ad dilectum iuniorum provocent. dat. xvi kal. iun. mediolano stilichone et aureliano viris clarissimis conss. (400 mai. 17).

CTh.7.18.11pr.

Idem aa. et theodosius a. hadriano praefecto praetorio. si qui desertores oberrare in provinciis fuerint comprehensi, eos et comprehendi protinus volumus et ad iudicem deduci, ut auditi, cum de crimine desertionis suae confessi fuerint, carceris custodiae deputentur: de quorum nominibus ad tuam sublimitatem subditis confessionibus referatur, ut instructi magistri militum, quid de his fieri oporteat, pro sui auctoritate constituant. sin vero inventi resistendum atque armis obtinendum putaverint, tamquam rebelles in ipsis temeritatis suae conatibus opprimantur: (403 febr. 24).

CTh.7.18.11.1

Ita tamen, ut provinciarum iudices sollicita cautione disquirant, ne sub falsarum tractoriarum nomine desertionis suae crimen defendere moliantur, ne subpositis aut conmentis epistulis evadendi habeant facultatem. (403 febr. 24).

CTh.7.18.11.2

In desertorum quoque occultatores iuxta promulgatas leges severissime vindicetur. dat. vi kal. mart. ravenna theodosio a. i et rumorido conss. (403 febr. 24).

CTh.7.18.12pr.

Idem aaa. hadriano praefecto praetorio. si quis militem profugum desertoremque castrorum in praedio suo susceperit, nisi eum ipse prodiderit aut comprehensum severitati iudiciariae potestatis obtulerit, sciat, si in dissimulando convictus fuerit, fundum ipsum, in quo praedictus postea potuerit inveniri, fisci nostri viribus sociandum. (403 iul. 25).

CTh.7.18.12.1

Quod si forte contigerit, ut inscio domino in eius praediis habitarit, fundo a nexu huius legis exuto actorem conscium severo supplicio damnandum esse censemus. quam condicionem etiam circa actores domus nostrae volumus custodiri. dat. viii kal. aug. ravenna theodosio a. i et rumorido conss. (403 iul. 25).

CTh.7.18.13

Idem aaa. hadriano praefecto praetorio. desertores modis omnibus adtinendos esse censemus. universi igitur provinciales sciant opprimendorum sibi desertorum facultatem esse permissam: quibus ne sit tarditas poenae solacio, velox ubicumque iubemus esse supplicium. quod ad notitiam primatium urbium vicorum castellorumque deveniat, quo scire possint etiam occultatores eorum ad subeundam poenam, quae divi genitoris nostri est constituta legibus, adtineri. dat. vi non. oct. theodosio a. i et rumorido conss. (403 oct. 2).

CTh.7.18.14pr.

Idem aaa. hadriano praefecto praetorio. opprimendorum desertorum facultatem provincialibus iure permittimus: qui si resistere ausi fuerint, velox ubicumque iubemus esse supplicium. cuncti etenim adversus latrones publicos desertoresque militiae ius sibi sciant pro quiete communi exercendae publicae ultionis indultum: (403 oct. 2).

CTh.7.18.14.1

Hac tamen condicione servata, ut ab his iunioribus, qui proxima indictione praesenti tempore conferuntur, supplicio temperetur, quia per provinciales intra praescriptum legibus tempus ad ea signa, quibus destinati fuerant, redhibendi sunt, ne possessores redhibitionis damna percellant propter eos, qui necdum paene auspicati militiam fugerunt. (403 oct. 2).

CTh.7.18.14.2

Sed ut in his patientiam tenemus, ita omnes, qui ultra memoratam indictionem et nostrae beneficia sanctionis castra et militiam deseruere, condemnationibus obnoxios esse praecipimus occultatoresque eorum ad subeundam poenam, quae divi genitoris nostri constituta est legibus, volumus retentari. dat. vi non. oct. d. n. theodosio a. i et rumorido viro clarissimo conss. (403 oct. 2).

CTh.7.18.15

Idem aaa. longiniano praefecto praetorio. qui relictis militaribus castris se ad depraedationes vel latrocinium contulerint, severitatem publicam non evadant. dat. viiii kal. april. ravenna arcadio a. vi et probo v. c. conss. (406 mart. 24).

CTh.7.18.16

Impp. honorius et theodosius aa. gaisoni comiti et magistro militum. qui sine conmeatu aliquo annum in penatibus propriis vel in quibuslibet locis desidiosa quiete transegerit, decem sequentibus postponatur; in quo vero biennium talis culpa deprehenditur, viginti sibi antepositos congemiscat; tertius autem annus triginta praelatos iure deflebit, ita ut quartus exempto matriculae nulli veniam derelinquat. et cetera. dat. prid. id. iun. ravenna post consulatum honorii viiii et theodosii v aa. (413 iun. 12).

CTh.7.18.17

Idem aa. constantio magistro militum. omnes tribunos, qui per africam vagorum et desertorum requirendorum sumpserunt officium, ne sub huiusmodi professione vastent provinciam, submoveri praecipimus. in futurum autem istud nequaquam vocabulum vel officium infaustum constituimus per africam esse debere, ita ut, si quis ad condemnatam huius officii qualitatem praedae causa adspirare temptaverit, capitalis in eum severitas exeratur. dat. pridie kal. mart. ravenna honorio viiii et theodosio v aa. conss. (412 febr. 29).

CTh.7.19.0. De saturianis et subafrensibus et occultatoribus eorum

CTh.7.19.1pr.

Impp. arcadius et honorius aa. messalae praefecto praetorio. saturianorum coniurationem armis sumus, ut oportuit, persecuti. sed aliquot ex eis inminentis poenae evitatione ad diversa semet latibula contulerunt, quorum occultatores huic severitati sciant se esse subdendos, ut hae possessiones, in quibus latebram collocaverint, fisci nostri corporibus adgregentur, nisi protinus post edicti huius auctoritatem poenae ac legibus fuerint restituti. (399 iul. 20).

CTh.7.19.1.1

Simili etiam se condicione retinendum esse cognoscat, si qui e subafrensibus, qui in saturianorum se coniurationem miscuerunt, quempiam praeviderit occultandum. quisquis igitur huiusmodi hominem adversus salubris decreti auctoritatem existimaverit latebris subtrahendum, sciat sibi cum eo facinus esse commune, et si eiusmodi personae fuerint, quae multari rerum amissione non possint, proprii capitis luendum esse supplicio. (399 iul. 20).

CTh.7.19.1.2

Nec hi sane poenae se exsortes futuros esse credant, qui deprehensos in quolibet rure tantorum scelerum machinatores silentio praetermiserint et non statim sub publica testificatione, quibus in locis inventi fuerint, publicaverint. (399 iul. 20).

CTh.7.19.1.3

Id quoque observandum esse censemus, ut ad ea loca, quae a memoratis latronibus tenebantur, diligens dirigatur inspector, oblaturus primitus veteribus dominis, ut, si haec possidere desiderant, ne abductis maereant cultoribus, translatis aliunde familiis rura, quae huc usque infructuosa apud eosdem perditorum temeritas fecisse videbatur, exerceant, vel certe, si inconvenientia existimaverint, salva tributorum praestatione ad idoneos possessores transferant. dat. xiii kal. aug. theodoro viro clarissimo cons. (399 iul. 20).

CTh.7.20.0. De veteranis

CTh.7.20.1

Imp. constantinus a. floriano praesidi. veteranis, qui ex die v nonarum iuliarum, cum prima per thraciam victoria universo orbi illuxit, et qui postea aput nicomediam nostram missionem meruerunt, certa per edictum indulsimus, quae scribendi tabulis vel encauto et cerussa conscribere detur eis licentia. edictum autem continens indulgentiam nostram ad devotionem tuam misimus, ut et tua dicatio et cuncti alii recognoscant, quid praestitimus memoratis. proposita iiii id. april. licinio v et crispo caesare conss. (318 [324] apr. 10).

CTh.7.20.2pr.

Idem a. cum introisset principia et salutatus esset a praefectis et tribunis et viris eminentissimis, adclamatum est: auguste constantine, dii te nobis servent: vestra salus nostra salus: vere dicimus, iurati dicimus. adunati veterani exclamaverunt: constantine aug, quo nos veteranos factos, si nullam indulgentiam habemus? constantinus a. dixit: magis magisque conveteranis meis beatitudinem augere debeo quam minuere. victorinus veteranus dixit: muneribus et oneribus universis locis conveniri non sinamur. constantinus a. dixit: apertius indica; quae sunt maxime munera, quae vos contumaciter gravant? universi veterani dixerunt: ipse perspicis scilicet. constantinus a. dixit: iam nunc munificentia mea omnibus veteranis id esse concessum perspicuum sit, ne quis eorum nullo munere civili neque in operibus publicis conveniatur neque in nulla collatione neque a magistratibus neque vectigalibus. in quibuscumque nundinis interfuerint, nulla proponenda dare debebunt. publicani quoque, ut solent agentibus super compellere, ab his veteranis amoveantur; quiete post labores suos perenniter perfruantur. (320 [?] mart. 1).

CTh.7.20.2.1

Fisco nostro quoque eadem epistula interdiximus, ut nullum omnino ex his inquietaret, sed liceat eis emere et vendere, ut integra beneficia eorum sub saeculi nostri otio et pace perfruantur et eorum senectus quiete post labores perfruatur. (320 [?] mart. 1).

CTh.7.20.2.2

Filios quoque eorum defendant decertationes, quae in patris persona fuerunt, quosque optamus florescere sollicitius, ne si contumaces secundum eosdem veteranos comprobari potuerint, decimentur his sententiis, cum praesidali officio adiungentur. probabilius iussionem meam curabunt ergo stationarii milites cuiusque loci cohortis, et parentes eorum desperationem, et ad sanctimoniam conspectus mei sine ulla deliberatione remittere, ut sint salvi, cum senuas consecuntur poenas indulgentiae. dat. kal. mart. in civitate velovocorum constantino aug. vi et constantino caes. conss. (320 [?] mart. 1).

CTh.7.20.3

Idem a. ad universos veteranos. veterani iuxta nostrum praeceptum vacantes terras accipiant easque perpetuo habeant immunes, et ad emenda ruri necessaria pecuniae in nummo viginti quinque milia follium consequantur, boum quoque par et frugum promiscuarum modios centum. qui autem negotii gerendi habuerit voluntatem, huic centum follium summam inmunem habere permittimus. praeter hos ergo, qui vel domicillis vel negotiis detinentur, omnes, qui vacatis et nullum negotium geritis, ne inopia laboretis, ad hoc remedium debetis concurrere. dat. iii id. oct. constantinopoli constantino a. vi et constantino caes. conss. (320 oct. 13).

CTh.7.20.4pr.

Idem a. ad maximum praefectum urbi. comitatenses et ripenses milites atque protectores suum caput, patris ac matris et uxoris, si tamen eos superstites habeant, omnes excusent, si censibus inditi habeantur. quod si aliquam ex his personis non habuerint vel nullam habuerint, tantum pro suo debent peculio excusare, quantum pro iisdem, si non deessent, excusare potuissent, ita tamen, ut non pactione cum alteris facta simulato dominio rem alienam excusent, sed vere proprias facultates. (325 iun. 17).

CTh.7.20.4.1

Veteranos autem post emeritae missionis epistulas tam suum quam uxoris caput excusare sancimus aut, si honestam missionem meruerint, suum caput tantummodo excusare ceteros. omnes veteranos de quocumque exercitu una cum uxore sua unius capitis frui excusatione praecipimus. (325 iun. 17).

CTh.7.20.4.2

Ripensis autem veteranus, qui ex priore lege post viginti quattuor stipendia honesta missione impetrata unius excusatione capitis fruebatur, etiam si viginti stipendiis completis honestam missionem meruerit, ad exemplum comitatensium militum unum caput excuset. intra viginti etiam stipendia dimissus, quoniam inbecilli et debiles censibus non dedicantur, eodem beneficio utatur. (325 iun. 17).

CTh.7.20.4.3

Alares autem et cohortales dum militant, propria capita excusent, veteranis quoque eadem excusationis solacia habituris. qui quocumque tempore in quibuscumque partibus meruerint missionem, si ex comitatensi militia senectutis vel debilitatis causa dimissi fuerint, indiscreto stipendiorum numero duo capita excusaturis, id est suum adque uxoris; et ripensibus indiscrete idem privilegium habituris, si se ob belli vulnera dimissos probaverint: ita ut, si quis eorum post quindecim stipendia intra viginti et quattuor annos ex militia decesserit, sui tantum capitis excusatione fruatur; uxorem enim ripensis, si militia decesserit post viginti et quattuor annos, excusari oportet. proposita xv kal. iul. antiochiae paulino et iuliano conss. (325 iun. 17).

CTh.7.20.5

Idem a. maximo praefecto praetorio. providendum est, ne veterani protectoria dignitate cumulati aut qui honores varios pro meritis suis consecuti sunt, incongruis pulsentur iniuriis, cum, si quis in hoc crimine fuerit deprehensus, rectores provinciarum conveniat ad tuum iudicium referre atque ad tuum officium praedictos dirigere, ut factum pro sui qualitate possit facillime coherceri. dat. iiii kal. ian. treviris ianuarino et iusto conss. (328 [?] dec. 29).

CTh.7.20.6

Imp. constantius a. ad helpidium consularem pannoniae. privilegia concessa veteranis, qui stipendia iusta meruerunt, prout se quisque in officiis competentibus militasse declaret, omnia conserventur, corporalium seu personalium munerum vacatione eisdem tribuenda. dat. viii kal. iul. sirmio constantio a. vii et constant. a. ii conss. (342 [?] iun. 24).

CTh.7.20.7

Idem a evagrio praefecto urbi. quosdam veteranos hoc nomine indignos latrocinia perpetrare comperimus, ideoque praecipimus, ut veterani, quibus bona mens est, aut arva versent aut certe in optimis negotiis pecuniam tractent et mercimonia agitent. qui vero neque rus colunt neque utilem vitam commerciis exhibent, mox in ipsos capitaliter exsurgendum. exui enim omnibus privilegiis debent, per quos publica quies perturbatur, ita ut, si levissimum aliquid deliquerint, omnibus subiciantur poenis. dat. iii id. aug. constantio a. vi et constante ii conss. (353 [?] aug. 11).

CTh.7.20.8

Impp. valentinianus et valens aa. ad universos provinciales. omnibus benemeritis veteranis quam volunt patriam damus et inmunitatem perpetuam pollicemur. habeant ex vacantibus sive ex diversis, ubi elegerint, agros et ea lege habeant, ut sibi soli eorundem fructus cessuros esse cognoscant; nullum ex his agris stipendium, nullam annuam praestationem postulabimus: amplius addentes, ut etiam ad culturam eorundem agrorum et animalia et semina praebeamus, ita ut is, qui ex protectore dimissus erit, duo boum paria et centum modios utriusque frugis consequatur, alii vero, qui honestas missiones sive causarias consequuntur, singula paria boum et quinquaginta modios utriusque frugis accipiant. super quibus praebendis ad competentes iudices scripta congrua destinata sunt. si quos etiam veterani servulos familiasve ad agrum duxerint, inmunes perpetuo possideant. dat. xv kal. dec. romae divo ioviano et varroniano conss. (364 nov. 17).

CTh.7.20.9

Imppp. valentinianus, valens et gratianus aaa. ad dagalaifum magistrum militum. remotis iniuriis iussimus veteranis nostris vel adgnatis licere emere vendere negotiari: quos secundum veterem consuetudinem parentum nostrorum ab omni munere universisque reditibus auri argentique, sed et portorii indemnes esse oportet. dat. viii id. dec. veronae gratiano nob p. et dagalaifo conss. (366 dec. 6).

CTh.7.20.10

Idem aaa. ad probum praefectum praetorio. si quis praepositus fuerit aut fabricae aut classi aut laetis, identidem si praepositus romanae legionis vel cohortis gesserit tribunatum, aut quicumque his administrationibus, ad quas nonnisi cum certis fideiussoribus singuli quique veniunt, fortasse praefuerit, qui non vel intra palatium congruo labore meruisse vel armatam invenitur sudasse militiam, his privilegiis careat quae militaribus palatinisque tribuuntur. dat. x kal. ian. treviris valentiniano nobilissimo puero et victore conss. (369 dec. 23).

CTh.7.20.11

Idem aaa. ad iovinum magistrum militum. conmoneat tua sinceritas hac sanctione veteranos, ut loca absentium squalida et situ dissimulationis horrentia, de solida fructuum indemnitate securi, quantum vires uniuscuiusque patientur, exerceant. namque decernimus, ut his, qui soli relicti terras sulcaverint, sine molestia praeiudicioque dominorum proventuum emolumenta quaerantur nihilque illis, qui messium tempus adsolent aucupari, agratici nomine deferatur. dat. xvi kal. feb. valentiniano et valente aa. iiii conss. (373 [365 vel 368] ian. 17).

CTh.7.20.12pr.

Impp. arcadius et honorius aa. stilichoni magistro utriusque militiae. plerique testimonialibus fraude quaesitis fiunt veterani, qui milites non fuerint, nonnulli inter exordia militiae in ipso aetatis flore discedunt. quisquis igitur laetus alamannus sarmata vagus vel filius veterani aut cuiuslibet corporis dilectui obnoxius et florentissimis legionibus inserendus testimoniales ex protectoribus vel cuiuslibet dignitatis obtinuit vel eas, quae nonnumquam comitum auctoritate praestantur, ne delitiscat, tirociniis castrensibus inbuatur. (400 ian. 30).

CTh.7.20.12.1

Si quis praeterea vel prima stipendia vel nondum, ut oportebat, impleta missionis colore deseruit, nihil impetrata valeant, nisi forte quempiam aut defessae aetatis aut corporis aegritudo aut gloriosorum vulnerum cicatrices causaria vel honesta missione defendunt, dummodo hos ista non adiuvent, qui aetate solida et integro corpore haec occuparunt. (400 ian. 30).

CTh.7.20.12.2

Et quoniam plurimos vel ante militiam vel post inchoatam vel peractam latere obiectu piae religionis agnovimus, dum se quidam vocabulo clericorum et infaustis defunctorum obsequiis occupatos non tam observatione cultus quam otii et socordiae amore defendunt, nulli omnino tali excusari obiectione permittimus, nisi qui aut fractus senio aut membris debilis aut parvitate deformis indignus consortio virorum fortium repperitur. (400 ian. 30).

CTh.7.20.12.3

Illius quoque sanctionis oportet admoneri, ut, si quis decurionum primipilariorum collegiatorum civilium apparitionum vel aliorum necessitatibus irretitus militiae sacramenta durasset, defendi castrensium stipendiorum excusatione non possit. dat. iii kal. feb. mediolano stilichone et aureliano viris clarissimis conss. (400 ian. 30).

CTh.7.20.13

Impp. honorius et theodosius aa. stilichoni comiti et magistro utriusque militiae. oportet inter eos, qui ambitu ac suffragiis ad tribunatus praeposituras que perveniunt, et eos, qui labore periculis atque ordine militiae decurso huiusmodi dignitates acceperint, esse discretionem. quare inmunes eos haberi decernimus, qui militiae praerogativa, ut dignum est, ad tribunatum praeposituramve perveniunt. conmonendi autem sunt comites et duces militum, ut et ipsi eos relevatos esse cognoscant neque aliquid hoc nomine ab his flagitandum. de quibus ad omnes militares iudices paria scripta direximus. dat. xi kal. april. roma honorio viii et theodosio iii aa. conss. (409 [407] mart. 22).

CTh.7.21.0. De testimoniali ex tribunis et protectoribus

CTh.7.21.1

Imp. constantinus a. ad rufinum praefectum praetorio. ferri non potest in titulos militaris laudis irrepere eos, qui nec aciem viderint nec signa perspexerint nec arma tractaverint. ideoque si qui ex protectoribus vel ex praepositis vel ex tribunis epistulas reportaverint, non habeant privilegium, quod merentur qui ordine militiae sub armorum labore decurso ad hunc honorem pervenerint. proposita iiii id. aug. sirmio constantino a. iii et licinio iii conss. (?) (313 [352 - 354] aug. 10).

CTh.7.21.2

Imp. constantius a. ad praefectos praetorio. post alia: si quis de paganis vel decurionibus ambierit ad honores protectoriae dignitatis, nec tempus nec stipendia ei post hanc legem computanda sunt. hoc et circa eos, qui ad praeposituras ambitu pervenerint, custodiri praecipimus. et cetera. dat. kal. mai. constantio a. vi et constante ii conss. (353 mai. 1).

CTh.7.21.3pr.

Impp. arcadius et honorius aa. florentino praefecto urbi. quicumque ex protectoribus aut domesticis honorarias missiones meruerint, sub hac norma penes eos dignitas maneat, ut neque municeps curiam neque collegiatus obsequium propriae urbis effugiat neque negotiator a pensionis aurariae instituta summa militiae suffragio subtrahatur neque ab ullo postremo officio militia vel corpore talis se impetrati quisquam obiectione defendat, sed manente norma solvat omnia, quae ab illo vel condicione nascendi vel iure proprii postulantur officii. (396 apr. 18).

CTh.7.21.3.1

De liberis etiam eorum censemus, ne de his editi originis munus per privilegia emendicatae dignitatis effugiant. (396 apr. 18).

CTh.7.21.3.2

Quae quidem omnia officere illis aliquando non patimur, quos emeritos felicibus castris vel honesta interdum adversae valetudinis missio vel vulnerum laudabilis excusatio vel emensum sub signis tempus absolvit. dat. xiiii kal. mai. mediolano arcadio iiii et honorio iii aa. conss. (396 apr. 18).

CTh.7.21.4

Impp. honorius et theodosius aa. theodoro praefecto praetorio. eos, qui testimoniales non suo merito, sed eorum contemplatione sunt adepti qui pro his nostram clementiam sunt precati, par severitas persequatur. eos tamen esse in urbe sacratissima non vetamus, qui posuerunt illic larem adque domicilium. dat. x kal. dec. ravenna basso et filippo conss. (408 nov. 22).

CTh.7.22.0. De filiis militarium apparitorum et veteranorum

CTh.7.22.1

Imp. constantinus a. ad octavianum. veteranorum liberos aptos militiae, quorum quidam ut desides recusant militarium munerum functionem, quidam adeo ignavi sunt, ut cum dispendio corporis militiae velint necessitatem evadere, iubemus, si ad militiam inutiles resectis digitis iudicentur, curialibus sine aliqua ambiguitate muneribus atque obsequiis adgregari. dat. xiiii kal. mart. sirmio, accepta vii id. april. regio constantino a. v et licinio c. conss. (319 febr. 16).

CTh.7.22.2pr.

Idem a. ad severum. veteranorum filios propter privilegia parentibus eorum indulta vacare non patimur, sed programmate per omnes civitates proposito diligenter quaesitos ad alterutrum compelli iubemus, ut aut decurionatus muneribus obtemperent aut militent, observaturo devotionis tuae officio, ut qui probantur ab annis viginti usque ad viginti et quinque annos aetatem agant. (326 iul. [mart.?] 30).

CTh.7.22.2.1

Si autem veteranorum filii, qui equestrem militiam toleraverunt, inter equites probari voluerint, habeant facultatem, ita ut cum singulis equis idoneis praedicto adgregentur obsequio. (326 iul. [mart.?] 30).

CTh.7.22.2.2

Quod si quis duos equos habeat vel unum idoneum et servum unum, cum circitoria militet dignitate et binas annonas accipiat, qui gradus praebetur aliis post laborem. (326 iul. [mart.?] 30).

CTh.7.22.2.3

Singularum autem civitatum decurionibus intimetur, ut veteranorum filios, qui praedictae aetatis sunt, si militare noluerint vel minus inveniantur idonei, ad curialia vocare non morentur obsequia, si tamen patrimoniis idonei esse noscuntur. (326 iul. [mart.?] 30).

CTh.7.22.2.4

Ex his autem, qui militare voluerint, si qui minus apti sunt equestri militiae id efficiente calamitate membrorum et legionariae congrui esse noscuntur, deducendi ad nos protectori qui ob hoc missus est consignentur. dat. iii kal. aug. aquileia constantino a. vii et constantio caes. conss. (326 iul. [mart.?] 30).

CTh.7.22.3

Idem a. ad evagrium. ii, qui ex officialibus quorumcumque officiorum geniti sunt, sive eorundem parentes adhuc sacramento tenentur sive iam dimissi erunt, in parentum locum procedant. dat. prid. non. aug. basso et ablavio conss. (331 aug. 4).

CTh.7.22.4

Idem a. ad leontium praefectum praetorio. iam dudum sanximus, ut veteranorum filii, qui post sedecim annos militiae munus subire non possunt vel armis gerendis habiles non extiterint, curiis mancipentur. dat. iii id. april. pacatiano et hilariano conss. (332 [343] apr. 11).

CTh.7.22.5

Idem a. ablavio praefecto praetorio. veteranorum filii vel eorum, qui praepositi vel protectores fuerunt, vel ceterorum, qui quemlibet gradum militiae tenuerunt, si invalidi et inbecilli sint, curiis adgregentur, ita ut re familiari gaudentes et inaptos militiae curiarum societati coniungas. quod etiam nos fecimus sub conspectu nostro his, quos deliciosis nutrimentis enervatos esse perspeximus. qui igitur ex his patresfamilias sunt et idonei functionibus publicis, eligantur ad augendum curialium numerum, singularum civitatum ordinibus commonendis, ut quos norunt idoneos nominare non dubitent praeter eos, quos vigor et fortitudo defendendae rei publicae idoneos facit. nam et duces singulorum limitum convenimus, ne deinceps veterani filius inutilis sacramento cingatur. eos etiam, qui iam probati sunt, diligenter inspiciant, ut qui minus idonei repperiuntur sacramento soluti ad gravitatem tuam mittantur. dat. et proposita id. nov. dalmatio et zenofilo conss. (333 nov. 13).

CTh.7.22.6

Imp. constantius a. antonio duci mesopotamiae. post alia: observetur, ne veteranorum seu militum filii officiis praesidalibus adgregentur. dat. iiii non. feb. limenio et catullino conss. (349 febr. 2).

CTh.7.22.7

Impp. valentinianus et valens aa. ad petronium patricium. quicumque castrensi stirpe progeniti diversorum se nexibus officiorum tradiderunt, manu iniecta retrahantur sciantque veterani, quibus quies post arma concessa est, liberos suos, quos militaribus aptos ministeriis insitum robur ostendat, offerendos esse militiae. nam si quis militaris prosapiae degeneri mente officiorum se consortiis adgregavit, ita ut fractis viribus grandaevam praeferat senectutem aut debilitatis obtentu bellico operi inconveniens iudicetur, eundem ignaviae latebris vel sera indagatione protractum curiarum functionibus placuit mancipari. proposita beryti idib. april. valentiniano et valente aa. conss. (365? 368? 370? 373? apr. 13).

CTh.7.22.8

Imppp. valentinianus, valens et gratianus aaa. ad probum praefectum praetorio. filios veteranorum, qui armatae militiae paruissent, si in officiis publicis vel ministerio chartularum atque observatione rationum inveniuntur, sciat tua sinceritas esse revocandos. etenim hi, quibus vel corporis robur vel statura defuerit, qui comitatensi digni possint esse militia, ripensi poterunt copulari. proposita romae xv kal. mart. modesto et arintheo conss. (372 febr. 15).

CTh.7.22.9

Imppp. gratianus, valentinianus et theodosius aaa. quicumque castrensi stirpe progenitos diversis se officiis indiderunt, etiam manu iniecta retrahantur, sciantque veterani liberos suos, quos militaribus aptos muniis insitum robur ostendat, aut offerendos esse militiae aut obnoxios nostrae legis laqueis iam futuros. scripta petro consulari phoenices damasco pridie id. mai. gratiano a. v et theodosio a. i conss. (380 mai. 14).

CTh.7.22.10

Idem aaa. ad felicem comitem orientis. non solum in diversis officiis militantes, sed etiam vacantes rebus propriis veteranorum ac militum filios armatae militiae volumus sociari. nulla igitur sit excusationis occasio. dat. viii id. iul. thessalonica gratiano v et theodosio i aa. conss. (380 iul. 8).

CTh.7.22.11pr.

Idem aa. have, neoteri, karissime nobis. si filii primipilarium reperti fuerint, qui ingressi legitimos annos nullis stipendiis fulciuntur, sed anno proximo, quo ad curiam fuerint lacessiti, semet militiae manciparint, ad curiam teneantur, ita ut ne officii quidem, cum transacto anno esse coeperint curiales, praepostera audiatur circa eius personam ac sera petitio. (380 sept. 8).

CTh.7.22.11.1

Quod si in eadem domo duo filii erunt et latum adeo felixque patrimonium, quod possit duplicium necessitatum suscipere functiones, unum oportebit militiae, unum curiae vindicari. quod servandum pari norma erit, si tres aut quattuor liberi vel etiam plures numero familiam eiusdem stirpis ornaverint, ut etiam ex numerosis fratribus unus ad curiam devocetur. dat. vi id. sept. sirmio gratiano v et theodosio i aa. conss. (380 sept. 8).

CTh.7.22.12

Impp. arcadius et honorius aa. stilichoni comiti et magistro utriusque militiae. quoniam filii veteranorum ad diversa officia se contulerunt, hac sanctione praecipimus, ut ab his, qui nunc sunt in officiis occupati, nulli iuniores repetantur, ac deinceps post hoc edictum aditum veteranorum filiis militandi per civilia officia esse praeclusum. dat. vi kal. oct. mediolano honorio a. iiii et eutychiano conss. (398 sept. 26).

CTh.7.23.0. De oblatione equorum.

CTh.7.23.1

Imppp. valentinianus, valens et gratianus aaa. ad probum praefectum praetorio. quicumque honorariis codicillis habetur ex comite, tres protinus equos, qui digni sunt comprobari, curet offerre, quicumque autem eodem ex praeside factus indulto, duos pari devotione mox tradat. ita enim promptius instruitur usus armorum. quod munus in posterum ea lege novetur, ut quinto quoque anno, hoc est magis aliquando quam saepe, similis recurrat exactio.

dat. viii id. iun. sirmio valentiniano nobilissimo puero et victore conss. (369 iun. 6).

CTh.7.24.0. De oblatione votorum

CTh.7.24.1

Impp. arcadius et honorius aa. basilio praefecto urbi. quando votis conmunibus felix annus aperitur, in una libra auri solidi septuaginta duo obryziaci principibus offerendi devotionem animo libenti suscipimus statuentes, ut deinceps sequentibus annis uniuscuiusque sedulitas principibus suis talia ingerant semper et deferant. dat. iii non. mart. mediolano olybrio et probino conss. (395 mart. 5).

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CTh.8.1.0. De numerariis, actuariis, scriniariis et exceptoribus

CTh.8.1.1

Imp. constantinus a. ad leontium. dudum sanximus, ut nullus ad singula officia administranda ambitione perveniat, vel maxime ad tabularios, nisi qui ex ordine vel corpore officii uniuscuiusque est. hos enim officia sibi iniuncta tamdiu agere iubemus, quoad idoneos esse manifestum est aut aetate non impediente complere id posse monstrantur, ut administratione aput unum iugiter permanente fides quoque eius appareat. si quis ergo ex suffragio ambitionis ad officia fisco obnoxia accesserit, multae nomine denas libras auri exigatur. proposita v id. iun. hierapoli constantino a. v et licinio caes. conss. (319 [343] iun. 9).

CTh.8.1.2

Idem a. ne ii, qui procul ab officio sublimitatis tuae sunt, nullum meritum per sedulitatem vel obsequia praeferentes locum possint laborantibus debitum irrepere, exceptores placet pro loco et ordine suo ad commentarios accedere et eorum administrationi subrogari ceteris propulsatis, ita ut inter exceptores, prout quisque locum tempore adipisci meruerit, ordine et merito consequatur. dat. kal. iul. treviris basso et ablavio conss. (331 [?] iul. 1).

CTh.8.1.3

Idem a. ad maximum praefectum praetorio. utilitate suadente annonarios et actuarios condicionales esse praecipimus, annonis etiam adiuvari et capitationem eorum qui censiti sunt haberi inmunem. ideoque tua sollertia competentia monebit officia, ut actuariis binas annonas, annonariis vero singulas protinus subministrent, capitationem quoque ipsorum tantum, qui ex his censiti sunt, faciat haberi inmunem, quoad in actu fuerint constituti, nam postea vel laus eos et dignitas honorabit vel, si in culpa fuerint deprehensi, poena comitabitur. emissa iii non. mai. dalmatio et zenofilo conss. (333 mai. 5).

CTh.8.1.4

Idem a. ad veronicianum vicarium asiae. vorax et fraudulentum numerariorum propositum, qui diversis rectoribus obsequuntur, ita inhibendum est, ut et antea sanximus et nunc itidem sancimus, condicioni eos subdi tormentorum et eculeis adque lacerationibus subiacere nec ultra biennium hoc fungi obsequio. et cetera. dat. xiiii kal. iun. optato et paulino conss. (334 mai. 19).

CTh.8.1.5

Imp. constantius a. ad taurum praefectum praetorio. actuarii condicionales sollicite proprio fungantur officio nec ad quasdam irrepant dignitates, quibus eos perfrui divalia statuta prohibent. hoc vitium corrigentes nos etiam iussimus utiliter a patre praecepta servari et litteris ad magistros peditum et equitum datis iussioni effectum praecipimus commodari. dat. prid. non. mai. roma constantio a. viiii et iuliano caes. ii conss. (357 mai. 6).

CTh.8.1.6

Imp. iulianus a. ad auxonium correctorem tusciae. numerarii, qui publicas rationes civitatum versutis fraudibus lacerare didicerunt, subiaceant tortori nomine artis ac fraudis. verum cum quinquennio administraverint chartas publicas, unum integrum annum vacent, ut ad incusantium iurgia facilis adpetitu sit vita privata. septimo porro anno, cum eosdem bene creditum munus administrasse claruerit, ex perfectissimis dimittantur. hic abolebit honor dignitatis additae veterem vilitatem. dat. xvi kal. feb. constantinopoli mamertino et nevitta conss. (362 ian. 17).

CTh.8.1.7

Idem a. secundo praefecto praetorio. quamquam praecedente iussione omnes numerarios condicionales esse praecepimus, tamen etiamnunc eos, qui sumpserint chartarum notitiam et in eodem officio erunt, condicionales esse iubemus, ut scientes nullo se privilegio esse munitos ac facile per tormenta fraudium suarum tutelas detegi posse, nihil committant in damna rei publicae. dat. kal. mart. mamertino et nevitta conss. (362 mart. 1).

CTh.8.1.8

Idem a. ad mamertinum praefectum praetorio. iubemus omnes numerarios, non eos modo, quos plebe confusa vulgus abscondit, sed primos etiam et magistros eorum, officii sedis amplissimae, tum autem iudicum ceterorum, solutos penitus militaribus sacramentis condicionales etiam fieri, ne dignitas fraudibus faciat umbraculum, per quinquennium perinde inservire scriniis. quippe admodum iniquum videtur pro alienis fraudibus rudes et nuper adscitos adiutores compelli ratiocinia praestare adque his inminere periculum. dat. epistula praefecto praetorio v kal. dec. viminacio iuliano a. iiii et sallustio conss. (363 nov. 27).

CTh.8.1.9pr.

Impp. valentinianus et valens aa. ad clearchum. numerarii qui appellari consueverant consularium ac praesidum, dumtaxat tabularii posthac nostra sanctione vocabuntur, scientes sese tormentis esse subiectos, nisi iudicibus vel his, qui provecti nostro iudicio ad provincias venerint vel his, qui ibidem diutius fuerint commorati, debitorum ac reliquorum modum frequenter ingesserint sub actorum testificatione: quos scire oportet cum his qui debitores sunt sese ad solutionem esse retinendos, nisi omnia debita ipsis fuerint indicantibus persoluta. (365 febr. 16).

CTh.8.1.9.1

Triennii tamen spatio tabulariorum decet tempus omne concludi. denique cum peregrinos deligi adque ad singulas quasque provincias oporteat destinari, peractis triennii spatiis adque hoc tempore completo biennio post administrationem in provinciis residere debebunt, obsequia iudicum praestolantes, ut edant rationem torporis adque segnitiae ac subiaceant dispendiis, quae communicari isdem cum exactoribus convenit, si detrectasse fidem praetermissis suggestionibus monstrabuntur. dat. xiiii kal. mart. constantinopoli valentiniano et valente aa. conss. (365 febr. 16).

CTh.8.1.10

Idem aa. iovio magistro equitum. actuariis palatinorum et comitatensium numerorum senas annonas, senum etiam capitum, pseudocomitatensium etiam quaternas annonas et quaternum capitum ex horreorum conditis praecepimus....Per decennium curam eius officii sustinere, ut perspicue manifesteque fides eorum et industria comprobetur. quod cum ad nos iuxta numerorum testificationem suggestione excellentiae tuae pervenerit, honore perfectissimatus in palatio nostro potientur, etiam maiorem gradum dignitatis postmodum adepturi. post hoc vero beneficium qui fraudibus ac rapinis minime temperarint, in eos iudiciorum auctoritas exseratur. dat. viii kal. iun. mediolano valentiniano et valente aa. conss. (365 mai. 25).

CTh.8.1.11

Idem aa. ad rufinum praefectum praetorio. super numerariis celsissimi officii tui aliter est nostra sententia quam divae memoriae iulianus duxerat sanciendum. ille lege proposita numerarios omisso cingulo, condicionis conscios vilioris necessitati publicae obsecundare praecepit: nos, qui malumus obsequia hominum esse voluntaria quam coacta, sumere cingulum et militiae ordinem tenere numerarios iubemus, cum, si in aliquo fraudium scelere fuerint deprehensi, nullo modo possint a corporali iniuria vindicari. dat. prid. id. dec. parisiis valentiniano et valente aa. conss. (365 dec. 12).

CTh.8.1.12

Imppp. gratianus, valentinianus et theodosius aaa. omnibus rectoribus provinciarum. in provinciis singulis duo tabularii collocentur, quo ad unum fiscalis arcae ratiocinium, ad alterum largitionales pertinere tituli iubeantur, scituri, quod, si ex alienis quicquam actibus ad alteram partem illicita fuerit usurpatione translatum, si, qui iudicis culpam dissimulatione texerit, gravissimo sit supplicio subiugandus. dat. iii kal. april. constantinopoli antonio et syagrio conss. (382 mart. 30).

CTh.8.1.13

Idem aaa. floro praefecto praetorio. post alia: numerarii nonnisi exacto triennii tempore divinam nostri numinis purpuram venerentur, capitali supplicio subiugandi, si in fraudem constituti vel statuta tempora subterfugere voluerint vel ambitu usurpare maioris militiae dignitatem. dat. xviii kal. oct. constantinopoli antonio et syagrio conss. (382 sept. 14).

CTh.8.1.14pr.

Impp. arcadius et honorius aa. severo praefecto urbi. ne diutius ad cunctorum perniciem actuarii numerariorum consortiis adiuventur, illustris auctoritas tua cunctos ex numerariis ab actuariorum societate praecipiat abstinere adque ab eorum communione discedere. quod si haec moniti custodire neglexerint, isdem poenis se quibus actuarios non ambigant subiacere. (398 iun. 28).

CTh.8.1.14.1

Actuarios vero cunctos intra quinquaginta dies urbis nostrae terminos compellat excedere, scituros, quod, si ultra statutum tempus praesentes fuerint comprehensi, viginti librarum auri dispendium subituri sunt. dat. iiii kal. iul. niciae honorio a. iiii et eutychiano conss. (398 iun. 28).

CTh.8.1.15

Impp. honorius et theodosius aa. hypatio magistro militum per orientem. ex insinuatione magnificentiae tuae cognitis his, quae a scriniariis officii tui crudeliter perpetrantur, dum actuariis sua pravitate permixta freti, potestate chartarum, rationes eorum pro sua voluntate perscribunt, generali lege censemus, ut ad exemplum numerariorum, quorum ob fraudes haec dudum forma processit, a chartarum cura triennio finito pellantur numquam ad eam ulterius admittendi. cum his, qui ante ab huiusmodi consortio quoquo pacto recesserunt, ita ad principatum officii, si maluerint, praestolentur ad pecunia, quam actuariis quolibet genere extorserunt, fisco vindicanda. quod et in posterum observabitur, si quis ex scriniariis eiusdem officii aliquos cum actuariis contractus habuerit, quoniam hoc collegium conmerciumque penitus convenit inhiberi. dat. xvii kal. april. constantinopoli honorio x et theodosio vi aa. conss. (415 mart. 16).

CTh.8.1.16

Idem aa. vitaliano duci libyae. nemo de numerariis tui officii seu domesticis vel scriniariis sive adiutoribus post completum sui temporis actum ad eandem rursus sollicitudinem audeat adspirare, x auri librarum condemnatione proposita, si quis hanc violare voluerit sanctionem, eadem poena officio quoque proposita, si per ambitionem vel avaritiam ex his aliquid temerari concesserit. dat. viiii kal. nov. constantinopoli honorio a. xi et constantio ii v. c. conss. (417 oct. 24).

CTh.8.1.17

Impp. theodosius et valentinianus aa. tauro praefecto praetorio. qui ad numerariorum gradum veniunt in officio tuae sedis excelsae, quamdiu eodem funguntur officio, domesticorum militiam non adfectent, ne in alio actu constituti alterius sacramenti privilegiis perfruantur. completo sane triennii tempore eam tantummodo militiam consequantur, quae instituto antiquitus more defertur. intra alterius autem triennii metas altiorem quamcumque militiam seu potius dignitatem nullam penitus adipiscendi habeant facultatem. et cetera. dat. v non. iul. constantinopoli theodosio a. xiiii et maximo conss. (433 iul. 3).

CTh.8.2.0. De tabulariis, logografis et censualibus.

CTh.8.2.1

Imp. constantius a. ad catullinum praefectum praetorio. nullus omnino ex tabulariis vel scribis vel decurionibus eorumque filiis in quocumque officio militet, sed ex omnibus officiis, nec non et si intra nostrum palatium militent, necdum impleto quinquennio reperti et retracti protinus curiis officiis que municipalibus reddantur. dat. viii kal. iul. lauriaco marcellino et probino conss. (341 iun. 24).

CTh.8.2.2

Impp. valentinianus et valens aa. ad artemium vicarium hispaniarum. si qui tabulariorum necessitate perfuncti vel adspirare coeperint ad curias vel vocari, non prius eos ordo suscipiat, quam fideliter dederint administratarum suo tempore chartularum aput acta rationem. dat. kal. iun. treveris valentiniano et valente iii aa. conss. (370 iun. 1).

CTh.8.2.3

Imppp. gratianus, valentinianus et theodosius aaa. neoterio praefecto praetorio. comperimus aliquantos relictis muneribus curiarum scribas, sed et logografos civitatum in nomen irrepsisse militiae. his retractis legem hanc tulimus, ne quis ex hoc hominum numero paria audeat usurpare, hoc admodum sufficiente numero militiae supplementis, qui ex vagis veteranorumque filiis vacantibusque potuerit fida pervestigatione compleri.

dat. iiii non. feb. thessalonica gratiano a. v et theodosio a. i conss. (380 febr. 2).

CTh.8.2.4

Idem aaa. quicumque decurionum sponte se censuali ministerio manciparit, condicionem habeat quam ipse delegit, depositurus sui ordinis penitus dignitatem, si eum necessitas quaestioni subdendum invenerit. dat. xv kal. oct. constantinopoli richomere et clearcho conss. (384 sept. 17).

CTh.8.2.5 [=brev.8.1.1]

Impp. arcad. et honor. aa. hadriano pf. p. generali lege sancimus, ut, sive solidis provinciis sive singulis civitatibus necessarii fuerint tabularii, liberi homines ordinentur, neque ulli deinceps ad hoc officium patescat aditus, qui sit obnoxius servituti; sed et si quis dominorum servum suum sive colonum chartas publicas agere permiserit (consensum enim, non ignorantiam volumus obligari), ipsum quidem, in quantum interfuerit publicae utilitati, pro ratiociniis, quae servo sive colono agente tractata sunt, obnoxium attineri, servum autem competentibus affectum verberibus fisco addici. in praeteritum quoque decernimus, cura dominorum praesentari eos, qui ratiocinia tractaverint, quorum interfuit ab initio providere, ne publicis actibus privata servitia immiscerentur, ut temporis sui quisque rationem positus in quaestione depromat. dat. viii. kal. april. mediolano, vincentio et fravitta coss.

interpretatio. sive in solida provincia sive per singulas civitates tabularii fuerint ordinati, hoc est, qui rationes publicas tractant, ingenui a provincialibus ordinentur: coloni vel servi ad hoc officium nullatenus admittantur, quia, quibus fides publica committenda est, tales eligi debebunt, de quibus querela esse non possit. quod si dominus colonum vel servum suum tabularium esse consenserit, pro consensu dominus hac mulcta feriatur, ut quicquid colonus ille vel servus detrimenti admiserit, hoc dominus sine mora restituat: colonus ille vel servus verberatus fisci viribus addicatur

CTh.8.3.0. De privilegiis apparitorum magisteriae potestatis

CTh.8.3.1

Impp. valentinianus et valens aa. ad artemium correctorem. post alia: qui sese in officiis magistrorum equitum ac peditum militasse ac militare monstraverint, ab omni nominationis iniuria excusentur. eligendi autem erunt susceptores e diversis officiis, etiam ex largitionalibus civitatum, qui utique extra palatium degunt. dat. xiii kal. oct. aquileia, acc. xv kal. nov. salerni divo ioviano et varroniano conss. (364 sept. 19).

CTh.8.4.0. De cohortalibus principibus cornicularii et primipilaribus

CTh.8.4.1

Imp. constantinus a. ad constantium praefectum praetorio. quoniam iniquissime tyrannus constituit, ut, qui ex cohortali militia honestam missionem et vacationem rerum suarum meruerint, civilibus officiis et curiae necessitatibus inserviant, placet hac lege cessante eos, qui cohortali militia completis xx stipendiis discesserint, ad nulla deinceps civilia munera vel curiae devocari. quam rem et circa officiales praesidum observari conveniet. dat. iiii kal. mai. constantino aug. iiii et licinio iiii conss. (315 [324] apr. 28).

CTh.8.4.2

Idem a. edicto suo ad afros. stationariis primipilarium, quorum manifesta sunt loca, coram mandatum est, ut, si extra modum aliquid extorserint, sciant se capite puniendos: praeterea ne carcerem habeant neve quis personam pro manifesto crimine apud se habeat in custodia neve quis amplius quam duos agasones ex provincia secum habeat vel de numidia sibi adiungat neve ex aliis provinciis agasonem habeat vel qui alicuius iam stationarii minister fuit. proposita vi id. mai. karthagine constantino a. iiii et licinio iiii conss. (315 mai. 10).

CTh.8.4.3

Idem a. ad bithynos. primipilaribus post emeritam militiam perfectissimatus vel ducenae vel centenae vel egregiatus dari dignitas potest. dat. xii kal. aug. gallicano et basso conss. (317 iul. 21).

CTh.8.4.4

Imp. constantius a. antonio duci mesopotamiae. iuxta suggestionem vicarii mesopotamiae de his, qui officia praesidalia deserentes ad sacramenta militiae adspirasse noscuntur, iteranda statuti desideratur auctoritas, ideoque etiam nunc iubemus, ut retentis his qui veteranorum seu militum filii esse noscuntur ceteros gravitas tua officiis propriis restituere non moretur. et cetera. dat. iiii non. feb. limenio et catullino conss. (349 febr. 2).

CTh.8.4.5

Idem a. ad viros clarissimos praefectos praetorio. post alia: beneficiarios in eodem obsequio perseverare volumus. et cetera. dat. prid. non. mai. constantino a. vii et constante c. ii conss. (354 [353] mai. 6).

CTh.8.4.6

Idem a. ad taurum praefectum praetorio. primipilaribus, qui ad pascendos milites sollemniter ad limitem destinantur, gravia sustinentibus detrimenta hoc modo credidimus consulendum, ut duces, qui multa eis extorquere firmantur, nomine munerum vel sportulae nihil amplius percipiant quam percipiebant patre nostro perennis memoriae regente rem publicam, ita ut species a primipilaribus ipsa praestetur nec in nummum aurumve dirigatur, ne super inmensitate pretiorum necessitas conquerendi exsurgat. hac igitur remota iniuria idonei mittantur, qui ex more susceptis omnibus alimoniis militaribus easdem pervehere contendant, actis apud rectorem provinciae conficiendis, per quae designabitur, quantus specierum modus in usum alimoniae militaris a primipilaribus praebeatur et quid ob munera ducibus mittenda vel sportulam, cuius habet notitiam officium praesidale. dat. epistula praefecto, cui haec sacra fuerat antelata, xi kal. iun. mediolano datiano et cereale conss. (358 mai. 22).

CTh.8.4.7

Idem a. ad taurum praefectum praetorio. beneficiarii vel officiales rationalis, si exhibitione cursus seu primipili necessitate neglecta, interversa etiam ratione fiscali ad ecclesias putaverint transeundum, curialium retrahantur exemplo. si vero obnoxii ratiociniis vel necessitatibus non sint, sub notione iudicum officiis consentientibus, si id probabilis vitae studium postularit, transferantur nec cessionem metuant facultatum. quod si clandestinis artibus putaverint irrependum, ad curialium similitudinem duas concedant liberis aut, si proles defuerit, propinquis e propria substantia portiones tertiam sibimet retenturi; sin vero propinquorum necessitudo defuerit, geminae portiones officiis, in quibus militant, relinquantur portione tertia tantummodo retentata. dat. iiii kal. sept. tauro et florentio conss. (361 aug. 29).

CTh.8.4.8pr.

Impp. valentinianus et valens aa. ad mamertinum praefectum praetorio. post alia: qui in proconsulum consularium correctorum vel praesidum officiis ita stipendia merentur, ut rei publicae partes pro virili captu per vim laborum procurent, si cursui veredorum obnoxii vel pastui primipili militiam clariorem, aditu obstricti itineris, occupaverint, ita infulas adfectati honoris amittent, ut necessitatem vetustae procurationis agnoscant. liberi vero eorum si ab ineunte aevo alterius gradus sacramenta meruerint, paternae necessitatis condicione non alias fatigentur, quam si adhuc eos loci, quamquam altioris, tamen eiusmodi docebitur retinere mensura, ut parva contumelia dignitatis paterni muneris subdantur impensis. (364 mai. 13).

CTh.8.4.8.1

Et quoad huiusmodi homines in his provinciis militabunt, quas aut primipili pastus aut necessitas veredariae non adigat functionis, xxv eos stipendia a nexu curialis nominationis absolvant; liberis eorum ea condicione obnoxiis municipum complexui relinquendis, si militiae detrectaverint voluntatem. subscribendarii vero, tabularii diurnarii logografi censuales, si et censu opulenti erunt et exercitatione quantulacumque eruditi, post emensum munus ea condicione curiis adgregentur, si, cum in officiis essent vilioribus, nulla eos suppliciorum macula turpaverit. (364 mai. 13).

CTh.8.4.8.2

Et quoniam infinitum est viritim cuncta complecti, hoc quasi generale conclusio legis amplectitur, ut quicumque alii sine defensione praedictorum privilegiorum in quibuslibet urbibus oppidis municipiis repperiantur, pro captu virium et mediocritate censuum curialia officia suae sortis agnoscant. et cetera. dat. iii id. mai. hadrianopoli divo ioviano et varroniano conss. (364 mai. 13).

CTh.8.4.9

Idem aa. ad probum praefectum praetorio. secundum divi iuliani statuta sportula duci in quinquaginta libras argenti non ab uno primipilari, sed ab universis pariter inferatur nihilque amplius duces sportulae sollemnis praetextu conentur exculpere. dat. viii kal. april. treviris valentiniano et valente aa. conss. (368? 370? 373? mart. 25).

CTh.8.4.10

Idem aa. ad dracontium vicarium africae. principes seu cornicularios stationes, quae personis suis merito deferuntur, non aliis vendere, sed ipsos potissimum his administratiunculis perfrui iubemus. quod si post pastum primipili de his putaverint nundinandum, non alteri quam adiutoribus suis, et tamen his ipsis, qui numquam eiusmodi stationes egisse doceantur, habeant libertatem licentiamque vendendi. dat. iii kal. april. mediolano valentiniano et valente aa. conss. (365 mart. 30).

CTh.8.4.11

Idem aa. festo consulari syriae. solita cohortalibus syriae privilegia, quae a divo diocletiano porrecta sunt adque concessa, nos quoque porreximus ac iubemus eos non ad sollicitudinem bastagae, non ad functionem navicularium devocandos, non invitos curialibus coetibus adscribendos, verum peracto labore militiae, pastus primipili competenti sedulitate functione transacta praerogativam his recusationis offerimus. dat. vi non. oct. valentiniano et valente aa. conss. (365? 368? 370? oct. 2).

CTh.8.4.12

Imppp. valentinianus, valens et gratianus aaa. ad probum praefectum praetorio. post alia: officia rectorum provinciarum tuae magnificentiae litteris volumus admoneri, ut susceptos in officio proprio vel probatos cohortium nomine legionumve privilegiis aestiment inserendos. dat. xvi kal. iun. modesto et arinthaeo conss. (372 mai. 16/7).

CTh.8.4.13

Imppp. gratianus, valentinianus et theodosius aaa. ad severum praefectum praetorio. primipilarium liberos sacramentis adque militiae, quae eorum maioribus fuerat, elapsos ad ultima quidem apparitionis et eandem necessitatem minime devocamus, variis tamen, quas tempus efflagitat, iuvare rem publicam statuimus expensis. dat. iii non. april. mediolano antonio et syagrio conss. (382 apr. [?] 3).

CTh.8.4.14

Idem aaa. ad proculum comitem orientis. qui relicto principatus officio quod gerebat ad senatoriae dignitatis nomen ambiit, propriae redditus militiae plumbatis cohercendus est. dat. prid. non. iul. constantinopoli merobaude ii et saturnino conss. (383 iul. 6).

CTh.8.4.15

Idem aaa. ad neoterium praefectum praetorio. si apparitor diffugerit criminosus, edictum, quo revocari possit, adiecta condicione legibus subsequatur; cui nisi fuerit satisfactum, merito in latitantem a iudice pro qualitate peccati sententia proferetur: veniam enim talibus nos promittimus non daturos, ut saltem huiusmodi oraculi sanctione perterriti, cum de indulgentia desperare coeperint, aut scelera nulla conmittant aut noverint crimina nec fugae latebris nec indulgentiis relaxanda. dat. prid. id. iun. mediolano arcadio a. i et bautone conss. (385 iun. 12).

CTh.8.4.16pr.

Imppp. valentinianus, theodosius et arcadius aaa. tatiano praefecto praetorio. ordinariorum iudicum apparitores, qui vel speculatorum vel ordinariorum adtigerint gradum, nullo annorum numero, nulla stipendiorum contemplatione laxentur, priusquam primipili pastum digesta ratione compleverint. quod si ante debitum locum qui huic functioni habetur obnoxius vel aegri corporis labem vel defessae senectutis extrema ad impetrandam quietem crediderit praetendenda, non prius otio condonetur, quam omne quod primipilo debetur expenderit. (389 mai. 5).

CTh.8.4.16.1

Eos etiam, qui pro sceleribus suis soluto militiae cingulo addicuntur infamiae, ne integro peculio sub hac occasione laetentur, ita condignae ultioni volumus subiacere, ut functioni quoque, quae extrema militiae debebatur, nihil ex eorum facultatibus subtrahatur. dat. iii non. mai. mediolano timasio et promoto conss. (389 mai. 5).

CTh.8.4.17

Idem aaa. cynegio praefecto praetorio per orientem. cum ante placuisset, ut a primipilaribus secundum dispositionem divi gratiani species horreis erogandae comitatensibus militibus ex more deferrentur, limitaneis vero pretia darentur, nunc placuit, ut aurum ad officium illustris per illyricum praefecturae cum certa taxatione, id est pro octogenis libris laridae carnis, pro octogenis etiam libris olei et pro duodenis modiis salis singuli solidi perferantur. dat. v kal. iul. timasio et promoto conss. (389 [?] iun. 27).

CTh.8.4.18

Imppp. theodosius, arcadius et honorius aaa. rufino praefecto praetorio. ex his, qui de numero comitianorum vel ex apparitione culminis vestri consulari officio deputati sunt, nullus ambiendi et transfugiendi in alterius militiae ordinem habeat facultatem. dat. iii kal. iun. heracleae arcadio iii et honorio ii aa. conss. (394 mai. 30).

CTh.8.4.19

Impp. arcadius et honorius aa. euthymio vicario asiae. in speciebus primipilaribus adaerandis eadem pretiorum taxatio servetur, quae in venalibus publicis poterit repperiri. is enim, qui excedere praecepta nostra temptaverit, severa iudicis sententia cohercebitur. dat. v kal. mart. constantinopoli arcadio iiii et honorio iii aa. conss. (396 febr. 26).

CTh.8.4.20

Idem aa. et theodosius a. anthemio praefecto praetorio. quicumque ad chartas vel tabulas vel quodcumque aliud ministerium cohortalis optaverit, non ante accedere permittatur, nisi eius nomen matriculis receptum primitus fuerit, poena proposita his, qui contra statuta caelestia crediderint suscipiendos aliquos aut quodlibet eis officium iniungendum, et adtinendis his nihilo minus in officio, qui etiam post haec praecepta meditatione quadam futurae fraudis clam fortassis ita eorum ordinum actibus interfuerunt, ut obtentu non dati militiae nominis liberum sibi, cum id expedisset, praecogitarent abscessum. de his sane, qui huiusmodi artibus antehac usi evitanda officia rescriptorum impetratione crediderint, id statuimus, ut rescriptis, quae ad tuae sublimitatis iudicium emittuntur, nullis praeterea ad alios iudices elicitis eos uti patiamur, vel, si obreptio aliqua fuerit impetrata, a nullo alio iudice suscipiantur. dat. xvi kal. april. constantinopoli dd. nn. honorio vii et theodosio ii aa. conss. (470 mart. 17).

CTh.8.4.21

Impp. honorius et theodosius aa. anthemio praefecto praetorio. polychronio, qui ex primipilaribus in memorialium scrinia irrepsit, condicioni propriae restituto generali lege decernimus omnes, qui ex huiusmodi condicione palatinis semet indecenter inseruerunt obsequiis, omissis adsignari natalibus adque omnes, quorum interest huius rei sollicitudo, observare, ne quis desertis adsuetis officiis ad palatina umquam sacramenta adspiret. dat. prid. non. april. constantinopoli varane v. c. cons. (410 apr. 4).

CTh.8.4.22

Idem aa. seleuco praefecto praetorio. quicumque post militiam provincialis officii vel certe adhuc militans ad maius privilegium militiae ditatus spoliis provincialium properavit, absolutus sacramento eius militiae originario solo adque status sui reddatur obsequiis. neque isdem in futurum nulla adtemptandi maioris splendoris officii adque sacramenti potestas sit. dat. prid. kal. mart. ravenna dd. nn. honorio viiii et theodosio v aa. conss. (412 febr. 29).

CTh.8.4.23

Idem aa. euchario proconsuli africae. quia plurimi consuetam proconsularem ceterorumque iudicum fugientes militiam diversis palatinis seu illustrium potestatum officiis se sociasse dicuntur, decernimus omnes absolutos cingulo militiae ad propriam functionem reduci. in futurum sane praecipimus, ut, si quis comprehensus ad militiam palatinam adspirare aliquibus indiciis adprobetur, in aeternum mancipatui vel susceptioni societur, non ante ex eius officii conversatione removendus, quam vitae finis huiusmodi sententia eundem potuerit liberare. dat. prid. kal. mart. ravenna honorio viiii et theodosio v aa. conss. (412 febr. 29).

CTh.8.4.24

Idem aa. probo comiti sacrarum largitionum. quisquis in officio palatino apparitor vel exutus eodem munere ex proconsulari officio vel ordinarii iudicis potuerit repperiri, sublatis militiae privilegiis functioni propriae regionique reddatur. dat. prid. kal. mart. ravenna dd. nn. honorio viiii et theodosio v aa. conss. (412 febr. 29).

CTh.8.4.25

Idem aa. liberio praefecto praetorio. quicumque ex diversis officiis omnium moderatorum officiales contra vetitum altioris militiae gradum indebite obtinuisse noscuntur, in propria revocentur officia. universos igitur apparitores, quos extra conscientiam tuam vel stipendiorum meritum claruerit ad militiam convolasse, praecipimus revocari similique praeceptione diversorum iudicum officiales antiquae militiae restitui. et cetera. dat. vi kal. dec. ravenna honorio viiii et theodosio v aa. conss. (412 [409?] nov. 26).

CTh.8.4.26

Idem aa. anthemio praefecto praetorio. si quis e grege cohortalinorum urguente criminis insectatione stipendiis fuerit exemptus, aut otio traditus quietis artibus inmoretur aut, si ad pristina sacramenta precum miseratione maluerit repedare, indultum nostrae maiestatis oraculum amplissimae tuae sedi offerat allegandum. sanctione hac edictis propositis divulganda, ut provinciarum iudices sciant, si quas caelestes praescriptiones super reddenda militia elicuerit provincialis apparitor, quas non ante praecelsa sedes tua libravit, auditionem huius legis intercessione depulsam. dat. xiii kal. mart. constantinopoli honorio x et theodosio vi augg. conss. (415 [?] febr. 17).

CTh.8.4.27

Idem aa. eustathio praefecto praetorio. pro singulis libris argenti, quas primipilares viris spectabilibus ducibus sportulae gratia praestant, quaterni solidi praebeantur, si non ipsi argentum offerre sua sponte maluerint. dat. xiii kal. iul. constantinopoli honorio xiii et theodosio x aa. conss. (422 iun. 19).

CTh.8.4.28

Idem aa. asclepiodoto praefecto praetorio. valentinianae ceterarumque legum, quae diversa super temporibus usurpatae militiae statuerunt, auctoritate cessante haec praecipimus observari: primum ut neque curialis neque cohortalinus neque curialis aut cohortalini filius condicione deserta ad aliam audeat adspirare fortunam, cui maiorum suorum exempla praeiudicant. dein, si quis memoratarum condicionum laqueis irretitus ad militiam armatam per subreptionem vel illicitum patrocinium transierit et id curia, ex qua tiro ortus est, per decennium iugiter siluerit, ut is, qui in castris sine aliqua fortunae pristinae conventione incessanter stipendia meruerit designata sibi et strenue susceptis armis insudaverit, minime conveniatur ulterius, sed privilegia et praemia viri fortis expectet. et cetera. dat. xv kal. iun. constantinopoli asclepiodoto et mariniano vv. cc. conss. (423 mai. 18).

CTh.8.4.29

Impp. theodosius et valentinianus aa. florentio praefecto praetorio. ii, quorum nomina excellentiae tuae suggestio comprehendit, omnesque, qui ex primipilariis ex quacumque provincia quamlibet militiam contra licitum praesumpserunt, etiamsi obtinuisse eam speciali adnotatione nostrae indulgentiae videantur, spoliati cingulo ad priorem statum et condicionem pristinam revocentur, omni aditu cuiuslibet dignitatis ita huiusmodi condicioni praecluso, ut non solum impetratis iam beneficiis careant, verum etiam, si quid postmodum elicere temptaverint, id omne in irritum devocetur. praeceptis enim vestris et publicis utilitatibus in perpetuum debent esse subiecti nec exsequendarum necesitatum munia declinare. dat. vi id. iul. constantinopoli felice et tauro conss. (428 iul. 10).

CTh.8.4.30pr.

Idem aa. isidoro praefecto praetorio. post alia: eodem exemplo eubulo praefecto praetorio illyrici. si cohortalis apparitor aut obnoxius cohorti ad ullam posthac adspiraverit dignitatem, spoliatus omnibus impetrati honoris insignibus ad statum pristinum revocetur, liberis etiam in tali eius condicione susceptis fortunae patriae mancipandis. (436 apr. 3).

CTh.8.4.30.1

Si qui vero cohortalis vel subiectus cohorti ullam ante hanc legem gessit militiam aut coeptam dudum etiamnunc gerit aut causidicinam in foro amplissimae praefecturae orientis adque illyrici vel urbano profitetur iudicio, in eodem latarum pridem constitutionum sanctio observetur. (436 apr. 3).

CTh.8.4.30.2

Post hanc vero legem si quis ex his ausus fuerit ullam affectare militiam, nulla praescriptione temporis muniatur, sed ad condicionem propriam retrahatur, ne ipse vel eius liberi post talem ipsius statum procreati quod cohorti debetur valeant declinare. dat. iii non. april. constantinopoli isidoro et senatore conss. (436 apr. 3).

CTh.8.5.0. De cursu publico angariis et parangariis

CTh.8.5.1

Imp. constantinus a. ad constantium. si quis iter faciens bovem non cursui destinatum, sed aratris deditum duxerit abstrahendum, per stationarios et eos, qui cursui publico praesunt, debito vigore correptus aut iudici, si praesto fuerit, offeratur aut magistratibus municipalibus competenti censura tradatur eorumque obsequio transmittatur, aut si eius fuerit dignitatis, ut nequaquam in eum deceat tali vigore consurgere, super eius nomine ad nostram clementiam referatur. qui enim explicaverit mansionem, si forte boves non habuerit, inmorari debet, donec fuerint exhibiti ab his, qui cursus publici curam gerunt, nec culturae terrae inservientes abstrahere. acc. xi kal. feb. caralis constantino a. iiii et licinio iiii conss. (315 ian. 22).

CTh.8.5.2

Idem a. ad titianum. quoniam plerique nodosis et validissimus fustibus inter ipsa currendi primordia animalia publica cogunt quidquid virium habent absumere, placet, ut omnino nullus in agitando fuste utatur, sed aut virga aut certe flagro, cuius in cuspide infixus brevis aculeus pigrescentes artus innocuo titillo poterit admonere, non ut exigat tantum, quantum vires valere non possunt. qui contra hanc fecerit sanctionem promotus, regradationis humilitate plectetur: munifex poenam deportationis excipiat. dat. prid. id. mai. sabino et rufino conss. (316 mai. 14).

CTh.8.5.3

Idem a. ad acindynum praefectum praetorio. praesidibus et rationalibus ceterisque, quibus propterea res publica et annonas et alimenta pecoribus subministrat, usurpandi agminalis seu paraveredi licentia derogetur. quibus illud quoque licere non patimur, ne quid de provincialibus citra ordinem poscant nisi hi tantum, quorum fides cognita est, cum usus necessitatis exegerit. vestrae vero gravitatis ubi ratio exegerit, cursus publicus praesto est, quibus si a publico itinere aliqua militari via devertendum fuerit, ubi evectio non erit, publicis utemini agminalibus, sed modice et temperate tantum ad usum proprium necessariis. quae res si neglecta fuerit, vobis aestimationis vestrae notam incurrentibus praesides periculum sustinebunt, cum super hac re exploratores iam missi sint. quae enim mala provincialibus inferantur, conici ex eo etiam potest, quod nostris itineribus, quos publica utilitas movet, magna atque anxia dispositione vix vicenorum agminalium numerus subministrari queat. proposita xv kal. mart. constantino a. vii et constantio caes. conss. (326 [339] febr. 15).

CTh.8.5.4pr.

Idem a. menandro. certis nuntiis compertum est, quod plures veluti sibi ac necessitatibus propriis petitas angarias taxato pretio distrahunt. quamvis itaque raro posthac et non nisi merentibus evectiones praebendae sint, omnes tamen, qui ubique sunt cursus publici observatione districti, inquirant, si quis in hoc genere criminis possit intercipi, ut emptor et venditor in insulam relegentur, illis etiam, qui observare iussi sunt, pro dissimulatione vel neglegentia idem supplicium luituris. (326 iun. 22).

CTh.8.5.4.1

Non improbum tamen est, si is, qui angarialem habet copiam, ad tutelam vitae vel laborem adeundum itineris pro solacio sibi quendam sociaverit. namque hoc factum meretur veniam nec latere poterit explorantes; illud poena superius dicta plectendum est. super qua re proconsules rectores provinciarum praefectos vehiculorum adque omnes, qui cursui publico praesunt, admoneri conveniet. dat. x kal. iul. constantino a. vii et constantio caesare conss. (326 iun. 22).

CTh.8.5.5

Idem a. ad musonianum praefectum praetorio. iam dudum nostrae clementiae iussa exsistunt, ut rectoribus provinciarum evectionum faciendarum copia denegetur, quoniam cursui publico magna infertur pernicies, si haec licentia latius panderetur. ideoque hoc ipsum repetimus quod ante placuerat ac iubemus eos auctoritatis tuae litteris commoneri, ut iussis parere festinent. dat. viii kal. aug. constantio a. vii et constantio c. conss. (354 iul. 25).

CTh.8.5.6

Idem a. magno agenti vicariam praefecturam. hoc interdicto prohibemus, ne quis agminales ac paraveredos aestimet postulandos: in eos enim, qui hoc temere praesumpserint, vindicari acrius oportebit iussione nostra cunctis provincialibus intimata. dat. kal. aug. constantino a. vii et constantio c. conss. (354 aug. 1).

CTh.8.5.7

Imp. constantius a. olybrio proconsuli africae. paraveredorum exactio patrimonia multorum evertit et pavit avaritiam nonnullorum. ideoque praelata iussione nostra provinciarum rectores excellentia tua commoneat, ut, exceptis agentibus in rebus, qui ad movendum militem mitti consuerunt, quisquis alius paraveredum exegerit, non ei cedat impune, sed nec illi qui dederit. dat. iii non. aug. antiochiae constantio a. vii et constantio caes. conss. (354 [360] aug. 3).

CTh.8.5.8pr.

Idem a. ad taurum praefectum praetorio. evectiones ab omnibus postulentur, quacumque conspicui fuerint dignitate; non enim debet esse umquam efficax usurpatio, quae possit animalibus publici cursus inferre perniciem. quod si quis putaverit resistendum et sine evectione iter facere detegitur, ubi repertus fuerit, eundem iussimus detineri ac de eius nomine ad prudentiam tuam et ad musonium clarissimum virum comitem et magistrum officiorum referri. (357 [356] iun. 24).

CTh.8.5.8.1

Statuimus raedae mille pondo tantummodo superponi, birotae ducenta, veredo triginta; non enim ampliora onera perpeti videntur. (357 [356] iun. 24).

CTh.8.5.8.2

Octo mulae iungantur ad raedam aestivo videlicet tempore, hiemali decem; birotis trinas sufficere iudicavimus. adque haec cuncta regionibus praestitutos curare praecipimus poena eis proposita. dat. viii kal. iul. mediolano constantio a. viiii et iuliano caes. ii consulibus. (357 [356] iun. 24).

CTh.8.5.9pr.

Idem a. ad taurum praefectum praetorio. miranda sublimitas tua nullos evectioni dies addendos esse cognoscat nec passim raedarum tractorias vel evectiones birotum faciat. (357 dec. [?] 6).

CTh.8.5.9.1

Et agentibus in rebus a tua sublimitate tribui vel fieri evectionem vetamus; sufficere namque posse confidimus, quae isdem a nobis vel magistri officiorum comitatus nostri iussis necessaria habita ratione praebentur. dat. viii id. dec. mediolano constantio a. viiii et iuliano caesare ii conss. (357 dec. [?] 6).

CTh.8.5.10

Idem a. ad flavianum proconsulem africae. nulli de cetero subiunctorio privato animalia publica praebeantur nec rei huiusmodi facultas mulionibus relinquatur, sed penitus conquiescat. dat. vi kal. nov. sirmio post consulatum constanti a. viiii et iuliani caes. ii. (358 oct. 27).

CTh.8.5.11

Idem a. helpidio praefecto praetorio. ne qua posthac legio amplius quam duas angarias et hoc eorum, si qui aegri sunt, causa usurpare conetur, cum ad destinata proficiscitur, ita tamen, ut pro singulis angariis bina tantum boum paria consequantur. si qui post hanc legem amplius moverit, in maximam se reprehensionem sciat esse venturum. dat. xvi kal. dec. indictione iiii. (360 nov. 16).

CTh.8.5.12

Imp. iulianus a. ad mamertinum praefectum praetorio. quoniam cursum publicum fatigavit quorundam inmoderata praesumptio et evectionum frequentia, quas vicaria potestas et praesidum adque consularium officia prorogare non desinunt, curam ac sollicitudinem huius rei nos subire compulsi faciendarum evectionum licentiam cunctis abduximus. exceptis igitur vobis nulli evectionem licebit facere de cetero. sed ut necessitates publicae impleantur, vicariis denas vel duodenas evectiones manu mea perscriptas ipse permittam, praesidibus vero binas annuas faciat vestra sublimitas, quibus ad separatas provinciarum secretasque partes necessariis ex causis officiales suos dirigere possint. sed his quoque nostra etiam mansuetudo evectiones singulas dabit, ut ad nos referre possint, cum id fieri necessitas quaedam exegerit. acc. viii kal. mart. syracusis mamertino et nevitta conss. (362 febr. 22).

CTh.8.5.13

Idem a. ad mamertinum praefectum praetorio. ad suggestionem comitis adque eorum, qui largitionibus praesunt, illationi specierum largitionalium competentes evectiones rectores provinciarum, cum absit vicarius, facere debent. quod universis rectoribus tua sublimitas indicare non differat. acc. xii kal. iul. mamertino et nevitta conss. (362 iun. 20).

CTh.8.5.14pr.

Idem a. ad mamertinum praefectum praetorio. qui contra adnotationem manus nostrae plures quam evectio continebit veredos crediderit usurpandos, capitalem rem fecisse videbitur, et si instantis necessitatis gratia non retineatur, quis tamen ille sit ad censurae tuae, tum ad serenitatis nostrae conscientiam referendum est. (362 sept. 9).

CTh.8.5.14.1

Et quamquam, quid sit parhippus, et intellegere et discernere sit proclive, tamen, ne forte interpretatio depravata aliter hoc significet, sublimitas tua noscat parhippum eum videri et habendum esse, si quis usurpato uno vel duobus veredis, quos solos evectio continebit, alterum tertiumve extra ordinem commoveat. (362 sept. 9).

CTh.8.5.14.2

Nihil autem interesse debet nec ad crimen vocari, utrum agens in rebus suo anne mulionis itineri subiugando, modo evectionis datae formam et licentiam non excedat. dat. v id. sept. mamertino et nevitta conss. (362 sept. 9).

CTh.8.5.15

Idem a. ad avitianum vicarium africae. mancipum cursus publici dispositio proconsulis forma teneatur, neque tamen sit cuiusquam tam insignis audacia, qui parangarias aut paraveredos in civitatibus ad canalem audeat commovere, quo minus marmora pivatorum vehiculis provincialium transferantur, ne otiosis aedium cultibus provincialium patrimonia fortunaeque lacerentur. dat. vii kal. nov. antiochiae iuliano a. iiii et sallustio conss. (363 oct. 26).

CTh.8.5.16pr.

Idem a. ad mamertinum praefectum praetorio. in provincia sardinia, in qua nulli paene discursus veredorum seu paraveredorum necessarii esse noscuntur, ne provincialium status subruatur, memoratum cursum penitus amputari oportere decernimus, quem maxime rustica plebs, id est pagi contra publicum decus tolerarunt. excellens igitur auctoritas tua officio praesidali necessitatem tolerandae huiusmodi exhibitionis imponat, aut certe, si hoc existimant onerosum, suis animalibus uti debebunt, quotiens eos commeare per provinciam necessitas publica persuaserit. (363 nov. 25).

CTh.8.5.16.1

Sane angariarum cursum submoveri non oportet propter publicas species, quae ad diversos portus deferuntur. proinde considerata rerum necessitate pro locorum situ atque itineris qualitate tantum numerum angariarum collocari oportere decernas, quantum necessarium esse adhibitae plenissime deliberationes suaserint. dat. vii kal. dec. antiochiae iuliano a. iiii et sallustio conss. (363 nov. 25).

CTh.8.5.17pr.

Impp. valentinianus et valens aa. ad menandrum. vehiculis nihil ultra mille librarum mensuram patiemur imponi, ita ut veredarii sat habeant, quod his triginta libras equis vehere concessimus. quidquid igitur supra mensuram exsuperare constiterit, ad dispendium eius, qui in legem conmiserit, fisco conveniet adscribi. (364 mart. [?] 14).

CTh.8.5.17.1

Illud sane, ut penitus enormium vehiculorum usus intercidat, sanciendum esse decernimus, ut, quisquis opificum ultra hanc quam perscripsimus normam vehiculum crediderit esse faciendum, non ambigat sibi, si liber sit, exilii poenam, si servus, metalli perpetua supplicia subeunda. dat. prid. id. mart. mediolano divo ioviano et varroniano conss. (364 mart. [?] 14).

CTh.8.5.18pr.

Idem aa. ad mamertinum praefectum praetorio. si quando praepositus largitionum species transmittendas necessarias esse suggesserit ac brevem diversarum specierum, cui subvectio vehiculorum poscitur, designaverit, a praesidibus diversorum officiorum evectio competens praebeatur. (364 mai. 13).

CTh.8.5.18.1

Illud etiam sublimitas tua observari omni cautione praecipiat, ne amplius in singulis quibusque carpentis, quam bini aut ut summum terni homines invehantur, quos tamen directarum rerum custodes vel prosecutores esse constiterit. dat. iii id. mai. divo ioviano et varroniano conss. (364 mai. 13).

CTh.8.5.19

Idem aa. ad symmachum praefectum urbi. magnifica sedes tua evectionum faciendarum arbitrium in publicis tantum causis usurpet. verum ingenti procurabitur cautione, ne parum considerata facilitas ita publicis incipiat visceribus imminere, ut fatigatione nimia paenitentiam huius concessionis suscipere cogamur. dat. viiii kal. iul. philippopoli divo ioviano et varroniano conss. (364 iun. 23 [mai. 25]).

CTh.8.5.20pr.

Idem aa. ad florianum comitem rerum privatarum. iuxta divi iuliani consultissimam legem ad transferendas largitionum res necessarias competentia iudices evectionum subsidia perferant. (364 sept. 12).

CTh.8.5.20.1

Illud quoque adiectum est, ne quicquam oneris vehiculis publicis cumulatius, quam ratio fiscalis posceret, superponeretur, si quidem non amplius in singulis quibusque vehiculis, quam binos aut ut summum ternos sedere praeceptum sit. dat. prid. id. sept. divo ioviano et varroniano conss. (364 sept. 12).

CTh.8.5.21

Idem aa. ad artemium. competenti ratione prohibemus, ne hi, qui familiae praesunt, novum rapinarum aut fraudium genus exerceant, ut pro rotarum tritura ac ministeriis pecuniam ab angariarum praebitoribus poscant. pro rotis igitur et pro angariis praebitores dispendia nulla patiantur. dat. iii kal. oct. aquileia divo ioviano et varroniano conss. (364 sept. 29).

CTh.8.5.22pr.

Idem. aa. ad volusianum praefectum urbi. cunctos iudices laudanda tua sinceritas monebit, ut minime quosque transire patiantur, antequam seriem evectionis aspexerint et congrua subnotatione dimiserint. sane cuiuscumque fuerit dignitatis qui nostra interdicta calcaverit, retentetur, dum super ipsius nomine ad mansuetudinem nostram querella dirigatur, cui vindicta non deerit. in eos autem protinus ultio competens exserenda est, quos sinceritas tua pro loco graduque militiae ibidem coherceri posse crediderit. (365 febr. [?] 18).

CTh.8.5.22.1

Praeterea illud adiungimus, ut parhippum vel avertarium nullus accipiat, nullus impune praesumat, nisi eum nostrae serenitatis arbitrio aliqua necessitate cogente vir illustris magister officiorum textui evectionis addiderit. prolata litteris sub die xii kal. mart. romae, acc. iiii kal. april. venabri consulatu valentiniani et valentis aa. (365 febr. [?] 18).

CTh.8.5.23pr.

Idem aa. mamertino praefecto praetorio. ad procurationem clavularii cursus eligendi sunt ex eo hominum genere, qui in provinciis codicillis comitivae et praesidatus aut rationum epistulis honorariis nixi ab omnium se civilium et publicorum officiorum ministerio removerunt. his tamen ab hac molestia segregatis, qui legationum reverentia, principalium beneficiorum iudiciis, honorem ipsis principibus tradentibus sunt adepti vel qui emeritis officiis palatinis missione donati sunt. (365 mart. 10).

CTh.8.5.23.1

Locandi autem erunt per singulas mansiones vel quo longius sinceritas tua procurationem eorum existimaverit porrigendam. in quo negotio si quid neglectum secusve gestum fuerit, ad eorum, quidquid peccatum erit, crimen invidiamque referetur. (365 mart. 10).

CTh.8.5.23.2

Quanto autem tempore unusquisque iniuncti officii sarcinam debeat sustinere, celsitudinis tuae arbitriis relinquimus sanciendum. (365 mart. 10).

CTh.8.5.23.3

Qui viri et evectiones commeantium exactissima cura inspicere debebunt et animalibus alimenta, quae fiscus noster suggerit, ministrare. dat. vi id. mart. mediolano valentiniano et valente aa. conss. (365 mart. 10).

CTh.8.5.24

Idem aa. ad buleforum consularem campaniae. nonnullos id agere compertum est, ut, si forte defecta fuerint animalia, quae vehiculis deputata sunt, veredorum numerum, qui alteri serviunt necessitati, ad raedas quibus utuntur usurpent. hanc licentiam per mancipes locorum omnifariam prohiberi conveniet, ut, si quis extiterit, qui formam nostrae sanctionis excedat, cuiuscumque fuerit dignitatis, tamdiu resistere ac residere cogatur, quamdiu animalia, quibus iter peragat, revertantur. dat. viiii kal. april. mediolano valentiniano et valente aa. conss. (365 mart. 24).

CTh.8.5.25

Idem aa. ad symmachum correctorem lucaniae et brittiorum. compertum est usurpatione quorundam in publici cursus damna grassante ab itinere solito deviari. proinde si quis iter faciens cuiuscumque dignitatis fuerit militans ab itinere recto deverterit quingentis passibus, poena in eum competens proferatur et ad nostram scientiam referatur. dat. viii kal. april. mediolano valentiniano et valente aa. conss. (365 mart. 25).

CTh.8.5.26

Idem aa. ad mamertinum praefectum praetorio. cursus mancipes clavularii ex quo genere hominum debeant ordinari, apertissima lege decrevimus. quorum si praedictae numerus functioni non potuerit occurrere, curiales ad hoc munus sunt vocandi. dat. vi kal. mai. valentiniano et valente aa. conss. (365 apr. 26).

CTh.8.5.27

Idem aa. ad fortunatum consularem pannoniae secundae. neque plures parhippos dimittendos nec emensis evectionibus dandam conmeandi cuiquam facultatem gravitas tua cognoscat. in eo autem ne admonitionem quidem adhibendam putamus, ut a nullo omnino cursus publicus sine evectionis auctoritate moveatur. dat. v kal. iun. mediolano valentiniano et valente aa. conss. (365 mai. 28).

CTh.8.5.28

Idem aa. ad probum praefectum praetorio. quod iam gallis prodest, ad illyricum etiam italiaeque regiones convenit redundare, ut non amplius raeda quam mille pondo subvectet, angariae mille quingenta sufficiant, veredo ultra triginta nullus imponat. directa v kal. ian. sirmio valentiniano et valente aa. conss. (368? 370? 373? dec. 28).

CTh.8.5.29

Idem aa. ad domnum consularem siciliae. ii tantum parhippum praesumant, quibus nos ipsi in evectione quam facimus veredum cum parhippo tribui iusserimus. si quis vero citra nostrae adnotationis indultum id licenter exegerit, severissimae subiaceat ultioni. dat. iiii non. dec. treviris post consulatum lupicini et iovini vv. cc. (368 [367] dec. 2).

CTh.8.5.30

Imppp. valentinianus, valens et gratianus aaa. ad viventium praefectum praetorio. perspicue sanxeramus, ut in carpentis raedarum mensuram subditam nullus excederet, nemo amplius raedae quam mille pondo, angariae quam mille quingenta, veredo quam triginta auderet imponere. ideoque ad illustres magistros equitum et peditum scripta porreximus, ut per loca, quae huiuscemodi observationis excubiis munienda sunt, sollicitos protectores diligentesque constituant, quo idem et mensuram vehiculorum et vim onerum semper inspiciant nihilque fieri contra haec iura patiantur. quin etiam, quotienscumque aliquis fuerit inventus excessisse legem vel vehiculi enormitate vel ponderis, quemlibet locum, quamcumque ille protulerit dignitatem, quidquid ultra mensuram esse constiterit, aput se protector, qui insolentiam deprehenderit, retentabit, donec super eo, qui interdicta contempserit, ad clementiam nostram relatio dirigatur. dat. viiii kal. oct. valentiniano et valente ii aa. conss. (368 sept. 23).

CTh.8.5.31

Idem aaa. ad catafronium vicarium italiae. nec mulionibus nec carpentariis nec mulomedicis cursui publico deputatis mercedem a quoquam sinceritas tua siverit ministrari, cum iuxta publicam dispositionem annonas et vestem, quam isdem credimus posse sufficere, consequantur. et cetera. dat. xviii kal. sept. treviris valentiniano et valente iii aa. conss. (370 aug. 15).

CTh.8.5.32

Idem aaa. ad ampelium. evectionum copiam senatui, cum proficiscendi ad nos necessitas fuerit, serenitas nostra largita est. nam si adclamationibus populi romani nostri aliisque antiquis et sollemnibus rebus concessa iugitas illibata servatur, provincialibus etiam, quando e re esse censerent, evectionum copia non negata est, ut ad nos sumpta evectione contendant, quanto magis huius arbitrii his facultas est deferenda, quos collegii merito videre frequentius cupimus? dat. iii id. dec. treviris gratiano a. ii et probo conss. (371 dec. 11).

CTh.8.5.33pr.

Idem aaa. ad constantium. evectionum emittendarum etiam per ceteras provincias dumtaxat in translationem vestium tua sinceritas habeat facultatem, ut, si forte in itinere vicarius non fuerit, cum vestes eaedem transferuntur, tarditas nulla generetur: certe, ubi idem vicarius forte morabitur, aut dimittet tuas aut alias ipse renovabit. et hoc quidem eo constituitur exemplo, quo aurum argentumque transfertur, in quo utique nullum evectionibus tuis adfertur obstaculum, quominus id, quod transmissum fuerit, ad loca statuta perveniat. (374 iul. 10).

CTh.8.5.33.1

Eaedem autem vestes militares usque ad ea loca sunt transferendae, ubi ipsi milites sunt constituti, neque enim paulo deverticulo abducendi sunt ab excubiis sibi pro publica utilitate commissis. (374 iul. 10).

CTh.8.5.33.2

Tales igitur vestes a provinciis dirigantur, quae, priusquam moventur, inspectione gravitatis tuae displicere non possint. dat. vi id. iul. robore gratiano a. iii et equitio v. c. conss. (374 iul. 10).

CTh.8.5.34pr.

Idem aaa. ad hesperium praefectum praetorio. quia in omnibus aliis provinciis veredorum pars quarta reparatur, in proconsulari provincia tantum detur, quantum necessitas postulaverit et quidquid absumptum non fuerit, hoc nec pro debito habeatur nec a provincialibus postuletur. non dubitamus autem plus quam quartam ad reparationem necessariam non esse iumentorum. (377 [379?] febr. 27).

CTh.8.5.34.1

Praeterea in singulis mutationibus arbitramur ternis veredis muliones singulos posse sufficere. (377 [379?] febr. 27).

CTh.8.5.34.2

Nam ut stabula impensis publicis extruantur, contra rationem est, cum provincialium sumptu citius arbitremur et utilius adparanda. (377 [379?] febr. 27).

CTh.8.5.34.3

Iam vero mancipum non ab ordine nec a magistratibus accipienda videntur obsequia, sed ab officio proconsulari qui missione donantur, vel ex aliis officiis, quos idoneos adque emeritos esse constiterit. non enim improbabilis haec dispositio est, cum et in suburbicariis regionibus haec consuetudo servetur. dat. iii kal. mart. treviris gratiano a. iiii et merobaude conss. (377 [379?] febr. 27).

CTh.8.5.35pr.

Imppp. valens, gratianus et valentinianus aaa. ad auxonium praefectum praetorio. a nullo umquam oppido aut frequenti civitate, mansione denique adque vico uno die ultra quinque veredorum numerus moveatur, ac si quis eorum, qui praepositi vocantur aut mancipes, publico denique cursui nomine aliquo praesunt, hunc quem praescripsimus modum patiatur excedi, severissime sinceritatis tuae auctoritate compescetur: aut militans exauctorationem subibit aut decurio vel manceps relegatione annua plectetur. ii autem, qui suprascriptum numerum supergredi molientur, cuiuscumque sint honoris aut nominis, quinque argenti libris in unius veredi usurpatione multentur. (378 apr. 20).

CTh.8.5.35.1

Si tamen necessitas maior coegerit, super sollemnem numerum iubemus admitti quos aut sacras litteras ferre constiterit aut habere in evectionibus adnotatum, ut aliqua de causa instantius ire iubeantur, quod vel spectabilis viri officiorum magistri vel sinceritatis tuae litteris oportebit adscribi, ut exstet evidens causa, quae praescriptum legis excedat. (378 apr. 20).

CTh.8.5.35.2

In vehiculis etiam hac volumus ratione moderari, ne supra assium numero raeda moveatur. quod facinus sublimis auctoritas tua si contra vetitum cernat admitti, pro motu suo severitate cohibebit. dat. xii kal. mai. treviris valente vi et valentiniano ii aa. conss. (378 apr. 20).

CTh.8.5.36

Imppp. gratianus, valentinianus et theodosius aaa. ad syagrium praefectum praetorio. mancipibus supra lustrale tempus cura non inmineat mancipatus: nec intra triginta dies .... amplius cuiquam liceat ex mutatione discedere. quod si quis supra praescriptum numerum dierum ab statione, quam receperit, excesserit, capitali animadversione puniatur. idcirco enim quinquennio devoluto eos honorem perfectissimatus manere praecipimus omniumque aliarum necessitatum immunitate fovemus, ut tempus procurationis impositae sollerti fide et integritate succedant. dat. iii kal. mart. treveris syagrio et eucherio conss. (381 febr. 27).

CTh.8.5.37

Idem aaa. ad palladium praefectum augustalem. eum, qui sagum hippocomorum notabili populatione voluerit usurpare vel scindere, cuiuslibet fuerit dignitatis, sine aliqua exceptione iubeas detineri, ut, cum de eius nomine relatio fuerit destinata, quid super eius contumacia statuendum sit, opportunius aestimemus. dat. prid. id. mai. constantinopoli antonio et syagrio conss. (382 mai. 14).

CTh.8.5.38

Idem aaa. floro praefecto praetorio. proficiscente vicario triginta asini, veredi decem tantummodo moveantur, quinquaginta librarum auri dispendio eius officio, si haec fuerint contempta, non inmerito subiugando. illud etiam similiter observetur, ne quis faciendae evectionis sibi vindicet facultatem. dat. viii kal. mai. constantinopoli antonio et syagrio conss. (382 apr. 24).

CTh.8.5.39

Idem aaa. floro praefecto praetorio. quisquis seu civili seu militari deposita dignitate aget otium, non prius usquam fiducia evectionum prodeat, quam editis causis nostra maiestate consulta utendi itidem cursus publici acceperit potestatem. reliquos vero, etiamsi expresserint tali tenore copiam latius evagandi, a fructu furtivae impetrationis arcemus. dat. xvii kal. aug. constantinopoli antonio et syagrio conss. (382 iul. 16).

CTh.8.5.40pr.

Idem aaa. floro praefecto praetorio. iudicibus faciendae evectionis copiam denegamus cum id nostro numini et vestris tantum sit potestatibus reservandum. his enim tantum ambulandi facultatem iudices ex suo arbitrio praebituri sunt, quos in transmissione largitionalium titulorum prosecutores viderint constitutos, scituri, si definitionem nostram excesserint, se quidem xxv auri libris, officium vero quinquaginta esse multandos. (382 iul. 23).

CTh.8.5.40.1

Sane ut etiam agendi itineris possit esse moderatio, seni veredi, singulae etiam raedae per dies singulos dimittantur. dat. x kal. aug. constantinopoli antonio et syagrio conss. (382 iul. 23).

CTh.8.5.41

Idem aaa. filagrio comiti orientis. capitalis periculi acerbitate proposita evectionum contractus asinorumque merces et ementis et distrahentis poena prohibemus. proposita beryto, dat. xii kal. oct. antonio et syagrio conss. (382 sept. 20).

CTh.8.5.42

Idem aaa. constantiano vicario dioeceseos ponticae. reparationis collatione ab officialium persona submota idoneos mancipes constitutos quinquennii tempus implere praecipimus. dat. iii kal. ian. constantinopoli antonio et syagrio conss. (382 dec. 30).

CTh.8.5.43

Idem aaa. ad neoterium praefectum praetorio. quibus ius ante non fuit evectionum abstinentia, quibus fuit faciendarum moderatione rei publicae prospiciant. illustres enim viri militiae equestris ac pedestris magistri, qui hac usurpatione caruerunt, multo in posterum patientius abstinebunt, cum et amantes rei publicae sint et circa communes utilitates nostris sibi animadvertant moribus esse vivendum. dat. kal. feb. richomere et clearcho conss. (384 febr. [?] 1).

CTh.8.5.44

Idem aaa. cynegio praefecto praetorio. nullus evectione utatur privatus, tametsi valuerit impetrare, exceptis his, quos sublimissimae administrationis illustravit indeptio et quos magistri equitum ac peditum pompa sublimat, qui tamen omnes in actu ipso positi rei publicae providerunt, non hi, quos honorarii tantum nominis suffragia prosequuntur, sub hac videlicet definitione, ut, cum semel ad propria vel optata pervenerint, utendae eiusdem evectionis non habeant facultatem nisi consulta iterum clementia nostra geminae isdem beneficium detulerit largitatis, etiamsi administratione deposita ad larem proprium revertuntur. dat. vi non. mart. constantinopoli richomere et clearcho conss. (384 mart. 2).

CTh.8.5.45

Idem aaa. cynegio praefecto praetorio. nullus numerum amplius quam singulas vel binas angarias secundum prius nostrae praeceptum serenitatis usurpet. dat. iiii id. april. constantinopoli richomere et clearcho conss. (384 apr. 10).

CTh.8.5.46

Imppp. valentinianus, theodosius et arcadius aaa. cynegio praefecto praetorio. diversorum officiorum veterani mancipatum debitum cursui publico repraesentent, etiamsi post contra vim legis aliquam indepti sint dignitatem aut per suffragium ad curiarum honorarium patronatum aut ad societatem consortiumque laurentum aut ad decuriae herculeae suffragium adspirasse doceantur. in his vero, qui non terrena, sed caelestia privilegia quaesiverunt, hoc custodiendum esse sancimus, ut, si quemquam ex huiusmodi genere hominum iam tenet religio sacrosancta eiusque operam non potest accipere mancipatus, facultates memorati cursus publicus consequatur. dat. v id. april. mediolano arcadio a. i et bautone v. c. conss. (385 apr. 9).

CTh.8.5.47pr.

Idem aaa. cynegio praefecto praetorio. raedae mille librarum onus imponi debet, carro sescentarum nec amplius addito eo, ut aurum ceteraeque species largitionales non ad libidinem prosecutorum vel susceptorum, sed aptis oneri ac ponderi vehiculis deferantur. quibus utique non licebit sub capitalis exitii minis quicquam oneris privati secus quam lex nostra praescribit imponere neque alios mercede subvehendos velut proposita licitatione conducere, exceptis his quos necessitas prosecutionis adiunxerit. (385 iun. 17).

CTh.8.5.47.1

Et quoniam veredorum quoque cura pari ratione tractanda est, sexaginta libras sella cum frenis, triginta quinque vero averta non transeat, ea condicione, ut, si quis praescripta moderaminis imperatorii libramenta transscenderit, eius sella in frusta caedatur, averta vero fisci viribus deputetur. dat. xv kal. iul. constantinopoli arcadio a. i et bautone conss. (385 iun. 17).

CTh.8.5.48pr.

Idem aaa. cynegio praefecto praetorio. si aurum sacrarum largitionum vel argentum ad comitatum nostrum destinatur, una raeda quingentis auri libris, mille vero argenti, si vero privatarum, auri trecentis, quingentis vero argenti libris oneretur. sint praeterea duo palatini prosecutores singularum raedarum cum tribus servis, habentes quinquagenarum librarum avertas et saga, quibus par erit eos pro itineris necessitate muniri, ita ut, si quid ultra praescriptum nostrae serenitatis inventum fuerit, ad comitatum nostrum protinus dirigatur. (386 mart. 4).

CTh.8.5.48.1

Lineae vel amictoria, quibus hactenus onerari raedae solebant, nec ulterius raedis, sed angariis vel navibus dirigantur et si alicubi repertae fuerint huiusmodi species, thensauris eius urbis, in qua deprehensae fuerint, deputentur, per angarias, ubi facultas fuerit, destinandae; reliquae vero delicatae vestes, sed et linteamen amictorum nostrorum usibus necessarium raedis sub mille librarum ponderatione mittantur. dat. iiii non. mart. constantinopoli honorio n. p. et evodio v. c. conss. (386 mart. 4).

CTh.8.5.49

Idem aaa. caesario magistro officiorum. ii qui provinciis praesunt inspectis evectionibus ex quacumque parte venientium ad vehiculorum vicem comites quattuor veredos cum parhippo, tribunos militum ternos movere permittant, ceteros domesticos protectores et agentes in rebus binis uti tantummodo patiantur. dat. iii non. sept. valentiae timasio et promoto conss. (389 [386] sept. 3).

CTh.8.5.50

Idem aaa. praefectis praetorio. non patimur hippocomos per eos, qui veredis uterentur, indigna spoliatione vaxari, si quidem nonnulli veredarii saga eorundem dicantur auferre. quocirca per omnes iudices et curiosos miserabilis removeatur iniuria, scientibus cunctis, quod, si observata non fuerit nostra sanctio, non solum damna resarcire, verum etiam notam et multam qui neglexerit subire cogetur, ut his retentis, qui fuerint detecti hippocomis saga abstulisse, super eorum nominibus ad nostram clementiam referatur. proposita xv kal. iul. treviris valentiniano a. iiii et neoterio conss. (390 iun. 17).

CTh.8.5.51

Idem aaa. potamio praefecto augustali. publici cursus exhibitio antiqua ex consuetudine inducta curialibus viritim per curias debet pensata locorum hominum facultatum qualitate distribui. dat. iii kal. aug. constantinopoli arcadio a. ii et rufino conss. (392 iul. 30).

CTh.8.5.52

Idem aaa. rufino praefecto praetorio. faciendarum evectionum licentiam in excidium publici cursus a comitibus aegyptiaci limitis usurpatam sublimis magnitudo tua auctoritate huius legis inhibebit. dat. vii kal. aug. constantinopoli d. n. theodosio a. iii et abundantio v. c. conss. (393 iul. 26).

CTh.8.5.53

Impp. arcadius et honorius aa. dextro praefecto praetorio. quia comperimus quosdam animalia publica subtraxisse, ea per inquisitionem mulionum et mancipum volumus redhiberi, adque ideo per muliones et mancipes, nisi animalia perducta fuerint, diligenti inquisitioni et plenae cognitioni locus non negetur, et cum manifesta ratione deprehenderit illicita usurpatione cursum publicum fuisse vexatum, in quadruplum superductorum animalium pretium inferri censemus. et ne idem etiam in futurum admittatur, praecipimus, ut, si qui vel per unam mutationem veredum mulamve aut bovem superducendum esse crediderit, memoratam fisci viribus multam inferat. dat. xv kal. april. mediolano olybrio et probino conss. (395 mart. 18).

CTh.8.5.54

Idem aa. dextro praefecto praetorio. meminimus evectiones illustribus viris honori potius quam usui detulisse. ne igitur cursus publicus pereat, hac lege sancimus, ne quis sibi deinceps cursum publicum privatus usurpet, nisi cum aut a nobis evocatur aut a clementiae nostrae veneratione discedit. si quis ergo posthac contra vetitum sibi cursum publicum illicita temeritate praesumpserit, motum in se nostrae mansuetudinis excitabit. et cetera. dat. vi kal. mai. mediolano olybrio et probino conss. (395 apr. 26).

CTh.8.5.55

Idem aa. florentino praefecto urbi. duorum veredorum evectiones te praesumpsisse propria relatione signasti. cuius facti veniam indulgemus, sed nihil tale posthac nec usurpari volumus nec licere. dat. xii kal. mart. mediolano arcadio iiii et honorio iii aa. conss. (396 febr. 18).

CTh.8.5.56

Idem aa. simplicio magistro militum. sufficiunt iudicum potestatibus evectiones, quas a nostra serenitate vel sede illustrium praefectorum necessitatibus publicis accipiunt servituras. insignis igitur auctoritas tua statutis nostrae clementiae sibi faciendarum evectionum usurpatam licentiam negatam fuisse cognoscat. tunc namque metu praeceptum custodire oportet iudices inferiores, cum cognoverint a potioribus custodiri. si vero posthac eadem culpa permanserit, in officium auctoritatis tuae gravi supplicio vindicabitur. dat. xv kal. ian. constantinopoli arcadio iiii et honorio iii aa. conss. (396 dec. 18).

CTh.8.5.57

Idem aa. remistheo duci armeniae. repetita lege sancimus, ne experientiae tuae post hoc prorsus sit licentia aut evectiones facere aut sine evectionibus nostris facultatem cursus publici vindicare. cuius rei temeritatem si posthac laudabilitas tua crediderit esse repetendam, scias a te x libras auri, x etiam ab officio, quod tuis iussionibus obsecundat, protinus exigendas, his tantummodo utendi cursus publici facultate concessa, qui legati de diversis gentibus ad nostram clementiam properare festinant. dat. vi kal. mart. constantinopoli caesario et attico conss. (397 febr. 24).

CTh.8.5.58

Idem aa. vincentio praefecto praetorio. si quis mulionem mutationibus deputatum vel sollicitatione vel receptione subtraxerit, per singula capita humana x libras argenti inferre cogatur. et ne sollicitatoribus et occultatoribus sit ullum in aliqua excusatione perfugium, nec mutari quemquam per compensationis simulationem vel absolvi sub aetatis aut debilitatis alicuius obtentu licebit. ideoque iudex, qui sibi hoc vindicaverit ut servum publicum liberet, unam libram auri per homines singulos, officium quoque eius, si legem supprimendo consenserit, simili poena multetur. haec in futurum mansuetudo nostra constituit. in praeteritum autem hoc statuisse sufficiat, ut, si muliones publici repperti fuerint licet senes aut debiles, cum uxoribus suis et omni peculio adque agnatione retrahantur. et cetera. dat. xii kal. mart. mediolano honorio a. iiii et eutychiano conss. (398 febr. 18).

CTh.8.5.59 [=brev.8.2.1]

Impp. arcad. et honor. aa. messalae pf. p. si quispiam paraveredum aut parangariam non ostensa evectione, quae tamen pro publica facta sit necessitate, praesumpserit*, periculo curatoris sive defensoris et principalium civitatum ad ordinarium iudicem dirigatur, singulas libras auri per singulos paraveredos vel parangarias fisci viribus illaturus. qua in parte si rector provinciae atque officium eius colludium praebere voluerit, duplum ex suis bonis noverit exigendum. dat. xv. kal. dec. stilicone et aureliano coss. haec lex interpretatione non indiget

CTh.8.5.60

Idem aa. messalae praefecto praetorio. animalia publica, dum longe maiore ac periniquo pretio pabula aestimantur, per mancipes adque apparitores aperte vexantur. ne id contingat, sublimitas tua disponat, ut neque pabula mutationibus desint neque provinciales ultra, quam iustitiae sinit ratio, praegraventur. dat. v k. dec. mediolano stilichone et aureliano conss. (400 nov. 27).

CTh.8.5.61

Idem aa. vincentio praefecto praetorio. macrobium illicita praesumptione evectiones fecisse constitit, cum necessitas publica non flagitaret, quique multam temeritatis excepit. ne autem idem in futurum contingat, sublimitas tua vicarios admonebit atque eorum officia interminatione proposita, ut ab huiusmodi usurpatione noverint abstinendum. dat. v id. dec. mediolano stilichone et aureliano conss. (400 dec. 9).

CTh.8.5.62

Idem aa. caesario praefecto praetorio. usurpationem cursus publici penitus iussimus amputari, scilicet ut excepta magnitudine tua praesumendi velocis et clavularii cursus nullus habeat potestatem. quod si quid iudicum vel contemptus vel ignorantiae vitio scita nostri numinis temeranda censuerit, unium.....Quoque officium, quod ei paret, sciat se xxx libris auri esse multandum. dat. iii non. feb. constantinopoli vincentio et fravito conss. (401 [immo 396/7] febr. 3).

CTh.8.5.63

Idem aa. provincialibus provinciae proconsularis. quoniam multos perspeximus illicita praesumptione paraveredos vel parangarias postulare, hac lege sancimus, ut nulli deinceps usurpandi licentia concedatur nisi in causa publica vel manifestis evectionibus destinato. si quis contra fecerit, una libra auri multetur. et cetera. dat. prid. kal. april. mediolano vincentio et fravito conss. (401 mart. 31).

CTh.8.5.64pr.

Imppp. arcadius, honorius et theodosius aaa. septimino proconsuli africae. comperimus provinciales et pabula et pecuniam pro equorum cursualium sollemni ratione conferre et extrinsecus paraveredorum onere praegravari. (403 mart. 26).

CTh.8.5.64.1

Provinciarum igitur rectores procurent, ne umquam cursus publicus veniat in querellam et occasio deceptionis curiales animalia indebita praestare compellat. dat. vii kal. april. ravenna d. n. theodosio a. i et rumorido conss. (403 mart. 26).

CTh.8.5.65

Idem aaa. hadriano praefecto praetorio. per stationes singulas idoneos mancipes volumus collocari, amotis, ne deinceps usurpantium praesumptionibus atteratur.... dat. iiii kal. mart. romae honorio a. vi et aristaeneto conss. (404 febr. 27).

CTh.8.5.66pr.

Idem aaa. anthemio praefecto praetorio. nemo ducum ingressus semel provinciam suam postmodum itineribus faciendis cursu adque angariis ipse sive suum utatur officium, sed expeditionem militarem iumentis propriis exsequantur. (407 aug. 2).

CTh.8.5.66.1

De cohortalinis etiam officiis eadem lege sancimus, ne quis ex his per provinciam suam discurrens veredo uti conetur in posterum, cum sacra prohibitum sanctione cognoscant. (407 aug. 2).

CTh.8.5.66.2

Quod si quis ducum vel apparitorum vel cohortalium temerario animo ea quae decernimus contemnenda putaverit, per singula animalia quibus usus fuerit singularum librarum auri illatione multabitur. dat. iiii non. aug. constantinopoli dd. nn. honorio vii et theodosio ii aa. conss. (407 aug. 2).

CTh.8.6.0. De tractoriis et stativis

CTh.8.6.1

Impp. valentinianus et valens aa. ad rufinum praefectum praetorio. nemini ex his, qui ex castrensibus muniis absoluti ad domum redeunt post labores, tractoria praebeatur a sacro separata iudicio, sed unusquisque in epistulis nostris, quibus ad aevi reliqui testimonium singulos sequimur, viaticum conficiendi itineris consequatur. hanc igitur sanctionem sinceritas tua congrua auctoritate custodiat ac, si quando aliquis ex hoc genere hominum annonas poposcerit, imperialibus litteris sua subscriptione subiecta modum debitae praebitionis impertiat. sed ne quis, ut hactenus factum est, quas superfluas impetraverit, largiatur aut vendat, ne quis ad quaestum de hac erogatione capiendum ulterius nomen opponat. emissa sub die viii kal. feb. roma valentiniano et valente aa. conss. (365 ian. [?] 25).

CTh.8.6.2

Imppp. theodosius, arcadius et honorius aaa. rufino praefecto praetorio. tractoriae cum stativis solitis bidui tantummodo tempus accipiant. nulli vero penitus cum necessariis praebeantur nisi his tantummodo, qui animalia atque equos sacro usui necessarios prosequuntur, ita tamen, ut his dimissis in tractoriarum corpore praefinitus quinque dierum numerus adscribatur, ut nullus ultra hoc temporis spatium ad residendum in quo libitum fuerit loco copiam nanciscatur. dat. vii kal. sept. constantinopoli arcadio a. ii et rufino consulibus. (392 aug. 26).

CTh.8.7.0. De diversis officiis et apparitoribus et probatoriis eorum

CTh.8.7.1

Imp. constantinus a. ad versennium fortunatum consularem aquarum. promotionis ordo custodiendus est, ut primus in officio sit, qui prior fuerit in consequendo beneficio principali. dat. viii id. mart. thessalonica constantino a. iiii et licinio iiii conss. (315 mart. 8).

CTh.8.7.2

Idem a. ad philippum praefectum praetorio. officiales, quos ex diversis officiis ex protectoribus epistulas impetrasse constiterit, pristinae reddi iubemus militiae. dat. iii non. nov. arelato constantino a. vii et constantio caes. consulibus. (326 [346?] nov. 3).

CTh.8.7.3

Imp. constantius a. ad silvanum comitem et magistrum militum. post alia: universi officiales diversorum officiorum, qui ex protectoribus epistulas meruerunt, officiis pristinis militiaeque reddantur nec opponant quaesitae sibi vocabulum dignitatis. dat. vi kal. iun. sirmi limenio et catullino conss. (349 mai. 27).

CTh.8.7.4

Idem a. ad viros clarissimos praefectos praetorio. post alia: de cohortalibus adque magistrorum equitum et peditum officialibus iubemus, ut minime de cetero ad adorandam purpuram nostram veniant, nisi si sub armis militiam toleraverint et omnibus expeditionibus adfuerint. dat. prid. id. mai. constantio a. vii et constante ii caesare consulibus. (354 [353] mai. 14).

CTh.8.7.5

Idem a. ad praefectos praetorio. post alia: de chartulariis magistrorum equitum et peditum si quis post xxv annos obnoxius curiae fuerit reppertus, habeat privilegium militiae. omnes autem, qui probati fuerint quacumque ratione vel quocumque tempore, perseverent in militia, ii dumtaxat qui ministeriales et paedagogiani et silentiarii et decuriones exsistunt, ita ut post quindecim annos minime ab aliquo inquietentur. et cetera. dav. xv kal. iun. constantio a. vii et constante caes. ii conss. (354 [353] mai. 18).

CTh.8.7.6

Idem a. ad praefectos praetorio. post alia: de largitionalibus comitatensibus et officialibus rationalis rerum privatarum custodiri praecipimus, ut post viginti et quinque annos ad curiam minime revocentur. hoc idem de officialibus praefectorum vicariorum observari sanximus. de primipilaribus vero, quia cursum exhibent, anni decem observandi sunt. officiales enim praefecti urbi propterea, quod non exhibent primipili pastionem, post viginti quinque annos minime persequantur. quod sane ad logografos pertinet, prius promulgatam legem firmam esse volumus. dat. prid. non. oct. constantio a. vii et constante c. ii conss. (354 [353] oct. 6).

CTh.8.7.7

Impp. constantius et constans aa. ad taurum praefectum praetorio. instaurata necessaria sanctione id volumus de cetero custodiri, ne ullus quemquam iudicum probare audeat vel provehere. excipimus tamen officia cursus publici sollicitudinem sustinentia, nec enim tanto muneri adminiculum denegari publica permittit utilitas. quae cum ita sint, ceteris officiis universis eique, quod paret laudabili prudentiae tuae, nullus nisi nostro existente statuto debebit adscribi. dat. vi kal. iun. mediolano, acc. viii id. iul. datiano et cereale conss. (358 [357] mai. 27).

CTh.8.7.8

Impp. valentinianus et valens aa. ad mamertinum praefectum praetorio. praefecturae cornicularios, qui annis singulis ex numero deputatorum exeunt, post transactos corniculos nostram adorare purpuram volumus, quo honore perfunctis, cum iam missionem tenuerint, liberum otium damus, ut ad susceptionem vel cuiuslibet necessitatis officium qui ex corniculario adoraverint minime devocentur. haec igitur missio ea habeat privilegia, quae veterum principum sanctiones habere constiterit. dat. iii kal. feb. mediolano valentiniano et valente aa. conss. (365 ian. 30).

CTh.8.7.9

Idem aa. ad germanianum praefectum praetorio. qui de ordinariorum officiis iudicum vel amplitudinis tuae, exceptis his, qui cornicularii honore perfuncti sunt vel his, qui secundum legem purpuram nostram adorarunt, inter protectores domesticos vel scholares militant, ad eius, quod declinare temptarunt, muneris functionem et ad necessitates constringantur mancipatus. dat. vii id. april. remis gratiano et dagalaifo conss. (366 apr. 7).

CTh.8.7.10

Idem aa. ad viventium praefectum praetorio. probabile et celebrandum tuae sinceritatis examen lege firmamus, quod ex officio tui culminis iners vulgus eiecisti et indignos militia diversis iussisti inhaerere muneribus. ideoque nulli eorum, quos illustris praestantia tua propositis publicavit edictis, habendi vel adipiscendi gradum alterum sit facultas. quin etiam si quis de his umquam interdictam adfectaverit dignitatem, iniecta manu a quocumque rectore retrahatur, ut a condicione sententiae non recedat. dat. xvi kal. iun. complati valentiniano n. p. et victore conss. (369 mai. 17).

CTh.8.7.11

Imppp. valentinianus, valens et gratianus aaa. severo magistro militum. si quando praefectus praetorio vel vicarius aut rector provinciae significaverit eum, qui chartis ac ratiociniis publicis invenitur obnoxius, ad praeposituram castri ac militum transisse, retractus illi adsignetur officio, a quo ad necessitatem praestandi ratiocinii devocatur; tamen in reiecti vero locum is potissimum destinetur, cui meritorum adstipulentur insignia. dat. x kal. ian. gratiano a. ii et probo conss., emissa ad magistros militum et comites et duces omnes. (371 dec. 23).

CTh.8.7.12

Idem aaa. ad iulianum proconsulem africae. nullum militem a quolibet numero ad stationes agendas per consulares byzacenam et tripolitanam provincias destinari iubemus, sed probati in obsequiis praesidalibus eius officii, in quo parent, vocabulo censeantur nec quicquam his sit cum armatae militiae nuncupatione commune. sed et si quis forte ex his, qui in legionibus vel in numeris deputentur, gestandis armis idoneus sit, qui tamen pastui primipili neutiquam obnoxius detegatur, ei, cui adscriptus est, militiae indubitanter iungatur. dat. iii kal. iun. nassonaci, acc. vi kal. dec. modesto et arinthaeo conss. (372 mai. 30).

CTh.8.7.13

Idem aaa. ad romanum comitem africae. numquam officiales iudicum in quolibet militum numero deputentur; probatos enim eius officii, in quo parent, appellatione congruit nominari. si qui sane in quolibet numero ex apparitoribus praesidentium nunc repperientur adscripti neque pastui primipili deteguntur obnoxii, hique armis gestandis pro statura ac robore corporis idonei sunt, revocentur ad numeros, quibus de more hactenus deputati sunt. dat. iii kal. iul. modesto et arinthaeo conss. (372 iun. 29).

CTh.8.7.14pr.

Idem aaa. tatiano comiti sacrarum largitionum. nullus thensaurensis vel officialis comitis thensaurorum semel deprehensus eversor quocumque pacto aut repetat militiam suam aut aliam sibi requirat per ambitum dignitatem vel sese transferat ad aliam quamcumque militiam. (377 ian. 25).

CTh.8.7.14.1

Sed neque hi, qui nuper thensaurorum custodiam susceperunt, scriniarii etiam comitum thensaurorum vel ceteri thensaurenses alterius militiae sperent se occasione defendi vel ad honores aliquos dignitatesve transire, sed ea perpetuo tenendos esse militia, qua sunt a principio mancipati. dat. viii kal. feb. antiochiae gratiano a. iiii et merobaude conss. (377 ian. 25).

CTh.8.7.15

Imppp. gratianus, valentinianus et theodosius aaa. ad syagrium praefectum urbi. qui abhinc quinquennio desertis propriae apparitionis obsequiis in ordines indebitos evolarunt, pristinis officiis reddantur. et cetera. dat. vii id. oct. syagrio et eucherio conss. (381 oct. 9).

CTh.8.7.16pr.

Idem aa. et arcadius a. ad principium praefectum praetorio. praeter eos, qui de officio eminentium potestatum numero stipendiorum et curriculis evolutis urbique praefecti, vicariae etiam potestatis, serenitatis nostrae annis singulis adtingere purpuram venerarique praecepti sunt, nulli prorsus vel ex eo numero vel illorum certe, qui provincialia officia peregerunt, tranquillitatis nostrae muricem adorare sit liberum omnium suffragiorum obreptione cessante. (385 sept. 18).

CTh.8.7.16.1

Adeo autem unumquemque ea, quibus vel sponte initiatus est vel suorum retinetur consortio maiorum, non sinimus civilium officiorum sacramenta defugere, ut etiam ad palatina hos adque agentum in rebus transire vetemus officia, nisi omnibus expeditis, quae eorum peragi poscit ordo militiae. (385 sept. 18).

CTh.8.7.16.2

Si quis igitur ea, quae sunt salubriter cauta violarit, non solum se ilico sciat esse retrahendum, verum etiam bonorum media parte multandum ac mancipatus statim muneri subiugandum, ita ut per hoc tempus, quod hac lege praescriptum est, istius functionis muneri se norit esse subdendum. (385 sept. 18).

CTh.8.7.16.3

Omnes itaque iudices civilis arbitrii tua magnificentia moneat curam his oportere inesse quam maximam, ne quis apparitionis propriae desertorem ad indebitam adspirare patiatur. retrahi enim oportet contumacem ac legis laqueis implicari. dat. xiiii kal. oct. aquileia arcadio a. i et bautone v. c. conss. (385 sept. 18).

CTh.8.7.17

Idem aaa. ad principium praefectum praetorio. exceptores omnes iudicibus obsequentes, qui nec militiam sustinent neque a fisco ullas consequuntur annonas, absque metu navare coeptis operam, etiamsi decuriones sint, minime prohibemus, dummodo munia propriae civitatis agnoscant et peracto secundum morem exceptionis officio ad propriam sibi curiam redeundum esse non nesciant. dat. iiii id. dec. aquileia arcadio a. i et bautone conss. (385 dec. 10).

CTh.8.7.18

Idem aaa. et arcadius a. ad eusignium praefectum praetorio. nullus ex his, quos claruerit militia resolutos, indebita denuo sacramenta suscipiat. si quis autem id per obreptionem forte meruerit, quinque librarum auri multetur incommodo. dat. prid. id. iul. mediolano honorio n. p. et evodio conss. (386 iul. 14).

CTh.8.7.19pr.

Impp. arcadius et honorius aa. florentino praefecto urbi. post alia: cuiuslibet iudicis apparitores, inter quos etiam praefectianos locamus, ad quamcumque aliam militiam vel palatinam vel militarem ambiendo transierint, retrahendi hos copiam illis, quos deseruere, tribuimus, ita ut vilissima quaelibet officia ac mancipatus quoque, si modo ab his cui nati sunt ordo exegerit, administrent. (397 dec. 21).

CTh.8.7.19.1

In quorum idem servandum, quod in curialium, successione decernimus, ut etiam si patres haec fugerint, teneatur agnatio. et cetera. dat. xii kal. ian. mediolano caesario et attico conss. (397 dec. 21).

CTh.8.7.20

Impp. honorius et theodosius aa. graccho praefecto urbi. quicumque apparitores ob culpam vel neglegentiam fuerint iudicato discincti, ad nullam militiam adspirandi habeant facultatem nec ex rescripto his ullus aditus reseretur, quos congruit poenae gravissimae subiugari, si contra inhibita quoque sacratissimis constitutis adspirare praesumpserint. dat. viii kal. aug. ravenna dd nn honorio x et theodosio vi aa. conss. (415 iul. 25).

CTh.8.7.21

Impp. theodosius et valentinianus aa. hierio praefecto praetorio. nemo aliter ad tuae sublimitatis admittatur officium, nisi eum emissa ex sacris scriniis probatoria consecrarit. quod et in ceteris officiis, quibus similis erat consuetudo militiae, diverso quidem modo, sed pari diligentia sublimitas tua iubeat custodiri, sed in his quoque, id est virorum spectabilium proconsulis asiae, comitis orientis, praefecti augustalis et vicariorum, quos etiam monuimus sub viginti interminatione librarum auri irenarchas quoque et actuarios, et cornicularios tam classium urbi constantinopolitanae quam thymelae equorumque currulium civitatum diversarum non aliter, nisi, ut consueverat, manus sanxerit principalis, praecipiat ordinari. quin si quis talis sub tua fuerit iudicatione convictus, profecto irritis his, quae vetita contrectavit, etiam congruam indignationem incurret, his retentis in suo ordine et gradu militiae, qui qualitercumque ad praesentem diem admissi sunt. et cetera. dat. x kal. iul. nicomediae dd. nn. theodosio xii et valentiniano ii aa. conss. (426 iun. 22).

CTh.8.7.22

Idem aa. theofilo praefecto urbi. nemo aliter ad tuae sublimitatis in posterum admittatur officium, nisi eum emissa ex sacris scriniis probatoria consecrarit. actuarios quoque thymelae et equorum currulium, suarios etiam et optiones per omnes regiones urbis constantinopolitanae et alia omnia, quae vel in militia vel gradibus actibusque nutum pro sollemnitate priscae institutionis desiderant principalem, non aliter, nisi, ut consueverat, manus sanxerit principalis, praecipiat ordinari. quin si quis talis sub tua fuerit iudicatione convictus, profecto irritis his, quae vetita contrectavit, etiam congruam indignationem incurret, his retentis videlicet in suo ordine et gradu militiae, qui qualitercumque ad praesentem diem videntur admissi. dat. kal. iul. nicomediae theodosio xii et valentiniano ii aa. conss. (426 iul. 1).

CTh.8.7.23

Idem aa. acacio comiti sacrarum largitionum. comitum thensaurorum dioeceseos provectiones et ipsos thensaurenses vetus observatio principali dexterae reservavit, nec aliter voluit eos vel in iudicum suorum oboedientiam vel in committendis publicis necessitatibus habere progressum, nisi militiam eis emissa ex sacris scriniis probatoria condonasset. quod ita esse decretum ad notitiam eorum, quibus hoc videtur esse conveniens, pervenire tua magnitudo constituet, non absque indignatione arbitrium principale passura quorundam temeraria usurpatione diminui; his retentis videlicet in suo ordine et gradu militiae, qui qualitercumque ad praesentem diem videntur admissi. dat. kal. iul. nicomediae dd. nn. theodosio xii et valentiniano ii aa. conss. (426 iul. 1).

CTh.8.8.0. De executoribus et exactionibus

CTh.8.8.1

Impp. valentinianus et valens aa. ad florianum consularem venetiae. die solis, qui dudum faustus habetur, neminem christianum ab exactoribus volumus conveniri, contra eos, qui id facere ausi sint, hoc nostri statuti interdicto periculum sancientes. dat. xi kal. mai. treviris valentiniano et valente aa. conss. (368? 370? 373? apr. 21).

CTh.8.8.2

Imppp. gratianus, valentinianus et theodosius aaa. ad potitum vicarium. quisquis fuerit exhibitus, usque ad negotii terminum ab eo, cui primum traditus fuerat, observari eum apparitore decernimus; si qua praesumptione fuerit haec mansuetudinis nostrae posthabita praeceptio, primiscrinio qui iussa temeraverit quinque librarum auri condemnatione multando. dat. viii kal. nov. auxonio et olybrio conss. (379 oct. 25).

CTh.8.8.3 [=brev.8.3.1]

Imppp. grat., valent. et theodos. aaa. ad principium pf. p. solis die, quem dominicum rite dixere maiores, omnium omnino litium, negotiorum, conventionum quiescat intentio; debitum publicum privatumque nullus efflagitet; ne apud ipsos quidem arbitros vel in iudiciis flagitatos vel sponte delectos ulla sit agnitio iurgiorum. et non modo notabilis, verum etiam sacrilegus iudicetur, qui a sanctae religionis instituto rituve deflexerit. pp. iii. non. nov. aquileiae. acc. viii. kal. dec. romae, honorio n. p. et evodio v. c. coss.

interpretatio. die solis, qui dominicus merito dicitur, omnium hominum actio conquiescat, ut nec publicum nec privatum debitum requiratur, nulla iudicia neque publica neque privata fiant. quod qui non observaverit, reus sacrilegii teneatur

CTh.8.8.4

Idem aaa. ad eusignium praefectum praetorio. nullus apparitor amplitudinis tuae vel de officiis palatinis ad eam provinciam, ex qua oriundus est vel in qua collocaverit larem, obtentu publicae necessitatis vel exsecutor privati negotii dirigatur. etenim officii celsitudinis tuae primiscrinius tres libras auri fisci utilitatibus sine dilatione persolvet, si statuta fuerint temerata, apparitor vero, qui huic se muneri passus est deputari, solutus militia mancipum corpori sociabitur. haec vero poena etiam ceteris irrogata est, ut, si domesticus aut protector, strator vel agens in rebus vel palatinus utriusque officii vel ad eam provinciam, in qua natus est, vel ad eam, in qua collocarit larem, cum huiusmodi usurpatione perrexerit, matriculis quidem exemptus ipse, qui se voluit mitti, auri libram unam fisci viribus inferre cogatur, adiutores vero officiorum palatinorum ac numerarii comitum illustrium virorum sive actuarii libram fisci viribus solvant, nisi statuta fuerint custodita. dat. iii non. dec. mediolano honorio nobilissimo puero et evodio v. c. conss. (386 dec. 3).

CTh.8.8.5

Impp. arcadius et honorius aa. dextro praefecto praetorio. sive a palatinis petantur quae sunt sacris largitionibus inferenda sive quid res privata nostra desideret vel si quod subsidium publicarum necessitatum magnificentia tua per apparitionem suam arcae nomine deposcit, remota exigentium permixtione per rectorem provinciae instantibus officiis memoratis exactionem celebrari decernimus, qui ad se intellegit vel desidiae invidiam vel industriae gloriam pertinere. dat. xvii kal. iun. mediolano olybrio et probino conss. (395 mai. 16).

CTh.8.8.6

Idem aa. ad provinciales et ad proconsules. ne per diversas provinciarum partes aut palatinus exactor accederet aut illustrium virorum apparitor vagaretur vel militaris terror inferret formidinem, hac lege sancimus, ut omnis memoratis intentio ad provinciae rectorem sit, cum eo agant, illo insistente disponente adque agnoscente suo periculo rem peragendam compleant universa. dat. xvii kal. iul. mediolano olybrio et probino conss. (395 iun. 15).

CTh.8.8.7

Idem aa. andromacho praefecto urbi. quicumque e palatio nostro cuiuslibet tituli ad provinciam conmearit compulsor exactor admonitor portitorve praecepti, agens in rebus vel palatinus vel apparitor illustrium potestatum, hoc tantum potestatis arripiat, quod mandatum curae suae specialiter adprobatur, nec, quod iniunctum alteri fuit, collegii iure praesumat, ne, dum hoc sibi invicem mutui officii licentia partiuntur, agant cuncti, quod singulis credebatur. et cetera. dat. prid. id. iul. mediolano olybrio et probino conss. (395 iul. 14).

CTh.8.8.8

Impp. honorius et theodosius aa. iohanni praefecto praetorio. post alia: die sabbata ac reliquis sub tempore, quo iudaei cultus sui reverentiam servant, neminem aut facere aliquid aut ulla ex parte conveniri debere praecipimus, cum fiscalibus commodis et litigiis privatorum constet reliquos dies posse sufficere. et cetera. dat. vii kal. aug. ravenna honorio viii et theodosio iii aa. conss. (409 [412] iul. 26).

CTh.8.8.9

Idem aa. palladio praefecto praetorio. sive ex praetoriano officio sive illustris comitivae sedis largitionum nec non et rei privatae nostrae vel ex quacumque apparitione ad quamcumque necessitatem profligandam quis fuerit destinatus, sciat intra anni metas debere collectis ratiociniis ad proprium iudicem remeare eique suam efficaciam ostendere, quid eius instantia exactum fuerit quidve in debitis habeatur vel penes quos resederit vel cuius culpa aut causa in eadem provincia fuerit derelictum. quod si exacto spatio anni eius regionis visceribus praedator insidens deprehensus fuerit remorari, tunc absolutus cingulo militia abicietur, primoribus eiusdem militiae decem librarum auri multa proposita. sin redire dissimulet, ligatus ferreis nexibus cura provincialis officii sub elogio ad debitum mittatur examen nec ei liberum sit, ut hoc se privilegio aut occasione defendat, quod sibi aliud negotium vel aliam necessitatem post iniunctam esse causetur, cum isdem licentiam auferamus in eadem provincia iterare exactionem. et cetera. dat. x kal. oct. ravenna d. n. theodosio a. vii et palladio conss. (416 sept. 22).

CTh.8.8.10

Idem aa. iohanni praefecto praetorio. post alia: nullam possessionem alterius pro alienis debitis publicis sive privatis praecipimus conveniri. et cetera. dat. v id. iul. ravenna dd. nn. honorio xiii et theodosio x aa. conss. (422 iul. 11).

CTh.8.9.0. De lucris officiorum

CTh.8.9.1

Imp. constantinus a. ad pacatianum. ordines decuriarum scribarum librariorum et lictoriae consularis oblatis precibus meruerunt, ut in civilibus causis et editionibus libellorum officiorum sollemnitate fungantur, ita ut vetusta aetate servatum est, eo usque praerogativa veniente, ut militares intercessiones procul usque a liberalibus causis sese contineant. rectores itaque quae iussimus observabunt. dat. xv kal. mai. constantinopoli constantio et albino conss. (335 apr. 17).

CTh.8.9.2

Imppp. gratianus, valentinianus et theodosius aaa. ad severum praefectum urbi. emolumenta ceteraque compendia, quibus magnitudinis tuae apparitio sustinetur, neque his auferri sancimus, quibus pro eiusdem officii liberalitate collata sunt, neque in eos veluti ex necessitate transferri futura aetate permittimus, quos huiusmodi largitate vel praemio opinantur indignos, modo ut nihil ab eo necessarii moris aut ordinis pandat antiquitas, sed volentium potius fuisse doceatur quam principatus ipsius adque administrationis officium. dat. kal. aug. antonio et syagrio conss. (382 aug. 1).

CTh.8.10.0. De concussionibus advocatorum sive apparitorum

CTh.8.10.1

Imp. constantinus a. proconsuli africae. si quis se a ducenariis vel centenariis ac praecipue fisci advocatis laesum esse cognoscit, adire iudicia ac probare iniuriam non moretur, ut in eum qui convictus fuerit competenti severitate vindicetur. dat. vi id. nov. treviris, acc. xv kal. mart. carthagine constantino a. iiii et licinio iiii consulibus. (314 vel 315 [immo 313] nov. 8).

CTh.8.10.2

Imp. constantius a. eubulidae viro clarissimo vicario africae. praeter sollemnes et canonicas pensitationes multa a provincialibus afris indignissime postulantur ab officialibus et scholasticis, non modo in civitatibus singulis, sed et mansionibus, dum ipsis et animalibus eorundem alimoniae sine pretio ministrantur. nec latet mansuetudinem nostram saepissime scholasticos ultra modum acceptis honorariis in defensione causarum omnium et annonas et sumptus accipere consuesse, quibus, tantis conmodis fulti itinere, suam avaritiam explere nequeunt. provinciales itaque cuncti iudices tueantur nec iniurias inultas transire permittant. dat. iii kal. iul. leontio et sallustio conss. (344 iun. 29).

CTh.8.10.3

Impp. arcadius et honorius aa. pompeiano proconsuli africae. quotiens compulsor arguitur in depraedatione convictus, non consulta clementia nostra. poenam subeat legibus competentem. dat. prid. kal. ian. mediolano stilichone et aureliano conss. (400 dec. 31).

CTh.8.10.4

Impp. honorius et theodosius aa. euchario proconsuli africae. universa compulsorum genera ex africanis provinciis constituimus esse pellenda, his videlicet restitutis, quae forsitan per temeritatem sustulerant. dat. vi id. aug. ravenna dd. nn. honorio viiii et theodosio v aa. conss. (412 aug. 8).

CTh.8.11.0. Ne quid publicae laetitiae nuntii ex descriptione vel ab invitis accipiant

CTh.8.11.1pr.

Impp. valentinianus et valens aa. ad eugrammimum. cum anni exordia certis inchoanda consulibus nuntiantur, a tenuioribus, sportulae specie, collationis necessitas separetur, ne scilicet discriptione facta pro capitatione aut iugatione quicquam isdem veluti legitimi muneris exprimatur. (364 dec. 16).

CTh.8.11.1.1

Iubemus tamen, ut viri per provincias emerito iam honore pollentes, praeterea curiales, quos his gradus honore et in collationibus honestate functionis convenit esse finitimos, arbitratu suo tribuant, quantum putaverint largiendum: porro tenuioribus ab hac sorte iniuriosae necessitatis alienis, (364 dec. 16).

CTh.8.11.1.2

Quod quidem interdicti severitate fieri vetamus in posterum, ut rectores provinciarum vicenis auri libris, porro officia quadragenis constituamus esse multanda, si quicquam pauperes hac adscriptione praebuerint vel his extorqueri quicquam passi fuerint aut aeque, quos contra vetitum fecisse cognoverint, taciturnitate alicuius dissimulationis aboleverint. dat. xvii kal. ian. constantinopoli divo ioviano et varroniano conss. (364 dec. 16).

CTh.8.11.2

Idem aa. provincialibus salutem dicunt. si quando victoriae, si quando laetitiae publicae nuntiantur vel novorum consulum nomina perferuntur, collationi nullus locus, nulla sit licentia; nihil quisquam exigat, nihil audeat postulare. si quis vero honoratorum sponte quid offerre voluerit, id tantum recte dandum iudicamus. ceterum quidquid expostulatum, quidquid fuerit indictum, rector quidem provinciae eius, in qua res ita gesta erit, duplum quod indixerit quodve dare coegerit ex suo fisci viribus pendet, officium autem quadrupli summam pro eadem necessitate persolvet. dat. iii id. ian. mediolano valentiniano et valente augustis conss. (365 ian. 11).

CTh.8.11.3

Imppp. valentinianus, valens et gratianus aaa. ad mamertinum praefectum praetorio. si quando faustorum nuntiorum gaudia provincialibus intimantur quotiensque quid per terrarum orbem disseminatur, seu militum illustres victoriae seu strages hostium aut nostri triumphi perferuntur vel hi quos geremus aut deferimus consulatus, nulli publica distributione et arbitrio iudicis munera, quae vocant sportulas, deputentur. ceterum si quis iudicum vim decretorum nostrorum violaverit, eius rei, quae viritim distributa fuerit et coacta, duplicem poenam subibit aut officium quoque, quod ei paruerit, in quattuor partibus multa exaggerata constringat. honorati vero et urbibus suis eminentes ex arbitrio suo, quantum mens tulerit, largiantur. missa a praefecto praetorio die id. feb. mediolano valentiniano nb. p. et victore v. c. conss. (369 [365?] febr. 13).

CTh.8.11.4

Imppp. gratianus, valentinianus et theodosius aaa. floro praefecto praetorio. quidquid nostrorum umquam nuntiari coeperit prosperorum, bella si desinent, si oriuntur victoriae, fastis si honor datus fuerit regalium trabearum, compositae pacis si erit efferenda tranquillitas, sacros vultus inhiantibus si forte populis inferemus, haec sine pretio nuntiari excipique sancimus. gerulum iubemus esse castissimum: indices nummarios esse prohibemus: iudices statuimus esse sollicitos, ne turpi colludio quaeratur ex miseris pretium gaudiorum. quod si id sacrilega fuerit dissimulatione violatum, et accipientem pudoris fortunarumque manebit excidium et cogentem par poena multabit et officium triginta librarum auri vexatione quatiatur. dat. iiii non. feb. constantinopoli merobaude ii et saturnino conss. (383 febr. 2).

CTh.8.11.5 [=brev.8.4.1]

Imppp. valent., theodos. et arcad. aaa. have tatiane, carissime nobis. legem nostram, qua nihil ab invitis provincialibus gratulationis nomine exigendum esse decrevimus, volumus custodiri. dat. iv. kal. mai. mediolano, timasio et promoto coss.

interpretatio. quando gaudia publica nuntiantur, nihil invitis provincialibus gratulationis nomine exigatur

CTh.8.12.0. De donationibus

CTh.8.12.1pr. [=brev.8.5.1pr.]

Imp. constantinus a. ad maximum pf. u. donatio, sive directa sit, sive mortis causa instituta, sive condicionibus* faciendi ac non faciendi suspensa, sive ex aliquo notato tempore promissa, sive animo dantium accipientiumve sententiis, quantum ius sinit, cognominata, sub hac fieri debet observatione, ut, quas leges indulgent, actiones, condiciones* pactionesque contineat, hisque penitus cognitis vel recipiantur, si complacitae sunt, vel reiiciantur, si sunt molestae; ita ut minorum defensores, si per eos donationum condicio* neglecta est, rei amissae periculum praestent.

CTh.8.12.1.1 [=brev.8.5.1.1]

In conscribendis autem donationibus nomen donatoris, ius ac rem notari oportet, neque id occulte aut per imperitos aut privatim, sed aut tabula, aut quodcumque* aliud materiae tempus dabit, vel ab ipso vel ab eo, quem sors ministraverit, scientibus plurimis perscribatur.

CTh.8.12.1.2 [=brev.8.5.1.2]

Et corporalis traditio subsequatur ad excludendam vim atque irreptionem advocata vicinitate, omnibusque arbitris adhibitis, quorum postea fide probabitur, donatam rem, si est mobilis, ex voluntate traditam donatoris, vel, si immobilis, abscessu donantis novo domino patefactam, actis etiam annectendis, quae apud iudicem vel magistratus conficienda sunt. dat. iii. non febr. roma, sabino et rufino coss.

interpretatio. donatio aut directa est aut mortis causa conscribitur. directa donatio est, ubi in praesenti res donata traditur. mortis causa donatio est, ubi donator, dum advivit, rem, quam donat, sibi reservat, scribens: si prius mortuus fuero quam tu, res mea ad te perveniat, ut postea ad illum, cui donat, non ad heredes donatoris res donata perveniat. quod si prius moriatur, cui res mortis causa donata est, res in iure permaneat donatoris. est et alia donatio, ubi donator obligat illum, cui donat, ut aliquid faciat aut non faciat, id est, si aliquid iubeat fieri, quod impossibile iudicetur, aut quod honestati contrarium videatur; aut si id ordinet fieri, quod honestum est et possit impleri: quia tunc infirmatur donatio, quando condiciones* honestatis possibilis impletae non fuerint. nam si inhonestae et impossibiles condiciones* ponantur, remotis condicionibus* firma donatio est. est item et alia, in qua sibi donator certum tempus possessionis reservat. quae tamen omnes donationes superius comprehensae si modum excesserint lege conscriptum, unde possint certae personae de immodica donatione proponere, hoc est si quartam sibi facultatis suae donator non reservaverit, non valebunt. sed praeterea illa donatio contra legem est, si quis rem in lite positam, quae repetitur, aut recto ordine donet aut condicionem* contra bonos mores, hoc est causam cuiuslibet criminis, donator in donatione conscribat. minoribus vero si quid fuerit per donationem a quocumque* oblatum sive collatum, tutores vel curatores eorum debent studere, ne quid firmitati donationis desit. quod si eorum negligentia donatio ad effectum perducta non fuerit, ad eorum dispendium pertinebit, ita ut quicquid minores de donatione perdiderint, curatores vel tutores illis de propria facultate restituant. in conscribendis autem donationibus hic ordo servandus est, ut donatio nomen prius contineat donatoris vel illius, cui donatur deinde res, quae donantur, sive in agris sive in mancipiis sive in quibuslibet rebus atque corporibus, nominatim in donatione conscribendae sunt, non occulte, sed publice, non privatim vel secrete, sed aut in tabulis aut in chartis aut ubicumque* legatur facta donatio. quam tamen donationem, si literas novit, donator ipse subscribat: si vero ignorat, praesentibus plurimis eligat, qui pro ipso subscribat: et hanc ipsam donationem gestorum solennitas et corporalis traditio subsequatur, ita ut, si mobilia donantur, praesentibus plurimis tradantur: si vero ager vel domus donatur, quod moveri non potest, ut inde donator abscedat et novo domino pateat res donata, si tamen sibi de his rebus usumfructum donator non reservaverit. gesta vero donationum aut apud iudicem aut apud curiam alleganda sunt

CTh.8.12.2

Idem a. aconio catullino proconsuli africae. si quis in emancipatum minorem, priusquam fari possit aut habere rei quae sibi donatur affectum, italicum sive stipendiarium fundum crediderit conferendum, omne ius compleat instrumentis ante praemissis et inductione corporaliter impleta. quod propter adtestationem fidei per eum servum, quem idoneum esse constiterit, transigi placuit, qui eo usque in statu suo permanebit, donec is, cuius facultatibus cesserit, annos laetoriae legis egressus legitimam compleverit aetatem, quo tunc demum, si eius integritas ac fides fuerit comprobata, si ita sederit possidentibus, libertatis praemium consequatur. dat. xii kal. mai. serdicae sabino et rufino conss. (316 [?] apr. 20).

CTh.8.12.3

Idem a. ad cassium praefectum urbi. promulgatum dudum est donationes nullo alio modo firmas posse detineri, nisi apud actorum contestationem confectae fuerint. sed quia multi aliena vel non pleno iure ad se pertinentia donantes extra patriam et provinciam, in qua possident, acta conficiunt, placet, ut nulli liceat extra provinciam laremque suum donationum instrumenta apud acta allegare, sed in quo domicilium habuerit adque possessiones constitutae sunt, aput suum ordinarium iudicem vel, si eum abesse contigerit, aput curatorem municipalesve eiusdem civitatis. nam si hoc praetermissum fuerit, nullam firmitatem habere donationes sancimus. dat. kal. mai. roma sabino et rufino conss. (316 [?] mai. 1).

CTh.8.12.4

Idem a. ad bassum praefectum urbi. iuxta divi pii consultissimi principis instituta valere donationes placet inter liberos et parentes in quocumque solo et cuiuslibet rei liberalitas probabitur extitisse, licet neque mancipatio dicatur neque traditio subsecuta, sed nuda tantum voluntas claruerit, quae non dubium consilium teneat nec incertum, sed iudicium animi tale proferat, ut nulla quaestio voluntatis possit irrepere et collata inter ceteras exceptas cinciae legi personas obtinere propriam firmitatem, sive mancipationis decursa fuerit sollemnitas vel certe res tradita doceatur. quam legem ad lites volumus pertinere, quaecumque tempore iussionis nostrae inveniuntur esse suspensae et quae post futurae sunt, ne transacta negotio refricentur. dat. non. oct. constantino a. v. et licinio caes. conss. (319 oct. 7).

CTh.8.12.5

Idem a. ad severum comitem hispaniarum. data iam pridem lege statuimus, ut donationes interveniente actorum testificatione conficiantur. quod vel maxime inter necessarias coniunctissimasque personas convenit custodiri, si quidem clandestinis ac domesticis fraudibus facile quidvis pro negotii opportunitate confingi potest vel id quod vere gestum est aboleri. cum igitur ne liberos quidem ac parentes lex nostra ab actorum confectione secernat, id, quod necessario super donationibus apud acta conficiendis iam pridem statuimus, universos teneat, salvo tamen iuris privilegio, quod liberis et parentibus suffragatur, scilicet ne traditionis vel mancipationis sollemnitas sit necessaria. dat. iiii non. mai. constantinopoli, dalmatio et zenofilo conss. (333 mai. 4).

CTh.8.12.6

Impp. constantius et constans aa. ad celsinum. a venerabili parente nostro statutum est irritas donationes esse, quae actorum indicia non haberent, nec segnius etiam lenitudinis nostrae cura succedit. dat. viiii kal. ian. marcellino et probino conss. (341 dec. 24).

CTh.8.12.7

Idem aa. ad orfitum praefectum urbi. cum genitoris mei scitis evidenter expressum sit nullam donationem inter extraneos firmam esse, si ei traditionis videatur deesse sollemnitas et idem huiusmodi necessitatem liberis tantum ac parentibus relaxarit, in omnibus deinceps observari negotiis oportebit, ut donatio inter extraneos minus firma iudicetur, si iure mancipatio et traditio non fuerit impleta. dat. viii kal. mai. arbitione et lolliano conss. (355 apr. 24).

CTh.8.12.8pr.

Impp. honorius et theodosius aa. aureliano praefecto praetorio. donationes debere sortiri perpetuam firmitatem, quas corporalis traditio fuerit subsecuta, sancimus, ne ususfructus exceptio pro traditione possit intellegi. qui enim post liberalitatem re donata perfrui concupiscit, hoc sibi quo voluerit modo, consignata videlicet possessione, debet praecipuum custodire, ne imperfecta vaccillet donatio. (415 mart. 23).

CTh.8.12.8.1

Gestorum quoque confectionem sive ante traditionem sive post traditionem fieri oportebit, ut instrumentum, quo continetur munificentia, aput acta publicetur, in hac quidem urbe aput magistrum census, in provinciis vero aput provinciarum rectores vel, si praesto non fuerint, aput magistratus municipales vel si civitas ea vel oppidum, in quo donatio celebratur, non habeat magistratus, apud defensorem plebis, in qualibet civitate fuerit repertus: curatores enim civitatum ab huiuscemodi negotio temperare debebunt, ne tanta res eorum concidat vilitate. sed iam allegatas apud curatores donationes et gesta confecta valere necesse est, in posterum omnibus, quae statuta sunt, observandis, quoniam, si quid fuerit praetermissum, nullius momenti videbitur esse donatio. (415 mart. 23).

CTh.8.12.8.2

Gesta autem confici super rebus etiam alibi collocatis ubicumque sufficiet, ita ut traditio corporalis in locis, ubi res donata consistit, omni modo celebretur. dat. x kal. april. constantinopoli dd. nn. honorio x et theodosio vi aa. conss. (415 mart. 23).

CTh.8.12.9 [=brev.8.5.2]

Impp. honor. et theodos. aa. monaxio pf. p. legis a nobis paulo ante latae cetera quidem cautio necessaria nobis admodum visa est, sublata vero in donationibus species traditionis, quam olim retentio ususfructus induxerat, non sine magna ratione desiderata est, quum observationem iuris contrahere potius quam propagare debeamus. ideoque ius pristinum renovamus, ut, quisquis rem aliquam donando vel in dotem dando usumfructum eius retinuerit, etiamsi stipulatus non fuerit, eam continuo tradidisse credatur, nec quid amplius requiratur, quo magis videatur facta traditio, sed omni modo idem sit in his causis usumfructum retinere, quod tradere. dat. prid. id. mart. constantinopoli, d.N. honorio a. xi. et constantio v. c. ii. coss.

interpretatio. quicumque* de rebus propriis servato usufructu cuilibet aliquid quacumque* donatione contulerit, vel in dotem dederit, et sibi usumfructum reservet, rem tradidisse cognoscitur; quia reservatio ususfructus, etiamsi stipulatio inserta non fuerit, pro traditione habetur

CTh.8.13.0. De revocandis donationibus

CTh.8.13.1pr.

Impp. constantius et constans aa. ad philippum praefectum praetorio. liceat matribus, si impios filios probare se posse confidunt, publice adire iudicia. matrem autem ingenuam liberam libertam libertinam, cui scilicet civitatis romanae iura quaesita sunt, ita ut queri antiquo iure poterant, accipi audirique decernimus itemque filios filias ingenuos ingenuas, libertos libertas, libertinos libertinas, cives pari condicione romanos. secludimus mulierem, quae in secundi matrimonii foedus innubserit et unius tantum matrimonii mulieribus revocandarum donationum pro dimidia parte decernimus facultatem. hic autem, qui a matre impietatis arguitur, quidquid ex eo, quod titulo donationis tenet, eo die, quo controversiae qualecumque principium iussu iudicantis datur, habere repperitur, huius dimidium victo eripiatur. ceterum quae ante adhuc matre pacifica iure perfecta sunt et ante inchoatum coeptumque iurgium vendita donata mutata in dotem data ceterisque causis legitime alienata, minime revocamus. (349 sept. 20).

CTh.8.13.1.1

Actionem vero matris ita personalem esse volumus, ut vindicationis tantum habeat effectum nec in heredem detur nec tribuatur heredi. qua re de ceteris vel alterius status vel portentosae vilitatis abiectaeque pudicitiae satis etiam tacite cautum putamus. quis est enim, qui his aliquid arbitretur tribuendum esse, cum etiam illis, quae iure, secundas tamen contraxerunt nuptias, nihil ex his privilegiis tributum esse velimus? dat. xii kal. oct. limenio et catullino conss. (349 sept. 20).

CTh.8.13.2 [=brev.8.6.1]

Impp. constantius et constans aa. ad philippum pf. p. avi nostri pro patribus firma lege sanxerunt, ut, si quid patres in liberos munificentiae titulo contulissent, si eos impios in iudicio declarassent, omne id esset revocandum, ne pietatis praemium apud scelestos et flagitiosos animos permaneret. dat. xii. kal. oct. limenio et catulino coss.

interpretatio. donatio in emancipatum filium a patre facta, si laesum pater se esse probaverit, revocatur. hic de iure requirendum de revocandis donationibus

CTh.8.13.3 [=brev.8.6.2]

Iidem aa. ad orfitum pf. u. si umquam libertis patronus filios non habens bona omnia vel partem aliquam facultatum fuerit donatione largitus, et postea susceperit liberos, totum, quicquid largitus fuerit, revertatur in eiusdem donatoris arbitrio ac dicione* mansurum. dat. v. kal. april. arbetione et lolliano coss.

interpretatio. si quis filios non habens bona sua vel partem bonorum libertis donaverit, et is, qui donaverat, filios postea habuerit, donationes in libertis factae ad integrum vacuantur

CTh.8.13.4 [=brev.8.6.3]

Iidem aa. ad orfitum pf. u. si quis forsitan filiorum maternam munificentiam consecutus in matrem impius detegitur, non iam dimidiam portionem, ut ante fuerat iussum, rei donatae, sed omnem substantiam proprietatis amittat. matres vero, quae in secundas convenerint nuptias, reposcere vetamus a filiis, quae earum perceperint largitate. quin etiam identidem commonemus, alia omnia iuxta prioris legis tenorem debere servari. dat. ix. kal. iul. sirmio, datiano et cereale coss.

interpretatio. si quis filius donatione matris aliquid fuerit consecutus et eam postmodum laeserit, probatis in iudicio laesionis causis, donationem mater, si voluerit, in integrum revocabit. quod si mater haec, quae filio donavit, ad secundas nuptias transierit, contra donationem per quamcumque* occasionem veniendi nullam habeat potestatem, servatis de reliquo legibus, quae sub titulo de secundis nuptiis continentur

CTh.8.13.5

Imppp. theodosius, arcadius et honorius aaa. victorio proconsuli asiae. maritus donationes, quas instabiles esse testatur, formata legibus repetat actione. dat. v kal. iul. constantinopoli theodosio a. iii et abundantio conss. (393 iun. 27).

CTh.8.13.6 [=brev.8.6.4]

Impp. theodos. et valent. aa. ad senatum. post alia: donationem circa filium filiamve, nepotem neptemve, pronepotem proneptemve emancipationis tempore celebratam pater seu avus vel proavus revocare non poterit, nisi edoctis manifestissimis causis, quibus eam personam, in quam collata donatio est, contra ipsam venire pietatem, et ex causis, quae legibus continentur, fuisse constabit ingratam. quas tamen causas in cognitione discuti oportebit, et nostro admitti iudicio, quum hoc inter partes competenti visum fuerit cognitori. alias iubemus non audiri parentis querelas etc. dat. viii. id. nov. ravenna, dd. nn. theodos. xii. et valentin. ii. aa. coss.

interpretatio. si quis filio, filiae, nepoti ex filio vel pronepoti ex nepote emancipationis tempore aliquid donaverit, id nisi probatis in iudicio manifestis offensarum causis revocare non poterit

CTh.8.14.0. [=brev.8.7.0.] De ingratis liberis.

CTh.8.14.1 [=brev.8.7.1]

Imppp. valent., valens et grat. aaa. ad praetextatum pf. u. filios contumaces, qui patres vel acerbitate convicii vel cuiuscumque* atrocis iniuriae dolore pulsassent, leges, emancipatione rescissa, damno libertatis immeritae mulctare voluerunt. dat. v. kal. sept. ambianis, lupicino et iovino coss.

interpretatio. filii emancipati, si iniuriam patri gravem, quae probari possit, intulerint et convicti fuerint hoc fecisse, rescissa emancipatione in familiam revocentur

CTh.8.15.0. De his, quae administrantibus vel publicum officium gerentibus distracta sunt vel donata

CTh.8.15.1

.........Agrippina dixit: tw topw ekeinw ouk epagarxei. constantinus a. dixit: sed iure continetur, ne quis in administratione constitutus aliquid compararet, unde quidem nihil interest, an in suo pago an in alieno comparavit, cum constet contra ius eundem comparasse. et adiecit: ignoratis fiscale effici totum, quidquid administrantes comparaverint? agrippina dixit: tou topou ekeinou praipositos ouk en: ega egorasa para tou adelfou autou, ide ai wnai. constantinus a. dixit: recipient a venditore codia et agrippina competens pretium. (.....).

CTh.8.15.2 [=brev.8.8.1]

Imp. constantinus a. ad veronicianum vicarium asiae. post alia: damus provincialibus facultatem, ut, quicumque* sibi a numerariis, qui diversis rectoribus obsequuntur, conquesti fuerint aliquas venditiones extortas, irritas inanesque efficiant, et male vendita ad venditoris dominium revertantur, amissione etiam pretii illicitis ac detestandis emptoribus* puniendis. dat. xiv. kal. iun. optato et paulino coss. haec lex expositione non indiget.

CTh.8.15.3pr.

Impp. valentinianus et valens aa. ad iovinum praefectum urbi. princeps cornicularius commentariensis numerarius et ordinarii per singula officia possessionum adque aedium nec non etiam mancipiorum comparationem sciant sibi esse praeclusam. sive igitur in ipsis provinciis, in quibus memorata officia sustinere noscuntur, constiterit eos esse progenitos seu in aliis, omni modo a praedictis comparationibus per provincias, in quibus militant, temperare debebunt. (364 apr. 11).

CTh.8.15.3.1

Solas tamen res paternas memoratos mercari posse praecepimus, ita ut apud rectorem provinciae non minoribus pretiis, quam ratio aequitatis exposcit, venditio celebretur. dat. iii id. april. constantinopoli divo ioviano et varroniano conss. (364 apr. 11).

CTh.8.15.4

Idem aa. senecae. post alia: vim illius legis aspicito eique pareto, qua proxime constitutum est, ut publicum munus agitantes nihil in suscepto mercarentur officio. dat. v kal. iul. valentiniano et valente aa. conss. (365 iun. 27).

CTh.8.15.5pr.

Idem aa. ad probum praefectum praetorio. omnis se turpibus nundinis administrator abstineat: idem sibi altior iudex, idem mediae dignitatis, idem quicumque vel minimus putet esse praescriptum. (365? 368? 370? 373? aug. 3).

CTh.8.15.5.1

Nemo in provincia quam tuetur, donec in eadem commorabitur, aliquid comparandi sumat adfectum: similiter administrantium socii adque participes, quaedam enim uniuscuiusque portio videtur adsessor. patronos etiam fisci ab his contractibus iubemus inhiberi et qui principatum officiorum gerunt seu corniculum quique commentariensium nomine exosa miseris claustra custodiunt tabularios quoque provinciarum et urbium singularum pari condicione constringimus; identidem numerarii praefecturae vel vicariae potestatis observent. praeterea officiales adque municipes, qui exactiones quascumque susceperint, eos etiam, quibus vel discussionis indago vel negotium censuale mandatur, insuper principales, a quibus distributionum omnium forma procedit, curatores etiam lex ista contineat. (365? 368? 370? 373? aug. 3).

CTh.8.15.5.2

Verum si qui ex his medio muneris sui tempore vel privatim aliquid emisse vel publice detegetur, in irritum gesta revocentur, comparatores autem contra interdicta.....Mati non modo his, quae per semet ipsos vel per aliam fuerint empta personam, sive agri sint sive domus sive mancipia seu quaecumque mobilia, sed etiam ea pecuniae taxatione, quam dederint, exuantur. nec ullus inquirat, utrum civiliter rem actam constet an turbide. nec obsit propria reposcenti vel venditio interiecta vel largitas vel mentio ulla legati, nam utcumque in alterum res fuerit a comparatore translata, quam emi in officio non oportuit, liberum corporis persequendi praestamus arbitrium. (365? 368? 370? 373? aug. 3).

CTh.8.15.5.3

Adiungimus autem, ut, si domini corporum venditorum, postquam emptores coeperint esse privati, quinquennio integro in repetitione cessaverint, continuo sibi fiscus usurpet, quae contra hoc vetitum vendita docebuntur. dat. iii non. aug. sirmio valentiniano et valente aa. conss. (365? 368? 370? 373? aug. 3).

CTh.8.15.6pr.

Imppp. gratianus, valentinianus et theodosius aaa. floro praefecto praetorio. quicumque administranti provinciam provinciasve adque indifferenter sub quoquo apice potestatis quid donaverit, repetendi usque ad quintum annum proximum, ex quo idem privatus esse coeperit, habeat facultatem. (380 iun. 17).

CTh.8.15.6.1

Adque hoc scito nostro non unam iudicis personam comprehendimus, sed latius studio provisionis excurrimus. sive igitur ei sive eius uxori, filio filiaeve, nepoti nepti et deinceps in infinitum, indifferenter emancipato an in sacris agenti, patri matri, fratri sorori, socero socrui et qui in consilio erit domesticove, coactam quis, sui palam vi adhibita seu clam et latenter imposita, prompserit largitatem, eam non secus repetere queat intra ea quae praescripsimus tempora, ac si de iure ipsius nullo vel inchoatae alienationis titulo recessisset, ita ut ad repetendam possessionem ne denuntiatione quidem opus sit, sed sufficiat apud iudicem, cuius ea de re notio erit, docuisse tempus, quo liberalitas sit parata, quo patefacto non secus ad eundem possessio cum fructibus revertatur, ac si ex eius numquam iure migrasset. (380 iun. 17).

CTh.8.15.6.2

Donatoris autem heredibus similem relinquimus actionem, si donator eo tempore obierit, quo adhuc in potestate is degerit, cuius obtentu videtur expressa donatio. sin autem donator superstes fuit, quamdiu is abierit potestate, tum heredum extinguimus actionem, maxime cum donator non stantem ab initio donationem taciturnitatis suae videatur firmasse consensu. dat. xv kal. iul. thessalonicae gratiano a. v et theodosio a. i consulibus. (380 iun. 17).

CTh.8.15.7

Idem aaa. floro praefecto praetorio. numerarii nihil emant, nihil contrahant. et cetera. dat. xviii kal. oct. constantinopoli antonio et syagrio conss. (382 sept. 14).

CTh.8.15.8

Impp. arcadius et honorius aa. caesario praefecto praetorio. omnes, quos olim legum forma complectitur, amplissimae etiam potestatis nihil administrationis suae tempore aut emptionis aut donationis titulo consequantur. dat. iii id. iul. constantinopoli caesario et attico vv. cc. conss. (397 iul. 13).

CTh.8.16.0. De infirmandis poenis caelibatus et orbitatis

CTh.8.16.1pr.

Imp. constantinus a. ad populum. qui iure veteri caelibes habebantur, inminentibus legum terroribus liberentur adque ita vivant, ac si numero maritorum matrimonii foedere fulcirentur, sitque omnibus aequa condicio capessendi quod quisque mereatur. nec vero quisquam orbus habeatur: proposita huic nomini damna non noceant. (320 ian. 31).

CTh.8.16.1.1

Quam rem et circa feminas aestimamus earumque cervicibus imposita iuris imperia velut quaedam iuga solvimus promiscue omnibus. (320 ian. 31).

CTh.8.16.1.2

Verum huius beneficii maritis et uxoribus inter se usurpatio non patebit, quorum fallaces plerumque blanditiae vix etiam opposito iuris rigore cohibentur, sed maneat inter istas personas legum prisca auctoritas. dat. prid. kal. feb. serdicae, proposita kal. april. romae constantino a. vi et constantino c. conss. (320 ian. 31).

CTh.8.17.0. De iure liberorum

CTh.8.17.1

Impp. arcadius et honorius aa. ad caesarium praefectum praetorio. sancimus, ut sit in petendo iure liberorum sine definitione temporis licentia supplicandi, nec implorantum preces aetas vel tempus impediat, sed sola miseris ad poscendum auxilium sufficiat desperatio liberorum. dat. vii id. mai. constantinopoli arcadio iiii et honorio iii aa. conss. (396 mai. 9).

CTh.8.17.2

Impp. honorius et theodosius aa. isidoro praefecto urbi. in perpetuum hac lege decernimus inter virum et uxorem rationem cessare ex lege papia decimarum et, quamvis non interveniant liberi, ex suis quoque eos solidum capere testamentis, nisi forte lex alia minuerit derelicta. tantum igitur post haec maritus vel uxor sibi invicem derelinquant, quantum superstes amor exegerit. dat. prid. non. sept. varane v. c. cons. (410 sept. 4).

CTh.8.17.3

Idem aa. isidoro praefecto urbi. nemo post haec a nobis ius liberorum petat, quod simul hac lege detulimus. et cetera. dat. prid. non. sept. varane v. c. cons. (410 sept. 4).

CTh.8.17.4

Idem aa. iohanni praefecto praetorio. post alia: quod impetratum ius conmunium liberorum superstite catullino clarissimo viro minus allegatum esse cognoscitur, nec succedenti obesse permittimus nec ulli umquam in simili causa statuimus nociturum. et cetera. dat. xiii kal. mart. ravennae honorio viiii et theodosio v aa. conss. (412 febr. 17).

CTh.8.18.0. De maternis bonis et materni generis et cretione sublata

CTh.8.18.1pr. [=brev.8.9.1pr.]

Imp. constantinus a. consulibus, praetoribus, tribunis plebis, senatui salutem dicit. placuit, salva reverentia et pietate sacris nominibus debita, ut potestas quidem et ius fruendi rebus liberorum suorum in sacris constitutorum, in maternis dumtaxat* facultatibus, penes patres maneat, destituendorum autem liberorum eis licentia derogetur.

CTh.8.18.1.1 [=brev.8.9.1.1]

Cesset itaque in maternis dumtaxat* successionibus commentum cretionis, et res, quae ex matris successione fuerint ad filios devolutae, ita sint in parentum potestate atque dominio, ut fruendi pontificium habeant, alienandi eis licentia derogetur. nam maternum patrimonium, quod filiis in potestate constitutis obvenerit, quum patre mortuo sui iuris fuerint, praecipuum habere eos et sine cuiusquam consortio placuit.

CTh.8.18.1.2 [=brev.8.9.1.2]

Quod si pater suum filium patremfamilias videre desiderans, eum emancipaverit, repraesentare ei maternam debebit substantiam, ita ut filius accepto munere libertatis, reique suae dominus effectus, ne videatur ingratus, tertiam partem custoditae sibi rei muneris causa parenti offerat, aestimatione, si res dividi coeperint, bonorum virorum arbitrio permittenda, quam tertiam alienare quoque pater, si hoc maluerit, habebit liberam potestatem.

CTh.8.18.1.3 [=brev.8.9.1.3]

Ante emancipationem autem parentes, penes quos maternarum rerum utendi fruendique potestas est, omnem debent tuendae rei diligentiam adhibere et, quod iure filiis debetur, in examine poscere, et sumptus* ex fructibus impigre facere, et litem inferentibus resistere, atque ita omnia agere, tanquam solidum perfectumque dominium et personam gerant legitimam; ita ut, si quando rem alienare voluerint, emptor* vel is, cui res donatur, observet, ne quam partem earum rerum, quas alienari prohibitum est, sciens accipiat vel ignorans. docere enim pater debet, proprii iuris eam rem esse, quam donat aut distrahit; et emptori*, si velit, sponsorem aut fideiussorem licebit accipere, quia nullam poterit praescriptionem opponere filiis quandoque rem suam vindicantibus. dat. xv. kal. aug. aquileia. recitata apud vettium rufinum pf. u. in senatu non. sept., constantino a. v. et licinio c. coss.

interpretatio. legis istius reliqua pars in aliis legibus continetur: hoc tantum de reliquis legibus plus habet, ut patres, qui filiorum res gubernare iussi sunt, negotia eorum summo studio et integritate agere procurent, ut nihil per negligentiam eorum filiis pereat, sed fructus rerum maternarum sine aliqua negligentia redigi vel vendi faciant, ut ex tempore competenti, sicut lex novella dicit, portiones suas filii sine aliqua imminutione percipiant. res filiorum patribus alienare non liceat, hoc est nec vendere nec donare. quod si fortasse praesumpserint*, emptor*, vel qui donator accesserit, grandi se sollicitudine et cura custodiant, ne filiorum res a patre venditas aut donatas accipiant, aut scientes aut etiam nescientes: sed compellant patrem, qui venditor vel donator fuerit, et filiorum res in sua retinet potestate, ut probet suum esse, quod tradidit. etiam ut suspicionem suam possit abstergere, fideiussorem a patre venditore percipiat, qui obligatione rerum suarum damnum emptori* non faciat: quia defuncto patre licet filiis res suas a quibuscumque* personis, sive venditae sive donatae a patre fuerint, in suum dominium revocare

CTh.8.18.2 [=brev.8.9.2]

Idem a. iulio severo. quum ad patrem aliquid ex materna successione interposita cretione pervenerit, et ad liberos maternarum rerum successiones defluxerint, ita eas haberi placet in parentum potestate, ut dominium tantum possessionis usurpent, alienandi vero licentiam facultatemque non habeant, ut quum aetates legitimae liberorum ad emancipationem parentes invitaverint, et patresfamilias videre liberos suos voluerint, tertiam partem maternorum bonorum eis filii tanquam muneris causa offerant; quam si suscipiendam patres putaverint, faciendae divisionis arbitrium permitti oportebit iustitiae bonorum virorum, per quos facta divisione tertiam partem oblatam parentes ita accipient, ut alienandae quoque eius partis habeant facultatem, si modo ullus potuerit inveniri, cui placeat hanc amplecti licentiam, quum omni modo filios conducat anniti, ut pio sedulitatis affectu mereantur accipere eam, quam patribus dederint, portionem. dat. vii. id. sept. mediolano. acc. non. oct. constantino a. v. et licinio c. coss.

interpretatio. materna bona filiorum defuncta uxore pater ita possideat, ut usumfructum de his habeat: sed quantum aut quam diu habeat, lex novella constituit: distrahendi tamen aut donandi ex his nullam pater habeat potestatem. sane si filium mortua matre emancipaverit, de bonis maternis, id est de emancipati filii portione ipse filius muneris causa de maternis bonis tertiam offerat portionem: quae tamen in ipsius proprietate mansura est ita, ut eam pater bonis viris dividentibus consequatur. si tamen tantum patris nomen ad hoc adduci potuerit, ut rem filiorum impia cupiditate suscipiat, aut aliis derelinquat: studere tamen filios decet, ut id, quod parentibus causa emancipationis obtulerint, servitio et pietate recipiant

CTh.8.18.3

Idem a. ad severum comitem hispaniarum. insinuatum est quosdam patres principalis coniugii copulatione destitutos in perniciem filiorum ultra misericordiam sanguinis properare et receptis deinceps aliis matrimoniis maiorem sibi in rebus filiorum vindicare personam: qui quoniam in his usufructuarii remansisse videntur, usurpare ea ac pervertere confidunt, ut per hoc his, qui in orbitate remanserunt, nulla nec possidendi nec litigandi tribuatur occasio. ideoque placet, ne quis pater receptis deinceps matrimoniis earum rerum, quae prioris coniugis fuerunt, sibi ius defendendum existimet nisi tutelae vice, donec minores probata aetate esse videantur. his autem moderatio nostra cuncta iubet servari adque restitui. proposita iii kal. april. constantinopoli optato et paulino conss. (334 mart. 30).

CTh.8.18.4

Imp. constantius a. ad dionysium. cretionis observantiam praecipimus removeri, per quam filii patriae potestati subiecti res ex materna hereditate vel ex diversis successionibus ad se devolutas antehac his, in quorum potestate fuerant, adquirebant et ut intra sextum annum facultates aliunde venientes .... ibe.. si quidem superstites sunt, sint patrum, intra praefinitum tempus defunctis quae ex materna hereditate vel generis materni devoluta sunt, ad proximos veniant iubemus, quoniam priorem nostram iussionem quae sine temporis distinctione filiorum successiones ad patres iusserat pertinere, aequitatis ratio corrigi persuasit. si quis vero ex paterno genere vel amicis paternis quacumque ratione reliquerit, id simili iustitiae moderamine ad patrem aut ad patris genus pertineat, ut ex utraque familia manantes facultates singulis quibuscumque cessisse potius quam adeptae esse videantur. post emensum vero sextum aetatis suae annum adaeque sine eiusdem cretionis necessitate delatas sibi qualicumque successionis genere facultates ad eos, in quorum potestate sunt, iure patrio transmittant. proposita prid. id. mart. heliopoli constantio a. ii et constante conss. (339 mart. 14).

CTh.8.18.5

Idem a. ad leontium com. or. qui se patris negat heredem, defuncti avi suscipere facultates non potest, maxime emancipatus, nisi per bonorum possessionem ad huiusmodi beneficium pervenerit. et quod maternus avus relinquit, patri adquiritur, et si legatum fideiconmissumve esset solutum, bonorum patris effectum est. quod si fideiconmissi dies legative iam cesserat, ad heredes patris petitio devoluta est. si vero filius familias ab avo suo materno heres ostenditur institutus, patre cernere iubente filioque cernente persona filii media hereditas pervenit ad patrem. dudum si quidem placuisse patet, ut possessio longi temporis in hereditatibus ad filios delatis inefficax esset adque patribus eas sola sollemnitas cretionis adquireret, sed excepta causa maternorum bonorum: ita adquiri non debere certissimum est, in quibus vis ac vocabulum cretionis expulsum est. nec vero dubitari potest, si priusquam legati vel fideiconmissi cederet dies aut iussu patris diceret cretionem, propriae potestatis effectus est, arbitrio suo eundem haec potuisse conquirere. dat. viii id. april. limenio et catullino conss. (349 apr. 6).

CTh.8.18.6 [=brev.8.9.3]

Imppp. grat., valent. et theodos. aaa. ad hesperium pf. p. quemadmodum maternas facultates venditione vel donatione transscribere in alias personas patribus non licet, ita ea, quae pater matris ac mater quaeque avus matris aut avia nepotibus pronepotibusve donaverint sive ab intestato reliquerint, patribus alienare non liceat. delatae vero ab extraneis sive ex transversa linea facultates, praeterquam ab his necessitudinibus, quas locuti sumus, patribus conferant, quicquid filiis positis in eorum potestate detulerint. dat. prid. kal. aug. acc. iv. kal. sept. ausonio et olybrio vv. cc. coss.

interpretatio. pater uxore mortua filiorum bona ita possideat, ut ex his ei nec vendere aliquid liceat, nec donare, nec quolibet alio ordine alienare: similiter et quaecumque* avi vel proavi materni nepotibus neptibus, pronepotibus proneptibusve donaverint vel fortasse reliquerint, in alias personas transferre patri quolibet ordine non licebit. sane si quae extraneorum donatione vel munere filiis in familia positis facultates accesserint, vel alii parentes, quam qui supra nominati sunt, contulerint, id totum patribus acquiratur, ut faciendi ex hoc, quod voluerint, habeant potestatem

CTh.8.18.7 [=brev.8.9.4]

Impp. arcad. et honor. aa. florentino pf. u. quicquid avus avia, proavus proavia nepoti nepti, pronepoti pronepti cuiuslibet tituli largitate contulerint, id est testamento, fideicommisso, legato, codicillo, donatione vel etiam intestati successione, pater filio filiaeve integra illibataque custodiat, ut vendere, donare, relinquere alteri aut obligare non possit, ut, quemadmodum ipse super his licentiam totius potestatis amittit, ita defuncto eo, filio filiaeve praecipua computentur, nec ab illis, qui ex patre sunt, consortibus vindicentur. supplicandi etiam in futurum contra haec licentiam summovemus etc. dat. id. oct. mediolano, olybrio et probino coss.

interpretatio. quicquid ad nepotes vel pronepotes avorum vel aviarum maternarum munere vel testamento vel successione aut qualibet scriptura devenerit, id praecipuum, hoc est proprium post patris obitum vindicabunt, neque in coheredum communione mittendum est, quod avorum expressis nominatisque personis maternorum fuerit largitate collatum

CTh.8.18.8

Imppp. arcadius, honorius et theodosius aaa. anthemio ppo. certis annorum intervallis in bonorum possessione maternae hereditatis a patre poscenda aut successione amplectenda infantis filii aetatem nostra auctoritate praescribimus, ut sive maturius sive tardius filius fandi sumat auspicia intra septem annos aetatis eius pater aut bonorum possessionem imploret aut qualibet actis testatione successionem amplectatur, hac vero aetate finita filius edicti beneficium petat vel de successione suscipienda suam exponat voluntatem, dum tamen intra annum ad impetrandam bonorum possessionem praescributum uterque de possessione amplectenda suum prodat arbitrium. cretionum autem scrupulosam sollemnitatem, sive materna filio familias sive alia quaedam deferatur hereditas, hac lege emendari penitus amputarique decernimus. dat. xvi kal. april. constp. dd. nn. honorio vii et theodosio ii aa. conss. (407 mart. 17).

CTh.8.18.9pr. [=brev.8.9.5pr.]

Impp. theodos. et valent. aa. ad senatum urbis romae. post alia: si uxor intestata defecerit superstitibus communibus filiis in patria potestate degentibus, utitur maritus prisco beneficio iuris ac legum circa usumfructum retinendum, quam diu filii in potestate consistunt, aut in praebenda filiis libertate circa trientem sibi ex constantinianae legis beneficio conquirendum.

CTh.8.18.9.1 [=brev.8.9.5.1]

Si vero viva matre emancipati sunt filii, tunc demum, quia omni commodo destituitur pater, nec retinet usumfructum, viriles ei inter filios, seu unus seu plures sunt, ususfructus tribuimus portiones.

CTh.8.18.9.2 [=brev.8.9.5.2]

Si vero mulier moriens alios ex filiis emancipatos a patre, alios in patria potestate dimiserit, in casu dispari utitur maritus defunctae beneficio, quod casui utrique praescribimus, id est circa eorum quidem portionem, quos adhuc in sacris retinet, usumfructum ex legum auctoritate retinebit, et praemium debitae, quum volet, emancipationis accipiet: in eorum vero parte, quos exisse de potestate viva matre constiterit, usumfructum virilis inter eos portionis secundum praescripta percipiet.

CTh.8.18.9.3 [=brev.8.9.5.3]

In nepotibus etiam vel neptibus hoc observandum esse censemus, ut maritus, qui uxore mortua, non exstantibus filiis, cum solis nepotibus vel neptibus ex hac lege ad emolumentum vocandus est, si unus vel una pluresve nepotes ex filio uno vel pluribus, qui in potestate defecerunt, procreati sunt, hoc iure utatur, quod de filiis constitutum est. nam licet hoc novum praesens lex constituat in nepotibus, non est tamen ab re, ut in hoc casu deteriores esse nepotibus filii non sinantur. habeat igitur avus veniens cum nepotibus in potestate durantibus usumfructum bonorum omnium, quae ex defunctae aviae successione delata sunt. quum vero iis quoque libertatem emancipatione largitur, similiter et ab ipsis, sicut de filiis constitutum est, trientem pro praemio manumissionis accipiat, vel, si ex pluribus alteros manumittit, alteros retinet, ex parte manumissorum trientem, ex parte vero in potestate manentium retineat usumfructum.

CTh.8.18.9.4 [=brev.8.9.5.4]

Quod si nepotes sint neptesve aut ex emancipato filio aut ex filia procreati, aut ab ipso in sacris avia vivente dimissi, idem avus virilis cum ipsis portionis habeat usumfructum. si vero ex nepotibus neptibusve tempore, quo in aviae successionem vocantur, alii in avi sunt potestate, id est mariti defunctae, alii sui iuris sint, circa personam quidem eorum, qui in potestate consistunt, et in usufructu consequendo et in triente ex emancipationis praemio conquirendo ratio supra dicta servetur: in his vero, qui sui iuris sunt, facultas capiendi ususfructus virilis inter eos portionis habeatur.

CTh.8.18.9.5 [=brev.8.9.5.5]

Eadem autem et de pronepotibus sexus utriusque sancimus, manente definitione, quae de singulis sancita est, si filii sint pariter ac nepotes etc. dat. viii. id. nov. ravenna, dd. nn. theodos. xii. et valentin. ii. aa. coss.

interpretatio. uxor si superstite marito defecerit, et omnes filios in patris potestate dimiserit, pater de maternis filiorum bonis usumfructum habeat usque ad illud tempus, quod lex novella constituit. quod si post matris obitum filios vel filium pater emancipaverit, de eorum portionibus, quos liberos facit, trientem a filiis pro collata libertate percipiat, iuri suo perpetuo vindicandum. quod si superstite matre pater filium vel filios emancipaverit, quia non potest matre viva de filiorum portionibus vindicare tertiam portionem, necesse erit ut post matris obitum, si superstes pater fuerit, a singulis emancipatis filiis virilem, id est de uno mediam, de duobus tertiam, de tribus quartam percipiat portionem in usumfructum, quoad usque vixerit, possidendam. quod si aliqui filii viva matre a patre emancipati fuerint, et aliqui fortasse non fuerint, circa emancipatos vel non emancipatos eadem, quae superius comprehensa est, a patre forma servetur. quod si mortua uxore filii non fuerint, et nepotes vel neptes ex filiis avus paternus habuerit, qui omnes in avi potestate consistunt, eadem, quae de filiis, et circa nepotes in omnibus forma servetur. at vero si aliquos ex ipsis nepotibus avus emancipare voluerit, tertiam similiter, sicut et de filiorum partibus, accipiat portionem: nam et de pronepotibus similiter observari lex ista constituit

CTh.8.18.10pr. [=brev.8.9.6pr.]

Iidem aa. ad senatum. post alia: si sine liberis unus vel una moriatur e filiis, et superstitem fratrem vel fratres, sororem vel sorores et patrem relinquat, sive is emancipatus sive in potestate defecerit, eius portionem, quam ex bonis maternis vel undeunde iure quaesiverit, pater sine dubio consequatur, iugi dominio possidendam.

CTh.8.18.10.1 [=brev.8.9.6.1]

Quod si novercam superduxerit, ea quidem, quae filius defunctus extrinsecus acquisierat, sibi habeat pater et perpetuo iure dominii possideat, bonorum vero ex matris patrimonio filio, qui defunctus est, quaesitorum solum usumfructum retentet, ad alios filios ex eodem matrimonio natos post eius obitum proprietate reditura. et si ante mortem filii domum secundis nuptiis occupavit, similem causam sequatur, ut filio extrinsecus acquisita perpetuo iure possideat, maternarum autem rerum eius solum usumfructum retentet.

CTh.8.18.10.2 [=brev.8.9.6.2]

Quod si filius filiave exstantibus liberis adhuc positi in potestate defecerint, portionis eorum totius solum usumfructum morientis retentet, nepotibus, id est defuncti filiis proprietate servata. si vero nepotes tempore mortis maternae extra avi sint potestatem, ipsi illico in patris sui matrisve successionem vocentur etc. dat. viii. id. nov. ravenna, dd. nn. theodos. xii. et valentin. ii. aa. coss.

interpretatio. si amissa matre, patre superstite, unus vel una de filiis sive emancipatus sive non emancipatus sine filiis moriatur, pater mortuo filio in totam illius portionem iure succedit. quod si aliam uxorem duxerit, haec, quae de maternis bonis mortuus filius derelinquit, pater usufructuario tantum ordine possidebit; post eius obitum ad fratres mortui ex eodem matrimonio natos, quod ille de maternis bonis habuit, revertatur. aliunde vero filio, qui moritur, acquisita in proprietate patria residebunt. quod si filius vel filia vivo patre habentes filios moriantur, pater res nepotum, sicut filiorum iure usufructuario retinebit. si vero hi, qui moriuntur, emancipatus vel emancipata moriantur, in portionibus eorum in integrum filii sui sine ulla avi potestate succedant

CTh.8.19.0. [=brev.8.10.0.] De bonis, quae filiisfamilias ex matrimonio acquiruntur.

CTh.8.19.1 [=brev.8.10.1]

Impp. theodos. et valent. aa. ad senatum. post alia: quum venerandae leges vetuerint patribus iure potestatis conquiri, quicquid eorum filiis avus avia, proavus proavia, alio modo a linea materna venientes quocumque* titulo contulissent: hoc quoque convenit observari, ut, quicquid vel uxor marito non emancipato vel maritus uxori in potestate positae quocumque* titulo vel iure contulerit sive transmiserit, hoc patri nullatenus acquiratur, atque ideo in eius tantum, cui delatum est, iure durabit etc. dat. viii. id. nov. ravenna, dd. nn. theodos. xii. et valentin. ii. aa. coss.

interpretatio. sicut id, quod avus vel avia materna nepotibus, pronepotibus positis in patris potestate donaverint, patri non acquiritur, ita et quicquid maritus uxori vel uxor marito in patris potestate positis donaverint aut testamento dimiserint, id ad patris dominium minime pertinebit, sed hoc sibi filii ad integrum vindicabunt

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CTh.9.1.0. De accusationibus et inscriptionibus

CTh.9.1.1 [=brev.9.1.1]

Imp. constantinus a. ad octavianum comitem hispaniarum. quicumque* clarissimae dignitatis virginem rapuerit, vel fines aliquos invaserit, vel in aliqua culpa seu crimine fuerit deprehensus, statim intra provinciam, in qua facinus perpetravit, publicis legibus subiugetur, neque super eius nomine ad scientiam nostram referatur, nec fori praescriptione utatur. omnem enim honorem reatus excludit, quum criminalis causa et non civilis res vel pecuniaria moveatur. dat. prid. non. dec. serdicae. acc. v. non. mart. cordubae, gallicano et basso coss.

interpretatio. quicumque* damnabile vel puniendum legibus crimen admiserit, non se dicat in foro suo, id est in loco, ubi habitat, debere pulsari: sed ubi crimen admissum est, ab eius loci iudicibus vindicetur, nec de eius persona ad principem referatur

CTh.9.1.2

Idem a. ad ianuarinum. quicumque ex eo die, quo reus fuerit in iudicio petitus, intra anni spatium noluerit adesse iudicio, res eius fisco vindicentur et si postea repertus nocens fuerit, deprehensus saeviori sententiae subiugetur. sed et si argumentis evidentibus et probatione dilucida innocentiam suam purgare suffecerit, nihilo minus facultates eius penes fiscum remaneant. dat. id. ianuar., acc. v kal. aug. corintho constantino a. v et licinio caes. conss. (319 ian. 13).

CTh.9.1.3 [=brev.9.1.2]

Idem a. ad agricolanum..... quum ius evidens atque manifestum sit, ut intendendi criminis publici facultatem non nisi ex certis causis mulieres habeant, hoc est si suam suorumque iniuriam persequantur, observari antiquitus statuta oportet. neque enim fas est, ut passim mulieribus accusandi permissa facultas sit; alioquin in publicis olim quaestionibus interdum aut admissa probatio est aut accusantis auctoritas. patroni etiam causarum monendi sunt, ne respectu compendii feminas, securitate forsitan sexus in actionem illicitam proruentes, temere suscipiant. pp. v. id. febr. probiano et iuliano coss.

interpretatio. feminis nisi in sua suorumque causa quemquam accusare non liceat, quia susceptione alienarum causarum legibus prohibentur. advocati etiam commonendi sunt, ne contra leges suscipiant in alienis causis feminas litigare cupientes

CTh.9.1.4

Idem a. ad universos provinciales. si quis est cuiuscumque loci ordinis dignitatis, qui se in quemcumque iudicum comitum amicorum vel palatinorum meorum aliquid veraciter et manifeste probare posse confidit, quod non integre adque iuste gessisse videatur, intrepidus et securus accedat, interpellet me: ipse audiam omnia, ipse cognoscam et si fuerit comprobatum, ipse me vindicabo. dicat, securus et bene sibi conscius dicat: si probaverit, ut dixi, ipse me vindicabo de eo, qui me usque ad hoc tempus simulata integritate deceperit, illum autem, qui hoc prodiderit et comprobaverit, et dignitatibus et rebus augebo. ita mihi summa divinitas semper propitia sit et me incolumem praestet, ut cupio, felicissima et florente re publica. proposita xv kal. octob. nicomediae paulino et iuliano conss. (325 sept. 17).

CTh.9.1.5 [=brev.9.1.3]

Idem a. ad maximum pf. u. quodam tempore admissum est, ut non subscriptio, sed professio criminis uno sermone ex ore fugiens tam accusatorem quam reum sub experiendi periculo de patria, de liberis, de fortunis, de vita denique dimicare cogeret. ideoque volumus, ut, remota professionis licentia ac temeritate, ad subscriptionis morem ordinemque criminatio referatur, ut iure veteri in criminibus deferendis omnes utantur, id est ut, sopita ira et per haec spatia mentis tranquillitate recepta, ad supremam actionem cum ratione veniant atque consilio. dat. xi. kal. iun. sirmio. acc. romae, constantino a. vii. et constantio c. coss.

interpretatio. si quis iratus crimen aliquod temere cuilibet obiecerit, convicium non est pro accusatione habendum, sed permisso tractandi spatio, id quod iratus dixit, per scripturam se probaturum esse fateatur. quod si fortasse resipiscens post iracundiam, quae dixit, iterare aut scribere fortasse noluerit, non ut reus criminis teneatur

CTh.9.1.6

Idem a. secundo praefecto praetorio. edi criminalia acta ut civilia iubemus, his videlicet, quorum salus ad discrimen vocatur, neque expectari deprecationem actorum neque arte accusatoris differri, ut de innocentia iudicantis adque aequitate consistat. dat. kal. decemb. ianuarino et iusto conss. (328 [362/3] dec. 1).

CTh.9.1.7

Imp. constantius a. domitio leontio praefecto praetorio. ii, quos custodia delatae criminationis includit, intra unius mensis spatium audiantur inquisitione completa, ne, si delati criminis causam segnius iudicantis lenitudo distulerit, reciprocos poenae sortiatur incursus. dat. xv kal. novemb. urso et polemio conss. (338 oct. 18).

CTh.9.1.8

Impp. valentinianus et valens aa. ad maximinum correctorem tusciae. non sinendum est, ut quisque negotii criminalis strepitu terreatur, nisi inscriptione conscribtus et exhibitionis iniuriam et rei condicionem sustineat. dat. xv kal. dec. remis, acc. florentiae gratiano nob. p. c. et dagalaifo conss. (366 nov. 17).

CTh.9.1.9 [=brev.9.1.4]

Impp. valent. et valens aa. ad valerianum pf. u. non prius quemquam sinceritas tua ad tuae sedis examen iubebit adduci, quam solennibus satisfecerit, qui nititur fidem doloris asserere, quum iuxta formam iuris antiqui ei, qui coeperit arguere, aut vindicta proposita sit, si vera detulerit, aut supplicium, si fefellerit. dat. vii. kal. dec. remis, gratiano n. p. et dagalaipho coss.

interpretatio. tam civile negotium quam criminale accusationis professio manu accusatoris conscripta praecedat

CTh.9.1.10 [=brev.9.1.5]

Iidem aa. et grat. a. ad florianum comitem. post alia: ultra provinciae terminos accusandi licentia non progrediatur. oportet enim illic criminum iudicia agitari, ubi facinus dicitur admissum. peregrina autem iudicia praesentibus legibus coercemus. dat. v. id. nov. martianopoli, valentin. et valente iv. aa. coss.

interpretatio. criminum discussio ibi agitanda est, ubi crimen admissum est; nam alibi criminis reus prohibetur audiri

CTh.9.1.11 [=brev.9.1.6]

Iidem aaa. ad florianum comitem. post alia: nullus secundum iuris praescriptum, crimen, quod intendere proposuerit, exsequatur, nisi subeat inscriptionis vinculum. etenim qui alterius famam, fortunas, caput denique et sanguinem in iudicium devocaverit, sciat sibi impendere congruam poenam, si, quod intenderit, non probaverit etc. dat. v. id. nov. martianopoli, valentin. et valente iv. aa. coss.

interpretatio. nisi inscriptione celebrata per ordinem reum quemquam non fieri, nec ad iudicium exhiberi, quia sicut convictum poena constringit, ita et accusatorem, si non probaverit, quod obiecit

CTh.9.1.12 [=brev.9.1.7]

Iidem aaa. laodicio praesidi sardiniae. neganda est accusatis licentia criminandi, priusquam se crimine, quo premuntur, exuerint. nam sanctionum veterum conditores adimendam licentiam omnibus censuerunt in accusatores suos invidiosam dicendi vocem. nullam itaque obtineat in iudiciis auctoritatem periclitantium furor, qui si latius evagetur, ne ipse quidem cognitor tutus erit aut quaestionem securus agitabit, qui, exsequendo iuris severitatem, non potest illorum, quos punit, odium evitare. dat. prid. id. aug. carnunti, gratiano a. iii. et equitio v. c. coss.

interpretatio. non credendum est contra alios eorum confessioni, qui in criminibus accusantur, nisi se prius probaverint innocentes: quia periculosa est et admitti non debet rei adversus quemcumque* professio

CTh.9.1.13

Imppp. valens, gratianus et valentinianus aaa. ad senatum. post alia: provincialis iudex vel intra italiam, cum in eius disceptationem criminalis causae dictio adversum senatorem inciderit, intendendi quidem examinis et cognoscendi causas habeat potestatem, verum nihil de animadversione decernens integro non causae, sed capitis statu referat ad scientiam nostram vel ad inclytas potestates. referent igitur praesides et correctores, item consulares, vicarii quoque, proconsules de capite, ut diximus, senatorio negotii examine habito. referant autem de suburbanis provinciis iudices ad praefecturam sedis urbanae, de ceteris ad praefecturam praetorio. sed praefecto urbis cognoscenti de capite senatorum spectatorum maxime virorum iudicium quinquevirale sociabitur et de praesentibus et administratorum honore functis licebit adiungere sorte ductos, non sponte delectos. et cetera. lecta in senatu iii id. feb. valente v et valentiniano aa. conss. (376 febr. 11).

CTh.9.1.14 [=brev.9.1.8]

Imppp. grat., valent. et theodos. aaa. ad marinianum vicarium hispaniae. qui vel internecivi exserit actionem vel crimen suspectae mortis intendit, non prius cuiuscumque* caput accusatione pulset, quam vinculo legis adstrictus pari coeperit poenae condicione* iurgare, ita ut etiam servos si quis crediderit accusandos, non prius ad miserorum tormenta veniatur, quam se accusator vinculo inscriptionis adstrinxerit. appetendorum enim causa servorum aut dispendium facultatum est aut poena dominorum. dat. vi. kal. iun. patavi, merobaude iterum et saturnino coss.

interpretatio. quicumque* alium de homicidii crimine periculosa vel capitali obiectione pulsaverit, non prius a iudicibus audiatur, quam se similem poenam, quam reo intendit, conscripserit subiturum: et si servos alienos accusandos esse crediderit, se simili inscriptione constringat, futurum ut supplicia innocentum servorum aut poena capitis sui aut facultatum amissione compenset

CTh.9.1.15 [=brev.9.1.9]

Iidem aaa. cynegio pf. p. concessum singuli universique cognoscant, non emendicatis suffragiis decretorum, sed lite suis nominibus instituta illustris et magnificae celsitudinis tuae adeundam potestatem, quoniam accusari unumquemque per alterum non oportet: videlicet ut iustitia et aequitate, qua notus es, in iudice punias, si innoxios verberavit, in officio, si fortasse conticuit, quod caedi decuriones innoxios non liceret. dat. prid. kal. mai. constantinopoli, arcadio a. i. et bautone coss.

interpretatio. in criminalibus causis vel obiectionibus per mandatum nullus accuset; nec si per rescriptum principis hoc potuerit impetrare. sed ipse, qui crimen intendit, praesens per se accuset, inscriptione praemissa. iudices autem puniendi sunt et damnandum officium, si fortasse tacuerint, si innocentem nisi praemissa inscriptione subdendum crediderint quaestioni

CTh.9.1.16

Idem aaa. extra provinciae terminos accusatori non erit licentia progredi, quia oportet illic criminum iudicia fieri, ubi facinus dicatur admissum. dat. iii kal. april. honorio nobilissimo puero et evodio conss. (386 mart. 30).

CTh.9.1.17

Idem aaa. tatiano praefecto praetorio. post alia: tunc convenit potentiores viros adesse iudiciis, cum eorum praesentiam criminalis per inscriptionem causa deposcat. dat. xv kal. mar. mediolano valentiniano a. iiii et neoterio conss. (390 feb. 15).

CTh.9.1.18 [=brev.9.1.10]

Impp. arcad. et honor. aa. ne diversorum criminum rei vel desidia iudicum vel quadam lenitatis ambitione per provincias detenti in carcere crudelius differantur, moneantur omnes iudices, productos e custodiis reos disceptationi debitae subdere et, quod leges suaserint, definire. dat. iii. non. aug. constantinopoli, arcadio iv. et honorio iii. aa. coss.

interpretatio. rei non multo tempore in carcere vel in custodia teneantur, sed celeriter aut innocentes absolvantur, aut si convicti fuerint criminosi, sententia puniantur

CTh.9.1.19pr. [=brev.9.1.11pr.]

Impp. honor. et theodos. aa. consulibus, praetoribus, tribunis plebis, senatui suo salutem dicunt. accusationis ordinem iam dudum legibus institutum servari iubemus, ut, quicumque* in discrimen capitis arcessitur, non statim reus, qui accusari potuit, aestimetur, ne subiectam innocentiam faciamus. sed quisquis ille est, qui crimen intendit, in iudicium veniat, nomen rei indicet et vinculum inscriptionis arripiat, custodiae similitudinem, habita tamen dignitatis aestimatione, patiatur, nec impunitam fore noverit licentiam mentiendi, quum calumniantes ad vindictam poscat similitudo supplicii.

CTh.9.1.19.1 [=brev.9.1.11.1]

Nemo sibi tamen obiectu cuiuslibet criminis blandiatur de se in quaestione confessus, veniam propter flagitia sperans adiuncti, vel communione criminis consortium personae superioris optans, aut inimici supplicio in ipsa supremorum suorum sorte sociandus, aut eripi se posse confidens studio aut privilegio nominati, quum veteris iuris auctoritas de se confessos ne interrogari quidem de aliorum conscientia sinat. nemo igitur de proprio crimine confitentem super conscientia scrutetur aliena nemo credat supplicia fugienti; commonitoriis secreto mandatis fidem penitus abnegamus etc. dat. viii. id. aug. ravennae, asclepiodoto et mariniano coss.

interpretatio. ante inscriptionem nemo efficitur criminosus: nam inscriptione per ordinem facta, tunc a iudice suscipiendus est reus et custodiae cum accusatore tradendus est, ea tamen ratione, ut tam accusati quam accusatoris dignitas aestimetur, et unumquemque ante discussionem ita iudex faciat custodiri, ut eorum natales aut dignitas patiuntur. sane his, qui crimina sua in quaestione confessi sunt, de aliis si dicere voluerint, a iudice non credatur, quia iure et legibus constitutum est, ut spontanea professione reus reum non faciat, neque illi de altero credatur, qui se criminosum esse confessus est

CTh.9.2.0. De exhibendis vel transmittendis reis

CTh.9.2.1

Imp. iulianus a. sallustio praefecto praetorio. ius senatorum et auctoritatem eius ordinis, in quo nos quoque ipsos esse numeramus, necesse est ab omni iniuria defendere. si quis ergo senator socius criminis insimulatus fuerit, ante causae cognitionem omni terrore calumniae, omni suspicionis molestia careat; vacuus sit prorsus et liber, antequam re convicta crimen agnoscat et exuat dignitatem. dat. non. feb. constantinopoli mamertino et nevitta conss. (362 febr. 5).

CTh.9.2.2

Impp. valentinianus et valens aa. valentino consulari piceni. quisquis fuerit, quem crimen pulsat, quem negotium tangit, comprehensum eum iudex sub custodia constituat atque ita vel causae meritum vel personae qualitatem ad nos referat, vel, si longius fuerimus, ad illustres viros praefectos praetorio, sive ad magistros militum, si militaris fuerit persona, ne sub specie vel verae vel ementitae dignitatis facinora dilabantur. dabimus enim formam, quam unusquisque iudex sequetur in eo, qui reus fuerit inventus. interim ille, qui in suspicionem venerit negotii criminalis, cuiuscumque honoris esse dicatur, comprehensus ex officio non recedat. dat. xi kal. feb. mediolano valentiniano et valente aa. conss. (365 ian. 22).

CTh.9.2.3

Imppp. gratianus, valentinianus et theodosius aaa. eutropio praefecto praetorio. nullus in carcerem, priusquam convincatur, omnino vinciatur. ex longinquo si quis est acciendus, non prius insimulanti adcommodetur adsensus quam sollemni lege se vinxerit et in poenam reciproci stilo trepidante recaverit. eique qui deducendus erit ad disponendas res suas componendosque maestos penates spatium coram loci iudice aut etiam magistratibus dierum xxx tribuatur, nulla remanente aput eum qui ad exhibendum missus est copia nundinandi. qui posteaquam ad iudicem venerit, adhibita advocatione ius debebit explorare quaesitum ac tamdiu pari cum accusatore fortuna retineri, donec reppererit cognitio celebrata discrimen. dat. iii kal. ian. constantinopoli gratiano v et theodosio i aa. conss. (380 dec. 30).

CTh.9.2.4

Imppp. valentinianus, theodosius et arcadius aaa. drepanio proconsuli africae. neminem iudicio exhibendum esse praecipimus, nisi de cuius exhibitione iudex pronuntiaverit. dat. prid. non. feb. mediolano valentiniano a. iiii et neoterio conss. (390 febr. 4).

CTh.9.2.5

Impp. honorius et theodosius aa. caeciliano praefecto praetorio. defensores civitatum, curatores, magistratus et ordines oblatos sibi reos in carcerem non mittant, sed in ipso latrocinio vel congressu violentiae aut perpetrato homicidio, stupro vel raptu vel adulterio deprehensos et actis municipalibus sibi traditos expresso crimine prosecutionibus arguentium cum his, a quibus fuerint accusati, mox sub idonea prosecutione ad iudicium dirigant. et cetera. dat. xii kal. feb. ravennae honorio viii et theodosio iii aa. conss. (409 ian. 21).

CTh.9.2.6

Impp. honorius et theodosius aa. caeciliano praefecto praetorio. si quos praecepto iudicum praemisso inscriptionis vinculo reos factos adminiculum curiae propriae dirigere iussum fuerit, municipalibus actis interrogentur, an velint iuxta praeceptum triumphalis patris nostri xxx diebus sibi concessis sub moderata et diligenti custodia propter ordinationem domus propriae parandosque sibi sumptus in civitate residere. quod si fieri voluerint, hoc genus beneficii cupientibus non negetur: si vero dirigi velint, mox reos cum suis accusatoribus mittant nec ad arbitrium adversariorum in civitatibus retineri patiantur. et cetera. dat. xii kal. feb. ravennae honorio viii et theodosio iii aa. conss. (409 ian. 21).

CTh.9.3.0. De custodia reorum

CTh.9.3.1pr.

Imp. constantinus a. ad florentium rationalem. in quacumque causa reo exhibito, sive accusator exsistat sive eum publicae sollicitudinis cura perduxerit, statim debet quaestio fieri, ut noxius puniatur, innocens absolvatur. quod si accusator aberit ad tempus aut sociorum praesentia necessaria videatur, id quidem debet quam celerrime procurari. interea vero exhibito non ferreas manicas et inhaerentes ossibus mitti oportet, sed prolixiores catenas, ut et cruciatio desit et permaneat fida custodia. nec vero sedis intimae tenebras pati debebit inclusus, sed usurpata luce vegetari et, ubi nox geminaverit custodiam, vestibulis carcerum et salubribus locis recipi ac revertente iterum die ad primum solis ortum ilico ad publicum lumen educi, ne poenis carceris perimatur, quod innocentibus miserum, noxiis non satis severum esse cognoscitur. (320 iun. 30).

CTh.9.3.1.1

Illud etiam observabitur, ut neque his qui stratorum funguntur officio neque ministris eorum liceat crudelitatem suam accusatoribus vendere et innocentes intra carcerum saepta leto dare aut subtractos audientiae longa tabe consumere. non enim existimationis tantum, sed etiam periculi metus iudici imminebit, si aliquem ultra debitum tempus inedia aut quocumque modo aliquis stratorum exhauserit et non statim eum penes quem officium custodiae est adque eius ministros capitali poena subiecerit. dat. prid. cal. iul. serdicae constantino a. vi et constantino caes. conss. (320 iun. 30).

CTh.9.3.2

Idem a. ad evagrium. si quis in ea culpa vel crimine fuerit deprehensus, quod dignum claustris carceris et custodiae squalore videtur, auditus aput acta, cum de admisso constiterit, poenam carceris sustineat atque ita postmodum eductus aput acta audiatur. ita enim quasi sub publico testimonio commemoratio admissi criminis fiet, ut iudicibus inmodice saevientibus freni quidam ac temperies adhibita videatur. dat. iii non. feb. heracleae constantino a. vii et constantio caes. conss. (326 febr. 3).

CTh.9.3.3 [=brev.9.2.1]

Imp. constantius a. acyndino pf. p. quoniam unum carceris conclave permixtos secum criminosos includit, hac lege sancimus, ut, etiamsi poenae qualitas permixtione iungenda est, sexum tamen disparem diversa claustrorum habere tutamina iubeatur. dat. non. april. acyndino et proculo coss.

interpretatio. viri et mulieres, etiamsi criminis aequalitate iungantur, non tamen in unius carceris custodia teneantur

CTh.9.3.4

Impp. valentinianus et valens aa. ad valerianum vicarium hispaniarum. post alia: nullus ante carceris custodiae mancipetur, quam ab eo, qui in accusationem eius erupit, in codice publico sollemnia inscriptionis impleta sint. praelata litteris v. c. vicarii vi id. sep. veronae valentiniano et valente aa. conss. (365 sept. 8).

CTh.9.3.5 [=brev.9.2.2]

Imppp. valent., valens et grat. aaa. ad probum pf. p. ad commentariensem receptarum personarum custodia observatioque pertineat, nec putet hominem abiectum atque vilem obiiciendum esse iudiciis, si reus condicione* aliqua fuerit elapsus. nam ipsum volumus eius poena consumi, cui obnoxius docebitur fuisse, qui fugerit. si vero commentariensis necessitate aliqua procul ab officio egerit, adiutorem eius pari iubemus invigilare cura, et eadem statuimus legis severitate constringi. dat. iii. kal. iul. contionaci, gratiano a. ii. et probo coss.

interpretatio. si de carcere reus fugerit, ab eo, cui est traditus, requiratur: qui si eum non potuerit praesentare, noverit negligens custos, illius se aut damnum aut poenam, qui fugerit, subiturum

CTh.9.3.6

Imppp. gratianus, valentinianus et theodosius aaa. eutropio praefecto praetorio. de his quos tenet carcer id aperta definitione sancimus, ut aut convictum velox poena subducat aut liberandum custodia diuturna non maceret. temperari autem ab innoxiis austera praeceptione sancimus et praedandi omnem segetem de neglegentia iudicum provinciarum ministris feralibus amputamus. nam nisi intra tricensimum diem semper commentariensis ingesserit numerum personarum, varietatem delictorum, clausorum ordinem aetatemque vinctorum, officium viginti auri libras aerario nostro iubemus inferre, iudicem desidem ac resupina cervice tantum titulum gerentem extorrem impetrata fortuna decem auri libris multandum esse censemus. dat. iii kal. ian. constantinopoli gratiano v et theodosio i aa. conss. (380 dec. 30).

CTh.9.3.7 [=brev.9.2.3]

Impp. honor. et theodos. aa. caeciliano pf. p. post alia: iudices omnibus dominicis diebus productos reos e custodia carcerali videant et interrogent, ne his humanitas clausis per corruptos carcerum custodes negetur. victualem substantiam non habentibus faciant ministrari, libellis duabus aut tribus diurnis vel quot existimaverint, commentariensi decretis, quorum sumptibus* proficiant alimoniae pauperum quos ad lavacrum sub fida custodia duci oportet, mulcta iudicibus viginti librarum auri et officiis eorum eiusdem ponderis constituta, ordinibus quoque trium librarum auri mulcta proposita, si saluberrime statuta contempserint*. nec deerit antistitum christianae religionis cura laudabilis, quae ad observationem constituti iudicis hanc ingerat monitionem. dat. xii. kal. febr. ravenna, honorio viii. et theodos. iii. aa. coss.

interpretatio. omnibus dominicis diebus iudices sub fida custodia de carceribus reos educant, ut eis a christianis vel a sacerdotibus substantia vel alimonia praebeatur, et ad balneum praedictis diebus sub fida custodia religionis contemplatione ducantur. si qui iudices hoc implere neglexerint, poenam, quam lex ipsa constituit, cogantur implere

CTh.9.4.0. Si quis imperatori maledixerit

CTh.9.4.1

Imppp. theodosius, arcadius et honorius aaa. rufino praefecto praetorio. si quis modestiae nescius et pudoris ignarus improbo petulantique maledicto nomina nostra crediderit lacessenda ac temulentia turbulentus obtrectator temporum fuerit, eum poenae nolumus subiugari neque durum aliquid nec asperum sustinere, quoniam si id ex levitate processerit, contemnendum est, si ex insania, miseratione dignissimum, si ab iniuria, remittendum. unde integris omnibus ad nostram scientiam referatur, ut ex personis hominum dicta pensemus et, utrum praetermitti an exequi rite debeat, censeamus. dat. v id. aug. constantinopoli theodosio a. iii et abundantio v. c. conss. (393 aug. 9).

CTh.9.5.0. Ad legem iuliam maiestatis

CTh.9.5.1pr.

Imp. constantinus a. ad maximum praefectum urbi. si quis alicui maiestatis crimen intenderit, cum in huiuscemodi re convictus minime quisquam privilegio dignitatis alicuius a strictiore inquisitione defendatur, sciat se quoque tormentis esse subdendum, si aliis manifestis indiciis accusationem suam non potuerit comprobare. cum eo, qui huius esse temeritatis deprehenditur, illum quoque tormentis subdi oportet, cuius consilio atque instinctu ad accusationem accessisse videbitur, ut ab omnibus conmissi consciis statuta vindicta possit reportari. (314 [320-323] ian. 1).

CTh.9.5.1.1

In servis quoque vel libertis, qui dominos aut patronos accusare aut deferre temptaverint, professio tam atrocis audaciae statim in admissi ipsius exordio per sententiam iudicis comprimatur ac denegata audientia patibulo adfigatur. proposita kal. ianuar. volusiano et anniano conss. (314 [320-323] ian. 1).

CTh.9.6.0. Ne praeter crimen maiestatis servus dominum vel patronum libertus seu familiaris accuset

CTh.9.6.1

Imppp. valens, gratianus et valentinianus aaa. ad maximum praefectum praetorio. cessent liberti capitalium criminum tumultu et nefariae delationis indiciis auctores libertatis incessere, ita ut tam nefandos conatus ferri aut ignium poena compescat. proposita id. mart. valente v et valentiniano aa. conss. (376 mart. 15).

CTh.9.6.2 [=brev.9.3.1]

Imppp. valens, grat. et valent. aaa. ad maximum pf. p. quum accusatores servi dominis intonent, nemo iudiciorum exspectet eventum, nihil quaeri, nihil discuti placet, sed cum ipsis delationum libellis, cum omni scripturarum et meditati criminis apparatu nefandarum accusationum crementur auctores, excepto tamen appetitae maiestatis crimine, in quo etiam servis honesta proditio est: nam et hoc facinus tendit in dominos. dat. id. mart. valente v. et valentin. aa. coss.

interpretatio. servus dominum accusans non solum audiendus non est, verum etiam puniendus, nisi forte dominum de crimine maiestatis tractasse probaverit

CTh.9.6.3 [=brev.9.3.2]

Impp. arcad. et honor. aa. eutychiano pf. p. si quis ex familiaribus vel ex servis cuiuslibet domus cuiuscumque* criminis delator atque accusator emerserit, eius existimationem, caput atque fortunas petiturus, cuius familiaritati vel dominio inhaeserit, ante exhibitionem testium, ante examinatum iudicium, in ipsa expositione criminum atque accusationis exordio ultore gladio feriatur. vocem enim funestam intercidi oportet potius quam audiri. maiestatis crimen excipimus. dat. vi. id. nov. constantinopoli, caesario et attico coss.

interpretatio. si servus dominum aut amicus vel domesticus sive libertus patronum accusaverit vel detulerit cuiuslibet criminis reum, statim in ipso initio accusationis gladio puniatur: quia vocem talem exstingui volumus, non audiri, nisi forte dominum aut patronum de crimine maiestatis tractasse probaverit

CTh.9.6.4 [=brev.9.3.3]

Impp. honor. et theodos. aa. ad senatum. post alia: libertorum adversus patronos illicitas atque improbas voces poenae obiectione praecludimus, atque ita, ut non modo sponte prodire non audeant, sed ne vocati quidem in iudicium venire cogantur etc. dat. viii. id. aug. ravenna, asclepiodoto et mariniano coss.

interpretatio. liberti accusatores patronorum, ubi primum in accusationis vocem proruperint, puniantur

CTh.9.7.0. Ad legem iuliam de adulteriis

CTh.9.7.1 [=brev.9.4.1]

Imp. constantinus a. africano v. c. quae adulterium commisit, utrum domina cauponae an ministra fuerit, requiri debebit, et ita obsequio famulata servili, ut plerumque ipsa intemperantiae vina praebuerit; ut, si domina tabernae fuerit, non sit a vinculis iuris excepta, si vero potantibus ministerium praebuit, pro vilitate eius, quae in reatum deducitur, accusatione exclusa, liberi, qui accusantur, abscedant, quum ab his feminis pudicitiae ratio requiratur, quae iuris nexibus detinentur, hae autem immunes a iudiciaria severitate praestentur, quas vilitas vitae dignas legum observatione non credidit. dat. iii. non. febr. heracleae, constantino a. vii. et constantio c. coss.

interpretatio. tabernae domina, hoc est uxor tabernarii, si inventa fuerit in adulterio, accusari potest: si vero eius ancilla vel quae ministerium tabernae praebuit, in adulterio fuerit deprehensa, pro vilitate dimittetur. sed et ipsa tabernarii uxor, si tam vilis ministerii officium egerit et in adulterio fuerit deprehensa, accusari non potest a marito

CTh.9.7.2 [=brev.9.4.2]

Idem a. ad euagrium pf. p. quamvis adulterii crimen inter publica referatur, quorum delatio in commune omnibus sine aliqua legis interpretatione conceditur, tamen, ne volentibus temere liceat foedare connubia, proximis necessariisque personis solummodo placet deferri copiam accusandi, hoc est patri vel consobrino et consanguineo maxime fratri, quos verus dolor ad accusationem impellit. sed et his personis legem imponimus, ut crimen abolitione compescant. in primis maritum genialis tori vindicem esse oportet, cui quidem ex suspicione etiam ream coniugem facere, nec intra certa tempora inscriptionis vinculo contineri, veteres retro principes annuerunt. extraneos autem procul arceri ab hac accusatione censemus. nam etsi omne genus accusationis necessitas inscriptionis adstringat, nonnulli tamen proterve id faciunt et falsis contumeliis matrimonia deformant. pp. nicomediae vii. kal. mai., constantino a. vii. et constantio c. coss.

interpretatio. in adulterio extraneam mulierem nullus accuset, sed propinqui, ad quorum notam pertinet, hoc est frater germanus, frater patruelis, patruus et consobrinus, qui tamen ante inscriptionem, si accusata acquieverit, possunt per satisfactionem veniam promereri. reliqui ab accusatione prohibentur. maritis sane etiam ex suspicione accusare permissum est

CTh.9.7.3

Impp. constantius et constans aa. ad populum. cum vir nubit in feminam, femina viros proiectura quid cupiat, ubi sexus perdidit locum, ubi scelus est id, quod non proficit scire, ubi venus mutatur in alteram formam, ubi amor quaeritur nec videtur, iubemus insurgere leges, armari iura gladio ultore, ut exquisitis poenis subdantur infames, qui sunt vel qui futuri sunt rei. dat. prid. non. dec. mediolano, proposita romae xvii kal. ianuar. constantio iii et constante ii aa. conss. (342 dec. 4).

CTh.9.7.4pr. [=brev.9.4.3pr.]

Imppp. grat., valent. et theodos. aaa. cynegio pf. p. in adulterii quaestione ab omni familia, non solum mariti, sed etiam uxoris, quae tamen tunc temporis domi fuerit, quo adulterium dicatur admissum, quaerendum est sine defensione cuiusquam.

CTh.9.7.4.1 [=brev.9.4.3.1]

Idem volumus, et si forte mulier marito mortis parasse insidias vel quolibet alio genere voluntatem occidendi habuisse inveniatur.

CTh.9.7.4.2 [=brev.9.4.3.2]

Parem etiam condicionem* in interrogatione mancipiorum servari volumus, si forte maritus eo modo insectetur uxorem. dat. iii. id. dec. constantinopoli, arcadio a. i. et bautone coss.

interpretatio. de adulterio uxorum mariti per tormenta familiae utriusque, hoc est suae et uxoris quaerere permittuntur; si tamen illo tempore, quo admissum dicitur, haec ipsa mancipia praesentia aut in eadem domo fuisse probantur. similiter et si mortem sibi ab uxore adultera maritus paratam fuisse conqueratur, utriusque familiae discussione quaeri licet. similiter etiam familiae utriusque poena quaerendum est, si maritus mortem uxori qualibet ratione paraverit

CTh.9.7.5 [=brev.9.4.4]

Imppp. valent., theodos. et arcad. aaa. cynegio pf. p. ne quis christianam mulierem in matrimonium iudaeus accipiat, neque iudaeae christianus coniugium sortiatur. nam si quis aliquid huius modi admiserit, adulterii vicem commissi huius crimen obtinebit, libertate in accusandum publicis quoque vocibus relaxata. dat. iii. id. mart. thessalonica, theodos. a. ii. et cynegio coss.

interpretatio. nec iudaeus christianam nec christianus iudaeam ducat uxorem. quod si fecerit, cuiuslibet accusatione velut in adulteros vindicetur

CTh.9.7.6 [=brev.9.4.5]

Iidem aaa. orientio vicario urbis romae. omnes, quibus flagitii usus est, virile corpus muliebriter constitutum alieni sexus damnare patientia (nihil enim discretum videntur habere cum feminis), huius modi scelus spectante populo flammis vindicibus expiabunt. pp. in foro traiani viii. id. aug., valentin. a. iv. et neoterio coss. haec lex interpretatione non indiget.

CTh.9.7.7 [=brev.9.4.6]

Imppp. theodos., arcad. et honor. aaa. rufino pf. p. adulterii accusatione proposita, praescriptiones civiles, quibus aut dos repeti fingitur, aut ex ratione aliqua debitum flagitatur, quae occurrere atque perstrepere examini consuerunt, iussimus sequestrari, nec earum obice aliquid negotio tarditatis afferri; sed accusatione fundata, hoc est quum, quo iure quove tempore actio fuerit intromissa, constiterit, discutiatur crimen, facti qualitas publicetur, quum et iurgia, quae magnitudine superant, praeponantur, et civilis actio criminali iure postponatur, idem tamen, quum competere coeperit, habitura momenti, dummodo non obsit examini. dat. vii. id. dec. constantinopoli, arcadio a. ii. et rufino coss.

interpretatio. quum adulterium maritus accusator obiecerit, dotis aut donationis repetitio conquiescat quia civilem repetitionem misceri criminali accusationi non oportet

CTh.9.7.8 [=brev.9.4.7]

Iidem aaa. rufino pf. p. si qui adulterii fuerint accusati et obtentu proximitatis intentata depulerint, per commemorationem necessitudinis fidem crimini derogando, dum existimatur non debere credi, quod allegatur, non potuisse committi, hi si postmodum in nuptias suas consortiumque convenerint, facinus illud, quo fuerint accusati, manifesta fide atque indiciis evidentibus publicabunt. unde si qui eius modi reperti fuerint, iussimus in eosdem severissime vindicari, et veluti convictum facinus confessumque puniri. dat. prid. non. dec. constantinopoli, theodos. a. iii. et abundantio v. c. coss.

interpretatio. qui in adulterio accusantur et se propinquitatis aut amicitiarum excusatione defenderint, si fortasse quolibet tempore secretum crimen publica coniunctione prodiderint, eos velut manifestos adulteros puniri placet

CTh.9.7.9

Idem aaa. gildoni comiti et magistro utriusque militiae per africam. si quis adulterii reus factus accusatoris mariti forum declinare temptaverit, in hoc non possit eludere, nec praerogativa militari defensetur, ibi confestim audiendus, ubi fuerit accusatus. dat. iii kal. ianuar. constantinopoli theodosio a. iii et abundantio conss. (393 dec. 30).

CTh.9.8.0. [=brev.9.5.0.] Si quis eam, cuius tutor fuerit, corruperit.

CTh.9.8.1 [=brev.9.5.1]

Imp. constantinus a. ad bassum vicarium italiae. post alia: ubi puellae ad annos adultae aetatis accesserint et adspirare ad nuptias coeperint, tutores necesse habeant comprobare, quod puellae sit intemerata virginitas, cuius coniunctio postulatur. quod ne latius porrigatur, hic solus debet tutorem nexus adstringere, ut se ipsum probet ab iniuria laesi pudoris immunem. quod ubi constiterit, omni metu liber optata coniunctione frui debebit; officio servaturo, ut, si violatae castitatis apud ipsum facinus haereat, deportatione plectatur, atque universae eius facultates fisci viribus vindicentur, quamvis eam poenam debuerit sustinere, quam raptori leges imponunt. dat. prid. non. april. aquileia, constantino a. vi. et constantino c. coss.

interpretatio. ubi primum puellae sub tutore viventes ad annos pervenerint nuptiales, et quicumque* petitor accesserit, non prius puella iungatur, nisi virginitas illius, quod a tutore servata sit, fuerit approbata: nam si ab ipso tutore convincitur eius violata virginitas, statim exsilio deputetur, et res illius omnes fiscus usurpet

CTh.9.9.0. [=brev.9.6.0.] De mulieribus, quae se servis propriis iunxerunt.

CTh.9.9.1pr. [=brev.9.6.1pr.]

Imp. constantinus a. ad populum. si qua cum servo occulte rem habere detegitur, capitali sententiae subiugetur, tradendo ignibus verberone, sitque omnibus facultas crimen publicum arguendi, sit officio copia nuntiandi, sit etiam servo licentia deferendi, cui probato crimine libertas dabitur, quum falsae accusationi poena immineat.

CTh.9.9.1.1 [=brev.9.6.1.1]

Ante legem nupta tali consortio segregetur, non solum domo, verum etiam provinciae communione privata, amati abscessum defleat relegati.

CTh.9.9.1.2 [=brev.9.6.1.2]

Filii etiam, quos ex hac coniunctione habuerit, exuti omnibus dignitatis insignibus, in nuda maneant libertate, neque per se neque per interpositam personam quolibet titulo voluntatis accepturi aliquid ex facultatibus mulieris.

CTh.9.9.1.3 [=brev.9.6.1.3]

Successio autem mulieris ab intestato vel filiis, si erunt legitimi, vel proximis cognatisque deferatur vel ei, quem ratio iuris admittit, ita ut et quod ille, qui quondam amatus est, et quod ex eo suscepti filii quolibet casu in sua videntur habuisse substantia, dominio mulieris sociatum a memoratis successoribus vindicetur.

CTh.9.9.1.4 [=brev.9.6.1.4]

His ita omnibus observandis, et si ante legem decessit mulier vel amatus, quoniam vel unus auctor vitii censurae occurrit.

CTh.9.9.1.5 [=brev.9.6.1.5]

Sin vero iam uterque decessit, soboli parcimus, ne defunctorum parentum vitiis praegravetur; sint filii, sint potiores fratribus, proximis atque cognatis, sint relictae successionis heredes.

CTh.9.9.1.6 [=brev.9.6.1.6]

Post legem enim hoc committentes morte punimus. qui vero ex lege disiuncti clam denuo convenerint, congressus vetitos renovantes, hi servorum indicio vel speculantis officii vel etiam proximorum delatione convicti poenam similem sustinebunt. dat. iv. kal. iun. serdicae, constantino a. vii. et constantio c. coss.

interpretatio. si qua ingenua mulier servo proprio se occulte miscuerit, capitaliter puniatur. servus etiam, qui in adulterio dominae convictus fuerit, ignibus exuratur. in potestate habeat huius modi crimen quicumque* voluerit accusare. servi etiam aut ancillae, si de hoc crimine accusationem detulerint, audiantur: ea tamen ratione, ut si probaverint, libertatem consequantur, si fefellerint, puniantur. hereditas mulieris, quae se tali crimine maculaverit, vel filiis, si sunt ex marito suscepti, vel propinquis ex lege venientibus tribuatur

CTh.9.10.0. Ad legem iuliam de vi publica et privata

CTh.9.10.1 [=brev.9.7.1]

Imp. constantinus a. ad catulinum proconsulem africae. qui in iudicio manifestam detegitur commisisse violentiam, non iam relegatione aut deportatione insulae plectatur, sed supplicium capitale excipiat, nec interposita provocatione sententiam, quae in eum fuerit dicta, suspendat, quoniam multa facinora sub uno violentiae nomine continentur, quum aliis vim inferre tentantibus, aliis cum indignatione repugnantibus verbera caedesque crebro deteguntur admissae. unde placuit, si forte quis vel ex possidentis parte vel ex eius, qui possessionem temerare tentaverit, interemptus* sit, in eum supplicium exseri, qui vim facere tentavit et alterutri parti causam malorum praebuit. dat. xv. kal. mai. serdicae, gallicano et basso coss.

interpretatio. convictus in iudicio de evidenti violentiae crimine capite puniatur, nec sententiam iudicis qui damnatus est qualibet appellatione suspendat: et si fortasse homicidia ab utraque parte commissa fuerint, in illum vindicetur, qui ut alium per caedem expelleret, violenter ingressus est

CTh.9.10.2

Idem a. ad bassum praefectum urbi. si quis per violentiam alienum fundum invaserit, capite puniatur. et sive quis ex eius parte, qui violentiam inferre temptaverit, sive ex eius, qui iniuriam repulsaverit, fuerit occisus, eum poena adstringat, qui vi deicere possidentem voluerit. dat. vi id. mart. romae gallicano et basso conss. (317 mart. [?] 10).

CTh.9.10.3 [=brev.9.7.2]

Iidem a. ad bassum pf. u. si quis ad se fundum vel quodcumque* aliud asserit pertinere, ac restitutionem sibi competere possessionis putat, civiliter super possidendo agat, aut impleta solennitate iuris crimen violentiae opponat, non ignarus, eam se sententiam subiturum, si crimen obiectum non potuerit comprobare, quam reus debet excipere. quod si omissa interpellatione vim possidenti intulerit, ante omnia violentiae causam examinari praecipimus, et in ea requiri, quis ad quem venerit possidentem, ut ei, quem constiterit expulsum, amissae possessionis iura reparentur, eademque protinus restituta violentus, poenae non immerito destinatus, in totius litis terminum differatur, ut, agitato negotio principali, si contra eum fuerit iudicatum, in insulam deportetur, bonis omnibus abrogatis. quod si pro eo, quem claruerit esse violentum, sententia proferetur, omnium rerum, de quibus litigatum est, media pars penes eum resideat, cetera fisci viribus vindicentur. pp. prid. non. oct. romae, constantino a. v. et licinio c. coss.

interpretatio. si quis adversarium suum ita apud iudicem crediderit accusandum, ut se asserat violentiam pertulisse, ad probationem rei eum convenit attineri: quod si probare non potuerit, quem dixerat violentum, eandem poenam suscipiat, quam ille, quem impetit, convictus potuisset excipere. de reliquo haec lex praetermittenda est, quia in quarto libro sub titulo unde vi, quae tamen temporibus posterior inventa est, habetur exposita

CTh.9.10.4pr. [=brev.9.7.3pr.]

Imppp. valent., theodos. et arcad. aaa. ad albinum pf. u. servos, qui fecisse violentiam confessionibus testium aut propriis docebuntur, si id inscio domino commiserint, postremo supplicio deditos luere perpetrata censemus. quod si illi metu atque exhortatione dominorum violentiam admiserint, palam est, secundum legem iuliam dominum infamem pronuntiandum loci aut originis propriae dignitate non uti, servos vero, quos furoribus talium paruisse constiterit, metallis per sententiam dedi. viles autem infamesque personae et hi, qui bis aut saepius violentiam perpetrasse convincentur, constitutionum divalium poena teneantur.

CTh.9.10.4.1 [=brev.9.7.3.1]

Iudicem vero nosse oportet, quod gravi infamia sit notandus, si violentiae crimen apud se probatum distulerit, omiserit vel impunitate donaverit aut molliore, quam praestituimus, poena perculerit. dat. prid. non. mart. mediolano, valentin. a. iv. et neoterio v. c. coss.

interpretatio. si servi inscio domino confessi vel convicti fuerint violentiam commisisse, addicti tormentis gravibus puniuntur. si vero iubentibus dominis violentiae crimen admiserint, domini, qui illicita praeceperunt, notantur infamia et nobilitatis vel honoris sui dignitatem tenere non possunt. servi autem, qui talibus dominorum furoribus paruerunt, in metallum detruduntur. ceterum non liceat iudicibus discussionem violentiae differre vel dimittere vel donare: qui si probaverint violentiam et non statim vindicaverint, noverint se periculum subituros. viles autem personae, quae bis aut frequenter admisisse violentiam comprobantur, constituta legibus poena supra scripta omnimodis feriantur

CTh.9.11.0. [=brev.9.8.0.] De privati carceris custodia.

CTh.9.11.1 [=brev.9.8.1]

Imppp. valent., theodos. et arcad. aaa. erytrio praefecto augustali. si quis posthac reum privato carceri destinarit, reus maiestatis habeatur. dat. prid. kal. mai. thessalonica, theodos. a. ii. et cynegio v. c. coss. ista lex interpretatione non indiget.

CTh.9.12.0. De emendatione servorum

CTh.9.12.1

Imp. constantinus a. ad bassum. si virgis aut loris servum dominus adflixerit aut custodiae causa in vincla coniecerit, dierum distinctione sive interpretatione depulsa nullum criminis metum mortuo servo sustineat. nec vero inmoderate suo iure utatur, sed tunc reus homicidii sit, si voluntate eum vel ictu fustis aut lapidis occiderit vel certe telo usus letale vulnus inflixerit aut suspendi laqueo praeceperit vel iussione taetra praecipitandum esse mandaverit aut veneni virus infuderit vel dilaniaverit poenis publicis corpus, ferarum vestigiis latera persecando vel exurendo admotis ignibus membra aut tabescentes artus atro sanguine permixta sanie defluentes prope in ipsis adegerit cruciatibus vitam linquere saevitia immanium barbarorum. dat. v id. mai. romae constantino a. v et licinio c. conss. (319 mai. 11).

CTh.9.12.2 [=brev.9.9.1]

Imp. constantinus a. maximiliano macrobio... quoties verbera dominorum talis casus servorum comitabitur, ut moriantur, culpa nudi sunt, qui, dum pessima corrigunt, meliora suis acquirere vernulis voluerunt. nec requiri in huius modi facto volumus, in quo interest domini incolume iuris proprii habere mancipium, utrum voluntate occidendi hominis an vero simpliciter facta castigatio videatur. toties etenim dominum non placet morte servi reum homicidii pronuntiari, quoties simplicibus quaestionibus domesticam exerceat potestatem. si quando igitur servi plagarum correctione, imminente fatali necessitate, rebus humanis excedunt, nullam metuant domini quaestionem. dat. xiv. kal. mai. sirmio, constantino a. vii. et constantio c. coss.

interpretatio. si servus, dum culpam dominus vindicat, mortuus fuerit, dominus culpa homicidii non tenetur, quia tunc homicidii reus est, si occidere voluisse convincitur. nam emendatio non vocatur ad crimen

CTh.9.13.0. [=brev.9.10.0.] De emendatione propinquorum.

CTh.9.13.1 [=brev.9.10.1]

Impp. valent. et valens aa. ad senatum. in corrigendis minoribus pro qualitate delicti senioribus propinquis tribuimus potestatem, ut, quos ad vitae decora domesticae laudis exempla non provocant, saltem correctionis medicina compellat. neque nos in puniendis morum vitiis potestatem in immensum extendi volumus, sed iure patrio auctoritas corrigat propinqui iuvenis erratum et privata animadversione compescat. quod si atrocitas facti ius domesticae emendationis excedit, placet, enormis delicti reos dedi iudicum notioni. dat. prid. kal. dec. valentin. et valente aa. coss.

interpretatio. propinquis senioribus lege permittitur errorem vel culpas adolescentium propinquorum patria districtione corrigere, id est ut si verbis vel verecundia emendari non possint, privata districtione verberibus corrigantur. quod si gravior culpa fuerit adolescentis, quae privatim emendari non possit, in notitiam iudicis deferatur

CTh.9.14.0. Ad legem corneliam de sicariis

CTh.9.14.1 [=brev.9.11.1]

Imppp. valent., valens et grat. aaa. ad probum pf. p. si quis necandi infantis piaculum aggressus aggressave sit, erit capitale istud malum. pp. vii. id. febr. romae, gratiano a. iii. et equitio coss.

interpretatio. sive vir sive mulier infantem necaverit, rei homicidii teneantur

CTh.9.14.2 [=brev.9.11.2]

Imppp. valent., theodos. et arcad. aaa. ad provinciales. liberam resistendi cunctis tribuimus facultatem, ut quicumque* militum vel privatorum ad agros nocturnus populator intraverit, aut itinera frequentata insidiis aggressionis obsederit, permissa cuicumque* licentia, dignus illico supplicio subiugetur, ac mortem, quam minabatur, excipiat, et id, quod intendebat, incurrat. melius est enim occurrere in tempore, quam post exitum vindicari. vestram igitur vobis permittimus ultionem, et, quod serum est punire iudicio, subiugamus edicto.

nullus parcat militi, cui obviari telo oporteat ut latroni. dat. kal. iul. tatiano et symmacho coss.

interpretatio. quoties ad faciendam rapinam aliquis aut iter agentem aut domum cuiuslibet nocturnus exspoliator aggreditur, huius modi personis, quae vim sustinent, damus etiam cum armis licentiam resistendi, et si pro temeritate sua occisus fuerit ille, qui venerit, mors latronis ipsius a nemine requiratur

CTh.9.14.3pr.

Impp. arcadius et honorius aa. eutychiano praefecto praetorio. quisquis cum militibus vel privatis, barbaris etiam scelestam inierit factionem aut factionis ipsius susceperit sacramenta vel dederit, de nece etiam virorum illustrium, qui consiliis et consistorio nostro intersunt, senatorum etiam, nam et ipsi pars corporis nostri sunt, cuiuslibet postremo qui nobis militat cogitarit, eadem enim severitate voluntatem sceleris qua effectum puniri iura voluerunt: ipse quidem utpote maiestatis reus gladio feriatur bonis eius omnibus fisco nostro addictis, filii vero eius, quibus vitam imperatoria specialiter lenitate concedimus, paterno enim deberent perire supplicio, in quibus paterni, hoc est hereditarii criminis exempla metuantur, a materna vel avita, omnium etiam proximorum hereditate ac successione habeantur alieni, testamentis extraneorum nihil capiant, sint perpetuo egentes et pauperes, infamia eos paterna semper comitetur, ad nullos umquam honores, nulla prorsus sacramenta perveniant, sint postremo tales, ut is perpetua egestate sordentibus sit et mors solacio et vita supplicio. (397 sept. 4).

CTh.9.14.3.1

Denique iubemus etiam eos notabiles esse sine venia, qui pro talibus umquam aput nos intervenire temptaverint. (397 sept. 4).

CTh.9.14.3.2

Ad filias sane eorum, quolibet numero fuerint, falcidiam tantum ex bonis matris, sive testata sive intestata defecerit, volumus pervenire, ut habeant ingrate potius filiae alimoniam quam integre emolumentum ac nomen heredis. mitior enim circa eas debet esse sententia, quas pro infirmitate sexus minus ausuras esse confidimus. (397 sept. 4).

CTh.9.14.3.3

Emancipatio, quae a praedictis sive in filios post legem dumtaxat latam sive in filias fuerit collata, non valeat. (397 sept. 4).

CTh.9.14.3.4

Dotes donationes, quarumlibet postremo rerum alienationes, quas ex eo tempore qualibet fraude vel iure factas esse constiterit, quo primum memorati de ineunda factione ac societate cogitaverint, nullius statuimus esse momenti. (397 sept. 4).

CTh.9.14.3.5

Uxores sane praedictorum recuperatas dotes, si in ea condicione fuerint, ut, quae a viris titulo donationis acceperint, filiis debeant reservare, tempore quo ususfructus absumitur omnia ea fisco nostro se relicturas esse cognoscant, quae iuxta legem filiis debebantur: falcidia etiam ex his rebus filiabus tantum, non etiam filiis deputata. (397 sept. 4).

CTh.9.14.3.6

Id, quod de praedictis eorumque filiis cavimus, etiam de satellitibus consciis ac ministris filiisque eorum simili severitate censemus. (397 sept. 4).

CTh.9.14.3.7

Sane si quis ex his in exordio initae factionis studio verae laudis accensus ipse prodiderit factionem, et praemio a nobis et honore donabitur. is vero, qui usus fuerit factione, si vel sero, tamen incognita adhuc consiliorum arcana patefecerit, absolutione tantum ac venia dignus habebitur. dat. prid. non septemb. ancyrae caesario et attico conss. (397 sept. 4).

CTh.9.15.0. [=brev.9.12.0.] De parricidis.

CTh.9.15.1 [=brev.9.12.1]

Imp. constantinus a. ad verinum vicarium africae. si quis in parentis aut filii aut omnino affectionis eius, quae nuncupatione parricidii continetur, fata properaverit, sive clam sive palam id fuerit enisus, neque gladio, neque ignibus, neque ulla alia solenni poena subiugetur, sed insutus culeo et inter eius ferales angustias comprehensus serpentum contuberniis misceatur et, ut regionis qualitas tulerit, vel in vicinum mare vel in amnem proiiciatur, ut omni elementorum usu vivus carere incipiat, ut ei coelum superstiti, terra mortuo auferatur. dat. xvi. kal. dec. licinio v. et crispo c. coss. acc. prid. id. mart. karthagine, constantino a. v. et licinio c. coss.

interpretatio. si quis patrem matrem, fratrem sororem, filium filiam aut alios propinquos occiderit, remoto omnium aliorum genere tormentorum, facto de coriis sacco, qui culeus nominatur, in quo quum missus fuerit, cum ipso etiam serpentes claudantur: et si mare vicinum non fuerit, in quolibet gurgite proiiciatur, ut tali poena damnatus nullo tempore obtineat sepulturam

CTh.9.16.0. De maleficis et mathematicis et ceteris similibus

CTh.9.16.1

Imp. constantinus a. ad maximum. nullus haruspex limen alterius accedat nec ob alteram causam, sed huiusmodi hominum quamvis vetus amicitia repellatur, concremando illo haruspice, qui ad domum alienam accesserit et illo, qui eum suasionibus vel praemiis evocaverit, post ademptionem bonorum in insulam detrudendo: superstitioni enim suae servire cupientes poterunt publice ritum proprium exercere. accusatorem autem huius criminis non delatorem esse, sed dignum magis praemio arbitramur. proposita kal. feb. romae constantino a. v et licinio caes. conss. (319 febr. 1 [sept.....]).

CTh.9.16.2

Idem a. ad populum. haruspices et sacerdotes et eos, qui huic ritui adsolent ministrare, ad privatam domum prohibemus accedere vel sub praetextu amicitiae limen alterius ingredi, poena contra eos proposita, si contempserint legem. qui vero id vobis existimatis conducere, adite aras publicas adque delubra et consuetudinis vestrae celebrate sollemnia: nec enim prohibemus praeteritae usurpationis officia libera luce tractari. dat. id. mai. constantino a. v et licinio conss. (319 mai. 15).

CTh.9.16.3 [=brev.9.13.1]

Imp. constantinus a. et c. ad bassum pf. p. eorum est scientia punienda et severissimis merito legibus vindicanda, qui magicis accincti artibus aut contra hominum moliti salutem aut pudicos ad libidinem deflexisse animos detegentur. nullis vero criminationibus implicanda sunt remedia humanis quaesita corporibus aut in agrestibus locis, ne maturis vindemiis metuerentur imbres aut ruentis grandinis lapidatione quaterentur, innocenter adhibita suffragia, quibus non cuiusque salus aut existimatio laederetur, sed quorum proficerent actus, ne divina munera et labores hominum sternerentur. dat. x. kal. iun. aquileia, crispo et constantino caess. coss.

interpretatio. malefici vel incantatores vel immissores tempestatum vel ii, qui per invocationem daemonum mentes hominum turbant, omni poenarum genere puniantur

CTh.9.16.4 [=brev.9.13.2]

Imp. constantius a. et iulianus c. ad populum. nemo haruspicem consulat aut mathematicum, nemo hariolum. augurum et vatum prava confessio conticescat. chaldaei ac magi et ceteri, quos maleficos ob facinorum magnitudinem vulgus appellat, nec ad hanc partem aliquid moliantur. sileat omnibus perpetuo divinandi curiositas. etenim supplicium capitis feret gladio ultore prostratus, quicumque* iussis obsequium denegaverit. dat. viii. kal. febr. mediolano, constantio a. ix. et iuliano caes. ii. coss.

interpretatio. quicumque* pro curiositate futurorum vel invocatorem daemonum vel divinos, quos hariolos appellant, vel haruspicem, qui auguria colligit, consuluerit, capite punietur

CTh.9.16.5

Idem a. ad populum. post alia: multi magicis artibus ausi elementa turbare vitas insontium labefactare non dubitant et manibus accitis audent ventilare, ut quisque suos conficiat malis artibus inimicos. hos, quoniam naturae peregrini sunt, feralis pestis absumat. dat. prid. non. decemb. mediolano constantio a. viiii et iuliano caes. ii conss. (357 dec. [?] 4).

CTh.9.16.6

Idem a. ad taurum praefectum praetorio. etsi excepta tormentis sunt corpora honoribus praeditorum, praeter illa videlicet crimina, quae legibus demonstrantur, etsi omnes magi, in quacumque sint parte terrarum, humani generis inimici credendi sunt, tamen quoniam qui in comitatu nostro sunt ipsam pulsant propemodum maiestatem, si quis magus vel magicis contaminibus adsuetus, qui maleficus vulgi consuetudine nuncupatur, aut haruspex aut hariolus aut certe augur vel etiam mathematicus aut narrandis somniis occultans artem aliquam divinandi aut certe aliquid horum simile exercens in comitatu meo vel caesaris fuerit deprehensus, praesidio dignitatis cruciatus et tormenta non fugiat. si convictus ad proprium facinus detegentibus repugnaverit pernegando, sit eculeo deditus ungulisque sulcantibus latera perferat poenas proprio dignas facinore. dat. iii non. iul. arimini datiano et cereale conss. (358 iul. 5).

CTh.9.16.7 [=brev.9.13.3]

Impp. valent. et valens aa. ad secundum pf. p. ne quis deinceps nocturnis temporibus aut nefarias preces aut magicos apparatus aut sacrificia funesta celebrare conetur. detectum atque convictum competenti animadversione mactari, perenni auctoritate censemus. dat. v. id. sept. divo ioviano a. et varroniano coss.

interpretatio. quicumque* nocturna sacrificia daemonum celebraverit vel incantationibus daemones invocaverit, capite puniatur

CTh.9.16.8

Idem aa. ad modestum praefectum praetorio. cesset mathematicorum tractatus. nam si qui publice aut privatim in die noctuque deprehensus fuerit in cohibito errore versari, capitali sententia feriatur uterque. neque enim culpa dissimilis est prohibita discere quam docere. dat. prid. id. decemb. constantinopoli valentiniano et valente aa. conss. (370? 373? dec. 12).

CTh.9.16.9

Imppp. valentinianus, valens et gratianus aaa. ad senatum. haruspicinam ego nullum cum maleficiorum causis habere consortium iudico neque ipsam aut aliquam praeterea concessam a maioribus religionem genus esse arbitror criminis. testes sunt leges a me in exordio imperii mei datae, quibus unicuique, quod animo inbibisset, colendi libera facultas tributa est. nec haruspicinam reprehendimus, sed nocenter exerceri vetamus. dat. iiii kal. iun. treviris gratiano a. ii et probo conss. (371 mai. 29).

CTh.9.16.10

Idem aaa. ad ampelium praefectum urbi. quia nonnulli ex ordine senatorio maleficiorum insimulatione adque invidia stringebantur, idcirco huiusmodi negotia urbanae praefecturae discutienda permisimus. quod si quando huiusmodi inciderit quaestio, quae iudicio memoratae sedis dirimi vel terminari posse non creditur, eos, quos negotii textus amplectitur, una cum gestis omnibus praesentibus adque praeteritis ad comitatum mansuetudinis nostrae sollemni observationi transmitti praecipimus. dat. viii id. dec. gratiano a. ii et probo conss. (371 dec. 6).

CTh.9.16.11

Imppp. valentinianus, theodosius et arcadius aaa. albino praefecto urbi. quicumque maleficiorum labe pollutum audierit deprehenderit occupaverit, ilico ad publicum protrahat et iudiciorum oculis communis hostem salutis ostendat. quod si quisquam ex agitatoribus seu ex quolibet alio genere hominum contra hoc interdictum venire temptaverit aut clandestinis suppliciis etiam manifestum reum malificae artis suppresserit, ultimum supplicium non evadat geminae suspicionis obnoxius, quod aut publicum reum, ne facinoris socios pulicaret, severitati legum et debitae subtraxerit quaestioni aut proprium fortassis inimicum sub huius vindictae nomine consilio atrociore confecerit. dat. xvii kal. sept. romae timasio et promoto conss. (389 aug. 16).

CTh.9.16.12

Impp. honorius et theodosius aa. caeciliano praefecto praetorio. mathematicos, nisi parati sint codicibus erroris proprii sub oculis episcoporum incendio concrematis catholicae religionis cultui fidem tradere numquam ad errorem praeteritum redituri, non solum urbe roma, sed etiam omnibus civitatibus pelli decernimus. quod si hoc non fecerint et contra clementiae nostrae salubre constitutum in civitatibus fuerint deprehensi vel secreta erroris sui et professionis insinuaverint, deportationis poenam excipiant. dat. kal. feb. ravennae honorio viii et theodosio iii aa. conss. (409 febr. 1).

CTh.9.17.0. De sepulchri violati

CTh.9.17.1

Imp. constantius a. ad titianum praefectum urbi. si quis in demoliendis sepulchris fuerit adprehensus, si id sine domini conscientia faciat, metallo adiudicetur; si vero domini auctoritate vel iussione urgetur, relegatione plectatur. et si forte detractum aliquid de sepulchris ad domum eius villamque pervectum post hanc legem repperietur, villa sive domus aut aedificium quodcumque erit fisci viribus vindicetur. dat. vii kal. iul. mediolano acindyno et proculo conss. (340 iun. 25).

CTh.9.17.2pr.

Idem a. ad limenium praefectum praetorio. factum solitum sanguine vindicari multae inflictione corrigimus atque ita supplicium statuimus in futurum, ut nec ille absit a poena, qui ante commisit. universi itaque, qui de monumentis columnas vel marmora abstulerunt vel coquendae calcis gratia lapides deiecerunt, ex consulatu scilicet dalmatii et zenofili, singulas libras auri per singula sepulchra fisci rationibus inferant investigati per prudentiae tuae iudicium. eadem etiam poena, qui dissiparunt vel ornatum minuerunt, teneantur et qui posita in agris suis monumenta calcis coctoribus vendiderunt una cum his, qui ausi sunt comparare - quidquid enim attingi nefas est, non sine piaculo comparatur - sed ita, ut ab utroque una libra postuletur. sed si ex praecepto iudicum monumenta deiecta sunt, ne sub specie publicae fabricationis poena vitetur, eosdem iudices iubemus hanc multam agnoscere; nam ex vectigalibus vel aliis titulis aedificare debuerunt. quod si aliquis multam metuens sepulchri ruinas terrae congestione celaverit et non intra statutum ab excellentia tua tempus confessus sit, ab alio proditus duas auri libras cogatur inferre. qui vero libellis datis a pontificibus impetrarunt, ut reparationis gratia labentia sepulchra deponerent, si vera docuerunt, ab illatione multae separentur: at si in usum alium depositis abusi sunt, teneantur poena praescripta. (349 mart. 28).

CTh.9.17.2.1

Hoc in posterum observando, ut in provinciis locorum iudices. in urbe roma cum pontificibus tua celsitudo inspiciat, si per sarturas succurrendum sit alicui monumento, ut ita demum data licentia tempus etiam consummando operi statuatur. (349 mart. 28).

CTh.9.17.2.2

Quod si aliquis contra sanctionem clementiae nostrae sepulchrum laesurus attigerit, xx libras auri largitionibus nostris cogatur inferre. locorum autem iudices si haec observare neglexerint, non minus nota quam statuta in sepulchrorum violatores poena grassetur. dat. v kal. april. limenio et catullino conss. (349 mart. 28).

CTh.9.17.3

Idem a. et iulianus caes. ad orfitum. quosdam comperimus lucri nimium cupidos sepulchra subvertere et substantiam fabricandi ad proprias aedes transferre. ii detecto scelere animadversionem priscis legibus definitam subire debebunt. proposita in foro traiani constantio a. viii et iuliano caes. conss. (356.....).

CTh.9.17.4

Idem a. ad populum. qui aedificia manium violant, domus ut ita dixerim defunctorum, geminum videntur facinus perpetrare, nam et sepultos spoliant destruendo et vivos polluunt fabricando. si quis igitur de sepulchro abstulerit saxa vel marmora vel columnas aliamve quamcumque materiam fabricae gratia sive id fecerit venditurus, decem pondo auri cogatur inferre fisco: sive quis propria sepulchra defendens hanc in iudicium querellam detulerit sive quicumque alius accusaverit vel officium nuntiaverit. quae poena priscae severitati accedit, nihil enim derogatum est illi supplicio, quod sepulchra violantibus videtur impositum. huic autem poenae subiacebunt et qui corpora sepulta aut reliquias contrectaverint. dat. id. iun. mediolano constantio a. viiii et iuliano caes. ii conss. (357 [356] iun. 13).

CTh.9.17.5pr.

Imp. iulianus a. ad populum. pergit audacia ad busta diem functorum et aggeres consecratos, cum et lapidem hinc movere et terram sollicitare et cespitem vellere proximum sacrilegio maiores semper habuerint. sed et ornamenta quidam tricliniis aut porticibus auferunt de sepulchris. quibus primis consulentes, ne in piaculum incidant contaminata religione bustorum, hoc fieri prohibemus poena manium vindice cohibentes. (363 febr. 12).

CTh.9.17.5.1

Secundum illud est, quod efferri cognovimus cadavera mortuorum per confertam populi frequentiam et per maximam insistentium densitatem; quod quidem oculos hominum infaustis incestat aspectibus. qui enim dies est bene auspicatus a funere aut quomodo ad deos et templa venietur? ideoque quoniam et dolor in exsequiis secretum amat et diem functis nihil interest, utrum per noctes an per dies efferantur, liberari convenit populi totius aspectus, ut dolor esse in funeribus, non pompa exsequiarum nec ostentatio videatur. dat. prid. id. feb. antiochiae iuliano a. iiii et sallustio conss. (363 febr. 12).

CTh.9.17.6

Imppp. gratianus, valentinianus et theodosius aaa. pancratio praefecto urbi. omnia quae supra terram urnis clausa vel sarcofagis corpora detinentur, extra urbem delata ponantur, ut et humanitatis instar exhibeant et relinquant incolarum domicilio sanctitatem. quisquis autem huius praecepti neglegens fuerit adque aliquid tale ab huius interminatione praecepti ausus fuerit moliri, tertia in futurum patrimonii parte multetur. officium quoque, quod tibi paret, quinquaginta librarum auri affectum despoliatione maerebit. ac ne alicuius fallax et arguta sollertia ab huius se praecepti intentione subducat atque apostolorum vel martyrum sedem humandis corporibus aestimet esse concessam, ab his quoque, ita ut a reliquo civitatis, noverint se atque intellegant esse submotos. dat. iii kal. aug. heracleae eucherio et syagrio conss. (381 iul. 30).

CTh.9.17.7

Idem aaa. cynegio praefecto praetorio. humatum corpus nemo ad alterum locum transferat; nemo martyrem distrahat, nemo mercetur. habeant vero in potestate, si quolibet in loco sanctorum est aliquis conditus, pro eius veneratione quod martyrium vocandum sit addant quod voluerint fabricarum. dat. iiii kal. mart. constantinopoli honorio n. p. et evodio conss. (386 febr. 26).

CTh.9.18.0. [=brev.9.14.0.] Ad legem Fabiam.

CTh.9.18.1 [=brev.9.14.1]

Imp. constantinus a. ad domitium celsum vicarium africae. plagiarii, qui viventium filiorum miserandas infligunt parentibus orbitates, metalli poena cum ceteris ante cognitis suppliciis tenebantur. si quis tamen eiusmodi reus fuerit oblatus, posteaquam super crimine patuerit, servus quidem vel libertate donatus bestiis primo quoque munere obiiciatur, liber autem sub hac forma in ludum detur gladiatorium, ut, antequam aliquid faciat, quo se defendere possit, gladio consumatur. eos autem, qui pro hoc crimine iam in metallum dati sunt, numquam* revocari praecipimus. dat. kal. aug. constantino a. iv. et licinio iv. coss.

interpretatio. hi, qui filios alienos furto abstulerint et ubicumque* transduxerint, sive ingenui sive servi sint, morte puniantur

CTh.9.19.0. Ad legem corneliam de falso

CTh.9.19.1pr. [=brev.9.15.1pr.]

Imp. constantinus a. mechilio hilariano correctori lucaniae et brittiorum. si quis decurio testamentum vel codicillos aut aliquam deficientis scripserit voluntatem, vel conscribendis publicis privatisque instrumentis praebuerit officium, si falsi quaestio moveatur, decurionatus honore seposito, quaestioni, si ita poposcerit causa, subdatur. sed non statim desinit esse decurio, qui in huius modi facto fuerit deprehensus. quantum enim ad municipales pertinet necessitates, decurio permanet; quantum ad rem gestam et veritatem reserandam, uti decurionatus honore non poterit.

CTh.9.19.1.1 [=brev.9.15.1.1]

Nec vero is, qui ante fuerit tabellio, ad eludendam quaestionem super his, quae ante conscripsit, factus decurio defendi hac poterit dignitate, quoniam scripturae veritas, si res poposcerit, per ipsum debet probari auctorem. dat. iii. kal. febr. acc. kal. aug. sabino et rufino coss.

interpretatio. si quis curialis voluntatem morientis aut quodlibet publicum documentum scripserit, et de falsitate accusatur, seposita primitus dignitate, si necesse fuerit, subdatur examini: qui si convincitur, a curia non expelletur, sed curiae dignitate privabitur, id est ut honoratus esse non possit. tabellio vero, qui amanuensis nunc vel cancellarius dicitur, etiamsi ad curiae pervenerit dignitatem, si de falsitate accusatus fuerit aut convictus, subdatur examini, ut per ipsum, per quem confecta est, scripturae veritas approbetur

CTh.9.19.2pr.

Imp. constantinus a. ad maximum praefectum urbi. cum in praeterito is mos in iudiciis servaretur, ut prolatis instrumentis, si ea falsa quis diceret, a sententia iudex civilis controversiae temperaret eoque contingeret, ut imminens accusatio nullis clausa temporibus petitorem possessoremve deluderet, commodum duximus, ut, etsi alteruter litigantium falsi strepitum intulisset, petitori tamen possessorive momentum prolatorum instrumentorum conferret auctoritas, ut tunc civili iurgio terminato secunda falsi actio subderetur. (326 [320] mart. 25).

CTh.9.19.2.1

Volumus itaque, ut primum cesset inscriptio. sed ubi falsi examen inciderit, tunc ad morem pristinum quaestione civili per sententiam terminata acerrima fiat indago argumentis testibus scripturarum collatione aliisque vestigiis veritatis. nec accusatori tantum quaestio incumbat nec probationis ei tota necessitas indicatur, sed inter utramque personam sit iudex medius nec ulla quae sentiat interlocutione divulget, sed tamquam ad imitationem relationis, quae solum audiendi mandat officium, praebeat notionem, postrema sententia quid sibi liqueat proditurus. (326 [320] mart. 25).

CTh.9.19.2.2

Ultimum autem finem strepitus criminalis, quem litigantem disceptantemque fas non sit excedere, anni spatio limitamus, cuius exordium testatae aput iudicem competentem actionis nascetur auspicium: capitali post probationem supplicio, si id exigat magnitudo commissi, vel deportatione ei qui falsum commiserit imminente. proposita viii kal. april. in foro traiani constantino a. vii et constantio c. conss. (326 [320] mart. 25).

CTh.9.19.3

Impp. valentinianus et valens aa. ad festum proconsulem africae. serenitas nostra prospexit inde caelestium litterarum coepisse imitationem, quod his apicibus tuae gravitatis officium consultationes relationesque complectitur, quibus scrinia nostrae perennitatis utuntur. quam ob rem istius sanctionis auctoritate praecipimus, ut posthac magistra falsorum consuetudo tollatur et communibus litteris universa mandentur, quae vel de provincia fuerint scribenda vel a iudice, ut nemo stili huius exemplum aut privatim sumat aut publice. dat. v id. iun. treviris lupicino et iovino conss. (367 iun. [?] 9).

CTh.9.19.4pr. [=brev.9.15.2pr.]

Imppp. valens, grat. et valent. aaa. ad maximinum pf. p. damus copiam iurgantibus, si apud iudicem proferatur scriptura, de qua oritur aliqua disputatio, spatium ut habeat, qui perurgeat, profitendi, utrum de falso criminaliter, an de scripturae fide statuat civiliter experiri.

CTh.9.19.4.1 [=brev.9.15.2.1]

Quod si expetens vindictam falsi crimen intenderit, erit in arbitrio iudicantis, an eum sinat etiam sine inscriptione certare. iudicis enim potestati committi oportet, ut de eo, qui obiecta non probaverit, sumat propositum antiquo iure supplicium. rationi quoque huius modi plenissime suffragatur antiquitas, quae nequissimos homines et argui voluit et coerceri legibus variis, cornelia de veneficiis, sicariis, parricidiis, iulia de adulteris ambitusve criminibus, ceterisve ita promulgatis, ut possit etiam sine inscriptione cognosci, poena tamen accusatorem etiam sine solennibus occuparet. de qua re et divus antoninus rescripsisse docetur, id in iudicis potestate constituens, quod nosmet in legibus iusseramus. removebitur itaque istius lenitate rescripti praecepti superioris austeritas, ut, si quis deinceps tabulas testamenti, chirographa testationesque, nec non etiam rationes privatas vel publicas, pacta et epistolas vel ultimas voluntates, donationes, venditiones vel si quid prolatum aliud insimulare conabitur, habeat, praetermissis solennibus, accusandi facultatem, pro iudicis motu sententiam relaturus.

CTh.9.19.4.2 [=brev.9.15.2.2]

Civiles autem inquisitiones inter utrasque confligentium partes aequali motu ingruit et recurrit humanitas, quum is, qui praeerit quaestioni, intentiones falsas aut conficta crimina ex legibus poenis competentibus possit ulcisci. pp. romae xvi. kal. mai., valente v. et valentin. aa. coss.

interpretatio. de falso potest et criminaliter et civiliter agi. civiliter, quum aliquis quibuslibet scripturis non falsi crimen obiecerit, sed veritatem scripturae se velle quaerere dicit. nam si ad iudicem venerit accusator, et falsi crimen intenderit, iudex tribuat accusatori spatium, ut deliberet, utrum criminaliter agere an civiliter velit. qui si reversus ad iudicem in obiecto falsitatis crimine perseveraverit, in potestate iudicis erit, utrum inscriptionem celebrari velit, an obiectum crimen sine inscriptione discutere. quod quum iudex de obiectione falsitatis audierit, seu inscriptione habita seu omissa, aut in accusatum, si falsitas approbatur, aut in accusatorem, si falso obiecerit, proferatur, ex lege sententia

CTh.9.20.0. Victum civiliter agere et criminaliter posse.

CTh.9.20.1 [=brev.9.16.1]

Imppp. valens, grat. et valent. aaa. ad antonium pf. p. a plerisque prudentium generaliter definitum est, quoties de re familiari et civilis et criminalis competit actio, utraque licere experiri, nec si civiliter fuerit actum, criminalem posse consumi. sic denique et per vim possessione deiectus, si de ea recuperanda interdicto unde vi erit usus, non prohibetur tamen etiam lege iulia de vi publico iudicio instituere accusationem; et suppresso testamento quum ex interdicto de tabulis exhibendis fuerit actum, nihilo minus ex lege cornelia testamentaria poterit crimen inferri; et quum libertus se dicit ingenuum, tam de operis civiliter quam etiam lege visellia criminaliter poterit perurgeri. quo in genere habetur furti actio et legis fabiae constitutum. et quum una excepta sit causa de moribus, sexcenta alia sunt, quae enumerari non possunt, ut, quum altera prius actio intentata sit, per alteram, quae supererit, iudicatum liceat retractari. qua iuris definitione non ambigitur, etiam falsi crimen, de quo civiliter iam actum est, criminaliter esse repetendum. dat. prid. id. ian. treviris, valente vi. et valentin. ii. aa. coss.

interpretatio. sunt causae permixtae, civiles pariter et criminales; et possunt hae causae ita dividi, ut prius civilis, deinde criminalis agatur, si voluerit accusator: ita ut si quis de re sua fuerit violenter expulsus, et rem ablatam civili primitus maluerit actione repetere, momentum sibi restitui petat, et si de eius proprietate is, qui expulsus est, civiliter fuerit superatus, criminali postmodum actione servata, recepto primitus momento, potest postmodum impetere violentum. de testamento etiam, si quis commendatum a testatore testamentum in fraudem heredis fortasse suppresserit, et id heres scriptus iudicio restitui petit, testamento per iudicium momenti beneficio restituto, potest postmodum de suppresso testamento criminalem proponere actionem. et reliquis similibus causis similis actio tribuatur

CTh.9.21.0. De falsa moneta

CTh.9.21.1

Imp. constantinus a. ad verinum. quicumque adulterina fecerit numismata, poenam pro discretione sexus et condicionis suae diversitate sustineat, hoc est ut, si decurio vel decurionis sit filius, exterminatus genitali solo ad quamcumque in longinquo positam civitatem sub perpetui exilii condicione mittatur ac super facultatibus eius ad nostram scientiam referatur; si plebeius, ut rebus amissis perpetuae damnationi dedatur; si servilis condicionis, ultimo supplicio subiugetur. dat. et pp. xv kal. april. constantino a. v. et licinio caes. conss. (319 mart. 18).

CTh.9.21.2pr.

Idem a. ad ianuarinum. quoniam nonnulli monetarii adulterinam monetam clandestinis sceleribus exercent, cuncti cognoscant necessitatem sibi incumbere huiusmodi homines inquirendi, ut investigati tradantur iudiciis, facti conscios per tormenta ilico prodituri ac sic dignis suppliciis addicendi. (321 nov. 20).

CTh.9.21.2.1

Accusatoribus etiam eorum immunitatem permittimus, cuius modus, quoniam dispar census est, a nobis per singulos statuetur. servos etiam, qui hoc detulerint, civitate romana donamus, ut eorum domini pretium a fisco percipiant. (321 nov. 20).

CTh.9.21.2.2

Si quis autem militum huiusmodi personam susceptam de custodia exire fecerit, capite puniatur. (321 nov. 20).

CTh.9.21.2.3

Appellandi etiam privato licentia denegetur; si vero miles aut promotus huiusmodi crimen incurrerit, super eius nomine et gradu ad nos referatur. (321 nov. 20).

CTh.9.21.2.4

Si dominum fundi vel domus conscium esse probabitur, deportari eum in insulam oportebit, cunctis eius rebus protinus confiscandis; si vero eo ignaro crimen commissum est, possessionem aut domum debet amittere, in qua id scelus admissum est. actor fundi vel servus vel incola vel colonus, qui hoc ministerium praebuit, cum eo qui fecit supplicio capitali plectetur, nihilo minus fundo vel domo fisci viribus vindicanda. (321 nov. 20).

CTh.9.21.2.5

Quod si dominus ante ignorans, ut primum repperit, scelus prodidit perpetratum, minime possessio vel domus ipsius proscriptionis iniuriae subiacebit, sed auctorem ac ministrum poena capitalis excipiet. dat. xii kal. dec. romae crispo ii et constantino ii cc. conss. (321 nov. 20).

CTh.9.21.3

Idem a. ad tertullum proconsulem africae. si quis nummum falsa fusione formaverit, universas eius facultates fisco addici praecipimus, atque ipsum severitate legitima coherceri, ut in monetis tantum nostris cudendae pecuniae studium frequentetur. dat. prid. non. iul. mediolano constantino a. vii et constantio caes. conss. (326 iul. 6).

CTh.9.21.4pr.

Idem a. helpidio. pridem statutum fuit, ut, si ignorante quoque domino in fundo eius vel domo figuratus clam nummus cuderetur, sedem flagitii suo fiscus dominio vindicaret. nunc discretionem fieri placet, ut, si dominus in proximo constitutus sit, cuius incuria vel neglegentia punienda est, praeceptum prius valeat, sin vero longissime ab ea domo vel possessione afuerit, nullum sustineat detrimentum. (329 mai. 4).

CTh.9.21.4.1

Viduas autem ac pupillos speciali dignos indulgentia credidimus, ut viduae nec in proximo constitutae domo sua vel possessione careant, si nulla aput ipsas tam gravis conscientiae noxa resideat, pupilli vero etiam si conscii fuerint, nullum sustineant detrimentum, quia aetas eorum, si tamen fuerint impuberes, quid videat ignorat. tutores tamen eorum si in proximo sint, quoniam ignorare eos, quid in re pupilli geritur, non oportet, haec poena expectabit, ut ex rebus eorum, si idonei fuerint, tantum fisco inferatur, quantum pupillo fuerat auferendum. quibus ita emendatis in omnibus capitulis lex pridem lata servabitur. dat. iiii non. mai. constantino a. viii et constantio iiii conss. (329 mai. 4).

CTh.9.21.5 [=brev.9.17.1]

Imp. constantius a. leontio pf. p. praemio accusatoribus proposito, quicumque* solidorum adulter potuerit reperiri vel a quoquam fuerit publicatus, illico, omni dilatione summota, flammarum exustionibus mancipetur. dat. xii. kal. mart. antiochiae, placido et romulo coss.

interpretatio. praemium accipiat, quicumque* adulterum monetarium prodiderit, et is, qui prodiius est, si de monetae adulteratione convictus fuerit, ignibus concremetur

CTh.9.21.6

Idem a. limenio praefecto praetorio. comperimus nonnullos flaturarios maiorinam pecuniam non minus criminose quam crebre separato argento ab aere purgare. si quis igitur post haec fuerit in hac machinatione deprehensus, capitaliter se fecisse cognoscat, verum et eos, qui domum agrumque praebuerint, relatis in largitionibus facultatibus esse plectendos: nostra scilicet super eorum nominibus edocenda clementia. proposita prid. id. feb. limenio et catullino conss. (349 febr. 12).

CTh.9.21.7

Imppp. valentinianus, valens et gratianus aaa. ad archelaum comitem sacrarum largitionum. quidquid ex auro hominum privatorum in monetis publicis reppereris figuratum, id omne nostris scias largitionibus vindicandum, si quidem ipse se dignum condemnatione iudicavit, quisquis aurum proprium non coactus monetis fiscalibus sponte credidit inferendum. dat. v id. mar. marcianopoli valentiniano n. p. et victore conss. (369 mart. 11).

CTh.9.21.8

Idem aaa. tatiano comiti sacrarum largitionum. solitae moderationis arbitrio superiorem sententiam mitigamus, qua omne aurum, quod a privatis pro figuratione monetis dicebatur illatum, fisci iusseramus commodis vindicari, ut pro omni summa, quae brevibus tenetur inserta, binae per singulas libras omissa frustratione unciae conferantur. dat. xii kal. iun. antiochiae gratiano a. iii et equitio conss. (374 mai. 21).

CTh.9.21.9

Imppp. valentinianus, theodosius et arcadius aaa. have tatiane karissime nobis. falsae monetae rei, quos vulgo paracharactas vocant, maiestatis crimine tenentur obnoxii. dat. v kal. iul. constantinopoli timasio et promoto conss. (389 iun. 27).

CTh.9.21.10

Idem aaa. rufino praefecto praetorio. si quis super cudendo aere vel rescripto aliquo vel etiam adnotatione nostra sibi eripuerit facultatem, non solum fructum propriae petitionis amittat, verum etiam poenam quam meretur excipiat. dat. iiii id. iul. constantinopoli theodosio a. iii et abundantio conss. (393 iul. 12).

CTh.9.22.0. [=brev.9.18.0.] Si quis solidi circulum exteriorem inciderit vel adulteratum in vendendo subiecerit.

CTh.9.22.1 [=brev.9.18.1]

Imp. constantinus a. leontio pf. p. omnes solidi, in quibus nostri vultus ac veneratio una est, uno pretio aestimandi sunt atque vendendi, quamquam diversa formae mensura sit. nec enim qui maiore habitu faciei extenditur, maioris est pretii, aut qui angustiore expressione concluditur, minoris valere credendus est, quum pondus idem exsistat. quod si quis aliter fecerit, aut capite puniri debet, aut flammis tradi, vel alia poena mortifera. quod ille etiam patietur, qui mensuram circuli exterioris arroserit, ut ponderis minuat quantitatem, vel figuratum solidum adultera imitatione in vendendo subiecerit. dat. vii. kal. aug. gallicano et basso coss.

interpretatio. quicumque* solidum circumciderit aut adulterum supposuerit aut falsam monetam fecerit, capite puniatur

CTh.9.23.0. Si quis pecunias conflaverit vel mercandi causa transtulerit aut vetitas contrectaverit

CTh.9.23.1pr.

Imp. constantius a. et iulianus caes. ad rufinum praefectum praetorio. quicumque vel conflare pecunias vel ad diversa vendendi causa transferre detegitur, sacrilegii sententiam subeat et capite plectatur. portus enim litoraque diversa, quo facilior esse navibus consuevit accessus, et itineris tramites statuimus custodiri per idoneos officiales ac praepositos a praesidibus et nonnullis praeditis dignitate, ut cognita veritate provinciarum rectores obnoxios legibus puniant. officia quoque inmenso periculo subiacebunt. (356 [352] mart. 8).

CTh.9.23.1.1

Nec vero aliquis negotiatorum plus mille follibus pecuniae in usu publico constitutae animalibus propriis sumptuum gratia portare debebit. aut si ampliorem modum quisquam vehere detegatur, facultates eius fisci dominio vindicentur et ipse adficiatur exilio. (356 [352] mart. 8).

CTh.9.23.1.2

Nam pecunias navibus vectas non omnes iudicamus mercatores debere promere, quippe in usu tantum publico pecunias constitutas permittimus convehi itidemque eas solas species emi, quae mercatoribus more sollemni ad diversa portantur. pecunias vero nulli emere omnino fas erit nec vetitas contrectare, quia in usu publico constitutas pretium oportet esse, non mercem. (356 [352] mart. 8).

CTh.9.23.1.3

Placet denique, ut, si quis forsitan nummus praeter eum, qui in usu publico perseverat, aput aliquem mercatorem fuerit inventus, fisci dominio cum omnibus delinquentis facultatibus vindicetur. et si forte cum mercibus ad quascumque provincias venerint naves, cuncta solita licentia mercabuntur praeter pecunias, quas more solito maiorinas vel centenionales communes appellant, vel ceteras, quas vetitas esse cognoscunt. acc. viii id. mar. constantina constantio a. viii et iuliano caes. conss. (356 [352] mart. 8).

CTh.9.23.2

Impp. arcadius et honorius aa. dextro praefecto praetorio. centenionalem tantum nummum in conversatione publica tractari praecipimus maioris pecuniae figuratione submota. nullus igitur decargyrum nummum alio audeat commutare, sciens fisco eandem pecuniam vindicandam, quae in publica potuerit conversatione deprehendi. dat. prid. id. april. mediolano olybrio et probino conss. (395 apr. 12).

CTh.9.24.0. De raptu virginum vel viduarum

CTh.9.24.1pr. [=brev.9.19.1pr.]

Imp. constantinus a. ad populum. si quis nihil cum parentibus puellae ante depectus invitam eam rapuerit vel volentem abduxerit, patrocinium ex eius responsione sperans, quam propter vitium levitatis et sexus mobilitatem atque consilii a postulationibus et testimoniis omnibusque rebus iudiciariis antiqui penitus arcuerunt, nihil ei secundum ius vetus prosit puellae responsio, sed ipsa puella potius societate criminis obligetur.

CTh.9.24.1.1 [=brev.9.19.1.1]

Et quoniam parentum saepe custodiae nutricum fabulis et pravis suasionibus deluduntur, his primum, quarum detestabile ministerium fuisse arguitur redemptique* discursus, poena immineat, ut eis meatus oris et faucium, qui nefaria hortamenta protulerit, liquentis plumbi ingestione claudatur.

CTh.9.24.1.2 [=brev.9.19.1.2]

Et si voluntatis assensio detegitur in virgine, eadem, qua raptor, severitate plectatur, quum neque his impunitas praestanda sit, quae rapiuntur invitae, quum et domi se usque ad coniunctionis diem servare potuerint et, si fores raptoris frangerentur audacia, vicinorum opem clamoribus quaerere seque omnibus tueri conatibus. sed his poenam leviorem imponimus solamque eis parentum negari successionem praecipimus.

CTh.9.24.1.3 [=brev.9.19.1.3]

Raptor autem indubitate convictus si appellare voluerit, minime audiatur.

CTh.9.24.1.4 [=brev.9.19.1.4]

Si quis vero servus raptus facinus dissimulatione praeteritum aut pactione transmissum detulerit in publicum, latinitate donetur, aut, si latinus sit, civis fiat romanus: parentibus, quorum maxime vindicta intererat, si patientiam praebuerint ac dolorem compresserint, deportatione plectendis.

CTh.9.24.1.5 [=brev.9.19.1.5]

Participes etiam et ministros raptoris citra discretionem sexus eadem poena praecipimus subiugari, et si quis inter haec ministeria servilis condicionis* fuerit deprehensus, citra sexus discretionem eum concremari iubemus. dat. kal. april. aquileia, constantino a. vi. et constantino c. coss.

interpretatio. si cum parentibus puellae nihil quisquam ante definiat, ut eam suo debeat coniugio sociare, et eam vel invitam rapuerit vel volentem, si raptori puella consentiat, pariter puniantur. si quis vero ex amicis aut familia aut fortasse nutrices puellae consilium raptus dederint aut opportunitatem praebuerint rapiendi, liquefactum plumbum in ore et in faucibus suscipiant, ut merito illa pars corporis concludatur, de qua hortamenta sceleris ministrata noscuntur. illae vero, quae rapiuntur invitae, quae non vocibus suis de raptore clamaverint, ut vicinorum vel parentum solatio adiutae liberari possent, parentum suorum eis successio denegetur. raptori convicto appellare non liceat, sed statim inter ipsa discussionis initia a iudice puniatur. quod si fortasse raptor cum parentibus puellae paciscatur, et raptus ultio parentum silentio fuerit praetermissa, si servus ista detulerit, latinam percipiat libertatem, si latinus fuerit, civis fiat romanus. parentes vero, qui raptori in ea parte consenserint, exsilio deputentur. qui vero raptori solatia praebuerint, sive viri sive feminae sint, ignibus concrementur

CTh.9.24.2

Imp. constantius a. ad tatianum. quamvis legis prioris extet auctoritas, qua inclytus pater noster contra raptores atrocissime iusserat vindicari, tamen nos tantummodo capitalem poenam constituimus, videlicet ne sub specie atrocioris iudicii aliqua in ulciscendo crimine dilatio nasceretur. in audaciam vero servilem dispari supplicio mensura legum impendenda est, ut perurendi subiciantur ignibus, nisi a tanto facinore saltem poenarum acerbitate revocentur. dat. ii id. nov. limenio et catullino conss. (349 nov. 12).

CTh.9.24.3 [=brev.9.19.2]

Imppp. valens, grat. et valent. aaa. ad maximinum pf. p. qui coniugium raptus scelere contractum voluerit accusare, sive propriae familiae dedecus eum moverit seu commune odium delictorum, inter ipsa statim exordia insignem recenti flagitio vexet audaciam. sed si quo casu quis vel accusationem differat vel reatum, et opprimi e vestigio atrociter commissa nequiverint, ad persecutionem criminis ex die sceleris admissi quinquennii tribuimus facultatem. quo sine metu interpellationis et complemento accusationis exacto, nulli deinceps copia patebit arguendi, nec de coniugio aut sobole disputandi. dat. xviii. kal. dec. gratiano a. iii. et equitio coss.

interpretatio. si accusationem raptus vel per metum vel per voluntatem per quinquennium quisquam distulerit, a die raptus expleto quinquennio, accusandi ultra non habeat potestatem, sed post quinquennium nec de tali coniunctione raptoribus aliquid opponatur, et filii omnes legitimi habeantur

CTh.9.25.0. De raptu vel matrimonio sanctimonialium virginum vel viduarum

CTh.9.25.1 [=brev.9.20.1]

Imp. constantius a. ad orfitum... eadem utrumque raptorem severitas feriat, nec sit ulla discretio inter eum, qui pudorem virginum sacrosanctarum et castimoniam viduae labefactare scelerosa raptus acerbitate detegitur. nec ullus sibi ex posteriore consensu valeat raptae blandiri. dat. xi. kal. sept. constantio a. vii. et constante c. coss.

interpretatio. quicumque* vel sacratam deo virginem vel viduam fortasse rapuerit, si postea eis de coniunctione convenerit, pariter puniantur

CTh.9.25.2 [=brev.9.20.2]

Imp. iovianus a. ad secundum pf. p. si quis non dicam rapere, sed vel attentare matrimonii iungendi causa sacratas virgines vel viduas, volentes vel invitas, ausus fuerit, capitali sententia ferietur. [filii ex tali contubernio nati, punitis his iuxta legem, in hereditatem non veniant; quibus etiamsi principali beneficio praestetur vetetur et facultas... eorum proximis heredibus acquirendam]. dat. xi. kal. mart. antiochiae, ioviano a. et varroniano coss. haec lex expositione non indiget.

CTh.9.25.3

Impp. honorius et theodosius aa. palladio praefecto praetorio. post alia: si quis dicatam deo virginem prodigus sui raptor ambierit, publicatis bonis deportatione plectatur, cunctis accusationis huius licentia absque metu delationis indulta. neque enim, exigi convenit proditorem, quem pro pudicitia religionis invitat humanitas. dat. viii id mart. ravennae theodosio a. viiii et constantio iii v. c. conss. (420 mart. 8).

CTh.9.26.0. Ad legem iuliam de ambitu

CTh.9.26.1

Impp. arcadius et honorius aa. ad caesarium praefectum praetorio. si quis ad illustrem palatii nostri ambierit dignitatem atque ad eos honores ascendere ambitione temptaverit, qui non nisi probatis nobis viris nostro iudicio deferuntur, cuiuslibet ille sit loci ordinis dignitatis, amissis bonis et fisco nostro protinus vindicatis deportationis multetur exilio. neque aliud inter coeptum ambitum atque perfectum esse arbitretur, cum pari sorte leges scelus quam sceleris puniant voluntatem. dat. xiiii kal. mar. constantinopoli caesario et attico conss. (397 febr. 16).

CTh.9.26.2

Idem aa. pompeiano proconsuli africae. nullus omnino principatum ceteraque officia repetere audeat, cum publicae disciplinae semel gesta sufficiant, ac si quispiam promotorum denuo ad id munus irrepserit, quod docebitur ante gessisse affectus gravissimis suppliciis poenam deportationis excipiat, ita ut primates officii, quorum interest ambientibus obviare, hanc propositam poenam non dubitent. dat. prid. kal. iun. mediolano stilichone et aureliano conss. (400 mai. (?) 31).

CTh.9.26.3

Idem aa. et theodosius a. strategio vicario africae. non absque publicae dilacerationis incommodo officia peracta repetuntur. quare huius praecepti auctoritate censemus, ut ad eadem rursus officia subrepticiis nemo supplicationibus admittatur, sed cassatis quae hoc modo sunt impetrata ad solutionem debiti primitus artentur et qui contra fecerint poenam in futurum deportationis excipiant. dat. iii kal. iun. ravennae theodosio a. i et rumorido conss. (403 mai. 30).

CTh.9.26.4

Impp. honorius et theodosius aa. palladio praefecto praetorio. si quis proconsularem aut vicariam potestatem vel consularitatis fasces aut vexilla praesidalia atque in discussionibus comitivas vel officia principatus contra definitionem nostram iterare temptaverit, fisco eius omne patrimonium sociari decernimus. dat. id. mart. ravennae d. n. theodosio a. vii et palladio v. c. conss. (416 mart. 15).

CTh.9.27.0. Ad legem iuliam repetundarum

CTh.9.27.1 [=brev.9.21.1]

Imppp. grat., valent. et theodos. aaa. neoterio pf. p. iudices, qui se furtis et sceleribus fuerint maculasse convicti, ablatis codicillorum insignibus et honore exuti inter pessimos quosque et plebeios habeantur. nec sibi posthac de eo honore blandiantur, quo se ipsi indignos iudicaverunt. dat. xviii. kal. febr. thessalonica, gratiano v. et theodos. i. aa. coss. ista lex tam evidens est, ut expositione non indigeat.

CTh.9.27.2

Idem aaa. eutropio praefecto praetorio. ii, qui in re publica versati sinisterius sunt, perpetuo sibi omnes dignitates vel legitimas vel honorarias sciant esse praeclusas. quocirca iubemus, ut illustris magnificentia tua nullum omnino, qui superiore tempore male usae administrationis crimen excepit, ad provincias patiatur accedere, sed de his ad nos referat. dat. xv kal. iul. thessalonica gratiano v et theodosio i aa. conss. (380 iun. 17).

CTh.9.27.3

Idem aaa. matroniano duci et praesidi sardiniae. ut unius poena metus possit esse multorum, natalem quondam ducem sub custodia protectorum ad provinciam quam nudaverat ire praecipimus, ut non solum quod eius non dicam domesticus, sed manipularius et minister accepit, verum etiam quod ipse a provincialibus nostris rapuit ac sustulit, in quadruplum invitus exsolvat. dat. prid. id. iun. constantinopoli antonio et syagrio conss. (382 iun. 12).

CTh.9.27.4 [=brev.9.21.2]

Iidem aaa. floro pf. p. sciant iudices, super admissis propriis aut a se aut ab heredibus suis poenam esse repetendam. dat. x. kal. sept. antonio et syagrio coss.

interpretatio. omnes iudices sciant, quicquid male rapuerint, si ipsi non reddiderint, a suis heredibus esse reddendum

CTh.9.27.5

Idem aaa. have marcelline karissime nobis. omnes cognitores et iudices a pecuniis atque patrimoniis manus abstineant neque alienum iurgium putent suam praedam. etenim privatarum quoque litium cognitor idemque mercator parem capitis ac vitae, quae peculatus reos consuevit involvere, cogetur subire iacturam. dat. prid. non. april. mediolano merobaude ii et saturnino conss. (383 apr. 4).

CTh.9.27.6

Idem aaa. et arcadius a. edictum ad provinciales. iubemus hortamur, ut, si quis forte honoratorum decurionum possessorum, postremo etiam colonorum aut cuiuslibet ordinis a iudice fuerit aliqua ratione concussus, si quis scit venalem de iure fuisse sententiam, si quis poenam vel pretio remissam vel vitio cupiditatis ingestam, si quis postremo quacumque de causa improbum iudicem potuerit adprobare, is vel administrante eo vel post administrationem depositam in publicum prodeat, crimen deferat, delatum adprobet, cum probaverit et victoriam reportaturus et gloriam. dat. x kal. iul. constantinopoli honorio n. p. et evodio conss. (386 inn. 22).

CTh.9.27.7

Imppp. valentinianus, theodosius et arcadius aaa. severino comiti rerum privatarum. unusquisque procurator praepositus gynaecei tabularius susceptor colonus vel quicumque se a comite domorum meminerit esse concussum, cum ipse cui pecuniam numeraverit administratione decesserit, intra anni spatia ad iudicium spectabilitatis tuae quidquid dederit repetiturus adcurrat, ut prosit pensionibus quidquid ille reddiderit. sin vero ex tempore depositae administrationis praestituti temporis curricula transfluxerint, nulla vox advocationis emergat, sed ipsos procuratores praepositos colonos tabularios susceptores obnoxios ad solutionem iubemus artari. dat. prid. non. iun. mediolano valentiniano a. iiii et neoterio conss. (390 iun. 4).

CTh.9.28.0. De crimine peculatus

CTh.9.28.1

Imppp. theodosius, arcadius et honorius aaa. rufino praefecto praetorio. pridem fuerat constitutum, ut hi iudices, qui peculatu provincias quassavissent, multae dispendio subiacerent. sed quoniam nec condigna crimini ultio est nec par poena peccato, placuit tam severam animadvertendi esse censuram, ut, cum vix par poena his possit flagitiis inveniri neque condignis tantum nefas cruciatibus expiari, capitale hoc esse praecipiamus adque animadversione severissima coherceri. dat. iiii id. septemb. constantinopoli arcadio a. ii et rufino conss. (392 sept. 10).

CTh.9.28.2

Impp. honorius et theodosius aa. aureliano praefecto praetorio ii. non est sanctitatis negotium rapinis et praedis fidem adhibere, quando quidem haec scelera velut contagium quoddam funestae pestis debeant declinari. nec enim crimen dissimile est rapere et ei, qui rapuerit, rapta servare. dat. iii non. mar. constantinopoli honorio x et theodosio vi aa. conss. (415 mart. 5).

CTh.9.29.0. De his, qui latrones vel aliis criminibus reos occultaverint

CTh.9.29.1

Imppp. valentinianus, valens et gratianus aaa. simplicio vicario. eos, qui secum alieni criminis reos occulendo sociarunt, par atque ipsos reos poena expectet. proposita romae x kal. april. gratiano a. iii et equitio v. c. conss. (374 mart. 23).

CTh.9.29.2 [=brev.9.22.1]

Imppp. grat., valent. et theodos. aaa. ad flavianum pf. p. post alia: latrones quisquis sciens susceperit vel offerre iudiciis supersederit, supplicio corporali aut dispendio facultatum pro qualitate personae et iudicis aestimatione plectatur. si vero actor sive procurator latronem domino ignorante occultaverit et iudici offerre neglexerit, flammis ultricibus concrematur. dat. iii. kal. mart. merobaude ii. et saturnino coss.

interpretatio. si quis sciens in domo sua latronem susceperit aut eum occultare voluerit aut eum iudici tradere fortasse neglexerit, si ingenua et vilior persona est, fustigetur: si vero melior, damno ad arbitrium iudicis feriatur. si vero actor aut procurator inscio domino hoc fecerit, incendio concremetur

CTh.9.30.0. Quibus equorum usus concessus est aut denegatus

CTh.9.30.1

Impp. valentinianus et valens aa. ad mamertinum praefectum praetorio. exceptis senatoribus atque honoratis, sed et his, qui provincias administrant, veteranis etiam, qui sub armis militia functi sunt, et decurionibus ceteris omnibus per picenum atque flaminiam nec non etiam apuliam et calabriam, brittios et lucaniam atque samnium habendi equi vel equae copiam praeclusam esse sancimus. ii vero, qui minime animos ab huius modi usurpatione deflectunt, abactorum supplicio teneantur. dat. prid. kal. octob. altino divo ioviano et varroniano conss. (364 sept. 30).

CTh.9.30.2

Idem aa. ad buleforum consularem campaniae. post alia: ut omnes latronum conatus debilitati conquiescant, pastoribus rei nostrae, id est lanigerarum ovium pecudumque custodibus, nec non etiam procuratoribus et actoribus senatorum habendi equini pecoris licentiam denegamus, sub hac videlicet interminatione, ut ii, qui nostrae mansuetudinis statuta temptaverint violare, abactorum supplicia tolerare cogantur. dat. iii non. octob. altino divo ioviano et varroniano conss. (364 oct. 5).

CTh.9.30.3

Idem aa. rufino praefecto praetorio. cum omnifariam urbicarias regiones ab omni crimine et adsiduis abactorum rapinis quietas esse cuperemus, eo usque intentio nostra prospexit, ut istis in locis equo vehi his tantummodo liceret, quos ab huius modi sceleris suspicione locus aut dignitas vindicavit. sed postea sanximus, ut suarii equis quidem uterentur, verum ad periculum suum pertinere cognoscerent, si quid in his regionibus sceleris esset admissum. nunc quia advertimus, a suariis, qui propriis officiis occupantur, hanc necessitatem alienam esse debere, excellentia tua ita his sedendorum equorum potestatem datam esse cognoscat, ut nullo prioris sanctionis timore teneantur per ea sane loca, quae neque abactoribus neque aliis criminationibus infamata sunt. dat. xi kal. iul. mediolano valentiniano et valente aa. conss. (365 iun. 21).

CTh.9.30.4

Idem aa. ad valentinum consularem piceni. palatini utendorum equorum per picenum ad itinerum necessitatem habeant facultatem. dat. xvii kal. ian. mediolano valentiniano et valente aa. conss. (365 dec. [?] 16).

CTh.9.30.5

Impp. arcadius et honorius aa. benigno vicario urbis romae. pastores valeriae provinciae vel piceni uti equinis animalibus non iubemus. alioquin, si interdictus usus animalium vindicetur, conscios usurpationis huius seu dominos vel procuratores relegationis poena retinebit. dat. kal. decemb. mediolano theodoro v. c. cons. (399 dec. 1).

CTh.9.31.0. Ne pastoribus dentur filii nutriendi

CTh.9.31.1

Impp. honorius et theodosius aa. caeciliano praefecto praetorio. post alia: nemo curialium plebeiorum possessorumve filios suos nutriendos pastoribus tradat. aliis vero rusticanis, ut fieri solet, nutriendos dari non vetamus. si vero post istius legis publicationem quisquam nutriendos pastoribus dederit, societatem latronum videbitur confiteri. dat. xii kal. feb. ravennae honorio viii et theodosio iii aa. conss. (409 ian. 21).

CTh.9.32.0. De nili aggeribus non corrumpendis

CTh.9.32.1

Impp. honorius et theodosius aa. anthemio praefecto praetorio. si quis posthac per aegyptum intra duodecimum cubitum fluminis nili ulla fluenta de propriis ac vetustis usibus praeter fas praeterque morem antiquitatis usurpaverit, flammis eo loco consumatur, in quo vetustatis reverentiam et propemodum ipsius imperii adpetierit securitatem: consciis et consortibus eius oasenae deportationi constringendis, ita ut numquam supplicandi eis vel recipiendi civitatem vel dignitatem vel substantiam licentia tribuatur. dat. x kal. octob. constantinopoli honorio viii et theodosio iii aa. conss. (409 sept. 22).

CTh.9.33.0. [=brev.9.23.0.] De his, qui plebem audent contra publicam colligere disciplinam.

CTh.9.33.1 [=brev.9.23.1]

Imppp. grat., valent. et theodos. aaa. florentio pf. augustali. si quis contra evidentissimam iussionem suscipere plebem et adversus publicam disciplinam defendere fortasse tentaverit, mulctam gravissimam sustinebit. dat. xiii. kal. ian. constantinopoli, richomere et clearcho coss.

interpretatio. si quis populum ad seditionem concitaverit, damnis gravissimis subiacebit

CTh.9.34.0. De famosis libellis

CTh.9.34.1 [=brev.9.24.1]

Imp. constantinus a. ad verinum vicarium africae. si quando famosi libelli reperiantur, nullas exinde calumnias patiantur hi, quorum de factis vel nominibus aliquid continebunt, sed scriptionis auctor potius requiratur et repertus cum omni vigore cogatur his de rebus, quas proponendas credidit, comprobare; nec tamen supplicio, etiamsi aliquid ostenderit, subtrahatur. pp. iv. kal. april. karthagine, constantino a. v. et licinio c. coss.

interpretatio. qui famosam chartam ad cuiuscumque* iniuriam et maculam conscripserit, in secreto aut in publico affixerit inveniendamque proiecerit, illi, contra quem proposita est chartula, non nocebit, nec famae eius aliquid derogabit. sed si inveniri potuerit, qui huius modi chartulam fecit, constringatur, ut probet, quae conscripsit: qui si etiam, quae scripsit, probare potuerit, fustigetur, qui infamare maluit quam accusare

CTh.9.34.2

Idem a. ad aelianum proconsulem africae. licet serventur in officio tuo et vicarii exemplaria libellorum, qui in africa oblati sunt, tamen eos quorum nomina continent metu absolutos securitate perfrui sinas solumque moneas, ut ab omni non solum crimine, sed etiam suspicione verisimili alieni esse festinent. nam qui accusandi fiduciam gerit, oportet comprobare, nec occultare quae scierit, quoniam praedicabilis erit ad dicationem publicam merito perventurus. proposita v kal. mar. carthagine constantino a. vi et constantino c. conss. (320/6 [313] febr. 25).

CTh.9.34.3

Idem a. ad ianuarinum agentem vicariam praefecturam. ut accusatoribus patientia praebenda est, si quem persequi in iudicio volunt, ita famosis libellis fides habenda non est nec super his ad nostram scientiam referendum, cum eosdem libellos flammis protinus conducat aboleri, quorum auctor nullus existit. proposita prid. non. dec. romae constantino a. vi et constantino caes. conss. (320 dec. 4).

CTh.9.34.4

Idem a. ad dionysium. famosa scriptio libellorum, quae nomine accusatoris caret, minime examinanda est, sed penitus abolenda. nam qui accusationis promotione confidat, libera potius intentione quam captiosa atque occulta conscriptione alterius debet vitam in iudicium devocare. proposita tyro xii kal. nov. ianuarino et iusto conss. (328 oct. 21).

CTh.9.34.5

Imp. constantius a. ad afros. libellis quos famosos vocant, si fieri possit, abolendis inclytus pater noster providit et huiusmodi libellos ne in cognitionem quidem suam vel publicam iussit admitti. non igitur vita cuiusquam, non dignitas concussa his machinis vacillabit; nam omnes huiusmodi libellos concremari decernimus. dat. xiiii kal. iul. urso et polemio conss. (338 iun. 18).

CTh.9.34.6

Idem a. ad populum. nemo prorsus de famosis libellis, qui neque aput me neque in iudiciis ullum obtinent locum, calumniam patiatur. nam et innocens creditur, cui defuit accusator, cum non defuerit inimicus. dat. prid. kal. nov. mediolano arbitione et lolliano conss. (355 oct. 31).

CTh.9.34.7

Impp. valentinianus et valens aa. ad edictum. famosorum infame nomen est libellorum, ac si quis vel colligendos vel legendos putaverit ac non statim chartas igni consumpserit, sciat, se capitali sententia subiugandum. sane si quis devotionis suae ac salutis publicae custodiam gerit, nomen suum profiteatur et ea, quae per famosum persequenda putavit, ore proprio edicat, ita ut absque ulla trepidatione accedat, sciens quod, si adsertionibus veri fides fuerit opitulata, laudem maximam ac praemium a nostra clementia consequetur. dat. xiiii kal. mar. constantinopoli valentiniano et valente aa. conss. (365? 368? 370? 373? feb. 16).

CTh.9.34.8

Idem aa. ad florianum comitem. iam pridem adversus calumnias firmissima sunt praesidia comparata. nullus igitur calumniam metuat. contestatio vero, quae caput alterius contra iuris ordinem pulsat, depressa nostris legibus iaceat; intercidat furor famosorum, saepe ut constituimus, libellorum. et cetera. dat. v id. nov. marcianopoli valentiniano et valente aa. conss. (368 nov. 9).

CTh.9.34.9 [=brev.9.24.2]

Imppp. valent., theodos. et arcad. aaa. cynegio pf. p. si quis famosum libellum sive domi sive in publico vel quocumque* loco ignarus offenderit: aut discerpat prius, quam alter inveniat, aut nulli confiteatur inventum, nemini denique, si tam curiosus est, referat, quid legendo cognoverit. nam quicumque* obtulerit inventum, certum est, ipsum reum ex lege retinendum, nisi prodiderit auctorem, nec evasurum poenam huius modi criminibus constitutam, si proditus fuerit cuiquam retulisse, quod legerit. dat. xiv. kal. febr. constantinopoli, honorio n. p. et evodio coss.

interpretatio. si quis chartulam famosam in cuiuscumque* iniuriam vel infamiam in publico propositam viderit et legerit et non statim discerpserit, sed cuicumque*, quae in ea legerit, fortasse retulerit, ipse velut auctor huius criminis teneatur

CTh.9.34.10

Imppp. arcadius, honorius et theodosius aaa. anthemio praefecto praetorio et patricio. universi, qui famosis libellis inimicis suis velut venenatum quoddam telum iniecerint, ii etiam, qui famosam seriem scriptionis impudenti agnitam lectione non ilico discerpserint vel flammis exusserint vel lectorem cognitum prodiderint, ultorem suis cervicibus gladium reformident. dat. iiii kal. mai. constantinopoli arcadio a. vi et probo conss. (406 apr. 28).

CTh.9.35.0. De quaestionibus

CTh.9.35.1

Imppp. valentinianus, valens et gratianus aaa. ad olybrium praefectum urbi. nullus omnino ob fidiculas perferendas inconsultis ac nescientibus nobis vel militiae auctoramento vel generis aut dignitatis defensione nudetur, excepta tamen maiestatis causa, in qua sola omnibus aequa condicio est. ii quoque citra consultationis modum subiciantur quaestioni, qui evidentibus argumentis subscriptiones nostras finxisse prodentur, qua in re ne palatini quidem nominis adsumptionem huius esse volumus quaestionis exortem. dat. viii id. iul. valentiniano nob. p. et victore conss. (369 iul. 8).

CTh.9.35.2pr.

Idem aaa. ad antonium praefectum praetorio galliarum. decuriones sive ob alienum sive ob suum debitum exortes omnino earum volumus esse poenarum, quas fidiculae et tormenta constituunt. quod quidem capitale iudici erit, si in contumeliam ordinis exitiumque temptetur. maiestatis tantummodo reos et quae nefanda dictu sunt conscios aut molientes ex ordine municipali maneat tam cruenta condicio. debitores vero et quos allectos aut susceptores memorant a summo usque ad infimum ordinem curiales exortes talium volumus esse poenarum. habet severitas multa, quae sumat ad sanciendam publici officii disciplinam, ut abstineat tam cruentis. (376 sept. 17).

CTh.9.35.2.1

Plumbatarum vero ictus, quos in ingenuis corporibus non probamus, non ab omni ordine submovemus, sed decemprimos tantum ordinis curiales ab immanitate huiusmodi verberum segregamus, ita ut in ceteris animadversionis istius habeatur moderatio commonentis. dat. xv kal. octob. treviris valente v et valentiniano aa. conss. (376 sept. 17).

CTh.9.35.3

Imppp. valens, gratianus et valentinianus aaa. ad gracchum praefectum urbi. severam indagationem per tormenta quaerendi a senatorio nomine submovemus. dat. prid. non. ian. treviris gratiano a. iiii et merobaude conss. (377 ian. 4).

CTh.9.35.4 [=brev.9.25.1]

Imppp. grat., valent. et theodos. aaa. albuciano vicario macedoniae. quadraginta diebus, qui auspicio cerimoniarum paschale tempus anticipant, omnis cognitio inhibeatur criminalium quaestionum. dat. vi. kal. april. thessalonica, gratiano a. v. et theodos. a. i. coss.

interpretatio. diebus quadragesimae pro reverentia religionis omnis criminalis actio conquiescat

CTh.9.35.5

Imppp. valentinianus, theodosius et arcadius aaa. tatiano praefecto praetorio. sacratis quadragesimae diebus nulla supplicia sint corporis, quibus absolutio expectatur animarum. dat. viii id. septemb. foro flamini timasio et promoto conss. (389 sept. 6).

CTh.9.35.6

Impp. arcadius et honorius aa. ad messalam praefectum praetorio. nihil sibi deflectens a iustitia indignatio cognitorum, nihil venalis exigentium terror in eas, quae aut innocentiae auctoritate securae aut principalitatis sunt honore munitae, intellegat licere personas ad inferendas iniurias corporales. habeat hanc mercedem laboris multorum munerum testimoniis commendata devotio. et cetera. dat. xii kal. sept. theodoro v. c. cons. (399 aug. 21).

CTh.9.35.7

Impp. honorius et theodosius aa. ad anthemium praefectum praetorio. provinciarum iudices moneantur, ut in isaurorum latronum quaestionibus nullum quadragensimae nec venerabilem pascharum diem existiment excipiendum, ne differatur sceleratorum proditio consiliorum, quae per latronum tormenta quaerenda est, cum facillime in hoc summi numinis speretur venia, per quod multorum salus et incolumitas procuratur. dat. v kal. mai. constantinopoli basso et philippo conss. (408 apr. 27).

CTh.9.36.0. [=brev.9.26.0.] Ut intra annum criminalis actio terminetur.

CTh.9.36.1 [=brev.9.26.1]

Imppp. valent., theodos. et arcad. aaa. desiderio vicario. quisquis accusator reum in iudicium sub inscriptione detulerit, si intra anni tempus accusationem coeptam prosequi supersederit, vel, quod est contumacius, ultimo anni die adesse neglexerit, quarta bonorum omnium parte mulctatus aculeos consultissimae legis incurrat; scilicet manente infamia, quam veteres iusserant sanctiones. dat. iv. id. iul. treviris, arcadio a. i. et bautone coss.

interpretatio. quicumque* inscriptione praemissa cuiuscumque* criminis reum accusare voluerit, ab eo die, quo inscripsit, intra annum peragat propositam actionem. qui si distulerit, infamis effectus, bonorum suorum quarta parte mulctabitur

CTh.9.36.2 [=brev.9.26.2]

Impp. honor. et theodos. aa. caeciliano pf. p. post alia: noverint iudices cuilibet culmini honorive praesidentes, necessariis utrique parti, si petantur, dilationibus non negatis a die inscriptionis intra anni curricula criminales causas limitandas, quo emenso habeat accusator, quia destitit, poenam sibi legibus constitutam; et si persona vilior fuerit, cui damnum famae non sit iniuria, poenam patiatur exsilii, nisi forsitan intra anni metas consensus partium abolitionem poposcerit. in iudicum autem debet esse diligentia, ut, si nulla rationabilis a reo vel accusatore dilatio postuletur, urgeant talium causarum notionem, non exspectatis anni moris. si vero accusator vel reus, propter documenta forsitan sibi necessaria, annum voluerint custodiri, dare assensum debet patientia cognitoris, in alteram partem severiorem formatura sententiam etc. dat. xii. kal. febr. ravenna, honorio viii. et theodos. iii. aa. coss.

interpretatio. iudices, qui inscriptione praemissa criminalia negotia audire coeperint, a die inscriptionis, si inducias aut accusator aut reus petierit, intra annum praestare debebunt, ut haec actio intra anni curriculum finiatur. quod si accusator intra annum, quae proposuit, probare distulerit, absoluto reo, poenam suscipiat lege superiori comprehensam. quod si talis persona sit, ad cuius deformitatem infamia non pertineat, exsilio deputetur. tamen si inter accusatorem et reum ita iudice praesente convenerit, ut pro instructione utriusque partis anni integri induciae tribuantur, debet a iudice non negari, futurum ut pars, quae post inducias fuerit superata, districtiori sententia feriatur

CTh.9.37.0. De abolitionibus

CTh.9.37.1 [=brev.9.27.1]

Imp. constantinus a. ad ianuarinum pf. u. si post strepitum accusationis exortae abolitio postuletur, causa novae miserationis debet inquiri, ut, si citra depectionem id fiat, postulata humanitas praebeatur; sin aliquid suspicionis exstiterit, quod manifestus reus depectione celebrata legibus subtrahatur, redemptae* miserationis vox minime admittatur, sed adversus nocentem reum, inquisitione facta, poena competens exseratur. dat. vi. kal. dec. serdica, constantino a. v. et licinio c. coss.

interpretatio. si quem poenituerit accusare criminaliter et inscriptionem fecisse de eo, quod probare non potuerit, si ei cum accusato innocente convenerit, invicem se absolvant. si vero iudex eum, qui accusatus est, criminosum esse cognoverit et inter reum et accusatorem per corruptionem de absolutione reatus convenerit, is, qui reus probatur, remoto colludio, poenam excipiat legibus constitutam

CTh.9.37.2 [=brev.9.27.2]

Imppp. valent., valens et grat. aaa. ad probum pf. p. accusator, qui se laqueo legis adstringit, agnoscat, nullum sibi fore ad latebram abolitionis recursum, postquam aliquid iniuriae merito inscriptionis illatae tolerarit inscriptus, id est si vel carcerem sustinuerit vel tormenta vel verbera vel catenas, nisi forte ille, qui haec pertulit, contemnat et donet ipse, quod pertulit, ac par fuerit tam petitoris quam petiti in accipienda abolitione consensus. prius tamen quam aliquis de quaestione liberetur, sequitur illud, ut plerisque criminibus ne consentientibus quidem partibus praestetur abolitio, ut sunt illa, in quibus aut violata maiestas, aut patria oppugnata vel prodita, aut peculatus admissus, aut sacramenta deserta sunt, omniaque ea, quae iure veteri continentur. in quibus iudex non minus accusatorem ad docenda, quae detulit, quam reum ad purganda, quae negat, debet urgere. dat. prid. id. oct. treviris, valentin. n. p. et victore coss. ista lex expositione non indiget.

CTh.9.37.3

Imppp. gratianus, valentinianus et theodosius aaa. floro praefecto praetorio. fallaciter incusantibus, maxime post exhibitionem accusati, nullius iuris color velut derivata excusatione proficiat; non publica abolitio, non privata talibus prospiciat subveniatque personis, non specialis indulgentia, ne beneficium quidem eos generale subducat. sciant cuncti praemeditentur, ante praecaveant, eam se rem deferre debere in publicam notionem, quae munita sit testibus, instructa documentis, signis ad probationem luce clarioribus expedita. dat. xv kal. iun. constantinopoli antonio et syagrio conss. (382 mai. 18).

CTh.9.37.4 [=brev.9.27.3]

Impp. honor. et theodos. aa. caeciliano pf. p. abolitionem invito reo, postquam fuerit officii custodiae traditus, intra dies xxx accusatori petenti dari permittimus, post hoc tempus, nisi reus consentiat, censemus non esse tribuendam. si vero ingenuos aliquos, velut testes criminis petitos ab accusatore, deductos esse constiterit, solam custodiae iniuriam tolerasse, qui testes dicantur esse, non conscii, eorum ab accusatore sumptibus* consulendum est. quod si ingenuorum, licet plebeiorum, corpora fuerint laesa verberibus tormentisque vexata, abolitionem, etiam duarum partium consensu petitam, iubemus vigore iudicum denegari, et crimen propositum, cuius examen tormentis iam coeperat, agitari, nec ante a iudice dimitti, quam in reum, probato crimine, vindicetur, aut in accusatorem pari forma sententiae damnatio referatur etc. dat. xii. kal. febr. ravenna, honorio viii. et theodos. iii. aa. coss.

interpretatio. si criminis accusator intra triginta dies abolitionem petierit, etiam invito reo a iudice concedatur: ut liberi et accusatus et accusator abscedant: post triginta vero dies, quam accusatus custodiae fuerit traditus, nisi abolitionem et reus et accusator a iudice petierint, accusatori solo non esse praestandam. quod si testes exhibiti ad petitionem accusatoris fuerint, et in custodiam missi fuerint, et abolitio petita praestitaque fuerit, sumptus*, quos fecerunt testes, eis accusator exsolvat. nam si testes exhibiti ab accusatore poenae subiacuerint, etiamsi consentient partes, abolitio a iudicibus denegetur, sed aut in accusatum, si convictus fuerit, aut in accusatorem, si non convicerit legibus, ex sententia iudicis poenam, quam passurus erat reus, accusator excipiat

CTh.9.38.0. De indulgentiis criminum

CTh.9.38.1

Imp. constantinus a. ad maximum praefectum praetorio. propter crispi atque helenae partum omnibus indulgemus praeter veneficos homicidas adulteros. acc. iii kal. nov. romae probiano et iuliano conss. (322 oct. 30).

CTh.9.38.2

Imp. constantius a. ad cerealem praefectum urbi. omnia penitus amputentur, quae tyrannicum tempus poterat habere tristissima. universos ergo praecipimus esse securos exceptis quinque criminibus, quae capite vindicantur. dat. viii id. sep. lugduni constantio a. vii et constante c. conss. (354 [immo 353] sept. 6).

CTh.9.38.3

Imppp. valentinianus, valens et gratianus aaa. ad viventium praefectum urbi. ob diem paschae, quem intimo corde celebramus, omnibus, quos reatus adstringit, carcer inclusit, claustra dissolvimus. adtamen sacrilegus in maiestate, reus in mortuos, veneficus sive maleficus, adulter raptor homicida communione istius muneris separentur. dat. iii non. mai. romae lupicino et iovino conss. (367 [369] mai. 5).

CTh.9.38.4

Idem aaa. ad olybrium praefectum urbi. paschae celebritas postulat, ut, quoscumque nunc aegra exspectatio quaestionis poenaeque formido sollicitat, absolvamus. decretis tamen veterum mos gerendus est, ne temere homicidii crimen, adulterii foeditatem, maiestatis iniuriam, maleficiorum scelus, insidias venenorum raptusque violentiam sinamus evadere. lecta viii id. iun. valentiniano et valente ii aa. conss. (368 iun. 6).

CTh.9.38.5

Idem aaa. ad senatum. indulgentia, patres conscripti, quos liberat notat nec infamiam criminis tollit, sed poenae gratiam facit. in uno hoc aut in duobus reis ratum sit: qui indulgentiam senatui dat, damnat senatum. dat. xiiii kal. iun. treviris gratiano a. ii et probo conss. (371 mai. 19).

CTh.9.38.6

Imppp. gratianus, valentinianus et theodosius aaa. ad antidium v.C. vicarium. paschalis laetitiae dies ne illa quidem gemere sinit ingenia, quae flagitia fecerunt; pateat insuetis horridus carcer aliquando luminibus. alienum autem censemus ab indulgentia, qui nefariam criminum conscientiam in maiestatem superbe animaverit, qui parricidali furore raptus sanguine proprio manum tinxit, qui cuiusque praeterea hominis caede maculatus est, qui genialis tori ac lectuli fuit invasor alieni, qui verecundiae virginalis raptor extitit, qui venerandum cognati sanguinis vinculum profano caecus violavit incestu, vel qui noxiis quaesita graminibus et diris inmurmurata secretis. mentis et corporis venena composuit, aut qui sacri oris imitator et divinorum vultuum adpetitor venerabiles formas sacrilegio eruditus inpressit. his ergo tali quoque sub absolutione damnatis indultum nostrae serenitatis eo praecepti fine concludimus, ut remissionem veniae crimina nisi semel commissa non habeant, ne in eos liberalitatis augustae referatur humanitas, qui impunitatem veteris admissi non emendationi potius quam consuetudini deputarunt. recitata xii kal. aug. romae syagrio et eucherio conss. (381 iul. 21).

CTh.9.38.7

Idem aaa. ad marcianum vicarium. religio anniversariae obsecrationis hortatur, ut omnes omnino periculo carceris metuque poenarum eximi iuberemus, qui leviore crimine rei sunt postulati. unde apparet eos excipi, quos atrox cupiditas in scelera compulit saeviora: in quibus est primum crimen et maxime maiestatis, deinde homicidii veneficiique ac maleficiorum, stupri atque adulterii parique immanitate sacrilegii sepulchrique violatio, raptus monetaeque adulterata figuratio. dat. xi kal. april. mediolano richomere et clearcho conss. (384 mart. 22).

CTh.9.38.8 [=brev.9.28.1]

Imppp. grat., valent. et theodos. aaa. ad neoterium pf. p. nemo deinceps tardiores fortassis affatus nostrae perennitatis exspectet: exsequantur iudices, quod indulgere consuevimus. ubi primum dies paschalis exstiterit, nullum teneat carcer inclusum, omnium vincula solvantur. sed ab his secernimus eos, quibus contaminari potius gaudia laetitiamque communem, si dimittantur, advertimus. quis enim sacrilego diebus sanctis indulgeat? quis adultero vel incesti reo tempore castitatis ignoscat? quis non raptorem in summa quiete et gaudio communi persequatur instantius? nullam accipiat requiem vinculorum, qui quiescere sepultos quadam sceleris immanitate non sivit; patiatur tormenta veneficus, maleficus adulteratorque monetae; homicida, quod fecit, semper exspectet; reus etiam maiestatis de domino, adversum quem talia molitus est, veniam sperare non debet. dat. v. kal. mart. mediolano, arcadio a. i. et bautone coss.

interpretatio. sacrilegus, adulter, incesti reus, raptor, sepulcrorum violator, veneficus, maleficus, adulterator monetae, homicida diebus paschae nullatenus absolvantur. reliqui omnes, quos minorum causarum culpa constringit, diebus venerabilibus paschae specialiter absolvantur

CTh.9.38.9

Impp. arcadius et honorius aa. ad caesarium praefectum praetorio. devotissimae nobis provinciae lyciae priorem famam meritumque inter ceteras renovari censemus, idque excellens eminentia tua edictis propositis cunctis faciat innotescere, ne quis posthac civem lycium contumelioso nomine iniuriae audeat vulnerare. teneant honores suos, quos meritis ac laboribus perceperunt et a nostra serenitate sumpturi sunt; habeant praeteritas dignitates sperentque sui devotione venturas. nec unius viri illustris tatiani tantum valuerit temporalis offensio, teterrimi iudicis inimici ut adhuc macula in lycios perseveret, quae in ipso iam temporis absolutione consumpta est. dat. prid. kal. sept constantinopoli arcadio a. iiii et honorio a. iii conss. (396 aug. 31).

CTh.9.38.10

Idem aa. et theodosius a. romulo praefecto praetorio. omnes omnium criminum reos vel deportatione depulsos vel relegatione aut metallis deputatos, quos insulae variis servitutibus aut loca desolata susceperunt, hac nostra indulgentia liberamus, separatis illis, qui ad locum poenae destinatum contra iudicum sententias ire noluerunt. indignus est enim humanitate, qui post damnationem commisit in legem. dat. viii id. aug. ravennae stilichone et aureliano conss. (400 [405] aug. 6).

CTh.9.38.11

Impp. honorius et theodosius aa. gaisoni comiti et magistro officiorum. post alia: de his, qui tyrannicae praesumptionis ... aut sacramenta sectati ad nostrum imperium redierunt, hanc volumus esse sententiam, ut, quos inter incendia tyrannidis adsumptae fidelis paenitudo revocavit, ordinem et fructum militiae non amittant. eos vero, quibus lentum regressum necessitas desperationis indixit, soluto cingulo matricula convenit aboleri, ita ut illud quoque par reverentiae forma custodiat, ne redire ei ad pristinam militiam liceat, qui aliud militandi genus elegerit. dat. prid. id. feb. ravennae varana cons. (410 febr. 12).

CTh.9.38.12

Idem aa. palladio praefecto praetorio. liberata re publica tyrannidis iniuria omnium criminum reos relaxari praecipimus. dat. viii id. aug. ravennae varana v. c. cons. (410 [?] aug. 6).

CTh.9.39.0. [=brev.9.29.0.] De calumniatoribus.

CTh.9.39.1 [=brev.9.29.1]

Imppp. grat., valent. et theodos. aaa. hellebico comiti et magistro utriusque militiae. non est ratio, qua manifesti calumniatoris supplicium differatur. nec enim patimur frequenter iterari, quae consistere prima actione non quiverint, atque alienam innocentiam securitatemque sine crimine, damnabili appetitione terreri. dat. iii. kal. ian. constantinopoli, merobaude ii. et saturnino coss. ista lex sub eodem titulo similem interpretationem habet.

CTh.9.39.2 [=brev.9.29.2]

Iidem aaa. menandro vicario asiae. nostris et parentum nostrorum constitutionibus comprehensum est, eos, qui accusationem alienis nominibus praesumpsissent*, delatorum numero esse ducendos. atque ideo calumniosissimum caput et personam iudicio irritae delationis infamem deportatio sequatur, quo posthac singuli universique cognoscant, non licere in eo principum animos commovere, quod non possit ostendi. dat. viii. id. mai. constantinopoli, arcadio a. i. et bautone coss. haec lex interpretatione non indiget.

CTh.9.39.3 [=brev.9.29.3]

Impp. arcad. et honor. aa. victorio proconsuli africae. innocentes sub specie falsae criminationis non patimur callidorum impugnatione subverti: qui si tentaverint, intelligant, sibimet severitatem legum pro commissis facinoribus incumbere. dat. iii. id. mart. mediolano, honorio a. iv. et eutychiano coss.

interpretatio. calumniatores sunt, quicumque* causas ad se non pertinentes sine mandato alterius proposuerunt. calumniatores sunt, quicumque* iusto iudicio victi causam iterare tentaverint. calumniatores sunt, quicumque* quod ad illos non pertinet, petunt aut in iudicio proponunt. calumniatores sunt, qui sub nomine fisci facultates appetunt alienas et innocentes quietos esse non permittunt. calumniatores etiam sunt, qui falsa deferentes contra cuiuscumque* innocentis personam principum animos ad iracundiam commovere praesumunt. qui omnes infames effecti in exsilium detrudentur. hic de iure addendum, qui calumniatores esse possunt

CTh.9.40.0. De poenis

CTh.9.40.1 [=brev.9.30.1]

Imp. constantinus a. ad catulinum. qui sententiam laturus est, temperamentum hoc teneat, ut non prius capitalem in quempiam promat severamque sententiam, quam in adulterii vel homicidii vel maleficii crimine aut sua confessione aut certe omnium, qui tormentis vel interrogationibus fuerint dediti, in unum conspirantem concordantemque rei finem convictus sit et sic in obiecto flagitio deprehensus, ut vix etiam ipse ea, quae commiserit, negare sufficiat. dat. iii. non. nov. treviris. acc. xv. kal. mai. hadrumeti, volusiano et anniano coss.

interpretatio. iudex criminosum discutiens non ante sententiam proferat capitalem, quam aut reus ipse fateatur, aut convictus aut per innocentes testes vel per conscios criminis sui aut homicidium aut adulterium aut maleficium commisisse manifestius convincatur

CTh.9.40.2

Idem a. eumelio. si quis in ludum fuerit vel in metallum pro criminum deprehensorum qualitate damnatus, minime in eius facie scribatur, dum et in manibus et in suris possit poena damnationis una scriptione comprehendi, quo facies, quae ad similitudinem pulchritudinis caelestis est figurata, minime maculetur. dat. xii kal. april. cavilluno constantino a. iiii et licinio iiii conss. (315 [316?] mart. 21).

CTh.9.40.3

Idem a. ad festum praesidem sardiniae. quicumque cohercitionem mereri ex causis non gravibus videbuntur, in urbis romae pistrina dedantur. quod ubi tua sinceritas coeperit observare, omnes sciant eos, qui, sicut dictum est, ex levioribus causis huiusmodi meruerint subire sententiam, ergastulis vel pistrinis esse dedendos adque ad urbem romam, id est ad praefectum annonae, sub idonea prosecutione mittendos. dat. iiii kal. aug. constantino a. v et licinio conss. (319 iul. 29).

CTh.9.40.4

Imp. constantius a. theodoro viro perfectissimo praesidi arabiae. dum reis manifesta probatione convictis spatium ante sententiam temporis datur, facultas supplicandi criminosissimis patet, cum in homicidii crimine et in aliis detecti gravioribus causis ultio differenda non sit. igitur quidem qui iam impetraverunt, ad veniam pertineant: de cetero vero iuxta criminis qualitatem legem oportet servari et in scelerosos et in noxios proferri iuris sententiam. dat. id. octob. constantio a. iiii et constante c. conss. (346 [?] oct. 15).

CTh.9.40.5

Impp. valentinianus et valens aa. ad symmachum praefectum urbi. leviorum criminum reos excellens auctoritas tua pistrinis iubebit legum aequitate servata damnari, sub hac videlicet observantia, ut sub obtutibus tuis semper pistoribus praecipiantur adsignari, ne, dum occulte per nequissimos commentarienses traduntur, gratia venalis existat. dat. v id. iun. naisso divo ioviano et varroniano conss. (364 iun. 9).

CTh.9.40.6

Idem aa. artemio. omnes, qui in levioribus criminibus rei deteguntur, pistrinorum exercitio urbis romae damnare debebis, ita ut transmissio eorum ad officium praefecti annonae sine aliqua tergiversatione celebretur. dat. iii id. iun. naisso divo ioviano et varroniano conss. (364 iun. 11).

CTh.9.40.7

Idem aa. artemio. nullum ex his, quos pistrinis qualitas condemnationis addixerit, impertita ceteris reis indulgentia relaxari oportet, nisi aliquis speciale serenitatis nostrae meruerit reportare rescriptum. dat. viii id. octob. altino divo ioviano et varroniano conss. (364 oct. 8).

CTh.9.40.8

Idem aa. ad symmachum praefectum urbi. quicumque christianus sit in quolibet crimine deprehensus, ludo non adiudicetur. quod si quisquam iudicum fecerit, et ipse graviter notabitur et officium eius multae maximae subiacebit. dat. xviii kal. feb. valentiniano et valente aa. conss. (365 ian. 15).

CTh.9.40.9

Idem aa. ad olybrium praefectum urbi. ne quis pro cohercitione delicti vel pistoribus vel cuicumque alteri corpori, cum alterius sit corporis, addicatur; sed unusquisque pro crimine, in quo fuerit deprehensus, motum congruae severitatis excipiet. dat. iii id. april. valentiniano et valente aa. conss. (368? 370? apr. 11).

CTh.9.40.10 [=brev.9.30.2]

Imppp. valent., valens et grat. aaa. ad praetextatum pf. u. quoties in senatorii ordinis viros pro qualitate peccati austerior fuerit ultio proferenda, nostra potissimum explorentur arbitria, quo rerum atque gestorum tenore comperto, eam formam statuere possimus, quam modus facti contemplatioque dictaverit. dat. viii. id. oct. remis, gratiano a. i. et dagalaipho coss.

interpretatio. si quando aliquae maiores personae aut alicuius dignitatis viri vocantur in crimen, iudex ad rerum dominos referat, ut de huius modi personis quid fieri debeat, dominorum praeceptio iusta constituat

CTh.9.40.11

Idem aaa. ad viventium praefectum urbi. neminem de numinis nostri sacrario prodeuntem harena suscipiat, lanista doceat, saeva meditatio et pugnatrix exerceat; multa si quidem possunt esse supplicia, quibus culpa plectatur. dat. v id. april. lupicino et ioviano conss. (367 [366] apr. 9).

CTh.9.40.12

Imppp. valens, gratianus et valentinianus aaa. ad antonium praefectum praetorio. campaniae consularibus formam iudicationis adscribimus, ne in loco certa condicione finito modum animadversionis excedant neque extra provinciam suam ius relegationis exerceant. dat. prid. kal. decemb. treviris valente vi et valentiniano ii aa. conss. (378 nov. 30).

CTh.9.40.13 [=brev.9.30.3]

Imppp. grat., valent. et theodos. aaa. flaviano pf. p. illyrici et italiae. si vindicari in aliquos severius, contra nostram consuetudinem, pro causae intuitu iusserimus, nolumus statim eos aut subire poenam, aut excipere sententiam, sed per dies xxx super statu eorum sors et fortuna suspensa sit. reos sane accipiat vinciatque custodia, et excubiis solertibus vigilanter observet. dat. xv. kal. sept. verona, antonio et syagrio coss.

interpretatio. si princeps cuiuscumque* gravi accusatione commotus quemquam occidi praeceperit, non statim a iudicibus, quae ab irato principe iussa sunt, compleantur, sed triginta diebus, qui puniri iussus est, reservetur, donec pietas dominorum iustitiae amica subveniat

CTh.9.40.14

Imppp. valentinianus, theodosius et arcadius aaa. ad principium praefectum praetorio. ne diu apparitorum prava admodum venalisque perfidia in publica impune commoda desaeviret, censuimus etiam in absentes pro competenti ultione debere consurgi. dat. kal. iun. arcadio a. i et bautone conss. (385 iun. [?] 1).

CTh.9.40.15

Idem aaa. tatiano praefecto praetorio. si quis convictus reus maximi criminis fuerit subiectusque sententiae, competens iudicium compleatur nec exquisita commentis ars eiusmodi subornetur, ut direptus a clericis adseratur vel appellasse simuletur. quod si quisquam post iudicium vendibili coniventia licentiae huic praestiterit adsensum, haut levia sustinebit. nam proconsules, comites orientis, praefecti augustales, vicarii etiam adfecti nota deformi tricenas auri libras compendiis fiscalibus conferent, iudices autem ordinarii similiter deformati quinas denas cogentur exsolvere. officia vero eorundem isdem, quibus iudices sui, dispendiis subiacebunt, si in suggestione cessaverint ac non praeceptum legis ingesserint atque iniecta manu, ne rei auferantur, obstiterint ac nisi id quod fuerit constitutum in effectum exsecutionemque perduxerint. dat. iii id. mart. constantinopoli arcadio a. ii et rufino conss. (392 mart. 13).

CTh.9.40.16pr.

Impp. arcadius et honorius aa. eutychiano praefecto praetorio. post alia: addictos supplicio et pro criminum immanitate damnatos nulli clericorum vel monachorum, eorum etiam, quos synoditas vocant, per vim adque usurpationem vindicare liceat ac tenere. quibus in causa criminali humanitatis consideratione, si tempora suffragantur, interponendae provocationis copiam non negamus, ut ibi diligentius examinetur, ubi contra hominis salutem vel errore vel gratia cognitoris obpressa putatur esse iustitia: ea condicione, ut, sive pro consule, comes orientis, praefectus augustalis, vicarii fuerint cognitores, non tam ad clementiam nostram quam ad amplissimas potestates sciant esse referendum. eorum enim de his plenum volumus esse iudicium, qui, si ita res est et crimen exegerit, rectius possint punire damnatos. (398 iul. 27).

CTh.9.40.16.1

Reos etiam tempore provocationis emenso ad locum poenae sub prosecutione pergentes nullus aut teneat aut defendat, sed sciat se cognitor xxx librarum auri multa, primates officii capitali esse sententia feriendos, nisi usurpatio ista aut protinus vindicetur aut, si tanta clericorum ac monachorum audacia est, ut bellum potius quam iudicium futurum esse existimetur, ad clementiam nostram commissa referantur, ut nostro mox severior ultio procedat arbitrio. (398 iul. 27).

CTh.9.40.16.2

Ad episcoporum sane culpam ut cetera redundabit, si quid forte in ea parte regionis, in qua ipsi populo christianae religionis doctrinae insinuatione moderantur, ex his quae fieri hac lege prohibemus a monachis perpetratum esse cognoverint nec vindicaverint. ex quorum numero rectius, si quos forte sibi deesse arbitrantur, clericos ordinabunt. et cetera. dat. vi kal. aug. mnyzo honorio a. iiii et eutychiano conss. (398 iul. 27).

CTh.9.40.17

Idem aa. aureliano praefecto praetorio. omnes res eutropi, qui quondam praepositus sacri cubiculi fuit, aerarii nostri calculis adiunximus, erepto splendore eius et consulatu a taetra illuvie et a commemoratione nominis eius et caenosis sordibus vindicato, ut eiusdem universis actibus antiquatis omnia mutescant tempora nec eius enumeratione saeculi nostri labes appareat nec ingemiscant aut qui sua virtute ac vulneribus romanos fines propagant vel qui eosdem servandi iuris aequitate custodiunt, quod divinum praemium consulatus lutulentum prodigium contagione foedavit. patriciatus etiam dignitate atque omnibus inferioribus spoliatum se esse cognoscat, quas morum polluit scaevitate. omnes statuas, omnia simulacra, tam ex aere quam ex marmore seu ex fucis quam ex quacumque materia quae apta est effingendis, ab omnibus civitatibus oppidis locisque privatis ac publicis praecipimus aboleri, ne tamquam nota nostri saeculi obtutus polluat intuentum. adhibitis itaque fidis custodibus ad cyprum insulam perducatur, in qua tua sublimitas relegatum esse cognoscat, ut ibidem pervigili cura vallatus nequeat suarum cogitationum rabie cuncta miscere. dat. xvi kal. feb. constantinopoli theodoro v. c. cons. (399 ian. [?] 17).

CTh.9.40.18 [=brev.9.30.4]

Impp. arcad. et honor. aa. eutychiano pf. p. sancimus, ibi esse poenam, ubi et noxa est. propinquos, notos, familiares procul a calumnia summovemus, quos reos sceleris societas non facit; nec enim affinitas vel amicitia nefarium crimen admittunt. peccata igitur suos teneant auctores, nec ulterius progrediatur metus, quam reperitur delictum. hoc singulis quibusque iudicibus intimetur. dat. viii. kal. aug. constantinopoli, theodoro v. c. cos.

interpretatio. poena illum tantum sequatur, qui crimen admisit. propinqui vero, affines vel amici, familiares vel noti, si conscii criminis non sunt, non teneantur obnoxii. nemo de propinquitate criminosi aut de amicitiis timeat, nisi qui scelus admiserit

CTh.9.40.19

Impp. honorius et theodosius aa. donato proconsuli africae. satellites gildonis custodiis mancipentur et proscriptione damnentur. dat. iii id. nov. basso et philippo conss. (408 nov. 11).

CTh.9.40.20

Idem aa. theodoro praefecto praetorio. si quis ex proscriptorum numero comitatum nostrae serenitatis sive moenia aeternae urbis intraverit, deportatione plectetur. dat. x kal. dec. basso et philippo conss. (408 nov. 22).

CTh.9.40.21

Idem aa. honoratis et provincialibus africae. heraclianum hostem publicum iudicantes digna censuimus auctoritate puniri, ut eius resecentur infaustae cervices. eius quoque satellites pari intentione persequimur. sed hanc omnibus privatis atque militantibus licentiam damus, et omnes prodendi in medium habeant liberam facultatem nec invidiam metuat qui ad publicum deduxerit criminosum, cum illud specialiter caveamus, ne ullus aliquem eorum aut subtrahendum iudicet aut celandum neve ex eorum facultatibus vel deposita deneget vel accepta non prodat. dat. iii non. iul. ravennae honorio viiii et theodosio v aa. conss. (412 [413?] iul. 5).

CTh.9.40.22

Idem aa. ad anthemium praefectum praetorio. omnes, quos damnationis condicio diversis exiliis destinatos metas temporis praestituti in carceris implesse custodia deprehendit, solutos poena vinculisque laxatos custodia liberari praecipimus nec ullas exilii postmodum miserias formidare. sit satis inmensorum cruciatuum semel eluisse supplicia, ne, qui aurae communis haustu et lucis aspectu diu privati sunt intra breve spatium catenarum ponderibus praegravati, etiam exilii poenam sustinere iterum compellantur. dat. xiiii kal. mai. constantio et constante vv. cc. conss. (414 apr. 18).

CTh.9.40.23

Idem aa. monaxio praefecto praetorio. rectores provinciarum conveniri praecipimus, ut ii, qui pro suo crimine poenam exilii sub certo temporis spatio subire decreti sunt, exacto praefinito tempore nec claustris carceralibus nec in locis, in quibus exules versati sunt, teneantur. dat. iii kal. septemb. eudoxiopoli d. n. theodosio a. vii et palladio v. c. conss. (416 aug. 30).

CTh.9.40.24

Idem aa. monaxio praefecto praetorio. his, qui conficiendi naves incognitam ante peritiam barbaris tradiderunt propter petitionem viri reverentissimi asclepiadis chersonesitanae civitatis episcopi imminenti poena et carcere liberatis capitale tam ipsis quam etiam ceteris supplicium proponi decernimus si quid simile fuerit in posterum perpetratum. dat. viii kal. octob. constantinopoli monaxio et plinta conss. (419 sept. 24).

CTh.9.41.0. [=brev.9.31.0.] Ne sine iussu principis certis iudicibus liceat confiscare.

CTh.9.41.1pr. [=brev.9.31.1pr.]

Imp. theodos. a. et valent. c. ad hierium pf. p. nulli iudicum, exceptis his, qui in summa administrationis sunt positi potestate, vitae quoque noxiis ius adimendae sortiti sunt, quemquam omnino inconsulta nostra clementia in ullo genere criminationis tristi liceat proscriptionis tempestate percellere. ad nos simulationum genera, quaestionis ordo, criminum moles, documentorum probationumque pensanda libramenta mittantur.

CTh.9.41.1.1 [=brev.9.31.1.1]

Nemo sibi praesumat moderatorum provinciarumque rectorum, sub quibuscumque* infulis potestatis, quemquam patrimonii universis privare subsidiis.

CTh.9.41.1.2 [=brev.9.31.1.2]

In illos gladii sui et ius severitatis exerceant, in quos statim destringi ferrum iura praecipiunt, quorumque differri supplicium materia est interitus plurimorum. dat. x. kal. febr. constantinopoli, d.N. theodos. a. xi. et valentin. c. coss.

interpretatio. nullus iudicum privatas facultates fisci nomine proscribere aut occupare praesumat, sed ad rerum dominos referat causam, pro qua hoc aliquis mereatur, et quod iussum fuerit, observetur

CTh.9.42.0. De bonis proscriptorum seu damnatorum

CTh.9.42.1pr.

Imp. constantinus a. petronio probiano: res uxoris, quae vel successione qualibet vel emptione vel etiam largitione viri in eam ante reatum iure pervenerant, damnato marito, illibatas esse praecipio nec alieni criminis infortunio stringi uxorem, cum paternis maternisve ac propriis frui eam integro legum statu religiosum sit. et donatio maritalis ante tempus criminis ac reatus collata in uxorem, quia pudicitiae praemio cessit, observanda est, tamquam si maritum eius natura, non poena subduxerit; capacitatis privilegio videlicet et modo inspecto, ut consideretur, quid capere potuit. (321 febr. 27).

CTh.9.42.1.1

Si quid etiam in emancipatos liberos ante tempus criminis ac reatus patrem contulisse claruerit, integrum isdem et citra inquietudinem reservetur. (321 febr. 27).

CTh.9.42.1.2

Quod vero nec uxor nec emancipati liberi potuerint vindicare, captum et incorporatum ita ad me referri specialiter censeo, ut illud quoque addatur, utrum filios habeat qui damnatus est, simulque adiciatur, utrum iidem apud se ex causa donationis aliquid vindicarint. (321 febr. 27).

CTh.9.42.1.3

Sed in his, qui fiscalibus actibus nexi sunt et pro ratiociniis proscribuntur et condemnantur, placuit, si quid proprium uxor habuit vel a marito datum, in quantum capere potuit, ante initum actum, ex quo origo fraudis ac vitii in iudicium deducta est, si quid deinde in emancipatos filios donatione collatum, antequam orto nexu suffugium potius quam munificentia frausque temptetur intemeratum aput accipientium iura persistere; nec quicquam fisco in qualibet causa teneatur obnoxium, nisi quod in dominio proprio, cum obligari ortus est, habuit vel quod agens tam suo quam uxoris vel filiorum vel cuiuscumque praeterea nomine comparavit. (321 febr. 27).

CTh.9.42.1.4

Exceptis dumtaxat caesarianis, qui ab omni iuris beneficio excluduntur, nisi probata a me purgataque ratiocinia fuerint, ut quod innoxie habuerint transmittendi copiam habeant. dat. iii kal. mart. serdicae crispo ii et constantino ii cc. conss. (321 febr. 27).

CTh.9.42.2

Imp. constantius a. et iulianus caes. ad populum. si quem forte gladius ultor adflixerit aliave quaelibet vitam adimens poena consumpserit, usque ad tertium gradum generis copulationis eiusdem successio deferatur fisco penitus quiescente, ut accipiat hereditatem, qui eam iure civili vel praetorio poterat vindicare, de numero videlicet personarum, quas legis huius excepit auctoritas, sed ita, ut alia sit condicio damnatorum ex crimine maiestatis aut magicae. in his enim, etiamsi liberos damnatus habeat vel parentes, non condentes poenam, sed relinquentes antiquam, fisco fieri locum praecipimus. dat. viii id. mart. mediolano constantio a. viii et iuliano caes. conss. (356 mart. 8).

CTh.9.42.3

Idem a. et caes. caelestino consulari baeticae. ubi aliquis pro qualitate criminis vivendi sententiam passus fisco fecerit locum, super occupandis rebus eius statim officium procuratoris patrimonii litteris tuis conveniatur, ut eadem corpora fisci viribus vindicentur et protinus super occupatione eorum scriptis competentibus intimetur. dat. v. kal. septemb. constantio a. viiii et iuliano caes. ii conss. (357 aug. 28).

CTh.9.42.4

Idem a. ad taurum. vetueramus bona capite damnatorum fiscali dominio vindicari excepto crimine maiestatis et magicae, ut ea haberent usque ad gradum tertium sucessores eorum, quorum vitam severitas ademisset. nunc vero bona capite damnatorum fiscali dominio vindicari decernimus sanctione illa, quam certa condicione dederamus, quiescente. dat. prid. non. ian. sirmi, acc. vi kal. sept. datiano et cereale conss. (358 ian. 4).

CTh.9.42.5

Imp. iulianus a. ad felicem comitem sacrarum largitionum. quidam scelerate proscriptorum facultates occultant. hos praecipimus, si locupletes sint, proscriptione puniri, si per egestatem abiecti sunt in faecem vilitatemque plebeiam, damnatione capitali debita luere detrimenta. proposita romae vii id. mart. mamertino et nevitta conss. (362 mart. 9).

CTh.9.42.6 [=brev.9.32.1]

Impp. valent. et valens aa. ad symmachum pf. u. substantiam damnatorum integram ad liberos pervenire, et in qualibet causa positis parentibus liberos heredes esse praecipimus, excepta sola maiestatis quaestione: quam si quis sacrilego animo assumit, iuste poenam ad suos etiam posteros mittit. dat. vii. kal. dec. mediolano, divo ioviano et varroniano coss.

interpretatio. si quis pro crimine suo occidi vel damnari meruerit, crimen cum auctore deficiat, bona vero eius ad filios vel ad heredes legitimos pertinebunt: nisi forte maiestatis crimine damnatus sit aliquis, quorum etiam filios de bonis damnati patris fieri iubemus alienos

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CTh.9.42.7

Idem aa. et gratianus a. ad probum praefectum praetorio. si qui intra provinciam pro qualitate delicti stilum proscriptionis incurrerit, per ordinarii officii sollicitudinem bonorum eius indago diligentissime celebretur, ne quid rei privatae commodis per gratiam atque colludium furto subducatur. et plena descriptio comprehendat, quod spatium et quod sit ruris ingenium, quid aut cultum sit aut colatur, quid in vineis olivis aratoriis pascuis silvis fuerit inventum, quae etiam gratia et quae amoenitas sit locorum, quis aedificiis ac possessionibus ornatus, quotve mancipia in praediis occupatis vel urbana vel rustica vel quarum artium generibus inbuta teneantur, quot sint casarii vel coloni, quot boum exercitiis terrarum atque vomeribus inservientium, quot pecorum et armentorum greges et in qua diversitate numerati sint, quantum auri et argenti, vestium ac monilium vel in specie vel in pondere et in quibus speciebus quidve in enthecis sit repertum. tum demum omnia ea, quae velle nos perspicis, inquisitione constricta rationalis rei privatae tradantur officio nostro nectenda patrimonio. mox vero ad nos sub litteris publicis iudicis singillatim de omnibus nominatimque perferatur, procul dubio neglegentia multanda. nam si quid post factam a praedicto officio investigationem rationalis rei privatae, cui inquisitio secunda mandata est, amplius fortassis invenerit, officium fraudulentum ea condemnatione ferietur, ut aliud tantum, quantum fuerat subtractum, ex propriis facultatibus inferat. dat. iii non. mai. treviris valentiniano nb. p. et victore conss. (369 mai. 5).

CTh.9.42.8pr.

Imppp. gratianus, valentinianus et theodosius aaa. eutropio praefecto praetorio. deportato si erunt liberi nepotesve sui seu emancipati, nepotes quoque ex filia, semissem tantum bonorum fiscus usurpet, semissis ipsi ac liberis hac distributione servetur, ut sextantem ipse ad fortunam ab extrema inopia vindicandam suae habeat potestatis, trientem liberi nepotesve, scilicet indifferenter sive ii ex filio sive filia erunt. quod si idem et emancipatos et suae potestatis filios nepotesve habuerit, beneficium tantum ad eos, qui in potestate sunt, transferatur, si emancipati ea, quae consecuti erant emancipationis tempore, damnose existimant conferenda. sin autem confusionem bonorum et donationis elegerint, omnia ea, quae fiscus concedit, aequae divisionis partibus sortiantur. quae regula etiam in dote filiae vel neptis ex filio conferenda custodienda erit. et si filius quidem erit aut filii, ex filio autem alio filiisve aut filia nepotes, triens hic in stirpes, non in capita dividatur. (380 iun. 17).

CTh.9.42.8.1

Quod si deportatus sine liberis vel nepotibus patrem habebit ac matrem vel etiam utrumque, non semissis a fisco, sed bessis patrimonii vindicetur, triens residuus in duos sextantes redactus inter parentes ac deportatum aequaliter dividatur, ita ut unciam mater, si ius liberorum habuerit, usurpet; sin fecunditatis privilegium non habebit, patri unciam iam habenti mater semunciam ex uncia sua cedat. idem servabitur, si deportato ex duobus parentibus unus supererit, ut sextantem sine aliqua malignitatis interpretatione praesumat tunc quidem mater, etiamsi ius non habuerit liberorum, quam superstes vir, ut sanximus, semper excludet. (380 iun. 17).

CTh.9.42.8.2

Quod si deportato nec liberi fuerint nec parentes, dextantem fiscus accipiat, sextans ei ad vitae adflictae adminicula reservetur. (380 iun. 17).

CTh.9.42.8.3

Exceptis his, qui crimine fuerint maiestatis adflicti; nam in eo casu solum sextantem iubemus filiis ac nepotibus reservari, his regulis, quibus supra est constitutum, destantem fisco usurpante: ipsum vero in tam atroci facinore convictum non solum deportatione, sed egestate puniri conveniet. dat. xv kal. iul. thessalonicae gratiano v et theodosio i aa. conss. (380 iun. 17).

CTh.9.42.9pr.

Idem aaa. eutropio praefecto praetorio. si aliquis supplicio fuerit adflictus, filiis quidem omnium facultatum deferatur prima successio. nepotes vero ex filia gradus secundus admittat, si tamen nullus suorum fuerit inventus, qui eos antecedat, hereditate in stirpes, non in capita dividenda. quod aeque observabitur, si erit filius ac nepotes, qui ab intestato successuri defuncto vel ex duodecim tabulis vel per rescissionem capitis praetorio vocabuntur edicto, emancipatis et filia necessitate collationis adstrictis. progredietur tamen beneficium etiam ad tertii gradus liberos, si modo ex virili stirpe descendunt, ita dumtaxat, ut sub hoc casu ipsi semissem, semissem fiscus usurpet, ea distributione partium, quam ius civile disponit. (280 iun. 17).

CTh.9.42.9.1

Quod si supplicio huius modi adflictus comprehensorum graduum liberos non habebit, tum capite secundo pater ac mater in trientem dumtaxat vocetur, besse ad aerarium publicum transferendo, atque ita, si matri ius fuerit liberorum, partes inter utrumque parentem sextantibus impleantur, sin deerit, quadrantem pater, unciam mater accipiat. quod si interfectus patrem tantum reliquerit, nihilo setius vindicatione trientis utatur, item si matrem, dummodo ea ius habeat liberorum. sin autem sola supererit mater, papiae tamen legis privilegiis destituta neque trino partu fecunditati publicae gratiosa, sextante contenta sit fisco dextantem usurpante. (280 iun. 17).

CTh.9.42.9.2

Tertii capitis haec erit regula, ut secundi quoque gradus parentes, avum scilicet atque aviam paris beneficii foveat sanctio. paternus tamen hoc casu, non etiam maternus, avus et avia quaerentur, ut quadrantem ex defuncti accipiant bonis ea divisionis lege, quae circa patrem ac matrem diversis est casibus explicata. (280 iun. 17).

CTh.9.42.9.3

Iungimus tamen capite tertio avo aviaeque fratrem perempti ac sororem, ita ut in capita dividi quadrantem isdem existentibus sanciamus. ac si cui perempto cum fratre ac sorore manserit consanguinitatis agnatio, sit duodecim tabulis locus ac ius civile praevaleat, ut avus atque avia, cognatorum gradu invitati, vinci se a legitimis adquiescant. quo quidem casu tres unciae inter sororem ac fratrem aequaliter dividentur. uterinus autem frater ac soror eodem gradu, quo avus et avia, vocabuntur. sin omnes hae deerint punito necessitudines, fisco omnia vindicentur. dat. xv kal. iul. thessalonicae gratiano v et theodosio i aa. conss. (280 iun. 17).

CTh.9.42.10 [=brev.9.32.2]

Imppp. grat., valent. et theodos. aaa. postumiano pf. p. ad beneficium legis valentinianae pertineant postumi* quoque puniti patris, ut bona faciant non caduca. et ne quis partum, qui fuerit, vel suppositum arguat, vel non suppositum mentiatur, si forte eo tempore, quo maritum severitas rapiet ad poenam (excepto tamen maiestatis reatu, sicut ante praeceptum est), gravidam se uxor adverterit, mittat ad iudicem, conveniat magistratus, maneat deposita de conceptione testatio, petantur futurae partitudinis testimonia, adhibitisque custodibus foecunditas pudica servetur. quippe illam fidem solam generis fisco nostro volumus esse potiorem, de cuius minime nativitate dubitetur. dat. viii. id. april. constantinopoli, merobaude ii. et saturnino coss.

interpretatio. si quicumque* damnatus praegnantem reliquerit uxorem, statim mulier de conceptu suo iudicem vel curiales contestetur, ut quum pepererit, in bonis damnati postumus*, id est post mortem patris natus succedat

CTh.9.42.11

Imppp. theodosius, arcadius et honorius aaa. rufino praefecto praetorio. si qui pro atrocitate commissi formam eiusmodi sustinebunt, ut bona eorum proscriptionis nomine vindicata fiscalibus sint socianda corporibus, commemorationem nostrorum nominum in his titulis nolumus fieri, qui eorum postibus adfigentur, vel his, quorum ius ac proprietas auferetur. officium etenim palatinum decem librarum auri multae dispendio vexabitur, si hoc deinceps crediderit neglegendum. dat. kal. mai. constantinopoli theodosio a. iii et abundantio v. c. conss. (393 mai. 1).

CTh.9.42.12

Idem aaa. rufino praefecto praetorio. omnia proscriptorum bona, quae fisco iusserat tatianus adnecti, vel ipsis, qui propriam nuditatem. vel illis, qui suorum mortem in extrema positi egestate lugent, sine dubitationis obstaculo reddi praecipimus. dat. prid. id. iun. constantinopoli theodosio a. iii et abundantio v. c. conss. (393 iun. 12).

CTh.9.42.13

Idem aaa. drepanio comiti rerum privatarum. omnia proscriptorum bona, quae fisci nomine singulis quibusque tatianus eripuit, vel ipsis, qui gladio acerbiorem stilum passi aerumnas suas nuditatemque fleverunt vel eorum filiis ac propinquis, qui cruentas excepere sententias, restitui mox iubemus, ita ut omnes, qui aliquid ex huiusmodi bonis nostra liberalitate meruerunt, restituere indepta cogantur. dat. prid. id. iun. constantinopoli theodosio a. iii. et abundantio conss. (393 iun. 12).

CTh.9.42.14

Impp. arcadius et honorius aa. caesario praefecto praetorio. serenitatis nostrae provisione solita commonemus, ut ea, quae rufinus quondam, cum viveret, quoquo pacto possedit, in eodem statu interim maneant nec quisquam sibi post eius obitum spontaneam vindicandi tribuat potestatem. nam qui transacto tempore siluit ac rufinum tenere concessit, fiscum quoque nostrum sine praeiudicio possidere patiatur. hoc edictis propositis per omnes provincias praecipimus divulgari, quo cuncti sciant iacturam se perpessuros graviorem totiusque rei familiaris periculum, nisi ante praeceptum nostrum manus ab his, quae rufinus vivus possederat, voluerint abstinere. dat. id. feb. constantinopoli arcadio iiii et honorio iii aa. conss. (396 febr. 13).

CTh.9.42.15 [=brev.9.32.3]

Impp. arcad. et honor. aa. caesario pf. p. si quis posthac stilum, quod absit, proscriptionis exceperit, solus criminis sui solvat poenas: neminem habeat in bonorum amissione consortem. sit a proscripti mariti sorte uxor aliena, quo (ut assolet) proscripto, uxor proprias, velut manu iniecta, mox vindicet, aut certe quoquo modo occupatas statim recipiat facultates. dos etiam, non quae aliquoties inaniter dotalium instrumentorum tenore conscribitur, sed quam se corporaliter tradidisse docuerit, praesentetur. ea etiam, si forte cum proscripti bonis mixta sunt, non negentur, quae ab innoxio adhuc marito ante nuptias titulo donationis acceperit. sin vero frater, soror, propinquus, affinis et quicumque* proscripto qualibet sorte sociantur. tam longe enim unusquisque a metu ac poena abesse debet, quam alienus a crimine est. dat. iii. non. aug. constantinopoli, arcadio iv. et honorio iii. aa. coss.

interpretatio. quicumque* damnari proscribique meruerit, ab eius facultatibus bona uxoria sequestrentur, ita ut et dotem, quam marito uxor aut eius parentes obtulerunt, et donationem, quam ante nuptias pro coniunctione susceperat, uxor retineat, sibique vindicet a bonis proscriptae facultatis aliena, quia mariti crimine uxor non potest obligari

CTh.9.42.16

Idem aa. ad peregrinum comitem et procuratorem divinae domus. ex possessionibus gildonis, quae ad nostrum aerarium sunt devolutae, canonem omnium titulorum ex integro sollemni more imputata cautione solvi praecipimus. dat. kal. decemb. altino theodoro v. c. cons. (399 dec. 1).

CTh.9.42.17 [=brev.9.32.4]

Iidem aa. studio comiti r. p. ne quis proscriptorum bona vel eorum, qui publicam videntur excepisse sententiam, intra biennium aestimet postulanda. abstineant facultatibus intra id temporis expetendis, ut aut proprias quis recipiat, si, ut nobis ingenitum est, duriores casus et tristiorem fortunam imperatoria humanitate molliamus, aut tum demum postulet, quum iam fiscalem potius quam proscriptorum rem expetisse noscatur. si quis autem petendas proscripti vel deportati intra biennium crediderit facultates, careat fructu liberalitatis augustae, ita ut nec instruantur huius modi petitiones, nec si temere instructae fuerint et sub specialis beneficii munificentia nostram provocaverint liberalitatem, habeant aliquas vires indulta. dat. xiv. kal. febr. constantinopoli, vincentio et fravitta coss.

interpretatio. bona eius, qui proscribi meruerit, intra biennium non competantur. si quis vero intra biennium proscripti bona petierit, quod meruerit, non valebit, quia solita misericordia nostra pietas commoveri et reddere, quae merito commota iussit auferri

CTh.9.42.18

Idem aa. bathanario comiti africae. marcharidus proscriptus plurima rerum penes diversos reliquit, sicut quaestio habita patefecit. ut quisque igitur aliquid ex eius facultatibus retinet, si intra duos menses spontanea restituat voluntate, sciat se ad veniam pertinere, si quae susceperat fideliter repraesentet, alioquin patrimonio suo fisco sociato poenam se deportationis noverit subiturum. dat. iii id. iul. mediolano vincentio et fravitto conss. (401 iul. 13).

CTh.9.42.19

Idem aa. et theodosius a. ursicino comiti sacrarum largitionum. possessiones, quae ex bonis gildonis aut satellitum eius in ius nostrae serenitatis retentae sunt ab occupatoribus, nostro patrimonio adgregentur, ita ut ab his ex eo tempore, quo indebite retentarunt, praestationum simplum inferatur. qui si conventi intra kalendas octobres possessiones putaverint retinendas, sciant se ad dupli restitutionem coartandos et duplos fructus esse reddendos. dat. xii kal. mai. ravennae stilichone ii et anthemio conss. (405 apr. 20).

CTh.9.42.20

Impp. honorius et theodosius aa. theodoro praefecto praetorio. proscriptorum satellitumque fortunas aerario nostro iubemus accedere. ideoque per agros, per cuncta domicilia titulos nostrae serenitatis adfigi praecipimus. quidquid sane ab eorum procuratoribus ex praediorum fructibus congregatum est, largitionibus nostris protinus copuletur, ne, si iussa nostra aut dissimulatione neglexerint aut colludio praetermiserint, supplicium exilii pariter et proscriptionis sustineant. dat. viii kal. octob. mediolano basso et philippo conss. (408 sept. 24).

CTh.9.42.21

Idem aa. theodoro praefecto praetorio. qui in facultates stilichonis et actus videntur esse versati vel ex isdem facultatibus aliquid subtraxisse vel aliquid rapuisse, omnifariam reddant. dat. viii kal. novemb. basso et philippo conss. (408 oct. 25).

CTh.9.42.22

Idem aa. theodoro praefecto praetorio. qui suas opes praedoni publico vel eius filio ceterisque satellitibus dederunt vel iure vel corpore, quibus ille usus est ad omnem ditandam inquietandamque barbariem, his omnem repetendi viam iubemus esse praeclusam. dat. x kal. decemb. ravennae basso philippo conss. (408 nov. 22).

CTh.9.42.23

Idem aa. palladio praefecto praetorio. post alia. eorum facultates, qui pro criminibus suis meruere puniri, omni penitus competitione submota fisco nostro iubemus addici, si nullos tamen liberos patrem matremve derelinquunt, quibus damnatorum bona legum servavit humanitas; scelere maiestatis excepto, cuius atrocitas nihil relinquit heredibus. dat. viii id. iul. ravennae eustathio et agricola conss. (421 iul. 8).

CTh.9.42.24pr.

Impp. theodosius et valentinianus aa. hierio praefecto praetorio. sentiat latro nefarius aut huiusmodi quis professis testatisque sceleribus involutus ultionem suam non posse tardari. damnato etiam ita proscriptio infligenda est, ut dimidia parte aerario vindicata alia damnati filiis reservetur. (426 ian. 23).

CTh.9.42.24.1

Decurioni vero, qui hoc incurrerit, si liberos non habeat, succedat curia bonaque universa detineat aut ipsa per se aut suo ordinatura periculo munera subiturum. sin erit suboles curiali, quam municipales sibi vindicent functiones, integris fortunis fulciatur. si filia vel filiae fuerint, quod pro certa legis sanctione defixum est, pars dimidia ad eas deveniat facultatum. sin mares curiales fuerint intermixti, dimidia pars eis curiae nomine deferatur et aliam, quam in commune omnibus tribuit indulgentia principalis, pro virili dividant portione. dat. x kal. feb. constantinopoli d. n. theodosio xii et valentiniano ii aa. conss. (426 ian. 23).

CTh.9.43.0. [=brev.9.33.0.] De sententiam passis et restitutis et liberis eorum.

CTh.9.43.1pr. [=brev.9.33.1pr.]

Imp. constantinus a. ad maximum pf. u. in quaestione testamenti, quod deportati filius remeante patre fecisset, remotis ulpiani atque pauli notis, papiniani placet valere sententiam, ut in patris sit filius potestate, cui dignitas ac bona restituta sunt.

CTh.9.43.1.1 [=brev.9.33.1.1]

Ita tamen, ut gesta per filium, cuius consilia legitima aetas firmaverat, rata sint, eodem in potestatem patriam redeunte, ne eorum rescissio efficiat, quod est maxime absurdum, eodem tempore nec in patris nec in sua quemquam fuisse potestate.

CTh.9.43.1.2 [=brev.9.33.1.2]

Minores enim aetate iure quicquam agere prohibentur. quibus si damnato patre tutor datus est, necesse est, ut ab officio recedat, regresso eo, quem non solum nomine redire, sed etiam officium suum nulla pravitate corruptum liberis praebere oportet, ut eorum bona tueatur et augeat. nam si patria potestate ad corrumpendi atque effundendi patrimonii licentiam abutetur, ut furioso ac dementi, item prodigo, libidinum omnium vitiorumque servo non est eorum pecunia committenda: ab administratione fugiat: neque tutor esse desinat, omniaque minoris dispendia suis ipse damnis praestet. sententia vero deportationis nullo patrem praeiudicio deminuat. quem si comperta integritas ut natura, ita officio liberis restituerit, ei gubernacula rerum tradenda sunt, cuius, ad imitationem publici iuris, provisa custodia est. quae nisi bonis patribus detur, luctuosior erit reditus quam discessus.

CTh.9.43.1.3 [=brev.9.33.1.3]

Ideoque tantum ad restitutionem indulgentia valeat, quantum ad correctionem sententia valuit. utque deportationis ipsum per se nomen rerum omnium spoliatio est, ita indulgentia reditus bonorum ac dignitatis uno nomine amissorum omnium sit recuperatio. et filii emancipationem a patribus officiis petant, ut libertatem non damnationis, sed lenitatis paternae testem habeant. dat. xviii. kal. oct. sirmio, crispo ii. et constantino ii. caess. coss.

interpretatio. si quis pater in exsilium missus filium in maiore aetate reliquerit, quaecumque* de bonis propriis gessit filius, iuxta sententiam papiniani rata et firma permaneant, nec contra aut testamentum aut transactionem filii reversus pater venire permittitur. sane quum redierit pater, si filium vivum invenerit, filium in ius suum paterna potestate recipiet. ceterum quod de rebus propriis absente patre filius gessit, reversus pater revocare non poterit. quicquid vero filii in annis minoribus constituti fecerint, penitus non valebit: qui tamen si pro aetate vel absentia patris aut tutores aut curatores acceperint, reversus pater filios, repulsis curatoribus vel tutoribus, cum omni facultate recipiet: ea tamen condicione*, ut rem filiorum ita administret ac regat, ut non solum detrimenta non sentiant, sed studio patris res et facultas proficiat filiorum. quod si pater aut prodigus aut negligens aut eversor aut libidini deditus esse convincetur, et filiorum res impie ac dementer vastare ac dilapidare cognoscetur, filii talis patris, tanquam eo mortuo, sub tutore aut curatore consistant: quia sicut aequum est, ut bonus et utilis pater rem filiorum regendam administrandamque recipiat, ita iniquum est, ut in damnum filiorum reversus facultates a tutoribus curatoribusve reservatas dementi subversione dilaceret

CTh.9.44.0. De his, qui ad statuas confugiunt

CTh.9.44.1

Imppp. valentinianus, theodosius et arcadius aaa. cynegio praefecto praetorio. eos, qui ad statuas vel evitandi metus vel creandae invidiae causa confugerint, ante diem decimum neque auferri ab aliquo neque discedere sponte perpetimur; ita tamen, ut, si certas habuerint causas, quibus confugere ad imperatoria simulacra debuerint, iure ac legibus vindicentur; sin vero proditi fuerint artibus suis invidiam inimicis creare voluisse, ultrix in eos sententia proferatur. dat. prid. non. iul. constantinopoli honorio n. p. et evodio v. c. conss. (386 iul. 6).

CTh.9.45.0. De his, qui ad ecclesias confugiunt

CTh.9.45.1

Imppp. theodosius, arcadius et honorius aaa. romulo comiti sacrarum largitionum. publicos debitores, si confugiendum ad ecclesias crediderint, aut ilico extrahi de latebris oportebit aut pro his ipsos, qui eos occultare probantur, episcopos exigi. sciat igitur praecellens auctoritas tua neminem debitorum posthac a clericis defendendum aut per eos eius, quem defendendum esse crediderint, debitum esse solvendum. dat. xv kal. nov. constantinopoli arcadio a. ii et rufino conss. (392 oct. 18).

CTh.9.45.2

Impp. arcadius et honorius aa. archelao praefecto augustali. iudaei, qui reatu aliquo vel debitis fatigati simulant se christianae legi velle coniungi, ut ad ecclesias confugientes vitare possint crimina vel pondera debitorum, arceantur nec ante suscipiantur, quam debita universa reddiderint vel fuerint innocentia demonstrata purgati. dat. xv kal. iul. constantinopoli caesario et attico conss. (397 iun. 17).

CTh.9.45.3

Idem aa. eutychiano praefecto praetorio. si quis in posterum servus ancilla, curialis, debitor publicus, procurator, murilegulus, quilibet postremo publicis privatisve rationibus involutus ad ecclesiam confugiens vel clericus ordinatus vel quocumque modo a clericis fuerit defensatus nec statim conventione praemissa pristinae condicioni reddatur, decuriones quidem et omnes, quos solita ad debitum munus functio vocat, vigore et sollertia iudicantum ad pristinam sortem velut manu mox iniecta revocentur: quibus ulterius legem prodesse non patimur, quae cessione patrimonii subsecuta decuriones esse clericos non vetabat. sed etiam hi, quos oeconomos vocant, hoc est qui ecclesiasticas consuerunt tractare rationes, ad eam debiti vel publici vel privati redhibitionem amota dilatione cogantur, in qua eos obnoxios esse constiterit, quos clerici defensandos receperint nec mox crediderint exhibendos. et cetera. dat. vi kal. aug. mnizo honorio a. iiii et eutychiano conss. (398 iun. 27).

CTh.9.45.4pr. [=brev.9.34.1pr.]

Impp. theodos. et valent. aa. antiocho pf. p. pateant summi dei templa timentibus; nec sola altaria et oratorium templi circumiectum, quod ecclesias quadripertito intrinsecus parietum septo concludit, ad tuitionem confugientium sancimus esse proposita, sed usque ad extremas fores ecclesiae, quas oratum gestiens populus primas ingreditur, confugientibus aram salutis esse praecipimus, ut inter templum, quod parietum descripsimus cinctu, et post loca publica ianuas primas ecclesiae quicquid fuerit interiacens, sive in cellulis sive in domibus, hortulis, balneis, areis atque porticibus, confugas interioris templi vice tueatur. nec in extrahendos eos conetur quisquam sacrilegas manus immittere, ne qui hoc ausus sit, quum discrimen suum videat, ad expetendam opem ipse quoque confugiat. hanc autem spatii latitudinem ideo indulgemus, ne in ipso dei templo et sacrosanctis altaribus confugientium quemquam manere vel vescere, cubare vel pernoctare liceat: ipsis hoc clericis religionis causa vetantibus, ipsis, qui confugiunt, pietatis ratione servantibus.

CTh.9.45.4.1 [=brev.9.34.1.1]

Arma quoque in quovis telo, ferro vel specie eos, qui confugiunt, minime intra ecclesias habere praecipimus, quae non modo a summi dei templis ac divinis altaribus prohibentur, sed etiam cellulis, domibus, hortulis, balneis, areis atque porticibus.

CTh.9.45.4.2 [=brev.9.34.1.2]

Proinde hi, qui sine armis ad sanctissimum dei templum aut ad sacrosanctum altare sive usquam gentium sive in hac alma urbe confugiunt, somnum intra templum sive ipsum altare vel omnino cibum capere absque aliqua eorum iniuria ab ipsis clericis arceantur, designantibus spatia, quae in ecclesiasticis septis eorum tuitioni sufficiant, ac docentibus, capitalem poenam esse propositam, si qui eos conentur invadere. quibus si perfuga non annuit, neque consentit, praeferenda humanitati religio est et a divinis ad loca, quae diximus, turbanda temeritas.

CTh.9.45.4.3 [=brev.9.34.1.3]

Hos vero, qui templa cum armis ingredi audent, ne hoc faciant, praemonemus; dein si telis cincti quovis ecclesiae loco vel ad templi septa vel circa vel extra sint, statim eos, ut arma deponant, auctoritate episcopi a solis clericis severius conveniri praecipimus, data eis fiducia, quod religionis nomine melius quam armorum praesidio muniantur. sed si ecclesiae voce moniti, post tot tantorumque denuntiationes, noluerint arma relinquere, iam, clementiae nostrae apud deum et episcoporum causa purgata, armatis, si ita res exegerit, intromissis, trahendos se abstrahendosque esse cognoscant et omnibus casibus esse subdendos. sed neque episcopo inconsulto, nec sine nostra sive iudicum in hac alma urbe vel ubicumque* iussione armatum quemquam ab ecclesiis abstrahi oportebit, ne, si multis passim hoc liceat, confusio generetur. dat. x. kal. april. constantinopoli, antiocho v. c. cos. et qui fuerit nuntiatus.

interpretatio. ecclesiae ac loca deo dicata reos, qui ibidem compulsi timore confugerint, ita tueantur, ut nulli locis sanctis ad direptionem reorum vim ac manus afferre praesumant: sed quicquid spatii vel in porticibus vel in atriis vel in domibus vel in areis ad ecclesiam adiacentibus pertinet, velut interiora templi praecipimus custodiri, ut reos timoris necessitas non constringat circa altaria manere et loca veneratione digna polluere. sane si qui ad loca sancta confugerint, arma si qua secum portaverint, mox deponant, nec se existiment magis armorum praesidio quam sanctorum locorum veneratione defendi. quod si deponere arma noluerint et sacerdoti vel clericis non crediderint, sciant se armatorum viribus extrahendos. si vero extrahere de locis sanctis quemlibet reum quacumque* ratione quis tentaverit, noverit se capitali supplicio esse damnandum

CTh.9.45.5

Idem aa. hierio praefecto praetorio. super confugientibus ad sanctae religionis altaria sanctionem in perpetuum valituram credidimus promulgandam, ut, si quidem servus cuiusquam ecclesiam altariave loci tantum veneratione confisus sine ullo telo petierit, is non plus uno die ibidem dimittatur, quin domino eius vel cuius metu poenam imminentem visus est declinasse, a clericis quorum interest nuntietur. isque eum impertita indulgentia peccatorum, ut nullis residentibus iracundiae menti reliquiis, in honorem loci et eius respectu, ad cuius auxilium convolavit, abducat. quod si armatus nullis hoc suspicantibus inopinus irruerit, exinde protinus abstrahatur vel certe continuo domino vel ei, unde eum tam furiosa formido proripuit, indicetur eique mox abstrahendi copia non negetur. sed si armorum fiducia resistendi animos insania impellente conceperit, abripiendi extrahendique eum domino, quibus potest id efficere viribus, concedatur. quod si illum etiam confici in concertatione pugnaque contigerit, nulla erit eius noxa nec conflandae criminationis relinquetur occasio, si is, qui ex statu servili in hostilis et homicidae condicionem transivit, occisus sit. quod si quae tam sunt utiliter constituta eorum, qui huic rei pro suo praeficiuntur officio, aut neglegentia aut coniventia vel aliqua ratione fuerint dapravata, animadversio iusta non deerit, ut sub episcopalis diiudicationis arbitrio loco eo, quem tueri nequivere, submoti et reiecti in ordinem plebeiorum motum iudiciarii vigoris excipiant. dat. v kal. april. constantinopoli valerio cons. et qui fuerit nuntiatus. (432 mart. 28).

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CTh.10.1.0. De iure fisci

CTh.10.1.1

Imp. constantinus a. et caes. ad populum. si quid a fisco fuerit occupandum vel a nobis de cetero pro unius cuiusque meritis obsequiisque donandum vel ab eodem distrahendum, intra annum, omnibus vel a petitione vel a comparatione se abstinentibus ii, qui putant iniuste res proprias a fisco esse comparatas, contra eundem agere contendant scientes gratulantesque, quod annua spatia, intra quae suum repetant, sint indulta, ac si probaverint iustitiam petitioni suae adesse, recipiant et nostro beneficio habeant restituta. dat. id. sept. romae constantino a. iiii et licinio iiii conss. (315 sept. 13).

CTh.10.1.2 [=brev.10.1.1]

Imp. constantinus a. ad severum rationalem africae. post alia: possessiones atque mancipia exempta* fisci patrimonio quibusdam donavimus. haec directo iure atque perpetuo absque omni quaestione volumus obtineri poena contra rationales et magistros privatae rei atque officiales proposita, si quid contra tentaverint etc. pp. xvi. kal. iun. romae in foro traiani, constantino a. v. et licinio c. coss.

interpretatio. quicumque* agri atque mancipia quibuscumque* personis de fisci nostri iure donantur, apud eos, quibus donata sunt, sine suspicione aliqua volumus permanere: contra ordinatores domorum dominicarum poena proposita, si contra praeceptionem facere cognoscuntur

CTh.10.1.3

Idem a. ad provinciales. iustas etiam et quae locum habent fisci actiones praecipimus concremari ob hoc solum, quod suis temporibus prolatae non sunt. iam calumniae privatorum eo saltem arceantur exemplo, quo iustas fisci lites silere praecipimus. dat. iii kal. iun. constantino a. v et licinio c. conss. (319 mai. 30).

CTh.10.1.4

Idem a. ad dometium dracontium magistrum privatae rei africae. cum fiscus litem patiatur aut inferat, anni spatium ad determinandam causam spectari oportet, quia hoc ad instruendum satis est et diutius non oportet privatorum sive fisci emolumenta fatigari. dat. xiiii kal. iun. serdicae constantino a. vi et constante c. conss. (320 mai. 19).

CTh.10.1.5pr.

Idem a. defensionis facultas danda est his, quibus aliquam inquietudinem fiscus infert, cum facultates eorundem athuc controversia pendente inquietari describique fas non sit. ubi ergo controversia extiterit fisco alicuius patrimonium vindicante, aput eum omnibus facultatibus constitutis cognitio ventiletur, ut, cum rei exitus debere eas vindicari probaverit, tum demum res persequi liceat et super modo facultatum ac rerum interrogationem haberi, quae per condicionales servos investiganda est, ut, si quid subtractum fuerit, exigatur et extrinsecus tantum aliud multae nomine, quantum fuerat per fraudem ablatum. (326 dec. 31).

CTh.10.1.5.1

Sane in huiuscemodi quaestione si caesariani nomen inciderit, ad usurpationem constitutionis istius non debebit accedere, si quidem consuetudo fraudium, quibus praedicti omnia temerare consuerunt, exceptionem eorundem meruerit. dat. prid. kal. ian. sirmio constantino a. vii et constantio caes. conss. (326 dec. 31).

CTh.10.1.6

Imp. constantius a. ad hieroclem consularem syriae coeles. secundum legem, quam dudum promulgavimus, vanam appellationem recte non suscepisti. de cetero quoque in causis rebusque fiscalibus huiusmodi provocationes non debebis admittere. dat. viii kal. mai. philippo et sallia conss. (348 apr. 24).

CTh.10.1.7

Idem a. et iulianus caes. verecundo rationali summarum. ab edicti nostri tenore, quo tempora negotiis sancienda esse censuimus, fiscales causae seiunctae sunt, quoniam fieri potest, ut per innumeras occupationes tui officii vel forte fraudulentam astutiam et venale silentium fiscalis petitio omni iustitiae ratione subnixa propter temporis angustias perimatur. proposita vi kal. iul. vallis constantio a. viiii et iuliano caes. conss. (357 iun. 26).

CTh.10.1.8

Impp. valentinianus et valens aa. ad caesarium comitem rerum privatarum. universa loca vel praedia, quae nunc in iure templorum sunt quaeque a diversis principibus vendita vel donata sunt retracta, ei patrimonio, quod privatum nostrum est, placuit adgregari. dat. prid. non. feb. mediolano divo ioviano et varroniano conss. (364 febr. [?] 4).

CTh.10.1.9

Idem aa. ad symmachum praefectum urbi. observet in posterum eminentia tua, ne quid de rebus rei privatae violetur, nisi prius comes rerum privatarum fuerit gnarus. dat. vii id. mar. mediolano valentiniano et valente aa. conss. (365 mart. 9).

CTh.10.1.10

Idem aa. ad dracontium vicarium africae. qui in contractibus scelestis ac fisco perniciosis interversorum maculosis se fraudibus implicuerunt, in quadrupli redhibitionem teneantur. dat. xv kal. dec. hadrumeto valentiniano et valente aa. conss. (365? 368? nov. 17).

CTh.10.1.11

Idem aa. et gratianus a. alexandriano comiti rerum privatarum. ut perspicue colonorum utilitatibus consulatur, decima indictione singulas tantum dependant centesimas, qui reditus domui nostrae debitos quodannis iuxta consuetudinem arcariis tradunt; ita tamen, ut singularum quoque centesimarum ratio semper evidens scientiae tuae digesta referatur; videlicet ut erogationibus cunctis aperta instructione patefactis reliquorum ratio ex centesima possit agnosci. dat. vii kal. oct. dorostori lupicino et ioviano conss. (367 sept. 25).

CTh.10.1.12

Imppp. gratianus, valentinianus et theodosius aaa. pancratio comiti rerum privatarum. et mori veteri et constitutis nos maiorum accessisse cognoscas. et alytarchae urbis antiochenae plantandi plures, excidendae unius cupressi iubemus tribui facultatem. dat. xv kal. iul. thessalonicae ausonio et olybrio conss. (379 iun. 17).

CTh.10.1.13

Idem aaa. ad messianum proconsulem africae. in omnibus fiscalibus causis, quisquis iudicum cognitor resederit, exceptis magnificis viris largitionum nostrarum comitibus, quos extra ordinem negotia definire non multo ante lata secundum veteres mores constitutione praecepimus, si intra eandem provinciam res agatur, duos menses satis abundeque sufficere censemus; si ex contigua personae atque instructiones necessariae putabuntur, quattuor; si ex transmarina, sex. cum vero de causae meritis interposita provocatione tractabitur, in eadem provincia partibus constitutis intra viginti, si ex contigua, intra quadraginta dies negotium terminetur. dat. xv kal. octob. aquileiae arcadio a. i et bautone conss. (385 sept. 17).

CTh.10.1.14

Idem aa. hyperechio comiti rerum privatarum. auri atque argenti maximum pondus plurimis diversisque temporibus usurpatum et ad aerarii nostri rationes non relatum cognovimus. quod ne in dispendium rei privatae procedat, ut facilius accepti expensique ratio clarescat, nihil volumus de collatione praedicta absque nostri auctoritate in quibuscumque provinciis usurpari, quo facilior sit discussio pecuniae, cuius nobis fuerit summa testatior. dat. xvi kal. ian. mediolano caesario et attico conss. (397 dec. 17).

CTh.10.1.15

Impp. arcadius et honorius aa. ad paulum comitem domorum. si qua usquam loca ad sacrum dominium pertinentia cuiuslibet temeritas occupavit, secundum veteris census fidem in sua iura retrahentur. rescripta igitur obreptionibus impetrata cum praescribtione longi temporis et novi census praeiudicio submovebit auctoritas tua atque ita omnia suo corpori quae sunt avulsa restituet. neque enim aut precatio colorata aut incubatio diuturna aut novella professio proprietatis nostrae privilegium abolere potuerunt. dat. v kal. april. constantinopoli arcadio iiii et honorio iii aa. conss. (396 mart. 28).

CTh.10.1.16

Idem aa. apollodoro. omnium praediorum, quae rei nostrae adgregata sunt, in diversis speciebus maxima pars passim ab improbis direpta est. et quamvis secundum iuris ordinem ea, quae erepta sunt, in quadruplum oportuerit postulari, clementiae tamen nostrae moderationem secuti decernimus ex eo die, ex quo iussio nostra fuerit celebrata, cessantibus frustratoriis defensionibus, quibus in exactorum personam refertus commissa direptio, intra tres menses ea tantum quae constiterit pervasa restitui. quod si quispiam ingratus nostro beneficio solutionem distulerit, in dupli poena teneatur obnoxius. qua condicione eos quoque volumus adstringi, qui in fugam versi esse dicuntur, ut, nisi intra constitutum tempus quae sunt direpta reddantur, ut ad modum dupli rei nostrae eorum praedia vindicentur. officia quoque iudicum diversorum, si non exactores et compulsores, quorum direptio arguitur, repraesentaverint tempore superius constituto, eadem poena retinebit, ipsis adversus fugientes actione servata. iudicum quoque segnitiam in hac parte gravissima multa feriendam esse censemus. dat. xii kal. decemb. mediolano theodoro v. c. cons. (399 nov. 20).

CTh.10.1.17

Impp. honorius et theodosius aa. patricio comiti rerum privatarum. super creandis susceptoribus dispositionem tuae sublimitatis firmam esse praecipimus periculo procuratorum rei dominicae, ita ut omni ambitione cessante quae statuta sunt quaeque antiqua consuetudine commendantur, in pabulis vel sumptu familiae ministrando intemerata permaneant, super irenarcho et optione omni antiqua consuetudine observanda. dat. iii kal. ian. constantinopoli theodosio a. viiii et constantio iii conss. (420 dec. 30).

CTh.10.2.0. De domibus ad rem privatam pertinentibus distrahendis vel praetoriis iudicum reservandis

CTh.10.2.1

Imppp. valens, gratianus et valentinianus aaa. comiti largitionum. rationales vel ordinarii iudices earum domorum, quas procuratorum nequitia et rationalium neglegentia labi patitur in ruinas, instituant auctionem hastis habitis ex licitatione currente. sane si quae sunt per varias provincias huiuscemodi domus, quales esse in augustensi suitranea civitate suggeritur vel aliis in locis, praestantes et privatis usibus ampliores, ut servari forsitan oportebit, iudicum mansionibus deputandas provincialium et eorum cura reficiendas. dat. vii kal. octob. valente vi et valentiniano ii aa. conss. (378 sept. 25).

CTh.10.2.2

Impp. arcadius et honorius aa. firmino comiti sacrarum largitionum. ne domus ad nostrum patrimonium pertinentes, quae sunt in diversis urbibus, ex neglegentia nostro aerario adferant detrimentum, omnes licitatione habita volumus venundari. palatinos autem fide probatos ire praecipimus. ordinarios quoque iudices tua sublimitas admonebit, ut certa pretiorum fides et domorum sit iusta in auctione taxatio. dat. kal. novemb. mediolano honorio a. iiii et eutychiano conss. (398 oct. 27).

CTh.10.3.0. De locatione fundorum iuris emphyteutici et rei publicae et templorum

CTh.10.3.1

Imp. iulianus a. secundo praefecto praetorio. post alia: possessiones publicas civitatibus iubemus restitui ita, ut iustis aestimationibus locentur, quo cunctarum possit civitatium reparatio procurari. proposita id. mart. constantinopoli mamertino et nevitta conss. (362 mart. 13?).

CTh.10.3.2 [=brev.10.2.1]

Imppp. valent., valens et grat. aaa. ad probum pf. p. curialibus omnibus conducendorum rei publicae praediorum ac saltuum inhibeatur facultas: illo etiam observando, ne quis curialium vel de extraneis civitatibus fundos aut loca huius modi conductione suscipiat. dat. vi. kal. iul. treviris, modesto et arintheo coss.

interpretatio. omnibus curialibus conducendorum rei publicae agrorum ac saltuum licentia denegetur: illo specialiter observando, ut nullus curialis vel de extraneis civitatibus agros ac loca supra scripta sub qualibet conductione suscipiat, ne sub hac occasione servitia curiae debita non impendat

CTh.10.3.3

Imppp. gratianus, valentinianus et theodosius aaa. pancratio comiti rerum privatarum. secundum legem divi valentiniani, quae semel conductas possessiones nulla ad alios constituit ratione transferri, nullum priorem conductorem a secundo patiaris excludi, sed penes eos iugem permanere iubeas possessionem, quos priore conductionis iure eandem meruisse constiterit. dat. prid. id. iun. thessalonicae gratiano v et theodosio i aa. conss. (380 iun. 12).

CTh.10.3.4

Idem aaa. nebridio comiti rerum privatarum. ut quisque conductor fuerit inventus possessor fundi, qui ex publico vel templorum iure descendit, huic cum augmento oblato ager iungatur inutilior. quod si contra id reluctandum existimaverit, alius possessor sub eadem praestatione quaeratur, vel si voluntarius quis conductor non invenietur, tunc ad possessores antiquos, id est decuriones vel quoslibet alios, loca iuris praedicti adiunctis inutilibus revertantur sine adiectione tertia, idoneis fideiussoribus praebitis. dat. xv kal. feb. constantinopoli merobaude ii et saturnino conss. (383 ian. 18).

CTh.10.3.5

Impp. arcadius et honorius aa. messalae praefecto praetorio. aedificia, hortos adque areas aedium publicarum et ea rei publicae loca, quae aut includuntur moenibus civitatum aut pomeriis sunt conexa, vel ea quae de iure templorum aut per diversos petita aut aeternabili domui fuerint congregata, vel civitatum territoriis ambiuntur, sub perpetua conductione, salvo dumtaxat canone, quem sub examine habitae discussionis constitit adscriptum, penes municipes, collegiatos et corporatos urbium singularum collocata permaneant omni venientis extrinsecus atque occulte conductionis adtemptatione submota. officia etiam palatina decem librarum auri multae subiaceant, si cui adversus praecepta huius sanctionis venienti aditum adsentatione praestiterint. dat. vi kal. dec. mediolano stilichone et aureliano conss. (400 nov. 26).

CTh.10.3.6

Idem aa. nestorio comiti rei privatae. nullus palatinorum, qui in officio rei privatae nostrae militat, conductoris nomine vel per se vel per quamlibet personam possessionum huiusmodi conducendarum habeat facultatem. dat. vi kal. aug. vincentio et fravitta conss. (401 iul. 27).

CTh.10.3.7pr.

Impp. honorius et theodosius aa. ursacio comiti rerum privatarum. post alia: emphyteutici iuris praedia ita locari praecipimus, ut cessante illustris privatarum comitis iussione quanta sors in aliis functionibus fuerit sublevata, tanta etiam in pensione dematur. (417 mai. 14).

CTh.10.3.7.1

Illut quoque pari diligentia statuimus, ut, si quis etiam rescriptum de nostris altaribus meruerit alium inspectorem loca debere discutere, subreptio ista vacuetur et illut valeat, quod probatissimi peraequatoris generalis electio, non specialis et gratiosa forsitan, definivit ambitio. dat. prid. id. mai. ravennae honorio a. xi et constantio ii conss. (417 mai. 14).

CTh.10.4.0. De actoribus et procuratoribus et conductoribus rei privatae

CTh.10.4.1 [=brev.10.3.1]

Imp. constantinus a. ad philippum vicarium urbis. si quis ab actore rerum privatarum nostrarum sive a procuratore fuerit vexatus, super eius calumniis vel depraedationibus deferre querimoniam non dubitet. quae res quum fuerit comprobata, sancimus, ut idem, qui contra provincialem quicquam moliri fuerit ausus, publice concremetur, quoniam gravior poena constituenda est in hos, qui nostri iuris sunt et nostra debent custodire mandata. dat. iii. non. mart. heracleae, constantino a. iii. et licinio iii. coss.

interpretatio. quicumque* ab actore dominico vel procuratore fuerit alicuius iniuriae improbitate vexatus, de eorum calumniis vel depraedationibus ad principem convolare debebit. quae res si potuerit approbari, eos, qui circa provinciales talia facere ausi sunt, placuit incendio concremari, quia graviorem poenam principes constitui voluerunt in eos, qui sui iuris sunt et sua debent custodire mandata

CTh.10.4.2 [=brev.10.3.2]

Impp. valent. et valens aa. ad severum vicarium urbis. divum iulianum hoc competentissime decrevisse comperimus, ut actores rei privatae nostrae minime necessitatibus terrerentur atque afflictarentur iniuriis, quas saepe numero rectores provinciarum vel arrogatione illicita principalium vel propriis decretis ordinis fieri censuissent. quod adeo nos probamus, ut ratum esse iubeamus. dat. xi. kal. aug. mediolano, valentin. et valente aa. coss.

interpretatio. iulianum principem bene ac salubriter statuisse certissimum est, ut actores domus dominicae nullis necessitatibus turbarentur aut fatigarentur iniuriis, quas eis frequenter rectores provinciarum per suggestiones principalium facere consuessent. cuius facti constitutionem in tantum rationabilem et necessariam iudicamus, ut firmam permanere iubeamus

CTh.10.4.3

Idem aa. ad crescentem vicarium africae. in negotio criminali per rationalem colonos vel conductores rei privatae nostrae, quorum repraesentatio poscitur, exhibendos esse sinceritas tua cognoscat, in civili vero causa defensorem domus nostrae adesse debere. dat. prid. non. april. alteio valentiniano et valente aa. conss. (370? 373? apr. 4).

CTh.10.5.0. Qui conductores rei privatae fideiussores exigi non debent

CTh.10.5.1

Impp. arcadius et honorius aa. eulogio comiti rerum privatarum. quidquid divi parentis nostri valentiniani senioris iussio de fundis privatae rei continebat, nostra etiam auctoritate firmamus. ut igitur ille praeceperat, ne consistoriani comites fideiussores in suscipiendis possessionibus darent, quod etiam divus gratianus secutus est, custodiri oportet. dat. iii kal. mai. mediolano honorio a. iiii et eutychiano conss. (398 apr. 29).

CTh.10.6.0. De grege dominico

CTh.10.6.1

Impp. arcadius et honorius aa. caesario praefecto praetorio. propositis sublimis magnificentiae tuae minimi maximique moneantur edictis, ut sciant singulas auri libras ex propriis facultatibus eruendas pro singulis equis vel equabus sive hermogenianis sive palmatis, nisi eas sponte obtulerint, in his vero, quos ex aliis gregibus occupatos esse constiterit, sex auri uncias fisci viribus inferendas. dat. prid. kal. dec. constantinopoli olybrio et probino conss. (395 [396/7] nov. 30).

CTh.10.7.0. De caesarianis

CTh.10.7.1

Imp. constantinus a. ad bithynos. caesarianos in actu dumtaxat constitutos ad perfectissimatus vel ducenae vel centenae vel egregiatus dignitates non oportet admitti. sed si inculpate compleverint suum officium et ab omni vacent ratione fiscali iudicio, datam huiusmodi dignitatem prodesse eis oportet. dat. xii kal. aug. gallicano et basso conss. (317 iul. 21).

CTh.10.7.2

Impp. valentinianus et valens aa. ad mamertinum praefectum praetorio. non convenit caesarianos inconsultis nobis ad alicuius corporis molestiam devocari. quapropter si alicui corpori necessarii fuerint visi, ad nostram mansuetudinem referatur, ut nobis decernentibus his iubeantur adiudicari, quibus eos rectissima ratione postulari nostra mansuetudo perspexerit. dat. x kal. mai. sirmio divo ioviano et varroniano consulibus. (364 apr. [?] 22).

CTh.10.8.0. De bonis vacantibus

CTh.10.8.1

Imp. constantinus a. ad aemilium virum perfectissimum rationalem. si quando adnotationes nostrae contineant possessionem sive domum quam donaverimus integro statu donatam, hoc verbo ea vis continebitur, quam antea scribebamus, cum adiacentibus et mancipiis et pecoribus et fructibus et omni iure suo, ut ea, quae ad instructum possessionis vel domus pertinent, tradenda sint. dat. vi id. mar. mediolano constantino a. iii et licinio iii conss. (313 mart. 10).

CTh.10.8.2

Idem a. ad priscum rationalem. ne principali liberalitate praeventa dominium quis rei alienae affectet, iubemus, quotiens iure suadente aliquorum bona ex officio tuo fuerint occupata, breves eorum plenissimos ad virum perfectissimum comitem et amicum nostrum mitti, ne fraudibus caesarianorum inminuantur vel petentibus aliquid abiuretur; poena contra rationalem et officium eius proposita, si petitorem ante possidere permiserint id quod ei donatum est priusquam praedicti breves commeaverint. dat. v id. mar. sirmio constantino a. v et licinio caes. conss. (319 mart. 11).

CTh.10.8.3 [=brev.10.4.1]

Imp. constantinus a. ad severum pf. u. nec interpellatis his, quibus pro laboribus suis ac meritis aliquid donaverimus, sed in iure suo, hoc est sine molestia litis manentibus, concitatorem iudicii, qui inquietudinem inferre tentaverit, examini tuo praesentari oportet, ut citra molestiam possidentis ius suum manifestis probationibus doceat: in quo partes reluctantis ipse suscipies, quoniam fructus liberalitatis nostrae pulsatur. hac enim lege sancimus, ut, quicumque* in tales venient querelas, secundum praedictam formam ius suum ostendant: his, quae comperta fuerint, ad nostram scientiam referendis, ut salva possidentium proprietate, quibus, ut dictum est, in perpetuum quaesita est firmitas possidendi, deliberationis nostrae sit, qualiter his, qui allegationes suas probaverint, beneficio lenitatis nostrae extrinsecus debeat subveniri. recitata iii. non. aug. in palatio, constantino a. vii. et constantio c. coss.

interpretatio. non inquietentur ii, quibus aliqua pro suo labore donavimus, sed omnibus, quae a nobis donata sunt, in ipsorum iure positis, is, qui eos inquietare voluerit, ad iudicii audientiam protrahatur, ut sine aliqua molestia possidentis ius suum pulsator valeat confirmare: omnibus, quae hac de re inter praefatos acta fuerint, ad nostram notitiam referendis, ut et nostris inquietatus remediis adiuvetur

CTh.10.8.4

Imp. constantius a. ad iuvenalem rationalem numidiae. quamvis plurimis petentibus facultates eorum, qui sub hoste publico egerunt adque in proelio poenas debitas pependerunt, liberalitas nostra largita sit, tamen volumus, ut aurum argentum et mancipia urbana et vestes ceteraque mobilia petitores habeant, qui iam meruerunt vel postea impetraturi sunt, mancipia autem rustica et possessiones et domus ad fiscum pertineant officii tui instantia, his etiam reddituris, qui haec percepisse noscuntur, ut constitutio et de praeterito et deinceps habeat firmitatem. dat. v id. iun. constantio a. iiii et constante a. iii conss. (346 iun. 9).

CTh.10.8.5

Impp. theodosius et valentinianus aa. hermocrati comiti rerum privatarum. si vacantia vel caduca bona delata legibus ad aerarium in achaia perhibeantur, certi palatini electi et iure iurando obstricti mittantur, ut eorum instantia vir spectabilis proconsul praesente fisci patrono diligenter inquirat, cuius vacans caducumque fuerit patrimonium quantumque vel quale videatur. et cum data reclamandi copia nullum id iure possidere vel vindicare constiterit locumque aerario factum esse tam ipsius relatione quam publicorum monumentorum fide constiterit, rerum nobis notitia intimetur, ut iussu nostro vacantia vel caduca nomine occupentur aerarii, quo petentes a nobis huiusmodi res sic demum, si ita visum fuerit, responsum legitimum mereantur: quorum petitiones, antequam res praedicto ordine procurentur, nec accipiendas nec instruendas esse censemus. quae forma etiam in parte bonorum in una alterave re seu actione una vel etiam pluribus servetur. nam si quid per fraudem in dispendium aerarii fuerit admissum, missi quidem executores, non vitante indignationem proconsule, parte facultatum dimidia multabuntur: fisci vero patronus detrimentum, quod vitio eius fisco ingeritur, resarcire urguebitur aut si litem improbe cuiquam intenderit, redhibitione sumptuum damnorumque cohercebitur, petitores autem bonorum omni petitionis emolumento carebunt. dat. vii id. octob. constantinopoli d. n. theodosio a. xv et qui fuerit nuntiatus conss. (435 oct. 9).

CTh.10.9.0. De incorporatione

CTh.10.9.1

Imppp. valentinianus, valens et gratianus aaa. ad florianum comitem rerum privatarum. si quando aut alicuius publicatione aut ratione iuris aliquid rei nostrae addendum est, rite adque sollemniter per comitem rerum privatarum, dein rationales in singulis quibusque provinciis commorantes incorporatio compleatur et diligens stilus singillatim omnia adscribat. tituli vero, quorum adiectione praedia nostris sunt consecranda nominibus, non nisi publica testificatione ponantur; gravissimis statim subdendis suppliciis, qui huiusmodi aliquid propria usurpatione temptaverint. dat. iiii kal. april. valentiniano n. p. et victore conss. (369 mart. 29).

CTh.10.9.2

Impp. arcadius et honorius aa. eulogio comiti rerum privatarum. quicumque a nobis caducas vacantesve meruerit facultates, sive cum auro vel argento, quod specialiter rarum erit, nam saepius habita horum exceptione praestantur, post allegationem beneficii principalis omnium bonorum, id est immobilium moventium vel, ut plenissime loquamur, praediorum urbanorum aedium mancipiorum animalium argenti auri ornamentorum vestium pecuniae fiscus incorporationem traditionemque percipiat. et cum officii palatini brevibus fuerint cuncta competenter inserta, omne illud, quod ex quibuslibet corporibus est repertum, nostris auribus intimetur. nec quicquam horum ad petentem ante perveniat, quam suggestione sublimitatis tuae informata mansuetudo nostra traditionem secundario praecepto prioris liberalitatis impertiat: ut, nisi denuo a nobis fuerint confirmata, quae videntur impetrata, nihil valeant. dat. xviii kal. decemb. mediolano olybrio et probino conss. (395 nov. 14).

CTh.10.9.3

Impp. honorius et theodosius aa. largo proconsuli africae. et moris veteris instituto incorporationem bonorum anteferri competitionis effectui decernimus et de possessore iam fisco referri ad viri illustris privatarum largitionum comitis scientiam censemus: illud competitoribus conpendium relaxantes, ut, quod a mansuetudine nostra iterata supplicatione poscendum fuerat, ab eius sublimitate non expectato imperiali beneficio postuletur. et cetera. dat. v id. octob. ravennae honorio xii et theodosio viii aa. conss. (418 oct. 11).

CTh.10.10.0. De petitionibus et ultro datis et delatoribus

CTh.10.10.1

Imp. constantinus a. ad populum. post alia: de delatoribus iam certa statuimus; quibus si quis contra fecerit, poenam capitalem excipiet. proposita xv kal. feb. constantino a. iii et licinio iii conss. (313 ian. 18).

CTh.10.10.2 [=brev.10.5.1]

Imp. constantinus a. ad populum. comprimatur unum maximum humanae vitae malum, delatorum exsecranda pernicies, et inter primos conatus in ipsis faucibus stranguletur, et amputata radicitus invidiae lingua vellatur, ita ut iudices nec calumniam nec vocem prorsus deferentis admittant; sed si qui delator exstiterit, capitali sententiae subiugetur. dat. et pp. in foro traiani kal. dec., constantino a. v. et licinio c. coss.

interpretatio. delatores dicuntur, qui aut facultates prodiderint alienas aut caput impetierint alienum. quicumque* delator cuiuslibet rei exstiterit, in ipso proditionis initio a iudice loci correptus continuo stranguletur, et ei incisa radicitus lingua tollatur, ut si quis proditor futurus est, nec calumnia nec vox illius audiatur

CTh.10.10.3 [=brev.10.5.2]

Idem a. ad provinciales. omnes iudices invigilare praecipimus et delatores poenis afficere. apertissimi enim iuris est, ut, quod ex cuiuscumque* patrimonio ceciderit in casum, et legibus et retro iuris ordine, fisci advocatis agentibus, vindicetur. sed quia nonnulli praecipites secundum ius possessa patrimonia deferre non cessant, damus omnibus, qui se laesos existimant, contra delatores severitatem iudicum implorare ferro destrictam. nemo enim potest delatorem plus agnoscere quam ille, qui iniuriam per eius nequitiam sustinuit. dat. xi. kal. april. constantinopoli, constantio et albino coss.

interpretatio. custodientes iustitiam nomen persequimur delatorum, ita ut, quum agniti et convicti fuerint delatores, gladio puniantur

CTh.10.10.4

Imp. constantius a. celsino praefecto praetorio. innocentiam securitate firmantes et quorundam audaciam prohibentes edictum promulgavimus, ne quid occultis delationibus possit in hominum licere fortunas. dat. prid. id. iun. viminacio urso et polemio conss. (338 iun. 12).

CTh.10.10.5

Idem a. callepio rationali trium provinciarum. donatarum rerum dominium his tradatur, quos anteriores tempus imperialis donationis ostenderit. dat. iiii non. feb. naisso acindyno et proculo conss. (340 febr. 2).

CTh.10.10.6

Idem a. ad eusebium comitem rerum privatarum. donationes a divo genitore nostro ex privatis rebus factas valere praecipimus. dat. viii id. april. savariae constantio a. iii et constante iterum conss. (342 april. 6).

CTh.10.10.7

Idem a. ad eustathium comitem rerum privatarum. nulli palatino delatorios libellos de competentibus rei privatae nostrae rebus accipere liceat, nec delatori ad comitatum nostrum vel officium sublimitatis tuae pateat accessus, priusquam ordinarius iudex cognitione suscepta veram esse delatoris adsertionem probaverit adque ad tuam sublimitatem rettulerit. dat. id. mai. treviris amantio et albino conss. (345 mai. 15).

CTh.10.10.8

Idem a. ad orionem comitem rerum privatarum. qui largientibus nobis aliquid fuerint consecuti, cum delatoribus suis ad iudicia veniant, in iure consistant, negotia persequantur, ut adseveratio delatorum prodat fisco debitas facultates. in eos autem, qui aliquorum detulerint patrimonia, adfirmantes ad fisci nostri dominium pertinere, si non potuerint ostendere quod adstruxerant, severitas competens exeratur. consequens igitur erit petitiones legibus minime consentaneas a iudiciis removeri nec eos adfici metu, qui legibus possident proprias facultates. dat. iii non. mart. sirmio constantio a. vi et constante caes. conss. (353 [352?] mart. 5).

CTh.10.10.9

Impp. valentinianus et valens aa. ad provinciales byzacenos. post alia: de munificentia principali quaelibet bona tamquam caduca poscentes non aliter adipiscantur petitiones effectum, nisi delatores valuerint publicare. dat. prid. id. septemb. aquileiae divo ioviano et varroniano conss. (364 sept. 12).

CTh.10.10.10 [=brev.10.5.3]

Impp. valent. et valens aa. ad provinciales afros. in tantum humani generis inimicos arbitra aequitate persequimur, ut delatores pronuntiatos puniri gladio iusserimus. dat. prid. non. febr. mediolano, valentin. et valente aa. coss. haec lex interpretatione non indiget.

CTh.10.10.11

Imppp. valentinianus valens et gratianus aaa. alexandriano comiti rerum privatarum. super vacantibus ac caducis, cum forte largitatem nostram aviditas circuit postulantium, prius tua scripta mittantur. certi etiam dirigantur, qui cuncta sollerter inquirant, et cuius fuerint facultates et si nemo eas sibi iure nititur retentare. ac si locum fisco factum esse claruerit, occupatis prius bonis et rerum omnium descriptione perfecta serenitatis nostrae scientia protinus instruatur, ut quid statuendum sit, pro legum ordine terminemus. dat. iii id. decemb. marcianopoli valentiniano nb. p. et victore conss. (369 dec. 11).

CTh.10.10.12pr.

Imppp. gratianus, valentinianus et theodosius aaa. pancratio comiti rerum privatarum. qui cum ex praesenti die ut caducas poposcerit facultates ex consensu nostrae liberalitatis acceperit, non ante allegare rescriptum, non prius obtinere sententiam, non denique effectum exsecutionis debebit accipere, quam eum iudiciis introducat, a quo sibi id quod poposcerit delatum adserit esse patrimonium. quod quidem non solum in generali iubemus bonorum petitione servari, verum etiam si carptim fundos vel vacantia rura, aliqua denique praedia vel rustica vel urbana poscentur, aliqua etiam huiusmodi, quae viritim solent obtentu liberalitatis invadi, ut, si causam non tenuerit, cautum legibus supplicium delator excipiat. (380 ian. 30).

CTh.10.10.12.1

Neque sane introduci eum satis erit eo tempore, quo rescriptum allegatur ac liberalitas intimatur, verum dirigendus is erit ad eam provinciam provinciasve, in quibus patrimonia delata consistunt, ut eius instruat actiones qui nostra liberalitate nitetur et cuius se honestati per blandum ministerium iniustae delationis inmersit, ut scilicet maiore omnium plausu detecta ibi calumnia eius supplicio publicae severitati litetur, ubi securi ac tuti domini trepidavere fortunae. (380 ian. 30).

CTh.10.10.12.2

Illud etiam ad professionem odii, quo universas delationes exsecramur, adiungimus, ut, si idem delator etiam in bonis causis, tertio tamen fuerit inventus, post victoriam tertiae proditionis capitali supplicio coherceatur. dat. iii kal. feb. thessalonicae gratiano v et theodosio i aa. conss. (380 ian. 30).

CTh.10.10.13

Idem aaa. edictum ad provinciales. delatores ab ipsis, qui bona a nobis delata vel carptim suscipiunt fundos vel vacantia rura tam rustica quam urbana, cum rescriptum allegatur, primum aput virum clarissimum comitem inducantur, deinde ad provinciam provinciasve ducantur, ut praesentibus ibidem probationibus quae detulerant indicarent. illud etiam odio eorum ducti decernendum esse censuimus, ut, etsi vera in delationem negotia detulissent, post victoriam tertiae delationis delator capite plecteretur. dat. prid. kal. sept. thessalonicae gratiano v et theodosio i aa. conss. (380 aug. 31).

CTh.10.10.14

Idem aaa. pancratio comiti rerum privatarum. nemo possit ad indultum a nobis beneficium pertinere, nisi qui ante instructionem ab officio, quod tuis meritis paret, adnuentibus nobis fuerit consecutus. dat. xii kal. oct. thessalonicae gratiano v et theodosio i aa. conss. (380 sept. 20).

CTh.10.10.15 [=brev.10.5.4]

Imppp. grat., valent. et theodos. aaa. eutropio pf. p. quisquis in crimine maiestatis deprehensus fuerit et punitus, bonaque eius, sicut plectendi consuetudo criminis habet, fiscus invaserit, nullus eadem sub spe munificentiae principalis audeat proprio iuri poscere. qui contra legem id ausus fuerit sperare, quod non licet, reus violatae legis habeatur. sed quoniam plerumque ita in nonnullis inverecunda petentum inhiatione constringimur, ut etiam non concedenda tribuamus, ne rescripto quidem nostro adversum formam latae legis loci aliquid relinquatur. si quid autem ex bonis talibus nostro iudicio, nullo tamen desiderante atque poscente, concedi cuiquam voluerimus, huius modi tantum valeat liberalitas. dat. xvi. kal. dec. thessalonica, gratiano v. et theodos. i. aa. coss.

interpretatio. quisquis in crimine maiestatis inventus fuerit et punitus, bona eius fiscus acquirat, ita ut nullus aliquid ex eius facultatibus sibi velut munificentiae iure audeat postulare. et si aliquis contra leges crediderit postulandum, nec id, quod petiit, accipiat, et violator legis habeatur. si quid tamen nullo petente, proprio arbitrio de talibus bonis cuiquam dederimus, donatio huius modi firma permaneat

CTh.10.10.16

Idem aaa. nebridio comiti rerum privatarum. nemo eas sine summo sacrilegio possessiones existimet postulandas, quae cum magno censu tectorum ambitu palatiis sint magis aptae quam praediis, adeoque hoc nomen refugiendum sibi esse cognoscat, ut sacrilegii vereatur invidiam, etiamsi laqueos deceptae ignorationis inciderit, cum semper in petendo debeat esse sollicitus, quicumque est in impetrandi occasione curiosus. laudanda igitur experientia tua officio gravem poenam tali lege constituat, si umquam instructione deceperit et petenti nefaria collusione consenserit, illi etiam ut deprehenso beneficii adimat potestatem. dat. xiii kal. iun. constantinopoli antonio et syagrio conss. (382 mai. 20).

CTh.10.10.17 [=brev.10.5.5]

Iidem aaa. panellino consulari lydiae. servum domini delatorem iubemus in exemplum omnium proditorum severissimae sententiae subiugari, etiamsi obiecta probaverit. dat. vii. kal. nov. constantinopoli, antonio et syagrio coss. haec lex interpretatione non indiget.

CTh.10.10.18

Idem aaa. nebridio comiti rerum privatarum. etsi color petitionis aut ratione aliqua aut tempore possit admitti, secundum nostras leges non debet audiri, priusquam proditum delatorem competens poena constrinxerit. dat. iii kal. sep. merobaude ii et saturnino conss. (383 aug. 30).

CTh.10.10.19

Imppp. valentinianus, theodosius et arcadius aaa. ad senatores civitatis alexandrinae. securitati vestrae studentes et iustitia necessariae legationis animati dedimus litteras ad virum clarissimum et illustrem cynegium praefectum praetorio, quibus iussimus, ut delatores, quos iam etiam sua sententia meritis poenis adfecit, ubi reppererit, pari supplicio persequatur, fundatis omnibus, quae super possessionibus ac terris, quas hoc nomen huc usque vexavit, idem vir illustris constituit. agite igitur securi atque ita patrimonia vestra tenete colite frequentate, ut boni saeculi poscit affectio. dat. vi non. mart. constantinopoli valentiniano a. iii et eutropio conss. (387 mart. 2).

CTh.10.10.20

Imppp. theodosius, arcadius et honorius aaa. flaviano praefecto praetorio. plerisque mancipia vaga, tacita fideicommissa, bona vacantia et caduca monstrantibus quies possidentibus abnegatur. ideoque praecipimus, ut omnium officiorum periculo custodiatur, vicarii etiam adque ordinarii cognitores moneantur - ea animadversione proposita, quae non facultates eorum sit expetitura, sed sanguinem -, ut nullum huiusmodi rescriptum mansuetudinis nostrae, nec si specialis super hoc adnotatio proferatur, nisi una cum delatore suscipiant et ante de animo eius et facto vel impletis probationibus vel desertis iuxta constituta legum, quae super hoc iam dudum a divis principibus lata sunt, iudicetur. proposita vi id. april. arcadio a. ii et rufino conss. (392 apr. 8).

CTh.10.10.21

Impp. arcadius et honorius aa. laurentio comiti rerum privatarum. sit haec mensura bona poscentium, ne quis oblatis precibus in petitione bonorum auri atque argenti faciat mentionem. ac ne generaliter in omnes haec fuerit constituta, summis dignitatibus usque ad secundicerium notariorum hoc servari decernimus ceteris ab hac licentia retentatis, ne, dum nimia largitas tenditur, publica commoditas neglegatur, ita ut, si qui post hanc legem textum impetratae petitionis adtulerit, effectu denegato frustretur. dat. viii kal. mai. constantinopoli arcadio iiii et honorio iii aa. conss. (396 apr. 24).

CTh.10.10.22

Idem aa. firmino comiti rerum privatarum. divi patris nostri statuta renovantes aeterna lege sancimus officium palatinum quinquaginta auri libras de suis facultatibus exigi, si prius allegari divalia rescripta permiserit, quam delator in iudicio fuerit constitutus. dat. vi kal. nov. mediolano honorio a. iiii et eutychiano conss. (398 oct. 27).

CTh.10.10.23

Idem aa. studio comiti rerum privatarum. ne quis proscriptorum bona vel eorum, qui publicam videntur excepisse sententiam, intra biennium aestimet postulanda. abstineant facultatibus intra id temporis expetendis, ut aut proprias quis recipiat, si, ut nobis ingenitum est, duriores casus et tristiorem fortunam imperatoria humanitate molliamus, aut tum demum postulet, cum iam fiscalem potius quam proscriptorum expetisse noscatur. si quis autem petendas proscripti vel deportati intra biennium crediderit facultates, careat fructu liberalitatis augustae, ita ut nec instruantur huiusmodi petitiones nec, si temere instructae fuerint et sub specialis beneficii munificentia nostram provocaverint liberalitatem, habeant aliquas vires indulta. dat. xiiii kal. feb. constantinopoli vincentio et fravito conss. (401 ian. 19).

CTh.10.10.24

Idem aa. et theodosius a. anthemio praefecto praetorio. pro inclyti principis constantini sanctione, quam nos etiam hac lege roboramus, in his possessionibus, quae velut de patrimoniali vel rei publicae aut templorum aut cuiuslibet huiusmodi tituli iure subtractae a nostra liberalitate poscuntur, cesset penitus delatorum nomen infestum omnesque se ab hac nefaria petitione retineant scientes nullum ex hoc posse fructum adquiri, sed huius decreti violatores sacrilegii poenam contrahere. dat. viii id. nov. stilichone ii et anthemio conss. (405 nov. 6).

CTh.10.10.25

Idem aa. ad theodorum praefectum praetorio. cum per illyrici partes barbaricus sperearetur incursus, numerosa incolarum manus sedes quaesivit externas, in cuius ingenuitatem adsidua petitorum solet libido grassari eique illicite iugum servitutis imponere. igitur praescriptum tua sublimitas recognoscat, ut illyricianos omnes, quos patria complectitur vel alia quaelibet terra susceperit, petere non liceat. dat. iiii id. decemb. ravennae basso et philippo conss. (408 dec. 10).

CTh.10.10.26

Impp. honorius et theodosius aa. maximo comiti rerum privatarum. antecedentium temporum constituta firmamus, ut carere se fructu impetrati noverint, qui contra geminatam praeceptionem contenderint. nec cuiquam liberum permittatur arbitrium instructionis sollemnitate transgressa quicquam improbum de nostra clementia flagitare, cum oporteat instructionis luce evidenter agnosci, cuius aestimatio meritum ponderandum sit, quod nostra munificentia relaxatur. dat. viii kal. aug. honorio x et theodosio vi aa. conss. (415 iul. 25).

CTh.10.10.27pr.

Idem aa. largo proconsuli africae. quicumque ex praesenti die sub specie caducorum quaecumque bona putaverit postulanda eademque consensu nostrae liberalitatis acceperit, sive supplicis rescripti auctoritate nitatur sive elicitis specialiter apicibus adnotationis expressae, cum ad transmarinam provinciam vel provincias, in quibus sunt patrimonia constituta, pervenerit et contradictionem domini per quamcumque personam rem propriam defendentis acceperit, effectum adepti beneficii suspensa exsecutione non peragat et ad comitatum spondentem venire immatura profectione non urgeat. (415 [418] oct. 11).

CTh.10.10.27.1

Immo ille qui pulsatus fuerit institutum sibi integri anni spatium recognoscat, idoneum satis tempus muniendae congrue tractatibus litis et instruendi quem deserit laris habiturus, nec ad iacturam veteris dominii sub iniuria properae festinationis artandus, omnium iudicum, quos locorum ratio exegerit implorari, publico muniendus auxilio, ut praedae inhiantium non dedatur. (415 [418] oct. 11).

CTh.10.10.27.2

Quem si mora forsitan pro voluntate prolixior delectarit nec intra anni metas quas fiximus ad illustris viri privatae rei comitis examen occurrerit, sciat se ipsum in se tulisse sententiam nec subeundi ultra certaminis experiendam esse fortunam. (415 [418] oct. 11).

CTh.10.10.27.3

Cui si per impugnantium profectionem circumdato ad comitatum pergere aut pervenire liberum intra curricula praefinita non fuerit, apud quemcumque iudicem contestatis querellis et evidenter probatis praeiudicio contractae non suo vitio tarditatis exutus et de factionis auctore vindictam congruam prosequatur. (415 [418] oct. 11).

CTh.10.10.27.4

Illud sane prae ceteris providae cautionis habiturus, ut statuto tempore legitimam personam sui probaturus adveniat, non illusor utilitatis alienae nec futurae disceptationis circumscriptor occurrat. (415 [418] oct. 11).

CTh.10.10.27.5

Cum vero intra contiguas vicinasque provincias bona aliqua expetuntur, quorum contradictor potuerit inveniri, ad praebendam inter legitimas personas audientiam et exercendum inter partes iure conflictum ex die conventionis perlatae in notitiam pulsatorum sex mensum spatium praecipimus custodiri, cuius eventum examinis adsertor iuris proprii debeat praestolari. (415 [418] oct. 11).

CTh.10.10.27.6

Viventium quoque bona a competendi licentia vindicamus, qui criminibus, in quibus videntur argui, nec iudicio convicti nec sententia probantur addicti. et cetera. dat. v id. octob. ravennae honorio x et theodosio vi aa. conss. (415 [418] oct. 11).

CTh.10.10.28

Idem aa. largo proconsuli africae. post alia: delatores, sine quibus petitionem nullam aut inchoari aut peragi iubemus, certa denuntiatae auctoritatis condicione constringimus, ut ignoscendum sibi, si semel probaverint delata, non ambigant, periculosam vero sibi futuram esse victoriam iteratae proditionis abrupto periculo recognoscant; sin vero tertia voce detulerint, non probandum, sed poenam sibi protinus noverint potius subeundam. et cetera. dat. v id. octob. ravennae honorio xii et theodosio viii aa. conss. (418 oct. 11).

CTh.10.10.29pr.

Idem aa. et constantius a. palladio praefecto praetorio. nullum patimur competitioni subiacere viventem, nisi quem crimini obnoxium capitalis sententia deportationi addixerit, ut ademptio facultatum poenam praemissae indignationis adcumulet. de quibus tamen, sicut divali sanctione decretum est, competi per biennium nihil iubemus. (421 iul. 8).

CTh.10.10.29.1

Uno tamen petitorio singulorum bonuscula iubemus adscribi, nefas esse censentes plurimorum uno pittacio postulari sub illicita cupiditate fortunas. (421 iul. 8).

CTh.10.10.29.2

Ex edictis etiam pendentibus nullas competitionis causas iubemus inferri, cum vix sub iurgii sit contumeliis edictum nec existimationem latentis incesset, criminalis vero programmatis tenor hanc tantum ferat de iure censuram, ut inter reos adnotato non tam censum debeat transferre, sed famam. (421 iul. 8).

CTh.10.10.29.3

Ex privatorum quoque sollicitudine contractuum, qui frustra negantur illis plerumque personis, a quibus publici muneris iniuncta curantur, nullum fomitem calumniae patimur litis accendi. cur enim continentiam venditionis alienae inquisitio palatina rimetur? (421 iul. 8).

CTh.10.10.29.4

Quinquaginta sane libris auri multandum se palatinum discat officium, nisi legis huius salubre decretum perpetua exsecutione servaverit. dat. viii id. iul. ravennae eustathio et agricola conss. (421 iul. 8).

CTh.10.10.30pr.

Idem aa. et constantius a. palladio praefecto praetorio. post alia: caduca mortuorum bona tunc ad competitores iubemus ex nostra largitate transferri, si nullum ex qualibet sanguinis linea vel iuris titulo legitimum reliquerit intestatus heredem. eorum vero patrimonia mortuorum, qui vitae suae tempore diversis conscientiam suam dicuntur polluisse criminibus, competi nequaquam debere censemus, nisi quos publica accusatione constiterit fuisse convictos, dummodo impetrationis huiusce rescriptum non prius liceat allegari, quam delator palatino fuerit adsignatus officio nulli penitus satisdationi credendus. in quem, si concessa titubaverint, calumniae poena referatur, quamvis hoc ipsum, quod voluit esse delator, poenae iam sit ex iure mancipium. (421 iul. 8).

CTh.10.10.30.1

Ubi tamen impetratae competitionis auctoritas possessorem convenerit, sicut iam generali lege decretum est per hunc unum annum conveniendi ad illustre iudicium intemeratis facultatibus praestamus indutias, ut cognitione suscepta substantiam sui iuris alleget. qui si per anni metas dissimulatis his suo vitio, non fortunae casibus aut adversantis fraude, defuerit, in se videbitur tulisse sententiam. et cetera. dat. viii id. iul. ravennae eustathio et agricola conss. (421 iul. 8).

CTh.10.10.31

Idem aaa. proculo comiti rerum privatarum. edictali lege sancimus, ut, sicut possessori unius anni spatia praestita sunt, intra quae propriis allegationibus adfuturus adsit examini, ita is, qui caduca vel vacantia bona vel quocumque nomine tamquam fisco nostro quaesita crediderit postulanda, simili sorte teneatur. quod nisi intra anni metas ex die auctoritatis intra provinciam publicatae petitionis suae demonstraverit aequitatem, careat impetratis ac possessori ad propria revertendi facultas libera tribuatur, cui desistente competitore consuli volumus etiam de sumptibus et litis expensis. proposita in foro traiani viii kal. septemb. honorio xiii et theodosio x aa. conss. (422 aug. 25).

CTh.10.10.32pr.

Imp. theodosius a. et valentinianus caes. valerio comiti rerum privatarum. petitores bonorum partiri cum aerario nostro praecipimus. ac si quis exceptis iuris templorum possessionibus vel patrimonialibus qualitercumque aliquid ad nostrum aerarium pertinens nostrae nutu clementiae meruerit, postquam efficax quod impetraverat postulatum rei ipsius eventu constiterit, ex aequa cum aerario dividere parte non dubitet; videlicet impensis omnibus litis et sumptibus imputatis ac petitori dein summa integra tribuendis, ut, quod pure ad quaestus eius compendiumque devenerit, in eius procul dubio societatem admittat aerarium, nullo ex his, quae de temporibus possidentis vel aliis veteri observatione et competitionum auctoritate sunt tradita, deminuto, sed in sua omnibus stabilitate durantibus, ut in delatores quae est nihilo minus poena et, si fieri potest, acerbior exeratur. (425 mai. 13).

CTh.10.10.32.1

Quin et iudex, sive vir illustris comes rei privatae is fuerit seu provinciae moderator, integritatis procul dubio erit vehemens observator, quamdiu privato iurgio aequis conflictibus decertatur. (425 mai. 13).

CTh.10.10.32.2

Fisci etiam advocati praecipimus vocem in suo manere silentio, nec partem aerario vindicantis admitti, priusquam iure cognitionali sententia, quam quidem praesente fisci patrono proferri ac tractari praecipimus, petitor certissimam victoriam fuerit consecutus: etiam si lis ex transactione aut qualibet alia ratione fuerit sopita, modis omnibus suam a petitore vindicaturo aerario portionem, quamvis etiam beneficio quis speciali sibi de universitate praecaverit. alioquin titubet in petitore perceptio, si ius suum non constet aerario. dat. iii id. mai. constantinopoli theodosio a. xi et valentiniano caes. conss. (425 mai. 13).

CTh.10.10.33

Impp. theodosius et valentinianus aa. ad senatum. nusquam calumnia perstrepet; nullus innocentium fortunarum delator occurret; stabit legitima servitutis libertatisque discretio iura dominorum servorum non impune rebellium restitutione sancimus; patricii fori solidantes privilegia inviolabilem manere decrevimus trabeatam quietem; competitorum non tantum vitia comprimimus, sed ipsum etiam nomen abolemus. et cetera. dat. vi kal. ian. romae theodosio xii et valentiniano ii aa. conss. (426 dec. 27 [ian. 3]).

CTh.10.10.34

Idem aa. thalassio comiti rerum privatarum. si quis ex his, qui sacro nostro cubiculo serviunt, ad petitionem caducorum ad fiscum pertinentium adspiraverit, cum impetrabile huius fuerit postulatum, lege, qua pars dimidia vindicatur aerario, protinus absolvatur primoque nutu nostrae clementiae statim integro perfruatur, nec laboret ad partis alterius, quae fisco videtur addicta, prorsus petitionem attingi, norma legis antea promulgatae in ceteris omnibus custodita. dat. viii kal. mar. constantinopoli theodosio a. xiii et qui fuerit nuntiatus. (430 febr. 22).

CTh.10.11.0. De his qui se deferunt

CTh.10.11.1

Imp. constantinus a. rationalibus histpaniarum. is, cuius tacitae fidei commissa fuerit hereditas, statim officio gravitatis tuae nuntiet et gesta prodat et continuo quod actum fuerit renuntiet, et post hanc fidem tertiam ab omnibus defuncti bonis percipiat portionem. quod si ab uxore defuncti istud officio devotionis tuae fuerit revelatum, ipsa etiam, quam defunctus esse voluit heredem, si gesta aperuerit, tali praemio mancipetur, ut ex omni patrimonio medium consequatur et cum fisco nostro celebret divisionem, id etiam habitura privilegium, ut prior eligat portionem; et tunc occultator ille gestorum, fisci et mulieris pariter inimicus, exutus omni patrimonio suo ac fisco vindicato in insulam deportetur. dat. id. mar. gallicano et basso conss. (317 mart. 15).

CTh.10.12.0. Si vagum petatur mancipium

CTh.10.12.1pr.

Impp. valentinianus et valens aa. ad probum praefectum praetorio. qui vaga mancipia iuris alieni petunt, si iustitia eadem probant, impetrati beneficii auctoritate potiantur vendendique concessam aliis quam delatoribus habeant facultatem. si vero aut his qui detulerint distracta fuerint aut ab his qui ante possederint detinentur, non effugiatur ultio, quae est legibus constituta. (368? 370? 373? mart. 21).

CTh.10.12.1.1

Sed et dominis propriorum vindicatio competat et eadem poena, quae de occultatoribus et fugitivariis data est, unusquisque teneatur. dat. xii kal. april. treviris valentiniano et valente aa. conss. (368? 370? 373? mart. 21).

CTh.10.12.2pr.

Idem aa. ad probum praefectum praetorio. quicumque habuerit super vagi mancipii postulatione rescriptum, non prius quicquam inquietudinis moliatur, quam facta eius allegatione sollemniter delatorem, a quo fuerit instructus, expresserit; careat etiam, si eum prodere supersederit, fructu et commoditate beneficii. nec ante aliquis quem poposcerit per manus iniectionem aestimet vindicandum, quam definitiva inter partes fuerit dicta sententia. (368? 370? 373? iun. 17).

CTh.10.12.2.1

Has vero cognitiones ad ordinarios volumus pertinere rectores, ut delatoribus primitus in medio collocatis, his etiam, qui quasi vagi sacro nominabuntur indulto, ad iudicia productis, totius causae interna discutiant solliciteque ac diligenter interrogent, de quorum dominio fuga vel quo alio genere discesserint qui petuntur, ut is, in quo vitium deprehenderint, ad dominum sub prosecutione revocetur. (368? 370? 373? iun. 17).

CTh.10.12.2.2

Si quis etiam vel tributarius repperitur vel inquilinus ostenditur, ad eum protinus redeat, cuius se esse profitetur. (368? 370? 373? iun. 17).

CTh.10.12.2.3

Nihilo minus etiam eo pergat indago, ut cuncta rimando cognoscat, utrum is fuerit petitionis hortator, qui iniquae retentionis invidiam aliquo necesse habuerit colorare velamine ut, si colonos eadem occulere arte quaesiverit, indemnitatem sarciat tributorum; si servos, ad eam poenam, quae dudum est legibus constituta, teneatur. (368? 370? 373? iun. 17).

CTh.10.12.2.4

Quisquis autem plebeium se adserit esse vel liberum, fide rei ostensa ab omni molestia vindicetur et ad ea loca, ex quibus eum esse claruerit, remittatur. (368? 370? 373? iun. 17).

CTh.10.12.2.5

Contra in his, qui aut dominis sine herede defunctis invenientur dominos non habere aut servi poenae aliquando facti ac postmodum liberati iudicialibus dominos amisere sententiis, postremo in universis, de quibus iniectio manus fisco rite praebetur, munificentiae principali congruus patebit effectus. (368? 370? 373? iun. 17).

CTh.10.12.2.6

Sane, quia in petitione deceptis convenit provideri, quotienscumque fuerit circumscripta simplicitas, ex delatorum isdem re atque substantia ad eum modum, quem habitae concertationis impendia supputata collegerint postulatique hominis aestimatio comprehenderit, consulatur. dat. xv kal. iul. treviris valentiniano et valente aa. conss. (368? 370? 373? iun. 17).

CTh.10.13.0. De petitoribus et desistentibus

CTh.10.13.1

Imppp. valentinianus, theodosius et arcadius aaa. ad gorgonium comitem rerum privatarum. si quispiam alienae substantiae petitor mora ludificante in longum protrahere coeperit possidentem et tertio conventus cum delatore noluerit adesse iudiciis, non solum iurgii, quod exortum est, amissione multetur, verum etiam sumptus et litis expensas ei reddere compellatur, quem superfluo litigio credidit esse vexandum. quod quidem etiam in absentem contumacem post trinam, ut dictum est, conventionem statuendum esse censemus. dat. viii id. iun. mediolano honorio nb p et evodio v. c. conss. (386 iun. 6).

CTh.10.14.0. Si petitionis socius sine herede defecerit

CTh.10.14.1 [=brev.10.6.1]

Imp. constantinus a. ad mygdonium castrensem s. palatii. si quis forte decesserit eorum, qui communi nomine donatum aliquid a nostra impetraverunt clementia, nec superstites dereliquerit successores, placet, non ad extraneam quamcumque* personam, sed ad socium vel consortem pervenire portionem illius, qui intestatus aut sine liberis defunctus est. dat. xii. kal. april. antiochia, constantino a. iv. et licinio iv. coss.

interpretatio. si aliquis ex iis mortuus fuerit, ad quos nominatim munificentia nostra processit, et nec testamentum fecisse, nec filios reliquisse cognoscitur, placet, ut portionem eius is, cum quo pariter defunctus accepit, id est socius eius acquirat: merito enim socius praefertur, ubi filii nulla persona intervenisse cognoscitur

CTh.10.14.2

Imp. constantius a. orioni viro clarissimo. nonnulli in nostro vel patris nostri obsequio constituti nominibus iunctis professionem sibi largientibus nobis tribui poposcerunt. iubemus itaque, ut si qui forsitan ex his, qui communiter aliquid impetraverint, nullo herede derelicto decesserit, ad consortem potius solacium quam ad personam aliam pars perveniat decedentis. dat. xv kal. iul. mediolano philippo et sallia conss. (348 iun. 17).

CTh.10.15.0. De advocatis fisci

CTh.10.15.1 [=brev.10.7.1]

Imp. constantinus a. aeliano proconsuli africae. post alia: fisci advocatus, poenam metuens, caveat, ne fiscalia commoda occultet, neve, nullo negotio exsistente, fisci nomine privatis audeat calumnias commovere. dat. vi. id. nov. treviris, constantino a. iv. et licinio iv. coss.

interpretatio. hi, qui fisci nostri commoda vel utilitatem tuentur, hanc debent custodire mensuram, ne negligentes circa ea, quae nobis iure debentur, exsistant, et ne provincialibus calumniatores, dum aliquid ab iis iniuste fisci nomine repetunt, approbentur

CTh.10.15.2

Idem a. ad pacatianum praefectum praetorio. etsi potior aput nos privatorum causa est quam fisci tutela, praecipimus tamen, si a nobis plures defensacula fisci meruerint, eum praeponi ceteris, qui melior innocentia, potior litteris, pollentior reliquis examinata fide esse noscetur, etiamsi post alios hoc beneficium a nostra clementia reportavit. dat. iii non. iul. singiduno optato et paulino conss. (334 iul. 5).

CTh.10.15.3

Imp. constantius a. ad petronium vicarium africae. patroni fiscalium commodorum fidem cum veritate tueantur, ne, si forte intra praescriptas causae cognoscendae metas fiscus aliqua circumscriptione fuerit irretitus, collusionis fraude vulgata ex eorum facultatibus recuperet, quidquid calliditate praevaricationis perdiderit. subscripta v id. april. aquileiae acindyno et proculo conss. (340 apr. 9).

CTh.10.15.4

Impp. valentinianus et valens aa. ad rufinum praefectum praetorio. vicarios praefecturae ordinariosque rectores praecelsa sinceritas tua istius sanctionis auctoritate commoneat, ut privatae rei nostrae, quotienscumque aliquas vel denuntiaverit vel exceperit actiones, idoneos tribuant advocatos. dat. xiiii kal. iun. remis lupicino et iovino conss. (367 mai. 19).

CTh.10.16.0. De fisci debitoribus

CTh.10.16.1

Impp. valentinianus et valens aa. ad auxonium praefectum praetorio. de diacatochis quosdam comperimus ita fiscales lacerasse rationes, ut satisfieri aerario nostro sine patrimonii eorum venditione non possit, sed eorundem bonis propositis nonnulli fiscalem refugiant auctionem, metuentes, ne, si aliquam bonorum emerint portionem, etiam ad reliqua debita inferenda teneantur. nihil igitur ab his amplius flagitetur, quam pro rerum viribus generaliter comparatarum decursis hastis voluntaria fuerint pretii oblatione polliciti. dat. kal. sept. valentiniano et valente aa. conss. (368? 370? sept. 1).

CTh.10.16.2

Idem aa. et gratianus a. ad archelaum comitem orientis. hi, qui fisco nostrae mansuetudinis obnoxii sunt, omissa frustratione teneantur, ut, quod suis nominibus debent, de suis facultatibus cogantur exsolvere, servatis, cum compleverint, allegationibus propriis, si quas adversus quoscumque ex suis contractibus debitores competere sibi ex iure crediderint, ita ut adversus eos, quos sibi obnoxios adseverant, legibus et iudiciis experiendum esse cognoscant. dat. iii non. iul. novioduno valentiniano nb p et victore conss. (369 iul. 5).

CTh.10.16.3 [=brev.10.8.1]

Imppp. valens, grat. et valent. aaa. fortunatiano comiti r. p. inter chartulas deportati brevis quidam asseveratur inventus, qui nomina continebat debitorum seu contractorum. quum tamen neque testibus credita pecunia probaretur, neque cautionibus, quae inserta sunt, doceantur, facile esse perspeximus, ut sub propriae annotationis manu unusquisque faciat debitorem. occasionis igitur huius calumniam praesenti volumus iussione cohiberi, ut, brevis vanitate reiecta, nullus ad redhibitionem de his, quorum nomina conscripta sunt, urgeatur. dat. prid. non. iul. hierapoli, gratiano a. iv. et merobaude coss.

interpretatio. si prolati breves vel a quocumque* dimissi inveniantur, in quibus sibi quicumque* aliquos faciat debitores, nullis cautionibus prolatis neque aliis evidentibus documentis, nullam adscripti breves obtineant firmitatem

CTh.10.16.4

Imppp. gratianus, valentinianus et theodosius aaa. florentio proconsuli palaestinae. nemo susceptor vel exactor vel debitor fisci dumtaxat cessionem bonorum faciens intentionem publicae necessitatis evadat, sed omnes omnino, quos fisci nostri esse constiterit debitores, ad solutionem ea severitate, quam vigor iudiciarius postulat, urgeantur. dat. viii kal. sept. constantinopoli arcadio a. i et bautone conss. (385 aug. 25).

CTh.10.17.0. De fide et iure hastae

CTh.10.17.1

Imppp. valentinianus, valens et gratianus aaa. ad viventium praefectum praetorio galliarum. quaecumque pro reliquis prodigorum in annonario titulo ceterisve fiscalibus debitis in quibuscumque corporibus sub auctione licitanda sunt, fisco auctore vendantur, ut perpetuo penes eos sint iure dominii, quibus res huiuscemodi sub hastae sollemnis arbitrio fiscus addixerit. et si quid umquam, ut a fisco facta venditio possit infringi, auctoritate rescripti fuerit impetratum, nullus obtemperet, cum etiam minoribus, si quando aliquid ex rebus eorum pro fiscalibus debitis adiudicatur emptoribus, repetitionis facultas in omnem intercipiatur aetatem. dat. iii non. nov. treviris valentiniano n. p. et victore conss. (369 nov. 3).

CTh.10.17.2

Idem aaa. ad felicem comitem sacrarum largitionum. si qui proscribente ac distrahente fisco debitorum fiscalium emerint facultates, pro earum rerum tantum pretiis obnoxii sint, quas eos patuerit decursis hastis et proscriptione habita comparasse. nam ita eos munimus, ut nullius conventioni patiamur extrinsecus subiacere. dat. vii id. mart. marcianopoli valentiniano et valente aa. conss. (370? mart. 9).

CTh.10.17.3 [=brev.10.9.1]

Imppp. valent., theodos. et arcad. aaa. ad magnillum vicarium africae. si quos debitorum mole depressos necessitas publicae rationis adstringat proprias distrahere facultates, rei qualitas et redituum quantitas aestimetur, ne, sub nomine subhastationis publicae locus fraudibus relinquatur et, possessionibus viliore distractis, plus exactor ex gratia quam debitor ex pretio consequatur. hi postremo, sub empti* titulo, perpetuo dominii iure potiantur, qui tantum annumeraverint fisco, quantum exegerit utilitas privatorum. etenim periniquum est, ut, alienis bonis sub gratiosa auctione distractis, parum accedat publico nomini, quum totum pereat debitori. dat. xiii. kal. iul. aquileia, acc. id. ian. hadrumeti, post cons. tatiani et symmachi vv. cc.

interpretatio. si quicumque* publici debiti enormitate constringitur, ut non possit hoc ipsum debitum nisi vendita propria facultate dissolvere, in eius modi debito hanc exactores formam servare debebunt, ut non ita rem praecipitent, ut res minore, quam valeat, pretio distrahatur, nec tales sub quolibet colludio provideant emptores*, ut et debitor proprietatem perdat, et parum fiscus acquirat

CTh.10.18.0. De thesauris

CTh.10.18.1

Imp. constantinus a. ad rationales. quicumque thesaurum invenerit et ad fiscum sponte detulerit, medietatem consequatur inventi, alterum tantum fisci rationibus tradat, ita tamen, ut citra inquietudinem quaestionis omnis fiscalis calumnia conquiescat. haberi enim fidem fas est his, qui sponte obtulerint quod invenerint. si quis autem inventas opes offerre noluerit et aliqua ratione proditus fuerit, a supra dicta venia debebit excludi. dat. iii kal. april. constantino a. iiii et licinio iiii conss. (315 mart. 30).

CTh.10.18.2pr. [=brev.10.10.1pr.]

Imppp. grat., valent. et theodos. aaa. ad populum urbis constantinopolitanae. quisquis thesauros et condita ab ignotis dominis tempore vetustiore monilia quolibet casu repererit, suae vindicet potestati, neque calumniae formidinem fiscali aut privato nomine ullis deferentibus pertimescat; non metalli qualitas, non reperti modus sub aliquod periculum quaestionis incurrat.

CTh.10.18.2.1 [=brev.10.10.1.1]

In hac tamen naturali aequitate animadvertimus quoddam temperamentum adhibendum, ut, si cui in solo proprio huius modi contigerit, integro id iure praesumat; qui in alieno, in quartam repertorum partem eum, qui loci dominus fuerit, admittat. ne tamen per hanc licentiam quisquam aut aliena effodiat, aut in locis non sui iuris per famam suspecta rimetur. dat. vii. kal. febr. thessalonica, gratiano a. v. et theodos. a. i. coss.

interpretatio. si quicumque* thesaurum in sua terra invenerit, ei ex integro, quod inventum est, acquiratur, et nullam calumniam pertimescat. si vero in loco alieno thesaurum casu invenerit, eum, qui loci dominus est, in quartam inventarum rerum debet admittere. attamen nullus effodiendo loca aliena praesumat ista requirere

CTh.10.18.3

Imppp. valentinianus, theodosius et arcadius aaa. neoterio praefecto praetorio. eos, qui suadente numine vel ducente fortuna thesauros reppererint, reppertis laetari rebus sine aliquo terrore permittimus. dat. vi non. mart. constantinopoli valentiniano a. iiii et neoterio conss. (390 mart. 2).

CTh.10.19.0. De metallis et metallariis

CTh.10.19.1

Imp. constantinus a. ad maximum rationalem africae. secandorum marmorum ex quibuscumque metallis volentibus tribuimus facultatem, ita ut, qui caedere metallum atque ex eo facere quodcumque decreverint, etiam distrahendi habeant liberam potestatem. dat. prid. kal. octob. constantino a. vi et constantino caes. conss. (320 sept. 30).

CTh.10.19.2

Imp. iulianus a. ad rufinum comitem orientis. quoniam marmorum cupiditate in inmensum quoddam saxorum pretia aucta sunt, ut sumptuosa voluntas copia relaxetur, permittimus omnibus, ut qui volunt caedere habeant licentiam adtributam. fore enim arbitramur, ut etiam complures saxorum nitentium venae in lumen usumque perveniant. dat. xi kal. nov. antiochiae iuliano a. iiii et sallustio conss. (363 oct. 22).

CTh.10.19.3

Impp. valentinianus et valens aa. ad cresconium comitem metallorum. perpensa deliberatione duximus sanciendum, ut, quicumque exercitium metallorum vellet adfluere, is labore proprio et sibi et rei publicae commoda compararet. itaque si qui sponte confluxerint, eos laudabilitas tua octonos scripulos in balluca cogat exsolvere; quidquid autem amplius colligere potuerint, fisco potissimum distrahant, a quo competentia ex largitionibus nostris pretia suscipient. dat. iiii id. decemb. parisis valentiniano et valente aa. conss. (365 dec. 10).

CTh.10.19.4

Idem aa. ad germanianum comitem sacrarum largitionum. ob metallicum canonem, in quo propria consuetudo retinenda est, quattuordecim uncias ballucae pro singulis libris constat inferri. dat. vi id. ian. rom. lupicino et ioviano conss. (367 ian. 8).

CTh.10.19.5

Imppp. valentinianus, valens et gratianus aaa. fortunatiano comiti rerum privatarum. nullam partem romani orbis credidimus relinquendam, ex qua non metallarii, qui incolunt latebras, producantur, et quos domus nostrae secreta retinent. et in comprehendendis eis investigatores eorum rectores congruis auxiliis prosequantur. dat. prid. kal. mai. antiochiae valentiniano nb. p. et victore conss. (369 apr. 30).

CTh.10.19.6

Idem aaa. ad probum praefectum praetorio. si qua navis metallarium ad sardiniam transtulerit, gubernator ipsius vel magister quinos pro singulis hominibus solidos cogatur inferre. dat. prid. non. iun. martiatici valentiniano nb. p. et victore conss. (369 iun. 4).

CTh.10.19.7

Idem aaa. ad probum praefectum praetorio. quemadmodum dominus noster valens per omnem orientem eos, qui ibidem auri metallum vago errore sectantur, a possessoribus cunctis iussit arceri, ita sinceritas tua universos per illyricum et dioecesim macedonicam provinciales edicto conveniat, ut nemo quemquam thracem ultra in possessione propria putet esse celandum, sed ut singulos potius regredi ad solum genitale compellant, quos inde venisse cognoscunt. alioquin gravis in eum animadversio proferetur, qui latebram huiusmodi hominibus post haec interdicta praebuerit. dat. xiiii kal. april. treviris valentiniano et valente aa. conss. (370? 373? mart. 19).

CTh.10.19.8

Imppp. valens, gratianus et valentinianus aaa. ad senatum. potestatem eruendi vel exsecandi de privatis lapidicinis iam pridem per macedoniam et illyrici tractum certa sub condicione permisimus. sed vobis, patres conscripti, volentibus liberalius deferetur, suo ut quisque sumptu suoque emolumento, vectigalis operas et portorii damna non metuens, pariat eam copiam. et cetera. lecta in senatu id. aug. valente v et valentiniano aa. conss. (376 aug. 13).

CTh.10.19.9

Idem aaa. ad vindicianum virum clarissimum vicarium. datis ad illustres viros praefectos galliarum et italiae litteris primum metallarios praecipimus admoneri, ne eis novelli statuti, quod fuerat elicitum, privilegio transeundi ad sardiniam spes improba blandiatur; deinde provinciarum, quae mari alluuntur, iudices scientes fieri, ut universorum navigatio huiusmodi hominum generi clauderetur, ita ut, si aurileguli transfretare temptassent, severitate iudicis audaciae suae ferrent digna supplicia adficiendis etiam poena custodibus, si neglegentia navigandi isdem copiam praebuissent; ita ut haec non sine periculo suo rectores provinciarum neglegenda meminerint. dat. xviii kal. sept. valente vi et valentiniano ii aa. conss. (378 aug. 15).

CTh.10.19.10

Imppp. gratianus, valentinianus et theodosius aaa. floro praefecto praetorio. cuncti, qui per privatorum loca saxorum venam laboriosis effossionibus persequuntur, decimas fisco, decimas etiam domino repraesentent, cetero modo suis desideriis vindicando. dat. iiii kal. sept. constantinopoli antonio et syagrio conss. (382 aug. 29).

CTh.10.19.11

Idem aaa. cynegio praefecto praetorio. ii, quibus ad exercenda metalla privata dives marmorum vena consentit, excidendi exsecandique iuxta legem dudum latam habeant facultatem, ita ut decima pars fisci nostri utilitatibus, decima ei cuius locus est deputetur. quidquid vero reliquum fuerit, id iuxta eiusdem legis tenorem exercentibus cedat habituris licentiam vendendi donandi et quo voluntas suaserit transferendi. dat. iii non. octob. constantinopoli richomere et clearcho conss. (384 oct. 5).

CTh.10.19.12

Imppp. valentinianus, theodosius et arcadius aaa. romulo comiti sacrarum largitionum. per annos singulos septeni per hominem scripuli largitionibus inferantur ab aurilegulis non solum in pontica dioecesi, verum etiam in asiana. dat. xi kal. mart. constantinopoli arcadio a. ii et rufino conss. (392 febr. 19).

CTh.10.19.13

Idem aaa. rufino praefecto praetorio. privatorum manus ab exercendo quolibet marmoreo metallo prohiberi praecipimus, ut fiscalibus instantia locis liberior relaxetur. si qui vero clandestino opere vetita deinceps exercere temptaverit, omne id, quidquid exciderit, iuri fisci et publico vindicandum. dat. prid. id. feb. constantinopoli theodosio a. iii et abundantio conss. (393 febr. 12).

CTh.10.19.14 [=brev.10.11.1]

Imppp. valent., theodos. et arcad. aaa. paterno. quosdam operta humo esse saxa dicentes id agere cognovimus, ut, defossis in altum cuniculis, alienarum aedium fundamenta labefactent. qua de re, si quando huius modi marmora sub aedificiis latere dicantur, perquirendi eadem copia denegetur, ne, dum cautium ementita nobilitas cum aedificiorum qualitate taxatur, et pretium domus, ne diruatur, offertur, non tam publicae rei studium quam privati causa videatur fuisse dispendii. dat. xvii. kal. april. constantinopoli, theodos. a. iii. et abundantio coss.

interpretatio. quicumque* metallum dicentes latere sub alienis aedificiis quaelibet saxa vel marmora effodienda crediderint, ut per eos fundamentorum firmitas incipiat vacillare, his inquisitionis huius licentiam denegamus, ne, dum nobiliores lapides se quaerere asserunt, aut vendere aut subvertere aliena fundamenta praesumant

CTh.10.19.15pr.

Imp. theodosius a. maximino comiti sacrarum largitionum. metallarii, qui ea regione deserta, ex qua videntur oriundi, ad externa migrarunt, indubitanter ad propriae originis stirpem laremque revocentur. eorum autem earumque progenies, qui ex domibus privatorum eligere maluerunt consortia nuptiarum, aequa inter fiscum meum et parentes suos lance dividatur, ita ut, qui singulorum tantummodo filiorum probabuntur esse genitores, ex integro unicis fisco affectibus cedant: in posterum cunctis metallariorum condicionem necessario secuturis, quicumque ex ipsis et ex quocumque fuerint latere procreati. (424 iul. 11).

CTh.10.19.15.1

Qui vero metallica loca praedictae obnoxia functioni emisse perhibentur, isdem procul dubio, quae auctores eorum implere consueverant, muniis subiacebunt. nam de his, qui ad census annonarios transierunt, observandum est, ut illi, qui ante quinquennium tantummodo nexibus privatorum videntur impliciti, sine dubio ad originem propriam redire cogantur, ex aequo cum publicis fundis eorum subole dividenda et unico filio metallariorum origini vindicando, omni tamen ceteris in futurum huiuscemodi licentia arte praeclusa. quod si quis postea illud quod nunc prohibetur fecerit, sciat nullum exinde praeiudicium fisco esse generandum, etiamsi is, quem metallicum esse constabit, privatis censibus suum nomen indiderit. dat. v id. iul. constantinopoli victore v. c. cons. (424 iul. 11).

CTh.10.20.0. De murilegulis et gynaeceariis et monetariis et bastagariis

CTh.10.20.1

Imp. constantinus a. ad bithynos. monetarios in sua semper durare condicione oportet nec dignitates eis perfectissimatus tribui vel ducenae vel centenae vel egregiatus. dat. xii kal. aug. gallicano et basso conss. (317 iul. 21).

CTh.10.20.2

Imp. constantius a. ad taurum praefectum praetorio. quinque auri librarum multam exigatur, qui mancipium gynaecei, quod celat, non intra kal. septemb. prodiderit. dat. xiiii kal. april. mediolano datiano et cereale conss. (358 [357] mart. 19).

CTh.10.20.3

Impp. valentinianus et valens aa. ad germanum consularem. ingenuae mulieres, quae se gynaeceariis sociaverint, si conventae denuntiatione sollemni splendorem generis contuberniorum vilitati praeferre noluerint, suorum maritorum condicione teneantur. dat. iiii kal. iul. mediolano valentiniano et valente aa. conss. (365 iun. 28).

CTh.10.20.4

Idem aa. ad auxonium praefectum praetorio. quod ad praesens remedium pertinet, decimum animal bastagariis pro reparatione praebeatur. dat. id. decemb. marcianopoli valentiniano et valente aa. conss. (368 dec. 13).

CTh.10.20.5

Imppp. valentinianus, valens et gratianus aaa. filematio comiti sacrarum largitionum. si quis uxorem de familiis conchylegulorum acceperit, sciat condicioni eorundem se esse nectendum. dat. iiii kal. iul. treviris gratiano a. ii et probo conss. (371 iun. 28).

CTh.10.20.6

Idem aaa. ad modestum. opifices vesti linteae contexendae in usum erogationum nostrarum operam dantes sollicitatos a plurimis esse cognovimus. igitur et eos, penes quos sunt, et textores ipsos terna auri pondo thesaurorum commodis inferre praecipimus; quin etiam opifices ipsos textrinis linteae vestis vindicari conveniet. quod si aliquis detegetur in eadem insolentia permanere et iugiter opificem detinuerit, non iam multam, ut praeterito tempore iusseramus, sed proscriptionem subire debebit. dat. v kal. iul. modesto et arintheo conss. (372 iun. 27).

CTh.10.20.7

Idem aaa. ad filematium comitem sacrarum largitionum. qui aliquem ex familiis gynaecei in latebris habere comperti sunt, quinque librarum auri damno subicientur. dat. xii kal. sept. ciliciae modesto et arintheo conss. (372 aug. 21).

CTh.10.20.8

Idem aaa. ad tatianum comitem sacrarum largitionum. intra kalendarum augustarum diem qui linteones retentare dicuntur, antiquis eos condicionibus reddant aut se pro ingentis audaciae contumacia quinis auri libris per singulos eorum poenae nomine sciant esse feriendos: non minore circa eos etiam multae comminatione proposita, qui obnoxios scytopolitanos linyfos publico canoni in posterum suscipere conabuntur. dat. xiiii kal. mar. antiochiae gratiano a. iii et equitio conss. (374 febr. 16).

CTh.10.20.9

Imppp. gratianus, valentinianus et theodosius aaa. ad eucherium. qui textrini nostri mancipia occultatione celaverit, ternis libris auri pro singulorum hominum suppressione plectatur. proposita karthagine iii kal. mart. post cons. auxoni et olybri. (380 febr. 28).

CTh.10.20.10pr.

Idem aaa. ad hesperium praefectum praetorio. edicimus, ne qua mulier spendidioris gradus monetarii adhaerens consortio decus nativae libertatis amittat. quod si quam ab hac praeceptione statutum nostrae perennitatis abduxerit, ea secundum auctoritatem senatus consulti claudiani vel legitima admonita conventione discedat vel, si complexui monetarii putaverit inhaerendum, non ambigat se et liberis praeiudicaturam et eius condicioni esse nectendam. nihilo minus autem et eas, quae ante legem nostram monetariis videntur esse coniunctae, placuit praedicto titulo conveniri scientes, nisi interdicta coniunctione discesserint, mutasse se statum. (380 [379] mart. 14).

CTh.10.20.10.1

Si qua vero originaria seu colona possessionis alienae, ignaro domino seu sciente, monetario adsociabitur, ii conventi mox iuri agrorum debitas personas retrahere festinent vel de cetero sciant repetendi facultatem silentii sui coniventia perdidisse. (380 [379] mart. 14).

CTh.10.20.10.2

Sed ut monetario nullam necti volumus, ita et monetario patre susceptas prohibemus extraneis copulari. dat. prid. id. mart. aquileiae post consulatum auxoni et olybri. (380 [379] mart. 14).

CTh.10.20.11

Idem aaa. trifolio comiti sacrarum largitionum. aeternam fiximus legem, ne umquam bastagariis militiam vel suam deserere liceat vel aliam subreptiva impetratione temptare. et tribuni, qui scientes huiusmodi milites ad numerum receperint, per singulos bastagarios singulas auri libras fisco cogantur inferre. et super hoc dedimus litteras ad illustres magistros utriusque militiae. dat. viiii kal. aug. heracleae richomere et clearcho conss. (384 iul. 24).

CTh.10.20.12

Idem aaa. ad principium praefectum praetorio. si quis naviculam functioni muricis et legendis conchyliis deputatam ausus fuerit usurpare, duarum librarum auri illatione teneatur. dat. vi kal. oct. aquileiae arcadio a. i et bautone conss. (385 sept. 26).

CTh.10.20.13

Imppp. arcadius, honorius et theodosius aaa. filometori comiti sacrarum largitionum. lotas in posterum sericoblattae ac metaxae huiusmodi species inferri praecipimus; viginti librarum auri condemnatione proposita his, qui scrinium canonum tractant, prioribus etiam eiusdem officii, si statua caelestia a quoquam passi fuerint temerari. dat. v kal. iul. constantinopoli arcadio a. vi et probo conss. (406 iun. 27).

CTh.10.20.14

Imp. theodosius a. et valentinianus c. maximino comiti sacrarum largitionum. murileguli, qui relicto adque despecto propriae condicionis officio vetitis se infulis dignitatum et cingulis penitus denegatis munisse dicuntur, ad propriae artis et originis vincla revocentur. ab illis autem, qui rebus eorum videntur inhiasse, quos in sua origine permanere et sollemnibus ministeriis inservire manifestum est, omnia, quaecumque constiterit ex quocumque titulo possessa, antiquis possessoribus restituantur. quod si alienigenae detentatores oneribus condicionis externae maluerint subiacere quam restituere facultates, et futura deinceps agnoscant munia sibi esse subeunda et de praeterito, si qua ipsis possidentibus reliqua colliguntur, a semet ipsis sciant sine aliqua excusatione solvenda. dat. xvii kal. nov. constantinopoli victore cons. (424 oct. 16).

CTh.10.20.15

Idem a. et caes. maximino comiti sacrarum largitionum. ii, qui ex filiabus murilegulorum et alienae originis patribus sunt vel fuerint procreati, iura maternae condicionis agnoscant. dat. viiii kal. iun. theodosio a. xi et valentiniano caes. conss. (425 mai. 24).

CTh.10.20.16

Impp. theodosius et valentinianus aa. acacio comiti sacrarum largitionum. si quis ex corpore gynaeceariorum vel linteariorum sive linyfariorum monetariorumve aut murilegulorum vel aliorum similium ad divinas largitiones nexu sanguinis pertinentium voluerit posthac de suo collegio liberari, non quoscumque nec facile in locum proprium, freti dexterae triumphalis absolutione, substituant, sed eos, quos omnibus idoneos modis sub ipsis quodammodo amplissimae tuae sedis obtutibus adprobarint; ita tamen, ut is, qui ab huiusmodi condicione iuxta formam caelitus datam beneficio principali fuerit absolutus, universam generis sui prosapiam in functione memorati corporis permanentem cum omnibus eius qui absolvitur rebus obnoxiam largitionibus sacris futuram esse non dubitet. dat. vii kal. mar. constantinopoli dd. nn. theodosio xii et valentiniano ii aa. conss. (426 febr. 23).

CTh.10.20.17

Idem aa. valerio comiti sacrarum largitionum. placet, si conchyliolegulorum filiae condicionis alienae nubserint viris, qui ex ipsis fuerint procreati ab eo tempore nexum maternae adscriptionis agnoscant, ex quo promulgatam super hoc cognoverint legem. de his vero, quos ante eam natos esse constiterit, huiusmodi forma servetur, ut, sive conchyliolegulorum seu adscriptorum progenies fuerit colonorum, paternam tantum condicionem sequantur. si qui vero post legem aut patre conchyliolegulo geniti probabuntur aut matre, memoratae adscriptioni obnoxios se esse non ambigant. dat. x kal. april. constantinopoli hierio et ardabure conss. (427 mart. 23).

CTh.10.20.18

Idem aa. apollonio comiti sacrarum largitionum. quoniam trecentas paene libras blattae sericae clandestina fucatione non sine laesae maiestatis crimine coloratas et adaeratum conchylii non minimum pondus patefactum est, quaestione prodente, quibus sollemniter artibus, quibus consciis ac ministris metaxa cum privata fiscalis aequaliter publico murice tinguebatur, purpurae nundinas, licet innumeris sint constitutionibus prohibitae, recenti quoque interminatione vetamus; et dispositione illustris memoriae synesii revocata, quae perperam infirmata est ab illustris memoriae anysio, a quo subreptum nobis est veritate celata, septimum de scrinio exceptorum, sextum de scrinio canonum, quintum de scrinio tabulariorum ad bafia foenices per certum tempus mitti praecipimus, ut fraus omnis eorum prohibeatur sollertia timentium, ne quaesitis multo sudore stipendiis careant: etiam viginti librarum auri condemnatione proposita. dat. viii id. mart. constantinopoli isidoro et senatore conss. (436 mart. 8).

CTh.10.21.0. De vestibus holoveris et auratis.

CTh.10.21.1

Impp. valentinianus et valens aa. archelao comiti sacrarum largitionum. auratas ac sericas paragaudas auro intextas tam viriles quam muliebres privatis usibus contexere conficereque prohibemus et in gynaeceis tantum nostris fieri praecipimus. dat. v non. iul. nevioduni; acc. xv kal. aug. marcianopoli valentiniano nob. p. et victore conss. (369 iul. 18).

CTh.10.21.2

Imppp. gratianus, valentinianus et theodosius aaa. floro praefecto praetorio. nemo auratas habeat aut in tunicis aut in lineis paragaudas. non enim levi animadversione plectetur, quisquis vetito se et indebito non abdicarit indutu. dat. iii kal. april. constantinopoli antonio et syagrio conss. (382 mart. 30).

CTh.10.21.3

Imp. theodosius a. maximino comiti sacrarum largitionum. temperent universi, qui cuiuscumque sunt sexus dignitatis artis professionis et generis, ab huiusmodi speciei possessione, quae soli principi eiusque domui dedicatur. nec pallia tunicasque domi quis serica contexat aut faciat, quae tincta conchylio nullius alterius permixtione subtexta sunt. proferantur ex aedibus tradanturque tunicae et pallia ex omni parte texturae cruore infecta conchylii. nulla stamina subtexantur tincta conchylio nec eiusdem infectionis arguto pectine solidanda fila decurrant. reddenda aerario holovera vestimenta protinus offerantur. nec est, ut quisquam de abiurato pretio conqueratur, quia sufficit calcatae legis impunitas, nec vacet illi curare de quaestu, cui sua salus esse non debet in pretio. ne quis vero nunc huiusmodi suppressione in laqueos novae constitutionis incurrat; alioquin ad similitudinem laesae maiestatis periculum sustinebit. dat. xvii kal. feb. constantinopoli victore v. c. cons. (424 ian. 16).

CTh.10.22.0. De fabricensibus

CTh.10.22.1

Imppp. valentinianus, valens et gratianus aaa. tatiano comiti sacrarum largitionum. cum senae per tricenos dies ex aere tam aput antiochiam quam aput constantinopolim a singulis barbaricariis cassides, sed et bucculae tegerentur, octo vero aput antiochiam cassidas totidemque bucculas per dies triginta et tegerent argento et deaurarent, aput constantinopolim autem tres solas, statuimus, ut constantinopoli quoque non octonas singuli cassidas per tricenos dies, sed senas sic pari numero buccularum auro argentoque condecorent. dat. v id. mart. antiochiae gratiano a. iii et equitio conss. (374 mart. 11).

CTh.10.22.2

Imppp. valentinianus, theodosius et arcadius aaa. tatiano praefecto praetorio. omnibus fabricis non pecunias pro speciebus, sed ipsas species sine dilatione inferri, in perpetuum servanda hac forma praecipimus, ut venae nobilis et quae facile deducatur ignibus seu liquescat ferri materies praebeatur, quo promptius adempta fraudibus facultate commodo publico consulatur. dat. xv kal. nov. theodosio a. ii et cynegio conss. (388 oct. 18).

CTh.10.22.3

Idem aaa. rufino magistro officiorum. primicerium fabricae post biennium non solum vacatione, verum etiam honore donari praecipimus, ita ut inter protectores adoraturus aeternitatem nostram suo quisque tempore dirigatur. dat. viii id. mar. mediolano valentiniano a. iiii et neoterio conss. (390 mart. 8).

CTh.10.22.4

Impp. arcadius et honorius aa. hosio magistro officiorum. stigmata, hoc est nota publica, fabricensium brachiis ad imitationem tironum infligatur, ut hoc modo saltem possint latitantes agnosci: his, qui eos susceperint vel eorum liberos, sine dubio fabricae vindicandis, et qui subreptione quadam declinandi operis ad publicae cuiuslibet sacramenta militiae transierunt. dat. xviii kal. ian. constantinopoli honorio a. iiii et eutychiano conss. (398 dec. 15).

CTh.10.22.5

Idem aa. anthemio magistro officiorum. si quis posthac fabricensem admiserit procuratorem vel cultorem sui praedii detinuerit conductoremve susceperit, rei, quam contra vetitum fabricensi crediderit iniungendam, proprietate privetur, ea videlicet fiscalibus calculis socianda; ipse vero fabricensis, qui contraxerit legis offensam, multa duarum librarum auri feriatur. dat. iii kal. aug. constantinopoli honorio a. vi et aristaeneto conss. (404 iul. 30).

CTh.10.22.6

Impp. honorius et theodosius aa. anthemio praefecto praetorio. si quis consortium fabricensium crediderit eligendum, in ea urbe, qua natus est vel in qua domicilium collocavit, his quorum interest convocatis primitus acta conficiat, sese doceat non avo, non patre curiali progenitum, nihil ordini civitatis debere, nulli se civico muneri obnoxium, atque ita demum gestis confectis vel aput moderatorem provinciae vel si is absit aput defensorem civitatis ad militiam quam optaverit suscipiatur. quod si absque hac cautione quispiam ad fabricensium consortium obrepserit, sciat se ad ordinis cui debetur patriaeque suae munera esse revocandum, ita ut nulla eum nec temporis nec stipendiorum praerogativa defendat. dat. xv kal. iun. constantinopoli honorio viiii et theodosio v aa. conss. (412 mai. 18).

CTh.10.23.0. De classicis

CTh.10.23.1

Impp. valentinianus et valens aa. auxonio praefecto praetorio. classem seleucenam aliasque universas ad officium, quod magnitudini tuae obsequitur, volumus pertinere, ut classicorum numerus ex incensitis vel adcrescentibus compleatur et seleucena ad auxilium purgandi orontis aliasque necessitates orientis comiti deputetur. data indictione xii. (a. 369/70 ...).

CTh.10.24.0. De his, qui cum dispensatore contraxerunt

CTh.10.24.1

Impp. valentinianus et valens aa. ad probum praefectum praetorio. si quis ab exactoribus tabulariis arcariis officiisve rationum vel alio, cui fiscalium thesaurorum tutela mandetur, fenebrem pecuniam sumpserit, detectus in eodem ad quadrupli poenam ex hac auctoritate teneatur. dat. iiii id. mart. treviris valentiniano et valente aa. conss. (368? 370? 373? mart. 12).

CTh.10.24.2

Imppp. gratianus, valentinianus et theodosius aaa. palladio comiti sacrarum largitionum. sciant omnes neque dandi neque accipiendi mutuo ex largitionibus sacris auri patere cuiquam facultatem. quod si quis aurum ex nostro aerario privatis commodis profuturum occulte aut cautionis aut sponsionis fide ut debitor redditurus acceperit, ablatis bonis omnibus perpetuae deportationis subdetur exilio. is etiam, qui ex memoratis thesauris sub specie publici creditoris aurum cuiquam commodarit ac dederit, capitali sententia subiugetur. dat. xii kal. aug. heracleae eucherio et syagrio conss. (381 iul. 21).

CTh.10.24.3pr.

Idem aaa. palladio magistro officiorum. aurum, quod a provincialibus sine cunctatione persolvitur, nundinatione consumitur. poenis itaque se ultimis, quicumque harum machinatores praedarum detegi prodique potuerint, se noverint subiugandos, nisi dimenso itineris spatio susceptum a provinciali officio aurum traditum sacris largitionibus nuntiarint. (381 nov. 30).

CTh.10.24.3.1

Insuper si decem ultra diebus aurum, quod percurso itinere potuerit inferri, detentum vel a prosecutoribus vel a palatinis fuerit deprehensum, binarum ex toto centesimarum illatiom se sentiant obligatos. proposita prid. kal. decemb. beryto eucherio et syagrio conss. (381 nov. 30).

CTh.10.25.0. De privilegiis domus augustae

CTh.10.25.1

Imppp. arcadius, honorius et theodosius aaa. anthemio praefecto praetorio. ad omnem fraudem amputandam procuratores per singulas quasque provincias nobilissimarum puellarum filiarum mearum aput fidem gestorum praesentibus censualibus ac principalibus, quos huius inminutionis oneribus premi non dubium est, exponant numerum iugorum ad memoratarum domus pertinentium et pro eo tantum illustribus privilegiis ac debitis potiantur, ita ut ex veri fide brevibus praebitis et a rectoribus provinciae mox relatis, quae eos excusare debere conveniat, collatis rationibus cognoscant. dat. kal. decemb. constantinopoli arcadio a. vi et probo v. c. conss. (406 dec. 1).

CTh.10.26.0. De conductoribus et hominibus domus augustae

CTh.10.26.1

Impp. theodosius et valentinianus aa. basso praefecto praetorio. conductores hominesve augustissimae domus nostrae nullum cuiuslibet nomen militiae usurpent, nullius cingulo dignitatis utantur, ne ex hoc sibi erigendi supercilii fastus, sacro numini nostrae pietatis oriatur invidia. sed quotiens de causa ad domum regiam pertinente aliquid quaestionis emergit, non aliter quam ex legum ordine, quibus similiter omne hominum genus tenetur, vel excipiant vel inferant actionem, nec aliorum litigatorum negotio intercedant nec sententiam iudicantum aut illicito patrocinii sui fomite iura conturbent nullique exsecutionis suae turbulentum ministerium audeant commodare; non privatis se negotiis, non publicis misceant; nec quiescentem domum delatio ulla sollicitet, ne eos inconsultae pertinaciae sero paeniteat. dat. prid. non. mart. ravennae theodosio xii et valentiniano ii aa. conss. (425 mart. 6).

CTh.10.26.2

Idem aa. ad senatum urbis romae. post alia. conductores domus nostrae ab omni militiae privilegio submovemus. vivant aequa sorte cum ceteris, nec umquam, si ratio poscat, examinis severitatem iudiciariam ullo cinguli frustrabuntur obiectu, sed potius pari disceptationis eventu in omnibus causis legibus serviant, quibus tenentur et principes. dat. iii non. ian. romae dd. nn. theodosio xii et valentiniano ii aa. conss.

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CTh.11.1.0. De annona et tributis

CTh.11.1.1

Imp. constantinus a. ad proclianum. praeter privatas res nostras et ecclesias catholicas et domum clarissimae memoriae eusebii exconsule et exmagistro equitum et peditum et arsacis regis armeniorum nemo ex nostra iussione praecipuis emolumentis familiaris iuvetur substantiae. datianus enim vir clarissimus patricius, qui hanc olim gratiam fuerat consecutus, auferri sibi id cum tanta instantia depoposcit, cum quanta alii poscere consuerunt. ideoque omnes pensitare debebunt quae manu nostra delegationibus adscribuntur, nihil amplius exigendi. nam si qui vicarius aut rector provinciae aliquid iam cuiquam crediderit remittendum, quod aliis remiserit de propriis dare facultatibus compelletur. dat. xv kal. iul. constantinopoli constantino a. iiii et licinio iiii conss. (315 iun. 17 [360 ian. 18]).

CTh.11.1.2

Idem a. ad aelianum proconsulem africae. possessores cum satisfecerint publicae collationi, cautiones suas ad tabularios publicos deferant, ut eas tabularii sive sexagenarii periculi sui memores suscipiant a collatoribus, ipsas species quae debentur ex horreis suis ad civitates singulas per menses singulos perlaturis, ne illatio tributorum ex solis apochis falsis vel imaginariis cognoscatur. et cetera. dat. kal. nov. treviris constantino a. iiii et licinio iiii conss. (315 [313] nov. 1).

CTh.11.1.3

Idem a. gregorio praefecto praetorio. manu propria iudices universi periculo suo annonarias species et cetera, quae indictione penduntur, definitis quantitatibus et comprehensis modis facta adscriptione designent. cuius observantiae illa erit commoditas, ut post successionem quoque eorum facile requiratur, an exactores ultra quam oportuit de fortunis provincialium aliquid exculpere voluerunt. dat. vii id. octob. nepotiano et facundo conss. (336 oct. 9).

CTh.11.1.4

Imp. constantius a. si quis ab emphyteuticariis seu patrimoniali possessore privati iuris quippiam comparaverit, cuius substantia alias possessiones sustentare consueverat, et succisis quasi quarundam virium nervis reliqua lababuntur, earum possesionum onera subiturus est, quae penes distractores inutiles permanebunt. dat. viii id. decemb. thessalonicae feliciano et titiano conss. (337 dec. 6).

CTh.11.1.5

Idem a. ad uranium. omnes omnino ad oblationem pecuniarum oportet urgueri. lege enim nostra signatum est nec esse extraordinaria nec vocari, quae specialiter a provincialibus devotissimis conferenda sunt. dat. iii non. feb. constantio a. ii et constante conss. (339 febr. 3).

CTh.11.1.6

Impp. constantius et constans aa. ordini caesenatium. vinum, quod ad cellarii usus ministrari solet, cuncti italiae possessores iuxta statutum constantii fratris mei comparent. quod ut fieri facilius possit, ab omnibus italis nostris conferatur pecuniae quantitas ea, quam rufini viri clarissimi et illustris praefecti praetorio parentis amicique nostri moderatio dandam esse censuerat. dat. xi kal. iun. mediolano constantio vii et constante iii aa. conss. (354 mai. 22).

CTh.11.1.7

Idem aa. ad senatum. compertum est pro colonis profugis ad exsolvenda vos fiscalia conveniri. iubemus igitur, si nihil ex eorundem terris senatorum quemquam possidere constiterit, ut nulla cuiquam pensitandi pro his qui aufugerint necessitas imponatur. dat. v non. mai. tauro et florentio conss. (361 mai. 3).

CTh.11.1.8

Impp. valentinianus et valens aa. ad symmachum praefectum urbi. nemini aurum pro speciebus urbis romae liceat exigere de futuro. dat. id. iun. naissi divo ioviano et varroniano conss. (364 iun. 8).

CTh.11.1.9

Idem aa. ad mamertinum praefectum praetorio. tabulariorum fraudes se resecasse per suburbicarias regiones vir clarissimus anatolius consularis missa relatione testatus est, quod pabula, quae hactenus ex eorum voluntate atque arbitrio ad mutationes mansionesque singulas animalibus cursui publico deputatis repente atque improvise solebant convehi, nunc in consilio ratione tractata pro longinquitate vel molestia itineris ab unoquoque oppido certo ac denuntiato tempore devehi ordinavit. quod iubemus, ut etiam per omnes italiae regiones pari ratione servetur. dat. prid. non. mar. treviris valentiniano et valente aa. conss. (365 mart. 6).

CTh.11.1.10

Idem aa. ad dracontium vicarium africae. omnes, qui per africam opulentas desertasve centurias possident, ad integrum professionis modum necessitati publicae satisfaciant. dat. xvi kal. iun. mediolano valentiniano et valente aa. conss. (365 mai. 17).

CTh.11.1.11

Idem aa. ad dracontium vicarium africae. pro loco ac proximitate possessionum annona ad limitem transvehatur. quae iussio haut difficile capit effectum, si tabularii metu praesentium tormentorum a consuetis fraudibus arceantur. dat. xv kal. iul. mediolano valentiniano et valente aa. conss. (365 mai. 17).

CTh.11.1.12

Idem aa. ad faventium vicarium italiae. quisquis ex desertis agris veluti vagos servos liberalitate nostra fuerit consecutus, pro fiscalibus pensitationibus ad integram glebae professionem, ex qua videlicet servi videantur manere, habeatur obnoxius. id etiam circa eos observari volumus, qui ex huiusmodi fundis servos ad possessiones suas transire permiserint. etiam si militares viri aliquos ex his penes se retentant, conveniendi primitus sunt, ut aut restituant quos perperam petiverunt, aut sciant pro tributis obnoxios se futuros. dat. prid. kal. aug. mediolano valentiniano et valente aa. conss. (365 iul. 31).

CTh.11.1.13

Idem aa. ad dracontium vicarium africae. placuit per singulos quosque annos reliqua eorum, qui romae consistentes in africa possident, missis brevibus indicari eosdemque compelli, ut procuratores instructos ad officium tuae sinceritatis pro celebranda solutione transmittant. ut autem nihil de transmissione ac pervectione obscuritatis oriatur, tabularios praefecti annonae africae, sed et urbis romae ad officium, quod sollertiae tuae paret, deduci praecipimus, collaturos aput acta, quid transmissum, quid pervectum sit. cuius rei indicia manere et perferri ad scrinia nostra debebunt, eo nihilo minus curando, ut plena instructio ad officium illustris praefecturae praetorianae deferatur. dat. xv kal. nov. parisis; acc. xv kal. feb. karthagine post cons. valentiniani et valentis aa. (365 oct. 18).

CTh.11.1.14

Idem aa. ad modestum praefectum praetorio. penes quos fundorum dominia sunt, pro his colonis originalibus, quos in locis isdem censos esse constabit, vel per se vel per actores proprios recepta compulsionis sollicitudine implenda munia functionis agnoscant. sane quibus terrarum erit quantulacumque possessio, qui in suis conscripti locis proprio nomine libris censualibus detinentur, ab huius praecepti communione discernimus; eos enim convenit propriae commissos mediocritati annonarias functiones sub solito exactore cognoscere. dat. kal. mai. constantinopoli gratiano a. et dagalaifo conss. (366 [372 vel 374?] mai. 1).

CTh.11.1.15 [=brev.11.1.1]

Impp. valent. et valens aa. ad probum pf. p. unusquisque annonarias species pro modo capitationis et sortium praebiturus, per quaternos menses anni curriculo distributo, tribus vicibus summam collationis implebit. si vero quisquam uno tempore omnia sua debita optat expendere, proprio in accelerandis necessitatibus suis utatur arbitrio. dat. xiv. kal. iun. remis, gratiano et dagalaipho coss.

interpretatio. ista lex hoc praecipit, ut in inferendo publicis horreis tritico, quod debet, possessor pro rata canonis sui tribus illationibus, id est quaternis mensibus singulas debitorum partes acceleret, ut per annum summa debiti canonis impleatur. erit autem in ipsius arbitrio, si celerius potuerit, debita frumenta convehere

CTh.11.1.16

Idem aa. ad dracontium. provinciales nostri tributa fiscalia per anni curriculum tripertita satisfactione restituant. dat. viii kal. nov. nicomediae post cons. gratiani a. et dagalaifi. (367 oct. 25).

CTh.11.1.17 [=brev.11.1.2]

Imppp. valent., valens et grat. aaa. ad crescentem vicarium africae. heredes scripti etiam pro minus idoneis fundis fiscale onus cogantur agnoscere, vel, si renuntiandum hereditati putent, cedant his omnibus rebus, quas ex iisdem bonis quocumque* titulo et iure perceperint. dat. iv. id. iul. contionaci, gratiano a. ii. et probo coss.

interpretatio. hi, qui heredes testamento scripti sunt, hereditariorum agrorum onus, id est tributum cogantur agnoscere. quod si hereditatem sibi damnosam credunt, cedant his omnibus rebus, quae eis de hac ipsa hereditate poterunt provenire

CTh.11.1.18

Imppp. gratianus, valentinianus et theodosius aaa. ad populum. quisquis possessor aut maximae dignitatis aut infimae annonae urbis aeternae annuam pensitationem solvendo moram dilationis adtulerit, eius anni atque indictionis exordio, quae novum denuo annonae commeatibus poscit obsequium, duplum protinus et iam gravi coactus incommodo restituere cogatur; aut si forte non profecerit etiam geminati debiti in adceleranda solutione correctio, quadrupli, deinceps etiam proprii dilapidatione patrimonii, vestrae liberorumque vestrorum alimoniae profuturi ingratus et degener civis exsolvat. dat. vii kal. ian. aquileiae syagrio et eucherio conss. (381 dec. [?] 26).

CTh.11.1.19

Idem aaa. post alia: id, quod in titulis debitis sub praestatione confertur auraria, non aliter nisi scientibus defensoribus detur, quo sub eorum conscientia, sicut et ante praeceptum est, solvantur debita securitatesque reddantur, custodita sanctione emissae primitus legis, quo apocharum vel securitatum, quae restituentur, digesta signatio, cum a susceptoribus dabitur, et formam indictionis teneat et manifestationem eius quae fuerit exacta praestationis ostendat. dat. prid. kal. feb. beryto richomere et clearcho conss. (384 ian. 31).

CTh.11.1.20

Idem aaa. ad principium praefectum praetorio. in fraudem annonariae rei ac devotionis publicae elicitum damnabili obreptione rescriptum manifestum est vires non posse sortiri. circa omnes igitur par atque aequalis illationis forma teneatur. dat. viii kal. octob. aquileiae arcadio a. i et bautone conss. (385 sept. 24).

CTh.11.1.21

Imppp. valentinianus, theodosius et arcadius aaa. cynegio praefecto praetorio. nemo possessorum ad instruendas mansiones vel conferendas species excepta limitaneorum annona longius delegetur, sed omnis itineris ac necessitatis habita ratione. dat. x kal. ian. constantinopoli arcadio a. i et bautone conss. (385 dec. 23).

CTh.11.1.22

Idem aaa. cynegio praefecto praetorio. mediterraneae civitates antea maritimis et maritimae mediterraneis onerabantur expensis, ut plus haberet dispendii translatio quam devotionis illatio. hoc non solum in praesens, verum etiam in posterum prohibemus ea lege, ut se ultimo noverint supplicio puniendos, qui ista commiserint. dat. iii non. sep. valentiae honorio nb. p. et evodio conss. (386 sept. 3).

CTh.11.1.23

Imppp. theodosius, arcadius et honorius aaa. rufino praefecto praetorio. aerariae praestationis adiectio, quam citra priscam consuetudinem provincialium umeris tatianus imposuit, a cunctis penitus salubri moderatione removenda est. dat. prid. id. iun. constantinopoli theodosio a. iii et abundantio conss. (393 iun. 12).

CTh.11.1.24

Impp. arcadius et honorius aa. ennoio suo salutem. textrinis vel gynaeceis ex more a corporatis karthaginis species solitas praestari cognovimus, sed inmodica pro isdem reddi pretia. quod in dispendium nolumus fieri corporatorum, atque ideo sublimitas tua pretiorum modum statuat. dat. xii kal. ian. mediolano olybrio et probino conss. (395 dec. 21).

CTh.11.1.25

Idem aa. minervio comiti rerum privatarum. obsistere commodis publicis et statutis necessitatibus non possunt privilegia dignitatum. unde ut quisque praedii emolumenta consequitur, si non evoluto anni spatio intra sex menses omnem, cui esse constrictus dicitur, reliquorum intulerit cumulum, ad ipsos, qui sunt domini praedii, exactionem volumus pertinere. proposita in programmate vari viri clarissimi vicarii urbis romae honorio a. iiii et eutychiano conss. (398...).

CTh.11.1.26

Idem aa. vincentio praefecto praetorio galliarum. omni amoto privilegio beneficiorum possessores sublimitas tua praecipiet universos muneribus adstringi, earum scilicet provinciarum, ex quibus orta querimonia est aut in quibus haec retinendae plebis ratio adscriptioque servatur. nullum gratia relevet, nullum iniquae partitionis vexet incommodum, sed pari omnes sorte teneantur; ita tamen, ut, si ad alterius personam transferatur praedium, cui certus plebis numerus fuerit adscriptus, venditi onera novellus possessor compellatur agnoscere, cum plebem constet non tam in omnibus praediis adscribendam neque auferendam ab eo, cui semel posthac deputata fuerit. et cetera. dat. xiii kal. iul. mediolano theodoro v. c. cons. (399 iun. 19).

CTh.11.1.27

Idem aa. salvino comiti rerum privatarum. opulentos, quos annua solutione debitas inferre convenerat pensiones, cum eo, quod resedit in debitum, quadruplum iubemus inferre. ii vero, quos forte mediocritas a contumaciae huius excusat invidia, simplam debiti summam omni maturitate redhibere cogantur. quos tamen oportuerat pro media saltem praeceptionis condemnatione retineri, qui ad solvenda rei nostrae debita extiterunt. dat. id. nov. ravennae stilichone et aureliano conss. (400 [405] nov. 13).

CTh.11.1.28

Idem aa. pompeiano proconsuli africae. veterani terras censibus obligatas, ut cognovimus, vindicarunt, pro quibus tributum solvere dedignantur. quoscumque igitur insertas censibus terras tenere fuerit deprehensum, ilico ad solvenda tributa compelli praecipimus. dat. prid. kal. ian. mediolano stilichone et aureliano conss. (400 dec. 31).

CTh.11.1.29

Idem aa. provincialibus provinciae proconsularis. perpensa cura statuimus, ut non amplius vobis aliquid extra ordinem indicetur, quam rei annonariae necessitas ac devotio postularit. si quid vero de eodem modo diversarum specierum potuerit redundare, futurae iussimus illationi proficere, scilicet ut in locis propriis collata frumenta possessor ..... dependat ut vicenis solidis, qui in praeteritum pro equis curatoriciis petebantur, duo solidi detrahantur, ita ut proconsularis .... numidiae cognoscat octonos et denos solidos pro singulis equis debere persolvere, byzaceni etiam tripolitanique cognoscant quinos denos pro singulis equis se debere praestare, sportularum autem nomine, quae comiti sacri stabuli praestabantur, nihil penitus inferendum. dat. prid. kal. april. mediolano vincentio et fravito conss. (401 mart. 31).

CTh.11.1.30

Imppp. arcadius, honorius et theodosius aaa. sapidiano vicario africae. super mutando canone a quolibet impetrata rescripta vacuentur et si qui deinceps ausus fuerit quae prohibemus postulare, in duplum teneatur obnoxius. nam cum in privatis causis quae contra leges fuerint elicita, cassentur, rectius in publicis negotiis quae adversum vetera decreta extorta fuerint, submovemus. dat. prid. non. septemb. altino arcadio a. vi et probo conss. (406 sept. 4).

CTh.11.1.31

Impp. honorius et theodosius aa. seleuco praefecto praetorio. possessor africanus pro destitutis possessionibus cogitur tributa dependere. quod ne accidat, hac definitione sancimus nullum possessorem neque munificum praedium pro alienis debitis vel destitutione esse detinendum neque eorum praediorum depectione praegravari, quae ex isdem bonis, quae retinent, nequaquam esse monstrantur, ne ullis praestigiis atque commentis exactio mutiletur. electos igitur inspectores iam nunc censuimus esse mittendos, ut eorum relatione, integro canoni et illibatae pensitationi sollemni quatenus provideri debeat, aestimetur. dat. prid. kal. feb. ravennae honorio viiii et theodosio v aa. conss. (412 ian. 31).

CTh.11.1.32

Idem aa. euchario proconsuli africae. illationem omnem auri vel argenti a possessoribus in karthaginiensi urbe poscendam esse decernimus, in qua opportunitas est, si depraedator fraudium pareat, iudicis adeundi, ne cui sit facultas apochas abnegari, cum devotio cognitori potuerit aperiri, scilicet remotis omnibus, qui ad exactionem provincialium exquisita lucra captare festinant. dat. prid. kal. mar. ravennae honorio viiii et theodosio v aa. conss. (412 febr. 29).

CTh.11.1.33

Imp. theodosius a. isidoro praefecto praetorio illyrici. id ab unaquaque provincia censuimus expetendum, quod ab isdem nuper esse promissum tua sublimitas indicavit. ut vero nullus de cetero ad possessiones eorum, quod maxime reformidant, inspector accedat, macedonum reliqui exemplum secuti mediae quantitatis, ut obtulisse noscuntur, tributa suscipiant. sed achivi, qui protestati sunt nihil a se ultra tertiam partem posse conferri, illud exsolvant, ad quod se indubitanter fore idoneos pollicentur. quae dispositio in perpetuum observanda initio indictionis octavae congruum sumere debebit exordium. sacrosancta thessalonicensis ecclesia civitatis excepta, ita tamen, ut aperte sciat, propriae tantummodo capitationis modum beneficio mei numinis sublevandum nec externorum gravamine tributorum rem publicam ecclesiastici nominis abusione laedendam. dat. vi id. octob. constantinopoli victore v. c. cons. (424 oct. 10).

CTh.11.1.34

Impp. theodosius et valentinianus aa. celeri suo salutem. numquam dissimulatione iudicum pro compulsore aut opinatore africanus possessor mittatur in praedam, sed quattuor mensum ab edicti publicati die indutiis datis aurum a possessore capitolio studio spontaneae devotionis sancimus inferri:

ultra id tempus si tarditas adferatur, tunc militi debiti postulati delegandam esse rationem. quae pietatem nostram viri spectabilis bubulci comitis et legati decernere coegit eloquium. dat. v kal. mar. post cons. felicis et tauri. (429 febr. 25).

CTh.11.1.35

Idem aa. volusiano praefecto praetorio. post alia: ne provinciales, ad quorum utilitates spectat omnis haec nostra provisio, a devotione revocet nimia securitas et solvendi voluntas cesset necessitate submota, ea, quae nostro aerario pensitantur, hac ratione dissolvent, ut omni modo, antequam elabatur indictio, annua tributa gratus beneficiis nostris possessor exsolvat. si quis vero solutionem voluerit in tempora longiora differre, hunc provinciae rector omni exactionis acerbitate compellat. et cetera. dat. xvi kal. mart. ravennae post cons. felicis et tauri. (429 febr. 14).

CTh.11.1.36

Idem aa. flaviano praefecto praetorio. excepto patrimonio pietatis nostrae, cuius quidem reditus necessitatibus publicis frequentissime deputamus, universos possessores functiones in canonicis et superindicticiis titulis absque ullius beneficii exceptione agnoscere oportere censemus. igitur tua sublimitas pragmatici nostri statuta custodiens indifferenter cunctum possessorem obnoxium videlicet publicae functioni ad subeunda designatione distributa compellet. dat. iii kal. mai. ravennae basso et antiocho conss. (431 apr. 29).

CTh.11.1.37

Idem aa. dario praefecto praetorio. praeteritis, utcumque impetrata sunt, in suo statu manentibus, quoniam munificentiam principalem nefas est revocari, in posterum excepto cyro reverentissimo afrodisiensium civitatis episcopo, cuius tanta sunt merita, ut etiam contra generalem huiusmodi sanctionem speciali beneficio perfrui non vetetur, quicumque per adnotationem nostram in auro voluerit tributa dependere, communicata aestimatione quinquennii, sterilitatis ac fecunditatis pro foro rerum venalium habita ratione, ex eadem summa, quae eiusdem quinquennii perpensis frugibus colligitur, partem quintam pro annis singulis solvere compellantur. dat. v kal. septemb. apameae isidoro et senatore conss. (436 aug. 28).

CTh.11.2.0. Tributa in ipsis speciebus inferri

CTh.11.2.1

Impp. valentinianus et valens aa. ad symmachum praefectum urbi. scias inhibitam esse apochandi licentiam, ita ut ne ex praesenti aut futuro vel praeterito sub hoc titulo nummus a provincialibus postuletur. proposita prid. id. aug. valentiniano et valente aa. conss. (365 aug. 12).

CTh.11.2.2pr.

Idem aa. ad symmachum praefectum urbi. commoda cogitantes urbis aeternae vini speciem ita provinciales statuimus comportare, ut apochandi praesumptione damnata vina romam portentur. (365 oct. [?] 23).

CTh.11.2.2.1

In tantumque populi usibus profutura provisionis nostrae emolumenta porreximus, ut etiam pretio laxamenta tribuantur. sanximus quippe, ut per vini singulas qualitates detracta quarta pretiorum, quae habentur in foro rerum venalium, eadem species a mercantibus comparetur. dat. x kal. nov. mediolano valentiniano et valente aa. conss. (365 oct. [?] 23).

CTh.11.2.3

Imppp. valens, gratianus et valentinianus aaa. ad probianum praefectum urbi. vinum, quod sollemnis expressio popularibus commodis ex provincialium collectione desiderat, ilico suscipiatur advectum, ut erogationis pro tempore cura praestetur et ea vina populi usibus erogentur, quae natura sua processum temporis ferre non possunt. quod peraeque in omni vino, quod ex urbicaria regione confertur, observandum esse censemus. dat. xv kal. octob. treviris gratiano a. iiii et merobaude conss. (377 sept. 17).

CTh.11.2.4

Imppp. gratianus, valentinianus et theodosius aaa. earum rerum, quae in praebitionibus canonicis vel debitis ex more poscuntur, non sunt pretia specierum, sed ipsae quae postulantur species inferendae, scilicet ut, quod maximum est et unde omnis solet querella procedere, in annonario quoque titulo species annonarias solvant neque sub taxationibus pretiorum dispendiosis occasionibus adquiescant. nam et accipientem et dantem illicitae transactionis reatus involvet. et cetera. dat. prid. kal. feb. beryto richomere et clearcho consulibus. (384 ian. 31).

CTh.11.2.5

Imppp. valentinianus, thedosius et arcadius aaa. cynegio praefecto praetorio. ne quis pro speciebus annonariis pecunias existimet inferendas, scientibus cunctis, quod si quis contra hanc serenitatis nostrae legem captiosum aliquid putaverit perpetrandum, securitatibus hoc modo editis eos esse carituros. dat. xv kal. ian. constantinopoli timasio et promoto conss. (389 [?] dec. 18).

CTh.11.3.0. Sine censu vel reliquis fundum comparari non posse

CTh.11.3.1

Imp. constantinus a. ad antonium marcellinum praesidem provinciae lugdunensis primae. rei annonariae emolumenta tractantes, ut cognosceremus, quanta reliqua per singulas quasque provincias et per quae nomina ex huiusmodi pensitationibus resedissent, cognovimus hanc esse causam maxime reliquorum, quod nonnulli captantes aliquorum momentarias necessitates sub hac condicione fundos opimos comparent et electos, ut nec reliqua eorum fisco inferant et immunes eos possideant. ideoque placuit, ut, si quem constiterit huiusmodi habuisse contractum atque hoc genere possessionem esse mercatum, tam pro solidis censibus fundi comparati quam pro reliquis universis eiusdem possessionis obnoxius teneatur. dat. kal. iul. agrippinae constantino a. v et licinio c. conss. (319 iul. 1).

CTh.11.3.2

Idem a. acacio comiti macedoniae. mancipia adscripta censibus intra provinciae terminos distrahantur et qui emptione dominium nancti fuerint, inspiciendum sibi esse cognoscant. id quod in possessione quoque servari rationis est: sublatis pactionibus eorundem onera ac pensitationes publicae ad eorum sollicitudinem spectent, ad quorum dominium possessiones eaedem migraverunt. dat. iii kal. mart. thessalonicae constantio et maximo conss. (327 febr. 27).

CTh.11.3.3 [=brev.11.2.1]

Imp. iulianus a. ad secundum pf. p. omnes pro his agris, quos possident, publicas pensitationes agnoscant; nec pactionibus contrariis adiuventur, si venditor aut donator apud se collationis sarcinam pactione illicita voluerit retinere, et si necdum translata sit professio censualis, sed apud priorem fundi dominum forte permaneat, dissimulantibus ipsis, ut non possidentes pro possidentibus exigantur. dat. xiv. kal. mart. antiochiae, iuliano a. iv. et sallustio coss.

interpretatio. fundum nullus audeat comparare, sed omnes pro his agris, qui ad eos quoquo modo pervenerint, publici canonis impleant functiones. nec de solutione tributi cuicumque* liberum sit pacisci, sed sive donetur ager sive vendatur, factus dominus integra rei tributa suscipiat

CTh.11.3.4

Idem a. edictum. post alia: dominum, qui fructus capit, tributa exigi iustum est. dat. iii kal. mar. iuliano a. iiii et sallustio conss. (363 febr. 27).

CTh.11.3.5 [=brev.11.2.2]

Imppp. theodos., arcad. et honor. aaa. tatiano pf. p. quisquis alienae rei quoquo modo dominium consequitur, statim pro ea parte, qua possessor fuerit effectus, censualibus paginis nomen suum postulet annotari, ac se spondeat soluturum; ablataque molestia de auctore, in succedentem capitatio transferatur. dat. xv. kal. oct. constantinopoli, tatiano et symmacho coss.

interpretatio. quicumque* cuiuslibet rei dominium quolibet ordine acquisierit, continuo pro ea parte, qua possessor effectus est, publicis libris nomen suum petat adscribi, ac se promittat tributum agri, cuius possessor est, soluturum, ut remota de auctore, id est de priore domino inquietudine, in praesentem dominum solutio transferatur

CTh.11.4.0. Ne collatio per logografos celebretur

CTh.11.4.1

Imppp. valentinianus, valens et gratianus aaa. ad modestum praefectum praetorio. si quis collator iugationem suam logografo conmiserit, eam fisco noverit vindicandam. quidquid etiam vel in pretiis vel in speciebus aut aurum ordinem delegationis oblitus praetermissis susceptoribus aut horreis ad logografos detulerit, omne hoc amissurum se esse cognoscat et exactionem a se debito ordine deposcendam. officiales autem, qui ex huiusmodi commerciis aliquid fuerint accepisse detecti, quae avaritia praecipitante captarant exerta dupli animadversione redhibebunt, ipsis dumtaxat logografis in pristinae condicionis discrimine permansuris, si quidem his pro omnibus poenis sufficiat adsiduo tormentorum periculo subiacere. dat. prid. non. april. seleucia modesto et arintheo conss. (372 apr. 4).

CTh.11.5.0. De indictionibus

CTh.11.5.1

Impp. arcadius et honorius aa. pompeiano proconsuli africae. id tantum, quod est necessarium intra africam militibus consistentibus, provincialibus iubemus indici ac iuxta matricularum fidem quod exigit ratio postulari, ita ut, si quid erogationibus redundarit in speciebus diversis vel praebitione vecturisque, id futurae indictioni collationique proficiat. dat. v kal. april. vincentio et fravito conss. (401 mart. 28).

CTh.11.5.2

Impp. honorius et theodosius aa. palladio praefecto praetorio. omnes omnino quocumque ex titulo possidentes quod delegatio superindicti nomine videtur amplexa velut canonem cogantur inferre, et ne qua sit dubietas, hac aperta definitione decernimus, ut id potius canonis vocabulo postuletur. nulla igitur domus vel sacri patrimonii vel emphyteutici iuris vel hominum privatorum, etiamsi privilegium aliquod habere doceantur, ab hac necessitate seiuncta sit, quae iam non extraordinarium, ut hactenus, sed ipsis facientibus canonicum nomen accepit. dat. vii id. ian. ravennae theodosio a. vii et palladio conss. (416 ian. 7).

CTh.11.5.3

Impp. theodosius et valentinianus aa. isidoro praefecto praetorio. cum omnis hoc aegyptiaci tractus possessoribus conducibile videatur, ut ante kal. mai. praedelegatio manifestetur in locis, ne per ignorantiam collatores ad anni prioris exemplum ante delegationem missam ea cogantur exsolvere quae postmodum indebita missa delegatione forsitan provocavit eventus; scriniariis videlicet sedis excelsae modis omnibus ordinata salubriter impleturis, ita ut augustaliani officii et cohortalis et defensoris discrimine in locis celeberrimis per dimenstruum tempus ad omnium perveniat notionem. dat. prid. non. iun. constantinopoli isidoro et senatore conss. (436 iun. 4).

CTh.11.5.4

Idem aa. dario praefecto praetorio. particulari delegationum notitia ante indictionis exordium singulis transmissa provinciis collationis modum a possessoribus multo ante prospectum devotioni solitae, non subitis calumniis tua sublimitas faciat imputari, ut et provincialibus subeundi dispendia necessitas auferatur et officiis ingerendi damna licentia denegetur. dat. v kal. septemb. apameae isidoro et senatore conss. (436 aug. 28).

CTh.11.6.0. [=brev.11.3.0.] De superindicto.

CTh.11.6.1 [=brev.11.3.1]

Imppp. grat., valent. et theodos. aaa. ad proconsules, vicarios omnesque rectores. nihil superindictorum nomine ad solas praefecturae literas quisquam provincialis exsolvat; neque ullius omnino indictionis titulus, etiam solennis, immineat, nisi eum nostro confirmata iudicio et imperialibus nexa praeceptis sedis amplissimae deposcat indictio et cogat exactio. dat. vii. kal. iun. mediolano, antonio et syagrio coss.

interpretatio. haec lex hoc praecipit, ut nullum per rectores provinciae superindictum provincialibus imponatur, nisi forte ex hac re processisse praeceptio dominica comprobetur. tunc enim id, quod superindictum est, aut peti aut exigi poterit, quando a rerum domino cognoscitur constitutum

CTh.11.7.0. De exactionibus

CTh.11.7.1

Imp. constantinus a. ad aelianum proconsulem africae. post alia: ducenarii et centenarii sive sexagenarii non prius debent aliquem ex debitoribus convenire, quam a tabulario civitatis nominatim breves accipiant debitorum. quam quidem exactionem sine omni fieri concussione oportet ita ut, si quis in iudicio questus, quod indebite exactus est vel aliquam inquietudinem sustinuit, hoc ipsum probare potuerit, severa in exactores sententia proferatur. dat. kal. nov. treviris constantino a. iiii et licinio iiii conss. (315 [immo 313] nov. 1).

CTh.11.7.2

Idem a. ad pacatianum vicarium brittaniarum. unusquisque decurio pro ea portione conveniatur, in qua vel ipse vel colonus vel tributarius eius convenitur et colligit; neque omnino pro alio decurione vel territorio conveniatur. id enim prohibitum esse manifestum est et observandum deinceps, quo iuxta hanc nostram provisionem nullus pro alio patiatur iniuriam. dat. xii kal. decemb. constantino a. et licinio c. conss. (319 nov. 20).

CTh.11.7.3

Idem a. ad populum. nemo carcerem plumbatarumque verbera aut pondera aliaque ab insolentia iudicum repperta supplicia in debitorum solutionibus vel a perversis vel ab iratis iudicibus expavescat. carcer poenalium, carcer hominum noxiorum est officialium et cum denotatione eorum iudicum, quorum de officio cohercitiores esse debebunt, qui contra hanc legem admiserint. securi iuxta eam transeant solutores: vel certe, si quis tam alienus ab humano sensu est, ut hac indulgentia ad contumaciam abutatur, contineatur aperta et libera et in usus hominum constituta custodia militari. si in obdurata nequitia permanebit, ad res eius omnemque substantiam cives eius accedant, solutionis obsequio cum substantiae proprietate suscepto. qua facultate praebita omnes fore credimus proniores ad solvenda ea, quae ad nostri usus exercitus pro communi salute poscuntur. dat. kal. feb. constantino a. vi et constantio caes. conss. (320 febr. 1 [ian. 31]).

CTh.11.7.4 [=brev.11.4.1]

Imp. constantinus a. ad afros. quoniam succlamatione vestra merito postulastis, ne qua his, qui praestationes fiscales differunt, reliquorum laxitas proveniret, specialiter praecipimus observari, ut res eorum, qui fiscalibus debitis per contumaciam satisfacere differunt, distrahantur: comparatoribus data firmitate perpetua possidendi etc. dat. xv. kal. iun. serdicae, constantino et maximo coss.

interpretatio. quicumque* agrorum suorum tributa implere contemnent, agri eius, qui tributa sua contemnet exsolvere, ab exactore vendantur, et qui comparaverint, firmissimo iure hoc ordine empta* possideant

CTh.11.7.5

Imp. constantius a. nemesiano viro perfectissimo comiti largitionum. quotiens quis et privati debitor invenitur et fisci, et abreptus ab uno officio teneatur, ad universi debiti solutionem qui eum abstulit coartetur ac totius summae exactionem in se suscipiat, qui eundem avellendum abstrahendumque crediderit. dat. iiii id. mai. nitzibi amantio et albino conss. (345 mai. 12).

CTh.11.7.6

Idem a. ad eustathium praefectum praetorio. post alia: actores ceterique rei privatae nostrae ad solutionem specierum sollemnium debiti vigoris auctoritate cogantur, ne provinciales rei privatae nostrae fatiget immunitas. dat. viii id. mart., proposita romae limenio et catullino conss. (349 mart. 8).

CTh.11.7.7

Impp. constantius et constans aa. bibulenio restituto praesidi sardiniae. provinciales pro debitis plumbi verbera vel custodiam carceris minime sustinere oportet, cum hos cruciatus non insontibus, sed noxiis constitutos esse noscatur, satis vero sit debitorem ad solvendi necessitatem capione pignorum conveniri. dat. viii id. dec. thessalonicae constantio vi et constante iii aa. conss. (353 [346?] dec. 6).

CTh.11.7.8

Idem aa. ad taurum praefectum praetorio. exactiones provinciarum, quas rectores aut praefecti annonae aut rationales per africam sustinent, a maioribus iudicibus usurpari non debent, sed ab his solis impleri, quibus cura exactionis imminet. dat. iiii non. sept. dinummae, acc. prid. id. nov. karthagine arbitione et lolliano conss. (355 sept. 2).

CTh.11.7.9

Impp. valentinianus et valens aa. ad dracontium vicarium africae. ducenarios ab exactione provincialium secundum constitutionem sacrae memoriae constantii probabilis sinceritas tua iubebit arceri. dat. iii id. mai. hadrianopoli, acc. viii kal. octob. karthagine divo ioviano et varroniano conss. (364 mai. 13).

CTh.11.7.10

Idem aa. ad florianum consularem venetiae. die solis, qui dudum faustus habetur, neminem christianum ab exactoribus volumus conveniri; contra eos, qui id facere ausi sunt, hoc nostri statuti interdicto periculum sancientes. dat. xi kal. mai. treviris valentiniano et valente aa. conss. (368? 370? 373? apr. 21).

CTh.11.7.11

Idem aa. ad florianum comitem rerum privatarum. omnes provinciis praesidentes iussimus conveniri, ut a rei nostrae conventione cessarent, ne principales necessitates in publicum proferentes eadem, qua hactenus, in colonos iniquitate saevirent. illud etiam moderationi adiecimus, ut tripertita esset illatio fiscalium pensionum. sinceritas tua rationales procuratoresque commoneat, ut, quidquid pro iugatione vel capitatione deposcitur, certantibus studiis devotionis exsolvant. dat. viii kal. iun. mediolano valentiniano et valente aa. conss. (365 mai. 25).

CTh.11.7.12

Imppp. gratianus, valentinianus et theodosius aaa. constantiano vicario ponticae. potentiorum possessorum domus officium provinciae rectoris exigere debet, decurio vero personas curialium convenire, minores autem possessores defensor civitatis ad solutionem fiscalium pensitationum spectata fidelitate compellere. dat. v non. mai. merobaude ii et saturnino conss. (383 mai. 3).

CTh.11.7.13

Idem aaa. ad principium praefectum praetorio. solis die, quem dominicum rite dixere maiores, omnium omnino litium et negotiorum quiescat intentio; debitum publicum privatumque nullus efflagitet; ne aput ipsos quidem arbitros vel e iudiciis flagitatos vel sponte delectos ulla sit agnitio iurgiorum. et non modo notabilis, verum etiam sacrilegus iudicetur, qui a sanctae religionis instinctu rituve deflexerit. proposita iii non. nov. aquileiae honorio n. p. et evodio conss. (386 nov. 3).

CTh.11.7.14

Imppp. theodosius, arcadius et honorius aaa. rufino praefecto praetorio. apparitores quicumque in collatione auri praecepti fuerint officii sui adhibere servitium, titulorum debita et collationum summas relationis suae fide et adnotatione perscribant sitque ex officialis instructione officium conscium, quid exactum quidve perlatum esse videatur, ne longinqui itineris diversitate susceptor abductus et curiae suae desit et rei familiaris detrimenta sustineat.

dat. prid. id. april. constantinopoli theodosio a. iii et abundantio conss. (393 apr. 12).

CTh.11.7.15

Impp. arcadius et honorius aa. messalae praefecto praetorio. post alia: quoniam plerique callidis precibus rescripta impetrasse dicuntur, ne a solitis compulsoribus exigantur, praesenti iussione monemus, ne praetento velut quodam beneficio clementiae nostrae quicquam in exactione celebranda vetustati et consuetudini derogetur. dat. iiii kal. octob. altini theodoro v. c. cons. (399 sept. 28).

CTh.11.7.16

Idem aa. hadriano praefecto praetorio. missi opinatores cum delegatoriis iudicibus eorumque officiis insistant, ut intra anni metas id quod debetur accipiant; nihil his sit cum possessore commune, cui non militem, sed exactorem, si sit obnoxius, convenit imminere. iudices itaque, qui provinciales passi fuerint opinatoribus delegari, eiusdem quantitatis duplex poena retinebit, et apparitores ex quolibet officio sententiam deportationis excipient, si per semet exigendos voluerint delegare militibus, et curiales temporale manebit exilium, si eos, quos sollemniter exigere consuerunt, opinatoribus putaverint esse tradendos; cum iudicem oportet inquirere debitores, tabularios fideliter prodere nomina dominorum, apparitores sive curiales consuetudine servata regionum convictis debitoribus imminere, ut perceptis congruis emolumentis opinatores impleto anno ad proprios numeros valeant remeare. qui si ultra annum protracti fuerint, iudices et officia absque ulla mora de proprio cogentur exsolvere militibus quod debetur, ipsis adversus obnoxios repetitione servata. quod si ad nos aliqua de retentis opinatoribus querella pervenerit, in duplum ab his protinus exigetur, ut partem debitam miles, reliquum fiscus accipiat. iudicibus quoque eorumque officiis eatenus subvenimus, ut in contumaces debitores cuiuslibet dignitatis auctoritatem suam exerant ac, si impudenter solutio differatur, actores procuratores eorumque praedia persequantur, de eorum quoque nominibus ab nostram scientiam relaturi. dat. iii id. iul. mediolano vincentio et fravito conss. (401 iul. 13).

CTh.11.7.17

Impp. honorius et theodosius aa. anthemio praefecto praetorio. neque agentes in rebus neque sacrarum privatarum vel largitionum palatina officia ex quacumque causa, ex quocumque titulo fiscalis debiti, cum ad provinciam mittuntur, possessores per se audeant convenire, sive id ex praeterito reliquum trahatur seu praesentis temporis tributo solvi conveniat; sed rectores provinciarum frequenter adeundo commoneant eorumque officiis incumbant. quod si rector provinciae imminentem sibi memoratorum declinare molestiam quaerens vel qualibet alia ratione isdem propria auctoritate publicae exactionis permiserit curam, tam ipse quam officium eius vicena auri pondo fisco dependent. dat. vii id. dec. constantinopoli basso et filippo conss. (408 dec. 7).

CTh.11.7.18

Idem aa. anthemio praefecto praetorio. largitionalium titulorum exactionem palatinorum obsequiis vetustatis more consecratam iuxta priscam consuetudinem celebrari censemus, recens conditae legis in hac parte auctoritate sequestrata, quae ritu vetustatis neglecto palatinae munera dignitatis intempestiva legatorum achivorum admonitione abstulerat. ideoque huius statuti praeceptionem, per quam palatinos veteri exigendi functioni constrinximus, commoniti rectores observent. dat. v kal. octob. constantinopoli honorio viii et theodosio iii aa. conss. (409 sept. 27).

CTh.11.7.19

Idem aa. euchario proconsuli africae. tertiam partem canonis fundorum privatorum vel sextam emphyteuticorum ex kal. mart., sicut consuetudo deposcit, reliquam vero canonis summam ex kal. iul. par erit postulari, ne praepostera exactione possessor ad redimendam conventionis cogatur iniuriam. et cetera. dat. prid. kal. mart. ravennae honorio viiii et theodosio v aa. conss. (412 febr. 29).

CTh.11.7.20 [=brev.11.4.2]

Impp. honor. et theodos. aa. euchario proconsuli africae. post alia: constituto tempore publice apud karthaginem in secretario, admisso populo, exactorum ordinabuntur idoneae strenuaeque personae. de quibus si popularis accusatio ulla processerit, in eorum locum alios par erit destinari, ita ut severa indagatione, si in concussione possessorum deprehensi fuerint, illico et capitali periculo subiaceant, et direptorum quadrupli poena ex eorum patrimonio eruatur. iudices autem triginta librarum auri mulctae acerbitate sciant se esse plectendos, nisi ea, quae salubriter ordinata sunt, necessaria devotione compleverint. dat. prid. kal. mart. ravenna, honorio ix. et theodos. v. aa. coss.

interpretatio. haec lex hoc praecipit, exactores ad exigendas tributarias functiones idoneos esse mittendos, ita ut, si de his populi accusatio ulla processerit, id est querela deposita fuerit, in eorum locum alii dirigantur, ut habita diligenti inquisitione, si in dispendia provincialium de superexactionis crimine convinci potuerint, et capitali periculo subiaceant, et ex eorum facultatibus in quadruplum, quae sunt superexacta, reddantur. iudices vero provinciarum triginta librarum auri se poena noverint feriendos, si haec, quae statuta sunt, implere neglexerint

CTh.11.7.21

Idem aa. euchario suo salutem. grave et contra rerum ordinem iudicamus, ut idem municeps et civitatis necessitatem et exactoris publici subire cogatur officium. quod ne contingat, generali lege sancimus cognitoris, cuius interest, iussione ad praedia mansuetudinis nostrae vel quae sub fisci nomine coeperint retineri moderanda vel ex suo corpore idoneos quosque dari debere vel ex his, si qui perfuncti sacramento militiae absolutione potiuntur. ab his namque convenit, a quibus ratio ob praedam discuti consuevit, administrationem sustineri huiuscemodi praediorum. iudicibus itaque adque officiis poenam quinquaginta librarum auri imponimus, nisi commode obtemperaverint definitis. dat. prid. kal. mart. ravennae honorio viiii et theodosio v aa. conss. (412 febr. 29).

CTh.11.8.0. De superexactionibus

CTh.11.8.1

Impp. arcadius et honorius aa. caesario praefecto praetorio. si quis exactorum superexactionis crimen fuerit confutatus, eandem poenam subeat, quae divi valentiniani sanctione dudum fuerat definita. capitis namque periculo posthac cupiditas amovenda est, quae prohibita totiens in isdem sceleribus perseverat. dat. prid. non. mart. constantinopoli caesario et attico conss. (397 mart. 6).

CTh.11.8.2

Idem aa. apollodoro proconsuli africae. quidquid ultra debitum elicitum fuerat, eruatur. quod provinciae restitui protinus oportebit. dat. prid. id. mart. mediolano stilichone et aureliano conss. (400 mart. 14).

CTh.11.8.3pr.

Impp. honorius et theodosius aa. caeciliano praefecto praetorio. post alia: velut licito committi frequenti laesorum deploratione didicimus, ut maioribus subiectis mensuris atque ponderibus gravi possessor damno quatiatur. iubemus, ut cura et sollertia defensorum hoc fieri a susceptoribus non sinant deprehensosque ad iudicium dirigant, cum ipso commissae fraudis indicio. (409 ian. 21).

CTh.11.8.3.1

Idem fieri notum est, ut provincialibus nostris contestari iniurias suas cupientibus actorum confectio a defensoribus, ordinibus, curatore et magistratibus denegetur idque gratia tribuatur eorum, quos rationabiliter intellexerint arguendos. quod ne accidat, noverint cuncti provinciales, quotiens petitam sibi actorum copiam a memoratis viderint denegari, querellae propriae libellum conscriptum eo tenore quo fuerat contestandum in frequentioribus civitatum locis adfigendum conveniendosque scribas tabularios et cetera officia publica commonenda, per quae libellum colligi oportebit atque invitis supra memoratis personis sub actorum confectione ingeri, quorum quaestione fides possit inquiri: qua probata in eos, quos gestorum petitam confectionem negasse constiterit, vigor iudiciarius exeratur. dat. xii kal. feb. ravennae honorio viii et theodosio iii aa. conss. (409 ian. 21).

CTh.11.9.0. De distrahendis pignoribus, quae tributorum causa tenentur

CTh.11.9.1

Imp. constantinus a. quoniam decessoris tui litterae missae ad proculeianum tribunum et magistrum officiorum continent quorundam provincialium mancipia abducta pro pignore sub officio retineri, eo quod vestes canonicas vel equos minime intulerunt, atque haec mancipia neque dominos solutis debitis recepisse neque alios comparasse, veritos ne haec rescinderetur distractio: iubemus duorum mensum spatium ad solvenda debita mancipiorum dominis indulgeri, quo transacto nisi debita fuerint persoluta, firmiter mancipia comparabunt quicumque ad emptionem accesserint. proposita prid. kal. ian. castulone severo et rufino conss. (323 dec. 31).

CTh.11.9.2

Imp. constantius a. ad egnatium faustinum praesidem baeticae. si quis fundum vel mancipia ob cessationem tributorum vel etiam ob vestium auri argentique debitum, quae annua exactione solvuntur, occupata convento debitore et aput iudicem interpellatione celebrata, cum solutio cessaverit, sub hasta distracta comparaverit, perpetuam emptionis accipiat firmitatem, cum, si minoris forte persona fuerit inserta, necesse sit quempiam legitimae defensionis indiguisse persona praesertim cum ad iuris etiam praesentis et veteris aequitatem illud quoque indulgendum esse ducamus, ut scilicet par condicio etiam in hac pignorum capione servetur, quae ob fiscale debitum fuerint occupata nihilque intersit, utrumne officium summae rei vel procuratoris an certe rector provinciae id quod debitum fuerit deleget, si etiam in hac debitores forte cessaverint, condicione iuris expressa. dat. prid. id. decemb. feliciano et titiano conss. (337 dec. 12).

CTh.11.10.0. Ne operae a collatoribus exigantur

CTh.11.10.1

Imppp. valentinianus, valens et gratianus aaa. ad viventium praefectum praetorio. operarum praebitionem, quae illicite a provincialibus hactenus expetita est, sinceritas tua cessare praecipiat. nullum autem, qui caupona vel propola vel tabernaria lucrum familiare sectetur, cum animalia, quibus prosecutio debeatur, advenerint, si collegiati numero inpares videbuntur, ab hoc obsequio esse patiatur. melius enim est, ut otiosorum sit ista sedulitas, quam ipsas quoque perdat urbes tristis abductio rusticorum. dat. x kal. mart. treviris valentiniano nb. p. et victore conss. (369 febr. 20).

CTh.11.10.2pr.

Idem aaa. ad catafronium vicarium italiae. post alia: operas ad prosecutionem equorum vel diversorum neminem provincialium praebere permittimus, quia non ignoramus per universas italiae civitates...Esse quam plurimos et hunc esse morem, ut, quotiens inpares videntur qui...Prosecutionis officio maiore animalium numero repente veniente, tabernariis oppidorum hoc iniungatur obsequium. (370 aug. 15).

CTh.11.10.2.1

Causam vero pontis liquentiae nolumus nostris praeiudicare decretis: videlicet ob reparationem eiusdem aliquis numerus excusatus habeatur, sed ita eum instaurari oportet, ut a possessoribus civitatis eius territorio suo, quotiens usus poposcerit, reformetur. dat. xviii kal. sep. valentiniano et valente iii aa. conss. (370 aug. 15).

CTh.11.11.0. [=brev.11.5.0.] Ne damna provincialibus infligantur.

CTh.11.11.1 [=brev.11.5.1]

Impp. valent. et valens aa. ad probum pf. p. illyrici. si qui eorum, qui provinciarum rectoribus obsequuntur, quique in diversis agunt officiis principatus, et qui sub quocumque* praetextu muneris publici possunt esse terribiles, rusticano cuipiam necessitatem obsequii, quasi mancipio sui iuris imponat, aut servum eius vel forsitan bovem in usus proprios necessitatesque converterit, sive xenia aut munuscula, quae canonica ex more fecerunt, extorserit, vel sponte haec, quae improbata sunt, oblata non refutaverit, sublatis omnibus facultatibus ultimo subiugetur exitio, et nihilo minus rusticanum, qui se in eiusdem operas sponte propria detulisse responderit, par poenae severitudo constringat. eadem vero circa eos censura servetur, qui xenia aut munera deferri sibi a possessoribus cogunt aut oblata non respuunt. dat. prid. kal. oct. agrippinae, valentin. et valente aa. coss.

interpretatio. si quicumque* ex his, qui provinciarum rectoribus coniunguntur aut militant, vel qui agunt in diversis officiis principatus, vel quicumque* sub occasione publici actus videntur esse terribiles, rusticano alicui necessitatem servitii, velut sui iuris mancipio imposuerint, aut servum ipsius aut bovem in sui operis utilitatem transtulerint, sive xenia aut quaelibet munera crediderint exigenda, vel si oblata non recusaverint, ultimo exitio deputantur, et rerum suarum amissione damnantur

CTh.11.12.0. De immunitate concessa

CTh.11.12.1

Imp. constantius a. ad marcellinum. publicus ac noster inimicus diversis immunitatem dederat iugorum capitationibus et professionibus amputatis. iubemus ergo, ut omnibus omnino haec privilegia derogentur. dat. iii. kal. mai. acindyno et proculo conss. (340 apr. 29).

CTh.11.12.2

Imp. iulianus a. omnes omnino, quicumque capitationis indulgentiam immunitatemque meruerunt, non solum ex annonario titulo, verum etiam ex speciebus ceteris atque largitionibus excepti sunt immunesque erunt; neque enim praestanda dividimus. melius quippe est munificentiae compendium integrum competere quam saepius postulari. dat. prid. kal. mai. constantinopoli mamertino et nevitta conss. (362 apr. 30).

CTh.11.12.3

Impp. valentinianus et valens aa. ad florentium comitem sacrarum largitionum. omnium rerum ac personarum, quae privatam degunt vitam, in publicis functionibus aequa debet esse inspectio. hoc ideo dicimus, quia nonnulli privatorum elicitas suffragio proferunt sanctiones, quibus vectigalia vel cetera eiusmodi, quae inferri fisco moris est, sibi adserant esse concessa. hoc si quando militibus nostris hisve, qui in palatio nostro degunt, praestamus adprobantibus se sacramentis militaribus adtineri, quod concessimus firmum sit adque robustum; ceterum si quis privatorum eiusmodi rescriptione nitatur, cassa eadem sit. vectigalium enim non parva functio est, quae debet ab omnibus, qui negotiationis seu transferendarum mercium habent curam, aequa ratione dependi. dat. x kal. mart. mediolano valentiniano et valente aa. conss. (365 febr. 20).

CTh.11.12.4

Imppp. arcadius, honorius et theodosius aaa. basilio comiti sacrarum largitionum. salubribus licet ante prospectum meminerimus oraculis, ut eorum penitus vacuaretur obreptio, qui largitionalibus quippiam commodis derogantes absque palatini officii notione veniam debitae quantitatis mansuetudinis nostrae absolutione meruerunt, iterandae tamen copiam praeceptionis amplectimur, ut praeiudicio segregato non triplum modo, cui primitus videbatur obnoxius, verum etiam quadruplum dispendio digniore exsolvat. praelata litteris viri illustris comitis sacrarum largitionum iii id. iun. honorio vii et theodosio ii aa. conss. (407 iun. 11).

CTh.11.13.0. Si per obreptionem fuerit impetrata

CTh.11.13.1

Imppp. gratianus, valentinianus et theodosius aaa. ad probum praefectum praetorio. privilegia omnia paucis concessa personis in perniciem plurimorum in irritum devocentur omnesque huius modi immunitates qui quacumque ambitione meruerunt, ad aequale provincialium ceterorum consortium reducantur prositque iugatio rei publicae hactenus suspensa. et quo libentius adquiescant, proprio aequanimitatem docemus exemplo id contemptui haberi, quod immune hactenus habeatur facile persuademus ab omnibus faciendum esse quod fecimus. igitur sinceritas tua id ipsum per omnem italiam, tum etiam per urbicarias africanasque regiones ac per omne illyricum praelata oraculi huius auctoritate firmabit. dat. xiiii kal. feb. mediolano merobaude ii et saturnino conss. (383 ian. [?] 19).

CTh.11.14.0. De conditis in publicis horreis

CTh.11.14.1

Impp. valentinianus et valens aa. ad volusianum praefectum urbi. cavens, ne urbaniciani officiales annonariis necessitatibus misceantur, omnia participe praefecto annonae disponas ac iubeas ad curam propriam revocari. ante omnia autem quae in horreis habentur expendi volumus, ita ut non prius ad frumentum tendatur expensio, quod sub praefectura tua urbis horreis infertur, quam vetera condita fuerint erogata. si forte vetustate species ita corrupta est, ut per semet erogari sine querella non possit, eidem ex nova portione misceatur, cuius adiectione corruptio velata damnum fisco non faciat. ad istud autem negotium arbitratu ac iudicio tuo nobilis prudens fidelis optime sibi conscius pro integritatis meritis adponatur custos ac mensor, qui vel frumenta modio metiatur vel iustis aestimationibus colligat, quanta habeantur in condito. dat. vi id. april. divo ioviano et varroniano conss. (364 [365?] apr. [?] 8).

CTh.11.14.2

Impp. arcadius et honorius aa. florentino praefecto urbi. nihil prius ex horreis consequantur, quam omnis canon, qui antiquitus est institutus, fuerit completus; cognoscente officio urbicariae praefecturae decem libris auri esse multandum, si quae decrevimus, fuerint temerata. dat. vi kal. ian. mediolano arcadio iiii et honorio iii aa. conss. (396 dec. 27).

CTh.11.14.3

Idem aa. anatolio praefecto praetorio illyrici. nulli posthac horreaticas species contingendi copia praebeatur. sin vero quisquam temerator horreorum extiterit, qui sibi ex praedictis aliquid audeat usurpare, hanc poenam sciat nostro arbitrio definitam, ut deportationis poenae subiectus totius substantiae cogatur subire iacturam. dat. vii id. iul. constantinopoli caesario et attico conss. (397 iul. 9).

CTh.11.15.0. De publica comparatione

CTh.11.15.1

Imp. constantius a. ad senatum. ad comparationem diversarum specierum, quod synoneton appellatur, actores procuratoresque senatorum per diversas provincias nullam inquietudinem tolerent. dat. v non. mai. tauro et florentio conss. (361 mai. 3).

CTh.11.15.2

Imppp. gratianus, valentinianus et theodosius aaa. cunctos formari plenius conveniet, ut in speciebus etiam annonariis, quae a provincialibus sub transactione comparationis pretio expeti solent, sciant nullam sibi necessitatem indictionis imponi, sed huius adscriptionis necessitatem sublatam, mox ab amplissima praefectura pretiis competentibus destinandis. ut nihil trahatur in debitis, quod aut speretur aut promittatur quando solvendum, unusquisque provincialium nostrorum arbitratu proprio et mente devota species petitas isdem pretiis, quae in foro rerum venalium habebuntur, libens praestet ac distrahat, ita ut prius vendendas det species, quam omne, quod in rationem distractionis venerit, aurum fuerit consecutus; potiorum tantum, id est possessorum domibus delegatis, quibus tamen cohortatio imponitur, non necessitas imperatur, ut consensum facilem praebeant super speciebus annonariis distrahendis. haec autem adscriptio inferiores vel plebeios non tenebit, ut usibus publicis profuturas distrahant fruges. proposita prid. kal. feb. beryto richomere et clearcho conss. (384 ian. 31).

CTh.11.16.0. De extraordinariis sive sordidis muneribus

CTh.11.16.1

Imp. constantinus a. ad catullinum proconsulem africae. patrimoniales fundos extraordinariis oneribus vel mediae aut tertiae portionis obsequiis fatigari non convenit, cum eosdem et auri speciem et frumenti plurimum modum constet persolvere, ita ut qui violare statuta temptaverit puniatur. proposita vi kal. sep. karthagine constantino a. v et licinio conss. (319 [?] aug. 27).

CTh.11.16.2

Idem a. ad ulpium flavianum consularem aemiliae et liguriae. ab extraordinariis omnibus fundi patrimoniales adque emphyteuticarii per italiam nostram constituti habeantur immunes, ut canonica tantum et consueta dependant ad similitudinem per africam possessorum. dat. xii kal. iun., lecta aput acta severo et rufino conss. (323 mai. 21).

CTh.11.16.3

Idem a. ad edictum calchedoniensium et macedoniensium. quotienscumque aliquam adscriptionem fieri necesse est, rectorum consiliis et dispositione uniuscuiusque civitatis fiat adscriptio, ne libidini et commodo potiorum multitudo mediocrium subiecta gravibus et iniquissimis adficiatur iniuriis. accepta viii kal. mai. crispo iii et constantino iii aa. conss. (324 apr. 24).

CTh.11.16.4

Idem a. ad aemilianum praefectum praetorio. extraordinariorum munerum distributio non est principalibus committenda, ideoque rectores provinciarum monendi sunt, ut eam distributionem ipsi celebrent manuque propria perscribant adque encauto nomina adnectant, ea forma servata, ut primo a potioribus, dein a mediocribus adque infimis quae sunt danda praestentur. neque umquam sationibus vel colligendis frugibus insistens agricola ad extraordinaria onera trahatur, cum providentiae sit opportuno tempore his necessitatibus satisfacere. quae res neglecta vicariorum tuorum verecundiam tangit, ad rectorum autem officiorum capita venietur. manu autem sua rectores scribere debebunt, quid opus sit et in qua necessitate per singula capita vel quantae angariae vel quantae operae vel quae aut in quanto modo praebendae sint, ut recognovisse se scribant, exactionis praedicto ordine inter ditiores mediocres atque infimos observando. lecta vii id. mai. romae ianuarino et iusto conss. (328 mai. 9).

CTh.11.16.5

Imp. constantius a. ad italicum. privatas res nostras ab universis muneribus sordidis placet esse immunes neque earum conductores nec colonos ad sordida vel extraordinaria munera vel superindictiones aliquas conveniri. et cetera. dat. viii kal. feb. bononiae placido et romulo conss. (343 ian. 25).

CTh.11.16.6

Impp. constantius et constans aa. ad beronicianum vicarium asiae. palatini et constantinopolitani cives pro capitibus seu iugis suis tantum pensitationem atque obsequia recognoscant, extraordinariis et temonariis oneribus liberati.

dat. non. mai. constantinopoli constantio iiii et constante iii aa. conss. (346 mai. 7).

CTh.11.16.7

Idem a. et iulianus c. ad populum. sola iubemus exigi, quae factis a nobis indictionibus aliisve praeceptis continentur et quae anniversaria consuetudine antiquitus postulantur: aut, si inexcusabilis necessitas quiddam novum exigat nec dilationem publica utilitas patiatur, referri a ceteris iudicibus ad viros clarissimos praefectos praetorio et eorum arbitrio flagitanda deposci statimque id nostrae intimari clementiae. itaque iudicem, qui ultra iussa aliquid postulaverit, duplum iubemus inferre, officium vero eius quadruplum, viro clarissimo largitionum comite huic exactioni imminente, cum primum ad nos vel praefectos praetorio fuerit querella delata et facinus revelatum, ut et laesi nobis auctoribus aut praefectis recipiant, quod per arbitrium iudicis amiserant. dat. iiii non. april. mediolano constantio a. viii et iuliano c. conss. (356 apr. 2).

CTh.11.16.8

Idem a. et caes. ad taurum praefectum praetorio. placet nullum omnino iudicem de cetero provincialibus inferendum aliquid indicere, ut ea tantum sedulo cunctorum studio pensitentur, quae canonis instituti forma complectitur vel nostra clementia decernit inferenda vel delegatione sollemniter sanciente vel epistulis praecedentibus. sed si quid urguere forsitan coeperit, referri ad celsitudinem tuam statuimus et auctore te fieri et eo persoluto referri ad scientiam nostram, ut nobis iubentibus roboretur. de ceteris quae prospici oportet ante plurimum temporis, insinuetur nobis tempore indictionis ex more promendae. quippe suggerit ratio eius omnia serie contineri. ideoque tituli pensitandi semper ad nostram scientiam perferantur, ut indictione anniversariis vicibus emissa iubeamus inferri merito pensitanda. si quid autem arbitrio suo descripserit provinciales vel exegerit, in duplum inferet et officium eius quadruplum cogetur expendere, super exigenda condemnatione comite largitionum curante. dat. kal. april. mediolano constantio a. viiii et iuliano caes. ii conss. (357 apr. 1).

CTh.11.16.9

Idem a. et caes. ad taurum praefectum praetorio. exemplo africae debent fundi patrimoniales et emphyteutici per italiam constituti ab extraordinariis omnibus excusari. non enim per italiam tantum, sed etiam per urbicarias regiones et siciliam patrimonialium et emphyteuticorum fundorum vires servandas esse perspeximus. proposita romae vii kal. mart. eusebio et hypatio conss. (359 febr. 23).

CTh.11.16.10

Imp. iulianus a. secundo praefecto praetorio. nihil provincialibus indici sine nostra scientia fas est neque rursus ex his quae sunt indicta referri. omnia igitur, quae consuetudo vel dispositio nostra amplectitur, hoc est cursum publicum, translationes, itinerum sollicitudines ceteraque similia cuncti possessores implere pariter compellantur. et cetera. proposita iii id. mart. constantinopoli mamertino et nevitta conss. (362 mart. 13).

CTh.11.16.11 [=brev.11.6.1]

Impp. valent. et valens aa. secundo pf. p. nihil a provincialibus extraordinaria patimur indictione deposci. caveat igitur magnifica auctoritas tua, ne praeter ea, quae a mansuetudine nostra patuerit indicta, tenuiorum oneret functionem; ut, si quis usurpatoria temeritate amplius aliquid fuerit conatus exigere, obnoxius quadrupli repetitione teneatur. quae severitas iussionis ad ordinariorum iudicum officiorumque terrorem debebit excurrere, ut, si eorum vel gratiosa conniventia vel ignobili dissimulatione temeritas admiserit curialis, eos quoque damni similis poena castiget. dat. xiv. kal. april. constantinopoli, valentin. et valente aa. coss.

interpretatio. haec lex hoc praecipit, nihil debere a provincialibus de superindicticiis titulis peti, nisi ea tantum, quae a rerum dominis indicta constiterit. et hoc iubet, ut quicumque* aliquid superexigendum crediderit, quadrupli redhibitione componat. sed et ad ordinarios iudices hanc inquisitionem iubet excurrere, ut etiam si quid in provinciis eorum a quibuscumque* personis aut curialibus factum est, etiam eos similis damni poena castiget

CTh.11.16.12

Imppp. gratianus, valentinianus et theodosius aaa. ad theodorum comitem rerum privatarum. ad virum clarissimum et illustrem praefectum praetorio italiae scripta porreximus, ut ab actoribus et conductoribus patrimonii nostri atque ab his, qui iure perpetuo possederunt, extraordinarii muneris cessaret iniuria neque suburbicariis partibus tironum immineret exactio. sane praestantia tua providere debebit, quatenus frumenti et equorum maturetur exactio. dat. xv kal. april. treviris gratiano v et theodosio i aa. conss. (380 mart. 18).

CTh.11.16.13

Idem aaa. ad hypatium praefectum praetorio. privatae rei nostrae privilegiis permanentibus nihil extra ordinem praedia iure perpetuo consignata sustineant neque adiectis saepius ac praeter primum delegationis canonem postulatis adficiantur impendiis, quandoquidem neque aurario canoni sub privilegiis aestimato aliquid ex ea iubentibus nobis praebitionum diversitate decutitur et pari cum ceteris aestimari sorte non convenit, quos praeter annonarias functiones aestimata perpetuo pensionum praerogativa nexuerint. proposita karthagine id. april. post cons. syagrii et eucherii. (382 [383] apr. 13).

CTh.11.16.14

Idem aaa. ad syagrium praefectum praetorio. eos, qui cum honore comitum, nomine magistrorum, memoriae praefuerint vel epistulis vel libellis, item eos, qui ibidem peragendis signandisque responsis nostrae mansuetudine obsecundant, omnium vilium munerum ac totius capitulariae sive, ut rem quam volumus intellegi communi denuntiatione signemus, temonariae functionis fieri iubemus exsortes, ita ut eorum uniuscuiusque adscriptio excusetur, non ut onus alterius excipiat, si etiam eius summae sit, ut recipere possit adiunctos, sed aut suum tantum munus agnoscat aut, si complacito opus est, magis alteri ipse societur quam eidem alter adnectatur. hi igitur, qui ex eo gradu e palatio nostro abscesserint, adesse sibi competentia privilegia glorientur; qui vero superioribus dignitatibus creverint, nihilo minus huius loci privilegia praesto sibi fuisse laetentur. lecta iii kal. sep. capuae antonio et syagrio conss. (382 aug. 30).

CTh.11.16.15

Idem aaa. ad hypatium praefectum praetorio. maximarum culmina dignitatum, consistoriani quoque comites, notarii etiam nostri et cubicularii omnes atque ex cubiculariis ab omnibus sordidis muneribus vindicentur; ceteros autem palatina vel militari intra palatium praerogativa munitos ita demum privilegium simile contingat, si prioribus statutis se ad eiusmodi exceptionem docuerint pertinere, ut non singulis indulta personis, sed in commune dignitati vel corpori eiusmodi beneficia doceantur fuisse concessa: circa ecclesias, rhetores atque grammaticos eruditionis utriusque vetusto more durante. sane rerum extraordinariarum munus ab omnibus omnino magnificentia tua sciat esse poscendum nec posthac aut petitionem aut usurpationem cuiquam meminerit profuturam. sordidorum vero munerum talis exceptio sit, ut patrimoniis dignitatum superius digestarum nec conficiendi pollinis cura mandetur aut panis excoctio aut obsequium pistrini nec paraveredorum huiusmodi viris aut parangariarum praebitio mandetur, exceptis his, quibus ex more raeticus limes includitur vel expeditionis illyricae pro necessitate vel tempore utilitas adiuvatur. operarum atque artificum diversorum, excoquendae etiam calcis obsequia nulla de talibus adiumenta poscantur; materiam, lignum atque tabulata exceptorum virorum patrimonia non praebeant; carbonis quoque, nisi eum, quem moneta sollemniter vel fabricatio secundum veterem morem poscit armorum, ab huiusmodi viris praebitio desistat; publicis vel sacris aedibus construendis atque reparandis, hospitalium domorum minime curae subiaceant; viarum et pontium tales sollicitudo non oneret capituli atque temonis necessitas nulla mandetur; legatis atque allectis sumptus possessio huiusmodi privilegiis munita non ferat. hoc tamen his patrimoniis prosit, quae dignitatem proprio videntur nomine possidere, ita ut personis ac dignitatibus indulta beneficia tamdiu unicuique, quamdiu superfuerit, suffragentur. omnes autem, quorum dignitates atque personas hac lege perstringimus, non solum quamdiu militaverint, verum etiam post missionem atque etiam eos, qui simili honore perfuncti sunt, generali praerogativa a praebitione sordidorum munerum vindicamus. dat. v id. dec. antonio et syagrio conss. (382 dec. 9).

CTh.11.16.16

Imppp. valentinianus, theodosius et arcadius aaa. ad neoterium praefectum praetorio. sordidorum munerum excusatio delata personis ad heredem successoremve transire non potest. neque enim potest esse perpetuum, quod non rebus sed personis contemplatione dignitatis adque militiae indulsisse nos constat. igitur ne superindictorum nomine cuiusvis domus minus praestet neve quis id audeat postulare, oraculi nostri definitione sancimus. dat. xviii kal. mai. mediolano arcadio a. i et bautone conss. (385 apr. 14).

CTh.11.16.17

Idem aaa. ad principium praefectum praetorio. cogendarum intuitu pensionum a fundis patrimonialibus vel emphyteuticis extraordinaria functionum sarcina removeatur; capiti atque fortunis eorum iudicum atque officiorum, qui privilegia tanta temeraverint, discrimine minime defuturo, si similem rursus inquietudinem movere temptaverint. fundos enim tam patrimonialis iuris quam emphyteutici absque his, quae divali lege praecepta sunt, ad alia iubemus onera non vocari. dat. iii id. dec. aquileiae arcadio a. i et bautone conss. (385 dec. 11).

CTh.11.16.18

Imppp. valentinianus, theodosius et arcadius aaa. tatiano praefecto praetorio. extraordinariorum munerum beneficiis nullum omnino potiri iubemus, sed quidquid talis obsequii communis omnibus populis functio postularit, id ab omnibus indiscretum meritis atque personis iubemus impleri. neque sane deest, ubi vel meritorum privilegia vel dignitatum a communione vindicemus, si quidem ea munera, quae sordida nuncupantur, exceptas lege prohibeamus obire personas, scilicet ne ad eorum obsequia amplissimarum etiam militari fastigio nomina dignitatum vel consistoriani comites devocentur. quae simili privilegio ecclesiis, rhetoribus adque grammaticis institutionis utriusque largimur. ac ne in occulto lateat quae sit, munerum enumeratio sordidorum vocabulis ipsis signata respondet. eius igitur patrimonium, quem ab his obsequiis lex nostra defendit, cura conficiendi pollinis non habebit; nullam excoctionem panis agnoscet; nulla pistrinis obsequia dependet; operas atque artifices non praebebit; excoquendae ab eo calcis sollicitudo cessabit; non conferendis tabulatis obnoxia, non lignis, indultam quoque materiem sub eadem exceptione numerabit; nulla paraveredorum et parangariarum praebitione pulsabitur exceptis his, quas raetiarum limes, expeditiones illyricae, quas pastus translatio militaris vel pro necessitate vel pro sollemnitate deposcunt; carbonis ab eo illatio non cogetur, nisi vel monetalis cusio vel antiquo more necessaria fabricatio poscit armorum nullam sollicitudinem publicarum aedium vel sacrarum constituendarum reparandarumve suscipiet; nulla pontium vel viarum constructione retinebitur; temonis sive capituli onera non sentiet; allectis atque legatis nihil in sumptuum collatione numerabit. quae universa ita enumerati viri ad suum noverint privilegium pertinere, ut ea nec uxorum facultatibus indulta congnoscant et suis patrimoniis cum vivendi circumscripta temporibus. neque enim ea, quae laborum contemplatione singulis sunt delata personis, heres poterit vindicare securus. dat. iii non. iul. mediolano valentiniano a. iiii et neoterio conss. (390 iul. 5).

CTh.11.16.19

Idem aaa. tatiano praefecto praetorio orientis. eam legem, quam de extraordinariis sordidisque muneribus expressis vocabulis functionum et insignibus dignitatum sine ulla ambage praescripsimus, ita circa eos, in quos nostra munera redundarunt, servandam esse praecipimus, ut isdem beneficiis non quamdiu militaverint, sed quamdiu vixerint perfruantur. dat. xi kal. april. mediolano tatiano et symmacho conss. (391 mart. 22).

CTh.11.16.20

Impp. arcadius et honorius aa. messiano comiti rerum privatarum. evidenter atque absolute iubemus, ne fundi ad patrimonium nostrum pertinentes, seu conductionis titulo seu perpetuo iure teneantur, aliquid praeter ordinem superindicti vel pretii petiti nomine vel de sordidis quibuscumque muneribus agnoscant. nam hoc et a divis principibus impetratum est et a nostra serenitate reparatum. quisquis igitur iudicum contra fecerit, quinque pondo auri de facultatibus, alia de officiis suis, totidem et de curialibus, qui exsequi male iussa festinant, noverit eruenda. dat. xvii kal. iul. mediolano olybrio et probino conss. (395 [?] iun. 15).

CTh.11.16.21

Idem aa. theodoro praefecto praetorio. privilegia venerabilis ecclesiae, quae divi principes contulerunt, inminui non oportet: proinde etiam quae circa urbis romae episcopum, observatio intemerata custodiet, ita ut nihil extraordinarii muneris ecclesia vel sordidae functionis agnoscat. et cetera. dat. prid. kal. feb. mediolano caesario et attico conss. (397 ian. 31).

CTh.11.16.22

Idem aa. theodoro praefecto praetorio. privilegia venerabilis ecclesiae inminui non patimur, ita ut nihil extraordinarii muneris ecclesiae vel sordidae functionis agnoscant. quidquid igitur praeceptis veteribus reverentia religionis obtinuit, mutilari etiam poenae interminatione prohibemus; ita ut hi quoque qui ecclesiae obtemperant his, quibus cautum est, beneficiis perfruantur. dat. prid. id. iun. mediolano caesario et attico conss. (397 iun. 12).

CTh.11.16.23

Idem aa. et theodosius a. melitio praefecto praetorio. post alia: ab illustribus personis sordida munera et extraordinariae necessitatis damna removemus. et cetera. dat. xv kal. mar. ravennae dd. nn. honorio viiii et theodosio v aa. conss. (412 [409] febr. [?] 15).

CTh.11.17.0. De equorum collatione

CTh.11.17.1

Impp. valentinianus et valens aa. alexandrino comiti rerum privatarum. viceni et terni solidi per singulos equos, qui a colonis atque ab obnoxiis exiguntur, ipsi magis iugiter, quam fraude procuratorum nostrorum equi, offerantur. dat. iii kal. iun. marcianopoli lupicino et iovino conss. (367 mai. 30).

CTh.11.17.2

Impp. arcadius et honorius aa. pompeiano proconsuli africae. sicut dudum praeceptum est, quam primum equorum, qui curatoricio nomine flagitantur, in pretio maturetur exactio, ita ut viceni quidem solidi pro singulis equis a provincialibus exigantur, septeni vero contubernalibus ministrentur. dat. id. feb. mediolano vincentio et fravito conss. (401 febr. 13).

CTh.11.17.3

Idem aa. praefectis praetorio et comiti sacrarum largitionum. equos canonicos militares dioeceseos africanae secundum subiectam notitiam singularum provinciarum ex praesenti duodecima indictione iussimus adaerari, in tribuendis viris clarissimis comitibus stabuli sportulis in binis solidis pro singulis equis servari consuetudinem decernentes. quam formam quodannis observari praecipimus, ut secundum postulationem gaudenti viri clarissimi comitis africae devotissimo militi septeni solidi pro equis singulis tribuantur. dat. xii kal. april. mediolano vincentio et fravito conss. (401 mart. 21).

CTh.11.17.4

Impp. honorius et theodosius aa. herculio praefecto praetorio. constructioni murorum et comparationi transvectionique specierum universi sine ullo privilegio coartentur ad necessitates illyricianas: nam in his dumtaxat titulis nullum sub quodam cessare privilegii velamento censemus, sed sub hac condicione, cum tempus exegerit, huiusmodi collationi subcumbant, ut non tantum requiratur idoneus, verum universi pro portione suae possessionis iugationisque ad haec munia coartentur et a summis sarcina ad infimos usque decurrat. dat. iii id. april. constantinopoli basso et philippo conss. (408 apr. 11).

CTh.11.18.0. Qui a praebitione tironum et equorum excusentur

CTh.11.18.1

Impp. honorius et theodosius aa. melitio praefecto praetorio. tirones, quorum pretia exhausti aerarii necessitas flagitavit, praebere nolumus illustres viros praefectos, cum gerunt infulas dignitatis vel cum sublimem egerint praefecturam; non magistros militum vel comites domesticorum simile munus adstringat, neque enim tirones de facultatibus eorum poscendi sunt, quorum virtus triumphis nostris subiugat de hoste captivos; non praepositum vel primicerium sacri cubiculi, non castrensem, non comitem sacrae vestis, non ceteros cubicularios, non magistrum officiorum, quaestorem vel comites sacri ac privati aerarii illustres, non virum spectabilem primicerium notariorum, non consistorianos comites ac scriniorum magistros vel tribunos et notarios eadem damni multa percellet; non viros spectabiles comites archiatrorum, non comites stabuli, curapalatii, scholares, proximos scriniorum eademque scrinia, comites dispositionum, decuriones, magistrum admissionum et ceteras similes comitum laboribus nostris socias dignitates eiusdem praestationis sors teneat; non tribunos vel praepositos militares post testimonium inveteratae militiae. habeant in commune omnes, sive dum administrant seu postquam administraverint, debitum regiae liberalitatis officium; nemo tirones equos vel praestationem aurariam vereatur, quem sub legis nostrae sanctione prosequimur. illos tantum tironum atque auri munus adstringat, quos honorarios vocavit antiquitas vel qui fasces civilium partium consecuti nulla prius laboribus rudimenta posuerunt. de ipsis etiam militaris nominis viris eos praepositos vel tribunos a privilegiis esse convenit alienos, qui castrorum expertes habentur nec in hostem martio aere caluerunt. dat. xv kal. mart. ravennae honorio viii et theodosio iii aa. conss. (409 [412] febr. 15).

CTh.11.19.0. De collatione fundorum patrimonialium vel emphyteuticorum et rei privatae

CTh.11.19.1

Imp. constantinus a. ad dometium dracontium. quotiens plures fundum patrimonialem possident, pro portionibus fieri a singulis non vetetur illatio. quorundam enim probata industria ceterorum culpa poterit coherceri. dat. xv kal. mai. sirmi, accepta xv kal. iun. karthagine crispo ii et constantino ii conss. (321 apr. 17).

CTh.11.19.2

Imp. iulianus a. omnes, qui patrimoniales fundos retinent, pro his conveniendi sunt ad universorum munerum functiones, sicut unumquemque privatorum necessitas publicae pensitationis adstringit. et cetera. dat. v kal. april. mamertino et nevitta conss. (362 mart. 28).

CTh.11.19.3

Impp. valentinianus et valens aa. provincialibus byzacenis. ab emphyteuticariis possessoribus annonariam quidem solutionem per quattuor menses ita statuimus procurari, ut circa ultimos anni terminos paria concludantur; aurum vero non ex die x kal. dec. in prid. kalendarum ianuariarum, sed per annum solidum, prout quisque pendere potuerit, inferetur. dat. id. sep. aquileiae divo ioviano et varroniano conss. (364 sept. 12).

CTh.11.19.4

Impp. arcadius et honorius aa. firmino comiti sacrarum largitionum. post alia: qui praedia patrimonialia et emphyteutica, privatae quoque rei perpetuo iure retinent et dominici actores augmenti et superindicticii et onerum raeticorum dicuntur mediam nolle solvere pensionem. igitur iubemus, ut moniti rationales sciant ea, quae a divae memoriae valentiniano constituta sunt, quam primitus esse servanda. dat. viiii kal. iun. mediolano honorio a. iiii et eutychiano conss. (398 mai. 24).

CTh.11.20.0. De collatione donatarum vel relevatarum possessionum

CTh.11.20.1

Imp. iulianus a. aginatio consulari byzacenae. admodum nobis videtur absurdum et a nostrorum temporum tranquillitate submotum, ut ii, qui proscriptionis sortem pertulerunt, ad exemplum eorum, qui fundos donatos sacra liberalitate tenuerunt, auri atque argenti collationi redderentur obnoxii, quae sub divae memoriae constantio adscripta est, cum multum intersit inter eum, qui principali munificentia perfruitur, et eos, qui propria recuperare meruerunt. dat. prid. id. novemb. mampsystae iuliano a. iiii et sallustio conss. (363 nov. 12).

CTh.11.20.2

Impp. valentinianus et valens aa. ad mamertinum praefectum praetorio. eos, qui rem paternam vel suam a fisco recuperare meruerunt, a collatione auri atque argenti, quae adscripta est et his, qui aliquid a sacra liberalitate meruerunt, tutos defensosque servari praecipimus. dat. vi kal. mai. divo ioviano et varroniano conss. (364 apr. 26).

CTh.11.20.3

Impp. arcadius et honorius aa. hadriano praefecto praetorio. exigua quodammodo aedificiorum pensitatio nullum erga possessiones suas superindicti oneris pondus agnoscat. per omnes autem civitates municipia vicos castella ex horreis balneis ergasteriis tabernis domibus cenaculis, salinis etiam omnibus praeter mancipum, quae populi romani lavacris inserviunt, vel his, quae in memoratis locis sub pensionis locatione retinentur, nullius excepta persona unius anni, hoc est tertiae indictionis devotione congrua a locorum dominis pensio conferatur, excepta scilicet aeternabili urbe, quam ab huiusmodi munere reverentia propriae maiestatis excusat. ea videlicet ratione servata, ut, si qui dominorum defuerit, vel a procuratoribus vel ab his qui haec loca sub conductione detentant, id quod praeceptum est inferatur dominorum rationibus imputandum, ea condicione servata, ut sciant tantum, quantum ipsi percipere consuerunt, omni maturitate oportere conferre. dat. iii non. octob. ravennae stilichone et aureliano conss. (400 [405] oct. 5).

CTh.11.20.4pr.

Impp. honorius et theodosius aa. trygetio comiti rerum privatarum. largitates tam nostrae clementiae quam retro principum ex eo tempore, quo in bene meritos de re publica conferuntur, tenere perpetem firmitatem praecipimus, ut, quod unusquisque meruit et recte transmisit, nec ad heredem nec ad originem filiorum nepotumve sollicitudinem revocetur; nec quisquam pro his possessionibus, quae largitate principali iam dudum in singulos quosque collatae sunt, damnosae conventionis molestiam pertimescat. (423 mai. 19).

CTh.11.20.4.1

Sane, quod non optamus, si umquam extiterit tanta necessitas, ut aliquid in adiumentum aerarii nostri publica requirat expensa, adiuvari nos biennali pensione praecipimus, quae non gravat possessorem, ut et temporum rationem et possessionis, de cuius non potest soliditate dubitari, ante oculos collocemus. ideoque si quando in dono datis intra quinquennium possidentem necessitas dandi forte reppererit, hunc a collatione esse iubemus alienum si vero post quinquennium intra decem annorum spatia fuerit possessor inventus, mediam biennalis pensionis inferat portionem. ii vero, qui supra decennium dono data inventi fuerint praedia possidere, si emerserit ulla necessitas, integra biennali nos adiuvent pensione. (423 mai. 19).

CTh.11.20.4.2

Quod si contra hanc formam scientia iudicis vel exsecutoris conventio pulsandum intra haec tempora iudicaverit possessorem, ad multam sexaginta librarum auri persolvendam se noverint adstringendos. nec officium palatinum hac excusatione utatur, ut paucos esse adserat, ad quorum partes et scrinium haec cura pertineat, sed omnes omnium scriniorum totius militiae, quod sub privato meret aerario, ad praescriptam poenam se noverint adtinendos, ita ut primates praeter damnum etiam cinguli amissione multentur, si cuiquam providentiam simulanti consensum in hac suggestione aut instructionem praebuerint. (423 mai. 19).

CTh.11.20.4.3

Ipsum enim codicem causam concussionis et fraudis et universa scripturarum genera tali conexa negotio, ne vestigia timoris posthac ulla remaneant, in conventu provincialium flammis iubemus exuri eademque poena, si posthac ulla extiterit, quod in ipsa aliave provincia huiusmodi adserat se proferre documentum, pro publica quiete deperire. proposita in foro traiani xiiii kal. iun. asclepiodoto et mariniano conss. (423 mai. 19).

CTh.11.20.5pr.

Imp. theodosius a. asclepiodoto praefecto praetorio. ab universis, qui post obitum divi avi clementiae meae ex munificentia tam divae recordationis patris ac patrui mei quam etiam serenitatis meae fundos cuiuslibet iuris petiverunt, sub hac dispositione reditus conferantur, ut, quicumque a praesenti die triennio possident, unius anni habentes immunitatem pro reliquo biennio medii anni conferant reditus; ex triennio vero usque quinquennium, unius anni; a quinquennio usque ad decennium, biennii; a decennio et ultra, triennii. in qua dispositione etiam ii habebuntur, qui dempto canone possessiones cuiuslibet iuris donationis obtinent titulo aut, cum essent domini possessionum, canonem ex parte vel integrum adimi exoraverunt, ita tamen, ut, qui fundum dempto canone accepit, reditus universos, quos ipse percepit, iuxta datam dispositionem temporis solvat; qui vero dominus constitutus possessionis tantum canonis promeruit relevationem, canonem tantum pro data forma, hoc est aut dimidii anni aut unius aut biennii aut triennii, solvat; eadem ratione etiam illis tenendis, qui relevationem iugationis ex simplici beneficio meruerunt. sane qui inspectorem specialem ac si de ieiunis ac desertis possessionibus, accepisse dicuntur, electionem a sede culminis tui propositam amplectantur et aut solvant, ut dictum est, quod nunc consequuntur lucri pro rata temporum ratione, aut, si hoc moleste tulerint, patiantur denuo alios inspectores dirigi. (424 mai. 13).

CTh.11.20.5.1

Quod si qui ex possessionibus principali sibi quondam liberalitate donatis postmodum quasdam aliis aut venumdedit aut et ipse donavit, pro his quidem, quae venditae probabuntur, ille se statutis praesentibus obnoxium esse cognoscat, qui videtur pretium consecutus. cui vero non vendita, sed legitime donata vel iure successionis adquisita possessio est, is profecto debebit iustius adtineri ad illa praestanda iuxta tempora praefinita, qui adipisci in praesenti ex donata sibimet possessione monstratur. qui vero alterius nomine ex munificentia principali donatos obtinet fundos quique relevationis vel peraequationis beneficium simili modo consecutus ostenditur, ipse ad huiusmodi solutionem debebit adstringi, qui non ut petitor, sed ut dominus et possessor rei poterit adprobari. vel certe si hoc casu quodam patere forsitan non valebit, ab ipsa possessione, quae vel donata vel peraequata aut relevata est, supra dicti fructus beneficii conferantur. (424 mai. 13).

CTh.11.20.5.2

Scituris cunctis, quod, quisquis praedictam praestationem intra quattuor menses, ex quo fuerit admonitus, inferre distulerit, ipsas possessiones, quae donatae eidem videntur, amittet, ii vero, qui certum quid collationis seu functionis indictae pro temporali possessione praestiterint, pleno in posterum beneficii principalis, quod aliquando meruerunt, munere perfruentur. dat. iii id. mai. constantinopoli victore v. c. cons. (424 mai. 13).

CTh.11.20.6pr.

Impp. theodosius et valentinianus aa. antiocho praefecto praetorio. eorum iugorum sive capitum sive quo alio nomine nuncupantur privati iuris vel patrimonialis sive civilis sive templorum, quae a principio imperii divae recordationis arcadii genitoris mei ex petitionibus diversorum vel ultro datis adnotationibusque in praesentem diem qualitercumque relevata sunt vel adaerata levius vel de patrimoniali iure ad privatam vel in aurariam aerariam atque ferrariam praestationem translata, quinta pars commodi, quod ex eo beneficio ad dominos fundorum pervenit, ex eodem tempore exacta pro aestimatis per singulos annos habitis arcae et sacrarum largitionum viribus ex aequo societur. exceptis his, quae in capitatione humana atque animalium diversis qualitercumque concessa sunt, ita ut omnium, quae praedicto tempore atque etiam sub inclytae recordationis avo nostro in terrena sive animarum discriptione relevata sunt usque ad quadringentorum iugorum sive capitum quantitatem pars dimidia publicis censibus adiungatur, ut, si quidem usque ad quadringenta iuga vel capita relevatio facta est, dimidia tantum pars fisco reddatur, si vero amplius aliquid relevatum est, usque ad ducentorum iugorum vel capitum aput beneficium consecutos relevatio firma permaneat, reliqua omnia publicis censibus refundantur. aut enim intra ducentorum numerum pro rata partis dimidiae portione unumquemque relevari conveniet aut ultra eundem minime ad dispendium publicum praestita relevatione abuti, sive in una sive in diversis provinciis vel suo vel interposito nomine huiusmodi beneficium impetravit. nisi si quis se pro fundis sterilibus ac desertis maioris etiam adscriptionis relevationem iuste meruisse firmaverit et inspectore seu peraequatore misso probaverit, non iam secundum nostrum beneficium, quod usque ad ducenta iuga vel capita pro dimidia parte indulsimus, sed pro inspectionis futurae veritate ac fide tributa publica soluturus. (430 dec. [?] 31).

CTh.11.20.6.1

Adaeratis etiam et qualitercumque translatis ex quarta decima feliciter futura indictione translatione vel adaeratione servata modum collationis imponi, qui consecutis partem quandam beneficii reservabit pro regionum diversitate factae adaerationis modum atque omnium, quae in huiusmodi rebus consideranda sunt, qualitatem praefectura amplissima disponente. (430 dec. [?] 31).

CTh.11.20.6.2

Illis solis ab hac discriptione a sublimitate tua sicut visum fuerit disponente penitus eximendis et in praesenti collationis modo mansuris, quae civitatibus vel curiis vel officiis in commune remissa sunt vel aliquando personarum magis indulta, sed ex dispositione amplissimae sedis tuae, si qua sit de relevatione suspicio, inspectioni verissimae subiciendis. (430 dec. [?] 31).

CTh.11.20.6.3

Exactionem vero quintae partis collationum ab exordio imperii divae memoriae patris mei, ut dictum est, iam nunc fieri ab his qui emerunt vel eorum heredibus, si solvendo sint, vel detentatoribus, pro quo quisque possedit tempore, ...Obiit, posterioribus vel novis dominis, ad quos relevata praedia devenerunt, contra suos auctores actionibus legitimis reservandis, neque penitus ullo sub quocumque privilegio dispositione hac eximendo. (430 dec. [?] 31).

CTh.11.20.6.4

Firmiter in futurum et sine ulla discriptionis molestia aput eos, qui meruerunt, divina indulgentia permansura, ita ut ne retractari quidem nec proferri in medium has rursus liceat rationes, completis his, quae in praesenti de causis singulis aut personis pro rerum necessitate statuta sunt. dat. prid. kal. ian.

constantinopoli dd. nn. theodosio xiii et valentiniano iii aa. conss. (430 dec. [?] 31).

CTh.11.21.0. De collatione aeris

CTh.11.21.1pr.

Impp. valentinianus et valens aa. modesto praefecto praetorio. aes, quod dichoneutum vocatur, non modo deinceps largitionibus inferatur, verum de usu penitus et conversatione tollatur ac nemini publice hoc habere liceat. (371 apr. 7).

CTh.11.21.1.1

Et conflatores figurati aeris, adulteratores etiam monetae capitalis animadversio persequatur. dat. vii id. april. constantinopoli gratiano a. ii et probo conss. (371 apr. 7).

CTh.11.21.2

Impp. arcadius et honorius aa. hilario. aeris pretia, quae a provincialibus postulantur, ita exigi volumus, ut pro viginti quinque libris aeris solidus a possessore reddatur. dat. v kal. ian. mediolano arcadio iiii et honorio iii aa. conss. (396 dec. 28).

CTh.11.21.3

Imp. theodosius a. maximino comiti sacrarum largitionum. perpetuo sancimus generalique decreto, ne cui deinceps ex praecepto comitivae sedis vel per oraculum sacrum vel per divinas adnotationes numinis nostri in nummo vel in specie, nisi ita publica necessitas postularit, propria liceat tributa persolvere, sed ut magis aut ipsam speciem, si hoc usus exegerit, aut aurum, quod aestimatio certa constituit pro centenario aeris, huiusmodi possessor exsolvat. dat. v id. decemb. constantinopoli victore v. c. cons. (424 dec. 9).

CTh.11.22.0. Ne collationis translatio postuletur

CTh.ct.11.22.1

Impp. constantius et constans aa. philippo praefecto praetorio. plerique censum fundorum suorum iugorum ad alias civitates transferre curarunt. uniuscuiusque itaque civitatis censum in omnibus provinciis ad proprias civitates redire censuimus. dat. v kal. aug. constantio iiii et constante iii aa. conss. (346 iul. 28).

CTh.11.22.2

Imppp. gratianus, valentinianus et theodosius aaa. ad neoterium praefectum praetorio. habeat unaquaeque civitas consortem munerum, quem habuit in professione collegam. iugatio omnis, ubi est antiquitus adscripta, permaneat: redeat ad se alio in fraudem munerum translata iugatio. discant ordines, discant reliqui possessores mutato eo, quod non recte est impetratum, quem participem possidendi cognoverint, esse etiam in omnibus socium functionibus. proposita iiii non. mai. arcadio a. i et bautone conss. (385 mai. 4).

CTh.11.22.3

Imppp. valentinianus, theodosius et arcadius aaa. ad eusignium praefectum praetorio. transferat, qui orando meruerit ex iudicio tuae magnitudinis, in annonariis dumtaxat commeatibus ex alio loco ad urbem aliam professionem publicae functionis. qui diversis in urbibus non sufficiet respondere exactorum numero crebriori, ad unum, ubi magis possidet, iugationis reliquum modum sine publico detrimento exactorem transmittat. dat. xviii kal. mai. valentiniano a. iii et eutropio conss. (387 apr. 14).

CTh.11.22.4

Impp. honorius et theodosius aa. ad anthemium praefectum praetorio. nonnullos possessores exactionis consuetae more dissimulato eo temeritatis procedere cognovimus, ut quidam auctoritate rescriptionis elicita instantiam compulsorum eludant sub eo obtentu, quod sponte pronius inferant expetenda. qua usurpatione patefacta promulgamus, ut huiusmodi impetrationis novitate supplosa, quae vulgo autopractorium vocatur, universa pensitationis profligandae quae fuit reviviscat sollemnitas et curiales vel apparitio provincialis huius muneris vota procurent, exceptis his, quos eminentissimae tuae sedis specialiter consideratio digessit. dat. xiiii kal. iun. honorio viii et theodosio iii aa. conss. (409 mai. 19).

CTh.11.22.5

Idem a. herculio praefecto praetorio illyrici. quod olim meminimus constitutum, hac generali denuo legis praeceptione sancimus, ne cuiquam liceat praestationes possessionum ad aliud territorium ex alio transferre, sed omnibus modis in eo loci tributaria agnoscatur illatio, quem fides censuum retinet et necessitas publicae adscriptionis adstringit. quod si ulterius ab officio praefecturae praesentia vel priora statuta fuerint temerata, centum librarum auri multa ferietur, sed et singuli, qui nequaquam prohibitis temperabunt, viginti librarum auri dispendia sustinebunt. dat. viii kal. iul. constantinopoli varana v. c. cons. (410 mai. 25 vel iun. 24).

CTh.11.23.0. De protostasia

CTh.11.23.1

Imp. constantius a. ad senatum. protostasiae munus hactenus senatores imposita necessitate sustentent, ut isdem senatorum census implendae necessitatis contemplatione socientur nec cuiusquam alterius iuga aut capita senatorum censibus adgregentur, cum protostasiae munus ita debeant sustinere, ut ad eum numerum, quem ipsi censuali sorte sustentant, senatorum tantum censibus nexis eandem necessitatem debeant explicare. dat. v non. mai. tauro et florentio conss. (361 mai. 3).

CTh.11.23.2

Imp. iulianus a. sallustio praefecto praetorio. prototypias et exactiones in capitatione plebeia curialium munera et quidem inferiora esse minime dubitatur, atque ideo a senatoriis easdem domibus submoveri oportet. et cetera. dat. iii id. mart. constantinopoli mamertino et nevitta conss. (362 mart. 13).

CTh.11.23.3

Impp. arcadius et honorius aa. praesidi frygiae pacatianae. cessantibus his, quae quibusdam cuniculis et subreptionibus impetrata noscuntur, et salvis privilegiis dignitatum, gravitas tua universos faciat protostasiae subcumbere functioni, ut et officia publica maturius peragantur et privatorum merita ex hac distributione providentissime conserventur. dat. prid. kal. iul. constantinopoli arcadio a. iiii et honorio a. iii conss. (396 iun. 30).

CTh.11.23.4

Impp. arcadius et honorius aa. euthymio vicario asiae. qui ex primipilaribus sunt, protostasiae necessitatibus oboedire cogantur nec aliqua se obreptione subtrahere. dat. xii kal. ian. arcadio iiii et honorio iii aa. conss. (396 dec. 21).

CTh.11.24.0. De patrociniis vicorum

CTh.11.24.1

Imp. constantius a. et iulianus caes. helpidio. colonorum multitudinem indicasti per aegyptum constitutorum ad eorum sese, qui variis honoribus fulciuntur, ducum etiam patrocinia contulisse. universos itaque, quos tantum sibi claruerit temeritatis adsumere, ut praebeant latebram et defensione repromissa aditum implendae devotionis obclaudant, iubemus urgeri, ut debita, quaecumque vicani, quorum consortio recesserunt, e propriis facultatibus fisci docebuntur commodis intulisse, idem cogantur expendere. eos quoque, quos in defensionem suam videntur suscepisse, ab eorum patrocinio facias separari. dat. prid. non. feb. constantinopoli constantio a. x et iuliano caes. iii conss. (360 febr. 4).

CTh.11.24.2

Imppp. valentinianus, valens et gratianus aaa. ad auxonium praefectum praetorio. abstineant patrociniis agricolae subiugandi supplicio, si talia sibimet adiumenta commentis audacibus conquisierint. ii vero, qui propria patrocinia largiuntur, per singulos fundos, quotiens repperti fuerint, viginti et quinque auri libras dare debeant et non quantum patroni suscipere consuerant, sed dimidium eius fiscus adsumat. dat. prid. id. novemb. marcianopoli valentiniano et valente iii aa. conss. (370 [368?] nov. 12).

CTh.11.24.3

Impp. arcadius et honorius aa. heracliano comiti aegypti. quicumque ex officio tuo vel ex quocumque hominum ordine vicos in suum detecti fuerint patrocinium suscepisse, constitutas luent poenas. possessores autem competenter coherciti etiam inviti statutis imperialibus oboedire et muneribus publicis satisfacere cogantur. quoscumque autem vicos aut defensionis potentia aut multitudine sua fretos publicis muneribus constiterit obviare, ultioni, quam ratio ipsa dictabit, conveniet subiugari. dat. prid. kal. octob. olybrio et probino conss. (395 sept. 30).

CTh.11.24.4

Idem aa. eutychiano praefecto praetorio. censemus, ut, qui rusticis patrocinia praebere temptaverit, cuiuslibet ille fuerit dignitatis, sive magistri utriusque militiae sive comitis sive ex proconsulibus vel vicariis vel augustalibus vel tribunis sive ex ordine curiali vel cuiuslibet alterius dignitatis, quadraginta librarum auri se sciat dispendium pro singulorum fundorum praebito patrocinio subiturum, nisi ab hac postea temeritate discesserit. omnes ergo sciant non modo eos memorata multa feriendos, qui clientelam susceperint rusticorum, sed eos quoque, qui fraudandorum tributorum causa ad patrocinia solita fraude confugerint, duplum definitae multae dispendium subituros. dat. vi id. mart. constantinopoli theodoro v. c. cons. (399 mart. 10).

CTh.11.24.5

Idem aa. eutychiano praefecto praetorio. excellentia tua his legibus, quae de prohibendis patrociniis aliorum principum nomine promulgatae sunt, severiorem poenam nos addidisse cognoscat, scilicet ut, si quis agricolis vel vicanis propria possidentibus patrocinium reppertus fuerit ministrare, propriis facultatibus exuatur, his quoque agricolis terrarum suarum dispendio feriendis, qui ad patrocinia quaesita confugerint. dat. viii kal. iun. constantinopoli theodoro v. c. cons. (399 mai. 25).

CTh.11.24.6pr.

Impp. honorius et theodosius aa. aureliano praefecto praetorio. valerii, theodori et tharsacii examinatio conticiscat, illis dumtaxat sub augustaliano iudicio pulsandis, qui ex caesarii et attici consulatu possessiones sub patrocinio possidere coeperunt. quos tamen omnes functionibus publicis obsecundare censemus, ut patronorum nomen extinctum penitus iudicetur. possessiones autem athuc in suo statu constitutae penes priores possessores residebunt, si pro antiquitate census functiones publicas et liturgos, quos homologi coloni praestare noscuntur, pro rata sunt absque dubio cognituri. (415 dec. 3).

CTh.11.24.6.1

Metrocomiae vero in publico iure et integro perdurabunt, nec quisquam eas vel aliquid in his possidere temptaverit, nisi qui ante consulatum praefinitum coeperit procul dubio possidere, exceptis convicanis, quibus pensitanda pro fortunae condicione negare non possunt. (415 dec. 3).

CTh.11.24.6.2

Et quicumque in ipsis vicis terrulas contra morem fertiles possederunt, pro rata possessionis suae glebam inutilem et collationem eius et munera recusent. (415 dec. 3).

CTh.11.24.6.3

Ii sane, qui vicis quibus adscripti sunt derelictis, et qui homologi more gentilicio nuncupantur, ad alios seu vicos seu dominos transierunt, ad sedem desolati ruris constrictis detentatoribus redire cogantur, qui si exsequenda protraxerint, ad functiones eorum teneantur obnoxii et dominis restituant, quae pro his exsoluta constiterit. (415 dec. 3).

CTh.11.24.6.4

Et in earum metrocomiarum locum, quas temporis lapsus vel destituit vel viribus vacuavit, ex florentibus aliae subrogentur. (415 dec. 3).

CTh.11.24.6.5

Arurae quoque et possessiones, quas curiales quolibet pacto publicatis aput acta provincialia desideriis suis vel reliquerunt vel possidere alios permiserunt, penes eos, qui eas excoluerunt et functiones publicas recognoscunt, firmiter perdurabunt, nullam habentibus curialibus copiam repetendi. (415 dec. 3).

CTh.11.24.6.6

Quidquid autem in tempus usque dispositionis habitae a viro illustri decessore sublimitatis tuae ecclesiae venerabiles, id est constantinopolitana atque alexandrina possedisse deteguntur, id pro intuitu religionis ab his praecipimus firmiter retineri, sub ea videlicet sorte, ut in futurum functiones omnes, quas metrocomiae debent et publici vici pro antiquae capitationis professione debent, sciant procul dubio subeundas. (415 dec. 3).

CTh.11.24.6.7

Nequaquam cefalaeotis, irenarchis, logografis chomatum et ceteris liturgis sub quolibet patrocinii nomine publicis functionibus denegatis, nisi quid ex his quae exigenda sunt vel neglegentia vel contemptus distulerit. (415 dec. 3).

CTh.11.24.6.8

Metrocomias possidere nostro beneficio meruerunt, et publicos vicos committere compellantur. dat. iii non. decemb. honorio x et theodosio vi aa. conss. (415 dec. 3).

CTh.11.25.0. De quadrimenstruis brevibus

CTh.11.25.1

Imppp. theodosius, arcadius et honorius aaa. rufino praefecto praetorio. quotienscumque quadrimenstrui breves ab apparitoribus ducianis ad sedem vestrae celsitudinis destinantur, parilis notitia provinciali quoque tradatur officio, ut, priusquam ad iudicium vestrum examinanda mittantur, ibidem sub utrorumque praesentia conferantur, ut, qui perperam vel petita vel erogata notaverit, confutetur, ne discordante brevium modo in eorum damnum expensa revocetur, qui susceptionibus vel nominationibus obligati quae militum nomine petuntur exsolvant, nec imputari sibi quod exsolverint congemiscunt. dat. xii kal. iun. constantinopoli theodosio a. iii et abundantio conss. (393 mai. 21).

CTh.11.26.0. De discussoribus

CTh.11.26.1

Imppp. valentinianus, valens et gratianus aaa. ad artemium vicarium hispaniarum. quotiens in disceptatione constiterit inique discussionem fuisse confectam et fidem facti non poterit adprobare discussor, ipse in eodem titulo et in eodem modo ad solvendum protinus urgeatur, in quo alterum perperam fecerit debitorem. dat. prid. id. mai. valentiniano nb. p. et victore conss. (369 mai. 14).

CTh.11.26.2 [=brev.11.7.1]

Impp. arcad. et honor. aa. messalae pf. p. maximas praedas hoc pacto agi de provincialibus certum est, ut acceptae semel securitates et regestae polypticis a discussoribus vel apparitoribus denuo postulentur, non quod utilitas publica flagitat, sed ut, si casu est amissa securitas, maior praeda nascatur. decernimus itaque, ut, quando insertae securitates ratiociniis publicis continentur, rursus per iniuriam non petantur. dat. v. kal. dec. mediolano, stilicone et aureliano coss.

interpretatio. lex ista hoc iubet, in hoc maximam praedam exactores de provincialibus exercere, ut post emissas securitates iterum polypticos et securitates incipiant postulare, quod ab his non pro publica utilitate fieri, sed ut, si securitates inventae non fuerint, maior eis praeda nascatur. ideoque statuit, ut, si securitates ratiociniis publicis vel in polypticis exactorum continentur, iterum pro cupiditatis nequitia non petantur

CTh.11.27.0. De alimentis, quae inopes parentes de publico petere debent

CTh.11.27.1

Imp. constantinus a. ad ablavium. aereis tabulis vel cerussatis aut linteis mappis scripta per omnes civitates italiae proponatur lex, quae parentum manus a parricidio arceat votumque vertat in melius. officiumque tuum haec cura perstringat, ut, si quis parens adferat subolem, quam pro paupertate educare non possit, nec in alimentis nec in veste impertienda tardetur, cum educatio nascentis infantiae moras ferre non possit. ad quam rem et fiscum nostrum et rem privatam indiscreta iussimuas praebere obsequia. dat. iii id. mai. naisso constantino a. iiii et licinio iiii aa. conss. (315 mai. 13).

CTh.11.27.2

Idem a. menandro. provinciales egestate victus atque alimoniae inopia laborantes liberos suos vendere vel obpignorare cognovimus. quisquis igitur huiusmodi repperietur, qui nulla rei familiaris substantia fultus est quique liberos suos aegre ac difficile sustentet, per fiscum nostrum, antequam fiat calamitati obnoxius, adiuvetur, ita ut proconsules praesidesque et rationales per universam africam habeant potestatem et universis, quos adverterint in egestate miserabili constitutos, stipem necessariam largiantur atque ex horreis substantiam protinus tribuant competentem. abhorret enim nostris moribus, ut quemquam fame confici vel ad indignum facinus prorumpere concedamus. dat. prid. non. iul. romae probiano et iuliano conss. (322 iul. 6).

CTh.11.28.0. De indulgentiis debitorum

CTh.11.28.1

Imp. iulianus a. ad avitianum vicarium africae. excepto auro et argento cuncta reliqua indulgemus. dat. vii kal. nov. antiochiae, acc. xv kal. april. karthagine iuliano a. iiii et sallustio conss. (363 [362] oct. 26).

CTh.11.28.2

Impp. arcadius et honorius aa. dextro praefecto praetorio. quingenta viginti octo milia quadraginta duo iugera, quae campania provincia iuxta inspectorum relationem et veterum monumenta chartarum in desertis et squalidis locis habere dinoscitur, isdem provincialibus concessimus et chartas superfluae discriptionis cremari censemus. dat. viiii kal. april. mediolano olybrio et probino conss. (395 mart. 24).

CTh.11.28.3

Idem aa. andromacho praefecto urbi. omnium titulorum, sive qui ad illustres viros praefectos praetorio sive qui ad largitiones nostras pertinent, usque in consulatum primum clementiae nostrae, id est usque indictionem quintam decimam, quae proxima fuerit, reliqua universa concedimus. atque ut ipsa memoria reliquorum intercidat, chartas omnes, sive quas tabularii civitatum sive officia iudicum sive officium palatinum sive discussores habent, quibus tamen eius temporis et debitorum nomina et debita continentur, undique in medium congregatas palam flammis iubemus aboleri. post consulatum vero mansuetudinis nostrae, id est a prima indictione in consulatum olybrii et probini, omnium reliquorum exactionem suspendi oportere censemus, donec admoniti ordinarii iudices nominatorios breves absque ulla conscriptos fraude transmittant, quibus aperte liqueat, quae penes minuscularios, quae penes curiales debita, quae etiam in defectis domibus habeantur, his enim praecipue consulendum est, qui iusto remedio indigent. noverint igitur officia ad se omne dispendium rediturum, si occultatis idoneis in eorum locum faeneos defectosve subiecerint. ex consulatu sane olybrii et probini, id est ex nona indictione in praesentem diem adcelerari solutionem omnium conveniet debitorum. eos etiam, qui personalibus debitis sacro aerario tenentur adstricti, id est conductores diversorum portuum ac vectigalium, volumus esse securos. publicani etiam et telonarii, praepositi thesaurorum adque bafiorum, procuratores gynaecieariorum ac monetariorum ceterique, quos omnes in chartis suis officium palatinum sine ullo aetatis fine custodit, decernimus, ut, quaecumque per eos debita contracta sunt, submoveantur. ab heredibus etiam memoratorum exactionis atrocitas conquiescat. dat. vii kal. iul. mediolano vincentio et fravito conss. (401 iun. 25).

CTh.11.28.4

Idem aa. theodoro praefecto praetorio. ab omni intra italiam iugatione, quam munere annonariae functionis absolvimus, etiam glebalem pensionem iubet serenitas nostra removeri. dat. id. sept. mediolano basso et philippo conss. (408 sept. 13).

CTh.11.28.5

Impp. honorius et theodosius aa. honoratis et possessoribus per africam. reliquorum ex fiscalibus titulis cuncta debita nostrae mansuetudinis indulgentia subsequatur. et cetera. dat. vii kal. dec. post cons. honorii viii et theodosii iii aa. (410 [409] nov. 25).

CTh.11.28.6

Idem aa. macrobio proconsuli africae. considerantes africae devotionem usque in initium fusionis quintae universa reliqua, quae tam ad arcam sublimium potestatum quam ad largitiones pertinent, relaxari praecipimus. privatae quoque rei debita similiter relaxamus chartis abolitis, quibus debita publica continentur. dat. vii kal. iul. ravennae varana cons. (410 iun. 25).

CTh.11.28.7

Idem aa. iohanni praefecto praetorio. campaniae tusciae piceno samnio apuliae calabriae, sed et brittiis et lucaniae ex omni praestationis modo, quem antiqua sollemnitas detinebat, quattuor partes iubemus auferri, ita ut ex indictione decima quinque annorum indulgentia contributa partem solvant publicae functionis. ad reparationem sane cursus intra indulgentiae tempus quidquid fuerit postulatum, id solum conferri censuimus. dat. viii id. mai. ravennae lucio v. c. cons. (413 mai. 8).

CTh.11.28.8

Idem aa. seleuco praefecto praetorio. naviculariis intra africam ex quarta decima indictione consulatus valentiniani aug. iii et eutropi viri clarissimi usque ad indictionem quartam consulatus nostri septies et theodosi iterum omnia reliqua indulgemus. dat. iii non. april. ravennae constantio et constante conss. (414 apr. 3).

CTh.11.28.9

Idem aa. anthemio praefecto praetorio. per omnes provincias orientis ex indictione undecima valentiaca in quintam usque nuper transactam indictionem, annorum scilicet quadraginta, id est ex consulatu divorum valentiniani et valentis iterum augustorum usque ad consulatum invictissimi honorii patrui mei septies et meum iterum, omnium generalium titulorum sub aequa lance tam curiis quam collatori privato et patrimoniali, divinae quin etiam domui omnique iuri munifico, nec non et cellariis, praeter trium metallorum debitoribus docimeni, proconensis et troadensis, concessimus reliqua, sive species sive aes pecunia aurum argentumque debetur, ita ut nec horreis et praefectoriae arcae nec nostro aliquid ex his aerario debeatur; sequentis temporis debitis ex indictione sexta usque ad praesentem duodecimam emergentibus necessitatibus reservatis. dat. v id. april. constantinopoli constantio et constante conss. de eadem re scriptum edictum ad populum: ad marcianum comitem sacrarum largitionum: musellio praeposito sacri cubiculi de titulis ad domum sacram pertinentibus: ad rectores provinciarum: et de metallariis edictum ad populum per provincias illyrici et ad rectores provinciarum. (414 apr. 9).

CTh.11.28.10

Idem aa. aureliano praefecto praetorio. indulgentiam, quam ex undecima indictione valentiaca in quintam usque nuper transactam generaliter per omnes provincias et populos sparsimus, nonnulli visi sunt in suum compendium rapinamque convertere, ut fierent privata debita, quae fuerant publica. ideoque ut largitatem nostram non nomine, sed re ipsa provinciales experiantur, a nullo ordine obtentu anticipatae per se illationis ulterius aliquid exigantur, cum eis sufficere debeat ad medellam, quidquid et ipsi ex eadem indulgentia meruerunt, quam sacrilego animo temerare conati sunt. dat. v id. iul. constantinopoli honorio x et theodosio vi aa. conss. (415 iul. 11).

CTh.11.28.11

Idem aa. monaxio praefecto praetorio. primipili reliqua, tamquam ad nuper emissam generalem indulgentiam minime pertineant, flagitari cognovimus. ideoque sancimus primipili quoque reliqua eiusdem temporis relaxari nec quemquam debere pro eo tempore, quod indulgentia definivit, primipili vel cuiuslibet alterius tituli gratia conveniri praeter docimeni, proconensis et troadensis metallorum debitores, quos et dudum latae indulgentiae series comprehendit. dat. v id. sept. heracleae theodosio a. vii et palladio conss. (416 sept. 9).

CTh.11.28.12

Idem aa. palladio praefecto praetorio. praeter censuales functiones campania, quam et vetustatis gravior onerat adscriptio et post hostium vastavit incursio, peraequatis territoriis nonam partem tantummodo praeteriti assis publicarum toleret functionum. picenum vero et tusciam suburbicarias regiones septimam tributorum ad supputationem professionis antiquae per universos titulos iubemus agnoscere, ut reciso antiqui census onere is tantum modus, quem superius comprehendimus, chartis publicis inseratur, hac condicione, ut omnis super desertorum nomine querella in posterum conquiescat. dat. xvii kal. dec. ravennae honorio xii et theodosio viii aa. conss. (418 nov. 15).

CTh.11.28.13

Idem aa. venantio comiti rerum privatarum. breves, quos spectabiles ac probatissimi nobis viri ac palatinorum sacrarum vel ad praetoriana scrinia detulerunt, et professionis modum eum, qui brevibus sedit, scribi volumus, eum vero qui recisus est de chartis publicis iubemus auferri. unde secundum fidem polyptychorum per provinciam proconsularem novem milia duas centurias iugera centum quadraginta unum in solvendo et quinque milia septingentas centurias iugera centum quadraginta quattuor semis in removendis, per provinciam vero byzacenam in praestanda functione septem milia quadringentas sexaginta centurias iugera centum octoginta, septem milia sescentas quindecim vero centurias iugera tria semis in auferenda constat adscripta, ut circa eos, quibus collocata ac relevata sunt praedia, ad securitatem perpetuae proprietatis intermina possint aetate servari. de his vero, quae edictis pendentibus nondum sunt certis adsignata personis, rectores provinciarum decernimus providere, ut manentibus remediis, quae fides supra dicta adtribuit, idoneis collocentur. dat. x kal. mart. ravennae honorio xiii et theodosio x aa. conss. (422 febr. 20).

CTh.11.28.14

Idem aa. rufino comiti sacrarum largitionum. quod de annonariis functionibus per urbicarias regiones clementia nostra concessit, etiam in largitionalibus titulis et emphyteuticis rei publicae praediis custodiri mandamus. amotis igitur reliquis etiam circa largitionales titulos debita ex praesenti indictione constituet chartis abolitis debitorum. capitali sane supplicio percelletur, quisquis provincialem supra constitutum hac auctoritate modum debitae functionis adstrinxerit. regesta vi id. feb. ravennae asclepiodoto et mariniano conss. (423 febr. 8).

CTh.11.28.15

Impp. theodosius et valentinianus aa. tauro praefecto praetorio et patricio. quicumque ex imposita descriptione donatis relevatisque per sacram liberalitatem obnoxium se esse ex parte vel ex integro cognoscit, nostri numinis beneficio liberetur. et cetera. dat. xii kal. iul. constantinopoli ariovindo et aspare conss. (434 iun. 20).

CTh.11.28.16

Idem aa. tauro praefecto praetorio. a sexta indictione, ad quam superior indulgentia usque processit, ad undecimam nuper transactam sub aequa dimensione tam curiis quam possessori privato ac patrimoniali, divinae quin etiam domui, ex omni iure munifico nec non et in speciebus cellariensibus reliqua indulgemus, ita ut, quae in istis viginti annis a sexta, qua dictum est, indictione undecimam usque per omnes titulos sive in speciebus sive pecunia auro argentoque, debentur nomine reliquorum, omnibus concedantur. nihil de his viginti annis speret publicorum cumulus horreorum, nihil arca amplissimae praefecturae, nihil utrumque nostrum aerarium. dat. x kal. mai. theodosio a. xiiii et maximo v. c. conss. (433 apr. 22).

CTh.11.28.17

Idem aa. isidoro praefecto praetorio. debita susceptoribus ante decimam indictionem congregata, quae sedes excelsa pretiis humanioribus adaeravit, ex parte dimidia condonamus, arcae cetera inferri praecipimus. dat. prid. id. iul. constantinopoli isidoro et senatore conss. (436 iul. 14).

CTh.11.29.0. De relationibus

CTh.11.29.1

Imp. constantinus a. ad claudium plotianum correctorem lucaniae et brittiorum. post alia: super paucis, quae iuridica sententia decidi non possunt, nostram debes consulere maiestatem, ne occupationes nostras interrumpas, cum litigatoribus legitimum remaneat arbitrium a sententia provocandi. dat. vi kal. ian. treviris, acc. viii id. feb. regio constantino a. iii et licinio iii conss. (312 [313] dec. 27).

CTh.11.29.2

Idem a. profuturo praefecto annonae. si quis iudicum duxerit esse referendum, nihil pronuntiet, sed magis super quo haesitandum putaverit, nostram consulat scientiam aut, si tulerit sententiam, minime postea, ne a se provocetur, relatione promissa terreat litigantes. dat. iiii id. feb. sirmio constantino a. v et licinio c. conss. (319 febr. 10).

CTh.11.29.3

Impp. valentinianus et valens aa. ad viventium praefectum praetorio. super delictis provincialium numquam rectores provinciarum ad scientiam principum putent esse referendum, nisi ediderint prius consultationis exemplum. quippe tunc demum relationibus plena maturitas est, cum vel allegationibus refelluntur vel probantur adsensu. dat. iii. kal. ian. treviris valentiniano et valente aa. conss. (368? 370? dec. 30).

CTh.11.29.4

Idem aa. et gratianus a. ad apodemium. si quando ratio aut necessitas est in negotiis nostra iudicia requirendi exspectandique responsa, omnem omnino causam relationis series comprehendat, ut recitata consultatione, quae ita est dirigenda, propemodum actorum recensione non opus sit; actis etiam necessario sociandis. dat. vi id. mai. treviris valentiniano nb. p. et victore conss. (369 mai. 19).

CTh.11.29.5

Imppp. valentinianus, valens et gratianus aaa. ad eupraxium praefectum urbi. quicumque iudicum vel appellatione interposita vel ipse dubitans relationem in causa vel civili vel criminali spoponderit sese missurum, exemplum opinionis edendae refutatoriorumque dandorum, sed et transmittendae relationis intra eum diem servet, qui constantiniana lege decretus est, ita ut simul omnia ad eam de qua refertur causam pertinentia acta transmittat. quod si qui iudicum posthac non ita observaverit cuncta in relationibus dirigendis, quae iam pridem statuta sunt, eo crimine tenebitur una cum officio, quod ordinem servandorum suggerere neglexerit, quo tenentur, qui sacrilegium admiserint. et cetera. proposita xvi kal. mart. gratiano a. iii et equitio conss. (374 febr. 14).

CTh.11.29.6

Impp. honorius et theodosius aa. palladio praefecto praetorio. numquam ad unius litigatoris querimoniam nostris altaribus suggestio offeratur, ita ut, si cuiusquam ambitione plectenda importunitas id forte meruerit, ei, cuius intentione contra generale factum fuerit constitutum, damnum litis iudex infligat nec umquam in redivivum statum negotium redigatur, quod hac fuerit condicione praesumptum. dat. v id. sept. ravennae d. n. theodosio a. vii et palladio conss. (416 sept. 9).

CTh.11.30.0. De appellationibus et poenis earum et consultationibus

CTh.11.30.1

Imp. constantinus a. ad claudium plotianum correctorem lucaniae et brittiorum. si in negotio civili cognitis utrisque actionibus pronuntiaveris te ad nostram scientiam relaturum, consultationis exemplum litigatoribus intra decem dies edi aput acta iubeas, ut, si cui forte relatio tua minus plena vel contraria videatur, is refutatorias preces similiter tibi aput acta offerat intra dies quinque, quam illi exemplum consultationis tuae obtuleris. iam dicationis tuae est omnia, quae aput te vel aput alios gesta fuerint in eo negotio, consultationi tuae cum refutatoriis litigantis adnectere, ita ut scias et decem dies, intra quos edi consultationem oportet, et quinque, intra quos preces refutatoriae offerendae sunt, continuos debere servari. nam quinque diebus transactis nec offerentem preces refutatorias litigatorem debebis audire, sed sine his, quoniam intra statutum tempus oblatae non sunt, gesta omnia ad nostram referre scientiam. et cetera. dat. iii kal. ian. treviris constantino a. iii et licinio iii conss. (312 vel 313 [313] dec. 30 [27]).

CTh.11.30.2 [=brev.11.8.1]

Imp. constantinus a. ad catulinum. post alia: minime fas est, ut in civili negotio libellis appellatoriis oblatis aut carceris cruciatus aut cuiuslibet iniuriae genus seu tormenta vel etiam contumelias perferat appellator; absque his criminalibus causis, in quibus, etiamsi possunt provocare, eum tamen statum debent obtinere, ut post provocationem in custodia perseverent. ea custodita moderatione, ut eorum provocationes recipiantur, qui easdem non a praeiudicio interposuisse noscuntur aut etiam ante causam examinatam et determinatam, sed universo negotio peremptoria* praescriptione finito vel per cuncta membra decurso, contra iudicem interpositae esse noscantur etc. dat. iii. non. nov. treviris. acc. xv. kal. mai. hadrumeto, volusiano et anniano coss.

interpretatio. ista lex hoc praecipit, non debere appellantem aut carceris custodia aut cuiuslibet iniuriae afflictione constringi, exceptis tamen criminalibus causis, in quibus similis accusantem et accusatum condicio* poenae custodiaeque constringit: et eorum appellationes dicit debere recipi, sed ita, ut qui appellaverit, in custodia teneatur, quo usque ad alium iudicem crimina obiecta perveniant, ut discussis ad integrum omnibus, aut de absolutione aut de damnatione accipiat sententiam finitivam

CTh.11.30.3

Idem a. ad probianum proconsulem africae. appellationum causas, quae per vos in auditorio nostro, quibus vicem nostri mandamus examinis, diiudicantur, ita audire debes, ut edicto, quod super appellationum negotiis finiendis iam generaliter constitutum est, pareas atque eadem negotia quam maturissime explices. dat. viii kal. sept. romae constantino a. iiii et licinio iiii conss. (315 aug. 25).

CTh.11.30.4

Idem a. amabiliano praefecto annonae africae. officii cura est, ut omnes omnino appellationes, quaecumque fuerint interpositae, sollemniter curet accipere nec in recipiendis libellis aliquod genus iniuriae inferendum cuipiam existimet. proposita iii kal. ian. constantino a. iiii et licinio iiii conss. (315 dec. 30).

CTh.11.30.5

Idem a. petronio probiano suo salutem. ex illo tempore, quo in civilibus causis, quae inter privatos moventur, consulturum vel relaturum te esse promiseris vel appellationis a te interpositae sollemnia completa fuerint, nihil posthac tibi quodlibet speciale ac requisitum vel quibuscumque modis favoris gratiam praeferens audiendum est, sed observandum, ut iuxta priora statuta sollemnitatis more expleto gesta ad comitatum omnia dirigantur. et cetera. dat. id. aug. arelato; proposita id. octob. theveste sabino et rufino conss. (316 aug. 13).

CTh.11.30.6

Idem a. petronio probiano suo salutem. supplicare causa pendente non licet nisi forte ei, cui opinionis exemplum negatum est vel instructionis universae subpressa transmissio. quo facto crimen iudici sacrilegii imminebit, qui hoc commisso litigatori supplicandi necessitatem imponit: cui aliter supplicanti dimidiae partis rei de qua agitur imponenda est multa, ut pro iudicis aestimatione fisco pretium inferat. eo etiam, qui terminatam rescripto vel consultatione quaestionem exquisito suffragio refricare conabitur, quoniam maius crimen admittit, in omnem litis aestimationem protinus condemnando et sub sacramenti observatione omni venia deneganda, si quis contra haec supplicare temptaverit. dat. id. aug. arelato; proposita id. octob. theveste sabino et rufino conss. (316 aug. 13).

CTh.11.30.7

Idem a. ad bassum praefectum urbi. litigatoribus copia est etiam non conscriptis libellis ilico appellare voce, cum res poposcerit iudicata. dat. viii id. iun. sirmio gallicano et basso conss. (317 iun. 6).

CTh.11.30.8pr.

Idem a. ad bassum praefectum urbi. manente lege, qua praescriptum est, intra quot dies opinionis sive relationis exemplum privatis iudex debeat exhibere et refutatorii libelli intra quot dies rursum iudicibus offerendi sint, tam in privatis quam etiam in fiscalibus causis ex eo die, quo fuerit quaestio terminata vel ex quo relationem iudex per sententiam promiserit, intra vicensimum diem quaecumque ad instructionem pertinent causae, ad comitatum nostrum properantissime volumus adferri. quod nisi factum fuerit, ab universo officio viginti transactis diebus, quos post latam sententiam placuit supputari, intra viginti alios dies qui sequuntur tantum fisco nostro praecipimus inferri, quanti per aestimationem rationalis emolumentum litis, cuius suppressa fuerat instructio, fidelissime potuerit aestimari. cui capitale supplicium imminebit, si rigorem legis quocumque modo mollire temptaverit. (319 mart. 29).

CTh.11.30.8.1

Eadem poena officio imminente, si quando appellatione vel consultatione pendente vel post decisas nostris responsionibus causas ei, quod ullo modo fuerit impetratum, damnabilem voluerit coniventiam commodare. nam decreta nostra debet ingerere iudicanti ut ipso etiam dissimulante iudice reluctari et tamquam manibus iniectis eos de iudicio producere ac rationum officio traditos statuti prioris nexibus obligare, quorum desideriis violari nostras prospexerit sanctiones. proposita iiii kal. april. romae constantino a. v et licinio c. conss. (319 mart. 29).

CTh.11.30.9

Idem a. ad severum vicarium. ne causas, quae in nostram venerint scientiam, rursus transferri ad iudicia necesse sit, instructiones necessarias plene actis inseri praecipimus. nam cogimur a proferenda sententia temperare, qui sanximus retractari rescripta nostra ad opiniones vel etiam relationes iudicum data non oportere, quoniam verendum est, ne lis incognito negotio dirimatur adempta copia conquerendi. quare perennibus inuretur iudex notis, si cuncta, quae litigatores instructionis probationisque causa recitaverint, indita actis vel subiecta non potuerint inveniri. dat. x kal. iul. aquileiae constantino a. v et licinio c. conss. (319 iun. 22).

CTh.11.30.10

Idem a. ad crispinum. si quis per absentiam nominatus ad provocationis auxilium cucurrerit, ex eo die interponendae appellationis duorum mensum tempora ei computanda sunt, ex quo contra se celebratam nominationem didicisse se monstraverit. nam praesenti, qui factam nominationem cognovit et appellare voluerit, statim debet duorum mensum spatium computari. dat. viii id. iul. constantino a. vi et constantino c. conss. (320 iul. 8).

CTh.11.30.11pr.

Idem a. ad maximum. post alia: nemo in refutationem aliquid congerat, quod adserere intentione neglexerit. quod quidem saepe fit industria, si, quod quis probari posse desperet, in praesenti disceptatione dissimulet, certus se esse revincendum, si commenticia et ficta suggesserit. propter quod cogi etiam singulos oportebit ad proferenda in iudicio universa, quae ad substantiam litigii proficere arbitrantur, atque ea ratione urgeri, ut sciant sibi ex auctoritate legis istius non licere refutatoriis tale aliquid ingerere, quod aput iudicem non ausi fuerint publicare. nam si plena, ut iubemus, adsertio per litigatorem in iudiciis exeratur et integra instructio in consulti ordinem conferatur, stabit ratum ac fidele, quod iudicia nostra rescripserint neque ullus querimoniae locus dabitur nec occasio supplicandi, ut convelli labefactarique iubeamus quae ad relationem eius sanximus, qui neque vera neque universa suggessit. omnes igitur partium allegationes acta universa scripturarumque exempla omnium dirigantur. quod cum universos iudices tum praecipue sublimitatem tuam, qui cognitionibus nostram vicem repraesentas, servare conveniet. (321 ian. 12).

CTh.11.30.11.1

Sane etiam ex eo querimoniae litigantium oriuntur, quod a vobis, qui imaginem principalis disceptationis accipitis, appellationum adminicula respuuntur. quod inhiberi necesse est. quid enim acerbius indigniusque est, quam indulta quempiam potestate ita per iactantiam insolescere, ut despiciatur utilitas provocationis, opinionis editio denegatur, refutandi copia respuatur? quasi vero appellatio ad contumeliam iudicis, non ad privilegium iurgantis inventa sit vel in hoc non aequitas iudicantis, sed litigantis debeat considerari utilitas. dat. prid. id. ian. sirmio crispo ii et constantino ii cc. conss. (321 ian. 12).

CTh.11.30.12

Idem a. ad florentinum. si nominatus magistratus aliquis refragetur, non appellatio, sed querimonia hoc dicetur, appellationis enim verbum in maioribus rebus dici oportet. similiter et si ad exactionem annonariam nominatus de iniustitia queratur, non appellatio, sed querella hoc esse videbitur. ideoque nec tempora appellationum servandasunt, sed mox super huiusmodi querimoniis disceptandum. dat. id. april. constantinopoli severo et rufino conss. (323 apr. 13).

CTh.11.30.13

Idem a. ad iulianum praefectum urbi. nonnulli iudicum inferioris gradus a sententiis suis interponi provocationis auxilium aegre ferentes id efficiunt, ut nobis eorum relationes non necessariae et insolentes ingerantur. igitur volumus, cum ab eorum sententiis fuerit provocatum, super ea quaestione, cuius appellatione interposita iudices esse desierunt, minime eos ad nostram referre clementiam, sed gravitatis tuae, cui nostram vicem commisimus, sacrum auditorium expectari. dat. iii non. aug. heracleae constantino a. vii et constantio c. iii conss. (326 [329?] aug. 3).

CTh.11.30.14

Idem a. victori rationali urbis romae. quoniam nonnulli fisci debitores, cum iussi fuerint debitam summam exsolvere, interposito provocationis auxilio vim exsecutionis eludunt nec iam opinionis exemplum nec refutatorias preces curant petere vel offerre, placuit, ut, si intra dies complendis sollemnitatibus praestitutos ad facienda haec appellatoris cura defuerit, deserta ab eo provocatio aestimetur moxque debitum exigatur. dat. prid. kal. aug. constantio et maximo conss. (327 iul. 31).

CTh.11.30.15 [=brev.11.8.2]

Idem a. ad concilium provinciae africae. non recte iudices iniuriam sibi fieri existimant, si litigator, cuius negotium sententia vulneratum est, a principali causa provocaverit, quod neque novum neque alienum a iudiciis est. ideoque post negotium principale discussum litigatori liceat litem iuris remedio sublevare; et iudices observare debebunt, ne appellatores vel in carcerem redigant, vel a militibus faciant custodiri. pp. iv. kal. aug. karthagine, constantino a. viii. et constantino caes. iv. coss.

interpretatio. lex ista hoc iubet, non debere iudices provinciarum assertiones appellantium ad suam iniuriam revocare, quia hoc nec novum nec alienum a iudiciis esse cognoscitur; et ideo hoc iubet, ut liceat litigatori vitiatam causam appellationis remedio sublevare. hoc etiam specialiter praecepit, ut appellator nec in carcerem nec in quamcumque* custodiam redigatur, sed agendum negotium suum liber observet

CTh.11.30.16

Idem a. ad universos provinciales. a proconsulibus et comitibus et his qui vice praefectorum cognoscunt, sive ex appellatione sive ex delegato sive ex ordine iudicaverint, provocari permittimus, ita ut appellanti iudex praebeat opinionis exemplum et acta cum refutatoriis partium suisque litteris ad nos dirigat. a praefectis autem praetorio, qui soli vice sacra cognoscere vere dicendi sunt, provocari non sinimus, ne iam nostra contingi veneratio videatur. quod si victus oblatam nec receptam a iudice appellationem adfirmet, praefectos adeat, ut aput eos de integro litiget tamquam appellatione suscepta. superatus enim si iniuste appellasse videbitur, lite perdita notatus abscedet, aut, si vicerit, contra eum iudicem, qui appellationem non receperat, ad nos referri necesse est, ut digno supplicio puniatur. dat. kal. aug.; proposita kal. sept. constantinopoli basso et ablavio conss. (331 aug. 1).

CTh.11.30.17

Idem a. ad universos provinciales. qui licitam provocationem omiserit, perpetuo silere debebit nec a nobis impudens petere per supplicationem auxilium. quod si fecerit, deportationis poena plectendus est. dat. kal. aug.; proposita kal. sept. basso et ablavio conss. (331 aug. 1).

CTh.11.30.18

Imp. constantius a. anicio iuliano praefecto urbi. quotiens rationalis vel officii necessitate poscente vel ex praerogativa rescripti inter privatos iudicaverit, si a sententia fuerit provocatum, non ad nostram scientiam referendum est, sed apostolis datis, quod iuxta observatam rationem postulari sufficiet, ad auditorium gravitatis tuae, cui ad vicem nostram delata iudicatio est, partes pervenire oportet, in fiscalibus causis servato priscae consuetudinis more, ut opinione edita universa ad nostram scientiam referantur. dat. xiii kal. iul. serdicae; proposita vi kal. aug. romae constantio a. ii et constante conss. (339 [329] iun. 19).

CTh.11.30.19

Idem a. ad anatolium vicarium asiae. post alia: si ad curiam nominati vel ad duumviratus aliorumque honorum infulas vel munus aliquod evocati putaverint appellandum, intra duos menses negotia perorentur. dat. vi kal. dec. constantio a. ii et constante conss. (339 nov. 26).

CTh.11.30.20 [=brev.11.8.3]

Impp. constantius et constans aa. philippo pf. p. iudices cum in civilibus causis tum etiam in criminalibus, in quibus vitae hominum salutisque quodammodo fata tractantur, appellationes admittant, nec denegent vocem in supplicium sententia destinatis. pp. v. id. iun. post cons. constantii iterum et constantis aa.

interpretatio. lex ista hoc praecipit, ut etiam in criminalibus causis, ubi vita utriusque partis in dubium devocatur, liceat appellari, nec appellandi vox denegetur ei, quem in supplicium sententia destinarit

CTh.11.30.21

Idem aa. ad proculum proconsulem africae. si qui fiscale debitum per sententiam luere iussi appellationem frustrationis commento crediderint opponendam, ne moris tergiversantibus abutantur, ilico ad eum missi, cuius vice nostra cognitio est, intra viginti dies appellationis substantiam persequantur, ut vel probata appellatione ad dicationis tuae officium revertantur vel improbata ut legis istius contemptores ad praefectorum praetorio commentarios destinentur. eadem forma servanda etiam, si pessima conscientia forte gravati appellandi causas intra diem supersederint perorare. dat. iiii kal. dec. acindyno et proculo conss. (340 nov. 28).

CTh.11.30.22

Idem aa. ad scylacium. omnes praesides moneantur, ut, si quis provocatione sibi opus esse cognoscit, iuxta morem ordinemque legum accipiant libellos et ad eos qui consuerunt audire transmittant, nec appellantes iniuriarum adflictatione deterritos a suffragio necessariae defensionis expellant. imponimus enim praesentis multae fascem, ut iudex, qui suscipere neglexerit, auri libras x et officium eius quindecim pendat. proposita cyzico vi kal. mart. placido et romulo conss. (343 febr. 24).

CTh.11.30.23

Idem aa. ad rusticum praefectum urbi. dudum meminimus sancientibus nobis esse decretum, ut iuris veteris auctoritate submota nullus clarissimus a praefecti urbis sententia provocandi usurparet licentius facultatem. sed cunctas nobis partes publicae utilitatis atque communis iuris videntibus praestare visum est, ut vetustatis auctoritas et appellandi facultas et origo repetatur, scilicet consenescente priore lege, qua istius modi potestas videbatur exclusa. proposita romae vi non. iul. amantio et albino conss. (345 iul. 2).

CTh.11.30.24

Idem aa. procopio praesidi ciliciae. cum in controversia criminali sive civili iudex ad nos existimaverit referendum, acta, ut gesta sunt, refutatorios libellos, ut oblati sunt, referri oportet: quos quidem exigi et intra praescriptum patria constitutione tempus a iurgantibus flagitari iubemus ac pronuntiamus gravissimam notam esse subiturum, quisquis haec a nobis constituta neglexerit. proposita vi id. nov. filippo et sallia conss. (348 nov. 8).

CTh.11.30.25

Idem aa. ad lollianum praefectum praetorio. quoniam iudices ordinarii provocationes aestimant respuendas, placet, ut, si quis appellationem suscipere recusaverit, quae non ab exsecutione vel a praeiudicio, sed a sententia iurgium terminante fuerit interposita, xxx pondo auri cogatur fisco inferre, triginta alias libras auri officio eius itidem soluturo. dat. viii kal. aug. messadensi; proposita capuae arbitione et lolliano conss. (355 iul. 25).

CTh.11.30.26

Idem aa. ad volusianum praefectum praetorio. post alia: lata sententia, quae pertinet ad bona vacantia et caduca et ad ea, quae indignis legibus cogentibus auferuntur, si quis putaverit provocandum, vox eius debebit admitti. dat. iii kal. aug. arbitione et lolliano conss. (355 iul. 30).

CTh.11.30.27

Idem aa. et iulianus caes. ad taurum praefectum praetorio. de sardinia sicilia campania calabria brittiis et piceno aemilia et venetia et ceteris interpositas appellationes laudabilis sublimitas tua more sollemni debebit audire competenti appellatione terminandas. nec vero ulla poterit esse confusio. praefectus enim urbis nostra responsione conventus praedictis cognitionibus temperandum sibi esse cognovit. dat. sirmio constantio a. viiii et iuliano ii c. conss. (357...).

CTh.11.30.28

Idem aa. ad taurum. patris nostri salutaribus imperatis comperimus dudum esse praeceptum, ut, si a rationali vel comite vel alio, qui curam fiscalis commodi gerit, fiscale debitum postulante fuerit provocatum, ad eos, qui vice nostra huiusmodi cognitionibus praesident, appellatores intra diem tricensimum perducantur, adversus sententias, quas iniquas esse contendunt, exsecuturi proprias actiones. quapropter viginti sufficit dies intra eandem provinciam custodiri, intra quam fuerit provocatum, sic ut ex aliis quadraginta serventur atque intra eorum terminos quod patris nostri constitutio statuit explicetur. dat. xiiii kal. iul. singiduno; proposita x kal. aug. romae eusebio et hypatio conss. (359 iun. 18).

CTh.11.30.29

Imp. iulianus a. ad hymetium vicarium urbis. omnes legitimae appellationes, quaecumque fuerint contra audientiam tuae gravitatis interpositae, indubitanter suscipiantur et post latam sententiam intra triginta dies universa, quae in eiusmodi negotio geruntur, cum refutatoriis precibus seu libellis ad nostrum comitatum mittantur, strenuo videlicet officiali ex his, qui tibi parent, ad hanc sollicitudinem electo, ita ut publicis monumentis confectis dies, quo gerulis gesta tradantur, fideliter designetur. nam x librarum auri multae constituetur officium obnoxium, si statuta nostra aliqua fuerint dissimulatione violata. dat. x kal. octob. antiochiae mamertino et nevitta conss. (362 sept. 22).

CTh.11.30.30

Idem a. ad germanianum praefectum praetorio. his, qui tempore competenti non appellant, redintegrandae audientiae facultas denegetur. omnes igitur, qui contra praefectos urbi seu proconsules seu comites orientis seu vicarios sub specie formidinis provocationem non arbitrantur interponendam, a renovanda lite pellantur. nobis enim moderantibus rem publicam nullum audebit iudex provocationis perfugium iurgantibus denegare. qui vero vim sustinuerint, contestatione publice proposita intra dies videlicet legitimos, quibus appellare licet, causas appellationis evidenti adfirmatione distinguant, ut hoc facto tamquam interposita appellatione isdem aequitatis adminicula tribuantur. emissa xv kal. ian. mamertino et nevitta conss. (362 dec. 18).

CTh.11.30.31

Idem a. ad mamertinum praefectum praetorio. quoniam plerique rectores relationes, quas ad nostrae tranquillitatis comitatum destinare promittunt, supprimere vel differre conantur, prava id conscientia faciente conveniri eos ab illustri auctoritate tua praecipimus, ut intellegant sibi quidem denarum librarum auri, officiis vero suis vicenarum imminere condemnationem, si promissa relatio intra triginta dies non fuerit sine aliqua ambiguitate transmissa his officialibus, per quos convenit gesta transmitti. et quia plerumque contingit, ut gerulis litterarum aliquo casu existente tarditatis obstaculum videatur adferri, ne id quod necessitate contingit ad culpam rectorum redundare videatur, actis aput se confectis diem designare debebunt, in quo transmissio gestorum committitur his, qui huic necessitati deputantur. dat. x kal. april. iuliano a. iiii et sallustio conss. (363 mart. 23).

CTh.11.30.32

Impp. valentinianus et valens aa. salutem dicunt ordini civitatis karthaginis. iudicibus non solum appellationis suscipiendae necessitas videtur imposita, verum etiam triginta dierum spatia definita sunt, intra quae negotii merita ad mansuetudinis nostrae scrinia conveniat destinari, iudice et officio, si statuta fuerint aliqua parte mutilata, multae subiacente. dat. prid. non. feb. mediolano divo ioviano et varroniano conss. (364 febr. [?] 4).

CTh.11.30.33

Idem aa. ad dracontium vicarium africae. quicumque iudicum adversus auctoritatem legis appellationes neglexerit, protinus officio tuo, non rationalis, imminente ad viginti librarum auri exsolvendam multam cogetur, ita ut et officium eius triginta simili celeritate dissolvat. dat. prid. id. sept. aquileiae accepta xviii kal. dec. tacapis divo ioviano et varroniano conss. (364 sept. 12).

CTh.11.30.34pr.

Idem aa. ad symmachum praefectum urbi. si quisquam ausus consultationem sequi circa limina palatii nostri comitatumve fuerit deprehensus, aestimatae litis, quae in controversiam venit, medietatem in auro atque argento fisci viribus inferre cogetur. (364 nov. 9).

CTh.11.30.34.1

Iudex sane, qui relationem promiserit, nisi intra triginta dies dictae sententiae promissam relationem ad nostra scrinia destinarit, ipse quidem notabili sententia reprehensus x librarum auri condemnatione quatietur, officium vero eius, quod non suggesserit nec commonuerit de relationis necessitate, viginti libris auri fiat obnoxium. dat. v id. nov. mediolano divo ioviano et varroniano conss. (364 nov. 9).

CTh.11.30.35

Idem aa. ad modestum praefectum praetorio. cuncta instrumenta, quae iudiciis offeruntur, subiecta consultationi gesta continere debebunt. sed et acta, quae sint ante habita, et monumenta transmittenda sunt, hisque adnectenda sunt testimonia vel confessiones partium et omnia huiusmodi, in quibus causa consistit et habere exitum videatur. dat. kal. aug. marcianopoli valentiniano et valente aa. conss. (370 aug. 1).

CTh.11.30.36

Imppp. valentinianus, valens et gratianus aaa. ad eupraxium praefectum urbi. post alia: cum ex causis iustis aliquid, quo minus iudicari statim possit, repperietur incertum ac debitor adversus discussoris statum coeperit reluctari, dilatione postposita super eo, quod exorietur ambiguum, vel sublimitas tua vel vicarius, prout quisque vestrum proximus erit, adhibeat examen. proposita xvi kal. mart. gratiano a. iii et equitio conss. (374 febr. 14).

CTh.11.30.37

Imppp. valens, gratianus et valentinianus aaa. ad thalassium proconsulem africae. post alia: cum de praescriptionibus peremptoriis agitatur examen, si eas praescriptiones iudex ut leves putaverit improbandas et ab eius interlocutione fuerit appellatum, provocatio huiusmodi recipiatur, cum peremptoria praescriptio et definitiva sententia eadem vi vel consumptae causae vel non admittendae videantur operari. sed quoniam evenire potest, ut multae praescriptiones peremptoriae litigatoribus competant, ne in uno eodemque negotio per singulas necesse sit saepius provocari et totiens ad nos referri, omnes peremptorias praescriptiones, quas sibi quisque putaverit competere, cogatur expromere et ita demum, si a cognitore fuerint repudiatae, utatur, si placet, provocationis auxilio. et cetera. dat. iii kal. sept. treviris valente vi et valentiniano ii aa. conss. (378 aug. 30).

CTh.11.30.38

Imppp. gratianus, valentinianus et theodosius aaa. ad syagrium praefectum praetorio. post alia: in condemnationibus appellationes iubemus admitti. dat. xiiii kal. iul. gratiano v et theodosio i aa. conss. (380 iun. 18).

CTh.11.30.39

Idem aaa. ad macedonium comitem sacrarum largitionum. quotiens fiscalibus causis controversiae alicuius dubitatione pendentibus summam sententiae comes aerarii nostri imposuisse detegitur et cogendis obvium debitis provocationis suffugium fuerit obiectum, proprium super eo esse tribuendum praestantia tua discat examen, modo ut frequentibus statuta praeceptis eos praeter debiti modum poena comitetur, quos executionem veteris iudicati superfluae appellationis obiectu suspendisse claruerit. proposita karthagine xv kal. april. syagrio et eucherio conss. (381 mart. 18).

CTh.11.30.40

Idem aaa. ad basilium comitem sacrarum largitionum. omnem, quae de libello scripta recitatur, dici volumus atque esse sententiam atque ab eo provocationis auxilia quisquis efflagitat, ad auditorii sacri venire iudicium neque illic ex praeiudicio poenam vereri, sed appellationis iniustae iustaeve discrimen competenti subire luctamine. praeterea quidquid in cunctis cognitionibus atque conflictibus libelli absque documento et recitatione decernitur, praeiudicii loco iuste ac probabiliter putatur. atque ab eo si vel vocem quisquam provocationis obiecerit vel libellum, disputatione non indiget, quin certa atque manifesta praeiudicii condicione teneatur eumque confestim ab eodem cognitore exigi conveniet ac teneri. dat. prid. kal. sept. merobaude ii et saturnino conss. (383 aug. 31).

CTh.11.30.41

Idem aaa. ad ammianum comitem rerum privatarum. rationales privatae rei causis vel sacri aerarii praesidentes examen praesente fisci advocatione suscipiant. ac si eorum sententia forte fuerit appellatione suspensa, ad eos iudices disceptationis fata transeant, ad quos privatorum hominum causae referri ex provocatione consuerunt, ita ut, si ab illis quoque fuerit provocatum, mansuetudinis nostrae expectetur arbitrium, vel sinceritate tua vel sacrarum remunerationum comite, prout ad quem negotium pertinebit, quid super his, de quibus referatur, gestum sit, scriptis currentibus instruente, ut, sive athuc superest nostra cognitio, mansuetudinem nostram facta suggestione commoneat, sive adquiescentibus partibus terminum negotio datum esse constiterit, plenam rei inquisitionem notitiamque eius accipiat. sane tempora tantum volumus privatis fiscalibusque causis non esse communia, ut antiquo iure fiscalia negotia intra duos menses in eadem provincia, intra quattuor in contigua, intra sex in transmarina dicantur. proposita xvii kal. ian. merobaude ii et saturnino conss. (383 dec. 16).

CTh.11.30.42

Idem aaa. ad agrestium proconsulem palaestinae. probamus verecundiam iudicantis, si superfluam quoque recipiat provocationem, ne interim reliquum negotium audiret. dat. prid. kal. april. constantinopoli richomere et clearcho conss. (384 mart. 31).

CTh.11.30.43

Idem aaa. merobaudi duci aegypti. provocantibus multas nisi ex nostris decretis non patimur imponi. dat. xiii kal. nov. constantinopoli richomere et clearcho conss. (384 oct. 20).

CTh.11.30.44

Idem aaa. ad symmachum praefectum urbi. post alia: obiecta appellatione, etiamsi a praeiudicio interposita dicatur, vel ad nos vel ad cognitorem sacri auditorii sollemniter causa mittatur, cum, si ea provocatio adversum leges fuerit emissa, facile post iudicium sacri examinis ab huiusmodi litigatoribus multa possit exculpi. dat. iii kal. decemb. mediolano richomere et clearcho conss. (384 nov. 29).

CTh.11.30.45pr.

Idem aaa. et arcadius a. ad pelagium comitem rerum privatarum. post alia: cum post sententiam discussoris vel rationalis fuerit provocatum, ad sinceritatem tuam negotium transferatur, ut, si mediocritas negotii aut longinquitas regionis ad iudicium tuum litigatores venire non patitur, iudici provinciae, quem ipse probaveris, negotium deleges. (385 febr. 15).

CTh.11.30.45.1

Appellationes vero transmarinae in iudicio tuo intra anni agantur spatium; de contiguis et non longe positis provinciis appellationes intra constituta iure tempora peragantur. dat. xv kal. mart. mediolano arcadio a. i et bautone conss. (385 febr. 15).

CTh.11.30.46

Idem aaa. ad florentium comitem sacrarum largitionum. post alia: cum super fiscali debito emerserit provocatio, in eadem provincia vicensimo die negotii merita noscenda sunt, ita ut secundum generalis arbitrium sanctionis xl dierum ex contigua provincia spatia sufficiant. dat. vii kal. dec. aquileiae arcadio a. i et bautone conss. (385 nov. 25).

CTh.11.30.47

Imppp. valentinianus, theodosius et arcadius aaa. cynegio praefecto praetorio. cum antea sit constitutum, ut consultationem iudicis ad comitatum sacrum missam litigatorum nemo sequeretur, hoc integra deliberatione sancimus, ut, si ad consultationem anno decurso non fuerit aliqua ratione responsum, litigatores quorum interest collectis omnibus gestis et ipsius relationis exemplis veniendi ad comitatum nostrae serenitatis habeant liberam facultatem. dat. vii kal. feb. constantinopoli honorio nb. p. et evodio conss. (386 ian. 26).

CTh.11.30.48

Idem aaa. ad eusignium praefectum praetorio. revocare appellationem suam unicuique minime permittatur, sed sacro auditorio totius negotii examinatio reservetur. quod si hac lege neglecta gratiam siverit appellationis, et ipse quinquaginta libras argenti et eius officium parem summam condemnationis inferre cogetur. dat. xiiii kal. iun. mediolano valentiniano a. iii et eutropio conss. (387 mai. 19).

CTh.11.30.49

Idem aaa. albino praefecto urbis romae. in negotiis, quae in urbe venerabili nostri patrimonii nomine ventilantur, id iuris tulimus, ut, si ducentarum librarum argenti negotium quod agitur summam aestimationemque transcendit, a rationalis sententia provocantes comitivae privatarum sequantur examen. si vero intra praestitutum modum litigii summa se cohibet, sublimi eminentiae tuae sacrum nostri numinis iudicium delegamus. dat. viii kal. aug. romae timasio et promoto conss. (389 iul. 25).

CTh.11.30.50

Idem aaa. victorio proconsuli asiae. eum, qui procuratorem suum cum appellatione ante sententiam adversum se latam ad iudicium dirigit, iudiciaria auctoritate iubemus praeiudicialis multae excipere ac sustinere iacturam. emissa prid. non. april. constantinopoli theodosio a. iii et abundantio conss. (393 apr. 4).

CTh.11.30.51

Idem aaa. apodemio praefecto praetorio illyrici et italiae ii. quibus causis non est provocatio respuenda, iubemus respuentem iudicem xxx librarum auri, obsecundantem officii gratiam quinquaginta esse feriendam. dat. v id. iun. constantinopoli theodosio a. iii et abundantio conss. (393 iun. 9).

CTh.11.30.52

Idem aaa. have, rufine karissime nobis. nihil sub sacri iudicii examine de ea parte negotii debet definiri, de qua nihil in exordio aput praesidem aut institutum fuerit ac probatum. dat. iiii kal. octob. constantinopoli theodosio a. iii et abundantio conss. (393 sept. 28).

CTh.11.30.53

Impp. arcadius et honorius aa. ennoio proconsuli africae. post alia: libellis vel edictis factae citra consilium publicum non valeant nominationes; de quibus nec appellari necesse est, si sollemnitas deest. dat. xvii kal. iun. mediolano olybrio et probino conss. (395 mai. 16).

CTh.11.30.54

Idem aa. andromacho praefecto urbi. si ante annum relationi missae responsum sacra scrinia non dedissent, causae litigatoris commonitio non nocebit. post quod, etiamsi aliqua constitutio manasse monstratur, quae venientes rei, de qua agitur, ut dudum, amissione constringit, in quo ei, quae tempus designat, nihil intellegitur detraxisse, quia nullam indulti anni nec adtigit nec sustulit mentionem. atque ideo positum vigorem legum scitaque servabunt, si intra annum missae relationis impatientia litigatoris eruperit, vel condicio praestituta vel poena. transacto autem anni curriculo nemo venire prohibebitur, quominus a clementia nostra repetat oraculum, quod lex praescripta anni definitione distulit, non ademit. dat. viii kal. iun. mediolano olybrio et probino conss. (395 mai. 25).

CTh.11.30.55

Idem aa. messalae praefecto praetorio. in negotiis civilibus cum nihil sit, quod ante appellationem iudicio principali indigeat, agnitis partium allegationibus atque pensatis terminari oportet controversias, non dumtaxat consultatione differri. neque enim fas est, quod aput infirmum disceptatorem definiendi constantiam provocantis trepidatio retardavit, litigatorem sub consultationis ambiguo iugi expectatione pendere. dat. xiiii kal. iun. arcadio iiii et honorio iii aa. conss. (396 [399/400] mai. 19).

CTh.11.30.56

Idem aa. nebridio proconsuli asiae. repugnantes priscorum sententias nostra serenitas temperavit. si quis itaque libellos appellatorios ingesserit, sciat intra triduum post oblationem legitimam, non ex quo est sententia deprompta, appellatorem habere licentiam arbitrium commutandi, ne iustae paenitudinis humanitas amputetur. dat. xi kal. aug. constantinopoli arcadio iiii et honorio iii aa. conss. (396 iul. 22).

CTh.11.30.57

Idem aa. ad eutychianum praefectum praetorio. post alia: addictos supplicio et pro criminum immanitate damnatos nulli clericorum vel monachorum, eorum etiam quos synoditas vocant, per vim atque usurpationem vindicare liceat ac tenere. quibus in causa criminali humanitatis consideratione, si tempora suffragantur, interponendae provocationis copiam non negamus, ut ibi diligentius examinetur, ubi contra hominis salutem vel errore vel gratia cognitoris obpressa putatur esse iustitia; ea condicione, ut sive pro consule, comes orientis, augustalis, vicarii fuerint cognitores, non tam ad clementiam nostram quam ad amplissimas potestates sciant esse referendum. eorum enim de his plenum volumus esse iudicium, qui, si ita res est et crimen exegerit, rectius possint punire damnatos. et cetera. dat. vi kal. aug. mnizo honorio a. iiii et eutychiano conss. (398 iul. 27).

CTh.11.30.58pr.

Idem aa. theodoro praefecto praetorio. multorum querellis excitati hac lege sancimus, ut, si quis provocatione interposita suspecti iudicis velit vitare sententiam, in hac voce liberam habeat potestatem nec timeat contumeliam iudiciorum, cum et ab ipsa iniuria possit facile provocare, maxime cum a solis tantum praefectis non sine dispendio causae provocare permissum sit. sciant igitur cuncti sibi ab iniuriis et suspectis iudicibus et a capitali supplicio ac fortunarum dispendio provocationem esse concessam. (399 iun. 7).

CTh.11.30.58.1

Quod si quis posthac iudicum appellatione emissa libellos quoque oblatos audire noluerit, viginti librarum auri dispendio multabitur; officium vero eius nisi huic pertinaciter restiterit atque actis ita contradixerit et, quid iure sit constitutum, ostenderit, viginti quinque libras auri largitionibus nostris inferre cogetur. dat. vii id. iun. mediolano theodoro v. c. cons. (399 iun. 7).

CTh.11.30.59

Idem aa. simplicio praesidi tripolitanae. nullum ita credimus contumacem, ut appellationem interpositam legibus audeat recusare. quam ob rem teneat apparitio veterem disciplinam nec a suggestionibus necessariis metu eius, cui ad tempus paret, retrahatur. xxx autem libras auri aerario nostro cogetur inferre, qui obiectam provocationem iure neglexerit et eadem officium, si coniventiam praestet iudici, poena retinebitur. dat. prid. id. iun. veronae theodoro v. c. cons. (399 iun. 12).

CTh.11.30.60

Idem aa. pompeiano proconsuli africae. cum de appellationibus recipiendis necne promulgatarum legum sufficiat auctoritas atque his, qui rite ab iniusta sententia provocantes audire noluissent, sit poena proposita, poena etiam officio constituta, sive in criminalibus sive in civilibus causis fuerit iudicatum, attamen nostro etiam motu decernimus, ut veterum statuta serventur, quae nullum patimur umquam impune violare. dat. kal. iun. mediolano stilichone et aureliano conss. (400 iun. 1).

CTh.11.30.61

Idem aa. flaviano praefecto urbi. quotiens vir spectabilis vicarius venerandae urbis negotium aliquod praemissa inscriptione cognoscit atque ab eius sententia fuerit provocatum, ad nostram clementiam referri decernimus. sin vero huiusmodi examen arripuerit, in quo sine ullo legis vinculo non tam crimen obicitur quam cuiusdam criminis conflatur invidia lataque sententia appellatione suspenditur, illustrem sedem tuam editis ex more apostolis sacra vice audientiam praebere sancimus. dat. xiiii kal. septemb. brixiae stilichone et aureliano conss. (400 aug. 19).

CTh.11.30.62

Idem aa. et theodosius a. ad diotimum proconsulem africae. in negotiis, quae ex appellatione descendunt, veterem consuetudinem volumus custodiri, illud addentes, ut, si quando a gentilibus vel a praefectis eorum fuisset interposita provocatio, sacrum sollemniter, hoc est proconsularis cognitionis praestoletur examen. dat. xi kal. aug. ravennae stilichone ii et anthemio conss. (405 iul. 22).

CTh.11.30.63

Idem aaa. anthemio praefecto praetorio. in his causis, quae praesentes arbitros ex sententia vestrae magnitudinis sortiuntur, vel in ea civitate seu provincia qua degetis sive in proximis atque contiguis provinciis, lex antiqua propriam obtineat firmitatem, ut duobus exactis mensibus dies sit ultimus temporalis et intra triginta dies reparatio postuletur. ubi vero in longioribus ac remotis provinciis eadem litis ac dilationis ratio pensabitur, ad eorum instar, quos a rectoribus provinciarum eorumque sententiis convenit appellare, sex mensum temporalis dies, trium reparationis nomine dilatio praebeatur. dat. xiiii kal. ian. constantinopoli stilichone ii et anthemio conss. (405 dec. 19).

CTh.11.30.64pr.

Impp. honorius et theodosius aa. iuliano proconsuli africae. non ignoramus post interpositam provocationem in causis fiscalibus antiquitus constitutum, ut viginti dies constituti intra provinciam videantur et ut sacri auditorii cognitores divinae domus negotia terminarent, ex contigua vero provincia intra quadraginta dies negotia universa discingerent. verum serenitas nostra certum moderamen invenit. praecipimus itaque, ut praeter hos viginti dies, quos lex augusta constituit, viginti alios iungeremus. quorum quidem omnium haec erit forma servanda, ut, quocumque die ex adiectis viginti diebus fuerit negotium peroratum, sacri auditorii habere reverentiam iudicetur sitque ultimus, etiamsi non quadragensimus comprobatur. quae idcirco ita custodienda sancimus, ne, si unius tantum observabitur dies, aut aegritudo iudicantis aut litigantis fuerit occupatio, recte praefinitum tempus interdum distulisse videatur. ideoque hanc reverentiam cunctis his, qui superadditi sunt, diebus statuendam esse censuimus, ut nihil postea excusationis occurrat. lapsos enim post hoc tempus reparationem praecipimus non habere: ac ne medio tempore officii colludium differat litigantem, viginti librarum auri multam praecipimus imminere, ut, si eorum culpa atque colludio, quos suggerendi cura constringit, negotium claruerit fuisse dilatum, praescriptae multae teneantur obnoxii. si in tot diebus utilitatibus suis non adfuerit litigator, cui adversus fiscum nostrum iurgium manet, emenso iam tempore nullius reparationis beneficium speret, solam fisco exsecutionem superesse iam noverit. (412 oct. 15).

CTh.11.30.64.1

In contiguis quoque provinciis, in quibus quadraginta dies dedit antiquitas, sub simili condicione alios xxx dies iungi praecipimus, ut adiecti temporis spatium sub ea definitione custodiant et omni adiecto tempori sit dies ultimus, quocumque potuerit definiri. emenso tamen tempore litiganti reparationem penitus iussimus inhiberi. officium sane ad eandem multam praecipimus retineri, si eius dissimulatione actum esse constiterit, quominus negotium peroretur. dat. id. octob. ravennae honorio viiii et theodosio v aa. conss. (412 oct. 15).

CTh.11.30.65

Idem aa. symmacho proconsuli africae. praescriptiones fori in principio a litigatoribus obponendas esse legum decrevit auctoritas nec ab interlocutionibus appellandum esse duxerunt. quod si quis id fecerit, praeiudicialem multam subire cogetur, quae priscis sanctionibus continetur. hac igitur lege sancimus, ut appellatio litigantium intra tempus iure praescriptum suscepta nectatur annalibus et promissa relatio intra xxx dies legibus definitos ad sacra scrinia destinetur. quam legem nisi in omnibus causis universorum iudicum et officiorum executio devota servaverit, statutum priscis sanctionibus multae modum ab his mox iubemus exculpi. dat. v kal. septemb. ravennae honorio x et theodosio vi aa. conss. (415 aug. 28).

CTh.11.30.66

Idem aa. monaxio praefecto praetorio. omnes, quorum in causis sententiae iudicum appellatione suspensae sunt, vel medio tempore transegisse demonstrent vel, si non transegerunt, consultationes eorum quantocius nostris auribus intimare cogantur, ut responsa legibus competentia mereantur, illa videlicet lege servanda, qua cavetur neminem litigantium post interpositam appellationem intra annum ad sacrum comitatum nostrae maiestatis accedere. dat. viii id. mart. constantinopoli monaxio et plinta conss. (419 mart. 8).

CTh.11.30.67

Idem aa. asclepiodoto praefecto praetorio. post alia: si appellationem oblatam, in qua vel tuae amplitudinis vel urbanae praefecturae sacrum auditorium postulatur, iudex non susceperit vel suscepta appellatione apostolorum copiam denegaverit, ad deponendam super hac iniquitate querimoniam nec non etiam conveniendum adversarium ex prolata sententia iuxta antiquum ius anni metas habeat litigator. vel si huiusmodi appellatio suscepta non fuerit, in qua inferiorum iudicum sacra desideratur auditio, ad haec eadem facienda sex menses habeat litigator. si vero arbiter appellationem suscipere aut relationem dare contempserit, quattuor mensum tempora observentur. ut his quae statuimus actitatis pareat appellator temporibus, quae de appellationibus definita noscuntur. et cetera. dat. iii kal. april. constantinopoli asclepiodoto et mariniano conss. (423 mart. 30).

CTh.11.30.68

Impp. theodosius et valentinianus aa. celeri suo salutem. in privatae rei causis praeter pensionum et competitionum negotia de ceteris titulis ex appellatione a rationalis iudicio proconsulem oportet cognoscere. salva enim nostrae reverentia maiestatis ius nobis cum privatis non dedignamur esse commune. dat. v kal. mart. ravennae post cons. felicis et tauri vv. cc. (429 febr. 25).

CTh.11.31.0. De reparationibus appellationum

CTh.11.31.1

Impp. valentinianus et valens aa. ad mamertinum praefectum praetorio. si possessor in iudicio superatus provocationis auxilio se defenderit et temporibus fuerit evolutus, intra mensem tertium redintegrari sibi exhaustum postulet spatium. id ni fecerit, dictam in eum volumus manere sententiam. similis etiam ratio ex iudicio magistratuum esse debebit, tamen ut in eo artiores metae temporum serventur; intra xxx enim illic dies reparationem poterit adipisci, ne sententiam impositam rerum effectus competens subsequatur. dat. id. octob. veronae divo ioviano et varroniano conss. (364 oct. 15).

CTh.11.31.2

Idem aa. ad symmachum praefectum urbi. etsi post iteratum temporis lapsum nulli reparationem praescriptio legis indulgeat, tamen his iuris beneficia subveniunt, quorum non studio aut culpa, sed aegritudo iudicis vel rei publicae interveniens negotium, ne persequerentur, obstiterit. dat. xiiii kal. mart. mediolano valentiniano et valente aa. conss. (365 febr. 16).

CTh.11.31.3

Idem aa. ad olybrium praefectum urbi. si in sacrae cognitionis examine audientiam necessitas publica vel aegritudo iudicis abnegaverit, intra tres menses reparatio postuletur atque in adversariorum notitiam impetrata reparatio perferatur. ac ni utrumque intra hos tres menses fuerit effectum, sententia, quam appellator provocatione suspenderat, convalescat. quotiens vero a magistratibus pedaneisque iudicibus dicta sententia appellatione suspenditur, super qua disceptatio non auditorii sacri, sed ordinariorum iudicum cognitione tractanda est cuique duo ad peragendum menses causarum urgentium conclusione tribuuntur, si forte sine appellatoris studio praedictus lapsus inciderit, intra xxx dies reparatio postuletur. dat. xiiii kal. april. treviris valentiniano et valente aa. conss. (368? 370? mart. 19).

CTh.11.31.4

Idem aa. et gratianus a. ad olybrium praefectum urbi. si qui ex iustis causis, quae divorum parentum nostrorum constitutionibus comprehensae sunt, per occupationem eius iudicis, qui est in sacro auditorio cogniturus, ad reparationis possunt beneficium pertinere, trium mensum tempus in utroque custodiant, scilicet ut priusquam id possit elabi, et redintegrent evoluta curricula et redintegrata denuntient aut certe cavillatione submota his quae statuta sunt obsecundent. dat. xiii kal. iul. altaripa valentiniano n. p. et victore conss. (369 iun. 19).

CTh.11.31.5

Idem aaa. ad olybrium praefectum urbi. in speculis agat is, adversus quem in sacro auditorio causa reparanda est et, an intra tres menses reparationem adversarius mereatur, exploret ac statutum scitis triumphalibus diem sedulus in iudiciis litigator observet. incumbat quoque appellatori cura, ut, si adversarius ex loco, quem habitare consuevit, forte subterfugiat, pergat cum officio publico hominique eius, quem in loco reppererit, conventionem tradat ad adversarium perferendam idque ita gestum esse curator aut magistratus rescripti publici vel actorum testificatione confirmet. quibus impletis si is, cuius conventio curata est, iudicium obire neglexerit, ferat hanc desidiae contumaciaeque multam, ut urguens negotium ipso quoque absente dicatur diligentique iudicantis examine sententia proferatur ea, quam aequitatis ratio et iuris praescripta dictaverint. dat. xviii kal. sept. altino valentiniano et valente iiii aa. conss. (373 [370] aug. 15).

CTh.11.31.6 [=brev.11.9.1]

Impp. valent. et valens aa. ad modestum pf. p. reparatis intra mensem tertium ex priore lege temporibus, in notitiam hoc ipsum adversarii per denuntiationem ex more celebrandam iubemus sine dilatione perferri; scilicet ut, interiectorum spatiorum dinumeratione servata, ad debitum partes iudicium revertantur. quod si is, cui reparata sunt tempora, ultra dinumerationem crediderit differendum, lata adversus eum sententia roboretur, atque in exsecutionem semel iudicata ducantur. dat. vi. id. dec. constantinopoli, valentin. et valente iv. aa. coss.

interpretatio. lex ista hoc praecipit, ut, si quis videtur iniuste in causa sua victus, reparatis ante tertium mensem temporibus, quae appellationi videntur fuisse concessa, statim hoc ipsum in adversarii sui notitiam deducere procuret, et intra tempora, quae appellationi constituta sunt, de hoc ipso negotio is, qui appellavit, ut sibi credit competere, agere non moretur. quod si facere neglexerit, sententia, quae adversus eum lata fuerat, perseveret, et data exsecutione in omnibus compleatur

CTh.11.31.7

Imppp. gratianus, valentinianus et theodosius aaa. ad siburium praefectum praetorio. si possessor primis dicendi negotii temporibus excussus intra tres menses instaurationem non potuerit postulare ob id, quod copiam ad iudicia veniendi hostis obsaepserat, iuris beneficium eiusmodi occasione non perdat sitque depulsis perduellionibus haec prima litium rerumque reparatio, ut, cum primum adiri potuerit sacrae cognitionis auditor, cognitis causis praesidium amissae instaurationis indulgeat. dat. iii non. dec. treviris auxonio et olybrio conss. (379 dec. 3).

CTh.11.31.8

Imppp. theodosius, arcadius et honorius aaa. victorio proconsuli asiae. quotienscumque in his negotiis, quibus aliqui ad curiam devocantur, primus temporum lapsus inciderit, intra xxx dies sub ea definitione, qua cautum est, reparatio postuletur et petitae reparationis tenor in adversae partis notitiam perferatur. dat. viii kal. mai. constantinopoli arcadio a. ii et rufino conss. (392 apr. 24).

CTh.11.31.9

Impp. honorius et theodosius aa. asclepiodoto praefecto praetorio. post alia: appellatoribus, qui praefinito tempore iudicia non observaverint, haec tempora custodienda sunt, ut, si contra arbitri definitionem fuerit appellatum lapsumque provocator incurrerit, tempora priscis statuta legibus observentur:

secunda reparatione, quam provocanti ab arbitro serenitas nostra concedit, in ea quidem provincia in qua iurgium ventilatur et in contigua tres menses, in ulteriore autem quattuor menses habitura; si vero sententiam iudicis provocatio obiecta suspenderit, cum sacri cognitoris tribunal appellatur, post lapsum ad primam reparationem petendam tribus mensibus statuendis, si in eadem vel proxima provincia eius adversarius commoretur, quattuor vero, si in ulteriore consistet. in secunda vero reparatione, quam a iudice appellantibus serenitas nostra praestare consuevit, illi quidem, qui post lapsum intra tres quattuorve menses, sicut statuimus, non poposcerit reparationem ab eo, cui sacri auditorii cognitio debetur, transacto dierum spatio designato tres alios menses indulsimus ad impetrandum allegandumque rescriptum et ad conveniendos eos, quos pulsat intentio; ita tamen, ut tam in prima quam in secunda reparatione, sicut iam diximus, causae idoneae comprobentur, hoc est aegritudo vel occupatio actuum publicorum aliaque necessitas, quam iudex aut litigator diferre non potuit, vel si negotii patronus cognitis adsertionibus temporali die adesse non potuit. clarum autem fieri volumus post secundam reparationem aliam ulterius nullo modo posse deposci et in omnibus reparationum generibus formam custodiri, quam super his dedimus, qui se, ne conveniantur, ex reparatione subtraxerint. dat. iii kal. april. constantinopoli asclepiodoto et mariniano conss. (423 mart. 30).

CTh.11.32.0. De secundo lapsu

CTh.11.32.1

Impp. valentinianus et valens aa. ad volusianum praefectum urbi. si culpa iudicis gemino lapsu causa fuerit evoluta, iuxta divi constantini praeceptum ipse ad redhibitionem eius aestimationis, quanto res valet, de qua iurgium est, debet adtineri. dat. iii non. septemb. mediolano valentiniano et valente aa. conss. (365 sept. [?] 3).

CTh.11.33.0. De dilationibus ex consensu

CTh.11.33.1

Impp. arcadius et honorius aa. africano praefecto urbi. cognitiones omnes quotiens consensu partium differuntur, ultra duos menses differendi non habeant potestatem, ne paulatim libera dilatione concessa aetates plerumque iurgantium veternosis litibus consenescant. dat. iii kal. mai. constantinopoli arcadio iiii et honorio iii aa. conss. (396 apr. 29).

CTh.11.34.0. De his, qui per metum iudicis non appellaverunt

CTh.11.34.1

Imp. constantinus a. ad universos provinciales. in insulam deportandi sunt cum amissione omnium facultatum, quae fisco addicendae sunt, ii, qui provocatione omissa litem reparare temptaverint contra comitum ceterorumque sententias qui vice nostra iudicaverint, firmantes se per metum appellationis omisisse auxilium. in qua re vel nostrum vel praefectorum praetorio ex nostra erit iussione iudicium. dat. kal. aug. proposita kal. sept. basso et ablavio conss. (331 aug. 1).

CTh.11.34.2

Imp. constantius a. ad volusianum praefectum praetorio. si a praefecto urbi vel a proconsule fuerit dicta sententia eandemque provocatio minime fuerit subsecuta, praesidium postulare fas erit imminente iudicum metu territos se esse firmantibus. nam quicumque necessitatis huiuscemodi laqueis beneficio meo eximi postulaverit, aut per me cognoscam aut excellentiae tuae impertiam notionem, hac videlicet condicione, qua vicariorum sententiae, quas appellatio non suspenderit, ex divi patris mei sanctione retractantur. cum vero consularium ac praesidum aliorumve sententiae in querimoniam deducentur, prioris legis statuta sectanda sunt, quae similiter certo terrore proposito auxilium postulantibus detulit. dat. kal. ian. mediolano arbitione et lolliano conss. (355 ian. 1).

CTh.11.35.0. [=brev.11.10.0.] Si pendente appellatione mors intervenerit.

CTh.11.35.1 [=brev.11.10.1]

Imp. constantinus a. ad bassum pf. p. post alia: consulentibus iudicibus, si debeant, quum de appellatione cognoscunt, litigatoris heredibus, qui ante lapsum negotium in lite defecit, nova tempora prorogare, an eos cogere, intra dies reliquos, etiam incognitum negotium perorare, placuit, quum de appellationibus iudicatur, altero ex litigatoribus in lite defuncto menses quattuor* innovare, et nova tempora prorogari, ne ignorantes negotia vel etiam super adeunda hereditate dubitantes prius, quam aliquod commodum sentiant, damnis affici compellantur. dat. xiii. kal. iun. sirmio, crispo ii. et constantino ii. caess. coss.

interpretatio. si pendente adhuc appellatione mors intervenerit litigatoris appellantis, heredibus eius, qui appellavit, quattuor* menses ei, cuius auctor mortuus est, ad tractandum negotium debere praestari, nec eum debere ad dicendam causam praecipitari, ne per ignorantiam litis, quam non ad integrum tractavit, damnum videatur incurrere

CTh.11.36.0. Quorum appellationes non recipiantur

CTh.11.36.1 [=brev.11.11.1]

Imp. constantinus a. ad catulinum. moratorias dilationes frustratoriasque non tam appellationes quam ludificationes admitti non convenit. nam sicut bene appellantibus negari auxilium non oportet, ita his, contra quos merito iudicatum est, inaniter provocantibus differri bene gesta non decet. unde quum homicidam vel adulterum vel maleficum vel veneficum, quae atrocissima crimina sunt, confessio propria vel dilucida et probatissima veritatis quaestio probationibus atque argumentis detexerit, provocationes suscipi non oportet, quas constat non refutandi spem habere, quae gesta sunt, sed ea potius differre tentare. qui de variis litibus causisque dissentiunt, nec temere, nec ab articulis praeiudiciisque, nec ab his, quae iuste iudicata sunt, provocare debebunt. quod si reus in homicidii vel maleficii vel adulterii vel veneficii crimine partem pro defensione sui ex testibus quaestioneque proposita possit arripere, parte vero obrui accusarique videatur, tunc super interposita appellatione ab eodem, qui sibi magis, quae pro se faciant, testimonia prodesse debere affirmat, quam ea, quae adversus ipsum egerint, nocere, deliberationi nostrae plenum arbitrium relinquatur. dat. iii. non. nov. treviris. acc. xv. kal. mai. hadrumeti, volusiano et anniano coss.

interpretatio. in civilibus causis vel levioribus criminibus, quae legibus non tenentur inserta, appellationi constituta legibus dilatio praestanda est, et suspendenda est per appellationem sententia iudicantis. at vero homicidis, adulteris et reliquis, quos lex ista comprehendit, si convicti confessique fuerint et appellare voluerint, dilatio denegetur, sed statim in manifestis criminibus convicti iudicis est sententia proferenda, aut certe de magnis criminibus et maioribus personis ad principis est notitiam deferendum

CTh.11.36.2

Idem a. ad volusianum praefectum urbi. qui a praeiudicio appellaverit vel ab executoribus rerum antea statutarum atque alterius auditorii praepropere iudicia poposcerit, xxx follium poena multetur, ita ut omnem causam ipse sine dilatione discingas, quippe cum et causam tuam videaris esse facturus, si per coniventiam huiusmodi appellationem admiseris. si quas sane de omni causa interpositas esse provocationes perspexeris, in earum disceptatione observare debebis, quod iam pridem a nobis est evidentissime constitutum. proposita v kal. mart. romae constantino a. iiii et licinio iiii conss. (315 febr. 25).

CTh.11.36.3

Idem a. ad aelianum proconsulem africae. cum antehac lege de appellationibus data statutum sit, ne quis a praeiudicio vel ab executione interponeret provocationem neve huiusmodi appellatio ab his, qui vice nostra iudicant, admittatur, ne in perniciem plurimorum interpositis a praeiudicio appellationibus vel moratoriis quibusdam frustrationibus interiectis litigia protrahantur, tamen nunc poenam addi placuit, ut intellegant universi principalis negotii disceptatione causas suas munire debere et non ab ipsis quodammodo primae interlocutionis exordiis vel ab executionibus provocare, cum et illis, qui impatienter ab articulo appellandum putaverint, post cognitionem totius causae liceat appellare et his, qui sero ab exsecutionibus provocant, facultas appellandi minime fuerit denegata. si quis igitur tali usus appellatione fuerit in tuo iudicio deprehensus, ipsum quidem xxx follium poena multes, causam autem universam, eius dumtaxat, qui a praeiudicio vel ab executione temere appellaverit, sine ulla dilatione discingas, cum in nostro auditorio dari minime dilationem oporteat, interpositae appellationis tempore sufficiente litigatoribus ad perferendam instructionem plenissimam. proposita vi kal. mai. karthagine constantino a. vii et constantio caes. conss. (320/6 [313] apr. 26).

CTh.11.36.4

Impp. constantius et constans aa. ad catullinum. oportuerat te publici instituti respectu confessione detectos legum severitate punire nec frustra vitam differentum moratorias provocationes admittere, sed delatum adulterii crimen et quaestionibus athibitis adprobatum pari sceleri immanitate damnare. quod deinceps in huiusmodi criminibus convenit observari, ut manifestis probationibus adulterio probato frustratoria provocatio minime admittatur, cum pari similique ratione sacrilegos nuptiarum tamquam manifestos parricidas insuere culleo vivos vel exurere iudicantem oporteat. dat. iiii kal. sept. constantio a. ii et constante caes. conss. (339 aug. 29).

CTh.11.36.5

Idem aa. ad albinum vicarium hispaniarum. cum maior substantia litigii sit, a praeiudicio provocans xxx librarum argenti pondere plectatur: in minoribus etiam negotiis quindecim pondo argenti exsolvat. dat. vii id. april. marcellino et probino conss. (341 apr. 7).

CTh.11.36.6

Idem aa. ad leontium. in civilibus causis appellationis beneficium saepe sanximus non oportere differri. in fiscalibus vero vel rei privatae causis, hoc est ob debitum rennuendum vel munera respuenda, si quis appellare voluerit contra utilitatem fisci vel rei privatae, appellationem oblatam cessare oportet nec libellos huiusmodi suscipi, qui in damna fiscalia commodum sententiae latae aut dilatione suspendant aut terrore detorqueant. dat. v id. mai. antiochiae constantio iii et constante ii aa. conss. (342 mai. 11).

CTh.11.36.7

Idem aa. ad hieroclen consularem syriae coeles. observare curabis, ne quis homicidarum veneficorum maleficorum adulterorum itemque raptorum argumento convictus, teste superatus, voce etiam propria vitium scelusque confessus audiatur appellans. ut enim aequum est non convictos neque confessos, quia plerumque accidit, ut fortuna iudicii argumenta conglutinet, quorum similitudine opprimatur reus qui non possit vera ratione convinci, vel adversarii calliditas testes subtrahat, qui veritatem audacia vel acrimonia superet, vel confessos neque convictos, quod saepe vel repentinae formidinis vel impositorum tormentorum cogit immanitas, uti in appellando ceteris etiam rei iure communi: ita et aliena et propria voce depressum non oportet, quod contempserit aequitatem ac moram tantum usurpandae lucis indebitae rursus importunitates arripere. dat. v id. dec. leontio et sallustio conss. (344 dec. 9).

CTh.11.36.8 [=brev.11.11.2]

Impp. constantius et constans aa. theodoro consulari syriae coeles. in fiscalibus debitis nullius provocationem tua gravitas censeat admittendam. nec enim commodum publicum fas est diuturna frustratione suspendi, nec eludendi licentiam callidis fraudatoribus relaxari. dat. viii. id. mart. ancyrae, rufino et eusebio coss.

interpretatio. in manifestis fiscalibus debitis nulli penitus appellationem debere praestari, quia non oportet publicae rei commodum qualibet dilatione suspendi

CTh.11.36.9

Idem aa. ad cerealem praefectum urbi. calliditatis auxilio perspicui debitores rei privatae nostrae solutionem cupiunt evitare frustratoriis provocationibus interpositis. ideoque decrevimus minime convenire huiuscemodi vocem appellationis admitti. dat. x kal. aug. constantio a. vi et constante c. conss. (353 iul. 23).

CTh.11.36.10

Idem aa. ad proclianum proconsulem africae. placuit quinquaginta pondo argenti fisco inferre prudentiam tuam, si frustratoriam provocationem contra commodum fisci susceperis solutionemque vitanti praebueris culpabilem coniventiam. dat. xv kal. feb. constantinopoli; acc. x kal. aug. karthagine constantio a. vii et constante caes. conss. (354 [360?] ian. 18).

CTh.11.36.11

Idem aa. ad lollianum praefectum praetorio. ab exsecutione vel a praeiudicio appellationem oblatam suscipi non oportet. dat. viii kal. aug. arbitione et lolliano conss. (355 iul. 25).

CTh.11.36.12

Idem aa. ad volusianum praefectum praetorio. publica utilitate suadente in causis pensitationum debitorumque fiscalium inhibitum est provocationis auxilium. et cetera. dat. iiii kal. aug. arbitione et lolliano conss. (355 iul. 29).

CTh.11.36.13

Idem aa. ad probum proconsulem africae. cum constet iam dudum esse nostra sanctione praeceptum, ne aliquis, cum fiscale debitum postulatur, audeat provocare, proconsulare officium, si patientiam commodaverit, xxx pondo auri fisco cogatur inferre. dat. viiii kal. iul. sirmio datiano et cereale conss. (358 iun. 23).

CTh.11.36.14

Idem aa. ad flavianum proconsulem africae. gravis ista commotio est ac non ferenda iracundia iudicis, quae effusione humani sanguinis expiatur. sed ad fucum iniquitatis augendum lex nostri genitoris adscita est, scilicet ut diceretur genitor noster convictis in quaestione violentiae appellationis perfugia decerpsisse. plectatur, inquit, qui manifestam detegitur commisisse violentiam. quae legis suae verba aliis quoque scitis clemens conditor explanavit. etenim vigorem vindictae differri post totius negotii exitum noluit, scilicet ut, si procacem vesaniam pricnipalis negotii discussio publicasset, convictum reum aut medietatis amissio aut sors deportationis adfligeret. dat. iii non. aug. tauro et florentio conss. (361 aug. 3).

CTh.11.36.15

Impp. valentinianus et valens aa. salutem dicunt ordini civitatis karthaginiensium. post alia: ab executione vel a praeiudicio provocantes decrevimus non admitti, in tantum, ut contra definita facientes quinquaginta libras argenti condemnatione feriantur. dat. prid. non. feb. mediolano divo ioviano et varroniano conss. (364 febr. 4).

CTh.11.36.16

Idem aa. ad symmachum praefectum urbi. interpositas appellationes a praeiudicio vel ab exsecutione damnantes et eum, qui ab istiusmodi titulis provocaverit, et officium, quod non renuntiarit, quinquagenas argenti libras fisco nostro iubemus inferre, litem suam faciente iudice qui recepit. dat. viii id. octob. altino; accepta xvi kal. nov. divo ioviano et varroniano conss. (364 oct. 8).

CTh.11.36.17

Idem aa. ad modestum praefectum praetorio. nulli officialium a sententia proprii iudicis provocatio tribuatur nisi in eo tantum negotio, quod ratione civili, super patrimonio forsitan, aput proprium iudicem inchoarit, scilicet ut in eo tantum negotio a sententia eius cui paret iudici quisquis velit officialis appellet, quod per procuratorem persequi iure tribuitur. dat. iiii id. iun. cyzico valentiniano et valente aa. conss. (370 iun. 10).

CTh.11.36.18pr.

Idem aa. ad symmachum praefectum urbi. post alia: nullum audiri provocantem ante definitivam sententiam volumus, si tamen in iudicio competenti negotium fuerit inchoatum, salva scilicet iuris antiqui moderatione atque sententia, cum vel exceptio obponitur vel ad agendum locus poscitur vel dilatio instrumentorum causa aut testium postulatur atque haec impatientia vel iniquitate iudicum denegantur. (365 dec. [?] 20).

CTh.11.36.18.1

Similiter ne ab exsecutione quidem provocantem admitti convenit, si tamen executoris vitio minime modus sententiae transeatur. (365 dec. [?] 20).

CTh.11.36.18.2

In fiscalibus quoque vel manifestis debitis et criminalibus confessis negotiis nec non etiam praeiudiciis omnis prava repugnantium amputetur intentio. (365 dec. [?] 20).

CTh.11.36.18.3

Postremo universas appellationes, quas iura improbant, non oportet audiri. dat. xiii kal. ian. mediolano valentiniano et valente aa. conss. (365 dec. [?] 20).

CTh.11.36.19

Imppp. valentinianus, valens et gratianus aaa. ad olybrium praefectum urbi. abstinendum prorsus appellatione sancimus, quotiens fiscalis calculi satisfactio postulatur aut tributariae functionis sollemne munus exposcitur aut publici vel etiam privati, dummodo evidentis atque convicti, redhibitio debiti flagitatur, ut necessario in contumacem vigor iudiciarius excitetur. proposita romae xv kal. sept. valentiniano et valente ii aa. conss. (368 aug. 18).

CTh.11.36.20 [=brev.11.11.3]

Imppp. valent., valens et grat. aaa. ad claudium pf. u. quoniam chronopius ex-antistite idem fuit in tuo, qui fuerat in septuaginta episcoporum ante iudicio, et eam sententiam provocatione suspendit, a qua non oportuit provocare, argentariam mulctam, quam huius modi facto sanctio generalis imponit, cogatur expendere. hoc autem non fisco nostro volumus accedere, sed his, qui indigent, fideliter erogari. quod in hac causa et ceteris ecclesiasticis fiat. dat. viii. id. iul. valentin. n. p. et victore coss.

interpretatio. chronopium episcopum a multis episcopis fuisse damnatum, et studuisse eum ante iudicium sententiam, quae proferebatur, appellatione suspendere. a qua sententia, quia iuste prolata fuerat, appellare minime debuisset, in qua eum gravi mulctae, id est quinquaginta librarum argenti addictum fuisse dicit: quae tamen summa ipsius mulctae non fisco prodesse iussa est, sed pauperibus erogari

CTh.11.36.21 [=brev.11.11.4]

Iidem aaa. ad eupraxium pf. u. post alia: a discussoribus observari iubemus, ut manifesti debitores provocationis suffragio minime subleventur etc. pp. xvi. kal. mart. gratiano a. iii. et equitio coss.

interpretatio. omnes, qui huius modi negotia discutiunt, hoc specialiter observare debere, ut manifesti debitores appellationis suffragio non utantur, nec evidens debitum ulla possint appellationis dilatione suspendere

CTh.11.36.22

Idem aaa. ad claudium praefectum urbi. in interdicto quorum bonorum cessat licentia provocandi, ne, quod beneficio celeritatis inventum est, subdatur iniuriis tarditatis. dat. xii kal. iun. treviris gratiano a. iii et equitio conss. (374 mai. 21).

CTh.11.36.23

Imppp. valens, gratianus et valentinianus aaa. ad thalassium proconsulem africae. exceptis praescriptionibus peremptoriis si quis ab articulo appellare temptaverit, non audiatur, sed neglecta appellatione iudex discussis omnibus tendat ad finem, reservata post ultimum facultate partibus appellandi, si displicuerit definitiva sententia. neque tamen sit iudici potestas irrogandae multae. satis enim poenae videtur non audiri ab articulo provocantem. et cetera. dat. iii kal. feb. treviris accepta vi kal. mai. valente vi et valentiniano ii aa. conss. (378 ian. 30).

CTh.11.36.24

Idem aaa. ad thalassium proconsulem africae. post alia: si quis post susceptam super praescriptionibus peremptoriis appellationem et responsum a nobis redditum aliam peremptoriam praescriptionem obposuerit, non admittatur, et si propter eam non admissam provocare voluerit, refutetur. sane volumus ei iuxta ordinem iuris defensionis loco praescriptiones peremptorias, quibus ante uti debuerat, reservari. quam formam ab his cognitoribus volumus observari, quibus necesse est interpositam provocationem nostrae insinuare clementiae: in ceteris vero iudiciis eadem, quae dudum statuta fuerat, forma servetur. et cetera. dat. iii kal. feb. valente vi et valentiniano ii aa. conss. (378 ian. 30).

CTh.11.36.25

Idem aaa. ad thalassium proconsulem africae. post alia: ab exsecutione appellari non posse satis et iure et constitutionibus cautum est, ita ut appellantem etiam nostris sanctionibus statuta multa compescat, nisi forte executor sententiae modum iudicationis excedat. a quo si fuerit appellatum, executione suspensa decernendum putamus, ut, si res mobilis est, ad quam restituendam exsecutoris opera fuerit indulta, appellatione suscepta possessori res eadem detrahatur et idoneo collocetur, reddenda ei parti, pro qua sacer cognitor iudicaverit. quod si de possessione vel fundis exsecutio concessa erit et eam suspenderit provocatio, fructus omnes, qui tempore interpositae provocationis capti vel postea nati erunt, in deposito collocentur, iure fundi penes eum qui appellaverit constituto. sciant autem se provocatores vel ab exsecutione appellantes vel ab articulo ex his dumtaxat causis, ex quibus recipi iussimus provocationem, si eos perperam intentionem cognitoris suspendisse claruerit, quinquaginta librarum argenti animadversione multandos. dat. iii kal. feb. treviris valente vi et valentiniano ii aa. conss. (378 ian. 30).

CTh.11.36.26 [=brev.11.11.5]

Imppp. grat., valent. et theodos. aaa. ad hypatium pf. u. quisquis, ne voluntas diem functi testamento scripta reseretur, vel ne hi, quos scriptos patuerit, heredes edicti per divum hadrianum conditi beneficium consequantur, ausus fuerit provocare, interpositamque appellationem, cuius de ea re notio erit, recipiendam esse crediderit, viginti librarum auri mulcta et litigatorem, qui tam importune appellaverit, et iudicem, qui tam ignave conniventiam adhibuerit, involvat. dat. non. april. treviris, ausonio et olybrio coss.

interpretatio. haec lex specialiter praecipit, ut, si quis a quocumque* conditum testamentum per appellationem differre voluerit, ut non debeat reserari, et scriptum heredem ab adeunda hereditate suspendere, et in hac parte iudex appellatori voluerit praebere consensum, ut quo minus scriptam voluntatem non sequatur effectus: tam ipse iudex quam is, qui appellaverit, viginti libras auri fisco cogatur exsolvere

CTh.11.36.27

Idem aaa. hypatio praefecto augustali. universi, quos in publicis contractibus manifestissimos debitores cognitio inquisitioque convicerit, statim ut sententia fuerit promulgata, obnoxii redhibitioni teneantur nec illis aliquid ad excogitandas fraudes et versutias exerendas morae ac temporis relaxetur. dat. viii id. mai. constantinopoli merobaude ii et saturnino conss. (383 mai. 8).

CTh.11.36.28

Idem aaa. euchario proconsuli palaestinae. propter neglectorum contumaciam praeceptorum obnoxios beneficio provocationis excluso poenam inferre sine aliqua procrastinatione praecipimus. dat. x kal. dec. constantinopoli merobaude ii et saturnino conss. (383 nov. 22).

CTh.11.36.29

Idem aaa. ad pelagium comitem rerum privatarum. ante certum sententiae tempus et ordinem eventus a discussore vel a rationali appellare non liceat. et cetera. dat. xv kal. mart. mediolano arcadio a. i et bautone conss. (385 febr. 15).

CTh.11.36.30

Idem aaa. ad florentinum comitem sacrarum largitionum. saepe cautum est evidentissimos debitores appellantes audiri nullatenus oportere, deinde ab exsecutione adeo posse neminem provocare, ut, si hoc forte temptaverit, ut postea a praeiudicio appellans, ad quinquaginta librarum argenti multam iure retinendus sit. et cetera. dat. vii kal. dec. aquileiae arcadio a. i et bautone conss. (385 nov. 25).

CTh.11.36.31

Imppp. theodosius, arcadius et honorius aaa. hypatio praefecto augustali. officium, quod rettulit provocare convictos vel appellare confessos, xxx auri libras inferat fisco, nec ulla episcoporum vel clericorum vel populi suggeratur intervenire aut intervenisse persona. nec enim eos fas est adimi debitae severitati, qui pacem publicam actuum perturbatione confusam rebelli contumacia miscuerunt. non ignaro ipso etiam iudicante, nisi post sententiam dictam impleverit suas partes, eadem se multa, qua officium, esse plectendum. dat. v id. april. constantinopoli arcadio a. ii et rufino conss. (392 apr. 9).

CTh.11.36.32

Impp. arcadius et honorius aa. apollodoro comiti rerum privatarum. et publicarum necessitatum et privati aerarii poscit utilitas, ne commoda, quae domui nostrae debentur, callidis debitorum artibus differantur. quam ob rem eorum appellatione reiecta, qui aperte manifesteque convicti sunt, hoc observari praecepti huius auctoritate censemus, ut ei, quem constiterit esse publicum debitorem, appellationis beneficium denegetur. dat. iiii id. aug. mediolano arcadio iiii et honorio iii aa. conss. (396 aug. 10).

CTh.11.36.33

Imppp. arcadius, honorius et theodosius aaa. nestorio comiti et duci. aliquantos in tripolitana provincia reos temere ad appellationis comperimus auxilium convolare, ut poenam provocatione defugiant. ideoque decernimus, ut manentibus his, quae de audientiae discretione superioribus sunt decreta praeceptis, in convictos tamquam confessos sententia proferatur, ea nihilo minus condicione servata, ut nullus, priusquam iudicii formam examen susceptae cognitionis inveniat, appellandi habeat facultatem. dat. vii id. dec. ravennae arcadio a. vi et probo v. c. conss. (406 dec. 7).

CTh.11.37.0. [=brev.11.12.0.] Si de momento fuerit appellatum.

CTh.11.37.1 [=brev.11.12.1]

Imppp. valent., theodos. et arcad. aaa. ad eusignium pf. p. quum de possessione et momento causa dicitur, etsi appellatio interposita fuerit, tamen lata sententia sortiatur effectum, atque ita demum ad nostram scientiam referatur. ita tamen possessionis reformationem fieri oportet, ut integra omnis proprietatis causa servetur. dat. xiv. kal. dec. mediolano, honorio n. p. et evodio coss.

interpretatio. si de momento fuerit appellatum, momentariae causae audientiam proprietati obesse penitus non debere, quamlibet de momento videatur aliquid iudicatum, quod in effectum sit sine dubio deducendum, nec possit appellatione suspendi. iubet tamen, restituto momento causam proprietatis ex integro debere cognosci

CTh.11.38.0. [=brev.11.13.0.] De possessione ab eo, qui bis provocaverit, transferenda.

CTh.11.38.1 [=brev.11.13.1]

Imppp. valent., theodos. et arcad. aaa. proculo pf. u. qui gemino iudicio fuerit superatus, nec tamen obstinatam illam pervicaciam putaverit relinquendam, sed iterum provocandum esse crediderit, ab eo ad petitorem mox possessio transferatur. dat. xvi. kal. iul. aquileia, tatiano et symmacho coss.

interpretatio. si quicumque* in una causa duobus iudiciis fuerit superatus et adhuc eandem agendi pertinaciam voluerit retinere, et iterum appellandum esse putaverit, in adversarium eius continuo possessio transferatur

CTh.11.39.0. De fide testium et instrumentorum

CTh.11.39.1

Imp. constantinus a. aurelio helladio. etsi veteris iuris definitio et retro principum rescripta in iudicio petitori eius rei quam petit necessitatem probationis dederunt, tamen nos aequitate et iustitia moti iubemus, ut, si quando talis emerserit causa, in primordio iuxta regulam iuris petitor debeat probare, unde res ad ipsum pertineat; sed si deficiat pars eius in probationibus, tunc demum possessori necessitas imponatur probandi, unde possideat vel quo iure teneat, ut sic veritas examinetur. dat. naisso xv kal. octob. paulino et iuliano conss. (325 sept. 17).

CTh.11.39.2 [=brev.11.14.1]

Imp. constantinus a. et c. ad severum comitem hispaniarum. scripturae diversae et fidem sibi invicem derogantes, ab altera parte prolatae, nihil firmitatis habere potuerunt. dat. iv. non. mai. constantinopoli, dalmatio et zenophilo coss.

interpretatio. si quis multiplici scriptura contractum suum munire cupiens de una re venditionem et donationem proferat vel quaecumque* alia documenta: omnia rescindantur, quia impugnantes se chartulas lex haec vetat admitti

CTh.11.39.3pr. [=brev.11.14.2pr.]

Idem a. ad iulianum praesidem. iurisiurandi religione testes prius, quam perhibeant testimonium, iam dudum arctari praecepimus, et ut honestioribus potius fides testibus habeatur.

CTh.11.39.3.1 [=brev.11.14.2.1]

Simili more sanximus, ut unius testimonium nemo iudicum in quacumque* causa facile patiatur admitti. et nunc manifeste sancimus, ut unius omnino testis responsio non audiatur, etiamsi praeclarae curiae honore praefulgeat. dat. viii. kal. sept. naisso, optato et paulino coss.

interpretatio. testes priusquam de causa interrogentur, sacramento debere constringi, ut iurent, se nihil falsi esse dicturos. hoc etiam dicit, ut honestioribus magis quam vilioribus testibus fides potius admittatur. unius autem testimonium, quamlibet splendida et idonea videatur esse persona, nullatenus audiendum

CTh.11.39.4

Impp. constantius et constans aa. aurelio mimenio. quotiens scriptura aliqua profertur eaque ab eo, adversus quem facere videtur, suspecta dicitur, non solum is, qui de ea dubitat, falso conscriptam cogatur ostendere, verum etiam ille, qui eadem utitur, veritate subnixam probare cogatur. dat. vi kal. septemb. constantinopoli constantio iiii et constante iii aa. conss. (346 aug. 27).

CTh.11.39.5

Pars actorum habitorum aput imperatorem iulianum augustum mamertino et nevitta conss. x kal. april. constantinopoli in consistorio: adstante iovio viro clarissimo quaestore, anatolio magistro officiorum, felice comite sacrarum largitionum. et cetera. imp. iulianus a. dixit: thnikauta grammatia megalhn isxun exei, otan peri autwn twn grammatiwn mh amfisbhthsij ec allwn ofeilei bebaiousvai. (362 mart. 23).

CTh.11.39.6

Impp. valentinianus et valens aa. ad olybrium praefectum urbi. cum res agatur ex scripto, aut infirmari scributuram convenit aut probari. infirmari autem quae potest, nisi falsa doceatur? falsa porro a quibus aliis demonstranda est quam ab illis qui negant ei esse credendum? dat. prid. id. mart. treviris valentiniano nb. p. et victore conss. (369 mart. 14).

CTh.11.39.7 [=brev.11.14.3]

Imppp. valens, grat. et valent. aaa. ad antonium pf. p. post alia: iubemus, omnes deinceps, qui scripturas nefarias comminiscuntur, quum quid in iudicio promiserint, nisi ipsi adstruxerint veritatem, ut suspectae scripturae et falsi reos esse detinendos. dat. prid. id. ian. treviris, valente vi. et valentin. ii. aa. coss.

interpretatio. quicumque* scripturam in audientiam protulerit, veritatem eius probare iubeatur, quia hoc in omnibus causis statutum est, ut scripturam prolator affirmet. nam si is, qui scripturam protulit, eius non adstruxerit veritatem, ut falsitatis reum esse retinendum

CTh.11.39.8

Pars actorum habitorum in consistorio aput imperatores gratianum, valentinianum et theodosium cons. syagri et eucheri die iii kal. iul. constantinopoli. in consistorio imp. theodosius a. dixit: episcopus nec honore nec legibus ad testimonium flagitatur. idem dixit: episcopum ad testimonium dicendum admitti non decet, nam et persona dehonoratur et dignitas sacerdotis excepta confunditur. (381 iun. 29).

CTh.11.39.9 [=brev.11.14.4]

Imppp. grat., valent. et theodos. aaa. ad florentium praefectum augustalem. non oportet in absentem, quasi in praesentem atque convictum, verum statim putari, quicquid ab eo solo dicitur, qui accusat. dat. xiii. kal. ian. richomere et clearcho coss.

interpretatio. quoties quilibet accusator aliquid de adversario suo eo absente suggesserit, ei ante discussionem utriusque partis penitus non credatur

CTh.11.39.10 [=brev.11.14.5]

Iidem aaa. paulino praefecto augustali. presbyteri citra iniuriam quaestionis testimonium dicant, ita tamen, ut falsa non simulent. ceteri vero clerici, qui eorum gradum vel ordinem consequuntur, si ad testimonium dicendum petiti fuerint, prout leges praecipiunt, audiantur. salva tamen sit litigatoribus falsi actio, si forte presbyteri, qui sub nomine superioris loci testimonium dicere citra aliquam corporalem iniuriam sunt praecepti, hoc ipso, quod nihil metuant, vera suppresserint. multo magis etenim poena sunt digni, quibus quum plurimum per nostram iussionem delatum fuerit, occulto inveniuntur in crimine. dat. viii. kal. aug. arcadio a. i. et bautone coss.

interpretatio. presbyteri citra iniuriam quaestionis, id est sine supplicio corporali possunt testimonium dicere. alii vero clerici, qui eorum ordinem sequuntur, si ad testimonium dicendum adhibiti fuerint, sicut leges praecipiunt, audiantur: ita ut salva sit contra presbyteros falsi actio, si in aliquo docebuntur fuisse mentiti; quia magis poena digni sunt, quibus quum lex reverentiam praestet, suae professionis immemores in mendacii crimine deteguntur

CTh.11.39.11

Imppp. valentinianus, theodosius et arcadius aaa. flaviano praefecto praetorio. hi, qui sanctam fidem prodiderint et sacrum baptisma profanarint, a consortio omnium segregati sint, a testimoniis alieni. et cetera. dat. v id. mai. concordiae tatiano et symmacho conss. (391 mai. 11).

CTh.11.39.12 [=brev.11.14.6]

Impp. arcad. et honor. aa. aeternali proconsuli asiae. cogi possessorem ab eo, qui expetit, titulum suae possessionis edicere, quae tanta erit amentia, ut, ratione praepostera, petitor ab eo, quem pulsat, informari suas postulet actiones, quum omnem probationem exigi oporteat ab eo, qui vindicare nititur, non ab eo, qui se iuste tenere contendit? intentanti namque, non suscipienti, probationum necessitas imponenda est praeter eum, qui edicere cogitur, utrum pro possessore an pro herede possideat. dat. xii. kal. april. constantinopoli, arcadio iv. et honorio iii. aa. coss.

interpretatio. lex ista hoc praecipit, ut probatio non a possessore, sed a petitoris partibus requiratur, quia omnem probationem ab eo quaeri debere dicit, qui petitam rem desiderat obtinere, non ab illo, qui se iuste tenere contendit; praeter illum tantum casum, ubi interrogari necesse est possidentem, utrum ex sua persona an ex successione coeperit possidere

CTh.11.39.13 [=brev.11.14.7]

Impp. honor. et theodos. aa. caeciliano pf. p. post alia: quoniam ingenui testes ad causas postulantur alienas, si socii et participes criminis non dicantur, sed fides ab his notitiae postuletur, in exhibitione necessariarum personarum, hoc est testium talis debet esse cautio iudicantis, ut, his venturis ad iudicium, per accusatorem aut ab his, per quos fuerint postulati, sumptus* competentes dari praecipiat etc. dat. xii. kal. febr. ravennae, honorio viii. et theodos. iii. aa. coss.

interpretatio. quicumque* testes necessarios habet, dummodo idoneos, qui non sint causae aut culpae participes, studeat, qualiter eos suo sumptu*, ubi causa dicenda est, debeat exhibere

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CTh.12.1.0. De decurionibus

CTh.12.1.1 [=brev.12.1.1]

Imp. constantinus a. ad evagrium pf. p. nemo iudex civilium munerum vacationem cuiquam praestare curiali conetur, vel aliquem suo arbitrio de curia liberet. nam si quis fuerit eius modi infortunio depravatus, ut debeat sublevari, de eius nomine ad nostram scientiam referri oportet, ut certo temporis spatio civilium munerum ei vacatio porrigatur. pp. id. mart. constantino a. iii. et licinio iii. coss.

interpretatio. nullus iudex vacationem indebitam tribuat curiali, nec eum de suo officio studeat liberare. nam si ita tenuis cuiuscumque* curialis et exhausta facultas est, ut ei publici oneris necessitas non credatur, ad principis iussit referri notitiam

CTh.12.1.2

Idem a. ad crispinum. quoniam dubitasti, utrum ex numero dierum an ex nominatione kalendarum computari duum mensum spatia debeant, forma publici iuris observanda est, quae manifeste declarat, quid pro dierum diversitate praeceperit comprehendi. dat. kal. octob. constantino a. iiii et licinio iiii conss. (315 oct. 1).

CTh.12.1.3

Idem a. mecilio hilariano correctori lucaniae et brittiorum. universos decuriones volumus a tabellionum officiis temperare. nemo autem ad decurionatum vocatus excusare se poterit eo, quod fuerit tabellio, cum et huiusmodi homines, si sint idonei, vocari ad decurionatum oporteat. lex enim, quae decuriones a tabellionum officiis voluit submovere, ad decurionatum tabelliones vocari non prohibet. dat. iii kal. feb. sabino et rufino conss. (316 ian. 30).

CTh.12.1.4

Idem a. ad octavianum comitem hispaniarum. hi, qui honoris indebiti arripere insignia voluerunt, cum in consilium primates municipesque coguntur, adsistunt sedentibus his, quibus emeritis omnis honor iure meritoque debetur. ideoque sublimitas tua nullum omnino faciet praesidatus praerogativa laetari, nisi qui cunctos in patria gradus egressus per ordinem venerit, ita ut illi etiam, qui praesidatum ante tempus reportarunt, post expletos honores civicos honestamentis praestitis potiantur. proposita xiiii kal. feb. gallicano et basso conss. (317 ian. 19).

CTh.12.1.5

Idem a. ad bithynos. eos qui in palatio militarunt et eos quibus provinciae commissae sunt quique merito amplissimarum administrationum honorem perfectissimatus vel egregiatus adepti sunt, nec non et illos, qui decuriones vel principales constituti cuncta suae patriae munera impleverunt, frui oportet dignitate indulta. si vero decurio suffragio comparato perfectissimatus vel ducenae vel centenae vel egregiatus meruerit dignitatem declinare suam curiam cupiens, codicillis amissis suae condicioni reddatur, ut omnium honorum et munerum civilium discussione perfunctus iuxta legem municipalem aliquam praerogativam obtineat. eum quoque, qui originis gratia vel incolatus vel ex possidendi condicione vocatur ad curiam, perfectissimatus suffragio impetrati dignitas non defendit, qua remota tradi eum curiae oportebit. dat. xii kal. aug. gallicano et basso conss. (317 iul. 21).

CTh.12.1.6

Idem a. patroclo. nulla praeditos dignitate ad sordida descendere conubia servularum etsi videtur indignum, minime tamen legibus prohibetur; sed neque conubium cum personis potest esse servilibus et ex huiusmodi contubernio servi nascuntur. praecipimus itaque, ne decuriones in gremia potentissimarum domorum libidine ducente confugiant. si enim decurio clam actoribus atque procuratoribus nescientibus alienae fuerit servae coniunctus, et mulierem in metallum trudi per sententiam iudicis iubemus et ipsum decurionem in insulam deportari, bonis eius mobilibus et urbanis mancipiis confiscandis, praediis vero et rusticis mancipiis civitati, cuius curialis fuerat, mancipandis, si patria potestate fuerit liberatus nullosque habeat liberos vel parentes vel etiam propinquos, qui secundum legum ordinem ad eius successionem vocantur. quod si actores vel procuratores loci, in quo flagitium admissum est, fuerunt conscii vel compertum facinus prodere noluerunt, metallo eos convenit implicari. si vero dominus hoc fieri permisit vel postea cognitum celavit, si quidem in agro id factum est, fundus cum mancipiis et pecoribus ceterisque rebus, quae cultui rustico sustinentur, fisci viribus vindicetur; si vero in civitate id factum est, dimidiam bonorum omnium partem praecipimus confiscari, poenam augentes, quoniam intra domesticos parietes scelus admissum est, quod noluit mox cognitum publicare. igitur si legis latae die repperietur quisquam patrimonium suum alienasse atque in dominum servulae contulisse, ordini liceat diligenter inquirere, ut ita rei publicae civitatis quod de facultatibus supra dicti fuerit deminutum, in pecunia sarciatur. dat. kal. iul. aquileiae constantino a. v et licinio c. conss. (319 iul. 1).

CTh.12.1.7

Idem a. ad edictum. filios decurionum, qui decem et octo annorum aetate vegetantur, per provinciam karthaginem muneribus civicis adgregari praecipimus. neque enim opperiendum est, ut solvantur familia et sacris explicentur, cum voluntates patrum praeiudicare non debeant utilitatibus civitatum. proposita x kal. mart. constantino a. vi et constantio c. conss. (320 febr. 20).

CTh.12.1.8

Idem a. ad florentium. decuriones ad magistratum vel exactionem annonarum ante tres menses vel amplius nominari debent, ut, si querimonia eorum iusta videatur, sine impedimento in absolvendi locum alius subrogetur. dat. id. april. constantinopoli severo et rufino conss. (323 [?] apr. 13).

CTh.12.1.9

Idem a. ad hilarianum proconsulem africae. si quis decurio vel propriae rei causa vel rei publicae cogatur nostrum adire comitatum, is non ante discedat quam insinuato iudici desiderio proficiscendi licentiam consequatur. quod si pro sua audacia parvi aliquis hanc fecerit iussionem, deportationis exitum sortiatur. proposita vii id. iul. karthagine crispo iii et constantino iii conss. (324 iul. 9).

CTh.12.1.10

Idem a. ad maximum. quoniam diversis praestitimus, ut legionibus vel cohortibus deputentur vel militiae restituantur, quisquis huiusmodi beneficium proferat, requiratur, utrum ex genere decurionum sit vel ante nominatus ad curiam, ut, si quid tale probetur, curiae suae et civitati reddatur. quam formam circa omnes, qui iam dudum probati in militaribus officiis agunt vel restituti militiae sacramento muniuntur vel postea per suffragia probabuntur, observari conveniet. proposita v id iul. antiochiae paulino et iuliano conss. (325 iul. 11).

CTh.12.1.11

Idem a. ad constantium praefectum praetorio. quoniam relictis curiis nonnulli ad militiae praesidia confugiunt, omnes, qui nondum primipilo inveniuntur obnoxii, solutos militia ad eandem curiam reverti praecipimus: his solis in militia permansuris, qui pro loco atque ordine iam pastui adtinentur. dat. non. octob. paulino et iuliano conss. (325 oct. 7).

CTh.12.1.12 [=brev.12.1.2]

Idem a. ad maximum vicarium orientis. si qui vel ex maiore vel ex minore civitate originem ducit, si eandem evitare studens ad alienam se civitatem incolatus occasione contulerit, et super hoc vel preces dare tentaverit vel qualibet fraude niti, ut originem propriae civitatis eludat, duarum civitatum decurionatus onera sustineat, in una voluntatis, in una originis gratia. pp. viii. kal. ian. paulino et iuliano coss.

interpretatio. si quicumque* curialis de ea, in qua natus est, civitate ad aliam transire voluerit, condicionem* curiae debitam nullatenus possit evadere, nec si hoc ipsum mereri interposita supplicatione tentaverit, nec ullo argumento necessitates aut servitia civitatis suae pro eo, quod habitationem mutare voluit, possit evadere. nam quicumque* hoc fecerit et se in aliam civitatem transtulerit, hoc iubet, ut in utraque serviat civitate, id est in una pro condicione* nascendi et in alia pro habitandi voluntate deserviat

CTh.12.1.13

Idem a. ad evagrium praefectum praetorio. quoniam curias desolari cognovimus his, qui per originem obnoxii sunt, militiam sibi per supplicationem poscentibus et ad legiones vel diversa officia currentibus, iubemus omnes curias admoneri, ut, quos intra xx stipendia in officiis deprehenderint vel originem defugisse vel spreta nominatione militiae se inseruisse, hos ad curiam retrahant et de cetero sciant esse servandum, ut qui derelicta curia militaverit, revocetur ad curiam, non solum si originalis sit, sed et si substantiam muneribus aptam possidens ad militiam confugerit vel beneficio nostro fuerit liberatus. dat. xvi kal. iun. constantino a. vii et constantio c. conss. (326 mai. 17).

CTh.12.1.14

Idem a. ad praefectos praetorio. dudum lege promulgata sanxit nostra clementia, ut filii comitum et praesidum et rationalium magistrorumque privatae, qui tamen ex origine curialium descendunt, ordinibus necterentur. nunc praecipimus, ut, qui perfuncti muneribus idonei reperti sint iudicio clementiae nostrae accedere ad honores praecepti ad honestas promotiones perveniant, eos vero, quos nescit principalis auctoritas, ... iudicio praefecturae commisimus, uti eos, qui ex genere videntur esse curialium et minus apti iudicio principali, ordinibus propriis restituant, illos vero, quos iudicio nostro proveximus, intactos esse perficiant; ita tamen, ut heredes eorum curiis mancipentur. si quis sane decurio evertens fiscalia commoda, fugiens curiam ambitu ad senatum urbis inclytum pervenerit, minime admittatur. dat. viii kal. dec. constantino a. vii et constantio c. conss. (326 [353] nov. 24).

CTh.12.1.15

Idem a. ad annium tiberianum comitem. universis provinciarum rectoribus intimato nostram clementiam statuisse veteranorum filios curialibus muniis innectendos; ita ut et ii, qui perfectissimatus sibi honore blandiuntur, trusi in curiam necessariis officiis publicis inserviant. proposita xi kal. mai. karthagine constantio et maximo conss. (327 apr. 21).

CTh.12.1.16

Idem a. si ad magistratum nominati aufugerint, requirantur et, si pertinaci animo latere potuerint, his ipsorum bona permittantur, qui praesenti tempore in locum eorum ad duumviratus munera vocabuntur, ita ut, si postea repperti fuerint, biennio integro onera duumviratus cogantur agnoscere. omnes enim, qui obsequia publicorum munerum declinare temptaverint, simili condicione teneri oportet. dat. iii kal. octob. serdicae constantino a. viii et constantio iiii conss. (329 sept. 29).

CTh.12.1.17

Idem a. ad lucretium paternum. vacuatis rescriptis, per quae munerum civilium nonnullis est vacatio praestita, omnes civilibus necessitatibus adgregentur, ita ut nec consensu civium vel curiae praestita cuiquam immunitas valeat, sed omnes ad munerum societatem conveniantur. dat. viii kal. nov. heracleae constantino a. viii et constantio iiii conss. (329 oct. 25).

CTh.12.1.18pr.

Idem a. ad viros clarissimos praefectos praetorio. post alia: ad senatum decurio non adspiret manentibus athuc his, qui eandem dignitatem consecuti sunt. (329 [353] nov. 25).

CTh.12.1.18.1

Filios sane militarium iuxta prius praeceptum aut patris militiam adsequi volumus aut, si detrectaverint militare et xxxv annos impleverint, curiis mancipari. dat. vii kal. dec. constantino a. viii et constantio iiii conss. (329 [353] nov. 25).

CTh.12.1.19 [=brev.12.1.3]

Idem a. ad evagrium pf. p. quoniam nonnulli diversarum civitatum curiales intemperanter minores, quibus publica tutela debetur, ad curiae consortium devocarunt, ut septem vel octo annorum constitutos nonnullos nominasse firmentur, decernimus, ut omnino nullus in curiam nominationibus devocetur, nec functionum obsequia subire cogatur, nisi qui decimum et octavum annum aetatis fuerit ingressus. quod et in futurum arceri volumus, et eos eximi, qui infra eius aetatis terminos constituti iam nominati sunt, curialibus et vinculis absolvantur. quum enim decimum et octavum annum aetatis intraverint, si militiae nomen inserere iuxta legem datam non potuerint vel supersederint, municipali poterunt dari obsequio. dat. prid. non aug. basso et ablavio coss.

interpretatio. minores decem et octo annorum aetate curiales nec nominari a quibuscumque* nec ad servitia applicari debere: quia hoc lex sufficere credit, ut a decem et octo annis necessitati publicae, si necesse fuerit, applicentur, ita ut, si qui infra hanc aetatem ante nominati iam fuerint, absolvantur

CTh.12.1.20 [=brev.12.1.4]

Idem a. ad evagrium pf. p. nullus decurionum ad procurationes vel curas civitatum accedat, nisi omnibus omnino muneribus satisfecerit patriae vel aetate vel meritis. qui vero per suffragium ad hoc pervenerit administrare desiderans, non modo ab expetito officio repellatur, sed epistola quoque vel codicilli ab eo protinus auferantur, et ad comitatum destinentur. dat. prid. id. aug. basso et ablavio coss.

interpretatio. ista lex hoc praecipit, nullum curialem, nisi omnibus curiae officiis per ordinem actis, aut curatoris aut defensoris officium debere suscipere, nisi omnibus, ut dictum est, ante muneribus satisfecerit, quae patriae ordine debentur. nam si praefatus contra hanc praeceptionem quolibet suffragio aut sub quocumque* obtentu honoris se munire voluerit, et obtentis careat et, ubi rerum domini fuerint, dirigatur

CTh.12.1.21

Idem a. ad felicem praefectum praetorio. quoniam afri curiales conquesti sunt quosdam in suo corpore post flamonii honorem et sacerdotii vel magistratus decursa insignia praepositos compelli fieri mansionum, quod in singulis curiis sequentis meriti et gradus homines implere consuerunt, iubemus nullum praedictis honoribus splendentem ad memoratum cogi obsequium, ne nostro fieri iudicio iniuria videatur. dat. prid. non. aug. viminacio constantio et albino conss. (335 aug. 4).

CTh.12.1.22

Idem a. ad evagrium praefectum praetorio. cum decuriones decurionumque filii deque his geniti ad diversas militias confugiant, iubemus eos in quibuscumque officiis militantes exemptos militia restitui curiae exceptis his, qui in palatii nostri iam habentur officiis. dat. xi kal. sept. constantinopoli nepotiano et facundo conss. (336 aug. 22).

CTh.12.1.23

Imp. constantius a. ad iulianum. quamvis eos, qui tertio edicto vocati minime respondere voluerunt, legum severitas obnoxios faciat coetibus curiarum, tamen humaniorem placuit sequi viam et eos admonere edicto, ut intra xxx dies sui praesentiam faciant. quod si intra hoc tempus neglexerint vel sui praesentiam facere vel defensorem ad iudicia mittere, qui absentiae eorum iustas allegationes deponat, sententia super his lata sine aliquo cunctamine convalescat. dat. v id. octob. antiochiae urso et polemio conss. (338 oct. 11).

CTh.12.1.24

Idem a. aconio catullino vicario africae. quicumque fugientes obsequia curiarum affectaverint adumbratae nomina dignitatis, etsi eos spes falsi honoris illuserit, xxx argenti libras inferre congantur. acc. karthagine prid. id. dec. urso et polemio conss. (338 dec. 12).

CTh.12.1.25

Idem a. quoniam emptae dignitatis obtentu curias vacuefactas esse non dubium est, placuit, ut cuncti, qui suffragiis dignitatum insignia consecuti sunt, inmeriti honoris splendore privati civilium munerum sollemnitate fungantur. eorum sane intemeratas inconcussasque dignitates volumus permanere, qui vel iudicio provinciarum in officium legationis electi sunt vel honestis testimoniis adminiculis enitentes talium dignitatum privilegia insigniaque meruerunt. dat. v kal. nov. emesa urso et polemio conss. (338 oct. 28).

CTh.12.1.26

Impp. constantius et constans aa. ad catullinum vicarium africae. cunctos ex comitibus cuiuslibet ordinis et ex praesidibus et rationalibus et magistris studiorum, denique ex perfectissimis honorarios vel affectus eorum ad civica onera constringes, si quidem rectius patriae vel honoribus vel magistratibus expendere debuissent, quaecumque ab his foedantibus honores consumpta sunt. dat. kal. nov. urso et polemio conss. (338 nov. 1).

CTh.12.1.27

Idem aa. have celsine karissime nobis. rarum karthaginis splendidissimae senatum et exiguos admodum curiales residere conquestus es, dum universi indebitae dignitatis infulas foeda familiaris rei vexatione mercantur. igitur istiusmodi viri demptis honoribus imaginariis, cuiuscemodi illi erunt quos fuerant consecuti, civicis muneribus subiugentur. quod quidem per omnem africam sollertissime servari oportet. dat. vi id. ian. treviris constantio ii et constante aa. conss. (339 ian. 8).

CTh.12.1.28

Idem aa. ad anatolium vicarium asiae. constitutionibus perspicue definitum est kalendis martiis nominationes fieri, ut splendidorum honorum munerumque principia primo tempore procurentur. et cetera. dat. vi kal. dec. constantio ii et constante aa. conss. (339 nov. 26).

CTh.12.1.29

Idem aa. ordini civitatis constantinae cirtensium. magistratus desertores ad eam gravitas tua faciat necessitatem condicionis urgeri, ut, quascumque pro his expensas civitas prorogavit, refundere protinus ac repraesentare cogantur, et deinceps tenaciter observabit, ne qui derelicta curia in ordinem veniant senatorium, priusquam cunctas functiones civicis honoribus pensitaverint. dat. xiiii kal. feb. naisso acindyno et proculo conss. (340 ian. 19).

CTh.12.1.30

Idem aa. nemesiano comiti. curiales omnium civitatum nullam pro re privata nostra debent inquietudinem sustinere nec huiusmodi oneribus veluti extraordinariis occupari, quoniam satis est, si civitatum munera per eos congrue compleantur. et cetera. dat. prid. id. aug. bessae acindyno et proculo conss. (340 aug. 12).

CTh.12.1.31

Idem aa. ad catullinum praefectum praetorio. nullus omnino ex tabulariis vel scribis vel decurionibus eorumque filiis in quocumque officio militet, sed ex omnibus officiis, nec non et si intra nostrum palatium militent, necdum impleto quinquennio repperti et retracti protinus curiis officiisque municipalibus reddantur. dat. viii kal. iul. lauriaco marcellino et probino conss. (341 iun. 24).

CTh.12.1.32

Idem aa. ad hilarianum. militarium filios, qui gestandis armis idonei non esse dicuntur, curiis iam iamque tradi oportet. nam rei publicae incommodum est curias hominum paucitate languescere. dat. xvi kal. sept. marcellino et probino conss. (341 aug. 17).

CTh.12.1.33

Idem aa. rufino comiti orientis. quoniam sublimitas tua suggessit multos declinantes obsequia machinari, ut privilegia rei privatae nostrae colonatus iure sectantes curialium nominationes declinent, sancimus, ut, quicumque ultra xxv iugera privato dominio possidens ampliorem ex re privata nostra iugerationis modum cultura et sollicitudine propria gubernaverit, omni privilegiorum vel originis vel cuiuslibet excusationis alterius frustratione submota curiali consortio vindicetur. illo etiam curiae similiter deputando, qui minus quidem quam xxv iugerorum proprietatem habeat, ex rebus vero nostris vel parvum vel minorem iugerationis modum studio cultionis exercet. ita ut omni fraude submota si qui venditione simulata praescriptas lege minuat facultates, omne, quod simulata venditione ad alium transtulit, fisci nostri viribus vindicetur. quam poenam illi etiam sustinebunt, qui captiosa supplicatione delata speciale rescriptum in fraudem sanctionis extorserint. dat. non. april. antiochiae constantio iii et constante ii aa. conss. (342 apr. 5).

CTh.12.1.34

Idem aa. ad auxentium praesidem augustamnicae. eos, qui curialibus muneribus obnoxii honorariis dignitatibus gaudent, iuxta legem nostram remoto hoc patrocinio publicis utilitatibus oboedire ac satisfacere prudentia tua decernat. dat. vi id. april antiochiae constantio iii et constante ii aa. conss. (342 apr. 8).

CTh.12.1.35

Idem aa. leontio praefecto praetorio. iterata lege sancimus, ut veteranorum filii, si post sedecim annos militiae munus subire non possint vel armis gestandis habiles non existant, curiis mancipentur. dat. v kal. iul. hierapoli placido et romulo conss. (343 iun. 27).

CTh.12.1.36

Idem aa. ad titianum. universi omnino ex comitibus vel ex praesidibus, qui suffragio perceperint dignitates, civilibus oneribus muneribusque teneantur adstricti; plebeiam quoque sustineant capitationem, ne commoda publica cum umbratili suffragiorum pactione lacerentur. eos tamen a praedictis oneribus excipi oportebit, qui vel in administratione vel in legationibus publicis versati sunt, ita ut, si quis contra interdictum legis nostrae precationem obtulerit, eius patrimonium fisci nostri viribus protinus vindicetur. dat. prid. kal. iul. treviris placido et romulo conss. (343 iun. 30).

CTh.12.1.37

Idem aa. ad placidum praefectum praetorio. cautum est, ut, quicumque orti ex decurionibus sese ad militiam contulissent, in quibuscumque stipendiis deprehensi nulla absolvi praerogativa temporis possint, sed ordinibus quos reliquerant traderentur. hoc et in calcariensibus et fabricensibus et argentariis observetur, ut, quicumque obnoxii officiis vel muneribus civilibus ex supra dictis fabricis fuerint, curiae restituti nec impetrato rescripto liberentur. dat. v kal. iunias leontio et sallustio conss. (344 mai. 28).

CTh.12.1.38

Idem aa. ad anatolium praefectum praetorio. quoniam nonnulli curiis derelictis domesticorum seu protectorum se consortio copularunt, scholari etiam quidam nomen dederunt militiae aut palatinis sunt officiis adgregati, cunctos iubemus omni frustratione submota ad curias revocari. ne tamen diuturnitatis ratio videatur esse neglecta, quicumque sub armis militiae munus comitatense subierunt, si necdum quinque stipendia compleverunt nec pro publica defensione proeliis adfuerunt, reddantur. qui vero palatini nominis praeferunt dignitatem, si curialem trahunt originem, infra tot annos militiae nudati praesidiis oppidaneis restituantur obsequiis. de qua re magistros equitum ac peditum et virum clarissimum comitem domesticorum, nec non etiam sacrarum largitionum comitem et magistrum officiorum et castrensem, sub quibus cuncti esse noscuntur, credidimus commonendos, ut tua insistente prudentia et scribente de nominibus singulorum unusquisque propriae condicioni reddatur. dat. x kal. iun. caesenae constantio iiii et constante iii aa. conss. (346 mai. 23).

CTh.12.1.39

Idem aa. ad anatolium praefectum praetorio. in perpetuum observandum esse sancimus, ut citra iniuriam corporis, quod in servis etiam probrosum atque postremum est, cuncti primarii et curiales praecepta a iudicibus exequantur. frequenti ergo monitione atque hortatu tam primarios curiarum quam hos, qui magistratus gerunt atque gesserunt, sinceritas tua incitare debebit, ut promptius praecepta suscipiant omni corporalis contumeliae timore sublato. dat. kal. april. antiochiae limenio et catullino conss. (349 [post a. 350?] apr. 1).

CTh.12.1.40

Idem a. ad taurum praefectum praetorio. curiales plerique ad inane vocabulum militiae cucurrerunt ac tanta arte rem gerunt, ut nec muniis militaribus obsequantur nec oneribus oppidaneis prosint. igitur universi nulla praerogativa de vocabulo dignitatis in militia conquisitae nulloque stipendiorum numero suffragante restituantur civitatibus. dat. xii kal. aug. ravennae constantio vi et constante ii aa. conss. (353 357 iul. 21).

CTh.12.1.41

Idem a. ordini carthaginiensium. ex comitibus et ex praesidibus universi ceterique, qui sine administratione adumbratarum dignitatum codicillos honorarios meruerint, si ex vestro eosdem numero fuisse claruerit, in vestro consortio perseverent, fungantur oneribus et honoribus universis, quos ratio municipalis exposcit, permanentibus dignitatum titulis, quas eisdem constat indultas. dat. x kal. aug. constantio a. vi et constantio ii conss. (353 iul. 23).

CTh.12.1.42pr.

Idem a. ordini caesenatium salutem dicit. si qui ex praesidibus vel perfectissimatus accessione cumulati esse noscuntur, manentibus dignitatibus, quas suffragio meruerunt, nihilo minus in sui ordinis consortio perseverent, fungantur officiis curialibus ac municipalium munerum cura partita vobiscum obsequio capiantur. (354 mai. 22).

CTh.12.1.42.1

Si quis autem clarissimae meruerit infulas dignitatis nec indulti muneris gratiam codicillorum allegatione percepit, impetratae fructum dignitatis amittat. (354 mai. 22).

CTh.12.1.42.2

Et cuncti, qui per officia diversa nomina dederunt militiae, si de curialium numero originem trahunt, soluti sacramentis vestris coetibus adgregentur. dat. xi kal. iun. mediolani constantio a. vii et constantio iii caes. conss. (354 mai. 22).

CTh.12.1.43

Idem a. ad taurum praefectum praetorio. illudere commodis curiarum decurionibus ac decurionum filiis cautum est non licere, etsi vero adfectu militiae se obsequiis traderent. cum vero idcirco tantummodo ad militiae sacramenta confugiunt, ut commodis oppidaneis obsequium denegetur, fraudis huius commenta facile comprimentur. comperimus namque plurimos praedictorum nomen militiae tradidisse vel ad suffragia cucurrisse ita, ut post tempus exiguum honesta missione donentur....Et muneribus patriae perferendis curam sedulae mentis intendant. dat. xvi kal. aug. mediolani arbitione et lolliano conss. (355 iul. 17).

CTh.12.1.44

Idem a. ad martinianum vicarium africae. quicumque intra palatium perfectissimus aut comes provectus suffragio est, spolietur honoris indebiti dignitate et si intra provinciam repertus fuerit otiosus, cuius munia vitare studebat, obsequiis competentibus subiugetur. dat. xi kal. iun. sirmio datiano et cereale conss. (358 mai. 22).

CTh.12.1.45

Idem a. ad martinianum vicarium africae. parvi habito generis et originis nexu plerique muniis oppidaneis improbe destitutis ad militiam confugisse dicuntur. ideoque non eos tantum, qui etiamnunc in militia perseverent, set veteranos etiam statuimus evocari executuros proprias allegationes in iudiciis competentibus, - aequum est namque nullum se nomine honestae missionis tueri - ut etiamnunc in militia permanentes vel iam otium consecutos recipiant curiae, si sibi obnoxios esse monstraverint. elicitas quoque epistulas adimi volumus veteranis, curiae decernentes esse reddendos, quos obnoxios esse claruerit. dat. x kal. iul. sirmio datiano et cereale conss. (358 iun. 22).

CTh.12.1.46

Idem a. ad martinianum vicarium africae. a solis praecipimus advocatis eorumque consortio dari provinciae sacerdotem. nec aliquis arbitretur ita esse advocationis necessitatem impositam sacerdotio, ut et ab eo munerum oppidaneorum functio secernatur, cum nulla umquam iura patronis forensium quaestionum vacationem civilium munerum praestituerint. nullum igitur advocatum a curia, cui tenetur obnoxius, patimur excusari, videlicet si civico nomine aut vinculo incolatus oppidanea necessitas eum detinet obligatum. itaque aput alios etiam iudices operam dantes negotiis perorandis obnoxios esse decernimus sacerdotio, sic videlicet, ut intra eam provinciam huiusmodi honoribus mancipentur, ubi eos necessitas curialis detinet obligatos. dat. v kal. iul. mursae datiano et cereale conss. (358 iun. 27).

CTh.12.1.47 [=brev.12.1.5]

Imp. constantius a. .... oppidaneis ordinibus consulentes dudum iussimus, ab iniuriis corporalibus tutam esse debere ordinis dignitatem. condemnationibus etiam modum imposuimus, qui legibus designatur. ideoque sancimus, ut, si iudex vel in condemnationibus exprimendis vel in corporalibus iniuriis ultra licitum contra curialem exarserit, ipse quidem auri pondo quinque, officium vero eius decem fisco inferat. dat. xviii. kal. iul. eusebio et hypatio coss.

interpretatio. in correctione curialium certam patientiam iudices debent retinere, ut in corpore vel in sanguine curialium non facile audeant desaevire. nam si qui contra hoc fecerit, ipse quidem iudex quinque libras auri et officium eius decem auri libras fisco inferre cogantur

CTh.12.1.48

Idem a. ad senatum. si qui forte decuriones munia detrectantes ad senatus nostri sese consortium contulerunt, exempti albo curiae propriis urbibus mancipandi sunt. qui vero praetorum honore perfuncti sunt residentes in senatu, redhibere debebunt quae ex rationibus fisci aut urbium visceribus abstulerunt, ita ut omnibus deinceps adipiscendi honoris huiusce aditus obstruatur. dat. v non. mai. tauro et florentio conss. (361 mai. 3).

CTh.12.1.49pr.

Idem a. ad taurum praefectum praetorio. solum episcopum facultates suas curiae, sicut ante fuerat constitutum, nullus adigat mancipare, sed antistes maneat nec faciat substantiae cessionem. sane si qui ad presbyterorum gradus, diaconum etiam seu subdiaconum ceterorumque pervenerint adsistente curia ac sub obtutibus iudicis promente consensum, cum eorum vitam insignem atque innocentem esse omni probitate constiterit, habere debet patrimonium probabilis instituti, ut retineat proprias facultates, maxime si totius populi vocibus expetatur. (361 aug. 29).

CTh.12.1.49.1

Quod si qui forte non curialibus aput iudicem profitentibus, non denique expetente populo ad eos quos diximus gradus clandestinis artibus adspirent aut studio fraudulentae artis irrepserint, patrimonium suum liberis tradant ad curialia obsequia subrogatis. quod si suboles defuerit, propinquis suis, quos tamen gradus poterant legitimae successionis adtingere, duas tradat propriae substantiae portiones, sibi tertiam reservaturus, scilicet ut per propinquos, si tamen curiales sunt aut etiam si curiae numquam antea obsequium praebuerunt, praebeatur susceptis facultatibus obsequella. quod si filios aut propinquos non habuerint hi, qui derelicta curia ad cultum divinae reverentiae existimaverint transeundum, duas portiones curia debebit accipere relicta penes eum tertia, quem ante diximus ad ecclesiasticorum consortium insidiosis artibus adspirasse. ea vero, quae ad curiam ex eorum iure transierint, curiae esse oportet nec ex eius iure transferri. sed quoniam verendum fuerit, ne alienatis facultatibus aut in aliorum iura ante transscriptis nulla ex parte possit curiae utilitatibus consuli, observari oportet, ut, si patefacta fuerint fraudulenta consilia, qui qualibet necessitudine copulatus est, cum id potuerit demonstrare, easdem percipiat facultates curiae muneribus praebiturus obsequia; vel si propinquorum cesset indago, cuncta ad curiam transferantur quae quolibet titulo alienata probabuntur ex eo tempore, ex quo curiae munia coeperit detrectare qui viam divinae cultionis affectat. (361 aug. 29).

CTh.12.1.49.2

Si praepositi horreorum iique, qui suscepturi sunt magistratum, praepositi etiam pacis seu susceptores diversarum specierum ad ecclesiam crediderint adspirandum, postquam officia impositae sollicitudinis aut honoris adgressi sunt, ipsos primum antistites supernae legis conveniet reluctari ipsisque primum adnitentibus eosdem ad obsequia congrua revocari; aut, si hoc neglexerint, a curialibus iudiciali officio suffragante retrahendi sunt. et cetera. dat. iiii kal. sept. tauro et florentio conss. (361 aug. 29).

CTh.12.1.50pr.

Imp. iulianus a. secundo praefecto praetorio. post alia: decuriones, qui ut christiani declinant munia, revocentur. (362 mart. 13).

CTh.12.1.50.1

Et ab auri atque argenti praestatione, quod negotiatoribus indicitur, curiae immunes sint, nisi forte decurionem aliquid mercari constiterit, ita ut ordines civitatum ex huiusmodi reliquis sarcinarum, ut iam diximus, amoveantur. (362 mart. 13).

CTh.12.1.50.2

Et quoniam ad potentium domus confugisse quosdam relatum est curiales, ut tam foeda perfugia prohibeantur, multam statuimus, ut per singula capita singulos solidos dependat, qui ad potentis domum confugerit et tantundem qui receperit multae nomine inferat. nam si servus inscio domino susceperit, capite punietur, et ingenuus, qui invito patrono hoc fecerit, deportabitur. proposita iii id. mar. constantinopoli mamertino et nevitta conss. (362 mart. 13).

CTh.12.1.51

Idem a. iuliano comiti orientis. eos indulserunt veteres principes ex materno genere curialibus antiochenis adscribi, quos patris dignitas nullius vindicaret iuri civitatis. dat. v kal. sept. antiochiae mamertino et nevitta conss. (362 aug. 28).

CTh.12.1.52

Idem a. ad iulianum consularem foenices. non obstat curialium petitioni, quod ii, quos incolas dixerunt, alibi decuriones esse dicuntur; poterunt enim et aput eos detineri, si eorum patitur substantia et ante conventionem incolatui renuntiare noluerunt. sola vero possessione sine laris collocatione praedictos onerari iuris ratio non patitur, quamvis res decurionum comparasse dicantur. sane incolatus iure tunc detinendi sunt, si non aut arma gesserunt aut expeditioni militari praefuerunt aut sub praecone administrationis facti sunt senatores. dat. iii non. sept. antiochiae; acc. id. oct. tyro mamertino et nevitta conss. (362 sept. 3).

CTh.12.1.53pr.

Idem a. ad sallustium praefectum praetorio. quoniam ex paucis plurima commissa non absurde suspicamur, ex die kal. septembrium omnes omnino praeter sollemnes nominationes factas a curiis in irritum devocamus. de praecedentibus porro iustum agitabis examen. (362 sept. 18).

CTh.12.1.53.1

Placuit etiam designare, quae corpora sint, in quibus nominationis iuste sollemnitas exercetur. decurionum enim filios necdum curiae mancipatos et plebeios eiusdem oppidi cives, quos ad decurionum subeunda munera splendidior fortuna subvexit, licet nominare sollemniter. dat. xiiii kal. oct. antiochiae mamertino et nevitta conss. (362 sept. 18).

CTh.12.1.54

Idem a. ad iulianum comitem orientis. providendum est eorum novitati decurionum, qui nuper nomen curiis addiderunt, ne praeteritis debitis susceptorum onerentur: sed conventis propter haec debita qui ea praecedentibus delegationibus contraxerunt nullam eos molestiam pro sarcina nominationis alienae sustinere patiaris. proposita beryto kal. nov. mamertino et nevitta conss. (362 nov. 1).

CTh.12.1.55 [=brev.12.1.6]

Imp. iulianus a. leontio consulari palaestinae. qui pater sit tredecim liberorum, non modo ad curiam non vocetur, verum etiam, si sit decurio, honoratissima quiete donetur. dat. kal. mart. antiochiae, iuliano a. iv., et sallustio coss.

interpretatio. haec lex hoc praecipit, eum, qui pater probatur esse tredecim filiorum, non solum ad curiae servitia non tenendum, verum etiam, si curialis sit, honoratissima quiete donandum

CTh.12.1.56

Idem a. qui nati origine curiali militare munus adamaverunt, ubi x annorum stipendia confecta sunt, iussionum nostrarum auctoritate erunt curia immunes. si vero intra decennium recens athuc erit ratio militiae limitaneae, causa generis praeponderabit et originis: curiis enim adgregabuntur. dat. xii kal. ian. antiochiae iuliano a. iiii et sallustio conss. (363 dec. 21).

CTh.12.1.57

Impp. valentinianus et valens aa. ad mamertinum praefectum praetorio. nemo ad ordinem senatorium ante functionem omnium munerum municipalium senator accedat. cum autem universis transactis patriae stipendia fuerit emensus, tum eum ita ordinis senatorii complexus excipiet, ut reposcentium civium flagitatio non fatiget. ii autem, qui legem nostram neglexerint, exempti senatorio albo, quoad municipalibus necessitatibus satisfaciant, non capiant cassi honoris augmentum. nam qui cupiunt incrementum honoris adipsici, perfunctos se esse muneribus actis debent ordinarii iudicis adprobare, in locum suum scilicet filiis subrogatis, si eos successio familiae ad exsequendam universam legis nostrae mentem docebitur adiuvare. dat. non. mai. divo ioviano et varroniano conss. (364 mai. 7).

CTh.12.1.58pr.

Idem aa. ad mamertinum praefectum praetorio. qui curiali ortus familia ante completa munera patriae senator factus est, fructu careat, quousque muneribus absolvatur: quibus expletis si velit sumptuosum ordinem senatorium vitare, renuntiet dignitati; si permanserit, liberos quos post ediderit habeat senatores praetores iam quaestoresque, non muneri decurionum obnoxios. (364 mai. 13).

CTh.12.1.58.1

Militiae vero nullus gradus, nulla diuturnitas defendet eum, qui ut curialem contrahens originem repetetur. (364 mai. 13).

CTh.12.1.58.2

Sed et qui nexum curialem nascendi opportunitate vitaverit, nisi cum duodeviginti annos expleverit militiam exerceat, per quam parentibus eius immunitas quaesita est, securus esse non poterit propter sortem originis. dat. iii id. mai. hadrianopoli divo ioviano et varroniano conss. (364 mai. 13).

CTh.12.1.59

Idem aa. ad byzacenos. qui partes eligit ecclesiae, aut in propinquum bona propria conferendo eum pro se faciat curialem aut facultatibus curiae cedat quam reliquit, ex necessitate revocando eo, qui neutrum fecit, cum clericus esse coepisset. et cetera. dat. iiii id. sept. aquileiae divo ioviano et varroniano conss. (364 sept. 12).

CTh.12.1.60

Idem aa. ad byzacenos. sacerdotes vel curiales ultra terminos propriae civitatis non iubeantur sui exhibere praesentiam, in sacerdotibus creandis et in privilegiis, quae isdem deferebantur, veteri more servando. dat. prid. id. sept. aquileiae divo ioviano et varroniano conss. (364 sept. 12).

CTh.12.1.61

Idem aa. ad terentium correctorem tusciae. urbis vulsiniensium principales, qui tamen patronorum adepti fuerint dignitatem, hanc praerogativam laborum atque officiorum ferant, ne interdum ad libidinem prave consulentium iudicum gravibus adficiantur iniuriis. dat. v kal. novemb. divo ioviano et varroniano conss. (364 oct. 28).

CTh.12.1.62

Idem aa. ad symmachum praefectum urbi. municipalis, qui ad fabrorum collegium alia officia illusurus irrepsit, statui pristino reformetur, nec in posterum decurionum quis originem trahens ad hoc officium adspirare audeat. dat. iiii id. dec. mediolano divo ioviano et varroniano conss. (364 dec. 10).

CTh.12.1.63

Idem aa. ad modestum praefectum praetorio. quidam ignaviae sectatores desertis civitatum muneribus captant solitudines ac secreta et specie religionis cum coetibus monazonton congregantur. hos igitur atque huiusmodi intra aegyptum deprehensos per comitem orientis erui e latebris consulta praeceptione mandavimus atque ad munia patriarum subeunda revocari aut pro tenore nostrae sanctionis familiarium rerum carere illecebris, quas per eos censuimus vindicandas, qui publicarum essent subituri munera functionum. proposita beryto kal. ian. valentiniano et valente aa. conss. (370? 373? ian. 1).

CTh.12.1.64

Idem aa. mauris sitifensibus. privilegio militiae paternae se non vindicet, quem avitus curiae nexus adstringit, et patrem sine dubio receptura curia, si intra praedicti temporis calcem suis partibus adfuisset. quod si militari avo et patre decurione nascetur, paternae erit succedaneus functioni. dat. viiii kal. mai. treviris valentiniano et valente aa. conss. (?368? 370? 373? apr. 23).

CTh.12.1.65

Idem aa. ad terentium correctorem tusciae. omnes curiales, qui qualibet gratia prius ad altiorem gradum properaverint, quam munia universa percurrerint, ad ordinem necessitatum suarum revocentur nec ante ad usurpatam dignitatem admittantur, quam quae patriae debentur impleverint. non difficile autem intellegitur id, quod senatorio ordini concessum non est, concedi non posse ordinibus civitatum. dat. v kal. iun. mediolano valentiniano et valente aa. conss. (365 mai. 28).

CTh.12.1.66

Idem aa. ad rufinum praefectum praetorio. ordinibus curiarum, quorum nobis splendor vel maxime cordi est, non adgregentur nisi nominati, nisi electi, quos ipsi ordines coetibus suis duxerint adgregandos, nec quis ob culpam, ob quam eximi deberet ex ordine, mittatur in curiam. dat. xi kal. iul. ravennae valentiniano et valente aa. conss. (365 iun. 21).

CTh.12.1.67

Idem aa. ad volusianum praefectum urbi. nullus exceptis palatinis qualibet praerogativa fultus a debitis muneribus habeatur immunis. dat. iiii kal. iul. mediolano valentiniano et valente aa. conss. (365 iun. [?] 28).

CTh.12.1.68

Idem aa. ad severum praefectum urbi. quaecumque in perniciem ordinis abellinatium sine auctoritate ac iudicio principali ordinarii iudicis nimia arrogatione gesta sunt, neque vetustae consuetudini praeiudicare debebunt neque in futurum quandam necessitatem legis imponere. dat. prid. non. oct. veronae valentiniano et valente aa. conss. (365 [364?] oct. 6).

CTh.12.1.69

Idem aa. ad auxonium vicarium dioeceseos asianae. universi, qui praematura cupiditate senatorios coetus honoribus patriae praetulisse noscuntur, habeant quidem incolumem statum senatoriae dignitatis, verum fungantur his honoribus, quos patriae nondum reddiderunt. quin etiam liberos suos indicent, quos ante senatoriam dignitatem quisque suscepit. dat. prid. non. oct. valentiniano et valente aa. conss. (365? 368? 370? 373? oct. 6).

CTh.12.1.70

Idem aa. ad mamertinum praefectum praetorio. quisquis ex hoc corpore, quod susceptioni deputatum est, honorem quemlibet suffragio meruit, etiamsi nostras purpuras adoravit, meritis careat dignitatis. dat. iii kal. feb. valentiniano et valente aa. conss. (365 ian. 30).

CTh.12.1.71

Idem aa. et gratianus a. ad amphilochium consularem campaniae sive ad sofronium consularem piceni. qui praeterito aliquo vel honore vel munere ad locum indebitum tetenderunt, etiamsi conivente curia vel aliquibus in iudicium causis tamquam probabilibus allatis valuit obreptio, ad ea quae fugerant retrahantur. quiescat autem illa interlocutio, qua, cum huiusmodi querimoniae deferantur, pronuntiet iudex curiam suum nosse discrimen. dat. iii non. mai. treviris valentiniano et valente iii aa. conss. (370 mai. 5).

CTh.12.1.72

Idem aaa. ad olybrium consularem tusciae. si quis negotiator fundos comparaverit et ut aliquorum possessor praediorum vocetur ad curiam, ei necessitatis umbra non adsit, quod propterea pecunia, quam habet in conversatione, mercatoribus indictum aurum argentumque agnoscit, sed nominatione facta eius pareat functionibus, cui se sponte dedit, pecuniae usum in glebae commodum conferendo. dat. iii non. mai. treviris valentiniano et valente iii aa. conss. (370 mai. 5).

CTh.12.1.73

Idem aaa. ad symmachum proconsulem africae. qui nullo administrationis honore fultus, nullis vel palatini laboris insignibus vel meritis iustis militiae in consortium senatus nititur pervenire, missa in hanc rem legatione revocetur eique reddatur curiae, quam voluit declinare. dat. prid. kal. dec. treviris valentiniano et valente iiii aa. conss. (373 [?] nov. 30).

CTh.12.1.74pr.

Idem aaa. ad modestum praefectum praetorio. post alia: in his, qui ex curiis ad senatus consortia pervenerunt, haec forma servetur, ut, si perfunctus quispiam muneribus et filii subole nixus fuerit, quem senatorio necdum indepto honore suscepit, filium suum curiae functionibus tradat, ipse optata clarissimatus dignitate potiatur. quod si ei gemina vel numerosa suboles erit, tunc discrimen promptae dudum divalis legis adhibendum est, ut de duobus eius liberis aut pluribus sortiendi unius filii ad collegium senatus habeat optionem, ita ut ei, qui cum patre vel post patrem ad consortium senatus legetur, divisione cum fratribus per sortem successionis patrimonii idonea solius glebae substantia congregetur. plane si qui curialis factus senator et unius filii posteritate subnixus ipsum senatui poposcerit conecti seque promittat ad curiae munera regressurum, eiusmodi captio minime admittatur. (371 mart. 1).

CTh.12.1.74.1

Ceterum si de numero curialium factus senator filium non habebit, quem functionibus patriae heredem generis ac munerum derelinquat, glebae senatoriae brevibus eximatur circa eos forma data, qui intra annos xi consulatus constantii decimi et iuliani iii amplissimi ordinis participasse collegium monstrabuntur: ceterum anteriore tempore adscitos ipsa aequum est antiquitate defendi. (371 mart. 1).

CTh.12.1.74.2

Si quis igitur curialis prosapiae senatorio adepto vel a nobis vel a divis principibus honore subnixus sit, quantum ad liberos quidem pertinet, eadem quae superius comprehensa est forma servetur, excepto scilicet eo, qui sine filio sit et, ut statuimus, retrahendus est, nisi vel antiquitate participati senatus vel praestituti temporis praerogativa muniatur vel ius gladii habuit vel praeconum, qui honores concessi ceteris et antiquum instar senatorii nominis fuerint consecuti. (371 mart. 1).

CTh.12.1.74.3

His verae dignitatis titulis et iudicibus adiungendis, qui proprium decus senatorum indepti praeturae insignibus fuerint et honoribus ampliati, vel quos veteris tribunorum plebis appellatione respersos umbra nominis nobis annuentibus constiterit populo praefuisse. (371 mart. 1).

CTh.12.1.74.4

Inanes vero umbras et cassas imagines dignitatum codicillis honorariis sectantes nihil adiuvari praecipimus, exceptis eminentium elatis titulis dignitatum, si et honorario nomine a summo gradu usque ad consularitatem haut exiguis profecto meritis amplissima sibi honestamenta pepererunt, ceteris inferioribus dumtaxat honorariis dignitatibus ad ea officia quae reliquerant deducendis. (371 mart. 1).

CTh.12.1.74.5

Haec super obnoxiis curiali origini. ceterum suae potestatis et nullis per provincias functionibus obligati si vel longae militiae labore vel proximis erga nos...Iuvantibus codicillos senatorios reportaverint, nisi vitiis aut actae vitae obprobriis amplissimo ordine deprehendantur indigni, indepti semel clarissimatus dignitatem perpetuo manebunt in ordine senatorum. dat. kal. mart. constantinopoli gratiano a. ii et probo conss. (371 mart. 1).

CTh.12.1.75

Idem aaa. ad viventium praefectum praetorio. qui ad sacerdotium provinciae et principalis honorem gradatim et per ordinem muneribus expeditis, non gratia emendicatisque suffragiis, et labore pervenerint, probatis actibus, si consona est civium fama et publice ab universo ordine comprobantur, habeantur immunes, otio fruituri quod continui laboris testimonio promerentur liberumque sit corpus eorum ab his iniuriis, quas honoratos non decet sustinere. honorem etiam eis ex comitibus addi censemus, quem ii consequi solent, qui fidem diligentiamque suam in administrandis rebus publicis adprobarint. dat. iiii kal. iul. treviris gratiano a. ii et probo conss. (371 iun. 28).

CTh.12.1.76

Idem aaa. ad modestum praefectum praetorio. ex omnibus domibus producti qui origine sunt curiali, ad subeundam publicorum munerum functionem protrahantur, quippe cum occultatoribus talium praeter iacturam existimationis etiam rerum discrimen incumbat, si ulterius progressi utilitatem publicam privatis studiis et patrociniis postponant. dat. iii id. iul. ancyrae gratiano a. ii et probo conss. (371 iul. 13).

CTh.12.1.77

Idem aaa. ad probum vicarium urbis. nemo originis suae oblitus et patriae, cui domicilii iure devinctus est, ad gubernacula provinciae nitatur ascendere, priusquam decursis gradatim curiae muneribus subvehatur. nec vero a duumviratu vel a sacerdotio incipiat, sed servato ordine omnium officiorum sollicitudinem sustineat, quod nec his deferri per gratiam aut conivente iudice patimur, qui advocationis praerogativa nituntur; nec vero principalium vel sacerdotalium, cum nullam curialium officiorum agnoverint functionem, in honores primos irrepant. post munera vero et magistratus gradatim patriae persolutos aditus singulis ad administrationes publicas, nobis quoque adsistentibus recludatur. et cetera. dat. vii kal. mart. treviris modesto et arinthaeo conss. (372 febr. 23).

CTh.12.1.78

Idem aaa. ad probum praefectum praetorio. ad illustres comites et magistros equitum ac peditum scripta porreximus, ut scirent ab omnibus his veteranorum filiis, qui vel curiae addicti sunt vel civilibus muneribus aliisque necessitatibus obsecundant, penitus abstinendum vel, si qui forte retracti essent, eos ita protinus officiis anterioribus redderent nec pro his vicarios expeterent iuniores. dat. xvii kal. iun. patavione modesto et arintheo conss. (372 mai. 16/7).

CTh.12.1.79

Idem aaa. modesto praefecto praetorio. quicumque per osdroenam primipilarium maiore laetatur numero filiorum, unum loco suo veluti hereditario iure substituat, alterum pro amore patriae edessenae curiae tradat obsequiis, ceteris quam voluerit militiam provisurus. sin autem duos tantum procreaverit, cohorti satisfacere cogatur et curiae. quod si unum procreaverit, eundem ordini patriae restituat, nullo contra hanc formam beneficio valituro. damus sane licentiam tam patribus eorum quam ipsis, qui huius legis auctoritate civitatum obsequio adgregantur, ut, si quos curiales patrocinio principalium invenerint excusari, in medium proferant, ut et ipsi similibus officiis deputati pareant imperatis. dat. iii non. dec. antiochiae post cons. gratiani a. iii et equiti v. c. (375 dec. 3).

CTh.12.1.80

Imppp. gratianus, valentinianus et theodosius aaa. iuliano praefecto aegypti. omnis ordo curialis a tormentis his, quae reis debita sunt, et ab ictibus plumbatarum habeantur immunes, scituro iudice, quod si vel ipse vel eius officium contra vetitum legis aliquid usurpare temptaverit, gravissimo se supplicio esse subdendum. gravitas igitur tua sanctionis maiestate perspecta non solum a corporalibus curialium iniuriis temperabit, verum etiam tota observatione providebit, ut, si aliquid temerarium ab officio aliquo fuerit perpetratum, severioris poenae discrimine vindicetur. dat. xvi kal. april. gratiano v et theodosio i aa. conss. (380 mart. 17).

CTh.12.1.81

Idem aaa. ad neoterium praefectum praetorio. fabricenses ordinibus restituantur, qui originem curialem et propriae munera declinaverint civitatis; reliqui ne levi quidem inquietudine pulsentur. dat. xvi kal. april. thessalonicae gratiano v et theodosio i aa. conss. (380 mart. 17).

CTh.12.1.82

Idem aaa. neoterio praefecto praetorio. omnes ad curiam praecipimus revocari, qui ad munera subeunda originalibus vinculis occupati officia conantur exhibere maiora, sive se splendidissimo senatui tradiderunt sive per officia militantes obsequia patriae denegarunt, si tamen allegationum meritis deseruntur. dat. xvi kal. april. thessalonicae gratiano v et theodosio i aa. conss. (380 mart. 17).

CTh.12.1.83

Idem aaa. si qui militaris prosapiae se officio cohortis adgregarit et si infractis viribus grandaevam praeferat senectutem aut debilitatis obtentu bellico inconveniens operi iudicetur, de ignaviae latebris vel sera indagatione retractus curiarum functionibus mancipetur. scripta petro consulari foenices damasco prid. id. mai. constantinopoli gratiano v et theodosio i aa. conss. (380 mai. 14).

CTh.12.1.84

Idem aaa. ad camenium vicarium africae. in nominationibus a singulis quibusque ordinibus celebrandis dudum expressae quantitatis modum eatenus volumus custodiri, ut eorum in duabus, quae concilio adesse debent, partibus numerus derogetur, quos aut obtentus debilitatis alienat aut senectus pigra remoratur aut clericatus obsequia vindicarunt aut crimen desertionis absentat, ut ex reliquo numero duabus tertiis supputandis. proposita karthagine xv kal. mart. syagrio et eucherio conss. (381 febr. 15).

CTh.12.1.85

Idem aaa. eutropio praefecto praetorio. omnes iudices provinciarumque rectores a consuetudine temerariae usurpationis abstineant sciantque neminem omnino principalium aut decurionum sub qualibet culpae aut erroris offensa plumbatarum cruciatibus esse subdendum. quod si quis forte iudicum in hanc pertinaciam illiciti furoris eruperit, quod audeat principalem ac decurionem et suae, si sic dici oportet, curiae senatorem plumbatarum ictibus subdere, xx librarum auri illatione multatus et perpetua infamia inustus ne speciali quidem rescripto notem eluere mereatur; et officium quinquaginta librarum auri multam fisco nostro cogetur inferre, quoniam, ut pertinaciae iudicis resistat, liberam eidem contradicendi permittimus facultatem. dat. xii kal. aug. heracleae eucherio et syagrio conss. (381 iul. 21).

CTh.12.1.86

Idem aaa. eutropio praefecto praetorio. qui labores curialis officii declinantes per illicitae ambitionis compendia provecti non merito probantur esse, sed pretio, nulla debent ratione defendi, sed functionibus debitis redhiberi. super eorum autem filiis revocandis nullius dubietatis exstet ambiguum. dat. xii kal. aug. heracleae eucherio et syagrio conss. (381 iul. 21).

CTh.12.1.87

Idem aaa. ad florum praefectum praetorio. universos, qui se tam causarum actionibus quam etiam sacramentis militaribus cessantes ac stipendiis manciparunt, ad obsequium sublimitas tua iubeat redire curiale. eos vero, quos emptae defensionem praeferre compererit dignitatis, cunctas, quas crediderant subtrahendas, complere praecipiat functiones. dat. iii kal. aug. heracleae eucherio et syagrio conss. (381 iul. [?] 30).

CTh.12.1.88

Idem aaa. ad syagrium praefectum praetorio. post alia: curiales nisi per quinquennium armata militia vel per xxx annos dignitas palatina defendat, certum est origini esse reddendos, ita ut, servata quinquennii de praeterito condicione et in posterum istiusmodi personis a consortio militiae celsioris exclusis, omnes, qui intra praescriptum tempus inter palatinos habentur seu inter protectores aut domesticos, restituantur suae fortunae. proposita v id. april. karthagine post cons. syagri et eucheri vv. cc. (382 apr. 9).

CTh.12.1.89pr.

Idem aaa. ad syagrium praefectum praetorio. omnes omnino, quos paterna obsequia municipes fecerunt, resultandi curiae nexibus, quaelibet avorum atque maiorum stemmata referant, licentiam penitus amittant, non minore rectoribus, si hoc concesserint, periculi denuntiatione constrictis. (382 [381] iul. 5).

CTh.12.1.89.1

Veteranorum quoque filios armis inpares seque otio vel debilitate membrorum vel mentis torpore donantes vindicet curiarum necessitas. dat. iii non. iul. viminacio post cons. syagri et eucheri vv. cc. (382 [381] iul. 5).

CTh.12.1.90

Idem aaa. proculo comiti orientis. universos, qui ex consulatu divi pii constanti x et iuliani iii hoc enim tempus divorum parentium nostrorum valentiniani et valentis decreta signarunt, ex genere curiali ad senatoriam dignitatem adspirasse constiterit, vel restituendis omnibus functionibus quas debebunt curabis addicere vel, si cunctis functionibus obsecuti sunt, in substituendis quam maxime idoneis obnoxios facere non desistas. dat. viii id. mart. constantinopoli antonio et syagrio conss. (382 [383?] mart. 8).

CTh.12.1.91

Idem aaa. dario consulari. si qui curiales curia derelicta neque debitas patriae reddiderint functiones nec, cum ipsi discederent, idoneos subrogarunt, ita eos constringi oportet, ut et agenda persolvant et in locum suum idoneos pro publica utilitate constituant. dat. viii id. aug. constantinopoli antonio et syagrio conss. (382 aug. 6).

CTh.12.1.92

Idem aaa. floro praefecto praetorio. si quis procurationem facultatum suarum curiali crediderit esse mandandam, totius dignitatis exceptione depulsa patrimonium eius quod crediderat curiali proscriptio fiscalis invadat. ille vero, qui immemor libertatis et generis infamissimam suscipiens vilitatem existimationem suam servili obsecundatione damnaverit, deportationis incommodo subiugetur. dat. x kal. nov. constantinopoli antonio et syagrio conss. (382 oct. 23).

CTh.12.1.93

Idem aaa. clearcho praefecto praetorio. cuncti, qui ex decurionibus senatorum se splendori et collegio miscuerunt, eorumque omnis suboles, vel quae prius edita est vel quae postmodum docetur esse suscepta, remittatur ad curiam. dat. vii kal. dec. antonio et syagrio conss. (382 nov. 25).

CTh.12.1.94

Idem aaa. constantiano vicario dioeceseos ponticae. universos, quos per furtivam militiam et fraudes varias dignitatum obsequia civitatum gravitas tua compererit refugisse ac per ambitum honoris indebiti necessarium patriae ministerium denegasse, ad collegium ordinum et consortium functionum amota revocare dilatione contendat neque eos sub excusatione alicuius officii vel honoris permittat evagari. qui tunc demum libero poterunt honore gaudere, si universis muneribus nominationibusque completis absolutam possidere coeperint dignitatem. dat. prid. kal. feb. constantinopoli merobaude ii et saturnino conss. (383 ian. 31).

CTh.12.1.95

Idem aaa. ad eusignium proconsulem africae. viri ordinibus nati ad militiae non debent sacramenta confugere. post xv vero stipendia vinculo prioris ordinis liberetur, qui se tribus lustris adsidue militasse et neque bellicis necessitatibus neque muneribus militaribus ostenderit defuisse. dat. iiii kal. mart. mediolano merobaude ii et saturnino conss. (383 febr. 26).

CTh.12.1.96pr.

Idem aaa. floro praefecto praetorio. concessum curialibus provinciae mysiae, ut, si quos e plebe idoneos habent, ad decurionatus munia devocent, ne personae famulantium facultate locupletes onera, pro quibus patrimonia requiruntur, obscuritate nominis vilioris evadant. (383 mart. 5).

CTh.12.1.96.1

In quorum desiderio etiam istud adiectum est, ut originales, qui ad diversa provinciarum officia confugerunt, ex divi iuliani tempore ad curiales functiones sublata omni ambiguitate retrahantur. dat. iii non. mart. constantinopoli merobaude ii et saturnino conss. (383 mart. 5).

CTh.12.1.97

Idem aaa. cynegio comiti sacrarum largitionum. scias excepta dioecesi aegyptiaca ubique servandum esse, ne usquam penitus in susceptionem vel minimi vectigalis decurio conductor accedat, sed eorum professionibus et personis omnis haec diversarum locationum summa credatur, qui ad exhibendam publicis rationibus fidem periculo et fortunae coguntur et vitae.

dat. viii id. mar. constantinopoli merobaude ii et saturnino conss. (383 mart. 8).

CTh.12.1.98

Idem aaa. postumiano praefecto praetorio. in muneribus peragendis, si qua soluta ante non fuerant, vel in substituendis idoneis, ne quid patriae perisse videatur, vel in filiis retinendis priorum praecepta principum sublimitas tua custodiat. eos quoque, qui advocationis obtentu curialia onera declinant, agere universa compellat, quae etsi necessitas non exigit, tamen patria non remittit. ipsos quin etiam filios magistrorum, qui ex curiali stirpe descendunt, simili modo obnoxios esse decernat. dat. viii id. april. constantinopoli merobaude ii et saturnino conss. (383 apr. 6).

CTh.12.1.99

Idem aaa. ad hypatium praefectum praetorio. post alia: iussio, qua sibi iudaeae legis homines blandiuntur, per quam eis curialium munerum datur immunitas, rescindatur, cum ne clericis quidem liberum sit prius se divinis minsteriis mancipare, quam patriae debita universa persolvant. quisquis igitur vere deo dicatus est, alium instructum facultatibus suis ad munera pro se complenda constituat. dat. xiiii kal. mai. mediolano merobaude ii et saturnino conss. (383 apr. 18).

CTh.12.1.100

Idem aaa. ad hypatium praefectum praetorio. omnes, qui ex origine curialium se diversis gradibus inseruere militiae, reddi propriis ordinibus oportebit, exceptis his, quibus legis vetustae, quae certum numerum stipendiorum vel palatinae militiae viris statuit, opitulatur auctoritas. dat. xiii kal. mai. mediolano merobaude ii et saturnino conss. (383 apr. 19).

CTh.12.1.101

Idem aaa. ad basilium comitem sacrarum largitionum. exemplo senatorii ordinis patris originem municeps unusquisque sequatur. nec valeant specialiter delata rescripta, si quis se matris origine defendens a maiore curia ad minorem transferri fortasse promeruerit, neque ulla pro more provinciae referri sinatur exceptio. dat. xvi kal. iul. romae merobaude ii et saturnino conss. (383 iun. 16).

CTh.12.1.102

Idem aaa. postumiano ii praefecto praetorio. quotienscumque se ex rescriptis nostris aliquid impetrasse contendent ii, quos obnoxios curiae vel origo fecerit vel latum inter partes iudicium designarit, nullam prorsus spem curias declinandi ex colore sacrae iussionis accipiant. dat. xiiii kal. aug. constantinopoli merobaude ii et saturnino conss. (383 iul. 19).

CTh.12.1.103

Idem aaa. ad proculum comitem orientis. voluntate propria unusquisque syriarchiae munus suscipere debet, non necessitate imposita. dat. vi kal. aug. salamariae merobaude ii et saturnino conss. (383 iul. 27).

CTh.12.1.104

Idem aaa. postumiano praefecto praetorio. curiales, qui ecclesiis malunt servire quam curiis, si volunt esse quod simulant, contemnant illa, quae subtrahunt. nec enim eos aliter nisi contemptis patrimoniis liberamus. quippe animos divina observatione devinctos non decet patrimoniorum desideriis occupari. dat. vii id. nov. constantinopoli merobaude ii et saturnino conss. (383 nov. 7).

CTh.12.1.105

Idem aaa. cynegio praefecto praetorio. ob penuriam edessenorum municipum divi parentes nostri statuerunt, ut officii praesidis osdroenae provinciae principum liberi, si singuli essent, memoratae civitatis curialibus iungerentur, sin vero bini, divisa fecunditate singuli militiae, singuli vero curiae necterentur. quod cum ita sit, iubemus et praesenti lege et superiore servata, ut omnes omnino, qui ordine militiae ad principatum venturi sunt vel venisse monstrantur, etiamsi aliqua calliditatis arte se a principatus munere putaverint subtrahendos, memoratae curiae suos liberos tradant dividantque cum edessena civitate subolem rei publicae profuturam. hi quoque, qui iam contra legem ante principatum patrum quibuslibet sacramentis innexi sunt, retracti memoratae curiae congregentur. dat. prid. non. mai. constantinopoli richomere et clearcho conss. (384 mai. 6).

CTh.12.1.106

Idem aaa. cynegio praefecto praetorio. curiales quicumque perfuncti provincialibus dignitatibus fuerint, ad persolvenda ea, quae debent patriae, detinentur. dat. viii id. iul. heracleae richomere et clearcho conss. (384 iul. 8).

CTh.12.1.107

Idem aaa. cynegio praefecto praetorio. quicumque heres curiali vel legitimus vel electus testamento graduve successerit quique fideicommissarius aut legatarius eiusdem arbitrio morientis exstiterit vel si quem liberalitas locupletaverit forte viventis, quos a curiae nexu condicio solet dirimere, sciant pecuniariis descriptionibus pro ea tantum parte patrimonii, in quam quisque successit ad denarismum sive uncias sese auctoris sui nomine retinendum. dat. prid. kal. sept. veronae richomere et clearcho conss. (384 aug. 31).

CTh.12.1.108

Idem aaa. ad cynegium praefectum praetorio. ne quis officialium curiae poenae specie atque aestimatione dedatur, nisi si quis forte curiam defugiens ob hoc coeperit militare, ne ingenitis fungatur officiis. omnes itaque omnino iudices tuae censurae subditos admonebis, ne quis aestimet curiae loco supplicii quemquam deputandum, cum utique unumquemque criminosum non dignitas debeat, sed poena comitari. dat. viii id. nov. constantinopoli richomere et clearcho conss. (384 nov. 6).

CTh.12.1.109

Idem aaa. cynegio praefecto praetorio. nec cogi ad agonothesiam volumus invitos et ad eum statum cuncta referenda sunt, in quo inveniuntur. atque ideo curiales, qui universa persolverint nihilque iam vel ex honoribus reliquum habeant, quod debere videantur, dumtaxat huius ac similium pro qualitate generis functionum, postquam patriae cuncta reddiderint quae publica poscit utilitas, etsi praesentare forsitan nolunt, tamen propter personarum condicionem praestare cogendi sunt, ut concessa sibi generaliter atque in perpetuum ex comitibus dignitate laetentur, osculum quoque his in provincia iudicantum et consessus indultus sit. dat. vi kal. mai. arcadio a. i et bautone conss. (385 apr. 26).

CTh.12.1.110

Idem aaa. ad neoterium praefectum praetorio. universos municipes sibimet debitos ordo aput proprium repetat cognitorem, si quidem nullum magis uniuscuiusque forum competens poterit appellari quam patriae. si quis tamen provinciam rexerit curialis, aditum sibi interclusum senatoriae dignitatis intellegat, nisi patriae quidquid debet ante dissolverit. et ne colludio forte municipum quae sunt iussa frustrentur, sciant singularum ordines civitatum xxx libras auri se esse multandos, nisi ad reposcendos proprios sedulis institerint querellis. dat. v kal. iun. mediolano arcadio a. i et bautone conss. (385 mai. 28).

CTh.12.1.111

Idem aaa. cynegio praefecto praetorio. nemo prorsus curialium substituto filio vel quolibet alio deserendorum munerum patriae habeat facultatem, sed unusquisque, qui relicto in aliqua civitate vel filio vel vicario ordini se implicat senatorio, tam suis quam subrogati muneribus obligatus sub specie munerum publicorum enormia utrubique cogatur patrimonii subire dispendia. dat. prid. kal. mai. constantinopoli honorio n. p. et evodio conss. (386 apr. 30).

CTh.12.1.112

Idem aaa. florentio praefecto augustali. in consequenda archierosyne ille sit potior, qui patriae plura praestiterit nec tamen a templorum cultu observatione christianitatis abscesserit. quippe indecorum est, immo ut verius dicamus, illicitum ad eorum curam templa et templorum sollemnia pertinere, quorum conscientiam vera ratio divinae religionis imbuerit et quos ipsos decebat tale munus, etiamsi non prohiberentur, effugere. emissa xvi kal. iul. constantinopoli honorio n. p. et evodio conss. (386 iun. 16).

CTh.12.1.113

Idem aaa. universis comitibus et magistris equitum et peditum. admonitis viris clarissimis ducibus tribunis praepositis cunctos transfugas statuat illustris magnificentia vestra ad originem pristinam revocari, seu qui diversis officiis dedicati seu qui sacramentis militaribus mancipati sunt. nemo se annositate tueatur, nemo, si tamen eius pater aut avus decuriones fuerunt, factum suum incongrua usurpatione defendat. ordines quoque meminerint se condemnationi obnoxios et periculo, si quibuscumque in locis reppertos non, etiam renitentes ac repugnantes, huius statuti auctoritate reddiderint. dat. iii non. sept. valentiae honorio n. p. et evodio conss. (386 sept. 3).

CTh.12.1.114

Idem aaa. ad eusignium praefectum praetorio. curiales, qui sese privilegio domus nostrae defendi posse crediderint, ad curiam retrahantur et propriis functionibus mancipentur et publica damna sarciant. tamen si quis ex his domui divinae detectus fuerit quippiam debere, exsolvat. dat. viii kal. ian. honorio n. p. et evodio conss. (386 dec. 25).

CTh.12.1.115

Idem aaa. cynegio praefecto praetorio. clerici ad curiam pertinentes sciant ex patrimonio suo, si ipsi immunes cupiunt permanere, alios idoneos esse faciendos, qui recedentum praesentiam personamque restituant in publicis muneribus subeundis. dat. prid. kal. ian. constantinopoli honorio n. p. et evodio conss. (386 dec. 31).

CTh.12.1.116

Imppp. valentinianus, theodosius et arcadius aaa. cynegio praefecto praetorio. omnes, qui ex origine decurionum ad perorandas causas laudum atque industriae amore ducuntur, reddant patriae, cui nati sunt, debitas functiones nec sese superflui nominis praerogativa defendant, quando quidem facilius parere muniis possint, si necessitatem publicam eo tempore, quo student causis, industriae favore toleraverint. dat. vi kal. april. constantinopoli valentiniano a. iii et eutropio conss. (387 mart. 27).

CTh.12.1.117

Idem aaa. cynegio praefecto praetorio. quilibet principalium vel decurionum vel decoctor pecuniae publicae vel fraudulentus in adscriptionibus illicitis vel inmoderatus in exactione fuerit inventus, iuxta pristinam consuetudinem non solum a vobis, quibus propter loci dignitatem rerum summa commissa est, verum a iudicibus ordinariis plumbatarum ictibus subiciatur. dat. pridie kal. april. constantinopoli valentiniano a. iii et eutropio conss. (387 mart. 31).

CTh.12.1.118pr.

Idem aaa. cynegio praefecto praetorio. decurio fortunam, quam nascendo meruit, suffragiis atque ambitione non mutet, et si vacare per senectutem potuerit, propter ordinationem, quae per plurimos cito definiri solet, curiam non relinquat. (387 iul. 6).

CTh.12.1.118.1

Illud vero iterata lege praecipimus, ne in locum proprium homo curialis filium suum substituat et ipse otiosus defendatur senatorii nominis dignitate. si quis vero ad indebitum honorem posthac adspirare ausus fuerit, auctoritate ordinarii iudicis remotus patriae reddatur et civibus. dat. prid. non. iul. constantinopoli valentiniano a. iii et eutropio conss. (387 iul. 6).

CTh.12.1.119

Idem aaa. tatiano praefecto praetorio. claudiopolis, prusiadis ac tottai et doridis oppidorum sive mansionum per bithyniam curiales publicis illudere functionibus per suam fugam cognovimus iubemusque, ut edictis primitus evocati utilitatibus se patriae et ei cui nati sunt restituant civitati. quod si etiam post publicam admonitionem fugae et indevotionis vita praefertur, tunc ex idoneis quibusque corporibus ac potissimum ex his, qui in sublimitatis tuae officio probatam militiam peregerunt, in locum fugacium subrogentur, ita ut, quorum subeunt necessitates, et patrimonia consequantur, illis, qui sponte patriam reliquerunt, id necessitatis habituris, ut perpetuo careant cui nihil commodi contulerunt. dat. xi kal. iul. scupis theodosio a. ii et cynegio conss. (388 iun. 21).

CTh.12.1.120

Idem aaa. tatiano praefecto praetorio. universos, qui ad indebitam militiam similiter adspirarunt, datis litteris ad illustrem virum magistrum officiorum, comitem sacrarum ac privatarum, solutos militia ordinibus propriis atque officiis iussimus subrogari. dat. xvi kal. ian. mediolano timasio et promoto conss. (389 dec. 17).

CTh.12.1.121

Idem aaa. tatiano praefecto praetorio. qui ante secundum consulatum mansuetudinis meae ex ordine curiali vel presbyteri fastigium vel ministerium diaconi vel exorcistae suscepit officium, omne eius patrimonium immune a curialibus nexibus habeatur ac liberum. is vero, qui se ad religiosa divini cultus obsequia quocumque sub nomine post memorati consulatus tempora praescripta contulerit, omni sciat cedendum esse patrimonio. dat. xv kal. iul. mediolano valentiniano a. iiii et neoterio conss. (390 iun. 17).

CTh.12.1.122

Idem aaa. tatiano praefecto praetorio. ii quibus detulimus splendidos magistratus quosque etiam ornavimus insignibus dignitatum, si non habent curiam, cui aut necessitudinis foedere aut nexu sanguinis teneantur, in splendidissimum ordinem senatorium et illam nobilissimam curiam cooptentur. is vero ratio diversa sit, qui statim ut nati sunt, curiales esse coeperint. ii namque praerogativa quidem concessae dignitatis utantur atque eos praestiti honoris splendor exornet, sed maneant in sinu patriae et veluti dicati infulis mysterium perenne custodiant; sit illis piaculum inde discedere. de filiis vero eorum ut in avitis curiis debeant permanere, adfatim cautum est, cum adempta sit patribus licentia discedendi. dat. iiii non. sept. veronae valentiniano a. iiii et neoterio conss. (390 sept. 2).

CTh.12.1.123pr.

Idem aaa. ad tatianum praefectum praetorio. dudum super his, qui relicta curia vel senatoriam dignitatem adepti sunt vel christianitatis obtentu curialium se consortio separarunt, evidens sanctionum nostrarum processit auctoritas, ut, si eorum personas vel honor vel religio defenderet, quod ex curiali substantia vel ipsi retinerent vel in alios transtulissent, obnoxium publicis descriptionibus haberetur. (391 iul. 28).

CTh.12.1.123.1

Evidens etiam praecepto nostro tempus expressum est, ex quo consulatu, si qui de curialibus ad ecclesiam confugissent, omni scirent patrimonio curiae esse cedendum. (391 iul. 28).

CTh.12.1.123.2

Quidquid ex substantia curialium ad unumquemque diversa largiendi occasione pervenerit, denarismo vel unciis habeatur obnoxium in ea parte, in qua auctoris sui nomine fuerat retentatum. (391 iul. 28).

CTh.12.1.123.3

Eos vero, qui honores aliquos consecuti naturale nomen dignitate mutarunt, his etiam post honorem muneribus obligamus, quibus debitores patriae monstrabuntur. (391 iul. 28).

CTh.12.1.123.4

Super filiis autem eorum evidens sanctionis definitio est, quae, cum patres patria non concedat excedere, non potest filios curiae muneribus liberare. (391 iul. 28).

CTh.12.1.123.5

Si qui autem divino cultu occupati et sacrosanctis mysteriis servientes legitima filiorum successione nituntur, si nullum filii eorum adhuc in ecclesia locum tenent vel his, quae per leges comprehensa sunt, non defendantur officiis, hos cum patrum facultatibus curiae inservire decernimus. (391 iul. 28).

CTh.12.1.123.6

Vacuas vero et inanes sine naturali successione fortunas, ut evidenter expressimus, sibi curia vindicabit, habitura solacium facultatem, cui desit in functionibus numerus personarum. dat. v kal. aug. constantinopoli tatiano et symmacho conss. (391 iul. 28).

CTh.12.1.124 [=brev.12.1.7]

Imppp. theodos., arcad. et honor. aaa. philoxeno vicario thraciarum. si quis filiam decurionis vel principalis suo iunctam consortio nullis exstantibus liberis fatali sorte perdiderit, atque eius ultimo hereditatem fuerit adeptus arbitrio, si ab omnibus alienus officiis est et nullis, quibus merito excusari possit, privilegiis adiuvatur, eius mox civitatis curiae mancipetur, in qua antea, uxore vivente, sine rerum dominio et proprietate, liber, curiae obnoxias facultates heres coeperit uxoris possidere. dat. iii. non. april. constantinopoli, arcadio a. ii. et rufino coss.

interpretatio. si quis filiam curialis acceperit uxorem, et haec ipsa in coniugio eius mortua fuerit, et omnia ad maritum, quaecumque* supra dicta videbatur possidere, testamenti voluntate pervenerint, omnibus curiae necessitatibus maritus ille, qui heres est, teneatur obnoxius

CTh.12.1.125

Idem aaa. victorio proconsuli asiae. submoto privilegio militari, quo sibi actuarii blandiuntur, eum, qui evidenter ostenditur curiali patre genitus, mox necessariis atque origini suae debitis functionibus mancipari praecipimus. dat. viii kal. mai. constantinopoli arcadio a. ii et rufino conss. (392 apr. 24).

CTh.12.1.126

Idem aaa. ad potamium praefectum augustalem. principales devoti et nihil debentes habeant privilegium, ut nihil corporalium molestiarum patiantur, scitura experientia tua, nisi praeceptionis nostrae forma servetur, et officium et ipsam sedis tuae iudiciariam potestatem propositae multae esse subdendam. dat. x kal. iul. constantinopoli arcadio a. ii et rufino conss. (392 iun. 22).

CTh.12.1.127

Idem aaa. tatiano praefecto praetorio. quicumque decursis perfunctus officiis primum obtinuerit in sua curia sequentibus ceteris locum, comitivae tertii ordinis habeat dignitatem, ut ab omnibus eum iniuriis dignitas concessa defendat, ita tamen, ut hoc honore donatus a nexu propriae originis non recedat. dat. prid. kal. iul. constantinopoli arcadio a. ii et rufino conss. (392 iun. 30).

CTh.12.1.128

Idem aaa. abundantio comiti et magistro utriusque militiae. militaribus viris nihil sit commune cum curiis; nihil sibi licitum sciant, quod suae non subiectum est potestati; nullum iniuria, nullum verbere, nullum gravi pulsatione, tribunus dux ille an comes sit, curialem principalemve contingat. si quis posthac temerario et inconsiderato ausu ullum ex principalibus viris usurpata adtrectaverit iniuria, sciat se x auri libris esse multandum. dat. prid. kal. aug. constantinopoli arcadio a. ii et rufino conss. (392 iul. 31).

CTh.12.1.129

Idem aaa. rufino praefecto praetorio. post alia: quicumque est e curia senator effectus, quicumque militiam, cum esset curialis, adgressus est, restituatur obstringendus ei quam declinaverat functioni. quin etiam iubemus eos ad munera relicta adgnoscenda constringi, quos administrationum honor diversa suffragiorum ambitione provexit, ut eo quidem quem adepti sunt honore non careant, sed ab ea quam reliquerant functione non absint, providendo, ne quispiam curiae natus ad consortium senatoriae dignitatis adspiret, cum ita sibi videat et praeterita et praesenti iussione praescriptum, ut ei vel affectata vel emendicata huius ordinis gratia prodesse non possit. dat. x kal. dec. constantinopoli arcadio a. ii et rufino conss. (392 nov. 22).

CTh.12.1.130

Idem aaa. aureliano praefecto urbi. si quis municipum ad senatorium transire ordinem omnibus muniis perfunctus optaverit, bona sua, quibus substitui idoneus possit, sciet curiae semper esse obnoxia. dat. iii kal. mart. constantinopoli theodosio a. iii et abundantio conss. (393 febr. 27).

CTh.12.1.131

Idem aaa. aureliano praefecto praetorio. in calefaciendis aput antiochiam thermis veterem praestationis consuetudinem servari placet. constat enim merito submovendum, quidquid a tatiano probatur adiectum. dat. iii kal. mart. constantinopoli theodosio a. iii et abundantio conss. (393 febr. 27).

CTh.12.1.132

Idem aaa. aureliano praefecto praetorio. si quis curialis tres mares filios susceperit, unum dare senatui non vetetur. dat. vi id. mart. constantinopoli theodosio a. iii et abundantio conss. (393 mart. 10).

CTh.12.1.133

Idem aaa. silvano duci et correctori, limitis tripolitani. quicumque ex numero plebeiorum praesentibus singularum ordinibus civitatum agro vel pecunia idonei comprobantur, muniis curialibus adgregentur. qui vero nullam rei familiaris substantiam habent, militare in apparitorum numero non vetentur. dat. vi kal. april. constantinopoli theodosio a. iii et abundantio conss. (393 mart. 27).

CTh.12.1.134

Idem aaa. rufino praefecto praetorio. omnes, qui curiali obstricti sanguine diversis se officiorum privilegiis et actuum praeiudiciis adgregarunt, reddendos muniis esse non ambigas. eos etiam, qui adepti honores esse dicuntur, debitis statuas functionibus subrogandos manente privilegio dignitatis. ac ne ab his sententia promenda se temperet, quos praesidalis officii defendit obscuritas quosve nullum munus alligat naviculariae functionis. usque eo super hac re iudicantis est sententia porrigenda, ut, quoniam curialium fundos diversis titulis huiuscemodi homines tenere coeperunt, intellegant sese, quos nulla militiae privilegia, nulla honorum suffragia, non aetatis defensabit infirmitas, in eorum locum suscipiendis functionibus subrogandos, quorum vel habendo vel habitando sibi patrimonia praesumpserunt. dat. prid. id. april. constantinopoli theodosio a. iii et abundantio conss. (393 apr. 12).

CTh.12.1.135

Idem aaa. rufino praefecto praetorio. nullus vacationem temporariam curialis accipiat, nisi id forte veris ac probatis causis adnotatio nostra concesserit. dat. prid. non. iun. constantinopoli theodosio a. iii et abundantio conss. (393 iun. 4).

CTh.12.1.136

Idem aaa. rufino praefecto praetorio. nec debitis curiae licitum potest esse negare aut vitare quod declinare non possunt, nec curiis esse liberum debet eos expetere, quos iustis adsertos privilegiis non poterunt obtinere. dat. viiii kal. iul. constantinopoli theodosio a. iii et abundatio conss. (393 iun. 23).

CTh.12.1.137pr.

Idem aaa. rufino praefecto praetorio. omnes, qui municipibus genere aut actu tenentur obnoxii, a militia vel a quibuslibet retrahi mandamus officiis, nec rescripta aut adnotationes ad munerum fugam prodesse permittimus. incolas etiam et vacantes, qui tamen idonei sunt, iubemus adstringi. (393 aug. 9).

CTh.12.1.137.1

Nullus sane solis materni sanguinis vinculis illigetur, quia mulierum infirmitas numquam huiusmodi functionibus reddit obnoxios, a quibus ipsa habeatur immunis. dat. v id. aug. constantinopoli theodosio a. iii et abundantio conss. (393 aug. 9).

CTh.12.1.138

Idem aaa. aureliano praefecto praetorio. curiales, qui gradu meritorum usque ad honorariam pervenerint dignitatem, nulla equorum praestatio maneat, nec gleba senatoria ab his poscatur, quos non ita fecit obligatos. dat. vi id. dec. constantinopoli theodosio a. iii et abundantio conss. (393 dec. 8).

CTh.12.1.139

Idem aaa. rufino praefecto praetorio. omnes ilico, qui curiis debiti militarint, patriis muneribus restitui oportet. in qua re sublimis auctoritas tua providebit, ut de singulorum nominibus ad sedem vestram singulae quaeque referant civitates, ne quis dissimulatione suggerentium delitescat, ut cuncti sine frustratione aliqua restituti curiarum muniis cum omni posteritate deserviant. quod ita fixum volumus intemeratumque servari, ut adversum hoc potestas nulla, nulla denique adnotatio audiatur. quod si quis ex illis in officia externa transierit, omnis eius substantia iure curiae et possessione teneatur. dat. iii kal. iun. constantinopoli arcadio iii et honorio ii aa. conss. (394 mai. 30).

CTh.12.1.140

Impp. arcadius et honorius aa. theodoro praefecto praetorio. ad subeunda patriae munera dignissimi et meritis et facultatibus eligantur, ne tales forte nominentur, qui functiones publicas implere non possint. dat. xiii kal. feb. olybrio et probino conss. (395 [397-399?] ian. 20).

CTh.12.1.141

Idem aa. ennoio proconsuli africae. inconcussa volumus permanere, quae de incolatus iure antiquitus sunt constituta. dat. xvii kal. iun. mediolano olybrio et probino conss. (395 mai. 16).

CTh.12.1.142

Idem aa. ennoio proconsuli africae. nominationum forma vaccillare non debet. si omnes, qui albo curiae continentur, adesse non possunt, ne paucorum absentia sive necessaria sive fortuita debilitet, quod a maiore parte ordinis salubriter fuerit constitutum, cum duae partes ordinis in urbe positae totius curiae instar exhibeant. et cetera. dat. xvii kal. iun. mediolano olybrio et probino conss. (395 mai. 16).

CTh.12.1.143

Idem aa. ennoio proconsuli africae. fraudem civium non ferendam in dispendium ire civitatum animadvertimus, cum municipes aut peregrinando munera civitatum aut militiae ambitione declinant. intra quinquennium igitur nisi ad curiam reverterint, facultates eorum pro muneribus et oneribus curiae addici decernimus. dat. xvii kal. iun. mediolano olybrio et probino conss. (395 mai. 16).

CTh.12.1.144

Idem aa. ennoio proconsuli africae. ne diu in fraudem civitatum municipes evagentur vel ad militiam socientur, nisi intra quinquennium ad civitates proprias revertantur, facultates eorum pro muneribus et oneribus curiae addicantur. dat. xvii kal. iun. mediolano olybrio et probino conss. (395 mai. 16).

CTh.12.1.145

Idem aa. ennoio proconsuli africae. africanis sacerdotales karthagini restitui ibique arbitratu suo agere dum favorabili editione placuit. quod facientes divi patris nostri beneficium renovamus. dat. xvii kal. iun. mediolano olybrio et probino conss. (395 mai. 16).

CTh.12.1.146

Idem aa. dextro praefecto praetorio. multos animadvertimus, ut debita praestatione patriam defraudarent, sub umbra potentium latitare. oportet igitur statui multam, ut, quisquis in praescripti iuris formam inciderit, pro curiali quinque auri libras fisco nostro cogatur inferre, pro collegiato unam. omnes igitur quos tegunt expellant, ne clementia nostra ob contumaciam dissimulantium in maiorem indignationem exurgat. dat. xvii kal. iul. mediolano olybrio et probino conss. (395 iun. 15).

CTh.12.1.147pr.

Idem aa. palladio praefecto praetorio. quicumque decuriones patre atque maioribus adprobantur et armatam quacumque occasione adepti docentur esse militiam, absoluti sacramento militari, ut constitutum est, ad munia civilia revocantur. (416 sept. 9).

CTh.12.1.147.1

Si quos etiam huiusmodi homines palatinorum officiorum consortia retinent, exempti matriculis ad propriam urbem sub prosecutione dirigantur. (416 sept. 9).

CTh.12.1.147.2

Ac si in apparitione praetoriana aliquis inventus fuerit decurio inmorari, pari condicione ad civitatem originariam dirigatur. (416 sept. 9).

CTh.12.1.147.3

Reliqua quoque ministeria atque officia palatina pari forma legis adstringimus, ut quisquis municeps deprehensus fuerit, absolutus militari cingulo reddatur muneribus civitatis. et cetera. dat. v id. sept. ravennae d. n. theodosio a. vii et palladio conss. (416 sept. 9).

CTh.12.1.148

Idem aa. theodoro praefecto praetorio. cum super ordinando sacerdote provinciae publicus esset ex more tractatus, idem nostra auctoritate decretum est, ut ad subeunda patriae munera dignissimi et meritis et facultatibus eligantur nec huiusmodi nominentur, qui functiones debitas implere non possint. dat. iiii kal. oct. mediolano olybrio et probino conss. (395 [397-399?] sept. 28).

CTh.12.1.149

Idem aa. ennoio suo salutem. curiales in exitium curiarum se conantur exuere quacumque occasione patrimonii qualitercumque quaesiti naviculariorum onere volentes suam originem commutare. qua in re, quia totum inhibere non possumus, ratione dividimus. civitas ergo quem genuit, non amittat: patrimonium, quod ex ordine naviculariorum advenerit, prodat pro moderatione quem ditat, quia nec emere nec donatum adsequi nec damnosam quisque hereditatem adire compellitur, cum et in deliberationibus coniunctionum futurarum commodis prospiciatur heredum. neminem igitur sublimitas tua ad expediendas publicas necessitates parenti curiae se permittat auferre detque operam, ut et ordines curiarum nostrarum reddantur indemnes et patrimonia naviculariorum non pereant, sed functionis uterque status habeatur incolumis. dat. vii kal. ian. olybrio et probino conss. (395 dec. 26).

CTh.12.1.150

Idem aa. caesario praefecto praetorio. curiales, qui honorariam adepti sunt comitivam, formidare debent eos, quorum sunt moderationi commissi nec se existimare ideo meruisse dignitatem, ut iudicum praecepta despiciant. quod si in eadem culpa perseverent, quinque librarum auri multae obnoxius subiugetur, honore quoque quem prodidit spoliandus. dat. iiii kal. ian. constantinopoli olybrio et probino conss. (395 dec. 29).

CTh.12.1.151 [=brev.12.1.8]

Impp. arcad. et honor. aa. petronio vicario hispaniarum. municipalia gesta non aliter fieri volumus quam trium curialium praesentia, excepto magistratu et exceptore publico, semperque hic numerus in eadem actorum testificatione servetur. sic enim et fraudi non patebit occasio et veritati maior crescit auctoritas. dat. non. mai. mediolano, arcadio iv. et honorio iii. aa. coss. interpretatione non indiget.

CTh.12.1.152

Idem aa. africano praefecto urbi. ne quis ex corpore togatorum provinciales suscipiat functiones, scilicet ut et ambientibus claudatur ingressus et invitis necessitas auferatur. proposita constantinopoli iii non. aug. arcadio iiii et honorio iii aa. conss. (396 aug. 3).

CTh.12.1.153

Idem aa. florentino praefecto urbi. nonnulli decurionum honorarias ex protectoribus vel domesticis vel quaslibet alias obtinent missiones. unde, licet superiore praecepto consultum sit, ut sic penes eosdem emendicata dignitas permaneret, ne quicquam ob hoc patriae negaretur, nunc altius intuentes honoris eius ab his penitus amovemus umbracula, ita ut, si quis id meruit, ac si nihil impetraverit habeatur neque ob hoc sordido quolibet minimove tueatur vel a verberibus, si id modo personae eius qualitas patitur, iudiciariae emendationis excusetur. dat. xii kal. ian. mediolano caesario et attico conss. (397 dec. 21).

CTh.12.1.154

Idem aa. florentino praefecto urbi. post alia: si qui municipum vel palatinam vel armatam aliquando militiam debitis praetulerit functionibus, nullis privilegiis, nullis postremo temporibus exuatur nec ei annorum spatia stipendiorumque merita supputentur, sed teneat suum curia et perpetua sibi obnoxium vindicatione defendat. et cetera. dat. xii kal. ian. mediolano caesario et attico conss. (397 dec. 21).

CTh.12.1.155

Idem aa. florentino praefecto urbi. post alia: quia receptum in splendidissimum ordinem submoveri dignitatibus non oportet, quisquis emensus curialia onera honorum vel administrationis vel quarumcumque aliarum dignitatum infulas impetraverit, ipse quidem decoretur insignibus, sed liberi omnisque successio paternae dignitatis obiectu curialia vincula non exuant, nisi forte quis iam senatore susceptus consortio curiae nobilioris adnectitur. illustrium quoque virorum liberos, si non otio et torpore degeneri paternam exuere virtutem, fas erit excusari. in his tamen, qui ante expletas curialium munerum functiones meruerint dignitates, speciali humanitate tribuimus, ut, quae illis imponentur a patria, per substitutos praebere, si maluerint, non vetentur, nec agentis persona quaeratur, dummodo debiti non negetur officii. et cetera. dat. xii kal. ian. mediolano caesario et attico conss. (397 dec. 21).

CTh.12.1.156

Idem aa. florentino praefecto urbi. post alia: omnes ordines collegia centuriones ac si qui....Cuiusque muneribus vel officiis, ubicumque sunt corporati, ita generaliter illigentur, ut testimoniales impetratas sciant sibi nihil honoris privilegii excusationisve conferre. et cetera. dat. xii kal. ian. mediolano caesario et attico conss. (397 dec. 21).

CTh.12.1.157

Idem aa. theodoro praefecto praetorio. omnes, qui quolibet curiae iure debentur, cuiuscumque superstitionis sint, ad implenda munia teneantur. dat. id. feb. mediolano honorio a. iiii et eutychiano conss. (398 feb. 13 vel sept. 13).

CTh.12.1.158

Idem aa. theodoro praefecto praetorio. vaccillare per apuliam calabriamque plurimos ordines civitatum comperimus, quia iudaicae superstitionis sunt et quadam se lege, quae in orientis partibus lata est, necessitate subeundorum munerum aestimant defendendos. itaque hac auctoritate decernimus, ut eadem, si qua est, lege cessante, quam constat meis partibus esse damnosam, omnes, qui quolibet modo curiae iure debentur, cuiuscumque superstitionis sint, ad complenda suarum civitatum munia teneantur. dat. id. sept. mediolano honorio a. iiii et eutychiano conss. (398 febr. 13 vel sept. 13).

CTh.12.1.159

Idem aa. eutychiano praefecto praetorio. omnes omnino curiales in originalibus ac debitis perpetuo curiis perseverent et qui ex his ad provinciarum regimen atque administrationem qualibet fraude atque ambitione pervenerint, sciant se eo quem meruerant honore privandos et non solum ad curiam velut manu mox iniecta revocandos et cunctis rursus ab exordio muneribus servituros, verum etiam media patrimonii parte multandos. dat. viii kal. nov. constantinopoli honorio a. iiii et eutychiano conss. (398 oct. 25).

CTh.12.1.160

Idem aa. optato praefecto urbi. post alia: si quis ex curia usque ad diem iduum novembrium consulatu domini nostri honorii augusti fratris aeternitatis meae iiii et eutychiani viri clarissimi administratione donatus senatorio est ordini mancipatus, senator quidem esse non desinat neque ad novellae legis vincula pertineat, sed de substituto et rebus, ut antea caveramus, omnia incunctanter quae sunt iussa custodiant. dat. viii kal. dec. constantinopoli honorio a. iiii et eutychiano conss. (398 [405] nov. 24).

CTh.12.1.161

Idem aa. messalae praefecto praetorio. post alia: plectibili severitate eorum fraudibus obviandum est, qui genitalem curiam deserentes ad indebita officia fraude callidae molitionis irrepunt. et quamvis provisum fuerat congruae emendationis occursu, quemadmodum isti militiae nomine et honore suspenso officiis redderentur, tamen quia hoc callido consilio reppererunt, ut evitatis provinciae suae finibus, tamquam istorum tantum interdictus fuisset accessus, peregrinos expeterent commeatus, ne diutius in perniciem curiarum latitandi spes et solacium eos impunitatis exacuat, horum cupiditatibus obviamus, ut ex eorum bonis, qui se vel prosecutioni vel muniis civitatum interdictae dudum ambitione militiae vel qualibet fraude subtraxerint, curiis quas deseruerant consulatur. itaque si vocati edictis intra anni metas hi tamen, qui manifestis curiae nexibus illigantur, latere potius quam redire maluerint nec suffecerint, qui ad vicem eorum munera patriae post emensum annum, ut ordinis ratio postularit, exsolvant, sciant interpellatis provinciarum moderatoribus ex facultatibus suis suis curiis quas destituerunt consulendum. neque enim de inmaturo praeiudicio temporis possunt brevitatem causari. et cetera. dat. xvii kal. sept. theodoro v. c. cons. (399 aug. 16 [21]).

CTh.12.1.162

Idem aa. benigno vicario urbis romae. ne relictis urbibus plures sese ad corpus centonariorum transferant, spectabilitas tua, quoscumque et ubicumque latentes curiis atque collegiis debitos adprobarit, matura exsecutione restituat, si quidem tot existentibus legibus, quae occultatores certa feriri poena voluerunt, exsecutiones praestare iudices conveniat, non referre. dat. kal. dec. mediolano theodoro cons. (399 dec. 1).

CTh.12.1.163

Idem aa. eutychiano praefecto praetorio. si qui ex secundo divi patris nostri consulatu curiam relinquentes clericorum se consortio manciparunt, si iam episcopi vel presbyteri diaconesve esse meruerunt, in sacris quidem et secretioribus dei mysteriis perseverent, sed aut substitutos pro se curiae offerre cogantur aut iuxta legem dudum latam tradant curiae facultates. residui omnes, lectores subdiaconi vel ii clerici, quibus clericorum privilegia non debentur, debitis mox patriae muneribus praesententur. dat. iii id. dec. theodoro cons. (399 dec. [?] 11).

CTh.12.1.164

Idem aa. eutychiano praefecto praetorio. si quis umquam natus patre curiali vel initis muneribus curiae affectata militia a suis consortibus in iudicio rectoris provinciae lite pulsabitur, nullo fori praescriptionis obice, quae quidem habeat locum, ... licebit. in aliis actionibus aput eundem provinciae moderatorem suis allegationibus utatur. dat. v kal. ian. theodoro v. c. cons. (399 dec. [?] 28).

CTh.12.1.165

Idem aa. eutychiano praefecto praetorio. quicumque ex iudaeis obnoxii curiae comprobantur, curiae mancipentur. dat. iii kal. ian. theodoro v. c. cons. (399 dec. [?] 30).

CTh.12.1.166

Idem aa. pompeiano proconsuli africae. iuxta veterem morem mecilianus legatus adstruxit, ut sacerdotum filii inviti ad sacerdotium non cogantur. antiquam igitur consuetudinem laudabilitas tua praecipiat custodiri, ita ut neque ullus indebite teneatur et tamen idonei sacerdotes deesse non possint. dat. prid. kal. iul. mediolano stilichone et aureliano conss. (400 iun. 30).

CTh.12.1.167

Idem aa. et theodosius a. anthemio praefecto praetorio. ne quis curialium per substitutionem muneribus se patriae, quibus natus est, abstrahat, intercludi curialibus iussimus licentiam supplicandi. dat. iii non. octob. constantinopoli arcadio a. vi et probo conss. (406 oct. 5).

CTh.12.1.168

Impp. honorius et theodosius aa. anthemio praefecto praetorio. universarum civitatum ordinibus consulentes retro principum statuta firmamus, ut nemo nexui curiae mancipatus ad cuiuslibet militiae sacramentum audeat adspirare vel hoc admisso mox abstractus militia obsequiis oppidaneis mancipetur. dat. xv kal. iun. constantinopoli honorio viii et theodosio iii aa. conss. (409 mai. 18).

CTh.12.1.169

Idem aa. anthemio praefecto praetorio. sescentorum solidorum praebitionem, qua magistratuum census antiochenae per syriam civitatis, cum frequenter nutaret, erectus est, gratanter admisimus. fruatur itaque decora civitas tuae provisionis iugiter incrementis et largitione nostrae clementiae, ut sub hac oblectatione populus sua tristitia consoletur. dat. v kal. oct. constantinopoli honorio viii et theodosio iii aa. conss. (409 sept. 27).

CTh.12.1.170 [=brev.12.1.9]

Impp. honor. et theodos. aa. liberio pf. p. post alia: eos curiales, qui non expletis muneribus declinarunt esse, quod nati sunt, reddi urbibus debita censura praecipimus etc. dat. vi. kal. dec. ravenna, honorio viii. et theodos. iii. aa. coss.

interpretatio. quicumque* curialis, non actis servitiis, quae debebat, a debito officio declinavit, ad civitatis, unde discessit, servitia revocetur

CTh.12.1.171pr.

Idem aa. dardano praefecto praetorio galliarum. placuit principales viros e curia in galliis non ante discedere, quam quindecennium in ordinis sui administratione compleverint, per quae annorum moderata curricula impleant patriae gratiam. et quamvis cunctos deceat revocari, qui brevi tempore videntur elapsi, sectandam tamen moderationem esse censuimus, ut eos tantum ad declinatas necessitates nunc redire iuberemus, qui ante hoc recessisse sexennium deteguntur. nec quemquam convenit constituta salubriter annorum spatia recusare, quando expletis omnibus splendoris et honoris ornamenta succedunt. (460 [412] dec. 7).

CTh.12.1.171.1

Sane quoniam principalem locum et gubernacula urbium probatos administrare ipsa magnitudo deposcit, sine ordinis praeiudicio consensu curiae eligendos esse censemus, qui contemplatione actuum omnium possint respondere iudicio. (460 [412] dec. 7).

CTh.12.1.171.2

Eum vero, qui usque ad secundum evectus locum administrationem aut aetate implere aut debilitate nequiverit, suffragium meritorum et transactae testimonium vitae, tamquam primus constituto tempore curiam rexerit, obtinere conveniet. dat. vii id. dec. ravennae honorio viii et theodosio iii aa. conss. (460 [412] dec. 7).

CTh.12.1.172pr.

Idem aa. herculio praefecto praetorio illyrici. sententiae conquiescant, quae in praeiudicium curiarum transactis temporibus sub examine magnificae sedis tuae contra rationem veritatis prolatae curiae debitos per gratiam absolverunt, universique, quos sors nascendi municipalibus muneribus obligavit, fortunam propriam subire cogantur. (410 mai. 24 vel iun. 25).

CTh.12.1.172.1

Eos autem, qui sub patrocinio clericatus muneribus debitis patriam fraudaverunt, reddi sub ea condicione praecipimus, ut pro temporis consideratione et gradu, quem in ecclesiis obtinent, vel ipsi ad statum pristinum redeant et functionibus municipalibus obsecundent vel eorum patrimonia curiis consignentur: (410 mai. 24 vel iun. 25).

CTh.12.1.172.2

His etiam, qui ultro se curiarum coetibus inseruerunt, in ea quam elegerunt fortuna residentibus, circa eorum filios legum auctoritate servata. dat. viiii kal. iun. constantinopoli varane v. c. cons. (410 mai. 24 vel iun. 25).

CTh.12.1.173pr.

Idem aa. anthemio praefecto praetorio. ad inferiorum curialium relevandas fortunas et inpressionem potentium cohibendam placuit, ut ab instanti octava indictione descriptiones, quae per singulos ordines agitantur cogentibus diversis negotiis, non sumant ante principium, quam aput acta provinciarum rectoribus intimentur et ex eorum fuerint auctoritate firmatae. (410 aug. 26).

CTh.12.1.173.1

Sed et aurum, quod ex huiusmodi contributione redigitur, ita debet susceptori aurario consignari, ut securitatibus nomen inferentis, dies consul mensis, causa et summa comprehendatur, quo et descriptionis aequitas illustretur et describtus documentis evidentibus fulciatur. (410 aug. 26).

CTh.12.1.173.2

Hoc etiam observando, ut quadrimenstruis quoque brevibus, qui ab excellentiae tuae officio sollemniter diriguntur, celebratae descriptionis dispunctio societur, ut vestrae potestatis scientiam formidantes nihil ad relevationem locupletum atque inopum perniciem audeant pertemptare. (410 aug. 26).

CTh.12.1.173.3

Quod et circa hos optimum est custodiri, quibus lucrativae facultates ex bonis curialium obvenerunt, ut et ipsi fructu provisionis simillimae potiantur. (410 aug. 26).

CTh.12.1.173.4

Quam dispositionem si quis iudicum, numerariorum vel curialium mutilandam crediderit, interminationi, quam vestra sedes statuerit, subiacebit. dat. vii kal. sept. constantinopoli varane v. c. cons. (410 aug. 26).

CTh.12.1.174

Idem aa euchario proconsuli africae. duumvirum impune non liceat extollere potestatem fascium extra metas propriae civitatis. curiales etiam sacerdotio provinciae, sed et filios reddi praecipimus propriae civitati. dat. vi id. mar. ravennae honorio viiii et theodosio v aa. conss. (412 mart. 10).

CTh.12.1.175

Idem aa. lupiano comiti et magistro militum per orientem. hi, quos moderatores provinciarum maximeque foenices, ordinibus civitatum prosequentibus docti, ex consortio curiali ad officium culminis tui demigrasse suggesserint, mox sub fida prosecutione ad eiusdem iudicis transmittantur examen, qui super eorum nominibus rettulerit, vel sponte civilia munera subituri vel, si litigandum putaverint, post sententiam cognitoris, si id ea suggesserit, ordini mancipandi. dat. xv kal. iun. constantinopoli honorio viiii et theodosio v aa. conss. (412 mai. 18).

CTh.12.1.176

Idem aa. iuliano ii proconsuli africae. exceptis his, qui karthaginiensi curiae munus sacerdotii transegerunt, omnes, quicumque ex aliis provinciis atque civitatibus hoc honore decorantur, ad proprias urbes redire praecipimus. quidquid sane provinciarum nomine agi sacerdotalium superflua turba consuevit, id ab eo, qui sacerdotium reddet, suo tempore iubemus impleri. ac ne quid festis ac legitimis diebus subtraxisse videamur, etiam illud definiendum esse censemus, ut, quicumque propter pompam illius diei karthaginem forte convenerit, intra quinque dies ad propria rediturus ex eadem urbe discedat. ne autem certa statuta impune ullus audeat violare, xxx librarum auri multam statim a proconsulari officio exigi se cognoscat, qui in karthaginiensi urbe excepto ipsius decuriae viro habitandi gratia voluerit residere, cum dierum numerum, qui est statutus, excesserit: ipsius quoque dignitatis privilegio spoliandum esse se non dubitet. inhiberi autem etiam illas occasiones praesenti auctoritate censemus, ne comparatis sacerdotalis aliquis subito aedibus domicilium se habere confingat, cum specialiter statuisse videamur, ut quisque illo redeat, unde eum ducere originem constat. dat. vi kal. feb. ravennae post cons. honorii viiii et theodosii v aa. (413 ian. 27).

CTh.12.1.177pr.

Idem aa. leontio praefecto praetorio illyrici. etsi veterum principum sanctiones eos, qui nullis curiae nexibus obligati soli genitalis amore vel liberalitatis cupiditate suadente munus curiale subierint, obligari necessitatibus curiarum praecipiunt, tamen vastato illyrico consulentes aput omnes dumtaxat illyrici civitates praecipimus observari, ut, quisquis posthac integrae opinionis a consortio curiae penitus alienus ultro munus curiale putaverit subeundum vel oblata dumtaxat pecunia, per quam id ex integro poterit expediri, vel actu muneris ipsius vel insignibus subeundis, id est sive cum populi plausu sive etiam verecundae et tacitae conscientiae remuneratione contentus, adhibito ordine vel maiore eius parte illius videlicet civitatis, in qua munus spontaneum crediderit explicandum, in iudicio rectoris provinciae vel absente eo aput duumviros sive defensorem eiusdem civitatis primo se curiae non teneri incorrupta ordinis adstipulatione perdoceat, dein si certum munus se explicaturum promiserit, curialium praesentium responsione munitus, quod nec ipse nec facultates eius aut successores utpote curialis inquietudinem sustinebunt, liber et ab omni securus molestia curiali promissum munus absolvat, nec enim quod coeperit semiplenum deserere permittatur; ita ut pro hac liberalitate, peracto munere quod sponte promisit, eum honorem in ea civitate habeat, quem curialis habet eodem munere suscepto pariter et impleto. (413 apr. 16).

CTh.12.1.177.1

Sed si quis ex curiali prosapia vel gratia vel angustiis ordinis abusus praetextu legis per munus aliquod se putaverit curia liberandum, post expletum munus et gratiosam vel necessitate expressam professionem ordinis nihilo minus pulsetur a curia utpote curialis. quam legem, ex quo lata est videlicet valituram, per omne dumtaxat illyricum praecipimus observari. dat. xvi kal. mai. constantinopoli lucio v. c. cons. (413 apr. 16).

CTh.12.1.178

Idem aa. seleuco praefecto praetorio. omnes, qui curiali genere origine vel stirpe gignuntur, curiarum nexibus obligentur. aequum est enim, ut ingenua matre nascentes et quorum natales origo demonstrat, ex matre ingenua nati maiorum suorum dignitatibus socientur. nec quisquam privatorum suorum iuri lege nostra putet aliquid derogatum, qua, eorum morem secuti, rei publicae nostrae ex feminis cupimus esse consultum. et cetera. dat. xii kal. feb. ravennae honorio x et theodosio vi aa. conss. (415 ian. 21).

CTh.12.1.179pr.

Idem aa. seleuco praefecto praetorio. post alia: senatusconsulti claudiani auctoritatem firmantes ingenua stirpe creatos, quorum maiores curiae servierunt, civitatibus iussimus redhiberi. quod non solum de futuris, sed etiam de praeteritis observandum esse censemus. (415 ian. 21).

CTh.12.1.179.1

Vacantes quoque et nulla veterum dispositione ullius corporis societati coniunctos curiae atque collegiis singularum urbium volumus subiugari. (415 ian. 21).

CTh.12.1.179.2

Eos etiam, qui ad militiae cuiuslibet sacramenta venerunt, conventos propriis volumus inservire muneribus. (415 ian. 21).

CTh.12.1.179.3

Ita ut, si quis de reddendis ac iungendis eligendisve curialibus vocem reluctationis obiecerit, quinque librarum auri multa protinus feriatur, fisci nostri compendiis profutura. (415 ian. 21).

CTh.12.1.179.4

Servus vero actor sive procurator flammis detur ultricibus, obnoxiis curialibus nihilominus restitutis. dat. xii kal. feb. ravennae honorio x et theodosio vi aa. conss. (415 ian. 21).

CTh.12.1.180

Idem aa. urso praefecto urbi. licet augeri coetum amplissimum cupiamus, cuius consortio gratulamur, tamen, si quis functionibus involutus et nexibus municipalis ordinis innodatus codicillos clarissimatus potuerit impetrare, nec suscipiendos eos tua sublimitas nec penitus allegandos esse cognoscat. nec enim credimus utrumque per unum, prout convenit, posse compleri. dat. xiiii kal. mart. constantinopoli theodosio a. vii et palladio conss. (416 febr. 17).

CTh.12.1.181pr.

Idem aa. palladio praefecto praetorio. salvis his, quae iam dudum tam a nobis quam a retro principibus parentibus nostris super curialibus statuta noscuntur, hac etiam generali lege sancimus, ut, si quis suum decurionem vindicare voluerit, si iudicis desit copia, eundem manus iniectione concessa sciat ad examen cognitoris resultantem esse deducendum, ita ut moderator provinciae, si quaestio fortasse fiducia defensionis ulla generatur, nisi intra tres menses causam originis competenti disceptatione cognoverit atque convictum cum poena restituerit debitis muneribus vel liberum ab inquietudine vindicaverit, x librarum auri multam cogatur exsolvere, eius etiam officium pari damni irrogatione teneatur. (416 mai. 3).

CTh.12.1.181.1

Si quos sane curiae obnoxios in diversis officiis atque militia subterfugientes decurionatum ante esse claruerit, si per suffectam personam et periculo suo idoneam originis nexum procurare noluerint, exutos sacramento militiae ad civitates proprias dirigi convenit sub prosecutione idonea, ita ut de eorum nominibus, qui armatum adpetierint sacramentum, ad viros illustres magistros militum scripta mittantur, ut eorum auctoritate soluto cingulo militari reddantur muniis civitatum. dat. v non. mai. ravennae d. n. theodosio a. vii et palladio conss. (416 mai. 3).

CTh.12.1.182

Idem aa. monaxio praefecto praetorio. nemo posthac munerum ordine transcurso ad altioris curiae honores audeat pervenire, sed prius universis functionibus per ordinem propriae civitatis expletis tum demum ad competentem honorem singuli venire deproperent. dat. vii kal. sept. eudoxiopoli theodosio a. vii et palladio conss. (416 aug. 26).

CTh.12.1.183

Idem aa. monaxio praefecto praetorio. neminem obnoxium curiae et publicis functionibus involutum ad incongruam sibi fortunam deinceps adspirare elicitis codicillis clarissimatus magnitudo tua permittat, ut singulae civitates retineant obnoxios suis muneribus. super hoc enim etiam et illustris praefectura urbana nostra est commonita sanctione. dat. xv kal. mai. constantinopoli honorio xii et theodosio viii aa. conss. (418 apr. 17).

CTh.12.1.184

Idem aa. asclepiodoto praefecto praetorio. liberos curialium vel cohortalinorum quandoque susceptos, sive ante praerogativam et tempora expressa praesumptae militiae sive post decursa stipendia, originalem sequi condicionem oportet, quoniam satis est parentibus eorum vacationem a nostra clementia pro remuneratione fuisse concessam. dat. xvii kal. mai. constantinopoli asclepiodoto et mariniano conss. (423 apr. 15).

CTh.12.1.185

Impp. theodosius et valentinanus aa. celeri proconsuli africae. semel securitatem de refusione munerum emissam ab alio proconsule non liceat refricari. et ideo spectabilitas tua saluberrimae ac iustissimae praeceptionis formam secuta prohibebit in posterum eos ad discussionem transacti muneris constringi, quos claruit acceptae securitatis prosperitate laetari. dat. v kal. mai. ravennae post cons. felicis et tauri vv. cc. (429 apr. 27).

CTh.12.1.186

Idem aa. celeri proconsuli africae. legatio proconsularis provinciae per bubulcum spectabilem virum comitem curiales pro aliis, qui nec in eodem territorio possident, deflevit adstringi, quod ab obnoxiis saepe debetur devotissimi quique cogantur exsolvere. quae res pro arbitrio compulsorum vel opinatorum sive iudicum in eam famam mali iugitate pervenit, ut nullus paene curialis idoneus in ordine cuiusquam urbis valeat inveniri. cuius praesumptionis abolita consuetudine iubemus neminem curialem pro alieni territorii debitis adtineri, sed tantum municipem pro gleba propria conveniri. spectabilitas tua, salubrem sanctionem secuta, unumquemque debitorem suo deinceps nomine faciet adtineri. dat. v kal. mai. ravennae post cons. felicis et tauri vv. cc. (429 apr. 27).

CTh.12.1.187

Idem aa. isidoro praefecto praetorio. qui ante hanc legem spectabilium vel illustrium quocumque modo sortiti sunt dignitatem, parto semel honore et privilegiis perfruantur. si qui vero postea ex decurionibus vel subiectis curiae ad spectabilium gradum processerint, per se tam curialia quam senatoria subeant munera eorumque liberi post senatoriam suscepti dignitatem patrum obstringantur exemplo. quod si qui inter illustres etiam viros locum occupaverint non laborioso administrationis actu, sed honorario titulo dignitatis, senatui quidem per se respondeant, curiae vero per substitutos suarum periculo facultatum satisfaciant; quorum liberos et post eorum illustrem dignitatem progenitos non solum senatorum, sed etiam decurionum munia per se, non per subrogatos, subire conveniet. et cetera. dat. iii non. april. constantinopoli isidoro et senatore conss. eodem exemplo eubulo praefecto praetorio illyrici. (436 apr. 3).

CTh.12.1.188

Idem aa. isidoro praefecto praetorio. post alia: si qui decurio aut subiectus curiae ullam ante hanc legem gessit militiam aut coeptam dudum etiamnunc gerit aut causidicinam in foro amplissimae praefecturae orientis atque illyrici vel urbano profitetur iudicio, in eodem latarum pridem constitutionum sanctio observetur. post hanc vero legem si quis ex his ausus fuerit ullam affectare militiam, nulla praescriptione temporis muniatur, sed ad condicionem propriam retrahatur, ne ipse vel eius liberi post talem ipsius statum procreati quod patriae debetur valeant declinare. et cetera. dat. iii non. april. constantinopoli isidoro et senatore conss. (436 apr. 3).

CTh.12.1.189

Idem aa. isidoro praefecto praetorio. alexandrinis principalibus, etsi advocatione fungantur, nihilo minus peregrinatio ne incumbat nec cura publica nisi in sua tantum civitate committatur. et primus curiae, qui in muneribus universis expletis ad summum pervenerit gradum, comitivae primi ordinis frui per quinquennium dignitate praestita nec senatoriis minime functionibus obstringatur, in curia tamen permaneat. dat. prid. non. iun. constantinopoli isidoro et senatore conss. (436 iun. 4).

CTh.12.1.190

Idem aa. isidoro praefecto praetorio. quinque primates ordinis alexandrini a corporalibus iniuriis immunes esse censemus, ut voce libera commoditates patriae defendant, cum possint, si quid egerint criminose, pecuniariis coherceri dispendiis. aestimabuntur autem praesente curia viri spectabilis augustalis iudicio. dat. prid. non. iun. constantinopoli isidoro et senatore conss. (436 iun. 4).

CTh.12.1.191

Idem aa. isidoro praefecto praetorio. eum, qui xxx annos in alexandrina civitate civilibus inhaeserit muneribus, corporalibus muniis, non pecuniariis excusari conveniet, habita consideratione videlicet meritorum, ut hoc bene cogniti privilegium consequantur nec eo passim fruantur indigni. dat. prid. non. iun. constantinopoli isidoro et senatore conss. (436 iun. 4).

CTh.12.1.192

Idem aa. isidoro praefecto praetorio. si quos spontaneos hypomnematografi munificos suis exhortationibus ad publicas nominaverint functiones, augustalis iubemus non expectandum esse consensum, qui fit plerumque venalis, sed utriusque partis sufficere voluntatem, ut incipiat functio, quam nullus incusat, tum ad memoratum iudicem tam nominati quam etiam creatoris consona relatione currente: quam si suscipere vel confirmare distulerit, sciat se xxv auri librarum condemnatione plectendum. dat. prid. non. aug. constantinopoli isidoro et senatore conss. (436 aug. 4).

CTh.12.2.0. De praebendo salario

CTh.12.2.1

Imp. constantius a. ad marcellinum comitem orientis. post alia: nulli salarium tribuatur ex viribus rei publicae nisi ei, qui iubentibus nobis specialiter fuerit consecutus. gravitas igitur tua placitis obsequatur. et cetera. dat. v non. octob. constantinopoli limenio et catullino conss. (349 oct. 3).

CTh.12.3.0. De praediis et mancipiis curialium sine decreto non alienandis

CTh.12.3.1

Imppp. valentinianus, theodosius et arcadius aaa. cynegio praefecto praetorio. si quis decurionum vel rustica praedia vel urbana vel quaelibet mancipia venditor necessitate coactus addicit, interpellet iudicem competentem omnesque causas singillatim quibus stranguilatur exponat, ut mereatur valituram in perpetuum comparatori probata adsertione sententiam. ita enim fiet, ut nec inmoderatus venditor nec emptor inveniatur iniustus. denique nihil erit postmodum, quo venditor vel circumventum se insidiis vel obpressum potentia comparatoris queri debeat, quandoquidem sub fide actorum et de necessitate distrahentis et de voluntate patuerit comparantis. quod si quis contra vetitum occultis molitionibus per subpositas fraude personas cuiuslibet loci, quem tamen decurio distrahat, comparator exstiterit, sciat se pretio quod dederit et loco, quem comparaverit, esse privandum. dat. viii kal. dec. constantinopoli honorio n. p. et evodio conss. (386 nov. 24).

CTh.12.3.2pr.

Impp. honorius et theodosius aa. asclepiodoto praefecto praetorio. quoniam de constitutione inclytae recordationis avi nostri de alienandis praediis curialium promulgata dubitatum est, utrum soli principales sine decreti interpositione collegarum possessiones emere vetentur an omnibus comparandorum huiuscemodi fundorum copia sine praedicta observatione negata sit, generali sanctione decernimus, ut, si curialis praedium urbanum aut rusticum vendat cuiuscumque condicionis emptori, apud rectorem provinciae idoneas causas alienationis alleget, non perfunctorie a iudice, sed verissime requirendas, ut ita demum distrahendae possessionis facultatem accipiat, si alienationis necessitatem probaverit. infirma enim erit venditio, si haec fuerit forma neglecta, ita ut et pretium emptor amittat et venditori cum fructibus illaesam possessionem restituat. quae quidem de futuris contractibus observanda sunt. (423 aug. 9).

CTh.12.3.2.1

Praeteritas vero emptiones in osdroena specialiter provincia confectas, licet ex tempore legis sub divo avo nostro promulgatae sine gestorum testificatione a qualibet persona celebratas infirmari oporteat, tamen ex prima transacta nuper indictione ita volumus infirmari, ut alterius fortunae vel honoris homines, qui sine decreto praedia curialium in memorata provincia compararunt, receptis pretiis possessiones quas emerant dominis restituant ita ut, si usuras vel sumptus rei melioratae poposcerint, a venditore percipiant, fructus invicem reddituri. dat. v id. aug. eudoxiopoli asclepiodoto et mariniano conss. (423 aug. 9).

CTh.12.4.0. De imponenda lucrativis descriptione

CTh.12.4.1

Impp. theodosius et valentinianus aa. florentio praefecto praetorio. ii qui ex lucrativa causa possessiones detinent, quae aliquando curialium fuerint, pro singulis earum iugis et capitibus quaternas siliquas annuas ordinibus nomine descriptionis exsolvant, ita ut praebitionis istius forma non praeiudicet illis civitatibus, in quibus consuetudo praecedens vel pacta quaedam vel alia necessitas ampliorem summam exigi persuadet. et cetera. dat. v id. iun. constantinopoli felice et tauro conss. (428 iun. 9).

CTh.12.5.0. Quemadmodum munera civilia indicantur

CTh.12.5.1

Imp. constantinus a. tiberiano comiti per africam. ii magistratus, qui sufficiendis duumviris in futurum anni officium nominationes impertiunt, periculi sui contemplatione provideant, ut, quamvis populi quoque suffragiis nominatio in africa ex consuetudine celebretur, tamen ipsi nitantur pariter ac laborent, quemadmodum possint ii, qui nominati fuerint, idonei repperiri. nam aequitatis ratio persuadet, nisi idonei fuerint nominati, ipsos, quorum est periculum, adtineri. dat. nicomediae iii kal. aug. constantino a. vii et constantio caes. conss. (326 iul. [?] 30).

CTh.12.5.2

Idem a. ad concilium provinciae africae. sacerdotales et flamines perpetuos atque etiam duumvirales ab annonarum praeposituris inferioribusque muneribus inmunes esse praecipimus. quod ut perpetua observatione firmetur, legem hanc incisam aeneis tabulis iusssimus publicari. proposita xii kal. iun. karthagine feliciano et titiano conss. (337 mai. 21).

CTh.12.5.3

Impp. arcadius et honorius aa. probino proconsuli africae. quis tam inveniri iniquus arbiter rerum potest, qui in urbibus magnifico statu praeditis ac votiva curialium numerositate locupletibus ad iterationem quempiam transacti oneris impellat, ut, cum alii necdum paene initiati curiae sacris fuerint, alios continuatio et repetitae saepe functiones adficiant? dat. xvi kal. april. mediolano caesario et attico conss. (397 mart. 17).

CTh.12.6.0. De susceptoribus, praepositis et arcariis

CTh.12.6.1

Imp. constantinus a. ad edictum. si quem susceptorem evertisse constiterit rationem et ad solvendum non esse idoneum, creator eius hac necessitate teneatur, ut, quidquid ille dilapidavit, ipse de propriis rebus instauret compellaturque damnum omne sarcire, quod non esset illatum, si in idoneis nominandis competens adhibitum esset examen. dat. vii id. april. crispo ii et constantino ii cc. conss. (321 apr. 7).

CTh.12.6.2pr.

Idem a. ad eufrasium rationalem trium provinciarum. post alia: pro multis etiam et in diversis locis constitutis liceat simul auri pondus inferre, ita ut pro omnibus fundis securitas emissis cautionibus detur, ne separatim ab unoquoque auro exacto multis et adsiduis incrementis provincialium utilitas fatigetur. (325 iul. 19).

CTh.12.6.2.1

Hoc quoque addimus, ut unusquisque quod debet intra anni metas, quo tempore voluerit, inferat et per tabularium apparitorem illatio cognoscatur absque omni mora auro suscipiendo, ne quis in aliena civitate sumptus faciat vel, quod est gravius, legem commissi frustratus incurrat. nam si solvere volens a suscipiente fuerit contemptus, testibus adhibitis contestationem debebit proponere, ut hoc probato et ipse securitatem debitam commissi nexu liberatus cum emolumentis accipiat et qui suscipere neglexerit, eius ponderis quod debebatur duplum fisci rationibus per vigorem officii tui inferre cogatur. dat. xiiii kal. aug. paulino et iuliano conss. (325 iul. 19).

CTh.12.6.3

Impp. constantius et constans aa. claudio praefecto annonae alexandriae. susceptores centesimae dimidium, annotatores vero ceterorumque officiorum diversos homines, quos rationibus constat obnoxios esse, alterum dimidium habere censuimus, et nihil impetratoribus beneficii per rescriptum adversus ordinem constitutionis possint prodesse commenta. dat. kal. aug. limenio et catullino conss. (349 aug. 1).

CTh.12.6.4

Impp. valentinianus et valens aa. ad mamertinum praefectum praetorio. ad virum clarissimum proconsulem africae dari litteras iubemus, ut, sive ex principalium sive ex honoratorum numero pro merito fidei suae industriaeque susceptor vestium electus fuerit, huiusmodi necessitatis sarcinam uno dumtaxat anno sustinere praecipiatur: exceptis tamen his, qui palatinae militiae privilegiis muniuntur vel qui officiis ac ministeriis functi merito stipendiorum, merito dignitatis ornatum se adprobant consecutos: ita tamen, ut creationis periculum a proconsulari officio non recedat. dat. xiiii kal. iul. valentiniano et valente aa. conss. (365 iun. 18).

CTh.12.6.5

Idem aa. ad secundum praefectum praetorio. perpenso prospeximus studio, ut susceptores et praepositi horreorum ex praesidali officio, qui per diversa officia militiae sacramenta gestarunt, congrua ratione crearentur. sed quoniam praeses ciliciae adseruit deesse ex his corporibus quibus possit haec sollicitudo committi, ne in praesens tempus fisci nostri seu publica emolumenta vaccillent, excellentia tua, ubi eos deesse perviderit, quos susceptores ac praepositos creari scitis prioribus iusseramus, vetustum morem consuetudinemque sectabitur, scilicet ut ex eo ordine constituantur, ex quo ante consueverant ordinari, modo ut ipse ciliciae praeses et ceteri magnitudinis tuae litteris urgeantur, ut idoneos ex diversis officiis tota sagacitate vestigent eosque gerere praestitutam scitis nostrae mansuetudinis sollicitudinem faciant. nam si qui per gratiam fuerint praetermissi, necesse habet exigere publica commoditas ultionem. nec enim dubium est eos officiales, qui nunc diversis officiis obsecundant, plurimos praetermittere, quorum si qui in huiusmodi fuerint arte deprehensi, dabunt poenas, facultatibus traditis curiis, etiam capitis ac salutis. dat. iiii non. iul. caesarea valentiniano et valente aa. conss. (365 iul. 4).

CTh.12.6.6

Idem aa. ad mamertinum praefectum praetorio. tametsi iam lege apertissime cautum sit de officiis diversis, quae extra palatium sunt, susceptores debuisse constitui, tamen et hac iussione similiter designamus ab his, qui in officio magistrorum equitum et peditum militarunt, si quidem ordinis sint militaris, inquietudinem submovendam, eligendos autem susceptores e diversis officiis, scilicet quae extra palatium deputantur, additis etiam largitionalibus civitatum, quos post militiam volumus inter cetera corpora susceptionis munus agnoscere. dat. xv kal. aug. valentiniano et valente aa. conss. (365 iul. 18).

CTh.12.6.7

Idem aa. ad mamertinum praefectum praetorio. ad susceptionem specierum veniant, qui ante omnia sciant se decuriones non esse. ex corpore igitur diversorum officiorum quisquis idoneus repperitur tam moribus quam facultatibus, veluti matriculae per singulas provincias nomen suum adscribat, ut hac ordinatione dispositi annuas susceptiones peragant, ita ut nihil praeterea muneris pertimescant, atque expleta susceptione erogationibusque perfectis transacto illo officio cum aput iudicem fidele obsequium comprobarint, iudicii nostri digna praemia consequantur. adiungi autem ad hoc corpus debent etiam illi, qui ex officiis singulis sint, hoc est ex tabulariis et numerariis similibusve officiis eorum officiorum, de quorum ordine hoc corpus constitui volumus. quicumque vero ex his ad honores potiores per suffragium pervenerint, susceptionis munus perfungantur ita, ut salva sit dignitas quam habent, nec ex hac ordinatione curiale consortium pertimescant. dat. prid. non. aug. sirmio valentiniano et valente aa. conss. (365 aug. 4).

CTh.12.6.8

Idem aa. ad secundum praefectum praetorio. iuxta inveteratas leges nominatores susceptorum et eorum, qui ad praeposituram horreorum et pagorum creantur, teneantur obnoxii, si minus idonei sint qui ab iisdem fuerint nominati, nec quicquam ex eorum substantia celebrata per interpositam personam emptione mercentur. dat. iii kal. aug. constantinopoli valentiniano et valente aa. conss. (365 iul. [?] 30).

CTh.12.6.9

Idem aa. ad dracontium vicarium africae. susceptores specierum idcirco per illyrici provincias ex officialium corpore creari praecepimus, quod cognitum est illos et re et fide idoneos haberi quam eos, qui in curia suscipere consueverint. verum in provinciis africae tua sinceritas hoc ab his officium iubeat amoveri atque eos susceptores specierum annonariarum manere, quos ad hanc necessitatem vetus consuetudo constringit, maxime cum, si susceptores de curia dati aliquid vel neglegentia vel fraude decoxerint, ad redintegrationem specierum, sicuti moris est, ordo qui creaverit possit artari. acc. prid. kal. sept. constantinae valentiniano et valente aa. conss. (365? 368? aug. 31).

CTh.12.6.10

Idem aa. ad mamertinum praefectum praetorio. susceptores novi non modo praesentis anni debita, verum etiam species, quae ex reliquis inferuntur, quia novae sunt ac recentes, suscipiant. dat. prid. kal. nov. romae valentiniano et valente aa. conss. (365 oct. 31).

CTh.12.6.11

Idem aa. ad florentium comitem sacrarum largitionum. neminem biennio iugi allegationis officiis inservire permittat, neminem ab huiusmodi munere ad idem munus adstringi, nisi prius se vinculo sollicitudinis superioris absolverit. nam neque eos qui placuerint gravare iusti est neque illos qui displicuerint tenere prudentis. integro igitur singuli anniversario anno transcurso cogantur exponere, quibus titulis suscepta disperserint, ut facilius, si quis in furto fuerit deprehensus, recentem queat redintegrare iacturam. dat. xv kal. oct. mantebri gratiano n. p. et dagalaifo conss. (366 sept. 17).

CTh.12.6.12

Idem aa. ad rufinum praefectum praetorio. nulla debet esse causatio, quin solidi ex quocumque titulo congregati, sicut iam pridem praecepimus, in massam obryzae soliditatemque redintegrentur. et ita fiat omnis illatio, ut largitionalium et prosecutorum allectorumque fraudibus aditus obstruatur. facile etenim eos provinciae rector a dispendio vindicabit, qui binis solidis seu ternis necessitatem solutionis implebunt, si, postquam viritim nominatimque susceperint solidos plurimorum ea, quam superius memoravimus, qualitate poscenda, omnium debitum confletur in massam. sane si idem suscipientium deprehenditur quod fuerat ante fastidium, cum obryzae materies adferatur, quae non potest displicere, sub congrua animadversione plectendus est, qui id calumniatur et reprobat, quod ad compendium simplicis satisfactionis inventum est. prius tamen ad comitatum mansuetudinis nostrae massa obryzae, quae fuerit repudiata, mittatur, ut qua sit mente reiecta, videamus. dat. iiii id. nov. gratiano n. p. et dagalaifo conss. (366 nov. 10).

CTh.12.6.13pr.

Idem aa. ad germanianum comitem sacrarum largitionum. quotienscumque solidi ad largitionum subsidia perferendi sunt, non solidi, pro quibus adulterini saepe subduntur, sed aut idem in massam redacti aut, si aliunde qui solvit potest habere materiam, auri obryza dirigatur, pro ea scilicet parte, quam unusquisque dependit, ne diutius vel allecti vel prosecutores vel largitionales adulterinos solidos subrogando in compendium suum fiscalia emolumenta convertant. (367 ian. 8).

CTh.12.6.13.1

Illud etiam cautionis adicimus, ut, quotienscumque certa summa solidorum pro tituli qualitate debetur et auri massa transmittitur, in septuaginta duos solidos libra feratur accepto. et cetera. dat. vi id. ian. romae lupicinio et iovino conss. (367 ian. 8).

CTh.12.6.14

Idem aa. alexandriano comiti rerum privatarum. singulas tantum dependant centesimas, qui reditus domui nostrae debitos arcariis quotannis iuxta consuetudinem tradunt, ita tamen, ut earum quoque singularum centesimarum ratio semper evidens scientiae tuae digesta referatur, ut erogationibus cunctis aperta instructione patefactis reliquorum ratio ex eadem centesima possit agnosci. dat. vii kal. oct. dorostoli lupicino et iovino conss. (367 sept. 25).

CTh.12.6.15

Imppp. valentinianus, valens et gratianus aaa. probo praefecto praetorio. a possessoribus per tres vices petatur annona. in epimetris autem eam consuetudinem sinceritas tua faciat observari, ut in aridis quidem fructibus centesimam levandi dispendii causa a possessore susceptor accipiat, laridi vero et vini vicesimam consequatur. proposita vii id. ian. savariae valentiniano n. p. et victore conss. (369 ian. 7).

CTh.12.6.16

Idem aaa. ad chilonem. frumenta, quae horreis inferuntur, pro illationis modo ilico apocharum cautionibus annotentur. non autem oportet in horreis fiscalibus nisi fiscalia frumenta constitui. dat. v id. april. treviris post cons. gratiani a. iii et equiti v. c. (375 apr. 9).

CTh.12.6.17

Imppp. gratianus, valentinianus et theodosius aaa. have hypati karissime nobis. unus posthac in una dioecesi auri vel argenti susceptor ne sit, nec diu penes ipsos susceptores maneat facta collatio, sed statim quodcumque a provincialibus fuerit exsolutum, sacris thesauris inferatur. dat. iii kal. mai. constantinopoli post cons. antoni et syagri. (383 apr. 29).

CTh.12.6.18

Idem aaa. flaviano proconsuli asiae. quisquis posthac, quem exactionis vel susceptionis provincia manet, non specialiter et quid et in qua specie et ex quibus titulis et pro qua indictione videatur accepisse rescripserit, quadrupli eius rei, quam debitor dedisse se dicit, illatione multetur. officium quoque, nisi ad fraudes, si forte deinceps iteratae fuerint, detegendas....Tale commissum et inquisitioni subiaceat. dat. vi id. mai. constantinopoli merobaude ii et saturnino conss. (383 mai. 10).

CTh.12.6.19

Idem aaa. ad postumianum praefectum praetorio. in singulis stationibus et mensurae et pondera publice collocentur, ut fraudare cupientibus fraudandi adimant potestatem. dat. v non. octob. merobaude ii et saturnino conss. (383 oct. 3).

CTh.12.6.20 [=brev.12.2.1]

Imppp. grat., valent. et theodos. aaa. cynegio pf. p. exactores vel susceptores in celeberrimo coetu curiae, consensu et iudicio omnium, sub actorum testificatione firmentur, provinciarumque rectoribus eorum nomina, qui ad publici munus officii editi atque obligati fuerint, innotescant. et animadvertant, quicumque* nominaverint, ad discrimen suum universa, quae illi gesserint, redundare. dat. vi. kal. nov. constantinopoli, honorio n. p. et evodio coss.

interpretatio. exactores et susceptores publicae functionis non secretim, sed publice praesentibus aliis curialibus vel populo necessitates agendas expediendasque suscipiant: et qui nominati vel electi fuerint, iudicibus innotescant: scituris his, qui de electione talium fuerint apud acta professi, quod, si quid everterint, ad eorum, a quibus electi sunt, dispendium pertinebit

CTh.12.6.21pr.

Imppp. valentinianus, theodosius et arcadius aaa. cynegio praefecto praetorio. modios aeneos seu lapideos cum sextariis atque ponderibus per mansiones singulasque civitates iussimus collocari, ut unusquisque tributarius sub oculis constitutis rerum omnium modiis sciat, quid debeat susceptoribus dare; ita ut, si quis susceptorum conditorum modiorum sextariorumque vel ponderum normam putaverit excedendam, poenam se sciat competentem esse subiturum. (386 nov. 28).

CTh.12.6.21.1

Et submotis, quae contra utilitatem populorum omnium hactenus gesta sunt, frumenti quinquagensimas, hordei quadragensimas, vini et laridi vicensimas susceptoribus dari praecipimus. humanitatis autem necessitate commoniti susceptoribus in armeniae susceptionibus longinquitatis causa frumenti et hordei quadragensimas, vini et laridi quintas decimas dari praecipimus. dat. iiii kal. dec. constantinopoli honorio n. p. et evodio v. c. conss. (386 nov. 28).

CTh.12.6.22 [=brev.12.2.2]

Imppp. valent., theodos. et arcad. aaa. ad paulinum praefectum augustalem. non perpetui exactores in continuata vexandorum provincialium potestate, veluti concussionum dominatione, teneantur, sed per annos singulos iudiciaria sedulitate mutentur, nisi aut consuetudo civitatis aut raritas ordinis eos per biennium esse compellat. quod nisi factum fuerit, scias, te et officium tuum non minus mulcta quam gravi poena esse plectendum. dat. prid. kal. dec. constantinopoli, honorio n. p. et evodio v. c. coss.

interpretatio. lex ista hoc iubet, non debere exactores, qui uno anno exegerint, secundi anni exactionem suscipere et possessores superflua exactione vexare. sed hoc observari debere, ut annis singulis iudiciaria electione mutentur, nisi forte aut consuetudo civitatis aut raritas curialium per biennium eos exactores esse compellat. aliter enim si factum fuerit, et iudicem et officium suum mulcta pariter et gravis poena constringat

CTh.12.6.23

Idem aaa. cynegio praefecto praetorio. susceptores praesentibus defensoribus et modum iugationis possessorum et species singulas vel earum numerum quantitatemque perscribant. dat. iiii kal. dec. constantinopoli timasio et promoto conss. (389 [?] nov. 28).

CTh.12.6.24

Impp. arcadius et honorius aa. ad senatum et populum. post alia: susceptores canonis horreorumque praepositi singulis annis audiente viro spectabili vicario et praefecto annonae expensionem susceptarum specierum probare cogantur, ita ut, si qui eorum idonei probabuntur, quinquennio in huius officii statione permaneant et electi deinceps de curiis memorato muneri subrogentur. et cetera. dat. xii kal. mai. mediolano caesario et attico conss. (397 apr. 15).

CTh.12.6.25

Idem aa. firmino comiti rerum privatarum. palatinum iubemus procurare officium, ut nullus praepositurae vel cuiuscumque susceptionis subeat munus, antequam iuxta legem divae memoriae gratiani et susceptorum substantiae et fideiussorum facultates diligenti descriptione collectae ad eiusdem officii notitiam perferantur, cessante responso, quod per subreptionem in aerarii nostri dispendium elicitum est. dat. xv kal. april. mediolano theodoro v. c. cons. (399 mart. 18).

CTh.12.6.26

Idem aa. benigno vicario urbis romae. securitates semel publicatas et gestis lectas vini susceptoribus imputari et coeptam arcae discussionem volumus in apertum quaesita ratione deduci et omnes publicas securitates quae gestis tenentur a susceptoribus ferri accepto. dat. vi id. iun. mediolano stilichone et aureliano conss. (400 iun. 8).

CTh.12.6.27pr.

Idem aa. pompeiano suo salutem. ne fraude susceptorum, dum subducunt eos, qui apochas scripserunt, denuo soluta poscantur, manifeste sancimus, ut periculo totius corporis intra ipsam indictionem mutare eos non liceat, a quibus emissae sunt securitates, nisi falsitatis arguantur, et plurima improbare non audeant. (400 dec. 31).

CTh.12.6.27.1

Item a tabulariis quadrimenstruos breves publicari iubemus, ut, si isdem relatae securitates fideliter continent debitum, duplex non teneat exactio. (400 dec. 31).

CTh.12.6.27.2

Si autem aliquid a susceptore vel tabulario fraudis admissum esse possessor deprehendat, nemo eorum semel in interversione convictus id rursus officium gerat, in quo ante decoxit, etsi rescriptum nostrum elicitum clandestina supplicatione detulerit. dat. prid. kal. ian. mediolano stilichone et aureliano conss. (400 dec. 31).

CTh.12.6.28

Idem aa. pompeiano proconsuli africae. si apochae ad susceptores nomine militum deferantur, nihil ex ea pecunia intra provinciam tibi creditam prorogetur, quam sub testificatione gestorum ad instructionem provinciae numidiae vel mauretaniae oportet integram pervenire, ut illic devotissimus miles emolumenta sibi debita ex integro consequatur. si quis autem post interdictum mansuetudinis nostrae apochas putaverit esse deferendas, inaniter eas sciat esse delatas nec in acceptum ei qui susceperit referendum. dat. iiii kal. mart. mediolano post cons. stilichonis et aureliani vv. cc. (401 febr. 26).

CTh.12.6.29

Idem aa. et theodosius a. septimino proconsuli africae. dudum praecepimus, ut ex corpore negotiatorum ad suscipiendam tuendamque aurariae nostrae rationem adponeretur idoneus, qui tamen fide omnium et periculo fuisset electus. et nunc eadem renovantes ex negotiatorum sive quolibet alio corpore ad suscipiendam arcae rationem idoneum adponi praecipimus ea dumtaxat condicione servata, ut tam de suis quam officii sui facultatibus iudices noverint eruendum, si quid ille ex commissa sibi ratione crediderit usurpandum. dat. x kal. mart. ravennae theodosio a. i et rumorido conss. (403 febr. 20).

CTh.12.6.30

Idem aaa. lucio comiti sacrarum largitionum. duos tabularios et susceptores totidem per universas provincias oportere constitui clementia nostra praecepit. super hoc autem admonuimus et praetorianam amplissimam praefecturam, quo sciret eos, qui aurum largitionale susceperunt, nihil cum arcae ratiociniis habere commune, iudices autem provinciarum quinque libris auri multandos et primates officiorum capitali poena plectendos, si hoc vel in praesenti non fuerit custoditum vel postea commutatum. dat. vi kal. feb. basso et philippo conss. (408 ian. 27).

CTh.12.6.31

Impp. honorius et theodosius aa. euchario suo salutem. humilibus officiis aut extraordinariis oneribus occupari curiales non patimur, ne publica vaccillet utilitas. susceptionem itaque vestium aequius est ab officio proconsulari vel ab his qui in eodem meruerunt sollemniter procurari. horum namque interest huiusmodi explorare rationem et quaerere qualitatem eorum, quorum ad contuendum cura commodior est. neque enim aequum est, ut ad officium lucella, ad curialem susceptionis tantum damna pertineant. hanc igitur ab ordinibus iniuriam submovemus, exceptis his, si qui curialium officio memorato aut militasse aut militare fuerit deprehensus. dat. prid. kal. mart. ravennae honorio viiii et theodosio v aa. conss. (412 febr. 29).

CTh.12.6.32pr.

Impp. theodosius et valentinianus aa. volusiano praefecto praetorio. post alia: aurum sive argentum quodcumque a possessore confertur, arcarius vel susceptor accipiat, ita ut provinciae moderator eiusque officium ad crimen suum noverit pertinere, si possessoribus ullum fuerit ex aliqua ponderum iniquitate illatum dispendium. (429 febr. 27).

CTh.12.6.32.1

Possessori sane securitatem sub designatione titulorum arcarius vel susceptor emittat et quidquid ex pronvinciis ad nostrum dirigetur aerarium, id non solum ad illustres viros aerarii nostri comites, sed etiam ad eminentiam tuam pari relatione deferatur. (429 febr. 27).

CTh.12.6.32.2

Contra haec nostra si quicquam vetito ausu palatinus audebit, licebit provinciae moderatori eundem correptum ad sublimitatis tuae iudicium sub prosecutione dirigere, licebit provinciali, etsi probatur obnoxius, palatini contra vetitum exactionem sibi vindicantis temeritatem legitime repellere. quam si provincialis pulsare nequiverit et delata ad illustres viros aerarii comites querimonia impediente palatino officio non meruerit ultionem, tunc demum licebit magnificentiae tuae possessorum querellas et probata aput se dispendia vindicare. dat. iii kal. mart. ravennae post cons. felicis et tauri vv. cc. (429 febr. 27).

CTh.12.6.33

Idem aa. theodosio praefecto praetorio. a byzacena provincia dudum impetratum fuisse comperimus, ut urbium suariorum curiales horreorum custodiam curamque susciperent; ideoque sancimus proconsularis provinciae horreis non praefici principalem. dat. xv kal. mar. ravennae theodosio xiii et valentiniano v aa. conss. (430 febr. 15).

CTh.12.7.0. De ponderatoribus et auri illatione

CTh.12.7.1

Imp. constantinus a. ad eufrasium rationalem trium provinciarum. si qui solidos appendere voluerit, auri cocti septem solidos quaternorum scripulorum nostris vultibus figuratos adpendat pro singulis unciis, xiiii vero pro duabus, iuxta hanc formam omnem summam debiti illaturus. eadem ratione servanda, et si materiam quis inferat, ut solidos dedisse videatur. aurum vero quod infertur aequa lance et libramentis paribus suscipiatur, scilicet ut duobus digitis summitas lini retineatur, tres reliqui liberi ad susceptorem emineant nec pondera deprimant nullo examinis libramento servato, nec aequis ac paribus suspenso statere momentis. et cetera. proposita xiiii kal. aug. paulino et iuliano conss. (325 iul. 19).

CTh.12.7.2

Imp. iulianus a. ad mamertinum praefectum praetorio. emptio venditioque solidorum, si qui eos excidunt aut deminuunt aut, ut proprio verbo utar cupiditatis, adrodunt, tamquam leves eos vel debiles nonnullis repudiantibus impeditur. ideoque placet quem sermo graecus appellat per singulas civitates constitui zygostaten, qui pro sua fide atque industria neque fallat neque fallatur, ut ad eius arbitrium atque ad eius fidem, si qua inter vendentem emptoremque in solidis exorta fuerit contentio, dirimatur. dat. viiii kal. mai. salonae iuliano a. iiii et sallustio conss. (363 apr. 23).

CTh.12.7.3

Impp. valentinianus et valens aa. ad dracontium. si quid ex proscriptionibus vel condemnationibus deposcitur, si quid ex ceteris titulis, qui annui atque sollemnes sunt vel veteres vel recentes, aut peculiaris in singulis aut certa per paucos aut uniformis in cunctos cogit indictio, non in materia conferatur, sed sub condicionalium oculis ac periculis diu multumque flammae edacis examine in ea obryza detinetur, quemadmodum pura videatur. dat. prid. non. aug. nemasia post cons. gratiani n. p. et dagalaifi. (367 aug. 4).

CTh.12.8.0. De auri publici prosecutoribus

CTh.12.8.1

Impp. honorius et theodosius aa. anthemio praefecto praetorio. auri prosecutores partim nulla praemissa, ut adsolet, prosecutoria aurum praesumunt, partim diutius retentant quod statim fuerat adsignandum. ideoque censemus, ne quis absque praecepto viri illustris comitis sacrarum largitionum vel coquendum aurum sumat vel capiat deinceps retinendum. dat. xiii kal. aug. honorio viii et theodosio iii aa. conss. (409 iul. 20).

CTh.12.9.0. De his, quae ex publica collatione illata sunt, non usurpandis

CTh.12.9.1

Imp. constantinus a. nullus iudicum id, quod a re publica ex collatione susceperit, mutui interventione obposita vel invadat vel conetur invadere. dat. prid. non. mart. treviris paulino et iuliano conss. (325 [?] mart. 6).

CTh.12.9.2

Imppp. gratianus, valentinianus et theodosius aaa. have, lampadi karissime nobis. nullus penitus ex eo, quod refertur in conditis vel in arca continetur, ad quemlibet titulum usurpet, nisi forte praesumendi facultatem sublimium potestatum iussione perceperit. dat. iii id. april. constantinopoli antonio et syagrio conss. (382 apr. 11).

CTh.12.9.3

Impp. arcadius et honorius aa. messalae praefecto praetorio. post alia: sciant iudices nihil sibi ex privatae rei canone vel eo, quod ex isdem titulis exegerint, ad necessitates alias transferre licere, nisi malunt gravissima severitate suam licentiam coherceri. dat. xvi kal. iun. mediolano theodoro cons. (399 mai. 17).

CTh.12.10.0. Ne praefectianus exactoris vel curiosi vel horreorum custodis fungatur officio

CTh.12.10.1

Impp. valentinianus et valens aa. ad zosimum praesidem epiri novae. comperimus imperatoriae iussionis auctoritate neglecta praefectianos ad perniciem provincialium exitiumque remeasse et exactionibus in provincia meritis tuis credita vel potius lucris et quaestibus suis contra vetitum laborare, praeterea vel horreorum gerere custodiam vel curarum ius atque arbitrium sibi praesumere. horum si quis existat, volumus huius auctoritate praecepti in futurum susceptorum officiis eum deputari deque eius nomine universa clementiae nostrae auribus intimari. dat. xiiii kal. dec. mediolano valentiniano et valente iiii aa. conss. (373 [365] nov. 18).

CTh.12.11.0. De curatoribus kalendarii et fideiussoribus eorum

CTh.12.11.1pr.

Imp. constantinus a. locrio verino suo salutem. aput eos, quos superstites integris facultatibus esse pervideris vel quorum heredes incolumia retinent patrimonia, sortes kalendarii perseverare debebunt, ita tamen, ut annuas usuras suis quibusque temporibus exolvant, cum simul et rei publicae utile sit retinere idoneos debitores et ipsis commodum cumulum debiti minime nutriri. (314 ian. 30).

CTh.12.11.1.1

Et quia nefas est obnoxiis corporibus alienatis circumscribi civitates, placuit, si qui debitor rei publicae civitatis quippiam ex eo patrimonio, quod habuit, cum pecuniam rei publicae sumeret, donaverit vel distraxerit vel qualibet in alium ratione contulerit, qualitate rei alienatae perspecta atque omnibus debitoris facultatibus consideratis, quas habuit, cum ei pecunia crederetur, pro rata ab eo, qui ex debitoris facultatibus aliquid detinet, ex sorte atque usuris postulari. itaque quotiens minus idoneum deprehenditur eius patrimonium, cuius nomen kalendario civitatis alicuius invenitur obnoxium, iudex omni diligentiae sollicitudine debebit inquirere, ad quos ex qualibet condicione transierint debitoris facultates, ut singuli aequa aestimatione habita pro rata rerum quas possident conveniantur, personalem actionem contra eum habituri debitorem, qui ipsis solventibus liberatur. ab eo autem, a quo constat fortunarum suarum partem maximam recessisse, etiam reliquam portionem quae aput eum resederit transferri ad idoneum oportebit. (314 ian. 30).

CTh.12.11.1.2

Quod si quispiam debitor rei publicae civitatis fisco nostro locum fecerit, emptores quidem, qui ex fisco nostro comparaverint, manifestum est secundum ius vetus et rescripta divorum constitutionesque nostras nullam debere molestiam sustinere, cum huiusmodi casibus rem publicam placuerit fortuita dispendia sustinere; qui vero aliquid ex eiusdem bonis principali liberalitate fuerint consecuti, iuxta legem latam obnoxii erunt rei publicae habita solidarum facultatum consideratione, quae fuerant debitoris, cum pecuniam rei publicae sumeret, ut pro rata corporis, quod ex largitate nostra retinent, competentem sortis atque usurarum partem exigantur. (314 ian. 30).

CTh.12.11.1.3

Quod si quis debitor non comparuerit vel certe ita omnia sua consumpserit, ut nemo aliquam rem ex eius bonis possideat, id quoque debitum convenit ad dispendium rei publicae pertinere. ideoque periculo curatoris kalendari et magistratuum et creatorum aput idoneos vel dominos rusticorum praediorum pecunia collocanda est. proposita iii kal. feb. volusiano et anniano conss. (314 ian. 30).

CTh.12.11.2

Imppp. valentinianus, theodosius et arcadius aaa. ad hellenium vicarium urbis. kalendariorum nomen tam oleariae arcae quam frumentariae non multo ante oratio ad senatum missa noscitur antiquasse. ne igitur ea, quae aboleri ante censuimus, novis calumniarum facibus inardescant, tua providebit instantia. nos enim, quo sanctius quae cauta sunt observentur, xx librarum auri multa iudicem censuimus esse plectendum ac primates officii capitali cohercendos esse sententia. dat. non. aug. honorio n. p. et evodio conss. (386 aug. 5).

CTh.12.12.0. De legatis et decretis legationum

CTh.12.12.1

Impp. constantius et constans aa. ad taurum praefectum praetorio. in africanis provinciis universis conciliis liberam tribuo potestatem, ut congruente arbitrio studii condant cuncta decreta aut commodum quod credunt consulant sibi, quod sentiunt eloquantur decretis conditis missisque legatis. nullus igitur obsistat coetibus dictator, nemo conciliis obloquatur. dat. kal. aug. mediolano arbitione et lolliano conss. (355 aug. [?] 1).

CTh.12.12.2

Idem aa. et iulianus c. musoniano praefecto praetorio. nullus ad gentem axumitarum et homeritarum ire praeceptus ultra annui temporis spatia debet alexandriae de cetero demorari nec post annum percipere alimonias annonarias. dat. xviii kal. feb. mediolano indictione xv constantio a. viii et iuliano c. conss. (356 ian. 15).

CTh.12.12.3

Impp. valentinianus et valens aa. ad mamertinum praefectum praetorio. provinciales desideriorum suorum decreta initio aput acta ordinariorum iudicum prosecuti ad sedis tuae eminentiam mittant, ut impudentior petitio refutetur aut iustior petita commoda consequatur. si qua autem eiusmodi fuerint, quae magnificentiam tuam probabili cunctatione destringant, super his satis erit consuli scientiam nostram, ita ut cunctas petitiones cum litteris tuis legatorum unus advectet. dat. iii kal. iun. serdicae divo ioviano et varroniano conss. (364 mai. [?] 30).

CTh.12.12.4

Idem aa. ad mamertinum praefectum praetorio. iuxta legem divi constantini nihil post tractatum habitum civitatum voluntate mutetur sive mutiletur, sed integrae atque illibatae civitatum petitiones ad magnificentissimae sedis tuae notitiam perferantur, ut sit examinis tui, quaenam ex his auxilio tuo implenda protinus, quae clementiae nostrae auribus intimanda videantur. dat. vii id. sept. aquileiae divo ioviano et varroniano conss. (364 sept. 7).

CTh.12.12.5

Idem aa. victori duci aegypti. cum legati gentilium venerint, obsignari eorum tabulas oportet, ut ad mansuetudinem nostram fides earum, quae a regulis profectae fuerint, litterarum et numerus perferatur, ne per hanc occasionem etiam addendi in epistulis possit his facultas aperiri. dat v kal. ian. divo ioviano et varroniano conss. (364 dec. 28).

CTh.12.12.6

Idem aa. et gratianus a. ad claudium proconsulem africae. legati, qui ad comitatum nostrum non cum necessariis desideriis et probabilibus rebus advenerint, cum iniuria sui ad provinciam animalibus propriis revertentur. dat. iiii non. feb. treviris valentiniano n. p. et victore conss. (369 febr. 2).

CTh.12.12.7

Imppp. gratianus, valentinianus et theodosius aaa. eutropio praefecto praetorio. cum desideria sua singulae civitates cupiunt explicare, non viritim legatos mittant ad nostri numinis comitatum, sed tractatu habitoque conventu tres e provincia, qui petitiones advehant, deligantur; multae competentis denuntiatione praestrictis his, ...Qui provincias moderantur. dat. vi kal. aug. constantinopoli gratiano v et theodosio i aa. conss. (380 iul. [?] 27).

CTh.12.12.8

Idem aaa. ad severum praefectum urbi. quaecumque civitas legatos ad sacrarium nostrum voluerit ordinare, libera ei tribuatur facultas, ita tamen, ut a te probata atque elimata ad nos desideria perferantur. proposita karthagine viii kal. april. post cons. syagrii et eucherii vv. cc. (382 mart. 25).

CTh.12.12.9pr.

Idem aaa. ad provinciales. sive integra dioecesis in commune consulerit sive singulae inter se voluerint provinciae convenire, nullius iudicis potestate tractatus utilitati earum congruus differatur neque provinciae rector aut praesidens vicariae potestati aut ipsa etiam praefectura decretum aestimet requirendum. (382 mai. 10).

CTh.12.12.9.1

Illud etiam addimus, ut si integra dioecesis unum vel duos elegerit, quibus desideria cuncta committat, redae cursualis unius isdem tribuatur evectio; si vero singulae provinciae separatim putaverint dirigendos, singularum angariarum copia praebeatur, dummodo, sicut licere volumus oppressis deflere quae perferunt, ita provinciales nostri nec incassum peregrinationem suscipiendam eaque ad sacras aures deferenda cognoscant, quae probabiliter principibus adserantur nec superfluis perennitatem nostram existiment actibus occupandam. dat. vi id. mai. brixiae antonio et syagrio conss. (382 mai. 10).

CTh.12.12.10

Imppp. valentinianus, theodosius et arcadius aaa. principio praefecto praetorio. quotienscumque ex diversis provinciis ad sacrum mansuetudinis nostrae comitatum legationes, quas instruxere decreta, necesse erit commeare, in auditorio quidem celsitudinis tuae universa tractentur, sed ita, ut nullum finem capiat ordo gestorum illibataque rerum decisio singularum nostro auditui sententiaeque servetur, ita ut deinceps excellentia tua, cum in consistorio mansuetudinis nostrae secundum consuetudinem ex decretis petitiones legatorum de nostris scriniis recitantur, motum proprii arbitrii ratione decursa sententiis, quas pandimus, referat. dat. non. nov. aquileiae arcadio a. i et bautone conss. (385 nov. 5).

CTh.12.12.11

Idem aaa. ad eusignium praefectum praetorio. si quis vel civitatis vel provinciae vel corporis alicuius ita prosequi desideria voluerit, ut non omnia mandata litterarum, decretorum auctoritate demonstret, inauditus ac sine effectu remeare protinus iubeatur. dat. xv kal. mart. ticini honorio n. p. et evodio conss. (386 febr. 15).

CTh.12.12.12pr.

Imppp. theodosius, arcadius et honorius aaa. apodemio praefecto praetorio per illyricum. si quod extraordinarium concilium postulatur, cum vel ad nos est mittenda legatio vel vestrae sedi aliquid intimandum, id, quod inter omnes communi consilio tractatuque convenerit, minime in examen cognitoris ordinarii perferatur. provincialium enim desideria, quibus necessaria saepe fortuitis remedia deposcuntur, vobis solis agnoscere atque explorare permittimus, nobis probationem ac iudicium reservamus. (392 iul. 28).

CTh.12.12.12.1

Ad provinciale concilium in una frequentiore totius provinciae urbe cunctos volumus convenire, qui primatum honorantur insignibus, exceptis praefectoriis, quos dignitatibus ampliatos indignum a consiliantibus praeteriri, indignius vero ad publicum cum honoris iniuria devocari; unde honestum esse censemus de singulis quae tractanda erunt intra domos suas eos consuli, (392 iul. 28).

CTh.12.12.12.2

Ut nec plebi mixta dignitas inclinetur nec eius, cuius praesentiae copia deerit, probatum in re publica consilium neglegatur; scilicet ut in loco publico de communi utilitate sententia proferatur atque id, quod maioris partis probarit adsensus, sollemnis firmet auctoritas. dat. v kal. aug. constantinopoli arcadio a. ii et rufino conss. (392 iul. 28).

CTh.12.12.13pr.

Idem aaa. apodemio praefecto praetorio. provinciale concilium quo tempore iniri debeat, cum adsensu omnium atque consilio propria auctoritate definiat, ita ut ipse conventus in una opulentiore totius provinciae urbe absque ullius iniuria celebretur. inde quod in consilium communia vota deducunt, vel in aede publica vel in aliqua fori parte tractetur, ad quam omnium possit esse concursus, ne quid dispositio paucorum tegat, quod in communem utilitatem expetat sollicitudo cunctorum. (392 sept. 10).

CTh.12.12.13.1

Si quis autem eorum virorum, quos emeritos honor a plebe secernit, provincialium extraordinario cupit interesse concilio, pro suo loco atque ordine servata reverentia dignitatis vel ad eum locum, in quo cunctorum desideria possit agnoscere, ire debebit vel procuratoribus destinatis sententiae suae promere voluntatem, modo ut, quod voluerit paucorum voluntas, publica convocetur auctoritas. dat. iiii id. sept. constantinopoli arcadio a. ii et rufino conss. (392 sept. 10).

CTh.12.12.14

Imppp. honorius et theodosius aa. anthemio praefecto praetorio et patricio. omnium legationum provincialium instructiones aput sublimitatem tuam actis legi pensarique praecipimus, ut, quae digna nutu vel indulgentia nostrae clementiae probabuntur, eligere ac referre ad nos sublimitas tua non ambigat. nam remedia fessis quibusque necessaria nostro arbitrio decernentur. dat. xiiii kal. octob. constantinopoli basso et filippo conss. (408 sept. 18).

CTh.12.12.15

Idem aa. monaxio praefecto praetorio. quotiens legatio destinatur, universos curiales praecipimus, qui intra urbem consistunt, si non aegritudine vel alia inexcusabili necessitate impediuntur, in locum curiae convenire et decreta sua propria subscriptione firmata viro spectabili praefecto augustali insinuare, ut eius relatione tuis virtutibus intimata et sub examine tuo perpensa venire necne legati debeant, ordinetur: nulli penitus legatione libera committenda et auro coronario non, sicut nuper factum est, ab his colligendo, qui venditis honoribus, ut ad gradus altiores venirent, contra licitum coemerunt, quos quidem recepta summa quam dederunt universa munia patriae implere praecipimus, sed a curia omni praestando vindicta huius facinoris tuae sublimitati permissa. et cetera. dat. iii non. octob. constantinopoli d. n. theodosio a. vii et palladio v c. conss. (416 oct. 5).

CTh.12.12.16

Impp. theodosius et valentinianus aa. hierio praefecto praetorio. civitatum postulata, decreta urbium, desideria populorum liquido tua sublimitas recognoscit ad imperialis officium pertinuisse responsi admissosque sacrariis nostris semper sui imperatoris aspectu decoratos esse legatos; dixisse libere, quae illorum fuerant a communi fidei constantiaeque commissa. dat. kal. iun. nicomediae dd. nn. theodosio xii et valentiniano ii aa. conss. (426 iun. 1).

CTh.12.13.0. De auro coronario.

CTh.12.13.1

Imp. iulianus a. ad sallustium praefectum praetorio. aurum coronarium munus est voluntatis, quod non solum senatoribus, sed ne aliis quidem debet indici. licet quaedam indictionum necessitas postulaverit; sed nostro arbitrio reservari oportebit. dat. iii kal. mai. mamertino et nevitta conss. (362 apr. 29).

CTh.12.13.2

Imppp. valentinianus et valens aa. ad mamertinum praefectum praetorio. universi, quos senatorii nominis dignitas non tuetur, ad auri coronarii praestationem vocentur exceptis his, quos lex praeterita ab hac collatione absolvit. omnes igitur possessores aut inter decuriones coronarium aurum aut inter senatores glebalem praestationem deinceps recognoscant. dat. v kal. sept. emonae divo ioviano et varroniano v. c. conss. (364 aug. 28).

CTh.12.13.3

Idem aa. ad probum praefectum praetorio. nullus exceptis curialibus, quos pro substantia sui aurum coronarium offerre convenit, ad oblationem hanc adtineatur. dat. viiii kal. iul. savariae valentiniano et valente aa. conss. (368? 370? 373? iun. 23).

CTh.12.13.4

Imppp. gratianus, valentinianus et theodosius aaa. pancratio praefecto urbi. quae diversarum ordines curiarum vel amore proprio vel indulgentiarum laetitia vel rebus prospere gestis admoniti in coronis aureis signisque diversis obtulerint, in quacumque fuerint oblata materia, in ea suscipiantur, ne id, quod voluntate offertur, occasione obryzae incrementi, necessitatis iniuria insequatur. dat. iiii id. aug. vico augusti auxonio et olybrio conss. (379 aug. 10).

CTh.12.13.5

Idem aaa. cynegio praefecto praetorio. ad collationem auri coronarii placuit neminem absque consuetudine esse cogendum. dat. xv kal. feb. constantinopoli richomere et clearcho conss. (384 ian. 18).

CTh.12.13.6

Idem aaa. gaddanae satrapae sofanenae. aurum coronarium his reddi restituique decernimus, quibus illicite videtur ablatum, ut secundum consuetudinem moris antiqui omnes satrapae pro devotione, quae romano debetur imperio, coronam ex propriis facultatibus faciant serenitati nostrae sollemniter offerendam. dat. xviii kal. iul. constantinopoli valentiniano a. iii et eutropio conss. (387 iun. 14).

CTh.12.14.0. De irenarchis

CTh.12.14.1

Impp. honorius et theodosius aa. anthemio praefecto praetorio. irenarcharum vocabula, quae adsimulata provincialium tutela quietis ac pacis per singula territoria haud sinunt stare concordiam, radicitus amputanda sunt. cesset igitur genus perniciosum rei publicae; cesset rescriptorum irenarchas circiter inconvulsa simplicitas et celsitudinis tuae sedes provinciarum defendenda suscipiat pacis huiusmodi, locupletioribus commissura, praesidia. dat. viii kal. ian. constantinopoli honorio viii et theodosio iii aa. conss. (409 dec. 25).

CTh.12.15.0. De centurionibus

CTh.12.15.1

Impp. arcadius et honorius aa. vincentio praefecto praetorio. hac auctoritate sancimus, ut, quicumque centurionum corpus deseruit nullis dignitatum privilegiis excusatus, debitum munus subire cogatur. dat. id. septemb. mediolano theodoro cons. (399 sept. 13).

CTh.12.16.0. De mancipibus

CTh.12.16.1

Imppp. valentinianus, theodosius et arcadius aaa. albino praefecto urbis romae. quicumque vel rescripti adversus veteres sanctiones subreptiva defensione munitur vel de minusculis corporibus aut certe otiosis idoneus adprobatur, functioni mancipatus est addicendus. dat. xvii kal. sept. romae timasio et promoto conss. (389 aug. 16).

CTh.12.17.0. De his, qui numero liberorum vel paupertate excusationem meruerint

CTh.12.17.1pr.

Imp. constantinus a. dalmatio. quoniam cognovimus nonnullos vacationem a nobis personalium munerum impetrasse, alienos pro suis liberis nostris conspectibus offerentes, iubemus eos, cum hoc probatum sit, indulto beneficio privari, eos autem, qui cuiuscumque sexus liberos quinque habeant, impetrata semel vacatione potiri, ita ut, si in hoc numero filius legitimae aetatis inveniatur, obeundis statim pro suo patre muneribus adplicetur, patribus, qui filios vel filias quinque habuerint, promissa legibus immunitate servanda. (324 iun. 19).

CTh.12.17.1.1

Quod si quis propter censum tenuem vacationem meruerit atque hoc probaverit, beneficio potiatur, si propter rerum angustias ad personalia vocabatur obsequia. dat. xiiii kal. feb. sirmio crispo iii et constantino ii conss. (324 iun. 19).

CTh.12.18.0. Si curialis relicta civitate rus habitare maluerit

CTh.12.18.1

Impp. valentinianus et valens aa. ad tatianum praefectum aegypti. iudiciario omnes vigore constringes, ne vacuatis urbibus ad agros magis, quod frequenti lege prohibetur, larem curiales transferant familiarem. dat. vi id. mai. marcianopoli lupicino et iovino conss. (367 mai. 10).

CTh.12.18.2

Impp. arcadius et honorius aa. eutychiano praefecto praetorio. post alia: curiales omnes iubemus interminatione moneri, ne civitates fugiant aut deserant rus habitandi causa, fundum, quem civitati praetulerint, scientes fisco esse sociandum eoque rure esse carituros, cuius causa impios se vitando patriam demonstrarint. dat. xviii kal. ian. constantinopoli arcadio iiii et honorio iii aa. conss. (396 [?] dec. 15).

CTh.12.19.0. De his, qui condicionem propriam reliquerunt

CTh.12.19.1

Impp. arcadius et honorius aa. vincentio praefecto praetorio galliarum. destitutae ministeriis civitates splendorem, quo pridem nituerant, amiserunt: plurimi siquidem collegiati cultum urbium deserentes agrestem vitam secuti in secreta sese et devia contulerunt. sed talia ingenia huiusmodi auctoritate destruimus, ut, ubicumque terrarum repperti fuerint, ad officia sua sine ullius nisu exceptionis revocentur. de eorum vero filiis, qui tamen intra hos proxime quadraginta annos docebuntur fuisse suscepti, haec forma servabitur, ut inter civitatem et eos, quorum inquilinas vel colonas vel ancillas duxerint, dividantur, ita ut in ulteriorem gradum missa successio nullam calumniam perhorrescat. et cetera. dat. iii kal. iul. mediolano stilichone et aureliano vv. cc. conss. (400 iun. 29).

CTh.12.19.2

Idem aa. vincentio praefecto praetorio galliarum. actiones publicas privatasque non eadem ratione concludimus, si quidem statui publico impensius providendum est. eum igitur, qui curiae vel collegio vel burgis ceterisque corporibus intra eandem provinciam per xxx annos; in alia xl sine interpellatione servierit, neque res dominica neque actio privata continget, si colonatus quis aut inquilinatus quaestionem movere temptaverit. et cetera. dat. iii kal. iul. mediolano stilichone et aureliano conss. (400 iun. 29).

CTh.12.19.3

Idem aa. vincentio praefecto praetorio galliarum. post alia: manente hoc praecepto mansuetudinis nostrae, ut is, qui xxx annis docebitur functus officiis neque ulla umquam interpellatione pulsatus, intra eandem dumtaxat provinciam nihil calumniae super statu suo a privato neque a rei dominicae actoribus pertimescat, intra definiti temporis metas si quis docebitur fuisse conventus, iure legitimo in ordinaria sede pulsabitur, ut illic de statu eius sententia proferatur. primates sane ordinum defensoresque civitatum poenae denuntiatione constringimus, ne passim vagari curiae vel collegii defugas in publica damna patiantur. quod si per gratiam tacuisse detegentur, poenam relegationis excipiant. dat. iii kal. iul. mediolano stilichone et aureliano conss. (400 iun. 29).

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CTh.13.1.0. De lustrali collatione

CTh.13.1.1

Imp. constantius a. et iulianus caes. ad taurum praefectum praetorio. negotiatores omnes protinus convenit aurum argentumque praebere, clericos excipi tantum, qui copiatae appellantur, nec alium quemquam esse inmunem ab huius collationis obsequio. dat. iiii non. dec.; acc. romae viii id. feb. constantio a. viiii et iuliano caes. ii conss. (356 dec. 2).

CTh.13.1.2

Idem a. et caes. ad taurum praefectum praetorio. praeter eos, quos manifesta probatio demonstrat sub armis militiae sacramenta tolerasse quosque, cum requiem sortirentur, in pecuniarum certo numero inmunitatem claruerit consecutos, universi, qui negotiandi videntur exercere sollertiam, ad onus collationis adstringantur. acc. vi id. iul. karthagine constantio a. x et iuliano c. iii conss. (360 iul. 10).

CTh.13.1.3

Idem a. ad senatum. rusticanos colonosque vestros inter negotiatores describi non oportet, scilicet si nequaquam exercent negotiationis industriam, siquidem in eo negotiationem et mercimonia non oporteat aestimari, si ea homines vestri ac rusticani etiam in vestris possessionibus commorantes distrahant, quae in his terris quas incolunt adque in eodem rure gignuntur. dat. v non. mai. tauro et florentio conss. (361 mai. 3).

CTh.13.1.4pr.

Imp. iulianus a. secundo praefecto praetorio. post alia: decuriones, qui ut christiani declinant munia, revocentur. (362 mart. 13).

CTh.13.1.4.1

Et ab auri atque argenti praestatione, quod negotiatoribus indicitur, curiae inmunes sint, nisi forte decurionem aliquid mercari constiterit, ita ut ordines civitatum ex huiusmodi reliquis sarcinarum, ut iam diximus, amoveantur. proposita iii id. mar. constantinopoli mamertino et nevitta conss. (362 mart. 13).

CTh.13.1.5

Impp. valentinianus et valens aa. secundo praefecto praetorio. negotiatores, si qui ad domum nostram pertinent, si modo mercandi videantur exercere sollertiam et christianos, quibus verus est cultus, adiuvare pauperes et positos in necessitatibus volunt, potiorum quoque homines vel potiores ipsos, si tamen his mercandi cura est, ad necessitatem pensitationis adhibeas, praesertim cum potiorum quisque aut miscere se negotiationi non debeat aut pensitationem debeat, quod honestas postulat, primus agnoscere. dat. xv kal. mai. constantinopoli divo ioviano et varroniano conss. (364 apr. 17).

CTh.13.1.6

Idem aa. ad florentium comitem sacrarum largitionum. aurum mercatoribus adque argentum, quo erogatio publica iuvetur, indiximus; igitur exceptione inmunitatis nullus utetur. omnium enim regionum huiusmodi homines, omnium dignitatum hanc virilem iuvandae rei publicae partem sine aliqua privilegii venia iussimus sustinere. exceptio autem eos tantummodo in hac communi fere sorte defendet, qui proprio rure per se aut homines suos qui evidentissime cognoscuntur negotiantes non tam mercatorum loco haberi debent quam sollertium strenuorumque dominorum. dat. vi id. sept. divo ioviano et varroniano conss. (364 sept. 8).

CTh.13.1.7

Idem aa. ad probum praefectum praetorio. qui in sudore bellandi stipendiorum gradu usque ad protectores meruerunt, ... unius vaginae pretium, etiamsi aliis mercimoniis studere videantur. si quid autem supra hunc modum in mercimonii commutatione habeant, pro eo, quod amplius potuerit inveniri, ad necessitatem collationis artentur. omnes vero omnino, qui alterius nomine dignitatis emeritaeque militiae honore cumulati sunt, etsi per homines suos id exercent, ad oblationis obsequia adstringantur. proposita karthagine kal. april. valentiniano n. p. et victore conss. (369 apr. 1).

CTh.13.1.8

Imppp. valentinianus, valens et gratianus aaa. ad claudium proconsulem africae. hi tantum ad auri argentique detineantur oblationem merces emendo adque vendendo commutantes, qui in exercitio tabernarum usuque versantur, non etiam coloni rei nostrae, qui ea distrahunt, quae in dominicis possessionibus annus tulerit. dat. vi kal. mai. treviris valentiniano et valente iii aa. conss. (370 apr. 26).

CTh.13.1.9

Idem aaa. ad leontium consularem foenices. omnes iam nunc studio negotiationis intenti, seu conchylioleguli seu ex aliquolibet corpore mercatores, ad pensitationem auri, quod negotiatoribus indicitur, compellantur. beneficium enim quibusdam datum plebis iniuria est. proposita beryto prid. kal. iul. modesto et arinthaeo conss. (372 iun. 30).

CTh.13.1.10

Imppp. valentinianus, valens et gratianus aaa. ad italicum vicarium italiae. colonos rei privatae vel ceteros rusticanos pro speciebus, quae in eorum agris gigni solent, inquietari non oportet. eos etiam, qui manu victum rimantur aut tolerant, figulos videlicet aut fabros, alienos esse a praestationis eius molestia decernimus, ut hi tantum, qui pro mercimonio et substantia mercis ex rusticana plebe inter negotiatores sunt, sortem negotiationis agnoscant, quos in exercendis agris ingenitum iam pridem studium non retinet, sed mercandis distrahendisque rebus institutum vitae et voluntatis implicuit. dat. non. feb. mediolano gratiano iii et equitio v. c. conss. (374 febr. 5).

CTh.13.1.11

Imppp. gratianus, valentinianus et theodosius aaa. ad hesperium praefectum praetorio. etsi omnes mercatores spectat lustralis auri depensio, clerici tamen intra illyricum et italiam in denis solidis, intra gallias in quinis denis solidis inmunem usum conversationis exerceant. quidquid autem supra hunc modum negotiationis versabitur, id oportet ad functionem aurariam devocari. dat. iii. non. iul. aquileiae auxonio et olybrio conss. (379 iul. 2/5).

CTh.13.1.12

Idem aaa. ad atticum praefectum praetorio. nemo negotiator muneribus publicis eximatur exceptis his dumtaxat, qui innocenti industria fructus domesticos suis possessionibus innatos simpliciter vendunt, officiis et exactoribus pro his negotiatoribus adtinendis, quos excusatos subtractosve esse constiterit, in duplam quantitatem eius summae, quam illi inferre debuerant. dat. iii id. mart. mediolano richomere et clearcho conss. (384 mart. 13).

CTh.13.1.13 [=brev.13.1.1]

Imppp. grat., valent. et theodos. aaa. have postumiane karissime nobis. singuli quique, si per eos vernacula quaeque vendantur, functione auraria non teneantur; si vero emendi vendendive compendiis ultro citroque quaesitis familiaris rei amplitudo cumuletur, etsi militares sint, memoratae praestationi nectantur. dat. vi. id. nov. richomere et clearcho coss.

interpretatio. si quicumque* rem, quae ei nata est, aut quam non emit, vendat, ad solutionem aurariam minime teneatur. si vero emendi vendendique studio probabitur huc illucque discurrere, etiamsi militans est, ad solutionem teneatur aurariam

CTh.13.1.14

Imppp. valentinianus, theodosius et arcadius aaa. ad principium praefectum praetorio. eos, quos peractae militiae labor decurso stipendiorum ordine vel protectoris honore cumulavit vel honestae vel causariae missionis necessitate donavit, quindecim solidorum in mercimoniis omnibus inmunitatem habere iubemus, agnituros publicum munus, si ultra praestitutum legis nostrae modum emendis vendendisque rebus laxiore sumptu operam voluerint commodare. dat. prid. non. novemb. veronae arcadio a. i et bautone conss. (385 nov. [?] 4).

CTh.13.1.15

Idem aaa. cynegio praefecto praetorio. si quis potentior negotiatorem quempiam, quominus aurum debitum inferat, contra fisci nostri commoditates putaverit defendendum, ipse defensor negotiatoris adscriptam ei quem defenderit summam cogatur expendere. dat. xviii kal. mai. constantinopoli honorio n. p. et evodio conss. (386 apr. 14).

CTh.13.1.16

Impp. arcadius et honorius aa. clearcho praefecto urbi. omnes corporatos, de quibus orta querimonia est, quam maturissime praecipimus conveniri, ut aut commoda negotiatorum sequentes a clericorum excusatione discedant aut sacratissimo numini servientes versutis quaestibus intuitu tuae sinceritatis abstineant. distincta enim stipendia sunt religionis et calliditatis. dat. viii id. mai. constantinopoli theodoro v. c. cons. (399 mai. 8).

CTh.13.1.17

Idem aa. ianuarino consulari numidiae. a negotiatoribus aurum lustrale dependi non ignoramus et cum ad eos soleat distributionis cura recurrere, quos necessitas collationis adstringit, non convenit municipes hoc onere subiacere. sciant igitur de corpore suo, sicut in omnibus fere civitatibus, mancipes eligere absque ulla aerarii nostri deminutione, a curialibus alienae functionis distributione reiecta. dat. prid. non. iun. mediolano theodoro v. c. cons. (399 iun. 4).

CTh.13.1.18

Idem aa. pompeiano proconsuli africae. omnes negotiatores lustralem conferre convenit pensionem. non solum igitur hi, qui probantur in territoriis sive in civitatibus exercere commercia, subcumbant aurariae functioni, verum etiam, qui studentes fenori crescentis in dies singulos pecuniae accessione laetantur. dat. prid. kal. iul. mediolano stilichone et aureliano conss. (400 iun. 30).

CTh.13.1.19

Idem aaa. septimino proconsuli africae. omnes devotionem aurariae functionis agnoscant, quos diversi mercimonii cura constringit, ita ut, quibus negotiandi sollicitudo est, ad solutionem teneantur. dat. vii kal. april. ravennae d. n. theodosio a. i et rumorido conss. (403 mart. 26).

CTh.13.1.20

Impp. honorius et theodosius aa. anthemio praefecto praetorio. functiones, quas conferentium frequentia extenuata debilitat, ad stabilitatem revocandae sunt, ut, quod simul et sub una conventione petebatur, sub parva ac minima contributione absque consensu conferentium praebeatur. hoc in lustralis auri collatione in perpetuum decernimus observari, illud videlicet praecaventes, ne quis a nostra clementia vectigal huiusmodi audeat postulare. dat. viii kal. iun. varane v. c. cons. (410 mai. 25).

CTh.13.1.21

Idem aa. monaxio praefecto praetorio. nemo mercator vel possessor rerum, quae lustralis auri collationi tenentur obnoxiae, patrociniorum fiducia vel nomine cuiuslibet altissimae dignitatis a praedicta se functione aestimet subtrahendum, nec si ad domum dominae ac venerabilis augustae pulcheriae germanae nostrae seu nobilissimarum sororum pietatis nostrae pertineat. dat. xii kal. sept. honorio xii et theodosio viii aa. conss. (418 aug. 21).

CTh.13.2.0. De argenti pretio, quod thensauris infertur

CTh.13.2.1

Impp. arcadius et honorius aa. eutychiano praefecto praetorio. iubemus, ut pro argenti summa, quam quis thensauris fuerat illaturus, inferendi auri accipiat facultatem, ita ut pro singulis libris argenti quinos solidos inferat. dat. xi kal. mart. constantinopoli caesario et attico conss. (397 febr. [?] 19).

CTh.13.3.0. De medicis et professoribus

CTh.13.3.1pr.

Imp. constantinus a. ad volusianum. medicos, grammaticos et professores alios litterarum inmunes esse cum rebus, quas in civitatibus suis possident, praecipimus et honoribus fungi; in ius etiam vocari eos vel pati iniuriam prohibemus, ita ut, si quis eos vexaverit, centum milia nummorum aerario inferat a magistratibus vel quinquennalibus exactus, ne ipsi hanc poenam sustineant, (321/4 aug. 1).

CTh.13.3.1.1

Servus eis si iniuriam fecerit, flagellis debeat a suo domino verberari coram eo, cui fecerit iniuriam, vel, si dominus consensit, viginti milia nummorum fisco inferat, servo pro pignore, donec summa haec exsolvitur, retinendo. (321/4 aug. 1).

CTh.13.3.1.2

Mercedes etiam eorum et salaria reddi praecipimus. (321/4 aug. 1).

CTh.13.3.1.3

Quoniam gravissimis dignitatibus vel parentes vel domini vel tutores esse non debent, fungi eos honoribus volentes permittimus, invitos non cogimus. proposita kal. aug. sirmio crispo et constantino cc. conss. (321/4 aug. 1).

CTh.13.3.2

Idem a. ad rufinum praefectum praetorio. archiatri omnes et ex archiatris ab universis muneribus curialium, senatorum et comitum perfectissimorumque muneribus et obsequiis, quae administratione perfunctis saepe mandantur, a praestationibus quoque publicis liberi inmunesque permaneant nec ad ullam auri et argenti et equorum praestationem vocentur, quae forte praedictis ordinibus aut dignitatibus adscribuntur. huius autem indulgentiam sanctionis ad filios quoque eorum statuimus pervenire. dat. xii kal. iun. constantino a. vii et constantio caes. conss. (326 [354] mai. 21).

CTh.13.3.3

Idem a. ad populum. beneficia divorum retro principum confirmantes medicos et professores litterarum, uxores etiam et filios eorum ab omni functione et ab omnibus muneribus publicis vacare praecipimus nec ad militiam comprehendi neque hospites recipere nec ullo fungi munere, quo facilius liberalibus studiis et memoratis artibus multos instituant. proposita v kal. octob. constantinopoli dalmatio et zenofilo conss. (333 sept. 27).

CTh.13.3.4

Imp. iulianus a. ad archiatros. ratio aequitatis exposcit, ut veterum privilegia principum circa vos censeamus esse firmanda. proinde nostrae mansuetudinis sanctione subnixi securi a molestiis munerum omnium publicorum reliquum tempus aetatis iugiter agitabitis. dat. iiii id. mai. constantinopoli mamertino et nevitta conss. (362 mai. 12).

CTh.13.3.5

Idem a. magistros studiorum doctoresque excellere oportet moribus primum, deinde facundia. sed quia singulis civitatibus adesse ipse non possum, iubeo, quisque docere vult, non repente nec temere prosiliat ad hoc munus, sed iudicio ordinis probatus decretum curialium mereatur optimorum conspirante consensu. hoc enim decretum ad me tractandum referetur, ut altiore quodam honore nostro iudicio studiis civitatum accedant. dat. xv kal. iul., acc. iiii kal. augustas spoletio mamertino et nevitta conss. (362 iun. 17).

CTh.13.3.6

Impp. valentinianus et valens aa. ad mamertinum praefectum praetorio. si qui erudiendis adulescentibus vita pariter et facundia idoneus erit, vel novum instituat auditorium vel repetat intermissum. dat. iii id. ian. divo ioviano et varroniano conss. (364 ian. 11).

CTh.13.3.7

Idem aaa. ad probum praefectum praetorio. reddatur unusquisque patriae suae, qui habitum philosophiae indebite et insolenter usurpare cognoscitur, exceptis his, qui a probatissimis adprobati ab hac debent colluvione secerni. turpe enim est, ut patriae functiones ferre non possit, qui etiam fortunae vim se ferre profitetur. dat. xiiii kal. feb. sirmio valentiniano n. p. et victore conss. (369 ian. 19).

CTh.13.3.8pr.

Idem aaa. ad praetextatum praefectum urbi. exceptis portus xysti virginumque vestalium quot regiones urbis sunt, totidem constituantur archiatri. qui scientes annonaria sibi commoda a populi commodis ministrari honeste obsequi tenuioribus malint quam turpiter servire divitibus. (370 [368] ian. 30).

CTh.13.3.8.1

Quos etiam ea patimur accipere, quae sani offerunt pro obsequiis, non ea, quae periclitantes pro salute promittunt. (370 [368] ian. 30).

CTh.13.3.8.2

Quod si huic archiatrorum numero aliquem aut condicio fatalis aut aliqua fortuna decerpserit, in eius locum non patrocinio praepotentium, non gratia iudicantis alius subrogetur, sed horum omnium fideli circumspectoque delectu, qui et ipsorum consortio et archiatriae ipsius dignitate et nostro iudicio dignus habeatur. de cuius nomine referri ad nos protinus oportebit. dat. iii kal. feb. treviris valentiniano et valente iii aa. conss. (370 [368] ian. 30).

CTh.13.3.9pr.

Idem aaa. ad olybrium praefectum urbi. si qui in archiatri defuncti est locum promotionis meritis adgregandus, non ante eorum particeps fiat, quam primis qui in ordine repperientur septem vel eo amplius iudicantibus idoneus adprobetur, ita ut, quicumque fuerit admissus, non ad priorum numerum statim veniat, sed eum ordinem consequatur, qui ceteris ad priora subvectis ultimus poterit inveniri. (370 mart. 10).

CTh.13.3.9.1

Hisque annonarum compendia, quae eorum sunt meritis dignitatique praestanda, tua sinceritas iuxta dispositionem prius habitam faciat ministrari. dat. vi id. mart. valentiniano et valente iii aa. conss. (370 mart. 10).

CTh.13.3.10

Idem aaa. ad principium praefectum urbi. medicis et magistris urbis romae sciant omnes inmunitatem esse concessam, ita ut etiam uxores eorum ab omni inquietudine tribuantur inmunes et a ceteris oneribus publicis vacent, eosdemque ad militiam minime comprehendi placeat, sed nec hospites militares recipiant. dat. iii kal. mai. valentiniano et valente iii aa. conss. (370 [?] apr. 29).

CTh.13.3.11

Imppp. valens, gratianus et valentinianus aaa. antonio praefecto praetorio galliarum. per omnem dioecesim commissam magnificentiae tuae frequentissimis in civitatibus, quae pollent et eminent claritudine, praeceptorum optimi quique erudiendae praesideant iuventuti: rhetores loquimur et grammaticos atticae romanaeque doctrinae. quorum oratoribus viginti quattuor annonarum e fisco emolumenta donentur, grammaticis latino vel graeco duodecim annonarum deductior paulo numerus ex more praestetur, ut singulis urbibus, quae metropoles nuncupantur, nobilium professorum electio celebretur nec vero iudicemus, liberum ut sit cuique civitati suos doctores et magistros placito sibi iuvare compendio. trevirorum vel clarissimae civitati uberius aliquid putavimus deferendum, rhetori ut triginta, item viginti grammatico latino, graeco etiam, si qui dignus repperiri potuerit, duodecim praebeantur annonae. dat. x kal. iun. valente v et valentiniano aa. conss. (376 mai. 23).

CTh.13.3.12

Idem aaa. vindiciano. archiatrorum, qui intra penetralia regalis aulae totius vitae probitate floruerunt, nulla dignitatem sequatur expensa neque eorum fatiget heredes. ab his etiam, qui comitivae honore donati sunt, ut consuetudo poscebat, sordidi muneris interpellatio conquiescat. nam dilecti a patribus adque suscepti honoris ac muneris incrementa servamus. dat. xviii kal. octob. treviris auxonio et olybrio conss. (379 sept. 14).

CTh.13.3.13

Imppp. valentinianus theodosius et arcadius aaa. ad pinianum praefectum urbi. si quid impetratis subrepticiis in iudicio suo magnificentia tua ita viderit actitatum, ut his legibus, quae ad relationes promulgatae sunt, videatur aliquid inminutum, rescissis omnibus, quae per gratiam gesta videbuntur, eorum tenorem super archiatris ordinandis, quae a divae memoriae patre nostro constituta sunt, a nobis quoque confirmata ex huius auctoritate rescripti faciet omnifariam custodiri. dat. xi kal. feb. mediolano valentiniano a. iii et eutropio conss. (387 ian. 22).

CTh.13.3.14

Idem aaa. cynegio praefecto praetorio. ea, quae principes veteres archiatris sacri palatii, salutaris ac necessariae artis professoribus, sacro et mansuro in aeternum iudicio detulerunt, et antiquorum contemplatione iussorum et laborum praesentium intuitu roborata in perpetuum manere praecipimus nec ulla cuiuspiam improbitate convelli. dat. vi id. mart. constantinopoli valentiniano a. iii et eutropio conss. (387 mart. 10).

CTh.13.3.15

Idem aaa. rufino praefecto praetorio. post alia: archiatrorum privilegia, quae iis vetustis sanctionibus attributa sunt, illibata volumus permanere ac tenere perpetem firmitatem. hoc quoque addendum esse censuimus, ut qui egerunt administrationes aut earum honore fungentur vel dimissi e palatio testimonialium suffragio munientur, ad descriptiones senatorias non vocentur, sed ab omnibus muniis absoluti liberi adque securi dignitatis praemiis perfruantur. dat. vii kal. august. constantinopoli theodosio a. iii et abundantio conss. (393 iul. 26).

CTh.13.3.16

Impp. honorius et theodosius aa. monaxio praefecto praetorio. grammaticos oratores adque philosophiae praeceptores nec non etiam medicos praeter haec quae retro latarum sanctionum auctoritate consecuti sunt privilegia inmunitatesque frui hac praerogativa praecipimus, ut universi, qui in sacro palatio inter archiatros militarunt cum comitiva primi ordinis vel secundi, nulla municipali, nulla curialium collatione, nulla senatoria vel glebali descriptione vexentur, seu indepta administratione seu accepta testimoniali meruerint missionem, sint ab omni functione omnibusque muneribus publicis inmunes nec eorum domus ubicumque positae militem seu iudicem suscipiant hospitandum. quae omnia filiis etiam eorum et coniugibus illibata praecipimus custodiri, ita ut nec ad militiam liberi memoratorum trahantur inviti. haec autem et professoribus memoratis eorumque liberis deferenda mandamus. dat. prid. kal. dec. constantinopoli constantio et constante conss. (414 nov. 30).

CTh.13.3.17

Idem aa. helioni magistro officiorum. artium liberalium professoribus ac praecipue medicis, qui cum comitivae primi ordinis ac secundi militant dignitate, privilegia et beneficia a retro principibus praestita nec non etiam nova ipsis eorumque filiis clementia nostra detulit, ut cohaerens sanctio protestatur: quae tenaciter observari oportet. dat. prid. kal. dec. constantinopoli constantio et constante conss. (414 nov. 30).

CTh.13.3.18

Impp. theodosius et valentinianus aa. helioni magistro officiorum. habente propriam firmitatem secundo nostrae maiestatis oraculo, quod de excusandis sive praebendis his quae militantibus debentur hospitiis promulgatum est, illa, quae dudum circa archiatros et magistros sanximus litterarum, observentur. hos enim pro necessariis artibus et liberalibus disciplinis hospitali molestia, quoad viverent, liberari praecipimus. illibata ergo permaneant illa, quae quondam circa archiatros, quos in palatio nostro primi vel secundi ordinis comites militasse constiterit, et circa liberalium litterarum magistros videntur a nobis iustissime constituta. dat. xiiii kal. septemb. hierio et ardabure conss. (427 aug. 19).

CTh.13.3.19

Idem aa. proculo praefecto urbi. archiatrorum sacri palatii obsequia cogitantes id praesenti sanctione decernimus, ut, si qui ex his aut primi ordinis adepti fuerint comitivam aut maioris gradum dignitatis ascenderint, secundum id, quod eis dudum per sacras constitutiones indultum est, a glebali collatione specialiter inmunes sint, non praeiudicante eis novella lege, per quam iussimus, exceptis quibusdam dignitatibus quae illic nominatae sunt, senatoria munera omnes agnoscere. dat. iii id. iul. constantinopoli felice et tauro conss. (428 iul. 13).

CTh.13.4.0. De excusationibus artificum

CTh.13.4.1

Imp. constantinus a. ad felicem. architectis quam plurimis opus est; sed quia non sunt, sublimitas tua in provinciis africanis ad hoc studium eos impellat, qui ad annos ferme duodeviginti nati liberales litteras degustaverint. quibus ut hoc gratum sit, tam ipsos quam eorum parentes ab his, quae personis iniungi solent, volumus esse inmunes ipsisque qui discent salarium competens statui. proposita vi kal. sept. karthagine optato et paulino conss. (334 aug. [?] 27 [?]).

CTh.13.4.2

Idem a. ad maximum praefectum praetorio. artifices artium brevi subdito comprehensarum per singulas civitates morantes ab universis muneribus vacare praecipimus, si quidem ediscendis artibus otium sit adcommodandum; quo magis cupiant et ipsi peritiores fieri et suos filios erudire. dat. iiii non. aug. feliciano et titiano conss. (337 aug. 2).

CTh.13.4.3

Impp. constantius et constans aa. ad leontium praefectum praetorio. mechanicos et geometras et architectos, qui divisiones partium omnium incisionesque servant mensurisque et institutis operam fabricationi stringunt, et eos, qui aquarum inventos ductus et modos docili libratione ostendunt, in par studium docendi adque discendi nostro sermone perpellimus. itaque inmunitatibus gaudeant et suscipiant docendos qui docere sufficiunt. dat. prid. non. iul. leontio et sallustio conss. (344 iul. 6).

CTh.13.4.4

Impp. valentinianus, valens et gratianus aaa. ad chilonem vicarium africae. picturae professores, si modo ingenui sunt, placuit neque sui capitis censione neque uxorum aut etiam liberorum nomine tributis esse munificos et ne servos quidem barbaros in censuali adscriptione profiteri, ad negotiatorum quoque collationem non devocari, si modo ea in mercibus habeant, quae sunt propria artis ipsorum. pergulas et officinas in locis publicis sine pensione optineant, si tamen in his usum propriae artis exerceant, neve quemquam hospitem inviti recipiant, lege praescripsimus neve pedaneorum iudicum sint obnoxii potestati arbitriumque habeant consistendi in civitate, quam elegerint, neve ad prosecutiones equorum vel ad praebendas operas devocentur; neve a iudicibus ad efficiendos sacros vultus aut publicorum operum expolitionem sine mercede cogantur. quae omnia sic concessimus, ut, si quis circa eos statuta neglexerit, ea teneatur poena, qua sacrilegi cohercentur. dat. xii kal. iul. treviris gratiano a. iii et equitio conss. (374 iun. 20).

CTh.13.5.0. De navicularaiis

CTh.13.5.1

Imp. constantinus a. ad volusianum. si navicularius originalis levamentarius fuerit, nihilo minus aput eosdem, aput quos et parentes eius fuisse videntur, firmiter permanebit. dat. xiiii kal. april. volusiano et anniano conss. (314 mart. 19).

CTh.13.5.2

Idem a. amabiliano praefecto annonae. navicularios ad consortium pistorum urbicorum nominatos neque ulla hereditatis successione pistoribus obnoxios absolvi ab hoc munere oportebit. quod si hereditario iure forsitan pistoribus teneantur, facultatem habeant, si forte maluerint, obventicias pistorum hereditates eidem corpori reddere aut quibuscumque proximis defuncti cedere, ut ipsi a pistorum consortio liberentur. quod si hereditatem amplectantur, necesse est successionis ratione pistorii muneris societatem eos suscipere et ex propriis facultatibus onera navicularia sustinere, viro clarissimo praefecto urbi super hac re videlicet disceptante. dat. kal. iun. treviris constantino a. iiii et licinio iiii conss. (315 iun. 1 [dec. 30]).

CTh.13.5.3pr.

Idem a. amabiliano praefecto annonae. si quis navicularius per obreptionem vel quacumque ratione inmunitatem impetraverit, ad excusationem eum admitti nullo modo volumus. (319 [315] mai. 28).

CTh.13.5.3.1

Sed et si quis patrimonium naviculario muneri obnoxium possidet, licet altioris sit dignitatis, nihil ei honoris privilegia, in hac parte dumtaxat, opitulentur, sed sive pro solido sive pro portione huic muneri teneatur. nec enim aequum est, ut patrimonio huic functioni obnoxio excusato commune onus non omnes pro virili sustineant portione. proposita v kal. iun. constantinopoli constantino a. v et licinio caes. conss. (319 [315] mai. 28).

CTh.13.5.4

Idem a. helpidio. ex quocumque hispaniae litore portum urbis romae navicularii navis intraverit, quae onus dumtaxat fiscale subvexerit, eandem sine interpellatione cuiusquam abire praecipimus nec ulli extraordinario oneri deservire, ut facilius iniuncta sibi possit implere obsequia. dat. viii id. mart. thessalonicae crispo iii et constantino iii conss. (324 mart. 8).

CTh.13.5.5pr.

Idem a. ad ablavium praefectum praetorio. navicularios omnes per orbem terrarum per omne aevum ab omnibus oneribus et muneribus cuiuscumque fuerint loci vel dignitatis, securos vacuos inmunesque esse praecipimus, sive decuriones sint sive plebei seu potioris alterius dignitatis, ut a collationibus et omnibus oblationibus liberati integris patrimoniis navicularium munus exerceant. (326 sept. 18).

CTh.13.5.5.1

Naves quoque eorum, quantaecumque fuerint, ad aliud munus ipsis invitis teneri non convenit, ad quodcumque litus accesserint; litorum custodibus et vectigalium praepositis exactoribus decurionibus adque rationalibus et iudicibus scituris, quod qui hanc legem violaverit capite punietur. dat. xiiii kal. octob. constantino a. vii et constantio caes. conss. (326 sept. 18).

CTh.13.5.6

Idem a. ad felicem. commoda nobis visa est ea dispositio, quae expresse navicularios in hunc ordinem formavit, ut non promiscue, sed per vicissitudines rite servatas iuges cursus agnoscerent et exiguos implerent, quo ita levamentis alternantis auxilii cunctorum fortunae et tenuiorum potissimum confirmarentur nec necessitas fieret aliquos semper longiora lustrare ac plerisque obnoxios casibus fieri. quod ne ulterius possit accidere, labor omnibus par et iustus adiunctus sit et subsidia pari ratione deferantur nec tenuiores in querellas infructuosae complorationis incurrant. proposita vii id. sept. karthagine optato et paulino conss. (334 sept. [?] 7 [?]).

CTh.13.5.7

Idem a. navicularii orientis. pro commoditate urbis, quam aeterno nomine iubente deo donavimus, haec vobis privilegia credidimus deferenda, ut navicularii omnes a civilibus muneribus et oneribus et obsequiis habeantur inmunes et ne honores quidem civicos, ex quibus aliquod incommodum sentiant, subire cogantur. ab administratione etiam tutelae, sive legitimae sive eius, quam magistratus aut provinciae rectores iniungunt, habeantur inmunes. et vacatione legis iuliae et papiae potiantur, ut etiam nullis intervenientibus liberis et viri ex testamento uxorum solidum capiant et ad uxores integra voluntas perveniat maritorum. de proprietate etiam vel hereditate vel qualibet alia civili causa pulsati ne ex rescripto quidem nostro ad extraordinarium iudicium evocentur, sed agentibus in suo foro respondeant. et ad exemplum alexandrini stoli quaternas in frumento centesimas consequantur ac praeterea per singula milia singulos solidos, ut his omnibus animati et nihil paene de suis facultatibus expendentes cura sua frequentent maritimos commeatus. accepta kal. dec. optato et paulino conss. (334 dec. 1).

CTh.13.5.8

Idem a. ad severum. navicularios hispaniarum neque ad extraordinaria teneri officia neque alicubi retentos moras sustinere oportet, sed relatorias traditarum specierum intra decem dies a susceptoribus percipere, cumque ad aliquas insulas portus litora stationes accesserint, ostensis relatoriis nullam prorsus inquietudinem sustinere. dat. xiiii kal. iun. nepotiano et facundo conss. (336 mai. 19).

CTh.13.5.9

Imp. constantius a. et iulianus caes. olybrio praefecto urbi. nullam vim oportet navicularios sustinere delegatas species annonarias transferentes nec concussiones perpeti nec aliquod genus incommodi, sed venientes ac remeantes omni securitate potiri, decem auri libras multa proponenda his, qui eos inquietare temptaverint. dat. kal. iun. romae constantio a. viiii et iuliano caes. ii conss. (357 iun. 1 [mai. ...]).

CTh.13.5.10

Impp. valentinianus et valens aa. ad ampelium proconsulem africae. navicularios africanos, qui idonea publicis dispositionibus ac necessitatibus ligna convectant, privilegiis concessis dudum rursus augemus. dat. xiii id. mart. hadrianopoli divo ioviano et varroniano conss. (364 mart. [?] 8?).

CTh.13.5.11

Idem aa. ad symmachum praefectum urbi. quisquis ex naviculariorum corpore defugiens solita munia ad honores indebitos venit, in corporis sui consortia revertatur. et cetera. dat. iii id. ian. mediolano valentiniano et valente aa. conss. (365 ian. 11).

CTh.13.5.12

Idem aa. ad demetrianum praefectum annonae africae. si quis naviculariorum ex nostrae perennitatis indulto fori translationem potuerit optinere, fructu careat impetrati. circa feminarum vero personas veterum statuta teneantur, ut, in quibus foris antiqua eas dispositione constet adscriptas, illic navicularii oneris munus agnoscant. ut enim in litibus causisque privatis fora easdem sequi convenit maritorum, ita in publicis necessitatibus originis debent servare rationem. dat. prid. id. mai. treviris valentiniano n. p. et victore conss. (369 mai. 14).

CTh.13.5.13

Idem aa. ad olybrium praefectum urbi. sicut olim de linteonibus et naviculariis divus constantinus instituit, ita nunc ex omnibus sexaginta ad praesentis necessitatis teneantur impensas, quos tamen idoneos et communis delectus adseruit et facultatum inspectio comprobavit et sententia tuae sublimitatis adstruxit. quibus, si quem aut necessitas fatalis aut inopia repentina aut aliquis casus inviderit, ex vocationibus obnoxiis oportebit idoneum subrogari. sed sollicita inspectione prospiciatur, ne a quoquam amplius postuletur quam necessitas exegit lavacrorum vel instituta iam dudum forma praescripsit. dat. iiii non. dec. treviris valentiniano n. p. et victore conss. (369 dec. 2).

CTh.13.5.14pr.

Imppp. valentinianus, valens et gratianus, aaa. ad modestum praefectum praetorio. iuxta eum tenorem, quem a divo principe constantio datum musoniani clarissimae memoriae praefecti praetorio executione constat esse roboratum, intra orientales provincias naviculariorum corpus impleri iubemus, ea videlicet statutorum ratione servata, ut per eminentiam tuam numerus naviculariorum designetur tam intra orientem quam intra aegyptiacas partes, qui praesenti possit indictione compleri, excusandis videlicet pro denum milium modiorum luitione quinquagenis numero iugis in annonaria praestatione dumtaxat, ita ut vestes adque equi ceteraeque canonicae species ab indictione eadem non negentur. (371 febr. 11).

CTh.13.5.14.1

Ad conficienda vero competentia navigia a provincialibus cunctis primitus materiae postulentur, reparationem deinceps per singulos annos isdem naviculariis ex concessa iugorum inmunitate curaturis. (371 febr. 11).

CTh.13.5.14.2

Eorundem autem naviculariorum ex fide nobis nomina loca substantiae nuntientur brevibus duplici ratione conscriptis, quot videlicet de veteribus quotque sint et quales recenti adsociati delectu. (371 febr. 11).

CTh.13.5.14.3

His autem naviculariis, qui fuerint instituti, servari privilegia africana decernimus, ita ut facultatibus propriis per succedaneas hereditatum vices perpetuo sint obnoxii functioni. (371 febr. 11).

CTh.13.5.14.4

Et sunt corpora, de quibus navicularii ex indictione quinta decima constituendi sunt iuxta sacram iussionem ita: ex administratoribus ceterisque honorariis viris praeter eos, qui intra palatium sacrum versati sunt, de coetibus curialibus et de veteribus idoneis naviculariis et de ordine primipilario. et de senatoria dignitate ut, si qui voluerint freti facultatibus, consortio naviculariorum congregentur. dat. iii id. feb. constantinopoli gratiano a. ii et probo conss. (371 febr. 11).

CTh.13.5.15

Imppp. gratianus, valentinianus et theodosius aaa. ad hesperium praefectum praetorio. quisquis naviculariorum codicillis optaverit ornari, praebitioni equorum intellegat se esse subdendum. accepta xii kal. aug. constantinae auxonio et olybrio conss. (379 iul. 21).

CTh.13.5.16pr.

Idem aaa. corpori naviculariorum. delatam vobis a divo constantino et iuliano principibus aeternis equestris ordinis dignitatem nos firmamus. quod cum ita sit, si quis contra interdicta innumerabilium sanctionum corporali vos iniuria pulsare audeat, digna expiatione est luiturus ausum inmanis admissi, apparitione quoque sua ultimo supplicio deputanda, cuius monitio hanc debet sollicitudinem sustinere, ut iudices prava forsitan indignatione succensos ab illicitis tempestiva suggestione deducat. (380 febr. 6).

CTh.13.5.16.1

Huic illud additur, ne, qui certum ordinem ex nostra definitione retinetis, ulli vos alteri hominum generi haerere vereamini nec timeatis vos civitatium municipibus innecti. ex nullo itaque nexu, nulla causa, nulla persona decurionum vos obsequia contingent, cum praesertim priscis constitutionibus, quarum series orationis paginis antelata est, magis illud invaluisse perhibeatis, ut plerumque et ordinarios curiales naviculariorum sibi necessitas vindicaret. (380 febr. 6).

CTh.13.5.16.2

Quod vero ad negotiationis commodum advehendasque merces spectat ac respicit, in eo sollers cura competentium iudicum providebit, ut optentu nominis vestri non passim ac sine consideratione negotiatorum lateat inmunitas nec ipsi dudum delati beneficii privilegiis fructuque fraudemini. dat. viii id. feb. treviris gratiano v et theodosio i aa. conss. (380 febr. 6).

CTh.13.5.17

Idem aaa. ad principium praefectum praetorio. omnes navicularii per omne aevum ab omnibus oneribus et muneribus et collationibus et oblationibus subleventur, cuiuscumque loci fuerint vel dignitatis. et quicumque contra istam fecerit legem, seu custos litorum seu vectigalium praepositus seu exactor vel decurio seu rationalis vel iudex cuiuscumque provinciae, exhibitus sublatis universis facultatibus suis capitali sententiae subiugetur. dat. xii kal. mai. aquileiae honorio n. p. et evodio conss. (386 apr. 20).

CTh.13.5.18

Imppp. valentinianus, theodosius et arcadius aaa. alexandro praefecto augustali. iudaeorum corpus ac samaritanum ad naviculariam functionem non iure vocari cognoscitur; quidquid enim universo corpori videtur indici, nullam specialiter potest obligare personam. unde sicut inopes vilibusque commerciis occupati naviculariae translationis munus obire non debent, ita idoneos facultatibus, qui ex his corporibus deligi poterunt ad praedictam functionem, haberi non oportet inmunes. dat. xii kal. mart. constantinopoli valentiniano a. iiii et neoterio conss. (390 febr. 18).

CTh.13.5.19

Idem aaa. tatiano praefecto praetorio. quae de navicularii et curialibus ordinasti, maneant illibata adque perpetua; sint perpetuo navicularii, quia, qui merito esse debeant, providisti. ac si, cum obierint, subolem non relinquent, quilibet in eorum facultatibus qualibet ratione successerit, auctoris sui munus agnoscet. manebit vero in ordine curiali et ei filius in officium curiale succedat. nihil hic subripiendum decerpet ambitio; ipsa denique, si quoquo modo annotatio elicita fuerit, excludatur. dat. vi id. sept. veronae valentiniano a. iiii et neoterio conss. (390 sept. 8).

CTh.13.5.20

Idem aaa. hypatio praefecto augustali. eum, qui agentum in rebus militiam adeptus est, certis et debitis, eatenus naviculariae inquietudinis suspicione submota, frui privilegiis non vetamus, si nec genere neviculariorum corpori cohaeret nec nauarchiae obnoxias functioni retinet facultates. dat. prid. id. april. constantinopoli arcadio a. ii et rufino conss. (392 apr. 12).

CTh.13.5.21

Idem aaa. apodemio praefecto praetorio illyrici et africae. unusquisque navicularius noverit intra biennium aut securitatem suscepti oneris reportandam aut periculorum adprobandam esse fortunam. dat. xv kal. mart. constantinopoli arcadio a. ii et rufino conss. (392 febr. 15).

CTh.13.5.22

Idem aaa. rufino praefecto praetorio. naviculariorum vires ac debitas huic necessitati origines in ipsis provinciis honoratorum fides lecta pensabit mansurumque aliquid definiet vel revocando excusatos vel debitos obligando. quos compositis omnibus ad nos referre necesse est scituros a nobis de suo iudicio iudicandum. dat. iii non. sept. constantinopoli theodosio a. iii et abundantio conss. (393 sept. 3).

CTh.13.5.23

Idem aaa. rufino praefecto praetorio. solos navicularios a vectigali praestatione inmunes esse praecipimus. omnes vero mercatores teneri ad supra dictam praestationem in solvendis vectigalibus absque aliqua exceptione decernimus. dat. iii id. decemb. theodosio a. iii et abundantio conss. (393 dec. 11).

CTh.13.5.24

Impp. arcadius et honorius aa. provincialibus africae. ne qua causatio vectigalium nomine relinquatur, hoc observari decernimus, ut nulla omnino exactio naviculariis ingeratur, cum sibi rem gerere probabuntur, sed a praestatione vectigalium habeantur inmunes. dat. vii kal. iun. mediolano olybrio et probino conss. (395 mai. 26).

CTh.13.5.25

Idem aa. ennoio suo salutem. de naviculariis et curialibus aliquid sanxissemus, nisi divi patris nostri super his personis processisset auctoritas. dat. vii kal. ian. mediolano olybrio et probino conss. (395 dec. 26).

CTh.13.5.26

Idem aa. eusebio praefecto praetorio. comperimus navicularios susceptas species in negotiationis emolumenta convertere eo, quod abutantur constantinianae legis indulto, quae his ex die susceptarum specierum concluso biennio securitates reportare permisit. quod nos quoque non prohibemus, sed tantum sententiae consultae definitionis addimus, ut intra annum quo susceperint inferant species et eiusdem consulis securitates reportent, quae etiam diem illationis edoceant. biennium autem propter adversa hiemis et casus fortuitos in reportandis securitatibus non negamus, dummodo intra tempus superius designatum fides peracti constet officii. quod ad omnium notitiam volumus pervenire, ut cognoscant transmissionem vel traditionem intra annum susceptionis esse complectendam. dat. x kal. ian. mediolano arcadio iiii et honorio iii aa. conss. (396 dec. 23).

CTh.13.5.27

Idem aa. ad senatum et populum. post alia: navicularios tertiam urbani canonis portionem inter prima navigationis iubemus deferre exordia. quorum classem incuriae vetustate collapsam praetoriana praefectura restituat, ita ut omnes, qui praedia his obligata muneribus quibuslibet modis vel contractibus impetrarunt, secundum possessionis modum ad commeandi vocentur officium. et cetera. dat. xvii kal. mai. mediolano caesario et attico conss. (397 apr. 15).

CTh.13.5.28

Idem aa. messalae praefecto praetorio. post alia: provideatur, ut naves singuli quique naviculariae obnoxii functioni ad necessarium et constitutum modum exaedificare cogantur, ut onera debita et iusta suscipiant. qui scient se de propriis periclitaturos esse fortunis, nisi in his praeparandis debitae capacitatis summam modumque servaverint. dat. xiiii kal. mart. mediolano theodoro v. c. cons. (399 febr. 16).

CTh.13.5.29

Idem aa. flaviano praefecto urbi. deprehensae fraudes iure puniuntur. solidos itaque, quos sublimitas tua eruere valuit ab his, qui in navicularios praedas egerunt, volumus naviculariorum commodis reservari. et ne simpli poena in raptores constituta crescat audacia, in posterum sancimus, ut, quicumque in rapinis fuerit deprehensus, in poenam quadrupli teneatur. proposita romae in foro aproniani viiii kal. feb. stilichone et aureliano conss. (400 ian. 24).

CTh.13.5.30

Idem aa. pompeiano proconsuli africae. venerandae urbis intuitu naviculariis privilegia certa delata sunt, quae quicumque temerare temptaverit, nostra auctoritate propositam multam lege inferre cogatur. dat. xvii kal. iul. mediolano stilichone et aureliano conss. (400 iun. 15).

CTh.13.5.31

Idem aa. hadriano praefecto praetorio. universa, quae consultis nostris vel decretis illustris praefecturae indulta sunt naviculariis, si nulla melior utiliorque sententia commutavit vel auctoritas sanctionis infregit, firma servari decernimus. dat. xv kal. sept. honorio a. vi et aristaeneto conss. (404 aug. 18).

CTh.13.5.32

Impp. honorius et theodosius aa. anthemio praefecto praetorio. cum nauarchorum coetus circiter provincias orientis inopia navium titubaret et investigandae classis optentu insularum secessus obiret et navigandi opportunitate transacta iudiciorum indignatio sine transvectionis expectaretur effectu, merito celsitudo tua praefecto augustali et insularum praeside conventis alexandrinae et carpathiae classis summates et nonnullos alios naucleros eo professionis adduxit, ut onus frumentarii commeatus, qui per orientales nauarchos ex alexandrinae civitatis conditis consuerat ad sacratissimam urbem transferri, in suam fidem susceptum ad eadem augustissimae urbis horrea comportarent, solaciis pro mercedula praestitis ex tributariae pensitationis inmunitate vel ex eo, quod vocatur filikon, nec non etiam aliis, quae tuae cognitionis limavit examen; ita ut, super naufragiorum, quae contigerint casibus usitato more habita quaestione, si qui calculus modiationis dicatur tempestate maris deperisse, sub tuae sedis auditione nequaquam feratur acceptus, sed haec dispendii lacuna in omne naviculariorum concilium, pro rata scilicet contingentis muneris, deferatur. haec igitur nostra lege firmamus. dat. xiiii kal. feb. honorio viii et theodosio iii aa. conss. (409 ian. 19).

CTh.13.5.33

Idem aa. anthemio praefecto praetorio. qui fiscales species susceperit deportandas, si recta navigatione contempta litora devia sectatus eas avertendo distraxerit, capitali poena plectetur. dat. xiiii kal. aug. constantinopoli honorio viii et theodosio iii aa. conss. (409 iul. 19).

CTh.13.5.34

Idem aa. faustino praefecto praetorio. post alia: iudices, qui in portibus dioeceseos suae onusta navigia, cum prosperior flatus invitat, sub praetextu hiemis inmorari permiserint, una cum municipibus et corporatis eiusdem loci fortunarum propriarum feriantur dispendiis. navicularii praeterea poenam deportationis excipiant, si aliquid fraudis eos admisisse fuerit revelatum. dat. xviii kal. sept. ravennae varane v. c. cons. (410 aug. 15).

CTh.13.5.35

Idem aa. seleuco praefecto praetorio. universos, quos naviculariae condicioni obnoxios invenit antiquitas, praedictae functioni conveniet famulari. personas igitur memoratas et eorum heredes et praedia persequenda esse decernimus, ut canon sacratissimae urbis vel expeditionalium portuum necessitas impleatur. dat. prid. non. mar. ravennae honorio viiii et theodosio v. aa. conss. (412 mart. 6).

CTh.13.5.36pr.

Idem aa. navicularis per africam. tributa navicularis privilegia hac interminatione firmamus, ut, si quis cuiuslibet dignitatis iudicum vel militantum crediderit neglegenda et aditus negaverit petitum a se tuitionis praesidium, patrimonium suum noverit istius functionis oneribus addicendum sine ulla spe veniae, quam de nobis sub annotationis indulto meruerit. (412 mart. 17).

CTh.13.5.36.1

Illud etiam addimus, ut decem librarum auri multa tam navicularis quam iudicibus nec non proconsuli et vicario spectabilibus viris et viro clarissimo annonae praefecto officiisque eorum proponatur, si umquam ordini memorato, vel ipsi coegerint vel sponte cupienti quod non potest fieri, de centesimis suis auferri permiserint vel de propria substantia quidquam sportulae nomine cuiquam donare vel offerre personae, ut a singulis constitutum multae pondus non ambigant exigendum. accipientem quoque quadruplum fisco nostro iubemus exsolvere. et cetera. dat. xvi kal. april. ravennae honorio viiii et theodosio v aa. conss. (412 mart. 17).

CTh.13.5.37

Idem aa. naviculariis per africam. post alia: si ulla dignitas vel apparitio frumenti curam sustinens dirigendi a naviculario magistrove navis aliquid accepisse detegitur, probato crimini pro motu iudicis poena non desit. et cetera. dat. xvi kal. april. ravennae honorio viiii et theodosio v aa. conss. (412 mart. 17).

CTh.13.5.38pr.

Idem aa. albino praefecto urbi. dissimulationi et corruptelae urbani vel annonarii officii exquisitis remediis mansuetudo nostra prospexit, ut, si quando navicularius extra modum centesimarum diametrum incidisset, intra quinque dies, ex quo portum venerabilis urbis esset ingressus, adhibitis tribus illustribus viris urbana praefectura, praesente quoque annonario cognitore, quid evenisset detrimenti, inquireret et quicumque in hac fraude fuisset inventus, sub elogio, adiuncto idoneo executore, mox ad africam adque ad viri clarissimi praefecti annonae iudicium deduceretur, soluturus instantia memorati, quidquid debere fuerit deprehensus. (414 sept. 17).

CTh.13.5.38.1

Hac itaque lege decernimus, ut, si ultra diem praefinitum permiserit navicularium protelari, quinque libras auri se adque officium suum sciat aerario nostro debere inferre. apparitionem quoque praefecturae urbanae multa trium librarum auri feriendam esse censuimus. praefectus annonae duas libras auri sacris largitionibus inferre cogetur, nisi eius praecipue instantia intra diem constitutum fuerit adcelerata cognitio. huiusmodi igitur inquisitio etiam diebus feriatis et devotionum absque ulla observatione peragenda est. dat. xv kal. oct. ravennae constantio et constante conss. (414 sept. 17).

CTh.13.6.0. De praediis naviculariorum

CTh.13.6.1

Imp. constantinus a. ad decretum naviculariorum. alienationes possessionum a navicularíis factas fugiendi muneris gratia praeiudicare vobis non sinimus. ideoque volumus, ut comparatores supra scriptarum possessionum interpellato praefecto annonae ad id obsequium compellantur, cui se obnoxios esse fecerunt. dat. v kal. nov. constantino a. vii et constantio caes. conss. (326 oct. 28).

CTh.13.6.2

Impp. valentinianus et valens aa. ad symmachum praefectum urbi. post alia: patrimonia naviculariorum, quae quolibet genere in extraneorum dominia demigrarunt, in corporis sui ius proprietatemque remeent. dat. iii id. iun. mediolano valentiniano et valente aa. conss. (365 ian. 11).

CTh.13.6.3

Idem aa. ad musifilum vicarium africae. adversus petitionem naviculariorum de suo iure certantium spatium non praescribat annorum, etiam illis adsertionibus remotis, quibus nonnulli amplexantur quae divorum principum consecuti fuere permissu. sed et si est quidquam naviculario iuri obnoxium, quod domus nostrae proprietatem spectat, tolerare praecipimus navicularias functiones. dat. prid. kal. aug. vangionibus valentiniano et valente aa. conss. (368? 370? 373? iul. 31).

CTh.13.6.4

Idem aa. ad dracontium vicarium africae. post alia: naviculariae facultates naviculario corpori reddantur, si bona rite retinentes subire eorum onera nolint, quorum possessione fruuntur. ceterum si sponte cognoscunt naviculariam functionem sine exceptione potioris vel cuiuscumque, bona ad se transmissa sine inquietudine possideant, cum pro rata ex parte debitis fungantur officiis. et cetera. dat. iiii kal. mai. remis lupicino et iovino conss. (367 apr. 28).

CTh.13.6.5

Idem aa. ad aurelianum praefectum annonae. temporibus praescriptionem in vindicatione rerum ad navicularios pertinentium cognoscat tua gravitas esse succisam. domum etiam mansuetudinis nostrae in his, quae naviculario nomine obnoxia sunt, agnoscere praecipimus debitam functionem. dat. iii kal. octob. lupicino et iovino conss. (367 sept. 29).

CTh.13.6.6

Imppp. valentinianus, valens et gratianus aaa. ad provinciales afros. fundi omnes ad naviculariorum dominium pertinentes et ad aliorum iura translati fisco vel re publica vel naviculario vel quolibet alio distrahente sive donante vel ad filios vel propinquos vel extraneos transferente, etsi ad navicularios translati sint, reddantur dominis actione in rem et persecutione concessa, nisi maluerint hi, ad quos res pervenerint, onus agnoscere, cui erat ille obnoxius, cuius nomine vindicatio competit, evictionis ac melioratae rei perceptorumque fructuum inspectione habita. et cetera. dat. vii id. april. treviris modesto et arinthaeo conss. (372 apr. 7).

CTh.13.6.7pr.

Idem aaa. chiloni proconsuli africae. in his, quae navicularii vendunt, quoniam intercipere contractum emendi vendendique fas prohibet, emptor navicularii functionem pro modo portionis comparatae subeat, res enim oneri addicta est, non persona mercantis. neque navicularium ilico iubemus fieri eum, qui aliquid comparavit, sed eam partem quae empta est pro suo modo ac ratione esse munificam. nec enim totum patrimonium ad functionem navicularii muneris occupandum erit, quod habuerit qui rei exiguae mercator accessit, sed illa portio, quae ab initio navicularii fuit, ad pensionem huius functionis sola tenenda est, residuo patrimonio, quod ab hoc vinculo liberum est, otioso et inmuni servando. (375 aug. 3).

CTh.13.6.7.1

Domos vero, quarum cultu decus urbium potius quam fructus adquiritur, ubi a naviculariis veneunt, pro tanto modo ad hanc pensionem obligari placet, quantum habebant emolumentum, cum pecunia mutuarentur. ubi vero spatia loci et exiguitas nullam habuit pensionem aut extructio, cuius est ardua difficilisque molitio aut decus sumptuosum, aut, ut est plerumque liberale institutum, habitationem quis suam ornamento urbis adiecit, nolumus munificentiam quae postea addita est improbam licitationem aestimationis excipere, sed vetusta potius loci species et pensio cogitetur quam cultus hodiernus, qui per industriam hominis animosi accessit. dat. iii non. aug. post cons. gratiani a. iii et equiti v. c. (375 aug. 3).

CTh.13.6.8

Impp. arcadius et honorius aa. messalae praefecto praetorio. hi, qui fundos naviculariae functioni adscriptos a naviculariis acceperunt quolibet ad se titulo transeuntes, secundum agri opinionem, quae antiquitus habetur adscripta, naviculariam functionem suscipere cogantur. neque eas condiciones sibi aestiment profuturas, quas venditor minus idoneus in se receperit impositas ementis arbitrio, hac tamen ratione servata, ut, si ad minus idoneum fuerit translata possessio, etiam auctores transscripti praedii teneantur obnoxii sitque hoc in promptu, ut damnis fiscalibus primitus ab idoneis consulatur. et cetera. dat. xiiii kal. mart. mediolano theodoro v. c. cons. (399 febr. 16).

CTh.13.6.9

Impp. honorius et theodosius aa. sebastio comiti. post alia: navalem haeresim in omnibus volumus custodiri, ut usque ante viginti annos quaecumque possessiones sub hastaria sorte distractae sunt et propter contractum publicum navali fuerant haeresi separatae, si huic oneri ante eas subiacuisse constiterit, rursus ad debitam functionem teneantur obnoxiae. et cetera. dat. prid. id. mai. ravennae honorio a. xi et constantio ii conss. (417 mai. 14).

CTh.13.6.10pr.

Idem aa. proculo praefecto praetorio. si quod praedium in quolibet africani cespitis loco per quinquaginta annorum curricula ad navalem functionem nulla sollicitudo revocavit nec pulsatum aliquando intra designatam annorum seriem super hac parte constiterit ac praedictae annositatis cursum sine ulla navalis haeresis conventione transcenderit, nullis patimur sollicitudinibus agitari. (423 mai. 18).

CTh.13.6.10.1

Illud quoque penitus abolendum esse censemus, ut, quem non personae alicuius super navicularia functione probamenta confutarant, ulla chartarum post quinquaginta annorum seriem molestia rediviva conveniat. dat. xv kal. iun. ravennae asclepiodoto et mariniano conss. (423 mai. 18).

CTh.13.7.0. De navibus non excusandis

CTh.13.7.1

Impp. arcadius et honorius aa. eutychiano praefecto praetorio. cunctis per aegyptum intimetur viginti librarum auri multae esse subdendos eos, qui naves suo nomine vel defensione a transvectionibus publicis excusare temptaverint, publica iactura navium quoque dominis feriendis, qui neglectis necessitatibus publicis potiorum voluerunt patrociniis excusari. dat. prid. id. mart. constantinopoli theodoro v. c. cons. (399 mart. 14).

CTh.13.7.2

Idem aa. longiniano praefecto praetorio. multi naves suas diversorum nominibus et titulis tuentur. cui fraudi obviantes praecipimus, ut, si quis ad evitationem publicae necessitatis titulum crediderit adponendum, sciat navem esse fisco sociandam. nam ut privatos quoque non prohibemus habere navigia, ita fraudi locum esse non sinimus, cum omnes in commune, si necessitas exegerit, conveniat utilitatibus publicis oboedire et subvectionem sine dignitatis privilegio celebrare. nisi igitur intra triginta dies haec fraus fuerit remota, universa navigia, quae ad exceptiones confugiunt, dominis auferantur. dat. iii id. ian. ravennae arcadio a. vi et probo conss. (406 ian. 11).

CTh.13.8.0. Ne quid oneri publico imponatur

CTh.13.8.1

Impp. arcadius et honorius aa. rufino praefecto praetorio. oneri publico sarcinam privatam ne quis imponat nec audeat portitores frumenti ad suscipiendum onus aliqua necessitate compellere. hoc enim facto adque commisso non in dispendium solum adque naufragii damnum tenebitur obligatus, verum etiam publicae cohercitionis experietur vigorem. dat. v id. ian. constantinopoli olybrio et probino conss. (395 ian. 9).

CTh.13.9.0. De naufragiis

CTh.13.9.1

Imppp. valentinianus, valens et gratianus aaa. ad modestum praefectum praetorio. si quis navicularius naufragium sustinuisse adfirmat, provinciae iudicem, eius videlicet, in qua res agitur, adire festinet ac probet aput eum testibus eventum relatioque ad sublimissimam referatur praefecturam, ita ut intra anni spatium veritate relata remedium ex indulgentia consequatur. quod si per huiusmodi neglegentiam praefinitum anni spatium fortasse claudatur, supervacuas serasque actiones emenso anno placuit non admitti. dat. proposita beryti non. iun. modesto et arinthaeo conss. (372 iun. 5).

CTh.13.9.2

Idem aaa. ad demetrianum praefectum annonae africae. si quando causatio est de impetu procellarum, medium ex his nautis numerum navicularius exhibeat quaestioni, quos eum in navi pro modo capacitatis constat habuisse, quo eorum tormentis plenior veritas possit inquiri. de casu autem navis, quae ad urbem romam directa fuerit, intra annum quidquid acciderit iudiciis publicetur, de his vero, quae ad portus expeditionales longius vel constantinopolim sint profectae, intra biennium oblato praedicto numero nautarum super fide casus examen agitetur. addimus etiam, ut, si intra praefinitum tempus nulla fuerit delata querimonia, omnis posthac deplorationum aditus obstruatur. accepta aquileiae, lecta actis. (a. 372/5....).

CTh.13.9.3pr.

Imppp. gratianus, valentinianus et theodosius aaa. naviculariis afris salutem. quotiens obruta vel submersa fluctibus navi examen adhibetur praefecti annonae duorum vel trium quaestione destrictum, purgandi in alios nautas licentia offeratur. quid est enim, quod non abunde intra praefinitum numerum sollers quaesitor inveniat? circa magistros navium, quibus est scientia plenior, inmoretur; qui si fatali sorte defuerint, in alios inquisitio transferetur. (380 febr. 6).

CTh.13.9.3.1

Sane si universos violentia tempestatis obruerit, ne veritas lateat, sequimur constantinianae legis providam sanctionem, ut adfectionibus naviculariorum intra iudicia constitutis super eorum quaeratur interitu, quos navicularius naufragio perisse contendit. cuius rei examen placuit unius lustri spatio terminari, (380 febr. 6).

CTh.13.9.3.2

Ut omnis in posterum .... ut a duarum semis centesimarum, quae ex hibernis oneribus postulantur a vobis, petitio conquiescat. (380 febr. 6).

CTh.13.9.3.3

Placuit sane, ut, novembri mense navigatione subtracta, aprilis, qui aestati est proximus, susceptionibus adplicetur. cuius susceptionis necessitas ex kal. aprilib. in diem kal. octob. mansura servabitur; in diem vero iduum earundem navigatio porrigetur. (380 febr. 6).

CTh.13.9.3.4

Et quia ordinem vestrum ampliari etiam hominum adiectione gaudemus, quoscumque vacuos publico invenerit officio, in complexum vestri ordinis adplicate, dummodo is, qui in municipalibus manet causis, nominatione ordinis non teneatur. dat. viii id. feb. treviris gratiano v et theodosio i aa. conss. (380 febr. 6).

CTh.13.9.4pr.

Imppp. valentinianus, theodosius et arcadius aaa. tatiano praefecto praetorio. quae in naufragiis pereunt, nolumus nobis cum possessoribus, vel senatoribus vel privatis, esse communia, si quidem naufragii detrimentum fiscus agnoscat; quod interdum non grandis dispendii esse monstratur, si vexatam fluctibus navem levis iactura defendat quam si pondere suo gravatam pelagi unda submergat. (391 iul. 18).

CTh.13.9.4.1

Ubi vero non est testis periculi, restituantur damna naufragii et dispendia prosecutoris fraudibus inferantur, ut ad eorum iniuriam retorqueantur, qui minus idoneos nominarunt, non ad eos redeant, quos semel constiterit fuisse devotos. dat. xv kal. aug. constantinopoli tatiano et symmacho conss. (391 iul. 18).

CTh.13.9.5

Impp. arcadius et honorius aa. ad senatum et populum. post alia: navicularios, quos vis adversa naufragii prohibuerit suscepta deferre, vel de oneribus pravitate submersis vel de diametris aliisque iacturis, quia excludere casus et inclementem non possumus cohibere fortunam, praefectus annonae et vicarius urbis fidem probare gestorum congrua iudicatione compellant, moram et neglegentiam punituri. dat. xvii kal. mai. mediolano caesario et attico conss. (397 apr. 15).

CTh.13.9.6

Impp. honorius et theodosius aa. naviculariis per africam. post alia: de submersis navibus decernimus, ut levato velo istae causae cognoscantur. et si quisquam de talibus negotiis aliquid accepisse detegitur, iudex, aput quem constiterit, his conquerentibus qui nudantur pro qualitatibus personarum multandi removendi proscribendi habeat potestatem. si vero causarum talium cognitores, libelli datione vel planaria interpellatione commoniti, intra metas temporis constituti, hoc est intra biennium causis talibus veteri lege praescriptum, has causas audire neglexerint et legitimum tempus fuerit elapsum, praeiudicium noceat eatenus cognitori, ut naviculario propter vitium iudicis absoluto mediam oneris eius partem, propter cuius probandam amissionem legitimo dumtaxat tempore cognitio petebatur, iudex cogatur inferre, residuam vero officium eius exsolvat. dat. xvi kal. april. ravennae honorio viiii et theodosio v aa. conss. (412 mart. 17).

CTh.13.10.0. De censu sive adscriptione

CTh.13.10.1 [=brev.13.2.1]

Imp. constantinus a. ad populum. quoniam tabularii civitatum per collusionem potentiorum sarcinam ad inferiores transferunt, iubemus, ut, quisquis se gravatum probaverit, suam tantum pristinam professionem agnoscat etc. pp. xv. kal. febr. romae, constantino a. iii. et licinio iii. coss.

interpretatio. si tabularii aut hi, quibus exactionis libri traduntur, potentiores voluerint relevare et, quod relevaverint, inferioribus addiderint, is, qui gravatum se probaverit, non amplius dissolvat, quam secundum censum se ostenderit suscepisse

CTh.13.10.2

Idem a. ad eusebium virum perfectissimum praesidem lyciae et pamfyliae. plebs urbana, sicut in orientalibus quoque provinciis observatur, minime in censibus pro capitatione sua conveniatur, sed iuxta hanc iussionem nostram inmunis habeatur, sicuti etiam sub domino et parente nostro diocletiano seniore augusto eadem plebs urbana inmunis fuerat. dat. kal. iun. constantino a. iii et licinio iii conss. (313 iun. 1).

CTh.13.10.3

Imp. constantius a. ad dulcitium consularem aemiliae. si quis praedium vendere voluerit vel donare, retinere sibi transferendos ad alia loca colonos privata pactione non possit. qui enim colonos utiles credunt, aut cum praediis eos tenere debent aut profuturos aliis derelinquere, si ipsi sibi praedia prodesse desperant. dat. iii kal. mai. mediolano constantio a. viiii et iuliano caes. ii conss. (357 mai. 30).

CTh.13.10.4

Impp. valentinianus et valens aa. ad viventium praefectum praetorio galliarum. in virginitate perpetua viventes et eam viduam, de qua ipsa maturitas pollicetur aetatis nulli iam eam esse nupturam, a plebeiae capitationis iniuria vindicandas esse decernimus; item pupillos in virili sexu usque ad viginti annos ab istiusmodi functione inmunes esse debere, mulieres autem, donec virum unaquaeque sortitur. dat. x kal. dec. valentiniano et valente aa. conss. (368? 370? nov. 22).

CTh.13.10.5 [=brev.13.2.2]

Impp. valent. et valens aa. ad florentium pf. p. galliarum. si quis census inquisitione completa gravatum se esse credat, apud provinciae iudicem pulset, quem mavult, ex die clausi renuntiatique census spatia praestituta dinumerans; ut, si necessitatibus publicis occupatus domesticis commodis defuit, quum census agitatus est, intra anniversarii temporis circulum fiducia competitionis assistat, si vero praesentem sciat se esse censitum, intra quinque menses, quibuscumque* viribus fultus immineat, ultra non habeat huius vocis arbitrium. dat. iii. non. iun. remis, lupicino et iovino coss.

interpretatio. si aliquis in causa publica occupatus, quum descriptio agitaretur, per absentiam suam se esse gravatum queratur, intra anni spatium apud iudicem loci querelas suas allegare debebit. nam si praesentem fuisse constat, non plus quam quinque menses ad exsequendas querelas suas sibi noverit fuisse concessum, quibus transactis agendi copia denegetur

CTh.13.10.6

Idem aa. et gratianus a. ad viventium praefectum praetorio. nulla vidua, nemo pupillus ex utroque sexu, donec eos ingrediatur annos, qui iam tutoribus curatoribusve publicis non egeant, exactionem plebis agnoscat. simili autem devotione habeantur immunes et si quae se sacrae legis obsequio perpetuo dedicarunt. dat. iii kal. april. treviris valentiniano et valente iii aa. conss. (370 mart. 30).

CTh.13.10.7

Idem aaa. ad modestum praefectum praetorio. sicubi subscriptorum modo sorte fatali morientibus de scripto aliquid fuerit inminutum contraque in vicina vel contermina eius vel in eodem vel ubilibet simili substantia ratione nascendi ultra conscriptorum numeris adcreverit, modus censuum intraque servetur, ut ex eo, qui superest, ille, qui defuerit, suppleatur. hoc autem ut rite celebretur, auctoritas tua iudicibus tantum, id est rectoribus provinciarum, permittat potestatem, ita ut iidem, cum querimonia defensorum vel plebeiorum ad eos fuerit nuntiata, exhibitis partibus secundum fidem rerum coram cognoscant ac stabilitatem census finita altercatione componant, eos tantum, qui mortui videbuntur, ex adcrescentibus repleturi. ceterum illos, qui relictis censibus aufugerunt, ad excusationem pertinere non est aequum, quando quidem eum, qui videbitur aufugisse, constat esse revocandum. dat. xvii kal. feb. constantinopoli gratiano a. ii et probo conss. (371 ian. 16).

CTh.13.10.8pr.

Imppp. gratianus, valentinianus et theodosius aaa. ad populum. nemo aliquid inmune possideat; sit irritum, si quid domui nostrae tale concessimus; exaequationes censuum, quas consensus provinciarum, quas nostra responsa, quas censorum et peraequatorum officia, quas auctoritates denique ordinariorum et amplissimorum iudicum necessaria emendatione vel constitutione probaverant, inconcussa aeternitate permaneant. inmunitates vero specialiter datae, iugatio vel capitatio libris publicis et civitatum ac provinciarum encautariis sine aliqua probatione factae penes fruentes ereptae in functionem pristinam redeant. (383 mart. 5).

CTh.13.10.8.1

His nostrae serenitatis edictis civitatum tabulariis erit flamma supplicium, si cuiusquam fraude ambitu potestate iniusta cuiuspiam profiteretur inmunitas, ac non secundum praecedentem definitionem omnes omnino, abolita specialium inmunitatium gratia, necessitas tributariae functionis firmata censorum peraequatorum provincialium iudicum peraequatione constrinxerit. dat. iii non. mar. mediolano merobaude ii et saturnino conss. (383 mart. 5).

CTh.13.11.0. De censitoribus, peraequatoribus et inspectoribus

CTh.13.11.1

Imppp. gratianus, valentinianus et theodosius aaa. eutropio praefecto praetorio. si quis sacrilega vitem falce succiderit aut feracium ramorum fetus hebetaverit, quo declinet fidem censuum et mentiatur callide paupertatis ingenium, mox detectus capitale subibit exitium et bona eius in fisci iura migrabunt. illo videlicet vitante calumniam, qui forte detegitur laborasse pro copia ac reparandis agrorum fetibus, non sterilitatem aut inopiam procurasse. dat. prid. non. iun. constantinopoli eucherio et syagrio conss. (381 iun. 4).

CTh.13.11.2

Idem aaa. et arcadius a. cynegio praefecto praetorio. cum antea per singulos viros, per binas vero mulieres capitis norma sit censa, nunc binis ac ternis viris, mulieribus autem quaternis unius pendendi capitis adtributum est. quocirca sublimis auctoritas tua huiusmodi censibus per comanensium et ariarathensium armeniae secundae, amasenorum helenoponti et diocaesarensium cappadociae secundae urbes salubris ac temperatae peraequationis modum monumentis publicis iubebit adnecti. dat. vi k. april. constantinopoli honorio et evodio conss. (386 mart. 27).

CTh.13.11.3

Idem aaa. cynegio praefecto praetorio. si peraequatore misso aliquis aut procuratorem suum retraxerit aut colonum ad contumaciam retractionis armaverit, ad eum censuum modum, quem vel eo vel procuratore illius absente peraequator adposuerit, ad nostrae sanctionis auctoritatem tenebitur. dat. vi kal. april. constantinopoli honorio n. p. et evodio conss. (386 mart. 27).

CTh.13.11.4

Imppp. theodosius, arcadius et honorius aaa. rufino praefecto praetorio. qui fundum aliquem, velut afanticorum mole depressum, cupit aliquatenus relevari, omne nihilominus patrimonium suum admisso patiatur inspectore censeri. quod quidem etiam ad singularum civitatium legationes convenit custodiri, ut scilicet omne territorium censeatur, quotiens defectorum levamen exposcitur, ut squalida adque ieiuna in culta adque opima compensent. nemini autem citra nostram conscientiam in quantolibet modo tributariam suspendere liceat functionem. quod enim ad tempus differri iubebit, aut perpetuo amittitur aut sub acerbiore reliquorum mole repetendum est. dat. iii non. april. constantinopoli theodosio a. iii et abundantio conss. (393 apr. 3).

CTh.13.11.5

Idem aaa. rufino praefecto praetorio. qui gravatos se a peraequatoribus conqueruntur et iniusto oneri inpares esse proclamant, competitionis habeant facultatem, ut, quid remissum gratia, quid interceptum fuerit fraude, convincant et ex eo levamen accipiant, quod per deformia et criminosa commercia sibi impositum esse deplorant, ut aliis demeretur. sed in eo tempus placuit definiri, ne plures frustra litibus premerentur, si nullis intercepta metis actio tolleretur. quare cum fuerint traditi codices et completa peraequatio, intra annum cui videbitur de iniusto onere conqueratur, iniquitatem peraequatoris accuset ac praestitam gratiam habita competitione convincat, ut, quod ei fuerat superfusum, ille cognoscat, quem debitae functioni fraus clandestina subtraxerat. emenso autem eo tempore actio denegabitur sequestratis minoribus, qui fuerint indefensi; his etiam, qui aberunt causa rei publicae. qui tamen ex eo tempore quae sunt statuta custodient, ex quo ad agendum habere potuerint facultatem. dat. iii kal. dec. constantinopoli d. n. theodosio a. iii et abundantio v. c. conss. (393 nov. 29).

CTh.13.11.6pr.

Impp. arcadius et honorius aa. herodi. actus stratoris, qui possessores iuris emphyteutici sub peraequationis colore turbavit, iubemus aboleri, alio ad id negotium dirigendo. quem observare conveniet, ut pristinis dominis, si quidem idonei comprobantur, cuncta restituat, novis vero ad redhibenda omnia, quae per eum vel suspensa vel minuta vel dilata sunt, strenuus exactor incumbat. (396 [394] febr. 14).

CTh.13.11.6.1

Si quid etiam latioribus ac fecundioribus fundis addi in praestatione potest, tenax inquisitor incumbat. in omnibus vero subsignationem facultatium, quae in huiusmodi locationibus prima est quaerenda, suscipiat. dat. xvi kal. mart. arcadio iiii et honorio iii aa. conss. (396 [394] febr. 14).

CTh.13.11.7

Idem aa. hilariano. peraequationem omnibus necessariam esse non ignoramus, ideoque praecipimus, ut nullus electus contra iudicium culminis tui rescripti se privilegii alicuius auctoritate defendat, quoniam per cognitos ac probatos viros compendia provincialium iudicum volumus ordinari. dat. xiiii kal. april. mediolano arcadio iiii et honorio iii aa. conss. (396 mart. 19).

CTh.13.11.8

Idem aa. eusebio praefecto praetorio. peraequatores ac discussores, quorum nobis data sunt nomina, si incurrerint culpam neglegentiae vel gratiae, non solum honorum iacturam, verum etiam annonarum in quadruplum multam subire debebunt, ea vero, quae in damnum provincialium fuerint accepisse convicti, in quadruplum cogentur exsolvere. dat. iiii kal. april. mediolano arcadio iiii et honorio iii aa. conss. (396 mart. 29).

CTh.13.11.9

Idem aa. eutychiano praefecto praetorio. qui per impotentiam fundos opimos ac fertiles occuparunt, cum quaestuosis uberibusque pro rata portione suscipiant infecundos. quoniam itaque legati hieropolitanae civitatis succisos esse prosecuti sunt, huiusmodi possessionum retentatores cum opimis fundis et minus idoneos suscipiant, quo eiusmodi aequalitate servata et ante dictae curiae vires possint in posterum respirare et fisci indemnitas custodiri. dat. non. mar. constantinopoli honorio. a. iiii et eutychiano conss. (398 mart. 7).

CTh.13.11.10

Idem aa. messalae praefecto praetorio. quoniam ex multis gentibus sequentes romanam felicitatem se ad nostrum imperium contulerunt, quibus terrae laeticae administrandae sunt, nullus ex his agris aliquid nisi ex nostra adnotatione mereatur. et quoniam aliquanti aut amplius quam meruerant occuparunt aut colludio principalium vel defensorum vel subrepticiis rescriptis maiorem, quam ratio poscebat, terrarum modum sunt consecuti, inspector idoneus dirigatur, qui ea revocet, quae aut male sunt tradita aut improbe ab aliquibus occupata. dat. non. april. mediolano theodoro v. c. cons. (399 apr. 5).

CTh.13.11.11

Idem aaa. longiniano praefecto praetorio. per hoc quinquennium multos comites ac peraequatores nec non etiam discussores per diversas provincias constat esse directos, quos nihil profuisse utilitatibus publicis cognovimus. ideoque sublimitas tua eorum actus diligenti examinatione perpendat et si quos neglegenter invenerit iniuncta curasse, ablatis codicillis primitus et refusis faciet in duplum quae perceperunt emolumenta redhibere. si quos vero rapacitate plectenda a provincialibus aliquid abstulisse constiterit, direpta in quadruplum redhibere compellas. dat. v id. feb. ravennae arcadio a. vi et probo conss. (406 febr. 9).

CTh.13.11.12

Impp. honorius et theodosius aa. anthemio praefecto praetorio. cunctis per provincias administratoribus nostra insinuetur praeceptio, ut, si quando e re publica visum fuerit discussiones inspectionesque aut aliquid simile agitari, ei iniungant, qui vicarianae potestati, comitivae orientis aut augustalitati parendo statuta peregit stipendia, ita ut, si quis ex his, quos palam expressimus, super hoc officii munere excusando nostrum impetravit oraculum aut post elicuerit, nequaquam id admittatur. his enim ita rite digestis et ab hominibus gnaris administrabuntur publica munia et altioris adque inhabilis fortunae homines incompetentia obsequia declinabunt. dat. x kal. feb. constantinopoli honorio viii et theodosio iii aa. conss. (409 ian. 23).

CTh.13.11.13

Idem aa. iohanni praefecto praetorio. loca, quae praestationem suam implere non possunt, praecipimus adaequari, ut, quid praestare possint, mera fide et integra veritate scribatur, id vero quod impossibile est e vasariis publicis auferatur. et primo quidem veteribus dominis adscribi praedia ipsa conveniet, quorum si personae eorumve heredes non potuerint repperiri, vicinos vel peregrinos volentes, modo ut sint idonei, dominos statuendos esse censemus. in tantum autem omnium animos beneficiis provocamus, ut id, quod defectae possessioni inspectoris arbitrio adscribitur, biennii inmunitate relevetur, ut nec idonea praedia alterius glebae sarcina in posterum praegraventur. dat. viii id. iun. ravennae honorio viiii et theodosio v. aa. conss. (412 iun. 6).

CTh.13.11.14

Idem aa. ursacio comiti rerum privatarum. peraequationem agapii in perpetuum manere censemus. dat. iiii non. iul. ravennae theodosio a. vii et palladio conss. (416 iul. 4).

CTh.13.11.15

Idem aa. sebastio comiti primi ordinis. post alia: si qui aliarum possessionum dominus desertum praedium suum inspici forte voluerit, universa loca quae possidet etiamsi idonea sunt, peragrari patietur, ut sarcina destitutae possessionis, in quantum inspectio deprehenderit, possit melioribus sociari peraequatoque omni patrimonio nihil de desertis postea conqueratur. tantum enim his praediis aperta et absoluta levamenta praestamus, quorum aut domini omnino non extant aut paupertate mediocres ipsa tantum praedia habere monstrantur. dat. prid. id. mart. ravennae honorio a. xi et constantio ii conss. (417 mart. 14).

CTh.13.11.16

Idem aa. sebastio comiti primi ordinis. competitionis obreptione seclusa aput eum possessio firma permaneat, cui a peraequatore semel eam traditam fuisse constiterit. reliqua vero temporis ante acti a novo domino fiscum postulare non patimur, ne alterius culpa alter incipiat subiacere dispendio. si quis vero privatus aut obligatam sibi possessionem, quae deserta huc usque permansit, aut ex aliquo titulo deberi sibi iure confirmat, allegationes suas sine mora vel per se vel per aliam personam legibus ordinatam aput spectabilitatem tuam publicare debebit, ita ut, si aequitatis ratione suadente ad petitorem fuerit translata possessio, is, qui eam a peraequatore susceperat, rei melioratae receptis sublevetur expensis. verum ne sub specie litis dominationes semel constitutae turbentur, duorum mensum spatium censemus debere servari, intra quod is, qui putat sibi rem probabili ratione competere, debitas exerat actiones. quod si tempus adscriptum silentio fuerit interveniente transactum, nullum penitus repetendi volumus esse principium. quod si quis eo tempore, quo peraequator praedium alicui addicit, de suo iure vel per se vel per homines suos non crediderit actitandum, duorum mensum curriculis evolutis in perpetuum conquiescat. et cetera. dat. prid. id. mart. ravennae honorio a. xi et constantio ii conss. (417 mart. 14).

CTh.13.11.17

Idem aa. sebastio comiti primi ordinis. post alia: illa, quae ante viginti retro annos speciali impetratione diversis petitionibus inspecta claruerint, ab spectabilitate tua convenit iterari, quatenus, aliorum cessante iudicio intra provinciam sibi commissam, tuo omnia finiantur arbitrio. eas quoque possessiones, quae ante viginti similiter annos speciale beneficium de recisione meruerunt, studiose peragrare debebis, ut, utrum e re sint postulata remedia vel his aliquid deceat functionis adiungi, aestimatio fida demonstret. et cetera. dat. prid. id. mai. ravennae honorio a. xi et constantio ii conss. (417 mai. 14).

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CTh.14.25.0. De frumento carthaginiensi
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CTh.14.27.0. De alexandrinae plebis primatibus

CTh.14.1.0. De decuriis urbis romae

CTh.14.1.1

Imp. constantius a. et iulianus caes. ad iulianum. in decuriarum ordine insigni, cui librariorum vel fiscalium sive censualium nomen est, nequaquam aliquis locum primi ordinis adipiscatur nisi is, quem constiterit studiorum liberalium usu adque exercitatione pollere et ita esse litteris expolitum, ut citra offensam vitii ex eodem verba procedant: quod cunctis volumus intimari. ne autem litteraturae, quae omnium virtutum maxima est, praemia denegentur, eum, qui studiis et eloquio dignus primo loco videbitur, honestiorem faciet nostra provisio sublimitate ... tuave eius nomina indicante, ut deliberemus, quae in eum dignitas deferenda sit. dat. vi kal. mar. constantinopoli; accepta id. mai. romae constantio a. viiii et iuliano caes. ii conss. (357 [360] febr. 24).

CTh.14.1.2

Imppp. valentinianus, theodosius et arcadius aaa. ad sallustium praefectum urbi. privilegiorum antea decurialibus concessorum firmitatem mutare nec volumus nec debemus; quin immo ea, quae primitus statuta perdocentur, etiam nostrae mansuetudinis sanctione permaneant. dat. iii id. iun. mediolano honorio n. p. et evodio conss. (386 iun. 11).

CTh.14.1.3

Idem aaa. trifolio praefecto praetorio. perire nolumus, quidquid aeternae urbi constat fuisse concessum; usque adeo privilegia vetusta servamus, ut nova, in quantum ratio permittit, beneficia praestare velimus. unde in defendendis decurialibus, quos binos esse ex singulis quibusque urbibus omnium provinciarum veneranda decrevit antiquitas, id observare debebis, quod vel priscorum principum constitutis vel nostris intellegis sanctionibus definitum.

si quis vero decurialem de auferendis privilegiis putaverit lite pulsandum, intellegat se decuriae interpellare debere iudicem. dat. xiiii kal. feb. mediolano timasio et promoto conss. (389 ian. 19).

CTh.14.1.4

Imppp. arcadius, honorius et theodosius aaa. exsuperantio, iulio et ceteris decurialibus. leges tam a superioribus principibus quam a divo patre nostro conditas nostra auctoritate firmamus. singulos itaque iudices scire volumus, ne quis huic collegio iniuriis corporalibus temptet notam adterere neque ab his commodis, quae rationibus adprobantur, audeat separare. huic etenim collegio volumus antiquam privilegiorum praerogativam servari. dat. viii id. iul. romae honorio a. vi et aristaeneto conss. (404 iul. 8).

CTh.14.1.5

Idem aaa. curtio praefecto praetorio. cum tot et tam evidentibus praeceptionibus sacris iam inde ab antiquis principibus, nostris quoque rescriptis decuriae sint sacratissimae urbis privilegia confirmata, adtamen quae saepius statuta sunt, hac etiam lege firmamus. et cetera. dat. vii id. april. ravennae honorio vii et theodosio ii aa. conss. (407 apr. [?] 7).

CTh.14.1.6

Impp. honorius et theodosius aa. bonosiano praefecto urbi. vellemus privilegia augere decuriae, nisi genus esset iniuriae antiquitati aliquid sociare. quare cuncti cognoscant quinque libras auri multae nomine propositas, si quo in loco eorum actibus ullius persona obrepere forte temptaverit. emolumenta omnia per diversos erepta redhiberi decernimus. in eos sane, qui contra divalia statuta venisse dicuntur, spectabilis vicarius africae vindictam ferre curabit. dat. vii kal. octob. ravennae honorio viii et theodosio iii aa. conss. (409 sept. 25).

CTh.14.2.0. De privilegiis corporatorum urbis romae

CTh.14.2.1

Impp. valentinianus et valens aa. ad symmachum praefectum urbi. ea privilegia, quibus pro reverentia urbis aeternae varia corpora hominum vel priscarum legum cautio vel antecedentium principum fovit humanitas, magnifica sinceritas tua sciat vel confirmata esse arbitrio serenitatis nostrae vel, si in aliqua parte titubaverint, restituta. dat. kal. iun. bonamansione, proposita in foro traiani divo ioviano et varroniano conss. (364 iun. 1).

CTh.14.2.2

Imppp. valentinianus, theodosius et arcadius aaa. ad alypium praefectum urbi. nulli sit liberum, nulli permissum, ut novum aliquid urbis incolae in urbe sustineant. dat. prid. id. iul. aquileiae tatiano et symmacho conss. (391 iul. 14).

CTh.14.2.3

Impp. arcadius et honorius aa. florentino praefecto urbi. in honorem aeternae urbis corporatis indulta suffragia valere praecipimus. et cetera. dat. xv kal. april. mediolano caesario et attico conss. (397 mart. 18).

CTh.14.2.4

Impp. honorius et theodosius aa. palmato praefecto urbi. cura rectorum provinciarum corporati urbis romae, qui in peregrina transgressi sunt, redire cogantur, ut servire possint functionibus, quas imposuit antiqua sollemnitas. dat. iiii kal. april. ravennae honorio viiii et theodosio v aa. conss. (412 mart. 29).

CTh.14.3.0. De pistoribus et catabolensibus

CTh.14.3.1

Imp. constantinus a. ad profuturum praefectum annonae. cunctis pistoribus intimari oportet, quod, si quis forte possessiones suas ideo putaverit in alios transferendas, ut postea se, rebus in abdito collocatis, minus idoneum adseveret, tamquam in locum eius alio subrogando, nihil ei haec astutia nec detestabilia commenta profutura sunt, sed in obsequio pistrini sine ulla excusatione durabit nec ad eius iura revocabuntur, si quas emptiones transcripserit. proposita id. aug. constantino a. v et licinio caes. conss. (319 aug. 13).

CTh.14.3.2

Imp. constantius a. ad orfitum praefectum urbi. si quis pistoris filiam suo coniugio crediderit esse sociandam, pistrini consortio teneatur obnoxius et familiae pistoris adnexus oneribus etiam parere cogatur. et quoniam necessarium corpus fovendum est, patronos pistoribus constitutos ad altera functionis officia prohibeo devocari caudicariorum corpori minime de cetero copulandos, ut aliis necessitatibus absoluti eam tantummodo functionem liberae mentis nisibus exsequantur. dat. prid. non. iul. mediolano arbitione et lolliano conss. (355 iul. 6).

CTh.14.3.3pr.

Impp. valentinianus et valens aa. ad symmachum praefectum urbi. praedia rustica vel urbana, quae possident privato iure pistores, nec senatorem nec officialem comparare permittimus, contractu pari cum aliis non interdicto; quippe mercantes ad venditoris officium vocabuntur super hac emptione aput praefectum annonae testatione deposita. (364 iun. 2).

CTh.14.3.3.1

In donationibus vero filii excepti sunt et nepotes, eodem loco positis omnibus, qui qualibet proximitate iunguntur, quibus ideo non dempsimus beneficium largitatis, quia et paneficii necessitatem suscipere successionis iure coguntur. (364 iun. 2).

CTh.14.3.3.2

Haec forma servabitur et in testamentis aut donatione vel novissima voluntate, ut in extraneos collata non valeant, nisi pistoris officium sponte susceperint qui pistorum sunt munificentiam consecuti. dat. iiii non. iun. naissi divo ioviano et varroniano conss. (364 iun. 2).

CTh.14.3.4

Idem aa. ad symmachum praefectum urbi. optio concessa est his, qui e pistoribus facti sunt senatores, ut aut studio facultatum aut splendidissimo ordine segregati sint. quod si fuerint cupidi dignitatis, in tantam paneficii substantiam idoneos de suis subrogare cogantur, quantam ipsi exhibuere pistores. dat. viii id. iun. naissi divo ioviano et varroniano conss. (364 iun. 6).

CTh.14.3.5

Idem aa. ad symmachum praefectum urbi. filios pistorum, qui in parvula aetate relinquuntur, usque ad vicesimum annum aetatis a pistrini sollicitudine defendi iubemus. sane periculo totius corporis subrogari convenit pistores idoneos pro pupillis, sub hac videlicet condicione, ut post emensum vicesimum annum aetatis paterni muneris necessitatem subire cogantur, nihilo minus permanentibus pistoribus his, quos in locum eorum constat substitutos. dat. vi id. ian. naissi divo ioviano et varroniano conss. (364 ian. 8).

CTh.14.3.6

Idem aa. ad symmachum praefectum urbi. nulli liceat pistorum supplicatione delata subterfugiendi muneris impetrare licentiam. dat. vi id. ian. naissi divo ioviano et varroniano conss. (364 ian. 8).

CTh.14.3.7

Idem aa. ad viventium praefectum urbi. post quinquenni tempus emensum unus prior e patronis pistorum otio et quiete donetur, ita ut ei qui sequitur officinam cum animalibus servis molis fundis dotalibus, pistrinorum postremo omnem enthecam tradat adque consignet. dat. viii id. octob. altino divo ioviano et varroniano conss. (364 [367] oct. 8).

CTh.14.3.8

Idem aa. ad symmachum praefectum urbi. in speculis erit officium sinceritatis tuae, ne cui, qui semel pistorum corpori fuerit deputatus, abscedendi qualibet ratione copia facultasque tribuatur, etiamsi ad absolutionem eius pistorum omnium laboret adsensus et consessus convenisse videatur. ne illud quidem cuiquam concedi oportet, ut ab officina ad aliam possit transitum facere. dat. xviii kal. feb. mediolano valentiniano et valente aa. conss. (365 ian. 15).

CTh.14.3.9

Idem aa. ad olybrium praefectum urbi. ex libertinis catabolensium corpori statuimus sociari eum, cuius tota substantia triginta librarum argenti aestimatione colligitur. idque pondus sive ipsum per se habet seu in aliis quibuscumque speciebus vel in aedificiis adque agris dictae adscriptionis merita non transit, iubemus ab inquietudine istius molestiae segregari. dat. iii kal. april. treviris valentiniano et valente aa. conss. (368? 370? mart. 30).

CTh.14.3.10

Idem aa. ad olybrium praefectum urbi. libertini, qui a dominis cuiuscumque honoris aut meriti aliquid testamento vel donatione meruerunt, si aliqua pistrinis obnoxia consecuti sunt, pistorum corpori copulentur. si vero libera ab hoc nexu isdem sunt corporibus derelicta, catabolensium necessitatibus obsequantur. quin etiam si qui ex his aliis se corporibus crediderint inserendos, ab his incunctanter abstracti ei, cui hac lege sociati sunt, muneri deputentur. si autem a clarissimis viris aliquos acceperint fundos, sic praedicto corpori pareant, ut glebae, ex qua lucrata ea sunt corpora, nullum praeiudicium comparetur. dat. non. iul., lecta in pantheo non. nov. valentiniano et valente aa. conss. (368? 370? iul. 7).

CTh.14.3.11

Idem aa. ad symmachum praefectum urbi. hac sanctione generaliter edicimus nulli omnino ad ecclesias ob declinanda pistrina licentiam pandi. quod si quis ingressus erit, amputato privilegio christianitatis sciat se omni tempore ad consortium pistorum et posse et debere revocari. dat. v kal. octob. aquileiae valentiniano et valente aa. conss. (365 sept. 27).

CTh.14.3.12

Idem aa. ad claudium proconsulem africae. secundum parentis nostri constantini divale praeceptum omnibus lustris pistores ex officio, quod ei corpori constat addictum, ad urbem sacratissimam destinentur. in quo illud convenit praecaveri, ne quis hanc, quae personalis est, functionem pretio putet esse taxandam. veniant suo tempore, quos causa constringit et ita veniant, ut eos officium, quod tibi paret, pistorum patronis adque annonae praefecto aput publica monumenta consignet. quod si quis iudicum statuto tempore personam, quae est destinanda, non miserit, ipse profecto remanebit obnoxius functioni, cui subtraxisse probatur obnoxium. in officium quoque poena competens exeretur, quod aut dissimulatione neglexerit aut fraude subtraxerit iudicem suum super vi legis et consuetudinis admonere. dat. kal. decemb. treviris valentiniano et valente aa. conss. (370 dec. 1).

CTh.14.3.13

Imppp. valentinianus, valens et gratianus aaa. ad olybrium praefectum urbi. non ea sola pistrini sint vel fuisse videantur, quae in originem adscripta corpori dotis nomen et speciem etiam nunc retentant, sed etiam ea, quae ex successione pistorum ad heredes eorum vel quos alios devoluta noscuntur, quo eorum quoque distractio inhibita evidentius cerneretur. in his vero solis liciti contractus eidem corpori reserventur, quae ad ipsos non hereditario pistorum nomine, sed privatorum institutione, liberalitate vel dote aut quolibet titulo, probantur esse transfusa et si qua ipsi ex privata munificentia consecuti in rebus humanis agentes in aliquem ex sociis, id est in pistorem alterum transtulerunt. ceterum si haec quoque in successione propria reliquere, etiam eadem dotis nomine et titulo nuncupamus, quia pistrino proficere convenit, quod aput pistorem eo vivente permansit. servabis igitur de cetero ordinem constitutum, ut, si vel donatione pistoris rem pistrino hereditatis successionisve meritis obligatam quicumque ex privatis a pistoribus fuerit consecutus, sciat corpori obnoxium vendere et alienare non posse, sed in sua causa et pistorum nomine ac iure residere. dat. kal. iun. treviris valentiniano nob. p. et victore conss. (369 iun. 1).

CTh.14.3.14

Idem aaa. ad ursicinum praefectum annonae. si cui pistoris filia nubserit ac postea is eandem dilapidatis facultatibus consortio putaverit eximendam, non alia lege adque ratione eundem ipsum pistoriae necessitati et corpori praecipimus adstringi, quam si eodem munere originis vinculo teneretur. dat. viii kal. mart. treviris modesto et arinthaeo conss. (372 febr. 22).

CTh.14.3.15

Imppp. valens, gratianus et valentinianus aaa. ad gregorium virum clarissimum praefectum annonae. ne quis umquam praefectus annonae contra suam alienamve sententiam pistorum locum eiectis permiserit reformari, cum praescriptum suum aput iudices obtinere lex debeat, per quam simul adversus decoctorum vitia et utilitati annonae publicae et rerum iudicatarum constantiae providetur. dat. xiiii kal. mart. treviris gratiano a. iiii et merobaude conss. (377 febr. 16).

CTh.14.3.16

Imppp. gratianus, valentinianus et theodosius aaa. ad arborium praefectum urbi. quidquid ex horreis plectibili usurpatione praesumptum sit, id per pistores, in quos totius criminis confertur invidia, matura exactione reddatur, ut, si quid in hac specie minus potuerit exsolvi, in quibuscumque speciebus, in aere vel plumbo seu qualibet alia solutione, pensetur, dummodo redintegratio totius summae curetur. dat. id. iun. gratiano a. v et theodosio a. i conss. (380 iun. 13).

CTh.14.3.17

Idem aaa. ad titianum vicarium africae. iudices africanos laudabilis sinceritas tua huiusmodi interminatione conterreat, ut, nisi tempore solito debitos pistores venerabilis romae usibus dirigere curaverint, sciant se ipsos quinquaginta argenti librarum officiumque eorum pari condemnatione multandum. dat. iiii id. iul. treviris gratiano v et theodosio i aa. conss. (380 iul. 12).

CTh.14.3.18

Imppp. valentinianus, theodosius et arcadius aaa. ad sallustium praefectum urbi. ut concessa decurialibus privilegia nolumus abrogari, ita lege super mancipibus data nihil iubemus inminui. nam si qui ob hoc ad decurias illicite transierunt, ut munus evaderent mancipatus, necesse est erga eos privilegia non posse servari, quos obnoxios sibimet recte vindicat functio memorata. in tantum etiam defensiones diversorum principum largitate concessas erga decurias manere decernimus et mancipatui obnoxios iubemus addici, ut, si quispiam super absolutione mancipatus nostrae maiestati preces obtulerit, bonorum amissione plectatur. quod quidem non solum in decurialibus, sed etiam in ceteris decernimus perpetua lege servari. dat. iii id. iun. mediolano honorio n. p. et evodio v. c. conss. (386 iun. 11).

CTh.14.3.19

Impp. arcadius et honorius aa. eusebio praefecto praetorio. pistores urbis aeternae praetermissa veteri consuetudine fundis vel praediis ad nihilum redactis, quae eorum corpori solacia certa praebebant, novos sibi quaestus excogitasse comperimus. ideoque in futurum provisionis remedia proferentes misso probatae industriae viro singulorum fundorum sive praediorum, quae pistorum corpori obnoxia sunt, vires discuti exquirique praecipimus, ut idem iure perpetuo idoneis adfixa praestatione tradantur adque conductores praestationis modum et solacia ministrent antiquitus constituta pistoribus. dat. vii id. iul. mediolano arcadio iiii et honorio iii aa. conss. (396 iul. 9).

CTh.14.3.20

Idem aa. theodoro praefecto praetorio. adscripti semel per sententiam iudicis ordini pistorio subrepticia rescripta non quaerent, nec ulla eis supplicandi praestetur facultas. et qui huiusmodi sperare voluerit beneficia, quinque libras auri fisco nostro inferre cogetur. si quo enim casu vel oecultis vel ambitiosis hoc precibus elicuerit, iudex, cuius in iudicio haec fuerit prolata sententia, officium quoque eius, si consensum praebuerit impetratis, quinas auri libras aerario nostro inferent. dat. vii kal. mai. mediolano honorio a. iiii et eutychiano conss. (398 apr. 25).

CTh.14.3.21

Idem aa. et theodosius a. vitali praefecto annonae. nulli pistori nec posteris eius in privatas personas vel thymelicas vel eas, quae aurigandi studio detinentur, liceat coniugii societate transire, etiamsi huic facto omnium pistorum accedat adsensus, etiamsi nostra elicita fuerint aliqua subreptione rescripta. quod si quisquam in haec vetita adspirare temptaverit, sciat se verberibus adfectum deportatione puniendum facultatesque suas paneficio sociandas. quod si non statim officium gravitatis tuae in ipsis inceptis occurrerit, sed in suggestione cessaverit, in singulis familiis librarum auri decem multa feriatur: ita ut eae quoque personae cum patrimonio ad debitum officium revocentur, quae per huiusmodi nuptias in simili consortio fuerunt. omnes igitur, qui filias pistorum in consortium sortiti sunt, vel ex thymelicis vel aurigis vel universis privatis pistorio corpori ilico deputentur. dat. viii id. mart. ravennae d. n. theodosio a. i et rumorido v. c. conss. (403 mart. 8).

CTh.14.3.22

Impp. honorius et theodosius aa. palladio praefecto praetorio. quicumque illustris urbanae sedis vel annonariae potestatis apparitor clandestina fraude pistorem concusserit, accusatus adque convictus perpetuis paneficii nexibus addicatur. et cetera. dat. vii kal. ian. ravennae honorio a. xi et constantio ii v. c. conss. (417 dec. 26).

CTh.14.4.0. De suariis, pecuariis et susceptoribus vini ceterisque corporatis

CTh.14.4.1

Imp. constantinus a. ad pacatianum praefectum praetorio. quoniam suariorum corpus ad paucos devenit, iubemus eos adstante populo romano dicere, quibus excusatio sit delata, quibus provenerit onus, ut his in medium publicae rationis eductis exemplum rei naviculariae proponatur. itaque dinoscant facultates proprias suariorum esse obnoxias muneri ac de duobus alterum eligant; aut retineant bona quae suariae functioni destricta sunt ipsique suario teneantur obsequio aut idoneos quos volunt nominent, qui necessitati idem satisfaciant. nullum enim vacare ab huius rei munere patimur, sed sive honoribus evecti sive quolibet versutiae genere fugerunt, revocari eos iubemus idque ipsum teste et audiente populo romano compleri ac nos super his consuli, ut animadvertamus in eos, qui hac tergiversatione usi sint; de reliquo functionis huius vacatione nulli penitus tribuenda, sed eo qui subripere potuerit post beneficium infirmatum, salutis etiam periculum subituro. dat. viii id. mart. romae optato et paulino conss. (334 mart. 8).

CTh.14.4.2

Idem a. lucrio verino. in arbitrio suo possessor habeat, ne suario pecuniam solvat, quod ideo permissum est, ne in aestimando porcorum pondere licentia suariis praebeatur. quod si iuste porcos suarius aestimaverit, huic pecuniam possessor, cui pensitationis utriusque copia est indulta, numerabit. ne autem suario in suscipienda pecunia detrimenti aliquid adferatur, singulis quibusque annis ea pretia porcinae possessor adnumeret, quae usus publicae conversationis adtulerit. et quoniam non semper nec in omnibus locis una est forma pretiorum, pro diversitate locorum et temporum in specie pretia danda sunt, nisi ipsa porcina praestetur. iudices autem regionum monendi sunt, ut per singulos annos ad scientiam tuam referant, quae in quibus locis sunt pretia porcinae, ut instructione hac a tua gravitate perpensa tunc demum suarii per diversa proficiscantur et pretia suscipiant, quae in his regionibus versari cognoveris. queri enim suarii non poterunt, quia nihil interest, carius an vilius comparent, cum, quantum pretium daturi sunt, a possessore accipiant; et possessores erunt moderati in specie distrahenda, cum se sciant, quanto maiora pretia pro carne poposcerint, tanto plus suariis soluturos. dat. iii id. april. constantino a. vii et constantio c. conss. (326 [324] apr. 11).

CTh.14.4.3

Imp. iulianus a. flavio aproniano suo salutem. ea pretia, quae in campania per singulos annos repperiuntur, suariis urbis romae debent solvi, ita ut periculo suariorum populo porcinae species adfatim praebeatur. et quia officialibus pro omni supplicio sufficit direptorum restitutio, quidquid ultra senos folles per singulas libras claruerit flagitatum, id fisci viribus protinus vidicetur. exactio autem nummaria non per officium tuum vel ipsos suarios, sed per officiales consularis iuxta praeceptum nostrae mansuetudinis competentem sortiatur effectum. nam quia maiorum potestatum officiales solent esse provincialibus perniciosi, per ordinarios iudices adque curias etiam hanc exactionem convenit celebrari. per singulos itaque annos iuxta pretia, quae repperiuntur in publica conversatione, per campaniam habitantes pecuniam pro singulis libris porcinae praecipiantur exsolvere, ita ut non ad pretia, quae in urbe roma repperiuntur, sed quae aput campanos in publicis usibus habentur, nummaria celebretur exactio, suariis autem celebrandae nummariae exactionis facultas denegetur. nam dedimus litteras ad virum clarissimum consularem, ut remotis officialibus praefecturae urbanae et suariis ipse totius exactionis instantiam adque periculum ad suam curam sollicitudinemque revocare contendat. qui evidentissimo discrimini constituetur obnoxius, si in transmittendis pecuniis aliqua fuerit materia deceptionis exorta. dat. v id. decemb. antiochiae d. n. iuliano a. iiii et sallustio conss. (363 dec. 9).

CTh.14.4.4pr.

Impp. valentinianus et valens aa. ad praetextatum praefectum urbi. per singulas et semis decimas, quibus suariorum dispendia sarciuntur, damnum, quod inter susceptionem et erogationem necessario evenit, vini, hoc est septem et decem milium amphorarum perceptione relevetur. (367 oct. [?] 8).

CTh.14.4.4.1

Cui rei illud provisionis accedat, ut lucanus possessor et brittius, quos longae subvectionis damna quatiebant, possit, si velit, speciem moderata, hoc est septuagenarum librarum compensatione dissolvere, quod ibi debebit inferre, ubi vina fuerat traditurus. (367 oct. [?] 8).

CTh.14.4.4.2

Quibus in rebus illud quoque a decessore tuo salubriter institutum est, quo suariis aestimandi licentia denegetur pondusque porcorum trutinae examine, non oculorum libertate quaeratur, ita videlicet, ut ne volenti quidem possessori tradere animal liceat, cuius modum non prius ponderatione certa deciderit suarius. animal vero a possessore tradendum ob digeriem prius unius noctis tantum ieiunitate vacuetur. (367 oct. [?] 8).

CTh.14.4.4.3

Illud quoque salubris constantinianae legis forma compescat, videlicet ut cum possessore, cui commodioris pretii beneficia indulta a veteribus principibus praerogativa providit, proprium ordo decidat ac transigat isque ordo suariis, quibuscum habet vini emolumenta communia, aut legitimum pretium, id est romani fori, cui carnem fuerat illaturus, tradat, aut carnem debitam subministret. (367 oct. [?] 8).

CTh.14.4.4.4

Porro decimae semis, quam statuimus, non petantur ab his, a quibus fuerit pecunia ministranda. haec autem omnia aeneae tabulae in foro suario collocandae ad aeternam memoriam oportebit insculpi. dat. viii id. octob. remis lupicino et iovino conss. (367 oct. [?] 8).

CTh.14.4.5

Imppp. valentinianus, theodosius et arcadius aaa. ad albinum praefectum urbis romae. suariorum vires ea concidisse occasione comperimus, quod fundi eorum adque alia praedia in extraneas quasque personas multimoda donatione transcripta sunt. quae sublimis eminentia tua aut ad memoratorum iura revocabit aut, si eorum detentatores putaverint abnuendum, subeant cum his communem sarcinam, quorum incubuere corporibus. consanguineos quoque eorum vel originales ut memoratorum nomini functionique iubeas adiungi, plenum et aequitatis et iuris est. dat. xv kal. sept. romae timasio et promoto conss. (389 aug. 18).

CTh.14.4.6

Idem aaa. ad albinum praefectum urbi. porcinarii urbis aeternae cum pervigilem laborem populi romani commodis exhibeant, id se divae memoriae gratiani beneficio meruisse proponunt, ne sordidis umquam muneribus subiacerent. illustris igitur auctoritas tua divalium praeceptorum formam conservans etiam cum interminatione competenti suo insistat officio, quatenus id, quod et ante constitutum est et nulla postmodum iussione mutilatum, indubitatum adque intactum faciat perdurare. dat. viii kal. sept. romae timasio et promoto conss. (389 aug. 25).

CTh.14.4.7

Impp. arcadius et honorius aa. florentino praefecto urbi. heredes suariorum, filiorum etiam emancipatorum bona omnia ac patrimonia requirantur, ut, sive personarum agatur ratio sive rerum, non minus habeatur obnoxius quem possessio tenet quam quem successio generis adstringit, dummodo suo ordini adtributos suarii non amittant et propriis facultatibus solitisque subsidiis aliena adque longinqua et ab hoc munere distracta non quaerant. dat. xv kal. mar. mediolano caesario et attico conss. (397 febr. 15).

CTh.14.4.8pr.

Idem aa. hilario praefecto urbi. quicumque de suariorum corpore originariam functionem sub cuiuslibet desiderio auxilii vel honore declinasse noscuntur vel ad diversa se officia contulisse aut adnotationibus vel rescriptis nostrae serenitatis elicitis, ad munus pristinum revocentur, tam qui paterno quam qui materno genere inveniuntur obnoxii: oportet enim viribus vacuari, quae in dispendium publicum adumbratione extorta sint. nullique penitus ad quemlibet honorem adque militiam aditus tribuatur et si qua deinceps de nostris altaribus per adnotationem vel rescriptum vel quolibet genere fuerint elicita vel emendicata, cassentur. (408 ian. 15).

CTh.14.4.8.1

Eos etiam, qui ad clericatus se privilegia contulerunt, aut agnoscere oportet propriam functionem aut ei corpori quod declinant proprii patrimonii facere cessionem. (408 ian. 15).

CTh.14.4.8.2

Ii vero, qui praedia obnoxia corpori vel ex empto vel ex donato vel ex quolibet titulo tenent, pro rata publicum munus agnoscant aut possessionibus cedant. (408 ian. 15).

CTh.14.4.8.3

Circa reliqua etiam corpora, quae ad privilegia urbis romae pertinere noscuntur, eadem praecepti nostri forma servetur. dat. xviii kal. feb. romae basso et philippo conss. (408 ian. 15).

CTh.14.4.9

Impp. honorius et theodosius aa. palladio praefecto praetorio. post alia: ad excludendas patronorum caudicariorum fraudes et portuensium furta mensorum unus e patronis totius consensu corporis eligatur, qui per quinquennium custodiam portuensium suscipiat conditorum, clandestinum ad collegas digma missurus, ne quid ex specie fraus occulta vectorum pessimae qualitatis inmutet. cui praemia ista deferimus, ut, si optima fide administraverit munus iniunctum, post expletas lustralis sollicitudinis metas comitivae tertii ordinis honore cumuletur idque non iam ex codicillis nostris, sed constituti istius consequatur indulto; deprehensus in fraude amisso patrimonio ad pistrini etiam munia prima revocetur. illud etiam decernimus, ne in singulos tres primos patronos corporum singulorum vir clarissimus praefectus annonae ius habeat corporalis iniuriae nam sufficit in delinquentem illustris urbani censura iudicii. dat. vii kal. ianuar. ravennae honorio a. xi et constantio ii v. c. conss. (417 dec. 26).

CTh.14.4.10pr.

Idem aa. palladio praefecto praetorio. suariis pecuarii iungantur: sub hac tamen condicione decreti corpora volumus miscere, ut rescissis privilegiis, quae impetrasse dicuntur, mixtae corporum vices alternis fungantur officiis. (419 iul. 29).

CTh.14.4.10.1

Quibus cum lege concedimus, ut corpora externa iungamus, e re est, ut his quoque suas reddi iubeamus personas, quas rescissis omnium privilegiis vinculis gratiosis sententiis, si quas in abolitionem genuinae functionis callida fraude meruerunt, restitui cum facultatibus suis posthabita dilatione. (419 iul. 29).

CTh.14.4.10.2

Nulla tamen eos corporis iniuriae formido percellat: nam praecipimus, ut tres huius corporis principales terti ordinis comitivam recipiant, quam sibi non iam ex codicillis nostris, sed ex privilegio latae legis adsumant. (419 iul. 29).

CTh.14.4.10.3

Per quinque autem menses quinas in obsoniis libras carnis possessor accipiat, ne per minutias exigui ponderis amplius fraus occulta decerpat. possessores quoque, qui pro larido millenos denarios in vicenis libris solebant conferre, suariis in pretio exsolvant. (419 iul. 29).

CTh.14.4.10.4

Primiscrinii quoque tam illustris urbanae sedis quam spectabilis vicariae potestatis, nisi anno militiae finali inst833iterint, ad supplendam summam praeteritae dissimulationis artentur, ut ex propriis facultatibus debita suariae functionis exsolvant, quae neglexerunt flagitare dum militabant, privilegia etiam militiae perdituri. (419 iul. 29).

CTh.14.4.10.5

Quattuor milia sane obsoniorum, amputatis superfluis ac domus nostrae perceptionibus, diurna sublimitas tua decernat, quibus copiis populus animetur. dat. iiii kal. aug. ravennae monaxio et plinta conss. (419 iul. 29).

CTh.14.5.0. De mancipibus thermarum urbis et subvectione lignorum

CTh.14.5.1

Impp. valentinianus et valens aa. ad olybrium praefectum urbi. quidquid erga mancipes, qui thermarum exhibitionem romae curant, in exercitio compendiisque salinarum scitis priorum principum cautum est, aeterna sanctione firmamus. dat. iii non. april. treviris valentiniano et valente conss. (368? 370? apr. 3).

CTh.14.6.0. De calcis coctoribus urbis romae et constantinopolitanae

CTh.14.6.1

Imp. constantius a. ad orfitum praefectum urbi. ex omnibus praediis, quae iam dudum praestationi calcis coeperunt obnoxia adtineri, coctoribus calcis per ternas vehes singulae amphorae vini praebeantur, vecturariis vero amphora per bina milia et nungenta pondo calcis. quin etiam volumus non personas, sed ipsos fundos titulo huius praestationis adstringi. vecturarios etiam ex quattuor regionibus trecentos boves praecipimus dari. dat. viii kal. april. eusebio et hypatio conss. (359 mart. 25).

CTh.14.6.2

Impp. valentinianus et valens aa. ad symmachum praefectum urbi. oratio nostra immunitatem eorum, quos coctio calcis manet, et vecturariorum est evidenter amplexa. quaecumque igitur extraordinariorum prisca adque inveterata consuetudine huiusmodi sortis homines antea sunt adepti, nunc quoque ad leniendum opus quod sustinent publici muneris consequantur. dat. vi id. iun. naissi divo ioviano et varroniano conss. (364 iun. 8).

CTh.14.6.3

Idem aa. ad volusianum virum clarissimum vicarium. statum urbis aeternae reformare cupientes ac providere publicorum moenium dignitati iubemus, ut calcis coctoribus vectoribusque per singulas vehes singuli solidi praebeantur, ex quibus tres partes inferant possessores, quarta ex eius vini pretio sumatur, quod consuevit ex arca vinaria ministrari: illud addentes, ut non amplius quam terna milia minores vehes annuae postulentur. huius autem vehationis ita sit ratio partita, ut mille quingenta onera formis, alia sartis tectis annua deputentur, ita ut nulli iudicum seu officiorum excoquendae calcis licentia relinquatur, sub eo statuto, ut, qui in hac usurpatione fuerit, austeritatem vigoris publici ferre cogatur. hoc autem excepto a tarracinensis praestationis canone suggera, quae vetusto praeberi fari ac portus usibus more consuevit. a curialibus vero tuscis nungentarum vehum, quas inferre per singulos annos cogebantur, sarcinam sub ea condicione praecipimus amoveri, ut, si quando necessitas novi operis extiterit, id ipsum in notitiam nostram suggestionibus iudicum perferendum quid addendum vel quatenus inferendum sit, nostrae deliberationis moderamine sanciatur. ex supra dicto autem numero vehationis medietatem, quam sartis tectis iussimus deputari, separatim conveniet adscribi, ita ut praefecti urbi officium ad suam partem hanc curam pertinere cognoscat. dat. viii id. aug. mediolano valentiniano et valente aa. conss. (365 aug. [?] 6).

CTh.14.6.4

Imppp. gratianus, valentinianus et theodosius aaa. ad severum praefectum urbi. ut caementorum et calcis in urbe venerabili copiae minime derogetur, quisquis ex his quippiam sibi deferendum qualibet caelestis indulgentiae definitione contenderit, nihil prorsus accipiat, nisi quod cunctis moenibus fabricationique romanae superfluere ac redundare constiterit. dat. kal. april. antonio et syagrio conss. (382 apr. 1).

CTh.14.6.5

Impp. honorius et theodosius aa. aetio praefecto urbi. omnes fornaces per omne spatium, quod inter amphitheatrum et divi iuliani portum per litus maris extenditur, tolli praecipimus propter salubritatem urbis amplissimae et nostrarum aedium vicinitatem nec ulli in his locis coquendae calcis praeberi licentiam. dat. iiii non. octob. constantinopoli monaxio et plinta conss. (419 oct. 4).

CTh.14.7.0. De collegiatis

CTh.14.7.1 [=brev.14.1.1]

Impp. arcad. et honor. aa. graccho consulari campaniae. de retrahendis collegiis vel collegiatis iudices competentes dabunt operam, ut ad proprias civitates eos, qui longius abierunt, retrahi iubeant cum omnibus, quae eorum erunt, ne desiderio rerum suarum loco originario non valeant attineri. de quorum agnatione haec forma servabitur, ut, ubi non est aequale coniugium, matrem sequatur agnatio, ubi vero iustum erit, patri cedat ingenua successio. dat. ix. kal. iun. mediolano, caesario et attico coss.

interpretatio. collegiati, si de civitatibus suis forte discesserint, ad civitatis suae officia cum rebus suis vel ad loca, unde discesserunt, revocentur: de quorum filiis haec servanda condicio* est, ut, si de colona vel ancilla nascuntur, matrem sequatur agnatio; si vero de ingenua et collegiato, collegiati nascuntur

CTh.14.7.2 [3 h.]

Impp. honorius et theodosius aa. liberio praefecto praetorio. post alia: collegiatos et vitutiarios et nemesiacos signiferos cantabrarios et singularum urbium corporatos simili forma praecipimus revocari. quibus etiam supplicandi inhibendam facultatem esse censuimus, ne originem, quod fieri non potest, commutare ulla iussio videatur ac si forte per sacram auctoritatem cognoscitur aliqui liberatus, cessante beneficio ad originem revertatur. dat. vi kal. decemb. ravennae honorio viiii et theodosio v aa. conss. (412 [409?] nov. 26).

CTh.14.8.0. De centonariis et dendroforis

CTh.14.8.1

Imp. constantinus a. ad evagrium praefectum praetorio. ad omnes iudices litteras dare tuam convenit gravitatem, ut, in quibuscumque oppidis dendrofori fuerint, centonariorum adque fabrorum collegiis adnectantur, quoniam haec corpora frequentia hominum multiplicari expediet. dat. xiiii kal. octob. naisso, accepta viii id. novemb. constantino a. iiii et licinio iiii conss. (315 sept. 18).

CTh.14.8.2

Imppp. valentinianus, valens et gratianus aaa. ad olybrium praefectum urbi. ne quis ex centonariorum corpore subtrahere se possit ad curiam, poena eidem corpori proposita, nisi ilico de eius abscessu querellam deposuerit. dat. v kal. feb. treviris valentiniano n. p. et victore v. c. conss. (369 ian. 28).

CTh.14.9.0. De studiis liberalibus urbis romae et constantinopolitanae

CTh.14.9.1

Imppp. valentinianus, valens et gratianus aaa. ad olybrium praefectum urbi. quicumque ad urbem discendi cupiditate veniunt, primitus ad magistrum census provincialium iudicum, a quibus copia est danda veniendi, eiusmodi litteras perferant, ut oppida hominum et natales et merita expressa teneantur; deinde ut in primo statim profiteantur introitu, quibus potissimum studiis operam navare proponant; tertio ut hospitia eorum sollicite censualium norit officium, quo ei rei impertiant curam, quam se adseruerint expetisse. idem inmineant censuales, ut singuli eorum tales se in conventibus praebeant, quales esse debent, qui turpem inhonestamque famam et consociationes, quas proximas putamus esse criminibus, aestiment fugiendas neve spectacula frequentius adeant aut adpetant vulgo intempestiva convivia. quin etiam tribuimus potestatem, ut, si quis de his non ita in urbe se gesserit, quemadmodum liberalium rerum dignitas poscat, publice verberibus adfectus statimque navigio superpositus abiciatur urbe domumque redeat. his sane, qui sedulo operam professionibus navant, usque ad vicesimum aetatis suae annum romae liceat commorari. post id vero tempus qui neglexerit sponte remeare, sollicitudine praefecturae etiam impurius ad patriam revertatur. verum ne haec perfunctorie fortasse curentur, praecelsa sinceritas tua officium censuale commoneat, ut per singulos menses, qui vel unde veniant quive sint pro ratione temporis ad africam vel ad ceteras provincias remittendi, brevibus comprehendat, his dumtaxat exceptis, qui corporatorum sunt oneribus adiuncti. similes autem breves etiam ad scrinia mansuetudinis nostrae annis singulis dirigantur, quo meritis singulorum institutionibusque compertis utrum quandoque nobis sint necessarii, iudicemus. dat. iiii id. mart. treviris valentiniano et valente iii aa. conss. (370 mart. 12).

CTh.14.9.2

Idem aaa. clearcho praefecto urbi. antiquarios ad bibliothecae codices componendos vel pro vetustate reparandos quattuor graecos et tres latinos scribendi peritos legi iubemus. quibus de caducis popularibus, et ipsi enim videntur e populo, competentes impertiantur annonae: ad eiusdem bibliothecae custodiam condicionalibus et requirendis et protinus adponendis. dat. viii id. mai. modesto et arinthaeo conss. (372 mai. 8).

CTh.14.9.3pr.

Imp. theodosius a. et valentinianus caes. universos, qui usurpantes sibi nomina magistrorum in publicis magistrationibus cellulisque collectos undecumque discipulos circumferre consuerunt, ab ostentatione vulgari praecipimus amoveri, ita ut, si qui eorum post emissos divinae sanctionis adfatus quae prohibemus adque damnamus iterum forte temptaverit, non solum eius quam meretur infamiae notam subeat, verum etiam pellendum se ex ipsa ubi versatur illicite urbe cognoscat. illos vero, qui intra plurimorum domus eadem exercere privatim studia consuerunt, si ipsis tantummodo discipulis vacare maluerint, quos intra parietes domesticos docent, nulla huiusmodi interminatione prohibemus. sin autem ex eorum numero fuerint, qui videntur intra capitolii auditorium constituti, ii omnibus modis privatarum aedium studia sibi interdicta esse cognoscant scituri, quod, si adversum caelestia statuta facientes fuerint deprehensi, nihil penitus ex illis privilegiis consequentur, quae his, qui in capitolio tantum docere praecepti sunt, merito deferuntur. (425 febr. 27).

CTh.14.9.3.1

Habeat igitur auditorium specialiter nostrum in his primum, quos romanae eloquentiae doctrina commendat, oratores quidem tres numero, decem vero grammaticos; in his etiam, qui facundia graecitatis pollere noscuntur, quinque numero sint sofistae et grammatici aeque decem. et quoniam non his artibus tantum adulescentiam gloriosam optamus institui, profundioris quoque scientiae adque doctrinae memoratis magistris sociamus auctores. unum igitur adiungi ceteris volumus, qui philosofiae arcana rimetur, duo quoque, qui iuris ac legum formulas pandant, ita ut unicuique loca specialiter deputata adsignari faciat tua sublimitas, ne discipuli sibi invicem possint obstrepere vel magistri neve linguarum confusio permixta vel vocum aures quorundam aut mentes a studio litterarum avertat. dat. iii kal. mart. constantinopoli theodosio a. xi et valentiniano conss. (425 febr. 27).

CTh.14.10.0. De habitu, quo uti oportet intra urbem

CTh.14.10.1pr.

Imppp. gratianus, valentinianus et theodosius aaa. ad pancratium praefectum urbi. sine exceptione temporis matutini, dumtaxat intra moenia constitutus, nullus senatorum habitum sibi vindicet militarem, sed chlamydis terrore deposito quieta coloborum ac paenularum induat vestimenta. cum autem vel conventus ordinis candidati coeperit agitari vel negotium eius sub publica iudicis sessione cognosci, togatum eundem interesse mandamus. (382 ian. 12).

CTh.14.10.1.1

Officiales quoque, per quos statuta complentur ac necessaria peraguntur, uti quidem paenulis iubemus, verum interiorem vestem ad modum cingulis observare, ita tamen, ut discoloribus quoque palliis pectora contegentes condicionis suae necessitatem ex huiuscemodi agnitione testentur. (382 ian. 12).

CTh.14.10.1.2

Servos sane omnium, quorum tamen dominos sollicitudine constat militiae non teneri, aut byrris uti permittimus aut cucullis. (382 ian. 12).

CTh.14.10.1.3

Si quis de senatoribus statuta neglexerit, proprii auctoritate honoris exutus ingrediendi senatum iam non habeat potestatem officiales vero, sed et servi, qui pudoris non possunt dispendium sustinere, exilii poenam subire iubeantur: officio censuali viginti librarum auri non inmerito dispendiis subiugando, si culpam usurpationis huiusce aut dissimulatione subpresserit aut accepta pretii mercede subtraxerit. dat. prid. id. ianuar. constantinopoli antonio et syagrio conss. (382 ian. 12).

CTh.14.10.2

Impp. arcadius et honorius aa. ad populum. usum tzangarum adque bracarum intra urbem venerabilem nemini liceat usurpare. si quis autem contra hanc sanctionem venire temptaverit, sententia viri illustris praefecti spoliatum eum omnibus facultatibus tradi in perpetuum exilium praecipimus. et cetera. dat. proposita romae in foro divi traiani caesario et attico conss. (397 apr. 7?).

CTh.14.10.3

Idem aa. flaviano praefecto urbi. intra urbem romam nemo vel bracis vel tzangis utatur. quod si quisquam post praeceptum nostrae clementiae in hac contumacia perduraverit, prout condicio siverit, cohercitus sacra urbe pelletur. et cetera. dat. viii id. iun. brixiae. theodoro v. c. cons. (399 iun. 6).

CTh.14.10.4

Impp. honorius et theodosius aa. probiano praefecto urbi. maiores crines, indumenta pellium etiam in servis intra urbem sacratissimam praecipimus inhiberi, nec quisquam posthac impune hunc habitum poterit usurpare. si quis autem neglexerit nostrae sanctionis vigorem, ingenuus legis laqueos non evitet, servus operi publico vindicabitur. quod innotescere non solum intra urbem protinus, verum etiam in vicinis regionibus non licere sancimus. dat. prid. id. dec. ravennae d. n. theodosio a. vii et palladio conss. (416 dec. 12).

CTh.14.11.0. Quibus militantibus ad urbem non liceat accedere

CTh.14.11.1

Impp. arcadius et honorius aa. ad populum. post alia: agentes in rebus adque palatinos aliosque milites inferioris militiae exceptis his, quibus negotium aliquod aut munus fuerit iniunctum, omni penitus arceri urbis venerabilis iubemus accessu, ita ut, si quis nostri edicti auctoritatem violare temptaverit, deportatione plectatur. et cetera. dat. et proposita romae vii id. april. caesario et attico conss. (397 apr. 7).

CTh.14.12.0. De honoratorum vehiculis

CTh.14.12.1

Imppp. gratianus, valentinianus et theodosius aaa. nebridio praefecto urbi. omnes honorati seu civilium seu militarium dignitatum vehiculis dignitatis suae, id est carrucis biiugis, intra urbem sacratissimi nominis semper utantur. dat. iii kal. feb. constantinopoli honorio n. p. et evodio conss. (386 ian. 30).

CTh.14.13.0. De iure italico urbis constantinopolitanae

CTh.14.13.1

Imppp. valentinianus, valens et gratianus aaa. ad clearchum praefectum urbis constantinopolitanae. italici iuris auxilium arbitra aequitate renovamus. concessi igitur gratia beneficii publicis actibus intimetur et incisa tabulis debita sollemnitate permaneat. dat. prid. non. aug. hieropoli valentiniano et valente aa. conss. (370? 373? aug. 4).

CTh.14.14.0. De campo martio urbis romae

CTh.14.14.1

Impp. arcadius et honorius aa. ad populum. post alia: eos, qui in campo martio casas seu tuguria collocare temptaverint, sententia viri illustris praefecti spoliatos omnibus facultatibus tradi in perpetuum exilio praecipimus. et cetera. dat. et proposita romae in foro divi traiani caesario et attico conss. (397 apr. 7?).

CTh.14.15.0. De canone frumentario urbis romae

CTh.14.15.1

Impp. valentinianus et valens aa. ad symmachum praefectum urbi. ne pessimus panis populi romani usibus ministretur, sola ducentena milia modiorum frumenti integri adque intemerati iuxta priscum morem mensores et caudicarii levioribus pretiis pistoribus venundare cogantur. dat. vi id. iul. naisso divo ioviano et varroniano conss. (364 iul. 10).

CTh.14.15.2

Imppp. valentinianus, valens et gratianus aaa. ad iulianum praefectum annonae. nautici aput curatorum vel magistratuum acta fateantur incorruptas sese species suscepisse eorumque, aput quos deponitur ista testatio, praesens aspectus probet nihil in his esse vitii. quod eo tempore, quo ad sacrae urbis portum pervenit, praefecturam iugiter observare praeceptum est. dat. xviii kal. iul. remis gratiano a. i et dagalaifo conss. (366 iun. 14).

CTh.14.15.3pr.

Impp. arcadius et honorius aa. ad senatum. certum habetis, patres conscripti, quantum curarum impendimus pro vestris ac populi commodis; ideoque hac lege sancimus, ut, si quid frumenti vel olei urbicarii canonis remissione indultum est, speciali beneficio contra publicum commodum elicita non valeant. (397 apr. 15).

CTh.14.15.3.1

Urbani etiam usus frumenta si quando vel fortuna vel ratio in africae coegerit residere litoribus, adtingere nullus audeat aut mutatis directoriis quoquam praeter sacram urbem praescripti ullius innovatione transmittere. et cetera. dat. xvii kal. mai. mediolano caesario et attico conss. (397 apr. 15).

CTh.14.15.4pr.

Idem aa. theodoro praefecto praetorio. improborum petitiones, qui impudentius ausi sunt postulare pensiones aquae molarum, quae urbi venerabili annonas abundantius praestitissent, quinque librarum auri multa infligat, nisi ab hac petendi importunitate discedant. illos etiam, qui potestati praefecturae annonariae praesunt, et apparitores, qui isdem ministeriis obsecundant, par multa retineat, si cuiusquam improbissimi hominis consenserint vel paruerint voluntati. (398 apr. 12).

CTh.14.15.4.1

Simili autem poena teneantur, qui aliquid ex his horreis cellulisve, quae intra urbem romam adque in portu constitutae pistorio iure retinentur, sibimet tamquam possessione privata ausi fuerint vindicare. dat. prid. id. april. mediolano honorio a. iiii et eutychiano conss. (398 apr. 12).

CTh.14.15.5

Idem aa. messalae praefecto praetorio. neminem patimur in mutando canone urbis romae nostrae clementiae beneficium postulare. ideoque evidenti praeceptione consulentes non solum ea rescripta, quae quoquomodo potuerint impetrari, suscipi non sinimus, verum etiam illa vacuari, quae praeteritum quoque tempus elicuit. ac ne ullus subreptioni patescat aditus, eos, qui posthac commutari sibi canonem in fraudem venerandae urbis poposcerint, ad duplum retinendos esse decernimus, ut vetus dispositio suum robur obtineat. dat. prid. non septemb. altino theodoro v. c. cons. (399 sept. 4).

CTh.14.15.6

Idem aa. messalae praefecto praetorio. ne deinde facinora impunitate coalescant, evidenti praeceptione decernimus, ut a vicario ceterisque iudicibus, quos ex urbicario canone quidquam usurpasse constiterit, in quadruplum praesumpta poscantur, ita ut duplum iudices, duplum eorum officia cogantur inferre. deinceps autem nisi ab huiusmodi scelere temperetur, iudices deportationis poena retinendos, primates officiorum capitali supplicio subiugandos perpeti auctoritate sancimus. et cetera. dat. iiii kal. octob. altino theodoro v. c. cons. (399 sept. 28).

CTh.14.16.0. De frumento urbis constantinopolitanae

CTh.14.16.1

Impp. honorius et theodosius aa. monaxio praefecto urbi. quingentas auri libras partim a tui culminis indagine, partim amplissimi senatus grata illatione collectas ad prohibendam famem ita huic titulo consecramus, ut, quidquid super frumentaria comparatione titulus emptionis invenerit, in tribunalibus praefecturae urbanae sub gestorum testificatione pandatur, ut summa collecta et incrementa, quae venundato tritico accesserint, patrum insinuetur examini, omni adeo, quae contra hunc titulum temptabitur, usurpatione cessante, ut nec tuae sedis auctoritate nec cuiquam liceat cuiuscumque vel honestae occasionis obtentu haec perpensa ullo pacto convellere, ne non modo tot sententiarum violare munimina videatur, sed et familiari dispendio quatiatur et id, quod ex hac auri quantitate decerpserit, geminatum arcae frumentariae inferat. si quis autem privatim ad usus proprios intra urbem amplissimam frumentum comparare voluerit, habeat licentiam coemendi. dat. vi kal. mai. constantinopoli honorio viii et theodosio iii aa. conss. (409 apr. 26).

CTh.14.16.2

Idem aa. urso praefecto urbi. nulli, ne divinae quidem domui nostrae frumentum de horreis publicis pro annona penitus praebeatur, sed integer canon mancipibus consignetur, annona in pane cocto domibus exhibenda. ita enim debet canon ab inclytae memoriae constantino praestitutus nec non a divo pietatis meae avo auctus expendi, quoniam crescit inopia, si frumento, quod pro annona tribuitur, ad usus alios deputato cogentur sibi de publico emere quae aliis vendere potuissent. dat. x kal. aug. constantinopoli theodosio a. vii et palladio v. c. conss. (416 iul. 23).

CTh.14.16.3

Impp. theodosius et valentinianus aa. leontio praefecto urbi. sescentarum undecim auri librarum quantitas ad coemptionem frumentariam sit perpetuo dedicata, nec liceat cuiquam postea administratione urbicariae potestatis percepta aliquid ex memorata summa minuere vel ad quoscumque alios usus convertere sed sub gestorum testificatione certum fiat et quod mancipibus mutui nomine datum est et quod ab isdem sit excepta omni concussione solvendum. eum autem, qui hanc formam ausus fuerit inquinare, quantitatem, in qua suam calliditatem exercuerit, in duplum redhibere iubemus, et quidquid ex praedicta ratione adcreverit, ad cumulum memoratae auri quantitatis et frumentarii tituli fomitem redundare legisque huius tenorem aeneis tabulis incidi. dat. v kal. decemb. constantinopoli ariobindo et aspare conss. (434 nov. 26).

CTh.14.17.0. De annonis civicis et pane gradili

CTh.14.17.1

Impp. valentinianus et valens aa. iovio praefecto urbi. quia comperimus nonnullos venditis aedibus panes earum penes se retinere, nulli liceat, ut aedes sequantur annonae. sane si qui ex huiusmodi titulo caduci sint panes, fisci viribus vindicentur. dat. vi kal. april. divo ioviano et varroniano conss. (364 mart. 27).

CTh.14.17.2

Idem aa. ad mamertinum praefectum praetorio. panis gradilis in alium gradum translatio inhibeatur et cognoscat officium praefecti annonae severissima sibi inminere supplicia, si ulterius translationem per gradus permiserit commutari. dat. v id. decemb. naissi divo ioviano et varroniano conss. (364 dec. [?] 9).

CTh.14.17.3

Idem aa. ad maximum praefectum annonae. universi panem gradilem de gradibus adipiscantur neque cuiquam haec aut deferatur gratia aut imponatur iniuria, ut de pistrino accipiat. omni igitur studio hoc curabit officium sinceritatis tuae, ut, quaecumque illa sunt, quae diurna pistores alimentis popularibus praebent, omnia ea gradibus distribuant, non ex officinarum conductoribus promant. proposita pridie non. april. valentiniano et valente aa. conss. (368 apr. 4).

CTh.14.17.4

Idem aa. ad mamertinum praefectum praetorio. ne quid super gradili pane fraudis oriretur, iussimus omne illud, quod populo penditur, palam in gradibus, non clam a pistoribus ministrari. proposita prid. non. april. valentiniano et valente aa. conss. (368 apr. 4).

CTh.14.17.5

Idem aaa. ad populum. civis romanus, qui in viginti panibus sordidis, qui nunc dicuntur ardinienses, quinquaginta uncias comparabat, triginta et sex uncias in bucellis sex mundis sine pretio consequatur, ita ut ius in his nullus habeat officialis, nullus servus, nemo qui aedificiorum percipiat panem. quorum si quis se aliqua ratione fortasse inmerserit, adquisito pane privabitur proprium nihilo minus perditurus aut dabit pro condicione supplicium, eo, qui commissam detulit fraudem, et emptoris panes et venditoris habituro. popularibus enim, quibus non est aliunde solacium, quibus idem panis hodieque distrahitur, et eorum successoribus clementia nostra deputavit in quo nunc emitur loco propriis gradibus erogandum. quibus titulus figendus est aeneus, in quem et panis modus et percipientis nomen debebit incidi. et si ad tantum alicuius temeritas eruperit, ut aut per se aut per aliquem suorum sibi quolibet modo ius panis istius adque aereae tabulae suum voluerit nomen inserere, supra dictis condicionibus subiacebit. proposita romae kal. aug. valentiniano n. p. et victore conss. (369 aug. 1).

CTh.14.17.6

Idem aaa. ad maximum praefectum annonae. si quis umquam actor procurator servusve senatoris usurpatum gradilem, gratificante aut vendente scriba vel etiam consentiente, perceperit, subiciatur eculei quaestioni. ac si eundem patuerit temeritate propria adque ignorante domino de perceptione panis illicite transegisse, ipse sub vinculis pistrino quod fraudabat inserviat si vero senatoris culpa id fuisse constiterit, domus eius fisci viribus adgregetur. ex aliis quoque, si quis rei familiaris facultatibus praeditus designatum crimen admiserit, cum his quae habet pistrini exercitio subiugetur. si quis etiam pauperrimus rerum erit, cogetur exhibere operariam servitutem. in scribas vero, quos constiterit nefas vetitum perpetrasse, vindex legum gladius exeratur. dat. xiiii kal. april. treviris valentiniano et valente conss. (370 mart. 19).

CTh.14.17.7

Idem aaa. clearcho praefecto urbi. vendendi de reliquo popularibus annonam consuetudinem derogamus, ut huiusmodi celebrata venditio omni careat firmitate. verum si quis urbe abeundum esse crediderit, panes ceteraque quae percipit in horreorum conditis reserventur, poscentibus iuxta legem eiusdem ordinis hominibus deferenda. quin lege proposita etiam quae fuerint fortasse distractae, ad originem propriam iusque revocamus, si quidem iustum est, ut in perpetuum suum quisque detineat et per succedaneas vices proprius ordo teneat, ut palatinus palatini, militis vero militaris, popularem annonam popularis exposcat nec alter alterius sibi expetens diversorum ordinum valeat miscere rationem. dat. viii kal. mai. modesto et arinthaeo conss. (372 apr. 24 [immo mai. 8]).

CTh.14.17.8

Imppp. gratianus, valentinianus et theodosius aaa. restuto praefecto urbi. si quis ex schola defecerit mortemque obierit, non ab alio corpore vacantes flagitentur annonae, sed ipsis scholis cessurae dividendaeque perdurent. dat. prid. id. iul. thessalonicae gratiano v et theodosio i aa. conss. (380 iul. 14).

CTh.14.17.9

Imppp. valentinianus, theodosius et arcadius aaa. proculo praefecto urbis constantinopolitanae. annonas civicas in urbe constantinopolitana scholae scutariorum et scutariorum clibanariorum divi constantini adseruntur liberalitate meruisse. quarum ex magna parte inminutio facta perhibetur, quod alii eas putarunt tamquam proprias distrahendas, alii per successionum gradus hereditarium ius venire. sublimis igitur eminentia tua omnes eas, quas quoquomodo alienatas fuisse reppererit, his scholis, quibus donatae ac deputatae sunt, amota omni reluctatione restituet, habere enim debent earum perpetuitatem, quarum meruere compendium. dat. vii kal. aug. romae timasio et promoto conss. (389 iul. 26).

CTh.14.17.10

Imppp. theodosius, arcadius et honorius aaa. proculo praefecto urbi. annonas civicas non tam titulis dignitatum, quam singulorum viritim meritis adtributas ivi constantini liberalitate sat claruit. ideoque nihil ex his scholarum nomine vindicetur, sed pro uniuscuiusque merito quae sunt concessa serventur, ut, quicumque perceptarum annonarum emolumenta vel in heredes proprios iure sanguinis transfuderunt vel in extraneos distractionis titulo transscripserunt, maneat quod gestum est vel hereditatis merito vel venditionis arbitrio. dat. vii kal. iul. constantinopoli arcadio a. ii et rufino conss. (392 iun. 25).

CTh.14.17.11

Idem aaa. aureliano praefecto urbi. annonas civicas ad hoc militaribus viris beneficium divale distribuit, ut qui emolumenta perciperent, aedificandi studio magnitudinem urbis augerent. ac proinde, ne frustra deputatis commodis perfruantur quorum ope incrementa moenium non iuvantur, id super his annonis, quae scholis erogari solent, servandum est, ut ii tantum, qui domus habent, deputata suo nomini commoda consequantur, aliae retractatae adque in suspenso habitae nostrae munificentiae reserventur, his tantummodo, etiam si liberalitas sacra extiterit, deputandae, qui ex numero militarium virorum annonas pro extructis domibus beneficio nostrae adnotationis acceperint, ut et parata sui munera habeat largitas et superfluis necessitas non gravetur. dat. vi kal. mai. constantinopoli d. n. theodosio a. iii et abundantio conss. (393 apr. 26).

CTh.14.17.12

Idem aaa. aureliano praefecto urbi. si quae speciatim annonae domus in hac urbe habentibus divae memoriae constantini vel constantii largitate concessae sunt adque in heredes proprios iure successionis vel in extraneos venditionis titulo transierunt, erogatione solita ministrentur, et si quae scholarum nomine defenduntur. illustris igitur magnificentia tua et hanc super his formam custodire debebit. si quae vero ad arbitrium proculi datae nobis nescientibus erogantur, et retrahere eas ilico et revocare debebit. dat. xii kal. decemb. constantinopoli theodosio a. iii et abundantio conss. (393 nov. 20).

CTh.14.17.13

Impp. arcadius et honorius aa. africano praefecto urbi. eos, quos in hac urbe domos non habere cognoveris, annonis novis quolibet titulo acceptis privari tua magnitudo praecipiet nec ullis emolumentis civicis adiuvari. neque enim fas est, ut qui urbis adfectum domus indicio monstrare neglexerint, eius commodis perfruantur. sin vero quisquam est, qui se aedes spondeat habiturum, nisi intra sex menses instruxerit, nequaquam publicarum annonarum modum potiatur. proposita iii kal. aug. constantinopoli arcadio iiii et honorio iii aa. conss. (396 iul. 30).

CTh.14.17.14

Idem aaa. clearcho praefecto urbi. inclytae recordationis pater clementiae nostrae post solitum canonem, qui urbi augustissimi nominis praebetur, certum annonarum modum de novo canone addendum esse constituit. et quia nonnullos absque liberalitate nostra ex ea quantitate annonas consequi compertum est, magnificentia tua nulli ex eo modo annonam faciat ministrari nisi qui vel liberalitate nostra perceperit vel super his, quae ab illustri sede magnitudinis tuae ei sunt deputatae, triumphalis dexterae nostrae confirmationem est consecutus. dat. xi kal. april. constantinopoli arcadio v et honorio v aa. conss. (402 mart. 22).

CTh.14.17.15

Idem aaa. monaxio praefecto urbi. dispositionem magnificentiae tuae de olei mensura firmam manere praecipimus, ut decem et octo per singulos sextarios scripulis ad certorum ordinum commodum moderante dispositione tua retentis ac distributis sextarius olei ad viginti unam semis unciam redigatur. quam mensuram certum designatis suggestione corporibus solacium constitutam nullius posthac fraude credimus adtemptandam. dat. xv kal. mar. basso et philippo conss. (408 febr. 15).

CTh.14.18.0. De mendicantibus non invalidis

CTh.14.18.1

Imppp. gratianus, valentinianus et theodosius aaa. ad severum praefectum urbi. cunctis adfatim. quos in publicum quaestum incepta mendicitas vocabit, inspectis exploretur in singulis et integritas corporum et robur annorum, adque ea inertibus et absque ulla debilitate miserandis necessitas inferatur, ut eorum quidem, quos tenet condicio servilis, proditor studiosus et diligens dominium consequatur, eorum vero, quos natalium sola libertas prosequatur, colonatu perpetuo fulciatur quisquis huiusmodi lenitudinem prodiderit ac probaverit, salva dominis actione in eos, qui vel latebram forte fugitivis vel mendicitatis subeundae consilium praestiterunt. dat. xii kal. iul. patavi antonio et syagrio conss. (382 iun. 20).

CTh.14.19.0. De pretio panis ostiensis

CTh.14.19.1

Impp. arcadius et honorius aa. theodoro praefecto praetorio. panem ostiensem adque fiscalem uno nummo distrahi volumus. sancimus autem, ut nullus per sacrum rescriptum audeat pretium ampliare; qui si obtulerit supplicationem, duarum librarum auri multa ferietur. dat. prid. id. april. mediolano honorio a. iiii et eutychiano conss. (398 apr. 12).

CTh.14.20.0. De pretio piscis

CTh.14.20.1

Impp. honorius et theodosius aa. anthemio praefecto praetorio. qui ministerii nostri causa exhibendi piscis cura vel sollicitudine tenentur, plus a se exigi quam quo emere potuerint, protestantur, si quidem in tricenis libris sibi solidus ministretur et multo disparem quantitatem vix aegreque valeant comparare. ideoque per vicena pondo piscis, primae scilicet qualitatis, memoratis solidus ministretur. spatangium sane in primae qualitatis piscem imputari praecipimus, quod decem librarum pondus sua magnitudine minime excedere videtur. dat. xvii kal. mai. lucio v. c. cons. (413 apr. 15).

CTh.14.21.0. De nautis tiberinis

CTh.14.21.1

Impp. valentinianus et valens aa. ad symmachum praefectum urbi. qui navem tiberinam habere fuerit ostensus, onus rei publicae necessarium agnoscat. quaecumque igitur navigia in alveo tiberis inveniuntur, competentibus et solitis obsequiis mancipentur, ita ut nullius dignitas aut privilegium ab hoc officio vindicetur. dat. viii id. octob. altino divo ioviano et varroniano conss. (364 oct. 8).

CTh.14.22.0. De saccariis portus romae

CTh.14.22.1

Impp. valentinianus et valens aa. ad symmachum praefectum urbi. omnia, quaecumque advexerint privati ad portum urbis aeternae, per ipsos saccarios vel eos, qui se huic corpori permiscere desiderant, magnificentia tua iubeat comportari et pro temporum varietate mercedes considerata iusta aestimatione taxari, ita ut, si claruerit aliquem privatum per suos adventicias species comportare, quinta pars eius speciei fisco lucrativa vindicetur. dat. vi id. iun. naisso divo ioviano et varroniano conss. (364 iun. 8).

CTh.14.23.0. De patronis horreorum portuensium

CTh.14.23.1

Impp. arcadius et honorius aa. messalae praefecto praetorio. patronos horreorum portuensium singulis tantum annis praeesse decernimus omni subreptione cessante, ne umquam veteris erogationis ratiocinium novis commeatibus inseratur. nec ultra tempus constitutum quispiam sibi administrationem horreorum portuensium fraudulenter usurpet, nisi prioris anni ratiocinio ante deducto in alium annum quasi fidelis iam et idoneus subrogetur. dat. vi kal. april. altino stilichone et aureliano conss. (400 mart. 27).

CTh.14.24.0. De mensis oleariis

CTh.14.24.1

Imp. constantinus a. ad cerealem praefectum annonae. mensae oleariae, quae ita caducae fuerint, ut nullus possit adserere dominium, vicenis follibus per officium distrahantur. sed si quis mensam oleariam praedictis follibus emptam cariore pretio vendiderit, ferreis vinculis constrictus ad illyricum transmittatur poenam congruam luiturus. si quis autem mensam oleariam in dominio suo retinens vivendi cursum impleverit, eandem mensam ad successores proprios cum reliquis suis rebus hereditario poterit iure transmittere. dat. kal. mar. nicomediae, accepta viii id. april. romae ianuarino et iusto conss. (328 mart. 1).

CTh.14.25.0. De frumento carthaginiensi

CTh.14.25.1

Imp. constantinus a. ad catullinum proconsulem africae. si quis corpora aeneo frumento obnoxia distraxerit, ab omni interpellatione liber sit, quamvis alia corpora possederit sive coemerit libera ab aenei frumenti inquietudine. comparatores enim rerum obnoxiarum teneri oportet pro modo eius rei, quam adepti sunt, etiamsi extra liberalitatem rem fuerint consecuti. sed quia plerique ex magistratibus aenei frumenti pensitationi obnoxii vel ipsi sibi, dum administrant, alios subrogarunt vel redempti pro aliis alios creaverunt, rescissis subrogationibus ad eiusdem aenei frumenti pensitationem teneantur. illos enim solos ex subrogatis perseverare oportet, quos constiterit idoneos esse facultatibus et minus idoneorum loco non a redemptis magistratibus subrogatos. dat. prid. id. decemb. sirmi constantino a. iiii et licinio iiii conss. (315 [?] dec. 12).

CTh.14.26.0. De frumento alexandrino

CTh.14.26.1

Impp. honorius et theodosius aa. anthemio praefecto praetorio. in aestimatione frumenti, quod ad civitatem alexandrinam convehitur, quidquid de crithologiae et zygostasii munere et pro naucleorum tuenda substantia eminentia tua disposuit, roboramus. adque ut curialibus praedae auferatur occasio, iubemus eos ad huiusmodi sollicitudinem adfectandam numquam accedere, sed designata officia tuis provisionibus examinata sollicitudinem praedictam implere. dat. v kal. feb. constantinopoli honorio viiii et theodosio v aa. conss. (412 ian. 28).

CTh.14.26.2

Impp. theodosius et valentinianus aa. isidoro praefecto praetorio. diurnos centum et decem modios alimoniis alexandrinae civitatis addi decernimus, ut nemo privetur eo quod nunc usque percepit et perissochoregiae nomen penitus amputetur et tesserae designentur et nostrae pietatis nomine censeantur. dat. prid. non. iun. constantinopoli isidoro et senatore conss. (436 iun. 4).

CTh.14.27.0. De alexandrinae plebis primatibus

CTh.14.27.1

Impp. arcadius et honorius aa. gennadio praefecto augustali. archigerontes et dioecetae ergasiotanorum numero deligantur, quod officium tuum sollicite observet excubiis. dat. non. febr. constantinopoli, proposita alexandriae eutycheo arcadio iiii et honorio iii aa. conss. (396 febr. 5).

CTh.14.27.2

Impp. dd. nn. theodosius et valentinianus aa. isidoro praefecto praetorio. corporatos civitatis alexandrinae repurgandi fluminis onere liberamus et pro tenore et dispositione tua quadringentos solidos ex dinummio vectigali memoratae civitatis praecommodari decernimus, ita ut ex titulo navium omnibus modis repensentur. dat. prid. non. iun. constantinopoli isidoro et senatore conss. (436 iun. 4).

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CTh.15.1.1

Imp. constantinus a. ad flavianum proconsulem africae. nemo propriis ornamentis esse privandas existimet civitates: fas si quidem non est acceptum a veteribus decus perdere civitatem veluti ad urbis alterius moenia transferendum. dat. iiii non. feb. mediolano, accepta viii id. iul. constantino a. et caes. conss. (.... [357] febr. 2).

CTh.15.1.2

Idem a. menandro. propter neglegentiam iudicum, qui imperialia praecepta differunt, ad diversas provincias diversos misimus, qui ad scientiam nostram referant, quae vel diligentia promota viderint vel desidia corrupta culpaverint. monendi autem iudices sunt, qui instaurare publica opera debent, ut de effectis eis potius quam inchoatis ad nostram scientiam referant, nisi forte iusta ratione petendum sit aliquos, si forte defuerint, impensarum titulos provideri. de rebus autem praecipuis maximisque, non de quibuscumque vilissimis nostrum debent interpellare consilium. dat. iii id. april. sirmi crispo ii et constantino ii cc. conss. (321 apr. 11).

CTh.15.1.3

Idem a. secundo praefecto praetorio. provinciarum iudices commoneri praecipimus, ut nihil se novi operis ordinare ante debere cognoscant, quam ea compleverint, quae a decessoribus inchoata sunt, exceptis dumtaxat templorum aedificationibus. dat. iii kal. iul. constantino a. vii et constantio c. conss. (326 [362] iun. 29).

CTh.15.1.4

Idem a. have, felix, carissime nobis. omnis intra centum pedes vicinitas, quantum ad horrea pertinet, arceatur ac si quid constructum fuerit, diruatur, quoniam experimentis nuperrimis palam factum est aedificiorum, quae horreis adhaerebant, incendiis fiscales copias laborasse. quod si quis aedificandi amore publica damna neglexerit, non solum quod construxit, sed omnes res eius et quidquid in suo iure habuit, fisco adiudicari praecipimus. dat. xi kal. aug. sirmio constantino a. iiii et constantio c. conss. (326 iul. 22).

CTh.15.1.5

Impp. constantius et constans aa. have, catulline, karissime nobis. plurimi inmunitates operum publicorum concessione iudicum adepti sunt. itaque omnes iubemus inquiri, ut eorum nomina adque etiam privatas indulgentias lenitudo nostra cognoscat. et infra: iam nunc tamen iussimus, ut adversus fas elicitas inmunitates per detrimenta comperissent et in lucro habere desistant. in posterum aditus similia cupientibus obstruatur. dat. vi kal. aug. sirmi urso et polemio conss. (338 iul. 27).

CTh.15.1.6

Idem aa. ad marcellinum comitem orientis. quae operibus publicis impensa constiterit, accepto ferri oportere cognoscas. dat. v non. octob. constantinopoli limenio et catullino conss. (349 oct. 3).

CTh.15.1.7

Idem aa. ad senatum. quoniam diversi iudices nonnulla opera in quibusdam aestimant urbibus extruenda, ad huiusmodi necessitatem senatorum substantia non vocetur. eos quoque senatores, quibus per diversas provincias fuerit sollicitudo commissa, fretos sanctione nostra huiuscemodi temptamentis decet constanter obsistere, ne senatoriae facultates harum rerum contemplatione vexentur. dat. v non. mai. tauro et florentio conss. (361 mai. 3).

CTh.15.1.8

Idem a. ecdicio praefecto aegypti. oportuit praetoria iudicum et domos iudiciarias publico iuri adque usui vindicari. sed quia salubris nostra dispositio dilata est, nunc saltem tradatur effectui. et cetera. proposita iiii non. decemb. antiochiae mamertino et nevitta conss. (362 dec. 2).

CTh.15.1.9 [=brev.15.1.1]

Imp. iulianus a. ecdicio pf. aegypti. post alia: comperimus, super ergasteria publica, quae ad ius pertinent civitatis, plerosque sibi domos exstruxisse. praecipimus ergo, eos inconcusso iure, quae aedificaverunt, possidere. pp. iv. non. dec. antiochiae, mamertino et nevitta coss.

interpretatio. si quis in civitate consistens in locis publicis sibi domos forte construxerit, eas sine inquietudine aliqua possideat

CTh.15.1.10

Idem a. ad rufinum. quicumque cuiuslibet ordinis dignitatis aliquod opus publicum quoquo genere obscura interpretatione meruerit, fructu talis beneficii sine aliqua dubitatione privetur. non solum enim revocamus quod factum est, verum etiam in futurum cavemus, ne qua fraude temptetur. dat. vii id. dec. aquileiae mamertino et nevitta conss. (362 dec. 7).

CTh.15.1.11

Impp. valentinianus et valens aa. ad symmachum praefectum urbi. intra urbem romam aeternam nullus iudicum novum opus informet, quotiens serenitatis nostrae arbitria cessabunt. ea tamen instaurandi, quae iam deformibus ruinis intercidisse dicuntur, universis licentiam damus. dat. viii kal. iun. philippis divo ioviano et varroniano conss. (364 mai. 25).

CTh.15.1.12

Idem aa. ad symmachum. horrea fiscalia apud urbem romam nec non etiam portus in usus translata privatos cognovimus. haec ad pristinum....Inferioribus horreorum frumenta condantur, quae natura loci et umore vitiantur. annonas quoque horreis antiquitus deputatas hos redhibere compelles, qui eas in damna publica ausi sunt occupare, quarum substantiam enthecae populi romani proficere praecipies. sane quos invenies fabricarum destructionis auctores, ad reparationem necessario tenebis. dat. vi id. iun. naisso divo ioviano et varroniano conss. (364 iun. 8).

CTh.15.1.13

Idem aa. tautomedi duci daciae ripensis. in limite gravitati tuae commisso praeter eas turres, quas refici oportet, si forte indigeant refectione, turres administrationis tempore quotannis locis opportunis extrue. quod si huius praecepti auctoritatem neglexeris, finita administratione revocatus in limitem ex propriis facultatibus eam fabricam, quam administrationis tempore adiumentis militum et impensis debueras fabricare, extruere cogeris. dat. xiii kal. iul. mediolano divo ioviano et varroniano conss. (364 [?] iun. 19).

CTh.15.1.14

Idem aa. ad mamertinum praefectum praetorio. praesumptionem iudicum ulterius prohibemus, qui in eversionem abditorum oppidorum metropoles vel splendidissimas civitates ornare se fingunt transferendorum signorum vel marmorum vel columnarum materiam requirentes. quod post legem nostram sine poena admittere non licebit, praesertim cum neque novam constitui fabricam iusserimus, antequam vetera reformentur, et, si adeo aliquid fuerit inchoandum, ab aliis civitatibus conveniat temperari. dat. kal. ian. mediolano valentiniano et valente conss. (365 ian. 1).

CTh.15.1.15

Idem aa. ad dracontium. lex sancientibus nobis rogata est, quae iudices omnes et rectores provinciarum edicto suo adque auctoritate cohibet aliquid novi operis adripere, priusquam ea, quae victa senio fatiscerent, repararent. quae nunc etiam credidimus repetenda. dat. xiiii kal. mar. mediolano valentiniano et valente aa. conss. (365 feb. 16).

CTh.15.1.16

Idem aa. ad mamertinum praefectum praetorio. censura tua hanc iudicibus licentiam penitus amputabit, ne aliquid novellum adgrediantur opus veterum illustrium fabricarum reparatione neglecta. in eo sane larga ac benigna his licentia tribuetur, ut ornamenta urbium ac decora marmorum, quae in aliquo senium temporis sentiunt, ad speciem pristinam et usum congruae utilitatis instaurent. ceterum nihil auspicari quemquam novi operis patieris exceptis stabulorum fabricis, quae ex usu publico, si ita res tulerit, non prohibemus institui. dat. id. mar. senigallia valentiniano et valente aa. conss. (365 mart. 15).

CTh.15.1.17

Idem aa. ad valentinianum consularem piceni. si quid sinceritas tua his urbibus, quibus praeest, putaverit deferendum, instaurare antiquum opus rectius poterit quam novum inchoare. sane si quid reparationi alicuius operis postulandum erit, non in pecunia, sed in ipsis speciebus postulare te par est. si loca aliqua indigent novis stabulis aut horreis, videris exaedificare etiam, si emolumenta publica adverteris postulare. dat. prid. non. octob. valentiniano et valente aa. conss. (365 oct. 6).

CTh.15.1.18

Imppp. valentinianus, valens et gratianus aaa. ad probum praefectum praetorio. rectores provinciarum quodcumque opus inchoandum esse necessario viderint in aliqua civitate, id arripere non dubitent. si civitatis eius res publica tantum in tertia pensionis parte non habeat, quantum coeptae fabricae poscat impendium, ex aliarum civitatum rei publicae canone praesumant, tertiae videlicet portionis. proposita vii kal. feb. sirmio gratiano a. iii et equitio conss. (374 ian. 26).

CTh.15.1.19

Imppp. valens, gratianus et valentinianus aaa. ad senatum. post alia: nemo praefectorum urbis aliorumve iudicum, quos potestas in excelso locat, opus aliquod novum in urbe roma inclyta moliatur, sed excolendis veteribus intendat animum. novum quodque opus qui volet in urbe moliri, sua pecunia, suis operibus absolvat, non contractis veteribus emolumentis, non effossis nobilium operum substructionibus, non redivivis de publico saxis, non marmorum frustis spoliatarum aedium deformatione convulsis. lecta in senatu valente v et valentiniano aa. conss. (376.....).

CTh.15.1.20

Imppp. gratianus, valentinianus et theodosius aaa. iuliano praefecto aegypti. iudex, qui ad provinciam fuerit destinatus, duas partes vel incuria vel vetustate collapsas ad statum pristinum nitoris adducat adque tertiam construat novitatis, si tamen famae et propriis cupit laudibus providere. dat. xvi kal. april. thessalonicae gratiano a. v et theodosio a. i conss. (380 mart. 17).

CTh.15.1.21

Idem aaa. eutropio praefecto praetorio. singuli quique iudicum primo omnium in tuendis veteribus aedificiis publicis impendant propriae sollicitudinis curam, tum adgrediantur nova. adque studio cautae celeritatis, quidquid a superiore reppererint inchoatum, quasi a se coeptum noverint explicandum. dat. xvi kal. septemb. hadrianopoli gratiano a. v et theodosio a. i conss. (380 aug. [?] 17).

CTh.15.1.22

Idem aaa. have, procule karissime nobis. praescriptio temporis iuri publico non debet obsistere, sed ne rescripta quidem. adque ideo diruenda sunt omnia, quae per diversas urbes vel in foro vel in quocumque publico loco civitatis extructa noscuntur. dat. iii id. iun. constantinopoli merobaude ii et saturnino conss. (383 iun. 11).

CTh.15.1.23

Idem aaa. cynegio praefecto praetorio. ad portus et aquaeductus instaurationem omnes certatim facta operarum collatione instare debent neque aliquis ab huiuscemodi consortio dignitatis privilegiis excusari. dat. xv kal. feb. constantinopoli richomere et clearcho conss. (384 ian. 18).

CTh.15.1.24

Idem aaa. cynegio praefecto praetorio. omnes, quibus vel cura mandata fuerit operum publicorum vel pecunia ad extructionem solito more decreta, usque ad annos quindecim ab opere perfecto cum suis heredibus teneantur obnoxii, ita ut, si quid vitii in aedificatione intra praestitutum tempus provenerit, de eorum patrimonio, exceptis tamen his casibus qui sunt fortuiti, reformetur. dat. iii non. feb. constantinopoli arcadio a. i et bautone conss. (385 febr. 3).

CTh.15.1.25

Imppp. valentinianus, theodosius et arcadius aaa. proculo praefecto urbis constantinopolitanae. turpe est publici splendoris ornatum privatarum aedium adiectione conrumpi et ea, quae conspicuae urbis decori vel nostri temporis vel prioris saeculi aetate creverunt, aviditate cogendae pecuniae sociari. unde sublimis eminentia tua, quidquid talis astutiae deprehenderit fraude violatum, id, si publicis nitoribus faciem aspectus deterioris inducit, sive illud voluntaria praesumptione temeratum est sive expressam coactis adnotationibus occasionem fraudis obtinuit, iubebit amoveri. tuo enim arbitrio relinquimus, a quibus temperandum quaeve diruenda diiudices. dat. xvi kal. aug. romae timasio et promoto conss. (389 iul. 17).

CTh.15.1.26

Idem aaa. polemio praefecto praetorio illyrici et italiae. quotiens clariores urbes per singulas quasque provincias expensis propriis et vectigalibus maiorem pecuniam absolvendi cuiuslibet operis necessitate deposcunt, id ex minorum viribus vindicetur, ita ut non ante poscatur, quam omnis summa, quae isdem ex suis compendiis quaeri solet, instaurandis aedibus adsumatur. consequens vero erit, ut in notitiam serenitatis nostrae, quotiens habita fuerit haec vectigalium usurpatio, dirigatur, quantum fuerit aliunde praesumptum, per quos expensum, quatenus consummatum. dat. xvii kal. feb. mediolano valentiniano a. iiii et neoterio conss. (390 ian. 16).

CTh.15.1.27

Idem aaa. albino praefecto urbis romae. augustae in partibus civitatis magis antiqua reddi convenit quam inchoari supervacua. nosse itaque par est officium magnitudinis tuae et ceteros, a quibus sumptus huiusmodi operibus de aerario praebebuntur, accepto omnino non ferri, si quis per usurpationem opus praeter conscientiam nostram intra aeternam urbem voluerit publica collatione construere. ideoque summam omnem, quae illi contra interdictum forte praebebitur, pecunia sua et propriis facultatibus pendet, sequestrata condemnatione librarum auri decem, quae plectet sacrilegam contemnentis audaciam. dat. prid. non. april. mediolano valentiniano a. iiii et neoterio conss. (390 apr. 4).

CTh.15.1.28

Idem aaa. polemio praefecto praetorio illyrici et italiae. si quis novum opus in qualibet civitate sustollere audacius quam consultius molietur, de proprio se collaturum sumptus et perfecturum quod coeperit noscat. nihil quippe dispensatoribus ex hoc usu feremus accepto, et contra officium adque ipsum iudicem auri pondo dena constringent, ut saltem metu, quod facere sponte debuerant, reficiendis vetustioribus impendant laborem. dat. prid. non. april. mediolano valentiniano a. iiii et neoterio v. c. conss. (390 apr. 4).

CTh.15.1.29

Imppp. theodosius, arcadius et honorius aaa. aureliano praefecto urbi. ne quis iudicum nova aedificia moliatur, cum opera nonnulla aut coepta penderent aut neglecta nutarent. dat. iii kal. mar. constantinopoli theodosio a. iii et abundantio conss. (393 febr. 27).

CTh.15.1.30

Idem aaa. aureliano praefecto urbi. si quando concessa a nobis licentia fuerit extruendi, id sublimis magnificentia tua sciat esse servandum, ut nulla domus inchoandae publicae fabricae gratia diruatur, nisi usque ad quinquaginta libras argenti pretii aestimatione taxabitur. de aedificiis vero maioris meriti ad nostram scientiam referetur, ut, ubi amplior poscitur quantitas, imperialis extet auctoritas. dat. iii kal. mart. constantinopoli theodosio a. iii et abundantio conss. (393 febr. 27).

CTh.15.1.31pr.

Idem aaa. rufino praefecto praetorio. si qui iudices perfecto operi suum potius nomen quam nostrae perennitatis scripserint, maiestatis teneantur obnoxii. (394 iul. 5).

CTh.15.1.31.1

Illud etiam repetita sanctione decernimus, ut nemini iudicum liceat novis molitionibus industriae captare famam. quod si quis in administratione positus sine iussu nostro aedificii alicuius iacere fundamenta temptaverit, is proprio sumptu et iam privatus perficere cogetur quod ei non licuerat inchoare, nec provincia permittetur abscedere prius, quam ad perfectam manum coeptum perduxerit et, si quid de quibuslibet publicis titulis in ea ipsa fabrica praecepto eius impensum fuerit, reformarit. dat. iii non. iul. constantinopoli arcadio iii et honorio ii aa. conss. (394 iul. 5).

CTh.15.1.32 [=brev.15.1.2]

Impp. arcad. et honor. aa. eusebio comiti sacrarum largitionum. ne splendidissimae urbes vel oppida vetustate labantur, de reditibus fundorum iuris rei publicae tertiam partem reparationi publicorum moenium et thermarum subustioni deputamus. dat. xi. kal. iul. mediolano, olybrio et probino coss.

interpretatio. quoties aedificia vetustate consumpta* necesse fuerit reparari, ad ipsam reparationem tertiam partem de proprio fiscus impendat

CTh.15.1.33

Idem aa. have, vincenti, karissime nobis. praecipua nobis cura est, ne aut provinciales nostri superindictionibus praegraventur aut opera publica pereant vetustate collapsa. singuli igitur ordines civitatum ad reparationem moenium publicorum nihil sibi amplius noverint praesumendum praeter tertiam portionem eius canonis, qui ex locis fundisque rei publicae quotannis conferri solet, sicut divi parentis nostri valentiniani senioris deputavit auctoritas. dat. iii non. iul. mediolano olybrio et probino conss. (395 iul. 5).

CTh.15.1.34

Idem aa. caesario praefecto praetorio. omnes provinciarum rectores litteris moneantur, ut sciant ordines adque incolas urbium singularum muros vel novos debere facere vel firmius veteres renovare, scilicet hoc pacto impendiis ordinandis, ut adscriptio currat pro viribus singulorum, dein describantur pro aestimatione futuri operis territoria civium, ne plus poscatur aliquid quam necessitas imperaverit neve minus, ne instans impediatur effectus. oportet namque per singula iuga certa quaeque distribui, ut par cunctis praebendorum sumptuum necessitas imponatur. dat. viiii kal. april. arcadio iiii et honorio iii aa. conss. (396 mart. 24).

CTh.15.1.35

Idem aa. caesario praefecto praetorio. quidquid de palatiis aut praetoriis iudicum aut horreis aut stabulis et receptaculis animalium publicorum ruina lapsum fuerit, id rectorum facultatibus reparari praecipimus, qui a primo consulatu divi genitoris nostri usque praesens tempus gesserunt iudiciariam potestatem. proposita regio arcadio iiii et honorio iii aa. conss. (396 ....).

CTh.15.1.36

Idem aa. asterio comiti orientis. quoniam vias pontes, per quos itinera celebrantur, adque aquaeductus, muros quin etiam iuvari provisis sumptibus oportere signasti, cunctam materiam, quae ordinata dicitur ex demolitione templorum, memoratis necessitatibus deputari censemus, quo ad perfectionem cuncta perveniant. dat. kal. nov. caesario et attico conss. (397 nov. 1).

CTh.15.1.37pr.

Idem aa. theodoro praefecto praetorio. nemo iudicum in id temeritatis erumpat, ut inconsulta pietate nostra novi aliquid operis existimet inchoandum vel ex diversis operibus aeramen aut marmora vel quamlibet speciem, quae fuisse in usu vel ornatu probabitur civitatis, eripere vel alio transferre sine iussu tuae sublimitatis audeat. etenim si quis contra fecerit, tribus libris auri multabitur. (398 ian. 1).

CTh.15.1.37.1

Similis etiam condemnatio ordines civitatum manebit, nisi ornamentum genitalis patriae decreti huius auctoritate defenderint. horreorum autem vel stabulorum fabricas arbitratu proprio provinciarum iudices studio laudandae devotionis adripiant. dat. kal. ian. mediolano honorio a. iiii et eutychiano conss. (398 ian. 1).

CTh.15.1.38

Idem aa. eutychiano praefecto praetorio. excellens eminentia tua cuncta privata aedificia, quae coniuncta horreis publicis esse cognoverit, dirui ac demoliri praecipiet, ita ut ex quattuor lateribus privatorum consortio separata sint ac libero spatio secernantur, ut a principio fuerant fabricata. dat. v non. iul. constantinopoli honorio a. iii et eutychiano conss. (398 iul. [?] 3).

CTh.15.1.39

Idem aa. severo praefecto urbi. aedificia, quae vulgi more parapetasia nuncupantur, vel si qua alia opera publicis moeniis vel privatis sociata cohaerent, ut ex his incendium vel insidias vicinitas reformidet aut angustentur spatia platearum vel minuatur porticibus latitudo, dirui ac prosterni praecipimus. dat. v id. octob. constantinopoli honorio a. iiii et eutychiano conss. (398 oct. 11).

CTh.15.1.40

Idem aa. eutychiano praefecto praetorio. si aliquando operum publicorum petitores emergant, non nisi diruta penitusque destructa et quae parum sint usui civitatum petitoribus adsignentur. dat. id. dec. honorio a. iiii et eutychiano conss. (398 dec. 13).

CTh.15.1.41

Idem aa. hadriano praefecto praetorio. omnia aedificia publica sive iuris templorum intra muros posita vel etiam muris cohaerentia, quae tamen nullis censibus patuerit obligata, curiales et collegiati submotis competitoribus teneant adque custodiant, suarum non inmemores fortunarum, ita ut eos nullus penitus inquietet, qui aliquem locum publicum aut per sacram adnotationem meruerit aut in areis vacantibus, quae nullum usum civitatibus ornatumque praeberent, insinuata auctoritate rescripti propriis sumptibus aedificaverit. si qua vero super huiusmodi locis fuerit orta dubitatio, non aliquid municipes sive collegiatos volumus sponte praesumere, sed a rectore provinciae ortam dirimi quaestionem vel sublimem consuli praefecturam, si iudicandi exegerit difficultas. palatina sane officia ab his locis abstinere oportet nec praebendae instructionis gratia cuique subripiendi aditum reserari, cum, si quando a quopiam vacans locus aut area postulatur, consultius ad ordinarios iudices nostri mittantur affatus, ut, si neque usui neque ornatui civitatis adcommodum videtur esse quod poscitur, periculo ordinis et provincialis officii absque ullius gratiae colludio competitori sub gestorum testificatione tradantur. pensiones autem, quae deinceps sublatae a competitoribus fuerint, rationabiliter impositas reparationi iubemus proficere civitatis, exceptis videlicet pensionibus praeteriti temporis, quae iam sollemniter sacro privatoque debentur aerario. dat. iiii non. iul. mediolano vincentio et fravito conss. (401 iul. 4).

CTh.15.1.42

Idem aa. eutychiano praefecto praetorio. eudoxiopolitanae civitatis cives pro oblata no .... suam patriam ergasteria condonamus. ne quis igitur ergasteria memorata a nostra serenitate deinceps petere moliatur eaque ratione civium, quorum censum cupimus ampliari, iura perturbet. dat. prid. id. iul. constantinopoli honorio a. vi et aristaeneto conss. (404 iul. 14).

CTh.15.1.43

Idem aa. hadriano praefecto praetorio. petentibus loca publica ea condicione adnuimus, ne quid usui vel ornatibus aut commodis civitatum auferatur. et quamquam nullum opinemur existere, qui contra commoda vel ornatum propriae civitatis competitorum obreptionibus coniveret, adtamen huiuscemodi rescripta ad excellentiam tuam referri praecipimus, scientibus iudicibus, quod, si qui deinceps subrepticia voluerit allegare rescripta, non nisi reprehensione existimationis suae et poena officiorum suorum his aditum praebebunt, si in tradendis locis publicis, si qui forte nostra liberalitate fuerint concessi, excellentiae tuae non expectetur auctoritas. dat. viii kal. octob. ravennae stilichone ii et anthemio conss. (405 sept. 24).

CTh.15.1.44

Idem aaa. aemiliano praefecto urbi. si quando usus exegerit vel porticus vel quaslibet aedes aetatis senio seu fortuitis concussas casibus reparari, liceat etiam inconsulta clementia nostra cum reverentia sui imaginem deponere vel nostram vel retro principum reportatamque post refecta aedificia loco proprio denuo collocare. dat. v kal. iul. constantinopoli arcadio a. vi et probo conss. (406 iun. 27).

CTh.15.1.45

Idem aaa. aemiliano praefecto urbi. omnibus tabulatis tam his, quae intercolumnis adfixa sunt quam his, quae superiores porticus dividunt, ad formam pristinam civitatis habitus revocetur, ascensibus etiam his, qui ad superiores porticus ducunt, tam in latiorem modum patentibus quam pro ligneis scalis lapideis gradibus fabricandis. ita enim et pericula incendii aberunt et si qui casus adversi tulerint, facile amotis angustiis homines inter incendia discursus ac liberandi sui facultatem invenient. dat. xi kal. novemb. constantinopoli arcadio a. vi et probo conss. (406 oct. 22).

CTh.15.1.46

Idem aaa. aemiliano praefecto urbi. aedificia privatorum publicis aedibus adhaerentia sive superposita destrui tollique praecipimus. et in posterum id aperte sancimus, ut, si qui aedificandi iuxta publicas aedes animos dederit, quindecim pedum spatio interiecto inter publica ac privata aedificia ita sibi noverit fabricandum, ut tali intervallo et publicae aedes a periculo vindicentur et privatus aedificator velut perperam fabricati loci destructionis quandoque futurae non timeat detrimentum. dat. xi kal. nov. constantinopoli arcadio a. vi et probo conss. (406 oct. 22).

CTh.15.1.47

Impp. honorius et theodosius aa. monaxio praefecto urbi. quicumque locus in palatio huius urbis privatis aedificiis incommode occupatus est, is quam primum subrutis omnibus quae in eo sunt aedificiis palatio reformetur. quod privatorum non est parietibus coartandum, nam imperio magna ab universis secreta debentur: ut hi tantum locum habeant habitandi, quos legitimus maiestatis nostrae usus et rei publicae disciplina delegit, in futurum etiam universis ab huiusmodi usurpatione prohibendis. dat. viiii kal. mar. constantinopoli honorio viii et theodosio iii aa. conss. (409 febr. 21).

CTh.15.1.48

Idem aa. bonosiano praefecto urbi. nihil ex his, quae instaurationi ornatibusque singulis deputavit antiquitas, nullius colore occasionis auferri volumus. igitur a futuro proximo consulatu universa praedictae urbi debitorum vectigalium illibata augmenta pervaleant. dat. iiii kal. decemb. ravennae post cons. varanae v. c. (411 nov. 28).

CTh.15.1.49

Idem aa. herculio praefecto praetorio illyrici. constructioni murorum et comparationi transvectionique specierum universi sine ullo privilegio coartentur, ita ut in his dumtaxat titulis universi pro portione suae possessionis et iugationis ad haec munia coartentur, quo ita demum, a summis ad infimos usque sarcina decurrente, ferendi oneris non leve solacium, sed in commune omnibus profuturum communi labore curetur. quod in partibus dumtaxat illyricianis nostram clementiam statuisse tua sublimitas recognoscat. dat. v id. april. constantinopoli dd. nn. honorio viiii et theodosio v aa. conss. (412 apr. 9).

CTh.15.1.50

Idem aa. isidoro praefecto urbi. opus coeptum extruatur et porticus thermas honorianas praecurrat acie columnarum, cuius decus tantum est, ut privata iuste neglegeretur paulisper utilitas. sed ne census sui quisquam intercepta lucra deploret, sed e contrario cum pulchritudine civitatis etiam fortunas suas auctas esse laetetur, pro loco quod quisque possederat superaedificandi licentiam habeat. nam in locum privati aedificii, quod in usum publicum translatum est, occupationem basilicae iubemus vetustae succedere, ut contractus quidam et permutatio facta videatur, cum dominus, qui suum dederat civitati, pro eo habiturus sit ex publico remota omni formidine, quod inconcusso robore et ipse habere et quibus velit tradere habebit liberam facultatem. dat. iiii kal. novemb. constantinopoli honorio viiii et theodosio v aa. conss. (412 oct. 29).

CTh.15.1.51

Idem aa. anthemio praefecto praetorio. turres novi muri, qui ad munitionem splendidissimae urbis extructus est, completo opere praecipimus eorum usui deputari, per quorum terras idem murus studio ac provisione tuae magnitudinis ex nostrae serenitatis arbitrio celebratur, eadem lege in perpetuum et condicione servanda, ut annis singulis hi vel ad quorum iura terrulae demigraverint proprio sumptu earum instaurationem sibimet intellegant procurandam, earumque usu publico beneficio potientes curam reparationis ac sollicitudinem ad se non ambigant pertinere. ita enim et splendor operis et civitatis munitio cum privatorum usu et utilitate servabitur. dat. prid. non. april. lucio v c. cons. (413 apr. 4).

CTh.15.1.52

Imp. theodosius a. severino praefecto urbi. quia plurimae domus cum officinis suis in porticibus zeuxippi esse memorantur, reditus memoratorum locorum pro quantitate, quae placuit, ad praebenda luminaria et aedificia ac tecta reparanda regiae huius urbis lavacro sine aliqua iubemus excusatione conferri. dat. v id. ian. victore v. c. cons. (424 ian. 9).

CTh.15.1.53

Idem a. et valentinianus caes. constantio praefecto urbi. exsedras, quae septentrionali videntur adhaerere porticui, in quibus tantum amplitudinis et decoris esse monstratur, ut publicis commodis possint capacitatis ac pulchritudinis suae admiratione sufficere, supra dictorum consessibus deputabit. eas vero, quae tam orientali quam occidentali lateri copulantur, quas nulla a platea aditus adque egressus patens pervias facit, veterum usibus popinarum iubebit adscribi. his tamen ipsis, quae humiliores aliquanto adque angustiores putantur, vicinarum spatia cellularum ex utriusque lateris portione oportet adiungi, ne quid aut ministris eorundem locorum desit aut populis. sane si qui memoratas cellulas probabuntur vel imperatoria largitate vel quacumque alia donatione aut emptione legitima possidere, eos magnificentia tua competens pro isdem de publico pretium iubebit accipere. dat. iii kal. mar. constantinopoli d. n. theodosio a. xi et valentiniano caes. i conss. (425 febr. 27).

CTh.15.2.0. De aquaeductu

CTh.15.2.1

Imp. constantinus a. ad maximilianum consularem aquarum. possessores, per quorum fines formarum meatus transeunt, ab extraordinariis oneribus volumus esse inmunes, ut eorum opera aquarum ductus sordibus obpleti mundentur, nec ad aliud superindictae rei onus isdem possessoribus adtinendis, ne circa res alias occupati repurgium formarum facere non occurrant. quod si neglexerint, amissione possessionum multabuntur: nam fiscus eius praedium obtinebit, cuius neglegentia perniciem formae congesserit. praeterea scire eos oportet, per quorum praedia ductus commeat, ut dextra laevaque de ipsis formis quindecim pedibus intermissis arbores habeant; observante tuo officio, ut, si quo tempore pullulaverint, excidantur, ne earum radices fabricam formae conrumpant. dat. xv kal. iun. gallicano et symmacho conss. (330 mai. 18).

CTh.15.2.2

Imppp. valentinianus, valens et gratianus aaa. fortunatiano comiti rerum privatarum. aquaeductus, qui dafnensi palatio usum aquae praestat, quorundam aviditate tenuatur adpositis maioribus fistulis, quam ex imperiali largitate meruerunt. consensu igitur omnium in tribus locis conceptacula reparentur et singulorum nomina modusque servandus tabulis adscribatur, et si ultra licitum aliquem usurpasse constiterit, per singulos obolos librae unius auri dispendiis ingravetur. et si sacri tenore rescripti aliqui certum modum aquae meruisse noscetur, non prius eidem accipiendi potestas aliquatenus tribuatur, nisi adito rectore ex ipso conceptaculo quantitatem quam meruit possit adipisci. dat. iii kal. nov. antiochiae valentiniano n. p. et victore conss. (369 oct. 30?).

CTh.15.2.3

Imppp. gratianus, valentinianus et theodosius aaa. clearcho praefecto urbi. summas quidem domus, si lavacris lautioribus praesententur, binas non amplius aquae uncias aut, si hoc amplius exegerit ratio dignitatis, supra ternas neutiquam possidere, mediocres vero et inferioris meriti domus singulis et semis contentas esse decernimus, si tamen huiuscemodi balneas easdem habere claruerit. ceteros vero, qui mansionem spatio angustiore sustentant, ad mediae unciae usum tantum gaudere praecipimus neque obreptionem cuiquam patere, ita ut quod tibi paret officium sex librarum auri multa feriatur, nisi prodiderit usurpantes et is qui fefellit careat impetrato. dat. x kal. iul. constantinopoli antonio et syagrio conss. (382 [?] iun. 22).

CTh.15.2.4

Imppp. valentinianus, theodosius et arcadius aaa. pancratio praefecto urbi. si quis de cetero vetiti furoris audacia florentissimae urbis commoda voluerit mutilare aquam ad suum fundum ex aquaeductu publico derivando, sciat eundem fundum fiscalis tituli proscriptione signatum privatis rebus nostris adgregandum. dat. viii ... constantinopoli timasio et promoto conss. (389 [?] ...).

CTh.15.2.5

Idem aaa. albino praefecto urbis romae. eos, qui aquae copiam vel olim vel nunc per nostra indulta meruerunt, eius usum aut ex castellis aut ex ipsis formis iubemus elicere neque earum fistularum quas matrices vocant cursum ac soliditatem adtemptare. dat. v kal. septemb. romae timasio et promoto conss. (389 aug. 28).

CTh.15.2.6

Impp. arcadius et honorius aa. ad africanum praefectum urbi. quicumque ex aquaeductu magis quam ex castellis aquae usum putaverit derivandum, etiam id quod prius iure beneficii fuerat consecutus amittat. in eum vero pro condicione personae conveniet severissimo supplicio vindicari, qui adversus statuta huius oraculi avidae cupiditatis noluerit frena cohibere, ut privatis indulti meatus mensura famuletur. proposita iiii kal. iun. constantinopoli olybrio et probino conss. (395 mai. 29).

CTh.15.2.7 [=brev.15.2.1]

Idem aa. asterio comiti orientis. post alia: usum aquae veterem longoque dominio constitutum singulis civibus manere censemus nec ulla novatione turbari, ita tamen, ut quantitatem singuli, quam vetere licentia percipiunt, more usque in praesentem diem perdurante percipiant: mansura poena in eos, qui ad inrigationes agrorum vel hortorum delicias furtivis aquarum meatibus abutuntur. dat. kal. nov. caesario et attico conss.

interpretatio. haec lex interpretatione non indige

CTh.15.2.8

Idem aa. messalae praefecto praetorio. ex forma, cui nomen augusta est, quae in campania sumptu publico reparata est, nihil privatim singulorum usurpatio praesumat neque cuiquam posthac derivandae aquae copia tribuatur. si quis autem meatum aquae ausus fuerit avertere, quinque libras auri aerario nostro inferre cogatur. quidquid etiam ob eam fraudem ex rescripto fuerit elicitum vel qualibet arte temptatum, irritum habeatur. dat. v kal. ian. mediolano theodoro v. c. cons. (399 dec. 28).

CTh.15.2.9

Idem aa. ad flavianum praefectum urbi. ne quis claudiam interruptis formae lateribus adque perfossis sibi fraude elicita existimet vindicandam. si quis contra fecerit, earum protinus aedium et locorum amissione multetur. officium praeterea, cuius ad sollicitudinem operis huius custodia pertinebit, hac poena constringimus, ut tot librarum auri illatione multetur, quot uncias claudiae nostrae conventia eius usurpatas fuisse constiterit. dat. vi id. nov. mediolano stilichone et aureliano conss. (400 nov. 8).

CTh.15.3.0. De itinere muniendo

CTh.15.3.1

Imp. constantinus a. ad proculum proconsulem africae. emphyteuticarii possessores, qui mansuetudinis nostrae beneficio ad extraordinaria minime devocentur, sicut ceteri provinciales obsequium suum muniendis itineribus impendant. nulla enim ratione debent ab hoc, quod in commune omnibus profuturum est, esse seiuncti. proposita non. mai. karthagine constantino a. v et licinio caes. conss. (319 mai. 7).

CTh.15.3.2

Imp. iulianus a. ad avitianum vicarium africae. post alia: in muniendis viis iustissimum aequitatis cursum reliquit auctoritas. singuli enim loca debent quaeque sortiri, ut sibi consulant vel neglegentia vel labore. igitur eos loca iuxta morem priscum delegata curare oportebit. et cetera. dat. vii kal. nov. iuliano a. iiii et sallustio conss. (363 [362] oct. 26).

CTh.15.3.3

Imppp. valentinianus, theodosius et arcadius aaa. ad eusignium praefectum praetorio. a viarum munitione nullus habeatur inmunis, et eorum praediorum actores, qui forte iniuncto oneri privilegiorum contemplatione parere minime voluerint, nostrae domui vindicentur. dat. iiii kal. mart. valentiniano a. iii et eutropio conss. (387 febr. 26).

CTh.15.3.4

Impp. arcadius et honorius aa. messalae praefecto praetorio. dudum quidem fuerat constitutum, ut illustrium patrimonia dignitatum ab instauratione itinerum haberentur excepta. verum propter inmensas vastitates viarum certatim studia cunctorum ad reparationem publici aggeris conducibili devotione volumus festinare, nulla ad instructum munitionis huiusce dignitate aut privatorum privilegiorum in qualibet....Studiosius adpetita. etiam istud adiungimus, ut domos etiam clementiae nostrae, quas vetusta et innumera ab huius oneris curatione privilegia vindicabant, par condicio et sollicitudo constringat, ita tamen, ut in ceteris quae vel illustribus vel patrimonio nostro praecedentibus edictis beneficia fuerant adtributa, intemerata permaneant. dat. iii kal. mai. mediolano theodoro v. c. cons. (399 apr. 29).

CTh.15.3.5

Impp. honorius et theodosius aa. anthemio praefecto praetorio. antiquatis omnibus vel personalibus rescriptis vel per adnotationes elicitis per bithyniam ceterasque provincias possessores et reparationi publici aggeris et ceteris eiusmodi muneribus pro iugorum numero vel capitum, quae possidere noscuntur, adstringi cogantur. dat. vii kal. nov. constantinopoli honorio viiii et theodosio v aa. conss. (412 oct. 26).

CTh.15.3.6

Idem aa. asclepiodoto praefecto praetorio. absit, ut nos instructionem viae publicae et pontium stratarumque operam titulis magnorum principum dedicatam inter sordida munera numeremus. igitur ad instructiones reparationesque itinerum pontiumque nullum genus hominum nulliusque dignitatis ac venerationis meritis cessare oportet. domos etiam divinas ac venerandas ecclesias tam laudabili titulo libenter adscribimus. quam legem cunctarum provinciarum iudicibus intimari conveniet, ut noverint, quae viis publicis antiquitas tribuenda decrevit, sine ullius vel reverentiae vel dignitatis exceptione praestanda. dat. xv kal. mart. constantinopoli asclepiodoto et mariniano conss. (423 febr. 15).

CTh.15.4.0. De imaginibus imperialibus

CTh.15.4.1pr.

Imp. theodosius a. et valentinianus caes. aetio praefecto praetorio. si quando nostrae statuae vel imagines eriguntur seu diebus, ut adsolet, festis sive communibus, adsit iudex sine adorationis ambitioso fastigio, ut ornamentum diei vel loco et nostrae recordationi sui probet accessisse praesentiam. (425 mai. 5).

CTh.15.4.1.1

Ludis quoque simulacra proposita tantum in animis concurrentum mentisque secretis nostrum numen et laudes vigere demonstrent; excedens cultura hominum dignitatem superno numini reservetur. dat. iii non. mai. theodosio a. xi et valentiniano caes. conss. (425 mai. 5).

CTh.15.5.0. De spectaculis

CTh.15.5.1

Imppp. valentinianus, valens et gratianus aaa. ad probum praefectum praetorio. magistratus et sacerdotiorum editiones, quae aut in civitatibus aut certe in his debent exigi, quas delegit antiquitas, non in potestate iudicum sint, qui plerumque, dum popularem plausum alienis spoliationibus aucupantur, ea, quae in competenti loco sollers diligentia praeparavit, ad alteram urbem transferri praecipiunt, sed in eorum arbitrio maneant, quorum expensis ac sumptibus procurandae sunt. dat. vii kal. mai. treviris modesto et arinthaeo conss. (372 apr. 25).

CTh.15.5.2pr.

Imppp. gratianus, valentinianus et theodosius aaa. rufino praefectum praetorio. nullus omnino iudicum aut theatralibus ludis aut circensium certaminibus aut ferarum cursibus vacet nisi illis tantum diebus, quibus vel in lucem editi vel imperii sumus sceptra sortiti, hisque ut ante meridiem tantum sollemnitati pareant, post epulas vero ad spectaculum redire desistant. (386 [392-395] mai. 20).

CTh.15.5.2.1

In quo tamen omnes, sive iudices sive privati, nihil penitus auri praemio dandum esse cognoscent, quod solis licet consulibus, quibus erogandi moderationem vitae meritis permisimus. (386 [392-395] mai. 20).

CTh.15.5.2.2

Illud etiam praemonemus, ne quis in legem nostram, quam dudum tulimus, committat, nullum solis die populo spectaculum praebeat, nec divinam venerationem confecta sollemnitate confundat. dat. xiii kal. iun. heracleae honorio nob. p. et evodio v. c. conss. (386 [392-395] mai. 20).

CTh.15.5.3

Impp. honorius et theodosius aa. anthemio praefecto praetorio. nemo iudicum ex quacumque civitate in aliud oppidum vel ex provinciae solo equos curules aurigas cives temptet traducere, ne, dum popularibus plausibus intemperate serviunt, et publicarum rerum statum fatigent et festivitatem impediant in cunctis oppidis celebrandam, ita ut, si quis hanc violaverit iussionem, poena teneatur ea, quae legum violatores persequitur. dat. viii id. aug. constantinopoli honorio viii et theodosio iii aa. conss. (409 aug. 6).

CTh.15.5.4

Imp. theodosius a. isidoro praefecto illyrici. delforum curiae facultates novis damnis frequenter adtritas relatio tui culminis intimavit. ideoque praeceptis ad universas illyrici civitates iudicesque transmissis notum omnibus faciat nullum penitus spectacula oportere sollemnia urbis aeternae populis exhibere, sed unumquemque civium intra propriam civitatem debere solitae devotionis officia, prout patrimonii sui vires patiuntur, implere, gravissimae poenae interminatione proposita non solum contra eos, qui huiusmodi functiones crediderint exigendas, sed etiam contra ordinarios ubique rectores. dat. x kal. mai. constantinopoli victore v. c. cons. (424 apr. 22).

CTh.15.5.5

Idem a. et valentinianus caes. asclepiodoto praefecto praetorio. dominico, qui septimanae totius primus est dies, et natali adque epifaniorum christi, paschae etiam et quinquagesimae diebus, quamdiu caelestis lumen lavacri imitantia novam sancti baptismatis lucem vestimenta testantur, quo tempore et commemoratio apostolicae passionis totius christianitatis magistrae a cunctis iure celebratur, omni theatrorum adque circensium voluptate per universas urbes earundem populis denegata totae christianorum ac fidelium mentes dei cultibus occupentur. si qui etiamnunc vel iudaeae impietatis amentia vel stolidae paganitatis errore adque insania detinentur, aliud esse supplicationum noverint tempus, aliud voluptatum. ac ne quis existimet in honorem numinis nostri veluti maiore quadam imperialis officii necessitate compelli et, nisi divina religione contempta spectaculis operam praestat, subeundam forsitan sibi nostrae serenitatis offensam, si minus circa nos devotionis ostenderit quam solebat, nemo ambigat, quod tunc maxime mansuetudini nostrae ab humano genere defertur, cum virtutibus dei omnipotentis ac meritis universi obsequium orbis impenditur. dat. kal. feb. constantinopoli theodosio a. xi et valentiniano caes. i conss. (425 febr. 1).

CTh.15.6.0. De maiuma

CTh.15.6.1

Impp. arcadius et honorius aa. caesario praefecto praetorio. clementiae nostrae placuit, ut maiumae provincialibus laetitia redderetur, ita tamen, ut servetur honestas et verecundia castis moribus perseveret. dat. vii kal. mai. constantinopoli arcadio iiii et honorio iii aa. conss. (396 apr. 25).

CTh.15.6.2

Idem aa. aureliano praefecto praetorio. post alia: ludicras artes concedimus agitari, ne ex nimia harum restrictione tristitia generetur. illud vero quod sibi nomen procax licentia vindicavit, maiumam, foedum adque indecorum spectaculum, denegamus. dat. vi non. octob. constantinopoli theodoro v. c. cons. (399 oct. 2).

CTh.15.7.0. De scaenicis

CTh.15.7.1

Imppp. valentinianus, valens et gratianus aaa. ad viventium praefectum urbi. scaenici et scaenicae, qui in ultimo vitae ac necessitate cogente interitus inminentis ad dei summi sacramenta properarunt, si fortassis evaserint, nulla posthac in theatralis spectaculi conventione revocentur. ante omnia tamen diligenti observari ac tueri sanctione iubemus, ut vere et in extremo periculo constituti id pro salute poscentes, si tamen antistites probant, beneficii consequantur. quod ut fideliter fiat, statim eorum ad iudices, si in praesenti sunt, vel curatores urbium singularum desiderium perferatur, quod ut inspectoribus missis sedula exploratione quaeratur, an indulgeri his necessitas poscat extrema suffragia. dat. iii id. feb. treviris gratiano a. ii et probo v. c. conss. (371 [367] febr. 11).

CTh.15.7.2

Idem aaa. ad iulianum proconsulem africae. ex scaenicis natas, si ita se gesserint, ut probabiles habeantur, tua sinceritas ab inquietantium fraude direptionibusque submoveat. eas enim ad scaenam de scaenicis natas aequum est revocari, quas vulgarem vitam conversatione et moribus exercere et exercuisse constabit. dat. viii id. sept. mogontiaci gratiano a. ii et probo conss. (371 sept. 6).

CTh.15.7.3

Imppp. valens, gratianus et valentinianus aaa. ad hesperium proconsulem africae. non invidemus, sed potius cohortamur amplectenda felicis populi studia, gymnici ut agonis spectacula reformentur. verumtamen cum primates viri populi studiis ac voluptatibus grati esse cupiant, promptius permittimus, ut integra sit voluptas, quae volentium celebretur impensis. dat. vi id. mart. treviris valente v et valentiniano aa. conss. (376 mart. 19).

CTh.15.7.4

Imppp. gratianus, valentinianus et theodosius aaa. ad paulinum praefectum urbi. mulieres, quae ex viliori sorte progenitae spectaculorum debentur obsequiis, si scaenica officia declinarint, ludicris ministeriis deputentur, quas necdum tamen consideratio sacratissimae religionis et christianae legis reverentia suae fidei mancipavit; eas enim, quas melior vivendi usus vinculo naturalis condicionis evolvit, retrahi vetamus. illas etiam feminas liberas a contubernio scaenici praeiudicii durare praecipimus, quae mansuetudinis nostrae beneficio expertes muneris turpioris esse meruerunt. dat. viii kal. mai. mediolano gratiano v et theodosio i aa. conss. (380 apr. 24).

CTh.15.7.5

Idem aaa. ad paulinum praefectum urbi. quisquis thymelicam ex urbe venerabili inmemor honestatis abduxerit eandemque in longinqua transtulerit seu etiam intra domum propriam, ita ut voluptatibus publicis non serviat, retentarit, quinque librarum auri illatione multetur. dat. v kal. mai. mediolano gratiano v et theodosio i aa. conss. (380 apr. 24).

CTh.15.7.6

Idem aaa. ad valerianum praefectum urbi. equos, quos ad sollemne certamen vel mansuetudinis nostrae largitio subministrat vel diversorum ex amplissimo ordine magistratuum, hactenus ad copiam providendos serenitas nostra decrevit, ut, quidquid illud est, quod palmarum numero gloriosum et celebratis utrimque victoriis nobile congregatur, spectaculis potius urbanae plebis inserviat quam praedae adque compendio deputetur. quisquis igitur ex eo, quod vel serenitas nostra vel ordinarii consules vel praetores in huiuscemodi tribuunt voluptates, quamlibet commodis compendioque privato derivandam duxerit esse iacturam, unius auri librae condemnatione multatus largitionibus nostris cogatur esse munificus. dat. viii kal. mai. treviris eucherio et syagrio conss. (381 apr. [?] 24).

CTh.15.7.7

Idem aaa. ad valerianum praefectum urbi. eos qui agitandi munus exercent illustris auctoritas tua nullis praeter circense certamen adfici noverit oportere suppliciis. dat. viii id. mai. eucherio et syagrio conss. (381 mai. 8).

CTh.15.7.8

Idem aaa. ad valerianum praefectum urbi. scaenae mulier si vacationem religionis nomine postularit, obtentu quidem petitionis venia ei non desit, verum si post turpibus volutata complexibus et religionem quam expetierit prodidisse et gerere quod officio desierat animo tamen scaenica detegetur, retracta in pulpitum sine spe absolutionis ullius ibi eo usque permaneat, donec anus ridicula senectute deformis nec tunc quidem absolutione potiatur, cum aliud quam casta esse non possit. dat. viii id. mai. aquileiae syagrio et eucherio conss. (381 mai. 8).

CTh.15.7.9

Idem aaa. herasio proconsuli africae. quaecumque ex huiusmodi faece progenitae scaenica officia declinarint, ludicris ministeriis deputentur, quas necdum tamen sanctissimae religionis et in perenne servandae christianae legis secretorum reverentia suae fidei vindicarit. illas etiam feminas liberatas contubernio scaenici praeiudicii durare praecipimus, quae mansuetudinis nostrae beneficio expertes muneris turpioris esse meruerunt. proposita karthagine v kal. septemb. syagrio et eucherio conss. (381 aug. 28).

CTh.15.7.10

Idem aaa. cynegio praefecto praetorio. fidicinam nulli liceat vel emere vel docere vel vendere vel conviviis aut spectaculis adhibere. nec cuiquam ad delectationis desiderium erudita feminea musicae artis studio liceat habere mancipia. dat. viii kal. iul. constantinopoli arcadio a. i et bautone v. c. conss. (385 iun. 24).

CTh.15.7.11

Imppp. theodosius, arcadius et honorius aaa. rufino praefecto praetorio. nulla mima gemmis, nulla sigillatis sericis aut textis utatur auratis. his quoque vestibus noverint abstinendum, quas graeco nomine alethinocrustas vocant, in quibus alio admixtus colori puri rubor muricis inardescit. uti sane isdem scutlatis et variis coloribus sericis auroque sine gemmis collo brachiis cingulo non vetamus. dat. xi kal. octob. constantinopoli theodosio a. iii et abundantio conss. (393 sept. 21).

CTh.15.7.12pr.

Idem aaa. rufino praefecto praetorio. si qua in publicis porticibus vel in his civitatum locis, in quibus nostrae solent imagines consecrari, pictura pantomimum veste humili et rugosis sinibus agitatorem aut vilem offerat histrionem, ilico revellatur, neque umquam posthac liceat in loco honesto inhonestas adnotare personas; in aditu vero circi vel in theatri proscaeniis ut collocentur, non vetamus. (394 iun. 29).

CTh.15.7.12.1

His illud adicimus, ut mimae et quae ludibrio corporis sui quaestum faciunt publice habitu earum virginum, quae deo dicatae sunt, non utantur, et ut nulla femina nec puer thymelici consortio inbuantur, si christianae religionis esse cognoscitur. dat. iii kal. iul. heracleae arcadio a. iii et honorio a. ii conss. (394 iun. 29).

CTh.15.7.13

Impp. honorius et theodosius aa. diogeniano viro clarissimo tribuno voluptatum. mimas diversis adnotationibus liberatas ad proprium officium summa instantia revocari decernimus, ut voluptatibus populi ac festis diebus solitus ornatus deesse non possit. dat. vi id. feb. ravennae constantio v. c. cons.; acc. a tribuno voluptatum x kal. feb. karthagine post cons. honorii viiii et theodosii v aa. (413 febr. 8 (?).

CTh.15.8.0. De lenonibus

CTh.15.8.1

Imp. constantius a. ad severum praefectum urbi. si quis feminas, quae se dedicasse venerationi christianae legis sanctissimae dinoscuntur, ludibriis quibusdam subicere voluerit ac lupanaribus venditas faciat vile ministerium prostituti pudoris explere, nemo alter easdem coemendi habeat facultatem, nisi aut ii, qui ecclesiastici esse noscuntur aut christiani homines demonstrantur, competenti pretio persoluto. dat. iiii non. iul. hierapoli placido et romulo conss. (343 iul. 4).

CTh.15.8.2

Impp. theodosius et valentinianus aa. florentio praefecto praetorio. lenones patres et dominos, qui suis filiis vel ancillis peccandi necessitatem imponunt, nec iure frui dominii nec tanti criminis patimur libertate gaudere. igitur tali placet eos indignatione subduci, ne potestatis iure frui valeant neve quid eis ita possit adquiri. sed ancillis filiabusque, si velint, conductisve pro paupertate personis, quas sors damnavit humilior, episcoporum liceat, iudicum etiam defensorumque implorato suffragio omni miseriarum necessitate absolvi, ita ut, si insistendum eis lenones esse crediderint vel peccandi ingerant necessitatem invitis, non amittant solum eam quam habuerant potestatem, sed proscripti poenae mancipentur exilii metallis addicendi publicis, quae minor poena est, quam si praecepto lenonis cogatur quispiam coitionis sordes ferre, quas nolit. dat. xi kal. mai. felice et tauro conss. (428 apr. 21).

CTh.15.9.0. De expensis ludorum

CTh.15.9.1pr.

Imppp. valentinianus, theodosius et arcadius aaa. ad senatum. nulli privatorum liceat holosericam vestem sub qualibet editione largiri. illud etiam constitutione solidamus, ut exceptis consulibus ordinariis nulli prorsus alteri auream sportulam, diptycha ex ebore dandi facultas sit. (384 iul. 25).

CTh.15.9.1.1

Cum publica celebrantur officia, sit sportulis nummus argenteus, alia materia diptychis. nec maiorem argenteum nummum fas sit expendere, quam qui formari solet, cum argenti libra una in argenteos sexaginta dividitur; minorem dare volentibus non solum liberum, sed etiam honestum esse permittimus. dat. viii kal. aug. heracleae richomere et clearcho conss. (384 iul. 25).

CTh.15.9.2

Impp. honorius et theodosius aa. anthemio praefecto urbi. cunctos iudices admonemus, ut ludorum quidem, quibus moris est, intersint festivitati et oblectamentis favorem eliciant populorum, verum expensarum non excedant duorum solidorum librata impendia, nec inconsulta plausorum insania curialium vires, fortunas civium, principalium domus, possesorum opes, rei publicae robur evellant: exceptis alytarchis syriarchis agonothetis itemque asiarchis et ceteris, quorum nomen votiva festivitatis sollemnitas dedicavit. dat. v kal. martias constantinopoli honorio viii et theodosio iii aa. conss. (409 febr. 25).

CTh.15.10.0. De equis curulibus

CTh.15.10.1pr.

Imppp. valentinianus, valens et gratianus aaa. ad ampelium praefectum urbi. palmatis adque hermogenis equis, quos in curulis certaminis sorte vel contentionis incertum vel annorum series vel diversa ratio debiles fecit, ex horreis fiscalibus alimoniam praeberi decrevimus, equos vero hispani sanguinis vendendi solitam factionariis copiam non negamus. (371 ian. 1).

CTh.15.10.1.1

Illud quoque sinceritas tua praecipiat observari, ne graecorum equorum nomina, qui hinc missi fuerint, commutentur. dat. kal. ian. gratiano a. ii et probo conss. (371 ian. 1).

CTh.15.10.2

Imppp. gratianus, valentinianus et theodosius aaa. ad valerianum praefectum urbi. equos voluptatibus profuturos nequaquam campanorum populus adsequatur, quam si duo milia modiorum fabae per singulas factiones stabulorum in urbe venerabili necessaria antiqua et sollemni praebitione contulerint. dat. x kal. mai. aquileiae syagrio et eucherio conss. (381 apr. 22).

CTh.15.11.0. De venatione ferarum

CTh.15.11.1

Impp. honorius et theodosius aa. mauriano comiti domesticorum et vices agenti magistri militum. occidendorum leonum cunctis facimus potestatem, neque aliquando sinimus quemquam calumniam formidare, cum et salus nostrorum provincialium voluptati nostrae necessario praeponatur et haec ipsa propria voluptas intercludi minime videatur, quandoquidem occidendi feras, non venandi venundandique licentiam dederimus. occidendi igitur memoratas feras, et ducibus et officiis eorum conventis, cunctis licentia tribuatur. dat. xiii kal. iun. constantio et constante vv. cc. conss. (414 mai. 20).

CTh.15.11.2

Idem aa. monaxio praefecto praetorio. praesidalis officii eufratensis deploratione comperimus eos, qui transductioni ferarum a duciano officio deputantur, pro septem vel octo diebus contra legationum formam tres vel quattuor menses in hieropolitanam urbem residentes post expensas tanti temporis etiam caveas exigere, quas nulla praeberi consuetudo permittit. ideoque praecipimus, bestias, quae ad comitatum ab omnibus limitum ducibus transmittuntur, non plus quam septem diebus intra singulas civitates retineri; scientibus ducibus et eorum officiis, si quid contra haec commissum fuerit, quinas se libras auri fisci viribus illaturos. dat. v kal. octob. constantinopoli d. n. honorio a. xi et constantio ii v. c. conss. (417 sept. 27).

CTh.15.12.0. De gladiatoribus

CTh.15.12.1

Imp. constantinus a. maximo praefecto praetorio. cruenta spectacula in otio civili et domestica quiete non placent. quapropter, qui omnino gladiatores esse prohibemus eos, qui forte delictorum causa hanc condicionem adque sententiam mereri consueverant, metallo magis facies inservire, ut sine sanguine suorum scelerum poenas agnoscant. proposita beryto kal. octob. paulino et iuliano conss. (325 oct. 1).

CTh.15.12.2

Imp. constantius a. et iulianus c. ad orfitum praefectum urbi. universi, qui in urbe roma gladiatorium munus impendunt, prohibitum esse cognoscant sollicitandi auctorando milites vel eos, qui palatina sunt praediti dignitate, sex auri librarum multa inminente, si quis contra temptaverit. sponte etiam ad munerarium adeuntes per officium sublimitatis tuae ad magistros equitum ac peditum aut eos, qui gubernant officia palatina, oneratos ferreis vinculis mitti conveniet, ut huius legis statuto palatii dignitas a gladiatorio detestando nomine vindicetur. dat. xvi kal. nov. constantio a. viiii et iuliano caes. ii conss. (357 oct. 17).

CTh.15.12.3

Impp. arcadius et honorius aa. ad populum. post alia: si quos e gladiatorio ludo ad servitia senatoria transisse constabit, eos in extremas solitudines amandari decernimus. dat. et proposita romae caesario et attico conss. (397 apr. 7?).

CTh.15.13.0. De usu sellarum

CTh.15.13.1

Impp. arcadius et honorius aa. claudio praefecto urbi. exceptis plebeis scaenicis et qui spectaculo sui praebuit populo materiam voluptatis et tabernariis, ceteris omnibus usum sellarum et sedendi ac conveniendi in publicum tribuimus facultatem. dat. viii kal. ian. constantinopoli arcadio iiii et honorio iii aa. conss. (396 dec. 25).

CTh.15.14.0. De infirmandis his, quae sub tyrannis aut barbaris gesta sunt

CTh.15.14.1

Imp. constantinus a. ad constantium praefectum praetorio. remotis licini tyranni constitutionibus et legibus omnes sciant veteris iuris et statutorum nostrorum observari debere sanctionem. proposita xvii kal. iun. crispo iii et constantino iii caess. conss. (324 mai. 16).

CTh.15.14.2

Idem a. ad universos provinciales. tyranni et iudicum eius gestis infirmatis nemo per calumniam velit quod sponte ipse fecit evertere nec quod legitime gestum est. dat. prid. id. feb. paulino et iuliano conss. (325 febr. 12).

CTh.15.14.3

Idem a. antiocho praefecto vigilum. quae tyrannus contra ius rescripsit non valere praecipimus, legitimis eius rescriptis minime impugnandis. dat. viii id. iul. romae constantino a. vii et constantio caes. conss. (326 iul. 8).

CTh.15.14.4

Idem a. ad senatum. super his, qui ex senatoribus ad navicularium munus a tyranno deiecti sunt ac restitui suis natalibus deprecantur, placuit vestrae sanctitati iudicium examenque mandare, ut vos eligatis, qui splendori vestro patrimonii viribus et honestate vivendi et natalium dignitate respondent. incongruum est enim tantae dignitatis arbitrium alteri potius quam vestris suffragiis sententiisque conmittere. eorum autem, quos ut dignos elegeritis, nomina praefectus urbis nobis insinuet, ut vestrum iudicium comprobemus. dat. id. iul. constantino a. vii et constantio caes. conss. (326 iul. 15).

CTh.15.14.5

Imp. constantius a. et constans c. ad universos provinciales et populum. quae tyrannus vel eius iudices contra ius statuerunt, infirmari iubemus reddita possessione expulsis, ut qui vult ab initio agat. emancipationes autem et manumissiones et pacta sub eo facta et transactiones valere oportet. dat. iii non. nov. mediolano constantio a. v et constante conss. (352 nov. 3).

CTh.15.14.6

Imppp. valentinianus, theodosius et arcadius aaa. trifolio praefecto praetorio. nullus sibi honorem audeat vindicare, quem tyrannica concessit audacia, sed ad pristinum statum damnata praesumptio revocetur. dat. x kal. octob. aquileiae theodosio a. ii et cynegio conss. (388 sept. 22).

CTh.15.14.7

Idem aaa. trifolio praefecto praetorio. omne iudicium, quod vafra mente conceptum iniuriam, non iura reddendo maximus infandissimus tyrannorum credidit promulgandum, damnabimus. nullus igitur sibi lege eius, nullus iudicio blandiatur. dat. vi id. octob. mediolano theodosio a. ii et cynegio conss. (388 oct. 10).

CTh.15.14.8

Idem aaa. constantiano praefecto praetorio galliarum. omnes, qui tyranni usurpatione provecti cuiuslibet acceperunt nomen illicitum dignitatis, codicillos adque epistulas et promere iubemus et reddere. iuris quoque dictionem adque sententias, quas promere nequiverunt qui iudicum nomen habere non potuerunt, ex omnibus publicorum monumentorum scriniis iubemus auferri, ut abolita auctoritate gestorum nullus his iudicatis conetur inniti, quae et tempore et auctore delentur. exceptis his tantum negotiis adque in sui integra firmitate mansuris, quae conventionibus pactisque finita sunt, si dolo metuve caruerunt: his quoque pariter exceptis, quae donatio transtulit, emancipatio liberavit, contulit manumissio praemia meritae servitutis, quia in his omnibus voluisse sat iuris est. dat. xviiii kal. feb. mediolano timasio et promoto vv. cc. conss. (389 ian. 14).

CTh.15.14.9

Impp. arcadius et honorius aa. andromacho praefecto urbi. valeat omnis emancipatio tyrannicis facta temporibus; valeat a dominis concessa libertas; valeat celebrata et actis quibuslibet inserta donatio; valeat deficientium omne iudicium; valeat universa venditio; valeant sententiae iudicum privatorum - convelli enim iudicium non oportet - quos partium elegit adsensus et compromissi poena constituit; valeant conceptae sollemniter pactiones; valeant scripturae, quibus aut fides rerum aut ratio probatur aut debitum; valeant apud quemlibet habitae spontaneae professiones; valeat deposita super instituenda lite testatio valeat impetratio iuris communium liberorum; valeat procuratio scaevis mandata temporibus; datus tutor vel curator optineat firmitatem; valeat in sponsam perfecta largitio; doli ac vis et metus inchoata actio in tempus legitimum perseveret; bonorum admissa possessio et adfectus adeundae hereditatis obtineat et interdicti beneficium non amittat; valeat in integrum restitutionis petitum auxilium; valeat vindicatio....Identidem desiderata tribuatur; locatio et conductio inviolabilem obtineant firmitatem; interdicti beneficia tempora infausta non mutilent postulata inofficiosi actio et inmodicarum donationum rescissio petita servetur; beneficia transacta non titubent; sacramento terminata permaneant; pignoris adque fiduciae obligatio perseveret. stent denique omnia, quae in placitum sunt deducta privatum, nisi aut circumscriptio subveniet aut vis aut terror ostenditur. funestorum tantum consulum nomina iubemus aboleri, ita ut his reverentia in lectione recitantium tribuatur, qui tunc in oriente annuos magistratus victuris perpetuo sunt fascibus auspicati; tempus vero ipsum, ac si non fuerit, aestimetur, si quidem tunc temporis omissa aliqua praescriptio taciturnitatis etiam de illis, quae confirmavimus, non possit obponi. dat. xi kal. mai. mediolano olybrio et probino conss. (395 apr. 21).

CTh.15.14.10

Idem aa. eulogio comiti rerum privatarum. qui tyranni maximi secuti iussionem fundos perpetui iuris non ab ordinariis iudicibus, sed a rationalibus acceperunt, eorum amissione plectantur adque ad rem privatam denuo revertantur. dat. vi kal. mai. mediolano olybrio et probino conss. (395 apr. 26).

CTh.15.14.11

Idem aa. andromacho praefecto urbi. fas est sequi nos paternae dispositionis arbitrium adque ideo universos cuiuslibet ordinis viros, de quibus lex nostra reticuerat, ad veniam volumus pertinere et beneficia inopinantibus ultro deferimus, sancientes hac lege, ne is, qui tyranni tempore militavit vel etiam qualibet administratione donatus est aut honoraria dignitate perfunctus vel quicumque in aliquo honore diversis locis aut exactionibus praefuerunt, notam infamiae sustineant, aut deformi vocabulo polluantur. quibus eas tantum dignitates valere decernimus, quas ante tyrannicum tempus habuerunt. dat. xv kal. iun. mediolano olybrio et probino conss. (395 mai. 18).

CTh.15.14.12

Idem aa. eusebio praefecto praetorio. his, quos tyrannici temporis labes specie dignitatis infecerat, inustae maculae omnem abolemus infamiam. cunctis igitur statum priorem sine cuiusquam loci aut ordinis exceptione tribuimus, ut utantur omnes iure communi, teneant statum veteris dignitatis, ita ut nihil sibi ex his quos adepti fuerant honoribus blandiantur. dat. xv kal. iul. mediolano olybrio et probino conss. (395 iun. 17).

CTh.15.14.13

Impp. honorius et theodosius aa. hadriano praefecto praetorio. heracliani vocabulum nec privatim nec publice ulla memoria teneat, ideoque submovenda esse censemus, quaecumque sub eo gesta esse dicuntur. libertates quoque, quoniam certum est scelere eius sollemnitatem consulatus esse pollutam, in melius revocamus, sciatque dominorum voluntas iterandum esse, quod illo auctore advertit stare non posse; semel tamen mutatae condicionis beneficium implendum esse praecipimus et ita repeti manumissionum consuetudines nunc iubemus, ut nullus sub hac occasione incipiat nolle quod voluit. dat. iii non. aug. ravennae post cons. honorii viiii et theodosii v. aa. (413 aug. 3).

CTh.15.14.14 [=brev.15.3.1]

Impp. honor. et theodos. aa. constantio comiti et patricio. sub clade barbaricae depopulationis, si qua aut per fugam aut per congregationem infelicium populorum indigne invidioseque commissa sunt, ad invidiam placatarum legum a callidis litigatorum obiectionibus non vocentur. habeant omnium criminum impunitatem, qui evadendi forsitan non habuerant facultatem, nisi eos eadem crimina iuvissent; non enim crimen dicitur, quod mortis adegit impulsus. ex quo animadvertere cunctos litigatores congruum est, si quid depraedationis agnoverint, se recepturos, si tamen, in eorum, quos pulsaverint, facultatibus abundare aut residere id, potuerint comprobare. dat. kal. mart. ravenna, d.N. theodos. a. vii. et palladio v. c. coss.

interpretatio. quicumque* hostium terrore compulsus, dum mortem timet excipere, ad depraedandum se cum hostibus fortasse coniunxerit, non propter hoc vocetur ad crimen, quod pro conservanda vita fecit invitus. sane si quid apud eum de praeda resederit et residuum invenitur, quod evidenter agnoscitur, hoc solum reddere domino sine calumnia compellatur

CTh.15.15.0. Quod armorum usus interdictus est

CTh.15.15.1

Impp. valentinianus et valens aa. ad buleforum consularem campaniae. nulli prorsus nobis insciis adque inconsultis quorumlibet armorum movendorum copia tribuatur. dat. iii non. octob. altino divo ioviano et varroniano conss. (364 oct. 5).

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CTh.16.1.0. De fide catholica

CTh.16.1.1

Impp. valentinianus et valens aa. ad symmachum praefectum urbi. quisquis seu iudex seu apparitor ad custodiam templorum homines christianae religionis adposuerit sciat non saluti suae, non fortunis esse parcendum. dat. xv kal. decemb. mediolano, valentiniano et valente aa. conss. (365 nov. [?] 17).

CTh.16.1.2pr.

Imppp. gratianus, valentinianus et theodosius aaa. edictum ad populum urbis constantinopolitanae. cunctos populos, quos clementiae nostrae regit temperamentum, in tali volumus religione versari, quam divinum petrum apostolum tradidisse romanis religio usque ad nunc ab ipso insinuata declarat quamque pontificem damasum sequi claret et petrum alexandriae episcopum virum apostolicae sanctitatis, hoc est, ut secundum apostolicam disciplinam evangelicamque doctrinam patris et filii et spiritus sancti unam deitatem sub parili maiestate et sub pia trinitate credamus. (380 febr. 27).

CTh.16.1.2.1

Hanc legem sequentes christianorum catholicorum nomen iubemus amplecti, reliquos vero dementes vesanosque iudicantes haeretici dogmatis infamiam sustinere nec conciliabula eorum ecclesiarum nomen accipere, divina primum vindicta, post etiam motus nostri, quem ex caelesti arbitrio sumpserimus, ultione plectendos. dat. iii kal. mar. thessalonicae gratiano a. v et theodosio a. i conss. (380 febr. 27).

CTh.16.1.3

Idem aaa. ad auxonium proconsulem asiae. episcopis tradi omnes ecclesias mox iubemus, qui unius maiestatis adque virtutis patrem et filium et spiritum sanctum confitentur eiusdem gloriae, claritatis unius, nihil dissonum profana divisione facientes, sed trinitatis ordinem personarum adsertione et divinitatis unitate, quos constabit communioni nectari episcopi constantinopolitanae ecclesiae nec non timothei intra aegyptum alexandrinae urbis episcopi esse sociatos; quos etiam in orientis partibus pelagio episcopo laodicensi et diodoro episcopo tarsensi: in asia nec non proconsulari adque asiana dioecesi amphilochio episcopo iconiensi et optimo episcopo antiocheno: in pontica dioecesi helladio episcopo caesariensi et otreio meliteno et gregorio episcopo nysseno, terennio episcopo scythiae, marmario episcopo marcianopolitano communicare constiterit. hos ad optinendas catholicas ecclesias ex communione et consortio probabilium sacerdotum oportebit admitti: omnes autem, qui ab eorum, quos commemoratio specialis expressit, fidei communione dissentiunt, ut manifestos haereticos ab ecclesiis expelli neque his penitus posthac obtinendarum ecclesiarum pontificium facultatemque permitti, ut verae ac nicaenae fidei sacerdotia casta permaneant nec post evidentem praecepti nostri formam malignae locus detur astutiae. dat. iii kal. aug. heracleae eucherio et syagrio conss. (381 iul. 30).

CTh.16.1.4

Imppp. valentinianus, theodosius et arcadius aaa. ad eusignium praefectum praetorio. damus copiam colligendi his, qui secundum ea sentiunt, quae temporibus divae memoriae constanti sacerdotibus convocatis ex omni orbe romano expositaque fide ab his ipsis, qui dissentire noscuntur, ariminensi concilio, constantinopolitano etiam confirmata in aeternum mansura decreta sunt. conveniendi etiam quibus iussimus patescat arbitrium, scituris his, qui sibi tantum existimant colligendi copiam contributam, quod, si turbulentum quippiam contra nostrae tranquillitatis praeceptum faciendum esse temptaverint, ut seditionis auctores pacisque turbatae ecclesiae, etiam maiestatis capite ac sanguine sint supplicia luituri, manente nihilo minus eos supplicio, qui contra hanc dispositionem nostram obreptive aut clanculo supplicare temptaverint. dat. x kal. feb. mediolano honorio nob. p. et evodio conss. (386 ian. 23).

CTh.16.2.0. De episcopis, ecclesiis et clericis

CTh.16.2.1

Imp. constantinus a. haereticorum factione comperimus ecclesiae catholicae clericos ita vexari, ut nominationibus seu susceptionibus aliquibus, quas publicus mos exposcit, contra indulta sibi privilegia praegraventur. ideoque placet, si quem tua gravitas invenerit ita vexatum, eidem alium subrogari et deinceps a supra dictae religionis hominibus huiusmodi iniurias prohiberi. dat. prid. kal. nov. constantino a. iii et licinio iii c. conss. (313 [?] oct. 31).

CTh.16.2.2 [=brev.16.1.1]

Imp. constantinus a. octaviano correctori lucaniae et brittiorum. qui divino cultui ministeria religionis impendunt, id est hi, qui clerici appellantur, ab omnibus omnino muneribus excusentur, ne sacrilego livore quorundam a divinis obsequiis avocentur. dat. xii. kal. nov. constantino a. v. et licinio c. coss.

interpretatio. lex haec speciali ordinatione praecipit, ut de clericis non exactores, non allectos facere quicumque* sacrilega ordinatione praesumat, quos liberos ab omni munere, id est ab omni officio omnique servitio iubet ecclesiae deservire

CTh.16.2.3

Idem a. ad bassum praefectum praetorio. cum constitutio emissa praecipiat nullum deinceps decurionem vel ex decurione progenitum vel etiam instructum idoneis facultatibus adque obeundis publicis muneribus opportunum ad clericorum nomen obsequiumque confugere, sed eos de cetero in defunctorum dumtaxat clericorum loca subrogari, qui fortuna tenues neque muneribus civilibus teneantur obstricti, cognovimus illos etiam inquietari, qui ante legis promulgationem clericorum se consortio sociaverint. ideoque praecipimus his ab omni molestia liberatis illos, qui post legem latam obsequia publica declinantes ad clericorum numerum confugerunt, procul ab eo corpore segregatos curiae ordinibusque restitui et civilibus obsequiis inservire. proposita xv kal. aug. constantino a. vi et constantio caes. conss. (320 iul. 18).

CTh.16.2.4

Idem a. ad populum. habeat unusquisque licentiam sanctissimo catholicae venerabilique concilio decedens bonorum quod optavit relinquere. non sint cassa iudicia. nihil est, quod magis hominibus debetur, quam ut supremae voluntatis, post quam aliud iam velle non possunt, liber sit stilus et licens, quod iterum non redit, arbitrium. proposita v non. iul. romae crispo ii et constantino ii caess. conss. (321 iul. 3).

CTh.16.2.5

Idem a. ad helpidium. quoniam comperimus quosdam ecclesiasticos et ceteros catholicae sectae servientes a diversarum religionum hominibus ad lustrorum sacrificia celebranda compelli, hac sanctione sancimus, si quis ad ritum alienae superstitionis cogendos esse crediderit eos, qui sanctissimae legi serviunt, si condicio patiatur, publice fustibus verberetur, si vero honoris ratio talem ab eo repellat iniuriam, condemnationem sustineat damni gravissimi, quod rebus publicis vi<n>dicabitur. dat. viii kal. iun. sirmi severo et rufino conss. (323 mai. [?] 25).

CTh.16.2.6

Idem a. ad ablavium praefectum praetorio. neque vulgari consensu neque quibuslibet petentibus sub specie clericorum a muneribus publicis vacatio deferatur, nec temere et citra modum populi clericis conectantur, sed cum defunctus fuerit clericus, ad vicem defuncti alius allegetur, cui nulla ex municipibus prosapia fuerit neque ea est opulentia facultatum, quae publicas functiones facillime queat tolerare, ita ut, si inter civitatem et clericos super alicuius nomine dubitetur, si eum aequitas ad publica trahat obsequia et progenie municeps vel patrimonio idoneus dinoscetur, exemptus clericis civitati tradatur. opulentos enim saeculi subire necessitates oportet, pauperes ecclesiarum divitiis sustentari. proposita kal. iun. constantino a. vii et constantio caes. conss. (326 iun. 1).

CTh.16.2.7

Idem a. valentino consulari numidiae. lectores divinorum apicum et hypodiaconi ceterique clerici, qui per iniuriam haereticorum ad curiam devocati sunt, absolvantur et de cetero ad similitudinem orientis minime ad curias devocentur, sed immunitate plenissima potiantur. dat. non. feb. serdica gallicano et symmacho conss. (330 febr. 5).

CTh.16.2.8

Imp. constantius a. clericis salutem dicit. iuxta sanctionem, quam dudum meruisse perhibemini, et vos et mancipia vestra nullus novis collationibus obligabit, sed vacatione gaudebitis. praeterea neque hospites suscipietis et si qui de vobis alimoniae causa negotiationem exercere volunt, immunitate potientur. dat. vi kal. sept. placido et romulo conss. (343 aug. 27).

CTh.16.2.9

Idem a. severiano proconsuli achaiae. curialibus muneribus adque omni inquietudine civilium functionum exsortes cunctos clericos esse oportet, filios tamen eorum, si curiis obnoxii non tenentur, in ecclesia perseverare. dat. iii id. april. limenio et catullino conss. (349 apr. 11).

CTh.16.2.10

Impp. constantius et constans aa. universis episcopis per diversas provincias. ut ecclesiarum coetus concursu populorum ingentium frequentetur, clericis ac iuvenibus praebeatur immunitas repellaturque ab his exactio munerum sordidorum. negotiatorum dispendiis minime obligentur, cum certum sit quaestus, quos ex tabernaculis adque ergasteriis colligunt, pauperibus profuturos. ab hominibus etiam eorum, qui mercimoniis student, cuncta dispendia....Esse sancimus. parangariarum quoque parili modo cesset exactio. quod et coniugibus et liberis eorum et ministeriis, maribus pariter ac feminis, indulgemus, quos a censibus etiam iubemus perseverare immunes. dat. vii kal. iun. constantinopoli constantio vi et constante conss. (353 [320?] mai. 26).

CTh.16.2.11

Idem aa. ad longinianum praefectum aegypti. iam pridem sanximus, ut catholicae legis antistites et clerici, qui in totum nihil possident ac patrimonio inutiles sunt, ad munera curialia minime devocentur. verum comperimus pro nulla utilitate publica perfectione eos inquietari. ideoque praecipimus filios eorum, quicumque minus idonei et intra legitimam aetatem esse repperiuntur, nullam molestiam sustinere. dat. iiii kal. mart. constantio a. vii et constante a. conss. (354 [342?] febr. 26).

CTh.16.2.12 [=brev.16.1.2]

Imp. constantius a. et constans c. severo suo salutem. mansuetudinis nostrae lege prohibemus, in iudiciis episcopos accusari, ne, dum adfutura ipsorum beneficio impunitas aestimatur, libera sit ad arguendos eos animis furialibus copia. si quid est igitur querelarum, quod quispiam defert, apud alios potissimum episcopos convenit explorari, ut opportuna atque commoda cunctorum quaestionibus audientia commodetur. dat. epistola ix. kal. oct. acc. non. oct. arbetione et lolliano coss.

interpretatio. specialiter prohibetur, ne quis audeat apud iudices publicos episcopum accusare, sed in episcoporum audientiam perferre non differat, quicquid sibi pro qualitate negotii putat posse competere, ut in episcoporum aliorum iudicio, quae asserit contra episcopum, debeant definiri

CTh.16.2.13

Idem a. et iulianus caes. ad leontium. ecclesiae urbis romae et clericis concessa privilegia firmiter praecipimus custodiri. dat. iiii id. nov. mediolano constantio a. viiii et iuliano caes. ii conss. (357 nov. 10).

CTh.16.2.14pr.

Idem a. et iulianus caes. felici episcopo. omnis a clericis indebitae conventionis iniuria et iniquae exactionis repellatur improbitas nullaque conventio sit circa eos munerum sordidorum. et cum negotiatores ad aliquam praestationem competentem vocantur, ab his universis istiusmodi strepitus conquiescat; si quid enim vel parsimonia vel provisione vel mercatura honestati tamen conscia congesserint in usum pauperum adque egentium, ministrari oportet, ut, quod ex eorundem ergasteriis vel tabernis conquiri potuerit et colligi, collectum id religionis aestiment lucrum. (357 dec. [?] 6).

CTh.16.2.14.1

Verum etiam hominibus eorundem, qui operam in mercimoniis habent, divi principis, id est nostri statuta genitoris multimoda observatione caverunt, ut idem clerici privilegiis compluribus redundarent. (357 dec. [?] 6).

CTh.16.2.14.2

Itaque extraordinariorum a praedictis necessitas adque omnis molestia conquiescat. (357 dec. [?] 6).

CTh.16.2.14.3

Ad parangariarum quoque praestationem non vocentur nec eorundem facultates adque substantiae. (357 dec. [?] 6).

CTh.16.2.14.4

Omnibus clericis huiusmodi praerogativa succurrat, ut coniugia clericorum ac liberi quoque et ministeria, id est mares pariter ac feminae, eorumque etiam filii inmunes semper a censibus et separati ab huiusmodi muneribus perseverent. dat. viii id. decemb. mediolano, lecta v kal. ian. aput acta constantio a. viiii et iuliano caes. ii conss. (357 dec. [?] 6).

CTh.16.2.15pr.

Idem a. et caes. ad taurum praefectum praetorio. in ariminensi synodo super ecclesiarum et clericorum privilegiis tractatu habito usque eo dispositio progressa est, ut iuga, quae videntur ad ecclesiam pertinere, a publica functione cessarent inquietudine desistente: quod nostra videtur dudum sanctio reppulisse. (360 [359?] iun. 30).

CTh.16.2.15.1

Clerici vero vel hi, quos copiatas recens usus instituit nuncupari, ita a sordidis muneribus debent immunes adque a collatione praestari, si exiguis admodum mercimoniis tenuem sibi victum vestitumque conquirent; reliqui autem, quorum nomina negotiatorum matricula comprehendit eo tempore, quo collatio celebrata est, negotiatorum munia et pensitationes agnoscant, quippe postmodum clericorum se coetibus adgregarunt. (360 [359?] iun. 30).

CTh.16.2.15.2

De his sane clericis, qui praedia possident, sublimis auctoritas tua non solum eos aliena iuga nequaquam statuet excusare, sed etiam pro his, quae ipsi possident, eosdem ad pensitanda fiscalia perurgueri. universos namque clericos possessores dumtaxat provinciales pensitationes fiscalium recognoscere iubemus, maxime cum in comitatu tranquillitatis nostrae alii episcopi, qui de italiae partibus venerunt, et illi quoque, qui ex hispania adque africa commearunt, probaverint id maxime iuste convenire, ut praeter ea iuga et professionem, quae ad ecclesiam pertinet, ad universa munia sustinenda translationesque faciendas omnes clerici debeant adtineri. dat. epistula prid. kal. iul. mediolano constantio a. x et iuliano iii caes. conss. (360 [359?] iun. 30).

CTh.16.2.16

Idem aa. ad antiochenses. in qualibet civitate, in quolibet oppido vico castello municipio quicumque voto christianae legis meritum eximiae singularisque virtutis omnibus intimaverit, securitate perpetua potiatur. gaudere enim et gloriari ex fide semper volumus, scientes magis religionibus quam officiis et labore corporis vel sudore nostram rem publicam contineri. dat. xvi kal. mart. antiochiae tauro et florentio conss. (361 febr. 14).

CTh.16.2.17

Impp. valentinianus et valens aa. ad byzacenos. plebeios divites ab ecclesia suscipi penitus arcemus. dat. iiii id. sept. aquileiae divo ioviano et varroniano conss. (364 sept. 10).

CTh.16.2.18

Idem aa. ad claudium proconsulem africae. quam ultimo tempore divi constanti sententiam fuisse claruerit, valeat, nec ea in adsimulatione aliqua convalescant, quae tunc decreta vel facta sunt, cum paganorum animi contra sanctissimam legem quibusdam sunt depravationibus excitati. dat. xiii kal. mart. treviris valentiniano et valente aa. conss. (370 febr. 17).

CTh.16.2.19

Idem aa. modesto praefecto praetorio. quicumque ex curialium natus genere ad clericatum venerit et praeiudicio sanguinis coeperit postulari, certi temporis definitione defendatur, ut, si in consortio clericatus decennium quietis impleverit, cum patrimonio suo in perpetuum habeatur inmunis, si vero intra finitos annos fuerit a curia revocatus, cum substantia sua functionibus subiaceat civitatis: observando hoc, ut hi, quos decennium vindicat, petitione superflua minime fatigentur. dat. xvi kal. nov. hierapoli valentiniano et valente aa. conss. (370 oct. 17).

CTh.16.2.20

Imppp. valentinianus, valens et gratianus aaa. ad damasum episcopum urbis romae. ecclesiastici aut ex ecclesiasticis vel qui continentium se volunt nomine nuncupari, viduarum ac pupillarum domos non adeant, sed publicis exterminentur iudiciis, si posthac eos adfines earum vel propinqui putaverint deferendos. censemus etiam, ut memorati nihil de eius mulieris, cui se privatim sub praetextu religionis adiunxerint, liberalitate quacumque vel extremo iudicio possint adipisci et omne in tantum inefficax sit, quod alicui horum ab his fuerit derelictum, ut nec per subiectam personam valeant aliquid vel donatione vel testamento percipere. quin etiam, si forte post admonitionem legis nostrae aliquid isdem eae feminae vel donatione vel extremo iudicio putaverint relinquendum, id fiscus usurpet. ceterum si earum quid voluntate percipiunt, ad quarum successionem vel bona iure civili vel edicti beneficiis adiuvantur, capiant ut propinqui. lecta in ecclesiis romae iii kal. aug. valentiniano et valente iii aa. conss. (370 iul. 30).

CTh.16.2.21

Idem aaa. ad ampelium praefectum urbi. ii, qui ecclesiae iuge obsequium deputarunt, curiis habeantur inmunes, si tamen eos ante ortum imperii nostri ad cultum se legis nostrae contulisse constiterit: ceteri revocentur, qui se post id tempus ecclesiasticis congregarunt. dat. xvi kal. iun. gratiano a. ii et probo conss. (371 mai. 17).

CTh.16.2.22

Idem aaa. ad paulinum praesidem epiri novae. forma praecedentis consulti etiam circa episcoporum virginumque personas et circa alias, quarum statuto praecedenti facta complexio est, valeat ac porrigatur. dat. kal. decemb. treviris modesto et arinthaeo conss. (372 dec. 1).

CTh.16.2.23 [=brev.16.1.3]

Imppp. valens, grat. et valent. aaa. artemio, eurydico, appio, gerasimo et ceteris episcopis. qui mos est causarum civilium, idem in negotiis ecclesiasticis obtinendus est: ut, si qua sunt ex quibusdam dissensionibus levibusque delictis ad religionis observantiam pertinentia, locis suis et a suae dioeceseos synodis audiantur: exceptis, quae actio criminalis ab ordinariis extraordinariisque iudicibus aut illustribus potestatibus audienda constituit. dat. xvi. kal. iun. treviris, valente v. et valentin. aa. coss.

interpretatio. quoties ex qualibet re ad religionem pertinente inter clericos fuerit nata contentio, id specialiter observetur, ut convocatis ab episcopo dioecesanis presbyteris, quae in contentionem venerint, iudicio terminentur. sane si quid opponitur criminale, ad notitiam iudicis in civitate, qua agitur, deducatur, ut ipsius sententia vindicetur, quod probatur criminaliter fuisse commissum

CTh.16.2.24

Idem aaa. ad catafronium. presbyteros diaconos subdiaconos adque exorcistas et lectores, ostiarios etiam et omnes perinde, qui primi sunt, personalium munerum expertes esse praecipimus. dat. iii non. mart. gratiano a. iiii et merobaude v. c. conss. (377 mart. 5).

CTh.16.2.25

Imppp. gratianus, valentinianus et theodosius aaa. qui divinae legis sanctitatem aut nesciendo confundunt aut neglegendo violant et offendunt, sacrilegium committunt. dat. iii kal. mart. thessalonicae gratiano a. v et theodosio a. i conss. (380 febr. 27).

CTh.16.2.26

Idem aaa. ad tuscianum comitem orientis. universos, quos constiterit custodes ecclesiarum esse vel sanctorum locorum ac religiosis obsequiis deservire, nullius adtemptationis molestiam sustinere decernimus. quis enim eos capite censos patiatur esse devinctos, quos necessario intellegit supra memorato obsequio mancipatos? dat. prid. kal. april. constantinopoli eucherio et syagrio conss. (381 mart. 31).

CTh.16.2.27pr.

Imppp. valentinianus, theodosius et arcadius aaa. tatiano praefecto praetorio. nulla nisi emensis sexaginta annis, cui votiva domi proles sit, secundum praeceptum apostoli ad diaconissarum consortium transferatur. tum filiis suis, curatore, si id aetas poscit, petito, bona sua idoneis sedula religione gerenda committat, ipsa tantum praediorum suorum reditus consequatur, de quibus servandi abalienandi donandi distrahendi relinquendi vel quoad superest vel cum in fata concedit et libera ei voluntas est, integra sit potestas. nihil de monilibus et superlectili, nihil de auro argento ceterisque clarae domus insignibus sub religionis defensione consumat, sed universa integra in liberos proximosve vel in quoscumque alios arbitrii sui existimatione transcribat ac si quando diem obierit, nullam ecclesiam, nullum clericum, nullum pauperem scribat heredes. careat namque necesse est viribus, si quid contra vetitum circa personas specialiter comprehensas fuerit a moriente confectum. immo si quid ab his morienti fuerit extortum, nec tacito fideicommisso aliquid clericis in fraudem venerabilis sanctionis callida arte aut probrosa cuiuspiam coniventia deferatur; extorres sint ab omnibus quibus inhiaverant bonis. et si quid forte per epistulam codicillum donationem testamentum, quolibet denique detegitur genere conscriptum erga eos, quos hac sanctione submovimus, id nec in iudicium devocetur, sed vel ex intestato is, qui sibi competere intellegit, statuti huius definitione succedat, si quis se agnoscit filium, si quis probat propinquum, si quis denique vel casu vel iudicio, pro solido pro portione, heres legatarius fideicommissarius apertis deprehenditur codicillis, fruatur fortunae munere, conscientiae suae fructu et submotis his adque deiectis in hereditariis corporibus potestate utatur heredis. (390 iun. 21).

CTh.16.2.27.1

Feminae, quae crinem suum contra divinas humanasque leges instinctu persuasae professionis absciderint, ab ecclesiae foribus arceantur. non illis fas sit sacrata adire mysteria neque ullis supplicationibus mereantur veneranda omnibus altaria frequentare; adeo quidem, ut episcopus, tonso capite feminam si introire permiserit, deiectus loco etiam ipse cum huiusmodi contuberniis arceatur, ac non modo si fieri suaserit, verum etiam si hoc ab aliquibus exigi, factum denique esse quacumque ratione compererit, nihil sibi intellegat opitulari. hoc absque dubio emendandis pro lege erit, emendatis pro consuetudine, ut illi habeant testimonium, isti incipiant timere iudicium. dat. xi kal. iul. mediolano valentiniano a. iiii et neoterio v. c. conss. (390 iun. 21).

CTh.16.2.28

Idem aaa. tatiano praefecto praetorio. legem, quae de diaconissis vel viduis nuper est promulgata, ne quis videlicet clericus neve sub ecclesiae nomine mancipia superlectilem praedam velut infirmi sexus dispoliator invaderet et remotis adfinibus ac propinquis ipse sub praetextu catholicae disciplinae se ageret viventis heredem, eatenus animadvertat esse revocatam, ut de omnium chartis, si iam nota est, auferatur neque quisquam aut litigator ea sibi utendum aut iudex noverit exequendum. dat. x kal. septemb. veronae valentiniano a. iiii et neoterio conss. (390 aug. 23).

CTh.16.2.29

Impp. arcadius et honorius aa. hierio vicario africae. quaecumque a parentibus nostris diversis sunt statuta temporibus, manere inviolata adque incorrupta circa sacrosanctas ecclesias praecipimus. nihil igitur a privilegiis immutetur omnibusque, qui ecclesiis serviunt, tuitio deferatur, quia temporibus nostris addi potius reverentiae cupimus quam ex his quae olim praestita sunt immutari. dat. x kal. april. mediolano olybrio et probino conss. (395 mart. 23).

CTh.16.2.30

Idem aa. theodoro praefecto praetorio. post alia: non novum aliquid praesenti sanctione praecipimus, quam illa, quae olim videntur indulta, firmamus. privilegia igitur, quae olim reverentia religionis obtinuit, mutilari sub poenae etiam interminatione prohibemus, ita ut hi quoque, qui ecclesiae obtemperant, his, quibus ecclesia, beneficiis perfruantur. dat. prid. kal. feb. mediolano caesario et attico conss. (397 ian. 31).

CTh.16.2.31

Idem aa. theodoro praefecto praetorio. si quis in hoc genus sacrilegii proruperit, ut in ecclesias catholicas irruens sacerdotibus et ministris vel ipsi cultui locoque aliquid importet iniuriae, quod geritur litteris ordinum, magistratuum et curatorum et notoriis apparitorum, quos stationarios appellant, deferatur in notitiam potestatum, ita ut vocabula eorum, qui agnosci potuerint, declarentur. et si per multitudinem commissum dicetur, si non omnes, possunt tamen aliquanti cognosci, quorum confessione sociorum nomina publicentur. adque ita provinciae moderator sacerdotum et catholicae ecclesiae ministrorum, loci quoque ipsius et divini cultus iniuriam capitali in convictos sive confessos reos sententia noverit vindicandam nec expectet, ut episcopus iniuriae propriae ultionem deposcat, cui sanctitas ignoscendi solam gloriam dereliquit. sitque cunctis non solum liberum, sed et laudabile factas atroces sacerdotibus aut ministris iniurias veluti publicum crimen persequi ac de talibus reis ultionem mereri. quod si multitudo violenta civilis apparitionis executione et adminiculo ordinum possessorumve non potuerit praesentari, quod se armis aut locorum difficultate tueatur, iudices africani armatae apparitionis praesidium, datis ad virum spectabilem comitem africae litteris, praelato legis istius tenore deposcant, ut rei talium criminum non evadant. dat. vii kal. mai. mediolano honorio a. iiii et eutychiano conss. (398 apr. 25 [409 ian. 13]).

CTh.16.2.32

Idem aa. caesario praefecto praetorio. si quos forte episcopi deesse sibi clericos arbitrantur, ex monachorum numero rectius ordinabunt, non obnoxios publicis privatisque rationibus cum invidia teneant, sed habeant iam probatos. dat. vii kal. aug. honorio a. iiii et eutychiano conss. (398 [?] iul. 26).

CTh.16.2.33

Idem aa. eutychiano praefecto praetorio. ecclesiis, quae in possessionibus, ut adsolet, diversorum, vicis etiam vel quibuslibet locis sunt constitutae, clerici non ex alia possessione vel vico, sed ex eo, ubi ecclesiam esse constiterit, eatenus ordinentur, ut propriae capitationis onus ac sarcinam recognoscant, ita ut pro magnitudine vel celebritate uniuscuiusque vici ecclesiis certus iudicio episcopi clericorum numerus ordinetur. dat. vi kal. aug. mnizo honorio a. iiii et eutychiano conss. (398 iul. 27).

CTh.16.2.34

Idem aa. sapidiano vicario africae. si ecclesiae venerabilis privilegia cuiusquam fuerint vel temeritate violata vel dissimulatione neglecta, commissum quinque librarum auri, sicut etiam prius constitutum est, condemnatione plectatur. si quid igitur contra ecclesias vel clericos per obreptionem vel ab haereticis vel ab huiuscemodi hominibus fuerit contra leges impetratum, huius sanctionis auctoritate vacuamus. dat. vii kal. iul. brixiae theodoro v. c. cons. (399 iun. 25).

CTh.16.2.35 [=brev.16.1.4]

Impp. arcad. et honor. aa. hadriano pf. p. quicumque* residentibus sacerdotibus fuerit episcopali loco detrusus et nomine, si aliquid vel contra custodiam vel contra quietem publicam moliri fuerit deprehensus, rursusque sacerdotium petere, a quo videtur expulsus, procul ab ea urbe, quam infecit, secundum legem divae memoriae gratiani, centum milibus* vitam agat. sit ab eorum coetibus separatus, a quorum est societate discretus, sitque huius modi personis, tenore huius legis, illicitum, sacra nostra adire secreta et impetrare rescripta; omnibus abiectis per culpam sacerdotio personis, quae impetrata sunt, infecta permaneant: scituris his, quorum defensione nituntur, absque sui reprehensione non futurum, si hoc eis pollicentur suffragium, qui divinum non videntur meruisse iudicium. dat. prid. non. febr. ravenna, stilicone et aureliano coss. haec lex interpretatione non indiget.

CTh.16.2.36pr.

Idem aa. pompeiano proconsuli africae. quicumque catholicae religionis clerici intra eum modum, unde victus emendi vendendique usum lege praefinitum exercent, ab auraria pensione habeantur inmunes. (401 iul. 14).

CTh.16.2.36.1

Ab his quoque, quos a publici laboris actu et gradus clericatus et, quod non minus est, sanctior vita defendit, praecipimus temperari. nec enim ullum eorum, qui excepti legibus probabuntur, subiacere patiamur iniuriae. et cetera. dat. prid. id. iul. mediolano post cons. stilichonis et aureliani vv. cc. (401 iul. 14).

CTh.16.2.37

Idem aa. studio praefecto urbi. quoniam personae ad inquisitionem perpetrati incendii, ut tui culminis suggestio patefecit, nequeunt inveniri, clericos carceris custodia relaxamus, ita ut navibus impositi ad lares proprios revertantur. nec proscriptionis periculo domus careant, quas episcopos vel clericos peregrinos post publicationem edictorum et nostrae serenitatis adfatus probabitur suscepisse, pari forma servanda, si qua domus cives clericos nova ac tumultuosa conventicula extra ecclesiam celebrantes susceperit. ad obserandos si quidem seditionis aditus id nostro sedet arbitrio, ut omnes episcopi et clerici peregrini ab hac sacratissima urbe pellantur. dat. iiii kal. sept. constantinopoli honorio a. vi et aristaeneto conss. (404 aug. 29).

CTh.16.2.38

Imppp. arcadius, honorius et theodosius aaa. porfyrio proconsuli africae. post alia: privilegia, quae ecclesiis et clericis legum decrevit auctoritas, hac quoque praeceptione sancta et inviolata permanere decernimus. adque hoc ipsis praecipuum ac singulare deferimus, ut, quaecumque de nobis ad ecclesiam tantum pertinentia specialiter fuerint impetrata, non per coronatos, sed ab advocatis eorum arbitratu et iudicibus innotescant et sortiantur effectum. sacerdotes vero provinciae erunt solliciti, ne sub hac scilicet privilegii excusatione etiam contra eorum utilitatem aliquid his inferatur incommodum. dat. xvii kal. dec. romae honorio vii et theodosio ii aa. conss. (407 nov. 15).

CTh.16.2.39 [=brev.16.1.5]

Imppp. arcad., honor. et theodos. aaa. theodoro pf. p. quemcumque* clericum indignum officio suo episcopus iudicaverit et ab ecclesiae ministerio segregaverit, aut si qui professum sacrae religionis obsequium sponte dereliquerit, continuo eum curia sibi vindicet, ut liber illi ultra ad ecclesiam recursus esse non possit, et pro hominum qualitate et quantitate patrimonii vel ordini suo vel collegio civitatis adiungatur: modo ut quibuscumque* apti erunt publicis necessitatibus obligentur, ita ut colludio quoque locus non sit. per singulos igitur binae librae auri inferendae aerario nostro a decemprimis curialibus exigantur, si aliquibus illicitam conniventiam et colludia foeda praestiterint, hominibusque improbissimis ab omnibus officiis militiae aditus obstruatur. dat. v. kal. dec. ravennae, basso et philippo coss.

interpretatio. quemcumque* clericum episcopus suus malae vitae esse probaverit et eum de gradu suo pro morum pravitate deiecerit, vel si ipse clericus sua voluntate professionem reliquerit clericatus, continuo a iudice curialibus adiungatur, ut, si ita et natalibus et facultatibus est idoneus, eum inter ipsos curiales officium suum implere compellat. si autem infima persona est, inter collegiatos eum observare, vel ad quae aptus fuerit, in publico servire lex ista constituit, ita ut huius modi personae a curialibus quolibet colludio nullatenus excusentur. quod si factum fuerit, pro singulis personis curiales binas libras auri fisco a se noverint inferendas

CTh.16.2.40

Impp. honorius et theodosius aa. melitio praefecto praetorio. placet rationabilis consilii tenore perpenso destricta moderatione praescribere, a quibus specialiter necessitatibus ecclesiae urbium singularum habeantur inmunes. prima quippe illius usurpationis contumelia depellenda est, ne praedia usibus caelestium secretorum dicata sordidorum munerum fasce vexentur. nullam iugationem, quae talium privilegiorum sorte gratulatur, muniendi itineris constringat iniuria; nihil extraordinarium ab hac superindicticiumve flagitetur; nulla pontium instauratio, nulla translationum sollicitudo gignatur; non aurum ceteraque talia poscantur. postremo nihil, praeter canonicam illationem, quod adventiciae necessitatis sarcina repentina depoposcerit, eius functionibus adscribatur. si quis contra venerit, post debitae ultionis acrimoniam, quae erga sacrilegos iure promenda est, exilio perpetuae deportationis uratur. dat. viii kal. iun. ravennae honorio viiii et theodosio v aa. conss. (412 mai. 25).

CTh.16.2.41

Idem aa. melitio praefecto praetorio. clericos non nisi aput episcopos accusari convenit. igitur si episcopus vel presbyter, diaconus et quicumque inferioris loci christianae legis minister aput episcopos, si quidem alibi non oportet, a qualibet persona fuerint accusati, sive ille sublimis vir honoris sive ullius alterius dignitatis, qui hoc genus laudabilis intentionis arripiet, noverit docenda probationibus, monstranda documentis se debere inferre. si quis ergo circa huiusmodi personas non probanda detulerit, auctoritate huius sanctionis intellegat se iacturae famae propriae subiacere, ut damno pudoris, existimationis dispendio discat sibi alienae verecundiae impune insidiari saltem de cetero non licere. nam sicut episcopos presbyteros diaconos ceterosque, si his obiecta comprobari potuerint, maculatos ab ecclesia venerabili aequum est removeri, ut contempti post haec et miserae humilitatis inclinati despectu iniuriarum non habeant actionem, ita similis videri debet iustitiae, quod adpetitae innocentiae moderatam deferri iussimus ultionem. ideoque huiusmodi dumtaxat causas episcopi sub testificatione multorum actis audire debebunt. dat. iii id. dec. ravennae honorio viiii et theodosio v aa. conss. (412 dec. 11).

CTh.16.2.42pr.

Idem aa. monaxio praefecto praetorio. quia inter cetera alexandrinae legationis inutilia hoc etiam decretis scriptum est, ut reverentissimus episcopus de alexandrina civitate aliquas .... non exire, quod quidem terrore eorum, qui parabalani nuncupantur, legationi insertum est, placet nostrae clementiae, ut nihil commune clerici cum publicis actibus vel ad curiam pertinentibus habeant. (416 sept. 29).

CTh.16.2.42.1

Praeterea eos, qui parabalani vocantur non plus quam quingentos esse praecipimus, ita ut non divites et qui hunc locum redimant, sed pauperes a corporatis pro rata alexandrini populi praebeantur, eorum nominibus viro spectabili praefecto augustali videlicet intimatis et per eum ad vestram magnitudinem referendis. (416 sept. 29).

CTh.16.2.42.2

Quibus neque ad quodlibet publicum spectaculum neque ad curiae locum neque ad iudicium adcedendi licentiam permittimus, nisi forte singuli ob causas proprias et necessitates iudicem adierint, aliquem lite pulsantes vel ab alio ipsi pulsati vel in communi totius corporis causa syndico ordinato, sub ea definitione, ut, si quis eorum haec violaverit, et brevibus parabalani eximatur et competenti supplicio subiugetur nec umquam ad eandem sollicitudinem revertatur. (416 sept. 29).

CTh.16.2.42.3

Loco autem mortuorum viro spectabili praefecto augustali subrogandi dedimus potestatem sub ea condicione, quae superius designatur. dat. iii kal. octob. constantinopoli theodosio a. vii et palladio conss. (416 sept. 29).

CTh.16.2.43

Idem aa. monaxio praefecto praetorio. parabalani, qui ad curanda debilium aegra corpora deputantur, quingentos esse ante praecepimus. sed quia hos minus sufficere in praesenti cognovimus, pro quingentis sescentos constitui praecipimus, ita ut pro arbitrio viri reverentissimi antistitis alexandrinae urbis de his, qui ante fuerant et qui pro consuetudine curandi gerunt experientiam, sescenti parabalani ad huiusmodi sollicitudinem eligantur, exceptis videlicet honoratis et curialibus. si qui autem ex his naturali sorte fuerit absumptus, alter in eius locum pro voluntate eiusdem sacerdotis exceptis honoratis et curialibus subrogetur; ita ut hi sescenti viri reverentissimi sacerdotis praeceptis ac dispositionibus obsecundent et sub eius cura consistant: reliquis, quae dudum latae legis forma complectitur super isdem parabalanis vel de spectaculis vel de iudiciis ceterisque, sicut iam statutum est, custodiendis. dat. iii non. feb. constantinopoli honorio xii et theodosio viii aa. conss. (418 febr. 3).

CTh.16.2.44pr. [=brev.16.1.6pr.]

Impp. honor. et theodos. aa. palladio pf. p. eum, qui probabilem saeculo disciplinam agit, decolorari consortio sororiae appellationis non decet. quicumque* igitur cuiuscumque* gradus sacerdotio fulciuntur vel clericatus honore censentur, extranearum sibi mulierum interdicta consortia cognoscant; hac eis tantum facultate concessa, ut matres, filias atque germanas intra domorum suarum septa contineant. in his enim nihil scaevi criminis aestimari foedus naturale permittit.

CTh.16.2.44.1 [=brev.16.1.6.1]

Illas etiam non relinqui castitatis hortatur affectio, quae ante sacerdotium maritorum legitimum meruere coniugium. neque enim clericis incompetenter adiunctae sunt, quae dignos sacerdotio viros sui conversatione fecerunt. dat. viii. id. mai. ravenna, d.N. theodos. a. ix. et constantio iii. v. c. coss.

interpretatio. quicumque* clericatus utuntur officio, extranearum mulierum familiaritatem habere prohibentur; matrum, sororum vel filiarum sibi solatia intra domum suam noverint tantum esse concessa, quia nihil turpe in talibus personis fieri vel cogitari lex naturae permittit. illae vero mulieres sunt in solatio retinendae, quae in coniugio fuerunt ante officium clericatus

CTh.16.2.45

Idem aa. philippo praefecto praetorio illyrici. omni innovatione cessante vetustatem et canones pristinos ecclesiasticos, qui nunc usque tenuerunt, per omnes illyrici provincias servari praecipimus. tum si quid dubietatis emerserit, id oporteat non absque scientia viri reverentissimi sacrosanctae legis antistitis urbis constantinopolitanae, quae romae veteris praerogativa laetatur, conventui sacerdotali sanctoque iudicio reservari. dat. prid. id. iul. eustathio et agricola conss. (421 iul. 14).

CTh.16.2.46

Impp. theodosius a. et valentinianus caes. georgio proconsuli africae. post alia: privilegia praeteritarum legum ecclesiae sive clericis delata serventur. et cetera. dat. prid. non. iul. aquileiae d. n. theodosio a. xi et valentiniano caes. conss. (425 iul. 6 vel aug. 4).

CTh.16.2.47pr.

Idem a. et caes. basso comiti rerum privatarum. privilegia ecclesiarum omnium, quae seaculo nostro tyrannus inviderat, prona devotione revocamus, scilicet ut quidquid a divis principibus constitutum est vel quae singuli quique antistites pro causis ecclesiasticis impetrarant, sub poena sacrilegii iugi solidata aeternitate serventur. (425 oct. 8 [aug. 6]).

CTh.16.2.47.1

Clericos etiam, quos indiscretim ad saeculares iudices debere deduci infaustus praesumptor edixerat, episcopali audientiae reservamus. fas enim non est, ut divini muneris ministri temporalium potestatum subdantur arbitrio. et cetera. dat. viii id. octob. aquileiae d. n. theodosio a. xi et valentiniano c. conss. (425 oct. 8 [aug. 6]).

CTh.16.3.0. De monachis

CTh.16.3.1

Imppp. valentinianus, theodosius et arcadius aaa. tatiano praefecto praetorio. quicumque sub professione monachi repperiuntur, deserta loca et vastas solitudines sequi adque habitare iubeantur. dat. iiii non. sept. veronae valentiniano a. iiii et neoterio conss. (390 sept. 2).

CTh.16.3.2

Idem aaa. tatiano praefecto praetorio. monachos, quibus interdictae fuerant civitates, dum iudiciariis aluntur iniuriis, in pristinum statum submota hac lege esse praecipimus; antiquata si quidem nostrae clementiae iussione liberos in oppidis largimur eis ingressus. dat. xv kal. mai. constantinopoli arcadio a. ii et rufino conss. (392 apr. 17).

CTh.16.4.0. De his, qui super religione contendunt

CTh.16.4.1

Imppp. valentinianus, theodosius et arcadius aaa. eusignio praefecto praetorio. his, qui sibi tantummodo existimant colligendi copiam contributam, si turbulentum quippiam contra nostrae tranquillitatis praeceptum faciendum esse temptaverint, ut seditionis auctores pacisque turbatae ecclesiae, maiestatis capite ac sanguine sint supplicia luituri. dat. x kal. feb. constantinopoli, honorio nob. p. et evodio v. c. conss. (386 ian. 23).

CTh.16.4.2

Idem aaa. tatiano praefecto praetorio. nulli egresso ad publicum vel disceptandi de religione vel tractandi vel consilii aliquid deferendi patescat occasio. et si quis posthac ausu gravi adque damnabili contra huiusmodi legem veniendum esse crediderit vel insistere motu pestiferae perseverationis audebit, competenti poena et digno supplicio coherceatur. dat. xvi kal. iul. stobis theodosio a. ii et cynegio conss. (388 iun. 16).

CTh.16.4.3

Idem aaa. potamio praefecto augustali. deportatione dignus est, qui nec generali lege admonitus nec competenti sententia emendatus et fidem catholicam turbat et populum. dat. xv kal. aug. constantinopoli arcadio a. ii et rufino v. c. conss. (392 iul. 18).

CTh.16.4.4

Imppp. arcadius, honorius et theodosius aaa. anthemio magistro officiorum. cuncta officia moneantur a tumultuosis se conventiculis abstinere, et qui sacrilego animo auctoritatem nostri numinis ausi fuerint expugnare, privati cingulo bonorum proscriptione multentur. dat. iiii kal. feb. constantinopoli honorio a. vi et aristaeneto conss. (404 ian. 29).

CTh.16.4.5pr.

Idem aaa. studio praefecto urbi. si quis servos in hac sacratissima urbe possideat, eos a tumultuosis conventiculis faciat temperare, sciens se pro singulis servis, qui interesse conventibus interdictis fuerint comprehensi, trium librarum auri dispendio feriendum, servis videlicet puniendis. (404 sept. 11).

CTh.16.4.5.1

Quam formam in nummulariis ceterisque huius almae urbis corporibus volumus sub poena graviore servari, ut unumquodque corpus pro his, qui de suo numero conventus celebrare illicitos detegentur, ad quinquaginta pondo auri solutionem multae nomine adstringatur. dat. iii id. sept. constantinopoli honorio a. vi et aristaeneto conss. (404 sept. 11).

CTh.16.4.6

Idem aaa. eutychiano praefecto praetorio. rectores provinciarum moneantur, ut conventus eorum arceantur illiciti, qui orthodoxarum religione subfulti spretis sacrosanctis ecclesiis alio convenire conantur: his, qui ab arsaci theofili porfyri reverentissimorum sacrae legis antistitum communione dissentiunt, ab ecclesia procul dubio repellendis. dat. xiiii kal. dec. constantinopoli honorio a. vi et aristaeneto v. c. conss. (404 nov. 18).

CTh.16.5.0. De haereticis

CTh.16.5.1

Imp. constantinus a. ad dracilianum. privilegia, quae contemplatione religionis indulta sunt, catholicae tantum legis observatoribus prodesse oportet. haereticos autem atque schismaticos non solum ab his privilegiis alienos esse volumus, sed etiam diversis muneribus constringi et subici. proposita kal. sept. gerasto constantino a. vii et constantio c. conss. (326 sept. 1).

CTh.16.5.2

Idem a. ad bassum. novatianos non adeo comperimus praedamnatos, ut his quae petiverunt crederemus minime largienda. itaque ecclesiae suae domos et loca sepulcris apta sine inquietudine eos firmiter possidere praecipimus, ea scilicet, quae ex diuturno tempore vel ex empto habuerunt vel qualibet quaesiverunt ratione. sane providendum erit, ne quid sibi usurpare conentur ex his, quae ante discidium ad ecclesias perpetuae sanctitatis pertinuisse manifestum est. dat. vii kal. oct. spoleti constantino a. vii et constantio c. conss. (326 sept. 25).

CTh.16.5.3

Impp. valentinianus et valens aa. ad ampelium praefectum urbi. ubicumque manichaeorum conventus vel turba huiusmodi repperitur, doctoribus gravi censione multatis his quoque qui conveniunt ut infamibus atque probrosis a coetu hominum segregatis, domus et habitacula, in quibus profana institutio docetur, fisci viribus indubitanter adsciscantur. dat. vi non. mart. treviris modesto et arinthaeo conss. (372 mart. 2).

CTh.16.5.4

Imppp. valens, gratianus et valentinianus aaa. ad hesperium praefectum praetorio. olim pro religione catholicae sanctitatis, ut coetus haeretici usurpatio conquiesceret, iussimus, sive in oppidis sive in agris extra ecclesias, quas nostra pax obtinet, conventus agerentur, publicari loca omnia, in quibus falso religionis obtentu altaria locarentur. quod sive dissimulatione iudicum seu profanorum improbitate contigerit, eadem erit ex utroque pernicies. dat. x kal. mai. treviris valente v et valentiniano aa. conss. (376 [378?] apr. 22).

CTh.16.5.5

Imppp. gratianus, valentinianus et theodosius aaa. ad hesperium praefectum praetorio. omnes vetitae legibus et divinis et imperialibus haereses perpetuo conquiescant. quisquis opinionem plectibili ausu dei profanus inminuit, sibi tantummodo nocitura sentiat, aliis obfutura non pandat. quisquis redempta venerabili lavacro corpora reparata morte tabificat, id auferendo quod geminat, sibi solus talia noverit, alios nefaria institutione non perdat. omnesque perversae istius superstitionis magistri pariter et ministri, seu illi sacerdotali adsumptione episcoporum nomen infamant seu, quod proximum est, presbyterorum vocabulo religionem mentiuntur, seu etiam se diaconos, cum nec christiani quidem habeantur, appellant, hi conciliabulis damnatae dudum opinionis abstineant. denique antiquato rescripto, quod apud sirmium nuper emersit, ea tantum super catholica observatione permaneant, quae perennis recordationis pater noster et nos ipsi victura in aeternum aeque numerosa iussione mandavimus. dat. iii non. aug. mediolano, acc. xiii kal. sept. auxonio et olybrio conss. (379 aug. 3).

CTh.16.5.6pr.

Idem aaa. eutropio praefecto praetorio. nullus haereticis mysteriorum locus, nulla ad exercendam animi obstinatioris dementiam pateat occasio. sciant omnes etiam si quid speciali quolibet rescripto per fraudem elicito ab huiusmodi hominum genere impetratum est, non valere. (381 ian. 10).

CTh.16.5.6.1

Arceantur cunctorum haereticorum ab illicitis congregationibus turbae. unius et summi dei nomen ubique celebretur; nicaenae fidei dudum a maioribus traditae et divinae religionis testimonio atque adsertione firmatae observantia semper mansura teneatur; fotinianae labis contaminatio, arriani sacrilegii venenum, eunomianae perfidiae crimen et nefanda monstruosis nominibus auctorum prodigia sectarum ab ipso etiam aboleantur auditu. (381 ian. 10).

CTh.16.5.6.2

Is autem nicaenae adsertor fidei, catholicae religionis verus cultor accipiendus est, qui omnipotentem deum et christum filium dei uno nomine confitetur, deum de deo, lumen ex lumine: qui spiritum sanctum, quem ex summo rerum parente speramus et accipimus, negando non violat: apud quem intemeratae fidei sensu viget incorruptae trinitatis indivisa substantia, quae graeci adsertione verbi ousia recte credentibus dicitur. haec profecto nobis magis probata, haec veneranda sunt. (381 ian. 10).

CTh.16.5.6.3

Qui vero isdem non inserviunt, desinant adfectatis dolis alienum verae religionis nomen adsumere et suis apertis criminibus denotentur. ab omnium submoti ecclesiarum limine penitus arceantur, cum omnes haereticos illicitas agere intra oppida congregationes vetemus ac, si quid eruptio factiosa temptaverit, ab ipsis etiam urbium moenibus exterminato furore propelli iubeamus, ut cunctis orthodoxis episcopis, qui nicaenam fidem tenent, catholicae ecclesiae toto orbe reddantur. dat. iiii id. ian. constantinopoli eucherio et syagrio conss. (381 ian. 10).

CTh.16.5.7pr.

Idem aaa. eutropio praefecto praetorio. si quis manichaeus manichaeave ex die latae dudum legis ac primitus a nostris parentibus in quamlibet personam condito testamento vel cuiuslibet titulo liberalitatis atque specie donationis transmisit proprias facultates, vel quisquam ex his aditae per quamlibet successionis formam collatione ditatus est, quoniam isdem sub perpetua inustae infamiae nota testandi ac vivendi iure romano omnem protinus eripimus facultatem neque eos aut relinquendae aut capiendae alicuius hereditatis habere sinimus potestatem, totum fisci nostri viribus inminentis indagatione societur. sive id marito sive propinquo aut cuilibet bene merito sive etiam filiis, quos tamen vitae eiusdem et criminis facinora sociata coniungent, sive etiam per interpositam quamlibet personam profuturum eidem, qui e tali hominum genere et grege repperitur, illicita liberalitate provenerit, caduci titulo vindicetur. (381 mai. 8).

CTh.16.5.7.1

Nec in posterum tantum huius emissae per nostram mansuetudinem legis forma praevaleat, sed in praeteritum etiam, quidquid talium personarum aut proprietas reliquit aut successio habuit, usurpatio fiscalis commodi persequatur. nam licet ordo caelestium statutorum secuturis post observantiam sacratae constitutionis indicat neque actis obesse consueverit, tamen, quoniam quid consuetudo obstinationis et pertinax natura mereatur, in hac tantum, quam specialiter vigere volumus, sanctione iustae sensu instigationis agnoscimus et eos, qui etiam post legem primitus datam nequaquam ab illicitis et profanis coitionibus refrenari divina saltem monitione potuerunt, tamquam in ipsius depictae legis iniuriam veluti sacrilegii reos tenemus, severitatem praesentium statutorum non tam ad constituendae, sed ad ulciscendae legis sanximus exemplum, ita ut nec defensio temporis prosit. (381 mai. 8).

CTh.16.5.7.2

His tantum filiis paternorum vel maternorum bonorum successio deferatur, qui licet ex manichaeis orti sensu tamen et affectu propriae salutis admoniti ab eiusdem vitae professionisque collegiis pura semet dediti religione demoverint, tali inmunes a crimine. (381 mai. 8).

CTh.16.5.7.3

Illud etiam huic adicimus sanctioni, ne in conventiculis oppidorum, ne in urbibus claris consueta feralium mysteriorum sepulcra constituant; a conspectu celebri civitate penitus coherceantur. nec se sub simulatione fallaci eorum scilicet nominum, quibus plerique, ut cognovimus, probatae fidei et propositi castioris dici ac signari volent, maligna fraude defendant; cum praesertim nonnulli ex his encratitas, apotactitas, hydroparastatas vel saccoforos nominari se velint et varietate nominum diversorum velut religiosae professionis officia mentiantur. eos enim omnes convenit non professione defendi nominum, sed notabiles atque execrandos haberi scelere sectarum. dat. viii id. mai. constantinopoli eucherio et syagrio conss. (381 mai. 8).

CTh.16.5.8

Idem aaa. ad clicherium comitem orientis. nullum eunomianorum atque arrianorum vel ex dogmate aeti in civitate vel agris fabricandarum ecclesiarum copiam habere praecipimus. quod si temere ab aliquo id praesumptum sit, domus eadem, ubi haec constructa fuerint, quae construi prohibentur, fundus etiam vel privata possessio protinus fisci nostri viribus vindicetur atque omnia loca fiscalia statim fiant, quae sacrilegi huius dogmatis vel sedem receperint vel ministros. dat. xiiii kal. aug. constantinopoli eucherio et syagrio conss. (381 iul. 19).

CTh.16.5.9pr.

Idem aaa. floro praefecto praetorio. quisquis manichaeorum vitae solitariae falsitate coetum bonorum fugit ac secretas turbas eligit pessimorum, ita ut profanator atque corruptor catholicae, quam cuncti suspicimus, disciplinae legi subiugetur, ut intestabilis vivat, nihil vivus impendat illicitis, nihil moriens relinquat indignis, omnia suis non moribus, sed natura restituat aut proximis, si deerit legitima successio, melius regenda dimittat, fisci dominio deficiente agnatione sine fraude molitionis intellegat obligata. haec de solitariis. (382 mart. 31).

CTh.16.5.9.1

Ceterum quos encratitas prodigiali appellatione cognominant, cum saccoforis sive hydroparastatis refutatos iudicio, proditos crimine, vel in mediocri vestigio facinoris huius inventos summo supplicio et inexpiabili poena iubemus adfligi, manente ea condicione de bonis, quam omni huic officinae imposuimus, a latae dudum legis exordio. sublimitas itaque tua det inquisitores, aperiat forum, indices denuntiatoresque sine invidia delationis accipiat. nemo praescriptione communi exordium accusationis huius infringat. nemo tales occultos cogat latentesque conventus: agris vetitum sit, prohibitum moenibus, sede publica privataque damnatum. (382 mart. 31).

CTh.16.5.9.2

Ac summa exploratione rimetur, ut, quicumque in unum paschae die non obsequenti religione convenerint, tales indubitanter, quales hac lege damnavimus, habeantur. dat. prid. kal. april. constantinopoli antonio et syagrio conss. (382 mart. 31).

CTh.16.5.10

Idem aaa. constantiano vicario dioeceseos ponticae. tascodrogitae a sedibus quidem suis minime propellantur, ad nullam tamen ecclesiam haereticae superstitionis turba conveniat, aut, si forte convenerit, a conventiculis suis sine aliqua mora propulsetur. dat. xii kal. iul. constantinopoli merobaude ii et saturnino conss. (383 iun. 20).

CTh.16.5.11

Idem aaa. postumiano praefecto praetorio. omnes omnino, quoscumque diversarum haeresum error exagitat, id est eunomiani, arriani, macedoniani, pneumatomachi manichaei, encratitae, apotactitae, saccofori, hydroparastatae nullis circulis coeant, nullam colligant multitudinem, nullum ad se populum trahant nec ad imaginem ecclesiarum parietes privatos ostendant, nihil vel publice vel privatim, quod catholicae sanctitati officere possit, exerceant. ac si qui extiterit, qui tam evidenter vetita transcendat, permissa omnibus facultate, quos rectae observantiae cultus et pulchritudo delectat, communi omnium bonorum conspiratione pellatur. dat. viii kal. aug. constantinopoli merobaude ii et saturnino conss. (383 iul. 25).

CTh.16.5.12

Idem aaa. postumiano praefecto praetorio. vitiorum institutio deo atque hominibus exosa, eunomiana scilicet, arriana, macedoniana, apollinariana ceterarumque sectarum, quas verae religionis venerabili cultu catholicae observantiae fides sincera condemnat, neque publicis neque privatis aditionibus intra urbium adque agrorum ac villarum loca aut colligendarum congregationum aut constituendarum ecclesiarum copiam praesumat, nec celebritatem perfidiae suae vel sollemnitatem dirae communionis exerceat, neque ullas creandorum sacerdotum usurpet adque habeat ordinationes. eaedem quoque domus, seu in urbibus seu in quibuscumque locis paschae turbae professorum ac ministrorum talium colligentur, fisci nostri dominio iurique subdantur, ita ut ii, qui vel doctrinam vel mysteria conventionum talium exercere consuerunt, perquisiti ab omnibus urbibus ac locis propositae legis vigore constricti expellantur a coetibus et ad proprias, unde oriundi sunt, terras redire iubeantur, ne quis eorum aut commeandi ad quaelibet alia loca aut evagandi ad urbes habeat potestatem. quod si neglegentius ea, quae serenitas nostra constituit, impleantur, officia provincialium iudicum et principales urbium, in quibus coitio vetitae congregationis reperta monstrabitur, sententiae damnationique subdantur. dat. iii non. dec. constantinopoli merobaude ii et saturnino conss. (383 dec. 3).

CTh.16.5.13

Idem aaa. cynegio praefecto praetorio. eunomiani, macedoniani, arriani nec non apollinariani inter sacrae religionis officia pro suis erroribus famosa sunt nomina. omnes itaque, qui harum professionum vel pontificium sibi vel ministerium vindicarunt, qui se fugati nominis adserunt sacerdotes quique in criminosa religione ministrorum sibi nomen imponunt, qui docere se dicunt, quod aut nescire aut dediscere sit decorosum, omnibus huius urbis latebris indagine curiosiore perspectis sine ulla gratiae interventione pellantur; in aliis locis vivant ac penitus a bonorum congressibus separentur. dat. xii kal. feb. constantinopoli richomere et clearcho vv. cc. conss. (384 ian. 21).

CTh.16.5.14

Idem aaa. cynegio praefecto praetorio. apollinarianos ceterosque diversarum haeresum sectatores ab omnibus locis iubemus inhiberi, a moenibus urbium, a congressu honestorum, a communione sanctorum; instituendorum clericorum non habeant potestatem colligendarum congregationum vel in publicis vel in privatis ecclesiis careant facultate. nulla his episcoporum faciendorum praebeatur auctoritas; ipsi quoque episcopi nomine destituti appellationem dignitatis huius amittant. adeant loca, quae eos potissimum quasi vallo quodam ab humana communione secludant. his etiam illud adnectimus, ut supra memoratis omnibus adeundi atque interpellandi serenitatem nostram aditus denegetur. dat. vi id. mart. thessalonica theodosio a. ii et cynegio conss. (388 mart. 10).

CTh.16.5.15

Idem aaa. trifolio praefecto praetorio. omnes diversarum perfidarumque sectarum, quos in deum miserae vesania conspirationis exercet, nullum usquam sinantur habere conventum, non inire tractatus, non coetus agere secretos, non nefariae praevaricationis altaria manus impiae officiis impudenter adtollere et mysteriorum simulationem ad iniuriam verae religionis aptare. quod ut congruum sortiatur effectum, in specula sublimitas tua fidissimos quosque constituat, qui et cohibere hos possint et deprehensos offerre iudiciis, severissimum secundum praeteritas sanctiones et deo supplicium daturos et legibus. dat. xviii kal. iul. stobis d. n. theodosio a. ii et cynegio v. c. conss. (388 iun. 14).

CTh.16.5.16

Idem aaa. cynegio praefecto praetorio. nonnullos arrianorum formam nostrarum talem proferre iussionum comperimus, ut his liceat usurpare quae his videantur utilitatibus convenire. qua sublata sciant nullam huiusmodi iussionem e nostro sacrario profluxisse. quidquid itaque fuerit ab his pro eorum commoditate prolatum, ut falsi reus teneatur, qui deinceps ea circumtulerit. dat. v id. aug. constantinopoli theodosio a. ii et cynegio v. c. conss. (388 [?] aug. 9).

CTh.16.5.17

Imppp. valentinianus, theodosius et arcadius aaa. tatiano praefecto praetorio. eunomiani spadones nec faciendi nec adipiscendi habeant licentiam testamenti. quod circa omnes, quos vivos lex invenerit, volumus custodiri nec quemquam praeteritae cuiuspiam voluntatis privilegio defensari, cum, seu facta prius testamenta seu infecta doceantur, post hanc nostri oraculi sanctionem non habeant possidendi licentiam, non petendi, non etiam relinquendi heredem nomine principali, non fideicommissario, non legatario, non tacito fideicommisso vel quamcumque in huiuscemodi negotiis nuncupationem iuris ordo constituit: sed omnia, quae talium esse vel futura esse constiterit, ut caduca fisci nostri viribus vindicentur. nihil ad summum habeant commune cum reliquis. dat. iiii non. mai. mediolano timasio et promoto conss. (389 mai. 4).

CTh.16.5.18pr.

Idem aaa. albino praefecto urbi. quicumque sub nomine manichaeorum mundum sollicitant, ex omni quidem orbe terrarum, sed quam maxime de hac urbe pellantur sub interminatione iudicii. (389 iun. 17).

CTh.16.5.18.1

Voluntates autem eorundem, quin immo ipsae etiam facultates populo publicatae nec vim testamentorum teneant nec derelinqui per eos aut isdem fas sit. nihil ad summum his sit commune cum mundo. dat. xv kal. iul. romae timasio et promoto conss. (389 iun. 17).

CTh.16.5.19

Idem aaa. tatiano praefecto praetorio. ii, qui scaevi dogmatis retinent principatum, hoc est episcopi presbyteri diacones adque lectores et si qui clericatus velamine religioni maculam conantur infligere, sub cuiuslibet haeresis sive erroris nomine constituti ex funestis conciliabulis, seu intra urbem seu in suburbanis esse videantur, omni modo propellantur. dat. vi kal. decemb. mediolano timasio et promoto conss. (389 nov. 26).

CTh.16.5.20

Exemplum sacrarum litterarum. haereticorum polluta contagia pelli urbibus, vicis proturbari ac nullis penitus iubemus patere conventibus, ne in quoquam loco sacrilega cohors talium hominum colligatur. nulla eorum perversitati vel publica conventicula vel latentiora erroribus secreta tribuantur. dat. xiiii kal. iun. romae tatiano et symmacho vv. cc. conss. (391 mai. 19).

CTh.16.5.21

Idem aaa. tatiano praefecto praetorio. in haereticis erroribus quoscumque constiterit vel ordinasse clericos vel suscepisse officium clericorum, denis libris auri viritim multandos esse censemus, locum sane, in quo vetita temptantur, si coniventia domini patuerit, fisci nostri viribus adgregari. quod si id possessorem, quippe clanculum gestum, ignorasse constiterit, conductorem eius fundi, si ingenuus est, decem libras fisco nostro inferre praecipimus, si servili faece descendens paupertate sui poenam damni ac vilitate contemnit, caesus fustibus deportatione damnabitur. tum illud specialiter praecavemus, ut, si villa dominica fuerit seu cuiuslibet publici iuris et conductor et procurator licentiam dederint colligendi, denis libris auri proposita condemnatione multentur. verum si quos talibus repertos obsecundare mysteriis ac sibi usurpare nomina clericorum iam nunc proditum fuerit, denas libras auri exigi singulos et inferre praecipimus. dat. xvii kal. iul. constantinopoli arcadio a. ii et rufino conss. (392 iun. 15).

CTh.16.5.22

Imppp. theodosius, arcadius et honorius aaa. victorio proconsuli asiae. haeretici neque episcopi faciendi potestatem neque episcoporum confirmationes licitas habeant. dat. xvii kal. mai. constantinopoli arcadio iii et honorio ii aa. conss. (394 apr. 15).

CTh.16.5.23

Idem aaa. rufino praefecto praetorio. eunomianis, ne caperent aliquid vel relinquerent testamento, legem dudum credidimus promulgandam, quam quidem nunc consilio pleniore revocamus. vivant iure communi, scribant pariter ac scribantur heredes. dat. xii kal. iul. hadrianopoli arcadio iii et honorio ii aa. conss. (394 iun. 20).

CTh.16.5.24

Idem aaa. rufino praefecto praetorio. haereticorum dementia nec ulterius conetur perpetrare quae reppererit nec illicita habere concilia, nusquam profana praecepta vel docere vel discere: ne antistites eorundem audeant fidem insinuare, quam non habent, et ministros creare, quod non sunt, ne per coniventiam iudicantum omniumque, quibus per constitutiones paternas super hoc cura mandata est, eiusmodi audacia neglegatur et crescat. dat. vii id. iul. constantinopoli arcadio iii et honorio ii aa. conss. (394 iul. 9).

CTh.16.5.25pr.

Impp. arcadius et honorius aa. rufino praefecto praetorio. omnes poenas, cuncta supplicia, quae sanctionibus divae recordationis genitoris nostri adversum haereticorum sunt pertinacem spiritum constituta, nostro etiam decreto reparantes decernimus, quidquid etiam his est contra meritum delinquentum spe correctionis speciali quadam sanctione concessum, id irritum esse. (395 mart. 13).

CTh.16.5.25.1

Eunomianorum vero perfidam mentem et nequissimam sectam speciali commemoratione damnamus statuimusque omnia, quae contra illorum vesaniam decreta sunt, illibata custodiri, illud addentes, ne quis memoratae sectae militandi aut testandi vel ex testamento sumendi habeat facultatem, ut sit omnibus commune damnum, quibus etiam communis est religionis furor, cessante videlicet, si quid a patre nostro quibusdam fuerat super testandi iure beneficio speciali concessum. dat. iii id. mar. constantinopoli olybrio et probino conss. (395 mart. 13).

CTh.16.5.26

Idem aa. rufino praefecto praetorio. ne quis haereticorum, quos iam leges innumerae divi genitoris nostri continent, audeat coetus illicitos congregare profanaque mente omnipotentis dei contaminare mysterium, nec publice nec privatim, nec in secreto nec palam. nemo audeat episcopi sibi nomen adsciscere vel ecclesiasticum ordinem eorumque sanctissima nomina pollutis mentibus usurpare. dat. iii kal. april constantinopoli olybrio et probino conss. (395 mart. 30).

CTh.16.5.27

Idem aa. caesario praefecto praetorio. conficiendorum testamentorum dari eunomianis praecipimus potestatem et concedi id, quod divi genitoris nostri data nuper praeceptio continebat. dat. viii kal. iul. constantinopoli olybrio et probino conss. (395 iun. [?] 24).

CTh.16.5.28

Idem aa. aureliano proconsuli asiae. haereticorum vocabulo continentur et latis adversus eos sanctionibus debent subcumbere, qui vel levi argumento iudicio catholicae religionis et tramite detecti fuerint deviare. ideoque experientia tua heuresium haereticum nec in numero sanctissimorum antistitum habendum esse cognoscat. dat. iii non. sept. constantinopoli olybrio et probino conss. (395 sept. 3).

CTh.16.5.29

Idem aa. marcello magistro officiorum. sublimitatem tuam investigare praecipimus, an aliqui haereticorum vel in scriniis vel inter agentes in rebus vel inter palatinos cum legum nostrarum iniuria audeant militare, quibus exemplo divi patris nostri omnis et a nobis negata est militandi facultas. quoscumque autem deprehenderis culpae huius adfines, cum ipsis, quibus et in legum nostrarum et in religionum excidium coniventiam praestiterunt, non solum militia eximi, verum etiam extra moenia urbis huiusce iubebis arceri. dat. viii kal. decemb. constantinopoli olybrio et probino conss. (395 nov. 24).

CTh.16.5.30pr.

Impp. arcadius et honorius aa. clearcho praefecto urbi. cuncti haeretici procul dubio noverint omnia sibi loca huius urbis adimenda esse, sive sub ecclesiarum nomine teneantur sive quae diaconica appellantur vel etiam decanica, sive in privatis domibus vel locis huiusmodi coetibus copiam praebere videantur, his aedibus vel locis privatis fisco nostro adcorporandis. (396 [402] mart. 3).

CTh.16.5.30.1

Praeterea omnes clerici haereticorum ex sacratissima urbe pellantur neque his finibus liceat convenire. (396 [402] mart. 3).

CTh.16.5.30.2

Ad hoc interdicatur his omnibus ad litaniam faciendam intra civitatem noctu vel interdie profanis coire conventibus, statuta videlicet condemnatione centum librarum auri contra officium sublimitatis tuae, si quid huiusmodi fieri vel in publico vel in privatis aedibus concedatur. dat. v non. mar. constantinopoli arcadio iiii et honorio iii aa. conss. (396 [402] mart. 3).

CTh.16.5.31

Idem aa. caesario praefecto praetorio. auctores doctoresque eunomianorum facinoris investigati clericique maxime, quorum furor tantum suasit errorem, e civitatibus pellantur extorres. dat. xi kal. mai. constantinopoli arcadio iiii et honorio iii aa. conss. (396 apr. 21 vel 22).

CTh.16.5.32

Idem aa. caesario praefecto praetorio. ne eunomianorum tanta dementia perseveret, sublimis magnificentia tua omni studio auctores doctoresque eunomianorum investigare festinet clericique eorum maxime, quorum furor tantum suasit errorem, de civitatibus pellantur extorres et humanis coetibus segregentur. dat. x kal. mai. constantinopoli arcadio iiii et honorio iii aa. conss. (396 apr. 21 vel 22).

CTh.16.5.33

Idem aa. eutychiano praefecto praetorio. doctores apollinariorum tota maturitate praecipimus ex aedibus carae nobis abscedere civitatis, ita ut, si obumbrati latebris abire neglexerint, occultos coetus, ut aestimant, habituri, ea loca vel domus, quibus praedictos congregaverint, fisci rationi nectantur. dat. kal. april. constantinopoli caesario et attico conss. (397 apr. [?] 1).

CTh.16.5.34pr.

Idem aa. eutychiano praefecto praetorio. eunomianae superstitionis clerici seu montanistae consortio vel conversatione civitatum universarum adque urbium expellantur. qui si forte in rure degentes aut populum congregare aut aliquos probabuntur inire conventus, perpetuo deportentur, procuratore possessionis ultima animadversione punito, domino possessione privando, in qua his consciis ac tacentibus infausti damnatique conventus probabuntur agitati. si vero in qualibet post publicatam sollemniter iussionem urbe deprehensi aut aliquam celebrandae superstitionis gratia ingressi domum probabuntur, et ipsi ademptis bonis ultima animadversione plectantur et domus, in qua ea sorte, qua dictum est, ingressi nec statim a domino dominave domus expulsi ac proditi fuerint, fisco sine dilatione societur. (398 mart. 4).

CTh.16.5.34.1

Codices sane eorum scelerum omnium doctrinam ac materiam continentes summa sagacitate mox quaeri ac prodi exerta auctoritate mandamus sub aspectibus iudicantum incendio mox cremandos. ex quibus si qui forte aliquid qualibet occasione vel fraude occultasse nec prodidisse convincitur, sciat se velut noxiorum codicum et maleficii crimine conscriptorum retentatorem capite esse plectendum. dat. iiii non mart. constantinopoli honorio a. iiii et eutychiano conss. (398 mart. 4).

CTh.16.5.35

Idem aa. dominatori vicario africae. noxios manichaeos execrabilesque eorum conventus, dudum iusta animadversione damnatos, etiam speciali praeceptione cohiberi decernimus. quapropter quaesiti adducantur in publicum ac detestati criminosi congrua et severissima emendatione resecentur. in eos etiam auctoritatis aculei dirigantur, qui eos domibus suis damnanda provisione defendent. dat. xvi kal. iun. mediolano theodoro v. c. cons. (399 mai. 17).

CTh.16.5.36pr.

Idem aa. eutychiano praefecto praetorio. eunomianis poenam adimendae testamenti factionis peregrinorumque mutandae condicionis remittimus. patimur eos et donandi e suis facultatibus, ut velint, et dono rursus ab aliis accipiendi habere liberam potestatem. (399 iul. 6).

CTh.16.5.36.1

Conciliis vero abstineant, coetus illicitos derelinquant et sciant sibi interdictas esse collectiones aut poenas paratas, ita ut fundi procurator vel domus urbanae villicus, in quibus profana mysteria fuerint celebrata, ultimo supplicio feriantur ipsaque possessio et domus fisco vindicetur, si sciente domino et non prohibente nostrae iussioni fuerit obnisum. (399 iul. 6).

CTh.16.5.36.2

Praeterea ministri sceleris, quos falso nomine suo antistites vocant, si in collectione aliqua fuerint comprehensi, deportentur omnibus bonis ablatis. dat. prid. non. iul. constantinopoli theodoro v. c. cons. (399 iul. 6).

CTh.16.5.37

Idem aa. hadriano praefecto praetorio. rescriptum, quod donatistae a iuliano tunc principe impetrasse dicuntur, proposito programmate celeberrimis in locis volumus anteferri et gesta, quibus est huiuscemodi allegatio inserta, subnecti, quo omnibus innotescat et catholicae confidentiae stabilita constantia et donatistarum desperatio fucata perfidia. dat. v kal. mar. ravennae stilichone et aureliano conss. (400 [405] febr. 26 [25]).

CTh.16.5.38

Idem aa. et theodosius a. edictum. nemo manichaeum, nemo donatistam, qui praecipue, ut comperimus, furere non desistunt, in memoriam revocet. una sit catholica veneratio, una salus sit, trinitatis par sibique congruens sanctitas expetatur. quod si quis audeat interdictis sese illicitisque miscere, et praeteritorum innumerabilium constitutorum et legis nuper a mansuetudine nostra prolatae laqueos non evadat et si turbae forte convenerint seditionis, concitatos aculeos acrioris conmotionis non dubitet exserendos. dat. prid. id. feb. ravennae stilichone ii et anthemio conss. (405 febr. 12).

CTh.16.5.39

Idem aaa. diotimo suo salutem. donatistae superstitionis haereticos quocumque loci vel fatentes vel convictos legis tenore servato poenam debitam absque dilatione persolvere decernimus. dat. vi id. decemb. ravennae stilichone ii et anthemio conss. (405 dec. 8).

CTh.16.5.40pr.

Idem aaa. senatori praefecto urbi. quid de donatistis sentiremus, nuper ostendimus. praecipue tamen manichaeos vel frygas sive priscillianistas meritissima severitate persequimur. huic itaque hominum generi nihil ex moribus, nihil ex legibus sit commune cum ceteris. (407 febr. 22).

CTh.16.5.40.1

Ac primum quidem volumus esse publicum crimen, quia quod in religionem divinam conmittitur, in omnium fertur iniuriam. (407 febr. 22).

CTh.16.5.40.2

Quos bonorum etiam publicatione persequimur, quae tamen cedere iubemus proximis quibusque personis, ita ut ascendentium vel descendentium vel venientium ex latere cognatorum usque ad secundum gradum velut in successionibus ordo servetur. quibus ita demum ad capiendas facultates esse ius patimur, si non et ipsi pari conscientia polluuntur. (407 febr. 22).

CTh.16.5.40.3

Ipsos quoque volumus amoveri ab omni liberalitate et successione quolibet titulo veniente. (407 febr. 22).

CTh.16.5.40.4

Praeterea non donandi, non emendi, non vendendi, non postremo contrahendi cuique convicto relinquimus facultatem. (407 febr. 22).

CTh.16.5.40.5

In mortem quoque inquisitio tendit. nam si in criminibus maiestatis licet memoriam accusare defuncti, non inmerito et hic debet subire iudicium. ergo et suprema illius scriptura irrita sit, sive testamento sive codicillo sive epistula sive quolibet genere reliquerit voluntatis qui aut manichaeus aut fryga aut priscillianista fuisse convincitur, hoc quoque casu eadem illa circa gradus superius comprehensos condicione servata: alioquin nec filios heredes existere aut adire permittimus, nisi a paterna pravitate discesserint: delicti enim veniam paenitentibus damus. (407 febr. 22).

CTh.16.5.40.6

Servos etiam extra noxam esse volumus, si dominum sacrilegum revertentes ad ecclesiam catholicam servitio fideliore transierint. (407 febr. 22).

CTh.16.5.40.7

Praedium, quo se huiusmodi hominum coetus, domino, etsi non communione criminis implicato, sciente tamen nec prohibente, contraxit, patrimonio nostro societur, ac, si dominus ignoravit, actor vel procurator possessionis cohercitus plumbo perpeti metallorum operi deputetur, conductor, si idoneus est, deportabitur. (407 febr. 22).

CTh.16.5.40.8

Rector provinciae, si haec crimina dissimulatione vel gratia delata distulerit aut convicta neglexerit, sciat se multa viginti librarum auri feriendum. defensores quoque et principales urbium singularum nec non et officia provincialia decem librarum auri poena constringet, nisi in his, quae a iudicibus super hoc praecepta fuerint, exsequendis et sagacissimam curam et sollertissimam operam commodarint. dat. viii kal. mart. romae honorio vii et theodosio ii aa. conss. (407 febr. 22).

CTh.16.5.41

Idem aaa. porfyrio proconsuli africae. licet crimina soleat poena purgare, nos tamen pravas hominum voluntates admonitione paenitentiae volumus emendare. quicumque igitur haereticorum, sive donatistae sint sive manichaei vel cuiuscumque alterius pravae opinionis ac sectae profanis ritibus adgregati, catholicam fidem et ritum, quem per omnes homines cupimus observari, simplici confessione susceperint, licet adeo inveteratum malum longa ac diuturna meditatione nutriverint, ut etiam legibus ante latis videantur obnoxii, tamen hos, statim ut fuerint deum simplici religione confessi, ab omni noxa absolvendos esse censemus, ut ad omnem reatum, seu ante contractus est seu postea quod nolumus contrahitur, etiamsi maxime reos poena videatur urgere, sufficiat ad abolitionem errorem proprio damnavisse iudicio et dei omnipotentis nomen, inter ipsa quoque pericula requisitum, fuisse complexum, quia nusquam debet in miseriis invocatum religionis deesse subsidium. ut igitur priores quas statuimus leges in excidium sacrilegarum mentium omni executionis urgueri iubemus effectu, ita hos, qui simplicis fidem religionis licet sera confessione maluerint, censemus datis legibus non teneri. quae ideo sanximus, quo universi cognoscant nec profanis hominum studiis deesse vindictam et ad rectum redundare cultum legum quoque adesse suffragium. dat. xvii kal. dec. romae honorio vii et theodosio ii aa. conss. (407 nov. 15).

CTh.16.5.42

Impp. honorius et theodosius aa. olympio magistro officiorum et valenti comiti domesticorum. eos, qui catholicae sectae sunt inimici, intra palatium militare prohibemus, ut nullus nobis sit aliqua ratione coniunctus, qui a nobis fide et religione discordat. dat. xviii kal. dec. ravennae basso et philippo conss. (408 nov. 14).

CTh.16.5.43

Idem aa. curtio praefecto praetorio. omnia, quae in donatistas, qui et montenses vocantur, manichaeos sive priscillianistas vel in gentiles a nobis generalium legum auctoritate decreta sunt, non solum manere decernimus, verum in executionem plenissimam effectumque deduci, ita ut aedificia quoque vel horum vel caelicolarum etiam, qui nescio cuius dogmatis novi conventus habent, ecclesiis vindicentur. poena vero lege proposita veluti convictos tenere debebit eos, qui donatistas se confessi fuerint vel catholicorum communionem refugerint scaevae religionis obtentu, quamvis christianos esse se simulent. et cetera. dat. xvii kal. dec. romae basso et philippo conss. (408 [407] nov. 15).

CTh.16.5.44

Idem aa. have, donate, karissime nobis. donatistarum haereticorum iudaeorum nova adque inusitata detexit audacia, quod catholicae fidei velint sacramenta turbare. quae pestis cave contagione latius emanet ac profluat. in eos igitur, qui aliquid, quod sit catholicae sectae contrarium adversumque, temptaverint, supplicium iustae animadversionis expromi praecipimus. dat. viii kal. dec. ravennae basso et philippo conss. (408 nov. 24).

CTh.16.5.45

Idem aa. theodoro praefecto praetorio ii. defensorum curialium omniumque officiorum specula custodiat, ne quis intra aliquam civitatem vel ulla territorii parte secreta, qui ab ecclesiae catholico sacerdote dissidet, illicitae coitionis habeat facultatem. ipsa etiam loca iuri publico sociari seclusa omni excusatione censemus et proscriptos eos in exilium detrudi, qui audent disputare ea et adserere, quae institutio divina condemnat. dat. v kal. dec. ravennae basso et filippo conss. (408 nov. 27).

CTh.16.5.46

Idem aa. theodoro praefecto praetorio ii. post alia: ne donatistae vel ceterorum vanitas haereticorum aliorumque eorum, quibus catholicae communionis cultus non potest persuaderi, iudaei adque gentiles, quos vulgo paganos appellant, arbitrentur legum ante adversum se datarum constituta tepuisse, noverint iudices universi praeceptis earum fideli devotione parendum et inter praecipua curarum quidquid adversus eos decrevimus non ambigant exsequendum. quod si quisquam iudicum peccato coniventiae exsecutionem praesentis legis omiserit, noverit amissa dignitate graviorem motum se nostrae clementiae subiturum, officium quoque suum, quod saluti propriae contempta suggestione defuerit, punitis tribus primatibus condemnatione viginti librarum auri plectendum. ordinis quoque viri si in propriis civitatibus vel territoriis commissum tale aliquid siluerint in gratiam noxiorum, deportationis poenam et propriarum amissionem facultatum se noverint subituros. dat. xviii kal. feb. ravennae honorio viii et theodosio iii aa. conss. (409 ian. 15).

CTh.16.5.47

Idem aa. iovio praefecto praetorio. si quis contra ea, quae multipliciter pro salute communi, hoc est pro utilitatibus catholicae sacrosanctae ecclesiae, adversus haereticos et diversi dogmatis sectatores constituta sunt, etiam cum adnotationis nostrae beneficio venire temptaverit, careat impetratis. et cetera. dat. vi kal. iul. ravennae honorio viii et theodosio iii aa. conss. (409 iun. 26).

CTh.16.5.48

Idem aa. anthemio praefecto praetorio. montanistas et priscillianistas et alia huiuscemodi genera nefariae superstitionis per multiplicata scita divalia diversa ultionum supplicia contemnentes ad sacramenta quidem militiae, quae nostris obsecundat imperiis, nequaquam admitti censemus: si quos vero ex his curialis origo vel ordinum nexus aut cohortalinae militiae illigat obsequiis et functionibus, his adstringi praecipimus, ne sub colore damnatae religionis eliciant vacationis cupitae sibi suffragia. nec enim placet ex lege, quae in occidentalibus partibus promulgata praedictas caerimonias ita insecuta est, ut ab omni contractu eos et propemodum romana conversatione submoverit, cohortalis militiae vel curiarum eos necessitatibus liberari. dat. viiii kal. mar. constantinopoli varane v. c. cons. (410 febr. 21).

CTh.16.5.49

Idem aa. anthemio praefecto praetorio. manentibus his, quae in eunomianos lex divi patris clementiae nostrae iam dudum constituit, nihil deinceps invicem sibi vel donare vel ipsos donatione consequi, nihil item relinquere nec capere testamento decernimus. careant emolumentis, quae ex donationibus vel morientium voluntate alternis solebant illecebris fraude et circumventione percipere, ut in totum utriusque iuris communione priventur tantumque eis ab intestato succedant, quos ad succedendi ius proditus veteribus legibus ordo praescripsit, ita ut, si nullus ex his superstes fuerit, qui iure ab intestato ad hereditatem vocantur, tunc bona in hac superstitione defuncti ad fiscum nostrum pertineant. donationes etiam praedicto more prohibitae sacrarii nostri incrementis accedant, ita tamen, ut nulli ex his quicquam a nostra munificentia deposcere liceat neminique percipere, etsi quid forte voluerimus ultro largiri, sed in iure fisci maneant semper, nisi ea publicae utilitatis ratio venditioni subiecerit. dat. kal. mart. varane v. c. cons. (410 mart. 1).

CTh.16.5.50

Idem aa. ad strategium comitem rerum privatarum. de eadem re addito: ita ut officium rerum privatarum aperte cognoscat ad proprium periculum redundare, si quid umquam ex praedictis bonis dissimulatione sua cuiquam passum fuerit tradi, cum nullo modo nullaque ratione huius legis auctoritatem circumveniri oporteat. dat. kal. mar. varane v. c. cons. (410 mart. 1).

CTh.16.5.51

Idem aa. heracliano comiti africae. oraculo penitus remoto, quo ad ritus suos haereticae superstitionis obrepserant, sciant omnes sanctae legis inimici plectendos se poena et proscriptionis et sanguinis, si ultra convenire per publicum execranda sceleris sui temeritate temptaverint. dat. viii kal. sept. varane v. c. cons. (410 aug. 25).

CTh.16.5.52pr.

Idem aa. seleuco praefecto praetorio. cassatis, quae pragmaticis vel adnotatione manus nostrae potuerint impetrari, et manentibus his, quae iam dudum super hoc definita sunt, et veterum principum sanctione servata, nisi ex die prolatae legis omnes donatistae, tam sacerdotes quam clerici laicique, catholicae se, a qua sacrilege descivere, reddiderint, tunc illustres singillatim poenae nomine fisco nostro auri pondo quinquaginta cogantur inferre, spectabiles auri pondo quadraginta, senatores auri pondo triginta, clarissimi auri pondo viginti, sacerdotales auri pondo triginta, principales auri pondo viginti, decuriones auri pondo quinque, negotiatores auri pondo quinque, plebei auri pondo quinque, circumcelliones argenti pondo decem. (412 ian. 30).

CTh.16.5.52.1

Qui nisi a conductoribus, sub quibus conmanent, vel procuratoribus executori exigenti fuerint praesentati, ipsi teneantur ad poenam, ita ut nec domus nostrae homines ab huiuscemodi censura habeantur inmunes. (412 ian. 30).

CTh.16.5.52.2

Uxores quoque eorum maritalis segregatim multa constringat. (412 ian. 30).

CTh.16.5.52.3

Eos enim, quos nequaquam illata damna correxerint, facultatum omnium publicatio subsequetur. (412 ian. 30).

CTh.16.5.52.4

Servos etiam dominorum admonitio vel colonos verberum crebrior ictus a prava religione revocabit, ni malunt ipsi ad praedicta dispendia, etiam si sunt catholici, retineri. (412 ian. 30).

CTh.16.5.52.5

Clerici vero ministrique eorum ac perniciosissimi sacerdotes, ablati de africano solo, quod ritu sacrilego polluerunt, in exilium viritim ad singulas quasque regiones sub idonea prosecutione mittantur, ecclesiis eorum vel conventiculis praediisque, si qua in eorum ecclesias haereticorum largitas prava contulit, proprietati potestatique catholicae, sicut iam dudum statuimus, vindicatis. dat. iii kal. feb. ravennae honorio viiii et theodosio v aa. conss. (412 ian. 30).

CTh.16.5.53

Idem aa. felici praefecto urbi. iovinianum sacrlegos agere conventus extra muros urbis sacratissimae episcoporum querella deplorat. quare supra memoratum corripi praecipimus et contusum plumbo cum ceteris suis participibus et ministris exilio coherceri, ipsum autem machinatorem in insulam boam festina celeritate deduci, ceteros, prout libuerit, dummodo superstitiosa coniuratio exilii ipsius discretione solvatur, solitariis et longo spatio inter se positis insulis in perpetuum deportari. si qui autem pertinaci improbitate vetita et damnata repetiverit, sciat se austeriorem sententiam subiturum. dat. prid. non. mart. mediolano honorio viiii et theodosio v aa. conss. (412 [398?] mart. 6).

CTh.16.5.54pr.

Idem aa. iuliano proconsuli africae. donatistas adque haereticos, quos patientia clementiae nostrae nunc usque servavit, competenti constituimus auctoritate percelli, quatenus evidenti praeceptione se agnoscant et intestabiles et nullam potestatem alicuius ineundi habere contractus, sed perpetua inustos infamia a coetibus honestis et a conventu publico segregandos. (414 iun. 17).

CTh.16.5.54.1

Ea vero loca, in quibus dira superstitio nunc usque servata est, catholicae venerabili ecclesiae socientur, ita ut episcopi presbyteri omnesque antistites eorum et ministri spoliati omnibus facultatibus ad singulas quasque insulas adque provincias exulandi gratia dirigantur. (414 iun. 17).

CTh.16.5.54.2

Quisque autem hos fugientes propositam ultionem occultandi causa susceperit, sciat et patrimonium suum fisci nostri compendiis adgregandum et se poenam, quae his proposita est, subiturum. (414 iun. 17).

CTh.16.5.54.3

Damna quoque patrimonii poenasque pecuniarias evidenter imponimus viris mulieribus, personis singulis et dignitatibus pro qualitate sui quae debeant irrogari. si igitur proconsulari aut vicariano vel comitivae primi ordinis quisque fuerit honore subcinctus, nisi ad observantiam catholicam mentem propositumque converterit, ducentas argenti libras cogetur exsolvere fisci nostri utilitatibus adgregandas. ac ne id solum putetur ad resecandam intentionem posse sufficere, quotienscumque ad communionem talem accessisse fuerit confutatus, totiens multam exigatur, et si quinquies eundem constiterit nec damnis ab errore revocari, tunc ad nostram clementiam referatur, ut de solida eius substantia ac de statu acerbius iudicemus. (414 iun. 17).

CTh.16.5.54.4

Huiusmodi autem condicionibus etiam honoratos reliquos obligamus, scilicet ut senator, qui nullo munitus extrinsecus privilegio dignitatis, inventus in grege donatistarum centum libras solvat argenti, sacerdotales eandem summam cogantur exsolvere, decem primi curiales quinquaginta libras argenti addicantur, reliqui decuriones x solvant libras argenti, quicumque in haeresi maluerint permanere. (414 iun. 17).

CTh.16.5.54.5

Conductores autem domus nostrae si haec in praediis venerabilis substantiae uti permiserint, tantum pensione poenae nomine cogantur inferre, quantum in conductione pensitare consuerunt. eadem quoque emphyteuticarios auctoritas sacrae definitionis adstringet. (414 iun. 17).

CTh.16.5.54.6

Conductores vero privatorum si permiserint in isdem praediis conventicula haberi vel eorum patientia sacrum mysterium fuerit inquinatum, referatur per iudices ad scientiam dominorum, quorum intererit, si poenam volunt sacrae iussionis evadere, aut errantes corrigere aut perseverantes commutare ac tales praediis suis praebere rectores, qui divina praecepta custodiant. quod si procurare neglexerint, hi quoque in pensiones, quas accipere consuerunt, prolatae praeceptionis auctoritate multentur, ut, quod ad compendia eorum pervenire poterat, sacro iungatur aerario. (414 iun. 17).

CTh.16.5.54.7

Officiales autem diversorum iudicum si in hoc errore fuerint deprehensi, ad triginta librarum argenti illationem poenae nomine teneantur, ita ut, si quinquies condemnati abstinere noluerint, coherciti verberibus exilio mancipentur. (414 iun. 17).

CTh.16.5.54.8

Servos vero et colonos cohercitio ab huiusmodi ausibus severissima vindicabit. ac si coloni verberibus coacti in proposito perduraverint, tunc tertia peculii sui parte multentur. (414 iun. 17).

CTh.16.5.54.9

Adque omnia, quae ex huiusmodi generibus hominum locisque colligi poterunt, ad largitiones sacras ilico dirigantur. dat. xv kal. iul. ravennae constantio et constante conss. (414 iun. 17).

CTh.16.5.55

Idem aa. iuliano proconsuli africae. notione et sollicitudine marcellini spectabilis memoriae viri contra donatistas gesta sunt ea, quae translata in publica monumenta habere volumus perpetuam firmitatem. neque enim morte cognitoris perire debet publica fides. dat. iii kal. sept. romae constantio et constante conss. (414 aug. 30).

CTh.16.5.56

Idem aa. heracliano comiti africae. sciant cuncti, qui ad ritus suos haeresi superstitionis obrepserant, sacrosanctae legis inimici plectendos se poena et proscriptionis et sanguinis, si ultra convenire per publicum exercendi sceleris sui temeritate temptaverint, ne qua vera divinaque reverentia contagione temeretur. dat. viii kal. sept. honorio x et theodosio vi aa. conss. (415 aug. 25).

CTh.16.5.57pr.

Idem aa. aureliano praefecto praetorio ii. montanistae conveniendi vel celebrandi coetus ademptam sibi et creandi clericos omnem intellegant facultatem, ita ut, si conventus illicitos celebraverint, clerici eorum et episcopi sive presbyteri vel diaconi, qui nefaria conventicula ineunda temptaverint vel creare clericos ausi fuerint vel etiam creari adquieverint, stilum deportationis excipiant. (415 oct. 31).

CTh.16.5.57.1

Hi vero, qui ad celebrandos interdictos conventus eos susceperint, ea ipsa re, in qua hoc fieri concesserint et execrabilia mysteria celebrari, procul dubio intellegant se spoliandos, sive domus ea fuerit sive possessio; si vero procuratores ignorantibus dominis eos susceperint, in exilium se vehementer cohercitos non ambigant ablegandos. (415 oct. 31).

CTh.16.5.57.2

Si qua etiam propria eorum nunc extant aedificia, quae non ecclesiae, sed antra debent feralia nominari, venerabilibus ecclesiis orthodoxae sectae cum donariis addicentur. quod quidem ita fieri oportebit, ut abstineatur privatorum rebus, ne sub obtentu rerum ad ecclesias montanistarum pertinentium adversus privatos spoliatio ac direptio perpetretur. dat. prid. kal. nov. constantinopoli honorio x et theodosio vi aa. conss. (415 oct. 31).

CTh.16.5.58pr.

Idem aa. aureliano praefecto praetorio ii. domus eunomianorum propriae clericorum, quae apud inclytam urbem habentur, fisci viribus addicantur, in quibus nefarios conventus habitos vel iteratum baptisma claruerit, quod in modum semel nati hominis semel a deo conceditur. (415 nov. 6).

CTh.16.5.58.1

Quod facinus ne etiam a ceteris haereticis perpetretur, commonemus, similem exspectaturis poenam etiam aliis clericis haereticis, si divinum baptisma nefarie crediderint iterandum: (415 nov. 6).

CTh.16.5.58.2

Ne eo quoque extra poenam relegationis futuro, qui sponte adque ultro passus fuerit ad secundum se baptisma et geminata semel indultae fidei mysteria inbui temere vel perperam devocari: (415 nov. 6).

CTh.16.5.58.3

Pari poena deportationis absque alicuius intercessione in eunomianos clericos processura, si conventus exercere vel in hac inclyta urbe vel in provinciis, civitatibus ac territoriis vel creare ausi fuerint clericos pestiferi dogmatis vel creari. (415 nov. 6).

CTh.16.5.58.4

Confirmatis itaque prioribus legibus, quae promulgatae sunt tam circa inhibendos conventus eunomianorum quam etiam circa interdictas novissimas voluntates aut liberalitates, illud addimus, ut, si qui de eunomianis speciali beneficio meruerant, ut eis testamenti factio indulgeretur vel donandi vel accipiendi ex largitate licentia tribuatur, priventur hoc beneficio et pares ceteris sint, quibus pares sunt in dogmatis pravitate. nulli penitus testari liceat eunomiano in eunomianum, nulli eiusdem perversitatis ex testamento quicquam percipere eunomiani; nemo donet nec eunomianus ab eunomiano liberalitatem praedii vel domus accipiat, etiamsi per interpositam alterius sectae personam vel titulum venditionis imaginariae fraus quaedam legi fuerit excogitata. tantum hi, qui ab intestato venturi sunt ex legibus, in eorum hereditate succedant atque his locus pateat successionis, ad quos iura sanguinis legitimas intestatorum deferunt hereditates. (415 nov. 6).

CTh.16.5.58.5

Conventicula etiam eorum in domos si qua fuerint vel possessiones, pro norma generalium sanctionum aerario nostro absque dubio socientur sibi hoc imputante domino, qui interdictos coetus sciens passus est sub tecto proprio vel in praedio rustico exerceri. (415 nov. 6).

CTh.16.5.58.6

Illo incunctanter exsequendo, ut ubiubi repperti fuerint eunomianorum clerici, qui auctores iterati baptismatis exstiterunt, comprehensi in perpetuum sub poena deportationis ad exilium deducantur. (415 nov. 6).

CTh.16.5.58.7

Etiam illo addendo, ut nemo eunomianus vel militet vel provinciam sub administratione cuiuslibet officii suscipiat gubernandam. et cetera. dat. viii id. nov. constantinopoli dd. nn. honorio x et theodosio vi aa. conss. (415 nov. 6).

CTh.16.5.59

Idem aa. asclepiodoto praefecto praetorio. post alia: manichaei et fryges, quos pepyzitas sive priscillianistas vel alio latentiore vocabulo appellant, arriani itidem macedonianique et eunomiani, novatiani ac sabbatiani ceterique haeretici sciant universa sibi hac quoque constitutione denegari, quae illis generalium sanctionum interdixit auctoritas, puniendis, qui contra generalium constitutionum interdicta venire temptaverint. dat. v id. april. constantinopoli asclepiodoto et mariniano conss. (423 apr. 9).

CTh.16.5.60

Idem aa. asclepiodoto praefecto praetorio. de haereticis omnibus, quorum et errorem execramur et nomen, hoc est de eunomianis arrianis macedonianis ceterisque omnibus, quorum sectas piissimae sanctioni taedet inserere, quibus cunctis diversa sunt nomina, sed una perfidia, illa praecipimus debere servari, quae divi avus et pater nostrae clementiae constituerunt, scituris universis, quod, si in eodem furore permanserint, interminatae poenae erunt obnoxii. et cetera. dat. vi id. iun. constantinopoli asclepiodoto et mariniano conss. (423 iun. 8).

CTh.16.5.61

Idem aa. asclepiodoto praefecto praetorio. omnis dubiae interpretationis ambages hac sententia revocantes publicari praecipimus, quod lex, quae super eunomianis militare prohibitis ceterisque execrabilium religionum et professionum ritibus promulgata cognoscitur, nihil ad eos, qui cohortalini sunt, pertinet. his enim sunt apparitionibus obligati, in quibus emensis militiae stipendiis veterani primipili munus sustinere coguntur. dat. vi id. aug. eudoxiopoli asclepiodoto et mariniano conss. (423 aug. 8).

CTh.16.5.62

Imp. theodosius, a. et valentinianus caes. ad faustum praefectum urbi. manichaeos haereticos schismaticos sive mathematicos omnemque sectam catholicis inimicam ab ipso aspectu urbis romae exterminari praecipimus, ut nec praesentiae criminosorum contagione foedetur. circa hos autem maxime exercenda commonitio est, qui pravis suasionibus a venerabilis papae sese communione suspendunt, quorum schismate plebs etiam reliqua vitiatur. his conventione praemissa viginti dierum condonavimus indutias, intra quos nisi ad communionis redierint unitatem, expulsi usque ad centesimum lapidem solitudine quam eligunt macerentur. dat. xvi kal. aug. aquileiae theodosio a. xi et valentiniano caes. conss. (425 iul. 17 [aug. 6]).

CTh.16.5.63

Idem a. et caes. georgio proconsuli africae. omnes haereses omnesque perfidias, omnia schismata superstitionesque gentilium, omnes catholicae legi inimicos insectamur errores. si quos vero..., haec quoque clementiae nostrae statuta poena comitetur et noverint sacrilegae superstitionis auctores participes conscios proscriptione plectendos, ut ab errore perfidiae, si ratione retrahi nequeunt, saltem terrore revocentur et universo supplicationum aditu in perpetuum denegato criminibus debita severitate plectantur. et cetera. dat. prid. non. aug. aquileiae d. n. theodosio a. xi et valentiniano caes. conss. (425 iul. 6 vel aug. 4).

CTh.16.5.64

Idem a. et caes. basso comiti rerum privatarum. post alia: manichaeos haereticos sive schismaticos omnemque sectam catholicis inimicam ab ipso aspectu urbium diversarum exterminari praecipimus, ut nec praesentiae criminosorum contagione foedentur. omnes igitur personas erroris infausti iubemus excludi, nisi his emendatio matura subvenerit. et cetera. dat. viii id. aug. aquileiae d. n. theodosio a. xi et valentiniano caes. conss. (425 aug. 6).

CTh.16.5.65pr.

Impp. theodosius et valentinianus aa. florentio praefecto praetorio. haereticorum ita est reprimenda insania, ut ante omnia quas ab orthodoxis abreptas tenent ubicumque ecclesias statim catholicae ecclesiae tradendas esse non ambigant, quia ferri non potest, ut, qui nec proprias habere debuerant, ab orthodoxis possessas aut conditas suaque temeritate invasas ultra detineant. (428 mai. 30).

CTh.16.5.65.1

Dein ut, si alios sibi adiungant clericos vel, ut ipsi aestimant, sacerdotes, decem librarum auri multa per singulos ab eo, qui fecerit et qui fieri passus sit vel, si paupertatem praetendant, de communi clericorum eiusdem superstitionis corpore vel etiam donariis ipsis extorta nostro inferatur aerario. (428 mai. 30).

CTh.16.5.65.2

Post haec, quoniam non omnes eadem austeritate plectendi sunt, arrianis quidem, macedonianis et apollinarianis, quorum hoc est facinus, quod nocenti meditatione decepti credunt de veritatis fonte mendacia, intra nullam civitatem ecclesiam habere liceat; novatianis autem et sabbatianis omnis innovationis adimatur licentia, si quam forte temptaverint; eunomiani vero, valentiniani, montanistae seu priscillianistae, fryges, marcianistae, borboriani, messaliani, euchitae sive enthusiastae, donatistae, audiani, hydroparastatae, tascodrogitae, fotiniani, pauliani, marcelliani et qui ad imam usque scelerum nequitiam pervenerunt manichaei nusquam in romano solo conveniendi orandique habeant facultatem; manichaeis etiam de civitatibus expellendis, quoniam nihil his omnibus relinquendum loci est, in quo ipsis etiam elementis fiat iniuria. (428 mai. 30).

CTh.16.5.65.3

Nulla his penitus praeter cohortalinam in provinciis et castrensem indulgenda militia; nullo donationis faciendae invicem, nullo testamenti aut voluntatis ultimae penitus iure concesso; cunctisque legibus, quae contra hos ceterosque, qui nostrae fidei refragantur, olim latae sunt diversisque promulgatae temporibus, semper viridi observantia valituris, sive de donationibus in haereticorum factis ecclesias, sive ex ultima voluntate rebus qualitercumque relictis, sive de privatis aedificiis, in quae domino permittente vel conivente convenerint, venerandae nobis catholicae vindicandis ecclesiae, sive de procuratore, qui hoc nesciente domino fecerit, decem librarum auri multam vel exilium, si sit ingenuus, subituro, metallum vero post verbera, si servilis condicionis sit; ita ut nec in publico convenire loco nec aedificare sibi ecclesias nec ad circumscriptionem legum quicquam meditari valeant, omni civili et militari, curiarum etiam et defensorum et iudicum sub viginti librarum auri interminatione prohibendi auxilio. illis etiam in sua omnibus manentibus firmitate, quae de militia et donandi iure ac testamenti factione vel neganda penitus vel in certas vix concessa personas poenisque variis de diversis sunt haereticis promulgatae, ita ut nec speciale quidem beneficium adversus leges valeat impetratum. (428 mai. 30).

CTh.16.5.65.4

Nulli haereticorum danda licentia vel ingenuos vel servos proprios, qui orthodoxorum sunt initiati mysteriis, ad suum rursus baptisma deducendi, nec vero illos, quos emerint vel qualitercumque habuerint necdum suae superstitioni coniunctos, prohibendi catholicae sequi religionem ecclesiae. quod qui fecerit vel, cum sit ingenuus, in se fieri passus sit vel factum non detulerit, exilio ac decem librarum auri multa damnabitur, testamenti et donationis faciendae utrique deneganda licentia. (428 mai. 30).

CTh.16.5.65.5

Quae omnia ita custodiri decernimus, ut nulli iudicum liceat delatum ad se crimen minori aut nulli cohercitioni mandare, nisi ipse id pati velit, quod aliis dissimulando concesserit. dat. iii kal. iun. constantinopoli felice et tauro conss. (428 mai. 30).

CTh.16.5.66pr.

Idem aa. leontio praefecto urbi. damnato portentuosae superstitionis auctore nestorio nota congrui nominis eius inuratur gregalibus, ne christianorum appellatione abutantur: sed quemadmodum arriani lege divae memoriae constantini ob similitudinem impietatis porfyriani a porfyrio nuncupantur, sic ubique participes nefariae sectae nestorii simoniani vocentur, ut, cuius scelus sunt in deserendo deo imitati, eius vocabulum iure videantur esse sortiti. (435 aug. 3).

CTh.16.5.66.1

Nec vero impios libros nefandi et sacrilegi nestorii adversus venerabilem orthodoxorum sectam decretaque sanctissimi coetus antistitum ephesi habiti scriptos habere aut legere aut describere quisquam audeat: quos diligenti studio requiri ac publice conburi decernimus. (435 aug. 3).

CTh.16.5.66.2

Ita ut nemo in religionis disputatione alio quam supra dicto nomine faciat mentionem aut quibusdam eorum habendi concilii gratia in aedibus aut villa aut suburbano suo aut alio quolibet loco conventiculum clam aut aperte praebeat, quos omni conventus celebrandi licentia privari statuimus, scientibus universis violatorem huius legis publicatione bonorum esse coercendum. dat. iii non. aug. constantinopoli d. n. theodosio a. xv et qui fuerit nuntiatus conss. (435 aug. 3).

CTh.16.6.0. Ne sanctum baptisma iteretur

CTh.16.6.1

Impp. valentinianus et valens aa. ad iulianum proconsulem africae. antistitem, qui sanctitatem baptismi illicita usurpatione geminaverit et contra instituta omnium eam gratiam iterando contaminaverit, sacerdotio indignum esse censemus. dat. x kal. mart. treviris valentiniano et valente iiii aa. conss. (373 febr. 20).

CTh.16.6.2pr.

Imppp. valens, gratianus et valentinianus aaa. ad florianum vicarium asiae. eorum condemnamus errorem, qui apostolorum praecepta calcantes christiani nominis sacramenta sortitos alio rursus baptismate non purificant, sed incestant, lavacri nomine polluentes. eos igitur auctoritas tua erroribus miseris iubebit absistere ecclesiis, quas contra fidem retinent, restitutis catholicae. eorum quippe institutiones sequendae sunt, qui apostolicam fidem sine intermutatione baptismatis probaverunt. nihil enim aliud praecipi volumus, quam quod evangeliorum et apostolorum fides et traditio incorrupta servavit, sicut lege divali parentum nostrorum constantini constanti valentiniani decreta sunt. (377 oct. 17).

CTh.16.6.2.1

Sed plerique expulsi de ecclesiis occulto tamen furore grassantur, loca magnarum domorum seu fundorum illicite frequentantes; quos fiscalis publicatio comprehendet, si piaculari doctrinae secreta praebuerint, nihil ut ab eo tenore sanctio nostra deminuat, qui dato dudum ad nitentium praecepto fuerat constitutus. quod si errorem suum diligunt, suis malis domesticoque secreto, soli tamen, foveant virus impiae disciplinae. dat. xvi kal. nov. constantinopoli grationa a. iiii et merobaude conss. (377 oct. 17).

CTh.16.6.3

Imppp. arcadius, honorius et theodosius aaa. edictum. rebaptizantium non patimur devios errores. et cetera. dat. prid. id. feb. ravennae stilichone ii et anthemio conss. (405 febr. 12).

CTh.16.6.4pr.

Idem aaa. hadriano praefecto praetorio. adversarios catholicae fidei exstirpare huius decreti auctoritate prospeximus. ideoque intercidendam specialiter eam sectam nova constitutione censuimus, quae, ne haeresis vocaretur, appellationem schismatis praeferebat. in tantum enim sceleris progressi dicuntur hi, quos donatistas vocant, ut baptisma sacrosanctum mysteriis recalcatis temeritate noxia iterarint et homines semel, ut traditum est, munere divinitatis ablutos contagione profanae repetitionis infecerint. ita contigit, ut haeresis ex schismate nasceretur. inde male credulas mentes ad spem secundae indulgentiae blandus error invitat; facile est enim persuadere peccantibus veniam prius praestitam denuo posse praestari, quae, si concedi iterum eodem modo potest, non intellegimus, cur tertio denegetur. hi vero et servos vel homines iuri proprio subditos iterati baptismatis polluunt sacrilegio. quare hac lege sancimus, ut quisquis post haec fuerit rebaptizasse detectus, iudici qui provinciae praesidet offeratur, ut facultatum omnium publicatione multatus inopiae poenam, qua in perpetuum afficiatur, expendat, ita ut filiis eorum, si a paternae societatis pravitate dissentiunt, ea quae fuerint paterna non pereant, ut, si ipsos forsitan scaevitas paternae depravationis implicuit ac reverti ad catholicam religionem malunt, adipiscendorum his bonorum copia non negetur. (405 febr. 12).

CTh.16.6.4.1

Ea praeterea loca seu praedia, quae feralibus sacrilegiis deinceps constiterit praebuisse secretum, fisci viribus adplicentur, si tamen dominus aut domina aut praesens forte fuisse aut consensum praestitisse prodetur: quos quidem iusta etiam per sententiam notabit infamia. si vero his nesciis per conductorem procuratoremve eorum in domo agitatum huiusmodi facinus comprobatur, praeiudicio a praediorum publicatione suspenso impliciti sceleris auctores cohercitos plumbo exilium, in quo omni vitae suae tempore adficiantur, accipiet. (405 febr. 12).

CTh.16.6.4.2

Ac ne forsitan sit liberum conscientiam piacularis flagitii perpetrati intra domesticos parietes silentio celare, servis, si qui forsitan ad rebaptizandum cogentur, refugiendi ad ecclesiam catholicam sit facultas, ut eius praesidio adversus huius criminis et societatis auctores adtributae libertatis praesidio defendantur liceatque his sub hac condicione fidem tueri, quam extorquere ab invitis domini temptaverint, nec adsertores dogmatis catholici ea, qua ceteros, qui in potestate sunt positi, oportet ad facinus lege constringi, et maxime convenit omnes homines sine ullo discrimine condicionis aut status infusae caelitus sanctitatis esse custodes. (405 febr. 12).

CTh.16.6.4.3

Sciant ii vero, qui ex supra dictis sectis iterare baptisma non timuerint aut qui consentiendo hoc facinus propria huius societatis permixtione damnaverint, non solum testandi sibi, verum adipiscendi aliquid sub specie donationis vel agitandorum contractuum in perpetuum copiam denegatam, nisi pravae mentis errorem revertendo ad veram fidem consilii emendatione correxerint. (405 febr. 12).

CTh.16.6.4.4

Illos quoque par nihilo minus poena constringat, si qui memoratorum interdictis coetibus seu ministeriis praebuerint coniventiam, ita ut moderatores provinciarum, si in contemptum sanctionis huiusce consensum putaverint commodandum, sciant se viginti libras auri esse multandos, officia etiam sua simili condemnatione subiuganda. principales vel defensores civitatum, nisi id quod praecipimus fuerint exsecuti vel his praesentibus ecclesiae catholicae vis fuerit illata, eadem multa se noverint adtinendos. dat. prid. id. feb. ravennae stilichone ii et anthemio conss. (405 febr. 12).

CTh.16.6.5

Idem aaa. hadriano praefecto praetorio. ne divinam gratiam sub repetito baptismate polluta donatistarum vel montanistarum secta violaret, fallendi occasionem severitate huius praeceptionis abolemus statuentes, ut certa huiusmodi homines poena sequatur legisque censuram experiantur ultricem, qui in catholicam religionem perverso dogmate commisissent. iubemus igitur, ut, si quis posthac fuerit rebaptizare detectus, iudici qui provinciae praesidet offeratur, ut facultatum omnium publicatione multatus inopiae poenam expendat. et cetera. dat. prid. id. feb. ravennae stilichone ii et anthemio conss. (405 febr. 12).

CTh.16.6.6pr.

Impp. honorius et theodosius aa. ad anthemium praefectum praetorio. nullus rebaptizandi scelus adripiat nec eos, qui orthodoxorum ritu fuerint initiati, caeno profanatarum religionum haereticorumque sordibus polluere moliatur. quod licet fidamus metu severissimae interminationis a nullo penitus, ex quo interdictum est, fuisse conmissum, tamen, ut pravae mentis homines ab illicitis temperent vel coacti, volumus renovari, ut, si quis rebaptizasse, ex quo lex lata est, quempiam de mysteriis catholicae sectae fuerit detectus, una cum eo, quia piaculare crimen conmisit, si tamen criminis per aetatem capax sit cui persuasum sit, statuti prioris supplicio percellatur. (413 mart. 21).

CTh.16.6.6.1

Illud etiam, quod a retro principibus dissimulatum est et in iniuriam sacrae legis ab exsecrandis hominibus agitatur et ab his potissimum, qui, novatianorum collegio desertores ac refugae, auctores se quam potiores memoratae sectae haberi contendunt, quibus ex crimine nomen est, cum se protopaschitas appellari desiderent, inultum esse non patimur. sed si alio die novatiani, quam quo orthodoxorum antistites, praedicandum ac memorabilem saeculis diem paschae duxerint celebrandum, auctores illius conventionis deportatio pariter ac proscriptio subsequatur, contra quos acrior etiam poena fuerat promulganda, si quidem hoc delicto etiam haereticorum vesaniam superent, qui alio tempore quam quo orthodoxi paschae festivitatem observantes alium paene dei filium, non quem colimus venerantur. dat. xii kal. april. constantinopoli lucio v. c. cons. (413 mart. 21).

CTh.16.6.7

Idem aa. anthemio praefecto praetorio. nefarios eunomianorum coetus ac funesta conventicula penitus arceri iubemus: eos, qui episcoporum seu clericorum vel ministrorum nomine usurpato huiuscemodi coetibus praesunt quorumve in domibus seu in agris conventicula eunomianorum celebrantur illicita, si non ab hoc facinore ignoratione defendantur, cum in hoc fuerint scelere deprehensi, stilum proscriptionis incurrere et bonorum amissione coherceri; eos vero, qui fide, ut dictum est, inbutos inmani furore rebaptizare deteguntur, cum his qui rebaptizantur si hac sint aetate, cui crimen possit opponi. ....Dat. iiii kal. april. lucio v. c. cons. (413 mart. 29).

CTh.16.7.0. De apostatis

CTh.16.7.1

Imppp. gratianus, valentinianus et theodosius aaa. ad eutropium praefectum praetorio. his, qui ex christianis pagani facti sunt, eripiatur facultas iusque testandi et omne defuncti, si quod est testamentum submota conditione rescindatur. dat. vi non. mai. constantinopoli, syagrio et eucherio conss. (381 mai. 2).

CTh.16.7.2pr.

Idem aaa. postumiano praefecto praetorio. christianis ac fidelibus, qui ad paganos ritus cultusque migrarunt, omnem in quamcumque personam testamenti condendi interdicimus potestatem, ut sint absque iure romano. (383 mai. 20).

CTh.16.7.2.1

His vero, qui christiani et catechumeni tantum venerabili religione neglecta ad aras et templa transierint, si filios vel fratres germanos habebunt, hoc est aut suam aut legitimam successionem, testandi arbitratu proprio in quaslibet alias personas ius adimatur. (383 mai. 20).

CTh.16.7.2.2

Pari et circa eorum personas in capiendo custodienda forma, ut praeter suas et legitimas, quae isdem ex parentum vel germanorum fratrum bonis pervenire potuerint, successiones, iudicio etiam, si ita res ferent, conditae voluntatis nulla omnino in capiendis hereditatibus testamenti iura sibi vindicent et indubitate ab omni testamentorum debeant non solum condendorum, sed etiam sub adipiscendae pontificio hereditatis usurpandorum potestate excludi. dat. xiii kal. iun. constantinopoli merobaude ii et saturnino conss. (383 mai. 20).

CTh.16.7.3 [=brev.16.2.1]

Imppp. grat., valent. et theodos. aaa. ad hypatium pf. p. christianorum ad aras et templa migrantium negata testandi licentia vindicamus admissum. eorum quoque flagitia puniantur, qui christianae religionis et nominis dignitate neglecta, iudaicis semet polluere contagiis. dat. xii. kal. iun. patavi, merobaude ii. et saturnino coss.

interpretatio. reliqua pars legis de manichaeis ideo facta non est, quia evidenter in novellis invenitur

CTh.16.7.3pr.

[idem aaa. ad hypatium praefectum praetorio. christianorum ad aras et templa migrantium negata testandi licentia vindicamus admissum. eorum quoque flagitia puniantur, qui christianae religionis et nominis dignitate neglecta iudaicis semet polluere contagiis]. eos vero, qui manichaeorum nefanda secreta et scelerosos aliquando sectari maluere secessus, ea iugiter atque perpetuo poena comitetur, quam vel divalis arbitrii genitor valentinianus adscripsit vel nostra nihilo minus saepius decreta iusserunt. auctores vero persuasionis huius, qui lubricas mentes in proprium deflexerant consortium, eademque reos erroris huiuscemodi poena comitetur, quin etiam graviora plerumque pro motibus iudicum et qualitate commissi extra ordinem promi in nefarios sceleris huius artifices supplicia censemus. (383 mai. 21).

CTh.16.7.3.1

Sed ne vel mortuos perpetua vexet criminationis iniuria vel hereditariae quaestiones temporum varietate longorum prorsus emortuae in redivivos semper agitentur conflictus, huiuscemodi quaestionibus metam temporis adscribimus, ut, si quis defunctum violatae atque desertae christianae religionis accusat eumque in sacrilegia templorum vel in ritus iudaicos vel ad manichaeorum dedecus transisse contendit eaque gratia testari minime potuisse confirmat, intra quinquennium iuge, quod inofficiosis actionibus constitutum est, proprias exerat actiones futurique iudici huiuscemodi sortiatur exordium, ut eodem in luce durante, cuius praevaricatio criminanda est, flagitii huius et sceleris praesens fuisse doceatur publica sub testificatione testatus, probet indicium, neque enim eam superno nomine tacitus praestitisse perfidiam sceleribus adquiescens praevaricationem deinceps tamquam ignarus accuset. dat. xii kal. iun. patavi merobaude ii et saturnino conss.

interpretatio. haec lex interpretatione nos indiget (383 mai. 21)

CTh.16.7.4pr.

Imppp. valentinianus, theodosius et arcadius aaa. flaviano praefecto praetorio. ii, qui sanctam fidem prodiderint et sanctum baptisma profanaverint, a consortio omnium segregati sint, a testimoniis alieni, testamenti, ut ante iam sanximus, non habeant factionem, nulli in hereditate succedant, a nemine scribantur heredes. quos etiam praecepissemus procul abici ac longius amandari, nisi poenae visum fuisset esse maioris versari inter homines et hominum carere suffragiis. (391 mai. 11).

CTh.16.7.4.1

Sed nec umquam in statum pristinum revertentur, non flagitium morum oblitterabitur paenitentia neque umbra aliqua exquisitae defensionis aut muniminis obducetur, quoniam quidem eos, qui fidem quam deo dicaverant polluerunt et prodentes divinum mysterium in profana migrarunt, tueri ea quae sunt commenticia et concinnata non possunt. lapsis etenim et errantibus subvenitur, perditis vero, hoc est sanctum baptisma profanantibus, nullo remedio paenitentiae, quae solet aliis criminibus prodesse succurritur. dat. v id. mai. concordiae tatiano et symmacho conss. (391 mai. 11).

CTh.16.7.5

Idem aaa. flaviano praefecto praetorio. si quis splendor collatus est in eos vel ingenitus dignitatis, qui fide devii et mente caecati sacrosanctae religionis cultu et reverentia descivissent ac se sacrificiis mancipassent, pereat, ut de loco suo statuque deiecti perpetua urantur infamia ac ne in extrema quidem vulgi ignobilis parte numerentur. quid enim his cum hominibus potest esse commune, qui infandis et feralibus mentibus gratiam communionis exosi ab hominibus recesserunt? dat. v id. mai. concordiae tatiano et symmacho conss. (391 mai. 11).

CTh.16.7.6

Impp. arcadius et honorius aa. caesario praefecto praetorio. eos, qui, cum essent christiani, idolorum se superstitione impia maculaverint, haec poena persequitur, ut testandi in alienos non habeant facultatem, sed certa his generis sui propago succedat, id est pater ac mater, frater ac soror, filius ac filia, nepos ac neptis, nec ulterius sibi progrediendi quisquam vindicet potestatem. dat. x kal. april. constantinopoli arcadio iiii et honorio iii aa. conss. (396 mart. 23).

CTh.16.7.7pr.

Impp. theodosius et valentinianus aa. basso praefecto praetorio. post alia: apostatarum sacrilegum nomen singulorum vox continuae accusationis incesset et nullis finita temporibus huiuscemodi criminis arceatur indago. (426 apr. 7).

CTh.16.7.7.1

Quibus quamvis praeterita interdicta sufficiant, tamen etiam illud iteramus, ne quam, postquam a fide deviaverint, testandi aut donandi quippiam habeant facultatem, sed nec venditionis specie facere legi fraudem sinantur totumque ab intestato christianitatem sectantibus propinquis potissimum deferatur. (426 apr. 7).

CTh.16.7.7.2

In tantum autem contra huiusmodi sacrilegia perpetuari volumus actionem, ut universis ab intestato venientibus etiam post mortem peccantis absolutam vocem insimulationis congruae non negemus. nec illud patiemur obstare, si nihil in contestatione profano dicatur vivente perductum. (426 apr. 7).

CTh.16.7.7.3

Sed ne huius interpretatio criminis latius incerto vagetur errore, eos praesentibus insectamur oraculis, qui nomen christianitatis induti sacrificia vel fecerint vel facienda mandaverint, quorum etiam post mortem comprobata perfidia hac ratione plectenda est, ut donationibus testamentisque rescissis ii, quibus hoc defert legitima successio, huiusmodi personarum hereditate potiantur. dat. vii id. april. ravennae theodosio xii et valentiniano ii aa. conss. (426 apr. 7).

CTh.16.8.0. De iudaeis, caelicolis et samaritanis

CTh.16.8.1pr.

Imp. constantinus a. ad evagrium. iudaeis et maioribus eorum et patriarchis volumus intimari, quod, si quis post hanc legem aliquem, qui eorum feralem fugerit sectam et ad dei cultum respexerit, saxis aut alio furoris genere, quod nunc fieri cognovimus, ausus fuerit adtemptare, mox flammis dedendus est et cum omnibus suis participibus concremandus. (315 oct. 18).

CTh.16.8.1.1

Si quis vero ex populo ad eorum nefariam sectam accesserit et conciliabulis eorum se adplicaverit, cum ipsis poenas meritas sustinebit. dat. xv kal. nov. murgillo constantino a. iiii et licinio iiii conss. (315 oct. 18).

CTh.16.8.2

Idem a. ad ablavium praefectum praetorio. qui devotione tota synagogis iudaeorum patriarchis vel presbyteris se dederunt et in memorata secta degentes legi ipsi praesident, inmunes ab omnibus tam personalibus quam civilibus muneribus perseverent, ita ut illi, qui iam forsitan decuriones sunt, nequaquam ad prosecutiones aliquas destinentur, cum oporteat istiusmodi homines a locis in quibus sunt nulla compelli ratione discedere. hi autem, qui minime curiales sunt, perpetua decurionatus immunitate potiantur. dat. iii kal. decemb. constantinopoli gallicano et symmacho conss. (a. 330 nov. 29).

CTh.16.8.3

Idem a. decurionibus agrippiniensibus. cunctis ordinibus generali lege concedimus iudaeos vocari ad curiam. verum ut aliquid ipsis ad solacium pristinae observationis relinquatur, binos vel ternos privilegio perpeti patimur nullis nominationibus occupari. dat. iii id. dec. crispo ii et constantino ii cc. conss. (321 dec. 11).

CTh.16.8.4

Idem a. hiereis et archisynagogis et patribus synagogarum et ceteris, qui in eodem loco deserviunt. hiereos et archisynagogos et patres synagogarum et ceteros, qui synagogis deserviunt, ab omni corporali munere liberos esse praecipimus. dat. kal. dec. constantinopoli basso et ablavio conss. (331 dec. 1).

CTh.16.8.5 [=brev.16.3.1]

Imp. constantinus a. ad felicem pf. p. post alia: eum, qui ex iudaeo christianus factus est, inquietare iudaeos non liceat vel aliqua pulsare iniuria: pro qualitate commissi istius modi contumelia punienda etc. dat. xii. kal. nov. constantinopoli. pp. viii. id. mai. karthagine, nepotiano et facundo coss. haec lex interpretatione non eget.

CTh.16.8.6

Imp. constantius a. ad evagrium. post alia: quod ad mulieres pertinet, quas iudaei in turpitudinis suae duxere consortium in gynaeceo nostro ante versatas, placet easdem restitui gynaeceo idque in reliquum observari, ne christianas mulieres suis iungant flagitiis vel, si hoc fecerint, capitali periculo subiugentur, dat. id. aug. constantio a. ii cons. (339 aug. 13).

CTh.16.8.7 [=brev.16.3.2]

Imp. constantius a. et iulianus c. ad talassium pf. p. si quis, lege venerabili constituta, ex christiano iudaeus effectus sacrilegis coetibus aggregetur, quum accusatio fuerit comprobata, facultates eius dominio fisci iussimus vindicari. dat. v. non. iul. mediolano, constantio a. ix. et iuliano caes. ii. coss. ista lex interpretatione non eget.

CTh.16.8.8

Imppp. theodosius, arcadius et honorius aaa. tatiano praefecto praetorio. iudaeorum querellae quosdam auctoritate iudicum recipi in sectam suam reclamantibus legis suae primatibus adseverant, quos ipsi iudicio suo ac voluntate proiciunt. quam omnino submoveri iubemus iniuriam nec eorum in ea superstitione sedulus coetus aut per vim iudicum aut rescripti subreptione invitis primatibus suis, quos virorum clarissimorum et illustrium patriarcharum arbitrio manifestum est habere sua de religione sententiam, opem reconciliationis mereatur indebitae. dat. xv kal. mai. constantinopoli arcadio a. ii et rufino conss. (392 apr. 17).

CTh.16.8.9

Idem aaa. addeo comiti et magistro utriusque militiae per orientem. iudaeorum sectam nulla lege prohibitam satis constat. unde graviter commovemur interdictos quibusdam locis eorum fuisse conventus. sublimis igitur magnitudo tua hac iussione suscepta nimietatem eorum, qui sub christianae religionis nomine illicita quaeque praesumunt et destruere synagogas adque expoliare conantur, congrua severitate cohibebit. dat. iii kal. octob. constantinopoli theodosio a. iii et abundantio conss. (393 sept. 29).

CTh.16.8.10

Impp. arcadius et honorius aa. ad iudaeos. nemo exterus religionis iudaeorum iudaeis pretia statuet, cum venalia proponentur: iustum est enim sua cuique committere. itaque rectores provinciae vobis nullum discussorem aut moderatorem esse concedent. quod si quis sumere sibi curam praeter vos proceresque vestros audeat, tum velut aliena adpetentem supplicio coherceri festinent. dat. iii kal. mart. constantinopoli arcadio iiii et honorio iii aa. conss. (396 febr. 27).

CTh.16.8.11

Idem aa. ad claudianum comitem orientis. si quis audeat illustrium patriarcharum contumeliosam per publicum facere mentionem, ultionis sententia subiugetur. dat. viii kal. mai. constantinopoli arcadio iiii et honorio iii aa. conss. (396 apr. 24).

CTh.16.8.12

Idem aa. anatolio praefecto praetorio illyrici. excellens auctoritas tua rectores conveniri praecipiat, ut percepta notione cognoscant oportere a iudaeis irruentum contumelias propulsari eorumque synagogas in quiete solita permanere. dat. xv kal. iul. constantinopoli caesario et attico conss. (397 iun. 17).

CTh.16.8.13

Idem aa. caesario praefecto praetorio. iudaei sint obstricti caerimoniis suis: nos interea in conservandis eorum privilegiis veteres imitemur, quorum sanctionibus definitum est, ut privilegia his, qui illustrium patriarcharum dicioni subiecti sunt, archisynagogis patriarchisque ac presbyteris ceterisque, qui in eius religionis sacramento versantur, nutu nostri numinis perseverent ea, quae venerandae christianae legis primis clericis sanctimonia deferuntur. id enim et divi principes constantinus et constantius, valentinianus et valens divino arbitrio decreverunt. sint igitur etiam a curialibus muneribus alieni pareantque legibus suis. dat. kal. iul. caesario et attico conss. (397 iul. 1).

CTh.16.8.14

Idem aa. messalae praefecto praetorio. superstitionis indignae est, ut archisynagogi sive presbyteri iudaeorum vel quos ipsi apostolos vocant, qui ad exigendum aurum adque argentum a patriarcha certo tempore diriguntur, a singulis synagogis exactam summam adque susceptam ad eundem reportent. qua de re omne, quidquid considerata temporis ratione confidimus esse collectum, fideliter ad nostrum dirigatur aerarium: de cetero autem nihil praedicto decernimus esse mittendum. noverint igitur populi iudaeorum removisse nos depraedationis huiusmodi functionem. quod si qui ab illo depopulatore iudaeorum ad hoc officium exactionis fuerint directi, iudicibus offerantur, ita ut tamquam in legum nostrarum violatores sententia proferatur. dat. iii id. april. mediolano theodoro v. c. cons. (399 apr. 11).

CTh.16.8.15

Idem aa. eutychiano praefecto praetorio. cuncta privilegia, quae viris spectabilibus patriarchis vel his, quos ipsi ceteris praeposuerunt, divae memoriae pater noster adque retro principes detulerunt, suum robur tenere censemus. dat. iii non. feb. constantinopoli honorio a. vi et aristaeneto conss. (404 febr. 3).

CTh.16.8.16

Idem aa. romuliano praefecto praetorio. iudaeos et samaritanos, qui sibi agentum in rebus privilegio blandiuntur, omni militia privandos esse censemus. dat. x kal. mai. romae honorio a. vi et aristaeneto conss. (404 apr. 22).

CTh.16.8.17

Idem aa. hadriano praefecto praetorio. dudum iusseramus, ut ea, quae patriarchis a iudaeis istarum partium ex consuetudine praebebantur, minime praeberentur. verum nunc amota prima iussione secundum veterum principum statuta privilegia cunctos scire volumus iudaeis mittendi copiam a nostra clementia esse concessam. dat. viii kal. aug. romae honorio a. vi et aristaeneto conss. (404 iul. 25).

CTh.16.8.18

Impp. honorius et theodosius aa. anthemio praefecto praetorio. iudaeos quodam festivitatis suae sollemni aman ad poenae quondam recordationem incendere et sanctae crucis adsimulatam speciem in contemptum christianae fidei sacrilega mente exurere provinciarum rectores prohibeant, ne iocis suis fidei nostrae signum inmisceant, sed ritus suos citra contemptum christianae legis retineant, amissuri sine dubio permissa hactenus, nisi ab illicitis temperaverint. dat. iiii kal. iun. constantinopoli basso et philippo conss. (408 mai. 29).

CTh.16.8.19

Idem aa. iovio praefecto praetorio. caelicolarum nomen inauditum quodammodo novum crimen superstitionis vindicabit. ii nisi intra anni terminos ad dei cultum venerationemque christianam conversi fuerint, his legibus, quibus praecepimus haereticos adstringi, se quoque noverint adtinendos. certum est enim, quidquid a fide christianorum discrepat, legi christianae esse contrarium. quam quidam adhuc, vitae suae etiam et iuris inmemores, adtrectare ita audent, ut de christianis quosdam foedum cogant taetrumque iudaeorum nomen induere. et quamvis qui haec admiserint, priscorum principum legibus iure damnati sint, non tamen paenitet saepius admonere, ne mysteriis christianis inbuti perversitatem iudaicam et alienam romano imperio post christianitatem cogantur arripere. ac si quisquam id crediderit esse temptandum, auctores facti cum consciis ad poenam praeteritis legibus cautam praecipimus constringi, quippe cum gravius morte sit et inmitius caede, si quis ex christiana fide incredulitate iudaica polluatur. et idcirco iubemus, ne ecclesiis quisquam nocens vel cuiusquam abducere fideli ac devota deo praeceptione sancimus, sub hac videlicet definitione, ut, si quisquam contra hanc legem venire temptaverit, sciat, se ad maiestatis crimen esse retinendum. dat. kal. april. ravennae honorio viii et theodosio iii aa. conss. (409 apr. 1).

CTh.16.8.20pr.

Idem aa. iohanni praefecto praetorio. quae iudaeorum frequentari conventiculis constat quaeque synagogarum vocabulis nuncupantur, nullus audeat violare vel occupata detinere, cum sine intentione religionis et cultus omnes quieto iure sua debeant retinere. (412 iul. 26).

CTh.16.8.20.1

At cum vero iudaeorum memorato populo sacratum diem sabbati vetus mos et consuetudo servaverit, id quoque inhibendum esse censemus, ne sub obtentu negotii publici vel privati memoratae observationis hominem adstringat ulla conventio, cum reliquum omne tempus satis publicis legibus sufficere videatur sitque saeculi moderatione dignissimum, ne delata privilegia violentur: quamvis retro principum generalibus constitutis satis de hac parte statutum esse videatur. dat. vii kal. aug. ravennae honorio viiii et theodosio v aa. conss. (412 iul. 26).

CTh.16.8.21

Idem aa. philippo praefecto praetorio per illyricum. nullus tamquam iudaeus, cum sit innocens, obteratur nec expositum eum ad contumeliam religio qualiscumque perficiat. non passim eorum synagogae vel habitacula concrementur vel perperam sine ulla ratione laedantur, cum alioquin, etiam si sit aliquis sceleribus implicatus, idcirco tamen iudiciorum vigor iurisque publici tutela videtur in medio constituta, ne quisquam sibi ipse permittere valeat ultionem. sed ut hoc iudaeorum personis volumus esse provisum, ita illud quoque monendum esse censemus, ne iudaei forsitan insolescant elatique sui securitate quicquam praeceps in christianae reverentiam cultionis admittant. dat. viii id. aug. constantinopoli honorio viiii et theodosio v aa. conss. (412 [418?] aug. 6).

CTh.16.8.22

Idem aa. aureliano praefecto praetorio ii. quoniam gamalielus existimavit se posse impune delinquere, quo magis est erectus fastigio dignitatum, illustris auctoritas tua sciat nostram serenitatem ad virum illustrem magistrum officiorum direxisse praecepta, ut ab eo codicilli demantur honorariae praefecturae, ita ut in eo sit honore, in quo ante praefecturam fuerat constitutus ac deinceps nullas condi faciat synagogas et si quae sint in solitudine, si sine seditione possint deponi, perficiat, et ut inter christianos nullam habeat copiam iudicandi; et si qua inter eos ac iudaeos sit contentio, a rectoribus provinciae dirimatur. si christianum vel cuiuslibet sectae hominem ingenuum servumve iudaica nota foedare temptaverit vel ipse vel quisquam iudaeorum, legum severitati subdatur. mancipia quoque christianae sanctitatis si qua aput se retinet, secundum constantinianam legem ecclesiae mancipentur. dat. xiii kal. nov. constantinopoli honorio x et theodosio vi aa. conss. (415 oct. 20).

CTh.16.8.23

Idem aa. annati didascalo et maioribus iudaeorum. et veteribus et nostris sanctionibus constitutum est, cum propter evitationem criminum et pro diversis necessitatibus iudaicae religionis homines obligatos ecclesiae se consortio sociare voluisse didicerimus, non id devotione fidei, sed obreptione simulandum fieri. unde provinciarum iudices, in quibus talia commissa perhibentur, ita nostris famulatum statutis deferendum esse cognoscant, ut hos, quos neque constantia religiosae confessionis in hoc eodem cultu inhaerere perspexerint neque venerabilis baptismatis fide et mysteriis inbutos esse, ad legem propriam, quia magis christianitati consulitur, liceat remeare. dat. viii kal. octob. ravennae theodosio a. vii et palladio conss. (416 sept. 24).

CTh.16.8.24

Idem aa. palladio praefecto praetorio. in iudaica superstitione viventibus adtemptandae de cetero militiae aditus obstruatur. quicumque igitur vel inter agentes in rebus vel inter palatinos militiae sacramenta sortiti sunt, percurrendae eius et legitimis stipendiis terminandae remittimus facultatem, ignoscentes facto potius quam faventes, in posterum vero non liceat quod in praesenti paucis volumus relaxari. illos autem, qui gentis huius perversitati devincti armatam probantur adpetisse militiam, absolvi cingulo sine ambiguitate decernimus, nullo veterum meritorum patrocinante suffragio. sane iudaeis liberalibus studiis institutis exercendae advocationis non intercludimus libertatem et uti eos curialium munerum honore permittimus, quem praerogativa natalium et splendore familiae sortiuntur. quibus cum debeant ista sufficere, interdictam militiam pro nota non debent aestimare. dat. vi id. mart. ravennae honorio xii et theodosio viii aa. conss. (418 mart. 19).

CTh.16.8.25pr.

Idem aa. asclepiodoto praefecto praetorio. placet in posterum nullas omnino synagogas iudaeorum vel auferri passim vel flammis exuri et si quae sunt post legem recenti molimine vel ereptae synagogae vel ecclesiis vindicatae aut certe venerandis mysteriis consecratae, pro his loca eis, in quibus possint extruere, ad mensuram videlicet sublatarum, praeberi. (423 febr. 15).

CTh.16.8.25.1

Sed et donaria si qua sunt sublata, eisdem, si necdum sacris mysteriis sunt dedicata, reddantur, sin redhibitionem consecratio veneranda non sinit, pro his eiusdem quantitatis pretium tribuatur. (423 febr. 15).

CTh.16.8.25.2

Synagogae de cetero nullae protinus extruantur, veteres in sua forma permaneant. dat. xv kal. mart. constantinopoli asclepiodoto et mariniano conss. (423 febr. 15).

CTh.16.8.26

Idem aa. asclepiodoto praefecto praetorio. nota sunt adque omnibus divulgata nostra maiorumque decreta, quibus abominandorum paganorum, iudaeorum etiam adque haereticorum spiritum audaciamque compressimus. libenter tamen repetendae legis occasionem amplexi iudaeos scire volumus, quod ad eorum miserabiles preces nihil aliud sanximus, quam ut hi, qui pleraque inconsulte sub praetextu venerandae christianitatis admittunt, ab eorum laesione persecutioneque temperent utque nunc ac deinceps synagogas eorum nullus occupet, nullus incendat. tamen ipsi iudaei et bonorum proscriptione et perpetuo exilio damnabuntur, si nostrae fidei hominem circumcidisse eos vel circumcidendum mandasse constiterit. et cetera. dat. v id. april. constantinopoli asclepiodoto et mariniano conss. (423 apr. 9).

CTh.16.8.27

Idem aa. asclepiodoto praefecto praetorio. quae nuper de iudaeis et synagogis eorum statuimus, firma permaneant: scilicet ut nec novas umquam synagogas permittantur extruere nec auferendas sibi veteres pertimescant. cetera vero vetita in posterum sciant esse servanda, quemadmodum nuper constitutionis latae forma declarat. et cetera. dat. vi id. iun. constantinopoli asclepiodoto et mariniano conss. (423 iun. 8).

CTh.16.8.28

Impp. theodosius et valentinianus aa. basso praefecto praetorio. si iudaei vel samaritae filius filiave seu nepos, unus aut plures, ad christianae religionis lucem de tenebris propriae superstitionis consilio meliore migraverint, non liceat eorum parentibus, id est patri vel matri, avo vel aviae, exheredare vel in testamento silentio praeterire vel minus aliquid eis relinquere, quam poterant, si ab intestato vocarentur, adipisci. quod si ita forsitan evenerit, iubemus eum ab intestato rescissa voluntate succedere, libertatibus, quae in eodem testamento datae fuerint, si intra legitimum numerum sunt, suam obtinentibus firmitatem. si quid maximum crimen in matrem patremve, avum vel aviam tales filios vel nepotes commisisse aperte potuerit comprobari, manente in eos ultione legitima, si accusatio interea iure processerit, parentes tamen sub tali elogio, cui subpeditabunt probabilia et manifesta documenta, solam eis falcidiam debitae successionis relinquant, ut hoc saltem in honorem religionis electae meruisse videantur, manente, ut diximus, criminum, si probata fuerint, ultione. et cetera. dat. vi id. april. ravennae theodosio xii et valentiniano ii aa. conss. (426 apr. 8).

CTh.16.8.29

Idem aa. iohanni comiti sacrarum largitionum. iudaeorum primates, qui in utriusque palaestinae synedriis nominantur vel in aliis provinciis degunt, quaecumque post excessum patriarcharum pensionis nomine suscepere, cogantur exsolvere. in futurum vero periculo eorundem anniversarius canon de synagogis omnibus palatinis compellentibus exigatur ad eam formam, quam patriarchae quondam coronarii auri nomine postulabant; quae tamen quanta sit, sollerti inquisitione discutias; et quod de occidentalibus partibus patriarchis conferri consueverat, nostris largitionibus inferatur. dat. iii kal. iun. constantinopoli florentio et dionysio conss. (429 mai. 30).

CTh.16.9.0. Ne christianum mancipium iudaeus habeat

CTh.16.9.1 [=brev.16.4.1]

Imp. constantinus a. ad felicem pf. p. si quis iudaeorum christianum mancipium vel cuiuslibet alterius sectae mercatus circumciderit, minime in servitute retineat circumcisum, sed libertatis privilegiis, qui hoc sustinuerit, potiatur etc. dat. xii. kal. n

interpretatio. si quis iudaeorum servum christianum vel cuiuslibet alterius sectae emerit et circumciderit, a iudaei ipsius potestate sublatus in libertate permaneat

CTh.16.9.2

Imp. constantius a. ad evagrium. si aliquis iudaeorum mancipium sectae alterius seu nationis crediderit comparandum, mancipium fisco protinus vindicetur: si vero emptum circumciderit, non solum mancipii damno multetur, verum etiam capitali sententia puniatur. quod si venerandae fidei conscia mancipia iudaeus mercari non dubitet, omnia, quae aput eum repperiuntur, protinus auferantur nec interponatur quicquam morae, quin eorum hominum qui christiani sunt possessione careat. et cetera. dat. id. aug. constantio a. ii et constante a. conss. (339 aug. 13).

CTh.16.9.3

Impp. honorius et theodosius aa. annati didascalo et maioribus iudaeorum. absque calumnia praecipimus iudaeis dominis habere servos christianos hac dumtaxat condicione permissa, ut propriam religionem eos servare permittant. ideoque iudices provinciarum fide publicationis inspecta eorum insolentiam noverint reprimendam, qui tempestivis precibus insimulandos esse duxerint, omnesque subreptiones fraudulenter elicitas vel eliciendas vacuandas esse censemus. si quis contra fecerit, velut in sacrilegum ultio proferatur. dat. viii id. nov. ravennae honorio x et theodosio vi aa. conss. (415 nov. 6).

CTh.16.9.4

Idem aa. monaxio praefecto praetorio. iudaeus servum christianum nec comparare debebit nec largitatis titulo consequi. qui non hoc observaverit, dominio sibi petulanter adquisito careat, ipso servo, si quod fuerit gestum sua sponte duxerit publicandum, pro praemio libertate donando. verum ceteros, quos rectae religionis participes constitutos in suo censu nefanda superstitio iam videtur esse sortita vel deinceps hereditatis seu fideicommissi nomine fuerit consecuta, sub hac lege possideat, ut eos nec invitos nec volentes caeno propriae sectae confundat, ita ut, si haec forma fuerit violata, sceleris tanti auctores capitali poena proscriptione comitante plectantur. dat. iiii id. april. constantinopoli honorio a. xi et constantio v. c. ii conss. (417 apr. 10).

CTh.16.9.5

Idem aa. asclepiodoto praefecto praetorio. post alia: christiana mancipia iudaeorum nemo audeat comparare. nefas enim aestimamus religiosissimos famulos impiissimorum emptorum inquinari dominio. quod si quis hoc fecerit, statutae poenae absque omni erit dilatione obnoxius. et cetera. dat. v id. april. constantinopoli asclepiodoto et mariniano conss. (423 apr. 9).

CTh.16.10.0. De paganis, sacrificiis et templis

CTh.16.10.1pr.

Imp. constantinus a. ad maximum. si quid de palatio nostro aut ceteris operibus publicis degustatum fulgore esse constiterit, retento more veteris observantiae quid portendat, ab haruspicibus requiratur et diligentissime scriptura collecta ad nostram scientiam referatur, ceteris etiam usurpandae huius consuetudinis licentia tribuenda, dummodo sacrificiis domesticis abstineant, quae specialiter prohibita sunt. (320/1 dec. 17).

CTh.16.10.1.1

Eam autem denuntiationem adque interpretationem, quae de tactu amphitheatri scripta est, de qua ad heraclianum tribunum et magistrum officiorum scripseras, ad nos scias esse perlatam. dat. xvi kal. ian. serdicae; accepta viii id. mar. crispo ii et constantino ii cc. conss. (320/1 dec. 17).

CTh.16.10.2

Imp. constantius a. ad madalianum agentem vicem praefectorum praetorio. cesset superstitio, sacrificiorum aboleatur insania. nam quicumque contra legem divi principis parentis nostri et hanc nostrae mansuetudinis iussionem ausus fuerit sacrificia celebrare, competens in eum vindicta et praesens sententia exeratur. accepta marcellino et probino conss. (341 ....).

CTh.16.10.3

Idem aa. ad catullinum praefectum urbi. quamquam omnis superstitio penitus eruenda sit, tamen volumus, ut aedes templorum, quae extra muros sunt positae, intactae incorruptaeque consistant. nam cum ex nonnullis vel ludorum vel circensium vel agonum origo fuerit exorta, non convenit ea convelli, ex quibus populo romano praebeatur priscarum sollemnitas voluptatum. dat. kal. nov. constantio iiii et constante iii aa. conss. (346 [342] nov. 1).

CTh.16.10.4

Idem aa. ad taurum praefectum praetorio. placuit omnibus locis adque urbibus universis claudi protinus templa et accessu vetito omnibus licentiam delinquendi perditis abnegari. volumus etiam cunctos sacrificiis abstinere. quod si quis aliquid forte huiusmodi perpetraverit, gladio ultore sternatur. facultates etiam perempti fisco decernimus vindicari et similiter adfligi rectores provinciarum, si facinora vindicare neglexerint. dat. kal. dec. constantio iiii et constante iii aa. conss. (346 [354?] dec. 1).

CTh.16.10.5

Idem a. ad cerealem praefectum urbi. aboleantur sacrificia nocturna magnentio auctore permissa et nefaria deinceps licentia repellatur. et cetera. dat. viiii kal. dec. constantio a. vi et caes. ii conss. (353 nov. 23).

CTh.16.10.6

Idem a. et iulianus caes. poena capitis subiugari praecipimus eos, quos operam sacrificiis dare vel colere simulacra constiterit. dat. xi kal. mart. mediolano constantio a. viii et iuliano caes. conss. (356 febr. 19).

CTh.16.10.7

Imppp. gratianus, valentinianus et theodosius aaa. floro praefecto praetorio. si qui vetitis sacrificiis diurnis nocturnisque velut vesanus ac sacrilegus, incertorum consultorem se inmerserit fanumque sibi aut templum ad huiuscemodi sceleris executionem adsumendum crediderit vel putaverit adeundum, proscriptione se noverit subiugandum, cum nos iusta institutione moneamus castis deum precibus excolendum, non diris carminibus profanandum. dat. xii kal. ian. constantinopoli eucherio et syagrio conss. (381 dec. 21).

CTh.16.10.8

Idem aaa. palladio duci osdroenae. aedem olim frequentiae dedicatam coetui et iam populo quoque communem, in qua simulacra feruntur posita artis pretio quam divinitate metienda iugiter patere publici consilii auctoritate decernimus neque huic rei obreptivum officere sinimus oraculum. ut conventu urbis et frequenti coetu videatur, experientia tua omni votorum celebritate servata auctoritate nostri ita patere templum permittat oraculi, ne illic prohibitorum usus sacrificiorum huius occasione aditus permissus esse credatur. dat. prid. kal. dec. constantinopoli antonio et syagrio conss. (382 nov. 30).

CTh.16.10.9

Idem aaa. cynegio praefecto praetorio. ne quis mortalium ita faciendi sacrificii sumat audaciam, ut inspectione iecoris extorumque praesagio vanae spem promissionis accipiat vel, quod est deterius, futura sub execrabili consultatione cognoscat. acerbioris etenim inminebit supplicii cruciatus eis, qui contra vetitum praesentium vel futurarum rerum explorare temptaverint veritatem. dat. viii kal. iun. constantinopoli arcadio a. i et bautone v. c. conss. (385 mai. 25).

CTh.16.10.10

Idem aaa. ad albinum praefectum praetorio. nemo se hostiis polluat, nemo insontem victimam caedat, nemo delubra adeat, templa perlustret et mortali opere formata simulacra suspiciat, ne divinis adque humanis sanctionibus reus fiat. iudices quoque haec forma contineat, ut, si quis profano ritui deditus templum uspiam vel in itinere vel in urbe adoraturus intraverit, quindecim pondo auri ipse protinus inferre cogatur nec non officium eius parem summam simili maturitate dissolvat, si non et obstiterit iudici et confestim publica adtestatione rettulerit. consulares senas, officia eorum simili modo, correctores et praesides quaternas, apparitiones illorum similem normam aequali sorte dissolvant. dat. vi kal. mart. mediolano tatiano et symmacho conss. (391 febr. 24).

CTh.16.10.11

Idem aaa. evagrio praefecto augustali et romano comiti aegypti. nulli sacrificandi tribuatur potestas, nemo templa circumeat, nemo delubra suspiciat. interclusos sibi nostrae legis obstaculo profanos aditus recognoscant adeo, ut, si qui vel de diis aliquid contra vetitum sacrisque molietur, nullis exuendum se indulgentiis recognoscat. iudex quoque si quis tempore administrationis suae fretus privilegio potestatis polluta loca sacrilegus temerator intraverit, quindecim auri pondo, officium vero eius, nisi collatis viribus obviarit, parem summam aerario nostro inferre cogatur. dat. xvi kal. iul. aquileiae tatiano et symmacho conss. (391 iun. 16).

CTh.16.10.12pr.

Imppp. theodosius, arcadius et honorius aaa. ad rufinum praefectum praetorio. nullus omnino ex quolibet genere ordine hominum dignitatum vel in potestate positus vel honore perfunctus, sive potens sorte nascendi seu humilis genere condicione ortuna in nullo penitus loco, in nulla urbe sensu carentibus simulacris vel insontem victimam caedat vel secretiore piaculo larem igne, mero genium, penates odore veneratus accendat lumina, imponat tura, serta suspendat. (392 nov. 8).

CTh.16.10.12.1

Quod si quispiam immolare hostiam sacrificaturus audebit aut spirantia exta consulere, ad exemplum maiestatis reus licita cunctis accusatione delatus excipiat sententiam competentem, etiamsi nihil contra salutem principum aut de salute quaesierit. sufficit enim ad criminis molem naturae ipsius leges velle rescindere, illicita perscrutari, occulta recludere, interdicta temptare, finem quaerere salutis alienae, spem alieni interitus polliceri. (392 nov. 8).

CTh.16.10.12.2

Si quis vero mortali opere facta et aevum passura simulacra imposito ture venerabitur ac ridiculo exemplo, metuens subito quae ipse simulaverit, vel redimita vittis arbore vel erecta effossis ara cespitibus, vanas imagines, humiliore licet muneris praemio, tamen plena religionis iniuria honorare temptaverit, is utpote violatae religionis reus ea domo seu possessione multabitur, in qua eum gentilicia constiterit superstitione famulatum. namque omnia loca, quae turis constiterit vapore fumasse, si tamen ea in iure fuisse turificantium probabuntur, fisco nostro adsocianda censemus. (392 nov. 8).

CTh.16.10.12.3

Sin vero in templis fanisve publicis aut in aedibus agrisve alienis tale quispiam sacrificandi genus exercere temptaverit, si ignorante domino usurpata constiterit, viginti quinque libras auri multae nomine cogetur inferre, coniventem vero huic sceleri par ac sacrificantem poena retinebit. (392 nov. 8).

CTh.16.10.12.4

Quod quidem ita per iudices ac defensores et curiales singularum urbium volumus custodiri, ut ilico per hos comperta in iudicium deferantur, per illos delata plectantur. si quid autem ii tegendum gratia aut incuria praetermittendum esse crediderint, commotioni iudiciariae, subiacebunt; illi vero moniti si vindictam dissimulatione distulerint, triginta librarum auri dispendio multabuntur, officiis quoque eorum damno parili subiugandis. dat. vi id. nov. constantinopoli arcadio a. ii et rufino conss. (392 nov. 8).

CTh.16.10.13pr.

Impp. arcadius et honorius aa. rufino praefecto praetorio. statuimus nullum ad fanum vel quodlibet templum habere quempiam licentiam accedendi vel abominanda sacrificia celebrandi quolibet loco vel tempore. igitur universi, qui a catholicae religionis dogmate deviare contendunt, ea, quae nuper decrevimus, properent custodire et quae olim constituta sunt vel de haereticis vel de paganis, non audeant praeterire, scituri, quidquid divi genitoris nostri legibus est in ipsos vel supplicii vel dispendii constitutum, nunc acrius exsequendum. sciant autem moderatores provinciarum nostrarum et his apparitio obsecundans, primates etiam civitatum, defensores nec non et curiales, procuratores possessionum nostrarum, in quibus sine timore dispendii coetus illicitos haereticos inire comperimus, eo, quod fisco sociari non possunt, quippe ad eius dominium pertinentes, si quid adversus scita nostra temptatum non fuerit vindicatum adque in vestigio ipso punitum, omnibus se detrimentis et suppliciis subiugandos, quae scitis sunt veteribus constituta. (395 aug. 7).

CTh.16.10.13.1

Speciatim vero hac lege in moderatores austeriora sancimus et decernimus: namque his non custoditis omni industria adque cautela non solum hanc multam, quae in ipsos constituta est, exerceri, verum etiam quae in eos praefinita est qui commissi videntur auctores, nec his tamen remissa, quibus ob contumaciam suam iuste est irrogata. (395 aug. 7).

CTh.16.10.13.2

Insuper capitali supplicio iudicamus officia coercenda, quae statuta neglexerint. dat. vii id. aug. constantinopoli olybrio et probino conss. (395 aug. 7).

CTh.16.10.14

Idem aa. caesario praefecto praetorio. privilegia si qua concessa sunt antiquo iure sacerdotibus ministris praefectis hierofantis sacrorum sive quolibet alio nomine nuncupantur, penitus aboleantur nec gratulentur se privilegio esse munitos, quorum professio per legem cognoscitur esse damnata. dat. vii id. dec. constantinopoli arcadio iiii et honorio iii aa. conss. (396 dec. 7).

CTh.16.10.15

Idem aa. macrobio vicario hispaniarum et procliano vicario quinque provinciarum. sicut sacrificia prohibemus, ita volumus publicorum operum ornamenta servari. ac ne sibi aliqua auctoritate blandiantur, qui ea conantur evertere, si quod rescriptum, si qua lex forte praetenditur. erutae huiusmodi chartae ex eorum manibus ad nostram scientiam referantur, si illicitis evectiones aut suo aut alieno nomine potuerint demonstrare, quas oblatas ad nos mitti decernimus. qui vero talibus cursum praebuerint, binas auri libras inferre cogantur. dat. iiii kal. feb. ravennae theodoro v. c. cons. (399 ian. 29).

CTh.16.10.16

Idem aa. ad eutychianum praefectum praetorio. si qua in agris templa sunt, sine turba ac tumultu diruantur. his enim deiectis atque sublatis omnis superstitioni materia consumetur. dat. vi id. iul.; proposita damasco theodoro v. c. cons. (399 iul. 10).

CTh.16.10.17

Idem aa. apollodoro proconsuli africae. ut profanos ritus iam salubri lege submovimus, ita festos conventus civium et communem omnium laetitiam non patimur submoveri. unde absque ullo sacrificio atque ulla superstitione damnabili exhiberi populo voluptates secundum veterem consuetudinem, iniri etiam festa convivia, si quando exigunt publica vota, decernimus. dat. xiii kal. sept. patavi theodoro v. c. cons. (399 aug. 20).

CTh.16.10.18

Idem aa. apollodoro proconsuli africae. aedes illicitis rebus vacuas nostrarum beneficio sanctionum ne quis conetur evertere. decernimus enim, ut aedificiorum quidem sit integer status, si quis vero in sacrificio fuerit deprehensus, in eum legibus vindicetur, depositis sub officio idolis disceptatione habita, quibus etiam nunc patuerit cultum vanae superstitionis impendi. dat. xiii kal. sept. patavi theodoro v. c. cons. (399 aug. 20).

CTh.16.10.19pr.

Imppp. arcadius, honorius et theodosius aaa. curtio praefecto praetorio. post alia: templorum detrahantur annonae et rem annonariam iuvent expensis devotissimorum militum profuturae. (408 [407] nov. 15).

CTh.16.10.19.1

Simulacra, si qua etiamnunc in templis fanisque consistunt et quae alicubi ritum vel acceperunt vel accipiunt paganorum, suis sedibus evellantur, cum hoc repetita sciamus saepius sanctione decretum. (408 [407] nov. 15).

CTh.16.10.19.2

Aedificia ipsa templorum, quae in civitatibus vel oppidis vel extra oppida sunt, ad usum publicum vindicentur. arae locis omnibus destruantur omniaque templa in possessionibus nostris ad usus adcommodos transferantur; domini destruere cogantur. (408 [407] nov. 15).

CTh.16.10.19.3

Non liceat omnino in honorem sacrilegi ritus funestioribus locis exercere convivia vel quicquam sollemnitatis agitare. episcopis quoque locorum haec ipsa prohibendi ecclesiasticae manus tribuimus facultatem; iudices autem viginti librarum auri poena constringimus et pari forma officia eorum, si haec eorum fuerint dissimulatione neglecta. dat. xvii kal. dec. romae basso et philippo conss. (408 [407] nov. 15).

CTh.16.10.20pr.

Impp. honorius et theodosius aa. sacerdotales paganae superstitionis competenti coercitioni subiacere praecipimus, nisi intra diem kalendarum novembrium de karthagine decedentes ad civitates redierint genitales, ita ut simili quoque censurae per totam africam sacerdotales obnoxii teneantur, nisi de metropolitanis urbibus discesserint et remearint ad proprias civitates. (415 aug. 30).

CTh.16.10.20.1

Omnia etiam loca, quae sacris error veterum deputavit, secundum divi gratiani constituta nostrae rei iubemus sociari ita ut ex eo tempore, quo inhibitus est publicus sumptus superstitioni deterrimae exhiberi, fructus ab incubatoribus exigantur, quod autem ex eo iure ubicumque ad singulas quasque personas vel praecedentium principum largitas vel nostra maiestas voluit pervenire, id in eorum patrimoniis aeterna firmitate perduret. quod non tam per africam quam per omnes regiones in nostro orbe positas custodiri decernimus. (415 aug. 30).

CTh.16.10.20.2

Ea autem, quae multiplicibus constitutis ad venerabilem ecclesiam voluimus pertinere, christiana sibi merito religio vindicabit, ita ut omnis expensa illius temporis ad superstitionem pertinens, quae iure damnata est, omniaque loca, quae frediani, quae dendrophori, quae singula quaeque nomina et professiones gentiliciae tenuerunt epulis vel sumptibus deputata, possint hoc errore submoto compendia nostrae domus sublevare. (415 aug. 30).

CTh.16.10.20.3

Sane si quondam consecrata sacrificiis deceptionem hominum praestiterunt, ab usibus lavacrorum vel publicis affectibus separentur, ne illecebram errantibus praestent. (415 aug. 30).

CTh.16.10.20.4

Chiliarchas insuper et centonarios vel qui sibi plebis distributionem usurpare dicuntur censuimus removendos, ita ut capitalem sententiam non evadat, si quis aut volens ad huiusmodi nomen accesserit aut passus fuerit vel invitum se huiusmodi praesumptioni atque invidiae deputari. dat. iii kal. sept. ravennae honorio x et theodosio vi aa. conss. (415 aug. 30).

CTh.16.10.21

Idem aa. aureliano praefecto praetorio ii. post alia: qui profano pagani ritus errore seu crimine polluuntur, hoc est gentiles, nec ad militiam admittantur nec administratoris vel iudicis honore decorentur. dat. vii id. dec. d. n. theodosio a. vii et palladio conss. (416 dec. 7).

CTh.16.10.22

Idem aa. asclepiodoto praefecto praetorio. post alia: paganos qui supersunt, quamquam iam nullos esse credamus, promulgatarum ....Iam dudum praescripta compescant. et cetera. dat. v id. april. constantinopoli asclepiodoto et mariniano conss. (423 apr. 9).

CTh.16.10.23

Idem aa. asclepiodoto praefecto praetorio. post alia: paganos qui supersunt, si aliquando in execrandis daemonum sacrificiis fuerint comprehensi, quamvis capitali poena subdi debuerint, bonorum proscriptio ac exilium cohercebit. dat. vi id. iun. constantinopoli asclepiodoto et mariniano conss. (423 iun. 8).

CTh.16.10.24pr.

Idem aa. asclepiodoto praefecto praetorio. post alia: manichaeos illosque, quos pepyzitas vocant, nec non et eos, qui omnibus haereticis hac una sunt persuasione peiores, quod in venerabili die paschae ab omnibus dissentiunt, si in eadem amentia perseverant, eadem poena multamus, bonorum proscriptione atque exilio. (423 iun. 8).

CTh.16.10.24.1

Sed hoc christianis, qui vel vere sunt vel esse dicuntur, specialiter demandamus, ut iudaeis ac paganis in quiete degentibus nihilque temptantibus turbulentum legibusque contrarium non audeant manus inferre religionis auctoritate abusi. nam si contra securos fuerint violenti vel eorum bona diripuerint, non ea sola quae abstulerint, sed conventi in triplum et quadruplum quae rapuerint restituere compellantur. rectores etiam provinciarum et officia et provinciales cognoscant se, si fieri permiserint, ut eos qui fecerint puniendos. dat. vi id. iun. constantinopoli asclepiodoto et mariniano conss. (423 iun. 8).

CTh.16.10.25

Impp. theodosius et valentinianus aa. isidoro praefecto praetorio. omnibus sceleratae mentis paganae exsecrandis hostiarum immolationibus damnandisque sacrificiis ceterisque antiquiorum sanctionum auctoritate prohibitis interdicimus cunctaque eorum fana templa delubra, si qua etiam nunc restant integra, praecepto magistratuum destrui collocationeque venerandae christianae religionis signi expiari praecipimus, scientibus universis, si quem huic legi aput competentem iudicem idoneis probationibus illusisse constiterit, eum morte esse multandum. dat. xviii kal. dec. constantinopoli theodosio xv et valentiniano iiii aa. conss. (435 nov. 14).

CTh.16.11.0. De religione

CTh.16.11.1 [=brev.16.5.1]

Impp. arcad. et honor. aa. apollodoro proconsuli africae. quoties de religione agitur, episcopos convenit agitare; ceteras vero causas, quae ad ordinarios cognitores vel ad usum publici iuris pertinent, legibus oportet audiri. dat. xiii. kal. sept. patavio, theodoro v. c. cos. haec lex interpretatione non indiget.

CTh.16.11.2

Imppp. arcadius, honorius et theodosius aaa. diotimo proconsuli africae. edictum, quod de unitate per africanas regiones clementia nostra direxit, per diversa proponi volumus, ut omnibus innotescat dei omnipotentis unam et veram fidem catholicam, quam recta credulitas confitetur, esse retinendam. dat. iii non. mart. ravennae stilichone ii et anthemio conss. (405 mart. 5).

CTh.16.11.3

Impp. honorius et theodosius aa. marcellino suo salutem. ea, quae circa catholicam legem vel olim ordinavit antiquitas vel parentum nostrorum auctoritas religiosa constituit vel nostra serenitas roboravit, novella superstitione submota integra et inviolata custodiri praecipimus. dat. prid. id. oct. ravennae varane v. c. cons.

IMPERATORIS IVSTINIANI OPERA

INSTITVTIONES

Prooemium Liber I Liber II Liber III Liber IV

CODEX

Liber I Liber II Liber III Liber IV Liber V Liber VI

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INSTITVTIONES

IMPERATORIS IVSTINIANI INSTITVTIONVM

PROOEMIUM

IN·NOMINE DOMINI NOSTRI IESU CHRISTI.
IMPERATOR CAESAR FLAVIUS IUSTINIANUS ALAMANNICUS
GOTHICUS FRANCICUS GERMANICUS ANTICUS ALANICUS
VANDALICUS AFRICANUS PIUS FELIX
INCLITUS VICTOR AC TRIUMPHATOR
SEMPER AUGUSTUS CUPIDAE
LEGUM IUVENTUTI

Imperatoriam maiestatem non solum armis decoratam, sed etiam legibus oportet esse armatam, ut utrumque tempus et bellorum et pacis recte possit gubernari et princeps Romanus victor existat non solum in hostilibus proeliis, sed etiam per legitimos tramites calumniantium iniquitates expellens, et fiat tam iuris religiosissimus quam victis hostibus triumphator.

Quorum utramque viam cum summis vigiliis et summa providentia adnuente Deo perfecimus. et bellicos quidem sudores nostros barbaricae gentes sub iuga nostra deductae cognoscunt et tam Africa quam aliae innumerosae provinciae post tanta temporum spatia nostris victoriis a caelesti numine praestitis iterum dicioni Romanae nostroque additae imperio protestantur. omnes vero populi legibus iam a nobis vel promulgatis vel compositis reguntur. Et cum sacratissimas constitutiones antea confusas in luculentam ereximus consonantiam, tunc nostram extendimus curam et ad immensa prudentiae veteris volumina et opus desperatum, quasi per medium profundum euntes, caelesti favore iam adimplevimus.

Cumque hoc Deo propitio peractum est, Triboniano, viro magnifico, magistro et ex quaestore sacri palatii nostri, nec non Theophilo et Dorotheo, viris illustribus, antecessoribus, quorum omnium sollertiam et legum scientiam et circa nostras iussiones fidem iam ex multis rerum argumentis accepimus, convocatis, specialiter mandavimus ut nostra auctoritate nostrisque suasionibus componant Institutiones: ut liceat vobis prima legum cunabula non ab antiquis fabulis discere, sed ab imperiali splendore appetere, et tam aures quam animae vestrae nihil inutile nihilque perperam positum, sed quod in ipsis rerum optinet argumentis, accipiant, et quod in priore tempore vix post quadriennium prioribus contingebat, ut tunc constitutiones imperatorias legerent, hoc vos a primordio ingrediamini, digni tanto honore tantaque reperti felicitate, ut et initium vobis et finis legum eruditionis a voce principali procedat. Igitur post libros quinquaginta digestoram seu pandectarum, in quos omne ius antiquum collatum est (quos per eundem virum excelsum Tribonianum nec non ceteros viros illustres et facundissimos confecimus), in hos quattuor libros easdem institutiones partiri iussimus, ut sint totius legitimae scientiae prima elementa. Quibus breviter eitum est et quod antea optinebat et quod postea desuetudine inumbratum ab imperiali remedio illuminatum est. Quas ex omnibus antiquorum institutionibus et praecipue ex commentariis Gaii nostri tam institutionum quam rerum cottidianarum aliisque multis commentariis compositas cum tres praedicti viri prudentes nobis optulerunt, et legimus et cognovimus et plenissimum nostrarum constitutionum robur eis accommodavimus.

Summa itaque ope et alacri studio has leges nostras accipite et vosmet ipsos sic eruditos ostendite, ut spes vos pulcherrima foveat, toto legitimo opere perfecto, posse etiam nostram rem publicam in partibus eius vobis credendis gubernare.

Data undecimo kalendas Decembres Constantinopoli domino nostro Iustiniano perpetuo Augusto tertium consule.

DOMINI NOSTRI IUSTINIANI PERPETUO AUGUSTI
INSTITUTIONUM SIVE ELEMENTORUM
COMPOSITORUM PER TRIBONIANUM
VIRUM EXCELSUM IURISQUE DOCTISSIMUM MAGISTRUM
ET EX QUAESTORE SACRI PALATII ET
THEOPHILUM VIRUM MAGNIFICUM IURIS PERITUM
ET ANTECESSOREM HUIUS ALMAE URBIS ET
DOROTHEUM VIRUM MAGNIFICUM
QUAESTORIUM IURIS PERITUM ET ANTECESSOREM
BERYTENSIUM INCLYTAE CIVITATIS.

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IMPERATORIS IVSTINIANI INSTITVTIONVM LIBER PRIMVS

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solvitur
I:XIII De tutelis
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LIB. I, TIT. I.
DE IUSTITIA ET IURE.

Iustitia est constans et perpetua voluntas ius suum cuique tribuens. Iurisprudentia est divinarum atque humanarum rerum notitia, iusti atque iniusti scientia.

His generaliter cognitis et incipientibus nobis exponere iura populi Romani ita maxime videntur posse tradi commodissime, si primo levi ac simplici, post deinde diligentissima atque exactissima interpretatione singula tradantur. alioquin si statim ab initio rudem adhuc et infirmum animum studiosi multitudine ac varietate rerum oneraverimus, duorum alterum aut desertorem studiorum efficiemus aut cum magno labore eius, saepe etiam cum diffidentia, quae plerumque iuvenes avertit, serius ad id perducemus ad quod leniore via ductus sine magno labore et sine ulla diffidentia maturius perduci potuisset.

Iuris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere. Huius studii duae sunt positiones, publicum et privatum. publicum ius est quod ad statum rei Romanae spectat, privatum quod ad singulorum utilitatem pertinet. dicendum est igitur de iure privato, quod tripertitum est; collectum est enim ex naturalibus praeceptis aut gentium aut civilibus.

LIB. I, TIT. II.
DE IURE NATURALI, GENTIUM ET CIVILI.

Ius naturale est quod natura omnia animalia docuit. nam ius istud non humani generis proprium est, sed omnium animalium, quae in caelo, quae in terra, quae in mari nascuntur. hinc descendit maris atque feminae coniugatio, quam nos matrimonium appellamus, hinc liberorum procreatio et educatio: videmus etenim cetera quoque animalia istius iuris peritia censeri.

Ius autem civile vel gentium ita dividitur: omnes populi qui legibus et moribus reguntur partim suo proprio, partim communi omnium hominum iure utuntur: nam quod quisque populus ipse sibi ius constituit, id ipsius proprium civitatis est vocaturque ius civile, quasi ius proprium ipsius civitatis: quod vero naturalis ratio inter omnes homines constituit, id apud omnes populos peraeque custoditur vocaturque ius gentium, quasi quo iure omnes gentes utuntur. et populus itaque Romanus partim suo proprio, partim communi omnium hominum iure utitur. quae singula qualia sunt, suis locis proponemos.

Sed ius quidem civile ex unaquaque civitate appellatur, veluti Atheniensium: nam si quis velit Solonis vel Draconis leges appellare ius civile Atheniensium, non erraverit. sic enim et ius quo populus Romanus utitur ius civile Romanorum appellamus, vel ius Quiritium, quo Quirites utuntur; Romani enim a Quirino Quirites appellantur. sed quotiens non addimus, cuius sit civitatis, nostrum ius significamus: sicuti cum poetam dicimus nec addimus nomen, subauditur apud Graecos egregius Homerus, apud nos Vergilius.

Ius autem gentium omni humano generi commune est. nam usu exigente et humanis necessitatibus gentes humanae quaedam sibi constituerunt: bella etenim orta sunt et captivitates secutae et servitutes, quae sunt iuri naturali contrariae (iure enim naturali ab initio omnes homines liberi nascebantur); ex hoc iure gentium et omnes paene contractus introducti sunt, ut emptio venditio, locatio conductio, societas, depositum, mutuum, et alii innumerabiles.

Constat autem ius nostrum aut ex scripto aut ex non scripto, ut apud Graecos: t«n nÒmvn oþ m°n ¶ggrafoi, oþ d¢ ênrafoi..

Scriptum ius est lex, plebiscita, senatusconsulta, principum placita, magistratuum edicta, responsa prudentium. Lex est quod populus Romanus senatorio magistratu interrogante, veluti consule, constituebat. plebiscitum est, quod plebs plebeio magistratu interrogante, veluti tribuno, constituebat. plebs autem a populo eo differt quo species a genere: nam appellatione populi universi cives significantur, connumeratis etiam patriciis et senatoribus: plebis autem appellatione sine patriciis et senatoribus ceteri cives significantur. sed et plebiscita, lege Hortensia lata, non minus valere quam leges coeperunt. Senatusconsultum est quod senatus iubet atque constituit. nam cum auctus est populus Romanus in eum modum ut difficile sit in unum eum convocari legis sanciendae causa, aequum visum est senatum vice populi consuli. Sed et quod principi placuit legis habet vigorem, cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem concessit. quodcumque igitur imperator per epistulam constituit vel cognoscens decrevit vel edicto praecepit, legem esse constat: hae sunt quae constitutiones appellantur. plane ex his quaedam sunt personales, quae nec ad exemplum trahuntur, quoniam non hoc princeps vult: nam quod alicui ob merita indulsit, vel si cui poenam irrogavit, vel si cui sine exemplo subvenit, personam non egreditur. aliae autem, cum generales sunt, omnes procul dubio tenent. Praetorum quoque edicta non modicam iuris optinent auctoritatem. haec etiam ius honorarium solemus appellare, quod qui honorem gerunt, id est magistratus, auctoritatem huic iuri dederunt. proponebant et aediles curules edictum de quibusdam casibus, quod edictum iuris honorarii portio est. Responsa prudentium sunt sententiae et opiniones eorum quibus permissum erat iura condere. nam antiquitus institutum erat ut essent qui iura publice interpretarentur, quibus a Caesare ius respondendi datum est, qui iurisconsulti appellabantur. quorum omnium sententiae et opiniones eam auctoritatem tenebant ut iudici recedere a responso eorum non liceret, ut est constitutum.

Ex non scripto ius venit quod usus comprobavit. nam diuturni mores consensu utentium comprobati legem imitantur.

Et non ineleganter in duas species ius civile distributum videtur. nam origo eius ab institutis duarum civitatium, Athenarum scilicet et Lacedaemonis, fluxisse videtur: in his enim civitatibus ita agi solitum erat, ut Lacedaemonii quidem magis ea quae pro legibus observarent memoriae mandarent, Athenienses vero ea quae in legibus scripta reprehendissent custodirent.

Sed naturalia quidem iura, quae apud omnes gentes peraeque servantur, divina quadam providentia constituta, semper firma atque immutabilia permanent: ea vero quae ipsa sibi quaeque civitas constituit, saepe mutari solent vel tacito consensu populi vel alia postea lege lata.

Omne autem ius quo utimur vel ad personas pertinet vel ad res vel ad actiones. ac prius de personis videamus. nam parum est ius nosse, si personae, quarum causa statutum est, ignorentur.

LIB. I, TIT. III.
DE IURE PERSONARUM.

Summa itaque divisio de iure personarum haec est, quod omnes homines aut liberi sunt aut servi. Et libertas quidem est, ex qua etiam liberi vocantur, naturalis facultas eius quod cuique facere libet, nisi si quid aut vi aut iure prohibetur. Servitus autem est constitutio iuris gentium, qua quis dominio alieno contra naturam subicitur. Servi autem ex eo appellati sunt, quod imperatores captivos vendere iubent ac per hoc servare nec occidere solent: qui etiam mancipia dicti sunt, quod ab hostibus manu capiuntur. Servi autem aut nascuntur aut fiunt. nascuntur ex ancillis nostris: fiunt aut iure gentium, id est ex captivitate, aut iure civili, veluti cum homo liber maior viginti annis ad pretium participandum sese venumdari passus est. In servorum condicione nulla differentia est. in liberis multae differentiae sunt: aut enim ingenui sunt aut libertini.

LIB. I, TIT. IV.
DE INGENUIS.

Ingenuus is est qui statim ut natus est liber est, sive ex duobus ingenuis matrimonio editus, sive ex libertinis, sive ex altero libertino, altero ingenuo. sed et si quis ex matre libera nascatur, patre servo, ingenuus nihilo minus nascitur: quemadmodum qui ex matre libera et incerto patre natus est, quoniam vulgo conceptus est. sufficit autem liberam fuisse matrem eo tempore quo nascitur, licet ancilla conceperit. et ex contrario si libera conceperit, deinde ancilla facta pariat, placuit eum qui nascitur liberum nasci, quia non debet calamitas matris ei nocere qui in utero est. ex his et illud quaesitum est, si ancilla praegnans manumissa sit, deinde ancilla postea facta peperit, liberum an servum pariat? et Marcellus probat, liberum nasci: sufficit enim ei qui in ventre est liberam matrem vel medio tempore habuisse: quod et verum est. Cum autem ingenuus aliquis natus sit, non officit illi in servitute fuisse et postea manumissum esse: saepissime enim constitutum est, natalibus non officere manumissionem.

LIB. I, TIT. V.

DE LIBERTINIS.

Libertini sunt qui ex iusta servitute manumissi sunt. manumissio autem est datio libertatis: nam quamdiu quis in servitute est, manui et potestati suppositus est, et manumissus liberatur potestate. quae res a iure gentium originem sumpsit, utpote cum iure naturali omnes liberi nascerentur nec esset nota manumissio, cum servitus esset incognita: sed posteaquam iure gentium servitus invasit, secutum est beneficium manumissionis. et cum uno naturali nomine homines appellaremur, iure gentium tria genera hominum esse coeperunt, liberi et his contrarium servi et tertium genus libertini, qui desierant esse servi. Multis autem modis manumissio procedit: aut enim ex sacris constitutionibus in sacrosanctis ecclesiis aut vindicta aut inter amicos aut per epistulam aut per testamentum aut aliam quamlibet ultimam voluntatem. sed et aliis multis modis libertas servo competere potest, qui tam ex veteribus quam nostris constitutionibus introducti sunt. Servi vero a dominis semper manumitti solent, adeo ut vel in transitu manumittantur, veluti cum praetor aut proconsul aut praeses in balneum vel in theatrum eat.

Libertinorum autem status tripertitus antea fuerat: nam qui manumittebantur, modo maiorem et iustam libertatem consequebantur et fiebant cives Romani, modo minorem et Latini ex lege Iunia Norbana fiebant, modo inferiorem et fiebant ex lege Aelia Sentia dediticiorum numero. sed dediticiorum quidem pessima condicio iam ex multis temporibus in desuetudinem abiit, Latinorum vero nomen non frequentabatur: ideoque nostra pietas, omnia augere et in meliorem statum reducere desiderans, in duabus constitutionibus hoc emendavit et in pristinum statum reduxit, quia et a primis urbis Romae cunabulis una atque simplex libertas competebat, id est eadem quam habebat manumissor, nisi quod scilicet libertinus sit qui manumittitur, licet manumissor ingenuus sit. et dediticios quidem per constitutionem expulimus, quam promulgavimus inter nostras decisiones, per quas, suggerente nobis Triboniano, viro excelso, quaestore, antiqui iuris altercationes placavimus: Latinos autem Iunianos et omnem quae circa eos fuerat observantiam alia constitutione per eiusdem quaestoris suggestionem correximus, quae inter imperiales radiat sanctiones, et omnes libertos, nullo nec aetatis manumissi nec dominii manumissoris nec in manumissionis modo discrimine habito, sicuti antea observabatur, civitate Romana donavimus: multis additis modis, per quos possit libertas servis cum civitate Romana, quae sola in praesenti est, praestari.

LIB. I, TIT. VI.
QUI QUIBUS EX CAUSIS MANUMITTERE NON POSSUNT.

Non tamen cuicunque volenti manumittere licet. nam is qui in fraudem creditorum manumittit nihil agit, quia lex Aelia Sentia impedit libertatem. Licet autem domino qui solvendo non est testamento servum suum cum libertate heredem instituere, ut fiat liber heresque ei solus et necessarius, si modo nemo alius ex eo testamento heres extiterit, aut quia nemo heres scriptus sit, aut quia is qui scriptus est qualibet ex causa heres non extiterit. idque eadem lege Aelia Sentia provisum est, et recte: valde enim prospiciendum erat, ut egentes homines, quibus alius heres extaturus non esset, vel servum suum necessarium heredem habeant, qui satisfacturus esset creditoribus, aut, hoc eo non faciente, creditores res hereditarias servi nomine vendant, nec iniuria defunctus afficiatur. Idemque iuris est et si sine libertate servus heres institutus est. quod nostra constitutio non solum in domino qui solvendo non est, sed generaliter constituit, nova humanitatis ratione, ut ex ipsa scriptura institutionis etiam libertas ei competere videatur, cum non est verisimile, eum quem heredem sibi elegit, si praetermiserit libertatis dationem, servum remanere voluisse et neminem sibi heredem fore. In fraudem autem creditorum manumittere videtur qui vel iam eo tempore quo manumittit solvendo non est, vel qui datis libertatibus desiturus est solvendo esse. praevaluisse tamen videtur, nisi animum quoque fraudandi manumissor habuit, non impediri libertatem, quamvis bona eius creditoribus non sufficiant: saepe enim de facultatibus suis amplius quam in his est sperant homines. itaque tunc intellegimus impediri libertatem, cum utroque modo fraudantur creditores, id est et consilio manumittentis et ipsa re, eo quod bona non suffectura sunt creditoribus.

Eadem lege Aelia Sentia domino minori annis viginti non aliter manumittere permittitur, quam si vindicta apud consilium iusta causa manumissionis adprobata fuerit manumissi. Iustae autem manumissionis causae sunt, veluti si quis patrem aut matrem aut filium filiamve aut fratrem sororemve naturales aut paedagogum, nutricem, educatorem aut alumnum alumnamve aut collactaneum manumittat, aut servum procuratoris habendi gratia, aut ancillam matrimonii causa, dum tamen intra sex menses uxor ductatur, nisi iusta causa impediat, et qui manumittitur procuratoris habendi gratia, ne minor septem et decem annis manumittatur. Semel autem causa adprobata, sive vera sive falsa sit, non retractatur.

Cum ergo certus modus manumittendi minoribus viginti annis dominis per legem Aeliam Sentiam constitutus sit, eveniebat ut qui quattuordecim annos aetatis expleverit, licet testamentum facere possit et in eo heredem sibi instituere legataque relinquere possit, tamen, si adhuc minor sit annis viginti, libertatem servo dare non poterat. quod non erat ferendum, si is, cui totorum bonorum in testamento dispositio data erat, uni servo libertatem dare non permittebatur. quare nos similiter ei quemadmodum alias res ita et servos suos in ultima voluntate disponere, quemadmodum voluerit, permittimus, ut et libertatem eis possit praestare. sed cum libertas inaestimabilis est et propter hoc ante vicesimum aetatis annum antiquitas libertatem servo dari prohibebat: ideo nos, mediam quodammodo viam eligentes, non aliter minori viginti annis libertatem in testamento dare servo suo concedimus, nisi septimum et decimum annum impleverit et octavum decimum tetigerit. cum enim antiquitas huiusmodi aetati et pro aliis postulare concessit, cur non etiam sui iudicii stabilitas ita eos adiuvare credatur, ut et ad libertates dandas servis suis possint provenire.

LIB. I, TIT. VII.
DE LEGE FURIA CANINIA SUBLATA.

Lege Furia Caninia certus modus constitutus erat in servis testamento manumittendis. quem quasi libertatibus impedientem et quodammodo invidam tollendam esse censuimus; cum satis fuerat inhumanum, vivos quidem licentiam habere totam suam familiam libertate donare, nisi alia causa impediat libertati, morientibus autem huiusmodi licentiam adimere.

LIB. I, TIT. VIII.
DE HIS QUI SUI VEL ALIENI IURIS SUNT.

Sequitur de iure personarum alia divisio. nam quaedam personae sui iuris sunt, quaedam alieno iuri subiectae sunt: rursus earum quae alieno iuri subiectae sunt, aliae in potestate parentum, aliae in potestate dominorum sunt. videamus itaque de his quae alieno iuri subiectae sunt: nam si cognoverimus quae istae personae sint, simul intellegemus quae sui iuris sunt. ac prius dispiciamus de his qui in potestate dominorum sunt.

In potestate itaque dominorum sunt servi. quae quidem potestas iuris gentium est: nam apud omnes peraeque gentes animadvertere possumus, dominis in servos vitae necisque potestatem esse, et quodcumque per servum adquiritur id domino adquiritur. Sed hoc tempore nullis hominibus qui sub imperio nostro sunt licet sine causa legibus cognita et supra modum in servos suos saevire. nam ex constitutione divi Pii Antonini qui sine causa servum suum occiderit, non minus puniri iubetur quam qui servum alienum occiderit. sed et maior asperitas dominorum eiusdem principis constitutione coercetur. nam consultus a quibusdam praesidibus provinciarum de his servis qui ad aedem sacram vel ad statuas principum confugiunt, praecepit, ut si intolerabilis videatur dominorum saevitia, cogantur servos bonis condicionibus vendere, ut pretium dominis daretur: et recte; expedit enim rei publicae, ne quis re sua male utatur. cuius rescripti ad Aelium Marcianum emissi verba haec sunt:

"Dominorum quidem potestatem in suos servos illibatam esse oportet nec cuiquam hominum ius suum detrahi. sed dominorum interest, ne auxilium contra saevitiam vel famen vel intolerabilem iniuriam denegetur his qui iuste deprecantur. ideoque cognosce de querellis eorum qui ex familia Iulii Sabini ad statuam confugerunt, et si vel durius habitos quam aequum est, vel infami iniuria affectos cognoveris, veniri iube, ita ut in potestatem domini non revertantur. qui Sabinus, si meae constitutioni fraudem fecerit, sciet, me dmissum severius exsecuturum."

LIB. I, TIT. IX.
DE PATRIA POTESTATE.

In potestate nostra sunt liberi nostri, quos ex iustis nuptiis procreaverimus. Nuptiae autem sive matrimonium est viri et mulieris coniunctio, individuam consuetudinem vitae continens. Ius autem potestatis quod in liberos habemus proprium est civium Romanorum: nulli enim alii sunt homines qui talem in liberos habeant potestatem qualem nos habemus. Qui igitur ex te et uxore tua nascitur, in tua potestate est: item qui ex filio tuo et uxore eius nascitur, id est nepos tuus et neptis, aeque in tua sunt potestate, et pronepos et proneptis et deinceps ceteri. qui tamen ex filia tua nascitur, in tua potestate non est, sed in patris eius.

LIB. I, TIT. X.
DE NUPTIIS.

Iustas autem nuptias inter se cives Romani contrahunt, qui secundum praecepta legum coeunt, masculi quidem puberes, feminae autem viripotentes, sive patresfamilias sint sive filiifamilias, dum tamen filiifamilias et consensum habeant parentum, quorum in potestate sunt.   nam hoc fieri debere et civilis et naturalis ratio suadet in tantum ut iussum parentis praecedere debeat. unde quaesitum est, an furiosi filia nubere aut furiosi filius uxorem ducere possit? cumque super filio variabatur, nostra processit decisio, qua permissum est ad exemplum filiae furiosi filium quoque posse et sine patris interventu matrimonium sibi copulare secundum datum ex constitutione modum.

Ergo non omnes nobis uxores ducere licet: nam quarundam nuptiis abstinendum est: inter eas enim personas quae parentum liberorumve locum inter se optinent nuptiae contrahi non possunt, veluti inter patrem et filiam vel avum et neptem vel matrem et filium vel aviam et nepotem et usque ad infinitum: et si tales personae inter se coierunt, nefarias atque incestas nuptias contraxisse dicuntur. et haec adeo ita sunt ut, quamvis per adoptionem parentum liberorumve loco sibi esse coeperint, non possint inter se matrimonio iungi, in tantum ut etiam dissoluta adoptione idem iuris maneat: itaque eam quae tibi per adoptionem filia aut neptis esse coeperit, non poteris uxorem ducere, quamvis eam emancipaveris.

Inter eas quoque personas, quae ex transverso gradu cognationis iunguntur, est quaedam similis observatio, sed non tanta. sane enim inter fratrem sororemque nuptiae prohibitae sunt, sive ab eodem patre eademque matre nati fuerint, sive ex alterutro eorum. sed si qua per adoptionem soror tibi esse coeperit, quamdiu quidem constat adoptio sane inter te et eam nuptiae consistere non possunt: cum vero per emancipationem adoptio dissoluta sit, poteris eam uxorom ducere: sed et si tu emancipatus fueris, nihil est impedimento nuptiis. et ideo constat, si quis generum adoptare velit, debere eum ante filiam suam emancipare: et si quis velit nurum adoptare, debere eum ante filium emancipare. Fratris vel sororis filiam uxorem ducere non licet. sed nec neptem fratris vel sororis ducere quis potest, quamvis quarto gradu sint. cuius enim filiam uxorem ducere non licet, eius neque neptem permittitur. eius vero mulieris quam pater tuus adoptavit filiam non videris impediri uxorem ducere, quia neque naturali neque civili iure tibi coniungitur. Duorum autem fratrum vel sororum liberi vel fratris et sororis iungi possunt. Item amitam, licet adoptivam, uxorem ducere non licet, item materteram, quia parentum loco habentur. qua ratione verum est, magnam quoque amitam et materteram magnam prohiberi uxorem ducere. Adfinitatis quoque veneratione quarundam nuptiis abstinere necesse est. ut ecce privignam aut nurum uxorem ducere non licet, quia utraeque filiae loco sunt. quod scilicet ita accipi debet, si fuit nurus aut privigna: nam si adhuc nurus est, id est si adhuc nupta est filio tuo, alia ratione uxorem eam ducere non poteris, quia eadem duobus nupta esse non potest: item si adhuc privigna tua est, id est si mater eius tibi nupta est, ideo eam uxorem ducere non poteris, quia duas uxores eodem tempore habere non licet. Socrum quoque et novercam prohibitum est uxorem ducere, quia matris loco sunt. quod et ipsum dissoluta demum adfinitate procedit: alioquin si adhuc noverca est, id est si adhuc patri tuo nupta est, communi iure impeditur tibi nubere, quia eadem duobus nupta esse non potest: item si adhuc socrus est id est si adhuc filia eius tibi nupta est, ideo impediuntur nuptiae, quia duas uxores habere non potes. Mariti tamen filius ex alia uxore et uxoris filia ex alio marito, vel contra, matrimonium recte contrahunt, licet habeant fratrem sororemve ex matrimonio postea contracto natos. Si uxor tua post divortium ex alio filiam procreaverit, haec non est quidem privigna tua, sed Iulianus huiusmodi nuptiis abstinere debere ait: nam nec sponsam filii nurum esse nec patris sponsam novercam esse, rectius tamen et iure facturos eos, qui huiusmodi nuptiis se abstinuerint. Illud certum est, serviles quoque cognationes impedimento esse nuptiis, si forte pater et filia aut frater et soror manumissi fuerint. Sunt et aliae personae quae propter diversas rationes nuptias contrahere prohibentur quas in libris digestorum seu pandectarum ex veteri iure collectarum enumerari permisimus.

Si adversus ea quae diximus aliqui coierint, nec vir nec uxor nec nuptiae nec matrimonium nec dos intellegitur. itaque ii qui ex eo coitu nascuntur in potestate patris non sunt, sed tales sunt, quantum ad patriam potestatem pertinet, quales sunt ii quos mater vulgo concepit. nam nec hi patrem habere intelleguntur, cum his etiam incertus est: unde solent filii spurii appellari, vel a Graeca voce quasi sporãdhn concepti, vel quasi sine patre filii. sequitur ergo, ut et dissoluto tali coitu nec dotis exactioni locus sit. qui autem prohibitas nuptias coeunt et alias poenas patiuntur, quae sacris constitutionibus continentur.

Aliquando autem evenit, ut liberi quidem statim ut nati sunt in potestate parentum non fiant, postea autem redigantur in potestatem. qualis est is qui dum naturalis fuerat postea curiae datus potestati patris subicitur. nec non is qui a muliere libera procreatus, cuius matrimonium minime legibus interdictum fuerat sed ad quam pater consuetudinem habuerat. postea ex nostra constitutione, dotalibus instrumentis compositis, in potestate patris efficitur: quod et alii si ex eodem matrimonio non fuerint procreati, similiter nostra constitutio praebuit.

LIB. I, TIT. XI.
DE ADOPTIONIBUS.

Non solum tamen naturales liberi, secundum ea quae diximus, in potestate nostra sunt, verum etiam ii quos adoptamus. Adoptio autem duobus modis fit, aut principali rescripto aut imperio magistratus. imperatoris auctoritate adoptamus eos easve, qui quaeve sui iuris sunt. quae species adoptionis dicitur adrogatio. imperio magistratus adoptamus eos easve qui quaeve in potestate parentium sunt, sive primum gradum liberorum optineant, qualis est filius filia, sive inferiorem, qualis est nepos neptis, pronepos proneptis. Sed hodie ex nostra constitutione, cum filiusfamilias a patre naturali extraneae personae in adoptionem datur, iura potestatis naturalis patris minime dissolvuntur nec quidquam ad patrem adoptivum transit nec in potestate eius est, licet ab intestato iura successionis ei a nobis tributa sunt. si vero pater naturalis non extraneo, sed avo fílii sui materno, vel, si ipse pater naturalis fuerit emancipatus, etiam paterno, vel proavo simili modo paterno vel materno, filium suum dederit in adoptionem: in hoc casu quia in unam personam concurrunt et naturalia et adoptionis iura, manet stabile ius patris adoptivi, et naturali vinculo copulatum et legitimo adoptionis modo constrictum, ut et in familia et in potestate huiusmodi patris adoptivi sit. Cum autem impubes per principale rescriptum adrogatur, causa cognita adrogatio permittitur et exquiritur causa adrogationis, an honesta sit expediatque pupillo, et cum quibusdam condicionibus adrogatio fit, id est ut caveat adrogator personae publicae, hoc est tabulario, si intra pubertatem pupillus decesserit, restituturum se bona illis qui, si adoptio facta non esset, ad successionem eius venturi essent. item non alias emancipare eos potest adrogator, nisi causa cognita digni emancipatione fuerint et tunc sua bona eis reddat. sed et si decedens pater eum exheredaverit vel vivus sine insta causa eum emancipaverit, iubetur quartam partem ei suorum bonoram relinquere, videlicet praeter bona quae ad patrem adoptivum transtulit et quorum commodum ei adquisivit postea. Minorem natu non posse maiorem adoptare placet: adoptio enim naturam imitatur et pro monstro est ut maior sit filius quam pater. debet itaque is qui sibi per adrogationem vel adoptionem filium facit, plena pubertate, id est decem et octo annis praecedere. Licet autem et in locum nepotis vel neptis vel in locum pronepotis vel proneptis vel deinceps adoptare, quamvis filium quis non habeat. Et tam filium alienum quis in locum nepotis potest adoptare, quam nepotem in locum filii. Sed si quis nepotis loco adoptet, vel quasi ex eo filio quem habet iam adoptatum, vel quasi ex illo quem naturalem in sua potestate habet: in eo casu et filius consentire debet, ne ei invito suus heres adgnascatur. sed ex contrario si avus ex filio nepotem dat in adoptionem, non est necesse filium consentire. In plurimis autem causis adsimilatur is qui adoptatus vel adrogatus est, ei qui ex legitimo matrimonio natus est. et ideo si quis per imperatorem sive apud praetorem vel apud praesidem provinciae non extraneum adoptaverit, potest eundem alii in adoptionem dare. Sed et illud utriusque adoptionis commune est, quod et hi qui generare non possunt, quales sunt spadones, adoptare possunt, castrati autem non possunt. Feminae quoque adoptare non possunt, quia nec naturales liberos in potestate sua habent: sed ex indulgentia principis ad solatium liberorum amissorum adoptare possunt. Illud proprium est illius adoptionis quae per sacrum oraculum fit, quod is qui liberos in potestate habet, si se adrogandum dederit, non solum ipse potestati adrogatoris subicitur, sed etiam liberi eius in eiusdem fiunt potestate tamquam nepotes. sic enim et divus Augustus non ante Tiberium adoptavit, quam is Germanicum adoptavit: ut protinus adoptione facta incipiat Germanicus Augusti nepos esse. Apud Catonem bene scriptum refert antiquitas, servi si a domino adoptati sint, ex hoc ipso posse liberari. unde et nos eruditi in nostra constitutione etiam eum servum quem dominus actis intervenientibus filium suum nominaverit liberum esse constituimus, licet hoc ad ius filii accipiendum ei non sufficit.

LIB. I, TIT. XII.
QUIBUS MODIS IUS POTESTATIS SOLVITUR.

Videamus nunc, quibus modis ii qui alieno iuri subiecti sunt eo iure liberantur. et quidem servi quemadmodum potestate liberantur, ex his intellegere possumus quae de servis manumittendis superius euimas.

Hi vero qui in potestate parentis sunt mortuo eo sui iuris fiunt. sed hoc distinctionem recipit. nam mortuo patre sane omnimodo filii filiaeve sui iuris efficiuntur. mortuo vero avo non omnimodo nepotes neptesque sui iuris fiunt, sed ita si post mortem avi in potestatem patris sui recasuri non sunt: itaque si moriente avo pater eorum et vivit et in potestate patris sui est, tunc post obitum avi in potestate patris sui fiunt: si vero is quo tempore avus moritur aut iam mortuus est aut exiit de potestate patris, tunc hi, quia in potestatem eius cadere non possunt, sui iuris fiunt.

Cum autem is qui ob aliquod maleficium in insulam deportatur civitatem amittit, sequitur ut, quia eo modo ex numero civium Romanorum tollitur, perinde acsi mortuo eo desinant liberi in potestate eius esse. pari ratione et si is qui in potestate parentis sit in insulam deportatus fuerit, desinit in potestate parentis esse. sed si ex indulgentia principali restituti fuerint, per omnia pristinum statum recipiunt. Relegati autem patres in insulam in potestate sua liberos retinent: et e contario liberi relegate in postestate parentum remanent. Poenae servus effectus filios in potestate habere desinit. servi autem poenae efficiuntur, qui in metallum damnantur et qui bestiis subiciuntur.

Filiusfamilias si militaverit, vel si senator vel consul fuerit factus, manet in patris potestate. militia enim vel consularia dignitas patris potestate filium non liberat. sed ex constitutione nostra summa patriciatus dignitas illico ab imperialibus codicillis praestitis a patria potestate liberat. quis enim patiatur patrem quidem posse per emancipationis modum suae potestatis nexibus filiam relaxare, imperatoriam autem celsitudinem non valere eum quem sibi patrem elegit ab aliena eximere potestate?

Si ab hostibus captus fuerit parens, quamvis servus hostium fiat, tamen pendet, ius liberorum propter ius postliminii: quia hi qui ab hostibus capti sunt si reversi fuerint, omnia pristina iura recipiunt. idcirco reversus et liberos habebit in potestate, quia postliminium fingit eum qui captus est semper in civitate fuisse: si vero ibi decesserit, exinde, ex quo captus est pater, filius sui iuris fuisse videtur. ipse quoque filius neposve si ab hostibus captus fuerit, similiter dicimus propter ius postliminii ius quoque potestatis parentis in suspenso esse. dictum est autem postliminium a limine et post, et eum qui ab hostibus captus in fines nostros postea pervenit postliminio reversum recte dicimus. nam limina sicut in domibus finem quendam faciunt, sic et imperii finem limen esse veteres voluerunt. hinc et limes dictus est quasi finis quidam et terminus. ab eo postliminium dictum quia eodem limine revertebatur quo amissus erat. sed et qui victis hostibus recuperatur, postliminio rediisse existimatur.

Praeterea emancipatione quoque desinunt liberi in potestate parentum esse. sed ea emancipatio antea quidem vel per antiquam legis observationem procedebat, quae per imaginarias venditiones et intercedentes manumissiones celebrabatur, vel ex imperiali rescripto. nostra autem providentia et hoc in melius per constitutionem reformavit, ut, fictione pristina explosa, recta via apud competentes iudices vel magistratus parentes intrent et filios suos vel filias vel nepotes vel neptes ac deinceps sua manu dimitterent. et tunc ex edicto praetoris in huius filii vel filiae, nepotis vel neptis, bonis, qui vel quae a parente manumissus vel manumissa fuerit, eadem iura praestantur parenti quae tribuuntur patrono in bonis liberti: et praeterea si impubes sit filius vel filia vel ceteri, ipse parens ex manumissione tutelam eius nanciscitur. Admonendi autem sumus, liberum esse arbitrium ei qui filium et ex eo nepotem vel neptem in potestate habebit, filium quidem de potestate dimittere, nepotem vero vel neptem retinere: et ex diverso filium quidem in potestate retinere, nepotem vero vel neptem manumittere (eadem et de pronepote vel pronepte dicta esse intellegantur), vel omnes sui iuris efficere. Sed et si pater filium, quem in potestate habet, avo vel proavo naturali secundum nostras constitutiones super his habitas in adoptionem dederit, id est si hoc ipsum, actis intervenientibus, apud competentem iudicem manifestavit, praesente eo qui adoptatur, et non contradicente nec non eo qui adoptat, solvitur quidem ius potestatis patris naturalis, transit autem in huiusmodi parentem adoptivum, in cuius persona adoptionem plenissimam esse antea diximus. Illud autem scire oportet, quod, si nurus tua ex filio tuo conceperit et filium postea emancipaveris vel in adoptionem dederis praegnante nuru tua, nihilo minus quod ex ea nascitur, in potestate tua nascitur: quod si post emancipationem vel adoptionem fuerit conceptum, patris sui emancipati vel avi adoptivi potestati subicitur: et quod neque naturales liberi neque adoptiv ullo paene modo possunt cogere parentum de potestate sua eos dimittere.

LIB. I, TIT. XIII.
DE TUTELIS.

Transeamus nunc ad aliam divisionem. nam ex his personis quae in potestate non sunt, quaedam vel in tutela sunt vel in curatione, quaedam neutro iure tenentur. videamus igitur de his quae in tutela vel in curatione sunt: ita enim intellegemus ceteras personas, quae neutro iure tenentur. ac prius dispiciamus de his quae in tutela sunt. Est autem tutela, ut Servius definivit, ius ac potestas in capite libero ad tuendom eum qui propter aetatem se defendere nequit, iure civili data ac permissa. Tutores autem sunt qui eam vim ac potestatem habent, exque re ipsa nomen ceperunt itaque appellantur tutores quasi tuitores atque defensores, sicut aeditui dicuntur, qui aedes tuentur. Permissum est itaque parentibus, liberis impuberibus, quos in potestate habent, testamento tutores dare. et hoc in filio filiaque omnimodo procedit; nepotibus tamen neptibusque ita demum parentes possunt testamento tutores dare, si post mortem eorum in patris sui potestatem non sint recasuri. itaque si filius tuus mortis tuae tempore in potestate tua sit, nepotes ex eo non poterunt testamento tuo tutorem habere, quamvis in potestate tua fuerint; scilicet quia mortuo te in patris sui potestatem recasuri sunt. Cum autem in compluribus aliis causis postumi pro iam natis habentur, et in hac causa placuit non minus postumis quam iam natis testamento tutores dari posse, si modo in ea causa sint, ut, si vivis parentibus nascerentur, sui et in potestate eorum fierent. Sed si emancipato filio tutor a patre testamento datus fuerit, confirmandus est ex sententia praesidis omnimodo, id est sine inquisitione.

LIB. I, TIT. XIV.
QUI DARI TUTORES TESTAMENTO POSSUNT.

Dari autem potest tutor non solum paterfamilias, sed etiam filiusfamilias. Sed et servus proprius testamento cum libertate recte tutor dari potest. sed sciendum est, eum et sine libertate tutorem datum tacite et libertatem directam accepisse videri et per hoc recte tutorem esse. plane si per errorem quasi liber tutor datus sit, aliud dicendum est. servus autem alienus pure inutiliter datur testamento tutor: sed ita CUM LIBER ERIT utiliter datur. proprius autem servus inutiliter eo modo datur tutor. Furiosus vel minor viginti quinque annis tutor testamento datus tutor erit cum compos mentis aut maior viginti quinque annis fuerit factus.

Ad certum tempus vel ex certo tempore vel sub condicione vel ante heredis institutionem posse dari tutorem non dubitatur. Certae autem rei vel causae tutor dari non potest, quia personae, non causae vel rei datur.

Si quis "filiabus" suis vel "filiis" tutores dederit, etiam postumae vel postumo videtur dedisse, quia filii vel filiae appellatione et postumus et postuma continentur. quid, si nepotes sint, an appellatione filiorum et ipsis tutores dati sunt? dicendam est, ut ipsis quoque dati videantur, si modo "liberos" dixit. ceterum si "filios," non continebuntur: aliter enim filii, aliter nepotes appellantur. plane si "postumis" dederit, tam filii postumi quam ceteri liberi continebuntur.

LIB. I, TIT. XV.
DE LEGITIMA ADGNATORUM TUTELA.

Quibus autem testamento tutor datus non sit his ex lege duodecim tabularum adgnati sunt tutores, qui vocantur legitimi. Sunt autem adgnati per virilis sexus cognationem coniuncti, quasi a patre cognati, veluti frater eodem patre natus, fratris filius neposve ex eo, item patruus et patrui filius neposve ex eo. at qui per feminini sexus personas cognatione iunguntur non sunt adgnati, sed alias naturali iure cognati. itaque amitae tuae filius non est tibi adgnatus, sed cognatus (et invicem scilicet tu illi eodem iure coniungeris), quia qui nascuntur patris non matris familiam sequuntur. Quod autem lex ab intestato vocat ad tutelam adgnatos, non hanc habet significationem, si omnino non fecerit testamentum is qui poterat tutores dare, sed si quantum ad tutelam pertinet, intestatus decesserit. quod tunc quoque accidere intellegitur, cum is qui datus est tutor, vivo testatore decesserit. Sed adgnationis quidem ius omnibus modis capitis deminutione plerumque perimitur: nam adgnatio iuris est nomen. cognationis vero ius non omnibus modis commutatur, quia civilis ratio civilia quidem iura corrumpere potest, naturalia vero non utique.

LIB. I, TIT. XVI.
DE CAPITIS MINUTIONE.

Est autem capitis deminutio prioris status commutatio, eaque tribus modis accidit: nam aut maxima est capitis deminutio aut minor, quam quidam mediam vocant, aut minima.

Maxima est capitis deminutio, cum aliquis simul et civitatem et libertatem amittit. quod accidit in his qui servi poenae efficiuntur atrocitate sententiae, vel liberti ut ingrati circa patronos condemnati, vel qui ad pretium participandum se venumdari passi sunt.

Minor sive media est capitis deminutio, cum civitas quidem amittitur, libertas vero retinetur. quod accidit ei cui aqua et igni interdictum fuerit, vel ei qui in insulam deportatus est.

Minima capitis deminutio est, cum et civitas et libertas retinetur, sed status hominis commutatur. quod accidit in his qui, cum sui iuris fuerunt, coeperunt alieno iuri subiecti esse, vel contra. Servus autem manumissus capite non minuitur, quia nullum caput habuit. Quibus autem dignitas magis quam status permutatur, capite non minuuntur: et ideo senatu motos capite non minui constat. Quod autem dictum est, manere cognationis ius et post capitis deminutionem, hoc ita est. si minima capitis deminutio interveniat: manet enim cognatio. nam si maxima capitis deminutio incurrat, ius quoque cognationis perit, ut puta servitute alicuius cognati, et ne quidem, si manumissus fuerit, receipit cognationem. sed et si in insulam deportatus quis sit, cognatio solvitur.

Cum autem ad adgnatos tutela pertineat, non simul ad omnes pertinet, sed ad eos tantum qui proximiore gradu sunt, vel, si eiusdem gradus sint, ad omnes.

LIB. I, TIT. XVII.
DE LEGITIMA PATRONORUM TUTELA.

Ex eadem lege duodecim tabularum libertorum et libertarum tutela ad patronos liberosque eorum pertinet, quae et ipsa legitima tutela vocatur: non quia nominatim ea lege de hac tutela cavetur, sed quia perinde accepta est per interpretationem atque si verbis legis introducta esset. eo enim ipso, quod hereditates libertorum libertarumque, si intestati decessissent, iusserat lex ad patronos liberosve eorum pertinere, crediderunt veteres, voluisse legem etiam tutelas ad eos pertinere, cum et adgnatos, quos ad hereditatem vocat, eosdem et tutores esse iussit et quia plerumque, ubi successionis est emolumentum, ibi et tutelae onus esse debet. ideo autem diximus plerumque, quia, si a femina impubes manumittatur. ipsa ad hereditatem vocatur, cum alius est tutor.

LIB. I, TIT. XVIII.
DE LEGITIMA PARENTUM TUTELA.

Exemplo patronorum recepta est et alia tutela, quae et ipsa legitima vocatur. nam si quis filium aut filiam, nepotem aut neptem ex filio, et deinceps, impuberes emancipaverit, legitimus eorum tutor erit.

LIB. I, TIT. XIX.
DE FIDUCIARIA TUTELA.

Est et alia tutela, quae fiduciaria appellatur. nam si parens filium vel filiam, nepotem vel neptem, et deinceps, impuberes manumiserit, legitimam nanciscitur eorum tutelam: quo defuncto, si liberi virilis sexus extant, fiduciarii tutores filiorum suorum vel fratris vel sororis et ceterorum efficiuntur. atqui patrono legitimo tutore mortuo, liberi quoque eius legitimi sunt tutores: quoniam filius quidem defuncti, si non esset a vivo patre emancipatus, post obitum eius sui iuris efficeretur nec in fratrum potestatem recideret ideoque nec in tutelam, libertus autem si servus mansisset, utique eodem iure apud liberos domini post mortem eius futurus esset. ita tamen ii ad tutelam vocantur, si perfectae aetatis sint. quod nostra constitutio generaliter in omnibus tutelis et curationibus observari praecepit.

LIB. I, TIT. XX.
DE ATILIANO TUTORE, VEL EO QUI EX LEGE IULIA ET TITIA DABATUR.

Si cui nullus omnino tutor fuerat, ei dabatur in urbe quidem Roma a praetore urbano et maiore parte tribunorum plebis tutor ex lege Atilia, in provinciis vero a praesidibus provinciarum ex lege Iulia et Titia. Sed et si testamento tutor sub condicione aut die certo datus fuerat, quamdiu condicio aut dies pendebat, ex iisdem legibus tutor dari poterat. item si pure datus fuerat, quamdiu nemo ex testamento heres existebat, tamdiu ex iisdem legibus tutor petendus erat, qui desinebat tutor esse, si condicio existeret aut dies veniret aut heres existeret. Ab hostibus quoque tutore capto, ex his legibus tutor petebatur, qui desinebat esse tutor, si is qui captus erat in civitatem reversus fuerat: nam reversus recipiebat tutelam iure postliminii. Sed ex his legibus pupillis tutores desierunt dari, posteaquam primo consules pupillis utriusque sexus tutores ex inquisitione dare coeperunt, deinde praetores ex constitutionibus. nam supra scriptis legibus neque de cautione a tutoribus exigenda rem salvam pupillis fore, neque de compellendis tutoribus ad tutelae administrationem quidquam cavetur. Sed hoc iure utimur, ut Romae quidem praefectus urbis vel praetor secundum suam iurisdictionem, in provinciis autem praesides ex inquisitione tutores crearent, vel magistratus iussu praesidum, si non sint magnae pupilli facultates. Nos autem per constitutionem nostram et huiusmodi difficultates hominum resecantes nec exspectata iussione praesidum, disposuimus, si facultas pupilli vel adulti usque ad quingentos solidos valeat, defensores civitatum (una cum eiusdem civitatis religiosissimo antistite vel apud alias publicas personas) vel magistratus, vel iuridicum Alexandrinae civitatis tutores vel curatores creare, legitima cautela secundum eiusdem constitutionis normam praestanda, videlicet eoram periculo qui eam accipiant.

Impuberes autem in tutela esse naturali iure conveniens est, ut is qui perfectae aetatis non sit alterius tutela regatur. Cum igitur pupillorum pupillarumque tutores negotia gerunt, post pubertatem tutelae iudicio rationem reddunt.

LIB. I, TIT. XXI.
DE AUCTORITATE TUTORUM.

Auctoritas autem tutoris in quibusdam causis necessaria pupillis est, in quibusdam non est necessaria. ut ecce si quid dari sibi stipulentur, non est necessaria tutoris auctoritas: quod si aliis pupilli promittant, necessaria est: namque placuit, meliorem quidem suam condicionem licere eis facere etiam sine tutoris auctoritate, deteriorem vero non aliter quam tutore auctore. unde in his causis ex quibus mutuae obligationes nascuntur, in emptionibus venditionibus, locationibus conductionibus, mandatis, depositis, si tutoris auctoritas non interveniat, ipsi quidem qui cum his contrahunt obligantur, at invicem pupilli non obligantur. Neque tamen hereditatem adire neque bonorum possessionem petere neque hereditatem ex fideicommisso suscipere aliter possunt nisi tutoris auctoritate, quamvis lucrosa sit neque ullum damnum habeat. Tutor autem statim in ipso negotio praesens debet auctor fieri, si hoc pupillo prodesse existimaverit. post tempus vero aut per epistulam interposita auctoritas nihil agit. Si inter tutorem pupillumve iudicium agendum sit, quia ipse tutor in rem suam auctor esse non potest, non praetorius tutor, ut olim, constituitur, sed curator in locum eius datur, quo interveniente iudicium peragitur et eo peracto curator esse desinit.

LIB. I, TIT. XXII.
QUIBUS MODIS TUTELA FINITUR.

Pupilli pupillaeque cum puberes esse coeperint, tutela liberantur. pubertatem autem veteres quidem non solum ex annis, sed etiam ex habitu corporis in masculis aestimari volebant. nostra autem maiestas dignum esse castitate temporum nostrorum bene putavit, quod in feminis et antiquis impudicum esse visum est, id est inspectionem habitudinis corporis, hoc etiam in masculos extendere: et ideo sancta constitutione promulgata pubertatem in masculis post quartum decimum annum completum illico initium accipere disposuimus, antiquitatis normam in femininis personis bene positam suo ordine relinquentes, ut post duodecimum annum completum viripotentes esse credantur. Item finitur tutela, si adrogati sint adhuc impuberes vel deportati: item si in servitutem pupillus redigatur, ut ingratus a patrono, vel ab hostibus fuerit captus. Sed et si usque ad certam condicionem datus sit testamento, aeque evenit, ut desinat esse tutor existente condicione. Simili modo finitur tutela morte vel tutorum vel pupillorum. Sed et capitis deminutione tutoris, per quam libertas vel civitas eius amittitur, omnis tutela perit. minima autem capitis deminutione tutoris, veluti si se in adoptionem dederit, legitima tantum tutela perit, ceterae non pereunt. sed pupilli et pupillae capitis deminutio, licet minima sit, omnes tutelas tollit. Praeterea qui ad certum tempus testamento dantur tutores, finito eo, deponunt tutelam. Desinunt autem esse tutores, qui vel removentur a tutela ob id quod suspecti visi sunt, vel ex iusta causa sese excusant et onus administrandae tutelae deponunt secundum ea quae inferius proponemus.

LIB. I, TIT. XXIII.
DE CURATORIBUS.

Masculi puberes et feminae viripotentes usque ad vicesimum quintum annum completum curatores accipiunt; qui licet puberes sint, adhuc tamen huius aetatis sunt, ut negotia sua tueri non possint. Dantur autem curatores ab iisdem magistratibus a quibus et tutores. sed curator testamento non datur, sed datus confirmatur decreto praetoris vel praesidis. Item inviti adulescentes curatores non accipiunt praeterquam in litem: curator enim et ad certam causam dari potest. Furiosi quoque et prodigi, licet maiores viginti quinque annis sint, tamen in curatione sunt adgnatorum ex lege duodecim tabularum. sed solent Romae praefectus urbis vel praetor et in provinciis praesides ex inquisitione eis dare curatores. Sed et mente captis et surdis et mutis et qui morbo perpetuo laborant, quia rebus suis superesse non possunt, curatores dandi sunt. Interdum autem et pupilli curatores accipiunt, ut puta si legitimus tutor non sit idoneus, quia habenti tutorem tutor dari non potest. item si testamento datus tutor vel a praetore vel a praeside idoneus non sit ad administrationem nec tamen frandulenter negotia administrat, solet ei curator adiungi. item in locum tutorum qui non in perpetuum sed ad tempus a tutela excusantur solent curatores dari.

Quodsi tutor adversa valetudine vel alia necessitate impeditur, quo minus negotia pupilli administrare possit, et pupillus vel absit vel infans sit, quem velit actorem periculo ipsius praetor, vel qui provinciae praeerit, decreto constituet.

LIB. I, TIT. XXIV.
DE SATISDATIONE TUTORUM VEL CURATORUM.

Ne tamen pupillorum pupillaramve et eorum qui quaeve in curatione sunt negotia a tutoribus curatoribusve consumantur vel deminuantur, curat praetor, ut et tutores et curatores eo nomine satisdent. sed hoc non est perpetuum: nam tutores testamento dati satisdare non coguntur, quia fides eorum et diligentia ab ipso testatore probata est: item ex inquisitione tutores vel curatores dati satisdatione non onerantur, quia idonei electi sunt. Sed et si ex testamento vel inquisitione duo pluresve dati fuerint, potest unus offerre satis de indemnitate pupilli vel adulescentis et contutori vel concuratori praeferri, ut solus administret, vel ut contutor satis offerens praeponatur ei et ipse solus administret. itaque per se non potest petere satis a contutore vel concuratore suo, sed offerre debet, ut electionem det contutori suo, utrum velit satis accipere an satis dare. quodsi nemo eorum satis offerat si quidem adscriptum fuerit a testatore, quis gerat, ille gerere debet: quodsi non fuerit adscriptum, quem maior pars elegerit, ipse gerere debet, ut edicto praetoris cavetur. sin autem ipsi tutores dissenserint circa eligendum eum vel eos qui gerere debent, praetor partes suas interponere debet. idem et in pluribus ex inquisitione datis probandum est, id est ut maior pars eligere possit, per quem administratio fieret.

Sciendum autem est, non solum tutores vel curatores pupillis et adultis ceterisque personis ex administratione teneri, sed etiam in eos qui satisdationem accipiunt subsidiariam actionem esse, quae ultimum eis praesidium possit afferre. subsidiaria autem actio datur in eos qui vel omnino a tutoribus vel curatoribus satisdari non curaverint aut non idonee passi essent caveri. quae quidem tam ex prudentium responsis quam ex constitutionibus imperialibus et in heredes eorum extenditur. Quibus constitutionibus et illud exprimitur, ut, nisi caveant tutores vel curatores, pignoribus captis coerceantur. Neque autem praefectus urbis neque praetor neque praeses provinciae neque quis alius cui tutores dandi ius est, hac actione tenebitur: sed hi tantummodo qui satisdationem exigere solent.

LIB. I, TIT. XXV.
DE EXCUSATIONIBUS TUTORUM VEL CURATORUM.

Excusantur autem tutores vel curatores variis ex causis: plerumque autem propter liberos, sive in potestate sint sive emancipati. si enim tres liberos quis superstites Romae habeat vel in Italia quattuor vel in provinciis quinque, a tutela vel cura possunt excusari exemplo ceterorum munerum: nam et tutelam et curam placuit publicum munus esse. sed adoptivi liberi non prosunt, in adoptionem autem dati naturali patri prosunt. item nepotes ex filio prosunt, ut in locum patris succedant: ex filia non prosunt. filii autem superstites tantum ad tutelae vel curae muneris excusationem prosunt: defuncti non prosunt. sed si in bello amissi sunt, quaesitum est, an prosint. et constat, eos solos prodesse qui in acie amittuntur: hi enim, quia pro re publica ceciderunt, in perpetuum per gloriam vivere intelleguntur. Item divus Marcus in semestribus rescripsit, eum qui res fisci administrat a tutela vel cura, quamdiu administrat, excusari posse. Item qui rei publicae causa absunt, a tutela et cura excusantur. sed et si fuerunt tutores vel curatores, deinde rei publicae causa abesse coeperunt, a tutela et cura excusantur, quatenus rei publicae causa absunt, et interea curator loco eorum datur. qui si reversi fuerint, recipiunt onus tutelae nec anni habent vacationem, ut Papinianus responsorum libro quinto scripsit: nam hoc spatium habent ad novas tutelas vocati. Et qui potestatem aliquam habent excusare se possunt, ut divus Marcus rescripsit, sed coeptam tutelam deserere non possunt. Item propter litem, quam cum pupillo vel adulto tutor vel curator habet, excusare se nemo potest: nisi forte de omnibus bonis vel hereditate controversia sit. Item tria onera tutelae non affectatae vel curae praestant vacationem, quamdiu administrantur: ut tamen plurium pupillorum tutela vel cura eorundem bonorum, veluti fratrum, pro una computetur. Sed et propter paupertatem excusationem tribui tam divi fratres quam per se divus Marcus rescripsit, si quis imparem se oneri iniuncto possit docere. Item propter adversam valetudinem, propter quam nec suis quidem negotiis interesse potest, excusatio locum habet. Similiter eum qui litteras nesciret excusandum esse divus Pius rescripsit: quamvis et imperiti litterarum possunt ad administrationem negotiorum sufficere. Item si propter inimicitiam aliquem testamento tutorem pater dederit, hoc ipsum praestat ei excusationem: sicut per contrarium non excusantur qui se tutelam patri pupillorum administraturos promiserunt. Non esse autem admittendam excusationem eius qui hoc solo utitur, quod ignotus patri pupillorum sit, divi fratres rescripserunt. Inimicitiae, quas quis cum patre pupillorum vel adultorum exercuit, si capitales fuerunt nec reconciliatio intervenit, a tutela solent excusare. Item si quis status controversiam a pupillorum patre passus est, excusatur a tutela. Item maior septuaginta annis a tutela vel cura se potest excusare. minores autem viginti et quinque annis olim quidem excusabantur: a nostra autem constitutione prohibentur ad tutelam vel curam aspirare, adeo ut nec excusatione opus fiat. qua constitutione cavetur, ut nec pupillus ad legitimam tutelam vocetur nec adultus: cum erat incivile, eos qui alieno auxilio in rebus suis administrandis egere noscuntur et sub aliis reguntur, aliorum tutelam vel curam subire. Idem et in milite observandum est, ut nec volens ad tutelae munus admittatur. Item Romae grammatici, rhetores et medici et qui in patria sua id exercent et intra numerum sunt, a tutela vel cura habent vacationem.

Qui autem se vult excusare, si plures habeat excusationes et de quibusdam non probaverit, aliis uti intra tempora non prohibetur. qui excusare se volunt, non appellant: sed intra dies quinquaginta continuos, ex quo cognoverunt, excusare se debent (cuiuscumque generis sunt, id est qualitercumque dati fuerint tutores), si intra centesimum lapidem sunt ab eo loco ubi tutores dati sunt: si vero ultra centesimum habitant, dinumeratione facta viginti millium diurnorum et amplius triginta dierum. quod tamen, ut Scaevola dicebat, sic debet computari, ne minus sint quam quinquaginta dies. Datus autem tutor ad universum patrimonium datus esse creditur. Qui tutelam alicuius gessit, invitus curator eiusdem fieri non compellitur, in tantum ut, licet pater qui testamento tutorem dederit adiecit, se eundem curatorem dare, tamen invitum eum curam suscipere non cogendum, divi Severus et Antoninus rescripserunt. Iidem rescripserunt, maritum uxori suae curatorem datum excusare se posse, licet se immisceat. Si quis autem falsis allegationibus excusationem tutelae meruit, non est liberatus onere tutelae.

LIB. I, TIT. XXVI.
DE SUSPECTIS TUTORIBUS ET CURATORIBUS.

Sciendum est suspecti crimen e lege duodecim tabularum descendere. Datum est autem ius removendi suspectos tutores Romae praetori et in provinciis praesidibus earum et legato proconsulis. Ostendimus, qui possunt de suspecto cognoscere: nunc videamus, qui suspecti fieri possunt. et quidem omnes tutores possunt, sive testamentarii sint sive alterius generis tutores. quare et si legitimus sit tutor, accusari poterit. quid si patronus? adhuc idem erit dicendum: dummodo meminerimus, famae patroni parcendum, licet ut suspectus remotus fuerit. Consequens est ut videamus, qui possint suspectos postulare. et sciendum est, quasi publicam esse hanc actionem, hoc est omnibus patere. quin immo et mulieres admittuntur ex rescripto divorum Severi et Antonini, sed hae solae, quae pietatis necessitudine ductae ad hoc procedunt, ut puta mater: nutrix quoque et avia possunt, potest et soror: sed et si qua mulier fuerit, cuius praetor propensam in pietatem mentem intellexerit, non sexus verecundiam egredientem sed pietate productam, non continere iniuriam pupillorum, admittit eam ad accusationem. Impuberes non possunt tutores suos suspectos postulare: puberes autem curatores suos ex consilio necessariorum suspectos possunt arguere: et ita divi Severus et Antoninus rescripserunt. Suspectus est autem et qui non ex fide tutelam gerit, licet solvendo est, ut Iulianus quoque scripsit. sed et antequam incipiat gerere tutelam tutor, posse eum quasi suspectum removeri, idem Iulianus scripsit, et secundum eum constitutum est. Suspectus autem remotus, si quidem ob dolum, famosus est: si ob culpam, non aeque. Si quis autem suspectus postulatur, quoad cognitio finiatur interdicitur ei administratio, ut Papiniano visum est. Sed si suspecti cognitio suscepta fuerit posteaque tutor vel curator decesserit, extinguitur cognitio suspecti. Si quis tutor copiam sui non faciat ut alimenta pupillo decernantur, cavetur epistula divorum Severi et Antonini. ut in possessionem bonorum eius pupillus mittatur: et quae mora deteriora futura sunt, dato curatore distrahi iubentur. ergo ut suspectus romoveri poterit qui non praestat alimenta. Sed si quis praesens negat propter inopiam alimenta posse decerni, si hoc per mendacium dicat, remittendum eum esse ad praefectum urbis puniendum placuit, sicut ille remittitur qui data pecunia ministerium tutelae redemit. Libertus quoque, si fraudulenter gessisse tutelam filiorum vel nepotum patroni probetur, ad praefectum urbis remittitur puniendus. Novissime sciendum est, eos qui frandulenter tutelam vel curam administrant, etiamsi satis offerent, removendos a tutela, quia satisdatio propositum tutoris malevolum non mutat, sed diutius grassandi in re familiari facultatem praestat. Suspectum enim eum putamus qui moribus talis est ut suspectus sit: enimvero tutor vel curator, quamvis pauper est, fidelis tamen et diligens, removendus non est quasi suspectus.

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LIB. II, TIT. I.
DE RERUM DIVISIONE.

Superiore libro de iure personarum euimus: modo videamus de rebus. quae vel in nostro patrimonio vel extra nostrum patrimonium habentur. quaedam enim naturali iure communia sunt omnium, quaedam publica, quaedam universitatis, quaedam nullius, pleraque singulorum, quae variis ex causis cuique adquiruntur, sicut ex subiectis apparebit.

Et quidem naturali iure communia sunt omnium haec: aer et aqua profluens et mare et per hoc litora maris. nemo igitur ad litus maris accedere prohibetur, dum tamen villis et monumentis et aedificiis abstineat, quia non sunt iuris gentium, sicut et mare.

Flumina autem omnia et portus publica sunt: ideoque ius piscandi omnibus commune est in portibus fluminibusque. Est autem litus maris, quatenus hibernus fluctus maximus excurrit. Riparum quoque usus publicus est iuris gentium sicut ipsius fluminis: itaque navem ad eas appellere, funes ex arboribus ibi natis religare, onus aliquid in his reponere cuilibet liberum est, sicuti per ipsum flumen navigare. sed proprietas earum illorum est quorum praediis haerent: qua de causa arbores quoque in iisdem natae eorundem sunt. Litorum quoque usus publicus iuris gentium est, sicut ipsius maris: et ob id quibuslibet liberum est, casam ibi imponere, in qua se recipiant, sicut retia siccare et ex mare deducere. proprietas autem eorum potest intellegi nullius esse, sed eiusdem iuris esse cuius et mare, et quae subiacent mari terra vel harena.

Universitatis sunt, non singulorum, veluti quae in civitatibus sunt theatra, stadia et similia et si qua alia sunt communia civitatium.

Nullius autem sunt res sacrae et religiosae et sanctae: quod enim divini iuris est, id nullius in bonis est. Sacra sunt, quae rite et per pontifices Deo consecrata sunt, veluti aedes sacrae et dona quae rite ad ministerium Dei dedicata sunt, quae etiam per nostrum constitutionem alienari et obligari prohibuimus, excepta causa redemptionis captivorum. si quis vero auctoritate sua quasi sacrum sibi constituerit, sacrum non est, sed profanum. locus autem, in quo sacrae aedes aedificatae sunt, etiam diruto aedificio, adhuc sacer manet, ut et Papinianus scripsit. Religiosum locum unusquisque sua voluntate facit, dum mortuum infert in locum suum. in communem autem locum purum invito socio inferre non licet: in commune vero sepulcrum etiam invitis ceteris licet inferre. item si alienus ususfructus est, proprietarium placet, nisi consentiente usufructuario, locum religiosum non facere. in alienum locum, concedente domino, licet inferre: et licet postea ratum habuerit quam illatus est mortuus, tamen religiosus locus fit. Sanctae quoque res, veluti muri et portae, quodammodo divini iuris sunt et ideo nullius in bonis sunt. ideo autem muros sanctos dicimus, quia poena capitis constituta sit in eos qui aliquid in muros deliquerint. ideo et legum eas partes quibus poenas constituimus adversus eos qui contra leges fecerint sanctiones vocamus.

Singulorum autem hominum multis modis res fiunt: quarundam enim rerum dominium nanciscimur iure naturali, quod, sicut diximus, appellatur ius gentium, quarundam iure civili. commodius est itaque a vetustiore iure incipere. palam est autem, vetustius esse naturale ius, quod cum ipso genere humano rerum natura prodidit: civilia enim iura tunc coeperunt esse, cum et civitates condi et magistratus creari et leges scribi coeperunt.

Ferae igitur bestiae et volucres et pisces, id est omnia animalia quae in terra mari caelo nascuntur, simulatque ab aliquo capta fuerint, iure gentium statim illius esse incipiunt: quod enim ante nullius est id naturali ratione occupanti conceditur. nec interest, feras bestias et volucres utrum in suo fundo quisque capiat, an in alieno: plane qui in alienum fundum ingreditur venandi aut aucupandi gratia, potest a domino, si is providerit, prohiberi, ne ingrediatur. quidquid autem eorum ceperis, eo usque tuum esse intellegitur, donec tua custodia coercetur: cum vero evaserit custodiam tuam et in naturalem libertatem se receperit, tuum esse desinit et rursus occupantis fit. naturalem autem libertatem recipere intellegitur, cum vel oculos tuos effugerit vel ita sit in conspectu tuo, ut difficilis sit eius persecutio. Illud quaesitum est, an, si fera bestia ita vulnerata sit ut capi possit, statim tua esse intellegatur. quibusdam placuit, statim tuam esse et eo usque tuam videri, donec eam persequaris; quodsi desieris persequi, desinere tuam esse et rursus fieri occupantis. alii non aliter putaverunt tuam esse, quam si ceperis. sed posteriorem sententiam nos confirmamus, quia multa accidere solent, ut eam non capias. Apium quoque natura fera est. itaque quae in arbore tua consederint, antequam a te alveo includantur, non magis tuae esse intelleguntur, quam volucres quae in tua arbore nidum fecerint: ideoque si alius eas incluserit, is earum dominus erit. favos quoque si quos hae fecerint, quilibet eximere potest. plane integra re, si provideris ingredientem in fundum tuum, potes eum iure prohibere, ne ingrediatur. examen quod ex alveo tuo evolaverit eo usque tuum esse intellegitur donec in conspectu tuo est nec difficilis eius persecutio est: alioquin occupantis fit. Pavonum et columbarum fera natura est. nec ad rem pertinet, quod ex consuetudine avolare et revolare solent: nam et apes idem faciunt, quarum constat feram esse naturam: cervos quoque ita quidam mansuetos habent, ut in silvas ire et redire soleant, quorum et ipsorum feram esse naturam nemo negat. in his autem animalibus, quae ex consuetudine abire et redire solent, talis regula comprobata est, ut eo usque tua esse intellegantur, donec animum revertendi habeant: nam si revertendi animum habere desierint, etiam tua esse desinunt et fiunt occupantium. revertendi autem animum videntur desinere habere, cum revertendi consuetudinem deseruerint. Gallinarum et anserum non est fera natura idque ex eo possumus intellegere, quod aliae sunt gallinae quas feras vocamas, item alii anseres quos feros appellamus. ideoque si anseres tui aut gallinae tuae aliquo casu turbati turbataeve evolaverint, licet conspectum tuum effugerint, quocumque tamen loco sint, tui tuaeve esse intelleguntur: et qui lucrandi animo ea animalia retinet, furtum committere intellegitur.

Item ea quae ex hostibus capimus iure gentium statim nostra fiunt: adeo quidem, ut et liberi homines in servitutem nostram deducantur, qui tamen, si evaserint nostram potestatem et ad suos reversi fuerint, pristinum statum recipiunt.

Item lapilli gemmae et cetera quae in litore inveniuntur, iure naturali statim inventoris fiunt.

Item ea quae ex animalibus dominio tuo subiectis nata sunt eodem iure tibi adquiruntur.

Praeterea quod per alluvionem agro tuo flumen adiecit, iure gentium tibi adquiritur. est autem alluvio incrementum latens. per alluvionem autem id videtur adici, quod ita paulatim adicitur ut intellegere non possis, quantum quoquo momento temporis adiciatur. Quodsi vis fluminis partem aliquam ex tuo praedio detraxerit et vicini praedio appulerit, palam est eam tuam permanere. plane si longiore tempore fundo vicini haeserit, arboresque quas secum traxerit in eum fundum radices egerint, ex eo tempore videntur vicini fundo adquisitae esse. Insula quae in mari nata est, quod raro accidit, occupantis fit: nullius enim esse creditur. at in flumine nata, quod frequenter accidit, si quidem mediam partem fluminis teneat, communis est eorum qui ab utraque parte fluminis prope ripam praedia possident, pro modo latitudinis cuiusque fundi, quae latitudo prope ripam sit. quodsi alteri parti proximior sit, eorum est tantum, qui ab ea parte prope ripam praedia possident. quodsi aliqua parte divisum flumen, deinde infra unitum agrum alicuius in formam insulae redegerit, eiusdem permanet is ager cuius et fuerat. Quodsi naturali alveo in universum derelicto alia parte fluere coeperit, prior quidem alveus eorum est qui prope ripam eius praedia possident, pro modo scilicet latitudinis cuiusque agri, quae latitudo prope ripam sit; novus autem alveus eius iuris esse incipit, cuius et ipsum flumen, id est publici. quodsi post aliquod tempus ad priorem alveum reversum fuerit flumen, rursus novus alveus eorum esse incipit qui prope ripam eius praedia possident. Alia sane causa est, si cuius totus ager inundatus fuerit. neque enim inundatio speciem fundi commutat et ob id, si recesserit aqua, palam est eum fundum eius manere cuius et fuit.

Cum ex aliena materia species aliqua facta sit ab aliquo, quaeri solet, quis eorum naturali ratione dominus sit, utram is qui fecerit, an ille potius qui materiae dominus fuerit: ut ecce si quis ex alienis uvis aut olivis aut spicis vinum aut oleum aut frumentum fecerit, aut ex alieno auro vel argento vel aere vas aliquod fecerit, vel ex alieno vino et melle mulsum miscuerit, vel ex alienis medicamentis emplastrum aut collyrium composuerit, vel ex aliena lana vestimentum fecerit, vel ex alienis tabulis navem vel armarium vel subsellium fabricaverit. et post multas Sabinianorum et Proculianorum ambiguitates placuit media sententia existimantium, si ea species ad materiam reduci possit, eum videri dominum esse qui materiae dominus fuerat; si non possit reduci, eum potius intellegi dominum qui fecerit: ut ecce vas conflatum potest ad rudem massam aeris vel argenti vel auri reduci, vinum autem aut oleum aut frumentum ad uvas et olivas et spicas reverti non potest, ac ne mulsum quidem ad vinum et mel resolvi potest. quodsi partim ex sua materia, partim ex aliena speciem aliquam fecerit quisque, velut ex suo vino et alieno melle mulsum aut ex suis et alienis medicamentis emplastrum aut collyrium aut ex sua et aliena lana vestimentum fecerit, dubitandum non est, hoc casu eum esse dominum qui fecerit: cum non solum operam suam dedit, sed et partem eiusdem materiae praestavit. Si tamen alienam purpuram quis intexuit suo vestimento, licet pretiosior est purpura, accessionis vice cedit vestimento: et qui dominus fuit purpurae, adversus eum qui subripuit habet furti actionem et condictionem, sive ipse est qui vestimentum fecit, sive alius. nam extinctae res licet vindicari non possint, condici tamen a furibus et a quibusdam aliis possessoribus possunt. Si duorum materiae ex voluntate dominorum confusae sint, totum id corpus quod ex confusione fit utriusque commune est, veluti si qui vina sua confuderint aut massas argenti vel auri conflaverint. sed si diversae materiae sint et ob id propria species facta sit, forte ex vino et melle mulsum aut ex auro et argento electrum, idem iuris est: nam et eo casu communem esse speciem non dubitatur. quodsi fortuitu et non voluntate dominoram confusae fuerint vel diversae materiae vel quae eiusdem generis sunt, idem iuris esse placuit. Quodsi frumentum Titii tuo frumento mixtum fuerit, si quidem ex voluntate vestra, commune erit, quia singula corpora, id est singula grana, quae cuiusque propria fuerunt ex consensu vestro communicata sunt. quodsi casu id mixtum fuerit, vel Titius id miscuerit sine voluntate tua, non videtur commune esse, quia singula corpora in sua substantia durant nec magis istis casibus commune fit frumentum quam grex communis esse intellegitur, si pecora Titii tuis pecoribus mixta fuerint: sed si ab alterutro vestrum id totum frumentum retineatur, in rem quidem actio pro modo frumenti cuiusque competit, arbitrio autem iudicis continetur, ut is aestimet, quale cuiusque frumentum fuerit. Cum in suo solo aliquis aliena materia aedificaverit, ipse dominus intellegitur aedificii, quia omne quod inaedificatur solo cedit. nec tamen ideo is qui materiae dominus fuerat desinit eius dominus esse: sed tantisper neque vindicare eam potest neque ad exhibendum de ea re agere propter legem duodecim tabularum, qua cavetur, ne quis tignum alienum aedibus suis iniunctum eximere cogatur, sed duplum pro eo praestat per actionem quae vocatur de tigno iuncto (appellatione autem tigni omnis materia significatur ex qua aedificia fiunt): quod ideo provisum est, ne aedificia rescindi necesse sit. sed si aliqua ex causa dirutum sit aedificium, poterit materiae dominus, si non fuerit duplum iam consecutus, tunc eam vindicare et ad exhibendum agere. Ex diverso si quis in alieno solo sua materia domum aedificaverit, illius fit domus, cuius et solum est. sed hoc casu materiae dominus proprietatem eius amittit, quia voluntate eius alienata intellegitur, utique si non ignorabat, in alieno solo se aedificare: et ideo, licet diruta sit domus, vindicare materiam non poterit. certe illud constat, si in possessione constituto aedificatore, soli dominus petat domum suam esse, nec solvat pretium materiae et mercedes fabrorum, posse eum per exceptionem doli mali repelli, utique si bonae fidei possessor fuit qui aedificasset: nam scienti, alienum esse solum, potest culpa obici, quod temere aedificaverit in eo solo quod intellegeret alienum esse. Si Titius alienam plantam in suo posuerit, ipsius erit: et ex diverso si Titius suam plantam in Maevii solo posuerit, Maevii planta erit, si modo utroque casu radices egerit, antequam autem radices egerit, eius permanet cuius et fuerat. adeo autem ex eo ex quo radices agit planta proprietas eius commutatur, ut, si vicini arborem ita terra Titii presserit ut in eius fundum radices ageret, Titii effici arborem dicamus: rationem etenim non permittere, ut alterius arbor esse intellegatur quam cuius in fundum radices egisset. et ideo prope confinium arbor posita si etiam in vicini fundum radices egerit, communis fit. Qua ratione autem plantae quae terra coalescunt solo cedunt, eadem ratione frumenta quoque, quae sata sunt, solo cedere intelleguntur. ceterum sicut is qui in alieno solo aedificaverit si ab eo dominus petat aedificium, defendi potest per exceptionem doli mali, secundum ea quae diximas: ita eiusdem exceptionis auxilio tutus esse potest is qui alienum fundum sua impensa bona fide consevit. Litterae quoque, licet aureae sint, perinde chartis membranisque cedunt acsi solo cedere solent ea quae inaedificantur aut inseruntur: ideoque si in chartis membranisve tuis carmen vel historiam vel orationem Titius scripserit, huius corporis non Titius, sed tu dominus esse videberis. sed si a Titio petas, tuos libros tuasve membranas esse, nec impensam scripturae solvere paratus sis, poterit se Titius defendere per exceptionem doli mali, utique si bona fide earum chartarum membranarumve possessionem nanctus est. Si quis in aliena tabula pinxerit, quidam putant tabulam picturae cedere: aliis videtur pictura, qualiscumque sit, tabulae cedere. sed nobis videtur melius esse, tabulam picturae cedere: ridiculum est enim picturam Apellis vel Parrhasii in accessionem vilissimae tabulae cedere. unde si a domino tabulae, imaginem possidente, is qui pinxit eam petat, nec solvat pretium tabulae, poterit per exceptionem doli mali summoveri: at si is qui pinxit possideat, consequens est ut utilis actio domino tabulae adversus eum detur, quo casu, si non solvat impensam picturae, poterit per exceptionem doli mali repelli, utique si bona fide possessor fuerit ille qui picturam imposuit. illud enim palam est, quod, sive is qui pinxit subripuit tabulas sive alius, competit domino tabularum furti actio.

Si quis a non domino, quem dominum esse crederet, bona fide fundum emerit vel ex donatione aliave qua iusta causa aeque bona fide acceperit: naturali ratione placuit, fructus quos percepit eius esse pro cultura et cura. et ideo si postea dominus supervenerit et fundum vindicet, de fructibus ab eo consumptis agere non potest. ei vero qui sciens alienum fundum possederit non idem concessum est. itaque cum fundo etiam fructus, licet consumpti sint, cogitur restituere. Is ad quem ususfructus fundi pertinet non aliter fructuum dominus efficitur, quam si eos ipse perceperit. et ideo licet maturis fructibus, nondum tamen perceptis, decesserit, ad heredem eius non pertinent, sed domino proprietatis adquiruntur. eadem fere et de colono dicuntur. In pecudum fructu etiam fetus est, sicuti lac et pilus et lana: itaque agni et haedi et vituli et equuli statim naturali iure dominii sunt fructuarii. partus vero ancillae in fructu non est, itaque ad dominum proprietatis pertinet: absurdum enim videbatur hominem in fructu esse, cum omnes fructus rerum natura hominum gratia comparavit. Sed si gregis usumfructum quis habeat, in locum demortuorum capitum ex fetu fructuarius summittere debet, ut et Iuliano visum est, et in vinearum demortuarum vel arborum locum alias debet substituere. recte enim colere debet et quasi bonus paterfamilias uti.

Thesauros, quos quis in suo loco invenerit, divus Hadrianus, naturalem aequitatem secutus, ei concessit qui invenerit. idemque statuit, si quis in sacro aut in religioso loco fortuito casu invenerit. at si quis in alieno loco non data ad hoc opera sed fortuitu invenerit, dimidium domino soli concessit. et convenienter, si quis in Caesaris loco invenerit, dimidium inventoris, dimidium Caesaris esse statuit. cui conveniens est et si quis in publico loco vel fiscali invenerit, dimidium ipsius esse, dimidium fisci vel civitatis.

Per traditionem quoque iure naturali res nobis adquiruntur: nihil enim tam conveniens est naturali aequitati, quam voluntatem domini, volentis rem suam in alium transferre, ratam haberi. et ideo cuiuscumque generis sit corporalis res, tradi potest et a domino tradita alienatur. itaque stipendiaria quoque et tributaria praedia eodem modo alienantur. vocantur autem stipendiaria et tributaria praedia quae in provinciis sunt, inter quae nec non Italica praedia ex nostra constitutione nulla differentia est. Sed si quidem ex causa donationis aut dotis aut qualibet alia ex causa tradantur, sine dubio transferentur: venditae vero et traditae non aliter emptori adquiruntur, quam si is venditori pretium solverit vel alio modo ei satisfecerit, veluti expromissore aut pignore dato. quod cavetur quidem etiam lege duodecim tabularum: tamen recte dicitur et iure gentium, id est iure naturali, id effici. sed et si is qui vendidit fidem emptoris secutus fuerit, dicendum est, statim rem emptoris fieri. Nihil autem interest, utrum ipse dominus tradat alicui rem, an voluntate eius alius. Qua ratione, si cui libera negotiorum administratio a domino permissa fuerit isque ex his negotiis rem vendiderit et tradiderit, facit eam accipientis. Interdum etiam sine traditione nuda voluntas sufficit domini ad rem transferendam, veluti si rem, quam tibi aliquis commodavit aut locavit aut apud te deposuit, vendiderit tibi aut donaverit. quamvis enim ex ea causa tibi eam non tradiderit, eo tamen ipso, quod patitur tuam esse, statim adquiritur tibi proprietas perinde ac si eo nomine tradita fuisset. Item si quis merces in horreo depositas vendiderit, simul atque claves horrei tradiderit emptori, transfert proprietatem mercium ad emptorem. Hoc amplius interdum et in incertam personam collocata voluntas domini transfert rei proprietatem: ut ecce praetores vel consules qui missilia iactant in vulgus ignorant quid eorum quisque excepturus sit, et tamen, quia volunt quod quisque exceperit eius esse, statim eum dominum efficiunt. Qua ratione verius esse videtur et si rem pro derelicto a domino habitam occupaverit quis, statim eum dominium effici. pro derelicto autem habetur quod dominus ea mente abiecerit ut id rerum suaram esse nollet, ideoque statim dominus esse desinit. Alia causa est earum rerum quae in tempestate maris levandae navis causa eiciuntur. hae enim dominorum permanent, quia palam est, eas non eo animo eici quo quis eas habere non vult, sed quo magis cum ipsa navi periculum maris effugiat: qua de causa si quis eas fluctibus expulsas vel etiam in ipso mari nactus lucrandi animo abstulerit, furtum committit. nec longe discedere videntur ab his quae de rheda currente, non intellegentibus dominis, cadunt.

LIB. II, TIT. II.
DE REBUS INCORPORALIBUS.

Quaedam praeterea res corporales sunt, quaedam incorporales. Corporales eae sunt quae sui natura tangi possunt: veluti fundus, homo, vestis, aurum, argentum et denique aliae res innumerabiles. Incorporales autem sunt quae tangi non possunt. qualia sunt ea quae in iure consistunt: sicut hereditas, ususfructus, obligationes quoquo modo contractae. nec ad rem pertinet quod in hereditate res corporales continentur: nam et fructus qui ex fundo percipiuntur corporales sunt, et id quod ex aliqua obligatione nobis debetur plerumque corporale est, veluti fundus, homo, pecunia: nam ipsum ius hereditatis et ipsum ius utendifruendi et ipsum ius obligationis incorporale est. Eodem numero sunt iura praediorum urbanorum et rusticorum, quae et servitutes vocantur.

LIB. II, TIT. III.
DE SERVITUTIBUS.

Rusticorum praediorum iura sunt haec: iter, actus, via, aquae ductus. iter est ius eundi, ambulandi homini, non etiam iumentum agendi vel vehiculum: actus est ius agendi vel iumentum vel vehiculum. itaque qui iter habet, actum non habet; qui actum habet, et iter habet eoque uti potest etiam sine iumento. via est ius eundi et agendi et ambulandi: nam et iter et actum in se via continet. aquae ductus est ius aquae ducendae per fundum alienum. Praediorum urbanorum sunt servitutes quae aedificiis inhaerent, ideo urbanorum praediorum dictae quoniam aedificia omnia urbana praedia appellantur, etsi in villa aedificata sunt. item praediorum urbanorum servitutes sunt hae: ut vicinus onera vicini sustineat: ut in parietem eius liceat vicino tignum immittere: ut stillicidium vel flumen recipiat quis in aedes suas vel in aream, vel non recipiat: et ne altius tollat quis aedes suas, ne luminibus vicini officiatur. In rusticorum praediorum servitutibus quidam computari recte putant aquae haustum, pecoris ad aquam adpulsum, ius pascendi, calcis coquendae, harenae fodiendae.

Ideo autem hae servitutes praediorum appellantur, quoniam sine praediis constitui non possunt. nemo enim potest servitutem adquirere urbani vel rustici praedii, nisi qui habet praedium, nec quisquam debere, nisi qui habet praediam. Si quis velit vicino aliquod ius constituere, pactionibus atque stipulationibus id efficere debet. potest etiam in testamento quis heredem suum damnare, ne altius aedes tollat, ne luminibus aedium vicini officiat: vel ut patiatur eum tignum in parietem immittere vel stillicidium habere: vel ut patiatur eum per fundum ire, agere aquamve ex eo ducere.

LIB. II, TIT. IV.
DE USUFRUCTU.

Ususfructus est ius alienis rebus utendifruendi salva rerum substantia. est enim ius in corpore: quo sublato et ipsum tolli necesse est. Ususfructus a proprietate separationem recipit, idque pluribus modis accidit. ut ecce si quis alicui usumfructum legaverit; nam heres nudam habet proprietatem, legatarius usumfructum: et contra si fundum legaverit deducto usufructu, legatarius nudam habet proprietatem, heres vero usumfructum: item alii usumfructum, alii deducto eo fundum legare potest. sine testamento vero si quis velit alii usumfructum constituere, pactionibus et stipulationibus id efficere debet. ne tamen in universum inutiles essent proprietates semper abscedente usufructu, placuit, certis modis extingui usumfructum et ad proprietatem reverti. Constituitur autem ususfructus non tantum in fundo et aedibus, verum etiam in servis et iumentis ceterisque rebus, exceptis his quae ipso usu consumuntur: nam eae neque naturali ratione neque civili recipiunt usumfructum. quo numero sunt vinum, oleum, frumentum, vestimenta. quibus proxima est pecunia numerata: namque in ipso usu adsidua permutatione quodammodo extinguitur. sed utilitatis causa senatus censuit, posse etiam earum rerum usumfructum constitui, ut tamen eo nomine heredi utiliter caveatur. itaque si pecuniae ususfructus legatus sit, ita datur legatario ut eius fiat, et legatarius satisdat heredi de tanta pecunia restituenda, si morietur aut capite minuetur. ceterae quoque res ita traduntur legatario ut eius fiant: sed aestimatis his satisdatur, ut, si morietur aut capite minuetur, tanta pecunia restituatur quanti eae fuerint aestimatae. ergo senatus non fecit quidem earum rerum usumfructum (nec enim poterat), sed per cautionem quasi usumfructum constituit. Finitur autem ususfructus morte fructuarii et duabus capitis deminutionibus, maxima et media, et non utendo per modum et tempus. quae omnia nostra statuit constitutio. item finitur ususfructus, si domino proprietatis ab usufructuario cedatur (nam extraneo cedendo nibil agitur): vel ex contrario si fructuarius proprietatem rei adquisierit, quae res consolidatio appellatur. eo amplius constat, si aedes incendio consumptae fuerint vel etiam terrae motu aut vitio suo corruerint, extingui usumfructum et ne areae quidem usumfructum deberi. Cum autem finitus fuerit ususfructus, revertitur scilicet ad proprietatem et ex eo tempore nudae proprietatis dominus incipit plenam habere in re potestatem.

LIB. II, TIT V.
DE USU ET HABITATIONE.

Iisdem istis modis quibus ususfructus constituitur etiam nudus usus constitui solet, iisdemque illis modis finitur quibus et ususfructus desinit. Minus autem scilicet iuris in usu est quam in usufructu. namque is qui fundi nudum usum habet, nihil ulterius habere intellegetur, quam ut oleribus, pomis, floribus, feno, stramentis, lignis ad usum cottidianum utatur: in eoque fundo hactenus ei morari licet, ut neque domino fundi molestus sit, neque his per quos opera rustica fiunt impedimento sit: nec ulli alii ius quod habet aut vendere aut locare aut gratis concedere potest, cum is qui usumfructum habet potest haec omnia facere. Item is qui aedium usum habet hactenus iuris habere intellegitur ut ipse tantum habitet, nec hoc ius ad alium transferre potest: et vix receptum videtur ut hospitem ei recipere liceat et cum uxore sua liberisque suis, item libertis nec non aliis liberis personis, quibus non minus quam servis utitur, habitandi ius habeat, et convenienter, si ad mulierem usus aedium pertineat cum marito habitare ei liceat. Item is ad quem servi usus pertinet ipse tantum operis atque ministerio eius uti potest: ad alium vero nullo modo ius suum transferre ei concessum est. idem scilicet iuris est et in iumento. Sed si pecoris vel ovium usus legatus fuerit, neque lacte neque agnis neque lana utetur usuarius, quia ea in fructu sunt. plane ad stercorandum agrum suum pecoribus uti potest.

Sed si cui habitatio legata sive aliquo modo constituta sit, neque usus videtur neque ususfructus, sed quasi proprium aliquod ius. quam habitationem habentibus, propter rerum utilitatem secundum Marcelli sententiam, nostra decisione promulgata permisimus non solum in ea degere sed etiam aliis locare.

Haec de servitutibus et usufructu et usu et habitatione dixisse sufficiat. de hereditate autem et de obligationibus suis locis proponemus. euimus summatim, quibus modis iure gentium res adquiruntur: modo videamus, quibus modis legitimo et civili iure adquiruntur.

LIB. II, TIT. VI.
DE USUCAPIONIBUS ET LONGI TEMPORIS POSSESSIONIBUS.

Iure civili constitutum fuerat, ut, qui bona fide ab eo qui dominus non erat, cum crediderit eum dominum esse, rem emerit vel ex donatione aliave qua iusta causa acceperit, is eam rem, si mobilis erat, anno ubique, si immobilis, biennio tantum in Italico solo usucapiat, ne rerum dominia in incerto essent. et cum hoc placitum erat, putantibus antiquioribus dominis sufficere ad inquirendas res suas praefata tempora, nobis melior sententia resedit, ne domini maturius suis rebus defraudentur neque certo loco beneficium hoc concludatur. et ideo constitutionem super hoc promulgavimus, qua cautum est, ut res quidem mobiles per triennium usucapiantur, immobiles vero per longi temporis possessionem, id est inter praesentes decennio, inter absentes viginti annis, usucapiantur, et his modis, non solum in Italia sed in omni terra quae nostro imperio gubernatur, dominium rerum iusta causa possessionis praecedente adquiratur.

Sed aliquando etiamsi maxime quis bona fide rem possederit, non tamen illi usucapio ullo tempore procedit, veluti si quis liberum hominem vel rem sacram vel religiosam vel servum fugitivum possideat. Furtivae quoque res et quae vi possessae sunt, nec si praedicto longo tempore bona fide possessae fuerint, usucapi possunt: nam furtivarum rerum lex duodecim tabularum et lex

Atinia inhibet usucapionem, vi possessarum lex Iulia et Plautia. Quod autem dictum est furtivaram et vi possessarum rerum usucapionem per legem prohibitam esse, non eo pertinet ut ne ipse fur quive per vim possidet usucapere possit: nam his alia ratione usucapio non competit, quia scilicet mala fide possident: sed ne ullus alius, quamvis ab eis bona fide emerit vel ex alia causa acceperit, usucapiendi ius habeat. unde in rebus mobilibus non facile procedit ut bonae fidei possessori usucapio competat. nam qui alienam rem vendidit vel ex alia causa tradidit, furtum eius committit. Sed tamen id aliquando aliter se habet. nam si heres, rem defuncto commodatam aut locatam vel apud eum depositam existimans hereditariam esse, bona fide accipienti vendiderit aut donaverit aut dotis nomine dederit, quin is qui acceperit usucapere possit, dubium non est, quippe ea res in furti vitium non ceciderit, cum utique heres qui bona fide tamquam suam alienaverit furtum non committit. Item si is ad quem ancillae ususfructus pertinet, partum suum esse credens, vendiderit aut donaverit, furtum non committit: furtum enim sine affectu furandi non committitur. Aliis quoque modis accidere potest ut quis sine vitio furti rem alienam ad aliquem transferat et efficiat ut a possessore usucapiatur. Quod autem ad eas res quae solo continentur expeditius procedit: ut si quis loci vacantis possessionem propter absentiam aut neglegentiam domini, aut quia sine successore decesserit, sine vi nanciscatur. qui quamvis ipse mala fide possidet, quia intellegit, se alienum fundum occupasse, tamen, si alii bona fide accipienti tradiderit, poterit ei longa possessione res adquiri, quia neque furtivum neque vi possessum accepit; abolita est enim quorundam veterum sententia existimantium, etiam fundi locive furtum fieri, et eorum qui res soli possident principalibus constitutionibus prospicitur, ne cui longa et indubitata possessio auferri debeat. Aliquando etiam furtiva vel vi possessa res usucapi potest: veluti si in domini potestatem reversa fuerit; tunc enim, vitio rei purgato, procedit eius usucapio. Res fisci nostri usucapi non potest. sed Papinianus scripsit, bonis vacantibus fisco nondum nuntiatis, bona fide emptorem sibi traditam rem ex his bonis usucapere posse: et ita divus Pius et divi Severus et Antoninus rescripserunt. Novissime sciendum est, rem talem esse debere, ut in se non habeat vitium, ut a bona fide emptore usucapi possit vel qui ex alia iusta causa possidet.

Error autem falsae causae usucapionem non parit. veluti si quis, cum non emerit, emisse se existimans possideat: vel cum ei donatum non fuerat, quasi ex donatione possideat.

Diutina possessio, quae prodesse coeperat defuncto, et heredi et bonorum possessori continuatur, licet ipse sciat praedium alienum: quodsi ille initium iustum non habuit, heredi et bonorum possessori, licet ignoranti, possessio non prodest. quod nostra constitutio similiter et in usucapionibus observari constituit, ut tempora continuentur. Inter venditorem quoque et emptorem coniungi tempora, divi Severus et Antoninus rescripserunt.

Edicto divi Marci cavetur, eum qui a fisco rem alienam emit, si post venditionem quinquennium praeterierit, posse dominum rei per exceptionem repellere. constitutio autem divae memoriae Zenonis bene prospexit his qui a fisco per venditionem vel donationem vel alium titulum aliquid accipiunt, ut ipsi quidem securi statim fiant et victores existant, sive conveniantur sive experiantur: adversus sacratissimum autem aerarium usque ad quadriennium liceat intendere his qui pro dominio vel hypotheca earum rerum quae alienatae sunt putaverint sibi quasdam competere actiones. nostra autem divina constitutio, quam nuper promulgavimus, etiam de his qui a nostra vel venerabilis Augustae domo aliquid acceperint haec statuit quae in fiscalibus alienationibus praefata Zenoniana constitutione continentur.

LIB. II, TIT. VII.
DE DONATIONIBUS.

Est etiam aliud genus adquisitionis, donatio. Donationum autem duo genera sunt: mortis causa et non mortis causa. Mortis causa donatio est quae propter mortis fit suspicionem, cum quis ita donat, ut, si quid humanitus ei contigisset, haberet is qui accepit: sin autem supervixisset qui donavit, reciperet, vel si eum donationis poenituisset, aut prior decesserit is cui donatum sit. hae mortis causa donationes ad exemplum legatorum redactae sunt per omnia. nam cum prudentibus ambiguum fuerat, utrum donationis an legati instar eam obtinere oporteret, et utriusque causae quaedam habebat insignia et alii ad aliud genus eam retrahebant, a nobis constitutum est, ut per omnia fere legatis connumeretur: et sic procedat quemadmodum eam nostra formavit constitutio. et in summa mortis causa donatio est, cum magis se quis velit habere quam eum cui donatur, magisque eum cui donat quam heredem suum. sic et apud Homerum Telemachus donat Piraeo:

Πείραι᾽ (οὐ γάρ τ᾽ ἴδμεν, ὅπος ἔσται τάδε ἔργα)·
εἴ κεν ἐμὲ μνηστῆρες ἀγήνορες ἐν μεγάροισι
λάθρῃ κτείναντες, πατρώια πάντα δάσωνται,
αὐτὸν ἔχοντά σε βούλομ᾽ ἐπαυρέμεν, ἤ τινα τῶνδε·
εἰ δέ κ᾽ ἐγὼ τούτοισι φόνον καὶ κῆρα φυτεύσω,
δὴ τότε μοι χαίροντι δέρειν πρὸς δώματα χαίρων.

Aliae autem donationes sunt quae sine ulla mortis cogitatione fiunt, quas inter vivos appellamus, quae omnino non comparantur legatis: quae si fuerint perfectae, temere revocari non possunt. perficiuntur autem cum donator suam voluntatem scriptis aut sine scriptis manifestaverit: et ad exemplum venditionis nostra constitutio eas etiam in se habere necessitatem traditionis voluit, ut, et si non tradantur, habeant plenissimum et perfectum robur et traditionis necessitas incumbat donatori. et cum retro principum dispositiones insinuari eas actis intervenientibus volebant, si maiores ducentorum fuerant solidorum, nostra constitutio et quantitatem usque ad quingentos solidos ampliavit, quam stare et sine insinuatione statuit, et quasdam donationes invenit quae penitus insinuationem fieri minime desiderant, sed in se plenissimam habent firmitatem. alia insuper multa ad uberiorem exitum donationum invenimus, quae omnia ex nostris constitutionibus, quas super his posuimus, colligenda sunt. sciendum tamen est, quod, etsi plenissimae sint donationes, tamen si ingrati existant homines in quos beneficium collatum est, donatoribus per nostram constitutionem licentiam praestavimus certis ex causis eas revocare, ne, qui suas res in alios contulerunt, ab his quandam patiantur iniuriam vel iacturam, secundum enumeratos in nostra constitutione modos.

Est et aliud genus inter vivos donationum, quod veteribus quidem prudentibus penitus erat incognitum, postea autem a iunioribus divis principibus introductum est, quod ante nuptias vocabatur et tacitam in se condicionem habebat, ut tunc ratum esset, cum matrimonium fuerit insecutum: ideoque ante nuptias appellabatur, quod ante matrimonium efficiebatur et nunquam post nuptias celebratas talis donatio procedebat. sed primus quidem divus Iustinus, pater noster, cum augeri dotes et post nuptias fuerat permissum, si quid tale evenit, etiam ante nuptias donationem augeri et constante matrimonio sua constitutione permisit: sed tamen nomen inconveniens remanebat, cum ante nuptias quidem vocabatur, post nuptias autem tale accipiebat incrementum. sed nos plenissimo fini tradere sanctiones cupientes et consequentia nomina rebus esse studentes, constituimus, ut tales donationes non augeantur tantum sed et constante matrimonio initium accipiant et non ante nuptias, sed propter nuptias vocentur et dotibus in hoc exaequentur, ut, quemadmodum dotes et constante matrimonio non solum augentur, sed etiam fiunt, ita et istae donationes, quae propter nuptias introductae sunt, non solum antecedant matrimonium sed etiam eo contracto et augeantur et constituantur.

Erat olim et alius modus civilis adquisitionis per ius adcrescendi, quod est tale: si communem servum habens aliquis cum Titio, solus libertatem ei imposuit vel vindicta vel testamento, eo casu pars eius amittebatur et socio adcrescebat. sed cum pessimum fuerat exemplo, et libertate servum defraudari et ex ea humanioribus quidem dominis damnum inferri, severioribus autem lucrum adcrescere: hoc quasi invidiae plenum pio remedio per nostram constitutionem mederi necessarium duximus et invenimus viam, per quam et manumissor et socius eius et qui libertatem accepit nostro fruantur beneficio, libertate cum effectu procedente (cuius favore et antiquos legislatores multa et contra communes regulas statuisse manifestissimum est) et eo qui eam imposuit suae liberalitatis stabilitate gaudente et socio indemni conservato pretiumque servi secundum partem dominii quod nos definivimus accipiente.

LIB. II, TIT. VIII.
QUIBUS ALIENARE LICET VEL NON.

Accidit aliquando ut qui dominus sit alienare non possit, et contra qui dominus non sit alienandae rei potestatem habeat. nam dotale praedium maritus invita muliere per legem Iuliam prohibetur alienare, quamvis ipsius sit, dotis causa ei datum. quod nos, legem Iuliam corrigentes, in meliorem statum deduximus. cum enim lex in soli tantummodo rebus locum habebat quae Italicae fuerant, et alienationes inhibebat quae invita muliere fiebant, hypothecas autem earum etiam volente: utrisque remedium imposuimus, ut etiam in eas res quae in provinciali solo positae sunt interdicta fiat alienatio vel obligatio, et neutrum eorum neque consentientibus mulieribus procedat, ne sexus muliebris fragilitas in perniciem substantiae earum converteretur. Contra autem creditor pignus ex pactione, quamvis eius ea res non sit, alienare potest. sed hoc forsitan ideo videtur fieri, quod voluntate debitoris intellegitur pignus alienare, qui ab initio contractus pactus est, ut liceret creditori pignus vendere, si pecunia non solvatur. sed ne creditores ius suum persequi impedirentur neque debitores temere suarum rerum dominium amittere videantur, nostra constitutione consultum est et certus modus impositus est, per quem pignorum distractio possit procedere, cuius tenore utrique parti creditorum et debitorum satis abundeque provisum est. Nunc admonendi sumus, neque pupillum neque pupillam ullam rem sine tutoris auctoritate alienare posse. ideoque si mutuam pecuniam alicui sine tutoris auctoritate dederit non contrahit obligationem, quia pecuniam non facit accipientis, ideoque vindicari nummi possunt, sicubi extent: sed si nummi, quos mutuos dedit, ab eo qui accepit bona fide consumpti sunt, condici possunt, si mala fide, ad exhibendum de his agi potest. at ex contrario omnes res pupillo et pupillae sine tutoris auctoritate recte dari possunt. ideoque si debitor pupillo solvat, necessaria est tutoris auctoritas: alioquin non liberabitur. sed etiam hoc evidentissima ratione statutum est in constitutione, quam ad Caesarienses advocatos ex suggestione Triboniani, viri eminentissimi, quaestoris sacri palatii nostri, promulgavimus, qua dispositum est, ita licere tutori vel curatori debitorem pupillarem solvere, ut prius sententia iudicialis sine omni damno celebrata hoc permittat. quo subsecuto, si et iudex pronuntiaverit et debitor solverit, sequatur huiusmodi solutionem plenissima securitas. sin autem aliter quam disposuimus solutio facta fuerit et pecuniam salvam habeat pupillus aut ex ea locupletior sit et adhuc eandem summam pecuniae petat, per exceptionem doli mali summoveri poterit: quodsi aut male consumpserit aut furto amiserit, nihil proderit debitori doli mali exeptio, sed nihilo minus damnabitur, quia temere sine tutoris auctoritate et non secundum nostram dispositionem solverit. sed ex diverso pupilli vel pupillae solvere sine tutore auctore non possunt, quia id quod solvunt non fit accipientis, cum scilicet nullius rei alienatio eis sine tutoris auctoritate concessa est.

LIB. II, TIT. IX.
PER QUAS PERSONAS NOBIS ADQUIRITUR.

Adquiritur nobis non solum per nosmet ipsos, sed etiam per eos quos in potestate habemus: item per eos servos in quibus usumfructum habemus: item per homines liberos et servos alienos, quos bona fide possidemus. de quibus singulis diligentius dispiciamus. Igitur liberi vestri utriusque sexus, quos in potestate habetis, olim quidem, quidquid ad eos pervenerat (exceptis videlicet castrensibus peculiis), hoc parentibus suis adquirebant sine ulla distinctione: et hoc ita parentum fiebat, ut esset eis licentia quod per unum vel unam eorum adquisitum est alii filio vel extraneo donare, vel vendere vel quocumque modo voluerant applicare. quod nobis inhumanum visum est et generali constitutione emissa et liberis pepercimus et patribus debitum reservavimus. sancitum etenim a nobis est, ut, si quid ex re patris ei obveniat, hoc secundum antiquam observationem totum parenti adquirat (quae enim invidia est, quod ex patris occasione profectum est, hoc ad eum reverti?): quod autem ex alia causa sibi filiusfamilias adquisivit, huius usumfructum quidem patri adquirat, dominium autem apud eum remaneat, ne, quod ei suis laboribus vel prospera fortuna accessit, hoc in alium perveniens luctuosum ei procedat. Hocque a nobis dispositum est et in ea specie ubi parens, emancipando liberum, ex rebus quae adquisitionem effugiunt sibi partem tertiam retinere, si voluerat, licentiam ex anterioribus constitutionibus habebat, quasi pro pretio quodammodo emancipationis, et inhumanum quiddam accidebat, ut filius rerum suarum ex hac emancipatione dominio pro parte defraudetur, et, quod honoris ei ex emancipatione additum est, quod sui iuris effectus est, hoc per rerum deminutionem decrescat. ideoque statuimus, ut parens pro tertia bonorum parte dominii, quam retinere poterat, dimidiam non dominii rerum, sed ususfructus retineat: ita etenim et res intactae apud filium remanebunt et pater ampliore summa fruetur, pro tertia dimidia potiturus. Item vobis adquiritur, quod servi vestri ex traditione nanciscuntur sive quid stipulentur vel ex qualibet alia causa adquirunt. hoc enim vobis et ignorantibus et invitis obvenit. ipse enim servus, qui in potestate alterius est, nihil suum habere potest. sed si heres institutus sit, non alias nisi iussu vestro hereditatem adire potest: et si iubentibus vobis adierit, vobis hereditas adquiritur, perinde ac si vos ipsi heredes instituti essetis. et convenienter scilicet legatum per eos vobis adquiritur. non solum autem proprietas per eos quos in potestate habetis adquiritur vobis, sed etiam possessio: cuiuscumque enim rei possessionem adepti fuerint, id vos possidere videmini. unde etiam per eos usucapio vel longi temporis possessio vobis accedit. De his autem servis, in quibus tantum usumfructum habetis, ita placuit, ut, quidquid ex re vestra vel ex operibus suis adquirant, id vobis adiciatur, quod vero extra eas causas persecuti sunt, id ad dominum proprietatis pertineat. itaque si is servus heres institutus sit, legatumve quid ei aut donatum fuerit, non usufructuario, sed domino proprietatis adquiritur. idem placet et de eo qui a vobis bona fide possidetur, sive is liber sit sive alienus servus; quod enim placuit de usufructuario, idem placet et de bona fide possessore. itaque quod extra duas istas causas adquiritur, id vel ad ipsum pertinet, si liber est, vel ad dominum, si servus est. sed bonae fidei possessor cum usuceperit servum, quia eo modo dominus fit, ex omnibus causis per eum sibi adquirere potest: fructuarius vero usucapere non potest, primum quia non possidet, sed habet ius utendifruendi, deinde quia scit, servum alienum esse. non solum autem proprietas per eos servos in quibus usumfructum habetis vel quos bona fide possidetis, vel per liberam personam, quae bona fide vobis servit, adquiritur vobis, sed etiam possessio: loquimur autem in utriusque persona secundum definitionem quam proxime euimus, id est si quam possessionem ex re vestra vel ex operibus suis adepti fuerint. Ex his itaque apparet, per liberos homines, quos neque vestro iuri subiectos habetis neque bona fide possidetis, item per alienos servos, in quibus neque usumfructum habetis neque iustam possessionem, nulla ex causa vobis adquiri posse. et hoc est quod dicitur, per extraneam personam nihil adquiri posse: excepto eo quod per liberam personam, veluti per procuratorem, placet non solum scientibus, sed etiam ignorantibus vobis adquiri possessionem secundum divi Severi constitutionem et per hanc possessionem etiam dominium, si dominus fuit qui tradidit, vel per usucapionem aut longi temporis praescriptionem, si dominus non sit.

Hactenus tantisper admonuisse sufficiat, quemadmodum singulae res adquiruntur: nam legatorum ius, quo et ipso singulae res vobis adquiruntur: item fideicommissorum, ubi singulae res vobis relinquuntur, opportunius inferiori loco referemus. videamus itaque nunc, quibus modis per universitatem res vobis adquiruntur. si cui ergo heredes facti sitis sive cuius bonorum possessionem petieritis vel si quem adrogaveritis vel si cuius bona libertatum conservandarum causa vobis addicta fuerint, eius res omnes ad vos transeunt. ac prius de hereditatibus dispiciamus. quarum duplex condicio est: nam vel ex testamento vel ab intestato ad vos pertinent. et prius est ut de his dispiciamus quae vobis ex testamento obveniunt. qua in re necessarium est, initio de ordinandis testamentis exponere.

LIB. II, TIT. X.
DE TESTAMENTIS ORDINANDIS.

Testamentum ex eo appellatur quod testatio mentis est. Sed ut nihil antiquitatis penitus ignoretur sciendum est, olim quidem duo genera testamentorum in usu fuisse, quorum altero in pace et in otio utebantur, quod calatis comitiis appellabatur, altero, cum in proelium exituri essent, quod procinctum dicebatur. accessit deinde tertium genus testamentorum, quod dicebatur per aes et libram, scilicet quia per emancipationem, id est imaginariam quandam venditionem agebatur, quinque testibus et libripende, civibus Romanis puberibus, praesentibus et eo qui familiae emptor dicebatur. sed illa quidem priora duo genera testamentorum ex veteribus temporibus in desuetudinem abierunt: quod vero per aes et libram fiebat, licet diutius permansit, attamen partim et hoc in usu esse desiit. Sed praedicta quidem nomina testamentorum ad ius civile referebantur. postea vero ex edicto praetoris alia forma faciendorum testamentorum introducta est: iure enim honorario nulla emancipatio desiderabatur, sed septem testium signa sufficiebant, cum iure civili signa testium non erant necessaria. Sed cum paulatim tam ex usu hominum quam ex constitutionum emendationibus coepit in unam consonantiam ius civile et praetorium iungi, constitutum est, ut uno eodemque tempore, quod ius civile quodammodo exigebat, septem testibus adhibitis et subscriptione testium, quod ex constitutionibus inventum est, et ex edicto praetoris signacula testamentis imponerentur: ut hoc ius tripertitum esse videatur, ut testes quidem et eorum praesentia uno contextu testamenti celebrandi gratia a iure civili descendant, subscriptiones autem testatoris et testium ex sacrarum constitutionum observatione adhibeantur, signacula autem et numerus testium ex edicto praetoris. Sed his omnibus ex nostra constitutione propter testamentorum sinceritatem, ut nulla fraus adhibeatur, hoc additum est, ut per manum testatoris vel testium nomen heredis exprimatur et omnia secundum illius constitutionis tenorem procedant.

Possunt autem testes omnes et uno anulo signare testamentum (quid enim, si septem anuli una sculptura fuerint?) secundum quod Pomponio visum est. sed et alieno quoque anulo licet signare. Testes autem adhiberi possunt ii cum quibus testamenti factio est. sed neque mulier neque impubes neque servus neque mutus neque surdus neque furiosus nec cui bonis interdictum est, nec is quem leges iubent improbum intestabilemque esse, possunt in numero testium adhiberi. Sed cum aliquis ex testibus testamenti quidem faciendi tempore liber existimabatur, postea vero servus apparuit, tam divus Hadrienus Catonio Vero quam postea divi Severus et Antoninus rescripserunt, subvenire se ex sua liberalitate testamento, ut sic habeatur atque si ut oportet factum esset, cum eo tempore quo testamentum signaretur omnium consensu hic testis liberorum loco fuerit, nec quisquam esset qui ei status quaestionem moveat. Pater nec non is qui in potestate sunt, utrique testes in unum testamentum fieri possunt: quia nihil nocet ex una domo plures testes alieno negotio adhiberi. In testibus autem non debet esse qui in potestate testatoris est. sed si filiusfamilias de castrensi peculio post missionem faciat testamentum, nec pater eius recte testis adhibetur nec is qui in potestate eiusdem patris est: reprobatum est enim in ea re domesticum testimonium. Sed neque heres scriptus neque is qui in potestate eius est, neque pater eius, qui habet eum in potestate, neque fratres, qui in eiusdem patris potestate sunt, testes adhiberi possunt, quia totum hoc negotium quod agitur testamenti ordinandi gratia, creditur hodie inter heredem et testatorem agi. licet enim id olim ius tale valde conturbatum fuerat, et veteres, qui familiae emptorem et eos qui per potestatem ei coadunati fuerant testamentariis testimoniis repellebant, heredi et his qui coniuncti ei per potestatem fuerant concedebant testimonia in testamentis praestare, licet hi qui id permittebant hoc iure minime abuti debere eos suadebant: tamen nos, eandem observationem corrigentes et quod ab illis suasum est in legis necessitatem transferentes, ad imitationem pristini familiae emptoris merito nec heredi, qui imaginem vetustissimi familiae emptoris optinet, nec aliis personis quae ei, ut dictum est, coniunctae sunt, licentiam concedimus sibi quodammodo testimonia praestare: ideoque nec eiusmodi veterem constitutionem nostro codici inseri permisimus. Legatariis autem et fideicommissariis, quia non iuris successores sunt, et aliis personis eis coniunctis testimonium non denegamus, immo in quadam nostra constitutione et hoc specialiter concessimus, et multo magis his qui in eorum potestate sunt, vel qui eos habent in potestate, huiusmodi licentiam damus.

Nihil autem interest, testamentum in tabulis an in chartis membranisve vel in alia materia fiat. Sed et unum testamentum pluribus codicibus conficere quis potest, secundum optinentem tamen observationem omnibus factis. quod interdum et necessarium est, si quis navigaturus et secum ferre et domi relinquere iudiciorum suorum contestationem velit, vel propter alias innumerabiles causas, quae humanis necessitatibus imminent.

Sed haec quidem de testamentis quae in scriptis conficiuntur. si quis autem voluerit sine scriptis ordinare iure civili testamentum, septem testibus adhibitis et sua voluntate coram eis nuncupata, sciat hoc perfectissimum testamentum iure civili firmunque constitutum.

LIB. II, TIT. XI.
DE MILITARI TESTAMENTO.

Supra dicta diligens observatio in ordinandis testamentis militibus propter nimiam imperitiam constitutionibus principalibus remissa est. nam quamvis hi neque legitimum numerum testium adhibuerint neque aliam testamentorum sollemnitatem observaverint, recte nihilo minus testantur, videlicet cum in expeditionibus occupati sunt: quod merito nostra constitutio induxit. quoque enim modo voluntas eius suprema sive scripta inveniatur sive sine scriptura, valet testamentum ex voluntate eius. illis autem temporibus, per quae citra expeditionum necessitatem in aliis locis vel in suis sedibus degunt, minime ad vindicandum tale privilegium adiuvantur: sed testari quidem, et si filiifamilias sunt, propter militiam conceduntur, iure tamen communi ea observatione et in eorum testamentis adhibenda quam et in testamentis paganorum proxime euimus. Plane de militum testamentis divus Traianus Statilio Severo ita rescripsit:

"Id privilegium quod militantibus datum est, ut quoquo modo facta ab his testamenta rata sint, sic intellegi debet, ut utique prius constare debeat, testamentum factum esse, quod et sine scriptura a non militantibus quoque fieri potest. is ergo miles de cuius bonis apud te quaeritur, si convocatis ad hoc hominibus, ut voluntatem suam testaretur, ita locutus est ut declararet quem vellet sibi esse heredem et cui libertatem tribuere, potest videri sine scripto hoc modo esse testatus, et voluntas eius rata habenda est. ceterum si, ut plerumque sermonibus fieri solet, dixit alicui: EGO TE HEREDEM FACIO aut TIBI BONA MEA RELINQUO, non oportet hoc pro testamento observari.

nec ullorum magis interest quam ipsorum quibus id privilegium datum est, eiusmodi exemplum non admitti: alioquin non difficulter post mortem alicuius militis testes existent, qui adfirment se audisse dicentem aliquem, relinquere se bona cui visum sit, et per hoc iudicia vera subvertentur."

Quin immo et mutus et surdus miles testamentum facere potest. Sed hactenus hoc illis a principalibus constitutionibus conceditur, quatenus militant et in castris degunt: post missionem vero veterani vel extra castra si faciant adhuc militantes testamentum, communi omnium civium Romanorum iure facere debent. et quod in castris fecerint testamentum non communi iure, sed quomodo voluerint, post missionem intra annum tantum valebit. quid igitur, si intra annum quidem decesserit, condicio autem heredi adscripta post annum extiterit? an quasi militis testamentum valeat? et placet, valere quasi militis. Sed et si quis ante militiam non iure fecit testamentum et miles factus et in expeditione degens resignavit illud et quaedam adiecit sive detraxit vel alias manifesta est militis voluntas hoc valere volentis, dicendum est, valere testamentum quasi ex nova militis voluntate. Denique et si in adrogationem datus fuerit miles vel filiusfamilias emancipatus est, testamentum eius quasi militis ex nova voluntate valet nec videtur capitis deminutione irritum fieri.

Sciendum tamen est, quod ad exemplum castrensis peculii tam anteriores leges quam principales constitutiones quibusdam quasi castrensia dederunt peculia, atque eorum quibusdam permissum erat etiam in potestate degentibus testari. quod nostra constitutio latius extendens, permisit omnibus in his tantummodo peculiis testari quidem, sed iure communi: cuius constitutionis tenore perspecto, licentia est nihil eorum quae ad praefatum ius pertinent ignorare.

LIB. II, TIT. XII.
QUIBUS NON EST PERMISSUM TESTAMENTA FACERE.

Non tamen omnibus licet facere testamentum. statim enim hi qui alieno iuri subiecti sunt testamenti faciendi ius non habent, adeo quidem ut, quamvis parentes eis permiserint, nihilo magis iure testari possint: exceptis his quos antea enumeravimus, et praecipue militibus qui in potestate parentum sunt, quibus de eo quod in castris adquisierint permissum est ex constitutionibus principum testamentum facere. quod quidem initio tantum militantibus datum est tam ex auctoritate divi Augusti quam Nervae nec non optimi imperatoris Traiani; postea vero subscriptione divi Hadriani etiam dimissis militia, id est veteranis, concessum est. itaque si quidem fecerint de castrensi peculio testamentum, pertinebit hoc ad eum quem heredem reliquerint: si vero intestati decesserint, nullis liberis vel fratribus superstitibus, ad parentes eorum iure communi pertinebit. ex hoc intellegere possumus, quod in castris adquisierit miles qui in potestate patris est, neque ipsum patrem adimere posse neque patris creditores id vendere vel aliter inquietare neque, patre mortuo, cum fratribus esse commune, sed scilicet proprium eius esse id quod in castris adquisierit, quamquam iure civili omnium qui in potestate parentum sunt peculia perinde in bonis parentum computantur acsi servorum peculia in bonis dominorum numerantur: exceptis videlicet his quae ex sacris constitutionibus, et praecipue nostris, propter diversas causas non adquiruntur. praeter hos igitur qui castrense peculium vel quasi castrense habent, si quis alius filiusfamilias testamentum fecerit, inutile est, licet suae potestatis factus decesserit. Praeterea testamentum facere non possunt impuberes, quia nullum eorum animi iudicium est; item furiosi, quia mente carent. nec ad rem pertinet, si impubes postea pubes factus aut furiosus postea compos mentis factus fuerit et decesserit. furiosi autem si per id tempus fecerint testamentum quo furor eorum intermissus est iure testati esse videntur, certe eo quod ante furorem fecerint testamento valente: nam neque testamenta recte facta neque aliud ullum negotium recte gestum postea furor interveniens peremit. Item prodigus, cui bonorum suorum administratio interdicta est, testamentum facere non potest, sed id quod ante fecerit quam interdictio ei bonorum fiat ratum est. Item mutus et surdus non semper facere testamentum possunt. utique autem de eo surdo loquimur qui omnino non exaudit, non qui tarde exaudit: nam et mutus is intellegitur qui eloqui nihil potest, non qui tarde loquitur. saepe autem etiam litterati et eruditi homines variis casibus et audiendi et loquendi facultatem amittunt: unde nostra constitutio etiam his subvenit, ut certis casibus et modis secundum normam eius possint testari, aliaque facere quae eis permissa sunt. sed si quis post testamentum factum valetudine aut quolibet alio casu mutus aut surdus esse coeperit, ratum nihilo minus eius remanet testamentum. Caecus autem non potest facere testamentum nisi per observationem quam lex divi Iustini patris mei introduxit. Eius qui apud hostes est testamentum quod ibi fecit non valet, quamvis redierit: sed quod dum in civitate fuerat fecit, sive redierit, valet iure postliminii, sive illic decesserit, valet ex lege Cornelia.

LIB. II, TIT. XIII.
DE EXHEREDATIONE LIBERORUM.

Non tamen, ut omnimodo valeat testamentum, sufficit haec observatio quam supra euimus. sed qui filium in potestate habet, debet curare ut eum heredem instituat vel exheredem nominatim faciat: alioquin si eum silentio praeterierit, inutiliter testabitur, adeo quidem ut, etsi vivo patre filius mortuus sit, nemo ex eo testamento heres existere possit, quia scilicet ab initio non constiterit testamentum. sed non ita de filiabus vel aliis per virilem sexum descendentibus liberis utriusque sexus fuerat antiquitati observatum: sed si non fuerant heredes scripti scriptaeve vel exheredati exheredataeve, testamentum quidem non infirmabatur, ius autem adcrescendi eis ad certam portionem praestabatur. sed nec nominatim eas personas exheredare parentibus necesse erat, sed licebat et inter "ceteros" hoc facere. Nominatim autem exheredari quis videtur sive ita exheredetur TITIUS FILIUS MEUS

EXHERES ESTO, sive ita FILIUS MEUS EXHERES ESTO, non adiecto proprio nomine, scilicet si alius filius non extet.

Postumi quoque liberi vel heredes institui debent vel exheredari. et in eo par omnium condicio est, quod et in filio postumo et in quolibet ex ceteris liberis sive feminini sexus sive masculini praeterito valet quidem testamentum, sed postea adgnatione postumi sive postumae rumpitur et ea ratione totum infirmatur: ideoque si mulier, ex qua postumus aut postuma sperabatur, abortum fecerit, nihil impedimento est scriptis heredibus ad hereditatem adeundam. sed feminini quidem sexus personae vel nominatim vel inter "ceteros" exheredari solebant, dum tamen, si inter "ceteros" exheredentur, aliquid eis legetur, ne videantur per oblivionem praeteritae esse, masculos vero postumos, id est filium et deinceps, placuit non aliter recte exheredari, nisi nominatim exheredentur, hoc scilicet modo: QUICUMQUE MIHI FILIUS GENITUS FUERIT, EXHERES ESTO. Postumorum autem loco sunt et hi qui in sui heredis locum succedendo quasi adgnascendo fiunt parentibus sui heredes. ut ecce si quis filium et ex eo nepotem neptemve in potestate habeat, quia filius gradu praecedit, is solus iura sui heredis habet, quamvis nepos quoque et neptis ex eo in eadem potestate sunt: sed si filius eius vivo eo moriatur aut qualibet alia ratione exeat de potestate eius, incipit nepos neptisve in eius locum succedere et eo modo iura suorum heredum quasi adgnatione nanciscuntur. ne ergo eo modo rumpatur eius testamentum, sicut ipsum filium vel heredem instituere vel nominatim exheredare debet testator, ne non iure faciat testamentum, ita et nepotem neptemve ex filio necesse est ei vel heredem instituere vel exheredare, ne forte, vivo eo filio mortuo, succedendo in locum eius nepos neptisve quasi adgnatione rumpant testamentum. idque lege Iunia Velleia provisum est, in qua simul exheredationis modus ad similitudinem postumorum demonstratur.

Emancipatos liberos iure civili neque heredes instituere neque exheredare necesse est, quia non sunt sui heredes. sed praetor omnes tam feminini sexus quam masculini, si heredes non instituantur, exheredari iubet, virilis sexus nominatim, feminini vero et inter "ceteros." quodsi neque heredes instituti fuerint neque ita, ut diximus, exheredati, promittit praetor eis contra tabulas testamenti bonorum possessionem.

Adoptivi liberi quamdiu sunt in potestate patris adoptivi, eiusdem iuris habentur cuius sunt iustis nuptiis quaesiti: itaque heredes instituendi vel exheredandi sunt secundum ea quae de naturalibus euimus: emancipati vero a patre adoptivo neque iure civili neque quod ad edictum praetoris attinet inter liberos numerantur. qua ratione accidit ut ex diverso, quod ad naturalem parentem attinet, quamdiu quidem sint in adoptiva familia, extraneorum numero habeantur, ut eos neque heredes instituere neque exheredare necesse sit. cum vero emancipati fuerint ab adoptivo patre, tunc incipiunt in ea causa esse in qua futuri essent si ab ipso naturali patre emancipati fuissent.

Sed haec vetustas introducebat. nostra vero constitutio inter masculos et feminas in hoc iure nihil interesse existimans, quia utraque persona in hominum procreatione similiter naturae officio fungitur et lege antiqua duodecim tabularum omnes similiter ad successiones ab intestato vocabantur, quod et praetores postea secuti esse videntur, ideo simplex ac simile ius et in filiis et in filiabus et in ceteris descendentibus per virilem sexum personis non solum natis sed etiam postumis introduxit, ut omnes, sive sui sive emancipati sunt, aut heredes instituantur aut nominatim exheredentur, et eundem habeant effectum circa testamenta parentum suorum infirmanda et hereditatem auferendam quem filii sui vel emancipati habent, sive iam nati sunt sive adhuc in utero constituti postea nati sunt. circa adoptivos autem certam induximus divisionem, quae constitutione nostra, quam super adoptivis tulimus, continetur. Sed si in expeditione occupatus miles testamentum faciat et liberos suos iam natos vel postumos nominatim non exheredaverit, sed silentio praeterierit, non ignorans an habeat liberos, silentium eius pro exheredatione nominatim facta valere constitutionibus principum cautum est. Mater vel avus maternus necesse non habent liberos suos aut heredes instituere aut exheredare, sed possunt eos omittere. nam silentium matris aut avi materni ceterorumque per matrem ascendentium tantum facit quantum exheredatio patris. neque enim matri filium filiamve neque avo materno nepotem neptemve ex filia, si eum eamve heredem non instituat, exheredare necesse est, sive de iure civili quaeramus, sive de edicto praetoris, quo praeteritis liberis contra tabulas bonorum possessionem promittit. sed aliud eis adminiculum servatur, quod paulo post vobis manifestum fiat.

LIB. II, TIT. XIV.
DE HEREDIBUS INSTITUENDIS.

Heredes instituere permissum est tam liberos homines quam servos tam proprios quam alienos. proprios autem olim quidem secundum plurium sententias non aliter quam cum libertate recte instituere licebat. hodie vero etiam sine libertate ex nostra constitutione heredes eos instituere permissum est quod non per innovationem induximus, sed quoniam et aequius erat et Atilicino placuisse Paulus suis libris quos tam ad Masurium Sabinum quam ad Plautium scripsit refert. proprius autem servus etiam is intellegitur in quo nudam proprietatem testator habet, alio usumfructum habente. est autem casus in quo nec cum libertate utiliter servus a domina heres instituitur, ut constitutione divorum Severi et Antonini cavetur, cuius verba haec sunt:

"Servum adulterio maculatum non iure testamento manumissum ante sententiam ab ea muliere videri quae rea fuerat eiusdem criminis postulata, rationis est: quare sequitur, ut in eundem a domina collata institutio nullius momenti habeatur."

alienus servus etiam is intellegitur, in quo usumfructum testator habet. Servus autem a domino suo heres institutus, si quidem in eadem causa manserit, fit ex testamento liber heresque necessarius. si vero a vivo testatore manumissus fuerit, suo arbitrio adire hereditatem potest, quia non fit necessarius, cum utrumque ex domini testamento non consequitur. quodsi alienatus fuerit, iussu novi domini adire hereditatem debet et ea ratione per eum dominus fit heres: nam ipse alienatus neque liber neque heres esse potest, etiamsi cum libertate heres institutus fuerit: destitisse etenim a libertatis datione videtur dominus qui eum alienavit. alienus quoque servus heres institutus si in eadem causa duraverit, iussu domini adire hereditatem debet. si vero alienatus fuerit aut vivo testatore aut post mortem eius, antequam adeat, debet iussu novi domini adire. at si manumissus est, vivo testatore vel mortuo, antoquam adeat, suo arbitrio adire hereditatem potest. Servus alienus post domini mortem recte heres instituitur, quia et cum hereditariis servis est testamenti factio: nondum enim adita hereditas personae vicem sustinet, non heredis futuri, sed defuncti, cum et eius qui in utero est servus recte heres instituitur. Servus plurium, cum quibus testamenti factio est, ab extraneo institutus heres, unicuique dominorum cuius iussu adierit pro portione dominii adquirit hereditatem.

Et unum hominem et plures in infinitum, quot quis velit, heredes facere licet. Hereditas plerumque dividitur in duodecim uncias, quae assis appellatione continentur. habent autem et hae partes propria nomina ab uncia usque ad assem, ut puta haec; uncia, sextans, quadrans, triens, quincunx, semis, septunx, bes, dodrans, dextans deunx, as. non autem utique duodecim uncias esse oportet. nam tot unciae assem efficiunt quot testator voluerit, et si unum tantum quis ex semisse verbi gratia heredem scripserit, totus as in semisse erit: neque enim idem ex parte testatus et ex parte intestatus decedere potest, nisi sit miles, cuius sola voluntas in testando spectatur. et e contrario potest quis in quantascumque voluerit plurimas uncias suam hereditatem dividere. Si plures instituantur, ita demum partium distributio necessaria est si nolit testator eos ex aequis partibus heredes esse: satis enim constat, nullis partibus nominatis aequis ex partibus eos heredes esse. partibus autem in quorundam personis expressis, si quis alius sine parte nominatus erit, si quidem aliqua pars assi deerit, ex ea parte heres fit, et si plures sine parte scripti sunt, omnes in eadem parte concurrent. si vero totus as completus sit, in partem dimidiam vocantur, et ille vel illi omnes in alteram dimidiam. nec interest, primus an medius an novissimus sine parte scriptus sit: ea enim pars data intellegitur quae vacat. Videamus, si pars aliqua vacet nec tamen quisquam sine parte heres institutus sit, quid iuris sit? veluti si tres ex quartis partibus heredes scripti sunt. et constat, vacantem partem singulis tacite pro hereditaria parte accedere et perinde haberi ac si ex tertiis partibus heredes scripti essent: et ex diverso si plus asse in portionibus sit, tacite singulis decrescere, ut, si verbi gratia quattuor ex tertiis partibus heredes scripti sint, perinde habeantur ac si unusquisque ex quarta parte scriptus fuisset. Et si plures unciae quam duodecim distributae sunt, is qui sine parte institutus est quod dipondio deest habebit: idemque erit si dipondius expletus sit. quae omnes partes ad assem postea revocantur, quamvis sint plurium unciarum.

Heres et pure et sub condicione institui potest. ex certo tempore aut ad certum tempus non potest, veluti POST QUINQUENNIUM QUAM MORIAR vel EX KALENDES ILLIS aut USQUE AD KALENDAS ILLAS HERES ESTO: diemque adiectum pro supervacuo haberi placet, et perinde esse ac si pure heres institutus esset. Impossibilis condicio in institutionibus et legatis nec non in fideicommissis et libertatibus pro non scripto habetur. Si plures condiciones institutioni adscriptae sunt, si quidem coniunctim, ut puta SI ILLUD ET ILLUD FACTUM ERIT, omnibus parendum est: si separatim, veluti SI ILLUD AUT ILLUD FACTUM ERIT, cui libet obtemperare satis est.

Hi, quos numquam testator vidit, heredes institui possunt, veluti si fratris filios peregri natos, ignorans qui essent, heredes instituerit: ignorantia enim testantis inutilem institutionem non facit.

LIB. II, TIT. XV.
DE VULGARI SUBSTITUTIONE.

Potest autem quis in testamento suo plures gradus heredum facere, ut puta SI ILLE HERES NON ERIT, ILLE HERES ESTO; et deinceps, in quantum velit, testator substituere potest et novissimo loco in subsidium vel servum necessarium heredem instituere. Et plures in unius locum possunt substitui, vel unus in plurium, vel singuli singulis, vel invicem ipsi qui heredes instituti sunt. Et si ex disparibus partibus heredes scriptos invicem substituerit et nullam mentionem in substitutione habuerit partium, eas videtur partes in substitutione dedisse quas in institutione expressit: et ita divus Pius rescripsit. Sed si instituto heredi et coheredi suo substituto dato alius substitutus fuerit, divi Severus et Antoninus sine distinctione rescripserunt, ad utramque partem substitutum admitti. Si servum alienum quis patremfamilias arbitratus, heredem scripserit et, si heres non esset, Maevium ei substituerit, isque servus iussu domini adierit hereditatem, Maevius in partem admittitur. illa enim verba SI HERES NON ERIT, in eo quidem quem alieno iuri subiectum esse testator scit, sic accipiuntur: si neque ipse heres erit neque alium heredem effecerit: in eo vero quem patremfamilias esse arbitratur, illud significant: si hereditatem sibi eive cuius iuri postea subiectus esse coeperit non adquisierit. idque Tiberius Caesar in persona Parthenii servi sui constituit.

LIB. II, TIT. XVI.
DE PUPILLARI SUBSTITUTIONE.

Liberis suis impuberibus, quos in potestate quis habet, non solum ita, ut supra diximus, substituere potest, id est ut, si heredes ei non extiterint, alius ei sit heres, sed eo amplius ut et si heredes ei extiterint et adhuc impuberes mortui fuerint, sit eis aliquis heres. veluti si quis dicat hoc modo: TITIUS FILIUS MEUS HERES MIHI ESTO: SI FILIUS MEUS HERES MIHI NON ERIT, SIVE HERES ERIT ET PRIUS MORIATUR QUAM IN SUAM TUTELAM VENERIT (id est pubes factus sit), TUNC SEIUS HERES ESTO. quo casu si quidem non extiterit heres filius, tunc substitutus patri fit heres: si vero extiterit heres filius et ante pubertatem decesserit, ipsi filio fit heres substitutus. nam moribus institutum est, ut, cum eius aetatis sunt in qua ipsi sibi testamentum facere non possunt, parentes eis faciant. Qua ratione excitati, etiam constitutionem in nostro posuimus codice, qua prospectum est, ut, si mente captos habeant filios vel nepotes vel pronepotes cuiuscumque sexus vel gradus, liceat eis, etsi puberes sint, ad exemplum pupillaris substitutionis certas personas substituere: sin autem resipuerint, eandem substitutionem infirmari, et hoc ad exemplum pupillaris substitutionis, quae, postquam pupillus adoleverit, infirmatur. Igitur in pupillari substitutione secundum praefatum modum ordinata duo quodammodo sunt testamenta, alterum patris, alterum filii, tamquam si ipse filius sibi heredem instituisset: aut certe unum est testamentum duarum causarum, id est duarum hereditatum. Sin autem quis ita formidolosus sit, ut timeret, ne filius eius pupillus adhuc ex eo quod palam substitutum accepit, post obitum eius periculo insidiarum subiceretur: vulgarem quidem substitutionem palam facere et in primis testamenti partibus debet, illam autem substitutionem, per quam et si heres extiterit pupillus et intra pubertatem decesserit, substitutus vocatur, separatim in inferioribus partibus scribere eamque partem proprio lino propriaque cera consignare, et in priore parte testamenti cavere ne inferiores tabulae vivo filio et adhuc impubere aperiantur. illud palam est, non ideo minus valere substitutionem impuberis filii, quod in iisdem tabulis scripta sit quibus sibi quisque heredem instituisset, quamvis hoc pupillo periculosum sit. Non solum autem heredibus institutis impuberibus liberis ita substituere parentes possunt, ut et si heredes eis extiterint et ante pubertatem mortui fuerint, sit eis heres is quem ipsi voluerint, sed etiam exheredatis. itaque eo casu si quid pupillo ex hereditatibus legatisve aut donationibus propinquorum atque amicorum adquisitum fuerit, id omne ad substitutum pertinet. quaecumque diximus de substitutione impuberum liberorum vel heredum institutorum vel exheredatorum, eadem etiam de postumis intellegimus. Liberis autem suis testamentum facere nemo potest, nisi et sibi faciat: nam pupillare testamentum pars et sequela est paterni testamenti, adeo ut, si patris testamentum non valeat, ne filii quidem valebit. Vel singulis autem liberis vel qui eorum novissimus impubes morietur, substitui potest. singulis quidem, si neminem eorum intestato decedere voluit: novissimo, si ius legitimarum hereditatium integrum inter eos custodiri velit. Substituitur autem impuberi aut nominatim, veluti TITIUS, aut generaliter QUISQUIS MIHI HERES ERIT: quibus verbis vocantur ex substitutione, impubere filio mortuo, qui et scripti sunt heredes et extiterunt, et pro qua parte heredes facti sunt. Masculo igitur usque ad quattuordecim annos substitui potest, feminae usque ad duodecim annos: et si hoc tempus excesserit, substitutio evanescit. Extraneo vero vel filio puberi heredi instituto, ita substituere nemo potest ut, si heres extiterit et intra aliquod tempus decesserit, alius ei sit heres: sed hoc solum permissum est, ut eum per fideicommissum testator obliget, alii hereditatem eius vel totam vel pro parte restituere: quod ius quale sit, suo loco trademus.

LIB. II, TIT. XVII.
QUIBUS MODIS TESTAMENTA INFIRMANTUR.

Testamentum iure factum usque eo valet donec rumpatur irritumve fiat.

Rumpitur autem testamentum, cum in eodem statu manente testatore ipsius testamenti ius vitiatur. si quis enim post factum testamentum adoptaverit sibi filium per imperatorem, eum qui sui iuris est, aut per praetorem, secundum nostram constitutionem, eum qui in potestate parentis fuerit, testamentum eius rumpitur quasi adgnatione sui heredis. Posteriore quoque testamento, quod iure perfectum est, superius rumpitur. nec interest, an extiterit aliquis heres ex eo, an non extiterit: hoc enim solum spectatur, an aliquo casu existere potuerit. ideoque si quis aut noluerit heres esse, aut vivo testatore aut post mortem eius, antequam hereditatem adiret, decesserit, aut condicione, sub qua heres institutus est, defectus sit, in his casibus paterfamilias intestatus moritur: nam et prius testamentum non valet, ruptum a posteriore, et posterius aeque nullas vires habet, cum ex eo nemo heres extiterit. Sed si quis, priore testamento iure perfecto, posterius aeque iure fecerit, etiamsi ex certis rebus in eo heredem instituerit, superius testamentum sublatum esse divi Severus et Antoninus rescripserunt. cuius constitutionis inseri verba iussimus, cum aliud quoque praeterea in ea constitutione expressum est.

"Imperatores Severus et Antoninus Cocceio Campano. Testamentum secundo loco factum, licet in eo certarum rerum heres scriptus sit, iure valere, perinde ac si rerum mentio facta non esset, sed teneri heredem scriptum, ut, contentus rebus sibi datis, aut suppleta quarta ex lege Falcidia, hereditatem restituat his qui in priore testamento scripti fuerant, propter inserta verba secundo testamento, quibus ut valeret prius testamentum expressum est, dubitari non oportet."

et ruptum quidem testamentum hoc modo efficitur.

Alio quoque modo testamenta iure facta infirmantur, veluti cum is qui fecerit testamentum capite deminutus sit. quod quibus modis accidit, primo libro rettulimus. Hoc autem casu irrita fieri testamenta dicuntur, cum alioquin et quae rumpantur, irrita fiunt, et quae statim ab initio non iure fiunt, irrita sunt: et ea quae iure facta sunt, postea propter capitis deminutionem irrita fiunt, possumus nihilo minus rupta dicere. sed quia sane commodius erat singulas causas singulis appellationibus distingui, ideo quaedam non iure facta dicuntur, quaedam iure facta rumpi vel irrita fieri. Non tamen per omnia inutilia sunt ea testamenta quae ab initio iure facta propter capitis deminutionem irrita facta sunt. nam si septem testium signis signata sunt, potest scriptus heres secundum tabulas testamenti bonorum possessionem agnoscere, si modi defunctus et civis Romanus et suae potestatis mortis tempore fuerit: nam si ideo irritum factum sit testamentum, quod civitatem vel etiam libertatem testator amisit, aut quia in adoptionem se dedit et mortis tempore in adoptivi patris potestate sit, non potest scriptus heres secundum tabulas bonorum possessionem petere. Ex eo autem solo non potest infirmari testamentum quod postea testator id noluit valere: plusque adeo, etsi quis post factum prius testamentum posterius facere coeperit et aut mortalitate praeventus, aut quia eum eius poenituit, id non perfecisset, divi Pertinacis oratione cautum est, ne alias tabulae priores iure factae irritae fiant, nisi sequentes iure ordinatae et perfectae fuerint. nam imperfectum testamentum sine dubio nullum est. Eadem oratione expressit, non admissurum se hereditatem eius qui litis causa principem heredem reliquerit, neque tabulas non legitime factas in quibus ipse ob eam causam heres institutus erat probaturum, neque ex nuda voce heredis nomen admissurum, neque ex ulla scriptura cui iuris auctoritas desit aliquid adepturum. secundum haec divi quoque Severus et Antoninus saepissime rescripserunt: "licet enim," inquiunt, "legibus soluti sumus, attamen legibus vivimus."

LIB. II, TIT. XVIII.
DE INOFFICIOSO TESTAMENTO.

Quia plerumque parentes sine causa liberos suos vel exheredant vel omittunt, inductum est ut de inofficioso testamento agere possint liberi, qui queruntur, aut inique se exheredatos aut inique praeteritos, hoc colore, quasi non sanae mentis fuerunt, cum testamentum ordinarent. sed hoc dicitur non quasi vere furiosus sit, sed recte quidem fecit testamentum, non autem ex officio pietatis: nam si vere furiosus est, nullum est testamentum. Non tantum autem liberis permissum est parentum testamentum inofficiosum accusare, verum etiam parentibus liberorum. soror autem et frater turpibus personis scriptis heredibus ex sacris constitutionibus praelati sunt: non ergo contra omnes heredes agere possunt. ultra fratres et sorores cognati nullo modo aut agere possunt aut agentes vincere. Tam autem naturales liberi, quam secondum nostrae constitutionis divisionem adoptati, ita demum de inofficioso testamento agere possunt si nullo alio iure ad bona defuncti venire possunt. nam qui alio iure veniunt ad totam hereditatem vel partem eius, de inofficioso agere non possunt. postumi quoque, qui nullo alio iure venire possunt, de inofficioso agere possunt. Sed haec ita accipienda sunt si nihil eis penitus a testatoribus testamento relictum est. quod nostra constitutio ad verecundiam naturae introduxit. sin vero quantacumque pars hereditatis vel res eis fuerit relicta, de inofficioso querela quiescente, id quod eis deest, usque ad quartam legitimae partis repletur, licet non fuerit adiectum, boni viri arbitratu debere eam repleri.

Si tutor nomine pupilli, cuius tutelam gerebat, ex testamento patris sui legatum acceperit, cum nihil erat ipsi tutori relictum a patre suo, nihilo minus possit nomine suo de inofficioso patris testamento agere. Sed et si e contrario pupilli nomine, cui nihil relictum fuerit, de inofficioso egerit et superatus est, ipse quod sibi in eodem testamento legatum relictum est, non amittit. Igitur quartam quis debet habere, ut de inofficioso testamento agere non possit: sive iure hereditario sive iure legati vel fideicommissi, vel si mortis causa ei quarta donata fuerit, vel inter vivos in his tantummodo casibus, quorum nostra constitutio mentionem facit, vel aliis modis qui constitutionibus continentur. Quod autem de quarta diximus, ita intellegendum est ut, sive unus fuerit sive plures quibus agere de inofficioso testamento permittitur, una quarta eis dari possit, ut pro rata distribuatur eis, id est pro virili portione, quarta.

LIB. II, TIT. XIX.
DE HEREDUM QUALITATE ET DIFFERENTIA.

Heredes autem aut necessarii dicuntur aut sui et necessarii aut extranei.

Necessarius heres est servus heres institutus: ideo sic appellatur, quia, sive velit sive nolit, omnimodo post mortem testatoris protinus liber et necessarius heres fit. unde qui facultates suas suspectas habent, solent servum suum primo aut secundo vel etiam ulteriore gradu heredem instituere, ut, si creditoribus satis non fiat, potius eius heredis bona quam ipsius testatoris a creditoribus possideantur vel distrahantur vel inter eos dividantur. pro hoc tamen incommodo illud ei commodum praestatur, ut ea quae post mortem patroni sui sibi adquisierit ipsi reserventur: et quamvis non sufficiant bona defuncti creditoribus, iterum ex ea causa res eius, quas sibi adquisierit, non veneunt.

Sui autem et necessarii heredes sunt veluti filius, filia, nepos neptisque ex filio et deinceps ceteri liberi, qui modo in potestate morientis fuerint. sed ut nepos neptisve sui heredes sint, non sufficit eum eamve in potestate avi mortis tempore fuisse, sed opus est ut pater eius vivo patre suo desierit suus heres esse, aut morte interceptus aut qualibet alia ratione liberatus potestate: tunc enim nepos neptisve in locum patris sui succedit. sed sui quidem heredes ideo appellantur quia domestici heredes sunt et vivo quoque patre quodammodo domini existimantur. unde etiam, si quis intestatus mortuus sit, prima causa est in successione liberorum. necessarii vero ideo dicuntur quia omnimodo, sive velint sive nolint, tam ab intestato quam ex testamento heredes fiunt. sed his praetor permittit volentibus abstinere se ab hereditate, ut potius parentis quam ipsorum bona similiter a creditoribus possideantur.

Ceteri, qui testatoris iuri subiecti non sunt, extranei heredes appellantur. itaque liberi quoque nostri qui in potestate nostra non sunt, heredes a nobis instituti, extranei heredes videntur. qua de causa et qui heredes a matre instituuntur eodem numero sunt, quia feminae in potestate liberos non habent. servus quoque a domino heres institutus et post testamentum factum ab eo manumissus eodem numero habetur. In extraneis heredibus illud observatur, ut sit cum eis testamenti factio, sive ipsi heredes instituantur, sive hi qui in potestate eorum sunt. et id duobus temporibus inspicitur, testamenti quidem facti, ut constiterit institutio, mortis vero testatoris, ut effectum habeat. hoc amplius et cum adit hereditatem esse debet cum eo testamenti factio, sive pure sive sub condicione heres institutus sit: nam ius heredis eo vel maxime tempore inspiciendum est quo adquirit hereditatem. medio autem tempore inter factum testamentum et mortem testatoris vel condicionem institutionis existentem mutatio iuris heredi non nocet, quia, ut diximus, tria tempora inspici debent. testamenti autem factionem non solum is habere videtur qui testamentum facere potest sed etiam qui ex alieno testamento vel ipse capere potest vel alii adquirere, licet non potest facere testamentum. et ideo et furiosus et mutus et postumus et infans et filiusfamilias et servus alienus testamenti factionem habere dicuntur: licet enim testamentum facere non possunt, attamen ex testamento vel sibi vel alii adquirere possunt. Extraneis autem heredibus deliberandi potestas est de adeunda hereditate vel non adeunda. sed sive is cui abstinendi potestas est immiscuerit se bonis hereditariis, sive extraneus, cui de adeunda hereditate deliberare licet, adierit, postea relinquendae hereditatis facultatem non habet, nisi minor sit annis viginti quinque: nam huius aetatis hominibus sicut in ceteris omnibus causis deceptis, ita et si temere damnosam hereditatem susceperint, praetor succurrit. Sciendum tamen est, divum Hadrianum etiam maiori viginti quinque annis veniam dedisse, cum post aditam hereditatem grande aes alienum, quod aditae hereditatis tempore latebat, emersisset. sed hoc divus quidem Hadrianus speciali beneficio cuidam praestitit; divas autem Gordianus postea in militibus tantummodo hoc extendit: sed nostra benevolentia commune omnibus subiectis imperio nostro hoc praestavit beneficium et constitutionem tam aequissimam quam nobilem scripsit, cuius tenorem si observaverint homines, licet eis adire hereditatem et in tantum teneri in quantum valere bona hereditatis contingit, ut ex hac causa neque deliberationis auxilium eis fiat necessarium, nisi omissa observatione nostrae constitutionis et deliberandum existimaverint et sese veteri gravamini aditionis supponere maluerint. Item extraneus heres, testamento institutus aut abintestato ad legitimam hereditatem vocatus, potest aut pro herede gerendo vel etiam nuda voluntate suscipiendae hereditatis heres fieri. pro herede autem gerere quis videtur, si rebus hereditariis tamquam heres utatur vel vendendo res hereditarias aut praedia colendo locandove et quoquo modo, si voluntatem suam declaret vel re vel verbis de adeunda hereditate, dummodo sciat, eum in cuius bonis pro herede gerit testato intestatove obiisse et se ei heredem esse. pro herede enim gerere est pro domino gerere: veteres enim heredes pro dominis appellabant. sicut autem nuda voluntate extraneus heres fit, ita et contraria destinatione statim ab hereditate repellitur. eum, qui mutus vel surdus natus est vel postea factus, nihil prohibet pro herede gerere et adquirere sibi hereditatem, si tamen intellegit quod agitur.

LIB. II, TIT. XX.
DE LEGATIS.

Post haec videamus de legatis. quae pars iuris extra propositam quidem materiam videtur: nam loquimur de his iuris figuris quibus per universitatem res nobis adquiruntur. sed cum omnino de testamentis deque heredibus qui testamento instituuntur locuti sumus, non sine causa sequenti loco potest haec iuris materia tractari.

Legatum itaque est donatio quaedam a defuncto relicta. Sed olim quidem erant legatorum genera quattuor: per vindicationem, per damnationem, sinendi modo per praeceptionem: et certa quaedam verba cuique generi legatorum adsignata erant, per quae singula genera legatorum significabantur. sed ex constitutionibus divorum principum sollemnitas huiusmodi verborum penitus sublata est. nostra autem constitutio, quam cum magna fecimus lucubratione, defunctorum voluntates validiores esse cupientes, et non verbis sed voluntatibus eorum faventes, disposuit, ut omnibus legatis una sit natura et, quibuscumque verbis aliquid derelictum sit, liceat legatariis id persequi non solum per actiones personales, sed etiam per in rem et per hypothecariam: cuius constitutionis perpensum modum ex ipsius tenore pe fectissime accipere possibile est. Sed non usque ad eam constitutionem standum esse existimavimus. cum enim antiquitatem invenimus legata quidem stricte concludentem, fideicommissis autem, quae ex voluntate magis descendebant defunctorum, pinguiorem naturam indulgentem, necessarium esse duximus omnia legata fideicommissis exaequare, ut nulla sit inter ea differentia, sed quod deest legatis, hoc repleatur ex natura fideicommissorum, et si quid amplius est in legatis per hoc crescat fideicommissi natura. sed ne in primis legum cunabulis permixte de his exponendo studiosis adulescentibus quandam introducamus difficultatem, operae pretium esse duximus, interim separatim prius de legatis et postea de fideicommissis tractare, ut natura utriusque iuris cognita, facile possint permixtionem eorum eruditi suptilioribus auribus accipere.

Non solum autem testatoris vel heredis res, sed et aliena legari potest: ita ut heres cogatur redimere eam et praestare vel, si non potest redimere, aestimationem eius dare. sed si talis res sit, cuius non est commercium, nec aestimatio eius debetur, sicuti si campum Martium vel basilicam vel templa vel quae publico usui destinata sunt, legaverit: nam nullius momenti legatum est. quod autem diximus, alienam rem posse legari, ita intellegendum est, si defunctus sciebat alienam rem esse, non et si ignorabat; forsitan enim si scisset alienam non legasset: et ita divus Pius rescripsit. et verius est ipsum qui agit, id est legatarium, probare oportere, scisse alienam rem legare defunctum, non heredem probare oportere, ignorasse alienam, quia semper necessitas probandi incumbit illi qui agit. Sed et si rem obligatam creditori aliquis legaverit, necesse habet heres luere. et hoc quoque casu idem placet quod in re aliena, ut ita demum luere necesse habeat heres, si sciebat defunctus rem obligatam esse: et ita divi Severus et Antoninus rescripserunt. si tamen defunctus voluit legatarium luere et hoc expressit, non debet heres eam luere. Si res aliena legata fuerit et eius, vivo testatore, legatarius dominus factus fuerit, si quidem ex causa emptionis, ex testamento actione pretium consequi potest: si vero ex causa lucrativa, veluti ex donatione vel ex alia simili causa, agere non potest. nam traditum est, duas lucrativas causas in eundem hominem et in eandem rem concurrere non posse. hac ratione si ex duobus testamentis eadem res eidem debeatur, interest utrum rem an aestimationem ex testamento consecutus est: nam si rem, agere non potest, quia habet eam ex causa lucrativa, si aestimationem, agere potest. Ea quoque res, quae in rerum natura non est, si modo futura est, recte legatur, veluti fructus, qui in illo fundo nati erunt, aut quod ex illa ancilla natum erit.

Si eadem res duobus legata sit sive coniunctim sive disiunctim, si ambo perveniant ad legatum, scin ditur inter eos legatum: si alter deficiat, quia aut spreverit legatum aut vivo testatore decesserit aut alio quolibet modo defecerit, totum ad collegatarium pertinet. coniunctim autem legatur, veluti si quis dicat TITIO ET SEIO HOMINEM STICHUM DO LEGO: disiunctim ita TITIO HOMINEM STICHUM DO LEGO, SEIO STICHUM DO LEGO, sed et si expresserit EUNDEM HOMINEM STICHUM, aeque disiunctim legatum intellegitur.

Si cui fundus alienus legatus fuerit et emerit proprietatem detracto usufructu et ususfructus ad eum pervenerit et postea ex testamento agat, recte eum agere et fundum petere Iulianus ait, quia ususfructus in petitione servitutis locum optinet; sed officio iudicis contineri, ut deducto usufructu iubeat aestimationem praestari. Sed si rem legatarii quis ei legaverit, inutile legatum est, quia quod proprium est ipsius, amplius eius fieri non potest: et licet alienaverit eam, non debetur nec ipsa nec aestimatio eius. Si quis rem suam quasi alienam legaverit, valet legatum: nam plus valet quod in veritate est quam quod in opinione. sed et si legatarii putavit, valere constat, quia exitum voluntas defuncti potest habere. Si rem suam legaverit testator posteaque eam alienaverit, Celsus existimat, si non adimendi animo vendidit, nihilo minus deberi, idque divi Severus et Antoninus rescripserunt. iidem rescripserunt, eum qui post testamentum factum praedia quae legata erant pignori dedit ademisse legatum non videri, et ideo legatarium cum herede agere posse, ut praedia a creditore luantur. si vero quis partem rei legatae alienaverit, pars quae non est alienata omnimodo debetur, pars autem alienata ita debetur si non adimendi animo alienata sit.

Si quis debitori suo liberationem legaverit, legatum utile est, et neque ab ipso debitore neque ab herede eius potest heres petere, nec ab alio qui heredis loco est: sed et potest a debitore conveniri, ut liberet eum. potest autem quis vel ad tempus iubere, ne heres petat. Ex contrario si debitor creditori suo quod debet, legaverit, inutile est legatum, si nihil plus est in legato quam in debito, quia nihil amplius habet per legatum. quodsi in diem vel sub condicione debitum ei pure legaverit, utile est legatum propter repraesentationem. quodsi vivo testatore dies venerit aut condicio extiterit, Papinianus scripsit, utile esse nihilo minus legatum, quia semel constitit. quod et verum est: non enim placuit sententia existimantium, extinctum esse legatum, quia in eam causam pervenit, a qua incipere non potest. Sed si uxori maritus dotem legaverit, valet legatum, quia plenius est legatum quam de dote actio. sed si quam non acceperit dotem legaverit, divi Severus et Antoninus rescripserunt. si quidem simpliciter legaverit, inutile esse legatum: si vero certa pecunia vel certum corpus aut instrumentum dotis in praelegando demonstrata sunt valere legatum.

Si res legata sine facto heredis perierit, legatario decedit. et si servus alienus legatus sine facto heredis manumissus fuerit, non tenetur heres. si vero heredis servus legatus fuerit et ipse eum manumiserit, teneri eum Iulianus scripsit, nec interest, scierit an ignoraverit, a se legatum esse. sed et si alii donaverit servum, et is cui donatus est eum manumiserit, tenetur heres, quamvis ignoraverit a se eum legatum esse.

Si quis ancillas cum suis natis legaverit, etiamsi ancillae mortuae fuerint, partus legato cedunt. idem est, si ordinarii servi cum vicariis legati fuerint, ut, licet mortui sint ordinarii, tamen vicarii legato cedant. sed si servus cum peculio fuerit legatus, mortuo servo vel manumisso vel alienato, et peculii legatum extinguitur. idem est si fundus instructus vel cum instrumento legatus fuerit: nam fundo alienato et instrumenti legatum extinguitur. Si grex legatus fuerit posteaque ad unam ovem pervenerit, quod superfuerit, vindicari potest. Grege autem legato etiam eas oves quae post testamentum factum gregi adiciuntur legato cedere, Iulianus ait: esse enim gregis unum corpus ex distantibus capitibus, sicuti aedium unum corpus est ex cohaerentibus lapidibus: aedibus denique legatis, columnas et marmora quae post testamentum factum adiecta sunt legato cedere. Si peculium legatum fuerit, sine dubio quidquid peculio accedit vel decedit vivo testatore legatarii lucro vel damno est. quodsi post mortem testatoris ante aditam hereditatem servus adquisierit, Iulianus ait, si quidem ipsi manumisso peculium legatum fuerit, omne quod ante aditam hereditatem adquisitum est legatario cedere, quia dies huius legati ab adita hereditate cedit: sed si extraneo peculium legatum fuerit, non cedere ea legata, nisi ex rebus peculiaribus auctum fuerit. peculium autem nisi legatum fuerit, manumisso non debetur, quamvis si vivus manumiserit, sufficit si non adimatur: et ita divi Severus et Antoninus rescripserunt. iidem rescripserunt, peculio legato, non videri id relictum, ut petitionem habeat pecuniae quam in rationes dominicas impendit. iidem rescripserunt, peculium videri legatum, cum rationibus redditis liber esse iussus est et ex eo reliquas inferre.

Tam autem corporales res quam incorporales legari possunt. et ideo quod defuncto debetur potest alicui legari, ut actiones suas heres legatario praestet, nisi exegerit vivus testator pecuniam: nam hoc casu legatum extinguitur. sed et tale legatum valet: DAMNAS ESTO HERES DOMUM ILLIUS REFICERE vel ILLUM AERE ALIENO LIBERARE.

Si generaliter servus vel alia res legetur, electio legatarii est, nisi aliud testator dixerit. Optionis legatum, id est ubi testator ex servis suis vel aliis rebus optare legatarium iusserat, habebat in se condicionem, et ideo nisi ipse legatarius vivus optaverat, ad heredem legatum non transmittebat. sed ex constitutione nostra et hoc in meliorem statum reformatum est et data est licentia et heredi legatarii optare licet vivus legatarius hoc non fecit. et diligentiore tractatu habito, et hoc in nostra constitutione additum est, ut, sive plures legatarii existant, quibus optio relicta est, et dissentiant in corpore eligendo, sive unius legatarii plures heredes, et inter se circa optandum dissentiant, alio aliud corpus eligere cupiente, ne pereat legatum (quod plerique prudentium contra benevolentiam introducebant), fortunam esse huius optionis iudicem et sorte esse hoc dirimendum, ut, ad quem sors perveniat, illius sententia in optione praecellat.

Legari autem illis solis potest, cum quibus testamenti factio est. Incertis vero personis neque legata neque fideicommissa olim relinqui concessum erat: nam nec miles quidem incertae personae poterat relinquere, ut divus Hadrianus rescripsit. incerta autem persona videbatur quam incerta opinione animo suo testator subiciebat, veluti si quis ita dicat: QUICUMQUE FILIO MEO IN MATRIMONIUM FILIAM SUAM COLLOCAVERIT, EI HERES MEUS ILLUM FUNDUM DATO: illud quoque, quod his relinquebatur qui post testamentum scriptum primi consules designati erunt aeque incertae personae legari videbatur: et denique multae aliae huiusmodi species sunt. libertas quoque non videbatur posse incertae personae dari, quia placebat nominatim servos liberari. tutor quoque certus dari debebat. sub certa vero demonstratione, id est ex certis personis incertae personae recte legabatur, veluti EX COGNATIS MEIS, QUI NUNC SUNT, SI QUIS FILIAM MEAM UXOREM DUXERIT, EI HERES MEUS ILLAM REM DATO. incertis autem personis legata vel fideicommissa relicta et per errorem soluta repeti non posse, sacris constitutionibus cautum erat. Postumo quoque alieno inutiliter legabatur: est autem alienus postumus qui natus inter suos heredes testatoris futurus non est: ideoque ex emancipato filio conceptus nepos extraneus erat postumus avo. Sed nec huiusmodi species penitus est sine iusta emendatione derelicta, cum in nostro codice constitutio posita est, per quam et huic parti medevimus non solum in hereditatibus, sed etiam in legatis et fideicommissis: quod evidenter ex ipsius constitutionis lectione clarescit. tutor autem nec per nostram constitutionem incertus dari debet, quia certo iudicio debet quis pro tutela suae posteritati cavere. Postumus autem alienus heres institui et antea poterat et nunc potest, nisi in utero eius sit quae iure nostra uxor esse non potest.

Si quis in nomine, cognomine, praenomine legatarii erraverit testator, si de persona constat, nihilo minus valet legatum. idem in heredibus servatur: et recte; nomina enim significandorum hominum gratia reperta sunt, qui si quolibet alio modo intellegantur, nihil interest. Huic proxima est illa iuris regula, falsa demonstratione legatum non peremi, veluti si quis ita legaverit STICHUM SERVUM MEUM VERNAM DO LEGO: licet enim non verna sed emptus sit, de servo tamen constat, utile est legatum. et convenienter si ita demonstraverit STICHUM SERVUM, QUEM A SEIO EMI, sitque ab alio emptus, utile legatum est, si de servo constat. Longe magis legato falsa causa non nocet. veluti cum ita quis dixerit: TITIO, QUIA ABSENTE ME NEGOTIA MEA CURAVIT, STICHUM DO LEGO, vel ita: TITIO, QUIA PATROCINIO EIUS CAPITALI CRIMINE LIBERATUS SUM, STICHUM DO LEGO: licet enim neque negotia testatoris umquam gessit Titius neque patrocinio eius liberatus est, legatum tamen valet. sed si condicionaliter enuntiata fuerit causa, aliud iuris est. veluti hoc modo: TITIO, SI NEGOTIA MEA CURAVIT, FUNDUM DO LEGO.

An servo heredis recte legamus, quaeritur. et constat, pure inutiliter legari, nec quidquam proficere si vivo testatore de potestate heredis exierit, quia quod inutile foret legatum, si statim post factum testamentum decessisset testator, hoc non debet ideo valere, quia diutius testator vixerit. sub condicione vero recte legatur, ut requiramus, an, quo tempore dies legati cedit, in potestate heredis non sit. Ex diverso herede instituto servo, quin domino recto etiam sine condicione legetur, non dubitatur. nam et si statim post factum testamentum decesserit testator, non tamen apud eum qui heres sit dies legati cedere intellegitur, cum hereditas a legato separata sit et possit per eum servum alius heres effici, si prius quam iussu domini adeat in alterius potestatem translatus sit, vel manumissus ipse heres efficitur: quibus casibus utile est legatum: quodsi in eadem causa permanserit et iussu legatarii adierit, evanescit legatum.

Ante heredis institutionem inutiliter antea legabatur, scilicet quia testamenta vim ex institutione heredum accipiunt et ob id veluti caput atque fundamentum intellegitur totius testamenti heredis institutio. pari ratione nec libertas ante heredis institutionem dari poterat. sed quia incivile esse putavimus, ordinem quidem scripturae sequi (quod et ipsi antiquitati vituperandum fuerat visum), sperni autem testatoris voluntatem: per nostram constitutionem et hoc vitium emendavimus, ut liceat et ante heredis institutionem et inter medias heredum institutiones legatum relinquere et multo magis libertatem, cuius usus favorabilior est.

Post mortem quoque heredis aut legatarii simili modo inutiliter legabatur: veluti si quis ita dicat: CUM HERES MEUS MORTUUS ERIT, DO LEGO: item PRIDIE QUAM HERES AUT LEGATARIUS MORIETUR. Sed simili modo et hoc correximus, firmitatem huiusmodi legatis ad fideicommissorum similitudinem praestantes, ne vel in hoc casu deterior causa legatorum quam fideicommissorum inveniatur.

Poenae quoque nomine inutiliter legabatur et adimebatur vel transferebatur. poenae autem nomine legari videtur quod coercendi heredis causa relinquitur, quo magis is aliquid faciat aut non faciat: veluti si quis ita scripserit: HERES MEUS SI FILIAM SUAM IN MATRIMONIUM TITIO COLLOCAVERIT (vel ex diverso SI NON COLLOCAVERIT), DATO DECEM AUREOS SEIO, aut si ita scripserit: HERES MEUS SI SERVUM STICHUM ALIENAVERIT (vel ex diverso SI NON ALIENAVERIT), TITIO DECEM AUREOS DATO. et in tantum haec regula observabatur, ut perquam pluribus principalibus constitutionibus significetur nec principem quidem agnoscere quod ei poenae nomine legatum sit. nec ex militis quidem testamento talia legata valebant, quamvis alias militum voluntates in ordinandis testamentis valde observantur. quin etiam nec libertatem poenae nomine dari posse placebat. eo amplius nec heredem poenae nomine adici posse Sabinus existimabat, veluti si quis ita dicat: TITIUS HERES ESTO: SI TITIUS FILIAM SUAM SEIO IN MATRIMONIUM COLLOCAVERIT, SEIUS QUOQUE HERES ESTO: nihil enim intererat, qua ratione Titius coerceatur, utrum legati datione an coheredis adiectione. at huiusmodi scrupulositas nobis non placuit, et generaliter ea quae relinquuntur, licet poenae nomine fuerint relicta vel adempta vel in alios translata, nihil distare a ceteris legatis constituimus vel in dando vel in adimendo vel in transferendo: exceptis his videlicet quae impossibilia sunt vel legibus interdicta aut alias probrosa: huiusmodi enim testatorum dispositiones valere, secta temporum meorum non patitur.

LIB. II, TIT. XXI.
DE ADEMPTIONE LEGATORUM.

Ademptio legatorum, sive eodem testamento adimantur sive codicillis, firma est, sive contrariis verbis fiat ademptio, veluti si quod ita quis legaverit DO LEGO ita adimatur NON DO NON LEGO, sive non contrariis, id est aliis quibuscumque verbis. Transferri quoque legatum ab alio ad alium potest, veluti si quis ita dixerit: HOMINEM STICHUM, QUEM TITIO LEGAVI, SEIO DO LEGO, sive in eodem testamento sive in codicillis hoc fecerit: quo casu simul Titio adimi videtur et Seio dari.

LIB. II, TIT. XXII.
DE LEGE FALCIDIA.

Superest ut de lego Falcidia dispiciamus, qua modus novissime legatis impositus est. cum enim olim lege duodecim tabularum libera erat legandi potestas, ut liceret vel totum patrimonium legatis erogare (quippe ea lege ita cautum esset: "uti legassit suae rei, ita ius esto"): visum est hanc legandi licentiam coartare, idque ipsorum testatorum gratia provisum est, ob id quod plerumque intestati moriebantur, recusantibus scriptis heredibus pro nullo aut minimo lucro hereditates adire. et cum super hoc tam lex Furia quam lex Voconia latae sunt, quarum neutra sufficiens ad rei consummationem videbatur: novissime lata est lex Falcidia, qua cavetur, ne plus legare liceat quam dodrantem totorum bonorum, id est ut, sive unus heres institutus esset sive plures, apud eum eosve pars quarta remaneret.

Et cum quaesitum esset, duobus heredibus institutis, veluti Titio et Seio, si Titii pars aut tota exhausta sit legatis quae nominatim ab eo data sunt, aut supra modum onerata, a Seio vero aut nulla relicta sint legata, aut quae partem eius dumtaxat in partem dimidiam minuunt, an, quia is quartam partem totius hereditatis aut amplius habet, Titio nihil ex legatis quae ab eo relicta sunt retinere liceret: placuit, ut quartam partem suae partis salvam habeat, posse retinere: etenim in singulis heredibus ratio legis Falcidiae ponenda est. Quantitas autem patrimonii, ad quam ratio legis Falcidiae redigitur, mortis tempore spectatur. itaque si verbi gratia is qui centum aureorum patrimonium habebat centum aureos legaveri, nihil legatariis prodest, si ante aditam hereditatem, per servos hereditarios aut ex partu ancillarum hereditariarum aut ex fetu pecorum, tantum accesserit hereditati ut, centum aureis legatorum nomine erogatis, heres quartam partem hereditatis habiturus sit, sed necesse est ut nihilo minus quarta pars legatis detrahatur. ex diverso si septuaginta quinque legaverit et ante aditam hereditatem in tantum decreverint bona, incendiis forte aut naufragiis aut morte servorum, ut non amplius quam septuaginta quinque aureorum substantia vel etiam minus relinquatur, solida legata debentur. nec ea res damnosa est heredi, cui liberum est non adire hereditatem: quae res efficit ut necesse sit legatariis, ne destituto testamento nihil consequantur, cum herede in portione pacisci. Cum autem ratio legis Falcidiae ponitur, ante deducitur aes alienum, item funeris impensa et pretia servorum manumissorum, tunc deinde in reliquo ita ratio habetur, ut ex eo quarta pars apud heredes remaneat, tres vero partes inter legatarios distribuantur, pro rata scilicet portione eius quod cuique eorum legatum fuerit. itaque si fingamus, quadringentos aureos legatos esse, et patrimonii quantitatem, ex qua legata erogari oportet, quadringentorum esse, quarta pars singulis legatariis detrahi debet. quodsi trecentos quinquaginta legatos fingamus, octava debet detrahi. quodsi quingentos legaverit, initio quinta, deinde quarta detrahi debet: ante enim detrahendum est quod extra bonorum quantitatem est, deinde quod ex bonis apud heredem remanere oportet.

LIB. II, TIT. XXIII.
DE FIDEICOMMISSARIIS HEREDITATIBUS.

Nunc transeamus ad fideicommissa. et prius de hereditatibus fideicommissariis videamus.

Sciendum itaque est, omnia fideicommissa primis temporibus infirma esse quia nemo invitus cogebatur praestare id de quo rogatus erat: quibus enim non poterant hereditates vel legata relinquere, si relinquebant, fidei committebant eorum qui capere ex testamento poterant: et ideo fideicommissa appellata sunt, quia nullo vinculo iuris, sed tantum pudore eorum qui rogabantur, continebantur. postea primus divus Augustus semel iterumque gratia personarum motus, vel quia per ipsius salutem rogatus quis diceretur, aut ob insignem quorundam perfidiam iussit consulibus auctoritatem suam interponere. quod, quia iustum videbatur et populare erat, paulatim conversum est in adsiduam iurisdictionem: tantusque favor eorum factus est, ut paulatim etiam praetor proprius crearetur, qui fideicommissis ius diceret, quem fideicommissarium appellabant.

Inprimis igitur sciendum est, opus esse ut aliquis recto iure testamento heres instituatur, eiusque fidei committatur ut eam hereditatem alii restituat: alioquin inutile est testamentum in quo nemo heres instituitur. cum igitur aliquis scripserit: LUCIUS TITIUS HERES ESTO, poterit adicere: ROGO TE, LUCI TITI, UT, CUM PRIMUM POSSIS HEREDITATEM MEAM ADIRE, EAM GAIO SEIO REDDAS, RESTITUAS. potest autem quisque et de parte restituenda heredem rogare: et liberum est vel pure vel sub condicione relinquere fideicommissum vel ex die certo.

Restituta autem hereditate is quidem qui restituit nihilo minus heres permanet: is vero qui recipit hereditatem aliquando heredis aliquando legatarii loco habebatur. Et in Neronis quidem temporibus Trebellio Maximo et Annaeo Seneca consulibus senatusconsultum factum est. quo cautum est ut, si cui hereditas ex fideicommissi causa restituta sit, omnes actiones quae iure civili heredi et in heredem competerent, ei et in eum darentur cui ex fideicommisso restituta esset hereditas. post quod senatusconsultum praetor utilos actiones ei et in eum qui recepit hereditatem, quasi heredi et in heredem dare coepit.

Sed quia heredes scripti, cum aut totam hereditatem aut paene totam plerumque restituere rogabantur, adire hereditatem ob nullum vel minimum lucrum recusaban, atque ob id extinguebantur fideicommissa; postea Vespasiani Augusti temporibus Pegaso et Pusione consulibus senatus censuit, ut ei qui rogatus esset hereditatem restituere perinde liceret quartam partem retinere, atque lege Falcidia ex legatis retinere conceditur. ex singulis quoque rebus quae per fideicommissum relinquuntur eadem retentio permissa est. post quod senatusconsultum ipse heres onera hereditaria sustinebat: ille autem qui ex fideicommisso recepit partem hereditatis legatarii partiarii loco erat, id est, eius legatarii cui pars bonorum legabatur. quae species legati partitio vocabatur, quia cum herede legatarius partiebatur hereditatem. unde quae solebant stipulationes inter heredem et partiarium legatarium interponi, eaedem interponebantur inter eum qui ex fideicommisso recepit hereditatem et heredem, id est ut et lucrum et damnum hereditarium pro rata parte inter eos commune sit. Ergo si quidem non plus quam dodrantem hereditatis scriptus heres rogatus sit restituere, tunc ex Trebelliano senatusconsulto restituebatur hereditas et in utrumque actiones hereditariae pro rata parte dabantur: in heredem quidem iure civili, in eum vero qui recipiebat hereditatem, ex senatusconsulto Trebelliano tamquam in heredem. at si plus quam dodrantem vel etiam totam hereditatem restituere rogatus sit, locus erat Pegasiano senatusconsulto, et heres qui semel adierit hereditatem si modo sua voluntate adierit, sive retinuerit quartam partem sive noluerit retinere, ipse universa onera hereditaria sustinebat. sed quarta quidem retenta, quasi partis et pro parte stipulationes interponebantur tamquam inter partiarium legatarium et heredem: si vero totam hereditatem restituerit, emptae et venditae hereditatis stipulationes interponebantur. sed si recuset scriptus heres adire hereditatem ob id quod dicat eam sibi suspectam esse quasi damnosam, cavetur Pegasiano senatusconsulto ut, desiderante eo cui restituere rogatus est, iussu praetoris adeat et restituat hereditatem, perindeque ei et in eum qui recipit hereditatem actiones dentur, acsi iuris est ex Trebelliano senatusconsulto: quo casu nullis stipulationibus opus est, quia simul et huic qui restituit securitas datur, et actiones hereditariae ei et in eum transferuntur qui recipit hereditatem, utroque senatusconsulto in hac specie concurrente.

Sed quia stipulationes ex senatusconsulto Pegasiano descendentes et ipsi antiquitati displicuerunt et quibusdam casibus captiosas eas homo excelsi ingenii Papinianus appellat et nobis in legibus magis simplicitas quam difficultas placet, ideo omnibus nobis suggestis tam similitudinibus quam differentiis utriusque senatusconsulti, placuit exploso senatusconsulto Pegasiano, quod postea supervenit, omnem auctoritatem Trebelliano senatusconsulto praestare, ut ex eo fideicommissariae hereditates restituantur, sive habeat heres ex voluntate testatoris quartam sive plus sive minus sive penitus nihil, ut tunc, quando vel nihil vel minus quarta apud eum remaneat, liceat ei vel quartam vel quod deest, ex nostra auctoritate retinere vel repetere solutum, quasi ex Trebelliano senatusconsulto pro rata portione actionibus tam in heredem quam in fideicommissarium competentibus, si vero totam hereditatem sponte restituerit, omnes hereditariae actiones fideicommissario et adversus eum competunt; sed etiam id quod praecipuum Pegasiani senatusconsulti fuerat, ut, quando recusabat heres scriptus sibi datam hereditatem adire, necessitas ei imponeretur totam hereditatem volenti fideicommissario restituere, et omnes ad eum et contra eum transirent actiones, et hoc transposuimus ad senatusconsultum Trebellianum, ut ex hoc solo et necessitas heredi imponatur, si ipso nolente adire fideicommissarius desiderat restitui sibi hereditatem, nullo nec damno nec commodo apud heredem manente. Nihil autem interest, utrum aliquis ex asse heres institutus aut totam hereditatem aut pro parte restituere regatur, an ex parte heres institutus aut totam partem aut partis partem restituere rogatur: nam et hoc casu eadem observari praecepimus, quae in totius hereditatis restitutione diximus. Si quis una aliqua re deducta sive praecepta quae quartam continet, veluti fundo vel alia re, rogatus sit restituere hereditatem, simili modo ex Trebelliano senatusconsulto restitutio fiat, perinde ac si quarta parte retenta rogatus esset reliquam hereditatem restituere. sed illud interest, quod altero casu, id est cum deducta sive praecepta aliqua re restituitur hereditas, in solidum ex eo senatusconsulto actiones transferuntur, et res quae remanet apud heredem sine ullo onere hereditario apud eum manet, quasi ex legato ei adquisita, altero vero casu, id est cum, quarta parte retenta, rogatus est heres restituere hereditatem et restituit, scindantur actiones et pro dodrante quidem transferantur ad fideicommissarium, pro quadrante remaneant apud heredem. quin etiam licet in una re, qua deducta aut praecepta restituere aliquis hereditatem rogatus est, maxima pars hereditatis contineatur, aeque in solidum transferuntur actiones et secum deliberare debet is cui restituitur hereditas an expediat sibi restitui. eadem scilicet interveniunt et si duabus pluribusve rebus deductis praeceptisve restituere hereditatem rogatus sit. sed et si certa summa deducta praeceptave, quae quartam vel etiam maximam partem hereditatis continet, rogatus sit aliquis hereditatem restituere, idem iuris est. quae diximus de eo qui ex asse heres institutus est, eadem transferimus et ad eum qui ex parte heres scriptus est.

Praeterea intestatus quoque moriturus potest rogare eum ad quem bona sua vel legitimo iure vel honorario pertinere intellegit, ut hereditatem suam totam partemve eius aut rem aliquam, veluti fundum, hominem, pecuniam, alicui restituat: cum alioquin legata nisi ex testamento non valeant. Eum quoque cui aliquid restituitur potest rogare ut id rursus alii totum aut partem vel etiam aliud aliquid restituat. Et quia prima fideicommissorum cunabula a fide heredum pendent et tam nomen quam substantiam acceperunt, et ideo divus Augustus ad necessitatem iuris ea detraxit: nuper et nos, eundem principem superare contendentes, ex facto quod Tribonianus vir excelsus quaestor sacri palatii suggessit, constitutionem fecimus, per quam disposuimus: si testator fidei heredis sui commisit, ut vel hereditatem vel speciale fideicommissum restituat et neque ex scriptura neque ex quinque testium numero, qui in fideicommissis legitimus esse noscitur, res possit manifestari, sed vel pauciores quam quinque vel nemo penitus testis intervenerit, tunc sive pater heredis sive alius quicumque sit, qui fidem elegit heredis et ab eo aliquid restitui voluerit, si heres perfidia tentus adimplere fidem recusat, negando rem ita esse subsecutam, si fideicommissarius iusiurandum ei detulerit, cum prius ipse de calumnia iuraverit, necesse eum habere vel iusiurandum subire, quod nihil tale a testatore audivit, vel recusantem ad fideicommissi vel universitatis vel specialis solutionem coartari, ne depereat ultima voluntas testatoris fidei heredis commissa. eadem observari censuimus et si a legatario vel fideicommissario aliquid similiter relictum sit. quodsi is a quo relictum dicitur confiteatur quidem aliquid a se relictum esse, sed ad legis subtilitatem decurrat, omnimodo cogendus est solvere.

LIB. II, TIT. XXIV.
DE SINGULIS REBUS PER FIDEICOMMISSUM RELICTIS.

Potest autem quis etiam singulas res per fideicommissum relinquere, veluti fundum, hominem, vestem, argentum, pecuniam numeratam, et vel ipsum heredem rogare ut alicui restituat, vel legatarium quamvis a legatario legari non possit. Potest autem non solum proprias testator res per fideicommissum relinquere, sed et heredis aut legatarii aut fideicommissarii aut cuiuslibet alterius. itaque et legatarius et fideicommissarius non solum de ea re rogari potest, ut eam alicui restituat, quae ei relicta sit, sed etiam de alia, sive ipsius sive aliena sit. hoc solum observandum est, ne plus quisquam rogetur alicui restituere quam ipse ex testamento ceperit; nam quod amplius est inutiliter relinquitur. cum autem aliena res per fideicommissum relinquitur, necesse est ei qui rogatus est aut ipsam redimere et praestare aut aestimationem eius solvere. Libertas quoque servo per fideicommissum dari potest, ut heres eum rogetur manumittere vel legatarius vel fideicommissarius. nec interest, utrum de suo proprio servo testator roget, an de eo qui ipsius heredis aut legatarii vel etiam extranei sit. itaque alienus servus redimi et manumitti debet: quodsi dominus eum non vendat, si modo nihil ex iudicio eius qui reliquit libertatem percepit, non statim extinguitur fideicommissaria libertas, sed differtur, quia possit tempore procedente, ubicumque occasio redimendi servi fuerit, praestari libertas. qui autem ex causa fideicommissi manumittitur, non testatoris fit libertus, etiamsi testatoris servus sit, sed eius qui manumittit: at is qui directo testamento liber esse iubetur, ipsius testatoris fit libertus, qui etiam orcinus appellatur. nec alius ullus directo ex testamento libertatem habere potest quam qui utroque tempore testatoris fuerit, et quo faceret testamentum et quo moreretur. directo autem libertas tunc dari videtur, cum non ab alio servum manumitti rogat, sed velut ex suo testamento libertatem ei competere vult.

Verba autem fideicommissorum haec maxime in usu habentur; PETO, ROGO, VOLO, MANDO, FIDEI TUAE COMMITTO. quae perinde singula firma sunt atque si omnia in unum congesta essent.

LIB. II, TIT. XXV.
DE CODICILLIS.

Ante Augusti tempora constat ius codicillorum non fuisse, sed primus Lucius Lentulus, ex cuius persona etiam fideicommissa coeperunt, codicillos introduxit. nam cum decederet in Africa scripsit codicillos testamento confirmatos, quibus ab Augusto petiit per fideicommissum ut faceret aliquid: et cum divus Augustus voluntatem eius implesset, cuius deinceps reliqui auctoritatem secuti, fideicommissa praestabant, et filia Lentuli legata quae iure non debebat solvit, dicitur Augustus convocasse prudentes, inter quos Trebatium quoque, cuius tunc auctoritas maxima erat, et quaesisse, an possit hoc recipi nec absonans a iuris ratione codicillorum usus esset: et Trebatium suasisse Augusto, quod diceret, utilissimum et necessarium hoc civibus esse propter magnas et longas peregrinationes, quae apud veteres fuissent, ubi, si quis testamentum facere non posset, tamen codicillos posset. post quae tempora cum et Labeo codicillos fecisset, iam nemini dubium erat quin codicilli iure optimo admitterentur.

Non tantum autem testamento facto potest quis codicillos facere, sed et intestatus quis decedens fideicommittere codicillis potest. sed cum ante testamentum factum codicilli facti erant, Papinianus ait, non aliter vires habere quam si speciali postea voluntate confirmentur. sed divi Severus et Antoninus rescripserunt, ex his codicillis qui testamentum praecedunt posse fideicommissum peti, si appareat eum qui postea testamentum fecerat a voluntate quam codicillis expresserat non recessisse. Codicillis autem hereditas neque dari neque adimi potest, ne confundatur ius testamentorum et codicillorum, et ideo nec exheredatio scribi. directo autem hereditas codicillis neque dari neque adimi potest: nam per fideicommissum hereditas codicillis iure relinquitur. nec condicionem heredi instituto codicillis adicere neque substituere directo potest. Codicillos autem etiam plures quis facere potest: et nullam sollemnitatem ordinationis desiderant.

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LIB. III, TIT. I.
DE HEREDITATIBUS QUAE AB INTESTATO DEFERUNTUR.

Intestatus decedit qui aut omnino testamentum non fecit, aut non iure fecit, aut id quod fecerat ruptum irritumve factum est, aut nemo ex eo heres extitit.

Intestatorum autem hereditates ex lege duodecim tabularum primum ad suos heredes pertinent. Sui autem heredes existimantur, ut et supra diximus, qui in potestate morientis fuerunt: veluti filius filia, nepos neptisve ex filio, pronepos proneptisve ex nepote filio nato prognatus prognatave. nec interest, utrum naturales sunt liberi an adoptivi. Quibus connumerari necesse est etiam eos qui ex legitimis quidem matrimoniis non sunt progeniti, curiis tamen civitatum dati, secundum divalium constitutionum quae super his positae sunt tenorem, suoram iura nanciscuntur: nec non eos quos nostrae amplexae sunt constitutiones, per quas iussimus, si quis mulierem in suo contubernio copulaverit non ab initio affectione maritali, eam tamen cum qua poterat habere coniugium, et ex ea liberos sustulerit, postea vero affectione procedente etiam nuptialia instrumenta cum ea fecerit filiosque vel filias habuerit: non solum eos liberos qui post dotem editi sunt iustos et in potestate esse patribus, sed etiam anteriores, qui et his qui postea nati sunt occasionem legitimi nominis praestiterunt: quod optinere censuimus, etiamsi non progeniti fuerint post dotale instrumentum confectum liberi, vel etiam nati ab hac luce subtracti fuerint.

Ita demum tamen nepos neptisve et pronepos proneptisve suorum heredum numero sunt, si praecedens persona desierit in potestate parentis esse, sive morte id acciderit sive alia ratione, veluti emancipatione: nam si per id tempus quo quis moreretur filius in potestate eius sit, nepos ex eo suus heres esse non potest. idque et in ceteris deinceps liberorum personis dictum intellegimus. postumi quoque, qui, si vivo parente nati essent in potestate futuri forent, sui heredes sunt. Sui autem etiam ignorantes fiunt heredes et, licet furiosi sint, heredes possunt existere: quia quibus ex causis ignorantibus adquiritur nobis, ex his causis et furiosis adquiri potest. et statim morte parentis quasi continuatur dominium: et ideo nec tutoris auctoritate opus est in pupillis, cum etiam ignorantibus adquiritur suis heredibus hereditas: nec curatoris consensu adquiritur furioso, sed ipso iure.

Interdum autem, licet in potestate mortis tempore suus heres non fuit, tamen suus heres parenti efficitur, veluti si ab hostibus quis reversus fuerit post mortem patris sui: ius enim postliminii hoc facit. Per contrarium evenit, ut, licet quis in familia defuncti sit mortis tempore, tamen suus heres non fiat, veluti si post mortem suam pater iudicatus fuerit reus perduellionis, ac per hoc memoria eius damnata fuerit: suum enim heredem habere non potest, cum fiscus ei succedit. sed potest dici, ipso iure esse suum heredem. sed desinere.

Cum filius filiave et ex altero filio nepos neptisve extant, pariter ad hereditatem vocantur, nec qui gradu proximior est ulteriorem excludit: aequum enim esse videtur, nepotes neptesque in patris sui locum succedere. pari ratione et si nepos neptisque sit ex filio et ex nepote pronepos proneptisve, simul vocantur. et quia placuit, nepotes neptesque, item pronepotes proneptesque in parentis sui locum succedere, conveniens esse visum est, non in capita, sed in stirpes hereditatem dividi, ut filius partem dimidiam hereditatis habeat et ex altero filio duo pluresve nepotes alteram dimidiam. item si ex duobus filiis nepotes extant et ex altero unus forte aut duo, ex altero tres aut quattuor, ad unum aut duos dimidia pars pertinet, ad tres vel ad quattuor altera dimidia.

Cum autem quaeritur, an quis suus heres existere potest: eo tempore quaerendum est quo certum est aliquem sine testamento decessisse: quod accidit et destituto testamento. hac ratione si filius exheredatus fuerit et extraneus heres institutus est, filio mortuo postea certum fuerit heredem institutum ex testamento non fieri heredem, aut quia noluit esse heres aut quia non potuit, nepos avo suus heres existet, quia quo tempore certum est intestatum decessisse patremfamilias, solus invenitur nepos. et hoc certum est. Et licet post mortem avi natus sit, tamen avo vivo conceptus, mortuo patre eius posteaque deserto avi testamento, suus heres efficitur. plane si et conceptus et natus fuerit post mortem avi, mortuo patre suo desertoque postea avi testamento, suus heres avo non existit, quia nullo iure cognationis patrem sui patris tetigit. sic nec ille est inter liberos avo quem fillus emancipatus adoptaverat. hi autem cum non sunt quantum ad hereditatem liberi, neque bonorum possessionem petere possunt quasi proximi cognati. haec de suis heredibus.

Emancipati autem liberi iure civili nihil iuris habent: neque enim sui heredes sunt, quia in potestate esse desierunt parentis, neque alio ullo iure per legem duodecim tabularum vocantur. sed praetor naturali aequitate motus dat eis bonorum possessionem unde liberi, perinde ac si in potestate parentis mortis tempore fuissent, sive soli sint sive cum suis heredibus concurrant. itaque duobus liberis extantibus, emancipato et qui mortis tempore in potestate fuerit, sane quidem is qui in potestate fuerit solus iure civili heres est, id est solus suus heres est: sed cum emancipatus beneficio praetoris in partem admittitur, evenit ut suus heres pro parte heres fiat. At hi qui emancipati a parente in adoptionem se dederunt non admittuntur ad bona naturalis patris quasi liberi, si modo cum is moreretur in adoptiva familia sint. nam vivo eo emancipati ab adoptivo patre perinde admittuntur ad bona naturalis patris, ac si emancipati ab ipso essent nec umquam in adoptiva familia fuissent: et convenienter, quod ad adoptivum patrem pertinet, extraneorum loco esse incipiunt. post mortem vero naturalis patris emancipati ab adoptivo et quantum ad hunc aeque extraneorum loco fiunt, et quantum ad naturalis parentis bona pertinet, nihilo magis liberorum gradum nanciscuntur: quod ideo sic placuit, quia iniquum erat esse in potestate patris adoptivi, ad quos bona naturalis patris pertinerent, utrum ad liberos eius an ad adgnatos.

Minus ergo iuris habent adoptivi filii quam naturales. namque naturales emancipati beneficio praetoris gradum liberorum retinent, licet iure civili perdunt: adoptivi vero emancipati et iure civili perdunt gradum liberorum et a praetore non adiuvantur. et recte: naturalia enim iura civilis ratio peremere non potest, nec quia desinunt sui heredes esse, desinere possunt filii filiaeve aut nepotes neptesve esse: adoptivi vero emancipati extraneorum loco incipiunt esse, quia ius nomenque filii filiaeve, quod per adoptionem consecuti sunt, alia civili ratione, id est emancipatione, perdunt. Eadem haec observantur et in ea bonorum possessione quam contra tabulas testamenti parentis liberis praeteritis. id est neque heredibus institutis, neque ut oportet exheredatis, praetor pollicetur. nam eos quidem qui in potestate parentis mortis tempore fuerunt et emancipatos vocat praetor ad eam bonorum possessionem: eos vero qui in adoptiva familia fuerunt per hoc tempus quo naturalis parens moreretur, repellit. item adoptivos liberos emancipatos ab adoptivo patre, sicut ab intestato ita longe minus contra tabulas testamenti, ad bona eius admittit, quia desinunt in liberorum numero esse. Admonendi tamen sumus, eos qui in adoptiva familia sunt, quive post mortem naturalis parentis ab adoptivo patre emancipati fuerint, intestato parente naturali mortuo, licet ea parte edicti qua liberi ad bonorum possessionem vocantur non admittantur, alia tamen parte vocari, id est qua cognati defuncti vocantur. ex qua parte ita admittuntur si neque sui heredes liberi neque emancipati obstent neque adgnatus quidem ullus interveniat: ante enim praetor liberos vocat tam suos heredes quam emancipatos, deinde legitimos heredes, deinde proximos cognatos.

Sed ea omnia antiquitati quidem placuerunt: aliquam autem emendationem a nostra constitutione acceperunt, quam super his personis posuimus quae a patribus suis naturalibus in adoptionem aliis dantur. invenimus etenim nonnullos casus, in quibus filii et naturalium parentum successionem propter adoptionem amittebant et, adoptione facile per emancipationem soluta, ad neatrius patris successionem vocabantur. hoc solito more corrigentes, constitutionem scripsimus per quam definivimus, quando parens naturalis filium suum adoptandum alii dederit, integra omnia iura ita servari atque si in patris naturalis potestate permansisset nec penitus adoptio fuerit subsecuta: nisi in hoc tantummodo casu, ut possit ab intestato ad patris adoptivi venire successionem. testamento autem ab eo facto neque iure civili neque praetorio aliquid ex hereditate eius persequi potest neque contra tabulas bonorum possessione agnita neque inofficiosi querela instituta, cum nec necessitas patri adoptivo imponitur vel heredem eum instituere vel exheredatum facere, utpote nullo naturali vinculo copulatum: neque si ex Sabiniano senatusconsulto ex tribus maribus fuerit adoptatus, nam et in huiusmodi casu neque quarta ei servatur nec ulla actio ad eius persecutionem ei competit. nostra autem constitutione exceptus est is quem parens naturalis adoptandum susceperit: utroque enim iure tam naturali quam legitimo in hanc personam concurrente, pristina iura tali adoptioni servavimus, quemadmodum si paterfamilias sese dederit adrogandum. quae specialiter et singillatim ex praefatae constitutionis tenore possunt colligi.

Item vetustas, ex masculis progenitos plus diligens, solos nepotes vel neptes qui ex virili sexu descendunt ad suorum vocabat successionem, et iuri adgnatorum eos anteponebat: nepotes autem qui ex filiabus nati sunt et pronepotes ex neptibus cognatorum loco numerans, post adgnatorum lineam eos vocabat, tam in avi vel proavi materni quam in aviae vel proaviae sive paternae sive maternae successionem. divi autem principes non passi sunt talem contra naturam iniuriam sine competenti emendatione relinquere: sed cum nepotis et pronepotis nomen commune est utrisque qui tam ex masculis quam ex feminis descendunt, ideo eundem gradum et ordinem successionis eis donaverunt: sed ut aliquid amplius sit eis qui non solum naturae sed etiam veteris iuris suffragio muniuntur, portionem nepotum et neptium vel deinceps, de quibus supra diximus, paulo minuendam esse existimaverunt, ut minus tertiam partem acciperent quam mater eorum vel avia fuerat acceptura, vel pater eorum vel avus paternus sive maternus, quando femina mortua sit cuius de hereditate agitur, hisque, licet soli sint, adeuntibus adgnatos minime vocabant. et quemadmodum lex duodecim tabularum filio mortuo nepotes vel neptes vel pronepotes et proneptes in locum patris sui ad successionem avi vocat: ita et principalis dispositio in locum matris suae vel aviae eos cum iam designata partis tertiae deminutione vocat. Sed nos, cum adhuc dubitatio manebat inter adgnatos et memoratos nepotes, partem quartam defuncti substantiae adgnatis sibi vindicantibus ex cuiusdam constitutionis auctoritate, memoratam quidem constitutionem a nostro codice segregavimus neque inseri eam ex Theodosiano codice in eo concessimus. nostra autem constitutione promulgata toti iuri eius derogatum est et sanximus, talibus nepotibus ex filia vel pronepotibus ex nepte et deinceps superstitibus, adgnatos nullam partem mortui successionis sibi vindicare, ne hi qui ex transversa linea veniunt potiores his habeantur qui recto iure descendunt: quam constitutionem nostram obtinere secundum sui vigorem et tempora et nunc sancimus. ita tamen quemadmodum inter filios et nepotes ex filio antiquitas statuit non in capita sed in stirpes dividi hereditatem, similiter nos inter filios et nepotes ex filia distributionem fieri iubemus, vel inter omnes nepotes et neptes et alias deinceps personas, ut utraque progenies matris suae vel patris, aviae vel avi portionem sine ulla deminutione consequantur, et, si forte unus vel duo ex una parte, ex altera tres aut quattuor extent, unus aut duo dimidiam, alteri tres aut quattuor alteram dimidiam hereditatis habeant.

LIB. III, TIT. II.
DE LEGITIMA ADGNATORUM SUCCESSIONE.

Si nemo suus heres, vel eorum quos inter suos heredes praetor vel constitutiones vocant, extat aut successionem quoquo modo amplectatur: tunc ex lege duodecim tabularum ad adgnatum proximum hereditas pertinet.

Sunt autem adgnati, ut primo quoque libro tradidimus, cognati per virilis sexus personas cognatione iuncti, quasi a patre cognati. itaque eodem patre nati fratres adgnati sibi sunt, qui et consanguinei vocantur, nec requiritur an etiam eandem matrem habuerint. item patruus fratris filio et invicem is illi adgnatus est. eodem numero sunt fratres patrueles, id est qui ex duobus fratribus procreati sunt, qui etiam consobrini vocantur. qua ratione etiam ad plures gradus adgnationis pervenire poterimus. hi quoque, qui post mortem patris nascuntur, nanciscuntur consanguinitatis iura. non tamen omnibus simul adgnatis dat lex hereditatem, sed his qui tunc proximo gradu sunt cum certum esse coeperit aliquem intestatum decessisse. Per adoptionem quoque adgnationis ius consistit, veluti inter filios naturales et eos quos pater eorum adoptavit (nec dubium est, quin proprie consanguinei appellentur): item si quis ex ceteris adgnatis tuis, veluti frater aut patruus aut denique is qui longiore gradu est, aliquem adoptaverit, adgnatio inter vos esse non dubitatur.

Ceterum inter masculos quidem adgnationis iure hereditas etiam longissimo gradu ultro citroque capitur. quod ad feminas vero ita placebat ut ipsae consanguinitatis iure tantum capiant hereditatem si sorores sint, ulterius non capiant: masculi vero ad earum hereditates, etiam si longissimo gradu sint, admittantur. qua de causa fratris tui aut patrui tui filiae vel amitae tuae hereditas ad te pertinebat, tua vero ad illas non pertinebat. quod ideo ita constitutum erat, quia commodius videbatur, ita iura constitui ut plerumque hereditates ad masculos confluerent. sed quia sane iniquum erat in universum eas quasi extraneas repelli, praetor eas ad bonorum possessionem admittebat ea parte qua proximitatis nomine bonorum possessionem pollicetur: ex qua parte ita scilicet admittuntur, si neque adgnatus ullus nec proximior cognatus interveniat. Et haec quidem lex duodecim tabularum nullo modo introduxit, ased simplicitatem legibus amicam amplexa, simili modo omnes adgnatos sive masculos sive feminas cuiuscumque gradus ad similitudinem suorum invicem ad successionem vocabat: media autem iurisprudentia quae erat lege quidem duodecim tabularum iunior imperiali autem dispositione anterior, subtilitate quadam excogitata, praefatam differentiam inducebat et penitus eas a successione adgnatorum repellebat, omni alia successione incognita, donec praetores, paulatim asperitatem iuris civilis corrigentes, sive quod deest adimplentes, humano proposito alium ordinem suis edictis addiderant et, cognationis linea proximitatis nomine introducta, per bonorum possessionem eas adiuvabant et pollicebantur his bonorum possessionem quae unde cognati appellatur. Nos vero legem duodecim tabularum sequentes et eius vestigia in hac parte conservantes, laudamus quidem praetores suae humanitatis, non tamen eos inplenum causae mederi invenimus: quare etenim, uno eodemque gradu naturali concurrente et adgnationis titulis tam in masculis quam in feminis aequa lance constitutis, masculis quidem dabatur ad successionem venire omnium adgnatorum, ex adgnatis autem mulieribus nullis penitus nisi soli sorori ad adgnatorum successionem patebat aditus? ideo in plenum omnia reducentes et ad ius duodecim tabularum eandem dispositionem exaequantes, nostra constitutione sanximus:

"omnes legitimas personas, id est per virilem sexum descendentes, sive masculini sive feminini generis sunt, simili modo ad iura successionis legitimae ab intestato vocari secundum gradus sui praerogativam, nec ideo excludendas quia consanguinitatis iura sicuti germanae non habent."

Hoc etiam addendum nostrae constitutioni existimavimus, ut transferatur unus tantommodo gradus

"a iure cognationis in legitimam successionem, ut non solum fratris filius et filia secundum quod iam definivimus, ad successionem patrui sui vocentur, sed etiam germanae consanguineae vel sororis uterinae filius et filia soli, et non deinceps personae, una cum his ad iura avunculi sui perveniant, et mortuo eo qui patruus quidem est fratris sui filiis, avunculus autem sororis suae suboli, simili modo ab utroque latere succedant tamquam si omnes ex masculis descendentes legitimo iure veniant, scilicet ubi frater et soror superstites non sunt (his etenim personis praecedentibus et successionem admittentibus ceteri gradus remanent penitus semoti)":

videlicet hereditate non in stirpes, sed in capita dividenda.

Si plures sint gradus adgnatorum, aperte lex duodecim tabularum proximum vocat: itaque si verbi gratia sit frater defuncti et alterius fratris filius aut patruus, frater potior habetur. et quamvis singulari numero usa lex proximum vocet, tamen dubium non est quin et, si plures sint eiusdem gradus, omnes admittantur: nam et proprie proximus ex pluribus gradibus intellegitur et tamen dubium non est quin, licet unus sit gradus adgnatorum, pertineat ad eos hereditas. Proximus autem, si quidem nullo testamento facto quisque decesserit, per hoc tempus requiritur quo mortuus est is cuius de hereditate quaeritur. quodsi facto testamento quisquam decesserit, per hoc tempus requiritur quo certum esse coeperit, nullum ex testamento heredem extaturum: tum enim proprie quisque intellegitur intestatus decessisse. quod quidem aliquando longo tempore declaratur: in quo spatio temporis saepe accidit, ut proximiore mortuo, proximus esse incipiat qui moriente testatore non erat proximus.

Placebat autem , in eo genere percipiendarum hereditatum successionem non esse, id est quamvis proximus, qui, secundum ea quae diximus, vocatur ad hereditatem, aut spreverit hereditatem aut, antequam adeat, decesserit, nihilo magis legitimo iure sequentes admittuntur. quod iterum praetores imperfecto iure corrigentes, non in totum sine adminiculo relinquebant, sed ex cognatorum ordine eos vocabant, utpote adgnationis iure eis recluso. sed nos nihil deesse perfectissimo iuri cupientes, nostra constitutione sanximus quam de iure patronatus, humanitate suggerente, protulimus, successionem in adgnatorum hereditatibus non esse eis denegandam, cum satis absurdum erat quod cognatis a praetore apertum est hoc adgnatis esse reclusum, maxime cum in onere quidem tutelarum et primo gradu deficiente, sequens succedit, et quod in onere obtinebat non erat in lucro permissum.

Ad legitimam successionem nihilo minus vocatur etiam parens qui contracta fiducia filium vel filiam, nepotem vel neptem ac deinceps, emancipat. quod ex nostra constitutione omnimodo inducitur, ut emancipationes liberorum semper videantur contracta fiducia fieri, cum apud antiquos non aliter hoc obtinebat nisi specialiter contracta fiducia parens manumisisset.

LIB. III, TIT. III.
DE SENATUSCONSULTO TERTULLIANO.

Lex duadecim tabularum ita stricto iure utebatur et praeponebat masculorum progeniem, et eos qui per feminini sexus necessitudinem sibi iunguntur adeo expellebat, ut ne quidem inter matrem et filium filiamve ultro citroque hereditatis capiendae ius daret, nisi quod praetores ex proximitate cognatorum eas personas ad successionem bonorum possessione unde cognati accommodata vocabant.

Sed hae iuris angustiae postea emendatae sunt. et primus quidem divus Claudius matri ad solatium liberorum amissorum legitimam eorum detulit hereditatem. Postea autem senatusconsulto Tertulliano, quod divi Hadriani temporibus factum est, plenissime de tristi successione matri, non etiam aviae deferenda cautum est: ut mater ingenua trium liberorum ius habens, libertina quattuor ad bona filiorum filiarumve admittatur intestatorum mortuorum, licet in potestate parentis est, ut scilicet, cum alieno iuri subiecta est, iussu eius adeat cuius iuri subiecta est. Praeferuntur autem matri liberi defuncti, qui sui sunt quive suorum loco, sive primigradus sive ulterioris. sed et filiae suae mortuae filius vel filia opponitur ex constitutionibus matri defunctae, id est aviae suae. pater quoque utriusque, non etiam avus vel proavus, matri anteponitur, scilicet cum inter eos solos de hereditate agitur. frater autem consanguineus tam filii quam filiae excludebat matrem: soror autem consanguinea pariter cum matre admittebatur: sed si fuerat frater et soror consanguinei et mater liberis honorata, frater quidem matrem excludebat, communis autem erat hereditas ex aequis partibus fratri et sorori.

Sed nos constitutione, quam in codice nostro nomine decorato posuimus, matri subveniendum esse existimavimus, respicientes ad naturam et puerperium et periculum et saepe mortem ex hoc casu matribus illatam. ideoque impium esse credidimus, casum fortuitum in eius admitti detrimentum: si enim ingenua ter vel libertina quater non pepererit, immerito defraudabatur successione suorum liberorum; quid enim peccavit, si non plures sed paucos pepererit? et dedimus ius legitimum plenum matribus sive ingenuis sive libertinis, etsi non ter enixae fuerint vel quater, sed eum tantum vel eam qui quaeve morte intercepti sunt, ut et sic vocentur in liberorum suoram legitimam successionem. Sed cum antea constitutiones iura legitima perscrutantes partim matrem adiuvabant, partim eam praegravabant et non in solidum eam vocabant, sed in quibusdam casibus tertiam partem ei abstrahentes certis legitimis dabant personis, in aliis autem contrariam faciebant: nobis visum est, recta et simplici via matrem omnibus legitimis personis anteponi et sine ulla deminutione filiorum suorum successionem accipere, excepta fratris et sororis persona, sive consanguinei sint sive sola cognationis iura habentes, ut quemadmodum eam toto alio ordini legitimo praeposuimus, ita omnes fratres et sorores, sive legitimi sint sive non, ad capiendas hereditates simul vocemus, ita tamen ut, si quidem solae sorores cognatae vel adgnatae et mater defuncti vel defunctae supersint, dimidiam quidem mater, alteram vero dimidiam partem omnes sorores habeant, si vero matre superstite et fratre vel fratribus solis vel etiam cum sororibus sive legitima sive sola cognationis iura habentibus intestatus quis vel intestata moriatur, in capita distribuatur eius hereditas. Sed quemadmodum nos matribus prospeximus, ita eas oportet suae suboli consulere: scituris eis quod, si tutores liberis non petierint vel in locum remoti vel excusati intra annum petere neglexerint, ab eorum impuberum morientium successione merito repellentur. Licet autem volgo quaesitus sit filius filiave, potest ad bona eius mater ex Tertulliano senatusconsulto admitti.

LIB. III, TIT. IV.
DE SENATUSCONSULTO ORPHITIANO.

Per contrarium autem ut liberi ad bona matrum intestatarum admittantur, senatusconsulto Orphitiano effectum est, quod latum est Orphito et Rufo consulibus, divi Marci temporibus. et data est tam filio quam filiae legitima hereditas, etiamsi alieno iuri subiecti sunt: et praeferuntur et consanguineis et adgnatis defunctae matris. Sed cum ex hoc senatusconsulto nepotes ad aviae successionem legitimo iure non vocabantur, postea hoc constitutionibus principalibus emendatum est, ut ad similitudinem filioram filiarumque et nepotes et neptes vocentur. Sciendum autem est, huiusmodi successiones quae a Tertulliano et Orphitiano deferuntur, capitis deminutione non peremi propter illam regulam qua novae hereditates legitimae capitis deminutione non pereunt, sed illae solae quae ex lege duodecim tabularum deferantur. Novissime sciendum est, etiam illos liberos qui vulgo quaesiti sunt ad matris hereditatem ex hoc senatusconsulto admitti.

Si ex pluribus legitimis heredibus quidam omiserint hereditatem, vel morte vel alia causa impediti fuerint quominus adeant: reliquis, qui adierint, adcrescit illorum portio et, licet ante decesserint qui adierint, ad heredes tamen eorum pertinet.

LIB. III, TIT. V.
DE SUCCESSIONE COGNATORUM.

Post suos heredes, eosque quos inter suos heredes praetor et constitutiones vocant, et post legitimos (quo numero sunt adgnati et hi quos in locum adgnatorum tam supra dicta senatusconsulta quam nostra erexit constitutio) proximos cognatos praetor vocat. Qua parte naturalis cognatio spectatur. nam adgnati capite deminuti quique ex his progeniti sunt, ex lege duodecim tabularum inter legitimos non habentur, sed a praetore tertio ordine vocantur, exceptis solis tantummodo fratre et sorore emancipatis, non etiam liberis eorum quos lex Anastasiana cum fratribus integri iuris constitutis vocat quidem ad legitimam fratris hereditatem sive sororis, non aequis tamen partibus, sed cum aliqua deminutione quam facile est ex ipsius constitutionis verbis colligere, aliis vero adgnatis inferioris gradus, licet capitis deminutionem passi non sunt, tamen eos anteponit et procul dubio cognatis. Hos etiam, qui per feminini sexus personas ex transverso cognatione iunguntur, tertio gradu proximitatis nomine praetor ad successionem vocat. Liberi quoque qui in adoptiva familia sunt ad naturalium parentum hereditatem hoc eodem gradu vocantur. Vulgo quaesitos nullum habere adgnatum manifestum est, cum adgnatio a patre, cognatio sit a matre, hi autem nullum patrem habere intelleguntur. eadem ratione nec inter se quidem possunt videri consanguinei esse, quia consanguinitatis ius species est adgnationis: tantum igitur cognati sunt sibi, sicut et matris cognatis. itaque omnibus istis ea parte competit bonorum possessio qua proximitatis nomine cognati vocantur. Hoc loco et illud necessario admonendi sumus, adgnationis quidem iure admitti aliquem ad hereditatem et si decimo gradu sit, sive de lege duodecim tabularum quaeramus, sive de edicto quo praetor legitimis heredibus daturum se bonorum possessionem pollicetur. proximitatis vero nomine his solis praetor promittit bonorum possessionem qui usque ad sextum gradum cognationis sunt, et ex septimo a sobrino sobrinaque nato nataeve.

LIB. III, TIT. VI.
DE GRADIBUS COGNATIONIS.

Hoc loco necessarium est exponere quemadmodum gradus cognationis numerentur. qua in re inprimis admonendi sumus, cognationem aliam supra numerari, aliam infra, aliam ex transverso, quae etiam ex latere dicitur. superior cognatio est parentium, inferior liberorum, ex transverso fratrum sororumve, eorumque qui ex his progenerantur, et convenienter patrui, amitae, avunculi, materterae. et superior quidem et inferior cognatio a primo gradu incipit: at ea quae ex transverso numeratur, a secundo.

Primo gradu est supra pater, mater, infra filius, filia. Secundo supra avos, avia, infra nepos, neptis, ex transverso frater, soror. Tertio supra proavus, proavia. infra pronepos, proneptis, ex transverso fratris sororisque filius, filia et convenienter patruus, amita, avunculus matertera. patruus est patris frater, qui Graece πάτρως vocatur: avunculus est matris frater, qui apud Graecos proprie μήτρως appellatur: et promiscue θεῖς dicitur. amita est patris soror, matertera vero matris soror: utraque θεία vel apud quosdam τηθῖς appellatur. Quarto gradu supra abavus, abavia, infra abnepos, abneptis, ex transverso fratris sororisque nepos, neptis et convenienter patruus magnus, amita magna (id est avi frater et soror), item avunculus magnus, matertera magna (id est aviae frater et soror), consobrinus, consobrina (id est qui quaeve ex fratribus aut sororibus progenerantur). sed quidam recte consobrinos eos proprie putant dici, qui ex duabus sororibus progenerantur, quasi consororinos: eos vero qui ex duobus fratribus progenerantur proprie fratres patrueles vocari (si autem ex duobus fratribus filiae nascantur, sorores patrueles appellantur): at eos qui ex fratre et sorore propagantur amitinos proprie dici (amitae tuae filii consobrinum te appellant, tu illos amitinos). Quinto supra atavas, atavia, infra adnepos, adneptis, ex transverso fratris sororisque pronepos, proneptis et convenienter propatruus, proamita (id est proavi frater et soror), proavunculus, promatertera (id est proaviae frater et soror), item fratris patruelis, sororis patruelis, consobrini et consobrinae, amitini, amitinae filius, filia, propius sobrino, sobrina (hi sunt patrui magni, amitae magnae, avunculi magni, materterae magnae filias, filia). Sexto gradu sunt supra tritavus, tritavia, infra trinepos, trineptis, ex transverso fratris sororisque abnepos, abneptis et convenienter abpatruus, abamita (id est abavi frater et soror), abavunculus, abmatertera (id est abaviae frater et soror), item propatrui, proamitae, proavunculi, promaterterae filius, filia, item fratris patruelis, sororis patruelis, consobrini, consobrinae, amitini, amitinae nepos, neptis, item sobrini sobrinaeque (id est qui quaeve ex fratribus vel sororibus patruelibus vel consobrinis vel amitinis progenerantur). Hactenus ostendisse sufficiet quemadmodum gradus cognationis numerentur. namque ex his palam est intellegere quemadmodum ulterius quoque gradus numerare debemus:

quippe semper generata quaeque persona gradum adiciat, ut longe facilias sit respondere quoto quisque gradu sit quam propria cognationis appellatione quemquam denotare. Adgnationis quoque gradus eodem modo numerantur. Sed cum magis veritas oculata fide quam per aures animis hominum infigitur, ideo necessarium duximus, post narrationem graduum etiam eos praesenti libro inscribi. quatenus possint et auribus et inspectione adulescentes perfectissimam graduum doctrinam adipisci.

Illud certum est, ad serviles cognationes illam partem edicti qua proximitatis nomine bonorum possessio promittitur non pertinere: nam nec ulla antiqua ege talis cognatio computabatur. sed nostra constitutione, quam pro iure patronatus fecimus (quod ius usque ad nostra tempora satis obscurum atque nube plenum et undique confusum fuerat) et hoc, humanitate suggerente, concessimus, ut si quis in servili consortio constitutus liberum vel liberos habuerit, sive ex libera sive servilis condicionis muliere, vel contra serva mulier ex libero vel servo habuerit liberos cuinscumque sexus, et ad libertatem his pervenientibus, et hi qui ex servili ventre nati sunt libertatem meruerunt, vel, dum mulieres liberae erant, ipsi in servitute eas habuerunt et postea ad libertatem pervenerunt, ut hi omnes ad successionem vel patris vel matris veniant, patronatus iure in hac parte sopito: hos enim liberos non solum in suorum parentium successionem, sed etiam alterum in alterius mutuam successionem vocavimus, ex illa lege specialiter eos vocantes, sive soli inveniantur qui in servitute nati et postea manumissi sunt, sive una cum aliis qui post libertatem parentium concepti sunt, sive ex eadem matre vel eodem patre sive ex aliis nuptiis, ad similitudinem eorum qui ex iustis nuptiis procreati sunt.

Repetitis itaque omnibus quae iam tradidimus, apparet, non semper eos qui parem gradum cognationis optinent pariter vocari, eoque amplius nec eum quidem qui proximior sit cognatus semper potiorem esse. cum enim prima causa sit suorum heredum quosque inter suos heredes iam enumeravimus, apparet, pronepotem vel abnepotem defuncti potiorem esse quam fratrum aut patrem matremque defuncti, cum alioquin pater quidem et mater, ut supra quoque tradidimus, primum gradum cognationis optineant, frater vero secundum, pronepos autem tertio gradu sit cognatus et abnepos quarto: nec interest in potestate morientis fuerit an non fuerit, quod vel emancipatus vel ex emancipato aut ex feminino sexu propagatus est.

Amotis quoque suis heredibus quosque inter suos heredes vocari diximus, adgnatus, qui integrum ius adgnationis habet, etiamsi longissimo gradu sit, plerumque potior habetur quam proximior cognatus: nam patrui nepos vel pronepos avunculo vel materterae praefertur. totiens igitur dicimus aut potiorem haberi eum qui proximiorem gradum cognationis obtinet, aut pariter vocari eos qui cognati sint, quotiens neque suorum heredum iure quique inter suos heredes sunt, neque adgnationis iure aliquis praeferri debeat secumdum ea quae tradidimus, exceptis fratre et sorore emancipatis, qui ad successionem fratrum vel sororum vocantur, qui et si capite deminuti sunt, tamen praeferuntur ceteris ulterioris gradus adgnatis.

LIB. III, TIT. VII.
DE SUCCESSIONE LIBERTORUM.

Nunc de libertorum bonis videamus. olim itaque licebat liberto patronum suum impune testamento praeterire: nam ita demum lex duodecim tabularum ad hereditatem liberti vocabat patronum, si intestatus mortuus esset libertus, nullo suo herede relicto. itaque intestato quoque mortuo liberto, si is suum heredem reliquisset, nihil in bonis eius patrono ius erat. et si quidem ex naturalibus liberis aliquem suum heredem reliquisset, nulla videbatur querela: si vero adoptivus filius esset, aperte iniquum erat nihil iuris patrono superesse. Qua de causa postea praetoris edicto haec iuris iniquitas emendata est. sive enim faciebat testamentum libertus, iubebatur ita testari ut patrono partem dimidiam bonorum suorum relinqueret: et si aut nihil aut minus partis dimidiae reliquerat, dabatur patrono contra tabulas testamenti partis dimidiae bonorum possessio. si vero intestatus moriebatur, suo herede relicto filio adoptivo, dabatur aeque patrono contra hunc suum heredem partis dimidiae bonorum possessio. prodesse autem liberto solebant ad excludendum patronum naturales liberi, non solum quos in potestate mortis tempore habebat, sed etiam emancipati et in adoptionem dati, si modo ex aliqua parte heredes scripti erant aut praeteriti contra tabulas bonorum possessionem ex edicto petierant: nam exheredati nullo modo repellebant patronum. Postea lege Papia adaucta sunt iura patronorum qui locupletiores libertos habebant. cautum est enim ut ex bonis eius qui sestertiorum centum milium patrimonium reliquerit et pauciores quam tres liberos habebat, sive is testamento facto, sive intestato mortuus erat, virilis pars patrono deberetur. itaque cum unum filium filiamve heredem reliquerit libertus, perinde pars dimidia patrono debebatur ac si is sine ullo filio filiave decessisset: cum duos duasve heredes reliquerat, tertia pars debebatur patrono: si tres reliquerat, repellebatur patronus.

Sed nostra constitutio, quam pro omnium notione Graeca lingua, compendioso tractatu habito, composuimus, ita huiusmodi causas definivit, ut si quidem libertus vel liberta minores centenariis sint, id est minus centum aureis habeant substantiam (sic enim legis Papiae summam interpretati sumus, ut pro mille sestertiis unus aureus computetur), nullum locum habeat patronus in eorum successionem, si tamen testamentum fecerint. sin autem intestati decesserint, nullo liberorum relicto, tunc patronatus ius, quod erat ex lege duodecim tabularum, integrum reservavit. cum vero maiores centenariis sint, si heredes vel bonorum possessores liberos habeant sive unum sive plures cuiuscumque sexus vel gradus, ad eos successionem parentum deduximus, omnibus patronis una cum sua progenie semotis. sin autem sine liberis decesserint, si quidem intestati, ad omnem hereditatem patronos patronasque vocavimus: si vero testamentum quidem fecerint, patronos autem vel patronas praeterierint, cum nullos liberos haberent vel habentes eos exheredaverint, vel mater sive avus maternus eos praeterierit, ita ut non possint argui inofficiosa eorum testamenta, tunc ex nostra constitutione per bonorum possessionem contra tabulas non dimidiam, ut ante, sed tertiam partem bonorum liberti consequantur; vel quod deest eis ex constitutione nostra repleatur, si quando minus tertia parte bonorum suorom libertus vel liberta eis reliquerint, ita sine onere ut nec liberis liberti libertaeve ex ea parte legata vel fideicommissa praestentur, sed ad coheredes hoc onus redundaret; multis aliis casibus a nobis in praefata constitutione congregatis, quos necessarios esse ad huiusmodi iuris dispositionem perspeximus ut tam patroni patronaeque quam liberi eorum nec non qui ex transverso latere veniunt usque ad quintum gradum ad successionem libertorum vocentur, sicut ex ea constitutione intellegendum est: ut si eiusdem patroni vel patronae vel duorum duarum pluriumve sint liberi, qui proximior est ad liberti seu libertae vocetur successionem, et in capita non in stirpes dividatur successio, eodem modo et in his qui ex transverso latere veniunt servando. paene enim consonantia iura ingenuitatis et libertinitatis in successionibus fecimus.

Sed haec de his libertinis hodie dicenda sunt qui in civitatem Romanam pervenerunt, cum nec sunt alii liberti, simul et dediticiis et Latinis sublatis, cum Latinorum legitimae successiones nullae penitus erant, qui licet ut liberi vitam suam peragebant, attamen ipso ultimo spiritu simul animam atque libertatem amittebant, et quasi servoram ita bona eorum iure quodammodo peculii ex lege Iunia manumissores detinebant. postea vero senatusconsulto Largiano cautum fuerat ut liberi manumissoris, non nominatim exheredati facti, extraneis heredibus eorum in bonis Latinorum praeponerentur. quibus supervenit etiam divi Traiani edictum, quod eundem hominem, si invito vel ignorante patrono ad civitatem venire ex beneficio principis festinavit, faciebat vivum quidem civem Romanum, Latinum autem morientem. sed nostra constitutione propter huiusmodi condicionum vices et alias difficultates cum ipsis Latinis etiam legem Iuniam et senatusconsultum Largianum et edictum divi Traiani in perpetuum deleri censuianus, ut omnes liberti civitate Romana fruantur, et mirabili modo quibusdam adiectionibus ipsas vias quae in Latinitatem ducebant ad civitatem Romanam capiendam transposuimus.

LIB. III, TIT. VIII.
DE ADSIGNATIONE LIBERTORUM.

In summa, quod ad bona libertorum, admonendi sumus, senatum censuisse ut, quamvis ad omnes patroni liberos qui eiusdem gradus sint aequaliter bona libertorum pertineant, tamen liceret parenti uni ex liberis adsignare libertum, ut post mortem eius solus is patronus habeatur qui adsignatus est, et ceteri liberi, qui ipsi quoque ad eadem bona, nulla adsignatione interveniente, pariter admitterentur, nihil iuris in his bonis habeant. sed ita demum pristinum ius recipiunt, si is cui adsignatus est decesserit nullis liberis relictis. Nec tantum libertum, sed etiam libertam, et non tantum filio nepotive, sed etiam filiae neptive adsignare permittitur. Datur autem haec adsignandi facultas ei qui duos pluresve liberos in potestate habebit, ut eis quos in potestate habet adsignare ei libertum libertamve liceat. unde quaerebatur, si eum cui adsignaverit, postea emancipaverit num evanescat adsignatio? sed placuit, evanescere, quod et Iuliano et aliis plerisque visum est. Nec interest, testamento quis adsignet an sine testamento: sed etiam quibuscumque verbis hoc patronis permittitur facere, ex ipso senatusconsulto quod Claudianis temporibus factum est Suillo Rufo et Ostorio Scapula consulibas.

LIB. III, TIT. IX.
DE BONORUM POSSESSIONIBUS.

Ius bonorum possessionis introductum est a praetore emendandi veteris iuris gratia. nec solum in intestatorum hereditatibus vetus ius eo modo praetor emendavit, sicut supra dictum est, sed in eorum quoque qui testamento facto decesserint. nam si alienus postumus heres fuerit institutus, quamvis hereditatem iure civili adire non poterat, cum institutio non valebat, honorario tamen iure bonorum possessor efficiebatur, videlicet cum a praetore adiuvabatur: sed hic e nostra constitutione hodie recte heres instituitur, quasi et iure civili non incognitus.

Aliquando tamen neque emendandi neque impugnandi veteris iuris, sed magis confirmandi gratia pollicetur bonorum possessionem. nam illis quoque qui recte facto testamento heredes instituti sunt, dat secundum tabulas bonorum possessionem: item ab intestato suos heredes et adgnatos ad bonorum possessionem vocat: sed et remota quoque bonorum possessione, ad eos hereditas pertinet iure civili.

Quos autem praetor solus vocat ad hereditatem, heredes quidem ipso iure non fiunt (nam praetor heredem facere non potest: per legem enim tantum vel similem iuris constitutionem heredes fiunt, veluti per senatusconsultum et constitutiones principales: sed cum eis praetor dat bonorum possessionem, loco heredum constituuntur et vocantur bonorum possessores. adhuc autem et alios complures gradus praetor fecit in bonorum possessionibus dandis, dum id agebat, ne quis sine successore moriatur: nam angustissimis finibus constitutum per legem duodecim tabularum ius percipiendarum hereditatum praetor ex bono et aequo dilatavit.

Sunt autem bonorum possessiones ex testamento quidem hae. prima quae praeteritis liberis datur vocaturque contra tabulas. secunda quam omnibus iure scriptis heredibus praetor pollicetur, ideoque vocatur secundum tabulas.

Et cum de testamentis prius locutus est, ad intestatos transitum fecit. et primo loco suis heredibus, et his qui ex edicto praetoris suis connumerantur, dat bonorum possessionem quae vocatur unde liberi. secundo legitimis heredibus: tertio decem personis quas extraneo manumissori praeferebat (sunt autem decem personae hae: pater, mater, avus, avia, tam paterni quam materni, item filius, filia, nepos, neptis, tam ex filio quam ex filia, frater, soror, sive consanguinei sive uterini): quarto cognatis proximis: quinto tanquam ex familia: sexto patrono et patronae liberisque eorum et parentibus: septimo viro et uxori: octavo cognatis manumissoris.

Sed eas quidem praetoria induxit iurisdictio. nobis tamen nihil incuriosum praetermissum est, sed nostris constitutionibus omnia corrigentes, contra tabulas quidem et secundum tabulas bonorum possessiones admisimus utpote necessarias constitutas, nec non ab intestato unde liberi et unde legitimi bonorum possessiones. Quae autem in praetoris edicto quinto loco posita fuerat, id est unde decem personae, eam pio proposito et compendioso sermone supervacuam ostendimus: cum enim praefata bonorum possessio decem personas praeponebat extraneo manumissori, nostra constitutio, quam de emancipatione liberorum fecimus, omnibus parentibus eisdemque manumissoribus contracta fiducia manumissionem facere dedit, ut ipsa manumissio eorum hoc in se habeat privilegium et supervacua fiat praedicta bonorum possessio. sublata igitur praefata quinta bonorum possessione, in gradum eius sextam antea bonorum possessionem reduximus et quintam fecimus, quam praetor proximis cognatis pollicetur. Cumque antea septimo loco fuerat bonorum possessio tanquam ex familia et octavo unde liberi patroni patronaeque et parentes eorum, utramque per constitutionem nostram, quam de iure patronatus fecimus, penitus vacuavimus: cum enim ad similitudinem successionis ingenuorum libertinorum successiones posuimus, quas usque ad quintum tantummodo gradum coartavimus, ut sit aliqua inter ingenuos et libertos differentia, sufficiunt eis tam contra tabulas bonorum possessio quam unde legitimi et unde cognati, ex quibus possint sua iura vindicare, omni scrupulositate et inextricabili errore duarum istarum bonorum possessionum resoluta. Aliam vero bonorum possessionem, quae unde vir et uxor appellatur et nono loco inter veteres bonorum possessiones posita fuerat, et in suo vigore servavimus et altiore loco, id est sexto, eam posuimus, decima veteri bonorum possessione, quae erat unde cognati manumissoris, propter causas enarratas merito sublata: ut sex tantummodo bonorum possessiones ordinariae permaneant suo vigore pollentes. Septima eas secuta, quam optima ratione praetores introduxerunt. novissime enim promittitur edicto his etiam bonorum possessio quibus ut detur lege vel senatusconsulto vel constitutione comprehensum est, quam neque bonorum possessionibus quae ab intestato veniunt, neque eis quae ex testamento sunt, praetor stabili iure connumeravit, sed quasi ultimum et extraordinarium auxilium, prout res exigit, accommodavit scilicet his qui ex legibus, senatusconsultis, constitutionibus principum ex novo iure vel ex testamento vel ab intestato veniunt.

Cum igitur plures species successionum praetor introduxisset easque per ordinem disposuisset et in unaquaque specie successionis saepe plures extent dispari gradu personae: ne actiones creditorum differrentur, sed haberent quos convenirent, et ne facile in possessionem bonorum defuncti mitterentur et eo modo sibi consulerent, ideo petendae bonorum possessioni certum tempus praefinivit. liberis itaque et parentibus tam naturalibus quam adoptivis in petenda bonorum possessione anni spatium, ceteris centum dierum dedit. Et si intra hoc tempus aliquis bonorum possessionem non petierit, eiusdem gradus personis adcrescit: vel si nemo ex eo sit, deinceps ceteris proinde bonorum possessionem ex successorio edicto pollicetur ac si is qui praecedebat ex eo numero non esset. si quis itaque delatam sibi bonorum possessionem repudiaverit, non quousque tempus bonorum possessioni praefinitum excesserit, expectatur, sed statim ceteri ex eodem edicto admittuntur. In petenda autem bonorum possessione dies utiles singuli considerantur. Sed bene anteriores principes et huic causae providerunt, ne quis pro petendo bonorum possessiones curet, sed, quocumque modo si admittentis eam indicium, intra statuta tamen tempora, ostenderit, plenum habeat earum beneficium.

LIB. III, TIT. X.
DE ADQUISITIONE PER ADROGATIONEM.

Est et alterius generis per universitatem successio, quae neque lege duodecim tabularum neque praetoris edicto, sed eo iure quod consensu receptum est, introducta est. Ecce enim cum paterfamilias sese in adrogationem dat, omnes res eius corporales et incorporales quaeque ei debitae sunt, adrogatori ante quidem pleno iure adquirebantur, exceptis his quae per capitis deminutionem pereunt, quales sunt operarum obligationes et ius adgnationis. usus etenim et ususfructus, licet his antea connumerabantur, attamen capitis deminutione minima eos tolli nostra prohibuit constitutio. Nunc autem nos eandem adquisitionem quae per adrogationem fiebat coartavimus ad similitudinem naturalium parentum: nihil etenim aliud nisi tantummodo ususfructus tam naturalibus patribus quam adoptivis per filiosfamilias adquiritur in his rebus quae extrinsecus filiis obveniunt, dominio eis integro servato: mortuo autem filio adrogato in adoptiva familia etiam dominium eius adrogatorem transit, nisi supersint aliae personae quae ex nostra constitutione patrem in his quae adquiri non possunt antecedunt. Sed ex diverso pro eo quod is debuit qui se in adoptionem dedit, ipso quidem iure adrogator non tenetur, sed nomine filii convenietur et, si noluerit eum defendere, permittitur creditoribus per competentes nostros magistratus bona quae eius cum usufructu futura fuissent, si se alieno iuri non subiecisset, possidere et legitimo modo ea disponere.

LIB. III, TIT. XI.
DE EO CUI LIBERTATIS CAUSA BONA ADDICUNTUR.

Accessit novus casus successionis ex constitutione divi Marci. nam si hi qui libertatem acceperunt a domino in testamento, ex quo non aditur hereditas, velint bona sibi addici libertatium conservandarum causa, audiuntur. et ita rescripto divi Marci ad Popilium Rufum continetur. Verba rescripti ita se habent:

"Si Virginio Valenti, qui testamento suo libertatem quibusdam adscripsit, nemine successore ab intestato existente, in ea causa bona esse coeperunt ut veniri debeant: is cuius de ea re notio est aditus rationem desiderii tui habebit, ut libertatium tam earum quae directo, quam earum quae per speciem fideicommissi relictae sunt, tuendarum gratia addicantur tibi, si idonee creditoribus caveris de solido quod cuique debetur solvendo. et hi quidem quibus directa libertas data est perinde liberi erunt ac si hereditas adita esset: hi autem quos heres rogatus est manumittere a te libertatem consequantur: nisi si non alia condicione velis bona tibi addici quam ut etiam qui directo libertatem acceperunt tui liberti fiant; nam huic etiam voluntati tuae, si ii de quorum statu agitur consentiant, auctoritatem nostram accommodamus. et ne huius rescriptionis nostrae emolumentum alia ratione irritum fiat, si fiscus bona agnoscere voluerit, et hi qui rebus nostris attendunt scient, commodo pecuniario praeferendam libertatis causam, et ita bona cogenda ut libertas his salva sit qui eam adipisci potuerunt si hereditas ex testamento adita esset."

Hoc rescripto subventum est et libertatibus et defunctis, ne bona eorum a creditoribus possideantur et veneant. certe si fuerint ex hac causa bona addicta, cessat bonorum venditio; extitit enim defuncti defensor, et quidem idoneus, qui de solido creditoribus cavet. Inprimis hoc rescriptum totiens locum habet, quotiens testamento libertates datae sunt. quid ergo, si quis intestatus decedens codicillis libertates dederit neque adita sit ab intestato hereditas? favor constitutionis debet locum habere. certe si testatus decedat et codicillis dederit libertatem, competere eam nemini dubium est. Tunc constitutioni locum esse verba ostendunt, cum nemo successor ab intestato existat. ergo quamdiu incertum sit, utrum existat an non, cessabit constitutio: si certum esse coeperit neminem extare, tunc erit constitutioni locus. Si is qui in integrum restitui potest abstinuit se ab hereditate, an, quamvis potest in integrum restitui, potest admitti constitutio? et debet addictio bonorum fieri. quid ergo, si post addictionem libertatum conservandarum causa factam in integrum sit restitutus? utique non erit dicendum revocari libertates quae semel competierunt. Haec constitutio libertatum tuendarum causa introducta est: ergo si libertates nullae sint datae, cessat constitutio. quid ergo, si vivus dedit libertates vel mortis causa et, ne de hoc quaeratur, utrum in fraudem creditorum an non factum sit, idcirco velint addici sibi bona, an audiendi sunt? et magis est, ut audiri debeant, etsi deficiant verba constitutionis. Sed cum multas divisiones eiusmodi constitutioni deesse perspeximus, lata est a nobis plenissima constitutio, in quam multae species collatae sunt, quibus ius huiusmodi successionis plenissimum est effectum, quas ex ipsa lectione constitutionis potest quis cognoscere.

LIB. III, TIT. XII.
DE SUCCESSIONIBUS SUBLATIS, QUAE FIEBANT PER BONORUM VENDITIONEM ET EX SENATUSCONSULTO CLAUDIANO.

Erant ante praedictam successionem olim et aliae per universitatem successiones. qualis fuerat bonorum emptio quae de bonis debitoris vendendis per multas ambages fuerat introducta, et tunc locum habebat quando iudicia ordinaria in usu fuerunt: sed cum extraordinariis iudiciis posteritas usa est, ideo cum ipsis ordinariis iudiciis etiam bonorum venditiones exspiraverunt et tantummodo creditoribus datur officio iudicis bona possidere et, prout eis utile visum fuerit, ea disponere, quod ex latioribus digestorum libris perfectius apparebit.

Erat et ex senatusconsulto Claudiano miserabilis per universitatem adquisitio, cum libera mulier servili amore bacchata ipsam libertatem per senatusconsultum amittebat et cum libertate substantiam: quod indignum nostris temporibus esse existimantes, et a nostra civitate deleri et non inseri nostris digestis concessimus.

LIB. III, TIT. XIII.
DE OBLIGATIONIBUS.

Nunc transeamus ad obligationes. obligatio est iuris vinculum, quo necessitate adstringimur alicuius solvendae rei, secundum nostrae civitatis iura.

Omnium autem obligationum summa divisio in duo genera deducitur: namque aut civiles sunt aut praetoriae. civiles sunt, quae aut legibus constitutae aut certe iure civili comprobatae sunt. praetoriae sunt, quas praetor ex sua iurisdictione constituit, quae etiam honorariae vocantur.

Sequens divisio in quattuor species deducitur: aut enim ex contractu sunt aut quasi ex contractu aut ex maleficio aut quasi ex maleficio. prius est, ut de his quae ex contractu sunt dispiciamus. harum aeque quattuor species sunt: aut enim re contrahuntur aut verbis aut litteris aut consensu. de quibus singulis dispiciamus.

LIB. III, TIT. XIV.
QUIBUS MODIS RE CONTRAHITUR OBLIGATIO .

Re contrahitur obligatio veluti mutui datione. mutui autem obligatio in his rebus consistit quae pondere, numero mensurave constant, veluti vino, oleo, frumento, pecunia numerata, aere, argento, auro, quas res aut numerando aut metiendo aut adpendendo in hoc damus ut accipientium fiant, et quandoque nobis non eaedem res, sed aliae eiusdem naturae et qualitatis reddantur. unde etiam mutuum appellatum sit, quia ita a me tibi datur, ut ex meo tuum fiat. ex eo contractu nascitur actio quae vocatur condictio. Is quoque, qui non debitum accepit ab eo qui per errorem solvit re obligatur: daturque agenti contra eum propter repetitionem condicticia actio; nam proinde ei condici potest SI PARET EUM DARE OPORTERE ac si mutuum accepisset. unde pupillus, si ei sine tutoris auctoritate non debitum per errorem datum est, non tenetur indebiti condictione, non magis quam mutui datione. sed haec species obligationis non videtur ex contractu consistere, cum is qui solvendi animo dat magis distrahere voluit negotium quam contrahere.

Item is cui res aliqua utenda datur, id est commodatur, re obligatur et tenetur commodati actione. sed is ab eo qui mutuum accepit longe distat: namque non ita res datur ut eius fiat, et ob id de ea re ipsa restituenda tenetur. et is quidem qui mutuum accepit, si quolibet fortuito casu quod accepit amiserit, veluti incendio, ruina, naufragio aut latronum hostiumve incursu, nihilo minus obligatus permanet. at is qui utendum accepit sane quidem exactam diligentiam custodiendae rei praestare iubetur, nec sufficit ei tantam diligentiam adhibuisse quantam suis rebus adhibere solitus est, si modo alius diligentior poterit eam rem custodire: sed propter maiorem vim maioresve casus non tenetur, si modo non huius culpa is casus intervenerit: alioquin si id quod tibi commodatum est peregre ferre tecum malueris, et vel incursu hostium praedonumve vel naufragio amiseris, dubium non est quin de restituenda ea re tenearis. commodata autem res tunc proprie intellegitur, si nulla mercede accepta vel constituta res tibi utenda data est. alioquin mercede interveniente locatus tibi usus rei videtur: gratuitum enim debet esse commodatum.

Praeterea et is apud quem res aliqua deponitur re obligatur, et actione depositi, qua et ipse de ea re quam accepit restituenda tenetur. sed is ex eo solo tenetur, si quid dolo commiserit, culpae autem nomine, id est desidiae atque neglegentiae, non tenetur: itaque securus est qui parum diligenter custoditam rem furto amisit, quia, qui neglegenti amico rem custodiendam tradidit, suae facilitati id imputare debet.

Creditor quoque qui pignus accepit re obligatur, qui et ipse de ea ipsa re quam accepit restituenda tenetur actione pigneraticia. sed quia pignus utriusque gratia datur, et debitoris, quo magis ei pecunia crederetur, et creditoris, quo magis ei in tuto sit creditum, placuit sufficere, quod ad eam rem custodiendam exactam diligentiam adhiberet: quam si praestiterit et aliquo fortuito casu rem amiserit, securum esse nec impediri creditum petere.

LIB. III, TIT. XV.
DE VERBORUM OBLIGATIONE.

Verbis obligatio contrahitur ex interrogatione et responsione, cum quid dari fierive nobis stipulamur. ex qua duae proficiscuntur actiones, tam condictio, si certa sit stipulatio, quam ex stipulatu, si incerta. quae hoc nomine inde utitur, quia stipulum apud veteres firmum appellabatur, forte a stipite descendens.

In hac re olim talia verba tradita fuerunt:

SPONDES?
SPONDEO, PROMITTIS?
PROMITTO, FIDEPROMITTIS?
FIDEPROMITTO, FIDEIUBES?
FIDEIUBEO, DABIS?
DABO, FACIES?
FACIAM.

utrum autem Latina an Graeca vel qua alia lingua stipulatio concipiatur, nihil interest, scilicet si uterque stipulantium intellectum huius linguae habeat: nec necesse est eadem lingua utrumque uti, sed sufficit congruenter ad interrogatum respondere: quin etiam duo Graeci Latina lingua obligationem contrahere possunt. sed haec sollemnia verba olim quidem in usu fuerunt: postea autem Leoniana constitutio lata est, quae, sollemnitate verborum sublata, sensum et consonantem intellectum ab utraque parte solum desiderat, licet quibuscumque verbis expressus est.

Omnis stipulatio aut pure aut in diem aut sub condicione fit. pure veluti QUINQUE AUREOS DARE SPONDES? idque confestim peti potest. in diem, cum adiecto die, quo pecunia solvatur, stipulatio fit: veluti DECEM AUREOS PRIMlS KALENDIS MARTIIS DARE SPONDES? id autem quod in diem stipulamur statim quidem debetur, sed peti prius quam dies veniat non potest: ac ne eo quidem ipso die in quem stipulatio facta est peti potest, quia totus ille dies arbitrio solventis tribui debet. neque enim certum est eo die in quem promissum est datum non esse, priusquam is praetereat. At si ita stipuleris DECEM AUREOS ANNUOS, QUOAD VIVAM, DARE SPONDES?, et pure facta obligatio intellegitur et perpetuatur, quia ad tempus deberi non potest. sed heres petendo pacti exceptione submovebitur. Sub condicione stipulatio fit, cum in aliquem casum differtur obligatio, ut si aliquid factum fuerit aut non fuerit, stipulatio committatur, veluti SI TITIUS CONSUL FACTUS FUERIT, QUINQUE AUREOS DARE SPONDES? si quis ita stipuletur SI IN CAPITOLIUM NON ASCENDERO, DARE SPONDES? perinde erit ac si stipulatus esset, cum morietur dari sibi. ex condicionali stipulatione tantum spes est debitum iri, eamque ipsam spem transmittimus, si, priusquam condicio existat, mors nobis contigerit. Loca etiam inseri stipulationi solent, veluti CARTHAGINE DARE SPONDES? quae stipulatio licet pure fieri videatur, tamen re ipsa habet tempus iniectum, quo promissor utatur ad pecuniam Carthagine dandam. et ideo si quis ita Romae stipuletur HODIE CARTHAGINE DARE SPONDES? inutilis erit stipulatio, cum impossibilis sit repromissio. Condiciones quae ad praeteritum vel ad praesens tempus referuntur aut statim infirmant obligationem aut omnino non differunt: veluti SI TITIUS CONSUL FUIT vel SI MAEVIUS VIVIT, DARE SPONDES? nam si ea ita non sunt, nihil valet stipulatio: sin autem ita se habent, statim valent. quae enim per rerum naturam certa sunt non morantur obligationem, licet apud nos incerta sint.

Non solum res in stipulatum deduci possunt, sed etiam facta: ut si stipulemur fieri aliquid vel non fieri. et in huiusmodi stipulationibus optimum erit poenam, subiicere, ne quantitas stipulationis in incerto sit ac necesse sit actori probare, quid eius intersit. itaque si quis ut fiat aliquid, stipuletur, ita adici poena debet? SI ITA FACTUM NON ERIT, TUM POENAE NOMINE DECEM AUREOS DARE SPONDES: sed si quaedam fieri, quaedam non fieri una eademque conceptione stipuletur, clausula erit huiusmodi adicienda: SI ADVERSUS EA FACTUM ERIT, SIVE QUID ITA FACTUM NON ERIT, TUNC POENAE NOMINE DECEM AUREOS DARE SPONDES?

LIB. III, TIT. XVI.
DE DUOBUS REIS STIPULANDI ET PROMITTENDI.

Et stipulandi et promittendi duo pluresve rei fieri possunt. stipulandi ita si post omnium interrogationem promissor respondeat SPONDEO. ut puta cum duobus separatim stipulantibus ita promissor respondeat UTRIQUE VESTRUM DARE SPONDEO: nam si prius Titio spoponderit, deinde alio interrogante spondeat, alia atque alia erit obligatio nec creduntur duo rei stipulandi esse. duo pluresve rei promittendi ita fiunt, MAEVI, QUINQUE AUREOS DARE SPONDES? SEI, EOSDEM QUINQUE AUREOS DARE SPONDES? respondeant singuli separatim SPONDEO. Ex huiusmodi obligationibus et stipulantibus solidum singulis debetur et promittentes singuli in solidum tenentur. in utraque tamen obligatione una res vertitur: et vel alter debitum accipiendo vel alter solvendo omnium perimit obligationem et omnes liberat. Ex duobus reis promittendi alius pure, alius in diem vel sub condicione obligari potest: nec impedimento erit dies aut condicio, quo minus ab eo qui pure obligatus est petatur.

LIB. III, TIT. XVII.
DE STIPULATIONE SERVORUM.

Servus ex persona domini ius stipulandi habet. sed hereditas in plerisque personae defuncti vicem sustinet: ideoque quod servus hereditarius ante aditam hereditatem stipulatur adquirit hereditati, ac per hoc etiam heredi postea facto adquiritur. Sive autem domino sive sibi sive conservo suo sive impersonaliter servus stipuletur, domino adquirit. idem iuris est et in liberis qui in potestate patris sunt, ex quibus causis adquirere possunt. Sed cum factum in stipulatione continebitur, omnimodo persona stipulantis continetur, veluti si servus stipuletur, ut sibi ire agere liceat: ipse enim tantum prohiberi non debet, non etiam dominus eius. Servus communis stipulando unicuique dominorum pro portione dominii adquirit, nisi si unius eorum iussu aut nominatim cui eorum stipulatus est: tunc enim soli ei adquiritur. quod servus communis stipulatur, si alteri ex dominis adquiri non potest, solidum alteri adquiritur, veluti si res quam dari stipulatus est unius domini sit.

LIB. III, TIT. XVIII.
DE DIVISIONE STIPULATIONUM.

Stipulationum aliae iudiciales sunt, aliae praetoriae, aliae conventionales, aliae communes tam praetoriae quam iudiciales. Iudiciales sunt dumtaxat quae a mero iudicis officio proficiscuntur: veluti de dolo cautio vel de persequendo servo qui in fuga est, restituendove pretio. Praetoriae, quae a mero praetoris officio proficiscuntur, veluti damni infecti vel legatorum. praetorias autem stipulationes sic exaudiri oportet ut in his contineantur etiam aediliciae: nam et hae ab iurisdictione veniunt. Conventionales sunt quae ex conventione utriusque partis concipiuntur, hoc est neque iussu iudicis neque iussu praetoris, sed ex conventione contrahentium. quaram totidem genera sunt, quot (paene dixerim) rerum contrahendarum. Communes sunt stipulationes veluti rem salvam fore pupilli: nam et praetor iubet rem salvam fore pupillo caveri, et interdum iudex, si aliter expediri haec res non potest: vel de rato stipulatio.

LIB. III, TIT. XIX.
DE INUTILIBUS STIPULATIONIBUS.

Omnis res quae dominio nostro subicitur in stipulationem deduci potest, sive illa mobilis sive soli sit. At si quis rem quae in rerum natura non est aut esse non potest dari stipulatus fuerit, veluti Stichum, qui mortuus sit, quem vivere credebat, aut hippocentaurum, qui esse non possit, inutilis erit stipulatio. Idem iuris est, si rem sacram aut religiosam, quam humani iuris esse credebat, vel publicam, quae usibus populi perpetuo eita sit, ut forum vel theatrum, vel liberum hominem, quem servum esse credebat, vel rem cuius commercium non habuit, vel rem suam, dari quis stipuletur. nec in pendenti erit stipulatio ob id quod publica res in privatum deduci et ex libero servus fieri potest et commercium adipisci stipulator potest et res stipulatoris esse desinere potest: sed protinus inutilis est. item contra, licet initio utiliter res in stipulatum deducta sit, si postea in earum qua causa de quibus supra dictum est sine facto promissoris devenerit, extinguitur stipulatio. ac ne statim ab initio talis stipulatio valebit LUCIUM TITIUM, CUM SERVUS ERIT, DARE

SPONDES? et similia, quia natura sui dominio nostro exempta in obligationem deduci nullo modo possunt.

Si quis alium daturum facturumve quid spoponderit, non obligabitur, veluti si spondeat Titium quinque aureos daturum. quodsi effecturum se ut Titius daret spoponderit, obligatur.

Si quis alii quam cuius iuri subiectus sit stipuletur, nihil agit. plane solutio etiam in extranei personam conferri potest (veluti si quis ita stipuletur MIHI AUT SEIO DARE SPONDES?), ut obligatio quidem stipulatori adquiratur, solvi tamen Seio etiam invito eo recte possit, ut liberatio ipso iure contingat, sed ille adversus Seium habeat mandati actionem. quodsi quis sibi et alii, cuius iuri subiectus non sit, decem dari aureos stipulatus est, valebit quidem stipulatio: sed utrum totum debetur quod in stipulationem deductum est, an vero pars dimidia, dubitatum est: sed placet, non plus quam partem dimidiam ei adquiri. ei, qui tuo iuri subiectus est, si stipulatus sis, tibi adquiris, quia vox tua tamquam filii sit, sicuti filii vox tamquam tua intellegitur in his rebus quae tibi adquiri possunt.

Praeterea inutilis est stipulatio, si quis ad ea quae interrogatus erit non respondeat, veluti si decem aureos a te dari stipuletur, tu quinque promittas, vel contra: aut si ille pure stipuletur, tu sub condicione promittas, vel contra, si modo scilicet id exprimas, id est si cui sub condicione vel in diem stipulanti tu respondeas: PRAESENTI DIE SPONDEO. nam si hoc solum respondeas: PROMITTO, breviter videris in eandem diem aut condicionem spopondisse: nec enim necesse est in respondendo eadem omnia repeti quae stipulator expresserit.

Item inutilis est stipulatio, si ab eo stipuleris qui iuri tuo subiectus est, vel si is a te stipuletur. sed servus quidem non solum domino suo obligari non potest, sed ne alii quidem ulli: filii vero familias aliis obligari possunt.

Mutum neque stipulari neque promittere posse palam est. quod et in surdo receptum est: quia et is qui stipulatur verba promittentis, et is qui promittit verba stipulantis audire debet. unde apparet, non de eo nos loqui qui tardius exaudit, sed de eo qui omnino non exaudit. Furiosus nullum negotium gerere potest, quia non intellegit quid agit. Pupillus omne negotium recte gerit: ut tamen, sicubi tutoris auctoritas necessaria sit, adhibeatur tutor, veluti si ipse obligetur: nam alium sibi obligare etiam sine tutoris auctoritate potest. Sed quod diximus de pupillis, utique de his verum est qui iam aliquem intellectum habent; nam infans et qui infantiae proximus est, non multum a furioso distant, quia huius aetatis pupilli nullum intellectum habent: sed in proximis infantiae propter utilitatem eorum benignior iuris interpretatio facta est, ut idem iuris habeant quod pubertati proximi. sed qui in parentis potestate est impubes nec auctore quidem patre obligatur.

Si impossibilis condicio obligationibus adiciatur, nihil valet stipulatio. impossibilis autem condicio habetur, cui natura impedimento est quo minus existat, veluti si quis ita dixerit: SI DIGITO CAELUM ATTIGERO, DARE SPONDES? at si ita stipuletur, SI DIGITO CAELUM NON ATTIGERO, DARE SPONDES? pure facta obligatio intellegitur ideoque statim petere potest.

Item verborum obligatio inter absentes concepta inutilis est. sed cum hoc materiam litium contentiosis hominibus praestabat, forte post tempus tales allegationes opponentibus et non praesentes esse vel se vel adversarios suos contendentibus: ideo nostra constitutio propter celeritatem dirimendarum litium introducta est, quam ad Caesarienses advocatos scripsimus, per quam disposuimus, tales scripturas quae praesto esse partes indicant omnimodo esse credendas, nisi ipse qui talibus utitur improbis allegationibus manifestissimis probationibus vel per scripturam vel per testes idoneos approbaverit, in ipso toto die quo conficiebatur instrumentum sese vel adversarium suum in aliis locis esse.

Post mortem suam dari sibi nemo stipulari poterat, non magis quam post eius mortem a quo stipulabatur. ac ne is qui in alicuius potestate est post mortem eius stipulari poterat, quia patris vel domini voce loqui videtur. sed et si quis ita stipuletur, PRIDIE QUAM MORIAR vel PRIDIE QUAM MORIERIS DARI? inutilis erat stipulatio. sed cum, ut iam dictum est, ex consensu contrahentium stipulationes valent, placuit nobis etiam in hunc iuris articulum necessariam inducere emendationem, ut, sive post mortem sive pridie quam morietur stipulator sive promissor, stipulatio concepta est, valeat stipulatio.

Item si quis ita stipulatus erat: SI NAVIS EX ASIA VENERIT, HODIE DARE SPONDES? inutilis erat stipulatio, quia praepostere concepta est. sed cum Leo inclytae recordationis in dotibus eandem stipulationem, quae praepostera nuncupatur non esse reiciendam existimavit, nobis placuit et huic perfectum robur accommodare, ut non solum in dotibus, sed etiam in omnibus valeat huiusmodi conceptio stipulationis. Ita autem concepta stipulatio, veluti si Titius dicat CUM MORIAR, DARE SPONDES? vel CUM MORIERIS, et apud veteres utilis erat et nunc valet. Item post mortem alterius recte stipulamur.

Si scriptum fuerit in instrumento, promisisse aliquem, perinde habetur atque si interrogatione praecedente responsum sit.

Quotiens plures res una stipulatione comprehenduntur, si quidem promissor simpliciter respondeat DARE SPONDEO, propter omnes tenetur: si vero unam ex his vel quasdam daturum se spoponderit, obligatio in his pro quibos spoponderit contrahitur. ex pluribus enim stipulationibus una vel quaedam videntur esse perfectae: singulas enim res stipulari et ad singulas respondere debemus.

Alteri stipulari, ut supra dictum est, nemo potest: inventae sunt enim huiusmodi obligationes ad hoc, ut unusquisque sibi adquirat quod sua interest: ceterum si alii detur, nihil interest stipulatoris. plane si quis velit hoc facere, poenam stipulari conveniet, ut, nisi ita factum sit ut comprehensum esset, committatur poenae stipulatio etiam ei cuius nihil interest: poenam enim cum stipulatur quis, non illud inspicitur, quid intersit eius, sed quae sit quantitas sita in condicione stipulationis. ergo si quis stipuletur Titio dari, nihil agit; sed si addiderit poenam NISI DEDERIS, TOT AUREOS DARE SPONDES? tunc committitur stipulatio. Sed si quis stipuletur alii, cum eius interesset, placuit stipulationem valere. nam si is qui pupilli tutelam administrare coeperat, cessit administratione contutori suo et stipulatus est, rem pupilli salvam fore, quoniam interest stipulatoris fieri quod stipulatus est, cum obligatus futurus esset pupillo si male res gesserit, tenet obligatio. ergo et si quis procuratori suo dari stipulatus sit, stipulatio vires habebit. et si creditori suo, quod sua interest, ne forte vel poena committatur, vel praedia distrahantur quae pignori data erant, valet stipulatio. Versa vice qui alium facturum promisit, videtur in ea esse causa ut non teneatur, nisi poenam ipse promiserit.

Item nemo rem suam futuram in eum casum quo sua fit, utiliter stipulatur. Si de alia re stipulator senserit, de alia promissor, perinde nulla contrahitur obligatio ac si ad interrogatum responsum non esset, veluti si hominem Stichum a te stipulatus quis fuerit, tu de Pamphilo senseris, quem Stichum vocari credideris. Quod turpi ex causa promissum est, veluti si quis homicidium vel sacrilegium se facturum promittat, non valet.

Cum quis sub aliqua condicione fuerit stipulatus, licet ante condicionem decesserit, postea existente condicione, heres eius agere potest. idem est et a promissoris parte. Qui hoc anno aut hoc mense dari stipulatus sit, nisi omnibus partibus praeteritis anni vel mensis non recte petet. Si fundum dari stipuleris vel hominem, non poteris continuo agere, nisi tantum spatii praeterierit quo traditio fieri possit.

LIB. III, TIT. XX.
DE FIDEIUSSORIBUS.

Pro eo qui promittit solent alii obligari, qui fideiussores appellantur, quos homines accipere solent dum curant ut diligentius sibi cautum sit. In omnibus autem obligationibus adsumi possunt, id est sive re sive verbis sive litteris sive consensu contractae fuerint. ac ne illud quidem interest, utrum civilis an naturalis sit obligatio cui adiciatur fideiussor, adeo quidem ut pro servo quoque obligetur, sive extraneus sit qui fideiussorem a servo accipiat, sive ipse dominus in id quod sibi naturaliter debetur. Fideiussor non tantum ipse obligatur sed etiam heredem obligatum relinquit. Fideiussor et praecedere obligationem et sequi potest.

Si plures sint fideiussores, quotquot erunt numero, singuli in solidum tenentur. itaque liberum est creditori, a quo velit solidum petere. sed ex epistula divi Hadriani compellitur creditor a singulis qui modo solvendo sint litis contestatae tempore partes petere. ideoque si quis ex fideiussoribus eo tempore solvendo non sit, hoc ceteros onerat. sed et si ab umo fideiussore creditor totum consecutus fuerit, huius solius detrimentum erit, si is pro quo fideiussit solvendo non sit: et sibi imputare debet, cum potuerit adiuvari ex epistula divi Hadriani, et desiderare ut pro parte in se detur actio. Fideiussores ita obligari non possunt ut plus debeant quam debet is pro quo obligantur: nam eorum obligatio accessio est principalis obligationis nec plus in accessione esse potest quam in principali re. at ex diverso, ut minus debeant, obligari possunt. itaque si reus decem aureos promiserit, fideiussor in quinque recta obligatur: contra vero non potest obligari. item si ille pure promiserit, fideiussor sub condicione promittere potest: contra vero non potest. non solum enim in quantitate, sed etiam in tempore minus et plus intellegitur. plus est enim statim aliquid dare, minus est post tempus dare.

Si quid autem fideiussor pro reo solverit, eius reciperandi causa habet cum eo mandati indicium. Graece fideiussor plerumque ita accipitur: τῇ ἐμῇ πίστει κελεύω, λέγω, θέλω sive βούλομαι : sed et si φημί dixerit, pro eo erit ac si dixerit, λέγω. In stipulationibus fideiussorum sciendum est generaliter hoc accipi, ut, quodcumque scriptum sit quasi actum, videatur etiam actum: ideoque constat, si quis se scripserit fideiussisse, videri omnia sollemniter acta.

LIB. III, TIT. XXI.
DE LITTERARUM OBLIGATIONE.

Olim scriptura fiebat obligatio, quae nominibus fieri dicebatur: quae nomina hodie non sunt in usu.

Plane si quis debere se scripserit quod numeratum ei non est, de pecunia minime numerata post multum temporis exceptionem opponere non potest: hoc enim saepissime constitutum est. sic fit ut et hodie, dum queri non potest. scriptura obligetur: et ex ea nascitur condictio, cessante scilicet verborum obligatione. multum autem tempus m hac exceptione antea quidem ex principalibus constitutionibus usque ad quinquennium procedebat: sed ne creditores diutius possint suis pecuniis forsitan defraudari, per constitutionem nostram tempus coartatum est, ut ultra biennii metas huiusmodi exceptio minime extendatur.

LIB. III, TIT. XXII.
DE CONSENSU OBLIGATIONE.

Consensu fiunt obligationes in emptionibus venditionibus, locationibus conductionibus, societatibus, mandatis. Ideo autem istis modis consensu dicitur obligatio contrahi, quia neque scriptura neque praesentia omnimodo opus est, ac ne dari quidquam necesse est, ut substantiam capiat obligatio, sed sufficit eos qui negotium gerunt consentire. Unde imter absentes quoque talia negotia contrahuntur, veluti per epistulam aut per nuntium. Item in his contractibus alter alteri obligatur in id quod alterum alteri ex bono et aequo praestare oportet, cum alioquin in verborum obligationibus alius stipuletur, alius promittat.

LIB. III, TIT. XXIII.
DE EMPTIONE ET VENDITIONE.

Emptio et venditio contrahitur simulatque de pretio convenerit, quamvis nondum pretium numeratum sit ac ne arra quidem data fuerit. nam quod arrae nomine datur argumentum est emptionis et venditionis contractae. sed haec quidem de emptionibus et venditionibus quae sine scriptura consistunt obtinere oportet: nam nihil a nobis in huiusmodi venditionibus innovatum est. in his autem quae scriptura conficiuntur non aliter perfectam esse emptionem et venditionem constituimus, nisi et instrumenta emptionis fuerint conscripta vel manu propria contrahentium, vel ab alio quidem scripta, a contrahente autem subscripta et, si per tabellionem fiunt, nisi et completiones acceperint et fuerint partibus absoluta. donec enim aliquid ex his deest, et poenitentiae locus est et potest emptor vel venditor sine poena recedere ab emptione. ita tamen impune recedere eis concedimus nisi iam arrarum nomine aliquid fuerit datum: hoc etenim subsecuto, sive in scriptis sive sine scriptis venditio celebrata est, is qui recusat adimplere contractum, si quidem emptor est, perdit quod dedit, si vero venditor, duplum restituere compellitur, licet nihil super arris expressum est.

Pretium autem constitui oportet: nam nulla emptio sine pretio esse potest. sed et certum pretium esse debet. alioquin si ita inter aliquos convenerit, ut, quanti Titius rem aestimaverit, tanti sit empta: inter veteres satis abundeque hoc dubitabatur, sive constat venditio sive non. sed nostra decisio ita hoc constituit, ut, quotiens sic composita sit venditio QUANTI ILLE AESTIMAVERIT, sub hac condicione staret contractus, ut, si quidem ipse qui nominatus est pretium definierit, omnimodo secundum eius aestimationem et pretium persolvatur et res tradatur, ut venditio ad effectum perducatur, emptore quidem ex empto actione, venditore autem ex vendito agente. sin autem ille qui nominatus est vel noluerit vel non potuerit pretiam definire, tunc pro nihilo esse venditionem, quasi nullo pretio statuto. quod ius cum in venditionibus nobis placuit, non est absurdum et in locationibus et conductionibus trahere.

Item pretium in numerata pecunia consistere debet. nam in ceteris rebus an pretium esse possit, veluti homo aut fundus aut toga alterius rei pretium esse possit, valde quaerebatur. Sabinus et Cassius etiam in alia re putant posse pretium consistere: unde illud est quod vulgo dicebatur, per permutationem rerum emptionem et venditionem contrahi, eamque speciem emptionis venditionisque vetustissimam esse: argumentoque utebantur Graeco poeta Homero, qui aliqua parte exercitum Achivorum vinum sibi comparasse ait permutatis quibusdam rebus, his

ἔνθεν ἄρ᾽ οἰνίζοντο καρηκομόωντες Ἀχαιοί,
ἄλλοι μὲν χαλκῷ, ἄλλοι δ᾽ αἴθωνι σιδήρῳ,
ἄλλοι δὲ ῥινοῖς, ἄλλοι δ᾽ αὐτῇσι βόεσσι,
verbis: ἄλλοι δ᾽ ἀνδραπόδεσσι.

diversae scholae auctores contra sentiebant, aliudque esse existimabant permutationem rerum, aliud emptionem et venditionem. alioquin non posse rem expediri, permutatis rebus, quae videatur res venisse et quae pretii nomine data esse: nam utramque videri et venisse et pretii nomine datam esse, rationem non pati. sed Proculi sententia, dicentis permutationem propriam esse speciem contractus a venditione separatam, merito praevaluit, cum et ipse aliis Homericis versibus adiuvatur et validioribus rationibus argumentatur. quod et anteriores divi principes admiserunt et in nostris digestis latius significatur.

Cum autem emptio et venditio contracta sit (quod effici diximus, simulatque de pretio convenerit, cum sine scriptura res agitur), periculum rei venditae statim ad emptorem pertinet, tametsi adhuc ea res emptori tradita non sit. itaque si homo mortuus sit vel aliqua parte corporis laesus fuerit, aut aedes totae aut aliqua ex parte incendio consumptae fuerint, aut fundus vi fluminis totus vel aliqua ex parte ablatus sit, sive etiam inundatione aquae aut arboribus turbine deiectis longe minor aut deterior esse coeperit, emptoris damnum est, cui necesse est, licet rem non fuerit nactus, pretium solvere. quidquid enim sine dolo et culpa venditoris accidit, in eo venditor securus est. sed et si post emptionem fundo aliquid per alluvionem accessit, ad emptoris commodum pertinet: nam et commodum eius esse debet cuius periculum est. Quodsi fugerit homo qui veniit, aut subreptus fuerit, ita ut neque dolus neque culpa venditoris interveniat animadvertendum erit an custodiam eius usque ad traditionem venditor susceperit. sane enim, si susceperit, ad ipsius periculum is casus pertinet: si non susceperit, securus erit. idem et in ceteris animalibus ceterisque rebus intellegimus. utique tamen vindicationem rei et condictionem exhibere debebit emptori, quia sane, qui rem nondum emptori tradidit adhuc ipse dominus est. idem est etiam de furti et de damni iniuriae actione. Emptio tam sub condicione quam pure contrahi potest. sub condicione veluti SI STICHUS INTRA CERTUM DIEM TIBI PLACUERIT, ERIT TIBI EMPTUS AUREIS TOT. Loca sacra vel religiosa, item publica, veluti forum, basilicam, frustra quis sciens emit, quas tamen si pro privatis vel profanis, deceptus a venditore, emerit, habebit actionem ex empto, quod non habere ei liceat ut consequatur quod sua interest deceptum eum non esse. idem iuris est, si hominem liberum pro servo emerit.

LIB. III, TIT. XXIV.

DE LOCATIONE ET CONDUCTIONE.

Locatio et conductio proxima est emptioni et venditioni iisdemque iuris regulis consistit. nam ut emptio et venditio ita contrahitur si de pretio convenerit, sic etiam locatio et conductio ita contrahi intellegitur si merces constituta sit. et competit locatori quidem locati actio, conductori vero conducti. Et quae supra diximus, si alieno arbitrio pretium permissum fuerit, eadem et de locatione et conductione dicta esse intellegamus, si alieno arbitrio merces permissa fuerit. qua de causa si fulloni polienda curandave aut sarcinatori sarcienda vestimenta quis dederit nulla statim mercede constituta, sed postea tantum daturus quantum inter eos convenerit, non proprie locatio et conductio contrahi intellegitur, sed eo nomine praescriptis verbis actio datur.

Praeterea sicut vulgo quaerebatur, an permutatis rebus emptio et venditio contrahitur: ita quaeri solebat de locatione et conductione, si forte rem aliquam tibi utendam sive fruendam quis dederit et invicem a te aliam utendam sive fruendam acceperit. et placuit, non esse locationem et conductionem, sed proprium genus esse contractus. veluti si, cum unum quis bovem haberet et vicinus eius unum, placuerit inter eos, ut per denos dies invicem boves commodarent, ut opus facerent, et apud alterum bos periit: neque locati vel conducti neque commodati competit actio, quia non fuit gratuitum commodatum, verum praescriptis verbis agendum est.

Adeo autem familiaritatem aliquam inter se habere videntur emptio et venditio, item locatio et conductio, ut in quibusdam causis quaeri soleat, utrum emptio et venditio contrahatur, an locatio et conductio. ut ecce de praediis quae perpetuo quibusdam fruenda traduntur, id est ut, quamdiu pensio sive reditus pro his domino praestetur, neque ipsi conductori neque heredi eius, cuive conductor heresve eius id praedium vendiderit aut donaverit aut dotis nomine dederit aliove quo modo alienaverit auferre liceat. sed talis contractus quia inter veteres dubitabatur et a quibusdam locatio, a quibusdam venditio existimabatur: lex Zenoniana lata est, quae emphyteuseos contractui propriam statuit naturam neque ad locationem neque ad venditionem inclinantem, sed suis pactionibus fulciendam, et si quidem aliquid pactum fuerit, hoc ita optinere ac si natura talis esset contractus, sin autem nihil de periculo rei fuerit pactum, tunc si quidem totius rei interitus accesserit, ad dominum super hoc redundare periculum, sin particularis, ad emphyteuticarium huiusmodi damnum venire. quo iure utimur.

Item quaeritur, si cum aurifice Titio convenerit, ut is ex auro suo certi ponderis certaeque formae anulos ei faceret et acciperet verbi gratia aureos decem, utrum emptio et venditio contrahi videatur, an locatio et conductio? et Cassius ait, materiae quidem emptionem venditionemque contrahi, operae autem locationem et conductionem. sed placuit, tantum emptionem et venditionem contrahi. quodsi suum aurum Titius dederit, mercede pro opera constituta, dubium non est quin locatio et conductio sit.

Conductor omnia secundum legem conductionis facere debet et, si quid in lege praetermissum fuerit, id ex bono et aequo debet praestare. qui pro usu aut vestimentorum aut argenti aut iumenti mercedem aut dedit aut promisit, ab eo custodia talis desideratur qualem diligentissimus paterfamilias suis rebus adhibet. quam si praestiterit et aliquo casu rem amiserit, de restituenda ea non tenebitur. Mortuo conductore intra tempora conductionis, heres eius eodem iure in conductionem succedit.

LIB. III, TIT. XXV.
DE SOCIETATE.

Societatem coire solemus aut totorum bonorum, quam Graeci specialiter κοινοπραξίαν appellant, aut unius alicuius negotiationis, veluti mancipiorum emendorum vendendorumque, aut olei, vini, frumenti emendi vendendique.

Et quidem si nihil de partibus lucri et damni nominatim convenerit, aequales scilicet partes et in lucro et in damno spectantur. quodsi expressae fuerint partes, hae servari debent: nec enim umquam dubium fuit, quin valeat conventio, si duo inter se pacti sunt ut ad unum quidem duae partes et damni et lucri pertineant, ad aliam tertia. De illa sane conventione quaesitum est, si Titius et Seius inter se pacti sunt, ut ad Titium lucri duae partes pertineant, damni tertia, ad Seium duae partes damni, lucri tertia, an rata debet haberi conventio? Quintus Mucius contra naturam societatis talem pactionem esse existimavit et ob id non esse ratam habendam. Servius Sulpicius, cuius sententia praevaluit, contra sentit, quia saepe quorundam ita pretiosa est opera in societate, ut eos iustum sit meliore condicione in societatem admitti: nam et ita coiri posse societatem non dubitatur, ut alter pecuniam conferat, alter non conferat et tamen lucrum inter eos commune sit, quia saepe opera alicuius pro pecunia valet. et adeo contra Quinti Mucii sententiam obtinuit, ut illud quoque constiterit, posse convenire, ut quis lucri partem ferat, damno non teneatur, quod et ipsum Servius convenienter sibi existimavit: quod tamen ita intellegi oportet, ut, si in aliqua re lucrum, in aliqua damnum allatum sit, compensatione facta, solum quod superest intellegatur lucri esse. Illud expeditum est, si in una causa pars fuerit expressa, veluti in solo lucro vel in solo damno, in altera vero omissa: in eo quoque quod praetermissum est eandem partem servari

Manet autem societas eo usque donec in eodem consensu perseveraverint: at cum aliquis renuntiaverit societati, solvitur societas. sed plane si quis callide in hoc renuntiaverit societati ut obveniens aliquod lucrum solus habeat, veluti si totorum bonorum socius, cum ab aliquo heres esset relictus, in hoc renuntiaverit societati ut hereditatem solus lucrifaceret, cogitur hoc lucrum communicare: si quid vero aliud lucri faceret quod non captaverit, ad ipsum solum pertinet: ei vero cui renuntiatum est, quidquid omnino post renuntiatam societatem adquiritur, soli conceditur. Solvitur adhuc societas etiam morte socii, quia qui societatem contrahit, certam personam sibi elegit. sed et si consensu plurium societas coita sit, morte unius socii solvitur etsi plures supersint, nisi si in coeunda societate aliter convenerit. Item si alicuius rei contracta societas sit et finis negotio impositus est, finitur societas. Publicatione quoque distrahi societatem manifestum est, scilicet si universa bona socii publicentur: nam cum in eius locum alius succedit, pro mortuo habetur. Item si quis ex sociis, mole debiti praegravatus, bonis suis cesserit et ideo propter publica aut propter privata debita substantia eius veneat, solvitur societas. sed hoc casu si adhuc consentiant in societatem, nova videtur incipere societas.

Socius socio utrum eo nomine tantum teneatur pro socio actione si quid dolo commiserit, sicut is qui deponi apud se passus est, an etiam culpae, id est desidiae atque neglegentiae, nomine, quaesitum est: praevaluit tamen, etiam culpae nomine teneri eum. culpa autem non ad exactissimam diligentiam dirigenda est: sufficit enim talem diligentiam in communibus rebus adhibere socium, qualem suis rebus adhibere solet. nam qui parum diligentem socium sibi adsumit, de se queri, hoc est suae id imprudentiae imputare, debet.

LIB. III, TIT. XXVI.
DE MANDATO.

Mandatum contrahitur quinque modis, sive sua tantum gratia aliquis tibi mandet, sive sua et tua, sive alienia tantum, sive sua et aliena, sive tua et aliena. at si tua tantum gratia tibi mandatum sit, supervacuum est mandatum et ob id nulla ex eo obligatio nec mandati inter vos actio nascitur. Mandantis tantum gratia intervenit mandatum, veluti si quis tibi mandet ut negotia eius gereres, vel ut fundum ei emeres, vel ut pro eo sponderes. Tua et mandantis, veluti si mandet tibi ut pecuniam sub usuris crederes ei qui in rem ipsius mutuaretur, aut si, volente te agere cum eo ex fideiussoria causa, mandet tibi ut cum reo agas periculo mandantis, vel ut ipsius periculo stipuleris ab eo quem tibi deleget in id quod tibi debuerat. Aliena tantum causa intervenit mandatum, veluti si tibi mandet ut Titii negotia gereres, vel ut Titio fundum emeres, vel ut pro Titio sponderes. Sua et aliena, veluti si de communibus suis et Titii negotiis gerendis tibi mandet, vel ut sibi et Titio fundum emeres, vel ut pro eo et Titio sponderes. Tua et aliena, veluti si tibi mandet ut Titio sub usuris crederes. quodsi ut sine usuris crederes, aliena tantum gratia intercedit mandatum. Tua tantum gratia intervenit mandatum, veluti si tibi mandet ut pecunias tuas potius in emptiones praediorum colloces quam feneres, vel ex diverso ut feneres potius quem in emptiones praediorum colloces. cuius generis mandatum magis consilium est quam mandatum et ob id non est obligatorium, quia nemo ex consilio mandati obligatur, etiamsi non expediat ei cui dabitur, cum liberum cuique sit apud se explorare, an expediat consilium. itaque si otiosam pecuniam domi te habentem hortatus fuerit aliquis, ut rem aliquam emeres vel eum crederes, quamvis non expedierit tibi eam emisse vel credidisse, non tamen tibi mandati tenetur. et adeo haec ita sunt, ut quaesitum sit, an mandati teneatur qui mandavit tibi, ut Titio pecuniam fenerares: sed obtinuit Sabini sententia, obligatorium esse in hoc casu mandatum, quia non aliter Titio credidisses quam si tibi mandatum esset. Illud quoque mandatum non est obligatorium quod contra bonos mores est, veluti si Titius de furto aut damno faciendo aut de iniuria facienda tibi mandet. licet enim poenam istius facti nomine praestiteris, non tamen ullam habes adversus Titium actionem.

Is qui exsequitur mandatum non debet excedere fines mandati. ut ecce si quis usque ad centum aureos mandaverit tibi, ut fundum emeres vel ut pro Titio sponderes, neque pluris emere debes neque in ampliorem pecuniam fideiubere; alioquin non habebis cum eo mandati actionem: adeo quidem, ut Sabino et Cassio placuerit, etiam si usque ad centum aureos cum eo agere velis, inutiliter te acturum. diversae scholae auctores recte te usque ad centum aureos acturum existimant: quae sententia sane benignior est. quod si minoris emeris, habebis scilicet cum eo actionem, quoniam qui mandat, ut sibi centum aureorum fundus emeretur, is utique mandasse intellegitur, ut minoris, si possit, emeretur.

Recte quoque mandatum contractum, si, dum adhuc integra res sit, revocatum fuerit, evanescit. Item si adhuc integro mandato mors alterutrius interveniat, id est vel eius qui mandaverit, vel eius qui mandatum susceperit, solvitur mandatum. sed utilitatis causa receptum est, si mortuo eo qui tibi mandaverit, tu ignorans eum decessisse exsecutus fueras mandatum, posse te agere mandati actione: alioquin iusta et probabilis ignorantia damnum tibi afferat. et huic simile est quod placuit, si debitores manumisso dispensatore Titii per ignorantiam liberto solverint, liberari eos: cum alioquin stricta iuris ratione non possent liberari, quia alii solvissent, quam cui solvere debuerint.

Mandatum non suscipere liberum est: susceptum autem consummandum aut quam primum renuntiandum est, ut aut per semet ipsum aut per alium eandem rem mandator exsequatur. nam nisi ita renuntiatur ut integra causa mandatori reservetur eandem rem explicandi, nihilo minus mandati actio locum habet, nisi si iusta causa intercessit aut non renuntiandi aut intempestive renuntiandi.

Mandatum et in diem differri et sub condicione fieri potest. In summa sciendum est, mandatum, nisi gratuitum sit, in aliam formam negotii cadere: nam mercede constituta, incipit locatio et conductio esse. et ut generaliter dixerimus: quibus casibus, sine mercede suscepto officio, mandati aut depositi contrahitur negotium, his casibus, interveniente mercede, locatio et conductio contrahi intellegitur. et ideo si fulloni polienda curandave vestimenta dederis aut sarcinatori sarcienda, nulla mercede constituta neque promissa, mandati competit actio.

LIB. III, TIT. XXVII.
DE OBLIGATIONIBUS QUASI EX CONTRACTU.

Post genera contractuum enumerata dispiciamus etiam de his obligationibus quae non proprie quidem ex contractu nasci intelleguntur, sed tamen, quia non ex maleficio substantiam capiunt, quasi ex contractu nasci videntur.

Igitur cum quis absentis negotia gesserit, ultro citroque inter eos nascuntur actiones, quae appellantur negotiorum gestorum: sed domino quidem rei gestae adversus eum qui gessit directa competit actio, negotiorum autem gestori contraria. quas ex nullo contractu proprie nasci manifestum est: quippe ita nascuntur istae actiones, si sine mandato quisque alienis negotiis gerendis se obtulerit: ex qua causa ii quorum negotia gesta fuerint etiam ignorantes obligantur. idque utilitatis causa receptum est, ne absentium qui subita festinatione coacti, nulli demandata negotiorum suorum administratione, peregre profecti essent, deserentur negotia: quae sane nemo curaturus esset, si de eo quod quis impendisset nullam habiturus esset actionem. sicut autem is qui utiliter gesserit negotia, habet obligatum dominum negotiorum, ita et contra iste quoque tenetur, ut administrationis rationem reddat. quo casu ad exactissimam quisque diligentiam compellitur reddere rationem: nec sufficit talem diligentiam adhibere, qualem suis rebus adhibere soleret, si modo alius diligentior commodius administraturus esset negotia.

Tutores quoque, qui tutelae iudicio tenentur, non proprie ex contractu obligati intelleguntur (nullum enim negotiam inter tutorem et pupillum contrahitur): sed quia sane non ex maleficio tenentur, quasi ex contractu teneri videntur. et hoc autem casu mutuae sunt actiones: non tantum enim pupillus cum tutore habet tutelae actionem, sed et ex contrario tutor cum pupillo habet contrariam tutelae, si vel impenderit aliquid in rem pupilli vel pro eo fuerit obligatus aut rem suam creditori eius obligaverit.

Item si inter aliquos communis sit res sine societate, veluti quod pariter eis legata donatave esset, et alter eorum alteri ideo teneatur communi dividundo iudicio, quod solus fructus ex ea re perceperit, aut quod socius eius in eam rem necessarias impensas fecerit: non intellegitur proprie ex contractu obligatus esse, quippe nihil inter se contraxerunt: sed quia non ex maleficio tenetur, quasi ex contractu teneri videtur. Idem iuris est de eo qui coheredi suo familiae erciscundae iudicio ex his causis obligatus est.

Heres quoque legatorum nomine non proprie ex contractu obligatus intellegitur: neque enim cum herede neque cum defuncto ullum negotium legatarius gessisse proprie dici potest: sed quia ex maleficio non est obligatus heres, quasi ex contractu debere intellegitur.

Item is cui quis per errorem non debitum solvit quasi ex contractu debere videtur. adeo enim non intellegitur proprie ex contractu obligatus ut, si certiorem rationem sequamur, magis, ut supra diximus, ex distractu quam ex contractu possit dici obligatus esse: nam qui solvendi animo pecuniam dat, in hoc dare videtur, ut distrahat potius negotium quam contrahat. sed tamen proinde is qui accepit obligatur, ac si mutuum illi daretur, et ideo condictione tenetur. Ex quibusdam tamen causis repeti non potest quod per errorem non debitum solutum sit. namque definiverunt veteres, ex quibus causis infitiando lis crescit, ex his causis non debitum solutum repeti non posse, veluti ex lege Aquilia, item ex legato. quod veteres quidem in his legatis locum habere voluerunt quae certa constituta per damnationem cuicumque fuerant legata: nostra autem constitutio cum unam naturam omnibus legatis et fideicommissis indulsit, huiusmodi augmentum in omnibus legatis et fideicommissis extendi voluit: sed non omnibus legatariis praebuit, sed tantummodo in his legatis et fideicommissis quae sacrosanctis ecclesiis, ceterisque venerabilibus locis quae religionis vel pietatis intuitu honorificantur, derelicta sunt, quae si indebita solvantur non repetuntur.

LIB. III, TIT. XXVIII.
PER QUAS PERSONAS NOBIS OBLIGATIO ADQUIRITUR.

Eitis generibus obligationum quae ex contractu vel quasi ex contractu nascuntur, admonendi sumus, adquiri vobis non solum per vosmet ipsos, sed etiam per eas quoque personas quae in vestra potestate sunt, veluti per servos vestros et filios: ut tamen, quod per servos quidem vobis adquiritur, totum vestrum fiat, quod autem per liberos quos in potestate habetis ex obligatione fuerit adquisitum, hoc dividatur secundum imaginem rerum proprietatis et ususfructus, quam nostra discrevit constitutio: ut, quod ab actione commodum perveniat, huius usumfructum quidem habeat pater, proprietas autem filio servetur, scilicet patre actionem movente secundum novellae nostrae constitutionis divisionem. Item per liberos homines, et alienos servos quos bona fide possidetis, adquiritur vobis, sed tantum ex duabus causis, id est si quid ex operis suis vel ex re vestra adquirant. Per eum quoque servum in quo usumfructum vel usum habetis, similiter ex duabus istis causis vobis adquiritur. Communem servum pro dominica parte dominis adquirere certum est, excepto eo quod uni nominatim stipulando aut per traditionem accipiendo illi soli adquirit, veluti cum ita stipuletur: TITIO DOMINO MEO DARE SPONDES? sed si unius domini iussu servus fuerit stipulatus, licet antea dubitabatur, tamen post nostram decisionem res expedita est, ut illi tantum adquirat qui hoc ei facere iussit, ut supra dictum est.

LIB. III, TIT. XXIX.
QUIBUS MODIS OBLIGATIO TOLLITUR.

Tollitur autem omnis obligatio solutione eius quod debetur, vel si quis, consentiente creditore, aliud pro alio solverit. nec tamen interest, quis solvat, utrum ipse qui debet, an alius pro eo: liberatur enim et alio solvente, sive sciente debitore sive ignorante vel invito solutio fiat. item si reus solverit, etiam ii qui pro eo intervenerunt liberantur. idem ex contrario contingit, si fideiussor solverit: non enim solus ipse liberatur, sed etiam reus.

Item per acceptilationem tollitur obligatio. est autem acceptilatio imaginaria solutio. quod enim ex verborum obligatione Titio debetur, id si velit Titius remittere, poterit sic fieri, ut patiatur haec verba debitorem dicere: QUOD EGO TIBI PROMISI, HABESNE ACCEPTUM?

et Titius respondeat HABEO; sed et Graece potest acceptum fieri, dummodo sic fiat ut Latinis verbis solet: ἔχεις λαβὼν δηνάρια τόσα; ἔχω λαβών. quo genere, ut diximus, tantum eae obligationes solvuntur quae ex verbis consistunt, non etiam ceterae: consentaneum enim visum est, verbis factam obligationem posse aliis verbis dissolvi. sed id quod ex alia causa debetur potest in stipulationem deduci et per acceptilationem dissolvi. sicut autem quod debetur pro parte recte solvitur, ita in partem debiti acceptilatio fieri potest. Est prodita stipulatio, quae vulgo Aquiliana appellatur, per quam stipulationem contingit ut omnium rerum obligatio in stipulationem deducatur et ea per acceptilationem tollatur. stipulatio enim Aquiliana novat omnes obligationes et a Gallo Aquilio ita composita est:

QUIDQUID TE MIHI EX QUACUMQUE CAUSA DARE FACERE OPORTET, OPORTEBIT OPORTERETVE, PRAESENS IN DIEMVE QUARUMQUE RERUM MIHI TECUM ACTIO QUAEQUE ABS TE PETITIO VEL ADVERSUS TE PERSECUTIO EST, ERIT, QUODQUE TU MEUM HABES, TENES, POSSIDES, POSSIDERESVE DOLOVE MALO FECISTI QUO MINUS POSSIDERES, QUANTI QUAEQUE EARUM RERUM RES ERIT, TANTAM PECUNIAM DARI STIPULATUS EST AULUS AGERIUS, SPOPONDIT NUMERIUS NEGIDIUS.

item e diverso Numerius Negidius interrogavit Aulum Agerium:

QUIDQUID TIBI HODIERNO DIE PER AQUILIANAM STIPULATIONEM SPOPONDI, ID OMNE HABESNE ACCEPTUM?

respondit Aulus Agerius:

HABEO ACCEPTUM vel et ACCEPTUM TULI**.**

Praeterea novatione tollitur obligatio. veluti si id quod tu Seio debeas, a Titio dari stipulatus sit. nam interventu novae personae nova nascitur obligatio et prima tollitur translata in posteriorem, adeo ut interdum, licet posterior stipulatio inutilis sit, tamen prima novationis iure tollatur: veluti si id quod Titio tu debebas a pupillo sine tutoris auctoritate stipulatus fuerit, quo casu res amittitur: nam et prior debitor liberatur et posterior obligatio nulla est. non idem iuris est, si a servo quis stipulatus fuerit: nam tunc prior proinde obligatus manet ac si postea nullus stipulatus fuisset. sed si eadem persona sit a qua postea stipuleris, ita demum novatio fit, si quid in posteriore stipulatione novi sit, forte si condicio aut dies aut fideiussor adiciatur aut detrahatur. quod autem diximus, si condicio adiciatur novationem fieri, sic intellegi oportet, ut ita dicamus factam novationem si condicio extiterit: alioquin si defecerit, durat prior obligatio. Sed cum hoc quidem inter veteres constabat, tunc fieri novationem cum novandi animo in secundam obligationem itum fuerat: per hoc autem dubium erat, quando novandi animo videretur hoc fieri, et quasdam de hoc praesumptiones alii in aliis casibus introducebant: ideo nostra processit constitutio, quae apertissime definivit, tunc solum fieri novationem, quotiens hoc ipsum inter contrahentes expressum fuerit quod propter novationem prioris obligationis convenerunt; alioquin manere et pristinam obligationem et secundam ei accedere, ut maneat ex utraque causa obligatio secundum nostrae constitutionis definitiones, quas licet ex ipsius lectione apertius cognoscere.

Hoc amplius eae obligationes quae consensu contrahuntur contraria voluntate dissolvuntur. nam si Titius et Seius inter se consenserunt ut fundum Tusculanum emptum Seius haberet centum aureorum, deinde re nondum secuta, id est neque pretio soluto neque fundo tradito, placuerit inter eos ut discederetur ab emptione et venditione, invicem liberantur. idem est et in conductione et locatione et omnibus contractibus qui ex consensu descendunt, sicut iam dictum est.

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LIBER QUARTUS: TITULORUM CONSPECTUS.

IV:I De obligationibus quae ex delicto nascuntur
IV:II Vi bonorum raptorum
IV:III De lege Aquilia
IV:IV De iniuriis
IV:V De obligationibus quae quasi ex delicto nascuntur
IV:VI De actionibus
IV:VII Quod cum eo qui in aliena potestate est negotium gestum esse dicitur
IV:VIII De noxalibus actionibus
IV:IX Si quadrupes pauperiem fecisse dicetur
IV:X De his per quos agere possumus
IV:XI De satisdationibus
IV:XII De perpetuis et temporalibus actionibus et quae ad heredes vel in heredes transeunt
IV:XIII De exceptionibus
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IV:XV De interdictis
IV:XVI De poena temere litigantium
IV:XVII De officio iudicis
IV:XVIII De publicis iudiciis

LIB. IV, TIT. I.
DE OBLIGATIONIBUS QUAE EX DELICTO NASCUNTUR.

Cum eitum sit superiore libro de obligationibus ex contractu et quasi ex contractu, sequitur, ut de obligationibus ex maleficio dispiciamus. sed illae quidem, ut suo loco tradidimus, in quattuor genera dividuntur: hae vero unius generis sunt, nam omnes ex re nascuntur, id est ex ipso maleficio, veluti ex furto aut rapina aut damno aut iniuria.

Furtum est contrectatio rei fraudulosa vel ipsius rei vel etiam usus eius possessionisve: quod lege naturali prohibitum est admittere. Furtum autem vel a furvo, id est nigro, dictum est, quod clam et obscure fit et plerumque nocte: vel a fraude: vel a ferendo, id est auferendo: vel a Graeco sermone, qui φῶρας appellant fures. immo etiam Graeci ἀπὸ τοῦ φέρειν φῶρας dixerunt.

Furtorum autem genera duo sunt, manifestum et nec manifestum. nam conceptum et oblatum species potius actionis sunt furto cohaerentes quam genera furtorum, sicut inferius apparebit. manifestus fur est, quem Graeci ἐπ᾽ αὐτοφώρῳ appellant: nec solum is qui in ipso furto deprehenditur, sed etiam is qui eo loco deprehenditur quo fit, veluti qui in domo furtum fecit et, nondum egressus ianuam deprehensus fuerit, et qui in oliveto olivarum aut in vineto uvarum furtum fecit, quamdiu in eo oliveto aut in vineto fur deprehensus sit: immo ulterius furtum manifestum extendendum est, quamdiu eam rem fur tenens visus vel deprehensus fuerit sive in publico sive in privato vel a domino vel ab alio, antequam eo pervenerit quo perferre ac deponere rem destinasset, sed si pertulit quo destinavit, tametsi deprehendatur cum re furtiva, non est manifestus fur. nec manifestum furtum quid sit, ex his quae diximus intellegitur: nam quod manifestum non est, id scilicet nec manifestum est. Conceptum furtum dicitur cum apud aliquem testibus praesentibus furtiva res quaesita et inventa sit: nam in eum propria actio constituta est, quamvis fur non sit, quae appellatur concepti. oblatum furtum dicitur, cum res furtiva ab aliquo tibi oblata sit eaque apud te concepta sit, utique si ea mente tibi data fuerit, ut apud te potius quam apud eum qui dederit, conciperetur: nam tibi, apud quem concepta sit, propria adversus eum qui obtulit, quamvis fur non sit, constituta est actio, quae appellatur ablati. est etiam prohibiti furti actio adversus eum qui furtum quaerere testibus praesentibus volentem prohibuerit. praeterea poena constituitur edicto praetoris per actionem furti non exhibiti adversus eum qui furtivam rem apud se quaesitam et inventam non exhibuit. sed hae actiones, id est concepti et oblati et furti prohibiti nec non furti non exhibiti in desuetudinem abierunt. cum enim requisitio rei furtivae hodie secundum veterem observationem non fit: merito ex consequentia etiam praefatae actiones ab usu communi recesserunt, cum manifestissimum est quod omnes qui scientes rem furtivam susceperint et celaverint, furti nec manifesti obnoxii sunt. Poena manifesti furti quadrupli est tam ex servi persona quam ex liberi, nec manifesti dupli.

Furtum autem fit non solum cum quis intercipiendi causa rem alienam amovet, sed general iter cum quis alienam rem invito domino contrectat. itaque sive creditor pignore, sive is apud quem res deposita est ea re utatur, sive is qui rem utendam accepit in alium usum eam transferat quam cuius gratia ei data est, furtum committit. veluti si quis argentum utendum acceperit quasi amicos ad cenam invitaturus et id peregre secum tulerit, aut si quis equum gestandi causa commodatum sibi longius aliquo duxerit, quod veteres scripserunt de eo qui in aciem equum perduxisset. Placuit tamen, eos qui rebus commodatis aliter uterentur quam utendas acceperint, ita furtum committere, si se intellegant id invito domino facere eumque, si intellexisset, non permissurum, ac si permissurum credant, extra crimen videri: optima sane distinctione, quia furtum sine affectu furandi non committitur. Sed et si credat aliquis, invito domino se rem commodatam sibi contrectare, domino autem volente id fiat, dicitur furtum non fieri. unde illud quaesitum est, cum Titius servum Maevii sollicitaverit, ut quasdam res domino subriperet et ad eum perferret, et servus id ad Maevium pertulerit, Maevius, dum vult Titium in ipso delicto deprehendere, permisit servo quasdam res ad eum perferre, utrum furti an servi corrupti iudicio teneatur Titius, an neutro? et cum nobis super hac dubitatione suggestum est et antiquorum prudentium super hoc altercationes perspeximus, quibusdam neque furti neque servi corrupti actionem praestantibus, quibusdam furti tantummodo: nos huiusmodi calliditati obviam euntes, per nostram decisionem sanximus, non solum furti actionem, sed etiam servi corrupti contra eum dari: licet enim is servus deterior a sollicitatore minime factus est, et ideo non concurrant regulae quae servi corrupti actionem introducerent, tamen consilium corruptoris ad perniciem probitatis servi introductum est, ut sit ei poenalis actio imposita, tamquam re ipsa fuisset servus corruptus, ne ex huiusmodi impunitate et in alium servum, qui possit corrumpi, tale facinus a quibusdam pertentetur. Interdum etiam liberorum hominum furtum fit, veluti si quis liberorum nostrorum, qui in potestate nostra sunt, subreptus fuerit. Aliquando autem etiam suae rei quisque furtum committit, veluti si debitor rem quam creditori pignoris causa dedit subtraxerit.

Interdum furti tenetur qui ipse furtum non fecerit: qualis est cuius ope et consilio furtum factum est. in quo numero est qui tibi nummos excussit, ut alius eos raperet, aut obstitit tibi, ut alius rem tuam surriperet, vel oves aut boves tuas fugaverit, ut alius eas exciperet: et hoc veteres scripserunt de eo qui panno rubro fugavit armentum. sed si quid eorum per lasciviam, et non data opera ut furtum admitteretur, factum est, in factum actio dari debet. at ubi ope Maevii Titius furtum fecerit, ambo furti tenentur. ope consilio eius quoque furtum admitti videtur, qui scalas forte fenestris supponit aut ipsas fenestras vel ostium effringit, ut alius furtum faceret, quive ferramenta ad effringendum aut scalas, ut fenestris supponerentur, commodaverit, sciens cuius gratia commodaverit. certe qui nullam operam ad furtum faciendum adhibuit, sed tantum consilium dedit atque hortatus est ad furtum faciendum, non tenetur furti. Hi qui in parentium vel dominorum potestate sunt si rem eis subripiant, furtum quidem illis faciunt et res in furtivam causam cadit nec ob id ab ullo usucapi potest antequam in domini potestatem revertatur; sed furti actio non nascitur, quia nec ex alia ulla causa potest inter eos actio nasci: si vero ope consilio alterius furtum factum fuerit, quia utique furtum committitur, convenienter ille furti tenetur, quia verum est, ope consilio eius furtum factum esse.

Furti autem actio ei competit cuius interest rem salvam esse, licet dominus non sit: itaque nec domino aliter competit quam si eius intersit rem non perire. Unde constat, creditorem de pignore subrepto furti agere posse, etiamsi idoneum debitorem habeat, quia expedit ei pignori potius incumbere quam in personam agere: adeo quidem ut, quamvis ipse debitor eam rem subripuerit, nihilo minus creditori competat actio furti. Item si fullo polienda curandave aut sarcinator sarcienda vestimenta mercede certa acceperit eaque furto amiserit, ipse furti habet actionem, non dominus, quia domini nihil interest eam rem non perisse, cum iudicio locati a fullone aut sarcinatore rem suam persequi potest. sed et bonae fidei emptori, subrepta re quam emerit, quamvis dominus non sit, omnimodo competit furti actio, quemadmodum et creditori. fulloni vero et sarcinatori non aliter furti competere placuit, quam si solvendo sint, hoc est si domino rei aestimationem solvere possint: nam si solvendo non sunt, tunc quia ab eis suum dominus consequi non possit, ipsi domino furti actio competit, quia hoc casu ipsius interest rem salvam esse. idem est et si in parte solvendo sint fullo aut sarcinator. Quae de fullone et sarcinatore diximus, eadem et ad eum cui commodata res est transferenda veteres existimabant: nam ut ille fullo mercedem accipiendo custodiam praestat, ita is quoque qui commodum utendi percipit similiter necesse habet custodiam praestare. sed nostra providentia etiam hoc in decisionibus nostris emendavit, ut in domini sit voluntate, sive commodati actionem adversus eum qui rem commodatam accepit movere desiderat, sive furti adversus eum qui rem subripuit, et alterutra earum electa, dominum non posse ex poenitentia ad alteram venire actionem. sed si quidem furem elegerit, illum qui rem utendam accepit penitus liberari. sin autem commodator veniat adversus eum qui rem utendam accepit, ipsi quidem nullo modo competere posse adversus furem furti actionem, eum autem qui pro re commodata convenitur, posse adversus furem furti habere actionem, ita tamen si dominus, sciens rem esse subreptam, adversus eum cui res commodata fuit pervenit: sin autem nescius et dubitans rem non esse apud eum commodati actionem instituit, postea autem, re comperta, voluit remittere quidem commodati actionem, ad furti autem pervenire, tunc licentia ei concedatur et adversus furem venire, nullo obstaculo ei opponendo, quoniam incertus constitutus movit adversus eum qui rem utendam accepit commodati actionem (nisi domino ab eo satisfactum est: tunc etenim omnimodo furem a domino quidem furti actione liberari, suppositum autem esse ei qui pro re sibi commodata domino satisfecit), cum manifestissimum est, etiam si ab initio dominus actionem instituit commodati ignarus rem esse subreptam, postea autem, hoc ei cognito, adversus furem transivit, omnimodo liberari eum qui rem commodatam accepit, quemcumque causae exitum dominus adversus furem habuerit: eadem definitione obtinente, sive in partem sive in solidum solvendo sit is qui rem commodatam accepit. Sed is apud quem res deposita est custodiam non praestat, sed tantum in eo obnoxius est, si quid ipse dolo malo fecerit: qua de causa si res ei subrepta fuerit, quia restituendae eius nomine depositi non tenetur nec ob id eius interest, rem salvam esse, furti agere non potest, sed furti actio domino competit. In summa sciendum est, quaesitum esse, an impubes rem alienam amovendo furtum faciat. et placet, quia furtum ex affectu consistit, ita demum obligari eo crimine impuberem, si proximus pubertati sit, et obid intellegat se delinquere.

Furti actio sive dupli sive quadrupli tantum ad poenae persecutionem pertinet: nam ipsius rei persecutionem extrinsecus habet dominus, quam aut vindicando aut condicendo potest auferre. sed vindicatio quidem adversus possessorem est, sive fur ipse possidet sive alius quilibet: condictio autem adversus ipsum furem heredemve eius, licet non possideat, competit.

LIB. IV, TIT. II.
VI BONORUM RAPTORUM.

Qui res alienas rapit, tenetur quidem etiam furti (quis enim magis alienam rem invito domino contrectat quam qui vi rapit? ideoque recte dictum est, eum improbum furem esse): sed tamen propriam actionem eius delicti nomine praetor introduxit, quae appellatur vi bonorum raptorum et est intra annum quadrupli, post annum simpli. quae actio utilis est, etiamsi quis unam rem, licet minimam, rapuerit. quadruplum autem non totum poena est et extra poenam rei persecutio, sicut in actione furti manifesti diximus: sed in quadruplo inest et rei persecutio, ut poena tripli sit, sive comprehendatur raptor in ipso delicto sive non. ridiculum est enim levioris esse condicionis eum qui vi rapit quam qui clam amovet. Quia tamen ita competit haec actio, si dolo malo quisque rapuerit: qui aliquo errore inductus, suam rem esse, et imprudens iuris eo animo rapuit quasi domino liceat rem suam etiam per vim auferre possessoribus, absolvi debet. cui scilicet conveniens est nec furti teneri eum qui eodem hoc animo rapuit. sed ne, dum talia excogitentur, inveniatur via per quam raptores impune suam exerceant avaritiam: melius divalibus constitutionibus pro hac parte prospectum est, ut nemini liceat vi rapere rem mobilem vel se moventem, licet suam eandem rem existimet: sed si quis contra statuta fecerit, rei quidem suae dominio cadere, sin autem aliena sit, post rei restitutionem etiam aestimationem eiusdem rei praestare. quod non solum in mobilibus rebus, quae rapi possunt, constitutiones optinere censuerunt, sed etiam in invasionibus quae circa res soli fiunt, ut ex hac omni rapina homines abstineant. In hac actione non utique spectatur, rem in bonis actoris esse: nam sive in bonis sit sive non sit, si tamen ex bonis sit, locum haec actio habebit. quare sive commodata sive locata sive etiam pignerata sive deposita sit apud Titium, sic ut intersit eius non auferri, veluti si in re deposita culpam quoque promisit, sive bona fide possideat, sive usumfructum in ea quis habeat, vel quod aliud ius ut intersit eius non rapi: dicendum est, competere ei hanc actionem, ut non dominium accipiat, sed illud solum quod ex bonis eius qui rapinam passus est, id est quod ex substantia eius, ablatum esse proponatur. et generaliter dicendum est, ex quibus causis furti actio competit in re clam facta, ex iisdem causis omnes habere hanc actionem.

LIB. IV, TIT. III.
DE LEGE AQUILIA.

Damni iniuriae actio constituitur per legem Aquiliam. cuius primo capite cautum est ut, si quis hominem alienum alienamve quadrupedem, quae pecudum numero sit, iniuria occiderit, quanti ea res in eo anno plurimi fuit, tantum domino dare damnetur.

Quod autem non praecise de quadrupede, sed de ea tantum quae "pecudum numero" est cavetur, eo pertinet, ut neque de feris bestiis neque de canibus cautum esse intellegamus, sed de his tantum quae proprie pasci dicuntur, quales sunt equi, muli, asini, boves, oves, caprae. de suibus quoque idem placuit: nam et sues pecorum appellatione continentur, quia et hi gregatim pascuntur: sic denique et Homerus in Odyssea ait, sicut Aelius Marcianus in suis institutionibus refert:

δήεις τόν γε σύεσσι παρήμενον· αἱ δὲ νέμονται
πὰρ Κόρακος πέτρῃ, ἐπί τε κρήνῃ Ἀρεθούσῃ.

"Iniuria" autem occidere intellegitur, qui nullo iure occidit. itaque qui latronem occidit, non tenetur, utique si aliter periculum effugere non potest. Ac ne is quidem hac lege tenetur qui casu occidit, si modo culpa eius nulla invenitur: nam alioquin non minus quam ex dolo ex culpa quisque hac lege tenetur. Itaque si quis, dum iaculis ludit vel exercitatur, transeuntem servum tuum traiecerit, distinguitur. nam si id a milite quidem in Campo, locove ubi solitum est exercitari, admissum est, nulla culpa eius intellegitur: si alius tale quid admisit, culpae reus est. idem iuris est de milite, si is in alio loco quam qui exercitandis militibus destinatus est, id admisit. Item si putator ex arbore deiecto ramo servum tuum transeuntem occiderit, si prope viam publicam aut vicinalem id factum est neque praeclamavit, ut casus evitari possit, culpae reus est: si praeclamavit neque ille curavit cavere, extra culpam est putator. aeque extra culpam esse intellegitur, si seorsum a via forte vel in medio fundo caedebat, licet non praeclamavit, quia eo loco nulli extraneo ius fuerat versandi. Praeterea si medicus, qui servum tuum secuit, dereliquerit curationem atque ob id mortuus fuerit servus, culpae reus est. Imperitia quoque culpae adnumeratur, veluti si medicus ideo servum tuum occiderit, quod eum male secuerit aut perperam ei medicamentum dederit. Impetu quoque mularum, quas mulio propter imperitiam retinere non potuerit, si servus tuus oppressus fuerit, culpae reus est mulio. sed et si propter infirmitatem retinere eas non potuerit, qui, cum alius firmior retinere potuisset, aeque culpae tenetur. eadem placuerunt de eo quoque, cum equo veheretur, impetum eius aut propter infirmitatem aut propter imperitiam suam retinere non potuerit.

His autem verbis legis "quanti id in eo anno plurimi fuerit" illa sententia exprimitur, ut si quis hominem tuum, qui hodie claudus aut luscus aut mancus erit, occiderit, qui in eo anno integer aut pretiosus fuerit, non tanti teneatur quanti is hodie erit, sed quanti in eo anno plurimi fuerit. qua ratione creditum est, poenalem esse huius legis actionem, quia non solum tanti quisque obligatur quantum damni dederit, sed aliquando longe pluris: ideoque constat, in heredem eam actionem non transire, quae transitura fuisset si ultra damnum numquam lis aestimaretur. Illud non ex verbis legis, sed ex interpretatione placuit, non solum perempti corporis aestimationem habendam esse, secundum ea quae diximus, sed eo amplius quidquid praeterea, perempto eo corpore, damni vobis adlatum fuerit, veluti si servum tuum heredem ab aliquo institutum ante quis occiderit quam is iussu tuo adiret: nam hereditatis quoque amissae rationem esse habendam constat. item si ex pari mularum unam vel ex quadriga equorum unum occiderit, vel ex comoedis unus servus fuerit occisus: non solum occisi fit aestimatio, sed eo amplius id quoque computatur, quanto depretiati sunt qui supersunt. Liberum est autem ei cuius servus fuerit occisus, et privato iudicio legis Aquiliae damnum persequi, et capitalis criminis eum reum facere.

Caput secundum legis Aquiliae in usu non est.

Capite tertio de omni cetero damno cavetur. Itaque si quis servum, vel eam quadrupedem quae pecudum numero est, vulneraverit, sive eam quadrupedem quae pecudum numero non est, veluti canem aut feram bestiam, vulneraverit aut occiderit, hoc capite actio constituitur. in ceteris quoque omnibus animalibus, item in omnibus rebus quae anima carent, damnum iniuria datum hac parte vindicatur. si quid enim ustum aut ruptum aut fractum fuerit, actio ex hoc capite constituitur: quamquam potuerit sola rupti appellatio in omnes istas causas sufficere: "ruptum" enim intellegitur quoquo modo corruptum. unde non solum usta aut fracta, sed etiam scissa et collisa et effusa et quoquo modo perempta atque deteriora facta hoc verbo continentur: denique responsum est, si quis in alienum vinum aut oleum id immiserit quo naturalis bonitas vini vel olei corrumperetur, ex hac parte legis eum teneri. Illud palam est, sicut ex primo capite ita demum quisque tenetur, si dolo aut culpa eius homo aut quadrupes occisus occisave fuerit, ita ex hoc capite ex dolo aut culpa de cetero damno quemque teneri. hoc tamen capite non quanti in eo anuo, sed quanti in diebus triginta proximus res fuerit, obligatur is qui damnum dederit. Ac ne "plurimi" quidem verbum adicitur; sed Sabino recte placuit, perinde habendam aestimationem ac si etiam hac parte "plurimi" verbum adiectum fuisset: nam plebem Romanam, quae Aquilio tribuno rogante hanc legem tulit, contentam fuisse, quod prima parte eo verbo usa est.

Ceterum placuit, ita demum ex hac lege actionem esse, si quis praecipue corpore suo damnum dederit. ideoque in eum qui alio modo damnum dederit, utiles actiones dari solent: veluti si quis hominem alienum aut pecus ita incluserit ut fame necaretur, aut iumentum tam vehementer egerit ut rumperetur, aut pecus in tantum exagitaverit ut praecipitaretur, aut si quis alieno servo persuaserit ut in arborem ascenderet vel in puteum descenderet, et is ascendendo vel descendendo aut mortuus fuerit aut aliqua parte corporis laesus erit, utilis in eum actio datur. sed si quis alienum servum de ponte aut ripa in flumen deiecerit et is suffocatus fuerit, eo quod proiecerit corpore suo damnum dedisse non difficiliter intellegi poterit ideoque ipsa lege Aquilia tenetur. sed si non corpore damnum fuerit datum neque corpus laesum fuerit, sed alio modo damnum alicui contigit, cum non sufficit neque directa neque utilis Aquilia, placuit eum qui obnoxius fuerit in factum actione teneri: veluti si quis, misericordia ductus, alienum servum compeditum solverit, ut fugeret.

LIB. IV. TIT. IV.
DE INIURIIS.

Generaliter iniuria dicitur omne quod non iure fit specialiter alias contumelia, quae a contemnendo dicta est, quam Graeci ὕβριν appellant; alias culpa, quam Graeci αἰδίκημα dicunt, sicut in lege Auilia damnum iniuria accipitur; alias iniquitas et iniustitia, quam Graeci ἀδικίαν vocant. cum enim praetor vel iudex non iure contra quem pronuntiat, iniuriam accepisse dicitur.

Iniuria autem committitur non solum cum quis pugno puta aut fustibus caesus vel etiam verberatus erit, sed etiam si cui convicium factum fuerit, sive cuius bona, quasi debitoris, possessa fuerint ab eo qui intellegebat nihil eum sibi debere, vel si quis ad infamiam alicuius libellum aut carmen scripserit, composuerit, ediderit, dolove malo fecerit quo quid eorum fieret; sive quis matremfamilias aut praetextatum praetextatamve adsectatus fuerit, sive cuius pudicitia attentata esse dicetur: et denique aliis pluribus modis admitti iniuriam manifestum est.

Patitur autem quis iniuriam non solum per semet ipsum, sed etiam per liberos suos, quos in potestate habet: item per uxorem suam, id enim magis praevaluit. itaque si filiae alicuius, quae Titio nupta est, iniuriam feceris, non solum filiae nomine tecum iniuriarum agi potest, sed etiam patris quoque et mariti nomine. contra autem, si viro iniuria facta sit, uxor iniuriarum agere non potest: defendi enim uxores a viris, non viros ab uxoribus aequum est. sed et socer nurus nomine, cuius vir in potestate est, iniuriarum agere potest. Servis autem ipsis quidem nulla iniuria fieri intellegitur, sed domino per eos fieri videtur. non tamen iisdem modis quibus etiam per liberos et uxores, sed ita cum quid atrocius commissum fuerit et quod aperte ad contumeliam domini respicit: veluti si quis alienum servum verberaverit, et in hunc casum actio proponitur. at si quis servo convicium fecerit vel pugno eum percusserit, nulla in eum actio domino competit. Si communi servo iniuria facta sit, aequum est, non pro ea parte qua dominus quisque est aestimationem iniuriae fieri, sed ex dominorum persona, quia ipsis fit iniuria. Quodsi ususfructus in servo Titii est, proprietas Maevii est, magis Maevio iniuria fieri intellegitur. Sed si libero qui tibi bona fide servit iniuria facta sit, nulla tibi actio dabitur, sed suo nomine is expereri poterit: nisi in contumeliam tuam pulsatus sit, tunc enim competit et tibi iniuriarum actio. idem ergo est et in servo alieno bona fide tibi serviente, ut totiens admittatur iniuriarum actio, quotiens in tuam contumeliam iniuria ei facta sit.

Poena autem iniuriarum ex lege duodecim tabularum propter membrum quidem ruptum talio erat: propter os vero fractum nummariae poenae erant constitutae quasi in magna veterum paupertate. sed postea praetores permittebant ipsis qui iniuriam passi sunt eam aestimare, ut iudex vel tanti condemnet, quanti iniuriam passus aestimaverit, vel minoris, prout ei visum fuerit. sed poena quidem iniuriae quae ex lege duadecim tabularum introducta est in desuetudinem abiit: quam autem praetores introduxerunt, quae etiam honoraria appellatur, in iudiciis frequentatur. nam secundum gradum dignitatis vitaeque honestatem crescit aut minuitur aestimatio iniuriae: qui gradus condemnationis et in servili persona non immerito servatur, ut aliud in servo actore, aliud in medii actus homine, aliud in vilissimo vel compedito constituatur. Sed et lex Cornelia de iniuriis loquitur et iniuriarum actionem introduxit. quae competit ob eam rem, quod se pulsatum quis verberatumve, domumve suam vi introitum esse dicat. domum autem accipimus, sive in propria domo quis habitat sive in conducta vel gratis sive hospitio receptus sit. Atrox iniuria aestimatur vel ex facto, veluti si quis ab aliquo vulneratus fuerit vel fustibus caesus: vel ex loco, veluti si cui in theatro vel in foro vel in conspectu praetoris iniuria facta sit: vel ex persona, veluti si magistratus iniuriam passus fuerit, vel si senatori ab humili iniuria facta sit, aut parenti patronoque fiat a liberis vel libertis; aliter enim senatoris et parentis patronique, aliter extranei et humilis personae iniuria aestimatur. nonnumquam et locus vulneris atrocem iniuriam facit, veluti si in oculo quis percussus sit. parvi autem refert, utrum patrifamilias an filiofamilias talis iniuria facta sit: nam et haec atrox aestimabitur.

In summa sciendum est, de omni inuria eum qui passus est posse vel criminaliter agere vel civiliter. et si quidem civiliter agatur, aestimatione facta secundum quod dictum est, poena imponitur. sin autem criminaliter, officio iudicis extraordinaria poena reo irrogatur: hoc videlicet observando, quod Zenoniana constitutio introduxit, ut viri illustres quique supra eos sunt et per procuratores possint actionem iniuriaram criminaliter vel persequi vel suscipere, secundum eius tenorem qui ex ipsa manifestius apparet. Non solum autem is iniuriarum tenetur qui fecit iniuriam, hoc est qui percussit: verum ille quoque continebitur qui dolo fecit vel qui curavit ut cui mala pugno percuteretur. Haec actio dissimulatione aboletur: et ideo, si quis iniuriam dereliquerit, hoc est statim passus ad animum suum non revocaverit, postea ex poenitentia remissam iniuriam non poterit recolere.

LIB. IV, TIT. V.
DE OBLIGATIONIBUS QUAE QUASI EX DELICTO NASCUNTUR.

Si iudex litem suam fecerit, non proprie ex maleficio obligatus videtur. sed quia neque ex contractu obligatus est et utique peccasse aliquid intellegitur, licet per imprudentiam: ideo videtur quasi ex maleficio teneri, et in quantum de ea re aequum religioni iudicantis videbitur, poenam sustinebit.

Item is ex cuius coenaculo vel proprio ipsius vel conducto vel in quo gratis habitabat, deiectum effusumve aliquid est, ita ut alicui noceretur, quasi ex maleficio obligatus intellegitur: ideo autem non proprie ex maleficio obligatus intellegitur, quia plerumque ob alterius culpam tenetur aut servi aut liberi. cui similis est is qui ea parte qua vulgo iter fieri solet id positum aut suspensum habet quod potest, si ceciderit, alicui nocere: quo casu poena decem aureorum constituta est. de eo vero quod deiectum effusumve est, dupli quanti damnum datum sit, constituta est actio. ob hominem vero liberum occisum quinquaginta aureorum poena constituitur: si vero vivet nocitumque ei esse dicetur, quantum ob eam rem aequum iudici videtur, actio datur: iudex enim computare debet mercedes medicis praestitas ceteraque impendia quae in curatione facta sunt, praeterea operarum quibus caruit, aut cariturus est, ob id quod inutilis factus est. Si filiusfamilias seorsum a patre habitaverit et quid ex coenaculo eius deiectum effusumve sit, sive quid positum suspensumve habuerit cuius casus periculosus est: Iuliano placuit, in patrem nullam esse actionem, sed cum ipso filio agendum. quod et in filiofamilias iudice observandum est, qui litem suam fecerit.

Idem exercitor navis aut cauponae aut stabuli de damno, dolo aut furto, quod in nave aut in caupona aut in stabulo factum erit, quasi ex maleficio teneri videtur, si modo ipsius nullum est maleficium, sed alicuius eorum quorum opera navem aut cauponam aut stabulum exerceret: cum enim neque ex contractu sit adversus eum constituta haec actio et aliquatenus culpae reus est, quod opera malorum hominum uteretur, ideo quasi ex maleficio teneri videtur. in his autem casibus in factum actio competit, quae heredi quidem datur, adversus heredem autem non competit.

LIB. IV, TIT. VI.
DE ACTIONIBUS.

Superest, ut de actionibus loquamur. actio autem nihil aliud est quam ius persequendi iudicio quod sibi debetur.

Omnium actionum, quibus inter aliquos apud iudices arbitrosve de qua re quaeritur, summa divisio in duo genera deducitur: aut enim in rem sunt aut in personam. namque agit unusquisque aut cum eo qui ei obligatus est vel ex contractu vel ex maleficio, quo casu proditae actiones in personam sunt, per quas intendit adversarium ei dare facere oportere, et aliis quibusdam modis: aut cum eo agit qui nullo iure ei obligatus est, movet tamen alicui de aliqua re controversiam. quo casu proditae actiones in rem sunt. veluti si rem corporalem possideat quis, quam Titius suam esse affirmet, et possessor dominum se esse dicat: nam si Titius suam esse intendat, in rem actio est. Aeque si agat, ius sibi esse re, fundo forte vel aedibus, utendifruendi vel per fundum vicini eundi, agendi vel ex fundo vicini aquam ducendi, in rem actio est. eiusdem generis est actio de iure praediorum urbanorum, veluti si agat, ius sibi esse altius aedes suas tollendi prospiciendive vel proiciendi aliquid vel immittendi in vicini aedes. contra quoque de usufructu et de servitutibus praediorum rusticorum, item praediorum urbanorum invicem quoque proditae sunt actiones, ut quis intendat, ius non esse adversario utendifruendi, eundi, agendi aquamve ducendi, item altius tollendi, prospiciendi, proiciendi, immittendi: istae quoque actiones in rem sunt, sed negativae. quod genus actionis in controversiis rerum corporalium proditum non est: nam in his is agit qui non possidet: ei vero qui possidet non est actio prodita per quam neget rem alterius esse. sane uno casu qui possidet nihilo minus actoris partes obtinet, sicut in latioribus digestorum libris oppotunius apparebit.

Sed istae quidem actiones, quarum mentionem habuimus, et si quae sunt similes, ex legitimis et civilibus causis descendunt. aliae autem sunt, quas praetor ex sua iurisdictione comparatas habet tam in rem quam in personam, quas et ipsas necessarium est exemplis ostendere. ecce plerumque ita permittit in rem agere, ut vel actor diceret, se quasi usucepisse quod usu non ceperit, vel ex diverso possessor diceret, adversariam suum usu non cepisse quod usuceperit. Namque si cui ex iusta causa res aliena tradita fuerit, veluti ex causa emptionis aut donationis aut dotis aut legatorum, necdum eius rei dominus effectus est, si eius rei casu possessionem amiserit, nullam habet directam in rem actionem ad eam rem persequendam: quippe ita proditae sunt iure civili actiones, ut quis dominium suum vindicet. sed quia sane durum erat, eo casu deficere actionem, inventa est a praetore actio, in qua dicit is qui possessionem amisit eam rem se usucepisse, et ita vindicat suam esse. quae actio Publiciana appellatur, quoniam primum a Publicio praetore in edicto proposita est.

Rursus ex diverso si quis, cum rei publicae causa abesset vel in hostium potestate esset, rem eius qui in civitate esset usuceperit, permittitur domino, si possessor rei publicae causa abesse desierit, tunc intra annum, rescissa usucapione, eam petere, id est ita petere ut dicat, possessorem usu non cepisse et ob id suam esse rem. quod genus actionis et aliis, simili aequitate motus, praetor accommodat, sicut ex latiore digestorum seu pandectarum volumine intellegere licet.

Item si quis in fraudem creditorum rem suam alicui tradiderit, bonis eius a creditoribus ex sententia praesidis possessis, permittitur ipsis creditoribus, rescissa traditione, eam rem petere, id est dicere eam rem traditam non esse et ob id in bonis debitoris mansisse.

Item Serviana et quasi Serviana, quae etiam hypothecaria vocatur, ex ipsius praetoris iurisdictione substantiam capit. Serviana autem experitur quis de rebus coloni, quae pignoris iure pro mercedibus fundi ei tenentur; quasi Serviana autem qua creditores pignora hypothecasve persequuntur. inter pignus autem et hypothecam quantum ad actionem hypothecariam nihil interest: nam de qua re inter creditorem et debitorem convenerit ut sit pro debito obligata, utraque hac appellatione continetur. sed in aliis differentia est: nam pignoris appellatione eam proprie contineri dicimus quae simul etiam traditur creditori, maxime si mobilis sit: at eam quae sine traditione nuda conventione tenetur proprie hypothecae appellatione contineri dicimus.

In personam quoque actiones ex sua iurisdictione propositas habet praetor, veluti de pecunia constituta: cui similis videbatur receptitia: sed ex nostra constitutione, cum et, si quid plenius habebat, hoc in pecuniam constitutam transfusum est, ea quasi supervacua iussa est cum sua auctoritate a nostris legibus recedere. item praetor proposuit de peculio servorum filiorumque familias, et ex qua quaeritur, an actor iuraverit, et alias complures. De pecunia autem constituta cum omnibus agitur quicumque vel pro se vel pro alio soluturos se constituerint, nulla scilicet stipulatione interposita. nam alioquin si stipulanti promiserint, iure civili tenentur. Actionem autem de peculio ideo adversus patrem dominumve comparavit praetor quia, licet ex contractu filiorum servorumve ipso iure non teneantur, aequum tamen esset peculio tenus, quod veluti patrimoniam est filiorum filiarumque, item servorum, condemnari eos. Item si quis postulante adversario iuraverit, deberi sibi pecuniam quam peteret, neque ei solvatur, iustissime accommodat ei talem actionem, per quam non illud quaeritur, an ei pecunia debeatur, sed an iuraverit.

Poenales quoque actiones praetor bene multas ex sua iurisdictione introduxit: veluti adversus eum qui quid ex albo eius corrupisset: et in eum qui patronum vel parentem in ius vocasset, cum id non impetrasset: item adversus eum qui vi exemerit eum qui in ius vocaretur, cuiusve dolo alius exemerit: et alias innumerabiles.

Praeiudiciales actiones in rem esse videntur, quales sunt, per quas quaeritur, an aliquis liber vel an libertus sit, vel de partu agnoscendo. ex quibus fere una illa legitimam causam habet, per quam quaeritur, an aliquis liber sit: ceterae ex ipsius praetoris iurisdictione substantiam capiunt.

Sic itaque discretis actionibus, certum est, non posse actorem rem suam ita ab aliquo petere SI PARET EUM DARE OPORTERE: nec enim quod actoris est, id ei dari oportet, quia scilicet dari cuiquam id intellegitur quod ita datur ut eius fiat, nec res quae iam actoris est, magis eius fieri potest. plane odio furum, quo magis pluribus actionibus teneantur, effectum est, ut extra poenam dupli aut quadrupli, rei recipiendae nomine fures etiam hac actione teneantur SI PARET EOS DARE OPORTERE, quamvis sit adversus eos etiam haec in rem actio, per quam rem suam quis esse petit. Appellamus autem in rem quidem actiones vindicationes: in personam vero actiones, quibus dare facere oportere intenditur, condictiones. condicere enim est denuntiare prisca lingua: nunc vero abusive dicimus condictionem actionem in personam, qua actor intendit dari sibi oportere: nulla enim hoc tempore eo nomine denuntiatio fit.

Sequens illa divisio est, quod quaedam actiones rei persequendae gratia comparatae sunt, quaedam poenae persequendae, quaedam mixtae sunt. Rei persequendae causa comparatae sunt omnes in rem actiones. earum vero actionum quae in personam sunt, hae quidem quae ex contractu nascuntur fere omnes rei persequendae causa comparatae videntur: veluti quibus mutuam pecuniam vel in stipulatum deductam petit actor, item commodati, depositi, mandati, pro socio, ex empto vendito, locato conducto. plane si depositi agetur, eo nomine quod tumultus, incendii, ruinae, naufragii causa depositum sit, in duplum actionem praetor reddit, si modo cum ipso apud quem depositum sit aut cum herede eius ex dolo ipsius agitur: quo casu mixta est actio. Ex maleficiis vero proditae actiones aliae tantum poenae persequendae causa comparatae sunt, aliae tam poenae quam rei persequendae et ob id mixtae sunt. poenam tantum persequitur quis actione furti; sive enim manifesti agatur quadrupli sive nec manifesti dupli, de sola poena agitur: nam ipsam rem propria actione persequitur quis, id est suam esse petens, sive fur ipse eam rem possideat, sive alius quilibet: eo amplius adversus furem etiam condictio est rei. Vi autem bonorum raptorum actio mixta est, quia in quadruplo rei persecutio continetur, poena autem tripli est. sed et legis Aquiliae actio de damno mixta est, non solum si adversus infitiantem in duplum agatur, sed interdum et si in simplum quisque agit. veluti si quis hominem claudum aut luscum occiderit, qui in eo anno integer et magni pretii fuerit; tanti enim damnatur, quanti is homo in eo anno plurimi fuerit, secundum iam traditam divisionem. item mixta est actio contra eos qui relicta sacrosanctis ecclesiis vel aliis venerabilibus locis legati vel fideicommissi nomine dare distulerint usque adeo ut etiam in iudicium vocarentur: tunc etenim et ipsam rem vel pecuniam quae relicta est dare compelluntur, et aliud tantum pro poena, et ideo in duplum eius fit condemnatio.

Quaedam actiones mixtam causam optinere videntur tam in rem quam in personam. qualis est familiae erciscundae actio, quae competit coheredibus de dividenda hereditate: item communi dividundo, quae inter eos redditur inter quos aliquid commune ex quacumque causa est, ut id dividatur: item finium regundorum, quae inter eos agitur qui confines agros habent. in quibus tribus iudiciis permittitur iudici rem alicui ex litigatoribus ex bono et aequo adiudicare et, si unius pars praegravari videbitur, eum invicem certa pecunia alteri condemnare.

Omnes autem actiones vel in simplum conceptae sunt vel in duplum vel in triplum vel in quadruplum: ulterius autem nulla actio extenditur. In simplum agitur veluti ex stipulatione, ex mutui datione, ex empto, vendito, locato, conducto, mandato et denique ex aliis compluribus causis. In duplum agimus veluti furti nec manifesti, damni iniuriae ex lege Aquilia, depositi ex quibusdam casibus: item servi corrupti, quae competit in eum cuius hortatu consiliove servus alienus fugerit aut contumax adversus dominum factus est aut luxuriose vivere coeperit aut denique quolibet modo deterior factus sit (in qua actione etiam earum rerum quas fugiendo servus abstulit aestimatio deducitur): item ex legato quod venerabilibus locis relictum est, secundum ea quae supra diximus. Tripli vero, cum quidam maiorem verae aestimationis quantitatem in libello conventionis inseruit, ut ex hac causa viatores, id est exsecutores litium, ampliorem summam sportularum nomine exigerent: tunc enim quod propter eorum causam damnum passus fuerit reus id triplum ab actore consequetur, ut in hoc triplo et simplum, in quo damnum passus est, connumeretur. quod nostra constitutio induxit, quae in nostro codice fulget, ex qua dubio procul est ex lege condicticiam emanare. Quadrupli veluti furti manifesti, item de eo quod metus causa factum sit, deque ea pecunia quae in hoc data sit ut is cui datur calumniae causa negotium alicui faceret vel non faceret: item ex lege condicticia a nostra constitutione oritur, in quadruplum condemnationem imponens his exsecutoribus litium qui contra nostrae constitutionis normam a reis quidquam exegerint. Sed furti quidem nec manifesti actio, et servi corrupti, a ceteris de quibus simul locuti sumus eo differt quod hae actiones omnimodo dupli sunt: at illae, id est damni iniuriae ex lege Aquilia et interdum depositi, infitiatione duplicantur, in confitentem autem in simplum dantur: sed illa quae de his competit quae relicta venerabilibus locis sunt non solum infitiatione duplicatur, sed et si distulerit relicti solutionem usque quo iussu magistratuum nostrorum conveniatur; in confitentem vero et antequam iussu magistratuum conveniatur solventem simpli redditur. Item actio de eo quod metus causa factum sit a ceteris, de quibus simul locuti sumus, eo differt quod eius natura tacite continetur ut qui iudicis iussu ipsam rem actori restituat, absolvatur. quod in ceteris casibus non ita est, sed omnimodo quisque in quadruplum condemnatur, quod est et in furti manifesti actione.

Actionum autem quaedam bonae fidei sunt, quaedam stricti iuris, bonae fidei sunt hae: ex empto, vendito, locato, conducto, negotiorum gestorum, mandati, depositi, pro socio, tutelae, commodati, pigneraticia, familiae erciscundae, communi dividundo, praescriptis verbis quae de aestimato proponitur, et ea quae ex permutatione competit, et hereditatis petitio. quamvis enim usque adhuc incertum erat, sive inter bonae fidei iudicia connumeranda sit sive non, nostra tamen constitutio aperte eam esse bonae fidei disposuit. Fuerat antea et rei uxoriae actio ex bonae fidei iudiciis: sed cum, pleniorem esse ex stipulatu actionem invenientes, omne ius quod res uxoria ante habebat cum multis divisionibus in ex stipulatu actionem, quae de dotibus exigendis proponitur, transtulimus, merito rei uxoriae actione sublata, ex stipulatu, quae pro ea introducta est, naturam bonae fidei iudicii tantum in exactione dotis meruit ut bonae fidei sit. sed et tacitam ei dedimus hypothecam: praeferri autem aliis creditoribus in hypothecis tunc censuimus, cum ipsa mulier de dote sua experiatur, cuius solius providentia hoc induximus. In bonae fidei autem iudiciis libera potestas permitti videtur iudici ex bono et aequo aestimandi quantum actori restitui debeat. in quo et illud continetur, ut, si quid invicem actorem praestare oporteat, eo compensato, in reliquum is cum quo actum est condemnari debeat. sed et in strictis iudiciis ex rescripto divi Marci opposita doli mali exceptione compensatio inducebatur. sed nostra constitutio eas compensationes quae iure aperto nituntur latius introduxit, ut actiones ipso iure minuant, sive in rem sive personales sive alias quascumque, excepta sola depositi actione, cui aliquid compensationis nomine opponi satis impium esse credidimus, ne sub praetextu compensationis depositarum rerum quis exactione defraudetur.

Praeterea quasdam actiones arbitrarias, id est ex arbitrio iudicis pendentes, appellamus, in quibus nisi iudicis is cum quo agitur actori satisfaciat, veluti rem restituat vel exhibeat vel solvat vel ex noxali causa servum dedat, condemnari debeat. sed istae actiones tam in rem quam in personam inveniuntur. in rem veluti Publiciana, Serviana de rebus coloni, quasi Serviana, quae etiam hypothecaria vocatur: in personam veluti quibus de eo agitur quod aut metus causa aut dolo malo factum est, item qua id quod certo loco promissum est, petitur. ad exhibendum quoque actio ex arbitrio iudicis pendet. in his enim actionibus et ceteris similibus permittitur iudici ex bono et aequo, secundum cuiusque rei de qua actum est naturam, aestimare quemadmodum actori satisfieri oporteat.

Curare autem debet iudex, ut omnimodo, quantum possibile ei sit, certae pecuniae vel rei sententiam ferat, etiam si de incerta quantitate apud eum actum est.

Si quis agens in intentione sua plus complexas fuerit, quam ad eum pertinet, causa cadebat, id est rem admittebat, nec facile in integrum a praetore restituebatur, nisi minor erat viginti quinque annis. huic enim, sicut in aliis causis causa cognita succurrebatur si lapsus iuventute fuerat, ita et in hac causa succurri solitum erat. sane si tam magna causa iusti erroris interveniebat ut etiam constantissimus quisque labi posset, etiam maiori viginti quinque annis succurrebatur: veluti si quis totum legatum petierit, post deinde prolati fuerint codicilli, quibus aut pars legati adempta sit aut quibusdam aliis legata deta sint, quae efficiebant ut plus petisse videretur petitor quam dodrantem, ad quem ideo lege Falcidia legata minuebantur.

Plus autem quattuor modis petitur: re, tempore, loco, causa: re veluti si quis pro decem aureis, qui ei debebantur, viginti petierit, aut si is cuius ex parte res est, totam eam vel maiore ex parte suam esse intenderit. Tempore: veluti si quis ante diem vel ante condicionem petierit. qua ratione enim qui tardius solvit quam solvere deberet minus solvere intellegitur, eadem ratione qui praemature petit plus petere videtur. Loco plus petitur, veluti cum quis id quod certo loco sibi stipulatus est alio loco petit, sine commemoratione illius loci in quo sibi dari stipulatus fuerit: verbi gratia si is qui ita stipulatus fuerit EPHESI DARE SPONDES? Romae pure intendat dari sibi oportere. ideo autem plus petere intellegitur, quia utilitatem quam habuit promissor, si Ephesi solveret, adimit ei pura intentione: propter quam causam alio loco petenti arbitraria actio proponitur, in qua scilicet ratio habetur utilitatis quae promissori competitura fuisset si illo loco solveret. quae utilitas plerumque in mercibus maxima invenitur, veluti vino, oleo, frumento, quae per singulas regiones diversa habent pretia: sed et pecuniae numeratae non in omnibus regionibus sub iisdem usuris fenerantur. si quis tamen Ephesi petat, id est eo loco petat quo ut sibi detur stipulatus est, pura actione recte agit: idque etiam praetor monstrat, scilicet quia utilitas solvendi salva est promissori. Huic autem qui loco plus petere intellegitur, proximus est is qui causa plus petit: ut ecce si quis ita a te stipulatus sit HOMINEM STICHUM AUT DECEM AUREOS DARE SPONDES? deinde alterutrum petat, veluti hominem tantum aut decem aureos tantum. ideo autem plus petere intellegitur quia in eo genere stipulationis promissoris est electio, utrum pecuniam an hominem solvere malit: qui igitur pecuniam tantum vel hominem tantum sibi dari oportere intendit, eripit electionem adversario et eo modo suam quidem meliorem condicionem facit, adversarii vero sui deteriorem. qua de causa talis in ea re prodita est actio, ut quis intendat, hominem Stichum aut aureos decem sibi dari oportere, id est ut eodem modo peteret, quo stipulatus est. praeterea si quis generaliter hominem stipulatus sit et specialiter Stichum petat, aut generaliter vinum stipulatus, specialiter Campanum petat, aut generaliter purpuram stipulatus sit, deinde specialiter Tyriam petat: plus petere intellegitur, quia electionem adversario tollit, cui stipulationis iure liberum fuit aliud solvere quam quod peteretur. quin etiam licet vilissimum sit quod quis petat, nihilo minus plus petere intellegitur, quia saepe accidit ut promissori facilius sit illud solvere quod maioris pretii est. Sed haec quidem antea in usu fuerant. postea autem lex Zenoniana et nostra rem coartavit, et si quidem tempore plus fuerit petitum, quid statui oportet Zenonis divae memoriae loquitur constitutio: sin autem quantitate vel alio modo plus fuerit petitum, omne si quid forte damnum, ut in sportulis, ex hac causa acciderit ei contra quem plus petitum fuerit, commissa tripli condemnatione, sicut supra diximus, puniatur. Si minus in intentione complexus fuerit actor quam ad eum pertineret, veluti si, cum ei decem deberentur, quinque sibi dari oportere intenderit, aut cum totus fundus eius esset, partem dimidiam suam esse petierit, sine periculo agit: in reliquum enim nihilo minus iudex adversarium in eodem indicio condemnat ex constitutione divae memoriae Zenonis. Si quis aliud pro alio intenderit, nihil eum periclitari placet, sed in eodem iudicio cognita veritate errorem suum corrigere ei permittimus, veluti, si is qui hominem Stichum petere deberet Erotem petierit, aut si quis ex testamento sibi dari oportere intenderit, quod ex stipulatu debetur.

Sunt praeterea quaedam actiones quibus non solidum quod debetur nobis persequimur, sed modo solidum consequimur, modo minus. ut ecce si in peculium filii servive agamus: nam, si non minus in peculio sit quam persequimur, in solidum pater dominusve condemnatur: si vero minus inveniatur, eatenus condemnat iudex quatenus in peculio sit. quemadmodum autem peculium intellegi debeat, suo ordine proponemus. Item si de dote iudicio mulier agat, placet, eatenus maritum condemnari debere quatenus facere possit, id est quatenus facultates eius patiuntur. itaque si dotis quantitati concurrant facultates eius, in solidum damnatur: si minus, in tantum quantum facere potest. propter retentionem quoque dotis repetitio minuitur: nam ob impensas in res dotales factas marito retentio concessa est, quia ipso iure necessariis sumptibus dos minuitur, sicut ex latioribus digestorum libris cognoscere licet. Sed et si quis cum parente suo patronove agat, item si socius cum socio iudicio societatis agat, non plus actor consequitur quam adversarius eius facere potest. idem est, si quis ex donatione sua conveniatur. Compensationes quoque oppositae plerumque efficiunt ut minus quisque consequatur quam ei debeatur: namque ex bono et aequo, habita ratione eius quod invicem actorem ex eadem causa praestare oporteret, in reliquum eum cum quo actum est condemnare licet, sicut iam dictum est. Eum quoque qui creditoribus suis bonis cessit, si postea aliquid adquisierit quod ideoneum emolumentum habeat, ex integro in id quod facere potest creditores cum eo experiuntur: inhumanum enim erat spoliatum fortunis suis in solidum damnari.

LIB. IV, TIT. VII.

QUOD CUM EO QUI IN ALIENA POTESTATE EST NEGOTIUM GESTUM ESSE DICITUR.

Quia tamen superius mentionem habuimus de actione quae in peculium filiorumfamilias servorumque agitur: opus est ut de hac actione, et de ceteris quae eorundem nomine in parentes dominosve dari solent, diligentius admoneamus. et quia, sive cum servis negotium gestum sit, sive cum his qui in potestate parentis sunt, fere eadem iura servantur, ne verbosa fiat disputatio, dirigamus sermonem in personam servi dominique, idem intellecturi de liberis quoque et parentibus, quorum in potestate sunt. nam si quid in his proprie observetur, separatim ostendemus.

Si igitur iussu domini cum servo negotium gestum erit, in solidum praetor adversus dominum actionem pollicetur, scilicet quia qui ita contrahit fidem domini sequi videtur.

Eadem ratione praetor duas alias in solidum actiones pollicetur, quarum altera exercitoria, altera institoria appellatur. excercitoria tunc locum habet, cum quis servum suum magistrum navis praeposuerit, et quid cum eo eius rei gratia cui praepositus erit contractum fuerit. ideo autem exercitoria vocatur, quia exercitor appellatur is ad quem cottidianus navis quaestus pertinet. institoria tunc locum habet, cum quis tabernae forte aut cuilibet negotiationi servum praeposuerit et quid cum eo eius rei causa cui praepositus erit contractum fuerit. ideo autem institoria appellatur, quia qui negotiationibus praeponuntur institores vocantur. Istas tamen duas actiones praetor reddit et si liberum quis hominem aut alienum servum navi aut tabernae aut cuilibet negotiationi praeposuerit, scilicet quia eadem aequitatis ratio etiam eo casu interveniebat.

Introduxit et aliam actionem praetor, quae tributoria vocatur. namque si servus in peculiari merce, sciente domino, negotietur, et quid cum eo eius rei causa contractum erit, ita praetor ius dicit ut quidquid in his mercibus erit quodque inde receptum erit, id inter dominum, si quid ei debebitur, et ceteros creditores pro rata portione distribuatur. et quia ipsi domino distributionem permittit, si quis ex creditoribus queratur, quasi minus ei tributum sit quam oportuerit, hanc ei actionem accommodat, quae tributoria appellatur.

Praeterea introducta est actio de peculio, deque eo quod in rem domini versum erit, ut, quamvis sine voluntate domini negotium gestum erit, tamen sive quid in rem eius versum fuerit, id totum praestare debeat, sive quid non sit in rem eius versum, id eatenus praestare debeat quatenus peculium patitur. In rem autem domini versum intellegitur, quidquid necessario in rem eius impenderit servus, veluti si mutuatus pecuniam creditoribus eius solverit, aut aedificia ruentia fulserit, aut familiae frumentum emerit, vel etiam fundum aut quamlibet aliam rem necessariam mercatus erit. Itaque si ex decem utputa aureis, quos servos tuus a Titio mutuos accepit, creditori tuo quinque aureos solverit, reliquos vero quinque quolibet modo consumpserit pro quinque quidem in solidum damnari debes, pro ceteris vero quinque eatenus quatenus in peculio sit: ex quo scilicet apparet, si toti decem aurei in rem tuam versi fuerint, totos decem aureos Titium consequi posse. licet enim una est actio qua de peculio deque eo quod in rem domini versum sit, agitur, tamen duas habet condemnationes. itaque iudex, apud quem ea actione agitur, ante dispicere solet, an in rem domini versum sit, nec aliter ad peculii aestimationem transit quam si aut nihil in rem domini versum intellegatur aut non totum. Cum autem quaeritur, quantum in peculio sit, ante deducitur quidquid servus domino quive in potestate eius sit debet, et quod superest id solum peculium in tellegitur. aliquando tamen id quod ei debet servus qui in potestate domini sit, non deducitur ex peculio, veluti si is in huius ipsius peculio sit. quod eo pertinet, ut, si quid vicario suo servus debeat, id ex peculio eius non deducatur.

Ceterum dubium non est quin is quoque qui iussu domini contraxerit cuique institoria vel exercitoria actio competit, de peculio deque eo quod in rem domini versum est agere possit: sed erit stultissimus, si omissa actione qua facillime solidum ex contractu consequi possit, se ad difficultatem perducat probandi, in rem domini versum esse, vel habere servum peculium et tantum habere ut solidum sibi solvi possit. Is quoque cui tributoria actio competit aeque de peculio et in rem verso agere potest: sed sane huic modo tributoria expedit agere, modo de peculio et in rem verso. tributoria ideo expedit agere, quia in ea domini condicio praecipua non est, id est, quod domino debetur, non deducitur, sed eiusdem iuris est dominus, cuius et ceteri creditores: at in actione de peculio ante deducitur quod domino debetur, et in id quod reliquum est creditori dominus condemnatur. rursus de peculio ideo expedit agere, quod in hac actione totius peculii ratio habetur, at in tributoria eius tantum quod negotiatur, et potest quisque tertia forte parte peculii aut quarta vel etiam minima negotiari, maiorem autem partem in praediis et mancipiis aut fenebri pecunia habere. prout ergo expedit, ita quisque vel hanc actionem vel illam eligere debet: certe qui potest probare in rem domini versum esse, de in rem verso agere debet.

Quae diximus de servo et domino, eadem intellegimus et de filio et filia aut nepote et nepte et patre avove cuius in potestate sunt. Illud proprie servatur in eorum persona, quod senatusconsultum Macedonianum prohibuit mutuas pecunias dari eis qui in parentis erunt potestate: et ei qui crediderit denegatur actio, tam adversus ipsum filium filiamve, nepotem neptemve, sive adhuc in potestate sunt, sive morte parentis vel emancipatione suae potestatis esse coeperint, quam adversus patrem avumve, sive habeat eos adhuc in potestate sive emancipaverit. quae ideo senatus prospexit, quia saepe onerati aere alieno creditarum pecuniarum, quas in luxuriam consumebant, vitae parentium insidiabantur.

Illud in summa admonendi sumus, id quod iussu patris dominive contractum fuerit quodque in rem eius versum fuerit, directo quoque posse a patre dominove condici tamquam si principaliter cum ipso negotium gestum esset. ei quoque qui vel exercitoria vel institoria actione tenetur, directo posse condici placet, quia huius quoque iussu contractum intellegitur.

LIB. IV, TIT. VIII.
DE NOXALIBUS ACTIONIBUS.

Ex maleficiis servorum, veluti si furtum fecerint aut bona rapuerint aut damnum dederint aut iniuriam commiserint, noxales actiones proditae sunt, quibus domino damnato permittitur, aut litis aestimationem sufferre aut hominem noxae dedere. Noxa autem est corpus quod nocuit, id est servus: noxia ipsum maleficium, veluti furtum, damnum, rapina, iniuria. Summa autem ratione permissum est noxae deditione defungi: namque erat iniquum, nequitiam eorum ultra ipsorum corpora dominis damnosam esse. Dominus noxali iudicio servi sui nomine conventus, servum actori noxae dedendo liberatur. nec minus perpetuum eius dominium a domino transfertur: si autem damnum ei cui deditus est resarcierit quaesita pecunia, auxilio praetoris, invito domino, manumittitur. Sunt autem constitutae noxales actiones aut legibus aut edicto praetoris: legibus veluti furti lege duodecim tabularum, damni iniuriae lege Aquilia: edicto praetoris veluti iniuriarum et vi bonorum raptorum.

Omnis autem noxalis actio caput sequitur. nam si servus tuus noxiam commiserit, quamdiu in tua potestate sit tecum est actio: si in alterius potestatem pervenerit, cum illo incipit actio esse, aut si manumissus fuerit, directo ipse tenetur et extinguitur noxae deditio. ex diverso quoque directa actio noxalis esse incipit: nam si liber homo noxiam commiserit, et is servus tuus esse coeperit (quod casibus quibasdam effici primo libro tradidimus), incipit tecum esse noxalis actio, quae ante directa fuisset. Si servus domino noxiam commiserit, actio nulla nascitur: namque inter dominum et eum qui in eius potestate est nulla obligatio nasci potest. ideoque et si in alienam potestatem servus pervenerit aut manumissus fuerit, neque cum ipso, neque cum eo cuius nunc in potestate sit, agi potest. unde si alienus servus noxiam tibi commiserit et is postea in potestate tua esse coeperit, intercidit actio, quia in eum casum deducta sit in quo consistere non potuit: ideoque licet exierit de tua potestate, agere non potes, quemadmodum si dominus in servum suum aliquid commiserit, nec si manumissus vel alienatus fuerit servus, ullam actionem contra dominum habere potest.

Sed veteres quidem haec et in filiisfamilias masculis et feminis admiserunt. nova autem hominum conversatio huiusmodi asperitatem recte respuendam esse existimavit et ab usu communi haec penitus recessit: quis enim patitur filium suum et maxime filiam in noxam alii dare, ut pene per corpus filii pater magis quam filius periclitetur, cum in filiabus etiam pudicitiae favor hoc bene excludit? et ideo placuit, in servos tantummodo noxales actiones esse proponendas, cum apud veteres legum commentatores invenimus saepius dictum, ipsos filiosfamilias pro suis delictis posse conveniri.

LIB. IV, TIT. IX.
SI QUADRUPES PAUPERIEM FECISSE DICETUR.

Animalium nomine, quae ratione carent, si quidem lascivia aut fervore aut feritate pauperiem fecerint, noxalis actio lege duodecim tabularum prodita est (quae animalia, si noxae dedantur, proficiunt reo ad liberationem, quia ita lex duodecim tabularum scripta est); puta si equus calcitrosus calce percusserit aut bos cornu petere solitus petierit. haec autem actio in his quae contra naturam moventur locum habet: ceterum si genitalis sit feritas, cessat. Denique si ursus fugit a domino et sic nocuit, non potest quondam dominus conveniri, quia desiit dominus esse, ubi fera evasit. pauperies autem est damnum sine iniuria facientis datum: nec enim potest animal iniuriam fecisse dici, quod sensu caret. haec quod ad noxalem actionem pertinet.

Ceterum sciendum est. aedilitio edicto prohiberi nos canem, verrem, aprum, ursum, leonem ibi habere qua vulgo iter fit: et si adversus ea factum erit et nocitum homini libero esse dicetur, quod bonum et aequum iudici videtur, tanti dominus condemnetur, ceterarum rerum, quanti damnum datum sit, dupli. praeter has autem aedilicias actiones et de pauperie locum habebit: numquam enim actiones praesertim poenales de eadem re concurrentes alia aliam consumit.

LIB. IV, TIT. X.
DE HIS PER QUOS AGERE POSSUMUS.

Nunc admonendi sumus, agere posse quemlibet aut suo nomine aut alieno. alieno veluti procuratorio, tutorio, curatorio, cum olim in usu fuisset, alterius nomine agere non posse nisi pro populo, pro libertate, pro tutela. praeterea lege Hostilia permissum est furti agere eorum nomine qui apud hostes essent aut rei publicae causa abessent quive in eorum cuius tutela essent. et quia hoc non minimam incommoditatem habebat, quod alieno nomine neque agere neque excipere actionem licebat, coeperunt homines per procuratores litigare: nam et morbus et aetas et necessaria peregrinatio itemque aliae multae causae saepe impedimento sunt quo minus rem suam ipsi exsequi possint. Procurator neque certis verbis neque praesente adversario, immo plerumque ignorante eo constituitur: cuicumque enim permiseris rem tuam agere aut defendere is procurator intellegitur. Tutores et curatores quemadmodum constituuntur, primo libro eitum est.

LIB. IV, TIT. XI.
DE SATISDATIONIBUS.

Satisdationum modus alius antiquitati placuit, alium novitas per usum amplexa est.

Olim enim si in rem agebatur, satisdare possessor compellebatur, ut, si victus nec rem ipsam restitueret nec litis aestimationem, potestas esset petitori aut cum eo agendi aut cum fideiussoribus eius. quae satisdatio appellabatur iudicatum solvi: unde autem sic appellabatur, facile est intellegere. namque stipulabatur quis, ut solveretur sibi quod fuerit iudicatum. multo magis is qui in rem actione conveniebatur, satisdare cogebatur, si alieno nomine iudicium accipiebat. ipse autem qui in rem agebat, si suo nomine petebat, satisdare non cogebatur. procurator vero si in rem agebat, satisdare iubebatur ratam rem dominum habiturum: periculum enim erat, ne iterum dominus de eadem re experiatur. tutores et curatores eodem modo quo et procuratores satisdare debere, verba edicti faciebant. sed aliquando his agentibus satisdatio remittebatur. Haec ita erant si in rem agebatur. sin vero in personam, ab actoris quidem parte eadem obtinebant quae diximus in actione qua in rem agitur. ab eius vero parte cum quo agitur, si quidem alieno nomine aliquis interveniret, omnimodo satisdabat, quia nemo defensor in aliena re sine satisdatione idoneus esse creditur. quod si proprio nomine aliquis iudicium accipiebat in personam, iudicatum solvi satisdare non cogebatur.

Sed haec hodie aliter observantur. sive enim quis in rem actione convenitur sive personali suo nomine, nullam satisdationem propter litis aestimationem dare compellitur; sed pro sua tantum persona, quod in iudicio permaneat usque ad terminum litis, vel committitur suae promissioni cum iureiurando, quam iuratoriam cautionem vocant, vel nudam promissionem vel satisdationem pro qualitate personae suae dare compellitur. Sin autem per procuratorem lis vel infertur vel suscipitur, in actoris quidem persona, si non mandatum actis insinuatum est vel praesens dominus litis in iudicio procuratoris sui personam confirmaverit, ratam rem dominum habiturum satisdationem procurator dare compellitur, eodem observando et si tutor vel curator, vel aliae tales personae quae alienarum rerum gubernationem receperunt, litem quibusdam per alium inferunt. Sin vero aliquis convenitur, si quidem praesens procuratorem dare paratus est, potest vel ipse in iudicium venire et sui procuratoris personam per iudicatum solvi satisdationis sollemnes stipulationes firmare vel extra iudicium satisdationem exponere, per quam ipse sui procuratoris fideiussor existit pro omnibus iudicatam solvi satisdationis clausulis. ubi et de hypotheca suarum rerum convenire compellitur, sive in iudicio promiserit sive extra iudicium caverit, ut tam ipse quam heredes eius obligentur: alia insuper cautela vel satisdatione propter personam ipsius exponenda, quod tempore sententiae recitandae in iudicio invenietur, vel si non venerit, omnia dabit fideiussor quae condemnatione continentur nisi fuerit provocatum. Si vero reus praesto ex quacumque causa non fuerit et alius velit defensionem subire, nulla differentia inter actiones in rem vel personales introducenda, potest hoc facere, ita tamen ut satisdationem iudicatum solvi pro litis praestet aestimatione. nemo enim secundum veterem regulam, ut iam dictum est, alienae rei sine satisdatione defensor idoneus intellegitur. Quae omnia apertius et perfectissime e cottidiano iudiciorum usu in ipsis rerum documentis apparent. Quam formam non solum in hac regia urbe, sed et in omnibus nostris provinciis, etsi propter imperitiam aliter forte celebrantur, optinere censemus, cum necesse est omnes provincias caput omnium nostrarum civitatum id est hanc regiam urbem, eiusque observantiam sequi.

LIB. IV, TIT. XII.
DE PERPETUIS ET TEMPORALIBUS ACTIONIBUS ET QUAE AD HEREDES VEL IN HEREDES TRANSEUNT.

Hoc loco admonendi sumus, eas quidem actiones quae ex lege senatusve consulto sive ex sacris constitutionibus proficiscuntur, perpetuo solere antiquitus competere, donec sacrae constitutiones tam in rem quam personalibus actionibus certos fines dederunt: eas vero quae ex propria praetoris iurisdictione pendent, plerumque intra annum vivere (nam et ipsius praetoris intra annum erat imperium). aliquando tamen et in perpetuum extenduntur, id est usque ad finem constitutionibus introductum, quales sunt hae quas bonorum possessori, ceterisque qui heredis loco sunt, accommodat. furti quoque manifesti actio, quamvis ex ipsius praetoris iurisdictione proficiscatur, tamen perpetuo datur: absurdum enim esse existimavit anno eam terminari.

Non omnes autem actiones quae in aliquem aut ipso iure competunt aut a praetore dantur et in heredem aeque competunt aut dari solent. est enim certissima iuris regula, ex maleficiis poenales actiones in heredem non competere, veluti furti, vi bonorum raptorum, iniuriarum, damni iniuriae. sed heredibus huiusmodi actiones competunt nec denegantur, excepta iniuriarum actione et si qua alia similis inveniatur. aliquando tamen etiam ex contractu actio contra heredem non competit, cum testator dolose versatus sit et ad heredem eius nihil ex eo dolo pervenerit. poenales autem actiones, quas supra diximus, si ab ipsis principalibus personis fuerint contestatae, et heredibus dantur et contra heredes transeunt.

Superest ut admoneamus quod si ante rem iudicatam is cum quo actum est satisfaciat actori, officio iudicis convenit eum absolvere, licet iudicii accipiendi tempore in ea causa fuisset, ut damnari debeat: et hoc est, quod ante vulgo dicebatur, omnia iudicia absolutoria esse.

LIB. IV, TIT. XIII.
DE EXCEPTIONIBUS.

Sequitur ut de exceptionibus dispiciamus. comparatae sunt autem exceptiones defendendorum eorum gratia cum quibus agitur: saepe enim accidit, ut, licet ipsa actio qua actor experitur iusta sit, tamen iniqua sit adversus eum cum quo agitur. Verbi gratia si metu coactus aut dolo inductus aut errore lapsus stipulanti Titio promisisti quod non debueras promittere, palam est, iure civili te obligatum esse, et actio qua intenditur dare te oportere, efficax est: sed iniquum est te condemnari, ideoque datur tibi exceptio metus causa aut doli mali aut in factum composita ad impugnandam actionem. Idem iuris est, si quis quasi credendi causa pecuniam stipulatus fuerit neque numeravit. narn eam pecuniam a te petere posse eum certum est: dare enim te oportet, cum ex stipulatu tenearis: sed quia iniquum est eo nomine te condemnari, placet, exceptione pecuniae non numeratae te defendi debere, cuius tempora nos, secundum quod iam superioribus libris scriptum est, constitutione nostra coartavimus. Praeterea debitor si pactus fuerit cum creditore, ne a se peteretur, nihilo minus obligatus manet, quia pacto convento obligationes non omnimodo dissolvuntur: qua de causa efficax est adversus eum actio qua actor intendit SI PARET EUM DARE OPORTERE. sed quia iniquum est, contra pactionem eum damnari, defenditur per exceptionem pacti conventi. Aeque si debitor deferente creditore iuraverit, nihil se dare oportere, adhuc obligatus permanet: sed quia iniquum est de periurio quaeri, defenditur per exceptionem iurisiurandi. in his quoque actionibus quibus in rem agitur aeque necessariae sunt exceptiones: veluti si petitore deferente possessor iuravent, eam rem suam esse, et nihilo minus eandem rem petitor vindicet: licet enim verum sit quod intendit, id est rem eius esse, iniquum est tamen, possessorem condemnari. Item si iudicio tecum actum fuerit sive in rem sive in personam, nihilo minus ob id actio durat et ideo ipso iure postea de eadem re adversus te agi potest: sed debes per exceptionem rei iudicatae adiuvari. Haec exempli causa rettulisse sufficiet. alioquin quam ex multis variisque causis exceptiones necessariae sint, ex latioribus digestorum seu pandectarum libris intellegi potest. Quarum quaedam ex legibus vel ex his quae legis vicem obtinent, vel ex ipsius praetoris iurisdictione substantiam capiunt.

Appellantur autem exceptiones aliae perpetuae et peremptoriae, aliae temporales et dilatoriae. Perpetuae et peremptoriae sunt, quae semper agentibus obstant et semper rem de qua agitur peremunt: qualis est exceptio doli mali et quod metus causa factum est et pacti conventi, cum ita convenerit, ne omnino pecunia peteretur. Temporales atque dilatoriae sunt quae ad tempus nocent et temporis dilationem tribuunt: qualis est pacti conventi, cum convenerit, ne intra certum tempus ageretur, veluti intra quinquennium, nam finito eo tempore non impeditur actor rem exsequi. ergo hi quibus intra tempus agere volentibus obicitur exceptio aut pacti conventi aut alia similis, differe debent actionem et post tempus agere: ideo enim et dilatoriae istae exceptiones appellantur. alioquin, si intra tempus egerint obiectaque sit exceptio, neque eo iudicio quidquam consequerentur propter exceptionem nec post tempus olim agere poterant, cum temere rem in iudicium deducebant et consumebant, qua ratione rem amittebant. hodie autem non ita stricte haec procedere volumus, sed eum qui ante tempus pactionis vel obligationis litem inferre ausus est Zenonianae constitutioni subiacere censemus, quam sacratissimus legislator de his qui tempore plus petierunt protulit, ut et inducias, quas, sive ipse actor sponte indulserit vel natura actionis continet, contempserat, in duplum habeant hi qui talem iniuriam passi sunt, et post eas finitas non aliter litem suscipiant, nisi omnes expensas litis antea acceperint, ut actores, tali poena perterriti, tempora 1itium doceantur observare. Praeterea etiam ex persona dilatoriae sunt exceptiones: quales sunt procuratoriae, veluti si per militem aut mulierem agere quis velit: nam militibus nec pro patre vel matre vel uxore nec, ex sacro rescripto, procuratorio nomine experiri conceditur: suis vero negotiis superesse sine offensa disciplinae possunt. eas vero exceptiones quae olim procuratoribus propter infamiam vel dantis vel ipsius procuratoris opponebantur, cum in iudiciis frequentari nullo perspeximus modo, conquiescere sancimus, ne, dum de his altercatur, ipsius negotii disceptatio proteletur.

LIB. IV, TIT. XIV.
DE REPLICATIONIBUS.

Interdum evenit ut exceptio quae prima facie iusta videatur, inique noceat. quod cum accidit, alia allegatione opus est adiuvandi actoris gratia, quae replicatio vocatur, quia per eam replicatur atque resolvitur vis exceptionis. veluti cum pactus est aliquis cum debitore suo, ne ab eo pecuniam petat, deinde postea in contrarium pacti sunt, id est ut petere creditori liceat: si agat creditor et excipiat debitor, ut ita demum condemnetur, si non convenerit, ne eam pecuniam creditor petat, nocet ei exceptio; convenit enim ita, etiamque nihilo minus hoc verum manet, licet postea in contrarium pacti sunt. sed quia iniquum est creditorem excludi, replicatio ei dabitur ex posteriore pacto convento.

Rursus interdum evenit ut replicatio quae prima facie iusta sit, inique noceat. quod cum accidit, alia allegatione opus est adiuvandi rei gratia, quae duplicatio vocatur. Et si rursus ea prima facie iusta videatur, sed propter aliquam causam inique actori noceat, rursus allegatione alia opus est, qua actor adiuvetur, quae dicitur triplicatio. Quarum omnium exceptionum usum interdum ulterius quam diximus, varietas negotiorum introducit: quas omnes apertius ex latiore digestorum volumine facile est cognoscere.

Exceptiones autem quibus debitor defenditur plerumque accommodari solent etiam fideiussoribus eius: et recte, quia, quod ab his petitur, id ab ipso debitore peti videtur, quia mandati iudicio redditurus est eis quod hi pro eo solverint. qua ratione et si de non petenda pecunia pactus quis cum reo fuerit, placuit, proinde succurrendum esse per exceptionem pacti conventi illis quoque qui pro eo obligati essent, ac si et cum ipsis pactus esset, ne ab eis ea pecunia peteretur. sane quaedam exceptiones non solent his accommodari. ecce enim debitor si bonis suis cesserit et cum eo creditor experiatur, defenditur per exceptionem NISI BONIS CESSERIT: sed haec exceptio fideiussoribus non datur, scilicet ideo quia, qui alios pro debitore obligat hoc maxime prospicit, ut, cum facultatibus lapsus fuerit debitor, possit ab his quos pro eo obligavit suum consequi.

LIB. IV, TIT. XV.
DE INTERDICTIS.

Sequitur ut dispiciamus de interdictis seu actionibus quae pro his exercentur. erant autem interdicta formae atque conceptiones verborum, quibus praetor aut iubebat aliquid fieri aut fieri prohibebat. quod tum maxime faciebat, cum de possessione aut quasi possessione inter aliquos contendebatur.

Summa autem divisio interdictorum haec est, quod aut prohibitoria sunt aut restitutoria aut exhibitoria. prohibitoria sunt quibus vetat aliquid fieri, veluti vim sine vitio possidenti, vel mortuum inferenti quo ei ius erit inferendi, vel in loco sacro aedificari, vel in flumine publico ripave eius aliquid fieri quo peius navigetur. restitutoria sunt quibus restitui aliquid iubet, veluti bonorum possessori possessionem eorum quae quis pro herede aut pro possessore possidet ex ea hereditate, aut cum iubet ei qui vi possessione fundi deiectus sit restitui possessionem. exhibitoria sunt per quae iubet exhiberi, veluti eum cuius de libertate agitur, aut libertum cui patronus operas indicere velit, aut parenti liberos qui in potestate eius sunt. sunt tamen qui putant, proprie interdicta ea vocari quae prohibitoria sunt, quia interdicere est denuntiare et prohibere: restitutoria autem et exhibitoria proprie decreta vocari: sed tamen optinuit omnia interdicta appellari, quia inter duos dicuntur.

Sequens divisio interdictorum haec est, quod quaedam adipiscendae possessionis causa comparata sunt, quaedam retinendae, quaedam reciperandae.

Adipiscendae possessionis causa interdictum accommodatur bonorum possessori, quod appellatur QUORUM BONORUM, eiusque vis et potestas haec est, ut, quod ex his bonis quisque quorum possessio alicui data est, pro herede aut pro possessore possideat, id ei cui bonorum possessio data est restituere debeat. pro herede autem possidere videtur qui putat se heredem esse: pro possessore is possidet qui nullo iure rem hereditariam, vel etiam totam hereditatem, sciens ad se non pertinere, possidet. ideo autem adipiscendae possessionis vocatur interdictum, quia ei tantum utile est qui nunc primum conatur adipisci rei possessionem: itaque si quis adeptus possessionem amiserit eam, hoc interdictum ei inutile est. interdictum quoque, quod appellatur Salvianum, adipiscendae possessionis causa comparatum est, eoque utitur dominus fundi de rebus coloni quas is pro mercedibus fundi pignori futuras pepigisset.

Retinendae possessionis causa comparata sunt interdicta UTI POSSIDETIS et UTRUBI, cum ab utraque parte de proprietate alicuius rei controversia sit et ante quaeritur, uter ex litigatoribus possidere et uter petere debeat. namque nisi ante exploratum fuerit, utrius eorum possessio sit, non potest petitoria actio institui, quia et civilis et naturalis ratio facit ut alius possideat, alius a possidente petat. et quia longe commodius est possidere potius quam petere, ideo plerumque et fere semper ingens existit contentio de ipsa possessione. commodum autem possidendi in eo est, quod, etiamsi eius res non sit qui possidet, si modo actor non potuerit suam esse probare, remanet suo loco possessio: propter quam causam, cum obscura sint utriusque iura, contra petitorem iudicari solet. Sed interdicto quidem UTI POSSIDETIS de fundi vel aedium possessione contenditur, UTRUBI vero interdicto de rerum mobilium possessione. quorum vis et potestas plurimam inter se differentiam apud veteres habebat: nam UTI POSSIDETIS interdicto is vincebat qui interdicti tempore possidebat, si modo nec vi nec clam nec precario nanctus fuerat ab adversario possessionem, etiamsi alium vi expulerat aut clam abripuerat alienam possessionem aut precario rogaverat aliquem, ut sibi possidere liceret: UTRUBI vero interdicto is vincebat, qui maiore parte eius anni nec vi nec clam nec precario ab adversario possidebat. hodie tamen aliter observatur; nam utriusque interdicti potestas, quantum ad possessionem pertinet, exaequata est, ut ille vincat et in re soli et in re mobili, qui possessionem nec vi nec clam nec precario ab adversario litis contestationis tempore detinet. Possidere autem videtur quisque non solum si ipse possideat, sed et si eius nomine aliquis in possessione sit, licet is eius iuri subiectus non sit, qualis est colonus et inquilinus: per eos quoque apud quos deposuerit quis aut quibus commodaverit ipse possidere videtur: et hoc est quod dicitur, retinere possessionem posse aliquem per quemlibet qui eius nomine sit in possessione.

quin etiam animo quoque retineri possessionem placet, id est ut quamvis neque ipse sit in possessione neque eius nomine alius, tamen si non relinquendae possessionis animo, sed postea reversurus inde discesserit, retinere possessionem videatur. adipisci vero possessionem per quos aliquis potest, secundo libro euimus. nec ulla dubitatio est quin animo solo possessionem adipisci nemo potest.

Reciperandae possessionis causa solet interdici si quis ex possessione fundi vel aedium vi deiectus fuerit; nam ei proponitur interdictum UNDE VI, per quod is qui deiecit cogitur ei restituere possessionem, licet is ab eo qui vi deiecit, vi vel clam vel precario possidebat. sed ex sacris constitutionibus, ut supra diximus si quis rem per vim occupaverit, si quidem in bonis eius est. dominio eius privatur, si aliena, post eius restitutionem etiam aestimationem rei dare vim passo compellitur. qui autem aliquem de possessione per vim deiecerit, tenetur lege Iulia de vi privata aut de vi publica: sed de vi privata, si sine armis vim fecerit, sin autem cum armis eum de possessione expulerit, de vi publica. "armorum" autem appellatione non solum scuta et gladios et galeas significari intellegimus, sed et fustes et lapides.

Tertia divisio interdictorum haec est, quod aut simplicia sunt aut duplicia. simplicia sunt, in quibus alter actor, alter reus est: qualia sunt omnia restitutoria aut exhibitoria: namque actor est qui desiderat aut exhiberi aut restitui reus is a quo desideratur ut restituat aut exhibeat. prohibitoriorum autem interdictorum alia simplicia sunt, alia duplicia. simplicia sunt, veluti cum prohibet praetor in loco sacro vel in flumine publico ripave eius aliquid fieri (nam actor est qui desiderat, ne quid fiat, reus qui aliquid facere conatur): duplicia sunt veluti UTI POSSIDETIS interdictum et UTRUBI. ideo autem duplicia vocantur quia par utriusque litigatoris in his condicio est nec quisquam praecipue reus vel actor intellegitur, sed unusquisque tam rei quam actoris partem sustinet.

De ordine et veteri exitu interdictorum supervacuum est hodie dicere: nam quotiens extra ordinem ius dicitur, qualia sunt hodie omnia iudicia, non est necesse reddi interdictum, sed perinde iudicatur sine interdictis atque si utilis actio ex causa interdicti reddita fuisset.

LIB. IV, TIT. XVI.
DE POENA TEMERE LITIGANTIUM.

Nunc admonendi sumus, magnam curam egisse eos qui iura sustinebant, ne facile homines ad litigandum procederent: quod et nobis studio est. idque eo maxime fieri potest, quod temeritas tam agentium quam eorum cum quibus agitur, modo pecuniaria poena, modo iurisiurandi religione, modo metu infamiae coercetur. Ecce enim iusiurandum omnibus qui conveniuntur ex nostra constitutione defertur: nam reus non aliter suis allegationibus utitur, nisi prius iuraverit, quod putans se bona instantia uti ad contradicendum pervenit. at adversus infitiantes ex quibusdam causis dupli actio constituitur, veluti si damni iniuriae aut legatorum locis venerabilibus relictorum nomine agitur. statim autem ab initio pluris quam simpli est actio veluti furti manifesti quadrupli, nec manifesti dupli: nam ex his causis et aliis quibusdam, sive quis neget sive fateatur, pluris quam simpli est actio.

Item actoris quoque calumnia coercetur: nam etiam actor pro calumnia iurare cogitur ex nostra constitutione. utriusque etiam partis advocati iusiurandum subeunt, quod alia nostra constitutione comprehensum est. haec autem omnia pro veteris calumniae actione introducta sunt, quae in desuetudinem abiit, quia in partem decimam litis actorem multabat, quod nusquam factum esse invenimus: sed pro his introductum est et praefatum iusiurandum et ut improbus litigator etiam damnum et impensas litis inferre adversario suo cogatur.

Ex quibusdam iudiciis damnati ignominiosi fiunt, veluti furti, vi bonorum raptorum, iniuriarum, de dolo, item tutelae, mandati, depositi, directis non contrariis actionibus, item pro socio, quae ab utraque parte directa est, et ob id quilibet ex sociis eo iudicio damnatus ignominia notatur. sed furti quidem aut vi bonorum raptorum aut iniuriarum aut de dolo non solum damnati notantur ignominia, sed etiam pacti: et recte; plurimum enim interest, utrum ex delicto aliquis an ex contractu debitor sit.

Omnium autem actionum instituendarum principium ab ea parte edicti proficiscitur qua praetor edicit de in ius vocando: utique enim in primis adversarius in ius vocandus est, id est ad eum vocandus est qui ius dicturus sit. qua parte praetor parentibus et patronis, item liberis parentibusque patronorum et patronarum hunc praestat honorem ut non aliter liceat liberis libertisque eos in ius vocare quam si id ab ipso praetore postulaverint et impetraverint: et si quis aliter vocaverit, in eum poenam solidorum quinquaginta constituit.

LIB. IV, TIT. XVII.
DE OFFICIO IUDICIS.

Superest ut de officio iudicis dispiciamus. et quidem in primis illud observare debet iudex, ne aliter iudicet quam legibus aut constitutionibus aut moribus proditum est. Ideo si noxali iudicio addictus est, observare debet ut, si condemnandus videbitur dominus, ita debeat condemnare: PUBLIUM MAEVIUM LUCIO TITIO DECEM AUREIS CONDEMNO AUT NOXAM DEDERE.

Et si in rem actum sit, sive contra petitorem iudicavit, absolvere debet possessorem, sive contra possessorem, iubere eum debet ut rem ipsam restituat cum fructibus. sed si in praesenti neget se possessor restituere posse et sine frustratione videbitur tempus restituendi causa petere, indulgendum est ei, ut tamen de litis aestimatione caveat cum fideiussore, si intra tempus quod ei datum est non restituisset. et si hereditas petita sit, eadem circa fructus interveniunt quae diximus intervenire in singularum rerum petitione. illorum autem fructuum quos culpa sua possessor non perceperit, in utraque actione eadem ratio paene habetur, si praedo fuerit. si vero bona fide possessor fuerit, non habetur ratio consumptorum neque non perceptorum: post inchoatam autem petitionem etiam illorum ratio habetur qui culpa possessoris percepti non sunt vel percepti consumpti sunt.

Si ad exhibendum actum fuerit, non sufficit si exhibeat rem is cum quo actum est, sed opus est ut etiam causam rei debeat exhibere, id est ut eam causam habeat actor quam habiturus esset si cum primum ad exhibendum egisset exhibita res fuisset: ideoque si inter moras usucapta sit res a possessore, nihilo minus condemnabitur. praeterea fructuum medii temporis, id est eius quod post acceptum ad exhibendum iudicium ante rem iudicatam intercessit, rationem habere debet iudex. quod si neget is cum quo ad exhibendum actum est in praesenti exhibere se posse et tempus exhibendi causa petat idque sine frustratione postulare videatur, dari et debet, ut tamen caveat, se restituturum: quod si neque statim iussu iudicis rem exhibeat neque postea exhibiturum se caveat, condemnandus est in id quod actoris intererat ab initio rem exhibitam esse.

Si familiae erciscundae iudicio actum sit, singulas res singulis heredibus adiudicare debet et, si in alterius persona praegravare videatur adiudicatio, debet hunc invicem coheredi certa pecunia, sicut iam dictum est, condemnare. eo quoque nomine coheredi quisque suo condemnandus est, quod solus fructus hereditarii fundi percepit aut rem hereditariam corrupit aut consumpsit. quae quidem similiter inter plures quoque quam duos coheredes subsequuntur.

Eadem interveniunt et si communi dividundo de pluribus rebus actum fuerit. quod si de una re, veluti de fundo, si quidem iste fundus commode regionibus divisionem recipiat, partes eius singulis adiudicare debet et, si unius pars praegravare videbitur, is invicem certa pecunia alteri condemnandus est: quodsi commode dividi non possit, vel homo forte aut mulus erit de quo actum sit, uni totus adiudicandus est et is alteri certa pecunia condemnandus.

Si finium regundorum actum fuerit, dispicere debet iudex, an necessaria sit adiudicatio. quae sane uno casu necessaria est, si evidentioribus finibus distingui agros commodius sit quam olim fuissent distincti; nam tunc necesse est ex alterius agro partem aliquam alterius agri domino adiudicari: quo casu conveniens est ut is alteri certa pecunia debeat condemnari. eo quoque nomine damnandus est quisque hoc iudicio, quod forte circa fines malitiose aliquid commisit, verbi gratia quia lapides finales furatus est aut arbores finales cecidit. contumaciae quoque nomine quisque eo iudicio condemnatur, veluti si quis iubente iudice metiri agros passus non fuerit. Quod autem istis iudiciis alicui adiudicatum sit id statim eius fit cui adiudicatum est.

LIB. IV, TIT. XVIII.
DE PUBLICIS IUDICIIS.

Publica iudicia neque per actiones ordinantur nec omnino quidquam simile habent ceteris iudiciis de quibus locuti sumus, magnaque diversitas est eorum et in instituendis et in exercendis. Publica autem dicta sunt quod cuivis ex populo exsecutio eorum plerumque datur. Publicorum iudiciorum quaedam capitalia sunt, quaedam non capitalia. capitalia dicimus quae ultimo supplicio adficiunt vel aquae et ignis interdictione vel deportatione vel metallo: cetera si qua infamiam irrogant cum damno pecuniario, haec publica quidem sunt, non tamen capitalia.

Publica autem iudicia sunt haec. lex Iulia maiestatis, quae in eos qui contra imperatorem vel rem publicam aliquid moliti sunt suum vigorem extendit. cuius poena animae amissionem sustinet, et memoria rei et post mortem damnatur. Item lex Iulia de adulteriis coercendis, quae non solum temeratores alienarum nuptiarum gladio punit, sed etiam eos qui cum masculis infandam libidinem exercere audent. sed eadem lege Iulia etiam stupri flagitium punitur, cum quis sine vi vel virginem vel viduam honeste viventem stupraverit. poenam autem eadem lex irrogat peccatoribus, si honesti sunt, publicationem partis dimídiae, bonorum, si humiles, corporis coercitionem cum relegatione.

Item lex Cornelia de sicariis, quae homicidas ultore ferro persequitur vel eos, "qui hominis occidendi causa cum telo ambulant." "telum" autem, ut Gaius noster in interpretatione legis duodecim tabularum scriptum reliquit, vulgo quidem id appellatur quod ab arcu mittitur, sed et omne significatur quod manu cuiusdam mittitur: sequitur ergo ut et lapis et lignum et ferrum hoc nomine contineatur. dictumque ab eo quod in longinquum mittitur, a Graeca voce figuratum, ἀπὸ τοῦ τηλοῦ: et hanc significationem invenire possumus et in Graeco nomine: nam quod nos telum appellamus, illi βέλος appellant ἀπὸ τοῦ βαλλεσθαι. admonet nos Xenophon; nam ita scripsit:

καὶ τὰ βέλη ὁμοῦ ἐφέρετο, λόγχαι, τοξεύματα,
σφενδόναι, πλεῖστοι δὲ καὶ λίθοι.

"sicarii" autem appellantur a sica, quod significat ferreum cultrum. eadem lege et venefici capite damnantur, qui artibus odiosis, tam venenis quam susurris magicis homines occiderunt vel mala medicamenta publice vendiderunt.

Alia deinde lex asperrimum crimen nova poena persequitur, quae Pompeia de parricidiis vocatur. qua cavetur, ut, "si quis parentis aut filii, aut omino adfectionis eius quae nuncupatione parricidii continetur, fata properaverit, sive clam sive palam id" ausus fuerit, nec non is cuius dolo malo id factum est, vel conscius criminis existit, licet extraneus sit, "poena parricidii puniatur, et neque gladio neque ignibus neque ulli alii solemni poenae subiugetur, sed insutus culeo cum cane et gallo gallinaceo et vipera et simia et inter eius ferales angustias comprehensus," secundum quod regionis qualitas tulerit, "vel in vicinum mare vel in amnem proiciatur, ut omni elementorum usu vivus carere incipiat et ei caelum superstiti, terra mortuo auferatur." si quis autem alias cognatione vel adfinitate coniunctas personas necaverit, poenam legis Corneliae de sicariis sustinebit.

Item lex Cornelia de falsis, quae etiam testamentaria vocatur, poenam irrogat ei qui testamentum vel aliud instrumentum falsum scripserit, signaverit, recitaverit, subiecerit, quive signum adulterinum fecerit, sculpserit, expresserit sciens dolo malo. eiusque legis poena in servos ultimum supplicium est, quod et in lege de sicariis et veneficis servatur, in liberos vero deportatio.

Item lex Iulia de vi publica seu privata adversus eos exoritur qui vim vel armatam vel sine armis commiserint. sed si quidem armata vis arguatur, deportatio ei ex lege Iulia de vi publica irrogatur: si vero sine armis, in tertiam partem bonorum publicatio imponitur. sin autem per vim raptus virginis vel viduae vel sanctimonialis, velatae vel aliae, fuerit perpetratus, tunc et peccatores et ii qui opem flagitio dederunt, capite puniuntur secundam nostrae constitutionis definitionem, ex qua haec apertius possibile est scire. Lex Iulia peculatus eos punit qui pecuniam vel rem publicam vel sacram vel religiosam furati fuerint. sed si quidem ipsi iudices tempore administrationis publicas pecunias subtraxerunt, capitali animadversione puniuntur, et non solum hi, sed etiam qui ministerium eis ad hoc adhibuerunt vel qui subtracta ab his scientes susceperunt: alii vero qui in hanc legem inciderint poenae deportationis subiugantur. Est et inter publica iudicia lex Fabia de plagiariis, quae interdum capitis poenam ex sacris constitutionibus irrogat interdum leviorem. Sunt praeterea publica iudicia lex Iulia ambitus et lex Iulia repetundarum et lex Iulia de annona et lex Iulia de residuis, quae de certis capitulis loquuntur et animae quidem amissionem non irrogant, aliis autem poenis eos subiciunt qui praecepta earum neglexerint.

Sed de publicis iudiciis haec euimus, ut vobis possibile sit summo digito et quasi per indicem ea tetigisse. alioquin diligentior eorum scientia vobis ex latioribus digestorum sive pandectarum libris deo propitio adventura est.

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CJ.1.1.1pr.: Imperatores Gratianus, Valentinianus, Theodosius

Cunctos populos, quos clementiae nostrae regit temperamentum, in tali volumus religione versari, quam divinum petrum apostulum tradidisse romanis religio usque ad nunc ab ipso insinuata declarat quamque pontificem damasum sequi claret et petrum alexandriae episcopum virum apostolicae sanctitatis, hoc est ut secundum apostolicam disciplinam evangelicamque doctrinam patris et filii et spiritus sancti unam deitatem sub pari maiestate et sub pia trinitate credamus. * grat. valentin. et theodos. aaa. ad pop. urb. constantinop. * <a 380 d. iii k. mart. thessalonica gratiano v et theodosio aa. conss.>

CJ.1.1.1.1: Imperatores Gratianus, Valentinianus, Theodosius

Hanc legem sequentes christianorum catholicorum nomen iubemus amplecti, reliquos vero dementes vesanosque iudicantes haeretici dogmatis infamiam sustinere, divina primum vindicta, post etiam motus nostri, quem ex caelesti arbitrio sumpserimus, ultione plectendos. <a 380 d. iii k. mart. thessalonica gratiano v et theodosio aa. conss.>

CJ.1.1.2pr.: Imperatores Gratianus, Valentinianus, Theodosius

Nullus haereticis mysteriorum locus, nulla ad exercendam animi obstinatioris dementiam pateat occasio. sciant omnes, etiamsi quid speciali quolibet rescripto per fraudem elicito ab huiusmodi hominum genere impetratum sit, non valere. arceantur cunctorum haereticorum ab illicitis congregationibus turbae: unius et summi dei nomen ubique celebretur: nicaenae fidei dudum a maioribus traditae et divinae religionis testimonio atque adsertione firmatae observantia semper mansura teneatur. * grat. valentin. et theodos. aaa. eutropio pp. * <a 381 d. iiii id. ian. constantinopoli eucherio et syagrio conss.>

CJ.1.1.2.1: Imperatores Gratianus, Valentinianus, Theodosius

Is autem nicaenae adsertor fidei et catholicae religionis verus cultor accipiendus est, qui omnipotentem deum et christum filium dei uno nomine confitetur, deum de deo, lumen ex lumine, qui spiritum sanctum, quem ex summo rerum parente speramus et accipimus, negando non violat, apud quem intemeratae fidei sensu viget incorruptae trinitatis indivisa substantia, quae graeco verbo ousia recte credentibus dicitur. haec profecto nobis magis probata, haec veneranda sunt. <a 381 d. iiii id. ian. constantinopoli eucherio et syagrio conss.>

CJ.1.1.2.2: Imperatores Gratianus, Valentinianus, Theodosius

Qui vero isdem non inserviunt, desinant adfectatis dolis alienum verae religionis nomen adsumere et suis apertis criminibus denotentur: ab omnium submoti ecclesiarum limine penitus arceantur, cum omnes haereticos illicitas agere intra oppida congregationes vetemus. ac si quid eruptio factiosa temptaverit, ab ipsis etiam urbium moenibus exterminato furore propelli iubemus, ut cunctis orthodoxis episcopis, qui nicaenam fidem tenent, catholicae ecclesiae toto orbe reddantur. <a 381 d. iiii id. ian. constantinopoli eucherio et syagrio conss.>

CJ.1.1.4pr.: Imperator Marcianus

Nemo clericus vel militans vel alterius cuiuslibet condicionis de fide christiana publice turbis coadunatis et audientibus tractare conetur in posterum, ex hoc tumultus et perfidiae occasionem requirens. * marcian. a. palladio pp. * <a 452 d. vii id. febr. constantinopoli sporacio cons.>

CJ.1.1.4.1: Imperator Marcianus

Nam iniuriam facit iudicio reverentissimae synodi, si quis semel iudicata ac recte disposita revolvere et publice disputare contendit, cum ea, quae nunc de christiana fide a sacerdotibus, qui chalcedone convenerunt, per nostra praecepta statuta sunt, iuxta apostolicas eitiones et instituta sanctorum patrum trecentorum decem et octo et centum quinquaginta definita esse noscuntur. <a 452 d. vii id. febr. constantinopoli sporacio cons.>

CJ.1.1.4.2: Imperator Marcianus

Nam in contemptores huius legis poena non deerit, quia non solum contra fidem vere eitam veniunt, sed etiam iudaeis et paganis ex huiusmodi certamine profanant veneranda mysteria. <a 452 d. vii id. febr. constantinopoli sporacio cons.>

CJ.1.1.4.3: Imperator Marcianus

Igitur si clericus erit, qui publice tractare de religione ausus fuerit, consortio clericorum removebitur: si vero militia praeditus sit, cingulo spoliabitur: ceteri etiam hiusmodi criminis rei, si quidem liberi sint, de hac sacratissima urbe pellentur, pro vigore iudiciario etiam competentibus suppliciis subiugandi, sin vero servi, severissimis animadversionibus plectentur. <a 452 d. vii id. febr. constantinopoli sporacio cons.>

CJ.1.1.8pr.: Imperator Justinianus

Inter claras sapientiae mansuetudinis vestrae laudes, christianissime principum, puriore luce tamquam aliquod sidus irradiat, quod amore fidei, quod caritatis studio, edocti ecclesiasticis disciplinis, romanae sedis reverentiam conservatis et ei cuncta subicitis et ad eius deducitis unitatem, ad cuius auctorem, hoc est apostolorum primum, domino loquente praeceptum est: ' pasce oves meas '. * gloriosiss. et clementiss. fil. iustiniano a. iohannes ep. urb. romae.* <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.1: Imperator Justinianus

Quam esse omnium vere ecclesiarum caput et patrum regulae et principum statuta declarant et pietatis vestrae reverentissimi testantur affatus. patet igitur in vobis impletum fore, quod scripturae loquuntur: ' per me reges regnant et potentes scribunt iustitiam '. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.2: Imperator Justinianus

Nihil est enim, quod lumine clariore praefulgeat, quam recta fides in principe: nihil est, quod ita nequeat occasui subiacere, quam vera religio. nam cum auctorem vitae vel luminis utraque respiciant, recte et tenebras respuunt et nesciunt subiacere defectui. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.3: Imperator Justinianus

Quam ob rem, gloriosissime principum, votis omnibus exorabitur divina potentia, ut pietatem vestram in hoc ardore fidei, in hac devotione mentis, in hoc integrae religionis studio sine defectu sui in tempora longiora conservet: hoc enim et sanctis credimus ecclesiis expedire. scriptum est enim: ' labiis regit rex ', et iterum: ' cor regis in manu dei, et ubi voluerit, inclinabit illud '. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.4: Imperator Justinianus

Hoc est enim, quod vestrum firmat imperium, hoc, quod vestra regna conservat. nam pax ecclesiae, religionis unitas, auctorem facti in sublime provectum grata sibi tranquillitate custodit. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.5: Imperator Justinianus

Neque enim parva ei vicissitudo a potentia divina tribuitur, per quem nullis rugis ecclesia divisa secernitur, nullis insertis maculis variatur. scriptum est enim: ' quia cum rex iustus sederit supra sedem, non adversabitur sibi quicquam malignum '. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.6: Imperator Justinianus

Proinde serenitatis vestrae apices per hypatium atque demetrium sanctissimos viros fratres et coepiscopos meos reverentia consueta suscepimus: quorum etiam relatione comperimus, quod fidelibus populis proposuissetis edictum amore fidei pro submovenda haereticorum intentione secundum apostolicam doctrinam, fratrum et coepiscoporum nostrorum interveniente consensu. quod, quia apostolicae doctrinae convenit, nostra auctoritate confirmamus. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.7: Imperator Justinianus

Textus autem epistulae talis est: <a. 533 d. viii id. iun. constantinopoli dn. iustiniano perpetuo augusto iii consule. > victor iustinianus pius felix inclitus triumphator semper augustus iohanni sanctissimo archiepiscopo almae urbis romae et patriarchae. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.8: Imperator Justinianus

Reddentes honorem apostolicae sedi et vestrae sanctitati, quod semper nobis in voto fuit et est, ut decet, patrem honorantes vestram beatitudinem omnia, quae ad ecclesiarum statum pertinent, festinamus ad notitiam deferre vestrae sanctitatis, quoniam semper magnum nobis fuit studium unitatem vestrae apostolicae sedis et statum sanctarum dei ecclesiarum custodiri, qui hactenus obtinet et incommote permanet nulla intercedente contrarietate. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.9: Imperator Justinianus

Ideoque omnes sacerdotes universi orientalis tractus et subicere et unire sedi vestrae sanctitatis properavimus. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.10: Imperator Justinianus

Et in praesenti ergo quae hic commota sunt, quamvis manifesta et indubitata sint et secundum apostolicae vestrae sedis doctrinam ab omnibus semper sacerdotibus firme custodita et praedicata, necessarium duximus, ut ad notitiam vestrae sanctitatis perveniant. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.11: Imperator Justinianus

Nec enim patimur quicquam, quod ad ecclesiarum statum pertinet, quamvis manifestum et indubitatum sit, quod movetur, ut non etiam vestrae innotescat sanctitati , quia caput est omnium sanctarum ecclesiarum. per omnia enim, ut dictum est, properamus honorem et auctoritatem crescere vestrae sedis. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.12: Imperator Justinianus

Manifestum igitur facimus vestrae sanctitati, quod pauci quidam infideles et alieni sanctae dei catholicae atque apostolicae ecclesiae contradicere iudaice ausi sunt adversus ea, quae ab omnibus sacerdotibus secundum vestram doctrinam recte tenentur et glorificantur atque praedicantur, denegantes dominum nostrum ihesum christum, unigenitum filium dei et deum nostrum, incarnatum ex sancto spiritu et sancta atque gloriosa virgine et dei genetrice maria hominem factum atque crucifixum, unum esse sanctae et consubstantialis trinitatis, coadorandum et conglorificandum patri et spiritui sancto, consubstantialem patri secundum divinitatem et consubstantialem nobis eundem ipsum secundum humanitatem, passibilem carne, eundem ipsum impassibilem deitate. <a 534 d. viii k. april. roma dn. iust iniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.13: Imperator Justinianus

Recusantes enim dominum nostrum ihesum christum unigenitum filium dei et deum nostrum fateri unum esse sanctae et consubstantialis trinitatis videntur nestorii malam sequentes doctrinam, secundum gratiam dicentes eum filium dei et alium dicentes deum verbum et alium christum. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.14: Imperator Justinianus

Omnes vero sacerdotes sanctae catholicae atque apostolicae ecclesiae et reverentissimi archimandritae sacrorum monasteriorum sequentes sanctitatem vestram et custodientes statum et unitatem sanctarum dei ecclesiarum, quam habent ad apostolicam vestrae sanctitatis sedem, nihil penitus immutantes de ecclesiastico statu, qui hactenus obtinuit atque obtinet, uno consensu confitentur et glorificant , praedicantes dominum nostrum ihesum christum, unigenitum filium et verbum dei et deum nostrum, ante saecula et sine tempore de patre natum, in ultimis diebus descendisse de caelis et incarnatum ex spiritu sancto et sancta atque gloriosa virgine et dei genetrice maria natum et hominem factum et crucifixum unum esse sanctae et consubstantialis trinitatis, coadorandum et conglorificandum patri et sancto spiritui. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et pa ulino iuniore vc. conss.>

CJ.1.1.8.15: Imperator Justinianus

Nec enim alium deum verbum et alium christum cognoscimus, sed unum atque eundem ipsum consubstantialem patri secundum divinitatem et consubstantialem nobis eundem ipsum secundum humanitatem, passibilem carne, eundem ipsum impassibilem deitate. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.16: Imperator Justinianus

Ut enim est in divinitate perfectus, ita idem ipse et in humanitate perfectus est: in una enim subsistentia unitatem suscipimus et confitemur, quod dicunt graeci tyn kav hupostasin henwsin homologumen. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.17: Imperator Justinianus

Et quoniam unigenitus filius et verbum dei, ante saecula et sine tempore de patre natus, idem ipse et in ultimis diebus descendens de caelis, incarnatus ex sancto spiritu et sancta atque gloriosa virgine et dei genetrice maria et homo factus, dominus noster ihesus christus proprie et vere deus est, ideo et sanctam et gloriosam virginem maria proprie et vere dei matrem dicimus: non quia deus verbum principium ex ipsa sumpserit, sed quod in ultimis diebus descendit de caelis et ex ipsa incarnatus et homo factus natus est. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.18: Imperator Justinianus

Quem confitemur et credimus, sicut dictum est, consubstantialem esse patri secundum deitatem et consubstantialem nobis eundem ipsum secundum humanitatem, eiusdem miracula et passiones, quas sponte carne sustinuit, cognoscentes. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.19: Imperator Justinianus

Suscipimus autem sancta quattuor concilia, id est trecentorum decem et octo sanctorum patrum, qui in nicaea congregati sunt, et centum quinquaginta sanctorum patrum, qui in hac regia urbe convenerunt, et sanctorum patrum, qui in epheso primo congregati sunt, et sanctorum patrum, qui in chalcedone convenerunt, sicut vestra apostolica sedes docet atque praedicat. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.20: Imperator Justinianus

Omnes ergo sacerdotes sequentes doctrinam apostolicae vestrae sedis ita credunt et confitentur et praedicant. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.21: Imperator Justinianus

Unde properavimus haec ad notitiam deferre vestrae sanctitatis per hypatium et demetrium, beatissimos episcopos, ut nec vestram sanctitatem lateat, quae a quibusdam paucis monachis male et iudaice secundum nestorii perfidiam denegata sunt. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.22: Imperator Justinianus

Petimus ergo vestrum paternum adfectum, ut vestris ad nos destinatis litteris et ad sanctissimum episcopum huius almae urbis et patriarcham vestrum fratrem, quoniam et ipse per eosdem scripsit ad vestram sanctitatem festinans in omnibus sequi sedem apostolicam beatitudinis vestrae, manifestum nobis faciatis, quod omnes, qui praedicta recte confitentur, suscipit vestra sanctitas et eorum, qui iudaice ausi sunt recte denegare fidem, condemnat perfidiam. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.23: Imperator Justinianus

Plus enim ita et circa vos omnium amor et vestrae sedis crescit auctoritas et quae ad vos est unitas sanctarum ecclesiarum inturbata servabitur, quando per vos didicerint omnes beatissimi episcopi eorum, quae ad vos relata sunt, sinceram vestrae sanctitatis doctrinam. petimus autem vestram beatitudinem orare pro nobis et dei nobis adquirere providentiam. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.24: Imperator Justinianus

Et alia manu: divinitas te servet per multos annos, sancte ac religiosissime pater. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.25: Imperator Justinianus

Liquet igitur, gloriosissime imperator, ut lectionis tenor et legatorum vestrorum relatio patefecit, vos apostolicis eruditionibus studere, cum de religionis catholicae fide ea sapitis, ea scripsistis, ea populis fidelibus publicastis, quae, sicut diximus, et sedes apostolica docet et patrum veneranda decrevit auctoritas et nos confirmavimus in omnibus. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.26: Imperator Justinianus

Opportunum est ergo voce clamare prophetica; ' iucundetur caelum desuper, effundant montes iucunditatem et colles laetitia laetabuntur '. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.27: Imperator Justinianus

Haec igitur in tabulis cordis fideles scribere, haec ut pupillas oculorum convenit observare. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.28: Imperator Justinianus

Neque enim quisquam est, in quo christi caritas fervet, qui tam rectae, tam verae confessionis vestrae fidei refragator existat, cum impietatem evidenter nestorii eutychisque et omnium haereticorum damnantes, unam veram catholicam fidem domini et dei nostri salvatoris ihesu christi magisterio institutam et propheticis apostolicisque praedicationibus ubique diffusam et sanctorum per totum orbem confessionibus roboratam, patrum atque doctorum sententiis adunatam et nostrae doctrinae consentaneam inconcusse atque inviolabiliter devota deo et pia mente servatis. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iu niore vc. conss.>

CJ.1.1.8.29: Imperator Justinianus

Soli etenim vestris professionibus adversantur, de quibus divina scriptura loquitur dicens: ' posuerunt mendacium spem suam et mendacio operiri speraverunt ': et iterum qui secundum prophetam dicunt domino: ' recede a nobis, vias tuas scire nolumus ', propter quos salomon dicit: ' semitas propriae culturae erraverunt , colligunt autem manibus infructuosa '. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.30: Imperator Justinianus

Haec est igitur vestra vera fides, haec certa religio, hoc beatae recordationis, ut diximus, patres omnes praesulesque romanae ecclesiae, quos in omnibus sequimur, hoc sedes apostolica praedicavit hactenus et inconvulse custodivit: huic confessioni, huic fidei quisquis contradictor extiterit, alienum a sancta communione, alienum se ipse ab ecclesia iudicavit esse catholica. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.31: Imperator Justinianus

Nos enim in romana cyrum cum sequacibus suis invenimus civitate, qui de acoemetensi monasterio fuit, quos apostolicis suasionibus ad rectam fidem et velut oves , quae perierant errantes, ad ovile contendimus revocare dominicum, ut agnoscerent secundum prophetam linguae balbutientes loqui quae ad pacem sunt. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.32: Imperator Justinianus

Non credentibus autem per nos primus apostolorum esaiae prophetae verba dicit: ' pergite lumini ignis vestri et flammae, quam accendistis '. sed obduratum est cor eorum, ut scriptum est, ut non intellegerent, et pastoris vocem oves, quae meae non erant, audire minime voluerunt. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.33: Imperator Justinianus

In quibus servantes ea, quae ab ipsorum sunt statuta pontifice, eos minime in nostra communione recepimus et ab omni ecclesia catholica esse iussimus alienos, nisi errore damnato doctrinam nostram quantocius sequi habita regulari professione signaverint. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.34: Imperator Justinianus

Aequum quippe est, ut, qui nostris minime oboedientiam commodant statutis, ecclesiis habeantur extorres. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.35: Imperator Justinianus

Sed quia gremium suum numquam redeuntibus claudit ecclesia, obsecro clementiam vestram, ut, si proprio errore deposito et prava intentione depulsa ad unitatem ecclesiae reverti voluerint, in nostra communione receptis indignationis vestrae removeatis aculeos et nobis intercedentibus benigni animi gratiam condonate. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.36: Imperator Justinianus

Deum autem et salvatorem nostrum ihesum christum exoramus, quatenus longaevis et pacificis vos dignetur custodire temporibus in hac vera religione et unitate et veneratione apostolicae sedis, cuius principatum ut christianissimi et pii conservatis in omnibus. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.37: Imperator Justinianus

Praeterea, serenissime principum, laudamus legatorum vestrorum personas, hypatii et demetrii fratrum et coepiscoporum nostrorum, quos clementiae vestrae gratos fore ipsa manifestavit electio. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.38: Imperator Justinianus

Nam tantae causae pondus non nisi perfectis in christo potuisset iis iniungi, tantae vero pietatis, tantae reverentiae plenos adfatus nisi per amantes minime dignaremini destinare. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.1.8.39: Imperator Justinianus

Et alia manu: gratia domini nostri ihesu christi et caritas dei patris et communicatio spiritus sancti sit semper vobiscum, piissime fili. item subscriptio: omnipotens deus regnum et salutem vestram perpetua protectione custodiat, gloriosissime et clementissime fili imperator auguste. <a 534 d. viii k. april. roma dn. iustiniano pp. a. iiii et paulino iuniore vc. conss.>

CJ.1.2.0. De sacrosanctis ecclesiis et de rebus et privilegiis earum.

CJ.1.2.1: Imperator Constantinus

Habeat unusquisque licentiam sanctissimo catholicae venerabilique concilio decedens bonorum quod optavit relinquere. non sint cassa iudicia. nihil est quod magis hominibus debetur, quam ut supremae voluntatis, post quam iam aliud velle non possunt, liber sit stilus et licitum quod iterum non redit arbitrium. * const. a. ad pop. * <a 321 pp. v non. iul. romae crispo ii et constantino ii cc. conss.>

CJ.1.2.2: Imperatores Gratianus, Valentinianus, Theodosius

Nemo apostolorum vel martyrum sedem humandis corporibus existimet esse concessam. * grat. valentin. et theodos. aaa. pancratio pu. * <a 381 d. iii k. aug. heracliae eucherio et syagrio conss.>

CJ.1.2.3: Imperatores Gratianus, Valentinianus, Theodosius

Nemo martyres distrahat, nemo mercetur. * grat. valentin. et theodos. aaa. cynegio pp. * <a 386 d.Iiii k. mart. constantinopoli honorio np. et euodio conss.>

CJ.1.2.4: Imperatores Honorius, Theodosius

Non plures quam nongenti quinquaginta decani sacrosanctae huius amplissimae urbis deputentur ecclesiae nullique his addendi mutandive vel in defuncti locum substituendi pateat copia: nulli alii corporatorum praeter praedictum numerum per patrocinia immunitate concessa negataque omni novationis facultate similia vindicandi his, quae in honorem vel necessaria obsequia sacrosanctae ecclesiae indulta sunt. * honor. et theodos. aa. aetio pu. * <a 409 d. xii k. sept. eudoxiopoli honorio viii et theodosio iii aa. conss.>

CJ.1.2.5: Imperatores Honorius, Theodosius

Placet rationabilis consilii tenore perpenso destricta moderatione praescribere, a quibus specialiter necessitatibus ecclesiae urbium singularum habeantur immunes. prima quippe illius usurpationis contumelia depellenda est, ne praedia usibus caelestium secretorum dedicata sordidorum munerum faece vexentur. nihil extraordinarium ab hac superindicticiumve flagitetur, nulla translationum sollicitudo gignatur, postremo nihil praeter canonicam illationem, quam adventiciae necessitatis sarcina repentina depoposcerit, eius functionibus adscribatur. si quis contra venerit, post debitae ultionis acrimoniam, quae erga sacrilegos iure pr omenda est, exilio perpetuae deportationis uratur. * honor. et theodos. aa. melitio pp. * <a 412 d. viii k. iun. ravenna honorio viiii et theodosio v aa. conss.>

CJ.1.2.6: Imperatores Honorius, Theodosius

Omni innovatione cessante vetustatem et canones pristinos ecclesiasticos, qui nunc usque tenuerunt, et per omnes illyrici provincias servari praecipimus, ut, si quid dubietatis emerserit, id oporteat non absque scientia viri reverentissimi sacrosanctae legis antistitis urbis constantinopolitanae, quae romae veteris praerogativa laetatur, conventui sacerdotali sanctoque iudicio reservari. * honor. et theodos. aa. philippo pp. illyrici. * <a 421 d. prid. id. iul. eustathio et agricola conss. >

CJ.1.2.7: Imperatores Honorius, Theodosius

Ad instructiones itinerum pontiumque etiam divinas domos et venerabiles ecclesias tam laudabili titulo libenter adscribimus, quia non est inter sordida munera numeratum. * honor. et theodos. aa. asclepiodoto pp. * <a 423 d. xv k. mart. constantinopoli asclepiodoto et mariniano conss.>

CJ.1.2.8: Imperator Theodosius

Sacrosancta thessalonicensis ecclesia civitatis aperte sciat propriae tantummodo capitationis modum beneficio mei numinis sublevandum nec externorum gravamine tributorum rem publicam ecclesiastici nominis abusione laedendam. * theodos. a. isidoro pp. illyrici. * <a 424 d. vi id. oct. constantinopoli victore cons.>

CJ.1.2.9pr.: Imperatores Theodosius, Valentinianus

Qui sub praetextu decanorum seu collegiatorum, cum id munus non impleant, aliis se muneribus conantur subtrahere, eorum fraudibus credidimus obviandum, ne quis sub specie muneris, quod minus exsequitur, alterius muneris oneribus relevetur, ne argentariorum vel nummulariorum munera declinentur ab his, qui dici tantum collegiati vel decani festinant. * theodos. et valentin. aa. cyro pu. * <a 439 d. x k. april. theodosio xvii et festo conss.>

CJ.1.2.9.1: Imperatores Theodosius, Valentinianus

Ideoque si quis eorum sub nudae appellationis velamine collegiatum se seu decanum appellat, sciat pro se alium subrogandum, qui praedicto muneri sufficiens adprobatur, subrogatione videlicet memoratorum vel eorum qui moriuntur primatum eius qui subrogatur admisso iudicio: ab hac dispositione nemine se excusante sacrosanctarum ecclesiarum reverentia. <a 439 d. x k. april. theodosio xvii et festo conss.>

CJ.1.2.10pr.: Imperatores Theodosius, Valentinianus

Iubemus nullam navem ultra duorum millium modiorum capacem ante felicem embolam vel publicarum specierum transvectionem aut privilegio dignitatis aut religionis intuitu aut praerogativa personae publicis utilitatibus excusari posse subtractam: nec si caeleste contra proferatur oraculum, sive adnotatio sit sive divina pragmatica, providentissimae legis regulas expugnare debebit. * theodos. et valentin. aa. florentio pp. * <a 439 d. viii id. april. constantinopoli theodosio a. xvii et festo conss.>

CJ.1.2.10.1: Imperatores Theodosius, Valentinianus

Quod etiam in omnibus causis cupimus observari, ut generaliter, si quid eiusmodi contra ius vel utilitatem publicam in quolibet negotio proferatur, non valeat. quidquid enim in fraudem istius legis quolibet modo fuerit attemptatum, id navigii quod excusatur publicatione corrigimus. <a 439 d. viii id. april. constantinopoli theodosio a. xvii et festo conss.>

CJ.1.2.11: Imperatores Theodosius, Valentinianus

Neminem angariis vel parangariis vel plaustris vel quolibet munere excusari praecipimus, cum ad felicissimam expeditionem numinis nostri omnium provincialium per loca, qua iter arripimus, debeant nobis ministeria exhiberi, licet ad sacrosanctas ecclesias possessiones pertineant. * theodos. et valentin. aa. ad taurum pp. * <a 445 d. xiii k. mart. constantinopoli valentiniano a. vi et nomo conss.>

CJ.1.2.12pr.: Imperatores Valentinianus, Marcianus

Privilegia, quae generalibus constitutionibus universis sacrosanctis ecclesiis orthodoxae religionis retro principes praestiterunt, firma et illibata in perpetuum decernimus custodiri. * valentin. et marcian. aa. palladio pp. * <a 451 d. pridie id. nov. constantinopoli marciano a. cons.>

CJ.1.2.12.1: Imperatores Valentinianus, Marcianus

Omnes sane pragmaticas sanctiones, quae contra canones ecclesiasticos interventu gratiae et ambitionis elicitae sunt, robore suo et firmitate vacuatas cessare praecipimus. <a 451 d. pridie id. nov. constantinopoli marciano a. cons.>

CJ.1.2.12.2: Imperatores Valentinianus, Marcianus

Et quia humanitatis nostrae est prospicere egenis ac dare operam, ut pauperibus alimenta non desint, salaria etiam, quae sacrosanctis ecclesiis in diversis speciebus de publico hactenus ministrata sunt, iubemus nunc quoque inconcussa et a nullo prorsus imminuta praestari liberalitatique huic promptissimae perpetuam tribuimus firmitatem. <a 451 d. pridie id. nov. constantinopoli marciano a. cons.>

CJ.1.2.13: Imperatores Valentinianus, Marcianus

Generali lege sancimus, sive vidua sive diaconissa vel virgo deo dicata vel sanctimonialis mulier, sive quocumque alio nomine religiosi honoris vel dignitatis femina nuncupatur, testamento vel codicillo suo, quod tamen alia omni iuris ratione munitum sit, ecclesiae vel martyrio vel clerico vel monacho vel pauperibus aliquid vel ex integro vel ex parte in quacumque re vel specie credidit seu crediderit relinquendum, id modis omnibus ratum firmumque consistat, sive hoc institutione sive substitutione seu legato aut fideicommisso per universitatem seu speciali, sive scripta sive non scripta voluntate fuerit derelictum: omni in posterum in huiusmodi negotiis ambiguitate submota. * valentin. et marcian. aa. p alladio pp. * <a 455 d. x k. mai. constantinopoli valentiniano viii et anthemio conss.>

CJ.1.2.14pr.: Imperatores Leo, Anthemius

Iubemus nulli posthac archiepiscopo in hac urbe regia sacrosanctae ecclesiae praesidenti, nulli oeconomo, cui res ecclesiastica gubernanda mandatur, esse facultatem fundos vel praedia urbana seu rustica, res postremo immobiles aut in his praediis colonos vel mancipia constituta aut annonas civiles cuiuscumque suprema vel superstitis voluntate ad religiosam ecclesiam devolutas sub cuiuscumque alienationis specie ad quamcumque transferre personam, sed ea praedia dividere quidem, colere augere et ampliare nec ulli isdem praediis audere cedere. * leo et anthem. aa. armasio pp. * <a 470 d. constantinopoli iordane et severo conss.>

CJ.1.2.14.1: Imperatores Leo, Anthemius

Verum sive testamento quocumque iure facto seu codicillo vel sola nuncupatione, legato sive fideicommisso, aut mortis causa aut alio quocumque ultimo arbitrio aut certe inter viventes habita largitate sive contractu venditionis sive donationis aut alio quocumque titulo quisque ad praefatam venerabilem ecclesiam patrimonium suum partemve certam patrimonii in fundis praediis seu domibus vel annonis mancipiis et colonis eorumque peculiis voluerit pertinere, inconcussa ea omnia sine ulla penitus imminutione conservent scientes nulla sibi occasione vel tempore ad vicissitudinem beneficii colorati vel gratiae referendae, donandi vel certe volentibus emere alienandi aliquam facultatem permissam, nec si omnes cum religioso episcopo et oeconomo clerici in earum possessionum alienatione consentiant. <a 470 d. constantinopoli iordane et severo conss.>

CJ.1.2.14.2: Imperatores Leo, Anthemius

Ea enim, quae ad beatissimae ecclesiae iura pertinent vel posthac forte pervenerint, tamquam ipsam sacrosanctam et religiosam ecclesiam intacta convenit venerabiliter custodiri, ut, sicut ipsa religionis et fidei mater perpetua est, ita eius patrimonium iugiter servetur illaesum. <a 470 d. constantinopoli iordane et severo conss.>

CJ.1.2.14.3: Imperatores Leo, Anthemius

Sane, si haec nostrae perennitatis statuta audaci spiritu et mente sacrilega quisquam oeconomorum vel hominum temeranda crediderit, ipse quidem, qui protervo ausu ecclesiastica praedia donationis vel emptionis seu commutationis aut cuiuscumque contractus alterius nomine nisi eo quo nunc statuimus adquirere vel habere temptaverit, omnem huiusmodi fructum propriae temeritatis amittat: et pretia quidem et munera, quae eius rei gratia data fuerint oeconomo seu aliis quibuscumque personis, ecclesiae lucris et commodis adquirantur. <a 470 d. constantinopoli iordane et severo conss.>

CJ.1.2.14.4: Imperatores Leo, Anthemius

Praedia autem et in his omnia constituta ab ipsis clericis et temporalibus oeconomis cum fructibus seu pensionibus et accessionibus totius medii temporis vindicentur, ut tamquam penitus a nullo empta vel vendita teneantur, quia ea, quae contra leges fiunt, pro infectis habenda sunt. <a 470 d. constantinopoli iordane et severo conss.>

CJ.1.2.14.5: Imperatores Leo, Anthemius

Oeconumus autem, qui hoc fecerit, immo fieri passus fuerit vel in quacumque prorsus huiusmodi venditione seu donatione vel commutatione nisi ea quam praesenti lege concedimus, postremo in quacumque alienatione consenserit, commissa sibi oeconomatus administratione privetur deque bonis eius quodcumque exinde incommodum ecclesiae contigerit reformetur heredesque eius et successores ac posteri super hoc facto sive consensu competenti ab ecclesiasticis actione pulsentur: <a 470 d. constantinopoli iordane et severo conss.>

CJ.1.2.14.6: Imperatores Leo, Anthemius

His tabellionibus, qui huiusmodi contractuum vetitorum ausi fuerint instrumenta conscribere, irrevocabilis exilii animadversione plectendis: <a 470 d. constantinopoli iordane et severo conss.>

CJ.1.2.14.7: Imperatores Leo, Anthemius

His quoque iudicibus vel ius gestorum habentibus, qui huiusmodi donationum vel contractuum gesta confecerint, dignitatis propriae et bonorum omnium spoliatione damnandis. <a 470 d. constantinopoli iordane et severo conss.>

CJ.1.2.14.8: Imperatores Leo, Anthemius

Sane ne omnis religiosis oeconomis provisionis commodae via et occasio venerandis ecclesiis profutura videatur exclusa, id, quod utile plerumque iudicatur, cautelae observatione necessario procedere concedimus. <a 470 d. constantinopoli iordane et severo conss.>

CJ.1.2.14.9: Imperatores Leo, Anthemius

Si quando igitur vir religiosus oeconomus huius regiae urbis ecclesiae perspexerit expedire, ut desideranti cuiquam certarum possessionum atque praediorum, urbanorum scilicet sive rusticorum, ad ius ecclesiasticum pertinentium temporaria usus fructus possessio pro ipsius petitione praestetur, tunc eius temporis, quod inter utrosque convenerit, sive in diem vitae suae ab eo qui desiderat postuletur, pacta cum eo qui hoc elegerit ineat oeconumus atque conscribat, per quae et tempus, intra quod hoc praestari placuerit, statuatur et manifestum sit, quid quacumque acceperit ad vicem huius beneficii gratia, praestando quidem ecclesiastici praedii pro tempore usu fructu, post statutum autem tempus et placitum temporum redituum proprietate ad ius et dominium ecclesiasticum recurrente firmit er: ita scilicet, ut sive completo spatio, quod inter eos fuerit constitutum, seu mortis suae tempore, si hoc quoque convenerit, is, qui possessionem ecclesiasticam et certorum redituum usum fructum habendi gratia pacto interveniente susceperit, non minus quam alterius tantae quantitatis, quantae acceperat reditus, cum ipso praediorum dominio et rebus immobilibus eorumque colonis et mancipiis ecclesiae derelinquat. <a 470 d. constantinopoli iordane et severo conss.>

CJ.1.2.14.10: Imperatores Leo, Anthemius

Nisi enim hac condicione pacta inita fuerint, ea quoque decernimus non valere, sed possessionem ecclesiasticam tamquam nullo iure transcriptam in ipsius iure ac dominio permanere et ab ecclesiasticis sive oeconomis decernimus vindicari. <a 470 d. constantinopoli iordane et severo conss.>

CJ.1.2.16pr.: Imperator Zeno

Decernimus, ut antiquatis ac infirmatis funditus, quae contra ipsum orthodoxae religionis deum quodammodo facta sunt, in integrum restituantur universa et ad suum ordinem revocentur, quae ante profectionem nostrae mansuetudinis de orthodoxae religionis fide et sanctissimarum ecclesiarum et martyriorum statu firmiter obtinebant: his, quae contra haec tempore tyrannidis innovata sunt tam contra venerabiles ecclesias, quarum sacerdotium gerit beatissimus ac religiosissimus episcopus patriarcha nostrae pietatis pater acacius, quam ceteras, quae per diversas provincias collocatae sunt, nec non et reverentissimos earum antistites seu de iure sacerdotalium creationum seu de expulsione cuiusquam episcopi a quolibet illis temporibus facta seu de praerogativa in episcoporum concilio vel extra concilium ante alios residendi vel de privilegio metropolitano vel patriarch ico sub isdem impiis temporibus, penitus antiquandis, ut cassatis et rescissis, quae per huiusmodi sceleratas iussiones aut pragmaticas sanctiones aut constitutiones impias sive formas subsecuta sunt, quae a divae recordationis retro principibus ante nostrum imperium et deinceps a nostra mansuetudine indulta vel constituta sunt super sanctis ecclesiis et martyriis et religiosis episcopis clericis aut monachis, inviolata serventur. * zeno a. sebastiano pp. * <a 477 d. xvi k. ian. post cons. armati vc.>

CJ.1.2.16.1: Imperator Zeno

Sacrosanctam quoque huius religiosissimae civitatis ecclesiam matrem nostrae pietatis et christianorum orthodoxae religionis omnium et eiusdem regiae urbis sanctissimam sedem privilegia et honores omnes super episcoporum creationibus et iure ante alios residendi et cetera omnia, quae ante nostrum imperium vel nobis imperantibus habuisse dignoscitur, habere in perpetuum firmiter regiae urbis intuitu iudicamus et sancimus. <a 477 d. xvi k. ian. post cons. armati vc.>

CJ.1.2.19: Imperator Justinianus

Illud, quod ex veteribus legibus licet obscure positis a quibusdam attemptabatur , ut donationes super piis causis factae, licet minus in actis intimatae sint, tamen valeant, certo et dilucido iure taxamus, ut in aliis quidem casibus vetera iura super intimandis donationibus intacta maneant: si quis vero donationes usque ad quingentos solidos in quibuscumque rebus fecerit vel in sanctam ecclesiam vel in xenodochium vel in nosocomium vel in orphanotrophium vel in ptochotrophium vel in ipsos pauperes vel in quamcumque civitatem, istae donationes etiam citra actorum confectionem convalescant: sin vero amplioris quantitatis donatio sit, excepta scilicet imperiali donatione, non aliter valeat, nisi actis intimata fuerit: nulli danda licentia quacumque alia causa quasi pietatis iure subnixa praeter eas, quas specialiter euimus, introducenda veterum scita super intimandis donationibus permutare. * iust. a. menae pp. * <a 528 !d.!.... dn. iustiniano pp. a. !ii cons.! >

CJ.1.2.21pr.: Imperator Justinianus

Sancimus nemini licere sacratissima atque arcana vasa vel vestem ceteraque donaria, quae ad divinam religionem necessaria sunt (cum etiam veteres leges ea, quae iuris divini sunt, humanis nexibus non illigari sanxerunt) vel ad venditionem vel hypothecam vel pignus trahere, sed ab his, qui haec suscipere ausi fuerint, modis omnibus vindicari tam per religiosissimos episcopos quam oeconomos nec non etiam sacrorum vasorum custodes: nullam eis actionem relinquendam vel super recipiendo pretio vel fenore exigendo, pro quo res pignoratae sunt, sed omnibus huiusmodi actionibus respuendis ad restitutionem earum modis omnibus coartari. * iust. a. demostheni pp. * <a 529 >

CJ.1.2.21.1: Imperator Justinianus

Sin autem vel conflata sunt vel fuerint vel alio modo immutata vel dispersa, nihilo minus vel ad ipsa corpora vel ad pretia eorum exactionem competere sive per in rem sive per condictionem sive per in factum actionem, cuius tenor in multis et variis iuris articulis saepe est admissus, excepta videlicet causa captivitatis in locis, in quibus hoc (quod abominamur) contigerit. <a 529 >

CJ.1.2.21.2: Imperator Justinianus

Nam si necessitas fuerit in redemptione captivorum, tunc et venditionem praefatarum rerum divinarum et hypothecam et pignorationem fieri concedimus, cum non absurdum est animas hominum quibuscumque causis vel vestimentis praeferri: hoc obtinente non solum in futuris negotiis, sed etiam in iudiciis pendentibus. <a 529 >

CJ.1.2.22pr.: Imperator Justinianus

Sancimus res ad venerabiles ecclesias vel xenones vel monasteria vel ptochotrophia vel brephotrophia vel orphanotrophia vel gerontocomia vel si quid aliud tale consortium descendentes ex qualicumque curiali liberalitate sive inter vivos sive mortis causa sive in ultimis voluntatibus habita lucrativorum inscriptionibus liberas immunesque esse: lege scilicet, quae super huiusmodi inscriptionibus posita est, in aliis quidem personis suum robur obtinente, in parte autem ecclesiastica vel aliarum domuum, quae piis consortiis deputatae sunt, suum vigorem pietatis intuitu mitigante. cur enim non faciamus discrimen inter res divinas et humanas, et quare non competens praerogativa caelesti favori conservetur? * iu st. a. demostheni pp. * <a 529 recitata septimo miliario huius inclitae civitatis in novo consistorio palatii iustiniani.>

CJ.1.2.22.1: Imperator Justinianus

Quae oportet non solum in casibus, quos futurum tempus creaverit, sed etiam in adhuc pendentibus et iudiciali termino vel amicali compositione necdum sopitis obtinere. <a 529 recitata septimo miliario huius inclitae civitatis in novo consistorio palatii iustiniani.>

CJ.1.2.23pr.: Imperator Justinianus

Ut inter divinum publicumque ius et privata commoda competens discretio sit, sancimus, si quis aliquam reliquerit hereditatem vel legatum vel fideicommissum vel donationis titulo aliquid dederit vel vendiderit sive sacrosanctis ecclesiis sive venerabilibus xenonibus vel ptochiis vel monasteriis masculorum vel virginum vel orphanotrophiis vel brephotrophiis vel gerontocomiis nec non iuri civitatum, relictorum vel donatorum vel venditorum eis sit longaeva exactio nulla temporis solita praescriptione coartanda. * iust. a. iuliano pp. * <a 530 d. v k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.1.2.23.1: Imperator Justinianus

Sed et si in redemptione captivorum quaedam pecuniae vel res relictae vel legitimo modo donatae sunt, et earum exactionem longissimam esse censemus. <a 530 d. v k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.1.2.23.2: Imperator Justinianus

Et nobis quidem cordi erat nullis temporum metis huiusmodi actionem circumcludi. sed ne videamur in infinitum hanc extendere, longissimum vitae hominum tempus eligimus et non aliter eam actionem finiri concedimus, nisi centum annorum curricula excesserint: tunc enim tantummodo huiuscemodi exactionem evanescere sinimus. <a 530 d. v k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.1.2.23.3: Imperator Justinianus

Sive itaque memoratis religiosissimis locis vel civitatibus hereditas sive legatum sive fideicommissum fuerit relictum, vel donatio vel venditio processerit in quibuscumque rebus mobilibus vel immobilibus vel se moventibus, sive pro redemptione captivorum quaedam fuerint derelicta vel donata, sit eorum paene perpetua vindicatio et ad annos centum secundum quod dictum est extendatur, nulla alia exceptione temporis inhibenda, sive contra primas personas sive contra heredes vel successores earum moveatur. <a 530 d. v k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.1.2.23.4: Imperator Justinianus

In his autem omnibus casibus non solum personales actiones damus, sed etiam in rem et hypothecariam secundum nostrae tenorem constitutionis, quae legatariis et hypothecarias donavit, et supra dictis omnibus unum tantummodo terminum vitae suae imponimus, id est centum metas annorum. <a 530 d. v k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.1.2.23.5: Imperator Justinianus

Haec autem omnia observari sancimus in iis casibus, qui vel postea fuerint nati vel iam in iudicium deducti sunt. <a 530 d. v k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.1.3.0. De episcopis et clericis et orphanotrophis et brephotrophis et xenodochis et asceteriis et monachis et privilegio eorum et castrensi peculio et de redimendis captivis et de nuptiis clericorum vetitis seu permissis.

CJ.1.3.1: Imperator Constantius

Iuxta sanctionem, quam dudum meruistis, et vos et mancipia vestra nullus novis collationibus obligabit, sed vacatione gaudebitis. praeterea neque hospites suscipietis. * constantius a. clericis s. d. * <a 343 d. vi k. sept. placido et romulo conss.>

CJ.1.3.2pr.: Imperator Constantius

Omnis a clericis indebitae conventionis iniuria et iniquae exactionis repellatur improbitas nullaque conventio sit circa eos munerum sordidorum. et cum negotiatores ad aliquam praestationem competentem vocantur, ab his universis istiusmodi strepitus conquiescat. si quid enim vel parsimonia vel provisione vel mercatura , honestati tamen conscia, congesserint, in usum pauperum atque egentium ministrari oportet aut id, quod ex eorundem ergasteriis vel tabernis conquiri potuerit et colligi, collectum id religionis aestiment lucrum. * constantius a. felici ep. * <a 357 d. viii id. dec. mediolano. lecta v k. ian. apud acta constantio a. viiii et iuliano c. ii conss.>

CJ.1.3.2.1: Imperator Constantius

Verum etiam hominibus eorundem, qui operam in mercimoniis habent, divi principis , id est nostri genitoris, statuta multimoda observatione caverunt, ut idem clerici privilegiis pluribus redundarent. <a 357 d. viii id. dec. mediolano. lecta v k. ian. apud acta constantio a. viiii et iuliano c. ii conss.>

CJ.1.3.2.2: Imperator Constantius

Itaque extraordinariorum a praedictis necessitas atque omnis molestia conquiescat. <a 357 d. viii id. dec. mediolano. lecta v k. ian. apud acta constantio a. viiii et iuliano c. ii conss.>

CJ.1.3.2.3: Imperator Constantius

Ad parangariarum quoque praestationem non vocentur nec eorundem facultates atque substantiae. <a 357 d. viii id. dec. mediolano. lecta v k. ian. apud acta constantio a. viiii et iuliano c. ii conss.>

CJ.1.3.2.4: Imperator Constantius

Omnibus clericis huiusmodi praerogativa succurrat, ut coniugia clericorum ac liberi quoque et ministeria, id est mares pariter ac feminae, eorumque etiam filii immunes semper ab huiusmodi muneribus perseverent. <a 357 d. viii id. dec. mediolano. lecta v k. ian. apud acta constantio a. viiii et iuliano c. ii conss.>

CJ.1.3.3: Imperator Constantius

De his clericis, qui praedia possident, sublimis auctoritas tua non solum eos aliena iuga nequaquam statuet excusare, sed etiam pro his, quae ab ipsis possidentur, eosdem ad pensitanda fiscalia perurgueri. universos namque clericos possessores dumtaxat provinciales pensitationes fiscalium translationesque faciendas recognoscere iubemus. * constantius a. ad taurum pp. * <a 360 data epistula prid. k. iul. mediolano constantio a. x et iuliano c. iii conss.>

CJ.1.3.4pr.: Imperator Constantius

Officiales rationales, si exhibitione cursus seu primipili necessitate neglecta, interversa etiam ratione fiscali ad clericatus honorem putaverint transeundum, ad priorem condicionem retrahantur. * constantius a. ad taurum pp. * <a 361 d. iiii k. sept. tauro et florentio conss.>

CJ.1.3.4.1: Imperator Constantius

Si vero obnoxii ratiociniis vel necessitatibus non sint, sub notione iudicum officiis consentientibus, si id probabilis vitae studium postularit, transferantur nec cessionem metuant facultatum. <a 361 d. iiii k. sept. tauro et florentio conss.>

CJ.1.3.4.2: Imperator Constantius

Quod si clandestinis artibus putaverint inrependum, duas concedant liberis aut, si proles defuerit, propinquis e propria substantia portiones tertiam sibimet retenturi: si vero propinquorum necessitudo defuerit, geminae portiones officiis in quibus militant relinquantur, portione tertia tantummodo retenta. <a 361 d. iiii k. sept. tauro et florentio conss.>

CJ.1.3.5: Imperator iovianus

Si quis non dicam rapere, sed attemptare tantum matrimonii iungendi causa sacratissimas virgines ausus fuerit, capitali poena ferietur. * iovianus a. secundo pp. * <a 364 d. xi k. mart. antiochiae ioviano a. et varroniano conss.>

CJ.1.3.6: Imperatores Valens, Gratianus, Valentinianus

Presbyteros diaconos subdiaconos atque exorcistas et lectores, ostiarios etiam personalium munerum expertes esse praecipimus. * valens grat. et valentin. aaa. ad cataphronium. * <a 377 d. iii non. mart. gratiano a. iiii et merobaude conss.>

CJ.1.3.7: Imperatores Gratianus, Valentinianus, Theodosius

Nec honore nec legibus episcopus ad testimonium flagitatur. item dixit: episcopum ad testimonium dicendum admitti non decet: nam et persona oneratur et dignitas sacerdotis excepta confunditur. * grat. valentin. et theodos. aaa. pars act. hab. in s. consist.* <381 syagrii et eucherii vv. clariss. conss. die iv k iul. constantinopoli.>

CJ.1.3.8pr.: Imperatores Gratianus, Valentinianus, Theodosius

Presbyteri citra iniuriam quaestionis testimonium dicant, ita tamen, ut falsa non simulent. ceteri vero clerici, qui eorum gradum vel ordinem sequuntur, si ad testimonium dicendum petiti fuerint, prout leges praecipiunt, audiantur. * grat. valentin. et theodos. aaa. paulino praef. augustali.* <a 385 d. viii k. aug. arcadio a. et bautone conss.>

CJ.1.3.8.1: Imperatores Gratianus, Valentinianus, Theodosius

Salva tamen sit litigatoribus falsi actio, si forte presbyteri, qui sub nomine superioris loci testimonium dicere citra aliquam corporalem iniuriam sunt praecepti, hoc ipso, quod nihil metuant, vera suppresserint. multo magis etenim poena sunt digni, quibus cum plurimum honoris per nostram iussionem delatum est, occulto inveniuntur in crimine. <a 385 d. viii k. aug. arcadio a. et bautone conss.>

CJ.1.3.9: Imperatores Valentinianus, Theodosius, Arcadius

Nulla nisi emensis sexaginta annis secundum praeceptum apostoli ad diaconissarum consortium transferatur. * valentin. theodos. et arcad. aaa. tatiano pp. * <a 390 d. xi k. iul. mediolano valentiniano a. iiii et neoterio conss.>

CJ.1.3.10pr.: Imperatores Arcadius, Honorius

Si quis in hoc genus sacrilegii proruperit, ut in ecclesias catholicas inruens, sacerdotibus et ministris vel ipso cultu locoque importet iniuriae, quod geritur , a provinciae rectoribus animadvertatur. * arcad. et honor. aa. theodoro pp. * <a 398 d. vi k. mai. mediolano honorio a. iiii et eutychiano conss.>

CJ.1.3.10.1: Imperatores Arcadius, Honorius

Atque ita provinciae moderator sacerdotum et catholicae ecclesiae ministrorum, loci quoque ipsius et divini cultus iniuriam capitali in convictos sive confessos reos sententia noverit vindicandum nec expectet, ut episcopus iniuriae propriae ultionem deposcat, cui sanctitas ignoscendi gloriam dereliquit: sitque cunctis laudabile factas atroces sacerdotibus aut ministris iniurias veluti publicum crimen persequi ac de talibus reis ultionem mereri. <a 398 d. vi k. mai. mediolano honorio a. iiii et eutychiano conss.>

CJ.1.3.10.2: Imperatores Arcadius, Honorius

Quod si multitudo violenta civilis apparitionis exsecutione et adminiculo ordinum possessorumve non potuerit praesentari, quod se armis aut locorum difficultate tueatur, praesides provinciarum etiam militari auxilio per publicas litteras appetito competentem vindicatam tali excessui imponere non morentur. <a 398 d. vi k. mai. mediolano honorio a. iiii et eutychiano conss.>

CJ.1.3.11: Imperatores Arcadius, Honorius

Ecclesiis, quae in possessionibus, ut adsolet, diversorum, vicis etiam vel quibuslibet locis sunt constitutae, clerici non ex alia possessione vel vico, sed ex eo, ubi ecclesiam esse constiterit, ordinentur, ut propriae capitationis onus ac sarcinam recognoscant: ita ut pro magnitudine vel celebritate uniuscuiusque vici ecclesiis certus iudicio episcopi clericorum numerus ordinetur. * arcad. et honor. aa. eutychiano pp. * <a 398 d. vi k. aug. mnizo honorio a. iiii et eutychiano conss.>

CJ.1.3.12: Imperatores Arcadius, Honorius

Si quis curialis clericus fuerit ordinatus nec statim conventione praemissa pristinae condicioni reddatur, is vigore et sollertia iudicantium ad pristinam sortem velut manu mox iniecta revocetur. clericis enim ulterius legem prodesse non patimur, quae cessione patrimonii subsecuta decuriones clericos esse non vetabat. * arcad. et honor. aa. eutychiano pp. * <a 398 d. vi k. aug. mnizo honorio a. iiii et eutychiano conss.>

CJ.1.3.13: Imperatores Arcadius, Honorius

Si ecclesiae venerabilis privilegia cuiusquam fuerint vel temeritate violata vel dissimulatione neglecta, commissum quinque librarum auri condemnatione plectetur. * arcad. et honor. aa. sapidiano vic. africae. * <a 399 d. vii k. iul. brixiae theodoro cons.>

CJ.1.3.14: Imperatores Arcadius, Honorius

Quicumque residentibus sacerdotibus fuerit episcopali loco et nomine detrusus, si aliquid vel contra custodiam vel contra quietem publicam moliri fuerit deprehensus rursusque sacerdotium petere, a quo videtur expulsus, procul ab ea urbe, quam conturbavit, centum milibus vitam agat. nec nostra adeat secreta nec impetrare rescripta speret, sed etiam impetratis careat: defensoribus etiam eorum indignationem subituris. * arcad. et honor. aa. hadriano pp. * <a 400 d. prid. non. febr. ravenna stilichone et aureliano conss.>

CJ.1.3.15: Imperatores Arcadius, Honorius

Conventicula illicita extra ecclesiam in privatis aedibus celebrari prohibemus, proscriptionis domus periculo imminente, si dominus eius in ea clericos nova ac tumultuosa conventicula extra ecclesiam celebrantes susceperit. * arcad. et honor. aa. studio pu. * <a 404 d. iiii k. sept. constantinopoli honorio a. vi et aristaeneto conss.>

CJ.1.3.16: Imperatores Honorius, Theodosius

Quisquis censibus fuerit adnotatus, invito agri domino ab omni temperet clericatu, adeo ut etiam, si in eo vico, in quo noscitur mansitare, clericus fuerit, sub hac lege religiosum adsumat sacerdotium, ut et capitationis sarcinam per ipsum dominum agnoscere compellatur et ruralibus obsequiis quo maluerit subrogato fungatur, ea scilicet immunitate indulta, quae certae capitationis venerandis ecclesiis relaxatur: nullo contra hanc legem valituro rescripto. * honor. et theodos. aa. anthemio pp. * <a 409 d. prid. k. mart. honorio a. viii et theodosio a. iii conss.>

CJ.1.3.17pr.: Imperatores Honorius, Theodosius

Placet nostrae clementiae, ut nihil commune clerici cum publicis actibus vel ad curiam pertinentibus, cuius corpori non sunt adnexi, habeant. * honor. et theodos. aa. monaxio pp. * <a 416 d. iii k. oct. constantinopoli theodosio a. vii et palladio conss.>

CJ.1.3.17.1: Imperatores Honorius, Theodosius

Praeterea eis, qui parabalanin vocantur, neque ad quodlibet publicum spectaculum neque ad curiae locum neque ad iudicium accedendi licentiam permittimus, nisi forte singuli ob causas proprias et necessitates iudicem adierint aliquem lite pulsantes vel ab alio ipsi pulsati vel in communi totius corporis causa syndico ordinato: sub ea definitione, ut, si quis eorum haec violaverit et brevibus parabalanin eximatur et competenti supplicio subiugetur nec umquam ad eandem sollicitudinem revertatur. <a 416 d. iii k. oct. constantinopoli theodosio a. vii et palladio conss.>

CJ.1.3.18pr.: Imperatores Honorius, Theodosius

Parabalanin, qui ad curanda debilium aegra corpora deputantur, sescentos constitui praecipimus, ita ut pro arbitrio viri reverentissimi antistitis alexandrinae urbis de his, qui ante fuerant et qui pro consuetudine curandi gerunt experientiam, sescenti parabalanin ad huiusmodi sollicitudinem eligantur, exceptis videlicet honoratis et curialibus. * honor. et theodos. aa. monaxio pp. * <a 418 d. iii non. febr. constantinopoli honorio xii et theodosio viii aa. conss.>

CJ.1.3.18.1: Imperatores Honorius, Theodosius

Si quis autem ex his naturali sorte fuerit absumptus, alter in eius locum pro voluntate eiusdem sacerdotis exceptis honoratis et curialibus subrogetur, ita ut hi sescenti viri reverentissimi sacerdotis praeceptis ac dispositionibus obsecundent et sub eius cura consistant: reliquis, quae dudum latae legis forma complectitur, super his parabalanin vel de spectaculis vel de iudiciis ceterisque sicut iam statutum est custodiendis. <a 418 d. iii non. febr. constantinopoli honorio xii et theodosio viii aa. conss.>

CJ.1.3.19pr.: Imperatores Honorius, Theodosius

Eum, qui probabilem saeculo disciplinam agit, decolorari consortio sororiae appellationis non decet. quicumque igitur cuiuscumque gradus sacerdotio fulciuntur vel clericatus honore censentur, extranearum sibi mulierum interdicta consortia cognoscant: hac eis tantum facultate concessa, ut matres filias atque germanas intra domorum suarum saepta contineant: in his enim nihil scaevi criminis aestimari foedus naturale permittit. * honor. et theodos. aa. palladio pp. * <a 420 d. viii id. mai. ravenna theodosio a. viiii et constantio iii conss.>

CJ.1.3.19.1: Imperatores Honorius, Theodosius

Illas etiam non relinqui castitatis hortatur adfectio, quae ante sacerdotium maritorum legitimum meruere coniugium: neque enim clericis incompetenter adiunctae sunt, quae dignos sacerdotio viros sui conversatione fecerunt. <a 420 d. viii id. mai. ravenna theodosio a. viiii et constantio iii conss.>

CJ.1.3.20pr.: Imperatores Theodosius, Valentinianus

Si quis presbyter aut diaconus aut diaconissa aut subdiaconus vel cuiuslibet alterius loci clericus aut monachus aut mulier, quae solitariae vitae dedita est, nullo condito testamento decesserit nec ei parentes utriusque sexus vel liberi vel si qui agnationis cognationisve iure iunguntur vel uxor extiterit, bona, quae ad eum vel ad eam pertinuerint, sacrosanctae ecclesiae vel monasterio, cui fuerat destinatus aut destinata, omnifariam socientur. * theodos. et valentin. aa. ad taurum pp. * <a 434 d. xviii k. ian. ariobindo et aspare conss.>

CJ.1.3.20.1: Imperatores Theodosius, Valentinianus

Exceptis his facultatibus, quas forte censibus adscripti vel iuri patronatus subiecti vel curiali condicioni obnoxii clerici vel monachi cuiuscumque sexus relinquunt: nec enim iustum est bona seu peculia, quae aut patrono legibus debentur aut domino possessionis, cui quis eorum fuerat adscriptus, aut ad curias pro tenore dudum latae constitutionis sub certa forma pertinere noscuntur, ab ecclesiis vel monasteriis detineri: actionibus videlicet competenter sacrosanctis ecclesiis vel monasteriis reservatis, si quis forte praedictis condicionibus obnoxius aut ex gestis negotiis aut ex quibuslibet aliis ecclesiasticis actibus obligatus obierit. <a 434 d. xviii k. ian. ariobindo et aspare conss.>

CJ.1.3.21: Imperatores Theodosius, Valentinianus

Ad similitudinem tam episcoporum orthodoxae fidei quam presbyteri et diaconi ii, qui honorario titulo illustrem dignitatem consecuti sunt, per substitutos periculo suarum facultatum curiae muneribus satisfacere non vetentur. * theodos. et valentin. aa. thomae pp. * <a 442 d. v k. mart. constantinopoli eudoxio et dioscoro conss.>

CJ.1.3.22pr.: Imperatores Theodosius, Valentinianus

Si qua per calumniam postulatio super criminalibus causis apud competentem iudicem deposita exhibitionis causa fuerit sacrosanctae religionis antistitis, triginta pondo auri condemnatione publicis calculis inferenda ut percellatur, praecipimus. * theodos. et valentin. aa. florentio pp. * <a 445 d. iii id. febr. constantinopoli valentiniano a. vi et nomo conss.>

CJ.1.3.22.1: Imperatores Theodosius, Valentinianus

Quin etiam omnia privilegia, quae sacrosanctis ecclesiis confugarum aut clericorum, decanorum vel aliorum ecclesiasticorum causa legibus sunt praestita, intacta atque illibata servari. <a 445 d. iii id. febr. constantinopoli valentiniano a. vi et nomo conss.>

CJ.1.3.22.2: Imperatores Theodosius, Valentinianus

Praeterea iubemus, ut omnes clerici atque monachi, qui de suis civitatibus ad hanc almam urbem ecclesiastici negotii vel religionis causa proficiscuntur, litteris episcopi, cui unusquisque iter faciens obsequitur, muniti adveniant: scituri quod, si citra hanc fiduciam accesserint, sibimet imputabunt, quod non clerici vel monachi esse putabuntur. <a 445 d. iii id. febr. constantinopoli valentiniano a. vi et nomo conss.>

CJ.1.3.23: Imperatores Valentinianus, Marcianus

Quoniam venerabilis recordationis flavianus huius almae urbis episcopus cum venerabili synodo innumerabilium paene sacerdotum, qui chalcedone convenerunt, tanto ac tali decoratus est testimonio, ut eutyches, qui contra senserat, cum scelaeratis dictis suis ab omnibus uno ore damnaretur, aboleatur quidem eutychetis damnosa memoria, flaviani autem laudabilis recordatio reveletur. * valentin. et marcian. aa. palladio pp. * <a 452 d. constantinopoli pridie nonas iulias sporacio cons.>

CJ.1.3.24: Imperatores Valentinianus, Marcianus

Id, quod pauperibus testamento vel codicillis relinquitur, non ut incertis personis relictum evanescat, sed modis omnibus ratum firmumque consistat. * valentin. et marcian. aa. palladio pp. * <a 455 d. viii k. mai. anthemio cons.>

CJ.1.3.25pr.: Imperator Marcianus

Cum clericis in iudicium vocatis pateat episcopalis audientia, volentibus tamen actoribus, si actor disceptationem sanctissimi archiepiscopi noluerit experiri, eminentissimae tuae sedis examen contra catholicos sub viro reverentissimo archiepiscopo huius urbis clericos constitutos vel contra reverentissimum oeconomum tam de ipsius quam de ecclesiasticis negotiis sibimet noverit expetendum neque in ullo alio foro vel apud quemquam alterum iudicem eosdem clericos litibus inretire et civilibus vel criminalibus negotiis temptet innectere. * marcian. a. constantino pp. * <a 456 ? d........ >

CJ.1.3.25.1: Imperator Marcianus

Memorati autem reverentissimi clerici orthodoxarum ecclesiarum, quae sub viro religioso antistite huius inclitae urbis sunt, in causa, in qua vel ipsi vel procuratores, quos pro se dederint, sententiarum auctoritate pulsantur, exsecutoribus, per quos coeperint conveniri, fideiussorem sacratissimae huius urbis ecclesiae oeconomum vel defensorem praebeant, qui usque ad quinquaginta libras auri fideiussor existat. <a 456 ? d........ >

CJ.1.3.25.1a: Imperator Marcianus

Ipse vero reverentissimus oeconomus almae huius urbis ecclesiae lite pulsatus fideiussorem pro se non praebeat, utpote qui et aliorum clericorum fideiussor futurus est, sed fidei suae committatur. <a 456 ? d........ >

CJ.1.3.25.1b: Imperator Marcianus

Quod si lis diversorum (excepto reverentissimo oeconomo) clericorum, quae agitanda sit, memoratam summam videtur excedere, clericus lite pulsatus det exsecutori pro residua quantitate cautionem suam: cui nullum tamen insertum erit iusiurandum, quia ecclesiasticis regulis et canone a beatissimis episcopis antiquitus instituto clerici iurare prohibentur. <a 456 ? d........ >

CJ.1.3.25.2: Imperator Marcianus

Statuimus autem, ut exsecutoribus idem reverentissimus oeconomus vel alii diversi clerici sub beatissimo archiepiscopo huius splendidissimae civitatis sententiarum tuarum auctoritate commoniti solidos duos tantummodo dent pro commonitione sua et pro institutione procuratoris, si per eum voluerint litigare. <a 456 ? d........ >

CJ.1.3.25.3: Imperator Marcianus

Quod circa alios quoque diversos apparitores eminentiae tuae in his, quae ex consuetudine praebentur officio, observari in causis praedictorum clericorum iubemus, ut litis sumptus vel expensae a clericis pauciores humanioresve praestentur. <a 456 ? d........ >

CJ.1.3.26: Imperator Leo

Decernimus, ut posthac neque monachi aut quicumque alius cuiuslibet status aut fortunae in aedes publicas vel in quaecumque loca populi voluptatibus fabricata venerabilem crucem et sanctorum martyrum reliquias illicite inferre conentur vel occupare audeant ea, quae vel ad publicas causas vel ad populi oblectamenta constructa sunt. cum enim religiosae aedes non desunt, possunt ibi, consultis prius ut oportet religiosissimis episcopis, reliquias martyrum non quorundam usurpatione, sed arbitrio reverentissimorum antistitum collocare. ideo patientiam et modestiam suam, quam leges nostrae et publica disciplina et ipsorum monachorum nomen ecit, studiose unusquisque tam monachus quam cuiuslibet alterius professionis retineat et perpetuo observare procuret. * leo a. viviano pp. * <a 459 d. xv k. oct. patricio cons.>

CJ.1.3.27: Imperator Leo

Quisquis emensis militiae suae stipendiis expletisque officiis sive muneribus, quae cuicumque condicioni aut consuetudine vel lege debebat, ad consortium se contulerit clericorum et inter ministros verae orthodoxae fidei maluerit et elegerit numerari, nullius prorsus sententiae acerbitate revocetur nec a dei templis quibus se consecravit inopportunis intentionibus abstrahatur, sed isdem beatissimis ministeriis securus permaneat et quietus, ad quae post longi laboris lassitudinem ob reliquiae vitae requiem consilio meliore protractus est: his actionibus, si quae contra eum eiusque patrimonium legitima intentione competunt, pro iuris ordine responsurus: exceptis primipilaribus, quos praeceptis tui culminis et publicis utilitatibus in perpetuum esse subiectos sacratissimae constitution is statuta sanxerunt. * leo a. erythrio pp. * <a 466 d. prid. non. mart. constantinopoli leone a. iii cons.>

CJ.1.3.28pr.: Imperator Leo

Nulli licere decernimus, si testamento heres sit institutus seu ab intestato succedat seu fideicommissarius vel legatarius inveniatur, dispositionem pii testatoris infringere vel improba mente violare, adserendo incertum esse legatum vel fideicommissum, quod redemptioni relinquitur captivorum, sed modis omnibus exactum pro voluntate testatoris piae rei negotio proficere. * leo a. nicostrato pp. * <a 468 d. xv k. sept. constantinopoli anthemio ii cons.>

CJ.1.3.28.1: Imperator Leo

Et si quidem testator significaverit, per quem desiderat redemptionem fieri captivorum, is qui specialiter designatus est legati seu fideicommissi habeat exigendi licentiam et pro sua conscientia votum adimpleat testatoris. sin autem persona non designata testator absolute tantummodo summam legati vel fideicommissi taxaverit, quae debeat memoratae causae proficere, vir reverentissimus episcopus illius civitatis, ex qua testator oritur, habeat facultatem exigendi, quod huius rei gratia fuerit derelictum, pium defuncti propositum sine ulla cunctatione ut convenit impleturus. <a 468 d. xv k. sept. constantinopoli anthemio ii cons.>

CJ.1.3.28.2: Imperator Leo

Cum autem vir religiosissimus episcopus huiusmodi pecunias pio relictas arbitrio fuerit consecutus, statim gestis intervenientibus earum quantitatem et tempus quo eas susceperit apud rectorem provinciae publicare debebit. post unius vero anni spatium et numerum captivorum et data pro his pretia eum manifestare praecipimus, ut per omnia impleantur tam piae deficientium voluntates: ita tamen, ut religiosissimi antistites gratis et sine ullo dispendio praedicta gesta conficiant, ne humanitatis obtentu relictae pecuniae iudiciorum dispendiis erogentur. <a 468 d. xv k. sept. constantinopoli anthemio ii cons.>

CJ.1.3.28.3: Imperator Leo

Quod si testato, qui huiusmodi legatum vel fideicommissum non designata persona reliquit, barbarae sit nationis et de eius patria aliqua emerserit ambiguitas, vir reverentissimus episcopus civitatis eius, in qua idem testator defunctus est , itidem habeat legati seu fideicommissi petitionem defuncti propositum modis omnibus impleturus. <a 468 d. xv k. sept. constantinopoli anthemio ii cons.>

CJ.1.3.28.4: Imperator Leo

Quod si in vico vel in territorio testator mortem obierit, illius civitatis vir reverentissimus episcopus exactionem habebit, sub qua vicus vel territorium esse dignoscitur. <a 468 d. xv k. sept. constantinopoli anthemio ii cons.>

CJ.1.3.28.5: Imperator Leo

Et ne pium defunctorum propositum improba fraudatorum calliditate celetur, quidquid pro huiusmodi causa a testatore relictum fuerit, universi, qui id quocumque modo cognoverint, vel in viri clarissimi rectoris provinciae vel in urbis episcopi notitiam deferendi habeant liberam facultatem: nec delatoris nomen suspicionemque formident, cum fides atque industria eorum tam laude quam honestate non careat ac pariter pietate, cum veritatem in publicas aures lucemque deduxerint. <a 468 d. xv k. sept. constantinopoli anthemio ii cons.>

CJ.1.3.30pr.: Imperatores Leo, Anthemius

Si quemquem vel in hac urbe regia vel in ceteris provinciis, quae toto orbe diffusae sunt, ad episcopatus gradum provehi deo auctore contigerit, puris hominum mentibus nuda electionis conscientia sincero omnium iudicio proferatur. * leo et anthem. aa. armasio pp. * <a 469 d. viii id. mart. constantinopoli zenone et marciano conss.>

CJ.1.3.30.1: Imperatores Leo, Anthemius

Nemo gradum sacerdotii pretii venalitate mercetur: qualiter quisque mereatur, non quantum dare sufficiat aestimetur. <a 469 d. viii id. mart. constantinopoli zenone et marciano conss.>

CJ.1.3.30.2: Imperatores Leo, Anthemius

Profecto enim quis locus tutus et quae causa esse poterit excusata, si veneranda dei templa pecuniis expugnantur? quem murum integritati aut vallum fidei providebimus, si auri sacra fames penetralia veneranda proserpit? quid denique cautum esse poterit aut securum, si sanctitas incorrupta corrumpitur? <a 469 d. viii id. mart. constantinopoli zenone et marciano conss.>

CJ.1.3.30.3: Imperatores Leo, Anthemius

Cesset altaribus imminere profanus ardor avaritiae et a sacris adytis repellatur piaculare flagitium. ita castus et humilis nostris temporibus eligatur episcopus, ut, locorum quocumque pervenerit, omnia vitae propriae integritate purificet. <a 469 d. viii id. mart. constantinopoli zenone et marciano conss.>

CJ.1.3.30.4: Imperatores Leo, Anthemius

Non pretio, sed precibus ordinetur antistes. tantum ab ambitu debet esse sepositus, ut quaeratur cogendus, rogatus recedat, invitatus effugiat. <a 469 d. viii id. mart. constantinopoli zenone et marciano conss.>

CJ.1.3.30.5: Imperatores Leo, Anthemius

Sola illi suffragetur necessitas excusandi. profecto enim indignus est sacerdotio, nisi fuerit ordinatus invitus, cum sane quisquis hanc sanctam et venerandam antistitis sedem pecuniae interventu subiise aut si quis, ut alterum ordinaret vel eligeret, aliquid accepisse detegitur, ad instar publici criminis et laesae maiestatis accusatione proposita a gradu sacerdotii retrahatur. <a 469 d. viii id. mart. constantinopoli zenone et marciano conss.>

CJ.1.3.30.6: Imperatores Leo, Anthemius

Nec hoc solum deinceps honore privari, sed perpetuae quoque infamiae damnari decernimus, ut eos, quos facinus par coinquinat et aequat, utrosque similis poena comitetur. <a 469 d. viii id. mart. constantinopoli zenone et marciano conss.>

CJ.1.3.31pr.: Imperatores Leo, Anthemius

Orphanotrophos huius inclitae urbis nulla subtilitate iuris obsistente eorum quidem qui pupilli sunt quasi tutores, adulescentium vero quasi curatores sine ullo fideiussionis gravamine in emergentibus causis tam in iudicio quam extra iudicium, ut opus exegerit, ad similitudinem tutoris et curatoris personas et negotia eorum, si qua possint habere, defendere ac vindicare iubemus: ita videlicet, ut praesentibus publicis personis, id est tabulariis, aut intervenientibus gestis in hac quidem inclita urbe apud virum perfectissimum magistrum census, in provinciis vero apud moderatores earum vel defensores locorum res eorum eis tradantur, a quibus sunt custodiendae: ut, si quas earundem rerum propter fenus forsitan vel aliam urguentem causam vel eo quod servari non possunt alienare perspexerint, prius habita aestimatione licebit eis alienationis inire contractum, ut pretia eorum quae exinde colliguntur, ab isdem personis custodiantur. * leo et anthem. aa. dioscoro pp. * <a 472 d. k. iun. constantinopoli marciano cons.>

CJ.1.3.31.1: Imperatores Leo, Anthemius

Huiusmodi autem pium atque religiosum officium pro tempore orphanotrophos ita peragere convenit, ut minime ratiociniis tutelaribus seu curationibus obnoxii sint. grave enim atque iniquum est callidis quorundam, si ita contigerit, machinationibus eos vexari, qui propter timorem dei a parentibus atque substantiis destitutos minores sustentare ac velut paterna adfectione educare festinant. <a 472 d. k. iun. constantinopoli marciano cons.>

CJ.1.3.32pr.: Imperatores Leo, Anthemius

Omnes, qui ubicumque sunt vel posthac fuerint orthodoxae fidei sacerdotes et clerici, cuiuscumque gradus sunt, monachi quoque in causis civilibus ex nullius penitus maioris minorisve sententia iudicis ad extranea iudicia pertrahantur aut provinciam vel locum aut regionem quam habitant exire cogantur. nullus eorum ecclesias vel monasteria propria, quae religionis intuitu habitant, relinquere miserabili necessitate iubeatur, sed apud suos iudices ordinarios, hoc est provinciarum rectores, locis quibus degunt et ecclesiarum ministeriis obsecundant, omnium contra se agentium suscipiant actiones, ut his saltem horis atque temporibus, quibus religiosos viros a turbulenta observatione praetorii vacare contigerit cumque eos ad tempus petitorum intentio calumniosa laxaverit, ad sua se monasteria et venerabiles ecclesias conferentes sapienti animo, precatione sollicita faciliusque de proximo sacrosanctis altaribus obsecundent in suis laribus et domiciliis constituti. * leo et anthem. aa. erythrio pp. * <a 472 datum constantinopoli pridie nonas april. marciano cons.>

CJ.1.3.32.1: Imperatores Leo, Anthemius

In hac autem regia urbe si quando cuiuscumque rei causa episcopos vel presbyteros ceterosque clericos, qui sacrosanctis ecclesiis obsequuntur, sive monachos ex aliis quibuscumque provinciis contigerit reperiri, quos tamen in litem quisquam vocare voluerit, in nullo alio sit licitum memoratos cuiquam pulsare iudicio, nisi in tuae sublimatis dumtaxat examine, ubi eis et beatitudinis honor debitus reservetur et oratorum adfluens in defensionibus copia large praestetur. <a 472 datum constantinopoli pridie nonas april. marciano cons.>

CJ.1.3.32.2: Imperatores Leo, Anthemius

Praeterea cum in provinciis ex eius qui regit provinciam fuerint sententia vel interlocutione conventi sive illi sacerdotes seu cuiuscumque gradus clerici sive monachi habeantur, dummodo approbentur orthodoxi, qui in propriis causis contractibusve pulsantur non alios quam ecclesiae propriae defensores seu quos oeconomos appellant fideiussores praebeant, ne, dum exsecutoris pertinax et avara protervitas extraneos fideiussores flagitat, multiglex innoxiae paupertati infligatur incommodum. <a 472 datum constantinopoli pridie nonas april. marciano cons.>

CJ.1.3.32.3: Imperatores Leo, Anthemius

In hac autem regia urbe inventi ex quacumque provincia venientes, cum in tuae amplitudinis iudicio, quod eis solum delegavimus, lite pulsati fuerint, reverentissimi orthodoxae fidei sacerdotes certe oeconomi aut ecclesiae defensores seu clerici in causis civilibus suis sive ecclesiasticis nulla praebendi fideiussoris molestentur iniuria, sed aut vicariis fideiussionibus contradantur, quas tamen stipulationum sollemnis cautela vallaverit, aut cautionibus et professioni propriae ac facultatum suarum obligationibus committantur. <a 472 datum constantinopoli pridie nonas april. marciano cons.>

CJ.1.3.32.4: Imperatores Leo, Anthemius

Hoc nihilo minus observando, ut in causis ecclesiasticis nullum alium conveniri fas sit nisi eum, quem dispensatorem pauperum, id est oeconomum ecclesiae, episcopi tractatus elegerit (hunc enim sine dubio a sacerdote convenit ordinari) : quem tamen conventum defensoris ecclesiae fidei committi praecipimus. <a 472 datum constantinopoli pridie nonas april. marciano cons.>

CJ.1.3.32.5: Imperatores Leo, Anthemius

Exsecutoribus in minoribus quidem iudiciis omnibus in ipsa conventione sacerdotum seu clericorum non amplius quam unum semissem aut sperantibus aut etiam audentibus accipere. si vero apparitor tuae magnitudinis ex sententia tuae sedis amplissimae in provincia degentes eos monuerit, iubemus non amplius eum quam duos solidos sportularum nomine percipere. in hac vero urbe magnifica idem apparitor tuae magnitudinis uno aureo sportularum gratia a provincialibus clericis contentus sit, quantaelibet summae qui conventus fuerit exponatur obnoxius. <a 472 datum constantinopoli pridie nonas april. marciano cons.>

CJ.1.3.32.6: Imperatores Leo, Anthemius

Praeterea nullus exsecutor vexare contumeliis clericos ullos, nullis impulsionibus molestare, nullis exprobrare conviciis aut corporalibus iniuriis fatigare conetur: his, qui huiusmodi aliquid adgressi fuerint, post amissionem cinguli et patrimonii ultima protinus animadversione plectendis. <a 472 datum constantinopoli pridie nonas april. marciano cons.>

CJ.1.3.32.7: Imperatores Leo, Anthemius

Privilegiis sane singulis quibuscumque sacrosanctis ecclesiis orthodoxae fidei, xenodochiis sive ptochiis tam generaliter quam specialiter attributis perpetuo reservandis, nullis eas earumque sacerdotes aut clericos cuiuslibet gradus aut monachos vel ptochos aut xenodochos orthodoxae fidei deputatos extraordinariis muneribus praecipimus praegravari. eas enim sarcinas oneris, quas plerisque personis diversa ratione remittimus, imponi beatissimis viris nostro saeculo inconveniens esse iudicamus. <a 472 datum constantinopoli pridie nonas april. marciano cons.>

CJ.1.3.32.8: Imperatores Leo, Anthemius

Praeterea ne cui temeritas sua lucrativa concedatur et ut impudens calumniantium refrenetur audacia, iubemus, quotiens ii, qui sacerdotes seu clericos seu monachos ceterosque superius designatos vel in tuae magnitudinis examine vel in provinciali iudicio proposita actione convenerint, si causa cognita convicti fuerint sine iusta eos et legitima petitione pulsasse, omnes eis legitimas expensas sumptusque, quos ab exordio coeptae controversiae ipsorum vitio tolerasse eos constiterit, redhibere cogantur, ut hac saltem censurae iustissimae formidine revocati improbis adsidue conflictationibus occupati adquiescant se iam sopitis clamoribus iurgiorum magistra deinceps necessitate retinere. <a 472 datum constan tinopoli pridie nonas april. marciano cons.>

CJ.1.3.33: Imperatores Leo, Anthemius

Sacrosanctae orthodoxae fidei episcopi atque presbyteri, diaconi quoque, qui semel probatis moribus integritate castissima ad hunc gradum meruerint pervenire, ea, quaecumque in eodem clericatus gradu locoque viventes adquirere et habere potuerint, etiamsi in patris avique aut proavi potestate constituti sunt et adhuc superstites habentur, tamquam bona propria vindicent: de his, si quando eis libitum fuerit, testandi vel donandi vel quolibet alio titulo alienandi libera facultate concessa, ut ea bona quoquo tempore numquam fratribus vel sororibus aut ex his genitis conferantur, sed ad eorum filios posteros et quoscumque extraneos heredes perveniant nec a patribus avis aut proavis, sed ab ipsorum liberis tamquam praecipua vindicentur, certe his procedant, quibus ipsi id peculium vel inter vivos alienatione habita vel mortis tempore ultima et vere cognita voluntate concesserint. * leo et anthem. aa. erythrio pp. * <a 472 d. prid. non. april. marciano cons.>

CJ.1.3.34pr.: Imperatores Leo, Anthemius

Omnia privilegia, quae a retro principibus aut a nostra serenitate vel iudiciariis dispositionibus aut liberalitatibus pro singulis quibuscumque temporibus vel consuetudine sive circa ius metatorum sive in aliis quibuslibet rebus praestita sunt orphanotrophio sive asceteriis vel ecclesiis aut ptochiis seu xenodochiis aut monasteriis atque ceteris hominibus etiam ac rebus iuris eorum ad curam niconis viri religiosissimi presbyteri et orphanotrophi vel ad eos, qui post eum loco eius successerint, pertinentibus ad similitudinem zotici beatissimae memoriae, qui prius huiusmodi pietatis officium invenisse dicitur, per hanc pragmaticam sanctionem firma illibataque in perpetuum custodiri decernimus. valde etenim hoc videtur esse necessarium, cum exinde sustentatio vel educatio orphanis atque egenis et usibus ecclesiasticis vel ptochiis vel asceteriis comparetur. * leo et anthem. aa. dioscoro pp. * <a 472 d. x k. ian. constantinopoli marciano cons.>

CJ.1.3.34.1: Imperatores Leo, Anthemius

Domus etiam aliasque res superius nominatas ad curam memorati viri pertinentes vel postmodum quolibet modo ad eius sollicitudinem vel qui post eum ad eiusdem orphanotrophii curam vocati fuerint perventuras ad instar maioris venerabilis ecclesiae huius inclitae urbis omnibus privilegiis, quae eadem sancta ecclesia vel nunc adipiscitur vel postea merebitur, perpetuo potiri pietatis intuitu decernimus. <a 472 d. x k. ian. constantinopoli marciano cons.>

CJ.1.3.36pr.: Imperator Zeno

Iubemus adscripticiorum creationes secundum veterem constitutionem, nisi dominorum possessionum, unde oriundi sunt, evidens concurrerit consensus, nullius penitus esse momenti, sed isdem fundorum dominis, qui faciendae creationi non sicut dictum est evidenter consenserint, ius proprium ad similitudinem ceterorum colonorum in suos adscripticios exercendi, tamquam si nulla creatio intercessisset, tribui facultatem. idemque hoc super illis quoque agricolis decernimus observari, qui cum essent adscripticiae nexibus condicionis conscripti, solitariam vitam videlicet appetentes quibuslibet sese monasteriis contra voluntatem dominorum fundorum duxerint offerendos. * zeno a. sebastiano pp. * <a 484 d. v k. april. constantinopoli theodorico cons.>

CJ.1.3.36.1: Imperator Zeno

Servos sane sociari clericorum consortiis volentibus quoque et consentientibus dominis modis omnibus prohibemus, cum liceat eorum dominis, data servis prius libertate licitum eis ad suscipiendos honores clericorum iter, si hoc voluerint, aperire. <a 484 d. v k. april. constantinopoli theodorico cons.>

CJ.1.3.36.2: Imperator Zeno

Omnes praeterea virorum clarissimorum provincias moderantium sententiis absque ulla privilegii differentia (qui tamen praesidali iurisdictioni subiecti sunt, sive episcopi vel quilibet clerici aut monachi aut cuiuslibet sint condicionis) pariter respondere decernimus: nulla in posterum viris clarissimis provinciarum rectoribus ad loca, in quibus incusatae personae consistunt, perveniendi necessitate penitus imponenda, cum non solum legibus, verum etiam naturali quoque iuri conveniat, quos res exegerit, iudicialibus ad iudicium vocari sententiis, non ipsos iudices, quod dici etiam iniustum est, ad subiectos deduci, sed per datos ab his iudices causae examinationem in locis ubi incusati degunt procedere. <a 4 84 d. v k. april. constantinopoli theodorico cons.>

CJ.1.3.37: Imperator Zeno

Servis, si dominorum fuerint voluntate muniti, solitariam vitam participandi licentia non denegetur, dum tamen eorum domini non ignorent, quod, si servis suis ad monasteriorum cultum migrandi tribuerint facultatem, eorundem servorum dominio, donec idem servi in eodem monachorum habitu duraverint, spoliandos: alioquin si relicta forte vita solitaria ad aliam se condicionem transtulerint, certum est eos ad servitutis iugum, quam monachicae professionis cultu evaserant, reversuros. * zeno a. sebastiano pp. * <a 484 d. id. april. theodorico cons.>

CJ.1.3.40: Imperator Justinus

Repetita promulgatione non solum iudices quorumlibet tribunalium, verum etiam defensores ecclesiarum huius almae urbis, quos turpissimum insinuandi ultimas deficientium voluntates genus irrepserat, praemonendos censemus, ne rem attingant, quae nemini prorsus omnium secundum constitutionum praecepta quam census magistro competit. absurdum etenim clericis est, immo etiam opprobrium, si peritos se velint disceptationum esse forensium: feriendis temeratoribus huius sanctionis poena quinquaginta librarum auri. *

iustinus a. archelao pp. * <a 524 d. xiii k. dec. constantinopoli iustino a. ii et opilione conss.>

CJ.1.3.48pr.: Imperator Justinianus

Si quis ad declinandam legem falcidiam, cum desiderat totam suam substantiam pro redemptione captivorum relinquere, eos ipsos captivos scripserit heredes, ne videatur quasi incertis personis heredibus institutis iudicium suum oppugnandum reliquisse, sancimus huius talem institutionem pietatis intuitu valere et non esse respuendam. * iust. a. iohanni pp. * <a 531 d. x k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.1.3.48.1: Imperator Justinianus

Sed et si pauperes quidam scripserit heredes et non inveniatur certum ptochium vel certae ecclesiae pauperes, de quibus testator cogitaverit, sed hic incerto vocabulo pauperes fuerint heredes instituti, simili modo et huiusmodi institutionem valere decernimus. <a 531 d. x k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.1.3.48.2: Imperator Justinianus

Et si quidem captivos scripserit heredes, civitatis, in qua testator larem fovere ac degere noscitur, episcopus et oeconomus hereditatem suscipiant et omnimodo in redemptione captivorum procedat hereditas sive per annuos reditus sive per venditionem mobilium seu se moventium rerum: nullo penitus ex hoc lucro vel oeconomo vel episcopo vel sacrosanctae ecclesiae relinquendo. si enim propter hoc a speciali herede recessum est, ut non falcidiae ratio inducatur, quomodo ferendum est hoc, quod in sacro venit, per falcidiam vel aliam occasionem minui? <a 531 d. x k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.1.3.48.3: Imperator Justinianus

Ubi autem indiscrete pauperes scripti sunt heredes, ibi xenonem eius civitatis omnimodo hereditatem nancisci et per xenodochum in aegrotantes fieri patrimonii distributionem, secundum quod in captivis constituimus: vel per redituum annalium erogationem vel per venditionem rerum mobilium vel se moventium, ut ex his res immobiles comparentur et annuus victus aegrotantibus accedat. quis enim pauperior est hominibus, qui et inopia tenti sunt et in xenonem repositi et suis corporibus laborantes necessarium victum sibi non possunt adferre? <a 531 d. x k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.1.3.48.4: Imperator Justinianus

Licentia omnimodo danda et in priore et in secunda specie et actionem movere et debita exigere, ut in captivos vel in aegrotantes consumantur. si enim heredum eis et ius et nomen dedimus, sine falcidiae tamen legis emolumento, necesse est eos et debita exigere et creditoribus respondere. <a 531 d. x k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.1.3.48.5: Imperator Justinianus

Sin autem ampliores in civitate xenones vel ptochia sint, ne incerta videatur pecuniarum datio, tunc ei xenoni vel ptochio, qui pauperior esse dignoscitur, easdem res vel pecunias adsignari: hoc videlicet discutiendo a viro reverentissimo locorum antistite et sub eo constitutis clericis. <a 531 d. x k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.1.3.48.6: Imperator Justinianus

Sin autem nullus xenon in civitate inveniatur, tunc secundum de captivis sanctionem pro tempore oeconomus sacrosanctae ecclesiae vel episcopus hereditatem accipiat et sine falcidiae ratione pauperibus, qui in civitate sunt vel penitus mendicantes vel alia sustentatione egentes, eaedem pecuniae distribuantur. <a 531 d. x k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.1.3.48.7: Imperator Justinianus

Haec tamen omnia locum habere sancimus, quando non certi xenonis vel certi ptochii vel certae ecclesiae nominatio a testatore subsecuta est, sed incertus est eius sensus. sin autem in personam certam vel in certam venerabilem domum respexit, ei tantummodo hereditatem vel legatum competere sancimus, nulla falcidia nec in hac parte intercedente. <a 531 d. x k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.1.3.48.8: Imperator Justinianus

In omnibus autem hiusmodi casibus caelestes iracundias sacrosanctarum rerum administratores expectent, si qualecumque lucrum ex huiusmodi gubernationibus sibi adquisierint vel si hoc committi ab alio senserint et non gravissima poena et interminatione quod perperam factum est studeant corrigere. <a 531 d. x k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.1.3.49pr.: Imperator Justinianus

Cum lege leoniana viris reverentissimis episcopis et presbyteris et diaconis peculium habere quasi castrense concessum est, eo addito, ut in ipso testari possint, dubitabatur, si huiusmodi testamenta debent de inofficiosi querella expugnari, cum de omnibus personis, quae huiusmodi peculia meruerunt, eadem fuerat quaestio exorta. * iust. a. iohanni pp. * <a 531 d. k. sept. constantinopoli post cons. lampadii et orestae.>

CJ.1.3.49.1: Imperator Justinianus

Sancimus itaque viris reverentissimis episcopis et presbyteris et diaconis, qui tale peculium (id est quasi castrense) possident, super his tantummodo rebus, quae quasi castrensis peculii sunt, non solum ultima condere secundum leges tamen elogia licere, quod ex leoniana constitutione descendit, sed etiam eorum ultimas voluntates, super his tantummodo habitas, de inofficiosi querellae minime subiacere. <a 531 d. k. sept. constantinopoli post cons. lampadii et orestae.>

CJ.1.3.50pr.: Imperator Justinianus

Si quis in conscribendo instrumento sese confessus fuerit non usurum fori praescriptione propter sacerdotii praerogativam, sancimus non licere ei adversus sua pacta venire et contrahentes decipere, cum regula est iuris antiqui omnes licentiam habere his quae pro se introducta sunt renuntiare. * iust. a. iohanni pp. * <a 531 d. k. sept. constantinopoli post cons. lampadii et orestae vv. cc.>

CJ.1.3.50.1: Imperator Justinianus

Quam generalem legem in omnibus casibus obtinere sancimus, qui necdum per iudicialem sententiam vel amicalem conventionem sopiti sunt. <a 531 d. k. sept. constantinopoli post cons. lampadii et orestae vv. cc.>

CJ.1.3.51pr.: Imperator Justinianus

Generaliter sancimus omnes viros reverentissimos episcopos nec non presbyteros seu diaconos et subdiaconos et praecipue monachos, licet non sint clerici, immunitatem ipso iure omnes habere tutelae sive testamentariae sive legitimae sive dativae: et non solum tutelae esse eos expertes, sed etiam curae, non solum pupillorum et adultorum, sed et furiosi et muti et surdi et aliarum personarum, quibus tutores vel curatores a veteribus legibus dantur. * iust. a. iohanni pp. * <a 531 d. k. nov. post cons. lampadii et orestis vv. cc.>

CJ.1.3.51.1: Imperator Justinianus

Eos tamen clericos et monachos huiusmodi habere beneficium sancimus, qui ad sacrosanctas ecclesias vel monasteria permanent, non devagantes neque circa divina ministeria desides, cum propter hoc ipsum beneficium eis indulgemus, ut aliis omnibus derelictis dei omnipotentis inhaereant ministeriis. <a 531 d. k. nov. post cons. lampadii et orestis vv. cc.>

CJ.1.3.51.2: Imperator Justinianus

Et hoc non solum in vetere roma vel in hac regia civitate, sed in omni terra, ubicumque christianorum nomen colitur, obtinere sancimus. <a 531 d. k. nov. post cons. lampadii et orestis vv. cc.>

CJ.1.3.53pr.: Imperator Justinianus

Raptores virginum vel viduarum vel diaconissarum, quae deo fuerint dedicatae, pessima criminum peccantes capitis supplicio plectendos fuisse decernimus, quod non solum ad iniuriam hominum, sed ad ipsius omnipotentis dei inreverentiam committitur. * iust. a. hermogeni mag. off. * <a 533 d. xv k. dec. constantinopoli dn. iustiniano pp. a. iii cons.>

CJ.1.3.53.1: Imperator Justinianus

Qui itaque huiusmodi crimen commiserint et qui eis auxilium tempore invasionis praebuerint, ubi inventi fuerint in ipsa rapina et adhuc flagrante crimine comprehensi a parentibus sanctimonialium virginum vel viduarum vel diaconissarum aut earum consanguineis vel tutoribus seu curatoribus, convicti interficiantur. <a 533 d. xv k. dec. constantinopoli dn. iustiniano pp. a. iii cons.>

CJ.1.3.53.2: Imperator Justinianus

Sin autem post commissum tam detestabile crimen aut potentatu raptor se defendere aut fuga evadere potuerit, in hac quidem regia urbe tam viri excelsi praefecti praetorio quam vir gloriosissimus praefectus urbis, in provinciis autem tam viri eminentissimi praefecti praetorio per illyricum quam magistri militum per diversas nostri orbis regiones nec non viri spectabiles praefectus aegypti et vicarii et proconsules et nihilo minus viri spectabiles duces et viri clarissimi rectores provinciarum nec non alii cuiuslibet ordines iudices, qui in locis inventi fuerint, simile studium cum magna sollicitudine adhibeant, ut eos possint comprehendere et comprehensos in tali crimine post legitimas et iuri cognitas probationes sine fori praescriptione durissimis poenis adficiant et mortis condemnent supplicio. <a 533 d. xv k. dec. constantinopoli dn. iustiniano pp. a. iii cons.>

CJ.1.3.53.3: Imperator Justinianus

Bona autem eorum, si hoc commissum fuerit vel in sanctimonialem virginem, quae in asceterio vel monasterio degit, sive eadem virgo diaconissa constituta sit sive non, eidem monasterio vel asceterio, ubi consecrata est, addicentur, ut ex his rebus et ipsa solacium habeat, dum vivit, sufficiens et res omnes sacrosanctum asceterium seu monasterium pleno habeat dominio. <a 533 d. xv k. dec. constantinopoli dn. iustiniano pp. a. iii cons.>

CJ.1.3.53.4: Imperator Justinianus

Sin autem diaconissa cuiuscumque ecclesiae sit, in nullo autem monasterio vel asceterio constituta est, sed per se degit, raptoris eius substantia ecclesiae, cuius diaconissa est, adsignetur, ut ex his facultatibus ipsa quidem usum fructum, dum superest, ab eadem ecclesia consequatur, ecclesia vero omnem proprietatem et plenam possessionem earundem rerum nostro habeat beneficio: nemine vel iudice vel alia quacumque persona hoc audente contemnere. <a 533 d. xv k. dec. constantinopoli dn. iustiniano pp. a. iii cons.>

CJ.1.3.53.5: Imperator Justinianus

Poenas autem, quas praediximus, id est mortis et bonorum amissionis, constituimus non tantum adversus raptores, sed etiam contra eos, qui hos comitati in ipsa invasione et rapina fuerint. ceteros autem omnes, qui conscii et ministri huiusmodi criminis reperti et convicti fuerint vel eos susceperint vel quamcumque opem eis intulerint, sive masculi sive feminae sunt, cuiuscumque condicionis vel gradus vel dignitatis, poenae tantummodo capitali subicimus, ut huic poenae omnes subiaceant, sive volentibus sive nolentibus sanctimonialibus virginibus seu aliis supra dictis mulieribus tale facinus fuerit perpetratum. <a 533 d. xv k. dec. constantinopoli dn. iustiniano pp. a. iii cons.>

CJ.1.3.54pr.: Imperator Justinianus

Deo nobis auxilium praebente omnia, quae pro honore sanctae catholicae ecclesiae ad dei placitum fieri properamus, legibus constituere et operibus adimplere desideramus. * iust. a. iohanni pp. * <a >

CJ.1.3.54.1: Imperator Justinianus

Et iam quidem multa cum eius auxilio statuimus, quae ecclesiasticae doctrinae statui conveniunt, in praesenti autem hoc pia deliberatione duximus corrigendum, quod hactenus contra dei timorem fiebat. <a >

CJ.1.3.54.2: Imperator Justinianus

Cognitum etenim nobis est, quod, si quis sponsus vel sponsa post datas aut acceptas arras voluisset se divino deputare servitio et a saeculari conversatione recedere ac sanctimonialem vitam vivere atque in dei timore permanere, compellebatur vir quidem ea quae arrarum nomine dederat amittere, sponsa vero duplum id quod acceperat reddere. quod nostrae mansuetudini satis religioni esse contrarium visum est. <a >

CJ.1.3.54.3: Imperator Justinianus

Unde per praesentem legem in perpetuum valituram iubemus, ut, si quis sponsus vel sponsa desideraverit saeculi istius vitam contemnens in sanctimonialium conversatione vivere, sponsus quidem omnia, quae arrarum nomine futuri causa coniugii dedisset, sine ulla imminutione recipiat, sponsa autem non duplum, sicut hactenus, sed hoc tantum sponso restituat, quod arrarum acceperat nomine, et nihil amplius reddere compellatur, nisi quod probata fuerit accepisse. <a >

CJ.1.3.54.4: Imperator Justinianus

Nam et maritis et uxoribus qui saeculo renuntiant iam anteriore lege a nobis provisum est, ut, sive maritus sive uxor religionis causa a coniugio recesserit et solitariam vitam elegerit, unusquisque eorum res suas recipiat, quas vel pro dote vel ante nuptias donatione praestiterat, et hoc tantummodo lucri nomine consequatur ab eo qui solitariam vitam elegerit, quod debuit legitime vel ex pacto per casum mortis exigere. <a >

CJ.1.3.54.5: Imperator Justinianus

Hoc etiam cognitum nobis correctione nostra dignum esse iudicamus, ut, si quis in parentium potestate constitutus vel constituta vel forsitan huiusmodi iure absolutus vel absoluta elegerit se vel monasterio vel clero sociare et reliquum vitae suae tempus sanctimonialiter degere voluerit, non liceat parentibus vel easdem personas quocumque modo abstrahere vel propter hanc tantummodo causam quasi ingratum a sua hereditate vel successione repellere, sed necesse sit eis omnimodo, cum ultimam voluntatem suam sive per scripturam sive alio legitimo modo conficiant, quartam quidem portionem secundum leges nostras eis relinquere; sin autem amplius voluerit largiri, hoc eius voluntati concedimus. <a >

CJ.1.3.54.6: Imperator Justinianus

Sin vero ultimam voluntatem parentes neque testamento neque alio ultimo elogio declarasse monstrati fuerint, omnem parentium substantiam heredes, quibus ab intestato competit, secundum leges nostras sibi defendant: nullo eis impedimento ex sanctimoniali conversatione generando, sive soli sive cum aliis ad successionem vocantur. <a >

CJ.1.3.54.7: Imperator Justinianus

Huius perpetuae nostrae legis beneficia eos volumus obtinere, qui in monasterio vel clericatu perseveraverint. nam si qui eorum, de quibus praesentem legem posuimus, sanctimonialem vitam elegerint, ad saecularem autem conservationem remeaverint, iubemus omnes eorum res ad iura eius ecclesiae vel monasterii a quo recesserint pertinere. <a >

CJ.1.3.54.8: Imperator Justinianus

His ita dispositis repetita lege iubemus, ut nullus iudaeus vel paganus vel haereticus servos christianos habeat. quod si inventi in tali reatu fuerint, sancimus servos modis omnibus liberos esse secundum anteriorem nostrarum legum tenorem. <a >

CJ.1.3.54.9: Imperator Justinianus

In praesenti autem hoc amplius decernimus, ut, si suis de praedictis iudaeis vel paganis vel haereticis habuerit servos nondum catholicae fidei sanctissimis mysteriis imbutos, et praedicti servi desideraverint ad orthodoxam fidem venire, postquam catholicae ecclesiae sociati fuerint, in libertatem modis omnibus ex praesenti lege eripiantur: et eos tam iudices provinciarum quam sacrosanctae ecclesiae defensores nec non beatissimi episcopi defendant, nihil pro eorum pretio penitus accipientibus dominis. <a >

CJ.1.3.54.10: Imperator Justinianus

Quod si forte posthac etiam ipsi domini eorum ad orthodoxam fidem conversi fuerint, non liceat eis ad servitutem reducere illos, qui eos ad fidem orthodoxam praecesserunt: sed si quis talia usurpaverit, poenis gravissimis subiacebit. <a >

CJ.1.3.54.11: Imperator Justinianus

Haec igitur omnia, quae pietatis intuitu nostra sanxit aeternitas, omnes iudices et religiosissimi antistites sive africanae dioeceseos, in qua maxime huiusmodi vitia frequentari cognovimus, sive aliarum provinciarum naviter et studiosissime observare procurent. nam contemptores non solum pecuniaria multa, sed et capitis supplicio ferientur. <a >

CJ.1.4.0. De episcopali audientia et de diversis capitulis, quae ad ius curamque et reverentiam pontificalem pertinent.

CJ.1.4.1: Imperatores Valentinianus, Valens

Negotiatores, si qui ad domum nostram pertinent, ne commodum mercandi videantur excedere, christianos, quibus verus cultus est, adiuvare pauperes et positos in necessitate provideant. * valentin. et valens aa. ad iulianum com.

orientis. * <a 364 d. xv k. mai. constantinopoli divo ioviano et varroniano conss.>

CJ.1.4.2: Imperatores Valentinianus, Valens

Si clericus ante definitivam sententiam frustratoriae dilationis causa ad appellationis auxilium convolaverit, multam quinquaginta librarum argenti, quam contra huiusmodi appellatores sanctio generalis imponit, cogatur expendere. hoc autem non fisco nostro volumus accedere, sed pauperibus fideliter erogari. * valentin. et valens aa. ad claudium pu. * <a 369 d. viii id. iul. valentiniano np. et victore conss.>

CJ.1.4.3pr.: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

Nemo deinceps tardiores fortassis adfatus nostrae perennitatis expectet: exsequantur iudices, quod indulgere consuevimus. ubi primum dies paschalis extiterit, nullum teneat carcer inclusum, omnium vincula solvantur. * grat. valentin. theodos. et arcad. aaaa. neoterio pp. * <a 385 d.V k. mart. mediolano arcadio a. et bautone vc. conss.>

CJ.1.4.3.1: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

Sed ab his secernimus eos, quibus contaminari potius gaudia laetitiamque communem, si dimittantur, animadvertimus. <a 385 d.V k. mart. mediolano arcadio a. et bautone vc. conss.>

CJ.1.4.3.2: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

Quis enim sacrilego diebus sanctis indulgeat? quis adultero vel stupri vel incesti reo tempore castitatis ignoscat? quis non raptorem virginis in summa quiete et gaudio communi persequatur instantius? <a 385 d.V k. mart. mediolano arcadio a. et bautone vc. conss.>

CJ.1.4.3.3: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

Nullam accipiat requiem vinculorum, qui quiescere sepultos quadam sceleris immanitate non sinit: patiatur tormenta veneficus, maleficus, adulterator violatorque monetae: homicida et parricida quod fecit semper expectet: reus etiam maiestatis de domino, adversus quem talia molitus est, veniam sperare non debet. <a 385 d.V k. mart. mediolano arcadio a. et bautone vc. conss.>

CJ.1.4.3.4: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

His ergo tali quoque sub absolutione damnatis indultum nostrae serenitatis eo praecepti fine concludimus, ut remissionem veniae crimina nisi semel commissa non habeant, ne in eos liberalitatis augustae referatur humanitas, qui impunitatem veteris admissi non emendationi potius quam consuetudini deputarunt. <a 385 d.V k. mart. mediolano arcadio a. et bautone vc. conss.>

CJ.1.4.4: Imperatores Theodosius, Arcadius, Honorius

Mimae et quae lidibrio corporis sui quaestum faciunt publice habitu earum virginum, quae deo dicatae sunt, non utantur. * theodos. arcad. et honor. aaa. rufino pp. * <a 394 d. iii k. iul. heracleae arcadio a. iii et honorio a. ii conss.>

CJ.1.4.5: Imperatores Arcadius, Honorius

Archigerontes et dioecetae ergasiotanorum non nisi christiani dirigantur. quod officium tuum sollicite observet excubiis. * arcad. et honor. aa. gennadio praef. augustali. * <a 396 d. non. febr. constantinopoli pp. alexandriae eutycheo arcadio iiii et honorio iii aa. conss.>

CJ.1.4.6pr.: Imperatores Arcadius, Honorius

Addictos supplicio et pro criminum immanitate damnatos nulli clericorum vel monachorum, eorum etiam, quos synoditas vocant, per vim atque usurpationem vindicare liceat ac tenere, sed reos ad locum poenae sub prosecutione pergentes nullus teneat aut defendat. * arcad. et honor. aa. rufino pp. * <a 398 d. vi k. aug. mnizo honorio a. iiii et eutychiano conss.>

CJ.1.4.6.1: Imperatores Arcadius, Honorius

Sed sciat se cognitor triginta librarum auri multa, primates officii capitali esse sententia feriendos, nisi usurpatio ista aut protinus vindicetur aut, si tanta clericorum aut monachorum audacia est, ut bellum potius quam iudicium futurum esse existimetur, ad clementiam nostram commissa referantur, ut nostro arbitrio mox severior ultio procedat. <a 398 d. vi k. aug. mnizo honorio a. iiii et eutychiano conss.>

CJ.1.4.6.2: Imperatores Arcadius, Honorius

Ad episcoporum sane culpam ut cetera redundabit, si quid forte in ea parte regionis, in qua ipsi populos christianae religionis doctrinae insinuatione moderantur, ex his, quae fieri hac lege prohibuimus a monachis perpetratum esse cognoverint nec vindicaverint. <a 398 d. vi k. aug. mnizo honorio a. iiii et eutychiano conss.>

CJ.1.4.6.3: Imperatores Arcadius, Honorius

Quibus in causa criminali humanitatis consideratione, si tempora suffragantur, interponendae provocationis copiam non negamus. <a 398 d. vi k. aug. mnizo honorio a. iiii et eutychiano conss.>

CJ.1.4.7: Imperatores Arcadius, Honorius

Si qui ex consensu apud sacrae legis antistitem litigare voluerint, non vetabuntur, sed experientur illius (in civili dumtaxat negotio) arbitri more residentis sponte iudicium. quod his obesse non poterit nec debebit, quos ad praedicti cognitoris examen conventos potius afuisse quam sponte venisse constiterit. * arcad. et honor. aa. eutychiano pp. * <a 398 d. vi k. aug. mediolani honorio a. iiii et eutychiano conss.>

CJ.1.4.8: Imperatores Arcadius, Honorius, Theodosius

Episcopale iudicium sit ratum omnibus, qui se audiri a sacerdotibus elegerint, eamque illorum iudicationi adhibendam esse reverentiam, quam vestris referre necesse est potestatibus, a quibus non licet provocare. per iudicium quoque officia, ne sit cassa episcopalis cognitio, definitioni exsecutio tribuatur. * arcad. honor. et theodos. aaa. theodoro pp. * <a 408 d. id. dec. basso et philippo conss.>

CJ.1.4.9pr.: Imperatores Honorius, Theodosius

Iudices dominicis diebus productos reos e custodia carcerali videant interrogent , ne his humanitas clausis per corruptos carcerum custodes negetur: victualem substantiam non habentibus faciant ministrare libellis duobus aut tribus diurnis vel quot existimaverint commentarienses decretis, quorum sumptibus proficiant alimoniae pauperum: quos ad lavacrum sub fida custodia duci oportet. * honor. et theodos. aa. caeciliano pp. * <a 409 d. viii k. febr. ravennae honorio viii et theodosio iii aa. conss.>

CJ.1.4.9.1: Imperatores Honorius, Theodosius

Multa iudicibus viginti librarum auri et officiis eorum eiusdem ponderis constituta, ordinibus quoque trium librarum auri multa proposita, si saluberrima statuta contempserint. nec deerit antistitum christianae religionis cura laudabilis, quae ad observationem constituti iudicis hanc ingerat monitionem. <a 409 d. viii k. febr. ravennae honorio viii et theodosio iii aa. conss.>

CJ.1.4.10pr.: Imperatores Honorius, Theodosius

Mathematicos, si non parati sint codicibus erroris proprii sub oculis episcoporum incendio concrematis catholicae religionis cultui fidem tradere numquam ad errorem praeteritum redituri, non solum urbe roma, sed etiam omnibus civitatibus pelli decernimus. * honor. et theodos. aa. caeciliano pp. * <a 409 d. k. febr. ravenna honorio viii et theodosio iii aa. conss.>

CJ.1.4.10.1: Imperatores Honorius, Theodosius

Qui si hoc non fecerint et contra clementiae nostrae salubre constitutum in civitatibus fuerint comprehensi vel secreta erroris sui et professionis insinuaverint, deportationis poenam excipiant. <a 409 d. k. febr. ravenna honorio viii et theodosio iii aa. conss.>

CJ.1.4.11: Imperatores Honorius, Theodosius

Christianos proximorum locorum volumus sollicitudinem gerere, ut romanos captivos qui reversi fuerint nemo teneat, nemo iniuriis aut damnis adficiat. * honor. et theodos. aa. theodoro pp. * <a 409 d. iii id. dec. ravenna honorio viii et theodosio iii aa. conss.>

CJ.1.4.12: Imperatores Theodosius, Valentinianus

Si lenones patres vel domini suis filiabus vel ancillis peccandi necessitatem imposuerint, liceat filiabus vel ancillis episcoporum implorato suffragio omni miseriarum necessitate absolvi. * theodos. et valentin. aa. florentio pp. * <a 428 d. xi k. mai. felice et tauro conss.>

CJ.1.4.13pr.: Imperator Marcianus

Decernimus, ut, quicumque catholicarum ecclesiarum, quae sub viro religiosissimo archiepiscopo huius almae urbis sunt, reverentissimum oeconomum sive de ecclesiasticis sive de propriis et ad ipsum solum pertinentibus causis vel quemcumque alterum earundem ecclesiarum clericum aliqua voluerit lite pulsare, apud memoratum beatissimum archiepiscopum causam dicat in negotiis audiendis fidem ac sinceritatem geminam praebiturum et sacerdotis et iudicis. * marcian. a. constantino pp. * <a 456 d. viii ... april. varane et iohanne conss.>

CJ.1.4.13.1: Imperator Marcianus

Volentibus tamen actoribus pateat episcopale iudicium. ac nullus, qui huiuscemodi intendit in sacrosanctas ecclesias vel praedictos clericos actionem, ad religiosissimum antistitem cognitorem ducatur invitus. <a 456 d. viii ... april. varane et iohanne conss.>

CJ.1.4.15: Imperatores Leo, Anthemius

Nemo vel in foro magnitudinis tuae vel in provinciali iudicio vel apud quemquam iudicem accedat ad togatorum consortium, nisi sacrosanctis catholicae religionis fuerit imbutus mysteriis. sin autem aliquid quoquo modo vel quadam machinatione factum vel attemptatum fuerit, officium quidem sublimitatis tuae centum librarum auri iacturam pro condemnatione sustineat, idem vero, quicumque ausus fuerit contra providum nostrae serenitatis decretum officium advocationis per subreptionem adripere et prohibitum patrocinium praestiterit, advocationis officio remotus stilum proscriptionis atque perpetui exilii specialiter sustinebit: scituris etiam provinciarum rectoribus, quod is, sub cuius administratione aliquid huiu smodi fuerit attemptatum, partis bonorum dimidiae proscriptionem et poenam exilii per quinquennium sustinebit. * leo et anthem. aa. nicostrato pp. * <a 468 d. pridie k. april. constantinopoli anthemio a. ii cons.>

CJ.1.4.16: Imperatores Leo, Anthemius

Si legibus prohibitae non sint speratae nuptiae et post arras sponsalicias sponsa coniugium sponsi propter religionis diversitatem recusaverit, si quidem probatum fuerit ante datas easdem arras sponsalicias hoc idem mulierem vel parentes eius cognovisse, sibi debeant imputare. si vero horum ignari sponsalicias arras susceperint vel post arras datas talis causa paenitentiae intercesserit, isdem tantummodo redditis super alterius simpli poena liberi custodiantur. quod simili modo etiam de sponsis super recipiendis nec ne arris praestitis custodiri censemus. * leo et anthem. aa. erythrio pp. * <a 472 d. k. iul. constantinopoli marciano cons.>

CJ.1.4.19: Imperator Anastasius

Iubemus eos tantummodo ad defensorum curam peragendam ordinari, qui sacrosanctis orthodoxae religionis imbuti mysteriis hoc imprimis sub gestorum testificatione , praesente quoque religiosissimo fidei orthodoxae antistite, per depositiones cum sacramenti religione celebrandas patefecerint. ita enim eos praecipimus ordinari, ut reverentissimorum episcoporum nec non clericorum et honoratorum ac possessorum et curialium decreto constituantur. * anastas. a. eustathio pp. * <a 505 d. xiii k. mai. sabiniano et theodoro conss.>

CJ.1.4.21pr.: Imperator Justinianus

Si praesens quidem sit, qui pecuniam numerasse vel alias res dedisse scriptus est, aliquam vero administrationem in provinciis gerat, ut difficile esse videatur denuntiationem eidem non numeratae pecuniae mittere, licentiam damus ei, qui memorata exceptione uti velit, alios iudices adire et per eos manifestare, cui exceptionem huiusmodi obicit, factam a se super non numerata pecunia querellam esse. * iust. a. menae pp. * <a 528 d. k. iul. constantinopoli dn. iustiniano a. ii cons.>

CJ.1.4.21.1: Imperator Justinianus

Quod si non sit alius administrator civilis vel militaris vel per aliquam causam difficile sit ei qui memoratam querellam opponit adire eum et ea quae dicta sunt facere, licentiam damus et per virum reverentissimum episcopum eandem suam exceptionem creditori manifestare et ita tempus statutum interrumpere. <a 528 d. k. iul. constantinopoli dn. iustiniano a. ii cons.>

CJ.1.4.21.2: Imperator Justinianus

Quod etiam in exceptione non numeratae dotis locum habere receptum est. <a 528 d. k. iul. constantinopoli dn. iustiniano a. ii cons.>

CJ.1.4.24: Imperator Justinianus

Nemini licere volumus, sive ab ingenuis genitoribus puer parvulus procreatus sive a libertina progenie sive servili condicione maculatus eitus sit, eum puerum in suum dominium vindicare sive nomine dominii sive adscripticiae sive colonariae condicionis: sed neque his, qui eos nutriendos sustulerunt, licentiam concedi penitus (cum quadam distinctione) eos tollere: sed nullo discrimine habito ii, qui ab huiusmodi hominibus educati vel nutriti vel aucti sunt, liberi et ingenui appareant et sibi adquirant et in posteritatem suam vel extraneos heredes omnia quae habuerint, quo modo voluerint, transmittant. haec observantibus non solum praesidibus provinciarum, sed etiam viris religiosissimis episcopis. * iust. a. demostheni pp. * <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.1.4.27pr.: Imperator Justinianus

De creationibus curatorum, qui furiosis utriusque sexus dantur, necesse nobis visum est constituere, quemadmodum eas celebrari oportet. * iust. a. iuliano pp. * <a 530 d. k. sept. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.1.4.27.1: Imperator Justinianus

Et si quidem pater curatorem furioso vel furiosae in ultimo elogio heredibus institutis vel exheredatis dederit (ubi et fideiussionem cessare necesse est paterno testimonio pro satisdatione sufficiente), ipse qui datus est ad curationem perveniat, ita tamen, ut in provinciis apud praesides earum, praesente eis tam viro religiosissimo locorum antistite quam tribus primatibus, actis intervenientibus, tactis sacrosanctis scripturis depromat omnia se recte cum utilitate furiosi gerere neque praetermittere, quae utilia furioso esse putaverit, neque admittere, quae non utilia esse existimaverit: et inventario cum omni subtilitate publice conscripto res suscipiat et eas secundum sui opinionem disponat sub hypotheca rerum ad eum pertinentium, ad similitudinem tutorum et adulti curatorum. <a 530 d. k. sept. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.1.4.27.2: Imperator Justinianus

Sin autem testamentum quidem parens non confecerit, lex autem curatorem utpote adgnatum vocaverit vel eo cessante aut non idoneo forsitan existente ex iudiciali electione curatorem ei dare necesse fuerit, tunc scilicet et in provinciis apud praesidem cuiuscumque provinciae et virum religiosissimum episcopum civitatis nec non tres primates creatio procedat, ita ut, si quidem curator substantiam idoneam possidet et sufficientem ad fidem gubernationis, et sine aliqua satisdatione nominatio eius procedat. sin autem non talis eius census inveniatur, tunc et fideiussio in quantum possibile est ab eo exploretur. <a 530 d. k. sept. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.1.4.27.3: Imperator Justinianus

Creatione omnimodo sacrosanctis scripturis propositis in omni causa celebranda, ipso autem curatore, cuiuscumque substantiae vel dignitatis est, praefatum sacramentum pro utiliter rebus gerendis praestante et inventarium publice conscribente et hypotheca rerum curatoris modis omnibus adhibenda, quatenus possint undique res furiosi utiliter gubernari. <a 530 d. k. sept. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.1.4.28: Imperator Justinianus

Tam dementis quam furiosi liberi cuiuscumque sexus possunt legitimas contrahere nuptias, tam dote quam ante nuptias donatione a curatore eorum praestanda: aestimatione tamen in hac quidem regia urbe excellentissimi praefecti urbis, in provinciis autem virorum clarissimorum earum praesidum vel locorum antistitum tam opinione personae quam moderatione dotis et ante nuptias donationis statuenda, praesentibus tam curatoribus dementis quam furiosi nec non his, qui ex genere eorum nobiliores sunt, ita tamen, ut nulla ex hac causa oriatur vel in hac regia urbe vel in provinciis iactura substantiae furiosi vel mente capti, sed gratis omnia procedant, ne tale hominum infortunium etiam expensarum detrimento praegravetur. * iust. a. iuliano pp. * <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.1.4.31pr.: Imperator Justinianus

Sancimus, si quando afuerit is, qui res alienas vel creditori obnoxias detinet, et desiderat dominus rei vel creditor suam intentionem proponere et non ei licentia sit absente suo adversario qui rem detinet vel infantia vel furore laborante et neminem tutorem vel curatorem habente vel in summa potestate constituto, licentia ei detur adire praesidem vel libellum ei porrigere et hoc in querimoniam deducere intra constituta tempora et interruptionem temporis facere. * iust. a. iohanni pp. * <a 531 d. constantinopoli k. oct. post consulatum lampadii et orestis vv. cc.>

CJ.1.4.31.1: Imperator Justinianus

Sin autem nullo poterit modo praesidem adire, saltem ad episcopum locorum eat et suam manifestare voluntatem scriptis deproperet. <a 531 d. constantinopoli k. oct. post consulatum lampadii et orestis vv. cc.>

CJ.1.5.0. De haereticis et manichaeis et samaritis.

CJ.1.5.1: Imperator Constantinus

Privilegia, quae contemplatione religionis indulta sunt, catholicae tantum legis observatoribus prodesse oportet. haereticos non solum his privilegiis alienos esse volumus, sed et diversis muneribus constringi et subici. * const. a. ad dracilianum. * <a 326 pp. k. sept. gerasti constantino a. vii et constantio conss.>

CJ.1.5.2pr.: Imperatores Gratianus, Valentinianus, Theodosius

Omnes vetitae legibus et divinis et imperialibus constitutionibus haereses perpetuo conquiescant et nemo ulterius conetur quae reppererit profana praecepta vel docere vel discere: ne antistites eorundem audeant fidem insinuare, quam non habent, et ministros creare, quod non sunt: ne per coniventiam iudicantium omniumque, quibus per constitutiones paternas super hoc cura mandata est, eiusmodi audacia neglegatur et crescat. * grat. valentin. et theodos. aaa. ad hesperium pp. * <a 379 d. iii non. aug. mediolano. acc. xiii k. sept. ausonio et olybrio conss.>

CJ.1.5.2.1: Imperatores Gratianus, Valentinianus, Theodosius

Haereticorum autem vocabulo continentur et latis adversus eos sanctionibus debent succumbere, qui vel levi argumento iudicio catholicae religionis et tramite detecti fuerint deviare. <a 379 d. iii non. aug. mediolano. acc. xiii k. sept. ausonio et olybrio conss.>

CJ.1.5.3pr.: Imperatores Arcadius, Honorius

Cuncti haeretici procul dubio noverint omnia sibi loca adimenda esse, sive sub ecclesiarum nomine teneantur sive diaconica appellantur vel etiam decanica, sive in privatis domibus vel locis huiusmodi coetibus copiam praebere videantur: his aedibus vel locis privatis ecclesiae catholicae vindicandis. * arcad. et honor. aa. clearcho pu. * <a 396 d. v non. mart. constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.1.5.3.1: Imperatores Arcadius, Honorius

Ad hoc interdicatur his omnibus ad litaniam faciendam noctu vel die profanis coire conventibus: statuta videlicet condemnatione centum librarum auri contra officium sublimitatis tuae vel praesidale quinquaginta, si quid huiusmodi fieri vel in publico vel in privatis aedibus concedatur. <a 396 d. v non. mart. constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.1.5.4pr.: Imperatores Arcadius, Honorius

Manichaeos seu manichaeas vel donatistas meritissima severitate persequimur. huic itaque hominum generi nihil ex moribus, nihil ex legibus sit commune cum ceteris. * arcad. et honor. aa. et theodos. a. senatori pp. * <a 407 d. viii k. mart. romae honorio vii et theodosio ii aa. conss.>

CJ.1.5.4.1: Imperatores Arcadius, Honorius

Ac primum quidem volumus esse publicum crimen, quia, quod in religione divina committitur, in omnium fertur iniuriam. quos bonorum etiam publicatione persequimur: quae tamen cedere iubemus proximis quibusque personis, ita ut ascendentium vel descendentium vel venientium ex latere cognatorum usque ad secundum gradum velut in successionibus ordo servetur. quibus ita demum ad capiendas facultates esse ius patimur, si non et ipsi pari conscientia polluuntur. <a 407 d. viii k. mart. romae honorio vii et theodosio ii aa. conss.>

CJ.1.5.4.2: Imperatores Arcadius, Honorius

Ipsos quoque volumus amoveri ab omni liberalitate et successione quolibet titulo veniente. <a 407 d. viii k. mart. romae honorio vii et theodosio ii aa. conss.>

CJ.1.5.4.3: Imperatores Arcadius, Honorius

Praeterea non donandi, non emendi, non vendendi, non postremo contrahendi cuiquam convicto relinquimus facultatem. <a 407 d. viii k. mart. romae honorio vii et theodosio ii aa. conss.>

CJ.1.5.4.4: Imperatores Arcadius, Honorius

In mortem quoque inquisitio tendatur. nam si in criminibus maiestatis licet memoriam accusare defuncti, non immerito et hic debet subire iudicium. <a 407 d. viii k. mart. romae honorio vii et theodosio ii aa. conss.>

CJ.1.5.4.5: Imperatores Arcadius, Honorius

Ergo et suprema illius scriptura irrita sit, sive testamento sive codicillo sive epistula sive quolibet genere reliquerit voluntatem qui manichaeus fuisse convincitur: hoc quoque casu eadem illa circa gradus superius comprehensos condicione servata. <a 407 d. viii k. mart. romae honorio vii et theodosio ii aa. conss.>

CJ.1.5.4.6: Imperatores Arcadius, Honorius

Sed nec filios heredes existere aut adire permittimus, nisi a paterna pravitate discesserint: delicti enim veniam paenitentibus damus. <a 407 d. viii k. mart. romae honorio vii et theodosio ii aa. conss.>

CJ.1.5.4.7: Imperatores Arcadius, Honorius

In eos etiam auctoritatis aculei dirigantur, qui eos domibus suis damnanda provisione defendent. <a 407 d. viii k. mart. romae honorio vii et theodosio ii aa. conss.>

CJ.1.5.4.8: Imperatores Arcadius, Honorius

Servos insuper extra noxam esse volumus, si dominum sacrilegum evitantes ad ecclesiam catholicam servitio fideliore transierint. <a 407 d. viii k. mart. romae honorio vii et theodosio ii aa. conss.>

CJ.1.5.5pr.: Imperator Theodosius

Ariani et macedoniani, pneumatomachi et apollinariani et novatiani sive sabbatiani, eunomiani, tetraditae sive tessarescaedecatitae, valentiniani, papianistae, montanistae seu priscillianistae vel phryges vel pepuzitae, marcianistae, borboriani, messaliani, eutychitae sive enthusiastae, donatistae, audiani, hydroparastatae, tascodrogitae, batrachitae, hermeieciani, photiniani, pauliani, Marcelliani, ophitae, encratitae, apotactitae, saccophori et, qui ad imam usque scelerum nequitiam pervenerant, manichaei nusquam in romano solo conveniendi orandique habeant facultatem. * theodos. a. et valentin. c. florentio pp. * <a 428 d. iii k. iun. constantinopoli felice et tauro conss.>

CJ.1.5.5.1: Imperator Theodosius

Manichaeis etiam de civitatibus expellendis et ultimo supplicio tradendis, quoniam nihil his relinquendum loci est, in quo ipsis etiam elementis fiat iniuria, cunctisque legibus, quae contra eos ceterosque qui nostrae fidei refragantur olim latae sunt diversisque prolatae temporibus, semper viridi observantia valituris sive de donationibus in haereticorum conventicula, quae ipsi audacter ecclesias nuncupare conantur, factis sive ex ultima voluntate rebus qualitercumque relictis sive de privatis aedificiis, in quae domino permittente vel conivente convenerint, venerandae nobis catholicae vindicandis ecclesiae sive de procuratore, qui hoc nesciente domino fecerit, decem librarum auri multam vel exilium, si sit ingenuus, subituro, metallum vero post verbera, si servilis condicionis sit. <a 428 d. iii k. iun. constantinopoli felice et tauro conss.>

CJ.1.5.5.2: Imperator Theodosius

Ita ut nec in publico convenire loco nec aedificare sibi quasi ecclesias nec ad circumscriptionem legum quicquam meditari valeant, omni civili et militari, curiarum etiam et defensorum et iudicium sub viginti librarum auri interminatione prohibendi auxilio. <a 428 d. iii k. iun. constantinopoli felice et tauro conss.>

CJ.1.5.5.3: Imperator Theodosius

Illis etiam in sua omnibus manentibus firmitate, quae de militia poenisque variis de diversis sunt haereticis promulgata, ut nec speciale quidem beneficium adversus leges valeat impetratum. <a 428 d. iii k. iun. constantinopoli felice et tauro conss.>

CJ.1.5.6pr.: Imperatores Theodosius, Valentinianus

Damnato portentuosae superstitionis auctore nestorio nota congrui nominis eius inuratur gregalibus, ne christianorum appellatione abutantur: sed quemadmodum ariani lege divae memoriae constantini ob similitudinem impietatis porphyriani a porphyrio nuncupantur, sic ubique participes nefariae sectae nestorii simoniani vocentur, ut, cuius scelus sunt in deserendo deo imitati, eius vocabulum iure videantur esse sortiti. * theodos. et valentin. aa. leontio pu. * <a 435 d. iii non. aug. constantinopoli theodosio xv et valentiniano iiii aa. conss.>

CJ.1.5.6.1: Imperatores Theodosius, Valentinianus

Nec vero impios libros nefandi et sacrilegi nestorii adversus venerabilem orthodoxarum sectam decretaque sanctissimi coetus antistitum ephesi habiti scriptos habere aut legere aut describere quisquam audeat: quos diligenti studio requiri ac publice comburi decernimus. <a 435 d. iii non. aug. constantinopoli theodosio xv et valentiniano iiii aa. conss.>

CJ.1.5.6.2: Imperatores Theodosius, Valentinianus

Ita ut nemo in religionis disputatione aliquam supra dicti nominis faciat mentionem aut quibusdam eorum habendi concilii gratia in aedibus aut villa aut suburbano suo aut alio quolibet loco conventiculum clam aut aperte praebeat: quos omni conventus celebrandi licentia privari statuimus: scientibus universis violatorem huius legis publicatione bonorum esse coercendum. <a 435 d. iii non. aug. constantinopoli theodosio xv et valentiniano iiii aa. conss.>

CJ.1.5.7: Imperatores Theodosius, Valentinianus

Curiales omnium civitatum, onerosis quin etiam militiae seu diversis officiis facultatum et personalium munerum obligatos suis ordinibus, cuiuscumque sectae sint, inhaerere censemus, ne videamur hominibus exsecrandis contumelioso ambitu immunitatis beneficium praestitisse, quos volumus huius constitutionis auctoritate damnari. * theodos. et valentin. aa. florentio pp. * <a 438 d. prid. k. febr. constantinopoli theodosio a. xvi et fausto conss.>

CJ.1.5.8pr.: Imperatores Valentinianus, Marcianus

Quicumque in hac sacra urbe vel in alexandrina civitate vel in omni aegyptiaca dioecesi diversisque aliis provinciis eutychetis profanam perversitatem sequuntur et ita non credunt, ut trecenti decem et octo sancti patres tradiderunt catholicam fidem in nicaena civitate fundantes, centum quoque et quinquaginta alii venerabiles episcopi, qui in alma urbe constantinopolitana postea convenerunt, et sicut athanasius et theophilus et cyrillus sanctae recordationis episcopi alexandrinae civitatis credebant, quos etiam ephesina synodus (cui beatae memoriae cyrillus praefuit, in qua nestorii error expulsus est) in universis secuta est, quos et nuper venerabilis chalcedonensis synodus est secuta, prioribus conciliis sacerdotum ex omni prorsus parte consentiens nihilque adimens sacrosancto symbolo neque adiciens, sed eutychetis dogmata funesta condemnans: sciant se esse haereticos apollinaristas: apollinaris enim facinorosissimam sectam eutyches et dioscorus mente sacrilega sunt secuti. * valentin. et marcian. aa. palladio pp. * <a 455 d. k. aug. constantinopoli valentiniano a. viii et anthemio conss.>

CJ.1.5.8.1: Imperatores Valentinianus, Marcianus

Ideoque hi omnes, qui apollinaris vel eutychetis perversitatem sequuntur, illis poenis, quae divorum retro principum constitutionibus contra apollinaristas vel serenitatis nostrae postmodum sanctione contra eutychianistas vel hac ipsa augustissima lege contra eosdem decretae sunt, noverint se esse plectendos. <a 455 d. k. aug. constantinopoli valentiniano a. viii et anthemio conss.>

CJ.1.5.8.2: Imperatores Valentinianus, Marcianus

Idcirco apollinaristae, hoc est eutychianistae (quibus etsi est in appellatione diversitas, tamen in haeresis pravitate coniunctio, et dispar quidem nomen, sed idem sacrilegium) sive in hac alma urbe diversisque provinciis sive in alexandrina civitate sive intra aegyptiacam dioecesim sunt neque ita credunt, ut praedicti venerabiles patres credebant, neque viro reverentissimo alexandrinae urbis antistiti proterio fidem orthodoxam tenenti communicant, episcopos vel presbyteros aliosque clericos creare et habere prohibemus: scientibus tam his eutychianistis vel apollinaristis, qui ausi fuerint cuiquam episcopi vel presbyteri vel clerici nomen imponere, quam his, qui passi fuerint impositum sibi nomen sacerdotale retinere, poenam exilii cum facultatum suarum amissione se subituros. <a 455 d. k. aug. constantinopoli valentiniano a. viii et anthemio conss.>

CJ.1.5.8.3: Imperatores Valentinianus, Marcianus

Universi praeterea apollinaristae vel eutychianistae non ecclesias non monasteria sibi construant, parasynaxes et conventicula tam diurna quam nocturna non contrahant neque ad domum neque ad possessionem cuiusquam neque ad monasterium vel quemcumque alterum locum operaturi sectae funestissimae congregentur. <a 455 d. k. aug. constantinopoli valentiniano a. viii et anthemio conss.>

CJ.1.5.8.4: Imperatores Valentinianus, Marcianus

Quod si fecerint et hoc factum fuisse domino volente constiterit, post rem in examine iudicis adprobatum domus vel possessio, in qua convenerint, fisco sine dilatione societur, monasterium vero eius civitatis orthodoxae ecclesiae, in cuius territorio est, iubemus addici. <a 455 d. k. aug. constantinopoli valentiniano a. viii et anthemio conss.>

CJ.1.5.8.5: Imperatores Valentinianus, Marcianus

Si vero ignorante domino, sciente vero qui pensiones domus exigit vel conductore vel procuratore vel actore praedii parasynaxes et conventicula interdicta collegerint, conductor vel procurator sive actor vel quicumque eos in domum vel in possessionem vel in monasterium receperint ac passi fuerint illicitas parasynaxes conventusque celebrari, si vilis et abiectae condicionis sunt, fustibus publice et in poenam suam et in aliorum coerceantur exemplum, si honestae vero personae sunt, decem libras auri multae nomine fisco nostro cogantur inferre. <a 455 d. k. aug. constantinopoli valentiniano a. viii et anthemio conss.>

CJ.1.5.8.6: Imperatores Valentinianus, Marcianus

Nullum praeterea apollinaristam vel eutychianistam ad aliquam iubemus adspirare militiam. si qui vero in quacumque militia inventi fuerint militare, soluti cingulo honestorum hominum et palatii communione priventur nec in aliqua nec in qua nati sunt civitate vel vico aut regione versentur. <a 455 d. k. aug. constantinopoli valentiniano a. viii et anthemio conss.>

CJ.1.5.8.7: Imperatores Valentinianus, Marcianus

Si qui vero in hac alma urbe nati sunt, tam sacratissimo comitatu quam omni per provincias metropolitana civitate pellantur. <a 455 d. k. aug. constantinopoli valentiniano a. viii et anthemio conss.>

CJ.1.5.8.8: Imperatores Valentinianus, Marcianus

Nulli insuper eutychianistae vel apollinaristae publice vel privatim advocandi coetus et circulos contrahendi et de errore haeretico disputandi ac perversitatem facinorosi dogmatis adserendi tribuatur facultas. <a 455 d. k. aug. constantinopoli valentiniano a. viii et anthemio conss.>

CJ.1.5.8.9: Imperatores Valentinianus, Marcianus

Nulli etiam contra venerabilem chalcedonensem synodum liceat aliquid vel dictare vel scribere vel edere atque emittere aut aliorum scripta super eadem re proferre. <a 455 d. k. aug. constantinopoli valentiniano a. viii et anthemio conss.>

CJ.1.5.8.10: Imperatores Valentinianus, Marcianus

Nemo huiusmodi habere libros et sacrilega scriptorum audeat monimenta servare. quod si qui in his criminibus fuerint deprehensi, perpetua deportatione damnentur. <a 455 d. k. aug. constantinopoli valentiniano a. viii et anthemio conss.>

CJ.1.5.8.11: Imperatores Valentinianus, Marcianus

Eos vero qui discendi studio audierint de infausta haeresi disputantes, decem librarum auri, quae fisco nostro inferendae sunt, iubemus subire dispendium. ultimo etiam supplicio coerceantur, qui illicita docere temptaverint. <a 455 d. k. aug. constantinopoli valentiniano a. viii et anthemio conss.>

CJ.1.5.8.12: Imperatores Valentinianus, Marcianus

Omnes vero huiuscemodi chartae ac libri, qui funestum eutychetis, hoc est apollinaris, fuerint dogma complexi, incendio concrementur, ut facinorosae perversitatis vestigia ipsa flammis ambusta depereant. aequum namque est, ut immanissima sacrilegia par poenae magnitudo percellat. <a 455 d. k. aug. constantinopoli valentiniano a. viii et anthemio conss.>

CJ.1.5.8.13: Imperatores Valentinianus, Marcianus

Scientibus moderatoribus provinciarum eorumque apparitionibus, defensoribus etiam civitatum, quod, si ea, quae legis huius religiosissima sanctione custodienda decrevimus, aut neglexerint aut aliqua permiserint temeritate violari, denarum librarum auri multam fisco cogantur inferre: insuper etiam existimationis suae periculum sustinebunt. <a 455 d. k. aug. constantinopoli valentiniano a. viii et anthemio conss.>

CJ.1.5.10pr.: Imperator Leo

Si qui orthodoxae religionis emptione vera vel ficticia aut quocumque alio iure vel titulo praedia et possessiones resque immobiles, in quibus orthodoxae fidei ecclesiae vel oratoria constituta sunt, in haereticae sectae et contraria orthodoxae fidei sentientem quamcumque personam transferre voluerint, nullam huiusmodi vel inter vivos habitam vel secreto iudicio compositam valere volumus voluntatem, etiamsi ab orthodoxae fidei venditore vel quocumque modo alienatore commenticio sub qualibet occasione fuerit adsignata: sed irrita omnia huiusmodi documenta et tamquam penitus nec scripta esse censemus. * leo a. erythrio pp. * <a 466 - 472 ? >

CJ.1.5.10.1: Imperator Leo

Haec enim praedia et possessiones, quae in haereticas personas quocumque modo translatae fuerint vel collatae, fisci nostri viribus decernimus vindicari. <a 466 - 472 ? >

CJ.1.5.10.2: Imperator Leo

Sive enim apud dominos possessoresve orthodoxos ea praedia maneant seu ad fisci nostri iura pervenerint, necesse est in his ecclesias et oratoria constituta diligentius et sollicitius instaurari. nostrae enim serenitatis undique ad hunc exitum providentia ducit, ut omnipotentis dei templa, in quibus nostrae fidei instituta perdurant, cultu adsiduo per omnia saecula rediviva serventur. <a 466 472 ? >

CJ.1.5.10.3: Imperator Leo

Nec enim dubitari potest, quod si in haereticos veniant possessiones, in quibus verae fidei ecclesiae vel oratoria constituta sunt et integritas colitur, omnimodo ab his deseri atque destitui, omni cultu vacare, omnibus sacris et solitis viduari mysteriis, omni splendore privari, nullis populorum conventionibus, nullis clericorum observationibus celebrari et ex hoc sine dubio easdem ecclesias perire ruere complanari. nec enim de earum instauratione haeretici poterunt aliquando cogitare, quas penitus esse nolebant. quae omnia resecantes ad praesentem legem pervenimus. <a 466 - 472 ? >

CJ.1.5.19pr.: Imperator Justinianus

Cognovimus multos esse orthodoxos liberos, quibus nec pater nec mater orthodoxae sunt religionis. et ideo sancimus, non tantum in casu, ubi alter orthodoxae religionis est, sed etiam in his casibus, in quibus uterque parens alienae sectae sit, id est pater et mater, ii tantummodo liberi ad eorum successionem sive ex testamento sive ab intestato vocentur et donationes seu alias liberalitates ab his accipere possint, qui orthodoxorum venerabili nomine sunt decorati: ceteris liberis eorum, qui non dei omnipotentis amorem, sed paternam vel maternam impiam adfectionem secuti sunt, ab omni beneficio repellendis. * iust. a. demostheni pp. * <a 529 >

CJ.1.5.19.1: Imperator Justinianus

Liberis autem orthodoxis non existentibus ad agnationem vel cognationem eorum, orthodoxas tamen, easdem res vel successiones pervenire. <a 529 >

CJ.1.5.19.2: Imperator Justinianus

Quod si nec agnatio nec cognatio recta inveniatur, tunc easdem res fisci nostri viribus vindicari. <a 529 >

CJ.1.5.19.3: Imperator Justinianus

Sed ne videamur morientibus quidem genitoribus liberis providere, viventibus autem nullam inferre providentiam, quod etiam ex facto nobis cognitum est, necessitatem imponimus talibus genitoribus orthodoxos liberos secundum sui patrimonii quantitatem alere et omnia eis praestare, quae ad quotidianam vitae conversationem sufficiant: sed et dotes pro filiabus vel neptibus dare et ante nuptias donationes pro filiis vel nepotibus perscribere, in omni casu secundum vires patrimonii huiusmodi liberalitatibus aestimandis, ne propter divini amoris electionem paterna vel materna fuerint liberi provisione defraudati. <a 529 >

CJ.1.5.19.4: Imperator Justinianus

Omnibus videlicet, quae nostrae constitutiones de poenis paganorum et manichaeorum et borboritarum et samaritarum et montanistarum et tascodrogorum et ophitarum ceterorumque haereticorum causa constituerunt, ex hac nostra lege confirmandis et in perpetuum valituris. <a 529 >

CJ.1.5.21pr.: Imperator Justinianus

Quoniam multi iudices in dirimendis litigiis nos interpellaverunt, indigentes nostro oraculo, ut eis reseretur, quid de testibus haereticis statuendum sit, utrumne accipiantur eorum testimonia an respuantur, sancimus contra orthodoxos quidem litigantes nemini haeretico vel etiam his qui iudaicam superstitionem colunt esse in testimonia communionem, sive utraque pars orthodoxa sit sive altera. * iust. a. iohanni pp. * <a 531 d. v k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.1.5.21.1: Imperator Justinianus

Inter se autem haereticis vel iudaeis, ubi litigandum existimaverint, concedimus foedus permixtum et dignos litigatoribus etiam testes introduci, exceptis scilicet his, quos vel manichaeus furor (cuius partem et borboritas esse manifestissimum est) vel pagana superstitio detinet, samaritis nihilo minus et qui illis non absimiles sunt, id est montanistis et tascodrogis et ophitis, quibus pro reatus similitudine omnis legitimus actus interdictus est. <a 531 d. v k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.1.5.21.2: Imperator Justinianus

Sed et his quidem, id est manichaeis et borboritis et paganis nec non samaritis et montanistis et tascodrogis et ophitis, omne testimonium sicut et alias legitimas conversationes sancimus esse interdictum : aliis vero haereticis tantummodo iudicialia testimonia contra orthodoxos, secundum quod constitutum est, volumus esse inhibita. <a 531 d. v k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.1.5.21.3: Imperator Justinianus

Ceterum testamentaria testimonia eorum et quae in ultimis elogiis vel in contractibus consistunt, propter utilitatem necessarii usus sine ulla distinctione permittimus, ne probationum facultas angustetur. <a 531 d. v k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.1.5.22: Imperator Justinianus

Divinam nostram sanctionem, per quam iussimus neminem errore constrictum haereticorum hereditatem vel legatum sive fideicommissum accipere, etiam in ultimis militum voluntatibus locum habere praecipimus, sive communi iure sive militari testentur. * iust. a. iohanni pp. * <a 531 d. k. sept. post consulatum lampadii et orestis vv. cc.>

CJ.1.6.0. Ne sanctum baptisma iteretur.

CJ.1.6.1: Imperatores Valens, Gratianus, Valentinianus

Antistitem, qui sanctitatem baptismatis illicita usurpatione geminaverit, sacerdotio indignum esse censemus. eorum enim condemnamus errorem, qui apostolorum praecepta calcantes christiani nominis sacramenta sortitos alio rursus baptismate non purificant, sed incestant, lavacri nomine polluentes. * valens grat. et valentin. aaa. ad florianum vic. asiae. * <a 377 d. xvi k. nov. constantinopoli gratiano a. iiii et merobaude conss.>

CJ.1.6.2: Imperatores Honorius, Theodosius

Si quis rebaptizare quempiam de mysteriis catholicae sectae fuerit detectus, una cum eo qui piaculare crimen commisit (si tamen criminis per aetatem capax sit, cui persuasum sit) ultimo supplicio percellatur. * honor. et theodos. aa. anthemio pp. * <a 413 d. xii k. april. constantinopoli lucio cons.>

CJ.1.6.3pr.: Imperatores Theodosius, Valentinianus

Nulli haereticorum danda est licentia vel ingenuos vel servos proprios, qui orthodoxorum sunt initiati mysteriis, ad suum rursus baptisma deducendi, nec vero illos, quos emerint vel qualitercumque habuerint necdum suae superstitioni coniunctos, prohibendi catholicae sequi religionem ecclesiae. * theodos. et valentin. aa. florentio pp. * <a 428 d. iii k. iun. constantinopoli felice et tauro conss.>

CJ.1.6.3.1: Imperatores Theodosius, Valentinianus

Quod qui fecerit vel, cum sit ingenuus, in se fieri passus sit vel factum non detulerit, exilio ac decem librarum auri multa damnabitur: testamenti et donationis faciendae utrique deneganda licentia. <a 428 d. iii k. iun. constantinopoli felice et tauro conss.>

CJ.1.6.3.2: Imperatores Theodosius, Valentinianus

Quae omnia ita custodiri decernimus, ut nulli iudicum liceat delatum ad se crimen minori aut nulli coercitioni mandare, nisi ipse id pati velit, quod aliis dissimulando concesserit. <a 428 d. iii k. iun. constantinopoli felice et tauro conss.>

CJ.1.7.0. De apostatis.

CJ.1.7.1: Imperator Constantius

Si quis lege venerabili constitutus ex christiano iudaeus effectus sacrilegis coetibus adgregetur, cum accusatio fuerit comprobata, facultates eiusdem dominio fisci iubemus vindicari. * constantius a. ad thalassium pp. * <a 357 d. v non. iul. mediolano constantio a. viiii et iuliano c. ii conss.>

CJ.1.7.2: Imperatores Gratianus, Valentinianus, Theodosius

Si quis defunctum violatae atque desertae christianae religionis accusat eumque in sacrilegia templorum vel in ritus iudaicos transisse contendit eaque gratia testari minime potuisse confirmat, intra quinquennium iuge, quod inofficiosis actionibus constitutum est, proprias exserat actiones futurique iudicii huiuscemodi sortiatur exordium. * grat. valentin. et theodos. aaa. ad hypatium pp. * <a 383 d. xv k. iun. patavi merobaude ii et saturnino conss.>

CJ.1.7.3pr.: Imperatores Valentinianus, Theodosius, Arcadius

Ii, qui sanctam fidem prodiderint et sanctum baptisma haeretica superstitione profanaverint, a consortio omnium segregati sint, a testimoniis alieni, testamenti, ut ante iam sanximus, non habeant factionem, nulli in hereditate succedant, a nemine scribantur heredes. * valentin. theodos. et arcad. aaa. flaviano pp. * <a 391 d. v id. mai. concordiae tatiano et symmacho conss.>

CJ.1.7.3.1: Imperatores Valentinianus, Theodosius, Arcadius

Quos etiam praecepissemus procul abici ac longius amandari, nisi poenae visum fuisset esse maioris versari inter homines et hominum carere suffragiis. <a 391 d. v id. mai. concordiae tatiano et symmacho conss.>

CJ.1.7.3.2: Imperatores Valentinianus, Theodosius, Arcadius

Sed nec umquam in statum pristinum revertentur, non flagitium morum oblitterabitur paenitentia neque umbra aliqua exquisitae defensionis aut muniminis obducetur, quoniam quidem eos, qui fidem quam deo dicaverant polluerunt et prodentes divinum mysterium in profana migraverunt, tueri ea quae sunt commenticia et concinnata non possunt. <a 391 d. v id. mai. concordiae tatiano et symmacho conss.>

CJ.1.7.3.3: Imperatores Valentinianus, Theodosius, Arcadius

Lapsis etenim et errantibus subvenitur, perditis vero. hoc est sanctum baptisma profanantibus, nullo remedio paenitentiae, quae solet aliis criminibus adesse, succurritur. <a 391 d. v id. mai. concordiae tatiano et symmacho conss.>

CJ.1.7.4pr.: Imperatores Theodosius, Valentinianus

Apostatarum sacrilegum nomen singulorum vox continuae accusationis incesset et nullis finita temporibus huiuscemodi criminis arceatur indago. * theodos. et valentin. aa. basso pp. * <a 426 d. vii id. april. ravennae theodosio a. xii et valentiniano c. ii conss.>

CJ.1.7.4.1: Imperatores Theodosius, Valentinianus

Quibus quamvis praeterita interdicta sufficiant, tamen etiam illud iteramus, ne, postquam a fide deviaverint, testandi aut donandi quippiam habeant facultatem. sed nec venditionis specie facere legi fraudem sinantur, totumque ab intestato christianitatem sectantibus propinquis potissimum deferatur. <a 426 d. vii id. april. ravennae theodosio a. xii et valentiniano c. ii conss.>

CJ.1.7.4.2: Imperatores Theodosius, Valentinianus

In tantum autem contra huiuscemodi sacrilegia perpetuari volumus actionem, ut universis ab intestato venientibus etiam post mortem peccantis absolutam vocem insimulationis congruae non negamus: nec illud patiemur obstare, si nihil in contestatione profano dicatur vivente perductum. <a 426 d. vii id. april. ravennae theodosio a. xii et valentiniano c. ii conss.>

CJ.1.7.4.3: Imperatores Theodosius, Valentinianus

Sed ne huius interpretatio criminis latius incerto vagetur errore, eos praesentibus insectamur oraculis, qui nomine christianitatis induti sacrificia vel fecerint vel facienda mandaverint: quorum etiam post mortem comprobata perfidia hac ratione plectenda est, ut donationibus testamentisque rescissis ii, quibus hoc defert legitima successio, huiusmodi personarum hereditate potiantur. <a 426 d. vii id. april. ravennae theodosio a. xii et valentiniano c. ii conss.>

CJ.1.7.5: Imperatores Theodosius, Valentinianus

Eum, quicumque servum seu ingenuum, invitum vel suasione plectenda, ex cultu christianae religionis in nefandam sectam ritumve traduxerit, cum dispendio fortunarum capite puniendum censemus. * theodos. et valentin. aa. florentio pp. * <a 438 d. prid. k. febr. constantinopoli theodosio a. xvi et fausto conss.>

CJ.1.7.6: Imperatores Valentinianus, Marcianus

Eos, qui catholicarum ecclesiarum clerici vel orthodoxae fidei monachi relicto vero orthodoxae religionis cultu apollinaris vel eutychetis haeresin et dogmata abominanda sectati sunt, omnibus poenis, quae prioribus legibus adversus haereticos constitutae sunt, iubemus teneri et extra ipsum quoque romani imperii solum repelli, sicut de manichaeis praecedentium legum statuta sanxerunt. * valentin. et marcian. aa. palladio pp. * <a 455 d. k. aug. constantinopoli valentiniano a. viii et anthemio conss.>

CJ.1.8.0. Nemini licere signum salvatoris christi vel in silice vel in marmore aut sculpere aut pingere.

CJ.1.8.1: Imperatores Theodosius, Valentinianus

Cum sit nobis cura deligens per omnia superni numinis religionem tueri, signum salvatoris christi nemini licere vel in solo vel in silice vel in marmoribus humi positis insculpere vel pingere, sed quodcumque reperitur tolli: gravissima poena multando eo, si quis contrarium statutis nostris temptaverit, specialiter imperamus. * theodos. et valentin. aa. eudoxio pp. * <a 427 d. xii k. iun. hierio et ardaburio conss.>

CJ.1.9.0. De iudaeis et caelicolis.

CJ.1.9.1: Imperator Antoninus

Quod cornelia salvia universitati iudaeorum, qui in antiochensium civitate constituti sunt, legavit, peti non potest. * ant. a. claudio tryphonino. * <a 213 d. prid. k. iul. antonino a. iiii et balbino conss.>

CJ.1.9.3: Imperator Constantinus

Iudaeis et maioribus eorum et patriarchis volumus intimari, quod, si quis post hanc legem aliquem, qui eorum feralem fugerit sectam et ad dei cultum respexerit , saxis aut alio furoris genere, quod nunc fieri cognovimus, ausus fuerit attemptare, mox flammis dedendus est et cum omnibus suis participibus concremandus. * const. a. ad euagrium pp. * <a 315 d. xv k. nov. murgillo constantino a. iiii et licinio iiii conss.>

CJ.1.9.4: Imperatores Valentinianus, Valens

In synagoga iudaicae legis velut hospitii merito inruentes iubeas emigrare: quos privatorum domus, non religionum loca habitationum merito convenit attingere. * valentin. et valens aa. remigio mag. off. * <a 368 ? 370 ? 373 ? d. prid. non. mai. treviris valentiniano et valente aa. conss.>

CJ.1.9.5: Imperatores Gratianus, Valentinianus, Theodosius

Iussio, qua sibi iudaeae legis homines blandiuntur, per quam eis curialium munerum dabatur immunitas, rescindatur. * grat. valentin. et theodos. aaa. hypatio pp. * <a 383 d. xiiii k. mai. mediolani merobaude ii et saturnino conss.>

CJ.1.9.6: Imperatores Valentinianus, Theodosius, Arcadius

Ne quis christianam mulierem in matrimonium iudaeus accipiat neque iudaeae christianus coniugium sortiatur. nam si quis aliquid huiusmodi admiserit, adulterii vicem commissi huius crimen obtinebit, libertate in accusandum publicis quoque vocibus relaxata. * valentin. theodos. et arcad. aaa. cynegio pp. * <a 388 d. prid. id. mart. thessalonica theodosio a. ii et cynegio conss.>

CJ.1.9.7: Imperatores Valentinianus, Theodosius, Arcadius

Nemo iudaeorum morem suum in coniunctionibus retinebit nec iuxta legem suam nuptias sortiatur nec in diversa sub uno tempore coniugia conveniat. * valentin. theodos. et arcad. aaa. infantio com. orientis. * <a 393 d. iii k. ian. constantinopoli theodosio a. iii et abundantio conss.>

CJ.1.9.8pr.: Imperatores Gratianus, Valentinianus, Theodosius

Iudaei romano communi iure viventes in his causis, quae tam ad superstitionem eorum quam ad forum et leges ac iura pertinent, adeant sollemni more iudicia omnesque romanis legibus conferant et excipiant actiones. * grat. valentin. et theodos. aaa. eutychiano pp. * <a 398 d. iii non. febr. constantinopoli honorio a. iiii et eutychiano conss.>

CJ.1.9.8.1: Imperatores Gratianus, Valentinianus, Theodosius

Si qui vero ex his communi pactione ad similitudinem arbitrorum apud iudaeos in civili dumtaxat negotio putaverint litigandum, sortiri eorum iudicium iure publico non vetentur. <a 398 d. iii non. febr. constantinopoli honorio a. iiii et eutychiano conss.>

CJ.1.9.8.2: Imperatores Gratianus, Valentinianus, Theodosius

Eorum etiam sententias iudices exsequantur, tamquam ex sententia cognitoris arbitri fuerint attributi. <a 398 d. iii non. febr. constantinopoli honorio a. iiii et eutychiano conss.>

CJ.1.9.9: Imperatores Arcadius, Honorius

Nemo exterus religionis iudaeorum iudaeis pretia statuet, cum venalia proponentur. iustum est enim sua cuique committere. itaque rectores provinciarum vobis nullum discussorem aut moderatorem esse concedent. quod si quis sumere sibi curam praeter vos proceresque vestros audeat, eum velut aliena appetentem supplicio coercere festinent. * arcad. et honor. aa. ad iudaeos. * <a 396 d. iii k. mart. constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.1.9.10: Imperatores Arcadius, Honorius

Quicumque ex iudaeis obnoxii curiae comprobantur, curiae mancipentur. * arcad. et honor. aa. eutychiano pp. * <a 399 d. iii k. ian. theodoro cons.>

CJ.1.9.11: Imperatores Honorius, Theodosius

Iudaeos quodam festivitatis suae sollemni aman ad poenae quondam recordationem incendere et sanctae crucis adsimulatam speciem in contemptu christianae fidei sacrilega mente exurere provinciarium rectores prohibeant, ne locis suis fidei nostrae signum immisceant, sed ritus suos citra contemptum christianae legis retineant, amissuri sine dubio permissa hactenus, nisi ab illicitis temperaverint. * honor. et theodos. aa. anthemio pp. * <a 408 d. iiii k. iun. constantinopoli basso et philippo conss.>

CJ.1.9.12pr.: Imperatores Honorius, Theodosius

Caelicolarum nomen inauditum quodammodo novum crimen superstitionis vindicavit. ii, nisi ad dei cultum venerationemque christianam conversi fuerint, his legibus , quibus praecipimus haereticos adstringi, se quoque noverint attinendos. * honor. et theodos. aa. iovio pp. * <a 409 d. k. april. ravenna honorio viii et theodosio iii aa. conss.>

CJ.1.9.12.1: Imperatores Honorius, Theodosius

Aedificia autem eorum, quae nescio cuius dogmatis novi conventus habent, ecclesiis vindicentur. certum est enim, quidquid a fide christianorum discrepat, legi christianae esse contrarium. <a 409 d. k. april. ravenna honorio viii et theodosio iii aa. conss.>

CJ.1.9.13: Imperatores Honorius, Theodosius

Die sabbato ac reliquis sub tempore, quo iudaei cultus sui reverentiam servant, neminem aut facere aliquid aut ulla ex parte conveniri debere praecipimus (ita tamen, ut nec illis detur licentia eodem die christianos orthodoxos convenire, ne christiani forte ex interpellatione iudaeorum ab officialibus praefatis diebus aliquam sustineant molestiam), cum fiscalibus commodis et litigiis privatorum constat reliquos dies posse sufficere. * honor. et theodos. aa. iohanni pp. * <a 412 d. vii k. aug. ravennae honorio viiii et theodosio v aa. conss.>

CJ.1.9.14pr.: Imperatores Honorius, Theodosius

Nullus tamquam iudaeus, cum sit innocens, obteratur nec eitum eum ad contumeliam religio qualiscumque perficiat: non passim eorum synagogae vel habitacula concrementur vel perperam sine ulla ratione laedantur, cum alioquin, etiam si sit aliquis sceleribus implicitus, idcirco tamen iudiciorum vigor iurisque publici tutela videtur in medio constituta, ne quisquam sibi ipse permittere valeat ultionem. * honor. et theodos. aa. philippo pp. * <a 412 d. viii id. aug. constantinopoli honorio viiii et theodosio v aa. conss.>

CJ.1.9.14.1: Imperatores Honorius, Theodosius

Sed ut hoc iudaeorum personis volumus esse provisum, ita illud quoque monendum esse censemus, ne iudaei forsitan insolescant elatique sui securitate quicquam praeceps in christianae reverentiam cultionis admittant. <a 412 d. viii id. aug. constantinopoli honorio viiii et theodosio v aa. conss.>

CJ.1.9.15: Imperatores Honorius, Theodosius

Si qua inter christianos et iudaeos sit contentio, non a senioribus iudaeorum, sed ab ordinariis iudicibus dirimatur. * honor. et theodos. aa. aureliano pp. * <a 415 d. xiii k. nov. constantinopoli honorio x et theodosio vi aa. conss.>

CJ.1.9.16: Imperatores Honorius, Theodosius

Iudaei et bonorum proscriptione et perpetuo exilio damnabuntur, si nostrae fidei hominem circumcidisse eos vel circumcidendum mandasse constiterit. * honor. et theodos. aa. asclepiodoto pp. * <a 423 d. v id. april. constantinopoli asclepiodoto et mariniano conss.>

CJ.1.9.17: Imperatores Theodosius, Valentinianus

Iudaeorum primates, qui in utriusque palestinae synedriis nominantur vel in aliis provinciis degunt, periculo suo anniversarium canonem de synagogis omnibus palatinis compellentibus exigant ad eam formam, quam patriarchae quondam coronarii auri nomine postulabant: et hoc, quod de occidentalibus partibus patriarchis conferri consueverat, nostris largitionibus inferatur. * theodos. et valentin. aa. iohanni com. sacr. larg. * <a 429 d. iii k. iun. constantinopoli florentio et dionysio conss.>

CJ.1.9.18pr.: Imperatores Theodosius, Valentinianus

Hac victura in omne aevum lege sancimus neminem iudaeum, quibus omnes administrationes et dignitates interdictae sunt, nec defensoris civitatis fungi saltem officio nec patris honorem adripere concedimus, ne adquisiti sibi officii auctoritate muniti adversus christianos et ipsos plerumque sacrae religionis antistites velut insultantes fidei nostrae iudicandi vel pronuntiandi quamlibet habeant potestatem. * theodos. et valentin. aa. florentino pp. * <a 439 d. prid. k. febr. constantinopoli theodosio a. xvii et festo conss.>

CJ.1.9.18.1: Imperatores Theodosius, Valentinianus

Illud etiam pari consideratione rationis arguentes praecipimus, ne qua iudaica synagoga in novam fabricam surgat, fulciendi veteres permissa licentia, quae ruinam minantur. <a 439 d. prid. k. febr. constantinopoli theodosio a. xvii et festo conss.>

CJ.1.9.18.2: Imperatores Theodosius, Valentinianus

Quisquis igitur vel infulas ceperit, quaesitis dignitatibus non potiatur, vel si ad officia vetita subrepserit, his penitus repelletur, vel si synagogam extruxerit, compendio catholicae ecclesiae noverit se laborasse: et qui ad honores et dignitates inrepserit, habeatur, ut antea, condicionis extremae, etsi honorariam illicite promeruerit dignitatem: et qui synagogae fabricam coeperit non studio reparandi, cum damno auri quinquaginta librarum fraudetur ausibus suis. <a 439 d. prid. k. febr. constantinopoli theodosio a. xvii et festo conss.>

CJ.1.9.18.3: Imperatores Theodosius, Valentinianus

Cernat praeterea bona sua proscripta, mox poenae sanguinis destinandus, qui fidem alterius expugnavit perversa doctrina. <a 439 d. prid. k. febr. constantinopoli theodosio a. xvii et festo conss.>

CJ.1.10.0. Ne christianum mancipium haereticus vel paganus vel iudaeus habeat vel possideat vel circumcidat.

CJ.1.10.1: Imperator Constantius

Iudaeus servum christianum nec comparare debebit nec largitatis vel alio quocumque titulo consequatur. quod si aliquis iudaeorum mancipium vel christianum habuerit vel sectae alterius seu nationis crediderit ex quacumque causa possidendum et id circumciderit, non solum mancipii damno multetur, verum etiam capitali sententia puniatur, ipso servo pro praemio libertate donando. * constantius a. ad euagrium. * <a 339 d. id. aug. constantinopoli constantio ii et constante conss.>

CJ.1.11.0. De paganis sacrificiis et templis.

CJ.1.11.1pr.: Imperator Constantius

Placuit omnibus locis atque urbibus universis claudi protinus templa et accessu vetito omnibus licentiam delinquendi perditis abnegari. * constantius a. ad taurum pp. * <a 354 d.K.Dec.Constantio a.Vii et constante iii conss. >

CJ.1.11.1.1: Imperator Constantius

Volumus etiam cunctos sacrificiis abstinere. <a 354 d.K.Dec.Constantio a.Vii et constante iii conss. >

CJ.1.11.1.2: Imperator Constantius

Quod si quis aliquid forte huiusmodi perpetraverit, gladio ultore sternatur. facultates etiam perempti fisco decernimus vindicari et similiter puniri rectores provinciarum, si facinora vindicare neglexerint. <a 354 d.K.Dec.Constantio a.Vii et constante iii conss. >

CJ.1.11.2: Imperatores Gratianus, Valentinianus, Theodosius

Ne quis mortalium ita faciendi sacrificii sumat audaciam, ut inspectione iecoris extorumque praesagio vanae spem promissionis accipiat vel, quod est deterius, futura sub exsecrabili consultatione cognoscat. acerbioris etenim imminebit supplicii cruciatus eis, qui contra vetitum praesentium vel futurarum rerum explorare temptaverint veritatem. * grat. valentin. et theodos. aaa. cynegio pp. * <a 385 d. viii k. iun. constantinopoli arcadio a. et bautone conss.>

CJ.1.11.3: Imperatores Arcadius, Honorius

Sicut sacrificia prohibemus, ita volumus publicorum operum ornamenta servari. ac ne sibi aliqua auctoritate blandiantur, qui ea conantur evertere, si quod rescriptum, si qua lex forte praetenditur: abreptae huiusmodi chartae ex eorum manibus ad nostram scientiam referantur. * arcad. et honor. aa. macrobio et procliano vic. * <a 399 d. iiii k. febr. ravennae theodoro cons.>

CJ.1.11.4: Imperatores Arcadius, Honorius

Ut profanos ritus iam salubri lege submovimus, ita festos conventus civium et communem omnium laetitiam non patimur submoveri. unde absque ullo sacrificio atque ulla superstitione damnabili exhiberi populo voluptates secundum veterem consuetudinem, iniri etiam festa convivia, si quando exigunt publica vota, decernimus. * arcad. et honor. aa.Apollodoro procons. africae. * <a 399 d. xiii k. sept. patavi theodoro cons.>

CJ.1.11.5: Imperatores Honorius, Theodosius

Omnia loca, quae sacris error veterum deputavit, nostrae rei iubemus sociari. quod autem ex eo iure ubicumque ad singulas quasque personas vel praecedentium principum largitas vel nostra maiestas voluit pervenire, id in eorum patrimoniis aeterna firmitate perduret. ea vero, quae multiplicibus constitutis ad venerabilem ecclesiam voluimus pertinere, christiana sibi merito religio vindicabit. * honor. et theodos. aa. populo carthaginiensi. * <a 415 d. iii k. sept.Ravennae honorio x et theodosio vi aa. conss.>

CJ.1.11.6pr.: Imperatores Honorius, Theodosius

Christianis, qui vel vere sunt vel esse dicuntur, specialiter demandamus, ut iudaeis ac paganis in quiete degentibus nihilque temptantibus turbulentum legibusque contrarium non audeant manus inferre religionis auctoritate abusi. nam si contra securos fuerint violenti vel eorum bona diripuerint, non ea sola quae abstulerint, sed convicti in duplum quae rapuerint restituere compellantur. * honor. et theodos. aa. asclepiodoto pp. * <a 423 d. vi id. iun. constantinopoli asclepiodoto et mariniano conss.>

CJ.1.11.6.1: Imperatores Honorius, Theodosius

Rectores etiam provinciarum et officia et principales cognoscant se, si non ipsi talia vindicent, sed fieri a popularibus hoc permiserint, ut eos qui fecerint puniendos. <a 423 d. vi id. iun. constantinopoli asclepiodoto et mariniano conss.>

CJ.1.11.7pr.: Imperatores Valentinianus, Marcianus

Nemo venerantis adorantisque animo delubra, quae olim iam clausa sunt, reseret: absit a saeculo nostro infandis exsecrandisque simulacris honorem pristinum reddi, redimiri sertis templorum impios postes, profanis aris accendi ignes, adoleri in isdem thura, victimas caedi, pateris vina libari et religionis loco existimari sacrilegium. * valentin. et marcian. aa. palladio pp. * <a 451 d. prid. id. nov. marciano a. cons.>

CJ.1.11.7.1: Imperatores Valentinianus, Marcianus

Quisquis autem contra hanc serenitatis nostrae sanctionem et contra interdicta sacratissimarum veterum constitutionum sacrificia exercere temptaverit, apud publicum iudicem reus tanti facinoris legitime accusetur et convictus proscriptionem omnium bonorum suorum et ultimum supplicium subeat. <a 451 d. prid. id. nov. marciano a. cons.>

CJ.1.11.7.2: Imperatores Valentinianus, Marcianus

Conscii etiam ac ministri sacrificiorum eandem poenam, quae in illum fuerit inrogata, sustineant, ut hac legis nostrae severitate perterriti metu poenae desinant sacrificia interdicta celebrare. <a 451 d. prid. id. nov. marciano a. cons.>

CJ.1.11.7.3: Imperatores Valentinianus, Marcianus

Quod si vir clarissimus rector provinciae post accusationem legitimam et post crimen in cognitione convictum tantum scelus dissimulaverit vindicare, quinquaginta libras auri ipse iudex, quinquaginta etiam officium eius confestim fisco nostro inferre cogatur. <a 451 d. prid. id. nov. marciano a. cons.>

CJ.1.11.8pr.: Imperatores Leo, Anthemius

Nemo ea, quae saepius paganae superstitionis hominibus interdicta sunt, audeat pertemptare, sciens, quod crimen publicum committit qui haec ausus fuerit perpetrare. * leo et anthem. aa. dioscoro pp. * <a 472? >

CJ.1.11.8.1: Imperatores Leo, Anthemius

In tantum autem huiusmodi facinora volumus esse resecanda, ut, etiamsi in alieno praedio vel domo aliquid tale perpetretur, scientibus videlicet dominis, praedium quidem vel domus sacratissimi viribus aerarii addicetur, domini vero pro hoc solo, quod scientes consenserint sua loca talibus contaminari sceleribus, si quidem dignitate vel militia quadam decorantur, amissione militiae vel dignitatis nec non rerum suarum proscriptione plectentur, privatae vero condicionis vel plebeii constituti post cruciatus corporis operibus metallorum perpetuo deputabuntur exilio. <a 472? >

CJ.1.12.0. De his qui ad ecclesias confugiunt vel ibi exclamant.

CJ.1.12.1: Imperatores Arcadius, Honorius

Iudaei, qui reatu aliquo vel debitis fatigati simulant se christianae legi velle coniungi, ut ad ecclesias confugientes evitare possint crimina vel pondera debitorum, arceantur nec ante suscipiantur, quam debita universa reddiderint vel fuerint innocentia demonstrata purgati. * arcad. et honor. aa. archelao praef. augustali. * <a 397 d. xv k. iul. constantinopoli caesario et attico conss.>

CJ.1.12.2: Imperatores Honorius, Theodosius

Fideli ac devota praeceptione sancimus nemini licere ad sacrosanctas ecclesias confugientes abducere: sub hac videlicet definitione, ut, si quisquam contra hanc legem venire temptaverit, sciat se ad maiestatis crimen esse retinendum. * honor. et theodos. aa. iovio pp. * <a 409 d. k. april. ravennae honorio viii et theodosio iii aa. conss.>

CJ.1.12.4pr.: Imperatores Theodosius, Valentinianus

Si servus cuiusquam ecclesiam alteriave armatus nullis hoc suspicantibus inopinatus inruerit, exinde protinus abstrahatur vel certe continuo domino vel ei, unde eum tam furiosa formido proripuit, indicetur eique mox abstrahendi copia non negetur. * theodos. et valentin. aa. hiero pp. * <a 432 d. v. k. april. constantinopoli valerio et aetio conss.>

CJ.1.12.4.1: Imperatores Theodosius, Valentinianus

Sed si armorum fiducia resistendi animos insania impellente conceperit, abripiendi extrahendique eum domino, quibus potest id efficere viribus, concedatur. quod si illum etiam confici in concertatione pugnaque contigerit, nulla erit eius noxa nec conflandae criminationis relinquetur occasio, si is, qui ex statu servili in hostilis et homicidae condicionem transiliit, occisus sit. <a 432 d. v. k. april. constantinopoli valerio et aetio conss.>

CJ.1.12.5: Imperator Marcianus

Denuntiamus vobis omnibus, ut in sacrosanctis ecclesiis et in aliis quidem venerabilibus locis, in quibus cum pace et quiete vota competit celebrari, abstineatis omni seditione. nemo conclamationibus utatur, nemo moveat tumultum aut impetum committat vel conventicula collecta multitudine in qualibet parte civitatis vel vici vel cuiuscumque loci colligere aut celebrare conetur. nam si quis aliquid contra leges a quibusdam sibi existimet perpetrari, liceat ei adire iudicem et legitimum postulare praesidium. sciant sane omnes, quod, si quis contra huius edicti normam aut agere aliquid aut seditionem movere temptaverit, ultimo supplicio subiacebit. * marcian. a. ad pop. * <a 451 d. iii id. iul. constantinopoli marciano a. cons.>

CJ.1.12.6pr.: Imperator Leo

Praesenti lege decernimus per omnia loca valitura (excepta hac urbe regia, in qua nos divinitate propitia degentes, quotiens usus exegerit, invocati singulis causis atque personis praesentanea constituta praestamus) nullos penitus cuiuscumque condicionis de sacrosanctis ecclesiis orthodoxae fidei expelli aut tradi vel protrahi confugas nec pro his venerabiles episcopos aut religiosos oeconomos exigi, quae debeantur ab eis: qui hoc moliri aut facere aut nuda saltim cogitatione atque tractatu ausi fuerint temptare, capitali et ultima supplicii animadversione plectendi sunt. ex his ergo locis eorumque finibus, quos anteriorum le gum praescripta sanxerunt, nullos expelli aut eici aliquando patimur nec in ipsis ecclesiis reverendis ita quemquam detineri atque constringi, ut ei aliquid aut victualium rerum aut vestis negetur aut requies. * leo a. erythrio pp. * <a 466 d. prid. k. mart. constantinopoli leone a. iii cons.>

CJ.1.12.6.1: Imperator Leo

Sed si quidem ipsi refugae apparent publice et se in sacris locis offerunt quaerentibus conveniendos, ipsi, servata locis reverentia, iudicum quibus subiacent sententiis moneantur, responsum daturi, quale sibi quisque perspexerit convenire. <a 466 d. prid. k. mart. constantinopoli leone a. iii cons.>

CJ.1.12.6.2: Imperator Leo

Quod si in finibus ecclesiasticis latitant, religiosus oeconomus seu defensor ecclesiae vel certe, quem his negotiis commodiorem auctoritas episcopalis elegerit, reconditam latentemque personam decenter sine ullo incommodo monitus, intra fines ecclesiae si invenitur, praesentet. <a 466 d. prid. k. mart. constantinopoli leone a. iii cons.>

CJ.1.12.6.3: Imperator Leo

Cum autem monitus fuerit in publico privatove contractu actione civili, in eius sit arbitrio sive per se seu, si magis elegerit, instructo sollemniter procuratore directo in eius iudicis, cuius pulsatur sententiis, examine respondere. <a 466 d. prid. k. mart. constantinopoli leone a. iii cons.>

CJ.1.12.6.4: Imperator Leo

Sed si hoc facere detractat aut differt, iudiciorum legumque solitus ordo servetur. itaque si res immobiles possidet, post edictorum sollemnia sententia iudicantis usque ad modum debiti bonorum eius sive praediorum traditio seu venditio celebretur. <a 466 d. prid. k. mart. constantinopoli leone a. iii cons.>

CJ.1.12.6.5: Imperator Leo

Quod si res mobiles habet easque extra terminos occultat ecclesiae, sententia iudicantis et exsecutoris sollicitudine perquisitae, quocumque occultantur, erutae pro aequitatis tramite modoque debiti publicis rationibus privatisque proficiant. <a 466 d. prid. k. mart. constantinopoli leone a. iii cons.>

CJ.1.12.6.6: Imperator Leo

Sane si intra fines habentur ecclesiae vel apud quemlibet ex clericis absconditae sive depositae fuisse firmantur, studio et providentia viri reverentissimi oeconomi sive defensoris ecclesiae diligentia inquisitae quolibet modo ad sacrosanctam ecclesiam pervenientes proferantur, ut pari aequitatis ordine ex isdem bonis fisco vel rei publicae sive creditoribus et quibuscumque iustis petitoribus ad modum debiti consulatur. <a 466 d. prid. k. mart. constantinopoli leone a. iii cons.>

CJ.1.12.6.7: Imperator Leo

Sicubi depositae vel commendatae dicuntur, inquirendi tantam volumus esse cautelam, ut, si sola suspicatione apud aliquem adserantur absconditae, de sua etiam conscientia satisfacere auctoritate venerabilis antistitis iubeatur. <a 466 d. prid. k. mart. constantinopoli leone a. iii cons.>

CJ.1.12.6.8: Imperator Leo

Adicientes, quod ea, quae de principalibus personis decrevimus, etiam in fideiussorum sive mandatorum seu rerum ad eos pertinentium vel familiarium et sociorum vel participum et omnino in isdem causis obnoxiorum personis praecipimus observari, scilicet si ipsos quoque secum confugae intra ecclesiarum terminos habere voluerint, ut ex eorum quoque bonis publica debita privataque solvantur et per eos rerum ubicumque depositae sunt procedat inquisitio. et haec quidem de ingenuis liberisque personis. <a 466 d. prid. k. mart. constantinopoli leone a. iii cons.>

CJ.1.12.6.9: Imperator Leo

Sane si servus aut colonus vel adscripticius, familiaris sive libertus et huiusmodi aliqua persona domestica vel condicioni subdita conquassatis rebus certis atque subtractis aut se ipsum furatus ad sacrosancta se contulerit loca, statim a religiosis oeconomis sive defensoribus, ubi primum hoc scire potuerint, per eos videlicet ad quos pertinent, ipsis praesentibus pro ecclesiastica disciplina et qualitate commissi aut ultione competenti aut intercessione humanissima procedente, remissione veniae et sacramenti interveniente securi ad locum statumque proprium revertantur, rebus, quas secum habuerint, reformandis. diutius enim eos intra ecclesiam non convenit commorari, ne patronis seu dominis per ipsorum ab sentiam obsequia iusta denegentur et ipsi per incommodum ecclesiae egentium et pauperum alantur expensis. <a 466 d. prid. k. mart. constantinopoli leone a. iii cons.>

CJ.1.12.6.10: Imperator Leo

Inter haec autem, quae sedulo ad religiosi oeconomi sive defensoris ecclesiae sollicitudinem curamque respiciunt, erit etiam illud observandum, ut singulorum intra ecclesias confugientium personas causasque incessanter conquirant, denique iudices vel eos, ad quos causae et personae pertinent, instantius instruant, ut aequitatis convenientiam diligentius exsequantur. <a 466 d. prid. k. mart. constantinopoli leone a. iii cons.>

CJ.1.13.0. De his qui in ecclesiis manumittuntur.

CJ.1.13.1: Imperator Constantinus

Iam dudum placuit, ut in ecclesia catholica libertatem domini suis famulis praestare possint, si sub adspectu plebis adsistentibus christianorum antistitibus id faciant, ut propter facti memoriam vice actorum interponatur qualiscumque scriptura, in qua ipsi vice testium signent. unde a vobis quoque ipsis non immerito dandae et relinquendae sunt libertates, quo quis vestrum pacto voluerit, dummodo vestrae voluntatis evidens appareat testimonium. * const. a. ad protogenem ep. * <a 316 d. vi id. iun. sabino et rufino conss.>

CJ.1.13.2: Imperator Constantinus

Qui religiosa mente in ecclesiae gremio servulis suis meritam concesserint libertatem, eandem eodem iure donasse videantur, quo civitas romana sollemnitatibus decursis dari consuevit. sed hoc dumtaxat his, qui sub adspectu antistitum dederint, placuit relaxari. clericis autem amplius concedimus, ut, cum suis famulis tribuunt libertatem, non solum in conspectu ecclesiae ac religiosi populi plenum fructum libertatis concessisse dicantur, verum etiam cum postremo iudicio dederint libertates seu quibuscumque verbis dari praeceperint, ita ut ex die publicatae voluntatis sine aliquo iuris teste vel interprete competat directa libertas. * const. a. osio. * <a 321 d. xiiii k. mai. crispo ii et constantino ii conss .>

CJ.1.14.0. De legibus et constitutionibus principum et edictis.

CJ.1.14.1: Imperator Constantinus

Inter aequitatem iusque interpositam interpretationem nobis solis et oportet et licet inspicere. * constant. a. septimio basso pu. * <a 316 d. iii non. dec. sabino et rufino conss.>

CJ.1.14.2: Imperatores Theodosius, Valentinianus

Quae ex relationibus vel suggestionibus iudicantium per consultationem in commune florentissimorum sacri nostri palatii procerum auditorium introducto negotio statuimus vel quibuslibet corporibus aut legatis aut provinciae vel civitati vel curiae donavimus, nec generalia iura sint, sed leges fiant his dumtaxat negotiis atque personis, pro quibus fuerint promulgata, nec ab aliquo retractentur: notam infamiae subituro eo, qui vel astute ea interpretari voluerit vel impetrato impugnare rescripto, nec habituro fructum per subreptionem eliciti: et iudices, si dissimulaverint vel ulterius litigantem audierint vel aliquid allegandum admiserint vel sub quodam ambiguitatis colore ad nos rettulerint, triginta librarum auri condemnatione plectendi sunt. * theodos. et valentin. aa. ad senatum. * <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.1.14.3pr.: Imperatores Theodosius, Valentinianus

Leges ut generales ab omnibus aequabiliter in posterum observentur, quae vel missa ad venerabilem coetum oratione conduntur vel inserto edicti vocabulo nuncupantur, sive eas nobis spontaneus motus ingesserit sive precatio vel relatio vel lis mota legis occasionem postulaverit. nam satis est edicti eas nuncupatione censeri vel per omnes populos iudicum programmate divulgari vel expressius contineri, quod principes censuerunt ea, quae in certis negotiis statuta sunt similium quoque causarum fata componere. * theodos. et valentin. aa. ad senatum. * <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa.Conss.>

CJ.1.14.3.1: Imperatores Theodosius, Valentinianus

Sed et si generalis lex vocata est vel ad omnes iussa est pertinere, vim obtineat edicti; interlocutionibus, quas in uno negotio iudicantes protulimus vel postea proferemus, non in commune praeiudicantibus, nec his, quae specialiter quibusdam concessa sunt civitatibus vel provinciis vel corporibus, ad generalitatis observantiam pertinentibus. <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa.Conss.>

CJ.1.14.4: Imperatores Theodosius, Valentinianus

Digna vox maiestate regnantis legibus alligatum se principem profiteri: adeo de auctoritate iuris nostra pendet auctoritas. et re vera maius imperio est submittere legibus principatum. et oraculo praesentis edicti quod nobis licere non patimur indicamus. * theodos. et valentin. aa. ad volusianum pp. * <a 429 d. iii. id. iun. ravennae florentio et dionysio conss.>

CJ.1.14.5pr.: Imperatores Theodosius, Valentinianus

Non dubium est in legem committere eum, qui verba legis amplexus contra legis nititur voluntatem: nec poenas insertas legibus evitabit, qui se contra iuris sententiam scaeva praerogativa verborum fraudulenter excusat. nullum enim pactum, nullam conventionem, nullum contractum inter eos videri volumus subsecutum, qui contrahunt lege contrahere prohibente. * theodos. et valentin. aa. florentio pp. * <a 439 d. vii id. april. constantinopoli theodosio a. xvii et festo conss.>

CJ.1.14.5.1: Imperatores Theodosius, Valentinianus

Quod ad omnes etiam legum interpretationes tam veteres quam novellas trahi generaliter imperamus, ut legis latori, quod fieri non vult, tantum prohibuisse sufficiat, cetera quasi expressa ex legis liceat voluntate colligere: hoc est ut ea quae lege fieri prohibentur, si fuerint facta, non solum inutilia, sed pro infectis etiam habeantur, licet legis lator fieri prohibuerit tantum nec specialiter dixerit inutile esse debere quod factum est. sed et si quid fuerit subsecutum ex eo vel ob id, quod interdicente lege factum est, illud quoque cassum atque inutile esse praecipimus. <a 439 d. vii id. april. constantinopoli theodosio a. xvii et festo conss.>

CJ.1.14.5.2: Imperatores Theodosius, Valentinianus

Secundum praedictam itaque regulam, quam ubique servari factum lege prohibente censuimus, certum est nec stipulationem eiusmodi tenere nec mandatum ullius esse momenti nec sacramentum admitti. <a 439 d. vii id. april. constantinopoli theodosio a. xvii et festo conss.>

CJ.1.14.6: Imperatores Theodosius, Valentinianus

Quod favore quorundam constitutum est, quibusdam casibus ad laesionem eorum nolumus inventum videri. * theodos. et valentin. aa. florentio pp. * <a 439 d. k. aug. theodosio a. xvii et festo conss.>

CJ.1.14.7: Imperatores Theodosius, Valentinianus

Leges et constitutiones futuris certum est dare formam negotiis, non ad facta praeterita revocari, nisi nominatim etiam de praeterito tempore adhuc pendentibus negotiis cautum sit. * theodos. et valentin. aa. cyro pp.Et cons. design. * <a 440 d. non. april. constantinopoli valentiniano a. v et anatolio conss.>

CJ.1.14.8pr.: Imperatores Theodosius, Valentinianus

Humanum esse probamus, si quid de cetero in publica vel in privata causa emerserit necessarium, quod formam generalem et antiquis legibus non insertam ecat , id ab omnibus antea tam proceribus nostri palatii quam gloriosissimo coetu vestro, patres conscripti, tractari et, si universis tam iudicibus quam vobis placuerit, tunc allegata dictari et sic ea denuo collectis omnibus recenseri et, cum omnes consenserint, tunc demum in sacro nostri numinis consistorio recitari, ut universorum consensus nostrae serenitatis auctoritate firmetur. * theodos. et valentin. aa. ad senatum. * <a 446 d. xvi k. nov. aetio iii et symmacho conss.>

CJ.1.14.8.1: Imperatores Theodosius, Valentinianus

Scitote igitur, patres conscripti, non aliter in posterum legem a nostra clementia promulgandam, nisi supra dicta forma fuerit observata. bene enim cognoscimus , quod cum vestro consilio fuerit ordinatum, id ad beatitudinem nostri imperii et ad nostram gloriam redundare. <a 446 d. xvi k. nov. aetio iii et symmacho conss.>

CJ.1.14.9: Imperatores Valentinianus, Marcianus

Leges sacratissimae, quae constringunt omnium vitas, intellegi ab omnibus debent , ut universi praescripto earum manifestius cognito vel inhibita declinent vel permissa sectentur. si quid vero in isdem legibus latum fortassis obscurius fuerit, oportet id imperatoria interpretatione patefieri duritiamque legum nostrae humanitati incongruam emendari. * valentin. et marcian. aa. ad palladium pp. * <a 454 d. prid. non. april. constantinopoli aetio et studio vv. cc. conss.>

CJ.1.14.11: Imperatores Leo, Zeno

Cum de novo iure, quod inveterato usu non adhuc stabilitum est, dubitatio emergat, necessaria est tam suggestio iudicantis quam sententiae principalis auctoritas. * leo et zeno aa. * <a 474 d. x k. mai. leone iuniore a. cons.>

CJ.1.14.12pr.: Imperator Justinianus

Si imperialis maiestas causam cognitionaliter examinaverit et partibus cominus constitutis sententiam dixerit, omnes omnino iudices, qui sub nostro imperio sunt, sciant hoc esse legem non solum illi causae, pro qua producta est, sed omnibus similibus. * iust. a. demostheni pp. * <a 529 recitata septimo millario urbis constantinopolitanae in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons. >

CJ.1.14.12.1: Imperator Justinianus

Quid enim maius, quid sanctius imperiali est maiestate? vel quis tantae superbiae fastidio tumidus est, ut regalem sensum contemnat, cum et veteris iuris conditores constitutiones, quae ex imperiali decreto processerunt, legis vicem obtinere aperte dilucideque definiunt? <a 529 recitata septimo millario urbis constantinopolitanae in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons. >

CJ.1.14.12.2: Imperator Justinianus

Cum igitur et hoc in veteribus legibus invenimus dubitatum, si imperialis sensus legem interpretatus est, an oporteat huiusmodi regiam interpretationem obtinere , eorum quidem vanam scrupulositatem tam risimus quam corrigendam esse censuimus. <a 529 recitata septimo millario urbis constantinopolitanae in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons. >

CJ.1.14.12.3: Imperator Justinianus

Definimus autem omnem imperatoris legum interpretationem sive in precibus sive in iudiciis sive alio quocumque modo factam ratam et indubitatam haberi. si enim in praesenti leges condere soli imperatori concessum est, et leges interpretari solum dignum imperio esse oportet. <a 529 recitata septimo millario urbis constantinopolitanae in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons. >

CJ.1.14.12.4: Imperator Justinianus

Cur autem ex suggestionibus procerum, si dubitatio in litibus oriatur et sese non esse idoneos vel sufficientes ad decisionem litis illi existiment, ad nos decurritur et quare ambiguitates iudicum, quas ex legibus oriri evenit, aures accipiunt nostrae, si non a nobis interpretatio mera procedit? vel quis legum aenigmata solvere et omnibus aperire idoneus esse videbitur nisi is, cui soli legis latorem esse concessum est? <a 529 recitata septimo millario urbis constantinopolitanae in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons. >

CJ.1.14.12.5: Imperator Justinianus

Explosis itaque huiusmodi ridiculosis ambiguitatibus tam conditor quam interpres legum solus imperator iuste existimabitur: nihil hac lege derogante veteris iuris conditoribus, quia et eis hoc maiestas imperialis permisit. <a 529 recitata septimo millario urbis constantinopolitanae in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons. >

CJ.1.15.0. De mandatis principum.

CJ.1.15.1: Imperatores Gratianus, Valentinianus, Theodosius

Si quis adserat cum mandatis nostris se venisse secretis, omnes sciant nemini quicquam, nisi quod scriptis probaverit, esse credendum nec ullius dignitate terreri, sive ille tribuni sive notarii sive comitis praeferat dignitatem, sed sacras nostras litteras esse quaerendas. * grat. valentin. et theodos. aaa. ad eusignium pp. * <a 383 d. xvi k. iul.Veronae. accepta prid. k. aug. merobaude ii et saturnino conss.>

CJ.1.16.0. De senatus consultis.

CJ.1.16.1: Imperatores Valentinianus, Theodosius, Arcadius

Quamvis consultum senatus perpetuam per se obtineat firmitatem, tamen etiam nostris legibus idem prosequimur adicientes, ut, si quisquam speciali supplicatione eliciendum aliquod rescriptum temptaverit, ut transire ei formam liceat statutorum, tertia patrimonii parte multatus et damnatus ambitus crimine maneat infamis. * valentin. theodos. et arcad. aaa. ad senatum. * <a 384 d. vii k. aug. heracleae ricomere et clearcho conss.>

CJ.1.17.0. De veteri iure enucleando et auctoritate iuris prudentium qui in digestis referuntur.

CJ.1.17.1pr.: Imperator Justinianus

Deo auctore nostrum gubernantes imperium, quod nobis a caelesti maiestate traditum est, et bella feliciter peragimus et pacem decoramus et statum rei publicae sustentamus: et ita nostros animos ad dei omnipotentis erigimus adiutorium, ut neque armis confidamus neque nostris militibus neque bellorum ducibus vel nostro ingenio, sed omnem spem ad solam referamus summae providentiam trinitatis: unde et mundi totius elementa processerunt et eorum dispositio in orbem terrarum producta est. * iust. a. triboniano v. eminent. quaest. sacri palatii. * <a 530 data octavo decimo kalendas ianuarias constantinopoli lampadio et oreste viris clarissimus consulibus.>

CJ.1.17.1.1: Imperator Justinianus

Cum itaque nihil tam studiosum in omnibus rebus invenitur quam legum auctoritas, quae et divinas et humanas res bene disponit et omnem iniquitatem expellit, repperimus autem omnem legum tramitem, qui ab urbe condita et romuleis descendit temporibus, ita esse confusum, ut in infinitum extendatur et nullius humanae naturae capacitate concludatur: primum nobis fuit studium a sacratissimis retro principibus initium sumere et eorum constitutiones emendare et viae dilucidae tradere, quatenus in unum codicem congregatae et omni supervacua similitudine et iniquissima discordia absolutae universis hominibus promptum suae sinceritatis praebeant praesidium. <a 530 data octavo decimo kalendas ianuarias constantinopo li lampadio et oreste viris clarissimus consulibus.>

CJ.1.17.1.2: Imperator Justinianus

Hocque opere consummato et in uno volumine nostro nomine praefulgente coadunato, cum ex paucis et tenuioribus relevati ad summam et plenissimam iuris emendationem pervenire properaremus et omnem romanam sanctionem et colligere et emendare et tot auctorum dispersa volumina uno codice indita ostendere, quod nemo alius neque sperare neque optare ausus est, res quidem nobis difficillima, immo magis impossibilis videbatur. sed manibus ad caelum erectis et aeterno auxilio invocato eam quoque curam nostris reposuimus animis, deo freti, qui et res penitus desperatas donare et consummare suae virtutis magnitudine potest. <a 530 data octavo decimo kalendas ianuarias constantinopoli lampadio et oreste viris clarissimus consulibus.>

CJ.1.17.1.3: Imperator Justinianus

Et ad tuae sinceritatis optimum respeximus ministerium tibique primo et hoc opus commisimus, ingenii tui documentis ex nostri codicis ordinatione acceptis, et iussimus quos probaveris tam ex facundissimis antecessoribus quam ex viris disertissimis togatis fori amplissimae sedis ad sociandum laborem eligere. his itaque collectis et in nostrum palatium introductis nobisque tuo testimonio placitis totam rem faciendam permisimus, ita tamen, ut tui vigilantissimi animi gubernatione res omnis celebretur. <a 530 data octavo decimo kalendas ianuarias constantinopoli lampadio et oreste viris clarissimus consulibus.>

CJ.1.17.1.4: Imperator Justinianus

Iubemus igitur vobis antiquorum prudentium, quibus auctoritatem conscribendarum interpretandarumque legum sacratissimi principes praebuerunt, libros ad ius romanum pertinentes et legere et elimare, ut ex his omnis materia colligatur, nulla secundum quod possibile est neque similitudine neque discordia derelicta, sed ex his hoc colligi, quod unum pro omnibus sufficiat. quia autem et alii libros ad ius pertinentes scripserunt, quorum scripturae a nullis auctoribus receptae nec usitatae sunt, neque nos eorum volumina nostram inquietare dignamur sanctionem. <a 530 data octavo decimo kalendas ianuarias constantinopoli lampadio et oreste viris clarissimus consulibus.>

CJ.1.17.1.5: Imperator Justinianus

Cumque haec materia summa numinis liberalitate collecta fuerit, oportet eam pulcherrimo opere extruere et quasi proprium et sanctissimum templum iustitiae consecrare et in libros quinquaginta et certos titulos totum ius dirigere tam secundum nostri constitutionum codicis quam edicti perpetui imitationem, prout hoc vobis commodius esse patuerit, ut nihil extra memoratam consummationem possit esse derelictum, sed his quinquaginta libris totum ius antiquum, per millesimum et quadringentesimum paene annum confusum et a nobis purgatum, quasi quodam muro vallatum nihil extra se habeat: omnibus auctoribus iuris aequa dignitate pollentibus et nemini quadam praerogativa servanda, quia non omnes in omnia, sed certi per certa vel meliores vel deteriores inveniuntur. <a 530 data octavo decimo kalendas ianuarias constantinopoli lampadio et oreste viris clarissimus consulibus.>

CJ.1.17.1.6: Imperator Justinianus

Sed neque ex multitudine auctorum quod melius et aequius est iudicatote, cum possit unius forsitan et deterioris sententia et multos et maiores in aliqua parte superare. et ideo ea, quae antea in notis aemilii papiniani ex ulpiano et paulo nec non marciano adscripta sunt, quae antea nullam vim obtinebant partim propter honorem splendidissimi papiniani, non statim respuere, sed, si quid ex his ad repletionem summi ingenii papiniani laborum vel interpretationem necessarium esse perspexeritis, et hoc ponere legis vicem obtinens non moremini: ut omnes qui relati fuerint in hunc codicem prudentissimi viri habeant auctoritatem tam, quasi et eorum studia ex principalibus constitutionibus profecta et a nostro divino fuerint ore profusa. omnia enim merito nostra facimus, quia ex nobis omnis eis impertietur auctoritas. nam qui non subtiliter factum emendat, laudabilior est eo qui primus invenit. <a 530 data octavo decimo kalendas ianuarias constanti nopoli lampadio et oreste viris clarissimus consulibus.>

CJ.1.17.1.7: Imperator Justinianus

Sed et hoc studiosum vobis esse volumus, ut, si quid in veteribus non bene positum libris inveniatis vel aliquod superfluum vel minus perfectum, supervacua similitudine semota et quod imperfectum est repleatis et omne opus moderatum et quam pulcherrimum ostendatis. hoc etiam nihilo minus observando, ut, si aliquid in veteribus legibus vel constitutionibus, quas antiqui in suis libris posuerunt , non recte scriptum inveniatis, et hoc reformetis et ordini moderato tradatis: ut hoc videatur esse verum et optimum et quasi ab initio scriptum, quod a vobis electum et ibi positum fuerit, et nemo ex comparatione veteris voluminis quasi vitiosam scripturam arguere audeat. cum enim lege antiqua, quae regia nuncupabatur, omne ius omnisque potestas populi romani in imperatoriam translata sunt potestatem, nos vero sanctionem omnem non dividimus in alias et alias conditorum partes, sed totam nostram esse volumus, quid possit antiquitas nostris legibus abrogare? et in tantum volumus eadem omnia, cum reposita sunt, obtinere, ut si aliter fuerant apud veteres conscripta, in contrarium autem in compositione inveniantur, nullum crimen scripturae imputetur, sed nostrae electioni hoc adscribatur. <a 530 data octavo decimo kalendas ianuarias constantinopoli lampadio et oreste viris clarissimus consulibus.>

CJ.1.17.1.8: Imperator Justinianus

Nulla itaque in omnibus praedicti codicis membris antinomia (sic enim a vetustate graeco vocabulo nuncupatur) aliquem sibi vindicet locum, sed sit una concordia, una consequentia, adversario nemine constituto. <a 530 data octavo decimo kalendas ianuarias constantinopoli lampadio et oreste viris clarissimus consulibus.>

CJ.1.17.1.9: Imperator Justinianus

Sed et similitudinem (secundum quod dictum est) ab huiusmodi consummatione volumus exulare: et ea, quae sacratissimis constitutionibus quas in codicem nostrum redegimus cauta sunt, iterum poni ex veteri iure non concedimus, cum divalium constitutionum sanctio sufficit ad eorum auctoritatem: nisi forte vel propter divisionem vel propter repletionem vel propter pleniorem indaginem hoc contigerit : et hoc tamen perraro, ne ex continuatione huiusmodi lapsus oriatur aliquid in tali prato spinosum. <a 530 data octavo decimo kalendas ianuarias constantinopoli lampadio et oreste viris clarissimus consulibus.>

CJ.1.17.1.10: Imperator Justinianus

Sed et si quae leges in veteribus libris positae iam in desuetudinem abierunt, nullo modo vobis easdem ponere permittimus, cum haec tantummodo obtinere volumus , quae vel iudiciorum frequentissimus ordo exercuit vel longa consuetudo huius almae urbis comprobavit, secundum salvii iuliani scripturam, quae indicat debere omnes civitates consuetudinem romae sequi, quae caput est orbis terrarum, non ipsam alias civitates. romam autem intellegendum est non solum veterem, sed etiam regiam nostram, quae deo propitio cum melioribus condita est auguriis. <a 530 data octavo decimo kalendas ianuarias constantinopoli lampadio et oreste viris clarissimus consulibus.>

CJ.1.17.1.11: Imperator Justinianus

Ideoque iubemus duobus istis codicibus omnia gubernari, uno constitutionum, altero iuris enucleati et in futuro codici componendi: vel si quid aliud a nobis fuerit promulgatum institutionum vicem obtinens, ut rudis animus studiosi simplicibus enutritus facilius ad altioris prudentiae redigatur scientiam. <a 530 data octavo decimo kalendas ianuarias constantinopoli lampadio et oreste viris clarissimus consulibus.>

CJ.1.17.1.12: Imperator Justinianus

Nostram autem consummationem, quae a vobis deo adnuente componetur, digestorum vel pandectarum nomen habere sancimus, nullis iuris peritis in posterum audentibus commentarios illi adplicare et verbositate sua supra dicti codicis compendium confundere: quemadmodum et in antiquioribus temporibus factum est, cum per contrarias interpretantium sententias totum ius paene conturbatum est sed sufficiat per indices tantummodo et titulorum subtilitatem quae paratitla nuncupantur quaedam admonitoria eius facere, nullo ex interpretatione eorum vitio oriundo. <a 530 data octavo decimo kalendas ianuarias constantinopoli lampadio et oreste viris clarissimus consulibus.>

CJ.1.17.1.13: Imperator Justinianus

Ne autem per scripturam aliqua fiat in posterum dubitatio, iubemus non per siglorum captiones et compendiosa aenigmata, quae multas per se et per suum vitium antinomias induxerunt, eiusdem codicis textum conscribi: etiam si numerus librorum significatur aut aliud quicquam: nec haec etenim per specialia sigla numerorum manifestari, sed per litterarum consequentiam explanari concedimus. <a 530 data octavo decimo kalendas ianuarias constantinopoli lampadio et oreste viris clarissimus consulibus.>

CJ.1.17.1.14: Imperator Justinianus

Haec omnia igitur deo placido facere tua prudentia una cum aliis facundissimis viris studeat et tam subtili quam celerrimo fini tradere, ut codex consummatus et in quinquaginta libros digestus nobis offeratur in maximam et aeternam rei memoriam deique omnipotentis providentiae argumentum nostrique imperii vestrique ministerii gloriam. <a 530 data octavo decimo kalendas ianuarias constantinopoli lampadio et oreste viris clarissimus consulibus.>

CJ.1.17.2pr.: Imperator Justinianus

Tanta circa nos divinae humanitatis est providentia, ut semper aeternis liberalitatibus nos sustentare dignetur. post bella enim parthica aeterna pace sopita postque vandalicam gentem ereptam et carthaginem, immo magis omnem libyam romano imperio iterum sociatam et leges antiquas iam senio praegravatas per nostram vigilantiam praebuit in novam pulchritudinem et moderatum pervenire compendium: quod nemo ante nostrum imperium umquam speravit neque humano ingenio possibile esse penitus existimavit. erat enim mirabile romanam sanctionem ab urbe condita usque ad nostri imperii tempora, quae paene in mille et quadringentos annos concurrunt, intestinis proeliis vacillantem hocque et in imperiales constitutiones extendentem in unam reducere consonantiam, ut nihil neque contrarium neque idem neque simile in ea inveniatur et ne geminae leges pro rebus singulis positae usquam appareant. namque hoc caelestis quidem providentiae peculiare fuit, humanae vero imbecillitati nullo modo possibile. nos itaque more solito ad immortalitatis respeximus praesidium et summo numine invocato deum auctorem et totius operis praesulem fieri optavimus et omne studium triboniano viro excelso magistro officiorum et ex quaestore sacri nostri palatii et ex consule credidimus eique omne ministerium huiuscemodi ordinationis imposuimus, ut ipse una cum aliis illustribus et prudentissimis viris nostrum desiderium adimpleret. nostra quoque maiestas semper investigando et perscrutando ea quae ab his componebantur, quidquid dubium et incertum inveniebatur, hoc numine caelesti erecta emendabat et in competentem formam redigebat. omnia igitur confecta sunt domino et deo nostro i hesu christo possibilitatem tam nobis quam nostris in hoc satellitibus praestante. * caesar flav. iust. a. ad senatum et omnes populos. * <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.1: Imperator Justinianus

Et principales quidem constitutiones duodecim libris digestas iam ante in codicem nostro nomine praefulgentem contulimus. postea vero maximum opus adgredientes ipsa vetustatis studiosissima opera iam paene confusa et dissoluta eidem viro excelso permisimus tam colligere quam certo moderamini tradere. sed cum omnia percontabamur, a praefato viro excelso suggestum est duo paene milia librorum esse conscripta et plus quam tricies centena milia versuum a veteribus effusa, quae necesse esset omnia et legere et perscrutari et ex his si quid optimum fuisset eligere. quod caelesti fulgore et summae trinitatis favore confectum est secundum nostra mandata, quae ab initio ad memoratum virum excelsum fecimus, et in quinquaginta libros omne quod utilissimum erat collectum est et omnes ambiguita tes decisae nullo seditioso relicto. nomenque libris imposuimus digestorum seu pandectarum, quia omnes disputationes et decisiones in se habent legitimas et quod undique fuit collectum, hoc in sinus suos receperunt, in centum quinquaginta paene milia versuum totum opus consummantes. et in septem partes eos digessimus , non perperam neque sine ratione, sed in numerorum naturam et artem respicientes et consentaneam eis divisionem partium conficientes. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.2: Imperator Justinianus

Igitur prima quidem pars totius contextus, quae graeco vocabulo prwta nuncupatur, in quattuor libros seposita est. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.3: Imperator Justinianus

Secundus autem articulus septem libros habet, qui de iudiciis appellantur. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.4: Imperator Justinianus

In tertia vero congregatione omnia quae de rebus nominantur contulimus, octo libris eis deputatis. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.5: Imperator Justinianus

Quartus autem locus, qui et totius compositionis quasi quidam invenitur umbilicus, octo libros suscepit. in quibus omnia quae ad hypothecam pertinent oreposita sunt, ut non a pigneraticia actione in libris de rebus posita multum distarent: alio libro eodem inserto volumine, quae aedilicium edictum et redhibitoriam actionem et duplae stipulationem, quae de evictionibus proposita est, continet. quia haec omnia titulis emptionum et venditionum consentanea sunt et praedicta actiones quasi pedisequae illarum ab initio processerunt, in vetustioris quidem edicti ordinatione in loca devia et multo distantia devagantes, per nostram autem providentiam his congregatae, cum oportuerat ea quae de eodem paene loquuntur in confinio ponere. alius itaque liber post duo primos nobis excogitatus est de usuris et traiecticiis pecuniis et de instrumentis et testibus et probationibus nec non praesumptionibus. et memorati tres singulares libri iuxta compositionem de rebus positi sunt. post hos si qua de sponsalibus vel nuptiis vel dotibus legibus dicta sunt reposuimus, tribus librorum voluminibus ea concludentes. de tutelis autem et curationibus geminos libros conscripsimus. et memoratam ordinationem octo librorum mediam totius operis reposuimus, omnia undique tam utilissima quam pulcherrima iura continentem. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.6: Imperator Justinianus

Quintus autem exoritur nobis digestorum articulus, in quo de testamentis et codicillis tam privatorum quam militum omne, quidquid antiquis dictum est, inveniat quis depositum: qui de testamentis appellatur. de legatis autem et fideicommissis quinque librorum numerus adgregatus est. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.6a: Imperator Justinianus

Cumque nihil tam peculiare fuerat, quam ut legatis quidem legis falcidiae narratio, fideicommissis autem senatus consulti trebelliani, singulis libris utrique eorum adplicatis tota pars quinta in novem libros coadunata est. solum autem senatus consultum trebellianum ponendum esse existimavimus: captiosas etenim et ipsis veteribus odiosas pegasiani senatus consulti ambages et utriusque senatus consulti ad se tam supervacuas quam scrupulosas diversitates respuentes totum ius super his positum trebelliano senatus consulto adiudicavimus. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.6b: Imperator Justinianus

Sed in his nihil de caducis a nobis memoratum est, ne causa, quae in rebus non prospere gestis et tristibus temporibus romanis increbuit calamitatibus, bello coalescens civili, nostris remaneant temporibus, quae favor caelestis et pacis vigore firmavit et super omnes gentes in bellicis victoriis posuit, ne luctuosum monumentum laeta saecula inumbrare concedatur. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.7: Imperator Justinianus

Sexta deinde pars digestorum exoritur, in quibus omnes bonorum possessiones positae sunt, quae ad ingenuos, quae ad libertinos respiciunt: ut et ius omne, quod de gradibus et adfinitatibus descendit, legitim aeque hereditates et omnis ab intestato successio et tertullianum et orfitianum senatus consultum, ex quibus matres et filii invicem sibi heredes existunt, in geminos libros contulimus, bonorum possessionis multitudinem in compendiosum et manifestissimum ordinem concludentes. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.7a: Imperator Justinianus

Post haec ea, quae de operis novi nuntiationibus damnique infecti et pro aedificiis dirutis et eorum insidiis et quae de aqua pluvia arcenda veteribus auctoribus placita sunt, nec non de publicianis et donationibus tam inter vivos quam mortis causa conficiendis cauta legibus invenimus, in librum singularem deduximus. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.7b: Imperator Justinianus

De manumissionibus autem et de liberali causa alius liber res pondit: <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.7c: Imperator Justinianus

Quemadmodum et de adquisitione tam dominii quam possessionis et titulis qui eam inducunt multae et variae lectiones uni sunt insertae volumini: <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.7d: Imperator Justinianus

Alio libro deputato his, qui iudicati vel in iure confessi sunt, et de bonorum detentionibus et venditionibus et ut ne quid in fraudem creditorum fiat. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.7e: Imperator Justinianus

Postque haec omnia interdicta glomerata sunt: et deinceps exceptiones et de temporum prolixitatibus et de obligationibus et actionibus liber iterum singularis extenditur: ut praefata sexta pars totius digestorum voluminis octo libris definiatur. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.8: Imperator Justinianus

Septimus autem et novissimus articulus digestorum sex libris formatus est. quo de stipulationibus seu verborum obligationibus et fideiussoribus et mandatoribus , nec non novationibus et solutionibus et acceptilationibus et de praetoris stipulationibus omne quod ius invenitur gemino volumine inscriptum est, quod in libris antiquis nec numerari possibile fuit. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.8a: Imperator Justinianus

Et post hoc duo terribiles libri positi sunt pro delictis privatis et extraordininariis nec non publicis criminibus, qui omnem continent severitatem poenarumque atrocitatem. quibus permixta sunt et ea quae de audacibus hominibus cauta sunt, qui se celare conantur et contumaces existunt: et de poenis, quae condemnatis infliguntur vel conceduntur, nec non de eorum substantiis. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.8b: Imperator Justinianus

Liber autem singularis pro appellationibus nobis excogitatus est contra sententias tam civiles quam criminales causas finientes. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.8c: Imperator Justinianus

Cetera autem omnia, quae ad municipales vel de decurionibus et muneribus vel publicis operibus vel nundinis et pollicitationibus ac diversis cognitionibus et censibus vel significatione verborum veteribus inventa sunt quaeque regulariter definita, in se recepit quinquagesimus, totius consummationis perfectus. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.9: Imperator Justinianus

Quae omnia confecta sunt per virum excelsum nec non prudentissimum magistrum ex quaestore et ex consule tribonianum, qui similiter eloquentiae et legitimae scientiae artibus decoratus et in ipsis rerum experimentis emicuit nihilque maius nec carius nostris umquam iussionibus duxit: nec non per alios viros magnificos et studiosissimos perfecta sunt, id est constantinum virum illustrem comitem sacrarum largitionum et magistrum scrinii libellorum sacrarumque cognitionum, qui semper nobis ex bona opinione et gloria sese commendavit: nec non theophilum virum illustrem magistrum iurisque peritum in hac splendissima civitate laudabiliter optimam legum gubernationem extendentem: et dorotheum virum illustrem et fa cundissimum quaestiorum, quem in berytiensium splendidissima civitate leges discipulis tradentem propter eius optimam opinionem et gloriam ad nos deduximus participemque huius operis fecimus: sed et anatolium virum illustrem magistrum, qui et ipse apud berytienses iuris interpres constitutus ad hoc opus adlectus est , vir ab antiqua stirpe legitima procedens, cum et pater eius leontius et avus eudoxius post patricium inclutae recordationis quaestorium et antecessorem et leontium virum gloriosissimum praefectorium et consularem atque patricium filium eius optimam sui memoriam in legibus reliquerunt: nec non cratinum virum illustrem et comitem sacrarum largitionum et optimum antecessorem huius almae urbis constitutum: qui omnes ad praedictum opus electi sunt una cum stephano, mena, prosdocio, eutolmio, timotheo, leonide, leontio, platone, iacobo, constantino, iohanne, viris prudentissimis, qui patroni quidem sunt causarum apud maximam sedem praefecturae, quae orientalibus praetoriis praesidet, omne autem suae virtutis testimonium undique accipientes et a nobis ad tanti operis consummationem electi sunt. et cum omnes in unum convenerunt gubernatione triboniani viri excelsi, ut tantum opus nobis auctoribus possint conficere, deo propitio in quinquaginta libros opus consummatum est. <a 533 data septimo decimo kalendas ianuarius consta ntinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.10: Imperator Justinianus

Tanta autem nobis antiquitati habita est reverentia, ut nomina prudentium taciturnitati tradere nullo patiamur modo: sed unusquisque eorum, qui auctor legis fuit, nostris digestis inscriptus est: hoc tantummodo a nobis effecto, ut, si quid in legibus eorum vel supervacuum vel imperfectum aut minus idoneum visum est, vel adiectionem vel deminutionem necessariam accipiat et rectissimis tradatur regulis. et ex multis similibus vel contrariis quod rectius habere apparebat, hoc pro aliis omnibus positum est unaque omnibus auctoritate indulta, ut quidquid ibi scriptum est, hoc nostrum appareat et ex nostra voluntate compositum: nemine audente comparare ea quae antiquitas habebat his quae nostra auctoritas introduxit, quia multa et maxima sunt, quae propter utilitatem rerum transformata s unt. adeo ut et si principalis constitutio fuerat in veteribus libris relata, neque ei pepercimus, sed et hanc corrigendam esse putavimus et in melius restaurandam. nominibus etenim veteribus relictis, quidquid legum veritati decorum et necessarium fuerat, hoc nostris emendationibus servavimus. et propter hanc causam et si quid inter eos dubitabatur, hoc iam in tutissimam pervenit quietem, nullo titubante relicto. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.11: Imperator Justinianus

Sed cum prospeximus, quod ad portandam tantae sapientiae molem non sunt idonei homines rudes et qui in primis legum vestibulis stantes intrare ad arcana eorum properant, et aliam mediocrem eruditionem praeparandam esse censuimus, ut sub ea colorati et quasi primitiis omnium imbuti possint ad penetralia eorum intrare et formam legum pulcherrimam non coniventibus oculis accipere. et ideo triboniano viro excelso, qui ad totius operis gubernationem relectus est, nec non theophilo et dorotheo viris illustribus et facundissimis antecessoribus accersitis mandavimus, quatenus libris, quos veteres composuerunt, qui prima legum argumenta continebant et institutiones vocabuntur, separatim collectis, quidquid ex his utile et aptissimum et undique sit elimatum et rebus, quae in praesenti aevo in usu vertuntur, consentaneum invenitur, hoc et capere studeant et quattuor libris reponere et totius eruditionis prima fundamenta atque elementa ponere, quibus iuvenes suffulti possint graviora et perfectiora legum scita sustentare. admonuimus autem eos, ut memores etiam nostrarum fiant constitutionum, quas pro emendatione iuris promulgavimus, et in confectione institutionum etiam eadem emendatione ponere non morentur: ut sit manifestum et quid antea vacillabat et quid postea in stabilitatem redactum est. quod opus ab his perfectum ut nobis oblatum et relectum est, et prono suscepimus animo et nostris sensibus non indignum esse iudicavimus et praedictos libros constitutionum vicem habere iussimus: quod in oratione nostra, quam eisdem libris praeposuimus, apertius declaratur. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.12: Imperator Justinianus

Omni igitur romani iuris dispositione composita et in tribus voluminibus, id est institutionum et digestorum seu pandectarum nec non constitutionum, perfecta et in tribus annis consummata, quae ut primum separari coepit, neque in totum decennium compleri sperabatur: omnipotenti deo et hanc operam ad hominum sustentationem piis obtulimus animis uberesque gratias maximae deitati reddidimus, quae nobis praestitit et bella feliciter agere et honesta pace perpotiri et non tantum nostro, sed etiam omni aevo tam instanti quam posteriori leges optimas ponere. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.12(13): Imperator Justinianus

Omnibus itaque hominibus eandem sanctionem manifestam facere necessarium esse perspeximus, ut sit eis cognitum, quanta confusione et infinitate absoluti in quantam moderationem et legitimam veritatem pervenerunt: legesque in posterum habeant tam directas quam compendiosas omnibusque in promptu positas et ad possidendi libros earum facilitatem idoneas: ut non mole divitiarum expensa possint homines supervacuae legum multitudinis adipisci volumina, sed vilissima pecunia facilis eorum comparatio pateat tam ditioribus quam tenuioribus, minimo pretio magna prudentia reparanda. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.13: Imperator Justinianus

Si quid autem in tanta legum compositione, quae ab immenso librorum numero collecta est, simile forsitan raro inveniatur, nemo hoc vituperandum existimet, sed primum quidem imbecillitati humanae, quae naturaliter inest, hoc inscribat , quia omnium habere memoriam et penitus in nullo peccare divinitatis magis quam mortalitatis est: quod et a maioribus dictum est. deinde sciat, quod similitudo in quibusdam et his brevissimis adsumpta non inutilis est, et nec citra nostrum propositum hoc subsecutum: aut enim ita lex necessaria erat, ut diversis titulis propter rerum cognationem adplicari eam oporteat, aut, cum fuerat aliis diversis permixta, impossibile erat eam per partes detrahi, ne totum confundatur. et in his partibus, in quibus perfectissimae visiones eitae veterum fuerant, quod particulatim in eas fuerat sparsum, hoc dividere ac separare penitus erat incivile, ne tam sensus quam aures legentium ex hoc perturbentur. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.14: Imperator Justinianus

Similique modo si quid principalibus constitutionibus cautum est, hoc in digestorum volumine poni nullo concessimus modo, quasi constitutionum recitatione sufficiente: nisi et hoc raro ex isdem causis, quibus similitudo adsumpta est. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.15: Imperator Justinianus

Contrarium autem aliquid in hoc codice positum nullum sibi locum vindicabit nec invenitur, si quis subtili animo diversitatis rationes excutiet: sed est aliquid novum inventum vel occulte positum, quod dissonantiae querellam dissoluit et aliam naturam inducit discordiae fines effugientem. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.16: Imperator Justinianus

Sed et si quid forsitan praetermissum est, quod in tantis milibus quasi in profundo positum latitabat, et, cum idoneum fuerat poni, obscuritate involutum necessario derelictum est: quis hoc apprehendere recto animo possit? primo quidem propter ingenii mortalis exiguitatem: deinde propter ipsius rei vitium, quod multis inutilibus permixtum nullam sui ad eruendum praebuit copiam: deinde quod multo utilius est pauca idonea effugere, quam multis inutilibus homines praegravari. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.17: Imperator Justinianus

Mirabile autem aliquid ex his libris emersit, quod multitudo antiqua praesente brevitate paucior invenitur. homines etenim, qui antea lites agebant, licet multae leges fuerant positae, tamen ex paucis lites perferebant vel propter inopiam librorum, quos comparare eis impossibile erat, vel propter ipsam inscientiam, et voluntate iudicum magis quam legitima auctoritate lites dirimebantur. in praesenti autem consummatione nostrorum digestorum e tantis leges collectae sunt voluminibus, quorum et nomina antiquiores homines non dicimus nesciebant, sed nec umquam audiebant. quae omnia collecta sunt substantia amplissima congregata, ut egena quidem antiqua multitudo inveniatur, opulentissima autem brevitas nostra efficiatur. antiquae autem sapientiae librorum copiam maxime tribonianus vir excellentissimus praebuit, in quibus multi fuerant et ipsis eruditissimis hominibus incogniti, quibus omnibus perlectis, quidquid ex his pulcherrimum erat, hoc semotum in optimam nostram compositionem pervenit. sed huius operis conditores non solum ea volumina perlegerunt, ex quibus leges positae sunt, sed etiam alia multa, quae, nihil vel utile vel novum in eis invenientes, quod exceptum nostris digestis applicarent, optimo animo respuerunt. <a 533 data septimo decimo kalen das ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.18: Imperator Justinianus

Sed quia divinae quidem res perfectissimae sunt, humani vero iuris condicio semper in infinitum decurrit et nihil est in ea, quod stare perpetuo possit (multas etenim formas edere natura novas deproperat), non desperamus quaedam postea emergi negotia, quae adhuc legum laqueis non sunt innodata. si quid igitur tale contigerit, augustum imploretur remedium, quia ideo imperialem fortunam rebus humanis deus praeposuit, ut possit omnia quae noviter contingunt et emendare et componere et modis et regulis competentibus tradere. et hoc non primum a nobis dictum est, sed ab antiqua descendit prosapia: cum et ipse iulianus legum et edicti perpetui subtilissimus conditor in suis libris hoc rettulit, ut, si quid imperfectum inveniatur, ab imperiali sanctione hoc repleatur. et non ipse solus, sed et divus hadrianus in compositione edicti et senatus consulto, quod eam secutum est, hoc apertissime definivit, ut, si quid in edicto positum non inveniatur, hoc ad eius regulas eiusque coniecturas et imitationes possit nova instruere auctoritas. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.19: Imperator Justinianus

Haec igitur omnia scientes, patres conscripti et omnes orbis terrarum homines, gratias quidem amplissimas agite summae divinitati, quae vestris temporibus tam saluberrimum opus servavit: quo enim antiquitas digna divino non est visa iudicio, hoc vestris temporibus indultum est. hasce itaque leges et adorate et observate omnibus antiquioribus quiescentibus: nemoque vestrum audeat vel comparare eas prioribus vel, si quid dissonans in utroque est, requirere, quia omne quod hic positum est hoc unicum et solum observari censemus. nec in iudicio nec in alio certamine, ubi leges necessariae sunt, ex aliis libris, nisi ab isdem institutionibus nostrisque digestis et constitutionibus a nobis compositis vel promulgatis aliquid vel recitare vel ostendere conetur, nisi temerator velit falsitatis crimini subiectus una cum iudice, qui ei audientiam accommodabit, poenis gr avissimis laborare. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.20: Imperator Justinianus

Ne autem incognitum vobis fiat, ex quibus veterum libris haec consummatio ordinata est, iussimus et hoc in primordiis digestorum nostrorum inscribi, ut manifestissimum sit, ex quibus legis latoribus quibusque libris eorum et quot milibus hoc iustitiae romanae templum aedificatum est. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.20a: Imperator Justinianus

Legis latores autem vel commentatores eos elegimus, qui digni tanto opere fuerant et quos et anteriores piissimi principes admittere non sunt indignati, omnibus uno dignitatis apice impertito nec sibi quodam aliquam praerogativam vindicante. cum enim constitutionum vicem et has leges obtinere censuimus quasi ex nobis promulgatas, quid amplius aut minus in quibusdam esse intellegatur, cum una dignitas, una potestas omnibus est indulta? <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.21: Imperator Justinianus

Hoc autem quod et ab initio nobis visum est, cum hoc opus fieri deo adnuente mandabamus, tempestivum nobis videtur et in praesenti sancire, ut nemo neque eorum , qui in praesenti iuris peritiam habent, nec qui postea fuerint audeat commentarios isdem legibus adnectere: nisi tantum si velit eas in graecam vocem transformare sub eodem ordine eaque consequentia, sub qua voces romanae positae sunt (hoc quod graeci kata poda dicunt), et si qui forsitan per titulorum subtilitatem adnotare maluerint et ea quae paratitla nuncupantur componere. alias autem legum interpretationes, immo magis perversiones eos iactare non concedimus , ne verbositas eorum aliquid legibus nostris adferat ex confusione dedecus. quod et in antiquis edicti perpetui commentatoribus factum est, qui opus moderate confectum huc atque illuc in diversas sententias producentes in infinitum detraxerunt, ut paene omnem romanam sanctionem esse confusam. quos si passi non sumus , quemadmodum posteritatis admittatur vana discordia? si quid autem tale facere ausi fuerint, ipsi quidem falsitatis rei constituantur, volumina autem eorum omnimodo corrumpentur. si quid vero, ut supra dictum est, ambiguum fuerit visum, hoc ad imperiale culmen per iudices referatur et ex auctoritate augusta manifestetur, cui soli concessum est leges et condere et interpretari. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.22: Imperator Justinianus

Eandem autem poenam falsitatis constituimus et adversus eos, qui in posterum leges nostras per si glorum obscuritates ausi fuerint conscribere. omnia enim, id est et nomina prudentium et titulos et librorum numeros, per consequentias litterarum volumus, non per sigla manifestari, ita ut, qui talem librum sibi paraverit, in quo sigla posita sunt in qualemcumque locum libri vel voluminis, sciat inutilis se esse codicis dominum: neque enim licentiam aperimus ex tali codice in iudicium aliquid recitare, qui in quacumque sua parte siglorum habet malitiam. ipse autem librarius, qui eas inscribere ausus fuerit, non solum criminali poena secundum quod dictum est plectetur, sed etiam libri aestimationem in duplum domino reddat, si et ipse dominus ignorans talem librum vel comparaverit vel confici curaverit. quod et antea a nobis dispositum est in constitutione, quam ad legum professores dimisimus. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.23: Imperator Justinianus

Leges autem nostras, quae in his codicibus, id est institutionum seu elementorum et digestorum vel pandectarum posuimus, suum obtinere robur ex tertio nostro felicissimo sancimus consulatu, praesentis duodecimae indictionis tertio kalendas ianuarias, in omne aevum valituras et una cum nostris constitutionibus pollentes et suum vigorem in iudiciis ostendentes in omnibus causis, sive quae postea emerserint sive in iudiciis adhuc pendent nec eas iudicialis vel amicalis forma compescuit. quae enim iam vel iudiciali sententia finita sunt vel amicali pacto sopita, haec reuscitari nullo volumus modo. bene autem properavimus in tertium nostrum consulatum et has leges edere, quia maximi dei et domini nostri ihesu christi auxilium felicissimum eum nostrae rei publicae donavit, cum in hunc et b ella parthica abolita sunt et quieti perpetuae tradita, et tertia pars mundi nobis adcrevit (post europam enim et asiam et tota libya nostro imperio adiuncta est) et tanto operi legum caput impositum est, omnia caelestia dona nostro tertio consulatui indulta. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.17.2.24: Imperator Justinianus

Itaque omnes iudices nostri pro sua iurisdictione easdem leges suscipiant et tam in suis iudiciis quam in hac regia urbe habeant et proponant, et praecipue vir excelsus huius almae urbis praefectus. curae autem erit tribus excelsis praefectis praetoriis tam orientalibus quam illyricis nec non libycis per suas auctoritates omnibus, qui suae iurisdictioni suppositi sunt, eas manifestare. <a 533 data septimo decimo kalendas ianuarius constantinopoli dn. iustiniano pp. a. iii consule >

CJ.1.18.0. De iuris et facti ignorantia.

CJ.1.18.1: Imperator Antoninus

Quamvis, cum causam tuam ageres, ignorantia iuris propter simplicitatem armatae militiae adlegationes competentes omiseris, tamen si nondum satisfecisti, permitto tibi, si coeperis ex sententia conveniri, defensionibus tuis uti. * ant. a. maximo mil. * <a 212 d. vii k. mai. duobus aspris conss.>

CJ.1.18.2: Imperator Antoninus

Cum ignorantia iuris excusari facile non possis, si maior annis hereditati matris tuae renuntiasti, sera prece subveniri tibi desideras. * ant. a. sextio iuvenali. * <a 243 pp. xv k. nov. arriano et papo conss.>

CJ.1.18.3: Imperator Philippus

Si emancipata a patre intra annum bonorum possessionem petere cessasti, praetendere iuris ignorantiam nullis rationibus potes. * philipp. a. Marcellae. * <a 244 pp. xvi k. iul. peregrino et aemiliano conss.>

CJ.1.18.4: Imperatores Diocletianus, Maximianus

Si post divisionem factam testamenti vitium in lucem emerserit, ex his, quae per ignorantiam confecta sunt, praeiudicium tibi non comparabitur. ostende igitur apud correctorem virum clarissimum amicum nostrum testamentum vel fide veri deficere vel iuris ratione stare non posse, ut infirmata scriptura, quae testamenti vice prolata est, solidam successionem obtineas. * diocl. et maxim. aa. iulianae. * <a 290 d. viii id. iul. diocletiano iiii et maximiano iii aa. conss.>

CJ.1.18.5: Imperatores Diocletianus, Maximianus

Cum falsa demonstratione mutari substantia veritatis minime possit, respondendo id quod paternum erat ex maternis esse bonis nihil egisti. * diocl. et maxim. aa. et constant. et maxim. nobb. cc. martiali.* <a 293 d. prid. k. ian. diocletiano v et maximiano iiii aa. conss.>

CJ.1.18.6: Imperatores Diocletianus, Maximianus

Si non transactionis causa, sed indebitam errore facti olei materiam vos archantico stipulanti dare spopondisse rector animadverterit provinciae, reddito quod debetis residui liberationem condicentes audiet. * diocl. et maxim. aa. et cc. tauro et pollioni. * <a 294 d. v k. mai. cc. conss.>

CJ.1.18.7: Imperatores Diocletianus, Maximianus

Error facti necdum negotio finito nemini nocet: nam causa decisa velamento tali non instauratur. * diocl. et maxim. aa. et cc. zoe. * <a 294 d. vi non. iul. cc. conss.>

CJ.1.18.8: Imperatores Diocletianus, Maximianus

Cum testamentum nullo iure constiterit, ex eius, quae ab intestato successit, professione sola velut ex testamento liberos per errorem profitentis orcini vel proprii liberti, si non ipsius accessit iudicium, cum errantis voluntas nulla sit, effici non potuerint. * diocl. et maxim. aa. et cc. dionysiae. * <a 294 d. v k. sept. cc. conss.>

CJ.1.18.9: Imperatores Diocletianus, Maximianus

Non idcirco minus, quod a vobis velut a liberis debitam accepisse pecuniam samus dicitur, cum nullus sit errantis consensus, movere status quaestionem prohibentur eius heredes. * diocl. et maxim. aa. et cc.Gaio et anthemio. * <a 294 d. vi id. dec. cc. conss.>

CJ.1.18.10: Imperatores Diocletianus, Maximianus

Cum quis ius ignorans indebitam pecuniam persolverit, cessat repetitio. per ignorantiam enim facti tantum repetitionem indebiti soluti competere tibi notum est. * diocl. et maxim. aa.Et cc. amphiae. * <a 294 d. v k. ian. cc. conss.>

CJ.1.18.11: Imperator Constantinus

Quamvis in lucro nec feminis ius ignorantibus subveniri soleat, tamen contra aetatem adhuc imperfectam locum hoc non habere retro principium statuta declarant. * constant. a. valeriano vic. * <a 330 d. iiii k. mai. gallicano et symmacho conss.>

CJ.1.18.12: Imperatores Valentinianus, Theodosius

Constitutiones principum nec ignorare quemquam nec dissimulare permittimus. * valentin. et theodos. aa. flaviano pp. illyrici et italiae. * <a 391 d. vi k. iun. vincentiae tatiano et symmacho conss.>

CJ.1.18.13: Imperatores Leo, Anthemius

Ne passim liceat mulieribus omnes suos contractus retractare in his, quae praetermiserint vel ignoraverint, statuimus, si per ignorantiam iuris damnum aliquod circa ius vel substantiam suam patiantur, in his tantum casibus, in quibus praeteritarum legum auctoritas eis suffragatur, subveniri. * leo et anthem. aa. erythrio pp. * <a 472 d. k. iul marciano cons.>

CJ.1.19.0. De precibus imperatori offerendis et de quibus rebus supplicare liceat vel non.

CJ.1.19.1: Imperatores Diocletianus, Maximianus

Licet servilis condicio deferendae precis facile capax non sit, tamen admissi sceleris atrocitas et laudabilis fidei exemplum super vindicanda caede domini tui hortamento fuit, ut praefecto praetorio iuxta adnotationis nostrae decretum demandaremus (quem adire cura), ut auditis his, quae in libello contulisti, et reos investigare et severissimam vindictam iuxta legum censuram exigere curet. * diocl. et maxim. aa.Firminae. * <a 290 d. viii id oct. diocletiano iiii et maximiano iii aa. conss.>

CJ.1.19.2: Imperator Constantinus

Quotiens rescripto nostro moratoria praescriptio remittitur, aditus supplicandi pandatur. quod autem totius negotii cognitionem tollit et vires principalis negotii exhaurit, sine gravi partis alterius dispendio convelli non potest. nec praescriptionis igitur peremptoriae relaxatio petatur. * constant. a. severo pu. * <a 325 d. x k. iun. nicaeae paulino et iuliano conss.>

CJ.1.19.3: Imperator Constantinus

Nec damnosa fisco nec iuri contraria postulari oportet. * const. a. ad pop. * <a 329 pp. viii k. oct. romae constantino a. viii et constantio c. iiii conss.>

CJ.1.19.4: Imperatores Gratianus, Valentinianus, Theodosius

Universa rescripta, quae in debitorum causis super praestandis dilationibus promulgantur, non aliter valeant, nisi fideiussio idonea super solutione debiti praebeatur. * grat. valentin. et theodos. aaa. floro pp. * <a 382 d. viii k. mart. constantinopoli antonio et syagrio conss.>

CJ.1.19.5: Imperatores Valentinianus, Valens

Si quis adversus praefectorum praetorio sententias duxerit supplicandum victusque fuerit denuo, nullam habebit licentiam iterum super eadem causa supplicandi. * valentin. et valens aa. ad volusianum pp. * <a 365 d. xv k. oct. romae valentiniano et valente aa. conss.>

CJ.1.19.6: Imperatores Honorius, Theodosius

Universis simul hanc observantiam remittimus, ut, a quocumque liberae condicionis constituto vel servo supplicante impetratum fuerit rescriptum, minime requiratur, per quem preces oblatae sunt. * honor. et theodos. aa. isidoro pu. * <a 410 d. ii non. sept. constantinopoli varane cons.>

CJ.1.19.7: Imperatores Theodosius, Valentinianus

Rescripta contra ius elicita ab omnibus iudicibus praecipimus refutari, nisi forte aliquid est, quod non laedat alium et prosit petenti vel crimen supplicanti indulgeat. * theodos. et valentin. aa. ad senatum. * <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.1.19.8: Imperatores Theodosius, Valentinianus

Instrumentorum exempla non prosit precibus adiunxisse, sed necesse sit eorum in supplicatione vim exprimi, ut responsuro principi vera precatio rem aperiat cognoscendam, solis, cum necessitas exegerit, verbis precibus inserendis, quorum de sensu inter partes ita dubitari contigerit, ut etiam merito nostrum expectetur iudicium. * theodos. et valentin. aa. florentio pp. * <a 429 d. vi k. april. constantinopoli florentio et dionysio conss.>

CJ.1.20.0. Quando libellus principi datus litis contestationem facit.

CJ.1.20.1: Imperatores Arcadius, Honorius

Dubium non est contestationem intellegi etiam, si nostrae fuerint tranquillitati preces oblatae, easque adversus heredem quoque eius in quem porrectae sunt vel ab herede eius qui meruerit exerceri. * arcad. et honor. aa. remigio praef. augustali. * <a 396 d. xii k. april. constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.1.20.2: Imperator Justinianus

Temporales actiones, quae per oblationem precum et ad eas rescriptiones perpetuantur, definire necessarium esse duximus, ne quis putet ad alias etiam, quae certis taxantur temporibus, hoc pertinere. sciant igitur omnes eas tantummodo per oblationes precum et ad eas rescripta perpetuari, quae a praetore constitutae annali tempore coartatae sunt. * iust. a. menae pp. * <a 529 d. k. april. constantinopoli decio vc. cons.>

CJ.1.21.0. Ut lite pendente vel post provocationem aut definitivam sententiam nulli liceat imperatori supplicare.

CJ.1.21.1: Imperator Alexander Severus

Licet, postquam supplicasti, priusquam rescriptum impetrares, praeses provinciae vir clarissimus pronuntiaverit, cum tamen a sententia non provocaveris, rescriptum, quod postea secutum esse suggeris, ad retrahenda quae decreto terminata sunt non patrocinatur. * alex. a. caperio. * <a 232 d. k. mart. lupo et maximo conss.>

CJ.1.21.2: Imperator Constantinus

Supplicare causa pendente non licet, nisi vel actorum vel pronuntiationis editio denegetur. qui autem terminatam rescripto vel consultatione quaestionem exquisito suffragio refricare conabitur, in omnem litis aestimationem adversario suo protinus condemnetur: omni venia deneganda, si quis contra haec supplicare temptaverit. * const. a. petronio probiano suo salutem. * <a 316 d. id. aug. arelato. pp. id. oct. theveste sabino et rufino conss.>

CJ.1.21.3: Imperator Constantinus

Qui licitam provocationem omiserit, perpetuo silere debebit nec a nobis impudens petere per supplicationem auxilium. quod si fecerit, desiderio suo carebit et ignominiae poena notabitur. * const. a. ad provinciales. * <a 331 d. k. aug. pp. k. sept. constantinopoli basso et ablabio conss.>

CJ.1.22.0. Si contra ius utilitatemve publicam vel per mendacium fuerit aliquid postulatum vel impetratum.

CJ.1.22.1: Imperatores Diocletianus, Maximianus

Non idcirco minus is, cui a nostro rescripto cognitio delata est, iudicare potest, quod ex gestis quaedam in precibus omissa proponis. * diocl. et maximin. aa. et cc. gregorio. * <a 293 d. v non. mai. diocletiano v et maximiniano iiii aa. conss.>

CJ.1.22.2: Imperatores Diocletianus, Maximianus

Praescriptione mendaciorum opposita, sive in iuris narratione mendacium reperiatur sive in facti sive in tacendi fraude, pro tenore veritatis, non deprecantis adfirmatione, datum iudicem cognoscere debere et secundum hoc de causa convenit ferre sententiam. * diocl. et maxim. aa. et constant. et maximin. cc. statiae.* <a 294 d. k. dec. sirmi cc. conss.>

CJ.1.22.3: Imperator Constantinus

Puniri iubemus decem librarum auri multa iudices, qui vetuerunt precum argui falsitatem. * const. a. ad bassum. * <a 313 d. k. oct. constantino a. iii et licinio c. iii conss.>

CJ.1.22.4: Imperator Constantinus

Etsi non cognitio, sed exsecutio mandatur, de veritate precum inquiri oportet, ut, si fraus intervenit, de omni negotio cognoscatur. * const. a. ad barbarum pompeianum consularem campaniae. * <a 333 d. iii id. nov. aquis dalmatio et zenophilo conss.>

CJ.1.22.5: Imperatores Theodosius, Valentinianus

Etsi legibus consentaneum sacrum oraculum mendax precator attulerit, careat penitus impetratis et, si nimia mentientis invenitur improbitas, etiam severitati subiaceat iudicantis. * theodos. et valentin. aa. ad senatum. * <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.1.22.6: Imperator Anastasius

Omnes cuiuscumque maioris vel minoris administrationis universae nostrae rei publicae iudices monemus, ut nullum rescriptum, nullam pragmaticam sanctionem, nullam sacram adnotationem, quae generali iuri vel utilitati publicae adversa esse videatur, in disceptatione cuiuslibet litigii patiantur proferri, sed generales sacras constitutiones modis omnibus non dubitent observandas. * anastas. a. matroniano pp. * <a 491 ? d. k. iul. constantinopoli.>

CJ.1.23.0. De diversis rescriptis et pragmaticis sanctionibus.

CJ.1.23.1: Imperator Alexander Severus

Si libellum de communi causa tu fraterque tuus dedistis, quamvis rescriptum ad unius personam directum sit, utrique tamen prospectum est. * alex. a. supero. * <a 222 d. id. iul. alexandro a. cons.>

CJ.1.23.2: Imperator Alexander Severus

Falso adseveratur auctoritatem rescriptorum devoluto spatio anni obtinere firmitatem suam non oportere, cum ea, quae ad ius rescribuntur, perennia esse debent, si modo tempus, intra quod adlegari vel audiri debeat, non sit comprehensum. * alex. a. epagatho. * <a 270 d. vii k. nov. antiochiano et orfito conss.>

CJ.1.23.3: Imperatores Diocletianus, Maximianus

Sancimus, ut authentica ipsa atque originalia rescripta et nostra manu subscripta, non exempla eorum, insinuentur. * diocl. et maxim. aa. crispino praesidi prov. phoenice. * <a 292 d. prid. k. april. hannibaliano et asclepiodoto conss.>

CJ.1.23.3: Imperatores Diocletianus, Maximianus

Sancimus, ut authentica ipsa atque originalia rescripta et nostra manu subscripta, non exempla eorum, insinuentur. * diocl. et maxim. aa. crispino praesidi prov. phoenice. * <a 292 d. prid. k. april. hannibaliano et asclepiodoto conss.>

CJ.1.23.4: Imperator Constantinus

Si qua beneficia personalia sine die et consule fuerint deprehensa, auctoritate careant. * const. a. ad lusitanos. * <a 322 d. vii k. aug. savariae probiano et iuliano conss.>

CJ.1.23.5: Imperatores Valentinianus, Theodosius, Arcadius

Sacrilegii instar est divinis super quibuscumque administrationibus vel dignitatibus promulgandis obviare beneficiis. * valentin. theodos. et arcad. aaa. ad nicetium praef. annon. * <a 385 d. k. febr. mediolani arcadio a. et bautone conss.>

CJ.1.23.6pr.: Imperator Leo

Sacri adfatus, quoscumque nostrae mansuetudinis in quacumque parte paginarum scripserit auctoritas, non alio vultu penitus aut colore, nisi purpurea tantummodo scriptione illustrentur, scilicet ut cocti muricis et triti conchylii ardore signentur: eaque tantummodo fas sit proferri et dici rescripta in quibuscumque iudiciis, quae in chartis sive membranis subnotatio nostrae subscriptionis impresserit. * leo a. hilariano mag. off. et patricio. * <a 470 d. vi k. april. iordane et severo conss.>

CJ.1.23.6.1: Imperator Leo

Hanc autem sacri encausti confectionem nulli sit licitum aut concessum habere aut quaerere aut a quoquam sperare: eo videlicet, qui hoc adgressus fuerit tyrannico spiritu, post proscriptionem bonorum omnium capitali non immerito poena plectendo. <a 470 d. vi k. april. iordane et severo conss.>

CJ.1.23.7pr.: Imperator Zeno

Universa rescripta, sive in personam precantium sive ad quemlibet iudicem manaverint, quae vel adnotatio vel quaevis pragmatica sanctio nominetur, sub ea condicione proferri praecipimus, si preces veritate nituntur, nec aliquem fructum precator oraculi percipiat impetrati, licet in iudicio adserat veritatem, nisi quaestio fidei precum imperiali beneficio monstretur inserta. * zeno a. sebastiano pp. * <a 477 d. x k. ian. constantinopoli post consulatum armati.>

CJ.1.23.7.1: Imperator Zeno

Nam et vir magnificus quaestor et viri spectabiles magistri scriniorum: qui sine praefata adiectione qualecumque divinum responsum dictaverint, et iudices, qui susceperint, reprehensionem subibunt et, qui illicite dictata scribere ausi fuerint cuiuscumque scrinii memoriales seu pragmaticarii vel adiutores primicerii, amissione cinguli ferientur. <a 477 d. x k. ian. constantinopoli post consulatum armati.>

CJ.1.23.7.2: Imperator Zeno

Pragmaticas praeterea sanctiones non ad singulorum preces super privatis negotiis proferri, sed si quando corpus aut schola vel officium vel curia vel civitas vel provincia vel quaedam universitas hominum ob causam publicam fuderit preces, manare decernimus, ut hic etiam veritatis quaestio reservetur. <a 477 d. x k. ian. constantinopoli post consulatum armati.>

CJ.1.24.0. De statuis et imaginibus.

CJ.1.24.1: Imperatores Arcadius, Honorius

Si quis iudicum accepisse aeneas vel argenteas vel marmoreas statuas extra imperiale beneficium in administratione positus detegetur, emolumenta, quae acceperit in ea positus dignitate, quam polluit, cum extortis titulis vel praesumptis in quadruplum fisco nostro inferat simulque noverit existimatonis suae poenam se subiturum. nec eos sane a periculo pudoris haberi volumus immunes, qui adulandi studio aut metu inconstanti ignavia transire quae sunt interdicta temptaverint. * arcad. et honor. aa. theodoro pp. * <a 398 d. xii k. ian. mediolani honorio a. iiii et eutychiano conss.>

CJ.1.24.2: Imperator Theodosius

Si quando nostrae statuae vel imagines eriguntur seu diebus, ut adsolet, festis sive communibus, adsit iudex sine adorationis ambitioso fastigio, ut ornamentum diei vel loco et nostrae recordationi sui probet accessisse praesentiam. * theodos. a. et valentin. c. aetio pp. * <a 425 d. iii non. mai. theodosio a. xi et valentiniano c. conss.>

CJ.1.24.3: Imperatores Theodosius, Valentinianus

In nostrae serenitatis imaginibus ac statuis erigendis privatae collationis iniuriam propulsari praecipimus, ne quid in eo suum collator agnoscat. * theodos. et valentin. aa. florentio pp. * <a 439 d. iii non. april. theodosio a. xvii et festo conss.>

CJ.1.24.4: Imperatores Theodosius, Valentinianus

Et virtutum praemia tribui merentibus convenit et aliorum honores aliis damnorum occasionem fieri non oportet. idcirco quotiens vel iudicibus nostris vel cuilibet alii statua fuerit a quocumque collegio seu officio vel in hac sacratissima civitate vel in provinciis postulata, nequaquam ex discriptione sumptus colligi patimur, sed eius, cuius ad honorem petitur, expensis propriis statuam collocari praecipimus. * theodos. et valentin. aa. ad nomum com. et mag. off. * <a 444 d. v k. april. theodosio a. xviii cons.>

CJ.1.25.0. De his qui ad statuas confugiunt.

CJ.1.25.1: Imperatores Valentinianus, Theodosius, Arcadius

Qui ad statuas vel vitandi metus vel creandae invidiae causa confugerint, si certas habuerint causas, quibus confugere ad imperatoria simulacra debuerint, iure ac legibus vindicentur. si vero probati fuerint artibus suis invidiam inimicis creare voluisse, ultrix in eos sententia proferatur. * valentin. theodos. et arcad. aaa. cynegio pp. * <a 386 d. prid. non. iul. constantinopoli honorio np. et euodio conss.>

CJ.1.26.0. De officio praefectorum praetorio orientis et illyrici.

CJ.1.26.1: Imperator Alexander Severus

Libellus praefecto praetorio datus pro contestatione haberi non potest. * alex. a. theodoto. * <a 230 d. prid. k. oct. agricola et clemente conss.>

CJ.1.26.2: Imperator Alexander Severus

Formam a praefecto praetorio datam, et si generalis sit, minime legibus vel constitutionibus contrariam, si nihil postea ex auctoritate mea innovatum est, servari aequum est. * alex. a. restituto. * <a 235 d. id. aug. severo et quintiano conss.>

CJ.1.26.3: Imperatores Valentinianus, Theodosius, Arcadius

Si quos iudices vel propter adversam et longinquam corporis valetudinem vel propter neglegentiam aut furtum vel simile aliquod vitium sublimitas tua inutiles esse reppererit, his ab administratione remotis et vice eorum aliis subrogatis furibusque poenis legitimis subactis ad nostrae mansuetudinis scientiam non crimina, sed vindicta referatur. * valentin. theodos. et arcad. aaa. tatiano pp. * <a 389 d. vi non. mai. mediolani timasio et promoto conss.>

CJ.1.26.4: Imperatores Valentinianus, Theodosius, Arcadius

De ordinario iudice semper illustris est cognitio praefecturae, licet militari viro ab eo facta fuerit iniuria. * valentin. theodos. et arcad. aaa. addeo com. et mag. utr. mil.* <a 393 d. prid. id. ian. constantinopoli theodosio a. iii et abundatio conss.>

CJ.1.26.5: Imperatores Arcadius, Honorius, Theodosius

Si qui posthac velut indebitis oneribus gravati ad preces crediderint convolandum sive de naviculariis rationibus sive transvectionibus, rescripta, quae de omnibus his atque huiusmodi ordinationibus emitti contigerit, ad sedem sublimitatis tuae rescribantur. * arcad. honor. et theodos. aaa. anthemio pp. * <a 405 d. vii id. dec. constantinopoli stilichone ii et anthemio conss.>

CJ.1.27.0. De officio praefecti praetorio africae et de omni eiusdem dioeceseos statu.

CJ.1.27.1pr.: Imperator Justinianus

Quas gratias aut quas laudes domino deo nostro ihesu christo exhibere debeamus, nec mens nostra potest concipere nec lingua proferre. * in nom. d. n. ihesu christi imp. c. flav. iust. alaman. gotthic. francic. germanic. antic. alanic. vvandalic. afric. pius felix incl. victor ac triumphator semper a. archelao pp. africae.* <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.1: Imperator Justinianus

Multas quidem et antea a deo meruimus largitates et innumerabilia circa nos eius beneficia confitemur, pro quibus nihil dignum nos egisse cognoscimus: prae omnibus tamen hoc, quod nunc deus omnipotens per nos pro sua laude et pro suo nomine demonstrare dignatus est, excedit omnia mirabilia opera, quae in saeculo contigerunt, ut africa per nos tam brevi tempore reciperet libertatem, ante centum et quinque annos a vvandalis captivata, qui animarum fuerant simul hostes et corporum. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.2: Imperator Justinianus

Nam animas quidem diversa tormenta atque supplicia non ferentes rebaptizando ad suam perfidiam transferebant: corpora vero liberis natalibus clara iugo barbarico durissime subiugabant. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.3: Imperator Justinianus

Ipsas quoque dei sacrosanctas ecclesias suis perfidiis maculabant: aliquas vero ex eis stabula fecerunt. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.4: Imperator Justinianus

Vidimus venerabiles viros, qui abscissis radicitus linguis poenas suas mirabiliter loquebantur: alii vero post diversa tormenta per diversas dispersi provincias vitam in exilio peregerunt. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.5: Imperator Justinianus

Quo ergo sermone aut quibus operibus dignas deo gratias agere valeamus, quod per me, ultimum servum suum, ecclesiae suae iniurias vindicare dignatus est et tantarum provinciarum populos a iugo servitutis eripere? <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.6: Imperator Justinianus

Quod beneficium dei antecessores nostri non meruerunt, quibus non solum africam liberare non licuit, sed et ipsam romam viderunt ab eisdem vvandalis captam et omnia imperialia ornamenta in africam exinde translata. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.7: Imperator Justinianus

Nunc vero deus per suam misericordiam non solum africam et omnes eius provincias nobis tradidit, sed et ipsa imperialia ornamenta, quae capta roma fuerant ablata, nobis restituit. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.8: Imperator Justinianus

Ergo post tanta beneficia, quae nobis divinitas contulit, hoc de domini dei nostri misericordia postulamus, ut provincias, quas nobis restituere dignatus est, firmas et illaesas custodiat et faciat nos eas secundum suam voluntatem ac placitum gubernare, et universa africa sentiat omnipotentis dei misericordiam et cognoscant eius habitatores, quam a durissima captivitate et iugo barbarico liberati in quanta libertate sub felicissimo nostro imperio degere meruerunt. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.9: Imperator Justinianus

Hoc etiam deprecantes exoramus precibus sanctae et gloriosae semper virginis et dei genetricis mariae, ut, quidquid minus est rei publicae nostrae, per nos, ultimos servos suos, restituat in suo nomine deus et dignos nos faciat servitium eius adimplere. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.10: Imperator Justinianus

Deo itaque auxiliante pro felicitate rei publicae nostrae per hanc divinam legem sancimus, ut omnis africa, quam deus nobis praestit, per ipsius misericordiam optimum suscipiat ordinem et propriam habeat praefecturam, ut sicut oriens atque illyricum, ita et africa praetoriana maxima potestate specialiter a nostra clementia decoretur. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.11: Imperator Justinianus

Cuius sedem iubemus esse carthaginem et in praefatione publicarum chartarum praefecturis aliis eius nomen adiungi, quam nunc tuam excellentiam gubernare decernimus. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.12: Imperator Justinianus

Et ab ea auxiliante deo septem provinciae cum suis iudicibus disponantur, quarum zeugi, quae proconsularis antea vocabatur, carthago et byzacium ac tripolis rectores habeant consulares: reliquae vero, id est numidia et mauritaniae et sardinia, a praesidibus cum dei auxilio gubernentur. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.13: Imperator Justinianus

Et in officio quidem tuae magnitudinis nec non pro tempore viri magnifici praefecti africae trecentos nonaginta sex viros per diversa scrinia et officia militare decernimus. in officiis vero consularium ac praesidum quinquaginta homines per singula officia esse sancimus. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.14: Imperator Justinianus

Quae vero emolumenta sive magnificentia tua sive consulares et praesides et quid unusquisque ex officio eorum de publico consequi debet, notitia subter adnexa declarat. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.15: Imperator Justinianus

Optamus ergo, ut omnes iudices nostri secundum voluntatem et timorem dei et nostram electionem atque ordinationem sic suas administrationes gubernare studeant, ut nullus eorum aut cupiditati sit deditus aut violentias aliquas vel ipse inferat vel iudicibus aut officiis eorum aut quibuscumque aliis collatoribus inferre permittat. licet enim per omnes provincias nostras deo iuvante festinemus, ut illaesos habeant collatores, maxime tamen tributariis dioeceseos africanae consulimus, qui post tantorum temporum captivitatem meruerunt deo iuvante per nos lumen libertatis adspicere. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.16: Imperator Justinianus

Ergo iubemus omnes violentias et omnem avaritiam cessare et iustitiam atque veritatem circa omnes nostros tributarios reservari. sic enim et deus placatur et ipsi possunt celerius, sicut collatores alii nostrae rei publicae, relevari atque florere. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.17: Imperator Justinianus

Sportulas etiam ab officio tam viri magnifici praefecti africani quam reliquorum iudicum sic exigi iubemus, quomodo in nostris legibus est dispositum et ab omni re publica nostra custoditur, ut nullus audeat quocumque tempore vel quocumque modo earum excedere quantitatem. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.18: Imperator Justinianus

Hoc etiam praesenti sanctione credimus ordinandum, ut non multa dispendia pro completione chartarum vel codicillorum vel in nostro laterculo vel in scriniis praefecti praetoriorum per africam iudices sustinere videantur, quia, si ipsi dispendiis laesi non fuerint, nullam habeant necessitatem eiusdem nostrae africae tributarios praegravandi. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.19: Imperator Justinianus

Iubemus ergo, ut iudices dioeceseos africanae tam civiles quam militares in nostro laterculo pro codicillorum atque chartularum promotionis suae consuetudinibus nihil ultra quam sex solidos praebeant, at vero in scrinio praefectorum non ultra duodecim solidos cogantur inferre. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.20: Imperator Justinianus

Quem modum si quis excesserit, ipse quidem iudex triginta librarum auri dispendio subiacebit, officium vero eius non solum simile dispendium, sed et capitale periculum sustinebit. nam si aliquis ex quacumque parte ausus fuerit iussiones nostras excedere et non festinaverit cum dei timore eas servare, non solum dignitatis aut substantiae periculum sustinebit, sed etiam ultimo supplicio subiacebit. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.21: Imperator Justinianus

Et est notitia deo auxiliante: pro annonis et capitu pro tempore praefecti praetorio per totam africam auri libras centum. pro annonis consiliariorum auri libras viginti. pro annonis cancellariorum auri libras septem. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.22: Imperator Justinianus

Item officiis eius ita: in scrinio primo hominibus decem pro annonis xviiiis, pro capitu xiis, fiunt solidi cxlviis. ita: numerario pro annonis vi annona solidorum v et pro capitu iiii capitus solidorum iiii, fiunt solidi xlvi. secundo pro annonis iii annona solidorum v et pro capitu ii capitus solidorum iiii, fiunt solidi xxiii. tertio pro annonis ii annona solidorum v et pro capitu is capitus solidorum iiii, fiunt solidi xvi. quarto quinto et sexto ad annonas is annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi xxxiiiis. reliquis quattuor ad annonas i annona solidorum v et ad capitum s capitus solidorum iiii, fiunt solidi xxviii. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.23: Imperator Justinianus

In scrinio secundo ut supra scriptum est. in scrinio tertio ut supra scriptum est. in scrinio quarto ut supra scriptum est. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.24: Imperator Justinianus

In scrinio primiscrinii, quod est subadiuvae, hominibus decem annonae xiiii capita xis, fiunt solidi cxvi. ita: primiscrinio pro annonis iii annona solidorum v et pro capitu ii capitus solidorum iiii, fiunt solidi xxiii. secundo pro annonis ii, annona solidorum ut supra scriptum est, et pro capitu is, capitus solidorum ut supra scriptum est, fiunt solidi xvi. tertio et quarto pro annonis is, annona solidorum ut supra scriptum est, et pro capitu i, capitus solidorum ut supra scriptum est, fiunt solidi xxiii. reliquis hominibus sex ad annonam i annona solidorum v et pro capitu i capitus solidorum iiii, fiunt solidi liiii. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.25: Imperator Justinianus

In scrinio commentariensis hominibus duodecim annonae xvii capita xiiiis, fiunt solidi cxliii. ita: primo commentariensi annonae iii annona solidorum v, pro capitu ii capitus solidorum iiii, fiunt solidi xxiii. sequentes homines tres ad annonas ii annona solidorum v, pro capitu is capitus solidorum iiii, fiunt solidi xlviii. reliqui homines octo ad annonam i annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi lxxii. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.26: Imperator Justinianus

In scrinio ab actis hominibus decem annonae xiiii capita xii, fiunt solidi cxviii. ita: primo annonae iii pro annona i solidi v, capita ii capitus solidorum iiii, fiunt solidi xxiii. secundo et tertio ad annonas ii pro annona i solidi v et ad capitum is capitus solidorum iiii, fiunt solidi xxxii. reliquis septem ad annonam i annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi lxiii. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.27: Imperator Justinianus

In scrinio libellorum hominibus sex annonae viis capita vis, fiunt solidi lxiiis. ita: primo annonae ii pro annona solidi v, pro capitu is capitus solidorum iiii, fiunt solidi xvi. secundo annona is pro annona solidi v, pro capitu i capitus solidorum iiii, fiunt solidi xis. reliquis hominibus quattuor ad annonas i annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi xxxvi. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.28: Imperator Justinianus

In schola exceptorum hominibus sexaginta annonae lxxiiii capita lxii solidi dcxviii. ita: primo et secundo ad annonas iii pro annona solidi v et ad capita ii capitus solidorum iiii, fiunt solidi xlvi. aliis hominibus quinque ad annonas ii annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi lxx. reliquis hominibus decem ad annonas is annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi cxv. reliquis hominibus quadraginta tribus ad annonas i annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi ccclxxxvii. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.29: Imperator Justinianus

In schola singulariorum hominibus quinquaginta annonae liis capita l solidi cccclxiis. ita: primo annonae ii annona solidorum v, capitus i capitus solidorum iiii, fiunt solidi xiiii. secundo tertio et quarto ad annonas is annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi xxxiiiis. reliquis hominibus quadraginta sex ad annonam i annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi ccccxiiii. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.30: Imperator Justinianus

In schola mittendariorum hominibus quinquaginta annonae liis capita l solidi cccclxiis. ita: primo annonae ii annona solidorum v, capitus i capitus solidorum iiii, fiunt solidi xiiii. secundo tertio et quarto ad annonam is annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi xxxiiiis. reliquis hominibus quadraginta sex ad annonam i annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi ccccxiiii. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.31: Imperator Justinianus

In schola cursorum hominibus triginta annonae xxxiis capita xxx solidi cclxxxiis. ita: primo annonae ii annona solidorum v, capitus i capitus solidorum iiii, fiunt solidi xiiii. secundo et tertio et quarto ad annonam is annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi xxxiiiis. reliquis hominibus viginti sex ad annonam i annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi ccxxxiiii. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.32: Imperator Justinianus

In schola nomenculatorum hominibus duodecim annonae xiii capita xiis solidi cxv. ita: primo annonae ii annona solidorum v, capitus is capitus solidorum iiii, fiunt solidi xvi. reliquis hominibus undecim ad annonam i annona solidorum v et ad capitum i capitus solidorum iiii, fiunt solidi xcviiii. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.33: Imperator Justinianus

In schola stratorum hominibus sex annonae vii capita vi solidi lviiii. ita: primo annonae ii annona solidorum v, capitus i capitus solidorum iiii, fiunt solidi xiiii. reliquis hominibus quinque ad annonas i pro annona solidos v et ad capitum i pro capitu solidos iiii, fiunt solidi xlv. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.34: Imperator Justinianus

In schola praeconum hominibus decem annonae xi capita xs solidi xcvii. ita: primo annonae ii pro annona solidos v, capitus is pro capitu solidos iiii, fiunt solidi xvi. reliquis hominibus novem ad annonam i pro annona solidos v et ad capitum i pro capitu solidos iiii, fiunt solidi lxxxi. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.35: Imperator Justinianus

In schola draconariorum hominibus decem annonae xi capita xs solidi xcvii. ita: primo annonae ii pro annona solidos v, capitus is pro capitu solidos iiii, fiunt solidi xvi. reliquis hominibus novem ad annonam i pro annona solidos v et ad capitum i pro capitu solidos iiii, fiunt solidi lxxxi. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.36: Imperator Justinianus

In scrinio operum hominibus viginti annonae xxviii capita xxi solidi ccxxiiii. ita: primo annonae iii pro annona solidi v, capita ii pro capitu solidi iiii, fiunt solidi xxiii. reliquis hominibus tribus ad annonas ii pro annona solidi v et ad capitum i pro capitu solidi iiii, fiunt solidi xlii. reliquis aliis hominibus sex ad annonam is pro annona solidi v et ad capitum i pro capitu solidi iiii, fiunt solidi lxviiii. reliquis aliis hominibus decem ad annonam i pro annona solidi v et ad capitum i pro capitu solidi iiii, fiunt solidi xc. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.37: Imperator Justinianus

In scrinio arcae hominibus viginti annonae xxviii capita xxi solidi ccxxiiii. ita: primo annonae iii pro annona solidi v, capita ii pro capitu solidi iiii, fiunt solidi xxiii. reliquis hominibus tribus ad annonas ii pro annona solidi v et ad capitum i pro capitu solidi iiii, fiunt solidi xlii. reliquis aliis hominibus sex ad annonam is pro annona solidi v et ad capitum i pro capitu solidi iiii, fiunt solidi lxviiii. reliquis aliis hominibus decem ad annonam i pro annona solidi v et ad capitum i pro capitu solidi iiii, fiunt solidi xc. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.38: Imperator Justinianus

In schola chartulariorum hominibus quinquaginta annonae lviii capita liis solidi d. ita: primo annonae iii pro annona solidi v, capita ii pro capitu solidi iiii , fiunt solidi xxiii. reliquis hominibus tribus ad annonas ii pro annona solidi v et ad capitum is pro capitu solidi iiii, fiunt solidi xlviii. reliquis aliis hominibus sex ad annonam is pro annona solidi v et ad capitum i pro capitu solidi iiii, fiunt solidi lxviiii. reliquis aliis hominibus quadraginta ad annonam i pro annona solidi v et ad capitum i pro capitu solidi iiii, fiunt solidi ccclx. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.39: Imperator Justinianus

Fiunt homines cccxcvi, annonae ccccxcviii solidorum iiccccxc, capita ccccxxs solidorum mdclxxxii, fiunt solidi iiiiclxxii. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.40: Imperator Justinianus

Item pro annonis et capitu consularis solidi ccccxlviii. officiorum eius solidi clx. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.41: Imperator Justinianus

Pro tempore medicis hominibus quinque annonae xlviiii capita xviiis solidi cccxviiii. ita: primo pro annonis xv capitibus vi solidi ic. secundo pro annonis x capitibus solidi lxx. reliquis hominibus tribus ad annonas viii et ad capita iis solidi cl. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.42: Imperator Justinianus

Grammaticis hominibus duobus ad annonas x et ad capita v, ad solidos lxx. sophistis oratoribus hominibus duobus ad annonas x, ad capita v, ad solidos lxx. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.1.43: Imperator Justinianus

Haec igitur, quae pro disponendis civilibus iudicibus africae eorumque officiis, id est tam scriniariis amplissimae eius praefecturae quam cohortalibus, per hanc divinam constitutionem statuimus, tua magnitudo cognoscens ex kalendis septembribus futurae tertiae decimae indictionis effectui mancipari observarique procuret atque edictis publicis omnibus innotescant: his scilicet, qui ordinati fuerint a tua sublimitate secundum praesentem divinam constitutionem, firmitatem sui status in perpetuo habituris. nam deo iuvante de militaribus iudicibus et de officiis eorum et de alio nostro exercitu per aliam sanctionem statuimus. <a 534 emissa lex constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2pr.: Imperator Justinianus

In nomine domini nostri ihesu christi ad omnia consilia omnesque actus semper progredimur. per ipsum enim imperii iura suscepimus, per ipsum pacem cum persis in aeternum confirmavimus, per ipsum acerbissimos hostes et fortissimos tyrannos deiecimus, per ipsum multas difficultates superavimus, per ipsum et africam defendere et sub nostrum imperium redigere nobis concessum est, per ipsum quoque, ut nostro moderamine recte gubernetur et firme custodiatur, confidimus. * iust. a. belisario mag. mil. per orientem. * <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.1: Imperator Justinianus

Unde iam per eius gratiam civilium administrationum iudices et officia singulis africanis provinciis constituimus, attribuentes, quid emolumentorum unusquisque percipere debeat. ad eius igitur providentiam etiam nunc animum nostrum referentes et armatas militias et duces militum ordinare disponimus. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.1a: Imperator Justinianus

Sancimus itaque, ut dux limitis tripolitanae provinciae in leptimagnensi civitate sedes interim habeat, dux vero byzacenae provinciae in capsa et thelepte civitatibus interim sedeat, dux autem numidiae provinciae in constantinensi civitate sedes interim habeat, dux autem mauritaniae provinciae in caesariensi civitate interim sedeat. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.2: Imperator Justinianus

Iubemus etiam, ut in traiectu, qui est contra hispaniam, quod septem dicitur, quantos providerit tua magnitudo, de militibus una cum tribuno suo, homine prudente et devotionem servante rei publicae nostrae per omnia, constituas, qui possit et ipsum traiectum semper servare et omnia, quaecumque in partibus hispaniae vel galliae seu francorum aguntur, viro spectabili duci nuntiare, ut ipse tuae magnitudini referat. in quo traiectu etiam dromones, quantos provideris, ordinari facias. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.3: Imperator Justinianus

In sardinia autem iubemus ducem ordinari et eum iuxta montes, ubi barbaricini videntur, sedere habentem milites pro custodia locorum, quantos et ubi tua magnitudo providerit. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.4: Imperator Justinianus

Et omnes diligenter pro commissis suae custodiae provinciis invigilent et ab omni hostium incursione subiectos nostros tueantur illaesos et festinent, die noctuque dei invocando auxilium et diligenter laborando, usque ad illos fines provincias africanas extendere, ubi ante invasionem vvandalorum et maurorum res publica romana fines habuerat et ubi custodes antiqui servabant, sicut ex clusuris et burgis ostenditur. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.4a: Imperator Justinianus

Maxime autem civitates, quae prope clusuras et fines antea tenebantur, cum essent sub romano imperio constitutae, auxiliante divina misericordia, cum hostes per partes expelluntur, festinantes comprehendere atque manere et in illis locis duces et milies per partes accedant, ubi antea fines et clusurae provinciarum erant, quando integrae africanae servabantur sub romano imperio provinciae: <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.4b: Imperator Justinianus

Quod deo adnuente, cuius auxilio nobis restitutae sunt, speramus cito nostris provenire temporibus, et ut in securitate et pace provinciae cum antiquis finibus integrae serventur et vigiliis ac laboribus devotissimorum militum et cura spectabilium pro tempore ducum custodiantur illaesae, quoniam ita convenit, ut semper custodes fines provinciae servent, ne detur hostibus licentia incurrendi aut devastandi loca, quae nostri subiecti possident. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.5: Imperator Justinianus

Quantos autem milites sive pedestres sive equites per unumquemque limitem qui debent ad custodiendas provincias et civitates, tua magnitudo, prout consideraverit, ordinet et nobis referat, ut, si perviderimus sufficientem esse ordinationem, confirmemus eam, sin autem perspexerimus et aliquid amplius fieri, ut eam augmentemus. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.6: Imperator Justinianus

Quid autem dux stipendiorum nomine pro se suisque hominibus et quid eius officium consequatur, hoc subdita declaratur notitia. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.7: Imperator Justinianus

Sicut ergo praedictum est, interim nunc duces ac milites secundum nostram dispositionem in locis seu civitatibus quibus iussimus sedeant, donec deo auxiliante nobis ac rei publicae nostrae per labores nostros in illis locis constitui possint, in quibus uniuscuiusque provinciae antiquus limes constitutus erat, quando florente romana re publica memoratae provinciae integrae tenebantur. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.8: Imperator Justinianus

Pro limitaneis vero ordinandis (quia necessarium nobis esse videtur, ut extra comitatenses milites per castra milites limitanei constituantur, qui possint et castra et civitates limitis defendere et terras colere, ut alii provinciales videntes eos per partes ad illa loca se conferant) exemplum fecimus unius numeri limitaneorum, ut secundum exemplum, quod nos misimus, per castra et loca, quae providerit tua magnitudo, eos ad similitudinem nostri exempli ordinet, sic tamen ut, si inveneris de provinciis idonea corpora, aut de illis, quos antea milites habebant, limitaneorum constituas numero in unoquoque limite, ut, si forsitan commotio aliqua fuerit, possint ipsi limitanei sine comitatensibus militibus una cum ducibus suis adiuvare loca, ubi dispositi fuerint, non longe limitem exeuntes nec ipsi limitanei nec duces eorum, ut nullum etiam dispendium a ducibus vel ducianis praedicti limitanei sustineant, nec aliquas sibi consuetudines de eorum stipendiis per fraudes ad suum lucrum convertant. haec autem non solum in limitaneos volumus observari, sed etiam in comitatenses milites. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.9: Imperator Justinianus

Et unumquemque ducem et tribunos eorundem militum iubemus, ut semper milites ad exercitationem armorum teneant et non concedant eos divagari, ut, si quando necessitas contigerit, possint inimicis resistere: et nullum audeant duces aut tribuni commeatalem de ipsis dimittere, ne, dum sibi lucrum studeant conficere, incustoditas nostras relinquant provincias. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.9a: Imperator Justinianus

Nam si usurpaverint memorati duces vel officia eorum seu tribuni commeatalem de militibus relinquere aut aliquod lucrum de eorum emolumentis subripere, hoc non solum in quadruplum iubemus publico dependere, sed etiam dignitate eos privari. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.9b: Imperator Justinianus

Magis enim debent duces et tribuni supra deputata sibi emolumenta secundum labores suos de nostra largitate remunerationem sperare et non de commeatis militum aut de eorum stipendiis lucrum sibi adquirere, quoniam ideo ordinati sunt milites, ut per ipsos provinciae vindicentur: praecipue cum sufficienter et ipsis ducibus et officiis eorum emolumenta praestitimus et semper providimus unumquemque secundum labores suos ad meliores gradus et maiores dignitates perducere. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.10: Imperator Justinianus

Postquam vero deo placuerit et per tuam magnitudinem limes omnis in antiquum statum pervenerit et bene ordinatus fuerit, tunc, ubicumque necessitas emerserit, viri spectabiles duces invicem sibi, quando usus exegerit, auxilium praebeant, ut provinciae seu limites eorum vigiliis et laboribus deo iuvante illaesi custodiantur. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.11: Imperator Justinianus

Sicut autem iubemus audaces et feroces contra inimicos iudices ac milites nostros esse, sic volumus eos mites et benevolos circa collatores nostros existere et nullum damnum nullamque laesionem in eos efficere. si autem quisquam de militibus ausus fuerit quamcumque laesionem tributariis nostris inferre, periculo viri spectabilis ducis seu tribuni et principis digna vindicta adficiatur et indemnes tributarii nostri custodiantur. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.12: Imperator Justinianus

Si vero pro quibusdam causis interpellatio apud nostros iudices facta fuerit, iubemus non amplius sportularum nomine, quam nostris legibus definitum est, exsecutores accipere, poenam eisdem legibus insertam ex transgressione formidantes. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.13: Imperator Justinianus

Cum autem deo adiuvante africanae nostrae provinciae per tuam magnitudinem secundum nostram dispositionem ordinatae et limites in antiquum statum reducti et omnis africa sic detenta fuerit, sicut erat, cum ergo haec omnia deo iuvante, praesente tua magnitudine, disposita et perfecta fuerint et per labores tuos antiquos fines omnis africa receperit, et docuerit nos de omni ordinatione totius africanae dioeceseos, id est quanti et qui milites in quibus locis vel civitatibus constituti sunt et quanti limitanei in quibus locis vel limitibus constituti sunt, tunc iubemus tuam magnitudinem ad nostram clementiam remeare. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.14: Imperator Justinianus

Interea vero si aliquas civitates seu castella per limitem constituta perviderit tua magnitudo nimiae esse magnitudinis et propter hoc non posse bene custodiri, ad talem modum eas construi disponat, ut possint per paucos bene servari. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.15: Imperator Justinianus

Cum autem magnitudo tua omnibus dispositis ad nos remeare iussa fuerit, tunc duces uniuscuiusque limitis, quotiens pro componendis civitatibus aut castris et pro stipendiis suis ac pro annonis aliquid opus habuerint, celerius ad virum magnificum praefectum per africam significent, ut ipse quae necessaria fuerint festinet facere, ne aliqua protractio provinciis noceat. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.16: Imperator Justinianus

Ea vero, quae ipse fecerit vel quae adhuc necessarie procuranda sunt, postea et memoratus vir magnificus praefectus africae et viri spectabiles duces et de aliis omnibus quae ibi aguntur frequenter ad nos referant, ut bene facta confirmemus et, quae opportunius debent fieri, ex nostra dispositione peragantur. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.17: Imperator Justinianus

Hoc etiam decernimus, ut duces, qui ordinandi sunt per africanos limites, nihil amplius in sacratissimo palatio cuilibet personae aut dignitati vel in praetorio per africam praefecturae vel magisteriae potestati praebeant, nisi quantum subter adnexa declarat notitia. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.17a: Imperator Justinianus

Nam si quis amplius, quam in subdita notitia taxatum est, usurpaverit seu acceperit, triginta libras auri multae dependat nomine, cum et periculo indignationis nostrae serenitatis subiacebit: nulla alia qualibet persona aut dignitate aut officio accipiente aliquid ab eis praeter illos, quorum nomina in subiecta notitia continentur. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.18: Imperator Justinianus

Ad haec iubemus, ut deo iuvante unusquisque dux seu eorum officia, secundum quod notitia subter adnexa detinet, emolumenta sua ex tributis africanae provinciae ex kalendis septembribus instantis felicissimae tertiae decimae indictionis percipiant. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.19: Imperator Justinianus

Et est notitia: deo volente debent delegari ducibus et eorum officiis in africa constitutis pro annonis et capitu per singulos annos praebendis ita: <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.20: Imperator Justinianus

Viro clarissimo duci tripolitanae provinciae et hominibus eius annonae cxc, singulis annonis solidi v, capita clviii, singulis capitibus solidi iiii, simul fiunt pro annonis et capitu solidi mdlxxxii. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.21: Imperator Justinianus

Adsessori ducis et officio eius hominibus quadraginta annonae xcvis, singulis annonis solidi v, capita xlviii, singulis capitibus solidi iiii, simul fiunt pro annonis et capitu solidi dclxxiiiis dividuntur sic: <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.22: Imperator Justinianus

Adsessori uno annonae viii capita iiii. primicerio uno annonae v capita ii. numerario uno annonae iiii capita ii. ducenariis quattuor ad annonas iiis, fiunt annonae xiiii, et ad capitum is, fiunt capita vi. centenariis sex ad annonas iis, fiunt annonae xv, et ad capitum i, fiunt capita vi. biarchis octo ad annonas ii , fiunt annonae xvi, et ad capitum i, fiunt capita viii. circitoribus novem ad annonas ii, fiunt annonae xviii, et ad capitum i, fiunt capita viiii. semissalibus undecim ad annonam is, fiunt annonae xvis, et ad capitum i, fiunt capita xi. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.23: Imperator Justinianus

Item viro clarissimo duci byzacenae provinciae et hominibus eius annonae cxc, singulis annonis solidi v, capita clviii, singulis capitibus solidi iiii, simul fiunt pro annonis et capitu solidi mdlxxxii. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.24: Imperator Justinianus

Adsessori ducis et officio eius hominibus quadraginta annonae xcvis, singulis annonis solidi v, capita xlviii, singulis capitibus solidi iiii, simul fiunt pro annonis et capitu solidi dclxxiiiis. dividuntur sic: <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.25: Imperator Justinianus

Adsessori uno annonae viii capita iiii. primicerio uno annonae v capita ii. numererario uno annonae iiii capita ii. ducenariis quattuor ad annonas iiis, fiunt annonae xiiii, et ad capitum is, fiunt capita vi. centenariis sex ad annonas iis , fiunt annonae xv, et ad capitum i, fiunt capita vi. biarchis octo ad annonas ii, fiunt annonae xvi, et ad capitum i, fiunt capita viii. circitoribus novem ad annonas ii, fiunt annonae xviii, et ad capitum i, fiunt capita viiii. semissalibus undecim ad annonam is, fiunt annonae xvis, et ad capitum i, fiunt capita xi. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.26: Imperator Justinianus

Item viro clarissimo duci numidiae provinciae et hominibus eius annonae cxc, singulis annonis solidi v, capita clviii, singulis capitibus solidi iiii, simul fiunt pro annonis et capitu solidi mdlxxxii. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.27: Imperator Justinianus

Adsessori ducis et officio eius hominibus quadraginta annonae xcvis, singulis annonis solidi v, capita xlviii, singulis capitibus solidi iiii, simul fiunt pro annonis et capitu solidi dclxxiiiis. dividuntur sic: <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.28: Imperator Justinianus

Adsessori uno annonae viii capita iiii. primicerio uno annonae v capita ii. numerario uno annonae iiii capita ii. ducenariis quattuor ad annonas iiis, fiunt annonae xiiii, et ad capitum is, fiunt capita vi. centenariis sex ad annonas iis, fiunt xv, et ad capitum i, fiunt capita vi. biarchis octo ad annonas ii, fiunt annonae xvi, et ad capitum i, fiunt capita viii. circitoribus novem ad annonas ii, fiunt annonae xviii, et ad capitum i, fiunt capita viiii. semissalibus undecim ad annonas is, fiunt annonae xvis, et ad capitum i, fiunt capita xi. <a 534

emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.29: Imperator Justinianus

Item viro clarissimo duci mauritaniae provinciae et hominibus eius annonae cxc, singulis annonis solidi v, capita clviii, singulis capitibus solidi iiii, simul fiunt pro annonis et capitu solidi mdlxxxii. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.30: Imperator Justinianus

Adsessori ducis et officio eius hominibus quadraginta annonae xcvis, singulis annonis solidi v, capita xlviii, singulis capitibus solidi iiii, simul fiunt pro annonis et capitu solidi dclxxiiiis. dividuntur sic: <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.31: Imperator Justinianus

Adsessori uno annonae viii capita iiii. primicerio uno annonae v capita ii. numerario uno annonae iiii capita ii. ducenariis quattuor ad annonas iiis, fiunt annonae xiiii, et ad capitum is, fiunt capita vi. centenariis sex ad annonas iis, fiunt annonae xv, et ad capitum i, fiunt capita vi. biarchis octo ad annonas ii , fiunt annonae xvi, et ad capitum i, fiunt capita viii. circitoribus novem ad annonas ii, fiunt annonae xviii, et ad capitum i, fiunt capita viiii. semissalibus undecim ad annonas is, fiunt annonae xvis, et ad capitum i, fiunt capita xi. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.32: Imperator Justinianus

Item viro clarissimo duci sardiniae insulae et hominibus eius annonae cxc, singulis annonis solidi v, capita clviii, singulis capitibus solidi iiii, simul fiunt pro annonis et capitu solidi mdlxxxii. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.33: Imperator Justinianus

Adsessori ducis et officio eius hominibus quadraginta annonae xcvis, singulis annonis solidi v, capita xlviii, singulis capitibus solidi iiii, simul fiunt pro annonis et capitu solidi dclxxiiiis. dividuntur sic: <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.34: Imperator Justinianus

Adsessori uno annonae viii capita iiii. primicerio uno annonae v capita ii. numerario uno annonae iiii capita ii. ducenariis quattuor ad annonas iiis, fiunt annonae xiiii, et ad capitum is, fiunt capita vi. centenariis sex ad annonas iis, fiunt annonae xv, et ad capitum i, fiunt capita vi. biarchis octo ad annonas ii , fiunt annonae xvi, et ad capitum i, fiunt capita viii. circitoribus novem ad annoas ii, fiunt annonae xviii, et ad capitum i, fiunt capita viiii. semissalibus undecim ad annonas is, fiunt annonae xvis, et ad capitum i, fiunt capita xi. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.35: Imperator Justinianus

Item notitia consuetudinum, quas in sacro laterculo et in praetorio amplissimae praefecturae per africam, iam in officio magistri militum pro tempore dux praebere oportet uniuscuiusque limitis sic: in sacro laterculo solidi vi: in officio magisteriae militum potestatis pro insinuandis administrationis suae divinis nostrae serenitatis adfatibus solidi xii: in officio amplissimae praefecturae per africam pro insinuandis eiusdem chartis solidi xii. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.27.2.36: Imperator Justinianus

(21) gloria itaque tua, quae per hanc pragmaticam sanctionem nostra statuit aeternitas, effectui mancipari observarique praecipiat. <a 534 emissa lex idibus aprilibus constantinopoli dn. iustiniano pp. a. iiii et paulino vc. conss.>

CJ.1.28.0. De officio praefecti urbis.

CJ.1.28.1: Imperatores Valentinianus, Valens

Studentibus nobis statum urbis et annoniarum rationem aliquando firmare in animo subiit eiusdem annonae curam non omnibus deferre potestatibus. ac ne praefectura urbis abrogatum sibi aliquid putaret, si totum ad officium annonarium redundasset eidem praefecturae sollicitudinis ac diligentiae necessitatem mandamus, sed non ita, ut lateat officium annonariae praefecturae, sed ut ambae potestates, in quantum sibi negotii est, tueantur civilem annonam sitque societas muneris ita, ut inferior gradus meritum superioris agnoscat atque ita superior potestas se exserat, ut sciat ex ipso nomine, quid praefecto debeatur annonae. * valentin. et valens aa. ad volusianum pu. * <a 368 d. ii non. april. mediolani valentiniano et valente aa. ii conss.>

CJ.1.28.2: Imperatores Valentinianus, Valens

Quod promulgatis sanctionibus tua sinceritas perscriptum esse non nescit, etiam ex praecepto nostro competenter observet nec quasdam personas de provincia existimet avocandas nisi tantummodo suos officiales et homines populares huius almae urbis seditioni obnoxios. * valentin. et valens aa. ad ampelium pu. * <a 371 372 >

CJ.1.28.3: Imperatores Valens, Gratianus, Valentinianus

Praefectura urbis cunctis quae intra urbem sunt antecellat potestatibus, tantum ex omnium parte delibans, quantum sine iniuria ac detrimento alieni honoris usurpet. * valens grat. et valentin. aaa. ad rufinum pu. * <a 376 d. iii id. iul. valente a. v et valentiniano iun. conss.>

CJ.1.28.4: Imperatores Valentinianus, Theodosius, Arcadius

Omnia corporatorum genera, quae in constantinopolitana civitate versantur, universos quoque cives atque populares praefecturae urbanae regi moderamine recognoscas. * valentin. theodos. et arcad. aaa. severino com. sacr. larg. * <a 391 d. xvii k. mai. mediolani tatiano et symmacho conss.>

CJ.1.28.5: Imperator Theodosius

Primicerius adiutorum tuae sedis officii per biennium, quod in eodem gradu ex consuetudine priscae ordinationis emeruit, curam insuper personarum usurpatione omni atque ambitione cessante suscipiat: hoc etiam adiecto, ut, si quis ex memorato ordine vel condicionis humanae fine praeventus vel alia quacumque ratione militiae gradum propriae amisisse monstrabitur, solitae ambitionis iniuria vacante locum is, qui iuxta matriculae veritatem sequitur, obtineat. * theodos. a. constantio pu. * <a 424 d. x iii k. ian. constantinopoli victore cons.>

CJ.1.29.0. De officio magistri militum.

CJ.1.29.1: Imperatores Gratianus, Valentinianus, Theodosius

Viri illustres comites et magistri peditum et equitum in provinciales nullam penitus habeant potestatem, nec amplissima praefectura in militares viros. * grat. valentin. et theodos. aaa. ad eusignium pp. * <a 386 - 387>

CJ.1.29.2: Imperatores Honorius, Theodosius

Apparitores statutos officii tui ad aliud iudicium trahi minime oportebit. sciat igitur illustris magnificentia tua sub te, sive civiliter sive criminaliter appetantur, eos litigare debere. * honor. et theodos. aa. ad hypatium mag. mil. per orientem. * <a 414 d. id. dec. constantinopoli constantio et constante conss.>

CJ.1.29.3: Imperator Zeno

Eos, qui ultra statutos officii magisteriae per orientem potestatis militant, civilium quoque iudicum sententiis super quolibet negotio subiacere: ipsis quin etiam statutis in tributariis collationibus civilium quoque iudicum dispositionibus procul dubio parituris. * zeno a. sebastiano pp. * <a 476-485>

CJ.1.29.4: Imperator Anastasius

Milites de locis, in quibus consistunt, ad alia loca sine speciali nostrae serenitatis auctoritate nullatenus transferri praecipimus, nec eorum expensae in locis, in quibus consistunt, minuantur. sed si forte quaedam urguens et necessaria causa emerserit, utilitati ac securitati publicae tam amplissimam praetorianam praefecturam quam tuam sedem sine ulla procrastinatione prospicere protinus oportet et suggestiones ad nostras aures destinare, indicantes tam loca, de quibus milites transferendi sunt, quam ea, ad quae pervenire eos oportet, nominaque fortissimorum numerorum, in quibus idem milites referuntur, nec non quantitatem annonarum et ante omnia causam, ob quam idem milites transferendi sunt, ut post talem suggestionem a nostra auctoritate competentia procedant. * anastas. a. iohanni mag. mil. per illyricum. * <a xxx >

CJ.1.29.5: Imperator Justinianus

Cum propitia divinitate romanum nobis sit delatum imperium, sollicita cura cauta diligentia pertractantes perspeximus oportere etiam partibus armeniae et ponto polemoniaco et gentibus proprium magistrum militum per hanc legem constituere, tuamque magnitudinem, quae nobis ex ante gestis optime commendata est, idoneam ad talem fore dignitatem confidentes elegimus certasque provincias, id est magnam armeniam, quae interior dicebatur, et gentes (anzetenam videlicet, ingilenam , asthianenam, sophenam, sophanenam, in qua est martyropolis, balabitenam) et primam et secundam armeniam et pontum polemoniacum tuae curae cum suis ducibus commisimus, comite armeniae penitus sublato, certosque subdidimus numeros, non m odo quos in praesenti novos constituimus, sed etiam de praesentalibus et orientalibus et aliis agminibus segregatos, non tamen quantitatem eorum agminum minuentes: sed quia plures eis addidimus sine rei publicae gravamine et sine augmento sumptuum, aliquantos subtraximus, ita tamen, ut et post hanc subtractionem ampliores remanserint, quam usque ad nostra felicia fuerant tempora. * iust. a. zetae viro illustri mag. mil. per armeniam et pontum polemoniacum et gentes.* <a xxx >

CJ.1.30.0. De officio quaestoris.

CJ.1.30.1: Imperator Theodosius

Totius minoris laterculi curam scias ad tuae sublimitatis sollicitudinem pertinere, ita ut tuo arbitratu ex scrinio memoriae totius minoris laterculi dignitates, hoc est praepositurae omnes, tribunatus et praefecturae castrorum iuxta consuetudinem priscam clementiae meae auctoritate deinceps mittantur. * theodos. a. sallustio quaest. * <a 424 d. vi k. mai. constantinopoli victore cons.>

CJ.1.30.2: Imperator Theodosius

Omnes minoris laterculi dignitates, quae sub cura quidem ac sollicitudine viri illustris quaestoris esse antea videbantur, postea vero vel universae vel mediae ad magistrorum militum potestatem dispositionemque transierant, placuit nunc clementiae meae vetusti temporis more renovato ad prisca deinceps iura revocare. * theodos. a. helioni com. et mag. off. * <a 424 d. iii k. mai. supra scripto cons.>

CJ.1.30.3: Imperator Anastasius

Officia et condiciones, quae pertinent ad viros devotos in sacro scrinio memoriae militantes, nemini liceat sub quacumque occasione sine ulla divinae subscriptionis liberalitate peragere: eo, quicumque in hoc fuerit postea facinore convictus, publicatione bonorum suorum multando, officio quoque rectoris provinciae, in qua non adlegato super gerenda sollicitudine sacro rescripto aliquis ausus fuerit eandem curam sibimet usurpare, trium librarum auri dispendio feriendo. * anastas. a. eusebio mag. off. * <a 492 d. k. mart. constantinopoli anastasio a. et rufo conss.>

CJ.1.31.0. De officio magistri officiorum.

CJ.1.31.1pr.: Imperator Constantius

Privilegiis dudum scholae vestrae indultis integris reservatis, ad ducenam etiam et centenam et biarchiam nemo suffragio, nisi labore unusquisque perveniat, principatum vero adipiscatur matricula decurrente, ita ut ad curas agendas et cursum illi exeant, quos ordo militiae vocat et laborum. * constantius a. ad agentes in rebus. * <a 359 d. et pp. romae in foro traiani k. nov. eusebio et hypatio conss.>

CJ.1.31.1.1: Imperator Constantius

Adiutor praeterea, in quo totius scholae status et magistri securitas constituta est, idoneus probitate morum ac bonis artibus praeditus nostris per magistrum obtutibus offeratur, ut nostro ordinetur arbitrio. <a 359 d. et pp. romae in foro traiani k. nov. eusebio et hypatio conss.>

CJ.1.31.2: Imperatores Valentinianus, Theodosius, Arcadius

Nemo agentum in rebus ordinem militiae atque stipendia praevertat, etiamsi nostri numinis per obreptionem detulerit indultum: ac si quis formam istiusmodi docebitur obtulisse, in locum, ex quo indecenter emerserat, revertatur, ut is gradu ceteros antecedat, quem stipendia longiora vel labor prolixior fecerit anteire. * valentin. theodos. et arcad. aaa. ad principium mag. off.* <a 386 pp. hadrumeti vii id. mart. post cons. arcadii a. et bautonis.>

CJ.1.31.3: Imperatores Theodosius, Valentinianus

Scholarium nostrorum devotio, probata nostris parentibus, circa nostrae maxime serenitatis adfectionem enituit. inde quidquid ad fovenda servandaque eorum privilegia postulatur, statim credidimus admittendum. ideoque suggestionem tui culminis approbantes viris spectabilibus comitibus scholarum verberandi regradandive senatores ac ducenarios licentiam denegamus. ea namque, quae tali commotione digna sunt, ad tuae sublimitatis volumus referri notitiam. * theodos. et valentin. aa. phlegetio com. et mag. off. * <a 441 d. xv k. mai. constantinopoli cyro vc. cons.>

CJ.1.31.4: Imperatores Theodosius, Valentinianus

Curae perpetuae tui culminis credimus iniungendum, ut super omni limite sub tua iurisdictione constituto, quemadmodum se militum numerus habeat castrorumque ac clusurarum cura procedat, quotannis significare nobis propria suggestione procuret. * theodos. et valentin. aa. nomo mag. off. * <a 443 d. prid. id. sept. constantinopoli maximo ii et paterio conss.>

CJ.1.31.5pr.: Imperatores Justinus, Justinianus

Iubemus eum ad militiam devotissimorum scholarium de cetero pervenire, qui nostrum meruit iudicium, nec licere pro tempore tui culminis administrationem habenti sine huiusmodi probatoria aliquem inter eosdem viros devotos, scholares suis referre praeceptionibus: sed sciat is, qui sine sacro rescripto ad eandem pervenire militiam ausus fuerit, non solum ea se privari, verum etiam poenae viginti librarum auri subici. * iustinus et iust. aa. tatiano mag. off. * <a 527 d. x k. mai. constantinopoli mavortio vc. cons.>

CJ.1.31.5.1: Imperatores Justinus, Justinianus

Illud etiam observari de cetero volumus, ut, si quis locus statutorum scholarium in quacumque schola vacaverit, ille subrogetur, quem nostra pietas per sacrum rescriptum vacantem subire locum praeceperit. <a 527 d. x k. mai. constantinopoli mavortio vc. cons.>

CJ.1.31.5.2: Imperatores Justinus, Justinianus

Ad haec quadrimenstruos breves eorundem scholarium cura tuae sublimitatis et pro tempore viri excellentissimi magistri officiorum conscribi volumus et eos sacro scrinio laterculi praestari ibi deponendos, ut semper notitia eorundem scholarium certa sit neque publico damnum aliquod infligatur. <a 527 d. x k. mai. constantinopoli mavortio vc. cons.>

CJ.1.32.0. De officio comitis sacrarum largitionum.

CJ.1.32.1pr.: Imperatores Arcadius, Honorius

Palatinis haec cura debet esse praecipua, ut, periculo proprio notariis destinatis, super neglegentia iudicum, si ita res exegerit, conquerantur, ne eorum sit impunita desidia. * arcad. et honor. aa. limenio com. sacr. larg. * <a 401 d. iii k. mart. mediolani vincentio et fravito conss.>

CJ.1.32.1.1: Imperatores Arcadius, Honorius

Iudices quoque de eorum nominibus referre convenit, quos commodis propriis magis quam utilitatibus publicis studere praeviderint. <a 401 d. iii k. mart. mediolani vincentio et fravito conss.>

CJ.1.32.1.2: Imperatores Arcadius, Honorius

Breves etiam quadrimenstruos ad officium palatinum noverint dirigendos aurumque exactum ad sacras largitiones sine ulla dilatione esse mittendum. <a 401 d. iii k. mart. mediolani vincentio et fravito conss.>

CJ.1.33.0. De officio comitis rerum privatarum.

CJ.1.33.1: Imperatores Valentinianus, Valens

Si quid negotiorum fuerit actitatum, in quibus aliquid commodi fiscalis appareat , ad officium rei privatae tua gravitas acta transmittat, ut instructione percepta, quid sibimet iuris auxilio debeatur, agnoscat. * valentin. et valens aa. ad honoratum consularem byzacii. * <a 368 d. vi k. ian. valentiniano et valente aa. ii conss.>

CJ.1.33.2: Imperatores Arcadius, Honorius

Ad palatinorum curam et rationalium officia omnium rerum nostrarum et totius perpetuarii, hoc est emphyteuticarii, iuris exactio revertatur. * arcad. et honor. aa. minervio com. rer. privat. * <a 397 d. x k. ian. mediolani caesario et attico conss.>

CJ.1.33.3: Imperatores Honorius, Theodosius

Si quis iudicum vir illustris vel praefectus urbi cognitionem comitivae privatarum examini debitam sibimet vindicandam censuerit vel tuitionem contra eiusdem sedis statuta praestiterit, ad quinquaginta librarum auri illationem poenae nomine eius officium teneatur, quam decet in articulo exigi mansuetudinis nostrae aerario sociandam. * honor. et theodos. aa. ursacio com. rer. privat. * <a 414 d. vi id. aug. ravennae constantio et constante conss.>

CJ.1.34.0. De officio comitis sacri patrimonii.

CJ.1.35.0. De officio proconsulis et legati.

CJ.1.35.1: Imperator Constantinus

Legati non solum civiles, sed etiam criminales causas audiant, ita ut, si sententiam in reos ferendam perviderint, ad proconsules eos transmittere non morentur. * const. a. aeliano procons. africae. * <a 320 d. k. oct. constantino a. vi et constantino c. conss.>

CJ.1.35.2: Imperatores Arcadius, Honorius

Officium hellesponti consularis aeternae recordationis patrem serenitatis nostrae adiit et eitis suis incommodis, quibus a vicarianis apparitoribus urguebatur, oravit sub tuae sublimitatis agere potestate. cuius adlegationes humanae proclivius pium principem commoverunt: quod et nos obtinere censemus. * arcad. et honor. aa. simplicio procons. asiae. * <a 396 d. viii k. april. constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.1.36.0. De officio comitis orientis.

CJ.1.36.1pr.: Imperator Leo

Titulos, qui alytarchiae et syriarchiae muneribus in prima syria deputati sunt, per officia tam viri spectabilis comitis orientis quam viri clarissimi rectoris provinciae flagitari praecipimus. * leo a. pusaeo pp. * <a 465 d. v id. nov. constantinopoli basilisco et herminerico conss.>

CJ.1.36.1.1: Imperator Leo

Alytarchiae quidem ludi cura viri spectabilis comitis orientis et eius officii, syriarchiae vero sollicitudine viri clarissimi moderantis provinciam eiusque apparitionis exerceantur, nullique penitus curialium, nec si voluerint, idem munus vel honorem subeundi licentia permittatur. <a 465 d. v id. nov. constantinopoli basilisco et herminerico conss.>

CJ.1.37.0. De officio praefecti augustalis.

CJ.1.37.1: Imperatores Valentinianus, Theodosius, Arcadius

Omnia tributa per aegyptiacam dioecesin cura et providentia claritatis tuae a moderatoribus provinciarum exigi iubemus. si qui tamen ex possessoribus sive militaribus sive non militaribus ad inferenda quae debent audaces extiterint, eos per militare etiam auxilium, si opus exegerit, ad solutionem compelli censemus. * valentin. theodos. et arcad. aaa. florentio praef. augustali.* <a 386 d. xiii k. mart. constantinopoli honorio np. et euodio conss.>

CJ.1.37.2: Imperatores Theodosius, Arcadius, Honorius

Praefectus augustalis ordinariorum sub se iudicum examinandi flagitia et super his referendi, non amovendi vel puniendi habeat potestatem. * theodos. arcad. et honor. aaa. rufino pp. * <a 395 d. prid. non. dec. constantinopoli olybrio et probino conss.>

CJ.1.38.0. De officio vicarii.

CJ.1.38.1: Imperatores Valens, Gratianus, Valentinianus

In civilibus causis vicarios comitibus militum convenit anteferri, in militaribus negotiis comites vicariis anteponi, quotiensque societas in iudicando contigerit, priore loco vicarius ponderetur, comes adiunctus accedat: si quidem cum praefecturae meritum ceteris dignitatibus antestet, vicaria dignitas ipso nomine eius se trahere indicet portinem et sacrae cognitionis habeat potestatem et iudicationis nostrae soleat repraesentare reverentiam. * valens grat. et valentin. aaa. antonio pp. * <a 377 d. viii id. ian. gratiano a. iiii et merobaude conss.>

CJ.1.38.2: Imperatores Valens, Gratianus, Valentinianus

Relationes vicariorum, si quando usus attulerit, ad nostram mansuetudinem referantur. relationes enim iudicum libenter audimus, ne administratorum decrescere videatur auctoritas, si eorum consulta veluti profanorum preces a nostris adytis repellamus. * valens grat. et valentin. aaa. ad hesperium pp. * <a 377 d. xii k. febr. gratiano a. iiii et merobaude conss.>

CJ.1.39.0. De officio praetorum.

CJ.1.39.1: Imperator Constantius

Praetori defertur haec iurisdictio sancientibus nobis, ut liberale negotium ipse disceptator examinet. sane interponi ab eo decreta conveniet, ut, sive in integrum restitutio deferenda est, probatis dumtaxat causis ab eodem etiam interponatur decretum, seu tutoris dandi seu ordinandi curatoris, impleatur ab eo interpositio decretorum: quippe cum apud eum quoque adipisci debeat patronorum iudicio sedula servitus libertatem. nec sane debita filiorum votis patrum vota cessabunt, ut patente copia liberos suos exuant potestate, magis propriis obsequiis mancipatos, cum sese intellegant his obsequii plus debere, a quibus sese memine runt vinculis sacris exutos. * constantius a. ad senatum. * <a 359 d. iii k. ian. eusebio et hypatio conss.>

CJ.1.39.2: Imperatores Valentinianus, Marcianus

Tres tantummodo praetores electae opinionis in hac urbe per singulos annos iudicio senatus praecipimus ordinari, qui competentes causas et debitos actus integre disceptare atque tractare debebunt, ut hi tamen tres ex his, qui proprium larem in hac alma urbe habeant, non ex provinciis eligantur. nec si qui forte propter aliquas causas ad hanc urbem de provinciis venerit, ad praeturae munus vocetur, sed hi tantummodo, ut dictum est, qui hic domicilium fovent, ita ut nec ipsi sumptus quosdam inferre cogantur inviti, sed habeant spontaneae liberalitatis arbitrium. * valentin. et marcian. aa. tatiano pu. * <a 450 d. xv k. ian. constantinopoli valentiniano a. vii et avieno conss.>

CJ.1.40.0. De officio rectoris provinciae.

CJ.1.40.1: Imperator Alexander Severus

Potest de falso causam cognoscens praeses provinciae incidentem proprietatis quaestionem dirimere. * alex. a. iulianae. * <a 234 d. vi k. april. maximo ii et urbano conss.>

CJ.1.40.2: Imperator Constantinus

Praesides provinciarum oportet, si quis potentiorum extiterit insolentior et ipsi vindicare non possunt aut examinare aut pronuntiare nequeunt, de eius nomine ad nos aut certe ad praetorianae praefecturae scientiam referre : quo provideatur, qualiter publicae disciplinae et laesis tenuioribus consulatur. * const. a. ad maximum. * <a 328 d. iiii k. ian. treviris ianuarino et iusto conss.>

CJ.1.40.3: Imperator Constantinus

Iustissimos et vigilantissimos iudices publicis adclamationibus collaudandi damus omnibus potestatem, ut honoris eis auctiores proferamus processus, et e contrario iniustos et maleficos querellarum vocibus accusandi, ut censurae nostrae vigor eos absumat. nam si verae voces sunt nec ad libidinem per clientelas effusae, diligenter investigabimus: praefectis praetorio et comitibus, qui per provincias constituti sunt, provincialium nostrorum voces ad nostram scientiam referentibus. * const. a. ad provinciales. * <a 331 pp. k. nov. constantinopoli basso et ablabio conss.>

CJ.1.40.4: Imperator Constantinus

In officiales praefectorum cursum publicum laniantes vel prava contra utilitatem publicam molientes vindicandi tibi dedimus potestatem, ita ut praefectos de eorum culpa facias certiores. * const. a. ad periclem praes. * <a 335 d. x k. nov. nicopoli constantio et albino conss.>

CJ.1.40.5: Imperatores Valentinianus, Valens

Potioris gradus iudicibus ab inferioribus competens reverentia tribuatur. sed ubi publica tractatur utilitas, etsi minor iudex veritatem investigaverit, nulla maiori inrogatur iniuria. sane qui insignia dignitatis ad hoc exercet, ut indignis iniuriis existimet adficiendos eos, qui officia cum potestate moderantur, non declinabit nostrae indignationis aculeos. * valentin. et valens aa. ad apronianum pu. * <a 364 d. v. k. iun. ancyro divo ioviano et varroniano conss.>

CJ.1.40.6: Imperatores Gratianus, Valentinianus, Theodosius

Civitas rhodiorum iniuriam suam non tam decenter quam sero conquesta est. unde inviolabili observatione sancimus, ut, quoniam tempore hiemis navigatio saepe periculosa est semper incerta, in illis quinque urbibus, quae potiores esse ceteris adseruntur, vicissim hiemandum sibi iudices recognoscant. quod si cuiquam tale existat ingenium, ut praecepta nostra contemnat, quinquaginta ab eo argenti librae, centum ab eius officio, si aliter factum fuerit, fisci viribus inferantur. * grat. valentin. et theodos. aaa. cynegio pp. * <a 385 d. v id. dec. constantinopoli arcadio et bautone conss.>

CJ.1.40.7: Imperatores Valentinianus, Theodosius, Arcadius

Qui ordinariam gesserit dignitatem, quidquid ex venturae delegationis titulis profligaverit, cum dispendio pudoris atque fortunae de propriis facultatibus intra provinciam positus inferre debebit. * valentin. theodos. et arcad. aaa. cynegio pp. * <a 386 d. vii k. iun. constantinopoli honorio np. et euodio conss.>

CJ.1.40.8: Imperatores Valentinianus, Theodosius, Arcadius

Ne quis iudicum in provincia sua praefectianum vel palatinum vel militem vel ex his etiam omnibus, qui antea in huiusmodi officiis fuerunt commorati, intercessorem (id est exsecutorem) cuiusquam litigatoris petitione in quolibet seu privato seu publico negotio putet esse tribuendum. nam peccantem circa consulta caelestia cum suo officio non solum detrimentum famae, sed etiam patrimoniorum damna comitentur. * valentin. theodos. et arcad. aaa. cynegio pp. * <a 386 d. non. aug. constantinopoli honorio np. et euodio conss.>

CJ.1.40.9: Imperatores Valentinianus, Theodosius, Arcadius

Nullus provinciae moderator augustissimam urbem sine iussione adire audeat. nam si quem patuerit contra decreti nostri praecepta venisse, is congrua condemnatione plectetur. * valentin. theodos. et arcad. aaa. polemio pp. illyrici. * <a 390 d. x k. ian. mediolani post consulatum timasii et promoti.>

CJ.1.40.10: Imperatores Arcadius, Honorius

Nullum palatinis tibi obsecundantibus cum provincialibus volumus esse commercium : sed iudices scire debebunt hoc sibi praecipue esse commissum, ut ipsi a provincialibus exigant et consueta deposcant, palatinum vero possessor non horreat, qui non sibi, sed iudicibus atque officiis praeceptus est imminere. * arcad. et honor. aa. limenio com. sacr. larg. * <a 401 d. vi k. april.>

CJ.1.40.11: Imperatores Honorius, Theodosius

Moderatores provinciarum curam gerere iubemus, ne quid potentium procuratores perperam inliciteque committant. * honor. et theodos. aa. theodoro pp. * <a 408 d. vi k. dec. ravennae basso et philippo conss.>

CJ.1.40.12: Imperatores Honorius, Theodosius

Omnes per provincias apparitores pro inveterata auctoritate iuxta motum iudicis nudatos verberibus, si ita res tulerit, subiacere praecipimus, ut et facilis exsecutio rerum publicarum sit et officiorum insolentia comprimatur et iudicum severitati competens reddatur auctoritas. * honor. et theodos. aa. monaxio pp. * <a 412 d. vi k. ian. honorio viiii et theodosio v aa. conss.>

CJ.1.40.14: Imperator Leo

Si quis cohortalibus adhuc obsequiis obligatus regimen provinciae vel cingulum cuiuslibet militiae dignitatisve quoquo modo meruit, contra licitum usurpatis impetratisve careat, etiamsi ultronea nostra liberalitate ius gerendae provinciae vel militiae seu dignitatis cuiuspiam sibi iactaverit fuisse delatum. * leo a. constantino pp. * <a 471 d. vii id. aug. constantinopoli leone a. iiii et probiano conss.>

CJ.1.40.15pr.: Imperator Leo

Nulli iudicum, qui provincias regunt, in civitatibus, in quibus sacra palatia vel praetoria sunt, liceat relictis his privatorum sibi domus ad habitandum veluti praetoria vindicare, sed sacratissima modis omnibus inhabitare palatia seu praetoria, ut hac necessitate compellantur eorum reparationi providere. * leo a. constantino pp. * <a 471 ? >

CJ.1.40.15.1: Imperator Leo

Ubi autem et palatium est et praetorium, palatium quidem habitationi praesidis, praetorium autem suscipiendis conservandisque speciebus publicis horreorum vice vel aliae necessariae rei deputetur. <a 471 ? >

CJ.1.40.15.2: Imperator Leo

Quod si quis aliquando dissimulare temptaverit, protinus eum atque officium quinquaginta librarum auri multam ad reparandum sacrum quod neglexerit palatium solvere sancimus. <a 471 ? >

CJ.1.41.0. Ut nulli patriae suae administratio sine speciali permissu principis permittatur.

CJ.1.42.0. De quadrimenstruis tam civilibus quam militaribus brevibus.

CJ.1.43.0. De officio praefecti vigilum.

CJ.1.43.1: Imperatores Valentinianus, Theodosius, Arcadius

Praefecti vigilum huius urbis nihil de capitalibus causis sua auctoritate statuere debent, sed si quid huiusmodi evenerit, culmini tuae potestatis referre, ut de memoratis causis celsiore sententia iudicetur. * valentin. theodos. et arcad. aaa. nebridio pu. * <a 385 - 389 >

CJ.1.44.0. De officio praefecti annonae.

CJ.1.44.2

* * <a 532 d. viii id. mart. constantinopoli post consulatum lampadii et orestae vv. cc. anno secundo.>

CJ.1.45.0. De officio civilium iudicum.

CJ.1.45.1: Imperatores Arcadius, Honorius, Theodosius

Honorati, qui lites habere noscuntur, his horis, quibus causarum merita vel fata panduntur, residendi cum iudice non habeant facultatem. * arcad. honor. et theodos. aaa. curtio pp. * <a 408 d. iii non. febr. romae basso et philippo conss.>

CJ.1.45.2: Imperatores Honorius, Theodosius

Si quis pro publicis functionibus, quae flagitantur, aliquo se defendere temptet munimine, adeat iudicem et promat, quae duxerit adserenda: quem si iudex, quod non arbitramur, minus audire maluerit, ipse quidem administrator triginta librarum auri, apparitio vero eius quinquaginta feriatur dispendio. * honor. et theodos. aa. anthemio pp. * <a 409 d. xiiii k. aug. constantinopoli honorio viii et theodosio iii aa. conss.>

CJ.1.46.0. De officio iudicum militarium.

CJ.1.46.1: Imperatores Valentinianus, Theodosius, Arcadius

Numquam omnino in negotiis privatorum vel tuitio militaris vel exsecutio tribuatur. * valentin. theodos. et arcad. aaa. comm. et magg. utr. mil.* <a 393 d. prid. id. febr. constantinopoli theodosio a. iii et abundantio conss.>

CJ.1.46.2: Imperatores Honorius, Theodosius

Praecipimus, ne quando curiales vel privatae condicionis homines ad militare exhibeantur iudicium vel contra se agentum actiones excipiant vel litigare in eo cogantur. interminationem autem quinquaginta librarum auri adversus comitianum officium proponi decernimus, si quid contra haec aliquando temptaverit. * honor. et theodos. aa. monaxio pp. * <a 416 d. vi k. sept. eudoxiopoli theodosio a. vii et palladio conss.>

CJ.1.46.3: Imperatores Theodosius, Valentinianus

Nemo de his, qui in virorum spectabilium ducum officiis militaverint, scholae agentum in rebus quacumque subreptione post completam militiam societur, ne agendi vices viri clarissimi principis accipiat facultatem. si quis autem adversus haec nostrae perennitatis decreta venire conetur, militia spoliatus proscriptionis poena pro parte bonorum tertia constringatur. * theodos. et valentin. aa. anatolio mag. mil. * <a 443 d. v k. febr. constantinopoli maximo ii et paterio conss.>

CJ.1.46.4pr.: Imperatores Theodosius, Valentinianus

Duces limitum et praecipue, quibus gentes quae maxime cavendae sunt appropinquant, in ipsis limitibus commorari et milites ad proprium redigere numerum imminentibus magisteriis potestatibus diuturnisque eorum exercitationibus inhaerere praecipimus. * theodos. et valentin. aa. nomo mag. off. * <a 443 d. prid. id. sept. constantinopoli maximo ii et paterio conss.>

CJ.1.46.4.1: Imperatores Theodosius, Valentinianus

Castrorum quin etiam refectionis clusuriarumque curam habeant. <a 443 d. prid. id. sept. constantinopoli maximo ii et paterio conss.>

CJ.1.46.4.2: Imperatores Theodosius, Valentinianus

Quibus cum principe castrorumque praepositis pro laborum vicissitudine limitaneorum militum duodecimam annonarum partem, distribuendam videlicet inter eos magisteriae potestatis arbitrio, deputamus. <a 443 d. prid. id. sept. constantinopoli maximo ii et paterio conss.>

CJ.1.47.0. Ne comitibus rei militaris vel tribunis lavacra praestentur.

CJ.1.47.1: Imperatores Arcadius, Honorius, Theodosius

Omnem inquietudinem a curiis et civitatibus praecipimus prohiberi nec ulla privata ab his succendi balnea ad tribunorum vel ducum aliorumve militarium comitum usus nec adaerationem aliquam pro hac causa profligari. illustribus enim tantum viris comitibus ac magistris militum (si tamen id voluerint) hoc ministerium indulgemus: dupli poena violatoribus huius sanctionis imminente. * arcad. honor. et theodos. aaa. anthemio pp. * <a 406 d. v k. dec. constantinopoli arcadio a. vi et probo conss.>

CJ.1.48.0. De officio diversorum iudicum.

CJ.1.48.1: Imperator Constantinus

Nemo iudex officialem ad eam domum, in qua mater familias agit, cum aliquo praecepto existimet esse mittendum, ut eandem in publicum protrahat, cum certum sit debita eius, quae intra domum considerato sexu semet contineat, domus eius vel cuiuscumque rei habita distractione, publicis necessitatibus posse servari. quod si quis in publicum matrem familias posthac crediderit protrahendam, inter maximos reos citra ullam indulgentiam capitali poena plectetur. * const. a. ad domitium celsum vic. * <a 316 d. iii id. ian. treviris sabino et rufino conss.>

CJ.1.48.2: Imperatores Valentinianus, Theodosius, Arcadius

Singuli quique iudices sciant celsioribus viris et his, quorum nonnumquam iudicio provehuntur, honorificentiam esse debitam praestandam, nec in subscriptionibus suis fratres audeant nominare, apparitione multanda, cuius haec cura est. * valentin. theodos. et arcad. aaa. ad principium pu. * <a 384 d. id. febr. ricomere et clearcho conss.>

CJ.1.48.3: Imperatores Valentinianus, Theodosius, Arcadius

Sciant principes et cornicularii et primates officiorum, iudices etiam, ternas libras auri a suis facultatibus eruendas, si honoratis viris, quibus etiam consistorium nostrum ingrediendi facultas praebetur, secretarii iudicum non patuerit ingressus aut reverentia non fuerit in salutatione delata aut sedendi cum iudice societas denegata. * valentin. theodos. et arcad. aaa. constantio pp. galliarum. * <a 389 d. vi id. nov. treviris timasio et promoto conss.>

CJ.1.49.0. Ut omnes tam civiles quam militares iudices post administrationem depositam per quinquaginta dies in civitatibus vel certis locis permaneant.

CJ.1.49.1pr.: Imperator Zeno

Nemo ex viris clarissimis praesidibus provinciarum vel consularibus aut correctoribus neve qui administrationis maioris infulas meruerint, id est viri spectabiles proconsules vel praefectus augustalis aut comes orientis aut cuiuslibet tractus vicarius aut quicumque dux vel comes cuiuslibet limitis vel divinarum comes domorum, postquam sibi successum fuerit, audeat excedere de locis, quae rexisse noscitur, antequam quinquaginta dierum constitutus numerus finiatur. * zeno a. sebastiano pp. * <a 479 d. v id. oct. constantinopoli zenone a. ii cons.>

CJ.1.49.1.1: Imperator Zeno

Sed per id tempus praesides quidem et consulares nec non correctores in metropoli, spectabiles vero iudices tam civiles quam militares in civitatibus administratae dioeceseos illustrioribus publice, nec domi vel intra sancrosanctos terminos vel regiones aut potentes domos latitantes, sed in celeberrimis locis ante omnium quos nuper gubernaverant ora versentur, ut pateat omnibus facultas libera super furtis aut criminibus querimoniam commovendi, ita ut ab omni defensus iniuria provisione post eum administrantis ac periculo officii nec minus curialium et defensoris civitatis, iuratoriae tantum cautioni commissus, postquam fuerit in querimoniam devocatus, pulsare volentibus (ut dictum est) pro legum ratione respondeat: <a 479 d. v id. oct. constantinopoli zenone a. ii cons.>

CJ.1.49.1.2: Imperator Zeno

Nec ullam ante praefinitum tempus de provincia discedendi excusationem ei tribuat vel divina revocatoria vel codicilli alterius administrationis oblati vel praeceptum amplissimae tuae sedis, ut alterius provinciae moderatoris vices obtineat, aut praeceptum praefatae vel alterius civilis seu militaris cuiuscumque potestatis, ut quamcumque sollicitudinem publicam gerat aut exhibeatur vel deducatur, aut postremum cuiuslibet artis astutia, cuiuscumque occasionis excogitata calliditas excludatur, ut modis omnibus, quae pro universarum provinciarum salute sancimus, sortiantur effectum. <a 479 d. v id. oct. constantinopoli zenone a. ii cons.>

CJ.1.49.1.3: Imperator Zeno

Quod si quis temeritate punienda saluberrimam legem circumscribendam vel violandam crediderit, licet et maiestatis reus non immerito iudicetur, attamen quinquaginta librarum auri multam publicis calculis inferre cogetur: simili poena plectendo, qui post eum administratione suscepta minime eum curaverit honeste retinendum aut super eius fuga protinus referendum. <a 479 d. v id. oct. constantinopoli zenone a. ii cons.>

CJ.1.49.1.4: Imperator Zeno

Administrationem autem deponere non volumus decessorem, antequam successor ad provinciae fines pervenerit, licet litteris ad eum seu programmate vel edicto ad officium et provinciales usus fuerit. <a 479 d. v id. oct. constantinopoli zenone a. ii cons.>

CJ.1.49.1.5: Imperator Zeno

Ipse autem, qui praesentem fugiens non observaverit legem, ubicumque repertus fuerit, licet in hac florentissima civitate, ad provinciam sine ullo penitus obstaculo praeceptione tui culminis, cura etiam viri clarissimi rectoris provinciae , in qua repertus fuerit, deducetur, per sex mensuum curricula ibidem moraturus, quatenus interea minime crimina possint vel furta celari. <a 479 d. v id. oct. constantinopoli zenone a. ii cons.>

CJ.1.49.1.6: Imperator Zeno

Officium etiam, quod eum (debito tamen honore servato) non prohibuerit contra legis tenorem discedere, triginta librarum auri dispendio ferietur. <a 479 d. v id. oct. constantinopoli zenone a. ii cons.>

CJ.1.49.1.7: Imperator Zeno

Quod si intra quinquaginta dierum numerum fuerit forte pulsatus et praefato elapso tempore necdum finita lis fuerit, civiliter quidem super furtorum sceleribus pulsatus dato procuratore instructo post quinquaginta dies protinus habeat licentiam discedendi: accusatione vero super criminibus facta per inscriptionum laqueos inretitus usque ad terminum causae ibidem necessario perdurabit. <a 479 d. v id. oct. constantinopoli zenone a. ii cons.>

CJ.1.49.1.8: Imperator Zeno

Sciant autem universi iudices, apud quos vel administrationis iure vel ex praecepto amplissimae tuae sedis huiusmodi controversiae civiliter vel criminaliter ventilantur, intra viginti dierum spatium debere se praefata litigia, postquam orta fuerint, terminare. nam si supersederint, ipsos quidem decem librarum auri condemnationem subire censemus, accusationem vero seu civilem intentionem semel in iudicium deductam praefato modo legitime terminari. <a 479 d. v id. oct. constantinopoli zenone a. ii cons.>

CJ.1.50.0. De officio eius qui vicem alicuius iudicis obtinet.

CJ.1.50.1: Imperator Gordianus

In causa quae spectat ad utilitatem rei publicae eum qui vice praesidis provinciae administrat potuisse cognoscere in dubium non venit. sane si in aliquo captum est ius rei publicae, iuxta scita divorum principum defensores rei publicae (si modo adesse fiduciam negotio putant) restitutionis auxilium possunt flagitare. * gord. a.Domitio pp. * <a 240 d. iii non. nov. sabino ii et venusto conss.>

CJ.1.50.2: Imperatores Theodosius, Valentinianus

Suggerente magnificentia vestra docta imperialis aeternitas debere eos, qui praeceptione principali seu vestrae sedis amplissimae tueri locum rectorum provinciarum noscuntur, auctoritatem habere tutores seu curatores petentibus dare, decretum etiam interponere ad alienandas minorum similiumque eis personarum seu curalium facultates, emancipationes quoque legibus celebrare et omnia quae ad iurisdictionem rectoris provinciae pertinent actitare, praecipere dignata est pro dispositione vestrae celsitudinis praefatas huiusmodi sollicitudines peragendi habere licentiam. * theodos. et valentin. aa. mandata ad antiochum pp. per referendarium, quae sic habent:* <a 427 d. prid. id. oct. constantinopoli hierio et ardabure conss.>

CJ.1.51.0. De adsessoribus et domesticis et cancellariis iudicum.

CJ.1.51.1: Imperatores Diocletianus, Maximianus

Studiorum labor meretur, ut hi, qui in publicis administrationibus constitui sociari sibi consiliorum participes cupiunt, spe praemiorum atque honorificentia sua provocent eos, quorum prudentiam sibi putant esse necessariam, non metu terribili et necessitate incongrua libertati. * diocl. et maxim. aa. paulino. * <a 286 d. prid. id. iul. tiberiade maximo ii et aquilino conss.>

CJ.1.51.2: Imperator Constantinus

Praesides non per adsessores, sed per se subscribant libellis. quod si quis adsessori subscriptionem inconsultis nobis permiserit, mox adsessor qui subscripsit exilio puniatur: praesidis vero nomen ad nos referri iubemus, ut in eum severius vindicetur. * const. a. ad bassum pp. * <a 320 d. xv k. sept. constantino a. vi et constantino c. conss.>

CJ.1.51.3pr.: Imperatores Arcadius, Honorius

Consiliarios iudicum et cancellarios et eos, qui domesticorum funguntur officio, post depositam administrationem quinquaginta dies in provincia residere praecipimus. * arcad. et honor. aa. messalae pp. * <a 399 d. vi k. ian. mediolani theodoro cons.>

CJ.1.51.3.1: Imperatores Arcadius, Honorius

Pro confesso autem tenebitur, qui accusatus huiusmodi personam subtraxerit: eaque in quadruplum restitui iubemus, quae desiderantur ablata, ut duplum spoliatus accipiat, duplum noster fiscus adquirat. <a 399 d. vi k. ian. mediolani theodoro cons.>

CJ.1.51.4: Imperatores Arcadius, Honorius

Domesticus iudicis a publicis actibus arceatur. quod si necessitatibus publicis sese convictus fuerit miscuisse, statim eum ad maioris potestatis examen deduci oportet, ut competens in eo vindicta promatur. * arcad. et honor. aa. et theodos. a. ad caelicianum vic. * <a 404 d. vi id. april. honorio a. vi et aristaeneto conss.>

CJ.1.51.5: Imperatores Honorius, Theodosius

Nemo in provinciis, qui semel domestici vel cancellarii ministerium gesserit, ad eandem observationem aliqua ambitione iterum remeare concedatur. * honor. et theodos. aa. seleuco pp. * <a 415 d. iii id. dec. ravennae aa. x et vi conss.>

CJ.1.51.6: Imperatores Honorius, Theodosius

Nemo de domesticis ducum vel comitum militarium, officiis eorum connumeratus, post completum sui temporis actum ad eandem rursus sollicitudinem audeat adspirare: decem auri librarum condemnatione proposita, si quis hanc violare voluerit sanctionem: eadem poena officio quoque coercendo, si per ambitionem vel avaritiam ex his aliquid temerari concesserit. * honor. et theodos. aa. vitaliano duci libyae. * <a 417 d. viiii k. nov. constantinopoli honorio a. xi et constantio ii conss.>

CJ.1.51.7: Imperatores Honorius, Theodosius

Velut castrense peculium filii familias adsessores etiam post patris obitum vindicent, qui consiliis propriis administratores iuvare consueverunt, si quid licitis honestisque lucris coadunare potuerunt. * honor. et theodos. aa. eustathio pp. * <a 422 d. x k. april. constantinopoli honorio xiii et theodosio x aa.Conss.>

CJ.1.51.8: Imperatores Honorius, Theodosius

Nullus iudicum ad provinciam sibi commissam quemquam secum ducere audeat, cui domestici vel cancellarii nomen imponat, nec profectum ad se undecumque suscipiat , ne famae nota cum bonorum publicatione plectatur. periculo enim primatum officii cancellarios, sub fide gestorum ex eodem officio electos iudicibus applicari iubemus, ita ut post depositam administrationem nec militiam deserant et provincialibus praesentiam sui exhibeant, quo volentibus sit accusandi eos facultas, si enim idonea causa exegerit, ad detegenda iudicis flagitia et quaestioni eos subdi oportet. * honor. et theodos. aa. asclepiodoto pp. * <a 423 d. prid. k. iun. constantinopoli asclepiodoto et mariniano conss.>

CJ.1.51.9: Imperatores Theodosius, Valentinianus

Si post depositam administrationem iudicum praesentiam vel exhibitionem domesticorum querimonia provincialium aut curalium vel aliqua publica necessitas postulaverit, per eosdem administratores, quorum domestici fuerint, iudicio legibusque tradantur. * theodos. et valentin. aa. ad taurum pp. * <a 433 d. v non. iul. constantinopoli theodosio a. xiiii et maximo conss.>

CJ.1.51.10: Imperatores Theodosius, Valentinianus

In consiliariis observari censemus, ut in eum, qui in sua provincia ultra quattuor menses moderatoribus adsederit adversus leges antiquas et divorum retro principum scita, proscriptio bonorum et accusatio publici criminis immineat, nisi per caeleste oraculum vel amplissimae tuae sedis praeceptionem sese defendat. * theodos. et valentin. aa. florentio pp. * <a 439 d. xiii k. febr. theodosio xvii et festo conss.>

CJ.1.51.11: Imperatores Theodosius, Valentinianus

Non parum adsessoribus magistratuum maiorum quam ipsis iudicibus nostrae benivolentiae liberalitas tribuenda est. ideoque consiliarios virorum illustrium praefectorum tam praetorio quam huius inclitae urbis eminentissimorumque magistrorum militum nec non etiam viri illustris magistri officiorum, sive praedicto officio iam functi sunt seu fungentur in posterum, post depositum etiam officium ab omni indictionis onere seu civilium seu militarium iudicum prorsus immunes esse praecipimus, ut nec ab amplissima quidem sede tui culminis eis ulla molestia super suscipiendo quolibet gravamine penitus iniungatur: quinquaginta librarum auri officio tui culminis damnatione multando, si quid adversus statuta clementiae nostrae innovari concesserit. * theodos. et valentin. aa. zoilo pp.Orientis. * <a 444 d. v k. mart. theodosio a. xviii et albino conss.>

CJ.1.51.12: Imperatores Valentinianus, Marcianus

Liceat omnibus iudicibus illustri praeditis potestate consiliarios sibi eosdem secundo ac tertio et saepius iniungere, quia qui semel recte cognitus est, ob hoc solum non debet, quod iam probatus est, improbari. * valentin. et marcian. aa. palladio pp. * <a 450 vel 455 d..... valentiniano a....>

CJ.1.51.13: Imperator Zeno

* zeno.* <a 487 d. vi k. iul. post consulatum longini.>

CJ.1.51.14pr.: Imperator Justinianus

Nemo ex his, qui advocati causarum constituti sunt vel fuerint et in hac regia urbe in quocumque iudicio deputati et in aliis omnibus provinciis nostro subiectis imperio, audeat in uno eodemque tempore tam advocatione uti quam consiliarii cuiuscumque magistratus, quibus res publica gerenda committitur, curam adripere , cum sat abundeque sufficit vel per advocationem causis perfectissime patrocinari vel adsessoris officio fungi, ne, cum in utrumque festinet, neutrum bene peragat: sed sive advocatus esse maluerit, hoc cum debita sollertia implere possit , vel si adsessionem elegerit, in ea videlicet permaneat, ita tamen, ut post consiliarii sollicitudinem depositam liceat ei ad munus advocationis reverti. * i ust. a. demostheni pp. * <a 529 d. v k. oct. chalcedone decio vc. cons.>

CJ.1.51.14.1: Imperator Justinianus

Nec sit concessum cuidam duobus magistratibus adsidere et utriusque iudicii curam peragere (neque enim facile credendum est duabus etiam necessariis rebus unum sufficere: nam cum uni iudicio adfuerit, altero abstrahi necesse est sicque nulli eorum idoneum in totum inveniri), sed altera adsessione penitus semota unius magistratus esse contentum iudicio. <a 529 d. v k. oct. chalcedone decio vc. cons.>

CJ.1.51.14.2: Imperator Justinianus

Nec callidis machinationibus huiusmodi legem putet quis esse circumscribendam et , si non consilarii signum quod solitum est chartis imponat, sed alias quasdam litteras excogitatas adsimulaverit, existimari ei licere fungi quidem memorato officio, sub huiusmodi tamen umbra latere, cum in legem committunt hi, qui vigorem eius scrupulosis et excogitatis artibus eludere festinant. <a 529 d. v k. oct. chalcedone decio vc. cons.>

CJ.1.51.14.3: Imperator Justinianus

Neque sibi blandiri quemquam oportet, quod et praesentis legis aculeos possit evadere, quemadmodum et anteriores leges super hac re positas deludebat. si quis etenim in tali commisso fuerit inventus, sciat se de matriculis advocatorum penitus esse delendum et decem librarum auri multam nostris privatis largitionibus illaturum, per virum illustrem comitem rerum privatarum exigendam, et aliam maiorem regalis culminis subiturum offensam, cum nec ipse iudex, qui hoc fieri passus est et sciens prudensque hoc commiserit, sine imperiali commitione remanebit : <a 529 d. v k. oct. chalcedone decio vc. cons.>

CJ.1.51.14.4: Imperator Justinianus

Eadem poena subiciendo etiam eo vel eis, qui in his causis, quarum patrocinium adepti sunt quibusque advocationem suam praestiterint, adsessionis cuiuscumque magistratus colore audeat vel audeant iudicare, ne adfectionis suae advocationis memor incorrupti iudicis non possit nomen perferre. <a 529 d. v k. oct. chalcedone decio vc. cons.>

CJ.1.52.0. De annonis et capitu administrantium vel adsessorum aliorumve publicas sollicitudines gerentium vel eorum, qui aliquas consecuti sunt dignitates.

CJ.1.52.1: Imperatores Theodosius, Valentinianus

Omnibus tam viris spectabilibus quam viris clarissimis iudicibus, qui per provincias sive militarem sive civilem administrationem gerunt, nec non comiti commerciorum, magistro aeris sive privatae rei, rationali per ponticam atque asianam dioecesin et adsessoribus iudicum singulorum in praebendis solaciis annonarum hic fixus ac stabilis servabitur modus, ut ea pro annonis et capitu dignitati suae debitis pretia consequantur, quae particularibus delegationibus soleant contineri. * theodos. et valentin. aa. florentio pp. * <a 439 d. iii k. iun. constantinopoli theodosio xvii et festo conss.>

CJ.1.53.0. De contractibus iudicum vel eorum qui sunt circa eos et inhibendis donationibus in eos faciendis et ne administrationis tempore proprias aedes aedificent sine sanctione pragmatica.

CJ.1.53.1pr.: Imperator Justinianus

Quicumque administrationem in hac florentissima urbe gerunt, emere quidem mobiles vel immobiles res vel domus extruere non aliter possint, nisi specialem nostri numinis hoc eis permittentem divinam rescriptionem meruerint. * iust. a. menae pp. * <a 528 d. v id. dec. constantinopoli dn. iustiniano a. ii cons.>

CJ.1.53.1.1: Imperator Justinianus

Donationes vero omnimodo recusent, scientes non esse validas eas in quibuscumque rebus et quacumque aestimatione, nisi post administrationem depositam vel specialiter in scriptis donator eandem donationem ratam habuerit vel tempus quinquennale praeterierit, in quo nulla querella super isdem donationibus vel ab ipso donatore vel ab successoribus eius facta sit. <a 528 d. v id. dec. constantinopoli dn. iustiniano a. ii cons.>

CJ.1.53.1.2: Imperator Justinianus

Provincias vero moderantibus non solum donationes, sed etiam emptiones quarumcumque mobilium vel immobilium rerum praeter eas, quae ad alimonias vel vestem pertinent, et aedificationes, licet sacri apices aliquid eorum permiserint, penitus interdicimus. nec ratum sit, quod his donatione vel venditione datum est, licet quinquennale tempus post depositam administrationem excesserit vel consensus donatoris vel venditoris post eandem administrationem adiectus sit. <a 528 d. v id. dec. constantinopoli dn. iustiniano a. ii cons.>

CJ.1.53.1.3: Imperator Justinianus

Haec autem etiam ad domesticos et consiliarios eorum trahi necessarium duximus, illud etiam adicientes, ut nec per interpositam personam aliquid eorum sine periculo possit perpetrari. <a 528 d. v id. dec. constantinopoli dn. iustiniano a. ii cons.>

CJ.1.53.1.4: Imperator Justinianus

Quae etiam ad praeterita negotia referri sancimus, nisi transactionibus vel iudicationibus sopita sint. <a 528 d. v id. dec. constantinopoli dn. iustiniano a. ii cons.>

CJ.1.54.0. De modo multarum, quae ab iudicibus infliguntur.

CJ.1.54.1: Imperatores Severus, Antoninus

Multa damnum famae non inrogat. * sev. et ant. aa. firmo. * <a 205 d. v id. april. antonino a. et geta utrisque ii conss.>

CJ.1.54.2: Imperator Alexander Severus

Procuratores meos, id est rationales, indicendae multae ius non habere saepe rescriptum est. * alex. a. decimo. * <a 228 d. xiii k. sept. modesto et probo conss.>

CJ.1.54.3: Imperator Gordianus

Curator rei publicae, qui graeco vocabulo logista nuncupatur, multandi ius non habet. * gord. a. celeri. * <a 239 d. id. sept. gordiano a. et aviola conss.>

CJ.1.54.4: Imperatores Gratianus, Valentinianus, Theodosius

Illustres viros praefectos praetorio usque ad quinquaginta librarum auri multas, cum peccatum gravissimum erit, sinimus pervenire. * grat. valentin. et theodos. aaa. eutropio pp. * <a 380 d. viii id. ian. gratiano v et theodosio aa. conss.>

CJ.1.54.5: Imperatores Valentinianus, Theodosius, Arcadius

Multarum severa compendia aerario nostro protinus esse quaerenda nullus ignoret, nisi ipse iudex id, quod ad poenam admissi facinoris exculpitur, vel publicis operibus vel cursui publico vel aliis necessariis causis specialiter deputaverit. * valentin. theodos. et arcad. aaa. ad praetextatum pp. * <a 384 d. v id. sept. aquileiae ricomere et clearcho conss.>

CJ.1.54.6pr.: Imperatores Arcadius, Honorius

Eos, qui ordinario provincias iure moderantur, erga eorum personas, quos culpa reddit obnoxios, ultra duarum unciarum auri multam condemnare non patimur. * arcad. et honor. aa. messalae pp. * <a 399 d. xii k. sept. theodoro cons.>

CJ.1.54.6.1: Imperatores Arcadius, Honorius

Proconsularem vero potestatem, si multandi necessitas imminebit, senarum unciarum auri summa cohibebit: in qua forma etiam comes orientis atque praefectus augustalis erit. <a 399 d. xii k. sept. theodoro cons.>

CJ.1.54.6.2: Imperatores Arcadius, Honorius

Ceteri vero spectabiles iudices et qui vice vestra administrationis gubernacula susceperunt, ultra tres auri uncias sibi intellegant licentiam denegandam. <a 399 d. xii k. sept. theodoro cons.>

CJ.1.54.6.3: Imperatores Arcadius, Honorius

Id quoque observandum a moderatore esse censemus, ut in unius correptione personae, si ad id continuatio peccati impulerit, trinae tantum in annum condemnationis sub praestituta summa severitas exseratur. <a 399 d. xii k. sept. theodoro cons.>

CJ.1.54.6.4: Imperatores Arcadius, Honorius

Quod si quis praedictum modum excesserit, huius auctor admissi condemnato ad dupli restituionem, fisco vero nostro ad inferendam eam quantitatem, quam multae nomine inflixerit, retinebitur. <a 399 d. xii k. sept. theodoro cons.>

CJ.1.54.6.5: Imperatores Arcadius, Honorius

Nec tamen ad huiusmodi legis moderationem pertinere se credant, qui in peculatibus aut manubiis, id est depraedationibus concussionibus furtis atque aliis flagitiis, quae coerceri severius convenit, fuerint deprehensi, scilicet ut scripta per iudices memoratos, in cuiuslibet fuerit dirigenda dispendium, sententia proferatur. <a 399 d. xii k. sept. theodoro cons.>

CJ.1.54.6.6: Imperatores Arcadius, Honorius

Nec putent factu facile esse, ut aut praecipiti persuasione condemnet quem culpa non ingravat, aut erubescenda varietate iudicii pro arbitrio proprio immutandum esse quod lex iusserit, nisi paupertas condemnati hoc persuaserit. <a 399 d. xii k. sept. theodoro cons.>

CJ.1.55.0. De defensoribus civitatum.

CJ.1.55.1: Imperatores Valentinianus, Valens

Si quis de tenuioribus ac minusculariis rebus interpellandum te esse crediderit, in minoribus causis, id est usque ad quinquaginta solidorum summam, acta iudicialia conficias, scilicet ut, si quando quis vel debitum iustum vel servum, qui per fugam fuerit elapsus, vel quod ultra delegationem dederit postulaverit vel quodlibet huiusmodi, tua disceptatione restituas. ceteras vero, quae dignae forensi magnitudine videbuntur, ordinario insinuato rectori. * valentin. et valens aa. senecae defensori. * <a 365 d. v k. iul. tyrici valentiniano et valente aa. conss.>

CJ.1.55.2: Imperatores Valentinianus, Valens

Defensores civitatum non ex decurionum seu cohortalium corpore, sed ex aliis idoneis personis huic officio deputentur. * valentin. et valens aa. ad probum pp. * <a 368? 370? 373? d. iii non. nov. isdem conss. >

CJ.1.55.3: Imperatores Valentinianus, Valens

Utili ratione prospectum est, ut innocens et quieta rusticitas peculiaris patrocinii, id est defensoris locorum, beneficio fruatur, ut apud eum in pecuniariis causis litigandi habeat facultatem. * valentin. et valens aa. et grat. a. ad senatum. * <a 373 d. iiii id. aug. hierapoli valentiniano et valente aa. utrisque iiii conss.>

CJ.1.55.4: Imperatores Gratianus, Valentinianus, Theodosius

In defensoribus universarum provinciarum erit administrationis haec forma et tempus quinquennii spatii metiendum: scilicet ut imprimis parentis vicem plebi exhibeas, descriptionibus rusticos urbanosque non patiaris adfligi, officialium insolentiae, iudicum procacitati salva reverentia pudoris occurras, ingrediendi, cum voles, ad iudicem liberam habeas facultatem, superexigendi damna vel spolia plus petentium ab his, quos liberorum loco tueri debes, excludas, nec patiaris quicquam ultra delegationem solitam ab his exigi, quos certum est nisi tali remedio non posse reparari. * grat. valentin. et theodos. aaa. theodoro defens. civitatis.* <a 385 d. xi non. ian. constantinopoli arcadio et bautone conss.>

CJ.1.55.5: Imperatores Valentinianus, Theodosius, Arcadius

Defensores nihil sibi insolenter, nihil indebitum vindicantes nominis sui tantum fungantur officio: nullas infligant multas, severiores non exerceant quaestiones, plebem vel decuriones ab omni improborum insolentia et temeritate tueantur, ut id tantum, quod esse dicuntur, esse non desinant. * valentin. theodos. et arcad. aaa. potamio praef. augustali. * <a 392 d. iii non. mart. constantinopoli arcadio a. ii et rufino conss.>

CJ.1.55.6: Imperatores Valentinianus, Theodosius, Arcadius

Per omnes regiones, in quibus fera et periculi sui nescia latronum feruet insania, probatissimi quique et districtissimi defensores adsint disciplinae et quotidianis actibus praesint, qui non sinant crimina impunita coalescere: removeantur patrocinia, quae feruorem reis et auxilium scelerosis impertiendo maturari scelera fecerunt. * valentin. theodos. et arcad. aaa. tatiano pp. * <a 392 d. v id. april. constantinopoli arcadio a. ii et rufino conss.>

CJ.1.55.7: Imperatores Arcadius, Honorius

Defensores civitatum oblatos sibi reos in ipso latrocinio vel congressu violentiae aut perpetrato homicidio stupro vel raptu vel adulterio deprehensos et actis publicis sibi traditos expresso crimine cum his, a quibus fuerint accusati, mox sub idonea prosecutione ad iudicium dirigant. * arcad. et honor. aa. caeciliano pp. * <a 405 d. prid. k. ian. mediolani stilichone ii et anthemio conss.>

CJ.1.55.8pr.: Imperatores Honorius, Theodosius

Defensores ita praecipimus ordinari, ut sacris orthodoxae religionis imbuti mysteriis reverentissimorum episcoporum nec non clericorum et honoratorum ac possessorum et curialium decreto constituantur: de quorum ordinatione referendum est ad illustrissimam praetorianam potestatem, ut litteris eiusdem magnificae sedis eorum solidetur auctoritas. * honor. et theodos. aa. caeciliano pp. * <a 409 d. xii k. febr. ravennae honorio viii et theodosio iii aa. conss.>

CJ.1.55.8.1: Imperatores Honorius, Theodosius

Quod si quid a qualibet persona contra publicam disciplinam in laesionem possessorum fieri cognoverint defensores, referendi habeant potestatem ad illustres et magnificos viros praefectos praetorio et illustres viros magistros equitum et peditum, magistros etiam officiorum et comites tam sacrarum largitionum quam rerum privatarum. <a 409 d. xii k. febr. ravennae honorio viii et theodosio iii aa. conss.>

CJ.1.55.9pr.: Imperatores Honorius, Theodosius

Iubemus cura ac sollertia defensorum minime possessores maioribus mensuris et ponderibus a susceptoribus praegravari, sed eos deprehensos ad iudicium dirigi cum ipso commissae fraudis indicio. * honor. et theodos. aa. caeciliano pp. * <a 409 d. xii k. febr. ravennae honorio viii et theodosio iii aa.Conss.>

CJ.1.55.9.1: Imperatores Honorius, Theodosius

Illud etiam fieri permittimus, ut, si provincialibus nostris contestari iniurias seu laesiones suas cupientibus actorum confectio a defensoribus denegetur, licentia eis tribuatur querellae propriae libellum conscriptum eo tenore, quo fuerat contestandum, in frequentioribus civitatum locis proponendi conveniendique scribas, tabularios et cetera officia publica commonenda, per quae libellum colligi oportebit atque invitis supra memoratis personis sub actorum confectione ingerendi, quorum quaestione fides possit inquiri: qua probata in eos, quos gestorum petitam confectionem negasse constiterit, vigor iudiciarius exseratur. <a 409 d. xii k. febr. ravennae honorio viii et theodosio iii aa.Conss.>

CJ.1.55.10: Imperatores Theodosius, Valentinianus

Nulli defensorum licere decernimus, si de publica sollicitudine voluerit se liberare, nisi divinos adfatus intimaverit tuae sublimitatis iudicio, triginta librarum auri poenam tam moderatoribus provinciarum quam ceteris iudicibus vel temeratoribus sacri nostri oraculi subituris, si neglecta fuerit auctoritas principalis. * theodos. et valentin. aa. cyro pp. * <a 441 d. xv k. sept. constantinopoli cyro vc. cons.>

CJ.1.55.11: Imperator Anastasius

Iubemus eos tantummodo ad defensorum curam peragendam ordinari, qui sacrosanctis orthodoxae religionis imbuti mysteriis hoc imprimis sub gestorum testificatione , praesente quoque religiosissimo fidei orthodoxae antistite, per depositiones cum sacramenti religione celebrandas patefecerint. ita enim eos praecipimus ordinari, ut reverentissimorum episcoporum nec non clericorum et honoratorum ac possessorum et curialium decreto constituantur. * anastas. a. eustathio pp. * <a 505 d. xiii k. mai. sabiniano et theodoro conss.>

CJ.1.56.0. De magistratibus municipalibus.

CJ.1.56.1: Imperator Constantinus

Decuriones ad magistratum vel exactionem annonarum ante tres menses vel amplius nominari debent, ut, si querimonia eorum iusta videatur, sine impedimento in absolvendi locum alius subrogetur. * const. a. ad florentium pp. * <a 323 d. id. april. constantinopoli severo et rufino conss.>

CJ.1.56.2: Imperatores Valentinianus, Valens

Magistratus conficiendorum actorum habeant potestatem. * valentin. et valens aa. ad germanium. * <a 366 d. xiii k. ian. gratiano np. et dagalaifo conss.>

CJ.1.57.0. De officio iuridici alexandriae.

CJ.1.57.1: Imperatores Leo, Anthemius

Iubemus apud alexandrinae dumtaxat clarissimae civitatis iuridicum licitum et concessum esse singulis quibusque volentibus donationis conscriptae sollemniter instrumenta reserare, eisdemque robur adiciet gestorum series apud eundem virum confecta, tamquam si apud virum clarissimum moderatorem provinciae vel magistratus vel defensorem plebis habita fuisse diceretur. * leo et anthem. aa. alexandro duci et praef. augustali. * <a 469 d. k. sept. constantinopoli zenone et marciano conss.>

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CJ.2.1.0. De edendo.

CJ.2.1.1: Imperator Antoninus

Ipse dispice, quemadmodum pecuniam, quam deposuisse te dicis, deberi tibi probes. nam quod desideras, ut rationes suas adversaria tua exhibeat, id ex causa ad iudicis officium pertinere solet. * ant. a. manilio. * <a155 pp. iiii k. oct. sabiniano ii et severo conss.>

CJ.2.1.2: Imperatores Severus, Antoninus

Is, apud quem res agitur, acta publica tam criminalia quam civilia exhiberi inspicienda ad investigandam veritatis fidem iubebit. * sev. et ant. aa. fausto. * <a 194 pp. non. iul. severo a. et albino conss.>

CJ.2.1.3: Imperatores Severus, Antoninus

Edita actio speciem futurae litis demonstrat, quam emendari vel mutari licet, prout edicti perpetui monet auctoritas vel ius reddentis decernit aequitas. * sev. et ant. aa. valenti. * <a 202 d. iii k. sept. severo iii et antonino aa. conss.>

CJ.2.1.4: Imperator Antoninus

Qui accusare volunt, probationes habere debent, cum neque iuris neque aequitatis ratio permittat, ut alienorum instrumentorum inspiciendorum potestas fieri debeat. actore enim non probante qui convenitur, etsi nihil ipse praestarit, obtineat. * ant. a. epaphrodito. * <a 212 pp. v id. mart. duobus aspris conss.>

CJ.2.1.5: Imperator Alexander Severus

Non est novum eum a quo petitur pecunia implorare rationes creditoris, ut fides constare possit. * alex. a. valentinianae. * <a 223 pp. vii id. mart. maximo ii et aeliano conss.>

CJ.2.1.6: Imperator Alexander Severus

Iustum est desiderium eius a quo petitur, licet nomine publico, ut rationibus publicis exhibitis constet, quantum sub nomine suo solutum sit. * alex. a. uriano. * <a 223 pp. xvi k. dec. maximo ii et aeliano conss.>

CJ.2.1.7: Imperator Alexander Severus

Procurator privatae rationis instrumentorum, quae communia tibi esse dicis cum fisco, describendorum facultatem secundum morem fieri iubebit: et si quando res exegerit ad fidem petitionis tuae apud alium iudicem praebendam aliquid eorum proferri, desiderante eo qui convenitur, ut id fiat, praecipiet. * alex. a. valenti. * <a 225 pp. x k. mart. fusco et dextro conss.>

CJ.2.1.8: Imperator Alexander Severus

Et quae a divo antonino patre et quae a me rescripta sunt, cum iuris et aequitatis rationibus congruunt. nec enim diversa sunt vel discrepantia, quod multum intersit, ex parte eius, qui aliquid petit quique doli exceptione submoveri ab intentione petitionis suae potest, rationes promi reus desideret, quibus se posse instruere contendit (quod utique ipsa rei aequitatis suadet), an vero ab eo a quo aliquid petitur actor desideret rationes exhiberi, quando hoc casu non oportet originem petitionis ex instrumentis eius qui convenitur fundari. * alex. a. floro. * <a 225 pp. k. oct. fusco et dextro conss.>

CJ.2.2.0. De in ius vocando.

CJ.2.2.1: Imperator Alexander Severus

Sicut bonis moribus convenit reverentiam manumissoris uxori praeberi, ita re exigente in ius eam sine permissu praetoris vocari prohibitum est. * alex. a. tryphoni. * <a 230 pp. iiii k. april. agricola et clemente conss.>

CJ.2.2.2: Imperator Gordianus

Venia edicti non petita patronum seu patronam eorumque parentes et liberos, heredes insuper, etsi extranei sint, a libertis seu liberis eorum non debere in ius vocari ius certissimum est: nec in ea re rusticitati venia praebeatur, cum naturali ratione honor eiusmodi personis debeatur. cum igitur confitearis patroni tui filium sine permissu praesidis in ius vocasse, poenam edicto perpetuo praestitutam rescripto tibi concedi temere desideras. * gord. a. nocturno. * <a 239 pp. viii id. nov. gordiano a. et aviola conss.>

CJ.2.2.3: Imperatores Diocletianus, Maximianus

Qui in potestate patris agunt, adversus eos experiri non possunt. si igitur emancipata es, venia edicti petita hoc facere non prohiberis. quod et in matris persona observandum est. * diocl. et maxim. aa. roxanae. * <a 287 pp. viii id. nov. diocletiano iii et maximiniano aa. conss.>

CJ.2.3.0. De pactis.

CJ.2.3.1: Imperator Severus

Condicionis incertum inter fratres non iniquis rationibus conventione finitum est. cum igitur verbis fideicommissi petitum a patre tuo profitearis, ut, si vita sine liberis decederet, hereditatem licinio frontoni restitueret, pactum eo tempore de sextante frontoni dando, cum liberos philinus non sustulerat, interpositum non idcirco potest iniquum videri, quod facta, sicut placuit, divisione diem suum te filio eius superstite functus est. * sev. a. philino. * <a 200 pp. vii k. dec. severo a. ii et victorino conss.>

CJ.2.3.2: Imperatores Severus, Antoninus

Post venditionem hereditatis a te factam, si creditores contra emptores actiones suas movisse probare potueris eosque eas spontanea suscepisse voluntate, exceptione taciti pacti non inutiliter defenderis. * sev. et ant. aa. claudio. * <a 202 pp. prid. id. febr. severo iii et antonino aa. conss.>

CJ.2.3.3: Imperatores Severus, Antoninus

Servus creditoris meliorem causam domini facere potest: in deterius autem reformare novo pacto non potest obligationem recte constitutam. * sev. et ant. aa. restituto. * <a 202 pp. viii k. april. severo iii et antonino aa. conss.>

CJ.2.3.4: Imperatores Severus, Antoninus

Postquam liti de praedio motae renuntiasti, causam finitam instaurari posse nulla ratio permittit. * sev. et ant. aa. valeriae. * <a 206 pp. iiii id. febr. albino et aemiliano conss.>

CJ.2.3.5: Imperator Antoninus

Creditori tuo si partem pecuniae exsolvisti, de parte vero non petenda inter te et eum convenit ob causas negotiaque eius tuo patrocinio fideque defensa, ea obligatione partim iure civili partim honorario liberatus es. nam exceptio perpetua pacti conventi vel doli residui petitionem repellit, cum et solutum per ignorantiam repeti potuisset. * ant. a. demagorae. * <a 213 pp. viii k. aug. romae antonino a. iiii et balbino conss.>

CJ.2.3.6: Imperator Antoninus

Pacta, quae contra leges constitutionesque vel contra bonos mores fiunt, nullam vim habere indubitati iuris est. * ant. a. iuliae basiliae. * <a 213 pp. v k. aug. antonino a. iiii et balbino conss.>

CJ.2.3.7: Imperator Antoninus

Debitori tuo si heres extitisti, actio, quam contra eum habuisti, adita hereditate confusa est. sed si eam hereditatem, posteaquam in iudicio obtinuisti, ei tradidisti, quem sententia superaveras, ea condicione pactoque, ut tam ceteris creditoribus quam tibi in eo, quod tibi deberetur, si eam hereditatem non adisses , satisfaceret, pacti conventionisque fides servanda est. quae si non servatur, ex stipulatu, si modo pacto subiecta est, actio dabitur. * ant. a. iulio maximo. * <a 213 pp. iii k. aug. antonino a. iiii et balbino conss.>

CJ.2.3.8: Imperator Alexander Severus

Cum, posteaquam adversarius matris tuae victus esset, matrem tuam circumvenerit, ut ei caveret nullam se controversiam de servis moturam, id pactum mala fide factum irritum est, et cum ex ea conventione cum matre tua agi coeperit, iudex eam liberabit. * alex. a. aurelio dionysio. * <a 222 pp. prid. id. sept. alexandro a. cons.>

CJ.2.3.9: Imperator Alexander Severus

Si pascenda pecora partiaria (id est ut fetus eorum portionibus, quibus placuit , inter dominum et pastorem dividantur) apollinarem suscepisse probabitur, fidem pacto praestare per iudicem compelletur. * alex. a. mucatrauli. * <a 222 pp. iiii k. oct. alexandro a. cons.>

CJ.2.3.10: Imperator Alexander Severus

Legem, quam dixisti, cum dotem pro alumna dares, servari oportet, nec obesse tibi potuit, quod dici solet ex pacto actionem non nasci: tunc enim hoc iure utimur, cum pactum nudum est: alioquin cum pecunia datur et aliquid de reddenda ea convenit, utilis est condictio. * alex. a. nicae. * <a 227 pp. iiii k. oct. alexandro a. cons.>

CJ.2.3.11: Imperator Alexander Severus

Ex conventione quidem, qua pactam novercam tuam cum patre tuo dicis, cum fundum in dotem daret, ut et tributa ipsa agnosceret et creditoribus, quibus fuerant praedia obligata, usuras solveret, actio tibi adversus eam competere non potest, et si pactum in stipulationem deductum probetur. sed si fundus aestimatus ita, ut pars instrumenti significat, in dotem datus est, ex vendito actio, ut placitis stetur, competit. * alex. a. capitoni. * <a 229 pp. non. dec. ipso a. iii et dione ii conss.>

CJ.2.3.12: Imperator Alexander Severus

Pacta novissima servari oportere tam iuris quam ipsius rei aequitas postulat. quapropter si conventione quae praecessit diversa pars usuram se non esse consensit, et maxime si, ut proponis, id etiam apud acta praesidis adseveravit, actionem, quae super prima conventione fuerat, exercere non prohiberis. * alex. a. flaccillae. * <a 230 pp. iii k. mart. agricola et clemente conss.>

CJ.2.3.13: Imperator maximinus

In bonae fidei contractibus ita demum ex pacto actio competit, si ex continenti fiat: nam quod postea placuit, id non petitionem, sed exceptionem parit. * maximinus a. marino. * <a 236 pp. v id. ian. maximino a. et africano conss.>

CJ.2.3.14: Imperator Gordianus

Si pacto, quo poenam adversarium tuum promisisse proponis, si placito non stetisset, stipulatio subiecta est, ex stipulatu agens vel id quod in conventionem devenerat, ut fiat, consequeris vel poenam stipulatione comprehensam more iudiciorum exiges. nam bona adversarii tui in te transferri citra sollemnem ordinem frustra deprecaris. * gord. a. caecilio mil. * <a 241 pp. k. april. gordiano a. ii et pompeiano conss.>

CJ.2.3.15: Imperatores valer., gallien.

Pactum, quod dotali instrumento comprehensum est, ut, si pater vita fungeretur, ex aequa portione ea quae nubebat cum fratre heres patri suo esset, neque ullam obligationem contrahere nec libertatem testamenti faciendi mulieris patri potuit auferre. * valer. et gallien. aa. et valer. nobil. c. pactumeio. * <a 259 pp. x k. mart. aemiliano et basso conss.>

CJ.2.3.16: Imperatores Diocletianus, Maximianus

Cum proponas filios testamento scriptos heredes rogatos esse, ut qui primus rebus humanis eximeretur, alteri portionem hereditatis restitueret, quoniam precariam substitutionem fratrum consensu remissam adseris, fideicommissi persecutio cessat. * diocl. et maxim. aa. diaphanto. * <a 286 pp. iiii id. febr. maximo ii et aquilino conss.>

CJ.2.3.17: Imperatores Diocletianus, Maximianus

Pactum, quod bona fide interpositum docebitur, et si scriptura non existente aliis probationibus rei gestae veritas comprobari potest, praeses provinciae secundum ius custodiri efficiet. * diocl. et maxim. aa. deximacho. * <a 286 pp. viiii k. iul. maximo ii et aquilino conss.>

CJ.2.3.18: Imperatores Diocletianus, Maximianus

Si creditores vestros ex parte debiti admisisse quemquam vestrum pro sua persona persolventem probaveritis, aditus rector provinciae pro sua gravitate, ne alter pro altero exigatur, providebit. * diocl. et maxim. aa. iulio et aemilio. * <a 287 pp. vii id. ian. diocletiano iii et maximiano aa.Comss.>

CJ.2.3.19: Imperatores Diocletianus, Maximianus

Licet inter privatos huiusmodi scriptum, quo comprehenditur, ut is qui supervixerit alterius rebus potiatur, nec donationis quidem mortis causa gestae efficaciter speciem ostendat, tamen cum voluntas militum, quae super ultimo vitae spiritu deque familiaris rei decreto quoquo modo contemplatione mortis in scripturam deducitur, vim postremi iudicii obtineat proponasque te ac fratrem tuum ad discrimen proelii pergentes ob communem mortis fortunam invicem pactos esse, ut ad eum, qui superstes fuisset, res eius, cui casus finem vitae attulisset, pertinerent, existente condicione intellegitur ex fratris tui iudicio, quod principalium constitutionum prompto favore firmatur, etiam rerum eius compendium ad te de latum esse. * diocl. et maxim. aa. victoriano mil. * <a 290 pp. xiii k. dec. sirmi ipsis iiii et iii aa. conss.>

CJ.2.3.20: Imperatores Diocletianus, Maximianus

Traditionibus et usucapionibus dominia rerum, non nudis pactis transferuntur. * diocl. et maxim. aa. et cc. martiali. * <a 293 pp. k. ian. aa. conss.>

CJ.2.3.21: Imperatores Diocletianus, Maximianus

Cum proponas inter vos sine scriptura placuisse fratrum tuorum successiones aequis ex partibus dividi, et transactionis causa probari possit hanc intercessisse conventionem, exceptione te tueri potes, si possides: quod si adversarius tuus teneat, ex hoc placito nullam actionem esse natam, si tibi stipulatione non prospexisti, debes intellegere: nec adversario tuo transactione uti concedendum, nisi ea quae placita sunt paratus est adimplere. * diocl. et maxim. aa. et cc. eusebio. * <a 293 pp. k. mai. thirallo aa. conss.>

CJ.2.3.22: Imperatores Diocletianus, Maximianus

Pactum curatoris recipere minorem quantitatem paciscentis adultae aetatis suffragium, ne noceat, efficiet. tutores enim et curatores exigentes pupillis et adultis debitum, non etiam remittentes praestant obligationis liberationem. * diocl. et maxim. aa. et cc. archelao. * <a 293 pp. xvii k. dec. sirmi aa. conss.>

CJ.2.3.23: Imperatores Diocletianus, Maximianus

Filius paciscendo vel debitum accipiendo nihil detrahit patris obligationi. * diocl. et maxim. aa. et cc.Honorato. * <a 293 pp. xvii k. dec. sirmi aa. conss.>

CJ.2.3.24: Imperatores Diocletianus, Maximianus

Si actionem legati vel fideicommissi, quam adversus heredes mariti quondam tui habuisti, te adfectione heredum aliis remisisse probetur, exceptionem pacti contra debitores instituenti actiones nocere tibi minime posse intellegis. * diocl. et maxim. aa. et cc.Domnae. * <a 293 pp. xvii k. ian. sirmi aa. conss.>

CJ.2.3.25: Imperatores Diocletianus, Maximianus

Debitorum pactionibus creditorum petitio nec tolli nec mutari potest. * diocl. et maxim. aa. et cc. euhemero. * <a 294 s. iiii k. mai. sirmi cc. conss.>

CJ.2.3.26: Imperatores Diocletianus, Maximianus

Pactum successorum debitoris ex lege duodecim tabularum aes alienum hereditarium pro portionibus quaesitis singulis ipso iure divisum in solidum unum obligare creditori non potest: quod et in honorario succedentibus iure locum habebit. de chirographis itaque communibus exhibendis cum coherede vel non perfectis in divisione placitis convenire quanti tua interest potes. * diocl. et maxim. aa. et cc. corneliae. * <a 294 pp. iii id. oct. variani cc. conss.>

CJ.2.3.27: Imperatores Diocletianus, Maximianus

Petens ex stipulatione, quae placiti servandi causa secuta est, seu antecessit pactum seu post statim interpositum sit, recte secundum se ferri sententiam postulat. * diocl. et maxim. aa. et cc. aurelio chresimo. * <a 294 s. vi id. nov. heracleae cc. conss.>

CJ.2.3.28: Imperatores Diocletianus, Maximianus

Si certis annis quod nudo pacto convenerat datum fuit, ad praestandum in posterum indebitum solutum obligare non potuit eum qui pactum fecit, nisi placitis stipulatio intercessit. * diocl. et maxim. aa. et cc. leontio. * <a 294 s. iii non. dec. burtudizi cc. conss.>

CJ.2.3.29pr.: Imperator Justinianus

Si quis in conscribendo instrumento sese confessus fuerit non usurum fori proscriptione propter cingulum militiae suae vel dignitatis vel etiam sacerdotii praerogativam, licet ante dubitabatur, sive oportet eandem scripturam tenere et eum qui hoc pactus est non debere adversus suam conventionem venire, vel licentiam ei praestari decedere quidem a scriptura, suo autem iure uti: sancimus nemini licere adversus pacta sua venire et contrahentes decipere. * iust. a. iohanni pp. * <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.2.3.29.1: Imperator Justinianus

Si enim ipso edicto praetoris pacta conventa, quae neque contra leges nec dolo malo inita sunt, omnimodo observanda sunt, quare et in hac causa pacta non valent, cum alia regula est iuris antiqui omnes licentiam habere his quae pro se introducta sunt renuntiare? <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.2.3.29.2: Imperator Justinianus

Omnes itaque iudices nostri hoc in litibus observent, et huiusmodi observatio et ad pedaneos iudices et ad compromissarios et arbitros electos perveniat scituros, quod, si neglexerint, etiam litem suam facere intellegantur. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.2.3.30pr.: Imperator Justinianus

De quaestione tali a caesariensi advocatione interrogati sumus: si duabus vel pluribus personis spes alienae fuerat hereditatis ex cognatione forte ad eos devolvendae, pactaque inter eos inita sunt pro adventura hereditate, quibus specialiter declarabatur, si ille mortuus fuerit et hereditas ad eos perveniat, certos modos in eadem hereditate observari, vel si forte ad quosdam ex his hereditatis commodum pervenerit, certas pactiones evenire. et dubitabatur, si huiusmodi pacta servari oportet. * iust. a. iohanni pp. * <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestae vv.Cc.>

CJ.2.3.30.1: Imperator Justinianus

Faciebat autem eis quaestionem, quia adhuc superstite eo, de cuius hereditate sperabatur, huiusmodi pactio processit et quia non sunt ita confecta, quasi omnimodo hereditate ad eos perventura, sed sub duabus condicionibus composita sunt, si ille fuerit mortuus et si ad hereditatem vocentur hi qui pactionem fecerunt. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestae vv.Cc.>

CJ.2.3.30.2: Imperator Justinianus

Sed nobis omnes huiusmodi pactiones odiosae videntur et plenae tristissimi et periculosi eventus. quare enim quodam vivente et ignorante de rebus eius quidam paciscentes convenerunt? <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestae vv.Cc.>

CJ.2.3.30.3: Imperator Justinianus

Secundum veteres itaque regulas sancimus omnimodo huiusmodi pacta, quae contra bonos mores inita sunt, repelli et nihil ex his pactionibus observari, nisi ipse forte, de cuius hereditate pactum est, voluntatem suam eis accommodaverit et in ea usque ad extremum vitae spatium perseveraverit: tunc etenim sublata acerbissima spe licebit eis illo sciente et iubente huiusmodi pactiones servare. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestae vv.Cc.>

CJ.2.3.30.4: Imperator Justinianus

Quod etiam anterioribus legibus et constitutionibus non est incognitum, licet a nobis clarius est introductum. iubemus etenim neque donationes talium rerum neque hypothecas penitus esse admittendas neque alium quendam contractum, cum in alienis rebus contra domini voluntatem aliquid fieri vel pacisci secta temporum meorum non patitur. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestae vv.Cc.>

CJ.2.4.0. De transactionibus.

CJ.2.4.1: Imperator Antoninus

Neque pactio neque transactio cum quibusdam ex curatoribus sive tutoribus facta auxilio ceteris est in his, quae separatim communiterve gesserunt vel gerere debuerunt. cum igitur tres curatores habueris et cum duobus ex his transegeris, tertium convenire non prohiberis. * ant. a. celerio. * <a 211 d. k. mai. gentiano et basso conss.>

CJ.2.4.2: Imperator Antoninus

Cum te proponas cum sorore tua de hereditate transegisse et idpropter certam pecuniam te ei debere cavisse, etsi nulla fuisset quaestio hereditatis, tamen propter timorem litis transactione interposita pecunia recte cauta intellegitur. ex qua causa si fisco solvisses, repetere non posses: si non solvisses, iure convenireris. * ant. a. lutatiae. * <a 213 pp. iii id. aug. antonino a. iiii et balbino conss.>

CJ.2.4.3: Imperator Alexander Severus

Age cum geminiano, quod pater eius curator tibi datus negotia tua gesserit, et si apud iudicem negabit se actione teneri, quoniam transactio et aquiliana stipulatio interposita est, iudex contemplatione iudicii quod est bonae fidei quaeret, de quanta pecunia nominatim transactum sit: et si apparuerit de minore transactum, quantam pecuniam reliquam ex administratione curae deberi probatum fuerit, solvere eum iubebit, quod non in stipulationem aquilianam obligationis curae tantum deductum est, quanti erat quantitas pecuniae quae debebatur. * alex. a. tulliae. * <a 223 d. prid. id. aug. maximo ii et aeliano conss.>

CJ.2.4.4: Imperator Alexander Severus

Actione administratae curae ab eo, qui legitimae aetatis annos complevit, in aquilianam stipulationem deducta et per acceptilationem extincta nullam aliam superesse nisi de dolo intra concessa tempora non ambigitur, nisi specialiter etiam de dolo transactum est. * alex. a. numidio. * <a 226 pp. ii non. mart. alexandro a. ii et Marcello conss.>

CJ.2.4.5: Imperator Alexander Severus

Cum te transegisse cum herede quondam tutoris tui profitearis, si id post legitimam aetatem fecisti, frustra desideras, ut a placitis recedatur. licet enim, ut proponis, nullum instrumentum intercesserit, tamen si de fide contractus confessione tua constet, scriptura, quae probationem rei gestae solet continere, necessaria non est. * alex. a. evocato. * <a 227 pp. k. mart. albino et aemiliano conss.>

CJ.2.4.6pr.: Imperator Alexander Severus

Cum mota inofficiosi querella matrem vestram cum diversa parte transegisse ita, ut partem bonorum susciperet et a lite discederet, proponatis, instaurari quidem semel omissam querellam per vos, qui matri heredis extitistis, iuris ratio non sinit. * alex. a. pomponiis. * <a 230 pp. viii id. ian. agricola et clemente conss.>

CJ.2.4.6.1: Imperator Alexander Severus

Verum si fides placitis praestita non est, in id quod interest diversam partem recte convenietis: aut enim, si stipulatio conventioni subdita est, ex stipulatu actio competit, aut, si omissa verborum obligatio est, utilis actio, quae praescriptis verbis rem gestam demonstrat, danda est. <a 230 pp. viii id. ian. agricola et clemente conss.>

CJ.2.4.7: Imperator Gordianus

Transactionis placitum ab eo interpositum, cui causae actionem, non decisionem litis mandasti, nihil petitioni tuae derogavit. * gord. a. licinio timotheo evocato. * <a 238 pp. x k. ian. pio et pontiano conss.>

CJ.2.4.8: Imperator Gordianus

De alimentis praeteritis si quaestio defertur, transigi potest, de futuris autem sine praetore seu praeside interposita transactio nulla auctoritate iuris censetur. * gord. a. iunio mil. * <a 239 pp.Xiiii k.Ian.Gordiano a. et aviola conss.>

CJ.2.4.9: Imperator Gordianus

Si super possessione, quae tibi quaesita est, cum quaestionem patereris a fratre uxoris tuae, pactum conventum et stipulatio inter vos, ut adlegas, interposita est, ut, si intra diem certum idem adversarius tuus decem aureos tibi numerasset , possessione ei cederes, vel, si eam inferre quantitatem non curasset, ulterius quaestionem non patereris, et is qui ita spopondit promisso satis non fecit, consequens est te ad quem res pertinet vim ab eo pati non debere: cuius rei gratia vir clarissimus praeses provinciae interpellatus vim prohibebit, praecipue cum, etiamsi in rem diversae parti actio competeret, huiusmodi pactione propter utilem exceptionem posset submoveri. * gord. a. agrippino. * <a 241 pp. vi id. april. gordiano a. ii et pompeiano conss.>

CJ.2.4.10: Imperator Philippus

Fratris tui filiis de paterna successione ac statu etiam nunc contra fidem sanguinis itemque placitorum quaestionem inferre parum probe postulas. nullus etenim erit litium finis, si a transactionibus bona fide interpositis coeperit facile discedi. * philipp. a. apollophaniae. * <a 244 pp. prid. k. april. peregrino et aemiliano conss.>

CJ.2.4.11: Imperatores valer., gallien.

De fideicommisso a patre inter te et fratrem vicissim dato, si alter vestrum sine liberis excesserit vita, interposita transactio rata est, cum fratrum concordia remoto captandae mortis alterius voto improbabili retinetur. et non potest eo casu rescindi, tamquam circumventus sis, cum pacto tali consenseris, cum neque eam cui subveniri solet aetatem agere te proponas nec, si ageres, isdem illis de causis in integrum restitutionis auxilium impetrare deberes. * valer. et gallien. aa. et valer. nobil. c. gaiano mil.* <a 255 pp. xv k. dec. valeriano et gallieno aa. utrisque ii conss.>

CJ.2.4.12: Imperatores valer., gallien.

Praeses provinciae aestimabit, utrum de dubia lite transactio inter te et civitatis tuae administratores facta sit, an ambitiose id, quod indubitate deberi posset, remissum sit. nam priore casu ratam manere transactionem iubebit, posteriore nocere civitati gratiam non sinet. * valer. et gallien. aa. primo. * <a 259 pp. xvi k. mart. aemiliano et basso conss.>

CJ.2.4.13pr.: Imperatores Diocletianus, Maximianus

Interpositas metus causa transactiones ratas non haberi edicto perpetuo continetur. nec tamen quilibet metus ad rescindenda ea, quae consensu terminata sunt, sufficit, sed talem metum probari oportet, qui salutis periculum vel corporis cruciatum contineat. * diocl. et maxim. aa. proclae. * <a 290 s. iiii non. april. byzantii ipsis iiii et iii aa. conss.>

CJ.2.4.13.1: Imperatores Diocletianus, Maximianus

Ad vim tamen vel dolum arguendum qualitas causae principalis non sufficit: unde si nihil tale probari potest, consensu quaestiones terminatas minime instaurari oportet. <a 290 s. iiii non. april. byzantii ipsis iiii et iii aa. conss.>

CJ.2.4.13.2: Imperatores Diocletianus, Maximianus

Sed quoniam eum, cum quo te transegisse commemoras, ex ancilla tua natum servum esse adseveras, si vera sunt, quae precibus complexa es alia ratio pactum reformat: nec enim dubii iuris est dominos cum servis suis paciscentes ex placitis teneri atque obligari non posse. <a 290 s. iiii non. april. byzantii ipsis iiii et iii aa. conss.>

CJ.2.4.14: Imperatores Diocletianus, Maximianus

Si diversa pars contra placitum agere nititur, aequitatis ratio suadet refusa pecunia, cum et tu hoc desideras, causam ex integro agi. * diocl. et maxim. aa. sopatrae. * <a 290 pp. iiii non. iul. ipsis iiii et iii aa. conss.>

CJ.2.4.15: Imperatores Diocletianus, Maximianus

Ut responsum congruum accipere possis, insere pacti exemplum: ita enim intellegemus, utrum sola conventio fuit, an etiam aquiliana stipulatio nec non et acceptilatio secuta fuerit: quae si subdita esse illuxerit, nullam adversariae tuae petitionem hereditatis vel in rem specialem competere palam fiet. * diocl. et maxim. aa. pontio. * <a 290 pp. xv k. aug. ipsis iiii et iii aa. conss.>

CJ.2.4.16: Imperatores Diocletianus, Maximianus

Causas vel lites transactionibus legitimis finitas imperiali rescripto resuscitari non oportet. * diocl. et maxim. aa. et cc. caecilio. * <a 293 s. v id. mart. aa. conss.>

CJ.2.4.17: Imperatores Diocletianus, Maximianus

Cum proponas ab ea, contra quam supplicas, litem quam tecum habuit transactione decisam eamque acceptis quae negotii dirimendi causa placuerat dari nunc de conventione resiluisse, ac petas vel pacto stari vel restitui data, perspicis, si quidem de his reddendis manente transactionis placito statim stipulatione, si contra fecerit, prospexisti et quinque et viginti annis maior fuit, quod exceptionem pacti et actionem datorum habeas: quod si nihil tale convenit, exceptio tibi, non etiam eorum quae dedisti repetitio competit securitate parta. * diocl. et maxim. aa. et cc. Marcello. * <a 293 pp. v id. iun. ipsis aa. v et iiii conss.>

CJ.2.4.18: Imperatores Diocletianus, Maximianus

Transigere vel pacisci de crimine capitali excepto adulterio non prohibitum est.In aliis autem publicis criminibus, quae sanguinis poenam non ingerunt, transigere non licet citra falsi accusationem. * diocl. et maxim. aa. et cc. valentiniano. * <a 293 s. iii k. sept. aa. conss.>

CJ.2.4.19: Imperatores Diocletianus, Maximianus

Sub praetextu instrumenti post reperti transactionem bona fide finitam rescindi iura non patiuntur. sane si eam per se vel per alium subtractis, quibus veritas argui potuit, decisionem litis extorsisse probetur, si quidem actio superest, replicationis auxilio doli mali pacti exceptio removetur, si vero iam perempta est, infra constitutum tempus tantum actionem de dolo potes exercere. * diocl. et maxim. aa. et cc. irenaeo. * <a 293 s. xiiii k. oct. sirmi aa. conss.>

CJ.2.4.20: Imperatores Diocletianus, Maximianus

Non minorem auctoritatem transactionum quam rerum iudicatarum esse recta ratione placuit, si quidem nihil ita fidei congruit humanae, quam ea quae placuerant custodiri. nec enim ad rescindenum pactum sufficit, quod hoc secunda hora noctis intercessisse proponas, cum nullum tempus sanae mentis maioris quinque et viginti annis consensum repudiet. * diocl. et maxim. aa. et cc. antistiae. * <a 293 s. iiii k. oct. aa. conss.>

CJ.2.4.21: Imperatores Diocletianus, Maximianus

Cum ea, quae transactionis causa dari aut retineri convenit, velut emptorem eum quem accipere placuerat obtinere praescribitur, his quae simulate geruntur pro infectis habitis frustra ficti pretii postulatur numeratio. * diocl. et maxim. aa. et cc. geminiano. * <a 293 s. v non. oct. ipsis aa. conss.>

CJ.2.4.22: Imperatores Diocletianus, Maximianus

Si maior transegisti, ad rescindendam transactionem de dolo contestatio non sufficit. * diocl. et maxim. aa. et cc.Alexandro. * <a 293 s. k. dec. aa. conss.>

CJ.2.4.23: Imperatores Diocletianus, Maximianus

Nec intentio creditorum archimedori, cui alios successisse profiteris, si obligatus pro eo non fuisti, tenere potest. sed haec integro negotio tractari convenerat: nam cum iam quaestionem transactione decisam et a te dari placitam numeratam pecuniam proponas, huius indebiti soluti praetextu improbe tibi petitionem decerni postulas, cum, etsi tantum in stipulationem fuisset deducta, indebiti promissi velamento defendi non posses. * diocl. et maxim. aa. et cc. tatiano. * <a 294 d. viii id. mart. cc. conss.>

CJ.2.4.24: Imperatores Diocletianus, Maximianus

Si quidem ex causa transactionis acceptis his quae instrumento continentur nihil amplius peti convenit, adversariam tuam exceptionis auxilio defendi perspicis. sin vero certam quantitatem quasi solam ab ea debitam reddere se debere sine litis decisione confessa est, tam eam quam residuam debiti partem petere minime prohiberis. * diocl. et maxim. aa. et cc. victorino. * <a 294 s. v non. april. sirmi cc. conss.>

CJ.2.4.25: Imperatores Diocletianus, Maximianus

Si maiores quinque et viginti annis cum patruo sive avunculo vestro transegistis vel ei debita donationis causa sine aliqua condicione remisistis, non idcirco, quod hoc huius hereditatis captandae causa, id est spe futurae successionis, vos fecisse proponatis, aliis ei succedentibus instaurari finita debent. * diocl. et maxim. aa. et cc. Marcellae et cyrillae. * <a 294 s. ii id. april. cc. conss.>

CJ.2.4.26: Imperatores Diocletianus, Maximianus

Transactione matris filios eius non posse servos fieri notissimi iuris est. * diocl. et maxim. aa. et cc. dionysiadae. * <a 294 s. id. april. cc. conss.>

CJ.2.4.27: Imperatores Diocletianus, Maximianus

Sanam mente, licet aegram corpore recte transigere manifestum est, nec postulare debueras improbo desiderio placita rescindi valitudinis corporis adversae velamento. * diocl. et maxim. aa. et cc. catoni. * <a 294 s. vii id. mai. cc. conss.>

CJ.2.4.28pr.: Imperatores Diocletianus, Maximianus

Sive apud acta rectoris provinciae sive sint actis, scriptura intercedente vel non, transactio interposita est, hanc servari convenit. * diocl. et maxim. aa. et cc. sapparutae. * <a 294 d. iii non. iul. cc. conss.>

CJ.2.4.28.1: Imperatores Diocletianus, Maximianus

Sed quoniam, ut certum quid accipias, convenisse te, licet sine scriptura, proponis nec huius rei causa stipulationem secutam esse, quamvis ex pacto non potuit nasci actio, tamen rerum vindicatione pendente, si exceptio pacti opposita fuerit, doli mali vel in factum replicatione usa poteris ad obsequium placitorum adversarium urguere. <a 294 d. iii non. iul. cc. conss.>

CJ.2.4.29: Imperatores Diocletianus, Maximianus

Sub praetextu specierum post repertarum generali transactione finita rescindi prohibent iura. error autem circa proprietatem rei apud alium extra personas transigentium tempore transactionis constitutae nihil potest nocere. * diocl. et maxim. aa. et cc. marciae. * <a 294 s. iiii k. oct. cc. conss.>

CJ.2.4.30: Imperatores Diocletianus, Maximianus

Transactione finita, cum ex partibus tuis magis dolum intercessisse quam eorum, contra quos preces fundis, confitearis, instaurare grave nec non criminosum tibi est. * diocl. et maxim. aa. et cc. antonino. * <a 294 s. v id. oct. crevi cc. conss.>

CJ.2.4.31: Imperatores Diocletianus, Maximianus

Si de certa re pacto transactionis interposito hoc comprehensum erat " nihil amplius peti", etsi non additum fuerat " eo nomine", de ceteris quaestionibus integra permaneat actio. * diocl. et maxim. aa. et cc.Proculo. * <a 294 pp. iiii id. oct. byzantii cc. conss.>

CJ.2.4.32: Imperatores Diocletianus, Maximianus

Si causa cognita prolata sententia, sicut iure traditum est, appellationis vel in integrum restitutionis sollemnitate suspensa non est, super iudicato frustra transigi non est opinionis incertae. proinde si non aquiliana stipulatione et acceptilatione subsecuta competentem tibi actionem peremisti, praeses provinciae usitato more legum rebus pridem iudicatis effectum adhibere curabit. * diocl. et maxim. aa. et cc. cyrillo. * <a 294 s. viii k. nov. cc. conss.>

CJ.2.4.33pr.: Imperatores Diocletianus, Maximianus

Si pro fundo quem petebas praedium certis finibus liberum dari transactionis causa placuit, nec eo tempore minor annis viginti quinque fuisti, licet hoc praedium obligatum post vel alienum pro parte fuerit probatum, instaurari decisam litem prohibent iura. * diocl. et maxim. aa. et cc. euchrysio. * <a 294 s. v id. nov. melantiade cc. conss.>

CJ.2.4.33.1: Imperatores Diocletianus, Maximianus

Ex stipulatione sane, si placita servari secuta est, vel, si non intercessit, praescriptis verbis actione civili subdita apud rectorem provinciae agere potes. <a 294 s. v id. nov. melantiade cc. conss.>

CJ.2.4.33.2: Imperatores Diocletianus, Maximianus

Si tamen ipsas res apud te constitutas, ob quarum quaestionem litis intercessit decisio, fiscus vel alius a te vindicavit, nihil petere potes. <a 294 s. v id. nov. melantiade cc. conss.>

CJ.2.4.34: Imperatores Diocletianus, Maximianus

Cum donationis seu transactionis causa administratae tutelae debiti scientes vos obligationem fratri vestro remisisse proponatis nec umquam volenti dolus inferatur, frustra de dolo querimini, nec ad implendum promissum hereditatis propriae pollicitatione quisquam adstringitur. * diocl. et maxim. aa. et cc.Ptolemaidi. * <a 294 pp. vi id. nov. cc. conss.>

CJ.2.4.35: Imperatores Diocletianus, Maximianus

Transactionem, quae dominii translatione vel actione parata seu perempta finem accepit, cum eam amicis etiam intervenientibus re vera ostenditur processisse, metus velamento rescindi postulantis professio detegit improbitatem. * diocl. et maxim. aa. et cc. ammonio. * <a 294 s. viiii k. dec. nicomediae cc. conss.>

CJ.2.4.36: Imperatores Diocletianus, Maximianus

Si cum liberis maior annis viginti quinque transegisti, quamvis dari tibi placita repraesentata necdum probentur nec offerant haec qui conveniuntur, ne quid amplius ab ipsis exigi possit, exceptionis proficit aequitas. * diocl. et maxim. aa. et cc. achilleo. * <a 294 s. vi id. dec. cc. conss.>

CJ.2.4.37: Imperatores Diocletianus, Maximianus

Promissis transactionis causa non impletis poenam in stipulationem deductam, si contra factum fuerit, exigi posse constitit. * diocl. et maxim. aa. et cc.Basilissae. * <a 294 s. xii k. ian. nicomediae cc. conss.>

CJ.2.4.38: Imperatores Diocletianus, Maximianus

Transactio nullo dato vel retento seu promisso minime procedit. * diocl. et maxim. aa. et cc.Theodotiano. * <a 294 s. viii k. ian.Nicomediae cc. conss.>

CJ.2.4.39: Imperatores Diocletianus, Maximianus

Quamvis eum qui pactus est statim paeniteat, transactio rescindi et lis instaurari non potest: et qui tibi suasit intra certum tempus licere a transactione recedi, falsum adseveravit. * diocl. et maxim. aa. et cc.Marcianae. * <a 294 s. d. v k. ian. sirmi cc. conss.>

CJ.2.4.40: Imperatores Gratianus, Valentinianus, Theodosius

Ubi pactum vel transactio scripta est atque aquilianae stipulationis et acceptilationis vinculis firmitas iuris innexa est, aut subsecutis secundum leges accommodandus est consensus aut poena una cum his quae data probantur ante cognitionem causae, si et adversarius hoc maluerit, inferenda est. * grat. valentin. et theodos. aaa. eutropio pp. * <a 381 d. iii non. iun. constantinopoli eucherio et syagrio conss.>

CJ.2.4.41pr.: Imperatores Arcadius, Honorius

Si quis maior annis adversus pacta vel transactiones nullo cogentis imperio libero arbitrio et voluntate confecta putaverit esse veniendum vel interpellando iudicem vel supplicando principibus vel non implendo promissa, eas autem invocato dei omnipotentis nomine eo auctore solidaverit, non solum inuratur infamia, verum etiam actione privatus, restituta poena quae pactis probatur inserta, et rerum proprietate careat et emolumento, quod ex pacto vel transactione illa fuerit consecututs: itaque omnia eorum mox commodo deputabuntur, qui intemerata pacti iura servaverint. * arcad. et honor. aa. rufino pp. * <a 395 d. v id. oct. constantinopoli olybrio et probino conss.>

CJ.2.4.41.1: Imperatores Arcadius, Honorius

Eos etiam huius legis vel iactura dignos iubemus esse vel munere, qui nomina nostra placitis inserentes salutem principum confirmationem initarum esse iuraverint pactionum. <a 395 d. v id. oct. constantinopoli olybrio et probino conss.>

CJ.2.4.42: Imperatores Leo, Anthemius

Si ex falsis instrumentis transactiones vel pactiones initae fuerint, quamvis iusiurandum his interpositum sit, etiam civiliter falso revelato eas retractari praecipimus: ita demum ut, si de plurimis causis vel capitulis eaedem pactiones initae fuerint, illa tantummodo causa vel pars retractetur, quae ex falso instrumento composita convicta fuerit, aliis capitulis firmis manentibus: nisi forte etiam de eo, quod falsum dicitur, controversia orta decisa sopiatur. * leo et anthem. aa. erythrio pp. * <a 472 d. k. iul. constantinopoli marciano cons.>

CJ.2.4.43: Imperator Anastasius

Iubemus in omnibus litigiis iam motis et pendentibus seu postea super servili vel adscripticia condicione movendis transactiones celebrandas vel iam celebratas , si non alio iuri cognito modo eas vacillare contigerit, vires suas obtinere nec ob hoc videri tenorem earum titubare, quod pro condicione servili vel adscripticia confectae sint. * anastas. a. thomae pp. illyrici. * <a 500 d. xv k. dec. patricio et hypatio conss.>

CJ.2.5.0. De calculi errore.

CJ.2.5.1: Imperatores Diocletianus, Maximianus

Errorem calculi, sive ex uno contractu sive ex pluribus emerserit, veritati non adferre praeiudicium saepe constitutum est: unde rationes etiam saepe computatas denuo retractari posse, si res iudicatae non sunt vel transactio non intervenit , explorati iuris et. sed et si per errorem calculi velut debitam quantitatem, cum esset indebita, promisisti, condictio liberationis tibi competit. * diocl. et maxim. aa. et cc. aurelio quarto. * <a 293 d. vi k. mart. aa. conss.>

CJ.2.5.2

CJ.2.6.0. De postulando.

CJ.2.6.1: Imperator Antoninus

Cum a praefecto aegypti perpetuo causas agere prohibitus non appellaveris, placitis obtempera. * ant. a. artemidoro. * <a 216 pp. iii. k. aug. sabino ii et anullino conss.>

CJ.2.6.2: Imperator Alexander Severus

Nec ceterorum liberti, nedum mei quidem, si ita sunt litteris eruditi, ut patrocinia desiderantibus praestare possint, prohibentur hoc facere. * alex. a. polydoro. * <a 224 pp. non mart. iuliano et crispino conss.>

CJ.2.6.3: Imperator Gordianus

Si sub specie honorarii, quod advocato usque ad certum modum deberi potuisset, eam quantitatem, quam desiderio complecteris, te daturum cavisti et, quasi mutuam pecuniam accepisses, eam te redditurum promisisti nec temporis spatio gesto negotio consensum ac fidem accommodasti, competenti exceptione non numeratae pecuniae tutus es et ex hac causa cautionem interpositam usitato more potes condicere. * gord. a. flaviano. * <a 240 pp. v id. iun. sabino ii et venusto conss.>

CJ.2.6.4: Imperatores Diocletianus, Maximianus

Velamento absentiae patroni causae rursum ad finitas quaestiones redire quis frustra conatur. * diocl. et maxim. aa. et cc. theodotiano. * <a 294 s. iiii k. ian. nicomediae cc. conss.>

CJ.2.6.5: Imperator Constantinus

Si qui advocatorum existimationi suae immensa atque illicita compendia praetulisse sub nomine honorariorum ex ipsis negotiis quae tuenda susceperint emolumentum sibi certae partis cum gravi damno litigatoris et depraedatione poscentes fuerint inventi, placuit, ut omnes, qui in huiusmodi scaevitate permanserint, ab hac professione penitus arceantur. * constant. a. helladio. * <a 325 d. iii k. april. paulino et iuliano conss.>

CJ.2.6.6pr.: Imperatores Valentinianus, Valens

Quisquis vult esse causidicus, non idem in eodem negotio sit advocatus et iudex, quoniam aliquem inter arbitros et patronos oportet esse delectum. * valentin. et valens aa. ad olybrium pu. * <a 368 pp. x k. sept. valentiniano et valente aa. ii conss.>

CJ.2.6.6.1: Imperatores Valentinianus, Valens

Ante omnia autem universi advocati ita praebeant patrocinia iurgantibus, ut non ultra, quam litium poscit utilitas, in licentiam conviciandi et maledicendi temeritatem prorumpant: agant, quod causa desiderat: temperent ab iniuria. nam si quis adeo procax fuerit, ut non ratione, sed probris putet esse certandum, opinionis suae imminutione quatietur. nec enim coniventia commodanda est, ut quisquam negotio derelicto in adversarii sui contumeliam aut palam pergat aut subdole. <a 368 pp. x k. sept. valentiniano et valente aa. ii conss.>

CJ.2.6.6.2: Imperatores Valentinianus, Valens

Praeterea nullum cum eo litigatore contractum, quem in propria recepit fide, ineat advocatus, nullam conferat pactionem. <a 368 pp. x k. sept. valentiniano et valente aa. ii conss.>

CJ.2.6.6.3: Imperatores Valentinianus, Valens

Nemo ex his, quos licebit accipere vel decebit, aspernanter habeat, quod sibi semel officii gratia libero arbitrio obtulerit litigator. <a 368 pp. x k. sept. valentiniano et valente aa. ii conss.>

CJ.2.6.6.4: Imperatores Valentinianus, Valens

Nemo ex industria protrahat iurgium. <a 368 pp. x k. sept. valentiniano et valente aa. ii conss.>

CJ.2.6.6.5: Imperatores Valentinianus, Valens

Apud urbem autem romam etiam honoratis, qui hoc putaverint eligendum, eo usque liceat orare, quousque maluerint, videlicet ut non ad turpe compendium stipemque deformem haec adripiatur occasio, sed laudis per eam augmenta quaerantur. nam si lucro pecuniaque capiantur, veluti abiecti atque degeneres inter vilissimos numerabuntur. <a 368 pp. x k. sept. valentiniano et valente aa. ii conss.>

CJ.2.6.6.6: Imperatores Valentinianus, Valens

Quisquis igitur ex his, quos agere permisimus, vult esse causidicus, eam solam , quam sumit tempore agendi, sibi sciat esse personam, quousque causidicus est, nec putet quisquam honori suo aliquid esse detractum, cum ipse necessitatem elegerit standi et ipse contempserit ius sedendi. <a 368 pp. x k. sept. valentiniano et valente aa. ii conss.>

CJ.2.6.7pr.: Imperatores Valentinianus, Valens

Providendum est, ne hi, quos in foro aut meritum nobilissimos fecerit aut vetustas, in una parte consistant, aliam a rudibus atque tironibus necesse sit sustineri. * valentin. et valens aa. et grat. a. ad olybrium pu. * <a 370 d. k. mart. treviris valentiniano et valente iii aa. conss.>

CJ.2.6.7.1: Imperatores Valentinianus, Valens

Atque ideo si in uno auditorio duo tantum prae ceteris fuerint vel plures, quorum fama sit hilarior, in iudicantis officio sit, ut par causidicorum distributio fiat et exaequetur partibus auxilium singulorum et aequa divisio procedat. <a 370 d. k. mart. treviris valentiniano et valente iii aa. conss.>

CJ.2.6.7.2: Imperatores Valentinianus, Valens

Si quis vero monitus a iudice ea excusatione, quae nequeat comprobari, cuicumque parti patrocinium denegaverit, careat foro, sciat etiam numquam sibi ad agendum copiam posse restitui. <a 370 d. k. mart. treviris valentiniano et valente iii aa. conss.>

CJ.2.6.7.3: Imperatores Valentinianus, Valens

Si quis autem ex litigatoribus detectus fuerit separatim tractasse cum pluribus et adversario suo tali fraude subtraxisse paris defensionis copiam, ostendet procul dubio iniquam a se litem foveri et auctoritatem iudicis a se lusam experietur. <a 370 d. k. mart. treviris valentiniano et valente iii aa. conss.>

CJ.2.6.8: Imperatores Leo, Anthemius

Nemo vel in foro magnitudinis tuae vel in provinciali iudicio vel apud quemquam iudicem accedat ad togatorum consortium, nisi sacrosanctis catholicae religionis fuerit imbutus mysteriis. sin autem aliquid quoquo modo vel quadam machinatione factum vel attemptatum fuerit, officium quidem sublimitatis tuae centum librarum auri iacturam pro condemnatione sustineat, idem vero, quicumque ausus fuerit contra providum nostrae serenitatis decretum officium advocationis per subreptionem adripere et prohibitum patrocinium praestiterit, advocationis officio remotus stilum proscriptionis atque perpetui exilii specialiter sustinebit: scituris etiam provinciarum rectoribus, quod is, sub cuius administratione aliquid huiu smodi fuerit attemptatum, partis bonorum dimidiae proscriptionem et poenam exilii per quinquennium sustinebit. * leo et anthem. aa. nicostrato pp. * <a 468 d. prid. k. april. constantinopoli anthemio a. ii cons.>

CJ.2.7.0. De advocatis diversorum iudiciorum.

CJ.2.7.1: Imperator Antoninus

Si patronum causae praevaricatum putas et impleveris accusationem, non deerit adversus eum pro temeritate commissi sententia, atque ita de principali causa denuo quaeretur. quod si non docueris praevaricatum, et calumnia notaberis et rebus iudicatis, a quibus non est provocatum, stabitur. * ant. a. doloni. * <a 213 pp. iii k. oct. antonino a. iiii et balbino conss.>

CJ.2.7.2: Imperatores Valens, Gratianus, Valentinianus

Qui necessario patriae suae debent municipio functiones, eos decurionibus adgregatos nolumus evagari, permittentes tamen, ut in negotiis causidicorum fungantur officiis et in civitatibus propriis subeant munia curiarum, ita tamen, ut non contra rem publicam civitatis, in qua honorem hunc consecuti sunt, eis adesse permittatur. * valens grat. et valentin. aaa. ad antonium pp. * <a 378 d. xv k. sept. ravennae valente vi et valentiniano ii aa. conss.>

CJ.2.7.3: Imperatores Arcadius, Honorius

Ne quis ex corpore togatorum, minime curialibus nexibus illigatus, provinciales suscipiat functiones, scilicet ut et ambientibus claudatur ingressus et invitis necessitas auferatur. * arcad. et honor. aa. ad africanum pu. * <a 396 d. iii non. aug. constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.2.7.4: Imperatores Honorius, Theodosius

Fori tui culminis et universorum iudiciorum advocati quidquid ex huiuscemodi professione vel ipsius occasione quaesierint vel quaesierunt, id post patris obitum praecipuum veluti peculium castrense ad exemplum militum proprio dominio valeant vindicare. * honor. et theodos. aa. eustathio pp. * <a 422 d. x. k. april. constantinopoli honorio xiii et theodosio x aa. conss.>

CJ.2.7.5: Imperatores Theodosius, Valentinianus

Quidquid animi largitate et munificentia praestitimus principali togatis per orientem eminentissimae praefecturae reverentia studiorum, id sibi praesenti sanctione praestitum esse cognoscant patroni causarum illustris urbicariae praefecturae. * theodos. et valentin. aa. cyro pu. * <a 426 d. vii k. ian. constantinopoli theodosio xii et valentiniano ii aa. conss.>

CJ.2.7.6: Imperatores Theodosius, Valentinianus

Sancimus, ut advocatis, qui apud tuam magnificentiam causas acturi sunt, a nullo iudice, nec ab ipsa eminentissima praefectura, sollicitudo ulla penitus iniungatur: sed nec advocatis provinciarum vel spectabilium iudicum quisquis existimet aliquid iniungendum. nulla igitur togatis inspectio, nulla ingeratur peraequatio, nulla operis instructio, nulla discussio, nullum ratiocinium imponatur, nullum denique aliud eis mandetur praeter arbitrium in eodem dumtaxat loco ubi advocationis exercetur officium: quinquaginta librarum auri poena officio feriendo, quod legis istius regulas temerare temptaverit. * theodos. et valentin. aa. ad florentium pp. * <a 439 d. xiii k. mai. constantinopoli theodosio a. xvii et fes to conss.>

CJ.2.7.7: Imperatores Theodosius, Valentinianus

Isdem privilegiis isdemque immunitatibus potiri togam illustrissimae per illyricum praefecturae, quibus fruitur toga per orientem praetorianae sedis excelsae, decernimus. * theodos. et valentin. aa. thalassio pp.Per illyricum. * <a 439 d. vii id. sept. constantinopoli theodosio a. xvii et festo conss.>

CJ.2.7.8: Imperatores Theodosius, Valentinianus

Cum advocatio praetoriana centum quinquaginta numero togatis minime vel imminuendo vel augendo concludatur, iubemus eos, qui ex his ad fisci patronatum pervenerint, a cohortis vel alterius vilioris condicionis nexibus cum liberis quandocumque genitis liberos custodiri postque tale officium depositum annumque completum advocatorum consortio abscedere cum comitiva consistoriana: omneque, quod togatis fori celsitudinis tuae quolibet casu quolibet adquiritur titulo, ut castrense sibimet vindicare nec patribus vel avis paternis earum rerum commodum adquirere legis istius auctoritate decernimus: his omnibus etiam ad urbicariae praefecturae advocationem trahendis. * theodos. et valentin. aa. cyro pp.Cons. designato. * <a 440 d. iii k. ian. valentiniano a. v et anatolio conss.>

CJ.2.7.9: Imperatores Theodosius, Valentinianus

Si quis de togatis fori celsitudinis tuae vel illyricianae seu urbicariae praefecturae sive de his, qui in provincialibus iudiciis causarum patrocinium profitentur, electione tuae sedis regendae provinciae munus potestatemque susceperit, post peractam integre ac sine ulla opinionis labe administrationem ad illud officium, unde abstractus est et unde sibi vitae subsidia comparabat, remeandi habeat facultatem nec causas orare denuo quadam prohibeatur invidia. * theodos. et valentin. aa. apollonio pp. * <a 442 d. xii k. sept. constantinopoli eudoxio et dioscoro conss.>

CJ.2.7.10: Imperatores Valentinianus, Marcianus

Binos, qui priores fori tuae sedis inveniuntur, ad patronatum fisci singulis quibusque annis accedere paribus dignitatis et privilegiorum insignibus ambiendos praecipimus, quibus antehac utebatur is, qui solus creabatur fisci patronus. * valentin. et marcian. aa. palladio pp. * <a 452 d. xiiii k. iul. constantinopoli sporacio cons.>

CJ.2.7.11pr.: Imperator Leo

Nemini licere sancimus aliquem sub adsidendi colore statutis centum quinquaginta advocatis, quos sibi eminentissima praefectura in consilium adsumpserit, adgregare. * leo a. viviano pp. * <a 460 d. k. febr. constantinopoli magno et apollonio conss.>

CJ.2.7.11.1: Imperator Leo

Non aliter vero consortio advocatorum tuae sedis aliquis societur, nisi prius in examine viri clarissimi rectoris provinciae, ex qua oriundus est, praesentibus cohortalibus gesta conficiat, quibus aperte pateat cohortali statui ac fortunae eundem minime subiacere, si praesens vir clarissimus rector provinciae fuerit in eius examine: si vero afuerit, apud defensorem sui oppidi gesta conficiat. <a 460 d. k. febr. constantinopoli magno et apollonio conss.>

CJ.2.7.11.2: Imperator Leo

Iuris peritos etiam doctores eorum iubemus iuratos sub gestorum testificatione depromere, esse eum, qui posthac subrogari voluerit, peritia iuris instructum: filios autem togatorum excellentiae tuae, qui vel nunc causas agunt vel futuris temporibus actitaverint, ceteris supernumerariis anteferri. <a 460 d. k. febr. constantinopoli magno et apollonio conss.>

CJ.2.7.11.3: Imperator Leo

Illud insuper decernimus, ut etiam his, qui ultra centum quinquaginta advocatos eminentissimae tuae sedis reperiuntur, liceat et apud virum spectabilem proconsulem vel praefectum augustalem vel comitem orientis, viros etiam spectabiles vicarios et apud rectores provinciarum negotia perorare. <a 460 d. k. febr. constantinopoli magno et apollonio conss.>

CJ.2.7.12: Imperator Leo

Sancimus patronum fisci iudicio celsitudinis tuae iam non quotannis, sed biennio pro vetere consuetudine finem officii sui sortiri: salvis eidem consortio privilegiis omnibus, quae a retro principibus meruit, manentibus. * leo a. eusebio pp.Illyrici. * <a 463 d. x k. mart. constantinopoli basilio et viviano conss.>

CJ.2.7.13pr.: Imperatores Leo, Anthemius

Petitionem virorum disertissimorum advocatorum alexandrinae splendissimae civitatis, quam de fori sui matricula et fisci patrono obtulerunt, merito admittentes hac sanctione decernimus quinquaginta statutos haberi eorumque nomina pro tempore matriculae conficiendae inscribi et eos advocationis officium in iudicio tam viri spectabilis praefecti augustalis quam viri spectabilis ducis aegyptiaci limitis petentibus adhibere, ceteros vero ultra memoratum numerum constitutos apud alios iudices eiusdem alexandrinae civitatis perorare, filiis scilicet statutorum in loco deficientium supernumerariis anteponendis: egredientem autem post biennium fisci patronum contemplatione laborum exconsulari moderatoris provinciae dignitate decorari: licentia facultateque ei non deneganda, cum usus exegerit , tam pro se quam pro filiis parentibus et uxoribus nec non etiam personis ex transverso latere usque ad quartum gradum constitutis patrocinium suum adhibere. * leo et anthem. aa. alexandro duci aegyptiaci limitis et praef. augustali.* <a 468 d. xiii k. sept. anthemio cons.>

CJ.2.7.13.1: Imperatores Leo, Anthemius

Quando autem fisci patronum mori contigerit, gradu eum sequentem sine ulla dilatione in loco eius subrogari, heredibus defuncti nihil exinde sibi commodi adquiri posse speraturis: cunctis privilegiis, quae hactenus habuisse noscuntur, nec non his, quae suggestio tuae magnitudinis continet, etiam in posterum intactis inviolatisque servandis, quatenus huiusmodi delato eis liberalitate nostrae serenitatis honore possint in otio et tranquillitate reliquum tempus vitae suae peragere, nulla eis invitis sollicitudine ingerenda. <a 468 d. xiii k. sept. anthemio cons.>

CJ.2.7.14: Imperatores Leo, Anthemius

Advocati, qui dirimunt ambigua fata causarum suaeque defensionis viribus in rebus saepe publicis ac privatis lapsa erigunt, fatigata reparant, non minus provident humano generi, quam si proeliis atque vulneribus patriam parentesque salvarent. nec enim solos nostro imperio militare credimus illos, qui gladiis clupeis et thoracibus nituntur, sed etiam advocatos: militant namque causarum patroni, qui gloriosae vocis confisi munimine laborantium spem vitam et posteros defendunt. * leo et anthem. aa. callicrati pp. illyrici. * <a 469 d. v k. april. constantinopoli zenone et marciano conss.>

CJ.2.7.15pr.: Imperator Leo

Post duos fisci patronos, qui ex anterioribus constitutionibus isdem beneficiis muniuntur, sexaginta quattuor togatos, qui in praesenti sunt, a primo usque ad sexagesimum quartum imperialibus beneficiis perfrui censemus, quibus fisci patroni liberique eorum honorati sunt. * leo a. dioscoro pp. * <a 472 d. xvii k. iun. constantinopoli marciano cons.>

CJ.2.7.15.1: Imperator Leo

His quoque illud adiciendum esse statuimus, ut, si quis patronatus fisci adeptus gradum fatalem diem obierit, universa totius anni solacia, ex quo hoc idem officium peragere coeperit, ad heredes seu successores suos, sive liberi sive extranei fuerint, transmittendi tam ex testamento quam ab intestato liberam habeat facultatem. <a 472 d. xvii k. iun. constantinopoli marciano cons.>

CJ.2.7.16: Imperatores leo iun., Zeno

Ad similitudinem sexaginta quattuor advocatorum fori amplissimae praetorianae praefecturae quindecim tantum ex foro tuae magnitudinis, qui in praesenti gradus primos obtinent, post fisci videlicet patronum, isdem privilegiis nostrae mansuetudinis beneficio perfruantur, quibus fisci patroni liberique eorum muniuntur. * leo iunior et zeno aa. iustiniano pu. * <a 474 d. xvii k. april. constantinopoli leone iuniore a. cons.>

CJ.2.7.17pr.: Imperatores leo iun., Zeno

Iubemus advocationem fori tui culminis in centum quinquaginta, sicut antea constitutum fuerat, advocatos concludi eundemque numerum, quotiens vel professionis fine vel morte vel quocumque casu fuerit imminutus, electione magnificae tuae sedis impleri, ita ut in praesenti quidem et hinc usque ad biennium ad plenitudinem supra definiti numeri subrogandi sine ulla cohortalis aut cuiuslibet deterioris condicionis quaestione succedant: salva videlicet adversus eos apparitionibus si qua competit actione, quam certum est, postquam fisci patronatus officio impleto exierint, evanescere: post lapsum vero biennium foro tuae magnificae potestatis inseri postulantes non aliter, nisi sub gestorum confectione minime eos cohortali condicioni subiacere patefactum fuerit, admittantur. * leo iunior et zeno aa. paulo pp.Per illyricum. * <a 474>

CJ.2.7.17.1: Imperatores leo iun., Zeno

Cuncta sane privilegia, quae magnificae per orientem praefecturae advocatis ex divinis retro principum seu inclitae recordationis leonis vel nostris sanctionibus indulta sunt, tuae quoque gloriosissimae sedis causidicis absque ulla discretione competere per hanc in aeternum valituram legem sancimus. <a 474>

CJ.2.7.20pr.: Imperator Anastasius

Suggestionem viri illustris comitis privatarum et proconsulis asiae duximus admittendam, per quam nostrae serenitatis auribus intimavit fori sui advocatos communi petitione magnopere postulasse, ut, postquam advocationis deposuerint officium, dignitate quadam nostra liberalitate potiantur. * anastas. a. eusebio mag. off. * <a 497 d. ii k. ian. constantinopoli anastasio a. ii cons.>

CJ.2.7.20.1: Imperator Anastasius

Iubemus itaque post depositum, ut dictum est, praefatum officium unumquemque eorum, qui in praesenti sunt vel postea matriculis eorum pro tempore fuerint inserti, clarissimi primi ordinis comitis perfrui dignitate, quatenus et tempore quietis fructum praeteritorum laborum consequantur proque fide atque industria erga clientes suos comprobata privatae condicionis hominum multitudine segregati clarissimis merito connumerentur. <a 497 d. ii k. ian. constantinopoli anastasio a. ii cons.>

CJ.2.7.21: Imperator Anastasius

Advocatos amplissimae tuae sedis, qui pro tempore ad fisci patroni gradum et officium provehuntur, una cum liberis iam natis vel postea procreandis ab omni cohortalis seu cuiuslibet deterioris condicionis vinculo immunes ac liberos cum patrimonio suo conservari praecipimus, cum constet hoc iam pridem tam advocatis amplissimae praetorianae per orientem quam magnificae urbicariae praefecturae sacris constitutionibus esse indultum et non dubium sit non tantum eas, sed etiam sublimissimae tuae sedis germanas esse potestates. * anastas. a. thomae pp.Per illyricum. * <a 500 d. xii k. dec. patricio et hypatio conss.>

CJ.2.7.22pr.: Imperator Anastasius

Iubemus pro tempore primatem advocatorum fori viri illustris comitis orientis per biennium fisci patroni fungi officio et solacia sibi communi consensu deputata per idem biennium consequi, hoc quoque transacto professionem advocationis deponere: consortio videlicet eorundem advocatorum ad quadraginta tantummodo viros redigendo, ita ut, si qui superflui sunt iam eidem consortio sociati, de advocationis officio minime reiciantur, nemine alio eis adiciendo, donec quadraginta virorum numerum advocatorum consortium excedere contingat. * anastas. a. constantino pp. * <a 505 d. k. iul. constantinopoli sabiniano et theodoro conss.>

CJ.2.7.22.1: Imperator Anastasius

Ad haec eos, qui, prout statutum est, fisci patroni deposuerint officium, postea quoque non prohiberi singulos tam pro se quam pro iugali sua et socero et socru nec non genero et nuru liberisque propriis, colonis et servis ad se pertinentibus advocationis fungi officio. <a 505 d. k. iul. constantinopoli sabiniano et theodoro conss.>

CJ.2.7.22.2: Imperator Anastasius

Nec aediculas eorum metatorum onere molestari, si tamen in una tantummodo suaque domo singuli talem praerogativam sibi vindicare maluerint. <a 505 d. k. iul. constantinopoli sabiniano et theodoro conss.>

CJ.2.7.22.3: Imperator Anastasius

Pro sportulis praeterea modum, quem notitia nobis porrecta declarat, tam pro his quam pro colonis et servis eorum custodiri, neminique praeberi licentiam eundem modum circa sportularum exactionem contra eos excedendi. <a 505 d. k. iul. constantinopoli sabiniano et theodoro conss.>

CJ.2.7.22.4: Imperator Anastasius

Nec de cetero quemquam, antequam per statuta tempora legum eruditioni noscatur inhaesisse, supra dicto consortio sociari. <a 505 d. k. iul. constantinopoli sabiniano et theodoro conss.>

CJ.2.7.22.5: Imperator Anastasius

Et filios advocatorum vel adhuc in tali constitutorum officio vel eorum, qui fisci patronatum deposuerunt, superstitum vel mortuorum, extraneis ad idem officium accedentibus anteponi eique gratis et sine sumptibus sociari, si et ipsi, prout dispositum est, solito tempore legum doctrinam meruerint. <a 505 d. k. iul. constantinopoli sabiniano et theodoro conss.>

CJ.2.7.22.6: Imperator Anastasius

Ut autem his, qui fisci patroni officium adepti sunt vel fuerint, non tantum superstitibus, sed etiam morte praeventis prospiciatur, tam ad heredes fisci patroni, qui semel ad talem gradum vocatus sit, solacia eius transire hisque servari , quam ipsos, qui fisci patronatum iam deposuerunt vel postea deposuerint, minime cuiuslibet actus publici sollicitudinem nolentes subire compelli nec exhibitionis seu deductionis onere nisi speciali auctoritate nostra molestari et in provincia incusandos per sententiam viri spectabilis comitis orientis utpote competentis iudicis conveniri atque litigare decernimus. <a 505 d. k. iul. constantinopoli sabiniano et theodoro conss.>

CJ.2.7.23pr.: Imperator Anastasius

Laudabile vitaeque hominum necessarium advocationis officium maxime principalibus praemiis oportet remunerari. * anastas. a. eustathio pp. * <a 506 d. xii k. dec. constantinopoli areobindo et messala conss.>

CJ.2.7.23.1: Imperator Anastasius

Ideoque iubemus viros clarissimos fisci pro tempore patronos fori tuae celsitudinis sollemni die festivitatis kalendarum ianuariarum ipsius tantummodo anni, per quem tale peragunt officium, inter spectabiles sacri nostri consistorii comites divina nostrae serenitatis manu puncti consequi solacium. <a 506 d. xii k. dec. constantinopoli areobindo et messala conss.>

CJ.2.7.23.2: Imperator Anastasius

Et postquam tale deposuerint officium, si quidem filios ingenuos habeant, eos clarissimorum notariorum inseri consortio tribunorum, sacras solitas epistulas sine quadam suffragii solutione percepturos. <a 506 d. xii k. dec. constantinopoli areobindo et messala conss.>

CJ.2.7.23.3: Imperator Anastasius

Et si quis per sententiam sublimitatis tuae monitus super agnito debito vel agnita causa, quae ingeritur ei, confessionem exponere paratus sit, eam non arbitro delegato, sed tunc temporis fisci patronis vel alterutri eorum, si alter adesse non possit, pro more tamen solito sub actorum testificatione intimari. <a 506 d. xii k. dec. constantinopoli areobindo et messala conss.>

CJ.2.7.23.4: Imperator Anastasius

Quotiensque de nuptiis quis sine dotalibus instrumentis mutuo contrahendi matrimonium animo celebratis super adfectu suo, liberis ex huiusmodi coniugio iam extantibus vel necdum procreatis, legitimis adlegationibus uti maluerit, eas apud eosdem pro tempore fisci patronos vel alterutrum, ut dictum est, eorum gestis intervenientibus commendari, ita videlicet, ut iuri cognitae adlegationes absentibus personis, si quae competunt, serventur intactae. <a 506 d. xii k. dec. constantinopoli areobindo et messala conss.>

CJ.2.7.23.5: Imperator Anastasius

His insuper, quicumque apud viros gloriosos pro tempore consules mancipia sua libertate donare voluerint, antelatos fisci patronos ad easdem libertates peragendas propriam advocationis vocem accommodare <a 506 d. xii k. dec. constantinopoli areobindo et messala conss.>

CJ.2.7.23.6: Imperator Anastasius

Aliis nihilo minus privilegiis, quae iam pridem memoratis vel fisci patronis vel adhuc advocationis pro tempore peragentibus officium togatis diversis modis indulta sunt, ex hac etiam sanctione nostra in sua stabilitate duraturis. <a 506 d. xii k. dec. constantinopoli areobindo et messala conss.>

CJ.2.7.24pr.: Imperator Anastasius

Petitiones virorum disertissimorum fori praesidalis secundae syriae provinciae advocatorum cum competenti moderatione censuimus admittendas et iubemus pro tempore primatem eorum per biennium fisci patroni fungi officio et solacia sibi communi consensu deputata per idem biennium consequi hocque transacto professionem advocationis deponere: consortio videlicet eorundem advocatorum ad triginta tantummodo viros redigendo, ita ut, si qui superflui sunt iam eidem consortio sociati, de advocationis officio minime reiciantur, nemine alio eis adiciendo, donec triginta virorum numerum advocatorum excedere consortium contingat. * anastas. a. sergio pp. * <a 517 d. k. dec. anastasio et agapito conss.>

CJ.2.7.24.1: Imperator Anastasius

Ad haec eos, qui, prout statutum est, fisci patroni deposuerint officium, postea quoque non prohiberi singulos tam pro se quam pro iugali sua et socero et socru nec non genero et nuru liberisque propriis, colonis et servis ad se pertinentibus advocationis fungi officio. <a 517 d. k. dec. anastasio et agapito conss.>

CJ.2.7.24.2: Imperator Anastasius

Nec aediculas eorum metatorum nomine molestari, si tamen in una tantummodo suaque domo singuli talem praerogativam sibi vindicare maluerint. <a 517 d. k. dec. anastasio et agapito conss.>

CJ.2.7.24.3: Imperator Anastasius

Pro sportulis praeterea modum, quem notitia nobis porrecta declarat, tam pro his quam pro colonis et servis eorum custodiri, neminique praeberi licentiam eundem modum circa sportularum exactionem contra eos excedendi. <a 517 d. k. dec. anastasio et agapito conss.>

CJ.2.7.24.4: Imperator Anastasius

Nec de cetero quemquam, antequam per statuta tempora legum eruditioni noscatur inhaesisse, supra dicto consortio sociari. <a 517 d. k. dec. anastasio et agapito conss.>

CJ.2.7.24.5: Imperator Anastasius

Et filios advocatorum vel adhuc in tali constitutorum officio vel eorum, qui fisci patronatum deposuerunt, superstitum vel mortuorum, extraneis ad idem officium accedentibus anteponi eique gratis et sine sumptibus sociari, si et ipsi, prout dispositum est, solito tempore legum doctrinam meruerint. <a 517 d. k. dec. anastasio et agapito conss.>

CJ.2.7.24.6: Imperator Anastasius

Ut autem his, qui fisci patroni officium adepti sunt vel fuerint, non tantum superstitibus, sed etiam morte praeventis prospiciatur, tam ad heredes fisci patroni, qui semel ad talem gradum vocatus sit, solacia eius transire hisque servari , quam ipsos, qui fisci patronatum iam deposuerunt vel postea deposuerint, minime cuiuslibet actus publici sollicitudinem nolentes subire compelli nec exhibitionis seu deductionis onere nisi speciali auctoritate nostra molestari et in provincia incusandos per sententias viri clarissimi provinciam in qua degunt moderantis, utpote competentis iudicis, conveniri atque litigare decernimus. <a 517 d. k. dec. anastasio et agapito conss.>

CJ.2.7.25pr.: Imperator Justinus

Restituendae sunt clarissimis eloquentiae luminibus sexaginta auri librae, quas sub imperio zenonis divae memoriae pedaneis deputatas arbitris nec non fideiussorum vires aestimantibus, tamen auferendas credidit parca posterioris subtilitas principis, ut iam liberalitate nostri numinis viri clarissimi fisci patroni praefatam auri summam sine fraude annis singulis consequantur, ab amplissima tua sede pari lance in utrumque dividendam. nam universis redditur, quod pro voto omnium primatibus indulgetur. * iustinus a. marino pp. * <a 519 d. k. dec. constantinopoli ipso a. et eutherico conss.>

CJ.2.7.25.1: Imperator Justinus

Sacras insuper epistulas, quibus adprobantur viri clarissimi tribuni praetoriani et notarii, non unius tantum nomine, sed alterius quoque unius praestandas perspicimus, sive suos filios sive quos alios duxerint illustrandos. <a 519 d. k. dec. constantinopoli ipso a. et eutherico conss.>

CJ.2.7.25.2: Imperator Justinus

Ad haec altiore beneficio codicillos, quibus illustris honoratur dignitas, consequantur, quos unius solum nomine eisdem viris facundissimis daturos nos pollicemur profuturos scilicet alteri eorum altero concedente, seu qui ex provinciis suis vel ex amicis voluerint, in provinciis tamen degentibus. <a 519 d. k. dec. constantinopoli ipso a. et eutherico conss.>

CJ.2.7.25.3: Imperator Justinus

Licentiam eis praeterea facimus binos homines annis singulis itidem offerendi nostram adoraturos purpuram, statutis inserendos praesentalibus domesticis, unum equitum, alterum scholae peditum, in vacantem eorum locum qui defuncti sunt, nullo, dum supererant, de militia venumdanda pacto cum eis interposito, quorum eiusmodi conventiones intersunt, ita tamen, ut idem viri facundissimi, cum offerendos eosdem crediderint homines, bina solidorum pro singulis millia nihilque amplius noverint dependenda viris magnificis comitibus dicatissimorum domesticorum , id est equitum quidem pro eo, qui inter equites meriturus est, peditum autem pro eo, qui inter pedites inserendus est: solitis videlicet statim stipendiis nec non ceteris solaciis isdem tironibus deputandis sine quolibet alio dispendio. <a 519 d. k. dec. constantinopoli ipso a. et eutherico conss.>

CJ.2.7.25.4: Imperator Justinus

Aliis etiam privilegiis potiantur, quae diversis temporibus consecuti sunt sive per augustos apices seu dispositiones et sententias amplissimae tuae sedis. nam qui novis digni iudicati sunt, ii multo magis in anterioribus quoque sunt adiuvandi. <a 519 d. k. dec. constantinopoli ipso a. et eutherico conss.>

CJ.2.7.26pr.: Imperator Justinus

Per hanc legem decernimus, ne, antequam in octuaginta tantum virorum numerum fori tui culminis togatorum collegium deductum fuerit, adspirare quis qualibet arte concedatur aut possit, nisi vel eorum filii, qui triginta priorum obtinent numerum, facundiae studiis eruditi, gratis videlicet et sine ullo suffragio, aut fortasse exteri non ultra duos per annos singulos, facundia et ipsi conspicui taxati fuerint: nullo deinceps, postquam in octuaginta virorum numerum redacti fuerint, superare qualibet rursus ambitione vel astutia quantitatem ausuro. * iustinus a. theodoto pu. * <a 524 d. id. febr. constantinopoli iustino a. ii et opilione conss.>

CJ.2.7.26.1: Imperator Justinus

Interdicenda quoque cunctis licentia praevertendi progressus seriem, quam ipsius temporis ordo suppeditat, et ut in mercatorum contractibus loca permutandi et adhuc tirones iam interesse veteribus. <a 524 d. id. febr. constantinopoli iustino a. ii et opilione conss.>

CJ.2.7.26.2: Imperator Justinus

Hoc etiam pronuntiandum censemus, ne quis ex his in aliis degat regionibus relicta observatione glorificae tuae sedis. noverint etenim, qui post nomen impetratum patroni litium ultra trium annorum spatium ex sacratissiama hac urbe morandum duxerit, nec nuncupationem togati nec privilegia virorum eiusmodi concedenda sibi, ut nec repetitis ex industria praedictae sedis auctoritatibus protrahatur aut multiplicetur peregrinationis excursus. <a 524 d. id. febr. constantinopoli iustino a. ii et opilione conss.>

CJ.2.7.26.3: Imperator Justinus

Quorum omnium si quid vel minimum quocumque tempore fuerit violatum, viginti primates eiusdem ordinis et qui pro tempore sollicitudinem ab actis in amplitudinis tuae gerent officio, adiutores etiam eorum denis singuli libris auri ferientur, quod adversus imperialia consulta serenitatis nostrae tendentibus non statim obiecerint intercessionem legis praesentis aut non restiterint et omni nisu prohibuerint, ne quid temptetur contrarium: cum nec in administratores sublimissimae tuae sedis, si non intente custodierint disposita salutaria et, ut non temerentur, prospexerint, poena deerit decem auri librarum. <a 524 d. id. febr. constantinopoli iustino a. ii et opilione conss.>

CJ.2.7.26.4: Imperator Justinus

Sescenti autem aurei, quibus pro tempore fisci patronus fori tuae celsitudinis ad exemplum priorum temporum ex arca tui iudicii consolatur, ne post decursum celerem advocationis et labores gloriosos egenus exeat, non, ut saepe contigit, incerto die praestentur, sed cum medium iter pervenerint patrocinii rerum fiscalium, id est kalendis octobribus, per annos singulos sine cunctatione solventur. <a 524 d. id. febr. constantinopoli iustino a. ii et opilione conss.>

CJ.2.7.26.5: Imperator Justinus

Quidquid insuper privilegiorum retro principum sacris adfatibus vel auctoritate tribunalis cuius interest huic eidem ordini datum ostenditur, inviolatum servari. <a 524 d. id. febr. constantinopoli iustino a. ii et opilione conss.>

CJ.2.7.26.6: Imperator Justinus

Cumque lite quisquam eorum pulsatus fuerit seu civilis causae certaminis aut criminalis quaestionis obtentu, hic vel in provinciis, cum per concessum tempus eorum adesse quemquam evenit, nullos exsecutores sportulas adsequi nec, qui controversiis movendis inserviunt aut excipiendo seu praeparando vel officio quolibet alio, quocumque nomine sumptum exigendum censere. <a 524 d. id. febr. constantinopoli iustino a. ii et opilione conss.>

CJ.2.7.27: Imperator Justinus

Nemo excepta menandri fisci patroni persona speret de cetero permutationum saltibus superiore gradu captato fruiturum se beneficiis, quae patronis aerarii seu dum officium exhibent causis fiscalibus aut post expletum agmen impertita monstrantur. * iustinus a. archelao pp. * <a 524 d. xii k. sept. iustino a. ii et opilione conss.>

CJ.2.7.29pr.: Imperator Justinianus

De constitutione divinae recordationis iustini patris nostri super togatis amplissimae tuae sedis prolata illyriciani advocati postulaverunt a nobis eis clarum fieri, si locum etiam circa eos possit habere, sive cum commeatu sive sine commeatu iudicio eiusdem sublimitatis afuerint. * iust. a. iohanni pp. * <a 531 - 534 >

CJ.2.7.29.1: Imperator Justinianus

Sancimus itaque talem legem generaliter in persona eorum tenere, ut, si quis sine commeatu ultra continuum biennium afuerit vel cum commeatu ultra quinquennium , de matricula penitus aboleatur: nulla licentia ei danda gradum suum vindicare nec iterum viris disertissimis togatis eiusdem sedis adsistere. perfruantur igitur advocati eiusdem sublimitatis hac nostra generali sanctione. <a 531 - 534 >

CJ.2.8.0. De advocatis fisci.

CJ.2.8.1: Imperator Antoninus

Cum te fisci causam agitasse proponas, quamvis te salarium percepisse neges, tamen placitis adquiesce. eos enim, qui causam fisci egissent, prohibitum est adversus fiscum patrocinium praestare. * ant. a. claudio. * <a 213 pp. xiii k. ian. antonino a. iiii et balbino conss.>

CJ.2.8.2: Imperatores valer., gallien.

Potes auctoribus nobis adversus fiscum quoque patrocinium exhibere privatis, dum eam scilicet causam, quam tu, cum fisci advocatus fueras, forte tractasti, suscipere declines. * valer. et gallien. aa. frequenti. * <a 254 pp. vi k. mart. valeriano ii et gallieno aa. conss.>

CJ.2.8.3: Imperator Constantinus

Fisci advocatus poenam metuens caveat, ne fiscalia commoda occultet neve nullo negotio existente fisci nomine privatis audeat calumnias commovere. * const. a. aeliano procons. africae. * <a 313 d. vi id. nov. treviris constantino a. iii et licinio c. iii conss.>

CJ.2.8.4: Imperatores Gratianus, Valentinianus, Theodosius

Rationales privatae rei causis vel sacri aerarii praesidentes examen praesente fisci advocato suscipiant. * grat. valentin. et theodos. aaa. ad ammianum com. rer. p * <a 383 pp. xvii k. ian. merobaude ii et saturnino conss.>

CJ.2.9.0. De errore advocatorum vel libellos seu preces concipientium.

CJ.2.9.1: Imperator Alexander Severus

Ea, quae advocati praesentibus his quorum causae aguntur adlegant, perinde habenda sunt, ac si ab ipsis dominis litium proferantur. * alex. a. aureliae. * <a 227 pp. k. mart. albino et maximo conss.>

CJ.2.9.2: Imperator Gordianus

Errores eorum, qui desideria (id est preces) scribunt, veritati praeiudicium adferre non posse manifestum est. et ideo si condemnationem, cuius mentionem libello insertam esse proponis, manifeste probare potes non intercessisse, adlegationes tuas laedi non oportere is, qui super negotio disceptaturus est, non ignorat. * gord. a. rogato mil. * <a 238 pp. x k. iul. pio et pontiano conss.>

CJ.2.9.3: Imperatores Diocletianus, Maximianus

Sententiis finita negotia rescriptis revocari non oportet. nec enim quae constituta sunt, ut advocatorum error litigatoribus non noceat, tibi etiam opitulari possunt, cum te praesentem neque causae palam ex continenti, id est triduo proximo, contradixisse neque post sententiam appellationis remedio, si tibi haec displicebat, usam proponas. * diocl. et maximin. aa. et cc ulpiae. * <a 294 d. vi k. sept. viminacii cc. conss.>

CJ.2.10.0. Ut quae desunt advocationi partium iudex suppleat.

CJ.2.10.1: Imperatores Diocletianus, Maximianus

Non dubitandum est iudici, si quid a litigatoribus vel ab his qui negotiis adsistunt minus fuerit dictum, id supplere et proferre, quod sciat legibus et iuri publico convenire. * diocl. et maxim. aa. ad honoratum. * <a 290 s. xvi k. mart. diocletiano iiii et maximiano iii aa. conss.>

CJ.2.11.0. De causis, ex quibus infamia alicui inrogatur.

CJ.2.11.1: Imperatores Severus, Antoninus

Infamiae detrimentum minime tibi adfertur ob id solum, quod in carcerem coniectus es vel vincula tibi iussu legitimi iudicis iniecta sunt. * sev. et ant. aa. manilio. * <pp. sine die et consule.>

CJ.2.11.2: Imperatores Severus, Antoninus

Neque furti neque vi bonorum raptorum neque peculatus damnatus intellegi potest, qui, cum plus debiti nomine tributorum exegisset, in duplum a praeside condemnatus est. * sev. et ant. aa. verennio. * <a 197 pp. v id. ian. laterano et rufino conss.>

CJ.2.11.3: Imperatores Severus, Antoninus

Etsi severior sententia dici debuit, tamen, cum proconsul vir clarissimus certis rationibus motus mitiorem sententiam dixerit et ordine decurionum te biennio abstinere iussit, transacto tempore non esse te in numero infamium palam est eo, quod ex antidiastolys post biennium remisisse tibi prohibitionem decurionatus iudex videtur. * sev. et ant. aa. metrodoro. * <a 197 pp. x k. ian. laterano et rufino conss.>

CJ.2.11.4: Imperatores Severus, Antoninus

Si posidonium in tempus anni relegatum secundum sententiam non excessisse proconsulis probaveris, quinque annis exilio temporario damnandum inter infames haberi non oportet, quando sententiae severitas cum ceteris damnis transigere videatur. * sev. et ant. aa. venustiano. * <a 198 pp. vi k. mart. saturnino et gallo conss.>

CJ.2.11.5: Imperatores Severus, Antoninus

Decuriones quidem, item filios decurionum fustibus castigari prohibitum est: verum si iniuriam te fecisse proconsul vir clarissimus pronuntiavit, ignominia notatus es. * sev. et ant. aa. ambrosio. * <a 198 pp. k. iul. saturnino et gallo conss.>

CJ.2.11.6: Imperatores Severus, Antoninus

Ad tempus in opus publicum dati pristinum quidem statum retinent, sed damno infamiae et post impletum tempus subiciuntur. * sev. et ant. aa. .To. * <a 203 pp. vii id. dec. geta et plautiano conss.>

CJ.2.11.7: Imperator Antoninus

Nemo ob id, quod bonis paternis se abstinuit, infamis est. * ant. a. demetrio. * <a 205 pp. v id. ian. antonino a. et geta utrisque ii conss.>

CJ.2.11.8: Imperator Antoninus

Furti si condemnata es, citra verbera quoque fustium famae damnum subisti. quod si res furtiva, quam alter subripuit apud te ignorantem comperta est, non laesit existimationem tuam sententia durior. * ant. a. ulpiae. * <a 205 pp. x k. mart. antonino a. et geta utrisque ii conss.>

CJ.2.11.9: Imperator Antoninus

Neminem sequitur infamia ob defensa negotia publica patriae suae. * ant. a. laeto. * <a 208 pp. xii k. mart. antonino a. et geta utrisque iii conss.>

CJ.2.11.10: Imperator Antoninus

Iniuriarum ex persona quoque servi damnatus infamia notatur. * ant. a. severo. * <a 208 pp. iiii k. aug. isdem conss.>

CJ.2.11.11: Imperator Alexander Severus

Debitores qui bonis cesserint, licet ex ea causa bona eorum venierint, infames non fiunt. * alex. a. irenaeo. * <a 223 pp. x k. maias maximo ii et aeliano conss.>

CJ.2.11.12: Imperator Alexander Severus

Si te expilasse hereditatem sententia praesidis constitit, non ex eo, quod non et alia tibi poena inrogata est, furti improbioris infamiam evitasti. * alex. a. donato. * <a 224 pp. k. iul. iuliano ii et crispino conss.>

CJ.2.11.13: Imperator Alexander Severus

Ea, quae pater testamento suo filios increpans scripsit, infames quidem filios iure non faciunt, sed apud bonos et graves opinionem eius, qui patri displicuit, onerant. * alex. a. iuventio. * <a 229 xiii k. nov. ipso a. iii et dione conss.>

CJ.2.11.14: Imperator Gordianus

Nullam existimationis infamiam avunculus tuus pertimescat, ictibus fustium subiectus ob crimen habita quaestione, si sententia non praecessit ignominiae maculam inrogans. * gord. a. iovino. * <a 238 pp. vi k. sept. pio et pontiano conss.>

CJ.2.11.15: Imperator Gordianus

Decreto amplissimi ordinis luctu feminarum deminuto tristior habitus ceteraque hoc genus insignia mulieribus remittuntur, non etiam intra tempus, quo lugere maritum moris est, matrimonium contrahere permittitur, cum etiam, si nuptias alias intra hoc tempus secuta est, tam ea quam is, qui sciens eam duxit uxorem, etiam si miles sit, perpetuo edicto labem pudoris contrahit. * gord. a. sulpiciae. * <a 239 pp. xvii k. iul. gordiano a. et aviola conss.>

CJ.2.11.16: Imperator Gordianus

Fustibus caesum, cui per praeconem ita dictum est: " katygorian aneu tinos dikaias hupostasews ohutws agenes huparchwn my enistaso " ut calumniatorem videri notatum ideoque esse famosum manifestum est. * gord. a. domitiano. * <a 240 pp. iii k. aug. sabino et venusto conss.>

CJ.2.11.17: Imperator Gordianus

Verbum precibus insertum potius verecundiam onerare quam ullam existimationis maculam videtur adspergere. etenim cum non causa cognita dictum est sukophanteis , sed ad postulatum patroni interlocutione iudicis responsum sit, nequaquam hoc infamiam inrogat. * gord. a. magno. * <a 242 pp. viii k. oct. attico et praetextato conss.>

CJ.2.11.18: Imperator Gordianus

Non damnatos quidem dumtaxat iniuriae, sed pactos quoque perpetuum infamat edictum. verum pactos eos demum, qui ullos adversariis nummos pro mala conscientia ex transactione numerassent, in hac causa placuit intellegi. ceterum simplex eius rei gratia integram existimationem illibatamque conservat. quod si iureiurando decisa contentio est, nemo dubitaverit, quin religionem absolutio iudicantis sequatur. * gord. a. antiocho. * <a 260 pp. xiiii k. ian. saeculare ii et donato conss.>

CJ.2.11.19: Imperatores carinus, numer.

Interlocutio praesidis, quae indicta est, infamem eum de quo quaeris fecisse non videtur, cum non specialiter ob iniuriam vel admissam vim condemnatus, sed ita praesidis verbis gravatus est et admonitus, ut ad melioris vitae frugem se reformet. * carinus et numer. aa. aristocrati. * <a 284 pp. xvii k. febr. carino ii et numeriano aa. conss.>

CJ.2.11.20: Imperatores Diocletianus, Maximianus

Improbum fenus exercentibus et usuras usurarum illicite exigentibus infamiae macula inroganda est. * diocl. et maxim. aa. fortunato. * <a 290 pp. xvi k. mart. ipsis iiii et iii aa. conss.>

CJ.2.11.21: Imperatores Diocletianus, Maximianus

Si fratres tui minores dumtaxat aetate in ludicrae artis ostentatione spectaculum sui populo praebuerunt, inviolatum existimationem obtinent. * diocl. et maxim. aa. statio. * <a 290 d. v k. sept. ipsis aa. conss.>

CJ.2.11.22: Imperatores Diocletianus, Maximianus

Fidem rumpens societatis cum infamiae periculo suo nomine pro socio conventus ad faciendum satis urguetur. * diocl. et maxim. aa. et cc. domitiano. * <a 294 d. vi id. dec. nicodemiae cc. conss.>

CJ.2.12.0. De procuratoribus.

CJ.2.12.1: Imperator pius

Cautio ratihabitionis tunc exigitur a procuratore, quotiens incertum est, an ei negotium mandatum est. * divus pius severo. * <a 150 pp. iiii id. oct. gallicano et vetere conss.>

CJ.2.12.2: Imperator divi fratres

Cum rem pecuniariam esse dicas, potes per maritum tuum sollemnibus impletis appellationi adversariae respondere, cum appellationes pecuniariae etiam per procuratores exerceri ab utraque parte litigantium possunt. * divi fratres sextiliae. * <a 161 accepta viii k. aug. ipsis iii et ii conss.>

CJ.2.12.3pr.: Imperatores Severus, Antoninus

Eum, qui res agit heredum, a quibus tibi deberi fideicommissum dicis, evoca ad praetorem virum clarissimum, qui aut respondere tibi cogetur aut administratione negotiorum secundum formam iurisdictionis prohibebitur. * sev. et ant. aa. pomponio. * <a 204 pp. x k. sept. cilone et libone conss.>

CJ.2.12.3.1: Imperatores Severus, Antoninus

Deliberabit autem praetor, si non defandat heredes, debeatne te mittere in possessionem, secutus iurisdictionem, quae exerceri adversus indefensos solet. <a 204 pp. x k. sept. cilone et libone conss.>

CJ.2.12.4: Imperatores Severus, Antoninus

Quia absente te iudicatum dicis, aequum est restitui tibi causae defensionem: nec oberit tibi, quod uxor tua interfuit iudicio aut etiam adquievit sententiae, cum aliena negotia per mulieres non aliter agi possunt, nisi in rem suam et proprium lucrum mandatae sunt eis actiones. * sev. et ant. aa. saturnino. * <a 207 pp. prid. non. ian. apro et maximo conss.>

CJ.2.12.5: Imperator Antoninus

Actionem ei, qui absentis nomine agere vult, si non eum defendat, denegari oportere iam edicto perpetuo expressum est. * ant. a. pancratiae. * <a 212 pp. iii k. mart. duobus aspris conss.>

CJ.2.12.6: Imperator Antoninus

Reum criminis constitutum defensionem causae suscipere non posse, antequam purgarit innocentiam suam, incognitum non est. * ant. a. marciano. * <a 223 d. vi k. mart. maximo ii et aeliano conss.>

CJ.2.12.7: Imperator Antoninus

Militem nec pro patre vel matre vel uxore nec ex sacro rescripto procuratorio nomine experiri oportet, cum neque defensionem alienam suscipere vel redimere negotia vel quasi suffragatorem accedere utilitate publica permittatur. * ant. a. macrino mil. * <a 223 pp. viii id. mart. maximo ii et aeliano conss.>

CJ.2.12.8: Imperator Antoninus

Quod quis sibi debitum exigere tibi mandavit, ante litis contestationem tu alii petendum mandare non potes. * ant. a. mansueto. * <a 223 pp. viii k. sept. maximo ii et aeliano conss.>

CJ.2.12.9: Imperator Antoninus

Qui stipendia merent, suis negotiis superesse inoffensa disciplina possunt: nec potest dici eum, qui honesta et verecunda praecedente causa mandatas sibi actiones exercuerit, alieno negotio fungi, cum, licet intentio ex persona alterius bona fide sumatur, hunc tamen rem suam gerere non ambigitur. quod militibus meis interdici non modo absurdum, verum etiam iniquum est. * ant. a. aufidio. * < sine die et consule.>

CJ.2.12.10: Imperator Antoninus

Si procurator ad unam speciem constitutus officium mandati egressus est, id quod gessit nullum domino praeiudicium facere potuit. quod si plenam potestatem agendi habuit, rem iudicatam rescindi non oportet, cum, si quid fraude vel dolo egit, convenire eum more iudiciorum non prohiberis. * ant. a. castriciae. * <a 227 pp. iii k. mart. albino et maximo conss.>

CJ.2.12.11pr.: Imperator Antoninus

Neque tutores neque curatores ex sua persona in re pupilli vel adulescentis procuratorem facere possunt, sed actorem constituere debent. * ant. a. sebastiano. * <a 229 pp. prid. id. mai. alexandro a. iii et dione conss.>

CJ.2.12.11.1: Imperator Antoninus

Pupillus autem vel pupilla vel adultus vel adulta tam ad agendum quam ad defendendum tutore seu curatore interveniente procuratorem ordinare possunt. <a 229 pp. prid. id. mai. alexandro a. iii et dione conss.>

CJ.2.12.11.2: Imperator Antoninus

Ipsi autem tutores et curatores post litis contestationem a se factam ad exemplum procuratorum, qui litem contestati sunt, dare procuratores non prohibentur. <a 229 pp. prid. id. mai. alexandro a. iii et dione conss.>

CJ.2.12.12pr.: Imperator Antoninus

Exigendi a filio tuo mandati, qui se defensioni tuae offerebat, duplici ratione necessitas non fuit, aut quod defendere quis sive libertus sive extraneus sine mandato potest (satisdatione tamen pro defensione praestita et alia procul dubio observatione subiecta), aut quod filius, etiamsi ultro actionem patris nomine dirigat, mandatum probare non cogitur. * ant. a. frontino mil. * <a 230 v k. oct. agricola et clementino conss.>

CJ.2.12.12.1: Imperator Antoninus

Sane quod necdum legitimam aetatem idem filius tuus compleverat, ob hoc quidem depellere procuratione eum iudex non iniuste potuit. sed multo iustius fuit vel huiusmodi defensorem audire, quam absentem quasi contumacem et indefensum gravi condemnatione adficere. <a 230 v k. oct. agricola et clementino conss.>

CJ.2.12.13: Imperator Gordianus

Ita demum super lite persequenda, quam tibi mater mandavit, actionem intendere potes, si, cum primo litem contestareris, non est tibi eo nomine opposita praescriptio militiae: quod nec, cum appellatio agitur, tibi obici poterit. nam si integra res est, ratio perpetui edicti acceptam tibi non permittit alieno nomine actionem intendere. * gord. a. viciano mil. * <a 239 iii id. ian. gordiano a. et aviola conss.>

CJ.2.12.14: Imperator Gordianus

Non hoc minus sententia adversus te lata iuris substiti, quod adversaria tua minor viginti quinque annis constituta causam suam marito sine curatore agendam mandavit. minoribus etenim aetas in damnis subvenire, non in rebus prospere gestis obesse consuevit. * gord. a. sabiniano. * <a 241 pp. iii non. oct. gordiano a. ii et pompeiano conss.>

CJ.2.12.15: Imperatores Diocletianus, Maximianus

Litem te redemisse contra bonos mores precibus manifeste professus es, cum procurationem quidem suscipere (quod officium gratuitum esse debet) non sit res illicita, huiusmodi autem officia non sine reprehensione suscipiantur. * diocl. et maxim. aa. et cc. cornificio. * <a 293 pp. iii non. april. aa. conss.>

CJ.2.12.16: Imperatores Diocletianus, Maximianus

Procuratorem vel actorem praedii, si non specialiter distrahendi mandatum accepit, ius rerum dominii vendendi non habere certum ac manifestum est. unde si non ex voluntate domini vendentibus his fundum comparasti, pervides improbum tuum desiderium esse dominium ex huiusmodi emptione tibi concedi desiderantis. * diocl. et maxim. aa. et cc. paconiae. * <a 293 s. non. april. byzantii aa. conss.>

CJ.2.12.17: Imperatores Diocletianus, Maximianus

Invitus procurationem suscipere nemo cogitur nec eandem ultra, nisi provocationis causa, extendere. sed nec defensionem absentis subire compellitur, cum fidem susceptam implere sufficiat. * diocl. et maxim. aa. et cc. mardonio. * <a 293 pp. non. iun. philippopoli diocletiano v et maximiano iiii aa. conss.>

CJ.2.12.18: Imperatores Diocletianus, Maximianus

Alienam suscipere defensionem virile officium est et ultra sexum muliebrem esse constat. filio itaque tuo, si pupillus est, tutorem pete. * diocl. et maxim. aa. et cc. dionysiae. * <a 294 s. xii k. febr. sirmi cc. conss.>

CJ.2.12.19: Imperatores Diocletianus, Maximianus

Si pretium, quod actoribus alienis fundum vel servum citra mandatum tibi distrahentibus dedisti et neque praecessisse neque secuta contractum domini declaretur voluntas, in rem autem eius id pretium cessisse provinciae praeses causa cognita perspexerit, hoc tibi restitui iubebit. * diocl. et maxim. aa. et cc. firmo. * <a 294 s. prid. id. mart. cc. conss.>

CJ.2.12.20: Imperatores Diocletianus, Maximianus

Nihil arbitramur interesse, utrum ab initio an coepta iam lite negotium ad personam procuratoris transitum fecerit. * diocl. et maxim. aa. et cc. ad verinum praes. syriae. * <a 294 d. x k. oct. demesso cc. conss.>

CJ.2.12.21pr.: Imperator Constantinus

Maritus citra mandatum in rebus uxoris cum sollemni satisdatione et alia observatione intercedendi habeat liberam facultatem, ne feminae persequendae litis obtentu in contumeliam matronalis pudoris inreverentur inruant nec conventibus virorum vel iudiciis interesse cogantur. * const. a. ad concilium prov. africae. * <a 315 pp. iiii id. mart. hadrumeto constantino a. iiii et licinio iiii conss.>

CJ.2.12.21.1: Imperator Constantinus

Sin autem mandatum susceperit, licet maritus sit, id solum exsequi debet, quod procuratio emissa praescripserit. <a 315 pp. iiii id. mart. hadrumeto constantino a. iiii et licinio iiii conss.>

CJ.2.12.22: Imperator Constantinus

Procuratoribus institutis et post contestatam litem dominis effectis ii qui mandaverant non habeant facultatem negotia persequendi, nisi capitales inimicitiae vel morbus vel alia necessaria causa intercesserit: tunc enim etiam invitis his transferri lis potest. * const. a. ad bassum pu. * <a 319 d. xiii k. iul. constantino a. v et licinio c. conss.>

CJ.2.12.23: Imperator Julianus

Nulla dubitatio est post causam in iudicio agitatam utpote dominum litis procuratorem effectum etiam post excessum eius, qui agendam vel defendendam litem mandaverat, posse inchoatam causam iurgiumque finire, quippe cum et procuratorem posse eum instituere veteres iuris voluerunt conditores. * iul. a. secundo pp. * <a 363 lecta apud acta prid. non. febr. iuliano a. iiii et sallustio conss.>

CJ.2.12.24: Imperatores Gratianus, Valentinianus, Theodosius

Licet in principio quaestionis persona debet inquiri procuratoris, an ad agendum negotium mandatum a domino litis habeat, tamen si falsus procurator inveniatur, nec dici controversiae solent nec potest esse iudicium. * grat. valentin. et theodos. aaa. pancratio pu. * <a 382 d. prid. non. april. constantinopoli antonio et syagrio conss.>

CJ.2.12.25: Imperatores Valentinianus, Theodosius, Arcadius

Quicumque praetorianae vel urbanae praefecturae sublimissimae fastigium vel magisterium militare vel consistorianae comitivae insignia meruerit dignitatis vel proconsulare ius dixerit aut vicarii fuerit administratione subfultus, si quid ab eo vel infertur iurgium vel refertur, procuratoris personam in negotii sui iura substituat. quod si quis sanctionis huius statuta transgressus iudiciis sese iurgaturus ingesserit, careat eius litis sorte, cuius non per procuratorem expectavit eventum. iudex nihilo minus, qui contra fecerit, noverit a se viginti libras auri, ab officio quoque suo tantundem ponderis exigendum. * valentin. theodos. et arcad. aaa. tatiano pp. * <a 392 d. xviii k. oct. arcadio a. ii et rufino conss.>

CJ.2.12.26: Imperatores Arcadius, Honorius, Theodosius

In pecuniariis controversiis, etsi specialiter hoc praecepti vel sententiae minime designat auctoritas, passim unicuique, si tamen ita maluerit, per procuratorem respondendi tribuimus facultatem: nisi forte quosdam, iustiores nonnumquam ob causas, vehementior maximi iudicis vocabit auctoritas. * arcad. honor. et theodos. aaa. anthemio pp. * <a 406 d. prid. id. oct. constantinopoli arcadio a. et probo conss.>

CJ.2.13.0. Ne liceat potentioribus patrocinium litigantibus praestare vel actiones in se transferre.

CJ.2.13.1pr.: Imperatores Diocletianus, Maximianus

Divine admodum constituit divus claudius consultissimus princeps parens noster, ut iactura causae adficerentur ii, qui sibi potentiorum patrocinium advocassent, ut hoc proposito metu iudiciariae lites potius suo marte discurrerent, quam potentiorem domorum opibus niterentur. * diocl. et maxim. aa. et cc. aristobulo salutem. * <a 293 d. iiii id. sept. aa. conss.>

CJ.2.13.1.1: Imperatores Diocletianus, Maximianus

Quem palam est in tantum provincialium quaestionibus esse commotum, ut huius sanctionis rectores provinciarium custodes et contemptae rei vindices fecerit, scilicet ut in actores seu procuratores in subsidia negotiorum vel usurpatos gratia vel redemptos severa sententia vindicarent. <a 293 d. iiii id. sept. aa. conss.>

CJ.2.13.1.2: Imperatores Diocletianus, Maximianus

Quare cum intersit et universe omnium et praecipue tenuiorum, qui saepe importunis potentium intercessionibus opprimuntur, inter litigatores audientiam tuam impertire debebis: nec metuas, ne praeiudices clarissimis viris, cum divus claudius huius rei rectorem provinciae et disceptatorem et, si res postularet, ultorem specialiter fecerit. <a 293 d. iiii id. sept. aa. conss.>

CJ.2.13.2: Imperatores Honorius, Theodosius

Si cuiuscumque modi cautiones ad potentium fuerint delatae personas, debiti creditores iactura multentur. aperta enim credentium videtur esse voracitas, qui alios actionum suarum redimunt exactores. * honor. et theodos. aa. iohanni pp. * <a 422 d. v id. iul. ravenna honorio xiii et theodosio x aa. conss.>

CJ.2.14.0. De his, qui potentiorum nomine titulos praediis adfigunt vel eorum nomina in lite praetendunt.

CJ.2.14.1pr.: Imperatores Arcadius, Honorius

Animadvertimus plurimos iniustarum desperatione causarum potentium titulos et clarissimae privilegia dignitatis his, a quibus in ius vocantur, opponere. * arcad. et honor. aa. messalae pp. * <a 400 d. v k. dec. mediolani stilichone cons.>

CJ.2.14.1.1: Imperatores Arcadius, Honorius

Ac ne in fraudem legum adversiorumque terrorem his nominibus abutantur et titulis, qui huiusmodi dolo scientes conivent, adficiendi sunt publicae sententiae nota. <a 400 d. v k. dec. mediolani stilichone cons.>

CJ.2.14.1.2: Imperatores Arcadius, Honorius

Quod si nullum in hac parte consensum praebuerint, ut libelli aut tituli eorum nominibus aedibus adfigantur alienis, eatenus in eos qui fecerint vindicetur, ut adfecti plumbo perpetuis metallorum suppliciis deputentur. <a 400 d. v k. dec. mediolani stilichone cons.>

CJ.2.14.1.3: Imperatores Arcadius, Honorius

Quisquis igitur lite pulsatus, cum ipse et rei sit possessor et iuris et titulum illatae sollemniter pulsationis exceperit, contradictoriis libellis aut titulis alterius nomen crediderit ingerendum, eius possessionis aut causae, quam sub hac fraude aut retinere aut evitare temptaverit, amissione multetur nec repetendae actionis, etiam si ei probabilis negotii merita suffragantur, habeat facultatem. <a 400 d. v k. dec. mediolani stilichone cons.>

CJ.2.14.1.4: Imperatores Arcadius, Honorius

Eos sane, qui se sponte alienis litibus inseri patiuntur, cum his neque proprietas neque possessio competat, veluti famae suae prodigos et calumniarum redemptores notari oportebit. <a 400 d. v k. dec. mediolani stilichone cons.>

CJ.2.15.0. Ut nemo privatus titulos praediis suis vel alienis imponat vel vela regalia suspendat.

CJ.2.15.1: Imperatores Honorius, Theodosius

Regiae maiestatis est, ut nostrae tantum domus et patrimonia titulorum inscriptione legantur. omnes igitur intellegant publico iuri esse deputandum id, cui nomen dominicum praescribitur. * honor. et theodos. aa. flaviano pp. * <a 408 d. iii k. dec. ravennae basso et philippo conss.>

CJ.2.15.2pr.: Imperatores Theodosius, Valentinianus

Ne quis vela regia suspendere vel titulum audeat sine praeceptione iudicis competentis rebus alienis imponere, quas quocumque modo qualiscumque persona possideat, licet non dominus, licet iniustus possessor ac temerarius invasor qui possidet doceatur. * theodos. et valentin. aa. ad florentium pp. * <a 439 d. xv k. iul. constantinopoli theodosio a. xvii et festo conss.>

CJ.2.15.2.1: Imperatores Theodosius, Valentinianus

Eum autem, qui hoc facere ausus fuerit, si plebeius est, ultimo subdi supplicio, si clarissimus vel curialis vel miles vel clericus, proscribendum deportandumque non solum civitate romana, sed etiam libertate privari censemus, exsecutoresque huius legis omnes iudices esse oportere. <a 439 d. xv k. iul. constantinopoli theodosio a. xvii et festo conss.>

CJ.2.15.2.2: Imperatores Theodosius, Valentinianus

Deponendi autem vel frangendi titulos vel etiam conscindendi vela non solum eis, ad quorum praeiudicium tale aliquid contra fas contraque leges committitur, sed omnibus tam liberis quam servis sine metu calumniae vel accusatione criminis licentiam ministramus, decernentes iudices eorumque officia tricenis libris auri multari, si talem accusationem vel admittant vel depositam scribi concedant. <a 439 d. xv k. iul. constantinopoli theodosio a. xvii et festo conss.>

CJ.2.16.0. Ut nemini liceat sine iudicis auctoritate signa imprimere rebus, quas alius tenet.

CJ.2.16.1: Imperator probus

Saepe rescriptum est ante sententiam signa rebus, quas aliquis tenebat, imprimi non oportere. et ideo ea rebus aut fructibus apud te constitutis illicite imposita poteris ipse licite detrahere, ut amotis his causa, quae ex officio tibi infertur, terminetur. * probus a. octaviano. * <a 278 d. iiii k. iul. probo a. ii et lupo conss.>

CJ.2.16.2: Imperatores Diocletianus, Maximianus

Rebus, quas alius detinet, imprimere signa nemini licet, etiam si suas vel obligatas sibi eas esse aliquis adfirmet. * diocl. et maxim. aa. craugasio. * <>

CJ.2.17.0. Ne fiscus vel res publica procurationem alicui patrocinii causa in lite praestet.

CJ.2.17.1: Imperator Gordianus

Rei publicae viribus adiuvari te sub obtentu quantitatis, quam eidem rei publicae debes, contra iuris rationem desideras. * gord. a. legitimo et aliis. * <a 241 pp. viii id. ian. gordiano a. ii et pompeiano conss.>

CJ.2.17.2: Imperator Gordianus

Cum adlegas partem rerum vel actionum dimidiam fisco, quo magis viribus eius protegaris, velle te donare, huiusmodi litium donationem admitti temporum meorum disciplina non patitur. unde ius tuum, si quod tibi competit, citra invidiam fisci mei tueri sollemniter cura. * gord. a. tertullo. * <a 241 s. vi non. aug. gordiano a. ii et pompeiano conss.>

CJ.2.17.3: Imperatores Diocletianus, Maximianus

Abhorret saeculo nostro sub praetextu debiti procurationem contra privatos fiscum praestare. * diocl. et maxim. aa. et cc. amphioni. * <a 293 d. viii k. ian. philippopoli aa. conss.>

CJ.2.17.4: Imperatores Diocletianus, Maximianus

Ad fraudem creditoribus faciendam invidiam fiscalem contra creditoribus faciendam invidiam fiscalem contra saeculi nostri tranquillitatem implorari non decet. redde itaque fisco nostro quod debes, ac si conventus velut a creditore fueris, quem tibi numerasse pecuniam negas, exceptione non numeratae pecuniae secundum leges uti potes. * diocl. et maxim. aa. et cc. achilli. * <a 294 d. xvi k. ian. sirmi cc. conss.>

CJ.2.18.0. De negotiis gestis.

CJ.2.18.1: Imperatores Severus, Antoninus

Cum tutores filiorum tuorem suspectos faceres eisdemque tutores seu curatores peteres, munere pietatis fungebaris: quae causa non admittit negotiorum gestorum actionem, ut sumptus, quos in ea lite fecisti, repetere possis, cum etiam, si quis pro adfectione eos petere potest. * sev. et ant. aa. sopatrae. * <a 196 pp. iii non. oct. dextro et prisco conss.>

CJ.2.18.2: Imperatores Severus, Antoninus

Contra impuberes quoque, si negotia eorum urguentibus necessitatis rationibus utiliter gerantur, in quantum locupletiores facti sunt, dandam actionem ex utilitate ipsorum receptum est. quae tibi quoque iure decernetur, quod sumptus in pupillum, quem romae tutorum petendorum gratia duxisti, fecisse te adlegas, si non matertera eiusdem se facere paratam propriis impendiis ostenderit. * sev. et ant. aa. rufinae. * <a 197 pp. xv k. febr. laterano et rufino conss.>

CJ.2.18.3: Imperatores Severus, Antoninus

Sive pro fratre coherede pecuniam solvisti, negotiorum gestorum actione experiri potes, sive pignoris liberandi gratia debitum universum solvere coactus es, actionem eandem habebis vel iudicio familiae herciscundae, si non est inter vos redditum, eam quantitatem adsequeris. * sev. et ant. aa. hadriano. * <a 199 pp. viii k. febr. anullino et frontone conss.>

CJ.2.18.4: Imperatores Severus, Antoninus

Qui pupillae negotia tutoris mandato suscepit, pro tutore negotia non videtur gessisse, sed negotiorum gestorum actione pupillae tenebitur. * sev. et ant. aa. claudio. * <a 201 pp. iii non. dec. fabiano et muciano conss.>

CJ.2.18.5: Imperatores Severus, Antoninus

Officio nec minus obsequio liberti functus negotiorum gestorum actionem contra patroni filias pupillas habere non potes. * sev. et ant. aa. trophimo . * <a 203 pp. xiii k. iul. geta et plautiano conss.>

CJ.2.18.6: Imperatores Severus, Antoninus

Curatorem tibi quidem patris testamento datum dicis: quod non potest videri iure factum. quod si, ut proponis, administrationi se miscuit, negotiorum gestorum actio tam adversus eum quam contra heredes eius tibi competit. * sev. et ant. aa. gallo. * <a 207 pp. apro et maximo conss.>

CJ.2.18.7: Imperator Antoninus

Si ab eo, qui negotia tua gessit, heres ex duabus unciis institutus es, etiamsi adeas hereditatem, in reliquis decem unciis adversus coheredem competit tibi petitio, si quam adversus defunctum habuisti actionem. * ant. a. euphratae. * <a 216 pp. vi id. mart. romae sabino ii et anullino conss.>

CJ.2.18.8: Imperator Antoninus

Adversus eos, qui negotia tua gesserunt, negotiorum gestorum iudicio civiliter consiste: nec tibi oberit, si propter occupationes militares eam litem tardius fuisses exsecutus, cum hoc genus actionis longi temporis praescriptione excludi non possit. * ant. a. severo. * <a 218 pp. vi k. aug. antonino a. et advento conss.>

CJ.2.18.9: Imperator Antoninus

Si pecuniam a debitore tuo iulianus exegit eamque solutionem ratam habuisti, habes adversus eum negotiorum gestorum actionem. * ant. a. sallustio. * <a 217 pp. viii k. mart. praesente et extricato conss.>

CJ.2.18.10: Imperator Alexander Severus

Si servum alienum non inutilem domino constitutum aegrum curastis et negotium utiliter gessistis, competenti vobis actione sumptus recuperare potestis. * alex. a. secundo et aliis. * <a 222 pp. xii k. dec. alexandro a. cons.>

CJ.2.18.11: Imperator Alexander Severus

Alimenta quidem, quae filiis tuis praestitisti, reddi tibi non iusta ratione postulas, cum id exigente materna pietate feceris. si quid autem in rebus eorum utiliter et probabili more impendisti, si non et hoc materna liberalitate, sed recipiendi animo fecisse ostenderis, id negotiorum gestorum actione consequi potes. * alex. a. herenniae. * <a 227 pp. xii k. febr. albino et maximo conss.>

CJ.2.18.12: Imperator Alexander Severus

Si filius pro patre suo debitum solvit, nullam actionem ob eam solutionem habet, sive in potestate patris, cum solveret, fuit, sive sui iuris constitutus donandi animo pecuniam dedit. si igitur pater tuus sui iuris constitutus pro patre suo negotium gerens non praecedente mandato debitum eius solvit, negotiorum gestorum agere cum patruis tuis potes. * alex. a. theophilo. * <a 230 pp. k. aug. agricola et clemente conss.>

CJ.2.18.13: Imperator Alexander Severus

Quod in uxorem tuam aegram erogasti, non a socero repetere, sed adfectioni tuae debes expendere. in funus sane eius si quid eo nomine quasi recepturus erogasti, patrem, ad quem dos rediit, iure convenis. * alex. a. aquilae. * <a 230 pp. viii k. nov. agricola et clemente conss.>

CJ.2.18.14: Imperator Alexander Severus

Si mandatum solius mariti secutus tam ipsius quam uxoris eius negotia gessisti, tam tibi quam mulieri invicem negotiorum gestorum competit actio. ipsi sane qui mandavit adversus te mandati actio est: sed et tibi adversus eum contraria, si quid forte supererogasti. * alex. a. rufo. * <a 234 pp. x k. mart. maximo ii et urbano conss.>

CJ.2.18.15: Imperator Gordianus

Si paterna adfectu privignas tuas aluisti seu mercedes pro his aliquas magistris expendisti, eius erogationis tibi nulla repetitio est. quod si ut repetiturus ea, quae in sumptum misisti, aliquid erogasti, negotiorum tibi gestorum intendenda actio est. * gord. a. muciano. * <a 239 pp. vi id. iul. gordiano a. et aviola conss.>

CJ.2.18.16: Imperatores gallus, volus.

Si negotium sororis tuae gerens pro ea tributa solvisti, vel mandante ea vel rogante id fecisti, negotiorum gestorum actione vel mandati id, quod solvisse te constiterit, recipere poteris. * gallus et volus. aa. eutychiano. * <a 252 pp. xi k. mai. gallo et volusiano conss.>

CJ.2.18.17: Imperatores Diocletianus, Maximianus

Curatoris etiam successores negotiorum gestorum utili conventos actione tam dolum quam latam culpam praestare debere nec ad eos officium administrationis transire ideoque nullam alienandi eos res adultae potestatem habere convenit. * diocl. et maxim. aa. et cc. claudiae. * <a 293 d. xiii k. ian. sirmi aa. conss.>

CJ.2.18.18: Imperatores Diocletianus, Maximianus

Ob negotium alienum gestum sumptuum factorum usuras praestari fides bona suasit: quo iure contra eos etiam, quorum te necessitate compulsum negotium gessisse proponis, per iudicium negotiorum gestorum uteris. * diocl. et maxim. aa. et cc. pomponio. * <a 293 d. viiii k. ian. aa. conss.>

CJ.2.18.19: Imperatores Diocletianus, Maximianus

Ab uno herede pro solido re veluti communi venumdata de pretio coheres venditoris negotiorum gestorum ratam faciens venditionem agere potest. * diocl. et maxim. aa. et cc. alexandro. * <a 294 d. id. febr. sirmi cc. conss.>

CJ.2.18.20pr.: Imperatores Diocletianus, Maximianus

Tutori vel curatori similis non habetur, qui citra mandatum negotium alienum sponte gerit, quippe superioribus quidem muneris necessitas administrationis finem , huic autem propria voluntas facit ac satis abunde sufficit, si cui vel in paucis amici labore consulatur. * diocl. et maxim. aa. et cc. octaviae. * <a 294 d. viii k. mai. sirmi cc. conss.>

CJ.2.18.20.1: Imperatores Diocletianus, Maximianus

Secundum quae super his quidem, quae nec tutor nec curator constitutus ultro quis administravit, cum non tantum dolum et latam culpam, sed et levem praestare necesse habeat, a te conveniri potest et ea, quae tibi ab eo deberi patuerit, cum usuris compelletur reddere. <a 294 d. viii k. mai. sirmi cc. conss.>

CJ.2.18.20.2: Imperatores Diocletianus, Maximianus

De ceteris vero, quae ab aliis tui constituta iuris detenta exacta non sunt, ab hoc, qui nec agendi quidem propter exceptionis obstaculum facultatem habere potuit, exigi non potest: et idcirco adversus eos, quos res tuas tenere dicis, detorquere tuas petitiones debes. <a 294 d. viii k. mai. sirmi cc. conss.>

CJ.2.18.21: Imperatores Diocletianus, Maximianus

Si cognati tui servos suos manumiserunt, hoc, quod eos administrasse res vestras contendis, eorum impedimentum libertati fieri non potuit. quin autem ex actu praecedenti post manumissionem, si utriusque temporis administratio non conexa, sed separata sit, conveniri non posse procul dubio sit. * diocl. et maxim. aa. et cc. mitrae. * <a 294 d. vi k. oct. viminacii cc. conss.>

CJ.2.18.22: Imperatores Diocletianus, Maximianus

Negotium gerentes alienum non interveniente speciali pacto casum fortuitum praestare non compelluntur. * diocl. et maxim. aa. et cc. eulogio. * <a 294 d. xi k. dec. cc. conss.>

CJ.2.18.23: Imperatores Diocletianus, Maximianus

Negotiis gestis non in rem, sed in personam est actio. * diocl. et maxim. aa. et cc. theodoro. * <a 294 d. xii k. dec. nicomediae cc. conss.>

CJ.2.18.24pr.: Imperator Justinianus

Si quis nolente et specialiter prohibente domino rerum administrationi earum sese immiscuit, apud magnos auctores dubitabatur, si pro expensis, quae circa res factae sunt, talis negotiorum gestor habeat aliquam adversus dominum actionem. * iust. a. iuliano pp. * <a 530 d. xv k. dec. constantinopoli lampadio et oreste conss.>

CJ.2.18.24.1: Imperator Justinianus

Quam quibusdam pollicentibus directam vel utilem, aliis negantibus, in quibus et salvius iulianus fuit, haec decidentes sancimus, si contradixerit dominus et eum res suas administrare prohibuerit, secundum iuliani sententiam nullam esse adversus eum contrariam actionem, scilicet post denuntiationem, quam ei dominus transmiserit nec concedens ei res eius attingere, licet res bene ab eo gestae sint. <a 530 d. xv k. dec. constantinopoli lampadio et oreste conss.>

CJ.2.18.24.2: Imperator Justinianus

Quid enim, si dominus adspexerit ab administratore multas expensas utiliter factas et tunc dolosa adsimulatione habita eum prohibuerit, ut neque anteriores expensas praestet? quod nullo patimur modo: sed ex quo die attestatio ad eum facta est vel in scriptis vel sine scriptis, sub testificatione tamen aliarum personarum, ex eo die pro faciendis meliorationibus nullam ei actionem competere, super anterioribus autem, si utiliter factae sunt, habere eum actionem contra dominum concedimus sua natura currentem. <a 530 d. xv k. dec. constantinopoli lampadio et oreste conss.>

CJ.2.19.0. De his quae vi metusve causa gesta sunt.

CJ.2.19.1: Imperator Alexander Severus

Persecutionem eorum, quae vi vel furto ablata sunt, etiam si postea interciderunt, integram esse iure responsum est. * alex. a. felici. * <a 223 pp. x k. dec. maximo ii et aeliano conss.>

CJ.2.19.2: Imperator Alexander Severus

Cum te non solum cavisse, verum etiam solvisse pecuniam confitearis, qua ratione ut vim passus restitui quod illatum est postules, perspici non potest, quando verisimile non sit ad solutionem te properasse omissa querella de chirographo utpote per vim extorto, nisi et in solvendo vim te passum dicis. * alex. a. alexandro. * <a 226 pp. vi k. iul. alexandro a. ii et Marcello conss.>

CJ.2.19.3: Imperator Gordianus

Si vi vel metu fundum avus tuus distrahere coactus est, etiamsi maxime emptor eum alii vendidit, si tamen tu avo tuo heres extitisti, ut tibi reddito a te pretio restituatur, postquam placuit in rem quoque dari actionem, secundum formam perpetui edicti adito praeside provinciae poteris postulare, si modo qui secundo loco comparavit longae possessionis praescriptione non fuerit munitus. * gord. a. gaio. * <a 238 pp. vi id. aug. pio et pontiano conss.>

CJ.2.19.4: Imperator Gordianus

Si per vim vel metum mortis aut cruciatus corporis venditio vobis extorta est et non postea eam consensu roborastis, iuxta perpetui formam edicti intra annum quidem agentes, quo experiundi potestas est, si res non restituatur, quadrupli referetis condemnationem, scilicet reddito a vobis pretio: post annum vero causa cognita eadem actio in simplum permittitur: quae causae cognitio eo pertinet, ut ita demum decernatur, si alia actio non sit. * gord. a. primo et eutycheti. * <a 239 pp. iii non. aug. gordiano a. et aviola conss.>

CJ.2.19.5: Imperator Gordianus

Non interest, a quo vis adhibita sit patri et patruo tuo, utrum ab emptore an vero sciente emptore ab alio, ut vi metuve possessionem vendere cogerentur. nam si adhibita vi compulsi sunt possessiones suas quae maiore valebant minimo distrahere, iurisdictionis tenore, ut id quod improbe factum est in priorem statum revolvatur, impetrabunt. * gord. a. rufo mil. * <a 239 pp. vi k. ian. gordiano a. et aviola conss.>

CJ.2.19.6: Imperatores Diocletianus, Maximianus

Ad invidiam alicui nocere nullam dignitatem oportet. unde intellegis, quod ad metum arguendum, per quem dicis initum esse contractum, senatoria dignitas adversarii tui sola non est idonea. * diocl. et maxim. aa. et cc. pollae. * <a 294 pp. iii k. mai. heracliae cc. conss.>

CJ.2.19.7: Imperatores Diocletianus, Maximianus

Si donationis vel transactionis vel stipulationis vel cuiuscumque alterius contractus obligationis confectum instrumentum metu mortis vel cruciatus corporis extortum vel capitales minas pertimescendo adito praeside provinciae probare poteris, hoc ratum haberi secundum edicti formam non patietur. * diocl. et maxim. aa. et cc. cotui. * <a 293 d. ii non. ian. aa. conss.>

CJ.2.19.8: Imperatores Diocletianus, Maximianus

Cum te domus et horti venditionem fecisse sub spe recipiendi, quod de frumento feceras, instrumentum vel timore, ne ad civilia munera nominareris, proponas et rescindi venditionem veluti metus causa factam desideres, intellegis ad ratum non habendum contractum metum huiusmodi prodesse non posse. * diocl. et maxim. aa. et cc. trophimo. * <a 293 d. xi k. sept. viminacii aa. conss.>

CJ.2.19.9: Imperatores Diocletianus, Maximianus

Metum non iactationibus tantum vel contestationibus, sed atrocitate facti probari convenit. * diocl. et maxim. aa. et cc. hymnodae. * <a 293 d. k. dec. aa. conss.>

CJ.2.19.10: Imperatores Diocletianus, Maximianus

Accusationis institutae vel futurae metu alienationem seu promissionem factam rescindi postulantis improbum desiderium est. * diocl. et maxim. aa. et cc. faustinae. * <a 294 d. vi k. febr. cc. conss.>

CJ.2.19.11: Imperator Constantinus

Si per impressionem quis aliquem metuens saltem in mediocri officio constitutum rei suae in eadem provincia vel loco, ubi tale officium peragit, sub venditionis titulo fecerit cessionem, et quod emptum fuerit reddatur et nihilo minus etiam pecunia retineatur: simili poena servanda, si qui vel coniugis vel amici nominibus abutentes praedam tamen sibi adquirunt. * const. a. ad euagrium pp. * <a 326 d. x k. oct. aquileiae constantino a. vii et constantio conss.>

CJ.2.19.12: Imperatores Honorius, Theodosius

Venditiones donationes transactiones, quae per potentiam extortae sunt, praecipimus infirmari. * honor. et theodos. aa. ad pop. * <a 415 d. xiii k. mart. constantinopoli honorio x et theodosio vi aa. conss.>

CJ.2.20.0. De dolo malo.

CJ.2.20.1: Imperatores Severus, Antoninus

Si fideiussor a creditore pignora emit, oblata quantitate sortis et usurarum tibi dominium cum fructibus, quos bona fide percepit, consultius restituet, ne fidei ruptae gratia de dolo possit actio exerceri. * sev. et ant. aa. clementinae. * <a 203 accepta d. iii id. mai. plautiano et geta conss.>

CJ.2.20.2: Imperator Antoninus

De dolo actio, cum alia nulla competit, causa cognita permittitur. * ant. a. agrippae. * <a 211 d. non. nov. gentiano et basso conss.>

CJ.2.20.3: Imperator Gordianus

Non possunt obesse tibi tempora, quae in actione de dolo solent computari, quibus rei publicae causa, ut adlegas, occuparis: sed exinde tibi incipiet tempus cedere, ex quo muneribus liberatus facultatem agendi intra praestituta tempora coeperis obtinere. * gord. a. aquilino. * <a 240 pp. id. aug. sabino ii et venusto conss.>

CJ.2.20.4: Imperatores Diocletianus, Maximianus

Cum proponas inter te et eum, quem in contubernio ancillam tuam sibi coniunxisse memorasti, placuisse, ut tibi pro eadem daret mancipium, intellegis, quod, si manumisisti vel ei tradidisti et ille manumisit, revocandae libertatis potestatem non habes, sed solum, si necdum statutum tempus de dolo tibi decerni actionem. quod si penes te dominium eius remansit, adito praeside provinciae cum natis hanc potes recuperare, si nulla moveatur status quaestio. * diocl. et maxim. aa. et cc. menandrae. * <a 294 d. iii k. mai. heracliae cc. conss.>

CJ.2.20.5pr.: Imperatores Diocletianus, Maximianus

Si superstite patre per emancipationem tui iuris effecta matri successisti rebusque tuis per legitimum tutorem patrem eundemque manumissorem administratis postea transegisti cum eo bona fide, perspicis, quod, si pactum tantum factum sit, petitio tua per exceptionem submovetur, si vero novatio legitimo modo intercessit et acceptilatio subsecuta est, nullam tibi iam superesse actionem. * diocl. et maxim. aa. et cc. aphrodisiae. * <a 293 d. id. iun. aa. conss.>

CJ.2.20.5.1: Imperatores Diocletianus, Maximianus

Sane si laesa es immodice liberatione sollemniter per novationem atque acceptilationem tributa, non de dolo propter paternam verecundiam, sed in factum actio tibi tribuenda est. <a 293 d. id. iun. aa. conss.>

CJ.2.20.6: Imperatores Diocletianus, Maximianus

Dolum ex insidiis perspicuis probari convenit. * diocl. et maxim. aa. et cc. hymnodae. * <a 293 d. k. dec. aa. conss.>

CJ.2.20.7: Imperatores Diocletianus, Maximianus

Si maior quinque et viginti annis hereditatem fratris tui repudiasti, nulla tibi facultas eius adeundae relinquitur. sane si eius uxoris tibi substitutae dolo factum est, actionem de dolo contra eam exercere potes. * diocl. et maxim. aa. et cc. sebastiano. * <a 294 d. xvi k. mai. cc. conss.>

CJ.2.20.8: Imperator Constantinus

Optimum duximus non ex eo die, quo se quisque admissum dolum didicisse memoraverit, neque intra anni utilis tempus, sed potius ex eo die, quo adseritur commissus dolus, intra continuum biennium de dolo actionem moveri, sive afuerit sive praesto est is, qui dolum se passum esse conqueratur. omnes igitur sciant neque incipiendae post biennium neque ante completum biennium coeptae, post biennium finiendae doli actionis concessam licentiam. * const. a. ad symmachum vic. * <a 319 d. viii k. aug. naisso constantino a. v et licinio c. conss.>

CJ.2.21.0. De in integrum restitutione minorum viginti quinque annis.

CJ.2.21.1: Imperator Alexander Severus

Illud inspiciendum est, num inofficiosi querellae vel palam vel tacita dissimulatione sit renuntiatum. nec hoc autem in personam tuam cadere posse auxilium quod aetati impertitur ostendit. * alex. a. plotianae. * <a 223 d. v id. iul. maximo ii et aeliano conss.>

CJ.2.21.2: Imperator Alexander Severus

Eo tempore, quo soror tua auxilio iuvabatur aetatis, si patris intestati bonorum possessionem accipere debuit, licet quinque filios superstites habuerit, non tamen ideo minus ad edicti praerogativam pertinet, scilicet si nunc per aetatem beneficium restitutionis largitur. * alex. a. alexandro. * <a 238 pp. viii id. aug. pio et pontiano conss.>

CJ.2.21.3: Imperatores Diocletianus, Maximianus

Si curatorem habens minor quinque et viginti annis post pupillarem aetatem res venum dedisti, hunc contractum servari non oportet, cum non absimilis ei habeatur minor curatorem habens, cui a praetore curatore dato bonis interdictum est. si vero sine curatore constitutus contractum fecisti, implorare in integrum restitutionem, si necdum tempora praefinita excesserint, causa cognita non prohiberis. * diocl. et maxim. aa. et cc. attiano. * <a 293 d. xiiii k. mai. heracliae aa. conss.>

CJ.2.21.4: Imperatores Diocletianus, Maximianus

Si minorem te quinque et viginti annis fuisse, cum contraheres, ostenderis, et tempora restitutionis praestituta excessisse ab adversario tuo comprobatum non fuerit, praeses provinciae in integrum restitutionis dare tibi auxilium debeat. * diocl. et maxim. aa. et cc. isidoro. * <a 293 d. v k. mai. heracliae aa. conss.>

CJ.2.21.5pr.: Imperatores Diocletianus, Maximianus

Minoribus in integrum restitutio, in quibus se captos probare possunt, etsi dolus adversarii non probetur, competit. * diocl. et maxim. aa. et cc. rufo. * <a 293 d. v k. mai. heracliae aa. conss.>

CJ.2.21.5.1: Imperatores Diocletianus, Maximianus

Ante impletum etiam quintum et vicesimum annum de his, in quibus se minores captos existimant, posse in integrum restitutionem implorare certissimi iuris est. <a 293 d. v k. mai. heracliae aa. conss.>

CJ.2.21.6: Imperatores Diocletianus, Maximianus

Si intra aetatem, cui succurri solet, in integrum restitutionis lis inchoata est nec ei a te renuntiatum est, mors eius, contra quem haec fuerat implorata, fraudi tibi esse non potest. * diocl. et maxim. aa. et cc. sententiae. * <a 294 d. v k. mai. sirmi cc. conss.>

CJ.2.21.7: Imperatores Diocletianus, Maximianus

De tutela avunculi eiusdemque tutoris, cui falso aetate probata praestitisti liberationem, quem ignarum aetatis tuae non fuisse tam officium tutelae quam sanguinis proximitas arguit, si necdum statutum tempus excessit, ex causa in integrum restitutionis heredes eius convenire potes. * diocl. et maxim. aa. et cc. severae. * <a 294 d. xi k. aug. cc. conss.>

CJ.2.21.8: Imperatores Honorius, Theodosius

Minoribus in his, quae vel praetermiserint vel ignoraverint, innumeris auctoritatibus constat esse consultum. * honor. et theodos. aa. iuliano procons. africae. * <a 414 d. prid. non. mart. ravennae constantio vc. cons.>

CJ.2.21.9: Imperator Zeno

Non videtur circumscriptus esse minor, qui iure sit usus communi. * zeno a. aeliano pp. * <a 480 d. k. ian. basilio cons.>

CJ.2.22.0. De filio familias minore.

CJ.2.22.1: Imperator Gordianus

Si frater tuus, cum mutuam pecuniam acciperet, in patris fuit potestate nec iussu eius nec contra senatus consultum contractum est, propter lubricum aetatis adversus eam cautionem in integrum restitutionem potuit postulare. * gord. a. candiano mil. * <a 238 pp. iii non. oct. pio et pontiano conss.>

CJ.2.22.2: Imperator Gordianus

Filius familias, si minor viginti quinque annis pro extraneo fideiussit, in integrum restitutionem postulare non prohibetur. sed et si pro patre suo fideiussor extitit eique diem suum functo non successit, in integrum restitutionem postulare potest. * gord. a. tryphoni mil. * <a 241 d. k. iul. gordiano a. ii et pompeiano conss.>

CJ.2.23.0. De fideiussoribus minorum.

CJ.2.23.1: Imperatores Severus, Antoninus

Postquam in integrum aetatis beneficio restitutus es, periculum evictionis emptori, cui praedium ex bonis paternis vendidisti, praestare non cogeris. sed ea res fideiussores, qui pro te intervenerint, excusare non potest. quare mandati iudicio, si pecuniam solverint aut condemnati fuerint, convenieris, modo si eo quoque nomine restitutionis auxilio non iuvaris. * sev. et ant. aa. myroni. * <a 194 pp. vi k. oct. severo a. et albino conss.>

CJ.2.23.2: Imperatores Diocletianus, Maximianus

Si ea, quae tibi vendidit possessiones, interposito decreto praesidis aetatis tantummodo auxilio adiuvatur, non est dubium fideiussorem ex persona sua obnoxium esse contractui. verum si dolo malo apparuerit contractum interpositum esse, manifesti fideiussores consulendum esse. * diocl. et maxim. aa. curioni. * <a 287 s. vi k. mai. diocletiano iii et maximiano aa. conss.>

CJ.2.24.0. Si tutor vel curator intervenerit.

CJ.2.24.1: Imperator Antoninus

Si iam puberes utriusque sexus parentium hereditatem adistis, sed etiam nunc in ea aetate estis, ut eo, quod paternae hereditati vos obligastis, in integrum restitutionis auxilium accipere debeatis, adite per procuratores vestros praesidem provinciae. quod si legitimam aetatem implestis idque tempus, quo in integrum restitui possitis, excessit, curatores vestros, si adversus eos nondum experti estis, iudicio secundum formam iuris convenite. * ant. a. marcianae. * <a 215 pp. ii non. april. laeto et cereale conss.>

CJ.2.24.2: Imperator Alexander Severus

Minoribus annis viginti quinque etiam in his, quae praesentibus tutoribus vel curatoribus in iudicio vel extra iudicium gesta fuerint, in integrum restitutionis auxilium superesse, si circumventi sunt, placuit. * alex. a. marcianae. * <a xxx >

CJ.2.24.3: Imperatores Diocletianus, Maximianus

Etiam in his, quae minorum tutores vel curatores male gessisse probari possunt, licet personali actione a tutore vel curatore suum consequi possint, in integrum restitutionis auxilium eisdem minoribus dari iam pridem placuit. * diocl. et maxim. aa. nicomedi. * <a 286 d. iiii non. mai. maximo ii et aquilino conss.>

CJ.2.24.4: Imperatores Diocletianus, Maximianus

Si creditor non vestram personam, sed curatorum secutus cum ipsis contractum habuit et ab ipsis stipulatus est, nullam ei prorsus adversus vos actionem competere manifestum est. * diocl. et maxim. aa. et cc. isidoro. * <a 293 v k. mai. heracliae aa. conss.>

CJ.2.24.5: Imperatores Diocletianus, Maximianus

Etiam tutoribus vel curatoribus distrahentibus vel alias contrahentibus minores tam restitui rebus propriis quam tutorum vel curatorum damna sequi, nullo eis praeiudicio per electionem generando, placuit. * diocl. et maxim. aa. et cc. valentino. * <a 294 vi id. dec. cc. conss.>

CJ.2.25.0. Si in communi eademque causa in integrum restitutio postuletur.

CJ.2.25.1: Imperatores Diocletianus, Maximianus

Nec si maior quinque et viginti annis soror vestra fuit, vobis non mandantibus nec ratam transactionem habentibus de iure vestro quicquam minuere potuit. nam si cognitis quae gesserit his consensum post viginti et quinque annos aetatis commodastis, quamvis illa minor pro portione propria restitutionis auxilium implorare possit, vobis tamen ad communicandum edicti perpetui beneficium eius aetas patrocinari non potest. * diocl. et maxim. aa. et cc. domitio aphobio. * <a 294 s. iii id. aug. cc. conss.>

CJ.2.26.0. Si adversus rem iudicatam.

CJ.2.26.1: Imperator Alexander Severus

Minus ex tutelae iudicio consecuti de superfluo habere actionem ita potestis, si tempore iudicii minores annis fuistis et nunc beneficium aetatis vobis largitur. ceterum si post legitimam aetatem sententia prolata est, iterato eandem actionem de isdem speciebus inferre non potestis. * alex. a. iuliis. * <a 231 pp. v k. febr. pompeiano et peligniano conss.>

CJ.2.26.2: Imperator Gordianus

Si, cum pater tuus te in sua potestate esse minimeque emancipationem a se factam valere diceret, pro consule super causa cognoscens te eius potestati subiectam pronuntiaverit, cum adversus eam sententiam in integrum restitui postules, is qui provinciam regit in impertienda cognitione suas partes secundum leges exhibebit. * gord. a. serenae. * <a 238 pp. xv k. dec. pio et pontiano conss.>

CJ.2.26.3: Imperator Philippus

Adversus sententiam eius, qui tunc vice principis iudicavit, in integrum restitutionis auxilium apud praetorem seu praesidem provinciae clarissimum virum flagitare nequaquam potes: nam adversus eius sententiam, qui vice principis cognovit , solus princeps restituet. * philipp. a. et philipp. c. aelianae. * <a 245 pp. xviii k. nov. philippo a. et titiano conss.>

CJ.2.26.4: Imperatores Diocletianus, Maximianus

Cum et minores vos esse adfirmetis et indefensos, nullum vobis praeiudicium fieri praeses provinciae pro sua gravitate curabit. nam si iusta defensione tutorum vel curatorum vobis adsistente aliquid statutum est, intellegitis in integrum restitutionis auxilium vobis esse necessarium: eodem obtinente etiam, si per procuratorem vestrum legitime ordinatum lis agitata est. * diocl. et maxim. aa. urbano. * <a 286 d. xvi k. mai. maximo et aquilino conss.>

CJ.2.26.5: Imperatores Diocletianus, Maximianus

In rem pupilli vel adulti contra tutores seu curatores a praeside lata sententia restitutionis auxilium non minus, quam si quid adversus eos fuisset statutum, implorare minores posse constat. * diocl. et maxim. aa. et cc. marciano. * <a 294 d. k. nov. nicomediae cc. conss.>

CJ.2.27.0. Si adversus venditionem.

CJ.2.27.1: Imperator Alexander Severus

Si minor annis viginti quinque emptori praedii cavisti nullam de cetero te esse controversiam facturum, idque etiam iureiurando corporaliter praestito servare confirmasti, neque perfidiae neque periurii me auctorem futurum sperare tibi debuisti. * alex. a. florentino mil. * <d. vi k. sept.>

CJ.2.27.2: Imperator Constantinus

In integrum restitutione minoribus adversus commenticias venditiones et adversus tutorum seu curatorum insidias sanctionum praesidio cautum esse non dubium est. * const. a. ad pop. * <a 326 d. id. mart. sirmi ipso a. vii et c. conss.>

CJ.2.28.0. Si adversus venditionem pignoris.

CJ.2.28.1: Imperatores Diocletianus, Maximianus

Etiam adversus venditiones pignorum, quae a creditoribus fiunt, minoribus subveniri, si tamen magno detrimento adficiantur, iam pridem placuit. si igitur pignori captis praediis ac distractis enorme damnum ex huiusmodi venditione passos vos ostenderitis, praesertim cum hodieque vos minores esse adfirmetis, auxilium restitutionis vobis impertietur. * diocl. et maxim. aa. sabinae et aliis. * <a 290 d. x k. dec. sirmi ipsis iiii et iii aa. conss.>

CJ.2.28.2pr.: Imperatores Diocletianus, Maximianus

Rem, quam a patre vestro quondam creditor eius obligatam sibi distraxit, per aetatem vestram postulantium revocari desiderium non habet rationem. * diocl. et maxim. aa. et cc. severae et clementianae. * <a 294 d. xiii k. mai. sirmi cc. conss.>

CJ.2.28.2.1: Imperatores Diocletianus, Maximianus

Quod iuris est et si extraneo successistis: nam si creditor non bona fide versatus est, ipsum magis vel tutores sive curatores vestros, qui hanc venumdari passi sunt, convenite. <a 294 d. xiii k. mai. sirmi cc. conss.>

CJ.2.29.0. Si adversus donationem.

CJ.2.29.1: Imperatores Diocletianus, Maximianus

Si quae res ante nuptias congruenti moderatione a minore annis marito sponsaliorum tempore, etiam curatore praesente, tibi donatae sunt, obtentu aetatis non revocabuntur. * diocl. et maxim. aa. theodotae. * <a 285 s. iii non. nov. diocletiano a. et aristobulo conss.>

CJ.2.29.2pr.: Imperatores Diocletianus, Maximianus

Si in te ac fratrem tuum emancipatos pater vester fecit donationem, in alium postea transferendo portionem eius nihil vobis abstulit: nec, si frater tuus sibi quaesiti praedii rustici partem donanti patri consensit, dominium ab eo discedere potuit propter senatus consulti auctoritatem, nec auxilium in integrum restitutionis in hac re necessarium est. * diocl. et maxim. aa. et cc. midae. * <a 293 d. viii k. ian. aa. conss.>

CJ.2.29.2.1: Imperatores Diocletianus, Maximianus

In aliis vero rebus, quae etiam sine decreti recitatione alienari possunt, si, postquam sibi donatae fuerint, postea alii donanti eandem patri voluntatem in minore aetate accommodavit nec praestituta tempora restitutionis excessit, hoc auxilium implorare potest. <a 293 d. viii k. ian. aa. conss.>

CJ.2.30.0. Si adversus libertatem.

CJ.2.30.1: Imperatores Severus, Antoninus

Si post decretum praetoris viri clarissimi, qui fideicommissariam libertatem deberi pronuntiavit, secundus, quem condicioni non paruisse conquereris, manumissus non est, aetas tua litis instaurationem admittit. quod si libertatem quamvis indebitam dedisti, non posse eam revocari intellegis, sed damnum, quod ob eam causam illatum est, iudicio negotiorum gestorum a curatoribus tuis esse sarciendum. * sev. et ant. aa. anniae. * <a 197 pp. ii k. iul. laterano et rufino conss.>

CJ.2.30.2: Imperator Gordianus

Etsi minor annis, ut adlegas, constituta servum tuum ab eo circumscripta in consilio manumisisti, tamen vindictae impositio, qua libertas iusta munitur, nec obtentu quidem aetatis rescindi potest. indemnitati vero tuae, a manumisso scilicet sarciendae, ab eo cuius iurisdictio est, quatenus iuris ratio permittit, consuli debet. * gord. a. solanae. * <a 241 pp. vi id. mart. gordiano a. ii et pompeiano conss.>

CJ.2.30.3pr.: Imperatores valer., gallien.

Quos retrahi in servitutem postulatis, si non in consilio causa cognita, cum minores annis viginti fuissetis, manumisistis, non per in integrum restitutionem, sed ipso iure persequi potestis. quod si probata causa libertas praestita est, restitutio in integrum contra libertatem locum habere non potest. * valer. et gallien. aa. marthonae et sabinillae. * <a 260 pp. viii k. oct. saeculare ii et donato conss.>

CJ.2.30.3.1: Imperatores valer., gallien.

Si tamen in ea re culpa seu fraude liberti eiusdemque curatoris ratio vestra laesa sit, sarciri damnum ab eo qui hoc intulit praeses provinciae curabit, non dubitaturus etiam graviorem exsecutionem adhibere, si quid tam aperta fraude commissum est, ut puniendum in liberto crimen deprehendatur. <a 260 pp. viii k. oct. saeculare ii et donato conss.>

CJ.2.30.4: Imperatores Diocletianus, Maximianus

In iudicio de liberali causa sententiam pro libertate latam ne quidem praerogativa minoris aetatis sine appellatione posse rescindi ambigi non potest. * diocl. et maxim. aa. et cc. tatiano. * <a 303 pp. viii id. ian. nicomediae diocletiano viii et maximiano vii conss.>

CJ.2.31.0. Si adversus transactionem vel divisionem minor restitui velit.

CJ.2.31.1: Imperatores Severus, Antoninus

Cum in integrum pupilla restituta rescindi transactionem vel divisionem placuit, tu quoque actionibus, quas pridem habuisti, utaris. * sev. et ant. aa. honorato. * <>

CJ.2.31.2: Imperatores Diocletianus, Maximianus

Si ex persona minorum in integrum restitutio adversus transactum propter aetatis auxilium imploretur, tibi quoque agenti ex integro vel replicatione contra exceptionem pacti vel, si peremptam constet pristinam obligationem, ex instauratione negotii tributa actione consulendum est. * diocl. et maxim. aa. et cc. hymnodae. * <a 294 d. k. dec. cc. conss.>

CJ.2.32.0. Si adversus solutionem a debitore vel a se factam.

CJ.2.32.1: Imperatores Diocletianus, Maximianus

Exemplo ceterorum debitorum tutores etiam quae ex administratione tutelae debent curatoribus solventes liberantur, sed ante tempus in integrum restitutioni praestitum edicto perpetuo permissum beneficium implorari et, an sit tribuendum, per causae cognitionem aestimari potest. * diocl. et maxim. aa. et cc. soteri. * <a 294 d. vi id. febr. cc. conss.>

CJ.2.32.2: Imperatores Diocletianus, Maximianus

Indebito legato, licet per errorem iuris a minore soluto, repetitionem ei decerni, si necdum tempus, quo restitutionis tribuitur auxilium, excesserit, rationis est. * diocl. et maxim. aa. et cc. laurinae. * <a 294 d. xv k. april. sirmi cc. conss.>

CJ.2.33.0. Si adversus dotem.

CJ.2.33.1: Imperator Alexander Severus

Quoniam circumventam dicis sororem tuam omnia bona in dotem dedisse, an veritas adlegationi adsistat, si ad te hereditas sorosis tuae vel bonorum possessio pertinuit et tempora nondum praeterierint, intra quae legibus conceditur ex persona defuncti postulare in integrum restitutionem, praeses provinciae praesente diversa parte examinabit. * alex. a. valenti. * <a 233 d. vi id. iul. maximo et paterno conss.>

CJ.2.34.0. Si adversus delictum suum.

CJ.2.34.1: Imperatores Severus, Antoninus

In criminibus quidem aetatis suffragio minores non iuvantur: etenim malorum mores infirmitas animi non excusat. sed cum delictum non ex animo, sed ex contractu venit, noxa non committitur, etiamsi poenae causa pecuniae damnum inrogatur: et ideo minoribus et in hac causa in integrum restitutionis auxilium competit. * sev. et ant. aa. longino. * <a 200 d. id. oct. severo ii et victorino conss.>

CJ.2.34.2: Imperatores Diocletianus, Maximianus

Licet in delictis aetate neminem excusari constet, matri tamen, quae filiis tutorem aetatis lubrico lapsa non petiit, eorum minime denegari successionem convenit, cum hoc in maioribus matribus tantum obtineat. * diocl. et maxim. aa. et cc. proculae. * <a 294 v non. mart. cc. conss.>

CJ.2.35.0. Si adversus usucapionem.

CJ.2.35.1: Imperatores Diocletianus, Maximianus

Contra eos, qui res minorum tenent, si usucapione dominium adquisierunt, restitutionis auxilium eis decerni debet. * diocl. et maxim. aa. et cc. isidorae. * <a 294 d. k. mai. sirmi cc. conss.>

CJ.2.36.0. Si adversus fiscum

CJ.2.36.1: Imperatores Severus, Antoninus

Si probus in minore aetate constitutus circumventus a rufino dispensatore nostro venditionem rei praecipiti animo pretio longe minore contrahere festinavit, iuris publici fiscus noster in iure restitutionis sequetur auctoritatem. * sev. et ant. aa. longino. * <a 200 d. id. oct. severo et victorino conss.>

CJ.2.36.2: Imperator Alexander Severus

Si adversus privatos in integrum restitutionem tam tu quam fratres tui desideratis, praesidis provinciae viri clarissimi notio est isque causa cognita aestimabit, an auxilium quod imploratis conferri in vos debeat. quod si adversus fiscum id postulatis, intellegitis procuratorem meum una cum praeside, praesente fisci patrono, adire vos debere. * alex. a. antiocho et aliis. * <a 226 d. k. aug. alexandro a. ii et Marcello conss.>

CJ.2.36.3pr.: Imperatores Diocletianus, Maximianus

Edicto quidem divi marci parentis nostri res minorum exceptae nihil tuum adiuvant desiderium, si quidem debiti causa patris minoris vel etiam ipsius praedia venumdata quinquennii praescriptionis nullam admittunt quaestionem. * diocl. et maxim. aa. et cc. laurentio. * <a 294 d. id. febr. sirmi cc. conss.>

CJ.2.36.3.1: Imperatores Diocletianus, Maximianus

Sed quoniam per collusionem sive fraudem tunc temporis procuratoris nostri nimis exiguo pretio fundum tuum cum mancipiis venumdatum adseveras, si aditus rationalis noster tuis adlegationibus adesse fidem nec servatam sollemnitatem hastarum animadverterit, fisco te satisfaciente revocata venditione fundum tibi restitui iubebit. <a 294 d. id. febr. sirmi cc. conss.>

CJ.2.37.0. Si adversus creditorem.

CJ.2.37.1: Imperator Antoninus

Cum et ipse confitearis cum zenodora minore viginti quinque annis contraxisse nec docere potuisse praetori viro clarissimo ex eo contractu locupletiorem factam , intellegis eam merito in integrum restitutam. * ant. a. prunico. * <a 214 d. vi non. mai. messala et sabino conss.>

CJ.2.37.2: Imperator Gordianus

Si, ut adlegas, minor annis pecuniam fenori accepisti nec ea in rem tuam versa est, adversus cautionem, per quam eo nomine te obligasti, in integrum restitutionis auxilium potes sollemniter postulare. * gord. a. gaiano. * <a 238 pp. iii non. oct. pio et pontiano conss.>

CJ.2.38.0. Si ut se hereditate abstineat.

CJ.2.38.1: Imperatores Severus, Antoninus

Si vos paternae hereditati non miscuistis, ob eam rem testificatio necessaria non fuit, cum fides veritatis verborum adminicula non desideret. quod si pro herede gessistis vel bonorum possessionem accepistis, propter aetatem, cui subveniri solet, in integrum restitutionis auxilium accipere debetis. * sev. et ant. aa. florentio et aliis. * <a 198 pp. v non. mart. saturnino et gallo conss.>

CJ.2.38.2: Imperator Gordianus

Si, cum avi tui testamento te heredem reliquissent, hereditates eorum non adisti , liberum tibi est repudiata paterna successione per in integrum restitutionis auxilium, quo te aetatis iure dicis esse munitam, hereditatem parentum tuorum, licet antea non adisti, nunc obtinere. * gord. a. herodotae. * <a 241 pp. iii non. febr. gordiano a. ii et pompeiano conss.>

CJ.2.39.0. Si ut omissam hereditatem vel bonorum possessionem vel quid aliud adquirat.

CJ.2.39.1: Imperator Gordianus

Minores viginti quinque annis non tantum in his, quae ex bonis propriis amiserunt, verum etiam si hereditatem sibi delatam non adierint, posse in integrum restitutionem postulare iam dudum placuit. * gord. a. protae. * <a 238 pp. id. oct. pio et pontiano conss.>

CJ.2.39.2: Imperatores Diocletianus, Maximianus

Ad bonorum possessionem in paternis rebus omissam minores in integrum restitutionis admitti beneficio iam pridem placuit. restituti autem decreto bona, quae habuerunt mortis tempore patris, debent conferre. * diocl. et maxim. aa. et cc. sarapiadi. * <a 294 d. xvi k. nov. sirmi cc. conss.>

CJ.2.40.0. In quibus causis in integrum restitutio necessaria non est.

CJ.2.40.1: Imperator Alexander Severus

Minoribus quinque et viginti annis, praesertim qui per tutores vel curatores non defenduntur, non obesse, si mortem defuncti non ulciscantur, innumeris divorum parentum meorum ac meis rescriptis continetur. * alex. a. mutato. * <a 229 v id. mai. alexandro a. iii et dione conss.>

CJ.2.40.2: Imperatores valer., gallien.

Adulescentiae tempus non imputari in id quinquennium liberis, cuius praescriptio seram inofficiosi moventibus quaestionem opponi solet, manifeste ante rescripsimus. impleta igitur aetate legitima non est in integrum restitutio necessaria, quia non integratio amissae causae his datur, sed integra ipsa causa servatur. * valer. et gallien. aa. et valer. c. theodotae. * <a 258 pp. ii id. aug. tusco et basso conss.>

CJ.2.40.3: Imperatores Diocletianus, Maximianus

In minorum persona re ipsa et ex solo tempore tardae pretii solutionis recepto iure moram fieri creditum est, in his videlicet, quae moram desiderant, id est in bonae fidei contractibus et fideicommissis et in legato. * diocl. et maxim. aa. decimo caplusio. * <a 290 pp. xii k. oct. ipsis iiii et iii aa. conss.>

CJ.2.40.4: Imperatores Diocletianus, Maximianus

Si tutor tuus, qui pro tutelari officio non caverat, iudicio expertus est, contra eum lata sententia iuri tuo officere non potuit, nec ea quae ab eo gesta sunt ullam firmitatem obtinent. frustra igitur in integrum restitutionis auxilium desideras, quando ea, quae ab eo gesta sunt, qui legitimae administrationis personam sustinere non potuit, ipso iure irrita sunt. * diocl. et maxim. aa. et cc. stratonicae. * <a 294 s. xviii k. ian. nicomediae cc. conss.>

CJ.2.40.5pr.: Imperator Justinianus

Sancimus favore imperfectae aetatis exceptionem non numeratae pecuniae ab initio minoribus non currere, ne, dum in integrum restitutionem expectamus, aliquod emergat obstaculum, per quod huiusmodi beneficio minor uti non potest, ne substantia eius subvertatur. * iust. a. iohanni pp. * <a 531 d. k. nov. constantinopoli post cons. lampadii et orestis vv. cc.>

CJ.2.40.5.1: Imperator Justinianus

Sed humanius et latius eandem legis interpretationem extendere, in omnibus casibus, in quibus vetera iura currere quidem temporales praescriptiones adversus minores concesserunt, per in integrum autem restitutionem eis subveniebant, eas ipso iure non currere. melius etenim est intacta iura eorum servari, quam post causam vulneratam remedium quaerere. videlicet exceptionis triginta et quadraginta annorum in suo statu remanentibus. <a 531 d. k. nov. constantinopoli post cons. lampadii et orestis vv. cc.>

CJ.2.41.0. Qui et adversus quos in integrum restitui non possunt.

CJ.2.41.1pr.: Imperator Alexander Severus

In consilio quidem cognoscentis de restitutione in integrum esse oportet, num is , qui se minorem annis laesum esse dicat, diligens pater familias fuerit actibusque publicis industrium se docuerit, ut lapsum eum per aetatem verisimile non sit. * alex. a. cononidi. * <a 232 pp. x k. oct. lupo et maximo conss.>

CJ.2.41.1.1: Imperator Alexander Severus

Verum si causa cognita circumventus deprehendatur, propter hoc solum velut praescriptione a solito auxilio removeri non debet, quod urguentibus patriae necessitatibus decurio minor annis creatus sit vel propagandae suboli liberorum educatione prospexerit. <a 232 pp. x k. oct. lupo et maximo conss.>

CJ.2.41.2: Imperator Justinianus

Cum apud veteres dubitabatur, an liberi parentes suos vel liberti patronos in querimoniam deducere possint quasi non rite in eos versatos, et quidam existimabant nullam esse contra huiusmodi personas in integrum restitutionem, pondere naturali vel patronali reverentia huiusmodi petulantiae refragante, nisi vel ex magna causa vel adversus turpem eorum personam, alii autem personarum quidem vel causae distinctionem respuendam esse censuerunt, tunc autem tantummodo dandam esse restituionem putaverunt, cum minor ex sua simplicitate se deceptum, non ex dolo patris vel patroni circumscriptum esse dicat: quod, ut maneat in omnibus honor parentibus et patrono vel patronae illibatus atque intactus, sancimus nullo modo neque adversus parentes utriusque sexus neque adversus patronum vel patro nam dari restitutionem. nam personarum reverentia omnem eis excludit restitutionem, cum procul dubio est etiam ipsas personas cavere, ne quid suae opinioni contrarium existat. * iust. a. iohanni pp. * <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.2.42.0. Si minor se maiorem dixerit vel probatus fuerit.

CJ.2.42.1: Imperator Alexander Severus

Si, cum minor annis viginti quinque esses, tabulis quae sunt tuarum professionum oblatis tibi aetatem quasi maior annis viginti quinque decepta probasti, in integrum restitutionem intra statutum legibus tempus etiam post impletam aetatem de omnibus intra aetatem adversus te gestis postulare apud eum, cuius de ea re iurisdictio est, potes. * alex. a. maximianae. * <a 223 pp. xii k. april. maximo ii et aeliano conss.>

CJ.2.42.2: Imperatores Diocletianus, Maximianus

Si is, qui nunc minorem se adseverat, fallaci maioris aetatis mendacio te decepit, iuxta statuta iuris, cum errantibus, non etiam fallentibus minoribus publica iura subvenerunt, in integrum restitui non debet. * diocl. et maxim. aa. vitalio. * <a 287 d. ii k. dec. diocletiano iii et maximiano aa. conss.>

CJ.2.42.3pr.: Imperatores Diocletianus, Maximianus

Si alterius circumveniendi causa minor aetate maiorem te probare adspectu laboraveris, cum malitia suppleat aetatem, restitutionis auxilium tam sacris constitutionibus quam rescriptorum auctoritae denegari statutum est. * diocl. et maxim. aa. et cc. theodotae. * <a 293 d. xiii k. oct. sirmi aa. conss.>

CJ.2.42.3.1: Imperatores Diocletianus, Maximianus

Quod si per iniuriam vel circumventionem adversarii hoc fuerit factum, durat beneficium, quo minoribus causa cognita subveniri solet. <a 293 d. xiii k. oct. sirmi aa. conss.>

CJ.2.42.3.2: Imperatores Diocletianus, Maximianus

Aditus itaque praeses provinciae probationis aetatis examinata causa, si tuum dolum non reppererit intercessisse, ac te minorem tunc fuisse probaveris, causa cognita in integrum restitui providebit. <a 293 d. xiii k. oct. sirmi aa. conss.>

CJ.2.42.3.3: Imperatores Diocletianus, Maximianus

Si tamen in instrumento per sacramenti religionem maiorem te esse adseverasti, non ignorare debes exclusum tibi esse in integrum restitutionis beneficium, nisi palam et evidenter ex instrumentorum prolatione, non per testium depositiones te fuisse minorem ostenderis. <a 293 d. xiii k. oct. sirmi aa. conss.>

CJ.2.42.3.4: Imperatores Diocletianus, Maximianus

Huiusmodi autem sacramento corporaliter praestito nullum tibi superesse auxilium perspicui iuris est. <a 293 d. xiii k. oct. sirmi aa. conss.>

CJ.2.42.4: Imperatores Diocletianus, Maximianus

Cum circa probandum annorum numerum apud rectorem provinciae erratum esse proponas et in huiusmodi causis etiam filiis familias minoribus subveniri admissum sit, ea, quae in prece contulisti, praesidem provinciae examinare convenit: qui se aestimata aetate tua maiorem annis falsa opinione te praesumpsisse ex probationum luce cognoverit, erga minoris personam fidem veri sequetur. * diocl. et maxim. aa. et cc. livio. * <a 293 d. vi id. dec. aa. conss.>

CJ.2.43.0. Si saepius in integrum restitutio postuletur.

CJ.2.43.1: Imperatores Severus, Antoninus

Si post sententiam proconsulis contra vos latam desiderastis in integrum restitui nec obtinuistis, frustra, ut rursum ea quaestio in integrum restitutionis agitetur, desideratis: appellare enim debuistis, si vobis sententia displicebat.

sed si adhuc in ea aetate estis, cui subveniri solet, appellandi ius vobis restituimus. * sev. et ant. aa. romano et aliis. * <a 204 pp. v k. aug. cilone et libone conss.>

CJ.2.43.2: Imperator Alexander Severus

Quamquam curatores pupillae victi sunt, cum in integrum restitui pupillam desiderabant, cum tamen novis defensionibus causam instrui posse dicas, adeant curatores uxoris tuae et petant, ut causas in integrum restitutionis agant. * alex. a. .To mil. * <a 226 pp. v k. aug. alexandro a. ii et Marcello conss.>

CJ.2.43.3: Imperator Philippus

In una eademque causa iteratum in integrum restitutionis auxilium non iure, nisi novae defensiones praetendantur, posci saepe rescriptum est. * philipp. a. et philipp. c. aniciae. * <a 244 pp. ii k. iul. peregrino et aemiliano conss.>

CJ.2.44.0. De his qui veniam aetatis impetraverunt.

CJ.2.44.1: Imperator aurel.

Eos, qui veniam aetatis impetraverunt, etiamsi minus idonee rem suam administrare videantur, in integrum restitutionis auxilium impetrare non posse manifestissimum est, ne qui cum eis contraheret principali auctoritate circumscriptus esse videatur. * aurel. a. agathocleti. * <a 274 pp. k. iul. aureliano a. et capitolino conss.>

CJ.2.44.2pr.: Imperator Constantinus

Omnes adulescentes, qui honestate morum praediti paternam frugem vel avorum patrimonia gubernare cupiunt et super hoc imperiali auxilio indigere coeperint, ita demum aetatis veniam impetrare audeant, cum vicesimi anni metas impleverint, ita ut post impetratam aetatis veniam idem ipsi per se principale beneficium adlegantes non solum praescriptorum annorum numerum probent, sed etiam testibus idoneis advocatis morum suorum instituta probitatemque animi et testimonium vitae honestioris edoceant. * const. a. ad verinum pu. * <a 321 pp. iii k. iun. romae crispo ii et constantino ii cc. conss.>

CJ.2.44.2.1: Imperator Constantinus

Feminas quoque, quas morum honestas mentisque sollertia commendat, cum octavum et decimum annum egressae fuerint, veniam aetatis impetrare sancimus. sed eas propter pudorem ac verecundiam feminarum in coetu publico demonstrari testibus non cogimus, sed percepta aetatis venia annos tantum probare testibus vel instrumentis, misso procuratore, concedimus, ut etiam ipsae in omnibus negotiis tale ius habeant, quale mares habere praescripsimus, ita tamen, ut praedia sine decreto non alienent. <a 321 pp. iii k. iun. romae crispo ii et constantino ii cc. conss.>

CJ.2.44.2.2: Imperator Constantinus

Sed senatores quidem clarissimi viri in hac regia urbe commorantes apud sublimitatem tuam, ceteri vero apud praetorem, in provinciis autem omnes apud earum rectores de suis moribus et honestae perdoceant. <a 321 pp. iii k. iun. romae crispo ii et constantino ii cc. conss.>

CJ.2.44.2.3: Imperator Constantinus

Hi vero, qui contra memoratam dispositionem veniam aetatis impetraverint, sciant eam nullas vires obtinere. <a 321 pp. iii k. iun. romae crispo ii et constantino ii cc. conss.>

CJ.2.44.3: Imperator Justinianus

Eos, qui veniam aetatis principali clementia impetraverunt vel impetraverint, non solum alienationem, sed etiam hypothecam minime posse sine decreti interpositione rerum suarum immobilium facere iubemus, in quarum alienatione vel hypotheca decretum illis necessarium est, qui necdum veniam aetatis meruerunt, ut similis sit in ea parte condicio minorum omnium, sive petita sive non sit aetatis venia. * iust. a. menae pp. * <a 529 d. viii id. april. decio vc. cons.>

CJ.2.44.4: Imperator Justinianus

Si quis aliquid dari vel fieri voluerit et legitimae aetatis fecerit mentionem vel sic absolute dixerit 'perfectae aetatis', illam tantummodo aetatem intellectam esse videri volumus, quae ex viginti quinque annorum curriculis completur, non ab imperiali beneficio suppletur. et praecipue quidem in substitutionibus vel restitutionibus hoc intellegi sancimus: nihilo minus autem et in aliis, nisi specialiter quisquam addiderit ex venia aetatis velle aliquid procedere. * iust. a. ad senatum. * <a 530 d. xi k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.2.45.0. Si maior factus ratum habuerit.

CJ.2.45.1: Imperatores Diocletianus, Maximianus

Si inter minores quinque et viginti annis vel scriptura interposita vel sine scriptura facta sine dolo divisio est eamque post legitimam aetatem ratam fecerunt , manere integram debere convenit. * diocl. et maxim. aa. et cc. eutychiano. * <a 293 s. viii k. mai. aa. conss.>

CJ.2.45.2: Imperatores Diocletianus, Maximianus

Qui post vicesimum quintum annum aetatis ea quae in minora aetate gesta sunt rata habuerunt, frustra rescissionem eorum postulant. * diocl. et maxim. aa. et cc. soteri. * <a 294 d. id. febr. cc. conss.>

CJ.2.46.0. Ubi et apud quem cognitio restitutionis agitanda sit.

CJ.2.46.1: Imperator Antoninus

Si quid a procuratore meo iudicatum est, id per in integrum restitutionem praesidis sententia non potest rescindi. princeps enim solus contra sententiam procuratorum suorum in integrum restituere solet. * ant. a. severo. * <a 215 pp. vi k. dec. laeto ii et cereale conss.>

CJ.2.46.2: Imperatores Diocletianus, Maximianus

Quoniam ea, quae in transactione dari placuerat, te tradidisse proponas, consequens est, si de his repetendis per in integrum restitutionem vel quacumque aliam causam putaveris agendum, eius adire te provinciae praesidem, in qua domicilium habent quos convenis. * diocl. et maxim. aa. aquilinae. * <>

CJ.2.46.3pr.: Imperator Justinianus

Cum scimus esse dubitatum de restitutionibus, quae in integrum postulantur, sive tantummodo apud iudicem, cui aliqua iurisdictio est, examinari eas oportet, sive et apud pedaneos iudices, sive eas minores viginti quinque annis petierint sive maiores, secundum quod anterioribus sanctionibus vel veteris iuris vel nostris declaratum est: sancimus non solum apud iudices pro tribunali huiusmodi causae cognitiones proponi, sed etiam apud eos iudices, quos augusta dederit maiestas aut nostrae rei publicae administratores vel in hac regia civitate vel in provinciis, ut videatur ipse, qui iudicem destinaverit, utpote pro tribunali cognoscens et in integrum dare restitutionem et causas eius examinare: sic etenim non difficilis erit causarum examinatio. * iust. a. iohanni pp. * <a 531 d. iii k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.2.46.3.1: Imperator Justinianus

Sed ne quis ita effuse intellectum nostrae constitutionis audeat esse trahendum, ut etiam apud compromissarios iudices vel arbitros ex communi sententia electos vel apud eos, qui dantur a iudicibus, qui propriam iurisdictionem non habent, sed tantummodo iudicandi facultatem, putet huiusmodi extendi sanctionem, cum hos generaliter volumus tales causas dirimere, qui vel certae administrationi, cui et iurisdictio adhaeret, praepositi sunt vel ab his fuerint dati, et multo magis si a nostra maiestate delegata eis causarum sit audientia. <a 531 d. iii k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.2.46.3.2: Imperator Justinianus

Sed ne quid penitus dubitandum relinquatur, et hoc addendum esse censemus, ut eis fuerit mandatum, quod et veteribus non fuerat incognitum, vel si generaliter iudices dati sunt, vel in aliis speciebus, inciderit autem quaedam quaestio restitutionis. <a 531 d. iii k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.2.47.0. De reputationibus, quae fiunt in iudicio in integrum restitutionis.

CJ.2.47.1pr.: Imperator Severus

Qui restituitur in integrum, sicut in damno morari non debet, ita nec in lucro: et ideo quidquid ad eum pervenit vel ex emptione vel ex venditione vel ex alio contractu, hoc debet restituere. * sev. a. tatiano. * < sine die et consule.>

CJ.2.47.1.1: Imperator Severus

Sed et si intercessor minor viginti quinque annis intervenit, in veterem debitorem debet restitui actio. < sine die et consule.>

CJ.2.47.1.2: Imperator Severus

Sed et cum adiit minor hereditatem et restituitur, mox quidquid ad eum ex hereditate pervenit, debet praestare. < sine die et consule.>

CJ.2.47.1.3: Imperator Severus

Verum et si quid dolo eius factum est, hoc eum praestare convenit. < sine die et consule.>

CJ.2.48.0. Etiam per procuratorem causam in integrum restitutionis agi posse.

CJ.2.48.1: Imperator Alexander Severus

Causam in integrum restitutionis, si qua competit, etiam per procuratorem agi posse placet. * alex. a. liciniano. * <a 231 d. xiii k. oct. pompeiano et peligno conss.>

CJ.2.49.0. In integrum restitutione postulata ne quid novi fiat.

CJ.2.49.1: Imperator Gordianus

Postulata in integrum restitutione omnia in suo statu esse debere, donec res finiatur, perspicui iuris est, idque curabit is, ad cuius partes ea res pertinet. * gord. a. secundino mil. * <a 239 pp. xii k. iul. gordiano a. et aviola conss.>

CJ.2.50.0. De restitutione militum et eorum qui rei publicae causa afuerunt.

CJ.2.50.1: Imperatores Severus, Antoninus

Si valerianus centurio cohortis duodecimae alpinorum ante vita decessit, quam possessionem acciperet, heres eius ex persona defuncti restitutionis auxilium intra annum utilem ita recte implorabit, si valerianus post exactos dies, quibus bonorum possessio defertur, in militia defunctus est. * sev. et ant. aa. chiloni. * <a 197 pp. k. nov. laterano et rufino conss.>

CJ.2.50.2: Imperator Alexander Severus

Si quid de bonis eorum, qui rei publicae causa absentes sunt, deminutum est actioneve qua competente eis aliquis liberatus fuit, in integrum restitutio perpetua iurisdictione intra annum utilem permittitur. * alex. a. petronio centurioni. * <a 222 pp. xiii k. nov. alexandro a. cons.>

CJ.2.50.3: Imperator Alexander Severus

Quod tempore militiae de bonis alicuius possessum ab aliquo est, posteaquam is rei publicae causa abesse desiit, intra annum utilem amota praescriptione temporis medii possessionem vindicare permissum est: ultra autem ius possessoris laedere contra eum institutum non oportet. * alex. a. flavio aristodemo mil. * <a 223 pp. non. ian. maximo ii et aeliano conss.>

CJ.2.50.4: Imperator Gordianus

Ignorare non debes eorum, qui rei publicae causa sine dolo malo absunt, si absentes boni viri arbitratu non defenduntur, bona tantum possideri, venditionem autem in id tempus differri, quo rei publicae causa abesse desierint. * gord. a. mestriano. * <a 239 d. xii k. ian. gordiano a. et aviola conss.>

CJ.2.50.5: Imperator Gordianus

Neque rei publicae causa absentibus nec aliis maioribus ad titulum in integrum restitutionis pertinentibus praescriptionem quadriennii post factam a fisco venditionem obesse posse manifestum est. * gord. a. secundino mil. * <a 240 pp. vi id. mai. sabino et venusto conss.>

CJ.2.50.6: Imperatores valer., gallien.

Si, cum militaribus laboribus operam dares, creditoris tui heredes possessiones sibi obligatas distraxerunt, poteris adito praeside provinciae in integrum restitutionem impetrare retractataque venditione recipies possessiones, oblato ante debito vel pretio, si minus debito fuisset. * valer. et gallien. aa. germano centurioni. * <a 254 pp. iiii non. april. valeriano et gallieno aa. conss.>

CJ.2.50.7: Imperatores Diocletianus, Maximianus

Quae a patre geruntur, non decet pro disciplina militari a filiis ad irritum devocari, praesertim cum nec patrem tuum in rebus humanis agentem adfirmes conquestum fuisse super huiusmodi contractu. * diocl. et maxim. aa. et cc. marinae. * <a 294 d. non. febr. cc. conss.>

CJ.2.50.8: Imperator Justinianus

Sancimus his solis, qui in expeditionibus occupati sunt, ea tantummodo tempora, quae in eadem expeditione percurrunt, tam in exceptionibus declinandis quam in petendis in integrum restitutionibus eis opitulari: illis temporibus, per quae citra expeditionis necessitatem in aliis locis vel in suis aedibus degunt, minime eos ad vindicanda memorata privilegia adiuvantibus. * iust. a. menae pp. * <a 529 d. vi id. april. constantinopoli decio vc. cons.>

CJ.2.51.0. De uxoribus militum vel eorum qui rei publicae causa absunt.

CJ.2.51.1: Imperator Alexander Severus

Temporalibus actionibus exclusis mulieribus, quae cum maritis rei publicae causa absentibus peregrinatae sunt, ad exemplum militum subveniri solere non est ignotum. * alex. a. secundinae. * <a 226 pp. iii non. dec. alexandro a. ii et Marcello conss.>

CJ.2.51.2: Imperatores Diocletianus, Maximianus

Ei, quae diutissime fuit cum marito qui militiae operam daret, non officit praescriptio longi temporis: sed quia huiusmodi diutinae absentiae commenta callide adhibita atque composita obesse omnino non debent, decernimus, ut, si talis mulier domum ad se pertinere monstraverit, quae in absentia eius vendita est, refuso pretio, quod re vera solutum est, eandem recipiat. * diocl. et maxim. aa. et cc. quintiliano. * <a 290 vel 293 d. viii k. dec. ipsis aa. conss.>

CJ.2.52.0. De temporibus in integrum restitutionis tam minorum aliarumque personarum, quae restitui possunt, quam heredum eorum.

CJ.2.52.1: Imperator Gordianus

In his, in quibus laesus es, cum minor annis viginti quinque esses, toto militaris expeditionis tempore auxilium restitutionis postulare potes: tempus etenim post impletam minorem aetatem praestitutum ex die missionis iuxta rationem iuris computari debet. * gord. a. pudenti mil. * <a 238 pp. iii non. oct. pio et pontiano conss.>

CJ.2.52.2: Imperator Gordianus

Si intra legitimam aetatem vel, ea impleta, nondum exacto tempore praestituto pater tuus in fata concessit tuque ei heres extitisti et intra viginti quinque annos vel post eam aetatem intra id tempus, quod ad in integrum restitutionem defuncto supererat, nomen militiae dedisti, praeses provinciae causa cognita per in integrum restitutionem ex persona defuncti subveniri tibi providebit. * gord. a. secundino mil. * <a 238 d. xi k. nov. pio et pontiano conss.>

CJ.2.52.3: Imperator Gordianus

Si intra annos, quibus in integrum restitutionis auxilium indulgetur, constitutus es vel eo tempore nomen militiae dedisti et expeditione occupatus es, continuatum beneficium restitutionis per usucapionem, licet ante militiam suppleta sit , non patitur te dispendio rei familiaris adfligi. * gord. a. muciano mil. * <a 238 d. viiii k. nov. pio et pontiano conss.>

CJ.2.52.4: Imperatores Diocletianus, Maximianus

Ex persona fratrum, si tibi eorum quaesita successio est, potes contra quem supplicas agere, non ignorans, quod, si minores quinque et viginti annis militaverunt fratres tui atque in militia diem functi sunt, in integrum restitutionis eis tempus non cesserit, sed omne ad successorem transmiserint. * diocl. et maxim. aa. et cc. dionysio. * <a 294 s. viii k. ian. philippopoli cc. conss.>

CJ.2.52.5pr.: Imperator Constantinus

Ea, quae de temporibus in integrum restitutionum legibus cauta sunt, custodiri convenit, et si forte quis beneficio nostro aetatis veniam fuerit consecutus, ex eo die, quo indulgentia nostra in iudicio competenti fuerit intimata eique administratio rei propriae permissa, ut ad persequendas in integrum restitutionum finiendasque causas iure tempus habeat praestitutum, ita tamen, ut numquam minoribus viginti quinque annis constitutis de his, quae ante impetratam veniam aetatis gesserunt, auxilium in integrum restitutionis denegetur. * const. a. ad bassum. * <a 312 d. non. oct. romae constantino a. et licinio utrisque ii conss.>

CJ.2.52.5.1: Imperator Constantinus

Si quando sane in minoris iura successerit minor, minime prohibeatur, cum quintum et vicesimum aetatis suae annum transierit, in integrum restitutionis beneficio uti tempore illibato. <a 312 d. non. oct. romae constantino a. et licinio utrisque ii conss.>

CJ.2.52.5.2: Imperator Constantinus

Quod si maioris fuerit minor iura nactus, quantum ad eas pertinet causas, quas ex persona maioris fuerit consecutus, tantum temporis ad exponendas in integrum restitutionis decidendasque causas accipere debebit, quantum defuncto, cuius heres aut bonorum possessor docebitur extitisse, reliquum fuerat. <a 312 d. non. oct. romae constantino a. et licinio utrisque ii conss.>

CJ.2.52.5.3: Imperator Constantinus

Cum vero maior successionem fuerit adeptus minoris, si quidem civili iure ab intestato vel ex testamento successerit, mox cum fuerit adita hereditas, si vero honorario iure, ex quo bonorum possessio fuerit accepta, examinando in integrum restitutionis negotio solida sine ulla diminutione tempora supputentur. <a 312 d. non. oct. romae constantino a. et licinio utrisque ii conss.>

CJ.2.52.6pr.: Imperator Constantinus

Petendae in integrum restitutionis temporibus observatis, si dilatio ab actore petatur, quae intra metas restitutionis valet artari, eandem quocumque flagitante causis cognitis tribui oportebit. sin vero eiusmodi postulantur curricula, quae intra spatium receptum angustari non queunt (quippe si in confinio legitimi temporis petantur, et eius terminos prorogabunt), dilationem petitori denegari conveniet: in eius enim arbitrio fuerat tunc inferre litigium, cum petitae dilationis mora spatio superstite posset includi. * const. a. ad iulianum pu. * <a 327 d. xiiii k. aug. pp. romae ad senatum constantio et maximo conss.>

CJ.2.52.6.1: Imperator Constantinus

Quod si defensio rei dilationis suffragium postulaverit, eandem adserta causa citra obstaculum temporis deferri sancimus, quia nequaquam in ipsius steterat potestate, quando litigio pulsaretur. dari igitur debet, etsi impetrata dimensio sese ultra temporis definitionem proferat. qua dilatione, si a reo impetretur, etiam actor in requirendis probationibus uti minime prohibetur. <a 327 d. xiiii k. aug. pp. romae ad senatum constantio et maximo conss.>

CJ.2.52.7pr.: Imperator Justinianus

Supervacuam differentiam utilis anni in integrum restitutionis a nostra re publica separantes sancimus et in antique roma et in hac alma urbe et in italia et in aliis provinciis quadriennium continuum tantummodo numerari ex die, ex quo annus utilis currebat, et id tempus totius loci esse commune: ex differentia enim locorum aliquod induci discrimen satis nobis absurdum esse visum est. * iust. a. iohanni pp. * <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.2.52.7.1: Imperator Justinianus

Quod non solum in minorum restitutionibus, quibus utilis annus incipit currere, ex quo vicesimi sexti anni dies illuxerit, sed etiam in maiorum hoc idem adhiberi sancimus, ut et hic pro utili anno memorata continuatio temporis observetur ad interponendam contestationem finiendamque litem. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.2.52.7.2: Imperator Justinianus

Et quemadmodum omnis minor aetas excipitur in minorum restitutionibus, ita et in maiorum tempus, in quo rei publicae causa afuerint vel aliis legitimis causis, quae veteribus legibus enumeratae sunt, fuerint occupati, omne praecipiatur, et sit non absimilis in hac parte minorum et maiorum restitutio. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.2.53.0. Quibus ex causis maiores in integrum restituuntur.

CJ.2.53.1: Imperator Antoninus

Si propter officium legationis ad me bona fide factae absens et indefensus condemnatus es, instaurationem iudicii iure desideras, ut ex integro defensionibus tuis utaris. nam eos quoque, qui legationis officio funguntur, in eo privilegio esse, quo sunt qui rei publicae causa absunt, receptum est. * ant. a. aemiliano. * <a 212 pp. v non. mart. duobus aspris conss.>

CJ.2.53.2: Imperator Antoninus

Si idcirco apud arbitrum praesentiam tui facere non potuisti, quod sub custodia militari iussu praesidis detinebaris, idque in veritate esse praesidi provinciae probaveris, accipies causae instaurationem. * ant. a. dionysio. * <a 215 pp. xiii k. oct. laeto et cereale conss.>

CJ.2.53.3: Imperatores Diocletianus, Maximianus

In contractibus, qui bonae fidei sunt, etiam maioribus officio iudicis causa cognita publica iura subveniunt. * diocl. et maxim. aa. proculo decurioni. * <a 285 d. non. aug. diocletiano a. ii et aristobulo conss.>

CJ.2.53.4: Imperatores Diocletianus, Maximianus

Res publica minorum iure uti solet ideoque auxilium restitutionis implorare potest. * diocl. et maxim. aa. prisciano. * <a 285 d. ii id. nov. diocletiano a. ii et aristobulo conss.>

CJ.2.53.5: Imperatores Diocletianus, Maximianus

Si ab hostibus eum patre ac matre captus, post his ibi defunctis legis corneliae beneficio reversus successiones eorum quaesisti, exemplo utilis actionis, quae in integrum restitutis datur, cum exceptionis annuae quae huic obici solet obiectu res vindicare non prohiberis. * diocl. et maxim. aa. et cc. liciniano. * <a 294 d. xvi k. mai. cc. conss.>

CJ.2.54.0. De alienatione iudicii mutandi causa facta.

CJ.2.54.1: Imperatores Diocletianus, Maximianus

Cum in rem actioni possessio pariat adversarium, alienatione etiam iudicii mutandi causa celebrata in integrum restitutio edicto perpetuo permittatur, intellegis, quod, si rem, ne secum agatur, qui possidebat venumdedit et emptori tradidit, quem elegeris conveniendi tibi tributam esse iure facultatem. * diocl. et maxim. aa. et cc. catulo. * <a 294 d. vi k. dec. viminacio cc. conss.>

CJ.2.55.0. De receptis.

CJ.2.55.1: Imperator Antoninus

Ex sententia arbitri ex compromisso iure perfecto aditi appellari non posse saepe rescriptum est, quia nec iudicati actio inde praestari potest et ob hoc invicem poena promittitur, ut metu eius a placitis non recedatur. sed si ultra diem compromisso comprehensum iudicatum est, sententia nulla est, nec ullam poenam committit qui ei non paruerit. * ant. a. nepotianae. * <a 213 pp. viiii k. aug. romae antonino a. iiii et balbino conss.>

CJ.2.55.2: Imperatores carus, carinus, numer.

Si contra compromissum adversarius tuus apud electum arbitrum praesentiam sui facere detrectavit, placitae poenae videtur obnoxius. * carus carinus et numer. aaa. clementi. * <a 283 pp. viii k. ian. caro et carino conss.>

CJ.2.55.3: Imperatores Diocletianus, Maximianus

Arbitrorum ex compromisso sententiae non obtemperans, si sordes vel evidens gratia eorum qui arbitrati sunt intercessit, adversus filiam tuam agentem ex stipulatu exceptione doli mali uti poteris. sed et ex doli clausula, quae compromissi stipulationi subici solet, filiam tuam convenire non vetaberis. * diocl. et maxim. aa. et cc. petroniae. * <a 290 vel 293 pp. iii id. ian. ipsis aa. conss.>

CJ.2.55.4pr.: Imperator Justinianus

Ne in arbitris cum sacramenti religione eligendis periurium committatur et detur licentia perfidis hominibus passim definitiones iudicum eludere, sanctissimo arbitrio et huiusmodi rem censemus esse componendam. * iust. a. demostheni pp. * <a 529 d. iii k. nov. decio vc. cons.>

CJ.2.55.4.1: Imperator Justinianus

Si igitur inter actorem et reum nec non et ipsum iudicem fuerit consensum, ut cum sacramenti religione lis procedat, et ipsi quidem litigatores scriptis hoc suis manibus vel per publicas personas scripserint vel apud ipsum arbitrum in actis propria voce deposuerint, quod sacramentis praestitis arbiter electus est, hoc etiam addito, quod et ipse arbiter iuramentum praestitit super lite cum omni veritate dirimenda, eius definitionem validam omnimodo custodiri et neque reum neque actorem posse discedere, sed tenere omnifariam, quatenus oboedire ei compellantur. <a 529 d. iii k. nov. decio vc. cons.>

CJ.2.55.4.2: Imperator Justinianus

Sin autem de arbitro quidem nihil tale fuerit vel compositum vel scriptum, ipsae autem partes litteris hoc manifestaverint, quod iuramenti nexibus se illigaverint, ut arbitri sententia stetur, et in praesenti casu omnimodo definitionem arbitri immutatam servari, litteris videlicet eorum similem vim obtinentibus, sive ab initio hoc fuerit ab his scriptum vel praefato modo depositum, dum arbiter eligebatur, sive post definitivam sententiam hoc scriptum inveniatur, quod cum sacramenti religione eius audientiam amplexi sunt vel quod ea quae statuta sunt adimplere iuraverunt. <a 529 d. iii k. nov. decio vc. cons.>

CJ.2.55.4.3: Imperator Justinianus

Sed et si ipse solus arbiter hoc litigatoribus poscentibus et vel scriptis vel depositionibus, ut dictum est, manifestum facientibus praestiterit iuramentum, quod cum omni veritate liti libramenta imponat, similem esse etiam in praesenti casu prioribus eius definitionem et eam omnimodo legibus esse vallatam. <a 529 d. iii k. nov. decio vc. cons.>

CJ.2.55.4.4: Imperator Justinianus

Et in his omnibus casibus liceat vel in factum vel condictionem ex lege vel in rem utilem instituere, secundum quod facti qualitas postulaverit. <a 529 d. iii k. nov. decio vc. cons.>

CJ.2.55.4.5: Imperator Justinianus

Sin autem in scriptura quidem aut depositione nihil tale appareat, una autem pars edicat iuramentum esse praestitum, quatenus arbitrali stetur sententia, huiusmodi litigatorum vel solius arbitri sermones minime esse credendos, cum et, si quis iusiurandum datum esse non iudice supposito nec hoc scriptura partium testante concesserit, incerti certaminis compositio, quae inter homines imperitos saepe accidit, non aliquid robur iudicatis inferat, sed in huiusmodi casu haec obtineant, quae veteres super arbitris eligendis sanxerunt. <a 529 d. iii k. nov. decio vc. cons.>

CJ.2.55.4.6: Imperator Justinianus

Si quis autem post arbitri definitionem subscripserit emmenein vel stoichein vel plyrun vel panta poiein vel didonai (graecis enim vocabulis haec enarrare propter consuetudinem utilis visum est), etsi non adiecerit homologw , et sic omnimodo per actionem in factum eum compelli ea facere quibus consensit. qualis enim differentia est, si huiusmodi verbis etiam homologw adiciatur vel huiusmodi vocabulum transmittatur? <a 529 d. iii k. nov. decio vc. cons.>

CJ.2.55.4.7: Imperator Justinianus

Si enim verba consueta stipulationum et subtilis, immo magis supervacua observatio ab aula concessa est, nos, qui nuper legibus a nobis scriptis multa vitia stipulationum multasque ambages scrupulososque circuitus correximus, cur non et in huiusmodi scriptura totam formidinem veteris iuris amputamus, ut, si quis haec scripserit vel unum ex his, adquiescere eis compellatur et ea ad effectum omnimodo perducere? cum non est verisimile haec propter hoc scripsisse, ut tantum non contradicat, sed ut etiam ea impleat, adversus quae obviam ire non potest. <a 529 d. iii k. nov. decio vc. cons.>

CJ.2.55.5pr.: Imperator Justinianus

Cum antea sancitum fuerat in arbitris eligendis, quos neque poena compromissi vallabat neque iudex dederat, sed nulla praecedente sententia communis electio, ut in illorum sententia stetur, procreabat, si quidem pro parte pulsata forma arbitralis procederet, exceptionem ei veluti pacti generari, sin autem pro actore calculus poneretur, nihil ex eo procedere ei praesidii: sancimus in eos arbitros, quos praediximus et quos talis consensus elegerit sub eo pacto in scriptis vel non in scriptis habito, ut eorum definitioni stetur, si quidem subscripserint, postquam definitio procedit, quod non displicet ambabus partibus eorum sententia, non solum reo exceptionem veluti pacti generari, sed etiam actori ex nostro numine in factum actionem, quatenus possit sententia eius exsecutioni mandari, sed in hac quidem regia civitate ab officio eminentissimae praefecturae vel eius, cuius forum pars sequitur fugientis, in provinciis autem tam per moderato res quam apparitiones eorum, vel per iudices , quorum regimen pars pertimescat pulsata. * iust. a. iuliano pp. * <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.2.55.5.1: Imperator Justinianus

Sin autem minime quidem post sententiam subscripserint arbitri formam amplecti, sed silentio eam roboraverint et non intra decem dies proximos attestatio missa fuerit vel iudici vel adversariis ab alterutra parte, per quam manifestum fiat definitionem non esse amplectendam, tunc silentio partium sententiam roboratam esse et fugienti exceptionem et agenti memoratam actionem competere. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.2.55.5.2: Imperator Justinianus

Altera autem parte recusante secundum praefatum modum et implere statuta minime cupiente nihil fieri praeiudicium neque pari vel exceptionem reo vel actori actionem, exceptis videlicet arbitris, qui cum sacramenti religione electi sunt secundum novellam nostri numinis constitutionem: tunc etenim ea omnia servari, quae lege nostra super huiusmodi audientia definita sunt. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.2.55.5.3: Imperator Justinianus

Licet non ignoramus iulii pauli opinionem et aliorum prudentium certorum, qui tetigerunt quidem huiusmodi quaestionem, quam in praesenti adgredimur, non autem perfectissime peregerunt, sed usque ad quasdam temporales actiones standum esse existimaverunt, plenius tamen et generaliter definimus conventum in scriptis apud compromissum iudicem factum ita temporis interruptionem inducere, quasi in ordinario iudicio lis fuisset inchoata. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.2.55.5.4: Imperator Justinianus

Ad haec generaliter sancimus in his, quae apud compromissarios acta sunt, si aliquod in factum respiciens vel professum est vel attestatum, posse eo et in ordinariis uti iudiciis. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.2.55.6: Imperator Justinianus

Sancimus mulieres suae pudicitiae memores et operum, quae eis natura permisit et a quibus eas iussit abstinere, licet summae atque optimae opinionis constitutae arbitrium in se susceperint vel, si fuerint patronae, inter libertos suam interposuerint audientiam, ab omni iudiciali agmine separari, ut ex earum electione nulla poena, nulla pacti exceptio adversus iustos eorum conventores habeatur. * iust. a. iohanni pp. * <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae.>

CJ.2.56.0. De satisdando.

CJ.2.56.1pr.: Imperatores Diocletianus, Maximianus

Non est iuris incerti eum, qui apud acta factus est agentis procurator, non compelli ratam rem dominum habiturum satisdare: hoc enim casu veluti praesentis procuratorem intervenire intellegendum est. * diocl. et maxim. aa. et cc. * <a 294 d. viiii k. nov. cc. conss.>

CJ.2.56.1.1: Imperatores Diocletianus, Maximianus

Itaque etsi postea mutata voluntate procuratorem esse noluerit, tamen iudicium, quo quasi procurator expertus est, iudex ratum habere debebit. <a 294 d. viiii k. nov. cc. conss.>

CJ.2.56.1.2: Imperatores Diocletianus, Maximianus

Sin autem ei ab adversario opposita fuerit in ipso litis exordio defensionis adlegatio, etiam ipse quasi absentis in hac parte procurator satisdationem super excipienda lite praestare cogitur, qua non praecedente lis quae ei mandata est ulterius procedere a iudice non conceditur. <a 294 d. viiii k. nov. cc. conss.>

CJ.2.56.1.3: Imperatores Diocletianus, Maximianus

Rei autem procurator vel defensor, etiam sub gestorum testificatione factus, in ipso litis limine iudicatum solvi satisdationem in omnibus causis praestare cogitur. <a 294 d. viiii k. nov. cc. conss.>

CJ.2.57.0. De formulis et impetratione actionum sublatis.

CJ.2.57.1: Imperatores Constantius, constans

Iuris formulae aucupatione syllabarum insidiantes cunctorum actibus radicitus amputentur. * constantius et constans aa. Marcellino praesidi phoenice. * <a 342 d. x k. febr. constantio iii et constante ii aa. conss.>

CJ.2.57.2: Imperatores Theodosius, Valentinianus

Nulli prorsus non impetratae actionis in maiore vel minore iudicio agenti opponatur exceptio, si aptam rei et proposito negotio competentem eam esse constiterit. * theodos. et valentin. aa. hierio pp. * <a 428 d. x k. mart. constantinopoli tauro et felice conss.>

CJ.2.58.0. De iureiurando propter calumniam dando.

CJ.2.58.1pr.: Imperator Justinianus

In omnibus causis, sive propter litteras fuerit certatum sive propter instrumenta sive propter quicquam aliud, in quo necessitas probationis incumbit, sancimus non aliter easdem probationes praestare compelli, nisi prius qui eas ecit iuramentum de calumnia praestaverit, quod non causa differendi huiusmodi proposuit adlegationes: nam sacramenti timore contentiosa litigantium instantia compescitur. * iust. a. demostheni pp. * <a 529 d. xii k. oct. constantinopoli decio vc. cons.>

CJ.2.58.1.1: Imperator Justinianus

Ne autem perperam in quaestionem servorum quidam venientes sui animi crudelitatem exerceant, non aliter concedi eis qui quaestionem servorum ecunt ad hoc venire vel a iudicibus audiri, nisi prius tactis sacrosanctis scripturis deponant, quod non odio servorum vel propter offensas coheredum ad hoc venerunt, sed quia aliter rerum hereditariarum veritatem exquirere vel ostendere non possunt. <a 529 d. xii k. oct. constantinopoli decio vc. cons.>

CJ.2.58.2pr.: Imperator Justinianus

Cum et iudices non aliter causas dirimere concessimus nisi sacrosanctis evangeliis propositis et patronos causarum in omni orbe terrarum, qui romano imperio suppositus est, prius iurare et ita perferre causas disposuimus: necessarium duximus et praesentem legem ponere, per quam sancimus in omnibus litibus, quae fuerint post praesentem legem inchoatae, non aliter neque actorem neque fugientem in primordio litis exercere certamina, nisi post narrationem et responsionem, antequam utriusque partis advocati sacramentum legitimum praestent, ipsae principales personae subeant iusiurandum. et actor quidem iuret non calumniandi animo litem movisse, sed existimando bonam causam habere: reus autem non aliter suis adlegationibus utatur, nisi prius et ipse iuraverit, quod putans se bona instantia uti ad reluctandum pervenerit: et postea utriusque partis viros disertissimos advocatos, quod iam dispositum est a nobis, iusiurandum praestare, sacrosanctis videlicet evangeliis ante iudicem positis. * iust. a. iuliano pp. * <a 531 pp. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.2.58.2.1: Imperator Justinianus

Sin autem vel dignitas vel sexus personae non concesserit eam ad iudicem pervenire, in domo litigantis sacramentum procedere, altera videlicet parte vel procuratore eius praesente. <a 531 pp. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.2.58.2.2: Imperator Justinianus

Quod observari oportet et si tutores vel curatores vel aliae quaedam sint personae, quae administrationem alienarum rerum auctoritate legitima gerunt. convenit enim et ipsos iureiurando adfici, quia ipsi causam scientes ita ad eam perveniunt. neque enim pupillus neque adultus vel aliae huiusmodi personae, sed ipsi, qui pro eis tutelam vel curam vel aliam legitimam gerunt administrationem, scire possunt causam et ita ad iudicium pervenire eo, quod ex animi sui sententia iurent. <a 531 pp. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.2.58.2.2a: Imperator Justinianus

Et licet vera causae natura alia forsitan est, tamen quod quisque credit et existimat, hoc esse iurandum: omnibus aliis iuramentis, quae vel ex praeteritis descendunt legibus vel a nobis disposita sunt, in sua firmitate duraturis. <a 531 pp. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.2.58.2.3: Imperator Justinianus

Sin autem afuerit alterutra pars et per procuratorem causa agitur, non ante licentiam habeat actor litem exercendam suo procuratori mandare, nisi prius actis intervenientibus in provincia qua degit sacramentum calumniae subeat, similique modo si reus afuerit et forsitan vel per iudicatum solvi stipulationem procuratorem ordinaverit vel defensor pro eo intervenerit, et ipse vel praesente actore per se vel per instructum procuratorem vel etiam absente eo, si hoc iudex perspexerit, inter acta iuramentum praestiterit, quod reum dare antea dispositum est. <a 531 pp. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.2.58.2.4: Imperator Justinianus

Sed quia veremur, ne forsitan quidam collusione aliqua utentes remittere videantur sibi huiusmodi sacramentum et ex praedicta dissimulatione nostram sanctionem deludant, sancimus omnes iudices, licet ex compromisso cognoscant, vigorem suum exercentes, quia non pro commodo privatorum, sed pro communi utilitate praesentem legem posuimus, minime pati tale sacramentum remitti, sed omnimodo hoc et ab actore et a fugiente exigi, ne paulatim videatur huiusmodi res defraudari et sacramentum vel principalium personarum vel advocatorum ex quacumque parte mutilari. <a 531 pp. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.2.58.2.5: Imperator Justinianus

Hoc etiam huic legi addendum esse sancimus, ut, si quis pro alio litem movere voluerit nullo mandato prolato, sed per fideiussionem ratam rem dominum habiturum suam personam firmaverit, ne vel ex hac machinatione lex circumscribi videatur, sancimus si quid tale in posterum emerserit, sive pro una persona quis litem movere voluerit sive pro aliquo corpore vel vico vel alia universitate, fideiussionem quidem solitam praestare, litem autem ulterius minime procedere, nisi intra a iudice statuendum tempus faciat personas principales sacramentum subire, vel praesente adversario, si hoc maluerit, vel alio pro eo agente, vel penitus altera parte cessante inter acta apud defensorem locorum huiusmodi sacramentum vel ab ipso pro quo agitur vel plurima parte vel idonea universitatis procedat. <a 531 pp. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.2.58.2.6: Imperator Justinianus

Quod si actor noluerit subire sacramentum calumniae et hoc legitime fuerit approbatum, non liceat ei penitus ad litem pervenire, sed cadat ab instituta actione quasi improbus litigator, et tristitia iudicum ei cum sancta interminatione occurrat et ab iudicio eum quam longissime expellat. <a 531 pp. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.2.58.2.7: Imperator Justinianus

Sin autem reus hoc sacramentum subire recusaverit, in his capitulis, quae narratione comprehensa sunt, pro confessio habeatur et liceat iudici sententiam proferre, quemadmodum et ipsa rei qualitas suggesserit. <a 531 pp. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.2.58.2.8: Imperator Justinianus

Sic enim non lites solum, sed etiam calumniatores minuentur, sic pro iudiciis putabunt sese omnes in sacrariis sisti. si enim et ipsae principales litigantium partes per iuramentum lites exerceant et causarum patroni praebeant sacramentum et ipsi iudices propositis sanctis scripturis tam causae totius faciant examinationem quam suum proferant arbitrium, quid aliud, nisi pro hominibus deum in omnibus causis iudicem esse credendum est? <a 531 pp. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.2.58.2.8a: Imperator Justinianus

Antiqua itaque calumnia quiescente et eius ambagibus constitutio nostra dilucida et compendiosa in terris clareat omnibus et sit maximum dirimendarum causarum remedium. <a 531 pp. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.2.58.2.9: Imperator Justinianus

Sed praedictum sacramentum in litibus quidem quae necdum sunt inchoatae praestari volumus in ipso litis primordio. <a 531 pp. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.2.58.2.10: Imperator Justinianus

Sin autem causae adhuc pendentes inveniantur vel post litem contestatam et post solitas iudiciales cautelas iam praestitas, si quidem praesto fuerit utraque persona et in eadem civitate vel in territorio eius moratur, et in his litibus sacramentum locum habere et in primo post hanc legem ingressu compelli iusiurandum praestare. <a 531 pp. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.2.58.2.11: Imperator Justinianus

Sin autem una pars afuerit, ne videatur propter absentiam personae lis differri et aliquid contrarium eveniat nostro proposito et, quod pro compendio litium introductum est, in adversariam figuram transformetur, iubemus praesentem quidem personam omnimodo dare sacramentum, absenti autem in pendentibus dumtaxat litibus secundum quod praedictum est hoc concedi. <a 531 pp. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.2.58.2.12: Imperator Justinianus

Sin autem utraque principalis persona afuerit, ne diutius lites protelentur, etiam sine datione sacramenti lites pendentes suo decurrant tramite. <a 531 pp. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

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CJ.3.1.0. De iudiciis.

CJ.3.1.1: Imperatores Severus, Antoninus

Iudicio coepto usurarum stipulatio non est perempta. superest, ut debitorem eius temporis, quod non est in iudicium deductum, convenire possis. * sev. et ant. aa. clementi. * <a 205 pp. k. april. antonino a. ii et geta ii conss.>

CJ.3.1.2: Imperatores Severus, Antoninus

Licet iudice accepto cum tutore tuo egisti, ipso iure actio tutelae sublata non est: et ideo si rursus eundem iudicem petieris, contra utilem exceptionem rei iudicatae, si de specie de qua agis in iudicio priore tractatum non esse adlegas, non inutiliter replicatione doli mali uteris. * sev. et ant. aa. valerio. * <a 210 pp. vi k. ian. faustino et rufo conss.>

CJ.3.1.3: Imperator Alexander Severus

Quotiens quaestio status bonorum disceptationi concurrit, nihil prohibet, quo magis apud eum quoque, qui alioquin super causa status cognoscere non possit, disceptatio terminetur. * alex. a. faustinae. * <a 224 pp. vi id. febr. iuliano ii et crispino conss.>

CJ.3.1.4: Imperator Alexander Severus

Si, cum tibi pretium praediorum a curatoribus comparatorum reputaretur et instrumenta emptionis traderentur, quaestionem omissae evictionis non movisti, intellegis semel finitam litem instaurari non oportere. * alex. a. popilio. * <a 228 pp. k. aug. modesto et probo conss.>

CJ.3.1.5: Imperator Gordianus

A iudice iudex delegatus iudicis dandi non habet potestatem, cum ipse iudiciario munere fungatur, nisi a principe iudex datus fuerit. * gord. a. Marcello. * <a 238 pp. iiii non. sept. pio et pontiano conss.>

CJ.3.1.6: Imperator Gordianus

Servus in iudicio interesse non potest, nec, si condemnatio aliqua in personam eius facta sit, quod statutum est subsistit. * gord. a. iuniae. * <a 239 d. xv k. sept. gordiano a. et aviola conss.>

CJ.3.1.7: Imperatores Diocletianus, Maximianus

Cum debitoris tui servum, tibi pignoris iure obligatum bona domini sui quondam rebus humanis exempti tenere profitearis, adversus eum dari tibi actiones contra ius postulas, si quidem inter servum et liberum consistere iudicium nullum possit. ad possessionem itaque pignorum magis officio iudicis venire te convenit quam illicita postulare. * diocl. et maxim. aa. et cc. irenae. * <a 294 s. xiiii k. mai. sirmi cc. conss.>

CJ.3.1.8: Imperatores Constantinus, licin.

Placuit in omnibus rebus praecipuam esse iustitiae aequitatisque quam stricti iuris rationem. * const. et licin. aa. ad dionysium. * <a 314 d. id. mai. volusiano et anniano conss.>

CJ.3.1.9: Imperator Constantinus

Iudices oportet imprimis rei qualitatem plena inquisitione discutere et tunc utramque partem saepius interrogare, ne quid novi addere desiderent, cum hoc ipsum ad alterutram partem proficiat, sive definienda causa per iudicem sive ad maiorem potestatem referenda sit. * const. a. ad maximum. * <a 321 d. prid. id. ian. sirmi crispo ii et constantino ii cc. conss.>

CJ.3.1.10: Imperator Constantinus

Nulli prorsus audientia praebeatur, qui causae continentiam dividit et ex beneficii praerogativa id, quod in uno eodemque iudicio poterat terminari, apud diversos iudices voluerit ventilare: poena ei ex officio iudicis imminente, qui contra hanc supplicaverit sanctionem atque alium super possessione alium super principali quaestione iudicem postulaverit. * const. a. ad severum pu. * <a 325 d. iii k. aug. paulino et iuliano conss.>

CJ.3.1.13pr.: Imperator Justinianus

Properandum nobis visum est, ne lites fiant paene immortales et vitae hominum modum excedant, cum criminales quidem causas iam nostra lex biennio conclusit et pecuniariae causae frequentiores sunt et saepe ipsae materiam criminibus creare noscuntur, praesentem legem super his orbi terrarum ponendam, nullis locorum vel temporum angustiis coartandam ponere. * iust. a. iuliano pp. * <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.1.13.1: Imperator Justinianus

Censemus itaque omnes lites super pecuniis quantaecumque quantitatis, sive super condicionibus sive super iure civitatum seu privato fuerint illatae, super possessione vel dominio vel hypotheca seu servitutibus vel pro aliis quibusdam casibus, pro quibus hominibus contra se litigandum est, exceptis tantummodo causis, quae ad ius fiscale pertinent vel quae ad publicas respiciant functiones, non ultra triennii metas post litem contestatam esse protrahendas: sed omnes iudices , sive in hac alma urbe sive in provinciis maiorem seu minorem peragunt administrationem, sive in magistratibus positi sunt vel ex aula nostra dati vel a nostris proceribus delegati, non esse eis concedendum ulterius lites quam triennii spatio extendere. hoc etenim iudicialis magis esse potestatis nemo est qui ignoret: nam si ipsi voluerint, nullus tam audax invenitur, qui possit invito iudice litem protelare. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.1.13.2: Imperator Justinianus

Et si quidem pars actoris cessaverit, quatenus multiplici dilatione reus fatigetur, et triennii metae post litem contestatam iam prope finem veniant, ut semenstre tempus tantum ei supersit, licentia erit iudici per exsecutores negotii actorem requirere, parte fugiente ex una parte actoris absentiam incusante et iudicibus omnimodo suas aures huiusmodi quaestioni reserantibus: et si per tres vices hoc fuerit subsecutum, decem dierum spatio per unumquemque introitum destinato, et nec ita actoris pars fuerit inventa et neque per se neque per procuratorem instructum pervenerit, tunc iudicem negotii acta apud se confecta conspicere : <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.1.13.2a: Imperator Justinianus

Et si quidem nihil sufficiens actitatum est, ex quo possit termino causae certa fieri coniectura, non solum partem fugientem ab observatione iudicii relaxare, sed etiam in omnes expensas, quae consueto modo circa lites expenduntur, eum condemnare, vera quantitate earum sacramento fugientis manifestanda et omni cautela, quam super lite reus exposuit, reddenda: quae et si remanserit, viribus vacuabitur. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.1.13.2b: Imperator Justinianus

Sin autem ex gestis apud se habitis parte actoris minime inventa possit invenire viam, ex qua manifestum ei fiat, quid statuendum sit, et absente actore, si eum meliorem causam habere perspexerit, pro eo ferre sententiam non moretur et praesentem reum absenti actori condemnare, expensis tantummodo litis, quas reus legitime se expendisse iuraverit, condemnatione excipiendis, quia hanc poenam actori et meliorem causam habenti propter solam absentiae contumaciam imponimus. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.1.13.2c: Imperator Justinianus

Nullo penitus ei regressu ad eandem litem conservando: sed actor contumax cadat omnimodo lite, si reus absolvetur: sin vero aliqua condemnatio contra reum pro absente actore proferatur, quam forsitan non sufficientem sibi actor putaverit fugitivus, nullo modo iterum eandem litem resuscitare concedimus. et haec quidem poena actori fiat imposita. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.1.13.3: Imperator Justinianus

Sin autem reus afuerit et similis eius processerit requisitio, quemadmodum pro persona actoris ediximus, etiam absente eo eremodicium contrahatur et iudex, secundum quod veteribus legibus cautum est, ex una parte cum omni subtilitate causam requirat et, si obnoxius fuerit inventus, et contra absentem promere condemnationem non cesset, quae ad effectum perducatur: et per res et facultates fugientis victori satisfiat, sive ipse iudex ex sua iurisdictione hoc facere potest, sive per relationem ad maiorem iudicem hoc referatur et ex eo legitima via contra res contumacis aperiatur: nulla licentia ei vel alii personam eius solam praetendenti concedenda contradicendi, cum in possessionem ex huiusmodi causa actor mittitur: nec si reversus fuerit et voluerit fideiussiones dare et possessionem recuperare, audiatur: in huiusmodi etenim casibus omnem ei contradictionem excludimus. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.1.13.4: Imperator Justinianus

Cum autem eremodicium ventilatur sive pro actore sive pro reo, examinatione sine ullo obstaculo celebretur. cum enim terribiles in medio proponuntur scripturae, litigatoris absentia dei praesentia repletur, nec pertimescat iudex appellationis obstaculum, cum ei, qui contumaciter abesse noscitur, nulla est provocationis licentia, quod et in veteribus legibus esse statutum manifestissimi iuris est. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.1.13.5: Imperator Justinianus

Huiusmodi autem sententia prope finem triennii proferatur, pro quo et praesentem legem induximus. si enim in anteriore tempore, in quo larga temporis superest dilatio et spes absenti relicta fuerit revertendi, alterutra pars cessaverit, in sola expensarum datione et absolutione forsitan praestetur poenalis sententia, non autem tunc mors litis et condemnatio in absentem introducatur, quae in his tantummodo casibus accidunt, in quibus triennii effluentis imminet formido. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.1.13.6: Imperator Justinianus

Sive autem alterutra parte absente sive utraque praesente lis fuerit decisa, omnes iudices, qui sub imperio nostro constituti sunt, sciant in expensarum causa victum victori esse condemnandum, quantum pro solitis expensis litium iuraverit, non ignorantes, quod, si hoc praetermiserint, ipsi de proprio huiusmodi poenae subiacebunt et reddere eam parti laesae coartabuntur. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.1.13.7: Imperator Justinianus

Et haec de alterutra parte litigantium contumaciter absente nobis statuere visum est ad aequitatis rationem omnia corrigentibus. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.1.13.8: Imperator Justinianus

Sin autem utraque parte imminente et litem peragere cupiente iudex eam accipere noluerit vel propter amicitias vel inimicitias vel turpissimi lucri gratia vel per aliud quicquam vitium, quod miserrimis animis huiusmodi iudicum innasci potest, litem ipse ausus fuerit protelare et propter hoc triennium fuerit transactum, iudex, si quidem in magistratu positus est vel in maiore dignitate usque ad illustratus gradum, decem libras auri privatis nostris largitionibus inferre per scholam palatinam compellatur: sin autem iudex minor fuerit, trium librarum auri multa plectetur per eandem scholam exigenda et nostro aerario applicanda, et eo removendo alter iudex in locum eius subrogetur sub similis poenae formidine: his omnibus locum habentibus, cum unus iudex omnem causam ab initio peragat. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.1.13.8a: Imperator Justinianus

Sin autem in medio triennio vel morte iudicis vel alia inrecusabili occasione iudicium fuerit mutatum, tunc, si quidem ex triennio annale tempus vel amplius residet, in quo alius iudex causae imponitur, intra reliquum tempus causa finiatur: sin autem minus quam annale sit, tunc omne quod deest repleatur, ut non in minore perfecti anni tempore litem possit subrogatus iudex tam discutere quam terminare. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.1.13.9: Imperator Justinianus

Illo procul dubio observando, ut, si neque per alterutram litigantium partem vel per iudicem steterit, quominus lis suo marte decurrat, sed per patronos causarum, licentia detur iudici et eos duarum librarum auri poena adficere per scholam palatinam exigenda et similiter publicis rationibus adgregenda, ipso videlicet iudice in sua sententia hoc ipsum manifestante, quod per patronos causae vel fugientis vel agentis dilatio facta est vel per omnes vel quosdem ex his: necessitate advocatis imponenda, ex quo litem peragendam susceperint, eam usque ad terminum, nisi lex vel iusta causa impediat, adimplere, ne ex eius recusatione fiat causae dilatio: honorariis scilicet a clientibus, qui dare possint, disertissimis togatis omnimodo praestandis et, si cessaverint, per exsecutores negotiorum exigendis, ne et per huiusmodi machinationem causae merita protrahantur, nisi i pse litigator alium pro alio patronum eligere maluerit. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.1.13.10: Imperator Justinianus

Haec autem omnia in his nobis cauta sunt, quibus perfectae aetatis constitutis arbitrium suum pro omnibus causis sufficit. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.1.13.11: Imperator Justinianus

Sin vero causae vel pupillorum vel adultorum sint vel aliorum sub cura agentium masculorum vel feminarum, ut per tutores vel curatores vel actores vel procuratores eorum agantur, et eorum desidia triennium fuerit elapsum et causa ceciderint, litem quidem nihilo minus suum habere vigorem, omnem autem iacturam, quae ex hac causa oritur, ad tutores et curatores et fideiussores eorum heredesque et res eorum et omnes, quorum in hac causa legitime interest, redundare: sin autem non sufficiat pupillis vel minoribus eorum substantia, tunc in quo fuerint detrimentum perpessi, in integrum restitutionis auxilium eis superesse. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.1.14pr.: Imperator Justinianus

Rem non novam neque insolitam adgredimur, sed antiquis quidem legislatoribus placitam, cum vero contempta sit, non leve detrimentum causis inferentem. cui enim non est cognitum antiquos iudices non aliter iudicialem calculum accipere, nisi prius sacramentum praestitissent omnimodo sese cum veritate et legum observatione iudicium esse dispositurus? * iust. a. iuliano pp. * <a 530 d. iiii k. april. lampadio et oreste vv. cc. conss.>

CJ.3.1.14.1: Imperator Justinianus

Cum igitur et viam non inusitatem invenimus ambulandam et anteriores leges nostrae, quae de iuramentis positae sunt, non minimam suae utilitatis experientiam litigantibus praebuerunt et ideo ab omnibus merito collaudantur, ad hanc in perpetuum valituram legem pervenimus, per quam sancimus omnes iudices sive maiores sive minores, sive qui in administrationibus positi sunt vel in hac regia civitate vel in orbe terrarum, qui nostris gubernaculis regitur, sive eos, quibus nos audientiam committimus vel qui a maioribus iudicibus dantur vel qui ex iurisdi ctione sua iudicandi habent facultatem vel qui ex recepto (id est compromisso, quod iudicium imitatur) causa dirimendas suscipiunt vel qui arbitrium peragunt vel ex auctoritate sententiarum et partium consensu electi, et generaliter omnes omnino iudices romani iuris disceptatores non aliter litium primordium accipere , nisi prius ante iudicialem sedem sacrosanctae deponantur scripturae: et hoc permaneat non solum in principio litis, sed etiam in omnibus cognitionibus usque ad ipsum terminum et definitivae sententiae recitationem. <a 530 d. iiii k. april. lampadio et oreste vv. cc. conss.>

CJ.3.1.14.2: Imperator Justinianus

Sic etenim attendentes ad sacrosanctas scripturas et dei praesentia consecrati ex maiore praesidio lites diriment scituri, quod non magis alios iudicant, quam ipsi iudicantur, cum etiam ipsis magis quam partibus terribile iudicium est, si litigatores quidem sub hominibus, ipsi autem deo inspectore adhibito causas perferunt trutinandas. <a 530 d. iiii k. april. lampadio et oreste vv. cc. conss.>

CJ.3.1.14.3: Imperator Justinianus

Et hoc quidem iusiurandum iudiciale sit omnibus notum et romanis legibus optimum a nobis accedat incrementum et ab omnibus iudicibus observandum: et si praetereatur, contemptoribus periculosum sit. <a 530 d. iiii k. april. lampadio et oreste vv. cc. conss.>

CJ.3.1.14.4: Imperator Justinianus

Patroni autem causarum, qui utrique parti suum praestantes ingrediuntur auxilium , cum lis fuerit contestata, post narrationem propositam et contradictionem obiectam in qualicumque iudicio maiore seu minore vel apud arbitros sive ex compromisso vel aliter datos vel electos sacrosanctis evangeliis tactis iuramentum praestent, quod omni quidem virtute sua omnique ope quod iustum et verum existimaverint clientibus suis inferre procurent, nihil studii relinquentes, quod sibi possibile est, non autem credita sibi causa cognita, quod improba sit vel penitus desperata et ex mendacibus adlegationibus composita, ipsi scientes prudentesque mala conscientia liti patrocinantur, sed et si certamine procedente aliquid tale sibi cognitum fuerit, a causa recedant ab huiusmodi communione sese penitus separantes: hocque subsecuto nulla licentia concedatur spreto litigatori ad alterius advocati patrocinium convolare, ne melioribus contemptis improba advocatio subrogetur. <a 530 d. iiii k. april. lampadio et oreste vv. cc. conss.>

CJ.3.1.14.5: Imperator Justinianus

Sin autem plurimis patronis adhibitis et iuramento ab omnibus praestito quidam ex his causa procedente patrocinandum esse crediderint, quidam recusaverint, exeant quidem recusantes, volentes autem remaneant: causae etenim terminus manifestare poterit, qui timidius quique audacius iudicium vel reliquerint vel protulerint: nec in hac parte litigatoribus danda licentia alios pro recusantibus subrogare. <a 530 d. iiii k. april. lampadio et oreste vv. cc. conss.>

CJ.3.1.15: Imperator Justinianus

Sancimus omnes iudices sive in hac florentissima civitate sive in provinciis, si quando absens persona citata postea apparuerit, non aliter ei iudicialem aditum revelare, sed omnem claudere ei iudiciorum copiam, nisi prius omnia damna restituat ex huiusmodi vitio adversariis eius inflicta sive circa ingressus litis sive circa honoraria advocatorum vel alias causa, quae in iudicio vertuntur: aestimatione iudices quantitate eorum definienda, postquam iuratum ab eo fuerit qui fecit expensas: exsecutoribus negotiorum modis omnibus dispositones eorum adimplentibus: scituris iudicibus nostris et exsecutoribus, quod, si hoc praetermiserint, ex sua substantia huiusmodi detrimentum laesis resarcire compellantur. quod et in pedaneis iudicibus observari censemus, licet non citati, sed requisiti litigatores mala conscientia afuerint. * iust. a. iuliano pp. * <a 531 d. x k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.3.1.16: Imperator Justinianus

Apertissimi iuris est licere litigatoribus iudices, antequam lis inchoetur, recusare, cum etiam ex generalibus formis sublimissimae tuae sedis statutum est necessitatem imponi iudice recusato partibus ad eligendos venire arbitros et sub audientia eorum sua iura proponere. licet enim ex imperiali numine iudex delegatus est, tamen quia sine suspicione omnes lites procedere nobis cordis est, liceat ei, qui suspectum iudicem putat, antequam lis inchoetur, eum recusare, ut ad alium curratur libello recusationis ei porrecto, cum post litem contestatam neque appellare posse ante definitivam sententiam iam statuimus neque recusare posse, ne lites in infinitum extendantur: eodem scilicet exsecutore necessitatem partibus per ordinarium iudicem et omne civile auxilium imponente et arbitros eligere et apud eos venire et sic lite apparente, quasi arbitri fuerint ab imper iali culmine delegati. quod et, si ab imperiali maiestate iudex delegatus non sit, sed ab alio culmine, obtinere censemus. * iust. a. iuliano pp. * <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.1.17: Imperator Justinianus

Certi iuris est, quod concessa est militaribus hominibus iudicandi facultas. quid enim obstaculi est homines, qui cuiusdam rei peritiam habent, de ea iudicare? cum scimus et militares magistratus et omnes tales homines per usum cottidianum iam esse approbatos, ut et audiant lites et eas dirimant et pro sui et legis scientia huiusmodi altercationibus fines imponant. * iust. a. iohanni pp. * <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.3.1.18: Imperator Justinianus

Cum specialis iudex sive ab augusta fortuna sive ab iudiciali culmine in aliqua provincia, ubi incusatus degit, datus sit et una pars suspectum eum sibi esse dicit, ne forsitan absente persona iudicis et in alia civitate eiusdem provinciae commorante compellatur longo itinere emenso recusationis libellum ei incusatus offerre, sancimus, si quidem praesto est praeses provinciae in illa civitate, ubi de ea re dubitatur, licere ei, qui suspectum sibi esse iudicem dicit, ipsum praesidem adire et hoc facere in actis manifestum: sin autem non est moderator provinciae in praefato loco, haec eadem apud defensorem locorum vel duumviros municipales gestis apud eos habitis celebrare et iudicem quidem eum recusare, il ico autem, id est intra triduum proximum, sine ulla dilatione compelli arbitrum vel arbitros eligere et apud eos litigare, ne et datus iudex removeatur et alter non eligatur: electione videlicet arbitri, si variatum inter partes fuerit, simili modo vel praesidis provinciae, si adest, vel defensoris locorum vel magistratuum municipii arbitrio dirimenda et exsecutore negotii, cui mandata est huiusmodi causae exactio, imminente et statuta ab arbitris effectui mancipante, nisi fuerit provocatum. tunc enim ipse, qui iudicem antea dedit qui suspectus visus est, appellatione trutinata formam causae imponat legitimam. * iust. a. iohanni pp. * <a 531 d. id. nov. post consulatum lampadii et orestis vv. cc.>

CJ.3.28.4: Imperatores Severus, Antoninus

Cum ex causa fideicommissi secundum decretum praetoris in libertate morati sitis , filios etiam susceperitis, quamvis postea domini vestri testamentum inofficiosum sit pronuntiatum agente filio, non est aequum fieri vobis libertatis quaestionem. * idem aa. sotericho et aliis. * <a 208 pp. vi id. mart. antonino iii et geta ii conss.>

CJ.3.2.0. De sportulis et sumptibus in diversis iudiciis faciendis et de exsecutoribus litium.

CJ.3.2.1: Imperatores Gratianus, Valentinianus, Theodosius

Quisquis fuerit exhibitus, usque ad negotii terminum ab eo apparitore, cui primum traditus fuit, observari eum decernimus: si qua praesumptione fuerit haec mansuetudinis nostrae posthabita praeceptio, primiscrinio qui iussa temeraverit quinque librarum auri condemnatione multando. * grat. valentin. et theodos. aaa. ad potitum vic. * <a 379 d. viii k. nov. ausonio et olybrio conss.>

CJ.3.2.3pr.: Imperator Justinianus

Omnibus iudicibus licentiam praestamus, sive his, quibus a nostro numine lites mandantur, illustribus vel spectabilibus vel clarissimis vel togatis fori cuiusque praefecturae vel aliis quibusdam, vel his, qui ex nostris iudicibus delegandas lites accipiunt, exsecutores si cessaverint causas eis instructas offerre, et removere ab exsecutione eos et alios idoneos supponere vel etiam multis adficere, sed si quidem illustres sint iudices, usque ad sex solidorum summam, sin autem alii, usque ad tres tantummodo aureos, et ad iudices quorum interest referre, quatenus militia exuti poenas luant corporales. * iust. a. iuliano pp. * <a 530 d. v k. april. lampadio et oreste conss.>

CJ.3.2.3.1: Imperator Justinianus

Nostris autem amplissimis iudicibus licentia sit et maiores poenas et corporales maculas exsecutoribus imponere, si male fuerint circa lites versati, ut sciant non esse causas a se deludendas nec lucri gratia aliquod eis vitium imponendum. <a 530 d. v k. april. lampadio et oreste conss.>

CJ.3.3.0. De pedaneis iudicibus.

CJ.3.3.1: Imperator Gordianus

Procuratori nostro non vice praesidis agenti dandi iudices inter privatas personas non competere facultatem manifestum est: et ideo si, ut adlegatis, inter privatas personas is cuius meministis arbitros dandos putavit, sententia ab eis prolata nullo iure subsistit. * gord. a. vicanis. * <a 242 pp. k. febr. attico et praetextato conss.>

CJ.3.3.2pr.: Imperatores Diocletianus, Maximianus

Placet nobis praesides de his causis, in quibus, quod ipsi non possent cognoscere, antehac pedaneos iudices dabant, notionis suae examen adhibere, ita tamen ut , si vel per occupationes publicas vel propter causarum multitudinem omnia huiusmodi negotia non potuerint cognoscere, iudices dandi habeant potestatem. * diocl. et maxim. aa. et cc. dicunt: * <a 294 d. xv k. aug. cc. conss.>

CJ.3.3.2.1: Imperatores Diocletianus, Maximianus

(quod non ita accipi convenit, ut etiam in his causis, in quibus solebant ex officio suo cognoscere, dandi iudices licentia permissa credatur: quod usque adeo in praesidum cognitione retinendum est, ut eorum iudicia non deminuta videantur): dum tamen de ingenuitate, super qua poterant et ante cognoscere, et de libertinitate praesides ipsi diiudicent. <a 294 d. xv k. aug. cc. conss.>

CJ.3.3.3: Imperatores Diocletianus, Maximianus

Placet, ut iudicibus, si quos gravitas tua disceptatores dederit, insinues, ut delegata sibi negotia lata sententia determinent: nec in his causis, in quibus pronuntiare debent et possunt, facultatem sibi remittendi patere ad iudicium praesidale cognoscant, maxime cum, et si iudicatio alicui litigatorum parti iniusta videatur, interponendae provocationis potestas a sententia ex omni causa prolata libera litigatoribus tribuatur. * diocl. et maxim. aa. et cc. litt. ad serapionem. * <a 294 d. viii k. april. antiochiae cc. conss.>

CJ.3.3.4: Imperatores Diocletianus, Maximianus

Placuit, quotiens pedanei iudices dati post litem contestatam vel ad aliud iudicium necessario dirigantur vel publicae utilitatis ratione in alias provincias profiscantur vel diem obierint atque his rationibus negotiis coeptis finis non possit adhiberi, alium in locum eorum iudicem tribui qui negotium examinet, ne eiusmodi casibus intervenientibus impedimentum aliquod in persequendis litibus adferatur. * diocl. et maxim. aa. et cc. firmino. * <a 303 d. x k. dec. dechioppe diocletiano viii et maximiano vii aa. conss.>

CJ.3.3.5: Imperator Julianus

Quaedam sunt negotia, in quibus superfluum est moderatorem expectare provinciae: ideoque pedaneos iudices, hoc est qui negotia humiliora disceptent, constituendi damus praesidibus potestatem. * iul. a. secundo pp. * <a 362 d. v k. aug. antiochiae mamertino et nevitta conss.>

CJ.3.3.6: Imperator Zeno

* zenon a. * <a 486 vel 487 >

CJ.3.4.0. Qui pro sua iurisdictione iudices dare darive possunt.

CJ.3.4.1pr.: Imperatores Theodosius, Valentinianus

In causarum delegationibus illud consultissime praecipimus observari, ut ita valeant, si ad iurisdictionem pertineant delegantis. * theodos. et valentin. aa. cyro pp. * <a 440 d. xiii k. iun. valentiniano a. v et anatolio conss.>

CJ.3.4.1.1: Imperatores Theodosius, Valentinianus

Quod si quis alienae iurisdictionis causam crediderit delegandam, nec praecepto cognitorem datum parientiam accomodare censemus et, contra leges obtemperaverit deleganti, omnia, quae ab ea delegatione geruntur, ita pro infectis haberi praecipimus, ac si ipsi qui delegaverant alienae iurisdictionis iudices resedissent, ut nec appellandi quidem necessitas victis adversus eas sententias imponatur. <a 440 d. xiii k. iun. valentiniano a. v et anatolio conss.>

CJ.3.4.1.2: Imperatores Theodosius, Valentinianus

Haec, nisi iudices a nobis specialiter delegantibus dati aliis causas delegaverint iudicandas: nam his delegantibus nullo personarum causarumve habito tractatu appellationum ad eos iure iudicia remeabunt. <a 440 d. xiii k. iun. valentiniano a. v et anatolio conss.>

CJ.3.5.0. Ne quis in sua causa iudicet vel sibi ius dicat.

CJ.3.5.1: Imperatores Valens, Gratianus, Valentinianus

Generali lege decernimus neminem sibi esse iudicem vel ius sibi dicere debere. in re enim propria iniquum admodum est alicui licentiam tribuere sententiae. * valens grat. et valentin. aaa. ad gracchum pu. * <a 376 lecta k. dec. valente v et valentiniano aa. conss.>

CJ.3.6.0. Qui legitimam personam in iudiciis habent vel non.

CJ.3.6.1: Imperator Gordianus

Si, cum esses pupillaris aetatis, sine tutoris auctoritate cum adversario consisteres, praeses provinciae adversus te pronuntiavit, minime auctoritate iudicati nititur quod statutum est. * gord. a. candidae. * <a 239 d. id. dec. gordiano a. et aviola conss.>

CJ.3.6.2: Imperatores Diocletianus, Maximianus

In rebus, quae privati iudicii quaestionem habent, sicut pupillus tutore auctore et agere et conveniri potest, ita et adultus curatore consentiente litem et intendere et excipere debet. * diocl. et maxim. aa. et cc. aureliae agemachae. * <a 294 d. xviiii k. febr. cc. conss.>

CJ.3.6.3: Imperatores Honorius, Theodosius

Momentariae possessionis actio exerceri potest per quamcumque personam. sub colore autem adipiscendae possessionis obrepticia petitio alteri obesse non debet, maxime cum absque conventione personae legitimae initiatum iurgium videatur. nihil autem opituletur conventio circa minorem habita, cum id rectius circa curatorem debuerit custodiri. * honor. et theodos. aa. iuliano procons. africae. * <a 414 d. prid. non. mart. ravennae constantio et constante conss.>

CJ.3.7.0. Ut nemo invitus agere vel accusare cogatur.

CJ.3.7.1: Imperatores Diocletianus, Maximianus

Invitus agere vel accusare nemo cogitur. * diocl. et maxim. aa. camerio. * <a 284 d. id. oct. carino ii et numeriano conss.>

CJ.3.8.0. De ordine iudiciorum.

CJ.3.8.1: Imperatores Severus, Antoninus

Adite praesidem provinciae et ruptum esse testamentum fabii praesentis agnatione filii docete. neque enim impedit notionem eius, quod status quaestio in cognitione vertitur, etsi super causa status cognoscere non possit: pertinet enim ad officium iudicis qui de hereditate cognoscit universam incidentem quaestionem quae in iudicium devocatur examinare, quoniam non de ea, sed de hereditate pronuntiat. * sev. et ant. aa. Marcellinae. * <a 203 d. xiii k. dec. geta et plautiano conss.>

CJ.3.8.2: Imperator Antoninus

Si quaestio tibi generis ab his, quos fratres patrueles esse dicis, non fit, adito praeside et accepto iudice familiae erciscundae experire. quod si de ea re quaestio erit, prius de nativitatis veritate secundum iuris formam quaeri idem vir clarissimus curae habebit. * ant. a. magnillae. * <a 213 pp. x k. aug. antonino a. iiii et balbino conss.>

CJ.3.8.3: Imperatores valer., gallien.

Cum civili disceptationi principaliter motae quaestio criminis inciderit vel crimini prius instituto civilis causa adiungitur, potest iudex eodem tempore utramque quaestionem sua sententia dirimere. * valer. et gallien. aa. demetrio. * <a 262 pp. non. gallieno a. v et faustino conss.>

CJ.3.8.4: Imperator Constantinus

Quoniam civili quaestione intermissa saepe fit, ut prius de crimine iudicetur, quod utpote maius merito minori praefertur: ex quo criminalis quaestio quocumque modo cessaverit, oportet civilem causam velut ex integro in iudicium deductam discingi, ut finis criminalis negotii ex eo die, quo inter partes fuerit lata sententia, initium civili tribuat quaestioni. * constant. a. ad calpurnianum. * <a 336 d. id. mart. nepotiano et facundo conss.>

CJ.3.9.0. De litis contestatione.

CJ.3.9.1: Imperatores Severus, Antoninus

Res in iudicium deducta non videtur, si tantum postulatio simplex celebrata sit vel actionis species ante iudicium reo cognita. inter litem enim contestatam et editam actionem permultum interest. lis enim tunc videtur contestata, cum iudex per narrationem negotii causam audire coeperit. * sev. et ant. aa. valenti. * <a 202 d. k. sept. severo iii et antonino aa. conss.>

CJ.3.10.0. De plus petitionibus.

CJ.3.10.3: Imperator Justinianus

Odiosas contrahentium calliditates amputare properantes censemus, ut, si quis certa quantitate sibimet debita super ampliore pecunia per dolum et machinationem cautionem exegerit et ad iudicium debitorem vocaverit, si quidem ante inchoatam litem calliditatis eum paeniteat et veritatem debiti confessus fuerit, nullo eum dispendio praegravari: sin autem et liti praebuit exordium et in certaminibus negotii permanens arguatur de adiecta falsi quantitate, non solum ea, sed etiam toto debito eum fraudari: transactionibus scilicet et secundis confessionibus, sive insinuatae sint sive non, etiam in hoc casu suam obtinentibus firmitatem: talibus etenim cautionibus hoc obicere non oportet. * iust. a. iohanni pp. * <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.3.11.0. De dilationibus.

CJ.3.11.1pr.: Imperatores Diocletianus, Maximianus

Quoniam plerumque evenit, ut iudex instrumentorum vel personarum gratia dilationem dare rerum necessitate cogatur, spatium instructionis exhibendae postulatum dari conveniet. * diocl. et maxim. aa. et cc. dicunt: * <a 294 d. xv k. april. cc. conss.>

CJ.3.11.1.1: Imperatores Diocletianus, Maximianus

Quod hac ratione arbitramur esse moderandum, ut, si ex ea provincia ubi lis agitur vel persona vel instrumenta poscentur, non amplius quam tres menses indulgeantur: si vero ex continentibus provinciis, sex menses custodiri iustitiae est: in transmarina autem dilatione novem menses computari oportebit. <a 294 d. xv k. april. cc. conss.>

CJ.3.11.1.2: Imperatores Diocletianus, Maximianus

Quod ita constitutum iudicantes sentire debebunt, ut hac ratione non sibi concessum intellegant dandae dilationis arbitrium, sed eandem dilationem, si rerum urguentissima ratio flagitaverit et necessitas desideratae instructionis exegerit , non facile amplius quam semel nec ulla trahendi arte sciant esse tribuendam. <a 294 d. xv k. april. cc. conss.>

CJ.3.11.2: Imperator Constantinus

Si quando quis rescriptum ad extraordinarium iudicem reportaverit, dilatio ei penitus deneganda est: illi autem, qui in iudicium vocatur, danda est ad probanda precum mendacia vel proferenda aliqua instrumenta vel testes, quoniam instructus esse non potuit, si praeter spem ad alienum iudicium trahitur. * const. a. ad ursum vic. * <a 314 d. ii non. mart. volusiano et anniano conss.>

CJ.3.11.3: Imperator Constantinus

Sive pars sive integra dilatio fuerit data, eo usque iudicis officium conquiescat, donec petiti temporis defluxerint curricula. feriae autem, sive repentinae sive sollemnes sint, dilationum temporibus non excipiantur, sed his connumerentur. * const. a. profuturo praef. annonae. * <a 318 d. vii id. febr. sirmi licinio v et crispo conss.>

CJ.3.11.4: Imperator Constantinus

A procedente iudice dilationem non convenit postulari, etiamsi utraque parte praesente tribuatur, cum non alias nisi causa cognita indulgeri queat et cognitio causae non interpellatione planaria, sed considente magis iudice legitime colligatur, et, si forte dilationis petitio fuerit improbata, suscepta quaestio per sententiam iudicis dirimatur. * const. a. ad catullinum procons. africae. * <a 318 d. v id. febr. sirmi licinio v et crispo conss.>

CJ.3.11.5: Imperator Constantinus

Cum a nobis fuerit ad appellationem consultationemve rescriptum, sive sit primo iudicio petita dilatio sive ea tributa non sit sive nec petita quidem, eam dare cuiquam non licebit eadem ratione, qua nec in iudiciis quidem cognitionum nostrarum dilatio tribui solet. * const. a. ad maximum. * <a 322 pp. romae viii k. april. probiano et iuliano conss.>

CJ.3.11.6: Imperatores Constantius, constans

Inter privatos et fiscum si aliqua lis mota fuerit, utrique parti petendae dilationis per defensores suos copia non est deneganda, si hoc commoditatis ratio postulaverit. * constantius et constans aa. ad petronium vic. africae. * <a 340 d. v id. april. aquileiae acyndino et proculo conss.>

CJ.3.11.7: Imperatores Arcadius, Honorius

Nec de statu ac patrimonio litigantibus in transmarina etiam dilatione mensuum novem spatia egredi concedatur. * arcad. et honor. aa. messalae pp. * <a 399 d. xii k. dec. theodoro cons.>

CJ.3.12.0. De feriis.

CJ.3.12.1: Imperatores Constantius, Maximianus

Quoniam consulis, an similis observantia a nobis adiciendarum feriarum, quae rebus feliciter gestis proveniunt, ad appellationum quoque tempora porrigenda sit, verine carissime, rescribi placuit experientiae tuae, ut in causis provocationum iugiter et sine additamento eiuscemodi dierum tempora scias servari debere et supra dictorum dierum in appellationum causis minime fieri adiectionem. * constantius et maxim. aa. et sev. et maximin. nobb. cc. verino.* <a 305 d. non. .... apollonio superioris constantio v et maximiano v cc. conss.>

CJ.3.12.2: Imperator Constantinus

Omnes iudices urbanaeque plebes et artium officia cunctarum venerabili die solis quiescant. ruri tamen positi agrorum culturae libere licenterque inserviant, quoniam frequenter evenit, ut non alio aptius die frumenta sulcis aut vineae scrobibus commendentur, ne occasione momenti pereat commoditas caelesti provisione concessa. * const. a. helpidio. * <a 321 pp. v non. mart. crispo ii et constantino ii conss.>

CJ.3.12.3: Imperator Constantinus

A nullo iudice praesumi decet, ut auctoritate sua ferias aliquas condat. nec enim imperiales ferias vocari oportet, quas administrator edixerit, ac per hoc, si nomine eximuntur, etiam fructu carebunt. * constant. a. ad severum. * <a 323 d. id. april. sirmi severo et rufino conss.>

CJ.3.12.4pr.: Imperatores Valentinianus, Valens, Gratianus

Publicas ac fiscales causa tua sinceritas etiam feriatis geminis mensibus, hoc est sine aliqua intermissione, discingat. * valentin. valens et grat. aaa. ad olybrium pu. * <a 369 iiii non. mai. tyberiade valentiniano np. et victore conss.>

CJ.3.12.4.1: Imperatores Valentinianus, Valens, Gratianus

Pistoriis quoque causis isdem diebus ratum in futurum examen adhibebit. <a 369 iiii non. mai. tyberiade valentiniano np. et victore conss.>

CJ.3.12.5: Imperatores Valentinianus, Valens, Gratianus

Quadraginta diebus, qui auspicio caerimoniarum paschale tempus anticipant, omnis cognitio inhibeatur criminalium quaestionum. * valentin. valens et grat. aaa. albuciano vic. macedoniae. * <a 380 d. vi k. april. thessalonicae gratiano v et theodosio aa. conss.>

CJ.3.12.6pr.: Imperatores Valentinianus, Theodosius, Arcadius

Omnes dies iubemus esse iuridicos. * valentin. theodos. et arcad. aaa. albino pu. * <a 389 d. vii id. aug. romae timasio et promoto conss.>

CJ.3.12.6.1: Imperatores Valentinianus, Theodosius, Arcadius

Illos tantum manere feriarum dies fas erit, quos geminis mensibus ad requiem laboris indulgentior annus accepit aestivis fervoribus mitigandis et autumnis fetibus decerpendis. <a 389 d. vii id. aug. romae timasio et promoto conss.>

CJ.3.12.6.2: Imperatores Valentinianus, Theodosius, Arcadius

Kalendarum quoque ianuarium consuetos dies otio mancipamus. <a 389 d. vii id. aug. romae timasio et promoto conss.>

CJ.3.12.6.3: Imperatores Valentinianus, Theodosius, Arcadius

His adicimus natalicios dies urbium maximarum romae atque constantinopolis, quibus debent iura differri, qui et ab ipsis nata sunt, sacros quoque paschae dies, qui septeno vel praecedunt numero vel sequuntur, dies etiam natalis atque epiphaniorum christi et quo tempore commemoratio apostolicae passionis totius christianitatis magistrae a cunctis iure celebratur: in quibus etiam praedictis sanctissimis diebus neque spectaculorum copiam reseramus. <a 389 d. vii id. aug. romae timasio et promoto conss.>

CJ.3.12.6.4: Imperatores Valentinianus, Theodosius, Arcadius

In eadem observatione numeramus et dies solis, quos dominicos rite dixere maiores, qui repetito in se calculo revolvuntur. <a 389 d. vii id. aug. romae timasio et promoto conss.>

CJ.3.12.6.5: Imperatores Valentinianus, Theodosius, Arcadius

Parem necesse est habere reverentiam, ut ne apud ipsos arbitros vel a iudicibus flagitatos vel sponte delectos ulla sit agnitio iurgiorum, nostris etiam diebus, qui vel lucis auspicia vel ortus imperii protulerunt. <a 389 d. vii id. aug. romae timasio et promoto conss.>

CJ.3.12.6.6: Imperatores Valentinianus, Theodosius, Arcadius

In quindecim autem paschalibus diebus compulsio et annonariae functionis et omnium publicorum privatorumque debitorum differatur exactio. <a 389 d. vii id. aug. romae timasio et promoto conss.>

CJ.3.12.7: Imperatores Valentinianus, Theodosius, Arcadius

Actus omnes seu publici seu privati diebus quindecim paschalibus conquiescant. in his tamen emancipandi et manumittendi cuncti licentiam habeant, et super his acta non prohibeantur. * valentin. theodos. et arcad. aaa. tatiano pp. * <a 392 d. vi k. iun. constantinopoli arcadio a. ii et rufino conss.>

CJ.3.12.8: Imperatores Honorius, Theodosius

Provinciarum iudices moneantur, ut in quaestionibus latronum et maxime isaurorum nullum quadragesimae nec venerabilem pascharum diem existiment excipiendum, ne differatur sceleratorum proditio consiliorum, quae per latronum tormenta quaerenda est, cum facillime in hoc summi numinis speretur venia, per quod multorum salus et incolumitas procuratur. * honor. et theodos. aa. anthemio pp. * <a 408 d. v k. mai. constantinopoli basso et philippo conss.>

CJ.3.12.9pr.: Imperatores Leo, Anthemius

Dies festos, dies maiestati altissimae dedicatos nullis volumus voluptatibus occupari nec ullis exactionum vexationibus profanari. * leo et anthem. aa. armasio pp. * <a 469 d. v id. dec. constantinopoli zenone et marciano conss.>

CJ.3.12.9.1: Imperatores Leo, Anthemius

Dominicum itaque diem semper honorabilem ita decernimus venerandum, ut a cunctis exsecutionibus excusetur, nulla quemquam urgueat admonitio, nulla fideiussionis flagitetur exactio, taceat apparitio, advocatio delitescat, sit idem dies a cognitionibus alienus, praeconis horrida vox silescat, respirent a controversiis litigantes, habeant foederis intervallum, ad se veniant adversarii non timentes, subeat animos vicaria paenitudo, pacta conferant, transactiones loquantur. <a 469 d. v id. dec. constantinopoli zenone et marciano conss.>

CJ.3.12.9.2: Imperatores Leo, Anthemius

Nec tamen haec religiosi diei otia relaxantes obscaenis quemquam patimur voluptatibus detineri. nihil eodem die sibi vindicet scaena theatralis aut circense certamen aut ferarum lacrimosa spectacula: etiam si in nostrum ortum aut natalem celebranda sollemnitas inciderit, differatur. <a 469 d. v id. dec. constantinopoli zenone et marciano conss.>

CJ.3.12.9.3: Imperatores Leo, Anthemius

Amissionem militiae, proscriptionem patrimonii sustinebit, si quis umquam hoc die festo spectaculis interesse vel cuiuscumque iudicis apparitor praetextu negotii publici seu privati haec quae hac lege statuta sunt crediderit temeranda. <a 469 d. v id. dec. constantinopoli zenone et marciano conss.>

CJ.3.13.0. De iurisdictione omnium iudicum et de foro competenti.

CJ.3.13.1pr.: Imperatores Severus, Antoninus

Non quidem fuit iudex procurator noster in lite privatorum: sed cum ipsi eum iudicem elegeritis et is consentientibus adversariis sententiam tulerit, intellegitis vos adquiescere debere rei ex consensu vestro iudicatae, cum et procurator iudicandi potestatem inter certas habeat personas, et vos incongruum eum esse vobis iudicem scientes tamen audientiam eius elegistis. * sev. et ant. aa. severo et aliis. * <a 214 d. ii id. ian. messala et sabino conss.>

CJ.3.13.1.1: Imperatores Severus, Antoninus

Quod et in aliis similibus iudiciis tam in actionem proponentis quam in exceptionem opponentis persona locum habebit. <a 214 d. ii id. ian. messala et sabino conss.>

CJ.3.13.2: Imperatores Diocletianus, Maximianus

Iuris ordinem converti postulas, ut non actor rei forum, sed reus actoris sequatur: nam ubi domicilium habet reus vel tempore contractus habuit, licet hoc postea transtulerit, ibi tantum eum conveniri oportet. * diocl. et maxim. aa. et cc. alexandro. * <a 293 pp. vi k. sept. aa. conss.>

CJ.3.13.3: Imperatores Diocletianus, Maximianus

Privatorum consensus iudicem non facit eum, qui nulli praeest iudicio, nec quod is statuit rei iudicatae continet auctoritatem. * diocl. et maxim. aa. et cc. iudae. * <a 293 s. vi k. ian. aa. conss.>

CJ.3.13.4: Imperator Constantinus

Nemo post litem contestatam ordinariae sedis declinet examen, nec prius praefecti praetorio aut comitis orientis vel alterius spectabilis iudicis imploret auxilium, sed appellatione legibus facta ad sacrum auditorium veniat. * const. a. ad universos provinciales. * <a 331 pp. k. oct. basso et ablabio conss.>

CJ.3.13.5pr.: Imperatores Arcadius, Honorius

In criminali negotio rei forum accusator sequatur. * arcad. et honor. aa. vincentio pp. galliarum. * <a 397 d. xv k. ian. mediolani caesario et attico conss.>

CJ.3.13.5.1: Imperatores Arcadius, Honorius

Is vero, qui suam causam sive criminalem sive civilem sine caelesti oraculo in vetito vocabit examine aut exsecutionem poposcerit militarem, actor quidem propositi negotii actione multetur, reus vero pro condemnato habeatur: et tribuni sive vicarii capitalem sibi animadversionem subeundam esse cognoscant, si vel suam vel militum exsecutionem interdictam praebuerint. <a 397 d. xv k. ian. mediolani caesario et attico conss.>

CJ.3.13.6: Imperatores Honorius, Theodosius

Magisteriae potestati inter militares viros vel privato actore in reum militarem etiam civilium quaestionum audiendi concedimus facultatem, praesertim cum id ipsum e re esse litigantium videatur constetque militarem reum nisi a suo iudice nec exhiberi posse nec, si in culpa fuerit, coerceri. * honor. et theodos. aa. anthemio pp. * <a 413 d. v k. mai. constantinopoli lucio vc. cons.>

CJ.3.13.7pr.: Imperator Anastasius

Periniquum et temerarium esse perspicimus eos, qui professiones aliquas seu negotiationes exercere noscuntur, iudicum, ad quos earundem professionum seu negotiationum cura pertinet, iurisdictionem et praeceptiones declinare conari. * anastas. a. constantino pp. * <a 502 d. xv k. mart. constantinopoli probo et avieno conss.>

CJ.3.13.7.1: Imperator Anastasius

Quapropter iubemus huiusmodi hominibus nec cuiuslibet militiae seu cinguli vel dignitatis praerogativam in hac parte suppetere, sed eos, qui statutis in quacumque militia connumerati sunt vel fuerint seu dignitatem aliquam praetendunt, sine quadam fori praescriptione his iudicibus tam in publicis quam in privatis causis oboedire compelli, ad quorum sollicitudinem professionis seu negotiationis , quam praeter militiam, ut dictum est, exercent, gubernatio videtur respicere, ita tamen, ut ipsis nihilo minus iudicibus, sub quorum iurisdictione militia seu dignitas eorum constituta est, procul dubio respondeant. <a 502 d. xv k. mart. constantinopoli probo et avieno conss.>

CJ.3.13.7.2: Imperator Anastasius

His videlicet, quicumque contra eius tenorem venire temptaverint, militiae cingulo seu dignitatis honore pro tali conamine spoliandis. <a 502 d. xv k. mart. constantinopoli probo et avieno conss.>

CJ.3.14.0. Quando imperator inter pupillos vel viduas vel miserabiles personas cognoscat et ne exhibeantur.

CJ.3.14.1pr.: Imperator Constantinus

Si contra pupillos viduas vel diutino morbo fatigatos et debiles impetratum fuerit lenitatis nostrae iudicium, memorati a nullo nostrorum iudicum compellantur comitatui nostro sui copiam facere. quin immo intra provinciam, in qua litigator et testes vel instrumenta sunt, experiantur iurgandi fortunam atque omni cautela servetur, ne terminos provinciarum suarum cogantur excedere. * const. a. ad andronicum. * <a 334 d. xv k. iul. constantinopoli optato et paulino conss.>

CJ.3.14.1.1: Imperator Constantinus

Quod si pupilli vel viduae aliique fortunae iniuria miserabiles iudicium nostrae serenitatis oraverint, praesertim cum alicuius potentiam perhorrescunt, cogantur eorum adversarii examini nostro sui copiam facere. <a 334 d. xv k. iul. constantinopoli optato et paulino conss.>

CJ.3.15.0. Ubi de criminibus agi oportet.

CJ.3.15.1: Imperatores Severus, Antoninus

Quaestiones eorum criminum, quae legibus aut extra ordinem coercentur, ubi commissa vel inchoata sunt vel ubi reperiuntur qui rei esse perhibentur criminis, perfici debere satis notum est. * sev. et ant. aa. laurinae. * <a 196 pp. iiii non. oct. dextro ii et prisco conss.>

CJ.3.15.2: Imperatores Severus, Antoninus

Sciens liberum venumdando plagii crimen committit. ab eo itaque, qui super hoc queri potest, aditus competens iudex, si is, quem puerum ingenuum vendidisse proponis, ibi degit, causam cognoscet. * sev. et ant. aa. et cc. nicae. * <a 294 s. prid. non. febr. sirmi cc. conss.>

CJ.3.16.0. Ubi de possessione agi oportet.

CJ.3.16.1: Imperatores Valentinianus, Valens

Ubi aut vis facta dicitur aut momentaria possessio postulanda est, ibi loci iudicem adversus eum qui possessionem turbavit convenit iudicare. * valentin. et valens aa. ad festum procons. africae. * <a 366 d. viii k. iun. gratiano nobilissimo puero et dagalaifo conss.>

CJ.3.17.0. Ubi fideicommissum peti oportet.

CJ.3.17.1: Imperatores Severus, Antoninus

Fideicommissum ibi petendum esse, ubi hereditas relicta est, dubitari non oportet. * sev. et ant. aa. demetrio. * <a 204 pp. viii k. sept. cilone ii et libone conss.>

CJ.3.18.0. Ubi conveniatur qui certo loco dare promisit.

CJ.3.18.1: Imperator Alexander Severus

Qui certo loco se soluturum pecuniam obligat, si solutioni satis non fecerit, arbitraria actione et in alio loco potest conveniri: in qua venit aestimatio, quod alterutrius interfuit suo loco potius quam in eo in quo petitur solvi. * alex. a. heraclidae. * <a 225 d. vi id. mart. fusco ii et dextro conss.>

CJ.3.19.0. Ubi in rem actio exerceri debet.

CJ.3.19.1: Imperatores Diocletianus, Maximianus

In rem actio non contra venditorem, sed contra possidentem competit. frustra itaque desideras non tecum congredi, sed cum auctore tuo dominium vindicantem, cum te possidere contendas. nam si denuntiasti ei qui tibi vendidit, intellegit evictionis periculum. nec enim iurisdictionis forma in eadem provincia constitutis tam petitore quam possessore ob auctoris personam, quem in alia provincia dicis consistere, debet immutari. * diocl. et maxim. aa. et cc. pancratio. * <a 293 d. id. april. aa. conss.>

CJ.3.19.2pr.: Imperator Constantinus

Si quis alterius nomine quolibet modo possidens immobilem rem litem ab aliquo per in rem actionem sustineat, debet statim in iudicio dominum nominare, ut, sive in eadem civitate degat sive in agro sive in alia provincia sit, certo dierum spatio ab iudice finiendo eoque ad notionem eius perducendo, vel ipse in locis in quibus praedium situm est perveniens vel procuratorem mittens actoris intentiones excipiat. * const. a. ad universos provinciales. * <a 331 d. x k. aug. basso et ablabio conss.>

CJ.3.19.2.1: Imperator Constantinus

Si vero post huiusmodi indultum tempus minime hoc quod dispositum est facere maluerit, tamquam lite quae ei ingeritur ex die, quo possessor ad iudicium vocatus est, ad interrumpendam longi temporis praescriptionem contestata iudex, utpote domino possessionis nec post huiusmodi humanitatem sui praesentiam faciente, edictis legitimis proponendis eum citare curabit et tunc in eadem voluntate eo permanente negotium summatim discutiens in possessionem rerum actorem mitti non differet, omni adlegatione absenti de principali quaestione servata. <a 331 d. x k. aug. basso et ablabio conss.>

CJ.3.19.3: Imperatores Gratianus, Valentinianus, Theodosius

Actor rei forum, sive in rem sive in personam sit actio, sequitur. sed et in locis, in quibus res propter quas contenditur constitutae sunt, iubemus in rem actionem adversus possidentem moveri. * grat. valentin. et theodos. aaa. * <a 385 d. x k. iul. constantinopoli arcadio et bautone conss.>

CJ.3.20.0. Ubi de hereditate agatur et ubi scripti heredes in possessionem mitti postulare debent.

CJ.3.20.1: Imperatores valer., gallien.

Illic, ubi res hereditarias esse proponis, heredes in possessionem rerum hereditarium mitti postulandum est. ubi autem domicilium habet qui convenitur, vel si ibi ubi res hereditariae sitae sunt degit, hereditatis erit controversia terminanda. * valer. et gallien. aa. messiae. * <a 260 pp. vii k. mai. saeculare et donato conss.>

CJ.3.21.0. Ubi agi oportet de ratiociniis tam privatis quam publicis.

CJ.3.21.1: Imperatores Diocletianus, Maximianus

Eum, qui aliena negotia sive ex tutela sive quocumque alio titulo administravit, ubi haec gessit, rationem oportet reddere. * diocl. et maxim. aa. et cc. aurelio gerontio. * <a 293 s. xiiii k. sept. aa. conss.>

CJ.3.21.2: Imperatores Honorius, Theodosius

Nemo post depositum cingulum privatae vitae redditus ob negotium, quod militiae causa est ei exortum praestandi ratiocinii gratia eius numeri, in quo militavit vel quem ipse gessit a quocumque pulsatus fori praescriptionibus utatur. unumquemque enim super huiuscemodi causis, id est publicis, quas dum militaret exercuit, super ratiociniis militaribus, per quae suos contubernales adflixisse adseritur, in militari oportet iudicio respondere, in quo et instructio sufficiens et nota testimonia et verissima possunt documenta praestari. * honor. et theodos. aa. macedonio mag. mil. * <a 423 d. prid. k. iun. constantinopoli asclepiodoto et mariniano conss.>

CJ.3.22.0. Ubi causa status agi debeat.

CJ.3.22.1: Imperator Alexander Severus

Quae a te, cum tibi serviret, refugit et in aliam provinciam se contulit, libertatem sibi vindicans non iniuria eo loco litigare compellenda est, unde quasi fugitiva recessit. ideoque remittere eam in qua serviret praeses provinciae qui eo loco ius repraesentat curae habebit: sed non ubi deprehensa est audiri debet. * alex. a. aurelio aristocrati. * <a 231 pp. xiii k. sept. pompeiano et peligno conss.>

CJ.3.22.2: Imperator dec.

Procuratores nostros status causas examinare non posse omnibus notum est. * dec. a. et dec. et quintus cc. felici. * <a 250 pp. k. dec. decio a. ii et grato conss.>

CJ.3.22.3: Imperatores Diocletianus, Maximianus

Si in possessione libertatis constituta es, cum in status etiam quaestione actor rei forum sequi debeat, ibi causam liberalem agi oportet, ubi consistit quae ancilla dicitur, licet senatoria dignitate actor decoretur. * diocl. et maxim. aa. et cc. zenonidi. * <a 293 d. prid. id. april. byzantio aa. conss.>

CJ.3.22.4: Imperatores Diocletianus, Maximianus

Si ex possessione servitutis in libertatem quis proclamat, ibi agi oportere status causam, ubi domicilium constitutum habet qui se dominum dicit, non est ambigui iuris. * diocl. et maxim. aa. et cc. sisinniae. * <a 294 d. ii non. mart. byzantio cc. conss.>

CJ.3.22.5: Imperatores Diocletianus, Maximianus

Iam dudum a nobis statutum est, ut, si quae causae libertinitatis est servitutis in provinciis inter fiscum et privatos exorerentur, ad rationalem vel magistrum privatae rei, hoc est unde mota est quaestio, remitterentur, si quae vero ingenuitatis essent, a rectore provinciae examinarentur. * diocl. et maxim. aa. et cc. diogeni praesidi insularum. * <a 294 d. iiii non. aug. cc. conss.>

CJ.3.22.6: Imperator Justinianus

In litibus, in quibus utrum ingenuus an libertinus sit aliquis quaeritur, quinquennii divisionem, post quod divino auditorio opus esse veteres leges praecipiebant, in posterum cessare sancimus et huiusmodi lites etiam post memoratum tempus ad exemplum ceterarum vel in provinciis apud earum moderatores vel in hac alma urbe apud competentia maxima iudicia examinari. quod etiam, si clarissima persona super tali condicione vel etiam servili quaestionem patiatur, tenere censemus. * iust. a. menae pp. * <a 528 vel 529 d. iii non. aug.>

CJ.3.23.0. Ubi quis de curiali vel cohortali aliave condicione conveniatur.

CJ.3.23.1: Imperatores Arcadius, Honorius

Si quis vel curiae vel officiis iudicum aut aliis quibuscumque corporibus obnoxius intra provinciam ab his erit quos aufugerat comprehensus, non expectata eius iudicis notione, sub quo per ambitum coeperat militare, penitusque emendicati honoris praescriptione submota ab iudice, qui in locis aditus fuerit, audiatur manifestarumque rerum probatione convictus eorum societati quos declinaverat adgregetur. * arcad. et honor. aa. florentino pu. * <a 397 d. xii k. aug. mediolani caesario et attico conss.>

CJ.3.23.2pr.: Imperatores Theodosius, Valentinianus

Hac perpetua lege sancimus provincialibus iudiciis non posse fori praescriptionem opponere eos, qui ad curiam vocantur vel cohortalibus deberi dicuntur officiis vel aliis corporibus obnoxii sunt, eos etiam, qui superexactiones vel concussiones perpetrasse firmentur: exceptis videlicet his qui armata militia praediti sunt, vel aliis qui speciali beneficio principali sese defendant, ita tamen ut, cui ex militaribus viris curiae nomen vel cohortalis officii quaestio ingeratur , rector provinciae super eius nomine tam ad sedem tuae magnificentiae quam ad magisteriam vel ad competentem referat potestatem, ut hi, qui velut debiti postulentur, provinciali iudicio destinati ibi eventum iudicii expectent, ubi iura moveri praecipiunt huiusmodi quaestiones. * theodos. et valentin. aa. cyro pp. * <a 440 d. xi k. oct. constantinopoli valentiniano a. v et anatolio conss.>

CJ.3.23.2.1: Imperatores Theodosius, Valentinianus

Super publicis autem functionibus et debitis nemini liceat fori praescriptionem opponere praeter eos qui specialiter excepti sunt. <a 440 d. xi k. oct. constantinopoli valentiniano a. v et anatolio conss.>

CJ.3.23.2.2: Imperatores Theodosius, Valentinianus

Ceteros excelsae tuae sedis et rectorum provinciarum in quolibet negotio declinare minime posse iudicium decernimus, ita ut, qui tam saluberrimam legem pertinaciter violare temptaverint, sciant a moderatoribus provinciarum adversus se tamquam in contumaces sententiam proferendam. <a 440 d. xi k. oct. constantinopoli valentiniano a. v et anatolio conss.>

CJ.3.24.0. Ubi senatores vel clarissimi civiliter vel criminaliter conveniantur.

CJ.3.24.1: Imperator Constantinus

Quicumque non illustris, sed tantum clarissima dignitate praeditus virginem rapuerit vel fines aliquos invaserit vel in aliqua culpa seu crimine fuerit deprehensus, statim intra provinciam in qua facinus perpetravit publicis legibus subiugetur nec fori praescriptione utatur. omnem enim huiusmodi honorem reatus excludit. * const. a. ad octavianum com. hispaniarum. * <a 317 d. prid. non. dec. serdicae. acc. v non. mart. cordubae gallicano et basso conss.>

CJ.3.24.2: Imperatores Valens, Gratianus, Valentinianus

Senatores in pecuniariis causis, sive in hac urbe sive in suburbanis degunt, in iudicio tam praetorianae quam urbicariae praefecturae nec non magistri officiorum (quotiens tamen ad eum nostrae pietatis emanaverit iussio), in provinciis vero ubi larem fovent aut ubi maiorem bonorum partem possident et adsidue versantur respondebunt. * valens grat. et valentin. aaa. ad senatum. * <d. k. mart.>

CJ.3.24.3pr.: Imperator Zeno

Quotiens viro forte patricio vel ex patricio vel ei, quem praetorianae vel urbicariae amplissimae sedis administratio illustravit, vel consulari viro, quem tam ordinaria processio quam sacra nostrae pietatis pariter sublimavit oratio, quive magisteriae potestatis sudoribus clarus factus est, vel ei, qui magistri officiorum vel quaestoris officio functus aut sacri nostrae pietatis cubiculi praepositus post depositam administrationem senatorio ordini sociatus est, aut cui nostra serenitas domesticorum scholam regendam mandavit cuive sacros nostri numinis thesauros aut res privatas nostrae pietatis vel serenissimae augustae nostrae coniugis gubernandas iniunxit, post depositam videlicet administrationem cr imen publicum privatumve, cui tamen non per procuratorem respondere liceat, in hac alma urbe vel in provinciis commoranti ingeratur, nullius alterius iudicis nisi nostrae pietatis huiusmodi esse cognitionem vel sacri tantummodo cognitoris , cui nostra serenitas huiusmodi negotii audientiam vice sua sacris apicibus mittendis mandaverit, ita tamen, ut apud talem iudicem, nullius officii vel scholae intercedente ministerio, more atque habitu sacrarum consultationum absque ulla videlicet observatione dierum fatalium introductae causae, viris devotissimis sacri nostri scrinii libellensibus sollemnia implentibus, audiantur: eo qui in crimen vocatus erit, ne quas ante probationes iniurias patiatur, sedendi quoque in aliqua secretarii parte, quae iudicibus inferior, altercantibus vero superior esse videatur, habituro licentiam. * zeno a. arcadio pp. * <a 485 - 486? d. constantinopoli. >

CJ.3.24.3.1: Imperator Zeno

Adeo autem tantarum honores dignitatum duximus augendos, ut nec sacro quidem cognitori, nec postquam crimen fuerit patefactum, contra huiusmodi viros vel eorum substantias statuendi aliquid concedamus facultatem, sed hoc solummodo in huiusmodi viros vice quoque principis audituro licebit, ut intentatum apud se crimen , si patefactum fuisset, ad principalem referat notionem. <a 485 - 486? d. constantinopoli. >

CJ.3.24.3.1a: Imperator Zeno

Ultionis autem tantis inferendae dignitatibus modus non nisi in principis residebit arbitrio, cum sit certum oportere accusatoris calumniam (reo videlicet protinus absolvendo) inconsulta quoque nostra serenitate prout leges sanciunt coerceri, nisi forte accusator quoque non minoris quam reus sit dignitatis: in hoc namque casu super coercenda huiusmodi accusatoris calumnia non immerito consulenda erit principalis auctoritas. <a 485 - 486? d. constantinopoli. >

CJ.3.24.3.2: Imperator Zeno

Viros autem illustres in hac inclita urbe degentes, qui sine administratione honorariis decorati fuerint codicillis, licet talem praerogativam nostrae iussionis meruerint, ut quod non egerint videantur egisse, in criminalibus causis magnificae tuae sedis et illustrissimae urbicariae praefecturae nec non etiam viri magnifici magistri officiorum (quotiens tamen ad eius iudicium specialis nostrae pietatis emanaverit iussio) sententiis respondere decernimus, ita ut huiusmodi viri sedendi quidem in cognitionibus dicendis minime sibi vindicent facultatem. <a 485 - 486? d. constantinopoli. >

CJ.3.24.3.2a: Imperator Zeno

Sciant autem ipsi quoque nec de se vel suis facultatibus iudicaturos aliquid nec probatis criminibus, nisi prius ad nostram pietatem rettulerint, posse statuere. <a 485 - 486? d. constantinopoli. >

CJ.3.24.3.3: Imperator Zeno

Quotiens autem viri illustres in provinciis constituti (non hi tamen, quorum cognitio ad nostram maiestatem vel ad vice nostri numinis auditurum pertineat) in querimoniam fuerint criminalem vocati, et sedendi, cum celebratur cognitio, in secretariis iudicantium ius consequantur et iudices patefactis quoque criminibus ferendis contra huiusmodi viros vel facultates eorum sententiis abstineant, dum nostrae pietatis ad suas meruerint relationes responsum: supplicio videlicet, quod accusatoribus patefacta eorum calumnia ingerendum est, nec apud provinciales iudices, si non, sicut superius dictum est, similem dignitatem habeant, differendo. <a 485 - 486? d. constantinopoli. >

CJ.3.25.0. In quibus causis militantes fori praescriptione uti non possunt.

CJ.3.25.1pr.: Imperatores Theodosius, Valentinianus

Omnes omnino domesticos et agentes in rebus et quaecumque alia praetenditur militia vel dignitas sub moderatoribus provinciarum pro functionibus publicis respondere nulla fori praescriptione valitura sancimus, si hac qui exiguntur publica debita uti temptaverint. * theodos. et valentin. aa. florentio pp. * <a 439 d. xiii k. febr. constantinopoli theodosio a. xvii et festo conss.>

CJ.3.25.1.1: Imperatores Theodosius, Valentinianus

Immo et in aliis privatis actionibus occupatos volumus respondere, qui per provincias negotiantur vel conductorum vocabulis, cum non armata militia praediti sunt, defenduntur, sive domorum divinarum sive virorum potentium seu cuiuslibet condicionis sunt conductores, nisi forte commeatum ad rem propriam componendam unius anni indutias ostenderint se accepisse. <a 439 d. xiii k. febr. constantinopoli theodosio a. xvii et festo conss.>

CJ.3.25.1.2: Imperatores Theodosius, Valentinianus

Eadem forma servanda in his etiam, qui mercandi et militandi sacra beneficia meruerunt, ut etiam ipsi rectoribus provinciarum respondeant. <a 439 d. xiii k. febr. constantinopoli theodosio a. xvii et festo conss.>

CJ.3.26.0. Ubi causae fiscales vel divinae domus hominumque eius agantur.

CJ.3.26.1: Imperatores Severus, Antoninus

Non defensae mortis quaestionem apud procuratores nostros non oportere tractari quis ignorat, nec bona fisco peti posse, quam si de crimine constiterit apud eum , cui convictis poenam inrogare licet? plane defunctis homicidii reis apud procuratores quoque causam agendam esse ratio permittit. * sev. et ant. aa. dioscoro. * <a 197 pp. vii id. mai. laterano et rufino conss.>

CJ.3.26.2: Imperatores Severus, Antoninus

Non animadvertimus, cur causam ad officium procuratorum nostrorum pertinentem ad proconsulis notionem advocare velis. nam cum hoc quaeratur, an pater tuus mortem sibi consciverit metu alicuius poenae ac propterea bona fisco debeant vindicari, iam non de crimine aut poena mortui, sed de bonis quaerendum est. * sev. et ant. aa. aristae. * <a 207 d. xii k. oct. apro et maximo conss.>

CJ.3.26.3: Imperator Antoninus

Procurator meus, qui vice praesidis provinciae non fungitur, sicut exigere poenam desertae accusationis potest, ita iudicare, ut ea inferatur sententia sua, non potest. * ant. a. heliodoro. * <a 215 d. x k. sept. laeto et cereale conss.>

CJ.3.26.4pr.: Imperator Alexander Severus

Cum vendente procuratore meo emisse te praedia dicas, pretium eorum necessario solvere debes. * alex. a. maximae. * <a 233 pp. iiii id. oct. maximo et paterno conss.>

CJ.3.26.4.1: Imperator Alexander Severus

Cum his, quibus mandantibus eadem praedia emisse te et tradidisse dicas, agente te procurator meus, si eius audientiam elegeris, cognoscet, ut pecuniam quae pretii nomine tibi debetur et usuras quae fisco solvendae sunt consequi possis. <a 233 pp. iiii id. oct. maximo et paterno conss.>

CJ.3.26.5: Imperator Constantinus

Ad fiscum pertinentes causas rationalis decidat, omnibus concussionibus prohibendis. * const. a. ad ursum. * <a 315 d. non. febr. constantino a. iiii et licinio iiii conss.>

CJ.3.26.6: Imperatores Constantius, constans

Si quis adversus conductorem nostrum aliquid agendum crediderit, viro illustri comiti rerum privatarum referri oportet, ne et iudici existimationis et officio eius salutis discrimen immineat. * constantius a. ad italicum. * <d. k. febr..... conss.>

CJ.3.26.7: Imperatores Constantius, constans

Dominicis colonis et patrimonialibus gravitatem tuam censuimus disceptatricem esse debere. duces enim et praepositos limitum et castrorum et rectores provinciarum evocandis et arcessendis colonis abstinere oportet. * constant. a. ad bulephorum rationalem summae rei. * <a 349 d. xvi k. mart. limenio et catullino conss.>

CJ.3.26.8: Imperator Constantius

Cum aliquid colonus aut servus rei privatae nostrae contra disciplinam publicam adseratur perpetrare, ad iudicium rectoris provinciae venire cogendus est, sic videlicet, ut praesente rationali vel procuratore domus nostrae inter eum et accusatorem causa tractetur et, si facinus fuerit adprobatum, iuris severitas exseratur. * constant. a. ad taurum pp. * <a 358 d. v non. mart. sirmi datiano et cereale conss.>

CJ.3.26.9: Imperatores Valentinianus, Valens

Universi fiduciam gerant, ut, cum quis eorum ab actore rerum privatarum nostrarum sive a procuratore fuerit vexatus iniuriis, super eius contumeliis vel depraedationibus deferre querimoniam sinceritati tuae vel rectori provinciae non dubitet et ad publicae sententiam vindictae sine aliqua trepidatione convolare. quae res cum fuerit certis probationibus declarata, sancimus et edicimus, ut, si in provincialem hanc audaciam quisquam moliri fuerit ausus, publice vivus concremetur. * valentin. et valens aa. ad philippum vic. * <a 365 d. iii non. iul. heracliae valentiniano et valente aa. conss.>

CJ.3.26.10: Imperatores Gratianus, Valentinianus, Theodosius

Nullum ex officio rationalis, qui exactioni vel chartis inserviat, in alio iudicio adduci oportet, nisi forte cuiuspiam caput accusatio legibus instituta pulsaverit. * grat. valentin. et theodos. aaa. ad polemium pp. * <a 385 d. ii k. mai. arcadio et bautone conss.>

CJ.3.26.11: Imperatores Theodosius, Valentinianus

Hac lege sancimus, ut, sive agat domorum nostrarum colonus aut inquilinus aut servus seu pulsetur ab aliquo super criminali vel civili negotio, non alibi quam tui culminis ac viri spectabilis comitis domorum petatur examen: nullius adlegatione super fori praescriptione penitus admittenda. * theodos. et valentin. aa. artaxi praeposito sacri cubiculi. * <a 442 d. v id. april. eudoxio et dioscoro conss.>

CJ.3.27.0. Quando liceat sine iudice unicuique vindicare se vel publicam devotionem.

CJ.3.27.1pr.: Imperatores Valentinianus, Theodosius, Arcadius

Liberam resistendi cunctis tribuimus facultatem, ut quicumque militum vel privatorum ad agros nocturnus populator intraverit aut itinera frequentata insidiis adgressionis obsederit, permissa cuicumque licentia dignus ilico supplicio subiugetur ac mortem quam minabatur excipiat et id quod intendebat incurrat. melius enim est occurrere in tempore, quam post exitum vindicare. * valentin. theodos. et arcad. aaa. ad provinciales. * <a 391 d. k. iul. tatiano et symmacho conss.>

CJ.3.27.1.1: Imperatores Valentinianus, Theodosius, Arcadius

Vestram igitur vobis permittimus ultionem et, quod serum est punire iudicio, subiugamus edicto: nullus parcat militi, cui obviare telo oporteat ut latroni. <a 391 d. k. iul. tatiano et symmacho conss.>

CJ.3.27.2: Imperatores Arcadius, Honorius, Theodosius

Opprimendorum desertorum facultatem provincialibus iure permittimus. qui si resistere ausi fuerint, in his velox ubicumque iubemus esse supplicium. cuncti etenim adversus latrones publicos desertoresque militiae ius sibi sciant pro quiete communi exercendae publicae ultionis indultum. * arcad. honor. et theodos. aaa. hadriano pp. * <a 403 d. v non. oct. theodosio a. et rumorido conss.>

CJ.3.28.0. De inofficioso testamento.

CJ.3.28.1: Imperatores Severus, Antoninus

Cum de inofficioso matris suae testamento filius dicere velit adversus eum, qui ex causa fideicommissi hereditatem tenet, non est iniquum hoc ei accommodari, ut perinde fideicommissarius teneatur, ac si pro herede aut pro possessore possideret. * sev. et ant. aa. victorino. * <a 193 pp. v k. iul. falcone et claro conss.>

CJ.3.28.2: Imperatores Severus, Antoninus

Quamvis de inofficioso testamento acturum te bonorum possessionem accepisse proponas, tamen scriptis heredibus auferre possessionem incivile est. * sev. et ant. aa. lucretio. * <a 196 d. iiii k. dec. dextro ii et prisco conss.>

CJ.3.28.3pr.: Imperatores Severus, Antoninus

Si mater filiis duobus institutis tertio post testamentum suscepto, cum mutare idem testamentum potuisset, hoc facere neglexisset, merito utpote non iustis rationibus neglectus de inofficioso querellam instituere poterat. * sev. et ant. aa. ianuario. * <a 197 pp. viii k. iul. laterano et rufino conss.>

CJ.3.28.3.1: Imperatores Severus, Antoninus

Sed cum eam in puerperio vita cessisse proponas, repentini casus iniquitas per coniecturam maternae pietatis emendanda est. quare filio tuo, cui nihil praeter maternum fatum imputari potest, perinde virilem portionem tribuendam esse censemus, ac si omnes filios heredes instituisset. <a 197 pp. viii k. iul. laterano et rufino conss.>

CJ.3.28.3.2: Imperatores Severus, Antoninus

Sin autem heredes scripti extranei erant, tunc de inofficioso testamento actionem instituere non prohibetur. <a 197 pp. viii k. iul. laterano et rufino conss.>

CJ.3.28.5: Imperator Antoninus

Si pater tuus post litem contestatam vel postquam propositum habuisset inofficiosum fratris testamentum dicere te herede relicto decessit, causam coeptam vel quocumque modo illi placitam exsequi non prohiberis. * ant. a. aelio. * <a 211 pp. prid. non. oct. gentiano et basso conss.>

CJ.3.28.6: Imperator Antoninus

Cum quaeritur, an filii de inofficioso patris testamento possint dicere, si quartam bonorum mortis tempore testator reliquit, inspicitur. * ant. a. ingenuo. * <a 212 pp. vii k. iul. romae duobus aspris conss.>

CJ.3.28.7: Imperator Antoninus

Neptem defuncti actione de inofficioso testamento, quamvis pater eius emancipatus fuerat defunctus, experiri posse ignorare non debes. * ant. a. secundino. * <a 215 pp. vi k. iul. romae laeto ii et cereale conss.>

CJ.3.28.8pr.: Imperator Antoninus

Parentibus arbitrium dividendae hereditatis inter liberos adimendum non est, dum non minus, qui pietatis sibi conscius est, partis quae intestato defuncto potuit ad eum pertinere quarta ex iudicio parentis obtineat. * ant. a. florentino. * <a 223 pp. vii id. febr. maximo ii et aeliano conss.>

CJ.3.28.8.1: Imperator Antoninus

Qui autem agnovit iudicium defuncti eo, quod debitum paternum pro hereditaria parte persolvit vel alio legitimo modo, etiamsi minus quam ei debebatur relictum est, si is maior viginti quinque annis est, accusare ut inofficiosam voluntatem patris quam probavit non potest. <a 223 pp. vii id. febr. maximo ii et aeliano conss.>

CJ.3.28.9: Imperator Antoninus

De inofficioso testamento militis vel iure militare vel civile facto vel centurionis vel tribuni numeri nec filios posse queri ius certum est. * ant. a. romanae. * <a 223 pp. id. mai. maximo ii et aeliano conss.>

CJ.3.28.10: Imperator Antoninus

Si heredum quintiani, quem patrem tuum esse dicis, adversus quos de inofficioso testamento acturus eras, iure successionis bona ad fiscum pertinent, vel ipsius quintiani bona utpote vacantia fiscus tenet, causam apud procuratorem meum agere potes. * ant. a. quintiliano. * <a 223 pp. ii id. aug. maximo ii et aeliano conss.>

CJ.3.28.11: Imperator Antoninus

In harenam non damnato, sed sua sponte harenario constituto legitimae successiones integrae sunt, sicuti civitas et libertas manet. sed si testamentum parens eius fecit, neque de inofficioso testamento accusatio neque bonorum possessio ei competit: nam talem filium merito quis indignum sua successione iudicat, nisi et ipse similis condicionis est. * ant. a. ingenuo. * <a 224 pp. iiii k. ian. iuliano et crispino conss.>

CJ.3.28.12: Imperator Antoninus

Si pater puellae, cuius vos curatores esse dicitis, filio ex semisse, ipsa autem ex triente et uxore ex reliquo sextante scriptis heredibus, fidei filiorum commisit, ut, si quis eorum intra viginti quinque annos aetatis decederet, superstitibus portionem suam restitueret, praeterea uxori, ut id, quod ex causa hereditatis ad eam pervenisset, filiis post mortem suam restitueret, fideicommisit, calumniosam inofficiosi actionem adversus iustum iudicium testatoris instituere non debetis, cum ex huiusmodi fideicommissaria restitutione tam matris quam fratris eius portio ad eam poterat pervenire. * ant. a. liciniano et diogeniano. * <a 229 pp. non. dec. alexandro a. iii et dione conss.>

CJ.3.28.13: Imperator Gordianus

Cum duobus heredibus institutis, uno ex quinque, altero ex septem unciis, adversus eum qui ex septem unciis heres scriptus fuerat iusta querella contendisse, ab altero autem victum fuisse adlegas, pro ea parte, qua resolutum est testamentum, cum iure intestati qui obtinuit succedat, neque legata neque fideicommissa debentur, quamvis libertates et directae competant et fideicommissariae praestari debeant. * gord. a. prisciano. * <a 239 pp. iii k. febr. gordiano a. et aviola conss.>

CJ.3.28.14: Imperator Gordianus

Eum, qui inofficiosi querellam delatam non tenuit, a falsi accusatione non submoveri placuit. idem observatur et si e contrario falsi crimine instituto victus postea de inofficioso actionem exercere maluerit. * gord. a. prisco. * <a 239 pp. vi k. dec. gordiano a. et aviola conss.>

CJ.3.28.15: Imperator Philippus

Filiam praeteritam a matre ad successionem eius citra inofficiosi querellam adspirare non posse explorati iuris est. * philipp. a. et philipp. c. aphrodisiae. * <a 245 pp. v k. aug. philippo a. et titiano conss.>

CJ.3.28.16: Imperatores valer., gallien.

Contra maiores viginti quinque annorum duplicem actionem inferentes, primam, quasi testamentum non iure sit perfectum, alteram, quasi inofficiosum, licet iure perfectum, praescriptio ex prioris iudicii mora quinquennalis temporis non nascitur, quae officere non cessantibus non potest. * valer. et gallien. aa. et valer. nob. c. theodotae. * <a 258 pp. id. aug. tusco et basso conss.>

CJ.3.28.17: Imperatores carinus, numer.

Cum filium tuum te praeterita sororem heredem instituisse proponas, inofficiosi querellam apud praesidem provinciae persequi potes. * carinus et numer. aa. florae. * <a 284 pp. prid. id. febr. carino ii et numeriano aa. conss.>

CJ.3.28.18: Imperatores Diocletianus, Maximianus

Cum te pietatis religionem non violasse, sed mariti coniugium quod fueras sortita distrahere noluisse ac propterea offensum atque iratum patrem ad exheredationis notam prolapsum esse dicas, inofficiosi testamenti querellam inferre non vetaberis. * diocl. et maxim. aa. faustinae. * <a 286 pp. nicomediae xvi k. mart. maximo ii et aquilino conss.>

CJ.3.28.19: Imperatores Diocletianus, Maximianus

Si filia tua turpiter et cum flagitiosa foeditate vivit, ut a successione tua eam excludendam putes, si non inconsulto calore, sed ex meritis eius ad id odium incitatus es, postremi iudicii liberum arbitrum habebis. * diocl. et maxim. aa. apollinari. * <a 293 d. xv k. iul. sirmi ipsis v et iiii aa. conss.>

--: CJ. c.3.28.19: Imperatores Diocletianus, Maximianus

Si filia tua turpiter et cum flagitiosa foeditate vivit, ut a successione tua eam excludendam putes, si non inconsulto calore, sed ex meritis eius ad id odium incitatus es, postremi iudicii liberum arbitrum habebis. * diocl. et maxim. aa. apollinari. * <a 293 d. xv k. iul. sirmi ipsis v et iiii aa. conss.>

CJ.3.28.20: Imperatores Diocletianus, Maximianus

Filia in orbitate patris relicta cum marito, cui matre volente nupsit, colens concordiam iustas offensionis post eiusdem matris paenitentiam causas non praestat nec ex momentariis voluntatibus matris nupta atque vidua esse iure compellitur. * diocl. et maxim. aa. et cc. sabiniano. * <a 294 d. non. ian. sirmi cc. conss.>

CJ.3.28.21: Imperatores Diocletianus, Maximianus

Fratris vel sororis filii, patrui vel avunculi, amitae etiam et materterae testamentum inofficiosum frustra dicunt, cum nemo eorum qui ex transversa linea veniunt exceptis fratre et sorore ad inofficiosi querellam admittatur. de falso sane per accusationem criminis queri non prohibentur. * diocl. et maxim. aa. et cc. alexandro. * <a 294 d. vi id. febr. cc. conss.>

CJ.3.28.22pr.: Imperatores Diocletianus, Maximianus

Si maritus tuus facto testamento te quidem ex asse scripsit heredem, filia autem quam habuit in potestate exheredata facta minime probetur nihilque ei relictum est neque iustas causas offensae praestitisse convincatur, eam de inofficioso testamento patris querentem totam hereditatem obtinere posse non ambigitur. * diocl. et maxim. aa. et cc. statillae. * <a 294 d. id. febr. sirmi cc. conss.>

CJ.3.28.22.1: Imperatores Diocletianus, Maximianus

Quod si iam obtinuit vel postea vincat, quodcumque maritus mortis suae tempore debuisse tibi perhibetur, idem ab ea reddi oportet. <a 294 d. id. febr. sirmi cc. conss.>

CJ.3.28.23: Imperatores Diocletianus, Maximianus

Testamenti factionem per testationem vos interdixisse matri profitentes iustitiam offensae manifeste testamini. * diocl. et maxim. aa. et cc. philippae. * <a 294 d. v id. sept. cc. conss.>

CJ.3.28.24: Imperatores Diocletianus, Maximianus

Testamentum militis filii familias in castrensi peculio factum neque a patre neque a liberis eius per inofficiosi querellam rescindi potest. * diocl. et maxim. aa. et cc. successo. * <a 294 d. iii non. dec. nicomediae cc. conss.>

CJ.3.28.25: Imperatores Diocletianus, Maximianus

Filiis matrem, quae de mariti moribus secus suspicetur, ita posse consulere iure compertum est, ut eos sub hac condicione instituat heredes, si a patre emancipati fuerint, atque eo pacto secundum tabulas bonorum possessionem patrem cum re accipere non videri, qui condicioni minime obtemperavit, neque ei nomine filiorum inofficiosi eo modo actionem posse competere, quibus nullam iniuriam fecerit mater, sed potius putaverit providendum, restituere debet. * diocl. et maxim. aa. et cc. menodoto. * <a 301 d. iiii non. iul. antiochiae titiano et nepotiano conss.>

CJ.3.28.26: Imperatores Diocletianus, Maximianus

Ex tribus unciis herede instituto filio intra pubertatis annos directam non inutiliter a patre fieri substitutionem certum est. * diocl. et maxim. aa. et cc. serapioni suo s. * <a 304 d. v k. sept. nicomediae diocletiano viiii et maximiano viii aa. conss.>

CJ.3.28.27: Imperator Constantinus

Fratres vel sorores uterini ab inofficiosi actione contra testamentum fratris vel sororis penitus arceantur: consanguinei autem durante vel non agnatione contra testamentum fratris sui vel sororis de inofficioso quaestionem movere possunt , si scripti heredes infamiae vel turpitudinis vel levis notae macula adsparguntur vel liberti, qui perperam et non bene merentes maximisque beneficiis suum patronum adsecuti instituti sunt, excepto servo necessario herede instituto. * const. a. ad lucrium verinum. * <a 319 d. id. april. sirmio constantino a. v et licinio c. conss.>

CJ.3.28.28pr.: Imperator Constantinus

Liberi de inofficioso querellam contra testamentum parentum moventes probationes debent praestare, quod obsequium debitum iugiter, prout ipsius naturae religio flagitabat, parentibus adhibuerunt, nisi scripti heredes ostendere maluerint ingratos liberos contra parentes extitisse. * const. a. ad claudium praes. daciae. * <a 321 d. viii id. febr. serdicae crispo ii et constantino ii cc. conss.>

CJ.3.28.28.1: Imperator Constantinus

Sin autem mater contra filii testamentum inofficiosi actionem instituat, inquiri diligenter iubemus, utrum filius nulla ex iusta causa laesus matrem novissima laeserit voluntate nec luctuosam ei et legitimam reliquerit portionem, ut testamento remoto matri successio deferatur. <a 321 d. viii id. febr. serdicae crispo ii et constantino ii cc. conss.>

CJ.3.28.28.2: Imperator Constantinus

Si tamen mater inhonestis factis atque indecentibus machinationibus filium forte obsedit insidiisque eum vel clandestinis vel manifestis appetiit vel inimicis eius suas amicitias copulavit atque in aliis sic versata est, ut inimica eius potius quam mater crederetur, ut hoc probato invita etiam adquiescat filii voluntati. <a 321 d. viii id. febr. serdicae crispo ii et constantino ii cc. conss.>

CJ.3.28.29pr.: Imperator Zeno

Quoniam novella constitutio divi leonis ante nuptias donationem a filio conferri ad similitudinem dotis quae a filia confertur praecepit, etiam ante nuptias donationem filio in quartam praecipimus imputari. * zeno a. sebastiano pp. * <a 479 d. k. mai. ipso a. ii conss.>

CJ.3.28.29.1: Imperator Zeno

Eodemque modo cum mater pro filia dotem vel pro filio ante nuptias donationem vel avus paternus aut maternus vel avia paterna aut materna pro sua nepte vel pro suo nepote vel proavus itidem vel proavia paterna aut materna pro sua pronepte vel pro suo pronepote dederit, non tantum eandem dotem vel donationem conferri, verum etiam in quartam partem ad excludendam inofficiosi querellam tam dotem datam quam ante nuptias donationem praefato modo volumus imputari, si ex substantia eius profecta sit, cuius de hereditate agitur. <a 479 d. k. mai. ipso a. ii conss.>

CJ.3.28.30pr.: Imperator Justinianus

Omnimodo testatorum voluntatibus prospicientes magnam et innumerabilem occasionem subvertendae eorum dispositionis amputare censemus et in certis casibus, in quibus de inofficiosis defunctorum testamentis vel alio modo subvertendis moveri solebat actio, certa et statuta lege tam mortuis consulere quam liberis eorum vel aliis personis, quibus eadem actio competere poterat: ut, sive adiciatur testamento de implenda legitima portione sive non, firmum quidem testamentum sit, liceat vero his personis, quae testamentum quasi inofficiosum vel alio modo subvertendum queri poterant, id quod minus portione legitima sibi relictum est ad implendam eam sine ullo gravamine vel mora exigere, si tamen non ingrati legiti mis modis arguantur, cum eos scilicet ingratos circa se fuisse testator edixit: nam si nullam eorum quasi ingratorum fecerit mentionem, non licebit eius heredibus ingratos eos nominare et huiusmodi quaestionem introducere. et haec quidem de his personis statuimus, quarum mentionem testantes fecerint et aliquam eis quantitatem in hereditate vel legato vel fideicommisso, licet minorem legitima portione, reliquerint. * iust. a. menae pp. * <a 528 d. k. iun. constantinopoli iustiniano a. ii cons.>

CJ.3.28.30.1: Imperator Justinianus

Sin vero vel praeterierint aliquam eorum personam iam natam vel ante testamentum quidem conceptam, adhuc vero in ventre constitutam, vel exheredatione vel alia eorum mentione facta nihil eis penitus reliquerint, tunc vetera iura locum habere sancimus, nullam ex praesenti promulgatione novationem vel permutationem acceptura. <a 528 d. k. iun. constantinopoli iustiniano a. ii cons.>

CJ.3.28.30.2: Imperator Justinianus

Imputari vero filiis aliisque personis, quae dudum ad inofficiosi testamenti querellam vocabantur, in legitimam portionem et illa volumus, quae occasione militiae ex pecuniis mortui eisdem personis adquisitae posse lucrari eas manifestum est, eo quod talis sit militia, ut vendatur vel mortuo militante certa pecunia ad eius heredes perveniat, ita tamen, ut ille gradus eiusdem militiae inspiciatur, quem morte testatoris militans obtinet, ut tanta ei pecunia in legitimam portionem computetur, quantam dari statutum est, si in eo gradu mortuus esset is, qui militiam ex pecuniis testatoris adeptus est. <a 528 d. k. iun. constantinopoli iustiniano a. ii cons.>

CJ.3.28.30.3: Imperator Justinianus

Exceptis solis viris spectabilibus silentiariis sacri nostri palatii, quibus praestita iam specialia beneficia tam de aliis capitulis quam de pecuniis super memorata militia a parentibus eorum datis, ne in legitimam portionem eis computentur, rata esse praecipimus: in ceteris vero personis praedictam observationem tenere volumus. <a 528 d. k. iun. constantinopoli iustiniano a. ii cons.>

CJ.3.28.31: Imperator Justinianus

Quae nuper ad testamenta conservanda nec facile retractanda sanximus, ut ratione falcidiae minime illis personis derelicta, quae ad inofficiosi testamenti querellam ex prioribus vocabantur legibus, non periclitentur testamenta, sed quod deest legitimae portioni, id est quartae parti ab intestato successionis, tantum repleatur, exceptis illis quibus nihil in testamento derelictum est, in quibus prisca iura illibata servavimus, etiam ad testamenta sine scriptis facienda locum habere sancimus. * iust. a. menae pp. * <a 528 d. iii id. dec. constantinopoli dn. iustiniano pp. a. ii cons.>

CJ.3.28.32: Imperator Justinianus

Quoniam in prioribus sanctionibus illud statuimus, ut, si quid minus legitima portione his derelictum sit, qui ex antiquis legibus de inofficioso testamento actionem movere poterant, hoc repleatur nec occasione minoris quantitatis testamentum rescindatur, hoc in praesenti addendum esse censemus, ut, si condicionibus quibusdam vel dilationibus aut aliqua dicpositione moram vel modum vel aliud gravamen introducente eorum iura, qui ad memoratam actionem vocabantur, minuta esse videantur, ipsa condicio vel dilatio vel alia dispositio moram vel quodcumque onus introducens tollatur et ita res procedat, quasi nihil eorum testamento additum esset. * iust. a. menae pp. * <a 529 d. ii k. april. constantinopoli dec io vc. cons.>

CJ.3.28.33pr.: Imperator Justinianus

Si quis suo testamento maximam quidem portionem libero derelinquat, minusculam autem alii vel aliis de sua stirpe progenitis, ipsam tamen legitimam sive in hereditate vel in legato vel in fideicommisso, ut non possit locus de inofficiosi testamenti querellae fieri, et ille quidem, qui ex parvulo genitoris sui consequitur substantiam, eam suscipere maluerit, qui autem ex maiore parte eam amplexus est, sive unus vel si plures sint, non statim et sine contentioso proposito vel ulla mora eam restituere voluerit, sed expectato iudiciorum strepitu et multis variisque certaminibus habitis post longum tempus ex sententia iudicis vix eam reddiderit, crudelitatem eius competenti poena adgredimur, ut, si haec fuerint subsecuta, non tantum in quod testator voluit eum restituere condemnetur, s ed etiam aliam tertiam partem quantitatis, quae fuerat in testamento derelicta, modis omnibus reddere, ut avaritia eius legitimis ictibus feriatur: aliis omnibus, quae in eodem testamento vel elogio scripta sunt, pro sui tenore ad effectum perducendis. * iust. a. demostheni pp. * <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.3.28.33.1: Imperator Justinianus

Legis autem veteris iniquitatem tollentes, ut non diutius erubescat posita, quam iulius paulus in suis scripsit quaestionibus, hanc piissimam adgredimur sanctionem. cum enim infantem suum non posse ingratum a matre sua vocari scripsit neque propter hoc ab ultima suae matris hereditate repelli, nisi hoc odio sui fecerit mariti, ex quo infans progenitus est, hoc iniquum iudicantes, ut alieno odio alius praegravetur, penitus delendum esse sancimus et huiusmodi causam liberis non tantum infantibus, sed etiam quamcumque aetatem agentibus opponi minime concedimus, cum possit sub condicione emancipationis hereditatem suam mater filio derelinquens et patris odium punire et iuri filii sui minime nocere nec suam ma turam fallere. satis enim crudele nobis esse videtur eum qui non sentit ingratum existimari. <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.3.28.34pr.: Imperator Justinianus

Si quis filium suum exheredatum fecerit alio scripto herede, reliquerit autem ex eo nepotem vel vivum vel in ventre nurus suae constitutum, deliberante vero scripto herede filius decesserit, nulla hereditatis petitione ex nomine de inofficioso constituta vel praeparata omne adiutorium nepotem dereliquit. nec enim pater nepoti aliquod ius, cum decesserit, contra patris sui testamentum dereliquit , quia postea et adita est ab extraneo hereditas et supervixit avo pater eius, ut neque ex lege vellaea possit in locum patris sui succedere et rescindere testamentum. et hoc nonnulli iuris consulti in medio proponentes inhumane reliquer unt. * iust. a. iohanni pp. * <a 531 d. iii k. aug. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.28.34.1: Imperator Justinianus

Sed nos, qui omnes subiectos nostros et filios et nepotes habere existimamus adfectione paterna et imitatione, secundum quod possibile est omnium commodo prospicientes iubemus in tali specie eadem iura nepoti dari, quae filius habebat, et nisi praeparatio facta est ad inofficiosi querellam instituendam, tamen posse nepotem eandem causam proponere: et si non heres apertissimis probationibus ostenderit ingratum patrem nepotis circa testatorem fuisse, testamento remoto ab intestato eum vocari, nisi certa quantitas patri eius minor parte legitima relicta est: tunc etenim secundum novellam nostri numinis constitutionem repletio quartae partis nepoti superest, si qua patri eius competebat: et perfruatur nostro beneficio a vetustate quidem neglectus, a nostro autem vigore recreatus, nisi pater adhuc superstes vel repudiavit querellam vel quinquennium tacuit, scilicet post aditam hereditatem. <a 531 d. iii k. aug. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.28.35pr.: Imperator Justinianus

Si quando talis concessio imperialis processerit, per quam libera testamenti factio conceditur, nihil aliud videri principem concedere, nisi ut habeat consuetam et legitimam testamenti factionem. neque enim credendum est romanum principem qui iura tuetur huiusmodi verbo totam observationem testamentorum multis vigiliis excogitatam atque inventam velle everti. * iust. a. iohanni pp. * <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.28.35.1: Imperator Justinianus

Illud etiam sancimus, ut, si quis a patre certas res vel pecunias accepisset et pactus fuisset, quatenus de inofficiosi querella adversus testamentum paternum minime ab eo moveretur, et post obitum patris filius cognito paterno testamento non agnoverit eius iudicium, sed oppugnandum putaverit, vetere iurgio exploso huiusmodi pacto filium minime gravari secundum papiniani responsum, in quo definivit meritis filios ad paterna obsequia provocandos quam pactionibus adstringendos. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.28.35.1a: Imperator Justinianus

Sed hoc ita admittimus, nisi transactiones ad heredes paternos filius celebraverit, in quibus apertissime iudicium patris agnoverit. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.28.35.2: Imperator Justinianus

Et generaliter definimus, quando pater minus legitima portione filio reliquerit vel aliquid dederit vel mortis causa donatione vel inter vivos sub ea condicione , ut haec inter vivos donatio in quartam ei computetur, si filius post obitum patris hoc quod relictum vel datum est simpliciter agnoverit, forte et securitatem heredibus fecerit quod ei relictum est accepisse, non adiciens nullam sibi superesse de repletione quaestionem, nullum filium sibi facere praeiudicium, sed legitimam partem repleri, nisi hoc specialiter sive in apocha sive in transactione scripserit vel pactus fuerit, quod contentus relicta vel data parte de eo quod deest nullam habet quaestionem: tunc etenim omni exclusa querella paternum amplecti compellitur iudicium. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.28.35.3: Imperator Justinianus

Quae omnis sanctio suas radices extendat non solum ad filium vel filiam, sed etiam ad omnes personas, quae de inofficioso querellam contra mortuorum ultima elogia possunt movere. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.28.36pr.: Imperator Justinianus

Scimus ante constitutionem fecisse, qua cautum est, si pater minorem debita portionem filio suo reliquisset, omnimodo, etsi non adiciatur viri boni arbitratu repleri filio, attamen ipso iure inesse eandem repletionem. * iust. a. iohanni pp. * <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.28.36.1: Imperator Justinianus

Quaerebatur itaque, si quis rem donatam vel inter vivos vel mortis causa vel in testamento relictam agnoverit et pro parte sua habuerit, deinde eadem res evicta vel tota vel pro parte fuerit, an debeat ex nostra constitutione pars legitima post evictionem suppleri: vel si ex lege falcidia minuantur legata vel fideicommissa vel mortis causa donationes, debet tamen ex hoc casu supplementum introduci: ne, dum totam falcidiam accipere heres nititur, etiam totum commodum hereditatis amittat. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.28.36.1a: Imperator Justinianus

Sancimus itaque in omnibus istis casibus, sive in totum evictio subsequatur sive in partem, emendari vitium et vel aliam rem vel pecunias restitui vel repletionem fieri, nulla falcidia interveniente, ut, sive ab initio minus fuerit derelictum sive extrinsecus qualiscumque causa interveniens aliquod gravamen imponat vel in quantitate vel in tempore, hoc modis omnibus repleri et nostrum iuvamen purum filiis inferri. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.28.36.1b: Imperator Justinianus

Repletionem autem fieri ex ipsa substantia patris, non si quid ex aliis causis filius lucratus est vel ex substitutione vel ex iure adcrescendi, puta usus fructus: humanitatis etenim gratia sancimus ea quidem omnia quasi iure adventicio eum lucrari, repletionem autem ex rebus substantiae fieri. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.28.36.1c: Imperator Justinianus

Cum autem quis extraneo herede instituto filio suo restituere eum hereditatem suam, cum moriatur, disposuerit, vel in tempus certum restitutionem distulerit, quia nostra constitutio, quae antea posita est, omnem dilationem omnem moram censuit esse abstrahendam, ut quarta pars pura et mox filio restituatur, in huiusmodi specie quid faciendum sit, dubitabatur. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.28.36.1d: Imperator Justinianus

Sancimus itaque quartae quidem partis restitutionem iam nunc celebrari non expectata nec morte heredis nec temporis intervallo, reliquim autem, quod post legitimam portionem restat, tunc restitui, quando testator disposuit. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.28.36.1e: Imperator Justinianus

Sic etenim filius suam habebit portionem integram et qualem leges et nostra constitutio definivit, et scriptus heres commodum quod ei testator dereliquit cum legitimo moderamine sentiet. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.28.36.2: Imperator Justinianus

Illud praeterea sancimus, ut tempora de inofficiosi querellae ab adita hereditate secundum ulpiani opinionem currant, herennii modestini sententia recusata, qui a morte testatoris ilico cursum de inofficioso querellae temporibus dabat, ut non liceat heredi quando voluerit adire, ne per huiusmodi tramitem iterum filius defraudetur debito naturali. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.28.36.2a: Imperator Justinianus

Sancimus itaque, ubi testator decesserit alio scripto herede et speratur de inofficioso querella, necessitatem habere scriptum heredem, si quidem praesto est in eadem commanens provincia, intra sex mensuum spatium, sin autem seorsum utraque pars in diversis provinciis degit, tunc intra annale tantummodo spatium simili modo per continuum a morte testatoris numerandum omnimodo adire huiusmodi hereditatem, vel manifestare suam sententiam, quod hereditatem minime admittit: expeditus etenim ita tractatus inducitur filio memoratam movere querellam: sin vero scriptus heres intra statuta tempora minime adierit, per officium quidem iudicis scriptum compelli hoc facere. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.28.36.2b: Imperator Justinianus

In medio tamen, id est a morte quidem testatoris, ante aditam autem hereditatem, etsi decesserit filius, huiusmodi querellam, licet non se praeparavit, ad suam posteritatem transmittet, ad extraneos vero heredes tunc tantummodo, quando antiquis libris insertam faciat praeparationem. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.28.37pr.: Imperator Justinianus

Cum antiquis legibus declaratum est, ut militaria testamenta de inofficioso querellam evadant, multi alii casus emergunt, in quibus dubitationes exortas sopiri necesse est. * iust. a. iohanni pp. * <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv cc.>

CJ.3.28.37.1: Imperator Justinianus

In castrensibus etenim peculiis introducta est et alia subdivisio et peculii triplex invenitur causa. vel enim paganum est peculium vel castrense vel quod medietatem inter utrumque obtinet, quod quasi castrense nuncupatur. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv cc.>

CJ.3.28.37.1a: Imperator Justinianus

In tali igitur peculio, quod quasi castrense appellatur, quibusdam personis licentia conceditur condere quidem testamenta, sed non quasi militibus pro voluerint modo, sed communi et licito et consueto ordine observando, quemadmodum constitutum fuerat in consulibus et praefectis legionum et praesidibus provinciarum et omnibus generaliter, qui in diversis dignitatibus vel administrationibus positi a nostra consequuntur manu vel ex publicis salariis quasdam largitates. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv cc.>

CJ.3.28.37.1b: Imperator Justinianus

Sed hae quidem personae testamenti faciendi habent potestatem in ipsis tamen tantummodo peculiis, quae iam enumerata sunt, id est quasi castrensibus. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv cc.>

CJ.3.28.37.1c: Imperator Justinianus

Sed et veterani, qui tempore quidem militiae sibi peculium adquisierunt, militiam autem deposuerunt, testari (licito tamen modo) non prohibentur. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv cc.>

CJ.3.28.37.1d: Imperator Justinianus

In his itaque omnibus quasi castrensibus peculiis dubitabatur, si contra huiusmodi testamenta de inofficioso querellam extendi oportet. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv cc.>

CJ.3.28.37.1e: Imperator Justinianus

Sed prior quaestio erat, si omnes qui quasi castrense peculium habent testari in hoc possint, quia non omnibus passim, sed quibusdam personis hoc privilegii loco concessum est: quia militibus quidem et veteranis testamenta facere in castrensi peculio undique concessum fuerat, sed militibus quidem in expeditione constitutis iure suo, veteranis autem iure communi: de aliis autem personis omnibus, quae non per speciale privilegium hoc acceperunt, si possint testari, dubitatum fuerat, ut puta viris disertissimis patronis causarum virisque devotissimis memorialibus et agentibus in rebus nec non magistris studiorum liberalium, archiatris quoque et omnibus omnino, qui salaria vel stipendia percipiunt publica. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv cc.>

CJ.3.28.37.1f: Imperator Justinianus

In his itaque omnibus sancimus, quia ad imitationem peculii castrensis quasi castrense peculium supervenit, omnibus, qui tale peculium possident, super ipsis tantummodo rebus, quae quasi castrensis peculii sunt, ultima condere (secundum leges tamen) posse elogia: hoc nihilo minus eis addito privilegio, ut neque eorum testamenta de inofficioso querella expugnentur. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv cc.>

CJ.3.28.37.1g: Imperator Justinianus

Si enim patronus adversus res, quas libertus eius ex castris quaesivit sui iuris indubitanter constitutus, praeteritus fuerit ab ingrato liberto, tamen contra eiusmodi peculium contra tabulas bonorum possessionem non habet secundum veterum legum sanctionem, quemadmodum oportet praefata peculia, quae ad instar castrensis peculii introducta sunt, de inofficioso querellae esse supposita? <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv cc.>

CJ.3.28.37.2: Imperator Justinianus

Sed haec obtinere oportet, donec in sacris parentum suorum constituti sunt hi qui quasi castrense peculium possident. si enim sui iuris efficiantur, procul dubio est eorum testamenta et pro ipsis rebus, quas antea ex quasi castrensi peculio habebant, posse de inofficioso querellam sustinere, cum neque nomen peculii permanet, sed aliis rebus confunditur et similem fortunam recipit, quemadmodum et ceterae res eorum, et unum congregatur ex omnibus patrimonium. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv cc.>

CJ.3.29.0. De inofficiosis donationibus.

CJ.3.29.1: Imperator Philippus

Si, ut adlegatis, mater vestra ad deludendam inofficiosi querellam paene universas facultates suas, dum ageret in rebus humanis, factis donationibus sive in quosdam liberos sive in extraneos exhausit ac postea vos ex duabus unciis fecit heredes easque legatis et fideicommissis exinanire gestivit, non iniuria iuxta formam super inofficioso testamento constitutorum subveniri vobis utpote quartam partem non habentibus desideratis. * philipp. a. nicanori et papinianae. * <a 245 pp. xiiii k. sept. philippo a. et titiano conss.>

CJ.3.29.2: Imperatores valer., gallien.

Pater si omne patrimonium suum impetu quodam immensae liberalitatis in filium effudit, aut in potestate is permansit, et arbitri familiae erciscundae officio congruit, ut tibi quartam debitae ab intestato portionis praestet incolumen, aut emancipatus fuerit, et, quia donatio non indiget alieno adminiculo, sed suis viribus nititur, iuxta constitutiones is qui provinciam regit ad similitudinem inofficiosi querellae auxilium tibi aequitatis impertiet. * valer. et gallien. aa. aetiae. * <a 256 pp. vi k. aug. maximo ii et glabrione conss.>

CJ.3.29.3: Imperatores valer., gallien.

Precibus quidem tuis proposita rescripta eos parentes denotant, qui, cum testamento facto vivi patrimonium suum immensis donationibus exinanissent, inane nomen heredum liberis reliquissent. sed ad intestatos quoque eadem ratio aequitatis extenditur. * valer. et gallien. aa. aeliano. * <a 257 pp. x k. nov. ipsis iiii et iii aa. conss.>

CJ.3.29.4: Imperatores Diocletianus, Maximianus

Si filius tuus immoderatae liberalitatis effusione patrimonium suum exhausit, praesidis provinciae auxilio uteris, qui discussa fide veri, si in integrum restitutionem ex filii persona competere tibi ob improbabilem donationis enormitatem animadverterit, in removendis his quae perperam gesta sunt tibi subveniet. ideoque non est tibi necessarium adversus immodicas donationes auxilium ad instar inofficiosi testamenti. * diocl. et maxim. aa. calpurniae aristaenetae. * <a 286 pp. iiii id. febr. mediolani maximo ii et aquilino conss.>

CJ.3.29.5: Imperatores Diocletianus, Maximianus

Si totas facultates tuas per donationes vacuefecisti, quas in emancipatos filios contulisti, id, quod ad submovendas inofficiosi testamenti querellas non ingratis liberis relinqui necesse est, ex factis donationibus detractum, ut filii vel nepotes, qui postea ex quocumque legitimo matrimonio nati sunt, debitum bonorum subsidium consequantur, ad patrimonium tuum revertetur. * diocl. et maxim. aa. cottabeo. * <a 286 d. ii k. mart. maximo ii et aquilino conss.>

CJ.3.29.6: Imperatores Diocletianus, Maximianus

Cum donationibus in fratrem tuum collatis facultates patris tui exhaustas esse eundemque patrem vestrum ea quae superfuerant codicillis inter vos divisisse proponas, si voluntatem eius non agnovisti nec beneficio aetatis adversus haec iuvari poteris nec tantum dos a patre data et fideicommissum continent, quantum ad submovendam querellam sufficiat, de enormitate donationum ad exemplum inofficiosi testamenti praeses provinciae iurisdictionis suae partes exhibebit. * diocl. et maxim. aa. demetrianae. * <a 286 pp. vi k. mai. conss. ut supra.>

CJ.3.29.7: Imperatores Diocletianus, Maximianus

Si mater tua ita patrimonium suum profunda liberalitate in fratrem tuum evisceratis opibus suis exhausit, ut quartae partis dimidium, quod ad excludendam inofficiosi testamenti querellam adversus te sufficeret, in his donationibus quas tibi largita est non habeas, quod immoderate gestum est revocabitur. * diocl. et maxim. aa. aurelio ammiano. * <a 286 pp. v id. mai. maximo ii et aquilino conss.>

CJ.3.29.8pr.: Imperatores Diocletianus, Maximianus

Si liqueat matrem tuam intervertendae quaestionis inofficiosi causa patrimonium suum donationibus in unum filium collatis exhausisse, cum adversus eorum cogitationes, qui consiliis supremum iudicium anticipare contendunt et actiones filiorum exhauriunt, aditum querellae ratio deposcat, quod donatum est pro ratione quartae ad instar inofficiosi testamenti convicti deminuetur. * diocl. et maxim. aa. auxanoni. * <a 294 pp. iii id. sept. cc. conss.>

CJ.3.29.8.1: Imperatores Diocletianus, Maximianus

Nam quod uxor a marito in se matrimonii tempore donationis causa collatum emancipato filio communi consentiente domino donavit, velut ex bonis patris, de cuius substantia prohibente matrimonio non potuit exire, datum accipi rationis est: in cuius bonis si idem consilium et eventus comprehendatur, lex, quam patrimonio matris ediximus, observabitur. <a 294 pp. iii id. sept. cc. conss.>

CJ.3.29.9: Imperator Constantius

Non convenit dubitari, quod immodicarum donationum omnis querella ad similitudinem inofficiosi testamenti legibus fuerit introducta et sit in hoc actionis utriusque vel una causa vel similis aestimanda vel idem et temporibus et moribus. * consius. a. olybrio. * <a 361 d. xiiii k. iun. tauro et florentio conss.>

CJ.3.30.0. De inofficiosis dotibus.

CJ.3.30.1: Imperator Constantius

Cum omnia bona a matre tua dote dicantur exhausta, concordare legibus promptum est, ut ad exemplum inofficiosi testamenti adversus dotem immodicam exercendae actionis copia tribuatur et filiis conquerentibus emolumenta debita deferantur. * constantius a. ad maximum praes. ciliciae. * <a 358 d. xiiii k. ian. sirmio datiano et cereale conss.>

CJ.3.31.0. De petitione hereditatis.

CJ.3.31.1pr.: Imperator t. ael. ant.

Senatus consultum auctore divo hadriano avo meo factum, quo cautum est, quid et ex quo tempore evicta hereditate restitui debeat, non solum ad fisci causas, sed etiam ad privatos hereditatis petitores pertinet. * t. ael. ant. a. augurino procons. africae. * <a 170 pp. vi k. febr. claro et cethego conss.>

CJ.3.31.1.1: Imperator t. ael. ant.

Usuras vero pecuniarum ante litis contestationem ex die venditionis hereditarium rerum ab eo factae qui antea possidebat collectas nec non etiam fructus bonae fidei possessores reddere cogendi non sunt, nisi ex his locupletiores extiterunt. <a 170 pp. vi k. febr. claro et cethego conss.>

CJ.3.31.1.2: Imperator t. ael. ant.

Post litem autem contestatam tam fructus non venditarum rerum, non solum quos perceperunt, sed etiam quos percipere poterant, quam usuras pretii rerum ante litis contestationem venditarum ex die contestationis computandas omnimodo reddere compellantur. <a 170 pp. vi k. febr. claro et cethego conss.>

CJ.3.31.2pr.: Imperatores Severus, Antoninus

Si post motam controversiam menecratis bonorum partem dimidiam musaeus ab herede scripto quaestionis illatae non ignarus comparavit, tam ipse quasi malae fidei possessor quam heredes eius fructus restituere coguntur. * sev. et ant. aa. Marcello mil. * <a 200 d. k. iul. severo a. ii et victorino conss.>

CJ.3.31.2.1: Imperatores Severus, Antoninus

Si vero venditionem lite antiquiorem esse liquido probaretur, ex eo die fructus restituantur, ex quo lis in iudicium deducta est. fructibus enim augetur hereditas, cum ab eo possidetur, a quo peti potest. <a 200 d. k. iul. severo a. ii et victorino conss.>

CJ.3.31.2.2: Imperatores Severus, Antoninus

Emptor autem, qui proprio titulo possessionis munitus non est, etiam singularum rerum iure convenitur. <a 200 d. k. iul. severo a. ii et victorino conss.>

CJ.3.31.3: Imperatores Severus, Antoninus

Hereditas materterae petita non infringit alterius hereditatis petitionem, quae venit ex alia successione. sed et si quaestionis titulus prior inofficiosi testamenti causam habuisset, iudicatae rei praescriptio non obstaret eandem hereditatem ex alia causa vindicanti. * sev. et ant. aa. epictae. * <a 205 pp. v id. aug. geta ii cons.>

CJ.3.31.4: Imperator Antoninus

In restituenda hereditate compensatio eius habebitur, quod te in mortui infirmitate in sumptumque funeris bona fide ex proprio tuo patrimonio erogasse probaveris. * ant. a. vitaliano. * <a 213 pp. vii k. mart. antonino a. iiii et balbino conss.>

CJ.3.31.5: Imperator Antoninus

De hereditate, quam bona fide possidebas, si contra te pronuntiatum est, in restitutione eius detrahetur, quod creditoribus eiusdem hereditatis exsolvisse te bona fide probaveris: nam repeti a creditoribus, qui suum receperint, non potest. * ant. a. postumianae. * <a 213 pp. vi k. iun. antonino a. iiii et balbino conss.>

CJ.3.31.6: Imperator Alexander Severus

Si putas non iure tutores datos nepotibus tuis, quod eos dicas in potestate tua esse, petere ab his hereditatem filii tui emancipati non moreris, cuius commodum ad te pertinere dicis, iudice statuturo, an a praesidalibus actis discedendum sit, qui eis tutores dedit, cum in tua potestate negarentur esse. * alex. a. firmino. * <a 224 pp. x k. iul. iuliano et crispino conss.>

CJ.3.31.7pr.: Imperatores Diocletianus, Maximianus

Hereditatis petitionem, quae adversus pro herede vel pro possessore possidentes exerceri potest, praescriptione longi temporis non submoveri nemini incognitum est, cum mixtae personalis actionis ratio hoc respondere compellat. * diocl. et maxim. aa. et cc. restitutae. * <a 294 pp. xi k. aug. cc. conss.>

CJ.3.31.7.1: Imperatores Diocletianus, Maximianus

A ceteris autem tantum specialibus in rem actionibus vindicari posse manifestum est, si non agentis intentio per usucapionem vel longum tempus explosa sit. <a 294 pp. xi k. aug. cc. conss.>

CJ.3.31.8: Imperatores Diocletianus, Maximianus

Liber nec ne fuerit testator, ante omnia disquiri debet, cum hereditas petatur. * diocl. et maxim. aa. et cc. aurelio asterio. * <a 294 d. iii k. april. cc. conss.>

CJ.3.31.9: Imperatores Diocletianus, Maximianus

Si scripti delatam sibi successionem cognati repudiaverunt et hanc honorario vel civili iure quaesiisti, res hereditarias, quae in eadem causa durant, hereditatis petitione vindicare potes. * diocl. et maxim. aa. et cc. demophiliae. * <a 294 d. iii k. dec. nicomediae cc. conss.>

CJ.3.31.10: Imperatores Diocletianus, Maximianus

Si filius familias delatam sibi hereditatem per longum tempus detinuit, eo ipso utpote agnita hereditate patri suo eius commodum adquisiisse videtur. * diocl. et maxim. aa. et cc. theodotiano. * <a 294 d. xiii k. ian. cc. conss.>

CJ.3.31.11: Imperatores Arcadius, Honorius

Cogi possessorem ab eo qui expetit titulum suae possessionis edicere incivile est praeter eum, qui dicere cogitur, utrum pro possessore an pro herede possideat. * arcad. et honor. aa. aeternali procons. asiae. * <a 396 d. xii k. april. constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.3.31.12pr.: Imperator Justinianus

Cum hereditatis petitioni locus fuerat, exceptio adsumebatur, quae tuebatur hereditatis petitionem, ne fieret ei praeiudicium. magnitudo etenim et auctoritas centumviralis iudicii non patiebatur per alios tramites viam hereditatis petitionis infringi. * iust. a. iohanni pp. * <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.31.12.1: Imperator Justinianus

Cumque multae varietates et controversiae veterum exortae sunt, eas certo fine concludentes sancimus, si quis hereditatis petitionem vel susceperit vel suscipere sperat vel movere, alius autem superveniens vel ex deposito vel commodato vel legato vel ex fideicommisso vel ex aliis causis inquietare vel reum vel agentem ex persona defuncti crediderit sibi esse necessarium, si quidem pro legato vel fideicommisso hoc faciat, rem expeditae quaestionis esse, cum possit scriptus heres cautione interposita non differre hanc petitionem, sed recte exigi vel legatum vel fideicommissum sub cautela vel satisdatione pro qualitate personarum , quod, si non obtinuerint eius iura, restituet legatarius vel fideicommissarius ei datam pecuniam cum usuris ex quarta centesimae parte currentibus, vel agrum cum fructibus quos percepit, vel domum cum pensionibus , scilicet in utroque eorum expensis antea necessariis et utilibus deductis: vel si ipse maluerit litem quidem contestari, expectare autem hereditatis petitionis eventum, hoc ei liceat facere, ut restitutio, si competeret, cum legitimis augmentis legatario vel fideicommissario accedat. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.31.12.1a: Imperator Justinianus

Sin autem ex contractibus defuncti agatur contra possessorem hereditatis vel eius rei de qua agitur, si quidem res sint vel depositae vel commodatae vel pignori datae vel aliae quae extant, non differri sub praetextu hereditatis petitionis memoratum iudicium, quemadmodum, si pro fenerata pecunia vel alia personali actione agatur contra possessorem vel petitorem, non debet iudicium differri, sed exitum suum accipere. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.31.12.1b: Imperator Justinianus

Postquam etenim hereditatis petitionis iudicium finem accipiat, tunc inter petitorem hereditatis et possessorem rationibus contractis non aliter possessor, si victus fuerit, hereditatem restituere compellitur, nisi pro omnibus quae rite ab eo gesta sunt petitor ei satisfaciat. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.31.12.1c: Imperator Justinianus

Quod si petitor fuerit victus, simili modo a possessore iudicis officio ei satisfiat vel, si hoc fuerit praetermissum, negotiorum gestorum vel ex lege condictione. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.31.12.2: Imperator Justinianus

Sin autem libertates vel a possessore vel a petitore fideicommissariae petantur vel directae ipso iure dicantur competere, annale tantummodo spatium expectetur a morte testatoris numerandum. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.31.12.2a: Imperator Justinianus

Et si quidem hereditatis petitionis iudicium intra id spatium terminum accipiat, secundum eventum iudicii et libertates vel effectum habeant vel evanescant. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.31.12.2b: Imperator Justinianus

Sin autem tempus annale emanaverit, tunc libertatis favore et humanitatis intuitu competant quidem directae libertates, ex fideicommissariis autem in libertatem servi eripiantur, ita tamen, si non falsum testamentum approbetur: sub ea scilicet condicione, ut, si actores sint vel alias ratiociniis suppositi, et postquam perveniant in libertatem, necessitas eis imponatur res hereditarias et rationes reddere: iure patronatus videlicet competente ei, qui ex legibus ad id possit vocari. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.31.12.3: Imperator Justinianus

Illo, ne in posterum dubitetur, observando, ut et ipsa hereditatis petitio omnimodo bonae fidei iudiciis connumeretur. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.32.0. De rei vindicatione.

CJ.3.32.1pr.: Imperatores Severus, Antoninus

Etiam per alienum servum bona fide possessum ex re eius qui eum possidet vel ex operis servi adquiri dominium vel obligationem placuit. quare tu quoque si bona fide possedisti eundem servum et ex nummis tuis mancipia eo tempore comparavit, potes secundum iuris formam uti defensionibus tuis. * sev. et ant. aa. caeciliae. * <a 210 pp. iii non. mai. eboraci faustino et rufo conss.>

CJ.3.32.1.1: Imperatores Severus, Antoninus

Mancipium autem alienum mala fide possidenti nihil potest adquirere, sed qui tenet non tantum ipsum, sed etiam operas eius nec non ancillarum partum et animalium fetus reddere cogitur. <a 210 pp. iii non. mai. eboraci faustino et rufo conss.>

CJ.3.32.2pr.: Imperatores Severus, Antoninus

Si inferiorem partem aedificii, quae solum contingit, ad te pertinere probare potes, eam, quam vicinus imposuit, accessisse dominio tuo non ambigitur. * sev. et ant. aa. aristaeneto. * <a 213 pp. xii k. nov. antonino a. iiii et balbino conss.>

CJ.3.32.2.1: Imperatores Severus, Antoninus

Sed et id, quod in solo tuo aedificatum est, quoad in eadem causa manet, iure ad te pertinet. si vero fuerit dissolutum, materia eius ad pristinum dominium redit, sive bona fide sive mala fide aedificium extructum sit, si non donandi animo aedificia alieno solo imposita sint. <a 213 pp. xii k. nov. antonino a. iiii et balbino conss.>

CJ.3.32.3pr.: Imperator Alexander Severus

Mater tua vel maritus fundum tuum invita vel ignorante te vendere iure non potuit, sed rem tuam a possessore vindicare etiam non oblato pretio poteris. * alex. a. domninae. * <a 222 pp. iii k. nov. alexandro a. cons.>

CJ.3.32.3.1: Imperator Alexander Severus

Sin autem postea de ea venditione consensisti vel alio modo proprietatem eius amisisti, adversus emptorem quidem nullam habes actionem, adversus venditricem vero de pretio negotiorum gestorum exercere non prohiberis. <a 222 pp. iii k. nov. alexandro a. cons.>

CJ.3.32.4: Imperator Gordianus

Adversus eos, qui a malae fidei possessoribus fundum bona fide comparaverunt, ita tibi actio competit, si prius, quam usucapionem implerent vel longae possessionis praescriptionem adipiscerentur, dominium ad te pervenerit. * gord. a. muniano mil. * <a 238 pp. xii k. nov. pio et pontiano conss.>

CJ.3.32.5pr.: Imperator Gordianus

Domum, quam ex matris successione ad te pertinere et ab adversa parte iniuria occupatam esse ostenderis, praeses provinciae cum pensionibus quas percepit aut percipere poterat et omni causa damni dati restitui iubebit. * gord. a. herasiano. * <a 239 pp. ii id. febr. gordiano a. et aviola conss.>

CJ.3.32.5.1: Imperator Gordianus

Eius autem quod impendit rationem haberi non posse merito rescriptum est, cum malae fidei possessores eius quod in rem alienam impendunt, non eorum negotium gerentes quorum res est, nullam habeant repetitionem, nisi necessarios sumptus fecerint: sin autem utiles, licentia eis permittitur sine laesione prioris status rei eos auferre. <a 239 pp. ii id. febr. gordiano a. et aviola conss.>

CJ.3.32.6: Imperator Gordianus

Si ea pecunia quam deposueras is apud quem collocata fuerat sibi possessiones comparavit ipsique traditae sunt, tibi vel omnes tradi vel quasdam compensationis causa ab invito eo in te conferri iniuriosum est. * gord. a. austronio mil. * <a 239 pp. v id. iul. gordiano a. et aviola conss.>

CJ.3.32.7: Imperator Philippus

Partum ancillae matris sequi condicionem nec statum in hac specie patris considerari explorati iuris est. * philipp. a. et philipp. c. aurelio antonio. * <a 245 pp. xiiii k. nov. philippo a. et titiano conss.>

CJ.3.32.8: Imperator Philippus

Si, ut proponis, pars diversa pecunia tua quaedam nomine suo comparavit, praeses provinciae utilem vindicationem obtentu militiae tibi eo nomine impertiri desideranti partes aequitatis non negabit. idem mandati quoque seu negotiorum gestorum actionem inferenti tibi iurisdictionem praebebit. * philipp. a. et c. philippo mil. * <a 246 pp. ii non. mart. praesente et albino conss.>

CJ.3.32.9: Imperatores carus, carinus, numer.

Doce ancillam, de qua supplicas, dotalem fuisse in notione praesidis: quo patefacto indubium erit vindicari ab uxore tua nequivisse. * carus carinus et numer. aaa. antonio. * <a 283 pp. iii k. mart. caro et carino aa. conss.>

CJ.3.32.10: Imperatores Diocletianus, Maximianus

Cum super vernis mancipiis nulla instrumenta te habere adseveres, in iudicio, in quo negotium coeptum esse proponitur, id quod in precem contulisti postulare debuisti. iudex enim non ignorat servorum dominia etiam citra instrumentorum exhibitionem aliis probationibus vel ipsorum interrogatione posse ostendi. * diocl. et maxim. aa. ianuario. * <a 290 pp. viii id. febr. ipsis iiii et iii aa. conss.>

CJ.3.32.11pr.: Imperatores Diocletianus, Maximianus

Si quis sciens agrum alienum sevit vel plantas imposuit, postquam eae radicibus terram fuerint amplexae, solo cedere rationis est. domini enim magis segetem vel plantas quam per huiusmodi factum solum suum facit. * diocl. et maxim. aa. et cc.Gaiano. * <a 293 d. iiii k. mart. sirmi aa. conss.>

CJ.3.32.11.1: Imperatores Diocletianus, Maximianus

Sane eum, qui bona fide possidens haec fecerit, per doli mali exceptionem contra vindicantem dominium servare sumptus iuris auctoritate significatum est. <a 293 d. iiii k. mart. sirmi aa. conss.>

CJ.3.32.12: Imperatores Diocletianus, Maximianus

Incivile atque inusitatum est quod postulas, ut mancipium, quod tradidisti et hoc modo dominium eius transtulisti, invito eo ex nostro rescripto tibi adsignetur. unde intellegis semel ancilla emptoris facta filios etiam postea natos eius dominium sequi, cuius mater eorum eo tempore fuit. sane de pretio, si non te hoc probatum fuerit recepisse, conveni adversarium tuum. * diocl. et maxim. aa. et cc. alexandro. * <a 293 d. vi id. april. aa. conss.>

CJ.3.32.13: Imperatores Diocletianus, Maximianus

Ordinarii iuris est, ut mancipiorum orta quaestione prius exhibitis mancipiis de possessione iudicetur ac tunc demum proprietatis causa ab eodem iudice decidatur. * diocl. et maxim. aa. et cc. eytychio. * <a 293 d. id. april. aa. conss.>

CJ.3.32.14: Imperatores Diocletianus, Maximianus

Cum a matre domum filii te sciente comparasse proponas, adversus eum dominium vindicantem, si matri non successit, nulla te exceptione tueri potes. quod si venditricis obtinet hereditatem, doli mali exceptione, pro qua portione ad eum hereditas pertinet, uti non prohiberis. * diocl. et maxim. aa. et cc. septimae. * <a 293 d. iii k. iul. aa. conss.>

CJ.3.32.15pr.: Imperatores Diocletianus, Maximianus

Quotiens duobus in solidum praedium iure distrahitur, manifesti iuris est eum, cui priori traditum est, in detinendo dominio esse potiorem. * diocl. et maxim. aa. et cc. aurelio proculino. * <a 293 d. xv k. oct. aa. conss.>

CJ.3.32.15.1: Imperatores Diocletianus, Maximianus

Si igitur antecedenti tempore possessionem emisse ac pretium exsolvisse apud praesidem provinciae probaveris, obtentu non datorum instrumentorum expelli te possessione non patietur. <a 293 d. xv k. oct. aa. conss.>

CJ.3.32.15.2: Imperatores Diocletianus, Maximianus

Erit sane in arbitrio tuo pretium quod dedisti cum usuris recipere, ita tamen, ut perceptorum fructuum et sumptuum ratio habeatur: cum et si ex causa donationis utrique dominium rei vindicetis, eum, cui priori possessio soli tradita est, haberi potiorem convenit. <a 293 d. xv k. oct. aa. conss.>

CJ.3.32.16: Imperatores Diocletianus, Maximianus

Si in area communi domum aliquis extruxit, hanc vobis communem iuris fecit ratio. cuius portionem ab eo, qui bona fide possidens aedificavit, si velis vindicare, sumptus offerre debes, ne doli mali possis exceptione submoveri. * diocl. et maxim. aa. et cc. ianuario. * <a 293 d. id. nov. sirmi aa. conss.>

CJ.3.32.17: Imperatores Diocletianus, Maximianus

Si fundum vestrum, vobis per denuntiationem admonentibus volentem ad emptionem accedere, quod distrahentis non fuerit, non recte is contra quem preces funditis comparavit vel alio modo mala fide contraxit, tam fundum vestrum constitutum probantibus quam fructus, quos eum mala fide percepisse fuerit probatum, aditus praeses provinciae restitui iubebit. * diocl. et maxim. aa. et cc. sabino. * <a 293 d. xii k. dec. sirmi aa. conss.>

CJ.3.32.18: Imperatores Diocletianus, Maximianus

Re tua apud aliquem manente proprietatis error nihil tibi nocere potuit, nisi alia contra te causa intervenerit. * diocl. et maxim. aa. et cc. claro. * <a 293 d. viiii k. ian. aa. conss.>

CJ.3.32.19: Imperatores Diocletianus, Maximianus

Indicia cetera, quae iure non respuuntur, non minorem probationis quam instrumenta continent fidem: quo iure, si de proprietate domus ambigis negotiumque integrum est, uti non prohiberis. * diocl. et maxim. aa. et cc. callistrato. * <a 293 viii k. ian. sirmi. aa. conss.>

CJ.3.32.20: Imperatores Diocletianus, Maximianus

Non servum, quem res tuas detinere adseveras, sed eius dominum de rebus repetendis conveniendum esse perspicis. * diocl. et maxim. aa. et cc. quartillae. * <a 294 vi k. mart. cc. conss.>

CJ.3.32.21: Imperatores Diocletianus, Maximianus

A possidentibus vindicata mancipia, quorum dominium ad vos pertinere intenditis, si, posteaquam impleveritis intentionem, haec non restituantur, iurisiurandi sollemnitate secuta condemnatio procedere debet. * diocl. et maxim. aa. et cc. herodi. * <a 294 d. vi id. oct. cc. conss.>

CJ.3.32.22: Imperatores Diocletianus, Maximianus

Certum est mala fide possessores omnes fructus solere cum ipsa re praestare, bona fide vero extantes, post litis autem contestationem universos. * diocl. et maxim. aa. et cc. diodoto. * <a 294 d. iii k. nov. cc. conss.>

CJ.3.32.23: Imperatores Diocletianus, Maximianus

Si mancipium tuum per vim vel furtum ablatum alii ex nulla iusta causa distraxerunt, vindicanti tibi dominium solvendi pretii nulla necessitas inrogatur. * diocl. et maxim. aa. et cc. magnifero. * <a 294 d. xvi k. dec. cc. conss.>

CJ.3.32.24: Imperatores Diocletianus, Maximianus

Nullo iusto titulo praecedente possidentes ratio iuris quaerere prohibet dominium. idcirco cum etiam usucapio cesset, intentio dominii non absumitur: unde hoc casu postliminio reverso citra beneficium actionis rescissoriae directa permanet integra vindicatio. * diocl. et maxim. aa. et cc. iuliano. * <a 294 d. xvi k. dec. cc. conss.>

CJ.3.32.25: Imperatores Diocletianus, Maximianus

Sollemnibus pensionibus rei pro alio satisfacientem non interveniente venditione solutionis causa minime dominum facit. * diocl. et maxim. aa. et cc. eugnomio. * <a 294 d. xvi k. dec. nicomediae cc. conss.>

CJ.3.32.26: Imperatores Diocletianus, Maximianus

Morae litis causam possessoris non instruunt ad inducendam longae possessionis praescriptionem, quae post litem contestatam in praeteritum aestimatur. * diocl. et maxim. aa. et cc. heliodoro. * <a 294 d. x id. dec. cc. conss.>

CJ.3.32.27: Imperatores Diocletianus, Maximianus

Servum emptor non traditum sibi praesentem vindicare non potest. * diocl. et maxim. aa. et cc. philadelpho. * <a 294 d. xviii k. ian. nicomediae cc. conss.>

CJ.3.32.28: Imperatores Diocletianus, Maximianus

Res alienas possidens, licet iustam causam nullam habeat tenendi, non nisi suam intentionem implenti restituere cogitur. * diocl. et maxim. aa. et cc. sopatro. * <a 294 d. viii k. ian. cc. conss.>

CJ.3.33.0. De usu fructu et habitatione et ministerio servorum.

CJ.3.33.1: Imperatores Severus, Antoninus

Si usus fructus omnium bonorum testamento uxoris marito relictus est, quamvis cautionem a te prohibuerat exigi, tamen non aliter a debitoribus solutam pecuniam accipere poteris quam oblata secundum formam senatus consulti cautione. * sev. et ant. aa. posidonio. * <a 199 pp. vi k. oct. anullino et frontone conss.>

CJ.3.33.2: Imperatores Severus, Antoninus

Verbis testamenti, quae precibus inseruisti, usum fructum legatum tibi animadvertimus. quae res non impedit proprietatis dominum obligare creditori proprietatem, manente scilicet integro usu fructu tui iuris. * sev. et ant. aa. felici. * <a 205 pp. vi id. mai. antonino ii et geta ii conss.>

CJ.3.33.3pr.: Imperator Antoninus

Si patri tuo usus fructus legatus est, defuncto eo nihil ad te pertinet, cum morte eius, cui fuerat legatus usus fructus vel alio modo adquisitus, ad proprietatem regredi solet. * ant. a. antoniano. * <a 213 pp. iii k. aug. antonino a. iiii et balbino conss.>

CJ.3.33.3.1: Imperator Antoninus

Usufructuario autem superstite licet dominus proprietatis rebus humanis eximatur , ius utendi fruendi non tollitur. <a 213 pp. iii k. aug. antonino a. iiii et balbino conss.>

CJ.3.33.4: Imperator Alexander Severus

Usu fructu constituto consequens est, ut satisdatio boni viri arbitrio praebeatur ab eo, apud quem id commodum pervenit, quod nullam laesionem ex usu proprietati adferat. nec interest, sive ex testamento sive ex voluntario contractu usus fructus constitutus est. * alex. a. verbicio. * <a 226 pp. vi id. mart. alexandro a. ii et Marcello conss.>

CJ.3.33.5: Imperator Alexander Severus

Si pater usum fructum praediorum in tempus vestrae pubertatis matri vestrae reliquit, finito usu fructu postquam vos adolevistis, posterioris temporis fructus perceptos ab ea repetere potestis, quos nulla ratione sciens de alieno percepit. * alex. a. .. evocato et aliis.* <a 226 pp. k. april. alexandro a. ii et Marcello conss.>

CJ.3.33.6: Imperator Alexander Severus

Interest, usum fructum solum maritus tuus in dotem acceperit, an proprietas quidem doti data sit, verum pactum intercessit, ut moriente eo tibi eadem possessio redderetur. nam usufructuarius quidem proprietatem pignorare non potuit: qui autem proprietatem aestimatam in dotem accepit, non ideo minus obligare eam potuit, quoniam soluto matrimonio restituenda tibi aestimatio eius fuit. * alex. a. stratonicae. * <a 230 pp. k. iul. agricola et clemente conss.>

CJ.3.33.7: Imperator Gordianus

Eum, ad quem usus fructus pertinet, sarta tecta suis sumptibus praestare debere explorati iuris est. proinde si quid ultra quam impendi debeat erogatum potes docere, sollemniter reposces. * gord. a. ulpiano mil. * <a 243 pp. k. febr. arriano et papo conss.>

CJ.3.33.8: Imperatores Diocletianus, Maximianus

Neque fructuarium ad obtinendam proprietatem rerum, quarum usum fructum habet, neque successores eius ulla temporis ex ea causa tenentes praescriptio munit. * diocl. et maxim. aa. et cc. hieroni. * <a 293 vi k. iul. aa. conss.>

CJ.3.33.9: Imperatores Diocletianus, Maximianus

Usu fructu matri tuae praediorum et mancipiorum relicto tam alienatio quam manumissio interdicta est. sane mancipia, quorum testamento ministerium matri relictum est, cum in his dominium non habet, nec tradendo cuiquam nec manumittendo ad testatoris heredem pertinentia quicquam facit. * diocl. et maxim. aa. et cc. auxanusae. * <a 293 d. k. dec. aa. conss.>

CJ.3.33.10: Imperatores Diocletianus, Maximianus

Si domina proprietatis uxori tuae usum fructum locavit sub certa annua praestatione, morte conductricis ei quae locavit etiam utendi fruendi causa non est deneganda. * diocl. et maxim. aa. et cc. pomponio. * <a 293 d. xiii k. ian. sirmi aa. conss.>

CJ.3.33.11: Imperatores Diocletianus, Maximianus

Habitatio morte finitur: nec proprietatem qui habitationem habuit legando dominii vindicationem excludit. * diocl. et maxim. aa. et cc. claudio theodoto. * <a 294 subscripta iiii k. oct. viminaci cc. conss.>

CJ.3.33.12pr.: Imperator Justinianus

Ambiguitatem antiqui iuris decidentes sancimus, sive quis uxori suae sive alii cuicumque usum fructum reliquerit sub certo tempore, in quo vel filius eius vel quisquam alius pervenerit, stare usum fructum in annos, in quos testator statuit , sive persona, de cuius aetate compositum est, ad eam pervenerit sive non: neque enim ad vitam hominis respexit, sed ad certa curricula: nisi ipse cui usus fructus legatus sit ab hac luce fuerit subtractus: tunc etenim ad posteritatem usum fructum transmitti non est possibile, cum morte usum fructum penitus extingui iuris indubitati sit. * iust. a. iuliano pp. * <a 530 d. k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.33.12.1: Imperator Justinianus

Sin autem talis fuerit incerta condicio, 'donec in furore filius vel alius quisquam remanserit', vel in aliis similibus casibus, quorum eventus in incerto sit, si quidem resipuerit filius vel alius, pro quo hoc dictum est, vel condicio extiterit, usum fructum finiri: sin autem adhuc in furore is constitutus decesserit, tunc quasi in usufructuarii vitam eo relicto manere usum fructum apud eum. cum enim possibile erat usque ad omne vitae tempus usufructuarii non ad suam mentem venire furentem vel condicionem impleri, humanissimum est ad vitam eorum usum fructum extendi. quemadmodum etenim, si decesserit usufructuarius ante completam condicionem vel furorem finitum, extinguitur usus fructus, ita humanum est extendi eum in usufructuarii vitam, etsi antea decesserit furiosus vel alia co ndicio defecerit. <a 530 d. k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.33.13pr.: Imperator Justinianus

Cum antiquitas dubitabat usu fructu habitationis legato, et primo quidem cui similis est, utrumne usui vel usui fructui an neutri eorum, sed ius proprium et specialem naturam sortita est habitatio, postea autem si possit is cui habitatio legata est eandem locare vel dominium sibi vindicare, auctorum iurgium decidentes compendioso responso omnem huiusmodi dubitationem resecamus. * iust. a. iuliano pp. * <a 530 d. xviii k. oct. lampadio et oreste vv. cc. conss.>

CJ.3.33.13.1: Imperator Justinianus

Et si quidem habitationem reliquerit, ad humaniorem declinare sententiam nobis visum est et dare legatario etiam locationis licentiam. quid enim distat, sive ipse legatarius maneat sive alii cedat, ut mercedem accipiat? <a 530 d. xviii k. oct. lampadio et oreste vv. cc. conss.>

CJ.3.33.13.2: Imperator Justinianus

Et multo magis, si habitationis usum fructum reliquerit, cum et nimiae subtilitati satisfactum videatur etiam nomine usus fructus addito. <a 530 d. xviii k. oct. lampadio et oreste vv. cc. conss.>

CJ.3.33.13.3: Imperator Justinianus

In tantum etenim valere habitationem volumus, ut non antecellat usum fructum nec dominium habitationis speret legatarius, nisi specialiter evidentissimis probationibus ipse legatarius possit ostendere et dominium ei domus esse relictum: tunc enim voluntati testatoris per omnia oboediendum est. <a 530 d. xviii k. oct. lampadio et oreste vv. cc. conss.>

CJ.3.33.13.4: Imperator Justinianus

Quam decisionem locum habere censemus in omnibus modis, quibus habitatio constitui potest. <a 530 d. xviii k. oct. lampadio et oreste vv. cc. conss.>

CJ.3.33.14pr.: Imperator Justinianus

Antiquitas dubitabat, si quis fundum vel aliam rem cuidam testamento reliquerit, quatenus usus fructus apud heredem maneat, si huiusmodi constat legatum. * iust. a. iuliano pp. * <a 530 d. xv k. oct. lampadio et oreste vv. cc. conss.>

CJ.3.33.14.1: Imperator Justinianus

Et cum quidam inutile legatum esse existimabant, quia usus fructus numquam ad suam redit proprietatem, sed semper apud heredem remanet, et forsitan hoc existimabant, quia et secundus heres et deinceps successores unus esse videntur et non potest huiusmodi usus fructus secundum veterem distinctionem solitis modis extingui, alii autem huiusmodi legatum non esse respuendum existimaverunt: tales altercationes decidentes censemus et huiusmodi legatum firmum esse et talem usum fructum una cum herede finiri et illo moriente vel aliis legitimis modis eum amittente expirare. quare enim iste usus fructus sibi tale vindicat privilegium, ut generali interemptione usus fructus ipse solus excipiatur? quod ex nulla induci rationabili sententia manifestissimum est. <a 530 d. xv k. oct. lampadio et oreste vv. cc. conss.>

CJ.3.33.14.2: Imperator Justinianus

Et propter hoc et usum fructum finiri et ad proprietatem suam redire et utile esse legatum sancientes huiusmodi paucissimis verbis totam eorum ambiguitatem delevimus. <a 530 d. xv k. oct. lampadio et oreste vv. cc. conss.>

CJ.3.33.15pr.: Imperator Justinianus

Inter antiquam prudentiam dissensio incidit, si per servum usus fructus domino fuerit adquisitus et ex quibusdam casibus (multi enim rebus incidunt mortalibus)pars huiusmodi servi in alium pervenerit, utrum omnis usus fructus, qui antea per servum ad aliquem pervenerit, apud eum remaneat an totus tollatur vel ex parte deminuatur, ex parte autem apud eum resideat? * iust. a. iuliano pp. * <a 530 d. x k. oct. lampadio et oreste vv. cc. conss.>

CJ.3.33.15.1: Imperator Justinianus

Et super huiusmodi dubitatione tres sententiae vertebantur, una, quae dicebat ex particulari alienatione servi totum usum fructum deminui, alia in tantum usum fructum deminui, in quantum et servus alienatur, tertia, quae definiebat partem quidem servi posse alienari, usum fructum autem totum apud eum remanere, qui ante servum in solidum habebat. et in novissimam sententiam et summum auctorem iuris scientiae salvium iulianum esse invenimus. <a 530 d. x k. oct. lampadio et oreste vv. cc. conss.>

CJ.3.33.15.2: Imperator Justinianus

Nobis autem haec decidentibus placuit salvii iuliani admitti sententiam et aliorum qui in eadem fuerunt opinione, quibus humanius visum est non interemptionem usus fructus studiosam esse, sed magis retentionem, quatenus, etsi pars servi alienatur, tamen nec pars usus fructus depereat, sed maneat secundum suam naturam integer atque incorruptus et, quemadmodum et ab initio fixus est, ita conservetur ex huiusmodi casu nullo deterioratus modo. <a 530 d. x k. oct. lampadio et oreste vv. cc. conss.>

CJ.3.33.16pr.: Imperator Justinianus

Corruptionem usus fructus multiplicem esse veteribus placuit, vel morte usufructuarii vel capitis deminutione vel non utendo vel aliis quibusdam non ignotis modis. sed de usu fructu quidem hoc indubitatum fuerat: de personali autem actione, quae super usu fructu nascitur, sive in stipulationem usus fructus deductus sive ex testamento relictus est, dubitabatur, morte quidem usufructuarii et capitis deminutione et eam tolli omnibus concedentibus, non utendo autem, si per annum vel per biennium forsitan eundem usum fructum non petierit usufructuarius, si personalis actio tollitur, altercantibus. * iust. a. iuliano pp. * <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.33.16.1: Imperator Justinianus

Sed nos haec decidentes sancimus non solum actionem quae pro usu fructu nascitur , sed nec ipsum usum fructum non utendo cadere, nisi tantummodo morte usufructuarii et ipsius rei interitu, sed usum fructum, quem sibi aliquis adquisivit, hunc habeat, dum vivit, intactum, cum multae et innumerabiles causae rebus incidunt mortalibus, per quas homines iugiter detinere quod habent non possunt, et est satis durum per huiusmodi difficultates amittere quod semel possessum est, nisi talis exceptio usufructuario opponetur, quae, etiam si dominium vindicabat, poterat eum praesentem vel absentem excludere. <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.33.16.2: Imperator Justinianus

Sed nec per omnem capitis deminutionem huiusmodi detrimentum imminere nostris patimur subiectis. quare enim, si filius familias fuerit is qui usum fructum habet, forte ex castrensi peculio, ubi nec usus fructus adquiritur ei, possessum, per emancipationem eum amittat? sed secundum quod definitum est tunc eum tantummodo desinere, cum usufructuarius vel res pereat, et tantummodo eum cum anima vel rei substantia expirare, nisi praedictae exceptionis vigor reclamaverit. <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.33.16.3: Imperator Justinianus

Excepta videlicet tali capitis deminutione, quae vel libertatem vel civitatem romanam possit adimere: et tunc enim usus fructus omnimodo ereptus ad suam revertatur proprietatem. <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.33.17pr.: Imperator Justinianus

Ex libris sabinianis quaestio nobis relata est, per quam dubitabatur, si usus fructus per servum adquisitus vel per filium familias capitis deminutione filii magna vel media vel morte vel emancipatione vel servi quacumque alienatione vel morte vel manumissione potest adhuc remanere. * iust. a. iohanni pp. * <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.33.17.1: Imperator Justinianus

Et ideo sancimus in huiusmodi casibus neque, si servus vel filius familias in praefatos casus inciderit, interrumpi patri vel domino usum fructum qui per eos adquisitus est, sed manere intactum, neque, si pater capitis deminutionem magnam vel mediam passus fuerit vel morte ab hac luce fuerit exemptus, usum fructum perire, sed apud filium remanere, etiamsi heres a patre non relinquatur. <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.33.17.2: Imperator Justinianus

Usum fructum enim per eum adquisitum apud eum remanere et post patris calamitatem oportet, cum plerumque verisimile est testatorem contemplatione filii quam patris usum fructum ei reliquisse. <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.34.0. De servitutibus et de aqua.

CJ.3.34.1: Imperator Antoninus

Si quas actiones adversus eum, qui aedificium contra veterem formam extruxit, ut luminibus tuis officeret, competere tibi existimas, more solito exercere non prohiberis. is, qui iudex erit, longi temporis consuetudinem vicem servitutis obtinere sciet, modo si is qui pulsatur nec vi nec clam nec precario possidet. * ant. a. calpurniae. * <a 211 pp. iii id. nov. gentiano et basso conss.>

CJ.3.34.2: Imperator Antoninus

Si aquam per possessionem martialis eo sciente duxisti, servitutem exemplo rerum mobilium tempore quaesiisti. quod si ante id spatium eius usus tibi interdictus est, frustra sumptus in ea re factos praestari tibi postulas, cum in aliena possessione operis facti dominium, quoad in eadem causa manet, ad eum pertinet, cuius est possessio. * ant. a. martiali. * <a 215 pp. k. iul. laeto ii et cereale conss.>

CJ.3.34.3: Imperator Antoninus

Et in provinciali praedio constitui servitus aquaeductus vel aliae servitutes possunt, si ea praecesserint, quae servitutem constituunt: tueri enim placita inter contrahentes debent. quare non ignorabis, si priores possessores aquam duci per praedia prohibere iure non potuerunt, cum eodem onere perferendae servitutis transire ad emptores eadem praedia posse. * ant. a. ricanae. * <a 223 pp. k. mai. maximo ii et aeliano conss.>

CJ.3.34.4: Imperator Antoninus

Aquam, quae in alieno loco oritur, sine voluntate eius, ad quem usus eiusdem aquae pertinet, praetoris edictum non permittit ducere. * ant. a. cornelio. * <a 223 pp. id. aug. maximo ii et aeliano conss.>

CJ.3.34.5: Imperator Philippus

Si quid pars diversa contra servitutem aedibus tuis debitam iniuriose extruxit, praeses provinciae revocare ad pristinam formam, damni etiam ratione habita, pro sua gravitate curabit. * philipp. a. et philipp. c. luciano mil. * <a 246 pp. k. febr. praesente et albino conss.>

CJ.3.34.6: Imperator Claudius

Praeses provinciae usu aqua, quam ex fonte iuris tui profluere adlegas, contra statutam consuetudinis formam carere te non permittet, cum sit durum et crudelitati proximum ex tuis praediis aquae agmen ortum sitientibus agris tuis ad aliorum usum vicinorum iniuria propagari. * claud. a. prisco. * <a 269 pp. vii k. mai. claudio a. et paterno conss.>

CJ.3.34.7: Imperatores Diocletianus, Maximianus

Si manifeste doceri possit ius aquae ex vetere more atque observatione per certa loca profluentis utilitatem certis fundis inrigandi causa exhibere, procurator noster, ne quid contra veterem formam atque sollemnem morem innovetur, providebit. * diocl. et maxim. aa. iuliano. * <a 286 pp. iiii non. mai. maximo ii et aquilino conss.>

CJ.3.34.8: Imperatores Diocletianus, Maximianus

Altius quidem aedificia tollere, si domus servitutem non debeat, dominus eius minime prohibetur. in pariete vero tuo si fenestram iulianus vi vel clam fecisse convincatur, sumptibus suis opus tollere et integrum parietem restituere compellitur. * diocl. et maxim. aa. et cc. aniceto. * <a 293 d. k. ian. sirmi aa. conss.>

CJ.3.34.9: Imperatores Diocletianus, Maximianus

Si in aedibus vicini tibi debita servitute parietem altius aedificavit heraclius , novum opus suis sumptibus per praesidem provinciae tollere compellitur. sed si te servitutem habuisse non probetur, tollendi altius aedificium vicino non est interdictum. * diocl. et maxim. aa. et cc. zosimo. * <a 293 pp. v k. iul. sirmi aa. conss.>

CJ.3.34.10: Imperatores Diocletianus, Maximianus

Si tibi servitutem aquae deberi praeses animadverterit nec hactenus non utentem spatio temporis amisisse perspexerit, uti te iure proprio providebit. nam si hoc minime probetur, loco proprio facto opere dominus fundi continere aquam et facere, quominus ager tuus rigari possit, non prohibetur. * diocl. et maxim. aa. et cc. nymphidio. * <a 294 pp. xi k. febr. sirmi cc. conss.>

CJ.3.34.11: Imperatores Diocletianus, Maximianus

Per agrum quidem alienum, qui servitutem non debet, ire vel agere vicino minime licet: uti autem via publica nemo recte prohibetur. * diocl. et maxim. aa. et cc. aurelio. * <a 294 d. xi k. nov. sirmi cc. conss.>

CJ.3.34.12: Imperatores Diocletianus, Maximianus

Non modus praediorum, sed servitus aquae ducendae terminum facit. * diocl. et maxim. aa. et cc. valeriae. * <a 294 pp. iii k. ian. nicomediae cc. conss.>

CJ.3.34.13: Imperator Justinianus

Sicut usum fructum, qui non utendo per biennium in soli rebus, per annale autem tempus in mobilibus vel se moventibus deminuebatur, non passi sumus huiusmodi sustinere compendiosum interitum, sed et ei decennii vel viginti annorum dedimus spatium, ita et in ceteris servitutibus obtinendum esse censuimus, ut omnes servitutes non utendo amittantur non biennio, quia tantummodo soli rebus adnexae sunt, sed decennio contra praesentes vel viginti annorum spatio contra absentes, ut sit in omnibus huiusmodi rebus causa similis differentiis explosis. * iust. a. iohanni pp. * <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.34.14pr.: Imperator Justinianus

Cum talis quaestio in libris sabinianis vertebatur: quidam etenim pactus est cum suo vicino, ut liceat ei vel per se vel per suos homines per agrum vicini transitum facere iterque habere uno tantummodo per quinquennium die, quatenus ei licentia sit in suam silvam inde transire et arbores excidere vel facere, quidquid ei fuerit visum, et quaerebatur, quando huiusmodi servitus non utendo amittitur , et quidam putaverunt, si in primo vel secundo quinquennio per eam viam non itum est, eandem servitutem penitus tolli quasi per biennium ea non utendo deperdita, singulo die quinquennii pro anno numerando, aliis aliam sententiam eligentibus, nobis placuit ita causam dirimere, ut, quia iam per legem latam a nobis prospectum est, ne servitutes per biennium non utendo depereant, sed per decem v el viginti annorum curricula, et in proposita specie , si per quattuor quinquennia nec uno die vel ipse vel homines eius eadem servitute usi sunt, tunc eam penitus amittat viginti annorum desidia. qui enim in tam longo prolixoque spatio suum ius minime consecutus est, sera paenitentia ad pristinam servitutem reverti desiderat. * iust. a. iohanni pp. * <a 531 d. xi k. nov. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.34.14.1: Imperator Justinianus

Cum autem apertissimi iuris est fructus aridos conculcatione quae in area fit suam naturam et utilitatem ostendere, aliquis vicinum suum vetabat ita aedificium extollere iuxta suam aream, ut ventus excluderetur et paleae ex huiusmodi obstaculo secerni a frugibus non possent, quasi vento suam vim per omnem locum inferre ex huiusmodi aedificatione vetito, cum secundum regionis situm et auxilium venti aream accedit. sancimus itaque nemini licere sic aedificare vel alio modo versari, ut idoneum ventum et sufficientem ad praefatum opus infringat et inutilem domino aream et fructuum inutilitatem faciat. <a 531 d. xi k. nov. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.3.35.0. De lege aquilia.

CJ.3.35.1: Imperator Alexander Severus

Damnum per iniuriam datum immisso in silvam igne vel excisa ea si probari potest , actione legis aquiliae utere. * alex. a. glyconidi. * <a 222 pp. vii id. nov. alexandro a. cons.>

CJ.3.35.2: Imperator Gordianus

Legis aquiliae actione expertus adversus eum, quem domum tuam deposuisse vel incendio concremasse damnoque te adflixisse proponis, ut id damnum sarciatur, competentis iudicis auctoritate consequeris. quin etiam, si aqua per iniuriam alio derivata est, ut in priorem statum restituatur, eiusdem iudicis cura impetrabis. * gord. a. muciano. * <a 239 pp. viii id. nov. gordiano a. et aviola conss.>

CJ.3.35.3: Imperator Gordianus

Ex morte ancillae, quam caesam conquestus es, tam legis aquiliae damni sarciendi gratia actionem quam criminalem accusationem adversus obnoxium competere posse non ambigitur. * gord. a. dolenti. * <a 241 pp. v k. april. gordiano a. ii et pompeiano conss.>

CJ.3.35.4: Imperatores Diocletianus, Maximianus

Contra negantem ex lege aquilia, si damnum per iniuriam dedisse probetur, dupli procedit condemnatio. * diocl. et maxim. aa. et cc. zoilo. * <a 293 d. xv k. mai. heracliae aa. conss.>

CJ.3.35.5: Imperatores Diocletianus, Maximianus

De pecoribus tuis, quae per iniuriam inclusa fame necata sunt vel interfecta, legis aquiliae actione in duplum agere potes. * diocl. et maxim. aa. et cc. claudio. * <a 293 d. xv k. nov. aa. conss.>

CJ.3.35.6: Imperatores Diocletianus, Maximianus

De his, quae per iniuriam depasta contendis, ex sententia legis aquiliae agere minime prohiberis. * diocl. et maxim. aa. et cc. plinio. * <a 294 pp. xv k. nov. cc. conss.>

CJ.3.36.0. Familiae erciscundae.

CJ.3.36.1: Imperatores Severus, Antoninus

Si non omnem paternam hereditatem ex consensu divisisti nec super ea re sententia dicta vel transactio subsecuta est, iudicio familiae erciscundae potes experiri. * sev. et ant. aa. marciano. * <a 197 pp. viii k. oct. laterano et rufino conss.>

CJ.3.36.2: Imperator Antoninus

Uxor tua si mortuo patre tuo, cui dotem numeraverat, cum heres ei extiteris, adhuc in matrimonio tuo fuit, familiae erciscundae actionem ad exsequendam dotem secundum iuris pridem placitum adversus coheredes tuos nactus es eamque retines, etiam si postea, dum tibi nupta est, decessit. * ant. a. avitiano. * <pp ii id. febr.>

CJ.3.36.3: Imperator Antoninus

Adversus coheredes dividendae hereditatis iudicio secundum iuris formam experire. iudex datus, si quid a coherede etiam tuae portionis ex hereditate sublatum fuerit probatum, adiudicationibus factis secundum iuris formam eum tibi condemnabit. expilatae enim hereditatis crimen frustra coheredi intenditur, cum iudicio familiae erciscundae indemnitati prospiciatur. * ant. a. rufo. * <pp. vii... nov.>

CJ.3.36.4: Imperator Alexander Severus

Si filius familias fuisti et res mobiles vel se moventes, quae castrensis peculii esse possunt, donatae tibi a patre sunt, eas quoque in cetero peculio castrensi non communes cum fratribus tuis habes. praedia autem, licet eunti tibi in castra filio pater donaverit, peculii castrensis non sunt. diverso iure ea praedia habentur, quae ex occasione militiae filiis familias obveniunt: haec enim castrensi peculio cedunt. * alex. a. antonio. * <>

CJ.3.36.5: Imperator Alexander Severus

In ipsius mariti tui fuit potestate mutare, quod iratus in servos suos testamento caverat, ut unus quidem in perpetuis vinculis moraretur, alter vero exportandus venumdaretur. proinde si offensam istam clementia flexit (quod, licet scriptura non probetur, vel aliis tamen rationibus doceri nihil impedit, praesertim cum posteriora eorum talia merita deprehenduntur, ut ira domini potuerit mitigari), novissimam eius voluntatem arbiter familiae erciscundae sequetur. * alex. a. statiliae. * <>

CJ.3.36.6: Imperator Gordianus

Ea quae in nominibus sunt non recipiunt divisionem, cum ipso iure in portiones hereditarias ex lege duodecim tabularum divisa sunt. * gord. a. pompeio mil. * <pp.>

CJ.3.36.7: Imperator Gordianus

Si qua fideicommissorum petitio inter coheredes consistat, praetor vel praeses provinciae eius rei disceptator constitutus vel iudex familiae erciscundae iudicio aditus, ut voluntas testatricis servetur, suas partes debet accommodare. * gord. a.Aeliano. * <a 239 vel 241 pp. k. sept. gordiano... conss.>

CJ.3.36.8: Imperator Gordianus

Bona, quaecumque sunt tibi communia cum fratre tuo ex hereditaria successione patris vel matris, cum eodem familiae erciscundae iudicio experiens, ut dividantur, impetrabis. * gord. a. telesphoro. * <a 243 pp. vi non..... arriano et papo conss.>

CJ.3.36.9: Imperator Gordianus

Non est ambiguum, cum familiae erciscundae titulus inter bonae fidei iudicia numeretur, portionem hereditatis, si qua ad te pertinet, incremento fructuum augeri. * gord. a. nerviae. * <>

CJ.3.36.10: Imperator Gordianus

Quotiens inter omnes heredes testator successionem dividit ac singulos certis possessionibus cum mancipiis, quae in isdem sunt constituta, iubet esse contentos , voluntati eius salva legis falcidiae auctoritate obtemperandum esse manifestum est: nec mutat, quod in sequentibus verbis mancipia sua universa nulla facta eorum discretione commendanda putavit heredibus, cum utique his ea videatur insinuasse, quibus etiam testamento relinquenda esse decrevit. * gord. a. philoterae. * <>

CJ.3.36.11: Imperator Philippus

Inter filios ac filias bona intestatorum parentium pro virilibus portionibus aequo iure dividi oportere explorati iuris est. * philipp. a. et philipp. c. antoniae. * <pp. xvi k. mart.... conss.>

CJ.3.36.12: Imperatores gallus, volus.

Non ideo divisio inter te ac fratrem tuum, ut proponis, facta irrita habenda est , quod eam scriptura secuta non est, cum fides rei gestae ratam divisionem satis adfirmet. * gallus et volus. aa. rufo. * <a 252 pp. prid. id. mart. gallo a. ii et volusiano conss.>

CJ.3.36.13: Imperatores Diocletianus, Maximianus

Certum est liberorum peculia post mortem patris in hereditate dividenda ad communionem esse revocanda. frater autem et coheres tuus ob contractus, quibus vivente patre etiam ignorante ipso obligatus fuit, convenire te et alterum fratrem tuum coheredem vestrum ultra non potest, quam ut de peculio suo recipiat tantam quantitatem, in quantam condemnatus est his, cum quibus ipse contraxit. * diocl. et maxim. aa. saturnino. * <>

CJ.3.36.14: Imperatores Diocletianus, Maximianus

Si familiae erciscundae iudicio, quo bona paterna inter te ac fratrem tuum aequo iure divisa sunt, nihil super evictione rerum singulis adiudicatarum specialiter inter vos convenit, id est ut unusquisque eventum rei suscipiat, recte possessionis evictae detrimentum fratrem tuum et coheredem pro parte agnoscere praeses provinciae per actionem praescriptis verbis compellet. * diocl. et maxim. aa. hermiano. * <>

CJ.3.36.15: Imperatores Diocletianus, Maximianus

Si divisionem conventione factam etiam possessio consensu secuta dominium pro solido rerum, quas pertinere ad patrem tuum placuit, ei firmavit, earum vindicationem habere potes, si patri tuo successisti. si vero placitum divisionis usque ad pactum stetit, arbiter familiae erciscundae iudicio vobis datus communionem inter vos finiri providebit. * diocl. et maxim. aa. et cc. theophilae. * <a 293 >

CJ.3.36.16: Imperatores Diocletianus, Maximianus

Filii patris testamentum rescindendi, si hoc inofficiosum probare non possunt, nullam habent facultatem. sed si tam circa testamentum quam etiam codicillos iudicium eius deficiat, verum quibuscumque verbis voluntas eius declarata sit, licet intestato ei fuerit successum, ex senatus consulto retentionis modo servato familiae erciscundae iudicio aditum iudicem sequi voluntatem oportere iuris auctoritate significatur. * diocl. et maxim. aa. et cc. heracliano. * <a 293 d. viii k. sept. aa. conss.>

CJ.3.36.17: Imperatores Diocletianus, Maximianus

Coheredibus divisionem inter se facientibus iuri absentis et ignorantis minime derogari ac pro indiviso portionem eum, quae initio ipsius fuit, in omnibus communibus rebus retinere certissimum est. unde portionem tuam cum reditibus arbitrio familiae erciscundae percipere potes, ex facta inter coheredes divisione nullum praeiudicium timens. * diocl. et maxim. aa. et cc. commodiano. * <a 293 d. vii k. dec. sirmi aa. conss.>

CJ.3.36.18pr.: Imperatores Diocletianus, Maximianus

Filiae, cuius pater nomine res comparavit, si non post contrarium eius iudicium probetur, per arbitrium dividendae hereditatis praecipuas adiudicari saepe rescriptum est. his itaque, si patri successisti, quem nomine tuo quaedam comparasse dicis, adversus sororem tuam apud praesidem provinciae, si res integra est, uti potes. * diocl. et maxim. aa. et cc. domnae. * <a 293 d. xviii k. ian. aa. conss.>

CJ.3.36.18.1: Imperatores Diocletianus, Maximianus

In communi autem hereditate quin sumptus ab uno facti bona fide familiae erciscundae iudicio vel negotiorum gestorum actione servari possint, non est ambiguum. <a 293 d. xviii k. ian. aa. conss.>

CJ.3.36.19: Imperatores Diocletianus, Maximianus

Incerti iuris non est in familiae erciscundae iudicio earum etiam rerum, quas ex coheredibus quidam de communibus absumpserunt vel deteriores fecerunt, rationem habendam eiusque rei ceteris praestandam indemnitatem. * diocl. et maxim. aa. et cc. lysicratiae. * <a 293 pp. xviii k. ian. aa. conss.>

CJ.3.36.20: Imperatores Diocletianus, Maximianus

In familiae erciscundae iudicio ab uno pro solido rei veluti communis venumdatae pretium non venit, sed mandati, si praecessit, coheres venditoris agere potest, vel negotiorum gestorum, si ratam fecerit venditionem. nam si velut propriam unus distraxit ac pretium possideat, hereditas ab eo petenda est. * diocl. et maxim. aa. et cc. pactumeiae. * <a 294 iii... febr. cc. conss.>

CJ.3.36.21: Imperatores Diocletianus, Maximianus

Si cogitatione futurae successionis officium arbitri dividendae hereditatis praeveniendo pater communis iudicio suo qualicumque indicio suam declaravit voluntatem, inter eos qui successerunt, exemplo falcidiae retentionis habita ratione, familiae dividendae causa datus arbiter (virili praeterea portione eorum, quae nulli specialiter vel generaliter adsignavit, facta divisione) in adiudicando patris sequetur voluntatem. * diocl. et maxim. aa. et cc. fortunato. * <a 294 vi k. dec. cc. conss.>

CJ.3.36.22: Imperatores Diocletianus, Maximianus

Servum communem non consentientibus coheredibus, sed per errorem ad eum qui possidet pertinere credentibus tenens, cum omnis verus titulus deficiat, suum non facit, sed in eo portiones hereditarias adsignatas penes singulos successores remanere manifestum est. * diocl. et maxim. aa. et cc. dionysio. * <a 294 >

CJ.3.36.23: Imperatores Diocletianus, Maximianus

Licet pacto divisionis adversus singulos actio pro hereditariis portionibus creditori parata mutari non possit, tamen ad exhibendam fidem his quae convenerant, stipulationis et iuris adhibito remedio, qui placitum excedit, urgueri potest, cum et hoc omisso, si non contrarium convenisse probaretur, praescriptis verbis conveniri potuisset. * diocl. et maxim. aa. et cc. hermogeni. * <a 294 s.>

CJ.3.36.24: Imperatores Diocletianus, Maximianus

Filium, quam habentem fundum portionem hereditatis fratribus et quibusdam aliis sub condicione verbis precariis restituere sanxit testator, post eius eventum, hereditaria parte praedii in quartae ratione retenta, compensato praeterea quod a coheredibus vice mutua percepit et, si quid deest, in supplementum deducto, quod a ceteris in eo fundo solvitur supra quartam habens, reddere compelletur. * diocl. et maxim. aa. et cc. socrati. * <a 294 d. v k. ian. cc. conss.>

CJ.3.36.25: Imperatores Diocletianus, Maximianus

Ex causa donationis vel aliunde tibi quaesita, si avi successionem respueris, conferre fratribus compelli non potes. * diocl. et maxim. aa. et cc. diocl. * <a 295 d. id. april. tusco et anullino conss.>

CJ.3.36.26pr.: Imperator Constantinus

Inter omnes dumtaxat heredes suos, qui ex quolibet venientes gradu tamen pares videantur esse, vel emancipatos, quos praetor ad successionem vocat, sive coeptum neque impletum testamentum vel codicillus seu epistula parentis esse memoratur sive quocumque alio modo scripturae quibuscumque verbis vel iudiciis inveniantur relictae, iudicio familiae erciscundae, licet intestato ad successionem liberi vocentur, servato senatus consulti auxilio defuncti dispositio custodiatur, etsi sollemnitate legum huiusmodi dispositio fuerit destituta. * const. a. ad bassum. * <a 321 d. romae k.... crispo ii et constantino ii cc. conss.>

CJ.3.36.26.1: Imperator Constantinus

Si vero in huiusmodi voluntate designatis liberis alia sit mixta persona, certum est eam voluntatem quantum ad illam dumtaxat permixtam personam pro nullo haberi. <a 321 d. romae k.... crispo ii et constantino ii cc. conss.>

CJ.3.37.0. Communi dividundo.

CJ.3.37.1pr.: Imperator Antoninus

Frater tuus si solam portionem praedii ad se pertinentem distraxit, venditionem revocari non oportet, sed adversus eum, cum quo tibi idem praedium commune esse coepit, communi dividundo iudicio consiste: ea actione aut universum praedium, si licitatione viceris, exsoluta socio parte pretii obtinebis aut pretii portionem, si alius meliorem condicionem attulerit, consequeris. * ant. a. luciano. * <a 213 pp. k. mart. romae antonino a. iiii et balbino conss.>

CJ.3.37.1.1: Imperator Antoninus

Quod si divisio praedii sine cuiusquam iniuria commode fieri poterit, portionem suis finibus tibi adiudicatam possidebis: hoc videlicet custodiendo, ut post litis contestationem nemo nec partem suam ceteris eiusdem rei dominis non consentientibus alienare possit. <a 213 pp. k. mart. romae antonino a. iiii et balbino conss.>

CJ.3.37.2pr.: Imperator Alexander Severus

Si probatum fuerit praesidi provinciae fratrem tuum vineas communes pignori dedisse, cum partem tuam, quam in vineis habes, creditori obligare non potuerit, praeses provinciae restitui tibi eam iubebit cum fructibus, quos creditor de parte tua percepit. * alex. a. avito mil. * <a 222 pp. ii id. sept. alexandro a. cons.>

CJ.3.37.2.1: Imperator Alexander Severus

Idem praeses provinciae de divisione vinearum inter te et creditorem fratris tui cognoscet et iubebit eum accepta pecunia, quanti statuerit partem fratris tui valere, eam partem quam de fratre tuo accepit tibi restituere aut aestimata tua parte ad creditorem fratris tui data pecunia quanti aestimaverit eam transferre. <a 222 pp. ii id. sept. alexandro a. cons.>

CJ.3.37.3pr.: Imperator Alexander Severus

Ad officium arbitri, qui inter te et fratrem tuum dividendis bonis datus fuerit, ea sola pertinent, quae manent communia tibi et illi. nam ea, quorum partem is vendidit, cum emptoribus tibi communia sunt et adversus singulos arbitrum petere debes, si ab illorum quoque societate discedi placeat. * alex. a. verecundiano. * <a 224 pp. v non. mai. iuliano et crispino conss.>

CJ.3.37.3.1: Imperator Alexander Severus

Cum autem regionibus dividi aliquis ager inter socios non potest, vel ex pluribus singuli aestimatione iusta facta unicuique sociorum adiudicantur, compensatione invicem pretii facta eoque, cui maiores res pretii obvenit, ceteris condemnato, ad licitationem nonnumquam etiam extraneo emptore admisso, maxime si se non sufficere ad iusta pretia alter ex sociis sua pecunia vincere vilius licentem profiteatur. <a 224 pp. v non. mai. iuliano et crispino conss.>

CJ.3.37.4pr.: Imperatores Diocletianus, Maximianus

Si maior quinque et viginti annis soror tua tecum res communes divisit, quamvis non instrumentis, sed aliis probationibus earum diremptam communionem probetur, stare finitis convenit. * diocl. et maxim. aa. et cc. herodae. * <a 294 d. viii id. febr. cc. conss.>

CJ.3.37.4.1: Imperatores Diocletianus, Maximianus

Quod si minor fuit nec tempus in integrum restitutioni praefinitum adhuc excessit, an in integrum propter divisionem restitui debeat, causa cognita provinciae praeses aestimabit. <a 294 d. viii id. febr. cc. conss.>

CJ.3.37.4.2: Imperatores Diocletianus, Maximianus

Idem eorum etiam, quae vobis permanent communia, fieri divisionem providebit, tam sumptuum, si quis de vobis in res communes fecit, quam fructuum, item doli et culpae, cum in communi dividundo iudicio haec omnia venire non ambigitur, rationem, ut in omnibus aequalitas servetur, habiturus. <a 294 d. viii id. febr. cc. conss.>

CJ.3.37.5: Imperatores Diocletianus, Maximianus

In communionem vel societatem nemo compellitur invitus detineri: quapropter aditus praeses provinciae ea, quae communia tibi cum sorore perspexerit, dividi providebit. * diocl. et maxim. aa. et cc. secundino. * <a 294 d. viii k. sept. cc. conss.>

CJ.3.38.0. Communia utriusque iudicii tam familiae erciscundae quam communi dividundo.

CJ.3.38.1: Imperator Antoninus

Divisionem praediorum vicem emptionis obtinere placuit. * ant. a. marco. * <a 211 pp. vi k. dec. gentiano et basso conss.>

CJ.3.38.2: Imperator Alexander Severus

Etiamsi is divisioni arbitrum dedit, cui ius dandi non fuit, tamen si socii quondam divisioni consensum dederint, quod quisque eorum secundum placita possedit, pro parte socii dominium nactus est. * alex. a. euphratae. * <a 229 pp. xvi k. dec. alexandro a. iii et dione conss.>

CJ.3.38.3: Imperatores Diocletianus, Maximianus

Maioribus etiam, per fraudem vel dolum vel perperam sine iudicio factis divisionibus, solet subveniri, quia in bonae fidei iudiciis et quod inaequaliter factum esse constiterit, in melius reformabitur. * diocl. et maxim. aa. aureliae severae. * <a 290 pp. xvii k. iul. ipsis iiii et iii aa. conss.>

CJ.3.38.4: Imperatores Diocletianus, Maximianus

Si patruus tuus ex communibus bonis res comparavit sibi negotium gerens, non omnium bonorum socius constitutus, pro competentium portionum modo indemnitati tuae consuli oportet: et ideo rem emptam eum communicare contra formam iuris postulas. * diocl. et maxim. aa. ad maximum. * <a 290 pp. xvi k. nov. ipsis iiii et iii aa. conss.>

CJ.3.38.5: Imperatores Diocletianus, Maximianus

De instrumentis, quae communia fratrem vestrum tenere proponitis, rector aditus provinciae, apud quem haec collocari debeant, aestimabit. * diocl. et maxim. aa. et cc. frontoni et glafirioni. * <a 293 pp. vi id. febr. sirmi aa. conss.>

CJ.3.38.6: Imperatores Diocletianus, Maximianus

Si cum patruo vestro hac condicione divisionem fecistis, ut se nullum dolum malum adhibuisse iuraret, nec fidem placitis exhibuit, quominus res indivisas requiratis, eorum placitum quae in divisionem venerunt nihil vobis nocere potest. * diocl. et maxim. aa. et cc. thesidianae. * <a 294 d. v k. april. sirmi cc. conss.>

CJ.3.38.7: Imperatores Diocletianus, Maximianus

Si fratres vestri pro indiviso commune praedium citra vestram voluntatem obligaverunt et hoc ad vos secundum pactum divisionis nulla pignoris facta mentione pervenit, evictis partibus, quae ante divisionem sociorum fuerunt, in quibus obligatio tantum constitit, ex stipulatu, si intercessit, alioquin quanti interest praescriptis verbis contra fratres agere potestis. nam si fundi scientes obligationem dominium suscepistis, tantum evictionis promissionem sollemnitate verborum vel pacto promissam probantes eos conveniendi facultatem habetis. * diocl. et maxim. aa. et cc. severiano et flaviano. * <a 294 d. ii non. dec. nicomediae cc. conss.>

CJ.3.38.8: Imperatores Diocletianus, Maximianus

Si inter vos maiores annis viginti quinque rerum communium divisio relicta vel translata possessione finem accepit, instaurari mutuo bona fide terminata consensu minime possunt. * diocl. et maxim. aa. et cc. nicomacho. * <a 294 d. non. dec. cc. conss.>

CJ.3.38.9: Imperatores Diocletianus, Maximianus

Familiae erciscundae vel communi dividundo iudicium ita demum, si corpora maneant communia, agi potest. * diocl. et maxim. aa. et cc. demetriano. * <a 294 d. vi id. dec. nicomediae cc. conss.>

CJ.3.38.10: Imperatores Diocletianus, Maximianus

Scriptura testamenti, qua specialiter omnia divisa continentur, quominus res quarum testator non fecit mentionem heredes inquirere nihil impedit. * diocl. et maxim. aa. et cc. gallicano. * < sine die et consule.>

CJ.3.38.11: Imperator Constantinus

Possessionum divisiones sic fieri oportet, ut integra apud successorem unumquemque servorum vel colonorum adscripticiae condicionis seu inquilinorum proxima agnatio vel adfinitas permaneret. quis enim ferat liberos a parentibus, a fratribus sorores, a viris coniuges segregari? igitur si qui dissociata in ius diversum mancipia vel colonos traxerint, in unum eadem redigere cogantur. * const. a. gerulo. * <a 334? d. iii k. mai. proculo et paulino conss.>

CJ.3.38.12pr.: Imperator Justinianus

Illud aequitatis vovere rationibus bene nobis apparuit. si quis etenim pro filio suo ante nuptias donationem conscripserit vel dederit vel pro filia sua dotem, et hoc quod dedit iterum in eundem revertatur vel stipulatione vel lege hoc faciente, vel et si alio dotem vel ante nuptias donationem dante stipulationis paternae tenor vel forte legis hoc induxerit, ille autem testamento condito vel filios suos vel extraneos scripserit heredes et nihil de huiusmodi rebus, quae ad eum reversae sunt vel pervenerunt, disposuerit, inveniantur autem alii liberi eius res a paterna substantia lucrati vel per ante nuptias donationes vel dotes vel militiae causa, quas utpote testamento existente non coguntur conferre, tunc filius vel filia easdem res, quae ad patrem reversae sunt vel pervenerunt, habeant praecipuas, ad simile tamen lucrum computandas, ut in praesenti casu tantum habeat ipsa vel ipse, quantum eius fratres ex patre sunt consecuti secundum eos modos quos supra diximus et quos conferre propter testamentum non coartantur. * iust. a. ad senatum. * <a 530 d. xi k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.38.12.1: Imperator Justinianus

Sin autem nihil tale penitus in fratres eorum a patre collatum est, neque ipsos sibi praecipue hanc partem vindicare, sed, quasi paternae facta substantiae sit, inter omnes secundum institutionis tenorem dividi. et haec quidem, si inter fratres patris elogium compositum sit. <a 530 d. xi k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.38.12.2: Imperator Justinianus

Sin autem extranei sint scripti heredes et nihil in testamento suo neque in hac parte testator dixerit, tunc omnimodo praecipuum habeat filius vel filia, quod ad patrem revertitur vel pervenit. si tamen minus in fratres collatum est, amplius autem ex huiusmodi casu ad patrem pervenit, illo quod ad similem quantitatem concurrit excepto cetera quasi paternae substantiae facta secundum modum institutionum dividantur: illo procul dubio observando, quod, si minus sit quod pater ex huiusmodi causa habuit ea quantitate quae in fratres collata est, tota huiusmodi portio ad eas personas perveniat, quarum occasione res ad patrem revertitur. <a 530 d. xi k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.38.12.3: Imperator Justinianus

Ea igitur, quae in paterna persona diximus, obtinere volumus etiam in avum et proavum paternum vel maternum et in matrem et in aviam vel proaviam paternam vel maternam. <a 530 d. xi k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.3.39.0. Finium regundorum.

CJ.3.39.1: Imperatores Diocletianus, Maximianus

Regionem certam fundi propriis finibus eius mutatis dominus eius distrahere ac residuum retinere non prohibetur. nec amplius emptor, quam quod ratione secundum venditionis fidem ad se pervenit, vindicare potest praetextu terminorum temporis antecedentis venditionem. * diocl. et maxim. aa. et cc. nicephoro. * <a 294 d. id. dec. nicomediae cc. conss.>

CJ.3.39.2: Imperatores Diocletianus, Maximianus

Successionum varietas et vicinorum novi consensus, additis vel detractis agris alterutro, determinationis veteris monumenta saepe permutant. * diocl. et maxim. aa. et cc. tatiano. * <a 294 d. viiii k. ian. nicomediae cc. conss.>

CJ.3.39.3pr.: Imperator Constantinus

Si quis super iuris sui locis prior de finibus detulerit querimoniam, quae proprietatis controversiae cohaeret, prius super possessione quaestio finiatur et tunc agrimensor ire praecipiatur ad loca, ut patefacta veritate huiusmodi litigium terminetur. * const. a. ad tertullianum. * <a 330 d. viii k. mart. bessi gallicano et symmacho conss.>

CJ.3.39.3.1: Imperator Constantinus

Quod si altera pars, ne huiusmodi quaestio terminetur, se subtraxerit, nihilo minus agrimensor in ipsis locis iussione rectoris provinciae una cum observante parte hoc ipsum faciens perveniet. <a 330 d. viii k. mart. bessi gallicano et symmacho conss.>

CJ.3.39.4: Imperator Constantinus

Si constiterit eum qui finalem detulerit quaestionem, priusquam aliquid sententia determinetur, rem sibi alienam usurpare voluisse, non solum id quod male petebat amittat, sed quod magis unusquisque contentus suo rem non expetat iuris alieni, qui inreptor agrorum fuerit in lite superatus, tantum agri modum, quantum adimere temptavit, amittat. * const. a. ad bassum pp. * <a 330 lecta apud acta xi k. iul. gallicano et symmacho conss.>

CJ.3.39.5: Imperatores Valentinianus, Theodosius, Arcadius

Quinque pedum praescriptione submota finalis iurgii vel locorum libera peragatur intentio. * valentin. theodos. et arcad. aaa. neoterio pp. * <a 385 pp. alexandriae vii k. aug. arcadio a. et bautone conss.>

CJ.3.39.6: Imperatores Theodosius, Arcadius, Honorius

Cunctis molitionibus et machinis amputatis decernimus in finali quaestione non longi temporis, sed triginta tantummodo annorum praescriptionem locum habere. * theodos. arcad. et honor. aaa. rufino pp. * <a 392 d. prid. non. nov. constantinopoli arcadio a. ii et rufino conss.>

CJ.3.40.0. De consortibus eiusdem litis.

CJ.3.40.1: Imperator Julianus

Explosis atque reiectis praescriptionibus, quas litigatores sub obtentu consortium studio protrahendae disceptationis excogitare consueverunt, sive unius fori omnes sint sive in diversis provinciis versentur, nec adiuncta praesentia consortis vel consortium agendi vel respondendi iurgantibus licentia pro parte pandatur. * iul. a. secundo pp. * <a 362 d. iii non sept. antiochiae mamertino et nevitta conss.>

CJ.3.40.2: Imperatores Valentinianus, Valens

Commune negotium post litem legitime ordinatam et quibusdam absentibus in solidum agi sine mandato potest, si praesentes rem ratam dominum habiturum cavere parati sunt, vel, si quod ab his petitur, iudicatum solvi satisdatione firmaverint. * valentin. et valens aa. sallustio pp. * <a 364 pp. vi id. dec. divo ioviano et varroniano conss.>

CJ.3.41.0. De noxalibus actionibus.

CJ.3.41.1: Imperator Alexander Severus

Si extat corpus nummorum, quos ablatos ex patris tui hereditate ab eo, quem liberum esse constitit, adlegas, vindicare eos vel ad exhibendum agere non prohiberis. nam quamvis alias noxa caput sequatur et manumissus furti actione teneatur, quae in heredem non competit, cum tamen servus a domino aliquid auferat, quamvis furtum committat, furti tamen actio non est nata neque adversus ipsum, si postea manumissus est, locum habet, nisi furtivas res et post manumissionem contractat. * alex. a. Marcello. * <a 223 pp. xiii k. dec. maximo ii et aeliano conss.>

CJ.3.41.2: Imperator Gordianus

Si servi vestri inscientibus vobis vel etiam prohibentibus furtim arbores ceciderunt, quibus etiam propria poena iuxta legem saltui datam fuerat praestituta, frustra veremini, ne ex persona eorum ultra noxae deditionem sitis obstricti, cum ex delictis servorum domini ignorantes vel prohibentes, si noxali actione conveniantur, ita condemnari debeant, ut aut noxae dedere aut condemnationem sufferre habeant in sua potestate. * gord. a. quintiliano et aliis. * <a 239 pp. iii non. iun. gordiano et aviola conss.>

CJ.3.41.3: Imperatores Diocletianus, Maximianus

Sive servum plagii paras accusare sollemniter, praesidem provinciae adire non prohiberis, sive dominum eius sollicitati servi noxali iudicio vel furti malueris convenire, suam tibi notionem praeses provinciae commodabit non ignorans, quod, si dominum elegeris et eo non consentiente quod intendis commissum probaveris, vel noxae dedendae vel damni sarciendi ac poenae praestandae habeat facultatem. * diocl. et maxim. aa. et cc. eutychio. * <a 293 pp. v non. oct. sirmi aa. conss.>

CJ.3.41.4pr.: Imperatores Diocletianus, Maximianus

Si servus ignorante domino vel sciente et prohibere nequeunte res tuas vi rapuit , dominum eius apud praesidem provinciae, si necdum utilis annus excessit, quadrupli, quod si hoc effluxit tempus, simpli noxali iudicio convenire potes: qui si noxae maluerit servum dedere, nihilo minus cum ipso quantum ad eum pervenit experiri non prohiberis: nam si eo conscio et prohibere valente, detracta noxae deditione conventus ad summam condemnationis solvendam omnimodo compellendus est. * diocl. et maxim. aa. et cc. sosio. * <a 293 pp. xviii k. ian. sirmi aa. conss.>

CJ.3.41.4.1: Imperatores Diocletianus, Maximianus

Sane si criminis publici accusationem propter uxorem tuam a servo raptam intendendam putaveris, non contra dominum, sed contra eum, quem facinus commisisse proponis, hanc instituere debes. <a 293 pp. xviii k. ian. sirmi aa. conss.>

CJ.3.41.5: Imperatores Diocletianus, Maximianus

Si tibi per furtum nec manifestum ancillam servus ope consilioque domini cum aliis rebus subtraxit, cum inter servum et liberum civile iudicium consistere non possit, eum ob hoc delictum dupli poenali actione et de rebus propriis vindicatione vel condictione convenire potes. * diocl. et maxim. aa. et cc. menophilo. * <a 294 s. v k. april. cc. conss.>

CJ.3.42.0. Ad exhibendum.

CJ.3.42.1: Imperator Alexander Severus

Si dominium ancillae, de qua agis, ad matrem tuam pertinuit nec iure a patre tuo venumdata est eiusque proprietatem tibi vindicare paratus es, praeses provinciae exhiberi eam iubebit, ut apud iudicem de rei veritate quaeratur. * alex. a. crescenti mil. * <a 222 pp. k. mai. alexandro a. cons.>

CJ.3.42.2: Imperator Alexander Severus

Si criminis alicuius reus servus postulatur, per ad exhibendum actionem produci a domino, non celari debet. * alex. a. syro. * <a 222 pp. xi k. dec. alexandro a. cons.>

CJ.3.42.3: Imperator Alexander Severus

Neque ad exhibendum actio neque proprietatis vindicatio, si nunc competit, propterea perempta est, quod aliquando adversus te ad exhibendum actione aliter pronuntiatum est, quia commutatione litis alia res esse incipit. * alex. a. felicissimae. * <a 223 pp. k. sept. maximo ii et aeliano conss.>

CJ.3.42.4: Imperator Alexander Severus

Non ignorabit iudex, instrumenta tui iuris, quae penes diversam partem fuisse probaveris, si ab eisdem non exhibeantur, iurisiurandi in litem facultatem deferri tibi oportere. * alex. a. flaccillae. * <a 230 pp. iii k. mart. agricola et clemente conss.>

CJ.3.42.5: Imperator Gordianus

Ad exhibendum actione non tantum eum qui possidet, sed etiam eum teneri, qui dolo fecit, quominus exhiberet, merito tibi a non contemnendae auctoritatis iuris consulto modestino responsum est. * gord. a. sabiniano mil. * <a 239 pp. ii id. febr. gordiano a. et aviola conss.>

CJ.3.42.6: Imperator Philippus

Instrumenta ad ius tuum pertinentia partem diversam invasisse adseverans, si quidem crimen intendis, sollemnibus accusationibus impletis fidem adseverationi tuae fac, sin vero ad exhibendum intendis, iudiciorum more experire. * philipp. a. polemonidi. * <a 244 pp. ii id. mart. peregrino et aemiliano conss.>

CJ.3.42.7: Imperatores Diocletianus, Maximianus

Exhibitionis necessitatis tenetur, qui facultatem habens culpam vel dolum in explendo praecepto committit, ita ut, qui rem deteriorem exhibuit, aequitas exhibitionis proficiat, ut, quamvis ad exhibendum agi non potest, in factum tamen actio contra eum detur. * diocl. et maxim. aa. vitaliano. * <a 286 pp. xvi k. iun. maximo ii et aquilino conss.>

CJ.3.42.8pr.: Imperatores Diocletianus, Maximianus

Si res tuas commodavit aut deposuit is, cuius precibus meministi, adversus tenentem ad exhibendum vel vindicatione uti potes. * diocl. et maxim. aa. et cc. photino. * <a 293 s. v k. mai. heracliae aa. conss.>

CJ.3.42.8.1: Imperatores Diocletianus, Maximianus

Quod si pactus sit, ut tibi restituantur, si quidem ei qui deposuit successisti, iure hereditario depositi actione uti non prohiberis: si vero nec civili nec honorario iure ad te hereditas eius pertinet, intellegis nullam te ex eius pacto contra quem supplicas actionem stricto iure habere: utilis autem tibi propter aequitatis rationem dabitur depositi actio. <a 293 s. v k. mai. heracliae aa. conss.>

CJ.3.42.9: Imperatores Diocletianus, Maximianus

Si ex quocumque contractu apud praesidem provinciae iure debitum cui oportuerat te reddidisse probaveris, chirographa tua, ex quibus iam nihil peti potest, et instrumenta ad eum contractum pertinentia tibi naturaliter liberationem consecuto exhiberi ac reddi iubebit. * diocl. et maxim. aa. et cc. faustino. * <a 294 s. viii k. sept. cc. conss.>

CJ.3.43.0. De aleae lusu et aleatoribus.

CJ.3.43.1pr.: Imperator Justinianus

Alearum lusus antiqua res est et extra operas pugnantibus concessa, verum pro tempore prodiit in lacrimas, milia extranearum nominationum suscipiens. quidam enim ludentes nec ludum scientes, sed nominationem tantum, proprias substantias perdiderunt, die noctuque ludendo in argento apparatu lapidum et auro. consequenter autem ex hac inordinatione blasphemare conantur et instrumenta conficiunt. * iust. a. demostheni eparcho praitorion. * <a 529 d. x k. oct. constantinopoli decio cons.>

CJ.3.43.1.1: Imperator Justinianus

Commodis igitur subiectorum providere cupientes hac generali lege decernimus, ut nulli liceat in privatis seu publicis locis ludere neque in specie neque in genere: et si contra factum fuerit, nulla sequatur condemnatio, sed solutum reddatur et competentibus actionibus repetatur ab his qui dederunt vel eorum heredibus aut his neglegentibus a patribus seu defensoribus locorum: <a 529 d. x k. oct. constantinopoli decio cons.>

CJ.3.43.1.2: Imperator Justinianus

Non obstante nisi quinquaginta demum annorum aliqua praescriptione: <a 529 d. x k. oct. constantinopoli decio cons.>

CJ.3.43.1.3: Imperator Justinianus

Episcopis locorum hoc inquirentibus et praesidum auxilio utentibus. <a 529 d. x k. oct. constantinopoli decio cons.>

CJ.3.43.1.4: Imperator Justinianus

Deinde vero ordinent quinque ludos, ton monobolon ton condomonobolon ke kondacca ke repon ke perichyten. sed nemini permittimus etiam in his ludere ultra unum solidum, etsi multum dives sit, ut, si quem vinci contigerit, casum gravem non sustineat. non solum enim bella bene ordinamus et res sacras, sed et ista: interminantes poenam transgressoribus, potestatem dando episcopis hoc inquirendi et auxilio praesidum sedandi. <a 529 d. x k. oct. constantinopoli decio cons.>

CJ.3.43.2pr.: Imperator Justinianus

Prohibemus etiam, ne sint equi lignei: sed si quis ex hac occasione vincitur, hoc ipse recuperaret: domibus eorum publicatis, ubi haec reperiuntur. * iust. a. * <a 529 d.X.K.Oct.Constantinopoli decio cons.>

CJ.3.43.2.1: Imperator Justinianus

Si autem noluerit recipere is qui dedit, procurator noster hoc inquirat et in opus publicum convertat. <a 529 d.X.K.Oct.Constantinopoli decio cons.>

CJ.3.43.2.2: Imperator Justinianus

Similiter provideant iudices, ut a blasphemiis et periuriis, quae ipsorum inhibitionibus debent comprimi, omnes penitus conquiescant. <a 529 d.X.K.Oct.Constantinopoli decio cons.>

CJ.3.44.0. De religiosis et sumptibus funerum.

CJ.3.44.1: Imperator Antoninus

Si vi fluminis reliquiae filii tui continguntur vel alia iusta et necessaria causa intervenit, aestimatione rectoris provinciae transferre eas in alium locum poteris. * ant. a. dionysiae. * <a 213 pp. viii k. nov. antonino a. iiii et balbino conss.>

CJ.3.44.2: Imperator Antoninus

Invito vel ignorante te ab alio illatum corpus in puram possessionem tuam vel lapidem locum religiosum facere non potest. si autem voluntate tua mortuum aliquis in locum tuum intulerit, religiosus iste efficitur: quo facto monumentum neque venire neque obligari a quoquam prohibente iuris religione posse in dubium non venit. * ant. a. hilariano. * <a 216 pp. k. mai. sabino ii et anullino conss.>

CJ.3.44.3: Imperator Alexander Severus

Legatum a defuncto tibi relictum et quod in funus vel morbum eius erogasse te boni viri arbitratu probaveris, praeses provinciae solvi tibi iubebit. * alex. a. primo. * <a 223 pp. v non. iul. maximo ii et aeliano conss.>

CJ.3.44.4pr.: Imperator Alexander Severus

Si sepulchrum monumenti appellatione significas, scire debes iure dominii id nullum vindicare posse, sed et, si familiare fuit, ius eius ad omnes heredes pertinere nec divisione ad unum heredem redigi potuisse. * alex. a. licinio. * <a 223 pp. vi non. nov. maximo ii et aeliano conss.>

CJ.3.44.4.1: Imperator Alexander Severus

Profana tamen loca, quae circa id sunt, si semper vicinis aedificiis usui hominum destinatis cesserunt, eius sunt, cui illa, quorum partes esse visae sunt, ex divisione obtigerunt. <a 223 pp. vi non. nov. maximo ii et aeliano conss.>

CJ.3.44.5: Imperator Alexander Severus

Militis voluntatem, quam circa monumentum sibi daciendum testamento expressit, et mater et pater heredes eius neglegere non debent. nam etsi delatio hoc nomine praeteritis constitutionibus amota est, invidiam tamen et conscientiam circa omissum supremum huiusmodi officium et contemptum iudicium defuncti evitare non possunt. * alex. a. cassio mil. * <a 224 pp. viii k. mai. iuliano et crispino conss.>

CJ.3.44.6: Imperator Alexander Severus

Monumentorum inscriptiones neque sepulchrorum iura neque dominium loci puri ad libertos transferunt. praescriptio autem longi temporis, si iustam causam initii habuit, vobis proficiat. * alex. a. primitivo et aliis. * <a 224 pp. viii k. iul. iuliano et crispino conss.>

CJ.3.44.7: Imperator Gordianus

Statuas sepulchro superimponere vel monumento, quod te extructurum profiteris, ornamenta quae putas superaddere non prohiberis, cum in iure suo eorum quae minus prohibita sunt unicuique facultas libera non denegetur. * gord. a. claudio. * <a 241 pp. iii k. aug. gordiano a. ii et pompeiano conss.>

CJ.3.44.8: Imperator Philippus

Ius familiarium sepulchrorum ad adfines seu proximos cognatos non heredes constitutos minime pertinet. * philipp. a. iuliae. * <a 244 pp. xvi k. iul. peregrino et aemiliano conss.>

CJ.3.44.9: Imperator Philippus

Locum quidem religiosum distrahi non posse manifestum est. verum agrum purum monumento cohaerentem profani iuris esse ideoque efficaciter venumdari non est opinionis incertae. * philipp. a. et philipp. c. faustinae. * <a 245 pp. vi k. dec. philippo a. et titiano conss.>

CJ.3.44.10: Imperatores Diocletianus, Maximianus

Si necdum perpetuae sepulturae corpus traditum est, translationem eius facere non prohiberis. * diocl. et maxim. aa. aquilinae. * <a 287 pp. viii id. dec. diocletiano iii et maximiano aa. conss.>

CJ.3.44.11: Imperatores Diocletianus, Maximianus

Obnoxios criminum digno supplicio subiectos sepulturae tradi non vetamus. * diocl. et maxim. aa. gaudentio. * <a 290 pp. viii id. april. ipsis iiii et iii aa. conss.>

CJ.3.44.12: Imperatores Diocletianus, Maximianus

Mortuorum reliquias, ne sanctum municipiorum ius polluatur, intra civitatem condi iam pridem vetitum est. * diocl. et maxim. aa. victorino. * <a 290 pp. iii k. oct. ipsis iiii et iii aa. conss.>

CJ.3.44.13: Imperatores Diocletianus, Maximianus

Ius sepulchri tam hereditarii quam familiaris ad extraneos etiam heredes, familiaris autem ad familiam, etiam si nullus ex ea heres sit, non etiam ad alium quemquam qui non heres est pertinere potest. * diocl. et maxim. aa. et cc. dionysio. * <a 294 s. iii id. nov. sirmi cc. conss.>

CJ.3.44.14: Imperatores Diocletianus, Maximianus

Nemo humanum corpus ad alterum locum sine augusti adfatibus transferat. * diocl. et maxim. aaa. cynegio pp.* <a 386 d. iiii k. mart. constantinopoli honorio nob. puero et euodio conss.>

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CJ.4.42.0. De eunuchis.
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CJ.4.44.0. De rescindenda venditione.
CJ.4.45.0. Quando liceat ab emptione discedere .
CJ.4.46.0. Si propter publicas pensitationes venditio fuerit celebrata.
CJ.4.47.0. Sine censu vel reliquis fundum comparari non posse.
CJ.4.48.0. De periculo et commodo rei venditae.
CJ.4.49.0. De actionibus empti et venditi.
CJ.4.50.0. Si quis alteri vel sibi sub alterius nomine vel aliena pecunia emerit.
CJ.4.51.0. De rebus alienis non alienandis et de prohibita rerum alienatione vel hypotheca.
CJ.4.52.0. De communium rerum alienatione.
CJ.4.53.0. Rem alienam gerentibus non interdici rerum suarum alienatione.
CJ.4.54.0. De pactis inter emptorem et venditorem compositis.
CJ.4.55.0. Si servus exportandus veneat.

CJ.4.56.0. Si mancipium ita venierit, ne prostituatur.
CJ.4.57.0. Si mancipium ita fuerit alienatum, ut manumittatur vel contra.
CJ.4.58.0. De aediliciis actionibus.
CJ.4.59.0. De monopoliis et de conventu negotiatorum illicito vel artificum ergolaborumque nec non balneatorum prohibitis illicitisque pactionibus.
CJ.4.60.0. De nundinis.
CJ.4.61.0. De vectigalibus et commissis.
CJ.4.62.0. Vectigalia nova instituti non posse.
CJ.4.63.0. De commerciis et mercatoribus.
CJ.4.64.0. De rerum permutatione et de praescriptis verbis actione.
CJ.4.65.0. De locato et conducto.
CJ.4.66.0. De emphyteutico iure.

CJ.4.1.0. De rebus creditis et de iureiurando.

CJ.4.1.1: Imperator Antoninus

Causa iureiurando ex consensu utriusque partis vel adversario inferente delato et praestito vel remisso decisa nec periurii praetextu retractari potest, nisi specialiter hoc lege excipiatur. * ant. a. herculiano. * <a 213 pp. xv k. iul. antonino a. iiii et balbino conss.>

CJ.4.1.2: Imperator Alexander Severus

Iurisiurandi contempta religio satis deum ultorem habet. periculum autem corporis vel maiestatis crimen secundum constituta divorum parentum meorum, etsi per principis venerationem quodam calore fuerit periuratum, inferri non placet. * alex. a. felici. * <a 223 pp. vi k. april. maximo ii et aeliano conss.>

CJ.4.1.3: Imperatores Diocletianus, Maximianus

In bonae fidei contractibus nec non etiam in aliis causis inopia probationum per iudicem iureiurando causa cognita res decidi potest. * diocl. et maxim. aa. severae. * <a 286 pp. x k. sept. maximo ii et aquilino conss.>

CJ.4.1.4: Imperatores Diocletianus, Maximianus

Si ad excludendam tutelae actionem pupillus iusiurandum tutori dedit, postea eandem litem exercere non prohibetur. * diocl. et maxim. aa. maximae. * <a 290 pp. k. iul. ipsis iiii et iii aa. conss.>

CJ.4.1.5: Imperatores Diocletianus, Maximianus

Cum etiam a pupillorum tutoribus velut ab ipsis pupillis relicta fideicommissa videantur, super fideicommisso praeses provinciae cognoscet et, si id tibi relictum esse constiterit, reddi tibi efficiet. idem, si infitietur, ad iusiurandum, ut desideras, tutorem adiget. * diocl. et maxim. aa. iuliano. * <a 290 pp. iii non. dec. ipsis iiii et iii aa. conss.>

CJ.4.1.6: Imperatores Diocletianus, Maximianus

Cum proponas partibus placuisse iurisiurandi religione generis et ingenuitatis quaestionem decidi, praeses provinciae iuxta decretum arbitri ad voluntatis vestrae placitum amitae tuae filiis consulet. * diocl. et maxim. aa. bessio. * <a 291 pp. v id. febr. tiberiano et dione conss.>

CJ.4.1.7: Imperatores Diocletianus, Maximianus

Nec filius nec quisquam alius neque litigando neque paciscendo, sed nec iusiurandum citra voluntatem domini rei deferendo praeiudicium ei facere potest. unde si citra mandatum tuum aliquid erga rem tuam filius tuus gessit nec ratum habuisti, nihil tibi oberit. * diocl. et maxim. aa. et cc. eutychianae. * <a 293 s. id. nov. aa. conss.>

CJ.4.1.8: Imperatores Diocletianus, Maximianus

Actori delato vel relato iureiurando, si iuraverit vel ei remissum fuerit sacramentum, ad similitudinem iudicati in factum actio competit. * diocl. et maxim. aa. et cc. alexandro. * <a 294 s. xii k. mai. cc. conss.>

CJ.4.1.9: Imperatores Diocletianus, Maximianus

Delata condicione iurisiurandi reus (si non per actorem, quominus de calumnia iuret, steterit) per iudicem solvere vel iurare, nisi referat iusiurandum, necesse habet. * diocl. et maxim. aa. et cc. marciano. * <a 294 s. v k. mai. sirmi conss.>

CJ.4.1.10: Imperatores Diocletianus, Maximianus

In actione etiam depositi, quae super rebus quasi sine scriptis datis movetur, iusiurandum ad exemplum ceterorum bonae fidei iudiciorum deferri potest. * diocl. et maxim. aa. et cc. protogeni. * <a 294 s. v k. dec. cc. conss.>

CJ.4.1.11pr.: Imperator Justinianus

Si quis iusiurandum intulerit et necdum eo praestito postea, utpote sibi adlegationibus abundantibus, hoc revocaverit, sancimus nemini licere penitus iterum ad sacramentum recurrere (satis enim absurdum est redire ad hoc, cui renuntiandum putavit, et, cum desperavit aliam probationem, tunc denuo ad religionem convolare) et iudices nullo modo eos audire ad tales iniquitates venientes. * iust. a. demostheni pp. * <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.4.1.11.1: Imperator Justinianus

Si quis autem sacramentum intulerit et hoc revocare maluerit, licere quidem ei hoc facere et alias probationes, si voluerit, praestare, ita tamen, ut huiusmodi licentia usque ad litis tantummodo terminum ei praestetur. <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.4.1.11.2: Imperator Justinianus

Post definitivam autem sententiam, quae provocatione suspensa non sit vel quae, postquam fuerit appellatum, corroborata fuerit, nullo modo revocare iuramentum et iterum ad probationem venire cuidam concedimus, ne repetita lite finis negotii alterius causae fiat exordium. <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.4.1.12pr.: Imperator Justinianus

Generaliter de omnibus iuramentis, quae in litibus offeruntur vel a iudice vel a partibus, definiendum est. cum enim iam increbuit iudices in plenissima definitione sacramentum imponere, evenit, ut provocatione lite suspensa hi quidem, qui iusiurandum praestare iussi sunt, ab hac forte luce subtrahantur, probationes autem rerum cadant, cum multum discrepat iuramentum hereditarium a principali sacramento. necessitate itaque rerum coacti et probationibus pinguius subvenientes ad huiusmodi venimus sanctionem. * iust. a. demostheni pp. * <a 529 d. iii k. nov. decio vc. cons.>

CJ.4.1.12.1: Imperator Justinianus

Omne igitur iuramentum, sive a iudicibus sive a partibus illatum vel in principio litis vel in medio vel in ipsa definitiva sententia, sub ipso iudice detur non expectata vel ultima definitione vel provocationis formidine. <a 529 d. iii k. nov. decio vc. cons.>

CJ.4.1.12.1a: Imperator Justinianus

Sed iuramento illato, cum hoc a partibus fuerit factum et a iudice approbatum vel ex auctoritate iudicis cuicumque parti illatum, si quidem is cui imponitur sacramentum nihil ad hoc fuerit reluctatus, et hoc praestetur vel referatur, necessitate imponenda ei cui refertur relationis subire sacramentum, vel, si hoc recusaverit, quasi illato sacramento praestito causa vel capitulum decidatur, nullo loco provocationi relinquendo. quis enim ferendus est ad appellationis veniens auxilium in his, quae ipse facienda procuravit? <a 529 d. iii k. nov. decio vc. cons.>

CJ.4.1.12.2: Imperator Justinianus

Sin autem is, cui sacramentum illatum est vel a parte vel a iudice, hoc subire minime voluerit, licentiam quidem habeat sacramentum recusare, iudex autem, si hoc omnimodo praestandum existimaverit, sic causam dirimat, quasi volente eo sacramentum sit recusatum, et ita cetera sive capitula sive totius negotii summa examinentur et lis suo marte percurrat, nullo ei obstaculo obviante. <a 529 d. iii k. nov. decio vc. cons.>

CJ.4.1.12.2a: Imperator Justinianus

Ipse autem, qui sacramentum sibi illatum dare recusaverit, vel hoc attestetur vel, si forte non audeat, habeat sibi in ultima provocatione repositum auxilium. <a 529 d. iii k. nov. decio vc. cons.>

CJ.4.1.12.2b: Imperator Justinianus

Et si iudex appellationi praesidens bene quidem illatum iusiurandum, non rite autem recusatum pronuntiaverit, res secundum quod iudicatum est permanebit. <a 529 d. iii k. nov. decio vc. cons.>

CJ.4.1.12.2c: Imperator Justinianus

Sin autem non rite quidem illatum, recte autem recusatum sacramentum pronuntiaverit, tunc ei licebit emendare sententiam iudicis, quae quasi ex recusato sacramento processit, et nihil penitus nec praeiudicii nec iniusti dispendii cuicumque incurret, sed et causae cursus ab initio usque ad novissimum terminum non impediatur et lis aequa lance trutinabitur. <a 529 d. iii k. nov. decio vc. cons.>

CJ.4.1.12.3: Imperator Justinianus

Sive autem illatum iuramentum fuerit praestitum sive recusatum, ipsi parti quae hoc intulit nullum provocationis remedium in hoc servabitur, cum nimis crudele est parti quae hoc detulit propter hoc ipsum, quod iudex eius petitionem secutus est, superesse provocationem. <a 529 d. iii k. nov. decio vc. cons.>

CJ.4.1.12.4: Imperator Justinianus

His de praesentibus personis statutis nec absentes nos fugiunt, sed etiam eos huic legi subiugamus. <a 529 d. iii k. nov. decio vc. cons.>

CJ.4.1.12.4a: Imperator Justinianus

Et si persona non praesens inveniatur, cui sacramentum illatum est, lite forte per procuratorem ventilata, necesse est vel ipsam principalem personam datis certis indutiis ad iudicem venire, ut ea quae de sacramentis statuta sunt impleat vel, si iudex existimaverit in provincia ubi degit sub actorum testificatione iuramentum ab ea vel dari vel referri vel recusari, hoc procedere, ut singulis casibus eventus iam definitus imponatur. <a 529 d. iii k. nov. decio vc. cons.>

CJ.4.1.12.4b: Imperator Justinianus

Licentia concedenda etiam parti alteri vel per se vel per procuratorem super hoc ipsum ordinatum adesse his, quae de iuramento aguntur, vel si neutrum facere maluerit, et ex una parte, sub fide tamen gestorum, iuramentum praestari vel referri vel recusari. <a 529 d. iii k. nov. decio vc. cons.>

CJ.4.1.12.4c: Imperator Justinianus

Expensis propter huiusmodi causam praestandis officio iudicis trutinandis, an ab utraque parte vel altera oportet eas dependi. <a 529 d. iii k. nov. decio vc. cons.>

CJ.4.1.12.4d: Imperator Justinianus

Nullo tamen ex hoc litibus impedimento generando, sed, donec ea procedunt, aliis vel capitulis vel litis membris a iudice eximinandis et, postquam fuerint ei intimata gesta super iuramento subsecuta, tunc iterum ad hoc capitulum iudice redeunte et eo adimpleto ad cetera perveniente. <a 529 d. iii k. nov. decio vc. cons.>

CJ.4.1.12.4e: Imperator Justinianus

Omnibus aliis, quae de praesentibus sancita sunt, et in absentium parte observandis. <a 529 d. iii k. nov. decio vc. cons.>

CJ.4.1.12.5: Imperator Justinianus

In omnibus autem casibus, in quibus sacramenta praestantur, observationem iudicialem permanere censemus secundum personarum qualitatem, sive sub ipso iudice praestari oportet iuramentum sive in domibus, sive sacris scripturis tactis sive in sacrosanctis oratoriis. <a 529 d. iii k. nov. decio vc. cons.>

CJ.4.1.12.6: Imperator Justinianus

Similique modo in sua firmitate manere, quae de calumniae iureiurando vel relato sacramento legibus cauta sunt vel a nobis vel a retro divis principibus inducta. non enim, ut aliquid derogetur antiquioribus legibus, haec prolata sunt, sed ut, si quid deesse eis videbatur, hoc repleatur. <a 529 d. iii k. nov. decio vc. cons.>

CJ.4.1.13pr.: Imperator Justinianus

Cum quis legatum vel fideicommissum utpote sibi relictum exigebat et testamento forte non apparente pro eo sacramentum ei ab herede delatum est et is religionem suam praestavit, adfirmans sibi legatum vel fideicommissum derelictum esse, et ex huiusmodi testamento id quod petebat consecutus est, postea autem manifestum factum est nihil ei penitus fuisse derelictum, apud antiquos quaerebatur, utrum iureiurando standum est, an restituere debet hoc quod accepit: vel, si re vera ei relictum fuerat legatum vel fideicommissum, si demus licentiam heredi falcidiam, si competat, ex hoc retinere. * iust. a. iohanni pp. * <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.4.1.13.1: Imperator Justinianus

Nobis itaque melius visum est repeti ab eo legatum vel fideicommissum nullumque ex huiusmodi periurio lucrum ei accedere, sed et si verum fuerit inventum, quartae detentionem introduci (si tamen locum habeat), ne quis ex hoc delicto sibi lucrum impium adferre nostris legibus concedatur. <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.4.2.0. Si certum petatur.

CJ.4.2.1: Imperatores Severus, Antoninus

Neque aequam neque usitatam rem desideras, ut aes alienum patris tui non pro portionibus hereditariis exsolvatis tu et frater coheres tuus, sed pro aestimatione rerum praelegatarum, cum sit explorati iuris hereditaria onera ad scriptos heredes pro portionibus hereditariis, non pro modo emolumenti pertinere. quod nec ipse ignorare videris, cum creditoribus secundum formam iuris pro portione tua caveris. * sev. et ant. aa. modestino. * <a 204 d. k. iul. cilone et libone conss.>

CJ.4.2.2: Imperator Antoninus

Quamvis pecuniam tuam asclepiades suo nomine crediderit, stipulando tamen sibi ius obligationis quaesivit. quam pecuniam ut possis petere, mandatis tibi ab eo actionibus consequeris. * ant. a. hermogeni. * <a 214 pp. vii k. mai. messala et sabino conss.>

CJ.4.2.3: Imperator Gordianus

Eos, qui officium administrant, neque per suppositas personas tempore officii sui in provincia fenus agitare posse saepe rescriptum est. * gord. a. sempronio. * <a 239 pp. viii k. sept. gordiano a. et aviola conss.>

CJ.4.2.4pr.: Imperator Philippus

Si absentis pecuniam nomine eius fenori dedisti ac reprobato nomine mandatis actionibus experiris, praeses provinciae iurisdictionem suam praebebit. * philipp. a. et philipp. c. maximo. * <a 246 pp. xv k. mart. praesente et albino conss.>

CJ.4.2.4.1: Imperator Philippus

Idem, si cessare mandatum animadverterit, utilem tibi adversus debitorem eo nomine actionem competere non negabit. <a 246 pp. xv k. mart. praesente et albino conss.>

CJ.4.2.5pr.: Imperatores Diocletianus, Maximianus

Si non singuli in solidum accepta mutua quantitate vel stipulanti creditori sponte vos obligastis, licet uni numerata sit pecunia, vel intercessionis nomine hanc pro rea suscepistis obligationem, frustra veremini, ne eius pecuniae nomine vos convenire possit, quam alii mutuo dedit, si intra praestitutum tempus rei gestae quaestionem detulistis. * diocl. et maxim. aa. et cc. aristodemo et proculo. * <a 293 s. v non. mai. aa. conss.>

CJ.4.2.5.1: Imperatores Diocletianus, Maximianus

Ac multo magis inanem timorem geritis, si pecunia numerata oleum susceptum instrumento sit collatum, cum, si reddendi stipulatio nulla subiecta est et huius rei est habita sollemnis contestatio, in suo statu remanente eo, quod vere factum intercessit, ex olei accepti scriptura nihil deberi manifestum est. <a 293 s. v non. mai. aa. conss.>

CJ.4.2.6pr.: Imperatores Diocletianus, Maximianus

Si ex pretio debitae quantitatis facta novatione per stipulationem usuras licitas contra quem supplicas stipulatus es, falsa mutuae datae quantitatis demonstratio praemissa, cum obligationis non defecerat substantia, quominus usque ad modum placitum usurae possint exigi, nihil nocet. * diocl. et maxim. aa. et cc. nicandro. * <a 293 s. xv k. dec. aa. conss.>

CJ.4.2.6.1: Imperatores Diocletianus, Maximianus

Si vero citra vinculum stipulationis tantum mutuam pecuniam datam conscriptum est et eius praestari fenus convenit, simulatis pro infectis habitis huiusmodi placitum nihil de praecedenti mutavit obligatione. <a 293 s. xv k. dec. aa. conss.>

CJ.4.2.7: Imperatores Diocletianus, Maximianus

Non unde originem pecunia quae mutuo datur habet, sed qui contraxit si propriam numeravit, in huiusmodi obligationibus requiritur. * diocl. et maxim. aa. et cc. pactumeiae. * <a 293 s. v non. oct. sirmi aa. conss.>

CJ.4.2.8: Imperatores Diocletianus, Maximianus

Si pro mutua pecunia, quam a creditore poscebas, argentum vel iumenta vel alias species utriusque consensu aestimatas accepisti, dato auro pignori, licet ultra unam centesimam usuras stipulanti spopondisti, tamen sors, quae aestimatione partium placito definita est, et usurarum titulo legitima tantum recte petitur. nec quicquam tibi prodesse potest, quod minoris esse pretii pignus quod dedisti proponis, quominus huius quantitatis solutioni pareas. * diocl. et maxim. aa. et cc. proculo. * <a 293 s. xvii k. ian. aa. conss.>

CJ.4.2.9: Imperatores Diocletianus, Maximianus

Cum te in gallia cum syntropho certum auri pondus itemque numeratam pecuniam mutuo dedisse, ut romae solveretur, precibus adseveras, aditus competens iudex, si duos reos stipulandi vel re pro solido tibi quaesitam actionem sive ab heredibus syntrophi procuratorem te factum animadverterit, totum debitum, alioquin quod dedisti solum restitui tibi iubebit. * diocl. et maxim. aa. et cc. alexandro. * <a 293 s. xv k. ian. aa. conss.>

CJ.4.2.10: Imperatores Diocletianus, Maximianus

Eo, quod a multis proprii debiti singulorum obligationis uno tantum instrumento probatio continetur, exactio non interpelletur. nam si pro pecunia quam mutuo dedisti tibi vinum stipulanti qui debuerant spoponderunt, negotii gesti paenitentia contractum habitum recte non constituit irritum. * diocl. et maxim. aa. et cc. egi crispino. * <a 294 s. prid. non. febr. sirmi cc. conss.>

CJ.4.2.11: Imperatores Diocletianus, Maximianus

Incendium aere alieno non exuit debitorem. * diocl. et maxim. aa. et cc. maximiano. * <a 294 s. ii id. febr. sirmi cc. conss.>

CJ.4.2.12: Imperatores Diocletianus, Maximianus

Si in rem communem cum ione mutuam sumpsisti pecuniam nec re nec sollemnitate verborum vos obligastis in solidum et post integrum solvisti, de restituenda tibi parte contra ionem experiri, ut debitum posceres, iudice cognoscente potes. * diocl. et maxim. aa. et cc. theophanio. * <a 294 s. xv k. sept. cc. conss.>

CJ.4.2.13: Imperatores Diocletianus, Maximianus

Eum, qui mutuam sumpsit pecuniam, licet in res alienas, creditore non contemplatione domini rerum eam fenori dante, principaliter obligatum obnoxium remanere oportet. * diocl. et maxim. aa. et cc. frontoni. * <a 294 s. xvii k. nov. nicomediae cc. conss.>

CJ.4.2.14: Imperatores Diocletianus, Maximianus

Mutuae pecuniae, quam aliis dedit, creditor citra sollemnitatem verborum subscribentem instrumento non habet obligatum. * diocl. et maxim. aa. et cc. hadriano. * <a 293 sine die aa. conss.>

CJ.4.2.15: Imperatores Diocletianus, Maximianus

Non adversus te creditores, qui mutuam pecuniam sumpsisti, sed eius, cui hanc credideras, heredes experiri contra iuris evidenter postulas formam. * diocl. et maxim. aa. et cc. charidemo. * <a 294 s. v k. dec. nicomediae cc. conss.>

CJ.4.2.16: Imperatores Honorius, Theodosius

Quisquis iudici fenebrem pecuniam mutuaverit, si in provincia fuerit versatus quasi emptor legum atque provinciae, vel si quis collectarius honoris pretium dederit ambienti, exilii poena una cum ipso iudice plectetur. * honor. et theodo. aa. theodoro pp. * <a 408 d. xvii k. nov. basso et philippo conss.>

CJ.4.2.17: Imperator Justinianus

Super chirographariis instrumentis haec pro communi utilitate sancienda duximus, ut, si quis pecunias credere supra quinquaginta libras auri voluerit vel super reddito debito securitatem accipere, cum amplius sit memorata quantitate, sciat non aliter debere chirographum a debitore vel creditore percipere, quam si testimonium trium testium probatae opinionis per eorum subscriptiones idem chirographum capiat. nam si citra huiusmodi observationem chirographum pro pecuniis memoratam auri quantitatem excedentibus proferatur, minime hoc admitti ab iudicantibus oportet. quod in futuris creditis vel debitorum solutionibus locum habere oportet. * iust. a. menae pp. * <a 528 d. k. iun. constantinopoli dn. iustiniano pp. a. ii cons.>

CJ.4.3.0. De suffragio.

CJ.4.3.1pr.: Imperatores Theodosius, Arcadius, Honorius

Si qui desideria sua explicare cupientes ferri sibi a quoquam suffragium postulaverint et ob referendam vicem se sponsione constrinxerint, promissa restituant, cum ea quae optaverint consequantur: si artibus moras nectent, ad solutionem debiti coartandi sunt. * theodos. arcad. et honor. aaa. rufino pp. * <a 394 d. iii non. mart. constantinopoli arcadio iii et honorio ii aa. conss.>

CJ.4.3.1.1: Imperatores Theodosius, Arcadius, Honorius

Sed si quid eo nomine in auro vel argento vel ceteris mobilibus datum fuerit, traditio sola sufficiat et contractus habebit perpetuam firmitatem, quoniam collatio rei mobilis inita integra fide hac ratione cumulatur. <a 394 d. iii non. mart. constantinopoli arcadio iii et honorio ii aa. conss.>

CJ.4.3.1.2: Imperatores Theodosius, Arcadius, Honorius

Quod si praedia rustica vel urbana placitum continebit, scriptura, quae ea in alium transferat, emittatur, sequatur traditio corporalis et rem fuisse completam gesta testentur: aliter enim ad novum dominium transire non possunt neque de veteri iure discedere. <a 394 d. iii non. mart. constantinopoli arcadio iii et honorio ii aa. conss.>

CJ.4.3.1.3: Imperatores Theodosius, Arcadius, Honorius

Quod si quis, dum solo commonitorio suffragio nititur, bona duxerit occupanda, reus temeritatis ac violentiae retinebitur atque in statum pristinum possessio reducetur, eo a petitione excluso, qui non dubitavit invadere, quod petere debuisset. <a 394 d. iii non. mart. constantinopoli arcadio iii et honorio ii aa. conss.>

CJ.4.4.0. De prohibita sequestratione pecuniae.

CJ.4.4.1: Imperatores Honorius, Theodosius

Quotiens ex quolibet contractu pecunia postulatur, sequestrationis necessitas conquiescat. oportet enim debitorem primo convinci et sic ad solutionem pulsari. quam rem non tantum iuris ratio, sed et ipsa aequitas persuadet, ut probationes secum adferat debitoremque convincat pecuniam petiturus. * honor. et theodos. aa. iohanni pp. * <a 422 d. v id. iul. ravennae honorio xiii et theodosio x aa. conss.>

CJ.4.5.0. De condictione indebiti.

CJ.4.5.1pr.: Imperatores Severus, Antoninus

Pecuniae indebitae per errorem, non ex causa iudicati solutae esse repetitionem iure condictionis non ambigitur. si quid igitur probare potueris patrem tuum, cui heres extitisti, amplius debito creditori suo persolvisse, repetere potes. * sev. et ant. aa. muciano. * <a 213 pp. iii k. aug. antonino a. iiii et balbino conss.>

CJ.4.5.1.1: Imperatores Severus, Antoninus

Usuras autem eius summae praestari tibi frustra desideras: actione enim condictionis ea sola quantitas repetitur, quae indebita soluta est. <a 213 pp. iii k. aug. antonino a. iiii et balbino conss.>

CJ.4.5.2: Imperatores Severus, Antoninus

Si citra ullam transactionem pecuniam indebitam alieno creditori promittere delegata es, adversus eam quae te delegavit condictionem habere potes. * sev. et ant. aa. secundinae. * <a 213 pp. xiiii k. ian. antonino a. iiii et balbino conss.>

CJ.4.5.3: Imperatores Diocletianus, Maximianus

Cum et soluta indebita quantitas ab ignorante repeti possit, multo facilius quantitatis indebitae interpositae scripturae condictio competit vel doli exceptio agenti opponitur. * diocl. et maxim. aa. et cc. pamphilo. * <a 293 s. iii non. april. byzantii aa. conss.>

CJ.4.5.4: Imperatores Diocletianus, Maximianus

Ea, quae per infitiationem in lite crescunt, ab ignorante etiam indebita soluta repeti non posse certissimi iuris est. sed et si cautio indebitae pecuniae ex eadem causa interponatur, condictioni locum non esse constat. * diocl. et maxim. aa. et cc. heraclio. * <a 293 s. v id. april. byzantii aa. conss.>

CJ.4.5.5: Imperatores Diocletianus, Maximianus

Si a patre emancipatus ei non intra tempora praestituta iure honorario successisti, quidquid indebitum postea per errorem utpote patris successor dedisti, eius condictionem tibi competere non est incerti iuris. * diocl. et maxim. aa. et cc. attalo. * <a 293 s. xiiii k. mai. aa. conss.>

CJ.4.5.6: Imperatores Diocletianus, Maximianus

Si per ignorantiam facti non debitam solutam quantitatem pro alio solvisti et hoc addito rectore provinciae fuerit probatum, hanc ei cuius nomine soluta est restitui eo agente providebit. * diocl. et maxim. aa. et cc. mnaseae. * <a 293 s. vi id. aug. aa. conss.>

CJ.4.5.7: Imperatores Diocletianus, Maximianus

Fideicommissum vel legatum indebitum per errorem facti solutum repeti posse explorati iuris est. * diocl. et maxim. aa. et cc. dionysiae. * <a 293 s. v id. sept. aa. conss.>

CJ.4.5.8: Imperatores Diocletianus, Maximianus

Creditoris falso procuratori solventi adversus eum indebiti repetitio, non obligationis liberatio competit. * diocl. et maxim. aa. et cc. ziparo. * <a 294 s. xv k. nov. cc. conss.>

CJ.4.5.9pr.: Imperatores Diocletianus, Maximianus

Indebitum solutum sciens non repetit. * diocl. et maxim. aa. et cc. gratianae. * <a 294 s. iiii non. dec. nicomediae cc. conss.>

CJ.4.5.9.1: Imperatores Diocletianus, Maximianus

Citra mandatum autem ab alio re distracta dominus evicta re vel ob praecedens vitium satis emptori faciens non indebitum praetendere, sed per eiusmodi factum ratum contractum habuisse probans a se debitum ostendit solutum. <a 294 s. iiii non. dec. nicomediae cc. conss.>

CJ.4.5.10pr.: Imperator Justinianus

Si quis servum certi nominis aut quandam solidorum quantitatem vel aliam rem promiserit et, cum licentia ei fuerat unum ex his solvendo liberari, utrumque per ignorantiam dependerit, dubitabatur, cuius rei datur a legibus ei repetitio, utrumne servi an pecuniae, et utrum stipulator an promissor habeat huius rei facultatem. * iust. a. iuliano pp. * <a 530 d. k. aug. constantinopoli lampadio et oresta vv. cc. conss.>

CJ.4.5.10.1: Imperator Justinianus

Et ulpianus quidem electionem ipsi praestat qui utrumque accepit, ut hoc reddat quod sibi placuerit, et tam Marcellum quam celsum sibi consonantes refert. papinianus autem ipsi qui utrumque persolvit electionem donat, qui et antequam dependat ipse habet electionem quod velit praestare, et huiusmodi sententiae sublimissimum testem adducit salvium iulianum summae auctoritatis hominem et praetorii edicti ordinatorem. <a 530 d. k. aug. constantinopoli lampadio et oresta vv. cc. conss.>

CJ.4.5.10.2: Imperator Justinianus

Nobis haec decidentibus iuliani et papiniani placet sententia, ut ipse habeat electionem recipiendi, qui et dandi habuit. <a 530 d. k. aug. constantinopoli lampadio et oresta vv. cc. conss.>

CJ.4.5.11pr.: Imperator Justinianus

Pro dubietate eorum, qui mente titubante indebitam solverunt pecuniam, certamen legislatoribus incidit, utrumne id, quod ancipiti animo persolverunt, possint repetere an non. * iust. a. iuliano pp. * <a 530 d. k. oct. constantinopoli lampadio et oresta vv. cc. conss.>

CJ.4.5.11.1: Imperator Justinianus

Quod nos decidentes sancimus omnibus, qui incerto animo indebitam dederunt pecuniam vel aliam quandam speciem persolverunt, repetitionem non denegari et praesumptionem transactionis non contra eos induci, nisi hoc specialiter ab altera parte approbetur. <a 530 d. k. oct. constantinopoli lampadio et oresta vv. cc. conss.>

CJ.4.6.0. De condictione ob causam datorum.

CJ.4.6.1: Imperator Antoninus

Pecuniam quam te ob dotem accepisse pactumque interpositum (ut fieri, cum iure matrimonium contrahitur, adsolet) proponis: impediente quocumque modo iuris auctoritate matrimonium constare nullam de dote actionem habet et propterea pecuniam, quam eo nomine accepisti, iure condictionis restituere debes et pactum, quod ita interpositum est, perinde ac si interpositum non esset haberi oportet. * ant. a. callistheni. * <a 215 pp. vi k. aug. laeto ii et cereale conss.>

CJ.4.6.2: Imperator Alexander Severus

Si, ut proponis, pater tuus ea lege sorori tuae praedia ceterque quorum meministi donavit, ut creditoribus ipsa satisfaceret ac, si placita observata non essent, donatio resolveretur, eaque contra fidem negotii gesti versata est, non est iniquum actionem condictionis ad repetitionem rerum donatarum tibi qui patri successisti decerni. * alex. a. asclepiadi. * <a 227 pp. xiiii k. dec. albino et maximo conss.>

CJ.4.6.3: Imperatores valer., gallien.

Ea lege in vos collata donatio, ut neutri alienandae suae portionis facultas ulla competeret, id efficit, ne alteruter eorum dominium prorsus alienaret, vel ut donatori vel heredi eius condictio, si non fuerit condicio servata, quaeratur. * valer. et gallien. aa. aurelio et alexandro. * <a 257 pp. k. april. valeriano iiii et gallieno iii aa. conss.>

CJ.4.6.4: Imperatores valer., gallien.

Si, cum exiguam pecuniam re vera susciperes, longe maiorem te accepisse cavisti eo, quod tibi patrocinium adversarius repromitteret, cum dicas fidem promissi non secutam, ut libereris obligatione eius, quod non acceptum propter speratum patrocinium spopondisti, per condictionem consequeris. * valer. et gallien. aa. et valer. c. aemiliae. * <a 259 pp. v k. mai. aemiliano et basso conss.>

CJ.4.6.5: Imperatores Diocletianus, Maximianus

Si militem ad negotium tuum procuratorem fecisti, cum hoc legibus interdictum sit, ac propter hoc pecuniam ei numerasti, quidquid ob causam datum est, causa non secuta restitui tibi competens iudex curae habebit. * diocl. et maxim. aa. martiali. * <a 290 pp. x k. oct. ipsis iiii et iii conss.>

CJ.4.6.6: Imperatores Diocletianus, Maximianus

Cum ancillam patrem vestrum ei, contra quem supplicastis, dedisse proponatis, interest multum, utrumne donandi animo dedit, an ob manumittendam filiam, quam ancillam existimabat, cum perfecta quidem donatio revocari non possit, causa vero dandi non secuta repetitio competat. * diocl. et maxim. aa. et cc. curioni et plotioni. * <a 293 s. ii id. mai. aa. conss.>

CJ.4.6.7: Imperatores Diocletianus, Maximianus

Si repetendi, quod donabas uxori eius, quem ad proficiscendum tecum huiusmodi liberalitate provocare proposueras, nullam addidisti condicionem, remanet integra donatio, cum levitati perfectam donationem revocare cupientium iure occurratur. * diocl. et maxim. aa. et cc. gerontio. * <a 293 s. vii k. sept. aa. conss.>

CJ.4.6.8: Imperatores Diocletianus, Maximianus

Dictam legem donationi, si non impossibilem contineat causam, ab eo qui hanc suscepit non impletam condictioni facere locum iuris dictat disciplina. quapropter si titulo liberalitatis res tuas in sponsam conferendo certam dixisti legem, nec huic illa, cum posset, paruit, successores ipsius de repetendis quae dederas, si hoc tibi placuerit, convenire non prohiberis. * diocl. et maxim. aa. et cc. flaviano. * <a 294 s. iii id. febr. cc. conss.>

CJ.4.6.9: Imperatores Diocletianus, Maximianus

Si liber constitutus, ut filiae tuae manumittantur, aliquid dedisti, causa non secuta de hoc tibi restituendo condictio competit. nam si quid servus de peculio domino dederit, contra eum nullam actionem habere potest: sed dominum, qui semel accipere pecuniam pro libertate passus est, aditus rector provinciae hortabitur salva reverentia (favore scilicet libertatis) placito suo stare. * diocl. et maxim. aa. et cc. bibulo. * <a 294 s. iii id. febr. sirmi cc. conss.>

CJ.4.6.10: Imperatores Diocletianus, Maximianus

Pecuniam a te datam, licet causa, pro qua data est, non culpa accipientis, sed fortuito casu secuta non est, minime repeti posse certum est. * diocl. et maxim. aa. et cc. cononianae. * <a 294 s. iii non. dec. nicomediae cc. conss.>

CJ.4.6.11: Imperatores Diocletianus, Maximianus

Advocationis causa datam pecuniam, si per eos qui acceperant, quominus susceptam fidem impleant, stetisse probetur, restituendam esse convenit. * diocl. et maxim. aa. et cc. stratonicae. * <a 294 s. xvii k. ian. cc. conss.>

CJ.4.7.0. De condictione ob turpem causam.

CJ.4.7.1: Imperator Antoninus

Si ex cautione tua conveniri coeperis, nullam te pecuniam accepisse, sed ob turpem causam et quam fieri prohibitum est interpositam ei, qui super ea re cogniturus est, probandum est et eo impleto absolutio sequetur. * ant. a. ingenuo. * < sine die et consule.>

CJ.4.7.2: Imperator Antoninus

Cum te propter turpem causam contra disciplinam temporum meorum domum adversariae dedisse profitearis, frustra eam restitui tibi desideras, cum in pari causa possessoris melior condicio habeatur. * ant. a. longino. * <a 215 pp. xv k. dec. laeto ii et cereale conss.>

CJ.4.7.3: Imperatores Diocletianus, Maximianus

Quod evitandi tirocinii causa dedisse te apud competentem iudicem ei de quo quereris indubia probationis luce constiterit, instantia eius recipies: qui memor censurae publicae post restitutionem pecuniae etiam concussionis crimen inultum esse non patietur. * diocl. et maxim. aa. dizoni mil. * <a 290 pp. iii k. aug. ipsis iiii et iii aa. conss.>

CJ.4.7.4: Imperatores Diocletianus, Maximianus

Quotiens accipientis, non etiam dantis turpis invenitur causa, licet haec secuta fuerit, datum condici tantum, non etiam usurae peti possunt. * diocl. et maxim. aa. et cc. rufino. * <a 293 s. vii id. ian. sirmi aa. conss.>

CJ.4.7.5: Imperatores Diocletianus, Maximianus

Promercalem te habuisse uxorem proponis: unde intellegis et confessionem lenocinii preces tuas continere et cautae quantitatis ob turpem causam exactioni locum non esse. quamvis enim utriusque turpitudo versatur ac soluta quantitate cessat repetitio, tamen ex huiusmodi stipulatione contra bonos mores interposita denegandas esse actiones iuris auctoritate demonstratur. * diocl. et maxim. aa. et cc. bitho. * <a 294 s. vi id. mai. cc. conss.>

CJ.4.7.6: Imperatores Diocletianus, Maximianus

Ob restituenda quae subtraxerat accipientem pecuniam, cum eius tantum interveniat turpitudo, condictione conventum hanc restituere debere convenit. * diocl. et maxim. aa. et cc. eutychiae. * <a 294 s. vi id. mai. cc. conss.>

CJ.4.7.7: Imperatores Diocletianus, Maximianus

Eum, qui ob restituenda quae abegerat pecora pecuniam accepit, tam hanc quam quae per hoc commissum tenuit restituere debere convenit, licet mortua vel alio fortuito casu perisse dicantur, cum in hoc casu in rem mora fiat. * diocl. et maxim. aa. et cc. zenonidae. * <a 294 d. v k. dec. nicomediae cc. conss.>

CJ.4.8.0. De condictione furtiva.

CJ.4.8.1: Imperatores Diocletianus, Maximianus

Praeses provinciae, sciens furti quidem actione singulos quosque in solidum teneri, condictionis vero nummorum furtim subtractorum electionem esse ac tum demum , si ab uno satisfactum fuerit, ceteros liberari, iure proferre sententiam curabit. * diocl. et maxim. aa. et cc. hermogeni. * <a 294 s. vi k. mai. cc. conss.>

CJ.4.8.2: Imperatores Diocletianus, Maximianus

Ante oblationem interemptae rei furtivae damnum ad furem pertinere certissimum est. * diocl. et maxim. aa. et cc. aristaeneto. * <a 294 d. k. mai. cc. conss.>

CJ.4.9.0. De condictione ex lege et sine causa vel iniusta causa.

CJ.4.9.1: Imperatores Diocletianus, Maximianus

Licet ante tempus debita exigi non possunt, tamen si te ex primipilo debitorem fisci constitutum ac patrimonium tuum exhaustum praeses provinciae compererit, ut ad solutionis securitatem solum fenebris pecuniae subsidium superesse videatur, commonebit debitorem tuum, si saltem ipse solvendo sit, ut ante definitum tempus debita tibi repraesentet, ut fisco, cuius ob necessitates publicas causam potiorem esse oportet, debita pecunia exsolvatur. * diocl. et maxim. aa. et cc. ulpio. * <a 294 s. xiii k. aug. sirmi cc. conss.>

CJ.4.9.2: Imperatores Diocletianus, Maximianus

Dissolutae quantitatis retentum instrumentum inefficax penes creditorem remanere et ideo per condictionem reddi oportere non est iuris ambigui. * diocl. et maxim. aa. et cc. scylacio. * <a 293 s. iii non. april. aa. conss.>

CJ.4.9.3: Imperatores Diocletianus, Maximianus

Mala fide possidens de proprietate victus extantibus fructibus vindicatione, consumptis vero condictione conventus horum restitutioni parere compellitur. * diocl. et maxim. aa. et cc. galatiae. * <a 294 s. vi id. febr. cc. conss.>

CJ.4.9.4: Imperatores Diocletianus, Maximianus

Si non est numeratum, quod velut acceptum te sumpsisse mutuo scripsisti, et necdum transisse tempus statutum vel intra hunc diem habitam contestationem monstrando reddi cautionem praesidali notione postulare potes. * diocl. et maxim. aa. et cc. alexandro. * <a 294 d. xvii k. ian. cc. conss.>

CJ.4.10.0. De obligationibus et actionibus.

CJ.4.10.1: Imperator Gordianus

Data certae pecuniae quantitate ei cuius meministi in vicem debiti actiones tibi adversus debitorem, pro quo solvisti, dicis esse mandatas et, antequam eo nomine litem contestareris, sine herede creditorem fati munus implesse proponis. quae si ita sunt, utilis actio tibi competit. * gord. a. valeriae. * <a 242 pp. v k. mai. attico et praetextato conss.>

CJ.4.10.2: Imperatores valer., gallien.

Nominibus in dotem datis, quamvis nec delegatio praecesserit nec litis contestatio subsecuta sit, utilem tamen marito actionem ad similitudinem eius qui nomen emerit dari oportere saepe rescriptum est. * valer. et gallien. aa. celso. * <a 260 pp. xiiii k. febr. saeculari ii et donato conss.>

CJ.4.10.3: Imperatores Diocletianus, Maximianus

Ob causas proprii debiti locatoris conveniri colonos pensionibus ex placito satisfacientes perquam iniuriosum est. * diocl. et maxim. aa. rusticiano. * <a 286 pp. prid. k. iun. tiberiade maximo ii et aquilino conss.>

CJ.4.10.4: Imperatores Diocletianus, Maximianus

Bonam fidem in contractibus considerari aequum est. * diocl. et maxim. aa. liciniae. * <a 290 pp. non. oct. ipsis iiii et iii aa. conss.>

CJ.4.10.5: Imperatores Diocletianus, Maximianus

Sicut initio libera potestas unicuique est habendi vel non habendi contractus, ita renuntiare semel constitutae obligationi adversario non consentiente minime potest. quapropter intellegere debetis voluntariae obligationi semel vos nexos ab hac non consentiente altera parte, cuius precibus fecistis mentionem, minime posse discedere. * diocl. et maxim. aa. et cc. camerino et marciano. * <a 293 d. non. april. byzantii aa. conss.>

CJ.4.10.6: Imperatores Diocletianus, Maximianus

Si in solutum nomen debitoris sui tibi debitor dedit tuus ac te in rem tuam procuratorem fecit, pignora, quae specialiter vel generaliter habes obligata, persequere. quod si ab his, quibus fuerant obligata, cum potiores erant, distracta probentur, ab emptoribus avocari non posse perspicis. * diocl. et maxim. aa. et cc. maurico. * <a 293 d. viiii k. iul. sirmi aa. conss.>

CJ.4.10.7pr.: Imperatores Diocletianus, Maximianus

Si a creditore nomen comparasti, ea pignora, quae venditor nomiminis(!) consequi posset, apud praesidem provinciae vindica. nam si debitum ex eius persona res obligatas tenentes non transferant, iure communi pignora distrahere non prohiberis. * diocl. et maxim. aa. et cc. euelpisto. * <a 293 s. iii k. ian. sirmi aa. conss.>

CJ.4.10.7.1: Imperatores Diocletianus, Maximianus

Sane si creditoribus in ordine pignorum antecedentibus venumdantibus qui possident comparaverunt vel longi temporis praescriptione muniti perhibentur, pignorum distrahendorum te non habere facultatem perspicis. <a 293 s. iii k. ian. sirmi aa. conss.>

CJ.4.10.8: Imperatores Diocletianus, Maximianus

Si quidem donationis causa ei, quem adfectione patris te dilexisse proponis, tuam accipere pecuniam permisisti, et hanc tuam liberalitatem remunerans te a procuratore suo aliam pecuniam sumere praecepit, rebusque humanis ante perceptionem fuit exemptus, nec quod dederas recuperare, cum perfectam habuit donationem, nec quod tibi dari mandaverat, necdum tibi traditum petere potes a procuratore. quod si mutuo dedisti nec a delegato dari novandi causa stipulatus es, successores eius solutioni parere compellentur. * diocl. et maxim. aa. et cc. crescentioni. * <a 294 s. xiii k. febr. sirmi cc. conss.>

CJ.4.10.9: Imperatores Diocletianus, Maximianus

Negantes debitores non oportet armata vi terreri: sed petitore quidem non implente suam intentionem vel exceptione submoto absolvi, convictos autem condemnari ac iuris remediis ad solutionem urgueri convenit. * diocl. et maxim. aa. et cc. glyconi. * <a 294 d. id. febr. cc. conss.>

CJ.4.10.10: Imperatores Diocletianus, Maximianus

Adversus debitorem electis pignoribus personalis actio non tollitur, sed eo, quod de pretio servari potuit, in debitum computato de residuo manet integra. * diocl. et maxim. aa. et cc. rufino. * <a 294 d. iii non. april. cc. conss.>

CJ.4.10.11: Imperatores Diocletianus, Maximianus

Nimia credulitate circumventa es, quia, quod colonis in rem suam mutuo dedisti, a domino praedii postulare posse credidisti: nec ad eum obligandum actorum ipsius adiuvat te praesentia. * diocl. et maxim. aa. et cc. paulae. * <a 294 d. viii k. aug. cc. conss.>

CJ.4.10.12: Imperatores Diocletianus, Maximianus

Ob aes alienum servire liberos creditoribus iura compelli non patiuntur. * diocl. et maxim. aa. et cc. iovino. * <a 294 d. xiii k. nov. cc. conss.>

CJ.4.10.13: Imperatores Diocletianus, Maximianus

Eum, cui mutuam dedisti pecuniam, ad solutionem urguere competenti debes actione. nam adversus negotiatores, quos ex mercibus pecunias abstulisse tuo debitori proponis, nullam habes actionem. * diocl. et maxim. aa. et cc. barsimio. * <a 294 d. xi k. april. cc. conss.>

CJ.4.10.14: Imperatores Diocletianus, Maximianus

Est in arbitrio vestro, personali debitoris heredes actione, an eum, qui ab his distracta sibique tradita pignora tenet, in rem serviana, si non longi temporis praescriptione munitus sit, an utrosque conveniatis. * diocl. et maxim. aa. et cc. hermodoto et nicomacho. * <a 294 d. v k. dec. nicomediae cc. conss.>

CJ.4.11.0. Ut actiones et ab herede et contra heredem incipiant.

CJ.4.11.1pr.: Imperator Justinianus

Cum et stipulationes et legata et alios contractus post mortem compositos antiquitas quidem respuebat, nos autem pro communi hominum utilitate recepimus, consentaneum erat etiam illam regulam, qua vetustas utebatur, more humano emendare. * iust. a. iohanni pp. * <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.4.11.1.1: Imperator Justinianus

Ab heredibus enim incipere actiones vel contra heredes veteres non concedebant contemplatione stipulationum ceterarumque causarum post mortem conceptarum. <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.4.11.1.2: Imperator Justinianus

Sed nobis necesse est, ne prioris vitii materiam relinquamus, et ipsam regulam e medio tollere, ut liceat et ab heredibus et contra heredes incipere actiones et obligationes, ne propter nimiam subtilitatem verborum latitudo voluntatis contrahentium impediatur. <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.4.12.0. Ne uxor pro marito vel maritus pro uxore vel mater pro filio conveniatur.

CJ.4.12.1: Imperatores Diocletianus, Maximianus

Frustra disputas de contractibus cum marito tuo habitis, utrumne iure steterit an minime, cum tibi sufficiat, si proprio nomine nullum contractum habuisti, quominus pro marito tuo conveniri possis, quod nec, si sponte pro eo intercessisses, quicquam a te propter senatus consultum exigi iure potuisset. * diocl. et maxim. aa. asclepiodotae. * <a 287 d. prid. id. april. diocletiano iii et maximiano aa. conss.>

CJ.4.12.2: Imperatores Diocletianus, Maximianus

Ob maritorum culpam uxores inquietari leges uetant. proinde rationalis noster, si res quae a fisco occupatae sunt dominii tui esse probaveris, ius publicum sequetur. * diocl. et maxim. aa. terentiae. * <a 287 d. iii non. sept. diocletiano et maximiano aa. conss.>

CJ.4.12.3: Imperatores Diocletianus, Maximianus

Cum te possessiones non in dotem pro filia tua dedisse, sed ad sustentandam eam extra dotis causam filiae tuae praedia adsignasse proponas, civilium munerum vel onerum municipalium obtentu ex persona mariti eius, quomodo matres ex persona filiorum interpellari non possunt, cum neque maritum pro uxoris obligatione conveniri posse constat, nisi ipse pro ea se obnoxium fecit. certissimum enim est ex alterius contractu neminem obligari. * diocl. et maxim. aa. et cc. carpophoro. * <a 293 iii id. sept. sirmi aa. conss.>

CJ.4.12.4: Imperatores Diocletianus, Maximianus

Cum te ideo ex persona filii tui commemores conveniri, quod pro debitis eius aliquid intulisse videaris, defensionibus tuis uti apud eum, cuius super ea re notio est, minime prohiberis, ut is ad solutionem alieni debiti urgueri te non patiatur. * diocl. et maxim. aa.Et cc. philoterae. * <a 301 d. x k. sept. titiano et nepotiano conss.>

CJ.4.13.0. Ne filius pro patre vel pater pro filio emancipato vel libertus pro patrono conveniatur.

CJ.4.13.1pr.: Imperator Gordianus

Neque ex eius filii persona, qui, cum sui iuris esset, mutuam pecuniam accepit, pater eius, si non fidem suam obstrinxit, conveniri potest, neque ex eius quem in potestate habet, si sine eius iussu contractum est neque contra senatus consultum macedonianum mutua data est, amplius dumtaxat de peculio actionem sustinere cogitur. * gord. a. candido mil. * <a 238 pp. iii non. oct. pio et pontiano conss.>

CJ.4.13.1.1: Imperator Gordianus

Quapropter pater quoque tuus, si ei pecunia a creditore fratris tui extorta est, ob quam reddendam non tenebatur, praesidis provinciae auctoritate eam recuperabit. <a 238 pp. iii non. oct. pio et pontiano conss.>

CJ.4.13.2: Imperatores Diocletianus, Maximianus

Ne contra iuris auctoritatem ab eo, qui patrem vestrum, a quo emancipatos vos dicitis, ad munus civile devocaverat, inquietemini, praeses provinciae providebit. * diocl. et maxim. aa. neoterio et eutolmio. * <a 286 d. viii k. febr. maximo ii et aquilino conss.>

CJ.4.13.3: Imperatores Diocletianus, Maximianus

Si filius familias invito patre decurio creatus fuerit, pro eo patrem inquietari non posse iure manifestissimo cautum est. * diocl. et maxim. aa. et cc. theogeni. * <a 294 s. x k. mai. sirmi cc. conss. >

CJ.4.13.4: Imperatores Diocletianus, Maximianus

Patris nomine superstitis filium nec munerum civilium nec debiti causa personali posse conveniri constat actione. * diocl. et maxim. aa. et cc. achaeo. * <a 294 s. xii k. mart. sirmi cc. conss.>

CJ.4.13.5: Imperatores Diocletianus, Maximianus

Ex patroni vel domini contractu liberti vel servi conveniri non possunt. * diocl. et maxim. aa. et cc. lampetio. * <a 294 s. iii id. april. cc. conss.>

CJ.4.14.0. An servus ex suo facto post manumissionem teneatur.

CJ.4.14.1: Imperator Severus

Quamvis cum statulibero contraxeris, tamen ex ante gesto te non habere cum eo post impletam condicionem libertatis actionem scire debes. * sev. a. ioviano. * <a 196 pp. iiii id. dec. dextro ii et prisco conss.>

CJ.4.14.2: Imperator Antoninus

Creditoribus tuis, qui tibi in servitute pecuniam crediderunt, nulla adversus te actio competit, maxime cum peculium tibi non esse legatum proponas. * ant. a. baetico. * <a 215 pp. iii k. sept. laeto ii et cereale conss.>

CJ.4.14.3: Imperator Alexander Severus

Promissae tibi pecuniae a servo tuo, ut eum manumitteres, si, posteaquam manumisisti, stipulatus ab eo non es, adversus eum petitionem per in factum actionem habes. * alex. a. aurelio herodi. * <a 222 pp. id sept. alexandro a. cons.>

CJ.4.14.4: Imperator Gordianus

Licet servitutis tempore quae pecuniam matris tuae subripuisse dicitur, ob eiusmodi admissum conveniri non poterat, ad libertatem tamen perducta (nam caput noxa sequitur) furti actione tenetur. * gord. a. heroni. * <a 238 pp. id. sept. pio et pontiano conss.>

CJ.4.14.5: Imperator Gordianus

Si, ut adlegas, antequam a domina manumittereris, fundos eius coluisti posteaque adempto peculio libertate donatus es, ob reliqua, si qua pridem contracta sunt, res bonorum, quas postea propriis laboribus quaesisti, inquietari minime possunt. * gord. a. chresto. * <a 243 pp. xvi k. dec. arriano et papo conss.>

CJ.4.14.6pr.: Imperatores Diocletianus, Maximianus

Sive servi sunt ii, quorum precibus fecisti mentionem, domi eos conveni, quia inter dominos ac servos iudicium constare nullum potest: sive post delictum manumissi sunt, ex antecedentibus post datam libertatem eos nulla ratio iuris a dominis quondam conveniri patitur. * diocl. et maxim. aa. et cc. feliciano. * <a 293 d. ii id. april. byzantio aa. conss.>

CJ.4.14.6.1: Imperatores Diocletianus, Maximianus

Sane si post manumissionem quid illicite commiserunt, hoc apud praesidem provinciae argue accepturus ex iure sententiam. <a 293 d. ii id. april. byzantio aa. conss.>

CJ.4.15.0. Quando fiscus vel privatus debitoris sui debitores exigere potest.

CJ.4.15.1: Imperatores Severus, Antoninus

Propter aes alienum pupilli res tutoris, qui nihil ex bonis eius tenet, pignori capi non oportet. * sev. et ant. aa. valeriano. * <a 197 pp. xi k. iun. laterano et rufino conss.>

CJ.4.15.2: Imperator Antoninus

Si in causa iudicati valentis, quem tibi condemnatum esse proponis, nihil est, quod sine quaestione pignoris loco capi et distrahi possit, debitores eius conventi ad solutionem auctoritate praesidis provinciae compelluntur. * ant. a. marco. * <a 205 d. vi non. april. geta cons.>

CJ.4.15.3: Imperator Gordianus

Si debitum non infitiantur hi, quos obnoxios debitoribus fisci esse proponis, potest videri non esse iniquum quod desideras, ut ad solutionem per officium procuratoris compellantur. nam si quaestio aliqua refertur, id concedi non oportere et ipse perspicis. * gord. a. primiano. * <a 240 pp. vi k. febr. sabino ii et venusto conss.>

CJ.4.15.4: Imperatores Diocletianus, Maximianus

Non prius ad eos, qui debitoribus fisci nostri sunt obligati, actionem fiscalem extendi oportere, nisi patuerit principales reos idoneos non esse, certissimi iuris est. * diocl. et maxim. aa. et cc. zosimo. * <a 293 s. xii k. mai. aa. conss.>

CJ.4.15.5: Imperatores Diocletianus, Maximianus

In solutum nomine dato non aliter nisi mandatis actionibus ex persona sui debitoris adversus eius debitores creditor experiri potest. suo autem nomine utili actione recte utetur. * diocl. et maxim. aa. et cc. nanidiae. * <a 294 d. k. ian. cc. conss.>

CJ.4.16.0. De actionibus hereditariis.

CJ.4.16.1: Imperator Gordianus

Pecuniam, quam tibi a matre debitam fuisse dicis, ab heredibus eius coheredibus tuis pro parte tibi competenti petere debes. sed et res, si quae tibi ob idem debitum obligatae sunt, persequi non prohiberis. * gord. a. hermeroti. * <a 241 pp. xi k. mart. gordiano a. ii et pompeiano conss.>

CJ.4.16.2: Imperator dec.

Pro hereditariis partibus heredes onera hereditaria agnoscere etiam in fisci rationibus placuit, nisi intercedat pignus vel hypotheca: tunc enim possessor obligatae rei conveniendus est. * dec. a. telemachae. * <a 249 pp. xiiii k. nov. aemiliano et aquilino conss.>

CJ.4.16.3: Imperatores Diocletianus, Maximianus

Heredem mariti quondam tui de dote reddenda tibi conveni: personalem enim actionem contra debitores hereditarios decerni tibi frustra postulas. * diocl. et maxim. aa. et cc. maximae. * <a 293 pp. xiiii k. mai. aa. conss.>

CJ.4.16.4: Imperatores Diocletianus, Maximianus

Sub praetextu aetatis pupilli debitoris hereditarii creditorum exactionem differri non posse nimis evidens est. unde cum te tutorem proponas, quemadmodum a pupillis creditoribus satisfiat, eniti debes. * diocl. et maxim. aa. et cc. crispo. * <a 293 d. x k. dec. sirmi aa. conss.>

CJ.4.16.5: Imperatores Diocletianus, Maximianus

Ut debitum ante de hereditate tibi solvatur ac tunc, si ad te pertineret, quaeri iubeamus, praeposterea petitio est. etenim cum tibi soceri successionem quaesitam patuerit, debiti petitionem per confusionem extingui non ambigitur. * diocl. et maxim. aa. et cc. iulio. * <a 294 d. prid. non. mart. sirmi cc. conss.>

CJ.4.16.6: Imperatores Diocletianus, Maximianus

Si adulta, cuius curam geris, pro triente patruo suo, quem etiam tutelam eius administrasse proponis, heres extit nec ab eo quicquam exigere prohibita est, debitum a coheredibus pro besse petere non prohibetur, cum ultra eam portionem qua successit petitio non confundatur. nam adversus adultam tuam rescindi postulas testamentum, si quidem coheredes eius adeuntes hereditatem se etiam obligant et, si non solvendo constituti probentur, postulata separatio nullum ei damnum fieri patietur. * diocl. et maxim. aa. et cc. domno. * <a 294 d. k. dec. cc. conss.>

CJ.4.16.7: Imperatores Diocletianus, Maximianus

Creditores hereditarios adversus legatarios non habere personalem convenit actionem, quippe cum evidentissime lex duodecim tabularum heredes huic rei faciat obnoxios. * diocl. et maxim. aa. et cc. apolausto. * <a 294 d. vi id. dec. nicomediae cc. conss.>

CJ.4.17.0. Ex delictis defunctorum in quantum heredes conveniantur.

CJ.4.17.1: Imperatores Diocletianus, Maximianus

Post litis contestationem eo qui vim fecit vel concussionem intulit vel aliquid deliquit, defuncto successores eius in solidum, alioquin in quantum ad eos pervenit conveniri iuris absolutissimi est, ne alieno scelere ditentur. * diocl. et maxim. aa. et cc. macedonae. * <a 294 d. v k. mai. sirmi cc. conss.>

CJ.4.18.0. De constituta pecunia.

CJ.4.18.1: Imperator Gordianus

Si pro alieno debito te soluturum constituisti, pecuniae constitutae actio non solum adversus te, sed etiam adversus heredes tuos perpetuo competit. * gord. a. felici. * <a 294 d. vii k. iul. sirmi cc. conss.>

CJ.4.18.2pr.: Imperator Justinianus

Recepticia actione cessante, quae sollemnibus verbis composita inusitato recessit vestigio, necessarium nobis visum est magis pecuniae constitutae naturam ampliare. * iust. a. iuliano pp. * <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.4.18.2.1: Imperator Justinianus

Cum igitur praefata actio, id est pecuniae constitutae, in his tantummodo a veteribus conclusa est, ut exigeret res quae in pondere numero mensura sunt, in aliis autem rebus nullam haberet communionem et neque in omnibus casibus longaeva sit constituta, sed in speciebus certis annali spatio concluderetur, et dubitaretur, si pro debito sub condicione vel in diem constituto eam possibile est fieri et si pure constituta pecunia contracta valeret, hac apertissima lege definimus, ut liceat omnibus constituere non solum res quae pondere numero mensura sunt, sed etiam alias omnes sive mobiles sive immobiles sive se moventes sive instrumenta vel alias quascumque res, quas in stipulationem possunt homines deducere: et neque sit in quocumque casu annalis, sed (sive pro se quis constituat sive pro alio) sit et ipsa in tali vitae mensura, in qua omnes personales sunt actiones, id est in annorum metis triginta: et liceat pro debito puro vel in diem vel condicionali constitui: et non absimilem penitus stipulationi habeat dignitatem, suis tamen naturalibus privilegiis minime defraudata: sed et heredibus et contra heredes competat, ut neque recepticiae actiones neque alio indigeat res publica in huiusmodi casibus adminiculo, sed sit pecuniae constitutae actio per nostram constitutionem sibi in omnia sufficiens, ita tamen, ut hoc ei inhaereat, ut pro debito fiat constitutum (cum secundum antiquam recepticiam actionem exigebatur et si quid non fuerat debitum), cum satis absurdum et tam nostris temporibus quam iustis legibus contrarium est permittere per actionem recepticiam res indebitas consequi et iterum multas proponere condictiones, quae et pecunias indebitas et promissiones corrumpi et restitui definiunt. <a 531 d. x k. mart. c onstantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.4.18.2.1a: Imperator Justinianus

Ut non erubescat igitur tale legum iurgium, hoc tantummodo constituatur, quod debitum est, et omnia, quae de recepticia in diversis libris legislatorum posita sunt, aboleantur et sit pecunia constituta omnes casus complectens, qui et per stipulationem possint explicari. <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.4.18.2.1b: Imperator Justinianus

Et neminem moveat, quod sub nomine pecuniae etiam omnes res exigi definimus, cum et in antiquis libris prudentium, licet pecunia constituta nominabatur, tamen non pecuniae tantum per eam exigebantur, sed omnes res quae pondere numero mensura constitutae sunt. <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.4.18.2.1c: Imperator Justinianus

Sed et possibile est omnes res in pecuniam converti. si enim certa domus vel certus ager vel certus homo vel alia res quae expressa est in constituendis rebus ponatur, quid distat a nomine ipsius pecuniae? <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.4.18.2.1d: Imperator Justinianus

Sed ut et subtilitati eorum satisfiat, qui non sensum, sed vana nominum vocabula amplecti desiderant, ita omnes res veniant in constitutam, tamquam fuisset ipsa pecunia constituta, cum etiam veteres pecuniae appellatione omnes res significari definiunt et huiusmodi vocabulum et in libris iuris auctorum et in alia antiqua prudentia manifestissime inventum est. <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.4.18.2.2: Imperator Justinianus

His videlicet, quae argenti distractores et alii negotiatores indefense constituerint, in sua firmitate secundum morem usque adhuc obtinentem durantibus. <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.4.18.3: Imperator Justinianus

Divi hadriani epistulam, quae de periculo dividendo inter mandatores et fideiussores loquitur, locum habere et in his qui pecunias pro aliis simul constituunt necessarium est: aequitatis enim ratio diversas species actionis excludere nullo modo debet. * iust. a. iohanni pp. * <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.4.19.0. De probationibus.

CJ.4.19.1: Imperatores Severus, Antoninus

Ut creditor, qui pecuniam petit, numeratam implere cogitur, ita rursum debitor, qui solutam adfirmat, eius rei probationem praestare debet. * sev. et ant. aa. faustino. * <a 196 pp. prid. k. iul. dextro ii et prisco conss.>

CJ.4.19.2: Imperator Antoninus

Possessiones, quas ad te pertinere dicis, more iudiciorum persequere. nec enim possessori incumbit necessitas probandi eas ad se pertinere, cum te in probatione cessante dominium apud eum remaneat. * ant. a. auluzano. * <a 215 pp. xv k. dec. laeto et cereale conss.>

CJ.4.19.3: Imperator Alexander Severus

Ex persona collegae avi vestri conveniri non debetis, si eundem collegam tempore depositi officii solvendo fuisse ostenderitis. * alex. a. leaenae et lupo. * <a 231 pp. v k. ian. pompeiano et peligno conss.>

CJ.4.19.4: Imperator Alexander Severus

Proprietatis dominium non tantum instrumento emptionis, sed ex quibuscumque aliis legitimis probationibus ostenditur. * alex. a. avito. * <a 222 pp. k. nov. alexandro a. cons.>

CJ.4.19.5: Imperator Philippus

Instrumenta domestica seu privata testatio seu adnotatio, si non aliis quoque adminiculis adiuventur, ad probationem sola non sufficiunt. * philipp. a. et philipp. c. sertorio. * <a 245 pp. vii id. april. philippo a. et titiano conss.>

CJ.4.19.6pr.: Imperator Philippus

Rationes defuncti, quae in bonis eius inveniuntur, ad probationem sibi debitae quantitatis solas sufficere non posse saepe rescriptum est. * philipp. a. et c. romulo. * <a 245 pp. id. mai. philippo a. et titiano conss.>

CJ.4.19.6.1: Imperator Philippus

Eiusdem iuris est et si in ultima voluntate defunctus certam pecuniae quantitatem aut etiam res certas deberi sibi significaverit. <a 245 pp. id. mai. philippo a. et titiano conss.>

CJ.4.19.7: Imperator gallien.

Exemplo perniciosum est, ut ei scripturae credatur, qua unusquisque sibi adnotatione propria debitorem constituit. unde neque fiscum neque alium quemlibet ex suis subnotationibus debiti probationem praebere posse oportet. * gallien. a. sabino. * <a 262 pp. prid. non. sept. gallieno a. v et faustino conss.>

CJ.4.19.8: Imperatores Diocletianus, Maximianus

Frustra veremini, ne ab eo qui lite pulsatur probatio exigatur. * diocl. et maxim. aa. publicio et optato. * <a 289 pp. xiii k. dec. basso et quintiano conss.>

CJ.4.19.9: Imperatores Diocletianus, Maximianus

Cum te minorem quinque et viginti annis esse proponas, adire praesidem provinciae debes et de aetate probare. * diocl. et maxim. aa. et cc. marcianae. * <a 293 d. id. april. aa. conss.>

CJ.4.19.10: Imperatores Diocletianus, Maximianus

Neque natales tui, licet ingenuum te probare possis, neque honores, quibus te functum esse commemoras, idoneam probationem pro filiae tuae ingenuitate continent, cum nihil prohibeat et te ingenuum et eam ancillam esse. * diocl. et maxim. aa. et cc. isidoro. * <a 293 d. xviii k. mai. aa. conss.>

CJ.4.19.11: Imperatores Diocletianus, Maximianus

Si scriptum heredem ab amita tua vel testamenti vitio vel quacumque alia ratione non posse obtinere hereditatem probari a te posse confidis, de hac hereditate apud rectorem provinciae agere potes. * diocl. et maxim. aa. et cc. antoniae. * <a 293 s. v k. ami. heracliae aa. conss.>

CJ.4.19.12: Imperatores Diocletianus, Maximianus

Cum res non instrumentis gerantur, sed in haec gestae rei testimonium conferatur , factam emptionem et in vacuam possessionem inductum patrem tuum pretiumque numeratum quibus potes iure proditis probationibus docere debes. * diocl. et maxim. aa. et cc. chroniae. * <a 293 d. v non. oct. aa. conss.>

CJ.4.19.13pr.: Imperatores Diocletianus, Maximianus

Non epistulis necessitudo consanguinitatis, sed natalibus vel adoptionis sollemnitate coniungitur, nec adversus absentem hereditatis dividundae gratia velut contra fratrem pro ancilla petitus arbiter substantiae perimit veritatem. * diocl. et maxim. aa. et cc. iustino. * <a 293 d. k. dec. aa. conss.>

CJ.4.19.13.1: Imperatores Diocletianus, Maximianus

Sive itaque quasi ad sororem, quam ancillam te posse probare confidis, epistulam emisisti, sive familiae erciscundae quasi pro coherede petitus arbiter doceatur , fraternitatis quaestio per haec tolli non potuit. <a 293 d. k. dec. aa. conss.>

CJ.4.19.14: Imperatores Diocletianus, Maximianus

Non nudis adseverationibus nec ementita professione, licet utrique consentiant, sed matrimonio legitimo concepti vel adoptione sollemni filii civili iure patri constituuntur. si itaque hunc contra quem supplicas alienum esse confidis, per te vel per procuratorem adfirmationem eius falsam detege. * diocl. et maxim. aa. et cc. muciano. * <a 293 d. k. dec. aa. conss.>

CJ.4.19.15: Imperatores Diocletianus, Maximianus

Vis eius, qui se dominum contendit, ad imponendum onus probationis servo minime prodest. cum igitur aufugisse te de domo severi profitearis, verum nec ab illo iusto initio, sed per violentiam adseveres esse detentum, inquisito prius, an in possessionem libertatis sine dolo malo constitutus sis, tunc etiam, onus probationis qui debeat subire, per huiusmodi eventum declarabitur. * diocl. et maxim. aa. et cc. antonino. * <a 293 d. vi k. ian. aa. conss.>

CJ.4.19.16: Imperatores Diocletianus, Maximianus

Sive possidetis praedia, quae a patre communi sibi fratres emancipati donata contendentes vindicant, ipsis incumbit facti probationis necessitas, sive ipsis ea praedia, quasi a patre vestro sibi donata, tenentibus vos heredes constituti patris petitis, ut intentionem vestram non constitisse detegant, unde domini facti sunt, emergente quaestione docere compelluntur. * diocl. et maxim. aa. et cc. philippo et sebastianae. * <a 294 d. x k. febr. cc. conss.>

CJ.4.19.17: Imperatores Diocletianus, Maximianus

Matrem tuam consecutam libertatem ac te post editam, ut ingenua probari possis, ostendi convenit. quod enim fratribus tuis nulla movetur quaestio, ad defensionem tuam nihil prodesse potest. * diocl. et maxim. aa. et cc. paulinae. * <a 294 d. v id. febr. cc. conss.>

CJ.4.19.18pr.: Imperatores Diocletianus, Maximianus

Cum precibus tuis significes ignorante te praedium eum cuius meministi sibi velut a te donatum instrumentis inseri fecisse, si vera sunt quae indidisti, nec ad nomen factae donationis fundus iste pervenit. * diocl. et maxim. aa. et cc. violentillae. * <a 294 d. vii id. april. byzantii cc. conss.>

CJ.4.19.18.1: Imperatores Diocletianus, Maximianus

Unde adito iudice competenti probare te oportet contra tuam voluntatem hunc fundum instrumento adversarium tuum sibi adscribi laborasse, ut secundum tenorem rescripti nostri possis consequi sententiam. <a 294 d. vii id. april. byzantii cc. conss.>

CJ.4.19.19: Imperatores Diocletianus, Maximianus

Exceptionem dilatoriam opponi quidem initio, probari vero, postquam actor monstraverit quod adseverat, oportet. * diocl. et maxim. aa. et cc. menandro. * <a 294 d. xvi k. dec. nicomediae cc. conss.>

CJ.4.19.20: Imperatores Diocletianus, Maximianus

Si de possessione servitutis emptionis instrumentis subtractis in libertatem proclamat eutychia, cum petitori probationis onus incumbat, intentione sua defecta his iuvari minime potest. nam si in servitutem petatur, ad emptionis probationem non est indiciis aliis opus, sed instrumentorum furtum monstrare sufficit. * diocl. et maxim. aa. et cc. phronimae. * <a 294 iiii non. dec. nicomediae cc. conss.>

CJ.4.19.21pr.: Imperatores Diocletianus, Maximianus

Ad probationem uti dominii aliena subtrahentes instrumenta his minime possunt, quippe cum horum lectio non recitantem, sed quem tenor scripturae designat, adiuvat. * diocl. et maxim. aa. et cc. crispo. * <a 294 s. vi id. dec. singiduni cc. conss.>

CJ.4.19.21.1: Imperatores Diocletianus, Maximianus

Cum itaque nec cetera probationum indicia reprobentur, iure competenti praediorum, quae in quaestionem veniunt, dominium ad te ostendae pertinere. nam res vindicantem ab emptore suos numeratos nummos adseverantem erga probationem laborare non convenit, si quidem huiusmodi, licet probetur, factum intentioni nullum praestet adminiculum. <a 294 s. vi id. dec. singiduni cc. conss.>

CJ.4.19.22: Imperatores Diocletianus, Maximianus

Ad probationem servitutis glyconis matrem eius ac fratrem servilia fecisse ministeria non sufficit, cum neque ingenuorum coniventia coniunctis necessitudine praeiudicet neque de servis ex eadem matre natis unus libertatem adipisci prohibeatur. * diocl. et maxim. aa. et cc. agathocleae. * <a 294 d. viiii k. ian. ipsis cc. conss.>

CJ.4.19.23: Imperatores Diocletianus, Maximianus

Actor quod adseverat probare se non posse profitendo reum necessitate monstrandi contrarium non adstringit, cum per rerum naturam factum negantis probatio nulla sit. * diocl. et maxim. aa. et cc. menelao. * <a 294 d. viii k. ian. cc. conss.>

CJ.4.19.24: Imperatores Valens, Gratianus, Valentinianus

Iubemus omnes deinceps, qui scripturas suspectas comminiscuntur, cum quid in iudicio prompserint, nisi ipsi adstruxerint veritatem, ut nefariae scripturae reos et quasi falsarios esse detinendos. * valens grat. et valentin. aaa. ad antonium pp. * <a 378 d. prid. id. ian. treviris valente vi et valentiniano ii aa. conss.>

CJ.4.19.25: Imperatores Gratianus, Valentinianus, Theodosius

Sciant cuncti accusatores eam se rem deferre debere in publicam notionem, quae munita sit testibus idoneis vel instructa apertissimis documentis vel indiciis ad probationem indubitatis et luce clarioribus expedita. * grat. valentin. et theodos. aaa. floro pp. * <a 382 d. xv k. iun. constantinopoli antonio et syagrio conss.>

CJ.4.20.0. De testibus.

CJ.4.20.2: Imperator Alexander Severus

Si tibi controversia ingenuitatis fiet, defende causam instrumentis et argumentis, quibus putas: soli etenim testes ad ingenuitatis probationem non sufficiunt. * alex. a. carpo. * <a 223 pp. x k. mai. maximo ii et aeliano conss.>

CJ.4.20.3: Imperatores valer., gallien.

Etiam iure civili domestici testimonii fides improbatur. * valer. et gallien. aa. rosae. * <a 255 pp. iii k. sept. valeriano iii et gallieno ii aa. conss.>

CJ.4.20.4: Imperatores carus, carinus, numer.

Solam testationem prolatam nec aliis legitimis adminiculis causa approbata nullius esse momenti certum est. * carus carinus et numer. aaa. aurelio. * <a 284 pp. viii k. dec. carino ii et numeriano conss.>

CJ.4.20.5: Imperatores Diocletianus, Maximianus

Eos testes ad veritatem iuvandam adhiberi oportet, qui omni gratiae et potentatui fidem religioni iudiciariae debitam possint praeponere. * diocl. et maxim. aa. candido. * <a 286 pp. v k. mai. maximo ii et aquilino conss.>

CJ.4.20.11pr.: Imperatores Honorius, Theodosius

Quoniam liberi testes ad causas postulantur alienas, si socii et participes criminis non dicantur, sed fides ab his notitiae postuletur, in exhibitione necessariarum personarum, hoc est testium, talis debet esse cautio iudicantis, ut his venturis ad iudicium per accusatorem aut ab his, per quos fuerint postulati, sumptus competentes dari praecipiat. * honor. et theodos. aa. caeciliano pp. * <a 409 d. xii k. febr. ravennae honorio viii et theodosio iii aa. conss.>

CJ.4.20.11.1: Imperatores Honorius, Theodosius

Idem iuris est et si in pecuniaria causa testes ab alterutra parte producendi sunt. <a 409 d. xii k. febr. ravennae honorio viii et theodosio iii aa. conss.>

CJ.4.20.12: Imperatores Honorius, Theodosius

Libertorum adversus patronos illicitas atque improbas voces poenae obiectione praecludimus atque ita, ut non modo sponte prodire non audeant, sed nec vocati quidem in iudicium venire cogantur. * honor. et theodos. aa. * <a 423 d. iiii id. aug. ravennae mariniano et asclepiodoto conss.>

CJ.4.20.14: Imperator Zeno

Nullum penitus, cum semel ad iudicem quemlibet, licet non suum, dicendi gratia testimonii fuerit ingressus, armatam forte militiam vel quamlibet aliam fori praescriptionem ad evadendum iudicis motum, quem vel testimonii verborum improbitas vel rei qualitas flagitaverit, posse praetendere praecipimus, sed omnes, qui in civili scilicet causa suum praebeant testimonium, separato et tamquam ante iudicium interim deposito exceptionis fori privilegio huiusmodi praesidio denudatos, ita iudicantis intrare secretum, ut, quodcumque aures eius offenderit, non dubitent sibimet formidandum: data cunctis iudicibus absque ullo praescriptionis obstaculo (sicut saepe dictum est) testes, quorum voces falsitate vel fraude non carere perspexerint, pro qualitate videlicet delicti animadvertendi licentia. * zeno a. arcadio pp. * <a 486 d. xii k. iun. constantinopoli longino cons.>

CJ.4.20.17pr.: Imperator Justinianus

Si quis testibus usus fuerit idemque testes adversus eum in alia lite producantur, non licebit ei personas eorum excipere, nisi ostenderit inimicitias inter se et illos postea emersas fuisse, ex quibus testes repelli leges praecipiunt: non adimenda scilicet ei licentia ex ipsis depositionibus testimonium eorum arguere. * iust. a. menae pp. * <a 528 d. k. iun. constantinopoli dn. iustiniano pp. a. ii cons.>

CJ.4.20.17.1: Imperator Justinianus

Sed et si liquidis probationibus datione vel promissione pecuniarum eos corruptos esse ostenderit, eam etiam adlegationem integram ei servari praecipimus. <a 528 d. k. iun. constantinopoli dn. iustiniano pp. a. ii cons.>

CJ.4.20.18pr.: Imperator Justinianus

Testium facilitatem, per quos multa veritati contraria perpetrantur, prout possibile est, resecantes omnibus praedicimus, qui in scriptis a se debita rettulerunt, quod non facile audientur, si dicant omnis debiti vel partis solutionem sine scriptis fecisse velintque viles et forsitan redemptos testes super huiusmodi solutione producere, nisi quinque testes idonei et summae atque integrae opinionis praesto fuerint solutioni celebratae hique cum sacramenti religione deposuerint sub praesentia sua debitum esse solutum, ut scientes omnes ita ea statuta esse non aliter debitum vel partem eius persolvant, nisi vel securitatem in scriptis capiant vel observaverint praefatam testium probationem: his scilicet, qui iam sine scriptis debitum vel partem eius solverunt, praesenti sanctione merito excipiendis. * iust. a. menae pp. * <a 528 d. k. iun. constantinopoli dn. iusti niano pp. a ii cons.>

CJ.4.20.18.1: Imperator Justinianus

Sin vero facta quidem securitas sit, fortuito vero casu vel incendii vel naufragii vel alterius infortunii perempta, tunc liceat his qui hoc perpessi sunt causam peremptionis probantibus etiam debiti solutionem per testes probare damnumque ex amissione instrumenti effugere. <a 528 d. k. iun. constantinopoli dn. iustiniano pp. a ii cons.>

CJ.4.20.19pr.: Imperator Justinianus

Si quando invitos testes in pecuniariis causis ex nostra lege aliquis trahere maluerit, si quidem sua sponte fideiussionem suae personae sine damno praestare velint, hoc fieri, sin autem noluerint, non carcerali custodia detrudi, sed sacramento eos committi censemus. * iust. a. iuliano pp. * <a 530 d. xii k. april. constantinopoli lampadio et oresta vv. cc. conss.>

CJ.4.20.19.1: Imperator Justinianus

Si enim pro toto litis certamine iuriiurando credendum esse testium putaverunt hi qui eos produxerunt, multo magis praesentiam suam testibus sacramento eorum credere debent. <a 530 d. xii k. april. constantinopoli lampadio et oresta vv. cc. conss.>

CJ.4.20.19.2: Imperator Justinianus

Sed cum oportet minime testes in huiusmodi casibus protelari et pro alienis commodis suas invenire difficultates, disponimus non amplius testes observare iudicies compelli, postquam fuerint admoniti, nisi tantum quindecim dies, intra quos iudices provideant, quatenus cognitionem suscipiant, in qua testes necessarii visi fuerint, ut omnimodo licentia eis concedatur et alterutra parte cessante et minime eos observare volente, si per exsecutores admoniti venire noluerint, testes accipere et alterutra parte praesente, quae eos introducit, testimonia eorum capere. <a 530 d. xii k. april. constantinopoli lampadio et oresta vv. cc. conss.>

CJ.4.20.19.3: Imperator Justinianus

His autem diebus effluentibus liceat quidem testibus decedere a iudice nullam habente licentiam eos, postquam afuerint, iterum retrahere: ipsum autem iudicem, si per eum steterit, quominus testimonium praestetur, parti laesae omnem iacturam pro huiusmodi causa illatam ex suis facultatibus resarcire. <a 530 d. xii k. april. constantinopoli lampadio et oresta vv. cc. conss.>

CJ.4.20.20: Imperator Justinianus

Cum apud compromissarios iudices testes fuissent producti, variatum erat, utrum deberet eorum depositionibus in iudicio litigator uti, an non esset audiendus. sancimus, si quidem in compromissis aliquid pro huiusmodi causa statutum est, hoc observari: sin autem nihil conventum est, in huiusmodi casibus, si quidem supersint testes, licentiam habere eum, contra quem depositiones eorum proferuntur , si eas recusaverit, concedere testes iterum adduci et non opponi eis, quod iam testimonium suum dederunt, vel, si hoc concedere minime maluerit, depositiones eorum quasi factas accipere, omni iure legitimo quod ei competit adversus eas servato: sin autem omnes ab hac luce subtracti sunt, tunc necessitatem ei imponi fide scripturae approbata, in qua depositiones eorum referuntur, eas quasi factas accipere. sin vero res permixtae fuerint et quidam ex his mortui alii vivent es, tunc in superstitum quidem testimonio eandem electionem servari litigatori, adversus quem testimonia proferuntur, in morientium autem personas depositiones eorum non esse respuendas: omni, secundum quod iam praediximus, adversus eas et testes iure legitimo, quod ei competit adversus quem proferuntur, integro reservato. * iust. a. iuliano pp. * <a 530 d. vi k. april. constantinopoli lampadio et oresta vv. cc. conss.>

CJ.4.21.0. De fide instrumentorum et amissione eorum et antapochis faciendis et de his quae sine scriptura fieri possunt.

CJ.4.21.1: Imperator Antoninus

Debitores tuos quibuscumque rationibus debere tibi pecuniam si probaveris, ad solutionem compellet aditus praeses provinciae : nec oberit tibi amissio instrumentorum, si modo manifestis probationibus eos debitores esse apparuerit. * ant. a. septimiae marciae. * <a 213 pp. v id. sept. antonino a. iiii et balbino conss.>

CJ.4.21.2: Imperator Alexander Severus

Si uteris instrumento, de quo alius accusatus falsi victus est, et paratus es, si ita visum fuerit a quo pecuniam petis, eiusdem criminis te reum facere et discrimen periculi poenae legis corneliae subire, non oberit sententia, a qua nec is contra quem data est appellavit nec tu, qui tunc crimini non eras subiectus, appellare debuisti. * alex. a. maniliano. * <a 223 pp. iii k. oct. maximo ii et aeliano conss.>

CJ.4.21.3: Imperator Alexander Severus

Si adversarius tuus apud acta praesidis provinciae, cum fides instrumenti quod proferebat in dubium revocaretur non se usurum contestatus est, vereri non debes , ne ex ea scriptura, quam non esse veram etiam professione eius constitit, negotium denuo repetatur. * alex. a. aeliano. * <a 226 pp. iii non. mai. alexandro a. ii et Marcello conss.>

CJ.4.21.4: Imperator Gordianus

Illatae dispensatori pecuniae, si ob amissorum instrumentorum casum probatione defeceris, inspectio rationum fiscalium fidem demonstrabit. * gord. a. marciano. * <a 239 d. ii id. febr. gordiano a. et aviola conss.>

CJ.4.21.5: Imperator Gordianus

Sicut iniquum est instrumentis vi ignis extinctis debitores quantitatum debitarum renuere solutionem, ita non statim casum conquerentibus facile credendum est. intellegere itaque debetis non existentibus instrumentis vel aliis argumentis probare fidem precibus vestris adesse. * gord. a. aurelio prisco et marco mil. * <a 240 pp. iii k. iul. sabino ii et venusto conss.>

CJ.4.21.6: Imperatores Diocletianus, Maximianus

Statum tuum natali professione perdita mutilatum non esse certi iuris est. * diocl. et maxim. aa. luscidi. * <a 286 d. xiii k. febr. nicomediae maximo ii et aquilino conss.>

CJ.4.21.7: Imperatores Diocletianus, Maximianus

Si sollemnibus stipendiis honeste sacramento solutus es, licet super huiusmodi re instrumenta, ut dicis, facta perdita sunt, tamen, si aliis evidentibus probationibus veritas ostendi potest, veteranorum privilegia etiam te usurpare posse dubium non est. * diocl. et maxim. aa. zinimae. * <a 286 d. xv k. iun. maximo ii et aquilino conss.>

CJ.4.21.8: Imperatores Diocletianus, Maximianus

Si constiterit proprietatem possessionis de qua agitur apud vos esse, providebit iudex ex persona fructuarii nullum praeiudicium dominio comparari propter amissionem instrumentorum. * diocl. et maxim. aa. alexandrae. * <a 287 d. xv k. mart. diocletiano iii et maximiano aa. conss.>

CJ.4.21.9: Imperatores Diocletianus, Maximianus

Instrumentis etiam non intervenientibus semel divisio recte facta non habeatur irrita. * diocl. et maxim. aa. et cc. aristaeneto. * <a 293 pp. vi k. iul. aa. conss.>

CJ.4.21.10: Imperatores Diocletianus, Maximianus

Cum instrumentis etiam non intervenientibus venditio facta rata maneat, consequenter amissis etiam quae intercesserant non tolli substantiam veritatis placuit. * diocl. et maxim. aa. et cc. victorino. * <a 294 d. viii k. nov. reginassi cc. conss.>

CJ.4.21.11: Imperatores Diocletianus, Maximianus

Emancipatione facta, etsi actorum tenor non existat, si tamen aliis indubiis probationibus vel ex personis vel ex instrumentorum incorrupta fide factam esse emancipationem probari possit, actorum interitu veritas convelli non solet. * diocl. et maxim. aa. et cc. theageni. * <a 294 d. iii id. nov. cc. conss.>

CJ.4.21.12: Imperatores Diocletianus, Maximianus

Non idcirco minus in vacuam inductus praedii donationis causa possessionem, quod eius facti praetermissum instrumentum adseveratur, hanc obtinere potes. * diocl. et maxim. aa. et cc.Dionysiae. * <a 294 d. id. dec. nicomediae cc. conss.>

CJ.4.21.13: Imperatores Diocletianus, Maximianus

Apud eos, qui rem gestam ignoraverunt, amissorum instrumentorum habita testatio nihil ad probationem veritatis prodesse potest. * diocl. et maxim. aa. et cc. leontio. * <a 294 d. xvi k. ian. nicomediae cc. conss.>

CJ.4.21.14: Imperatores Diocletianus, Maximianus

Scripturae diversae et fidem sibi invicem derogantes ab una eademque parte prolatae nihil firmitatis habere potuerunt. * diocl. et maxim. a. et c. ad severum com. hispaniarum. * <a 333 d. iiii non mai. constantinopoli dalmatio et zenophilo conss.>

CJ.4.21.15: Imperator Constantinus

In exercendis litibus eandem vim obtinent tam fides instrumentorum quam depositiones testium. * constant. a. ad pop. * <a 317 d. romae xii k. aug. gallicano et basso conss.>

CJ.4.21.17pr.: Imperator Justinianus

Contractus venditionum vel permutationum vel donationum, quas intimari non est necessarium, dationis etiam arrarum vel alterius cuiuscumque causae, illos tamen , quos in scriptis fieri placuit, transactionum etiam, quas instrumento recipi convenit, non aliter vires habere sancimus, nisi instrumenta in mundum recepta subscriptionibusque partium confirmata et, si per tabellionem conscribantur, etiam ab ipso completa et postremo a partibus absoluta sint, ut nulli liceat prius , quam haec ita processerint, vel a scheda conscripta, licet litteras unius partis vel ambarum habeat, vel ab ipso mundo, quod necdum est impletum et absolutum , aliquod ius sibi ex eodem contractu vel transactione vindicare: adeo ut nec i llud in huiusmodi venditionibus liceat dicere, quod pretio statuto necessitas venditori imponitur vel contractum venditionis perficere vel id quod emptoris interest ei persolvere. * iust. a. menae pp. * <a 528 d. k. iun. constantinopoli dn. iustiniano a. ii cons.>

CJ.4.21.17.1: Imperator Justinianus

Quae tam in postea conficiendis instrumentis quam in his, quae iam scripta nondum autem absoluta sunt, locum habere praecipimus, nisi iam super his transactum sit vel iudicatum, quae retractari non possunt: exceptis emptionalibus tantum instrumentis iam vel in scheda vel in mundo conscriptis, ad quae praesentem sanctionem non extendimus, sed prisca iura in his tenere concedimus. <a 528 d. k. iun. constantinopoli dn. iustiniano a. ii cons.>

CJ.4.21.17.2: Imperator Justinianus

Illud etiam adicientes, ut et in posterum, si quae arrae super facienda emptione cuiuscumque rei datae sunt sive in scriptis sive sine scriptis, licet non sit specialiter adiectum, quid super isdem arris non procedente contractu fieri oporteat, tamen et qui vendere pollicitus est, venditionem recusans in duplum eas reddere cogatur, et qui emere pactus est, ab emptione recedens datis a se arris cadat, repetitione earum deneganda. <a 528 d. k. iun. constantinopoli dn. iustiniano a. ii cons.>

CJ.4.21.18: Imperator Justinianus

Iudices sive in hac inclita urbe sive in provinciis ea quae disposuimus (ut possint, si hoc perspexerint, occasione testium in aliis locis degentium litigantes vel procuratores eorum ibi destinare, ut depositionibus, sub utriusque partis praesentia factis res ad eos referatur) etiam in illis servare volumus, qui prolatis instrumentis fidem adhibere exiguntur, ut, si poposcerint in aliis locis id eis facere permitti et hoc iuste peti iudex invenerit, similis proferatur sententia, ut, postquam in locis opportunis fides instrumento data vel minus data fuerit, referatur negotium ad priorem iudicem. * iust. a. menae pp. * <a 529 d. viii id. april. decio vc. cons.>

CJ.4.21.19pr.: Imperator Justinianus

Plures, apochis vel redituum vel usurarum perceptis, si quando super his fuerit dubitatio exorta, eas habere negando ius agentium faciunt vacillare, cum coloni ad dominum certantes et sibi iniquam forte libertatem vindicantes vel debitores creditoribus suis temporalem praescriptionem opponere cupientes ad easdem infitiationes perveniunt. * iust. a. demostheni pp. * <a 529 d. xii k. oct. chalcedone decio vc. cons.>

CJ.4.21.19.1: Imperator Justinianus

Quod resecantes iubemus, ut in praefatis casibus vel aliis privatis similibus , si voluerit is qui apocham conscripsit vel exemplar cum subscriptione eius qui apocham suscepit ab eo accipere vel antapocham suscipere, omnis ei licentia hoc facere concedatur: necessitate imponenda apochae susceptori antapocham reddere, ita tamen, ut si hoc is qui apocham conscribit facere neglexerit vel non curaverit, nullum ei praeiudicium ex eo, quod antapocham non recepit, generetur, cum hoc, quod pro quibusdam introductum est, inferre eis iacturam minime rationi convenit aequitatis. <a 529 d. xii k. oct. chalcedone decio vc. cons.>

CJ.4.21.20pr.: Imperator Justinianus

Comparationes litterarum ex chirographis fieri et aliis instrumentis, quae non sunt publice confecta, satis abundeque occasionem criminis falsitatis dare et in iudiciis et in contractibus manifestum est. * iust. a. iuliano pp. * <a 530 d. xiiii k. april. constantinopoli lampadio et oresta vv. cc. conss.>

CJ.4.21.20.1: Imperator Justinianus

Ideoque sancimus non licere comparationes litterarum ex chirographis fieri, nisi trium testium habuerint subscriptiones et prius litteris eorum fides imponatur vel ex ipsis hoc deponentibus (sive cunctis sive omnimodo duobus ex his) sive comparatione litterarum testium procedente, et tunc ex huiusmodi chartula iam probata comparatio fiat. <a 530 d. xiiii k. april. constantinopoli lampadio et oresta vv. cc. conss.>

CJ.4.21.20.2: Imperator Justinianus

Aliter etenim fieri comparationem nullo concedimus modo, licet in semet ipsum aliquis chartam conscriptam proferat, sed tantummodo vel ex forensibus vel publicis instrumentis vel ex huiusmodi chirographis quae enumeravimus comparatione trutinanda. <a 530 d. xiiii k. april. constantinopoli lampadio et oresta vv. cc. conss.>

CJ.4.21.20.3: Imperator Justinianus

Omnes autem comparationes non aliter fieri concedimus, nisi iuramento antea praestito ab his qui comparationes faciunt fuerit adfirmatum, quod neque lucri causa neque inimicitiis neque gratia tenti huiusmodi faciunt comparationem. <a 530 d. xiiii k. april. constantinopoli lampadio et oresta vv. cc. conss.>

CJ.4.21.20.4: Imperator Justinianus

Et hoc observari tam in omnibus sacris scriniis nostris quam in apparitione omnis sublimissimae praefecturae nec non magisteriae potestatis ceterisque omnibus iudiciis, quae in orbe nostro constituta sunt, his omnibus in posterum observandis. comparationes etenim iam antea factas retractari extra periculum minime est. <a 530 d. xiiii k. april. constantinopoli lampadio et oresta vv. cc. conss.>

CJ.4.21.21pr.: Imperator Justinianus

Cum quidam instrumentum protulerit vel aliam chartulam eique fidem imposuerit, postea autem persona, contra quam ista chartula vel instrumentum prolatum est, quasi falsum hoc constitutum redarguere niteretur, ne diutius dubitetur, utrum necessitatem ei qui protulit imponi oporteret repetita vice hoc proferre, an sufficiat ei fides iam pridem approbata, sancimus, si aliquid tali eveniat, eum, qui petit eam chartam iterum proferri, prius sacramentum praestare, quod existimans se posse falsum redarguere quod prolatum est ad huius modi venit petitionem. quid enim, si, cum nosset deperditam esse chartam vel forte concrematam vel alio modo diminutam, hanc requiri adsimulans et ad difficultatem productionis r espiciens huiusmodi facit petitionem? * iust. a. iuliano pp. * <a 530 d. v k. mart. lampadio et oresta vv. cc. conss.>

CJ.4.21.21.1: Imperator Justinianus

Et postquam hoc ab actore vel petitore fuerit iuratum et inscriptionum pagina apud competentem iudicem deposita, tunc necessitatem imponi ei, qui protulit chartam de qua quaeritur, iterum eam apud iudicem criminis proferre, quatenus possit apud eum crimen falsitatis ventilari. <a 530 d. v k. mart. lampadio et oresta vv. cc. conss.>

CJ.4.21.21.2: Imperator Justinianus

Sin autem dicat non esse sibi possibile eam ostendere, quia per fortuitos casus huiusmodi copia ei abrepta est, tunc subeat sacramentum, quod neque habet eandem chartulam neque alii eam dedit nec apud alium voluntate eius constituta est nec dolo malo fecit, quominus ea appareat, sed re vera ipsa chartula sine omni dolo deperdita est et productio eius sibi impossibilis est: et si tale subeat sacramentum, ab huiusmodi necessitate eum relaxari. <a 530 d. v k. mart. lampadio et oresta vv. cc. conss.>

CJ.4.21.21.3: Imperator Justinianus

Quod si praedictum iusiurandum subire minime maluerit, tunc quasi falsa chartula nullas habeat vires adversus eum, contra quem prolata est, sed sit penitus vacuata: neque enim ulterius poenam produci contra eos qui non iuraverunt volumus, cum forsitan quidam subtili reverentia tenti nec verum sacramentum praestare patiuntur. <a 530 d. v k. mart. lampadio et oresta vv. cc. conss.>

CJ.4.21.21.4: Imperator Justinianus

Eandem autem copiam ei praestamus, donec causa apud iudicem ventilatur. si enim iam plenissimum finem accepit et neque per appellationem suspensa est neque per solitam retractationem adhuc lis vivere speratur, tunc satis durum est huiusmodi querellae indulgeri, ne in infinitum causae retractentur et sopita iam negotia per huiusmodi viam iterum aperiantur et contrarium aliquid nostro eveniat proposito. <a 530 d. v k. mart. lampadio et oresta vv. cc. conss.>

CJ.4.22.0. Plus valere quod agitur quam quod simulate concipitur.

CJ.4.22.1: Imperatores valer., gallien.

In contractibus rei veritas potius quam scriptura prospici debet. * valer. et gallien. aa. rufino. * <a 259 pp. iii k. iun. aemiliano et basso conss.>

CJ.4.22.2: Imperatores Diocletianus, Maximianus

Acta simulata, velut non ipse, sed eius uxor comparaverit, veritatis substantiam mutare non possunt. quaestio itaque facti per praesidem examinabitur provinciae. * diocl. et maxim. aa. et cc. soteri. * <a 294 d. x k. mai. cc. conss.>

CJ.4.22.3: Imperatores Diocletianus, Maximianus

Emptione pignoris causa facta non quod scriptum, sed quod gestum est inspicitur. * diocl. et maxim. aa. et cc. marinae. * <a 294 d. k. mai. sirmi cc. conss.>

CJ.4.22.4: Imperatores Diocletianus, Maximianus

Si quis gestum a se fecerit alium egisse scribi, plus actum quam scriptum valet. * diocl. et maxim. aa. et cc. decio. * <a 294 d. viii k. dec. cc. conss.>

CJ.4.22.5: Imperatores Diocletianus, Maximianus

Si falsum instrumentum emptionis conscriptum tibi, velut locationis quam fieri mandaveras, subscribere, te non relecto, sed fidem habente, suasit, neutrum contractum in utroque alterutrius consensu deficiente constitisse procul dubio est. * diocl. et maxim. aa. et cc. victori. * <a 294 d. xiii k. ian. cc. conss.>

CJ.4.23.0. De commodato.

CJ.4.23.1: Imperatores Diocletianus, Maximianus

Ea quidem, quae vi maiore auferuntur, detrimento eorum quibus res commodantur imputari non solent. sed cum is, qui a te commodari sibi bovem postulabat, hostilis incursionis contemplatione periculum amissionis ac fortunam futuri damni in se suscepisse proponatur, praeses provinciae, si probaveris eum indemnitatem tibi promisisse, placitum conventionis implere eum compellet. * diocl. et maxim. aa. et cc. sisolae. * <a 290 vel 293 d. vi k. iun. ipsis aa. conss.>

CJ.4.23.2: Imperatores Diocletianus, Maximianus

Cum eum, qui temporalis ministerii causa suscepit ancillam, ad restitutionem eius bona fides urgueat, consequens est socerum tuum huius rei causa tradidisse ancillam adito praeside provinciae probare, ut fidem susceptam is adversus quem supplicas compellatur agnoscere. * diocl. et maxim. aa. et cc. auluzano. * <a 293 s. prid. non. nov. ipsis aa. conss.>

CJ.4.23.3: Imperatores Diocletianus, Maximianus

De restituendis rebus, quas obligandas pro se dederas, postquam debitum fuerit extenuatum, commodati actionem etiam adversus heredes eius exercere potes. * diocl. et maxim. aa. et cc. soterae. * <a 294 d. iii id. april. sirmi cc. conss.>

CJ.4.23.4: Imperatores Diocletianus, Maximianus

Praetextu debiti restitutio commodati non probabiliter recusatur. * diocl. et maxim. aa. et cc. faustinae. * <a 294 d. xii k. dec. ipsis cc. conss.>

CJ.4.24.0. De actione pigneraticia.

CJ.4.24.2: Imperator Alexander Severus

Quod ex operis ancillae vel ex pensionibus domus, quam pignori detineri dicis, perceptum est, debiti quantitatem relevabit. * alex. a. demetrio. * <a 222 pp. k. oct. antonino iiii et alexandro conss.>

CJ.4.24.3: Imperator Alexander Severus

Creditor, qui praedium pignori sibi nexum detinuit, fructus quos percepit vel percipere debuit in rationem exonerandi debiti computare necesse habet et, si agrum deteriorem constituit, eo quoque nomine pigneraticia actione obligatur. * alex. a. victori. * <a 222 pp. vi id. dec. antonino iiii et alexandro conss.>

CJ.4.24.4: Imperator Alexander Severus

Pactum vulgare, quod proposuistis, ut, si intra certum tempus pecunia soluta non fuisset, praedia pignori vel hypothecae data vendere liceret, non adimit debitori adversus creditorem pigneraticiam actionem. * alex. a. hermaeo et maximillae. * <a 223 pp. xii k. mai. maximo ii et aeliano conss.>

CJ.4.24.5: Imperator Alexander Severus

Si creditor sine vitio suo argentum pignori datum perdidit restituere id non cogitur: sed si culpae reus deprehenditur vel non probat manifestis rationibus se perdidisse, quanti debitoris interest condemnari debet. * alex. a. dioscoridae. * <a 224 pp. xiii k. mai. iuliano et crispino conss.>

CJ.4.24.6: Imperator Alexander Severus

Quae fortuitis casibus accidunt, cum praevideri non potuerant, in quibus etiam adgressura latronum est, nullo bonae fidei iudicio praestantur: et ideo creditor pignora, quae huiusmodi causa interierunt, praestare non compellitur nec a petitione debiti submovetur nisi inter contrahentes placuerit, ut amissio pignorum liberet debitorem. * alex. a. trophimae. * <a 225 pp. id. april. fusco et dextro conss.>

CJ.4.24.7pr.: Imperator Alexander Severus

Creditor, qui fundos et domos pignori vel hypothecae accepit, damnum in decidendis arboribus domibusque destruendis ab eo datum in rationem deducere cogitur et , si dolo vel culpa rem suppositam deteriorem fecerit, eo quoque nomine pigneraticia actione tenebitur, ut talem restituat, qualis fuerat tempore obligationis. * alex. a. iuliano. * <a 241 pp. xiii k. aug. gordiano a. ii et pompeiano conss.>

CJ.4.24.7.1: Imperator Alexander Severus

Creditor autem necessarios sumptus, quos circa res pigneraticias fecit, exigere non prohibetur. <a 241 pp. xiii k. aug. gordiano a. ii et pompeiano conss.>

CJ.4.24.8: Imperator Philippus

Si nulla culpa seu segnitia creditori imputari potest, pignorum amissorum dispendium ad periculum eius minime pertinet. sane si simulata amissione etiam nunc eadem pignora, ut adseveras, a parte diversa possidentur, adversus eum experiri potes. * philipp. a. et philipp. c. saturnino. * <a 246 pp. viii k. mart. praesente et albino conss.>

CJ.4.24.9: Imperatores Diocletianus, Maximianus

Pignus in bonis debitoris permanere ideoque ipsi perire in dubium non venit. cum igitur adseveres in horreis pignora deposita, consequens est secundum ius perpetuum, pignoribus debitori pereuntibus, si tamen in horreis, quibus et alii solebant publice uti, res depositae sunt, personalem actionem debiti reposcendi causa integram te habere. * diocl. et maxim. aa. et cc. georgio. * <a 293 pp. vi non. mai. mediolani aa. conss.>

CJ.4.24.10pr.: Imperatores Diocletianus, Maximianus

Nec creditores nec qui his successerunt adversus debitores pignori quondam res nexas petentes, reddita iure debita quantitate vel his non accipientibus oblata et consignata et deposita, longi temporis praescriptione muniri possunt. * diocl. et maxim. aa. et cc. apollodorae. * <a 293 d. non. mai. ipsis aa. conss.>

CJ.4.24.10.1: Imperatores Diocletianus, Maximianus

Unde intellegis, quod, si originem rei probare potes, adversario tenente vindicare dominium debeas. <a 293 d. non. mai. ipsis aa. conss.>

CJ.4.24.10.2: Imperatores Diocletianus, Maximianus

Ut autem creditor pignoris defensione se tueri possit, extorquetur ei necessitas probandi debiti vel, si tu teneas, per vindicationem pignoris hoc idem inducitur et tibi non erit difficilis vel solutione vel oblatione atque sollemni depositione pignoris liberatio. <a 293 d. non. mai. ipsis aa. conss.>

CJ.4.24.11: Imperatores Diocletianus, Maximianus

Pignoris causa res obligatas soluto debito restitui debere pigneraticiae actionis natura declarat. quo iure, si titulo pignoris obligasti mancipia, per eandem actionem uti potes, nec creditor citra conventionem vel praesidalem iussionem debiti causa res debitoris arbitrio suo auferre potest. * diocl. et maxim. aa. et cc. ammiano. * <a 294 d. v k. ian. sirmi ipsis cc. conss.>

CJ.4.24.12: Imperatores Diocletianus, Maximianus

Quominus fructuum, quos creditor ex rebus obligatis accepit, habita ratione ac residuo debito soluto, vel si per creditorem factum fuerit. quominus solveretur, pignora quae in eadem causa durant restituat debitori, nullo spatio longi temporis defenditur. * diocl. et maxim. aa. et cc. heraisco. * <a 294 d. xii k. dec. nicomediae cc. conss.>

CJ.4.25.0. De exercitoria et institoria actione.

CJ.4.25.1: Imperator Antoninus

Servus tuus pecuniam mutuam accipiendo ita demum te institoria actione obligavit , si, cum eum officio alicui vel negotiationi exercendae praeponeres, etiam ut id faceret, ei permissum a te probetur. quod si ea actio locum non habet, si quid in rem tuam versum probabitur, actione in eam rem proposita cogeris exsolvere. * ant. a. hermeti. * <a 212 pp. viii k. sept. duobus aspris conss.>

CJ.4.25.2: Imperator Alexander Severus

Ex contractibus servorum quamvis de peculio dumtaxat domini teneantur, de eo tamen, quod in rem eorum versum est vel cum institore ex causa cui praepositus fuit contractum est, in solidum conveniri posse dubium non est. * alex. a. callisto. * <a 222 pp. iii k. mai. alexandro a. cons.>

CJ.4.25.3: Imperator Alexander Severus

Institoria tibi adversus eum actio competit, a quo servum mensae praepositum dicis, si eius negotii causa, quod per eum exercebatur, deposita pecunia nec reddita potest probari. * alex. a. marciae. * <a 230 pp. non. mai. agricola et clemente conss.>

CJ.4.25.4: Imperatores Diocletianus, Maximianus

Et si a muliere magister navis praepositus fuerit, ex contractibus eius ea exercitoria actione ad similitudinem institoriae tenetur. * diocl. et maxim. aa. et cc. antigonae. * <a 293 d. xvi k. nov. sirmi aa. conss.>

CJ.4.25.5: Imperatores Diocletianus, Maximianus

Si mutuam pecuniam accipere demetriano domitianus mandavit et hoc posse probare confidis, ad exemplum institoriae eundem domitianum apud competentem iudicem potes convenire. * diocl. et maxim. aa. et cc. gaio. * <a 294 d. iiii k. nov. ipsis cc. conss.>

CJ.4.25.6: Imperatores Diocletianus, Maximianus

Qui secutus domini voluntatem cum servo ipsius habuit contractum, ad instar actionis institoriae recte de solido dominum convenit. * diocl. et maxim. aa. et cc. onesimae. * <a 294 d. xiiii k. dec. cc. conss.>

CJ.4.26.0. Quod cum eo qui in aliena est potestate negotium gestum esse dicitur, vel de peculio seu quod iussu aut de in rem verso.

CJ.4.26.1: Imperatores Severus, Antoninus

Cum filius familias tutor aut curator datur, pater tutelae vel negotiorum gestorum iudicio de peculio et de in rem verso conveniendus est. quod si voluntate eius filius decurio sit creatus et a magistratibus tutor constitutus, pater in solidum satisfacere cogitur, cum id onus exemplo ceterorum munerum civilium inductum intellegatur. * sev. et ant. aa. aelio. * <a 196 d. vii id. nov. dextro ii et prisco conss.>

CJ.4.26.2: Imperatores Severus, Antoninus

Eius rei nomine, quae cum filio familias contracta est sive sua voluntate sive eius in cuius potestate fuit, sive in peculium ipsius sive in rem patris ea pecunia redacta est, et si paterna hereditate abstinuit, actionem nisi in id quod facere possit non dari perpetui edicti interpretatione declaratum est. * sev. et ant. aa. annio. * <a 196 pp. viii k. dec. dextro ii et prisco conss.>

CJ.4.26.3: Imperator Antoninus

Etiam si non mandante neque subscribente neque iubente domina pecuniam mutuam servo priscae dedisses, tamen ea quantitas si in rem dominae eius iustis erogationibus versa est, de in rem verso apud suum iudicem eam conveni, consecuturus secundum iuris formam id quod tibi deberi apparuerit. * ant. a. artemoni. * <a 215 d. iii k. iul. laeto ii et cereale conss.>

CJ.4.26.4: Imperator Antoninus

Si ex contractu patris iussu eius pecuniam accepisti teque eius hereditate abstines, frustra vereris, ne a creditoribus eius conveniaris. * ant. a. leontio. * <a 216 d. v k. ian. sabino et anullino conss.>

CJ.4.26.5: Imperator Alexander Severus

Nulla res prohibet filios familias, si pro aliis maiores viginti quinque annis fideiusserint, actione adversus eos competenti teneri. sed si dumtaxat de peculio tecum agatur, defensionibus, si quae tibi competunt, uteris. * alex. a. asclepiadi. * <a 223 pp. vi id. dec. maximo ii et aeliano conss.>

CJ.4.26.6: Imperatores valer., gallien.

Si servus tuus sine permissu tuo accepta pecunia mutua in usurarum vicem habitandi facultatem concessit, nullo iure adversarius tuus hospitium ex hac causa sibi vindicat, cum te servi factum non obligaverit: et ingrediens rem tuam contra vim eius auctoritate competentis iudicis protegeris. * valer. et gallien. aa. et valer. nob. c. matronae. * <a 259 d. xii k. iul. aemiliano et basso conss.>

CJ.4.26.7pr.: Imperatores Diocletianus, Maximianus

Ei, qui servo alieno dat mutuam pecuniam, quamdiu superest servus, item post mortem eius intra annum de peculio contra dominum competere actionem vel, si in rem domini haec versa sit quantitas, post annum etiam esse honorariam non est ambigui iuris. * diocl. et maxim. aa. et cc. crescenti. * <a 293 d. non. april. byzantii aa. conss.>

CJ.4.26.7.1: Imperatores Diocletianus, Maximianus

Quapropter si quidem in rem domini versa pecunia est, heredes eius convenire potes de ea summa, quae in rem ipsius processit. <a 293 d. non. april. byzantii aa. conss.>

CJ.4.26.7.2: Imperatores Diocletianus, Maximianus

Si vero hoc probari non potest, consequens est, ut superstite quidem servo dominum de peculio convenias vel, si iam servus rebus humanis exemptus est vel distractus seu manumissus nec annus excessit, de peculio quondam adversus eum experiri possis. <a 293 d. non. april. byzantii aa. conss.>

CJ.4.26.7.3: Imperatores Diocletianus, Maximianus

Alioquin si cum libero rem agente eius, cuius precibus meministi, contractum habuisti et eius personam elegisti, pervides contra dominum nullam te habuisse actionem, nisi vel in rem eius pecunia processit vel hunc contractum ratum habuit. <a 293 d. non. april. byzantii aa. conss.>

CJ.4.26.8: Imperatores Diocletianus, Maximianus

Si ex alio contractu, non ex illicita mutui datione debitor extitisti vel quod patrem tuum in fide suscepisti, tam in patris positus potestate iure teneris quam etiam morte genitoris tui iuris effectus: et si quidem patris heres extitisti , in solidum, alioquin in quantum facere potes, secundum edicti formam. sed et si emancipatione tui iuris factus es, similiter conveniri te posse debes intellegere. * diocl. et maxim. aa. et cc. isidoro. * <a 293 d. vi id. april. byzantii aa. conss.>

CJ.4.26.9: Imperatores Diocletianus, Maximianus

Si mandator pro filio tuo extitisti vel iussu tuo cum eo quem in potestate tunc habuisti contractum est, intellegis et sorti et usuris te parere oportere, si te his omnibus obligasti, ut res quae pignoris iure detinentur liberari possint. quod si fideiussor creditae pecuniae intercessisti, teneri te ex ea obligatione explorati iuris est. * diocl. et maxim. aa. et cc. diogenio. * <a 294 d. iii k. mai. cc. conss.>

CJ.4.26.10pr.: Imperatores Diocletianus, Maximianus

Si liberam peculii administrationem habentes equas cum fetu de peculio servi venumdederunt, reprobandi contractum dominus nullam habet facultatem. * diocl. et maxim. aa. et cc. aphrodisio. * <a 294 d. v non. oct. sirmi cc. conss.>

CJ.4.26.10.1: Imperatores Diocletianus, Maximianus

Quod si non habentes liberam peculii administrationem rem dominicam eo ignorante distraxerunt, neque dominium, quod non habent, in alium transferre possunt neque condicionem eorum servilem scientibus possessionis iustum adferunt initium: unde non immerito nec temporis praescriptionem huiusmodi possessoribus prodesse manifestum est, ideoque res mobiles ementes etiam furti actione tenentur. <a 294 d. v non. oct. sirmi cc. conss.>

CJ.4.26.11: Imperatores Diocletianus, Maximianus

Cum ancilla contrahenti, quam iure non obligari constat, adversus dominum in quantum locupletius eius peculium factum est ea superstite ac post mortem intra utilem annum dandam actionem non ambigitur. * diocl. et maxim. aa. et cc. attalo. * <a 294 d. prid. k. dec. sirmi cc. conss.>

CJ.4.26.12: Imperatores Diocletianus, Maximianus

Dominum per servum obligari non posse ac tantum de peculio (deducto scilicet, quod naturaliter servus domino debet) eius creditoribus dari actionem vel, si quid in rem eius versum probetur, de in rem verso edicto perpetuo declaratur. * diocl. et maxim. aa. et cc. victori. * <a 294 d. xiii k. febr. sirmi cc. conss.>

CJ.4.26.13pr.: Imperatores Honorius, Theodosius

Dominos ita constringi manifestum est actione praetoria, quae apellatur quod iussu, si certam numerari praeceperint servo actorive pecuniam. * honor. et theodos. aa. iohanni pp. * <a 422 d. v id. iul. ravennae honorio xiii et theodosio x aa. conss.>

CJ.4.26.13.1: Imperatores Honorius, Theodosius

Igitur in perpetuum edictali lege sancimus, ut, qui servo colono conductori procuratori actorive possessionis pecuniam mutuam det, sciat dominos possessionum cultoresve terrarum obligari non posse. <a 422 d. v id. iul. ravennae honorio xiii et theodosio x aa. conss.>

CJ.4.26.13.2: Imperatores Honorius, Theodosius

Neque familiares epistulas, quibus homines plerumque commendant absentem, in id trahere convenit, ut pecuniam, quam non rogatus fuerat, impendisse pro praediis mentiatur, cum, nisi specialiter ut pecuniam praestet a domino fuerit postulatus , idem dominus teneri non possit. <a 422 d. v id. iul. ravennae honorio xiii et theodosio x aa. conss.>

CJ.4.26.13.3: Imperatores Honorius, Theodosius

Creditaque quantitate multari volumus creditores, si huiusmodi personis non iubente domino nec fideiussoribus specialiter acceptis fuerit credita pecunia. <a 422 d. v id. iul. ravennae honorio xiii et theodosio x aa. conss.>

CJ.4.26.13.4: Imperatores Honorius, Theodosius

Sane creditori licentiam damus, ut, si liber a rationibus quas gerebat fuerit inventus actor servus procuratorve praediorum, utilis actio pateat de peculio. <a 422 d. v id. iul. ravennae honorio xiii et theodosio x aa. conss.>

CJ.4.27.0. Per quas personas nobis adquiritur.

CJ.4.27.1pr.: Imperatores Diocletianus, Maximianus

Excepta possessionis causa per liberam personam, quae alterius iuri non est subdita, nihil adquiri posse indubii iuris est. * diocl. et maxim. aa. Marcello. * <a 290 d. k. iul. ipsis iiii et iii aa. conss.>

CJ.4.27.1.1: Imperatores Diocletianus, Maximianus

Si igitur procurator non sibi, sed ei, cuius negotia administrabat, redintegratae rei vindicationem pactus est idque pactum etiam stipulatio insecuta est, nulla domino obligatio adquisita est. servis autem res traditae dominis adquiruntur. <a 290 d. k. iul. ipsis iiii et iii aa. conss.>

CJ.4.27.2pr.: Imperator Justinianus

Si duo vel plures communem servum habeant et unus ex his iussit, ut nomine suo servus ab aliquo stipuletur decem puta aureos vel aliam rem, ipse autem servus non eius nomine qui iussit, sed alicuius ex dominis suis mentionem fecit et nomine illius stipulatus est, inter antiquam sapientiam quaerebatur, cui adquiritur actio et lucrum, quod ex hac accidit causa, utrumne ei qui iussit an ei cuius servus mentionem fecit an ambobus. * iust. a. iuliano pp. * <a 530 d. xv k. dec. lampadio et oresta vv. cc. conss.>

CJ.4.27.2.1: Imperator Justinianus

Cumque ex omni latere magna pars auctorum multum effudit tractatum, nobis verior eorum sententia videtur, qui domino qui iussit adferunt stipulationem et ei tantummodo adquiri dixerunt, quam aliorum, qui in alias opiniones deferuntur. neque enim malignitati servorum indulgendum est, ut liceat eis domini iussione contempta sua libidine facere stipulationem et ad alium dominum, qui eum forsitan corrupit, alienum lucrum transferre: quod neque ferendum est, si servus impius domino quidem qui iussit minime oboediendum existimaverit, alii autem, qui forsitan ignorat et nescit, repentinum adducit solacium. <a 530 d. xv k. dec. lampadio et oresta vv. cc. conss.>

CJ.4.27.2.2: Imperator Justinianus

Quod enim saepe apud antiquos dicebatur iussionem domini non esse absimilem nominationi, tunc debet obtinere, cum servus iussus ab uno ex dominis stipulationem facere sine nomine stipulatus est: tunc etenim soli ei adquirit qui iussit: sin autem expresserit alium dominum, soli illi necesse est adquisitionem celebrari: multo etenim amplius oportet valere dominici nominis mentionem quam herilem iussionem. <a 530 d. xv k. dec. lampadio et oresta vv. cc. conss.>

CJ.4.27.3pr.: Imperator Justinianus

Cum per liberam personam, si pecunia alterius nomine fuerit numerata, adquiritur ei cuius nomine pecunia credita est per huiusmodi numerationem condictio, non autem hypotheca vel pignus, quae procuratori data vel supposita sunt, dominis contractus adquiritur, talem differentiam expellentes sancimus et condictionem et hypothecariam actionem vel pignus ipso iure et sine aliqua cessione ad dominum contractus pervenire. * iust. a. iohanni pp. * <a 530 d. k. nov. lampadio et oresta vv. cc. conss.>

CJ.4.27.3.1: Imperator Justinianus

Si enim procuratori necessitas legibus imposita est domino contractus cedere actionem, quare non ab initio quemadmodum in personali actione cessio supervacua videbatur, non etiam in hypothecis et pignoribus simili modo dominus contractus habeat hypothecariam actionem seu pignoris vinculum vel retentionem sibi adquisitam? <a 530 d. k. nov. lampadio et oresta vv. cc. conss.>

CJ.4.28.0. Ad senatus consultum macedonianum.

CJ.4.28.1: Imperator pertinax

Si filius, cum in potestate patris esset, mutuam a te pecuniam accepit, cum se patrem familias diceret, eiusque adfirmationi credidisse te iusta ratione edocere potes, exceptio ei denegabitur. * pertinax a. atilio. * <a . 193 pp. x k. april. falcone et claro conss.>

CJ.4.28.2: Imperatores Severus, Antoninus

Zenodorus cum sui iuris esse publico videretur aut patris voluntate contraxit aut in eam rem pecuniam accepit, quae patris oneribus incumberet, vel suae potestatis constitutus novatione facta fidem suam obligavit vel alias agnovit debitum , non esse locum decreto amplissimi ordinis rationis est. * sev. et ant. aa. sophiae. * <a 198 pp. v k. mart. saturnino et gallo conss.>

CJ.4.28.3: Imperatores Severus, Antoninus

Si filius familias aliquid mercatus pretium stipulanti venditori cum usurarum accessione spondeat, non esse locum senatus consulto, quo fenerare filiis familias prohibitum est, nemini dubium est: origo enim potius obligationis quam titulus actionis considerandus est. * sev. et ant. aa. macrino. * <a 198 pp. id. mart. saturnino et gallo conss.>

CJ.4.28.4: Imperatores Severus, Antoninus

Si permittente patre filio familias pecuniam mutuam dedisti, senatus consulti potestas non intervenit, et ideo persecutio pignoris quod in bonis patris fuit non denegabitur, praesertim cum eidem filius heres extiterit, modo si nullus alius iure conventionis ratione temporis et ordinis potior apparuerit. * sev. et ant. aa.Cyrillae. * <a 201 pp. xii k. mai. fabiano et muciano conss.>

CJ.4.28.5pr.: Imperator Alexander Severus

Macedoniani senatus consulti auctoritas petitionem eius pecuniae non impedit, quae filio familias studiorum vel legationis causa alibi degenti ad necessarios sumptus, quos patris pietas non recusaret, credita est. * alex. a. septimiae musae. * <a 230 pp. prid. k. mart. agricola et clemente conss.>

CJ.4.28.5.1: Imperator Alexander Severus

Sed ex contractu filii post mortem eius de peculio actio in patrem competere ita demum potest, si anni utilis spatium petitionem non impedit. <a 230 pp. prid. k. mart. agricola et clemente conss.>

CJ.4.28.5.2: Imperator Alexander Severus

Sane si iussu patris datum mutuum probetur, nec in quos usus versa sit pecunia disquiri necesse est et perpetua in patrem etiam mortuo filio actio est. <a 230 pp. prid. k. mart. agricola et clemente conss.>

CJ.4.28.6pr.: Imperator Philippus

Si filius tuus in potestate tua agens contra senatus consultum macedonianum mutuam sumpsit pecuniam, actio de peculio adversus te eo nomine efficaciter dirigi nequaquam potest. * philipp. a. et philipp. c. theopompo. * <a 245 pp. vi non. mart. philippo a. et titiano conss.>

CJ.4.28.6.1: Imperator Philippus

Quod senatus consulti auxilium, licet filii familias meminit, ad nepotes et ad pronepotes porrigitur. <a 245 pp. vi non. mart. philippo a. et titiano conss.>

CJ.4.28.7pr.: Imperator Justinianus

Si filius familias citra patris iussionem vel mandatum vel voluntatem pecunias creditas acceperit, postea autem pater ratum habuerit contractum, veterum ambiguitatem decidentes sancimus, quemadmodum, si ab initio voluntate patris vel mandato filius familias pecuniam creditam accepisset, obnoxius firmiter constituebatur, ita et si postea ratum pater habuerit contractum, validum esse huiusmodi contractum, cum testimonium paternum respuere satis iniquum est. necesse est enim patris ratihabitionem principali patris mandato vel consensui non esse absimilem, cum nostra novella lege et generaliter omnis ratihabitio prorsus trahitur et confirmat ea ab initio quae subsecuta sunt. et haec quidem de privatis hominibus sancienda sunt. * iust. a. iuliano pp. * <a 530 d. xii k. aug. lampadio et oresta vv. cc. conss.>

CJ.4.28.7.1: Imperator Justinianus

Sin autem miles filius familias pecuniam creditam acceperit, sive sine mandato vel consensu vel voluntate vel ratihabitione patris, stare oportet contractum, nulla differentia introducenda, ob quam causam pecuniae creditae vel ubi consumptae sunt. in pluribus enim iuris articulis filii familias milites non absimiles videntur hominibus qui sui iuris sunt, et ex praesumptione omnis miles non credatur in aliud quicquam pecunias accipere et expendere nisi in causas castrenses. <a 530 d. xii k. aug. lampadio et oresta vv. cc. conss.>

CJ.4.29.0. Ad senatus consultum velleianum.

CJ.4.29.1: Imperator Antoninus

Mulieribus, quae alienam obligationem suscipiunt aut in se transferunt, si id contrahentes non ignorant, senatus consulto subvenitur. sed si pro aliis, cum obligatae non essent, pecuniam exsolvunt, intercessione cessante repetitio nulla est. * ant. a. lucillae. * <a 212 pp. non. dec. carviti duobus aspris conss.>

CJ.4.29.2: Imperator Antoninus

Frustra senatus consulti exceptione, quod de intercessionibus feminarum factum est, uti temptasti, quoniam principaliter ipsa debitrix fuisti. eius enim senatus consulti exceptio tunc mulieri datur, cum principaliter ipsa nihil debet, sed pro alio debitore apud creditorem eius intercessit: sin autem pro creditore suo aliis se obligaverunt vel ab eo se vel debitorem suum delegari passae sunt, huiusmodi senatus consulti auxilium non habent. * ant. a. nepotianae. * <a 213 pp. iii id. aug. antonino a. iiii et balbino conss.>

CJ.4.29.3: Imperator Antoninus

Si, cum ipse mutuam pecuniam acciperes, mater tua contra amplissimi ordinis consultum fidem suam interposuit, exceptione tueri potest. * ant. a. servato. * <a 213 pp. iii id. aug. antonino a. iiii et balbino conss.>

CJ.4.29.4pr.: Imperator Alexander Severus

Senatus consultum locum habet, sive eam obligationem, quae in alterius persona constitit, mulier in se transtulerit vel participaverit sive, cum alius pecuniam acciperet, ipsa se constituit ab initio ream, quod et in rerum earum pro aliis obligationibus admissum est. * alex. a. alexandriae. * <a 223 pp. vi k. ian. maximo ii et aeliano conss.>

CJ.4.29.4.1: Imperator Alexander Severus

Sed si praedia tua annis maior viginti quinque vendidisti et pro marito pecuniam solvisti, deficit auxilium senatus consulti. <a 223 pp. vi k. ian. maximo ii et aeliano conss.>

CJ.4.29.5: Imperator Alexander Severus

Si sine voluntate tua res tuae a marito tuo pignori datae sunt, non tenentur. quod si consensisti obligationi sciente creditrice, auxilio senatus consulti uti potes. quod si patientiam praestitisti, ut quasi suas res maritus obligaret, decipere voluisti mutuam pecuniam dantem et ideo tibi non succurretur senatus consulto, quo infirmitati, non calliditati mulierum consultum est. * alex. a. popiliae. * <a 224 d. xv k. iul. iuliano et crispino conss.>

CJ.4.29.6pr.: Imperator Alexander Severus

Si mater, cum filiorum suorum gereret patrimonium, tutoribus eorum securitatem promiserit et fideiussorem praestiterit vel pignora dederit, quoniam quodammodo suum negotium gessisse videtur, senatus consulti auxilio neque ipsa neque fideiussor ab ea praestitus neque res eius pigneratae adiuvantur. * alex. a. torquato. * <a 228 pp. vi id. oct. modesto et probo conss.>

CJ.4.29.6.1: Imperator Alexander Severus

Sin autem tutore se excusare volente ipsa se interposuit indemnitatem ei repromittens, auxilio senatus consulti uti minime prohibetur. <a 228 pp. vi id. oct. modesto et probo conss.>

CJ.4.29.6.2: Imperator Alexander Severus

Sin vero tutores petiit et sponte periculum suscepit, quominus teneatur, auctoritate iuris tuetur. <a 228 pp. vi id. oct. modesto et probo conss.>

CJ.4.29.7: Imperator Gordianus

Si sciens creditor a marito propter proprium debitum fundum mulieris, licet ea consentiente, pignori accepit, propter senatus consulti auxilium vendendo eum dominium mulieri auferre nequivit, nec tibi necesse est praestito pretio emptori vindicare, si matri heres extitisti. * gord. a. viviano. * <a 238 pp. xii k. oct. pio et pontiano conss.>

CJ.4.29.8pr.: Imperator Gordianus

Si paternam obligationem non tantum masculini sexus, verum etiam filiae emancipatae in se receperunt, quamvis filiae virilibus obligationibus eximantur propter exceptionem, quae ex senatus consulto velleiano descendit, tamen filios in id quod se obligaverunt teneri filiarumque subducta persona patrem in id conveniri posse, in quo conveniretur, si filiae non intercessissent, dubium non est. * gord. a. tryphoni. * <a 238 pp. non. oct. pio et pontiano conss.>

CJ.4.29.8.1: Imperator Gordianus

Pignora tamen patris, etsi in posteriorem obligationem accepta sunt, sine dubio tenentur: sed et si in priore fuerunt, quatenus ad patrem per restitutoriam actionem redit, hactenus tenebuntur. <a 238 pp. non. oct. pio et pontiano conss.>

CJ.4.29.9: Imperator Gordianus

Quamvis pro alio solvere possit mulier, tamen si praecedente obligatione, quam senatus consultum de intercessionibus efficacem esse non sinit, solutionem fecerit eius senatus consulti beneficio munitam se ignorans, locum habet repetitio. * gord. a. proculo. * <a 239 pp. non. iul. gordiano a. et aviola conss.>

CJ.4.29.10: Imperator Philippus

Si adversarius tuus non cum marito tuo, sed tecum negotium gessit, reliqua conductionis, quae dicis esse contracta, obtentu eiusmodi obligationum non potes recusare. enimvero si, cum eosdem fundos non tibi, sed marito tuo locaret, personam tuam ut idoneam secutus est, beneficio amplissimi ordinis, quod est factum de intercessionibus feminarum, te tueri potes. * philipp. a. et philipp. c. tryphaenae. * <a 244 pp. xviii k. sept. peregrino et aemiliano conss.>

CJ.4.29.11: Imperator Philippus

Etiam constante matrimonio ius hypothecarum seu pignorum marito remitti posse exploarati iuris est. * philipp. a. theodorae. * <a 244 pp. viii k. oct. peregrino et aemiliano conss.>

CJ.4.29.12: Imperatores valer., gallien.

Si dotare filiam volens genero res tuas obligasti, pertinere ad te beneficium senatus consulti falso putas: hanc enim causam ab eo beneficio esse removendam prudentes viri putaverunt. * valer. et gallien. aa. sepiducae. * <a 258 pp. viiii k. mart. tusco et basso conss.>

CJ.4.29.13: Imperatores Diocletianus, Maximianus

Si fenebris pecunia iuxta fidem veri a creditore tibi data est, sive tota quantitas fenoris sive pars eius in usum mariti processisse proponatur, decreto patrum non adiuvaris, licet creditor causam contractus non ignoraverit. * diocl. et maxim. aa. condianae. * <a 290 d. iii k. sept. ipsis iiii et iii aa. conss.>

CJ.4.29.14: Imperatores Diocletianus, Maximianus

Mulierem contra senatus consulti velleiani auctoritatem non posse intercedere eademque exceptione fideiussorem eius uti posse iuris auctoritas probat. unde si mater tua marito quondam suo heres non extitit, satis idoneae exceptionis remedio tuta est. * diocl. et maxim. aa. et cc. basilissae. * <a 294 pp. viii k. april. byzantii cc. conss.>

CJ.4.29.15: Imperatores Diocletianus, Maximianus

Si uxor pro marito contra senatus consultum intercessura te rogavit mandatorio nomine pro ea tuam fidem adstringere, initio contractus per exceptionis auxilium obligationi tuae cohaesit securitas, qua conventus defendi potes. * diocl. et maxim. aa. et cc. agrippino. * <a 294 pp. xviii k. iun. sirmi cc. conss.>

CJ.4.29.16: Imperatores Diocletianus, Maximianus

Si mulier alienam suscepit obligationem, cum ei per exceptionem velleiani senatus consulti succurratur, creditori contra priores debitores rescissoria actio datur. * diocl. et maxim. aa. et cc. rufino. * <a 294 pp. xvii k. febr. sirmi cc. conss.>

CJ.4.29.17: Imperatores Diocletianus, Maximianus

Si, cum pater vester a callistrato mutuam sumpsisset pecuniam, velut hanc eius uxor accepisset, instrumentum conscriptum est, nec ad exceptionis tractatum ex senatus consulto veniente pervenire necesse est, cum eam veritatis substantia, constituta potior quam simulata gesta, tueatur. * diocl. et maxim. aa. et cc. alexandro. * <a 294 iii id. mart. cc. conss.>

CJ.4.29.18: Imperatores Diocletianus, Maximianus

Feminis alienas novas vel veteres obligationes aliqua ratione suscipientibus subvenitur, nisi creditor aliqua ratione per mulierem deceptus sit: nam tunc replicatione doli senatus consulti exceptionem removeri constitutum est. * diocl. et maxim. aa. et cc. zotico. * <a 294 s. vi id. nov. antiochiae cc. conss.>

CJ.4.29.19: Imperatores Diocletianus, Maximianus

Cum ad eas etiam obligationes, quae ex mulieris persona calliditate creditoris sumpserunt primordium, decretum patrum, quod de intercessione feminarum factum est, pertinere edicto perpetuo declaratur, si tamen creditor, qui contrahere cum alio proposuerat, mulieris personam elegit, exceptione contra petitores secundum ea quae adseveras defendi potes. * diocl. et maxim. aa. et cc. faustinae. * <a 294 d. xviii k. ian. nicomediae cc. conss.>

CJ.4.29.20: Imperatores Diocletianus, Maximianus

Heredes quoque mulieris adversus creditores eadem exceptione, quae ex senatus consulto introducta est, uti posse non dubium est. * diocl. et maxim. aa. et cc. theodotiano. * <a 294 d. viiii k. ian. ipsis cc. conss.>

CJ.4.29.21: Imperator Anastasius

Iubemus licere mulieribus et pro uno contractu vel certis contractibus, seu pro una vel certis personis seu rebus iuri hypothecarum sibi competenti per consensum proprium renuntiare, quodque ita gestum sit, hac auctoritate nostra firmum illibatumque custodiri: ita tamen, ut, si generaliter tali renuntiatione pro uno ut dictum est contractu seu certis contractibus vel ad unam vel certas res seu personas consensum proprium accommodantes usae sunt vel fuerint, eadem renuntiatio ad illos contractus et illas res seu personas quibus consensum proprium accommodaverunt vel accommodaverint coartetur, nec aliis quibusdam contractibus, quibus minime mulieres consenserunt vel consenserint, praetendentibus eam opponendi licentia praebeatur: his scilicet omnibus, quae in praesenti per hanc consultissimam legem statuimus, ad praeteritos nihilo minus contractus pro negotiis et controversiis necdum transactionibus vel definitivis sententiis seu alio legitimo modo sopitis locum habituris. * anastas. a. celeri mag. off. * <a 517 d. k. april. anastasio et agapito conss.>

CJ.4.29.22pr.: Imperator Justinianus

Si mulier perfectae aetatis post intercessionem vel cautionem conscripserit vel pignus aut intercessorem praestiterit, sancimus, antiqua legum varietate cessante, si quidem intra biennale iuge tempus post priorem cautionem numerandum pro eadem causa fecerit cautionem vel pignus aut intercessorem dederit, nihil sibi praeiudicare, quod adhuc ex consequentia suae fragilitatis in secundam iacturam inciderit. * iust. a. iuliano pp. * <a 530 d. xv k. april. lampadio et oreste conss.>

CJ.4.29.22.1: Imperator Justinianus

Sin autem post biennium haec fecerit, sibi imputet, si, quod saepius cogitare poterat et evitare, non fecit, sed ultro firmavit: videtur etenim ex huiusmodi temporis prolixitate non pro aliena obligatione se illigare, sed pro sua causa aliquid agere et tam ex secunda cautione sese obnoxiam facere, in quantum hoc fecit, quam pignus aut intercessorem utiliter dare. <a 530 d. xv k. april. lampadio et oreste conss.>

CJ.4.29.23pr.: Imperator Justinianus

Antiquae iurisdictionis retia et difficillimos nodos resolventes et supervacuas distinctiones exsulare cupientes sancimus mulierem, si intercesserit, sive ab initio sive postea aliquid accipiens, ut sese interponat, omnimodo teneri et non posse senatus consulti velleiani uti auxilio, sive sine scriptis sive per scripturam sese interposuerit. * iust. a. iuliano pp. * <a 530 >

CJ.4.29.23.1: Imperator Justinianus

Sed si quidem in ipso instrumento intercessionis dixerit sese aliquid accepisse et sic ad intercessionem venisse et hoc instrumentum publice confectum inveniatur et a tribus testibus consignatum, omnimodo esse credendum eam pecuniam vel res accepisse et non esse ei ad senatus consulti velleiani auxilium regressum. <a 530 >

CJ.4.29.23.1a: Imperator Justinianus

Sin autem sine scriptis intercesserit vel instrumento non sic confecto, tunc, si possit stipulator ostendere eam accepisse pecunias vel res et sic subisse obligationem, repelli eam a senatus consulti iuvamine. <a 530 >

CJ.4.29.23.1b: Imperator Justinianus

Sin vero hoc minime fuerit ab eo approbatum, tunc mulieri superesse auxilium et antiquam actionem adversus eum servari, pro quo mulier intercessit, vel ei actionem parari. <a 530 >

CJ.4.29.23.1c: Imperator Justinianus

Sed si minus idoneae mulieri constitutae aliquis pecunias vel res dedit, ut pro eo se obligaret, mulieri quidem, quae re vera haec accepit, nullus pateat aditus ad senatus consulti auctoritatem, creditori autem liceat adversus eam venire et quod potest ab ea exigere et in reliquum debitorem antiquum adgredi, vel in partem, si aliquid a muliere possit accipere, vel in totum, si ea penitus inopia fatigatur. <a 530 >

CJ.4.29.23.2: Imperator Justinianus

Ne autem mulieres perperam sese pro aliis interponant, sancimus non aliter eas in tali contractu posse se pro aliis obligare, nisi instrumento publice confecto et a tribus testibus subsignato accipiant homines a muliere pro aliis confessionem: tunc etenim tantummodo eas obligari et sic omnia tractari, quae de intercessionibus feminarum vel veteribus legibus cauta vel ab imperiali auctoritate introducta sunt. <a 530 >

CJ.4.29.23.3: Imperator Justinianus

Sin autem extra eandem observationem mulieres susceperint intercedentes, pro nihilo habeatur huiusmodi scriptura vel sine scriptis obligatio tamquam nec confecta nec penitus scripta, nec senatus consulti auxilium imploretur, sed sit libera et absoluta, quasi penitus nullo in eadem causa subsecuto. <a 530 >

CJ.4.29.24pr.: Imperator Justinianus

Veterum ambiguitatem decidentes sancimus, si quis, ut servo suo manumissionem imponat, mulierem acceperit obnoxiam sese pro certa quantitate facientem, si in libertatem servum perduxerit, sive principaliter mulier sese obligavit sive pro servo hoc fecit, teneri eam, recte omnimodo senatus consultum velleianum in hoc casu tacere imperantes. * iust. a. iuliano pp. * <a 530 d. k. aug. lampadio et oreste conss.>

CJ.4.29.24.1: Imperator Justinianus

Satis etenim acerbum est et pietatis rationi contrarium dominum servi, qui credidit mulieri sive soli sive post servi promissionem, et libertatem servo imponere et suum famulum perdere et ea minime accipere, quibus fretus ad huiusmodi venit liberalitatem. <a 530 d. k. aug. lampadio et oreste conss.>

CJ.4.29.25pr.: Imperator Justinianus

Generaliter sancimus, ut, si quis maior viginti quinque annis sive masculus sive femina dotem vel pollicitus sit vel spoponderit pro qualibet muliere, cum qua matrimonium licitum est, omnimodo compellatur suam confessionem adimplere. * iust. a. ad pop. urb. constantinopolit. et universos provinciales. * <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis.>

CJ.4.29.25.1: Imperator Justinianus

Neque enim ferendum est quasi casu fortuito interveniente mulierem fieri indotatam et sic a viro forsitan repelli et distrahi matrimonium. cum enim scimus favore dotium et antiquos iuris conditores severitatem legis saepius mollire, merito et nos ad huiusmodi venimus sanctionem. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis.>

CJ.4.29.25.2: Imperator Justinianus

Nam si spontanea voluntate ab initio liberalitatem suam ostendit, necesse est eum vel eam suis promissionibus satisfacere, ut, quod ab initio sponte scriptum aut in pollicitationem deductum est, hoc et ab invitis postea compleatur, omni auctoritate velleiani senatus consulti in hac causa cessante. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis.>

CJ.4.30.0. De non numerata pecunia.

CJ.4.30.1: Imperatores Severus, Antoninus

Si pecuniam tibi non esse numeratam atque ideo frustra cautionem emissam adseris et pignus datum probaturus es, in rem experiri potes: nam intentio dati pignoris neque numeratae pecuniae non aliter tenebit, quam si de fide debiti constiterit. eademque ratione veritas servetur, si te possidente pignus adversarius tuus agere coeperit. * sev. et ant. aa. hilaro. * <a 197 pp. k. sept. laterano et rufino conss.>

CJ.4.30.2: Imperator Antoninus

Minorem pecuniam te accepisse et maioris cautionem interposuisse si apud eum qui super ea re cogniturus est constiterit, nihil ultra quam accepisti cum usuris in stipulatum deductis restituere te iubebit. * ant. a. maturio. * <a 213 d. id. april. antonino a. iiii et balbino conss.>

CJ.4.30.3: Imperator Antoninus

Si ex cautione tua, licet hypotheca data, conveniri coeperis, exceptione opposita seu doli seu non numeratae pecuniae compelletur petitor probare pecuniam tibi esse numeratam: quo non impleto absolutio sequetur. * ant. a. demetriae. * <a 215 d. iii k. iul. laeto et cereale conss.>

CJ.4.30.4: Imperator Antoninus

Cum fidem cautionis agnoscens etiam solutionem portionis debiti vel usurarum feceris, intellegis de non numerata pecunia nimium tarde querellam te deferre. * ant. a.Basso. * <>

CJ.4.30.5: Imperator Alexander Severus

Adversus petitiones adversarii si quid iuris habes, uti eo potes. ignorare autem non debes non numeratae pecuniae exceptionem ibi locum habere, ubi quasi credita pecunia petitur, cum autem ex praecedenti causa debiti in chirographum quantitas redigitur, non requiri, an tunc cum cavebatur numerata sit, sed an iusta causa debiti praecesserit. * alex. a. augustiano. * <>

CJ.4.30.6: Imperator Alexander Severus

Frustra opinaris exceptione non numeratae pecuniae te esse munitum, quando, ut fateris, in eius vicem qui erat obligatus substitueris te debitorem. * alex. a. iustino. * <pp.>

CJ.4.30.7: Imperator Alexander Severus

Si quasi accepturi mutuam pecuniam adversario cavistis, quae numerata non est, per condictionem obligationem repetere, etsi actor non petat, vel exceptione non numeratae pecuniae adversus agentem uti potestis. * alex. a. iuliano et ammoniano. * <a 223 pp. non. nov. maximo ii et aeliano conss.>

CJ.4.30.8pr.: Imperator Alexander Severus

Si intra legibus definitum tempus qui cautionem euit nulla querimonia usus defunctus est, residuum tempus eius heres habebit tam adversus creditorem quam adversus heredes eius. * alex. a. materno. * <a 228 pp. xii k. april. modesto et probo conss.>

CJ.4.30.8.1: Imperator Alexander Severus

Sin autem questus est, exceptio non numeratae pecuniae heredi et adversus heredes perpetuo competit. <a 228 pp. xii k. april. modesto et probo conss.>

CJ.4.30.8.2: Imperator Alexander Severus

Sin vero legitimum tempus excessit in querimoniam creditore minime deducto, omnimodo heres eius, et si pupillus sit, debitum solvere compelletur. <a 228 pp. xii k. april. modesto et probo conss.>

CJ.4.30.9: Imperatores Diocletianus, Maximianus

Cum ultra hoc quod accepit re obligari neminem posse constet et stipulatione interposita placita creditor non dederit, in factum dandam exceptionem convenit: si necdum tempus, intra quod huius rei querella deferri debet, transiit vel intra hoc in testando iuri paritum sit, nihil ultra hoc quod accepisti sortis a te nomine praeses provinciae exigi patietur. * diocl. et maxim. aa. et cc. zoilo. * <a 293? d. iii id. dec. ipsis.... conss.>

CJ.4.30.10: Imperatores Diocletianus, Maximianus

Adseveratio debitum solutum contendentis temporis diuturnitatis non excluditur. nec huic obloquitur, quod exceptio non numeratae pecuniae certa die non delata querella prius evanescat, cum inter eum, qui factum adseverans onus subiit probationis, et negantem numerationem, cuius naturali ratione probatio nulla est, et ob hoc ad petitorem eius rei necessitatem transferentem magna sit differentia. * diocl. et maxim. aa. et cc. mucazano. * <>

CJ.4.30.11: Imperatores Diocletianus, Maximianus

Si transactionis causa dare palladio pecuniam stipulanti spopondisti, exceptione non numeratae pecuniae defendi non potes. * diocl. et maxim. aa. et cc. eutychiano. * <d. iiii id. april.>

CJ.4.30.12: Imperatores Diocletianus, Maximianus

Tam mandatori quam fideiussori non numeratae pecuniae exceptio exemplo rei principalis competit. * diocl. et maxim. aa. et cc. severiano. * <>

CJ.4.30.13: Imperator Justinus

Generaliter sancimus, ut, si quid scriptis cautum fuerit pro quibuscumque pecuniis ex antecedente causa descendentibus eamque causam specialiter promissor edixerit, non iam ei licentia sit causae probationes stipulatorem exigere, cum suis adquiescere deceat, nisi certe ipse e contrario per apertissima rerum argumenta scriptis inserta religionem iudicis possit instruere, quod in alium quemquam modum et non in eum quem cautio perhibet negotium subsecutum sit. nimis enim indignum esse iudicamus, ut, quod sua quisque voce dilucide protestatus est, id in eundem casum infirmare testimonioque proprio resistere. * iustinus a. theodoto pu. * <>

CJ.4.30.14pr.: Imperator Justinianus

In contractibus, in quibus pecuniae vel aliae res numeratae vel datae esse conscribuntur, non intra quinquennium, quod antea constitutum erat, non numeratae pecuniae exceptionem obicere possit, qui accepisse pecunias vel alias res scriptus sit, vel successor eius, sed intra solum biennium continuum, ut eo lapso nullo modo querella non numeratae pecuniae introduci possit: his scilicet, qui propter aliquas causas specialiter legibus expressas etiam lapso quinquennio in praeteritis temporibus adiuvabantur, etiam in posterum, licet biennium pro quinquennio statutum est, eodem auxilio potituris. * iust. a. menae pp. * <a 528 d. k. iul. constantinopoli ipso a. ii cons.>

CJ.4.30.14.1: Imperator Justinianus

Sed quoniam securitatibus et instrumentis depositarum rerum vel pecuniarum talem exceptionem opponere litigatores conantur, iustum esse prospicimus huiusmodi potestatem in certis quidem casibus prorsus amputare, in aliis vero brevi tempore concludere. ideoque sancimus instrumento quidem depositionis certarum rerum vel certae pecuniae securitatibusque publicarum functionum, sive in solidum sive ex parte solutae esse conscribantur, illis etiam securitatibus, quae post confectionem dotalium instrumentorum de soluta dote ex parte vel in solidum exponuntur, nullam exceptionem non numeratae pecuniae penitus opponi. <a 528 d. k. iul. constantinopoli ipso a. ii cons.>

CJ.4.30.14.2: Imperator Justinianus

Super ceteris vero securitatibus, quae super privatis debitis a creditore conscribuntur partem debiti sortis vel usurarum nomine solutam esse significantes, vel adhuc feneraticia cautione apud creditorem manente, solidi tamen debiti solutionem factam esse demonstrantes, vel etiam futuram esse redhibitionem instrumenti feneraticii promittentes, vel si qua alterius cuiuscumque contractus gratia, in qua numeratio pecuniarum vel datio certarum specierum scripta est, securitas similiter data sit depensas esse pecunias vel alias res vel partem earum significans, intra triginta tantummodo dies post huiusmodi securitatis eitionem connumerandos exceptionem non numeratae pecuniae posse obici, ut, si hi transac ti fuerint, eadem securitas ab iudicantibus omnibus modis admittatur, nec liceat ei qui securitatem euit post excessum memoratorum dierum non esse sibi solutas vel pecunias vel alias res dicere. <a 528 d. k. iul. constantinopoli ipso a. ii cons.>

CJ.4.30.14.3: Imperator Justinianus

Illo videlicet observando, ut, in quibus permittitur exceptionem non numeratae pecuniae opponere vel ab initio vel post taxatum tempus elapsum, in his nec iusiurandum offerri liceat. <a 528 d. k. iul. constantinopoli ipso a. ii cons.>

CJ.4.30.14.4: Imperator Justinianus

In omni vero tempore, quod memoratae exceptioni taxatum est, licebit ei, cui talis exceptio competit, vel denuntiationibus scripto missis querellam non numeratae pecuniae manifestare ei, qui numerasse eam vel alias res dedisse instrumento scriptus est, vel, si abesse eum his locis in quibus contractus factus est contigerit, in hac quidem alma urbe apud quemlibet ordinarium iudicem, in provinciis vero apud viros clarissimos rectores earum vel defensores locorum eandem querellam manifestare eoque modo perpetuam sibi exceptionem efficere. <a 528 d. k. iul. constantinopoli ipso a. ii cons.>

CJ.4.30.14.5: Imperator Justinianus

Sed si praesens quidem sit, qui pecunias numerasse vel alias res dedisse scriptus est, aliquam vero administrationem vel in hac alma urbe vel in provinciis gerat, ut difficile esse videatur denuntiationem ei mittere, licentiam damus ei, qui memorata exceptione uti velit, alios iudices adire vel in hac alma urbe vel in provinciis et per eos ei manifestare, cui exceptionem huiusmodi obicit, factam a se super non numerata pecunia querellam esse. <a 528 d. k. iul. constantinopoli ipso a. ii cons.>

CJ.4.30.14.6: Imperator Justinianus

Quod si in provinciis vel non sit alius administrator civilis vel militaris, vel per aliquam causam difficile sit ei qui memoratam querellam opponit adire eum et ea quae dicta sunt facere, licentiam ei damus per virum reverentissimum episcopum eandem suam exceptionem creditori manifestare et ita tempus statutum interrumpere. quae etiam in exceptione non numeratae dotis locum habere certum est. <a 528 d. k. iul. constantinopoli ipso a. ii cons.>

CJ.4.30.15: Imperator Justinianus

Si cui non numeratae pecuniae competere possit exceptio, etiam eo supersedente tali auxilio uti, vel praesente vel absente, creditores eius possint (sive ipsi conveniantur utpote res eius detinentes, ab his qui debita eius exigunt, cui competit huiusmodi exceptio vel dotis vel alterius causae nomine, sive contra alios possidentes aliquam actionem ipsi moveant) possint in examinando negotio suis adversariis eandem non numeratae pecuniae exceptionem opponere nec eo prohibeantur, quod principalis debitor ea numquam usus est: ita tamen, ut neque principali debitori neque fideiussori eius aliquid praeiudicium generetur, si is qui eam exceptionem opposuit victus fuit, sed possint illi postea, si conveniantur, intra statuta scilicet tempora eadem se exceptione tueri. * iust. a. menae pp. * <a 528 - 529 >

CJ.4.30.16: Imperator Justinianus

Indubitati iuris est non numeratae pecuniae exceptionem locum habere et in talibus nominibus vel feneraticiis vel aliis cautionibus, quae etiam sacramenti habent mentionem. quae enim differentia est in huiusmodi exceptione, sive iusiurandum positum est sive non, tam in feneraticiis cautionibus quam in aliis instrumentis, quae talem exceptionem recipiunt? * iust. a. iohanni pp. * <a 531 - 532 >

CJ.4.31.0. De compensationibus.

CJ.4.31.1: Imperator Antoninus

Et senatus censuit et saepe rescriptum est compensationi in causa fiscali ita demum locum esse, si eadem statio quid debeat quae petit. hoc iuris propter confusionem diversorum officiorum tenaciter servandum est. si quid autem tibi ex ea statione cuius mentionem fecisti deberi constiterit, quam primum recipies. * ant. a. dianensi. * <>

CJ.4.31.2: Imperator Antoninus

Ex causa quidem iudicati solutum repeti non potest, eapropter nec compensatio eius admitti potest. eum vero, qui iudicati convenitur, compensationem pecuniae sibi debitae implorare posse nemini dubium est. * ant. a. claudio et asclepiadi. * <>

CJ.4.31.3: Imperator Alexander Severus

In ea, quae rei publicae te debere fateris, compensari ea, quae ab eadem tibi debentur, is cuius de ea re notio est iubebit, si neque ex kalendario neque ex vectigalibus neque ex frumenti vel olei publici pecunia neque tributorum neque alimentorum neque eius, quae statutis sumptibus servit, neque fideicommissi civitatis debitor sis. * alex. a. aetrio capitoni. * <a 223 pp. k. oct. maximo ii et aeliano conss.>

CJ.4.31.4: Imperator Alexander Severus

Si constat pecuniam invicem deberi, ipso iure pro soluto compensationem haberi oportet ex eo tempore, ex quo ab utraque parte debetur, utique quoad concurrent quantitates, eiusque solius, quod amplius apud alterum est, usurae debentur, si modo petitio earum subsistit. * alex. a. flavio et luciano. * <a 229 d. xvii k. oct. alexandro a. iii et dione conss.>

CJ.4.31.5: Imperator Alexander Severus

Etiam si fideicommissum tibi ex eius bonis deberi constat, cui debuisse te minorem quantitatem dicis, aequitas compensationis usurarum excludit computationem, petitio autem eius, quod amplius tibi deberi probaveris, sola relinquitur. * alex. a. honoratae. * <a 229 pp.>

CJ.4.31.6: Imperator Alexander Severus

Neque scriptura, qua cautum est accepta quae negas tradita, obligare te contra fidem veritatis potuit et compensationis aequitatem iure postulas. non enim prius exsolvi, quod debere te constiterit, aequum est, quam petitioni mutuae responsum fuerit, eo magis, quod ea te persequi dicis, quae a muliere divortii causa amota quereris. * alex. a. polydeucae. * <a 229 pp. xvi k. dec. alexandro a. iii et dione conss.>

CJ.4.31.7: Imperator Alexander Severus

Si ex venditione pretium venditori debetur, compensationis ratio opponitur. adversus fiscum enim solum emptores petitioni pretii compensationem obicere prohibentur. * alex. a. flavio ausonio. * <>

CJ.4.31.8: Imperator Gordianus

Si propter fructus ex possessione tua perceptos vitricus tuus debitor tibi constitutus est, cum id, quod a matre tua legatum est, a te petere coeperit, mutuo debitae quantitatis apud eum qui super ea re iudicaturus est compensationem non immerito obicies. * gord. a. aurelio emerito mil. * <>

CJ.4.31.9: Imperator Gordianus

Eius, quod non ei debetur qui convenitur, sed alii, compensatio fieri non potest. * gord. a. liciniae euctemonidi. * <pp. id. ian.>

CJ.4.31.10: Imperatores Diocletianus, Maximianus

Quoniam liberum fundum distractum proponis, post vero, veluti praecedente emptionem obligatione, certum quid solvisse, si debitum a te apud praesidem provinciae petatur, compensationem eius quod indebite solvisti potes opponere. * diocl. et maxim. aa. et cc. iulio nicandro. * <>

CJ.4.31.11: Imperatores Diocletianus, Maximianus

Si tutores pupillis officio magistratus urguente nominastis ac pro his propter onus primipili pecuniam solvistis, superstitiosam geritis sollicitudinem, ne ab ipsis conventi hanc eis imputare minime possitis vel a vobis quicquam amplius exigatur, si tantum, quantum eis tutores debuerunt, vel vos nomine ipsorum maiorem quantitatem dedisse probetur. * diocl. et maxim. aa. et cc. claudio iulio et paulo.* <>

CJ.4.31.12: Imperatores Diocletianus, Maximianus

Invicem debiti compensatione habita, si quid amplius debeas, solvens vel accipere creditore nolente offerens et consignatum deponens de pignoribus agere potes. * diocl. et maxim. aa. et cc. lucio corneliano. * <a 294 pp. xvii k. ian. nicomediae cc. conss.>

CJ.4.31.13: Imperatores Diocletianus, Maximianus

Si velut in id debitum, quod sollemnium publicarum pensitationum debueras nomine , compensaturo tibi nihil petiturum postea muciano scripsisti, redditis quae venerant in compensationem non indebiti soluti repetitio, sed ante debiti competit exactio. * diocl. et maxim. aa. et cc. aurelio basso. * <>

CJ.4.31.14pr.: Imperator Justinianus

Compensationes ex omnibus actionibus ipso iure fieri sancimus nulla differentia in rem vel personalibus actionibus inter se observanda. * iust. a. iohanni pp. * <a 531 d. k. nov. constantinopoli post cons. lampadii et orestis vv. cc.>

CJ.4.31.14.1: Imperator Justinianus

Ita tamen compensationes obici iubemus, si causa ex qua compensatur liquida sit et non multis ambagibus innodata, sed possit iudici facilem exitum sui praestare. satis enim miserabile est post multa forte variaque certamina, cum res iam fuerit approbata, tunc ex altera parte, quae iam paene convicta est, opponi compensationem iam certo et indubitato debito et moratoriis ambagibus spem condemnationis excludi. hoc itaque iudices observent et non procliviores in admittendas compensationes existant nec molli animo eas suscipiant, sed iure stricto utentes , si invenerint eas maiorem et ampliorem ecere indaginem, eas quidem alii iudicio reservent, litem autem pristinam iam paene expeditam sententia terminali componant: excepta actione depositi secundum nostram sanctionem, in qua nec com pensationi locum esse disposuimus. <a 531 d. k. nov. constantinopoli post cons. lampadii et orestis vv. cc.>

CJ.4.31.14.2: Imperator Justinianus

Possessionem autem alienam perperam occupantibus compensatio non datur. <a 531 d. k. nov. constantinopoli post cons. lampadii et orestis vv. cc.>

CJ.4.32.0. De usuris.

CJ.4.32.1: Imperator pius

Si interrogatione praecedente promissio usurarum recte facta probetur, licet instrumento conscripta non sit, tamen iure optimo debentur. * p. a. aurelio evocato. * < sine die et conss.>

CJ.4.32.2: Imperatores Severus, Antoninus

Usuras emptor, cui possessio rei tradita est, si pretium venditori non obtulerit , quamvis pecuniam obsignatam in depositi causa habuerit, aequitatis ratione praestare cogitur. * sev. et ant. aa. lucio. * <>

CJ.4.32.3: Imperatores Severus, Antoninus

Quamvis usurae fenebris pecuniae citra vinculum stipulationis peti non possunt, tamen ex pacti conventione solutae neque ut indebitae repetuntur neque in sortem accepto ferendae sunt. * sev. et ant. aa. iuliano serpio. * <a 200 pp. v k. oct. severo a. ii et victorino conss.>

CJ.4.32.4pr.: Imperatores Severus, Antoninus

Per retentionem pignoris usuras servari posse, de quibus praestandis convenit, licet stipulatio interposita non sit, merito constitutum est et rationem habet, cum pignora condicione pacti etiam usuris obstricta sint. * sev. et ant. aa. aproniae honoratae. * <>

CJ.4.32.4.1: Imperatores Severus, Antoninus

Sed enim in causa de qua agis haec ratio cessat, si quidem tempore contractus de minoribus usuris petendis convenit, postea autem, cum se debitor praestaturum maiores repromisit, non potest videri rata retentio pignoris, quando eo tempore, quo instrumenta emittebantur, non convenerit, ut pignus etiam ad hanc adiectionem teneatur. <>

CJ.4.32.5: Imperatores Severus, Antoninus

Adversus creditorem usuras maiores ex stipulatu petentem, si probetur per certos annos minores postea consecutus, utilis est pacti exceptio. secundum quod tueri causam potestis etiam adversus defensores civitatis maiores petentes ex cautione, si probaveritis semper quincunces amitam pupillorum vestrorum, quae maiores caverat, rependisse. * sev. et ant. aa. ultumio sabino et aliis. * <a 205 d. non. iul. geta cons.>

CJ.4.32.6: Imperator Antoninus

Si creditrici, quae ex causa pignoris obligatam sibi rem tenet, pecuniam debitam cum usuris testibus praesentibus obtulisti eaque non accipiente obsignatam eam deposuisti, usuras ex eo tempore quo obtulisti praestare non cogeris. absente vero creditrice praesidem super hoc interpellare debueras. * ant. a. antigono mil. * <a 212 pp. iii id. febr. duobus aspris conss.>

CJ.4.32.7: Imperator Antoninus

Creditor instrumentis suis probare debet quae intendit et usuras se stipulatum, si potest. nec enim, si aliquando ex consensu praestitae sunt, obligationem constituunt. * ant. a. domitio aristaeo. * <a 215 pp. iiii non. oct. romae laeto et cereale conss.>

CJ.4.32.8: Imperator Antoninus

Quamvis bassa, cum pecuniam mutuam acciperet, minores usuras menophano spoponderit et, nisi intra certum tempus eas solvisset, ampliores (licitas tamen) promiserit, si post tempus cautioni praefinitum creditor easdem accepit nec maiores dari sibi postulavit ac per hoc non recessisse a minorum praestatione eum probari potest, eas usuras computari oportet, quarum in exactione creditor perseveravit. * ant. a. claudio doryphoro. * <>

CJ.4.32.9: Imperator Antoninus

Si per te non stetit quominus intra tempora praefinita pecuniam minorum usurarum solveres, sed per tutores filiorum creditoris, qui eam accipere noluerunt, idque apud iudicem datum probaveris, eius temporis, quo per te non stetisse apparuerit, usurae maiores non exigentur. quod si etiam sortem deposuisti, exinde, ex quo id factum apparuerit, in usuras non convenieris. * ant. a. canio probo. * <>

CJ.4.32.10: Imperator Antoninus

Usurae per tempora solutae non proficiunt ad dupli computationem. tunc enim ultra sortis summam usurae non exiguntur, quotiens tempore solutionis summa usurarum excedit eam computationem. * ant. a. crato et donato mil. * <>

CJ.4.32.11: Imperator Alexander Severus

Frumenti vel hordei mutuo dati accessio etiam ex nudo pacto praestanda est. * alex. a. aurelio tyranno. * <a 223 pp. k. mai. maximo ii et aeliano conss.>

CJ.4.32.12: Imperator Alexander Severus

Ex praedio pignori obligato creditor post oblatam iure sibi pecuniam, quam non suscepit, si fructum accepit, exonerari sortis debitum certum est. * alex. a. popilio. * <>

CJ.4.32.13: Imperator Alexander Severus

In bonae fidei iudiciis, quale est etiam negotiorum gestorum, usurarum rationem haberi certum est. sed si finitum est iudicium sententia, quamvis minoris condemnatio facta est non adiectis usuris, nec provocatio secuta est, finita retractanda non sunt: nec eius temporis, quod post rem iudicatam fluxit, usurae ullo iure postulantur nisi ex causa iudicati. * alex. a. eustathiae et aliis. * <>

CJ.4.32.14: Imperator Alexander Severus

Si ea pactione uxor tua mutuam pecuniam dedit, ut vice usurarum inhabitaret, pactoque ita ut convenit usa est, non etiam locando domum pensionem redegit, referri quaestionem, quasi plus domus redigeret, si locaretur, quam usurarum legitimarum ratio colligit, minime oportet. licet enim uberiore sorte potuerit contrahi locatio, non ideo tamen illicitum fenus esse contractum, sed vilius conducta habitatio videtur. * alex. a. aurelio arcasiani. * <a 234 d. xi k. mai. maximo et urbano conss.>

CJ.4.32.15: Imperator Gordianus

Cum adleges uxorem tuam ea condicione mille aureorum numero quantitatem sumpsisse, ut, si intra diem certum debito satis non fecisset, cum poena quadrupli redderet quod accepit, iuris forma non patitur legem contractus istius ultra poenam legitimarum usurarum posse procedere. * gord. a. claudio portorio. * <a 242 d. non. m. attico et praetextato conss.>

CJ.4.32.16: Imperator Gordianus

Cum non frumentum, sed pecuniam fenori te accepisse adleges, ut certa modiatio tritici praestaretur, ac, nisi is modus sua die fuisset oblatus, mensurarum additamentis in fraudem usurarum legitimarum gravatum te esse contendis, potes adversus improbam petitionem competente uti defensione. * gord. a. flavio sulpicio. * <pp.>

CJ.4.32.17: Imperator Philippus

Si ea lege possessionem mater tua apud creditorem tuum obligavit, ut fructus in vicem usurarum consequeretur, obtentu maioris percepti emolumenti propter incertum fructuum eventum rescindi placita non possunt. * philipp. a. et philipp. c. aurelio euxeno. * <>

CJ.4.32.18: Imperatores Diocletianus, Maximianus

Indebitas usuras, etiam si ante sortem solutae non fuerint ac propterea minuere eam non potuerint, licet post sortem redditam creditori fuerint datae, exclusa iuris varietate repeti posse pensa ratione firmatum est. * diocl. et maxim. aa. et cc. aurelio castori. * <>

CJ.4.32.19pr.: Imperatores Diocletianus, Maximianus

Acceptam mutuo sortem cum usuris licitis creditori post testationem offer ac, si non suscipiat, consignatam in publico depone, ut cursus usurarum legitimarum inhibeatur. * diocl. et maxim. aa. et cc. aureliae irenaeae. * <>

CJ.4.32.19.1: Imperatores Diocletianus, Maximianus

In hoc autem casu publicum intellegi oportet vel sacratissimas aedes vel ubi competens iudex super ea re aditus deponi eas disposuerit. <>

CJ.4.32.19.2: Imperatores Diocletianus, Maximianus

Quo subsecuto etiam periculo debitor liberabitur et ius pignorum tollitur, cum serviana etiam actio manifeste declarat pignoris inhiberi persecutionem vel solutis pecuniis vel si per creditorem steterit, quominus solvatur. <>

CJ.4.32.19.3: Imperatores Diocletianus, Maximianus

Quod etiam in traiecticiis servari oportet. <>

CJ.4.32.19.4: Imperatores Diocletianus, Maximianus

Creditori scilicet actione utili ad exactionem earum non adversus debitorem, nisi forte eas receperit, sed vel contra depositarium vel ipsas competente pecunias. <>

CJ.4.32.20: Imperatores Diocletianus, Maximianus

Constitutionibus sacris, quae ultra certum modum usuras fenebris exigi pecuniae prohibent, mandatoribus etiam vel fideiussoribus subventum est: quibus quasi mandator vel fideiussor conventus uti potes. * diocl. et maxim. aa. et cc. aelio nicopolitano. * <asub die... >

CJ.4.32.21: Imperatores Diocletianus, Maximianus

Si usuras praestari pignore dato convenerat et in continenti numeratione facta, postea vel ante, propter quod debitum solutionem feceras, non designasti, habuit creditor in usuras tibi accepto ferendae solutae quantitatis facultatem. * diocl. et maxim. aa. et cc. chresimoni. * <>

CJ.4.32.22: Imperatores Diocletianus, Maximianus

Pignoribus quidem intervenientibus usurae, quae sine stipulatione peti non poterant, pacto retineri possunt. verum hoc iure constituto, cum huiusmodi nullo interposito pacto tantum certae summae poenam praestari convenisse proponas, nec peti nec retineri quicquam amplius et ad pignoris solutionem urgueri te disciplina iuris perspicis. * diocl. et maxim. aa. et cc. cominio carino. * <pp. id. iul. ipsis... conss.>

CJ.4.32.23: Imperatores Diocletianus, Maximianus

Oleo quidem vel quibuscumque fructibus mutuo datis incerti pretii ratio additamenta usurarum eiusdem materiae suasit admitti. * diocl. et maxim. aa. et cc. iasoni. * <a 294 d. iii k. oct. viminaci cc. conss.>

CJ.4.32.24: Imperatores Diocletianus, Maximianus

Si mater tua maior annis constituta negotia quae ad te pertinent gesserit, cum omnem diligentiam praestare debeat, usuras pecuniae tuae, quam administrasse fuerit comprobata, praestare compelli potest. * diocl. et maxim. aa. et cc. culciae. * <a 294 d. xiiii k. dec. ipsis cc. conss.>

CJ.4.32.25: Imperator Constantinus

Pro auro et argento et veste facto chirographo licitas solvi vel promitti usuras iussimus. * const. a. ad pop. * <>

CJ.4.32.26pr.: Imperator Justinianus

Eos, qui principali actione per exceptionem triginta vel quadraginta annorum, sive personali sive hypothecaria, ceciderunt, non posse super usuris vel fructibus praeteriti temporis aliquam movere quaestionem dicendo ex his temporibus eas velle sibi persolvi, quae non ad triginta vel quadraginta praeteritos annos referuntur, et adserendo singulis annis earum actiones nasci: principali enim actione non subsistente satis supervacuum est super usuris vel fructibus adhuc iudicem cognoscere. * iust. a. menae pp. * <a 528 d. id. dec. constantinopoli iustiniano pp a. ii cons.>

CJ.4.32.26.1: Imperator Justinianus

Super usurarum vero quantitate etiam generalem sanctionem facere necessarium esse duximus, veterem duram et gravissimam earum molem ad mediocritatem deducentes. <a 528 d. id. dec. constantinopoli iustiniano pp a. ii cons.>

CJ.4.32.26.2: Imperator Justinianus

Ideoque iubemus illustribus quidem personis sive eas praecedentibus minime licere ultra tertiam partem centesimae usurarum in quocumque contractu vili vel maximo stipulari: illos vero, qui ergasteriis praesunt vel aliquam licitam negotiationem gerunt, usque ad bessem centesimae suam stipulationem moderari: in traiecticiis autem contractibus vel specierum fenori dationibus usque ad centesimam tantummodo licere stipulari nec eam excedere, licet veteribus legibus hoc erat concessum: ceteros autem omnes homines dimidiam tantummodo centesimae usurarum posse stipulari et eam quantitatem usurarum etiam in aliis omnibus casibus nullo modo ampliari, in quibus citra stipulationem usurae exigi solent. <a 528 d. id. dec. constantinopoli iustiniano pp a. ii cons.>

CJ.4.32.26.3: Imperator Justinianus

Nec liceat iudici memoratam augere taxationem occasione consuetudinis in regione obtinentis. <a 528 d. id. dec. constantinopoli iustiniano pp a. ii cons.>

CJ.4.32.26.4: Imperator Justinianus

Si quis autem aliquid contra modum huius fecerit constitutionis, nullam penitus de superfluo habeat actionem, sed et si acceperit, in sortem hoc imputare compelletur, interdicta licentia creditoribus ex pecuniis fenori dandis aliquid detrahere vel retinere siliquarum vel sportularum vel alterius cuiuscumque causae gratia. nam si quid huiusmodi factum fuerit, principale debitum ab initio ea quantitate minuetur, ut tam ipsa minuenda pars quam usurae eius exigi prohibeantur. <a 528 d. id. dec. constantinopoli iustiniano pp a. ii cons.>

CJ.4.32.26.5: Imperator Justinianus

Machinationes etiam creditorum, qui ex hac lege prohibiti maiores usuras stipulari alios medios subiciunt, quibus hoc non ita interdictum est, resecantes iubemus, si quid tale fuerit attemptatum, ita computari usuras, ut necesse esset, si ipse qui alium interposuit fuisset stipulatus: in quo casu sacramenti etiam illationem locum habere sancimus. <a 528 d. id. dec. constantinopoli iustiniano pp a. ii cons.>

CJ.4.32.27pr.: Imperator Justinianus

De usuris, quarum modum iam statuimus, pravam quorundam interpretationem penitus removentes iubemus etiam eos, qui ante eandem sanctionem ampliores quam statutae sunt usuras stipulati sunt, ad modum eadem sanctione taxatum ex tempore lationis eius suas moderari actiones, illius scilicet temporis, quod ante eandem fluxit legem, pro tenore stipulationis usuras exacturos. * iust. a. menae pp. * <a 529 d. k. april. constantinopoli decio vc. cons.>

CJ.4.32.27.1: Imperator Justinianus

Cursum insuper usurarum ultra duplum minime procedere concedimus, nec si pignora quaedam pro debito creditori data sint, quorum occasione quaedam veteres leges et ultra duplum usuras exigi permittebant. <a 529 d. k. april. constantinopoli decio vc. cons.>

CJ.4.32.27.2: Imperator Justinianus

Quod et in bonae fidei iudiciis ceterisque omnibus in quibus usurae exiguntur servari censemus. <a 529 d. k. april. constantinopoli decio vc. cons.>

CJ.4.32.28pr.: Imperator Justinianus

Ut nullo modo usurae usurarum a debitoribus exigantur, et veteribus quidem legibus constitutum fuerat, sed non perfectissime cautum. si enim usuras in sortem redigere fuerat concessum et totius summae usuras stipulari, quae differentia erat debitoribus, qui re vera usurarum usuras exigebantur? hoc certe erat non rebus sed verbis tantummodo leges ponere. * iust. a. demostheni pp. * <a 529 pp. k. oct. chalcedone decio vc. cons.>

CJ.4.32.28.1: Imperator Justinianus

Quapropter hac apertissima lege definimus nullo modo licere cuidam usuras praeteriti vel futuri temporis in sortem redigere et earum iterum usuras stipulari, sed, si hoc fuerit subsecutum, usuras quidem semper usuras manere et nullum aliarum usurarum incrementum sentire, sorti autem antiquae tantummodo incrementum usurarum accedere. <a 529 pp. k. oct. chalcedone decio vc. cons.>

CJ.4.33.0. De nautico fenore.

CJ.4.33.2: Imperatores Diocletianus, Maximianus

Traiecticiam pecuniam, quae periculo creditoris datur, tamdiu liberam esse ab observatione communium usurarum, quamdiu navis ad portum appulerit, manifestum est. * diocl. et maxim. aa. scribonio honorato. * <a 286 pp. iiii id. mart. maximo ii et aquilino conss.>

CJ.4.33.3: Imperatores Diocletianus, Maximianus

Cum dicas pecuniam te ea lege dedisse, ut in sacra urbe tibi restitueretur, nec incertum periculum, quod ex navigatione maris metui solet, ad te pertinuisse profitearis, non dubium est pecuniae creditae ultra licitum te usuras exigere non posse. * diocl. et maxim. aa. aureliae cosmianae. * <a 286 pp. prid. id. mart. maximo ii et aquilino conss.>

CJ.4.33.4: Imperatores Diocletianus, Maximianus

Cum proponas te nauticum fenus ea condicione dedisse, ut post navigium, quod in africam dirigi debitor adseverabat, in salonitanorum portum nave delata fenebris pecunia tibi redderetur, ita ut navigii dumtaxat quod in africam destinabatur periculum susceperis, perque vitium debitoris, nec loco quidem navigii servato, illicitis comparatis mercibus quae navis continebat fiscum occupasse: amissarum mercium detrimentum, quod non ex marinae tempestatis discrimine, sed ex praecipiti avaritia et incivili debitoris audacia accidisse adseveratur, adscribi tibi iuris publici ratio non permittit. * diocl. et maxim. aa. aureliae iulianae. * <>

CJ.4.33.5: Imperatores Diocletianus, Maximianus

Traiecticiae quidem pecuniae, quae periculo creditoris mutuo datur, casus, antequam, ad destinatum locum navis perveniat, ad debitorem non pertinet, sine huiusmodi vero conventione infortunio naufragii non liberabitur. * diocl. et maxim. aa. et cc. pullio iuliano eucharisto. * <a 294 d. viii id. oct. retiariae cc. conss.>

CJ.4.34.0. Depositi.

CJ.4.34.1: Imperator Alexander Severus

Si incursu latronum vel alio fortuito casu ornamenta deposita apud interfectum perierunt, detrimentum ad heredem eius qui depositum accepit, qui dolum solum et latam culpam, si non aliud specialiter convenit, praestare debuit, non pertinet. quod si praetextu latrocinii commissi vel alterius fortuiti casus res, quae in potestate heredis sunt vel quas dolo desiit possidere, non restituuntur, tam depositi quam ad exhibendum actio, sed etiam in rem vindicatio competit. * alex. a. mestrio mil. * <a 234 pp. iiii id. iul. maximo ii et urbano conss.>

CJ.4.34.2: Imperator Gordianus

Usurae in depositi actione sicut in ceteris bonae fidei iudiciis ex mora venire solent. * gord. a. celsino mil. * <a 238 d. k. nov. pio et pontiano conss.>

CJ.4.34.3: Imperator Gordianus

Si depositi experiris, non immerito etiam usuras tibi restitui flagitabis, cum tibi debeat gratulari, quod furti eum actione non facias obnoxium, si quidem qui rem depositam invito domino sciens prudensque in usus suos converterit, etiam furti delicto succedit. * gord. a. austronio mil. * <a 239 d. id. iul. gordiano a. et aviola conss.>

CJ.4.34.4: Imperator Gordianus

Si deposita pecunia is qui eam suscepit usus est, non dubium est etiam usuras debere praestare. sed si, cum depositi actione expertus es, tantummodo sortis facta condemnatio est, ultra non potes propter usuras experiri: non enim duae sunt actiones alia sortis alia usurarum, sed una, ex qua condemnatione facta iterata actio rei iudicatae exceptione repellitur. * gord. a. timocrati mil. * <>

CJ.4.34.5: Imperatores valer., gallien.

Propter instrumenta quidem, quae te deposuisse cum adversario tuo dicis, ut residua pecunia quae ex conductione debebatur dissoluta ea reciperes, si id quod placuerat implesti, sequestrem potes convenire. quamvis autem haec reddita non fuerint, tamen adversus eum a quo fundum conduxeras, si omne quod ex hoc contractu debebatur reddidisti, ipsis solutionibus tutus es. * valer. et gallien. aa. et valer. c. claudio. * <a 259 d. id. iul. aemiliano et basso conss.>

CJ.4.34.6: Imperatores Diocletianus, Maximianus

Is, penes quem utrasque partes transactiones vel alia instrumenta commendasse dicis, legem qua haec suscepit servare necesse habet. * diocl. et maxim. aa. et cc. antonio alexandro et ulpiano antipatri.* <a 293 >

CJ.4.34.7: Imperatores Diocletianus, Maximianus

Desiderium tuum cum rationibus iuris non congruit. nam si custodiam pecuniae suscepisti, quam aliis a te datam instrumentum, quo hanc tibi reddi conscriptum profiteris, arguit, solutionem eius competentem improbe recusas. * diocl. et maxim. aa. et cc. antiocho attico calpurniano democrati. * <>

CJ.4.34.8: Imperatores Diocletianus, Maximianus

Si is, qui depositam a te pecuniam accepit, eam suo nomine vel cuiuslibet alterius mutuo dedit, tam ipsum de implenda suscepta fide quam eius successores teneri tibi certissimum est. adversus eum autem qui accepit nulla actio tibi competit, nisi nummi extant: tunc enim contra possidentem uti vindicatione potes. * diocl. et maxim. aa. et cc. aurelio alexandro. * <a 293 d. iiii k. mart. sirmi aa. conss.>

CJ.4.34.9: Imperatores Diocletianus, Maximianus

Cum hereditas personam dominae sustineat, ab hereditario servo, priusquam patri vestro successeritis, res commendatas secundum bonam fidem ab eius qui susceperat successoribus apud rectorem provinciae petere potestis. * diocl. et maxim. aa. et cc. aurelio menophilo et ceteris. * <a 293 pp. vii id. nov. sirmi aa. conss.>

CJ.4.34.10: Imperatores Diocletianus, Maximianus

Qui depositum non restituit, suo nomine conventus et condemnatus ad eius restitutionem cum infamiae periculo urguetur. * diocl. et maxim. aa. et cc. septimiae quadratillae. * <a 294 subscripta pridie idus decembres nicomedia cc. conss.>

CJ.4.34.11pr.: Imperator Justinianus

Si quis vel pecunias vel res quasdam per depositionis accepit titulum, eas volenti ei qui deposuerit reddere ilico modis omnibus compellatur nullamque compensationem vel deductionem vel doli exceptionem opponat, quasi et ipse quasdam contra eum qui deposuit actiones personales vel in rem vel hypothecarias praetendens, cum non sub hoc modo depositum accepit, ut non concessa ei retentio generetur, et contractus qui ex bona fide oritur ad perfidiam retrahatur. * iust. a. demostheni pp. * <a 529 recitata septimo miliario in novo consistorio palatii iustiniani d. iii k. nov. decio cons.>

CJ.4.34.11.1: Imperator Justinianus

Sed et si ex utraque parte aliquid fuerit depositum, nec in hoc casu compensationis praepeditio oriatur, sed depositae quidem res vel pecuniae ab utraque parte quam celerrime sine aliquo obstaculo restituantur, ei videlicet primum, qui primus hoc voluerit, et postea legitimae actiones integrae ei reserventur. <a 529 recitata septimo miliario in novo consistorio palatii iustiniani d. iii k. nov. decio cons.>

CJ.4.34.11.2: Imperator Justinianus

Quod obtinere sicut iam dictum est oportet et si ex una parte depositio celebrata est, ex altera autem compensatio fuerit opposita, ut integra omni legitima ratione servata depositae res vel pecuniae prima fronte restituantur. <a 529 recitata septimo miliario in novo consistorio palatii iustiniani d. iii k. nov. decio cons.>

CJ.4.34.11.3: Imperator Justinianus

Quod si in scriptis attestatio non per dolum vel fraudem fuerit ei qui depositum suscepit ab alio transmissa, ut minime depositum restituat, hocque per iusiurandum adfirmaverit, liceat ei qui deposuit sub defensionis cautela idonea praestita res depositas quantocius recuperare. <a 529 recitata septimo miliario in novo consistorio palatii iustiniani d. iii k. nov. decio cons.>

CJ.4.34.12: Imperator Justinianus

Supervacuam veterum differentiam e medio tollentes, si quis certum pondus auri vel confecti vel in massa constituti deposuerit et plures scripsit heredes et unus ex his contingentem sibi portionem a depositario accepit, alter supersederit vel alias fortuito casu impeditus hoc facere non potuerit, et postea depositarius in adversam inciderit fortunam vel sine dolo depositum perdiderit, sancimus non esse coheredi eius licentiam venire contra coheredem suum et ex eius parte avellere, quod ipse ex sua parte consequi minime potuerit, quasi eo quod coheres accepit communi constituto, cum, ubi certae pecuniae depositae fuerant et suam partem unus ex heredibus accepit, nemini veniret in dubium bene eum accepisse partem suam et non debere aliam partem attingere. nobis etenim non videtur esse homo obnoxius neque in massa neque in specie neque in pecunia numerata qui suam partem suscepit, ne industria poenas desidiae solvat. si enim et alius heres tempora opportuna quemadmodum coheres eius observasset, et suum uterque recipiebat et sequentibus altercationibus minime locus relinquebatur. * iust. a. iohanni pp. * <a 531 - 532 >

CJ.4.35.0. Mandati.

CJ.4.35.1: Imperatores Severus, Antoninus

Adversus eum, cuius negotia gesta sunt, de pecunia, quam de propriis opibus vel ab aliis mutuo acceptam erogasti, mandati actione pro sorte et usuris potes experiri: de salario quod promisit a praeside provinciae cognitio praebebitur. * sev. et ant. aa. leonidae. * <>

CJ.4.35.2: Imperator Antoninus

Cum ex causa fideiussionis pecuniam patrem tuum exsolvisse proponas, habes mandati actionem, qua non solum pecuniam, sed etiam pignora in obligationem eam deducta potes consequi. * ant. a. statio Marcellino. * <pp. viii >

CJ.4.35.3: Imperator Antoninus

Si pater tuus tibi sui iuris constituto actionem adversus debitores suos mandavit, potuit ipse praesens adversus eos re integra experiri. si quid itaque ab eo apud iudicem actum est, rescindi nulla ratio patitur. * ant. a. germano. * <a 216 pp. vi k. nov. sabino ii et anullino conss.>

CJ.4.35.4: Imperator Alexander Severus

Etiamsi contrariam sententiam reportaverunt, qui te ad exercendas causas appellationis procuratorem constituerunt, si tamen nihil culpa tua factum est, sumptus , quos in lite probabili ratione feceras, contraria mandati actione petere potes. * alex. a. aurelio vulnerato. * <as viii id. ian.>

CJ.4.35.5: Imperator Alexander Severus

Si maritus sororis tuae tibi procurans petere bonorum possessionem noluit, cum ipso tibi congrediendum est. quam querellam ita cum effectu habes, si mandasse te, ut peteretur bonorum possessio, eumque neglexisse arguas. * alex. a. iuliano. * <>

CJ.4.35.6: Imperator Gordianus

Si fideiussor pro reo patiente fidem suam adstrinxit, mandati cum eo post exsolutam pecuniam vel factam condemnationem potest exercere actionem. * gord. a. aelio sosibio mil. * <a 238 pp. iii non. sept. pio et pontiano conss.>

CJ.4.35.7: Imperator Gordianus

Si litteras eius secutus, qui pecuniae auctor fuerat, ei qui tibi litteras tradidit pecunias credidisti, tam adversus eum, qui a te mutuam sumpsit, quam adversus eum, cuius mandatum secutus es, mandati actio tibi competit. * gord. a. aureliano mil. * <>

CJ.4.35.8: Imperatores valer., gallien.

Si tibi pupillorum pater, ut pecuniam in rem suam servis eius crederes, mandavit et in hanc rem aeque ipso praecipiente pignora sunt obligata, et mandati actione pupillos post mortem patris convenire et exsequi ius obligationis pignorum poteris, si in solutione cessabitur. * valer. et gallien. aa. et valer. nob. c. aurelio lucio. * <a 259 d. iiii k. ian. aemiliano et basso conss.>

CJ.4.35.9: Imperatores Diocletianus, Maximianus

Cum per procuratorem causam tuam laesam esse dicas, mandati actio adversus eum tibi competit. * diocl. et maxim. aa. Marcello. * <>

CJ.4.35.10: Imperatores Diocletianus, Maximianus

Si pro ea contra quam supplicas fideiussor seu mandator intercessisti et neque condemnatus es neque bona eam dilapidare postea coepisse comprobare possis, ut iustam metuendi causam praebeat, neque ab initio ita te obligationem suscepisse, ut eam possis et ante solutionem convenire, nulla iuris ratione, antequam satis creditori pro ea feceris, eam ad solutionem urgueri certum est. fideiussorem vero seu mandatorem exceptione munitum et iniuria iudicis damnatum et appellatione contra bonam fidem minime usum non posse mandati agere manifestum est. * diocl. et maxim. aa. et cc. aurelio papio. * <a 293 >

CJ.4.35.11: Imperatores Diocletianus, Maximianus

Procuratorem non tantum pro his quae gessit, sed etiam pro his quae gerenda suscepit, et tam propter exactam ex mandato pecuniam quam non exactam, tam dolum quam culpam, sumptuum ratione bona fide habita, praestare necesse est. * diocl. et maxim. aa. et cc. aurelio gaio. * <a 293 d.... k. iun. sirmi aa. conss.>

CJ.4.35.12: Imperatores Diocletianus, Maximianus

Cum mandati negotii contractum certam accepisse legem adseveres, eam integram secundum bonam fidem custodiri convenit. unde si contra mandati tenorem procurator tuus ad te pertinentem fundum vendidit nec venditionem postea ratam habuisti, dominium tibi auferre non potuit. * diocl. et maxim. aa. et cc. firmo. * <a 293 pp. xvii k. iun. sirmi aa. conss.>

CJ.4.35.13: Imperatores Diocletianus, Maximianus

A procuratore dolum et omnem culpam, non etiam improvisum casum praestandum esse iuris auctoritate manifeste declaratur. * diocl. et maxim. aa. et cc. zosimo. * <a 294 d. k. febr. sirmi cc. conss.>

CJ.4.35.14: Imperatores Diocletianus, Maximianus

Si secundum mandatum tryphonis ac felicis equos tua pecunia comparatos vel in solutum a proprio debitore tibi traditos uni de his utriusque voluntate dedisti, ad parendum placitis eos mandati iudicio conventos bona fides urguet. * diocl. et maxim. aa. et cc. hermiano. * <a 294 d. vi k. april. sirmi cc. conss.>

CJ.4.35.15: Imperatores Diocletianus, Maximianus

Mandatum re integra domini morte finitur. * diocl. et maxim. aa. et cc. aurelio precario athenaeo. * <a 294 d. xvii k. mai. cc. conss.>

CJ.4.35.16: Imperatores Diocletianus, Maximianus

Ad comparandas merces data pecunia, qui mandatum suscepit, fide rupta quanti interest mandatoris tenetur. * diocl. et maxim. aa. et cc. uzando. * <a 294? iii k. oct.>

CJ.4.35.17: Imperatores Diocletianus, Maximianus

Salarium incertae pollicitationis peti non potest. * diocl. et maxim. aa. et cc. aurelio gorgonio. * <a 294? >

CJ.4.35.18: Imperatores Diocletianus, Maximianus

Post solutionem a se factam, qui dari mutuo mandavit, ab eo, pro quo intercessit , vel successoribus eius quod solutum est etiam cum usuris post moram recte reddi postulat. * diocl. et maxim. aa. et cc. tusciano. * <a 294? d. vii k. oct. sirmi... conss.>

CJ.4.35.19: Imperatores Diocletianus, Maximianus

Pretii rerum distractarum, quas venales mandato praecedente acceperas, ultra licitum usuras ex stipulatione vel mora praestare, licet pignora data probentur, compelli non potes. * diocl. et maxim. aa. et cc. aurelio eugenio. * <a 294? s. xiiii k. nov. sirmi ... conss.>

CJ.4.35.20pr.: Imperatores Diocletianus, Maximianus

Si contra licitum litis incertum redemisti, interdictae conventionis tibi fidem impleri frustra petis. * diocl. et maxim. aa. et cc. aurelio epagatho. * <>

CJ.4.35.20.1: Imperatores Diocletianus, Maximianus

Quod si gratuitum mandatum suscepisti, secundum bonam fidem sumptus recte postulas. <>

CJ.4.35.21: Imperator Constantinus

In re mandata non pecuniae solum, cuius est certissimum mandati iudicium, verum etiam existimationis periculum est. nam suae quidem quisque rei moderator atque arbiter non omnia negotia, sed pleraque ex proprio animo facit: aliena vero negotia exacto officio geruntur nec quicquam in eorum administratione neglectum ac declinatum culpa vacuum est. * const. a. volusiano pp. * <a 313 - 315? >

CJ.4.35.22pr.: Imperator Anastasius

Per diversas interpellationes ad nos factas comperimus quosdam alienis rebus fortunisque inhiantes cessiones aliis competentium actionum in semet exponi properare hocque modo diversas personas litigiorum, vexationibus adficere, cum certum sit pro indubitatis obligationibus eos magis, quibus antea suppetebant, sua vindicare quam ad alios ea transferre velle. * anastas. a. eustathio pp. * <a 506 d. x k. aug. areovinda et messala conss.>

CJ.4.35.22.1: Imperator Anastasius

Per hanc itaque legem iubemus in posterum huiusmodi conamen inhiberi (nec enim dubium est redemptores litium alienarum videri eos esse, qui tales cessiones in se confici cupiunt), ita tamen, ut, si quis datis pecuniis huiusmodi subierit cessionem, usque ad ipsam tantummodo solutarum pecuniarum quantitatem et usurarum eius actiones exercere permittatur, licet instrumento cessionis venditionis nomen insertum sit: <a 506 d. x k. aug. areovinda et messala conss.>

CJ.4.35.22.2: Imperator Anastasius

Exceptis scilicet cessionibus, quas inter coheredes pro actionibus hereditariis fieri contingit, et his, quascumque vel creditor vel is qui res aliquas possidet pro debito seu rerum apud se constitutarum munimine ac tuitione acceperit, nec non his, quas in legatarios seu fideicommissarios, quibus debita vel actiones seu res aliae relictae sunt, pro his fieri necesse sit: nulla etenim tali ratione intercedente redemptor, sicuti superius declaratum est, magis existit, qui alienas pecuniis praestitis subiit actiones. <a 506 d. x k. aug. areovinda et messala conss.>

CJ.4.35.22.3: Imperator Anastasius

Sin autem per donationem cessio facta est, sciant omnes huiusmodi legi locum non esse, sed antiqua iura esse servanda, ut cessiones tam pro exceptis et specialiter enumeratis quam aliis causis factae seu faciendae secundum actionum, quaecumque cessae sunt vel fuerint, tenorem sine quadam imminutione obtineant. <a 506 d. x k. aug. areovinda et messala conss.>

CJ.4.35.23pr.: Imperator Justinianus

Anastasio divae memoriae principi iustissima constitutio conscripta est tam humanitatis quam benivolentiae plena, ut ne quis alienum subeat debitum cessione in eum facta et amplius consequatur a debitore his, quae praestavit cessionis auctori, exceptis quibusdam casibus, qui specialiter illi sanctioni continentur. sed cum hi, qui circa lites morantur, eandem piam dispositionem in sua natura remanere minime concesserunt, invenientes machinationem, ut partem quidem debiti venditionis titulo transferant in alium creditores, reliquam autem partem per coloratam cedant donationem, generaliter anastasiane constitutioni subvenientes sancimus nulli licere partem quidem debiti cedere pecuniis acceptis et venditione actionum habita, partem autem donationis titulo videri transferre, sed, si voluerit, pure totum debitum donare et per donationem actiones transferre, non o cculte nec per artes clandestinas pecunias suscipere, publice autem simulatam donationem celebrare, sed undique puram et non dissimulatam facere donationem: huiusmodi enim cessionibus non adversamur. * iust. a. iohanni pp. * <a 531 - 532 >

CJ.4.35.23.1: Imperator Justinianus

Si quis autem occulte aliud quidem agere conatur et pecunias pro parte accepit et vendidit particulatim actiones, partem autem donare simulat vel ipsi, qui emptionem actionis subiit, vel forsitan alii per suppositam personam (quia et hoc saepius perpetratum esse didicimus), huiusmodi machinationem penitus amputamus, ut nihil amplius accipiat, quam ipse vero contractu re ipsa persolvit: sed omne , quod superfluum est et per figuratam donationem translatum, inutile esse ex utraque parte censemus, ut neque ei qui cedit actiones neque ei qui eas suscipere curavit aliquid lucri vel fieri vel remanere vel aliquam contra debitorem vel res ad eum pertinentes esse utrique eorum actionem. <a 531 - 532 >

CJ.4.35.23.2: Imperator Justinianus

Sed et si quis donationem quidem omnis debiti facere adsimulaverit, ut videatur esse tota donatio, aliquid autem occulte susceperit, et in hoc casu hoc tantummodo exactionem sortiri, quod datum esse comprobetur, et si hoc a debitore persolvatur, nulla contra eum vel substantiam eius ex dissimulata donatione oriatur molestia. <a 531 - 532 >

CJ.4.35.32.3: Imperator Justinianus

Et iustum quidem fuerat hoc remedium debitoribus ab anastasianis temporibus impertiri, ex quibus etiam lex lata est, quam homines astute lacerandam esse existimaverunt. sed ne videamur in tanta temporum nostrorum benivolentia aliquid acerbius admittere, in futuris post praesentem legem casibus haec observari censemus, ut omne, quod contra legem anastasianam excogitatum est, hoc in posterum nostro perfruatur remedio.

CJ.4.36.0. Si servus se emi mandaverit.

CJ.4.36.1pr.: Imperatores Diocletianus, Maximianus

Si extero servus se mandaverit emendum, quamvis nec ex persona servi (quia hoc liber mandare non potest) nec ex domini (quoniam qui mandat , ut a se res comparetur, inutiliter mandat) consistere credebatur actio, tamen optima ratione, quia non id agitur, ut ex ipso mandato, sed propter mandatum ex alio contractu nascatur actio, domino quaeri placuit obligationem. * diocl. et maxim. aa. et cc. aureliae dionysiae. * <a 293 subdita k. oct. sirmi ipsis aa. conss.>

CJ.4.36.1.1: Imperatores Diocletianus, Maximianus

Si itaque domino ignorante emi te mandasti ac te nummos subministrante peculiares soluti sunt, emptori minime liberatio per huiusmodi factum potuit pervenire. nec tamen si tradita nec manumissa es, etiam mandati de ancilla et empti de pretio consequendo tam contrarias actiones ei exercere concedi placuit. <a 293 subdita k. oct. sirmi ipsis aa. conss.>

CJ.4.36.1.2: Imperatores Diocletianus, Maximianus

Sane in illius arbitrio relictum est, utrumne mancipium an pretium consequi velit, cum ex peculio quod eius fuit solutio celebrata obligationis vinculo emptorem liberare non potuit. <a 293 subdita k. oct. sirmi ipsis aa. conss.>

CJ.4.37.0. Pro socio.

CJ.4.37.1: Imperatores Diocletianus, Maximianus

Societatem uno pecuniam conferente alio operam posse contrahi magis obtinuit. * diocl. et maxim. aa. et cc aurelio. * <a 293 d. iii non. mai. aa. conss.>

CJ.4.37.2: Imperatores Diocletianus, Maximianus

Cum proponas te praedium coniuncto dominio cum patruo tuo comparasse in possessionemque tam te quam ipsum inductum, iuris ratio efficit, ut dominium fundi ad utrumque pertineat. sane quia pretium a te solo numeratum et sollemnibus pensitationibus cessante socio satisfactum esse dicis, iudicio societatis id quod eo nomine praestari oportuerit consequeris. * diocl. et maxim. aa. et cc. pannonio. * <>

CJ.4.37.3: Imperatores Diocletianus, Maximianus

Cum in societatis contractibus fides exuberet conveniatque aequitatis rationibus etiam compendia aequaliter inter socios dividi, praeses provinciae, si patrem tuum salinarum societatem participasse et non recepta communis compendii portione rebus humanis exemptum esse reppererit, commodum societatis, quod deberi iuxta fidem veri constiterit, restitui tibi praecipiet. * diocl. et maxim. aa. et cc. aurelio victorino mil. * <pp. vi k. sept..... conss.>

CJ.4.37.4: Imperatores Diocletianus, Maximianus

Si societatis iure vel transactioni stipulatione subdita bonorum omnium aequis partibus inter te et fabiam divisionem recte fieri placuit, quo minus haec rata serventur, nihil interest, utrumne testatus, qui fuerit obligatus, an intestatus rebus sit humanis exemptus. * diocl. et maxim. aa. et cc. aurelio celeri. * <>

CJ.4.37.5: Imperatores Diocletianus, Maximianus

Tamdiu societas durat, quamdiu consensus partium integer perseverat. proinde si iam tibi pro socio nata est actio, eam inferre apud eum, cuius super ea re notio est, non prohiberis. * diocl. et maxim. aa. et cc. aurelio theodoro. * <a 294 d. xii k. ian. nicomediae cc conss.>

CJ.4.37.6: Imperator Justinianus

De societate apud veteres dubitatum est, si sub condicione contrahi potest: puta " si ille consul fuerit" societatem esse contractam. sed ne simili modo apud posteritatem sicut apud antiquitatem huiusmodi causa ventiletur, sancimus societatem contrahi posse non solum pure, sed etiam sub condicione: voluntates etenim legitime contrahentium omnimodo conservandae sunt. * iust. a. iohanni pp. * <a 531 d. prid.>

CJ.4.37.7: Imperator Justinianus

Sancimus veterum dubitatione semota licentiam habere furiosi curatorem dissolvere, si maluerit, societatem furiosi, et sociis licere ei renuntiare . et quemadmodum in omnibus aliis contractibus legitimam auctoritatem ei dedimus, ita et in hac parte eum permittimus competenter commodis furiosi providere. * iust. a. iohanni pp. * <a 531 d....... constantinopoli post consulatum lampadii et orestis >

CJ.4.38.0. De contrahenda emptione.

CJ.4.38.1: Imperatores valer., gallien.

Venditiones, etsi in alio loco quam in quo possessiones constitutae sunt fiant, non ideo irritae esse creduntur. * valer. et gallien. aa. aurelio paulo. * <d. xii k. mai.>

CJ.4.38.2: Imperatores Diocletianus, Maximianus

Emptionem et venditionem consensum desiderare nec furiosi ullum esse consensum manifestum est. intermissionis autem tempore furiosos maiores viginti quinque annis venditiones et alios quoslibet contractus posse facere non ambigitur. * diocl. et maxim. aa. aurelio avito. * <a 286 d. viii id. mai. maximo ii et aquilino conss.>

CJ.4.38.3: Imperatores Diocletianus, Maximianus

Si donationis causa venditionis simulatus contractus est, emptio sui deficit substantia. sane si in possessionem rei sub specie venditionis causa donationis, ut te aleret, induxisti, sicut donatio perfecta facile rescindi non potest, ita legi, quam tuis rebus donans dixisti, parere convenit. * diocl. et maxim. aa. et cc. valeriae viacrae. * <>

CJ.4.38.4: Imperatores Diocletianus, Maximianus

Cum res tibi donatas ab herede donatricis distractas esse proponas, intellegere debueras duplicari tibi titulum possessionis non potuisse, sed ex donatione et traditione dominum factum frustra emisse, cum rei propriae emptio non possit consistere, ac tunc demum tibi profuit, si ex donatione te non fuisse dominum demonstretur. sane quoniam omnia bona tibi ab ea donata et tradita dicis, ad hoc a filio facta venditio rerum maternarum adferre perfecta etiam donatione poterit defensionem, ne vel exemplo inofficiosi testamenti possit haec avocare. * diocl. et maxim. aa. et cc. aurelio luciano. * <a 293 pp. iiii k. iun. aa. conss.>

CJ.4.38.5: Imperatores Diocletianus, Maximianus

Cum ipse tutor nihil ex bonis pupilli quae distrahi possunt comparare palam et bona fide prohibetur, multo magis uxor eius hoc facere potest. * diocl. et maxim. aa. et cc. umbigae gratiae. * <a 293 d. viii k. dec. aa. conss.>

CJ.4.38.6: Imperatores Diocletianus, Maximianus

Si gaudentius in matrem tuam titulo venditionis sine quadam fraude dominium mancipii transtulit, non idcirco, quod post inter eos matrimonium et divortium secutum dicitur, iuri eius quicquam derogatum est: quod vindicare, te matri tuae successisse probans, minime prohiberis. * diocl. et maxim. aa. et cc. aurelio lucretio. * <>

CJ.4.38.7: Imperatores Diocletianus, Maximianus

Si ancillam ex emptione sibi quaesitam mater tua donatione a secundo marito postea se simulavit accepisse, tituli falsi figmentum dominium ei duplicare vel auferre non potuit. * diocl. et maxim. aa. et cc. aurelio isioni. * <a 294 s. non. mart. sirmi cc. conss.>

CJ.4.38.8: Imperatores Diocletianus, Maximianus

Si non donationis causa, sed vere vineas distraxisti nec pretium numeratum est, actio tibi pretii, non eorum quae dedisti repetitio competit. * diocl. et maxim. aa. et cc. herodi et diogeni. * <a 294 d. xvii k. april. cc. conss.>

CJ.4.38.9: Imperatores Diocletianus, Maximianus

Empti fides ac venditi sine quantitate nulla est. placito autem pretio non numerato, sed solum tradita possessione istiusmodi contractus non habetur irritus, nec idcirco is qui comparavit minus recte possidet, quod soluta summa quam dari convenerat negatur. sed et donationis gratia praedii facta venditione si traditio sequatur, actione pretii nulla competente perficitur donatio. * diocl. et maxim. aa. et cc. severo mil. * <a 294 d. viii k. april. sirmi cc. conss.>

CJ.4.38.10: Imperatores Diocletianus, Maximianus

Si mater tua velut ex bonis patris praedium suum comparavit, cum rei propriae non consistat emptio et hanc simulatam proponas, huiusmodi placitum mutare substantiam veritatis et ei nocere non potuit. * diocl. et maxim. aa. et cc. aureliae gordianae. * <a 294 d. vii id. april. cc. conss.>

CJ.4.38.11: Imperatores Diocletianus, Maximianus

Invitum comparare vel distrahere postulantis causam iustam non continet desiderium. * diocl. et maxim. aa. et cc. aurelio paterno. * <a 294 pp. iii non. dec. cc. conss.>

CJ.4.38.12pr.: Imperatores Diocletianus, Maximianus

Non idcirco minus emptio perfecta est, quod emptor fideiussorem non accepit vel instrumentum testationis vacuae possessionis omissum est: nam secundum consensum auctoris in possessionem ingressus recte possidet. * diocl. et maxim. aa. et cc. aurelio paciano. * <>

CJ.4.38.12.1: Imperatores Diocletianus, Maximianus

Pretium sane, si eo nomine satisfactum non probetur, peti potest: nec enim licet in continenti facta paenitentiae contestatio consensu finita rescindit. <>

CJ.4.38.13: Imperatores Diocletianus, Maximianus

In vendentis vel ementis voluntatem collata condicione comparandi, quia non adstringit necessitate contrahentes, obligatio nulla est. idcirco dominus invitus ex huiusmodi conventione rem propriam vel quilibet alius distrahere non compellitur. * diocl. et maxim. aa. et cc. aurelio decio lolliano. * <>

CJ.4.38.14: Imperatores Gratianus, Valentinianus, Theodosius

Dudum proximis consortibusque concessum erat, ut extraneos ab emptione removerent neque homines suo arbitratu vendenda distraherent. sed quia gravis haec videtur iniuria, quae inani honestatis colore velatur, ut homines de rebus suis facere aliquid cogantur inviti, superiore lege cassata unusquisque suo arbitratu quaerere vel probare possit emptorem, nisi lex specialiter quasdam personas hoc facere prohibuerit. * grat. valentin. et theodos. aaa. flaviano pp. illyrici. * <a 391 d. vi k. iun. vincentiae tatiano et symmacho conss.>

CJ.4.38.15pr.: Imperator Justinianus

Super rebus venumdandis, si quis ita rem comparavit, ut res vendita esset, quanti titius aestimaverit, magna dubitatio exorta est multis antiquae prudentiae cultoribus. * iust. a. iuliano pp. * <a 530 d. k. aug. lampadio et oreste conss.>

CJ.4.38.15.1: Imperator Justinianus

Quam decidentes censemus, cum huiusmodi conventio super venditione procedat " quanti ille aestimaverit", sub hac condicione stare venditionem, ut, si quidem ipse qui nominatus est pretium definierit, omnimodo secundum eius aestimationem et pretia persolvi et venditionem ad effectum pervenire, sive in scriptis sive sine scriptis contractus celebretur, scilicet si huiusmodi pactum, cum in scriptis fuerit redactum, secundum nostrae legis definitionem per omnia completum et absolutum sit. <a 530 d. k. aug. lampadio et oreste conss.>

CJ.4.38.15.2: Imperator Justinianus

Sin autem ille vel noluerit vel non potuerit pretium definire, tunc pro nihilo esse venditionem quasi nullo pretio statuto: nulla coniectura, immo magis divinatione in posterum servanda, utrum in personam certam an in viri boni arbitrium respicientes contrahentes ad haec pacta venerunt, quia hoc penitus impossibile esse credentes per huiusmodi sanctionem expellimus. <a 530 d. k. aug. lampadio et oreste conss.>

CJ.4.38.15.3: Imperator Justinianus

Quod et in huiusmodi locatione locum habere censemus. <a 530 d. k. aug. lampadio et oreste conss.>

CJ.4.39.0. De hereditate vel actione vendita.

CJ.4.39.1: Imperatores Severus, Antoninus

Aes alienum hereditate nomine fisci vendita ad onus emptoris bonorum pertinere nec fiscum creditoribus hereditariis respondere certum et absolutum est. * sev. et ant. aa. geminio. * <d. iii non. nov.>

CJ.4.39.2: Imperator Antoninus

Ratio iuris postulat, ut creditoribus hereditariis et legatariis seu fideicommissariis te convenire volentibus tu respondeas et cum eo, cui hereditatem venumdedisti, tu experiaris suo ordine. nam ut satis tibi detur, sero desideras, quoniam eo tempore, quo venumdabatur hereditas, hoc non est comprehensum. quamvis enim ea lege emerit, ut creditoribus hereditariis satisfaciat, excipere actiones hereditarias invitus cogi non potest. * ant. a. titio floriano. * <>

CJ.4.39.3: Imperator Alexander Severus

Nominis venditio et ignorante vel invito eo, adversus quem actiones mandantur, contrahi solet. * alex. a. quintiano et timotheo. * <a 223 d. viii id. febr. maximo ii et aeliano conss.>

CJ.4.39.4: Imperator Alexander Severus

Qui nondum certus de quantitate hereditatis, persuadente emptore quasi exiguam quantitatem, eam vendidit, bonae fidei iudicio conveniri, ut res tradat vel actiones mandet, non compellitur suoque iure eorum persecutionem habet. * alex. a. aurelio diogeni mil. * <a 223 d. xvii k. oct. maximo ii et aeliano conss.>

CJ.4.39.5: Imperator Alexander Severus

Emptor hereditatis actionibus mandatis eo iure uti debet, quo is cuius persona fungitur, quamvis utiles etiam adversus debitores hereditarios actiones emptori tribui placuerit. * alex. a. nonario onesimo. * <a 224 pp. k. mart. iuliano et crispino conss.>

CJ.4.39.6: Imperator Alexander Severus

Qui tibi hereditatem vendidit, antequam res hereditarias traderet, dominus earum perseveravit et ideo vendendo eas aliis dominium transferre potuit. sed quoniam contractus fidem fregit, ex empto actione conventus quod tua interest praestare cogitur. * alex. a. pomponio mil. * <a a. 230 pp. viii k. iul. agricola et clemente conss.>

CJ.4.39.7: Imperatores Diocletianus, Maximianus

Postquam eo decursum est, ut cautiones quoque debitorum pignori darentur, ordinarium visum est, ut post nominis venditionem utiles emptori, sic (ut responsum est) vel ipsi creditori postulanti dandas actiones. * diocl. et maxim. aa. manaseae. * <>

CJ.4.39.8: Imperatores Diocletianus, Maximianus

Ex nominis emptione dominium rerum obligatarum ad emptorem non transit, sed vel in rem suam procuratori facto vel utilis secundum ea, quae pridem constituta sunt, exemplo creditoris persecutio tribuitur. * diocl. et maxim. aa. et cc. vigiliano. * <as xv.>

CJ.4.39.9: Imperator Justinianus

Certi et indubitati iuris est ad similitudinem eius, qui personalem redemerit actionem et utiliter eam movere suo nomine conceditur, et eum, qui in rem actionem comparaverit, eadem uti posse facultate. cum enim actionis nomen generale est omnium sive in rem siue(!) in personam actionum et apud omnes veteres iuris conditores hoc nomen in omnibus pateat, nihil est tale, quod differentiam in huiusmodi utilibus actionibus possit introducere. * iust. a. iohanni pp. * <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.4.40.0. Quae res venire non possunt et qui vendere vel emere vetantur.

CJ.4.40.1: Imperatores Valentinianus, Theodosius, Arcadius

Fucandae atque distrahendae purpurae vel in serico vel in lana, quae blatta vel oxyblatta atque hyacinthina dicitur, facultatem nullus possit habere privatus. sin autem aliquis supra dicti muricis vellus vendiderit, fortunarum se suarum et capitis sciat subiturum esse discrimen. * valentin. theodos. et arcad. aaa. fausto com. sacr. larg. * <>

CJ.4.40.2: Imperatores Valentinianus, Theodosius, Arcadius

Comparandi serici a barbaris facultatem omnibus, sicut iam praeceptum est, praeter comitem commerciorum etiamnunc iubemus auferri. * valentin. theodos. et arcad. aaa. cariobaudi duci mesopotamiae. * <>

CJ.4.40.3: Imperatores Arcadius, Honorius

Quia nonnunquam in diversis litoribus distrahi publici canonis frumenta dicuntur , vendentes et ementes sciant capitali poenae se esse subdendos et in fraudem publicam commercia contracta damnari. * arcad. et honor. aa. ad senatum et pop. * <a 397 d. xvii k. mart. caesario et attico conss.>

CJ.4.40.4: Imperatores Honorius, Theodosius

Ne frumentum, quod devotissimo exercitui mittitur, in praedam lucrumque vertatur , hac sanctione decernimus, ut, quicumque hoc fuerint forte mercati, honestiores quidem stilum proscriptionis incurrant, inferiores autem vilioresque personae capitali supplicio subiaceant. * honor. et theodos. aa. faustino pp. * <a 410 vel 413 ? >

CJ.4.41.0. Quae res exportari non debeant.

CJ.4.41.1: Imperatores Valentinianus, Valens, Gratianus

Ad barbaricum transferendi vini et olei et liquaminis nullam quisquam habeat facultatem ne gustus quidem causa aut usus commerciorum. * valentin. valens et grat. aaa. ad theodotum mag. mil. * <a 370 - 375 >

CJ.4.41.2pr.: Imperator Marcianus

Nemo alienigenis barbaris cuiuscumque gentis ad hanc urbem sacratissimam sub legationis specie vel sub quocumque alio colore venientibus aut in diversis aliis civitatibus vel locis loricas et scuta et arcus sagittas et spathas et gladios vel alterius cuiuscumque generis arma audeat venumdare, nulla prorsus isdem tela , nihil penitus ferri vel facti iam vel adhuc infecti ab aliquo distrahatur. perniciosum namque romano imperio et proditioni proximum est barbaros, quos indigere convenit, telis eos, ut validiores reddantur, instruere. * marcian. a. constantino pp. * <a 455 - 457 >

CJ.4.41.2.1: Imperator Marcianus

Si quis autem aliquid armorum genus quarumcumque nationum barbaris alienigenis contra pietatis nostrae interdicta ubicumque vendiderit, bona eius universa proscribi protinus ac fisco addici, ipsum quoque capitalem poenam subire decernimus. <a 455 - 457 >

CJ.4.42.0. De eunuchis.

CJ.4.42.1: Imperator Constantinus

Si quis post hanc sanctionem in orbe romano eunuchos fecerit, capite puniatur: mancipio tali nec non etiam loco, ubi hoc commissum fuerit domino sciente et dissimulante, confiscando. * const. a. ursino duci mesopotamiae. * <d. vi k. mart.>

CJ.4.42.2pr.: Imperator Leo

Romanae gentis homines sive in barbaro sive in romano solo eunuchos factos nullatenus quolibet modo ad dominium cuiusdam transferri iubemus: poena gravissima statuenda adversus eos, qui hoc perpetrare ausi fuerint, tabellione videlicet, qui huiusmodi emptionis sive cuiuslibet alterius alienationis instrumenta conscripserit, et eo, qui octavam vel aliquod vectigalis causa pro his susceperit, eidem poenae subiciendo. * leo a. viviano pp. * <a 457 - 465 >

CJ.4.42.2.1: Imperator Leo

Barbarae autem gentis eunuchos extra loca nostro imperio subiecta factos cunctis negotiatoribus vel quibuscumque aliis emendi in commerciis et vendendi ubi voluerint tribuimus facultatem. <a 457 - 465 >

CJ.4.43.0. De patribus qui filios distraxerunt.

CJ.4.43.1: Imperatores Diocletianus, Maximianus

Liberos a parentibus neque venditionis neque donationis titulo neque pignoris iure aut quolibet alio modo, nec sub praetextu ignorantiae accipientis in alium transferri posse manifesti iuris est. * diocl. et maxim. aa. et cc. aureliae papinianae. * <a 294 d. xvi k. dec. nicomediae cc. conss.>

CJ.4.43.2pr.: Imperator Constantinus

Si quis propter nimiam paupertatem egestatemque victus causa filium filiamve sanguinolentos vendiderit, venditione in hoc tantummodo casu valente emptor obtinendi eius servitii habeat facultatem. * const. a. provincialibus suis. * <a 329 d. xv k. sept. serdicae constantino a. viii et constantino c. iiii conss.>

CJ.4.43.2.1: Imperator Constantinus

Liceat autem ipsi qui vendidit vel qui alienatus est aut cuilibet alii ad ingenuitatem propriam eum repetere, modo si aut pretium offerat quod potest valere, aut mancipium pro huiusmodi praestet. <a 329 d. xv k. sept. serdicae constantino a. viii et constantino c. iiii conss.>

CJ.4.44.0. De rescindenda venditione.

CJ.4.44.1: Imperator Alexander Severus

Si pater tuus per vim coactus domum vendidit, ratum non habebitur, quod non bona fide gestum est: mala fide enim emptio irrita est. aditus itaque nomine tuo praeses provinciae auctoritatem suam interponet, maxime cum paratum te proponas id quod pretii nomine illatum est emptori refundere. * alex. a. aurelio maroni mil. * <a 222 d. xi k. mart. antonino et alexandro conss.>

CJ.4.44.2: Imperatores Diocletianus, Maximianus

Rem maioris pretii si tu vel pater tuus minoris pretii, distraxit, humanum est, ut vel pretium te restituente emptoribus fundum venditum recipias auctoritate intercedente iudicis, vel, si emptor elegerit, quod deest iusto pretio recipies. minus autem pretium esse videtur, si nec dimidia pars veri pretii soluta sit. * diocl. et maxim. aa. aurelio lupo. * <a 285 pp. v k. nov. diocletiano a. ii et aristobulo conss.>

CJ.4.44.3: Imperatores Diocletianus, Maximianus

De contractu venditionis et emptionis iure perfecto alterutro invito nullo recedi tempore bona fides patitur, nec ex rescripto nostro. quo iure fiscum nostrum uti saepe constitutum est. * diocl. et maxim. aa. et cc. titiae et marcianae. * <a 293 d. viii id. febr. aa. conss.>

CJ.4.44.4: Imperatores Diocletianus, Maximianus

Ad rescindendam venditionem et malae fidei probationem hoc solum non sufficit, quod magno pretio fundum comparatum minoris distractum esse commemoras. * diocl. et maxim. aa. et cc. sempronio eudoxio. * <a 293 d. non. april. byzantio aa. conss.>

CJ.4.44.5pr.: Imperatores Diocletianus, Maximianus

Si dolo adversarii deceptum venditionem praedii te fecisse praeses provinciae aditus animadvertit, sciens contrarium esse dolum bonae fidei, quae in huiusmodi maxime contractibus exigitur, rescindi venditionem iubebit. * diocl. et maxim. aa. et cc. claudio rufo. * <a 293 d. xv k. nov. sirmi aa. conss.>

CJ.4.44.5.1: Imperatores Diocletianus, Maximianus

Quod si iure perfecta venditio est a maiore viginti quinque annis, intellegere debes consensu mutuo perfectam venditionem resolvi non posse. <a 293 d. xv k. nov. sirmi aa. conss.>

CJ.4.44.6: Imperatores Diocletianus, Maximianus

Non est probabilis causa, propter quam rescindi consensu factam venditionem desideras. quamvis enim duplum offeras pretium emptori, tamen invitus ad rescindendam venditionem urgueri non debet. * diocl. et maxim. aa. et cc. novisio gaiano veterano. * <a 293 >

CJ.4.44.7: Imperatores Diocletianus, Maximianus

Ratas manere semper perfectas iure venditiones vestra etiam interest. nam si oblato pretio rescindere venditionem facile permittatur, eveniet, ut et si quid vos laboribus vestris a fisco nostro vel a privato comparaveritis, eadem lege conveniamini, quam vobis tribui postulatis. * diocl. et maxim. aa. et cc. mucatraulo mil. * <a 293 >

CJ.4.44.8: Imperatores Diocletianus, Maximianus

Si voluntate tua fundum tuum filius tuus venumdedit, dolus ex calliditate atque insidiis emptoris argui debet vel metus mortis vel cruciatus corporis imminens detegi, ne habeatur rata venditio. hoc enim solum, quod paulo minori pretio fundum venumdatum significas, ad rescindendam emptionem invalidum est. quod videlicet si contractus emptionis atque venditionis cogitasses substantiam et quod emptor viliori comparandi, venditor cariori distrahendi votum gerentes ad hunc contractum accedant vixque post multas contentiones, paulatim venditore de eo quod petierat detrahente, emptore autem huic quod obtulerat addente, ad certum consentiant pretium, profecto perspiceres neque bonam fidem, quae emptionis atque v enditionis conventionem tuetur, pati neque ullam rationem concedere rescindi propter hoc consensu finitum contractum vel statim vel post pretii quantitatis disceptationem: nisi minus dimidia iusti pretii, quod fuerat tempore venditionis, datum est, electione iam emptori praestita servanda. * diocl. et maxim. aa. et cc. aureliae euodiae. * <a 293 d. k. dec. aa. conss.>

CJ.4.44.9: Imperatores Diocletianus, Maximianus

Pretii causa non pecunia numerata, sed pro eo pecoribus in solutum consentienti datis contractus non constituitur irritus. * diocl. et maxim. aa. et cc. domitio civalensi. * <a 293 d. xv k. ian. sirmi aa. conss.>

CJ.4.44.10: Imperatores Diocletianus, Maximianus

Dolus emptoris qualitate facti, non quantitate pretii aestimatur. quem si fuerit intercessisse probatum, non adversus eum, in quem emptor dominium transtulit, rei vindicatio venditori, sed contra illum cum quo contraxerat in integrum restitutio competit. * diocl. et maxim. aa. et cc. aemilio severo. * <>

CJ.4.44.11pr.: Imperatores Diocletianus, Maximianus

Venditor factum emptoris, quod eum tempore contractus latuit, post arguendo, non qui eo tempore scierit, quo id ageretur, et consensit, de dolo queri potest. * diocl. et maxim. aa. et cc. aureliae magnae. * <>

CJ.4.44.11.1: Imperatores Diocletianus, Maximianus

Igitur cum patrem tuum, ut maius comprehenderetur instrumento pretium, quam rei quae distrahebatur esse convenerat, consensisse profitearis, propter hoc solum de circumscriptione frustra queritur. <>

CJ.4.44.11.2: Imperatores Diocletianus, Maximianus

Sane si placitum pretium non probetur solutum vel in quantitatem debiti per errorem facti compensari cautum fuit, hoc reddi recte postulatur. <>

CJ.4.44.12: Imperatores Diocletianus, Maximianus

Non idcirco minus venditio fundi, quod hunc ad munus sumptibus necessariis urguentibus non vilioris pretii vel urguente debito te distraxisse contendis, rata manere debet. illicitis itaque petitionibus abstinendo ac pretium, si non integrum solutum est, petendo facies consultius. * diocl. et maxim. aa. et cc. antiocho. * <>

CJ.4.44.13: Imperatores Diocletianus, Maximianus

Si maior annis viginti quinque fundum distraxisti, propter hoc solum, quod ementi, ne compararet, socer tuus denuntiavit, emptionem a te rescindi bona fides non patitur. * diocl. et maxim. aa. et cc. aurelio nicae decaria. * <>

CJ.4.44.14: Imperatores Diocletianus, Maximianus

Ea condicione distractis praediis, ut quod rei publicae debebatur qui comparavit restitueret, venditor a se celebrata solutione quanti interest experiri potest, non ex eo, quod emptor non satis conventioni fecit, contractus irritus constituitur. * diocl. et maxim. aa. et cc. aurelio basilidae mil. * <a 294 s. xv k. ian. nicomediae cc. conss.>

CJ.4.44.15: Imperatores Gratianus, Valentinianus, Theodosius

Quisquis maior aetate praedia etiam procul posita distraxerit, paulo vilioris pretii nomine repetitionis rei venditae copiam minime consequatur. neque inanibus immorari sinatur obiectis, ut vires sibimet locorum causetur incognitas, qui familiaris rei scire vires vel merita atque emolumenta debuerat. * grat. valentin. et theodos. aaa. ad hypatium pp. * <a 383 d. vi non. mai. mediolani merobaude ii et saturnino conss.>

CJ.4.44.16pr.: Imperatores Valentinianus, Theodosius, Arcadius

Si quos debitorum mole depressos necessitas publicae rationis adstringat proprias distrahere facultates, rei qualitas et redituum quantitas aestimetur nec sub nomine subhastationis publicae locus fraudibus relinquatur et possessionibus viliore distractis plus exactor ex gratia quam debitor ex pretio consequatur. * valentin. theodos. et arcad. aaa. ad magnillum vic. africae.* <a 392 d. xiii k. iul. aquileiae. acc. id. ian. hadrumeti post consulatum tatiani et symmachi vv. cc.>

CJ.4.44.16.1: Imperatores Valentinianus, Theodosius, Arcadius

Hi postremo sub empti titulo perpetuo dominii iure potiantur, qui tantum adnumeraverint fisco, quantum exegerit utilitas privatorum. etenim periniquum est, ut alienis bonis sub gratiosa auctione distractis parum accedat publico nomini, cum totum pereat debitori. <a 392 d. xiii k. iul. aquileiae. acc. id. ian. hadrumeti post consulatum tatiani et symmachi vv. cc.>

CJ.4.44.17: Imperatores Arcadius, Honorius

Hi, qui imposita munera civitatum fuga destituunt et ineundos furtim existimant esse contractus, intellegant sibi nihil haec profutura esse commenta et pretio emptorem fugae conscium multandum esse, quod dederit. * arcad. et honor. aa. messalae pp. * <a 399 d. xii k. sept. theodoro cons.>

CJ.4.44.18: Imperatores Arcadius, Honorius, Theodosius

Vestium et argenti seu mancipiorum coemendorum, si quando a privatis nostris ea contigerit venumdari, palatini sciant sibi copiam denegatam: poena in eos amissionis pretii exercenda. * arcad. honor. et theodos. aaa. nestorio com. rer. privat. * <a a. 402 vel 406 d. iii k. ian. r. arcadio.... >

CJ.4.45.0. Quando liceat ab emptione discedere .

CJ.4.45.1: Imperator Gordianus

Re quidem integra ab emptione et venditione utriusque partis consensu recedi potest: etenim quod consensu contractum est, contrariae voluntatis adminiculo dissolvitur. at enim post traditionem interpositam nuda voluntas non resolvit emptionem, si non actus quoque priori similis retro agens venditionem intercesserit. * gord. a. licinio rufino. * <>

CJ.4.45.2pr.: Imperatores Diocletianus, Maximianus

Perfectam emptionem atque venditionem re integra tantum pacto et consensu posse dissolvi constat. * diocl. et maxim. aa. et cc. aurelio felici. * <a 293 d. non. april. byzantii aa. conss.>

CJ.4.45.2.1: Imperatores Diocletianus, Maximianus

Ergo si quidem arrae nomine aurum datum sit, potes hoc solum secundum fidem pacti recuperare. <a 293 d. non. april. byzantii aa. conss.>

CJ.4.45.2.2: Imperatores Diocletianus, Maximianus

Si vero partem pretii persolvisti, ad ea, quae venditorem oportet ex venditione praestare, magis actionem quam ad pretii quantitatem, quam te dedisse significas , habes. <a 293 d. non. april. byzantii aa. conss.>

CJ.4.46.0. Si propter publicas pensitationes venditio fuerit celebrata.

CJ.4.46.1: Imperator Antoninus

Venditionem ob tributorum cessationem factam revocari non oportet neque priore domino pretium offerente neque creditore eius iure hypothecae sive pignoris. potior est enim causa tributorum, quibus priore loco omnia cessantis obligata sunt. * ant. a. geminio materno. * <>

CJ.4.46.2pr.: Imperatores Diocletianus, Maximianus

Si deserta praedia ob cessationem collationum vel reliqua tributorum ex permissu praesidis ab his, quibus periculum exactionis tributorum imminet, distracta sincera fide iusto pretio sollemniter comparasti, venditio ob sollemnes praestationes necessitate facta convelli non debet. * diocl. et maxim. aa. atiniae plotianae. * <>

CJ.4.46.2.1: Imperatores Diocletianus, Maximianus

Sin autem venditio nulla iusta auctoritate praesidis praecedente facta est, hanc ratam haberi iura non concedunt, idque quod frustra gestum est revocari oportet , ita ut indemnitati tributorum omnibus modis consulatur. <>

CJ.4.46.2.2: Imperatores Diocletianus, Maximianus

Quae omnia tractari convenit praesente eo, quem emptorem extitisse proponis. <>

CJ.4.46.3: Imperator Constantinus

Si quis fundum vel mancipia aliamve rem ob cessationem tributorum vel etiam ob vestium auri argentique debitum, quae annua exactione solvuntur, occupata convento debitore et apud iudicem interpellatione celebrata, cum solutio cessaverit, sub hasta distracta comparaverit, perpetuam emptionis accipiat firmitatem. sin autem minoris forte persona fuerit inserta, necesse sit legitimae defensionis adesse venditioni personam, nihilque intersit, utrumne officium summae rei procuratoris an certe rectoris provinciae id quod debitum fuerit proposuerit. * constant. a. ad egnatium faustinum praes. baeticae. * <a 337 d. prid. id. dec. feliciano et titiano conss.>

CJ.4.47.0. Sine censu vel reliquis fundum comparari non posse.

CJ.4.47.1: Imperator Alexander Severus

Ex conventione quidem, qua pactam novercam tuam cum patre tuo dicis, cum fundum in dotem daret, ut tributa ipsa agnosceret, actio tibi adversus eam competere non potest, et si pactum in stipulationem deductum probetur. sed et si fundus aestimatus ita, ut pars instrumenti significat, in dotem datus est, ex vendito actio, ut placitis stetur, non competit. * alex. a. capitoni. * <a 229 pp. non. dec. ipso a. iii et dione ii conss.>

CJ.4.47.2pr.: Imperator Constantinus

Rei annonariae emolumenta tractantes cognovimus hanc esse causam maxime reliquorum, quod nonnulli captantes aliquorum momentarias necessitates sub hac condicione fundos comparant, ut nec reliqua eorum fisco inferant et immunes eos possideant. * const. a. ad antonium Marcellinum praes. * <a 319 d. k. iul. agrippinae constantino a. v et licinio c. conss.>

CJ.4.47.2.1: Imperator Constantinus

Ideoque placuit, ut, si quem constiterit huiusmodi habuisse contractum atque hac lege possessionem esse mercatum, tam pro solidis censibus fundi comparati quam pro reliquis universis eiusdem possessionis obnoxius teneatur, cum necesse sit eum qui comparat censum rei comparatae agnoscere, nec licere cuidam rem sine censu comparare vel vendere. <a 319 d. k. iul. agrippinae constantino a. v et licinio c. conss.>

CJ.4.47.3: Imperator Julianus

Omnes pro his agris quos possident publicas pensitationes agnoscant nec pactionibus contrariis adiuventur, si venditor aut donator apud se collationis sarcinam pactione illicita voluerit retinere, etsi necdum translata sit professio censualis, sed apud priorem fundi dominum forte permaneat, dissimulantibus ipsis, ut non possidentes pro possidentibus exigantur. * iul. a. ad secundum pp. * <a 363 d. xiiii k. mart. antiochiae iuliano a. iiii et sallustio conss.>

CJ.4.48.0. De periculo et commodo rei venditae.

CJ.4.48.1: Imperator Alexander Severus

Post perfectam venditionem omne commodum et incommodum, quod rei venditae contingit, ad emptorem pertinet. auctor enim ex his tantum causis suo ordine tenetur, quae ex praecedente tempore causam evictionis parant, et ita, si ei denuntiatum est, ut causae agendae adesset, et non absente emptore contra eum pronuntiatum est. * alex. a. iuliae secundinae. * <a 223 d. k. sept. maximo ii et aeliano conss.>

CJ.4.48.2pr.: Imperator Alexander Severus

Cum convenit, ut singulae amphorae vini certo pretio veneant, antequam tradantur , imperfecta etiam tunc venditione periculum vini mutati emptoris, qui moram mensurae faciendae non interposuit, non fuit. * alex. a. gargilio iuliano. * <a 223 pp. v k. april. maximo ii et aeliano conss.>

CJ.4.48.2.1: Imperator Alexander Severus

Cum autem universum quod in horreis erat postea venisse sine mensura et claves emptoribus traditas adlegas, perfecta venditione quod vino mutato damnum accidit , ad emptorem pertinet. <a 223 pp. v k. april. maximo ii et aeliano conss.>

CJ.4.48.2.2: Imperator Alexander Severus

Haec omnia locum habent non solum si vinum, sed etiam si oleum vel frumentum vel his similia venierint et ea aut deteriora aut penitus corrupta fuerint. <a 223 pp. v k. april. maximo ii et aeliano conss.>

CJ.4.48.3: Imperator Alexander Severus

Dolum auctoris bona fide emptori non nocere certi iuris est. * alex. a. daphenae. * <a 223 pp. iiii k. oct. maximo ii et aeliano conss.>

CJ.4.48.4: Imperator Gordianus

Cum inter emptorem et venditorem contractu sine scriptis inito de pretio convenit moraque venditoris in traditione non intercessit, periculo emptoris rem distractam esse in dubium non venit. * gord. a. silvestro mil. * <a 239 pp. xv k. ian. gordiano a. et aviola conss.>

CJ.4.48.5: Imperatores Diocletianus, Maximianus

Cum speciem venditam per violentiam ignis absumptam dicas, si venditionem nulla condicio suspenderat, amissae rei periculum te non adstringit. * diocl. et maxim. aa. aurelio leontio. * <a 285 pp. iii non. nov. atubino diocletiano a. ii et aristobulo conss.>

CJ.4.48.6: Imperatores Diocletianus, Maximianus

Mortis casus ancillae distractae etiam ante traditionem sine mora venditoris dilatam non ad venditorem, sed ad emptorem pertinet, et hac non ex praeterito vitio rebus humanis exempta solutionem emptor pretii non recte recusat. * diocl. et maxim. aa. et cc. aurelio cyrillo. * <a 294 s. xv k. ian. nicomediae cc. conss.>

CJ.4.49.0. De actionibus empti et venditi.

CJ.4.49.1: Imperator Antoninus

Adversus eum, cui agrum vendidisti, venditi iudicio consiste: nec enim tibi in rem actio cum emptore, qui personaliter tibi sit obligatus, competit. * ant. a. aelianae. * <a 215 pp. iiii id. iun. laeto iterum et cereale conss.>

CJ.4.49.2pr.: Imperatores valer., gallien.

Venditi actionem ad recipiendum residuum pretium intendere adversario tuo poteris. * valer. et gallien. aa. et valer. c. flavio domitiano. * <a 259 pp. id. mart. aemiliano et basso conss.>

CJ.4.49.2.1: Imperatores valer., gallien.

Nec quod in compensationem venerit, quasi et tu invicem deberes, id obesse tibi poterit, si in bonae fidei contractu, in quo maiores etiam viginti quinque annis officio iudicis in iis quae dolo commissa sunt adiuvantur, iusto errore te ductum vel fraude adversarii captum, quasi debitum id esset, quod re vera non debebatur, pepigisse monstraveris. <a 259 pp. id. mart. aemiliano et basso conss.>

CJ.4.49.2.2: Imperatores valer., gallien.

Fructus quoque perceptos ante venditionem contractam, quos, cum venditioni non accessissent, eundem emptorem invasisse proponis, eodem iudicio reposces. <a 259 pp. id. mart. aemiliano et basso conss.>

CJ.4.49.3: Imperatores Diocletianus, Maximianus

Ex arrali pacto personalis dumtaxat paciscentibus actio praeparatur. * diocl. et maxim. aa. serapodoro. * <a 290 pp. iiii id. iul. ipsis iiii et iii aa. conss.>

CJ.4.49.4: Imperatores Diocletianus, Maximianus

Si traditio rei venditae iuxta emptionis contractum procacia venditoris non fiat , quanti interesse compleri emptionem fuerit arbitratus praeses provinciae, tantum in condemnationis taxationem deducere curabit. * diocl. et maxim. aa. muciano. * <a 290 pp. viii id. sept. ipsis iiii et iii aa. conss.>

CJ.4.49.5: Imperatores Diocletianus, Maximianus

Curabit praeses provinciae compellere emptorem, qui nactus possessionem fructus percepit, partem pretii quam penes se habet cum usuris restituere, quas et perceptorum fructuum ratio et minoris aetatis favor, licet nulla mora intercesserit, generavit. * diocl. et maxim. aa. et cc. decimo caplusio. * <a 290 pp. xii k. oct. ipsis iiii et iii aa. conss.>

CJ.4.49.6: Imperatores Diocletianus, Maximianus

Venditi actio, si non ab initio aliud convenit, non facile ad rescindendam perfectam venditionem, sed ad pretium exigendum competit. * diocl. et maxim. aa. et cc. neratio. * <a 293 s. vi id. april. byzantii aa. conss.>

CJ.4.49.7: Imperatores Diocletianus, Maximianus

Si servos distraxisti ac pretium de peculio eorum, quod ad te pertinebat, nesciens unde solveretur accepisti, consequens est integram te pretii actionem habere , cum proprii venditoris nummi soluti non praestant emptori liberationem. * diocl. et maxim. aa. et cc. diodoro. * <a 293 s. xvii k. mai. melanthiade aa. conss.>

CJ.4.49.8pr.: Imperatores Diocletianus, Maximianus

Si pater tuus venum portionem suam dedit nec induxit in vacuam possessionem praedii, ius omne penes se eum retinuisse certum est. neque enim velut traditionis factae vectigal exsolutum, si simulatum factum intercessit, veritatem mutare potuit. * diocl. et maxim. aa. et cc. aurelio eusebio. * <a 293 s. v k. mai. aa. conss.>

CJ.4.49.8.1: Imperatores Diocletianus, Maximianus

Quapropter aditus praeses provinciae, si animadverterit in vacuam possessionem neque patrem tuum neque successores eius emptorem vel heredes ipsius quocumque loco factos induxisse, non dubitabit nihil esse translatum pronuntiare. et si te ex empto ad inducendum in vacuam possessionem perspexerit conveniri, aestimabit , an pretium sit exsolutum: ac si reppererit non esse satis pretio factum, hoc restitui tibi providebit. <a 293 s. v k. mai. aa. conss.>

CJ.4.49.9: Imperatores Diocletianus, Maximianus

Si minor a venditore sive sciente sive ignorante dicebatur capitatio praedii venditi et maior inventa sit, in tantum convenitur, quanto, si scisset emptor ab initio, minus daret pretii. sin vero huiusmodi onus et gravamen functionis cognovisset, nullam adversus venditorem habet actionem. * diocl. et maxim. aa. et cc. aureliae zaniae antipatrae. * <a 293 s. xv k. iun. philippopoli aa. conss.>

CJ.4.49.10: Imperatores Diocletianus, Maximianus

Cum venditorem carnis fide conventionis rupta tempore placito hanc non exhibuisse proponas, empti actione eum quanti interest tua tunc tibi praestitam fuisse apud praesidem provinciae convenire potes. * diocl. et maxim. aa. et cc. titio attalo. * <a 293 s. xvii k. ian. aa. conss.>

CJ.4.49.11: Imperatores Diocletianus, Maximianus

Si ancillam tibi ex causa venditionis traditam venditor manumisit, libertatem alienae factae praestare non potuit. quod si post venditionem ante traditionem manumisit, pleno iure dominus constitutus civem romanam facere non prohibebatur: tibi personali propter ruptam fidem contra venditorem actione competente. * diocl. et maxim. aa. et cc. flaviae eucarpiae. * <a 293 s. x k. ian. aa. conss.>

CJ.4.49.12: Imperatores Diocletianus, Maximianus

Sicut periculum vini mutati, quod certum fuerat comparatum, ad emptorem, ita commodum aucti pretii pertinet. utque hoc verum est, sic certae qualitatis ac mensurae distracto vino fidem placitis servandam convenit: quo non restituto non pretii quantitatis, sed quanti interest empti competit actio. * diocl. et maxim. aa. et cc. egi crispino.* <a 294 s. prid. non. febr. sirmi cc. conss.>

CJ.4.49.13: Imperatores Diocletianus, Maximianus

Fructus post perfectum iure contractum emptoris spectare personam convenit, ad quem et functionum gravamen pertinet: venditorque pretium tantum ac, si moram intercessisse probetur, usuras officio iudicis exigere potest. * diocl. et maxim. aa. et cc. flavio alexandro. * <a 294 s. iiii non. dec. cc. conss.>

CJ.4.49.14: Imperatores Diocletianus, Maximianus

Emptor servorum recte de his tradendis et de eorum fuga itemque sanitate erronesque non esse aut noxa solutus repromitti sibi recte postulat. * diocl. et maxim. aa. et cc. aurelio rusoni. * <a 294 s. v k. dec. cc. conss.>

CJ.4.49.15: Imperatores Diocletianus, Maximianus

Ultra modum tritici distracti citra pactum in solutione mora non facta nihil emptor exigere potest. * diocl. et maxim. aa. et cc. aurelio antonino aeliano. * <a 294 s. xv k. ian. nicomediae cc. conss.>

CJ.4.49.16: Imperatores Diocletianus, Maximianus

Post perfectam venditionem fetus quidem pecorum emptori, venditori vero sumptus, si quos bona fide fecerit, restitui debere notissimum est. * diocl. et maxim. aa. et cc. aurelio cyrillo. * <a 294 s. viii k. ian. cc. conss.>

CJ.4.49.17: Imperatores Diocletianus, Maximianus

Expulsos vos de fundo per violentiam a nerone, quem habere ius in eo negatis, profitentes nullam vobis adversus eum, ex cuius venditione fundum possidetis, actionem competere probatis. igitur ad instar interdicti seu actionis promissae experiendum esse perspicitis. * diocl. et maxim. aa. et cc. hermiano et hermippo. * <>

CJ.4.50.0. Si quis alteri vel sibi sub alterius nomine vel aliena pecunia emerit.

CJ.4.50.1: Imperator Antoninus

Si pecunia patris fundus mancipiaque comparata sunt, tamen cum emptiones matris tuae nomine factas esse proponis, ignorare non debes traditione matrem tuam dominam fuisse constitutam. plane si pecuniae petitionem competere tibi propter numerationem pretii existimas, civiliter consiste. * ant. a. mercatori secundo. * <a 213 pp. iii k. aug. antonino a. iiii et balbino conss.>

CJ.4.50.2: Imperator Alexander Severus

Si emancipatis vobis fundos, quos nomine vestro, cum in potestate ageretis, pater emerat, tradidit vel in possessione eorum voluntate patris fuistis, dominium adquisistis. * alex. a. septimiae. * <a 222 d. xiii k. april. antonino et alexandro conss.>

CJ.4.50.3: Imperator Alexander Severus

Mancipia quorum meministi si, ut proponis, nomine tuo itemque fratris tui cui successisti empta vobis tradita sunt, licet instrumento emptionis matrem tuam pecuniam numerasse contineatur, persequi ea more iudiciorum non prohiberis. * alex. a. fabio paterno. * <a 228 d. xv k. iul. modesto et probo conss.>

CJ.4.50.4: Imperatores valer., gallien.

Quamvis instrumento emptionis socrus nomen inscripseris, tamen si possessionem tenes, dominus effectus es. ob eam rem frustra calumniam mulieris, quamvis ipsa contractus tabulas habeat, formidas. * valer. et gallien. aa. et valer. c. aurelio cyrillo. * <d. iii non. mai.>

CJ.4.50.5: Imperatores Diocletianus, Maximianus

Cum propria pecunia tua te comparante possessionem quondam uxoris tuae nomen tantummodo accommodasse dicas eandemque occasione custodiae suae commissorum instrumentorum contra bonam fidem proprietatem eiusdem fundi usurpasse, rector provinciae, pro sua exercitatione cognitum habens donationem a non domina uxore tua in filiam suam collatam nullum praeiudicium dominio tuo attulisse, docenti tibi veritatem precibus tuis adsistere restituere eandem possessionem habita etiam fructuum taxatione curabit. * diocl. et maxim. aa. vero. * <a 290 d. prid. id. sept. ipsis iiii et iii aa. conss.>

CJ.4.50.6pr.: Imperatores Diocletianus, Maximianus

Multum interest, utrumne uxore tua comparante pecuniam numerasti eique possessio tradita est, an contractu emptionis a te nomine tuo habito tantum uxoris nomen post instrumentis scribi feceris. * diocl. et maxim. aa. et cc. aurelio dionysio. * <a 293 d. xiiii k. sept. viminacio aa. conss.>

CJ.4.50.6.1: Imperatores Diocletianus, Maximianus

Nam si quidem uxor tua nomine suo emit eique res traditae sunt nec in te quicquam de his processit, non nisi de pretio adversus eam, in quantum tu pauperior et illa locupletior facta est, habes actionem. <a 293 d. xiiii k. sept. viminacio aa. conss.>

CJ.4.50.6.2: Imperatores Diocletianus, Maximianus

Quod si emisti quidem tu et tibi tradita possessio est, tantum autem nomen instrumento uxoris quondam tuae scriptum est, res gesta potior quam scriptura habetur. <a 293 d. xiiii k. sept. viminacio aa. conss.>

CJ.4.50.6.3: Imperatores Diocletianus, Maximianus

Sin vero ab initio negotium uxoris gerens comparasti nomine ipsius, empti actionem nec illi nec tibi adquisisti, dum tibi non vis nec illi potes: quare in dominii quaestione ille potior habetur, cui possessio tradita est. <a 293 d. xiiii k. sept. viminacio aa. conss.>

CJ.4.50.7: Imperatores Diocletianus, Maximianus

Cum per eos qui negotia tua gerebant olei materiam te comparasse contractusque fidem pretio suscepto rupisse venditorem proponas, si quidem ex empto his qui iuri tuo subiecti fuerint contrahentibus tibi quaesita est actio, per te vel cui mandaveris, si vero sui iuris constituti secundum mandatum tuum hunc contractum habuerunt ac sibi empti quaesierunt actionem, per eos vel quibus illi dederint mandatum adi competentem iudicem, qui secundum bonam fidem, quae in huiusmodi contractibus observari solet, satisfieri providebit. * diocl. et maxim. aa. et cc. aurelio gerontio. * <a 293 s. xiiii k. sept. aa. conss.>

CJ.4.50.8: Imperatores Diocletianus, Maximianus

Qui aliena pecunia comparat, non ei cuius nummi fuerunt, sed sibi tam actionem empti quam dominium, si tamen ei fuerit tradita possessio, quaerit. cum itaque de rebus communibus fratrem patruelem tuum quaedam comparasse contendas, de tua pecunia hunc conveniendo facies consultius: nam in rem de rebus ab eo comparatis tibi contra eum petitio non competit. * diocl. et maxim. aa. et cc. maximae valentinae. * <a 294 d. prid. non. febr. sirmi cc. conss.>

CJ.4.50.9: Imperatores Diocletianus, Maximianus

Nihil prohibet altero pecuniam numerante in alium vel utriusque contrahentis consensu vel certe venditore tantummodo volente dominium transferri: eo etiam manifeste constituto, ut inter absentes per mediam personam vel per nuntium vel per epistulam talis contractus perfici possit. * diocl. et maxim. aa. et cc. eminio rufiniano. * <a 294 d. v non..... sirmi cc. conss.>

CJ.4.51.0. De rebus alienis non alienandis et de prohibita rerum alienatione vel hypotheca.

CJ.4.51.1: Imperator Alexander Severus

Si praesidi provinciae probatum fuerit iulianum nullo iure munitum servos tuos scientibus vendidisse, restituere tibi emptores servos iubebit. quod si ignoraverint et eorum facti sunt, pretium horum tibi solvere iulianum iubebit. * alex. a. cattiano mil. * <a 224 d. viiii id. iul. iuliano et crispino conss.>

CJ.4.51.2: Imperator Gordianus

Distrahente marito rem iuris tui, si consensum non accommodasti, licet sigillo tuo venditionis instrumentum fraude conquisita signaveris, eiusmodi tamen commentum emptori usucapione non subsecuta vel longi temporis praescriptione non munito nullam praestitisse potest securitatem. * gord. a. grattiae aeliae. * <>

CJ.4.51.3: Imperatores Diocletianus, Maximianus

Venditrici succedenti hereditario iure perfectam recte venditionem rescindere ac dominium revocare non licet: sed et si hoc ex persona sua vindicet, vel exceptione te doli mali, si hanc viam elegeris, tueri vel evicta re, etsi defensione monstrata nolueris uti, quanti tua interest poteris experiri. * diocl. et maxim. aa. et cc. aurelio valeriano. * <a 293 s. xvi k. nov. sirmi aa. conss.>

CJ.4.51.4: Imperatores Diocletianus, Maximianus

Mancipia patris, qui fundum a philippo conduxerat, successione tibi quaesita domino fundi pro debitis in solutum mater tua dando nihil tibi auferre potuit. et ideo si tu maior viginti quinque annis effectus ab ea negotium gestum non fecisti ratum, oblato debito, si non haec locator iure pignoris obligata sibi vendidit, petere poteris. * diocl. et maxim. aa. et cc. domitio aphobio. * <a 294 d. iii id. febr. cc. conss.>

CJ.4.51.5: Imperatores Diocletianus, Maximianus

Si fundum tuum pater post emancipationem te non consentiente venumdedit neque ei successisti neque possidens longi temporis praescriptione munitus est, eum tibi agenti rector provinciae reddi efficiet. * diocl. et maxim. aa. et cc. aurelio aegro. * <a 294 viii id. m. sirmi cc. conss.>

CJ.4.51.6: Imperatores Diocletianus, Maximianus

Nemo res ad te pertinentes non obligatas sibi nec ex officio vendendi potestatem habens distrahendo quicquam tibi nocere potuit. * diocl. et maxim. aa. et cc. aurelio rufo. * <d. k. nov.>

CJ.4.51.7: Imperator Justinianus

Sancimus, sive lex alienationem inhibuerit sive testator hoc fecerit sive pactio contrahentium hoc admiserit, non solum dominii alienationem vel mancipiorum manumissionem esse prohibendam, sed etiam usus fructus dationem vel hypothecam vel pignoris nexum penitus prohiberi: similique modo et servitutes minime imponi nec emphyteuseos contractum, nisi in his tantummodo casibus, in quibus constitutionum auctoritas vel testatoris voluntas vel pactionum tenor qui alienationem interdixit aliquid tale fieri permiserit. * iust. a. iohanni pp. * <d. k. nov. constantinopoli.>

CJ.4.52.0. De communium rerum alienatione.

CJ.4.52.1: Imperator Gordianus

Si nulla usucapionis praerogativa vel diuturni silentii praescriptio emptorem possessionis, quam a coheredibus patrui tui distractam suggeris, pro portione tua munit, in rem actio incolumis perseverat: aut si receptum ius securitatem emptori praestitit, est arbitrium tibi liberum conveniendi eos, qui pro portione satis illicitam venditionem celebraverunt. * gord. a. apollodoro evocato. * <>

CJ.4.52.2: Imperator Gordianus

Multum interest, utrum coheredes tui possessionem communem distraxerunt, an vero fiscus, cum partis dominus esset, soliditatem iuxta proprium privilegium vendidit. etenim si a fisco facta est venditio, fidem eius infringi minime rationis est. si vero coheredes soliditatem vendiderunt, licet emptor ab his delegatus partem pretii fisco solverit alteramque in cautionem deduxit, tamen portioni tuae ea venditio non potest obsistere. * gord. a. herenniano mil. * <>

CJ.4.52.3: Imperatores Diocletianus, Maximianus

Falso tibi persuasum est communis praedii portionem pro indiviso, antequam communi dividundo iudicium dictetur, tantum socio, non etiam extraneo posse distrahi. * diocl. et maxim. aa. et cc. aurelio eusebio. * <pp. id. febr..... conss.>

CJ.4.52.4: Imperatores Diocletianus, Maximianus

Portionem quidem tuam militantis alienare frater tuus non potuit. eius autem partem pretio soluto tibi restitui postulare nec militari gravitati convenit. * diocl. et maxim. aa. et cc. ulpiano mil. * <>

CJ.4.52.5: Imperatores Diocletianus, Maximianus

Si maior annis viginti quinque velut propria nesciens communia cum fratribus tuis praedia distraxisti, licet nullum instrumentum intercesserit nec quicquam specialiter convenit, alienae portionis evictione secuta quanti interest emptoris solves. * diocl. et maxim. aa. et cc. olympiano. * <>

CJ.4.53.0. Rem alienam gerentibus non interdici rerum suarum alienatione.

CJ.4.53.1: Imperatores Severus, Antoninus

Non est interdictum tutoribus vel curatoribus, etsi ex eo titulo iudicati debitores sunt constituti, cum sua causa res suas alienare. potuit ergo curator tuus fundum suum cum suo onere obligare fisco nostro: nam et privato potuisset. * sev. et ant. aa. publiciae capriolae. * <a a. 205 d. non. iun. antonino et geta conss.>

CJ.4.54.0. De pactis inter emptorem et venditorem compositis.

CJ.4.54.1: Imperator Antoninus

Si ea lege praedium vendidisti, ut, nisi intra certum tempus pretium fuisset exsolutum, emptrix arras perderet et dominium ad te pertineret, fides contractus servanda est. * ant. a. claudiae diotinae. * <a 216 d. v id.... sabino ii et anullino conss.>

CJ.4.54.2: Imperator Alexander Severus

Si fundum parentes tui ea lege vendiderunt, ut, sive ipsi sive heredes eorum emptori pretium quandoque vel intra certa tempora obtulissent, restitueretur, teque parato satisfacere condicioni dictae heres emptoris non paret, ut contractus fides servetur, actio praescriptis verbis vel ex vendito tibi dabitur, habita ratione eorum, quae post oblatam ex pacto quantitatem ex eo fundo ad adversarium pervenerunt. * alex. a. charisio mil. * <a 222 d. k. sept. alexandro a. cons.>

CJ.4.54.3: Imperator Alexander Severus

Qui ea lege praedium vendidit, ut, nisi reliquum pretium intra certum tempus restitutum esset, ad se reverteretur, si non precariam possessionem tradidit, rei vindicationem non habet, sed actionem ex venditio. * alex. a. felici mil. * <d. iii id. iul.>

CJ.4.54.4: Imperator Alexander Severus

Commissoriae venditionis legem exercere non potest, qui post praestitutum pretii solvendi diem non vindicationem rei eligere, sed usurarum pretii petitionem sequi maluit. * alex. a. claudio iuliano et proculiano. * <>

CJ.4.54.5: Imperator Gordianus

Initio venditionis si pactus es, ut is cui vendidisti possessionem pretii tardius exsoluti tibi usuras pensitaret, non immerito existimas etiam eas tibi adito praeside ab emptore praestari debere. nam si initio contractus non es pactus, si coeperis experiri, ex mora dumtaxat usuras tam ab ipso debitore quam ab eo, qui in omnem causam empti suam fidem adstrinxit, de iure postulabis. * gord. a. aurelio longino evocato. * <>

CJ.4.54.6: Imperatores carus, carinus, numer.

Cum te fundum tuum certae rei contemplatione inter vos habita exiguo pretio in alium transtulisse commemoras, poterit ea res tibi non esse fraudi, quando non impleta promissi fide dominii tui ius in suam causam reverti conveniat. et ideo aditus competens iudex fundum cuius mentionem facis restitui tibi cum fructibus suis sine ulla ludificatione sua autoritate perficiet, praecipue cum diversa pars receptis nummis suis nullam passa videri possit iniuriam. * carus carinus et numer. aaa. olybrio romulo. * <>

CJ.4.54.7: Imperatores Diocletianus, Maximianus

Si a te comparavit is cuius meministi et convenit, ut, si intra certum tempus soluta fuerit data quantitas, sit res inempta, remitti hanc conventionem rescripto nostro non iure petis. sed si se subtrahat, ut iure dominii eandem rem retineat, denuntiationis et obsignationis depositionisque remedio contra fraudem potes iuri tuo consulere. * diocl. et maxim. aa. et cc. fabiano musco. * <>

CJ.4.54.8: Imperatores Diocletianus, Maximianus

Tempore contractus inter emptorem et venditorem habitam conventionem integram servari, si ab ea posteriore non recedatur pacto, certum est. * diocl. et maxim. aa. et cc. auxanoni. * <>

CJ.4.54.9pr.: Imperator Justinianus

Si quis ita paciscatur in venditionis vel alienationis contractu, ut novo domino nullo modo liceat in loco vendito vel alio modo sibi concesso monumentum extruere vel alio modo humani iuris eum eximere, sancimus, licet hoc apud veteres dubitabatur, tale pactum ex nostra lege esse fovendum et immutilatum permanere. * iust. a. iohanni pp. * <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.4.54.9.1: Imperator Justinianus

Forsitan enim multum eius intererat, ne ei vicinus non solum quem nollet adgregetur, sed et pro quo specialiter interdictum est. cum etenim venditor vel aliter alienator non alia lege suum ius transferre passus est nisi tali fretus conventione, quomodo ferendum est aliquam captionem ex varia pati eum interpretatione? <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.4.55.0. Si servus exportandus veneat.

CJ.4.55.1pr.: Imperatores Severus, Antoninus

Lege venditionis exportata mancipia sub denuntiatione manus iniciendae libertatem ab emptore, vel qui successit in locum eius, antequam fides rumpatur, accipere possunt. * sev. et ant. aa. petroniae flavillae. * <a 200 pp. xv k. oct. severo a. ii et victorino conss.>

CJ.4.55.1.1: Imperatores Severus, Antoninus

Quae tamen fisco post manumissionem vindicantur et in perpetuam servitutem eadem lege veneunt, cum in his civitatibus conversantur, quas contrahentes exceperant. <a 200 pp. xv k. oct. severo a. ii et victorino conss.>

CJ.4.55.1.2: Imperatores Severus, Antoninus

Ante manumissionem iniciendae manus facultas non denegatur atque ideo non petuntur in publicum. <a 200 pp. xv k. oct. severo a. ii et victorino conss.>

CJ.4.55.2: Imperatores Severus, Antoninus

Si, ut manus iniectionem haberes, cavisti tibi, iure tuo uti potes. quod si hoc omisisti et poenam stipulatus es, homo quidem fisco commissus est, tu vero nactus ex stipulatu actionem. in omnibus tamen quaeritur, an domini voluntate in locum prohibitum venerit. * sev. et ant. aa. sezo nedymo. * <a 200 pp. vii k. nov. severo a. ii et victorino conss.>

CJ.4.55.3: Imperator Alexander Severus

Ancilla, quae exportanda venit nec exportata est, sed ab emptore in eadem civitate morante empta et manumissa est, adversus legem venditionis libera fieri non potuit: et ideo aditus a te procurator meus partibus suis fungetur. * alex. a. novio liberto. * <a 223 pp. iiii id. mart. maximo ii et aeliano conss.>

CJ.4.55.4pr.: Imperator Alexander Severus

Moveor, quod te a servis tuis dominum eorum venisse adfirmas sub ea lege, ne in patria moreris, et ab eo, cui te prior emptor vendiderat, manumissum esse dicis. * alex. a. aureliopapiae. * <a 224 pp. xi k. iul. iuliano et crispino conss.>

CJ.4.55.4.1: Imperator Alexander Severus

Quare competens iudex adversus eum, quem praesentem esse dicis, cognitionem suam praebebit et, si veritas accusationi aderit, exsecrabile delictum in exemplum capitali poena vindicabit. <a 224 pp. xi k. iul. iuliano et crispino conss.>

CJ.4.55.4.2: Imperator Alexander Severus

Sed quoad usque probaveris quae intendis, status tuus esse videtur, qui in te post manumissionem deprehenditur. <a 224 pp. xi k. iul. iuliano et crispino conss.>

CJ.4.55.5: Imperator Alexander Severus

Qui exportandus a domino de civitate sua venit, nec in urbe roma morari debet: qui autem de provincia certa, nec in italia. si itaque contra legem constitutam factum probare potes, utere iure, quod propterea tibi competit. * alex. a. sextiano serapioni. * <a 225 pp. vii k. febr. fusco ii et dextro conss.>

CJ.4.56.0. Si mancipium ita venierit, ne prostituatur.

CJ.4.56.1: Imperator Alexander Severus

Praefectus urbis amicus noster eam, quae ita venit, ut, si prostituta fuisset, abducendi potestas esset ei, cui secundum constitutionem divi hadriani id competit, abducendi faciet facultatem : quod si eum patientiam accommodasse contra legem quam ipse dixerat, ut in turpi quaestu mulier haberetur, animadverterit, libertate competente secundum interpretationem eiusdem principis perduci eam ad praetorem, cuius de liberali causa iurisdictio est, ut lis ordinetur, iubebit. nec enim tenor legis, quam semel comprehendit, intermittitur, quod dominium per plures emptorum personas ad primum qui prostituit sine lege simili pervenit. * alex. a. socrati. * <a 223 pp. iii k. nov. maximo ii etaeliano conss.>

CJ.4.56.2: Imperator Alexander Severus

Mulierem, quam ita venisse adlegas, ne prostitueretur aut, si prostituta fuerit, libera esset, per officium militare exhiberi apud tribunale oportet, ut, si controversia referatur pacto (quod tamen si verum est, libertas mulieri existente condicione competit), agatur causa apud eum cuius de ea re notio est. haec autem lex et nisi in tabulas venditionis inserta sit, quamvis epistula vel sine scriptis facta ostenditur, valet. * alex. a. severo. * <a 223 pp. k. dec. maximo ii et aeliano conss.>

CJ.4.56.3: Imperator Alexander Severus

Eam, quae ita venit, ne corpore quaestum faceret, nec in caupona sub specie ministrandi prostitui, ne fraus legi dictae fiat, oportet. * alex. a. aurelio aelio. * <a 225 pp. id. ian. fusco ii et dextro conss.>

CJ.4.57.0. Si mancipium ita fuerit alienatum, ut manumittatur vel contra.

CJ.4.57.1: Imperator Alexander Severus

Si patroclius, posteaquam te hermiae donationis causa dedit lege dicta, ut, si quindecim annis continuis servisses, ad libertatem perducereris ita, ut civis romanus esses, tempore peracto, si modo patroclius non contrariae voluntatis fuerit aut si iam decesserit, ad libertatem pervenisti, quoniam placuit non solum ad venditos, sed etiam ad donatos eam legem, ut manumitterentur, pertinere, nec te potuit semel translato dominio in hermiam postea alii patroclius vendere : et ideo non de praestanda tibi libertate, quam ex constitutione iam fueras adeptus , litigare debuisti, sed libertatem quam obtinueras defendere. * alex. a. patri censi. * <a 222 pp. vi id. nov. alexandro a. cons.>

CJ.4.57.2: Imperator Alexander Severus

Si ea lege chreste servum, sed naturalem filium venumdedit, ut emptor eum manumitteret, quamvis non est manumissus, ex constitutione divorum marci et commodi ad aufidium victorinum liber est. * alex. a. eutychiano. * <a 222 pp. non. dec. alexandro a. cons.>

CJ.4.57.3pr.: Imperator Alexander Severus

Si iusta saturnino puellam nomine firmam agentem tunc annos septem hac lege vendiderit, ut, cum haberet annos viginti quinque, libera esset, quamvis factum ab emptore praestandae libertatis pacto non sit insertum, sed ut libera esset expressum, tamen constitutioni divorum marci et commodi locus est. * alex. a. fulcinio maximo. * <a 224 pp. x k. febr. iuliano et crispino conss.>

CJ.4.57.3.1: Imperator Alexander Severus

Ideoque impleto vicensimo quinto anno firma libera facta est nec obest ei, quod vicensimo septimo anno manumissa est, quae iam ex constitutione libera erat : et is, quem post vicensimum quintum annum ex te conceptum enixa est, ingenuus est. <a 224 pp. x k. febr. iuliano et crispino conss.>

CJ.4.57.4: Imperator Gordianus

Si is, qui pretium pro te acceperat, ut statuto tempore te libertate donaret, moram repromissae libertati praestitit, ex eo te liberam esse factam manifestum est, ex quo, cum posset dari libertas, non est praestita. et ideo ex te natos ingenuos videri procreatos non est incertae opinionis. * gord. a. corneliae iucundae. * <a 240 pp. vi k. mai. sabino et venusto conss.>

CJ.4.57.5pr.: Imperator Gordianus

Ea quidem mancipia, quorum venditio eam legem accepit, ne ad libertatem perducantur, etiamsi manumittantur, nancisci libertatem non possunt. neque enim condicio, quae personae eius cohaesit, immutari facto eius qui ea lege comparavit potest. * gord. a. aurelio marino. * <a 240 pp. xvi k. sept. sabino et venusto conss.>

CJ.4.57.5.1: Imperator Gordianus

Nec tamen, poenae exactio si qua addita est condicioni non servatae, iustam exigendi tribuit causam. <a 240 pp. xvi k. sept. sabino et venusto conss.>

CJ.4.57.5.2: Imperator Gordianus

Qua igitur ratione te poterit vocare ad officium procuratoris, qui eam legem venditioni dedit, perspici non potest, cum nec in privatorum contractibus fiscus se interponere debeat et litterae ad te missae personae factum, si non ipse manumiseris, non contineant. <a 240 pp. xvi k. sept. sabino et venusto conss.>

CJ.4.57.6: Imperatores Diocletianus, Maximianus

Si puellam ea lege vendidisti, ut manumitteretur et, si manumissa non esset, centum aurei praestarentur, non servata fide nihilo minus eam raptam e vestigio servitutis ad libertatem, quae praestari potuit, constitit, nec pecunia quasi rupta fide suscepta recte petetur, cum non mutata venditoris voluntate condicionis potestate post manumittentis factum repraesentari optima ratione placuit. * diocl. et maxim. aa. et cc. helvidiae rufinae. * <a 293 s. xvi k. iun. ipsis aa. conss.>

CJ.4.58.0. De aediliciis actionibus.

CJ.4.58.1: Imperator Antoninus

Si non simpliciter, sed consilio fraudis servum tibi nescienti fugitivum vel alio modo vitiosum quis vendidit isque fugitivus abest, non solum in pretium servi venditorem conveniri, sed etiam damnum quod per eum tibi accidit competens iudex, ut iam pridem placuit, praestari iubebit. * ant. a. decentio veromilio. * <a 214 pp. iiii k. iun. messala et sabino conss.>

CJ.4.58.2: Imperator Gordianus

Cum proponas servum, quem pridem comparasti, post anni tempus fugisse, qua ratione eo nomine cum venditore eiusdem congredi quaeras, non possum animadvertere : etenim redhibitoriam actionem sex mensum temporibus vel quanto minoris anno concludi manifesti iuris est. * gord. a. petilio maximo. * <a 239 pp. k. dec. gordiano a. et aviola conss.>

CJ.4.58.3pr.: Imperatores Diocletianus, Maximianus

Si apud priorem dominum fugisse mancipium non doceatur, fuga post venditionem interveniens ad damnum emptoris pertinet. * diocl. et maxim. aa. aurelio muciano. * <a 286 pp. xv k. mai. maximo ii et aquilino conss.>

CJ.4.58.3.1: Imperatores Diocletianus, Maximianus

Sin autem venditor non vitiosum etiam in posterum fieri servum temere promiserit , quamvis hoc impossibile esse videtur, secundum fidem tamen antecedentis vel in continenti secuti pacti experiri posse non ambigitur : posteriores enim casus non venditoris, sed emptoris periculum spectant. <a 286 pp. xv k. mai. maximo ii et aquilino conss.>

CJ.4.58.3.2: Imperatores Diocletianus, Maximianus

Verum cum servum quem comparaveras ad eum qui distraxerat redisse contendis, iudex competens perspectis omnibus pro repertae rei qualitate proferre curabit sententiam. <a 286 pp. xv k. mai. maximo ii et aquilino conss.>

CJ.4.58.4pr.: Imperatores Diocletianus, Maximianus

Si praedium quis sub ea lege comparaverit, ut, si displicuerit, inemptum erit, id utpote sub condicione venditum resolvi et redhibitoriam adversus venditorem competere palam est. * diocl. et maxim. aa. * <a . k. mart.>

CJ.4.58.4.1: Imperatores Diocletianus, Maximianus

Idem observatur et si pestibilis fundus, id est pestibulas vel herbas letiferas habens, ignorante emptore distractus sit : nam in hoc etiam casu per eandem actionem eum quoque redhibendum esse. <a . k. mart.>

CJ.4.58.5: Imperatores Gratianus, Valentinianus, Theodosius

Habito semel bonae fidei contractu mancipioque suscepto et pretio soluto ita demum repetendi pretii potestas est ei qui mancipium comparaverit largienda, si illud quod dixerit fugitivum, poterit exhibere. hoc enim non solum in barbaris, sed etiam in provincialibus servis iure praescriptum est. * grat. valentin. et theodos. aaa. nebridio pu. * <a 386 d. iii k. iul. constantinopoli honorio np. et euodio conss.>

CJ.4.59.0. De monopoliis et de conventu negotiatorum illicito vel artificum ergolaborumque nec non balneatorum prohibitis illicitisque pactionibus.

CJ.4.59.2pr.: Imperator Zeno

Iubemus, ne quis cuiuscumque vestis aut piscis vel pectinum forte aut echini vel cuiuslibet alterius ad uictum vel ad quemcumque usum pertinentis speciei vel cuiuslibet materiae pro sua auctoritate, vel sacro iam elicito aut in posterum eliciendo rescripto aut pragmatica sanctione vel sacra nostrae pietatis adnotatione, monopolium audeat exercere, neve quis illicitis habitis conventionibus coniuraret aut pacisceretur, ut species diversorum corporum negotiationis non minoris, quam inter se statuerint, venumdentur. * zeno a. constantino pu. * <a 483 d. xvii k. ian. post consulatum trocondae.>

CJ.4.59.2.1: Imperator Zeno

Aedificiorum quoque artifices vel ergolabi aliorumque diversorum operum professores et balneatores penitus arceantur pacta inter se componere, ut ne quis quod alteri commissum sit opus impleat aut iniunctam alteri sollicitudinem alter intercapiat : data licentia unicuique ab altero inchoatum et derelictum opus per alterum sine aliquo timore dispendii implere omnique huiusmodi facinora denuntiandi sine ulla formidine et sine iudiciariis sumptibus. <a 483 d. xvii k. ian. post consulatum trocondae.>

CJ.4.59.2.2: Imperator Zeno

Si quis autem monopolium ausus fuerit exercere, bonis propriis spoliatus perpetuitate damnetur exilii. <a 483 d. xvii k. ian. post consulatum trocondae.>

CJ.4.59.2.3: Imperator Zeno

Ceterarum praeterea professionum primates si in posterum aut super taxandis rerum pretiis aut super quibuslibet illicitis placitis ausi fuerint convenientes huiusmodi sese pactis constringere, quinquaginta librarum auri solutione percelli decernimus : officio tuae sedis quadraginta librarum auri condemnatione multando, si in prohibitis monopoliis et interdictis corporum pactionibus commissas forte, si hoc evenerit, saluberrimae nostrae dispositionis condemnationes venalitate interdum aut dissimulatione vel quolibet vitio minus fuerit exsecutum. <a 483 d. xvii k. ian. post consulatum trocondae.>

CJ.4.60.0. De nundinis.

CJ.4.60.1: Imperatores Valentinianus, Valens

Qui exercendorum mercatuum aut nundinarum licentiam vel veterum indulto vel nostra auctoritate meruerunt, ita beneficio rescripti potiantur, ut nullum in mercatibus atque nundinis ex negotiatorum mercibus conveniant, vel in venaliciis aut locorum temporali quaestu et commodo privata exactione sectentur, vel sub praetextu privati debiti aliquam ibidem concurrentibus molestiam possint inferre. * valentin. et valens aa. ad probum pp. * <>

CJ.4.61.0. De vectigalibus et commissis.

CJ.4.61.1: Imperatores Severus, Antoninus

Si iure manumissus es ante quaestionem commissi motam, statum tuum vectigalis nomine convelli non est aequum. * sev. et ant. aa. victorino. * <>

CJ.4.61.2: Imperatores Severus, Antoninus

Neque commissum, quod ante quinquennium factum dicitur, si lis anticipata non est, vindicari potest, neque pro re, quae in commissi causam cecidit, si ipsa non extat nec dolo supprimatur, pretium peti potest. * sev. et ant. aa. iunio. * <>

CJ.4.61.3: Imperatores Severus, Antoninus

Omnibus militibus nostris prospeximus, ne ob omissas professiones poena commissi tenerentur. proinde deposito hoc metu, si qua portoria debere te apparuerit, exsolve. * sev. et ant. aa. ingenuo mil. * <>

CJ.4.61.4: Imperator Constantinus

Penes illum vectigalia manere oportet, qui superior in licitatione extiterit, ita ut non minus quam triennii fine locatio concludatur nec ullo modo interrumpatur tempus exigendis vectigalibus praestitutum. quo peracto tempore licitationum iura conductionumque recreari oportet ac simili modo aliis collocari. * const. a. ad iunium rufum. * <a 321 d. k. iul. crispo c. ii et constantino c. ii conss.>

CJ.4.61.5: Imperator Constantinus

Universi provinciales pro his rebus, quas ad usum proprium vel ad fiscum inferunt vel exercendi ruris gratia revehunt, nullum vectigal a stationariis exigantur. ea vero, quae extra praedictas causas vel negotiationis gratia portantur, solitae praestationi subiugamus: capitali poena proposita stationariis et urbanis militibus et ceteris personis, quorum avaritia id temptari firmatur. * const. a. menandro. * <a 321 d. iii id. iul. crispo ii et constantino ii conss.>

CJ.4.61.6pr.: Imperatores Valentinianus, Valens

Omnium rerum ac personarum, quae privatam degunt vitam, in publicis functionibus aequa debet esse inspectio. * valentinianus et valens aa. ad florentium com. sacr. larg. * <a 365 d. x k. mart. mediolani valentiniano et valente aa. conss.>

CJ.4.61.6.1: Imperatores Valentinianus, Valens

Hoc ideo dicimus, quia nonnulli privatorum elicitas suffragio proferunt sanctiones, quibus vectigalia vel cetera eiusmodi, quae inferri fisco moris est, sibi adserant esse concessa. <a 365 d. x k. mart. mediolani valentiniano et valente aa. conss.>

CJ.4.61.6.2: Imperatores Valentinianus, Valens

Si quis ergo privatorum eiusmodi rescriptione nitatur, cassa eadem sit. vectigalium enim non parva functio est, quae debet ab omnibus, qui negotiationis seu transferendarum mercium habent curam, aequa ratione dependi: exceptis naviculariis, cum sibi rem gerere probabuntur. <a 365 d. x k. mart. mediolani valentiniano et valente aa. conss.>

CJ.4.61.7: Imperatores Valentinianus, Valens, Gratianus

Ex praestatione vectigalium nullius omnino nomine quicquam minuatur, quin octavas more solito constitutas omne hominum genus, quod commerciis voluerit interesse, dependat, nulla super hoc militarium personarum exceptione facienda. * valentin. valens et grat. aaa. ad archelaum com. orientis. * <a 366 ? pp. beryto iiii k. febr. post consulatum valentiniani et valentis aa.>

CJ.4.61.8: Imperatores Gratianus, Valentinianus, Theodosius

A legatis gentium devotarum ex his tantum speciebus, quas de locis propriis, unde conveniunt, huc deportant, octavarii vectigal accipiant : quas vero ex romano solo, quae sunt tamen lege concessae, ad propria deferunt, has habeant a praestatione immunes ac liberas. * grat. valentin. et theodos. aaa. palladio com. sacr. larg. * <a 381 d. prid. non. iul. constantinopoli. acc. xii k. aug. syagrio et eucherio conss.>

CJ.4.61.9: Imperatores Gratianus, Valentinianus, Theodosius

Usurpationem totius licentiae submovemus circa vectigal alabarchiae per aegyptum atque augustamnicam constitutum, nihilque super transductione animalium, quae sine praebitione solita minime permittenda est, temeritate per licentiam vindicari concedimus. * grat. valentin. et theodos. aaa. palladio com. sacr. larg. * <>

CJ.4.61.10: Imperatores Arcadius, Honorius

Vectigalia, quaecumque quaelibet civitates sibi ac suis curiis ad angustiarum suarum solacia quaesierunt, sive illa functionibus curialium ordinum profutura sunt seu quibuscumque aliis earundem civitatum usibus designantur, firma his atque ad habendum perpetua manere praecipimus neque ullam contrariam supplicantium super his molestiam formidari. * arcad. et honor. aa. anthemio pp. * <>

CJ.4.61.11: Imperatores Arcadius, Honorius

Si quis sine persona mancipum, id est salinarum conductorum, sales emerit vendereve temptaverit, sive propria audacia sive nostro munitus oraculo, sales ipsi una cum eorum pretio mancipibus addicantur. * arcad. et honor. aa. lampadio pp. * <>

CJ.4.61.12: Imperatores Honorius, Theodosius

Quidquid contra vectigales largitionalium titulorum vel pragmaticis sacris vel adnotationibus fuerit elicitum, effectu et viribus carere censemus. * honor. et theodos. aa. gaisoni com. sacr. larg. * <a 408-412 d. viiii k. oct. ravennae.>

CJ.4.61.13pr.: Imperatores Theodosius, Valentinianus

Exceptis his vectigalibus, quae ad sacrum patrimonium nostrum quocumque tempore pervenerunt, cetera rei publicae civitatum atque ordinum aestimatis dispendiis, quae pro publicis necessitatibus tolerare non desinunt, reserventur, cum duas portione aerario nostro conferri prisca institutio disposuerat : atque hanc tertiam iubemus adeo in dicione urbium municipumque consistere, ut proprii compendii curam non in alieno potius quam in suo arbitrio noverint constitutam. * theodos. et valentin. aa. flaviano pp. * <>

CJ.4.61.13.1: Imperatores Theodosius, Valentinianus

Designatae igitur consortium portionis eatenus iuri ordinum civitatumque obnoxium maneat, ut etiam locandi quanti sua interest licentiam sibi noverint contributam. <>

CJ.4.62.0. Vectigalia nova instituti non posse.

CJ.4.62.1: Imperatores Severus, Antoninus

Non quidem temere permittenda est novorum vectigalium exactio : sed si adeo tenuis est patria tua, ut extraordinario auxilio iuvari debeat, adlega praesidi proviciae quae in libellum contulisti : qui re diligenter inspecta utilitatem communem intuitus scribet nobis quae compererit, et an habenda sit ratio vestri et quatenus, aestimabimus. * sev. et ant. aa. gavio victorino. * <pp. xii k. aug.>

CJ.4.62.2: Imperatores Severus, Antoninus

Vectigalia nova nec decreto civitatum institui possunt. * sev. et ant. aa. ventilio callistiano. * <>

CJ.4.62.3: Imperatores valer., gallien.

Non solent nova vectigalia inconsultis principibus institui. ergo et exigi aliquid , quod illicite poscatur, competens iudex vetabit et id quod exactum videtur, si contra rationem iuris extortum est, restitui iubebit. * valer. et gallien. aa. aurelio tusco et aliis. * <>

CJ.4.62.4: Imperator Constantinus

Si provincialium nostrorum querella de conductorum aviditate extiterit et probatum fuerit ultra vetustam consuetudinem et nostrae terminos iussionis aliquid eos profligasse, rei tanti criminis perpetuo exilio puniantur. sub conspectibus autem tuis vel eorum, qui tuae gravitati succedunt, licitationis cura servetur. * const. a. ad felicem pp. * <a 333-336 pp. vii id. mart. carthagine.>

CJ.4.63.0. De commerciis et mercatoribus.

CJ.4.63.1: Imperatores Valentinianus, Valens

Negotiatores, si qui ad domum nostram pertinent, potiorum quoque homines necessitatem debitam pensionum, ut honestas postulat, agnoscere moneantur, ut per cunctos, qui emolumenta negotiationibus captant, tolerabiles fiant agnoscendae devotionis effectus. * valentin. et valens aa. ad iulianum com.

orientis. * <a 364 d. xv k. mai. constantinopoli divo ioviano et varroniano conss.>

CJ.4.63.2: Imperatores Valentinianus, Valens

Non solum aurum barbaris minime praebeatur, sed etiam si apud eos inventum fuerit, subtili auferatur ingenio. si ulterius aurum pro mancipiis vel quibuscumque speciebus ad barbaricum fuerit translatum a mercatoribus, non iam damnis, sed suppliciis subiugentur, et si id iudex repertum non vindicat, tegere ut conscius criminosa festinat. * valentin. et valens aa. et grat. a. tatiano com. sacr. larg. * <a 374 ? >

CJ.4.63.3: Imperatores Honorius, Theodosius

Nobiliores natalibus et honorum luce conspicuos et patrimonio ditiores perniciosum urbibus mercimonium exercere prohibemus, ut inter plebeium et negotiatorem facilius sit emendi vendendique commercium. d. * honor. et theodos. aa. theodoro pp. * <a 408 vel 409 >

CJ.4.63.4pr.: Imperatores Honorius, Theodosius

Mercatores tam imperio nostro quam persarum regi subiectos ultra ea loca, in quibus foederis tempore cum memorata natione nobis convenit, nundinas exercere minime oportet, ne alieni regni, quod non convenit, scrutentur arcana. * honor. et theodos. aa. anthemio pp. * <a 408 vel 409 >

CJ.4.63.4.1: Imperatores Honorius, Theodosius

Nullus igitur posthac imperio nostro subiectus ultra nisibin callinicum et artaxata emendi sive vendendi species causa proficisci audeat nec praeter memoratas civitates cum persa merces existimet commutandas: sciente utroque qui contrahit et species, quae praeter haec loca fuerint venumdatae vel comparatae, sacro aerario nostro vindicandas et praeter earum ac pretii amissionem, quod fuerit numeratum vel commutatum, exilii se poenae sempiternae subdendum. <a 408 vel 409 >

CJ.4.63.4.2: Imperatores Honorius, Theodosius

Non defutura contra iudices eorumque apparitiones per singulos contractus, qui extra memorata loca fuerint agitati, triginta librarum auri condemnatione, per quorum limitem ad inhibita loca mercandi gratia romanus vel persa commeaverit. <a 408 vel 409 >

CJ.4.63.4.3: Imperatores Honorius, Theodosius

Exceptis videlicet his, qui legatorum persarum quolibet tempore ad nostram clementiam mittendorum iter comitati merces duxerint commutandas, quibus humanitatis et legationis intuitu extra praefinita etiam loca mercandi copiam non negamus, nisi sub specie legationis diutius in qualibet provincia residentes nec legati reditum ad propria comitentur. hos enim mercaturae insistentes non immerito una cum his, cum quibus contraxerint, cum resederint, poena huius sanctionis persequetur. <a 408 vel 409 >

CJ.4.63.5: Imperatores Honorius, Theodosius

Cessante omni ambitione, omni licentia quingentorum sexaginta trium collegiatorum numerus maneat nullique his addendi mutandive vel in defuncti locum substituendi pateat copia, ita ut iudicio tuae sedis sub ipsorum praesentia corporatorum in eorum locum, quos humani subtraxerint casus, ex eodem quo illi fuerant corpore subrogentur: nulli alii corporatorum praeter praedictum numerum per patrocinia immunitate concessa. * honor. et theodos. aa. aetio pu. * <a 409 d. xii k. sept. eudoxiopoli honorio viii et theodosio iii aa. conss.>

CJ.4.63.6pr.: Imperatores Honorius, Theodosius

Si qui inditas nominatim vetustis legibus civitates transgredientes ipsi vel peregrinos negotiatores sine comite commerciorum suscipientes fuerint deprehensi, nec proscriptionem bonorum nec poenam perennis exilii ulterius evadent. * honor. et theodos. aa. maximino com. sacr. larg. * <>

CJ.4.63.6.1: Imperatores Honorius, Theodosius

Ergo omnes pariter, sive privati seu cuiuspiam dignitatis sive in militia constituti, sciant sibi aut ab huiusmodi temeritate penitus abstinendum aut supra dicta supplicia subeunda. <>

CJ.4.64.0. De rerum permutatione et de praescriptis verbis actione.

CJ.4.64.1: Imperator Gordianus

Si, cum patruus tuus venalem possessionem haberet, pater tuus pretii nomine, licet non taxata quantitate, aliam possessionem dedit, idque quod comparavit non iniuria iudicis nec patris tui culpa evictum est, ad exemplum ex empto actionis non immerito id quod tua interest, si in patris iura successisti, consequi desideras. at enim si, cum venalis possessio non esset, permutatio facta est idque, quod ab adversario praestitum est, evictum est, quod datum est (si hoc elegeris) cum ratione restitui postulabis. * gord. a. thraseae mil. * <a 238 d. viii id. nov. pio et pontiano conss.>

CJ.4.64.2: Imperatores Diocletianus, Maximianus

Permutationem re ipsa utpote bonae fidei constitutam, sicut commemoras, vicem emptionis obtinere non incogniti iuris est. * diocl. et maxim. aa. primitivae. * <>

CJ.4.64.3: Imperatores Diocletianus, Maximianus

Ex placito permutationis re nulla secuta constat nemini actionem competere, nisi stipulatio subiecta ex verborum obligatione quaesierit partibus actionem. * diocl. et maxim. aa. et cc. barcio leontio. * <>

CJ.4.64.4pr.: Imperatores Diocletianus, Maximianus

Cum precibus tuis expresseris placitum inter te et alium permutationis intercessisse eumque fundum a te datum vendidisse, contra emptorem quidem te nullam habere actionem perspicis, cum ab eo susceperit dominium, cui te tradidisse titulo permutationis non negasti. * diocl. et maxim. aa. et cc. leontio. * <>

CJ.4.64.4.1: Imperatores Diocletianus, Maximianus

Secundum fidem autem placiti, si stipulatio subsecuta est, successores eius, cum quo contractum habuisti, convenire non prohiberis: si vero nulla stipulatio intercessit, praescriptis verbis actione, ut vel fides placiti servetur tibi vel, quod alterius accipiendi fundi gratia dedisti, causa non secuta restituatur. <>

CJ.4.64.5: Imperatores Diocletianus, Maximianus

Quoniam adseris patrem tuum ei contra quem preces fundis ea condictione dedisse fundum, ut invicem domum certam acciperet, aditus praeses provinciae placitis eum parere vel, si causam, propter quam fundus datus est, sequi non perspexerit, condictionis ratione datum restituere, sicut postulas, iubebit. * diocl. et maxim. aa. et cc. theodolanae. * <>

CJ.4.64.6: Imperatores Diocletianus, Maximianus

Rebus certa lege traditis, si huic non pareatur, praescriptis verbis incertam civilem dandam actionem iuris auctoritas demonstrat. * diocl. et maxim. aa. et cc. protogeni. * <>

CJ.4.64.7: Imperatores Diocletianus, Maximianus

Emptionem rebus fieri non posse pridem placuit. igitur cum frumenti certam modiationem callimacho et acamato te dedisse, ut tibi repraesentent olei designatum pondus adseveres, si placitis citra stipulationis sollemnitatem non exhibeant fidem, quantum dedisti, causa non secuta condicere pro desiderio tuo potes. * diocl. et maxim. aa. et cc. timotheo. * <a 294 s. xiii k. nov. cc. conss.>

CJ.4.64.8: Imperatores Diocletianus, Maximianus

Ea lege rebus donatis candido, ut quod placuerat menstruum seu annuum tibi praestaret, cum huiusmodi conventio non nudi pacti nomine censeatur, sed rebus propriis dictae legis substantia muniatur, ad implendum placitum, sicut postulas, praescriptis verbis tibi competit actio. * diocl. et maxim. aa. et cc. paulinae. * <a 294 s. non. dec. nicomediae cc. conss.>

CJ.4.65.0. De locato et conducto.

CJ.4.65.1: Imperator Antoninus

Dominus horreorum periculum vis maioris vel effracturam latronum conductori praestare non cogitur. his cessantibus si quid extrinsecus ex depositis rebus inlaesis horreis perierit, damnum depositarum rerum sarciri debet. * ant. a. iulio agrippino. * <a 213 pp. prid. non. ian. antonino a. iiii et balbino conss.>

CJ.4.65.2: Imperator Antoninus

Adversus eos, a quibus extruenda aedificia conduxisti, ex conducto actione consistens eo iudicio quod est bonae fidei debitum cum usuris solitis consequeris. * ant. a. epidio epicteto. * <a 213 pp. k. iul. romae antonino a. iiii et balbino conss.>

CJ.4.65.3: Imperator Antoninus

Diaetae, quam te conductam habere dicis, si pensionem domino insulae solvis, invitum te expelli non oportet, nisi propriis usibus dominus esse necessariam eam probaverit aut corrigere domum maluerit aut tu male in re locata versatus es. * ant. a. flavio callimorpho. * <a 214 pp. viii id. ian. messala et sabino conss.>

CJ.4.65.4pr.: Imperator Alexander Severus

Et divi pii et antonini litteris certa forma est, ut domini horreorum effractorum eiusmodi querellas deferentibus custodes exhibere necesse habeant nec ultra periculo subiecti sint. * alex. a. arrio sabino. * <a 222 pp. k. dec. alexandro a. cons.>

CJ.4.65.4.1: Imperator Alexander Severus

Quod vos quoque adito praeside provinciae impetrabitis. qui si maiorem animadversionem exigere rem deprehenderit, ad domitium ulpianum praefectum praetorio et parentem meum reos remittere curabit. <a 222 pp. k. dec. alexandro a. cons.>

CJ.4.65.4.2: Imperator Alexander Severus

Sed qui domini horreorum nominatim etiam custodiam repromiserunt, fidem exhibere debent. <a 222 pp. k. dec. alexandro a. cons.>

CJ.4.65.5: Imperator Alexander Severus

Certi iuris est ea, quae voluntate dominorum coloni in fundum conductum induxerint, pignoris iure dominis praediorum teneri. quando autem domus locatur, non est necessaria in rebus inductis vel illatis scientia domini: nam ea quoque pignoris iure tenentur. * alex. a. aurelio petronio. * <a 223 pp. k. mart. maximo ii et aeliano conss.>

CJ.4.65.6: Imperator Alexander Severus

Nemo prohibetur rem quam conduxit fruendam alii locare, si nihil aliud convenit. * alex. a. lucilio victorino. * <a 224 pp. v k. mart. iuliano et crispino conss.>

CJ.4.65.7: Imperator Alexander Severus

Si, cum hermes vectigal octavarum in quinquennium conduceret, fidem tuam obligasti posteaque spatio eius temporis expleto, cum idem hermes in conductionem ut idoneus detinerentur, non consensisti, sed cautionem tibi reddi postulasti, non oportere te posterioris temporis periculo adstringi competens iudex non ignorabit. * alex. a. septimio terentiano mil. * <a 227 pp. v id. ian. albino et maximo conss.>

CJ.4.65.8: Imperator Alexander Severus

Licet certis annuis quantitatibus fundum conduxeris, si tamen expressum non est in locatione aut mos regionis postulat, ut, si qua labe tempestatis vel alio caeli vitio damna accidissent, ad onus tuum pertinerent, et quae evenerunt sterilitates ubertate aliorum annorum repensatae non probabuntur, rationem tui iuxta bonam fidem haberi recte postulabis, eamque formam qui ex appellatione cognoscet sequetur. * alex. a. sabiniano hygino. * <a 231 pp. k. aug. pompeiano et peligno conss.>

CJ.4.65.9: Imperator Alexander Severus

Emptori quidem fundi necesse non est stare colonum, cui prior dominus locavit, nisi ea lege emit. verum si probetur aliquo pacto consensisse, ut in eadem conductione maneat, quamvis sine scripto, bonae fidei iudicio ei quod placuit parere cogitur. * alex. a. aurelio fusco mil. * <a 234 pp. vii id. sept. maximo ii et urbano conss.>

CJ.4.65.10: Imperator Gordianus

Viam veritatis ignoras in conductionibus non succedere heredes conductoris existimans, cum, sive perpetua conductio est, etiam ad heredes transmittatur, sive temporalis, intra tempora locationis heredi quoque onus contractus incumbat. * gord. a. pomponio sabino. * <a 239 d. viii k. mart. gordiano et aviola conss.>

CJ.4.65.11: Imperator Philippus

Invitos conductores seu heredes eorum post tempora locationis impleta non esse retinendos saepe rescriptum est. * philipp. a. aurelio theodoro. * <a 244 pp. vi id. aug. peregrino et aemiliano conss.>

CJ.4.65.12: Imperator Philippus

Damnum, quod per adgressuram latronum in possessionibus locatis rei tuae illatum esse proponis, a domina earundem possessionum, quam nullius criminis ream facere te dicis, sarciri nulla ratione desideras. * philipp. a. et philipp. c. aurelio nicae. * <a 245 pp. iiii k. nov. philippo a. et titiano conss.>

CJ.4.65.13pr.: Imperatores valer., gallien.

Si divisa conductio fuit et in singulis pro partibus facta, alieno nomine conveniri vos non oportet. si autem omnes qui conducebant in solidum locatori sunt obligati, ius ei competens conveniendi quem velit non debeat auferri. * valer. et gallien. aa. et valer. c. aurelio heraclidae. * <a 259 pp. viii id. mart. aemiliano et basso conss.>

CJ.4.65.13.1: Imperatores valer., gallien.

Habetis sane vos facultatem locatori offerendi debitum et, ut transferantur in vos ea, quae ob hanc conductionem ab his quorum nomine inquietamini obligata sunt, postulandi. <a 259 pp. viii id. mart. aemiliano et basso conss.>

CJ.4.65.14: Imperatores valer., gallien.

Si hi, qui a vobis redemerant frumentum et hordeum annonae inferendum, accepta pecunia fidem fefellerunt, ex locato agere cum his potestis. * valer. et gallien. aa. et c. aurelio iulio. * <a 259 pp. viii k. ian. aemiliano et basso conss.>

CJ.4.65.15: Imperatores valer., gallien.

Si fundo a locatore expulsa es, agere ex conducto potes poenamque, quam praestari rupta conventionis fide placuit, exigere ac retinere potes. * valer. et gallien. aa. et c. aureliae euphrosynae. * <a 259 pp. id. aug. aemiliano et basso conss.>

CJ.4.65.16: Imperatores valer., gallien.

Legem quidem conductionis servari oportet nec pensionum nomine amplius quam convenit reposci. sin autem tempus, in quo locatus fundus fuerat, sit exactum et in eadem locatione conductor permanserit, tacito consensu eandem locationem una cum vinculo pignoris renovare videtur. * valer. et gallien. aa. et c. aurelio timotheo. * <a 260 pp. iiii k. aug. saeculare ii et donato conss.>

CJ.4.65.17: Imperatores Diocletianus, Maximianus

Praeses provinciae ea quae ex locatione debentur exsolvi sine mora curabit, non ignarus ex locato et conducto actionem, cum sit bonae fidei, post moram usuras legitimas admittere. * diocl. et maxim. aa. hostilio hectario. * <a 290 pp. xv k. april. diocletiano iiii et maximiano iii aa. conss.>

CJ.4.65.18: Imperatores Diocletianus, Maximianus

Excepto tempore, quo edaci lucustarum pernicie sterilitatis vitium incessit, sequentis temporis fructus, quos tibi iuxta praeteritam consuetudinem deberi constiterit, reddi tibi praeses provinciae iubebit. * diocl. et maxim. aa. annio ursino. * <a 290 pp. xi k. oct. ipsis iiii et iii aa. conss.>

CJ.4.65.19: Imperatores Diocletianus, Maximianus

Circa locationes atque conductiones maxime fides contractus servanda est, si nihil specialiter exprimatur contra consuetudinem regionis. quod si alii remiserunt contra legem contractus atque regionis consuetudinem pensiones, hoc aliis praeiudicium non possit adferre. * diocl. et maxim. aa. et cc. iulio valentino. * <a 293 s. v k. mai. heracleae aa. conss. >

CJ.4.65.20: Imperatores Diocletianus, Maximianus

Qui rem propriam conduxit existimans alienam, dominium non transfert, sed inefficacem conductionis contractum facit. * diocl. et maxim. aa. et cc. aurelio carpophoro. * <a 293 s. iii k. mart. heracleae aa. conss.>

CJ.4.65.21: Imperatores Diocletianus, Maximianus

Si olei certa ponderatione fructus anni locasti, de contractu bonae fidei habito propter hoc solum, quod alter maiorem obtulit ponderationem, recedi non oportet. * diocl. et maxim. aa. et cc. antoniae. * <a 293 d. viii id. oct. sirmi aa. conss.>

CJ.4.65.22: Imperatores Diocletianus, Maximianus

Si hi, contra quos supplicas, facta locatione temporis certi suas tibi locaverint operas, quatenus bona fides patitur, causa cognita competens iudex conventionem servari iubebit. * diocl. et maxim. aa. et cc. papiniano. * <a 293 >

CJ.4.65.23: Imperatores Diocletianus, Maximianus

Ad probationem rei propriae sive defensionem non sufficit locatio ei facta, qui post de dominio coeperit contendere, cum nescientia dominii proprii et errantis nullum habeat consensum : sed ex eventu, si victus fuerit, contractus locationis non constitisse magis declaratur. nemo enim sibi iure possessionem mutare potest. * diocl. et maxim. aa. et cc. aurelio prisco. * <a 293 >

CJ.4.65.24: Imperatores Diocletianus, Maximianus

Contractus locationis conductionisque non intervenientibus etiam instrumentis ratus habeatur : secundum quod heredes conductoris, etsi non intervenerint instrumenta, non uxorem convenire debes. sane de posteriore tempore, quo conductricem ipsam proponis fuisse, adesse fidem precibus tuis probans pensiones integras ab ea pete. * diocl. et maxim. aa. et cc. aurelio antonino. * <a 293 pp. viii k. ian aa. conss.>

CJ.4.65.25: Imperatores Diocletianus, Maximianus

Si quis conductionis titulo agrum vel aliam quamcumque rem accepit ; possessionem debet prius restituere et tunc de proprietate litigare. * diocl. et maxim. aa. et cc. aurelio epagatho. * <a 293 iii k. ian. sirmi aa. conss.>

CJ.4.65.26: Imperatores Diocletianus, Maximianus

Si conductionis implestis fidem, eius rei gratia factum instrumentum evanuit. quod si quid vestrum in fundo fuit vel vi direptum est, hoc restitui vobis praeses provinciae iubebit. * diocl. et maxim. aa. et cc. aurelio opilioni et hermio. * <a 294 d. iii k. mai. cc. conss.>

CJ.4.65.27: Imperatores Diocletianus, Maximianus

Si tibi quae pro colonis conducti praedii prorogasti dominus fundi stipulanti dare spopondit, competens iudex reddi tibi iubebit. nam si conventio placiti fine stetit, ex nudo pacto perspicis actionem iure nostro nasci non potuisse. * diocl. et maxim. aa. et cc. maximiano agopodi. * <a 294 >

CJ.4.65.28: Imperatores Diocletianus, Maximianus

In iudicio tam locati quam conducti dolum et custodiam, non etiam casum, cui resisti non potest, venire constat. * diocl. et maxim. aa. et cc. tusciano neoni. * <a 294 d. xv k. oct. cc. conss.>

CJ.4.65.29: Imperatores Diocletianus, Maximianus

Cum conductorem aedificia, quae suscepit integra, destruxisse proponas, haec heredes etiam eius praeses provinciae instaurare aedificiorum inter vos habita ratione iubebit. * diocl. et maxim. aa. et cc. aurelio iuliano. * <>

CJ.4.65.30: Imperatores Theodosius, Valentinianus

Curialis neque procurator neque conductor alienarum rerum nec fideiussor aut mandator conductoris existat. alioquin nullam obligationem neque locatori neque conductori ex huiusmodi contractu competere sancimus. * theodos. et valentin. aa. florentio pp. * <a 439 d. vii id. april. constantinopoli theodosio a. xvii et festo conss.>

CJ.4.65.31: Imperator Leo

Milites nostros alienarum rerum conductores seu procuratores aut fideiussores vel mandatores conductorum fieri prohibemus, ne omisso armorum usu ad opus rurestre se conferant et vicinis graves praesumptione cinguli militaris existant. armis autem, non privatis negotiis occupentur, ut numeris et signis suis iugiter inhaerentes rem publicam, a qua aluntur, ab omni bellorum necessitate defendant. * leo a. aspari mag. mil. * <a 458 d. prid. non. iul. constantinopoli leone a. cons.>

CJ.4.65.32pr.: Imperator Zeno

Ne cui liceat, qui aliquam domum alienam vel locum aut ergasterium nomine conductionis accepit, alteri, qui post eum domini voluntate ad eandem conductionem accessit, litem inferre, quasi rem illicitam aut agenti damnosam temptaverit, sed patere facultatem dominis domos suas vel ergasteria vel loca cui voluerint locandi, ipsis nihilo minus qui conduxerint ab omni super hoc molestia liberis conservandis : nisi forte pacta per scripturam specialiter inita cum dominis vel cum his qui postea conduxerunt, legibus videlicet cognita, agentis intentionibus suffragantur. * zeno a. adamantio pu. * <>

CJ.4.65.32.1: Imperator Zeno

Quod si quis huiusmodi controversiam sacris iussionibus interdictam crediderit commovendam, si privatus est, acriter caesus exilii subeat poenam, si militat, decem librarum auri dispendio feriatur. <>

CJ.4.65.33: Imperator Zeno

Conductores rerum alienarum seu alienam cuiuslibet rei possessionem precario detinentes seu heredes eorum, si non eam dominis recuperare volentibus restituerint, sed litem usque ad definitivam sententiam expectaverint, non solum rem locatam, sed etiam aestimationem eius victrici parti ad similitudinem invasoris alienae possessionis praebere compellantur. * zeno a. sebastiano pp. * <a 484 d. v k. april. constantinopoli theoderico cons.>

CJ.4.65.35pr.: Imperator Justinianus

Licet retro principes multa de militibus, qui alienas possessiones vel domus conductionis titulo procurandas suscipiunt, sanxisse manifestum est, tamen quia res sic est contempta, ut neque interminationis sacratissimae constitutionis milites memores ad huiusmodi sordida audeant venire ministeria et relictis studiis publicis signisque victricibus ad conductiones alienarum rerum prosilire et armorum atrocitatem non in hostes ostendere, sed contra vicinos et forsitan adversus ipsos miseros colonos, quos procurandos susceperunt, convertere, necessarium duximus ad hanc sacratissimam venire constitutionem altius et plenius huiusmodi causam corrigentes. * iust. a. ad senatum. * <>

CJ.4.65.35.1: Imperator Justinianus

Iubemus itaque omnes omnino, qui sub armis militant, sive maiores sive minores (milites autem appellamus eos, qui tam sub excelsis magistris militum tolerare noscuntur militiam quam in undecim devotissimis scholis taxati sunt, nec non eos , qui sub diversis optionibus foederatorum nomine sunt decorati) saltem in posterum ab omni conductione alienarum rerum temperare scituros, quod ex ipso contractus initio sine aliquo facto vel aliqua sententia cadant militia et non sit regressus eis ad pristinum gradum neque a beneficio imperiali neque a consensu vel permissu iudicis, sub quo tolerandam sortiti sunt militiam : ne, dum alienas res conductionis titulo esse gubernandas existimant, suas militias suamque opinionem amittant, ex militibus pagani, ex decoratis infames constituti: et quod p ost huiusmodi conductionem, quam penitus interdiximus, a publico susceperint, et hoc sine aliqua mora vel procrastinatione reddere compellantur. <>

CJ.4.65.35.2: Imperator Justinianus

Scituris et ipsis, qui suas facultates post hanc legem eis ad conductionem permiserint nostra lege eorum conamine violata, quod nulla eis exactio contra eos concedatur, ut, qui alieni appetens constitutos militem procuratorem elegerit, et suis cadat reditibus. <>

CJ.4.65.35.3: Imperator Justinianus

Pateat autem omnibus huiusmodi copia apud competentes iudices accusationis, ut, qui in hac causa delator existat, laudandus magis quam vituperandus intellegatur : poena, quam contra milites nostrorum praeceptorum contemptores et ipsos, qui eis conductionem rerum ad se pertinentium permiserint, statuimus, in futuris causis obtinente. <>

CJ.4.66.0. De emphyteutico iure.

CJ.4.66.1: Imperator Zeno

Ius emphyteuticarium neque conductionis neque alienationis esse titulis addicendum, sed hoc ius tertium sit constitutum ab utriusque memoratorum contractuum societate seu similitudine separatum, conceptionem definitionemque habere propriam et iustum esse validumque contractum, in quo cuncta, quae inter utrasque contrahentium partes super omnibus vel etiam fortuitis casibus pactionibus scriptura interveniente habitis placuerint, firma illibataque perpetua stabilitate modis omnibus debeant custodiri : ita ut, si interdum ea, quae fortuitis casibus sicut eveniunt, pactorum non fuerint conventione concepta, si quidem tanta emerserit clades, quae prorsus ipsius etiam rei quae per emphyteusin data est facit interitum, hoc non emphyteuticario, cui nihil reliquum mansit, sed rei domino, qui, quod fatalitate ingruebat, etiam nullo intercedente contractu habiturus fuerat, imputetur : sin vero particulare vel aliud leve damnum contigerit, ex quo non ipsa rei penitus laedatur substantia, hoc emphyteuticarius suis partibus non dubitet adscribendum. * zeno a. sebastiano pp. * <a 476 - 484 >

CJ.4.66.2pr.: Imperator Justinianus

In emphyteuticariis contractibus sancimus, si quidem aliae pactiones in emphyteuticis instrumentis fuerint conscriptae, easdem et in aliis omnibus capitulis observari et de reiectione eius, qui emphyteusin suscepit, si solitam pensionem vel publicarum functionum apochas non praestiterit. * iust. a. demostheni pp. * <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.4.66.2.1: Imperator Justinianus

Sin autem nihil super hoc capitulo fuerit pactum, sed per totum triennium neque pecunias solverit neque apochas domino tributorum reddiderit, volenti ei licere eum a praediis emphyteuticariis repellere : nulla ei adlegatione nomine meliorationis vel eorum quae emponemata dicuntur vel poenae opponenda, sed omnimodo eo, si dominus voluerit, repellendo neque praetendente, quod non est super hac causa inquietatus, cum neminem oportet conventionem vel admonitionem expectare, sed ultro sese offerre et debitum spontanea voluntate persolvere, secundum quod et anteriore lege nostri numinis generaliter cautum est. <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.4.66.2.2: Imperator Justinianus

Ne autem ex hac causa dominis facultas oriatur emphyteutas suos repellere et reditum minime velle suscipere, ut ex huiusmodi machinatione triennio elapso suo iure is qui emphyteusin suscepit cadat, licentiam ei concedimus attestatione praemissa pecunias offere hisque obsignatis et secundum legem depositis minime deiectionis timere periculum. <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.4.66.3pr.: Imperator Justinianus

Cum dubitabatur, utrum emphyteuta debeat cum domini voluntate suas meliorationes , quae graeco vocabulo emponemata dicuntur, alienare vel ius emphyteuticum in alium transferre, an eius expectare consensum, sancimus, si quidem emphyteuticum instrumentum super hoc casu aliquas pactiones habeat, eas observari : sin autem nullo modo huiusmodi pactio posita est vel forte instrumentum emphyteuseos perditum est, minime licere emphyteutae sine consensu domini suas meliorationes aliis vendere vel ius emphyteuticum transferre. * iust. a. iuliano pp. * <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.4.66.3.1: Imperator Justinianus

Sed ne hac occasione accepta domini minime concedant emphyteutas suos accipere pretia meliorationum quae invenerint, sed eos deludant et ex hoc commodum emphyteutae depereat, disponimus attestationem domino transmitti et praedicere, quantum pretium ab alio re vera accipit. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.4.66.3.2: Imperator Justinianus

Et si quidem dominus hoc dare maluerit et tantam praestare quantitatem, quantam ipsa veritate emphyteuta ab alio accipere potest, ipsum dominum omnimodo haec comparare : <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.4.66.3.3: Imperator Justinianus

Sin autem duorum mensuum spatium fuerit emensum et dominus hoc facere noluerit, licentia emphyteutae detur, ubi voluerit, et sine consensu domini suas meliorationes vendere, his tamen personis, quae non solent in emphyteuticis contractibus vetari ad huiusmodi venire emptionem : necessitatem autem habere dominos, si aliis melioratio secundum praefatum modum vendita sit, accipere emphyteutam vel, ius emphyteuticum ad personas non prohibitas sed concessas et idoneas ad solvendum emphyteuticum canonem transponere si emphyteuta maluerit, non contradicere, sed novum emphyteutam in possessionem suscipere, non per conductorem nec per procuratorem, sed ipsos dominos per se vel per litteras suas vel, si hoc non potu erint vel noluerint, per depositionem in hac quidem civitate apud virum clarissimum magistrum censuum vel praesentibus tabulariis per attestationem, in provinciis autem per praesides vel defensores celebrandam. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.4.66.3.4: Imperator Justinianus

Et ne avaritia tenti domini magnam molem pecuniarum propter hoc efflagitent, quod usque ad praesens tempus perpetrari cognovimus, non amplius eis liceat pro subscriptione vel depositione nisi quinquagesimam partem pretii vel aestimationis loci, qui ad aliam personam transfertur, accipere. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.4.66.3.5: Imperator Justinianus

Sin autem novum emphyteutam vel emptorem meliorationis suscipere minime dominus maluerit et attestatione facta intra duos menses hoc facere supersederit, licere emphyteutae et non consentientibus dominis ad alios ius suum vel emponemata transferre. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.4.66.3.6: Imperator Justinianus

Sin autem aliter fuerit versatus, quam nostra constitutio disposuit, iure emphyteutico cadat. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

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CJ.5.1.1: Imperatores Diocletianus, Maximianus

Alii desponsata renuntiare condicioni ac nubere alii non prohibetur. * diocl. et maxim. aa. et cc. bianori. * <a 293 d. xviii k. mai. aa. conss.>

CJ.5.1.2: Imperator Constantinus

Si is, qui puellam suis nuptiis pactus est, intra biennium exsequi nuptias in eadem provincia degens supersederit, eiusque spatii fine decurso in alterius postea coniunctionem puella pervenerit, nihil fraudis ei sit, quae nuptias maturando vota sua diutius ludi non passa est. * const. a. et const. c. ad pacatianum pu. * <a 332 d. prid. id. april. marcianopoli pacatioano et hilarianoconss.>

CJ.5.1.3: Imperatores Gratianus, Valentinianus, Theodosius

Arris sponsaliorum nomine datis, si interea sponsus vel sponsa decesserit, quae data sunt iubemus restitui, nisi causam, ut nuptiae non celebrentur, defuncta persona iam praebuit. * grat. valentin. et theodos. aaa. eutropio pp. * <a 380 d. xv k. iul. thessalonicae gratiano v et theodosio aa. conss.>

CJ.5.1.4pr.: Imperatores Honorius, Theodosius

Si pater pactum de filiae nuptiis inierit et humana sorte consumptus ad vota non potuerit pervenire, id inter sponsos firmum ratumque permaneat, quod a patre docebitur definitum, nihilque permittatur habere momenti, quod cum defensore, ad quem minoris commoda pertinebunt, docebitur fuisse transactum. * honor. et theodos. aa. ad marinianum pp. * <a 422 d. iiii non. nov. ravennae honorio xiii et theodosio x aa. conss.>

CJ.5.1.4.1: Imperatores Honorius, Theodosius

Periniquum est enim, ut contra patriam voluntatem redempti forsitan tutoris aut curatoris admittatur arbitrium, cum plerumque etiam ipsius feminae adversus commoda propria inveniatur laborare consilium. <a 422 d. iiii non. nov. ravennae honorio xiii et theodosio x aa. conss.>

CJ.5.1.5pr.: Imperatores Leo, Anthemius

Mulier iuris sui constituta arrarum sponsalium nomine usque ad duplum teneatur, id est in id quod accepit et aliud tantundem nec amplius, si post completum vicesimum quintum annum vel post impetratam veniam aetatis atque in competenti iudicio comprobatam huiusmodi arras suscepit: in simplum autem, id est tantummodo quod accepit, si minoris aetatis est, sive virgo sive vidua sit, sive per se sive per tutorem vel curatorem vel aliam personam easdem arras acceperit. * leo et anthem. aa. erythrio pp. * <a 472 d. k. iul. constantinopoli marciano cons.>

CJ.5.1.5.1: Imperatores Leo, Anthemius

Patrem vero vel matrem, legitimae videlicet aetatis constitutos, sive simul sive separatim arras pro filia susceperint, avum autem vel proavum pro nepte seu pronepte in duplum tantummodo convenit teneri. <a 472 d. k. iul. constantinopoli marciano cons.>

CJ.5.1.5.2: Imperatores Leo, Anthemius

Quae ita custodiri censemus, si non propter personam vel condicionem aut aliam causam legibus vel generalibus constitutionibus interdictam futurum matrimonium constare prohibetur: tunc enim quasi nullo facto, utpote sine causa easdem arras praestitas tantummodo reddi consequens esse praecipimus. <a 472 d. k. iul. constantinopoli marciano cons.>

CJ.5.1.5.3: Imperatores Leo, Anthemius

Hoc quoque his adicimus, ut etiam, si legibus prohibitae non sint speratae nuptiae, post arras autem sponsalicias sponsa coniugium sponsi propter turpem vel impudicam conversationem aut religionis vel sectae diversitatem recusaverit vel eo, quod quasi vir coitum, ex quo spes subolis oritur, facere non potuerit, vel ob aliam iustam excusationis causam, si quidem probatum fuerit ante datas easdem arras sponsalicias hoc idem mulierem vel parentes eius cognovisse, sibi debeant imputare. <a 472 d. k. iul. constantinopoli marciano cons.>

CJ.5.1.5.4: Imperatores Leo, Anthemius

Sin vero horum ignari sponsalicias arras susceperint vel post arras datas aliqua iusta causa paenitentiae intercesserit, isdem tantummodo redditis super alterius simpli poena liberi custodiantur. <a 472 d. k. iul. constantinopoli marciano cons.>

CJ.5.1.5.5: Imperatores Leo, Anthemius

Quae omnia simili modo etiam de sponsis super recipiendis nec ne arris praestitis custodiri censemus: quadrupli videlicet poena, quae anterioribus legibus definita erat, in qua et arrarum quantitas imputabatur, cessante, nisi specialiter aliud ex communi consensu inter contrahentes de eadem quadrupli ratione placuit. <a 472 d. k. iul. constantinopoli marciano cons.>

CJ.5.1.5.6: Imperatores Leo, Anthemius

Extra definitionem autem huius legis si cautio poenam stipulationis continens fuerit interposita, ex utraque parte nullas vires habebit, cum in contrahendis nuptiis libera potestas esse debet. <a 472 d. k. iul. constantinopoli marciano cons.>

CJ.5.2.0. Si rector provinciae vel ad eum pertinentes sponsalia dederint.

CJ.5.2.1pr.: Imperatores Gratianus, Valentinianus, Theodosius

Si quis in potestate publica positus atque honore administrandarum provinciarum, qui parentibus aut tutoribus aut curatoribus aut ipsis quae matrimonium contracturae sunt potest esse terribilis, arras sponcalicias dederit, iubemus, ut deinceps, sive parentes sive eadem mutaverint voluntatem, non modo iuris laqueis liberentur poenaeque statutae expertes sint, sed extrinsecus data pignora lucrativa habeant, si ea non putent esse reddenda. * grat. valentin. et theodos. aaa. eutropio pp. * <a 380 d. xv k. iul.Thessalonicae gratiano v et theodosio aa.Conss.>

CJ.5.2.1.1: Imperatores Gratianus, Valentinianus, Theodosius

Quod ita late patere volumus, ut non solum circa administrantes, sed et circa administrantium filios nepotes ac propinquos, participes (id est consiliarios) domesticosque locum habeat, quibus tamen administrator operam dederit. <a 380 d. xv k. iul.Thessalonicae gratiano v et theodosio aa.Conss.>

CJ.5.2.1.2: Imperatores Gratianus, Valentinianus, Theodosius

Impleri autem id postea matrimonium non vetamus, quod tempore potestatis ob eas personas, de quibus locuti sumus, arris fuerat obligatum, si sponsarum consensus accedat. <a 380 d. xv k. iul.Thessalonicae gratiano v et theodosio aa.Conss.>

CJ.5.3.0. De donationibus ante nuptias vel propter nuptias et sponsaliciis.

CJ.5.3.1: Imperatores Severus, Antoninus

Multum interest, si ea, quae donat vir futurus, tradiderit uxori et postea in dotem acceperit, an vero donandi animo dotem auxerit, ut videatur accepisse, quod non accepit. priore enim casu donatio non impeditur, et res, quae in ea causa sunt, dotis effectae iudicio de dote peti possunt: posteriore autem nihil actum est donatione et, quod in dotem datum non est, non potest repeti. * sev. et ant. aa. metrodoro. * <>

CJ.5.3.2: Imperator Alexander Severus

Si praesidi provinciae probaveris, ut eucliam uxorem duceres, munera te parentibus eius dedisse, nisi tibi euclia nupserit, restitui tibi quod dedisti iubebit. * alex. a. attalo. * <>

CJ.5.3.3: Imperator Alexander Severus

Pollicitatione a fratre quondam tuo sponsalium causa facta, et si in stipulationem deducta ideo praestanda non fuerit, quoniam in dote uxor maritum fefellit, exceptionem adversus actionem ex stipulatu recte obicies. * alex. a. Marcellae. * <>

CJ.5.3.4: Imperator Gordianus

Quod sponsae ea lege donatur, ut tunc dominium eius adipiscatur, cum nuptiae fuerint secutae, sine effectu est. * gord. a. marco. * <a 239 pp. viii k. dec. gordiano a. et aviola conss.>

CJ.5.3.5: Imperatores valer., gallien.

Ea, quae tibi ut sponsae daturum se repromisit is, qui te ficto caelibatu, cum aliam matrem familias domi reliquisset, sollicitavit ad nuptias, petere cum effectu non potest, cum tu sponsa uxore domi posita non fuisti. * valer. et gallien. aa. theodorae. * <a 258 acc. xv id. mai. antiochiae tusco et basso conss.>

CJ.5.3.6: Imperator aurel.

Cum in te simplicem donationem dicas factam esse die nuptiarum et in ambiguo possit venire, utrum a sponso an marito donatum sit, sic distinguendum est, ut, si in tua domo donum acceptum est, ante nuptias videatur facta esse donatio, quod si penes se dedit sponsus, retrahi possit: uxor enim fuisti. * aurel. a. donatae. * <>

CJ.5.3.7: Imperatores carus, carinus, numer.

Si, cum ante nuptias munera darentur, ita conventum est atque huiusmodi conscripta pactio est, ut, si qua fors extitisset contra voluntatem eius et matrimonium distraxisset, tunc quae data erant apud eum qui dedisset heredemve eius remanerent, potest, qui eius hereditatem accepit, cui pacta puella munera supra dicta lege susceperat, eadem iure postulare. * carus carinus et numer. aaa. iuncianae. * < pp. k. april.>

CJ.5.3.8: Imperatores Diocletianus, Maximianus

Si ante matrimonium maior quinque et viginti annis constitutus sponsae suae, licet ante sponsalia, fundum donavit eamque in vacuam induxit possessionem, postea nullo titulo superstitem vel testamento eundem relinquentem alienare potuisse certi ac manifesti iuris est. * diocl. et maxim. aa. et cc. euphrosyno. * <a 293 d. k. mai. tirallo aa. conss.>

CJ.5.3.9: Imperatores Diocletianus, Maximianus

Cum te sponsae filii tui quaedam donasse confitearis, perfectam donationem rescindi nec nostro oportet rescripto, quam tua voluntas iurisque auctoritas fecit ratam. * diocl. et maxim. aa. et cc. iuliano. * <a 293 viii k. ian. aa. conss.>

CJ.5.3.10: Imperatores Diocletianus, Maximianus

Si filiae tuae sponsus ei mancipium donavit ac tu in eum iumenta liberalitatis ratione contulisti nec nuptiis secutis contra iuris rationem quod dederat abstulit, non invicem datorum restitutio, sed eius quod illicite rapuit repetitio competit. * diocl. et maxim. aa. et cc. dionysio. * <>

CJ.5.3.11: Imperatores Diocletianus, Maximianus

Si tibi res proprias liberalitatis causa sponsus tuus tradidit, eo, quod ab hostibus postea interfectus est, irrita donatio fieri non potest. * diocl. et maxim. aa. et cc. neae. * <>

CJ.5.3.12: Imperatores Diocletianus, Maximianus

Si mater vestra filiae suae sponso vel marito praedia sine ulla repetendi lege donavit et eum in vacuam induxit possessionem, nuptiis divortio solutis perfecta non dissolvitur donatio. * diocl. et maxim. aa. et cc. timocleae et cleotimae. * <a 294 s. vi id. febr. sirmi cc. conss.>

CJ.5.3.13: Imperatores Diocletianus, Maximianus

De rebus in sponsam donationis gratia collatis creditores mariti facti, si non prius obligatas sibi probent, eam convenire minime possunt. * diocl. et maxim. aa. et cc. alexandro. * <>

CJ.5.3.14: Imperatores Diocletianus, Maximianus

Si consentiente matre sua sponsus filiae tuae mancipia donavit et his acceptis in dotem non aestimatis in matrimonio post decessit, mater eademque heres eius pretium offerens restitutionem eorum improbe recusat. * diocl. et maxim. aa. et cc. aureliae. * <>

CJ.5.3.15pr.: Imperator Constantinus

Cum veterum sententia displiceat, quae donationes in sponsam nuptiis quoque non secutis decrevit valere, ea, quae largiendi animo inter sponsos et sponsas iure celebrantur, redigi ad huiusmodi condiciones iubemus, ut, sive adfinitatis coeundae causa sive non ita, vel in potestate patris degentes vel ullo modo proprii iuris constituti tamquam futuri causa matrimonii aliquid sibi ipsi vel consensu parentum mutuo largiantur, si quidem sponsus vel parens eius sortiri noluerit uxorem, id quod ab eo donatum fuerit nec repetatur traditum est, si quid apud donatorem resedit, ad sponsam et heredes eius submotis ambagibus transferatur. * const. a. ad maximum pu. * <a 319 d. xvii k. nov. constantino a. v et licinio c. conss.>

CJ.5.3.15.1: Imperator Constantinus

Quod si sponsa vel is in cuius agit potestate causam non contrahendi matrimonii praebuerit, tunc sponso eiusque heredibus sine aliqua deminutione per condictionem aut per utilem in rem actionem redhibeantur. <a 319 d. xvii k. nov. constantino a. v et licinio c. conss.>

CJ.5.3.15.2: Imperator Constantinus

Quae similiter observari oportet et si ex parte sponsae in sponsum donatio facta sit. <a 319 d. xvii k. nov. constantino a. v et licinio c. conss.>

CJ.5.3.16pr.: Imperator Constantinus

Si ab sponso rebus sponsae donatis interveniente osculo ante nuptias hunc vel illam mori contigerit, dimidiam partem rerum donatarum ad superstitem pertinere praecipimus, dimidiam ad defuncti vel defunctae heredes, cuiuslibet gradus sint et quocumque iure successerint, ut donatio stare pro parte media et solvi pro parte media videatur: osculo vero non interveniente, sive sponsus sive sponsa obierit, totam infirmari donationem et donatori sponso vel heredibus eius restitui. * const. a. ad tiberianum vic. hispaniarum. * <a 336 d. id. iul. constantinopoli nepotiano et facundo conss.>

CJ.5.3.16.1: Imperator Constantinus

Quod si sponsa interveniente vel non interveniente osculo donationis titulo (quod raro accidit) fuerit aliquid sponso largita et ante nuptias hunc vel illam mori contigerit, omni donatione infirmata ad donatricem sponsam sive eius successores donatarum rerum dominium transferatur. <a 336 d. id. iul. constantinopoli nepotiano et facundo conss.>

CJ.5.3.17: Imperatores Theodosius, Valentinianus

Minoribus aetate feminis etiam actorum testificatione in ante nuptias donatione ad eas facta omissa, si patris auxilio destitutae sint, iuste consulitur, ut firma donatio sit. * theodos. et valentin. aa. hierio pp. * <a 428 d. x k. mart. constantinopoli tauro et felice conss.>

CJ.5.3.18: Imperator Zeno

Si liberis ex priore matrimonio procreatis pater ad secundas migraverit nuptias vel non migraverit, nihil omnino filiis prioris coniugii ex donatione ante nuptias, quam ipse vel alius pro ipso uxori quondam eius matri communium liberorum donaverat, servare cogatur, quoniam et mater liberis ex priore matrimonio extantibus post secundas nuptias multoque amplius, si non fuerit alteri marito sociata, nihil isdem filiis ex dote, quam patri eorum ipsa vel alius pro ea obtulerit , servare compellitur. * zeno a. sebastiano pp. * <a 479 d. k. mai. zenone a. cons.>

CJ.5.3.19pr.: Imperator Justinus

Si constante matrimonio consilium augendae dotis inierit vel uxor forte vel eius nomine quilibet alius, nihilo minus marito quoque liceat seu pro marito cuilibet alii tanto donationem ante nuptias additamento maiorem facere, quanto dotis augetur titulus, nec obsit in huiusmodi munificentiis interdictas esse liberalitates tempore nuptiarum: indulgendum est namque consensui communi partium, ne, cum negetur augendae potestas donationis, dotis etiam pigrius constituatur augmentum. * iustinus a. archelao pp. * <a 527 ? >

CJ.5.3.19.1: Imperator Justinus

Idemque licere praecipimus etiam in his matrimoniis, in quibus interdum accidit ante nuptias quidem donationem nullam esse, solam vero dotem marito mulierem obtulisse, ut etiam tunc muliere dotem augente liceat marito quoque donationem in uxorem suam eiusdem quantitatis facere, quantum aucta dos continere dignoscitur: pactis videlicet de redhibitione vel retentione auctae dotis vel donationis, prout partes consenserint, pro iam statuto modo ineundis sive iniungendis veteribus pactis, quae initio nuptiarum de ante nuptias donatione et dote principaliter constituenda inita sunt. <a 527 ? >

CJ.5.3.19.2: Imperator Justinus

Iura etiam hypothecarum, quae in augenda dote vel donatione fuerint, ex eo tempore initium accipiant, ex quo eaedem hypothecae contractae sunt, et non ad prioris dotis vel ante nuptias donationis tempora referantur. <a 527 ? >

CJ.5.3.19.3: Imperator Justinus

Sed et si e contrario maritus et uxor ad deminuendam dotem et ante nuptias donationem consenserint, licere eis ad similitudinem deminutionis quae in dote fit etiam ante nuptias minuere donationem, ut pacta de amborum deminutionibus ineunda firma et legitima esse intellegantur: exceptis videlicet his casibus, in quibus aut maritus ex priore matrimonio liberos habens ad secundas migraverit nuptias, aut uxor similiter ex anteriore matrimonio liberis ei existentibus secundo marito se iunxerit. in hoc enim secundo matrimonio vel a parte mariti vel a parte mulieris vel ab utraque, si hoc etiam evenerit, interdictam esse deminutionem dotis et ante nuptias donationis, ne aliquid adversus filios prioris matrimonii machinari videatur, censemus. <a 527 ? >

CJ.5.3.20pr.: Imperator Justinianus

Cum multae nobis interpellationes factae sunt adversus maritos, qui decipiendo suas uxores faciebant donationes, quas ante nuptias antiquitas nominavit, insinuare autem eas actis intervenientibus supersedebant, ut ineffectae maneant et ipsi quidem commoda dotis lucrentur, uxores autem sine nuptiali remedio relinquantur, sancimus nomine prius emendato ita rem corrigi et non ante nuptias donationem eam vocari, sed propter nuptias donationem. * iust. a. iohanni pp. * <a 531533 >

CJ.5.3.20.1: Imperator Justinianus

Quare enim dotem quidem et constante matrimonio mulier marito dare conceditur, donationem autem marito nisi ante nuptias facere non permittitur? et quae huius rei differentia rationabilis potest inveniri, cum melius erat mulieribus propter fragilitatem sexus quam maribus subveniri? <a 531-533 >

CJ.5.3.20.2: Imperator Justinianus

Sicut enim dos propter nuptias fit et sine nuptiis quidem nulla dos intellegitur , sine dote autem nuptiae possunt celebrari, ita et in donationibus, quas mariti faciunt vel pro his alii, debet esse aperta licentia et constante matrimonio talem donationem facere, quae quasi antipherna possit intellegi et non simplex donatio. ideo enim et antiqui iuris conditores inter donationes etiam dotes connumerant. <a 531-533 >

CJ.5.3.20.3: Imperator Justinianus

Si igitur et nomine et substantia nihil distat a dote ante nuptias donatio, quare non etiam ea simili modo et matrimonio contracto dabitur? <a 531-533 >

CJ.5.3.20.4: Imperator Justinianus

Sancimus itaque omnes licentiam habere sive priusquam matrimonia contraxerint sive postea donationes mulieribus dare propter dotis dationem, ut non simplices donationes intellegantur, sed propter dotem et propter nuptias factae. simplices etenim donationes non propter nuptias fiunt, sed propter nuptias vetitae sunt: et propter alias causas et libidinem forsitan vel unius partis egestatem, non propter ipsam nuptiarum adfectionem efficiuntur. <a 531-533 >

CJ.5.3.20.5: Imperator Justinianus

Si igitur dote iam praestita maritus nulla ante nuptias facta donatione donare mulieri res maluerit, ita tamen, ut dotis quantitatem non excedant, et hoc ipsum significaverit, quod non simplicem faciat donationem, sed propter dotem iam conscriptam et ipse ad donationem venerit, licebit ei hoc facere et supponatur pactis dotalibus huiusmodi donatio. et si quidem hoc fuerit specialiter expressum, pacta conventa servari oportet. <a 531-533 >

CJ.5.3.20.6: Imperator Justinianus

Sin autem donatio quidem talis facta sit, utpote autem dotali instrumento antecedente nulla pacta tali donationi post nuptias inserantur, re ipsa videatur esse hoc pactum, et secundum dotales conventiones intellegantur et in tali donatione pacta fuisse conventa, ut aequis passibus utraque ambulet tam dos quam donatio. <a 531-533 >

CJ.5.3.20.7: Imperator Justinianus

Ita tamen, ut leoniana constitutio, quae super exaequatione pactionum loquitur non in quantitate, sed in partibus, maneat in his casibus intacta, et non solum ea immutilata custodiatur, sed etiam nostra, quam de interpretatione eius fecimus ambiguitatem eius tollentes: disparibus etenim pactionibus factis maiorem lucri partem ad minorem deducendam esse censemus, ut eodem modo uterque minorem partem lucretur. <a 531-533 >

CJ.5.3.20.8: Imperator Justinianus

Similique modo si facta quidem fuerit talis donatio, quae antea quidem ante nuptias vocabatur, nunc autem propter nuptias, non autem ante nuptias fuerit actis intervenientibus insinuata, licebit et constante matrimonio eam insinuare, nullo obstaculo penitus ex nuptiarum interventu faciendo: si enim fieri eas post nuptias concedatur, multo magis insinuari. <a 531-533 >

CJ.5.3.20.9: Imperator Justinianus

Similique modo et ea constitutio, quam pro augendis tam dotibus quam ante nuptias donationibus fecimus, intacta illabataque conservetur: omnibus videlicet, quae de simplicibus donationibus inter maritum et uxorem constante matrimonio vel a veteribus vel a nobis statuta sunt, in suo robore duraturis. <a 531-533 >

CJ.5.4.0. De nuptiis.

CJ.5.4.1: Imperatores Severus, Antoninus

Cum de nuptiis puellae quaeritur nec inter tutorem et matrem et propinquos de eligendo futuro marito convenit, arbitrium praesidis provinciae necessarium est. * sev. et ant. aa. potito. * <a 199 d. non. mai. anullino et frontone conss.>

CJ.5.4.2: Imperatores Severus, Antoninus

Si nuptiis pater tuus consensit, nihil oberit, quod instrumento ad matrimonium pertinenti subscripsit. * sev. et ant. aa. trophimae. * <>

CJ.5.4.3: Imperatores Severus, Antoninus

Libertum, qui patronam seu patroni filiam vel coniugem vel neptem vel proneptem uxorem ducere ausus est, apud competentem iudicem accusare poteris moribus temporum meorum congruentem sententiam daturum, quae huiusmodi coniunctiones odiosas esse merito duxerunt. * sev. et ant. aa. valeriae. * <a 196 id. nov. dextro ii et prisco conss.>

CJ.5.4.4: Imperator Alexander Severus

Liberi concubinas parentum suorum uxores ducere non possunt, quia minus religiosam et probabilem rem facere videntur. qui si contra hoc fecerint, crimen stupri committunt. * alex. a. perpetuo. * <a 228 iii id. april. modesto et probo conss.>

CJ.5.4.5: Imperator Alexander Severus

Si, ut proponis, pater quondam mariti tui, in cuius fuit potestate, cognitis nuptiis vestris non contradixit, vereri non debes, nepotem suum ne non agnoscat. * alex. a. maximae. * <>

CJ.5.4.6: Imperator Gordianus

Etsi contra mandata principum contractum sit in provincia consentiente muliere matrimonium, tamen post depositum officium si in eadem voluntate perseveraverit, iustae nuptiae efficiuntur: et ideo postea liberos susceptos natosque ex iusto matrimonio legitimos esse responsum viri prudentissimi pauli declarat. * gord. a. valeriae. * <a 239 xii k. sept. gordiano a. et avoila conss.>

CJ.5.4.7: Imperator Gordianus

Si, ut proponis, post querellam de marito a filia ad te delatam dissociatum est matrimonium nec te consentiente ad eundem regressa est, minus legitima coniunctio est cessante patris voluntate, in cuius est potestate: atque ideo non paenitente filia petitionem dotis repetere non prohiberis. * gord. a. apro. * <a 240 pp. iiii k. nov. sabino et venusto conss.>

CJ.5.4.8: Imperator Gordianus

In copulandis nuptiis nec curatoris, qui solam rei familiaris sustinet administrationem, nec cognatorum vel adfinium ulla auctoritas potest intervenire, sed spectanda est eius voluntas, de cuius coniunctione tractatur. * gord. a. romano. * <a 241 d. v k. mart. gordiano a. ii et pompeiano conss.>

CJ.5.4.9: Imperator probus

Si vicinis vel aliis scientibus uxorem liberorum procreandorum causa domi habuisti et ex eo matrimonio filia suscepta est, quamvis neque nuptiales tabulae neque ad natam filiam pertinentes factae sunt, non ideo minus veritas matrimonii aut susceptae filiae suam habet potestatem. * probus a. fortunato. * <>

CJ.5.4.10: Imperatores Diocletianus, Maximianus

Cum te non ex senatore patre procreatam ob matrimonium cum senatore contractum clarissimae feminae nomen adeptam dicas, claritas, quae beneficio mariti tibi parata est, si secundi ordinis virum postea sortita es redacta ad prioris dignitatis statum, deposita est. * diocl. et maxim. aa. paulinae. * <>

CJ.5.4.11: Imperatores Diocletianus, Maximianus

Si invita detinetur uxor tua a parentibus suis, interpellatus rector provinciae amicus noster exhibita muliere voluntatem eius secutus desiderio tuo medebitur. * diocl. et maxim. aa. alexandro. * <>

CJ.5.4.12: Imperatores Diocletianus, Maximianus

Ne filium quidem familias invitum ad ducendam uxorem cogi legum disciplina permittit. igitur, sicut desideras, observatis iuris praeceptis sociare coniugio tuo quam volueris non impediris, ita tamen, ut in contrahendis nuptiis patris tui consensus accedat. * diocl. et maxim. aa. sabino. * <a 285 a. ii et aristobulo conss.>

CJ.5.4.13: Imperatores Diocletianus, Maximianus

Neque sine nuptiis instrumenta facta matrimonii ad probationem sunt idonea diversum veritate continente, neque non interpositis instrumentis iure contractum matrimonium irritum est, cum omissa quoque scriptura cetera nuptiarum indicia non sunt irrita. * diocl. et maxim. aa. et cc. onesimo. * <>

CJ.5.4.14: Imperatores Diocletianus, Maximianus

Neque ab initio matrimonium contrahere neque dissociatum reconciliare quisquam cogi potest. unde intellegis liberam facultatem contrahendi atque distrahendi matrimonii transferri ad necessitatem non oportere. * diocl. et maxim. aa. et cc. titio. * <>

CJ.5.4.15: Imperatores Diocletianus, Maximianus

Uxorem libertam suam manumissori, si non sit ex his personis, quae specialiter prohibentur, ducere non est interdictum, et ex eo matrimonio iustos patri filios nasci certissimum est. * diocl. et maxim. aa. et cc. titiano. * <>

CJ.5.4.16: Imperatores Diocletianus, Maximianus

Patrem, qui filiam exposuit, at nunc adultam sumptibus et labore tuo factam matrimonio coniungi filio desiderantis favere voto convenit. qui si renitatur, alimentorum solutioni in hoc solummodo casu parere debet. * diocl. et maxim. aa. et cc. rhodoni. * <>

CJ.5.4.17: Imperatores Diocletianus, Maximianus

Nemini liceat contrahere matrimonium cum filia nepte pronepte, itemque matre avia proavia et ex latere amita ac matertera, sorore sororis filia et ex ea nepte, praeterea fratris filia et ex ea nepte, itemque ex adfinibus privigna noverca nuru socru ceterisque, quae iure antiquo prohibentur: a quibus cunctos volumus abstinere. * diocl. et maxim. aa. et cc. * <a 295 d. k. mai. damasco tusco et anullino conss.>

CJ.5.4.18pr.: Imperatores Valentinianus, Valens, Gratianus

Viduae intra quintum et vicesimum annum degentes, etiam si emancipationis libertate gaudent, tamen in secundas nuptias sine patris sententia non conveniant. * valentin. valens et grat. aaa. ad senatum. * <a 371 d. xvii k. aug. gratiano a. ii et probo conss.>

CJ.5.4.18.1: Imperatores Valentinianus, Valens, Gratianus

Quod si in condicionis delectum mulieris voluntas repugnat sententiae propinquorum, placet admodum, ut in virginum coniunctionibus sanctum est, habendo examini auctoritatem quoque iudiciariae cognitionis adiungi, ut, si pares sunt genere ac moribus petitores, is potior aestimetur, quem sibi consulens mulier adprobaverit. <a 371 d. xvii k. aug. gratiano a. ii et probo conss.>

CJ.5.4.18.2: Imperatores Valentinianus, Valens, Gratianus

Sed ne forte ii, qui gradu proximo ad viduarum successiones vocantur, et honestas nuptias impediant, si huiusmodi rei suspicio processerit, eorum volumus auctoritatem iudiciumque succedere, ad quos, etiamsi fatalis sors intercesserit, tamen hereditatis commodum pervenire non possit. <a 371 d. xvii k. aug. gratiano a. ii et probo conss.>

CJ.5.4.19: Imperatores Arcadius, Honorius

Celebrandis inter consobrinos matrimoniis licentia huius legis salubritate indulta est, ut revocata prisci iuris auctoritate restinctisque calumniarum fomentis matrimonium inter consobrinos habeatur legitimum, sive ex duobus fratribus sive ex duabus sororibus sive ex fratre et sorore nati sunt, et ex eo matrimonio editi legitimi et suis patribus successores habeantur. * arcad. et honor. aa. eutychiano pp. * <a 405 d. iii id. iun. nicaeae stilichone ii et anthemio conss.>

CJ.5.4.20pr.: Imperatores Honorius, Theodosius

In coniunctione filiarum in sacris positarum patris expectetur arbitrium: si sui iuris puella sit intra quintum et vicesimum annum constituta, ipsius quoque exploretur adsensus. si patris auxilio destituta, matris et propinquorum et ipsius quoque requiratur adultae iudicium. * honor. et theodos. aa. ad theodorum pp. * <a 408-409 >

CJ.5.4.20.1: Imperatores Honorius, Theodosius

Si vero utroque orbata parente sub curatoris defensione consistat et inter honestos competitores matrimonii oriatur forte certamen, ut queratur, cui potissimum puella iungenda sit, si puella cultu verecundiae propriam noluerit depromere voluntatem, coram positis propinquis iudici deliberare permissum sit, cui melius adulta societur. <a 408-409 >

CJ.5.4.21: Imperatores Theodosius, Valentinianus

A caligato milite usque ad protectoris personam et sine aliqua sollemnitate matrimoniorum liberam cum ingenuis dumtaxat mulieribus contrahendi coniugii permittimus facultatem. * theodos. et valentin. aa. basso pp. * <a 426 >

CJ.5.4.22: Imperatores Theodosius, Valentinianus

Si donationum ante nuptias vel dotis instrumenta defuerint, pompa etiam aliaque nuptiarum celebritas omittatur, nullus aestimet ob id deesse recte alias inito matrimonio firmitatem vel ex eo natis liberis iura posse legitimorum auferri, inter pares honestate personas nulla lege impediente consortium, quod ipsorum consensu atque amicorum fide firmatur. * theodos. et valentin. aa. hierio pp. * <a 428 d. x k. mart. constantinopoli felice et tauro conss.>

CJ.5.4.23pr.: Imperator Justinus

Imperalis benevolentiae proprium hoc esse iudicantes, ut omni tempore subiectorum commoda tam investigare quam eis mederi procuremus, lapsus quoque mulierum, per quos indignam honore conversationem imbecillitate sexus elegerint, cum competenti moderatione sublevandos esse censemus minimeque eis spem melioris condicionis adimere, ut ad eam respicientes improvidam et minus honestam electionem facilius derelinquant. nam ita credimus dei benevolentiam et circa genus humanum nimiam clementiam quantum nostrae naturae possibile est imitari, qui cottidianis hominum peccatis semper ignoscere dignatur et paenitentiam suscipere nostram et ad meliorem statum reducere: quod si circa nostro subiectos imperio nos etiam facere differamus, nulla venia digni esse videbimur. * iustinus a. demostheni p p. * <a 520-523 >

CJ.5.4.23.1: Imperator Justinus

Itaque cum iniustum sit servos quidem libertate donatos posse per divinam indulgentiam natalibus suis restitui postque huiusmodi principale beneficium ita degere, quasi numquam deservissent, sed ingenui nati essent, mulieres autem, quae scaenicis quidem sese ludis immiscuerunt, postea vero spreta mala condicione ad meliorem migravere sententiam et inhonestam professionem effugerunt, nullam spem principalis habere beneficii, quod eas ad illum statum reduceret, in quo, si nihil peccatum esset, commorari potuerint: praesenti clementissima sanctione principale beneficium eis sub ea lege condonamus, ut, si derelicta mala et inhonesta conversatione commodiorem vitam amplexae fuerint et honestati sese dederint, liceat eis nostro supplicare numini, ut divinos adfatus sine dubio mereantur ad matrimonium eas venire permittentes legitimum: <a 520-523 >

CJ.5.4.23.1a: Imperator Justinus

His, qui eis coniungendi sunt, nullo timore tenendis, ne scitis praeteritarum legum infirmum esse videatur tale coniugium, sed ita validum huiusmodi permanere matrimonium confidentibus, quasi nulla praecedente inhonesta vita uxores eas duxerint, sive dignitate praediti sint sive alio modo scaenicas in matrimonium ducere prohibeantur, dum tamen dotalibus omnimodo instrumentis, non sine scriptis tale probetur coniugium. <a 520-523 >

CJ.5.4.23.1b: Imperator Justinus

Nam omni macula penitus direpta et quasi suis natalibus huiusmodi mulieribus redditis neque vocabulum inhonestum eis inhaerere de cetero volumus neque differentiam aliquam eas habere cum his, quae nihil simile peccaverunt: <a 520-523 >

CJ.5.4.23.2: Imperator Justinus

Sed et liberos ex tali matrimonio procreandos suos et legitimos patri esse, licet alios ex priore matrimonio legitimos habeat, ut bona eius tam ab intestato quam ex testamento isti quoque sine ullo impedimento percipere possint. <a 520-523 >

CJ.5.4.23.3: Imperator Justinus

Sed etsi tales mulieres post divinum rescriptum ad preces earum datum ad matrimonium venire distulerint, salvam eis nihilo minus existimationem servari praecipimus tam in aliis omnibus quam ad transmittendam quibus voluerint suam substantiam et suspiciendam competentem sibi legibus ab aliis relictam vel ab intestato delatam hereditatem. <a 520-523 >

CJ.5.4.23.4: Imperator Justinus

Similes vero tale merentibus ab imperatore beneficium mulieribus illas etiam esse volumus, quae dignitatem aliquam, etsi non serenissimo principi supplicaverunt, ultronea tamen donatione ante matrimonium meruerint, ex qua dignitate aliam etiam omnem maculam, per quam certis hominibus legitime coniungi mulieres prohibentur, aboleri penitus oportet. <a 520-523 >

CJ.5.4.23.5: Imperator Justinus

His illud adiungimus, ut et filiae huiuscemodi mulierum, si quidem post expurgationem prioris vitae matris suae natae sint, non videantur scaenicarum esse filiae nec subiacere legibus, quae prohibuerunt filiam scaenicae certos homines in matrimonium ducere. <a 520-523 >

CJ.5.4.23.5a: Imperator Justinus

Sin vero ante procreatae sint, liceat preces offerentibus invictissimo principi sacrum sine ullo obstaculo mereri rescriptum, per quod eis ita nubere permittatur, quasi non sint scaenicae matris filiae: nec iam prohibeantur illis copulari, quibus scaenicae filias vel dignitatis vel alterius causae gratia uxores ducere interdicitur, ut tamen omnimodo dotalia inter eos etiam instrumenta conficiantur. <a 520-523 >

CJ.5.4.23.6: Imperator Justinus

Sed et si a scaenica matre procreata, quae usque ad mortem suam in eadem professione duravit, post eius obitum preces imperatoriae clementiae obtulerit et divinam indulgentiam meruerit liberationem maternae iniuriae et nubendi licentiam sibi condonantem, istam quoque posse sine metu priorum legum in matrimonio illis copulari, qui dudum scaenicae filiam uxorem ducere prohibebantur. <a 520-523 >

CJ.5.4.23.7: Imperator Justinus

Immo et illud removendum esse censuimus, quod etiam in priscis legibus, licet obscurius, constitutum est, ut matrimonia inter impares honestate contrahenda non aliter quidem valeant, nisi dotalia instrumenta confecta fuerint, his vero intercedentibus omnimodo firma sint sine aliqua distinctione personarum, si modo liberae sint et ingenuae mulieres, nullaque nefariarum vel incestarum coniunctionum suberit suspicio. <a 520-523 >

CJ.5.4.23.7a: Imperator Justinus

Nam nefarios et incestos coitus omnibus modis amputamus, sicut et illos, qui praeteritarum legum sanctione specialiter vetiti sunt, exceptis videlicet his, quos praesenti lege permisimus legitimique matrimonii iure muniri praecepimus. <a 520-523 >

CJ.5.4.23.8: Imperator Justinus

His itaque per hanc generalem legem ita constitutis et de cetero conservandis, praeteritas etiam huiusmodi coniunctiones ex subiecto tempore factas secundum praedictam dispositionem iudicari praecipimus, ut, si quis talem uxorem ab initio nostri imperii, prout dictum est, iam duxerit et liberos ab ea procreaverit, iustos eos et legitimos et tam ab intestato quam ex testamento pater successores habeat, et legitima in posterum nihilo minus ea uxore permanente procreandi quoque liberi legitimi sint. <a 520-523 >

CJ.5.4.24: Imperator Justinianus

Sancimus, si quis nuptiarum fecerit mentionem in qualicumque pacto, quod ad dandum vel faciendum vel non dandum vel non faciendum concipitur, et sive nuptiarum tempus dixerit sive nuptias nominaverit, non aliter intellegi esse condicionem adimplendam vel extenuandam, nisi ipsa nuptiarum accedat festivitas, et non esse tempus inspiciendum, in quo nuptiarum aetas vel feminis post duodecimum annum accesserit vel maribus post quartum decimum annum completum, sed ex quo vota nuptiarum re ipsa processerint. sic etenim et antiqui iuris contentio dirimetur et immensa librorum volumina ad mediocrem modum tandem pervenient. * iust. a. ad senatum. * <a 530 d. constantinopoli xi k. aug. lampadio et oreste conss.>

CJ.5.4.25pr.: Imperator Justinianus

Si furiosi parentis liberi, in cuius potestate constituti sunt, nuptias possunt contrahere, apud veteres agitabatur. * iust. a. iuliano pp. * <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.4.25.1: Imperator Justinianus

Et filiam quidem furiosi marito posse copulari omnes paene iuris antiqui conditores admiserunt: sufficere enim putaverunt, si pater non contradicat. <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.4.25.2: Imperator Justinianus

In filio autem familias dubitabatur. et ulpianus quidem rettulit constitutionem imperatoris marci, quae non de furioso loquitur, sed generaliter de filiis mente capti, sive masculi sive feminae sint qui nuptias contrahunt, ut hoc facere possint etiam non adito principe, et aliam dubitationem ex hoc emergere, si hoc, quod in demente constitutio induxit, etiam in furiosis obtinendum est, quasi exemplo mente capti et furiosi adiuvante. <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.4.25.3: Imperator Justinianus

His itaque dubitatis tales ambiguitates decidentes sancimus hoc repleri, quod divi marci constitutioni deesse videtur, ut non solum dementis, sed etiam furiosi liberi cuiuscumque sexus possint legitimas contrahere nuptias, tam dote quam ante nuptias donatione a curatore eorum praestanda: <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.4.25.4: Imperator Justinianus

Aestimatione tamen in hac quidem regia urbe excellentissimi praefecti urbis, in provinciis autem virorum clarissimorum earum praesidum vel locorum antistitum tam opinione personae quam moderatione dotis et ante nuptias donationis constituenda, praesentibus tam curatoribus dementis vel furiosi quam his, qui ex genere eorum nobiliores sunt: <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.4.25.5: Imperator Justinianus

Ita tamen, ut nulla ex hac causa oriatur vel in hac regia urbe vel in provinciis iactura substantiae furiosi vel mente capti, sed gratis omnia procedant, ne tale hominum infortunium etiam expensarum incremento praegravetur. <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.4.26pr.: Imperator Justinianus

Si quis alumnam suam libertate donaverit et in matrimonio suo collocaverit, dubitabatur apud antiquos, utrumne huiusmodi nuptiae legitimae esse videantur, an non. * iust. a. iuliano pp. * <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.4.26.1: Imperator Justinianus

Nos itaque vetustam ambiguitatem decidentes non esse vetitum matrimonium censemus. si enim ex adfectu omnes introducuntur nuptiae et nihil impium neque legibus contrarium in tali copulatione spectamus, quare praedictas nuptias inhibendas existimaverimus? nec enim homo sic impius inveniatur, ut, quam ab initio loco filiae habuit, eam postea in suo collocaverit matrimonio, sed ei credendum est, qui eam ab initio non ut filiam educavit et libertate donavit et dignam esse postea suo putavit matrimonio. <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.4.26.2: Imperator Justinianus

Ea videlicet persona omnimodo ad nuptias venire prohibenda, quam aliquis, sive alumna sit sive non, a sacrosancto suscepit baptismate, cum nihil aliud sic inducere potest paternam adfectionem et iustam nuptiarum prohibitionem, quam huiusmodi nexus, per quem deo mediante animae eorum copulatae sunt. <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.4.27: Imperator Justinianus

Sancimus nuptias, quae inter masculos et feminas maiores vel minores sexagenariis vel quinquagenariis lege iulia vel papia prohibitae sunt, homines volentes contrahere et ex nullo modo vel ex nulla parte tales nuptias impediri. * iust. a. iohanni pp. * <a 531 vel 532 >

CJ.5.4.28pr.: Imperator Justinianus

Si libertam quis uxorem habeat, deinde inter senatores scribatur dignitate illustratus, an solvatur matrimonium, apud ulpianum querebatur, quia lex papia inter senatores et libertas stare conubia non patitur. * iust. a. iohanni pp. * <a 531 vel 532 >

CJ.5.4.28.1: Imperator Justinianus

Nos igitur dei sequentes iudicium non patimur in uno eodemque conubio mariti felicitatem uxori fieri infortunium, ut, quantum vir in altum tollatur, tantum et coniux eius decrescat, immo magis penitus depereat. <a 531 vel 532 >

CJ.5.4.28.2: Imperator Justinianus

Absit itaque a nostro tempore huiusmodi asperitas et firmum maneat matrimonium et uxor marito concrescat et sentiat eius fulgorem stabileque maneat matrimonium ex huiusmodi superventu minime deminutum. <a 531 vel 532 >

CJ.5.4.28.3: Imperator Justinianus

Simili modo si privati hominis filia ad liberti veniat conubium et postea pater mulieris ad senatoris dignitatem fuerit elatus, taceat papiae legis crudelissima sanctio et neque per hunc modum dissolvatur matrimonium inter facti senatoris filiam et libertum, ne soceri prosperitas sine genero inveniatur. <a 531 vel 532 >

CJ.5.4.28.4: Imperator Justinianus

Melius est enim legis papiae severitatem in utroque casu compescere, quam eam sequendo hominum matrimonia dispergere non ex vitio mulieris et mariti, sed ex prospera alterutrius partis fortuna: cum enim ex una radice vitium nascitur, consequens est, ut una lege tollatur. <a 531 vel 532 >

CJ.5.5.0. De incestis et inutilibus nuptiis.

CJ.5.5.1: Imperator Alexander Severus

Liberta eademque uxor tua, si a te invito discessit, conubium cum alio non habet , si modo uxorem eam habere velis. * alex. a. amphigeni. * <>

CJ.5.5.2: Imperatores Diocletianus, Maximianus

Neminem, qui sub dicione sit romani nominis, binas uxores habere posse vulgo patet, cum et in edicto praetoris huiusmodi viri infamia notati sint. quam rem competens iudex inultam esse non patietur. * diocl. et maxim. aa. sebastianae. * <a 285 pp. iii id. dec. diocletiano a. ii et aristobulo conss.>

CJ.5.5.3pr.: Imperator Constantinus

Cum ancillis non potest esse conubium: nam ex huiusmodi contubernio servi nascuntur. * const. a. patroclo. * <a 319 d. k. iul. aquileiae constantino a. v et licinio c. conss.>

CJ.5.5.3.1: Imperator Constantinus

Ideoque praecipimus, ne decuriones in gremia potentissimarum domorum libidine servarum ducente confugiant. si enim decurio clam actoribus atque procuratoribus nescientibus alienae fuerit servae coniunctus, et mulierem in metallum trudi per sententiam iudicis iubemus et ipsum decurionem in insulam deportari, omnibus bonis eius civitati, cuius curialis fuerat, mancipandis, si patria potestate fuerit liberatus nullosque habeat liberos vel parentes vel etiam propinquos, qui secundum legum ordinem ad eius successionem vocantur. <a 319 d. k. iul. aquileiae constantino a. v et licinio c. conss.>

CJ.5.5.3.2: Imperator Constantinus

Quod si actores vel procuratores loci, in quo flagitium admissum est, fuerunt conscii vel compertum facinus promere noluerunt, metallo eos convenit implicari. <a 319 d. k. iul. aquileiae constantino a. v et licinio c. conss.>

CJ.5.5.3.3: Imperator Constantinus

Si vero dominus hoc fieri permisit vel postea cognitum celavit, si quidem in agro id factum est, fundus cum mancipiis et pecoribus ceterisque rebus. quae cultui rustico sustinentur, fisci viribus vindicetur: si vero in civitate id factum est, dimidiam bonorum omnium partem praecipimus confiscari poenam augentes, quoniam intra domesticos parietes scelus admissum est, quod noluit mox cognitum publicare. <a 319 d. k. iul. aquileiae constantino a. v et licinio c. conss.>

CJ.5.5.4pr.: Imperatores Valentinianus, Theodosius, Arcadius

Qui contra legum praecepta vel contra mandata constitutionesque principum nuptias forte contraxerit, nihil ex eodem matrimonio, sive ante nuptias donatum sive deinceps quoquo modo datum fuerit, consequatur, idque totum, quod ab alterius liberalitate in alterum processerit, ut indigno indignaeve sublatum fisco vindicari sancimus: * valentin. theodos. et arcad. aaa. ad andromachum com. rer. privat.* <d. vii k. mart.>

CJ.5.5.4.1: Imperatores Valentinianus, Theodosius, Arcadius

Exceptis tam feminis quam viris, qui aut errore acrissimo, non adfectato insimulatove, neque ex causa vili decepti sunt aut aetatis lubrico lapsi. <d. vii k. mart.>

CJ.5.5.4.2: Imperatores Valentinianus, Theodosius, Arcadius

Quos tamen ita demum legis nostrae laqueis eximi placuit, si aut errore comperto , aut ubi ad legitimos pervenerint annos, coniunctionem huiuscemodi sine ulla recrastinatione diremerint. <d. vii k. mart.>

CJ.5.5.5: Imperatores Valentinianus, Theodosius, Arcadius

Fratris uxorem ducendi vel duabus sororibus coniungendi penitus licentiam submovemus, nec dissoluto quocumque modo coniugio. * valentin. theodos. et arcad. aaa. cynegio pp. * <a 393 d.... k. dec. constantinopoli theodosio a. iii et abundantio conss.>

CJ.5.5.6pr.: Imperatores Arcadius, Honorius

Si quis incesti vetitique coniugii sese nuptiis funestavit, proprias quamdiu vixerit teneat facultates, sed neque uxorem neque filios ex ea editos habere credatur. * arcad. et honor. aa. eutychiano pp. * <a 396 d. vi id. dec. constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.5.5.6.1: Imperatores Arcadius, Honorius

Nihil prorsus praedictis nec per interpositam quidem personam vel donet superstes vel mortuus derelinquat. <a 396 d. vi id. dec. constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.5.5.6.2: Imperatores Arcadius, Honorius

Dos si qua forte sollemniter aut data aut promissa fuerit, iuxta ius antiquum fisci nostri commodis cedat. <a 396 d. vi id. dec. constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.5.5.6.3: Imperatores Arcadius, Honorius

Testamento suo extraneis nihil relinquat, sed sive testato sive intestato legibus ei et iure succedant, si qui forte ex iusto et legitimo matrimonio editi fuerint, hoc est de descendentibus filius filia nepos neptis pronepos proneptis, de ascendentibus pater mater avus avia, de latere frater soror patruus amita. <a 396 d. vi id. dec. constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.5.5.6.4: Imperatores Arcadius, Honorius

Testandi sane ita demum habeat facultatem, ut his tantum personis pro iuris ac legum quod voluerit arbitrio relinquat, quas succedere imperialis praecepti tenore mandavimus: ita tamen, ut hereditate defuncti penitus arceatur, si quis ex his quos memoravimus in contrahendis incestis nuptiis consilium inisse monstrabitur, successuro in locum illius, qui post eum gradum proximus invenitur. <a 396 d. vi id. dec. constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.5.5.6.5: Imperatores Arcadius, Honorius

Ea sane, quae de viris cavimus, etiam de feminis, quae praedictorum sese consortiis commaculaverint, custodiantur. <a 396 d. vi id. dec. constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.5.5.6.6: Imperatores Arcadius, Honorius

Memoratis vero personis non extantibus fisco locus pateat. <a 396 d. vi id. dec. constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.5.5.7pr.: Imperatores Valentinianus, Marcianus

Humilem vel abiectam feminam minime eam iudicamus intellegi, quae, licet pauper, ab ingenuis tamen parentibus nata sit. * valentin. et marcian. aa. palladio pp. * <a 454 d. prid. non. april. constantinopoli aetio et studio vv. cc. conss.>

CJ.5.5.7.1: Imperatores Valentinianus, Marcianus

Unde licere statuimus senatoribus et quibuscumque amplissimis dignitatibus praeditis, ex ingenuis natas quamvis pauperes in matrimonium sibi adsciscere, nullam que inter ingenuas ex divitiis et opulentiore fortuna esse distantiam. <a 454 d. prid. non. april. constantinopoli aetio et studio vv. cc. conss.>

CJ.5.5.7.2: Imperatores Valentinianus, Marcianus

Humiles vero abiectasque personas eas tantummodo mulieres esse censemus: ancillam ancillae filiam, libertam, libertae filiam, scaenicam vel scaenicae filiam, tabernariam vel tabernarii vel lenonis aut harenarii filiam, aut eam quae mercimoniis publice praefuit: ideoque huiusmodi inhibuisse nuptias senatoribus harum feminarum, quas nunc enumeravimus. <a 454 d. prid. non. april. constantinopoli aetio et studio vv. cc. conss.>

CJ.5.5.8: Imperator Zeno

Licet quidam aegyptiorum idcirco mortuorum fratrum sibi coniuges matrimonio copulaverint, quod post illorum mortem mansisse virgines dicebantur, arbitrati scilicet, quod certis legum conditoribus placuit, cum corpore non convenerint, nuptias re non videri contractas, et huiusmodi conubia tunc temporis celebrata firmata sunt, tamen praesenti lege sancimus, si quae huiusmodi nuptiae contractae fuerint, earumque contractores et ex his progenitos antiquarum legum tenori subiacere nec ad exemplum aegyptiorum, de quibus superius dictum est, eas videri fuisse firmatas vel esse firmandas. * zeno a. epinico pp. * <a 475 d. k. sept. constantinopoli post consulatum leonis iunioris.>

CJ.5.5.9: Imperator Zeno

Ab incestis nuptiis universi qui nostro reguntur imperio noverint temperandum. nam rescripta quoque omnia vel pragmaticas formas aut constitutiones impias, quae quibusdam personis tyrannidis tempore permiserunt scelesto contubernio matrimonii nomen imponere, ut fratris filiam vel sororis et eam, quae cum fratre quondam nuptiali iure habitaverat, uxorem legitimam turpissimo consortio liceret amplecti, aut ut alia huiusmodi committerentur, viribus carere decernimus, ne dissimulatione culpabili nefanda licentia roboretur. * zeno a. sebastiano pp. * <a 476-484 >

CJ.5.6.0. De interdicto matrimonio inter pupillam et tutorem seu curatorem liberosque eorum.

CJ.5.6.1: Imperatores Severus, Antoninus

Senatus consulti auctoritatem, quo inter pupillam et tutoris filium conubium saluberrime sublatum est, circumveniri rusticitatis et imperitiae velamentis non oportet. * sev. et ant. aa. mario. * <a 215 pp. vii id. febr. laeto ii et cereale conss.>

CJ.5.6.2: Imperator Alexander Severus

Mater pupillae cum tutore filiae suae vel filio tutoris nuptias contrahere non prohibetur. * alex. a. burrio. * <a 223 pp. non. nov. maximo ii et aeliano conss.>

CJ.5.6.3pr.: Imperator Gordianus

Cum proponas ei, quam matrimonio tuo iunctam suggeris, post liberos susceptos curatorem patrem tuum datum, quem contendis nec te in potestate habuisse: cum rite contractum matrimonium ex post facto vitiari non potuerit, iusta interpretatione metuere non debes, ne liberi quos habetis non ex iusto matrimonio suscepti videantur. * gord. a. rogatiano. * <>

CJ.5.6.3.1: Imperator Gordianus

Ut autem omnis scrupulus auferatur, insistere pater tuus debet nec non et uxor tua, ut alius loco eius detur: habebit enim facultatem repetendae rationis negotiorum gestorum ab eo qui fuerit substitutus. <>

CJ.5.6.4: Imperator Philippus

Libertinum, qui filio suo naturali, quem in servitute susceperat, postea manumisso pupillam suam eandemque patroni sui filiam in matrimonio collocavit, ad sententiam amplissimi ordinis, qui huiusmodi nuptiis interdicendum putavit, pertinere dubitari non oportet. * philipp. a. hygiae. * <>

CJ.5.6.5: Imperator Philippus

Curatorem adulto suo filiam suam nuptui collocare non posse falso tibi persuasum est. * philipp. a. et philipp. c. apuleio. * <a 245 pp. xv k. sept. philippo a. et titiano conss.>

CJ.5.6.6pr.: Imperatores valer., gallien.

Si patris tui pupillam nondum reddita tutelae ratione vel post redditam nondum exacto quinto et vicesimo nec non etiam utili anno uxorem duxisti, nec matrimonium cum ea habuisse nec filium ex huiusmodi coniunctione procreasse videri potes. * valer. et gallien. aa. lucio. * <a 260 pp. id. mai. saeculare ii et donato conss.>

CJ.5.6.6.1: Imperatores valer., gallien.

Sane si hoc pater puellae, cum decederet, postulavit, et nuptiae rite contractae et filius videtur iure susceptus. <a 260 pp. id. mai. saeculare ii et donato conss.>

CJ.5.6.7: Imperatores Diocletianus, Maximianus

Si tutor vel curator pupillam vel adultam quondam suam sibi vel filio suo nullo divino impetrato beneficio in matrimonio collocaverit, manet infamia contra eum velut confessum de tutela, quia huiusmodi coniunctione fraudem administrationis tegere laboravit, et dos data per condictionem repeti potest. * diocl. et maxim. aa. et cc. paregorio. * <>

CJ.5.6.8: Imperatores Leo, Anthemius

Si quis tutoris vel curatoris nomine usurpato, id est pro tutore seu pro curatore vel negotiorum gestore res pupillae administraverit eamque sibi filiove suo copulaverit, tales nuptias stare et non ad exemplum tutorum infirmari, ne ex huiusmodi subtili vel maligno tractatu matrimonia seu proles ex his progenita vel dos super his data vel promissa aliquam laesionem vel calumniam patiantur. * leo et anthem. aa. erythrio pp. * <a 469 d. k. iul. marciano cons.>

CJ.5.7.0. Si quacumque praeditus potestate vel ad eum pertinentes ad suppositarum iurisdictioni suae adspirare temptaverint nuptias.

CJ.5.7.1pr.: Imperatores Gratianus, Valentinianus, Theodosius

Si quis ordinaria vel qualibet praeditus potestate circa nuptias invitis ipsis vel parentibus contrahendas, sive pupillae sive apud patres virgines sive viduae erunt, sive et iuris sui viduae, denique cuiuscumque sortis, occasione potestatis utatur et minacem favorem suum invitis his, quorum utilitas agitur, exhibere aut exhibuisse detegitur, hunc, licet prohibitas nuptias non peregerit, attamen pro tali conamine multae librarum auri decem obnoxium statuimus et, cum honore abierit, peractam dignitatem usurpare prohibemus, tali scilicet poena, ut, si circa honorem eum, quo male usus est, vindicandum statutis nostris parere noluerit, eam provinciam, in qua sibi usurpaverit, habitare per iuge biennium non sinatur. * grat. valentin. et theodos. aaa. neoterio pp. * <a 380 d. xv k. iul. the ssalonicae gratiano v et theodosio aa. conss.>

CJ.5.7.1.1: Imperatores Gratianus, Valentinianus, Theodosius

Illo videlicet adiciendo, ut et in potestate adhuc constituto liceat personae , quam huiusmodi ambitu circumire temptaverit, confestim contestatione proposita cum sua suorumque domo iurisdictionem eius evitare, curaturis hoc uniuscuiusque civitatis defensoribus et eiusdem iudicis apparitoribus. <a 380 d. xv k. iul. thessalonicae gratiano v et theodosio aa. conss.>

CJ.5.7.1.2: Imperatores Gratianus, Valentinianus, Theodosius

Et quidem si haec pravitas ordinarii iudicis erit, universa eius domus ratio atque omnia vel civilia vel criminalia negotia, quamdiu idem in administratione fuerit, vicario competant. <a 380 d. xv k. iul. thessalonicae gratiano v et theodosio aa. conss.>

CJ.5.7.1.3: Imperatores Gratianus, Valentinianus, Theodosius

Sin autem vicarius vel similis potestatis vim in huiusmodi contrahendo matrimonio molietur, vicissim ordinarius iudex intercessor existat. <a 380 d. xv k. iul. thessalonicae gratiano v et theodosio aa. conss.>

CJ.5.7.1.4: Imperatores Gratianus, Valentinianus, Theodosius

Sin erunt uterque suspecti, ad illustrem praefecturam specialiter talium domorum , quamdiu idem administraverit, tuitio pertineat. <a 380 d. xv k. iul. thessalonicae gratiano v et theodosio aa. conss.>

CJ.5.8.0. Si nuptiae ex rescripto petantur.

CJ.5.8.1pr.: Imperatores Honorius, Theodosius

Quidam vetusti iuris ordine praetermisso obreptione precum nuptias, quas se intellegunt non mereri, de nobis existimant postulandas, saepe habere puellae consensum confingentes. quapropter tale sponsalium genus praesentis legis definitione prohibemus. * honor. et theodos. aa. theodoro pp. * <a 409 d. k. febr. ravennae honorio viii et theodosio iii aa. conss.>

CJ.5.8.1.1: Imperatores Honorius, Theodosius

Si quis igitur contra hanc definitionem nuptias precum subreptione meruerit, amissionem bonorum et poenam deportationis subiturum se esse non ambigat et amisso iure matrimonii, quod prohibita usurpatione meruerit, filios se ex hac coniunctione susceptos iustos non habiturum nec umquam postulatae indulgentiae adnotationisve indulto efficacem se veniae effectum meruisse: exceptis his, qui parentum sponsionem de nuptiis filiarum impleri desiderant vel sponsalia, hoc est arrarum data nomine, reddi sibi praecepto legum cum statuta poena deposcunt. <a 409 d. k. febr. ravennae honorio viii et theodosio iii aa. conss.>

CJ.5.8.2pr.: Imperator Zeno

Nefandissimum scelus fratris sororisve filiae nuptiarum, quod sacratissimis constitutionibus sub gravissimae poenae interminatione damnatum est, iterato praesentis divinae sanctionis tenore modis omnibus prohibemus. * zeno a. basilio pp. * <>

CJ.5.8.2.1: Imperator Zeno

Precandi quoque in posterum super tali coniugio, immo potius contagio, cunctis licentiam denegamus, ut unusquisque cognoscat impetrationem quoque rei, cuius est denegata petitio, nec si per subreptionem post hunc diem obtinuerit, sibimet profuturam. <>

CJ.5.9.0. De secundis nuptiis.

CJ.5.9.1pr.: Imperatores Gratianus, Valentinianus, Theodosius

Si qua mulier nequaquam luctus religionem priori viro nuptiarum festinatione praestiterit, ex iure quidem notissimo sit infamis. * grat. valentin. et theodos. aaa. eutropio pp. * <a 380 pp. xv k. ian. gratiano v et theodosio aa. conss.>

CJ.5.9.1.1: Imperatores Gratianus, Valentinianus, Theodosius

Praeterea secundo viro ultra tertiam partem bonorum in dotem ne det neque ei testamento plus quam tertiam partem relinquat. <a 380 pp. xv k. ian. gratiano v et theodosio aa. conss.>

CJ.5.9.1.2: Imperatores Gratianus, Valentinianus, Theodosius

Omnium praeterea hereditatum legatorum fideicommissorum suprema voluntate relictorum, mortis causa donationum sit expers. haec namque ab heredibus vel coheredibus aut ab intestato succedentibus vindicari iubemus, ne in his, quibus correctionem morum induximus, fisci videamur habere rationem. <a 380 pp. xv k. ian. gratiano v et theodosio aa. conss.>

CJ.5.9.1.3: Imperatores Gratianus, Valentinianus, Theodosius

His etiam amittendis, quae prior maritus ei suprema reliquerit voluntate, quamquam haec, quae mulieri a priore viro relinquuntur et per immaturum matrimonium vacuata esse coeperunt, primo a decem personis edicto praetoris enumeratis, id est adscendentibus et descendentibus et ex latere usque ad secundum gradum, scilicet gradibus servatis, deinde praesumi a fisco iubemus. <a 380 pp. xv k. ian. gratiano v et theodosio aa. conss.>

CJ.5.9.1.4: Imperatores Gratianus, Valentinianus, Theodosius

Eandem quoque mulierem infamem redditam hereditates ab intestato, vel legitimas vel honorarias, non ultra tertium gradum sinimus vindicare. <a 380 pp. xv k. ian. gratiano v et theodosio aa. conss.>

CJ.5.9.2: Imperatores Gratianus, Valentinianus, Theodosius

Si qua ex feminis perdito marito intra anni spatium alteri festinavit innubere (parvum enim temporis post decem menses servandum adicimus, tametsi id ipsum exiguum putemus) , probrosis inusta notis honestioris nobilisque personae et decore et iure privetur atque omnia, quae de prioris mariti bonis vel iure sponsalium vel iudicio defuncti coniugis consecuta fuerat, amittat. * grat. valentin. et theodos. aaa. eutropio pp. * <a 381 d. iii k. iun. constantinopoli eucherio et syagrio conss.>

CJ.5.9.3pr.: Imperatores Gratianus, Valentinianus, Theodosius

Feminae, quae susceptis ex priore matrimonio filiis ad secundas post tempus luctui statutum transierint nuptias, quidquid ex facultatibus priorum maritorum sponsalium iure, quidquid etiam nuptiarum sollemnitate perceperint, aut quidquid mortis causa donationibus factis aut testamenti iure directo aut fideicommissi vel legati titulo vel cuiuslibet munificae liberalitatis praemio ex bonis, ut dictum est, priorum maritorum fuerint adsecutae, id totum, ita ut perceperint, integrum ad filios, quos ex praecedente coniugio habuerint, transmittant vel ad quemlibet ex filiis (dummodo ex his tantum, quos tali successione dignissimos iudicamus), in quem contemplatione meritorum liberalitatis suae iudicium mater crediderit dirigendum. * grat. valentin. et theodos. aaa. floro pp. * <a 382 d. xv k. ian. constantinopoli antonio et syagrio conss.>

CJ.5.9.3.1: Imperatores Gratianus, Valentinianus, Theodosius

Nec quicquam eaedem feminae ex isdem facultatibus abalienandi in quamlibet extraneam personam vel successionem ex alterius matrimonii coniunctione susceptam praesumant atque habeant potestatem: possidendi tantum ac fruendi in diem vitae, non etiam abalienandi facultate concessa. nam si quid ex isdem rebus in alium quemlibet fuerit ab ea translatum, ex maternis redintegrabitur facultatibus, quo illibata ad hos quos statuimus liberos bona et incorrupta perveniant. <a 382 d. xv k. ian. constantinopoli antonio et syagrio conss.>

CJ.5.9.3.1a: Imperatores Gratianus, Valentinianus, Theodosius

Illud etiam addimus legi, ut, si aliquis ex isdem filiis, quos ex priore matrimonio susceptos esse constabit, forte decesserit, matre iam secundis nuptiis funestata, aliis etiam ex eodem matrimonio progenitis liberis superstitibus, id, quod per eandem successionem ab intestato vel ex testamento suae posteritatis mater videbitur consecuta, in diem vitae pro sibi debita portione sola tantum possessione delata, omne his qui supererunt ex priore susceptis matrimonio filiis relinquat nec super istiusmodi facultatibus testandi in quamlibet aliam extraneam personam vel quicquam alienandi habeat potestatem. <a 382 d. xv k. ian. constantinopoli antonio et syagrio conss.>

CJ.5.9.3.2: Imperatores Gratianus, Valentinianus, Theodosius

Quod si nullam ex priore matrimonio habuerit successionem vel natus native decesserint, omne, quod quoquo modo percepit, pleni proprietate iuris obtineat atque ex his nanciscendi dominii et testandi circa quem voluerit liberam habeat potestatem. <a 382 d. xv k. ian. constantinopoli antonio et syagrio conss.>

CJ.5.9.4pr.: Imperatores Honorius, Theodosius

Cum aliis sanctionibus iusserimus materna bona integra ad liberos pervenire, quod tamen mulier mariti largitate perceperit, ex eo tantum liberi coniugio procreati sibi speciale tamquam paternum noverint vindicandum. * honor. et theodos. aa. mariniano pp. * <a a.422 d.Iii non. nov ravennae honorio xiii et theodosio x aa. conss.>

CJ.5.9.4.1: Imperatores Honorius, Theodosius

Itaque si habens filios in secundas nuptias fortasse transierit, sponsaliciam largitatem, quam vir secundus contulerit in uxorem, tantummodo filii qui ex secundo matrimonio suscepti sunt pro soliditate possideant, nec prosit liberis ex priore susceptis marito, quod mulier in tertia minime vota migraverit. <a a.422 d.Iii non. nov ravennae honorio xiii et theodosio x aa. conss.>

CJ.5.9.4.2: Imperatores Honorius, Theodosius

Quod si posterior vir sine liberis ex eodem matrimonio susceptis decesserit, quidquid ab eo ex sponsalium largitate uxor fuerit consecuta, id sibi iurique suo sciat esse collatum, etiamsi ex priore matrimonio donator filios reliquisse doceatur. <a a.422 d.Iii non. nov ravennae honorio xiii et theodosio x aa. conss.>

CJ.5.9.4.3: Imperatores Honorius, Theodosius

Ad maternas sane veniens vel ex hoc vel ex quodlibet alio titulo facultates omnis posteritas ex quocumque suscepta viro pro debita sibi portione, ut a matre vel spontanea largitate vel per testamentum eius fuerit collata, possideat. <a a.422 d.Iii non. nov ravennae honorio xiii et theodosio x aa. conss.>

CJ.5.9.4.4: Imperatores Honorius, Theodosius

Nos enim hac lege id praecipue custodiendum esse decrevimus, ut ex quocumque coniugio suscepti filii patrum suorum sponsalicias retineant facultates. <a a.422 d.Iii non. nov ravennae honorio xiii et theodosio x aa. conss.>

CJ.5.9.5pr.: Imperatores Theodosius, Valentinianus

Generaliter censemus, quoquo casu constitutiones ante hanc legem mulierem liberis communibus, morte mariti matrimonio dissoluto, quae de bonis mariti ad eam devoluta sunt servare sanxerunt, isdem casibus maritum quoque quae de bonis mulieris ad eum devoluta sunt morte mulieris matrimonio dissoluto communibus liberis servare, nec interesse, si alter pro marito donationem ante nuptias vel pro muliere dotem crediderit offerendam. * theodos. et valentin. aa. florentio pp. * <a 439 d.Vii id.Sept.Constantinopoli theodosio a.Xvii et festo conss.>

CJ.5.9.5.1: Imperatores Theodosius, Valentinianus

Haec observari praecipimus, licet res ante nuptias donatae, ut adsolet fieri, in dotem a muliere redigantur. <a 439 d.Vii id.Sept.Constantinopoli theodosio a.Xvii et festo conss.>

CJ.5.9.5.2: Imperatores Theodosius, Valentinianus

Dominium autem rerum, quae liberis vel huius legis vel praeteritarum constitutionum auctoritate servantur, ad liberos pertinere decernimus. itaque defuncto eo, qui eas liberis reservabat, extantes ab omni possessore liberi vindicabunt, consumptas ab heredibus eius exigent, qui eas servare debuerat. <a 439 d.Vii id.Sept.Constantinopoli theodosio a.Xvii et festo conss.>

CJ.5.9.5.3: Imperatores Theodosius, Valentinianus

Alienandi sane vel obligandi suo nomine eas res, quae liberis servari praeceptae sunt, eis qui reservaturi sunt adempta licentia est. <a 439 d.Vii id.Sept.Constantinopoli theodosio a.Xvii et festo conss.>

CJ.5.9.5.4: Imperatores Theodosius, Valentinianus

Negotia vero liberorum patri utiliter administrare concedimus. <a 439 d.Vii id.Sept.Constantinopoli theodosio a.Xvii et festo conss.>

CJ.5.9.5.5: Imperatores Theodosius, Valentinianus

Dividendi quoque res inter eos ipsos liberos parentibus pro suo arbitrio vel eligendi quem voluerint licentiam non negamus. <a 439 d.Vii id.Sept.Constantinopoli theodosio a.Xvii et festo conss.>

CJ.5.9.5.6: Imperatores Theodosius, Valentinianus

In his autem casibus, in quibus res ut paternas mater liberis communibus servare praecepta est, hoc est ubi morte mariti matrimonio dissoluto mulier ad alias nuptias venit, vel ubi ut maternas patrem liberis communibus servare censuimus, hoc est ubi morte mulieris matrimonio dissoluto vir ad alias nuptias venit, si hereditatem eius parentis qui prior mortuus est non adierint liberi, licebit eis , tamquam eius tantum res fuerint qui posterior moritur, eas sibimet vindicare, scilicet si vel eius qui posterior moritur hereditatem crediderint adeundam, ne, quod favore liberorum inductum est, quibusdam casibus ad laesionem eorum videatur inventum. <a 439 d.Vii id.Sept.Constantinopoli theodosio a.Xvii et festo con ss.>

CJ.5.9.5.7: Imperatores Theodosius, Valentinianus

Illud etiam humanis sensibus huic legi credidimus inserendum, ut eo quoque casu, quo lucratur vel mulier res, quae ad eam a marito perveniunt, vel maritus eas, quae ex bonis mulieris ad eum transeunt (hoc est ubi primum matrimonium alterius morte dissolvitur nec superstes ad secundas nuptias venit), si res vel maritus vel uxor (hoc est qui superstes est) non consumpserit vel alienaverit (quod eis ad secundas nuptias non venientibus quasi rerum dominis concessum esse non dubium est), liberis liceat res a patre profectas ut paternas, a matre ut maternas accipere. <a 439 d.Vii id.Sept.Constantinopoli theodosio a.Xvii et festo conss.>

CJ.5.9.6pr.: Imperatores Leo, Anthemius

Hac edictali lege in perpetuum valitura sancimus, si ex priore matrimonio procreatis liberis pater vel mater ad secunda vel tertia aut ulterius repetiti matrimonii vota migraverit, non sit ei licitum novercae seu vitrico testamento vel sine scriptura seu codicillis, hereditatisve iure sive legati vel fideicommissi titulo plus relinquere, nec dotis aut ante nuptias donationis nomine seu mortis causa habita donatione conferre nec inter vivos conscribendis donationibus (quae etsi constante matrimonio civili iure interdictae sint, morte tamen donatoris ex certis causis confirmari solent), quam filio vel filiae, si unus vel una extiterit. * leo et anthem. aa. erythrio pp. * <a 472 d.Ii.K.Mart.Marciano cons. >

CJ.5.9.6.1: Imperatores Leo, Anthemius

Quod si plures liberi fuerint, singulis aequas partes habentibus minime plus, quam ad unumquemque eorum pervenerit, ad eorum liceat vitricum novercamve transferri. <a 472 d.Ii.K.Mart.Marciano cons. >

CJ.5.9.6.2: Imperatores Leo, Anthemius

Sin vero non aequis portionibus ad eosdem liberos memoratae transierint facultates, tunc quoque non liceat plus eorum novercae vel vitrico testantem relinquere vel donare seu dotis vel ante nuptias donationis titulo conferre, quam filius vel filia habet, cui minor portio ultima voluntate derelicta vel data fuerit aut donata, ita tamen, ut quarta pars, quae isdem liberis debetur ex legibus, nullo modo minuatur nisi ex his causis, quae de inofficioso excludunt querellas. <a 472 d.Ii.K.Mart.Marciano cons. >

CJ.5.9.6.3: Imperatores Leo, Anthemius

Quam observationem in personis etiam avi et aviae, proavi et proaviae, nepotum vel neptum, item pronepotum vel proneptum, sive in potestate sive emancipati emancipataeve sint, ex paterna vel materna linea venientibus, custodiri censemus. sin vero plus quam statutum est aliquid novercae vel vitrico relictum vel donatum aut datum fuerit, id quod plus relictum vel donatum aut datum fuerit, tamquam non scriptum neque derelictum vel donatum aut datum ad liberorum personas deferri et inter eas dividi iubemus: omni circumscriptione, si qua per interpositam personam vel alio quocumque modo fuerit excogitata, cessante. <a 472 d.Ii.K.Mart.Marciano cons. >

CJ.5.9.6.4: Imperatores Leo, Anthemius

His illud adiungimus, ut mulier in his casibus, in quibus ante nuptias donationes, ceteras etiam res a marito ad se devolutas secundum priorum legum statuta liberis communibus ut paternas servare compellitur (hoc est ubi morte mariti matrimonio dissoluto ad alias nuptias venerit), immobilium rerum et mancipiorum annonarumque civilium usu fructu dumtaxat vitae suae temporibus potiatur, alienatione earum penitus interdicta: <a 472 d.Ii.K.Mart.Marciano cons. >

CJ.5.9.6.5: Imperatores Leo, Anthemius

Mobilium vero rerum, iustis pretiis aestimatione habita per eos, quos utraque pars elegerit, arbitros iudicaturos interposito sacramento, simili modo usum fructum habeat, si idoneam fideiussionem praebuerit, quod easdem res mobiles vel earum pretium filiis et filiabus ex eodem matrimonio procreatis vel post mortem eorum nepotibus et neptibus ex isdem liberis procreatis, sive omnibus vel uno unave superstite mori contigerit, secundum legum modum restituat: <a 472 d.Ii.K.Mart.Marciano cons. >

CJ.5.9.6.6: Imperatores Leo, Anthemius

Vel certe si fideiussiones idoneas praestare distulerit aut nequiverit, praedictae res mobiles necdum matri a liberis traditae apud eosdem manebunt: solutae vero eidem matri vel ab eadem detentae restituentur liberis, si tamen ab his fideiussio idonea matri fuerit oblata, qua caveri debet, quod eidem superstiti pro usu fructu earundem rerum mobilium vel pretio, quo taxatae sunt, usurarum nomine centesimae partem tertiam annuis quibusque temporibus praestare non differant, ita ut in eadem fideiussione hoc quoque caveatur, quod a filiis filiabusque et ex his genitis liberis, si ante eandem matrem omnes eos obire contigerit, omnes res praedictae mobiles secundum legum moderationem matri, ut ad eandem lucrum redeat luctuosum, restituentur. <a 472 d.Ii.K.Mart.Marciano cons. >

CJ.5.9.6.7: Imperatores Leo, Anthemius

Erit itaque licitum utrilibet parti, quae fideiussionem praebuerit, si sibi commodum esse perspexerit, his rebus mobilibus uti frui easdemque dare mutuo vel obligare vel vendere, ut ex his maxime liberi adquirentes possint materno adfectui sine suo incommodo servire. <a 472 d.Ii.K.Mart.Marciano cons. >

CJ.5.9.6.8: Imperatores Leo, Anthemius

Sin autem utraque pars praedictam fideiussionem dissimulaverit aut forte offerre nequiverit, eaedem res apud mulierem usque in diem vitae suae manebunt. <a 472 d.Ii.K.Mart.Marciano cons. >

CJ.5.9.6.9: Imperatores Leo, Anthemius

Omnibus videlicet isdem maritalibus facultatibus, his etiam, quas habet habiturave est, tamquam si iure pignoris vel hypothecae suppositae sint, super eadem ante nuptias donatione vel rebus aliis ad eam ex mariti substantia devolutis ex eo die, quo eaedem res ad eam pervenerint, liberis obligatis, ut, si quis post traditas matri vel detentas ab ea res (si ita contigerit) contractum aliquem cum eadem muliere inierit, quae se repetitis nuptiis copulaverit, in vindicandis isdem suppositis rebus posterior habeatur, liberis, qui ex eodem matrimonio procreati sunt, et nepotibus neptibusve, qui ex his liberis geniti sunt, sine dubio praeponendis. <a 472 d.Ii.K.Mart.Marciano cons. >

CJ.5.9.6.10: Imperatores Leo, Anthemius

Sin vero liberorum suorum adfectione servata pater materve ad alias nuptias migrare noluerit, neque vir his, quae de bonis uxoris ad se transeunt, neque mulier rebus, quae ex substantia mariti ad se pervenerint, pro suo arbitrio uti vel eas vendere aut quocumque iure vel modo eas alienare vel pignoris iure sive hypothecae (si voluerint) obligare, utpote domini earum, prohibebuntur. <a 472 d.Ii.K.Mart.Marciano cons. >

CJ.5.9.6.11: Imperatores Leo, Anthemius

Extantes autem praedictas res, si non fuerint alienatae sive consumptae vel suppositae, licebit liberis vindicare etiam non adeuntibus hereditatem parentum. <a 472 d.Ii.K.Mart.Marciano cons. >

CJ.5.9.7: Imperator Zeno

In quibus casibus pater dotem, mater ante nuptias donationem vel alias res ad se ex altera parte devolutas filiis utriusque sexus servare praecepti sunt, si quem ex filiis vel filiabus ante patris vel matris obitum mori contigerit sive ante secundas nuptias sive postea, filio vel filia vel nepte aut nepote vel pluribus patre suo adhuc vivo vel matre superstite derelictis, portionem, quae defuncto filio vel filiae debebatur vel lucrum ex ea non ad fratres vel sorores mortui, sed ad filios eius vel filias vel nepotes utriusque sexus aut pronepotes avis vel proavis superstitibus pervenire decernimus: eligendi videlicet quos voluerint ex liberis superstitibus non adempta licentia. * zeno a. sebastiano pp. * <a 478 d.K.Mart. marciano cons. >

CJ.5.9.8pr.: Imperator Justinianus

Si quis prioris matrimonii filiorum ante secundas nuptias patris vel matris mortuus fuerit filiis a se vel nepotibus vel pronepotibus relictis, partem eius non ad fratres vel, si nullus alius frater vel soror sit, ad patrem vel matrem eius pervenire, sed ad filios vel nepotes vel pronepotes eiusdem mortuae personae sancimus, ut, sive unus sive plures sint, eam tantummodo partem vindicare possint , quae mortuo competit. * iust. a. menae pp. * <a 528 d. iii id. dec. dn. iustiniano a. ii cons.>

CJ.5.9.8.1: Imperator Justinianus

Illud etiam certa sanctione definire censemus, ut, si quis vel si qua ex aliquo matrimonio filiis procreatis minime ad secundas venerit nuptias, ut eo modo liceat quidem genitori res ex priore coniugio sibi adquisitas quo modo voluerit alienare vel administrare, si quae vero earum minime sint alienatae, possint liberi etiam non adeuntes paternam vel maternam hereditatem eas vindicare, certum esse sancimus, quod etiam illa de cetero videbitur earundem fuisse rerum alienatio, quae in testamento genitoris vel specialiter relinquendo vel generaliter heredem instituendo facta sit. <a 528 d. iii id. dec. dn. iustiniano a. ii cons.>

CJ.5.9.8.2: Imperator Justinianus

Talem vero licentiam filiis, ut etiam non adeuntes paternam vel maternam hereditatem lucra vindicarent, quae parens eorum ex matrimonio, quod secundo toro minime mutavit, sibi adquisita non alienavit, nullo modo eis concedimus, si paternam vel maternam hereditatem ab intestato ex parte (si forte alii etiam ex anteriore matrimonio morienti parenti filii sint) sibi adquisierint. <a 528 d. iii id. dec. dn. iustiniano a. ii cons.>

CJ.5.9.8.3: Imperator Justinianus

In illo etiam veterem sanctionem adimplentes praecipimus exemplo matris, cuius res post secundas nuptias filiis ex priore matrimonio natis suppositae sunt ad conservanda eis lucra, quae ex priore marito ad eam pervenerunt, patris quoque bona, quae habet habiturusque est, filiis ex priore matrimonio natis post secundas eius nuptias ad ea conservanda, quae ex eorum matre lucratus est, supposita esse. <a 528 d. iii id. dec. dn. iustiniano a. ii cons.>

CJ.5.9.8.4: Imperator Justinianus

Illius etiam patris, qui in sua potestate talem liberum vel liberos habens maternam eis substantiam vel ex materna linea ad eos devolutam servare compellitur, isdem liberis bona supposita esse ad conservandas easdem maternas res decernimus : ita tamen, ut occasione talium hypothecarum neque patris neque matris filii valeant administrationem perscrutari vel aliquam eis movere super hoc quaestionem , cum perspicui iuris sit, etiamsi alienata sint eorum bona, quae extra memorata lucra vel maternas res sunt, ius hypothecae integrum isdem manere filiis. <a 528 d. iii id. dec. dn. iustiniano a. ii cons.>

CJ.5.9.9pr.: Imperator Justinianus

Quoniam praeteritae leges omnia, quae liberis ex priore matrimonio procreatis mulier quidem secundo marito, vir autem uxori secundae dotis vel ante nuptias donationis nomine vel alio quocumque modo dederit vel reliquerit ampliora his, quae uni filio vel filiae ex anteriore matrimonio progenitis danda vel relinquenda sunt, revocata ad solos filios ex priore matrimonio natos pervenire constituerunt nullaque in hac parte filiorum ex secundo matrimonio natorum mentio facta est, hoc quoque corrigentes omnia quae memorato modo revocantur non solum ad filios prioris matrimonii, sed etiam ad eos qui ex secundis nuptiis nati fuerint pertinere et in capita inter omnes dividenda sancimus. * iust. a. menae pp. * <a 529 d.Id.April.Constantinopoli decio vc.Cons.>

CJ.5.9.9.1: Imperator Justinianus

Ad haec lucra, quae marito vel uxori ex dote vel ante nuptias donatione occasione repudii accedunt, indistincte post secundas eorum nuptias liberis ex priore coniugio procreatis ad similitudinem matrimonii morte dissoluti servari nec de cetero repudii causam requiri vel aliam in ea re exquisitionem fieri. <a 529 d.Id.April.Constantinopoli decio vc.Cons.>

CJ.5.9.10pr.: Imperator Justinianus

Cum apertissime legibus cavetur ingratos liberos a maiorum suorum hereditate merito esse repellendos, si hoc idem in suis elogiis conscripserint et re vera fuerit revelatum, reclamare videtur huiusmodi sanctioni divalis constitutio leonis inclitae recordationis, quam super filiis ex priore matrimonio procreatis conscripsit. * iust. a. demostheni pp. * <a 529 d.Xv.K.Oct chalcedone decio vc. cons.>

CJ.5.9.10.1: Imperator Justinianus

Nam cum necessitas est patri vel matri, qui ad secunda vota migraverunt, tantum praestare per quamcumque causam secundo marito vel novercae quantum filio vel filiae ex anterioribus nuptiis progenitis qui partem minimam habiturus est reliquerit, maxima iniquitas ex hac sanctione contra genitores efficiebatur. <a 529 d.Xv.K.Oct chalcedone decio vc. cons.>

CJ.5.9.10.2: Imperator Justinianus

Liberi etenim scientes, quod omnimodo aliquid sibi a genitoribus suis et nolentibus relinquendum est, et tantum, quantum secundus maritus vel noverca acceperit , cum omni licentia et lascivia suos genitores iniuriis adficiebant. <a 529 d.Xv.K.Oct chalcedone decio vc. cons.>

CJ.5.9.10.3: Imperator Justinianus

Quapropter sancimus ingratos re vera liberos neque hoc beneficium, quod divalis constitutio leonis augustae memoriae eis praestitit, in posterum posse sibi vindicare, sed quasi ingratos ab omni huiusmodi lucro repelli. <a 529 d.Xv.K.Oct chalcedone decio vc. cons.>

CJ.5.9.10.4: Imperator Justinianus

Quam observationem in personis etiam avi et aviae, proavi et proaviae, nepotum vel neptum, item pronepotum et proneptum, sive in potestate sive emancipati emancipataeve sint, ex paterna vel materna linea venientibus custodiri censemus. <a 529 d.Xv.K.Oct chalcedone decio vc. cons.>

CJ.5.9.10.5: Imperator Justinianus

Sed quemadmodum genitoribus providimus, ita et innocuam posteritatem nullis adfici iniuriis patimur, ut non genitores, qui sese secundis nuptiis devoverunt, inrationabile odium ad priores liberos forsitan habentes sine iusta ratione eos ingratos vocare concedantur. <a 529 d.Xv.K.Oct chalcedone decio vc. cons.>

CJ.5.9.10.6: Imperator Justinianus

Eos etenim liberos huiusmodi beneficio defraudari volumus, qui re ipsa ingrati circa suam antiquitatem ab heredibus genitorum liquidis et indubitatis probationibus convicti fuerint ex huiusmodi casibus, qui antea priscis legibus enumerati sunt. <a 529 d.Xv.K.Oct chalcedone decio vc. cons.>

CJ.5.10.0. Si secundo nupserit mulier, cui maritus usum fructum reliquerit.

CJ.5.10.1pr.: Imperatores Valentinianus, Theodosius, Arcadius

Si usum fructum maritus rerum suarum decedens uxori reliquerit eaque in secundas nuptias consortiumque convenerit, usum fructum, quem ex priore marito consecuta fuerit, amittat atque eum filiis ex die quo nupserit mature restituat. * valentin. theodos. et arcad. aaa. tatiano pp. * <a 392 d.Id.Mart.Arcadio a.Ii et rufino conss.>

CJ.5.10.1.1: Imperatores Valentinianus, Theodosius, Arcadius

Quod si liberos ex priore matrimonio adhuc imbecillitas habebit infantiae nec muniet tutoris auxilium ac per huiusmodi occasionem mater quae relicta fuerant usurpaverit, omnia, cum legitime repetantur, cum competentibus fructibus ad liquidum deducta ratione restituet. <a 392 d.Id.Mart.Arcadio a.Ii et rufino conss.>

CJ.5.10.1.2: Imperatores Valentinianus, Theodosius, Arcadius

Haec de usu fructu, quem vir extremam constituentis voluntatem de rebus propriis uxori reliquerit. de usu fructu vero rerum ante nuptias donatarum ea servari quae anteriores constitutiones decreverunt sancimus. <a 392 d.Id.Mart.Arcadio a.Ii et rufino conss.>

CJ.5.11.0. De dotis promissione vel nuda pollicitatione.

CJ.5.11.1: Imperator Alexander Severus

Frustra existimas actionem tibi competere, quasi promissa dos tibi nec praestita sit, cum neque species ulla nec quantitas promissa sit, sed hactenus nuptiali instrumento adscriptum, quod ea quae nubebat dotem dare promiserit. * alex. a. claudio. * <a 231 pp.K.Aug. pompeiano et peligno conss.>

CJ.5.11.2: Imperator Gordianus

Si pro dote promissa usuras dare socer tuus spopondit, id quod deberi ostenderis competens iudex solvi tibi praecipiet. * gord. a. herodoto. * <a 238 pp. xii k. sept. pio et pontiano conss.>

CJ.5.11.3: Imperator Gordianus

Si, cum ea quae tibi matrimonio copulata est nuberet, is cuius meministi dotem tibi non addita quantitate, sed quodcumque arbitratus fuisset pro ea daturum se rite promisit et interpositae stipulationis fidem non exhibet, competentibus actionibus usus ad repromissi emolumentum iure iudiciorum perveniens: videtur enim boni viri arbitrium stipulationi insertum esse. * gord. a.Claudio. * <a 240 pp.K.Ian.Sabino et venusto conss.>

CJ.5.11.4: Imperatores Diocletianus, Maximianus

Si voluntate dotantis in dotali instrumento plura tibi tradita scripsisti quam suscepisti, intellegis de his quae desunt petendis pactum esse consecutum. * diocl. et maxim. aa. et cc. rufo. * <a 293 s.Non.April.Aa.Conss.>

CJ.5.11.5: Imperatores Diocletianus, Maximianus

Si pro te pater marito tuo stipulanti promisit dotem, non tibi, sed marito contra successores soceri competit actio. * diocl. et maxim. aa.Et cc.Dasumianae. * <a 293 d.Viii k.Dec.Aa.Conss.>

CJ.5.11.6: Imperatores Theodosius, Valentinianus

Ad exactionem dotis, quam semel praestari placuit, qualiacumque sufficere verba censemus, sive scripta fuerint, sive non, etiamsi stipulatio in pollicitatione rerum dotalium minime fuerit subsecuta. * theodos. et valentin. aa. hierio pp. * <a 428 d. x k.Mart. constantinopoli felice et tauro conss.>

CJ.5.11.7pr.: Imperator Justinianus

Si pater dotem pro filia simpliciter dederit vel pro filio ante nuptias donationem fecerit, habeat autem filius vel in potestate constitutus vel forte emancipatus res maternas vel ex alio modo tales, quae adquisitionem effugiunt, quarum usus fructus solus apud patrem remanet, vel quocumque modo poterat quasdam actionem contra patrem habere, dubitabatur apud veteres, utrumne videatur pater ex ipso debito dotis vel ante nuptias donationis fecisse promissionem vel dationem, ut sese ab huiusmodi nexu liberet, an debitum quidem remanet in sua natura, liberalitas autem paterna dotem vel ante nuptias donationem dare suggessit. * iust. a. iohanni pp. * <a 531 d.K. nov. post consulatum lampadii et orestis vv. cc.>

CJ.5.11.7.1: Imperator Justinianus

Et in tali dubitatione multa pars legislatorum sese divisit, alio etiam incremento huiusmodi quaestioni addito, si forte dixerit in instrumento dotali ex rebus paternis et maternis dotem vel ante nuptias donationem dare, utrum pro dimidia parte videtur datio vel promissio facta esse, an pro rata portione utriusque substantiae. <a 531 d.K. nov. post consulatum lampadii et orestis vv. cc.>

CJ.5.11.7.2: Imperator Justinianus

Utramque igitur dubitationem certo fini tradentes sancimus, si quidem nihil addendum existimaverit, sed simpliciter dotem vel ante nuptias donationem dederit vel promiserit, ex sua liberalitate hoc fecisse intellegi, debito in sua figura remanente. neque enim leges incognitae sunt, quibus cautum est omnimodo paternum esse officium dotes vel ante nuptias donationes pro sua dare progenie. <a 531 d.K. nov. post consulatum lampadii et orestis vv. cc.>

CJ.5.11.7.3: Imperator Justinianus

Et liberalitas itaque talis maneat vera et inrevocabilis et puro nomine liberalitas, et debitum suam sequatur fortunam. <a 531 d.K. nov. post consulatum lampadii et orestis vv. cc.>

CJ.5.11.7.4: Imperator Justinianus

Ubi autem ex rebus tam suis quam maternis vel aliis quae non adquiruntur vel ex suis debitis dixerit fecisse huiusmodi liberalitates, tunc si quidem penitus inopia tentus est, ex illis videri rebus dotem vel ante nuptias donationem esse datam, quae ad filios vel filias pertinent. <a 531 d.K. nov. post consulatum lampadii et orestis vv. cc.>

CJ.5.11.7.5: Imperator Justinianus

Si vero et ipse substantiam idoneam possidet, et in hoc casu de suo patrimonio dotem vel ante nuptias donationem dedisse intellegatur. poterat enim secundum suas vires dotem pro filia vel ante nuptias donationem pro filio dare et consentire filiis suis, quando voluerint partem vel forte totam suam substantiam quam habent paternae liberalitati pro dote et ante nuptias donatione adgregare, ut re vera appareat, quid ipse vult dare et quid de substantia filiorum proficiscitur , ne, dum effuso sermone sese iactet, in promptum incidat sui periculum. <a 531 d.K. nov. post consulatum lampadii et orestis vv. cc.>

CJ.5.12.0. De iure dotium.

CJ.5.12.1pr.: Imperatores Severus, Antoninus

Evicta re, quae fuerat in dotem data, si pollicitatio vel promissio fuerit interposita, gener contra socerum vel mulierem seu heredes eorum condictione vel ex stipulatione agere potest. * sev. et ant. aa. nicephoro. * <a 201 pp.K.Aug. muciano et fabiano conss.>

CJ.5.12.1.1: Imperatores Severus, Antoninus

Sin autem nulla pollicitatio vel promissio intercesserit, post evictionem eius, si quidem res aestimata fuerit, ex empto competit actio. <a 201 pp.K.Aug. muciano et fabiano conss.>

CJ.5.12.1.2: Imperatores Severus, Antoninus

Sin vero hoc non factum est, si quidem bona fide eadem res in dotem data est, nulla marito competit actio: dolo autem dantis interposito de dolo actio adversus eum locum habebit, nisi a muliere dolus interpositus sit: tunc enim, ne famosa actio adversus eam detur, in factum actio competit. <a 201 pp.K.Aug. muciano et fabiano conss.>

CJ.5.12.2pr.: Imperator Antoninus

Si stipulatio de restituenda portione dotis datae subiecta est condicioque eius extitit, habet ex ea actionem, in cuius personam utiliter concepta commissaque est. * ant. a. alcibiadi. * <a 213 pp.D.Iii k. aug. antonino a.Iiii et balbino conss.>

CJ.5.12.2.1: Imperator Antoninus

Secundum quod si polla soror tua de restituenda sibi parte dotis habet actionem eo, quod mater vestra donandi animo passa est partem dimidiam dotis post obitum matris filiam stipulari, metuere non debet doli exceptionem, quod matri suae quae pactum interposuit heres ex minore quam dimidia portione extitit, nisi liquido probatum fuerit matrem eius mutasse dotis pacti voluntatem contentamque esse voluisse filiam suam pro portione hereditatis praelegationibus maritumque suum exactione liberari voluisse. <a 213 pp.D.Iii k. aug. antonino a.Iiii et balbino conss.>

CJ.5.12.3: Imperator Alexander Severus

Etsi dotis exactio defuncta in matrimonio filia potuisset ad patrem pertinere, dotalibus tamen servis maritus testamento directam et fideicommissariam libertatem iure dedit et praestita revocari non debuit, cum et inter vivos manumittendi mancipia dotalia constante matrimonio liberam maritus habet facultatem. * alex. a. euphemo. * <a 222 pp.Vi id. dec. antonino et alexandro conss.>

CJ.5.12.4: Imperator Alexander Severus

Nulla lege prohibitum est universa bona in dotem marito feminam dare. * alex. a. valenti. * <a 223 pp. iiii id. iul. maximo ii et aeliano conss.>

CJ.5.12.5: Imperator Alexander Severus

Quotiens res aestimatae in dotem dantur, maritus dominium consecutus summae velut pretii debitor efficitur. si itaque non convenit, ut soluto matrimonio res restituerentur et iure aestimatae sunt, retinebit eas, si pecuniam tibi offerat. * alex. a. statiae. * <a 226 d.Iii id.April.Alexandro a. ii et Marcello conss.>

CJ.5.12.6: Imperator Alexander Severus

Avia tua eorum, quae pro filia tua in dotem dedit, etsi verborum obligatio non intercessit, actionem ex fide conventionis ad te, si heres extitisti, transmittere potuit. nec enim eadem causa est patris et matris paciscentium, quippe matris pactum actionem praescriptis verbis constituit, patris dotis actionem profecticiae nomine competentem conventione simplici minime creditur innovare. * alex. a. sulpicio. * <a 236 d.Iii id febr.Maximino a. et africano conss.>

CJ.5.12.7: Imperator Gordianus

Cum a socero tuo pro uxore dos tibi daretur, si ea in stipulationem deducta non est sub tempore dationis, sed postea, socer tuus tecum paciscendo, si id non ex voluntate filiae suae fecit, condicionem eius laedere non potuit. quandoque enim sola de dote experiens id pactum non debere ad sui dispendium operari de iure defenditur. * gord. a. marco. * <a 238 pp. d. k. octobribus pio et pontiano conss.>

CJ.5.12.8: Imperator Gordianus

Etiamsi non dotem reddi sibi mater, sed ea, quae in dotem data sunt, ut eam sequerentur vel ad se pertineant in matrimonio defuncta filia, stipulata sit, durante matrimonio filia decedente actionem ex stipulatu videri quaesitam aequissimum esse iudicamus. cui consequens est, ut etiam id, quod additamenti causa in dotem datum est, eadem actione repetatur. * gord. a. agrippinae. * <a 240 pp.K.Febr. sabino et venusto conss.>

CJ.5.12.9: Imperator dec.

Dotis tuae potiorem causam magis esse convenit quam rei publicae, cui postea idem maritus obnoxius factus est. * dec. a. et dec. c. urbicanae. * <a 250 pp. vi id iun. decio a. et grato conss.>

CJ.5.12.10: Imperatores Diocletianus, Maximianus

Cum dotem te aestimatam accepisse profitearis, apparet iure communi per pactum quod doti insertum est formato contractu ex empto actionem esse. quis enim dubitet aestimationem a te mulieri deberi, cum periculo tuo res deteriores fiant vel augmenta lucro tuo recipiantur? * diocl. et maxim. aa. ingenuo. * <a 286 pp. xii k.Mai. maximo ii et aquilino conss.>

CJ.5.12.11: Imperatores Diocletianus, Maximianus

De his, quae in dotem data ac direpta commemoras, mariti tui esse actionem nulla est dubitatio. * diocl. et maxim. aa. et cc. severae. * <a 293 d. x k. mai heracliae aa. conss.>

CJ.5.12.12: Imperatores Diocletianus, Maximianus

Ex pecunia dotali fundus a marito tuo comparatus non tibi quaeritur, cum neque maritus uxori actionem empti possit adquirere ac dotis tantum actio tibi competat. unde aditus praeses provinciae, si non te transegisse reppererit, sed ex maiore dote partem consecutam, residuum restitui providebit. * diocl. et maxim. aa. et cc. rufinae. * <a 293 d. viii k. mai heracliae aa. conss.>

CJ.5.12.13: Imperatores Diocletianus, Maximianus

Si a matre vestra superstite aliquid ad vos pertinens in dotem scienti vitrico vestro datum est, intellegis nullam firmitatem iuris dationem habere, si neque pollicitatio neque stipulatio intercessit. * diocl. et maxim. aa. et cc. catulae. * <a 293 d. prid.K.Mai. heracliae aa. conss.>

CJ.5.12.14: Imperatores Diocletianus, Maximianus

Mater pro filia dotem dare non cogitur nisi ex magna et probabili vel lege specialiter expressa causa: pater autem de bonis uxoris suae invitae nullam dandi habet facultatem. * diocl. et maxim. aa. et cc. basilissae. * <a 293 s.D.Iiii non.Nov.Philippopoli aa. conss.>

CJ.5.12.15: Imperatores Diocletianus, Maximianus

Cum citra fidem etiam instrumentorum datam dotem aliunde probanti post divortium quondam uxoris secundum bonam fidem restitui debere constet, amissis etiam instrumentis sine dubio cetera probationum indicia iure prodita non habentur irrita. * diocl. et maxim. aa. et cc. ulpianae. * <a 293 d.Viii k. aug.Sirmi aa. conss.>

CJ.5.12.16: Imperatores Diocletianus, Maximianus

Ante divisionem soror tua intestato patri etiam ipsa succedens pro indiviso portionem fundi communis in dotem dare non prohibetur. * diocl. et maxim. aa. et cc. aemiliano. * <a 294 d. non. iul. sirmi cc. conss.>

CJ.5.12.17: Imperatores Diocletianus, Maximianus

Res, quarum usu fructu sibi deducto socrus in dotem dedit, venumdando auferre tibi nihil potest. * diocl. et maxim. aa. et cc. sabiniano. * <a 294 d. nonis iul. sirmi cc. conss.>

CJ.5.12.18: Imperatores Diocletianus, Maximianus

Si socrus tua fundum deducto usu fructu uxori tuae donavit tibique in dotem uxor quidem proprietatem, socrus autem usum fructum dedit, uxore tua rebus humanis in matrimonio exempta fundum apud te remansisse secundum placiti inter vos fidem non ambigitur. nam si acceptura certum quid annuum filiae suae usum fructum locavit, mortua conductrice usus fructus extingui minime potuit. * diocl. et maxim. aa. et cc. menestrato. * <a 294 d. xiiii k.Ian.Sirmi cc. conss.>

CJ.5.12.19pr.: Imperatores Diocletianus, Maximianus

Cum patrem pro filia dotem tibi dantem, si post suam mortem in matrimonio constituta rebus humanis eadem eximatur, partem dimidiam dotis ammiae reddi pactum proponas, post vero testamento facto cum aliis etiam ammiam heredem scripsisse nec ammiam quicquam ex stipulatu petere velle sanxisse, si quidem hanc sibi reddi secundum fidem pacti stipulatam ammiam non probetur, ex alieno pacto nec prorsus ei ulla competit actio. * diocl. et maxim. aa. et cc. achilli. * <a 294 d. xiii k. febr. sirmi cc. conss.>

CJ.5.12.19.1: Imperatores Diocletianus, Maximianus

Si vero ex verborum conceptione sibi quaesivit obligationem ac tibi testatorem prospexisse probetur, contra eam ex stipulatu post eventum condicionis petentem, quatenus accepit ex defuncti voluntate quae fuit stipulata, exceptione (salva falcidia) uti potes. <a 294 d. xiii k. febr. sirmi cc. conss.>

CJ.5.12.20: Imperatores Diocletianus, Maximianus

Pro oneribus matrimonii mariti lucro fructus dotis totius esse, quos ipse cepit, vel, si uxori capere donationis causa permisit, eum in quantum locupletior facta est posse agere manifestissimi iuris est. * diocl. et maxim. aa. et cc. tiberio. * <a 294 d.V k.Sirmimai. cc. conss.>

CJ.5.12.21: Imperatores Diocletianus, Maximianus

Si inter virum et uxorem pactum sit interpositum, ut, si matrimonium intra quinquennii forte tempora quoquo modo esset dissolutum, species aestimatae doti datae pretiis quibus aestimatae sunt redderentur, manifestum est non pretia specierum dari, sed ipsas species debere restitui, cum in placido specierum reddendarum idcirco pretiorum nomen videatur adnexum, ne, si species aliqua deminuta fuisset aut perdita, alio pretio quam quo taxata fuerat posceretur. * diocl. et maxim. aa. et cc. ad geminum. * <a 294 d.Non.Aug.Agrippinae cc.Conss.>

CJ.5.12.22: Imperatores Diocletianus, Maximianus

Rem, quam pater in dotem genero pro filia dedit nec recepit, alienare non potest. * diocl. et maxim. aa. et cc. polybianae. * <a 294 d.V k.Oct.Isdem cc.Conss.>

CJ.5.12.23: Imperatores Diocletianus, Maximianus

Si praedium uxor tua dotale venumdedit, sponte nec ne contractum habuerit, nihil interest, cum rei tibi quaesitae dominium auferre nolenti minime potuerit. * diocl. et maxim. aa. et cc. diogeni. * <a 294 d. v k. oct.Viminaci cc. conss.>

CJ.5.12.24: Imperatores Diocletianus, Maximianus

Si dotem marito libertae vestrae dedistis nec eam reddi soluto matrimonio vobis in continenti pacto vel stipulatione prospexistis, hanc culpa uxoris dissoluto matrimonio penes maritum remansisse constitit, licet eam ingratam circa vos fuisse ostenderitis. * diocl. et maxim. aa. et cc. aurelio et lysimacho. * <a 294 d.Vi k.Nov.Antiochiae cc.Cc. conss.>

CJ.5.12.25: Imperatores Diocletianus, Maximianus

Si mulier dotem a viro dari stipuletur, ut de ea testari possit, cum ordinationis testamenti cogitatio mortis antecedens tempus significat nec condicionem, sed causam continet, intestata quoque muliere defuncta stipulationem committi proficiet. * diocl. et maxim. aa. et cc. eutychiano. * <a 294 d. iii id. nov. antiochiae cc. cc. conss.>

CJ.5.12.26: Imperatores Diocletianus, Maximianus

Si genero dotem dando pro filia pater communis eam reddi tibi extraneo constituto stipulatus est, nec sibi cessante voluntate nec tibi prohibente iure quaerere potuit actionem. * diocl. et maxim. aa. et cc. demostheni. * <a 294 d. vi k. ian ipsis cc. conss.>

CJ.5.12.27: Imperatores Diocletianus, Maximianus

Licet dos iure penes maritum remanserit, pro rebus tamen hereditariis successores, non maritus quondam, sollemnibus pensitationibus parere debent. * diocl. et maxim. aa. et cc. pompeiano. * <a 294 s.Vi k.Ian.Sirmi.C. conss.>

CJ.5.12.28pr.: Imperator Zeno

Mulier in minore aetate constituta dotem marito consentiente generali vel speciali curatore recte dare et exigi potest, licet ipse tempore creationis fideiussorem in minorem quam dos est quantitatem dicitur praestitisse. * zeno a. aeliano pp. * <a 480 d.K.Ian.Basilio cons.>

CJ.5.12.28.1: Imperator Zeno

Hoc idem observatur et si minor ante nuptias donationem consentiente, ut dictum est, curatore fecerit. <a 480 d.K.Ian.Basilio cons.>

CJ.5.12.29pr.: Imperator Justinianus

Ubi adhuc matrimonio constituto maritus ad inopiam sit deductus et mulier sibi prospicere velit resque sibi suppositas pro dote et ante nuptias donatione rebusque extra dotem constitutis tenere, non tantum mariti res ei tenenti et super his ad iudicium vocatae exceptionis praesidium ad expellendum ab hypotheca creditorem secundum praestamus, sed etiam si ipsa contra detentatores rerum ad maritum suum pertinentium super isdem hypothecis aliquam actionem secundum legum distinctionem moveat, non obesse ei matrimonium adhuc constitutum sancimus, sed ita eam posse easdem res vindicare vel a creditoribus posterioribus vel ab aliis, qui non potiora iura legibus habere noscuntur, ut potuisset, si matrimonium eo modo esset dissolutum, quo dotis et ante nuptias donationis exactio ei competere poterat: ita tamen, ut eadem mulier nullam habeat licentiam eas res alienandi vivente marito et matrimonio inter eos constituto, sed fructibus earum ad sustentationem tam sui quam mariti filiorumque, si quos habeant, abutatur. * iust. a. menae pp. * <a 528 d. iii id.Dec. dn. iustiniano a. ii cons.>

CJ.5.12.29.1: Imperator Justinianus

Creditoribus scilicet mariti contra eum eiusque res, si quas postea forte adquisierit, integra sua iura habentibus: ipsis etiam marito et uxore post matrimonii dissolutionem super dote et ante nuptias donatione pro dotalium instrumentorum tenore integro suo iure potituris. <a 528 d. iii id.Dec. dn. iustiniano a. ii cons.>

CJ.5.12.30pr.: Imperator Justinianus

In rebus dotalibus sive mobilibus sive immobilibus seu se moventibus, si tamen extant, sive aestimatae sive inaestimatae sint, mulierem in his vindicandis omnem habere post dissolutum matrimonium praerogativam et neminem creditorum mariti , qui anteriores sunt, sibi potiorem causam in his per hypothecam vindicare, cum eaedem res et ab initio uxoris fuerant et naturaliter in eius permanserunt dominio. non enim quod legum subtilitate transitus earum in mariti patrimonium videtur fieri, ideo rei veritas deleta vel confusa est. * iust. a. demostheni pp. * <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.5.12.30.1: Imperator Justinianus

Volumus itaque eam in rem actionem quasi in huiusmodi rebus propriis habere et hypothecariam omnibus anteriorem possidere, ut, sive ex naturali iure eiusdem mulieris res esse intellegantur vel secundum legum subtilitatem ad mariti substantiam pervenisse, per utramque viam sive in rem sive hypothecariam ei plenissime consulatur. <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.5.12.30.2: Imperator Justinianus

Omnis autem temporalis exceptio, sive per usucapionem inducta sive per decem sive per viginti annorum curricula seu per triginta vel quadraginta annorum metas sive ex alio quocumque tempore maiore vel minore introducta, ea mulieribus ex eo opponatur, ex quo possint actiones movere, id est opulentis quidem maritis constitutis post dissolutum matrimonium, minus autem idoneis ex quo hoc eis infortunium illatum esse claruerit, cum constante etiam matrimonio posse mulieres contra maritorum parum idoneorum bona hypothecas suas exercere iam nostra lege humanitatis intuitu definitum est: ficti divortii falsa simulatione in huiusmodi causa, quam nostra lex amplexa est, stirpitus eruenda. <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.5.12.31pr.: Imperator Justinianus

Cum quidam dotes pro mulieribus dabant sive matres sive alii cognati vel extranei, recte quidem eas mariti sine monumentorum observatione suscipiebant: cum autem mulier redhibitionem casus stipulabatur et huiusmodi fortuitus casus evenisset, ipsa mulier utpote a se non facta donatione propter hoc, quod monumenta deerant, necessitatem habebat actiones huiusmodi casus ad eum qui dotem dedit per cessionem transferre vel ipsas res reddere: et ita inveniebatur forsitan post prolixa matrimonii annorum curricula et liberos forte editos infelix mulier indotata. * iust. a. iuliano pp. * <a 530 d.Xii k. april. lampadio et oreste vv.Cc.>

CJ.5.12.31.1: Imperator Justinianus

Sancimus itaque in huiusmodi omnibus casibus nullis monumentis rem indigere, sed in omni persona ratas esse huiusmodi donationes et mulierem dotem suam ipsam habere, cum fortuitus casus hoc lucrum ei addiderit, et firmiter hoc apud eam permanere, nisi ipse, qui ab initio dotem dederit, sibi dari huiusmodi casum stipulatus est: tunc etenim, cum neque ab initio suspicio aliqua liberorum concurrit , sed sibi omnem rem ille qui dotem dedit pepigerit, huiusmodi tractatus habere locum non potest. <a 530 d.Xii k. april. lampadio et oreste vv.Cc.>

CJ.5.12.31.2: Imperator Justinianus

Atqui in aliis omnibus casibus, in quibus ipse non stipulatus est, tristitiae suae mulier hoc proprium habeat solacium per actionem dotis. <a 530 d.Xii k. april. lampadio et oreste vv.Cc.>

CJ.5.12.31.3: Imperator Justinianus

Similique modo si quis extraneorum (id est qui eum pro quo dat non in potestate habeat) pro alio ante nuptias donationem nupturae dedit mulieri et necessaria monumenta adhibuerit, cum excedat summam legitimam donatio, vel non minor mater familias nuptura sit, non solum ad eam, cui ante nuptias donatio datur, monumenta suam habeant firmitatem, sed etiam ad illum pro quo dedit, ut, si lucrum ei ex dotalibus pactis accesserit, non hoc cedat donatori, sed in suum lucrum hoc maritus convertat firmumque et inrevocabile habeat, nisi donator et hic sibi reddi huiusmodi casum fuerit stipulatus, ne et in praefato casu simile anteriori vitium oriatur. <a 530 d.Xii k. april. lampadio et oreste vv.Cc.>

CJ.5.12.31.4: Imperator Justinianus

Sin autem minor quantitas sit vel ita res gesta sit, ut monumentorum ex omni parte nulla sit utilitas, et tunc donatio ad utramque personam valeat et maritus casum lucretur, nisi et hic donator eum stipulatus sit. <a 530 d.Xii k. april. lampadio et oreste vv.Cc.>

CJ.5.12.31.5: Imperator Justinianus

Praeterea sancimus, si quis in dotem vel praedia vel certum reditum vel aedes vel panes civiles spopondit vel promisit, si ex tempore matrimonii biennium transactum sit, ilico redituum vel pensionum nec non panis civilis quaestum eum praestare, etiamsi non fuerint adhuc res principales traditae: et si tota dos in auro sit, itidem post biennium usuras usque ad tertiam partem centesimae praestari. <a 530 d.Xii k. april. lampadio et oreste vv.Cc.>

CJ.5.12.31.6: Imperator Justinianus

Sin autem aliae res praeter immobiles vel aurum fuerint in dote, sive in argento sive in muliebribus ornamentis sive in veste sive in aliis quibuscumque, si quidem aestimatae fuerint, simili modo post biennium et earum usuras ex tertia parte currere: aestimatione earum, quia et hoc apertius declarare oportet, ea intellegenda, quae pro singulis speciebus facta est vel pro unoquoque genere dotalium specierum, id est pro argento vel pro ornamentis vel pro veste aliisque speciebus, et non esse exspectandam post singulas aestimationes unam coadunationem totius calculi, quod satis scrupulosum et per nimiam subtilitatem perniciosum est. <a 530 d.Xii k. april. lampadio et oreste vv.Cc.>

CJ.5.12.31.7: Imperator Justinianus

Sin autem minime res mobiles fuerint aestimatae, ea post biennium observari, quae leges post litem contestatam pro omnibus huiusmodi rebus definiunt. <a 530 d.Xii k. april. lampadio et oreste vv.Cc.>

CJ.5.12.31.8: Imperator Justinianus

Sin vero res permixtae fuerint et partim in auro partim in aliis rebus mobilibus vel immobilibus, pro iam facta divisione omnia procedere. licentia minime deneganda marito quando voluerit dotem petere, ne is qui debet putet sibi licentiam esse reditus vel pensiones vel usuras vel alias accessiones solventi dotis solutionem protelare: sed sive ante biennium sive postea voluerit dotem pars mariti petere, queat et secundum leges eam exigere. <a 530 d.Xii k. april. lampadio et oreste vv.Cc.>

CJ.5.13.0. De rei uxoriae actione in ex stipulatu actionem transfusa et de natura dotibus praestita.

CJ.5.13.1pr.: Imperator Justinianus

Rem in praesenti non minimam adgredimur, sed in omni paene corpore iuris effusam , tam super rei uxoriae actione quam ex stipulatu, earum communiones et differentias resecantes et in unum tramitem ex stipulatu actionis totum rei uxoriae ius , quod dignum esse valere censemus, concludentes. * iust. a. ad pop. urb. constantinopolitanae et universos provinciales.* <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.1: Imperator Justinianus

Rei uxoriae itaque actione sublata sancimus omnes dotes per ex stipulatu actionem exigi, sive scripta fuerit stipulatio sive non, ut intellegatur re ipsa stipulatio esse subsecuta. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.1a: Imperator Justinianus

Eodemque modo et si inutiliter facta est stipulatio: adiuvari enim eam magis quam evanescere oportet. si enim, cum una in instrumento stipulatio valida inveniatur, et aliis inutilibus suam noscitur praestare fortitudinem, quare non ex nostra lege huiusmodi stipulationibus robur accedat legitimum? est enim consentaneum nobis, qui censemus, et ubi supposita stipulatio non est, intellegi eam fuisse adhibitam, multo magis etiam, si inutilis est, validam eam effici. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.1b: Imperator Justinianus

Et ut plenius dotibus subveniatur, quemadmodum in administratione pupillarium rerum et in aliis multis iuris articulis tacitas hypothecas inesse accipimus, ita et in huiusmodi actione damus ex utroque latere hypothecam, sive ex parte mariti pro restitutione dotis sive ex parte mulieris pro ipsa dote praestanda vel rebus dotalibus evictis, sive ipsae principales personae dotes dederint, vel promiserint vel susceperint, sive aliae pro his personae, et dos sive adventicia sive profecticia sit secundum veteris iuris nominationem. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.1c: Imperator Justinianus

Ita enim et imperitia hominum et rusticitas nihil eis possit adferre praeiudicium, cum nos illis et ignorantibus et nescientibus in hoc casu nostram induximus providentiam. si enim et stipulationes et hypothecae inesse dotibus intelleguntur et inutiles stipulationes emendantur, sic in posterum causa invaniatur valida et perfecta, quasi omnibus dotalibus instrumentis a prudentissimis iuris confectis. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.1d: Imperator Justinianus

Et nemo putet nos haec sancire in his tantummodo dotibus, quae instrumentis receptae sunt: nihil enim prohibet, etsi sine scriptis dos vel detur vel promittatur vel suscipiatur, simili modo intellegi factam stipulationem et hypothecam ex utraque parte, quasi fuerit scripta. et natura quidem ex stipulatu actionis haec intellegatur, re uxoria in posterum cessante. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.2: Imperator Justinianus

Sed etsi non ignoramus ex stipulatu actionem stricto iure esse vallatam et non ex bona fide descendere, tamen, quia novam naturam de dote stipulatio sibi invenit, accommodetur ei a natura rei uxoriae etiam bonae fidei beneficium. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.2a: Imperator Justinianus

Et omnes quidem eventus, quos dos ex stipulatu habet, maneat pro sui natura exercens: si quid autem optimum ex rei uxoriae actione invenimus, hoc in praesenti specialiter ei addimus, ut sit et nova ista ex stipulatu quam composuimus et non propria tantum, sed etiam veteris actionis pulchritudine decorata. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.3: Imperator Justinianus

Primum itaque quid naturale sit ex stipulatu actionis, exponatur, et ita, si quid ex actione rei uxoriae supervenerit, addatur. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.3a: Imperator Justinianus

Sciendum itaque est edictum praetoris, quod de alterutro introductum est, in ex stipulatu actione cessare, ut uxor et a marito relicta accipiat et dotem consequatur, nisi specialiter pro dote ei maritus ea dereliquit, cum manifestissimum est testatorem, qui non hoc addidit, voluisse eam utrumque consequi. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.4: Imperator Justinianus

Maneat ex stipulatu actionis ius ad successores et sine mora transmissionis incorruptum. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.5: Imperator Justinianus

Taceat in ea retentionum verbositas. quid enim opus est inducere ob mores retentionem alio auxilio ex constitutionibus introducto? <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.5a: Imperator Justinianus

Vel ex qua causa ob res donatas retentio introducatur, cum sit donatori facultas per actionem in rem directam vel per utilem vel per condictionem suo iuri mederi? <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.5b: Imperator Justinianus

Sed nec retentio ob res amotas necessaria est, cum pateat omnibus maritis rerum amotarum iudicium. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.5c: Imperator Justinianus

Sileat ob liberos retentio, cum ipse naturalis stimulus parentes ad liberorum suorum educationem hortatur. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.5d: Imperator Justinianus

Ne varium genus culpae mariti contra uxores excogitent, ut possint eadem retentione contra eas uti, cum iam etiam imperialibus constitutionibus statutum sit, si culpa mulieris dissolutum fuerit matrimonium, quid fieri oportet. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.5e: Imperator Justinianus

Sed nec ob impensas in res dotis factas retentio satis esse nobis videtur idonea. cum enim necessariae quidem expensae dotis minuunt quantitates, utiles autem expensae non aliter in rei uxoriae actione detinebantur, nisi ex voluntate mulieris, non ab re est, si quidem voluntas mulieris intercedat, mandati actionem a nostra auctoritate marito contra uxorem indulgeri, quatenus possit per hanc hoc quod utiliter impensum est observari: vel si non intercedat mulieris voluntas, utiliter tamen res gesta est, negotiorum gestorum adversus eam sufficit actio. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.5f: Imperator Justinianus

Quod si voluptariae sunt, licet voluntate eius expensae, deductio operis quod fecit, sine laesione tamen prioris speciei, marito relinquatur, ut sit omnium retentionum expeditus tractatus et ex stipulatu actio merito secundum sui naturam nullam accipiat retentionem. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.6: Imperator Justinianus

Illo procul dubio in ex stipulatu actione servando, ut, si decesserit mulier constante matrimonio, dos non in lucrum mariti cedat nisi ex quibusdam pactionibus , sed ad heredes mulieris ex stipulatu actio secundum sui naturam transmittatur, sive expressa fuerit sive ex hac lege inesse intellegatur. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.7: Imperator Justinianus

Cum autem in exactione dotis ex stipulatu quidem actio naturaliter restitutionem dotis a parte mariti uxori ilico et in solidum fieri iubebat, rei uxoriae autem annua bima trima die in his quae pondere numero mensura consistunt exactionem pollicebatur, et non in solidum, sed quantum maritus facere potest, si non dolo malo suam deminuit substantiam, in hac parte rudem figuram ex stipulatu damus actioni, ut, si matrimonium fuerit dissolutum nullo pacto adhibito, in tantum quidem maritus condemnetur, in quantum facere potest, quia hoc aequissimum est et reverentiae debitum maritali, si non dolo malo versatus est: cautione videlicet ab eo exponenda, quod, si ad meliorem fortunam pervenerit, etiam quod minus persolvit, hoc restituere procuret. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.7a: Imperator Justinianus

Exactio autem dotis celebretur non annua bima trima die, sed omnimodo intra annum in rebus mobilibus vel se moventibus vel incorporalibus: ceteris videlicet rebus quae solo continentur ilico restituendis, quod commune utriusque fuerat actionis. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.7b: Imperator Justinianus

Sin autem supersederit res mobiles vel se moventes vel incorporales post annale tempus restituere vel ceteras res statim post dissolutum matrimonium, etiam usuras aestimationis omnium rerum, quae extra immobiles sunt, usque ad tertiam partem centesimae ex bona fidei introducendas maritus praestet: fructibus videlicet immobilium rerum parti mulieris ex tempore dissoluti matrimonii praestandis, similique modo pensionibus vel vecturis navium sive iumentorum vel operis servorum vel quaestu civilium annonarum et aliis quae sunt eis similia parti mulieris restituendis. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.8: Imperator Justinianus

Igitur et in sequenti capitulo sua ex stipulatu actio utatur natura, ut, si mulier a marito fuerit heres instituta et legis falcidiae ratio emerserit, etiam dotis debitum liceat ei sicuti alia debita ex substantia mariti subtrahere et sic quartam partem deducere. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.9: Imperator Justinianus

Cumque ex stipulatu actio in his casibus quos enumeravimus propriam habeat naturam, necessarium est in sequenti tractatu ea exponere, quae vel communia sunt utriusque actionis, quae in solam ex stipulatu actionem colligi oportet, vel propria quidem rei uxoriae actionis, exinde autem ex stipulatu actioni accommodanda. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.9a: Imperator Justinianus

Itaque partus dotalium ancillarum, id est quae aestimatae non sunt, vel quae servi dotales ex quacumque causa nisi ex re mariti vel operis suis adquisierint, ad mulierem pertinere utraque actio similiter voluit. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.9b: Imperator Justinianus

Fetus autem iumentorum et omnia quae fructuum nomine continentur ad lucrum mariti pertineant pro tempore matrimonii, sive aestimata sive non aestimata sint. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.9c: Imperator Justinianus

Sed et novissimi anni, in quo matrimonium solvitur, fructus pro rata temporis portione debere utrique parti adsignari commune utriusque actionis est, in rebus scilicet non aestimatis. aestimatarum enim rerum maritus quasi emptor et commodum sentiat et dispendium subeat et periculum expectet. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.10: Imperator Justinianus

Cautione videlicet defensionis in specie, in qua dotem suae uxoris vel nurus in familiae herciscundae iudicio praecipuam filius defuncti detrahit, secundum propriam naturam ex stipulatu actionis coheredibus suis praestanda. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.11: Imperator Justinianus

Videamus igitur, quali incremento ei de rei uxoriae actione accedente formare decet ex stipulatu actionem. cumque iuris certi et indubitati est, si parens per virilem sexum adscendens dote pro filia vel nepte praestita emancipaverit eam vel ipse decesserit, in rei uxoriae actione dotem omnimodo ad mulierem pertinere, etsi fuerit exheredata (quod non erat in ex stipulatu actione: ibi etenim velut aliae actiones in omnes heredes actio dividebatur), aequissimum nobis visum est et in ex stipulatu actione mulierem dotem suam praecipuam accipere, etsi emancipata vel exheredata sit vel cum aliis heredibus scripta. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.12: Imperator Justinianus

Quo a nobis recepto et aliae multae species promptum accipiunt exitum, cum dos possit et de inofficioso actionem excludere, maxime si sufficit ad quartam, et in collationem ferri, si intestatus pater familias decesserit, et testamento facto, quando hoc testator dixerit. quae omnia ex stipulatu actio a rei uxoriae actione accipit. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.13: Imperator Justinianus

Accedit ei et alia species a rei uxoriae actione. si quando etenim extraneus dotem dabat nulla stipulatione vel pacto pro restitutione eius in suam personam facto, quisquis is fuerat, mulier habebat rei uxoriae actionem: quod antea in ex stipulatu actione non erat. stipulatione autem vel pacto interposito stipulator vel is qui paciscebatur habebat vel ex stipulatu vel praescriptis verbis civilem actionem. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.13a: Imperator Justinianus

In praesenti autem non sic esse volumus, sed si non specialiter extraneus dotem dando in suam personam dotem stipulatus est vel pactum fecerit, tunc praesumatur mulier ipsa stipulationem fecisse, ut ei dos ex huiusmodi casu accedat. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.13b: Imperator Justinianus

Neque enim in hac specie volumus videri extraneum tacitam stipulationem fecisse, ne, quod pro mulieribus introduximus, hoc adversus mulieres convertatur. immo magis in huiusmodi dotibus, quae ab extraneis dantur vel promittuntur, ipsa mulier videatur fecisse tacitam stipulationem, nisi expressim extraneus sibi dotem reddi pactus fuerit vel stipulatus, cum donasse magis mulieri quam sibi aliquid ius servasse extraneus non stipulando videtur. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.13c: Imperator Justinianus

Extraneum autem intellegimus omnem citra parentem per virilem sexum adscendentem et in potestate dotandam personam habentem: parenti enim tacitam ex stipulatu actionem donamus. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.14: Imperator Justinianus

Et hoc ex rei uxoriae actione simili modo ex stipulatu actioni accommodandum est. si quando etenim post solutum matrimonium dos a patre petebatur, si quidem rei uxoriae fuerat actio, non poterat solus pater sine consensu filiae suae agere : et si necdum actione mota ab hac luce fuerat subtractus et si lis contestata esset, ad filiam quasi proprium patrimonium dos revertebatur. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.14a: Imperator Justinianus

Quod non erat in ex stipulatu actione: ibi enim et solus exactionem habebat consensu filiae non expectato et, si decedebat, ad suos heredes transmittebat. sed rei uxoriae ius et in ex stipulatu actionem transponere satis humanum, satis pium, satis utile matrimoniis est. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.15: Imperator Justinianus

Et cum lex iulia fundi dotalis italici alienationem prohibebat fieri a marito non consentiente muliere, hypothecam autem nec si mulier consentiebat, interrogati sumus, si oportet huiusmodi sanctionem non super italicis tantummodo fundis, sed pro omnibus locum habere. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.15a: Imperator Justinianus

Placet itaque nobis eandem observationem non tantum in italicis fundis, sed etiam in provincialibus extendi. cum autem hypothecam etiam ex hac lege donavimus, sufficiens habet remedium mulier, et si maritus fundum alienare voluerit. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.15b: Imperator Justinianus

Sed ne ex consensu mulieris hypothecae eius minuantur, necessarium est et in hac parte mulieribus subvenire hoc tantummodo addito, ut fundum dotalem non solum hypothecae titulo dare nec consentiente muliere maritus possit, sed nec alienare , ne fragilitate naturae suae in repentinam deducatur inopiam. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.15c: Imperator Justinianus

Licet enim anastasiana lex de consentientibus mulieribus vel suo iuri renuntiantibus loquitur, tamen eam intellegi oportet in res mariti vel dotis quidem, aestimatas autem, in quibus dominium et periculum mariti est: in fundo autem inaestimato, qui et dotalis proprie nuncupatur, maneat ius intactum, ex lege quidem iulia imperfectum, ex nostra autem auctoritate plenum atque in omnibus terris effusum et non tantum italicis et sola hypotheca conclusum. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.16: Imperator Justinianus

Illud etiam generaliter praesenti addere sanctioni necessarium esse duximus, ut, si qua pacta intercesserint vel pro restitutione dotis vel pro tempore vel pro usuris vel pro alia quacumque causa, quae nec contra leges nec contra constitutiones sunt, ea observentur. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.16a: Imperator Justinianus

Sin autem repudio matrimonium fuerit dissolutum, omnia iura, quae ex theodosiana vel nostra lege descendunt, immutilata custodiantur. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.16b: Imperator Justinianus

Simili modo ea, quae anastasianae legi pro his quae bona gratia separantur enumerata sunt, firma illibataque permaneant. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.16c: Imperator Justinianus

Et generaliter quidquid sacratissimis constitutionibus vel libris prudentium cautum est, quod non contrarium huic legi inveniatur, et hoc in sua maneat firmitate et ex stipulatu actioni adgregetur, licet in re uxoria tractatum est. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.13.1.16d: Imperator Justinianus

Quae omnia in his tantummodo dotibus locum habere censemus, quae post hanc legem datae fuerint vel promissae vel etiam sine scriptis habitae: instrumenta enim iam confecta viribus suis carere non patimur, sed suum expectare eventum. <a 530 d.K.Nov.Lampadio et oreste conss.>

CJ.5.14.0. De pactis conventis tam super dote quam super donatione ante nuptias et paraphernis.

CJ.5.14.1: Imperatores Severus, Antoninus

Legem, quam dixisti, cum dotem pro alumna dares, servari oportet, nec obesse tibi debet, quod dici solet ex pacto actionem non nasci: tunc enim hoc dicimus, cum pactum nudum est: alioquin cum pecunia datur et aliquid de reddenda ea convenit, utilis est condictio. * sev. et ant. aa. nicae. * <a 206 pp.Vii k. febr. albino et aemiliano conss.>

CJ.5.14.2: Imperator Antoninus

Fructus praediorum in dotem datorum si secundum pactum sumptibus tuis tuorumque servierunt, repeti non posse ambigere non debes. * ant. a. theodotae. * <a 213 d. xi k. april antonino a. iiii et balbino conss.>

CJ.5.14.3: Imperator Gordianus

Quamvis pater tuus, cum te nuptui collocaret, pactus sit, ut, si maritus tuus superstitibus filiis communibus in matrimonio decessisset, pars dotis liberorum nomine retineatur, eiusmodi tamen conventio, quominus actionem integrae dotis habeas, proficere non potest. * gord. a. torquatae. * <a 239 d. vi id. ian. gordiano a. et aviola conss.>

CJ.5.14.4: Imperator Gordianus

Pactum dotale, quo matrem convenisse cum patre tuo proponis, ut, si in matrimonio decessisset, tibi et fratribus tuis dos restitueretur, si stipulatio ex persona vestra, cum in potestate patris constituti non essetis, legitima minus intercessit, defuncta ea in matrimonio actionem vobis quaerere non potuit. sed si obligatione verborum rite intercedente dotis petitionem habere potuisti, maxime si ad vinculum potestatis patriae non attigeris, petitionem exsequi non prohiberis. * gord. a. agatho. * <a 240 pp.V id. iun. sabino et venusto conss.>

CJ.5.14.5: Imperatores Diocletianus, Maximianus

Hereditas extraneis testamento datur. cum igitur adfirmes dotali instrumento pactum interpositum esse vice testamenti, ut post mortem mulieris bona eius ad te pertinerent, quae dotis titulo tibi non sunt obligata, intellegis te nulla actione posse convenire heredes seu successores eius, ut tibi restituantur, quae nullo modo debentur. * diocl. et maxim. aa. claudio. * <a 290 pp. non. febr. ipsis iiii et iii aa. conss.>

CJ.5.14.6: Imperatores Diocletianus, Maximianus

Si convenit, ut in matrimonio uxore defuncta dos penes maritum remaneret, profecticiae dotis repetitionem huiusmodi pactum inhibuisse explorati iuris est, cum deteriorem causam dotis, in quem casum patri soli repetitio competit, pacto posse fieri auctoritate iuris saepissime sit responsum. * diocl. et maxim. aa. et cc. rufo. * <a 293 d. v non. mai. ipsis aa. conss.>

CJ.5.14.7: Imperatores Diocletianus, Maximianus

Pater, pro filia dotem datam genero ea prius in matrimonio defuncta nepotibus pactus restitui, licet his actionem quaerere non potuit, tamen utilis eis ex aequitate accommodabitur actio. * diocl. et maxim. aa. et cc. phileto. * <a 294 d. xiiii k. ian. nicomediae cc. conss.>

CJ.5.14.8: Imperatores Theodosius, Valentinianus

Hac lege decernimus, ut vir in his rebus, quas extra dotem mulier habet, quas graeci parapherna dicunt, nullam uxore prohibente habeat communionem nec aliquam ei necessitatem imponat. quamvis enim bonum erat mulierem, quae se ipsam marito committit, res etiam eiusdem pati arbitrio gubernari, attamen quoniam conditores legum aequitatis convenit esse fautores, nullo modo, ut dictum est, muliere prohibente virum in paraphernis se volumus immiscere. * theodos. et valentin. aa. hormisdae pp. * <a 450 s.D.V id. ian. post consulatum protogenis et asterii.>

CJ.5.14.9pr.: Imperatores Leo, Anthemius

Ex morte cuiuscumque personae sive mariti sive mulieris eandem partem, non pecuniae quantitatem, tam virum ex dote quam mulierem ex ante nuptias donatione lucrari decernimus. * leo et anthem. aa. nicostrato pp. * <a 468 d.Xv k. sept. anthemio a. ii cons.>

CJ.5.14.9.1: Imperatores Leo, Anthemius

Veluti si maritus mille solidorum ante nuptias donationem confecerit, licebit mulieri et minoris et amplioris quantitatis dotem offerre et marito similiter ante nuptias donationem: hoc tamen observandum est, ut quantam partem mulier stipuletur sibi lucro cedere ex ante nuptias donatione, si priorem maritum mori contigerit, tantam et maritus ex dote partem, non pecuniae quantitatem, stipuletur sibi, si constante matrimonio prior mulier in fata collapsa fuerit. <a 468 d.Xv k. sept. anthemio a. ii cons.>

CJ.5.14.9.2: Imperatores Leo, Anthemius

Et si pactum contra vetitum fuerit subsecutum, infirmum atque invalidum hoc esse , ut nulla ex eo procedere possit exactio, praecipimus. <a 468 d.Xv k. sept. anthemio a. ii cons.>

CJ.5.14.9.3: Imperatores Leo, Anthemius

Eadem custodiri censemus, sive pater pro filio sive mater sive ipse ducturus uxorem sui iuris constitutus sive quilibet alius pro eo ante nuptias donationem nupturae dederit. <a 468 d.Xv k. sept. anthemio a. ii cons.>

CJ.5.14.9.4: Imperatores Leo, Anthemius

Simili quoque modo, sive pater pro filia sive mater sive ipsa pro se, sui iuris videlicet constituta, sive quilibet alius pro ea uxorem ducturo dotem dederit seu promiserit, quoniam et alio pro ea offerente dotem ipsa eam pro se videtur offerre. <a 468 d.Xv k. sept. anthemio a. ii cons.>

CJ.5.14.9.5: Imperatores Leo, Anthemius

Quod adeo verum est, ut et ipsa ab alio pro se oblatam dotem in lucrum suum reposcat, nisi forte is qui eam obtulit statim (id est tempore oblationis seu promissionis) stipulatus vel pactus sit, ut sibi dos praedicta reddatur. <a 468 d.Xv k. sept. anthemio a. ii cons.>

CJ.5.14.10: Imperator Justinianus

Lege leonis divae memoriae pacta lucrorum dotis et ante nuptias donationis paria esse sanciente nec adiciente, quid fieri oporteat, si hoc minime observatum sit , nos omnia clara esse cupientes praecipimus disparibus eis factis maiorem lucri partem ad minorem deduci, ut eo modo uterque minorem partem lucretur. * iust. a. menae pp. * <a 529 d. viii id april. constintinopoli decio vc.Cons.>

CJ.5.14.11pr.: Imperator Justinianus

Si mulier marito suo nomina (id est feneraticias cautiones) quae extra dotem sunt dederit, ut loco paraphernarum apud maritum maneant, et hoc dotali instrumento fuerit adscriptum, utrumne habeat aliquas ex his actiones maritus sive directas sive utiles, an penes uxorem omnes remaneant, et in quem eventum dandae sint marito actiones, quaerebatur. * iust. a. iohanni pp. * <a 530 d. k. nov. lampadio et oreste vv. cc. conss.>

CJ.5.14.11.1: Imperator Justinianus

Sancimus itaque, si quid tale evenerit, actiones quidem omnimodo apud uxorem manere, licentiam autem marito dari easdem actiones movere apud competentes iudices nulla ratihabitione ab eo exigenda, et usuras quidem eorum circa se et uxorem expendere, pecunias autem sortis quas exegerit servare mulieri vel in causas, ad quas ipsa voluerit, distribuere. <a 530 d. k. nov. lampadio et oreste vv. cc. conss.>

CJ.5.14.11.2: Imperator Justinianus

Et si quidem in dotali instrumento hypothecae pro his nominatum a marito scriptae sunt, his esse mulierem ad cautelam suam contentam. sin autem minime hoc scriptum inveniatur, ex praesenti nostra lege habeat hypothecam contra res mariti, ex quo pecunias ille exegit. <a 530 d. k. nov. lampadio et oreste vv. cc. conss.>

CJ.5.14.11.3: Imperator Justinianus

Antea enim habeat ipsa mulier facultatem, si voluerit, sive per maritum sive per alias personas easdem movere actiones et suas pecunias percipere et ipsas cautiones a marito recipere, securitate ei competente facienda. <a 530 d. k. nov. lampadio et oreste vv. cc. conss.>

CJ.5.14.11.4: Imperator Justinianus

Dum autem apud maritum remanent eaedem cautiones, et dolum et diligentiam maritus circa eas praestare debet, qualem circa suas res habere invenitur ne ex eius malignitate vel desidia aliqua mulieri accedat iactura. quod si evenerit, ipse eandem de proprio resarcire compelletur. <a 530 d. k. nov. lampadio et oreste vv. cc. conss.>

CJ.5.15.0. De dote cauta et non numerata.

CJ.5.15.1: Imperatores Severus, Antoninus

Dotem numeratio, non scriptura dotalis instrumenti facit: et ideo non ignoras ita demum ad petitionem dotis admitti te posse, si dotem a te re ipsa datam probatura es. * sev. et ant. aa. dionysiae. * <a 204 d.Xiii k. aug.Cilone et libone conss.>

CJ.5.15.2: Imperator Alexander Severus

Quod de suo maritus constante matrimonio donandi animo in dotem adscripsit, si eandem donationem legitime confectam non revocavit, qui incrementum doti dedit, et durante matrimonio mortem obiit, ab heredibus mariti, quatenus interposita liberalitas munita est, peti potest. * alex. a. papinianae. * <a 229 pp. non. dec. alexandro a.Iii et dione conss.>

CJ.5.15.3: Imperator Justinianus

In dotibus, quas datas esse dotalibus instrumentis conscribi moris est, cum adhuc nulla datio, sed pollicitatio tantum subsecuta sit, liceat non numeratae pecuniae exceptionem opponere non solum marito contra uxorem vel heredes eius morte mulieris vel repudio dissoluto matrimonio, sed etiam heredibus mariti, cuius morte dissolutum est matrimonium, socero etiam vel eius heredibus, si cum filio suo dotem suscepisse dotalibus instrumentis scriptum sit, omnique personae, quam dotem suscepisse una cum marito conscribitur, et eius similiter heredibus, ita tamen, ut intra annum tantum continuum a morte mariti vel mulieris vel missione repudii computandum ea licentia detur. * iust. a. menae pp. * <a 528 d.K. iun. dn. iustiniano a.Ii cons.>

CJ.5.16.0. De donationibus inter virum et uxorem et a parentibus in liberos factis et de ratihabitione.

CJ.5.16.1: Imperator Antoninus

Bona quondam mariti tui fiscus si nemine ei successore exsistente ut vacantia occupavit, donationes ab eo factae, si usque ad finem vitae in eadem voluntate permansit, revocari non possunt. * ant. a. tryphenae. * <a 212 pp. iii id. ian. duobus aspris conss.>

CJ.5.16.2: Imperator Antoninus

Si ancillam nummis tuis comparatam esse praesidi provinciae probaveris donationisque causa focariae tuae nomine instrumentum emptionis esse conscriptum, eam tibi restitui iubebit. nam licet cessante iure matrimonii donatio perfici potuerit, milites tamen meos a focariis suis hac ratione fictisque adultationibus spoliari nolo. * ant. a. marco mil. * <a 213 pp.Xii k. mart. antonino a.Iiii et balbino conss.>

CJ.5.16.3pr.: Imperator Antoninus

Donatio mancipiorum aliarumque rerum, quas tibi ab uxore tua donatas dicis, si modo suae potestatis, cum donaret, fuit vel patris voluntate id fecit et in eadem voluntate donationis usque ad ultimum diem vitae perseveravit, ex mea et divi severi patris mei constitutione firmata est. * ant. a. epicteto. * <a 213 pp. iiii non. mart. antonino a. iiii et balbino conss.>

CJ.5.16.3.1: Imperator Antoninus

Sin autem post mortem filiae facta est donatio a quondam socero tuo, etiam inter vivos ea perfici potuit. <a 213 pp. iiii non. mart. antonino a. iiii et balbino conss.>

CJ.5.16.4: Imperator Alexander Severus

Nec inter eas quidem personas, quarum iuri subiecti sunt vir et uxor quive in eorum potestate sunt, donationes iure civili fieri possunt. * alex. a. claudiano. * <a pp. xvii k. oct.>

CJ.5.16.5: Imperator Alexander Severus

Si, ut proponis, pater tuus, in cuius potestate fuisti, marito tuo genero suo instrumentum debitoris donationis causa dedit isque matrimonio durante vita functus est ac postea a marito divortisti, quod gestum est non valet. * alex. a. quintillae. * <a 227 pp.Id.Febr.Albino et maximo conss.>

CJ.5.16.6pr.: Imperator Alexander Severus

Etiamsi uxoris tuae nomine res quae tui iuris fuerunt depositae sunt, causa proprietatis ea ratione mutari non potuit, etsi donasse te uxori res tuas ex hoc quis intellegat, cum donatio in matrimonio facta prius mortua ea quae liberalitatem excepit irrita sit. * alex. a. nepotiano. * <a 229 pp.Non.Dec.Alexandro a. iii et dione conss.>

CJ.5.16.6.1: Imperator Alexander Severus

Nec est ignotum, quod, cum probari non possit, unde uxor matrimonii tempore honeste quaesierit, de mariti bonis eam habuisse veteres iuris auctores merito credidissent. <a 229 pp.Non.Dec.Alexandro a. iii et dione conss.>

CJ.5.16.7: Imperator Alexander Severus

Si ex voluntate patris tui filio tutoris nupta es, collata in maritum donatio ipso iure irrita est. sed si matrimonium iure non valuit, licet ipso iure donatio tenuerit, quia tamen indigna persona eius fuit, qui nec maritus potest dici, utiles actiones super revocandis his tibi competunt. * alex. a. theodotae. * <a 232 pp.K.Oct.Lupo et maximo conss.>

CJ.5.16.8: Imperator Alexander Severus

Si fructus eorum praediorum, quae in dotem accepisse te dicis, matrimonii tempore uxorem tuam percipere passus es eosque uxor tua absumpsit, restitui tibi post divortium oportere nulla ratione contendis. sin autem ab his locupletior facta est, in tantum potest conveniri. * alex. a. leoni. * <a 233 pp.V k. oct. maximo et paterno conss.>

CJ.5.16.9: Imperator Gordianus

Etsi de tua pecunia mancipia uxori tuae comparata sunt, tamen, si ei sunt tradita, eorum dominium non ad te, sed ad eam pertinet, pecuniae autem tantummodo repetitionem habes, sive negotium eius gerens numerationem fecisti sive in eam donationem conferens quantitatem pretii largitus es: etenim vel in solidum vel quatenus locupletior facta est actione cum ea competenti poteris experiri. * gord. a. origeni. * <a 238 pp.Vii k. oct.Pio et pontiano conss.>

CJ.5.16.10: Imperator Gordianus

Si maritus quondam uxoris tuae, cum sui iuris esset, in eam praedia vel cetera donationis titulo contulit et in ea voluntate usque ad mortem suam perseveravit, ex oratione divi severi confirmata est donatio: ac si eas res pater defuncti iniuriose abstulit, per praesidem provinciae eas restituere cogetur. nec enim, quasi maleficiis eius sit maritus extinctus, crimen intendens sub praetextu accusationis quae donata sunt auferre debuit, cum causa liberalitatis a criminatione separata sit. * gord. a. veriano. * <a 239 pp.Iii k. april. gordiano a.Et aviola conss.>

CJ.5.16.11: Imperator Gordianus

Sicut cessat petitio quantitatis, quam de suo maritus uxori in menses singulos vel annos singulos proprii usus eius gratia promittit, ita ex ea causa nummi soluti erogatique non dari repetitionem manifestum est. * gord. a. maximo. * <a 241 pp.V k. iul.Gordiano a.Ii et pompeiano conss.>

CJ.5.16.12: Imperator Gordianus

Si maritus tuus creditores sortitus post factam in te donationem fundum, quem ex donatione iuri tuo vindicas, isdem specialiter obligavit, eandem obligationem defensionis tuae firmitatem inrumpere intellegere debes, cum sit manifestum non solum ex huiusmodi obligatione, sed etiam ex donatione vel venditione vel alio quolibet modo rebus alienatis revocatam esse a viro in mulierem factam donationem. * gord. a. secundinae. * <a 243 pp.Vi k. febr. arriano et papo conss.>

CJ.5.16.13pr.: Imperatores Diocletianus, Maximianus

Si quidem ante donationem possessionis in te iure, ut dicis, a marito collatam praedium ab eodem creditori obligatum fuit, alienationem eius salvo iure debiti (si tamen iuris ratio actionem eius non excludit) factam esse dubium non est. * diocl. et maxim. aa. rufinae. * <a 286 pp.Xii k. iul. maximo ii et aquilino conss.>

CJ.5.16.13.1: Imperatores Diocletianus, Maximianus

Quod si donatione iure celebrata eo, quod vel ante nuptias facta est vel in isdem casibus, in quibus etiam constante matrimonio donatio procedere potest, obligatio insecuta est, factum mariti, quem diem suum obisse memorasti, iuri tuo officere non posse certum est. <a 286 pp.Xii k. iul. maximo ii et aquilino conss.>

CJ.5.16.14pr.: Imperatores Diocletianus, Maximianus

Ex verbis, quae in postremis iudiciis inseruntur, licet ad fideicommissum vel legatum utilia sunt, non omnimodo legati vel fideicommissi persecutio datur, sed ita demum, si relinquendi studio huiusmodi verba fuerint adscripta. unde te voluntatis, non iuris quaestionem in preces tuas contulisse palam est. * diocl. et maxim. aa.Octavianae. * <a 290 pp. iii non. oct. ipsis aa. conss.>

CJ.5.16.14.1: Imperatores Diocletianus, Maximianus

Cum igitur lecto testamento animadvertimus maritum tuum ex praecedente donatione dominium tibi conservasse securitatique tuae ad obtinendam proprietatem cavisse , inditorum verborum conceptio non fideicommissum relictum ostendit, sed ex senatus consulti auctoritate liberalitatem mariti tui, cui custodiendae etiam moriens prospexit, quatenus firmare potuit dominium, mortis tempore tibi esse addictam. <a 290 pp. iii non. oct. ipsis aa. conss.>

CJ.5.16.15pr.: Imperatores Diocletianus, Maximianus

Si non verum contractum pater vester gessit, sed sub specie venditionis donationem possessionis in matrem vestram contulit, nec ex bonis, quae in persona patris vestri permansisse videbantur, ob primipilum indemnitati fiscali satisfieri potuit, licet in eadem donandi voluntate perseverasse eum probari potest, ex eadem possessione ad supplendam pecuniam, quae ex bonis ab eo relictis colligi nequivit, conferendum est. * diocl. et maxim. aa. iustiniano et aliis. * <a 291 pp.Iiii k. febr. tiberiano et dione conss.>

CJ.5.16.15.1: Imperatores Diocletianus, Maximianus

Quod si liberalitatis tenorem mutata voluntate pater tuus interrupit, in hereditate eius dominium resedisse nulla dubitatio est. <a 291 pp.Iiii k. febr. tiberiano et dione conss.>

CJ.5.16.16: Imperatores Diocletianus, Maximianus

Si filii tui emancipati matris hereditatem sibi adquisierunt, proba apud praesidem provinciae non donandi animo te nomine uxoris tuae praedia comparasse, sed nominis dumtaxat eius titulo usum per possessionem rerum a venditoribus tibi traditarum dominum esse effectum, ut comprehensa filiorum tuorum iniuria proprietatis ius incolume perseveret. nam si largiendi propositio id te fecisse constiterit, pecuniae tibi persecutio competit. * diocl. et maxim. aa. theodoro. * <a 291 pp. vi id. mart. tiberiano et dione conss. >

CJ.5.16.17: Imperatores Diocletianus, Maximianus

De his, quae extra dotem in domum illata a marito erogata commemoras, si quidem te donante consumpta sunt, intellegis adversus heredes non nisi in quantum locupletior fuit habere te actionem: si vero contra voluntatem tuam, omnia tibi restitui oportere. * diocl. et maxim. aa. et cc. capitolinae. * <a 293 sub die viii k.Mai. heracliae aa. conss.>

CJ.5.16.18: Imperatores Diocletianus, Maximianus

A marito in uxorem donatione collata matrimonii tempore nec initio dominium transferri potest nec post, si divortium intercesserit vel prior persona quae liberalitatem accepit rebus humanis fuerit exempta vel ab eo qui donavit fuerit revocata, potest convalescere. * diocl. et maxim. aa. et cc. maternae. * <a 293 sub die iiii k. iul. serdicae aa. conss.>

CJ.5.16.19: Imperatores Diocletianus, Maximianus

Si constante matrimonio tibi mater domum tradidit, hanc in tuis fecit bonis. * diocl. et maxim. aa. et cc. dionysiae. * <a 294 d.Id.Iul.Philippopoli cc. conss.>

CJ.5.16.20: Imperatores Diocletianus, Maximianus

Creditor debito soluto de pignore liberato nihil ad uxorem debitoris quondam transferre potuit. sed nec consensus eiusdem debitoris per eum qui creditor fuit accedens imaginariae factae venditioni ad dominium transferendum prodesse quicquam potuit, cum tam ea quae simulatae aguntur, quam quae in uxorem a marito donationis causa tempore matrimonii procedunt, propter iuris civilis interdictum (cum proponas uxorem superstite marito rebus humanis exemptam) pro infectis habeantur. * diocl. et maxim. aa. et cc. claudiae. * <a 294 d.V id. aug. viminaci cc. conss.>

CJ.5.16.21: Imperatores Diocletianus, Maximianus

Si propriis habitis contractibus quam acceperas mutuam pecuniam pro marito donationis causa erogasti, cum nec ad dignitatem profuerit nec locupletior sit factus, intellegis nullam tibi contra eum competere actionem. * diocl. et maxim. aa. et cc. cacaliae. * <a 294 d.Iii id. aug. viminaci cc. conss.>

CJ.5.16.22: Imperatores Diocletianus, Maximianus

Maritus manumissionis causa servum mulieri constante matrimonio donare potest. * diocl. et maxim. aa. et cc. arsinoae. * <a 294 s.K.Aug.Sirmi cc. conss.>

CJ.5.16.23: Imperatores Diocletianus, Maximianus

Si te in vacuam possessionem praedii socrus tua titulo donationis ante matrimonium vel post induxit, ad rescindendam donationem paenitentia nihil proficit. * diocl. et maxim. aa. et cc. caecilianae. * <a 294 s.K.Nov.Brundisii cc. conss.>

CJ.5.16.24pr.: Imperator Constantinus

Res uxoris, quae vel successione qualibet vel emptione vel etiam largitione viri in eam ante reatum iure pervenerant, damnato ac mortuo ex poena marito vel in servilem condicionem ex poenae qualitate deducto, illibatas esse praecipio nec alieni criminis infortunio stringi uxorem, cum paternis maternisve ac propriis frui eam integro legum statu religiosum sit. * const. a. petronio probiano. * <a 321 d.Iii k. mart. serdicae crispo ii et constantino ii cc. conss.>

CJ.5.16.24.1: Imperator Constantinus

Et donatio maritalis ante tempus criminis ac reatus collata in uxorem, quia pudicitiae praemio cessit, observanda est, tamquam si maritum eius natura, non poena subduxerit. <a 321 d.Iii k. mart. serdicae crispo ii et constantino ii cc. conss.>

CJ.5.16.24.2: Imperator Constantinus

Sin autem aqua et igni interdictum erit vel deportatio illata, non tamen mors ex poena subsecuta, donationes a viro in uxorem collatae adhuc in pendenti maneant , quia nec matrimonium huiusmodi casibus dissolvitur, ita ut, si usque ad vitae suae tempus maritus eas non revocaverit, ex morte eius confirmentur: fisco nostro ad easdem res nullam in posterum communionem habituro. <a 321 d.Iii k. mart. serdicae crispo ii et constantino ii cc. conss.>

CJ.5.16.25pr.: Imperator Justinianus

Donationes, quae parentes in liberos cuiuscumque sexus in potestate constitutos conferunt vel uxor in suum maritum vel maritus in suam uxorem vel alteruter eorum in aliam personam, cui constante matrimonio donare non licet, vel ipsae aliae personae in eam cui donare non poterant, ita firmas esse per silentium donatoris vel donatricis sancimus, si usque ad quantitatem legitimam vel eam excedentes actis fuerint intimatae. nam amplioris quantitatis donationem minime intimatam nec per silentium eius qui donavit confirmari concedimus. * iust. a. menae pp. * <a 528 d.Iii id.Dec.Dn.Iustiniano a. ii cons.>

CJ.5.16.25.1: Imperator Justinianus

Sin vero specialiter eas in suprema voluntate donator vel donatrix confirmaverit , sine ulla distinctione ratae habebuntur, ita tamen ut, si quidem ultra lege finitam quantitatem expositae minime actis intimatae fuerint, specialis earum confirmatio ex eo tempore vim habeat, ex quo eaedem donationes confirmatae sunt. <a 528 d.Iii id.Dec.Dn.Iustiniano a. ii cons.>

CJ.5.16.25.2: Imperator Justinianus

Sin vero vel non amplior sit donatio vel, cum amplior esset, in actis insinuata sit, tunc et silentium donatoris vel donatricis et specialis confirmatio ad illud tempus referatur, quo donatio conscripta sit: sicut et alias ratihabitiones negotiorum ad illa reduci tempora oportet, in quibus contracta sunt. nec in ceterum subtilem divisionem facti vel iuris introduci posse. <a 528 d.Iii id.Dec.Dn.Iustiniano a. ii cons.>

CJ.5.16.26: Imperator Justinianus

Donationes, quas divinus imperator in piissimam reginam suam coniugem vel illa in serenissimum maritum contulerit, ilico valere sancimus et plenissimam habere firmitatem, utpote imperialibus contractibus legis vicem obtinentibus minimemque opitulatione quadam extrinsecus egentibus. * iust. a. menae pp. * <a 529 d. viii id.April.Constantinopoli decio vc.Cons.>

CJ.5.16.27pr.: Imperator Justinianus

Si unus ex his, qui matrimonio fuerant copulati, in alium donatione facta ab hostibus captus est et in servitutem deductus et postea ibi morte peremptus, quaerebatur, an huiusmodi liberalitas, quam antea fecit, ex hoc roborari videtur an vacillare: et iterum si donator quidem in civitate romana constitutus decesserit , mortis autem eius tempore is qui donationem accepit in captivitate degebat et postea reversus est, an videtur et tunc donatio rata haberi. * iust. a. iohanni pp. * <a 530 d.K.Dec.Lampadio et oresta vv.Cc.Conss.>

CJ.5.16.27.1: Imperator Justinianus

Cum itaque in utroque casu oportet augusto remedio causam dirimi, cum nihil aliud tam peculiare est imperiali maiestati quam humanitas, per quam solam dei servatur imitatio, in ambobus casibus donationem firmam esse censemus. <a 530 d.K.Dec.Lampadio et oresta vv.Cc.Conss.>

CJ.5.17.0. De repudiis et iudicio de moribus sublato.

CJ.5.17.1: Imperator Alexander Severus

Matrimonium quidem deportatione vel aqua et igni interdictione non solvitur, si casus, in quem maritus incidit, non mutet uxoris adfectionem. ideoque dotis actio ipso iure non competit, sed indotatam esse eam, cuius laudandum propositum est, nec ratio aequitatis nec exempla permittunt. * alex. a. avitianae. * <a 229 pp.Non.Nov.Alexandro a.Iii et dione conss.>

CJ.5.17.2: Imperatores valer., gallien.

Liberum est filiae tuae, si sponsum suum post tres peregrinationis annos expectandum sibi ultra non putat, omissa spe huius coniunctionis matrimonium facere, ne opportunum nubendi tempus amittat, cum posset nuntium remittere, si praesente eo consilium mutare voluisset. * valer. et gallien. aa. et valer. c. paulinae. * <a 259 pp.Vii k. april. aemiliano et basso conss.>

CJ.5.17.3pr.: Imperatores Diocletianus, Maximianus

Dubium non est omnia omnino, quae consilio recte geruntur, iure meritoque effectu et firmitate niti. * diocl. et maxim. aa. tullio. * <a 290 d. ii k.Sept.Tiberiade ipsis aa. conss.>

CJ.5.17.3.1: Imperatores Diocletianus, Maximianus

Quare si tu dotem pro muliere dedisti et ex morte eius repetitionem stipulatus es, circumscribendi autem tui causa ficto repudio matrimonium brevi tempore rescissum est, res dotales, quas ante nuptias obtulisti, praeses provinciae recipere te non dubitabit. <a 290 d. ii k.Sept.Tiberiade ipsis aa. conss.>

CJ.5.17.3.2: Imperatores Diocletianus, Maximianus

Certum est enim daturum operam moderatorem provinciae, ut, quae contra fas gesta sunt, fructum calliditatis obtinere non possint, cum nobis huiusmodi commenta displiceant. <a 290 d. ii k.Sept.Tiberiade ipsis aa. conss.>

CJ.5.17.3.3: Imperatores Diocletianus, Maximianus

Imaginarios enim nuntios (id est repudia) nullius esse momenti, sive nuptiis fingant se renuntiasse sive sponsalibus, etiam veteribus iuris auctoribus placuit. <a 290 d. ii k.Sept.Tiberiade ipsis aa. conss.>

CJ.5.17.4: Imperatores Diocletianus, Maximianus

Filiae divortium in potestate matris non est. * diocl. et maxim. aa. et cc. pisoni. * <a 294 d. iii k. ian. sirmi cc. conss.>

CJ.5.17.5pr.: Imperatores Diocletianus, Maximianus

Dissentientis patris, qui initio consensit matrimonio, cum marito concordante uxore filia familias ratam non haberi voluntatem divus marcus pater noster religiosissimus imperator constituit, nisi magna et iusta causa interveniente hoc pater fecerit. * diocl. et maxim. aa. et cc. scyrioni. * <a 294 d. v k. sept. nicomediae cc. conss.>

CJ.5.17.5.1: Imperatores Diocletianus, Maximianus

Invitam autem ad maritum redire nulla iuris praecepit constitutio. <a 294 d. v k. sept. nicomediae cc. conss.>

CJ.5.17.5.2: Imperatores Diocletianus, Maximianus

Emancipatae vero filiae pater divortium in arbitrio suo non habet. <a 294 d. v k. sept. nicomediae cc. conss.>

CJ.5.17.6: Imperatores Diocletianus, Maximianus

Licet repudii libellus non fuerit traditus vel cognitus marito, dissolvitur matrimonium. * diocl. et maxim. aa. et cc. phoebo. * <a 294 d. xviii k. ian. nicomediae cc. conss. >

CJ.5.17.7pr.: Imperator Constantinus

Uxor, quae in militiam profecto marito post interventum annorum quattuor nullum sospitatis eius potuit habere indicium atque ideo de nuptiis alterius cogitavit nec tamen ante nupsit, quam libello ducem super hoc suo voto convenit, non videtur nuptias inisse furtivas nec dotis amissionem sustinere nec capitali poenae esse obnoxia, quae post tam magni temporis iugitatem non temere nec clanculo, sed publice contestatione deposita nupsisse firmatur. * constant. a. ad delmatium. * <a 337 d...... naisso feliciano et titiano conss.>

CJ.5.17.7.1: Imperator Constantinus

Ideoque observandum est, ut, si adulterii suspicio nulla sit nec coniunctio furtiva detegitur, nullum periculum ab his quorum coniugio erant copulatae vereantur, cum, si conscientia maritalis tori furtim esset violata, disciplinae ratio poenam congruam flagitaret. <a 337 d...... naisso feliciano et titiano conss.>

CJ.5.17.8pr.: Imperatores Theodosius, Valentinianus

Consensu licita matrimonia posse contrahi, contracta non nisi misso repudio solvi praecipimus. solutionem etenim matrimonii difficiliorem debere esse favor imperat liberorum. * theodos. et valentin. aa. hormisdae pp. * <a 449 d.V id.Ian.Protogene et asterio conss.>

CJ.5.17.8.1: Imperatores Theodosius, Valentinianus

Causas autem repudii hac saluberrima lege apertius designamus. sicut enim sine iusta causa dissolvi matrimonia iusto limite prohibemus, ita adversa necessitate pressum vel pressam, quamvis infausto, attamen necessario auxilio cupimus liberari. <a 449 d.V id.Ian.Protogene et asterio conss.>

CJ.5.17.8.2: Imperatores Theodosius, Valentinianus

Si qua igitur maritum suum adulterum aut homicidam vel veneficum vel certe contra nostrum imperium aliquid molientem vel falsitatis crimine condemnatum invenerit, si sepulchrorum dissolutorem, si sacris aedibus aliquid subtrahentem, si latronem vel latronum susceptorem vel abactorem aut plagiarium vel ad contemptum sui domi suae ipsa inspiciente cum impudicis mulieribus (quod maxime etiam castas exasperat) coetum ineuntem, si suae vitae veneno aut gladio vel alio simili modo insidiantem, si se verberibus, quae ab ingenuis aliena sunt, adficientem probaverit, tunc repudii auxilio uti necessariam ei permittimus libertatem et ca usas discidii legibus comprobare. <a 449 d.V id.Ian.Protogene et asterio conss.>

CJ.5.17.8.3: Imperatores Theodosius, Valentinianus

Vir quoque pari fine claudetur nec licebit ei sine causis apertius designatis propriam repudiare iugalem, nec ullo modo expellat nisi adulteram, nisi veneficam aut homicidam aut plagiariam aut sepulchrorum dissolutricem aut ex sacris aedibus aliquid subtrahentem aut latronum fautricem aut extraneorum virorum se ignorante vel nolente convivia appetentem aut ipso invito sine iusta et probabili causa foris scilicet pernoctantem, nisi circensibus vel theatralibus ludis vel harenarum spectaculis in ipsis locis, in quibus haec adsolent celebrari, se prohibente gaudentem, nisi sui veneno vel gladio aut alio simili modo insidiatricem, vel contra nostrum imperium aliquid machinantibus consciam, seu falsitatis se crimini immiscentem invenerit, aut manus audaces sibi probaverit ingerentem: tunc enim necessariam ei discedendi permittimus facultatem et causas discidii legibus comprobare. <a 449 d.V id.Ian.Protogene et asterio conss.>

CJ.5.17.8.4: Imperatores Theodosius, Valentinianus

Haec nisi vir vel mulier observaverint, ultrici providentissimae legis poena plectentur. nam mulier si contempta lege repudium mittendum esse temptaverit, suam dotem et ante nuptias donationem amittat nec intra quinquennium nubendi habeat denuo potestatem: aequum est enim eam interim carere conubio, quo se monstravit indignam. <a 449 d.V id.Ian.Protogene et asterio conss.>

CJ.5.17.8.4a: Imperatores Theodosius, Valentinianus

Quod si praeter haec nupserit, erit ipsa quidem infamis, conubium vero illud nolumus nuncupari: insuper etiam arguendi hoc ipsum volenti concedimus libertatem. <a 449 d.V id.Ian.Protogene et asterio conss.>

CJ.5.17.8.4b: Imperatores Theodosius, Valentinianus

Si vero causam probaverit intentatam, tunc eam et dotem recuperare et ante nuptias donationem lucro habere aut legibus vindicare censemus et nubendi post annum ei, ne quis de prole dubitet, permittimus facultatem. <a 449 d.V id.Ian.Protogene et asterio conss.>

CJ.5.17.8.5: Imperatores Theodosius, Valentinianus

Virum etiam, si mulierem interdicta arguerit attemptantem, tam dotem quam ante nuptias donationem sibi habere seu vindicare uxoremque, si velit, statim ducere hac iusta definitione sancimus. sin autem aliter uxori suae renuntiare voluerit, dotem redhibeat et ante nuptias donationem amittat. <a 449 d.V id.Ian.Protogene et asterio conss.>

CJ.5.17.8.6: Imperatores Theodosius, Valentinianus

Servis scilicet seu ancillis puberibus, si crimen adulterii vel maiestatis ingeritur, tam viri quam mulieris ad examinandam causam repudii, quo veritas aut facilius eruatur aut liquidius detegatur, si tamen alia documenta defecerint, quaestionibus subdendis. super plagis etiam, prout dictum est, illatis ab alterutro commovendis easdem probationes (quoniam non facile quae domi geruntur per alienos poterunt confiteri) volumus observari. <a 449 d.V id.Ian.Protogene et asterio conss.>

CJ.5.17.8.7: Imperatores Theodosius, Valentinianus

Si vero filio seu filiis, filia seu filiabus extantibus repudium missum est, omne quidquid ex nuptiis lucratum est filio seu filiis, filiae seu filiabus post mortem accipientis servari, id est si pater temere repudium miserit, donationem ante nuptias a matre servari, si mater, dotem ipsam eidem vel eisdem filio seu filiae patre moriente dimitti censemus: patri videlicet vel matri in scribendis filiis heredibus, unum seu unam vel omnes si scribere vel uni ex his donare velit, electione servata. <a 449 d.V id.Ian.Protogene et asterio conss.>

CJ.5.17.8.7a: Imperatores Theodosius, Valentinianus

Nec ullam alienandi seu supponendi memoratas res permittimus facultatem: sed si aliquid ex isdem rebus defuerit, ab heredibus seu earum detentatoribus, si tamen non ipsos heredes scripserit aut scripti filii non adierint, praecipimus resarciri, ut etiam hoc modo inconsulti animi ad repudium mittendum detrimento retrahantur. <a 449 d.V id.Ian.Protogene et asterio conss.>

CJ.5.17.8.8: Imperatores Theodosius, Valentinianus

Pactiones sane, si quae adversus praesentia scita nostrae maiestatis fuerint attemptandae, tamquam legum contrarias nullam habere volumus firmitatem. <a 449 d.V id.Ian.Protogene et asterio conss.>

CJ.5.17.9: Imperator Anastasius

Si constante matrimonio communi consensu tam mariti quam mulieris repudium sit missum, quo nulla causa continetur, quae consultissimae constitutioni divae memoriae theodosii et valentiniani inserta est, licebit mulieri non quinquennium expectare, sed post annum ad secundas nuptias convolare. * anastas. a. theodoro. * <a 497 d.Xv k. mart. anastasio a. ii cons.>

CJ.5.17.10: Imperator Justinianus

In causis iam dudum specialiter definitis, ex quibus recte mittuntur repudia, illam addimus, ut, si maritus uxori ab initio matrimonii usque ad duos continuos annos computandos coire minime propter naturalem imbecillitatem valeat, possit mulier vel eius parentes sine periculo dotis amittendae repudium marito mittere, ita tamen, ut ante nuptias donatio eidem marito servetur. * iust. a. menae pp. * <a 528 d. iii id. dec. dn. iustiniano a. pp.Ii cons.>

CJ.5.17.11pr.: Imperator Justinianus

Iubemus, ut, quicumque mulierem cum voluntate parentium aut, si parentes non habuerit, sua voluntate maritali adfectu in matrimonium acceperit, etiamsi dotalia instrumenta non intercesserint nec dos data fuerit, tamquam si cum instrumentis dotalibus tale matrimonium processisset, firmum coniugium eorum habeatur: non enim dotibus, sed adfectu matrimonia contrahuntur. * iust. a. hermogeni mag. off. * <a 533 d.Xv k.Dec.Constantinopoli dn. iustiniano pp. a. iii cons.>

CJ.5.17.11.1: Imperator Justinianus

Si quis autem eam, quam sine dote uxorem acceperat, a coniugio suo repellere voluerit, non alias ei hoc facere licebit, nisi talis culpa intercesserit, quae a nostris legibus condemnatur. <a 533 d.Xv k.Dec.Constantinopoli dn. iustiniano pp. a. iii cons.>

CJ.5.17.11.1a: Imperator Justinianus

Si vero sine culpa eam reiecerit vel ipse talem culpam contra innocentem mulierem commiserit, compellatur ei quartam partem propriae substantiae pro rata portione persolvere, ut, si quidem quadringentarum librarum auri vel amplius vir substantiam habeat, centum libras auri mulieri praestet et nihil amplius, etsi quantamcumque substantiam possideat: sin vero minus quadringentis libris auri puta substantia eius fuerit, tunc quarta pars computatione facta purae substantiae eius usque ad minimam quantitatem mulieri detur. <a 533 d.Xv k.Dec.Constantinopoli dn. iustiniano pp. a. iii cons.>

CJ.5.17.11.1b: Imperator Justinianus

Eodem modo servando et in mulieribus, quae indotatae constitutae sine culpa mariti constitutionibus cognita eos repudiaverint vel ipsae culpam innocenti marito praebuerint, ut ex utraque parte aequa lance et aequitas et poena servetur. <a 533 d.Xv k.Dec.Constantinopoli dn. iustiniano pp. a. iii cons.>

CJ.5.17.11.1c: Imperator Justinianus

Hoc lucro quartae partis filiis quidem non extantibus ipsis viro et mulieri competenti et ab his quo modo voluerint disponendo, filiis autem et deinceps personis ex eodem matrimonio intervenientibus eis servando ad similitudinem dotis et propter nuptias donationis per omnia, quae super his statuta sunt. <a 533 d.Xv k.Dec.Constantinopoli dn. iustiniano pp. a. iii cons.>

CJ.5.17.11.2: Imperator Justinianus

Inter culpas autem uxoris constitutionibus enumeratas et has addimus, si forte uxor sua ope vel ex industria abortum fecerit, vel ita luxuriosa est, ut commune lavacrum viris libidinis causa habere audeat, vel, dum est in matrimonio, alium maritum fieri sibi conata fuerit. <a 533 d.Xv k.Dec.Constantinopoli dn. iustiniano pp. a. iii cons.>

CJ.5.17.11.2a: Imperator Justinianus

Et in his enim causis locum habere constitutiones sancimus, quae de culpa tam mariti quam uxoris loquuntur, ut, quemadmodum dos et donatio propter nuptias perit, ita et mulieres indotatae in quartam partem, quam et viris et mulieribus ex hac lege destinavimus, amissionis periculum sustineant. <a 533 d.Xv k.Dec.Constantinopoli dn. iustiniano pp. a. iii cons.>

CJ.5.17.11.2b: Imperator Justinianus

Iudicio de moribus, quod antea quidem in antiquis legibus positum erat, non autem frequentabatur, penitus abolito: omnibus etenim causis requisitis et perlectis, quas antiquitas introducebat, nihil validum praeter eas, quas anteriores constitutiones et praesens dispositio introduxit, invenimus. <a 533 d.Xv k.Dec.Constantinopoli dn. iustiniano pp. a. iii cons.>

CJ.5.18.0. Soluto matrimonio dos quemadmodum petatur.

CJ.5.18.1: Imperatores Severus, Antoninus

Dubium non est post aestimationem dotis pactione vel stipulatione interposita, ut ipsae res, si dissoluto matrimonio extarent, uxori reddantur, ancillas cum partu ex stipulatu iudicio restitui oportere. * sev. et ant. aa. geminae. * <a 197 pp. iii id. april. laterano et rufino conss.>

CJ.5.18.2: Imperatores Severus, Antoninus

Secundum rationem iuris existimas restitui tibi debere dotem a fisco, qui bona damnati patris tui suscepit. licet enim viro quondam tuo pater tuus heres extiterit, attamen iuri tuo hoc derogari non potest, cum et ipse pater sine voluntate tua nec exigere nec accipere dotem poterat. * sev. et ant. aa. aquiliae. * <a 207 pp. prid. non. april. apro et maximo conss.>

CJ.5.18.3: Imperator Antoninus

Si ignorans statum erotis ut liberum duxisti et dotem dedisti isque postea servus est iudicatus, dotem ex peculio recipies et si quid praeterea tibi debuisse eum apparuerit. filii autem tui, ut ex libera nati incerto tamen patre, spurii ingenui intelleguntur. * ant. a. hostiliae. * <a 215 pp. vi k. sept. laeto ii et cereale conss.>

CJ.5.18.4: Imperator Antoninus

Dos a patre profecta, si in matrimonio decesserit mulier filia familias, ad patrem redire debet. * ant. a. apollonio. * <a 225 pp. xvi k. sept. fusco ii et dextro conss.>

CJ.5.18.5: Imperatores valer., gallien.

Si quidem vivit apud hostes uxor tua, nondum frater eius quasi heres dotem repetere potest. si vero diem functa est et hereditatem eius possit vindicare, dotis quoque repetitio ei iure competit, cum in stipulatum deducta sit. * valer. et gallien. aa. et valer. c. tauro. * <a 259 pp. ii non. mai. aemiliano et basso conss.>

CJ.5.18.6pr.: Imperatores Diocletianus, Maximianus

Si circumscripta matre vestra viliore pretio dotales res aestimatae sunt, quid super huiusmodi contractuum vitio statutum sit, vulgo patet. * diocl. et maxim. aa. alexandriae et neroni. * <a 290 vel 293 pp. vii k. nov. ipsis aa. conss.>

CJ.5.18.6.1: Imperatores Diocletianus, Maximianus

Proinde si dolosis artibus mariti circumventam matrem vestram iniqua aestimatione circumscriptam apud praesidem provinciae evidentibus probationibus ostenderitis, quando possidentibus vobis ad obtinenda praedia etiam doli mali exceptionis potestas opituletur, sciet, quatenus religionem iudicationis suae temperare debeat. <a 290 vel 293 pp. vii k. nov. ipsis aa. conss.>

CJ.5.18.6.2: Imperatores Diocletianus, Maximianus

Sin autem etiam maritus in aestimatione gravatum se adleget, veritate examinata non amplius quam pretium iustum restituere compellatur. <a 290 vel 293 pp. vii k. nov. ipsis aa. conss.>

CJ.5.18.6.3: Imperatores Diocletianus, Maximianus

Haec tum locum habent, cum res in natura sunt. si tamen extinctae sint, pretium, quod dotali instrumento inditum sit, id considerabitur. <a 290 vel 293 pp. vii k. nov. ipsis aa. conss.>

CJ.5.18.7: Imperatores Diocletianus, Maximianus

Filiae pecuniam adimere, quam habes in potestate, minime prohiberis. nam si pro ea dotem dedisti, hanc constante matrimonio ne consentiente quidem ipsa, matrimonio autem dissoluto invita repetere non potes. * diocl. et maxim. aa. et cc. erotio. * <a 294 s. v id. febr. sirmi cc. conss.>

CJ.5.18.8: Imperatores Diocletianus, Maximianus

Nec maritus, licet post divortium in quantum facere possit condemnandus est, post idoneus factus, qui non reddiderat integrum, residuam probabiliter solutionem recusat. at cum eius heredes in solidum conveniendos non ambigitur, ne cum his solvendo factis experiri non possis, superstitiosam geris sollicitudinem. * diocl. et maxim. aa. et cc. sallustiae. * <a 294 d. xiii k. april. sirmi cc. conss.>

CJ.5.18.9: Imperatores Diocletianus, Maximianus

Dotis actione successores mariti super eo, quod ei dotis nomine fuerat datum, convenire debes. ingrediendi enim in possessionem rerum dotalium, heredibus mariti non consentientibus, sine auctoritate competentis iudicis nullam habes facultatem. * diocl. et maxim. aa. et cc. marciae. * <a 294 s. d. viii k. nov. cc. conss.>

CJ.5.18.10: Imperatores Diocletianus, Maximianus

Si socero filiae tuae dotem dedisti, licet in eius positus potestate gener tuus rebus humanis exemptus sit, tamen non de peculio, sed in solidum a te consentiente filia conventum eum satis oportet facere. * diocl. et maxim. aa. et cc. epigono. * <a 294 s. vii id. nov. heracliae cc. conss.>

CJ.5.18.11: Imperatores Honorius, Theodosius

Si constante matrimonio maritus fatali fuerit sorte consumptus, dos, quae data dicitur vel promissa ex eius uxoris facultatibus, ad eam revertatur, nihilque sibi ex hoc defuncti heres audeat vindicare, quod ad mulierem recurrere fecit obitus maritalis. * honor. et theodos. aa. mariniano pp. * <a 422 d. iii non. nov. ravennae honorio xiii et theodosio x aa. conss.>

CJ.5.19.0. Si dos constante matrimonio soluta fuerit.

CJ.5.19.1: Imperatores Honorius, Theodosius

Si constante matrimonio a marito uxori dos sine causa legitima refusa est, quod legibus stare non potest, quia donationis instar perspicitur obtinere, eadem uxore defuncta ab eius heredibus cum fructibus ex die refusae dotis marito restituatur, ita ut proprietas eiusdem liberis ex eadem susceptis alienari contra leges a marito non possit. * honor. et theodos. aa. mariniano pp. * <a 422 d. iii non. nov. ravennae honorio xiii et theodosio x aa. conss.>

CJ.5.20.0. Ne fideiussores vel mandatores dotium dentur.

CJ.5.20.1: Imperatores Gratianus, Valentinianus, Theodosius

Sive ex iure sive ex consuetudine lex proficiscitur, ut vir uxori fideiussorem servandae dotis exhibeat, eam iubemus aboleri. * grat. valentin. et theodos. aaa. cynegio pp. * <a 381 d. viii non. sept. eucherio et syagrio conss.>

CJ.5.20.2: Imperator Justinianus

Generali definitione constitutionem pristinam ampliantes sancimus nullam esse satisdationem vel mandatum pro dote exigendum vel a marito vel a parte eius vel ab omnibus qui dotem suscipiunt. si enim credendam mulier se suamque dotem parti mariti existimavit, quare fideiussor vel alius intercessor exigitur, ut causa perfidiae in conubio eorum generetur? * iust. a. iuliano pp. * <a 530 d. x k. aug. lampadio et oresta conss.>

CJ.5.21.0. Rerum amotarum.

CJ.5.21.1pr.: Imperator Alexander Severus

Compensationis aequitatem iure postulas.Non enim prius exsolvi quod debere te constiterit aequum est, quam petitioni mutuae responsum fuerit, eo magis, quod ea te persequi dicis, quae divortii causa amota quereris. * alex. a. polydeucae. * <a 229 pp. xvi k. dec. alexandro a. iii et dione conss.>

CJ.5.21.1.1: Imperator Alexander Severus

Cum igitur apud competentem iudicem ex stipulatu conveniaris, apud eundem doce tui iuris res ablatas esse. <a 229 pp. xvi k. dec. alexandro a. iii et dione conss.>

CJ.5.21.2: Imperatores Diocletianus, Maximianus

Divortii gratia rebus uxoris amotis a marito vel ab uxore mariti rerum amotarum edicto perpetuo permittitur actio. constante etenim matrimonio neutri eorum neque poenalis neque famosa actio competit, sed de damno in factum datur actio. * diocl. et maxim. aa. et cc. sereno. * <a 290 vel 293 d. v k. oct. ipsis aa. conss.>

CJ.5.21.3: Imperatores Diocletianus, Maximianus

De rebus, quas divortii causa quondam uxorem tuam abstulisse proponis, rerum amotarum actione contra successores eius non in solidum, sed quantum ad eos pervenit, quod si res extent, dominii vindicatione uti non prohiberis. * diocl. et maxim. aa. et cc. quartioni. * <a 290 vel 293 d. v non. dec. ipsis aa. conss.>

CJ.5.22.0. Ne pro dote mulieri bona mariti addicantur.

CJ.5.22.1: Imperatores Diocletianus, Maximianus

Ut uxori pro dote addicantur bona quondam mariti, iure prohibitum est. sane si nullo relicto successore non idoneus decessit, secundum iuris formam, quatenus successionis modus patitur, indemnitati tuae consulere non prohiberis. * diocl. et maxim. aa. et cc. apollinariae. * <a 293 d. v non. dec. aa. conss.>

CJ.5.23.0. De fundo dotali.

CJ.5.23.1: Imperatores Severus, Antoninus

Si aestimata praedia data essent in dotem et convenisset, ut electio mulieri servetur, nihilo minus lex iulia locum habet. est autem alienatio omnis actus, per quem dominium transfertur. * sev. et ant. aa. didae. * <a 213 pp. xii k. mart. antonino a. iiii et balbino conss.>

CJ.5.23.2: Imperator Gordianus

Mariti, qui fundum communem cum alio in dotem inaestimatum acceperunt, ad communi dividundo iudicium provocare non possunt, licet ipsi possint provocari. * gord. a. domitianae. * <a 241 pp. v non. oct. gordiano a. ii et pompeiano conss.>

CJ.5.24.0. Divortio facto apud quem liberi morari vel educari debent.

CJ.5.24.1: Imperatores Diocletianus, Maximianus

Licet neque nostra neque divorum parentium nostrorum ulla constitutione caveatur , ut per sexum liberorum inter parentes divisio celebretur, competens tamen iudex aestimabit, utrum apud patrem an apud matrem matrimonio separato filii morari ac nutriri debent. * diocl. et maxim. aa. et cc. caelestinae. * <a 294 s. xvi k. iul. beroae cc. conss.>

CJ.5.25.0. De alendis liberis ac parentibus.

CJ.5.25.1: Imperator pius

Parentum necessitatibus liberos succurrere iustum est. * pius a. basso. * < sine die et consule.>

CJ.5.25.2: Imperator divi fratres

Competens iudex a filio te ali iubebit, si in ea facultate est, ut tibi alimenta praestare possit. * divi fratres celeri. * <a 161 d. id. april. ipsis iii et ii aa. conss.>

CJ.5.25.3: Imperator divi fratres

Si competenti iudici eum, quem te ex claudio enixam esse dicis, filium eius esse probaveris, alimenta ei pro modo facultatum praestari iubebit. idem, an apud eum educari debeat, aestimabit. * divi fratres tatianae. * <a 162 pp. xiii k. mart. romae rustico et aquilino conss.>

CJ.5.25.4: Imperatores Severus, Antoninus

Si patrem tuum officio debito promerueris, paternam pietatem tibi non denegabit. quod si sponte non fecerit, aditus competens iudex alimenta pro modo facultatium praestari tibi iubebit. quod si patrem se negabit, quaestionem istam in primis idem iudex examinabit. * sev. et ant. aa. sabino. * <a 197 pp. non. febr. laterano et rufino conss.>

CJ.5.26.0. De concubinis.

CJ.5.26.1: Imperator Constantinus

Nemini licentia concedatur constante matrimonio concubinam penes se habere. * const. a. ad pop. * <a 326 pp. xviii k. iul. caesareae constantino a. vii et c. conss.>

CJ.5.27.0. De naturalibus liberis et matribus eorum et ex quibus casibus iusti efficiuntur.

CJ.5.27.1pr.: Imperator Constantinus

Senatores seu perfectissimos, vel quos in civitatibus duumviralitas vel sacerdotii, id est phoenicarchiae vel syriarchiae, ornamenta condecorant, placet maculam subire infamiae et alienos a romanis legibus fieri, si ex ancilla vel ancillae filia vel liberta vel libertae filia vel scaenica vel scaenicae filia vel ex tabernaria vel ex tabernarii filia vel humili vel abiecta vel lenonis aut harenarii filia vel quae mercimoniis publicis praefuit susceptos filios in numero legitimorum habere voluerint aut proprio iudicio aut nostri praerogativa rescripti : ita ut, quidquid talibus liberis pater donaverit, sive illos legitimos seu naturales dixerit, totum retractum legitimae suboli reddatur aut fratri aut sorori aut patri aut matri. * const. a. ad gregorium. * <a 336 lecta xii k. aug. carth agine nepotiano et facundo conss.>

CJ.5.27.1.1: Imperator Constantinus

Sed et uxori tali quodcumque datum quolibet genere fuerit vel emptione collatum, etiam hoc retractum reddi praecipimus: ipsas etiam, quarum venenis inficiuntur animi perditorum, si quid quaeritur vel commendatum dicitur, quod his reddendum est quibus iussimus aut fisco nostro, tormentis subici iubemus. <a 336 lecta xii k. aug. carthagine nepotiano et facundo conss.>

CJ.5.27.1.2: Imperator Constantinus

Sive itaque per ipsum donatum est qui pater dicitur, vel per alium sive per interpositam personam, sive ab eo emptum vel ab alio, sive ipsorum nomine comparatum, statim retractum reddatur quibus iussimus aut, si non existunt, fisci viribus vindicetur. <a 336 lecta xii k. aug. carthagine nepotiano et facundo conss.>

CJ.5.27.1.3: Imperator Constantinus

Quod si existentes et in praesentia rerum constituti agere noluerint pacto vel iureiurando exclusi, totum sine mora fiscus invadat. <a 336 lecta xii k. aug. carthagine nepotiano et facundo conss.>

CJ.5.27.1.4: Imperator Constantinus

Quibus tacentibus et dissimulantibus a defensione fiscali duum mensuum tempora limitentur, intra quae si non retraxerint vel propter retrahendum rectorem provinciae interpellaverint, quidquid talibus filiis vel uxoribus liberalitas impura contulerit, fiscus noster invadat, donatas vel commendatas res sub poena quadrupli severa quaestione perquirens. <a 336 lecta xii k. aug. carthagine nepotiano et facundo conss.>

CJ.5.27.2: Imperatores Arcadius, Honorius

Matre vel legitimis filiis vel nepotibus aut pronepotibus cuiuscumque sexus, uno pluribusve, existentibus bonorum suorum unam tantum unciam pater naturalibus filiis seu filiabus eorumque genetrici vel, si sola sit concubina, semunciam largiendi vel relinquendi habeat potestatem. quidquid vero ultra modum concessum relictum sit, legitimis liberis vel matri vel ceteris successoribus iure reddetur. * arcad. et honor. aa. anthemio pp. * <a 405 d. id. nov. constantinopoli stilichone ii et anthemio conss.>

CJ.5.27.3pr.: Imperatores Theodosius, Valentinianus

Si quis seu liber ipse seu curiae sit nexibus obligatus, et tradendi filios naturales, vel omnes vel quos quemve maluerit, eius civitatis curiae, unde ipse oritur, et in solidum heredes scribendi liberam ei concedimus facultatem. * theodos. et valentin. aa. ad apollonium pp. * <a 443 d. xvii k. ian. constantinopoli post consulatum eudoxii et dioscori.>

CJ.5.27.3.1: Imperatores Theodosius, Valentinianus

Quod si cui non ex urbe, sed vico vel possessione qualibet oriundo naturales liberi contigerunt, eosque velit sub definitione praedicta curiae splendore honestare et hereditatis opibus adiuvare, eius civitatis adscribendi sunt ordini, sub qua vicus ille vel possessio censeatur. <a 443 d. xvii k. ian. constantinopoli post consulatum eudoxii et dioscori.>

CJ.5.27.3.2: Imperatores Theodosius, Valentinianus

Quod si alterutram regalium civitatum patriam sortiatur, sit ei liberum susceptam ex inaequali coniugio subolem cuiuscumque civitatis decurionibus immiscere, dummodo civitas quae eligitur totius provinciae teneat principatum. indignum est enim, ut, qui sacratissimae urbis ubere gloriatur, naturales suos non illustris ordine civitatis illuminet. <a 443 d. xvii k. ian. constantinopoli post consulatum eudoxii et dioscori.>

CJ.5.27.3.3: Imperatores Theodosius, Valentinianus

Haec sive postrema definiat sive donationem cuiuslibet quantitatis in liberos naturales pater conferat: et quod de subeunda sorte curiali seu testamento seu actorum fide constituat, ita ratum esse stabiliterque volumus observari, ut, sive abstinendo hereditatibus sive abdicando donationes naturales liberi curialem voluerint evitare fortunam posteaque paternarum opum vel in solidum vel ex parte reperti fuerint possessores, licet eas alienaverint, omnimodo ad condicionem, in qua pater eos amplificatis opibus esse voluit, etiam inviti cogantur accedere. <a 443 d. xvii k. ian. constantinopoli post consulatum eudoxii et dioscori.>

CJ.5.27.3.4: Imperatores Theodosius, Valentinianus

Et si filiam naturalem vel filias habuit et eam vel eas curiali vel curialibus civitatis, ex qua oriundus est vel sub qua vicus vel possessio unde oritur consistit, vel eius civitatis, quae principatum totius provinciae tenet, matrimonio collocavit, haec eadem et in persona eius vel earum ad exemplum marium obtinebunt. <a 443 d. xvii k. ian. constantinopoli post consulatum eudoxii et dioscori.>

CJ.5.27.3.5: Imperatores Theodosius, Valentinianus

Quid enim interest, utrum per filios an per generos commoditatibus civitatum consuletur, et utrum novos lex faciat curiales, an foveat quos invenit? <a 443 d. xvii k. ian. constantinopoli post consulatum eudoxii et dioscori.>

CJ.5.27.4pr.: Imperatores Leo, Anthemius

Quoniam desideria morientium ex arbitrio viventium non sine iusta ratione colligimus, et is, qui naturalem filium habens hortantibus legibus ultro ad instar legitimi filii municipalibus eum voluit adgregare muneribus et donare patriae principalem, manifestavit notumque fecit sine dubio professione certissima facultatum suarum omnium elegisse se adfectione debita successorem, cum certe huiusmodi personis adeo sacratissima constitutione subventum sit, ut nec renuntiandi eis aut alienandi vel repudiandi paternas hereditates aut donationes in fraudem curiae concedatur facultas, sed muneribus patriae susceptis patrimonia subire cogantur, nullam e diverso calumniantium vocem penitus patiemur admitti, sed ips um philocalum et paternorum bonorum omnium ab intestato heredem et bostrenae civitatis curiae principalem iniuncta vel iniungenda sibi munera subire ex eoque genitos vel nascendos filios similiter paternae condicioni subiacere praecipimus. * leo et anthem. aa. armasio pp. * <a 470 d. k. ian. constantinopoli iordane et severo conss.>

CJ.5.27.4.1: Imperatores Leo, Anthemius

Et huiusmodi formam in omnibus causis, quae similiter in cuiuscumque civitatis ordine curiaque contigerint, in posterum decernimus observari. <a 470 d. k. ian. constantinopoli iordane et severo conss.>

CJ.5.27.5pr.: Imperator Zeno

Divi constantini, qui veneranda christianorum fide romanum munivit imperium, super ingenuis concubinis ducendis uxoribus, filiis quin etiam ex isdem vel ante matrimonium vel postea progenitis suis ac legitimis habendis, sacratissimam constitutionem renovantes iubemus eos, qui ante hanc legem ingenuarum mulierum (nuptiis minime intercedentibus) electo contubernio cuiuslibet sexus filios procreaverunt, quibus nulla videlicet uxor est, nulla ex iusto matrimonio legitima proles suscepta, si voluerint eas uxores ducere, quae antea fuerant concubinae, tam coniugium legitimum cum huiusmodi mulieribus ingenuis, ut dictum est, posse contrahere, quam filios utriusque sexus ex earundem mulierum priore contubernio procreatos, mox quam nuptiae cum matribus eorum fuerint celebratae, suos patri et in potestate fieri et cum his, qui postea ex eodem matrimonio suscepti fuerint, vel solos, si nullus alius deinde nascatur, tam ex testamento volentibus pa tribus etiam ex integro succedere quam ab intestato petere hereditatem paternam: pactis, quae matrimonii tempore super dotalibus vel ante nuptias donationis rebus subsecuta fuerint, etiam ad ipsorum personas pertinentibus, ut una cum fratribus suis postea ex isdem parentibus forte progenitis, aut soli, si nullus alius sit procreatus, dotis et ante nuptias donationis pro tenore legum nec minus pactorum emolumenta recipiant. * zeno a. sebastiano pp. * <a 477 d. x k. mart. post consulatum armati.>

CJ.5.27.5.1: Imperator Zeno

Hi vero, qui tempore huius sacratissimae iussionis necdum prolem aliquam ex ingenuarum concubinarum consortio meruerunt, minime huius legis beneficio perfruantur, cum liceat easdem mulieres sibi prius iure matrimonii copulare non extantibus legitimis liberis aut uxoribus ac legitimos filios utpote nuptiis procedentibus procreare, nec debeant, quos ex ingenua concubina dilato post hanc legem matrimonio nasci voluerint, ut iusti ac legitimi postea videantur, magnopere postulare. <a 477 d. x k. mart. post consulatum armati.>

CJ.5.27.6pr.: Imperator Anastasius

Iubemus eos, quibus nullis legitimis existentibus liberis in praesenti aliquae mulieres uxoris loco habentur, ex his sibi progenitos seu procreandos suos et in potestate sua legitimosque habere propriasque substantias ad eos vel per ultimas voluntates vel per donationes seu alios legi cognitos titulos si voluerint transferre, ab intestato quoque eorum ad hereditatem vocandos, nec aliquam quaestionis seu altercationis exercendae sub qualibet astuta subtilique legum vel constitutionum occasione super his vel agnatis seu cognatis genitoris eorum vel quibusdam aliis superesse facultatem in posterum: nihilo minus, quisquis huiusmodi mulierem uxoris loco dotalibus instrumentis confectis habuerit, pro eius subole similem eandemque formam custodiri, ne adimatur ei licentia sibi quodammodo per liberos proprios suum patrimonium adquirendi. * anastas. a. sergio pp. * <a 517 d. k. april. anastasio et agapeto conss.>

CJ.5.27.6.1: Imperator Anastasius

Filios insuper vel filias iam per divinos adfatus a patribus suis in adrogationem susceptos vel susceptas huius providentissimae nostrae legis beneficio et iuvamine potiri censemus. <a 517 d. k. april. anastasio et agapeto conss.>

CJ.5.27.7pr.: Imperator Justinus

Legem anastasii divinae recordationis, quae super naturalibus filiis emissa est, in his valere tantum casibus concedimus, qui nunc usque subsecuti sunt pro eiusdem legis tenore in matrimoniis tunc constantibus vel postea contractis, ita tamen, ut non aliunde progenitis subvenisse credatur quam non ex nefario nec incesto coniugio. * iustinus a. marino pp. * <a 519 d. v id. nov. constantinopoli iustino a. et eutherico conss.>

CJ.5.27.7.1: Imperator Justinus

Naturalibus insuper filiis seu filiabus ex cuiuslibet mulieris cupidine non incesta non nefaria procreatis et in paterna per adrogationem seu per adoptionem sacra susceptis ex divinis iussionibus, sive antequam eadem lex inrepserit seu post eandem legem usque ad praesentem diem, non sine ratione duximus suffragandum , ut adoptio seu adrogatio firma permaneat, nullis prorsus improbanda quaestionibus, quasi quod impetrarunt lege quadam interdictum sit, quoniam, et si qua prius talis emergebat dubitatio, remittenda fuit movente misericordia, qua indigni non sunt qui alieno laborant vitio. <a 519 d. v id. nov. constantinopoli iustino a. et eutherico conss.>

CJ.5.27.7.2: Imperator Justinus

Sint itaque post eandem adrogationem seu adoptionem sui et in potestate patrum successionesque tam ex testamento quam ab intestato capiant, prout in adoptatis seu et in adrogatis constitutum est. <a 519 d. v id. nov. constantinopoli iustino a. et eutherico conss.>

CJ.5.27.7.3: Imperator Justinus

In posterum vero sciant omnes legitimis matrimoniis legitimam sibi posteritatem quaerendam, ac si praedicta constitutio lata non esset. iniusta namque libidinum desideria nulla de cetero venia defendet, nullum sublevabit novum adminiculum praeter anteriorum dispositionum ordinem, non ante lata sanctio, quam ex hoc die resecandam pia suggesserit ratio, non adrogationum vel adoptionum praetextus, quae ulterius minime ferendae sunt, non astutiae sive divinis adfectandae litteris seu quibusdam illicitis ambiendae machinationibus, cum nimis indignum, nimis sit impium flagitiis praesidia quaerere, ut et petulantiae servire liceat et ius nomenque patris, quod eis denegatum est, id altero legis colore praesumant. <a 519 d. v id. nov. constantinopoli iustino a. et eutherico conss.>

CJ.5.27.8pr.: Imperator Justinianus

Humanitatis intuitu naturalibus patribus hoc indulgemus, ut liceat eis nulla legitima subole vel matre subsistente naturalem vel naturales filios matremque eorum non tantum ex tribus unciis, quod praeteritae leges permittebant, sed etiam ex duplici portione, id est sex unciis, heredes scribere, ut, licet ab intestato nullam communionem ad patris naturalis successionem haberent, ex suprema tamen eius voluntate permittatur eis usque ad praedictas sex uncias (si hoc scilicet naturalis pater voluerit) hereditatem eius capere, ita tamen, ut memoratam sex unciarum quantitatem in omnibus naturalibus filiis et matre eorum minime testator excedat. * iust. a. menae pp. * <a 528 d. k. ian. constantinopoli dn. iustiniano a. ii cons.>

CJ.5.27.8.1: Imperator Justinianus

Quam et in legatis et fideicommissis eis relinquendis et dotibus et donationibus , tam aliis quam ante nuptias, usque ad aestimationem sex unciarum liberam similiter naturalibus eorum patribus damus potestatem. <a 528 d. k. ian. constantinopoli dn. iustiniano a. ii cons.>

CJ.5.27.8.2: Imperator Justinianus

Haec autem in futuris tantummodo testamentis vel ultimis voluntatibus vel dotibus vel donationibus locum habebunt. <a 528 d. k. ian. constantinopoli dn. iustiniano a. ii cons.>

CJ.5.27.9pr.: Imperator Justinianus

Communium rerum esse utilitatem recte iudicantes ludicis et omni ambiguitate segregatis legibus uti nostro subiectos imperio, ad praesentem sanctionem venimus, per quam omni dubitatione amputata, quae usque adhuc obtinebat, certissimum facimus, ut, quotiens naturales filii curiali fortunae patriae sui genitoris adsignantur, vel adhuc vivente patre vel post eius obitum pro dispositione testamenti ab eo conditi, et eo modo legitima iura in paterna successione adipiscuntur (quod recte fieri minime dubium est), licet illustrem dignitatem, ex qua curialis fortunae liberatio competere non potest, naturales filii antea meruerunt, ne permittatur eis contra substantiam ab eodem naturali patre descendentium vel ad scendentium vel ex latere cognationis vel agnationis iure eidem patri coniunctorum, licet ipsi legitimi successores eidem naturali patri per memoratam fortunam efficiantur, aliquod ius sibi vindicare. * iust. a. menae pp. * <a 528 d. k. iun. dn. iustiniano a. ii cons.>

CJ.5.27.9.1: Imperator Justinianus

Quod et in his locum habebit, qui iam a naturali patre curiali condicioni traditi adhuc superstites sunt, eodem scilicet modo nec illis contra substantiam eiusdem naturalis filii vel ex eo descendentium vel adscendentium vel ex latere coniunctorum aliquod sibi ius vindicare valentibus. <a 528 d. k. iun. dn. iustiniano a. ii cons.>

CJ.5.27.9.2: Imperator Justinianus

Sed si quidem iste naturalis filius sive postquam legitimus successor patri factus sit sive in antecedenti tempore filios ex legitimo matrimonio vel alios descendentes liberos habeat, eos modis omnibus ad eius successionem sine testamento morientis vocari nec curiae locum esse, praeterquam si quarta portio bonorum eius eidem curiae debeatur eo, quod nullus forte ex mortui liberis curialia munera peragere cogitur: illo videlicet observando, ut ii, quos iste naturalis filius, posteaquam fortunae curiali datus est, procreaverit, decuriones sine dubio sint et curialia peragere munera compellantur. <a 528 d. k. iun. dn. iustiniano a. ii cons.>

CJ.5.27.9.3: Imperator Justinianus

(1) sin vero sine liberis cuiuscumque gradus intestatus decesserit, si quidem matre superstite, tertiam quidem partem bonorum eius matrem habere, duas vero alias partes curiam, cui a patre datus est. <a 528 d. k. iun. dn. iustiniano a. ii cons.>

CJ.5.27.9.4: Imperator Justinianus

Sin autem mater quidem defuncti non superesset, alii vero cognati ex materna linea descendentes vel adscendentes vel ex latere venientes ad eius vocentur successionem, tunc ea quidem, quae a patre naturali ad eum pervenerunt, eidem curiae competere: si quid vero filio posteaque legitimo successori effecto vel a matre sua vel aliunde quocumque legitimo modo adquisitum sit, hoc ad proximos maternos eius cognatos pervenire. <a 528 d. k. iun. dn. iustiniano a. ii cons.>

CJ.5.27.9.5: Imperator Justinianus

Illo videlicet observando, ut, sive matre eius superstite sive ea ante filium mortua aliquis ex eius genere eiusdem curiae fortunam subire paratus sit, liceat ei se offerenti eidem curiae bona mortui, quae de substantia patris ad eum pervenerunt, capere muneraque peragere curialia, quo accedente mater defuncti, si adhuc supersit, non solum tertiam partem eorum, quae extra paternam substantiam filius eius aliunde adquisivit, sed omnia ea vel ipsa sola vel cum coheredibus suis capiet. <a 528 d. k. iun. dn. iustiniano a. ii cons.>

CJ.5.27.9.6: Imperator Justinianus

(2) ea vero, quae de successione naturalis filii post curialem condicionem morientis constituimus, non tantum in his locum habere debent, qui postea a patre suo naturali curiae dati fuerint, sed etiam in illis, qui iam dati sunt, si tamen adhuc supersunt. <a 528 d. k. iun. dn. iustiniano a. ii cons.>

CJ.5.27.9.7: Imperator Justinianus

Quod si ante praesentem sanctionem mortui sunt, minime ad eorum successionem eandem nostram sanctionem extendimus. <a 528 d. k. iun. dn. iustiniano a. ii cons.>

CJ.5.27.9.8: Imperator Justinianus

(3) et quoniam omnimodo favendum est curiis civitatum, illud etiam in hac parte addendum esse censemus, ut liceat patribus naturales filios curiae patriae suae tradere non solum nulla eis legitima subole existente, sed etiam si filios vel alios liberos ex legitimis matrimoniis procreatos habeant, et eo modo naturales quoque filios sibi legitimos successores efficere, ita tamen, ut minime eisdem patribus liceat per donationem vel ultimam voluntatem amplius eidem naturali filio dare vel relinquere, quam uni filio ex matrimonio legitimo procreato dederit vel reliquerit, cui minima portio data vel relicta sit. <a 528 d. k. iun. dn. iustiniano a. ii cons.>

CJ.5.27.10pr.: Imperator Justinianus

Cum quis a muliere libera et cuius matrimonium non est legibus interdictum cuiusque consuetudine gaudebat aliquos liberos habuerit, minime dotalibus instrumentis compositis, postea autem ex eadem adfectione etiam ad nuptialia pervenerit instrumenta et alios iterum ex eodem matrimonio liberos procreaverit, ne posteriores liberi, qui post dotem editi sunt, sibi omne paternum patrimonium vindicare audeant quasi iusti et in potestate effecti, fratres suos, qui ante dotem fuerant nati, ab hereditate paterna repellentes, huiusmodi iniquitatem non esse ferendam censemus. * iust. a. demostheni pp. * <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.5.27.10.1: Imperator Justinianus

Cum enim adfectio prioris subolis et ad dotalia instrumenta efficienda et ad posteriorem filiorum edendam progeniem praestitit occasionem, quomodo non est iniquissimum ipsam stirpem secundae posteritatis quasi iniustam excludere, cum gratias agere fratribus suis posteriores debeant, quorum beneficio ipsi sunt iusti filii et nomen et ordinem subsecuti. <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.5.27.10.2: Imperator Justinianus

Neque enim verisimile est eum, qui postea vel donationem vel dotem conscripsit, et ab initio talem adfectionem circa mulierem non habuisse, quae eam dignam esse uxoris nomine faciebat. <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.5.27.10.3: Imperator Justinianus

Quapropter sancimus in huiusmodi casibus omnes liberos, sive ante dotalia instrumenta editi sunt sive postea, una eademque lance trutinari et omnes suos et in potestate suis existere genitoribus, ut nec prior nec iunior ullo habeatur discrimine, sed ii, qui ex isdem maioribus procreati sunt, et simili perfruantur fortuna. <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.5.27.11pr.: Imperator Justinianus

Nuper legem conscripsimus, per quam iussimus, si quis mulierem in suo contubernio collocaverit non ab initio adfectione maritali, eam tamen, cum qua poterat habere conubium, et ex ea liberos sustulerit, postea vero adfectione procedente etiam nuptialia instrumenta cum ea fecerit filiosque vel filias habuerit, non solum secundos liberos qui post dotem editi sunt iustos et in potestate esse patribus, sed etiam anteriores, qui et his qui postea nati sunt occasionem legitimi nominis praestiterunt. * iust. a. iuliano pp. * <a 530 d. xv k. april. constantinopoli lampadio et oresta vv. cc. conss.>

CJ.5.27.11.1: Imperator Justinianus

Quam legem quidam putaverunt sic interpretari, ut sive non progeniti fuerint post dotem conscriptam liberi sive etiam ab hac luce subtracti, non anteriores filios iustos haberi, nisi in utroque tempore viventes et superstites liberi inveniantur. <a 530 d. xv k. april. constantinopoli lampadio et oresta vv. cc. conss.>

CJ.5.27.11.2: Imperator Justinianus

Quorum supervacuam subtilitatem penitus inhibendam censemus. sufficiat etenim talem adfectionem habuisse, ut post liberorum editionem et dotalia efficiant instrumenta et spem tollendae subolis habeant. <a 530 d. xv k. april. constantinopoli lampadio et oresta vv. cc. conss.>

CJ.5.27.11.3: Imperator Justinianus

Licet enim hoc quod speratum est ad effectum non pervenit, nihil anterioribus liberis fortuitus casus derogare concedatur: et multo magis, si quis mulierem, quam in contubernio suo habuerat, pregnantem fecerit, postea autem adhuc gravida muliere constituta dotalia fecerit instrumenta et puer vel puella editus vel edita sit, iusta patri suboles nascatur et in potestate efficiatur et heres ei existat morienti sive ab intestato sive ex testamento. satis enim absurdum est, si filii post dotem progeniti et anterioribus liberis adiutorium adferant, ipsum puerum vel puellam sibi opitulari non posse. <a 530 d. xv k. april. constantinopoli lampadio et oresta vv. cc. conss.>

CJ.5.27.11.4: Imperator Justinianus

Et generaliter definimus et, quod super huiusmodi casibus variabatur, definitione certa concludimus, ut semper in huiusmodi quaestionibus, in quibus de statu liberorum est dubitatio, non conceptionis, sed partus tempus inspiciatur: et hoc favore facimus liberorum. et editionis tempus statuimus esse inspectandum exceptis his tantummodo casibus, in quibus conceptionem magis approbari infantium condicionis utilitas expostulat. <a 530 d. xv k. april. constantinopoli lampadio et oresta vv. cc. conss.>

CJ.5.27.12pr.: Imperator Justinianus

Cuidam, qui iustum filium habebat, nepos accessit naturalis: si nepotis nomen huiusmodi suboli legibus accommodandum est, quaerebatur. volebat enim tali naturali nepoti ex suo legitimo filio iam defuncto progenito totam suam substantiam relinquere, quasi sacris constitutionibus tantummodo in filiis naturalibus prohibentibus totum patrimonium sive quantam partem voluerit eis relinquere et certo fini partes eorum concludentibus. * iust. a. iohanni pp. * <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.27.12.1: Imperator Justinianus

Huiusmodi autem dubitatio et in alia specie ventilata est. quid enim, si ex naturali filio nepotem habet avus legitimum patri suo vel naturalem? <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.27.12.2: Imperator Justinianus

In omnibus itaque talibus dubitationibus cum nulla legitima consequentia in huiusmodi personis custoditur, sed interventu subolis naturalis nihil ius legitimum subesse potest, ut necessitas relinquendi aliquid eis ex legibus immineat, liceat eis quantum voluerint suae substantiae in eos conferre, scilicet nulla legitima subole subsistente. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.27.12.3: Imperator Justinianus

Filiis enim naturalibus relinqui constitutiones quantum voluerint ideo prohibuerunt, quia vitium paternum frenandum esse existimaverunt. in nepotibus autem non eadem observatio in praefatis speciebus custodienda est, ubi legitima minime suboles facit impedimentum. ea enim subsistente veterum constitutionum tenorem in naturalibus filiis statutum et in nepotes extendimus. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.27.12.4: Imperator Justinianus

Sed haec in his tantummodo sancimus, in quibus voluntate aliquid consecuti sunt. iura etenim ab intestato in avi successionem nemini eorum penitus aperimus. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.27.12.5: Imperator Justinianus

Et haec non solum eis accedere censemus a substantia avi paterni naturalis, sed etiam proavi vel eius cognationis, si quid saltem huiusmodi vocabuli in tam degeneres homines extendere maluerint. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.28.0. De tutela testamentaria.

CJ.5.28.1: Imperatores Severus, Antoninus

Quem dicis tibi tutorem testamento patronae datum, si administrationi se non miscuit, nulla actione tibi tenetur: neque enim iure datus tutor fuit. quod si administravit sponte res tuas, experiri adversus eum actione negotiorum gestorum potes. * sev. et ant. aa. speratae. * <a 207 pp. xvii k. aug. apro et maximo conss.>

CJ.5.28.2: Imperator Antoninus

Etsi a patre tuo testamento iure tutor tibi datus eo tempore, quo heres extitisti, in rebus humanis fuit, tamen codicillis alius tutor recte datus est et uterque propter voluntatem testatoris tutor erit, nisi testamento datum pater alium codicillis dando reprobaverit: tunc enim posterior solus tutor erit. * ant. a. sabiniano. * <a 212 pp. id. april. duobus aspris conss.>

CJ.5.28.3: Imperator Alexander Severus

Si tutores testamento vobis dati sunt, quamquam unus vestrum suae aetatis factus sit, id est pupillarem aetatem excesserit, tutela tamen vestra ad eum non pertinet. * alex. a. gorgiae. * <a 223 pp. v k. ian. maximo ii et aeliano conss.>

CJ.5.28.4: Imperator Alexander Severus

Mater testamento filiis tutores dare non potest, nisi eos heredes instituerit. quando autem eos heredes non instituerit, solet ex voluntate defunctae datus tutor a praesidibus confirmari. nullo vero ex his interveniente si res pupillares qui dati sunt administraverint, protutelae actione tenentur. * alex. a. feliciano. * <a 224 pp. vii k. iun. iuliano et crispino conss.>

CJ.5.28.5: Imperatores valer., gallien.

Si pupillorum pater alienum servum, de quo postulas, et tutorem esse voluit et liberum, ante tamen tutore alio pupillis dato, redimi et manumitti hunc apud praesidem et curatorem adiungi oportet. * valer. et gallien. aa. daphno. * <a 260 pp. iii k. mart. saeculare ii et donato conss.>

CJ.5.28.6: Imperatores Diocletianus, Maximianus

Si tibi pater avunculum testamento recte tutorem dedit nec is excusatus est, eum tutelae iudicio tam administratis quam neglectis, cum administrari deberent, apud competentem iudicem conveni secundum bonam fidem tibi satisfacere iussurum. * diocl. et maxim. aa. et cc. domnae. * <a 294 s. non. april. sirmi cc. conss.>

CJ.5.28.7: Imperatores Diocletianus, Maximianus

Tutela contra tutorem mota, quem testamento patris (si in eius fuisti potestate) datum proponis, reddi tibi si quid debetur competens iudex aditus iubebit. curatorem enim inutiliter in testamento dari non ambigitur. * diocl. et maxim. aa. et cc. tryphaenae. * <a 294 d. xvii k. mai. sirmi cc. conss.>

CJ.5.28.8: Imperatores Theodosius, Valentinianus

Tutores etiam graecis verbis licet in testamentis relinquere, ut ita tutores dari videantur, ac si legitimis verbis eos testator dedisset. * theodos. et valentin. aa. florentino pp. * <a 439 d. prid. id. sept. constantinopoli theodosio a. xvii et festo conss.>

CJ.5.29.0. De confirmando tutore.

CJ.5.29.1: Imperator Alexander Severus

Testamento matris tutores dati excusare necesse non habent, nisi decreto secundum voluntatem defunctae, et quidem inquisitione habita, dati fuerint. * alex. a. prisco. * <a 224 pp. iii non. mart. iuliano et crispino conss.>

CJ.5.29.2: Imperator Alexander Severus

Neque per epistulam neque ex imperfecto testamento tutorem recte dari indubitati iuris est. sed voluntas patris in constituendis tutoribus vel curatoribus in huiusmodi casibus a iudice, ad cuius officium haec res pertinet, servari solet. secundum quae vereri non debes, ne tempus, antequam confirmareris, cesserit. * alex. a. valerio. * <a 226 pp. viii id. aug. alexandro a. ii et Marcello conss.>

CJ.5.29.3: Imperator Alexander Severus

Si, ut proponis, pupillo cuius meministi pater inutiliter testamento tutores dedit et, priusquam ii confirmarentur, alii ab eo cuius interest dati sunt, id quidem, quod iure gestum est, revocari non potest: an autem qui iudicium patris habent curatores eidem pupillo constitui debeant, aditus competens iudex perspectis utilitatibus eius aestimabit. * alex. a. sosiano. * <a 228 pp. iii id. april. modesto et probo conss.>

CJ.5.29.4: Imperator Justinianus

Naturalibus liberis providentes damus licentiam patribus eorum in his rebus, quas quocumque modo eis dederint vel dereliquerint, scilicet intra praefinitum nostris legibus modum, etiam tutorem eis relinquere, qui debet apud competentem iudicem se confirmare et ita res gerere pupillares. * iust. a. iuliano pp. * <a 530 d. xv k. april. constantinopoli lampadio et oresta conss.>

CJ.5.29.5: Imperator Justinianus

In rebus dotalibus sive mobilibus sive immobilibus seu se moventibus, si tamen extant, sive aestimatae sive inaestimatae sint, mulierem in his vindicandis omnem habere post dissolutum matrimonium praerogativam et neminem creditorum mariti , qui anteriores sunt, sibi potiorem causam in his per hypothecam vindicare, cum eaedem res et ab initio uxoris fuerant et naturaliter in eius permanserunt dominio. non enim quod legum subtilitate transitus earum in mariti patrimonium videtur fieri, ideo rei veritas deleta vel confusa est. * iust. a. demostheni pp. * <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.5.30.0. De legitima tutela.

CJ.5.30.1: Imperatores Diocletianus, Maximianus

Ad avunculos nec masculorum tutelae ex lege duodecim tabularum deferuntur, cum solum patruis, si non excusaverint, id ius tributum sit. * diocl. et maxim. aa. firminae. * <a 290 pp. viii k. iun. ipsis aa. iiii et iii conss.>

CJ.5.30.2: Imperatores Diocletianus, Maximianus

Ad agnatos pupilli iure legitimo sollicitudinem tutelae pertinere, nisi capitis deminutionem sustinuerunt, manifestissimum est. * diocl. et maxim. aa. et cc. asclepiodoto. * <a 293 s. iii non. april. aa. conss.>

CJ.5.30.3: Imperator Leo

Constitutione divae memoriae constantini lege claudia sublata, pro antiqui iuris auctoritate salvo manente agnationis iure tam consanguineus (id est frater) quam patruus ceterique legitimi ad pupillarum feminarum tutelam vocantur. * leo a. erythrio pp. * <a 472 d. k. iul. marciano cons.>

CJ.5.30.4: Imperator Anastasius

Frater emancipatus, qui in germani sui vel sororis successionem omnes inferiores seu prolixiores gradus non tantum cognatorum, sed etiam agnatorum antecedere a nobis pro nostra dispositione iussus est, etiam ad legitimam fratrum et sororum nec non liberorum fratrum tutelam, quasi minime patris potestate per ius emancipationis relaxatus, si non alia iuri cognita excusatione munitus sit, vocari nec sub praetextu capitis deminutionis alienum huiusmodi onere semet contendere sancimus. * anastas. a. polycarpo pp. * <a 498 d. k. april. iohanne et paulino conss.>

CJ.5.30.5pr.: Imperator Justinianus

Nemo neque frater neque alius legitimus in tutelam sive ingenui sive liberti vocetur, antequam quintum et vicesimum annum suae aetatis impleat. immineat enim ei pro sua tantummodo administratione periculum nec alieno onere alius praegravetur. * iust. a. demostheni pp. * <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.5.30.5.1: Imperator Justinianus

Sic etenim et pupillus et adultis competens gubernatio inducitur et naturalis ordo per omnia conservabitur. cui enim ferendum est eundem esse tutorem et sub tutela constitui, et iterum eundem curatorem et sub cura agere? haec certe et nominum et rerum foeda confusio est. <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.5.30.5.2: Imperator Justinianus

Discretis itaque omnibus vel dativi vel legitimi fiant tutores vel curatores ii, qui talis aetatis sunt, cui suarum rerum administratio committitur, quorumque res possunt plenissimo iure hypothecarum teneri. <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.5.30.5.3: Imperator Justinianus

Omnibus, quae de successionibus tam ingenuorum quam libertorum prioribus legibus disposita sunt, in suo robore duraturis nec aliquam imminutionem ex praesentis legis sanctione accepturis maxime in libertorum successionibus ne videantur ex eo, quod ad tutelae gravamen non veniunt, successionis emolumentum amittere. <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.5.31.0. Qui petant tutores vel curatores.

CJ.5.31.1: Imperator Antoninus

Admone adulescentem, adversus quem consistere vis, ut curatores sibi dari postulet, cum quibus secundum iuris formam consistas. qui si in petendis his cessabit , potes tu competentem iudicem adire, ut in dandis curatoribus officio suo fungatur. * ant. a. chrysanthae. * <a 214 pp. ii non. febr. messala et sabino conss.>

CJ.5.31.2: Imperator Antoninus

Patroni tui filii si eius aetatis sunt, ut res eorum per tutores administrari debeant, cura adire praetorem et nomina edere, ex quibus tutores constituantur, ne, si cessaveris, obsequii deserti periculum subeas. * ant. a. epaphrodito. * <a 214 pp. iii non. iul. messala et sabino conss.>

CJ.5.31.3: Imperator Antoninus

In locum tutoris defuncti vel in perpetuum relegati alium dari tutorem filiis tuis idoneum ex eadem provincia ab iudice competente postula, qui secundum officium suum utilitatibus eorum providebit. * ant. a. atalantae. * <a 215 pp. iiii id. iul. laeto ii et cereale conss.>

CJ.5.31.4: Imperator Antoninus

Si filiis debitoris tui non sunt necessarii, qui tutores petant, potes ipse curare, ut accipiant, per quos legitime defendantur. * ant. a. domnino. * <a 215 pp. iii id. iul. laeto ii et cereale conss.>

CJ.5.31.5: Imperator Alexander Severus

Amita tutores petere filiis fratris sui non prohibetur. * alex. a. fuscianae. * <a 223 pp. v k. iul. maximo ii et aeliano conss.>

CJ.5.31.6: Imperator Alexander Severus

Matris pietas instruere te potest, quos tutores filio tuo petere debes, sed et observare, ne quid secus quam oportet in re filii pupilli agatur. petendi autem filiis curatores necessitas matribus imposita non est, cum puberes minores anno vicesimo quinto ipsi sibi curatores, si res eorum exigit, petere debeant. * alex. a. otaciliae. * <a 224 pp. x k. oct. iuliano et crispino conss.>

CJ.5.31.7: Imperator Gordianus

Admone eam, quae quondam pupilla tua fuit, cum eam non tantum viri potentem, sed etiam nupsisse proponas, ut sibi petat curatorem. quod si ea petere neglexerit, quo maturius possis rationes reddere administrationis, adito eo cuius super ea re notio est petere curatorem non vetaris. * gord. a. dionysio. * <a 239 pp. vi id. ian. gordiano a. et aviola conss.>

CJ.5.31.8: Imperatores Diocletianus, Maximianus

Cum a matribus sedulum petendi tutoris officium exigatur, non fortuiti casus impedimentis adscribantur, proponasque procuratorem, qui ad petendum pupillo tutorem a matre fuerat constitutus, a latronibus interfectum petitionem ex necessitate demoratam esse, ab hereditatis successione matrem repelli, cuius nullum vitium intercessisse adseris, perquam durum est. * diocl. et maxim. aa. musico. * <a 291 pp. v id. mart. tiberiano et dione conss.>

CJ.5.31.9: Imperatores Diocletianus, Maximianus

Cum iure habenti tutorem tutor dari non possit, intellegis matrem non officium pietatis in petendo tutore deseruisse, sed iure munitam merito filio suo tutorem non postulare. * diocl. et maxim. aa. et cc. asclepiodoto. * <a 293 s. iii non. april. byzantii aa. conss.>

CJ.5.31.10: Imperatores Diocletianus, Maximianus

Nepotibus fratris tui, si eorum mater in petendis tutoribus debito non fungatur officio, petere tutores sollemniter potes. * diocl. et maxim. aa. et cc. prisco. * <a 294 s. prid. k. mai. sirmi cc. conss.>

CJ.5.31.11: Imperator Zeno

Matres naturalibus etiam filiis ad similitudinem eorum, qui ex iustis ac legitimis nuptiis sunt procreati, petendorum tutorum necessitati subiaceant, nulla eis ignorantia iuris ad evitanda legibus vel sacris constitutionibus definita, si petitionem tutorum minus curaverint, profutura. * zeno a. dioscoro pp. * <a 479 d. k. sept. constantinopoli zenone a. ii cons.>

CJ.5.32.0. Ubi petantur tutores vel curatores.

CJ.5.32.1: Imperator Antoninus

Magistratus eius civitatis, unde filii tui originem per condicionem patris ducunt vel ubi eorum sunt facultates, tutores vel curatores his quam primum secundum formam perpetuam dare curabunt. quod si filii tui neque possident quicquam in provincia, ubi morantur, neque inde originem ducunt, restituti apud patriam suam et ubi patrimonium habent morabuntur, ut ibi defensores legitimos sortiantur. * ant. a. aristobulae. * <a 215 pp. k. oct. laeto ii et cereale conss.>

CJ.5.33.0. De tutoribus et curatoribus illustrium vel clarissimarum personarum.

CJ.5.33.1pr.: Imperatores Valentinianus, Theodosius, Arcadius

Illustris praefectus urbis adhibitis decem viris e numero senatus amplissimi et praetore clarissimo viro, qui tutelaribus cognitionibus praesidet, tutores curatoresve ex quolibet ordine idoneos faciat retentari. et sane id libero iudicio expertesque damni constituent iudicantes. * valentin. theodos. et arcad. aaa. proculo pu. * <a 389 d. iii k. ian. mediolani timasio et promoto conss.>

CJ.5.33.1.1: Imperatores Valentinianus, Theodosius, Arcadius

Et si regendis pupillaribus substantiis singuli creandorum pares esse non possunt, plures ad hoc secundum leges veteres conveniet advocari, ut, quem coetus ille administrandis negotiis pupillorum dignissimum iudicabit, sola sententia obtineat praefecturae, super cuius nomine, sollemnitate servata, postea per praetorem interponatur decretum. <a 389 d. iii k. ian. mediolani timasio et promoto conss.>

CJ.5.33.1.2: Imperatores Valentinianus, Theodosius, Arcadius

Itaque hoc modo remoti a metu qui consilio adfuerint permanebunt et parvulis adultisque clarissimis iusta defensio sub hac prudentium deliberatione perveniet. <a 389 d. iii k. ian. mediolani timasio et promoto conss.>

CJ.5.33.1.3: Imperatores Valentinianus, Theodosius, Arcadius

(1) quod tamen circa eorum personas censuisse nos palam est, quibus neque testamentarii defensores neque legitimi vita aetate facultatibus suppetunt. nam ubi forte huiuscemodi homines offeruntur, si nihil ad defensionem suis privilegiis comparabunt, ut teneri possint, iure praescribimus. <a 389 d. iii k. ian. mediolani timasio et promoto conss.>

CJ.5.33.1.4: Imperatores Valentinianus, Theodosius, Arcadius

(2) ceterum alia, quae in causis minorum antiquis legibus cauta sunt, manere intemerata decernimus. <a 389 d. iii k. ian. mediolani timasio et promoto conss.>

CJ.5.33.1.5: Imperatores Valentinianus, Theodosius, Arcadius

(3) in provinciis autem curiales in nominandis tutoribus et curatoribus clarissimarum personarum exhibeant debitam cautionem, et discriminis sui memores cognoscant indemnitati minorum obnoxias etiam suas deinceps esse facultates. <a 389 d. iii k. ian. mediolani timasio et promoto conss.>

CJ.5.33.2: Imperatores Valentinianus, Theodosius, Arcadius

Generali lege prospectum est, ne quid ad illustrium senatorum tutelam curialibus occupati necessitatibus vocarentur. * valentin. theodos. et arcad. aaa. aurelio pu. * <a 393 d. viii k. aug. theodosio a. iii et abundantio conss.>

CJ.5.34.0. Qui dare tutores vel curatores et qui dari possunt.

CJ.5.34.1: Imperator Alexander Severus

Cum tibi in ea aetate constituto, ut, si de statu constaret, per tutores sive curatores negotia tua administrari deberent, libertatis controversiam fieri adleges, non oportuit impediri, quo magis liberali causa ordinata, quia interim pro libero habebaris, curator tibi daretur, per quem defendi causa tua potest. * alex. a. ambibulo. * <a 222 pp. k. nov. alexandro a. cons.>

CJ.5.34.2: Imperator Alexander Severus

Maritus etsi rebus uxoris suae debeat adfectionem, tamen curator ei creari non potest. * alex. a. artemisiae. * <a 225 pp. k. iul. fusco ii et dextro conss.>

CJ.5.34.3: Imperator Philippus

Luminibus captum curatorem habere falso tibi persuasum est. * philipp. a. dolenti. * <a 244 pp. xiii k. aug. peregrino et aemiliano conss.>

CJ.5.34.4: Imperator Philippus

Armatae militae muneribus occupatus neque si legitimus sit neque si ex testamento datus fuerit nec alio modo, etsi voluerit, tutor aut curator fieri potest: sed si errore ductus res administraverit, negotiorum gestorum actione convenitur. * philipp. a. emerito mil. * <a 244 pp. x k. aug. peregrino et aemiliano conss.>

CJ.5.34.5: Imperatores Diocletianus, Maximianus

Neque a praeside alterius provinciae neque a magistratibus municipalibus tutorem ortum ex alia civitate nec domicilium ubi nominatur habentem iure dari posse ab eo, cuius iurisdictioni subiectus non est, certissimi iuris est: neque cessatio iniuncti perperam officii ad periculum eius pertinet. * diocl. et maxim. aa. et cc. aelianae. * <a 293 s. xii k. mai. aa. conss.>

CJ.5.34.6: Imperatores Diocletianus, Maximianus

Quod dicis matrem filiis tutores nolle petere, super hac re adi praesidem provinciae, cum, si eam neglexisse perspexerit, etiam ipse magistratus dare tutores vel nomina mittere, ut ab ipso decreto tribui possint, iubere non prohibeatur. * diocl. et maxim. aa.Et cc. leontio. * <a 293 pp. prid. k. mai. aa. conss.>

CJ.5.34.7: Imperatores Diocletianus, Maximianus

In servili condicione constitutum tutorem vel curatorem a praeside dari non posse nullam habet iuris dubitationem. * diocl. et maxim. aa. et cc. rufo. * <a 293 s. prid. non. iul. philippopoli aa. conss.>

CJ.5.34.8: Imperatores Diocletianus, Maximianus

Creditorem debitoribus tutorem datum non tantum petitionem non amittere, sed etiam ipsum sibi posse solvere non ambigitur. * diocl. et maxim. aa. et cc. euelpisto. * <a 294 pp. v non. ian. cc. conss.>

CJ.5.34.9: Imperatores Diocletianus, Maximianus

Si sororis tuae filiis, tutore legitimo patruo constituto nec ullo excusato privilegio, tutor datus es, cum habenti tutorem alium dari prohibeant iura, necessitatem administrationis ad eum pertinere nec te datione teneri non ambigitur. * diocl. et maxim. aa. et cc. maximiano. * <a 294 s. iii k. febr. sirmi cc. conss.>

CJ.5.34.10: Imperatores Diocletianus, Maximianus

Curatorem habenti neque adiungi nisi causa cognita nec in loco eius alium substitui non ante priore remoto ambigui iuris non est: teque afuturum damni, quod medio tempore negotiis pupillaribus contigit, esse succedaneum, cum actorem periculo tuo constituere debueris, nec iure magistratum in absentiam tuam alium creasse certum est. * diocl. et maxim. aa. et cc. florentino. * <a 294 pp. iii k. april. cc. conss.>

CJ.5.34.11: Imperator Constantinus

In universis litibus placet non prius puberem iustam habere personam, nisi interposito decreto aut administrandi patrimonii gratia aut in litem fuerit curator datus, ut iuxta praecedentia nostrae pietatis statuta legitime initiatae litis agitata in iudiciis controversia finiatur. * const. a. et const. c. ad bassum pu. * <a 319 d. iiii id. oct. aquileiae constantino a. v et licinio c. conss.>

CJ.5.34.12: Imperatores Gratianus, Valentinianus, Theodosius

Curator adulescenti ordinatus post inchoatam litem non potest sub praetextu specialis curatoris a se nominati aut litem contestatam deserere aut ab administratione se subtrahere. * grat. valentin. et theodos. aaa. eutropio pp. * <a 381 d. iiii k. oct. constantinopoli eucher et syagrio conss.>

CJ.5.34.13: Imperatores Honorius, Theodosius

Ne magistratuum ulterius procedat licentia, plenius designamus, ne patrimonialem colonum sive alium, qui privilegio ab hac nuncupatione defenditur, tutelae muneris adstringat officium. * honor. et theodos. aa. monaxio pu. * <a 409 d.......... honorio viii et theodosio iii aa. conss.>

CJ.5.35.0. Quando mulier tutelae officio fungi potest.

CJ.5.35.1: Imperator Alexander Severus

Tutelam administrare virile munus est, et ultra sexum femineae infirmitatis tale officium est. * alex. a. otaciliae. * <a 224 pp. x k. oct. iuliano et crispino conss.>

CJ.5.35.2pr.: Imperatores Valentinianus, Theodosius, Arcadius

Matres, quae amissis viris tutelam administrandorum negotiorum in liberos postulant, priusquam confirmatio officii talis in eas iure veniat, fateantur actis sacramento praestito ad alias se nuptias non venire. * valentin. theodos. et arcad. aaa. tatiano pp. * <a 390 d. xii k. febr. mediolano valentiniano a. iiii et neoterio conss.>

CJ.5.35.2.1: Imperatores Valentinianus, Theodosius, Arcadius

Sane in optione huiuscemodi nulla cogitur, sed libera in condiciones quas praestituimus voluntate descendat: nam si malunt alia optare matrimonia, tutelas filiorum administrare non debent. <a 390 d. xii k. febr. mediolano valentiniano a. iiii et neoterio conss.>

CJ.5.35.2.2: Imperatores Valentinianus, Theodosius, Arcadius

Sed ne sit facilis in eas post tutelam iure susceptam inruptio, bona eius primitus, qui tutelam gerentis adfectaverit nuptias, in obligationem venire et teneri abnoxia rationibus parvulorum praecipimus, ne quid incuria, ne quid fraude depereat. <a 390 d. xii k. febr. mediolano valentiniano a. iiii et neoterio conss.>

CJ.5.35.2.3: Imperatores Valentinianus, Theodosius, Arcadius

His illud adiungimus, ut mulier, si aetate maior est, tunc demum petendae tutelae ius habeat, cum tutor testamentarius vel legitimus defuerit vel privilegio a tutela excusetur vel suspecti genere submoveatur vel ne suis quidem per animi aut corporis valetudinem administrandis facultatibus idoneus inveniatur. <a 390 d. xii k. febr. mediolano valentiniano a. iiii et neoterio conss.>

CJ.5.35.2.4: Imperatores Valentinianus, Theodosius, Arcadius

Quod si feminae tutelas refugerint et praeoptaverint nuptias, tunc demum vir illustris praefectus urbis adscito praetore, qui impertiendis tutoribus praesidet, sive iudices, qui in provinciis iura restituunt, de alio ordine per inquisitionem dari minoribus defensores iubebunt. <a 390 d. xii k. febr. mediolano valentiniano a. iiii et neoterio conss.>

CJ.5.35.3pr.: Imperator Justinianus

Si pater secundum nostram constitutionem naturalibus liberis in his rebus, quae ab eo in eos profectae sunt, tutorem non reliquerit, mater autem voluerit eorum, sive masculi sunt sive feminae, subire tutelam, ad exemplum legitimae subolis liceat ei hoc facere, quatenus actis sub competenti iudice intervenientibus iuramentum antea praestet, quod ad nuptias non perveniat, sed pudicitiam suam intactam conservet et renuntiet senatus consulti velleiani praesidio omnique alio legitimo auxilio suamque substantiam supponat. * iust. a. iuliano pp. * <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.35.3.1: Imperator Justinianus

Et ita filiorum suorum vel filiarum naturalium tutricem eam existere sancimus: omnibus, quae pro matribus et liberis earum ex legitimo matrimonio progenitis divalibus constitutionibus cauta sunt, in huiusmodi matribus observandis. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.35.3.2: Imperator Justinianus

Si enim in filiis iustis, in quibus et testamentariae et legitimae sunt tutelae, tamen matribus (his deficientibus) ad providentiam filiorum suorum venire conceditur, multo magis in huiusmodi casibus, ubi legitima tutela evanescit, saltem alias eis dari humanissimum est. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.36.0. In quibus causis tutorem habenti tutor vel curator dari potest.

CJ.5.36.1pr.: Imperator Antoninus

Si in locum eius tutoris ad tempus dati estis, qui rei publicae causa aberat, isque iam finito munere quod ei iniunctum est abesse desiit, quin ad eius officium curamque pertineant negotia pupillae, ambigere non debetis. * ant. a. tiberiano et rufo. * <a 213 pp. viii k. aug. antonino a. iiii et balbino conss.>

CJ.5.36.1.1: Imperator Antoninus

Sed consultius feceritis, si praesidem provinciae virum clarissimum adieritis, ut is ad administrationem tutelae compellatur. <a 213 pp. viii k. aug. antonino a. iiii et balbino conss.>

CJ.5.36.2: Imperator Alexander Severus

Potuit quidem et debuit competens iudex in locum excusati curatoris, licet pupillus alios quoscumque haberet tutores, dare. quamvis autem curator cum aliis in locum eius substitutus sis, tamen periculo administrationis ultra pubertatis tempora non adstringeris. * alex. a. valentino. * <a 228 pp. v id. iun. modesto et probo conss.>

CJ.5.36.3: Imperator Alexander Severus

Propter late diffusum (id est in diversis locis constitutum) patrimonium, vel quod solus administrationi non sufficias, an tibi tutelam administranti adiungi aliquos curatores oporteat, praeses provinciae, si te non sufficientem deprehenderit, aestimabit. * alex. a. hylae. * <a 231 pp. viii id. dec. pompeiano et peligno conss.>

CJ.5.36.4: Imperatores valer., gallien.

Licet tutorem habenti tutor dari non potest, tamen certis ex causis alius idoneus substitui sententia competentis iudicis solet, id est in locum suspecti, qui convictus ac remotus est, et in locum excusati vel defuncti vel relegati tutoris. * valer. et gallien. aa. euploio. * <a 260 pp. id. mart. saeculare ii et donato conss.>

CJ.5.36.5pr.: Imperatores Diocletianus, Maximianus

Cum ob augmentum facultatum curatores adiungi solent, non prius tutores dati administratione eorum liberantur. * diocl. et maxim. aa. et cc. zenoni. * <a 294 d. iii k. april. cc. conss.>

CJ.5.36.5.1: Imperatores Diocletianus, Maximianus

Sane si is qui administravit tempore finitae tutelae fuit solvendo, secuti temporis periculum ad te pertinere non potuisse manifestum est. <a 294 d. iii k. april. cc. conss.>

CJ.5.37.0. De administratione tutorum et curatorum et de pecunia pupillari feneranda vel deponenda.

CJ.5.37.1: Imperatores Severus, Antoninus

Frustra times administrare res adulescentis, cuius curator es, ne ex hoc aliquis existimet commune periculum prioris temporis te recepisse: sed ea, quae agenda putas, age et, quod magis interest omnium partium, insta, ut iudex inter te et tutores datus quam primum partibus suis fungatur. * sev. et ant. aa. modesto. * <a 206 pp. xii k. oct. albino et aemiliano conss.>

CJ.5.37.2: Imperatores Severus, Antoninus

Adversus curatorem adulescentis, cui collegae dati estis, quamdiu administratio communis durat, exerceri iudicium non potest. * sev. et ant. aa. timoni et helpidophoro. * <a 207 pp. ii k. mai. apro et maximo conss.>

CJ.5.37.3: Imperator Antoninus

Sumptus in pupillum tuum necessario et ex honestis iustisque causis iudici, qui super ea re cogniturus est, si probabuntur facti, accepto ferentur, etiamsi praetoris decretum de dandis eis non sit interpositum. nam quod a tutoribus sive curatoribus bona fide erogatur, potius iustitia quam aliena auctoritate firmatur. * ant. a. eumuso. * <a 212 d. xiiii k. sept. duobus aspris conss.>

CJ.5.37.4: Imperator Antoninus

Nisi eam pecuniam, quam constiterit libertum paternum tutorem filiae tuae rationi eius debere, vel deposuerit vel in praediorum comparationem converterit, remittetur ad praefectum urbis, secundum ea quae constituta sunt arbitrio eius puniendus. * ant. a. proculae. * <a 213 pp. xii k. oct. antonino a. iiii et balbino conss.>

CJ.5.37.5: Imperator Antoninus

Frustra tutores quondam adulescentium, quorum curam administras, iudicatum facere detractant, cum exacta pecunia possit auctoritate praesidis in depositi causam haberi. * ant. a. rufino. * <a 215 pp. k. iul. laeto ii et cereale conss.>

CJ.5.37.6: Imperator Alexander Severus

Non est ignotum tutores vel curatores, si nomine pupillorum vel adultorum scientes calumniosas instituunt actiones, eo nomine condemnari oportere, ne sub praetextu nominis eorum propter suas simultates secure lites suas exercere posse existiment. * alex. a. paconio. * <a 223 pp. vi id. mai. maximo ii et aeliano conss.>

CJ.5.37.7: Imperator Alexander Severus

Tutelam pupillorum tuorum sic administrare debes, ne aedificium, quod his relictum est, contra formam alienandi testamento datam vendas. * alex. a. valerio. * <a 223 pp. vi id. iul. maximo ii et aeliano conss.>

CJ.5.37.8: Imperator Alexander Severus

Etsi scisses te curatorem datum nec administrasses, ceteris curatoribus et administrationem peragentibus et sufficientibus damno praestando contra te actio dari non potest. si autem nescisses curatorem datum, etiamsi solvendo ceteri non sint, damni periculum ad te non redundabit. * alex. a. aprili. * <a 229 pp. vi id. dec. alexandro a. iii et dione conss.>

CJ.5.37.9: Imperator Alexander Severus

Si curatores habes hique dotare te bonis tuis cessant, adito praeside impetrabis , ut, quod moderatum est honestae personae, praestare cogantur. * alex. a. melitiae. * <a 230 pp. xvii k. mai. agricola et clemente conss.>

CJ.5.37.10: Imperator Alexander Severus

Si liberti eiusdemque curatoris culpa seu fraude ratio vestra laesa sit, sarciri damnum ab eo qui dedit praeses provinciae curabit, non dubitaturus etiam graviorem exsecutionem adhibere, si quid tam aperta fraude commissum est, ut puniendum in liberto crimen deprehendatur. * alex. a. rufinae. * <a 230 pp. xi k. aug. agricola et clemente conss.>

CJ.5.37.11: Imperator Gordianus

Si bonam causam ea cuius tutor es habuit et adversus latam sententiam non appellasti seu post appellationem provocationis sollemnia implere cessaveris, tutelae iudicio indemnitatem pupillae praestare debes. * gord. a. caecilio. * <a 239 pp. v id. aug. gordiano a. et aviola conss.>

CJ.5.37.12: Imperator Gordianus

De his, quae in fraudem administrationis a tutore gesta vel neglegenter acta a curatoribus eorum quibus successisti adlegas, agere debes, si modo annos legitimae aetatis implesti. neque enim ignoras non multum patrocinari fecunditatem liberorum feminis ad rerum suarum administrationem, si intra aetatem legitimam sunt constitutae. * gord. a. octavianae. * <a 241 pp. iii non. oct. gordiano a. ii et pompeiano conss.>

CJ.5.37.13: Imperator Gordianus

Tutores debita pupillaria seu deposita reposcentes ad satisdationem compelli non posse manifestum est. * gord. a. longino. * <a 243 pp. viii k. mai. arriano et papo conss.>

CJ.5.37.14: Imperator Philippus

Rationes curae administratae ante impletum vicesimum et quintum annum durante officio posci iure non posse manifestum est. * philipp. a. et philipp. c. clementi. * <a 245 pp. prid. non. aug. philippo a. et titiano conss.>

CJ.5.37.15: Imperatores Diocletianus, Maximianus

Si non subscripsisti quasi fideiussor, frustra vereris, ne ex ea intercessione, qua signasti ut curator, olim liberatus (ut adfirmas) sententia praesidis, ex officio curatoris conveniri possis. * diocl. et maxim. aa. licinio. * <a 287 pp. prid. non. mart. diocletiano iii et maximiano aa. conss.>

CJ.5.37.16: Imperatores Diocletianus, Maximianus

Non omni titulo rerum pupilli potestatem alienandi tutores habent, sed administrationis tantum causa distrahentes, quae venum eis dare licet, iustam causam possidendi comparantibus praestant. cum itaque donare nulla ratione res eorum quorum administrant negotia potestatem habent, vindicare dominium a possidentibus non prohiberis. * diocl. et maxim. aa. et cc. proculo. * <a 293 s. x k. mai. heracliae aa. conss.>

CJ.5.37.17: Imperatores Diocletianus, Maximianus

De successione sua tutores frustra timent, cum his qui tutelam administraverunt testamenti factio non denegetur. nec de bonis suis donare aliquid prohibentur. * diocl. et maxim. aa. et cc. martiali. * <a 293 s. xvi k. nov. sirmi aa. conss.>

CJ.5.37.18: Imperatores Diocletianus, Maximianus

Debitoribus pupillae pro officii ratione, tutorem te constitutum adseverans ad te nominum periculo pertinente, parere solutioni denuntia. qui si satis non fecerint, in venditione pignorum uti communi iure potes. * diocl. et maxim. aa. et cc. sotericho. * <a 293 s. prid. k. ian. sirmi aa. conss.>

CJ.5.37.19: Imperatores Diocletianus, Maximianus

Tutor licet absens decreto datus, si sciens se sollemniter non excusaverit, administrationi constituitur obnoxius. * diocl. et maxim. aa. et cc. vindiciano. * <a 294 s. iii id. febr. sirmi cc. conss.>

CJ.5.37.20: Imperator Constantinus

Pro officio administrationis tutoris vel curatoris bona, si debitores existant, tamquam pignoris titulo obligata minores sibimet vindicare minime prohibentur. idem est et si tutor vel curator quis constitutus res minorum non administravit. * const. a. * <a 314 d. vii k. april. treviris volusiano et anniano conss.>

CJ.5.37.21: Imperator Constantinus

Pupillorum seu minorum defensores, si per eos donationum condicio neglecta est, rei amissae periculum praestent. * constant. a. ad maximum pp. * <a 316 d. iii non. febr. romae sabino et rufino conss.>

CJ.5.37.22pr.: Imperator Constantinus

Lex, quae tutores curatoresque necessitate adstrinxit, ut aurum argentum gemmas vestes ceteraque mobilia pretiosa, urbana etiam mancipia, domos balnea horrea atque omnia intra civitates venderent omniaque ad nummos redigerent praeter praedia et mancipia rustica, multum minorum utilitati adversa est. * const. a. ad pop. * <a 326 d. id. mart. sirmi constantino a. vii et constantio c. conss.>

CJ.5.37.22.1: Imperator Constantinus

Praecipimus itaque, ut haec omnia nulli tutorum curatorumve liceat vendere, nisi hac forte necessitate et lege, qua rusticum praedium atque mancipium vendere vel pignorare vel in dotem dare in praeteritum licebat, scilicet per inquisitionem iudicis, probationem causae, interpositionem decreti, ut fraudi locus non sit. <a 326 d. id. mart. sirmi constantino a. vii et constantio c. conss.>

CJ.5.37.22.2: Imperator Constantinus

Ante omnia igitur urbana mancipia, quia totius suppellectilis notitiam gerunt, semper in hereditate et in domo retineant: nam boni servi fraudem fieri prohibebunt, mali, si res exegerit, sub, quaestione positi poterunt prodere veritatem. <a 326 d. id. mart. sirmi constantino a. vii et constantio c. conss.>

CJ.5.37.22.2a: Imperator Constantinus

Atque ita omnia observabunt, ut nec inventaria minuere nec mutare vel subtrahere aliquid tutor valeat: quod in veste margaritis gemmis et in vasculis ceteraque suppellectili necessarium est. <a 326 d. id. mart. sirmi constantino a. vii et constantio c. conss.>

CJ.5.37.22.2b: Imperator Constantinus

Et tolerabilius est, si ita contigerit, servos mori suis dominis, quam servire extraneis. quorum fuga potius tutori adscribitur, sive neglegentia dissolutam patiatur esse disciplinam, sive duritia vel inedia atque verberibus eos adficiat. <a 326 d. id. mart. sirmi constantino a. vii et constantio c. conss.>

CJ.5.37.22.2c: Imperator Constantinus

Nec enim dominos execrantur, sed magis diligunt, ita ut haec lex per hoc quoque melior antiqua sit: tunc enim remota servorum custodia etiam vita minorum saepius prodebatur. <a 326 d. id. mart. sirmi constantino a. vii et constantio c. conss.>

CJ.5.37.22.3: Imperator Constantinus

Nec vero domum vendere liceat, in qua defecit pater, minor crevit, in qua maiorum imagines aut videre fixas aut revulsas non videre satis est lugubre. ergo et domus et cetera omnia immobilia in patrimonio minorum permaneant, nullumque aedificii genus, quod integrum hereditas dabit, collapsum tutoris fraude depereat. <a 326 d. id. mart. sirmi constantino a. vii et constantio c. conss.>

CJ.5.37.22.3a: Imperator Constantinus

Sed et si parens vel cuiuscumque heres est minor reliquerit deformatum aedificium, tutor testificatione operis ipsius et multorum fide id reficere cogetur : ita enim annui reditus plus minoribus conferent quam per fraudes pretia deminuta. <a 326 d. id. mart. sirmi constantino a. vii et constantio c. conss.>

CJ.5.37.22.4: Imperator Constantinus

Servi etiam, qui aliqua sunt arte praediti, operas suas commodo minoris inferent et reliqui, qui in usum minoris domini esse non poterunt quibusque ars nulla est, partim labore suo partim alimoniarum taxatione pascantur. <a 326 d. id. mart. sirmi constantino a. vii et constantio c. conss.>

CJ.5.37.22.5: Imperator Constantinus

Lex enim non solum contra tutores, sed etiam contra feminas immoderatas atque intemperantes prospexit minoribus, quae plerumque novis maritis non solum res filiorum, sed etiam vitam addicunt. <a 326 d. id. mart. sirmi constantino a. vii et constantio c. conss.>

CJ.5.37.22.5a: Imperator Constantinus

Huic accedit, quod ipsius pecuniae, in qua robur omne patrimoniorum veteres posuerunt, fenerandi usus vix diuturnus, vix continuus et stabilis est: quo facto saepe intercidente pecunia ad nihilum minorum patrimonia deducuntur. <a 326 d. id. mart. sirmi constantino a. vii et constantio c. conss.>

CJ.5.37.22.6: Imperator Constantinus

Iam ergo venditio tutoris nulla sit sine interpositione decreti, exceptis his dumtaxat vestibus, quae detritae usu aut corruptae servando servari non potuerint. <a 326 d. id. mart. sirmi constantino a. vii et constantio c. conss.>

CJ.5.37.22.7: Imperator Constantinus

Animalia quoque supervacua minorum quin veneant, non vetamus. <a 326 d. id. mart. sirmi constantino a. vii et constantio c. conss.>

CJ.5.37.23: Imperator Constantinus

Si tutoris vel curatoris culpa vel dolo, eo quod vectigal praedio emphyteutico impositum minime dependere voluissent, minori fuerit amissum, damnum quod ei contigit ex substantia eorum resarciri necesse est. * const. a. felici. * <a 333 d. xiiii k. mai. constantinopoli dalmatio et zenophilo conss.>

CJ.5.37.24pr.: Imperatores Arcadius, Honorius

Tutores vel curatores, mox quam fuerint ordinati, sub praesentia publicarum personarum inventarium sollemniter rerum omnium et instrumentorum facere curabunt. * arcad. et honor. aa. eutychiano pp. * <a 396 d. vi k. mart. constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.5.37.24.1: Imperatores Arcadius, Honorius

Aurum argentumque et quidquid vetustate temporis non mutatur, si in pupilli substantia reperiatur, in tutissima custodia collocent, ita tamen, ut ex mobilibus aut praedia idonea comparentur aut, si forte (ut adsolet) idonea non potuerint inveniri, iuxta antiqui iuris formam usurarum crescat accessio, quarum exactio ad periculum tutoris pertinet. <a 396 d. vi k. mart. constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.5.37.25pr.: Imperator Justinianus

Sancimus creatione tutorum et curatorum cum omni procedente cautela licere debitoribus pupillorum vel adultorum ad eos solutionem facere, ita tamen, ut prius sententia iudicialis sine omni damno celebrata hoc permiserit. * iust. a. iuliano pp. * <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.37.25.1: Imperator Justinianus

Quo subsecuto, si et iudex pronuntiaverit et debitor persolverit, sequitur huiusmodi causam plenissima securitas, ut nemo in posterum inquietetur: non enim debet, quod rite et secundum leges ab initio actum est, ex alio eventu resuscitari. <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.37.25.2: Imperator Justinianus

Non autem hanc legem extendimus etiam in his solutionibus, quae vel ex reditibus vel ex pensionibus vel aliis huiusmodi causis pupillo vel adulto accedunt: sed si extraneus debitor ex feneraticia forsitan cautione vel aliis similibus causis solutionem facere et se liberare desiderat: tunc enim eandem subtilitatem observari censemus. <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.37.26pr.: Imperator Justinianus

Cum quaedam mulier testamento condito filium suum praeterisset, idem autem filius, qui praeteritus erat, vel fratris vel extranei esset tutor vel curator, qui scriptus a matre tutoris fuerat heres, in praesenti specie manifestissimum erat stare tutorem vel curatorem in praecipiti loco. * iust. a. iohanni pp. * <a 531 d. x k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.37.26.1: Imperator Justinianus

Sive enim auctoritatem suam vel consensum ad adeundam hereditatem praestare pupillo vel adulto minime voluerit, ne ex hac causa sua iura aliquod patiantur praeiudicium, satis ei imminet periculum tutelae vel utilis negotiorum gestorum actionis, ne pupillus vel adultus utpote ex illius tarditate laesus litem ei ingerat: sive huiusmodi timore perterritus auctor fuerit pupillo vel adulto, aliud periculum emergebat: dum enim alii consentit, ipse sua iura perdit: videbatur etenim confirmare matris suae iudicium, quod oppugnandum esse existimabat. <a 531 d. x k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.37.26.2: Imperator Justinianus

Et multae aliae insuper species oriuntur, ex quibus verendum est tutori vel curatori circa suas res praeiudicium, puta in hypothecis et aliis variis casibus. <a 531 d. x k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.37.26.3: Imperator Justinianus

Invenimus autem generaliter definitum post officium depositum omnes actiones, quas tutor vel curator ex necessitate officii subierit, in quondam pupillum vel adultum transferri. <a 531 d. x k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.37.26.4: Imperator Justinianus

Quare tam optimo exemplo argumentati non et in aliis omnibus casibus, in quibus veretur tutor vel curator, ne praeiudicium aliquid ei fiat, timorem eius removemus? <a 531 d. x k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.37.26.5: Imperator Justinianus

Damus igitur eis cum summa fiducia res pupillorum vel adultorum gubernare, scituris, quod lex nostra eis sua iura immutilata reservat nihil ex huiusmodi auctoritate vel consensu praeiudicii subituris. <a 531 d. x k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.37.27: Imperator Justinianus

Constitutionem, quam nuper fecimus disponentes, quemadmodum debent solutiones in contractibus minorum causa fieri sive ex reditibus sive ex pensionibus sive ex aliis similibus causis, etiam in usuras extendimus, quae tamen non summatim neque ex multis annis collectae iam debentur, biennales metas et centum solidorum quantitatem minime excedentes. * iust. a. iohanni pp. * <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.37.28pr.: Imperator Justinianus

Sancimus neminem tutorum vel curatorum pupilli vel adulti vel furiosi aliarumque personarum, quibus tam ex veteribus quam ex nostris constitutionibus curatores creantur, defensionem quam pro lite susceperunt recusare, sed ab initio litis modis omnibus memoratas personas defendere et litem praeparatam secundum leges instruere scientes, quod et hoc munus necessarium est tam tutelae quam curationi. * iust. a. iohanni pp. * <a 531 d. xii k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.37.28.1: Imperator Justinianus

Et si hoc recusaverint vel subire distulerint, non solum utpote suspecti amoveantur amissa eorum existimatione, sed etiam ex substantia sua omne detrimentum, quod antelatae personae ex recusatione defensionis sustineant, resarcire cogantur. <a 531 d. xii k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.37.28.1a: Imperator Justinianus

Sed et si quis ex quadam interpellatione admonitus propter litis instructionem consuetam cautelam exposuerit, vel post litem contestatam, quam per se et non per procuratorem suscepit, vel demens vel furiosus factus fuerit, sancimus continuo curatorem ei in competenti iudicio ordinari cura et provisione tam iudicis, sub quo lis vertitur, quam cognatorum et propinquorum et actoris, si voluerit, ut non ab eo instituta lis diutius protrahatur: necessitatem habente creando curatore defensionem subire et cetera litis adimplere. <a 531 d. xii k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.37.28.2: Imperator Justinianus

Personis etiam, quae periculo proprio vel suae substantiae tutores vel curatores petierunt, sive matres forte fuerint vel quidam alii, compellendis eos, quos ordinaverint tutores vel curatores, praeparare talem subire defensionem. <a 531 d. xii k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.37.28.2a: Imperator Justinianus

Vel si illi noluerint hoc facere et propter huiusmodi defensionis recusationem tutela vel curatione removeantur, sic necessitatem imponimus memoratis personis alios tutores vel curatores ordinare in ipsis gestis, in quibus tutores vel curatores creantur, ex sua confessione declarantes talem subire defensionem. <a 531 d. xii k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.37.28.2b: Imperator Justinianus

Ne autem tales personae sine provisione debita relinquantur vel contra eos agentium iura diutius protelentur, sancimus continuo, id est post recusationem defensionis, in casibus videlicet, in quibus (sicut dictum est) hoc fieri possit, creationem aliorum tutorum vel curatorum celebrari: cognatis aliisque propinquis vel adfinibus vel creditoribus vel aliis quorum interest adeuntibus vel admonentibus eos, qui secundum leges ius habent tutores vel curatores constituere. <a 531 d. xii k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.37.28.3: Imperator Justinianus

Defensionem autem et nomen eius in hoc casu apertius declarantes, ne forte putaverint tutores vel curatores gravamen sibimet imponi, illam decernimus defensionem eos subire, quae non satisdatione pro eventu litis constituitur, sed ut tantummodo litem secundum legum ordinem pro pupillo vel adulto aliisque personis instruant, licentiam ex hac nostra auctoritate habentes sine decreto res quarum gubernationem gerunt pro cautela litis subsignare. <a 531 d. xii k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.37.28.4: Imperator Justinianus

Omnem autem dubitationem pro defensione pupillorum et adultorum aliarumque personarum penitus amputantes sancimus omnes tutores vel curatores non alias creari, nisi prius cum aliis sollemnibus verbis, quae pro gubernatione rerum tam in gestis quam in cautionibus ab his conscribuntur, et hoc specialiter expresserint, quod omnimodo sine ulla dilatione defensionem pro pupillis et adultis aliisque supra memoratis personis subire eos necesse est. <a 531 d. xii k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.37.28.5: Imperator Justinianus

Hisque adicimus nullam neque in hoc capitulo ambiguitatem relinquentes tutoribus et omnibus curatoribus licere fructus, sive qui ex reditibus praediorum colliguntur sive ex substantia personarum quarum gubernationem habent inventi fuerint, id est vinum et oleum et frumentum vel cuiuscumque speciei sunt, sine decreto distrahere iusto pretio, quod in his locis, in quibus venditio celebratur, tunc temporis noscitur obtinere, et quae ex venditione eorundem fructuum colliguntur pecuniae, cum alia pupillorum vel adultorum aliarumque personarum substantia administrentur. <a 531 d. xii k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.38.0. De periculo tutorum et curatorum.

CJ.5.38.1: Imperator Alexander Severus

Et qui notitiae causa liberti tutores dantur, quamvis soli administrandorum negotiorum pupillorum sive adultorum facultatem interdum non accipiant propter tenuitatem sui patrimonii, periculo tamen omnes sunt obligati, sive ea, quae scire deberent ex utilitate eorum, tutores sive curatores dissimulaverunt aut fraudem aliquam adhibuerunt vel cum aliis participaverunt aut, cum suspectos facere deberent, in officio muneris vel obsequio debito cessaverunt. * alex. a. quinto. * <a 226 pp. viiii k. febr. alexandro a. ii et Marcello conss.>

CJ.5.38.2: Imperator Alexander Severus

Ad eos, qui in alia provincia tutelam administrant, periculum administrationis ex persona tutorum, qui in alia provincia res pupilli gerunt, non porrigitur. * alex. a. saturo. * <a 226 pp. non. iul. alexandro a. ii et Marcello conss.>

CJ.5.38.3: Imperator Philippus

Si res pupillares, quas horreo conditas habere aut etiam venumdare debuisti, in hospitio tuo, ut adseveras, vi ignis absumptae sunt, culpam seu segnitiam tuam non ad tuum damnum, sed ad pupilli tui spectare dispendium minus probabili ratione deposcis. * philipp. a. et philipp. c. gratiano. * <a 245 pp. iii k. april. philippo a. et titiano conss.>

CJ.5.38.4: Imperator Philippus

Tutoribus seu curatoribus fortuitos casus, adversus quos caveri non potuit, imputari non oportere saepe rescriptum est. * philipp. a. et c. floro. * <a 245 pp. xii k. sept. philippo a. et titiano conss.>

CJ.5.38.5: Imperatores Diocletianus, Maximianus

Si tutor petitus vel testamento datus tutorem te constitutum esse non ex remissioris neglegentiae vitio, sed iustae ignorationis ratione non didicisti idque liquidis probationibus ostenderis, periculo eius temporis, quod ignorante te transmissum est, non teneberis. * diocl. et maxim. aa. severo. * <a 290 pp. iii id. sept. ipsis iiii et iii aa. conss.>

CJ.5.38.6: Imperatores Diocletianus, Maximianus

Temporis, quod insequitur post tutelae translationem, administrationis officio finito ad eos qui fuerunt tutores gerendae rei non pertinere periculum rationis est. * diocl. et maxim. aa. epicteto. * <a 294 s. v k. dec. cc. conss.>

CJ.5.39.0. Quando ex facto tutoris vel curatoris minores agere vel conveniri possunt.

CJ.5.39.1: Imperator Antoninus

Iuliana, cuius tibi curatores condemnati sunt, si vicesimum quintum annum aetatis egressa est, actio iudicati utilis adversus ipsam bonaque eius exercenda est. nam tutores curatoresque finito officio non esse conveniendos ex administratione pupillorum adulescentiumque saepe decretum est. * ant. a. septimo. * <a 213 pp. viii k. iul. romae antonino a. iiii et balbino conss.>

CJ.5.39.2: Imperator Alexander Severus

Etsi tutores tui, cum pecuniam pupillarem crederent, ipsi stipulati sunt, utilis actio tibi datur. * alex. a. sosandro. * <a pp. xv k. sept.>

CJ.5.39.3: Imperator Gordianus

Si in rem minoris pecunia profecta sit, quae curatori vel tutori eius nomine mutuo data est, merito personalis in eundem minorem actio danda est. * gord. a. prudentiano. * <a 239 pp. non. sept. gordiano a. et aviola conss.>

CJ.5.39.4: Imperatores Diocletianus, Maximianus

Si hi, qui te in pupillari aetate constituta fuerunt tutores, postea in administratione perseverantes vel curatores constituti tua praedia locaverunt, eos competenter conveni: sed ex eorum contractu utilis tibi quaeri potuit contra successores conductoris actio. * diocl. et maxim. aa. et cc. maximianae. * <a 293 s. iii non. mart. aa. conss.>

CJ.5.39.5: Imperatores Diocletianus, Maximianus

Per tutorem pupillo actio nisi certis ex causis quaeri non potest. * diocl. et maxim. aa. et cc. onesimae. * <a 294 d. id. dec. cc. conss.>

CJ.5.40.0. Si ex pluribus tutoribus vel curatoribus omnes vel unus agere pro minore vel conveniri possunt.

CJ.5.40.1: Imperator Antoninus

Ab uno ex tutoribus vel curatoribus posse causam minoris defendi, cum alii tutores vel curatores eum defendere noluerint, ignorare non debes. * ant. a. miltiadi. * <a 214 pp. non. nov. messala et sabino conss.>

CJ.5.40.2: Imperator Constantinus

Si divisum administrationis periculum per provincias sit, his tantum omnibus insinuari convenit et ab ipsis inferri litem, qui in ea provincia tutelae vel curae officium sustinent, ne de aliis provinciis defensores minorum ad iudicia producantur. * const. a. et licin. c. ad symmachum. * <a 319 d. prid. non. febr. constantino a. v et licinio c. conss.>

CJ.5.41.0. Ne tutor vel curator vectigal conducat.

CJ.5.41.1pr.: Imperator Antoninus

Competens iudex non ignorat non esse admittendos ad vectigalia conducenda eos, qui pupillorum vel adulescentium tutelam seu curam administrant vel eius administrationis rationem nondum reddiderunt. * ant. a. sexto. * <a 213 pp. viii k. aug. romae antonino a. iiii et balbino conss.>

CJ.5.41.1.1: Imperator Antoninus

Sed quamvis contra interdictum ad vectigale conducendum accesseris, tamen, quoniam ultro me adisti, si tam vectigali quam pupillis satisfeceris, falsi crimine carebis. <a 213 pp. viii k. aug. romae antonino a. iiii et balbino conss.>

CJ.5.41.1.2: Imperator Antoninus

Cum autem fisco iam obstrictum postea tutorem esse dicas, periculo te excusare poteris. <a 213 pp. viii k. aug. romae antonino a. iiii et balbino conss.>

CJ.5.42.0. De tutore vel curatore qui satis non dedit.

CJ.5.42.1: Imperatores valer., gallien.

Si nondum vobis aetas legitima completa est, satisdationem ab his, quos minus idoneos curatores vobis ab adversario, cum magistratu fungeretur, datos dicitis, postulate. prohibentur enim ab administratione, nisi securitati vestrae satisdatione prospexerint. * valer. et gallien. aa. titio et flaviano. * <a 259 pp. non. iul. aemiliano et basso conss.>

CJ.5.42.2pr.: Imperatores valer., gallien.

Et eum tutorem qui superest, si secundum praesidis praeceptum et iuris formam satis non dat, removeri a tutela (si inopia hoc faciat, sine infamia, si fraude, etiam cum nota) aditus provinciae rector iubebit: et in locum defunctorum alios idoneos substitui praecipiet, praesertim cum patrimonium pupilli nova hereditate auctum esse proponas. * valer. et gallien. aa. et valer. c. euploio. * <a 260 pp. id. mai. saeculare et donato conss.>

CJ.5.42.2.1: Imperatores valer., gallien.

Tutores autem dati ab heredibus eorum, quos decessisse dicis, rationem tutelae reposcent. <a 260 pp. id. mai. saeculare et donato conss.>

CJ.5.42.3pr.: Imperatores Diocletianus, Maximianus

In dubium non venit tutores, qui non testamento dati sunt, administrandi potestatem nisi satisdatione emissa salvam tutelam fore non habere. * diocl. et maxim. aa. stratonicae. * <a 287 pp. xviii k. ian. nicomediae diocletiano iii et maximiano aa. conss.>

CJ.5.42.3.1: Imperatores Diocletianus, Maximianus

Si igitur tutor, qui pro tutelari officio non caverat, iudicio expertus est, adversus eum lata sententia iuri tuo officere non potuit, nec ea quae ab eo gesta sunt ullam firmitatem obtinent. <a 287 pp. xviii k. ian. nicomediae diocletiano iii et maximiano aa. conss.>

CJ.5.42.3.2: Imperatores Diocletianus, Maximianus

Frustra igitur in integrum restitutionis auxilium desideras, quando ea quae ab eo gesta sunt ipso iure irrita sunt. <a 287 pp. xviii k. ian. nicomediae diocletiano iii et maximiano aa. conss.>

CJ.5.42.4: Imperatores Diocletianus, Maximianus

Non omnium tutorum par similisque causa est. quapropter exemplo testamentarii confirmatum a praeside vel datum ex inquisitione non onerari satisdatione rem salvam fore pupillorum manifestum est, pluribus autem datis ex inquisitione tutoribus illum, qui satis secundum formam edicti rem pupilli salvam fore dedit, in administratione praeferri iam dudum obtinuit. * diocl. et maxim. aa. et cc. tertullo. * <a 294 s. id. dec. nicomediae cc. conss.>

CJ.5.42.5pr.: Imperatores Constantius, Maximianus

Tutor, qui satisdationem, cum dare debuit, minime interposuit, nihil omnino ex bonis pupilli alienare potest. * constantius et maxim. aa. et sev. et maximinus cc.* <a 305 d. xi k. ian. constantino v et maximiano v aa. conss.>

CJ.5.42.5.1: Imperatores Constantius, Maximianus

Posteaquam autem ad tutelae administrationem electus est, et bonorum possessionem pupilli nomine agnoscere eum potuisse et cetera eius, quae tempore artarentur , persequi debuisse aperte claret. <a 305 d. xi k. ian. constantino v et maximiano v aa. conss.>

CJ.5.43.0. De suspectis.

CJ.5.43.1: Imperator Antoninus

Libertum tuum et tutorem filii tui, si fraudulenter res eius administrare existimas, suspectum facere potes, modo si officium eius pubertate pupilli finitum non est. nam si eo iure tutor esse desiit, iudicio tutelae conveniendus est. * ant. a. domitiae. * <a 212 pp. id. aug. romae duobus aspris conss.>

CJ.5.43.2: Imperator Antoninus

Curatores quidem suo periculo, quanto tardius ad eos tutela transfertur, cessant. quod si id fraude factum existimas, suspectos eos postula: qui si submoveri meruerint, in locum eorum alios accipies. * ant. a. longino. * <a 215 pp. id. ian. laeto ii et cereale conss.>

CJ.5.43.3: Imperator Alexander Severus

Praeses provinciae tutores filiorum tuorum strictioribus remediis adhibitis omnimodo administrationis officium compellet agnoscere. quod si in eadem contumacia perseveraverint, suspectos postulare, ut alii in locum eorum petantur, non prohiberis. * alex. a. fortunatae. * <a 229 pp. id. ian. alexandro a. iii et dione conss.>

CJ.5.43.4: Imperator Alexander Severus

Etiam testamento patris tutorem datum suspectum postulare potes, si fraudem tutoris argueris. * alex. a. thalidae. * <a 229 pp. v id. sept. alexandro a. iii et dione conss.>

CJ.5.43.5: Imperator Alexander Severus

In postulandis suspectis tutoribus seu curatoribus non vires patrimoniorum principaliter, sed an nihil segniter, nihil fraudulenter geratur, perpendi oportet. * alex. a. asclepiadi. * <a 233 pp. viii k. ian. maximo ii et paterno conss.>

CJ.5.43.6pr.: Imperator Gordianus

Pietatis fungeris munere, qui fratris tui filios, ut necessitudo sanguinis suadet, protegere conaris. * gord. a. felici. * <a 238 pp. v id. nov. pio et pontiano conss.>

CJ.5.43.6.1: Imperator Gordianus

Si igitur tutores vel curatores eorum non recte administrant, suspectis eis postulatis atque ostensis, ut alii in loco eorum constituantur, facile impetrabis. <a 238 pp. v id. nov. pio et pontiano conss.>

CJ.5.43.6.2: Imperator Gordianus

Quod si nihil in fraudem egerunt, verum ita egeni sunt, ut in eorum administratione fratris tui filiorum substantia periclitetur, an eis iniungendus sit curator, qui idoneis facultatibus sit, rector provinciae aestimabit. <a 238 pp. v id. nov. pio et pontiano conss.>

CJ.5.43.6.3: Imperator Gordianus

Removendi autem licentia non solum parentibus utriusque sexus, sed etiam cognatis et extraneis et infamibus et ipsi cuius res administrantur, si non impubes sit, arbitrio cognatorum bonae opinionis constitutorum conceditur. <a 238 pp. v id. nov. pio et pontiano conss.>

CJ.5.43.7: Imperator Gordianus

Eum, quem ut suspectum tutorem vel curatorem accusas, pendente causa cognitionis abstinere ab administratione rerum tuarum, donec causa finiatur, praeses provinciae iubebit. alius tamen interea in locum eius in administratione rerum ordinandus est. * gord. a. gorgoniae. * <a 240 pp. vii k. mart. sabino ii et venusto conss.>

CJ.5.43.8: Imperator Philippus

Si non suspectum contutorem tuum postulare ac removere ab administratione bonorum pupilli curaveris, admitti nequaquam potest ratio desiderii tui iam nunc postulantis tutelam tibi nomine eiusdem pupilli restitui. * philipp. a. et philipp. c. proculo. * <a 244 pp. xiii k. nov. peregrino et aemiliano conss.>

CJ.5.43.9: Imperatores Diocletianus, Maximianus

Suspectos tutores ex dolo, non etiam eos, qui ob neglegentiam remoti sunt, infames fieri manifestum est. * diocl. et maxim. aa. et cc. ammiano. * <a 294 s. viii k. mai. cc. conss.>

CJ.5.44.0. De in litem dando tutore vel curatore.

CJ.5.44.1: Imperator Antoninus

Si quas petitiones adversus pupillos tuos habes, dirigere eas potes, adsistentibus causamque defendentibus contutoribus tuis, cum et, si alios tutores non haberent, ad hoc genus litis defendendae curatores accipere deberent. * ant. a. miltiadi. * <a 213 pp. xiii k. aug. antonino a. iiii et balbino conss.>

CJ.5.44.2pr.: Imperator Alexander Severus

An tibi partis fundi paterni vindicatio competat, is cuius de ea re notio est aestimabit. * alex. a. euaristo. * <a 224 pp. xii k. mai. iuliano et crispino conss.>

CJ.5.44.2.1: Imperator Alexander Severus

Respicere autem debes officium, in quo te esse tutorem dicis, ne ob eiusmodi petitionem evictione secuta ultra pretii quantitatem auctoris heredem pupillum tuum oneres, qui laudatus per te defendi debeat, cum aut compensationis rationem habere aut contrario tutelae iudicio experiri possis. <a 224 pp. xii k. mai. iuliano et crispino conss.>

CJ.5.44.2.2: Imperator Alexander Severus

Sed ne tuum ius, si quod habes, impediatur, ad eam rem defendendam, quae adversus te vindicantem agenda erit, curatores pupillo petuntur. <a 224 pp. xii k. mai. iuliano et crispino conss.>

CJ.5.44.3: Imperator gallien.

Ad protegendam causam tutor sive curator datus conveniri non potest administrationis periculo, cum sola suscepti negotii tutela mandata est. si nihil igitur, ut adlegas, praeter negotium gessisti, frustra conveniris. * gallien. a. valerio. * <a 265 pp. k. april. valeriano et lucillo conss.>

CJ.5.44.4: Imperator gallien.

Ad litem datus tutor si quid bona fide erogasti, a contutoribus more solito exigere potes. * gallien. a. irenaeo. * <a 267 pp. k. nov. paterno et arcesilao conss.>

CJ.5.44.5: Imperatores Diocletianus, Maximianus

Sive ex testamento sive iure legitimo fratris tui filiorum tutelae onus ad te pertineat, vereri non debes de his quaestionibus, quas adversus fratrem quondam tibi fuisse dicis, cum, si qua emerserit lis, procuratore dato et illis curatore ad litem constituto et sollemnitati iuris, ubi tutor exigitur, et indemnitati utriusque prospici possit. * diocl. et maxim. aa. et cc. tigrani. * <a 294 s. iiii k. mai. cc. conss.>

CJ.5.45.0. De eo qui pro tutore negotia gessit.

CJ.5.45.1: Imperatores valer., gallien.

Etiam mulieres, si res pupillares pro tutore administraverunt, ad praestandam rationem tenentur. * valer. et gallien. aa. Marcello. * <a 259 pp. aemiliano et basso conss.>

CJ.5.45.2: Imperatores Diocletianus, Maximianus

Non utiliter nominatus tutor pupillorum agendo nomine, licet ex eorum persona iniunctam impleat intentionem, exceptione " si tutor non est" submovetur. * diocl. et maxim. aa. et cc. marco. * <a 294 d. non. dec. cc. conss.>

CJ.5.46.0. Si mater indemnitatem promiserit.

CJ.5.46.1: Imperator Alexander Severus

Suo potius periculo magistratus tutores quos petisti dederunt, quam tu contra sexus condicionem alicui ex ea obligatione obstricta es, quod tuo periculo tutores filiis tuis dari postulasti. * alex. a. bruttiae. * <a 234 pp. iii id. mart. maximo ii et urbano conss.>

CJ.5.46.2: Imperator Philippus

Quaedam pupillorum vestrorum a matre itemque avo paterno administrata eorumque nomine indemnitatem vobis promissam esse adseveratis. quae si ita sunt et idem pupilli legitimae aetatis effecti non adversus matrem suam itemque avum, sed contra vos congredi malunt, non immerito indemnitatem ab his praestari desiderabitis, quos et administrationem suo periculo pridem suscepisse proponitis. * philipp. a. et philipp. c. asclepiadi et menandro. * <a 246 pp. iiii id. iul. praesente et albino conss.>

CJ.5.46.3: Imperatores Diocletianus, Maximianus

Ob tutorem non idoneum a matre petitum frustra vobis eam teneri contenditis, cum non, nisi specialiter eius periculo dari decreto fuisset comprehensum, ex ea obligatione obstricta est. * diocl. et maxim. aa. et cc. gaiano. * <a 293 s. k. dec. aa. conss.>

CJ.5.47.0. Si contra matris voluntatem tutor datus sit.

CJ.5.47.1: Imperatores Severus, Antoninus

Si contra matris ultimam voluntatem fuscinium filio communi tutorem datum probaveris, eum sine damno existimationis a tutela removendum praetor decernet. quae rescriptio, si in fraude convictus fuerit, non suffragabitur. * sev. et ant. aa. tertio. * <a 197 pp. xiii k. mart. laterano et rufino conss.>

CJ.5.48.0. Ut causae post pubertatem adsit tutor.

CJ.5.48.1pr.: Imperator Philippus

Tutores, qui necdum administrationis rationem ad curatores transtulerunt, defensioni causarum pupillarium adsistere oportere saepe rescriptum est. * philipp. a. dextro. * <a 245 pp. xii k. nov. philippo a. et titiano conss.>

CJ.5.48.1.1: Imperator Philippus

Et ideo, si (ut proponis) instrumenta, quibus adseri possunt causae provocationis, etiam nunc hi quorum meministi apud se detinent, aditus praeses provinciae periculi sui eos admoneri praecipiet. <a 245 pp. xii k. nov. philippo a. et titiano conss.>

CJ.5.49.0. Ubi pupilli educentur.

CJ.5.49.1pr.: Imperator Alexander Severus

Educatio pupillorum tutorum nulli magis quam matri eorum, si non vitricum eis induxerit, committenda est. * alex. a. dionysodoro. * <a 223 pp. vii id. febr. maximo ii et aeliano conss.>

CJ.5.49.1.1: Imperator Alexander Severus

Quando autem inter eam et cognatos et tutorem super hoc orta fuerit dubitatio, aditus praeses provinciae inspecta personarum et qualitate et coniunctione perpendet, ubi puer educari debeat. <a 223 pp. vii id. febr. maximo ii et aeliano conss.>

CJ.5.49.1.2: Imperator Alexander Severus

Sin autem aestimaverit, apud quem educari debeat, is necessitatem habebit hoc facere, quod praeses iusserit. <a 223 pp. vii id. febr. maximo ii et aeliano conss.>

CJ.5.49.2: Imperatores Diocletianus, Maximianus

Utrum nepos tuus ex filia apud te an patruum suum morari debeat, ex singulorum adfectione et qui magis ad suspicionem ex spe successionis propior sit, aestimabitur. * diocl. et maxim. aa. et cc. gratae. * <a 294 s. xviii k. nov. nicomediae cc. conss.>

CJ.5.50.0. De alimentis pupillo praestandis.

CJ.5.50.1pr.: Imperator Antoninus

Pupillus, si ei alimenta a tutore suo non praestantur, praesidem provinciae adeat, qui, ne in alimentorum praestatione mora fiat, partibus suis fungetur. * ant. a. faustino. * <a 215 pp. vi id. iul. romae laeto ii et cereale conss.>

CJ.5.50.1.1: Imperator Antoninus

Idem est et si de statu pupilli seu adulti et de bonis eius controversia pendeat. <a 215 pp. vi id. iul. romae laeto ii et cereale conss.>

CJ.5.50.2pr.: Imperator Alexander Severus

Quod plerumque postulatur, ut arbitrio praetoris alimenta pro modo facultatum pupillis vel iuvenibus constituantur, pro officio suo hi qui aliena negotia gerunt, ne apud iudicem controversiam habeant, faciunt. * alex. a. aufidio. * <a 223 pp. non. dec. maximo ii et aeliano conss.>

CJ.5.50.2.1: Imperator Alexander Severus

Ceterum si bonus vir et innocens tutor arbitrio suo aluit pupillos (quod interdum etiam necesse est fieri, ne secreta patrimonii et suspectum aes alienum, quod melius est interim taceri quam, cum de modo bonorum quaeritur, ultro proferri et apud acta ius dicentis contra utilitatem pupillorum signari), non dubio accepto ferre debebunt ea, quae vir bonus arbitrabitur merito ad exhibitionem educationis ministeria studiaque erogata esse. <a 223 pp. non. dec. maximo ii et aeliano conss.>

CJ.5.50.2.2: Imperator Alexander Severus

Nec ferendus est iuvenis, qui, cum praesens esset studiisque eruditus atque alitus est, si ea per alium se consecutum non probet, sumptusque recuset, quasi vento vixerit aut nullo liberi hominis studio imbui meruerit. <a 223 pp. non. dec. maximo ii et aeliano conss.>

CJ.5.51.0. Arbitrium tutelae.

CJ.5.51.1: Imperator Antoninus

Cum tutelae administratae ratio a te peti coeperit, neque veritati neque iustis probationibus officit, quod (ut dicis) testator modum patrimonii sui verbis testamenti ampliavit vel minuit. * ant. a. leoni. * <a 212 pp. v k. oct. romae duobus aspris conss.>

CJ.5.51.2: Imperator Antoninus

Nomina paternorum debitorum si idonea fuerunt initio susceptae tutelae et per latam culpam tutorum minus idonea tempore tutelae esse coeperunt, iudex qui super ea re datus fuerit dispiciet: et si palam dolo tutoris vel manifesta neglegentia cessatur, tutelae iudicio damnum, quod ex cessatione accidisset, pupillo praestandum esse statuere curabit. * ant. a. praesentino. * <a 213 pp. non. iul. antonino a. iiii et balbino conss.>

CJ.5.51.3: Imperator Antoninus

Curator, qui post decretum praesidis, sublata pecunia, quae ad comparationem possessionis fuerat deposita, praedium sibi comparavit, elige, utrum malis in emptione tibi negotium eum gessisse, an, quia in usus suos conversae pecuniae sunt, legitimas usuras ab eo accipere: secundum quae iudex tutelae iudicio redditus partem religionis implebit. * ant. a. vitalio. * <a 215 pp. iii k. iul. romae laeto ii et cereale conss.>

CJ.5.51.4pr.: Imperator Alexander Severus

Eum, qui bonis paternis secundum edicti formam abstentus est, hereditariis actionibus conveniri nulla ratio suadet. * alex. a. aglao. * <a 222 pp. iii k. mai. alexandro a. cons.>

CJ.5.51.4.1: Imperator Alexander Severus

Nec ad rem facit, quod adversus curatores , si non consulte abstentus sit, actio competat: nihil quippe in ea quae ex officio gesta sunt vel geri debebunt veniet, sed culpa solum quantique interfuit eius non fuisse abstentum aestimatur. <a 222 pp. iii k. mai. alexandro a. cons.>

CJ.5.51.4.2: Imperator Alexander Severus

Cui consequens est, ut, si propter eam causam transegisti cum curatoribus, nulla adversus te creditoribus patris tui petitio competat. <a 222 pp. iii k. mai. alexandro a. cons.>

CJ.5.51.5: Imperator Gordianus

Omnes tutores seu heredes eorum, qui administraverunt tutelam, ad eundem iudicem ire debere iam pridem constitutum est. cum igitur patrem tuum cum alio tutelam administrasse adlegas, praeses provinciae eundem iudicem adversus te atque heredes contutorum patris tui dare debebit, quatenus quisque condemnari debeat, examinaturum. * gord. a. victorino. * <a 238 pp. x k. aug. pio et pontiano conss.>

CJ.5.51.6pr.: Imperatores Diocletianus, Maximianus

Cum interdictae venditionis vitium etiam pretii fraude tutor vester cumulasse proponatur, non dubitabit praeses provinciae, quando venditionem confirmare voluistis, residuum pretium cum usuris venditae a tutore possessionis celeriter vobis restitui iubere. * diocl. et maxim. aa. septimo et cononi. * <a 290 pp. iiii k. sept. ipsis iiii et iii aa. conss.>

CJ.5.51.6.1: Imperatores Diocletianus, Maximianus

Quod autem petitis ab heredibus eius qui vendidit pretium vobis exsolvi, superfluo a nobis desideratis, quia nec praesidis experientiam possit latere, tutores qui gesserint sive heredes eorum obea negotia, quae per eos administrata sunt, principali loco conveniri debere, ceteris ob culpae rationem non servati detrimenti periculo substitutis, vel, si pariter administrasse doceantur, etiam adversus unum liberum experiundi arbitrium competere, ita ut actiones, quas adversus alios habetis, ad electum transferantur. <a 290 pp. iiii k. sept. ipsis iiii et iii aa. conss.>

CJ.5.51.7: Imperatores Diocletianus, Maximianus

Quidquid tutoris dolo vel lata culpa vel levi culpa sive curatoris minores amiserint vel, cum possent, non quaesierint, hoc etiam in tutelae sive negotiorum gestorum utile iudicium venire non est incerti iuris. * diocl. et maxim. aa. et cc. alexandro. * <a 293 s. prid. id. april. aa. conss.>

CJ.5.51.8: Imperatores Diocletianus, Maximianus

Tutores tutelae conveniri longi temporis praescriptio non prohibet. unde si his transactione vel novatione atque acceptilatione liberationem non praestitisti, apud rectorem provinciae quaecumque tibi debentur repetere non prohiberis. * diocl. et maxim. aa. et cc. dalmatio. * <a 293 s. xvi k. mai. aa. conss.>

CJ.5.51.9: Imperatores Diocletianus, Maximianus

Tutorem quondam, ut tam rationem quam si quid reliquorum nomine debet reddat, apud praetorem convenire potes. quamvis enim matrem tuam susceptis bonis vestris indemnitatem pro hac administratione tutori se praestituram promisisse proponatur, tamen adversus tutorem tibi tutelae, non adversus matris successores ex stipulatu competit actio. * diocl. et maxim. aa. et cc. iuliano. * <a 293 s. prid. k. ian. aa. conss.>

CJ.5.51.10pr.: Imperatores Diocletianus, Maximianus

Si defunctus tutelam vestram administraverit, non rerum eius dominium vindicare vel tenere potes, sed tutelae contra eius successores tibi competit actio. * diocl. et maxim. aa. et cc. pomponio. * <a 294 s. xi k. febr. sirmi cc. conss.>

CJ.5.51.10.1: Imperatores Diocletianus, Maximianus

Debitum autem aliis indiciis probari oportet. nam quod neque ipse neque uxor eius quicquam ante administrationem habuerunt, non idoneum huius continet indicium : nec enim pauperibus industria vel augmentum patrimonii, quod laboribus ac multis casibus quaeritur, interdicendum est. <a 294 s. xi k. febr. sirmi cc. conss.>

CJ.5.51.11: Imperatores Diocletianus, Maximianus

Tutor post puberem aetatem puellae si in administratione conexa perseveraverit, tutelae actione totius temporis rationem praestare cogitur. sin autem post finitam administrationem in isdem rebus minime se immiscuerit, temporis quod insequitur periculum ad eum non pertinet. * diocl. et maxim. aa. et cc. chrysianae. * <a 294 s. v k. dec. anchialo cc. conss.>

CJ.5.51.12: Imperatores Diocletianus, Maximianus

Tutelae actio tam heredibus quam etiam contra successores competit. * diocl. et maxim. aa. et cc. quintillae. * <a 294 s. x k. dec. sirmi cc. conss.>

CJ.5.51.13pr.: Imperator Justinianus

Veteris iuris dubitationem decidentes sancimus, si quidem tutor vel curator pro substantia pupilli vel adulti aliquid ubicumque dixerit ad maiorem quantitatem eam reducens, sive pro utilitate pupilli vel adulti sive per solam simplicitatem sive per aliam quamcumque causam, nihil veritati praeiudicare, sed hoc obtinere , quod ipsius rei inducit natura et mensura pupillaris vel adulti ostendit substantiae. * iust. a. iuliano pp. * <a 530 d. k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.51.13.1: Imperator Justinianus

Sin autem inventario publice facto res pupillares vel adulti conscripserit et ipse per huiusmodi scripturam confessus fuerit ampliorem quantitatem substantiae, non esse aliud inspiciendum nisi hoc quod scripsit, et secundum vires eiusdem scripturae patrimonium pupilli vel adulti exigi: neque enim sic homo simplex, immo magis stultus invenitur, ut et in publico inventario contra se scribi aliquid patiatur. <a 530 d. k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.51.13.2: Imperator Justinianus

Illo procul dubio observando, ut non audeat tutor vel curator res pupillares vel adulti aliter attingere vel ullam sibi communionem ad eas vindicare, nisi prius inventario publice facto secundum morem solitum res eis tradantur: nisi testatores qui substantiam transmittunt specialiter inventarium conscribi vetaverint. <a 530 d. k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.51.13.3: Imperator Justinianus

Scituris tutoribus et curatoribus, quod, si inventarium facere neglexerint, et quasi suspecti ab officio removeantur et poenis legitimis, quae contra eos interminatae sunt, subiacebunt et postea perpetua macula infamiae notabuntur, neque ab imperiali beneficio absolutione huiusmodi notae fruituri. <a 530 d. k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.52.0. De dividenda tutela et pro qua parte quisque tutorum conveniatur.

CJ.5.52.1: Imperator Gordianus

Si post finitum administrationis officium collegae tui indemnitati praestandae idonei fuerunt posteaque, dum non conveniuntur, minus idonei effecti sunt, vitium alienae cessationis ad dispendium tuum pertinere iuris ratio non patitur. * gord. a. optato. * <a 241 pp. vi id. mai. gordiano a. ii et pompeiano conss.>

CJ.5.52.2pr.: Imperatores carus, carinus, numer.

Si divisio administrationis inter tutores sive curatores in eodem loco seu provincia constitutos necdum fuit, licentiam habet adulescens et unum eorum eligere et totum debitum exigere, cessione videlicet ab eo adversus ceteros tutores seu curatores actionum ei competentium facienda. * carus carinus et numer. aaa. primigenio. * <a 284 pp. hemesae xv k. april. carino ii et numeriano aa. conss.>

CJ.5.52.2.1: Imperatores carus, carinus, numer.

In divisionem autem administratione deducta sive a praeside sive a testatoris voluntate unumquemque pro sua administratione convenire potest, periculum invicem tutoribus seu curatoribus non sustinentibus, nisi per dolum aut culpam suspectum non removerunt, cum alter eorum non solvendo effectus sit, vel suspicionis causam agendo sua sponte iura pupilli prodiderunt. <a 284 pp. hemesae xv k. april. carino ii et numeriano aa. conss.>

CJ.5.52.2.2: Imperatores carus, carinus, numer.

Nec prodest eis dicentibus contutorem suum non administrasse pupillares res. <a 284 pp. hemesae xv k. april. carino ii et numeriano aa. conss.>

CJ.5.52.2.3: Imperatores carus, carinus, numer.

Sin vero ipsi inter se res administrationis diviserunt, non prohibetur adulescens et unum ex his in solidum convenire, ita ut actiones, quas adversus alios habet, ad electum transferat. <a 284 pp. hemesae xv k. april. carino ii et numeriano aa. conss.>

CJ.5.52.3: Imperatores Diocletianus, Maximianus

Licet tutorum conventione mutuum periculum minime finiatur, tamen eum qui administravit, si solvendo sit, in primo loco eiusque successores conveniendos esse non ambigitur. * diocl. et maxim. aa. et cc. zotico. * <a 294 s. iiii k. oct. cc. conss.>

CJ.5.53.0. De in litem iurando.

CJ.5.53.1: Imperatores Severus, Antoninus

Adversus heredem tutoris ad transferendam tutelam iudicem accipiens tempore litis ad puberem instrumenta pertinentia restitui desiderabis. quod si dolo non exhibeantur, in litem iurandi tibi facultas erit, modo si quondam pupillo debitam adfectionem ad vincula quoque religionis extendere volueris. * sev. et ant. aa. asclepiodoto. * <a 205 pp. k. aug. geta ii cons.>

CJ.5.53.2pr.: Imperator Antoninus

Is, qui rationes tutelae seu curae reposcit, invitus in litem iurare compelli non potest. sed volens ita demum audiendus est, si heres per longam successionem tutoris instrumenta pupillaria dolo circumveniendi pupilli gratia exhibere non vult. * ant. a. severo. * <a 212 pp. xi k. oct. duobus aspris conss.>

CJ.5.53.2.1: Imperator Antoninus

Sin vero neque dolus neque lata culpa neque fraus heredis convincetur, omissa iurisiurandi facultate iudex de veritate cognoscet, quae etiam argumentis liquidis investigari potest. <a 212 pp. xi k. oct. duobus aspris conss.>

CJ.5.53.3: Imperator Antoninus

Summa sententia comprehensa, quam cessantibus curatoribus quondam tuis iudex secutus iurisiurandi a te prolati religionem in condemnationem deduxit, minui pacto non potuit. * ant. a. prisciano mil. * <a 215 pp. k. iul. laeto ii et cereale conss.>

CJ.5.53.4pr.: Imperator Gordianus

Alio iure est tutor, alio heres eius. tutor enim inventarium ceteraque instrumenta si non proferat, in litem iusiurandum adversus se potest admittere: at enim heres eius ita demum, si reperta in hereditate dolo malo non exhibeat. * gord. a. muciano. * <a 238 pp. vii k. oct. pio et pontiano conss.>

CJ.5.53.4.1: Imperator Gordianus

Sed cum adversus ipsum tutorem litem contestatam esse dicatis, transferentibus in heredes eius actionem praeses provinciae partes suas exhibebit non ignorans, nisi exhibeantur instrumenta, quatenus iuxta formam constitutionum partes suas debeat moderari. <a 238 pp. vii k. oct. pio et pontiano conss.>

CJ.5.53.5: Imperatores Diocletianus, Maximianus

Licet adversus heredes ob non factum inventarium iusiurandum in actione tutelae praetermitti placuerit, iudicem tamen velut ex dolo tutoris aliis indiciis instructum adversus eos ferre sententiam convenit. * diocl. et maxim. aa. et cc. artemidoro. * <a 294 s. viii k. ian. nicomediae cc. conss.>

CJ.5.54.0. De heredibus tutorum.

CJ.5.54.1: Imperatores Severus, Antoninus

Heredes tutoris ob neglegentiam, quae non latae culpae comparari possit, condemnari non oportet, si non contra tutorem lis inchoata est neque ex damno pupilli lucrum captatum aut gratiae praestitum sit. * sev. et ant. aa. fusciano. * <a 197 pp. vi id. mart. laterano et rufino conss.>

CJ.5.54.2pr.: Imperator Antoninus

Pater vester tutor vel curator datus si se non excusavit, non ideo vos minus heredes eius tutelae vel utili iudicio conveniri potestis, quod eum tutelam seu curam non administrasse dicitis: nam etiam cessationis ratio reddenda est. * ant. a. valentiniano et materno. * <a 213 pp. xi k. mart. antonino a. iiii et balbino conss.>

CJ.5.54.2.1: Imperator Antoninus

Prius tamen propter actum suum eos conveniendos esse qui administraverint saepe rescriptum est. <a 213 pp. xi k. mart. antonino a. iiii et balbino conss.>

CJ.5.54.3: Imperator Antoninus

Adversus heredes quondam tutoris tui tutelae actione consiste. in iudicium autem veniet etiam id, quod tibi tutor ex causa fideiussionis debuit. * ant. a. avitae. * <a 213 pp. iii non. iul. antonino a. iiii et balbino conss.>

CJ.5.54.4: Imperator Alexander Severus

Heredes eorum, qui tutelam vel curam administraverint, si quid ad eos ex re pupilli vel adulti perveniet, restituere coguntur: et in eo autem, quod tutor vel curator administrare debuit nec administravit, rationem reddere eos debere non est ambigendum. * alex. a. frontino. * <a 229 pp. viii k. nov. alexandro a. iii et dione conss.>

CJ.5.55.0. Si tutor non gesserit.

CJ.5.55.1pr.: Imperator Alexander Severus

Certum est non solum eos qui gesserunt, sed etiam qui gerere debuerunt tutelam teneri etiam in ea, quae a contutoribus servari non potuerunt, si modo, cum suspectos facere deberent, id officium omiserunt. * alex. a. zotico. * <a 223 pp. prid. id. mai. maximo ii et aeliano conss.>

CJ.5.55.1.1: Imperator Alexander Severus

Tu autem, etsi contra patronum tuum famosam actionem instituere non potuisti, providere tamen, ne quid tutelae deesset, necessariis postulationibus apud eum, cuius de ea re iurisdictio fuit, potuisti. <a 223 pp. prid. id. mai. maximo ii et aeliano conss.>

CJ.5.55.2: Imperator Alexander Severus

Qui se non immiscuerunt tutelae vel curae, ex persona eorum, qui gesserunt et idonei sunt, non onerantur. si qua vero sunt, quae, cum geri debuerunt, omissa sunt, latae culpae ratio omnes aequaliter tenet. * alex. a. .To. * <a 224 pp. viii k. mai. iuliano et crispino conss.>

CJ.5.56.0. De usuris pupillaribus.

CJ.5.56.1: Imperator Antoninus

Tutorem vel curatorem pecuniae, quam in usus suos convertit, legitimas usuras praestare debere olim placuit. * ant. a. praesentino. * <a 213 pp. non. iun. antonino a. iiii et balbino conss.>

CJ.5.56.2: Imperator Alexander Severus

Eius, quod ex causa tutelae debetur, usuras praestari oportere dubium non est, quamvis aliis pro participe muneris necessitas solutionis inrogetur, quia id non alias contingit, quam si cessatio contutoris in suspecto faciendo imputari possit. * alex. a. ampliato. * <a 224 pp. xiii k. iul. iuliano et crispino conss.>

CJ.5.56.3: Imperator Alexander Severus

Si pecuniam pupillarem neque idoneis hominibus credere neque in emptionem possessionum convertere potuisti, non ignorabit iudex usuras eius a te exigi non oportere. * alex. a. vitalio. * <a 228 pp. id. april. modesto et probo conss.>

CJ.5.56.4pr.: Imperatores Diocletianus, Maximianus

Pupillus agere vobiscum actione tutelae compelli non potest. * diocl. et maxim. aa. et cc. aurelio. * <a 294 pp. iii id. febr. sirmi cc. conss.>

CJ.5.56.4.1: Imperatores Diocletianus, Maximianus

Verum adversus futuram calumniam et ut, si quid ei debetis, cursus eius inhibeatur usurarum, denuntiationibus frequenter interpositis ad iudicium eum provocate ac, si rem dissimulatione proferat, actis apud praesidem provinciae factis voluntatis vestrae rationem declarate: quo facto tam vobis ipsis quam securitati filiorum vestrorum consulatis. <a 294 pp. iii id. febr. sirmi cc. conss.>

CJ.5.56.4.2: Imperatores Diocletianus, Maximianus

Quod et in curatoribus locum habet. <a 294 pp. iii id. febr. sirmi cc. conss.>

CJ.5.57.0. De fideiussoribus tutorum seu curatorum.

CJ.5.57.1: Imperator Alexander Severus

Eligere debes, utrum cum ipsis tutoribus vel curatoribus heredibusve eorum an cum his, qui pro eis se obligaverunt, agere debeas vel, si ita malis, dividere actionem. nam in solidum et cum reo et cum fideiussoribus agi iure non potest. * alex. a. felici. * <a 224 pp. x k. febr. iuliano et crispino conss.>

CJ.5.57.2pr.: Imperator Alexander Severus

Non est ambigui iuris electo reo et solvente fideiussorem liberari. * alex. a. prisco. * <a 225 pp. viii k. aug. fusco ii et dextro conss.>

CJ.5.57.2.1: Imperator Alexander Severus

Et ideo si simpliciter acceptus est fideiussor in id, quod tutor seu curator debiturus esset, cum proponas tutorem seu curatorem condemnatum solvisse, quid dubium est liberatum esse fideiussorem? <a 225 pp. viii k. aug. fusco ii et dextro conss.>

CJ.5.57.2.2: Imperator Alexander Severus

Plane si stipulatio rem salvam fore interposita est vel cautum est in id, quod a tutore seu curatore servari non potest, manet fideiussor obligatus ad supplendam tibi indemnitatem. <a 225 pp. viii k. aug. fusco ii et dextro conss.>

CJ.5.58.0. De contrario iudicio.

CJ.5.58.1: Imperatores Severus, Antoninus

Si pro iudicato contutore pecuniam solvisti, nullum iudicium tibi contra pupillum competit, ut delegetur tibi adversus liberatum actio. quod si nomen emisti, in rem suam procurator datus heredes eius iudicati poteris convenire. * sev. et ant. aa. stratoni. * <a 201 pp. vii k. mart. fabiano et muciano conss.>

CJ.5.58.2: Imperator Antoninus

Si non ex propria culpa solus pupillae condemnatus es, sed absens et indefensus adquievisti, cum ex causa iudicati satisfacere coeperis, actionem adversus contutores tuos mandari tibi a pupilla desiderabis vel utili actione uteris. * ant. a. primitivo. * <a 212 pp. prid. id. oct. duobus aspris conss.>

CJ.5.58.3pr.: Imperator Antoninus

Si pater tuus, quem et privigni sui tutelam administrasse proponis, testamento recte facto, pupillo etiam quondam suo herede instituto decessit, quoniam non nisi pro portione hereditaria tutelae petitionem confusione constet extingui, pro residua parte succedentem patri tutelae te convenit apud competentem iudicem reddere rationes. * ant. aa. et cc. thesidi. * <a 294 s. xviii k. ian. cc. conss.>

CJ.5.58.3.1: Imperator Antoninus

Qui secundum bonam fidem, eorum etiam, quae patrem tuum in re eius erogasse dicis, admissa compensatione, reliqui (si quid amplius debetur) faciet condemnationem. <a 294 s. xviii k. ian. cc. conss.>

CJ.5.58.3.2: Imperator Antoninus

Quod si sciens amplius in rem suam erogatum agendum propterea tutelae non putaverit, eum contrario iudicio convenire potes. <a 294 s. xviii k. ian. cc. conss.>

CJ.5.59.0. De auctoritate praestanda.

CJ.5.59.1: Imperatores Diocletianus, Maximianus

Neque tutoris neque curatoris absentia quicquam stipulationi pro pupillo habitae nocet. * diocl. et maxim. aa. et cc. antoniano. * < sine die et conss.>

CJ.5.59.2: Imperatores Diocletianus, Maximianus

Nec actiones sine tutoris auctoritate in aetate pupillari constituta remittendo quicquam amittere poteris. * diocl. et maxim. aa. et cc. serenae. * <a 294 s. xvii k. mai. cc. conss.>

CJ.5.59.3: Imperatores Diocletianus, Maximianus

Eum, qui a pupillo sine tutoris auctoritate distrahente comparavit, longi temporis spatium non defendit. * diocl. et maxim. aa. et cc. gaio. * <a 294 s. viii id. dec. cc. conss.>

CJ.5.59.4: Imperator Justinianus

Clarum posteritati facientes sancimus omnimodo debere et agentibus et pulsatis in criminalibus causis minoribus viginti quinque annis adesse curatores vel tutores, in quibus casibus et pupillos leges accusari concedunt, cum cautius et melius est cum suasione perfectissima et responsa facere minores et litem inferre, ne ex sua imperitia vel iuvenali calore aliquid vel dicant vel taceant, quod, si fuisset prolatum vel non expressum, prodesse eis poterat et a deteriore calculo eos eripere. * iust. a. iuliano pp. * <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.59.5pr.: Imperator Justinianus

Veterem dubitationem amputantes, per quam testamentarii quidem vel per inquisitionem dati tutoris et unius auctoritas sufficiebat, licet plures fuerant, non tamen diversis regionibus destinati, legitimi autem vel simpliciter dati omnes consentire compellebantur, sancimus, si plures tutores fuerint ordinati, sive in testamento paterno sive ex lege vocati sive a iudice vel ex inquisitione vel simpliciter dati, et unius tutoris auctoritatem omnibus tutoribus sufficere, ubi non divisa est administratio vel pro regionibus vel pro substantiae partibus: ibi etenim necesse est singulis pro suis partibus vel regionibus auctoritatem pupillo praestare, quia in hoc casu non absimiles esse testamentariis et per inquisitionem datis legitimos et simpliciter datos iubemus eo, quod fideiussionis onere praegravantur et subsidiariae actionis adminiculum speratur. * iust. a. iohanni pp. * <a 531 d. k. sept. constantinopoli post consulatum lampadii et orest is vv. cc.>

CJ.5.59.5.1: Imperator Justinianus

Sed haec omnia ita accipienda sunt, si non res quae agitur solutionem faciat ipsius tutelae, ut puta si pupillus in adrogationem se dare desiderat. etenim absurdum est solvi tutelam nec consentiente, sed forsitan et ignorante eo, qui tutor fuerat ordinatus. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.59.5.2: Imperator Justinianus

Tunc etenim, sive testamentarii sive per inquisitionem dati sive legitimi sive simpliciter creati sunt, necesse est omnes suam auctoritatem praestare, ut, quod omnes similiter tangit, ab omnibus comprobetur. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.59.5.3: Imperator Justinianus

Quae omnia simili modo et in curatoribus observari oportet. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.5.60.0. Quando curatores vel tutores esse desinant.

CJ.5.60.1: Imperator Antoninus

Si curatores tutoribus adiuncti sunt, pubertate pupilli tam tutorum quam curatorum adiunctorum officium finiri ideoque alios propter aetatis infirmitatem curatores esse dandos manifestissimum est. * ant. a. hermillae. * <a 213 pp. iiii k. aug. romae antonino a. iiii et balbino conss.>

CJ.5.60.2: Imperatores Diocletianus, Maximianus

Tutoris officium ex sola voluntate pupilli non finiri certissimum est. * diocl. et maxim. aa. et cc. menippo. * <a 294 s. xiii k. febr. cc. conss.>

CJ.5.60.3: Imperator Justinianus

Indecoram observationem in examinanda marum pubertate resecantes iubemus: quemadmodum feminae post impletos duodecim annos omnimodo pubescere iudicantur, ita et mares post excessum quattuordecim annorum puberes existimentur, indagnatione corporis inhonesta cessante. * iust. a. menae pp. * <a 529 d. viii id. april. constantinopoli decio vc. cons.>

CJ.5.61.0. De actore a tutore seu curatore dando.

CJ.5.61.1pr.: Imperator Alexander Severus

Neque tutores neque curatores ex sua persona in re pupilli vel adulescentis procuratorem facere possunt, sed actorem constituere debent. * alex. a. sebastiano. * <a 229 pp. prid. id. mai. alexandro a. iii et dione conss.>

CJ.5.61.1.1: Imperator Alexander Severus

Pupillus autem vel pupilla vel adultus vel adulta tam ad agendum quam ad defendendum, tutore seu curatore interveniente, procuratorem ordinare possunt. <a 229 pp. prid. id. mai. alexandro a. iii et dione conss.>

CJ.5.61.1.2: Imperator Alexander Severus

Ipsi etiam tutores et curatores post litis contestationem a se factam ad exemplum procuratorum, qui litem contestati sunt, dare procuratores non prohibentur. <a 229 pp. prid. id. mai. alexandro a. iii et dione conss.>

CJ.5.61.2: Imperatores Diocletianus, Maximianus

Si sui iuris constituti filii tui matri successerunt, licet te tutorem eorum esse probetur, tamen non per procuratorem, sed actorem decreto constitutum a te res eorum te absente peti convenit. * diocl. et maxim. aa. et cc. alphocrationi. * <a 294 s. non. ian. sirmi cc. conss.>

CJ.5.62.0. De excusationibus et temporibus earum.

CJ.5.62.1: Imperatores Severus, Antoninus

Falsa suasione credis te propterea, quod spado sis, immunitatem a tutelis habere. * sev. et ant. aa. aviolae. * <a 204 pp. k. mai. cilone et libone conss.>

CJ.5.62.2: Imperatores Severus, Antoninus

Si curatores dati estis generaliter nec decreto significatum est italicarum tantum rerum vobis munus adiunctum, adire debetis competentem iudicem, ut vos a provinciali administratione liberet. quod si factum fuerit, petent sibi in provincia curatores adulescentes. * sev. et ant. aa. aventiano et cosconio. * <a 204 pp. viii k. sept. cilone et libone conss.>

CJ.5.62.3: Imperatores Severus, Antoninus

Excusationis quidem tuae, si ingenuus libertino tutor datus es, certa causa est. sed cum te praeses provinciae audiendum non putaverit propter praescriptionem, quasi tardius adires, nec a decreto provocaveris, intellegis parendum esse sententiae. * sev. et ant. aa. crispino. * <a 206 pp. id. mart. albino et aemiliano conss.>

CJ.5.62.4pr.: Imperator Antoninus

Amplissimi ordinis consulto, qui pupillam suam uxorem ducit, nuptias contrahere non intellegitur et tamen infamis constituitur. * ant. a. agathodaemoni. * <a 216 pp. xi k. iul. sabino et anullino conss.>

CJ.5.62.4.1: Imperator Antoninus

Sed si tu demetriae, cum eam in matrimonio haberes, absens et ignorans curator constitutus es, potes esse securus, dum tamen alius substituatur. non enim debet ignorantia maritorum amplissimi ordinis consulto fraus quaeri. <a 216 pp. xi k. iul. sabino et anullino conss.>

CJ.5.62.5: Imperator Alexander Severus

Libertos a tutela vel cura liberorum patroni seu patronae nullam excusationem impetrare amplissimus ordo auctore divo marco censuit. et ideo nec illud prodesse eis debet, quominus curatores etiam inviti patroni seu patronae liberis dentur, quod eorundem tutelam administraverunt. * alex. a. bassiae. * <>

CJ.5.62.6pr.: Imperator Alexander Severus

Quinquaginta dies, qui praefiniti sunt ad professionem excusationis his qui tutores seu curatores dati sunt, ex eo die cedere, ex quo decretum praetoris aut testamentum parentis notum factum erit ei qui ad munus vocatus fuerit, ipsa constitutio quae hoc induxit sanxit. * alex. a. maximo. * <a 224 pp. iii non. mai. iuliano et crispino conss.>

CJ.5.62.6.1: Imperator Alexander Severus

Sed si quis in eius temporis computatione ab eo cuius de ea re notio fuit iniuriam passus non provocavit, adquiescere rebus iudicatis debet. <a 224 pp. iii non. mai. iuliano et crispino conss.>

CJ.5.62.7: Imperator Alexander Severus

Neque a tutela neque a cura ideo quis excusatur, quod creditor sive debitor eius est, cui tutor sive curator datus est, sed participem in munere habere debet, ut (si res exegerit) is qui alieno auxilio eget defendatur. * alex. a. antonino. * <a 224 pp. iii id. iul. iuliano et crispino conss.>

CJ.5.62.8: Imperator Alexander Severus

Coloni (id est conductores) praediorum ad fiscum pertinentium hoc nomine excusationem a muneribus civilibus non habent ideoque iniunctae tutelae munere fungi debent. * alex. a. maximo. * <a 225 pp. iiii k. febr. fusco et dextro conss.>

CJ.5.62.9: Imperator Alexander Severus

Frater tuus non ideo a tutela vel cura excusari debet, quod oculum amisit. proinde intellegis munus susceptum eum deserere non posse. * alex. a. romano. * <a 228 pp. k. febr. modesto et probo conss.>

CJ.5.62.10: Imperator Alexander Severus

Exactores tributorum tanto tempore, quanto rationem tributariam tractaverunt, non solum ab oneribus, sed etiam a tutelis vacationem habere dubitare non debuisti. * alex. a. crispino. * <a 229 d. id. aug. alexandro a. iii et dione conss.>

CJ.5.62.11pr.: Imperator Alexander Severus

Testamento tutor datus, ut a bonis his excuseris, quae pupilli tui in alia provincia quam unde es ubique moraris possident, intra quinquagesimum diem postulare debuisti. * alex. a. hylae. * <a 231 pp. viii id. dec. pompeiano et peligno conss.>

CJ.5.62.11.1: Imperator Alexander Severus

Quod si facere cessasti, excusatio quidem temporis praescriptione submovetur, sed propter late diffusum patrimonium an tibi adiungi aliquos curatores oporteat, praeses provinciae, si te insufficientem deprehenderit, aestimabit. <a 231 pp. viii id. dec. pompeiano et peligno conss.>

CJ.5.62.12: Imperator Gordianus

Voluntaria tutelae munera privilegiis nihil derogant. * gord. a. valentino. * <a 238 pp. xi k. nov. pio et pontiano conss.>

CJ.5.62.13: Imperator Gordianus

Nec senatorum quidem liberti, nedum ceterorum, propterea, quia patronorum negotia gerunt, a muneribus civilibus habent immunitatem. tantummodo etenim unus senatoris libertus, qui patroni negotia gerit, habet a tutela sive cura vacationem. * gord. a. apollinari. * <a 239 pp. x k. febr. gordiano a. et aviola conss.>

CJ.5.62.14pr.: Imperator Gordianus

Severiter praeses provinciae exsequetur, si animadverterit avunculum tuum propterea nominari tutorem, ut metu eiusmodi creationis a magistratibus iniuriam redimat. * gord. a. heraclidae. * <a 239 pp. id. sept. gordiano a. et aviola conss.>

CJ.5.62.14.1: Imperator Gordianus

Quin etiam si aliqua ei excusatio competit et non alia causa nominatus est, quam ut lite fatigetur, quod in eam rem absumptum fuerit, is qui eum nominavit iuxta formam constitutionum ei reddere cogetur. <a 239 pp. id. sept. gordiano a. et aviola conss.>

CJ.5.62.15: Imperator Gordianus

Quamquam in tutela detentus eo, quod excusatio quam obiciebas non est admissa, provocationis auxilium flagitares et in medio tempore hi quorum meministi in adulta aetate agere coeperunt, tamen non eo minus causa interpositae provocationis propter periculum administrationis eius temporis iudiciorum more examinanda est. * gord. a. tauro. * <a 243 pp. viii k. nov. arriano et papo conss.>

CJ.5.62.16: Imperator Philippus

Si, ut adlegas, his tutor datus es, cum quibus disceptationem hereditatis tibi esse proponis, et tempora antiquitus excusationibus praestituta etiam nunc opitulantur, adire praesidem provinciae potes, formae super ea re statutorum principalium obtemperari pro sua gravitate iussurum. * philipp. a. theodoto. * <a 244 pp. x k. aug. peregrino et aemiliano conss.>

CJ.5.62.17: Imperatores valer., gallien.

Licet orationis sub divo marco habitae verba deficiant, is tamen, qui post contractas nuptias nurui suae curator datur, excusare se debet, ne manifestam sententiam eius offendat et labem pudoris contrahat. * valer. et gallien. aa. epagatho. * <a 265 d. vi id. ian. valeriano ii et lucillo conss.>

CJ.5.62.18pr.: Imperatores Diocletianus, Maximianus

Tutores nominatos appellationem interponere necesse non habere certissimi iuris est. * diocl. et maxim. aa. et cc. sabino. * <a 294 d. non. april. cc. conss.>

CJ.5.62.18.1: Imperatores Diocletianus, Maximianus

Quapropter, licet non appellasti, si quam te excusationem habere confidis, intra tempus, quod divi marci constitutione praescriptum est, hac apud praesidem provinciae uti non prohiberis. <a 294 d. non. april. cc. conss.>

CJ.5.62.18.2: Imperatores Diocletianus, Maximianus

Nam quod omnium bonorum patrem pupilli usum fructum reliquisse quondam uxori suae proponis, ad excusandos vos a tutela non est idoneum. <a 294 d. non. april. cc. conss.>

CJ.5.62.19: Imperatores Diocletianus, Maximianus

Inusitatam rem desideras, de tutela filii te dimitti postulans, quod te posse contrario tutelae iudicio matrem eius convenire contendis. * diocl. et maxim. aa. et cc. dionysio. * <a 294 sine die et conss.>

CJ.5.62.20: Imperatores Diocletianus, Maximianus

Curator adultis nominatus, quorum tutor antea fueris, invitus in administratione teneri non potes. proinde si dies excusationibus praefinitus nondum excessit, uti competenti defensione potes. * diocl. et maxim. aa. et cc. charitino. * <a 294 s. x k. dec. nicomediae cc. conss.>

CJ.5.62.21: Imperatores Diocletianus, Maximianus

Quod res cum uterinis fratribus tibi communes esse profitearis, ad excusationem tutelae non est idoneum, cum harum divisio curatore dato fieri possit. * diocl. et maxim. aa. et cc. paramono. * <a 294 s. xviii k. ian. nicomediae cc. conss.>

CJ.5.62.22: Imperatores Diocletianus, Maximianus

Si tutor nominatus decreto praesidis habens excusationem absolutus es, ad te non pertinere periculum administrationis manifestum est. * diocl. et maxim. aa. et cc. hermodoro. * <a 294 d. xiii k. ian. nicomediae cc. conss.>

CJ.5.62.23pr.: Imperatores Diocletianus, Maximianus

Humanitatis ac religionis ratio non permittit, ut adversus sororem vel filios sororis actionum necessitates tutelae occasione suscipias, cum ipsius etiam pupilli, cui tutor datus es, aliud exigere videatur utilitas, scilicet ut eum tutorem potius habeat, qui ad defensionem eius non inhibeatur adfectu. * diocl. et maxim. aa. et cc. neophyto. * <a 294 s. vi k. febr. sirmi cc. conss.>

CJ.5.62.23.1: Imperatores Diocletianus, Maximianus

Iuxta formam igitur, quam consulti dedimus, praetorem adiri oportet, ut et iusto tuo desiderio et pupilli ipsius commodo consulatur. <a 294 s. vi k. febr. sirmi cc. conss.>

CJ.5.62.24: Imperatores Arcadius, Honorius

Excusationem naviculariis tutelae sive curae hactenus ipsis tribuimus, ut in huiusmodi officiis minoribus sui tantum corporis obligentur. * arcad. et honor. aa. flaviano pp. * <a 400 d. iii non. mart. mediolani stilichone et aureliano conss.>

CJ.5.62.25: Imperator Anastasius

Viros clarissimos sacri nostri palatii silentiarios circa latus nostrum militantes de tutelis et curationibus excusari sancimus. * anastas. a. antiocho praeposito sacri cubiculi. * <a 499 d. k. ian. iohanne cons.>

CJ.5.63.0. Si falsis adlegationibus excusatus sit.

CJ.5.63.1: Imperator Alexander Severus

Si absentibus necessariis personis vel his, qui sua sponte vos defendere volebant, non competentibus adlegationibus, qui vobis tutores aut curatores dati erant , liberati esse a munere visi sunt, ne eis circumvenisse iudicis religionem prosit, praeses provinciae audiet vos et, si iniustum decretum extorsisse eos apparuerit, exinde ad eos periculum administrationis pertinere pronuntiabit, ex quo dati sunt. * alex. a. lysimacho et diotimo. * <a 223 pp. xii k. mai. maximo ii et aeliano conss.>

CJ.5.63.2: Imperator Philippus

Tutores, quos postea quam bona pupillorum administraverunt a praeside provinciae quasi re integra excusari se impetrasse adseveras, periculum administrationis evitare minime posse manifestum est. * philipp. a. et philipp. c. auluzano. * <a 245 pp. xiiii k. iun. philippo a. et titiano conss.>

CJ.5.63.3: Imperator Philippus

Si, ut proponis, pars diversa administratione tutelae seu curae tuae itemque fratris tui ambitione potius quam iuris ratione se excusavit, periculo iniuncti muneris minime liberatus est. * philipp. a. et c. otani. * < sine die et consule.>

CJ.5.64.0. Si tutor rei publicae causa aberit.

CJ.5.64.1pr.: Imperator Gordianus

Qui tutores vel curatores dati rei publicae causa afuturi sunt, ad tempus se excusare debent a tutela, ne etiam medii temporis periculo obstringantur. * gord. a. guttio. * <a 239 pp. id. mart. gordiano a. et aviola conss.>

CJ.5.64.1.1: Imperator Gordianus

Quod quidem et tu si fecisti, eius intervalli quo afuisti periculum non debes pertimescere. quod si id praetermisisti, ut priore loco is conveniatur qui administravit, de iure postulabis. <a 239 pp. id. mart. gordiano a. et aviola conss.>

CJ.5.64.2: Imperator Gordianus

Certum est eos, qui rei publicae causa abesse desierunt, ab omni nova tutela anno vacare debere. * gord. a. reginio. * <a 241 pp. v k. mart. gordiano a. ii et pompeiano conss.>

CJ.5.65.0. De excusatione veteranorum.

CJ.5.65.1: Imperator Antoninus

Qui causaria missione sacramento post viginti stipendia solvuntur, et integram famam retinent et ad publica privilegia veteranis concessa pertinent. * ant. a. saturnino. * <a 213 pp. vii id. aug. antonino a. iiii et balbino conss.>

CJ.5.65.2: Imperator Gordianus

Quod placuit veteranos tantummodo conveterani filiorum seu militum, et quidem unam tutelam seu curam eodem tempore administrare compelli, eo pertinet, ut, si aliis dati fuerint, intra sollemnia tempora causas excusationis apud competentem iudicem deferant. * gord. a. celeri veterano. * <a 239 pp. iii k. iul. gordiano a. et aviola conss.>

CJ.5.66.0. Qui numero liberorum se excusant.

CJ.5.66.1: Imperatores Severus, Antoninus

Qui ad tutelam vel curam vocantur, romae quidem trium liberorum incolumium numero, quorum etiam status non ambigitur, in italia vero quattuor, in provinciis autem quinque habent excusationem. * sev. et ant. aa. claudio herodiano. * <a 203 pp. non. april. geta et plautiano conss.>

CJ.5.66.2: Imperator Antoninus

Neque filia amissa in numero prodest ad declinanda municipalia munera neque nepotes numerantur, quorum pater superest, cum suo nomine patri prosunt. * ant. a. Marcello. * <a 213 d. id. iun. antonino a. iiii et balbino conss.>

CJ.5.67.0. Qui aetate.

CJ.5.67.1: Imperator Philippus

Pater tuus si maior est annis septuaginta, ad tutelam seu curam devocatus excusare se sollemniter potest. * philipp. a. et philipp. c. severo. * <a 246 pp. xiii k. april. praesente et albino conss.>

CJ.5.68.0. Qui morbo.

CJ.5.68.1: Imperatores Severus, Antoninus

Luminibus captus aut surdus aut mutus aut furiosus aut perpetua valitudine tentus tutelae seu curationis excusationem habent. * sev. et ant. aa. sabino. * <a 204 pp. v id. sept. cilone et libone conss.>

CJ.5.69.0. Qui numero tutelarum.

CJ.5.69.1pr.: Imperatores Severus, Antoninus

Si tres tutelas vel curas eodem tempore non defunctorie susceptas administras, onere quartae tutelae vel curationis pupillorum seu adulescentium non gravaberis. * sev. et ant. aa. pompeiano. * <a 205 pp. iiii id. oct. antonino a. ii et geta ii conss.>

CJ.5.69.1.1: Imperatores Severus, Antoninus

Finito autem officio pubertate pupillorum vel aetate adulescentium aliae substitui possunt, licet nondum ratio tutelae sive curae administratae reddita sit. <a 205 pp. iiii id. oct. antonino a. ii et geta ii conss.>

CJ.5.69.1.2: Imperatores Severus, Antoninus

Sed imperfectae diversae species vacationis, licet permixtae, ad excusationem non proficiunt. scire igitur debes eum, qui duos filios habet et duas tutelas administrat, excusationem non mereri. <a 205 pp. iiii id. oct. antonino a. ii et geta ii conss.>

CJ.5.70.0. De curatore furiosi vel prodigi.

CJ.5.70.1: Imperator Antoninus

Curatores impleta legitima aetate prodigis vel furiosis solent tribui. * ant. a. marinianae. * <a 214 pp. iiii k. aug. messala et sabino conss.>

CJ.5.70.2pr.: Imperator Gordianus

Orationis divi severi beneficium, quo possessiones rusticas sine decreto praesidis pupillorum seu adulescentium distrahi vel obligari prohibitum est, non iniuria etiam ad agnatum furiosi porrigitur. * gord. a. anicio. * <a 238 pp. k. ian. pio et pontiano conss.>

CJ.5.70.2.1: Imperator Gordianus

Si igitur citra decretum praesidis fundus mente capti etiam ab agnato eius tibi pignori nexus est, vinculum pignoris in eo non consistit, utilem tamen adversus eum personalem actionem, si ob eius utilitatem pecunia mutua accepta est, poteris habere. <a 238 pp. k. ian. pio et pontiano conss.>

CJ.5.70.3: Imperator Gordianus

Si pater tuus mentis compos non est, pete ei curatores, per quos, si quid gestum est, quod revocari oporteat, possit causa cognita in pristinum statum restitui. * gord. a. aureliano. * <a 239 pp. vii id. april. gordiano a. et aviola conss.>

CJ.5.70.4: Imperatores Diocletianus, Maximianus

Cum repudiante furiosam sui iuris constitutam marito, qui solus repudiare potuit , quaedam matrem furiosae marito quondam eius instrumenta confecisse significas, intellegis nihil eam contra furiosam disponere potuisse, cum eius ad eam iure non pertinuerit defensio. * diocl. et maxim. aa. et cc. asclepiodoto. * <a 293 s. id. april. byzantii aa. conss.>

CJ.5.70.5: Imperator Anastasius

Ne lucrum quidem antea indebitae successionis emancipato vel emancipatis deputasse, nihil vero de oneribus tutelae prospexisse videamur, curatores nihilo minus eos pro duodecim tabularum lege furiosis fratribus et sororibus utpote legitimos existere hac legis sanctione decernimus. * anastas. a. ad pop. * <>

CJ.5.70.6pr.: Imperator Justinianus

Cum aliis quidem hominibus continuum furoris infortunium accidit, alios autem morbus non sine laxamento ingreditur, sed in quibusdam temporibus quaedam eis intermissio pervenit, et in hoc ipso multa est differentia, ut quibusdam breves indutiae, aliis maiores ab huiusmodi vitio inducantur, antiquitas disputabat, utrumne in mediis furoris intervallis permanet eis curatoris intercessio, an cum furore quiescente finita iterum morbo adveniente redintegratur. * iust. a. iuliano pp. * <a 530 d. k. sept. lampadio et oreste vv. cc. conss.>

CJ.5.70.6.1: Imperator Justinianus

Nos itaque eius ambiguitatem decidentes sancimus, cum incertum est in huiusmodi furiosis hominibus, quando resipuerint, sive ex longo sive in propinquo spatio, et impossibile est et in confinio furoris et sanitatis eum saepius constitui et per longum tempus sub eadem esse varietate, ut quibusdam videatur etiam paene furor esse remotus, curatoris creationem non esse finiendam, sed manere quidem eum, donec talis furiosus vivit, quia non est paene tempus in quo huiusmodi morbus desperatur: sed per intervalla, quae perfectissima sunt, nihil curatorem agere, sed ipsum posse furiosum, dum sapit, et hereditatem adire et omnia alia facere, quae sanis hominibus competunt: sin autem furor stimulis suis iterum eum accenderit, curatorem in contractus vocari, ut nomen quidem curatoris in omne te mpus habeat, effectum autem, quotiens morbus redierit, ne crebra vel quasi ludibriosa fiat curatoris creatio et frequenter tam nascatur quam desinere videatur. <a 530 d. k. sept. lampadio et oreste vv. cc. conss.>

CJ.5.70.7pr.: Imperator Justinianus

Cum furiosus, quem morbus detinet perpetuus, in sacris parentis sui constitutus est, indubitate curatorem habere non potest, quia sufficit ei ad gubernationem rerum quae ex castrensi peculio vel aliter ad eum pervenerint et vel ante furorem adquisitae sunt vel in furore obveniunt, vel in his, quorum proprietas ei tantummodo competit, paterna verecundia. * iust. a. iuliano pp. * <a 530 d.K.Sept constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.70.7.1: Imperator Justinianus

Quis enim talis adfectus extraneus inveniatur, ut vincat paternum? vel cui alii credendum est res liberorum gubernandas parentibus derelictis? <a 530 d.K.Sept constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.70.7.1a: Imperator Justinianus

Licet tertullianus iuris antiqui interpres libro singulari, quem de castrensi peculio condidit, tali tractatu proposito videatur obscure eandem attingere sententiam, tamen nos hoc apertissime introduximus. <a 530 d.K.Sept constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.70.7.1b: Imperator Justinianus

Sin autem parentes ab hac luce decedere contigerit, nostra constitutio, quam promulgavimus de his quae in testamento furioso relinquenda sunt vel substitutione eorum, in suo robore maneat. <a 530 d.K.Sept constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.70.7.2: Imperator Justinianus

Sin autem perpetuus furiosus sui iuris sit, tunc in paterna quidem hereditae, quae quasi debita ad posteritatem suam devolvitur, nulla est iuris veterum dubitatio, cum ilico apparet et suus heres suis extat parentibus. <a 530 d.K.Sept constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.70.7.3: Imperator Justinianus

Sin autem ex alia quacumque causa hereditas ad eum vel successio perveniat, tunc magna et inextricabilis vetustissimo iuri dubitatio exorta est, sive adire hereditatem vel bonorum possessionem petere furiosus possit, sive non, et si curator eius ad bonorum possessionem petendam admitti debeat. et iuris auctores ex utroque latere magnum habuere certamen. <a 530 d.K.Sept constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.70.7.3a: Imperator Justinianus

Nos itaque utramque aciem auctorum certo foedere compescentes sancimus furiosum quidem nullo modo posse vel hereditatem adire vel bonorum possessionem agnoscere : curatori autem eius licentiam damus, immo magis necessitatem imponimus, si utilem esse successionem existimaverit, eam bonorum possessionem agnoscere, quae antea ex decreto dabatur, et ad similitudinem bonorum possessionis habere, cum petitio bonorum possessionis constantiniana lege sublata est et ab ea introducta observatio pro antiqua sufficit petitione. <a 530 d.K.Sept constantinopoli lamp adio et oreste vv. cc. conss.>

CJ.5.70.7.4: Imperator Justinianus

Sed cum antiquitas in curatore furiosi multas ambages constituit, quemadmodum ab eo vel cautio vel satisdatio detur, vel pro quibus rebus vel quibus personis, et si omnis curator talem praestabat cautelam, necessarium nobis visum est, ut humano generi consulentes omnem quidem obscuritatem et inextricabilem circuitum tollamus, compendioso autem et dilucido remedio totum complectamur. et prius de creatione curatoris, qui furiosis utriusque sexus datur, sancientes tunc et aliis certum finem imponimus. <a 530 d.K.Sept constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.70.7.5: Imperator Justinianus

Et si quidem parens curatorem furioso vel furiosae in ultimo elogio heredibus institutis vel exheredatis dederit (ubi et fideiussionem cessare necesse est paterno testimonio pro satisdatione sufficiente), ipse qui datus est ad curationem perveniat, ita tamen, ut in hac florentissima civitate apud urbicariam praefecturam deducatur, in provincia autem apud praesidem eius, praesente ei tam viro religiosissimo locorum antistite quam tribus primatibus, et actis intervenientibus tactis sacrosanctis scripturis edicat omnia se recte et cum utilitate furiosi gerere neque praetermittere ea, quae utilia furioso esse putaverit, neque admittere, quae inutilia existimaverit. <a 530 d.K.Sept constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.70.7.5a: Imperator Justinianus

Et inventario cum omni subtilitate publice conscripto res suscipiat et eas secundum sui opinionem disponat sub hypotheca rerum ad eum pertinentium ad similitudinem tutorum et adulti curatorum. <a 530 d.K.Sept constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.70.7.6: Imperator Justinianus

Sin autem testamentum quidem parens non confecerit, lex autem curatorem utpote agnatum vocaverit, vel eo cessante aut non idoneo forsitan existente ex iudiciali electione curatorem ei dare necesse fuerit, tunc secundum praefatam divisionem in hac quidem florentissima civitate apud gloriosissimam urbicariam praefecturam creatio procedat: sed si quidem nobilis sit furiosi persona, etiam florentissimo senatu convocando, ut ex inquisitione curator optimae atque integrae opinionis nominetur. sin vero non talis persona sit, etiam solo viro gloriosissimo praefecto urbis praesidente hoc procedat. <a 530 d.K.Sept constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.70.7.6a: Imperator Justinianus

Et si quidem curator substantiam idoneam possidet et sufficientem ad fidem gubernationis, et sine aliqua satisdatione nominationem eius procedere: sin autem non talis eius census inveniatur, tunc et fideiussio in quantum possibile est ab eo exploretur. <a 530 d.K.Sept constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.70.7.6b: Imperator Justinianus

Creatione quidem omnimodo sacris scripturis propositis in omni causa celebranda, ipso autem curatore, cuiuscumque vel substantiae vel dignitatis est, praefatum sacramentum pro utiliter rebus gerendis praestante et inventarium publice conscribente, quatenus possint undique res furiosi utiliter gubernari. <a 530 d.K.Sept constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.70.7.6c: Imperator Justinianus

In provinciis vero his omnibus observandis, ut apud praesidem cuiuscumque provinciae et virum religiosissimum episcopum civitatis nec non tres primates memorata creatio procedat, eadem observatione et pro iureiurando et pro inventario et satisdatione et hypotheca rerum curatoris modis omnibus adhibenda. <a 530 d.K.Sept constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.70.7.7: Imperator Justinianus

Tali itaque ordinatione in curatore furiosi disposita, si quid postea ad furiosum pervenerit sive ex hereditate vel successione vel legato vel fideicommisso vel alio quocumque modo, hoc furioso accedat et hoc cum alia eius substantia manibus curatoris tradatur, inventario etiam super his rebus scilicet faciendo: et sub eius cura constituatur, quatenus, si quidem resipuerit furiosus et adquisitionem admiserit, ipsi restituatur. <a 530 d.K.Sept constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.70.7.8: Imperator Justinianus

Sin autem in furore diem suum obierit vel in suam sanitatem perveniens eam repudiaverit, si quidem successio est, ad eos referatur, volentes tamen, id est vel substitutum vel ab intestato heredes vel ad nostrum aerarium: eo scilicet observando, ut hi veniant ad successionem, qui mortis tempore furiosi propinquiores existant ei ad cuius bona vocabantur, si non in medio erat furiosus, omni satisdatione vel cautione, quam per inextricabilem circuitum veteris iuris auctores induxerunt, radicitus excisa: <a 530 d.K.Sept constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.70.7.9: Imperator Justinianus

Legatis autem procul dubio vel fideicommissis ceterisque adquisitionibus furioso adquirendis et substantiae eius adgregandis: sin autem ipse resipuerit et noluerit ea admittere et aperte haec respuerit vel heres eius hoc fecerit, a substantia eius ilico separandis, quasi nec fuerant ab initio ad eum devoluta, et legitimum tramitem ambulantibus, substantiam furiosi neque praegravantibus neque adiuvantibus. <a 530 d.K.Sept constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.70.7.10: Imperator Justinianus

Sin autem curator furiosi secundum nostram legem nominatus decesserit, sub eodem modo eademque observatione alius creabitur: quemadmodum et, si suspectus reperiatur, alter subrogatur. quod etiam veteribus legibus placuit. <a 530 d.K.Sept constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.70.7.11: Imperator Justinianus

Haec autem omnia, quae de creationibus curatorum cum per novam definitionem introducta sunt, futuris casibus imponantur et neque antea facti curatores removeantur neque aliquid novum eis accedat, sed antiquo ordine statuti in antiquos quantum ad creationem permaneant terminos: cautione videlicet vel satisdatione, quae antiquitus fuerat introducta, super postea venientibus ad furiosos successionibus minime praestanda. <a 530 d.K.Sept constantinopoli lampadio et oreste vv. cc. conss.>

CJ.5.71.0. De praediis vel aliis rebus minorum sine decreto non alienandis vel obligandis.

CJ.5.71.1pr.: Imperator Antoninus

Venditio quidem praedii, quod iure pignoris vel in causa iudicati captum et distractum est, ad senatus consultum, quod de alienandis praediis pupillorum vel adulescentium auctore praetore vel praeside provinciae factum est, non pertinet. * ant. a. muciano. * <a 212 pp.Xiii k.Dec.Duobus aspris conss.>

CJ.5.71.1.1: Imperator Antoninus

Sed si etiam nunc in ea aetate es, cui subveniri solet, aditus competens iudex, an te in integrum restituere debeat, praesente diversa parte causa cognita dispiciet. <a 212 pp.Xiii k.Dec.Duobus aspris conss.>

CJ.5.71.2pr.: Imperator Gordianus

Non est vobis necessaria in integrum restitutio, si tutores vel curatores vestri possessionem, licet pignori nexam, vendiderunt. * gord. a. clearcho et aphrodisio. * <a 239 pp. iii k. febr. gordiano a. et aviola conss.>

CJ.5.71.2.1: Imperator Gordianus

Quod si creditores id fecerint, ita demum iuxta formam edicti beneficium tibi impertietur, si fraudulenter venditione, participante consilium emptore, damnum tibi inflictum esse doceatur. <a 239 pp. iii k. febr. gordiano a. et aviola conss.>

CJ.5.71.3: Imperatores valer., gallien.

Cum emancipatis vobis praedium adquisitum foret, alienari a patre eodemque curatore sine praesidis auctoritate non potuit, maxime si, tamquam suum esset, non tamquam pupillare vendiderit, illibataque vobis persecutio eius manet. * valer. et gallien. aa. theodosiano et aliis. * <a 258 pp. iii non. ian. tusco et basso conss.>

CJ.5.71.4pr.: Imperatores valer., gallien.

Non solum per venditionem rustica praedia vel suburbana pupilli vel adulescentes alienare prohibentur, sed neque transactionis ratione neque permutatione et multo magis donatione nec alio quoquo modo ea transferre e dominio suo possunt. * valer. et gallien. aa. mithridati. * <a 260 pp.Xv k. mai. saeculare ii et donato conss.>

CJ.5.71.4.1: Imperatores valer., gallien.

Igitur et tu si fratribus tuis per transactionem fundum dedisti, vindicare eum potes. sed si quid invicem ab eis ex eodem pacto consecutus es, id mutuo restituere debebis. <a 260 pp.Xv k. mai. saeculare ii et donato conss.>

CJ.5.71.5: Imperatores valer., gallien.

Etsi praeses decreverit alienandum vel obligandum pupilli suburbanum vel rusticum praedium, tamen actionem pupillo, si falsis adlegationibus circumventam religionem eius probare possit, senatus reservavit: quam exercere tu quoque non vetaris. * valer. et gallien. aa. sereno. * <a 260 pp. iii k. mai. saeculare ii et donato conss.>

CJ.5.71.6: Imperatores carus, carinus, numer.

Minorum possessionis venditio, per procuratorem delato ad praetorem vel praesidem provinciae libello, fieri non potuit, cum ea res confici recte aliter non potest, nisi apud acta causis probatis, quae venditioni necessitatem inferant, decretum sollemniter interponatur. * carus carinus et numer. aaa. varo. * <a 283 pp. non. mart. caro et carino aa.Conss.>

CJ.5.71.7: Imperatores carus, carinus, numer.

Si ad resolvendam donationem, quam in emancipatum te pater contulerit, minor annis cautionem emisisti, cum huiusmodi scriptura contra senatus consulti auctoritatem data sit, non oberit iuri tuo. * carus carinus et numer. aaa. isidoro. * <a 283 pp. vi id. sept. hemesae caro et carino aa. conss.>

CJ.5.71.8: Imperatores Diocletianus, Maximianus

Praedia rustica, quae contra senatus consultum donata esse ante nuptias sponsaliorum nomine precum tuarum confessio ostendit, cum proprietas ad te propter iuris interdictum transire non potuerit, in dominio mariti permansisse palam est. * diocl. et maxim. aa. theodotae. * <a 285 pp. iii non. nov. diocletiano a. ii et aristobulo conss.>

CJ.5.71.9pr.: Imperatores Diocletianus, Maximianus

Etsi is, quem praedium rusticum minoris distraxisse adfirmas, curatoris officio functus id fecit, venditio tamen contra divi severi orationem facta praesidis sententia non immerito rescissa est. * diocl. et maxim. aa. muciano. * <a 285 pp. non. nov. diocletiano a. ii et aristobulo conss.>

CJ.5.71.9.1: Imperatores Diocletianus, Maximianus

Pignora sane, quae ob evictionis periculum idem curator ex rebus propriis tibi obligavit, non prohiberis persequi. <a 285 pp. non. nov. diocletiano a. ii et aristobulo conss.>

CJ.5.71.10: Imperatores Diocletianus, Maximianus

Praediorum, quae sine decreto alienata sunt, dominium tibi persequenti praeses opem feret. apud quem si illuxerit non universa pretia, quae curatori tuo data sunt, in patrimonium tuum processisse, pro ea dumtaxat pecuniae parte conveniri te permittit, quam in facultates tuas erogatam esse constiterit. * diocl. et maxim. aa. grato. * <a 290 pp. v id. aug. ipsis iiii et iii aa. conss.>

CJ.5.71.11pr.: Imperatores Diocletianus, Maximianus

Si quidem sine decreto minor annis patronus tuus rusticum praedium venumdedit, supervacuum est de vili pretio tractare, cum senatus consulti auctoritas retento dominio alienandi viam obstruxerit. * diocl. et maxim. aa. trophimo. * <a 290 pp. xii k. dec. ipsis iiii et iii aa. conss.>

CJ.5.71.11.1: Imperatores Diocletianus, Maximianus

Si vero iure interposito decreto venditionem vili pretio eius possessionis, cuius vires ignorabat, fecit, iuxta perpetui edicti auctoritatem in integrum restitutio causa cognita ei praebetur. <a 290 pp. xii k. dec. ipsis iiii et iii aa. conss.>

CJ.5.71.12: Imperatores Diocletianus, Maximianus

Ob aes alienum tantum causa cognita praesidali decreto praedium rusticum minoris provinciale distrahi permittitur. * diocl. et maxim. aa. et cc. leontio. * <a 293 s. prid. k. mai. heracliae aa. conss.>

CJ.5.71.13: Imperatores Diocletianus, Maximianus

Etiam vectigale vel patrimoniale sive emphyteuticum praedium sine decreto praesidis distrahi non licet. * diocl. et maxim. aa. et cc. zenonillae. * <a 293 s. viii k. sept. sirmi aa. conss.>

CJ.5.71.14: Imperatores Diocletianus, Maximianus

Utere viri prudentissimi papiniani responso ceterorumque, quorum precibus fecisti mentionem, sententiis ac doli mali exceptionem oppone, pretium ob eorum debitum solutum probans, si sortem cum usuris, quae fisco deberentur, pupilli non offerentes fundos provinciales citra decretum praesidis venumdatos cum fructibus petant. * diocl. et maxim. aa. et cc. frontoni. * <a 293 s. xviii k. dec. aa. conss.>

CJ.5.71.15: Imperatores Diocletianus, Maximianus

Si minor viginti quinque annis praedium rusticum, cum aliud deberes, sine decreto in solutum dedisti, dominium a te discedere non permisit senatus consulti auctoritas. * diocl. et maxim. aa. et cc. sabinae. * <a 293 s. viii k. dec. aa. conss.>

CJ.5.71.16pr.: Imperatores Diocletianus, Maximianus

Si praedium rusticum vel suburbanum, quod ab urbanis non loco, sed qualitate secernitur, in pupillari aetate constituta tutore auctore vel adulta sine decreto praesidis provinciae in qua situm est venumdedisti, secundum sententiam senatus consulti dominium eius sive ius a te discedere non potuit, sed vindicationem eius et fructuum, vel his non existentibus condictionem competere constitit. * diocl. et maxim. aa. et cc. eutychiae. * <a 294 s. vi id. april. anchialo cc. conss.>

CJ.5.71.16.1: Imperatores Diocletianus, Maximianus

Emptor autem si probare potuerit ex ceteris facultatibus oboedire te muneribus sive honoribus non potuisse, ad utilitates praeterea tuas cessisse pecuniam, quam pretii nomine sumpseras, doli exceptionis auxilio pretium cum usuris, quas praestatura esses, et sumptus meliorati praedii servare tantummodo potest. <a 294 s. vi id. april. anchialo cc. conss.>

CJ.5.71.17: Imperatores Diocletianus, Maximianus

Inter omnes minores nec commune praedium sine decreto praesidis sententia senatus consulti distrahi patitur. nam ad divisionis causam provocante tantum maiore socio eius alienationem et sine decreto fieri iam pridem obtinuit. * diocl. et maxim. aa. et cc. philippo. * <a 294 s. vii id. dec. cc. conss.>

CJ.5.71.18: Imperator Constantinus

Si minores vel ex patris nomine vel ex suo, debitis dumtaxat fiscalibus ingruentibus, vel ex privatis contractibus reperiantur obnoxii, decreti interpositio a constantiniano praetore celebranda est, probatis examussim causis, ut patefacta rerum fide firma venditio perseveret. * const. a. et const. c. ad severum. * <a 322 d. xv k. ian. serdicae probiano et iuliano conss.>

CJ.5.72.0. Quando decreto opus non est.

CJ.5.72.1: Imperator Antoninus

Si probare potes patrem pupilli, cuius tutorem convenisti, consensisse, ut reddito tibi praedio pretium reciperaret, id quod convenit servabitur. neque enim in ea re auctoritas praesidis necessaria est, ut tutorum sollicitudini consulatur, si voluntati defuncti pareant. * ant. a. valenti mil. * <a 205 pp. iiii k. ian. antonino a. ii et geta ii conss.>

CJ.5.72.2: Imperator aurel.

Illud requirendum est, an adito principe saturninus vir clarissimus specialiter ius venditionis acceperit. ad instar enim praesidialis decreti concessio principalis accedit. * aurel. a. pulchro. * <pp. byzantii id. ian. sine conss.>

CJ.5.72.3: Imperatores Diocletianus, Maximianus

Praedium rusticum vel suburbanum a minore viginti quinque annis alienari sine decreto praesidis, nisi parentis voluntas seu testatoris, ex cuius bonis ad minorem pervenit, super alienando eo aliquid mandasse deprehendatur, nulla ratione potest. * diocl. et maxim. aa. et cc. stratoniciano. * <a 295 pp. xv k. april. nicomediae tusco et anullino conss.>

CJ.5.72.4: Imperator Constantinus

Et sine interpositione decreti tutores vel curatores quarumcumque personarum vestes detritas et supervacua animalia vendere permittimus. * const. a. ad pop. * <a 326 d. id. mart. sirmi constantino a. vii et constantio c. conss.>

CJ.5.73.0. Si quis ignorans rem minoris esse sine decreto comparavit.

CJ.5.73.1: Imperator Gordianus

Si ea, quae in iura tutoris hereditario titulo successit, possessionem tuam vendidit, si ut pupillarem distraxit, emptor, qui sciens a tutoris herede mercatus est, cum officium morte finiatur, alienam rem comparando de temporis intervallo nullam potuit adquirere defensionem: si vero ut suam distraxit ignoransque rem alienam emptor comparavit, neque statim per traditionem possessionis dominus effectus est, sed tantummodo adversus te statuti temporis, cum te legitimae aetatis esse non diffitearis, potest uti praescriptione. * gord. a. felici. * <a 238 pp. v id. sept. pio et pontiano conss.>

CJ.5.73.2: Imperator Gordianus

Si contra amplissimi ordinis decretum possessiones tuae distractae sunt, conveni earum possessorem, ut, si ita probaveris gestum, et possessio retrahatur et fructus universi revocentur, si non bona fide emptorem fuisse qui emit constiterit. * gord. a. crispinae. * <a 241 pp. xvi k. ian. gordiano a. ii et pompeiano conss.>

CJ.5.73.3: Imperatores Diocletianus, Maximianus

Possessiones rusticae vel suburbanae sine causae cognitione et interpositione decreti contra senatus consultum alienatae nec a secundo emptore recte tenentur, nisi statutum temporis spatium intercesserit. * diocl. et maxim. aa. et cc. agathae. * <a 294 pp. id. febr. nicomediae cc. conss.>

CJ.5.73.4: Imperatores Diocletianus, Maximianus

Quoniam adversus emptorem, ad quem ex persona eius, cui contra senatus consultum donata res est, iusto titulo interveniente ea res de qua lis est transitum fecit, requirere oportebit, an praesente priore domino et maiore effecto sine controversia bonae fidei decennio vel absente viginti annis qui quaestionem patitur possessor fuisse monstretur. quod si apud gravitatem tuam manifeste constiterit, sine ulla cunctatione habita longi temporis praescriptione petitorem oportebit excludi. * diocl. et maxim. aa. et cc. alexandro. * <a 303 d. vi id. iun. dorostolo diocletiano viii et maximiano vii aa. conss.>

CJ.5.74.0. Si maior factus sine decreto factam alienationem ratam habuerit.

CJ.5.74.1: Imperatores Diocletianus, Maximianus

Cum proponas curatorem patris tui non interposito praesidis decreto praedium rusticum heredi creditoris seu tutori eius destinasse venumdare eamque venditionem deceptum patrem tuum ratam habuisse, si minore pretio distractum praedium est et inconsulto errore lapsum patrem tuum perperam venditioni consensum dedisse constiterit, non ab re erit superfluum pretii in compensationem deduci: quod praesidis provisione fieri convenit, cuius sollertiae congruum est, si diversa pars bonam fidem non amplectatur, in arbitrio eius ponere, an velit possessionem cum fructibus restituere, ita ut fenebris pecunia cum competentibus usuris restituatur. * diocl. et maxim. aa. liciniae. * <a 290 pp.Non.Oct.Ipsis iiii et iii aa.Conss.>

CJ.5.74.2: Imperatores Diocletianus, Maximianus

Si sine decreto praesidis praedia tua a tutore tuo alienata sunt nec speciali confirmatione vel, si bona fide possessor fuisset, statuti temporis excursu id, quod perperam est actum, fuerat stabilitum, praeses provinciae possessionem in ius tuum retrahet. * diocl. et maxim. aa. et cc. alexandro. * <a 293 d.K.Ian. sirmi aa.Conss.>

CJ.5.74.3pr.: Imperator Justinianus

Si quando sine decreto minorum vel adhuc sub curatoribus constitutorum vel per veniam aetatis eorum curam excedentium res alienantur vel supponuntur, et ad perfectam aetatem idem minores provecti longo silentio querellam huiusmodi tradiderint, ut inutilis alienatio vel suppositio diuturno silentio roboretur, certum tempus ad talem confirmationem praefinitum esse censemus. * iust. a. menae pp. * <a 529 d. viii id. april. constantinopoli decio vc. cons.>

CJ.5.74.3.1: Imperator Justinianus

Ideoque praecipimus, si per quinque continuos annos post impletam minorem aetatem (id est viginti quinque annos) connumerandos nihil conquestus est super tali alienatione vel suppositione is qui eam fecit vel heres eius, minime retractari eam occasione praetermissionis decreti, sed sic tenere, quasi ab initio legitimo decreto fuisset alienata res vel supposita. <a 529 d. viii id. april. constantinopoli decio vc. cons.>

CJ.5.74.3.2: Imperator Justinianus

Cum autem donationes a minoribus nec cum decreto celebrari possunt, si minor vel post veniam aetatis rem immobilem donationis titulo in alium (excepta propter nuptias donatione) transscripserit, non aliter hoc firmitatem habebit, nisi post viginti quinque annos impletos inter praesentes quidem decennium, inter absentes autem vicennium donatore adquiescente effluxerit: ut tamen in heredis persona illud tantummodo tempus accederet, quod post eiusdem heredis minoris aetatem silentio transactum sit. <a 529 d. viii id. april. constantinopoli decio vc. cons.>

CJ.5.75.0. De magistratibus conveniendis.

CJ.5.75.1pr.: Imperator Antoninus

Si magistratus a tutoribus seu curatoribus, quos tibi dederunt seu nominaverunt, stipulati sunt se eo nomine indemnes futuros inque eam rem fideiussores acceperunt extra rem salvam fore satisdationem, actio, quam adversus tutores seu curatores tuos instituisti, alienam obligationem non resolvit. * ant. a. muciano. * <a 212 accepta non. ian. duobis aspris conss.>

CJ.5.75.1.1: Imperator Antoninus

Sed adversus magistratus qui curatorem dederunt actio utilis ita demum competit, si universis bonis excussis revocatisque, quae eum in fraudem alienasse constiterit, indemnitati tuae in solidum satisfieri non potuit. <a 212 accepta non. ian. duobis aspris conss.>

CJ.5.75.1.2: Imperator Antoninus

Quam si exercueris, mandatis tibi ab eis actionibus adversus fideiussores quos acceperunt consistere potes, licet utilem actionem sine cessione habeas. <a 212 accepta non. ian. duobis aspris conss.>

CJ.5.75.2: Imperator Alexander Severus

In heredes magistratus, cuius non lata culpa idonee cautum pupillo non est, non solet actio dari. * alex. a. paterno. * <a 224 pp.Iii non.Iul.Iuliano et crispino conss.>

CJ.5.75.3: Imperator Gordianus

Si tu et collega tuus, cum magistratu fungeremini, minus idoneum tutorem dedistis cautionemque idoneam non exegistis nec alias servari pupillo indemnitas potest et utrique solvendo estis, pro virili parte in vos actionem dari non iniuria postulabis. * gord. a. aproniano. * <a 238 d.Viii k.Nov.Pio et pontiano conss.>

CJ.5.75.4: Imperator Gordianus

Adversus nominatorem tutoris vel curatoris minus idonei non ante perveniri potest, quam si bonis nominati itemque fideiussoris eius nec non collegarum quoque, ad quorum periculum consortium administrationis spectat, excussis non sit indemnitati pupilli vel adulti satisfactum. * gord. a. arruntiano. * <a 242 pp.Id.Mart.Attico et praetextato conss.>

CJ.5.75.5: Imperatores Diocletianus, Maximianus

In magistratus municipales tutorum nominatores, si administrationis finito tempore non fuerint solvendo nec ex cautione fideiussionis solidum exigi possit, pupillis quondam in subsidium indemnitatis nomine actionem utilem competere ex senatus consulto, quod auctore divo traiano parente nostro factum est, constitit. * diocl. et maxim. aa. et cc. eugeniae. * <a 294 ? d. vii id. dec. ipsis et conss.>

CJ.5.75.6pr.: Imperator Zeno

Cum sit adiecta praetoris sententia generalem curatori administrationem mandantis et, quod eam pro more sequitur, decretum pariter sit compositum, manifestum est non curatoris dationem fuisse invalidam, sed in aestimanda adultae substantia scribae vitium, qui, tamquam non amplius ducentis libris auri patrimonium valeret, fideiussorem acceperat, intercessisse. * zeno a. aeliano pp. * <a 480 d.V k.Ian.Basilio vc.Cons.>

CJ.5.75.6.1: Imperator Zeno

In quo casu non curatoris erit ratio reprehendenda, si qua laesio rebus minoris illata fuisse adversus legum ordinem comprobetur, sed super neglegentia vel dolo scribae, qui veram substantiae taxationem passus est occultari, legibus erit agendum. <a 480 d.V k.Ian.Basilio vc.Cons.>

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CJ.6.1.0. De fugitivis servis et libertis mancipiisque civitatum artificibus et ad diversa opera deputatis et ad rem privatam vel dominicam pertinentibus.

CJ.6.1.1: Imperatores Diocletianus, Maximianus

Servum fugitivum sui furtum facere et ideo non habere locum nec usucapionem nec longi temporis praescriptionem manifestum est, ne fuga servorum dominis suis ex quacumque causa fiat damnosa. * diocl. et maxim. aa. aemiliae. * <a 286 pp.V id.Dec.Maximo ii et aquilino conss.>

CJ.6.1.2: Imperatores Diocletianus, Maximianus

Requirendi fugitivos potestatem fieri dominis praesidialis officio est. * diocl. et maxim. aa. et cc. pompeiano. * <a 294 pp.Iii k.Mai.Cc.Conss.>

CJ.6.1.3: Imperator Constantinus

Si fugitivi servi deprehendantur ad barbaricum transeuntes, aut pede amputato debilitentur aut metallo dentur aut qualibet alia poena adficiantur. * const. a. et licin. c. ad probum. * <a 317 -323 sine die et consule.>

CJ.6.1.4pr.: Imperator Constantinus

Quicumque fugitivum servum in domum vel in agrum inscio domino eius susceperit, eum cum pari alio vel viginti solidis reddat. * const. a. ad valerianum. * <a 317 d.V k.Iul.Thessalonicae gallicano et basso conss.>

CJ.6.1.4.1: Imperator Constantinus

Sin vero secundo vel tertio eum susceperit, praeter ipsum duos vel tres alios vel praedictam aestimationem pro unoquoque domino repraesentet: in minorum persona tutoribus vel curatoribus poena simili imminente. <a 317 d.V k.Iul.Thessalonicae gallicano et basso conss.>

CJ.6.1.4.2: Imperator Constantinus

Quod si ad praedictam poenam solvendam is qui susceperit minime sufficiat, aestimatione competentis iudicis castigatio in eum procedat. <a 317 d.V k.Iul.Thessalonicae gallicano et basso conss.>

CJ.6.1.4.3: Imperator Constantinus

Quod si servus ingenuum se esse mentitus sub mercede apud aliquem fuerit, nihil is qui eum habuit poterit incusari. <a 317 d.V k.Iul.Thessalonicae gallicano et basso conss.>

CJ.6.1.4.4: Imperator Constantinus

Sane mancipium torqueri oportet, ut manifestetur, utrum propter lucrum capiendum callide a domino ad domum vel agrum eius qui suscepit immissus est, an non. <a 317 d.V k.Iul.Thessalonicae gallicano et basso conss.>

CJ.6.1.4.5: Imperator Constantinus

Quod si maligne factum esse ex servi interrogatione patuerit, servo etiam suo eum qui hoc fecerit privari oportet et ad fiscum pertinere mancipium. <a 317 d.V k.Iul.Thessalonicae gallicano et basso conss.>

CJ.6.1.5: Imperator Constantinus

Mancipia diversis artibus praedita, quae ad rem publicam pertinent, in isdem civitatibus placet permanere, ita ut, si quis tale mancipium sollicitaverit vel avocandum crediderit, cum servo altero sollicitatum restituat, duodecim solidorum summa inferenda rei publicae illius civitatis, cuius mancipium abduxit: libertis quoque artificibus, si sollicitati fuerint, cum eadem forma civitati reddendis: ita ut pro fugitivo servo, si sollicitudine defensoris non fuerit requisitus et revocatus, idem defensor duo vicaria mancipia exigatur, nec beneficio principali nec venditione in eius persona iam de cetero valituris. * const. a. ad ia nuarium. * <a 319 d. xvi k. mart. constantino a. v et licinio c. conss.>

CJ.6.1.6pr.: Imperator Constantinus

Cum servum quispiam repetit fugitivum et alius vitandae legis gratia, quae in occultantes mancipia certam poenam statuit, proprietatem opponet, vel in vocem libertatis eum animaverit, ilico nequissimus verbero super quo ambigitur tormentis subiciatur, ut aperta veritate diceptationi terminus fiat. * const. a. ad tiberianum com. hispaniarum. * <a 332 d. xv k. sept. constantinopoli pacatiano et hilariano conss.>

CJ.6.1.6.1: Imperator Constantinus

Quod non solum utrisque iurgantibus proderit, sed etiam servorum animos a fuga poterit deterrere. <a 332 d. xv k. sept. constantinopoli pacatiano et hilariano conss.>

CJ.6.1.7: Imperatores Valentinianus, Valens, Gratianus

Si quis servum fiscalem putaverit occultandum, non solum eum restituere, sed etiam duodecim libras argenti poenae nomine fisci viribus dependere compellatur. * valentin. valens et grat. aaa. ad felicem consularem. * <a 371 d. ii id. april. gratiano a. ii et probo conss.>

CJ.6.1.8: Imperatores Valentinianus, Theodosius, Arcadius

Si qui publicorum servorum fabricis seu aliis operibus deputati tamquam propriae condicionis immemores domibus se alienis et privatarum ancillarum consortiis adiunxerit, tam ipsi quam uxores eorum et liberi confestim condicioni pristinae laborique restituantur. * valentin. theodos. et arcad. aaa. albino pu. romae. * <a 389 d. viii k. aug. timasio et promoto conss.>

CJ.6.2.0. De furtis et de servo corrupto.

CJ.6.2.1: Imperatores Severus, Antoninus

Si pecunia tua mandantibus servis quidam praedia comparaverunt, eligere debes, utrum furti actionem et condictionem an mandati potius inferre debeas.Neque enim aequitas patitur, ut et criminis causam persequaris et bonae fidei contractum impleri postules. * sev. et ant. aa. theogeni. * <a 200 d. xi k. mai. severo a. ii et victorino conss.>

CJ.6.2.2: Imperatores Severus, Antoninus

Incivilem rem desideratis, ut agnitas res furtivas non prius reddatis, quam pretium fuerit solutum a dominis, curate igitur cautius negotiari, ne non tantum in damna huiusmodi, sed etiam in criminis suspicionem incidatis. * sev. et ant. aa. negotiatoribus. * <a 204 pp. iii k. dec. cilone et libone conss.>

CJ.6.2.3: Imperator Antoninus

Si nondum rem templo divino dedicatem vitricus tuus furto abstulit, habes adversus eum furti actionem. * ant. a. secundo. * <a 215 pp. vi ia. sept. laeto ii et cereale conss.>

CJ.6.2.4: Imperator Alexander Severus

Adversus eum dumtaxat, quem servum tuum sollicitasse dicis, si eum deterioris animi fecit, servi corrupti agere potes. quod si sollicitatum occultavit, etiam furti cum eo agere potes. quas actiones etiam per procuratorem exercere minime prohiberis. * alex. a. aurelio herodi. * <a 222 pp. id. sept. alexandro a. cons.>

CJ.6.2.5: Imperator Alexander Severus

Civile est, quod a te adversarius tuus exigit, ut rei, quam apud te fuisse fatearis, exhibeas venditorem. nam a transeunte etiam ignoto emisse dicere non convenit volenti evitare alienam boni viri suspicionem. * alex. a. cornelio. * <a 223 pp. iii k. mai. maximo ii et aeliano conss.>

CJ.6.2.6: Imperator Alexander Severus

Alienum servum sine voluntate domini qui sciens vendidit seu donavit vel alio modo alienavit, nihil domino diminuere potest: et si contractet vel apud se detinuerit, furtum facit. * alex. a. pythodoro. * <a 223 pp. vi k. ian. maximo ii et aeliano conss.>

CJ.6.2.7: Imperator Alexander Severus

Si is, cui te pecuniam ad matrem tuam perferendam dedisse proponis, parva quantitate numerata reliquam in usus suos convertit, furtum fecit. * alex. a. dato. * <a 228 pp. prid. id. iun. modesto et probo conss.>

CJ.6.2.8: Imperator Alexander Severus

Etiam furti actione tributorum exactor tenetur, si non cessante te in tributoria exactione sciens, quod nihil deberetur, ancillam tui iuris abduxit aut vendidit. quae res facit, ut nec emptor usucaperet vindicatioque tibi ipsius competat. * alex. a. valenti. * <a 231 pp. x k. mart. pompeiano et peligno conss.>

CJ.6.2.9: Imperatores Diocletianus, Maximianus

Subtracto furto vel vi abrepto mancipio, quamvis hoc rebus humanis non oblatum fuerit exemptum, tam ad raptorem quam ad furem periculum redundabit et uterque eorum poena legitima coercebitur. * diocl. et maxim. aa. et cc. aedesio. * <a 293 s. vii id. febr. sirmi aa. conss.>

CJ.6.2.10: Imperatores Diocletianus, Maximianus

Si abducta mancipia furto vel plagio venumdata praeses provincias perspexerit, cum nec ab emptore propter cohaerens vitium, antequam ad dominum possessio revertatur, usucapi possunt, et te ei cuius fuerunt successisse reppererit, restitui tibi providebit. * diocl. et maxim. aa. et cc. valerio. * <a 293 sine die et conss.>

CJ.6.2.11: Imperatores Diocletianus, Maximianus

De his, quae subtraxisse novercam pupilli tui precibus significas, rectorem adi provinciae, qui si eam, posteaquam dominus rerum is pro quo supplicas factus est , aliquid furatam cognoverit, non ignorat in quadruplum manifesti, nec manifesti vero dupli actione furti constituta condemnationem formare. * diocl. et maxim. aa. et cc. demostheni. * <a 293 d. vii k. sept. viminacio aa. conss.>

CJ.6.2.12pr.: Imperatores Diocletianus, Maximianus

Ancillae subtractae partus apud furem editi, priusquam a domino possideantur, usucapi nequeunt: matris furem etiam eorum causa furti teneri convenit actione. * diocl. et maxim. aa. et cc. quintillae. * <a 293 d. id. oct. sirmi aa. conss.>

CJ.6.2.12.1: Imperatores Diocletianus, Maximianus

Quapropter furti actione et condictione vel adversus possidentem vindicatione de mancipiis uti non prohiberis, cum altera poenam continens alterius electione minime tolli possit. <a 293 d. id. oct. sirmi aa. conss.>

CJ.6.2.12.2: Imperatores Diocletianus, Maximianus

Nam extra poenam rei persecutionem esse nulla iuris quaestio est, cum etiam hi qui aliena mancipia comparaverunt, si hanc causam non ignorant, furti actione tenentur. <a 293 d. id. oct. sirmi aa. conss.>

CJ.6.2.13: Imperatores Diocletianus, Maximianus

Post decisionem furti leges agi prohibent. quod si non transegisti, sed de sublatis partem tantum accepisti, residuam vindicare vel condicere et actione furti apud praesidem agere potes. * diocl. et maxim. aa. et cc. domno. * <a 293 d. k. dec. sirmi aa. conss.>

CJ.6.2.14: Imperatores Diocletianus, Maximianus

Eos, qui a servo furtim ablata scientes susceperint, non tantum de susceptis convenire, sed etiam poenali furti actione potes. * diocl. et maxim. aa. et cc. dionysio. * <a 293 d. viii k. ian. sirmi aa. conss.>

CJ.6.2.15: Imperatores Diocletianus, Maximianus

Furti actione minime teneri successores ignorare non debueras. de instrumentis autem ablatis in rem actione tenentem convenire potes. * diocl. et maxim. aa. et cc. socratiae. * <a 293 d. iii k. ian. sirmi aa. conss.>

CJ.6.2.16: Imperatores Diocletianus, Maximianus

Si servum vestrum nutriendum qui susceperat venumdedit, furtum commisit. * diocl. et maxim. aa. et cc. artemidoro et aliis. * <a 294 d. k. oct. viminacii cc. conss.>

CJ.6.2.17: Imperatores Diocletianus, Maximianus

Quamvis etiam hereditatis expilatae crimine promiscuus usus exemplo actionis furti ream uxorem fieri non patiatur, tamen heredes idemque filii super his, quae de patris bonis possidet, adversus eam in rem actione experiri non prohibentur. * diocl. et maxim. aa. et cc. cononi. * <a 294 d. id. dec. cc. conss.>

CJ.6.2.18: Imperatores Diocletianus, Maximianus

In eum, qui ex naufragio vel incendio cepisse vel in his rebus damni quid dedisse dicitur, infra annum utilem ei cui res abest quadrupli, post in simplum actionem proditam praeter poenam olim statutam edicti forma perpetui declarat. * diocl. et maxim. aa. et cc. dionysodoro. * <a 294 s. iii k. ian. nicomediae cc. conss.>

CJ.6.2.19: Imperatores Diocletianus, Maximianus

Falsus procurator depositum recipiendo vel aes alienum exigendo citra domini voluntatem furtum facit ac praeter rei restitutionem actione dupli furti nec manifesti convenitur. * diocl. et maxim. aa. et cc. mnesitheo. * < sine die et consule.>

CJ.6.2.20pr.: Imperator Justinianus

Si quis servo alieno suaserit aliquam rem domini sui subripere et ad se deducere , servus autem hoc domino manifestaverit et domino concedente res eius ad iniquum huiusmodi suasionis auctorem pertulerit, et ipse inventus fuerit rem detinere , quali tenetur actione is qui res suscepit, utrumne pro occasione furti an pro servo, quia eum corrumpere voluit, ut non solum furti, sed etiam servi corrupti is obligetur, veteres dubitaverunt. * iust. a. iuliano pp. * <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.6.2.20.1: Imperator Justinianus

Nobis itaque eorum altercationes decidentibus placuit non solum furti actionem, sed etiam servi corrupti contra eum dare. licet enim servus deterior minime factus est, tamen consilium corruptoris ad perniciem probitatis servi introductum est: et quemadmodum secundum iuris regulas furtum quidem non est commissum, quia is videtur furtum committere, qui contra domini voluntatem res eius contractat, ipse autem furti actione propter dolum suum tenetur, ita et servi corrupti contra eum actio propter suum vitium non ab re extendatur, ut sit ei poenalis actio imposita, tamquam re ipsa fuisset servus corruptus, ne ex huiusmodi impunitate et in alium servum, qui possit corrumpi, hoc facere pertemptet. <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.6.2.21pr.: Imperator Justinianus

Apud antiquos quaerebatur, si servus, quem aliquis bona fide possidebat, furtum commiserit alienarum rerum vel ipsius apud quem constitutus est, si ipse qui bona fide eum detinet noxalem furti actionem adversus verum dominum habet, vel ipse ab eo qui furtum passus est praedicta convenitur actione. * iust. a. iuliano pp. * <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.2.21.1: Imperator Justinianus

Cumque generalis regula ab antiqua prudentia exposita est huiusmodi hominis gratia, pro quo noxalem furti actionem suscipere aliquis compellitur, adversus alium furti actionem habere non concedens, quidam ita eam per coniecturam interpretati sunt, adversus bona fide quidem possessorem nullo modo furti actionem extendi, ipsi autem, si furtum fuerit passus, adversus verum dominum furti actionem noxalem recte decerni: tunc autem bona fide possessorem furti nomine, quod passus est, noxalem actionem contra dominum habere posse, quando servus sub domini sui fuerit constitutus possessione: et pro his rebus posse eum adversus dominum habere actionem, non solum quas servus subtraxerit iam apud eum constitutus, sed et pro his quas furatus est, quando fugit quidem a bona fide possessore, adhuc autem nondum sub domini sui manibus fuerit constitutus. <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.2.21.2: Imperator Justinianus

Quam interpretationem prisca quidem iura per coniecturam introducebant: nos autem altius et verius ad eam respicientes generalem regulam sic ab initio esse prolatam accipimus. <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.2.21.3: Imperator Justinianus

Cum igitur bona fide possessor domini cogitatione furem possidet, merito, donec apud eum constitutus est, et aliis tenetur noxali actione, si extranei furtum a servo fuerint passi, et ipse adversus verum dominum non habet actionem secundum regulam dicentem: qui habet adversus alium furti actionem, ipse ea teneri non potest. sin autem desinat in servi retentione et ille apud verum dominum fuerit inventus, tunc ipse quidem noxali furti actione minime potest teneri, adversus verum autem dominum habet ipse furti noxalem actionem, id est pro rebus, quas vel nunc furatus est, cum est apud verum dominum, vel antea, postquam bona fide possessoris retentionem excesserit necdum apud verum dominum factus. <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.2.21.4: Imperator Justinianus

Et sic iterum regulae generali casus evenit consentaneus: qui enim habet tunc furti actionem adversus dominum, ipse aliis teneri furti actione non potest. sic ex tempore omnibus discretis vetustissima dubitatio nostro foedere conquiescat et bona fide possessor in parte certa temporis et habeat actionem et non teneatur, et ipse dominus in alio tempore non teneatur actione et in alio sub actione constituatur. <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.2.21.5: Imperator Justinianus

De eo autem, qui liber constitutus ab alio bona fide tenetur, si furtum commiserit, recte et sine aliqua dubitatione dicitur posse eum, qui liber est cognitus, et ab ipso qui bona fide eum detinet pro furto conveniri, et bona fide possessorem, si ab extraneo furtum liber commiserit, non posse conveniri, sed ipsum pro suo furto respondere, quia generalis regula de servo prolata est, et pro eo, qui non servus, sed liber et suae potestatis est, noxalem moveri actionem impossibile nostrisque legibus incognitum est. <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.2.22pr.: Imperator Justinianus

Manifestissimi quidem iuris est furto perpetrato ei competere furti actionem, cuius interest, ne furtum committatur. * iust. a. iuliano pp. * <a 530 d.Xv k.Dec.Lampadio et oreste vv.Cc.Conss.>

CJ.6.2.22.1: Imperator Justinianus

Sed quaerebatur apud antiquos legum interpretes, si quis commodavit alii rem ad se pertinentem et ipsa res subtracta est, an furti actio adversus furem institui possit ab eo qui rem utendam accepit, idoneo scilicet constituto, quia et ipse commodati actione a domino pro ea re conveniri potest. <a 530 d.Xv k.Dec.Lampadio et oreste vv.Cc.Conss.>

CJ.6.2.22.1a: Imperator Justinianus

Et hoc quidem paene iam fuerat concessum, ut habeat ipse actionem, nisi inopia noscitur laborare: tunc enim furti actionem domino competere dicebant. <a 530 d.Xv k.Dec.Lampadio et oreste vv.Cc.Conss.>

CJ.6.2.22.1b: Imperator Justinianus

Sed ea satis increbuit dubitatio, si tempore quo furtum committebatur idoneus erat is qui rem commodandam accepit, postea autem ad inopiam pervenit, antequam moveatur actio quae ei antea competebat, an debeat actio quae semel ei adquisita est firmiter apud eum manere vel ad dominum reverti, cum et hoc quaerebatur, an in hoc casu furti actio ambulatoria sit nec ne. <a 530 d.Xv k.Dec.Lampadio et oreste vv.Cc.Conss.>

CJ.6.2.22.1c: Imperator Justinianus

Sed omnem talem tractatum alia sequitur subdivisio, si ex parte solvendo sit is qui rem utendam accepit, ut possit non in totum, sed particularem solutionem ei facere, an habeat furti actionem vel non. <a 530 d.Xv k.Dec.Lampadio et oreste vv.Cc.Conss.>

CJ.6.2.22.1d: Imperator Justinianus

Tales itaque ambiguitates veterum, immo magis, quod melius dicendum est, ambages nobis decidentibus in tanta rerum difficultate simplicior sententia placuit, ut in domini sit voluntate, sive commodati actionem adversus res accipientem movere desiderat sive furti adversus eum qui rem subripuit, et alterutra earum electa dominum non posse ex paenitentia ad alteram venire. <a 530 d.Xv k.Dec.Lampadio et oreste vv.Cc.Conss.>

CJ.6.2.22.1e: Imperator Justinianus

Sed si quidem furem elegerit, illum qui rem utendam accepit penitus liberari: sin autem quasi commodator veniat adversus eum qui rem utendam accepit, ipsi quidem nullo modo competere posse adversus furem furti actionem, eum autem, qui pro re commodata convenitur, posse adversus furem furti habere actionem, ita tamen, si dominus sciens rem esse subreptam adversus eum qui eam accepit perveniat. <a 530 d.Xv k.Dec.Lampadio et oreste vv.Cc.Conss.>

CJ.6.2.22.2: Imperator Justinianus

Sin autem nescius et dubitans rem non esse apud eum commodati actionem instituit , postea autem re comperta voluit remittere quidem commodati actionem, ad furti autem pervenire, tunc licentia ei concedatur et adversus furem venire, nullo obstaculo ei opponendo, quoniam incertus constitutus movit adversus eum qui rem utendam accepit commodati actionem, (nisi domino ab eo satisfactum est: tunc etenim omnimodo furem a domino quidem furti actione liberari, suppositum autem esse ei, qui pro re sibi commodata domino satisfecit), cum manifestissimum est, etiam si ab initio dominus actionem instituit commodati ignarus rei subreptae, postea autem hoc ei cognito adversus furem transivit, omnimodo liberari eum qui rem commodatam suscepit, quemcumque causae exitum dominus adversus furem habuerit: eadem definitione obtinente, sive in partem sive in solidum solvendo sit is qui rem commodatam accepit. <a 530 d.Xv k.Dec.Lampadio et oreste vv.Cc.Conss.>

CJ.6.2.22.3: Imperator Justinianus

Sed cum in secunda dubitatione incidebat, quid statuendum sit, si quis rem commodatam habuerit, quam aliquis furto subtraxerat et lite pulsatus condemnationem passus fuerat non tantum in rem furtivam, sed etiam in poenam furti, et postea dominus rei venerit omnem condemnationem accipere desiderans utpote ex suae rei occasione ortam, alia dubitatio incidit veteribus, utrumne rem tantummodo suam vel eius aestimationem consequatur, an etiam summam poenalem. <a 530 d.Xv k.Dec.Lampadio et oreste vv.Cc.Conss.>

CJ.6.2.22.3a: Imperator Justinianus

Et licet ab antiquis variatum est et ab ipso papiniano in contrarias declinante sententias, tamen nobis haec decidentibus papinianus, licet variavit, eligendus est, non in prima, sed in secunda eius definitione, in qua lucrum statuit minime ad dominum rei pervenire: ubi enim periculum, ibi et lucrum collocetur, nec sit damno tantummodo deditus qui rem commodatam accepit, sed liceat ei etiam lucrum sperare. <a 530 d.Xv k.Dec.Lampadio et oreste vv.Cc.Conss.>

CJ.6.2.22.4: Imperator Justinianus

Cum autem in confinio earum dubitationum tertia exorta est, quare non et eam decidimus? cum enim apertissimi iuris est non posse maritum constante matrimonio furti actionem contra suam uxorem habere, quia lex ita atrocem actionem dare in personas ita sibi coniunctas erubuit, huiusmodi incidit veterum sensibus quaestio. <a 530 d.Xv k.Dec.Lampadio et oreste vv.Cc.Conss.>

CJ.6.2.22.4a: Imperator Justinianus

Quidam etenim re sibi commodata huiusmodi rei furtum a sua muliere passus est: et dubitabatur, utrumne domino rei furti actio contra mulierem praestatur, an propter necessitatem causae et maritus eius utpote commodati actioni suppositus potest habere furti actionem. <a 530 d.Xv k.Dec.Lampadio et oreste vv.Cc.Conss.>

CJ.6.2.22.4b: Imperator Justinianus

Et auctores quidem iuris satis et in hac specie contra se iurgium exercuerunt: ex praesente autem lege et anterioribus nostris decisionibus, quae in ista positae sunt constitutione, potest et haec species apertius dirimi. <a 530 d.Xv k.Dec.Lampadio et oreste vv.Cc.Conss.>

CJ.6.2.22.4c: Imperator Justinianus

Si enim domino dedimus electionem ad quem voluit pervenire, sive ad eum qui rem commodatam accepit, sive contra eum qui furtum commisit, et in hac specie maritus quidem propter matrimonii pudorem non furti, sed rerum amotarum actionem habeat, si ipsum dominus elegerit, dominus autem omnem licentiam possideat sive adversus maritum commodati sive adversus mulierem furti actionem extendere: ita tamen ut, si ipse qui rem commodatam accepit solvendo sit, nullo modo adversus mulierem furti actio extendatur, ne ex huiusmodi occasione inter maritum et uxorem, qui non bene secum vivunt, aliqua machinatio oriatur, et forsitan marito volente uxor eius et trahatur et furti patiatur poenalem condemnationem. <a 530 d.Xv k.Dec.Lampadio et oreste vv.Cc.Conss.>

CJ.6.3.0. De operis libertorum.

CJ.6.3.1: Imperatores Severus, Antoninus

Si tempore manumissionis operae tibi impositae sunt, scis te eas praestare debere. solet autem inter patronos et libertos convenire, ut pro operis aliquid praestetur, licet pretium non possit, nisi quando propter inopiam pro alimentis id extra ordinem peti necessitas suaserit, cum, etsi operae non erant impositae, defectis tamen facultatibus patroni alere eum cogebaris. * sev. et ant. aa. romano. * <a 204 pp. iii k. ian. cilone et libone conss.>

CJ.6.3.2: Imperatores Severus, Antoninus

Manumissionis causa traditus neque in servitutem deduci a manumissore potest neque impositas operas praestare cogitur. * sev. et ant. aa. eutycheti. * <a 205 pp. vi k. mai. geta ii cons.>

CJ.6.3.3: Imperatores Severus, Antoninus

Qui nummis acceptis ab extraneo servum suum manumisit et pro operis pecuniam ab eo accepit, sive fuerant operae impositae sive non fuerant, ut indebita soluta reddere cogitur. * sev. et ant. aa. quintiano. * <a 206 pp. k. nov. albino et aemiliano conss.>

CJ.6.3.4: Imperator Antoninus

Si quam pecuniam tibi a liberto tuo ex venditione operarum deberi probaveris, restitui tibi a liberto tuo praeses iubebit (ex hoc enim liberam testamenti factionem libertus habet) , modo si non onerandae libertatis gratia emissam cautionem probabitur. * ant. a. valeriano. * <a 212 pp. xiiii k. mai. duobus aspris conss.>

CJ.6.3.5: Imperator Antoninus

Mater tua ab eo, quem ex causa fideicommissi manumisit, operas impositas petere non potest, nisi eius tantummodo temporis, quo eum ante manumisit, quam dies fideicommissae libertatis existeret. sed nisi ei honorem patronis debitum exhibuerit, adeat competentem iudicem pro modo admissi vindicaturum. * ant. a. terentio. * <a 212 pp. iii id. mai. duobus aspris conss.>

CJ.6.3.6: Imperator Alexander Severus

Liberti libertaeque defunctorum operas neque extraneis heredibus patronorum debent neque maritis patronarum. * alex. a. caecilio. * <a 222 pp. k. nov. alexandro a. cons.>

CJ.6.3.7pr.: Imperator Alexander Severus

Nec patronis pro operis mercedem accipere licet, quamvis, si indictae operae praestitae non sint, ad pecuniae exactionem obsequii non praestiti aestimatio convertatur. * alex. a. minicio. * <a 224 d. xii k. iun. iuliano et crispino conss.>

CJ.6.3.7.1: Imperator Alexander Severus

Qui autem duos filios in potestate vel diversis temporibus habuit, lege iulia de maritandis ordinibus obligatione operarum liberatur. <a 224 d. xii k. iun. iuliano et crispino conss.>

CJ.6.3.8: Imperator Alexander Severus

Si tuis nummis emptus es ab eo a quo manumissus es, nec operas ei debes neque puniri ab eo utpote ingratus potes: patronum tamen tuum esse negari non oportet. * alex. a. augustino. * <a 224 d. iii id. sept. iuliano et crispino conss.>

CJ.6.3.9: Imperator Alexander Severus

Libertae tuae ducendo eam uxorem dignitatem auxisti, et ideo non est cogenda operas tibi praestare, cum possis legis beneficio contentus esse, quod invito te iuste non possit alii nubere. * alex. a. laetorio. * <a 225 d. x k. mart. fusco et dextro conss.>

CJ.6.3.10: Imperator Alexander Severus

Titius si, cum testamentum faceret, servo suo libertatem cum condicione hac dedit: " gaium servum meum a die mortis meae annis tribus peractis manumitti volo, ita ut praestet heredibus meis, sicut me vivo praestabat", et cum idem servus testatori diurnum quiddam praestabat et post mortem eius usque ad diem praestandae libertatis etiam heredibus praestiterat, manifestum est, quod adeptus libertatem ad eandem praestationem compelli non possit. * alex. a. herculiano. * <a 225 d. vii id. aug. fusco et dextro conss.>

CJ.6.3.11pr.: Imperator Gordianus

Quod ex liberta muliere nascitur, ingenuum est. * gord. a. africano. * <a 238 pp.Iii non.Aug.Pio et pontiano conss.>

CJ.6.3.11.1: Imperator Gordianus

Is autem, qui libertate sua nubenti commodavit adsensum, quamvis operas ab ea exigere non possit, iura patronatus non amittit. <a 238 pp.Iii non.Aug.Pio et pontiano conss.>

CJ.6.3.12: Imperatores Diocletianus, Maximianus

Qui manumittuntur, liberum ubi voluerint commorandi arbitrium habent nec a patronorum filiis, quibus solam reverentiam debent, ad serviendi necessitatem redigi possunt, nisi ingrati probentur, cum neque cum patrono habitare libertos iura compellunt. * diocl. et maxim. aa. et cc. veneriae. * <a 293 s.Viiii k.Iun.Ipsis aa.Conss.>

CJ.6.3.13: Imperatores Valentinianus, Valens, Gratianus

In redhibitione operarum maneat poena eum, qui alienum libertum recipiendum esse duxerit. * valentin. valens et grat. aaa. ad probum pp. * <a 371 d.Iii id.Iul.Gratiano a.Ii et probo conss.>

CJ.6.4.0. De bonis libertorum et de iure patronatus.

CJ.6.4.1pr.: Imperatores Severus, Antoninus

Multum interest, utrum quis suis nummis emptus ac manumissus sit ab emptore, an a domino suo data pecunia mereatur libertatem. priore enim casu ad contra tabulas admitti patronum non placet, posteriore omnia iura patronatus retinet. * sev. et ant. aa. secundae. * <a 210 pp. v non. iul. faustino et rufino conss.>

CJ.6.4.1.1: Imperatores Severus, Antoninus

Et ideo cum sabiniani patroni filii, qui plenum ius habuit, ut hostis publici bona fisco vindicata sunt, secundum ea, quae divo pertinaci placuerunt et nos secuti sumus, in iura libertorum eius fiscus noster successit. <a 210 pp. v non. iul. faustino et rufino conss.>

CJ.6.4.2: Imperatores Valentinianus, Valens

Si liberti coniventibus patronis consortium cum ancillis colonisve nostris elegerint, sciant illi se deinceps commoda patronatus amissuros. * valentin. et valens aa. ad florianum com. rer. privat. * <a 367 d.Iii id.Oct.Treveris lupicino et iovino vv.Cc.Conss.>

CJ.6.4.3pr.: Imperator Justinianus

Si quis patronum in posterum huiusmodi narrationem conceperit vel in libertatibus, quae inter vivos actitantur, vel in his, quae ex testamento vel codicillis scriptis vel sine scriptis habitis proficiscuntur, ut liberti eorum a iure patronatus liberentur, antiqua interpretatione semota non dubitet etiam patronatus ius ex sola tali verborum conceptione libertis esse remittendum nec successionibus quae ab intestato descendunt, quas veteres et post huiusmodi actus servari in libertorum bonis decreverunt, a nobis patronis integris reservandis. * iust. a. demostheni pp. * <a 529 recitata septimo miliario in novo consistorio palatii iustiniani. d.Iii k.Nov.Decio vc.Cons.>

CJ.6.4.3.1: Imperator Justinianus

Sed quemadmodum in natalium restitutione omne ius tollitur patronatus, ita et in huiusmodi verbis eandem esse vim observandam omnes non ignorent. <a 529 recitata septimo miliario in novo consistorio palatii iustiniani. d.Iii k.Nov.Decio vc.Cons.>

CJ.6.4.3.2: Imperator Justinianus

Idem que iuris est, si inter vivos manumissione imposita in ultimis voluntatibus concessio data fuerit patronatus: ita tamen, ut in omnibus natalium restitutiones, ex quibus paene solis ingenuitas mera libertis competit, tam obtineant quam in nostra re publica polleant, cum nobis cordi est ingenuis magis hominibus quam libertis eam frequentari. <a 529 recitata septimo miliario in novo consistorio palatii iustiniani. d.Iii k.Nov.Decio vc.Cons.>

CJ.6.4.3.3: Imperator Justinianus

Reverentia tamen, quae a libertis debetur, et iure, quod adversus ingratos libertos patronis competit, integris reservandis, et si per verborum conceptionem secundum a nobis inductum modum ius patronatus fuerit amissum, cum etiam haec ingenuitatis praemio tolluntur, quam paene sola natalium restitutio inducit. <a 529 recitata septimo miliario in novo consistorio palatii iustiniani. d.Iii k.Nov.Decio vc.Cons.>

CJ.6.4.3.4: Imperator Justinianus

His videlicet casibus, per quos poenalibus modis ius patronatus quasi ab indignis patronis eripitur, in suo robore durantibus. <a 529 recitata septimo miliario in novo consistorio palatii iustiniani. d.Iii k.Nov.Decio vc.Cons.>

CJ.6.5.0. Si in fraudem patroni alienatio facta est.

CJ.6.5.1: Imperatores Diocletianus, Maximianus

Si in fraudem patroni libertus aliquid alienaverit, quatenus legitima pars deminuta est, revocandi tributam convenit esse potestatem. * diocl. et maxim. aa. et cc. claudio. * <a 294 s. xvi k. nov. sirmi cc. conss.>

CJ.6.5.2pr.: Imperatores Diocletianus, Maximianus

Defuncto quidem liberto patronus intestato succedens per actionem calvisianam in eius fraudem alienata revocare potest. * diocl. et maxim. aa. et cc. iuliae. * <a 294 s. viii k. ian. sirmi cc. conss.>

CJ.6.5.2.1: Imperatores Diocletianus, Maximianus

Verum cum patronum post liberti sui mortem ab eo fundi collatam donationem habuisse ratam adseveras, manumissoris factum infirmare successores eius minime possunt. <a 294 s. viii k. ian. sirmi cc. conss.>

CJ.6.6.0. De obsequiis patronis praestandis.

CJ.6.6.1: Imperator Alexander Severus

Contra patronum tuum famosam actionem instituere non potes. * alex. a. zotico. * <a 223 pp. prid. id. mai. maximo ii et aeliano conss.>

CJ.6.6.2: Imperator Alexander Severus

Libertae, quae voluntate patroni aut iure nuptae sunt, non coguntur officium patronis suis praestare. * alex. a. leontogono. * <a 223 pp. xvii k. aug. maximo ii et aeliano conss.>

CJ.6.6.3: Imperator Alexander Severus

Etiam qui pactione data a dominis manumittuntur, mero iure omne obsequium patronis debent. * alex. a. xantho. * <a 223 pp. k. nov. maximo ii et aeliano conss.>

CJ.6.6.4pr.: Imperator Alexander Severus

Si manumissori tuo vim et audaciam obiecisti ei, qui te beneficio suo ex servitute liberando, ut adversarium haberet, fecit, praeses provinciae, quatenus coercere eiusmodi temerariam licentiam debeat, aestimabit. * alex. a. victorino. * <a 224 pp. prid. k. oct. iuliano et crispino conss.>

CJ.6.6.4.1: Imperator Alexander Severus

Nam si qua tibi pecunia debebatur sive de rebus adversus patronum disceptatio fuerat, non protinus ad litigandum currere debueras: maxime autem si hoc facere auderes, sine atrocitate certe verborum aequitatem petitionis tuae commendare iudici potuisti, omni honore patrono debito reservato. <a 224 pp. prid. k. oct. iuliano et crispino conss.>

CJ.6.6.5: Imperator Gordianus

Etiam liberis damnatorum consuetum obsequium libertos paternos praestare debere in dubium non venit. proinde si non agnoscunt reverentiae debitae munus, non immerito videntur ipsi adversus se provocare severitatem. * gord. a. sulpiciae. * <a 240 pp. iii non. sept. sabino ii et venusto conss.>

CJ.6.6.6: Imperator Gordianus

Libertos sive libertas, maxime quibus impositae operae non sunt, consuetum potius obsequium quam servile ministerium manumissoribus exhibere debere neque vincula perpeti non est opinionis incertae. * gord. a. cornelio. * <a 242 pp. iii k. april. attico et praetextato conss.>

CJ.6.6.7pr.: Imperatores Diocletianus, Maximianus

Neque libertis novercae inferendae iniuriae privignis eius libera facultas esse debet: paternos etiam libertos, sicuti dicis, iniuriosos tibi fuisse ferendum non est. * diocl. et maxim. aa. metrodoro. * <a 286 pp. v id. mai. maximo ii et aquilino conss.>

CJ.6.6.7.1: Imperatores Diocletianus, Maximianus

Praeses igitur provinciae vindictam tibi personarum condicioni congruentem impertiri non dubitabit. <a 286 pp. v id. mai. maximo ii et aquilino conss.>

CJ.6.6.8: Imperatores Diocletianus, Maximianus

Nec patronae tuae obsequiis refragari te fas est. * diocl. et maxim. aa. hermiae. * <a 287 pp. xii febr. diocletiano iii et maximiano aa. conss.>

CJ.6.7.0. De libertis et eorum liberis.

CJ.6.7.1: Imperator Antoninus

Non est ignotum, quod ea, quae ex causa fideicommissi manumisit, ut ingratum libertum accusare non potest, cum id iudicium extra ordinem praebeatur ei, qui voluntate servo suo libertatem gratuitam praestitit, non qui debitam restituit. * ant. a. daphno. * <a 214 pp. v k. mai. messala et sabino conss.>

CJ.6.7.2pr.: Imperator Constantinus

Si manumissus ingratus circa patronum suum extiterit et quadam iactantia vel contumacia cervices adversus eum erexerit aut levis offensae contraxerit culpam, a patronis rursus sub imperia dicionemque mittatur, si in iudicio vel apud pedaneos iudices patroni querella exserta ingratum eum ostendat: filiis etiam qui postea nati fuerint servituris, quoniam illis delicta parentium non nocent, quos tunc ortos esse constiterit, dum libertate illi potirentur. * const. a. ad maximum pu. * <a 326 pp. id. april. romae constantino a. vii et constantio c. conss.>

CJ.6.7.2.1: Imperator Constantinus

Sane si is, qui in nostro consilio vindicta liberatus est, post coercitionem ex paenitentia dignum se praestiterit, ut ei civitas romana reddatur, non prius fruetur beneficio libertatis, quam si hoc patronus eius oblatis precibus impetraverit. <a 326 pp. id. april. romae constantino a. vii et constantio c. conss.>

CJ.6.7.3: Imperatores Honorius, Theodosius

Liberti non modo adversus patronos non audientur, verum etiam eandem quam patronis ipsis reverentiam praestent heredibus patronorum, quibus ingrati actio sicut ipsis manumissoribus deferetur, si illi datae sibi libertatis immemores nequitiam receperint servilis ingenii. * honor. et theodos. aa. ad senatum. * <a 423 d. viii id. aug. ravennae mariniano et asclepiodoto conss.>

CJ.6.7.4: Imperatores Theodosius, Valentinianus

Libertinae condicionis homines vel eorum filii si militantes docebuntur ingrati, ad servitutis nexum procul dubio reducentur. * theodos. et valentin. aa. basso pp. * <a 426 d. iii k. april. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.6.8.0. De iure aureorum anulorum et de natalibus restituendis.

CJ.6.8.1: Imperatores Diocletianus, Maximianus

Natales antiquos et ius ingenuitatis non ordo praestare decurionum, sed a nobis peti potuit. * diocl. et maxim. aa. et cc. philadelpho. * <a 290 vel 293 d. xv k. april. ravennae ipsis aa. conss.>

CJ.6.8.2: Imperatores Diocletianus, Maximianus

Aureorum usus anulorum beneficio principali tributus libertinitatis quoad vivunt imaginem non statum ingenuitatis praestat, natalibus autem antiquis restituti liberti ingenui nostro beneficio constituuntur. * diocl. et maxim. aa. et cc. philadelpho. * <a 294 d. xiii k..... sirmi cc. conss.>

CJ.6.9.0. Qui admitti ad bonorum possessionem possunt et intra quod tempus.

CJ.6.9.1: Imperatores Severus, Antoninus

Bonorum possessio filio familias delata cum ignorante quoque patre possit peti, emolumentum et patri adlatura, si ratam petitionem pater habuerit, amittitur transacto tempore. * sev. et ant. aa. macrinae. * < s. die et conss.>

CJ.6.9.2: Imperatores Severus, Antoninus

Si bonorum possessio dumtaxat tibi competit proximitatis nomine, habuisti spatium centum dierum utilium, ex quo eum defunctum scisti, ad bonorum possessionem amplectendam. * sev. et ant. aa. crispino. * <a 205 pp.Iii non.Nov.Geta ii cons.>

CJ.6.9.3: Imperatores Diocletianus, Maximianus

Infantis nomine agnitam bonorum possessionem et antequam loqueretur diem functi recte competere nulla dubitatio est. * diocl. et maxim. aa. crescentino. * <a 286 pp.V k.Ian.Maximo ii et aquilino conss.>

CJ.6.9.4: Imperatores Diocletianus, Maximianus

Emancipata si non agnovit intra annum unde liberi bonorum possessionem, nullam ad heredes vindicationem successionis transmittere potuit. * diocl. et maxim. aa. et cc. Marcello. * <a 294 d. xiiii k.Mai. heracliae cc.Conss.>

CJ.6.9.5: Imperatores Diocletianus, Maximianus

Quamdiu per facti quaestionem incertum est, utrumne secundum tabulas an ab intestato, et ex quo capite possessio sit delata, ne tibi tempus agnoscendae bonorum possessionis praefinitum cedat, superstitiosam geris sollicitudinem. * diocl. et maxim. aa. et cc. maximo. * <a 294 >

CJ.6.9.6: Imperatores Diocletianus, Maximianus

Iuris ignorantiam nec mulieribus prodesse in edicti perpetui cursum de agnoscenda bonorum possessione manifestum est. * diocl. et maxim. aa. et cc. frontinae. * <a 294 d.Iii k.Mai sirmi cc. conss.>

CJ.6.9.7pr.: Imperatores Constantius, Maximianus

Bonorum quidem possessionem pupilli nomine agnoscere tutorem potuisse aperte declaratur. * p. epist. constantii et maximiani aa. et severi et maximini nobb. * <a 305 vi id. sept. constantio et maximiano conss.>

CJ.6.9.7.1: Imperatores Constantius, Maximianus

Ipse autem pupillus bonorum possessionem sine tutoris auctoritate amplecti non potest, nisi etiam impuberi sine tutoris auctoritate hoc postulanti sciens hoc competens iudex dedit bonorum possessionem: tunc enim emolumentum successionis videtur praetorio iure quaesitum esse. <a 305 vi id. sept. constantio et maximiano conss.>

CJ.6.9.8: Imperator Constantinus

Quicumque res ex parentum vel proximorum successione iure sibi competere confidit, sciat sibi non obesse, si per rusticitatem vel ignorantiam facti vel absentiam vel quamcumque aliam rationem intra praefinitum tempus bonorum possessionem minime petisse noscatur, quoniam haec sanctio huiusmodi consuetudinis necessitatem mutavit. * const. a. ad dionysium. * <a 320 vel 326 pp. prid.Id.Mart.Heliopoli constantino a. et const.C.Conss.>

CJ.6.9.9: Imperator Constantinus

Ut verborum inanium excludimus captiones, ita haec observari decernimus, ut apud quemlibet iudicem vel etiam apud duumviros qualiscumque testatio amplectendae hereditatis ostendatur, statutis prisco iure temporibus coartanda, eo addito, ut , etiamsi intra alienam vicem, id est prioris gradus, properantius exseratur, nihilo minus tamen efficaciam parem, quasi suis sita curriculis, consequatur. * const. a. ad pop. * <a 339 d.K.Febr.Laodiceae constantio a. ii et constante a. conss.>

CJ.6.10.0. Quando non petentium partes petentibus adcrescunt.

CJ.6.10.1: Imperator Gordianus

Quotiens pluribus liberis cessante legitima successione bonorum possessio defertur, beneficium edicti perpetui quibusdam omittentibus his solis qui bonorum possessionem agnoverunt portionem non petentium adcrescere in dubium non venit. * gord. a. marcianae. * <a 244 d.Id.Ian.Peregrino et aemiliano conss.>

CJ.6.11.0. De bonorum possessione secundum tabulas.

CJ.6.11.1: Imperator Alexander Severus

Pendente appellatione a sententia, qua falsum testamentum pronuntiatum est, incerto adhuc, an defunctus intestatus decesserit, proximitatis nomine bonorum possessioni locus non est. * alex. a. vitali. * <a 223 d.Iii k.Mai. maximo ii et aeliano conss.>

CJ.6.11.2pr.: Imperator Gordianus

Bonorum quidem possessionem ex edicto praetoris non nisi secundum eas tabulas, quae septem testium signis signatae sunt, peti posse in dubium non venit. * gord. a. cornelio. * <a 242 pp.Xii k.Mart. attico et praetextato conss.>

CJ.6.11.2.1: Imperator Gordianus

Verum si eundem numerum adfuisse sine scriptis testamento condito doceri potest, iure civili testamentum factum videri ac secundum nuncupationem bonorum possessionem deferri explorati iuris est. <a 242 pp.Xii k.Mart. attico et praetextato conss.>

CJ.6.12.0. De bonorum possessione contra tabulas quam praetor liberis pollicetur.

CJ.6.12.1: Imperator Alexander Severus

Liberi contra tabulas parentium bonorum possessione admissa solis parentibus et liberis legata praestare debent secundum edictum. * alex. a. rufo. * <a 223 pp.Iiii id.Oct.Maximo ii et aeliano conss.>

CJ.6.12.2: Imperator Alexander Severus

Postumo nato, qui neque heres institutus a patre neque nominatim exheredatus est , testamentum rumpitur: et si contra tabulas bonorum possessio infanti a tutore petita est, secundum tabulas possessio locum habere non potest. * alex. a. hilarae. * <a 224 d.K.Mart.Iuliano et crispino conss.>

CJ.6.13.0. De bonorum possessione contra tabulas liberti, quae patronis vel liberis eorum datur.

CJ.6.13.1: Imperator Gordianus

Licet ex causa fideicommissi manumissus sit, quem ex voluntate patris cum sorore te manumisisse proponis, tamen, si extraneos scripsit heredes, partis legitimae contra tabulas eius bonorum possessionem petendo, vel contra nuncupationem, si testamentum sine scriptis conditum est, intra tempora edicto praestituta eam partem poteris obtinere. * gord. a. herculiano. * <a 239 pp.Vi k.Dec.Gordiano a. et aviola conss.>

CJ.6.13.2: Imperator Theodosius

Patronus liberti muneribus electis et operis contra tabulas bonorum possessione repellitur. * theodos. a. asclepiodoto pp. * <a 424 d.Xiii k.Mart.Constantinopoli victore cons.>

CJ.6.14.0. Unde liberi.

CJ.6.14.1: Imperatores Diocletianus, Maximianus

Si avus tuus relictis tribus emancipatis filiis decessit hique bonorum possessionem unde liberi acceperunt, pro portione heredes eos extitisse palam est. * diocl. et maxim. aa. sarpedoni. * <a 286 pp.Iiii non.Mart.Maximo ii et aquilino conss.>

CJ.6.14.2: Imperatores Diocletianus, Maximianus

Ex testamento vel ab intestato existente filio vel nepote suo herede nemo potest intestato heres existere. * diocl. et maxim. aa. et cc. zosimo. * <a 293 d.Vii id. mai. aa. conss.>

CJ.6.14.3: Imperator Constantius

Qui se patris post avum intestatum defuncti negat heredem, mortui avi paterni suscipere facultates non potest, maxime emancipatus, nisi per bonorum possessionem ad huiusmodi beneficium pervenerit. * constantius a. ad leontinum com. orientis. * <a 349 d.Viii id. april. limenio et catullino conss.>

CJ.6.15.0. Unde legitimi et unde cognati.

CJ.6.15.1: Imperator Alexander Severus

Consobrinorum tuorum intestatorum bona, si ad prioris necessitudinis neminem iure pertinuerunt, tuque eorum possessionem agnovisti, persequi non prohiberis. * alex. a. ulpio. * <a 224 d.Iiii id.Ian. iuliano et crispino conss.>

CJ.6.15.2: Imperatores Diocletianus, Maximianus

Cum propiorem sobrinum, id est natum a consobrina, rebus humanis intestatum defunctum proponas, intellegis sine auxilio bonorum possessionis eius te successionem vindicare non posse. * diocl. et maxim. aa. sozioni. * <a 290 d.Vii k.Iun.Laodiceae aa.Conss.>

CJ.6.15.3: Imperatores Diocletianus, Maximianus

Nepotibus avi materni pro virili portione etiam iure honorario successio defertur. * diocl. et maxim. aa. et cc. felici. * <a 293 d.Id.Oct.Sirmi aa conss.>

CJ.6.15.4: Imperatores Diocletianus, Maximianus

Non hoc, an tenuerit quis res hereditarias nec ne, sine voluntate adquirendae sibi hereditatis, quaerendum est, sed an admisit hereditatem vel bonorum possessionem. * diocl. et maxim. aa. et cc. syriscae. * <a 293 d.Xi k. ian. sirmi aa. conss.>

CJ.6.15.5: Imperatores Diocletianus, Maximianus

Certum est quidem cognationis iure citra admissionem neminem posse succedere: defuncti vero cognati succedere nolentes petere bonorum possessionem non urguentur. * diocl. et maxim. aa. et cc. platoni. * <a 294 d.Xii k. mart. sirmi cc.Conss.>

CJ.6.16.0. De edicto successorio

CJ.6.16.1: Imperator Alexander Severus

Si mater tua propter furorem suum patrui sui bonorum possessionem non accepit, tu filius eius ad eorundem bonorum patrui magni possessionem ex edicto, quo prioribus non petentibus sequentibus permittitur, admissus es. * alex. a. iulio. * <a 223 pp.Iiii id.Dec maximo ii et aeliano conss.>

CJ.6.16.2: Imperatores Diocletianus, Maximianus

Si aviae frater eorum, de quorum successione agitur, velut ex testamento adiit hereditatem, quos intestatos decessisse ac falsum testamentum prolatum contendis , et ab intestato non petita bonorum possessione vita functus est, ac tu licet quinto gradu constitutus ex successorio capite petisti bonorum possessionem vel necdum exclusus petas, eorum successionem potes vindicare. nam si is, quem quarto gradu constitutum non ambigitur, ex edicto petiit nec hoc te latuit, frustra nobis supplicasti. * diocl. et maxim. aa. et cc. firmo. * <a 294 s. vi id. april. sirmi cc. conss.>

CJ.6.17.0. De carboniano edicto.

CJ.6.17.1: Imperatores Diocletianus, Maximianus

Si tibi ac filio tuo status ab his contra quos supplicas movetur quaestio, perspicis praemature rerum, quas velut de patris successione filius tuus vindicat, restitutionem postulari, cum, si in pupillari permaneat aetate, secundum formam edicti carboniani data bonorum possessione satisdatione impleta tunc demum in possessionem eum constitui conveniat vel hac non oblata portionem ab omnibus quam vindicat possideri, servitutis vero quaestionem in tempus differri pubertatis. * diocl. et maxim. aa. et cc. florae. * <a 293 s. xii k. nov. sirmi aa. conss.>

CJ.6.17.2: Imperatores Valentinianus, Theodosius, Arcadius

Carbonianum edictum sub personis legitimis indubitato matrimonio, custodito partu et probata legitima successione defertur, scilicet ut in possessione novus heres constitutus usque ad pubertatis annos sine inquietudine rebus utatur interdum alienis. * valentin. theodos. et arcad. aaa. ad rufinum pp. * <a 393 d. iiii k. oct. constantinopoli theodosio a. iii et abundantio conss.>

CJ.6.18.0. Unde vir et uxor.

CJ.6.18.1: Imperatores Theodosius, Valentinianus

Maritus et uxor ab intestato invicem sibi in solidum pro antiquo iure succedant, quotiens deficit omnis parentium liberorum seu propinquorum legitima vel naturalis successio, fisco excluso. * theodos. et valentin. aa. hierio pp. * <a 428 d. x k. mart. constantinopoli felice et tauro conss.>

CJ.6.19.0. De repudianda bonorum possessione.

CJ.6.19.1: Imperatores Diocletianus, Maximianus

Emancipatus repudiata bonorum possessione absentiae patroni causae velamento rursum ad eandem redire quaestionem frustra conatur. * diocl. et maxim. aa. et cc. theodotiano. * <a 294 sine die et conss.>

CJ.6.19.2: Imperatores Diocletianus, Maximianus

Filio delatam bonorum possessionem patri ad fraudem filii repudiare non licet. * diocl. et maxim. aa. et cc. theodoro. * <a 294 s. vi k. dec. nicomediae cc. conss.>

CJ.6.20.0. De collationibus.

CJ.6.20.1: Imperator Alexander Severus

Emancipatos liberos testamento heredes scriptos et ex eo successionem obtinentes a patre donata fratri conferre non oportere, si pater, ut hoc fiat, supremis iudiciis non cavit, manifesti iuris est. * alex. a. deuteriae. * <a 224 pp. iii id. iul. iuliano et crispino conss.>

CJ.6.20.2: Imperator Alexander Severus

Si pater intestato decessit relictis duobus filiis et filia, cuius nomine dotem promiserat, portiones hereditatis aeque sunt et dos nihilo minus ita conferanda est, ut pro portionibus fratres eius a necessitate praestandae eius liberentur. * alex. a. primo. * <a 224 pp. iiii id. sept. iuliano et crispino conss.>

CJ.6.20.3: Imperator Alexander Severus

Pactum dotali instrumento comprehensum, ut contenta dote quae in matrimonio collocabatur nullum ad bona paterna regressum haberet, iuris auctoritate improbatur nec intestato patri succedere filia ea ratione prohibetur. dotem sane quam accepit fratribus qui in potestate manserunt conferre debet. * alex. a. alexandro. * <a 230 d. xiiii k. iul. agricola et clemente conss.>

CJ.6.20.4: Imperator Gordianus

Filiae dotem in medium ita demum conferre coguntur, si vel ab intestato succedant vel contra tabulas petant: nec dubium est profecticiam seu adventiciam dotem a patre datam vel constitutam fratribus qui in potestate fuerunt conferendam esse. his etenim, qui in familia defuncti non sunt, profecticiam tantummodo dotem post varias prudentium opiniones conferri placuit. * gord. a. marino. * <a 239 pp. iiii id. mart. gordiano a. et aviola conss.>

CJ.6.20.5: Imperator Gordianus

Dotis quidem petitio perseverante matrimonio tibi non competebat: quamvis enim eam intestato patre defuncto fratri conferre debueras, non tamen eo nomine adversus maritum tibi actio potuit esse, cum eo minus in partem tibi delatae successionis patris auferre potueris. * gord. a. alexandrae. * <a 239 d. non. sept. gordiano a. et aviola conss.>

CJ.6.20.6: Imperator Gordianus

Ea demum ab emancipatis fratribus his qui manserunt in potestate conferri consueverunt, quae in bonis eorum fuerunt eo tempore, quo pater fati munus implevit, exceptis videlicet quae ab ipsis aliis debentur. * gord. a. claudio. * <a 244 d. vii k. mai. peregrino et aemiliano conss.>

CJ.6.20.7: Imperator Philippus

Filiam testamento patris institutam heredem fratribus isdemque coheredibus dotem conferre non oportere, nisi pater hoc ipsum specialiter designavit, explorati iuris est. * philipp. a. tyranniae. * <a 246 pp. vi k.Mai.Praesente et albino conss.>

CJ.6.20.8: Imperatores Diocletianus, Maximianus

Si soror tua in paternorum bonorum divisione te fefellit nec dotem, quam acceperat a patre vestro intestato diem functo, contulit, praeses provinciae examinatis partium adlegationibus cum bonis dotem confundi iubebit et, quod deducta ratione plus apud eam esse animadverterit, restitui tibi iubebit. idem est et si arbitro dato divisio celebrata est. * diocl. et maxim. aa. callippo. * <a 290 s.Vi id.Iul.Ipsis aa. conss.>

CJ.6.20.9: Imperatores Diocletianus, Maximianus

Si emancipati utrique fuistis a patre, collatio cessat. si autem frater tuus in potestate mortis tempore fuerat nec ullum testamentum relictum vel novissimum iudicium communis patris teque emancipatum probatum fuerit, ab intestato te ad successionem paternam venientem ad collationem forma edicti perpetui certo iure provocat. * diocl. et maxim. aa. et cc. onesimo. * <a 293 s.Vi k.Mai.Heracliae aa. conss.>

CJ.6.20.10: Imperatores Diocletianus, Maximianus

A patre verbis precariis in codicillis relictum extero iure capiens filia ad collationem dotis urgueri non potest. * diocl. et maxim. aa. et cc. irenaeae. * <a 293 s.Vi k.Dec.Sirmi aa. conss.>

CJ.6.20.11: Imperatores Diocletianus, Maximianus

Postumo praeterito patris testamentum rumpenti atque intestato succedenti emancipatum petita bonorum possessione conferre debere bona sua perpetuo edicto cavetur, cum his etiam, qui sui futuri essent, si vivo patre nati fuissent, conferri manifeste significatur, et emancipatis, si legi datae collationi non pareatur, denegandas actiones non est ambigui iuris. * diocl. et maxim. aa. et cc. artemiae. * <a 293 pp.V k.Ian.Ipsis aa. conss.>

CJ.6.20.12pr.: Imperatores Diocletianus, Maximianus

Filiae, licet maneat in sacris, si dotem non conferat, quam mortis tempore communis patris habuit, fratribus in eadem familia constitutis, actiones hereditarias negari non ambigitur. * diocl. et maxim. aa. et cc. nilanthiae. * <a 294 d.Xi k.Febr.Sirmi cc.Conss.>

CJ.6.20.12.1: Imperatores Diocletianus, Maximianus

Unde consulte ac pro iuris ratione collationem fratribus tuis, quos in patris communis mortis tempore fuisse potestate proponis, offers. <a 294 d.Xi k.Febr.Sirmi cc.Conss.>

CJ.6.20.12.2: Imperatores Diocletianus, Maximianus

Quin autem fratres tui durantes in familia patris peculium, si hoc neque castrense neque relictum eis doceatur, praecipuum habere non possint, sed in divisione paternae veniat hereditatis, nec quicquam mutet, penes quem res ex hoc proficiscentes et in eadem causa durantes constitutae reperiantur, absoluti manifestique iuris est. <a 294 d.Xi k.Febr.Sirmi cc.Conss.>

CJ.6.20.13: Imperatores Diocletianus, Maximianus

Si donatione tibi post mortem patris quaesisti fundum, soror tua portionem eius vindicare non potest. nam si is filiae familias constitutae tibi a patre donatus est, cum sorore patri communi succedens eum praecipuum habere contra iura postulas. * diocl. et maxim. aa. et cc. antistiae. * <a 294 d.Vi id.Febr.Sirmi isdemque cc. conss.>

CJ.6.20.14: Imperatores Diocletianus, Maximianus

Si maritus quondam tuus ab intestato patri suo heres extitit et ei postumus editus successit, actionem hereditariam amitae filii vestri, quam habuit patris sui mortis tempore dotem non conferenti, denegare praeses non dubitabit. * diocl. et maxim. aa. et cc. stratonicae. * <a 295 pp. vii k. mart. trimotii tusco et anullino conss.>

CJ.6.20.15: Imperatores Diocletianus, Maximianus

Nec emancipati post mortem communis patris quaesita conferre coguntur, sed haec retinentes eius bona pro hereditaria dividunt portione. * diocl. et maxim. aa. et cc. philippo. * <a 294 d.Id.Dec.Ipsis cc. conss.>

CJ.6.20.16: Imperatores Diocletianus, Maximianus

Filiam cum fratribus suis heredibus intestato patri succedentem ultra relictum codicillis non conferentem dotem iudicio familiae erciscundae nihil posse consequi summa cum ratione placuit. * diocl. et maxim. aa. et cc. socrati. * <a 294 d.V k.Ian.Ipsis cc. conss.>

CJ.6.20.17: Imperator Leo

Ut liberis tam masculini quam feminini sexus, iuris sui vel in potestate constitutis, quocumque iure intestatae successionis, id est aut testamento penitus non condito vel, si factum fuerit, contra tabulas bonorum possessione petita vel inofficiosi querella mota rescisso, aequa lance parique modo prospici possit, hoc etiam aequitatis studio praesenti legi credidimus inserendum, ut in dividendis rebus ab intestato defunctorum parentium tam dos quam ante nuptias donatio conferatur, quam pater vel mater, avus vel avia, proavus proavia paternus vel maternus dederit vel promiserit pro filio vel filia, nepote vel nepte aut pronepote sive pronepte, nulla discretione intercedente, utrum in ipsas sponsas pro liberis suis memorati parentes donationem contulerint, an in ipsos sponsos earum, ut per eos eadem in sponsas donatio celebretur: ut in dividendis rebus ab intestato parentis, cuius de hereditate agitur, eadem dos vel ante nuptias donatio ex substantia eius profecta conferatur: emancipatis videlicet liberis utriusque sexus pro tenore praecedentium legum, quae in ipsa emancipatione a parentibus suis (ut adsolet fieri) consequuntur vel post emancipationem ab isdem adquisierint, collaturis. * leo a. erythrio pp. * <a 472 d.V k.Mart.Marciano cons.>

CJ.6.20.18: Imperator Anastasius

Liberos, qui nostrae legis auctoritate per oblationem precum et imperiale rescriptum sui iuris effecti fuerint, ad similitudinem ceterorum, qui emancipati ex antiquo iure sunt, collationes facere iubemus compelli secundum ea, quae super ceteris emancipatis statuta sunt. * anastas. a. constantino pp. * <a 502 d.Xii k.Aug.Constantinopoli probo et avieno iuniore conss.>

CJ.6.20.19pr.: Imperator Justinianus

Illam merito dubitationem amputare duximus, quae super collatione dotis vel ante nuptias donationis inter certas personas satis iam ventilata est. * iust. a. menae pp. * <a 528 d. k. iun. constantinopoli dn. iustiniano a. pp. ii cons.>

CJ.6.20.19.1: Imperator Justinianus

Nam si intestatus quis defunctus esset filio vel filiis vel filia vel filiabus relictis et ex mortua filia cuiuscumque sexus aut numeri nepotibus, vel si qua intestata defuncta esset filio quidem vel filiis similiter relictis, ex mortuo vero filio vel filia itidem nepotibus cuiuscumque sexus, de modo quidem successionis minime dubitabatur, sed palam erat, quod huiusmodi nepotes duas partes maternae vel paternae portionis tantummodo haberent, tertiam partem patruis suis vel avunculis vel amitis vel materteris pro iam posita constitutione concedentes. <a 528 d. k. iun. constantinopoli dn. iustiniano a. pp. ii cons.>

CJ.6.20.19.2: Imperator Justinianus

De collatione vero dotis vel ante nuptias donationis, quam defuncta persona pro filio vel filia superstitibus et pro mortuo vel mortua filio vel filia dedisset, multa dubitatio orta est, superstitibus quidem filiis defunctae personae non debere se dotem et ante nuptias donationem pro se datam a suo patre vel matre conferre filiis mortui fratris sui vel mortuae sororis suae contendentibus eo, quod nulla constitutio super huiuscemodi collatione posita est, nepotibus vero mortuae personae non tantum huic resistentibus, sed etiam illud adserentibus, quod onus collationis constitutione arcadii et honorii divae memoriae sibi impositum in personis tantummodo suorum avunculorum, non etiam patruorum vel amitarum vel materterarum locum habere potest. <a 528 d. k. iun. constantinopoli dn. iustini ano a. pp. ii cons.>

CJ.6.20.19.3: Imperator Justinianus

Talem igitur subtilem dubitationem amputantes praecipimus tam filios vel filias defunctae personae dotem vel ante nuptias donationem a parentibus suis sibi datam conferre nepotibus vel neptibus mortuae personae, quam eosdem nepotes vel neptes patruis suis aut avunculis, amitis etiam et materteris dotem et ante nuptias donationem patris sui vel matris, quam pro eo vel ea mortua persona dedit, similiter conferre, ut commixtis huiusmodi collationibus cum bonis mortuae personae duas quidem partes nepotes vel neptes habeant illius portionis, quae patri vel matri eorum, si superesset, deferebatur, tertiam vero eiusdem portionis partem una cum sibi competentibus portionibus filii vel filiae defunctae personae, cuius de hereditate agitur, capiant. <a 528 d. k. iun. constantinopoli dn. iustiniano a. pp. ii cons.>

CJ.6.20.20pr.: Imperator Justinianus

Illud sine ratione a quibusdam in dubietatem deductum plana sanctione revelamus, ut omnia, quae in quarta portione ab intestato successionis computantur his, qui ad actionem de inofficioso testamento vocantur, etiam si intestatus is decesserit, ad cuius hereditatem veniunt, omnimodo coheredibus suis conferant. * iust. a. menae pp. * <a 529 d. viii id. aug. constantinopoli decio vc. cons. >

CJ.6.20.20.1: Imperator Justinianus

Quod tam in aliis quam in his, quae occasione militiae uni heredum ex defuncti pecuniis adquisitae lucratur is qui militiam meruit, locum habebit, ut lucrum, quod tempore mortis defuncti ab eum pervenire poterat, non solum testamento condito quartae parti ab intestato successionis computetur, sed etiam ab intestato conferatur. <a 529 d. viii id. aug. constantinopoli decio vc. cons. >

CJ.6.20.20.2: Imperator Justinianus

Haec autem regula, ut omnia quae portioni quartae computantur etiam ab intestato conferantur, minime e contrario tenebit, ut possit quis dicere etiam illa quae conferuntur omnimodo in quartam partem his computari, qui ad de inofficioso querellam vocantur: ea enim tantummodo ex his quae conferuntur memoratae portioni computabuntur, pro quibus specialiter legibus, ut hoc fieret, expressum est. <a 529 d. viii id. aug. constantinopoli decio vc. cons. >

CJ.6.20.20.3: Imperator Justinianus

Ad haec, cum ante nuptias donatio vel dos a patre data vel matre vel aliis parentibus pro filio vel filia, nepote vel nepte ceterisque descendentibus conferatur, si unus quidem vel una liberorum ante nuptias tantummodo donationem vel dotem, non etiam simplicem donationem accepit vel acceperit, alter vero vel altera neque dotem neque donationem ante nuptias a parente suo suscepit vel susceperit, sed simplicem tantummodo donationem, ne ex eo iniustum aliquid oriatur, ea quidem persona, quae ante nuptias donationem vel dotem suscepit, conferre eam cogenda, illa vero, quae simplicem tantummodo donationem meruit, ad collationem eius minime coartanda: si quid huiusmodi accidit vel acciderit, iubemus ad similitu dinem eius, qui ante nuptias donationem vel dotem conferre cogitur, etiam illam personam, quae nulla dote vel ante nuptias donatione data solam simplicem donationem a parentibus suis accepit, conferre eam nec recusare collationem eo, quod simplex donatio non aliter confertur, nisi huiusmodi legem donator tempore donationis suae indulgentiae imposuerit. <a 529 d. viii id. aug. constantinopoli decio vc. cons. >

CJ.6.20.21pr.: Imperator Justinianus

Ut nemini super collatione de cetero dubietas oriatur, necessarium duximus constitutioni, quam iam favore liberorum fecimus, hoc addere, ut res, quas parentibus adquirendas esse prohibuimus, nec collationi post obitum eorum inter liberos subiaceant. * iust. a. iohanni pp. * <a 532 d.Xv k.Nov.Lampadio et oreste vv.Cc.Conss.Anno secundo.>

CJ.6.20.21.1: Imperator Justinianus

Ut enim castrense peculium in communi conferre in hereditate dividenda ex prisci iuris auctoritate minime cogebantur, ita et alias res, quae minime parentibus adquiruntur, proprias liberis manere censemus. <a 532 d.Xv k.Nov.Lampadio et oreste vv.Cc.Conss.Anno secundo.>

CJ.6.21.0. De testamento militis.

CJ.6.21.1: Imperator Antoninus

Frater tuus miles si te specialiter bonis quae in paganico habebat heredem fecit , bona quae in castris reliquit petere non potes, etiamsi is qui eorum heres institutus est adire ea noluerit: sed ab intestato succedentes veniunt, modo si in eius loco substitutus non est et liquido probatur fratrem tuum castrensia bona ad te pertinere noluisse. nam voluntas militis expeditione occupati pro iure servatur. * ant. a. florio mil. * <a 212 accepta v id, sept.Duobus aspris conss.>

CJ.6.21.2: Imperator Antoninus

Miles si castrensium tantummodo bonorum commilitonem suum instituit heredem, cetera bona eius ut intestati defuncti mater eius iure possedit. quod si extraneum scripsit heredem isque adiit hereditatem, bona eius in te transferri non iure desideras. * ant. a. septimo mil. * <a 213 pp.Xi k.Mart.Antonino a.Iiii et balbino conss.>

CJ.6.21.3pr.: Imperator Antoninus

Quamquam militum testamenta iuris vinculis non subiciantur, cum propter simplicitatem militarem quomodo velint et quomodo possint ea facere his concedatur, tamen in valeriani quondam centurionis testamento institutio etiam iure communi accepit auctoritatem. * ant. a. vindiciano. * <a 213 pp.K.Nov.Antonino a.Iiii et balbino conss.>

CJ.6.21.3.1: Imperator Antoninus

Nam cum pater familias filiam ex duabus unciis, uxorem ex uncia heredem scripserit nec de residuis portionibus quicquam significaverit, in tres partes divisisse eum apparet hereditatem, ut duas habeat quae sextantem accepit, tertiam quae ex uncia est heres instituta. <a 213 pp.K.Nov.Antonino a.Iiii et balbino conss.>

CJ.6.21.4pr.: Imperator Alexander Severus

Si rufinus vir clarissimus tribunus laticlavius maior annis lege definitis faciens testamentum te manumisit, iustam tibi libertatem competisse scire debes. * alex. a. iunio. * <a 222 pp.Xvi k.Dec.Alexandro a.Cons.>

CJ.6.21.4.1: Imperator Alexander Severus

Quod si minor annis ex lege constitutis fuerit, cum faceret testamentum, lege impediente nullam libertatem adeptus es, quae in hac parte nec militibus remissa est. <a 222 pp.Xvi k.Dec.Alexandro a.Cons.>

CJ.6.21.4.2: Imperator Alexander Severus

Quod si idem testator causam manumittendi te habuit, quae probabilis vivo manumittente consilio futura esset, quia per fideicommissum data libertas a quolibet minore annis ei, cuius causa probari potuit, praestari debet, et ex testamento militis eiusmodi servis iustam libertatem competere consequens est. <a 222 pp.Xvi k.Dec.Alexandro a.Cons.>

CJ.6.21.5: Imperator Alexander Severus

Ex testamento militis, sive adhuc in militia sive intra annum missus honeste decessit, hereditas et legata omnibus quibus relicta sunt debentur, quia inter cetera, quae militibus concessa sunt, liberum arbitrium quibus velint relinquendi supremis suis concessum est, nisi lex specialiter eos prohibuerit. * alex. a. sozomeno. * <a 224 pp. xvii k. febr. iuliano et crispino conss.>

CJ.6.21.6pr.: Imperator Alexander Severus

In testamento quidem eius, qui non miles fuit, si duobus heredibus institutis, altero, cui potuit usque ad tempus pubertatis parens facere testamentum, altero, cui posteaquam heres extitit substituere non potuit, invicem substitutio eisdem verbis facta esset, in eum solum casum eam locum habere et sententiis prudentium virorum et constitutionibus divorum parentium meorum placet, quo utrique pari ratione potuit substitui. * alex. a. valenti. * <a 225 pp. xii k. mai. fusco et dextro conss.>

CJ.6.21.6.1: Imperator Alexander Severus

Sed cum ex testamento militis controversiam esse proponas, defuncta parvula eius filia, posteaquam heres extitit patri, cum qua simul aequis partibus heres institutus eras substitutione invicem facta, et mater quidem intestatae filiae sibi successionem defendat, tu autem ex substitutione ad te pertinere contendas, iuris quidem ratio manifesta est licere militibus proprio privilegio etiam heredibus extraneis, posteaquam heredes extiterint, mortuis substituere. <a 225 pp. xii k. mai. fusco et dextro conss.>

CJ.6.21.6.2: Imperator Alexander Severus

Sed tibi probandum est, an ita frater tuus senserit. <a 225 pp. xii k. mai. fusco et dextro conss.>

CJ.6.21.7pr.: Imperator Alexander Severus

Ex his verbis: " fortunato liberto meo do lego" vindicare tibi libertatem non potes, si pagani testamentum proponatur. * alex. a. fortunato. * <a 229 pp. xii k. iul. alexandro a. iii et dione conss.>

CJ.6.21.7.1: Imperator Alexander Severus

At enim cum testatorem militem fuisse proponas, si non errore ductus libertum te credidit, sed dandae libertatis animum habuit, libertatem, et quidem directam, competere tibi, sed et legati vindicationem habere praerogativa militaris privilegii praestat. <a 229 pp. xii k. iul. alexandro a. iii et dione conss.>

CJ.6.21.8: Imperator Gordianus

Certi iuris est militem ad tempus etiam heredem instituere posse. * gord. a. aeternio mil. * <a 238 pp. iii k. oct. pio et pontiano conss.>

CJ.6.21.9: Imperator Gordianus

Sicut certi iuris est militem, qui scit se filium habere aliosque scripsit heredes, tacite eum exheredare intellegi, ita si ignorans se filium habere alios scribat heredes, non esse filio ademptam hereditatem, sed minime valente testamento, si sit in potestate, eum ad successionem venire in dubiis non habetur. * gord. a. valerio. * <a 238 pp. v non. oct. pio et pontiano conss.>

CJ.6.21.10pr.: Imperator Philippus

Si, cum vel in utero haberetur filia inscio patre milite, ab eo praeterita sit, vel cum in rebus humanis eam non esse falso rumore prolato pater putavit, nullam eius testamento fecit mentionem, silentium huiusmodi exheredationis notam nequaquam infligit. * philipp. a. et philipp. c. iustino mil. * <a 246 pp. xii k. iun. praesente et albino conss.>

CJ.6.21.10.1: Imperator Philippus

Is autem miles, qui testamento filiam appellavit eique legatum dedit, non instituendo eam heredem exheredavit. <a 246 pp. xii k. iun. praesente et albino conss.>

CJ.6.21.11: Imperator Philippus

Captatorias institutiones et in militis testamento nullius esse momenti manifestum est. * philipp. a. et c. aemilio mil. * <a 246 pp. vii k. iul. praesente et albino conss.>

CJ.6.21.12: Imperator Philippus

In testamento militis legem falcidiam et in legatis et in fideicommissis cessare explorati iuris est. sane si quid ultra vires patrimonii postulatur, competenti defensione tueri te potes. * philipp. a. et c. domitiae. * <a 246 pp. vi non. iul. praesente et albino conss.>

CJ.6.21.13: Imperatores valer., gallien.

Et militibus nostris, centurionibus quoque ob flagitium militare damnatis non aliarum quam castrensium rerum testamenta facere permittitur et intestatis iure proprio succeditur a fisco. * valer. et gallien. aa. claudiae. * <a 254 pp. non. aug. valeriano et gallieno aa. conss.>

CJ.6.21.14: Imperatores Diocletianus, Maximianus

Si a fratre suo militante mater vestra scripta heres successionem eius sibi quaesiit, quamvis testamenti scriptura non continet iuris observationem, hanc hereditatem fratrem testatoris vel eius filios ab intestato evincere non potuisse iure constitit. * diocl. et maxim. aa. et cc. heredibus maximae. * <a 294 s. v non. mai. aurris cc. conss.>

CJ.6.21.15pr.: Imperator Constantinus

Milites in expeditione degentes, si uxores aut filios aut amicos aut commilitones suos, postremo cuiuslibet generis homines amplecti voluerint supremae voluntatis adfectu, quomodo possint ac velint testentur, nec uxorum aut filiorum eorum , cum voluntatem patris reportaverunt, meritum aut libertas dignitasque quaeratur. * constant. a. ad pop. * <a 334 d.Iii id.Aug.Nicomediae optato et apulino conss.>

CJ.6.21.15.1: Imperator Constantinus

Proinde sicut iuris rationibus licuit ac semper licebit, si quid in vagina aut in clipeo litteris sanguine suo rutilantibus adnotaverint, aut in pulvere inscripserint gladio sub ipso tempore, quo in proelio vitae sortem derelinquunt, huiusmodi voluntatem stabilem esse oportet. <a 334 d.Iii id.Aug.Nicomediae optato et apulino conss.>

CJ.6.21.16: Imperator Anastasius

Scriniarios vel apparitores, qui virorum magnificorum magistrorum militum iussionibus vel actibus obtemperant, etsi nomina eorum matriculis militaribus referri videantur, nullatenus in ultimis a se conficiendis voluntatibus iuris militaris habere facultatem decernimus. * anastas. a. hierio pp. * <a 496 d.Id.Febr.Constantinopoli paulo vc. cons.>

CJ.6.21.17: Imperator Justinianus

Ne quidam putarent in omni tempore licere militibus testamenta quomodo voluerint componere, sancimus his solis, qui in expeditionibus occupati sunt, memoratum indulgeri circa ultimas voluntates conficiendas beneficium. * iust. a. menae pp. * <a 529 d.Iiii id.April.Constantinopoli decio vc. cons.>

CJ.6.21.18: Imperator Justinianus

Licet antiquis legibus permittebatur pupillis, si tribunatum numeri mereantur, ultimum elogium conficere posse, attamen indignum nostris temporibus esse videtur eum, qui stabilem mentem nondum adeptus est, propter privilegia militum sapientium hominum iura pertractare et in tenera aetate ex tali licentia parentibus forte suis vel aliis propinquis nocere propriam substantiam extraneis relinquentem. ideoque hoc fieri nullo modo concedimus. * iust. a. iohanni pp. * <a 532 d. xii k.Nov. constantinopoli post consulatum lampadii et orestis vv.Cc.Anno ii >

CJ.6.22.0. Qui facere testamentum possunt vel non possunt.

CJ.6.22.1pr.: Imperator Gordianus

Quamquam omnium bonorum socer tuus itemque frater eius socii fuerunt, tamen non eo minus idem frater eius, cum fati munus impleret, testamento suo potuit sibi heredem instituere quem vellet. * gord. a. petronio mil. * <a 243 pp.Xii k.Aug.Arriano et papo conss.>

CJ.6.22.1.1: Imperator Gordianus

Item non idcirco minus is testamenti factionem habet, quod indivisam successionem cum sorore sua dicatur habuisse. <a 243 pp.Xii k.Aug.Arriano et papo conss.>

CJ.6.22.2pr.: Imperatores Diocletianus, Maximianus

Si is, qui tecum uxorem tuam heredem scripsit, quando testamentum ordinavit, sanae mentis fuerit nec postea alicuius sceleris conscientia obstrictus, sed aut impatiens doloris aut aliqua furoris rabie constrictus se praecipitem dedit, eiusque innocentia liquidis probationibus commendari potest a te, adscitae mortis obtentu postremum eius iudicium convelli non debet. * diocl. et maxim. aa. et cc. viatori et pontiae. * <a 290 pp.K.Dec.Ipsis iiii et iii aa. conss.>

CJ.6.22.2.1: Imperatores Diocletianus, Maximianus

Quod si futurae poenae metu voluntaria morte supplicium antevenit, ratam voluntatem eius conservari leges vetant. <a 290 pp.K.Dec.Ipsis iiii et iii aa. conss.>

CJ.6.22.3pr.: Imperatores Diocletianus, Maximianus

Senium quidem aetatis vel aegritudinem corporis sinceritatem mentis tenentibus testamenti factionem certum est non auferre. * diocl. et maxim. aa. et cc. licinio. * <a 294 s.Iiii non.April.Sirmi cc. conss.>

CJ.6.22.3.1: Imperatores Diocletianus, Maximianus

Filiam autem, quae in potestate eius est, testamentum facere non posse indubitati iuris est. <a 294 s.Iiii non.April.Sirmi cc. conss.>

CJ.6.22.4pr.: Imperatores Diocletianus, Maximianus

Si frater patruelis tuus ante quartum decimum aetatis annum suae decessit, cum facere non potuit testamentum, nihil ex eius postremo recte postulatur iudicio. * diocl. et maxim. aa. et cc. rhodoni. * <a 294 s. iii id. nov. pantichi cc. conss.>

CJ.6.22.4.1: Imperatores Diocletianus, Maximianus

Nam si hanc aetatem egressus, licet vigoris necdum emersissent vestigia, suum ordinavit sollemniter iudicium, hoc convellere frustra conaris. <a 294 s. iii id. nov. pantichi cc. conss.>

CJ.6.22.5: Imperator Constantius

Eunuchis liceat facere testamentum, componere postremas exemplo omnium voluntates, conscribere codicillos salva testamentorum observantia. * constantius a. ad rufinum pp. * <a 352 d. v k. mart. sirmi constantio a. v et constantio c. conss.>

CJ.6.22.6: Imperator Constantius

Si quis imperatorem forte heredem instituerit, habeat mutandi iudicii facultatem , et quemcumque voluerit secundum leges in testamento suo heredem scribendi. * constantius a. ad volusianum pu. * <a 355 d. xii k. mart. mediolani arbitione et lolliano conss.>

CJ.6.22.7: Imperatores Valentinianus, Valens, Gratianus

Cum heredes instituuntur imperator seu augusta, ius commune cum ceteris habeant: quod et in codicillis vel fideicommissariis epistulis iure scriptis observandum erit. et sicuti priscis legibus cautum est, imperatori quoque vel augustae testamentum facere liceat et mutare. * valentin. valens et grat. aaa. ad maximum. * <a 371 d. vii id. aug. contionaci gratiano a. ii et probo conss.>

CJ.6.22.8pr.: Imperator Justinus

Hac consultissima lege sancimus, ut carentes oculis seu morbo vel ita nati per nuncupationem suae condant moderamina voluntatis, praesentibus septem testibus, quos aliis quoque testamentis interesse iuris est, tabulario etiam: ut cunctis ibidem collectis primum ad se convocatos omnes, ut sine scriptis testentur, edoceat, deinde exprimat nomina specialiter heredum et dignitates singulorum et indicia, ne sola nominum commemoratio quicquam ambiguitatis pariat, et ex quanta parte vel ex quotis unciis in successionem admitti debeant et quod unumquemque legatarium seu fideicommissarium adsequi velit: omnia denique palam edicat, quae ultimarum capit dispositionum series lege concessa. * iustinus a. demostheni p p. * <a 521 d. k. iun. constantinopoli iustiniano et valerio conss.>

CJ.6.22.8.1: Imperator Justinus

Quibus omnibus ex ordine peroratis uno eodemque loco et tempore, sed et tabularii manu conscriptis sub obtentu septem (ut dictum est) testium et eorundem testium manu subscriptis, dehinc consignatis tam ab isdem testibus quam a tabulario , plenum obtinebit robur testantis arbitrium. <a 521 d. k. iun. constantinopoli iustiniano et valerio conss.>

CJ.6.22.8.1a: Imperator Justinus

Quae in eundem modum erunt observanda, quamvis non heredes instituere, sed legata solum vel fideicommissa et in summa quae codicillis habentur congrua duxerit ordinanda. <a 521 d. k. iun. constantinopoli iustiniano et valerio conss.>

CJ.6.22.8.1b: Imperator Justinus

(1) at cum humana fragilitas mortis praecipue cogitatione turbata minus memoria possit res plures consequi, patebit eis licentia voluntatem suam sive in testamenti vel in codicilli tenore compositam cui velint scribendam credere, ut in eodem postea collocatis testibus et tabulario, re etiam (ut dictum est) patefacta, cuius causa convocati sunt, et chartula prometur, quam susceptam testatori recitabit tabularius simul et testibus, ut, ubi tenor eorum cunctis innotuerit, elogium ipse suum profiteatur agnoscere et ex animi sui quae lecta sunt disposuisse sententia, et in fine subscriptio sequatur testium nec non omnium signacula tam testium (prout dictum est) quam tabularii. <a 521 d. k. iun. constantinopo li iustiniano et valerio conss.>

CJ.6.22.8.2: Imperator Justinus

Sed quia tabulariorum copia non in omnibus locis datur quaerentibus, iubemus, ubi tabularius reperiri non possit, octavum adhiberi testem, ut, quod tabulario pro supra dicto modo commisimus, id per octavum testem effectum capiat: libera potestate concedenda suas voluntates in praedictum modum ordinantibus chartulam ita subscriptam, ita denique consignatam, ut antelatae formae declarant, cui velint ex testibus custodiendam mandare. sic fieri namque confidimus, ut non recipiat se tantum in caecis testandi licentia, sed ne locum quidem ullum relinquat insidiis tot oculis spectata, tot insinuata sensibus, tot insuper in tuto locata manibus. <a 521 d. k. iun. constantinopoli iustiniano et valerio conss.>

CJ.6.22.9pr.: Imperator Justinianus

Furiosum in suis indutiis ultimum condere elogium posse, licet ab antiquis dubitabatur, tamen et retro principibus et nobis placuit: nunc autem hoc decidendum est, quod simili modo antiquos animos movit, si coepto testamento furor eum invasit. * iust. a. iuliano pp. * <a 530 d. k. sept. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.22.9.1: Imperator Justinianus

Sancimus itaque tale testamentum hominis, qui in ipso actu testamenti adversa valetudine tentus est, pro nihilo esse. sin vero voluerit in dilucidis intervallis aliquod condere testamentum vel ultimam voluntatem et hoc sana mente et inceperit facere et consummaverit nullo tali morbo interveniente, stare testamentum sive quamcumque ultimam voluntatem censemus, si et alia omnia accesserint, quae in huiusmodi actibus legitima observatio sequitur. <a 530 d. k. sept. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.22.10pr.: Imperator Justinianus

Discretis surdo et muto, quia non semper huiusmodi vitia sibi concurrunt, sancimus, si quis utroque morbo simul laborat, id est ut neque audire neque loqui possit, et hoc ex ipsa natura habeat, neque testamentum facere neque codicillos neque fideicommissum relinquere neque mortis causa donationem celebrare concedatur nec libertatem sive vindicta sive alio modo imponere: eidem legi tam masculos quam feminas oboedire imperantes. * iust. a. iuliano pp. * <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.22.10.1: Imperator Justinianus

Ubi autem et in huiusmodi vitiis non naturalis sive masculo sive feminae accedit calamitas, sed morbus postea superveniens et vocem abstulit et aures conclusit, si ponamus huiusmodi personam litteras scientem, omnia, quae priori interdiximus, haec ei sua manu scribenti permittimus. <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.22.10.2: Imperator Justinianus

(1) sin autem infortunium discretum est, quod ita raro contingit, et surdis, licet naturaliter huiusmodi sensus variatus est, tamen omnia facere et in testamentis et in codicillis et in mortis causa donationibus et in libertatibus et in aliis omnibus permittimus. <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.22.10.3: Imperator Justinianus

Si enim vox articulata ei a natura concessa est, nihil prohibet eum omnia quae voluit facere, quia scimus quosdam iuris peritos et hoc subtilius cogitasse et nullum esse exposuisse, qui penitus non exaudit, si quis supra cerebrum illius loquatur, secundum quod iuventio celso placuit. <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.22.10.4: Imperator Justinianus

In eo autem, cui morbus superveniens auditum tantummodo abstulit, nec dubitari potest, quin possit omnia sine aliquo obstaculo facere. <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.22.10.5: Imperator Justinianus

Sin vero aures quidem apertae sint et vocem recipientes, lingua autem penitus praepedita, licet a veteribus auctoribus saepius de hoc variatum est, attamen si et hunc peritum litterarum esse proponamus, nihil prohibet et eum scribentem omnia facere, sive naturaliter sive per interventum morbi huiusmodi infortunium ei accessit. <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.22.10.6: Imperator Justinianus

Nullo discrimine neque in masculis neque in feminis in omni ista constitutione servando. <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.22.11pr.: Imperator Justinianus

Nemo ex lege, quam nuper promulgavimus, in rebus, quae parentibus adquiri non possunt, existimet aliquid esse innovandum, et permissum fuisse filiis familias cuiuscumque gradus vel sexus testamenta facere, sive sine patris consensu bona possideant secundum nostrae legis distinctionem, sive cum eorum voluntate. * iust. a. iohanni pp. * <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.22.11.1: Imperator Justinianus

Nullo etenim modo hoc eis permittimus, sed antiqua lex per omnia conservetur, quae filiis familias nisi in casibus certis testamenta facere nullo concedit modo , et in his personis, quae huiusmodi facultatem habere iam concessae sunt. <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.22.12: Imperator Justinianus

Omnes omnino, quibus quasi castrensia peculia habere ex legibus concessum est, habeant licentiam in ea tantummodo ultimas voluntates condere secundum nostrae constitutionis tenorem, quae talibus testamentis de inofficiosi querella immunitatem praestavit. * iust. a. iohanni pp. * <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.23.0. De testamentis: quemadmodum testamenta ordinantur.

CJ.6.23.1: Imperator Hadrianus

Testes servi an liberi fuerunt, non oportet in hac causa tractari, cum eo tempore, quo testamentum signabatur, omnium consensu liberorum loco habiti sunt nec quisquam eis usque adhuc status controversiam moverit. * hadr. a. catonio vero. * < sine die et conss.>

CJ.6.23.2: Imperator Alexander Severus

Publicati semel testamenti fides, quamvis ipsa materia, in qua primum a testatore scriptum relictum fuit, casu qui probatur intercidit, nihilo minus valet. * alex. a. expedito. * <a 225 pp. k. iun. fusco ii et dextro conss.>

CJ.6.23.3: Imperator Alexander Severus

Ex imperfecto testamento nec imperatorem hereditatem vindicare saepe constitutum est. licet enim lex imperii sollemnibus iuris imperatorem solverit, nihil tamen tam proprium imperii est, ut legibus vivere. * alex. a. antigono. * <a 232 pp. xi k. ian. lupo et maximo conss.>

CJ.6.23.4: Imperator Gordianus

Si in nomine praenomine seu cognomine testator erravit nec tamen de quo senserit incertum sit, error huiusmodi nihil officit veritati. * gord. a. rufino. * <a 239 pp. xii k. aug. gordiano a. et aviola conss.>

CJ.6.23.5: Imperatores valer., gallien.

Neque professio neque adseveratio nuncupantium filios, qui non sunt, veritati praeiudicant: et quae ut filiis testamento relinquuntur, iuxta ea quae a principibus statuta sunt non deberi certi iuris est. * valer. et gallien. aa. lucillo. * <a 254 accepta iiii non. iul. valeriano ii et gallieno aa. conss.>

CJ.6.23.6: Imperatores Diocletianus, Maximianus

Verba testamenti, quibus mater vestra decedens nihil se cuiquam donasse significavit, si res se aliter habet, fidem veri non perfringunt. * diocl. et maxim. aa. terentiae. * <a 285 pp. iii non. nov. diocletiano a. ii et aristobulo conss.>

CJ.6.23.7: Imperatores Diocletianus, Maximianus

Errore scribentis testamentum iuris sollemnitas mutilari nequaquam potest, quando minus scriptum, plus nuncupatum videtur. et ideo recte testamento facto, quamquam desit " heres esto", consequens est existente herede legata sive fideicommissa iuxta voluntatem testatoris oportere dari. * diocl. et maxim. aa. rufinae. * <a 290 pp. xvii k. febr. ipsis iiii et iii aa. conss.>

CJ.6.23.8pr.: Imperatores Diocletianus, Maximianus

Casus maioris ac novi contingentis ratione adversus timorem contagionis, quae testes deterret, aliquid de iure laxatum est: non tamen prorsus reliqua etiam testamentorum sollemnitas perempta est. * diocl. et maxim. aa. Marcellino. * <a 290 s. k. iul. ipsis iiii et iii aa. conss.>

CJ.6.23.8.1: Imperatores Diocletianus, Maximianus

Testes enim huiusmodi morbo oppresso eo tempore iungi atque sociari remissum est , non etiam conveniendi numeri eorum observatio sublata. <a 290 s. k. iul. ipsis iiii et iii aa. conss.>

CJ.6.23.9: Imperatores Diocletianus, Maximianus

Si non speciali privilegio patriae tuae iuris observatio relaxata est et testes non in conspectu testatoris testimoniorum officio functi sunt, nullo iure testamentum valet. * diocl. et maxim. aa. patrocliae. * <a 290 pp. k. iul. ipsis iiii et iii aa. conss.>

CJ.6.23.10: Imperatores Diocletianus, Maximianus

Si testamentum iure factum sit et heres sit capax, auctoritate rescripti nostri rescindi non oportet. * diocl. et maxim. aa. et cc. menophiliano. * <a 293 s. xv k..... aa. conss.>

CJ.6.23.11: Imperatores Diocletianus, Maximianus

Non idcirco minus iure factum testamentum suas obtinet vires, quod post mortem testatoris subtractum probatur. * diocl. et maxim. aa. et cc. zetho. * <a 293 s. prid non. iul. aa. conss.>

CJ.6.23.12pr.: Imperatores Diocletianus, Maximianus

Si unus de septem testibus defuerit vel coram testatore omnes eodem loco testes suo vel alieno anulo non signaverint, iure deficiat testamentum. * diocl. et maxim. aa. et cc. matroniae. * <a 293 s. prid. non. iul. philippopoli aa. conss.>

CJ.6.23.12.1: Imperatores Diocletianus, Maximianus

De his autem, quae interleta sive supra scripta dicis, non ad iuris sollemnitatem, sed ad fidei pertinet quaestionem, ut appareat, utrum testatoris voluntate emendationem meruerunt, vel ab altero inconsulte deleta sunt, an ab aliquo falso haec fuerint commissa. <a 293 s. prid. non. iul. philippopoli aa. conss.>

CJ.6.23.13: Imperatores Diocletianus, Maximianus

Testandi causa de pecunia sua legibus certis facultas, non iurisdictionis mutare formam vel iuri publico derogare cuiquam permissum est. * diocl. et maxim. aa. et cc. euripidi. * <a 294 s. vi k. dec. cc. conss.>

CJ.6.23.14: Imperatores Diocletianus, Maximianus

Non codicillum, sed testamentum aviam vestram facere voluisse institutio et exheredatio facta probant evidenter. * diocl. et maxim. aa. et cc. achilleo. * <a 294 s. id. dec. cc. conss.>

CJ.6.23.15pr.: Imperator Constantinus

Quoniam indignum est ob inanem observationem irritas fieri tabulas et iudicia mortuorum, placuit ademptis his, quorum imaginarius usus est, institutioni heredis verborum non esse necessariam observantiam, utrum imperativis et directis verbis fiat an inflexa. * const. a. ad pop. * <a 339 s. d. k. febr. laodiceae constantio a. ii et constante a. conss.>

CJ.6.23.15.1: Imperator Constantinus

Nec enim interest, si dicatur " heredem facio" vel " instituo" vel " volo" vel " mando" vel " cupio" vel " esto" vel " erit", sed quibuslibet confecta sententiis, quolibet loquendi genere formata institutio valeat, si modo per eam liquebit voluntatis intentio, nec necessaria sint momenta verborum, quae forte seminecis et balbutiens lingua profudit. <a 339 s. d. k. febr. laodiceae constantio a. ii et constante a. conss.>

CJ.6.23.15.2: Imperator Constantinus

Et in postremis ergo iudiciis ordinandis amota erit sollemnium sermonum necessitas, ut, qui facultates proprias cupiunt ordinare, in quacumque instrumenti materia conscribere et quibuscumque verbis uti liberam habeant facultatem. <a 339 s. d. k. febr. laodiceae constantio a. ii et constante a. conss.>

CJ.6.23.16pr.: Imperatores Gratianus, Valentinianus, Theodosius

Non dubium nec incertum est, sicut imperatoribus, ita qualibet dignitate vel potestate decoratis viris tam hereditatem quam legatum seu fideicommissum relinqui posse. * grat. valentin. et theodos. aaa. eutropio pp. * <a 380 s. d. k. iul. thessalonicae gratiano v et theodosio aa. conss.>

CJ.6.23.16.1: Imperatores Gratianus, Valentinianus, Theodosius

Illud adiciendum est, ut, qui ex testamento vel ab intestato heres extiterit, etsi voluntas defuncti circa legata seu fideicommissa seu libertates legibus non sit subnixa, tamen, si sua sponte agnoverit, implendi eam necessitatem habeat. <a 380 s. d. k. iul. thessalonicae gratiano v et theodosio aa. conss.>

CJ.6.23.17: Imperatores Arcadius, Honorius

Testamentum non ideo infirmari debebit, quod diversis hoc deficiens nominibus appellavit, cum superflua non noceant. namque necessaria praetermissa imminuunt contractus et testatoris officiunt voluntati, non abundans cautela. * arcad. et honor. aa. aeternali procons. asiae. * <a 396 d. xii k. april. arcadio iiii et honorio iii aa. conss.>

CJ.6.23.18: Imperatores Arcadius, Honorius

Testamenta omnia ceteraque, quae apud officium censuale publicari solent, in eodem reserventur nec usquam pemittatur fieri ulla translatio. mos namque retinendus est fidelissimae vetustatis, quem si quis in hac urbe voluerit immutare, irritam mortuorum videri faciet voluntatem. * arcad. et honor. aa. africano pu. * <a 397 d. vi k. oct. constantinopoli caesario et attico conss.>

CJ.6.23.19pr.: Imperatores Honorius, Theodosius

Omnium testamentorum sollemnitatem superare videatur, quod insertum mera fide precibus inter tot nobiles probatasque personas etiam conscientiam principis tenet. * honor. et theodos. aa. iohanni pp. * <a 413 d. xii k. mart. ravennae post consulatum honorii viiii et theodosii v aa.>

CJ.6.23.19.1: Imperatores Honorius, Theodosius

Sicut igitur securus erit, qui actis cuiuscumque iudicis aut municipum aut auribus privatorum mentis suae postremum publicavit iudicium, ita nec de eius umquam successione tractabitur, qui nobis mediis et toto iure, quod nostris est scriniis constitutum, teste succedit. <a 413 d. xii k. mart. ravennae post consulatum honorii viiii et theodosii v aa.>

CJ.6.23.19.2: Imperatores Honorius, Theodosius

Nec sane illud heredibus nocere permittimus, si rescripta nostra nihil de eadem voluntate responderit. voluntates etenim hominum audire volumus, non iubere, ne post sententiam nostram inhibitum videatur commutationis arbitrium, cum hoc ipsum, quod per supplicationem nostris auribus intimatur, ita demum firmum sit, si ultimum comprobatur nec contra iudicium suum defunctus postea venisse detegitur. <a 413 d. xii k. mart. ravennae post consulatum honorii viiii et theodosii v aa.>

CJ.6.23.19.3: Imperatores Honorius, Theodosius

Ne quid sane praetermisisse credamur huiusmodi institutionis successoribus designatis, omnia quae scriptis heredibus competunt iubemus eos habere nec super bonorum possessionis petitione ullam controversiam nasci, cum pro herede agere cuncta sufficiat et ius omne ipsa complere aditio videatur. <a 413 d. xii k. mart. ravennae post consulatum honorii viiii et theodosii v aa.>

CJ.6.23.19.4: Imperatores Honorius, Theodosius

Omnibus etenim praestandum esse censemus, ut libero arbitrio, cui testandi facultas suppetit, successorem suum oblatis possit precibus declarare et stabile sciat esse quod fecerit, nec institutus heres pertimescat, cum oblatas preces secundum voluntatem defuncti idoneis possit testibus approbare, si ei alia nocere non possunt. <a 413 d. xii k. mart. ravennae post consulatum honorii viiii et theodosii v aa.>

CJ.6.23.20pr.: Imperatores Honorius, Theodosius

Nolumus convelli deficientium scriptas iure ac sollemniter voluntates, dum quoddam morientis supremum et non adscriptum processisse confirmatur arbitrium, tamquam patrimonium suum ad nos deficiens maluerit pertinere. * honor. et theodos. aa. edict. ad pop. urb. constaninopolit. * <a 416 d. iiii id. mart. constantinopoli theodosio a. vii et palladio conss.>

CJ.6.23.20.1: Imperatores Honorius, Theodosius

Omnibus enim privatis et militantibus interdicimus, ut huiusmodi perhibeant testimonia, et falsi criminis reos teneri praecipimus, si, cum scriptae iure ac sollemniter deficientium extiterint voluntates, non scriptum aliquid sub nostrorum nominum mentione falso adstruere moliantur. <a 416 d. iiii id. mart. constantinopoli theodosio a. vii et palladio conss.>

CJ.6.23.20.2: Imperatores Honorius, Theodosius

Nemo itaque relictus heres vel legibus ad successionem vocatus nostrum vel potentium nomen horrescat: nemo ferre testimonia in hunc modum vel suscipere gestis huiusmodi voces audeat nostro vel etiam privatorum potentium nomine. <a 416 d. iiii id. mart. constantinopoli theodosio a. vii et palladio conss.>

CJ.6.23.21pr.: Imperatores Theodosius, Valentinianus

Hac consultissima lege sancimus licere per scripturam conficientibus testamentum , si nullum scire volunt quae in eo scripta sunt, signatam vel ligatam vel tantum clausulam involutamque proferre scripturam vel ipsius testatoris vel cuiuslibet alterius manu conscriptam, eamque rogatis testibus septem numero civibus romanis puberibus omnibus simul offerre signandam et subscribendam, dum tamen testibus praesentibus testator suum esse testamentum dixerit quod offertur eique ipse coram testibus sua manu in reliqua parte testamenti subscripserit: quo facto et testibus uno eodemque die ac tempore subscribentibus et consignantibus valere testamentum nec ideo infirmari, quod testes nesciant quae in eo scripta sunt testamento. * theodos. et valentin. aa. florentio pp. * <a 439 d. prid. id. sept. constantinopoli theodosio a. xvii et festo conss.>

CJ.6.23.21.1: Imperatores Theodosius, Valentinianus

Quod si litteras testator ignoret vel subscribere nequeat, octavo subscriptore pro eo adhibito eadem servari decernimus. <a 439 d. prid. id. sept. constantinopoli theodosio a. xvii et festo conss.>

CJ.6.23.21.2: Imperatores Theodosius, Valentinianus

In omnibus autem testamentis, quae praesentibus vel absentibus testibus dictantur, superfluum est uno eodemque tempore exigere testatorem et testes adhibere et dictare suum arbitrium et finire testamentum. sed licet alio tempore dictatum scriptumve proferatur testamentum, sufficiet uno eodemque die nullo actu interveniente testes omnes, videlicet simul nec diversis temporibus, subscribere signareque testamentum. <a 439 d. prid. id. sept. constantinopoli theodosio a. xvii et festo conss.>

CJ.6.23.21.2a: Imperatores Theodosius, Valentinianus

Finem autem testamenti subscriptiones et signacula testium esse decernimus. non subscriptum namque a testibus ac signatum testamentum pro imperfecto haberi convenit. <a 439 d. prid. id. sept. constantinopoli theodosio a. xvii et festo conss.>

CJ.6.23.21.3: Imperatores Theodosius, Valentinianus

Ex imperfecto autem testamento voluntatem tenere defuncti, nisi inter solos liberos a parentibus utriusque sexus habeatur, non volumus. <a 439 d. prid. id. sept. constantinopoli theodosio a. xvii et festo conss.>

CJ.6.23.21.3a: Imperatores Theodosius, Valentinianus

Si vero in huiusmodi voluntate liberis alia sit extranea mixta persona, certum est eam voluntatem, quantum ad illam dumtaxat permixtam personam pro nullo haberi, sed liberis adcrescere. <a 439 d. prid. id. sept. constantinopoli theodosio a. xvii et festo conss.>

CJ.6.23.21.4: Imperatores Theodosius, Valentinianus

Per nuncupationem quoque, hoc est sine scriptura, testamenta non alias valere sancimus, nisi septem testes, ut supra dictum est, simul uno eodemque tempore collecti testatoris voluntatem ut testamentum sine scriptura facientis audierint. <a 439 d. prid. id. sept. constantinopoli theodosio a. xvii et festo conss.>

CJ.6.23.21.5: Imperatores Theodosius, Valentinianus

Si quis autem testamento iure perfecto postea ad aliud pervenerit testamentum, non alias quod ante factum est infirmari decernimus, quam id, quod secundum facere testator instituit, iure fuerit consummatum, nisi forte in priore testamento scriptis his, qui ab intestato ad testatoris hereditatem successionemve venire non poterant, in secunda voluntate testator eos scribere instituit, qui ab intestato ad eius hereditatem vocantur. eo enim casu, licet imperfecta videatur scriptura posterior, infirmato priore testamento secundam eius voluntatem non quasi testamentum, sed quasi voluntatem intestati valere sancimus. <a 439 d. prid. id. sept. constantinopoli theodosio a. xvii et festo conss.>

CJ.6.23.21.5a: Imperatores Theodosius, Valentinianus

In qua voluntate quinque testium iuratorum depositiones sufficient: quo non facto valebit primum testamentum, licet in eo scripti videantur extranei. <a 439 d. prid. id. sept. constantinopoli theodosio a. xvii et festo conss.>

CJ.6.23.21.6: Imperatores Theodosius, Valentinianus

Illud etiam huic legi perspeximus inserendum, ut etiam graece omnibus liceat testari. <a 439 d. prid. id. sept. constantinopoli theodosio a. xvii et festo conss.>

CJ.6.23.22: Imperator Zeno

Dictantibus testamenta vel aliam quamlibet ultimam voluntatem legatum vel fideicommissum vel quodcumque aliud quolibet legitimo titulo testatorem posse relinquere minime dubitandum est. testibus etiam ad efficiendam voluntatem adhibitis pro suo libitu quod voluerit testator relinquere non prohibetur. * zeno a. sebastiano pp. * <a 480 d. k. mai. constantinopoli basilio iuniore vc. cons.>

CJ.6.23.23: Imperator Justinus

Consulta divalia, quibus considerate prospectum est, ne voluntates ultimae deficientium in hac regia urbe confectae apud alium aperiri possint quam virum clarissimum pro tempore census magistrum, monumentis intervenientibus pro iuris ordine, neve in hereditate, cuius summa centum aureorum pretium non excedit, mercedis quicquam aut sumptuum censum administrantes aut censualis apparitio super intimandis isdem elogiis audeant adsequi, firma nunc quoque edicimus ac repetita promulgatione non solum iudices quorumlibet tribunalium, verum etiam defensores ecclesiarum, quos turpissimum intimationis genus inrepserat, praemonendos censemus, ne rem attingant, quae nemini prorsus omnium secundum constitutionum praecepta quam census magistro competit. absurdum est namque, si promiscuis actibus rerum turbentur officia et alii creditum alius subtrahat, ac praecipue clericis, quibus opprobrium est, si peritos se velint disceptationum esse forensium: poena etiam feriendis temeratoribus praesentis sanctionis quinquaginta librarum auri. nec enim concedendum est, ut suprema vota deficientium eversionis quicquam ex incongrua insinuatione contrahant, dum res ab incongruis usurpatur audacter. * iustinus a. archelao pp. * <a 524 d. xiii k. dec. constantinopoli iustino a. ii et opilione conss.>

CJ.6.23.24: Imperator Justinianus

Ambiguitates, quae vel imperitia vel desidia testamenta conscribentium oriuntur, resecandas esse censemus et, sive institutio heredum post legatorum dationes scripta sit vel alia praetermissa sit observatio non ex mente testatoris, sed vitio tabellionis vel alterius qui testamentum scribit, nulli licentiam concedimus per eam occasionem testatoris voluntatem subvertere vel minuere. * iust. a. menae pp. * <a 528 d. k. ian. dn. iustiniano a. pp. ii cons.>

CJ.6.23.25: Imperator Justinianus

Praeposteri reprehensionem, quam novella constitutio in dotalibus instrumentis sustulisse noscitur, in aliis quoque omnibus tam contractibus quam testamentis tollimus, ut tali exceptione cessante et stipulatio et alii contractus et testatoris voluntas indubitate valeat, exactione videlicet post condicionem vel diem competente. * iust. a. menae pp. * <a 528 s. d. vii id. dec. dn. iustiniano a. pp. ii cons.>

CJ.6.23.26: Imperator Justinianus

In testamentis sine scriptis faciendis omnem formalem observationem penitus amputamus, ut, postquam septem testes convenerint, satis sit voluntatem testatoris vel testatricis simul omnibus manifestari significantis, ad quos substantiam suam pervenire vellet vel quibus legata vel fideicommissa vel libertates disponeret, etiamsi non ante huiusmodi dispositionem praedixerit testator vel testatrix illa formalia verba: ideo eosdem testes convenisse, quod sine scriptis suam voluntatem vel testamentum componere censuit. * iust. a. menae pp. * <a 528 s. d. iiii id. dec. constantinopoli dn. iustiniano a. pp. ii cons.>

CJ.6.23.27pr.: Imperator Justinianus

Sancimus, si quis legitimo modo condidit testamentum et post eius confectionem decennium profluxit, si quidem nulla innovatio vel contraria voluntas testatoris apparuit, hoc esse firmum. quod enim non mutatur, quare stare prohibetur? quemadmodum enim, qui testamentum fecit et nihil voluit contrarium, intestatus efficitur? * iust. a. iuliano pp. * <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.23.27.1: Imperator Justinianus

Sin autem in medio tempore contraria voluntas ostenditur, si quidem perfectissima est secundi testamenti confectio, ipso iure prius tollitur testamentum. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.23.27.2: Imperator Justinianus

Sin autem testator tantummodo dixerit non voluisse prius stare testamentum, vel aliis verbis utendo contrariam aperuit voluntatem, et hoc vel per testes idoneos non minus tribus vel inter acta manifestaverit et decennium fiat emensum, tunc irritum esse testamentum tam ex contraria voluntate quam ex cursu temporali. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.23.27.3: Imperator Justinianus

Aliter etenim testamenta mortuorum per decennii transcursionem evanescere nullo patimur modo, prioribus constitutionibus, quae super huiusmodi testamentis vacuandis latae fuerant, penitus antiquandis. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.23.28pr.: Imperator Justinianus

Cum antiquitas testamenta fieri voluit nullo actu interveniente et huiusmodi verborum compositio non rite interpretata paene in perniciem et testantium et testamentorum procederet, sancimus in tempore, quo testamentum conditur vel codicillus nascitur vel ultima quaedam dispositio secundum pristinam celebratus observationem (nihil enim ex ea penitus immutandum esse censemus) , ea quidem, quae minime necessaria sunt, nullo procedere modo, quippe causa subtilissima proposita ea quae superflua sunt minime debent intercedere. * iust. a. iuliano pp. * <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.23.28.1: Imperator Justinianus

Si quid autem necessarium advenerit et in ipsum corpus laborantis respiciens contigerit, id est vel victus necessarii vel potionis oblatio vel medicaminis datio vel impositio, quibus relictis ipsa sanitas testatoris periclitatur, vel si quis necessarius naturae usus ad depositionem superflui ponderis immineat vel testatori vel testibus, non esse ex hac causa testamentum subvertendum licet morbus comitialis, quod et factum esse comperimus, uni ex testibus contigerit, sed eo quod urguet et imminet repleto vel deposito iterum solita per testamenti factionem adimpleri. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.23.28.2: Imperator Justinianus

Et si quidem a testatore aliquid fiat testibus paulisper separatis, cum coram his facere aliquid naturale testator erubescat, iterum introductis testibus consequentiam factionis testamenti procedere. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.23.28.3: Imperator Justinianus

Si tamen in quendam vel quosdam testium aliquid tale contingat, si quidem ex brevi temporis intervallo necessitas potest transire, iterum eorundem testium reversum expectari et sollemnia peragi. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.23.28.4: Imperator Justinianus

Sin autem longiore spatio refectio fortuiti casus indigeat, et maxime si salus testatoris periclitantis immineat, tunc illo vel illis testibus, circa quos aliquid tale eveniet, separatis alios subrogari et ab eo vel ab eis tam testatorem quam alios testes sciscitari, si ea, quae eorum praesentiam antecedunt, omnia coram eis processissent. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.23.28.5: Imperator Justinianus

Et si hoc fuerit undique manifestum, tunc eos vel eum una cum aliis testibus ea quae oportet facere, etsi in medio subscriptiones testium iam fuerant subsecutae. sic etenim et naturae medemur et mortuorum elogia in suo statu facimus permanere. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.23.28.6: Imperator Justinianus

Cum autem constitutione, quae de testamentis ordinandis processit, cavetur, quatenus septem testium praesentia in testamentis requiratur et subscriptio a testatore fiat vel alio pro eo, et constitutio sic edixit: " octavo subscriptore adhibito", et quidam testamentum suum omne manu propria conscripsit et post eius litteras testes adhibiti suas subscriptiones supposuerunt aliaque omnia sollemniter in testamento peracta sunt et testamentum ex hoc, de quo dubitatur, irritum factum est, eandem constitutionem corrigentes sancimus, si quis sua manu totum testamentum vel codicillum conscripserit et hoc specialiter in scriptura reposu erit, quod sua manu hoc confecit, sufficiat ei totius testamenti scriptura et non alia subscriptio requiratur neque ab eo neque pro eo ab alio , sed sequantur huiusmodi scripturam et litterae testium et omnis quae expectatur observatio, et sit testamentum validum, et codicillus, si quinque testium litterae testatoris scripturae coadunentur, in sua firmitate remaneat, et nemo callidus machinator huiusmodi iniquitatis in posterum inveniatur. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.23.29pr.: Imperator Justinianus

Iubemus omnimodo testatorem, si vires ad scribendum habeat, nomen heredis vel heredum in sua subscriptione vel in quacumque parte testamenti ponere, ut sit manifestum secundum illius voluntatem hereditatem esse transmissam. * iust. a. iuliano pp. * <a 531 d. k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.23.29.1: Imperator Justinianus

Sin autem forsitan ex morbi acerbitate vel litterarum imperitia hoc facere minime poterit, testibus testamenti praesentibus nomen vel nomina heredis vel heredum ab eo nuncupari, ut omnimodo sciant testes, si non ipse subscribere potest, qui sunt scripti heredes, et ita certo heredis nomine successio procedat. <a 531 d. k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.23.29.2: Imperator Justinianus

Si enim talis est testator, qui neque scribere neque articulate loqui potest, mortuo similis est et falsitas in elogiis committitur, quam, ut exul fiat a re publica nostra, maxime in testamentorum confectione cupientes hanc edictalem legem in orbem terrarum ponimus. <a 531 d. k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.23.29.3: Imperator Justinianus

Quod si non fuerit observatum et nomen heredis vel heredum non fuerit manu testatoris scriptum vel voce coram testibus nuncupatum, hoc testamentum stare minime patimur vel in totum, si tota heredum nomina fuerint praetermissa, vel in eius heredis institutionem, cuius nomen neque lingua neque manus testatoris significavit. <a 531 d. k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.23.29.4: Imperator Justinianus

Sed ne aliqua forsitan oblivio testium animis incumbat pluribus interdum nominibus heredum expressis, ipsi testes in suis subscriptionibus, cum testator non haec scripserit, sed nuncupaverit, eorum nomina scribere non differant ad aeternam rei memoriam. <a 531 d. k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.23.29.5: Imperator Justinianus

Sin vero ipse testator in qualicumque parte testamenti nomina heredum (sicut dictum est) scripserit, supervacuum est testes in sua subscriptione hoc exprimere , cum forsitan nescire eos testator suos heredes voluit et semel causa ex ipsius testatoris scriptura appareat. <a 531 d. k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.23.29.6: Imperator Justinianus

Oportet enim omnimodo vel ex litteris testatoris vel ex voce quidem testatoris, litteris autem testium, qui ad elogium conficiendum fuerint convocati, nomina manifestari heredum. quemadmodum enim in elogio, quod sine scriptura conficitur, necesse est testatorem voce exprimere nomen vel nomina heredum, ita oportet et in testamentis per scripturam conficiendis, cum ipse testator manu sua scribere heredes vel noluerit vel minime potuerit, voce tamen eius eos manifestari. <a 531 d. k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.23.29.7: Imperator Justinianus

Quae in posterum tantummodo observari censemus, ut, quae testamenta post hanc novellam nostri numinis legem conficiuntur, haec cum tali observatione procedant: quid enim antiquitas peccavit, quae praesentis legis inscia pristinam secuta est observationem? scituris et tabellionibus et his qui conficienda testamenta procurant, quod, si aliter facere ausi fuerint, poenam falsitatis non evitabunt, quasi dolose in tam necessaria causa versati. <a 531 d. k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.23.30: Imperator Justinianus

Nostram provisionem, maxime circa ultima elogia defunctorum, nunc etiam extendi properamus. unde cum invenimus quasdam controversias veteribus iuris interpretatoribus exortas propter testamentum, quod legitimo modo conditum est septemque testium signa habens, postea fortuito casu vel per ipsius testatoris operam lino toto vel plurima eius parte incisa in ambiguitatem inciderit, solitum ei praebemus remedium sancientes, si quidem testator linum vel signacula inciderit vel abstulerit utpote voluntate eius mutata, testamentum non valere: sin autem ex alia quacumque causa hoc contigerit, durante testamento scriptos ad hereditatem vocari, maxime cum nostra constitutio, quam super tuitione testamentorum promulgavimus, testatorem disposuit vel sua manu nomen heredis scribere vel, si imper itia litterarum vel adversa valitudine seu alio modo hoc facere non potest, testes ipsos audito nomine heredis sub praesentia ipsius testatoris nomen heredis suis subscriptionibus declarare. * iust. a. iohanni pp. * <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.23.31pr.: Imperator Justinianus

Et ab antiquis legibus et a diversis retro principibus semper rusticitati consultum est et in multis legum subtilitatibus stricta observatio eis remissa est, quod ex ipsis rerum invenimus documentis. cum enim testamentorum ordinatio sub certa definitione legum instituta est, homines rustici et quibus non est litterarum peritia quomodo possunt tantam legum subtilitatem custodire in ultimis suis voluntatibus? ideo ad dei humanitatem respicientes necessarium duximus per hanc legem eorum simplicitati subvenire. * iust. a. iohanni pp. * <a 534 d. iii non. iul. constantinopoli dn. iustiniano a. iiii et paulino vc. conss.>

CJ.6.23.31.1: Imperator Justinianus

Sancimus itaque in omnibus quidem civitatibus et in castris orbis romani, ubi et leges nostrae manifestae sunt et litterarum viget scientia, omnia, quae etiam libris nostrorum digestorum seu institutionum et imperialibus sanctionibus nostrisque dispositionibus in condendis testamentis cauta sunt, observari nullamque ex praesenti lege fieri innovationem. <a 534 d. iii non. iul. constantinopoli dn. iustiniano a. iiii et paulino vc. conss.>

CJ.6.23.31.2: Imperator Justinianus

In illis vero locis, in quibus raro inveniuntur homines litterati, per praesentem legem rusticanis concedimus antiquam eorum consuetudinem legis vicem obtinere , ita tamen, ut, ubi scientes litteras inventi fuerint, septem testes, quos ad testimonium vocari necesse est, adhibeantur et unusquisque pro sua persona subscribat: ubi autem non inveniuntur litterati, septem testes et sine scriptura testimonium adhibentes admitti. <a 534 d. iii non. iul. constantinopoli dn. iustiniano a. iiii et paulino vc. conss.>

CJ.6.23.31.3: Imperator Justinianus

Si autem in illo loco minime inventi fuerint septem testes, usque ad quinque modis omnibus testes adhiberi iubemus: minus autem nullo modo concedimus. <a 534 d. iii non. iul. constantinopoli dn. iustiniano a. iiii et paulino vc. conss.>

CJ.6.23.31.4: Imperator Justinianus

Si vero unus aut duo vel plures scierint litteras, liceat his pro ignorantibus litteras, praesentibus tamen, subscriptionem suam imponere, sic tamen, ut ipsi testes cognoscant testatoris voluntatem et maxime quem vel quos heredes sibi relinquere voluerit, et hoc post mortem testatoris iurati deponant. <a 534 d. iii non. iul. constantinopoli dn. iustiniano a. iiii et paulino vc. conss.>

CJ.6.23.31.5: Imperator Justinianus

Quod igitur quisque rusticorum, sicut praedictum est, pro suis rebus disposuerit , hoc omnimodo legum subtilitate remissa firmum validumque consistat. <a 534 d. iii non. iul. constantinopoli dn. iustiniano a. iiii et paulino vc. conss.>

CJ.6.24.0. De heredibus instituendis et quae personae heredes institui non possunt.

CJ.6.24.1: Imperator t. ael. ant.: Qui deportantur, si heredes scribantur, tamquam peregrini capere non possunt, sed hereditas in ea causa est, in qua esset, si scripti non fuissent. * t. ael. ant. a. antestiano. * < sine die et cons.>

CJ.6.24.2: Imperator Antoninus

Pater tuus si ex residua parte heres institutus est, quam alter heres scriptus capere non posset, isque ad nullam partem hereditatis propter condicionem suam admitti potuit, ex asse heres extitit: nam residui commemoratio etiam totum admittit. * ant. a. caecilio. * <a 212 pp. xv k. iul. romae duobus aspris conss.>

CJ.6.24.3pr.: Imperator Alexander Severus

Cum proponas alexandrum equitem testamento primo loco iulianum ut libertum suum heredem instituisse eique substituisse his verbis: " quod si ex aliqua causa primus hereditatem meam adire noluerit vel non potuerit, tunc in locum secundum heredem substituo vitalem", post mortem autem testatoris iulianum servum communem fuisse defuncti militis et zoili fratris eius apparuerit, an tu ex substitutione admittereris, voluntatis est quaestio. * alex. a. vitali mil. * <a 223 pp. vi k. mai. maximo ii et aeliano conss.>

CJ.6.24.3.1: Imperator Alexander Severus

Nam si credens eum proprium et suum libertum heredem instituit nec per eum ad alium quemquam hereditatem pertinere voluit, extitit condicio substitutionis tibique delata hereditas est. <a 223 pp. vi k. mai. maximo ii et aeliano conss.>

CJ.6.24.3.2: Imperator Alexander Severus

Quod si verba substitutionis subscriptae ad ius rettulit, ut si nec per semet ipsum alium fecisset heredem (potuit enim quamvis iubente domino nolle adire), ita demum substitutus vocaretur, si tamen paruit domino et adiit, substitutioni locus non est. <a 223 pp. vi k. mai. maximo ii et aeliano conss.>

CJ.6.24.4: Imperator Gordianus

Si pater tuus eum quasi filium heredem instituit, quem falsa opinione ductus suum esse credebat, non instituturus, si alienum nosset, isque postea subditicius esse ostensus est, auferendam ei successionem divi severi et antonini placitis continetur. * gord. a. ulpio. * <a 238 pp. prid. non. oct. pio et pontiano conss.>

CJ.6.24.5: Imperator Gordianus

Non ideo minus uxor iure heres videtur instituta, quod non uxor, sed adfinis testamento nominata est. * gord. a. cassiano. * <a 241 pp. v k. oct. gordiano a. ii et pompeiano conss.>

CJ.6.24.6: Imperator Philippus

Si compensandi debiti gratia uxor maritum fecit heredem, desiderio tuo praeter portionem hereditatis debitum quoque restitui postulantis non tantum iuris severitas, verum etiam defunctae voluntas refragatur. * philipp. a. et philipp. c. antonio. * <a 246 pp. xii k. mart. praesente et albino conss.>

CJ.6.24.7: Imperatores Diocletianus, Maximianus

Nec apud peregrinos fratrem sibi quisquam per adoptionem facere poterat. cum igitur, quod patrem tuum voluisse facere dicis, irritum sit, portionem hereditatis , quam is adversus quem supplicas velut adoptatus frater heres institutus tenet, restitui tibi curae habebit praeses provinciae. * diocl. et maxim. aa. zizoni. * <a 285 pp. iii non. dec. diocletiano ii et aristobulo conss.>

CJ.6.24.8: Imperatores Diocletianus, Maximianus

Collegium, si nullo speciali privilegio subnixum sit, hereditatem capere non posse dubium non est. * diocl. et maxim. aa. hadriano. * <a 290 pp. x k. iun. ipsis iiii et iii aa. conss.>

CJ.6.24.9: Imperatores Diocletianus, Maximianus

Extraneum etiam cum morietur heredem scribi placuit. * diocl. et maxim. aa. et cc.Iuliae. * <a 293 pp. xvi k. nov. sirmi aa. conss.>

CJ.6.24.10: Imperatores Diocletianus, Maximianus

Neque per se heredes institutos, quibus hoc concessum non est, neque per servos proprios hereditatem posse quaerere dictat iuris ratio. * diocl. et maxim. aa. et cc. asclepiadae. * <a 294 s. xvi k. sept. sirmii cc. conss.>

CJ.6.24.11: Imperatores Theodosius, Valentinianus

Extraneum etiam penitus ignotum heredem quis instituere potest. * theodos. et valentin. aa. hierio pp. * <a 428 d. x k. mart. constantinopoli felice et tauro conss.>

CJ.6.24.12: Imperator Leo

Hereditatis vel legati seu fideicommissi aut donationis titulo domus aut annonae civiles aut quaelibet aedificia vel mancipia ad ius inclitae urbis vel alterius cuiuslibet civitatis pervenire possunt. * leo a. erythrio pp. * <a 469 d. v k. mart. marciano et zenone conss.>

CJ.6.24.13: Imperator Justinianus

Quotiens certi quidem ex certa re scripti sunt heredes vel certis rebus pro sua institutione contenti esse iussi sunt, quos legatariorum loco haberi certum est, alii vero ex certa parte vel sine parte, qui pro veterum legum tenore ad certam unciarum institutionem referuntur, eos tantummodo omnibus hereditariis actionibus uti vel conveniri decernimus, qui ex certa parte vel sine parte scripti fuerint, nec aliquam deminutionem earundem actionum occasione heredum ex certa re scriptorum fieri. * iust. a. menae pp. * <a 529 d. viii id. april. constantinopoli decio vc. cons.>

CJ.6.24.14pr.: Imperator Justinianus

Cum in libris ulpiani, quos ad massurium sabinum scripsit, talis species relata est, hanc apertius expedire nobis visum est. * iust. a. iohanni pp. * <d. iii k. aug. post consulatum lampadii et orestis vv. cc.>

CJ.6.24.14.1: Imperator Justinianus

Quidam testamentum faciens ita instituit: " sempronius plotii heres esto". veteres quidem existimabant errorem nominis esse et sic institutionem valere, quasi testator plotius nominaretur et sempronium sibi scripsisset heredem. <d. iii k. aug. post consulatum lampadii et orestis vv. cc.>

CJ.6.24.14.2: Imperator Justinianus

Sed huiusmodi sententiam crassiorem esse existimamus: neque enim sic homo supinus, immo magis stultus invenitur, ut suum nomen ignoret. sed si quidem ipse testator plotio cuidam heres extitit, manifestissimum esse sibi sempronium heredem instituisse, ut per mediam ipsius personam plotii heres efficiatur: et hoc argumentamur ex antiqua regula, quae voluit heredem heredis testatoris esse heredem. <d. iii k. aug. post consulatum lampadii et orestis vv. cc.>

CJ.6.24.14.3: Imperator Justinianus

Sin autem nihil tale factum est, supervacuam esse et inanem huiusmodi institutionem, nisi prius herede plotio sibi instituto sic adiecit:" sempronius plotii heres esto". tunc etenim existimandum est eum dixisse, si non plotius heres sibi fuerit, tunc sempronium in locum partemve plotii ex substitutione vocari, ut ita ex consequentia verborum plotius quidem institutus, sempronius autem substitutus inveniatur. <d. iii k. aug. post consulatum lampadii et orestis vv. cc.>

CJ.6.24.14.4: Imperator Justinianus

Sin autem neque ipse testator plotio heres extitit neque plotium heredem antea scripsit et sic sempronium plotio heredem voluit esse, nullius esse momenti talem institutionem, cum non est verisimile in suum nomen quendam errasse. <d. iii k. aug. post consulatum lampadii et orestis vv. cc.>

CJ.6.25.0. De institutionibus seu substitutionibus sub condicione factis.

CJ.6.25.1: Imperatores Severus, Antoninus

Cum avum maternum ea condicione filiam tuam heredem instituisse proponas, si anthylli filio nupsisset, non prius eam heredem existere, quam condicioni paruerit aut anthylli filio recusante matrimonium impeditum fuerit, manifestum est. * sev. et ant. aa. alexandro. * <a 199 pp.K.Oct.Anullino et frontone conss.>

CJ.6.25.2pr.: Imperator Antoninus

Condicioni, sub qua testamento matris tuae heres instituta es, si non paruisti, substitutio locum habet. nec enim videri potest sub specie turpium nuptiarum viduitatem tibi indixisse, cum te filio sororis suae consobrino tuo probabili consilio matrimonio iungere voluerit. * ant. a. cassiae. * <a 213 pp.Viii id.Mart.Romae antonino a.Iiii et balbino conss.>

CJ.6.25.2.1: Imperator Antoninus

Nec extraordinario auxilio indiges, cum ex his quae libello complexa es declaretur non per eum stetisse, quominus supremae voluntati matris tuae testatricis satisfieret. <a 213 pp.Viii id.Mart.Romae antonino a.Iiii et balbino conss.>

CJ.6.25.3: Imperator Antoninus

Si mater vos sub condicione emancipationis heredes instituit et, priusquam voluntati defunctae pareretur, sententiam pater meruit vel aliter defunctus est, morte eius vel alio modo patria potestate liberati ius adeundae hereditatis cum sua causa quaesistis. * ant. a. maxentio et aliis. * <a 216 s.Prid.K.Mai.Sabino et anullio conss.>

CJ.6.25.4pr.: Imperator Alexander Severus

Si pater filium quem in potestate habebat sub condicione, quae in ipsius potestate non erat, heredem scripsit nec in defectum eius exheredavit, iure testatus non videtur. * alex. a. aemilio. * <a 224 pp.Vi.K.April.Iuliano et crispino conss.>

CJ.6.25.4.1: Imperator Alexander Severus

Cum autem trans mare et longe te agentem sub hac condicione heredem scriptum esse dicas, si in patriam, quae in provincia mauritaniae erat, regressus fuisses, nec exheredatum te adleges, si in eum locum non redisses, manifestum est multis casibus non voluntariis sed fortuitis evenire potuisse, ut eam implere non posses: et ideo adire non prohiberis hereditatem. <a 224 pp.Vi.K.April.Iuliano et crispino conss.>

CJ.6.25.5pr.: Imperatores valer., gallien.

Reprehendenda tu magis es quam mater tua. illa enim si heredem te sibi esse vellet, id quod est inutile, matrimonium te dirimere cum viro non iuberet. * valer. et gallien. aa. maximae. * <a 257 pp.Xii k. dec. valeriano iiii et gallieno iii aa.Conss.>

CJ.6.25.5.1: Imperatores valer., gallien.

Tu porro voluntatem eius divortio comprobasti: oportuerat autem, etsi condicio huiusmodi admitteretur, praeferre lucro concordiam maritalem. enimvero cum boni mores haec observari vetent, sine ullo damno coniunctionem retinere potuisti. <a 257 pp.Xii k. dec. valeriano iiii et gallieno iii aa.Conss.>

CJ.6.25.5.2: Imperatores valer., gallien.

Redi igitur ad maritum sciens hereditatem matris, etiamsi redieris, retenturam, quippe quam retineres, licet prorsus ab eo non recessisses. <a 257 pp.Xii k. dec. valeriano iiii et gallieno iii aa.Conss.>

CJ.6.25.7pr.: Imperator Justinianus

Generaliter sancimus, si quis ita verba sua composuerit, ut edicat: " si filius vel filia intestatus vel intestata" vel etiam " sine liberis" aut " sine nuptiis decesserit", et ipse vel ipsa vel liberos sustulerit vel nuptias contraxerit sive testamentum fecerit, firmiter res possideri et non esse locum substitutioni vel restitutioni: si enim nihil ex his fuerit subsecutum, tunc valere condicionem et res secundum verba testamenti restitui, ut incertus successionis morientis exitus videatur certo substitutionis vel restitutionis fine concludi. cui enim ferendus est intellectus, si forsitan testamentum quidem non fecerit, posteritatem autem habuerit, propter huiusmodi verborum angustias liberos eius omni paene fructu paterno defraudari? viam itaque impiam obstruentes, ut ne quis et alius deviaverit, huiusmodi facimus sanctionem et hanc legem in perpetuum valituram inducimus tam patribus quam liberis gratam: quo exemplo etiam aliis personis, licet extraneae sunt, de quibus huiusmodi aliquod scriptum fuerit, medemur. * iust. a. ad senatum. * <a 530 d. xi k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.25.7.1: Imperator Justinianus

Cum autem invenimus excelsi ingenii papinianum in huiusmodi casu, in quo pater filio suo substituit nulla liberorum ex his procreandorum adiectione habita, ex optimo intellectu disposuisse evanescere substitutionem, si is qui substitutione praegravatus est pater efficiatur et liberos sustulerit, intellegentem non esse verisimile patrem, si de nepotibus cogitaverit, talem fecisse substitutionem: humanitatis intuitu hoc et latius et pinguius interpretandum esse credidimus. <a 530 d. xi k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.25.7.2: Imperator Justinianus

Et si quis naturales habuerit filios et partem eis reliquerit vel dederit usque ad modum, quem nos statuimus, et substitutioni eos subiugaverit nulla liberorum eorum mentione facta, et hic intellegi evanescere substitutionem, liberis eam excludentibus et intellectu optimo his qui ad substitutionem vocantur obsistente et non concedente ad eos eam partem venire, sed ad filios vel filias, nepotes vel neptes, pronepotes vel proneptes morientis transmittente, et non aliter substitutione locum accipiente, nisi ipsi liberi sine iusta subole decesserint: ut, quod inter iustos liberos sanctum est, hoc et in naturales filios extendatur. <a 530 d. xi k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.25.7.3: Imperator Justinianus

Quae omnia et in legatis vel fideicommissis specialibus locum habere sancimus. <a 530 d. xi k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.25.8pr.: Imperator Justinianus

Si quis heredem scripserit sub tali condicione: " si ille consul fuerit factus" vel " praetor", vel ita filiam suam heredem instituerit: " si nupta erit", vivo autem testatore vel ille consul processerit vel praetor fuerit factus vel filia eius nupta fuerit et adhuc vivo testatore consulatum quidem vel praeturam illi deposuerint, filia autem eius diverterit, omni dubitatione veterum explosa sancimus, quandocumque impleta fuerit condicio, sive vivo eo sive mortis tempore sive post mortem, condicionem videri esse completam. * iust. a. iohanni pp. * <a 531 d. viiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.25.8.1: Imperator Justinianus

Quod et in legatis et in fideicommissis et in libertatibus obtinendum esse censemus, ne, dum nimia utimur circa huiusmodi sensus subtilitate, iudicia testantium defraudentur. <a 531 d. viiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.25.9pr.: Imperator Justinianus

Si testamentum ita scriptum inveniatur: " ille heres esto secundum condiciones infra scriptas", si quidem nihil est adiectum neque aliqua condicio in testamento posita est, supervacuam esse condicionum pollicitationem sancimus et testamentum puram habere institutionem. * iust. a. iohanni pp. * <a 531 d. vi k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.25.9.1: Imperator Justinianus

Et argumento utimur, quod papinianus respondit vicos rei publicae relictos, qui proprios fines habebant, non ideo ex fideicommisso minus deberi, quod testator fines eorum et certaminis formam, quam celebrari singulis annis voluit, alia scriptura se declaraturum promisit ac postea morte praeventus non fecit. <a 531 d. vi k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.25.9.2: Imperator Justinianus

Sin autem condiciones quasdam in quavis parte testamenti posuit, tum videri ab initio condicionalem esse institutionem et sic omnia compleri, tamquam si testator ipsas institutiones eisdem condicionibus copulasset, quae infra scriptae sunt. <a 531 d. vi k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.25.10pr.: Imperator Justinianus

Cum quidam praegnantem habens coniugem scripsit heredem ipsam quidem uxorem suam ex parte, ventrem vero ex alia parte, et adiecit, si non postumus natus fuerit, alium sibi esse heredem, postumus autem natus impubes decessit, dubitabatur, quid iuris sit, tam ulpiano quam papiniano viris disertissimis voluntatis esse quaestionem scribentibus, cum opinabatur papinianus ideo testatorem voluisse postumo nato et impubere defuncto matrem magis ad eius venire successionem quam substitutum. si enim et suae substantiae partem uxori dereliquit, multo magis et luctuosam hereditatem ad matrem venire curavit. * iust. a. iohanni pp. * <a 531 d. iii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.25.10.1: Imperator Justinianus

Nos itaque in hac specie papiniani dubitationem resecantes substitutionem quidem in huiusmodi casu, ubi postumus natus adhuc impubes viva matre decesserit, respuendam esse censemus. tunc autem tantummodo substitutionem admittimus, cum postumus minime editus fuerit vel post eius partum mater prior decesserit. <a 531 d. iii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.26.0. De impuberum et de aliis substitutionibus.

CJ.6.26.1: Imperator t. ael. ant.: Cum heredes ex disparibus partibus instituti et invicem substituti sunt nec in substitutione facta est ullarum partium mentio, verum est non alias partes testatorem substitutioni tacite inseruisse, quam quae manifeste in institutione expressae sunt. * t. ael. ant. a. secundo. * <a 146 d. claro ii et severo conss.>

CJ.6.26.2: Imperatores Severus, Antoninus

Hereditatem quidem intestati filii delatam tibi dubitari non oportet. substitutio enim testamento patris facta ad pubertatis tempora porrigi non potest, quia ipso et aliis non eiusdem condicionis heredibus institutis et invicem substitutis propter eorum personam, quibus in unum casum dumtaxat substitui potest, etiam in filio idem debere servari et ratio suadet et divus marcus pater constituit. * sev. et ant. aa. phronimae. * <a 204 pp. vi k. aug. cilone et libone conss.>

CJ.6.26.3pr.: Imperator Alexander Severus

Heres instituta matris testamento si successionem ex testamento omisisti et ab intestato bonorum possessionis ius habere voluisti, substituto locum quin feceris, in dubium non venit. * alex. a. achillae. * <a 223 pp. xi k. sept. maximo ii et aeliano conss.>

CJ.6.26.3.1: Imperator Alexander Severus

Proinde si substitutus hereditatem amplexus est, actionibus quae adversus matrem competebant ipsum convenire, non successionem ab intestato potes vindicare. <a 223 pp. xi k. sept. maximo ii et aeliano conss.>

CJ.6.26.4: Imperator Alexander Severus

Quamvis placuerat substitutionem impuberis, qui in potestate testatoris fuerit, a parente factam ita: " si heres non erit" porrigi ad eum casum, quo, posteaquam heres extitit, impubes decessit, si modo non contrariam defuncti voluntatem extitisse probetur: cum tamen proponas ita substitutionem factam esse: " si mihi firmianus filius et aelia uxor mea (quod abominor) heredes non erunt, in locum eorum publius firmianus heres esto", manifestum est in eum casum factam substitutionem, quo utrique heredum substitui potuit. * alex. a. firmiano. * <a 225 pp. iiii k. iul. fusco ii et dextro conss.>

CJ.6.26.5: Imperatores Diocletianus, Maximianus

Post aditam hereditatem directae substitutiones non impuberibus filiis factae expirare solent. * diocl. et maxim. aa. hadriano. * <a 290 pp.X k.Iun. ipsis iiii et aa. conss.>

CJ.6.26.6: Imperatores Diocletianus, Maximianus

Testamento iure facto multis institutis heredibus et invicem substitutis, adeuntibus suam portionem coheredum etiam invitis repudiantium adcrescit portio. * diocl. et maxim. aa. et cc. quintiano. * <a sine die et consule >

CJ.6.26.7: Imperatores Diocletianus, Maximianus

Si testamento facto intra pupillarem aetatem et in sua potestate constitutae filiae, si intra pubertatem decesserit, directis verbis pater substituit, heredem te factum ex testamento post eventum condicionis intestati successionem exclusisse constitit. * diocl. et maxim. aa. et cc. feliciano. * <a 293 s.K.Ian.Sirmi aa. conss.>

CJ.6.26.8: Imperatores Diocletianus, Maximianus

Precibus tuis manifestius exprimere debueras, maritus quondam tuus miles defunctus, quem testamento facto heredem communem vestrum filium instituisse proponis et secundum heredem scripsisse, utrumne in primum casum an filio suo, quem habuit in potestate mortis tempore, si intra quartum decimum aetatis suae annum an postea decesserit. * diocl. et maxim. aa. et cc. petroniae. * <a 293 s.K.Ian.Sirmi aa. conss.>

CJ.6.26.8.2: Imperatores Diocletianus, Maximianus

Nam non est incerti iuris, quod, si quidem in patris militis positus potestate primo casu tantum habuit substitutum et patri heres extitit, eo defuncto ad te omnimodo eius pertineat successio. <a 293 s.K.Ian.Sirmi aa. conss.>

CJ.6.26.8.2: Imperatores Diocletianus, Maximianus

Si vero substitutio in secundum casum vel expressa vel compendio non usque ad certam aetatem facta reperiatur, si quidem infra pubertatem decessit, eos habeat heredes, quos pater ei constituit et adierunt hereditatem: si vero post pubertatem, te eius successionem obtinente velut ex causa fideicommissi bona, quae cum moreretur patris eius fuerunt, a te possunt petere. <a 293 s.K.Ian.Sirmi aa. conss.>

CJ.6.26.9pr.: Imperator Justinianus

Humanitatis intuitu parentibus indulgemus, ut, si filium vel nepotem vel pronepotem cuiuscumque sexus habeant nec alia proles descendentium eis sit, iste tamen filius vel filia vel nepos vel neptis vel pronepos vel proneptis mente captus vel mente capta perpetuo sit, vel si duo vel plures isti fuerint, nullus vero eorum saperet, liceat isdem parentibus legitima portione ei vel eis relicta quos voluerint his substituere, ut occasione huiusmodi substitutionis ad exemplum pupillaris nulla querella contra testamentum eorum oriatur, ita tamen, ut, si postea resipuerit vel resipuerint, talis substitutio cesset, vel si filii aut alii descendentes ex huiusmodi mente capta persona sapientes sint, non liceat parenti qui vel quae testatur alios quam ex eo descendentes unum vel certos vel omnes substituere. * iust. a. menae pp. * <a 528 d.Iii id.Dec.Constantinopoli dn.Iusti niano a. pp. ii cons.>

CJ.6.26.9.1: Imperator Justinianus

Sin vero etiam alii liberi testatori vel testatrici sint sapientes, ex his vero personis quae mente captae sunt nullus descendat, ad fratres eorum unum vel certos vel omnes eandem fieri substitutionem oportet. <a 528 d.Iii id.Dec.Constantinopoli dn.Iustiniano a. pp. ii cons.>

CJ.6.26.10pr.: Imperator Justinianus

Cum quidam duobus impuberibus filiis suis heredibus institutis adiecit, si uterque impubes decesserit, illum sibi esse heredem, et dubitabatur apud antiquos legum auctores, utrumne tunc voluit substitutum admitti, cum uterque filius eius in prima aetate decesserit, an alterutro decedente ilico substitutus in eius partem succedat, placuit sabino substitutionem tunc locum habere, cum uterque decesserit: cogitasse enim patrem primo decedente fratrem suum in eius portionem succedere. * iust. a. iohanni.Pp. * <a 531 d.Vi k.Aug.Constintinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.6.26.10.1: Imperator Justinianus

Nos eiusdem sabini veriorem sententiam existimantes non aliter substitutionem admittendam esse censemus, nisi uterque eorum in prima aetate decesserit. <a 531 d.Vi k.Aug.Constintinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.6.26.11pr.: Imperator Justinianus

Si quis duobus heredibus institutis filio suo impuberi eos una cum alio tertio substituit et verba testamenti ita composuerit: " quisquis mihi heres erit, et titius filio meo heres esto", secundum quod apud ulpianum invenimus, mortuo impubere filio quaerebatur, quomodo ad substitutionem vocentur tres substituti: utrumne duo priores, qui et patri heredes fuerant scripti, in dimidiam vocantur et titius in reliquam dimidiam, an tres substituti unusquisque ex triente ad substitutionem vocantur? alia applicata dubitatione, si quis ita heredem scripserit: " titius una cum filiis suis et sempronius heredes mihi sunto". et in praesente etenim specie quaerebatur secundum ulpianum voluntas testantis: utrumne titium una cum suis filiis in dimidiam vocat et sempronium in aliam dimidiam, an omnes in virilem portionem? * iust. a. iohanni pp. * <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.26.11.1: Imperator Justinianus

Nobis autem in prima quidem specie videtur tres substitutos unumquemque in trientem vocari, in secunda autem specie, cum et natura pater et filius eadem persona paene intelleguntur, dimidiam quidem partem titio cum filiis, alteram autem partem sempronio adsignari. <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.27.0. De necessariis et servis heredibus instituendis vel substituendis.

CJ.6.27.1: Imperator pertinax

Is, qui solvendo non est, heredem necessarium etiam in fraudem creditorum relinquere potest. sed si pignori datus fuisti et in eadem causa permansisti, nec ab eo quidem debitore qui solvendo non fuit liber et heres necessarius existere potuisti. * pertinax a. lucretio. * <a 193 pp.Xi k.April.Falcone et claro conss.>

CJ.6.27.2: Imperator Antoninus

Cum vos servi constituti sub appellatione libertorum heredes scripti essetis, ea scriptura benigna interpretatione perinde habenda est, ac si liberi et heredes instituti fuissetis. quod in legato locum non habet. * ant. a. aufidio. * <a 196 accepta vii k.Mart.Prisco et apollinari conss.>

CJ.6.27.3: Imperatores Diocletianus, Maximianus

Si tutor ancillam tuam contubernio suo coniunxit ac post heredem instituit, neque dominium ex huiusmodi facto tibi auferri potuit et, ut eius aditione iussu tuo tibi per hanc successio quaeratur, iure concessam habes facultatem. * diocl. et maxim. aa. et cc. felici. * <a 293 s.Xvi k.Ian.Sirmi aa.Conss.>

CJ.6.27.4pr.: Imperator Justinianus

Cum quidam suum pupillum heredem instituit et servo directis verbis libertatem reliquit et in secundo gradu, in quo pupillarem substitutionem faciebat, ipsum servum sine libertate pupillo suo substituit, quaerebatur inter prudentes, si ex huiusmodi substitutione heres necessarius pupillo existat. * iust. a. iuliano pp. * <a 530 d.Xv k.Dec.Constantinopoli lampadio et oreste vv.Cc.Conss. >

CJ.6.27.4.1: Imperator Justinianus

Causa etenim altercationis ex vetere regula orta est, quia omnibus placuerat hunc servum necessarium heredem domino fieri, cui in eodem gradu et hereditas et libertas relinquebatur, in praesenti autem non in unum tam libertas quam substitutio congregata est, sed in alium et alium gradum. <a 530 d.Xv k.Dec.Constantinopoli lampadio et oreste vv.Cc.Conss. >

CJ.6.27.4.2: Imperator Justinianus

Nobis itaque eandem altercationem decidentibus mirabile visum est, si quis putet ex huiusmodi scrupulositate impediri testatoris voluntatem, et maxime domini, et existimet non fieri servum heredem necessarium, sed ei licentiam praestet et libertatem consequi et hereditatem respuere et domini voluntati reclamare: qui si hoc differre temptaverit, etiam puniendus est. sit itaque et vivo pupillo liber, quia testator hoc voluit, et mortuo pupillo necessarius heres, quia et hoc testator voluit. <a 530 d.Xv k.Dec.Constantinopoli lampadio et oreste vv.Cc.Conss. >

CJ.6.27.5pr.: Imperator Justinianus

Quidam, cum testamentum conderet, duobus heredibus scriptis unum quidem ex parte instituit, servum autem suum, cuius et nomen addidit, ex reliqua parte sine libertate scripsit heredem et postea eundem servum alii legavit, vel post institutionem heredis servum per legatum alii adsignavit et tunc heredem eum sine libertate instituit: et dubitabatur, si huiusmodi legatum vel institutio aliquas vires potest habere et cui adquiritur legatum vel institutio. * iust. a. iohanni pp. * <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.27.5.1: Imperator Justinianus

Dubitationis autem materia erat, quod adhuc servum suum constitutum heredem sine libertate scripserat, et tanta inter veteres exorta est contentio, ut vix possibile sit videri eandem decidere. <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.27.5.1a: Imperator Justinianus

Sed antiquitatem quidem haec altercantem relinquendum est. nobis autem alius modus huiusmodi decisionis inventus est, quia semper vestigia voluntatis sequimur testatorum. <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.27.5.1b: Imperator Justinianus

Cum igitur invenimus a nostro iure hoc esse inductum, ut, si quis servum suum tutorem filiis suis reliquerit sine libertate, ex ipsa tutelae datione praesumatur etiam libertatem ei favore pupillorum imposuisse, quare non hoc et in hereditate et humanius et favore libertatis inducimus, ut, si quis servum suum scripserit heredem sine libertate, omnimodo civis romanus efficiatur? <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.27.5.1c: Imperator Justinianus

Quo inducto neque adquisitio neque tam effusus veterum atque inextricabilis tractatus locum habeat. neque enim ferendum est supponere quosdam ita esse supinos, ut eundem servum et heredem instituant sine libertate et item alii per legatum eundem servum adsignent. <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.27.5.1d: Imperator Justinianus

Sed cum veteres et aliam proposuerunt ambiguitatem dicentes, si quis servum suum in testamento quidem heredem ex parte sine libertate scripsisset, in codicillis autem libertatem ei reliquisset, si possit institutio valere et ille tam heres quam liber fieri, ne videatur per codicillos hereditas confirmari, in quibus hereditas dari secundum veterem regulam non potest: nos in tali dispositione, licet in codicillis fuerit scripta, et libertatem et hereditatem simul servis per nostram liberalitatem et benignam interpretationem indulgemus, ut gratulentur, cum non servi remaneant, sed et liberti et heredes efficiantur, cum tanta in eos nostri numinis benivolentia effusa est, ut, etsi libertas eis neque testamento neque codicillis data est, tamen hereditate servis relicta quasi iniunctam et libertatem esse videri. <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.27.5.2: Imperator Justinianus

Illo videlicet observando, ut, si legatum vel fideicommissum eis sine libertate relinquatur, maneant in servitute. <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.27.5.2a: Imperator Justinianus

Non tamen ita impii heredes existant, ut liberalitatem testatoris servilis laboris debita remuneratione defraudare conentur et non derelictum, licet adhuc servis constitutis, donent. <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.27.5.3: Imperator Justinianus

Quae iuris nostri definitio etiam ad aliam speciem dubitatam benigne extendatur. si quis etenim in principali testamento servum suum cuidam legaverit, in pupillari autem substitutione eundem servum filio suo sine libertate substituerit, quaerebatur, sive utilis esset talis substitutio et per servum legatum substitutio post mortem pupilli legatario adquiritur, sive inutilis est huiusmodi substitutio, quia sine libertate in servum proprium facta est. <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.27.5.3a: Imperator Justinianus

Melius itaque nobis videtur legatario eum non statim adquiri sancire, sed expectandum esse substitutionis eventum. et si quidem pupillo mortuo locus fuerit substitutioni, et liber et heres efficiatur: sin autem substitutio minime locum habuerit, forsitan pupillo iam in pubertatem perveniente, tunc ad legatarii dominium transeat. <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.27.5.3b: Imperator Justinianus

Quemadmodum enim veteres, si cum libertate substitutio fuisset, hoc inducebant quatenus in suspenso fiat libertas et statuliber intellegatur, ita et ex nostra interpretatione et sine adiectione libertatis in substitutione et liber et heres pupillo existat. <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.27.6: Imperator Justinianus

Decisione nostra, quam fecimus sancientes eum, qui a domino suo sine libertate heres instituitur, videri libertatem accepisse, in propria firmitate durante, si quis servum suum pure quidem heredem instituit, libertatem autem sub condicione ei donavit, si quidem condicio talis sit, quae in potestate servi posita est: ille autem eam neglexerit minimeque compleverit, et libertate eum et hereditate sua culpa defraudari. sin autem casualis est condicio et ex fortunae insidiis defecerit, tunc humanitatis intuitu libertatem quidem ei omnimodo competere, hereditatem autem, si quidem solvendo sit, ad alios venire, quos leges vocabant, si non aliquis fuisset substitutus. sin autem solvendo non sit, ut necessarius he res constitutus simul et libertatem et hereditatem obtineat. tunc enim secundum definitionem tam veteris quam nostrae decisionis et liber et heres existat necessarius. * iust. a. iohanni pp. * <a 531 d. ii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.28.0. De liberis praeteritis vel exheredatis.

CJ.6.28.1pr.: Imperatores Severus, Antoninus

Cum post omnes heredum gradus exheredatio scribatur, si adiciat testator ab omnibus se gradibus exheredare, non dubitatur iuri satisfactum. et ideo, etiamsi id non adiciatur, appareat tamen eum cum eo consilio scripsisse, ut ab omnibus exheredaret, recte factum testamentum videtur. * sev. et ant. aa. fabio. * <a 204 pp. vi k. iul. cilone et libone conss.>

CJ.6.28.1.1: Imperatores Severus, Antoninus

Proinde cum pater familias filiis institutis et invicem substitutis filiam exheredaverit, intellegendus est exheredationem ab utroque gradu fecisse. nam cum idem heredes instituti sunt, nulla ratio reddi potest, quare videatur in posteriore tantum casu exheredare voluisse. <a 204 pp. vi k. iul. cilone et libone conss.>

CJ.6.28.2: Imperator Alexander Severus

Si avus tuus, qui patrem tuum et novercam aequis portionibus heredes instituit, cum te quoque haberet in potestate, testamento nominatim non exheredavit, mortuo patre tuo vivo avo sine impedimento legis vellaeae succedendo in patris tui locum rupisti avi testamentum et ad te hereditas eius tota pertinuit. * alex. a. heraclidae. * <a 225 pp.Vi id.April.Fusco ii et dextro conss.>

CJ.6.28.3: Imperator Justinianus

Si quis filium proprium ita exheredaverit:" ille filius meus alienus meae substantiae fiat", talis filius ab huiusmodi verborum conceptione non praeteritus, sed exheredatus intellegatur. cum enim manifestissimus est sensus testatoris, verborum interpretatio nusquam tantum valeat, ut melior sensu existat. * iust. a. iuliano pp. * <a 531 d.X k.Mart.Constantinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.6.28.4pr.: Imperator Justinianus

Maximum vitium antiquae subtilitatis praesenti lege corrigimus, quae putavit alia esse iura observanda in successione parentum, si ex testamento veniant, in masculis et in feminis, cum ab intestato simile ius utrique sexui servaverunt, et aliis verbis exheredari debere filium sanxerunt, aliis filiam, et inter nepotes exheredandos alia iura civilia, alia praetoris introduxerunt. * iust. a. iohanni pp. * <a 531 d.K.Sept constantinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.6.28.4.1: Imperator Justinianus

Et si praeteritus fuerat filius, vel ipso iure testamentum evertebat vel contra tabulas bonorum possessionem in totum accipiebat, filia autem praeterita ius adcrescendi ex iure vetere accipiebat, ut eodem momento et testamentum patris quodammodo ex parte iure adcrescendi evertat et ipsa quasi scripta legatis supponeretur, ex praetore autem habebat contra tabulas bonorum possessionem in totum, constitutio autem magni antonini eam in tantum coartabat, in quantum ius adcrescendi competebat. qui enim tales differentias inducunt, quasi naturae accusatores existunt, cur non totos masculos generavit, ut, unde generentur, non fiant. <a 531 d.K.Sept constantinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.6.28.4.2: Imperator Justinianus

Nam haec corrigentes et maiorum nostrorum sequimur vestigia, qui eandem observationem colere manifestissimi sunt. scimus etenim antea simili modo et filium et alios omnes inter ceteros exheredatos scribere esse concessum, cum etiam centumviri aliam differentiam introduxerunt. <a 531 d.K.Sept constantinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.6.28.4.3: Imperator Justinianus

Et ex hac iniquitate vitium emersit, quale ex libris ulpiani, quos ad edictum fecit praetoris, inventum a triboniano viro gloriosissimo nostro quaestore ceterisque viris facundissimis compositoribus iuris enucleati ad nostras aures relatum est. <a 531 d.K.Sept constantinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.6.28.4.4: Imperator Justinianus

Nam cum ultimum adiutorium de inofficiosi querella positum est et nemo ex alio ortus praesidio ad hanc decurrere possit, inventa fuerat filia praeterita minus habens quam filia exheredata. cum enim per contra tabulas bonorum possessionem vel ius adcrescendi semissem substantiae filia praeterita accipiebat et omnibus legata praestare compellebatur, scilicet usque ad dodrantem suae portionis, remanebat ei sescuncia tantummodo in sua successione. <a 531 d.K.Sept constantinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.6.28.4.5: Imperator Justinianus

Quod si fuisset exheredata, quarta pars omnimodo totius substantiae ei relinqui debebat, et quam iniuria dignam pater existimabat, amplius habebat ea, quam taciturnitate in institutione praeteriit: et si secundum nostrae constitutionis definitionem, quam de supplemento quadrantis posuimus, repletio fuerat introducta, simili modo exheredatae in quarta repletio accedebat et ita vitium permansit, ut nec ex nostra constitutione emendationem aliquam sentiret. <a 531 d.K.Sept constantinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.6.28.4.6: Imperator Justinianus

Sancimus itaque, quemadmodum in successionibus parentium, quae ab intestato deferuntur, aequa lance et mares et feminae vocantur, ita et in scriptura testamentorum eas honorari et similibus verbis exheredationes nominatim procedere et contra tabulas possessionem talem habere, qualem filius suus vel emancipatus, ut et ipsa, si fuerit praeterita, ad instar filii emancipati vel sui vel testamentum ipso iure evertat vel per contra tabulas bonorum possessionem stare hoc non patiatur. <a 531 d.K.Sept constantinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.6.28.4.7: Imperator Justinianus

Et hoc non solum in filiabus obtinere, sed etiam in nepotibus et in neptibus et deinceps observari censemus, si tamen ex masculis progeniti sunt. <a 531 d.K.Sept constantinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.6.28.4.8: Imperator Justinianus

Sed quia et aliud vitium fuerat sub obtentu differentiae introductum et alia iura exheredationis in postumis, alia in iam natis observabantur, cum necesse fuerat postumam inter ceteros exheredatam etiam legato honorari, filiam autem iam progenitam et sine datione, et hoc brevissimo incremento verborum ad plenissimam definitionem deduximus sancientes eadem iura obtinere et in postumis exheredandis, sive masculini sive feminini sexus sint, quae in filiis et filiabus iam statuimus, ut etiam ipsi vel ipsae nominatim exheredentur, id est postumi vel postumae facta mentione. <a 531 d.K.Sept constantinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.6.29.0. De postumis heredibus instituendis vel exheredandis vel praeteritis.

CJ.6.29.1: Imperator Antoninus

Si post testamentum factum, quo postumorum suorum nullam mentionem testator fecit, filiam suscepit, intestato vita functus est, cum agnatione postumae cuius non meminit testamentum ruptum sit: ex rupto autem testamento nihil deberi neque peti posse explorati iuris est. * ant. a. brittiano. * <a 213 d. et pp. iiii k. iul. antonino a. iiii et balbino conss.>

CJ.6.29.2: Imperatores Diocletianus, Maximianus

Uxoris abortu testamentum mariti non solvi, postumo vero praeterito, quamvis natus ilico decesserit, non restitui ruptum iuris evidentissimi est. * diocl. et maxim. aa. et cc. sotericho. * <a 294 s.Xii k.Mart. sirmi cc. conss.>

CJ.6.29.3pr.: Imperator Justinianus

Quod certatum est apud veteres, nos decidimus. cum igitur is qui in ventre portabatur praeteritus fuerat, qui, si ad lucem fuisset redactus, suus heres patri existeret, si non alius eum antecederet et nascendo ruptum testamentum faciebat, si postumus in hunc quidem orbem devolutus est, voce autem non emissa ab hac luce subtractus est, dubitabatur, si is postumus ruptum facere testamentum potest. * iust. a. iuliano pp. * <a 530 d.Xv k.Dec.Constantinopoli lampadio et oreste vv.Cc.Conss.>

CJ.6.29.3.1: Imperator Justinianus

Veteres animi turbati sunt, quid de paterno elogio statuendum sit. cumque sabiniani existimabant, si vivus natus est, etsi vocem non emisit, ruptum testamentum , apparet, quod, etsi mutus fuerat, hoc ipsum faciebat, eorum etiam nos laudamus sententiam et sancimus, si vivus perfecte natus est, licet ilico postquam in terram cecidit vel in manibus obstetricis decessit, nihilo minus testamentum corrumpi, hoc tantummodo requirendo, si vivus ad orbem totus processit ad nullum declinans monstrum vel prodigium. <a 530 d.Xv k.Dec.Constantinopoli lampadio et oreste vv.Cc.Conss.>

CJ.6.29.4pr.: Imperator Justinianus

Quidam, cum testamentum faciebat, his verbis usus est: " si filius vel filia intra decem mensuum spatium post mortem meam fuerint editi, heredes sunto" vel ita dixit: " filius vel filia, qui intra decem menses proximos mortis meae nascentur, heredes sunto". iurgium antiquis interpretatoribus legum exortum est, an videantur non contineri testamento et hoc ruptum facere. * iust. a. iuliano pp. * <a 530 d.Xii k.Dec.Constantinopoli lampadio et oreste vv.Cc.Conss. >

CJ.6.29.4.1: Imperator Justinianus

Nobis itaque eorum sententias decidentibus, cum frequentissimas leges posuimus testatorum voluntates adiuvantes, ex neutra huiusmodi verborum positione ruptum fieri testamentum videtur, sed sive vivo testatore sive post mortem eius intra decem menses a morte testatoris numerandos filius vel filia fuerint progeniti, maneat testatoris voluntas immutilata, ne poenam patiatur praeteritionis, qui suos filios non praeteriit. <a 530 d.Xii k.Dec.Constantinopoli lampadio et oreste vv.Cc.Conss. >

CJ.6.30.0. De iure deliberandi et de adeunda vel adquirenda hereditate.

CJ.6.30.1: Imperator Antoninus

Si a patre emancipata eo defuncto bonorum possessionem non agnovisti, frustra vereris, ne hereditati paternae sis obligata, quod servum eius nullo iure manumisisti resque et mancipia quaedam propter funeris impensas distraxisti. * ant. a. titiae. * <a 214 pp. k. iul. messala et sabino conss.>

CJ.6.30.2: Imperator Alexander Severus

Cum debitum paternum te exsolvisse adlegas pro portione hereditaria, agnovisse te hereditatem defuncti non ambigitur. * alex. a. florentino mil. * <a 223 pp. vi id. febr. maximo ii et aeliano conss.>

CJ.6.30.3pr.: Imperator Gordianus

Si fratris tui filius mortis tempore in patris sui fuit potestate, sive ex asse heres institutus est, etiam clausis tabulis heres potuit existere, sive ex parte , nihilo minus statim suus heres ei extitit nec eapropter, quod intra paucos dies mortis patris sui concessit in fatum, tu ad eiusdem fratris tui potes accedere successionem. * gord. a. florentino mil. * <a 241 pp. xv k. sept. gordiano a. ii et pompeiano conss.>

CJ.6.30.3.1: Imperator Gordianus

Quod si, cum sui iuris esset, ante aditam hereditatem decessit tuque fratri tuo legitimus heres extitisti seu intra tempora edicto praefinita bonorum possessionem agnovisti: quae facultatum sunt vel quae ab alio iniuria detinentur, praesidis diligentia tibi restituentur. <a 241 pp. xv k. sept. gordiano a. ii et pompeiano conss.>

CJ.6.30.4: Imperator dec.

Filio familias delata hereditate si pater pro herede voluntate filii gessit, sollemnitati iuris satisfactum videri saepe rescriptum est. * dec. a. athenaidi. * <a 250 pp. x k. mart. decio a. et grato conss.>

CJ.6.30.5: Imperatores valer., gallien.

Potuit pupillus pro herede tutore auctore gerendo consequi successionem, sed ipsius actus et voluntas fuit necessaria. nam si quid nesciente eo tutor egit, illi hereditatem non potuit adquirere. * valer. et gallien. aa. paulo. * <a 257 pp. xvi k. iul. ipsis iiii et iii aa. conss.>

CJ.6.30.6: Imperatores Diocletianus, Maximianus

Si avia tua patrem tuum ex duabus unciis scripsit heredem, et sola animi destinatione pater tuus heres fieri poterat. igitur si testamento suo easdem uncias ad te petinere decrevit, apud rectorem provinciae duarum unciarum ius persequi poteris. * diocl. et maxim. aa. philippae. * <a 290 pp. xvi k. aug. sirmi ipsis iiii et iii aa. conss.>

CJ.6.30.7: Imperatores Diocletianus, Maximianus

Quoniam sororem tuam prius defunctam esse proponis, quam cognosceret, an a fratre sibi aliquid hereditatis fuisset relictum, manifestum atque evidens est, antequam pro herede gereret vel bonorum possessionem admiserit, defunctam successionem eam non potuisse ad heredes suos transmittere. * diocl. et maxim. aa. et cc. eusebio. * <a 293 pp. k. mai. thiralli aa. conss.>

CJ.6.30.8: Imperatores Diocletianus, Maximianus

Licet in continenti sui heredes se paternis non miscuerint bonis, tamen ignorantes delatam sibi esse hereditatem longi temporis praescriptione, quominus hanc recte vindicent, excludi non possunt. * diocl. et maxim. aa. et cc. claudio. * <a 293 s. xvii k. ian. sirmi aa. conss.>

CJ.6.30.9: Imperatores Diocletianus, Maximianus

Si curatoris tui quondam testamento iure facto vel ab intestato legitima delata successio est, hoc casu ei qui non repudiavit hereditatem eam licet adire. rector igitur aditus provinciae, si hereditati necdum sunt obligati, eos an heredes sint interrogare debebit ac, si tempus ad deliberandum petierint, moderatum statuet. * diocl. et maxim. aa. et cc. platoni. * <a 293 s. xvi k. ian. sirmi aa. conss.>

CJ.6.30.10: Imperatores Diocletianus, Maximianus

Si te bonis paternis maior quinque et viginti annis miscuisti, neque inopia patris te excusat neque vis fratris portionem tuam vel testamentum eripientis arcere te exactione creditorum, qui iure civili pro hereditaria te portione conveniunt, potest. * diocl. et maxim. aa. et cc. sabinae. * <a 294 s. xvi k. ian. sirmi cc. conss.>

CJ.6.30.11: Imperatores Diocletianus, Maximianus

Renitente te pater tuus, in cuius fuisti potestate, neque spem delatae tibi legitimae quaerendae successionis absumere neque hereditarios manumittendo servos his praestare libertatem potuit. * diocl. et maxim. aa. et cc. philumenae. * <a 294 s. vi id. febr. sirmi cc. conss.>

CJ.6.30.12: Imperatores Diocletianus, Maximianus

Puberem agnoscentem bonorum possessionem, posteaquam ei fuit hereditas delata, pro herede gerere non ambigitur. * diocl. et maxim. aa. et cc. antonio. * <a 294 s. iii k. dec. cc. conss.>

CJ.6.30.13: Imperatores Diocletianus, Maximianus

Suum heredem omissa bonorum possessione paternam successionem obtinere potuisse certi iuris est. * diocl. et maxim. aa. et cc. archepolidi. * <a 294 s. iii id. dec. nicomediae cc. conss.>

CJ.6.30.14: Imperatores Diocletianus, Maximianus

Si sorori suae frater tuus civili vel honorario successit iure, licet res ex eius descendentes bonis non probetur tenuisse, heres tamen effectus contra possidentes experiri potest. * diocl. et maxim. aa. et cc. flaviae. * <a 294 s. d. xviiii k. ian. nicomediae cc. conss.>

CJ.6.30.15: Imperator Constantius

Non est dubium, si, priusquam filius iussu patris adierit hereditatem, propriae potestatis effectus est, arbitrio suo eundem hanc sibi potuisse quaerere. * constantius a. ad leontium com. orientis. * <a 349 d. viii id. april. limenio et catulino conss.>

CJ.6.30.16: Imperatores Arcadius, Honorius

Nec emere nec donatum adsequi nec damnosam quisque hereditatem adire compellitur. * arcad. et honor. aa. ennodio. * <a 395 d. vii k. ian. olybrio et probino conss.>

CJ.6.30.17: Imperatores Arcadius, Honorius

Cretionum scrupulosam sollemnitatem hac lege penitus amputari decernimus. * arcad. et honor. aa. et theodos. a. anthemio pp. * <a 407 d. xvi k. april. constantinopoli honorio vii et theodosio ii aa. conss.>

CJ.6.30.18pr.: Imperatores Theodosius, Valentinianus

Si infanti, id est minori septem annis, in potestate patris vel avi vel proavi constituto vel constitutae hereditas sit derelicta vel ab intestato delata a matre vel linea ex qua mater descendit vel aliis quibuscumque personis, licebit parentibus eius sub quorum potestate est adire eius nomine hereditatem vel bonorum possessionem petere. * theodos. et valentin. aa. ad senatum. * <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.6.30.18.1: Imperatores Theodosius, Valentinianus

Sed si hoc parens neglexerit et in memorata aetate infans decesserit, tunc parentem quidem superstitem omnia ex quacumque successione ad eundem infantem devoluta iure patrio quasi iam infanti quaesita capere. <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.6.30.18.2: Imperatores Theodosius, Valentinianus

Parente vero non subsistente, si quidem post eius obitum tutor infanti sit vel datus fuerit, posse eum etiam adhuc infante pupillo constituto nomine eius adire hereditatem sive vivo parente sive post mortem eius ad eum devolutam vel bonorum possessionem petere et eo modo eidem infanti hereditatem quaerere. <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.6.30.18.3: Imperatores Theodosius, Valentinianus

Sin vero vel non sit tutor vel, cum sit, ea facere neglexerit, tunc eodem infante in ea aetate defuncto omnes hereditates ad eum devolutas et non agnitas ita intellegi, quasi ab initio non essent ad eum delatae, et eo modo ad illas personas perveniant, quae vocabantur, si minime hereditas infanti fuisset delata. ea vero, quae de infante in potestate parentium constituto statuimus, locum habebunt et si quacumque causa sui iuris idem infans inveniatur. <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.6.30.18.4: Imperatores Theodosius, Valentinianus

Sin autem septem annos aetatis pupillus excesserit et priore parente mortuo in pupillari aetate fati munus impleverit, ea obtinere praecipimus, quae veteribus legibus continentur, nulla dubietate relicta, quin pupillus post impletos septem annos suae aetatis ipse adire hereditatem vel possessionem bonorum petere consentiente parente, si sub eius potestate sit, vel cum tutoris auctoritate, si sui iuris sit, poterit vel, si non habeat tutorem, adire praetorem et eius decreto hoc ius consequi. <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.6.30.19pr.: Imperator Justinianus

Cum antiquioribus legibus et praecipue in quaestionibus iulii pauli invenimus filios familias paternam hereditatem deliberantes posse et in suam posteritatem hanc transmittere, et aliis quibusdam adiectis, quae in huiusmodi persona praecipua sunt: eam deliberationem et in omnes successores sive cognatos sive extraneos duximus esse protelandam. * iust. a. demostheni pp. * <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.6.30.19.1: Imperator Justinianus

Ideoque sancimus: si quis vel ex testamento vel ab intestato vocatus deliberationem meruerit vel hoc quidem non fecerit, non tamen successioni renuntiaverit, ut ex hac causa deliberare videatur, sed nec aliquid gesserit, quod aditionem vel pro herede gestionem inducit, praedictum arbitrium in successionem suam transmittat, ita tamen, ut unius anni spatiis eadem transmissio fuerit conclusa. <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.6.30.19.2: Imperator Justinianus

Et si quidem is, qui sciens hereditatem sibi esse vel ab intestato vel ex testamento delatam deliberatione minime petita intra annale tempus decesserit, hoc ius ad suam successionem intra annale tempus extendat. <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.6.30.19.3: Imperator Justinianus

Si enim ipse, postquam testamentum fuerit insinuatum, vel ab intestato vel ex testamento vel aliter ei cognitum sit heredem eum vocatum fuisse, annali tempore translapso nihil fecerit, ex quo vel adeundam vel renuntiandam hereditatem manifestaverit, is cum successione sua ab huiusmodi beneficio excludatur. <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.6.30.19.4: Imperator Justinianus

Sin autem instante annali tempore decesserit, reliquum tempus pro adeunda hereditate suis successoribus sine aliqua dubietate relinquat, quo completo nec heredibus eius alius regressus in hereditatem habendam servabitur. <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.6.30.20pr.: Imperator Justinianus

Quidam elogio condito heredem scripsit in certas uncias et post certa verba testamenti eunem in alias uncias vel tantas vel quantascumque et tertio vel in aliam partem hereditatis vel quendam unciarum modum, ille autem unam institutionem vel duas admittens unam vel duas vel quantascumque respuendas esse censuit: quaerebatur apud veteres, si hoc ei facere permittitur. * iust. a. iohanni pp. * <a 531 d. prid. k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.30.20.1: Imperator Justinianus

Similique modo dubitabatur, si impuberem quis filium suum heredem ex parte instituit et quendam extraneum in aliam partem, quem pupillariter substituit, et postquam testator decessit, pupillus quidem patri heres extitit, extraneus autem hereditatem adiit, et postea adhuc in prima aetate pupillus constitutus ab hac luce subtractus est et pupillaris substitutio locum sibi vindicavit: cumque substitutus eandem partem admittere noluit, quaesitum est, si potest iam heres ex principali testamento factus pupillarem substitutionem repudiare. <a 531 d. prid. k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.30.20.2: Imperator Justinianus

Utramque igitur dubitationem simul decidendam esse censemus: placuit etenim nobis sive in institutionibus sive in pupillari substitutione, ut vel omnia admittantur vel omnia repudientur et necessitas imponatur heredi particulari facto vel aliam aut alias partes hereditatis admittere vel etiam substitutionem pupillarem. <a 531 d. prid. k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.30.21pr.: Imperator Justinianus

Cum aliquis scripsit heredem eum, qui de sua condicione ei qui dominium eius vindicabat in iudicio adversabatur, is autem qui dominum sese dicebat adire eum hereditatem imperabat, ut adquisitio hereditatis per eum celebretur, indignatus est quasi domino ei parere. dubitatio veteribus exorta est, si qua poena ei imponitur huiusmodi insolentiae. * iust. a. iohanni pp. * <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.30.21.1: Imperator Justinianus

Veteres in multas retrahuntur sententias, sed nos eorum discordiam sic esse decidendam censemus, ut distinctio subtilis causae imponatur. <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.30.21.2: Imperator Justinianus

Et si quidem ita scripta est institutio: " illum servum illius heredem instituo" , quia apertissimum est intuitu domini esse institutionem conscriptam, necesse est omnimodo per competentem iudicem eum compelli adire quidem hereditatem et eam adquirere, nulli autem ex postfacto subici gravamini, si liber pronuntietur, sed omne sive lucrum sive damnum ad eum redundare qui in servitutem eum trahebat et denegari ei et adversus eum omnes hereditarias actiones, nullo ex hoc ei praeiudicio generando. <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.30.21.3: Imperator Justinianus

Sin autem quasi liber institutus est nulla domini vel servi mentione in institutione habita, tunc nullo compelli modo eum adire hereditatem nec denegari ei liberale iudicium, sed et hereditatem per suum ius decurrere et liberale iudicium suam expectare sententiam sive agente eo sive pulsato, ut, si quidem servus pronuntietur, tunc domino suo hereditatem adquirat, sin autem liber, eam adipiscatur, si adire maluerit. <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.30.22pr.: Imperator Justinianus

Scimus iam duas esse promulgatas a nostra clementia constitutiones, unam quidem de his, qui deliberandum pro hereditate sibi delata existimaverunt, aliam autem de improvisis debitis et incertu exitu per diversas species eis imposito. sed etiam veterem constitutionem non ignoramus, quam divus gordianus ad platonem scripsit de militibus, qui per ignorantiam hereditatem adierint, quatenus pro his tantummodo rebus conveniantur, quas in hereditate defuncti invenerint, ipsorum autem bona a creditoribus hereditariis non inquietentur: cuius sensus ad unam praefatarum constitutionum a nobis redactus est. arma etenim magis quam iura scire milites sacratissimus legislator existimavit. * iust. a. ad senatum. * <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.1: Imperator Justinianus

Ex omnibus itaque istis unam legem colligere nobis apparuit esse humanum et non solum milites adiuvare huiusmodi beneficio, sed etiam ad omnes hoc extendere, non tantum si improvisum emerserit debitum, sed etiam si onerosam quis inveniat esse quam adierit hereditatem. ita enim nec satis necessarium deliberationis erit auxilium, nisi hominibus formidolosis, qui et ea timent, quae nulla digna sunt suspicione. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.1a: Imperator Justinianus

Cum igitur hereditas ad quendam sive ex testamento sive ab intestato fuerit delata, sive ex asse sive ex parte, si quidem recta via adire maluerit hereditatem et spe certissima hoc fecerit vel sese immiscuerit, ut non postea eam repudiet, nullo indiget inventario, cum omnibus creditoribus suppositus est, utpote hereditate ei ex sua voluntate infixa. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.1b: Imperator Justinianus

Similique modo, si non titubante animo respuendam vel abstinendam esse crediderit hereditatem, ei apertissime intra trium mensuum spatium, ex quo ei cognitum fuerit scriptum se esse vel vocatum heredem, renuntiet nullo nec inventario faciendo nec alio circuitu expectando, et sit alienus huiusmodi hereditate, sive onerosa sive lucrosa sit. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.2: Imperator Justinianus

Sin autem dubius est, utrumne admittenda sit nec ne defuncti hereditas, non putet sibi esse necessariam deliberationem, sed adeat hereditatem vel sese immisceat, omni tamen modo inventarium ab ipso conficiatur, ut intra triginta dies, post apertas tabulas vel postquam nota ei fuerit apertura tabularum vel delatam sibi ab intestato hereditatem cognoverit numerandos, exordium capiat inventarium super his rebus, quas defunctus mortis tempore habebat. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.2a: Imperator Justinianus

Et hoc inventarium intra alios sexaginta dies modis omnibus impleatur sub praesentia tabulariorum ceterorumque, qui ad huiusmodi confectionem necessarii sunt. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.2b: Imperator Justinianus

Subscriptionem tamen supponere heredem necesse est, significantem et quantitatem rerum et quod nulla malignitate circa eas ab eo facta vel facienda res apud eum remanent, vel si ignarus sit litterarum vel scribere praepeditur, speciali tabulario ad hoc solum adhibendo, ut pro eo litteras supponat, venerabili signo antea manu heredis praeposito, testibus videlicet adsumendis, qui heredem cognoscunt et iubenti ei tabularium pro se subscribere interfuerint. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.3: Imperator Justinianus

Sin autem locis, in quibus res hereditariae vel maxima pars earum posita est, heredes abesse contigerit, tunc eis unius anni spatium a morte testatoris numerandum damus ad huiusmodi inventarii consummationem: sufficit enim praefatum tempus, etsi longissimo spatio distant, tamen dare eis facultatem inventarii conscribendi vel per se vel per instructos procuratores in locis ubi res positae sunt mittendos. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.4: Imperator Justinianus

Et si praefatam observationem inventarii faciendi solidaverint, et hereditatem sine periculo habeant et legis falcidiae adversus legatarios utantur beneficio, ut in tantum hereditariis creditoribus teneantur, in quantum res substantiae ad eos devolutae valeant. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.4a: Imperator Justinianus

Et eis satisfaciant, qui primi veniant creditores, et, si nihil reliquum est, posteriores venientes repellantur et nihil ex sua substantia penitus heredes amittant, ne, dum lucrum facere sperant, in damnum incidant. sed si legatarii interea venerint, et eis satisfaciant ex hereditate defuncti vel ex ipsis rebus vel ex earum forsitan venditione. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.5: Imperator Justinianus

Sin vero creditores, qui ex post emensum patrimonium necdum completi sunt, superveniant, neque ipsum heredem inquietare concedantur neque eos qui ab eo comparaverunt res, quarum pretia in legata vel fideicommissa vel alios creditores processerunt: licentia creditoribus non deneganda adversus legatarios venire et vel hypothecis vel indebiti condictione uti et haec quae acceperint recuperare, cum satis absurdum est creditoribus quidem suum ius persequentibus legitimum auxilium denegari, legatariis vero, qui pro lucro certant, suas partes legem accomodare. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.6: Imperator Justinianus

Sin vero heredes res hereditarias creditoribus hereditariis pro debito dederint in solutum vel per dationem pecuniarum satis eis fecerint, liceat aliis creditoribus, qui ex anterioribus veniunt hypothecis, adversus eos venire et a posterioribus creditoribus secundum leges eas abstrahere vel per hypothecariam actionem vel per condictionem ex lege, nisi voluerint debitum eis offerre. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.7: Imperator Justinianus

Contra ipsum tamen heredem, secundum quod saepius dictum est, qui quantitatem rerum hereditarium expenderit, nulla actio extendatur. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.8: Imperator Justinianus

Sed nec adversus emptores rerum hereditariarum, quas ipse vendidit pro solvendis debitis vel legatis, venire alii concedatur, cum satis anterioribus creditoribus a nobis provisum est vel ad posteriores creditores vel ad legatarios pervenientibus et suum ius persequentibus. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.9: Imperator Justinianus

In computatione autem patrimonii damus ei excipere et retinere, quidquid in funus expendit vel in testamenti insinuationem vel inventarii confectionem vel in alias necessarias causas hereditatis approbaverit sese persolvisse. sin vero et ipse aliquas contra defunctum habebat actiones, non eae confundantur, sed similem aliis creditoribus per omnia habeat fortunam, temporum tamen praerogativa inter creditores servanda. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.10: Imperator Justinianus

Licentia danda creditoribus seu legatariis vel fideicommissariis, si maiorem putaverint esse substantiam a defuncto derelictam, quam heres in inventario scripsit, quibus voluerint legitimis modis quod superfluum est approbare, vel per tormenta forsitan servorum hereditariorum secundum anteriorem nostram legem, quae de quaestione servorum loquitur, vel per sacramentum illius, si aliae probationes defecerint, ut undique veritate exquisita neque lucrum neque damnum aliquod heres ex huiusmodi sentiat hereditate: illo videlicet observando, ut, si ex hereditate aliquid heredes subripuerint vel celaverint vel amovendum curaverint, postquam fuerint convicti, in duplum hoc restituere vel hereditatis quantitati computare compellantur. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.C c.>

CJ.6.30.22.11: Imperator Justinianus

Donec tamen inventarium conscribitur, vel si res praesto sint, intra tres menses , vel si afuerint, intra annale spatium secundum anteriorem distinctionem, nulla erit licentia neque creditoribus neque legatariis vel fideicommissariis eos inquietare vel ad iudicium vocare vel res hereditarias quasi ex hypothecarum auctoritate vindicare, sed sit hoc spatium ipso iure pro deliberatione heredibus concessum, nullo scilicet ex hoc intervallo creditoribus hereditariis circa temporalem praescriptionem praeiudicio generando. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.12: Imperator Justinianus

Sin vero, postquam adierint vel sese immiscuerint, praesentes vel absentes inventarium facere distulerint, et datum iam a nobis tempus ad inventarii confectionem effluxerit, tunc ex eo ipso, quod inventarium secundum formam praesentis constitutionis non fecerunt, et heredes esse omnimodo intellegantur et debitis hereditariis in solidum teneantur nec legis nostrae beneficio perfruantur, quam contemnendam esse censuerunt. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.13: Imperator Justinianus

Et haec quidem de his sancimus, qui deliberationem nullam petendam curaverint, quam putamus quidem penitus post hanc legem esse supervacuam et debere ei derogari: cum enim liceat et adire hereditatem et sine damno ab ea discedere ex praesentis legis auctoritate, quis locus deliberationi relinquitur? <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.13a: Imperator Justinianus

Sed quia quidam vel vana formidine vel callida machinatione pro deliberando nobis supplicandum esse necessarium existimant, quatenus eis liceat annale tempus tergiversari et hereditatem inspicere et alias contra eam machinationes excogitare et eandem deliberationem flebilibus adsertionibus repetita prece saepius accipere: ne quis nos putaverit antiquitatis penitus esse contemptores, indulgemus quidem eis petere deliberationem vel a nobis vel a nostris iudicibus, non tamen amplius ab imperiali quidem culmine uno anno, a nostris vero iudicibus novem mensibus, ut neque ex imperiali largitate aliud tempus eis indulgeatur, sed et, si fuerit datum, pro nihilo habeatur: semel enim et non saepius eam peti concedimus. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.14: Imperator Justinianus

Sin autem hoc aliquis fecerit et inventarium conscripserit (necesse enim est omnimodo deliberantes inventarium cum omni subtilitate facere), non liceat ei post tempus praestitutum, si non recusaverit hereditatem, sed adire maluerit, nostrae legis uti beneficio, sed in solidum secundum antiqua iura omnibus creditoribus teneatur. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.14a: Imperator Justinianus

Cum enim gemini tramites inventi sunt, unus quidem ex anterioribus, qui deliberationem dederunt, alter autem rudis et novus a nostro numine repertus, per quem et adeuntes sine damno conservantur, electionem ei damus vel nostram constitutionem eligere et beneficium eius sentire vel, si eam aspernandam existimaverit et ad deliberationis auxilium convolaverit, eius effectum habere: et si non intra datum tempus recusaverit hereditatem, omnibus in solidum debitis hereditariis teneatur et non secundum modum parimonii, sed etsi exiguus sit census hereditatis , tamen quasi heredem eum in totum obligari, et sibi imputet, qui pro novo bene ficio vetus elegit gravamen. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.14b: Imperator Justinianus

Et ideo et in ipsam deliberationis dationem et divinum rescriptum super hoc promulgandum hoc adici volumus, ut sciant omnes, quod omnimodo post petitam deliberationem, si adierint vel pro herede gesserint vel non recusaverint hereditatem, omnibus in solidum hereditariis oneribus teneantur. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.14c: Imperator Justinianus

Si quis autem temerario proposito deliberationem quidem petierit, inventarium autem minime conscripserit et vel adierit hereditatem vel minime eam repudiaverit , non solum creditoribus in solidum teneatur, sed etiam legis falcidiae beneficio minime utatur. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.14d: Imperator Justinianus

Quod si post deliberandum recusaverit inventario minime conscripto, tunc res hereditatis creditoribus vel his qui ad hereditatem vocantur legibus reddere compelletur, quantitate earum sacramento res accipientium manifestanda, cum taxatione tamen ab iudice statuenda. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.15: Imperator Justinianus

Notissimum autem est ex hac constitutione, quae omnes casus continet, nostris constitutionibus iam pro eisdem capitulis promulgatis esse derogatum, quarum alteri et gordianae constitutionis sensus continebatur. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.30.22.16: Imperator Justinianus

Cum enim ampliore tractatu habito melior exitus inventus est et tribus constitutionibus in unum congregatis unus apparet et in milites et in alios omnes iuris probabilis articulus, quapropter ex anterioribus inquietari nostro subiectos imperio patimur? scilicet ut milites, etsi propter simplicitatem praesentis legis subtilitatem non observaverint, in tantum tamen teneantur, quantum in hereditate invenerint. quam patres conscripti, in huiusmodi casibus in posterum obtinere sancimus. <a 531 d.V k.Dec.Post consulatum lampadii et orestis vv.Cc.>

CJ.6.31.0. De repudianda vel abstinenda hereditate.

CJ.6.31.1: Imperator Antoninus

Si paterna hereditate te abstinuisse constiterit et non ut heredem in domo, sed ut inquilinum vel custodem vel ex alia iusta ratione habitasse liquido fuerit probatum, ex persona patris conveniri te procurator meus prohibebit. * ant. a. muciano. * <a 214 pp.Id.Iul.Messala et sabino conss.>

CJ.6.31.2: Imperator Antoninus

Si paterna hereditate abstinuisti, non ideo, quod a creditoribus fundos comparasti, si modo id bona fide fecisti, a posterioribus, qui sub isdem obligationibus pecuniam crediderint, iure conveniris. * ant. a. severo. * <a 215 pp.V k.Iul.Laeto ii et cereale conss.>

CJ.6.31.3: Imperatores Diocletianus, Maximianus

Suus heres exceptione pacti, qui testamentum iniustum adseverans postea nihil se de paterna successione petiturum non ex causa donationis, sed transigendi animo in iure professus est, cum respuere quaesitam nequiret hereditatem et transactio nullo dato vel retento seu promisso minime procedat, submoveri non potest. * diocl. et maxim. aa. et cc. theodotiano. * <a 294 sine die et cc. conss.>

CJ.6.31.4: Imperatores Diocletianus, Maximianus

Sicut maior quinque et viginti annis, antequam adeat, delatam repudians successionem post quaerere non potest, ita quaesitam renuntiando nihil agit, sed ius quod habuit retinet nec, quod confessos pro iudicatis habere placuit, ad vocem repudiantis hereditatem, sed ad certam quantitatem deberi confitentem pertinet. * diocl. et maxim. aa. et cc. modestino mil. * <a 293 s.V k.Ian.Sirmi aa. conss.>

CJ.6.31.5: Imperatores Diocletianus, Maximianus

Pupillorum repudiatio delatae hereditatis sine tutore auctore facta nihil eis nocet. * diocl. et maxim. aa. et cc. claudianae. * <a 293 s.Prid.K.Ian.Sirmi aa.Conss.>

CJ.6.31.6pr.: Imperator Justinianus

Si quis suus recusaverit paternam hereditatem, deinde maluerit eam adire, cum fuerat indistincte ei permissum, donec res paternae in eodem statu manent, hoc facere et post multum tempus licebat ei ad eandem hereditatem redire, hoc corrigentes sancimus, si quidem res iam venumdatae sint, ut nullus aditus ei ad hereditatem reservetur: quod et antiquitas observabat. * iust. a. iohanni pp.

* <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.6.31.6.1: Imperator Justinianus

Sin autem res alienatae non sint, si quidem maior annis constitutus est et tempora restitutionis nulla ei supersint, intra trium annorum spatium tantummodo huiusmodi ei detur licentia. <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.6.31.6.2: Imperator Justinianus

Sin autem vel minor est vel in utili tempore constitutus, tunc post completum quadriennium, quod spatium pro utili anno qui restitutionibus dabatur praestitum est, aliud triennium ei indulgeri, intra quod potest rebus in suo statu manentibus adire hereditatem et suam abdicationem revocare. <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.6.31.6.3: Imperator Justinianus

Quo tempore transacto nullus aditus penitus ad paternam hereditatem ei reservetur, nisi forte adhuc in minore aetate eo constituto res venditae sunt. tunc etenim per in integrum restitutionem non denegatur ei adire hereditatem et res recuperare et creditoribus paternis satisfacere. <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.6.32.0. Quemadmodum aperiantur testamenta et inspiciantur et describantur.

CJ.6.32.1: Imperator Alexander Severus

Ut testamentum, quod dicis factum, proferatur et publice recitetur, competens iudex iubebit. * alex. a. proculae. * <a 223 pp. ii k. april. maximo ii et aeliano conss.>

CJ.6.32.2: Imperatores valer., gallien.

Testamenti tabulas ad hoc tibi a patre datas, ut in patria proferantur, adfirmans potes illic proferre, ut secundum leges moresque locorum insinuentur, ita scilicet, ut testibus non praesentibus adire prius vel pro tribunali vel per libellum rectorem provinciae procures ac permittente eo honestos viros adesse facias , quibus praesentibus aperiantur et ab his rursum obsignentur. * valer. et gallien. aa. alexandro. * <a 256 pp. xii k. ian. maximo ii et glabrione conss.>

CJ.6.32.3: Imperatores Diocletianus, Maximianus

Eius, quod ad causam novissimi patris vestri iudicii pertinet, de calumnia tibi iuranti praeter partem, quam aperiri defunctus vetuit vel ad ignominiam alicuius pertinere dicitur, inspiciendi ac describendi praeter diem et consulem tibi rector provinciae facultatem fieri iubebit. * diocl. et maxim. aa. et cc. aristoteli. * <a 294 d. vi k. mai. cc. conss.>

CJ.6.32.4: Imperatores Gratianus, Valentinianus, Theodosius

Codicillos seu scripturam quolibet tenore formatam ea oportebit observatione in publicum proferri, qua testamenta panduntur. * grat. valentin. et theodos. aaa. ad hesperium pp. * <a 379 d. iii k. aug. mediolano ausonio et olybrio conss.>

CJ.6.33.0. De edicto divi hadriani tollendo et quemadmodum scriptus heres in possessionem mittatur.

CJ.6.33.1: Imperatores Severus, Antoninus

Cum inter institutum et substitutum controversia moveatur, eum, qui primo loco institutus est, induci in possessionem oportet. * sev. et ant. aa. lucillo. * <a 196 pp. xii k. dec. dextro et prisco conss.>

CJ.6.33.2: Imperator Alexander Severus

Quamvis quis se filium defuncti praeteritum esse adleget aut falsum vel inofficiosum testamentum seu alio vitio subiectum vel servus defunctus esse dicatur, tamen scriptus heres in possessionem mitti solet. * alex. a. eutacto. * <a 223 pp. vi k. nov. maximo ii et aeliano conss.>

CJ.6.33.3pr.: Imperator Justinianus

Edicto divi hadriani, quod sub occasione vicesimae hereditatum introductum est, cum multis ambagibus et difficultatibus et indiscretis narrationibus penitus quiescente, quia et vicesima hereditatis a nostra recessit re publica, antiquatis nihilo minus et aliis omnibus, quae circa repletionem vel interpretationem eiusdem edicti promulgata sunt, sancimus, ut, si quis ex asse vel ex parte competenti iudici testamentum ostenderit non cancellatum neque abolitum neque ex quacumque suae formae parte vitiatum, sed quod prima figura sine omni vituperatione appareat et depositionibus testium legitimi numeri vallatum sit, mittatur quidem in possessionem earum rerum, quae testatoris mortis tempore fuerunt, non autem legitimo modo ab alio detinentur, et eam cum testificatione publicarum personarum accipiat. * iust. a. iuliano pp. * <a a. 531 d. xii k. april. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.33.3.1: Imperator Justinianus

Sin autem aliquis contradictor extiterit, tunc in iudicio competenti causae in possessionem missionis et subsecutae contradictionis ventilentur et ei possessio adquiratur, qui potiora ex legitimis modis iura ostenderit, sive qui missus est qui antea detinens contradicendum putavit. <a a. 531 d. xii k. april. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.33.3.2: Imperator Justinianus

Nullis angustiis temporum huiusmodi missione coartanda, sed sive tardius sive praemature aliquis missus est, legis tantummodo arbitrium requiratur et causa, unde vel missio vel contradictio exoritur. <a a. 531 d. xii k. april. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.33.3.3: Imperator Justinianus

Sive enim post annale tempus sive post maioris aeui curricula aliquis fuerit missus, si tantum ex legitime formato testamento missio procedat, nullum ei temporis obiciatur obstaculum, nisi tantum temporis effluxerit, quod possit vel possessori plenissime securitatem et super dominio praestare, vel ipsi qui missus est omnem intentionem excludere. <a a. 531 d. xii k. april. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.33.3.4: Imperator Justinianus

Si enim vel ex una parte vel ex utroque latere temporis prolixitas occurrit, manifestissimum est non solum missionem, sed etiam ipsam principalem causam esse sopitam. <a a. 531 d. xii k. april. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.34.0. Si quis aliquem testari prohibuerit vel coegerit.

CJ.6.34.1: Imperator Alexander Severus

Civili disceptationi crimen adiungitur, si testator non sua sponte testamentum fecit, sed compulsus ab eo qui heres est institutus, vel quoslibet alios quos noluerit scripserit. * alex. a. severae. * <a 229 s.Xv k.Ian.Alexandro a.Iii et dione conss.>

CJ.6.34.2: Imperatores Diocletianus, Maximianus

Eos, qui, ne testamentum ordinetur, impedimento fuisse monstrantur, velut indignas personas a successionis compendio removeri celeberrimi iuris est. * diocl. et maxim. aa. nicagorae. * <a 285 pp.K.Ian.Diocletiano ii et aristobulo conss.>

CJ.6.34.3: Imperatores Diocletianus, Maximianus

Iudicium uxoris postremum in se provocare maritali sermone non est criminosum. * diocl. et maxim. aa. et cc. eutychidi. * <a 294 d.V k.Ian.Cc.Conss.>

CJ.6.35.0. De his quibus ut indignis auferuntur et ad senatus consultum silanianum.

CJ.6.35.1pr.: Imperatores Severus, Antoninus

Heredes, quos necem testatoris inultam omisisse constitit, fructus integros cogantur reddere. neque enim bonae fidei possessores ante controversiam illatam videntur fuisse, qui debitum officium pietatis scientes omiserint. * sev. et ant. aa. celeri. * <a 204 d.Xv k.April.Cilone et libone conss.>

CJ.6.35.1.1: Imperatores Severus, Antoninus

Ex hereditate autem rerum distractarum vel a debitoribus acceptae pecuniae post motam litem bonorum usuras inferant. <a 204 d.Xv k.April.Cilone et libone conss.>

CJ.6.35.1.2: Imperatores Severus, Antoninus

Quod in fructibus quoque locum habere, quos in praediis hereditariis inventos aut exinde perceptos vendiderint, procul dubio est. <a 204 d.Xv k.April.Cilone et libone conss.>

CJ.6.35.1.3: Imperatores Severus, Antoninus

Usuras autem semisses dependere satis est. <a 204 d.Xv k.April.Cilone et libone conss.>

CJ.6.35.2pr.: Imperatores Severus, Antoninus

Polla quidem liberam habuit administrandi patrimonii sui potestatem nec idcirco, quod pupillus illi heres extitit, ea quae ab ipsa finita sunt revocari in disceptationem oportet. * sev. et ant. aa. vero. * <a 208 pp.Vii k.Mai.Antonino a.Iii et geta iii conss.>

CJ.6.35.2.1: Imperatores Severus, Antoninus

Sed si pupilli nomine falsum dicere vis testamentum, de quo per pollam transactum est, potes experiri, dum memineris, si in causa non obtinueris, et portionem, quam ex eo testamento pupillus habet, te ei salvam facturum, quam adimi pupillo necesse erit secundum iuris formam, et de calumnia tua praesidem deliberaturum, quamvis pupilli nomine agere videaris, cum retractas ea quae finita sunt per coheredem. <a 208 pp.Vii k.Mai.Antonino a.Iii et geta iii conss.>

CJ.6.35.3: Imperator Alexander Severus

Si ea quaestio infertur filiis eius, quam consobrinam tuam dicis, quod tabulae testamenti patris eorum, qui a familia interfectus dicebatur, priusquam quaestio de servis haberetur, apertae et recitatae sunt, propter amplissimi ordinis consultum hereditas a fisco vindicatur et ideo agi causa apud procuratorem meum debet, quia non eo tempore pupilli fuerunt. * alex. a. antiochiano. * <a 222 pp.Ii non.April.Alexandro a. cons.>

CJ.6.35.4: Imperator Alexander Severus

Hereditas in testamento data per epistulam vel codicillos adimi non potuit. quia tamen testatrix voluntatem suam non mereri unum ex heredibus declaraverat, merito eius portio non iure ad alium translata fisco vindicata est. libertates autem in eadem epistula datae peti poterunt. * alex. a. philomuso. * <a 223 pp.Ii k.Dec.Maximo ii et aeliano conss.>

CJ.6.35.5: Imperator Alexander Severus

Non oportet ut indignis heredibus successiones auferri praetextu, quod in sepultura supremis defunctorum obtemperatum non fuisset. * alex. a. tyranno. * <a 224 pp. vii id. mart. iuliano et crispino conss.>

CJ.6.35.6pr.: Imperator Alexander Severus

Minoribus quinque et viginti annis heredibus non obesse crimen inultae mortis placuit. * alex. a. venusto et clementino. * <a 229 pp.Xv k.Iul.Alexandro a. iii et dione conss.>

CJ.6.35.6.1: Imperator Alexander Severus

Cum autem vos etiam accusationem pertulisse et quosdam ex reis punitos proponatis, licet is qui mandasse caedem dicitur provocaverit, vereri non debetis, ne quam hereditatis paternae a fisco meo quaestionem patiamini. convenit enim pietati vestrae respondere causam appellationis reddenti. <a 229 pp.Xv k.Iul.Alexandro a. iii et dione conss.>

CJ.6.35.6.2: Imperator Alexander Severus

Quod si maioris aetatis fuissetis, etiam ex necessitate provocationis certamen implere deberetis, ut possitis adire hereditatem. <a 229 pp.Xv k.Iul.Alexandro a. iii et dione conss.>

CJ.6.35.7: Imperator Alexander Severus

Si ideo ultio necis testatoris non est desiderata, quia caedis auctores reperiri non potuerunt, obesse heredibus, in quo nulla eorum culpa detegitur, non oportet. * alex. a. vitaliae. * <a 232 pp.Id.Mart.Lupo et maximo conss.>

CJ.6.35.8: Imperator Gordianus

Alia causa est eius, qui falsi instituta accusatione ad finem usque quod insimulabat perduxit et contrariam sententiam meruit, alia eius, qui inchoatam accusationem non pertulit, cum in illius quidem partem succedat fiscus, hic autem, qui contrariam iudicis sententiam non sustinuit, suae partis non perdat persecutionem. * gord. a. tatiae. * <a 239 pp.Xv k.Febr.Gordiano a.Et aviola conss.>

CJ.6.35.9: Imperatores Diocletianus, Maximianus

Cum fratrem tuum veneno peremptum esse adseveras, ut effectus successionis eius tibi non auferatur, mortem eius ulcisci te necesse est. licet enim hereditatem eorum, qui clandestinis insidiis perimuntur, hi qui iure vocantur adire non vetantur, tamen, si interitum non fuerint ulti, successionem obtinere non possunt. * diocl. et maxim. aa. aelianae. * <a 291 pp. tiberiano et dione conss.>

CJ.6.35.10pr.: Imperatores Diocletianus, Maximianus

Sororem fratris necem iure licito vindicantem evincere ab uxore scripta recte successionem non convenit. * diocl. et maxim. aa. et cc. silvanae. * <a 294 d. xii k. mai. sirmi cc. conss.>

CJ.6.35.10.1: Imperatores Diocletianus, Maximianus

Secundum quae, si fiduciam innocentiae geris et neque dolo malo tuo maritum necatum neque alias indignam te successione posse probari confidis, adversus omnem calumniam maximam habes securitatem. <a 294 d. xii k. mai. sirmi cc. conss.>

CJ.6.35.11pr.: Imperator Justinianus

Cum silanianum senatus consultum et a nobis tam laudandum quam corroborandum est nec non divi marci oratio, quae circa id facta est, invenimus autem in ea nullam mentionem libertatis factam et veteres movit quaedam de libertatibus relictis in testamento necati testatoris quaestio, necessarium nobis visum est etiam haec dirimere. * iust. a. iohanni pp. * <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.35.11.1: Imperator Justinianus

Ii enim, qui libertate fuerant in hoc testamento donati et si eam accepissent, lucrum, quod eis in medio accidit, poterant sibi adquirere, interea autem procrastinatione propter necis vindictam habita hoc minime ad eos pervenit et postea in libertatem deducti periclitabantur. <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.35.11.2: Imperator Justinianus

Ne medium tempus fuerit eis damnosum, et maxime si ancillae in medio pepererint et postea hereditas adita sit, bellissimum nobis videtur divi marci prudentissimi principis orationem et in libertatibus producere, ne princeps philosophiae plenus aliquid videatur imperfectum sanxisse: sed ita in hereditatibus et in legatis et in fideicommissis et maxime in libertatibus, quas semper philosophia amplectitur, extendatur eius oratio, ut et lucrum quod in medio accidit eis post libertatem acceptam restituatur et partus liber et ingenuus esse intellegatur nullaque machinatione huiusmodi praepeditio damnum aliquod inrogare concedatur et libera eorum posteritas, si in medio fuerint ab hac luce subtracti, suorum gen itorum commodum consequatur. <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.35.11.3: Imperator Justinianus

Merito enim nobis sanctissimi marci per omnia constitutionem replere placuit: nihil etenim actum esse credimus, dum aliquid addendum superest. <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.35.12pr.: Imperator Justinianus

Talis de antiquo iure dubietas nostrae serenitati suggesta est propter senatus consultum silanianum et servos, qui supplicio adficiuntur sub eodem tecto commorantes et non suum auxilium domino per insidias occiso praebentes. veteres enim certum non faciunt, qui intellectus de verbis " sub eodem tecto" significatur, sive in eodem cubiculo sive in triclinio vel porticu vel in aula haec appellatio accipi debeat, adicientes, si dominus in via vel in agro fuerit interfectus, eos servos puniri, qui praesto erant et non auxilium ad prohibendum periculum praebuerunt, nulla distinctione super qualitate praesentiae utentes. * iust. a. iohanni pp. * <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.6.35.12.1: Imperator Justinianus

Nos igitur omnem eis occasionem ad declinanda supplicia super neglegentia salutis domini sui amputantes sancimus omnes servos, ex quocumque loco sive in domo sive in via sive in agro possint clamorem exaudire vel insidias sentire et non auxilium tulerint, supplicio senatus consulti subiacere. oportet enim eos, ubicumque senserint dominum periclitantem, ad prohibendas insidias concurrere. <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.6.36.0. De codicillis.

CJ.6.36.1pr.: Imperator Alexander Severus

Rupto quidem testamento postumi agnatione codicillos quoque ad testamentum pertinentes non valere in dubium non venit. * alex. a. mocimo et aliis. * <a 233 pp. iii k. iul. maximo et paterno conss.>

CJ.6.36.1.1: Imperator Alexander Severus

Sed cum post ruptum testamentum patrem pupillorum vestrorum litteras emisisse proponatis, quibus praecedens iudicium confirmavit, praetor nihil contra ius fecit, si novissimam eius voluntatem secutus relictum testamento rei publicae fideicommissum ut ex codicillis relictum praestandum esse pronuntiavit. <a 233 pp. iii k. iul. maximo et paterno conss.>

CJ.6.36.2pr.: Imperator Philippus

Hereditatem quidem neque dari neque adimi codicillis posse manifestum est: verbis tamen precariis per huiuscemodi etiam novissimi iudicii ordinationem iura non faciunt irritas voluntates. * philipp. a. et philipp. c. asclepiodotae. * <a 244 pp. id. oct. peregrino et aemiliano conss.>

CJ.6.36.2.1: Imperator Philippus

Unde inefficaciter te codicillis rogatam esse, ut quibusdam rebus contenta portionem quam testamento fueras consecuta aliis restitueres, falso tibi persuasum est. <a 244 pp. id. oct. peregrino et aemiliano conss.>

CJ.6.36.3: Imperatores Diocletianus, Maximianus

Cum proponatis pupillorum vestrorum matrem diversis temporibus ac dissonis voluntatibus duos codicillos ordinasse, in dubium non venit id, quod priori codicillo inscripserat, per eum in quem postea secreta voluntatis suae contulerat, si a prioris tenore discrepat et contrariam voluntatem continet, revocatum esse. * diocl. et maxim. aa. hyacintho et aliis. * <a 290 pp. vi id. sept. ipsis iiii et iii aa. conss.>

CJ.6.36.4: Imperatores Diocletianus, Maximianus

Non idcirco minus, quod intestato te absente codicillos mater tua fecit, ii, quibus precariis verbis adscripta sunt, relicta capiunt. * diocl. et maxim. aa. et cc. stratonico. * < sine die et consule.>

CJ.6.36.5: Imperatores Diocletianus, Maximianus

Nec codicillos quidem furentem posse facere certissimi iuris est. si igitur scriptura velut codicillorum patris tui fuit prolata, ut aliquid ex hac peti possit , adseverationi tuae mentis eum compotem fuisse negantis fidem adesse probari convenit. * diocl. et maxim. aa. et cc. flaviae. * <a 294 d. vi k. dec. divelli cc conss.>

CJ.6.36.6: Imperatores Diocletianus, Maximianus

Sive initio quae fuerat codicillis relicturus generaliter, sive novissime relicta servari mandaverit, confirmatione munitus nullam iustam gerere sollicitudinem potes. * diocl. et maxim. aa. et cc. demostheni. * <a 294 d. iii id. dec. nicomediae cc. conss.>

CJ.6.36.7: Imperator Constantinus

Si idem codicilli quod testamenta possent, cur diversum his instrumentis vocabulum mandaretur, quae vis ac potestas una sociasset? igitur specialiter codicillis instituendi ac substituendi potestas iuris auctoritate data non est. * constant. a. ad maximum pp. * <a 332 d. iii... iun. pacatiano et hilariano conss.>

CJ.6.36.8pr.: Imperator Theodosius

Si quis agere ex testamento quolibet modo sive scripto sive sine scriptura confecto de hereditate voluerit, ad fideicommissi persecutionem adspirare cupiens, minime permittatur. * theodos. a. asclepiodoto pp. * <a 424 d. x k. mart. constantinopoli victore vc. cons.>

CJ.6.36.8.1: Imperator Theodosius

Tantum enim abest, ut aditum cuiquam pro suo migrandi desiderio concedamus, ut etiam illud sanciamus, ut, si testator faciens testamentum in eodem pro codicillis etiam id valere complexus sit, qui hereditatem petit, ab ipsis intentionis exordiis utrum velit eligendi habeat potestatem, sciens se unius electione alterius sibi aditum praeclusisse: ita ut, sive bonorum possessionem secundum tabulas aut secundum nuncupationem ceterasque similes postulaverit, aut certe mitti se ad possessionem ex more petierit, statim inter ipsa huius iuris auspicia propositum suae intentionis explanet. <a 424 d. x k. mart. constantinopoli victore vc. cons.>

CJ.6.36.8.1a: Imperator Theodosius

Illud quoque pari ratione servandum est, ut testator, qui decreverit facere testamentum, si id implere nequiverit, intestatus videatur esse defunctus nec traducere liceat ad fideicommissi interpretationem velut ex codicillis ultimam voluntatem, nisi id ille complexus sit, ut vim etiam codicillorum scriptura debeat obtinere: illo iure electionis videlicet perdurante, ut, qui ex testamento agere voluerit, ad fideicommissum migrare non possit. <a 424 d. x k. mart. constantinopoli victore vc. cons.>

CJ.6.36.8.2: Imperator Theodosius

Si quis vero ex parentibus utriusque sexus ac liberis usque ad gradum quartum agnationis vinculis adligatus vel cognationis nexu constrictus ad tertium scriptus heres fuerit vel nuncupatus, in eo videlicet testamento, quod testator vicem quoque codicillorum voluit obtinere, licebit ei, si de hereditate ex testamento secundum mortui voluntatem agens fuerit forte superatus vel certe ipse sponte voluerit, ad fideicommissi subsidium convolare. non enim par eademque ratio videtur amittere debita et lucra non capere. <a 424 d. x k. mart. constantinopoli victore vc. cons.>

CJ.6.36.8.3: Imperator Theodosius

In omni autem ultima voluntate excepto testamento quinque testes vel rogati vel qui fortuitu venerint in uno eodemque tempore debent adhiberi, sive in scriptis sive in sine scriptis voluntas conficiatur. testibus videlicet, quando scriptura voluntas componitur, subnotationem suam accommodantibus. <a 424 d. x k. mart. constantinopoli victore vc. cons.>

CJ.6.37.0. De legatis.

CJ.6.37.1: Imperator Antoninus

Quamvis verbis his:" ut quoad cum claudio iusto morati essetis", alimenta vobis et vestiarium legatum sit, tamen hanc fuisse defuncti cogitationem interpretor, ut et post mortem iusti eadem vobis praestari voluerit. * ant. a. pius libertis sextiae basiliae.* <a sine die et consule >

CJ.6.37.2: Imperatores Severus, Antoninus

Quamvis heres institutus hereditatem vendiderit, tamen legata et fideicommissa ab eo peti possunt et quod eo nomine datum fuerit, venditor ab emptore vel fideiussoribus eius petere poterit. * sev. et ant. aa. sabiniano. * <a 197 pp.X k.Sept.Laterano et rufino conss.>

CJ.6.37.3: Imperatores Severus, Antoninus

Qui post testamentum factum praedia quae legavit pignori vel hypothecae dedit, mutasse voluntatem circa legatariorum personam non videtur: et ideo, etiam si in personam actio electa est, recte placuit ab herede praedia liberari. * sev. et ant. aa. victorino. * <a 211 pp.Vi k.Mai.Gentiano et basso conss.>

CJ.6.37.4: Imperator Antoninus

Servis testamento dominorum non data libertate legatum seu fideicommissum relictum non valet nec convalescere potest, licet post mortem testatoris libertatem aliqua ratione consecuti sunt. * ant. a. sulpicio. * <a 213 pp.V k.Iul.Antonino a.Iiii et balbino conss.>

CJ.6.37.5: Imperator Antoninus

Non est dubium denegari actionem legatorum ei pro portione competenti in his rebus, quas subtraxisse eum de hereditate apparuerit. * ant. a. donato. * <a 213 pp.V id.Sept.Antonino a. iiii et balbino conss.>

CJ.6.37.6: Imperator Antoninus

Si legata relicta primus legatarius agnovit, substitutio eorum in personam pontianae facta evanuit. * ant. a. iulio. * <a 215 pp.Viii k.Mai.Romae laeto ii et cereale conss.>

CJ.6.37.7pr.: Imperator Antoninus

Si fortidianum fundum primo pater tuus fratribus per praeceptionem ac mox tibi legavit, concursu dominium eius tibi quoque quaeritur. * ant. a. fausto. * <a 215 pp.V id.Iul.Laeto ii et cereale conss.>

CJ.6.37.7.1: Imperator Antoninus

Error autem nominum in scriptura factus, si modo de mancipiis vel de possessionibus legatis non ambigitur, ius legati dati non minuit. <a 215 pp.V id.Iul.Laeto ii et cereale conss.>

CJ.6.37.8: Imperator Antoninus

Ab administratione tutelae religio sacramenti Marcellum, quem vobis a patre tutorem datum testamento proponitis, eripit. quae res, quominus legatum consequatur , non impedit: nec enim iuste ab ea petitione repellitur, cum, etiam si vellet, tutelam administrare prohibeatur. * ant. a. demetrio. * <a 216 pp.Viii id.Mart.Romae sabino ii et anullino conss.>

CJ.6.37.9: Imperator Alexander Severus

Si in fraudem eorum quae testamento relicta sunt admissus est accusator, qui testamentum falsum diceret, praeses provinciae secundum iurisdictionis formam solvi legata iubebit, interposita cautione, si evicta fuerit hereditas, ea restituturum, quamvis alias cautioni tunc locus sit, cum sine controversia legata solvantur. * alex. a. antiocho. * <a 223 pp.Vii id.Febr.Maximo ii et aeliano conss.>

CJ.6.37.10: Imperator Alexander Severus

Cum alienam rem quis reliquerit, si quidem sciens, tam ex legato quam ex fideicommisso ab eo qui legatum seu fideicommissum meruit peti potest. quod si suam esse putavit, non aliter valet relictum, nisi proximae personae vel uxori vel alii tali personae datum sit, cui legaturus esset, et si scisset rem alienam esse. * alex. a. ingenuae. * <a 227 pp.V k.Febr.Albino et maximo conss.>

CJ.6.37.11: Imperator Alexander Severus

Filia legatorum non habet actionem, si ea, quae ei testamento reliquit, pater vivus postea in dotem dedit. * alex. a. albiniano. * <a 231 pp.V non.Mart.Pompeiano et peligno conss.>

CJ.6.37.12pr.: Imperator Alexander Severus

Cum responso viri prudentissimi papiniani, quod precibus insertum est, praeceptionis legatum et omissa parte hereditatis vindicari posse declaratur, intellegis desiderio tuo iuxta iuris formam esse consultum. * alex. a. muciano. * <a 240 pp.Constitutio v id.Iul.Sabino ii et venusto conss.>

CJ.6.37.12.1: Imperator Alexander Severus

Verba vero responsi haec sunt: filiae mater praedium ita legavit: " praecipito sumito extra partem hereditatis": cum hereditati matris filia renuntiasset, nihilo minus eam recte legatum vindicare visum est. <a 240 pp.Constitutio v id.Iul.Sabino ii et venusto conss.>

CJ.6.37.13: Imperatores Diocletianus, Maximianus

Proprias tuas res legari vel fideicommitti tibi non potuisse manifestum est. * diocl. et maxim. aa. severae. * <a 286 pp.Xv k.Mai.Maximo ii et aquilino conss.>

CJ.6.37.14: Imperatores Diocletianus, Maximianus

Monumenta quidem legari non posse manifestum est, ius autem mortuum inferendi legare nemo prohibetur. * diocl. et maxim. aa. tatiano. * <a 286 pp.Ii k.Sept.Maximo ii et aquilino conss.>

CJ.6.37.15pr.: Imperatores Diocletianus, Maximianus

Si universae facultates, quas pater vester reliquit, debito fiscali aut privato absumuntur, nihil ex his, quae testamento eius adscripta sunt, valere potest. * diocl. et maxim. aa. terentio. * <a 290 pp.Iii k.Oct.Ipsis iiii et iii aa.Conss.>

CJ.6.37.15.1: Imperatores Diocletianus, Maximianus

Quod si deducto debito in relictis bonis superfluum est, libertates impediri iuris ratio non permittit, quando etiam legata nec non fideicommissa salva lege falcidia praestanda sunt. <a 290 pp.Iii k.Oct.Ipsis iiii et iii aa.Conss.>

CJ.6.37.16: Imperatores Diocletianus, Maximianus

Creditor, si a debitore suo rem, quam pignoris nomine susceperat, legatum sibi contendit, etiam debito ab heredibus eius oblato, quominus restituat, defendi potest. * diocl. et maxim. aa. et cc. scyllae. * <a 294 s.Xviii k.Febr.Sirmi cc. conss.>

CJ.6.37.17: Imperatores Diocletianus, Maximianus

Datum legatum adimi tam pure quam sub condicione, non libertis tantum, sed etiam ingenuis placuit. * diocl. et maxim. aa. et cc. eutychiano. * <a 294 d iii non.Mart.Cc. conss.>

CJ.6.37.18: Imperatores Diocletianus, Maximianus

Ex legato nominis, actionibus ab his qui successerunt non mandatis, directas quidem actiones legatarius habere non potest, utilibus autem suo nomine experietur. * diocl. et maxim. aa. et cc. iustino. * <a 294 d.Vi id.Dec.Cc. conss.>

CJ.6.37.19: Imperatores Diocletianus, Maximianus

Non tantum duum mensuum, sed etiam minoris temporis maritus uxori testamento scriptus succedit, nec legata vel fideicommissa seu donationes temporis huius angustia capi prohibet. * diocl. et maxim. aa. et cc. niconi. * <a 294 d. v id. dec. nicomediae cc. conss.>

CJ.6.37.20: Imperatores Diocletianus, Maximianus

Uxor patrui tui si testata decesserit, res tuas tantum usum fructum earum habens legare non potuit. * diocl. et maxim. aa. et cc. eutychiano. * <a 294 d.Vii k.Ian.Cc. conss.>

CJ.6.37.21: Imperator Constantinus

In legatis vel fideicommissis verborum necessaria non sit observantia, ita ut nihil prorsus intersit, quis talem voluntatem verborum casus exceperit aut quis loquendi usus effuderit. * constant. a. ad pop. * <a 339 d.K.Febr.Constantio ii et constante conss.>

CJ.6.37.22: Imperator Justinianus

In annalibus legatis vel fideicommissis, quae testator non solum certae personae , sed etiam eius heredibus praestari voluit, eorum exactionem omnibus heredibus et heredum heredibus conservari pro voluntate testatoris praecipimus. * iust. a. menae pp. * <a 528 d. iii id. dec. constantinopoli dn. iustiniano a. pp. ii cons.>

CJ.6.37.23pr.: Imperator Justinianus

Cum quaestio talis de significatione verborum animos veterum movit, si quis cuidam agrum puta cornelianum vel alium quendam in solidum legaverit, deinde alii partem eius dimidiam, quantam portionem primus, quantam secundus legatarius consequitur (simili dubitatione et in hereditate et in fideicommissis habita) , cumque computationes multae introducebantur et multis ratiocinatoribus dignae: nos huiusmodi computationes quasi superfluas et contrarias voluntati testatorum omnes esse sopiendas censemus. * iust. a. iuliano pp. * <a 530 d. xv k. dec. lampadio et oreste vv. cc. conss.>

CJ.6.37.23.1: Imperator Justinianus

Cum enim manifestissimum est eum, qui ab initio duodecim uncias rei cuidam reliquit, alii autem postea sex, recessisse quidem a priore voluntate, voluisse autem minui eam sex unciis, cum alii eas obtulit, et praesens casus exitum apertissimum inveniet. <a 530 d. xv k. dec. lampadio et oreste vv. cc. conss.>

CJ.6.37.23.1a: Imperator Justinianus

Si quis itaque vel agrum vel hereditatem reliquerit, primo quidem in totum, secundo autem in partem dimidiam, utrumque in sex uncias esse vel dominum rei legatae vel heredem. <a 530 d. xv k. dec. lampadio et oreste vv. cc. conss.>

CJ.6.37.23.1b: Imperator Justinianus

Et si primo re tota relicta tertiam partem secundo reliquerit, secundum praedictum modum octo quidem uncias vel agri vel hereditatis apud primum remanere, tertiam autem partem vel quattuor uncias ad secundum migrare. <a 530 d. xv k. dec. lampadio et oreste vv. cc. conss.>

CJ.6.37.23.1c: Imperator Justinianus

Et sic in omnibus statuendum est, id est in hereditatibus vel legatis vel fideicommissis: vestigia enim voluntatis testatoris non aliter nisi per huiusmodi viam aestimanda sunt. <a 530 d. xv k. dec. lampadio et oreste vv. cc. conss.>

CJ.6.37.23.2: Imperator Justinianus

(1) sed et aliam disceptationem iuris antiqui non absimilem constitutam decidere nobis humanum esse apparuit. agitabatur enim, si quis agrum cornelianum vel forte alium vel quandam rem cuidam legaverit et postea iterum vel saepius ei eandem rem per legatum vel fideicommissum dederit, post talia autem verba testamenti sempronio eundem agrum vel aliam rem legaverit, ut saepius quidem titii fuisset mentio, semel autem sempronii, quid statuendum est, et quid iuris sit, si coniunctim an separatim eis relinquatur, sive in legato hoc consistat sive in hereditate? <a 530 d. xv k. dec. lampadio et oreste vv. cc. conss.>

CJ.6.37.23.2a: Imperator Justinianus

Huiusmodi igitur decidentes antiquam controversiam sancimus, cuicumque fuerit vel hereditas vel ager in memoratis casibus sive coniunctim sive soli sive saepius eidem relictus, aequa lance et hereditatem et agrum et aliam quamcumque rem dividi et ad dimidiam partem unumquemque vocari, nisi specialiter expresserit et dixerit testator tantas quidem partes velle unum, tantas autem alterum habere. in omnibus etenim testatoris voluntatem, quae legitima est, dominari censemus. <a 530 d. xv k. dec. lampadio et oreste vv. cc. conss.>

CJ.6.37.24pr.: Imperator Justinianus

Cum quidam suum filium familias impuberem exheredatum fecit aliis heredibus scriptis, eidem autem pupillo alium substitutum reliquit, maximam scilicet ostendens ad filium suum adfectionem, cui nihil quidem emolumenti reliquit, sed post exheredationis iniuriam etiam substitutionem ei addidit et a substituto legatum reliquit, quaerebatur, si huiusmodi legatum vel fideicommissum potest valere. * iust. a. iohanni pp. * <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.37.24.1: Imperator Justinianus

Sed et si legatum eidem exheredato filio pater reliquerit et substituerit ei exheredato facto aliquem extraneum, iterum certabatur, si saltem per eundem modum fideicommissum potest relinquere. <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.37.24.2: Imperator Justinianus

Cum igitur antiquitas quidem haec diverse tractare maluit, nobis autem huiusmodi iurgia supervacua esse videntur, sancimus nullo legato nullo fideicommisso huiusmodi substitutum qui exheredato pupillo datus est praegravari, nec si ipsam rem quam pupillo legavit a substituto eius vel legare vel fideicommittere voluit. <a 531 d. ii k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.37.25pr.: Imperator Justinianus

Si legatarius celaverit testamentum et postea hoc in lucem emerserit, an possit legatum sibi derelictum is qui celaverit ex eo testamento vindicare, dubitabatur. * iust. a. iohanni pp. * <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.37.25.1: Imperator Justinianus

Quod omnimodo inhibendum esse censemus, ut non accipiat fructum suae calliditatis, qui heredem voluit hereditate defraudare: sed huiusmodi legatum illi quidem auferatur, maneat autem quasi pro non scripto apud heredem, ut, qui alii nocendum esse existimavit, ipse suam sentiat iacturam, quemadmodum, si legatarius, cui propter tutelam gerendam aliquid derelictum sit, non subierit tutelam, ei quidem legatum aufertur, pupillo autem adsignatur, cui ille utilis esse noluit. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.37.26pr.: Imperator Justinianus

Illud, quod de legatis vel fideicommissis temporalibus utpote irritis a legum conditoribus definitum est, emendare prospeximus sancientes et talem legatorum vel fideicommissorum speciem valere et firmitatem habere. * iust. a. iohanni pp. * <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.6.37.26.1: Imperator Justinianus

Cum enim iam constitutum est fieri posse temporales donationes et contractus, consequens est etiam legata vel fideicommissa, quae ad tempus relicta sunt, ad eandem similitudinem confirmari: post completum videlicet tempus ad heredem isdem legatis vel fideicommissis remeantibus, necessitatem habente legatario vel fideicommissario cautionem in personam heredis exponere, ut post transactum tempus res non culpa eius deterior facta restituatur. <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.6.38.0. De verborum et rerum significatione.

CJ.6.38.1pr.: Imperator Antoninus

Praediis instructis legatis, quamvis ex fructibus oleum et vinum in eodem fundo habuerit, tamen si id venale fuit, item ea, quae ad tempus propter incursionem latronum tutelae causa in praedium translata sunt, legato non cedere iuris auctoribus placuit. * ant. a. antipatrae. * <a 213 pp. vi id. aug. antonino a. iiii et balbino conss.>

CJ.6.38.1.1: Imperator Antoninus

Vinum vero, quod in apothecis fuit, si ideo illic habuit, ut, cum in praedium venisset mater familias, eo uteretur, legato cedere ignorare non debes. <a 213 pp. vi id. aug. antonino a. iiii et balbino conss.>

CJ.6.38.2pr.: Imperatores Diocletianus, Maximianus

Fundo " sicut instructus est" legato sive per fideicommissum relicto vilicum hominesque et omnia, quae vel, ut ipse pater familias, cum ibi ageret, vel fundus esset instructus, non temporis causa habuit in eo, relicta esse iuris auctoritate definitum est: ea etiam, quae tam fructuum colligendorum quam servandorum. * diocl. et maxim. aa. et cc. rufino. * <a 293 d. non. oct. sirmi aa. conss.>

CJ.6.38.2.1: Imperatores Diocletianus, Maximianus

Item pecora stercorandi vel pascendi causa ibi constituta, ut fructus de his capiantur vel ut fundus sit instructior, fideicommisso cedere certi iuris est. <a 293 d. non. oct. sirmi aa. conss.>

CJ.6.38.3: Imperator Justinianus

Sancimus cautionis nomine vel asphaleias non esse fideiussoris dationem interpretandam, nisi hoc specialiter vel in graecis vel in latinis verbis scriptum fuerit: nisi enim vel generaliter de satisdatione vel de fideiussione specialiter sit nominatum, cautione vel cautela vel asphaleia minime fideiussionem, sed nudam promissionem significari. * iust. a. iuliano pp. * <a 531 d. k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.38.4pr.: Imperator Justinianus

Cum quidam sic vel institutionem vel legatum vel fideicommissum vel libertatem vel tutelam scripsisset: " ille vel ille heres mihi esto" vel " illi aut illi do lego" vel " dari volo", vel " illum aut illum liberum" vel " tutorem esse volo" vel " iubeo", dubitabatur, utrumne inutilis sit huiusmodi institutio et legatum et fideicommissum et libertas et tutoris datio, an occupantis melior condicio sit, an ambo in huiusmodi lucra vel munia vocentur et an secundum aliquem ordinem admittantur, an uterque omnimodo, cum alii primum in institutionibus quasi institutum admitti, secundum quasi substitutum, alii in fideicommissis posteriorem solum accepturum fideicommissum existimaverunt, quasi recentiore voluntate testatoris utentem. * iust. a. iohanni pp. * <a 531 d. prid. k. mai. constantinop oli post consulatum lampadii et orestis vv. cc.>

CJ.6.38.4.1: Imperator Justinianus

Et si quis eorum altercationes singillatim exponere maluerit, nihil prohibet non leve libri volumen extendere, ut sic explicari possit tanta auctorum varietas, cum non solum iuris auctores, sed etiam ipsae principales constitutiones, quas ipsi auctores rettulerunt, inter se variasse videntur. <a 531 d. prid. k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.38.4.1a: Imperator Justinianus

Melius itaque nobis visum est omni huiusmodi verbositate explosa coniunctionem " aut" " pro" " et" accipi, ut videatur copulativo modo esse prolata et magis sit paradiazeuxis, ut et primam personam inducat et secundam non repellat. <a 531 d. prid. k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.38.4.1b: Imperator Justinianus

Quemadmodum enim verbi gratia in interdicto quod vi aut clam " aut" coniunctio pro " et" apertissime posita est, ita et in omnibus huiusmodi casibus sive institutionum sive legatorum sive fideicommissorum vel libertatum seu tutelarum hoc esse intellegendum, et ambo veniant aequa lance ad hereditatem, ambo legata similiter accipiant, fideicommissum in utrumque dividatur, libertas utrumque capiat , tutoris ambo fungantur officio. <a 531 d. prid. k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.38.4.1c: Imperator Justinianus

Sic nemo defraudetur a commodo testatoris, sic maior providentia pupillis inferatur, ne, dum dubitatur, apud quem debet esse tutela, in medio res pupillorum depereant. sed haec quidem sancimus, cum in personas huiusmodi proferatur scriptura. <a 531 d. prid. k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.38.4.2: Imperator Justinianus

Sin autem una quidem est persona, res autem ita derelictae: " illam aut illam rem illi do lego", vel " per fideicommissum relinquo", tunc secundum veteres regulas et antiquas definitiones vetustatis iura maneant incorrupta, nulla innovatione eis ex hac constitutione introducenda. <a 531 d. prid. k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.38.4.3: Imperator Justinianus

Quod etiam in contractibus locum habere censemus. <a 531 d. prid. k. mai. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.38.5pr.: Imperator Justinianus

Suggestioni illyricianae advocationis respondentes decernimus familiae nomen talem habere vigorem: parentes et liberos omnesque propinquos et substantiam, libertos etiam et patronos nec non servos per hanc appellationem significari. * iust. a. iohanni pp. * <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.6.38.5.1: Imperator Justinianus

Et si quis per suum elogium fideicommissum familiae suae reliquerit, nulla speciali adiectione super quibusdam certis personis facta, non solum propinquos, sed etiam his deficientibus generum et nurum. et hos enim nobis humanum esse videtur ad fideicommissum vocari, ita videlicet, si matrimonium morte filii vel filiae fuerit dissolutum. nullo etenim modo possint gener vel nurus filiis viventibus ad tale fideicommissum vocari, cum hi procul dubio eos antecedant: et hoc videlicet gradatim fieri, ut post eos liberti veniant. <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.6.38.5.2: Imperator Justinianus

Hoc eodem valente, et si quis rem immobilem cuidam legaverit vel fideicommiserit eamque alienari prohibuerit adiciens, ut, si hoc fideicommissarius praeterierit , familiae suae res adquiratur. <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.6.38.5.3: Imperator Justinianus

In aliis autem casibus nomen familiae pro substantia oportet intellegi, quia et servi et aliae res in patrimonio uniuscuiusque esse putantur. <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.6.39.0. Si omissa sit causa testamenti.

CJ.6.39.1: Imperatores Severus, Antoninus

Si in fraudem legatorum transmissam hereditatem ad substitutum probatura es, utilis actio adversus eum, cum quo fraudis consilium participatum est, competit. plane si pecunia accepta omisit aditionem, legata et fideicommissa praestare cogitur. * sev. et ant. aa. ianuariae. * <a 196 accepta k. oct. dextro ii et prisco conss.>

CJ.6.39.2pr.: Imperator Philippus

Eum, qui, cum testamento posset obtinere hereditatem, ab intestato ius successionis voluit amplecti, libertatibus eodem testamento datis obesse non posse iam pridem placuit. * philipp. a. et philipp. c. victoriae. * <a 245 pp. k. ian. philippo a. et titiano conss.>

CJ.6.39.2.1: Imperator Philippus

Quod si, cum neque adiri ex testamento hereditas neque bonorum possessio peti possit, iudicium defuncti non usurpabitur, sed ad irritum iuris ratione vocatum est, petitio relictorum nullo iure procedit. <a 245 pp. k. ian. philippo a. et titiano conss.>

CJ.6.39.2.2: Imperator Philippus

Sin vero iure facto testamento cessante herede scripto alter ab intestato adiit hereditatem, neque libertates neque legata ex testamento posse praestari manifestum est. <a 245 pp. k. ian. philippo a. et titiano conss.>

CJ.6.39.3: Imperatores Diocletianus, Maximianus

Si proculina patri vestro, cuius estis heredes, testamento quid reliquit et scripti iure secundum eius iudicium vel omissa causa testamenti successerunt ab intestato, aditus competens iudex, quatenus legis falcidiae modus patitur, vobis relicta restitui iubebit. * diocl. et maxim. aa. et cc. apro et piae. * <a 293 d. xv k. ian. sirmi aa. conss.>

CJ.6.40.0. De indicta viduitate et de lege iulia miscella tollenda.

CJ.6.40.1: Imperator Gordianus

Legatum alii sub condicione sic relictum, si uxor nuptui se post mortem mariti non collocaverit, contractis nuptiis condicione deficit ideoque peti legatum nequaquam potest. * gord. a. bono. * <a 241 pp. xiii k. aug. gordiano a. ii et pompeiano conss.>

CJ.6.40.2pr.: Imperator Justinianus

Ambiguitates legis iuliae miscellae generali lege tollentes nullum concedimus fieri iuramentum secundum praedictam legem, sed penitus ea cum muciana cautione super hac causa quiescente licere mulieribus, etiam maritorum suorum interminatione spreta, quae viduitatem eis indicit, et non dato sacramento procreandae subolis gratia, tamen ad secundas migrare nuptias, poena huiusmodi cessante, sive habeat liberos, sive non, et percipere ea, quae maritus dereliquit (quorum omnium manifestissimum est dominium minime eas liberis existentibus habere usu fructu tantummodo apud eas manente et ad liberos prioris tori proprietate eorum deferenda secundum ea, quae de secundis nuptiis lucrisque ex his mulieribus statuta sunt), ne ex necessitate legis et sacramento colorato periurium committatur. * iust. a. iuliano pp. * <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.40.2.1: Imperator Justinianus

Cum enim mulieres ad hoc natura progenuit, ut partus ederent, et maxima eis cupiditas in hoc constituta est, quare scientes prudentesque periurium committi patimur ? <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.40.2.2: Imperator Justinianus

Tale igitur iuramentum conquiescat et lex iulia miscella cedat cum muciana cautione super hoc introducta, a re publica separata. augeri etenim magis nostram rem publicam et multis hominibus progenitis frequentari quam impiis periuriis adfici volumus, cum satis esse inhumanum videtur per leges, quae periuria puniunt, viam periuriis aperiri. <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.40.3pr.: Imperator Justinianus

Legem iuliam miscellam quemadmodum in feminis sustulimus, ita et in masculis esse sublatam pertinere quidem ad sensum nostrae legis, quam super hoc promulgavimus, non est incertum. * iust. a. iohanni pp. * <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.40.3.1: Imperator Justinianus

Ne tamen quaedam ambiguitas simplices animos moveat, etiam expressim sancimus legem iuliam miscellam et senatus consulta, quae circa eam facta sunt, nec non mucianam cautionem, quae super talibus nuptiis introducta est, non solum in feminis, sed etiam in masculis cessare. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.40.3.2: Imperator Justinianus

Sed quia apud ulpianum in libris sabinianis invenimus quaedam verba, quae effugiunt legis miscellae observationem, ne quis et ea sublata esse putaverit, sancimus, cum huiusmodi verbis mulieribus aliquid relinquatur: " si vidua erit" vel " cum vidua erit" vel " quotiens vidua erit", vel e contrario maribus: " si amiserint uxores" vel " quando ad caelibatum pervenerint", non vetari ea vindicare vel legitimo modo sumere, quae eis derelicta sunt. neque enim ut permaneant vel feminae in viduitate vel masculi in caelibatu relictum esse videtur, ut locum vel ante nostram legem habeat lex iulia miscella, quae iam perempta est: sed cum primum hoc evenerit, ilico competat talibus personis eius quod relictum est persecutio, quia sub condicione relictum esse videtur, sive semel sive in annos si ngulos haec liberalitas fuerit conscripta, quasi pro solacio suae tristitiae. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.41.0. De his quae poenae nomine in testamento vel codicillis relinquuntur.

CJ.6.41.1pr.: Imperator Justinianus

Supervacuam observationem veterum legum, per quam voluntates testatorum ad effectum duci impediebantur, amputamus praecipientes nullum valere, dicendo poenae nomine quaedam esse relicta vel adempta in supremis testantium voluntatibus, ea infirmare, sed licere testanti pro implenda sua voluntate vel pecunias dari praecipere vel aliam pecuniariam poenam inferre quibus voluerit, tam in adimendis hereditatibus vel legatis vel fideicommissis vel libertatibus, quam in praecipiendo ad alias personas ea transferri ab eo, cui relicta ab initio sunt, vel aliquid aliis ab eo dari, si minus dispositionibus suis heres vel legatarius vel libertate donatus paruerit. * iust. a. menae pp. * <a 528 d. k. ian. constantinopoli dn. iustiniano a. pp. ii cons.>

CJ.6.41.1.1: Imperator Justinianus

Quod si aliquid facere vel legibus interdictum vel alias probrosum vel etiam impossibile iussus aliquis eorum fuerit, tunc sine ullo damno etiam neglecto testatoris praecepto servabitur. <a 528 d. k. ian. constantinopoli dn. iustiniano a. pp. ii cons.>

CJ.6.42.0. De fideicommissis.

CJ.6.42.1: Imperator Antoninus

Si probaveris demetrium petisse de matre heredeque sua, ut tibi alimenta menstrua et vestiarium annuum praestaret, eamque secutam voluntatem filii sui per multum temporis, id est non minus in tali causa triennio, ea praestitisse: ut in futurum quoque ea praestentur et, si qua in praeteritum praestita non sunt, exsolvantur, impetrabis. * ant. a. demetrio. * <a 212 pp.Xvii k.Sept.Duobus aspris conss.>

CJ.6.42.2: Imperator Antoninus

Etsi inutiliter fideicommissum relictum est, tamen si heredes comperta voluntate defuncti praedia ex causa fideicommissi avo tuo praestiterunt, frustra ab heredibus de ea re quaestio tibi movetur, cum non ex ea sola scriptura, sed ex conscientia relicti fideicommissi satis defuncti voluntati factum esse videatur. * ant. a. eupatrio. * <a 215 pp.Vi k.Aug.Laeto ii et cereale conss.>

CJ.6.42.3: Imperator Antoninus

Cum secundum voluntatem defunctae chrysidem puellam ab heredibus manumissam eamque, priusquam ei restitueretur hereditas, intestatam vita functam proponas, ad manumissores eius successio pertinet. qui si adierint eius hereditatem, confusis actionibus fideicommisso sunt liberati. * ant. a. rufino. * <a 215 pp.V id. dec.Laeto ii et cereale conss.>

CJ.6.42.4: Imperator Alexander Severus

Voluntas patris prohibentis liberos fundos extra familiam vendere vel pignori dare fratrem sorori donare prohibuisse non videtur. * alex. a. victorino. * <a 223 pp.V k.Iul.Maximo ii et aeliano conss.>

CJ.6.42.5: Imperator Alexander Severus

Si frater tuus, posteaquam patri heres extitit, pubes iam sine liberis decessit, ex pupillari substitutione tibi hereditas eius delata non est. sed si verbis fideicommissi aliqua parte testamenti confirmata est, fideicommissum ab heredibus petere non prohiberis. * alex. a. reginae. * <a 224 pp.Xv k.Febr.Iuliano et crispino conss.>

CJ.6.42.6pr.: Imperator Alexander Severus

Praedia obligata per legatum vel fideicommissum relicta heres luere debet, maxime cum testator condicionem eorum non ignoravit aut, si scisset, legaturus tibi aliud, quod non minus esset, fuisset. * alex. a. nilo. * <a 224 pp.Xvi k.Mart. iuliano et crispino conss.>

CJ.6.42.6.1: Imperator Alexander Severus

Sin vero a creditore distracta sunt, pretium heres exsolvere cogetur, nisi contraria defuncti voluntas ab herede ostendatur. <a 224 pp.Xvi k.Mart. iuliano et crispino conss.>

CJ.6.42.7: Imperator Alexander Severus

Voluntatis defuncti quaestio in aestimatione iudicis est. * alex. a. septimo. * <a 225 pp.Xv k.Mart.Fusco ii et dextro conss.>

CJ.6.42.8: Imperator Alexander Severus

Qui fideicommissariam libertatem meruit, legata seu fideicommissa a defuncto sibi data suo iure persequitur. * alex. a. mascello. * <a 225 pp.Xv k.Iun.Fusco ii et dextro conss.>

CJ.6.42.9: Imperator Gordianus

Ab eo, qui neque legatum neque fideicommissum neque hereditatem vel mortis causa donationem accepit, nihil per fideicommissum relinqui potest. * gord. a. paulinae. * <a 238 pp. xvii k. oct. pio et pontiano conss.>

CJ.6.42.10: Imperator Gordianus

Verbum " volo" licet desit, tamen quia additum perfectum sensum facit, pro adiecto habendum est. * gord. a. firmo. * <a 239 pp. iii id. dec. gordiano a. et aviola conss.>

CJ.6.42.11: Imperator Gordianus

Quotiens ab omnibus, qui alienatione facta ad fideicommissi petitionem adspirare possint, venditio celebratur aut quibusdam vendentibus alii consenserint, auctoritas contractus convelli nequaquam potest. * gord. a. papiniano. * <a 241 pp. ii k. ian. gordiano a. ii et pompeiano conss.>

CJ.6.42.12: Imperator Philippus

Post mortem suam rogatam restituere hereditatem defuncti iudicio et antequam fati munus impleat posse satisfacere (id est restituere hereditatem) quarta parte vel retenta vel omissa, si voluerit, explorati iuris est. * philipp. a. et philipp. c. rufino. * <a 244 pp. id. oct. peregrino et aemiliano conss.>

CJ.6.42.13: Imperator Philippus

Quotiens principali loco heres institutus testatori succedit, legata seu fideicommissa a substituto data posci iure non possunt. * philipp. a. et c. sempronio. * <a 246 pp. viii k. mart. praesente et albino conss.>

CJ.6.42.14pr.: Imperatores valer., gallien.

Ea, quam frater tuus instituerat, sive quaesita sive non quaesita hereditate decesserit, cum tamen simpliciter, antequam duodecimum annum aetatis implesset, verbis precativis testamento facto nonnullos ei voluerit substitutos, nihil prohibet fideicommissum peti vel ab ipsius heredibus, qui bona intestati tenent. * valer. et gallien. aa. falconi. * <a 255 pp. xiiii k. sept. valeriano iii et gallieno ii aa. c onss.>

CJ.6.42.14.1: Imperatores valer., gallien.

Tunc enim locum habet, quod regulariter traditur ea quae in testamento relinquuntur, si ex testamento non adeatur hereditas, non valere, cum verbis relicta directis adiri potuit hereditas, non cum illa ipsa sic data est, ut esset etiam ab intestato successoribus postulanda. <a 255 pp. xiiii k. sept. valeriano iii et gallieno ii aa. c onss.>

CJ.6.42.14.2: Imperatores valer., gallien.

Quod rescripsimus sequentes adseverationem tuam, quasi scripta heres non fuerit iure adoptata. alioquin si in familia relicta heres facta decessit, et consequenter ipsius heredes petitioni fideicommissi respondere coguntur. <a 255 pp. xiiii k. sept. valeriano iii et gallieno ii aa. c onss.>

CJ.6.42.15: Imperatores valer., gallien.

Quamvis simpliciter te ac fratrem tuum aliquis instituerit heredes eiusque hereditatis commodum pater ex tua fratrisque persona pro portionibus vestris potestatis ratione quaesierit, tamen quia inferioribus verbis testamenti vos sui iuris facere testator curavit, intellegi potest restituendi hereditatis commodi fideicommisso patrem obstrictum esse. * valer. et gallien. aa. philocrati. * <a 256 pp. vi id. oct. romae maximo ii et glabrione conss.>

CJ.6.42.16pr.: Imperatores carus, carinus, numer.

Cum virum prudentissimum papinianum respondisse non ignoramus etiam legata huiusmodi fideicommisso contineri, id est ubi heres rogatus fuerat, quidquid ex hereditate pervenerit, post mortem restituere, animadvertis etiam praeceptionis compendium testatoris verbis comprehensum esse. * carus carinus et numer. aaa. isidorae. * <a 283 pp. prid. id. nov. caro et carino aa. conss.>

CJ.6.42.16.1: Imperatores carus, carinus, numer.

Sane quoniam in fideicommissis voluntas magis quam verba plerumque intuenda sunt , si quas pro rei veritate praeterea probationes habes ad commendandam hanc patris voluntatem, quam fuisse adseveras, apud praesidem experiri non vetaris. <a 283 pp. prid. id. nov. caro et carino aa. conss.>

CJ.6.42.17: Imperatores Diocletianus, Maximianus

Si creditoris voluntas iure subnixa liberari te debito volentis doceri potest, et antequam sollemniter tibi liberatio a successore praestetur, exceptionem tibi ex voluntate descendentem competere manifestum est. * diocl. et maxim. aa. fortunato. * <a 286 pp. xii k. mai. maximo ii et aquilino conss.>

CJ.6.42.18: Imperatores Diocletianus, Maximianus

Cum necessitatem reddendae rationis defunctus remittendam tibi esse petierit, manifesti iuris est voluntatem defuncti immotam esse debere. * diocl. et maxim. aa. apolausto. * <a 290 pp. id. mart. ipsis iiii et iii aa. conss.>

CJ.6.42.19: Imperatores Diocletianus, Maximianus

Clari et aperti iuris est in fideicommissis posteriores voluntates esse firmiores. * diocl. et maxim. aa. ampliato. * <a 290 pp.Viii id.Sept.Ipsis iiii et iii aa.Conss.>

CJ.6.42.20: Imperatores Diocletianus, Maximianus

Etiam a pupillorum tutoribus velut ab ipsis relicta fideicommissa debentur. * diocl. et maxim. aa. iuliano. * <a 290 pp.Iii non.Dec.Ipsis iiii et iii aa.Conss.>

CJ.6.42.21: Imperatores Diocletianus, Maximianus

Si in persona patris tui, cui te successisse proponis, fideicommissi dies utiliter cessit, licet tempore quo fuerat datum necdum te natum probetur, uxorem patrui, quem contendis patri tuo rogatum, si sine liberis decesserit, ab avo relicta restituere, si ei successit, de fideicommisso convenire debes. nam si patrui etiam hereditas tibi quaesita est, non de fideicommisso quaerendum, sed hereditas ab ea vindicanda est. * diocl. et maxim. aa. et cc. tiberio. * <a 293 d.Vi id.Febr.Aa. conss.>

CJ.6.42.22: Imperatores Diocletianus, Maximianus

Et in epistula vel brevi libello vel sine scriptura, immo etiam nutu fideicommissum relinqui posse adhibitis testibus nulla dubitatio est. * diocl. et maxim. aa. et cc. planciano. * <a 293 d.Id.April.Byzantii aa. conss.>

CJ.6.42.23: Imperatores Diocletianus, Maximianus

Si veritas vel sollemnitas iuris deest nec amplexus parentis voluntatem relicta dedisti vel transactionis causa stipulantibus promisisti negotiumque integrum est, ad solutionem urgueri non potes. * diocl. et maxim. aa. et cc. stratonico. * <a 293 d.V k.Febr.Aa.Conss.>

CJ.6.42.24: Imperatores Diocletianus, Maximianus

Instrumenta praediorum per fideicommissum relictorum, quae ad probationem originis eorum pertinent, heredes praestare necesse non habent: tamen cautionem praestare debent, quod, si opus fuerit legatario seu fideicommissario, ipsa, si habent, proferant. * diocl. et maxim. aa. et cc. menestrato. * <a 293 d.K.Dec.Sirmi aa. conss.>

CJ.6.42.25: Imperatores Diocletianus, Maximianus

Heredum etiam res proprias per fideicommissum relinqui posse non ambiguitur. * diocl. et maxim. aa. et cc. iulianae. * <a 294 d.Ii.K.Mart.Cc.Conss.>

CJ.6.42.26: Imperatores Diocletianus, Maximianus

Ex repudiatione fideicommissi doli mali exceptio iusta causa intercedente tunc opponitur, quando ipse, cui fideicommissum relictum est, repudiatione usus fuerit. unde cum hoc non te, sed patrem fecisse adseveras, qui tibi nocere non potuit, nihil tibi obesse potest. * diocl. et maxim. aa. et cc. gaiano. * <a 294 d.Ii id.April.Sirmi cc. conss.>

CJ.6.42.27: Imperatores Diocletianus, Maximianus

Fideicommissum eius qui reliquerat paenitentia probata successores numquam praestare compelluntur. * diocl. et maxim. aa. et cc. olympiadi. * <a 294 d.V k.Oct.Viminacii cc. conss.>

CJ.6.42.28: Imperatores Diocletianus, Maximianus

Ex fideicommisso sub condicione sine libertate servis propriis inutiliter dato libertas peti non potest. * diocl. et maxim. aa. et cc. gaio. * <a 294 d.Xv k.Nov.Trans mare cc. conss.>

CJ.6.42.29: Imperatores Diocletianus, Maximianus

Ex testamento, quod iure non valet, nec fideicommissum quidem, si non intestato quoque succedentes rogati probentur, peti potest. * diocl. et maxim. aa. et cc. achilleo. * <a 294 d.Viii id.Dec.Cc.Conss.>

CJ.6.42.30: Imperator Justinianus

Cum acutissimi ingenii vir et merito ante alios excellens papinianus in suis statuit responsis, si quis filium suum heredem instituit et restitutionis post mortem oneri subegit, non aliter hoc videri disposuisse, nisi cum filius eius sine subole vitam reliquerit: nos huiusmodi sensum merito mirati plenissimum ei donamus eventum, ut, si quis haec disposuerit, non tantum filium heredem instituens , sed etiam filiam, vel ab initio nepotem vel neptem, pronepotem vel proneptem vel aliam deinceps posteritatem, et eam restitutionis post obitum gravamini subiugaverit, non aliter hoc sensisse videatur, nisi hi qui restitutione onerati s unt sine filiis vel filiabus vel nepotibus vel pronepotibus fuerint defuncti, ne videatur testator alienas successiones propriis anteponere. * iust. a. demostheni pp. * <a 529 recitata septimo in novo consistorio palatii iustiniani.D.Iii k.Nov.Decio vc.Cons.>

CJ.6.42.31pr.: Imperator Justinianus

Quidam filium suum a sacris paternis remisit et postea testamento condito eum praeteriit nullo ei penitus relicto, aliis heredibus derelictis, ipsum autem, quem neque heredem neque exheredatum fecit, fideicommisso praegravavit. quaerebatur, si utile est huiusmodi fideicommissum. * iust. a. iohanni pp. * <a 531 d.Prid.K.Mart.Constantinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.6.42.31.1: Imperator Justinianus

Tota igitur antiqua dubietate super hoc explosa nobis in hoc casu placuit, ut emancipatus utpote iniuria a patre adflictus non compellatur fideicommissum a sua persona relictum praestare. <a 531 d.Prid.K.Mart.Constantinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.6.42.31.2: Imperator Justinianus

Quod etiam in aliis personis, quas exheredari necesse est, locum habere censemus. <a 531 d.Prid.K.Mart.Constantinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.6.42.32pr.: Imperator Justinianus

Quaestionem ex facto emergentem resecantes et voluntati defunctorum prospicientes sancimus, si sine scriptura et praesentia testium fideicommisso derelicto fideicommissarius elegerit iuramentum heredis vel forsitan legatarii vel fideicommissarii, quotiens ab eo relictum est fideicommissum, sive universitatis sive speciale, necesse habere heredem vel legatarium vel fideicommissarium prius iureiurando de calumnia praestito vel sacramentum subire et omni inquietudine sese relaxare vel, si recusandum existimaverit sacramentum aut certam quantitatem manifestare fideicommissario derelictam noluerit, si forsitan maiorem fideicommissarius expetat, omnimodo exactioni fideicommissi subiacere et eum ad satisfacti onem compelli, cum ipse sibi iudex et testis invenitur, cuius religio et fides a fideicommissario electa est, nullis testibus nullisque aliis adventiciis probationibus requisitis, sed sive quinque sint testes vel minores vel nemo, causam per illius sacramentum vel dandum vel recusandum suam habere tam firmitatem quam exactionem, sive pater sit, qui fideicommissum dederit, sive extraneus, ut aequitatis ratio communiter in omnes procedat. * iust. a. iohanni pp. * <a 531 d.V k.Dec.Constantinopoli post consulatum lampadii et orestis. vv.Cc.>

CJ.6.42.32.1: Imperator Justinianus

Cum enim res per testium sollemnitatem ostenditur, tunc et numerus testium et nimia subtilitas requirenda est. lex etenim, ne quid falsitatis incurrat per duos forte testes compositum, maiorem numerum testium expostulat, ut per ampliores homines perfectissima veritas reveletur. <a 531 d.V k.Dec.Constantinopoli post consulatum lampadii et orestis. vv.Cc.>

CJ.6.42.32.2: Imperator Justinianus

Cum autem is, qui quid ex voluntate defuncti lucratur, et maxime ipse heres, cui summa auctoritas totius causae commissa est, dicere compellitur veritatem per sacramenti religionem, qualis locus testibus relinquatur vel quemadmodum ad extraneam fidem decurratur, propria et indubitata relicta? cum et in leges respeximus, quae iustis dispositionibus testatorum omnimodo heredes oboedire compellunt et sic strictius causam exigunt, ut etiam amittere lucrum hereditatis sanciant eos, qui testatoribus suis minime paruerunt. <a 531 d.V k.Dec.Constantinopoli post consulatum lampadii et orestis. vv.Cc.>

CJ.6.43.0. Communia de legatis et fideicommissis et de in rem missione tollenda.

CJ.6.43.1pr.: Imperator Justinianus

Cum ii, qui legatis vel fideicommissis honorati sunt, personalem plerumque actionem habere noscuntur, quis vel vindicationis vel sinendi modo aliorumque generum legatorum subtilitatem prono animo admittet, quam posteritas optimis rationibus usa nec facile suscepit nec inextricabiles circuitus laudavit? quis in rem missionis scrupulosis utatur ambagibus? * iust. a. demostheni pp. * <a 529 d.Xv k.Oct.Chalcedone decio vc.Cons.>

CJ.6.43.1.1: Imperator Justinianus

Rectius igitur esse censemus in rem quidem missionem penitus aboleri, omnibus vero tam legatariis quam fideicommissariis unam naturam imponere et non solum personalem actionem praestare, sed etiam in rem, quatenus eis liceat easdem res, vel per quodcumque genus legati vel per fideicommissum fuerint derelictae, vindicare in rem actione instituenda, et insuper utilem servianam (id est hypothecariam) super his quae fuerint derelicta in res mortui praestare. <a 529 d.Xv k.Oct.Chalcedone decio vc.Cons.>

CJ.6.43.1.2: Imperator Justinianus

Cum enim hoc iam iure nostro increbuit licere testatori hypothecam rerum suarum in testamento quibus voluerit dare, et iterum novellae constitutiones in multis casibus et tacitas hypothecas induxerunt, non ab re est etiam nos in praesenti casu hypothecariam donare, quae et nullo verbo praecedente possit ab ipsa lege induci. <a 529 d.Xv k.Oct.Chalcedone decio vc.Cons.>

CJ.6.43.1.3: Imperator Justinianus

Si enim testator ideo legata vel fidecommissa dereliquit, ut omnimodo personae ab eo honoratae ea percipiant, apparet ex eius voluntate etiam praefatas actiones contra res testatoris esse instituendas, ut omnibus modis voluntati eius satisfiat, et praecipue cum talia sint legata vel fidecommissa, quae piis actibus sunt deputata. <a 529 d.Xv k.Oct.Chalcedone decio vc.Cons.>

CJ.6.43.1.4: Imperator Justinianus

Et haec disponimus, non tantum si ab herede fuerit legatum derelictum vel fideicommissum, sed et si a legatario vel fideicommissario vel alia persona, quam gravare fideicommisso possumus, fideicommissum cuidam relinquatur. cum enim non aliter valeat, nisi aliquid lucri offerat ei a quo derelictum est, nihil est grave etiam adversus eum non tantum personalem, sed etiam in rem et hypothecariam extendere actionem in rebus, quas a testatore consecutus est. <a 529 d.Xv k.Oct.Chalcedone decio vc.Cons.>

CJ.6.43.1.5: Imperator Justinianus

In omnibus autem huiusmodi casibus in tantum et hypothecaria unumquemque conveniri volumus, in quantum personalis actio adversus eum competit, et hypothecam esse non ipsius heredis vel alterius personae quae gravata est fideicommisso rerum, sed tantummodo earum, quae a testatore ad eum pervenerint. <a 529 d.Xv k.Oct.Chalcedone decio vc.Cons.>

CJ.6.43.2pr.: Imperator Justinianus

Omne verbum significans testatoris legitimum sensum legare vel fideicommittere volentis utile atque validum est, sive directis verbis, quale est " iubeo" forte , sive precariis utetur testator, quale est " rogo" " volo" " mando" " fideicommitto", sive iuramentum posuerit, cum et hoc nobis audientibus ventilatum est, testatore quidem dicente " enorkw", partibus autem huiusmodi verbum huc atque illuc lacerantibus. * iust. a. iuliano pp. * <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.43.2.1: Imperator Justinianus

Sit igitur secundum quod diximus ex omni parte verborum non inefficax voluntas secundum verba legantis vel fideicommittentis et omnia, quae naturaliter insunt legatis, ea et fideicommissis inhaerere intellegantur et e contrario, quidquid fideicommittitur, hoc intellegatur esse legatum, et si quid tale est, quod non habet natura legatorum, hoc ei ex fideicommissis accommodetur, et sit omnibus perfectus eventus, ex omnibus nascantur in rem actiones, ex omnibus hypothecariae , ex omnibus personales. <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.43.2.2: Imperator Justinianus

Ubi autem aliquid contrarium in legatis et fideicommissis eveniat, hoc fideicommisso quasi humaniori adgregetur et secundum eius dirimatur naturam. <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.43.2.3: Imperator Justinianus

Et nemo moriens putet suam legitimam voluntatem reprobari, sed nostro semper utetur adiutorio, et quemadmodum viventibus providimus, ita et morientibus prospiciatur: et si specialiter legati tantummodo faciat testator mentionem, hoc et legatum et fideicommissum intellegatur, et si fidei heredis vel legatarii aliquid committatur, hoc et legatum esse videatur. nos enim non verbis, sed ipsis rebus leges imponimus. <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.43.3pr.: Imperator Justinianus

Si duobus vel tribus hominibus vel pluribus forte optio servi vel alterius rei relicta fuerit, vel si uni quidem legatario optio servi vel alterius rei relicta est, ipse autem moriens plures sibi reliquerit heredes, dubitabatur inter veteres, si inter legatarios vel heredes legatarii fuerit certatum et alter alterum servum vel aliam rem eligere velit, quid sit statuendum. * iust. a. iohanni pp. * <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.43.3.1: Imperator Justinianus

Sancimus itaque in omnibus huiusmodi casibus rei iudicem fortunam esse, sortem etenim inter altercantes adhibendam, ut, quem sors praetulerit, is quidem habeat potestatem eligendi, ceteris autem aestimationem praestet contingentium eis partium: id est in servis quidem et ancillis maioribus decem annis, si sine arte sint, viginti solidis aestimandis, minoribus videlicet decem annis non amplius quam decem solidis computandis: sin autem artifices sunt, usque ad triginta solidos aestimatione eorum procedente, sive masculi sive feminae sunt, exceptis notariis et medicis utriusque sexus, cum notarios quinquaginta solidis aestimari volumus, medicos autem et obstetrices sexaginta: eunuchis minoribus quidem decem annis usque ad triginta solidos valentibus, maioribus vero usque ad quinquagin ta, sin autem artifices sint, usque ad septuaginta. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.43.3.1a: Imperator Justinianus

Sed et si quis optionem servi vel alterius rei reliquerit non ipsi legatario, sed quem titius forte elegerit, titius autem vel noluerit eligere vel morte fuerit praeventus, et in hac specie dubitabatur apud veteres, quid statuendum sit, utrumne legatum expirat, an aliquid inducitur ei adiutorium, ut viri boni arbitratu procedat electio. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.43.3.1b: Imperator Justinianus

Censemus itaque, si intra annale tempus ille qui eligere iussus est hoc facere supersederit vel minime potuerit vel quandocumque decesserit, ipsi legatario videri esse datam electionem, ita tamen, ut non optimum ex servis vel aliis rebus quicquam eligat, sed mediae aestimationis, ne dum legatarium satis esse fovendum existimamus, heredis commoda defraudentur. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.43.3.2: Imperator Justinianus

Sed quia nostra maiestas per multos casus legatariis et fideicommissariis prospexit et actiones tam personales quam in rem et hypothecarias dedimus et in rem missionis tenebrosissimus error abolitus est, et ad hanc legem pervenimus. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.43.3.2a: Imperator Justinianus

Nemo itaque ea, quae per legatum vel pure vel sub certo die relicta sunt vel quae restitui aliis disposita sunt vel substitutione posita, secundum veterem dispositionem putet esse in posterum alienanda vel pignoris vel hypothecae titulo adsignanda vel mancipia manumittenda, sed sciat, quod hoc quod alienum est non ei liceat utpote sui patrimonii existens alieno iuri applicare, quia satis absurdum est et inrationabile rem, quam in suis bonis pure non possidet, eam ad alios posse transferre vel hypothecae pignorisve nomine obligare vel manumittere et alienam spem decipere. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.43.3.3: Imperator Justinianus

Sin autem sub condicione vel sub incerta die fuerit relictum legatum vel fideicommissum universitatis vel speciale vel substitutione vel restitutione, melius quidem faciat, et si in his casibus caveat ab omni venditione vel hypotheca, ne se gravioribus oneribus evictionis nomine supponat. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.43.3.3a: Imperator Justinianus

Sin autem avaritiae cupidine propter spem condicionis minime implendae ad venditionem vel hypothecam prosiluerit, sciat, quod condicione impleta ab initio causa in irritum devocetur et sic intellegenda est, quasi nec scripta nec penitus fuerat celebrata, ut nec usucapio nec longi temporis praescriptio contra legatarium vel fideicommissarium procedat. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.43.3.3b: Imperator Justinianus

Quod similiter censemus in huiusmodi legatis, quae sive pure sive sub die certo sive sub condicione sive sub incerta die relicta sint: sed in his omnibus casibus legatario quidem vel fideicommissario omnis licentia pateat rem vindicare et sibi adsignare, nullo obstaculo ei a detentatoribus opponendo. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.43.3.4: Imperator Justinianus

Emptor autem sciens rei gravamen adversus venditorem actionem habeat tantummodo ad restitutionem pretii, neque dupli stipulatione neque melioratione locum habente, cum sufficiat ei saltem pro pretio, quod sciens dedit pro aliena re, sibi satisfieri: creditori nihilo minus pigneraticia contraria actione adversus debitorem competente, ut ex omni parte omnique studio id, quod semper properamus, ad effectum perducatur, ut ultima elogia defunctorum legitimum finem sortiantur : bonae fidei procul dubio emptoribus integra iura et nullo modo ex hac constitutione deminuta contra venditores habentibus. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.44.0. De falsa causa adiecta legato vel fideicommisso.

CJ.6.44.1: Imperator Antoninus

Verba testamenti, quae inseruisti, aut solutam pecuniam debitam testatori declarant aut voluntatem eius liberare volentis debitorem manifeste ostendunt. et ideo aut peti quod solutum est non potest aut ex causa fideicommissi, ut debitor liberaretur, agendum est, nisi liquido probari possit eum non liberari debitorem voluisse, sed errore lapsum solutam sibi pecuniam existimasse. * ant. a septimio. * <a 213 pp.Vii k.Mart.Antonino a.Iiii et balbino conss.>

CJ.6.44.2: Imperator Alexander Severus

Etiam si veritas debiti non subest, falsa demonstratio non perimit legatum et ex testamento eius quoque nomine competit actio. * alex. a. faustinae. * <a 222 pp.Vii id.Nov.Alexandro a. cons.>

CJ.6.44.3pr.: Imperator Alexander Severus

Si non designata certa quantitate dotem tibi legavit maritus, sed quodcumque ad eum dotis nomine pervenisset perventurumve esset, et id ex testamento petis, necessaria probatio est numeratae pecuniae. * alex. a. verinae. * <a 223 pp.Non.Mai.Maximo ii et aeliano conss.>

CJ.6.44.3.1: Imperator Alexander Severus

Quod si quantitatem expressit, debetur et si in dotem datum non est, quasi aliud legatum, non eo iure, quo dos fungitur. <a 223 pp.Non.Mai.Maximo ii et aeliano conss.>

CJ.6.44.4: Imperator Gordianus

Si dotem, ut proponis, defuncta in matrimonio uxore tua patri eius reddidisti, vel etiam ea non reddita testamenti verbis, ut adseveras, munitus es, quibus recepisse dotem universam quondam socer tuus significavit, ne hoc nomine conveniaris, sollicite agere non debes, cum aut soluta dote nulla supersit actio aut non reddita adversus petentem iuxta defuncti voluntatem parata sit exceptio. * gord. a. alexandro. * <a 240 pp.Xv k.Iun.Sabino ii et venusto conss.>

CJ.6.44.5: Imperatores Diocletianus, Maximianus

Refert largiter, dotem reddi maritus tibi, an quae instrumento dotali conscripta sunt, legati seu precariis verbis statuit, quippe superiore quidem casu datum probanti repeti tantum, posteriore vero nihil nocente falsa demonstratione significatum instrumento postulari possit. * diocl. et maxim. aa. et cc. severae. * <a 294 s.Xiiii k.Dec.Cc.Conss.>

CJ.6.45.0. De his quae sub modo legata vel fideicommissa relinquuntur.

CJ.6.45.1: Imperator Antoninus

In legatis quidem et fideicommissis etiam modus adscriptus pro condicione observatur. sed si per te non stat, quominus voluntati testatoris pareas, sed per eum , cui nubere iussa es, quominus id quod tibi relictum est retineas, non oberit. * ant. a. saturninae. * <a 211 pp.V k.Ian.Gentiano et basso conss.>

CJ.6.45.2pr.: Imperator Gordianus

Ex his verbis: " titio decem millia vel insulam relinquo, ita ut quinque millia ex his vel eandem insulam mevio restituat", licet antea neque legati neque fideicommissi petitio nascebatur, tamen in libertate a divo severo hoc admissum est. * gord. a. ammonio. * <a 240 pp. vi id. aug. sabino ii et venusto conss.>

CJ.6.45.2.1: Imperator Gordianus

Sed in pecuniariis causis voluntatis tuendae gratia non immerito recipiendum est , ut etiam ex huiusmodi verbis, sive ad condicionem sive ad modum respiciunt, sive ad dandum vel faciendum aliquid, fideicommissi actio omnifariam nascatur, videlicet in condicionibus post exitum earum. <a 240 pp. vi id. aug. sabino ii et venusto conss.>

CJ.6.45.2.2: Imperator Gordianus

Sin vero legato aut fideicommisso relicto testator legatarium seu fideicommissarium prohibuerit heredem suum vel alium quendam debitum exigere, habet debitor adversus legatarium seu fideicommissarium agentem usque ad quantitatem relicti fideicommissi sive legati exceptionem. <a 240 pp. vi id. aug. sabino ii et venusto conss.>

CJ.6.46.0. De condicionibus insertis tam legatis quam fideicommissis et libertatibus.

CJ.6.46.1: Imperatores Severus, Antoninus

Cum testatorem fideicommissum trallianis ab eo, quem pro parte heredem instituerat, ita reliquisse proponas, si sine liberis institutus diem obisset, isque nepotem, quem ex filia susceperat, heredem instituerat, condicionem adscriptam fideicommisso defecisse manifestum est, nisi alia defuncti voluntas evidenter probabitur. * sev. et ant. aa. claudiae. * <a 197 pp. non. dec. laterano et rufino conss.>

CJ.6.46.2pr.: Imperatores Severus, Antoninus

Cum patrem familias fideicommissi nomine, quod in diem certam reliquit, ita cavere praecepisse proponas, si a marito non divertisset, iurisdictionis originem perinde servari aequum est, ac si nihil super ea re scriptum fuisset. * sev. et ant. aa. gallicano. * <a 205 pp. antiochiae xi k. aug. antonino a. ii et geta ii conss.>

CJ.6.46.2.1: Imperatores Severus, Antoninus

Nec exemplum legati vel hereditatis, in quibus condicio divortii nonnumquam remitti solet, huic rei comparandum est, cum absurdum sit ideo perpetui edicti neglegi formam, quia patris sui voluntati non obtemperatur. <a 205 pp. antiochiae xi k. aug. antonino a. ii et geta ii conss.>

CJ.6.46.3: Imperator Antoninus

Si ea condicione auluzanus legata testamento praestari voluit, si cum focaria sua matreque eius moraretur, et per eum stetit, quominus voluntati testatoris pareret, cum sponte scripturae testamenti non obtemperaverit, ad petitionem non admittitur. * ant. a. aurelio mil. * <a 215 pp. vi id. iul. laeto ii et cereale conss.>

CJ.6.46.4: Imperator Alexander Severus

Legatum sive fideicommissum a patruo tuo relictum tibi sub condicione, si filio eius nupsisses, cum mortuo filio, priusquam matrimonium cum eo contraheres, condicio defecerit, nulla ratione tibi deberi existimas. * alex. a. liciniae. * <a 226 pp. k. dec. alexandro a. et Marcello conss.>

CJ.6.46.5pr.: Imperatores Diocletianus, Maximianus

Si uxorem tuam tempore nuptiarum in patria potestate fuisse monstretur, fideicommissi commodum ei relicti, cum nupserit, nullo alio diem eius cedere prohibente patri quaesitum non ambigitur. * diocl. et maxim. aa. et cc. faustino. * <a 294 s. vi k. febr. sirmi cc. conss.>

CJ.6.46.5.1: Imperatores Diocletianus, Maximianus

Quod si a patre ante nuptias emancipata fuerit ac postea decesserit, superstite patre et marito ac liberis actionem fideicommissi sibi competentem ad heredes suos transmisit. <a 294 s. vi k. febr. sirmi cc. conss.>

CJ.6.46.6pr.: Imperator Justinianus

Cum quidam testamento condito libertatem suo servo dereliquit sub condicione, si suo heredi certum numerum solidorum praestet vel aliam quandam speciem vel vicarium servum, ille autem servus non in eodem loco constitutus, ubi etiam heres fuerat, herili testamento cognito properabat ad heredem cum ipso, quod iussus erat dare heredi, sed in medio latronum vel hostium incursione peremptum est quod portabat: quaerebatur inter antiquos, si praepeditur libertas, quia hoc dare servus non potest propter memoratum fortuitum casum. * iust. a. iohanni pp. * <a 532 d. prid. k. mai. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.6.46.6.1: Imperator Justinianus

Itaque veterum dubietate quiescente nobis placuit, ut et libertas omnimodo competat et commodum, quod heredi vel extraneo relinquitur, non abstrahatur. <a 532 d. prid. k. mai. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.6.46.6.2: Imperator Justinianus

Ex quacumque igitur causa impediatur, sive per heredem sive per eum, cui dare aliquid iussus est, sive per fortuitos casus, in libertatem quidem ipse omnimodo perveniat, nisi ipse servus noluit adimplere condicionem: obnoxius tamen constituatur post libertatem heredi vel ei cui dare iussus est, nisi et ipse oblatas pecunias non suscepit (quod enim semel repudiatum est ab eo, redintegrari minime concedimus), quatenus hoc quod dare iussus est omnimodo adimplere compellatur vel in ipso mancipio, si extat, vel in aestimatione eius non amplius quam in quindecim solidos imputanda, vel in alia re, si et ipsa appareat, vel si non existat, vera eius aestimatione praestanda. <a 532 d. prid. k. mai. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.6.46.7pr.: Imperator Justinianus

Si plures personae unam condicionem implere fuerint iussae, apud ulpianum dubitabatur, utrumne omnes simul eandem facere debent, an singuli quasi soli implere eam compelluntur. * iust. a. iohanni pp. * <a 531 d. iii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.46.7.1: Imperator Justinianus

Videtur autem nobis unumquemque necessitatem habere condicionem implere et pro portione sibi contingente accipere, quidquid ex hoc commodum est, ut hi quidem, qui compleverint iussa, ad lucrum vocentur, qui autem neglexerint, sibi imputent , si ab huiusmodi commodo repellentur. <a 531 d. iii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.47.0. De usuris et fructibus legatorum vel fideicommissorum.

CJ.6.47.1: Imperatores Severus, Antoninus

Legatorum seu fideicommissorum usuras ex eo tempore, quo lis contestata est, exigi posse manifestum est. sed et fructus rerum et mercedes servorum, qui ex testamento debentur, similiter praestari solent. * sev. et ant. aa. maximo. * <a 199 proposita prid. k. aug. anullino et frontone conss.>

CJ.6.47.2pr.: Imperator Antoninus

Adversus eos, qui sub obtentu legis falcidiae legata morantur, notissimum est iuris auxilium. * ant. a. libertis cassiani. * <a 212 pp. xvi k. iun. duobus aspris conss.>

CJ.6.47.2.1: Imperator Antoninus

Si igitur proposita stipulatione cavere cum satisdatione potestis vos restituturos, quanto amplius quam per eam legem licet acceperitis, iudex qui fideicommissis ius dicit solida vobis legata praestari iubebit. <a 212 pp. xvi k. iun. duobus aspris conss.>

CJ.6.47.2.2: Imperator Antoninus

Quod si satisdationem implere non poteritis, arbitro dato diem vobis praefiniet, intra quem altera parte cessante partibus suis fungetur. et si constiterit legi falcidiae locum non esse, et usuras et fructus post litem contestatam percipietis. <a 212 pp. xvi k. iun. duobus aspris conss.>

CJ.6.47.3: Imperator Alexander Severus

Si homines certi per fideicommissum tibi relicti fuerunt, post moram periculo debitoris fideicommissi fuerunt. * alex. a. paterno. * <a 224 proposita xii k. april. iuliano et crispino conss.>

CJ.6.47.4: Imperator Gordianus

In legatis et fideicommissis fructus post litis contestationem, non ex die mortis sequuntur, sive in rem sive in personam agatur. * gord. a. dionysio. * <a 239 pp. non. sept. gordiano a. et aviola conss.>

CJ.6.49.0. Ad senatus consultum trebellianum.

CJ.6.49.1: Imperatores Severus, Antoninus

Si ex senatus consulto partem quartam hereditatis retinuisti et dodrantem fideicommissi restituisti, quod creditoribus hereditariis pro novem unciis praestiteris, a fideicommissario petere potes. * sev. et ant. aa. probo. * <a 197 pp. xv k. april. laterano et rufino conss.>

CJ.6.49.2: Imperator Philippus

Ad eum, cui ex trebelliano senatus consulto pars hereditatis restituitur, successionis onera seu legatorum praestationem pro competenti portione spectare indubitati iuris est. * philipp. a. et philipp. c. iuliano. * <a 244 pp. xviii k. nov. peregrino et aemiliano conss.>

CJ.6.49.3: Imperatores carus, carinus, numer.

Si per fideicommissum hereditas rei publicae relicta est, ex trebelliano senatus consulto, quod ab intestato quoque locum habet, quartae partis et fructus eius vobis restitutio competit. * carus carinus et numer. aaa. zotico. * < sine die et consule.>

CJ.6.49.4: Imperatores Diocletianus, Maximianus

Non iustam te gerere sollicitudinem per fideicommissum relictae portionis hereditatis perspicimus verentem, ne fructum amittas relicti fideicommissi, quoniam avia testatoris ex parte scripta heres et tibi rogata restituere calliditate ac fraude repudiavit, ut ad alium nepotem eundemque coheredem devolvatur portio, a quo tibi nominatim non fuerat fideicommissum relictum, et coacta suspectam hereditatem adire, priusquam pro herede gereret, rebus sit humanis exempta: cum divo antonino parenti nostro deberi etiam a substitutis fideicommissum contemplatione iudicii testatoris quasi tacite ab his repetitum iam dudum placuerit. neque enim quartae retentionem, quam illa quae repudiaverit hereditatem, adire coacta suspectam retinere non potuit, timere debes. * diocl. et maxim. aa.Et cc. quint iano. * <a 293 s.Vi id.Iul philippopoli aa. conss. >

CJ.6.49.5pr.: Imperatores Diocletianus, Maximianus

Et sine scriptura per fideicommissum hereditas recte relinquitur. * diocl. et maxim. aa. et cc. ver. * <a 294 s.V k.Mai.Sirmi cc. conss.>

CJ.6.49.5.1: Imperatores Diocletianus, Maximianus

Igitur si te uxor tua et privignum suum in discrimine mortis constituta designavit velle successionem obtinere, usque ad dodrantem eius voluntatem ratam servari convenit, cum intestato ei succedentes de restituendo fideicommisso conventos ultra quartam (aere alieno deducto), quam penes eos sententia senatus consulti relinqui praecepit, tantum obtinere posse praestiterit. <a 294 s.V k.Mai.Sirmi cc. conss.>

CJ.6.49.6pr.: Imperator Zeno

Iubemus, quotiens pater vel mater, filio seu filiis, filia seu filiabus ex aequis partibus vel inaequis heredibus institutis, invicem seu simpliciter quosdam ex his aut quendam rogaverit, qui prior sine liberis decesserit, portionem hereditatis suae superstiti seu superstitibus restituere, ut modis omnibus retenta quarta pro auctoritate trebelliano senatus consulti, non per imputationem redituum, licet hoc testator rogaverit vel iusserit, sed in ipsis rebus hereditariis, dodrans restituatur. * zeno a. dioscure pp. * <a 489 pp.K.Sept.Constantinopoli eusebio cons.>

CJ.6.49.6.1: Imperator Zeno

Idemque in retinenda legis flacidiae portione obtinere iubemus, et si pater vel mater filio seu filia institutis (sicut supra dictum est) heredibus rogaverit eos easve nepotibus vel neptibus, pronepotibus vel proneptibus suis ac deinceps restituere hereditatem. <a 489 pp.K.Sept.Constantinopoli eusebio cons.>

CJ.6.49.6.1a: Imperator Zeno

In supra dictis autem casibus fideicommissorum servandorum satisdationem cessare iubemus, si non specialiter eandem satisdationem testator exigi disposuerit et cum pater vel mater secundis existimant nuptiis non abstinendum: in his etenim duobus casibus, id est cum testator specialiter satisdari voluerit vel cum secundis se pater vel mater matrimoniis iunxerint, necesse est, ut eadem satisdatio pro legum ordine praebeatur. <a 489 pp.K.Sept.Constantinopoli eusebio cons.>

CJ.6.49.6.2: Imperator Zeno

Sin autem is, qui fideicommissaria restitutione gravatus est, uno filio superstite vel nepote ex filio seu ex filia nato, vel pronepote vel postumo relicto decesserit, non videtur extitisse condicio et ideo deficit fideicommissi petitio. <a 489 pp.K.Sept.Constantinopoli eusebio cons.>

CJ.6.49.6.3: Imperator Zeno

Illud etiam admonemus ea, quae de falcidiae portione non per reditus, sed per ipsas res hereditarias retinenda et de satisdatione fideicommissorum (sicut supra dictum est) concedenda diximus, non ulterius quam in his personis et casibus, quorum superius mentio facta est, oportere produci. <a 489 pp.K.Sept.Constantinopoli eusebio cons.>

CJ.6.49.7pr.: Imperator Justinianus

Sancimus licentiam esse etiam soli tutori recte fieri fideicommissi nomine universitatis restitutionem, quod pupillo relictum est, et sine onere fideiussionis, ubi tamen pupillus fari non possit vel abesse noscitur, ne, dum nimia subtilitate circa res utimur pupillares, ipsa subtilitas ad perniciem eorum revertatur. * iust. a. iohanni pp. * <a 530 d.X k.Nov.Constantinopoli lampadio et oreste vv.Cc.Conss.>

CJ.6.49.7.1: Imperator Justinianus

Idemque iuris esse oportet, et si furioso fideicommissaria debeatur hereditas, ut restitutio curatori eius soli, nomine scilicet furiosi, celebretur. quis enim sensus, quae vox certa furioso esse intellegitur, cum in utroque casu restituentes plenissimam consequantur ex nostra lege securitatem? <a 530 d.X k.Nov.Constantinopoli lampadio et oreste vv.Cc.Conss.>

CJ.6.49.7.1a: Imperator Justinianus

Hoc eodem observando, et si ipsi pupilli vel furiosi restitutione gravati sunt. <a 530 d.X k.Nov.Constantinopoli lampadio et oreste vv.Cc.Conss.>

CJ.6.49.7.1b: Imperator Justinianus

Cum autem aliquis hereditatem restituere iussus est et dolo malo vel post litem contestatam vel antea sese contumaciter celaverit, vel si suppositus fideicommissariae restitutioni, antequam restitueret hereditatem, ab hac luce subtractus est nullo herede vel successore existente, vel si fideicommissarius, cui restituta est ex trebelliano hereditas, alii per fideicommissum restituere iussus fuerit res hereditarias: quemadmodum actionum translatio celebretur in tribus istis casibus, apud veteres dubitabatur: et domitius ulpianus constituendum esse super his putavit. <a 530 d.X k.Nov.Constantinopoli lampadio et oreste vv.Cc.Conss.>

CJ.6.49.7.1c: Imperator Justinianus

Sancimus itaque, ut, sive per contumaciam afuerit is, cui restitutio imposita est, sive morte praeventus nullo relicto successore fuerit, sive a primo fideicommissario in secundum translatio celebrari iussa est, ipso iure utiles actiones transferantur. <a 530 d.X k.Nov.Constantinopoli lampadio et oreste vv.Cc.Conss.>

CJ.6.49.8pr.: Imperator Justinianus

Quidam testamento condito iussit heredem omnem hereditatem quam ei dereliquit alii restituere, speciale autem fideicommissum alteri adscripsit. et quaerebatur, specialis fideicommissarius id quod ei derelictum est a quo consequi debeat, utrumne ab herede, ut post retentionem eius alias res universitatis fideicommissarius accipiat, an una cum aliis rebus oporteat et hoc generali fideicommissario adgregari, ut ipse speciali fideicommissario hoc tradat, sive in rebus sive in pecuniis sit fideicommissum. * iust. a. iohanni pp. * <a 532 d.Xv k.Nov.Constant inopoli post consulatum lampadii et orestis vv.Cc.Anno secundo.>

CJ.6.49.8.1: Imperator Justinianus

Sancimus itaque totam quidem substantiam secundum senatus consulti trebelliani auctoritatem restitui generali fideicommissario, illum autem speciali fideicommissario id quod ei derelictum est dependere. <a 532 d.Xv k.Nov.Constantinopoli post consulatum lampadii et orestis vv.Cc.Anno secundo.>

CJ.6.50.0. Ad legem falcidiam.

CJ.6.50.1: Imperatores Severus, Antoninus

Scire debes omissa falcidia, quo pleniorem fidem portionis restituendae exhiberes, non videri plus debito solutum esse. * sev. et ant. aa. prisco. * <a 197 pp.Iii id.Mai.Laterano et rufino conss.>

CJ.6.50.2: Imperatores Severus, Antoninus

Falcidiae rationem adversus omnes pro modo legatorum et fideicommissorum locum habere certi et explorati iuris est. * sev. et ant. aa sanctiano. * <a 197 pp.K.Iul.Laterano et rufino conss.>

CJ.6.50.3: Imperator Alexander Severus

Etiamsi tacitum fideicommissum heredem administrasse apparuerit, legata tamen seu fideicommissa, quae testamento relicta sunt, praestanda esse ambigi non oportet, ad eum videlicet modum, quem lex falcidia patiatur, cum quartam, quae aufertur heredi, qui contra legem fidem suam obtulit, legatariis proficere non placuit. * alex. a. hermagorae. * <a 222 pp.Id.Oct.Alexandro a. cons.>

CJ.6.50.4: Imperator Alexander Severus

Et in legatis principi datis legem falcidiam locum habere merito divo hadriano placuit. * alex. a. philetiano. * <a 222 pp.V k.Ian.Alexandro a.Cons.>

CJ.6.50.5: Imperator Alexander Severus

Si mortis causa immodicas donationes in sororem tuam matrem contulisse probare potes, legis falcidiae ratione secundum constitutionem divi severi avi mei uti potes. * alex. a. samosatae. * <a 223 pp.Xv k.Nov.Maximo ii et aeliano conss.>

CJ.6.50.6pr.: Imperator Alexander Severus

In ponenda ratione legis falcidiae omne aes alienum deducitur, etiam quod ipsi heredi mortis tempore debitum fuerit, quamvis aditione hereditatis confusae sint actiones. * alex. a. secundinae. * <a223 s.V k.Ian.Maximo ii et aeliano conss.>

CJ.6.50.6.1: Imperator Alexander Severus

Omnia autem legata, quamvis in operibus publicis conficiendis statuisque ponendis data sint, ad contributionem dodrantis pro rata suae cuiusque quantitatis revocantur. <a223 s.V k.Ian.Maximo ii et aeliano conss.>

CJ.6.50.6.2: Imperator Alexander Severus

Nec si quid ultro solidum heres praestiterit aut perfecerit, legitimae computationi praeiudicatur. <a223 s.V k.Ian.Maximo ii et aeliano conss.>

CJ.6.50.7: Imperator Alexander Severus

In testamento quidem militis ius legis falcidiae cessat. sed ea, quae ad vos pertinentia defunctus tenuit, bonorum eius videri minime possunt et ideo recte rationem eorum ut aeris alieni haberi desiderabitis. * alex. a. pomponio. * <a 226 pp.K.Mai.Alexandro ii et Marcello conss.>

CJ.6.50.8pr.: Imperator Alexander Severus

Irritum quidem propterea testamentum fratris tui esse non potest, quod ex causa fideicommissi obligatus fuit, ut, si sine liberis prior decederet, paternam tibi hereditatem redderet. * alex. a. aurelio. * <a 223 pp.Id.Sept.Maximo ii et paterno conss.>

CJ.6.50.8.1: Imperator Alexander Severus

Sed licet te heredem scripserit, in ponenda tamen legatorum ratione, quibus te oneratum esse suggeris, fideicommissum debitum aeris alieni loco deduci oportet insuperque in residuo legis falcidiae beneficium vindicabis. <a 223 pp.Id.Sept.Maximo ii et paterno conss.>

CJ.6.50.9: Imperator Gordianus

Error facti quartae ex causa fideicommissi non retentae repetitionem non impedit. is autem, qui sciens se posse retinere universum restituit, condictionem non habet: quin etiam, si ius ignoraverit, cessat repetitio. * gord. a. mestriano. * <a 238 pp.Xv k.Nov.Pio et pontiano conss.>

CJ.6.50.10: Imperator Gordianus

Quamquam pater tuus fratrem tuum rogaverit, ut, si sine liberis diem suum fungeretur, portionem hereditatis tibi restitueret, tamen intestato eodem diem suum functo id, quod beneficio legis falcidiae habere potuit, ad successorem intestati pertinere ideoque non immerito sororem tuam, quae simul tecum ab intestato ei successit, emolumenti quod retineri potuit portionem sibi vindicare manifestum est. * gord. a. diogenio. * <a 241 pp.V id.Nov.Gordiano a.Ii et pompeiano conss.>

CJ.6.50.11: Imperator Gordianus

Si, ut adlegas, pater tuus eam portionem , ex qua te fecit heredem, fratribus tuis restituere iussit certisque speciebus pro falcidia praecepit esse contentam, auxilium legis falcidiae, quod imploras, apud suum iudicem non prohiberis flagitare. * gord. a. maximae. * <a 243 pp.Vii k.Nov.Arriano et papo conss.>

CJ.6.50.12: Imperatores Diocletianus, Maximianus

In donationibus inter virum et uxorem factis legem falcidiam habere locum, quando fideicommissi partibus funguntur, nonnullis iuris placitis comprehensum est. * diocl. et maxim. aa. iustino. * <a 290 pp.Xvi k.Iul.Ipsis aa.Iiii et iii conss.>

CJ.6.50.13pr.: Imperatores Diocletianus, Maximianus

Si ea, cuius filium tuum servum significas, ex iudicio defuncti, quem dicis fideicommissariam libertatem ei reliquisse, aliquid consecuta est, ad restituendam fideicommissariam libertatem non immerito obnoxia constituta debet urgueri. * diocl. et maxim. aa. et cc. zetho. * <a 293 s.V k.Mai.Heracliae aa.Conss.>

CJ.6.50.13.1: Imperatores Diocletianus, Maximianus

Nam fideicommissum ei relictum usque ad eum modum potest petere, quod deducto pretio servorum, quos fuerat rogata manumittere, relictorum substantia patitur. <a 293 s.V k.Mai.Heracliae aa.Conss.>

CJ.6.50.14: Imperatores Diocletianus, Maximianus

Licet adieris patris hereditatem et confusione pro parte qua eidem successeris extinguatur actio, quam tibi competere eo, quod ex administratione tutelae multa eum debuisse contendis, pro residuis tamen partibus coheredes convenire non prohiberis et fundum a te relictum eatenus, quod deducta quarta residui substantia patitur, praestare necesse habes. * diocl. et maxim. aa. et cc. faustinae. * <a 293 d.Vi k.Oct.Viminacii aa.Conss.>

CJ.6.50.15: Imperatores Diocletianus, Maximianus

Si praediorum dotis apud te iure remanentis instrumenta verbis precariis vel testamento vel codicillis uxor tibi dari mandavit, eius iudicium successores implere compellentur, cum instrumentis praediorum domino relictis falcidiae nulla potest intervenire quaestio. * diocl. et maxim. aa. et cc. pomponio. * <a 294 supposita xvi k.Febr.Sirmi cc.Conss.>

CJ.6.50.16: Imperatores Diocletianus, Maximianus

Successores legata vel fideicommissa, si aes alienum hereditarium defuncti substantiae fines occupaverit, falcidiae legis iussio peti, item trebelliani senatus consulti praeceptum exigi non concedit. * diocl. et maxim. aa. et cc.Diomedi. * <a 294 s.Xvi k.Febr.Sirmi cc.Conss.>

CJ.6.50.17: Imperatores Diocletianus, Maximianus

A coheredibus relicta legata, quatenus modus lege falcidia praestitutus patitur, posse petere certissimi iuris est. * diocl. et maxim. aa. et cc. gaio. * <a 294 supposita v k.Nov.Anchiali cc. conss.>

CJ.6.50.18pr.: Imperator Justinianus

Si quis quadringentorum forte solidorum habens substantiam iusserit heredem non aliter adire hereditatem, nisi prius trecentos octuaginta solidos cuidam persolvat vel aliam quantitatem, quae diminuere falcidiae rationem potest, sancimus heredem, si adierit, legis falcidiae beneficio sustentatum repleri quidem quod ad falcidiam deest, et prius eo dato vel retento (sive una datio est, quae celebrari disposita fuerit, sive in multas dividitur personas) praefatae legis immutilatum habere beneficium. * iust. a. iohanni pp. * <a 531 d.K.Nov.Constantinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.6.50.18.1: Imperator Justinianus

Si enim, cum mortis causa donatio procedat et haec modum legis falcidiae excedat , heres post aditionem repetit eam pecuniam, quae ultra modum falcidiae corporaliter quidem data est, lege autem in patrimonio testatoris permansit, quare non in praesenti casu et viventibus et morientibus providemus, et eorum ultima elogia conservantes et commodum hereditarium non minuentes? <a 531 d.K.Nov.Constantinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.6.50.19: Imperator Justinianus

Cum certum sit heredem, qui plenam fidem testatori exhibet, in solidum legata dependentem non posse postea rationem legis praetendentem falcidiae repetitione uti, quia videtur voluntatem testatoris sequi, iubemus hoc simili modo firmum haberi, et si cautionem super integra legatorum solutione fecerit: quod veteribus legibus in ambiguitatem deductum est. in utroque etenim casu, id est sive solverit sive super hoc cautionem fecerit, aequitatis ratio similia suadere videtur. * iust. a. iohanni pp. * <a 532 d.Xv k.Nov.Constantinopoli post consulatum lampadii et orestis vv.Cc.Anno secundo.>

CJ.6.51.0. De caducis tollendis.

CJ.6.51.1pr.: Imperator Justinianus

Et nomen et materiam caducorum ex bellis ortam et auctam civilibus, quae in se populus romanus movebat, necessarium duximus, patres conscripti, in pacificis nostri imperii temporibus ab orbe romano recludere, ut, quod belli calamitas introduxit, hoc pacis lenitas sopiret. * iust. a. senatui urb. constantinopolit. et urb. romae. * <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.1: Imperator Justinianus

Et quemadmodum in multis capitulis lex papia ab anterioribus principibus emendata fuit et per desuetudinem abolita, ita et a nobis circa caducorum observationem invidiosum suum amittat vigorem, qui et ipsis prudentissimis viris displicuit , multas invenientibus vias, per quas caducum ne fieret. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.1a: Imperator Justinianus

Sed et ipsis testamentorum conditoribus sic gravissima caducorum observatio visa est, ut et substitutiones introducerent, ne fiant caduca et, si facta sint, apud certas personas recurrere disponerent, vias recludentes, quas lex papia posuit in caducis: quod et nos fieri concedimus. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.1b: Imperator Justinianus

Et cum lex papia ius antiquum, quod ante eam in omnibus simpliciter versabatur, suis machinationibus et angustiis circumcludens solis parentibus et liberis testatoris usque ad tertium gradum, si scripti fuerant heredes, suum imponere iugum erubuit antiquum intactum eis conservans, nos omnibus nostris subiectis sine differentia personarum concedimus. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.1c: Imperator Justinianus

Cum igitur materiam et exordium caducorum lex papia ab aditionibus, quae circa defunctorum hereditates procedebant, sumpsit et ideo non a morte testatoris, sed ab apertura tabularum dies cedere legatorum senatus consulta, quae circa legem papiam introducta sunt, concesserunt, ut, quod in medio deficiat, hoc caducum fiat, primum hoc corrigentes et antiquum statum revocantes sancimus omnes habere licentiam a morte testatoris adire hereditates similique modo legatorum vel fideicommissorum pure vel in diem relictorum diem a morte testatoris cedere. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.2: Imperator Justinianus

Et cum triplici modo ea, quae in ultimis elogiis relinquuntur, contingebat deficere, consentaneum est et tempora eorum et nomina manifeste exponere, ut, quod vel tollitur vel reformatur, non sit incognitum. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.2a: Imperator Justinianus

Ea enim vel his relinquebantur, qui in rerum natura tunc temporis, cum condebantur extrema elogia, non fuerant, forte hoc ignorantibus testatoribus, et ea pro non scripto esse leges existimabant: vel vivo testatore is, qui aliquid ex testamento habuit, post testamentum ab hac luce subtrahebatur, vel ipsum relictum expirabat, forte quadam condicione, sub qua relictum erat, deficiente, quod veteres appellabant in causa caduci: vel mortuo iam testatore hoc quod relictum est deficiebat, quod aperta voce caducum nuncupabatur. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.3: Imperator Justinianus

In primo itaque ordine, ubi pro non scriptis efficiebantur ea, quae personis iam ante testamentum mortuis testator donasset, statutum fuerat, ut ea omnia maneant apud eos, a quibus fuerant derelicta, nisi vacuatis vel substitutus suppositus vel coniunctus fuerat adgregatus: tunc enim non deficiebant, sed ad illos perveniebant: nullo gravamine nisi perraro in hoc pro non scripto superveniente. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.3a: Imperator Justinianus

Quod et nostra maiestas quasi antiquae benevolentiae consentaneum et naturali ratione subnixum intactum atque illibatum praecipit custodiri in omne aevum valiturum. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.4: Imperator Justinianus

Pro secundo vero ordine, in quo ea vertuntur, quae in causa caduci fieri contingebat, vetus ius corrigentes sancimus ea, quae ita evenerint, simili quidem modo manere apud eos, a quibus sunt derelicta, heredes forte vel legatarios vel alios, qui fideicommisso gravari possunt, nisi et in hunc casum vel substitutus vel coniunctus eos antecedat: sed omnes personas, quibus lucrum per hunc ordinem defertur, eas etiam gravamen quod ab initio fuerat complexum omnimodo sentire, sive in dando sit constitutum sive in quibusdam faciendis vel in modo vel condicionis implendae gratia vel alia quacumque via excogitatum. neque enim ferendus est is, qui lucrum quidem amplectitur, onus autem ei adnexum contemnit. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.5: Imperator Justinianus

In novissimo autem articulo, ubi proprie caduca fiebant, secundum quod praediximus, et clausis tabulis tam existere heredes quam posse adire, sive ex parte sint sive ex asse instituti, censemus et dies legatorum et fideicommissorum secundum quod praediximus a morte defuncti cedere: hereditatem etenim, nisi fuerit adita, transmitti nec veteres concedebant nec nos patimur, exceptis videlicet liberorum personis, de quibus theodosiana lex super huiusmodi causis inducta loquitur: his nihilo minus, quae super his, qui deliberantes ab hac luce migrant, a nobis constituta sunt, in suo robore mansuris. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.6: Imperator Justinianus

Libertatibus procul dubio et post praesentem sanctionem propter sui naturam, quae aditionem heredis expectat, ab adita hereditate una cum aliis, quae servis in testamento manumissis vel aliis legatis relicta sunt, competentibus. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.6a: Imperator Justinianus

Excepto etiam usu fructu, qui sui natura ad heredes legatarii transmitti non patitur et neque a morte testatoris neque ab adita hereditate, quantum ad transmissionem, dies eius cedit. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.6b: Imperator Justinianus

Sed haec quidem omnia in his observari sancimus secundum praefatam dispositionem , quae pure vel in diem certum relicta fuerint. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.7: Imperator Justinianus

Sin autem aliquid sub condicione relinquatur vel casuali vel potestativa vel mixta, quarum eventus ex fortuna vel ex honoratae personae voluntate vel ex utroque pendeat, vel sub incerta die, expectare oportet condicionis eventum, sub qua fuerit derelictum, vel diem, ut tunc cedat, cum vel condicio impleatur vel dies incertus extiterit. quod si in medio is, qui ex testamento lucrum sortitus est, decedat vel eo superstite condicio defecerit, hoc, quod ideo non praevaluit, manere disponimus simili modo apud eos, a quibus relictum est, nisi et hic vel substitutus relictum accipiat vel coniunctus sive heres sive legatarius hoc sibi adquirat, cum certi iuris sit et in institutionibus et legatis et fideicommissis et mortis causa donationibus posse substitui. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.8: Imperator Justinianus

Sed ut manifestetur, pro qua parte manere oportet hoc, quod fuerit defectum, apud eos, ex quibus sit derelictum, sancimus, si quidem ad heredes lucrum perveniat, pro parte hereditaria fieri eius distributionem, cum et ab ipsis simili modo , si valuisset, praestaretur, nisi nominatim ab uno vel ex certis heredibus fuerat relictum: tunc enim, quemadmodum solus vel soli praestabant, ita et lucrum sentiant. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.8a: Imperator Justinianus

Sin autem legatarii vel fideicommissarii sint vel mortis causa donatione honorati vel alia forte persona, quae fideicommisso praegravari potest, et hoc evanescat, manere hoc apud enumeratas personas sancimus pro virili omnimodo portione, id est pro numero personarum. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.9: Imperator Justinianus

Ne autem hoc, quod non ineleganter summi ingenii vir ulpianus in hac parte cum omni subtilitate disposuit, praetereatur, nostra sanctione hoc apertius inducimus. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.9a: Imperator Justinianus

Cum enim iam statuimus haec cum suis oneribus ad eum qui lucretur pervenire, sancimus, si quidem condicio vel aliud gravamen in dando sit constitutum, hoc omnimodo lucrantes pro modo lucri agnoscere. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.9b: Imperator Justinianus

Sin autem in faciendo aliquid impositum est, si quidem hoc et per alium impleri possit, simili modo et a lucrante agnosci, puta si honorata persona iubeatur insulam vel monumentum vel aliud tale suis sumptibus facere vel heredi vel legatario vel alii forte, quem testator voluerit, vel rem ab herede testatoris emere vel locationem vel fideiussionem subire, et si quid huiusmodi facti simile sit: nihil etenim refert, sive per eum, de quo testator locutus est, sive per alium eiusdem lucri successorem adimpleatur. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.9c: Imperator Justinianus

Sin vero talis est verborum conceptio et facti natura, ut quod relictum est ab alio adimpleri non possit, tunc, etsi lucrum ad aliquem pervenerit, non tamen et gravamen sequi, quia hoc neque ipsa natura concedit neque testator voluerit. quid enim, si iusserit eum in locum certum abire vel liberalibus studiis imbui vel domum suis manibus extruere vel pingere vel uxorem ducere? quae omnia testatoris voluntas in ipsius solius persona intellegitur conclusisse, cui et suam munificentiam relinquebat. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.9d: Imperator Justinianus

In omnibus videlicet hoc obtinente, ut pro simili parte et lucrum sentiant et gravamen, ubi hoc possit procedere, subeant. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.9e: Imperator Justinianus

Et hoc locum habere omni quidem modo in his, quae in causa caduci vel caduca secundum quod supra dictum est fiebant: in pro non scriptis autem non omnibus, sed quibusdam, quia eorum quaedam, etsi talia sunt, tamen cum suo onere veniebant, quae et nos in novi iuris compositione specialiter enumerari iussimus, ne quis veteris iuris prolixitatem quasi rebus necessariam vel pro eorum revolvat scientia. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.10: Imperator Justinianus

His ita definitis, cum in superiore parte nostrae sanctionis in plurimis locis coniuncti fecimus mentionem, necessarium esse duximus omnem inspectionem huiusmodi articuli latius et cum subtiliore tractatu dirimere, ut sit omnibus et hoc apertissime constitutum. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.10a: Imperator Justinianus

Non enim tantum coniunctivo modo quaedam relinquuntur, sed etiam disiunctivo. in his itaque, si quidem coheredes sunt omnes coniunctim vel omnes disiunctim et vel instituti vel substituti, hoc, quod fuerit quoquo modo vacuatum, si in parte hereditatis vel partibus consistat, aliis coheredibus cum suo gravamine pro hereditaria parte, etiamsi iam defuncti sunt, adquiratur. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.10b: Imperator Justinianus

Et hoc et nolentibus ipso iure adcrescat, si suas portiones iam agnoverint, cum sit absurdum eiusdem hereditatis partem quidem agnoscere, partem vero respuere, secundum quod et in divinis nostri numinis decisionibus statutum est. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.10c: Imperator Justinianus

Sin vero quidam ex heredibus institutis vel substitutis permixti sunt et alii coniunctim alii disiunctim nuncupati sunt, si quidem ex coniunctis aliquis deficiat, hoc omnimodo ad solos coniunctos cum suo veniat onere, id est pro parte hereditatis, quae ad eos pervenit. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.10d: Imperator Justinianus

Sin autem ex his, qui disiunctim scripti sunt, aliquis evanescat, hoc non ad solos disiunctos, sed ad omnes tam coniunctos quam disiunctos similiter cum suo onere pro portione hereditatis perveniat. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.10e: Imperator Justinianus

Haec ita tam varie, quia coniuncti quidem propter unitatem sermonis quasi in unum corpus redacti sunt et partem coniunctorum sibi heredum quasi suam praeoccupant, disiuncti vero ab ipso testatoris sermone apertissime sunt discreti et suum quidem habent, alienum autem non soli appetunt, sed cum oneribus suis coheredibus accipiunt. et haec in heredibus tantummodo statuenda sunt. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.11: Imperator Justinianus

Ubi autem legatarii vel fideicommissarii duo forte vel plures sunt, quibus aliquid relictum sit, si quidem coniunctim hoc relinquatur et omnes veniant ad legatum, pro sua portione quisque hoc habeat. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.11a: Imperator Justinianus

Sin vero pars quaedam ex his deficiat, eam omnibus, si habere maluerint, pro virili portione cum omni suo onere adcrescere vel, si omnes noluerint, tunc apud eos remanere, a quibus derelictum est: cum vero quidam voluerint, quidam noluerint, volentibus solummodo id totum accedere. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.11b: Imperator Justinianus

Sin autem disiunctim fuerit relictum, si quidem omnes hoc accipere et potuerint et maluerint, suam quisque partem pro virili portione accipiat et non sibi blandiantur, ut unus quidem rem, alii autem singuli solidam eius rei aestimationem accipere desiderent, cum huiusmodi legatariorum avaritiam antiquitas varia mente suscepit, in uno tantummodo genere legati eam accipiens, in aliis respuendam esse existimans, nos autem omnimodo repellimus, unam omnibus naturam legatis et fideicommissis imponentes et antiquam dissonantiam in unam trahentes concordiam. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.11c: Imperator Justinianus

Haec autem ita fieri sancimus, nisi testator apertissime et expressim disposuerit, ut uni quidem res solida, aliis autem aestimatio rei singulis in solidum praestetur. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.11d: Imperator Justinianus

Sin vero non omnes legatarii, quibus separatim res relicta sit, in eius adquisitionem concurrant, sed unus forte eam accipiat, haec solida eius sit, quia sermo testatoris omnibus prima facie solidum adsignare videtur, aliis supervenientibus partem a priore abstrahentibus, ut ex aliorum quidem concursu prioris legatum minuatur, sin vero nemo alius veniat vel venire potuerit, tunc non vacuatur pars quae defecit nec alii adcrescit, ut eius qui primus accepit legatum augere videatur, sed apud ipsum qui habet solida res maneat nullius concursu deminuta. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.11e: Imperator Justinianus

Et ideo si onus fuerit in personam eius, apud quem remanet legatum, adscriptum, hoc omnimodo adimpleat, ut voluntati testatoris pareatur. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.11f: Imperator Justinianus

Sin autem ad deficientis personam onus fuerit collatum, hoc non sentiat is, qui non alienum, sed suum legatum imminutum habet. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.11g: Imperator Justinianus

Et varietatis non in occulto sit ratio, cum ideo videtur testator disiunctim haec reliquisse, ut unusquisque suum onus, non alienum agnoscat. nam si contrarium volebat, nulla erat difficultas coniunctim ea disponere. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.12: Imperator Justinianus

Quae autem antiquis legibus dicta sunt de his quae ut indignis auferuntur, et nos simili modo intacta servamus, sive in nostrum fiscum sive in alias personas perveniant. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.13: Imperator Justinianus

Cum autem in superiore parte legis non aditam hereditatem minime quibusdam personis ad heredes transmitti disposuimus, necesse est, si quis solidam hereditatem non adierit, hanc, si quidem habeat substitutum, ad eum, si voluerit et potuerit, pervenire. quod si hoc non sit, vel ab intestato successores eam accipiant vel, si nulli sint vel accipere nolunt vel aliquo modo non capiant, tunc ad nostrum aerarium devolvatur. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.14: Imperator Justinianus

Haec autem omnia locum habere censemus tam in testamentis sive scriptis sive sine scriptis habitis quam in codicillis et omni ultimo elogio vel si quid ab intestato fuerit derelictum nec non in mortis causa donationibus. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.14a: Imperator Justinianus

Tantum etenim nobis superest clementiae, quod scientes etiam fiscum nostrum ultimum ad caducorum vindicationem vocari, tamen nec illi pepercimus nec augustum privilegium exercemus, sed quod communiter omnibus prodest, hoc rei privatae nostrae utilitati praeferendum esse censemus, nostrum esse proprium subiectorum commodum imperialiter existimantes. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.15: Imperator Justinianus

Locum autem huic legi constituimus in his defunctorum elogiis, quae posthac composita fuerint: anteriores etenim casus suo marte discurrere concedimus. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.51.1.16: Imperator Justinianus

Haec omnia ad vos, patres conscripti, duximus esse sancienda, ut nemini maneat incognitus nostrae benivolentiae labor, sed edictis ex sollemnitate a nostris magistratibus propositis omnibus innotescat. <a 534 d.K.Iun.Constantinopoli dn.Iustiniano pp.A.Iiii et paulino vc.Conss.>

CJ.6.52.0. De his qui ante apertas tabulas hereditates transmittunt.

CJ.6.52.1: Imperatores Theodosius, Valentinianus

Per hanc iubemus sanctionem in posterum filios seu filias, nepotes aut neptes, pronepotes aut proneptes a patre vel a matre, avo vel avia, proavo vel proavia scriptos heredes, licet non sint invicem substituti, seu cum extraneis seu soli sint instituti et ante apertas tabulas defuncti, sive se noverint scriptos heredes sive ignoraverint, in liberos suos, cuiuscumque sint sexus vel gradus, derelictam sibi hereditariam portionem posse transmittere memoratasque personas, si tamen hereditatem non recusant, nulla huiusmodi praescriptione obstante sibi tamquam debitam vindicare: quod scilicet etiam super legatis seu fideicommissis a patre vel matre, avo vel avia, proavo vel proavia derelictis locum habet: si quidem perindignum est fortuitas ob causas vel casus humanos nepotes aut neptes, pronepotes aut proneptes avita vel proavita successione fraudari aliosque adversus avitum vel proavitum desiderium vel institutum insperato legati commodo vel hereditatis gaudere. habeant vero solacium tristitiae suae, quibus est merito consulendum. * theodos. et valentin. aa. hormisdae pp. * <a 450 d. iii non. april. post consulatum protogenis et asterii.>

CJ.6.53.0. Quando dies legati vel fideicommissi cedit.

CJ.6.53.1: Imperatores Severus, Antoninus

Si competenti iudici annua legata vel fideicommissa tibi relicta probaveris, ab initio cuiusque anni exigendi ea habebis facultatem. * sev. et ant. aa. agrippae. * <a 198 supposita iii k. iun. saturnino et gallo conss.>

CJ.6.53.2: Imperatores Severus, Antoninus

Agrum pluribus relictum nominatim animadvertimus et cautum, ut ad eum qui supervixisset res pertineret. quicumque igitur is fuit, ad heredem suum dominium transmisit nec tali fideicommisso adstringitur. * sev. et ant. aa. prisco. * <a 204 pp. xv k. aug. cilone et libone conss.>

CJ.6.53.3: Imperatores Severus, Antoninus

Si pontianilla pervenit ad eam aetatem, cui legatum aut fideicommissum delatum erat, petitionem ad heredes transmisit, licet ante decesserit, quam consequeretur legatum vel fideicommissum. * sev. et ant. aa. aeliae. * <a 204 pp. v k. aug. cilone et libone conss.>

CJ.6.53.4: Imperatores Severus, Antoninus

Cum uxori usus fructus fundi legatur et eius proprietas, cum liberos habuerit, nato filio statim proprietatis legati dies cedit nec quicquam obest, si is decedat. * sev. et ant. aa. ammiae. * <a 208 pp. k. aug. antonino a. iii et geta item iii conss. >

CJ.6.53.5pr.: Imperator Alexander Severus

Ex his verbis: " do lego aeliae severinae filiae et secundae decem, quae legata accipere debebit, cum ad legitimum statum pervenerit", non condicio fideicommisso vel legato inserta, sed petitio in tempus legitimae aetatis dilata videtur. * alex. a. maximo. * <a 226 pp. xiii k. ian. alexandro a. ii et Marcello conss.>

CJ.6.53.5.1: Imperator Alexander Severus

Et ideo si aelia severina filia testatoris, cui legatum relictum est die legati cedente vita functa est, ad heredem suum actionem transmisit, scilicet ut eo tempore solutio fiat, quo severina, si rebus humanis subtracta non fuisset, vicesimum quintum annum aetatis impleret. <a 226 pp. xiii k. ian. alexandro a. ii et Marcello conss.>

CJ.6.53.5.2: Imperator Alexander Severus

Non coeptum enim annum, sed impletum, si de emolumento relicti fideicommissi tractetur, expectandum esse prudentibus placuit. <a 226 pp. xiii k. ian. alexandro a. ii et Marcello conss.>

CJ.6.53.6: Imperatores Diocletianus, Maximianus

Si fideicommissum ab intestato fuerit sorori tuae relictum codicillis et, posteaquam dies fideicommissi cessit, ignorans fideicommissum decessit, actionem huiusmodi adquiri potuisse dissimulare non potueris, salva scilicet ab intestato succedenti quarta portione. * diocl. et maxim. aa. et cc. eusebio. * <a 293 supposita k.Mai.Trallis aa. conss.>

CJ.6.54.0. Ut in possessionem legatorum vel fideicommissorum servandorum causa mittatur et quando satisdari debet.

CJ.6.54.1: Imperator pius

Quoniam nihil actor amplius postulat, quam ut fideicommissi nomine satisdetur, non debet is qui iuri dicendo praeest subtiliter cognoscere, debetur nec ne fideicommissum, sed tantum decernere, ut satisdetur. * divus pius salvio. * < sine die et consule.>

CJ.6.54.2: Imperator marcus

Ipsis rerum experimentis cognovimus ad publicam utilitatem pertinere, ut satisdationes, quae voluntatis defunctorum tuendae gratia in legatis, item fideicommissis inductae sunt, eorundem voluntate remitti possint. quocumque enim indicio voluntatis cautio legati seu fideicommissi remitti potest. * divus marcus stratonicae. * < sine die et consule.>

CJ.6.54.3: Imperatores Severus, Antoninus

Si postquam servandi legati seu fideicommissi gratia in possessionem inductus es , pignoris obligatio aut venditio ab herede intervenit, praecedere causam tuam, quam iure praetorio velut pignus habuisti, manifestum est. * sev. et ant. aa. symphoro. * <a 196 pp.Xi k.Dec.Dextro et prisco conss.>

CJ.6.54.4pr.: Imperatores Severus, Antoninus

Cum artemidoram patri pupillorum tuorum heredem extitisse proponas, quamvis, ut fideicommissam hereditatem his cum moreretur restitueret, petita sit, nullam tamen adversus debitores hereditarios habent pupilli tui actionem. * sev. et ant. aa. protagorae. * <a 215 pp.Iii k.Iul.Laeto ii et cereale conss.>

CJ.6.54.4.1: Imperatores Severus, Antoninus

Plane ut satis fideicommissorum artemidora det, si modo testator id fieri non prohibuerit, apud suum iudicem conveni. <a 215 pp.Iii k.Iul.Laeto ii et cereale conss.>

CJ.6.54.5: Imperator Alexander Severus

Qui legati sive fideicommissi causa in possessionem mittuntur, non proprietatem nanciscuntur, sed ius pignoris. ut autem et post acceptum pignus satisfiat defuncti voluntati, competens iudex te adeunte providebit. * alex. a. paulinae. * <a 224 pp. iii id. aug. iuliano et crispino conss.>

CJ.6.54.6: Imperator Alexander Severus

Certa est forma iurisdictionis, qua fideicommissi servandi causa in possessionem rerum, quae in causa hereditaria sunt aut dolo malo esse desierint, is, cui legati vel fideicommissi nomine satis non datur, mittitur vel in proprias res heredis, si fideicommisso satis non fit post sex menses, quam peti coeperit, secundum divi antonini patris mei constitutionem. * alex. a. donato. * <a 225 pp. vi id. ian. fusco ii et dextro conss.>

CJ.6.54.7: Imperator Alexander Severus

Scire debetis fideicommissi quidem et legati satisdationem remitti posse divum marcum et divum commodum constituisse: ut autem boni viri arbitratu is, cui usus fructus relictus est, utatur fruatur, minime satisdationem remitti testamento posse. * alex. a. proculiano. * <a 225 pp. x k. mart. fusco ii et dextro conss.>

CJ.6.54.8: Imperator Alexander Severus

Contra eos sive successores eorum, qui rem publicam administrantes per officii necessitatem civitati sub condicione relicti fideicommissi satis accipere debuerunt, quanti rei publicae interest satis acceptum non esse, dirigendam certum est actionem. * alex. aa. et cc. iulio et zenodoro. * <a 294 supposita vii k. mart. cc. conss.>

CJ.6.55.0. De suis et legitimis liberis et ex filia nepotibus ab intestato venientibus.

CJ.6.55.1: Imperatores Severus, Antoninus

Si fratri tuo legitima heres esse potes, centum dierum praefinitione non excluderis ad adquirendam hereditatem. * sev. et ant. aa. crispinae. * <a 205 pp. iii non. nov. antonino a. ii et geta ii conss.>

CJ.6.55.2: Imperatores Diocletianus, Maximianus

Nepotes ex diversis filiis varii numeri avo succedentes ab intestato non virilibus portionibus, sed ex stirpibus succedunt. * diocl. et maxim. aa. aviae. * <a 290 s. iii k. mart. hadrianopoli ipsis aa. iiii et iii conss.>

CJ.6.55.3: Imperatores Diocletianus, Maximianus

Ut intestato defuncto filius ac nepos ex alio, qui mortis eius tempore in rebus humanis non invenitur, manentes in sacris pariter succedant, evidenter lege duodecim tabularum cavetur. quod et honorarii iuris observatio sequitur. * diocl. et maxim. aa. et cc. frontoni. * <a 293 s. xv k. iul. aa. conss.>

CJ.6.55.4: Imperatores Diocletianus, Maximianus

Intestato defuncto postumum suum heredem quam sororem licet consanguineam haberi potiorem ordo successionum lege duodecim tabularum factus nimis evidenter demonstrat. * diocl. et maxim. aa. et cc. Marcellae. * <a 293 s. vi id. dec. aa. conss.>

CJ.6.55.5: Imperatores Diocletianus, Maximianus

Si te parens, in cuius fuisti potestate, sollemniter in adoptionem dedit, cum filiis naturalibus adoptivi patris ante vel post quaesitis defuncto intestato succedere potes. * diocl. et maxim. aa. et cc. appiano. * <a 293 d. vi k. ian. sirmi aa. conss.>

CJ.6.55.6: Imperatores Diocletianus, Maximianus

Ex libera conceptus et servo velut spurius habetur nec ut decurionis filius, quamvis pater eius naturalis manumissus et natalibus suis restitutus hunc fuit adeptus honorem, defendi potest. * diocl. et maxim. aa. et cc. posidonio. * <a 294 supposita vi id. febr. cc. conss.>

CJ.6.55.7: Imperatores Diocletianus, Maximianus

Filium habere suum libertus in potestate non prohibetur, cum ob praeteritum statum ex legitimis nuptiis ingenuorum exemplo filios habere liberto non sit interdictum. * diocl. et maxim. aa. et cc. aemilianae. * <a 294 s. xvi k. mart. sirmi cc. conss.>

CJ.6.55.8: Imperatores Diocletianus, Maximianus

Apud hostes patre defuncto filia communis vobis, quo casu scientia mortis non postulatur, heres extitit sua et ad te transmisit successionem. * diocl. et maxim. aa. et cc. catoniae. * <a a. 294 s. xii k. dec. nicomediae cc. conss.>

CJ.6.55.9pr.: Imperatores Valentinianus, Theodosius, Arcadius

Si defunctus cuiuscumque sexus aut numeri reliquerit filios et ex filia diem functa cuiuscumque sexus aut numeri nepotes, eius partis, quam defuncta filia superstes patri inter fratres suos fuisset habitura, duas partes consequantur nepotes ex eadem filia, tertia pars fratribus sororibusve eius quae defuncta est, id est filiis filiabusque eius, de cuius bonis agitur, avunculis scilicet sive materteris eorum, quorum commodo legem sancimus, adcrescat. * valentin. theodos. et arcad. aaa. constantino pp.Galliarum. * <a 389 d.V k.Mart.Mediolani timasio et promoto conss.>

CJ.6.55.9.1: Imperatores Valentinianus, Theodosius, Arcadius

Haec eadem, quae de avi materni bonis constituimus, de aviae maternae sive etiam paternae simili aequitate sancimus: nisi forte avi ad elogia inurenda impiis nepotibus iusta se motos ratione dixerint et hoc fuerit legibus approbatum. <a 389 d.V k.Mart.Mediolani timasio et promoto conss.>

CJ.6.55.9.2: Imperatores Valentinianus, Theodosius, Arcadius

Non solum autem si intestatus avus aviave defecerit, haec nepotibus quae sancimus iura servamus, sed et si avus vel avia, quibus huiusmodi nepotes erunt, testati obierint et praeterierint nepotes aut exheredaverint, easdem et de iniusto avorum testamento et si quae filiae poterant vel de re vel de lite competere actiones nepotibus deferimus secundum iustum nostrae legis modum, quae de parentum inofficiosis testamentis competunt filiis. <a 389 d.V k.Mart.Mediolani timasio et promoto conss.>

CJ.6.55.10: Imperatores Honorius, Theodosius

Ubi aviarum successio morte interveniente discutitur, capitis deminutio materna quaerenda non est. tunc enim in huiusmodi hereditatibus filiorum status aut persona spectatur, quotiens de eius bonis, qui potestatem familiae potuit habere, tractatur. * honor. et theodos. aa. maximo. pp. * <a 420 d.V k.Oct.Ravennae theodosio a.Viiii et constantio iii conss.>

CJ.6.55.11: Imperatores Theodosius, Valentinianus

Si matre superstite filius vel filia, qui moritur, filios dereliquerit, omnimodo patri suo matrive ipso iure succedant. quod sine dubio et de pronepotibus observandum esse censemus. * theodos. et valentin. aa. ad senatum urb. romae. * <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.6.55.12: Imperator Justinianus

Quotiens aliquis vel aliqua intestatus vel intestata mortuus vel mortua fuerit nepotibus vel pronepotibus cuiuscumque sexus vel deinceps aliis descendentibus derelictis, quibus unde liberi bonorum possessio minime competit, et insuper ex latere quibuscumque agnatis, minime possint idem agnati quartam partem hereditatis mortuae personae sibi vindicare, sed soli descendentes ad mortui successionem vocentur. quod tantum in futuris, non etiam praeteritis negotiis servari decernimus. * iust. a. menae pp. * <a 528 d. k. iul. constantinopoli dn. iustiniano a. pp. ii cons.>

CJ.6.56.0. Ad senatus consultum tertullianum.

CJ.6.56.1: Imperatores Diocletianus, Maximianus

Licet liberi matribus ab intestato ita demum per se heredes existant, si fari possint, tamen matres liberis, etiamsi infantes naturae concesserint, posse succedere nulla dubitatio est. * diocl. et maxim. aa. vivianae. * <a 291 pp. x k. april. tiberiano et dione conss.>

CJ.6.56.2: Imperatores Diocletianus, Maximianus

In successionem filii vel filiae communis sine liberis et fratribus vel sororibus morientis pater manumissor, quia ei sit vetus ius servatum, matri praefertur. * diocl. et maxim. aa. et cc. rhesae. * <a 294 s. vi id. dec. cc. conss.>

CJ.6.56.3: Imperator Constantinus

Matres, quae puberes amiserunt filios, licet impuberibus eis tutores non petierunt, praescriptione non petiti tutoris ad excludendam eorum successionem minime debere praescribi certum est. * const. a. catullino procons. africae. * <a 315 d. vi k. aug. constantino a. iiii et licinio iiii conss.>

CJ.6.56.4pr.: Imperatores Gratianus, Valentinianus, Theodosius

Si qua mulier nequaquam religionem priori viro, ex quo filios seu filias non habet, nuptiarum festinatione praestiterit, ex iure quidem notissimo sit infamis, nisi huiusmodi maculam imperiale beneficium ei remittat. * grat. valentin. et theodos. aaa. eutropio pp. * <a 380 pp. xv k. ian. gratiano v et theodosio aa. conss.>

CJ.6.56.4.1: Imperatores Gratianus, Valentinianus, Theodosius

Sin autem ei filii erunt seu filiae et impetraverit indulgentiam, infamiae abolitionem permittimus et ceterarum poenarum antiquationem, si facultatum omnium, quae fuerint tempore nuptiarum, medietatem filio filiaeve, filiis seu filiabus donaverit, quos habebat ex viro priore susceptos, pure scilicet et omni donationis sollemnitate completa nec retento quidem usu fructu. <a 380 pp. xv k. ian. gratiano v et theodosio aa. conss.>

CJ.6.56.4.2: Imperatores Gratianus, Valentinianus, Theodosius

Quem quidem semissem si duobus filiis seu filiabus pluribusve donaverit et sorte fatali unus vel una, seu alius vel alia ex isdem intestatus vel intestata obierit, semper ad superstites fratres vel sorores volumus pertinere. <a 380 pp. xv k. ian. gratiano v et theodosio aa. conss.>

CJ.6.56.4.3: Imperatores Gratianus, Valentinianus, Theodosius

Sin autem universae vel universi intestati diem obierint durae fortunae ad matrem solacia ex integro revertantur, ita scilicet, ut hunc semissem, quem filiis seu filiabus donaverat, intestato diem filiis seu filiabus obeuntibus rursus ipsa separatim ab ultimi filii vel filiae hereditate praesumat. <a 380 pp. xv k. ian. gratiano v et theodosio aa. conss.>

CJ.6.56.5pr.: Imperatores Theodosius, Valentinianus

Mater, quae defuncto filio filiave sine liberis ex testamento vel ab intestato succedit, si matrimonum secundum post mortem filii vel filiae non contraxerit, omnia filii morte delata pleno iure conquirat. * theodos. et valentin. aa. ad senatum urb. romae. * <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.6.56.5.1: Imperatores Theodosius, Valentinianus

Sin vero alterius elegerit coniugium mariti, extrinsecus quidem quaesita filio filiaeve simili firmitate possideat, rerum vero paternarum defuncti solo usu fructu humanitatis contemplatione potiatur, proprietatem sorori et fratribus transmissura defuncti. <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.6.56.6: Imperatores Theodosius, Valentinianus

Omnem matri sive ab intestato sive iure substitutionis, si filius impubes moritur, denegandam volumus successionem, si ea legitima liberorum tutela suscepta ad secundas contra sacramentum praestitum adspiraverit nuptias, antequam ei tutorem alium fecerit ordinari eique quod debetur ex ratione tutelae gestae persolverit. * theodos. et valentin. aa. florentio pp. * <a 439 d. vi id. iul. constantinopoli theodosio a. xvii et festo conss.>

CJ.6.56.7pr.: Imperator Justinianus

Si quis vel si qua matre superstite et fratre vel legitimo vel sola cognationis iura habente intestatus vel intestata decesserit, non excludi a filii successione matrem, sed una cum fratre mortui vel mortuae, si superstes vel filius vel privignus ipsius sit, ad eam pervenire ad similitudinem sororum mortui vel mortuae: ita tamen, ut, si quidem solae sorores agnatae vel cognatae et mater defuncti vel defunctae supersint, pro veterum legum tenore dimidiam quidem mater, alteram vero dimidiam partem omnes sorores habeant: sin vero matre superstite et fratre vel fratribus solis vel etiam cum sororibus intestatus quis vel intestata moriatur, in capita distribuatur eius hereditas nec liceat matri occasione soro rum mortui vel mortuae ampliorem partem sibi vindicare, quam rata portio capitum exigit: patruo scilicet mortui vel mortuae eius filio vel nepote nullum ius ad eius hereditatem matre herede existente habentibus nec ex veteribus legibus vel ex constitutionibus partem matris minui. * iust. a. menae pp. * <a 528 d. k. iun. constantinopoli dn. iustiniano a. pp. ii cons.>

CJ.6.56.7.1: Imperator Justinianus

Sin autem defuncta persona non solum matrem et fratres et sorores superstites habeat, sed etiam patrem, si quidem sui iuris decessit, quia patris persona interveniens matris iura superare videtur, omnibus pio animo providentes sancimus fratres quidem et sorores mortuae personae ad successionem proprietatis solos pro virili parte vocari, patri autem et matri usus fructus totius successionis bessem competere aequa lance inter patrem et matrem dividendum, reliqua parte usus fructus apud fratres et sorores remanente. <a 528 d. k. iun. constantinopoli dn. iustiniano a. pp. ii cons.>

CJ.6.56.7.2: Imperator Justinianus

Sin vero defuncta persona in sacris patris constituta decesserit, pater quidem usum fructum, quem et vivente filio habebat, detineat donec vivat incorruptum, mater autem, quia hunc usum fructum habere vivente patre non potest totum apud patrem constitutum, una cum fratribus defunctae personae ad proprietatem vocetur , scilicet cum sororibus sola in dimidiam, cum fratribus vel promiscui generis secundum supra scriptam distributionem in virilem portionem. <a 528 d. k. iun. constantinopoli dn. iustiniano a. pp. ii cons.>

CJ.6.56.7.3: Imperator Justinianus

Omnibus videlicet, quae de mulieribus ad secundas nuptias migrantibus sancita sunt, in suo statu durantibus. <a 528 d. k. iun. constantinopoli dn. iustiniano a. pp. ii cons.>

CJ.6.57.0. Ad senatus consultum orfitianum.

CJ.6.57.1: Imperator Alexander Severus

Si intestatae mulieris consanguinei existant et mater et filia, ad solam filiam ex senatus consulto orfitiano hereditas pertinet. * alex. a. euangelo. * <a 225 pp.Xv k.Febr.Fusco ii et dextro conss.>

CJ.6.57.2pr.: Imperatores Diocletianus, Maximianus

Non pro numero superstitum mortis matris tempore, sed succedentium materna scinditur hereditas. * diocl. et maxim. aa. et cc. metrodorae. * <a 293 s.Vii k.April.Sirmi aa. conss.>

CJ.6.57.2.1: Imperatores Diocletianus, Maximianus

Quapropter si mater vestra te et uno fratre emancipatis, duobus autem aliis in patria positis potestate superstitibus diem functa est et hi, qui in potestate patris fuerant, priusquam maternam hereditatem sibi quaererent, rebus humanis exempti sunt, inter duos tantum viriles non ambigitur factas portiones. <a 293 s.Vii k.April.Sirmi aa. conss.>

CJ.6.57.3: Imperatores Diocletianus, Maximianus

Matri intestatae defunctae secundum orfitianum senatus consultum citra bonorum possessionem filia pro herede gerendo succedere non prohibetur. * diocl. et maxim. aa. et cc. iulianae. * <a 293 s.Xii k.Nov.Aa. conss. >

CJ.6.57.4: Imperatores Gratianus, Valentinianus, Theodosius

Quotiens de emancipati filii filiaeve successione tractatur, filiis ex his genitis deferatur intacta pro solido successio neque ulla defunctae patri matrique concedatur intestatae successionis hereditas. * grat. valentin. et theodos. aaa. ad hilarianum pp. * <a 383 d. xi k. mart. mediolani merobaude ii et saturnino conss.>

CJ.6.57.5pr.: Imperator Justinianus

Si qua illustris mulier filium ex iustis nuptiis procreaverit et alterum spurium habuerit, cui pater incertus sit, quemadmodum res maternae ad eos perveniant, sive tantummodo ad liberos iustos sive ad spurios, dubitabatur. * iust. a. demostheni pp. * <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.6.57.5.1: Imperator Justinianus

Sancimus itaque, ut neque ex testamento neque ab intestato neque a liberalitate inter vivos habita iustis liberis existentibus aliquid penitus ab illustribus matribus ad spurios perveniat, cum in mulieribus ingenuis et illustribus, quibus castitatis observatio praecipuum debitum est, et nominari spurios satis iniuriosum, satis acerbum et nostris temporibus indignum esse iudicamus et hanc legem ipsi pudicitiae, quam semper colendam censemus, merito dedicamus. <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.6.57.5.2: Imperator Justinianus

Sin autem concubina liberae condicionis constituta filium vel filiam ex licita consuetudine ad hominem liberum habita procreaverit, eos etiam cum legitimis liberis ad materna venire bona, quae ea iure legitimo et in suo patrimonio possidet, nulla invidia est. <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.6.57.6pr.: Imperator Justinianus

Quidam ancillae suae per fideicommissum libertatem reliquit, eo autem, a quo libertas relicta est, moram in libertate praestanda faciente peperit ancilla. et esse quidem ingenuum puerum vel puellam, qui post moram nati sunt, omnes veteris iuris auctores consentiunt, dubitabatur autem inter eos, si matri morienti potest succedere. * iust. a. iuliano pp. * <a 530 d.K.Oct.Constantinopoli lampadio et oreste vv.Cc.Conss.>

CJ.6.57.6.1: Imperator Justinianus

Huiusmodi itaque dubitationem eorum decidentes ulterius eam procedere non patimur, sed sancimus eandem matris progeniem heredem ab intestato posse ei existere, salvo iure legitimo ex auctoritate senatus consulti orfitiani proli servando et tam matre ex senatus consulto tertulliano quam prole ex orfitiano senatus consulto invicem ad suas hereditates venientibus. <a 530 d.K.Oct.Constantinopoli lampadio et oreste vv.Cc.Conss.>

CJ.6.58.0. De legitimis heredibus.

CJ.6.58.1: Imperator Alexander Severus

In successione titulo consanguinitatis vel in bonorum possessione, quae proximitatis nomine competit, tam fratres quam sorores pari iure esse, licet non eadem matre susceptae sunt, ius certum est. nec huic derogatur, quod amitas vestras ab avo vestro dotatas fuisse proponitis. * alex. a. cassio et hermionae. * <a 223 pp.Non.Mai.Maximo ii et aeliano conss.>

CJ.6.58.2: Imperator Alexander Severus

Si eius, quae vos heredes instituit, patri non quaesistis hereditatem posteaque mortuo patre ac repudiata eius hereditate defunctae successionem agnovistis, ea, quae bonorum sunt defunctae, ab his separari, quae patris vestri fuerunt, praeses provinciae non ignorabit. * alex. a. tatianae et aliis. * <a 239 pp.Vi id.April.Gordiano a. et aviola conss.>

CJ.6.58.3pr.: Imperator dec.

Consanguinitatis iure et feminas ad intestatorum successionem admitti posse explorati iuris est. * dec. a. asclepiodotae. * <a 250 pp. ii non. dec. decio a. et grato conss.>

CJ.6.58.3.1: Imperator dec.

Proinde cum fratris tui intestato mortui ad te consanguinitatis iure hereditas pertineat, nulla ratione alterius fratris tui filii ad eandem successionem adspirare desiderant: nam et cessante iure agnationis in persona omnium praetorii iuris beneficio ad te potius, quae secundum gradum obtines, hereditas pertinet quam ad fratris tui filios, qui tertio gradu constituti sunt. <a 250 pp. ii non. dec. decio a. et grato conss.>

CJ.6.58.4: Imperatores Diocletianus, Maximianus

Si aut nullum testamentum nepos patrui tui ordinavit aut intra quattuordecim annos constitutus fecit et agnationis iure successio eius tibi delata est, etiam citra bonorum possessionis subsidium legitimo iure subnixus es. * diocl. et maxim. aa. caecilio. * <a 290 pp. id. iul. ipsis aa. iiii et iii conss.>

CJ.6.58.5: Imperatores Diocletianus, Maximianus

Ad intestati successionem agnationis iure quam proximitatis venientes haberi potiores certum est. * diocl. et maxim. aa. et cc. cyrillae. * <a 293 supposita xvi k. iul. sirmi aa. conss.>

CJ.6.58.6: Imperatores Diocletianus, Maximianus

Defuncto, suis extantibus heredibus et abstinentibus vel repudiantibus hereditatem, frater iure consanguinitatis succedere potest. * diocl. et maxim. aa. et cc. claudianae. * <a 293 s. prid. k. ian. aa. conss.>

CJ.6.58.7: Imperatores Diocletianus, Maximianus

Patruo ac materterae tertio constitutis gradu non pariter intestati successio defertur, sed patris frater agnationis iure sorori matris anteponitur. * diocl. et maxim. aa. et cc. ammiano. * <a 294 s. xvii k. mart. sirmi cc. conss.>

CJ.6.58.8: Imperatores Diocletianus, Maximianus

Si his, de quorum successione agitur, apud hostes defunctis secundum legis corneliae beneficium iure agnationis adita hereditate vel petita bonorum possessione successisti, substantiam eorum vindicare non prohiberis. * diocl. et maxim. aa. et cc. silano. * <a 293 s. non. iul. sirmi aa. conss.>

CJ.6.58.9: Imperatores Diocletianus, Maximianus

In successione intestatae sororem quam avum maternum haberi potiorem non ambigitur. * diocl. et maxim. aa. et cc. damagorae. * <a 294 s. vi k. iul. nicomediae cc. conss.>

CJ.6.58.10: Imperatores Theodosius, Valentinianus

Sciant, qui ad successionem vocantur pupilli mortui, si defuncto eius patre tutorem ei secundum leges non petierint intra annum, omnem eis sive ab intestato sive iure substitutionis successionem eius, si impubes moritur, denegandam. * theodos. et valentin. aa. florentio pp. * <a 439 d. vi id. iul. constantinopoli theodosio a. xvii et festo conss.>

CJ.6.58.11: Imperator Anastasius

Si ab eo, qui ex sacro rescripto secundum nostram constitutionem fieri postulaverit emancipationem liberorum, petitum sit, quatenus ei, qui emancipandus emancipandave est, minime legitima iura per emancipationem extinguantur, eadem iura tam emancipato vel emancipatae contra personas alias hoc modo sibi coniunctas quam aliis itidem contra eum vel eam in hereditatibus vel successionibus et tutelis nec non ceteris serventur intacta. * anastas. a. constantino pp. * <a 502 d. xv k. aug. constantinopoli probo et avieno iuniore conss.>

CJ.6.58.12pr.: Imperator Justinianus

Si maior quinquagenaria partum ediderit, si debet huiusmodi suboles suo patri sua constitui et hereditatem eius nancisci, a caesariana advocatione interrogati sumus. * iust. a. iohanni pp. * <a 532 d. iix k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.6.58.12.1: Imperator Justinianus

Et sancimus, licet mirabilis huiusmodi partus invenitur et raro contingit, nihil tamen eorum, quae probabiliter a natura noscuntur esse producta, respui, sed omne ius, quod ex quacumque lege liberis praestitum est, hoc merum atque immutilatum huiusmodi filiis vel filiabus servari in omnibus successionibus sive ex testamento sive ab intestato. <a 532 d. iix k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.6.58.12.2: Imperator Justinianus

Et summatim non absimiles aliis fiant, quos similes natura effecit, maxime cum et anteriore nostra lege huiusmodi nuptias permisimus, impares eas videri minime concedentes. <a 532 d. iix k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.6.58.13pr.: Imperator Justinianus

De emancipatis filiis, qui sacro rescripto patribus impertito hoc a suis genitoribus meruerunt, dubitatum est. cum enim anastasiana lex iura fratribus legitima noscitur servare, si quis ex his sine testamento et liberis decesserit, utrumne ad fratrem vel sororem eius successio devolvatur an ad superstitem patrem, dubitabatur. * iust. a. iohanni pp. * <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.58.13.1: Imperator Justinianus

Huiusmodi dubitationem compendioso responso duximus esse finiendam ideoque sancimus ad similitudinem maternarum rerum aliarumque, de quibus a nobis iam lex posita est, et huiusmodi hereditatem iure quidem dominii ad fratres vel sorores pervenire in totum, usum fructum autem eius patri totum, sive torum priorem servaverit sive ad secundas migraverit nuptias, adquiri, sive per sacrum oraculum emancipatio procedat sive alio legitimo modo a sacris paternis fuerint absoluti. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.58.13.2: Imperator Justinianus

Cum enim et pater utitur usu fructu et votum eius est ad alios filios suas res pervenire, quapropter, cum ex lege anastasiana in alium articulum fratribus prospectum est, non a nobis in hac specie plenius eis subvenitur, ut pater habeat usum fructum, fratres autem vel sorores dominium rerum relictarum? <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.58.13.3: Imperator Justinianus

Exceptis maternis rebus, in quibus, si ex eadem matre fratres vel sorores sunt, eos solos vocari oportet: sin autem non supersint, tunc ad similitudinem aliarum rerum in totam fraternitatem dominium earum cedere, ut sit apertissimus in omnibus tractatus et non per differentiam personarum vel rerum vacillare noscatur. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.58.14pr.: Imperator Justinianus

Lege duodecim tabularum bene romano generi prospectum est, quae unam consonantiam tam in maribus quam in feminis legitimis et in eorum successionibus nec non libertis observandam esse existimavit, nullo discrimine in successionibus habito , cum natura utrumque corpus edidit, ut maneat suis vicibus immortale et alterum alterius auxilio egeat, ut uno semoto et alterum corrumpatur. * iust. a. iohanni pp. * <a 531 d. v k. dec. post consulatum lampadii et orestis vv. cc.>

CJ.6.58.14.1: Imperator Justinianus

Sed posteritas, dum nimia utitur subtilitate, non piam induxit differentiam, sicut iulius paulus in ipso principio libri singularis, quem ad senatus consultum tertullianum fecit, apertissime docuit. <a 531 d. v k. dec. post consulatum lampadii et orestis vv. cc.>

CJ.6.58.14.2: Imperator Justinianus

Qui enim ferendum est ab intestato successionibus suas quidem filias ad similitudinem masculae subolis in parentis vocari successionem et iterum germanas iure consanguinitatis eandem sibi vindicare praerogativam, deinceps autem legitimas feminarum personas, si iura consanguinitatis non possident, a successione legitima repelli, cum maribus eadem successio pateat? <a 531 d. v k. dec. post consulatum lampadii et orestis vv. cc.>

CJ.6.58.14.3: Imperator Justinianus

Quare enim patris soror non ad successionem filii fratris sui una cum masculis vocatur, sed aliud ius in amita, aliud in patruis observatur? vel qua ratione fratris filius ad successionem patrui vocatur, germana autem eius ab eadem successione recluditur? <a 531 d. v k. dec. post consulatum lampadii et orestis vv. cc.>

CJ.6.58.14.4: Imperator Justinianus

Huiusmodi itaque legis antiquae reverentiam et nos anteponi novitati legis censemus et sancimus omnes legitimas personas, id est per virilem sexum descendentes , sive masculini sive feminini generis sint, simili modo ad iura successionis legitimae ad successionem intestatorum vocari secundum gradus sui praerogativam non ideo excludendas, quia consanguinitatis iura secundum germanae observationem non habent. <a 531 d. v k. dec. post consulatum lampadii et orestis vv. cc.>

CJ.6.58.14.5: Imperator Justinianus

Cum enim unius sanguinis iura remanent per virilem sexum incorrupta, quare naturae offendimus et legitimo iuri derogamus? cum et aliam maximam iniuriam res in se continet plerisque quasi vulnus intestinum incognitum. cum enim ad earum mulierum successionem masculi iure agnationis vocantur, quis patiatur earum quidem hereditatem ad eos legitimo iure deferri, ipsas vero neque invicem sibi neque masculis posse eodem iure succedere, sed propter hoc solum puniri, quod feminae natae sunt, et paterno vitio (si hoc vitium est) prolem innocentem gravari? <a 531 d. v k. dec. post consulatum lampadii et orestis vv. cc.>

CJ.6.58.14.6: Imperator Justinianus

(1) in his igitur casibus legem duodecim tabularum sequentes et novum ius novissimo iure corrigentes etiam unum gradum pietatis intuitu transferri ab iure cognationis in legitimam volumus successionem, ut non solum fratris filius et filia secundum quod iam definivimus ad successionem patrui sui vocentur, sed etiam germanae consanguineae vel sororis uterinae filius et filia soli et non deinceps personae una cum his ad iura avunculi sui perveniant, et mortuo eo, qui patruus quidem est fratris sui filiis, avunculus autem sororis suae suboli, simili modo ab utroque latere succedatur, tamquam si omnes legitimo iure veniant, scilicet ubi frater et soror superstites non sunt. his etenim personis praecedentibus et hereditatem admittentibus ceteri gradus remanent penitus semoti. <a 531 d. v k. dec. post consulatum lampadii et orestis vv. cc.>

CJ.6.58.14.7: Imperator Justinianus

Illo procul dubio observando, ut successio non ad stirpes, sed in capita dividatur et is gradus in ordinem legitimum transferatur: ceteris omnibus successionibus secundum ius usque ad praesens tempus observatum in suo statu manentibus. <a 531 d. v k. dec. post consulatum lampadii et orestis vv. cc.>

CJ.6.58.14.8: Imperator Justinianus

Si qui autem casus iam evenerunt, secundum quod pristina iura volebant, eorum fiat distributio. <a 531 d. v k. dec. post consulatum lampadii et orestis vv. cc.>

CJ.6.58.15pr.: Imperator Justinianus

Meminimus antea divinam promulgasse constitutionem, per quam ad vestigia legis duodecim tabularum totam progeniem ex legitima subole descendentem sive masculinam sive femininam legitimo iure hereditatem adipisci sanximus, ut, quemadmodum ipsis a legitimis succeditur, ita et ipsae legitimarum personarum amplectantur successionem. * iust. a. iohanni pp. * <a 534 d. id. oct. constantinopoli dn. iustiniano a. pp. iiii et paulino vc. conss.>

CJ.6.58.15.1: Imperator Justinianus

In qua constitutione unum gradum ex cognatis in ius legitimum reduximus, id est germanae filios et filias et sororis uterinae filios ac filias: quam constitutionem in suo robore permanere censemus, cum et in nostris institutionibus tenor eius a nobis relatus est. <a 534 d. id. oct. constantinopoli dn. iustiniano a. pp. iiii et paulino vc. conss.>

CJ.6.58.15.1a: Imperator Justinianus

Sed subtiliore tractatu habito necessarium duximus, et si quid ex praetoria iurisdictione frugi inventum est, et hoc cum perfectissima definitione posito nostras leges ampliari. <a 534 d. id. oct. constantinopoli dn. iustiniano a. pp. iiii et paulino vc. conss.>

CJ.6.58.15.1b: Imperator Justinianus

Cum igitur praetor filium emancipatum, licet subtili iure capite fuerat deminutus, attamen in patris successione sine ulla deminutione vocare manifestissimus est, non eodem autem iure ad fratrum suorum successionem ab eo vocabatur, sed nec filii eius iure legitimo suis patruis succedebant, necessarium duximus hoc primum corrigere et legem anastasianam iusto incremento perfectam ostendere, ut emancipatus filius et filia non solum in paternis bonis ad suorum similitudinem succedant, sed etiam in fratrum vel sororum suarum successione, sive omnes emancipati sint sive permixti sui cum emancipatis, aequo iure invicem sibi succedant et non secundum legem anastasianam parte aliqua deminuta. et haec quidem de filiis emancipatis sancire bellissimum nobis visum est. <a 534 d. id. oct. constantinopoli dn. iustiniano a. pp. iiii et paulino vc. conss.>

CJ.6.58.15.2: Imperator Justinianus

Sed nec fratrem vel sororem uterinos concedimus in cognationis loco relinqui. cum enim tam proximo gradu sunt, merito eos sine ulla differentia, tamquam si consanguinei fuerant, cum legitimis fratribus et sororibus vocandos esse sancimus, ut secundo gradu constituti et legitima successione digni reperti aliis omnibus , qui sunt ulterioris gradus, licet legitimi sint, praecellant. et haec quidem de secundi gradus successione satis abundeque nobis cum summa utilitate disposita sunt. <a 534 d. id. oct. constantinopoli dn. iustiniano a. pp. iiii et paulino vc. conss.>

CJ.6.58.15.3: Imperator Justinianus

Cum autem tertio gradui ex transversa linea fuerit locus, ubi patruis et filiis fratrum et sororum locum antiquitas dedicavit, una cum illis tam emancipati fratris quam emancipatae sororis filium tantummodo et filiam, sive emancipatos sive suos patribus constitutos, et neminem alium ulterius, nec non fratris uterini et sororis germanae vel uterinae filium et filiam tantummodo ex legitima linea invicem vocari censemus, sicut iam sanximus, ut omnes, qui vel ab antiquo iure vel a nostra liberalitate in legitimorum quidem positi sunt praerogativa, eodem autem tertio gradu sunt, simili iure vocentur. <a 534 d. id. oct. constantinopoli dn. iustiniano a. pp. iiii et paulino vc. conss.>

CJ.6.58.15.3a: Imperator Justinianus

Successionis videlicet iure et in hac parte servando, ut, si qui ex secundo gradu vocati renuntiaverint hereditati et noluerint eam adire nullusque alius sit in secundo gradu, qui succedere et potest et vult, tunc hi, quos praesenti lege enumeravimus ex tertio gradu, in locum recusantium succedant. <a 534 d. id. oct. constantinopoli dn. iustiniano a. pp. iiii et paulino vc. conss.>

CJ.6.58.15.3b: Imperator Justinianus

Illo etiam observando, ut successio non ad stirpes, sed in capita dividatur: ceteris omnibus successionibus secundum ius usque ad praesens tempus observatum procedentibus et nullo ex cognatis supra memoratos gradus ad iuris agnaticii formam redigendo, sed suum ordinem suamque proximitatem tenente incorruptam. <a 534 d. id. oct. constantinopoli dn. iustiniano a. pp. iiii et paulino vc. conss.>

CJ.6.58.15.4: Imperator Justinianus

Quas autem personas ex iure cognationis in legitimas successiones transveximus, eas et tutelae gravamini vicissim supponimus, scilicet si et masculi sint et perfectae aetatis secundum nostrae constitutionis tenorem, ut non solum lucrum sentiant, sed etiam gravamini subiugentur. <a 534 d. id. oct. constantinopoli dn. iustiniano a. pp. iiii et paulino vc. conss.>

CJ.6.58.15.5: Imperator Justinianus

Si qui autem casus iam evenerunt et per iudicialem sententiam vel amicalem transactionem sopiti sunt, nullam sentiant ex hac lege retractationem. <a 534 d. id. oct. constantinopoli dn. iustiniano a. pp. iiii et paulino vc. conss.>

CJ.6.59.0. Communia de successionibus.

CJ.6.59.1: Imperatores Diocletianus, Maximianus

Scire debuisti fratre emancipato potiorem eam quae in familia mansit in alterius emancipati bonis non haberi, sed eos pariter, si sollemniter petierint bonorum possessionem, succedere. * diocl. et maxim. aa. et cc. varianae. * <a 294 s. xv k. iun. sirmi cc. conss.>

CJ.6.59.2: Imperatores Diocletianus, Maximianus

Si pater tuus propiori sobrino tuo agnato constituto et intestato defuncto iure civili adita hereditate, vel hoc ab initio non interveniente sive capitis deminutione perempto sollemniter bonorum possessione admissa successit ac tibi patris tui quaesita hereditas est, adire praesidem provinciae debes ac tutorem eius de tutela convenire. * diocl. et maxim. aa. et cc. apollinario. * <a 293 d. xiiii k. iun. veronae aa. conss.>

CJ.6.59.3: Imperatores Diocletianus, Maximianus

Vitrico privigni successionem intestati civili vel honorario iure non deberi certissimum est. * diocl. et maxim. aa. et cc. ulpianae. * <a 294 s. xv k. mart. sirmi cc. conss.>

CJ.6.59.4: Imperatores Diocletianus, Maximianus

Servus successores habere non potest. * diocl. et maxim. aa. et cc. aurelio asterio. * <a 294 d. non. april. cc. conss.>

CJ.6.59.5pr.: Imperatores Diocletianus, Maximianus

Amitae, cui successisse filios suos proponis, hereditatem tuo nomine non recte petis. * diocl. et maxim. aa. et cc. iustinae. * <a 294 s. xii k. mart. cc. conss.>

CJ.6.59.5.1: Imperatores Diocletianus, Maximianus

Sed quoniam hos etiam intestatos diem functos adseveras, si quidem hi, quos privignos eiusdem amitae dicis, eorum consanguinei fuerint fratres, tam agnationis quam cognationis iure secundo gradu constitutos tibi praeferri non ambigitur. nam si amitini tui alio etiam patre nati numquam eorum matri privigni sunt, admisisse te bonorum possessionem probans eorum vindica successionem. <a 294 s. xii k. mart. cc. conss.>

CJ.6.59.6: Imperatores Diocletianus, Maximianus

Avunculo priori, qui est in tertio gradu, quam consobrino, qui sequentem occupat , deferri successionem intestati certi iuris est. * diocl. et maxim. aa. et cc. publiciano. * <a 294 suppos. k. oct. cc. conss.>

CJ.6.59.7: Imperatores Diocletianus, Maximianus

Adfinitatis iure nulla successio promittitur. * diocl. et maxim. aa. et cc. nicolao. * <a 294 d. prid. non. oct. cc. conss.>

CJ.6.59.8: Imperatores Diocletianus, Maximianus

Antequam scriptus cuiuscumque portionis capax repudiet hereditatem vel alia ratione quaerendae facultatem amittat, ei qui testamentum reliquit intestato nemo succedit. igitur perspicis, quod testamentariae successionis spe durante intestati bona defuncti non recte vindicentur. * diocl. et maxim. aa. et cc. .Tae. * <a 294 s. vi id. mart. retiariae cc. conss.>

CJ.6.59.9: Imperatores Diocletianus, Maximianus

Ancillae dominus liberi hominis, cum quo contubernium haec habuit, per hanc commixtionem successionem vindicare non potest. * diocl. et maxim. aa. et cc. sopatro. * <a 294 s. xv k. ian. nicomediae cc. conss.>

CJ.6.59.10: Imperatores Diocletianus, Maximianus

Nutritoribus hoc nomine nec civili nec honorario iure defertur hereditas. * diocl. et maxim. aa. et cc. danuvio. * <a 294 s. vi k. ian. cc. conss.>

CJ.6.59.11pr.: Imperator Justinianus

Sancimus, quemadmodum de his rebus, quae liberis in sacris constitutis ex occasione maritali adquisitae sunt, certus ordo destinatus est, ut, si quis ex his ab hac luce fuerit subtractus, pars eius, quam lucratus est, ad eius liberos vel nepotes vel pronepotes concedat, quibus non extantibus ad fratres suos ex eodem matrimonio progenitos vel, si etiam non supersint, ad fratres ex aliis nuptiis procreatos, cumque nemo eorum fuerit relictus, tunc ad patrem perveniat: ita et de his, quae materna linea per quascumque occasiones vel inter vivos vel per ultimas dispositiones vel ab intestato descendunt, similis ordo servetur, primo in filii vel filiae successione posteritate eius vocanda eaque non inventa frater no consortio eiusdem vel alieni matrimonii secundum praedictum ordinem arcessito , tunc ad ultimum locum pater a legibus conclametur et sui filii non gratam hereditatem relictam, sed triste lucrum sibi lugeat adquisitum. * iust. a. demostheni pp. * <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.6.59.11.1: Imperator Justinianus

In omnibus videlicet casibus, in superstite subole liberorum et fratribus adhuc viventibus, qui ad hereditatem defuncti patrem antecedunt, usu fructu rerum, quarum dominium ad eos pervenit, apud parentes remansuro. <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.6.60.0. De bonis maternis et materni generis.

CJ.6.60.1pr.: Imperator Constantinus

Res, quae ex matris successione fuerint ad filios devolutae, ita sint in parentum potestate, ut fruendi dumtaxat habeant facultatem, dominio videlicet earum ad liberos pertinente. * const. a. conss. praett. tribb. plebis senatui salutem. * <a 319 d. xv k. aug. aquileia. recitata apud vettium rufinum pu. in senatu non. sept. constantino a. v et licinio c. conss.>

CJ.6.60.1.1: Imperator Constantinus

Parentes autem, penes quos maternarum rerum utendi fruendique tantum potestas est, omnem debent tuendae rei diligentiam adhibere et quod iure filiis debetur in examine per se vel per procuratorem poscere et sumptus ex fructibus impigre facere et litem inferentibus resistere atque ita omnia agere, tamquam solidum perfectumque dominium et personam gerant legitimam, ita ut, si quando rem alienare voluerint, emptor vel is cui res donatur observet, ne quam partem earum rerum, quas alienari prohibitum est, sciens accipiat vel ignorans. <a 319 d. xv k. aug. aquileia. recitata apud vettium rufinum pu. in senatu non. sept. constantino a. v et licinio c. conss.>

CJ.6.60.1.2: Imperator Constantinus

Docere enim pater debet proprii iuris eam rem esse, quam donat aut distrahit: et emptori, si velit, fideiussorem licebit accipere, quia nullam poterit praescriptionem opponere filiis quandoque rem suam vindicantibus. <a 319 d. xv k. aug. aquileia. recitata apud vettium rufinum pu. in senatu non. sept. constantino a. v et licinio c. conss.>

CJ.6.60.2: Imperatores Arcadius, Honorius

Quidquid avus avia, proavus proavia ex materna linea venientes nepoti nepti pronepoti pronepti testamento fideicommisso legato donatione vel alio quolibet titulo largitionis vel etiam intestati successione contulerint, pater filio filiaeve integra illibataque custodiat, ut vendere donare relinquere alteri obligare, sicut nec materna bona, non possit usu fructu dumtaxat ad eum pertinente, ita ut , quemadmodum ipse super his licentiam totius potestatis amittit, defuncto eo filio filiaeve praecipua computentur nec ab illis, qui ex patre sunt coheredes, vindicentur. * arcad. et honor. aa. florentino pu. * <a 395 d. id. oct. mediolani olybrio et probino conss.>

CJ.6.60.3pr.: Imperatores Theodosius, Valentinianus

Si viva matre emancipati sunt filii et postea mater decesserit, quoniam omni commodo destituitur pater nec retinet usum fructum, viriles ei inter filios, sive unus seu plures sunt, usus fructus tribuimus portiones. * theodos. et valentin. aa. ad senatum urb. romae. * <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.6.60.3.1: Imperatores Theodosius, Valentinianus

Si vero mulier moriens alios ex filiis emancipatos a patre, alios in patria potestate dimiserit, in casu dispari utitur maritus defunctae beneficio, quod casui utrique praescripsimus, id est circa eorum quidem portionem, quos adhuc in sacris retinet, usum fructum ex legum auctoritate retinebit et praemium delatae, cum volet, emancipationis accipiet, in eorum vero parte, quos exisse de potestate viva matre constiterit, usum fructum virilis inter eos portinnis secundum praescripta percipiet. <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.6.60.3.2: Imperatores Theodosius, Valentinianus

In nepotibus etiam vel neptibus hoc observandum esse censemus, ut maritus, qui uxore mortua, non extantibus filiis, cum solis nepotibus vel neptibus ex hac lege ad emolumentum vocandus est, si unus vel una pluresve nepotes ex filio uno vel pluribus, qui in potestate defecerunt, procreati sunt, hoc iure utatur, quod de filiis constitutum est. <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.6.60.3.2a: Imperatores Theodosius, Valentinianus

Nam licet hoc novum praesens lex constituat in nepotes, non est tamen ab re, ut in hoc casu deteriores esse nepotibus filii non sinantur. <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.6.60.3.2b: Imperatores Theodosius, Valentinianus

Habeat igitur avus veniens cum nepotibus in potestate durantibus usum fructum bonorum omnium, quae ex defunctae aviae successione delata sunt. <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.6.60.3.2c: Imperatores Theodosius, Valentinianus

Cum vero his quoque libertatem emancipatione largitur, similiter et ab ipsis, sicut de filiis constitutum est, praemium manumissionis accipiat, vel si ex pluribus alteros manumittit alteros retinet, ex parte manumissorum legitimum praemium, ex parte vero in potestate manentium retineat usum fructum. <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.6.60.3.3: Imperatores Theodosius, Valentinianus

Quod si nepotes sint neptesve aut ex emancipato filio aut ex filia procreati aut ab ipso avia vivente sacris dimissis idem avus virilis cum ipsis portionis habeat usum fructum. si vero ex nepotibus neptibusve tempore, quo in aviae successionem vocantur, alii in avi sunt potestate, id est mariti defunctae, alii sui iuris sint, circa personam quidem eorum, qui in potestate consistunt, et in usu fructu consequendo et in emancipationis praemio conquirendo ratio supra dicta servetur: in his vero, qui sui iuris sunt, facultas capiendi usus fructus virilis inter eos portionis habeatur. <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.6.60.3.4: Imperatores Theodosius, Valentinianus

Eadem autem et de pronepotibus sexus utriusque sancimus, manente definitione, quae de singulis sancita est, si filii sint pariter ac nepotes. <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.6.60.4pr.: Imperator Leo

Omnem ambiguitatis confusionem amputantes hac liquida et compendiosa lege sancimus circa usum fructum maternarum rerum nullam esse differentiam, sive in priore matrimonio pater, ex quo filios habuit, permanere voluerit sive novercam filiis superduxerit: legibus, quae de maternis bonis latae sunt, suam habentibus firmitatem. * leo a. callicrati pp. per illyricum. * <a 468 d. k. sept. anthemio a. ii cons.>

CJ.6.60.4.1: Imperator Leo

Patres igitur usum fructum maternarum rerum, etiamsi ad secundas migraverint nuptias, sine dubio habere debebunt: nec ullam filiis vel quibuslibet ex persona eorum contra patres improbam vocem accusationemque posse competere. <a 468 d. k. sept. anthemio a. ii cons.>

CJ.6.61.0. De bonis, quae liberis in potestate constitutis ex matrimonio vel aliter adquiruntur, et eorum administratione.

CJ.6.61.1: Imperatores Theodosius, Valentinianus

Cum venerandae leges vetuerint patribus iure potestatis adquiri, quidquid eorum filiis avus avia proavus proavia a linea materna venientes quocumque titulo contulissent, hoc quoque convenit observari, ut, quidquid vel uxor marito non emancipato vel maritus uxori in potestate positae quocumque titulo vel iure contulerit seu transmiserit, hoc patri nullatenus adquiratur: atque ideo in eius tantum , cui delatum est, iure durabit. * theodos. et valentin. aa. ad senatum. * <a 426 d. viii id. nov. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.6.61.2: Imperatores Theodosius, Valentinianus

Constitutionis novae capitulum clariore interpretatione sancimus, ut, quae per filios nepotes pronepotes itemque filias neptes proneptes, quamvis in potestate sint, minime adquiri decrevimus a marito vel uxore quocumque titulo collata sive ultima voluntate transmissa, nullus ad id quoque pertinere existimet, quod ab ipso parente datum vel ante nuptias donationis causa pro una ex memoratis personis praestitum fuerat, ut minime ad eum, si casus tulerit, revertatur (prospiciendum est enim, ne hac iniecta formidine parentum circa liberos munificentia retardetur) : sed ut his potestatis iure ad parentes reversis cetera, quae ex substantia speciali coniugis ad superstitem devenerunt, quamvis idem in sacris sit , fructu tamen solo atque usu parentibus deputato, dominium ei qui a coniuge vel quae meruit reservetur, parente pro emancipationis etiam beneficio, si voluerit , sicut in maternis rebus vel quae per eanden lineam veniunt, praemium habituro. * theodos. et valentin. aa. hierio pp. * <a 428 d. x k. mart. felice et tauro conss.>

CJ.6.61.3pr.: Imperatores Theodosius, Valentinianus

Quod scitis prioribus continetur nec a filia quae in potestate est donationem ante nuptias patri nec a filio dotem adquiri, eo addito confirmamus, ut, defunctis his adhuc in potestate patris, si liberis extantibus moriantur, ad liberos eorum eaedem res iure hereditatis, non ad patres iure peculii transmittantur nec per nepotes avo videlicet adquirendae. * theodos. et valentin. aa. florentio pp. * <a 439 d. vii id. sept. constantinopoli theodosio a. xvii et festo conss. >

CJ.6.61.3.1: Imperatores Theodosius, Valentinianus

Sin autem idem nepos superstitibus tam patre quam avo paterno diem suum sine liberis obierit, eorum dominium, quae ad ipsum ex matre vel ab eius linea pervenerunt, non ad avum, sed ad patrem eius perveniat: usu fructu videlicet et in huiusmodi casibus avo, dum supererit, servando. <a 439 d. vii id. sept. constantinopoli theodosio a. xvii et festo conss. >

CJ.6.61.4pr.: Imperatores Leo, Anthemius

Quaecumque res ad filium vel filiam, nepotes sive pronepotes utriusque sexus in potestate constitutos ex priore vel secundo aut tertio seu coniugio numerosiore pervenerint ex dote vel quacumque donatione seu hereditate legato vel fideicommisso, earum usque in diem vitae suae pater vel avus vel proavus usum fructum habeant: easdem res quocumque modo alienandi vel pignoris seu hypothecae iure obligandi facultate eis penitus interdicta, dominio videlicet earum ad filios et nepotes sive pronepotes utriusque sexus permanente, etiamsi ex eodem matrimonio procreati non sint, ex quo eaedem res ad parentes eorum, qui quaeve in potestate sunt, fuerint devolutae. * leo et anthem. aa. erythrio pp. * <a 472 d. v k. mart. marciano cons.>

CJ.6.61.4.1: Imperatores Leo, Anthemius

Eo videlicet observando, ut morientium fratrum sororumve portiones, qui quaeve ex eodem matrimonio progeniti vel progenitae sunt, primo quidem ad liberos eorum , ut dictum est, si tamen fuerint, deinde his non extantibus ad superstites tantummodo fratres vel sorores eorum perveniant aut ad superstitem, si ex isdem fratribus sive sororibus unus unave remanserit. <a 472 d. v k. mart. marciano cons.>

CJ.6.61.4.2: Imperatores Leo, Anthemius

Omnibus autem, qui ex eodem coniugio fuerint procreati, defunctis tunc demum ad eos, qui ex alio matrimonio sunt editi, easdem res pro virili parte venire statuimus: nullo autem ex memoratis personis existente parentes eorum eas percipere. <a 472 d. v k. mart. marciano cons.>

CJ.6.61.4.3: Imperatores Leo, Anthemius

Parentibus vero, quorum sub potestate sunt, usum fructum dumtaxat habituris memoratas res iure potestatis alienandi vel obligandi licentiam denegamus, non prohibendis isdem liberis, quandoque sui iuris fuerint, nulla temporali praescriptione obsistente easdem res omnibus modis vindicare, nisi forte, postquam potestate parentium eos contigerit liberari, tantum temporis effluxerit, ut ex continua et inconcussa tenentis possessione eorum excludatur intentio. <a 472 d. v k. mart. marciano cons.>

CJ.6.61.5pr.: Imperatores Leo, Anthemius

Non sine ratione de negotio, quod inter matrem familias, cuius vestra suggestio meminit, et germanum eius vertitur, magnitudo tua diversis legibus ex utraque parte prolatis nostram credidit consulendam esse clementiam, cum mulier diversis iuris lectionibus idem intellegi maritum et sponsum niteretur probare, germanus mariti nomen illi soli, qui nuptias contraxerit, recitatione constitutionis divorum retro principum theodosii et valentiniani, qua cavetur, quidquid maritus vel uxor in potestate constituti invicem sibi reliquerint, non patri adquiri, sed ad eorum ius pertinere, imponere. * leo et anthem. aa. nepoti mag. mil. dalmatiae. * <a 473 d.K.Iun.Leone a.V.Cons.>

CJ.6.61.5.1: Imperatores Leo, Anthemius

Quamvis ergo significatione nominis maritus vel uxor post coeptum matrimonium intellegatur, ex quo videlicet inducta est dubietas, attamen, quia consequens est ambiguas atque legum diversis interpretationibus titubantes causas benigne atque naturalis iuris moderamine temperare, non piget nos in praesenti quoque negotio, de quo sublimitas tua suggessit, aequitati convenientem iuliani tantae existimationis viri atque disertissimi iuris periti opinionem sequi. qui cum de dotali praedio tractatu proposito idem ius tam de uxore quam de sponsa observare arbitratus sit, licet lex iulia de uxore tantum loquatur: qua ratione tam spons aliciam donationem quam hereditatem, quam memoratus sponsus suam sponsam lucrari voluit, non adquiri patri, sed ad eam pervenire benignum esse perspeximus. <a 473 d.K.Iun.Leone a.V.Cons.>

CJ.6.61.6pr.: Imperator Justinianus

Cum oportet similem providentiam tam patribus quam liberis deferri, invenimus autem in veteris iuris observatione multas esse res, quae extrinsecus ad filios familias veniunt et minime patribus adquiruntur, quemadmodum in maternis bonis vel quae ex maritali lucro ad eos perveniunt, ita et in his, quae ex aliis causis filiis familias adquiruntur, certam introducimus definitionem. * iust. a. demostheni pp. * <a 529 recitata septimo miliario in novo consistorio palatii dn.Iustiniani. d.Iii k. nov. decio vc. cons. >

CJ.6.61.6.1: Imperator Justinianus

Si quis itaque filius familias vel patris sui vel avi vel proavi in potestate constitutus aliquid sibi adquisierit non ex eius substantia, cuius in potestate sit, sed ab aliis quibuscumque causis, quae ex liberalitate fortunae vel laboribus suis ad eum perveniant, ea suis parentibus non in plenum, sicut antea erat sancitum, sed usque ad solum usum fructum adquirat, et eorum usus fructus quidem apud patrem vel avum vel proavum, quorum in sacris sit constitutus, permaneat, dominium autem filiis familias inhaereat ad exemplum tam maternarum quam ex nuptialibus causis filiis familias adquisitarum rerum. <a 529 recitata septimo miliario in novo consistorio palatii dn.Iustiniani. d.Iii k. nov. decio vc. cons. >

CJ.6.61.6.1a: Imperator Justinianus

Sic etenim et parenti nihil derogabitur usum fructum rerum possidenti et filii non lugebunt, quae ex suis laboribus sibi possessa sunt, ad alios transferenda adspicientes vel extraneos vel ad fratres suos, quod etiam gravius multis esse videtur. <a 529 recitata septimo miliario in novo consistorio palatii dn.Iustiniani. d.Iii k. nov. decio vc. cons. >

CJ.6.61.6.1b: Imperator Justinianus

Exceptis castrensibus peculiis, quorum nec usum fructum patrem vel avum vel proavum habere veteres leges concedunt: in his enim nihil novamus, sed vetera iura intacta servamus. eodem observando etiam in his peculiis, quae quasi castrensia peculia ad instar castrensis peculii accesserunt. <a 529 recitata septimo miliario in novo consistorio palatii dn.Iustiniani. d.Iii k. nov. decio vc. cons. >

CJ.6.61.6.1c: Imperator Justinianus

Sub hac tamen definitione hunc legis articulum inducimus, ut in successione quidem earum rerum, quae extrinsecus filiis familias adquiruntur, iura eadem observentur, quae in maternis et nuptialibus rebus statuta sunt. <a 529 recitata septimo miliario in novo consistorio palatii dn.Iustiniani. d.Iii k. nov. decio vc. cons. >

CJ.6.61.6.2: Imperator Justinianus

Non autem hypothecam filii familias adversus res patris viventis adhuc seu iam mortui sperare audeant nec ratiocinia eis super administratione inferre, sed tantummodo alienatione vel hypotheca suo nomine patribus denegata rerum, habeat parens plenissimam potestatem uti fruique his rebus, quae per filios familias secundum praedictum modum adquiruntur. <a 529 recitata septimo miliario in novo consistorio palatii dn.Iustiniani. d.Iii k. nov. decio vc. cons. >

CJ.6.61.6.2a: Imperator Justinianus

Et gubernatio earum sit penitus impunita et nullo modo audeat filius familias vel filia vel deinceps personae vetare eum, cuius in potestate sunt, easdem res tenere aut quomodo voluerit gubernare, vel si hoc fecerint, patria potestas in eos exercenda est: sed habeat pater vel aliae personae, quae superius enumeratae sunt, plenissimam potestatem uti frui gubernareque res praedicto modo adquisitas. <a 529 recitata septimo miliario in novo consistorio palatii dn.Iustiniani. d.Iii k. nov. decio vc. cons. >

CJ.6.61.6.2b: Imperator Justinianus

Et si quid ex usu earum pater avus vel proavus collegerit, habeat licentiam quemadmodum cupit hoc disponere et in alios heredes transmittere, vel si ex earum rerum fructibus res mobiles vel immobiles vel se moventes comparaverit, eas etiam quomodo voluerit habeat et transmittat et in alios transferat sive extraneos sive liberos suos seu quamlibet personam. <a 529 recitata septimo miliario in novo consistorio palatii dn.Iustiniani. d.Iii k. nov. decio vc. cons. >

CJ.6.61.6.2c: Imperator Justinianus

Sin autem res sibi memorato modo adquisitas parens noluerit tenere, sed apud filium vel filiam vel deinceps personas reliquerit, nullam post obitum eius licentiam habeant heredes alii patris avi vel proavi eundem usum vel quod ex hoc ad filios familias pervenit utpote patri debitum sibi vindicare, sed quasi diurna donatione in filium celebranda, qui usum fructum detinuit, quem patrem habere oportuerat, ita causa intellegatur et eundem usum fructum post obitum patris ipse lucretur, parente ius exactionis quasi sibi debitae a filio, qui usum fructum consensu eius possidebat, suae posteritati vel successioni minime transmittente, quatenus in omni pace inter se successio eius permaneat nec altercationis cuiu sdam maxime inter fratres oriatur occasio. <a 529 recitata septimo miliario in novo consistorio palatii dn.Iustiniani. d.Iii k. nov. decio vc. cons. >

CJ.6.61.6.3: Imperator Justinianus

Cum autem constantiniana lege cautum erat, si filii familias ab his, qui eos in potestate habent, nexu paterno per emancipationem liberentur, debere patrem tertiam partem bonorum, quae adquiri non solent, quasi remunerationis gratia a filio accipere vel retinere, et ex hac causa iterum pars non minima substantiae liberorum adimebatur, sancimus huiusmodi casu interveniente et emancipatione liberis imposita non tertiam partem dominii rerum minime adquisitarum, sed dimidiam usus fructus apud maiores qui emancipationem donant residere: exceptis et in hoc casu castrensibus et quasi castrensibus tantummodo peculiis, quibus nihil nec ex hac causa diminuitur. sic enim nec liberis cuiuscumque sexus aliquid dominii auferetur et patribus amplioris patrimonii usus fructus adsignabitur. <a 529 recitata septimo miliario in novo consistorio palatii dn.Iustiniani. d.Iii k. nov. decio vc. cons. >

CJ.6.61.6.3a: Imperator Justinianus

Hoc obtinente et si in emancipatione sibi parentes hoc minime servaverint: sed nisi specialiter vel in emancipatione huic praemio renuntiaverint vel donatione facta sese et ab huiusmodi beneficio alienaverint et in liberos hoc transtulerint, manere ad eos etiam tacentes ius et beneficium usus fructus retinendi, ut post obitum eorum et usus fructus in omnibus memoratis causis ad eos perveniat, quorum dominium est, scilicet secundum, quod iam diximus, in successionibus eorum omnibus servandis, quae de maternis et nuptialibus bonis consultissimis legibus definita sunt. <a 529 recitata septimo miliario in novo consistorio palatii dn.Iustiniani. d.Iii k. nov. decio vc. cons. >

CJ.6.61.6.4: Imperator Justinianus

Sed cum tacitas hypothecas tam veteres leges in quibusdam certis casibus introduxerunt quam nos in maternis ceterisque, quas servare necesse est, et dubitabatur, ex quo hypothecas competere oportet, utrumne ab initio an ex eo tempore, ex quo male aliquid gestum est, compendiosa narratione interpretamur initium gerendae vel deserendae administrationis vel observationis esse spectandum et non tempus, ex quo male aliquid fuerit gestum. <a 529 recitata septimo miliario in novo consistorio palatii dn.Iustiniani. d.Iii k. nov. decio vc. cons. >

CJ.6.61.7pr.: Imperator Justinianus

Cum multa privilegia imperialibus donationibus iam praestita sunt, dignum incrementum et his offerre nostra dignata est clementia. * iust. a. iuliano pp. * <a 530 d. proposit. xii k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.61.7.1: Imperator Justinianus

Si quis igitur a serenissimo principe vel a piissima augusta sive masculus sive femina donationem sit consecutus vel consecuta sive mobilium sive immobilium seu se moventium rerum, in filiis familias tamen constitutus vel constituta, habeat huiusmodi res omni adquisitione absolutas et nemini eas adquirat neque earum usum fructum pater vel avus vel proavus sibi vindicet, sed ad similitudinem castrensis peculii omnem facultatem in eas filii vel filiae familias habeant. <a 530 d. proposit. xii k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.61.7.2: Imperator Justinianus

Ut enim imperialis fortuna omnes supereminet alias, ita oportet et principales liberalitates culmen habere praecipuum. <a 530 d. proposit. xii k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.6.61.8pr.: Imperator Justinianus

Cum non solum in maternis rebus, quae filiis familias deferuntur, sed etiam de aliis omnibus, quae adquisitionem effugiunt, et maxime post novellam nostri numinis legem, quae omnia, quae extrinsecus ad filios familias perveniunt et non ex paterna substantia, non esse adquirenda patribus statuit nisi tantummodo ad usum fructum, variae altercationes exortae sunt et varios eventus variosque continent tractatus et semper in iudiciis versantur, necesse est utiliter et apertissime omnia dirimere. * iust. a. iohanni pp. * <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.61.8.1: Imperator Justinianus

Sancimus itaque in omnibus rebus, quae fugiunt quidem dominii adquisitionem, sed usus fructus tantummodo patri offertur vel aliis parentibus a filio familias cuiuscumque gradus vel sexus, sive pater adire filium familias integrae aetatis compellit et ille reclamandum existimat, sive filius familias adire cupit et pater in contrarium inclinat, liberam habere licentiam et patrem ipsum sibi adire hereditatem recusante filio et omne sive damnum sive lucrum in suam habere fortunam, nullo ex hoc praeiudicio filio generando: sive e contrario patre recusante filius adire hereditatem voluerit, nullam adquisitionem nec usum fructum patri offerri, sed ipsum filium sibi imputare, si quid ex hoc contigerit: nulla actione neque contra patrem danda, ubi adversus eius voluntatem filius hereditatem vel legatum vel fideicommissum vel aliud quidquid ex quocumque titulo sive donat ionis sive contractus sibi adquirere maluerit, neque adversus filium simili modo actione extendenda, ubi recusante eo pater sua auctoritate haec sibi vindicet, huiusmodi aditionis tramite ex praesenti lege patri competente. <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.61.8.1a: Imperator Justinianus

Sed habeat et pater omnem licentiam et actiones movere et ab aliis pulsari, ubi ad eum totum commodum pervenit, et filius simili modo in agendo et pulsando solus habeat et detrimentum et commodum, necessitate per officium patri imponenda tantummodo filio consentire vel agenti vel fugienti, ne iudicium sine patria voluntate videatur consistere. et haec quidem, si plenae aetatis filius est, qui paternam voluntatem sequi non patitur. <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.61.8.1b: Imperator Justinianus

Sin autem in secunda aetate adhuc filius est et hereditate ei delata pater consentire adeunti hereditatem noluerit vel patre volente ipse reclamaverit, si quidem recusaverit filius, licentiam damus patri simili modo hereditatem adire et eam pleno iure habere, his omnibus quae superius diximus locum habentibus. <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.61.8.1c: Imperator Justinianus

Sin autem patre recusante filius adire maluerit, damus quidem licentiam ei hoc facere, patre autem nolente res filii gubernare propter causae necessitatem habeat facultatem filius adire competentem iudicem et ex eo petere curatorem hereditati dari, per quem gubernatio rerum in eum delatarum procedat: in utroque casu in integrum restitutionis auxilio minime ei denegando. <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.61.8.2: Imperator Justinianus

Similique modo et in milite filio familias, qui recusaverit aditionem hereditatis, quae ei ex castrensibus occasionibus perveniat, patri danda licentia adire hereditatem, ut ad ipsum perveniat pleno iure tam per usum fructum quam per dominium eandem hereditatem possessurum, quasi ipse pater ab initio fuisset heres institutus: eo videlicet subiacente omnibus oneribus hereditariis et omnia commoda habituro et ad filium nullo periculo redundante, et haec quidem in his casibus observanda sunt, quibus discordia inter patrem et filium vertitur. <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.61.8.3: Imperator Justinianus

Ubi autem in unum voluntas eorum concurrit, et pater usum fructum et filius habeat proprietatem, et in agentibus et in fugientibus pater quidem suscipiat actiones et moveat, cuiuscumque aetatis filius inveniatur, adhibeatur autem etiam filiorum consensus, nisi adhuc in prima sunt aetate constituti vel longe absunt, sumptibus videlicet a patre propter rerum incrementa faciendis. cum enim nuda proprietas apud filium invenitur, ex qua substantia possibile est eum sumptus litis dependere? <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.61.8.4: Imperator Justinianus

Sin autem aes alienum ex defuncti persona descendit, cum etiam apud veteres haec esse substantia intellegitur, quae post detractum aes alienum supersederit, habeat pater licentiam ex rebus hereditariis primum quidem mobilibus, sin autem non sufficiunt, et immobilibus sufficientem partem filii nomine venumdare, ut ilico reddatur aes alienum et non usurarum onere praegravetur. <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.61.8.4a: Imperator Justinianus

Quod si pater hoc facere supersederit, ipse usuras vel ex reditibus vel ex sua substantia omnimodo dare compelletur. <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.61.8.4b: Imperator Justinianus

Sin autem legata vel fideicommissa sive annalia sive semel relicta imminent huiusmodi personis, si quidem tales reditus sunt, qui sufficiunt ad annalia legata, pater ex huiusmodi reditibus haec dependere compelletur. <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.61.8.4c: Imperator Justinianus

Sin autem non habet substantia sufficientem reditum ad legatorum vel fideicommissorum praestationem vel minime reditus vel alias accessiones contineat, sint tamen res mobiles vel immobiles, steriles quidem, non tamen inutiles, veluti domus in provinciis pretiosae vel ubicumque posita suburbana, ex quibus huiusmodi legata possunt explicari, licentia dabitur patri sufficientem partem eorum similiter filii nomine vendere et satisfacere legatis. <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.61.8.4d: Imperator Justinianus

Hoc procul dubio observando, ut et mancipia ipse usufructuarius aleret et omnia circa usum fructum faceret, quae nullo modo proprietatem possint deteriorem facere, paterna reverentia eum excusante et a ratiociniis et a cautionibus et ab aliis omnibus, quae usufructuarii extranei a legibus exiguntur, secundum nostrae constitutionis tenorem, quam iam super huiusmodi casibus tulimus. ipsum autem filium vel filios vel filias et deinceps alere patri necesse est non propter hereditates, sed propter ipsam naturam et leges, quae et parentibus alendos esse liberos imperaverunt et ipsis liberis parentes, si inopia ex utraque parte vertitur. <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.61.8.5: Imperator Justinianus

Sed pater quidem in praedictis tantummodo causis habeat licentiam recte res filiorum familias vendere filii nomine vel, si emptorem non invenerit, supponere, nullo modo licentia concedanda filiis easdem venditiones vel hypothecas retractare: non item licentia parentibus danda extra memoratas causas res, quarum dominium apud eorum posteritatem est, alienare vel pignori vel hypothecae titulo dare, sed si hoc fecerint, scituris, quod necesse est eos in legum laqueos incidere, quibus huiusmodi venditiones vel hypothecae sunt interdictae, exceptis videlicet rebus mobilibus vel immobilibus illis, quae onerosae hereditati sunt vel quocumque modo damnosae, quas sine periculo vendere patri cum paterna pietate licet, ut pretium earum vel in res et causas hereditarias procedat vel filio servetur. <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.61.8.5a: Imperator Justinianus

Filiis autem familias in his dumtaxat casibus, in quibus usus fructus apud parentes constitutus est, donec parentes vivunt, nec testari de isdem rebus permittimus, nec citra voluntatem eorum, quorum in potestatae sunt, ulla licentia concedenda dominium rei ad eos pertinentis alienare vel hypothecae titulo dare vel pignori adsignare. melius enim est coartare iuveniles calores, ne cupidini dediti tristem exitum sentiant, qui eos post dispersum expectat patrimonium. cum enim, sicut dictum est, parentes alere eos secundum leges compelluntur, quare ad venditionem rerum suarum prosilire desiderant? <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.61.8.6: Imperator Justinianus

Ubi autem puerilis aetas patri licentiam praestat etiam sine consensu filii hereditatem nomine eius adire, si hoc fecerit, damus quidem filio in integrum restitutionem, postquam patria fuerit potestate liberatus vel adoleverit, patrem autem oneribus hereditariis, licet nomine filii adiit, modis omnibus illigamus: quare enim talem hereditatem adiit, qualem nec ipse nunc nec filius idoneam sibi esse existimat? <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.61.8.6a: Imperator Justinianus

Non autem filio damus licentiam, si in integrum restitutionem petat respuendam esse credens hereditatem, adhuc minoribus curriculis instantibus iterum per aliam restitutionem adire praefatam hereditatem, ne ludibrio leges ei fiant saepius eandem et amplecti et respuere cupienti. si enim quod pater fecit ratum non habuit et propter hoc restitutus est, quomodo ferendus videatur iterum iudicium amplectens, quod et post patris voluntatem contraria adfectione aspernandum esse existimavit? <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.61.8.6b: Imperator Justinianus

Sin vero pater quidem hereditatem repudiaverit infante filio constituto, ipse autem filius postea vel adhuc in sacris constitutus vel patria potestate liberatus adeundam esse crediderit eandem hereditatem, licentiam damus ei vel, si sui iuris efficiatur, tutoribus vel curatoribus eius hereditatem adire, nullo praeiudicio ex recusatione paterna ei generando: simili modo et in hac parte nulla ei vel tutoribus eius vel curatoribus licentia concedenda contra priorem suam voluntatem in integrum restitutionem petere. <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.61.8.6c: Imperator Justinianus

Quae et in legatis et fideicommissis tam specialibus quam per universitatem relictis et in aliis causis, quas supra enumeravimus, similibusque eis observanda sunt. <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.6.61.8.7: Imperator Justinianus

In servis autem, qui filiis familias donantur, sive in constante matrimonio sive ab extraneis sub ea condicione, ut statim eos in libertatem producant, nullum impedimentum paterna faciat auctoritas. qualis enim usus fructus potest ei adquiri, qui momentarius esse ostenditur? si enim in ipso momento necesse habet eum et possidere et libertate donare, in talem hominem qualis usus fructus patri potest adquiri? <a 531 d. iiii k. aug. constantinopoli post consulatum lampadii et orestis vv. cc.>

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CJ.6.62.1: Imperator Constantinus

Si quis navicularius sine testamento et liberis vel successoribus defunctus sit, hereditatem eius non ad fiscum, sed ad corpus naviculariorum, ex quo fatali sorte subtractus est, deferri praecipimus. * const. a. mastichiano praef. annonae. * <a 326 pp. xv k..... lastronae constantino a. vii et constantio c. conss.>

CJ.6.62.2: Imperator Constantius

Universis tam legionibus quam vexillationibus comitatensibus seu cuneis insinuare debebis, ut cognoscant, cum aliquis fuerit rebus humanis exemptus atque intestatus sine legitimo herede decesserit, ad vexillationem, in qua militaverit, res eiusdem necessario pervenire. * constantius a. bonoso mag. equitum. * <a 347 d. v id. mai. hierapoli rufino et eusebio conss.>

CJ.6.62.3: Imperator Constantius

Si quis cohortali condicione gravatus sine testamento vel quolibet successore ultimum diem obierit, successionem eius non ad fiscum, sed ad ceteros cohortales eiusdem provinciae pertinere iubemus. * constantius a. rufino pp. * <a 349 d. v k. ian. limenio et catulino conss.>

CJ.6.62.4: Imperatores Theodosius, Valentinianus

Intestatorum curialium bona, si sine herede moriantur, ordinibus patriae eorum adipisci praecipimus. * theodos. et valentin. aa. florentio pp. * <a 429 d. v id. mart. florentio et dionysio conss.>

CJ.6.62.5pr.: Imperatores Theodosius, Valentinianus

Si quis fabricensis sine liberis vel legitimo herede decesserit non condito testamento, eius bona, cuiuscumque summae sint, ad eos pertinere, qui velut creatores decendentium attinentur, qui fisco pro intercepto respondere coguntur. * theodos. et valentin. aa. aureliano com. rer. privat. * <a 439 d. prid. non. nov. constantinopoli theodosio a. xvii et festo conss.>

CJ.6.62.5.1: Imperatores Theodosius, Valentinianus

Hoc enim facto contingit, ut et rei publicae ratio salva permaneat et fabricenses collegarum suorum solaciis perfruantur, qui damnis ac detrimentis tenentur obnoxii <a 439 d. prid. non. nov. constantinopoli theodosio a. xvii et festo conss.>

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CJ.7.65.0. Quorum appellationes non recipiantur.

CJ.7.66.0. Si pendente appellatione mors intervenerit.
CJ.7.67.0. De his qui per metum iudicis non appellaverunt.
CJ.7.68.0. Si unus ex pluribus appellaverit.
CJ.7.69.0. Si de momentaria possessione fuerit appellatum.
CJ.7.70.0. Ne liceat in una eademque causa tertio provocare vel post duas sententias iudicum, quas definitio praefectorum roboraverit, eas retractare.
CJ.7.71.0. Qui bonis cedere possunt.
CJ.7.72.0. De bonis auctoritate iudicis possidendis seu venumdandis et de separationibus.
CJ.7.73.0. De privilegio fisci.
CJ.7.74.0. De privilegio dotis.
CJ.7.75.0. De revocandis his quae per fraudem alienata sunt.

CJ.7.1.0. De vindicta libertate et apud consilium manumissione.

CJ.7.1.1: Imperator Antoninus

Eorum, qui apud consilium manumittuntur, post causam ab iudicibus probatam et manumissionem secutam non solet status in dubium vocari, si dicantur falsa demonstratione liberati. * ant. a. tertio. * <a 211 pp. non. oct. gentiano et basso conss.>

CJ.7.1.2: Imperatores Diocletianus, Maximianus

Nihil civitati romanae semel praestitae vel addere vel detrahere secundam manumissionem potuisse certissimum est. * diocl. et maxim. aa. et cc. sallustio. * <a 293 d. prid. k. mai aa. conss.>

CJ.7.1.3: Imperatores Diocletianus, Maximianus

Nec mulierem per maritum nec alium per procuratorem vindicta manumittere posse non est ambigui iuris. * diocl. et maxim. aa. et cc. attiae. * <>

CJ.7.1.4: Imperator Constantinus

Apud consilium nostrum vel apud consules praetores praesides magistratusve earum civitatum, quibus huiusmodi ius est, adipisci potest patronorum iudicio sedula servitus libertatem. * const. a. ad maximum pu. * <a 319 - 323 >

CJ.7.2.0. De testamentaria manumissione.

CJ.7.2.1: Imperatores Severus, Antoninus

Si codicillos maior viginti annis fecisset, confirmationis tempus libertati non nocere certum est: nec enim potestas iuris, sed iudicii consideratur. * sev. et ant. aa. primo. * <aproposita.>

CJ.7.2.2: Imperatores Severus, Antoninus

Ex testamento defuncti libertates praestari non possunt hereditate non adita, vel si rei memoria propter crimen quod morte non intercidit damnata est. * sev. et ant. aa. phileto. * <>

CJ.7.2.3: Imperatores Severus, Antoninus

Libertas testamento data adita hereditate contingit, et si heres scriptus per in integrum restitutionem abstinuerit hereditate, nihil ea res libertati obest. * sev. et ant. aa. euphrosynae. * <a 207 s. xvii k. mai. apro et maximo conss.>

CJ.7.2.4pr.: Imperatores Severus, Antoninus

Cum testamento directam libertatem pater tuus sit consecutus, quamvis ei heres extiteris, frustra tamen, rationes quas tempore servitutis gessit ut reddas, compelleris, cum non ea condicione acceperit libertatem. * sev. et ant. aa. anchilao. * <a 215 proposita vii k. dec. laeto ii et cereale conss.>

CJ.7.2.4.1: Imperatores Severus, Antoninus

Is autem, cui libertas sive fideicommissaria sive directa, si rationes reddidisset, relicta est, ante reliqua illata et ea, quae malo consilio amota sunt, ad libertatem non potest pervenire: sin autem non debitor ex rationibus fuerit repertus, post aditam hereditatem quasi puram libertatem consequitur. <a 215 proposita vii k. dec. laeto ii et cereale conss.>

CJ.7.2.5: Imperator Alexander Severus

In fraudem creditorum testamento datae libertates, quamvis debitori heres qui solvendo est extiterit, per legem aeliam sentiam non valent. * alex. a. quintiano. * <>

CJ.7.2.6: Imperator Gordianus

Si hereditas eius, a quo testamento dicis te esse manumissum, ob aes alienum spernitur ab heredibus, conservandae libertatis gratia non iniusta ratione creditoribus hereditariis satis offerens iudicium testatoris servari tibi postulabis, maxime cum id etiam a divo marco consultissimo principe sit constitutum: quod in extranea quoque persona observari oportet. * gord. a. pisistrato. * <>

CJ.7.2.7: Imperator Gordianus

Contra voluntatem matris tuae libertatem in eum conferre, quem illa liberum fieri prohibuit, non debes, ne videaris iura pietatis violare. * gord. a. .Tae. * <a 240 pp. x k. febr. sabino ii et venusto conss.>

CJ.7.2.8: Imperator Philippus

Cum testator libertatem tempore nuptiarum filii sui vel filiae servo dari iussit , non tempus praestandae libertati praestituit, sed potius condicioni locum fecit, ut non insecutis nuptiis libertas iure posci non possit. * philipp. a. et philipp. c. gemello. * <>

CJ.7.2.9: Imperatores carus, carinus, numer.

Servo tuo defunctus, licet te heredem scripsisse proponatur, tamen directam libertatem dare non potuit: iure enim directo libertatem servis alienis dare nemo potest. * carus carinus et numer. aaa. mauro. * <a 283 pp. vi id. nov. caro et carino conss.>

CJ.7.2.10: Imperatores Diocletianus, Maximianus

Directis verbis iure data libertate non sola impositione pilei, sed adita hereditate, si nulla iuris impediat constitutio, liberti constituuntur. * diocl. et maxim. aa. et cc. germano. * <a 293>

CJ.7.2.11: Imperatores Diocletianus, Maximianus

Si iure non substitit testamentum, in hoc nec libertates (cum non fuisse additum, ut pro codicillis scriptum valeret, proponas) recte datas constabit. * diocl. et maxim. aa. et cc. laurinae. * <a 293 pp. sub die xvi k. april. sirmi aa. conss.>

CJ.7.2.12pr.: Imperatores Diocletianus, Maximianus

Si heredes iure facto testamento sollemniter adierint hereditatem, ex testamento tibi libertas quaesita post colludentibus tam scriptis heredibus quam ab intestato vindicantibus successionem adimi non potuit. * diocl. et maxim. aa. et cc. rhizo. * <a 293 s. k. dec. sirmi aa. conss.>

CJ.7.2.12.1: Imperatores Diocletianus, Maximianus

Quod si sponte repudiaverunt sibi delatam successionem, omnia quae testamento fuerant scripta defecisse convenit. <a 293 s. k. dec. sirmi aa. conss.>

CJ.7.2.12.2: Imperatores Diocletianus, Maximianus

Si vero, ut vos fraudarent libertate, collusisse eos praeses animadverterit, secundum haec quae divus pius antoninus constituit libertatibus consuli providebit. <a 293 s. k. dec. sirmi aa. conss.>

CJ.7.2.13: Imperatores Diocletianus, Maximianus

Statuliberis datam libertatem adimi ab herede non posse certum est: nec alienatio nec usucapio statulibero, quominus existente condicione libertatem consequatur, nocere potest. * diocl. et maxim. aa. et cc. martiali. * <>

CJ.7.2.14: Imperatores Theodosius, Valentinianus

Directas libertates graecis verbis liceat in testamentis relinquere, ut ita libertates directae datae videantur, ac si legitimis verbis eas testator dari iussisset. * theodos. et valentin. aa. florentio pp. * <a 439 d. prid. id. sept. constantinopoli theodosio a. xvii et festo conss.>

CJ.7.2.15pr.: Imperator Justinianus

Cum constitutio divi marci declarat, si quis testamento condito vel sine testamento moriens, ut locus fiat ab intestato successioni, libertates reliquerit, nemo autem adire vult defuncti hereditatem eo, quod suspecta esse videtur, et si fuerint libertates forsitan et sine scriptis fideicommissariae relictae, licere vel cuilibet extraneo vel uni ex servis, qui et ipse libertate donatus est et pro sua periclitatur condicione, adire hereditatem sub hac condicione et satisdatione, quod et creditoribus omnibus satisfaciat et libertates imponat his, quibus voluerit testator, variae dubitationes ex hac constitutione emerserunt. * iust. a. iohanni pp. * <a 531 - 532>

CJ.7.2.15.1: Imperator Justinianus

Nam si res hereditariae herede minime invento venierint an et post venditionem earundem rerum possibile est vel servum vel quemlibet alium adire et recuperare quidem ab emptoribus res, satisfacere autem creditoribus et libertatibus, quaerebatur. <a 531 - 532>

CJ.7.2.15.1a: Imperator Justinianus

Et licet divus severus semel rebus venditis hoc non admisit, nobis tamen ulpiani sententia admonente placuit maxime propter libertates, ne depereant, et post venditionem rerum annale remedium dare divi marci constitutioni, intra quod et creditoribus omnibus satisfiat et emptores nihil novi patiantur, qui annalem saepe sentiebant rescissionem, et licere servo, qui libertate donatus est, vel alii cuidam extraneo vel ante venditionem rerum vel post venditionem, intra annale tamen tempus, adire hereditatem et res recuperare, prius satisdatione danda, ut tam creditoribus quam libertatibus satisfaciat. <a 531 - 532>

CJ.7.2.15.1b: Imperator Justinianus

(1) sin autem libertatibus quidem omnibus satisfacere quis polliceatur, creditoribus autem non in solidum, sed in partem solvere creditum, illi autem huiusmodi pactionem admiserint, sancimus et in huiusmodi casu consultissimi principis locum habere constitutionem et eum modis omnibus admittendum censemus, maxime cum ex voluntate creditorum hoc interponitur: nolentibus etenim creditoribus admitti talem petitionem nullo concedimus modo. <a 531 - 532>

CJ.7.2.15.2: Imperator Justinianus

Si vero quidam ex servis libertatem amplexi fuerint, alii autem censuerint esse respuendam, et in hunc casum extendenda est divi marci oratio et procul dubio et in hac specie audiendus est petitor hereditatis et maneat liberum arbitrium servorum, sive ad libertatem venire volunt sive in servitutem remanere. <a 531 - 532>

CJ.7.2.15.2a: Imperator Justinianus

Licet enim romanam civitatem recusare nemini servorum licet, tamen in hoc casu, ne propter quorundam indevotionem alii maneant in servitute, volentibus quidem omnibus servis licere in libertatem pervenire, nolentibus autem quibusdam vel recusantibus spontaneam servitutem imminere oportet et, quem patronum habere noluerint, dominum suum, forsitan et acerbum, sentiant. <a 531 - 532>

CJ.7.2.15.3: Imperator Justinianus

Sin vero non omnes libertates adimplere pollicitus fuerit, sed certum numerum servorum ex his, qui ad libertatem venire iussi sunt, melius est, si quidem res hereditariae sufficiunt ad implendos creditores, etiam omnibus servis dare libertatem, etsi hoc non pollicitus est. si autem deest in exsolvendis creditoribus, humanius est, ut saltim pauci veniant ad libertatem. <a 531 - 532>

CJ.7.2.15.4: Imperator Justinianus

Sed hoc quidem antiquis dubitationibus remedium invenimus. bellissimam autem repletionem praefatae constitutioni donantes sancimus: si non unus veniat hereditatis petitor, sed plures, si quidem uno momento uterque vel ampliores, omnibus detur licentia communiter hereditatem adire, prius satisdatione ab omnibus danda , ut creditoribus et libertatibus satisfaciant. <a 531 - 532>

CJ.7.2.15.4a: Imperator Justinianus

Sin autem per intervalla temporum hoc fiat, qui primus veniat habeat praerogativam, si etiam satisdationem praestare potest: illo enim cessante hoc facere alii gradatim secundum tempora petitionis succedant. et hoc intra annale tempus observetur. <a 531 - 532>

CJ.7.2.15.5: Imperator Justinianus

Sin autem uno pollicente quosdam liberos facere, non autem totos, alius emerserit satisdationem paratus idoneam praestare, quod omnibus creditoribus et omnibus libertatibus satisfaciat, aequissimum est eum admitti, ut omnes libertates indistincte celebrentur. quod privilegium damus non solum servo, qui libertate donatus est, sed etiam ei, cui nulla libertas relicta est, ut aliquid venustum eveniat, ut per eum, cui libertas relicta non est, aliis libertas imponatur. <a 531 - 532>

CJ.7.2.15.6: Imperator Justinianus

Sed si quidem, antequam prior hereditarias res et libertatem accipiat, hoc eveniat, secundo petitori vel tertio vel deinceps ampliores libertates pollicentibus fieri locum censemus. <a 531 - 532>

CJ.7.2.15.7: Imperator Justinianus

Sin autem iam rebus servo, qui primus petiit hereditatem, datis et libertatibus ab eo quibusdam servis hereditariis impositis quidam alius servus hereditarius vel liber extraneus hoc facere maluerit, licebit quidem ei hoc impetrare et sub maioribus pollicitationibus et satisdationibus hereditatem accipere: sed prior in libertate petitor maneat, licet res ab eo abstrahantur. his omnibus intra annum secundum quod dictum est celebrandis, ex quo prior petitor iudicem adierit. <a 531 - 532>

CJ.7.3.0. De lege fufia caninia tollenda.

CJ.7.3.1: Imperator Justinianus

Servorum libertates in testamento relictas tam directas quam fideicommissarias ad exemplum inter vivos libertatum indistincte valere censemus, lege fufia caninia de cetero cessante nec impediente testantium pro suis servis clementes dispositiones effectui mancipari. * iust. a. menae pp. * <a 528 d. k. iun. constantinopoli dn. iustiniano pp. a. ii cons.>

CJ.7.4.0. De fideicommissariis libertatibus.

CJ.7.4.1pr.: Imperatores Severus, Antoninus

Cum proponas hereditatem eius aditam non esse, a quo tibi fideicommissariam libertatem relictam dicis, et ab intestato alium quam qui scriptus erat hereditatem possedisse, si non a legitimo quoque herede fideicommissaria libertas repetita est, nullo iure praestari eam ab eo qui rogatus non est desideras. * sev. et ant. aa. * <a 197 pp. xiii k. mart. laterano et rufino conss.>

CJ.7.4.1.1: Imperatores Severus, Antoninus

Plane si pecunia accepta heredem institutum omisisse hereditatem docueris, libertatem tibi praestare cogetur. <a 197 pp. xiii k. mart. laterano et rufino conss.>

CJ.7.4.2: Imperator Antoninus

Quamvis codicilli, quibus avunculo defunctae legatus esse videaris, falsi pronuntiati sunt, tamen si ante motam criminis quaestionem iustam libertatem es a legatario consecutus, posterior eventus non infirmat ita datam libertatem. plane secundum divi hadriani constitutionem datur heredi viginti aureorum repetitio. * ant. a. valerio. * <a d. xviii k. aug. eodem antonio a........... conss.>

CJ.7.4.3: Imperator Alexander Severus

Cum libertatem mulieribus sub condicione datam proponas, quid dubium est eos, qui ex his ante impletam eam eduntur, servos nasci et pertinere ad heredes iure dominii? his enim demum succursum est, qui post moram praestandae libertatis progeniti sunt, ut liberi et ingenui viderentur. * alex. a. lucio. * <a 222? >

CJ.7.4.4: Imperator Alexander Severus

Si voluntate domini in libertate morata est, cui fideicommissaria libertas debita fuerit, secundum senatus consultum et constitutiones ad id pertinentes civis romana facta ingenuos peperit. sed si numquam ab ea libertas petita est, sibimet imputare debet, cum interea ex ea progeniti servi sint. * alex. a. arriano. * <a 222? >

CJ.7.4.5: Imperator Alexander Severus

Minor annis lege definitis nec per fideicommissum libertatem supremis suis relinquere potest nisi his, quorum causam probare potest. * alex. a. dionysio. * <a 222? >

CJ.7.4.6: Imperator Alexander Severus

Deberi etiam alienae ancillae fideicommissariam libertatem placuit: nec deficit hoc debitum, si interim domina, si modo nihil ex iudicio eius, qui quaeve reliquit libertatem, percepit, noluit vendere, quia possit tempore procedente, ubicumque occasio redimendae ancillae fuerit, praestari libertas. * alex. a. maximo. * <>

CJ.7.4.7: Imperator Alexander Severus

Hi, quibus per fideicommissum libertas supremis iudiciis relinquitur, eorum liberti efficiuntur, a quibus manumittuntur. * alex.A. nicomedi. * <a 225 pp. k. april. fusco et dextro conss.>

CJ.7.4.8: Imperator Alexander Severus

Cum proponas fideicommissariam libertatem ita tibi datam, si uxori testatoris placuisset, licet non adeunte hereditatem ad filium solida hereditas pertinere coepit, non refragante tamen uxore testatoris potes petere libertatem. * alex. a. eutycheti. * <a 225 pp. xv k. sept. fusco et dextro conss.>

CJ.7.4.9: Imperator Alexander Severus

Fideicommissaria quidem libertas ita tibi relicta, cum testatoris filius ad annum vigensimum quintum pervenisset, non intercidit, licet heredem intra praestitutam aetatem decessisse proponas: tempore quippe, quo, si viveret, praefinitam aetatem impleturus foret, spem libertatis non intercidere vetus placitum est. * alex. a. mercuriali. * <a 231 pp. k. april. pompeiano et peligno conss.>

CJ.7.4.10pr.: Imperatores valer., gallien.

Etsi non adscripta libertate testator servum suum tutorem filiis suis dederit, receptum est et libertatis et pupillorum favore, ut per fideicommissum manumisisse eum videatur. * valer. et gallien. aa. daphno. * <a 260 pp. iii k. mart. saeculare et donato conss.>

CJ.7.4.10.1: Imperatores valer., gallien.

Et si non suum proprium, sed alienum servum condicionem eius sciens tutorem adscripserit, aeque fideicommissariam libertatem datam, nisi aliud evidenter defunctum sensisse appareat, prudentibus placuit. <a 260 pp. iii k. mart. saeculare et donato conss.>

CJ.7.4.11pr.: Imperatores Diocletianus, Maximianus

Si servus fuisti ac tibi per fideicommissum libertas relicta fuerit, pervides sine manumissione te ad libertatem pervenire non potuisse. * diocl. et maxim. aa. et cc. flaviano. * < sine die et conss.>

CJ.7.4.11.1: Imperatores Diocletianus, Maximianus

Quapropter si verbis precariis constitutus servus libertatem accepisti, adiri praeses provinciae oportet, ut causa cognita, si tibi deberi libertatem perspexerit, ad manumittendum eum qui debet urgueat vel, si latitet, contra latitantem interposito decreto tibi prospiciat. < sine die et conss.>

CJ.7.4.12: Imperatores Diocletianus, Maximianus

Ex verbo " commendo" testamento vel codicillis non videri fideicommissariam libertatem relictam auctoritate iuris declaratur. * diocl. et maxim. aa. et cc. irenaeo. * <a 294 s. xvii k. mai. sirmi cc. conss.>

CJ.7.4.13: Imperatores Diocletianus, Maximianus

Si te, donatam ante matrimonium uxori suae, post ei legato relicto manumitti testamento seu codicillis verbis precariis a successoribus voluit, tam hos ad redemptionem et manumissionem quam eam, quae in capiendis relictis defuncti consensit iudicio, teneri tibique fideicommissariam debere libertatem non ambigitur. * diocl. et maxim. aa. et cc. pythagoridae. * <a 294 s. vii id. dec. cc. conss.>

CJ.7.4.14pr.: Imperator Justinianus

Cum inter veteres dubitabatur, si fideicommissariam libertatem possibile esset relinqui servo, qui adhuc in ventre portaretur et homo fieri speraretur, nos vetus iurgium decidentes libertatis favore censemus et fideicommissariam nec non directam libertatem suam firmitatem habere sive in masculo sive in femina, quae adhuc in ventre vehatur materno, ut cum libertate solem respiciat, etsi mater sua adhuc in servitute constans eum vel eam ediderit. * iust. a. iuliano pp. * <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.7.4.14.1: Imperator Justinianus

Sin autem plures creati vel creatae sint, sive unius fecit mentionem sive pluraliter nuncupavit, nihilo minus omnes ad libertatem ad prima veniant cunabula, cum in ambiguis sensibus melius est, et maxime in libertate, favore eius humaniorem amplecti sententiam. <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.7.4.15: Imperator Justinianus

Ancillam seu servum, cum fideicommissaria libertas eis relicta sit, sancimus, si mora a debitore libertatis facta fuerit, sententia praesidis eripi ad libertatem et nullo facto aut voluntate ab herede expectanda, sed talem habere eos libertatem, quasi ab ipso testatore directis verbis fuerint libertatem consecuti, cum satis impium atque absurdum est heredes testatoris differre voluntates, maxime cum ad libertatem respiciant. * iust. a. iuliano pp. * <a 530 d. k. oct. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.7.4.16pr.: Imperator Justinianus

Si quis in suo testamento rogaverit suum heredem ex liberis ancillae suae quam nominaverit unum quem elegerit ad libertatem perducere et, cum ancilla unum vel plures enixa est, heres neque dum superest in libertatem aliquem adduxerit vel, cum deliberat, quis ad libertatem producendus est, ab hac luce fuerit subtractus : dubitabatur ab antiquis, utrumne omnes an quidam aut nemo ex his ad libertatem perveniant. sed veteris quidem iuris altercatio multa sibi super huiusmodi casibus resonavit. * iust. a. iuliano pp. * <a 530 d. xv k. dec. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.7.4.16.1: Imperator Justinianus

Nos autem heredis malignitatem coercentes, si non voluntatem testatoris adimpleverit et mox, cum potuerit, non elegerit unum ex liberis ancillae et eum libertate donaverit, sancimus compelli non solum eum, sed etiam heredes vel successores eius omnes ancillae liberos in libertatem producere. <a 530 d. xv k. dec. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.7.4.16.2: Imperator Justinianus

Neque enim hoc contrarium est sententiae testatoris: cum enim omnimodo quendam ex his liberum esse disposuit et non ad certum corpus, sed ad omnes respexit, si non paretur eius voluntati, sine dubio ex sententia testatoris omnes ad libertatem perveniunt. <a 530 d. xv k. dec. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.7.4.16.3: Imperator Justinianus

Similemque esse definitionem censemus, et si non ab herede, sed a legatario vel fideicommissario testator rogaverit libertatem imponi. <a 530 d. xv k. dec. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.7.4.16.4: Imperator Justinianus

Sic etenim iusto timore heredes vel legatarii vel fideicommissarii perterriti et voluntatem testatoris adimplere procurent et sibi non ex omnium libertate quandam adferri patiantur iacturam. quod si reclamaverint, sibi tale dispendium imputent, non ex nostra lege, sed ex sua lugentes instantia. <a 530 d. xv k. dec. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.7.4.17pr.: Imperator Justinianus

Cum quidam servum suum ita legavit, ut legatarius libertatem ei imponat, et heres ad huiusmodi legatum improbe versatus servum dare legatario designatus est, ut etiam lite pulsetur, et iudex non in ipsum servum, sed in aestimationem litis condemnationem proferat: veteris iuris interpretes dubitabant, ne quid obstaculum libertati ex hac causa procedat et, si placuerit eandem deberi libertatem, a quo danda est utrumne ab herede an a legatario, et si heres imponat libertatem, an legatarius, quod ex pecuniaria condemnatione accepit, firmiter detinet sive totum sive ex parte sive etiam nihil. * iust. a. iuliano pp. * <a 530 d. constantinopoli xv k. dec. lampadio et oreste vv. cc.Conss.>

CJ.7.4.17.1: Imperator Justinianus

Talem itaque altercationem resecantes miramur, quare iudex, qui praepositus est in praedicta causa, non omnimodo condemnationem in servum, sed in aestimationem eius fecerat, cum ipsius vitium etiam huiusmodi altercationi praebuit occasionem. <a 530 d. constantinopoli xv k. dec. lampadio et oreste vv. cc.Conss.>

CJ.7.4.17.2: Imperator Justinianus

Unde si talis quaestio emerserit, nullum quidem iudicem ita esse stultum putamus , ut huiusmodi proferat condemnationem, sed si legatarius immineat, quatenus ei servus restituatur, et post litem contestatam duorum mensum spatium effluxerit, censemus ilico ad libertatem eripi servum, et illum quidem liberum esse, heredem autem pro sua indevotione omnes expensas, quas legatarius in litem fecit, in quadruplum ei condemnari, iure patronatus integro legatario servando. <a 530 d. constantinopoli xv k. dec. lampadio et oreste vv. cc.Conss.>

CJ.7.5.0. De dediticia libertate tollenda.

CJ.7.5.1: Imperator Justinianus

Dediticia condicio nullo modo in posterum nostram rem publicam molestare concedatur, sed sit penitus delata, quia nec in usu esse reperimus, sed vanum nomen huiusmodi libertatis circumducitur. nos enim, qui veritatem colimus, ea tantummodo volumus in nostris esse legibus, quae re ipsa obtinent. * iust. a. iuliano pp. * <a 530 d........ lampadio et oreste conss.>

CJ.7.6.0. De latina libertate tollenda et per certos modos in civitatem romanam transfusa.

CJ.7.6.1pr.: Imperator Justinianus

Cum dediticii liberti iam sublati sunt, quapropter imperfecta latinorum libertas incertis vestigiis titubans et quasi per saturam inducta adhuc remanet et non inutilis quidem pars eius deminuitur, quod autem ex ipsa rationabile est, hoc in ius perfectum deducitur? * iust. a. iohanni pp. * <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.6.1.1: Imperator Justinianus

Cum enim latini liberti ad similitudinem antiquae latinitatis, quae in coloniis missa est, videntur esse introducti, ex qua nihil aliud rei publicae nisi bellum accessit civile, satis absurdum est ipsa origine rei sublata imaginem eius derelinqui. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.6.1.1a: Imperator Justinianus

Cum igitur multis modis et paene innumerabilibus latinorum introducta est condicio et leges diversae et senatus consulta introducta sunt et ex his difficultates maximae emergebant tam ex lege iunia quam ex largiano senatus consulto nec non ex edicto divi traiani, quorum plenae quidem fuerant nostrae leges, non autem in rebus fuerat eorum experimentum: studiosissimum nobis visum est haec quidem omnia et latinam libertatem resecare, certos autem modus eligere, ex quibus antea quidem latina competebat libertas, in praesenti autem romana defertur condicio, ut his praesenti lege enumeratis et cives romanos nascentibus ceteri omnes modi, per quos latinorum nomen inducebatur, penitus conquiescant et non latinos pariant, sed ut pro nullis habeantur. <a 531 d. k. nov. constantinopoli post con sulatum lampadii et orestis vv. cc.>

CJ.7.6.1.1b: Imperator Justinianus

Quis enim patiatur talem esse libertatem, ex qua in ipso tempore mortis in eandem personam simul et libertas et servitium concurrunt et, qui quasi liber moratus est, eripitur non tantum in mortem, sed etiam in servitutem? <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.6.1.1c: Imperator Justinianus

Sancimus itaque, si quis per epistulam servum suum in libertatem producere maluerit, licere ei hoc facere quinque testibus adhibitis, qui post eius litteras sive in subscriptione positas sive per totum textum effusas suas litteras supponentes fidem perpetuam possint chartulae praebere. et si hoc fecerit, sive per scribendo sive per tabularium, libertas servo competat quasi ex imitatione codicilli delata, ita tamen, ut et ipso patrono vivente et libertatem et civitatem habeat romanam. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.6.1.2: Imperator Justinianus

Sed et si quis inter amicos libertatem dare suo servo maluerit, licebit ei quinque similiter testibus adhibitis suam explanare voluntatem et quod liberum eum esse voluit dicere: et hoc sive inter acta fuerit testificatus sive testium voces attestationem sunt amplexae et litteras tam publicarum personarum quam testium habeant, simili modo servi ad civitatem producantur romanam quasi ex codicillis similiter libertatem adipiscentes. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.6.1.3: Imperator Justinianus

Sed scimus etiam hoc esse in antiqua latinitate ex edicto divi claudii introductum, quod, si quis servum suum aegritudine periclitantem sua domo publice eiecerit neque ipse eum procurans neque alii eum commendans, cum erat ei libera facultas, si non ipse ad eius curam sufficeret, in xenonem eum mittere vel quo poterat modo eum adiuvare, huiusmodi servus in libertate latina antea morabatur et, quem ille moriendum dereliquit, eius bona iterum, cum moreretur, accipiebat. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.6.1.3a: Imperator Justinianus

Talis itaque servus libertate necessaria a domino et nolente re ipsa donatus fiat ilico civis romanus nec aditus in iura patronatus quondam domino reservetur. quem enim a sua domo suaque familia publice reppulit neque ipse eum procurans neque alii commendans neque in venerabilem xenonem eum mittens neque consueta ei praebens salaria, maneat ab eo eiusque substantia undique segregatus tam in omni tempore vitae liberti quam cum moriatur nec non postquam iam fuerit in fata sua concessus. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.6.1.4: Imperator Justinianus

Similique modo si quis ancillam suam sub hac condicione alienaverit, ne prostituatur, novus autem dominus impia mercatione eam prostituendam esse temptaverit, vel si pristinus dominus manus iniectionem in tali alienatione sibi servaverit et, cum ad eum fuerit reversa, ipse ancillam prostituerit, ilico in libertatem romanam eripiatur et, qui eam prostituerit, ab omni patronatus iure repellatur. qui enim ita degener et impius constitutus est, ut talem exerceret mercationem, quomodo dignus est vel ancillam vel libertam eam habere? <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.6.1.5: Imperator Justinianus

Sed et qui domini funus pileati antecedunt vel in ipso lectulo stantes cadaver ventilare videntur, si hoc ex voluntate fiat vel testatoris vel heredis, fiant ilico cives romani. et ne quis vana liberalitate iactare se concedatur, ut populus quidem eum quasi humanum respiciat multos pileatos in funus procedentes adspiciens, omnibus autem deceptis maneant illi in pristina servitute publico testimonio defraudati: fiant itaque et hi cives romani, iure tamen patronatus patronis integro servando. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.6.1.6: Imperator Justinianus

Illo procul dubio observando, ut, si quis sive in testamento sive vindicta quendam manumiserit, licet hoc dixerit vel scripserit, quod voluerit esse latinum, supervacua adiectio latinitatis aboleatur et fiat civis romanus, ne modi, qui ab antiqua observatione in civitatem romanam homines producebant, per privatorum voluntates deminui videantur. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.6.1.7: Imperator Justinianus

Sed et si sub condicione quidam libertatem suo servo reliquerit et a huc pendente condicione extraneus heres libertatem ei imposuerit, non ut antea latinus, sed civis fiat romanus. et si quidem condicio defecerit, ipsius heredis, qui libertatem imposuit, maneat libertus. sin autem fuerit adimpleta, ne eripiatur forsitan liberis et cognatis ius patronatus, orcinus libertus videatur et ad eum iura patronatus perveniant, cui leges concedunt. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.6.1.8: Imperator Justinianus

Illud etiam satis acerbum nobis visum est, quod putabat antiquitas, si in liberali iudicio superatus fuerat servus a domino, deinde servi pretium ab aliquo ei solutum est, in latinitate eum remorari. quemadmodum enim rationabile est et pretio eum perfrui et mortis liberti tempore denuo eum in servitutem deducere, cum non sint ambo casus sibi consentanei? et in praesenti igitur casu libertas romana ei accedat iure patronatus minime subnixa, quia ipse quodammodo sibi libertus invenitur. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.6.1.9: Imperator Justinianus

Sed et si quis homini libero suam ancillam in matrimonio collocaverit et dotem pro ea conscripserit, quod solitum est in liberis personis solis procedere, ancilla non latina, sed civis efficiatur romana. si enim hoc, quod frequentissime in cives romanas et maxime in nobiles personas fieri solet, id est dotalis instrumenti conscriptio, et in hac persona adhibita est, necessarium est consentaneum effectum huiusmodi scripturae observari. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.6.1.10: Imperator Justinianus

Similique modo si dominus inter acta quendam servum filium suum nominaverit, voci eius quantum ad liberam condicionem credendum est. si enim ipse tali adfectione fuerat accensus, ut etiam filium servum suum nominare non indignetur, et hoc non secreto neque inter solos amicos, sed etiam actis intervenientibus et quasi in iudicii figura nominaverit, quomodo potest eum servum iterum saltem morientem habere? sed producatur et ipse in civitatem romanam, vera liberalitate et non falso sermone domini sui sustentatus. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.6.1.11: Imperator Justinianus

Ille etiam novissimus antiquae latinitatis modus in civitatem romanam translatus eligendus est, si quis instrumenta, ex quibus servus ostendebatur, vel dederit servo vel corruperit. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.6.1.11a: Imperator Justinianus

Sed ne furandi occasio servis forsitan detur et sua malignitate in libertatem perveniant, talis modus certa et indubitata probatione manifestetur, ut testibus praesentibus non minus quinque dominus instrumenta vel det famulo suo vel deleat aut alio modo corrumpat. et ex eo igitur modo civitatem romanam ei competere censemus, salvo iure patronatus tam in hac specie quam in ceteris, nisi ubi specialiter hoc patronis denegavimus. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.6.1.12: Imperator Justinianus

His tantummodo casibus ex omni iure antiquae latinitatis electis ceteri omnes, qui in libris prudentium vel constitutionibus enumerati sunt, penitus conquiescant nec latini ab eis procedant, sed maneant, ut dictum est, servi in sua condicione nec tali remedio abuti concedantur. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.6.1.12a: Imperator Justinianus

Et ne in posterum aliquod ius latinae libertatis nostris legibus incurrat, lex iunia taceat largiano senatus consulto cessante, sileat edictum divi traiani, quod ea sequebatur, et si qua alia lex vel senatus consultum vel etiam constitutio loquitur de latinis, ea inefficax quantum in eam partem remaneat et triplex antea via libertatis, quae multiplices itroducebat ambages, uno directo tramite discat ambulare. quod si aliqua lex vel constitutio libertatis faciet mentionem, non autem latinitatis, ea pro civitate romana loqui intellegatur. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.6.1.13: Imperator Justinianus

Sed si quidem liberti iam mortui sunt, et bona eorum quasi latinorum his quorum intereat adgregata sunt, vel adhuc vivunt, nihil ex hac lege innovetur, sed maneant apud eos iure antiquo firmiter detenta et vindicanda. in futuris autem libertis praesens constitutio locum sibi vindicet. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.7.0. De servo communi manumisso.

CJ.7.7.1pr.: Imperator Justinianus

In communes servos eorumque libertatem et quando cuidam domino pars libertatem imponentis adcrescit nec ne, et maxime inter milites, qui huiusmodi imponunt libertatem, multa ambiguitas exorta est apud veteres iuris auctores. * iust. a. iuliano pp. * <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.7.1.1: Imperator Justinianus

Et inventa est constitutio apud marcianum in institutionibus divi severi, per quam idem imperator disposuit necessitatem imponi heredi militis comparare partem socii et servum libertate donare. <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.7.1.1a: Imperator Justinianus

Sed et alia constitutio severi et antonini principum reperta est, ex qua generaliter necessitas imponebatur socio partem suam socio vendere, quatenus libertas servo imponatur, licet nihil lucri ex substantia socii morientis alii socio accedat, pretio videlicet arbitrio praetoris constituendo, secundum ea, quae et ulpianus libro sexto fideicommissorum et paulus libro tertio fideicommissorum refert, ubi et hoc relatum est, quod sextus caecilius iuris antiqui conditor definivit socium per praetorem compelli suam partem vendere, quatenus liber servus efficiatur: quod et Marcellus apud iulianum in eius digestis notat: hocque et Marcellum, cum iulianum notaret, rettulisse palam est. <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.7.1.1b: Imperator Justinianus

His itaque apud veteres iuris auctores inventis decidentes tales altercationes generaliter sancimus, ut nulla inducatur differentia militis seu privati in servis communibus, sed in omnibus communibus famulis, sive inter vivos sive in ultima dispositione libertatem quis legitimam imponere communi servo voluerit, hoc faciat, necessitatem habente socio vendere partem suam, quantam in servo possidet, sive dimidiam sive tertiam sive quantamcunque, et si plures sint socii, uno ex his libertatem imponere cupiente alios omnes necessitatem habere partes suas, quas in servo possident, vendere ipsi, qui libertatem servo imponere desiderat, vel heredi eius (licet ipse communis servus institutus sit), si hoc moriturus dixerit, ita tamen, ut omnimodo ipse qui partes alias comparavit vel heredes ei us libertatem imponant. <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.7.1.2: Imperator Justinianus

Sin autem socius vel socii recusaverint pretium accipere, licentiam ei damus offerre hoc per publicas personas et sigillo impresso in aedem sacram deponere et sic habere facultatem servum libertate donare et eum habere plenissimam libertatem et civitate romana perfrui et nullum timere ex sociis. sibi etenim imputent, si, cum liceret lucrari pretium, hoc accipere differunt. <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.7.1.3: Imperator Justinianus

Sed ne circa peculium servi aliqua fuerit dubitatio, peculium eius in omnes socios pertinere iubemus ex partibus, pro quibus quisque et dominium servi possidet : licentia concedenda ei, qui libertatem moriens imponit, etiam eius peculium quod ei attingit liberto concedere. iura autem patronatus procul dubio pro suo ordine ad eum venire qui libertatem donavit. <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.7.1.4: Imperator Justinianus

Sin autem servus ratiociniis suppositus sit, ne ratiocinia pereant vel libertas impediatur, praesidem provinciae vel competentem iudicem tempus statuere, intra quod debet ratiociniis ante factis et debitis, quae ex his apparuerit, redditis ita ad libertatem venire. <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.7.1.5: Imperator Justinianus

Ne autem quantitas servilis pretii sit incerta, sed manifesta, sancimus servi pretium sive ancillae, si nulla arte sunt imbuti, viginti solidis taxari, his videlicet, qui usque ad decimum annum suae venerunt aetatis, in decem tantummodo solidis ponendis: sin autem aliqua arte praediti sunt exceptis notariis et medicis, usque ad triginta solidos pretium eorum redigi sive in masculis sive in feminis. <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.7.1.5a: Imperator Justinianus

Sin autem notarius sit vel medicus sive masculus sive femina, notarius quidem usque ad quinquaginta, medicus autem usque ad sexaginta taxetur. <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.7.1.5b: Imperator Justinianus

Sin vero eunuchi sint servi communes maiores decem annis, si quidem sine arte sint, in quinquaginta solidos computentur, sin autem artifices, usque ad septuaginta: minores etenim decem annis eunuchos non amplius triginta solidis aestimari volumus. <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.7.1.5c: Imperator Justinianus

Et eorum partem competentem socii accipientes libertatem eis per competentes iudices imponere compellentur. <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.7.1.6: Imperator Justinianus

Sin autem, uno ex sociis libertatem sive imponere sive relinquere servo cupiente et pretium dante alter vel alteri ex his ipsi velle dixerint libertatem imponere et pretium dare, melior quidem causa erit eius, qui primus ad hanc rationem pietatis perveniet. <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.7.1.6a: Imperator Justinianus

Si tamen sub obtentu libertatis et ipsi ad haec prosiluerint, tunc iudicem competentem omnes compellere sine pretio ei libertatem imponere: peculio quidem in omnes secundum partem dominii distribuendo, iura autem patronatus secundum sui naturam omnibus qui libertatem imposuerunt aequaliter habentibus. <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.7.1.7: Imperator Justinianus

Ius enim adcrescendi, quod antiqua iura in communibus servis manumittendis introducebant, nullius esse momenti nec in posterum frequentari penitus concedimus. <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.7.2pr.: Imperator Justinianus

Cum apud omnes iuris peritos hoc placitum est, ut servus communis apud unumquemque dominum partim sit proprius partim alienus, ut ex hac causa possit et ipse legato honorari et ipse legari, huiusmodi incidit quaestio. * iust. a. iuliano pp. * <a 530 d. constantinopoli xv k. dec. lampadio et oreste vv. cc. conss.>

CJ.7.7.2.1: Imperator Justinianus

Duo vel plures domini communem servum habebant, sed unus ex his ipsi servo suam partem quam in eo habebat legavit. et semel accepta dubitationis occasione hoc vetustas in magnum extollit certamen. <a 530 d. constantinopoli xv k. dec. lampadio et oreste vv. cc. conss.>

CJ.7.7.2.2: Imperator Justinianus

Cum igitur nos sensum huiusmodi legati crebra indagatione adgredientes duplicem esse eum opinamur: aut enim putavit testator liberum fieri posse ex parte servum , qui huiusmodi legatum ei reliquit, aut, si hoc minime cogitavit, adfectu socii fecit, ut ei adquiratur, heredes autem suos eundem servum possidere minime voluit, ut sit manifestum a suo patrimonio penitus esse eum alienatum: in tali itaque comparatione nos, qui fautores libertatis sumus, sic ambiguam testatoris interpretamur voluntatem, tamquam si voluit eum libertate in suam partem donare. <a 530 d. constantinopoli xv k. dec. lampadio et oreste vv. cc. conss.>

CJ.7.7.2.3: Imperator Justinianus

Et cum iam de communibus servis manumittendis statuimus, quid in huiusmodi casibus fieri oportet, ex illius sanctionis tenore et huiusmodi species sit definita. fiat itaque liber, ex parte quidem testatoris secundum eius voluntatem, ex altera autem parte ex nostra definitione, pretio secundum praedictae constitutionis tenorem vel sociis ab herede praestando vel, si accipere noluerint, tam offerendo quam signando et periculo eorum deponendo, cum sat abundeque imperiale est humaniorem sententiam pro durioribus sequi. <a 530 d. constantinopoli xv k. dec. lampadio et oreste vv. cc. conss.>

CJ.7.8.0. De servo pignori dato manumisso.

CJ.7.8.1: Imperatores Severus, Antoninus

Licet dotale mancipium vir qui solvendo est possit manumittere, tamen si te pignori quoque datum mulieri apparuerit, invita ea non posse libertatem adsequi non ambigitur. * sev. et ant. aa. proculo. * <a 205 pp. xii k. mai. antonino a ii et geta ii conss.>

CJ.7.8.2: Imperatores Severus, Antoninus

Libertas a debitore fisci servo data, qui pignori non est ex conventione speciali, sed tantum privilegio fisci obligatus, non aliter infirmatur, quam si hoc fraudis consilio effectum detegatur. * sev. et ant. aa. abascanto. * <>

CJ.7.8.3: Imperatores Severus, Antoninus

Ab eo, qui bona sua pignori obligavit, quae habet quaeque habiturus esset, posse servis libertatem dari certum est. non idem iuris est in his servis, qui pignoris iure specialiter traditi vel obligati sunt. * sev. et ant. aa. antonio. * <a 209 pp. iii k. ian. pompeiano et avito conss.>

CJ.7.8.4: Imperator Alexander Severus

Si, ut proponis, consentiente creditore, cui pignoris iure cum aliis mancipiis obligatus fuisti, a debitore manumissus es, potuisti ad libertatem pervenire. * alex. a. sabiniano. * <a 222 pp. vi id. mai. alexandro a. cons.>

CJ.7.8.5: Imperator Alexander Severus

Si creditoribus satisfactum fuerit, ancillae, quae pignori obligatae a debitore manumissae erant, liberae fiunt. nam ipse manumissor si fraudem se fecisse creditoribus, ut revocet libertates, audeat dicere, audiri non debet nec heredes eius. * alex. a. extricatiano. * <a 223 pp. iii k. iun. maximo ii et aeliano conss.>

CJ.7.8.6: Imperator Alexander Severus

Si tutor tuus de pecunia tua servos emptos manumisit, quoniam huiusmodi servi sicut ceterae res pupillaribus pecuniis emptae iure pignoris ex constitutione divorum parentium meorum obligati sunt favore pupillorum, liberi facti non sunt. * alex. a. auctori. * <>

CJ.7.8.7: Imperator Gordianus

Sive cum nupsisses mancipia in dotem dedisti, sive post datam dotem de pecunia dotis maritus tuus quaedam comparavit, iuris rationibus dominia eorum ad eum pervenerunt. ideoque frustra quaestionem super statu manumissorum conaris inferre, qui eius facti, qui comparavit vel in dotem accepit, ab eo iure potuerunt manumitti. * gord. a. iulianae. * <>

CJ.7.9.0. De servis rei publicae manumittendis.

CJ.7.9.1: Imperator Gordianus

Si ita, ut lege municipali constitutionibusque principum comprehenditur, cum servus publicus esses, ab ordine consentiente etiam praeside provinciae manumissus es, non ex eo, quod is quem dederas vicarium in fugam se convertit, iugo servitutis, quod manumissione evasisti, iterato cogeris succedere. * gord. a. epigono. * <>

CJ.7.9.2: Imperator Gordianus

Si decretum ordinis auctoritas rectoris provinciae comprobavit, quo is libertatem acceperat, cui postea fueras, ut proponis, matrimonio copulata, natam ex huiusmodi matrimonio et civem romanam esse et in patris potestate non est incertae opinionis. * gord. a. hadrianae. * <>

CJ.7.9.3pr.: Imperatores Diocletianus, Maximianus

Titulo non praecedente, quibus dominia servorum quaeri solent, municipium libertus servus non efficitur. * diocl. et maxim. aa. et cc. philadelpho. * <a 290 vel 293 d. xv k. april. ravennae aa. conss. >

CJ.7.9.3.1: Imperatores Diocletianus, Maximianus

Si itaque secundum legem vetti libici, cuius potestatem senatus consulto iuventio celso iterum et neratio Marcello consulibus facto ad provincias porrectam constitit, manumissus civitatem romanam consecutus es, post vero ut libertus tabularium administrando libertatem quam fueras consecutus non amisisti, nec actus tuus filio ex liberis ingenuo suscepto, quominus decurio esse possit, obfuit. <a 290 vel 293 d. xv k. april. ravennae aa. conss. >

CJ.7.10.0. De his qui a non domino manumissi sunt.

CJ.7.10.1: Imperator Antoninus

Eum, qui servos alienos ac si suos manumittit, ut pretium eorum dominis, si hoc elegerint, dependat, quanti sua interest, saepe rescriptum est. * ant. a. corneliano. * <a 213 pp. k. mart. antonino a. iiii et balbino conss.>

CJ.7.10.2: Imperator Alexander Severus

Felicissima, quam mandante te servos emisse dicis, si dominium servi quem manumisit nondum ad te transtulerat, frustra petis, ut denegata libertate eius quem manumissum dicis possessio tibi tradatur. * alex. a. mercuriali. * <>

CJ.7.10.3: Imperator Alexander Severus

Qui tibi hereditatem vendidit, antequam res hereditarias traderet, dominus earum perseveravit et ideo manumittendo libertatem servo hereditario praestitit. * alex. a. pompeio mil. * <a 230 pp. vi k. aug. agricola et clemente conss.>

CJ.7.10.4: Imperatores valer., gallien.

Si non proprietatem donaveras, sed ministerium ancillae dederas, libertatem mancipio dando ea, quae precarium usum haberet, dominio tuo nihil praeiudicavit. nemo enim alienum servum, quamvis ut proprium manumittat, ad libertatem producere potest. * valer. et gallien. aa. zoilo. * <a 260 pp. x k. aug. saeculare et donato conss.>

CJ.7.10.5: Imperatores Diocletianus, Maximianus

Si tradita sunt ex donatione mancipia, ius manumittendi donatrix non habuit. * diocl. et maxim. aa. Marcellinae. * <a 286 pp. v k. mai. maximo et aquilino conss.>

CJ.7.10.6: Imperatores Diocletianus, Maximianus

Si pater servum vestrum, licet vobis minoribus viginti annis consentientibus, manumisit, ei libertatem praestare non potuit. * diocl. et maxim. aa. et cc. mido. * <a 294 s.Non.Mart.Cc.Conss.>

CJ.7.10.7pr.: Imperator Constantinus

Si non a dominis libertas detur mancipio alieno, si quidem ab his iudicibus impetrabitur, quibus dandi ius est, sine ulla trepidatione poenae facilis dissolutio est. * const. a. ad bassum. * <a 319 pp. id. iul. constantino a. v et licinio c. conss.>

CJ.7.10.7.1: Imperator Constantinus

Si vero iubentibus nobis quicquam lege actum esse doceatur et non dominus, ut alienum mancipium manumitteretur, petisse probetur, tunc eodem, qui in conspectu nostro libertatem monstrabitur consecutus, ei protinus ad cuius proprietatem pertinet restituto is, qui mancipium alienum fallendo principis conscientiam manumisit, mancipia duo cogatur domino eius dare, cuiusmodi sexus aetatis atque artis constiterit esse manumissum, et alia tria fisco eadem ratione similia. <a 319 pp. id. iul. constantino a. v et licinio c. conss.>

CJ.7.10.7.2: Imperator Constantinus

Quae multa non semper imponitur, sed potius conquiescit, si forte manumissus inferentem sibi quaestionem status obiecta legitima praescriptione potuerit excludere, cum sibi amissi mancipii damna debeat imputare, qui in perniciem suam gesta taciturnitate firmaverit. <a 319 pp. id. iul. constantino a. v et licinio c. conss.>

CJ.7.11.0. Qui manumittere non possunt et ne in fraudem creditorum manumittatur.

CJ.7.11.1: Imperator Alexander Severus

Certum ius est non alias directas libertates per legem aeliam sentiam, quae sunt in fraudem creditorum manumissorum, revocari, nisi et consilium fraudis hoc animo manumittentis et eventus damni suum recipere volentium sequatur. inter creditores autem etiam eos numerandos esse, quibus fideicommissum debetur, olim placuit. * alex. a. antiocho. * <a 223 pp. iii id. nov. maximo ii et aeliano conss.>

CJ.7.11.2: Imperator Alexander Severus

Servos meos nec per interpositam personam ad libertatem producere homines peculii sui posse mandatis comprehenditur. * alex. a. nataliano. * <>

CJ.7.11.3: Imperator Alexander Severus

Divo marco auctore amplissimus ordo censuit, ne quis spectaculo, quod edatur, actorem suum alienumve servum manumitteret et, si factum esset, pro infecto haberetur. * alex. a. iustinae. * <>

CJ.7.11.4: Imperator Alexander Severus

Si minor annis viginti ad libertatem praestandam homines tradidisti, senatus consulto quod gestum est irritum constituitur. * alex. a. felic. * <a 224 pp. iii id. mai. iuliano et crispino conss.>

CJ.7.11.5: Imperator Alexander Severus

Si in fraudem eorum quae fisco debebantur probari potest libertas data, non valet. sed si pecuniam is, quem patrem tuum appellas, emptori dederit et ab eo redemptus ad libertatem productus est, nihil videtur bonis defuisse eius, qui fisci debitor dicitur. * alex. a. prisco. * <a xxx >

CJ.7.11.6: Imperatores Diocletianus, Maximianus

Nec fideicommissariam libertatem a pupilla sua servis debitam tutorem posse praestare certi iuris est. unde si hos, quos tu rogata manumittere fueras certo aetatis tuae tempore, ad libertatem non produxisti, sed tutor manumisit, remanserunt in servitute. * diocl. et maxim. aa. et cc. olympio. * <a xxx >

CJ.7.11.7: Imperatores Diocletianus, Maximianus

Si debitor ex administratione curae dominus tuus non solvendo constitutus fideicommissariam tibi reliquit libertatem, cum in fideicommissariis libertatibus eventum inspici tantum obtinuerit, nihil eius voluntas tibi prodesse potest. * diocl. et maxim. aa. et cc. zotico. * <a xxx >

CJ.7.12.0. Qui non possunt ad libertatem pervenire.

CJ.7.12.1pr.: Imperatores Severus, Antoninus

Cum divus pater meus constituerit a praesidibus provinciarum vel qui coercendorum maleficiorum potestatem habent in perpetua vincula damnatos ad libertatem produci non posse, hi, qui intra tempora poenae liberi et heredes esse iussi sunt aut legatum fideicommissumve acceperunt, neque libertatem adipisci nec quicquam eorum quae his data sunt capere possunt. * sev. et ant. aa. torquato. * <a 161? d. xvi k. iul. ipsis antonino et vero aa. conss.>

CJ.7.12.1.1: Imperatores Severus, Antoninus

Quod si poenae tempus compleverint, iam omni vinculo exsoluti et quasi ad pristinam vel simplicem servitutis condicionem redacti et libertatem et si qua testamentis dominorum illo tempore defunctorum acceperunt, sine ulla quaestione praeteritae poenae consequantur. <a 161? d. xvi k. iul. ipsis antonino et vero aa. conss.>

CJ.7.12.2pr.: Imperatores valer., gallien.

Is quidem, qui testamento vetitus est manumitti, ad libertatem non potest pervenire. * valer. et gallien. aa. theodoro. * <>

CJ.7.12.2.1: Imperatores valer., gallien.

Sed in proposito interest, utrumne eos, quos cum filio educatos esse testator expresserit, propter familiare ministerium et usum filiorum necessarium et venire et manumitti noluerit, an quasi male meritis poenam inrogaverit. <>

CJ.7.12.2.2: Imperatores valer., gallien.

Nam priore casu, morte eius cui consulebatur obsequi necessitate finita, libertas potest pervenire, posteriore id, quod poenae causa in servos statutum est, necesse est vires suas obtinere, quando divis parentibus meis placuerit eiusmodi testamentorum leges perpetuam servitutem male meritis servis inrogare, ut nec per suppositum emptorem ad libertatem produci possint. <>

CJ.7.13.0. Pro quibus causis servi praemium accipiunt libertatem.

CJ.7.13.1: Imperatores Diocletianus, Maximianus

Quoniam religiosa sollicitudo ad augendam provocandamque fidei observationem iuris praemio adfici debet, si ad ulciscendam caedem domini incorruptis probationibus ac strenuo nisu constiteris, libertatem, quam his qui dominorum caedem vindicant iam pridem senatus consulto et statutis principum praestari sancitum est, etiam tu pro tam ingentibus meritis non ex ipso facto, sed aditione et sententia praesidis reportabis. * diocl. et maxim. aa. firmino. * <a 290 pp. vii id. dec. diocletiano iiii et maximiano iii aa. conss.>

CJ.7.13.2: Imperator Constantinus

Servi, qui monetarios adulterinam monetam clandestinis sceleribus exercentes detulerint, civitate romana donantur, ut eorum domini pretium a fisco percipiant. * const. a. ad ianuarium. * <a 321 d. xii k. dec. romae crispo et constantino cc. ii conss.>

CJ.7.13.3: Imperator Constantinus

Si quis servus raptus virginis facinus dissimulatione praeteritum aut pactione transmissum detulerit in publicum, libertate donetur. * const. a. ad pop. * <a 320 d. prid. k. april. aquileia constantino c. conss.>

CJ.7.13.4: Imperatores Gratianus, Valentinianus, Theodosius

Si desertorem servus prodiderit, libertate donetur. * grat. valentin. et theodos. aaa. ad syagrium pp. * <a 380 pp. id. iul. romae gratiano v et theodosio aa. conss.>

CJ.7.14.0. De ingenuis manumissis.

CJ.7.14.1: Imperator Alexander Severus

Si ingenuum te et testamento manumissum esse dicas, apud suos iudices causam agere debes, si tamen iustum contradictorem habes, id est eum, qui se patronum tuum esse dicit, memor senatum censuisse, ut, qui post manumissionem originem repetierint, ea quae de domo manumissoris habent ibi relinquant. in qua causa etiam legata ut liberto data esse iuris prudentibus placuit. * alex. a. phileto. * <>

CJ.7.14.2: Imperator Gordianus

Ingenuam natam neque nutrimentorum sumptus neque servitutis obsequium faciunt ancillam neque manumissio libertinam. * gord. a. pompeiae. * <a 240 pp. v id. mai. sabino ii et venusto conss.>

CJ.7.14.3: Imperator Philippus

Si aviam tuam manumissam postea ingenuam sollemniter constitit statumque eius iustae sententiae tuetur auctoritas, filios eius quamvis ante sententiam susceptos ingenuam libertatem non immerito flagitare, si cum peritioribus tractatum habuisses, facile cognosceres. * philipp. a. felic. * <>

CJ.7.14.4: Imperatores Diocletianus, Maximianus

Cum cognatum tuum ingenuum, factum palmyrene factionis dominatione velut captivum, distractum esse dicas, praeses provinciae ingenuitatis suae reddi eum efficiet. * diocl. et maxim. aa. et cc. agrippae. * <a 293 s. iiii id. ian. aa. conss.>

CJ.7.14.5pr.: Imperatores Diocletianus, Maximianus

Defamari statum ingenuorum seu errore seu malignitate quorundam periniquum est, praesertim cum adfirmes diu praesidem unum atque alterum interpellatum a te vocitasse diversam partem, ut contradictionem faceret, si defensionibus suis confideret. * diocl. et maxim. aa. et cc. crescenti. * <a 293 d. prid. non. april. aa. conss.>

CJ.7.14.5.1: Imperatores Diocletianus, Maximianus

Unde constat merito rectorem provinciae commotum adlegationibus tuis sententiam dedisse, ne de cetero inquietudinem sustineres. <a 293 d. prid. non. april. aa. conss.>

CJ.7.14.5.2: Imperatores Diocletianus, Maximianus

Si igitur adhuc diversa pars perseverat in eadem obstinatione, aditus praeses provinciae ab iniuria temperari praecipiet. <a 293 d. prid. non. april. aa. conss.>

CJ.7.14.6: Imperatores Diocletianus, Maximianus

Scientis condicionem liberum non posse fieri servum evidentissimi iuris est. cum igitur proponas patrem pupillorum, quorum precibus fecisti mentionem, velut liberum te penes se habuisse, ministerium, licet in actu longi temporis, non praecedente vero titulo, quibus dominia quaeri solent, mutare tuam condicionem minime potuit. * diocl. et maxim. aa. et cc. dionysio. * <a 293 s. vii k. mai. aa. conss.>

CJ.7.14.7: Imperatores Diocletianus, Maximianus

Si te ac filios tuos ingenuos esse constat, natalium veritas vos tuetur. nam qui servitutis moverat quaestionem, apud acta causae renuntiando ad ingenuitatis probationem nec nocere quicquam nec prodesse potest. * diocl. et maxim. aa. et cc. matronae. * <a 293 s. xv k. iul. aa. conss.>

CJ.7.14.8: Imperatores Diocletianus, Maximianus

Ingenui nascuntur, libertini manumissione tantum constituuntur: pactum autem nec servis nec libertinis ingenuitatem adsignat nec his, qui transactioni non consenserunt, quicquam praeiudicare potest. * diocl. et maxim. aa. et cc. callimorpho. * <a 293 s. iiii k. ian. aa. conss.>

CJ.7.14.9pr.: Imperatores Diocletianus, Maximianus

Libertina matre procreatam ingenuis nasci natalibus evidentis ac manifesti iuris est. * diocl. et maxim. aa. et cc. potamoni. * <>

CJ.7.14.9.1: Imperatores Diocletianus, Maximianus

Cum igitur te matre libertina editam, dehinc ab hostibus captam postliminio reversam proponas et nunc tibi servitutis moveri quaestionem, consequens est adiri praesidem provinciae, qui de causa liberali cognoscet iure laturus sententiam, sciens neque huiusmodi matris condicionem neque captivitatem reversis de statu pristino quicquam posse detrahere. <>

CJ.7.14.10: Imperatores Diocletianus, Maximianus

Ad recognoscendos singulos nomina comparata publico consensu, ob celandos natales ingenuis si mutentur, minime nocet, natosque, licet in ministerio servitutis, liberae condicionis non servos possessio, sed status ingenuos edi perficit. * diocl. et maxim. aa. et cc. athenodorae. * <>

CJ.7.14.11: Imperatores Diocletianus, Maximianus

Si vestram possessionem nullus praecessit titulus, sed ingenui constituti operas mercede placita locastis, nec statui quicquam vestro derogatum est nec ad conventionis implendam fidem sollemniter agere prohibemini. * diocl. et maxim. aa. et cc. maximae. * <a 294 s. non mart. cc. conss.>

CJ.7.14.12: Imperatores Diocletianus, Maximianus

Ad mutandum liberae statum commissum plagii nihil promovet, sed abductam natales , quibus nata est, post hunc etiam casum obtinere convenit. * diocl. et maxim. aa. et cc. quietae. * <a 294 s. iii k. dec. cc. conss.>

CJ.7.14.13: Imperatores Diocletianus, Maximianus

Ingenuum se contendendo nec probando non amittit libertinitatem. * diocl. et maxim. aa. et cc. menandro. * <a 294 s. vii id. dec. cc. conss.>

CJ.7.14.14: Imperatores Diocletianus, Maximianus

Status ingenuae ex eo solo, quod velut ancilla sponsaliorum nomine data proponitur, praeiudicari nulla ratione potest. * diocl. et maxim. aa. et cc. aristoteli. * <a 294 s. vii k. ian. cc. conss.>

CJ.7.15.0. Communia de manumissionibus.

CJ.7.15.1pr.: Imperator Justinianus

Sancimus, si proprietarius servo, cuius usus fructus ad alium pertinebat, libertatem imposuit, non secundum antiquam observationem et libertatem cadere et eum sine domino intellegi esse, sed nec inveniri personam, cui res ad se venientes adquirat: sed si tam proprietarius quam usufructuarius libertatem ei consentientes imposuerant, pleno iure liberum eum effici et, si quid postea sibi adquisierit, hoc in bonis suis habere. * iust. a. iuliano pp. * <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.15.1.1: Imperator Justinianus

Sin autem proprietarius solus libertatem imposuerit usufructuario minime consentiente, sit quidem ille, qui libertatem a proprietario accepit, inter libertos proprietarii connumeratus et, si quid in medio possedit, hoc sibi adquirat, sibi habeat, suae posteritati relinquat, salvo patronatus iure per omnia custodiendo , nisi et hoc ei legibus fuerit remissum. <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.15.1.1a: Imperator Justinianus

Ipse tamen libertus quasi servus apud usufructuarium permaneat, donec usufructuarius vivit vel usus fructus non legitimo modo peremptus est. etenim si finem usus fructus quocumque modo accipiat, tunc facultas ei tribuitur quo maluerit degere modo. si vero adhuc superstite usufructuario ab hac luce fuerit libertus exemptus, hereditas eius legitimum tramitem sequatur. <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.15.1.2: Imperator Justinianus

Sin autem usufructuarius tantummodo libertatem imposuerit, si quidem hoc modo, ut cedat usu fructu proprietario, plenissimum ius habeat in servo proprietarius et omnia ei servus adquirat secundum ea, quae generaliter in servos et dominos constituta sunt. <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.15.1.2a: Imperator Justinianus

Sin vero gratias agendo usufructuarius eum ab usu fructu liberaverit et libertate donaverit, tunc maneat quidem servus proprietario suo adnexus, sed non necessitas ei imponatur, donec vivit usufructuarius vel usus fructus constare potest, observare proprietarium et quaedam ministeria ei adimplere, sed iudices nostri eum in quiete tueantur. post usufructuarii autem mortem vel usus fructus quocumque modo interemptionem tunc serviat quidem domino et omnia, quae in medio ad eum perveniant, haec suo domino adquirat. <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.15.1.2b: Imperator Justinianus

Et sit ex nostra constitutione haec separatio inter servos et liberos et non secundum ius antiquum idem servus remaneat et nullum respiciat dominum. <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.15.1.3: Imperator Justinianus

Illud quoque huic legi adicimus, ut explosa antiqua personarum differentia liceat parentibus tam feminis quam masculis filiis filiabus sive in sacris constitutis sive emancipatis cuiuscumque gradus mandatum imponere, quatenus servos in libertatem producant sive apud iudicem sive in sacris ecclesiis sive secundum alium quem mandator voluerit legitimum modum. cum enim et in successionibus et in aliis paene omnibus nulla est inter liberos discretio, oportet hoc observari et in praesenti casu maxime pro libertate, quam et fovere et tueri romanis legibus et praecipue nostro numini peculiare est. <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.15.2: Imperator Justinianus

Si quis servo suo libertatem imponat sive in ecclesia sive ad qualecumque tribunal vel apud eum, qui libertatem imponere legibus habet licentiam, sive in testamento vel alio ultimo elogio directam vel fideicommissariam, nullo coartetur modo eorum qui ad libertatem veniunt aetatem requirere. neque enim eum tantummodo civitatem romanam adipisci columus, qui maior triginta annis extitit, sed quemadmodum in ecclesiasticis libertatibus non est huiusmodi aetatis differentia, ita in omnibus libertatibus, quae a dominis imponuntur sive in extremis dispositionibus sive per iudices vel alio legitimo modo, hoc observari sancimus, ut sint omnes cives romani constituti: ampliandam enim magis civitatem nostram quam minuendam esse censemus. * iust. a. iuliano pp. * <a 530 d. k. aug. lampadio et oreste vv. cc. conss.>

CJ.7.15.3pr.: Imperator Justinianus

Si quis sine uxore constitutus ancillam suam nomine habeat concubinae et in eadem usque ad mortem consuetudine permanserit et forsitan liberos ex ea sustulerit , sancimus omnimodo non concedi heredibus defuncti eandem vel liberos eius, si etiam liberos habuerit, in servitutem deducere, sed post mortem domini sub certo modo eripiatur in libertatem una cum subole sua, si etiam eam forsitan habuerit. * iust. a. iohanni pp. * <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.15.3.1: Imperator Justinianus

Ipse etenim domino, dum superest, damus licentiam quomodo voluerit uti tam ancilla sua quam etiam ex ea progenita subole et in suo ultimo elogio quidquid voluerit contra eos disponere, id est sive quasi servos eos aliis legare sive in servitute heredum nominatim relinquere. sin autem taciturnitate eos praeterierit, tunc post mortem eius ad libertatem eripiantur, ut sit domini mors libertatis eorum exordium. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.15.3.2: Imperator Justinianus

Omnibus etenim uxores habentibus concubinas vel liberas vel ancillas habere nec antiqua iure nec nostra concedunt. <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.16.0. De liberali causa.

CJ.7.16.1: Imperator Antoninus

Rem quidem illicitam et inhonestam admisisse confiteris, quia proponis filios ingenuos a te venumdatos. sed quia factum tuum filiis obesse non debet, adi competentem iudicem, si vis, ut causa agatur secundum ordinem iuris. * ant. a. saturninae. * <pp. v id. febr.>

CJ.7.16.2: Imperator Antoninus

Si hi, quos servos tuos esse dicis, liberi esse a diversa parte dicuntur, de statu eorum more solito quaeri oportet: nec enim res iudicata, qua de proprietate eorum pronuntiatum est, opponi causae liberali potest. * ant. a. vereniano. * <a 214 d. non. febr. romae messala et sabino conss.>

CJ.7.16.3: Imperator Alexander Severus

Si liber homo alienae ancillae contubernium sequatur, licet ei fuerit denuntiatum, ut se abstineret, servus domini mulieris non fit. * alex. a. quirino. * <a 225 pp. non. febr. fusco et dextro conss. >

CJ.7.16.4: Imperator Alexander Severus

Si is, quem in servitutem petebas, liber quamvis absente te causa cognita pronuntiatus est, secunda in servitutem petitio eius dari tibi non debet. sed si, posteaquam cognovisti de sententia iudicis, appellasti, an iure lata sit, in auditorio quaeretur. * alex. a. iucundo. * <>

CJ.7.16.5pr.: Imperator Alexander Severus

Non ideo minus in libertatem proclamare potest ea, quam ancillam tuam esse dicis , quia eam vendente fisco comparasti. * alex. a. sabino. * <>

CJ.7.16.5.1: Imperator Alexander Severus

Sed nec hoc ad praescriptionem operatur, quod venditionis tempore maior viginti annis fuit, cum aetatis adlegatio non alias possit praescriptionem adversus civem romanum accommodare, quam si participandi pretii gratia consensum servituti dedisse probetur. <>

CJ.7.16.5.2: Imperator Alexander Severus

Probationis sane onus, cum ex servitute in libertatem adseritur, ad se recipit. qui si adfirmationem suam non impleat, inconcussum possessionis ius obtinebis. <>

CJ.7.16.6: Imperatores valer., gallien.

Nec si volens scripsisses servum te esse, non liberum, praeiudicium iuri tuo aliquid comparasses: quanto nunc magis, cum eam scripturam dare compulsum te esse testaris? * valer. et gallien. aa. et valer. nobil. c. vausumetio.* <>

CJ.7.16.7: Imperator aurel.

Si ab eo cuius servus fuisti manumissus es, frustra libertatis controversiam sustines, maxime ab herede eius qui manumisit, cum, etsi iure libertas non processit, respectu tamen aditae hereditatis voluntatem defuncti suo consensu firmare debuit. * aurel. a. secundo. * <>

CJ.7.16.8: Imperatores Diocletianus, Maximianus

Cum adfirmes placuisse quondam domino tuo, ut pro te et filia tua dato nummo certae quantitatis vos manumitteret, et te tantummodo liberaverit, aditus rector provinciae hortabitur eum salva reverentia, quam patrono liberti solent exhibere , placito suo stare. * diocl. et maxim. aa. veneriae. * <a 286 pp. prid.... sept. maximo ii et aquilino conss.>

CJ.7.16.9: Imperatores Diocletianus, Maximianus

Cum precum tuarum conceptio, licet eum contra quem supplicas ex ancilla natum esse expresserit, tamen nomini cognomen, quo liberi dumtaxat nuncupantur, addiderit et non servum esse, sed servili macula adspersum comprehenderit, contra eum qui servus non est supplicasse te intellegitur. * diocl. et maxim. aa. et cc. proculo. * <a 293 >

CJ.7.16.10: Imperatores Diocletianus, Maximianus

Liberos privatis pactis vel actus quacumque administrati ratione non posse mutata condicione servos fieri certi iuris est. * diocl. et maxim. aa. et cc. stratio. * <a 293 d. iiii non.>

CJ.7.16.11: Imperatores Diocletianus, Maximianus

Liberos priva non mutant servi statum, si ad civiles honores illicite atque improbe adspiraverint. unde si status moveatur quaestio, intellegere vobis licet nonil prodesse posse, quod pater vester honores civiles gessit. sollemnibus itaque ordinatis apud praesidem provinciae de statu vestro cognoscetur. * diocl. et maxim. aa. et cc. faustino. * <a 293 d. iiii non.>

CJ.7.16.12: Imperatores Diocletianus, Maximianus

Si liberum te natum aliquis comparavit, statum retines, quem antea habuisti. si vero ex ancilla editum naturalis pater idemque dominus distraxit ac post emptori pretium solvisti, non idcirco libertatem consecutus es. * diocl. et maxim. aa. et cc. secundo. * <a 293 pp. xviii k. mart. aa. conss.>

CJ.7.16.13: Imperatores Diocletianus, Maximianus

Principaliter destatu defuncti agi non potest. si vero ex peculio quondam eius, quem tibi bona reliquisse commemoras, res vindicentur vel eius filiis moveatur status quaestio, haec omnia sollemniter praesidali notione decidi debent. * diocl. et maxim. aa. et cc. antistiae. * <a 293 d. v k. mai. aa. conss.>

CJ.7.16.14: Imperatores Diocletianus, Maximianus

Lite ordinata in possessione libertatis is, de cuius libertate quaeritur, constituitur et interim pro libero habetur. * diocl. et maxim. aa. et cc. quintianae. * <a 293 d. iiii k. mai. heracleae aa. conss.>

CJ.7.16.15: Imperatores Diocletianus, Maximianus

Nec omissa professio probationem generis excludit nec falsa simulata veritatem minuit. cum itaque ad examinationem veri omnis iure prodita debeat admitti probatio, aditus praeses provinciae sollemnibus ordinatis, prout iuris ratio patitur , causam liberalem inter vos decidi providebit. * diocl. et maxim. aa. et cc. palladio. * <a 293 >

CJ.7.16.16: Imperatores Diocletianus, Maximianus

Si ministerium quasi libera exhibuisti ac te nesciente quasi ancilla in dotem data conscriptum instrumentum est, nihil haec libertati tuae nocere potuerunt, maxime cum te minorem aetate fuisse commemores et placuerit minores viginti annis nulla ratione mutare statum ac pro liberis servos fieri, ne ante libertatem inconsulte amittant, quam aliis propter aetatis rationem sine consilio praestare non possunt. * diocl. et maxim. aa. et cc. diogeniae. * <a 293 pp. vi id. mai. hadrianopoli aa. conss.>

CJ.7.16.17pr.: Imperatores Diocletianus, Maximianus

Multis rationibus natalibus ingenuis fratribus natis, post delictis vel casibus intervenientibus singulorum causae status separantur. * diocl. et maxim. aa. et cc. regio. * <a 293 s. x k. iun. aa. conss.>

CJ.7.16.17.1: Imperatores Diocletianus, Maximianus

Nihil itaque prohibet eundem et tibi non movere quaestionem et eos, quos fratres tuos adseveras, in servitutem vindicare sive retinere. <a 293 s. x k. iun. aa. conss.>

CJ.7.16.17.2: Imperatores Diocletianus, Maximianus

Igitur ad demonstrandam fratrum tuorum libertatem aliae sunt probationes necessariae: nam quod tibi non movetur quaestio libertatis, eorum non idoneam constat habere probationem. <a 293 s. x k. iun. aa. conss.>

CJ.7.16.18: Imperatores Diocletianus, Maximianus

Ad probationem ingenuitatis ab eo, contra cuius successores postulas, facta tibi locatio non sufficit, nec tamen hoc solum ad servitutis vinculum argumentum est idoneum. * diocl. et maxim. aa. et cc. zotico. * <a 293 s. id. iul. philippopoli aa. conss.>

CJ.7.16.19: Imperatores Diocletianus, Maximianus

Principaliter causam eius de quo supplicas esse quam tuam perspicimus. nam cum te eum ad libertatem produxisse profitearis, illius interest magis sollemniter suum tueri statum et consequenter tua etiam agetur causa: nam si ab eo, contra quem fundis preces, servus dicatur eique libertas ex manumissione tua vindicetur , probatio servitutis originis et beneficium manumissionis libertatem illi adsignans tuum etiam ius patronatus tuetur. si vero consentiat servituti, tunc iure concesso adito praeside provinciae eum invitum etiam defendere poteris. * diocl. et maxim. aa. et cc. paulo. * <a 293 >

CJ.7.16.20: Imperatores Diocletianus, Maximianus

Sicut semel praestitam libertatem revocari non licet, sic per ea, quae non manumittendi causa domini cum servis propriis agunt, nihil sibi detrahunt. * diocl. et maxim. aa. et cc. aeternali. * <a 293 s. vi k. sept. aa. conss.>

CJ.7.16.21: Imperatores Diocletianus, Maximianus

Eam, quae in possessione libertatis non sine dolo malo reperitur, in servitutem constitutae simile habere praeiudicium edicto perpetuo " si controversia erit, utrum ex servitute in libertatem petatur an ex libertate in servitutem" sui conceptione manifeste probatur, nec quicquam ancillae dolus proprii iuris dominis aufert. * diocl. et maxim. aa. et cc. thallusae. * <a 293 s. non. oct. sirmi aa. conss.>

CJ.7.16.22: Imperatores Diocletianus, Maximianus

Parentes natales, non confessio adsignat. quapropter si ex ancilla nata post ad libertatem manumissa pervenisti, te velut ex altera natam ancilla servam professa quaesitam manumissione libertatem huiusmodi simulatione vel errore amittere minime potuisti, cum servi nascantur ratione certa, non confessione constituantur. * diocl. et maxim. aa. et cc. pardaleae. * <a 293 d. v k. dec. aa. conss.>

CJ.7.16.23: Imperatores Diocletianus, Maximianus

Si tibi testamento directa libertas a domino relicta est et ex eo successerunt scriptae filiae, non idcirco, quod secundum eius voluntatem vel contra de filiis uni praestas obsequium, ceterae filiae tuam rescindere possunt libertatem. * diocl. et maxim. aa. et cc. musciae. * <a 293 >

CJ.7.16.24: Imperatores Diocletianus, Maximianus

Interrogatam et professam apud acta se esse ancillam huiusmodi factum defensionem libertatis non excludit. * diocl. et maxim. aa. et cc. sebastiano. * <a 293 s. iiii k. ian. aa. conss.>

CJ.7.16.25: Imperatores Diocletianus, Maximianus

Sicut praetermissa instrumenta manumissionis recte factae nullum adferunt praestitae libertati vitium, ita si servum ad libertatem produxisti, instrumentorum amissio nihil ei nocere potest. * diocl. et maxim. aa. et cc. licentiano. * <a 294 s. v id. febr. cc. conss.>

CJ.7.16.26: Imperatores Diocletianus, Maximianus

Sicut datam libertatem manumissis adimere patronus non potest, ita manumissionis instrumentum praestare cogitur. * diocl. et maxim. aa. et cc. molento. * <a 294 s. vii id. mart. cc. conss.>

CJ.7.16.27pr.: Imperatores Diocletianus, Maximianus

Arrianus si mota quaestione a leonide liber fuit pronuntiatus, in servitutem a victo iterum non recte petitus est. * diocl. et maxim. aa. et cc. aurelio asterio. * <a 294 d.Iii k.April.Sirmio cc.Conss.>

CJ.7.16.27.1: Imperatores Diocletianus, Maximianus

Coheres etiam tibi ab arriano datus colludens cum eo sive heredibus ipsius, qui status moverat quaestionem, nihil tibi obfuit, nec quae in confessionem inter eos venerunt, statum veritatis vel nomen substantiae defuncti mutare potuerunt. <a 294 d.Iii k.April.Sirmio cc.Conss.>

CJ.7.16.28: Imperatores Diocletianus, Maximianus

Avi paterni magistratu functi dignitas ad libertatis probationem nihil nepoti prodest, si quidem in liberali causa matris, non patris inspiciatur condicio. sed nec materni avi sola sufficit, cum, licet avia quoque libera probari possit, multis tamen ex causis status mutari consueverit. * diocl. et maxim. aa. et cc. eurymedonti. * <a 294 sirmi iiii id. april. aa. conss.>

CJ.7.16.29: Imperatores Diocletianus, Maximianus

De ancilla matre natam et ab eo redemptam, in cuius fuit contubernio, si non manumittitur, in servitute permanere non ambigitur. * diocl. et maxim. aa. et cc. troilae. * <a 294 >

CJ.7.16.30: Imperatores Diocletianus, Maximianus

Solo obsequii non praestiti velamento data libertas rescindi non potest. * diocl. et maxim. aa. et cc. eutychio. * <a 294 >

CJ.7.16.31: Imperatores Diocletianus, Maximianus

Si tibi servitutis improbe moveatur quaestio, sollemnibus ordinatis de calumnia vel iniuria, prout vindictae viam elegeris, habita contestatione, posteaquam servus non esse fueris pronuntiatus, adversus eam sententiam postulare potes, tunc demum de his etiam quae direpta probaveris restitutionem, cum pro libertate fuerit pronuntiatum, petiturus. * diocl. et maxim. aa. et cc. corsianae. * <a 294 >

CJ.7.16.32: Imperatores Diocletianus, Maximianus

Subscriptio filii domini manumittentis nec addere secuta nec omissa detrahere libertati quicquam potest. * diocl. et m1xim. aa. et cc. athenaidi. * <a 294 d. non. nov. cc. conss.>

CJ.7.16.33: Imperatores Diocletianus, Maximianus

Licet accepta pecunia dominus te manumisit, tamen tributa libertas rescindi non potuit. * diocl. et maxim. aa. et cc. melitianae. * <a 294 s. iiii id. nov. cc. conss.>

CJ.7.16.34: Imperatores Diocletianus, Maximianus

Libera concubinatus ratione non constituitur ancilla. * diocl. et maxim. aa. et cc. hermionae. * <a 294 d. id. nov. cc. conss.>

CJ.7.16.35: Imperatores Diocletianus, Maximianus

Non idcirco minus, quod pupilli res velut tutor administrasse dicitur, ex eius persona servitutis pati quaestionem potest. * diocl. et maxim. aa. et cc. atellio. * <a 294 sirmi non. dec. cc. conss.>

CJ.7.16.36: Imperatores Diocletianus, Maximianus

Post certi temporis ministerium ancillae liberam eam esse cum ea paciscendo conventionis obtemperandi legi domina nullam habet necessitatem utque hoc verum est , ita e contrario si filios suos constituta cum his libera in ministerium tibi tradere promisisse probetur, parere placitis non compellitur. * diocl. et maxim. aa. et cc. theodorae. * <a 294 >

CJ.7.16.37: Imperatores Diocletianus, Maximianus

Si filium tuum liberum genero vendidisti, qui tam proxima necessitudine coniunctus condicionis ignorantiam simulare non potest, utrisque sociis criminis accusator deest. * diocl. et maxim. aa. et cc. olympio. * <a 294 >

CJ.7.16.38: Imperatores Diocletianus, Maximianus

Non idcirco minus, quod te limenarcha creato nemo contradixit, rei publicae nomine moveri tibi status quaestio potest. * diocl. et maxim. aa. et cc. philoserapi. * <a 294 d. xvi k. ian. nicomediae cc. conss.>

CJ.7.16.39: Imperatores Diocletianus, Maximianus

Liberos velut servos profitentes statum eorum mutare non posse constat. * diocl. et maxim. aa. et cc. eutychio. * <a 294 s. vii k. ian. sirmi cc. conss.>

CJ.7.16.40: Imperatores Diocletianus, Maximianus

Iuxta edicti nostri continentiam in liberalibus quoque negotiis, sive de libertinitate sive de ingenuitate moventur, absente nihilo minus una parte causam discuti et pro iustitiae ratione sententiam proferri nihil prohibet. * diocl. et maxim. aa. et cc. litt. ad verinum. * <>

CJ.7.16.41: Imperatores Constantinus, licin.

Iubemus omnes epistulas actricis, quas ad aelium tamquam principalem fecerat, inanes et vacuas esse atque in irritum devocari ac de ingenuitate eiusdem aelii requiri nec mulieri id obesse, quod ad eum tamquam decurionem ac principalem scripserit, vel id, quod idem se finxerit decurionem vel principalem, maxime cum non solum testium professione et cognationis eius, quae iugum servile agnoscit, verum etiam voce propria eiusdem aelii apud aliud iudicium patuerat, quod condicionis servilis videretur. * const. et licin. aa. ad titianum praes. cappadociae. * <>

CJ.7.16.42: Imperator Constantinus

Placuit eos qui nascuntur matrum condicionibus uti, quarum mox visceribus exponuntur. ante litem vero nati suo omnes nomine in quaestionem vocentur, quoniam hos solos, qui in lite nati erunt, omnem fortunam matrum complecti oportet et aut iustis tradi dominis aut libertate cum lucis auctoribus frui. * const. a. ad maximum pu. * <a 322 d. prid. id. iun. sirmi probiano et iuliano conss.>

CJ.7.17.0. De adsertione tollenda.

CJ.7.17.1pr.: Imperator Justinianus

Lites super servili condicione movendas ad clementiorem tam examinationem quam terminum transferimus iubentes, si quis vel adhuc serviens liberum se esse dixerit vel in libertate commorans ad servitutem vocatus fuerit, adsertoris difficultatem in utroque casu cessare ipsumque per se ad intentiones eius qui dominum sese adserit respondere et, si ex possessione libertatis ad servitutem ducitur, etiam procuratorem dare minime prohiberi, quod his, qui ex servitute ad libertatem prosiluerint, penitus interdicimus: illis legibus, quae dudum et secunda et tertia vice adsertorias lites examinari praecipiebant, in posterum conquiescentibus, cum sit iustum primam definitionem in suis manere viribus, cum provocatio nulla oblata fuerit: qua porrecta, ad similitudinem aliorum negotiorum iudex, ad quem res ex provocatione ducitur, eam examinabit, cuius et ipsius iudicium ad secundam exquisitionem minime deducetur occasione legum, quae super adsertoriis litibus positae sunt. * iust. a. menae pp. * <a 528 d. iii id. dec. dn. iustiniano pp. a. ii cons.>

CJ.7.17.1.1: Imperator Justinianus

Super peculio etiam eorum vel aliis rebus aut causis veterem defensoris observationem tollimus, praecipientes illorum tantummodo peculia, qui ex possessione servitutis super libera condicione litigant, aliasque res quae vindicantur in tuto pro dispositione iudicis collocari. <a 528 d. iii id. dec. dn. iustiniano pp. a. ii cons.>

CJ.7.17.1.2: Imperator Justinianus

Omnes vero, qui pro libertate periclitantur, si quidem possint fideiussorem dare , eum exigi: sin vero re vera datio eius impossibilis eis sit hocque iudici manifeste ostendatur, iuratoriae cautioni committi: scientes quod, si post hiusmodi expositionem afuerint et edictis citati in absentia nihilo minus per unum annum duraverint, omnimodo servituti obnoxii erunt et eius dominio, qui litem eis intulit, sine ulla dubitatione adsignabuntur. <a 528 d. iii id. dec. dn. iustiniano pp. a. ii cons.>

CJ.7.17.1.3: Imperator Justinianus

Scire vero eos volumus, qui aliquem ad servitutem vocant, quod, si post primam accusationem in quocumque iudicio vel ex divali iussione factam et admonitionem ei oblatam, qui servus esse dicitur, in alio iudicio eum accusaverint (praeterquam si eius occasionem ipse qui servus esse dicitur praestiterit), etsi domini sint, suo iure privabuntur. <a 528 d. iii id. dec. dn. iustiniano pp. a. ii cons.>

CJ.7.17.2pr.: Imperator Justinianus

Expeditam antea quaestionem, in praesenti autem ex nostra lege, quam de adsertione tollenda posuimus, in quandam difficultatem incidere periclitantem, compendioso remedio fulciendam esse censemus. * iust. a. iohanni pp. * <a 531 d. k. sept.>

CJ.7.17.2.1: Imperator Justinianus

Cum enim per adsertores super libertate iudicium agitabatur, si in medio adsertore litem agente adsertus ab hac luce fuerit subtractus, necessitas imponebatur nihilo minus adsertori litem implere, ut emptor, si victus erat et pro libertate fuerat pronuntiatum, habeat regressum adversus venditorem, ut ei quasi liberae personae venditor reddat id, quod emptionali instrumento continebatur vel natura contractus exigebat. <a 531 d. k. sept.>

CJ.7.17.2.2: Imperator Justinianus

In praesenti autem, quia adsertorum vana nomina reiecta sunt, si persona pro cuius condicione lis agitur, mortua fuerit, quemadmodum iudicium potest adimpleri una tantummodo persona in iudicium veniente? <a 531 d. k. sept.>

CJ.7.17.2.3: Imperator Justinianus

Sancimus itaque in praesenti casu licentiam esse emptori adversus suum auctorem venire, quatenus vel ostendat venditor servum se vendidisse vel, si non potuerit , quasi libera persona vendita evictionis periculum ad eum revertatur. <a 531 d. k. sept.>

CJ.7.18.0. Quibus ad libertatem proclamare non licet et de rebus eorum, qui ad libertatem proclamare non prohibentur.

CJ.7.18.1pr.: Imperator Gordianus

Dispar causa est eius, qui dissimulata condicione sua distrahi se passus est, et eius qui pretium participatus est. nam superiori quidem non denegatur libertatis defensio, posteriori autem, et si civis romanus sit et participatus est pretia, libertas denegatur. * gord. a. proculo. * <a 239 pp. k. mai. gordiano a. et aviola conss.>

CJ.7.18.1.1: Imperator Gordianus

Eandemque et in eo distinctionem adhibendam, cui fideicommissaria libertas debetur, meritissimo iuris auctores responderunt. <a 239 pp. k. mai. gordiano a. et aviola conss.>

CJ.7.18.2: Imperatores Diocletianus, Maximianus

De latronum familia descendentibus ex largitione principali vel auctoritate fiscali servis factis retro principes libertatem denegari decreverunt. * diocl. et maxim. aa. et cc. melanae. * <>

CJ.7.18.3pr.: Imperator Constantinus

Si quis in libertatem proclamaverit, id, quod apud se esse eius qui se dominum dicit profitebitur, quoniam de eo non dubitatur, reddi ac referri iudex protinus pronuntiabit. * const. a. ad maximum pu. * <a 323 d. xv k. iun. thessalonica severo et rufino conss.>

CJ.7.18.3.1: Imperator Constantinus

Quod vero petitur, si fuerit negatione dubium, per cautionem conservabitur ac petitio differetur, ut, si fuerit approbata libertas, (quoniam et ipsis, qui his rem commiserunt, medendum est) gestarum rerum ab eodem ratio atque omne quod debebitur reposcatur, ut servitute depulsa qui pro domino quondam fuerat habeat, quod ut servo dominii iure largitus est et quae ex earum rerum quaestu ac fructibus conciliata sunt et quae de furtivis compendiis obscure capta ac parata sunt , cum liberum esse non oporteat, quod apud servum dominus peculii nomine collocaverat. <a 323 d. xv k. iun. thessalonica severo et rufino conss.>

CJ.7.18.3.2: Imperator Constantinus

Ea vero, quae testamento vel donatione quaesita sunt aut quae ex earum rerum emolumentis empta confectaque sunt, eidem ingenuo deputentur. quae tamen universa exacto libertatis iudicio, quae a supra dictis rebus discernantur, in sequestro esse oportet, ut his ab utroque deductis atque in medio iure collocatis ad eorum proprietatem uterque contendat. <a 323 d. xv k. iun. thessalonica severo et rufino conss.>

CJ.7.19.0. De ordine cognitionum.

CJ.7.19.1: Imperator Alexander Severus

Cum et ipse confessus es status controversiam pati, qua ratione postulas, priusquam de condicione constaret tua, accusandi tibi tribui potestatem contra eum, qui te servum esse contendit? cum igitur, sicut adlegas, statu generis fretus es , iuxta ius ordinarium praesidem pete, qui cognita prius liberali causa ex eventu iudicii, quid de crimine statuere debeat, non dubitabit. * alex. a. vitalio. * <a 223 pp. v id. m... maximo ii et aeliano conss.>

CJ.7.19.2: Imperator Alexander Severus

Si de hereditate et libertate controversia est, prius agi causa libertatis debet. sed si de hereditate agetur, ordinanda quidem est causa libertatis, sed sufficit ei, qui libertate utitur, ad victoriam de hereditate secundum se pronuntiatum. * alex. a. galliae. * <a 223 pp. v id. aug. maximo ii et aeliano conss.>

CJ.7.19.3: Imperator Alexander Severus

Si crimen aliquod inferatur ei, quam ingenuam esse dicis, ante liberalis causa suo ordine agi debet, cognitionem suam praeside praebente, quoniam necesse est ante sciri, si delictum probatum fuerit, ut in liberam et ingenuam an ut in ancillam constitui oportet. * alex. a. valeriano. * <a 223 pp. vi k. dec. maximo ii et aeliano conss.>

CJ.7.19.4pr.: Imperator Gordianus

Si status controversiam pateris, lite prius liberali terminata, si pro te fuerit pronuntiatum, agere etiam adversus eum, qui se dominum tuum esse contendit, non prohiberis. * gord. a. menedemo. * <a 239 d. x k. dec. gordiano a. et aviola conss.>

CJ.7.19.4.1: Imperator Gordianus

Quod si ideo te ab accusatione elidet, quasi servum non proprium sed alienum, liberale quidem iudicium cessat, causae autem examinatio apud eum qui iudicat ostendet, utrumne accusatio induci debeat propter statum personae, an evanescat. <a 239 d. x k. dec. gordiano a. et aviola conss.>

CJ.7.19.5: Imperatores Diocletianus, Maximianus

Cum status quaestionem tibi moveri et te debita velle petere commemores, ordinarium est prius sollemnibus interpositis, si hoc iuris admiserit ratio, causam liberalem apud praesidem provinciae decidi, ut, si liber fueris vel servus non esse pronuntiatus, tunc tibi iure debita restitui iubeat, cum hoc incerto, utrumne tibi libero constituto an domino tuo, si servum te sententia declaraverit, debeatur, ad solutionem debitorem tuum urgueri non oporteat. * diocl. et maxim. aa. et cc. alpheo. * <a 293 s. prid. k. mai. beraci aa. conss.>

CJ.7.19.6: Imperatores Diocletianus, Maximianus

Si res tuas raptas vel amotas esse dicis ab his, quos servos tuos esse contendis , hique in libertatem proclamaverunt, causa liberalis prius adversus eos et tunc damni dati rerumque amotarum lis apud praesidem provinciae contestanda est, ut, si quidem liberi vel servi non esse pronuntientur, tunc demum damni dati et amotarum rerum procedere possit adhibita probatione condemnatio, si vero secus, quaestio rerum amotarum evanescat. * diocl. et maxim. aa. et cc. alexandriae. * <a 293 d. iii k. ian. sirmi aa. conss.>

CJ.7.19.7pr.: Imperator Constantinus

Si quando negotium status fuerit exortum, si ab eius parte qui dicitur servus aliquid dicatur dominus abripuisse, prius considerari placet, utrum de possessione servitutis in libertatem reclamandum putet an vero ex possessione libertatis in servitutem vocatur. * const. a. ad bassum. * <a 317 - 319? >

CJ.7.19.7.1: Imperator Constantinus

Ac si eum de obsequiis servilibus libertatem constiterit flagitare, ante decidi status convenit causam atque ita praeberi direptorum negotiorum, si res exegerit , audientiam. <a 317 - 319? >

CJ.7.19.7.2: Imperator Constantinus

Quod si ei qui ad servitutem vocatur quicquam direptum esse memoretur, universa quae constiterit ablata ita demum reddi convenit ei, qui servus esse contenditur , si modo salvam rem futuram per idoneos fideiussores promiserit. <a 317 - 319? >

CJ.7.19.7.3: Imperator Constantinus

Nam si tales non potuerit dare, tunc ea convenit, de quibus in iudicio tractabitur, sequestrari in eum diem, in quo controversia sopietur, ita ut ex isdem, si alia facultas esse non poterit, tantum litis sumptibus et alimoniae hominis subministretur, quantum moderato iudicis arbitrio fuerit aestimatum. <a 317 - 319? >

CJ.7.19.7.4: Imperator Constantinus

(1) cum autem necdum lite de statu mota res ab aliquo direptae sint et sententia de restituenda possessione rerum lata ille, ne sententiae satisfieret, de statu controversiam movit, necessitatem habebit et sine satisdatione easdem res reddere et tunc causam liberalem secundum iuris ordinem exercere. <a 317 - 319? >

CJ.7.20.0. De collusione detegenda.

CJ.7.20.1: Imperatores Diocletianus, Maximianus

Cum servum matris tuae et stupro violasse dominam suam et turpis coniunctionis maculam excogitandae ingenuitatis collusione ac falsae captivitatis velamento apud competentem iudicem obtegere voluisse proponas nec libertatem ei matrem tuam dedisse, sed in solam ingenuitatem eum nudae voluntatis mendacio producere enisam adseveres, servum esse palam est, quando etiam divi pii rescriptum super captivitate emissum, quam non intercessisse significas, ingenuum fecisse non videatur, nec adseveratio consensus tui ingenuitatis ius tribuere potuit. * diocl. et maxim. aa. theodorae. * <a 290 pp. xiiii k. iul. diocletiano iiii et maximiano iii aa. conss.>

CJ.7.20.2: Imperatores Diocletianus, Maximianus

Libertinae condicionis constitutis privatis pactis mutare statum non licere ninniano senatus consulto contra collusorem poena statuta praemioque detegenti promisso manifeste declaratur. * diocl. et maxim. aa. et cc. milesio. * <a 294 d. v k. dec. cc. conss.>

CJ.7.21.0. Ne de statu defunctorum post quinquennium quaeratur.

CJ.7.21.1: Imperatores Severus, Antoninus

Aditus competens iudex causam praescriptionis examinabit et, si domitiae patronum, qui civis romanus in diem mortis vixit, ante quinque annos, quam lis bonorum mulieris inchoaretur, vita decessisse constiterit, libertae status ex persona manumissoris non retractabitur. * sev. et ant. aa. niconi. * <>

CJ.7.21.2: Imperatores Severus, Antoninus

Si is, qui te heredem fecit, propter matris condicionem servus dicitur et mater ante quinque annos litis motae vita decessit, praescriptioni locus erit, cum quaeri de statu non possit, nisi de condicione matris retractaretur. haec ita, si, quamdiu vixit, sine interpellatione ut civis romana egit. * sev. et ant. aa. maximo. * <a 205 pp. id. sept. antonino a. ii et geta c. ii conss.>

CJ.7.21.3: Imperator Alexander Severus

Quamvis defunctus sit maritus quondam tuus, cui status quaestio inferebatur, causa tamen etiam post obitum eius propter emolumentum successionis durat eamque apud eum, qui de hereditate vel de singulis rebus iudicaturus est, decidi oportet. * alex. a. olympiadi. * <>

CJ.7.21.4pr.: Imperator Alexander Severus

Si is, quem servum tuum fuisse et a fratre tuo manumissum atque heredem scriptum proponis, ut civis romanus vixit nec intra quinquennium post mortem eius status quaestionem movere coepisti, intellegis neque heredibus ab eo scriptis neque his, quos liberos esse voluit, controversiam te contra formam senatus consulti facere posse. * alex. a. marciano. * <a 228 pp. v id. iun. modesto et probo conss.>

CJ.7.21.4.1: Imperator Alexander Severus

Quod si prius, quam id spatium temporis excederet, agere coepisti, et peculium eius more iudiciorum persequi et cum manumissis ordinata lite secundum formam edicti experiri non prohiberis. <a 228 pp. v id. iun. modesto et probo conss.>

CJ.7.21.5: Imperator Gordianus

Quod est constitutum post quinquennium de statu defunctorum quaestionem incipere non posse, ad speciem emancipationis, iure nec ne perfecta sit, minime pertinet. * gord. a. severo. * <>

CJ.7.21.6pr.: Imperatores valer., gallien.

Si mater tua quasi ingenua communi opinione vixit et quinquennium a die mortis eius excessit, potes rem publicam et pupillos, si tibi status quaestionem movere temptaverint, nota praescriptione repellere. * valer. et gallien. aa. pollae. * <a 260 pp. vi id. iun. saeculare ii et donato conss.>

CJ.7.21.6.1: Imperatores valer., gallien.

An autem pro ingenua in diem mortis egerit, in iudicio requiretur. quod si varietas interveniat, posteriora tempora spectari convenit. <a 260 pp. vi id. iun. saeculare ii et donato conss.>

CJ.7.21.7: Imperatores Diocletianus, Maximianus

Si pater tuus veluti ingenuus vixit nec status controversiam, quasi fisci servus esset, apud praesidem provinciae, qui super huiusmodo quaestionibus iudicare solet, sed apud curatorem rei publicae non competentem iudicem passus est, postque mortem eius quinquennium fluxit, status tuus ex praescriptione, quae ex senatus consulto emanat, protectus est. * diocl. et maxim. aa. heliodoro. * <>

CJ.7.21.8: Imperatores Diocletianus, Maximianus

Repetitio peculii rerum servi tui, si nullo iusto titulo intercedente corpora ab aliquo possideantur, nulla temporis praescriptione mutilabitur. nec enim senatus consultum, quo super non retractandis defunctorum statibus sancitum est, intervenit, si defunctus in fuga conversatus atque latitans decessit. * diocl. et maxim. aa. et cc. theodoro. * <a 299? d. x k. dec. mel. diocletiano et maximiano aa. conss.>

CJ.7.22.0. De longi temporis praescriptione, quae pro libertate et non adversus libertatem opponitur.

CJ.7.22.1: Imperatores Diocletianus, Maximianus

Mala fide morato in libertae diu prodesse non potest temporis praescriptio. unde cum confitearis fuga te ab eo cuius meministi recessisse, intellegis ex hoc solo sine dolo malo in possessione te libertatis non esse. * diocl. et maxim. aa. et cc. muciano. * <a a. 293 d. x k. sept. aa. conss.>

CJ.7.22.2: Imperatores Diocletianus, Maximianus

Praestat firmam defensionem libertatis ex iusto initio longo tempore obtenta possessio. favor enim libertatibus debitus et salubris iam pridem ratio suasit, ut his, qui bona fide in possessione libertatis per viginti annorum spatium sine interpellatione morati essent, praescriptio adversus inquietudinem status eorum prodesse deberet, ut et liberi et cives fiant romani. * diocl. et maxim. aa. et cc. carterio. * <a 300 d. vii k. iul. antiochiae constantio iii et maximiano iii cc. conss.>

CJ.7.22.3: Imperatores Constantinus, licin.

Solam temporis longinquitatem, etiamsi sexaginta annorum curricula excesserunt, libertatis iura minime mutilare oportere congruit aequitati. * constant. et licin. aa. litt. ad dionysium vice praef. * <a 314 d. iii k. mai. volusiano et anniano conss.>

CJ.7.23.0. De peculio eius qui libertatem meruit.

CJ.7.23.1: Imperatores Diocletianus, Maximianus

Longe diversam causam eorum, qui a superstitibus manumittuntur, item illorum, quibus testamento libertas relinquitur, esse dissimulare non debueras, cum superiore quidem casu concessum tacite peculium, si non adimatur, posteriore vero, nisi specialiter fuerit datum, penes successorem remanere sit iuris evidentis. * diocl. et maxim. aa. et cc. rufino. * <a 294 s. v non. oct. cc. conss.>

CJ.7.24.0. De senatus consulto claudiano tollendo.

CJ.7.24.1pr.: Imperator Justinianus

Cum in nostris temporibus, in quibus multos labores pro libertate subiectorum sustinuimus, satis esse impium credidimus quasdam mulieres libertate sua fraudari et, quod ab hostium ferocitate contra naturalem libertatem inductum est, hoc a libidine nequissimorum hominum inferri, claudianum senatus consultum et omnem eius observationem circa denuntiationes et iudicium sententias conquiescere in posterum volumus, ne, quae libera constituta est, vel semel decepta vel infelici cupidine capta vel alio quocumque modo contra natalium suorum ingenuitatem deducatur in servitutem et sit pessimum dedecus cognationis suae fulgori, ut, quae forsitan decoratos dignitatibus habeat cognatos, haec in alienum cadat dominium et dominum pertimescat forsitan cognatis suis inferiorem. quod et in libertis observari oportet: semel etenim libertate potitam per tale dedecus in servitutem reduci religio temporum meorum nullo patitur modo. * iust. a. hermogeni mag. off. * <a 531-534 >

CJ.7.24.1.1: Imperator Justinianus

Sed ne servi vel adscripticii putent sibi impunitum esse tale conamen, quod maxime in adscripticios verendum est, ne liberarum mulierum nuptiis ab his excogitatis paulatim huiusmodi hominum condicio decrescat, sancimus, si quid tale fuerit vel a servo vel adscripticio perpetratum, liberam habere potestatem dominium eius sive per se sive per praesidem provinciae talem servum vel adscripticium castigatione competenti corrigere et abstrahere a tali muliere. quod si neglexerit, sciat in suum damnum huiusmodi desidiam reversuram. <a 531-534 >

CJ.7.25.0. De nudo ex iure quiritium tollendo.

CJ.7.25.1: Imperator Justinianus

Antiquae subtilitatis ludibrium per hanc decisionem expellentes nullam esse differentiam patimur inter dominos, apud quos vel nudum ex iure quiritium vel tantummodo in bonis reperitur, quia nec huiusmodi esse volumus distinctionem nec ex iure quiritum nomen, quod nihil aenigmate discrepat nec umquam videtur neque in rebus apparet, sed est vacuum et superfluum verbum, per quod animi iuvenum, qui ad primam veniunt legum audientiam, perterriti ex primis eorum cunabulis inutiles legis antiquae dispositiones accipiunt. sed sit plenissimus et legitimus quisque dominus sive servi sui sive aliarum rerum ad se pertinentium. * iust. a. iuliano pp. * <a 530-531 >

CJ.7.26.0. De usucapione pro emptore vel transactione.

CJ.7.26.1: Imperator Antoninus

Mancipia tua si ab eis distracta sunt, qui ius vendendi non habuerunt, vindicare ea potes. nec enim usucapi ab emptoribus potuerunt, cum illicita venditione furtum contractum sit. * ant. a. flaviano. * <a 213 pp. id. aug. anonino a. iiii et balbino conss.>

CJ.7.26.2: Imperator Alexander Severus

Si contra defuncti voluntatem servos, quos propter perfectae artis peritiam heredibus suis defunctus servari testamento praecepit, tutores vendiderunt, usucapi non potuerunt. * alex. a. Marcellino. * <a 224 d. v non. mart. iuliano et crispino conss.>

CJ.7.26.3: Imperator Alexander Severus

Si matrem eius, cuius nomine quaestionem pati dicis, bona fide emptam possidere coepisti, etiamsi ipsa in causam furtivam incidit, tamen postea conceptum apud te partum usucapere potuisti. * alex. a. nepotillae. * <>

CJ.7.26.4: Imperator Alexander Severus

Venditioni ancillae consensum dedisse diversam partem si probaveris, retractando contractum, quem ipsa ratum habuit, non audietur. sed et hac probatione cessante si bona fide emptam ancillam venditore bona fide distrahente temporis spatio usuceperis, intentio proprietatem vindicantis tenere non potest. * alex. a. achilleo. * <pp. iii id. april.>

CJ.7.26.5pr.: Imperator Gordianus

Si partem possessionis mala fide possessor venumdedit, id quidem, quod ab ipso tenetur, omnimodo cum fructibus recipi potest, portio autem, quae distracta est, ita demum recte petitur a possidente, si sciens alienam comparavit vel bona fide emptor nondum complevit usucapionem. * gord. a. marino. * <a 238 pp. xii k. april. pio et pontiano conss.>

CJ.7.26.5.1: Imperator Gordianus

Violenter autem possessione amissa, priusquam in domini potestatem perveniat, usucapio emptori, etsi bona fide mercatus est, non competit. <a 238 pp. xii k. april. pio et pontiano conss.>

CJ.7.26.6: Imperator Philippus

Cum sit probatum rem pignori fuisse obligatam et postea a debitore distractam, palam est non potuisse eam quasi furtivam usucapi. * philipp. a. cum consilio collocutus dixit: * < s. die et consule.>

CJ.7.26.7: Imperatores Diocletianus, Maximianus

Sciens servum alienum citra domini voluntatem venumdans furtum committit. quod rei vitium, priusquam ad dominum eius revertatur possessio, non permittit usucapionem fieri, licet bona fide possideatur. * diocl. et maxim. aa. et cc. pecudi. * <a 294 d. v id. febr. cc. conss.>

CJ.7.26.8: Imperatores Diocletianus, Maximianus

Ex causa transactionis habentes iustam causam possessionis usucapere possunt. * diocl. et maxim. aa. et cc. severo. * <a 294 >

CJ.7.26.9: Imperatores Diocletianus, Maximianus

Eum, qui a pupillo sine tutoris auctoritate distrahente comparavit, nullum temporis spatium defendit. sed si locupletior factus emptoris pecunia post pubertatem occasionem iuris ad iniquum trahat compendium, doli mali submovebitur exceptione. * diocl. et maxim. aa. et cc. gaio. * <a 294 s. viii id. dec. cc. conss.>

CJ.7.27.0. De usucapione pro donato.

CJ.7.27.1: Imperator Alexander Severus

Sive fuit dominus, qui tibi loca de quibus supplicasti donavit, sive a non domino bona fide donata suscepisti eaque usucepisti, auferri tibi quod iure quaesitum est non potest. * alex. a. macedonio. * <pp. v id. mart.>

CJ.7.27.2: Imperatores Diocletianus, Maximianus

Donantem ancillam alienam nihil domino deminuere non est ambigui iuris: furtum etiam contrahere citra voluntatem domini contractantem, ut eius rei nec usucapio possit procedere. * diocl. et maxim. aa. et cc. capitoni. * <a 293 s. v id. april. aa. conss.>

CJ.7.27.3: Imperatores Diocletianus, Maximianus

Irritam facere donationem perfectam nemini licet. utque hoc verum est, sic error falsae causae ratione fidei bonae non defenditur. quod et in dominio pro usucapione quaerendo servatur. * diocl. et maxim. aa. et cc. rhodano. * <>

CJ.7.28.0. De usucapione pro dote.

CJ.7.28.1: Imperator Alexander Severus

Res mobiles in dotem datae, quamvis alienae, si sine vitio tamen fuerunt, a bona fide accipiente pro dote usucapiuntur. * alex. a. taurino. * <>

CJ.7.29.0. De usucapione pro herede.

CJ.7.29.1: Imperator Antoninus

Cum pro herede usucapio locum non habeat, intellegis neque matrem tuam, cui heres extitisti, neque te usu mancipia ex ea causa capere posse. * ant. a. zoilo. * <a 215 pp. vii k. iul. romae laeto et cereale conss.>

CJ.7.29.2: Imperatores Diocletianus, Maximianus

Nihil pro herede posse usucapi suis existentibus heredibus obtinuit. * diocl. et maxim. aa. et cc. marinae. * <a 293 pp. v k. febr. aa. conss.>

CJ.7.29.3: Imperatores Diocletianus, Maximianus

Opinione falsa mortis pro herede possessio rerum absentis procedere non potest. * diocl. et maxim. aa. et cc. diocletiano. * <>

CJ.7.29.4: Imperatores Diocletianus, Maximianus

Usucapio non praecedente vero titulo procedere non potest nec prodesse neque tenenti neque heredi eius potest, nec obtentu velut ex hereditate, quod alienum fuit, domini intentio ullo longi temporis spatio absumitur. * diocl. et maxim. aa. et cc. serapioni. * <a 294 d. vii k. ian. cc. conss.>

CJ.7.30.0. Communia de usucapionibus.

CJ.7.30.1: Imperator Alexander Severus

Qui ex conducto possidet, quamvis corporaliter teneat, non tamen sibi, sed domino rei creditur possidere. neque enim colono vel conductori praediorum longae possessionis praescriptio quaeritur. * alex. a. sabino. * <a 226 pp. vii k. april. alexandro a. ii et Marcello conss.>

CJ.7.30.2: Imperator Alexander Severus

Iam pridem quidem mancipium, de quo supplicas, comparasse te dicis: sed si cogitaveris fisci mei rem usucapi non posse, respondere te actionibus fisci mei intellegis nec alias posse proprietatem obtinere, quam si non ex ancilla fiscali natum fuisse constiterit. * alex. a. onesimae. * <a 231 pp. non. mart. pompeiano et peligno conss.>

CJ.7.30.3: Imperator Alexander Severus

Si mala fide servum tuum sciens antiochus tenuit, intentionem tuam contra successorem eius, licet bona fide possidet, propter initii vitium usucapio non absumpsit. * alex. a. pantherio. * <>

CJ.7.31.0. De usucapione transformanda et de sublata differentia rerum mancipi et nec mancipi.

CJ.7.31.1pr.: Imperator Justinianus

Cum nostri animi vigilantia ex iure quiritum nomen et substantiam sustulerit et communes exceptiones in omni loco valeant, id est decem vel viginti vel triginta annorum vel si quae sunt aliae maioris aevi continentes prolixitatem, satis inutile est usucapionem in italicis quidem solis rebus admittere, in provincialibus autem recludere. sed et si quis res alienas, italicas tamen, bona fide possidebat per biennium, miseri rerum domini excludebantur et nullus eis ad eas reservabatur regressus. quae et nescientibus dominis procedebant: quo nihil inhumanius erat, si homo absens et nesciens tam angusto tempore suis cadebat possessionibus. * iust. a. iohanni pp. * <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.31.1.1: Imperator Justinianus

Ideo per praesentem legem et in italicis solis rebus, quae immobiles sunt vel esse intelleguntur, sicut annalem exceptionem, ita et usucapionem transformandam esse censemus, ut tantummodo et hic decem vel viginti annorum vel triginta et aliarum exceptionum tempora currant, huiusmodi angustiis penitus semotis. <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.31.1.2: Imperator Justinianus

Cum autem antiqui et in rebus mobilibus vel se moventibus, quae fuerant alienatae vel quocumque modo, bona fide tamen, detentae, usucapionem extendebant, non in italico solo nexu, sed in omnem orbem terrarum, et hanc annali tempore concludebant, et eam duximus esse corrigendam, ut, si quis alienam rem mobilem seu se moventem in quacumque terra sive italica sive provinciali bona fide per continuum triennium detinuerit, is firmo iure eam possideat, quasi per usucapionem ei adquisitam. <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.31.1.3: Imperator Justinianus

Hoc tantummodo observando, ut in his omnibus casibus ab initio bona fide eam capiat, secundum quod exigit longi temporis praescriptio, et ut continuetur ei possessio etiam anterioris iusti possessoris et connumeretur in decennium vel viginti annorum spatium vel triennium, quod in rebus mobilibus observandum esse censemus, ut in omnibus iusto titulo possessionis antecessoris iusta detentio, quam in re habuit, non interrumpatur ex posteriore forsitan alienae rei scientia, licet ex titulo lucrativo ea coepta est. <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.31.1.4: Imperator Justinianus

Ita etenim ampliatur quidem longi temporis materia, quae ei subdita est, minuitur autem usucapionum compendiosa dominis iactura et eius iura nocentia. <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.31.1.5: Imperator Justinianus

Cum etiam res dividi mancipi et nec mancipi sane antiquum est et merito antiquari oportet, sit et rebus et locis omnibus similis ordo, inutilibus ambiguitatibus et differentiis sublatis. <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.32.0. De adquirenda et retinenda possessione.

CJ.7.32.1: Imperatores Severus, Antoninus

Per liberam personam ignoranti quoque adquiri possessionem et, postquam scientia intervenerit, usucapionis condicionem inchoari posse tam ratione utilitatis quam iuris pridem receptum est. * sev. et ant. aa. attico. * <a 196 pp. vi k. dec. dextro ii et prisco conss.>

CJ.7.32.2: Imperator Alexander Severus

Minus instructus est, qui te sollicitum reddidit, quasi in vacuam possessionem eius, quod per procuratorem emisti, non sis inductus, cum ipse proponas diu te in possessione fuisse omniaque ut dominum gessisse. licet enim instrumento non sit comprehensum, quod tibi tradita sit possessio, ipsa tamen rei veritate id consecutus es, si sciente venditore in possessione fuisti. * alex. a. gauro. * <>

CJ.7.32.3: Imperator dec.

Donatarum rerum a quacumque persona infanti vacua possessio tradita corpore quaeritur. quamvis enim sint auctorum sententiae dissentientes, tamen consultius videtur interim, licet animi plenus non fuisset adfectus, possessionem per traditionem esse quaesitam: alioquin, sicuti viri consultissimi papiniani responso continetur, ne quidem per tutorem possessio infanti poterit adquiri. * dec. a. rufo. * <a 250 pp. v k. april. decio a. ii et grato conss.>

CJ.7.32.4: Imperatores Diocletianus, Maximianus

Licet possessio nudo animo adquiri non possit, tamen solo animo retineri potest. si igitur desertam praediorum possessionem non derelinquendi adfectione transacto tempore non coluisti, sed ex metus necessitate culturam eorum distulisti, praeiudicium tibi ex transmissi temporis iniuria generari non potest. * diocl. et maxim. aa. nepotianae. * <a 290 pp. k. aug. ipsis iiii et iii aa. conss.>

CJ.7.32.5: Imperatores Diocletianus, Maximianus

Cum nemo causam sibi possessionis mutare possit proponasque colonum nulla extrinsecus accedente causa ex colendi occasione ad iniquae venditionis vitium esse prolapsum, praeses provinciae inquisita fide veri domini tui ius convelli non sinet. * diocl. et maxim. aa. mennoni. * <>

CJ.7.32.6: Imperatores Diocletianus, Maximianus

Si nulla iusta ex causa ingressum agrum sive vineas eum cuius meministi praeses reppererit nec ulla praescriptione vestra interpellatur petitio, restituere te possessioni cum omni causa non dubitabit. * diocl. et maxim. aa. et cc. valerio. * <a 293 s. id. april. aa. conss.>

CJ.7.32.7: Imperatores Diocletianus, Maximianus

Improba possessio firmum titulum possidendi nullum praestare potest. unde ingredientem in vacuam possessionem alieni fundi non consentiente domino vel actore, qui eius rei concedendi potestatem habuit, causam iustam possessionis adipisci non potuisse certum est. * diocl. et maxim. aa. et cc. asyncrito. * <a 293 pp. v id. dec. aa. conss.>

CJ.7.32.8: Imperatores Diocletianus, Maximianus

Per procuratorem utilitatis causa possessionem et, si proprietas ab hac separari non possit, dominium etiam quaeri placuit. * diocl. et maxim. aa. et cc. cyrillo. * <a 294 pp. xviii k. mart. sirmi cc. conss.>

CJ.7.32.9: Imperatores Diocletianus, Maximianus

Nec ex vera venditione possessionem, quam non fuerat emptor adeptus, improbe retinere potest: ac multo minus is, qui adseveratione falsa velut emptor, cum sine obligatione pignoris pecuniam mutuo dedisset, fundum inrumpens alienum retinendi iustam habet causam. * diocl. et maxim. aa. et cc. sergio. * <a 294 pp. iii non. april. sirmi cc. conss.>

CJ.7.32.10: Imperator Constantinus

Nemo ambigit possessionis duplicem esse rationem, aliam quae iure consistit, aliam quae corpore, utramque autem ita demum esse legitimam, cum omnium adversariorum silentio ac taciturnitate firmetur: interpellatione vero et controversia progressa non posse eum intellegi possessorem, qui, licet corpore teneat, tamen ex interposita contestatione et causa in iudicium deducta super iure possessionis vacillet ac dubitet. * const. a. ad maternum. * <a 314 p. xi k. febr. triveris volusiano et anniano conss.>

CJ.7.32.11: Imperatores Arcadius, Honorius

Vitia possessionum a maioribus contracta perdurant et successorem auctoris sui culpa comitatur. * arcad. et honor. aa. petronio vic. hispaniarum. * <a 397 d. xv k. ian. mediolano caesario et attico conss.>

CJ.7.32.12pr.: Imperator Justinianus

Ex libris sabinianis quaestionem in divinas nostri numinis aures relatam tollentes definimus, ut sive servus sive procurator vel colonus vel inquilinus vel quispiam alius, per quem licentia est nobis possidere, corporaliter nactam possessionem cuiuscumque rei eam derelinquerit vel alii prodiderit, desidia forte vel dolo, ut locus aperiatur alii eandem possessionem detinere, nihil penitus domino praeiudicium generetur, ne ex aliena malignitate alienum damnum emergat, sed et ipse, si liberae condicionis est, competentibus actionibus subiugetur, omni iactura ab eo restituenda domino rei vel ei, circa quem neglegenter vel dolose versatus est. * iust. a. iohanni pp. * <a 531 - 532 >

CJ.7.32.12.1: Imperator Justinianus

Sin autem necdum sub manibus procuratoris vel coloni vel inquilini vel servi possessio facta est, sed eam accipere desidia vel dolo supersedit, tunc ipse qui eum transmisit ex mala sua electione praeiudicium circa possessionem patiatur, ex memoratarum personarum vel machinatione vel neglegentia accedens. <a 531 - 532 >

CJ.7.32.12.2: Imperator Justinianus

Hoc etenim tantummodo sancimus, ut dominus nullo modo aliquod discrimen sustineat ab his quos transmiserit, non ut etiam lucrum sibi per eos adquirat, cum et antiqua regula, quae definivit deteriorem condicionem per servum domini nullo fieri modo, tunc locum habet, cum de damno dominus periclitetur, non cum sibi lucrum per servum adquiri desiderat: salva videlicet et in hoc casu domino rei vel ei, qui ad eam detinendam praefatas transmiserit personas, adversus eas omni actione, si qua ex legibus ei competit servata. <a 531 - 532 >

CJ.7.33.0. De praescriptione longi temporis decem vel viginti annorum.

CJ.7.33.1pr.: Imperatores Severus, Antoninus

Cum post motam et omissam quaestionem res ad nova dominia bona fide transierint et exinde novi viginti anni intercesserint sine interpellatione, non est inquietanda quae nunc possidet persona, quae sicut accessione prioris domini non utitur, qui est inquietatus, ita nec impedienda est, quod ei mota controversia sit. * sev. et ant. aa. iuliano pp. * <d. iii et antonino aa. conss.>

CJ.7.33.1.1: Imperatores Severus, Antoninus

Quod si prior possessor inquietatus est, etsi postea per longum tempus sine aliqua interpellatione in possessione remansit, tamen non potest uti longi temporis praescriptione. <d. iii et antonino aa. conss.>

CJ.7.33.1.2: Imperatores Severus, Antoninus

Quod etiam in re publica servari oportet. <d. iii et antonino aa. conss.>

CJ.7.33.2: Imperatores Diocletianus, Maximianus

Longi temporis praescriptio his, qui bona fide coeptam possessionem continuatam nec interruptam inquietudine litis tenuerunt, solet patrocinari. * diocl. et maxim. aa. * <a 286 pp. v k. dec. maximo ii et aquilino conss.>

CJ.7.33.3: Imperatores Diocletianus, Maximianus

Si vineae, quas mater tua vitrico in dotem dedit, tuae proprietatis sunt nec ulla praescriptio ex transacti temporis prolixitate adolevit, praeses provinciae restitui tibi eas efficiet. * diocl. et maxim. aa. et cc. antonio. * <a 293 >

CJ.7.33.4: Imperatores Diocletianus, Maximianus

Diutina possessio iure tantum successionis sine iusto titulo obtenta prodesse ad praescriptionem hac sola ratione non potest. * diocl. et maxim. aa. et cc. hermo. * <a 293 pp. iiii id. april. aa. conss.>

CJ.7.33.5: Imperatores Diocletianus, Maximianus

Nec petentem dominium ab eo, cui petentis solus error causam possessionis sine vero titulo praestitit, silentii longi praescriptione depelli iuris evidentissimi est. * diocl. et maxim. aa. et cc. sotericho. * <a 293 s. sirmi xi k. mai. aa. conss.>

CJ.7.33.6: Imperatores Diocletianus, Maximianus

Si fraude et dolo, licet inter maiores annis, facta venditio est, hanc confirmare non potuit consequens tempus, cum longi temporis praescriptio in malae fidei contractibus locum non habeat. * diocl. et maxim. aa. et cc. pars epist.Ad primosum praes. syriae.* <a 293 accepta.>

CJ.7.33.7: Imperatores Diocletianus, Maximianus

Longi temporis praescriptione munitis instrumentorum amissio nihil iuris aufert nec diuturnitate possessionis partem securitatem maleficium alterius turbare potest. * diocl. et maxim. aa. et cc. antheae.* <a 293 d. prid. k. ian. aa. conss.>

CJ.7.33.8pr.: Imperatores Diocletianus, Maximianus

Si is contra quem supplicas matris tuae quondam mancipia quasi filius ex causa tantum adoptionis defendit, adfectio destinatae illicitae adoptionis ad horum dominium ei quaerendum sola non sufficit. * diocl. et maxim. aa. et cc. celso.* <a 294 >

CJ.7.33.8.1: Imperatores Diocletianus, Maximianus

Quapropter mancipia petere non prohiberis nullam timens temporis praescriptionem , si hoc tantum initio procedente is contra quem supplicas horum possessionem adeptus est. <a 294 >

CJ.7.33.9: Imperatores Diocletianus, Maximianus

Emptor bona fide contra praesentem decennii praescriptione, cuius initio contestationem haberi sufficit, posteaquam suam impleverit intentionem petitor, adhibita probatione iustae possessionis defensus absolvi recte postulat. * diocl. et maxim. aa. et cc. demostheni.* <a 294>

CJ.7.33.10: Imperatores Diocletianus, Maximianus

Nec bona fide possessionem adeptis longi temporis praescriptio post moram litis contestatae completa proficit, cum post motam controversiam in praeteritum aestimetur. * diocl. et maxim. aa. et cc. regino.* <a 294 pp. v id. dec. cc. conss.>

CJ.7.33.11: Imperator Justinianus

Super longi temporis praescriptione, quae ex decem vel viginti annis introducitur, perspicuo iure sancimus, ut, sive ex donatione sive ex alia lucrativa causa bona fide quis per decem vel viginti annos rem detinuisse probetur, adiecto scilicet etiam tempore prioris possessoris, memorata longi temporis exceptio sine dubio ei competat nec occasione lucrativae causae repellatur. * iust. a. menae pp. * <a 528 d. k. iun. dn. iustiniano pp. a. ii cons.>

CJ.7.33.12pr.: Imperator Justinianus

Cum in longi temporis praescriptione tres emergebant veteribus ambiguitates, prima proter res, ubi positae sunt, secunda propter personas, sive utriusque sive alterutrius praesentiam exigimus, et tertiae, si in eadem provincia vel si in eadem civitate debent esse personae tam petentis quam possidentis et res, pro quibus certatur: omnes praesentis legis amplectimur definitione, ut nihil citra eam relinquatur. * iust. a. iohanni pp. * <a 531 d.V k.Dec.Constantinopoli post consulatum lampadii et orestis vv.Cc. >

CJ.7.33.12.1: Imperator Justinianus

Sancimus itaque debere in huiusmodi specie utriusque personae tam petentis quam possidentis spectari domicilium, ut tam is qui dominii vel hypothecae quaestionem inducit quam is qui res possidet domicilium in uno habeant loco, id est in una provincia. hoc etenim nobis magis eligendum videtur, ut non civitate concludatur domicilium, sed magis provincia, et si uterque domicilium in eadem habet provincia, causam inter praesentes esse videri et decennio agentem excludi. <a 531 d.V k.Dec.Constantinopoli post consulatum lampadii et orestis vv.Cc. >

CJ.7.33.12.2: Imperator Justinianus

De rebus autem, de quibus dubitatio est, nulla erit differentia, sive in eadem provincia sint sive in vicina vel trans mare positae et longo spatio separatae. <a 531 d.V k.Dec.Constantinopoli post consulatum lampadii et orestis vv.Cc. >

CJ.7.33.12.3: Imperator Justinianus

Sin autem non in eadem provincia uterque domicilium habeat, sed alter in alia, alius in altera, tunc ut inter absentes causam disceptari et locum esse viginti annorum exceptioni. nihil enim prohibet, sive in eadem provincia res constitutae sint sive in alia, super his controversiam in iudicio provinciali moveri et multo magis in hac florentissima civitate. <a 531 d.V k.Dec.Constantinopoli post consulatum lampadii et orestis vv.Cc. >

CJ.7.33.12.3a: Imperator Justinianus

Quid enim prodest in ipsa provincia esse possessionem an in alia, cum ius vindicationis incorporale est et, ubicumque res positae sunt, et dominium earum et vinculum ad dominum vel creditorem possit reverti? ideo enim nostri maiores subtilissimo animo et divino quodam motu ad actiones et earum iura pervenerunt, ut incorporales constitutae possint ubicumque ius suum et effectum corporalem extendere. <a 531 d.V k.Dec.Constantinopoli post consulatum lampadii et orestis vv.Cc. >

CJ.7.33.12.3b: Imperator Justinianus

Sit igitur secundum hanc definitionem causa perfectissime composita et nemo posthac dubitet, neque inter praesentes neque inter absentes quid statuendum sit, ut bono initio et possessione tenentis et utriusque partis domicilio requisito sit expedita quaestio pro rebus ubicumque positis, nulla scientia vel ignorantia expectanda, ne altera dubitationis inextricabilis oriatur occasio. <a 531 d.V k.Dec.Constantinopoli post consulatum lampadii et orestis vv.Cc. >

CJ.7.33.12.4: Imperator Justinianus

Eodem observando et si res non soli sint, sed incorporales, quae in iure consistunt, veluti usus fructus et ceterae servitutes. <a 531 d.V k.Dec.Constantinopoli post consulatum lampadii et orestis vv.Cc. >

CJ.7.34.0. In quibus causis cessat longi temporis praescriptio.

CJ.7.34.1: Imperatores Diocletianus, Maximianus

Si is, cui colendum fundum dedisti, post instrumenta, quibus dominium ad te pertinere probari posset, per novercam tuam subtraxit, hoc solo praescriptione temporis defendi non potest. * diocl. et maxim. aa. Marcellinae. * <a xxx >

CJ.7.34.2: Imperatores Diocletianus, Maximianus

In servorum proprietatis negotio cum usucapio locum habeat, ad quaestionem longi temporis praescriptionis superfluo pervenitur. * diocl. et maxim. aa. et cc. dionysio. * <a xxx >

CJ.7.34.3: Imperatores Diocletianus, Maximianus

Unus individuum commune pro solido possidens intervallo temporis, quominus socius portionem vindicare vel eum communi dividundo iudicio provocare possit, non defenditur, cum neque familiae erciscundae iudicium neque communi dividundo actio excluditur longi temporis praescriptione. * diocl. et maxim. aa. et cc. apollinario. * <a 294 iii k.April.Sirmi cc. conss.>

CJ.7.34.4: Imperatores Diocletianus, Maximianus

Hereditatem quidem petentibus longi temporis praescriptio nocere non potest. verum his, qui nec pro herede nec pro possessore, sed pro emptore vel donato seu alio titulo res quae hereditariae sunt vel fuerunt possident, cum ab his successio vindicari non possit, nihil haec iuris definitio noceat. * diocl. et maxim. aa. et cc. liviae. * <a xx iii id. sept.>

CJ.7.34.5: Imperatores Diocletianus, Maximianus

Si puerum non pro derelicto habitum, sed ab hostibus vulneratum sumptibus tuis, sicut adseveras, liberum existimans curasti longi temporis praescriptione, quominus dominus eius offerens erogata recte vindicet, defendi non potes. * diocl. et maxim. aa. et cc. zosimo. * <a xxx >

CJ.7.35.0. Quibus non obiciatur longi temporis praescriptio.

CJ.7.35.1: Imperator Alexander Severus

Tempus expeditionis adversus petitiones, si quae competisse iuste probari possunt, praescriptionem non parit. * alex. a. venuleio veterano. * <a 224 pp.Vi non.Iul.Iuliano et crispino conss.>

CJ.7.35.2pr.: Imperatores Diocletianus, Maximianus

Cum per absentiam tuam eos, de quibus quereris, in res iuris tui inruisse adseveres teque ob medendi curam comitatu nostro discedere non posse palam sit, praefectus praetorio nostro accitis his quos causa contingit inter vos cognoscet. * diocl. et maxim. aa. aurelio archiatro. * <a 286 pp.Xii k.Mart.Nicomediae maximo ii et aquilino conss.>

CJ.7.35.2.1: Imperatores Diocletianus, Maximianus

Non necessario autem petis ex longi temporis diurnitate praescriptionem tibi non opponi, quando iustae absentiae ratio et necessitatis publicae obsequium ab huiusmodi praeiudicio te defendat. <a 286 pp.Xii k.Mart.Nicomediae maximo ii et aquilino conss.>

CJ.7.35.3: Imperatores Diocletianus, Maximianus

Non est incognitum id temporis, quod in minore aetate transmissum est, in longi temporis praescriptione non computari. ea enim tunc currere incipit, quando ad maiorem aetatem dominus rei pervenerit. * diocl. et maxim. aa. numidio correctori italiae. * <a 290 pp.Iii id. sept.Ipsis iiii et iii aa. conss.>

CJ.7.35.4: Imperatores Diocletianus, Maximianus

Si possessio inconcussa sine controversia perseveraverit, firmitatem suam teneat obiecta praescriptio: quam contra absentes vel rei publicae causa vel maxime fortuito casu nequaquam valere decernimus. * diocl. et maxim. aa. et cc. crispino. * <a 292 pp.Iiii k.Mart. hannibaliano et asclepiodoto conss.>

CJ.7.35.5: Imperatores Diocletianus, Maximianus

Neque mutui neque commodati aut depositi seu legati vel fideicommissi vel tutelae seu alii cuilibet personali actioni longi temporis praescriptionem obici posse certi iuris est. * diocl. et maxim. aa. et cc. ianuario. * <a 293 s. k. febr. aa. conss.>

CJ.7.35.6: Imperatores Diocletianus, Maximianus

Ab hostibus captus ac postliminio reversus actione in rem directa vel qualibet alia dominium vindicando temporis adversarii possessionem frustra times, cum adversos eos, qui restitutionis auxilio quacumque ratione iuvantur, huiusmodi factum non opituletur. * diocl. et maxim. aa. et cc. doleo. * <a 294 vi id. nov. heracleae cc. conss.>

CJ.7.35.7: Imperatores Diocletianus, Maximianus

Praescriptione bona fide possidentes adversus praesentem annorum decem, absentem autem viginti muniuntur. quod tempus, si ex alicuius persona de petitorum parte restitutionis praetendatur auxilium, deducto eo, quo, si quid fuerit gestum, succurri solet, residuum computari rationis est. * diocl. et maxim. aa. et cc. cassandro. * <>

CJ.7.35.8: Imperator Justinianus

Sancimus his solis militibus, qui expeditionibus occupati sunt, ea tantummodo tempora, quae in eadem expeditione percurrunt, in exceptionibus declinandis opitulari: illis temporibus, per quae citra expeditionum necessitatem in aliis locis vel in suis aedibus degunt, minime eos ad vindicandum hoc privilegium adiuvantibus. * iust. a. menae pp. * <a 529 d. k. april. constantinopoli decio vc. cons.>

CJ.7.36.0. Adversus creditorem.

CJ.7.36.1: Imperator Gordianus

Diuturnum silentium longi temporis praescriptione corroboratum creditoribus pignus persequentibus inefficacem actionem constituit, praeterquam si debitores vel qui in iura eorum successerunt obligatae rei possessioni incumbant. ubi autem creditori a possessore longi temporis praescriptio obicitur, personalis actio adversus debitorem salva ei competit. * gord. a. veneriae. * <>

CJ.7.36.2: Imperatores Diocletianus, Maximianus

Si debitori heres non extitisti, sed iusta viginti annorum possessione collata in te donatio roborata est, neque personali actione, quia debitori non successisti, conveniri te iuris ratio permittit nec data pignori praedia post intervallum longi temporis tibi auferenda sunt, quando etiam praesentibus creditoribus decem annorum praescriptionem opponi posse tam rescriptis nostris quam priorum principum statutis probatum sit. * diocl. et maxim. aa. et cc. Marcellae. * <>

CJ.7.37.0. De quadriennii praescriptione.

CJ.7.37.1: Imperator Constantinus

Notum est a fisco quaestionem post quadriennium continuum super bonis vacantibus inchoandam non esse. additum etiam est et eos, qui nostra largitate nituntur, nulla inquietudine lacessendos nec his a fisco nostro controversiam commovendam, qui quoquo modo aut titulo easdem res possederint. * const. a. ad orfitum. * <>

CJ.7.37.2pr.: Imperator Zeno

Omnes, qui quascumque res mobiles vel immobiles seu se moventes vel in actionibus aut quocumque iure constitutas a sacratissimo aerario comparaverint, eos quin etiam, quibus quaecumque res mobiles seu immobiles seu se moventes aut in actionibus vel quocumque iure constitutae munificentiae principalis nomine datae fuerint, omnibus pariter privilegiis, quae ex divinis sanctionibus inclitae recordationis leonis et nostrae pietatis super certis patrimoniis antea emptores consecuti sunt, perpotiri et ita cunctos huiusmodi beneficiis seu privilegiis perfrui, tamquam si super singulis substantiis seu patrimoniis etiam nunc vel postea data fuisset huiusmodi dispositio: nec posse contra emptores praedictarum rerum factos iam vel futuros, vel contra eos, quibus super huiusmodi rebus largitas nostra delata est vel fuerit, aliquas actiones in rem dominii vel hypothecae gratia vel in personam, civiles seu praetorias, vel ex legibus aut sacratissimis constitutionibus descendentes vel quaslibet alias, licet nominatim praesenti sanctione non sint comprehensae, moveri: data volentibus licentia intra quadriennium contra sacratissimum aerarium, si quas sibi competere actiones existimant, exercere, ita tamen, ut post elapsum quadriennium nec sacratissimum fiscum lice re sibimet quibuslibet actionibus pulsare cognoscant. * zeno a. aeneae com. rer. privat. * <>

CJ.7.37.2.1: Imperator Zeno

Ad haec fiscalium rerum emptoribus cum ratione iustitiae consulentes iubemus, quotiens competens scrinium gestis intervenientibus distractarum rerum pretia sese deposuerit suscepisse, minime post huiusmodi solutae pecuniae depositionem emptores quasi non numeratis pecuniis molestari vel necessitatem isdem emptoribus imponi, licet non sollemnem consecuti fuerint securitatem, soluta fuisse pretia probare. sed cum sit in arbitrio pretia suscipientis minime deponere sese quod non accepit suscepisse, ita convenit nec emptores plenissimam ex huiusmodi depositione super pretii solutione securitatem consecutos ullum (sicut dictum est) ulterius probatione gravamen penitus formidare. <>

CJ.7.37.3pr.: Imperator Justinianus

Bene a zenone divae memoriae fiscalibus alienationibus prospectum est, ne homines, qui ex nostro aerario donationis vel emptionis vel cuiuslibet alienationis titulo quicquam accipiunt, si quid circa contractum contrarium emerserit vel evictionis vel alterius inquietudinis gratia ad dominium vel hypothecam respiciens , aliquid sustineant detrimentum: sed adversus emptores quidem vel donationem accipientes vel per alios titulos alienationis quicquam detinentes minime quaecumque actiones moveantur, sed tantummodo contra aerarium usque ad quadriennium tantum, quo translapso neque adversus fiscum remaneat aliqua actio. * iust. a. floro com. rer. privat. et curat. dominic. domus et petro viro ill. curat. divin. domus sereniss. augustae et macedonio viro ill. curat. et ipsi dominicae domus.* <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. c c.>

CJ.7.37.3.1: Imperator Justinianus

Sed scimus hoc quidem in fiscalibus alienationibus naviter observari, sed non simili modo rem fuisse observatam circa eas res, quae a sacratissimis imperatoribus non a fiscalibus rebus, sed ex privata eorum substantia procedunt. <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.37.3.1a: Imperator Justinianus

Quod satis inrationabile est. quae enim differentia intoducitur, cum omnia principis esse intellegantur, sive a sua substantia sive ex fiscali fuerit aliquid alienatum? eodemque modo et si a serenissima augusta aliquid alienetur, quare non eadem utatur praerogativa? sed curatores nostri, per quos solemus substantiam nostram gubernare, necesse habeant in venditionibus rerum et evictionem et alia quae sunt privatae utilitatis pacta emptionalibus instrumentis addere vel quasdam tales obligationes in alienationum instrumentis agnoscere vel in permutationibus vel in transactionibus, si et hoc fuerit celebratum? <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.37.3.1b: Imperator Justinianus

Hoc enim est eorum, qui nec maiestatem imperialem agnoscunt et quantum inter privatam fortunam et regale culmen medium est, et nostros curatores, per quos res divinarum domuum aguntur, aliquibus iniuriis vel damnis adficere conantur. <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.37.3.1c: Imperator Justinianus

Quae omnia resecantes per hanc generalem et in perpetuum valituram legem sancimus omnes alienationes de aula procedentes, sive a nostra clementia sive a serenissima augusta coniuge nostra sive ab his, qui postea digni fuerint nomine imperiali, sive iam alienatum quid est sive postea fuerit, sine omni inquietudine permanere, sive res eis per nosmet ipsos sive procuratores, ex epistalmate tamen nostro, fuerint adsignatae. <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.37.3.1d: Imperator Justinianus

Et nemo audeat eos, qui res accipiunt per quemcumque titulum alienationis sive mobiles sive immobiles seu se moventes vel iura incorporalia vel panes civiles, iudiciis adficere vel sperare aliquam contra eos esse sibi viam apertam sed omnis aditus excludatur, omnis motus et spes huiusmodi petulantiae. <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.37.3.2: Imperator Justinianus

Sed adversus domos nostras habeant, intra quadriennium tamen, secundum imitationem fisci, quas existimant posse sibi competere actiones in rem vel hypothecariam, ut ex nostra iussione causa moveatur et competentem mereatur effectum. quod si quadriennium fuerit emensum, nec adversus nostram domum habeat quis quamcumque actionem. <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.37.3.3: Imperator Justinianus

Quia igitur multa scimus tam nosmet ipsos quam serenissimam augustam coniugem nostram variis personis iam donasse et vendidisse et per alios titulos adsignasse , et maxime sacrosanctis ecclesiis et xenonibus et ptochotrophiis et episcopis et monachis et aliis innumerabilibus personis, et eandem liberalitatem ex nostra substantia sive serenissimae coniugis nostrae esse confectam, sancimus etiam eos firmo iure habere quod consecuti sunt, ita ut contra illos quidem nulla moveatur actio, intra quadriennium autem ex praesenti die numerandum pateat omnibus aditus contra nostras divinas domos suas actiones super isdem rebus movere, scituris, quod praefato quadriennio finito neque adversus nostras domos aliquis eis reservetur regressus. <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.37.3.4: Imperator Justinianus

Cum enim multa privilegia augusta fortuna meruit et in donationibus sine insinuatione gestorum omnem firmitatem habentibus et super rebus, quas pro tempore serenissimus princeps divinae augustae constante matrimonio donaverit vel ipse a serenissima augusta per donationis titulum consequatur, ut maneat ilico donatio plena, nullo alio adfirmationis tempore expectando, ita et hoc videatur imperiale esse privilegium. qui enim suis consiliis suisque laboribus pro toto orbe terrarum die noctuque laborant, quare non habeant dignam sua praerogativam fortuna ? <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.37.3.5: Imperator Justinianus

Quae igitur pro augusto honore et cautela res accipientium nostra statuit aeternitas, haec tam sublimitas tua quam ceteri omnes iudices nostri observare festinent, ex eo tempore valitura, ex quo nutu divino imperiales suscepimus infulas. <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.38.0. Ne rei dominicae vel templorum vindicatio temporis exceptione submoveatur.

CJ.7.38.1: Imperatores Valentinianus, Valens

Saepenumero praeceptum est, ut servi atque liberti, colonique praeterea rei nostrae nec non etiam eorum suboles ac nepotes, quicumque de nostris possessionibus recessissent ac se ad diversa militiae genera contulissent, cingulo, in quo obrepserant fraudulenter, exuti, si ad aliquas fortasse transcenderint dignitates, omni temporis definitione submota nostro patrimonio redderentur. * valentin. et valens aa. ad probum pp. galliarum. *

CJ.7.38.2: Imperatores Valentinianus, Theodosius, Arcadius

Universas terras, quae a colonis dominicis iuris rei publicae vel iuris templorum in qualibet provincia venditae vel ullo alio pacto alienatae sunt, ab his qui perperam atque contra leges eas detinent, nulla longi temporis praescriptione officiente iubemus restitui, ita ut nec pretium quidem iniquis comparatoribus reposcere liceat. * valentin. theodos. et arcad. aaa. dextro com. rer. privat.* <a 387 d. v non. iul. constantinopoli valentiniano a. iii et eutropio conss.>

CJ.7.38.3pr.: Imperatores Arcadius, Honorius

Si qua usquam loca ad sacrum dominium pertinentia cuiuslibet temeritas occupavit , secundum veteris census fidem in sua iura retrahentur. * arcad. et honor. aa. ad paulum com. domorum. * <a 396 d. v k. april. constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.7.38.3.1: Imperatores Arcadius, Honorius

Rescripta igitur obreptionibus impetrata cum praescriptione longi temporis et novi census praeiudicio submovebit auctoritas tua, atque ita omnia suo corpori quae sunt avulsa restituet. neque enim incubatio diuturna aut novella professio proprietatis nostrae privilegium abolere poterit. <a 396 d. v k. april. constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.7.39.0. De praescriptione xxx vel xl annorum.

CJ.7.39.1pr.: Imperatores Diocletianus, Maximianus

Cum adseveras te absente eos, qui oculos praediis tuis imposuerant, operam dedisse, ut annonariae collationis praetextu vili pretio ab officio praesidali praedia tua distraherentur, si legitimi temporis spatium ex venditionis die fluxit, qui provinciam regit inter vos cognoscet et, quod publico iure praescriptum est, statuet. * diocl. et maxim. aa. arrianae. * <>

CJ.7.39.1.1: Imperatores Diocletianus, Maximianus

Si autem nondum ex die publicae venditionis legitimum tempus transmissum sit, iudex examinatis adlegationibus tuis quod rei qualitas dictaverit sequetur, non ignarus, si iniustam esse emptionem perspexerit, pretium, quod pro vitioso contractu datum est, secundum principalium statutorum tenorem mala fide emptoribus restitui non oportere. <>

CJ.7.39.2pr.: Imperatores Valentinianus, Valens

Male agitur cum dominis praediorum, si tanta precario possidentibus praerogativa defertur, ut eos post quadraginta annorum spatia qualibet ratione decursa inquietare non liceat, cum lex constantiniana iubeat ab his possessionis initium non requiri, qui sibi potius quam alteri possederunt, eos autem possessores non convenit appellari, qui ita tenent, ut ob hoc ipsum solitam debeant praestare mercedem. * valentin. et valens aa. ad volusianum pu. * <a 365 d. viiii k. aug. valentiniano et valente aa. conss.>

CJ.7.39.2.1: Imperatores Valentinianus, Valens

Nemo igitur, qui ad possessionem conductor accedit, diu alienas res tenendo ius sibi proprietatis usurpet, ne cogantur domini aut amittere quod locaverunt aut conductores utiles sibi fortassis excludere aut annis omnibus super dominio suo publice protestari. <a 365 d. viiii k. aug. valentiniano et valente aa. conss.>

CJ.7.39.3pr.: Imperatores Honorius, Theodosius

Sicut in rem speciales, ita de universitate ac personales actiones ultra triginta annorum spatium minime protendantur. sed si qua res vel ius aliquod postuletur vel persona qualicumque actione vel persecutione pulsetur, nihilo minus erit agenti triginta annorum praescriptio metuenda: eodem etiam in eius valente persona, qui pignus vel vel hypothecam non a suo debitore, sed ab alio per longum tempus possidente nititur vindicare. * honor. et theodos. aa. asclepiodoto pp. * <a 424 d. xviii k. dec. constantinopoli victore cons.>

CJ.7.39.3.1: Imperatores Honorius, Theodosius

Quae ergo ante non motae sunt actiones, triginta annorum iugi silentio, ex quo competere iure coeperunt, vivendi ulterius non habeant facultatem. nec sufficiat precibus oblatis speciale quoddam, licet per adnotationem, promeruisse responsum, vel etiam iudiciis adlegasse, nisi adlegato sacro rescripto aut in iudicio postulatione deposita fuerit subsecuta per exsecutorem conventio. <a 424 d. xviii k. dec. constantinopoli victore cons.>

CJ.7.39.3.1a: Imperatores Honorius, Theodosius

Non sexus fragilitate, non absentia, non militia contra hanc legem defendenda, sed pupillari aetate dumtaxat, quamvis sub tutoris defensione consistit, huic eximenda sanctioni nam cum ad eos annos pervenerit, qui ad sollicitudinem pertinent curatoris, necessario eis similiter ut aliis annorum triginta intervalla servanda sunt. <a 424 d. xviii k. dec. constantinopoli victore cons.>

CJ.7.39.3.2: Imperatores Honorius, Theodosius

Hae autem actiones annis triginta continuis extinguantur, quae perpetuae videbantur, non illae, quae antiquitus temporibus limitantur. <a 424 d. xviii k. dec. constantinopoli victore cons.>

CJ.7.39.3.3: Imperatores Honorius, Theodosius

Post hanc vero temporis definitionem nulli movendi ulterius facultatem patere censemus, etiamsi se legis ignorantia excusare temptaverit. <a 424 d. xviii k. dec. constantinopoli victore cons.>

CJ.7.39.4pr.: Imperator Anastasius

Omnes nocendi quibuslibet modis artes omnibus amputantes cunctas quidem temporales exceptiones, quae ex vetere iure vel principalibus decretis descendunt, tamquam si per hanc legem specialiter ac nominatim fuissent enumeratae, cum suo robore durare et suum cunctis, quibus competunt vel in posterum competere valuerint, pro suo videlicet tenore praesidium in perpetuum deferre decernimus. * anastas. a. matroniano pp. * <a 491 d. iiii k. aug. constantinopoli olybrio cons.>

CJ.7.39.4.1: Imperator Anastasius

Quidquid autem praeteritarum praescriptionum vel verbis vel sensibus minus continetur, implentes per hanc in perpetuum valituram legem sancimus, ut, si quis contractus, si qua actio, quae, cum non esset expressim saepe dictis temporalibus praescriptionibus concepta, quorundam tamen vel fortuita vel excogitata interpretatione saepe dictarum exceptionum laqueos evadere posse videatur, huic saluberrimae nostrae sanctioni succumbat et quadraginta curriculis annorum procul dubio sopiatur, nullumque ius privatum vel publicum in quacumque causa in quacumque persona, quod praedictorum quadraginta annorum extinctum est iugi silentio, moveatur. <a 491 d. iiii k. aug. constantinopoli olybrio cons.>

CJ.7.39.4.2: Imperator Anastasius

Sed quicumque super quolibet iure, quod per memoratum tempus inconcussum et sine ulla re ipsa illata iudiciaria conventione possedit, superque sua condicione, qua per idem tempus absque ulla iudiciali sententia simili munitione potitus est , sit liber et praesentis saluberrimae legis plenissima munitione securus. <a 491 d. iiii k. aug. constantinopoli olybrio cons.>

CJ.7.39.5: Imperator Anastasius

Praescriptionem quadraginta annorum ab his, qui ad curialem condicionem vocantur , opponi non patimur, sed genitalem statum semper eos agnoscere compelli sancimus. sacra etenim nostrae pietatis lex de aliis loquitur condicionibus nec anterioribus constitutionibus per eandem novellam legem derogatur, quae manifestissime curiales et liberos eorum explosis temporalibus praescriptionibus patriis suis reddi praecipiunt. * anastas. a. ad thomam pp. per illyricum. * <>

CJ.7.39.6pr.: Imperator Anastasius

Comperit nostra serenitas quosdam sacratissimam nostrae pietatis constitutionem, quae de annorum quadraginta loquitur praescriptione, ad praeiudicium etiam publicarum functionum solutionis trahere conari et, si quid per tanti vel amplioris temporis lapsum minime vel minus quam oportuerat tributorum nomine solutum est, non posse requiri seu profligari contendere, cum huiusmodo conamen manifestissime sensui propositoque nostrae legis obviare noscatur. * anastas. a. leontio pp. * <>

CJ.7.39.6.1: Imperator Anastasius

Ideoque iubemus eos, qui rem aliquam per continuum annorum quadraginta curriculum sine quadam legitima interpellatione possederunt, de possessione quidem rei seu dominio nequaquam removeri, functiones autem seu civilem canonem vel aliam quandam publicam collationem impositam ei dependere compelli nec huic parti cuiuscumque temporis praescriptionem oppositam admitti. <>

CJ.7.39.7pr.: Imperator Justinus

Cum notissimi iuris sit actionem hypothecariam in extraneos quidem suppositae rei detentores annorum triginta finiri spatiis, si non interruptum erit silentium , ut lege cautum est, id est etiam per solam conventionem, aut si aetas impubes excipienda monstretur, in ipsos vero debitores aut heredes eorum primos vel ulteriores nullis expirare lustrorum cursibus: nostrae provisionis esse perspeximus hoc quoque emendare, ne possessores eiusmodi prope immortali timore teneantur. * iustinus a. archelao pp. * <a 525 d. k. dec. constantinopoli philoxeno et probo conss.>

CJ.7.39.7.1: Imperator Justinus

Quamobrem iubemus hypothecarum persecutionem, quae rerum movetur gratia vel apud debitores consistentium vel apud debitorum heredes, non ultra quadraginta annos , ex quo competere coepit, prorogari, nisi conventio aut aetas, sicut dictum est , intercesserit, ut diversitas utriusque rerum persecutionis, quae in debitorem aut heredes eius quaeque movetur in extraneos, in solo sit annorum numero, verum in aliis omnibus ambo similes sint: in actione scilicet personali his custodiendis, quae prisca constitutionum sanxit iustitia. <a 525 d. k. dec. constantinopoli philoxeno et probo conss.>

CJ.7.39.7.2: Imperator Justinus

Sed cum illud etiam in forensibus controversiis ventilabatur, an creditor anteriora iura praetendens potest posteriorem creditorem hypothecam tenentem et ultra triginta annos inquietare utpote imaginem debitoris obtinentem eique possidentem, necessarium duximus et hoc dirimere. <a 525 d. k. dec. constantinopoli philoxeno et probo conss.>

CJ.7.39.7.2a: Imperator Justinus

Et sancimus, donec communis debitor vivit, non posse creditori anteriori triginta annorum exceptionem opponi, sed locum esse quadraginta annorum praescriptioni , quia, dum ille vivit, merito anterior creditor confidit, utpote apud debitorem eius possessione per posteriorem creditorem constituta. <a 525 d. k. dec. constantinopoli philoxeno et probo conss.>

CJ.7.39.7.2b: Imperator Justinus

Ex quo autem in fata sua debitor decesserit, ex eo quasi suo nomine possidentem posteriorem creditorem merito posse triginta annorum opponere praescriptionem. et secundum hanc distinctionem computationem temporum adhibendam, ut ex persona quidem sua posterior creditor triginta annos, quos ipse post mortem debitoris possedit, opponat: sin autem coniungere voluerit suae possessioni quam post mortem debitoris habuit, etiam tempus, quo vivente debitore vel ipse creditor vel communis debitor detinuit, tunc quadraginta annorum exceptionis iura tractari et, quantum deest ad quadraginta annorum possessionem, per quam et ipse debitor creditorem repellere potuerat hoc se possedisse ostendat. <a 525 d. k. dec. constantinopoli philoxeno et probo conss.>

CJ.7.39.7.3: Imperator Justinus

Eodem iure pro temporum computatione observando et si posterior creditor anteriori creditori offere debitum paratus est et is creditor longaevam possessionis praescriptionem ei opponere conatur. <a 525 d. k. dec. constantinopoli philoxeno et probo conss.>

CJ.7.39.7.4: Imperator Justinus

Illud autem plus quam manifestum est, quod in omnibus contractibus, in quibus sub aliqua condicione vel sub die certa vel incerta stipulationes et promissiones vel pacta ponuntur, post condicionis exitum vel post institutae diei certae vel incertae lapsum praescriptiones triginta aut quadraginta annorum, quae personalibus vel hypothecariis actionibus opponuntur, initium accipiunt. <a 525 d. k. dec. constantinopoli philoxeno et probo conss.>

CJ.7.39.7.4a: Imperator Justinus

Unde evenit, ut in matrimoniis, in quibus redhibitio dotis vel ante nuptias donationis in diem incertam mortis vel repudii differri adsolet, post coniugii dissolutionem earundem curricula praescriptionum personalibus itidem actionibus vel hypothecariis opponendarum incipiant. <a 525 d. k. dec. constantinopoli philoxeno et probo conss.>

CJ.7.39.7.5: Imperator Justinus

Immo et illud procul dubio est, quod si quis eorum, quibus aliquid debetur, res sibi suppositas sine violentia tenuerit, per hanc detentionem interruptio fit praeteriti temporis, si minus effluxit triginta vel quadraginta annis, et multo magis, quam si esset interruptio per conventionem introducta, cum litis contestationem imitatur ea detentio. <a 525 d. k. dec. constantinopoli philoxeno et probo conss.>

CJ.7.39.7.5a: Imperator Justinus

Sed et si quis debitorum ad agnoscendum suum debitum secundam cautionem in creditorem exposuerit, tempora memoratarum praescriptionum interrupta esse videbuntur, quantum ad priorem cautionem pertinet, quae scilicet innovata permansit, tam in personalibus quam in hypothecariis actionibus. namque improbum est debitorem contradicere, qui, ne sub accusatione creditoris fiat, secundam in eum super eo debito cautionem exposuit. <a 525 d. k. dec. constantinopoli philoxeno et probo conss.>

CJ.7.39.7.6: Imperator Justinus

In his etiam promissionibus vel legatis vel aliis obligationibus, quae dationem per singulos annos vel menses aut aliquod singulare tempus continent, tempora memoratarum praescriptionum non ab exordio talis obligationis, sed ab initio cuiusque anni vel mensis vel alterius singularis temporis computari manifestum est. <a 525 d. k. dec. constantinopoli philoxeno et probo conss.>

CJ.7.39.7.7: Imperator Justinus

Nulla scilicet danda licentia vel ei, qui iure emphyteutico rem aliquam per quadraginta vel quoscumque alios annos detinuerit, dicendi ex transacto tempore dominium sibi in isdem rebus quaesitum esse, cum in eodem statu semper manere datas iure emphyteutico res oporteat, vel conductori seu procuratori rerum alienarum dicendi ex quocumque temporum curriculo non debere se domino volenti post completa conductionis tempora possessionem recipere eam reddere. <a 525 d. k. dec. constantinopoli philoxeno et probo conss.>

CJ.7.39.8pr.: Imperator Justinianus

Si quis emptionis vel donationis vel alterius cuiuscumque contractus titulo rem aliquam bona fide per decem vel viginti annos possederit et longi temporis exceptionem contra dominos eius vel creditores hypothecam eius praetendentes sibi adquisierit posteaque fortuito casu possessionem eius rei perdiderit, posse eum etiam actionem ad vindicandam eandem rem habere sancimus. hoc enim et veteres leges, si quis eas recte inspexerit, sanciebant. * iust. a. menae pp. ii. * <a 528 d. iii id. dec. constantinopoli dn. iustiniano a. ii cons.>

CJ.7.39.8.1: Imperator Justinianus

Quod si quis eam rem desierit possidere, cuius dominus vel is qui suppositam eam habebat exceptione triginta vel quadraginta annorum expulsus est, praedictum auxilium non indiscrete, sed cum moderata divisione ei praestare censemus, ut, si quidem bona fide ab initio eam rem tenuit, simili possit uti praesidio, sin vero mala fide eam adeptus est, indignus eo videatur, ita tamen, ut novus possessor, si quidem ipse rei dominus ab initio fuit vel suppositam eam habebat et memoratae exceptionis necessitate expulsus est, commodum detentionis sibi adquirat. <a 528 d. iii id. dec. constantinopoli dn. iustiniano a. ii cons.>

CJ.7.39.8.1a: Imperator Justinianus

Sin vero nullum ius in eadem re quocumque tempore habuit, tunc licentia sit priori domino vel creditori, qui nomine hypothecae rem obligatam habuit, et heredibus eorum ab iniusto detentore eam vindicare, non obsistente ei, quod prior possessor triginta vel quadraginta annorum exceptione eum removerat, nisi ipse iniustus possessor triginta vel quadraginta annorum ex eo tempore computandorum, ex quo prior possessor, qui et vicit, ea possessione cecidit, exceptione munitus sit. <a 528 d. iii id. dec. constantinopoli dn. iustiniano a. ii cons.>

CJ.7.39.8.2: Imperator Justinianus

Sed haec super illis detentoribus censemus, qui sine violentia eandem rem nancti sunt. nam si quis violenter eam abstulit, omnimodo licebit priori possessori sine ulla distinctione eam vindicare. <a 528 d. iii id. dec. constantinopoli dn. iustiniano a. ii cons.>

CJ.7.39.8.3: Imperator Justinianus

Sed et si quis non per vim, sed sententia iudicis eam detinuit, ea tamen occasione, quod absens prior possessor et ad litem vocatus minime respondit, licebit ei ad similitudinem ceterorum, qui rei dominium habent, intra annum se offerenti cautionemque suscipiendae litis danti eandem rem recipere superque ea cognitionalia subire certamina. <a 528 d. iii id. dec. constantinopoli dn. iustiniano a. ii cons.>

CJ.7.39.8.4: Imperator Justinianus

Exceptionem etiam triginta vel quadraginta annorum in illis contractibus, in quibus usurae promissae sunt, ex illo tempore initium capere sancimus, ex quo debitor usuras minime persolvit. <a 528 d. iii id. dec. constantinopoli dn. iustiniano a. ii cons.>

CJ.7.39.9pr.: Imperator Justinianus

Saepe quidam suos obnoxios in iudicium vocantes et iudiciariis certaminibus ventilatis non ad certum finem lites producebant, sed taciturnitate in medio tempore adhibita, propter potentiam forte fugientium vel suam imbecillitatem vel alios quoscumque casus (cum sortis humanae multa sunt, quae nec dici nec enumerari possint), deinde iure suo lapsi esse videbantur eo, quod post cognitionem novissimam triginta annorum spatium effluxerit, et huiusmodi exceptione opposita suas fortunas ad alios translatas videntes merito quidem, sine remedio autem lugebant. * iust. a. demostheni pp. * <a 529 >

CJ.7.39.9.1: Imperator Justinianus

Quod nos corrigentes eandem exceptionem, quae ex triginta annis oritur, in huiusmodi casu opponi minime patimur, sed licet personalis actio ab initio fuerit instituta, tamen eam in quadragesimum annum extendimus, cum non sit similis, qui penitus ab initio tacuit, ei, qui et postulationem deposuit et in iudicium venit et subiit certamina, litem autem implere per quosdam casus praepeditus est. <a 529 >

CJ.7.39.9.2: Imperator Justinianus

Sed licet ipse actor defecerit, suae posteritati huiusmodi causae cursum eum relinquere posse definimus, ut eius heredibus vel successoribus liceat eam adimplere, nullo modo triginta annorum exceptione sublatam. <a 529 >

CJ.7.39.9.3: Imperator Justinianus

Quod tempus, id est quadraginta annorum spatium, ex eo numerari decernimus, ex quo novissima processit cognitio, post quam utraque pars cessavit. <a 529 >

CJ.7.40.0. De annali exceptione italici contractus tollenda et de diversis temporibus et exceptionibus et praescriptionibus et interruptionibus earum.

CJ.7.40.1pr.: Imperator Justinianus

Super annali exceptione, quae ex italicis contractibus oritur, tantae moles altercationum in omnibus iudiciis exortae sunt, quantas et enumerari difficile et explanari impossibile est. * iust. a. iuliano pp. * <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.7.40.1.1: Imperator Justinianus

Primum etenim naturae eius observatio cum omni scrupulositate et difficultate composita est, cum multa concurrere debent, ut ea nascatur. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.7.40.1.1a: Imperator Justinianus

Deinde illud spatium annale alii quidem ita effuse interpretabantur, ut possit usque ad decennium extendi, alii iudicantes usque ad quinquennium standum esse putaverunt. et in nostris temporibus saepius super huiusmodi calculo a iudicibus variatum est, unde nec facile suum effectum in litigiis ostendere huiusmodi exceptio valuit. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.7.40.1.1b: Imperator Justinianus

Cum itaque nobis aliae temporales exceptiones vel praescriptiones sufficiant, huiusmodi difficultatibus illigari nostro subiectos imperio minime patimur. ideoque memorata annali exceptione penitus quiescente aliae omnes legitimae exceptiones vel praescriptiones in iudiciis suum vigorem ostendant, sive quae super decennio vel viginti vel triginta vel quadraginta annis introductae sunt, sive quae minoribus spatiis concluduntur. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.7.40.1.1c: Imperator Justinianus

Ad haec cum nihil prohibet etiam ea, quae aliquam dubitationem acceperunt, clarioribus et compendiosis sanctionibus renovare, iubemus omnes personales actiones , quas verbosa quorundam interpretatio iactare extra metas triginta annorum conabatur, triginta annorum spatiis concludi, nisi legitimus modus, qui et veteribus et nostris legibus enumeratus est, interruptionem temporis introduxerit: sola hypothecaria actione quadraginta annorum utente curriculis. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.7.40.1.1d: Imperator Justinianus

Nemo itaque audeat neque actionis familiae erciscundae neque communi dividundo neque finium regundorum neque pro socio neque furti neque vi bonorum raptorum neque alterius cuiuscumque personalis actionis vitam longiorem esse triginta annis interpretari: sed ex quo ab initio competit et semel nata est, et non iteratis fabulis saepe recreata, quemadmodum in furti dicebatur, post memoratum tempus finiri. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.7.40.1.1e: Imperator Justinianus

Exceptis omnibus actionibus, licet personales sint, quae in iudicium deductae sunt et cognitionalia acceperunt certamina et postea silentio traditae sunt, in quibus non triginta, sed quadraginta annos esse expectandos, ex quo novissimum litigatores tacuerunt, nostra lex antea promulgavit. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.7.40.1.2: Imperator Justinianus

Ne autem imperfecta sanctio videatur, cum in maternis quidem rebus filiis familias tempore exceptionum currere dispositum erat, ex quo sacris paternis absoluti sunt, in aliis autem, quae minime adquiri possunt, hoc non fuerat specialiter constitutum, apertissima definitione sancimus filiis familias omnibus in his casibus, in quibus habent res minime patribus suis adquisitas, nullam temporalem exceptionem opponi, nisi ex quo actionem movere potuerint, id est postquam manu paterna vel eius in cuius potestate erant constituti fuerint liberati. quis enim incusare eos poterit, si hoc non fecerint, quod et si maluerint, minime adimplere lege obviante valebant? <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.7.40.2pr.: Imperator Justinianus

Ut perfectius omnibus consulamus et nemini absentia vel potentia vel infantia penitus adversarii sui noceat, sed sit aliqua inter desides et vigilantes differentia, sancimus: si quando afuerit is, qui res alienas vel creditori obnoxias detinet, et desiderat dominus rei vel creditor suam intentionem proponere et non ei licentia sit, absente suo adversario qui rem detinet, vel infantia vel furore laborante et neminem tutorem vel curatorem habente, vel in magna potestate constituto, licentia ei detur adire praesidem vel libellum ei porrigere et hoc in querimoniam deducere intra constituta tempora et interruptionem temporis facere: et sufficere hoc ad plenissimam interruptionem. * iust. a. iohanni pp. * <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.40.2.1: Imperator Justinianus

Sin autem nullo poterit modo praesidem adire, saltem ad episcopum locorum eat vel defensorem civitatis et suam manifestare voluntatem in scriptis deproperet. sin autem afuerit vel praeses vel episcopus vel defensor, liceat ei et proponere publice, ubi domicilium habet possessor, seu cum tabulariorum subscriptione vel , si civitas tabularios non habeat, cum trium testium subscriptione: et hoc sufficere ad omnem temporalem interruptionem sive triennii sive longi temporis sive triginta vel quadraginta annorum sit. <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.40.2.2: Imperator Justinianus

Omnibus aliis, quae de longi temporis praescriptione vel triginta vel quadraginta annorum curriculis constituta sunt sive ab antiquis legum conditoribus sive a nostra maiestate, in suo robore duraturis. <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.40.3pr.: Imperator Justinianus

Si ex multis causis quendam obnoxium habens, et maxime ex similibus quantitatibus, in unius quidem causae summam libellum conventionis composuerit, causam tamen non expresserit, apud veteres agitabatur, an videatur omnes causas in iudicium deduxisse aut vetustissimam earum aut nihil fecisse, cum eius sensus incertus esse apparebat. * iust. a. iohanni pp. * <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.40.3.1: Imperator Justinianus

Sed et in iudiciis in multis casibus tales altercationes ventilatas invenimus, et maxime propter longi temporis interruptionem. si enim personalis forte fuerat mota actio, hypothecariae autem actionis nulla mentio procedebat, quidam putabant personalem quidem esse temporis interruptione perpetuatam, hypothecariam autem evanescere taciturnitate sopitam. <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.40.3.2: Imperator Justinianus

Et si quis generaliter dixerat obnoxium sibi aliquem constitutum, aliae dubitationes emergebant, si omnes ei competentes actiones huiusmodo narratione contineri credantur, an vero quasi silentio circa eas habito tempore expirare, nullo ex incerta libelli confectione adminiculo eis adquisito. <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.40.3.3: Imperator Justinianus

Sancimus itaque nullam in iudiciis in posterum locum habere talem confusionem, sed qui obnoxium suum in iudicium clamaverit et libellum conventionis ei transmiserit, licet generaliter nullius causae mentionem habentem vel unius quidem specialiter, tantummodo autem personales actiones vel hypothecarias continentem, nihilo minus videri ius suum omne eum in iudicium deduxisse et esse interrupta temporum curricula, cum contra desides homines et sui iuris contemptores odiosae exceptiones oppositae sunt. <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.41.0. De adluvionibus et paludibus et de pascuis ad alium statum translatis.

CJ.7.41.1: Imperator Gordianus

Quamvis fluminis naturalem cursum opere manu facto alio non liceat avertere, tamen ripam suam adversus rapidi amnis impetum munire prohibitum non est. et cum fluvius priore alveo derelicto alium sibi facit, ager quem circumivit prioris domini manet. quod si paulatim ita auferat aliique parti applicet, id adluvionis iure ei quaeritur, cuius fundus crescit. * gord. a. marco. * <a 239 pp. iii k. dec. gordiano a. et aviola conss.>

CJ.7.41.2: Imperatores Arcadius, Honorius, Theodosius

Hi, quos inundatio nili fluminis reddidit ditiores, pro terris quas possident tributorum praestationem agnoscant. et qui suum deplorant patrimonium imminutum, alieno saltem functionis onere liberentur et nostrae serenitatis largitate defensi, locorum etiam possessione contenti, pro agitandi census examine respondeant devotioni. * arcad. honor. et theodos. aaa. caesario pp. * <a 403 d. iii id. iun. theodosio a. et rumorido conss.>

CJ.7.41.3pr.: Imperatores Theodosius, Valentinianus

Ea, quae per adluvionem sive in aegypto per nilum sive in aliis provinciis per diversa flumina possessoribus adquiruntur, neque ab aerario vendi neque a quolibet peti nec separatim censeri vel functiones exigi hac perpetuo lege valitura sancimus, ne vel adluvionum ignorare vitia vel rem noxiam possessoribus videamur indicere. * theodos. et valentin. aa. cyro pp. * <a 440 d. xi k. oct. constantinopoli valentiniano a. v et anatolio conss.>

CJ.7.41.3.1: Imperatores Theodosius, Valentinianus

Similiter ne ea quidem, quae paludibus antea vel pascuis videbantur adscripta, si sumptibus possessorum nunc ad frugum fertilitatem translata sunt, vel vendi vel peti vel quasi fertilia separatim censeri vel functiones exigi concedimus, ne doleant diligentes operam suam agri dedisse culturae nec diligentiam suam damnosam intellegant. <a 440 d. xi k. oct. constantinopoli valentiniano a. v et anatolio conss.>

CJ.7.41.3.2: Imperatores Theodosius, Valentinianus

Cuius legis temeratores quinquaginta librarum auri condemnatione coerceri decernimus: inter quos habendum est officium quoque tuae sedis excelsae, si aliquid eiusmodi suggesserit disponendum vel si preces instruxerit petitoris. <a 440 d. xi k. oct. constantinopoli valentiniano a. v et anatolio conss.>

CJ.7.42.0. De sententiis praefectorum praetorio.

CJ.7.42.1: Imperatores Theodosius, Valentinianus

Litigantibus in amplissimo praetorianae praefecturae iudicio, si contra ius se laesos adfirment, non provocandi, sed supplicandi licentiam ministramus, licet pro curia vel qualibet publica utilitate seu alia causa dicatur prolata sententia (nec enim publice prodest singulis legum adminicula denegari) : ita videlicet, ut intra biennium tantum nostro numini contra cognitionales sedis praetorianae praefecturae sententias, post successionem iudicis numerandum, supplicandi eis tribuatur facultas. * theodos. et valentin. aa. thalassio pp. illyrici. * <a 439 d. iii id. aug. constantinopoli theodosio a. xvii et festo conss.>

CJ.7.43.0. Quomodo et quando iudex sententiam proferre debet praesentibus partibus vel una absente.

CJ.7.43.1: Imperator t. ael. ant.

Non semper compelleris, ut adversus absentem pronunties, propter subscriptionem patris mei, qua significavit etiam contra absentes sententiam dari solere. id enim eo pertinet, ut absentem damnare possis, non ut omnimodo necesse habeas. * t. ael. ant. publicio. * < sine die et conss.>

CJ.7.43.2: Imperator Gordianus

Cessante quoque causa peremptorii edicti adversus eos, qui admoniti iudicio adesse noluerunt, sententiam ab iudice posse ferri certum est. * gord. a. severo. * <a 238 s. iiii k. aug. pio et pontiano conss.>

CJ.7.43.3: Imperator Gordianus

Ab eo iudicato recedi non potest, quod vobis absentibus et ignorantibus atque indefensis dicitis esse prolatum, si ubi primum cognovistis, non ilico de statutis querellam detulistis. ita enim firmitatem sententia, quae ita prolata est, non habebit, si ei non sit commodatus adsensus. * gord. a. antistio. * <a 239 pp. iiii id. iun. gordiano a. et aviola conss.>

CJ.7.43.4: Imperator Philippus

Si, ut proponis, pars diversa die feriato absente et ignorante te ab iudice dato sententiam pro partibus suis, quasi contumaciter deesses, impetravit, non immerito praeses denuo negotium alterius iudicis notioni terminandum commisit. * philipp. a. domitio. * <a 244 pp. v id. oct. peregrino et aemiliano conss.>

CJ.7.43.5: Imperator Philippus

Si, ut proponis, praeses provinciae, cum certum locum causae cognoscendae dedisset, alibi per obreptionem aditus sententiam adversus te absentem protulit, quod ita gestum est, ad effectum iuris spectare minime oportet. * philipp. a. et philipp. c. longino. * <>

CJ.7.43.6: Imperatores valer., gallien.

Si praeses quasi desertam ab adultis tuis causam appellationis, quae ab adiutore suo facta fuerat, circumduxit eo tempore, quo adulti curatores non habebant, repetitus notionem suam exhibebit. neque enim debet adultis nocere, quidquid eo tempore statutum est, quo defensione iusta et curatoris auxilio fuerant destituti. * valer. et gallien. aa. domitio. * <>

CJ.7.43.7: Imperatores Diocletianus, Maximianus

Ea, quae statuuntur adversus absentes non per contumaciam, scilicet denuntiationibus nequaquam ex more conventos, iudicatae rei firmitatem non obtinere certum est. * diocl. et maxim. aa. marino. * <a 290 pp. iii k. april. ipsis iiii et iii aa. conss.>

CJ.7.43.8: Imperatores Diocletianus, Maximianus

Consentaneum iuri fuit temporibus ad praesentiam partis adversae praescriptis praesidem provinciae impleta iuris sollemnitate et adversario tuo trinis litteris vel uno pro omnibus peremptorio edicto, ut praesentiam sui faceret, commonefacto, si in eadem contumacia perseveravit, praesentis adlegationes audire. quod vel successor eius facere curabit. a quo ter citatus si contumaciter praesentiam sui facere neglexerit, non abs re erit vel ad cogendum eum, ut se repraesentaret , possessionem bonorum cui incumbit ad te transferre et adversarium petitorem constituere, vel auditis defensionibus tuis id quod iuris ratio exegerit iudicare. * diocl. et maxim. aa. claudiae. * <a 290 pp. iii k. oct. ipsis iiii et iii aa. conss.>

CJ.7.43.9: Imperatores Diocletianus, Maximianus

Tres denuntiationes ad peremptorii edicti vicem adversus contumaces convalescere salubriter statutum est. * diocl. et maxim. aa. leontio. * <a 290 pp. xi k. nov. ipsis iiii et iii aa. conss.>

CJ.7.43.10: Imperatores Diocletianus, Maximianus

Cum non voluntatis tuae arbitrio, sed necessitate profectus sis, quidquid contra absentem statutum fuerit, quando absentiae necessaria causa sit, officere tibi iuris ratio non permittit. * diocl. et maxim. aa. blaesio. * <a 291 pp. iii id. mai. tiberiano et dione conss.>

CJ.7.43.11: Imperatores Diocletianus, Maximianus

Cum praesentibus partibus litem inchoatam proponas, si, posteaquam contra te licet absentem pronuntiatum est, intra praefinitum diem non appellasti, latam sententiam rescindi postulanti multae sacrae constitutiones refragantur. * diocl. et maxim. aa. et cc. valerio. * <>

CJ.7.44.0. De sententiis ex periculo recitandis.

CJ.7.44.1: Imperatores valer., gallien.

Arbitri nulla sententia est, quam scriptam edidit litigatoribus, non ipse recitavit. si igitur nihil fallis, omissa provocationis mora ex integro iudicari impetrabis a rectore provinciae. * valer. et gallien. aa. quinto. * <>

CJ.7.44.2pr.: Imperatores Valentinianus, Valens, Gratianus

Hac lege perpetua credimus ordinandum, ut iudices, quos cognoscendi et pronuntiandi necessitas teneret, non subitas, sed deliberatione habita post negotium sententias ponderatas sibi ante formarent et emendatas statim in libellum secuta fidelitate conferrent scriptasque ex libello partibus legerent, sed ne sit eis posthac copia corrigendi vel mutandi. * valentin. valens et grat. aaa. ad probum pp. * <a 371 d. xii k. febr. gratiano a. ii et probo conss.>

CJ.7.44.2.1: Imperatores Valentinianus, Valens, Gratianus

Exceptis tam viris eminentissimis praefectis praetorio quam aliis illustrem administrationem gerentibus ceterisque illustribus iudicibus, quibus licentia conceditur etiam per officium suum et eos, qui ministerium suum eis accommodant, sententias definitivas recitare. <a 371 d. xii k. febr. gratiano a. ii et probo conss.>

CJ.7.44.3pr.: Imperatores Valentinianus, Valens, Gratianus

Statutis generalibus iussimus, ut universi iudices, quibus reddendi iuris in provinciis permisimus facultatem, cognitis causis ultimas definitiones de scripti recitatione proferant. * valentin. valens et grat. aaa. ad probum pp. * <a 374 d. iii non. dec. triveris gratiano a. iii et equitio conss.>

CJ.7.44.3.1: Imperatores Valentinianus, Valens, Gratianus

Huic adicimus sanctioni, ut sententia, quae dicta fuerit, cum scripta non esset, nec nomen quidem sententiae habere mereatur nec ad rescissionem perperam decretorum appellationis sollemnitas requiratur. <a 374 d. iii non. dec. triveris gratiano a. iii et equitio conss.>

CJ.7.45.0. De sententiis et interlocutionibus omnium iudicum.

CJ.7.45.1: Imperatores Severus, Antoninus

Non videtur nobis rationem habere sententia decessoris tui, qui cum cognovisset inter petitorem et procuratorem, non procuratorem, sed ipsam dominam litis condemnavit, cuius persona in iudicio non fuit. potes igitur ut re integra de causa cognoscere. * sev. et ant. aa. quintiliano. * <a 208 d. iiii k. iun. antonino a. iii et geta conss.>

CJ.7.45.2: Imperator Antoninus

Si arbiter datus a magistratibus, cum sententiam dixit, in libertate morabatur, quamvis postea in servitutem depulsus sit, sententia ab eo dicta habet rei iudicatae auctoritatem. * ant. a. sextilio. * <>

CJ.7.45.3: Imperator Alexander Severus

Praeses provinciae non ignorat definitivam sententiam, quae condemnationem vel absolutionem non continet, pro iusta non haberi. * alex. a. vettio. * <a 223 pp. k. oct. maximo ii et aeliano conss.>

CJ.7.45.4: Imperator Alexander Severus

Prolatam a praeside sententiam contra solitum iudiciorum ordinem auctoritatem rei non obtinere certum est. * alex. a. severae. * <a 229 pp. xv k. ian. alexandro a. iii et dione conss.>

CJ.7.45.5: Imperator Philippus

Cum eorum, qui principaliter fisco tenebantur, bona ea lege fideiussoribus procurator tradi iusserit, ut ipsi indemnitatem fisco praestarent, nec a sententia eius intercesserit provocatio, consequens est datae formae obtemperari. * philipp. a. et philipp. c. montano. * <>

CJ.7.45.6: Imperatores carus, carinus, numer.

Cum sententiam praesidis irritam esse dicis, quod non publice, sed in secreto loco officio eius non praesente sententiam suam dixit, nullum tibi ex his quae ab eo decreta sunt praeiudicium generandum esse constat. * carus carinus et numer. aaa. zoilo. * <a 283 pp. v k. dec. caro et carino conss.>

CJ.7.45.7pr.: Imperatores Diocletianus, Maximianus

Ex stipulatione parta actione pacisci proximis personis suadendo praeses provinciae verborum obligationem, quam certo iure tolli tantum licet, extinguere non potest, nec vox omnis iudicis iudicati continet auctoritatem, cum potestatem sententiae certis finibus concludi saepe sit constitutum. * diocl. et maxim. aa. et cc. isidorae. * <>

CJ.7.45.7.1: Imperatores Diocletianus, Maximianus

Quapropter si nihil causa cognita secundum iuris rationem pronuntiatum est, vox pacisci suadentis praesidis actionem tuam perimere, si quam habuisti, minime potuit. <>

CJ.7.45.8pr.: Imperatores Diocletianus, Maximianus

Libera quidem theodota, quam ex emptionis causa vel in solutum creditori traditam proponis, pronuntiata citra provocationis auxilium sententia rescindi non potest. * diocl. et maxim. aa. et cc. licinio. * <>

CJ.7.45.8.1: Imperatores Diocletianus, Maximianus

Verum si mota quaestione, praemissa denuntiatione ei, qui auctor huius mulieris fuit, iudicatum processit, quanti tua interest, empti, si emisti, vel ob debitum reddendum, si in solutum data est, repetere non prohiberis. <>

CJ.7.45.9: Imperatores Diocletianus, Maximianus

Post sententiam, quae finibus certis concluditur, ab eo qui pronuntiaverat vel eius successore de quaestione, quae iam decisa est, statuta rei iudicatae non obtinent auctoritatem: nam nec de possessione pronuntiata proprietati ullum praeiudicium adferunt nec interlocutiones ullam causam plerumque perimunt. * diocl. et maxim. aa. et cc. domno. * <a 294 s. iii non april. cc. conss.>

CJ.7.45.10: Imperatores Diocletianus, Maximianus

Nulli, qui statuendi non habet facultatem, interdicere patriae cuiquam permittitur. * diocl. et maxim. aa. et cc. menodoro. * <>

CJ.7.45.11: Imperatores Diocletianus, Maximianus

Cum iudex in definitiva sententia iusiurandum solummodo praestari praecipiat, non tamen addat, quid ex recusatione vel praestatione sacramenti fieri oportet, huiusmodi sententiam nullam vim obtinere palam est. * diocl. et maxim. aa. et cc. titiano. * <>

CJ.7.45.12: Imperatores Arcadius, Honorius

Iudices tam latina quam graeca lingua sententias proferre possunt. * arcad. et honor. aa. iuliano procons. africae. * <a 397 d. v id. ian. mediolani caesario et attico conss.>

CJ.7.45.13: Imperator Justinianus

Nemo iudex vel arbiter existimet neque consultationes, quas non rite iudicatas esse putaverit, sequendum, et multo magis sententias eminentissimorum praefectorum vel aliorum procerum (non enim, si quid non bene dirimatur, hoc et in aliorum iudicum vitium extendi oportet, cum non exemplis, sed legibus iudicandum est), nec si cognitionales sint amplissimae praefecturae vel alicuius maximi magistratus prolatae sententiae: sed omnes iudices nostros veritatem et legum et iustitiae sequi vestigia sancimus. * iust. a. demostheni pp. * <a 529 d. iii k. nov.>

CJ.7.45.14: Imperator Justinianus

Cum papinianus summi ingenii vir in quaestionibus suis rite disposuit non solum iudicem de absolutione rei iudicare, sed ipsum actorem, si e contrario obnoxius fuerit inventus, condemnare, huiusmodi sententiam non solum roborandam, sed etiam augendam esse sancimus, ut liceat iudici vel contra actorem ferre sententiam et aliquid eum daturum vel facturum pronuntiare, nulla ei opponenda exceptione, quod non competens iudex agentis esse cognoscitur. cuius enim in agendo observavit arbitrium, eum habere et contra se iudicem in eodem negotio non dedignetur. * iust. a. demostheni pp. * <>

CJ.7.45.16: Imperator Justinianus

Cum solitum est in sententiis iudicum sic interlocutionem proferri, ut non liceat partibus ante definitivam sententiam ad appellationis vel recusationis venire auxilium, quidam putabant non licere ante litem contestatam nec iudicem recusare, quemadmodum nec ab eo appellare. cum enim simul utrumque vocabulum ponitur tam appellationis quam recusationis, provocatio autem ante litem contestatam non potest porrigi, putabant, quod nec recusare quidem iudicem cuidam conceditur ante litem contestatam. quod minime vetitum est. caveant itaque iudices huiusmodi sermonem simul et sine certa distinctione proferre. * iust. a. iuliano pp. * <a 530 d. xv k. dec. lampadio et oresta vv. cc. conss.>

CJ.7.46.0. De sententia, quae sine certa quantitate prolata est.

CJ.7.46.1: Imperatores Severus, Antoninus

Cum iudicem, quoad pecunia condemnationis soluta fuisset, pendendis usuris legem dixisse profitearis, non contra iuris formam sententiam datam palam est. * sev. et ant. aa. aelianae. * <a xxx >

CJ.7.46.2: Imperator Alexander Severus

Quamquam pecuniae quantitas sententia curatoris rei publicae non continetur, sententia tamen eius rata est, quoniam indemnitatem rei publicae praestari iussit. * alex. a. Marcellino. * < >

CJ.7.46.3: Imperator Gordianus

Haec sententia: " omnem debiti quantitatem cum usuris competentibus solve" iudicati actionem parare non potest, cum apud iudices ita demum sine certa quantitate facta condemnatio auctoritate rei iudicatae censeatur, si parte aliqua actorum certa sit quantitas comprehensa. * gord. a. aemilio. * <a xxx >

---: CJ. c.7.46.4: Imperator Gordianus

Haec sententia: " quae bona fide accepisti, solve , cum incertum esset quid accepisset quantumque ab eo peteretur, praesertim cum ipse qui extra ordinem iudicabat interlocutus sit dotem datam quae repeteretur non liquidam esse, iudicati auctoritate non nititur. cum igitur is qui postea iudicabat contra te certam sententiam protulit neque ab statutis provocaveris, ipsa tuo facto confirmasti iudicatum. * gord. a. saturninae. * <a xxx >

CJ.7.47.0. De sententiis, quae pro eo quod interest proferuntur.

CJ.7.47.1pr.: Imperator Justinianus

Cum pro eo quod interest dubitationes antiquae in infinitum productae sunt, melius nobis visum est huiusmodi prolixitatem prout possibile est in angustum coartare. * iust. a. iohanni pp. * <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.7.47.1.1: Imperator Justinianus

Sancimus itaque in omnibus casibus, qui certam habent quantitatem vel naturam, veluti in venditionibus et locationibus et omnibus contractibus, quod hoc interest dupli quantitatem minime excedere: in aliis autem casibus, qui incerti esse videntur, iudices, qui causas dirimendas suscipiunt, per suam subtilitatem requirere, ut, quod re vera inducitur damnum, hoc reddatur et non ex quibusdam machinationibus et immodicis perversionibus in circuitus inextricabiles redigatur, ne, dum in infinitum computatio reducitur, pro sua impossibilitate cadat, cum scimus esse naturae congruum eas tantummodo poenas exigi, quae cum competenti moderatione proferuntur vel a legibus certo fine conclusae statuuntur. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.7.47.1.2: Imperator Justinianus

Et hoc non solum in damno, sed etiam in lucro nostra amplectitur constitutio, quia et ex eo veteres quod interest statuerunt: et sit omnibus, secundum quod dictum est, finis antiquae prolixitatis huius constitutionis recitatio. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestae vv. cc.>

CJ.7.48.0. Si non a competenti iudice iudicatum esse dicatur.

CJ.7.48.1: Imperator Alexander Severus

Iudex ad certam rem datus, si de aliis pronuntiavit, quam quod ad eam speciem pertinet, nihil egit. * alex. a. sabiniano. * <a 223 iii non. ian. maximo ii et aeliano conss.>

CJ.7.48.2: Imperator Gordianus

Si militaris iudex super ea causa, de qua civilibus actionibus disceptandum fuit , non datus, a quo dari poterat, cognovit, etiam remota appellatione id quod ab eo statutum est firmitatem non habet iudicati. * gord. a. liciniae. * <a xxx >

CJ.7.48.3: Imperatores Diocletianus, Maximianus

Si de proprietate datus iudex adversus te nihil super hac statuit, rector aditus provinciae causam hanc cognoscere suaque decidere sententia curabit, cum et, si quid de possessione pronuntiatum probetur, hoc causae proprietatis minime noceat. * diocl. et maxim. aa. et cc. philetae. * <a 294 s. non. nov. heracleae cc. conss.>

CJ.7.48.4: Imperatores Gratianus, Valentinianus, Theodosius

Et in privatorum causis huiusmodi forma servetur, ne quemquam litigatorum sententia non a suo iudice dicta constringat. * grat. valentin. et theodos. aaa. ad potitum vic. * <a 379 d. x k. oct. romae ausonio et olybrio conss.>

CJ.7.49.0. De poena iudicis, qui male iudicavit, vel eius, qui iudicem vel adversarium corrumpere curavit.

CJ.7.49.1: Imperator Antoninus

Constitit in quacumque causa sive privata sive publica sive fiscali, ut, cuicumque data fuerit pecunia, vel iudici vel adversario, amittat actionem is, qui diffidentia iustae sententiae in pecuniae corruptela spem negotii reposuerit. * ant. a. ad gaudium. * <a 212 d. xiiii k. ian. duobus aspris conss.>

CJ.7.49.2: Imperator Constantinus

De eo, qui pretio depravatus aut gratia perperam iudicaverit, ei vindicata quem laeserit non solum existimationis dispendiis, sed etiam litis discrimine praebeatur. * const. a. ad felicem praes. corsicae. * <a 319 d. viii k. nov. sirmi constantino a. v et licinio c.Conss.>

CJ.7.50.0. Sententiam rescindi non posse.

CJ.7.50.1: Imperator Gordianus

Neque suam neque decessoris sui sententiam quemquam posse revocare in dubium non venit: nec necesse esse ab eiusmodi decreto interponere provocationem explorati iuris est. * gord. a. secundo. * < pp. k. mart.>

CJ.7.50.2pr.: Imperatores Diocletianus, Maximianus

Peremptorias exceptiones omissas initio, antequam sententia feratur, opponi posse perpetuum edictum manifeste declarat. * diocl. et maxim. aa. et cc. alexandrae. * <a 294 vii k. ian. nicomediae cc. conss.>

CJ.7.50.2.1: Imperatores Diocletianus, Maximianus

Quod si aliter actum fuerit, in integrum restitutio permittitur. nam iudicatum contra maiores annis viginti quinque non oppositae praescriptionis velamento citra remedium appellationis rescindi non potest. <a 294 vii k. ian. nicomediae cc. conss.>

CJ.7.50.3: Imperator Constantinus

Impetrata rescripta non placet admitti, si decisae semel causae fuerint iudiciali sententia, quam provocatio nulla suspendit: sed eos, qui tale rescriptum meruerint, etiam limine iudiciorum expelli. * const. a. ad proculum. * <a 319 d. vi k. ian. constantino a. v et licinio conss.>

CJ.7.51.0. De fructibus et litis expensis.

CJ.7.51.1: Imperatores Diocletianus, Maximianus

Hoc fructuum nomine continetur, quod iustis sumptibus deductis superest. * diocl. et maxim. aa. et cc. actae. * <a 294 iii non. april cc. conss.>

CJ.7.51.2: Imperatores Valentinianus, Valens

Litigator victus, qui post conventionem rei incubarit alienae, non in sola rei redhibitione teneatur nec tantum fructuum praestationem aut eorum quos ipse percepit agnoscat, sed eos, quos percipi oportuisse, non quos eum redegisse constabit, exsolvat ex eo, ex quo re in iudicium deducta scientiam malae possessionis accepit. heredis quoque succedentis in vitium par habenda fortuna est. * valentin. et valens aa. olybrio pu. * <a 369 d. vii k. mart. treviris valentiniano np. et victore conss.>

CJ.7.51.3: Imperatores Honorius, Theodosius

Terminato transactoque negotio posthac nulli actio neque ex rescripto super sumptuum repetitione praestetur, nisi iudex, qui de principali negotio sententiam promulgavit, cominus partibus constitutis iuridica pronuntiatione signaverit victori causae restitui debere expensas aut super his querellam iure competere. post absolutum enim dimissumque iudicium nefas est litem alteram consurgere ex litis primae materia. * honor. et theodos. aa. asclepiodoto pp. * <a 423 d.Iii k.April.Constantinopoli asclepiodoto et mariniano conss.>

CJ.7.51.4: Imperatores Valentinianus, Marcianus

Non ignoret is, cuius ex interpellatione aliquis secundum datam formam in longinqua fuerit protractus examina, quod, si culpa sui fuerit dilata cognitio vel minime actioni suae adfuerit vel delata probaverit, pro calumnia quidem poenam luat legibus constitutam, pro vero pecuniaria causa post dispendia, post sumptus considerata quantitate postulatorum vel medii itineris intervallo condemnationem pro aestimatione iudicis sustinebit. * edictum valentiniani et marciani aa. ad pop. * <a 450 d.V id.Oct.Constantinopoli valentiniano a. vii et avieno conss.>

CJ.7.51.6: Imperator Anastasius

Cum quidam per leges sacrasque constitutiones, alii per speciales largitates sibi praestituta privilegia praetendunt tam super sportulis pro conventionibus usque ad certam quantitatem praebendis quam super expensis litium vel minuendis vel penitus non agnoscendis, per hanc legem decernimus, ut, quicumque huiusmodi privilegio munitus est vel postea talem praerogativam quolibet modo meruerit, sciat , et si quos ipse utpote obnoxius sibi pro quacumque criminali vel civili causa constitutos in accusationem deduxerit, hos nihilo minus isdem privilegiis potituros, quoniam non est ferendum eos, qui praefatas praerogativas, ut ante latum est, praetendunt, aliquid plus ab adversariis suis quaerere concedi, quam ipsi ab aliis pulsati facere patiantur: ita scilicet, ut haec forma modis omnib us observetur super privilegiis per liberalitates vel generaliter quibusdam officiis aut scholis seu dignitatibus vel specialiter certis personis praestitis vel postea praebendis, sive hoc ipsum expressim principalibus dispositionibus vel adfatibus insertum sive praetermissum sit vel fuerit. * anastas. a. stephano mag. mil. * <a xxx >

CJ.7.52.0. De re iudicata.

CJ.7.52.1: Imperator Antoninus

Rebus quidem iudicatis standum est. sed si probare poteris eum cui condemnatus es id quod furto amisisse videbatur recepisse, adversus iudicati agentem doli exceptione opposita tueri te poteris. * ant. a. stellatori. * <a 213 xii k.Mart.Antonino a. iiii et balbino conss.>

CJ.7.52.2: Imperator Antoninus

Res iudicatae si sub praetextu computationis instaurentur, nullus erit litium finis. * ant. a. pacationo. * <a 215 pp.Prid.Non... romae laeto et cereale conss.>

CJ.7.52.3: Imperator Antoninus

Si pecuniam, quam mala ratione intercepisse vos apparuit, iussi sitis inferre cum poena et comperto praecepto praesidis non provocaveritis, universam quantitatem debetis inferre. * ant. a. demetrio. * <a xxx >

CJ.7.52.4: Imperator Gordianus

Sub specie novorum instrumentorum postea repertorum res iudicatas restaurari exemplo grave est. * gord. a. antonino. * <a xxx d. vii id. mart.>

CJ.7.52.5: Imperatores Diocletianus, Maximianus

Ad solutionem dilationem petentem adquievisse sententiae manifeste probatur, sicut eum, qui quolibet modo sententiae adquieverit. nec enim instaurari finita rerum iudicatarum patitur auctoritas. * diocl. et maxim. aa. et cc. valentino. * <a 294 s. prid. id. febr. sirmi cc. conss.>

CJ.7.52.6: Imperatores Honorius, Theodosius

Gesta, quae sunt translata in publica monumenta, habere volumus perpetuam firmitatem. neque enim morte cognitoris perire debet publica fides. * honor. et theodos. aa. iuliano procons. africae. * <a 414 d. iii k. sept. romae constantio et constante conss.>

CJ.7.53.0. De exsecutione rei iudicatae.

CJ.7.53.1: Imperatores Severus, Antoninus

Nimis propere iudex pignora Marcellae capi ac distrahi iussit ante rem iudicatam. prius est ergo, ut servato ordine actionem adversus eam dirigas et causa cognita sententiam accipias. * sev. et ant. aa. iustino. * <a 206 pp. iii k. febr. albino et aemiliano conss.>

CJ.7.53.2: Imperator Antoninus

Si causam iudicati non novasti, rem iudicatam praeses provinciae etiam pignoribus captis ac distractis ad emolumentum perduci iubebit. quod si novata causa est , ex stipulatu tibi actio competit et iudice accepto secundum iuris formam experire. * ant. a. maximo. * <a xxx >

CJ.7.53.3: Imperator Antoninus

Ordo rei gestae et mora solutionis, quae intercessit, constantius desiderat remedium. si itaque praesidem provinciae, qui rem iudicatam exsequi debet, adieris et adlegaveris res soli, quae pignori datae sunt, diu subhastatas ex compacto sive ambitione diversae partis emptorem non invenire, in possessionem earum te mittet, ut vel hoc remedio res tam diu tracta ad effectum perducatur. * ant. a. agrippae. * <a 214 d. xi k. iul. messala et sabino conss.>

CJ.7.53.4: Imperator Antoninus

Stipendia retineri propterea, quod condemnatus es, non patietur praeses provinciae, cum rem iudicatam possit aliis rationibus exsequi. * ant. a. Marcello mil. * <a 216 pp. iii non. iun. sabino ii et anullino conss.>

CJ.7.53.5: Imperator Gordianus

Etiam nomen debitoris in causa iudicati capi posse ignotum non est. * gord. a. amando. * <a 242 pp. iii id. oct. attico et praetextato conss.>

CJ.7.53.6: Imperator Philippus

Si, ut proponis, rerum iudicatarum exsecutor datus partes sibi iudicis vindicavit et contra ea, quae pridem pro partibus tuis fuerunt statuta, aliquid pronuntiandum putavit, sententia ab eo dicta vim rei iudicatae obtinere nequaquam potest. * philipp. a. et philipp. c. titiano. * <a xxx >

CJ.7.53.7: Imperatores Diocletianus, Maximianus

Si longis apertisque frustrationibus partis adversae restitutio remorata est, etiam servis rebus humanis exemptis a frustratore aestimatio eorum restituenda est. animalia quoque cum fetubus tibi intercessu praesidis repraesentabuntur. * diocl. et maximianus aa. theodoro. * <a xxx >

CJ.7.53.8: Imperatores Diocletianus, Maximianus

Exsecutorem eum solum esse manifestum sit, qui post sententiam, inter partes audita omni et discussa lite, prolatam iudicatae rei vigorem ad effectum videtur adducere. * diocl. et maxim. aa. et cc. * <a sine die et consule.>

CJ.7.53.9: Imperatores Diocletianus, Maximianus

Eos, quos debitores tuos esse contendis, apud rectorem conveni provinciae, qui, sive confessi debitum sive negantes et convicti fuerint condemnati nec intra statutum spatium solutioni satisfecerint, cum latae sententiae pignoribus etiam captis ac distractis secundum ea quae saepe constituta sunt meruerunt exsecutionem, iuris formam tibi custodiet. * diocl. et maxim. aa. et cc. glyconi. * <a 294 s. non. nov. cc. conss.>

CJ.7.54.0. De usuris rei iudicatae.

CJ.7.54.1: Imperator Antoninus

Fiscus, qui bona secundum se dicta sententia persequitur, eas quoque rationes habiturus est, ut, qui post legitimum tempus placitis non obtemperavit, usuram centesimam temporis quod postea fluxerit solvat. * ant. a. procuratoribus hereditatium. * <a xxx >

CJ.7.54.2: Imperator Justinianus

Eos, qui condemnati solutionem pecuniarum, quas dependere iussi sunt, ultra quattuor menses a die condemnationis vel, si provocatio fuerit oblata, a die confirmationis sententiae connumerandos distulerint, centesimas usuras exigi praecipimus: nec priscis legibus, quae duas centesimas eis inferebant, nec nostra sanctione, quae dimidiam centesimae statuit, locum in eorum personam habentibus. * iust. a. menae pp. * <a 529 d. vii id. april. constantinopoli decio cons. >

CJ.7.54.3pr.: Imperator Justinianus

Sancimus, ut si quis condemnatus fuerit, post datas a nobis quadrimenstres indutias centesimas quidem usuras secundum naturam iudicati eum compelli solvere, sed tantummodo sortis et non usurarum, quae ex pristino contractu in condemnationem deductae sunt. cum enim iam constituimus usurarum usuras penitus esse delendas, nullum casum relinquimus, ex quo huiusmodi machinatio possit induci. * iust. a. iohanni pp. * <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.54.3.1: Imperator Justinianus

Si enim sine emendatione relinquatur, aliquid absurdum atque inelegans necesse est evenire, cum utiliter ex contractibus descendentes plerumque minores centesimae ex nostra lege factae sunt et necesse est minoribus usuris graviores supponi. si enim ex iudicati actione centesimae omnimodo currunt usurae, ex contractibus autem hoc raro contingit in capitulis lege nostra tantummodo exceptis, huiusmodo iniquitatem ipsa necessitas rerum introducebat. <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.54.3.2: Imperator Justinianus

Et ideo pio remedio causam corrigentes sancimus sortis tantummodo usuras usque ad centesimam currentes ex iudicati actione profligari, non autem usurarum quantascumque usuras. si enim novatur iudicati actione prior contractus, necesse est usurarum quidem, quae anterioris contractus sunt, cursum post sententias inhiberi, alias autem usuras ex iudicati actione tantummodo sortis procedere, et non ideo, quod forsitan consummata est quantitas sortis et usurarum, totius summae usuras postea colligi, sed sortis tantummodo. <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.54.3.3: Imperator Justinianus

Et cum antiquitas pessimo exemplo reis quidem condemnatis laxamentum duorum mensum praestabat, fideiussores autem eorum eodem uti beneficio non concedebat, ut liceret victoribus relictis propter legem condemnatis personis a fideiussoribus eorum vel mandatoribus statim pecunias vel res in condemnatione positas exigere, huiusmodi acerbitatem resecantes sancimus quadrimenstres indutias, quas dedimus condemnatis, etiam ad fideiussores eorum et mandatores extendi, ne legi fiat derogatum. cum enim interventor solvere compellatur et ipse reum coerceat ad invitam solutionem, nullum condemnatus habebat nostrae sensum humanitatis, quia per medium fideiussorem statim pecunias persolvere compellebatur. <a 531 d. v k. de c. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.55.0. Si plures una sententia condemnati sunt.

CJ.7.55.1: Imperator Alexander Severus

Si non singuli in solidum, sed generaliter tu et collega tuus una et certa quantitate condemnati estis nec additum, ut, quod ab altero servari non possit, alter suppleret, effectus sententiae virilibus portionibus discretus est. ideoque parens pro tua portione sententiae ob cessationem alterius ex causa iudicati conveniri non potes. * alex. a. victori. * <a 229 pp.K.Iul.Alexandro a. iii et dione conss.>

CJ.7.55.2: Imperator Gordianus

Quotiens a tutoribus singulis procuratoribus datis insequitur in omnium persona condemnatio, periculum sententiae videri esse divisum. ideoque quod ab uno servari non potuerit, a ceteris exigi non posse explorati iuris est. * gord. a. anniano. * <a 242 pp.Xv k.April.Attico et praetextato conss.>

CJ.7.56.0. Quibus res iudicata non nocet.

CJ.7.56.1: Imperator Alexander Severus

Si neque mandasti fratri tuo defensionem rei tuae neque quod gestum est ratum habuisti, praescriptio rei iudicatae tibi non oberit. et ideo non prohiberis causam tuam agere sine praeiudicio rerum iudicatarum. * alex. a. masculino. * <a 222 pp. non.Mai.Alexandro a. cons.>

CJ.7.56.2: Imperator Gordianus

Res inter alios iudicatae neque emolumentum adferre his, qui iudicio non interfuerunt, neque praeiudicium solent inrogare. ideoque nepti tuae praeiudicare non potest, quod adversus coheredem eius iudicatum est, si nihil adversus ipsam statutum est. * gord. a. athenio. * <a 239 pp.V id.Iul.Gordiano a.Et aviola conss.>

CJ.7.56.3: Imperatores Diocletianus, Maximianus

Iuris manifestissimi est et in accusationibus his, qui congressi iudicio non sunt, officere non posse, si quid forte praeiudicii videatur oblatum. * diocl. et maxim. aa. honorato. * <a 289 pp.Xiiii k.Sept.Basso et quintiliano conss.>

CJ.7.56.4: Imperatores Diocletianus, Maximianus

Nec in simili negotio res inter alios actas absenti praeiudicare saepe constitutum est. * diocl. et maxim. aa. et cc. soteriano. * <a 294 s.Iii k.Dec.Cc. conss.>

CJ.7.57.0. Comminationes epistulas programmata subscriptiones auctoritatem rei iudicatae non habere.

CJ.7.57.1: Imperator Antoninus

Nec vim stipulationis obtinere potest comminatio iudicis, qui certas usuras praestaturos eos dixit, qui intra certum diem debitum non exsolvissent. * ant. a. rogatiano. * <a 213 pp.Prid.Id.Ian.Antonino a.Iiii et balbino conss.>

CJ.7.57.2: Imperator Alexander Severus

Rei iudicatae effectum non habet, quod per epistulam rector provinciae solvere vos pecuniam rei publicae iussit. * alex. a. maximiano. * <a 223 pp.Iiii id.Mart.Maximo ii et aeliano conss.>

CJ.7.57.3: Imperator Alexander Severus

Ea, quae causa cognita statuuntur, subscriptionibus revocari non posse saepe rescriptum est. * alex. a. zotico. * <a 227 pp.Vi id.Sept.Albino et maximo conss.>

CJ.7.57.4: Imperator Gordianus

Interlocutio praesidis apud acta signata: " nisi solutioni debiti is qui convenitur obsequium praestitisset, duplum seu quadruplum inferat" voluntas potius comminantis quam sententia iudicantis est, cum placitum eiusmodi ne rei iudicatae auctoritatem obtineat, iuris ratio declaret. * gord. a. asclepiadi. * <a 239 pp.Iii id.Dec.Gordiano a.Et aviola conss.>

CJ.7.57.5: Imperator Gordianus

Iudex, qui disceptationi locum dederat, partium adlegationes audire et examinare debuit. nam subscriptionem ad libellum datam talem, quae diversam partem in possessionem fundi mitteret, vicem rei iudicatae non obtinere non ambigitur. * gord. a. iucundo. * <a 241 pp.Xii k.Febr.Gordiano a. ii et pompeiano conss.>

CJ.7.57.6: Imperator Philippus

Programma, si quod a praeside propositum est, vim rei iudicatae nequaquam potest obtinere. nec comminationem vim rei iudicatae continere manifestum est. * philipp. a. et philipp. c. cassiano. * <a xxx pp.X k.April. ... conss.>

CJ.7.57.7: Imperator Constantinus

Quod magno conflictu sententia decerni solet, id paucis litteris temere adscriptis definiri fas non est. * const. a. ad bassum pp. * <a 320 d.Xv k.April.Constantino a.Vi et constantino c. conss.>

CJ.7.58.0. Si ex falsis instrumentis vel testimoniis iudicatum erit.

CJ.7.58.1: Imperatores Severus, Antoninus

Si tabulas testamenti, quas secutus proconsul vir clarissimus sententiam dixit, falsas dicere vis, praebebit notionem suam non obstante praescriptione rei iudicatae, quia nondum de falso quaesitum est. * sev. et ant. aa. vipsaniae. * <a xxx pp.V... conss.>

CJ.7.58.2: Imperator Alexander Severus

Et qui non provocaverunt, si instrumentis falsis se victos esse probare possunt, cum de crimine docuerint, ex integro de causa audiuntur. * alex. a. optato. * <a 224 pp.Xvi k.Oct.Iuliano et crispino conss.>

CJ.7.58.3: Imperator Alexander Severus

Falsam quidem testationem, qua diversa pars in iudicio adversus te usa est, ut proponis, solito more arguere non prohiberis. sed causa iudicati in irritum non devocatur, nisi si probare poteris eum qui iudicaverat secutum eius instrumenti fidem, quod falsum esse constiterit, adversus te pronuntiasse. * alex. a. clementi. * <a xxx pp.Vii k. sept.>

CJ.7.58.4: Imperator Gordianus

Iudicati exsecutio solet suspendi et soluti dari repetitio, si falsis instrumentis circumventam esse religionem iudicantis crimine postea falsi illato manifestis probationibus fuerit ostensum. * gord. a. herennio. * <a xxx pp.V id.Sept.>

CJ.7.59.0. De confessis.

CJ.7.59.1: Imperator Antoninus

Confessos in iure pro iudicatis haberi placet. quare sine causa desideras recedi a confessione tua, cum et solvere cogeris. * ant. a. iuliano. * <a 211 accepta prid.K.Oct.Gentiano et basso conss.>

CJ.7.60.0. Inter alios acta vel iudicata aliis non nocere.

CJ.7.60.1: Imperatores Diocletianus, Maximianus

Inter alios res gestas aliis non posse facere praeiudicium saepe constitutum est. unde licet quosdam de heredibus eius, quem debitorem tuum fuisse significas, solvisse commemores, tamen ceteri non alias ad solutionem urguentur, nisi debitum fuerit probatum. * diocl. et maxim. aa. et cc. epagatho. * <a 293 v k.April.Byzantio aa. conss.>

CJ.7.60.2: Imperatores Diocletianus, Maximianus

Inter alios factam transactionem absenti non posse facere praeiudicium notissimi iuris est. quapropter adito praeside provinciae aviam tuam mancipium tibi donasse proba ac, si hoc iure ad te pertinere perspexerit, restitui tibi providebit. neque enim, si te absente divisionem eius fecerint, aliquid iuri tuo derogari poterit. * diocl. et maxim. aa. et cc. severae. * <a 293 s.Id.April.Byzantio aa. conss.>

CJ.7.60.3: Imperatores Diocletianus, Maximianus

Si cum fratre tuo matri successisti, frater pro portione tua cum debitoribus hereditariis paciscendo vel agendo, non ex tua voluntate, pro hereditaria parte tibi quaesitam obligationem extinguere non potuit. * diocl. et maxim. aa. et cc. fortunatae. * <a 294 v id.Oct.Retiariae cc. conss.>

CJ.7.61.0. De relationibus.

CJ.7.61.1pr.: Imperator Constantinus

Si quis iudicum duxerit esse referendum, nihil inter partes pronuntiet, sed magis super quo haesitandum putaverit, nostram consulat scientiam aut, si tulerit sententiam, minime postea, ne a se provocetur, relatione promissa terreat litigantes, sciens, quod, si hoc fecerit, nihilo minus iure appellationum res agitabitur. * const. a. profuturo praef. annonae. * <a 319 d.Iiii id.Febr.Sirmio constantino a. et licinio c. conss.>

CJ.7.61.1.1: Imperator Constantinus

Sed nec ad nos mittatur aliquid, quod plena instructionem indigeat. <a 319 d.Iiii id.Febr.Sirmio constantino a. et licinio c. conss.>

CJ.7.61.1.2: Imperator Constantinus

Quotiens autem ad nostram scientiam iudex se polliceatur relaturum, consultationis exemplum litigatoribus ilico edi apud acta iubeat, ut, si cui forte relatio minus plena vel contraria videatur, is refutatorias preces similiter apud acta sine aliqua frustratoria dilatione offerat. <a 319 d.Iiii id.Febr.Sirmio constantino a. et licinio c. conss.>

CJ.7.61.2: Imperatores Valentinianus, Valens

Super delictis provincialium numquam rectores provinciarum ad scientiam principum putent esse referendum, nisi ediderint prius consultationis exemplum. quippe tunc demum relationibus plena maturitas est, cum vel adlegationibus refelluntur vel probantur adsensu. * valentin. et valens aa. ad viventium pp. * <a 368 d.Iii k.Ian.Treviris valentiniano et valente aa. conss.>

CJ.7.61.3: Imperatores Valentinianus, Valens

Si quando ratio aut necessitas est in negotiis nostra iudicia requirendi expectandique responsa, omnem omnino causam relationis series comprehendat, ut recitata consultatione, quae ita est dirigenda, propemodum actorum recensione non opus sit: actis etiam necessario sociandis. * valentin. et valens aa. ad apodemium. * <a 369 d.Vi id.Mai.Treviris valentiniano np.Et victore conss.>

CJ.7.62.0. De appellationibus et consultationibus.

CJ.7.62.1: Imperator Severus

Prius de possessione pronuntiare et ita crimen violentiae excutere praeses provinciae debuit. quod cum non fecerit, iuste provocatum est. * sev. a. sent. d. in pers. marci prisci id. ian. pompeiano et avtio conss. severus a. dixit:* <a 209 >

CJ.7.62.2: Imperator Alexander Severus

Novum quod postulas non est, quod, etsi rescripti mei auctoritas intercesserit, provocandi tamen facultas tibi non denegetur. * alex. a. plariano. * <a xxx >

CJ.7.62.3: Imperator Gordianus

Appellatione interposita, licet ab iudice repudiata sit, in praeiudicium deliberationis nihil fieri debere et in eo statu omnia esse, quo tempore pronuntiationis fuerint, saepissime constitutum est. * gord. a. victori. * <a xxx pp.Iiii >

CJ.7.62.4: Imperator Philippus

Si ad scribatum nominatus non provocasti, convelli statuta non possunt. * philipp. a. et philipp. c. probo. * <a xxx >

CJ.7.62.5: Imperatores Diocletianus, Maximianus

Praeses provinciae, ad quem appellasti, si non vitio neglegentiae vestrae tempus , quod ad reddendos apostolos praescriptum est, exemptum esse animadverterit, sed ex fatalis casus necessitate, diem functo eo qui eos perferebat, id accidisse cognoverit, iuxta perpetui iuris formam desiderio vestro medebitur. * diocl. et maxim. aa. valerio. * <>

CJ.7.62.6pr.: Imperatores Diocletianus, Maximianus

Eos, qui de appellationibus cognoscent ac iudicabunt, ita iudicium suum praebere convenient, ut intellegant, quod, cum appellatio post decisam per sententiam litem interposita fuerit, non ex occasione aliqua remittere negotium ad iudicem suum fas sit, sed omnem causam propria sententia determinare conveniat, cum salubritas legis constitutae ad id spectare videatur, ut post sententiam ab eo qui de appellatione cognoscit recursus fieri non possit ad iudicem, a quo fuerit provocatum. quapropter remittendi litigatores ad provincias remotam occasionem atque exclusam penitus intellegant, cum super omni causa interpositam provocationem vel iniustam tantum liceat pronuntiare vel iustam. * diocl. et maxim. aa. et cc.Dicunt: * < s. die et consule.>

CJ.7.62.6.1: Imperatores Diocletianus, Maximianus

Si quid autem in agendo negotio minus se adlegasse litigator crediderit, quod in iudicio acto fuerit omissum, apud eum qui de appellatione cognoscit persequatur , cum votum gerentibus nobis aliud nihil in iudiciis quam iustitiam locum habere debere necessaria res forte transmissa non excludenda videatur. < s. die et consule.>

CJ.7.62.6.2: Imperatores Diocletianus, Maximianus

Si quis autem post interpositam appellationem necessarias sibi putaverit esse poscendas personas, quo apud iudicem qui super appellatione cognoscet veritatem possit ostendere, quam existimabit occultam, hocque iudex fieri prospexerit, sumptus isdem ad faciendi itineris expeditionem praebere debebit, cum id iustitia ipsa persuadeat ab eo haec recognosci, qui evocandi personas sua interesse crediderit. < s. die et consule.>

CJ.7.62.6.3: Imperatores Diocletianus, Maximianus

Super his vero, qui in capitalibus causis constituti appellaverint (quos tamen et ipsos vel qui pro his provocabunt non nisi audita omni causa atque discussa post sententiam dictam appellare conveniet), id observandum esse sancimus, ut inopia idonei fideiussoris retentis in custodia reis opiniones suas iudices exemplo appellatoribus edito ac refutatorios eorum ad scrinia quorum interest transmittant, quibus gestarum rerum fides manifesta relatione pandatur, ut meritis eorum consideratis pro fortuna singulorum sententia proferatur. < s. die et consule.>

CJ.7.62.6.4: Imperatores Diocletianus, Maximianus

Ne temere autem ac passim provocandi omnibus facultas praeberetur, arbitramur eum, qui malam litem fuerit persecutus, mediocriter poenam a competenti iudice sustinere. < s. die et consule.>

CJ.7.62.6.5: Imperatores Diocletianus, Maximianus

Sin autem in iudicio propriam causam quis fuerit persecutus atque superatus voluerit provocare, eodem die vel altero libellos appellatorios offerre debebit. is vero, qui negotium tuetur alienum, supra dicta condicione etiam tertio die provocabit. < s. die et consule.>

CJ.7.62.6.6: Imperatores Diocletianus, Maximianus

Apostolos post interpositam provocationem etiam non petente appellatore sine aliqua dilatione iudicem dare oportet, cautione videlicet de exercenda provocatione in posterum minime praebenda. < s. die et consule.>

CJ.7.62.7: Imperatores Diocletianus, Maximianus

Qui ad civilia munera vel decurionatum vel honores devocantur, licet vacationem a principibus acceperint, si appellationis auxilio non utantur, consensu suo nominationem confirmant. cum igitur ad munus vocatus appellaveris a praeside provinciae, iuste te appellasse ostende. * diocl. et maxim. aa. et cc. neoni. * <a xxx >

CJ.7.62.8: Imperatores Diocletianus, Maximianus

Si contra maiorem quinque et viginti annis sententia lata provocationis secutae tempore praefinito causas non esse repraesentatas nec appellatione pendente transactione finitum negotium rector animadverterit, res iudicatas exsequi curabit. * diocl. et maxim. aa. et cc. oppiano. * <a xxx >

CJ.7.62.9: Imperatores Diocletianus, Maximianus

Dominus litis causam appellationis, quam procurator suus litigando interposuit, etiam absente procuratore exsequi potest. * diocl. et maxim. aa. et cc. have heraclida carissime nobis. * <a xxx >

CJ.7.62.10pr.: Imperatores Diocletianus, Maximianus

Si actor a curatore ordinatus deteriorem calculum reportaverit, tam ipse quam curator ad provocationis auxilium possunt pervenire, curator vero solus provocationis litem exercebit. * diocl. et maxim. aa. et cc. titiano. * <a 294 s. prid. k. oct. viminacii cc. conss.>

CJ.7.62.10.1: Imperatores Diocletianus, Maximianus

Sin autem interim adulescens veniam aetatis impetraverit vel ad legitimam aetatem pervenerit, potest suo nomine appellationem exercere. <a 294 s. prid. k. oct. viminacii cc. conss.>

CJ.7.62.11: Imperatores Diocletianus, Maximianus

Cives et incolae, manifestas etiam excusationes habentes, si sub iusta nominatione non appellaverint, ad probationem earum non admittuntur. * diocl. et maxim. aa. et cc. aurelio. * <a xvii k. ian.>

CJ.7.62.12: Imperator Constantinus

Minime fas est, ut in civili negotio libellis appellatoriis oblatis aut carceris cruciatus aut cuiuslibet iniuriae genus seu tormenta vel etiam contumelias perferat appellator, absque his criminalibus causis, in quibus, etiamsi possunt provocare, eum tamen statum debent obtinere, ut post provocationem in custodia, si fideiussoris idonei copiam non habeant, perseverent. * const. a. ad catullinum. * <a 314 d. iii non. nov. treviris. acc. xv k. mai. hadrumeto volusiano et anniano conss.>

CJ.7.62.13: Imperator Constantinus

Ex illo tempore, quo in civilibus causis, quae inter privatos moventur, consultaturum vel relaturum te esse promiseris vel appellationis a te interpositae sollemnia completa fuerint, nihil posthac tibi quodlibet speciale ac requisitum vel quibuscumque modis favoris gratiam praeferens audiendum est, sed observandum, ut iuxta priora statuta sollemnitatis more expleto gesta ad comitatum omnia dirigantur. * const. a. petronio probiano suo salutem. * <a 316 d. id. aug. arelato. pp. id. oct. theveste sabino et rufino conss.>

CJ.7.62.14: Imperator Constantinus

Litigatoribus copia est etiam non conscriptis libellis ilico appellare voce, cum res poposcerit iudicata, tam in civilibus quam in criminalibus causis. * const. a. ad bassum pu. * <a 317 d. viii id. iun. sirmio gallicano et basso conss.>

CJ.7.62.15: Imperator Constantinus

Ne causas, quae in nostram venerint scientiam, rursus transferri ad iudicia necesse sit, instructiones necessarias plene actis inseri praecipimus. nam cogimur a proferenda sententia temperare, quoniam verendum est, ne lis incognito negotio dirimatur, adempta copia conquerendi. quare perennibus inuretur iudex notis, si cuncta, quae litigatores instructionis probationisque causa recitaverint, indita actis vel subiecta non potuerint inveniri. * const. a. ad severum vic. * <a 319 d. x k. iul. aquileiae constantino a. v et licinio c. conss.>

CJ.7.62.16: Imperator Constantinus

Etiam eos, qui imaginem principalis disceptationis accipiunt, appellationum adminicula necesse est accipere. * const. a. ad maximum. * <a 321 d. prid. id. ian. sirmio crispio ii et constantino ii cc. conss. >

CJ.7.62.17: Imperator Constantinus

Si apud utrumque praetorem, dum quaestio ventilatur, ab aliqua parte auxilium provocationis fuerit obiectum, praefecturae urbis iudicium sacrum appellator observet. * const. a. ad iulianum pu. * <a xxx >

CJ.7.62.18: Imperator Constantinus

Quoniam nonnulli fisci debitores, cum iussi fuerint debitam summam exsolvere, interposito provocationis auxilio vim exsecutionis eludunt nec iam opinionis exemplum nec refutatorias preces curant petere vel offerre, placuit, ut, si intra dies sollemnitatibus praestitutos ad facienda haec appellatoris cura defuerit, deserta ab eo provocatio aestimetur moxque debitum exigatur. * constant. a. victori rationali urb. romae. * <a 327 d. prid. k. aug. constantino et maximo conss.>

CJ.7.62.19pr.: Imperator Constantinus

A proconsulibus et comitibus et his qui vice praefectorum cognoscunt, sive ex appellatione sive ex delegato sive ex ordine iudicaverint, provocari permittimus, ita ut appellanti iudex praebeat opinionis exemplum et acta cum refutatoriis partium suisque litteris ad nos dirigat. a praefectis autem praetorio provocare non sinimus. * const. a. ad universos provinciales. * <a 331 d. k. aug. pp. k. sept. constantinopoli basso et ablabio conss.>

CJ.7.62.19.1: Imperator Constantinus

Quod si victus oblatam nec receptam ab iudice appellationem adfirmet, praefectos adeat, ut apud eos de integro litiget tamquam appellatione suscepta. superatus enim si iniuste appellare videbitur, lite perdita notatus abscedet: aut si vicerit, contra eum iudicem, qui appellationem non receperit, ad nos referre necesse est, ut digno supplicio puniatur. <a 331 d. k. aug. pp. k. sept. constantinopoli basso et ablabio conss.>

CJ.7.62.20: Imperator Constantius

Et in maioribus et in minoribus negotiis appellandi facultas est. nec enim iudicem oportet iniuriam sibi fieri existimare eo, quod litigator ad provocationis auxilium convolavit. * constantius a. albino. * <a 341 d. vii id. april. Marcellino et probino conss.>

CJ.7.62.21: Imperator Constantius

Quoniam iudices ordinarii provocationes aestimant respuendas, placet, ut, si quis appellationem suscipere recusaverit, quae non contra exsecutionem, sed adversus sententiam iurgium terminantem fuerit interposita, triginta auri pondo cogatur largitionibus nostris inferre: triginta alia officio eius itidem soluturo, nisi ei pertinaciter restiterit atque actis contradixerit et, quid iure sit constitutum, ostenderit. * constantius a. ad lollianum pp. * <a 355 d. viii k. aug. messadensi. pp. capuae arbitione et lolliano conss.>

CJ.7.62.22: Imperator Constantius

Lata sententia, quae pertinet ad bona vacantia et ad ea, quae indignis legibus cogentibus auferuntur, si quis putaverit provocandum, vox eius debebit admitti. * constantius a. ad volusianum pp. * <a 355 d. iii k. aug. arbitione et lolliano conss.>

CJ.7.62.23: Imperator Constantius

Cum appellatio interposita fuerit per bithyniam paphlagoniam lydiam hellespontum , insulas etiam ac phrygiam salutarem, europam ac rhodopam et haemimontum, praefecturae urbis iudicium sacrum appellator observet. * constantius a. ad senatum. * <a 361 d. v non mai. tauro et florentio conss.>

CJ.7.62.24: Imperatores Valentinianus, Valens

Iudicibus non solum appellationis suspiciendae necessitas videtur imposita, verum etiam triginta dierum spatia ex die sententiae definita sunt, intra quae gesta una cum relatione litigatoribus convenit praestari: iudice et officio eius, si statuta fuerint aliqua parte mutilata, multae subiacentibus. * valentin. et valens aa. s. d. ord. civitatis carthaginensium.* <a 364 d. prid. non. febr. mediolani divo ioviano et varroniano conss.>

CJ.7.62.25: Imperatores Gratianus, Valentinianus, Theodosius

Et in multis ab iudicibus inferendis appellationes iubemus admitti. * grat. valentin. et theodos. aaa. ad syagrium pp. * <a 380 d. xiiii k. iul. gratiano v et theodosio aa. conss.>

CJ.7.62.26: Imperatores Gratianus, Valentinianus

Cum post sententiam discussoris vel rationalis fuerit provocatum, ad sinceritatem tuam negotium transferatur, ut, si mediocritas negotii aut longinquitas regionis ad iudicium tuum litigatores venire non patitur, iudicio rectoris provinciae, quem ipse probaveris, negotium deleges. * grat. valentin. aaa. et arcad. a. ad pelagium com. rer. * <a 385 d. xv k. mart. mediolano arcadio a. et bautone conss.>

CJ.7.62.27: Imperatores Arcadius, Honorius

Nominationes libellis vel edictis factae citra consilium publicum non valent: de quibus nec appellare necesse est, si sollemnitas deest. * arcad. et honor. aa. ennodio procons. africae. * <a 395 d. xvii k. iun. mediolani olybrio et probino conss.>

CJ.7.62.28: Imperatores Arcadius, Honorius

Si quis libellos appellatorios ingesserit, sciat se habere licentiam arbitrium commutandi et suos libellos recuperandi, ne iustae paenitudinis humanitas amputetur. * arcad. et honor. aa. nebridio procons. asiae. * <a 396 d. xi k. aug. constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.7.62.29pr.: Imperatores Arcadius, Honorius

Addictos supplicio et pro criminum immanitate damnatos nulli clericorum vel monachorum, eorum etiam quos synoditas vocant, per vim atque usurpationem vindicare liceat ac tenere. * arcad. et honor. aa. ad eutychianum pp. * <a 398 d. vi k. aug. mnizo honorio a. iiii et eutychiano conss.>

CJ.7.62.29.1: Imperatores Arcadius, Honorius

Quibus in causa criminali humanitatis consideratione, si tempora suffragantur, interponendae provocationis copiam non negamus, ut ibi diligentius examinetur, ubi contra hominis salutem per errorem vel gratia cognitoris oppressa putatur esse iustitia: ea condicione, ut, si proconsules vel omnes orientis, augustalis, vicarii fuerint cognitores, non tam ad clementiam nostram quam ad amplissimas potestates sciant esse referendum. eorum enim de his plenum volumus esse iudicium , qui, si ita res est et crimen exegerit, rectius possint punire damnatos. <a 398 d. vi k. aug. mnizo honorio a. iiii et eutychiano conss.>

CJ.7.62.30: Imperatores Arcadius, Honorius

Si quis provocatione interposita suspecti iudicis velit prolatam evitare sententiam, in hac voce liberam habeat potestatem nec timeat contumeliam iudiciorum, cum et ab ipsa iniuria possit facile provocare, maxime cum a solo tantum praefecto praetorio non sine dispendio causae provocare permissum sit. sciant igitur cuncti sibi ab iniuriis et suspectis iudicibus et in capitali supplicio ac fortunarum dispendio provocationem esse concessam. * arcad. et honor. aa. theodoro pp. * <a 399 d. vii id. iun. mediolani theodoro cons.>

CJ.7.62.31pr.: Imperatores Honorius, Theodosius

Si appellationem oblatam, in qua vel tuae amplitudinis vel urbanae praefecturae sacrum auditorium postulatur, iudex non susceperit vel suscepta appellatione apostulorum copiam denegaverit, ad deponendam super hac iniquitate querimoniam nec non etiam conveniendum adversarium ex sententia prolata iuxta antiquuum ius anni metas habeat litigator: vel si huiusmodi appellatio suscepta non fuerit, in qua inferiorum iudicum sacra desideratur auditio, ad haec eadem facienda sex menses habeat litigator. * honor. et theodos. aa. asclepiodoto pp. * <a 423 d. iii k. april. constantinopoli asclepiodoto et mariniano conss.>

CJ.7.62.31.1: Imperatores Honorius, Theodosius

Si vero arbiter appellationem suscipere aut relationem dare contempserit, quattuor mensum tempora observentur: ut his quae statuimus actitatis pareat appellator temporibus, quae de appellationibus definita noscuntur. <a 423 d. iii k. april. constantinopoli asclepiodoto et mariniano conss.>

CJ.7.62.32pr.: Imperatores Theodosius, Valentinianus

Praecipimus ex appellationibus spectabilium iudicum, quae per consultationes nostri numinis disceptationem implorant, non nostram ulterius audientiam expectari , ne nostris occupationibus, quibus pro utilitate mundi a singulorum nonnumquam negotiis avocamur, aliena fraudari commoda videantur. * theodos. et valentin. aa. cyro pp. * < >

CJ.7.62.32.1: Imperatores Theodosius, Valentinianus

Sed si a proconsulibus vel augustali vel comite orientis vel vicariis fuerit appellatum, virum illustrem praefectum praetorio, qui in nostro est comitatu, virum etiam illustrem quaestorem nostri palatii sacris iudiciis praesidentes disceptationem iubemus adripere eo ordine, ea observatione, isdem temporibus, quibus ceterae quoque lites fatali die post appellationem in sacris auditoriis terminantur. et hoc, licet quidam praedictorum spectabilium iudicum iure concesso ut sacri iudices appellationes acceperint. < >

CJ.7.62.32.1a: Imperatores Theodosius, Valentinianus

(1) quod si a duce fuerit appellatum, si idem et praeses sit, praefectura necessario tantum iure ordinario in sacro auditorio iudicabit. < >

CJ.7.62.32.2: Imperatores Theodosius, Valentinianus

In his autem omnibus iudiciis, quae consultationum introduximus loco, vel apostolos vel ea quae apud eum gesta sunt, contra cuius sententiam dicitur appellatum , suscipere ab appellatoribus et cognitiones inducere apud viros illustres praedictos iudices et ea quae geruntur excipere scribere scriptaque litigatoribus edere nostros epistulares praecipimus: officiis videlicet eorum, cum quibus vir illustris quaestor iudicat, exsequentibus iudicata. < >

CJ.7.62.32.3: Imperatores Theodosius, Valentinianus

Haec, si appellatio fuerit oblata iudici, qui non ex delegatione cognoscit. eorum enim sententiis appellatione suspensis, qui ex delegatione cognoscunt, necesse est eos aestimare, iuste nec ne fuerit appellatum, qui causas delegaverint iudicandas. < >

CJ.7.62.32.4: Imperatores Theodosius, Valentinianus

Huic saluberrimae legi illud etiam consultissimae credidimus inserendum, ut, si privato, non illustri, uni pluribusve, ut adsolet, nostra serenitas adita delegaverit causam et eius eorumve definitio fuerit appellatione suspensa, vir quidem magnificus praefectus praetorio, qui in nostro est comitatu, cum viro illustri quaestore temporali iudicet die. < >

CJ.7.62.32.4a: Imperatores Theodosius, Valentinianus

Nostri vero libellenses quae apud arbitros gesta sunt suscipiant, cognitiones inducant et ea quae geruntur excipiant scribant scriptaque litigatoribus edant: qui etiam apud arbitros, licet illustres sint, ex delegatione nostra cognoscentes excipiunt, si in sacratissimo nostri numinis comitatu causae dicantur. < >

CJ.7.62.32.5: Imperatores Theodosius, Valentinianus

Sane si illustrium ac magnificorum iudicum sententiae fuerint appellatione suspensae, eorum videlicet, quorum sententias licet appellatione suspendi, per consultationem nostram volumus audientiam expectari, licet antea privato homini, id est non illustri, lite a nobis delegata is postea tempore definitionis illustri decoratus dignitate reperiatur: eodem observando et si alter ei coniunctus sit arbiter, qui non illustrem meruit dignitatem. < >

CJ.7.62.32.6: Imperatores Theodosius, Valentinianus

Quidquid autem hac lege specialiter non videtur expressum, id veterum legum constitutionumque regulis omnes relictum intellegant. < >

CJ.7.62.33: Imperatores Theodosius, Valentinianus

Eo casu, quo apparitor magisteriae potestatis a curia vel officio cohortali de statu in provincia patiatur controversiam vel ut tributa vel functiones debens in provincia detinetur, si sententia rectoris provinciae fuerit appellatione suspensa, cum tua sublimitate viro quoque magnifico magistro militum cognoscente causae iubemus merita ponerari, licet magister militum rectori provinciae causam delegaverit perorandam. * theodos. et valentin. aa. cyro pp. * <a 441 d. prid. non. mart. constantinopoli cyro vc. cons.>

CJ.7.62.34pr.: Imperator Justinus

Iubemus, si qua suggestio maioris vel minoris iudicis ad nostram referatur clementiam de negotio, quod iudicandum ei tradidimus vel de quo pro sua iurisdictione iudicaverit, petentis a nostro numine finem eidem imponi negotio, quod ab eo disceptatum est, sive additum sit eidem suggestioni, quid referenti placeat (dum id partibus per sententiae recitationem manifestum non fecit) sive nihil huiusmodi adiectum sit, sed simpliciter nostri numinis responsum expectat, non prius eam discerni, quam per sacram pragmaticam nostri numinis iussionem duo magnifici viri vel patricii vel consulares vel praefectorii, quos pro tempore nos elegerimus, iubeantur adiungi viro illustri pro tempore quaestori nostri palatii et una cum eo in scriptis relationem discernere (sive praesentibus partibus, si hoc prospexerint, sive absentibus) et responsum relationi dandum sua sententia manifestare: ut tamen dispositio huiusmodi excellentissimorum iudicum omnimodo rata sit, nulli danda licentia provocationem contra eorum offerre sententiam vel aliam quamcumque dubitationem introducere. * iustinus a. demostheni pp. * <a 520 - 524 >

CJ.7.62.34.1: Imperator Justinus

Quam observationem non solum, si unus iudex suggestione vel relatione usus fuerit, tenere censemus, sed etiam si duobus vel amplioribus datis iudicibus in unam sententiam minime omnes convenerint, sed diversas suas sententias unusquisque nostrae mansuetudini rettulerit vel omnes nos consuluerint, quid decernendum sit. <a 520 - 524 >

CJ.7.62.37pr.: Imperator Justinianus

In offerendis provocationibus, ex quibus consultationum more negotium in nostrum sacrum palatium introduci solebat, hoc addendum esse censemus, ut, si quidem non excedat litis aestimatio decem librarum auri quantitatem, ex ipsa scilicet sententia iudicis discernenda, non duobus, sicut antea, magnificis iudicibus, sed uni tantummodo disceptatio negotii deputetur. * iust. a. menae pp. * <a 529 d. viii id. april. constantinopoli decio cons.>

CJ.7.62.37.1: Imperator Justinianus

Sin vero memoratam excedens quantitatem viginti libris auri terminetur, duobus tradatur magnificis iudicibus, viris scilicet devotis epistularibus cognitionalia certamina excipientibus, ita tamen ut, si dissentirent, virum illustrem pro tempore quaestorem adhibeant, ut eo dubietatem dirimente finiatur negotium: <a 529 d. viii id. april. constantinopoli decio cons.>

CJ.7.62.37.2: Imperator Justinianus

His videlicet litibus, quarum aestimatio viginti librarum auri quantitatem excedit, in commune auditorium florentissimorum sacri nostri palatii procerum introducendis: <a 529 d. viii id. april. constantinopoli decio cons.>

CJ.7.62.37.3: Imperator Justinianus

Ut tamen secundum iam statuta liceat quidem non solum victo, sed etiam victori consultationem ad unum vel duos iudices mittendam intra bienni tempus ei vel eis intimare: post excessum enim memorati temporis huiusmodi licentiam amputamus. <a 529 d. viii id. april. constantinopoli decio cons.>

CJ.7.62.37.4: Imperator Justinianus

Quae vero fuerint ab eo vel eis decreta, nulla provocatione suspendatur. <a 529 d. viii id. april. constantinopoli decio cons.>

CJ.7.62.37.5: Imperator Justinianus

Novas etiam adsertiones a partibus apud eundem vel eosdem iudices addi ad exemplum consultationis ad sacrum nostrum palatium introducendae permittimus. <a 529 d. viii id. april. constantinopoli decio cons.>

CJ.7.62.38: Imperator Justinianus

Si quando duciano iudicio appellatio fuerit oblata, sive ab ipsa qualitate iudicis sive ex divina delegatione viro spectabili duci destinata, sive inter spectabiles idem dux connummeretur sive illustri dignitate decoratur sive etiam maiore, cum etiam magisteriae potestatis homines nec non consulares saepe utilitate publica poscente ad huiusmodi curam perveniunt, nullo discrimine habito non dignitatem, sed ducatus magistratum spectari et appellationem ex quocumque duce venientem non ut antea erat dispositum, sed apud virum sublimissimum magistrum officiorum nec non virum excellentissimum nostri palatii quaestorem communi audientia praeposita in sacro auditorio more consultationem, viris devotis epistularibus excipientibus, ventilari: nulla veteris legis in hac causa observatione custodienda, sed apud eosdem tantummodo excellentissimos iudices causa trutinanda. * iust. a. demostheni pp. * <a 529 >

CJ.7.62.39pr.: Imperator Justinianus

Ampliorem providentiam subiectis conferentes, quam forsitan ipsi vigilantes non inveniunt, antiquam observationem emendamus, cum in appellationum auditoriis in solus post sententiam iudicis emendationem meruerat, qui ad provocationis convolasset auxilium, altera parte, quae hoc non fecisset, sententiam sequi, qualiscumque fuisset, compellenda. * iust. a. iuliano pp. * <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.7.62.39.1: Imperator Justinianus

Sancimus itaque, si appellator semel in iudicium venerit et causas appellationis suae proposuerit, habere licentiam et adversarium eius, si quid iudicatis opponere maluerit, si praesto fuerit, hoc facere et iudiciale mereri praesidium: sin autem absens fuerit, nihilo minus iudicem per suum vigorem eius partes adimplere. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.7.62.39.1a: Imperator Justinianus

(1) in refutatoriis autem libellis, qui solent maxime in sacro auditorio prudentissimorum nostrorum procerum recitari, caveant tam litigatores quam libellorum dictatores verbosis uti adsertionibus et ea quae iam perorata sunt iterum resuscitare, sed haec sola eis inscribere, quae compendiosa narratione causas provocationis possunt explanare vel aliquid novi continent vel addere quod derelictum est: scituri, quod si hoc fuerit praetermissum, non deerit adversus libellorum conditores amplissimi iudicii competens indignatio, quod sufficiant gestorum volumina introducta et virorum spectabilium magistrorum scriniorum breves omnia apertissime ostendere. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.7.62.39.2: Imperator Justinianus

Sed cum scimus legem nostram esse promulgatam, per quam more consultationum in causis quidem, quae usque ad decem libras auri extenduntur, unum iudicem sanximus superponi, viginti autem duos sublimissimos iudices, sed cum prima quidem facie lis videbatur non tantam summam excedere, in definitiva autem sententia apparebat iudici vel iudicibus etiam maiorem quantitatem debere imponere, non erat eis possibile formam qua erant conclusi excedere. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.7.62.39.2a: Imperator Justinianus

Sed nos definimus et omnem eis damus facultatem, si hoc ita fuerit subsecutum, licere eis et ampliorem summam praefata quantitate in qua dati sunt iudices excedere, et non ad modum suae rationis, sed ad veritatis indaginem ferre sententiam, ne tanti iudices quasi vinculis praepediti non possint legum veritati et iudiciali vigori per omnia satisfacere. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.7.63.0. De temporibus et reparationibus appellationum seu consultationum.

CJ.7.63.1: Imperator Constantinus

Si quis per absentiam nominatus vel ad duumviratus aliorumque honorum infulas vel munus aliquod evocatus ad provocationis auxilium cucurrerit, ex eo die interponendae appellationis duorum mensum tempora ei computanda sunt, ex quo contra se celebratam nominationem didicisse monstraverit. nam praesenti, qui factam nominationem cognovit et appellare voluerit, statim debet duorum mensum spatium computari. * const. a. ad crispinum. * <a 320 d. viii id. iul. constantino a. vi et constantio c. conss.>

CJ.7.63.2pr.: Imperatores Theodosius, Valentinianus

Tempora fatalium dierum pro saeculi nostri beatitudine credidimus emendanda ubique dilationum materias amputantes. et primi quidem fatalis diei tempora post appellationem, sive a viro clarissimo rectore provinciae sive a spectabili iudice fuerit appellatum, sex mensuum esse iubemus. * theodos. et valentin. aa. cyro pp. * <a 440 d. xii k. iun. valentiniano a. v et anatolio conss.>

CJ.7.63.2.1: Imperatores Theodosius, Valentinianus

Quod si primo fatali die lapsus est appellator, tricesimum primum diem alterum volumus esse fatalem. quod si eo quoque appellator exciderit, tertium similiter totidem diebus intermissis fatalem observari decernimus. quod si tertius quoque lapsus fuerit temporalis, quartum etiam fatalem post tricesimum primum diem similiter observari decernimus. <a 440 d. xii k. iun. valentiniano a. v et anatolio conss.>

CJ.7.63.2.2: Imperatores Theodosius, Valentinianus

Quod si ita contigerit, ut quattuor fatalibus diebus qui appellavit exciderit, tunc intra trium alium mensuum spatium a nostro numine reparationem peti praecipimus: qua petita nec adversarium decernimus admoneri nec temporalem diem a petitione reparationis numerari, sed trium mensum spatio ex quarto, fatali numerando causam induci praecipimus, licet ante unum diem reparatio fuerit impetrata, licet adlegata in iudicio virorum illustrium praefectorum non fuerit. <a 440 d. xii k. iun. valentiniano a. v et anatolio conss.>

CJ.7.63.2.3: Imperatores Theodosius, Valentinianus

Nec hoc parti nocebit adversae, cum non dubius, sed notus omnibus dies fatalis appareat. haec, si adversus viri clarissimi rectoris provinciae vel spectabilium iudicum sententias fuerit appellatum. <a 440 d. xii k. iun. valentiniano a. v et anatolio conss.>

CJ.7.63.2.4: Imperatores Theodosius, Valentinianus

(1) quod si arbitro in provincia ex delegatione sacra disceptante appellatio subsequatur, post priorem fatalem lapsum tres alii tantum fatales dies similiter ut supra dictum est servabuntur, nulla reparatione a nostro numine postulanda, ita ut nonaginta tribus diebus elapsis iudicata congruae exsecutioni mandentur. <a 440 d. xii k. iun. valentiniano a. v et anatolio conss.>

CJ.7.63.2.5: Imperatores Theodosius, Valentinianus

Sin autem ex sententia praetorianae praefecturae vel magistri officiorum vel alio illustri dignitate decorato arbiter in hac sacratissima civitate fuerit delegatus et appellatio contra definitionem vel sententiam eius subsecuta fuerit, primus quidem fatalis dies duorum mesum, alii vero tres ad similitudinem supra dictorum fatalium numerentur. <a 440 d. xii k. iun. valentiniano a. v et anatolio conss.>

CJ.7.63.2.6: Imperatores Theodosius, Valentinianus

Qui vero delegatum vel a spectabili iudice seu praeside provinciae arbitrum appellaverit, primum quidem fatalem diem duorum mensum, tres vero alios ad similitudinem praedictorum fatalium dierum habeat. <a 440 d. xii k. iun. valentiniano a. v et anatolio conss.>

CJ.7.63.2.7: Imperatores Theodosius, Valentinianus

(2) illud etiam circa observationem fatalium dierum custodiri decernimus, ut, si forte temporales in feriatos quoquo modo inciderint, praecendentes eos dies ut temporales a litigantibus observentur. quod si quis secus, ac iura praecipiunt, lapsus die fuerit temporali et hoc primo loco vel a praesente adversario vel etiam a iudice, si solus litigat, appellatori fuerit oppositum probatumque, pro eo habebitur appellator, ac si sententiam quoquo modo non coactus susceperit. <a 440 d. xii k. iun. valentiniano a. v et anatolio conss.>

CJ.7.63.3: Imperator Justinus

Nemo arbitretur in posterum licentiam futuram consultationibus ultra statuti temporis vivendi spatia neque per oblationem precum neque per sacrum rescriptum super reparatione temporum indulgendum neque sub praetextu quodam altero: sed omnibus incumbendum esse vigilanti diligentia, quo provocationes eorum intra statutum tempus introducantur, ita ut etiam gesta in iudicio, contra quod provocatum est, non prope finem temporis tradantur scrinio sacrarum epistularum, ne praepediatur per astutias fatalis rei terminus, sed aut statim, postquam appellatum sit, aut non minus quam ante dimidiam partem temporis praebeantur scrinio, ne, quod per angustias contingit temporum, tardus appellationis fautor suo dispendio refutetur. * iustinus a. apioni pp. * <a 518 d. k. dec. constantinopoli magno cons.>

CJ.7.63.4pr.: Imperator Justinus

Per hanc divinam sanctionem decernimus, ut licentia quidem pateat in exercendis consultationibus tam appellatori quam adversae parti novis etiam adsertionibus utendi vel exceptionibus, quae non ad novum capitulum pertinent, sed ex illis oriuntur et illis coniunctae sunt, quae apud anteriorem iudicem noscuntur propositae. * iustinus a. tatiano mag. off. * <a 520 d. v k. iun. constantinopoli rusticio cons.>

CJ.7.63.4.1: Imperator Justinus

Sed et si qua dicta quidem adlegatio monstrabitur vel instrumentum prolatum aliquod, probationes tamen illo quidem defuerunt tempore, verum apud sacros cognitores sine procrastinatione praeberi poterunt, id quoque eos admittere, quo exercitatis iam negotiis pleniore subveniatur veritatis lumine. <a 520 d. v k. iun. constantinopoli rusticio cons.>

CJ.7.63.5pr.: Imperator Justinianus

Cum anterioribus legibus ex omni provincia ad hunc nostrum sacratissimum comitatum similis cursus ad appellationes exercendas impertitus est, necessarium nobis visum est huiusmodi spatiis iustum imponere libramentum. * iust. a. triboniano quaest. sacri palatii. * <a 529 d.Xv k.Dec.Chalcedone decio vc. conss.>

CJ.7.63.5.1: Imperator Justinianus

Sancimus itaque, si quidem ab aegyptiaco vel libyco limite vel orientali tractu usque ad utrasque cilicias numerando vel armeniis et gentibus et omni illyrico causa fuerit more appellationum transmissa, primum semestre spatium in antiqua definitione permanere et a nihil penitus neque deminui neque adcrescere. <a 529 d.Xv k.Dec.Chalcedone decio vc. conss.>

CJ.7.63.5.1a: Imperator Justinianus

Sin autem ex aliis nostri imperii partibus sive asianae sive ponticae sive thraciae dioeceseos lis provocatione suspensa in hanc regiam urbem perveniat, pro semestri spatio trium tantummodo mensum spatium eis indulgeri: aliis trium mensum spatiis, id est nonaginta tribus diebus simili modo sequentibus sive semestre tempus sive tres priores menses secundum locorum definitionem, quam designavimus. <a 529 d.Xv k.Dec.Chalcedone decio vc. conss.>

CJ.7.63.5.1b: Imperator Justinianus

Sed et aliis tribus mensibus, qui ex reparatione ab aula concedi solent, in suo robore duraturis et prioribus accedentibus, ut partim annale numeretur, partim novem mensum spatium consequatur. <a 529 d.Xv k.Dec.Chalcedone decio vc. conss.>

CJ.7.63.5.1c: Imperator Justinianus

(1) et cum antea in fine cuiusque temporis unus fatalis dies ex antiquis legibus constitutus est et saepe eveniebat (cum multae sunt occasiones mortales appellationum) vel aegritudine vel spatii prolixitate vel per alias causas, quas nec dici nec enumerari facile sit, eundem diem fatalem non observari et lites expirare et huiusmodi luctuosis infelicitatibus patrimonia hominum titubare: propter hoc fortunae relevantes insidias sancimus non in unum diem fatalem standum esse in posterum, sed sive ante quartum diem fatalis luminis et ipsum fatalem sive post quinque dies, ex quo ortus fatalis effluxerit, appellator venerit et litem instituendam curaverit et eam in competens iudicium deduxerit, legi videri satisfactum, ne ingemiscat mortuae causae dispendium, sed nostro gaudeat beneficio, cum nobis cognitum sit etiam ex errore calculi dierum quem officium habuit saepe esse causas periclitatas: quod in posterum non fieri ex remedio legis pra esentis sperandum est. <a 529 d.Xv k.Dec.Chalcedone decio vc. conss.>

CJ.7.63.5.1d: Imperator Justinianus

Eodem beneficio et in aliis omnibus fatalibus qui vel a pedaneis iudicibus vel ab aliis, quos leges suis sanctionibus enumeraverunt, custodiendo seu observando , ut decem fatales pro uno ubique instituantur. <a 529 d.Xv k.Dec.Chalcedone decio vc. conss.>

CJ.7.63.5.2: Imperator Justinianus

In his autem casibus, in quibus biennium constitutum est, quatenus more consultationum in regia urbe sub communi audientia florentissimorum nostri palatii procerum ventilentur, biennii metas unius anni terminis coartamus, ut intra eum et gesta colligere et ea viris devotis epistularibus tradere et refutatorios libellos, si voluerint, offerre et litem in sacrum nostrum consistorium introducere cogantur: nulli licentia deneganda victrici parti, si voluerit, secundum quod iam constitutum est, et praemature causam inducere neque annali spatio expectato. <a 529 d.Xv k.Dec.Chalcedone decio vc. conss.>

CJ.7.63.5.3: Imperator Justinianus

Si tamen in sacro nostro consistorio lis exordium ceperit, etsi non fuerit in eodem die completa, tamen perpetuari eam concedimus, cum iniquum sit propter occupationes florentissimi ordinis, quas circa nostrae pietatis ministeria habere noscitur, causas hominum deperire. <a 529 d.Xv k.Dec.Chalcedone decio vc. conss.>

CJ.7.63.5.4: Imperator Justinianus

Illud etiam merito addendum huic legi censemus, ut si qui fatali die apud appellationis iudicem introductus, sive ex una parte sive cognitionaliter causae appellationis imponat exordium, deinde relicta ea discedat et in desidia reliquum tempus permaneat et annale tempus post inchoatam litem praeterierit, victore neque sententiam ad effectum perducere valente propter litem iam inchoatam neque iam terminum accipere inveniente, cum appellatoris absentia eam finiri non facile concedit, huiusmodi iniquitatem amputantes (cum adversarius potest et minime praesente appellatore litem exercere, quia hoc speciale privilegium eius est, qui appellationi examinandae praesidet, posse ex una parte causam dirimere) iubemus eundem appellatorem, nisi observaverit iudicium et causam usque ad finem p eregerit, sed per eum steterit, quominus omnia litis certamina impleantur, appellatione defraudari et sententiam contra eum latam in suo robore durare et ad effectum perduci, tamquam si ab initio minime fuerit provocatum: nisi ipse appellator evidentissime probationibus possit ostendere se quidem summa ope nisum voluisse litem exercere, per iudicem autem stetisse vel aliam inexorabilem causam subsecutam, propter quam hoc facere minime valuit. tunc etenim aliud ei annale tempus indulgemus, quo effluente et lite minime finem accipiente cadere eum de appellatorio iuvamine disponimus, cum sit ei apertissima facultas et nostram adire maiestatem et tarditatem iudicis in querellam deducere et nostro beneficio perpotiri. <a 529 d.Xv k.Dec.Chalcedone decio vc. conss.>

CJ.7.63.5.5: Imperator Justinianus

Cui consentaneum est, ut et in sententiis omnium amplissimorum praefectorum praetorio ex divino oraculo retractandis eadem observatio, quae supra dicta est, post ingressum unius vel utriusque partis tam propter absentiam personarum quam propter statuta tempora teneat. <a 529 d.Xv k.Dec.Chalcedone decio vc. conss.>

CJ.7.63.5.6: Imperator Justinianus

Sin autem partes inter se scriptura interveniente paciscendum esse crediderint nemini parti licere ad provocationis auxilium pervenire vel ullum fatalem observare, eorum pactionem firmam esse censemus. legum etenim austeritatem in hoc casu volumus pactis litigantium mitigari. <a 529 d.Xv k.Dec.Chalcedone decio vc. conss.>

CJ.7.64.0. Quando provocare necesse non est.

CJ.7.64.1: Imperator Alexander Severus

Datam sententiam dicitis, quam ideo vires non habere contenditis, quod contra res prius iudicatas, a quibus provocatum non est, lata sit. cuius rei probationem si promptam habetis, et citra provocationis adminiculum quod ita pronuntiatum est sententiae auctoritatem non obtinebit. * alex. a. apollinario et aliis. * <a 222 pp. viii k. april. alexandro a. cons.>

CJ.7.64.2pr.: Imperator Alexander Severus

Si, cum inter te et aviam defuncti quaestio de successione esset, iudex datus a praeside provinciae pronuntiavit potuisse defunctum et minorem quattuordecim annis testamentum facere ac per hoc aviam potiorem esse, sententiam eius contra tam manifesti iuris formam datam nullas habere vires palam est et ideo in hac specie nec provocationis auxilium necessarium fuit. * alex. a. capitoni. * <>

CJ.7.64.2.1: Imperator Alexander Severus

Quod si, cum de aetate quaereretur, implesse defunctum quartum decimum annum ac per hoc iure factum testamentum pronuntiavit, nec provocasti aut post appellationem impletam causa destitisti, rem iudicatam retractare non debes. <>

CJ.7.64.3: Imperator Gordianus

Si, ut proponis, suspensa apud amplissimos iudices cognitione provocationis, quam te ob id interposuisse dicis, quod decurio nominatus esses, ad duumviratum vocatus es, manifestum est praeiudicium futurae notioni memoratorum iudicum fieri non potuisse. * gord. a. ingenuo. * <>

CJ.7.64.4: Imperatores valer., gallien.

Cum magistratus datos iudices et unum ex his pronuntiasse proponas, non videtur appellandi necessitas fuisse, cum sententia iure non teneat. * valer. et gallien. aa. et valer. nob. c. iuliano. * <>

CJ.7.64.5: Imperatores carus, carinus, numer.

Certa ratione et fine multare praesides possunt. quod si aliter et contra legis statutum modum provinciae praeses multam vobis inrogaverit, dubium non est id, quod contra ius gestum videtur, firmitatem non tenere et sine appellatione posse rescindi. * carus carinus et numer. aaa. domitiano. * <a 283 pp. id. ian. caro et carino conss.>

CJ.7.64.6: Imperatores carus, carinus, numer.

Cum non eo die, quo praeses provinciae praecepit, iudex ab eodem datus pronuntiaverit, sed ductis diebus alieniore tempore sententiam dedisse proponatur, ne ambages frustra interpositae provocationis ulterius negotium protrahant, praeses provinciae superstitiosa appellatione submota ex integro inter vos cognoscet. * carus carinus et numer. aaa. germano. * <>

CJ.7.64.7: Imperatores Diocletianus, Maximianus

Venales sententias, quae in mercedem a corruptis iudicibus proferuntur, et citra interpositae provocationis auxilium iam pridem a divis principibus infirmas esse decretum est. * diocl. et maxim. aa. nicagorae. * <a 285 pp. k. ian. diocletiano a. et aristobulo conss.>

CJ.7.64.8: Imperatores Diocletianus, Maximianus

Si pater tuus, cum decurio creareris, non consensit et quindecim annos aetatis agis, aditus praeses provinciae, si inhabilem te ad obeundum decurionatus honorem esse perspexerit, quando huiusmodi aetati etiam praetermissa appellatione subveniatur, iniquam nominationem removebit. * diocl. et maxim. aa. constantio. * <a xxx >

CJ.7.64.9: Imperatores Diocletianus, Maximianus

Veteranis, qui in legione vel vexillatione militantes post vicesima stipendia honestam vel causariam missionem consecuti sunt, onerum et munerum personalium vacationem concessimus. huius autem indulgentiae nostrae tenore remunerantes fidam devotionem militum nostrorum etiam provocandi necessitatem remisimus. * diocl. et maxim. aa. et cc. rufino. * <a xxx >

CJ.7.64.10pr.: Imperator Justinianus

Omnem honorem salvum iudicibus reservantes, si quando una pars quasi laesa per definitivam eorum sententiam provocatione usa fuerit, interdicimus alteri parti quae vicit pro hoc tantummodo, quod nihil capere pro sumptibus litis et detrimentis vel minus quam oportuerat iussa est, provocationem offerre, cum ipsam decisionem litis recte factam esse confiteatur: iudicibus scilicet sive florentissimis proceribus sacri nostri palatii sive his, quibus pro minore litium aestimatione consultationes delegantur, si perspexerint adiuvandum esse victorem sumptuum perceptione, etiam sine provocatione eius hoc statuentibus et iustam eorundem sumptuum quantitatem definientibus. * iust. a. menae pp. * <a 529 d. viii id. april. constantinopoli decio vc. cons.>

CJ.7.64.10.1: Imperator Justinianus

Sed nec occasione consultationis introducendae victori provocare concedimus, cum et priscis legibus liceat ei et sine provocationis auxilio eandem consultationem differente suo adversario introducere et nos ei nihilo minus hoc permittimus, iniuriam ex supervacua provocatione iudicibus fieri prohibentes. <a 529 d. viii id. april. constantinopoli decio vc. cons.>

CJ.7.65.0. Quorum appellationes non recipiantur.

CJ.7.65.1: Imperator Antoninus

Eius, qui per contumaciam absens, cum ad agendam causam vocatus esset, condemnatus est negotio prius summatim perscrutato, appellatio recipi non potest. * ant. a. sabino. * <a 213 pp. non. iul. antonino a. iiii et balbino conss.>

CJ.7.65.2pr.: Imperator Constantius

Observare curabis, ne quis homicidarum veneficorum maleficorum adulterorum itemque eorum, qui manifestam violentiam commiserunt, argumentis convictus, testibus superatus, voce etiam propria vitium scelusque confessus audiatur appellans. * constantius a. ad hieroclem. * <a 344 d. v id. dec. leontio et sallustio conss.>

CJ.7.65.2.1: Imperator Constantius

Sicut enim haec ita observari disposuimus, ita aequum est testibus productis, instrumentis prolatis aliisque argumentis praestitis, si sententia contra eum lata sit et ipse, qui condemnatus est aut minime voce sua confessus sit aut formidine tormentorum tentus contra se aliquid dixerit, provocandi licentiam ei non denegari. <a 344 d. v id. dec. leontio et sallustio conss.>

CJ.7.65.3: Imperatores Valentinianus, Valens

Nulli officialium a sententia proprii iudicis provocatio tribuatur nisi in eo tantum negotio, quod ratione civili, super patrimonio forte, apud proprium iudicem inchoarit, scilicet ut in eo tantum negotio a sententia eius, cui paret iudici, quisquis velit officialis appellet, quod per procuratorem persequi iure tribuitur. * valentin. et valens aa. ad modestum pp. * <a 373 d. iiii id. iun. cyzico valentiniano et valente aa. conss.>

CJ.7.65.4: Imperatores Valentinianus, Valens, Gratianus

Abstinendum prorsus appellatione sancimus, quotiens fiscalis calculi satisfactio postulatur aut tributariae functionis sollemne munus exposcitur aut publici vel etiam privati, dummodo evidentis atque convicti redhibitio debiti flagitatur, ut necessario in contumacem vigor iudiciarius excitetur. * valentin. et valens et grat. aaa. ad olybrium pu. * <a 368 pp. romae xv k. sept valentiniano et valente ii aa. conss.>

CJ.7.65.4a: Imperatores Valentinianus, Valens, Gratianus

Si clericus ante definitivam sententiam frustratoriae dilationis causa ad appellationis auxilium convolaverit, multam quinquaginta librarum argenti, quam contra huiusmodi appellatores sanctio generalis imponit, cogatur expendere. hoc autem non fisco nostro volumus accedere, sed pauperibus fideliter erogari. * valentin. et valens et grat. aaa. ad claudium pu. * <a 369 d. viii id. iul. valentiniano np. et victore conss.>

CJ.7.65.5pr.: Imperatores Valens, Gratianus, Valentinianus

Ab exsecutione appellari non posse satis et iure et constitutionibus cautum est, nisi forte exsecutor sententiae modum iudicationis excedat. * valens grat. et valentin. aaa. ad thalassium procons. africae.* <a 378 d. iii k. febr. treviris valente vi et valentiniano ii aa. conss.>

CJ.7.65.5.1: Imperatores Valens, Gratianus, Valentinianus

A quo si fuerit appellatum, exsecutione suspensa decernendum putamus, ut, si res mobilis est, ad quam restituendam exsecutoris opera fuerit indulta, appellatione suscepta possessori res eadem detrahatur et idoneo collocetur reddenda ei parti, pro qua sacer cognitor iudicaverit. <a 378 d. iii k. febr. treviris valente vi et valentiniano ii aa. conss.>

CJ.7.65.5.2: Imperatores Valens, Gratianus, Valentinianus

Quod si de possessione vel de fundis exsecutio concessa erit et eam suspenderit provocatio, fructus omnes, qui tempore interpositae provocationis capti vel postea nati erunt, in deposito collocentur, iure fundi penes eum qui appellaverit constituto. <a 378 d. iii k. febr. treviris valente vi et valentiniano ii aa. conss.>

CJ.7.65.5.3: Imperatores Valens, Gratianus, Valentinianus

Sciant autem se provocatores vel ab exsecutione appellantes vel ab articulo, si eos perperam intentionem cognitoris suspendisse claruerit, quinquaginta librarum argenti animadversione multandos. <a 378 d. iii k. febr. treviris valente vi et valentiniano ii aa. conss.>

CJ.7.65.6: Imperatores Gratianus, Valentinianus, Theodosius

Quisquis, ne voluntas diem functi testamento scripta reseretur, vel ne hi, quos scriptos patuerit heredes, in possessionem mittantur, ausus fuerit provocare interpositamque appellationem is cuius de ea re notio erit recipiendam esse crediderit, viginti librarum argenti multa et litigatorem, qui tam importune appellaverit, et iudicem, qui tam ignave coniventiam adhibuerit, involvat. *

grat. valentin. et theodos. aaa. ad hypatium pu. * <a 379 d. non. april. triveris ausonio et olybrio conss.>

CJ.7.65.7: Imperatores Gratianus, Valentinianus, Arcadius

Ante sententiae tempus et ordinem eventus nec a discussore nec a rationali appellare liceat. * grat. valentin. et arcad. aaa. ad pelagium com. rer. pri * <a 385 d. xv k. mart. mediolani arcadio a. et bautone conss.>

CJ.7.65.8: Imperatores Arcadius, Honorius

Et publicarum necessitatum et privati aerarii deposcit utilitas, ne commoda, quae domui nostrae debentur, callidis debitorum artibus differantur. quamobrem eorum appellatione reiecta, qui aperte manifesteque convicti sunt, hoc observari praecepti huius auctoritate censemus, ut ei, quem constiterit esse publicum debitorem, appellationis beneficium denegetur. * arcad. et honor. aa. apollodoro com. rer. privat. * <a 396 d. iiii id. aug. mediolani arcadio iiii et honorio iii aa. conss.>

CJ.7.66.0. Si pendente appellatione mors intervenerit.

CJ.7.66.1: Imperator Alexander Severus

Etiam post mortem eius qui appellavit necesse est heredibus eius vel reddi causas provocationis vel statutis adquiescere. * alex. a. iuliano. * <a 222 pp. vi k. nov. alexandro a. cons.>

CJ.7.66.2: Imperator Alexander Severus

Eius, qui requirendus adnotatus appellaverat et ante actam causam mortuus est, bona ad successorem pertinere parentibus meis placuit. * alex. a. Marcellinae. * <a 222 pp. iii non. dec. alexandro cons.>

CJ.7.66.3: Imperator Alexander Severus

Si is, qui ademptis bonis in exilium datus appellaverit ac pendente provocatione defunctus est, quamvis crimen in persona eius evanuerit, tamen causam bonorum agi oportet. nam multum interest, utrum capitalis poena inrogata bona quoque rei adimat, quo casu morte eius extincto crimine nulla quaestio superesse potest, an vero non ex damnatione capitis, sed speciali praesidis sententia bona auferantur: tunc enim subducto reo sola capitis causa perimitur bonorum remanente quaestione. * alex. a. ulpio. * <a 228 pp. v id. mart. modesto et probo conss.>

CJ.7.66.4: Imperator Gordianus

Si pater tuus ad decurionatum devocatus appellationem interposuit eaque pendente concessit in fatum, honoris eius quaestio morte finita est. * gord. a. alexandro. * <a 238 pp. prid. non. oct. pio et pontiano conss.>

CJ.7.66.5: Imperator Gordianus

Quamvis ancilla, de cuius dominio disceptabatur et a rectore provinciae contra te iudicatum fuerat, in fatum concesserit, tamen cum appellationem super ea interpositam fuisse et in numero cognitionum pendere proponas, ea provocatio suo ordine propter peculium ancillae audiri debet. * gord. a. felici. * <a 238 pp. vii k. dec. pio et pontiano conss.>

CJ.7.66.6: Imperator Constantinus

Si unus ex litigatoribus adhuc pendente appellatione defunctus sit, non residuum tantum temporis heredes eius habent, sed etiam alios quattuor menses. sin autem ad deliberationem hereditatis certum tempus indulgetur, post elapsum eius idem tempus quattuor mensum numerabitur, ne ignorantes negotium vel etiam super adeunda hereditate dubitantes, priusquam aliquod commodum sentiant, damnis adfici compellantur. * const. a. ad bassum pu. * <a 321 d. xiii k. iun. sirmi crispo ii et constantino ii cc. conss.>

CJ.7.67.0. De his qui per metum iudicis non appellaverunt.

CJ.7.67.1: Imperatores Diocletianus, Maximianus

Si contra te iure pronuntiatum est nec appellationis imploratum auxilium, intellegis adquiescere te statutis oportere. in sacro enim comitatu nostro timere nihil potuisti. * diocl. et maxim. aa. et cc. diophani. * <a 293 s. xv k. iul. philippopoli aa. conss.>

CJ.7.67.2pr.: Imperator Julianus

His, qui tempore competenti non appellant, redintegrandae audientiae facultas denegetur. omnes igitur, qui contra praefectos urbi, magistros officiorum, magistros militum seu proconsules seu comites orientis seu vicarios seu praefectos augustales vel alium iudicem sub specie formidinis provocationem non arbitrantur interponendam, a revocanda lite pellantur. * iul. a. germaniano pp. * <a 362 emissa xv k. iul. mamertino et nevitta conss.>

CJ.7.67.2.1: Imperator Julianus

Qui vero vim sustinuerunt contestatione publice proposita, intra dies videlicet legitimos, quibus appellare licet, causas appellationis evidenti adfirmatione distinguant, ut hoc facto tamquam interposita appellatione isdem aequitatis adminicula tribuantur. <a 362 emissa xv k. iul. mamertino et nevitta conss.>

CJ.7.68.0. Si unus ex pluribus appellaverit.

CJ.7.68.1: Imperator Alexander Severus

Si iudici probatum fuerit unam eandemque condemnationem eorum quoque, quorum appellatio iusta pronuntiata est, fuisse nec diversitate factorum separationem accipere, emolumentum victoriae secundum ea quae constituta sunt ad te quoque pertinere non ignorabit. * alex. a. licinio. * <a 223 pp. xiii k. sept. maximo ii et aeliano conss.>

CJ.7.68.2: Imperator Alexander Severus

Si in una eademque causa unus appellaverit eiusque iusta appellatio pronuntiata est, ei quoque prodest qui non appellaverit. quod si aetatis auxilio unus contra sententiam restitutionem impetravit, maiori, qui suo iure non appellaverit, hoc rescriptum non prodest. * alex. a. sereno. * <a 224 s. iii id. sept. iuliano et crispino conss.>

CJ.7.69.0. Si de momentaria possessione fuerit appellatum.

CJ.7.69.1: Imperatores Valentinianus, Theodosius, Arcadius

Cum de possessione et eius momento causa dicatur, etsi appellatio interposita fuerit, tamen lata sententia sortiatur effectum. ita tamen possessionis reformationem fieri oportet, ut integra omnis proprietatis causa servetur. * valentin. theodos. et arcad. aaa. ad eusignium pp. * <a 386 d. xiiii k. dec. mediolano honorio np. et euodio conss.>

CJ.7.70.0. Ne liceat in una eademque causa tertio provocare vel post duas sententias iudicum, quas definitio praefectorum roboraverit, eas retractare.

CJ.7.70.1: Imperator Justinianus

Si quis in quacumque lite iterum provocaverit, non licebit ei tertio in eadem lite super isdem capitulis provocatione uti vel sententias excellentissimorum praefectorum praetorio retractare: licentia danda litigatoribus arbitro dato ipsius audientiam qui eum dedit ante litis contestationem invocare et huiusmodi petitione minime provocationis vim obtinente. * iust. a. menae pp. * <a 528 d. k. iul. constantinopoli dn. iustiniano a. ii cons.>

CJ.7.71.0. Qui bonis cedere possunt.

CJ.7.71.1: Imperator Alexander Severus

Qui bonis cesserint, nisi solidum creditor receperit, non sint liberati. in eo enim tantum hoc beneficium eis prodest, ne iudicati detrahantur in carcerem. * alex. a. irenaeo. * <a 223 pp. x k. dec. maximo ii et aeliano conss.>

CJ.7.71.2: Imperator Philippus

Si quantitatem, quam (licet rei publicae) condemnatus debebas, inferre paratus es, frustra vereris, ne verbum bonorum cessionis temere a te prolatum privare te necdum distractis facultatibus iuris rationibus possit. * philipp. a. et philipp. c. abascanto. * <a 245 pp. xvi k. febr. philippo a. et titiano conss.>

CJ.7.71.3: Imperatores valer., gallien.

Si pater tuus bonis cessit propter onera civilia, ipsius facultates oportet inquiri, non patrimonium, quod tibi emancipatae quaesitum dicis, inquietari. quod ut fiat, implorare aequitatem praesidis debes. * valer. et gallien. aa. et valer. nobilissimus c. lenillae. * <a 259 pp. xiii k. dec. aemiliano et basso conss.>

CJ.7.71.4pr.: Imperatores Diocletianus, Maximianus

Legis iuliae de bonis cedendis beneficium constitutionibus divorum nostrorum parentium ad provincias porrectum esse, ut cessio bonorum admittatur, notum est: non tamen creditoribus sua auctoritate dividere haec bona et iure dominii tenere , sed venditionis remedio, quatenus substantia patitur, indemnitati suae consulere permissum est. * diocl. et maxim. aa. et cc. chiloni. * < >

CJ.7.71.4.1: Imperatores Diocletianus, Maximianus

Cum itaque contra iuris rationem res iure dominii teneas eius qui bonis cessit creditorem te dicens, longi temporis praescriptione petitorem submoveri non posse manifestum est. quod si non bonis eum cessisse, sed res suas in solutum tibi dedisse monstretur, praeses provinciae poterit de proprietate tibi accommodare notionem. < >

CJ.7.71.5: Imperatores Diocletianus, Maximianus

Propter honorem municipalem vel munus bonis cedentium invidiosam admitti cessionem minime convenit, sed his obnoxios pro modo substantiae fungi. * diocl. et maxim. aa. et cc. myroni. * < >

CJ.7.71.6: Imperator Theodosius

In omni cessione bonorum ex qualibet causa facienda scrupulositate priorum legum explosa professio sola quaerenda est. idem dixit: * in omni cessione sufficit voluntatis sola professio. * theodos. a. apud acta: dixit: * <a 386 d.K.Mai.Honorio np.Et euodio conss.>

CJ.7.71.7: Imperator Justinianus

Cum et filii familias possint habere substantias, quae patribus adquiri vetitae sunt, nec non peculium vel castrense vel quod patre volente possident, quare cessio bonorum eis deneganda sit? cum, etsi nihil in suo censu hi qui in potestate sunt parentum habeant, tamen, ne patiantur iniuriam, debet bonorum cessio admitti. si enim et pater familias admittendus est propter iniuriarum timorem ad cessionis flebile veniens adiutorium, quare filiis familias utriusque sexus hoc ius denegamus? cum apertissimi iuris est et inter patres familias et alieno iuri subiectos, si quid postea eis pinguius accesserit, hoc iterum usque ad modum debiti posse a creditoribus legitimo modo avelli. * iust. a. iuliano pp. * <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.7.71.8pr.: Imperator Justinianus

Cum solito more a nostra maiestate petitur, ut ad miserabilis cessionis bonorum homines veniant auxilium et electio detur creditoribus vel quinquennale spatium eis indulgere vel bonorum accipere cessionem, salva eorum videlicet existimatione et omni corporali cruciatu semoto: quotidie dubitabatur, si quidam ex creditoribus voluerint quinquennales dare indutias, alii autem iam nunc cessionem accipere velint, qui audiendi sunt. * iust. a. iohanni pp. * <a 531 - 532>

CJ.7.71.8.1: Imperator Justinianus

In tali itaque dubitatione minime putamus esse ambiguum, quod sentimus et quod humaniorem sententiam pro duriore elegimus. et sancimus, ut vel ex cumulo debiti vel ex numero creditorum causa iudicetur. <a 531 - 532>

CJ.7.71.8.2: Imperator Justinianus

Et si quidem unus creditor aliis omnibus gravior in summa debiti inveniatur, ut omnibus in unum coadunatis et debitis eorum computatis ipse alios antecellat, ipsius sententia obtineat, sive indulgere tempus sive cessionem accipere desiderat. <a 531 - 532>

CJ.7.71.8.3: Imperator Justinianus

Si vero plures quidem sint creditores, ex diversis autem quantitatibus, et nunc amplior debiti cumulus minori summae praeferantur, sive par sive discrepans numerus est creditorum, cum non ex frequentissimo ordine feneratorum, sed ex quantitate debiti causa trutinatur. <a 531 - 532>

CJ.7.71.8.4: Imperator Justinianus

Pari autem quantitate debiti invenienda, dispari vero creditorum numero, tunc amplior pars creditorum obtineat, ut, quod pluribus placeat, hoc statueretur. <a 531 - 532>

CJ.7.71.8.5: Imperator Justinianus

Sin vero undique aequalitas emergat tam debiti quam numeri creditorum, tunc eos anteponi, qui ad humaniorem declinant sententiam non cessionem exigentes, sed indutias. <a 531 - 532>

CJ.7.71.8.6: Imperator Justinianus

Nulla quidem differentia inter hypothecarios et alios creditores quantum ad hanc electionem observanda: in rebus autem officio iudicis partiendis suam vim singulis creditoribus habentibus, quam eis legum praestabit regula. <a 531 - 532>

CJ.7.71.8.7: Imperator Justinianus

Nullo praeiudicio creditorum cuidam ex quinquennii dilatione circa temporalem praescriptionem generando. <a 531 - 532>

CJ.7.72.0. De bonis auctoritate iudicis possidendis seu venumdandis et de separationibus.

CJ.7.72.1: Imperator Antoninus

In bonis mortui potiorem esse causam legatariorum, qui eum utpote heredem convenire potuerunt, quam eorum, quibus ipse legavit, manifestum est, cum prius legatum quasi aes alienum exigitur, legatum autem a mortuo relictum post debiti detractionem inducitur. * ant. a. atticae. * <a xxx >

CJ.7.72.2: Imperator Gordianus

Est iurisdictionis tenor promptissimus indemnitatisque remedium edicto praetoris creditoribus hereditariis demonstratum, ut, quotiens separationem bonorum postulant, causa cognita impetrent. praeoptabis igitur convenientem desiderii tui fructum, si te non heredum fidem secutum, sed ex necessitate ad iudicium eos provocare demonstraveris. * gord. a. aristoni. * <a xxx >

CJ.7.72.3: Imperator Gordianus

Ex contractu, qui cessionem rerum antecessit, debitorem contra iuris rationem conveniens, cum eum aequitas auxilio exceptionis muniat ac tunc demum iteratam possis desiderare conventionem, cum tantum postea quaesiit, quod praesidem ad eius rei licentiam debeat promovere. * gord. a. claudianae. * <a xxx >

CJ.7.72.4: Imperatores Diocletianus, Maximianus

Incivile est, quod postulas, ut unus ex chirographariis creditoribus debitoris bona compellatur suscipere, satis ceteris eius creditoribus facturus. * diocl. et maxim. aa. et cc. clearchianae. * <a 293 >

CJ.7.72.5: Imperatores Diocletianus, Maximianus

Si bona debitoris tui vacare constet et haec a fisco non agnoscantur, in possessionem eorum mitti te a competenti iudice recte postulabis. * diocl. et maxim. aa. et cc. abydonio. * <a 293 xvii k. ian. aa. conss.>

CJ.7.72.6pr.: Imperatores Diocletianus, Maximianus

Pro debito creditores addici sibi bona debitoris non iure postulant. unde si quidem debitoris tui ceteri creditores pignori res acceperunt, potiores eos quam te chirographarium creditorem haberi non ambigitur. * diocl. et maxim. aa. et cc.Agathemero. * <>

CJ.7.72.6.1: Imperatores Diocletianus, Maximianus

Quod si specialiter vel generaliter nemini probentur obligatae ac sine successore communis debitor vel heres eius decessit, non dominii rerum vindicatione, sed possessione bonorum itemque venditione aequali portione pro rata debiti quantitate omnibus creditoribus consuli potest. <>

CJ.7.72.7: Imperatores Diocletianus, Maximianus

Si uxor tua pro triente patruo suo heres extitit nec ab eo quicquam exigere prohibita est, debitum a coheredibus pro besse petere non prohibetur, cum ultra eam portionem qua successit actio non confundatur. sin autem coheredes solvendo non sint, separatio postulata nullum ei damnum fieri patiatur. * diocl. et maxim. aa. et cc. domno. * <a 294 d. k. dec. cc. conss.>

CJ.7.72.8: Imperatores Diocletianus, Maximianus

In possessionem rei servandae uxor defuncti vel alii creditores missi dominium ex hac causa tenentes adipisci minime possunt. * diocl. et maxim. aa. et cc. aelidae. * <a 294 sub die vi k. ian. nicomediae cc. conss.>

CJ.7.72.9: Imperatores Diocletianus, Maximianus

Cum proponas eum contra quem supplicas ex administratione tibi negotiorum obligatum, hunc secundum iuris rationem adito rectore provinciae potes convenire. nam si ad circumscriptionem tui iuris latitat nec defendatur et eum tuum esse debitorem constat, ad exemplum edicti bonorum eius possessionem poteris impetrare: tempore autem transacto etiam venditionem eorum a competenti iudice postulare non prohiberis. * diocl. et maxim. aa. et cc. aurelio gerontio. * <a 299 d. xiiii k. sept. diocletiano vii et maximiano vi aa. conss.>

CJ.7.72.10pr.: Imperator Justinianus

Cum apud veteres quaestionem ortam invenimus super pecuniis debitis, pro quibus hypothecae non sunt constitutae, propter res ad debitorem pertinentes, dum is severiores creditores formidans sese celaverit, et illi de rebus ad eum pertinentibus competentia ingrediantur iudicia postulentque in possessionem rerum sese transmitti, si etiam alii creditores, quibus obnoxius esse videtur, possint quandam habere communionem in rerum possessione: huiusmodi dubitationem amputantes censemus per praesentem generalem divinam constitutionem, ut, si non omnes huiu smodi debita praetendentes, sed ex his certi ab iudiciali sententia in possessionem rerum mittantur, non solum hi, sed etiam alii omnes talia debita praetendentes eadem commoditate potiantur et possint cum prioribus rerum detentatoribus communionem habere in rebus, de quibus (sicut superius declaratur) prolata fuit sententia. quid enim iustius est, quam omnes, qui ad res debitoris mitti debent , esse participes huiusmodi commoditatis? * iust. a. iohanni pp. * <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.7.72.10.1: Imperator Justinianus

Ut autem non in perpetuum aliorum neglegentia illi, qui pro suis debitis alacriores creditoribus aliis ostenduntur fuisse, praegraventur, rectum nobis esse videtur tunc communionem habere in possessionem rerum alios creditores, qui non hoc peregisse noscuntur, cum praesentes quidem in una eademque degentes provincia , in qua et possessores rerum commorantur, intra duorum annorum spatia, absentes autem intra quadriennium creditoribus possessionem antelato modo detinentibus suum debitum certum faciant et expensas secundum quantitatem debitorum persolvant eis, qui sententias consecuti sunt, per sacramentum manifestandas eorum, qui eas adipiscendae gratia possessionis rerum sustinuerunt, quia et secundum debita satis eis fieri explorati iuris est. <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.7.72.10.1a: Imperator Justinianus

Post completum autem memoratum tempus nullam eis esse licentiam eos qui possessionem adepti sunt molestare vel quibusdam damnis adficere: actiones autem, quas ex legibus sibi competere putaverint, contra suos exercere debitores. <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.7.72.10.2: Imperator Justinianus

Sin autem hi qui detinent possessiones vel ex sententia iudicis res vendiderint vel alio quocumque legitimo modo omne ius, quod in isdem rebus habere noscuntur, in alias personas post definitum a nobis tempus transtulerint et certas pecunias acceperint, quidquid superfluum inventum fuerit vel amplius quam eis debetur, hoc modis omnibus necesse est eos praesentibus tabulariis signare et in cimeliarchio sanctae ecclesiae illius civitatis, in qua huiusmodi contractus celebratur, deponere: attestatione videlicet prius per memoratos tabularios conscribenda , praesente etiam eo qui res vendiderit vel in alias personas transtulerit, ut per eam manifestetur tam quantitas pecuniarum, quae pro venditione rerum vel translatione praestitae sunt, quam earum, quae superfluae post dissolutum debitum inveniantur, ut, si quis postea creditor apparuerit et debiti cautionem ostenderit, possit ex his satis sibi facere, prius scilicet rectore provinciae sine aliquo damno causae faciente examinationem et non concedente nec viros reverentissimos oeconomos vel cimeliarcham sanctae ecclesiae, in qua pecuniae deponuntur, aliquod detrimentum vel dispendium sustinere, per suam autem interlocutionem creditorem praecipiente secundum modum debiti ex depositis pecuniis suum accipere debitum. <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.7.72.10.3: Imperator Justinianus

Ut autem non liceat creditori in venditione vel translatione rerum dolum vel aliquam machinationem vel circumscriptionem facere, iubemus attestatione super hoc celebranda apud defensorem locorum gestis intervenientibus insinuari, sive tantum ex pretio, quantum debetur, sive plus sive minus colligitur, et praesentibus non tantum, sicut dictum est, tabulariis, sed etiam viro reverentissimo cimeliarcha, apud quem, si ita contigerit, superfluae pecuniae signatae deponendae sunt, iusiurandum sacrosanctis evangeliis propositis venditorem vel translatorem rerum praestare, quod neque per gratiam emptoris vel eius, ad quem res iure cessionis transferuntur, nec dolo aliquo interveniente minorem iusto rerum pretio quantitatem acceperit, sed eam, quam re vera cum omni studio potuerit invenire. <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.7.73.0. De privilegio fisci.

CJ.7.73.1: Imperator Antoninus

Bona mariti tui si ob reliqua administrationis primipili a fisco occupata sunt, res, quas tuas esse liquido probaveris, ab aliis separatae tibi restituuntur. * ant. a. eutropiae. * <a xxx >

CJ.7.73.2: Imperator Antoninus

Quamvis ex causa dotis vir quondam tuus tibi sit condemnatus, tamen si prius, quam res eius tibi obligarentur, cum fisco contraxit, ius fisci causam tuam praevenit. quod si post bonorum eius obligationem rationibus meis coepit esse obligatus, in eius bona cessat privilegium fisci. * ant. a. valerianae. * <a 213 pp. xiiii k. nov. antonino a. iiii et balbino conss.>

CJ.7.73.3: Imperator Antoninus

Si, cum pecuniam pro marito solveres, neque ius fisci in te transferri impetrasti neque pignoris causa domum vel aliud quid ab eo accepisti, habes personalem actionem nec potes praeferri fisci rationibus, a quo dicis ei vectigal denuo locatum esse, cum eo pacto universa, quae habet habuitve eo tempore, quo ad conductionem accessit, pignoris iure fisco teneantur. salva igitur indemnitate fisci debitorem tuum pro pecunia, quam pro eo fisco solvisti, more solito convenire non prohiberis. * ant. a. iulianae. * <a 213 pp. iii k. ian. antonino a. iiii et balbino conss.>

CJ.7.73.4: Imperator Antoninus

Si debitor, cuius fundum fuisse et ipse confiteris, prius eum distraxit, quam fisco aliquid debuit, inquietandum te non esse procurator meus cognoscet. nam etsi postea debitor extitit, non ideo tamen ea, quae de dominio eius excesserunt, pignoris iure fisco potuerunt obligari. * ant. a. quinto. * <a 215 pp. iii k. iul. laeto ii et cereale conss.>

CJ.7.73.5: Imperator Alexander Severus

Pecunia, quam creditor a debitore suo recepit, si postea ex iusta causa fisco restituenda erit, sine usuris debetur, quia non fenus contractum, sed suum recuperatum extraordinario iure aufertur. * alex. a. magnae. * <a 225 pp. xv k. iun. fusco et dextro conss.>

CJ.7.73.6: Imperator Gordianus

Cum patrem tuum fisci debitorem fuisse demonstres eumque nubenti tibi possessionem dedisse adleges, procuratorem ius fisci exsequentem eam iure pignoris revocare potuisse intellegis. * gord. a. severianae. * <a 240 pp. non. iul. sabino et venusto conss.>

CJ.7.73.7: Imperatores valer., gallien.

Si in te ius fisci, cum reliqua debitoris, pro quo satisfaciebas, tibi competens iudex adscripsit et transtulit, ab his creditoribus, quibus fiscus potior habetur, res quas eo nomine tenes non possunt inquietari. * valer. et gallien. aa. et valer. c. diodoro. * <a 259 pp. xv k. iun. aemiliano et basso conss.>

CJ.7.74.0. De privilegio dotis.

CJ.7.74.1: Imperatores Severus, Antoninus

Scire debes privilegium dotis, quo mulieres utuntur in actione de dote, ad heredes non transire. * sev. et ant. aa. firmo. * <a 209 pp. k. mai. pompeiano et avito conss.>

CJ.7.75.0. De revocandis his quae per fraudem alienata sunt.

CJ.7.75.1: Imperator Antoninus

Si heres post aditam hereditatem ad eum cui cessit corpora hereditaria transtulit, creditoribus permansit obligatus. si igitur in fraudem tuam id fecit, bonis eius excussis usitatis actionibus, si tibi negotium fuerit gestum, ea quae in fraudem alienata probabuntur revocabis. * ant. a. caesiae. * <a 213 pp. ii id. oct. antonino a. iiii et balbino conss.>

CJ.7.75.2: Imperator Alexander Severus

Si successione patris abstenta fuisti, ob ea quae in dotem data sunt convenire te creditores nequeunt, quibus pignerata in dotem data non docentur, nisi bonis defuncti non sufficientibus in fraudem creditorum dotem constitutam probabitur. * alex. a. symphorianae. * <a 232? pp. x k. iul. probo et maximo conss.>

CJ.7.75.3: Imperatores Diocletianus, Maximianus

Si paterna hereditate abstinuisti nec quicquam in fraudem creditorum ex bonis eius in te donationis iure transscriptum est, a privatis creditoribus praeses provinciae conveniri te non patietur. * diocl. et maxim. aa. acyndino. * <a 290 pp. x k. iul. ipsis iiii et iii aaa. conss.>

CJ.7.75.4: Imperatores Diocletianus, Maximianus

Filios debitoris ei succedentes velut in creditorum fraudem alienatorum facultatem revocandi non habere notissimi iuris est. * diocl. et maxim. aa. et cc. epagatho. * <a 293 subscripta x k. mai. aa. conss.>

CJ.7.75.5: Imperatores Diocletianus, Maximianus

Ignoti iuris non est adversus eum, qui sententia condemnatus intra statutum tempus satis non fecit nec defenditur, bonis possessis itemque distractis per actionem in factum contra emptorem, qui sciens fraudem comparavit, et eum, qui ex lucrativo titulo possidet, scientiae mentione detracta creditoribus esse consultum. * diocl. et maxim. aa. et cc. crescentino. * <a 293 s. x k. nov. aa. conss.>

CJ.7.75.6: Imperatores Diocletianus, Maximianus

Si actu sollemni praecedentem obligationem peremisti, perspicis adversus fraudatorem intra annum in quantum facere potest vel dolo malo fecit, quo minus possit , edicto perpetuo tantum actionem permitti. * diocl. et maxim. aa. et cc. menandrae. * <a xxx >

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CJ.8.58.0. De iure liberorum.

CJ.8.1.0. De interdictis.

CJ.8.1.1: Imperator Alexander Severus

Cum proponas radicibus arborum in vicina agathangeli area positis crescentibus fundamentis domus tuae periculum adferri, praeses ad exemplum interdictorum, quae in albo proposita habet: " si arbor in alienas aedes impendebit", item: " si arbor in alienum agrum impendebit", quibus ostenditur ne per arboris quidem occasionem vicino nocere oportere, rem ad suam aequitatem rediget. * alex. a. apro evocato. * <a 224 pp. vii k. april. iuliano et crispino conss.>

CJ.8.1.2: Imperatores valer., gallien.

Praeses provinciae in eum, qui eiusdem provinciae non est, nec ex interdicto potest cognoscere. * valer. et gallien. aa. messiae. * <a 260 pp. vii k. mai. saeculare et donato conss.>

CJ.8.1.3: Imperatores Diocletianus, Maximianus

Incerti iuris non est orta proprietatis et possessionis lite prius possessionis decidi oportere quaestionem competentibus actionibus, ut ex hoc ordine facto de dominii disceptatione probationes ab eo qui de possessione victus est exigantur. interdicta autem licet in extraordinariis iudiciis proprie locum non habent, tamen ad exemplum eorum res agitur. * diocl. et maxim. aa. et cc. pompeiano. * <a 293 subscripta v k. ian. sirmi aa. conss.>

CJ.8.1.4: Imperatores Arcadius, Honorius

Si quis quodlibet interdictum efflagitet, ruptis veteribus ambagibus inter ipsa cognitionum auspicia rationem exprimere ac suas adlegationes iubeatur proponere. * arcad. et honor. aa. aemiliano pu. * <a 406 d. xiii k. aug. constantinopoli arcadio a. vi et probo conss.>

CJ.8.2.0. Quorum bonorum.

CJ.8.2.1: Imperatores Severus, Antoninus

Hereditatem eius, quem patrem tuum fuisse dicis, petiturus iudicibus qui super ea re cognituri erunt de fide intentionis adlega. quamvis enim bonorum possessionem ut praeteritus agnovisti, tamen interdicto quorum bonorum non aliter possessor constitui poteris, quam si te defuncti filium esse et ad hereditatem vel bonorum possessionem admissum probaveris. * sev. et ant. aa. .To. * <a 197 pp. viii k. ian. laterano et rufino conss.>

CJ.8.2.2: Imperatores Diocletianus, Maximianus

Si ex edicto sororis patruelis intestato sine liberis defunctae recte petita bonorum possessione quaesisti successionem ac negotium integrum est, quae cum moreretur eius fuerunt, secundum edicti quorum bonorum tenorem ab his, qui pro herede vel pro possessore possident dolove malo fecerint, quo magis desierint possidere, tibi rector provinciae restitui efficiet. * diocl. et maxim. aa. et cc. marco. * <a 294 s. vi k. april. cc. conss.>

CJ.8.2.3pr.: Imperatores Arcadius, Honorius

Constat virum a bonis intestate uxoris superstitibus consanguineis esse extraneum, cum prudentium omnium responsa et lex ipsa naturae successores eos faciat. * arcad. et honor. aa. petronio vic. * <a 395 d. vi k. aug. mediolani olybrio et probino conss.>

CJ.8.2.3.1: Imperatores Arcadius, Honorius

Ergo iubemus, ut omnibus frustrationibus amputatis per interdictum quorum bonorum in petitorem corpora transferantur, secundaria actione proprietatis non exclusa. <a 395 d. vi k. aug. mediolani olybrio et probino conss.>

CJ.8.3.0. Quod legatorum.

CJ.8.3.1pr.: Imperatores Diocletianus, Maximianus

Heredi scripto satis idonec lege falcidia, si exhausta legatis successio probetur, per quartae retentionem prospectum est. * diocl. et maxim. aa. et cc. latinae. * <a 293 d. xvi k. ian. aa. conss.>

CJ.8.3.1.1: Imperatores Diocletianus, Maximianus

Unde si legatarius vel fideicommissarius non consentiente patre tuo, quem adseveras testatori successisse et bonorum possessionem accepisse, relicta sibi legata vel fideicommissa detinuit, secundum sententiam interdicti, quod adversus legatarios scriptis heredibus propositum est, oblata satisdatione, quam praestari oportet, in possessione constitui, ut ita retentione competenti utaris, experiri potes. <a 293 d. xvi k. ian. aa. conss.>

CJ.8.4.0. Unde vi.

CJ.8.4.1: Imperatores Diocletianus, Maximianus

Recte possidenti ad defendendam possessionem, quam sine vitio tenebat, inculpatae tutelae moderatione illatam vim propulsare licet. * diocl. et maxim. aa. et cc. theodoro. * <a 290 pp. xv k. dec. ipsis iiii et iii aa. conss.>

CJ.8.4.2: Imperatores Diocletianus, Maximianus

Vi pulsos restituendos esse interdicti exemplo, si necdum annus excessit, certissimi iuris est, et heredes teneri in tantum, quantum ad eos pervenit. * diocl. et maxim. aa. et cc. alexandro. * <a 293 s. aa. conss.>

CJ.8.4.3: Imperatores Diocletianus, Maximianus

Auctoritatem vobis rescripti nostri tenendae possessionis, quam vos per violentiam adeptas profitemini, commodari nimis improbe postulatis. * diocl. et maxim. aa. et cc. ulpiae et proclinae. * <a 294 s. viii id. april. cc. conss.>

CJ.8.4.4: Imperatores Diocletianus, Maximianus

Si de possessione vi deiectus es, eum et legis iuliae vis privatae reum postulare et ad instar interdicti unde vi convenire potes, quo reum causam omnem praestare, in qua fructus etiam, quos vetus possessor percipere potuit, non quos praedo percepit, venire non ambigitur. * diocl. et maxim. aa. et cc. hygino. * <a 294 s. iiii id. april. sirmi cc. conss.>

CJ.8.4.5: Imperator Constantinus

Invasor locorum poena teneatur legitima, si tamen vi loca eundem invasisse constiterit. nam si per errorem aut incuriam domini loca ab aliis possessa sunt, sine poena possessio restitui debet. * constant. a. ad tertullianum. * <a 330 d. vi k. mart. gallicano et symmacho conss.>

CJ.8.4.6pr.: Imperatores Gratianus, Valentinianus, Theodosius

Meminerint cuncti, sive vulgato rescripto mansuetudinis nostrae sive sententia cuiuslibet iudicis utantur in causis, conveniendos dominos locorum esse aut, si forte defuerint, actores eorum ad insinuandas sententias procuratoresque quaerendos, ne inde iniuriarum nascatur occasio, unde iura nascuntur. quod si praecepta nostra implere neglexerint, omni negotio, de quo iurgare coeperant, privabuntur. * grat. valentin. et theodos. aaa. pancratio pu. * <a 382 d. prid. non. april. antonio et syagrio conss.>

CJ.8.4.6.1: Imperatores Gratianus, Valentinianus, Theodosius

Sin autem habito plerumque colludio curatores vel tutores minorum his rem debitam ea occasione pervadant, ut pupillis vel adultis iurgandi copia et fructus adimatur, his eatenus subvenimus, ut eosdem non atterat damno culpa temeritatis alienae, sed ilico quidem possessio ei a quo est ablata reddatur, curatores autem vel tutores aeterna deportatione punitos bonorum quoque publicatio persequatur. <a 382 d. prid. non. april. antonio et syagrio conss.>

CJ.8.4.7: Imperatores Valentinianus, Theodosius, Arcadius

Si quis in tantam furoris pervenit audaciam, ut possessionem rerum apud fiscum vel apud homines quoslibet constitutarum ante eventum iudicialis arbitrii violenter invaserit, dominus quidem constitutus possessionem quam abstulit restituat possessori et dominium eiusdem rei amittat: sin vero alienarum rerum possessionem invasit, non solum eam possidentibus reddat, verum etiam aestimationem earundem rerum restituere compellatur. * valentin. theodos. et arcad. aaa. ad messianum com. rer. privat.* <a 389 d. xvii k. iul. treviris timasio et promoto conss.>

CJ.8.4.8: Imperatores Arcadius, Honorius

Momentariae possessionis interdictum, quod non semper ad vim publicam pertinet vel privatam, mox audiri, interdum etiam sine inscriptione, meretur. * arcad. et honor. aa. pasiphilo. * <a 395 d. viii k. ian. mediolani olybrio et probino conss.>

CJ.8.4.9: Imperator Zeno

Si quando vis iudicio fuerit patefacta, dein super rebus abreptis vel invasis vel damno tempore impetus quaestio proponatur, si non potuerit qui vim sustinuit quae perdidit singula comprobare, taxatione ab iudice facta pro personarum atque negotii qualitate, sacramento aestimationem rerum quas perdidit manifestet nec ei liceat ultra taxationem ab iudice factam iurare: et quod huiusmodi iureiurando dato fuerit declaratum, iudicem condemnare oportet. * zeno a. sebastiano pp. * <a 477 d. id. dec. constantinopoli post consulatum armati vc.>

CJ.8.4.10pr.: Imperator Zeno

Non ab re est, quemadmodum possessionis alienae invasores tam vetus quam praesens sacra constitutio censuit puniendos, nec conductoribus et possessionis alienae detentoribus impune procedere, si locatoribus forte vel possessionem rerum suarum, quam apud alios precario modo esse concesserant, recuperare secundum leges volentibus, cum nulla sibimet cognita legibus adlegatio competeret, duxerint resistendum, et non protinus, id est non expectato iudiciorum ordine, alienam possessionem recte eam recuperantibus cedere patiantur. * zeno a. sebastiano pp. * <a 484 d. v k. april. constantinopoli theodorico cons.>

CJ.8.4.10.1: Imperator Zeno

Eos namque iubemus pro tanta suae iniquitatis impudentia, si cognitionis iudiciariae eventu fuerint condemnati, rei, cuius possessionem sponte restituere usque ad definitivam sententiam minime passi sunt, aestimationem victrici parti una cum ipsa re praebere compelli. <a 484 d. v k. april. constantinopoli theodorico cons.>

CJ.8.4.11pr.: Imperator Justinianus

Cum quaerebatur inter illyricianam advocationem, quid fieri oporteret propter eos, qui vacuam possessionem absentium sine iudiciali sententia detinuerunt, quia veteres leges nec unde vi interdictum nec quod vi aut clam vel aliam quandam actionem ad recipiendam talem possessionem definiebant, violentia in ablatam possessionem minime praecedente, nisi domino tantummodo in rem actionem exercere permittentes: nos non concedentes aliquem alienas res vel possessiones per suam auctoritatem usurpare sancimus talem possessorem ut praedonem intellegi et generali iurisdictione ea teneri, quae pro restituenda possessione contra huiusmodi personas veteribus declarata est legibus. ridiculum etenim est dicere vel audire , quod per ignorantiam alienam rem aliquis quasi propriam occupaverit. * iust. a. iohanni pp. * <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.8.4.11.1: Imperator Justinianus

Omnes autem scire debent, quod non suum est, hoc ad alios modis omnibus pertinere, cum talis dispositio in furti actione iam dudum veteribus legibus definita est dicentibus: si quis alienam rem adversus domini voluntatem attigerit, furti actione tenetur. <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.8.4.11.2: Imperator Justinianus

His videlicet, quae super recipienda possessione a nobis disposita sunt, locum habentibus, si non ex die, ex quo possessio detenta est, triginta annorum excesserunt curricula. <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.8.5.0. Si per vim vel alio modo absentis perturbata sit possessio.

CJ.8.5.1pr.: Imperator Constantinus

Iudices absentium, qui cuiuslibet rei possessione privati sunt, suscipiant in iure personam et auctoritatis suae formidabile ministerium obiciant atque ita tueantur absentes, ut id solum diligenter inquirant, an eius, qui quolibet modo peregrinatur, possessio ablata est, quam propinquus vel parens vel proximus vel amicus vel colonus vel libertus seu servus quolibet titulo retinebat, nec eos, qui deiecti sunt absentium nomine possidentes, quia minime ipsis dictio causae mandata sit, ab experiunda re secludant, nec, si servi sint, eorum reiciant in iure personas, quia huiusmodi condicionis hominibus causas orare fas non sit: sed post elapsa quoque spatia recuperandae possessionis legibus praestituta litigium eis inferentibus largiri convenit, ut eos momentariae perinde possessioni sine ulla cunctatione restituant, ac si reversus dominus litigasset. * const. a. severo. * <a 326 d. x k. nov. mediolani constantino a. vii et constantio c. con ss.>

CJ.8.5.1.1: Imperator Constantinus

Cui tamen quolibet tempore reverso actionem recuperandae possessionis indulgemus , quia fieri potest, ut restitutio propter servulos infideles vel neglegentes propinquos vel parentes vel proximos vel amicos et colonos vel libertos interea differatur. absentibus enim officere non debet tempus emensum, quod recuperandae possessioni legibus praestitutum est, sed reformato statu, qui per iniuriam sublatus est, omnia quae supererunt ad disceptationem litigii immutilata permaneant: iudicio servato iustis legitimisque personis, cum valde sufficiat possessionem tenentibus absentium nomine contra praesentium violentiam subveniri. <a 326 d. x k. nov. mediolani constantino a. vii et constantio c. conss.>

CJ.8.5.2: Imperatores Arcadius, Honorius

Nec imperiale responsum, quod supplicatio litigatoris obtinuit, nec interlocutio cognitoris ex quacumque parte innovare possessionis statum eo qui rem tenet absente permittitur, quia negotiorum merita partium adsertione panduntur. * arcad. et honor. aa. petronio vic. hispaniarum. * <a 397 d. xv k. ian. mediolano caesario et attico conss.>

CJ.8.6.0. Uti possidetis.

CJ.8.6.1: Imperatores Diocletianus, Maximianus

Uti possidetis fundum de quo agitur, cum ab altero nec vi nec clam nec precario possidetis, rector provinciae vim fieri prohibebit ac satisdationis vel transferendae possessionis edicti perpetui forma servata de proprietate cognoscet. * diocl. et maxim. aa. et cc. cyrillo. * <a 294 subscripta iii id. oct. nicomediae cc. conss.>

CJ.8.7.0. De tabulis exhibendis.

CJ.8.7.1: Imperatores valer., gallien.

Si in potestate patris fuerunt impuberes filii et vos eis estis substituti atque ita ad vos intra pubertatem illis decedentibus coepit hereditas pertinere, de exhibendis testamenti tabulis interdicto uti potestis. * valer. et gallien. aa. germano. * <a 260 pp. vii k. mai. saeculari et donato conss.>

CJ.8.8.0. De liberis exhibendis seu de ducendis et de homine libero exhibendo.

CJ.8.8.1: Imperator Antoninus

Si, ut proponis, cum tua e potestatis esses, super rebus matris obtinuisti, potes eos qui tibi condemnati sunt convenire. quod si extitit, qui te filium et in sua potestate esse contendit, interdicto in eam rem proposito de fide intentionis eius quaeretur. * ant. a. iustino. * <a 212 pp. vi id. april. duobus aspris conss.>

CJ.8.8.2: Imperatores Diocletianus, Maximianus

Adi praesidem provinciae ac postula filios tuos exhiberi. * diocl. et maxim. aa. et cc. cyrillae. * <a 293 subscripta v id. april. byzantii aa. conss.>

CJ.8.8.3: Imperatores Diocletianus, Maximianus

Si ad instar interdicti de exhibenda filia philippi eum conveniendum putaveris, rector aditus provinciae suam vobis accomodabit notionem. * diocl. et maxim. aa. et cc. euodiae. * <a 293 s. xii k. dec. nicomediae aa. conss.>

CJ.8.9.0. De precario et de salviano interdicto.

CJ.8.9.1: Imperator Gordianus

Si te non remittente pignus debitor tuus ea quae tibi obnoxia sunt venumdedit, integrum tibi ius est ea persequi, non interdicto salviano (id enim tantummodo adversus conductorem debitoremve competit), sed serviana actione vel quae ad exemplum eius instituitur utilis adversus emptorem exercenda. * gord. a. aristoni. * <a 238 pp. vi id. sept. pio et pontiano conss.>

CJ.8.9.2: Imperatores Diocletianus, Maximianus

Habitantis precario heredes ad restituendum habitaculum teneri contra eos interdicto proposito manifeste declaratur. * diocl. et maxim. aa. et cc. fabricio. * <a 293 s. k. dec. sirmi aa. conss.>

CJ.8.10.0. De aedificiis privatis.

CJ.8.10.1: Imperatores Antoninus, verus

Et balneum, ut desideras, instruere et aedificium ei superponere potes, observata tamen forma, qua ceteri super balnea aedificare permittuntur, id est ut concamaratis superinstruas et ipsa concameres nec modum usitatum altitudinis excedas. * ant. et verus aa. tauro. * <a xxx pp. sine die et consule.>

CJ.8.10.2: Imperator Alexander Severus

Negotiandi causa aedificia demoliri et marmora detrahere edicto divi vespasiani et senatus consulto vetitum est. ceterum de alia domo in aliam transferre quaedam licere exceptum est: sed nec dominis ita transferre licet, ut integris aedificiis depositis publicus deformetur adspectus. * alex. a. diogeni. * <a 222 pp. xi k. ian. alexandro a. cons.>

CJ.8.10.3: Imperator Alexander Severus

An in totum ex ruina domus licuerit non eandem faciem in civitate restituere, sed in hortum convertere, et an hoc consensu tunc magistratuum non prohibentium, item vicinorum factum sit, praeses, probatis his quae in oppido frequenter in eodem genere controversiarum servata sunt, causa cognita statuet. * alex. a. apro evocato. * <a 224 pp. vii k. april. iuliano et crispino conss.>

CJ.8.10.4: Imperator Philippus

Si, ut proponis, socius aedificii ad refectionem eius sumptus conferre detractat , non necessarie extra ordinem tibi subveniri desideras. etenim si solus aedificaveris nec intra quattuor mensuum tempora cum centesimis nummus pro portione socii erogatus restitutus fuerit vel, quominus id fieret, per socium id stetisse constiterit, ius dominii pro solido vindicare vel obtinere iuxta placitum antiquitus poteris. * philipp. a. et philipp. c. victori. * <a 245 pp. iiii k. april. philippo a. et titiano conss.>

CJ.8.10.5: Imperatores Diocletianus, Maximianus

Si is, contra quem precem fundis, sciens prudensque soli partem ad te petinere, non quasi socius vel collega communis operis sollicitudine solidam balneorum extructionem ea mente, ut sumptus pro portione tua reciperet, adgressus est, sed totius loci dominium usurpare et collapsum balneum refabricare enisus est, cum aedificia quae alieno loco imponuntur solo cedant nec impensae his qui improbe id fecerint restitui debeant, antiquato divi hadriani edicto praeses provinciae memor iuris publici in dirimenda disceptatione legum placita custodiet. * diocl. et maxim. aa. octavio. * <a 290 pp. vi non. oct. ipsis iiii etiii aa. conss.>

CJ.8.10.6pr.: Imperator Constantinus

Si quis post hanc legem civitate spoliata ornatum, hoc est marmora vel columnas, ad rura transtulerit, privetur ea possessione, quam ita ornaverit. * const. a. helpidio agenti vicem pp. * <a 321 d. vi k. iun. viminacii crispo ii et constantino ii conss.>

CJ.8.10.6.1: Imperator Constantinus

Si quis autem ex alia in aliam civitatem labentium parietum marmora vel columnas de propriis domibus in proprias transferre voluerit, quoniam utrobique(!) haec esse publicum decus est, licenter hoc faciat: data similiter facultate etiam de possessione ornatum huiusmodi ad possessionem aliam transferendi, quamvis per muros vel etiam per mediam civitatem ea transferri necesse sit, ita ut ea solummodo quae illata fuerint civitatibus exportentur. <a 321 d. vi k. iun. viminacii crispo ii et constantino ii conss.>

CJ.8.10.7: Imperator Julianus

Nemini columnas vel statuas cuiuscumque materiae ex alia eademque provincia vel auferre liceat vel movere. * iul. a. ad avitianum vic. africae. * <a 362. 363 d. vi k. nov. iuliano a. iiii et sallustio conss.>

CJ.8.10.8pr.: Imperatores Valens, Gratianus, Valentinianus

Singularum urbium curiales etiam inviti vel reparare intra civitates quas olim habuerint domus vel ex novo aedificare cogantur, illic semper muniis inservituri et aucturi propriarum frequentiam civitatum. * valens grat. et valentin. aaa. ad modestum pp. * <a 377 d. xiii k. nov. gratiano a. iiii et merobaude conss.>

CJ.8.10.8.1: Imperatores Valens, Gratianus, Valentinianus

Possessores vero, qui non erunt curiales, in urbibus, in quibus domus possident, easdem domos dirutas neglectasque reparent, iudiciaria ad conservandum hoc praeceptum auctoritate retinendi. <a 377 d. xiii k. nov. gratiano a. iiii et merobaude conss.>

CJ.8.10.9: Imperatores Arcadius, Honorius, Theodosius

Si cui loci proprietas aedificandi iuxta publicas aedes animum dederit, quindecim pedum spatio interiecto inter publica ac privata aedificia ita sibi noverit fabricandum, ut tali intervallo et publicae aedes a periculo vindicentur et privatus aedificator velut perperam fabricato loco destructionis futurae quandoque non timeat detrimentum. * arcad. honor. et theodos. aaa. aemiliano pu. * <a 406 d. xi k. nov. constantinopoli arcadio vi et probo conss.>

CJ.8.10.10: Imperatores Honorius, Theodosius

Per provincias mesopotamiam osroenam euphratensem syriam secundam phoenicen libanensem ciliciam secundam utramque armeniam utramque cappadociam pontum polemoniacum atque hellenopontum, ubi magis hoc desideratur, ceterasque provincias cunctis volentibus permittatur murali ambitu fundos proprios seu loca sui dominii constituta vallare. * honor. et theodos. aa. monaxio pp. * <a 420 d. iii non. mai. constantinopoli theodosio a. viiii et constantio iii conss.>

CJ.8.10.11pr.: Imperatores Honorius, Theodosius

Maeniana, quae graece ezwstas appellant, sive olim constructa sive in posterum in provinciis construenda, nisi spatium inter se per decem pedes liberi aeris habuerint, modis omnibus detruncentur. * honor. et theodos. aa. severino pp. * <a 423 d. iii non. mai. constantinopoli theodosio a. viiii et constantio iii conss.>

CJ.8.10.11.1: Imperatores Honorius, Theodosius

In his vero locis, in quibus aedificia privatorum horreis publicis videntur obiecta, obstructione maenianorum quindecim pedum intervalla serventur. <a 423 d. iii non. mai. constantinopoli theodosio a. viiii et constantio iii conss.>

CJ.8.10.11.2: Imperatores Honorius, Theodosius

Quem intercapedinis modum aedificaturis quoque proponimus, ita ut, si quis intra definitum spatium, id est decem pedum mensuram, aedificare vel intra quindecim pedum maenianum possidere temptaverit, sciat non solum fabricam demoliendam, sed etiam ipsam domum fisco nostro adscribendam. <a 423 d. iii non. mai. constantinopoli theodosio a. viiii et constantio iii conss.>

CJ.8.10.13: Imperator Justinianus

Cum dubitabatur, utrum constitutio zenonis divae memoriae ad adamantium praefectum urbis scripta, quae de servitutibus loquitur, localis est et huic florentissimae urbi dedicata et debent illius quidem iura in hac observari, antiqua vero, quae contraria sunt, locum habere in provinciis: indignum esse nostro tempore putantes aliud ius in hac regia civitate de huiusmodi observari, aliud apud nostros esse provinciales, sancimus eandem constitutionem in omnibus urbibus romani imperii obtinere et secundum eius definitionem omnia procedere et, si quid ius ex ea lege innovatum est a vetere dispositione, et hoc in provinciis a praesidibus earum observari: ceteris videlicet omnibus, quae non per zenonianam legem innovata sunt, sed veteribus legibus comprehensa, in sua firmitate in omni loco manentibus. * iust. a. iohanni pp. * <a 531 d. k. sept. constantinopoli post con sulatum lampadii et orestis vv. cc.>

CJ.8.10.14pr.: Imperator Justinianus

De operis novi nuntiatione quandam antiquis ortam fuisse dubitationem nostra cognovit tranquillitas, dicentibus, si quis denuntiationem ad inhibendum opus miserit, non posse eum post annum elapsum, ex quo denuntiatio missa est, iterum aedificationem prohibere. * iust. a. iohanni pp. * <a 532 d. xii k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.8.10.14.1: Imperator Justinianus

Quod dupliciter iniquum nobis esse videtur. sive etenim non recte opus prohibuerit, decet non per totum annum hoc impediri, sive recte denuntiatioem emiserit, etiam post annum licentiam habere aedificationem prohibere. <a 532 d. xii k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.8.10.14.2: Imperator Justinianus

Talem igitur iniquitatem inhibentes sancimus, si quis denuntiationem emiserit, in hac quidem regia urbe praefectum urbi festinare, in provincia vero rectorem eius, intra trium mensum spatium causam dirimere: sin vero aliquid fuerit quocumque modo ad decisionem ambiguitatis impedimentum, licentiam habere eum, qui aedificationem deproperat, opus de quo agitur efficere, prius fideiussore ab eo dato officio urbicariae praefecturae vel provinciali. ut, si non recte aedificaverit, omne opus, quod post denuntiationem fecerit, suis sumptibus destruet. sic enim et opera non per inanes denuntiationes prohibebuntur et recte denuntiantibus consuletur. <a 532 d. xii k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.8.11.0. De operibus publicis.

CJ.8.11.1: Imperatores Constantinus, constans

Plurimi immunitates operum publicorum concessione iudicum adepti sunt: et ideo iubemus in posterum illicitas immunitates nullius esse momenti. * constant. et constans aa. ad catullinum. * <a 338 d. vi k. aug. sirmi urso et polemio conss.>

CJ.8.11.2: Imperatores Constantinus, constans

Quae operibus publicis impensa constiterit, accepto ferri oportere cognoscas. * const. et constans aa. ad Marcellinum com. orientis. * <a 349 d. v non. oct. constantinopoli limenio et catullino conss.>

CJ.8.11.4: Imperator Julianus

Praetoria iudicum et domos publicas oportet publico iuri atque usui semper vindicari. * iul. a. edicto praef. aegypti. * <a 362 pp. iiii non. dec. antiochiae mamertino et nevitta conss.>

CJ.8.11.5pr.: Imperatores Valentinianus, Valens

Intra urbem romam veterem et novam nullus iudicum novum opus informet, quotiens serenitatis nostrae arbitria cessabunt, nisi ex suis pecuniis huiusmodi opus construere voluerit. * valentin. et valens aa. ad symmachum pu. * <a 364 d. viii k. iun. philippis divo ioviano et varroniano conss.>

CJ.8.11.5.1: Imperatores Valentinianus, Valens

Ea tamen instaurandi, quae iam deformibus ruinis intercidisse dicuntur, universis licentiam damus. <a 364 d. viii k. iun. philippis divo ioviano et varroniano conss.>

CJ.8.11.6: Imperatores Gratianus, Valentinianus, Theodosius

Praescriptio temporis iuri publico non debet obsistere, sed nec rescripta quidem. atque ideo diruenda sunt omnia, quae per diversas urbes vel in foro vel in quocumque publico loco contra ornatum et commodum ac decoram faciem civitatis extructa noscuntur. * grat. valentin. et theodos. aaa. ad proculum. * <a 383 d. iii id. iun. constantinopoli merobaude ii et saturnino conss.>

CJ.8.11.7: Imperatores Gratianus, Valentinianus, Theodosius

Ad portus et aquae ductus et murorum instaurationem sive extructionem omnes certatim facta operarum collatione instare debent neque aliquis ab huiusmodi consortio dignitatis privilegiis excusari. * grat. valentin. et theodos. aaa. cynegio pp. * <a 384 d. xv k. febr. constantinopoli ricomere et clearcho conss.>

CJ.8.11.8: Imperatores Gratianus, Valentinianus, Theodosius

Omnes, quibus vel cura mandata fuerit operum publicorum vel pecunia ad extructionem solito more credita, usque ad annos quindecim ab opere perfecto cum suis heredibus teneantur obnoxii, ita ut, si quid vitii in aedificatione intra praestitutum tempus provenerit, de eorum patrimonio (exceptis tamen his casibus, qui sunt fortuiti) reformetur. * grat. valentin. et theodos. aaa. et arcad. a. cynegio pp. * <a 385 d. iii non. febr. constantinopoli arcadio a. et bautone conss.>

CJ.8.11.9pr.: Imperatores Theodosius, Arcadius, Honorius

Si quando concessa a nobis licentia fuerit extruendi, id sublimis magnificentia tua sciat esse servandum, ut nulla domus inchoandae publicae fabricae gratia diruatur, nisi usque ad quinquaginta libras argenti pretii aestimatione taxabitur. * theodos. arcad. et honor. aaa. aureliano pu. * <a 393 d. iii k. mart. constantinopoli theodosio a. iii et abundantio conss.>

CJ.8.11.9.1: Imperatores Theodosius, Arcadius, Honorius

De aedificiis vero maioris pretii ad nostram scientiam referatur, ut, ubi amplior poscitur quantitas, imperialis extet auctoritas. <a 393 d. iii k. mart. constantinopoli theodosio a. iii et abundantio conss.>

CJ.8.11.10: Imperatores Theodosius, Arcadius, Honorius

Si qui iudices perfecto publicis pecuniis operi suum nomen sine nostri numinis mentione scripserint, maiestatis teneantur obnoxii. * theodos. arcad. et honor. aaa. rufino pp. * <a 394 d. iii non. iul. constantinopoli arcadio iii et honorio ii aa. conss.>

CJ.8.11.11: Imperatores Arcadius, Honorius

Ne splendidissimae urbes vel oppida vetustate labantur, de reditibus fundorum iuris rei publicae tertiam partem reparationi publicorum moenium et thermarum subustioni deputamus. * arcad. et honor. aa. eusebio com. sacrum larg. * <a 395 d. xi k. iul. mediolani olybrio et probino conss.>

CJ.8.11.12: Imperatores Arcadius, Honorius

Omnes provinciarum rectores litteris moneantur, ut sciant ordines atque incolas urbium singularum muros vel novos debere facere vel veteres firmius renovare: scilicet hoc pacto impendiis ordinandis, ut adscriptio currat pro viribus singulorum, deinde adscribantur pro aestimatione futuri operis territoria civium, ne plus poscatur aliquid, quam necessitas imperaverit, neve minus, ne instans impediatur effectus: oportet namque per singula non sterilia iuga certa quaeque distribui, ut par cunctis praebendorum sumptuum necessitas imponatur: nemini excusatione vel alia praesumptione ab huiusmodi immunitate praebenda. * arcad. et honor. aa. caesario pp. * <a 396 d. viiii k. april. arcadio iiii et honorio iii aa. conss.>

CJ.8.11.13pr.: Imperatores Arcadius, Honorius

Nemo iudicum in id temeritatis erumpat, ut inconsulta pietate nostra novi aliquid operis existimet inchoandum, vel ex diversis operibus ornamenta aut marmora vel quamlibet speciem, quae fuisse in usu vel ornatu probabitur civitatis, eripere vel alio transferre sine iussu tuae sublimitatis audeat. etenim si quis contra fecerit, sex libris auri multabitur. * arcad. et honor. aa. theodoro pp. * <a 398 d. k. ian. mediolani honorio a. iiii et eutychiano conss.>

CJ.8.11.13.1: Imperatores Arcadius, Honorius

Similis etiam condemnatio ordines civitatum manebit, nisi ornamentum genitalis patriae decreti huius auctoritate defenderint. <a 398 d. k. ian. mediolani honorio a. iiii et eutychiano conss.>

CJ.8.11.13.2: Imperatores Arcadius, Honorius

Horreorum autem vel stabulorum fabricas arbitratu proprio provinciarum iudices studio laudandae devotionis adripiant. <a 398 d. k. ian. mediolani honorio a. iiii et eutychiano conss.>

CJ.8.11.14: Imperatores Arcadius, Honorius

Aedificia, quae vulgo parapessia nuncupantur, vel si qua alia opera moenibus vel publicis operibus sociata cohaerent, ut ex his incendium vel insidias vicinitas reformidet aut angustentur spatia platearum vel minuatur porticibus latitudo, dirui ac prosterni praecipimus. * arcad. et honor. aa. severo pu. * <a 398 d. v id. oct. constantinopoli honorio a. iiii et eutychiano conss.>

CJ.8.11.15: Imperatores Arcadius, Honorius

Si aliquando homines emergant, qui a nostra clementia opus publicum sibi praeberi postulaverint, non nisi diruta penitusque destructa et quae parum sunt in usu civitatium percipiant: intimandis huiusmodi rescriptis iudicio amplissimae tuae sedis. * arcad. et honor. aa. eutychiano pp. * <a 398 d. id. dec. honorio a. iiii et eutychiano conss.>

CJ.8.11.16: Imperatores Arcadius, Honorius

Si quando usus exegerit vel porticus vel quaslibet aedes aetatis senio seu fortuitis concussas casibus reparari, liceat etiam inconsulta clementia nostra cum reverentia sui imaginem deponere vel nostram vel retro principum, reportatamque post refecta aedificia loco proprio denuo collocare. * arcad. et honor. aa. et teodos. a. aemiliano pu. * <a 406 d. v k. iul. constantinopoli arcadio a. vi et probo conss.>

CJ.8.11.17: Imperatores Honorius, Theodosius

Quicumque locus in palatio huius urbis privatis aedificiis incommode occupatus est, is quam primum subrutis omnibus quae in eo sunt aedificiis palatio reformetur, quod privatorum non est parietibus coartandum (nam imperio magna ab universis secreta debentur), ut hi tantum locum habeant habitandi, quos legitimus maiestatis nostrae usus et rei publicae disciplina delegit: in futurum etiam universis ab huiusmodi usurpatione prohibendis. * honor. et theodos. aa. monaxio pu. * <a 409 d. viiii k. mart. constantinopoli honorio viii et theodosio iii aa. conss.>

CJ.8.11.18pr.: Imperatores Honorius, Theodosius

Turres novi muri, qui ad munitionem splendidissimae urbis extructus est, completo opere praecipimus eorum usui deputari, per quorum terras idem murus studio ac provisione tuae magnitudinis ex nostrae serenitatis arbitrio celebratur. * honor. et theodos. aa. anthemio pp. * <a 413 d. prid. non. april. lucio vc. cons.>

CJ.8.11.18.1: Imperatores Honorius, Theodosius

Eadem lege in perpetuum et condicione servanda, ut annis singulis hi vel ad quorum iura terrulae demigraverint, proprio sumptu eorum instaurationem sibimet intellegant procurandam, eorumque usu publico beneficio potientes curam reparationis ac sollicitudinem ad se non ambigant pertinere. <a 413 d. prid. non. april. lucio vc. cons.>

CJ.8.11.18.2: Imperatores Honorius, Theodosius

Ita enim et splendor operis et civitatis munitio cum privatorum usu et utilitate servabitur. <a 413 d. prid. non. april. lucio vc. cons.>

CJ.8.11.19: Imperator Theodosius

Quia plurimae domus cum officinis suis in porticibus zeuxippi esse memorantur, reditus memoratorum locorum pro quantitate, quae placuit, ad praebenda luminaria et aedificia ac tecta reparanda regiae huius urbis lavacro sine aliqua iubemus excusatione conferri. * theodos. a. severino pu. * <a 424 d. v id. ian. victore vc. cons.>

CJ.8.11.20: Imperatores Theodosius, Valentinianus

Qui sine auctoritate divini rescripti ad iudicium tuae celsitudinis destinandi angiportus integros vel partes suis domibus incluserint seu porticus usurparint, procul dubio iura pristina sacratissimae reddere civitati iubemus: multa auri quinquaginta librarum non defutura, si quis posthac in similem audaciam prodire temptaverit. * theodos. et valentin. aa. cyro pu. * <a 439 d. k. nov. theodosio a. xvii et festo conss.>

CJ.8.11.21pr.: Imperatores Theodosius, Valentinianus

Basilicam inauratam et marmoribus decoratam liberam in perpetuum manere neque alicuius imaginis pictarum cuiuslibet honoris tabularum adumbratione fuscari iubemus, neque in aliqua parte eiusdem basilicae tabulato quicquam opere stationes ergasteriave constitui sancimus. * theodos. et valentin. aa. cyro pu. * <a 440 d. xi k. febr. constantinopoli valentiniano a. v et anatolio conss.>

CJ.8.11.21.1: Imperatores Theodosius, Valentinianus

Illud quoque decernimus, ne in eam equos liceat intromitti vel nuptias celebrari. <a 440 d. xi k. febr. constantinopoli valentiniano a. v et anatolio conss.>

CJ.8.11.22: Imperator Leo

Nemini iudicum liceat in hac inclita urbe vel in provinciis nova opera inchoare, priusquam ea, quae coepta invenerit a decessore vel praedecessoribus suis, vetustate diruta aut desidia derelicta diligenti studio instantiaque compleverit, cum ex hoc plurimum laudis adquirat, si ea culta et perfecta reddiderit, quae vetusta sunt et instaurationem requirunt quaeque ab aliis initiata et imperfecta resederant. * leo a. erythrio pp. * <a 472 d. ii k. mart. constantinopoli marciano cons.>

CJ.8.11.23

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CJ.8.12.0. De ratiociniis operum publicorum et de patribus civitatum.

CJ.8.12.1pr.: Imperator Zeno

Iubemus provinciarum quidem rectores et singulae dioeceseos viros spectabiles iudices, id est praefectum augustalem et comitem orientis et utrosque proconsules et vicarios una cum suis apparitoribus pro tenore generalium magnificae tuae sedis dispositionum discutiendis publicis operibus vel aquae ductibus, qui ex civilibus reditibus vel a quolibet spontanea munificentia facti sunt vel fuerint, modis omnibus abstinere, nec aliquid quolibet modo quolibet tempore in discutiendo civiles reditus vel facta opera vel quae fieri adsolent, unam siliquam sibi ex singulis erogandis solidis vindicando aut quodcumque lucrum captando, cum huiusmodi rebus habere commune, utpote patribus civitatium et curae eorum deputatis. * zeno a. arcadio pp. * <a 485-486?>

CJ.8.12.1.1: Imperator Zeno

Qui vero opus aliquod pro sua liberalitate se facturos promiserint, licet certum sit eos ex sola pollicitatione ad implendum suae munificentiae opus necessitate iuris teneri, nullam tamen eos vel heredes eorum super facto opere ratiocinium vel discussionem aut aliquam (utpote non in integrum promissa quantitate in id opus erogata vel inutiliter facto opere, aut alia qua ratione) quocumque modo quocumque tempore inquietudinem sustinere concedimus. <a 485-486?>

CJ.8.12.1.2: Imperator Zeno

Quod si vir clarissimus provinciae moderator vel eius officium reditus publicos vel opera publica contra vetitum discutiendo vel unam siliquam aut quodlibet ex isdem reditibus vel operibus vindicando sacratissimae nostrae legis praecepta transierint, quinque quidem officii primates exilio damnati perpetuo bona sua civitati quam laeserint non dubitent vindicanda, rector vero provinciae quinquaginta librarum auri ferietur dispendio: hac eadem poena spectabilibus quoque iudicibus, licet illustri dignitate fuerint decorati, et eorum officiis, sicut superius distinctum est, imminenda. <a 485-486?>

CJ.8.13.0. De pignoribus.

CJ.8.13.1: Imperatores Severus, Antoninus

Debitor, qui pignoribus profitetur se creditoribus cedere, nihilo magis liberabitur. * sev. et ant. aa. timotheo. * <a 194 pp. v k. mart. severo a. ii et albino conss.>

CJ.8.13.2pr.: Imperatores Severus, Antoninus

Quamvis constet specialiter quaedam et universa bona generaliter adversarium tuum pignori accepisse et aequale ius in omnibus habere, iurisdictio tamen temperanda est. * sev. et ant. aa. lucio. * <a 204 pp. ii k. iun. cilone et libone conss.>

CJ.8.13.2.1: Imperatores Severus, Antoninus

Ideoque si certum est posse eum ex his, quae nominatim ei pignori obligata sunt, universum redigere debitum, ea, quae postea ex isdem bonis pignori accepisti, interim non auferri praeses iubebit. <a 204 pp. ii k. iun. cilone et libone conss.>

CJ.8.13.3: Imperatores Severus, Antoninus

Creditores, qui non reddita sibi pecunia conventionis legem ingressi possessionem exercent, vim quidem facere non videntur, attamen auctoritate praesidis possessionem adipisci debent. * sev. et ant. aa. maximo. * <a 205 pp. k. mai antonino a. ii et geta ii conss..>

CJ.8.13.4: Imperatores Severus, Antoninus

Cum te pecuniam accepisse et agros tuos obligasse fateris, non habet rationem, quod quereris vi te coactum pignori dare. si igitur recipere vis rem tuam, solve creditori pecuniam debitam. * sev. et ant. aa. bellio. * <a 208 d. iii k. iun. antonino a. iii et geta iii conss.>

CJ.8.13.5: Imperator Antoninus

Praeses provinciae vir clarissimus ius pignoris tui exsequentem te audiet. nec tibi oberit sententia adversus debitorem tuum dicta, si eum collusisse cum adversario suo aut, ut dicis, non causa cognita, sed praescriptione superatum esse constiterit. * ant. a. domitio. * <a 212 pp. id. mai. romae duobus aspris conss.>

CJ.8.13.6: Imperator Antoninus

In summa debiti computabitur etiam id, quod propter possessiones pignori datas ad collationem viarum muniendarum vel quod aliud necessarium obsequium praestitisse creditorem constiterit. * ant. a. quinto. * <a 213 pp. iii k. aug. antonino a. iiii et balbino conss.>

CJ.8.13.7: Imperator Gordianus

Usucapio pignoris conventionem non extinguit. * gord. a. marciano. * <a 238 pp. non. sept. pio et pontiano conss.>

CJ.8.13.8: Imperator Gordianus

Quamvis personali actione expertus adversus reum vel fideiussores seu mandatores eius feceris condemnationem, pignoris tamen adhuc habes persecutionem. * gord. a. festo. * <a 239 pp. id. mart. gordiano a. et aviola conss.>

CJ.8.13.9: Imperator Gordianus

Si dominium eius possessionis, quae cum pignori data esset, a debitrice donatu ad te translatum est, eamque postea creditor vel eius heredes detinere coeperunt , vindica eam, praeside provinciae curante, ut, fructuum deducta ratione residuoque a te oblato si fuerit satisfactum, ea possessio tibi reddatur. * gord. a. attico. * <a 239 pp. iii k. oct. gordiano a. et aviola conss.>

CJ.8.13.10: Imperatores Diocletianus, Maximianus

Debitores praesentes prius denuntiationibus conveniendi sunt. igitur si conventi debito satis non fecerint, persequenti tibi pignora seu hypothecas, quas instrumento specialiter comprehensas esse dicis, competentibus actionibus rector provinciae auctoritatis suae auxilium impertire non dubitabit. * diocl. et maxim. aa. alexandro. * <a 290 d. xviii k. febr. ipsis iiii et iii aa. conss.>

CJ.8.13.11: Imperatores Diocletianus, Maximianus

Nominatori pignori capere sine praesidis auctoritate res nominati non licet. * diocl. et maxim. aa. et cc. euphrosyno. * <a 293 s. iii k. mart. aa. conss.>

CJ.8.13.12: Imperatores Diocletianus, Maximianus

Si uxor tua pro pecunia quam accepit mutuo res proprias obligavit pignori eique tu successisti, licet in instrumentum eius facti testimonium collatum non sit, soluto debito creditorem de his tibi reddendis sollemni iure conveni. * diocl. et maxim. aa. et cc. eusebio. * <a 293 s. v k. april. aa. conss.>

CJ.8.13.13: Imperatores Diocletianus, Maximianus

Cum dominam non minorem viginti et quinque annis ea quae obligaverat tibi iure dominii possidere permisisse et in solutum dedisse precibus significes, dominae contractus et voluntas ad firmitatem tibi sufficit. * diocl. et maxim. aa. et cc. matronae. * <a 293 s. iii k. mai. heracliae aa. conss.>

CJ.8.13.14: Imperatores Diocletianus, Maximianus

Distractis a debitore pignoribus creditores in potestate habere, utrumne personali obligatos sibi, an pignora possidentes in rem actione convenire velint, non est incerti iuris. * diocl. et maxim. aa. et cc. appiano. * <a 293 s. k. mai. heracliae aa. conss.>

CJ.8.13.15: Imperatores Diocletianus, Maximianus

Debitorem neque vendentem neque donatem neque legantem vel per fideicommissum relinquentem posse deteriorem facere creditoris condicionem certissimum est. unde si tibi obligatam rem probare posse confidis, pignora persequi debes. * diocl. et maxim. aa. et cc. basilidae. * <a 293 s. v non. mai. heracliae aa. conss.>

CJ.8.13.16: Imperatores Diocletianus, Maximianus

Etsi frater tuus non suam, sed ad te pertinentem pecuniam mutuam suo nomine dedit ac pignus accepit, tamen tibi pignoris obligationem quaerere non potuit. * diocl. et maxim. aa. et cc. heraidi. * <a 293 s. iiii id. mai hadrianopoli aa. conss.>

CJ.8.13.17: Imperatores Diocletianus, Maximianus

Quamvis ea pecunia, quam a te mutuo frater tuus accepit, comparavit praedium, tamen nisi specialiter vel generaliter hoc obligavit, tuae pecuniae numeratio in causam pignoris non deduxit. sane personali actione debitum apud praesidem petere non prohiberis. * diocl. et maxim. aa. et cc. pontiae. * <a 293 s. xv k. iun. aa. conss.>

CJ.8.13.18: Imperatores Diocletianus, Maximianus

Pignoris vel hypothecae persecutio in rem est. * diocl. et maxim. aa. et cc. euodio. * <a 293 s. k. dec. sirmi aa. conss.>

CJ.8.13.19: Imperatores Diocletianus, Maximianus

Sicut vim maiorem pignorum creditor praestare necesse non habet, ita dolum et culpam, sed et custodiam exhibere cogitur. * diocl. et maxim. aa. et cc. maximo. * <a 293 s. xvii k. ian. aa. conss.>

CJ.8.13.20: Imperatores Diocletianus, Maximianus

Creditor ad petitionem urgueri iure minime potest. quapropter eo, quod vos heredibus euodiani debere confiditis, oblato et, si nolint accipere, consignato atque deposito de reddendo pignore hos praesidali notione convenite. * diocl. et maxim. aa. et cc. alexandro. * <a 294 pp. xviii k. febr. cc. conss.>

CJ.8.13.21: Imperatores Diocletianus, Maximianus

Res obligatas exterus debito soluto liberando datum petere, non earum dominium adipisci potest. * diocl. et maxim. aa. et cc. vito. * <a 294 s. iii k. nov. retiariae cc. conss.>

CJ.8.13.22: Imperatores Diocletianus, Maximianus

Secundus creditor offerendo priori debitum confirmat sibi pignus et a debitore sortem eiusque tantum usuras, quae fuissent praestandae, non etiam usurarum usuras accipit. * diocl. et maxim. aa. et cc. antiochiano. * <a 294 s. iii id. dec. nicomediae cc. conss.>

CJ.8.13.23: Imperatores Diocletianus, Maximianus

Maior annis viginti quinque pignoris conventione remissa, cum hoc solum pactum vel iurisdictio secundum ipsius voluntatem tueatur, persequi non potest. * diocl. et maxim. aa. et cc. macedonio. * <a 294 s. xvii k. ian. nicomediae cc. conss.>

CJ.8.13.24: Imperatores Diocletianus, Maximianus

Persecutione pignoris omissa debitores actione personali convenire creditor urgueri non potest. * diocl. et maxim. aa. et cc. marco. * <a 294 s. xv k. ian. nicomediae cc. conss.>

CJ.8.13.25: Imperatores Diocletianus, Maximianus

Servo, qui fuerat pignori obligatus, defuncto debiti permanet integra petitio. * diocl. et maxim. aa. et cc. dracontio. * <a 294 s. vii k. ian. nicomediae cc. conss.>

CJ.8.13.26: Imperatores Diocletianus, Maximianus

Si tibi notarium pignoris titulo debitor tuus obligavit, eum, a quo mancipium abreptum proponis, apud rectorem provinciae conveni. * diocl. et maxim. aa. et cc. mauricio. * <a 294 s. vi k. ian. sirmi cc. conss.>

CJ.8.13.27pr.: Imperator Justinianus

Super hypothecis, quas argenti distractores vel metaxarii vel alii quarumcumque specierum negotiatores pecunias sibi credentibus dare solent, hoc specialiter super amputanda omni machinatione sancimus, ut, si post huiusmodi contractum liberis suis vel alio modo cognatis quamcumque militiam idem negotiatores adquisierint, ea tamen vendi vel ad heredes sub certa definitione transmitti potest, liceat creditoribus eorum, etiam non probantibus ex pecuniis eorundem negotiatorum liberos eorum vel cognatos militasse (dum tamen contrarium non probetur alios e suo patrimonio dedisse pecunias), creditum ab his qui militarunt exigere vel tantum eos efflagitare, quanti vendi eadem militia possit. * iust. a. menae pp. * <a 528 d. k. iun. dn. iustiniano a. pp. ii cons.>

CJ.8.13.27.1: Imperator Justinianus

Quod ita obtinere sancimus, et si extraneis quibusdam idem negotiatores de suis pecuniis huiusmodi militiam adquisisse probentur, ut, quod generaliter in ipsis debitoribus militantibus talem militiam, quae vendi vel ad heredes transmitti potest, permissum est, ut liceat creditoribus et adhuc viventium debitorum iure hypothecae vindicare militias, nisi satis sibi fiat, et post mortem eorum exigere, quod pro isdem militiis pro tenore communis militantium placiti vel divinae sanctionis tale praestantis beneficium dari solet, hoc in negotiatorum personis, licet ipsi militantes minime debito obnoxii sint, integrum creditoribus eorum servetur. <a 528 d. k. iun. dn. iustiniano a. pp. ii cons.>

CJ.8.13.27.2: Imperator Justinianus

Quod scilicet in futuris militiis, non etiam in his, quas liberi vel cognati eorundem negotiatorum vel extranei pecuniis eorum meruerunt, tenere sancimus. <a 528 d. k. iun. dn. iustiniano a. pp. ii cons.>

CJ.8.14.0. In quibus causis pignus tacite contrahitur.

CJ.8.14.1: Imperator Antoninus

Universa bona eorum qui censentur vice pignorum tributis obligata sunt. * ant. a. sperato. * <a 213 pp. k. iun. antonino a. iiii et balbino conss.>

CJ.8.14.2: Imperator Antoninus

Certum est eius qui cum fisco contrahit bona veluti pignoris titulo obligari, quamvis specialiter id non exprimitur. * ant. a. proculo. * <a 214 d. vi k. mart. messala et sabino conss.>

CJ.8.14.3: Imperator Alexander Severus

Quamvis fructus pignori datorum praediorum, etsi id aperte non sit expressum, et ipsi pignori credantur tacita pactione esse, praedia tamen, quae emuntur ex fructuum pretio, ad eandem causam venire nulli prudentium placuit. * alex. a. pars ex rescripto.* <a 223 pp. id. oct. maximo ii et aeliano conss.>

CJ.8.14.4: Imperatores carus, carinus, numer.

Satis notum est et idem constitutum bona earum in dotem data, quae nuptae sunt his qui primipili sarcinam subeunt, obnoxia necessitati ei teneri: verum certo ordine, ut scilicet tunc demum ad hoc mulieris patrimonium periculum respiciat, si universis viri ac nominatorum facultatibus exhaustis nihil residuum inveniatur. * carus carinus et numer. aaa. * <a 283 d. v id. aug. caro et carino aa. conss.>

CJ.8.14.5: Imperatores Diocletianus, Maximianus

Si non in inductis et illatis in fundum, quae pignoris teneri causa placuerat, mancipia fuissent nec haec specialiter obligata monstrentur, rector provinciae ea restitui iubebit. nec enim praetextu debiti pensionum restitutionem horum morari potest, cum, si quid sibi deberi domina fundi ex pensionibus vel quacumque ratione probare possit, huius solutionem sollemniter fieri conveniat. * diocl. et maxim. aa. et cc. corinthiae. * <a 294 subscr. xii k. febr. cc. conss.>

CJ.8.14.6: Imperatores Theodosius, Valentinianus

Si mater legitima liberorum tutela suscepta ad secundas contra sacramentum praestitum adspiraverit nuptias, antequam ei tutorem alium fecerit ordinari eique quod debetur ex ratione tutelae gestae persolverit, mariti quoque eius praeteritae tutelae ratiociniis bona iure pignoris tenebuntur obnoxia. * theodos. et valentin. aa. ad florentium pp. * <a 439 d. vi id. iul. constantinopoli theodosio a. xvii et festo conss.>

CJ.8.14.7: Imperator Justinianus

Sancimus de invectis a conductore rebus et illatis, quae domino pro pensionibus tacite obligantur, non solum in utraque roma et territorio earum hoc ius locum habere, sed etiam in nostris provinciis. tali enim iusta praesumptione etiam omnes nostros provinciales perpotiri desideramus. * iust. a. iohanni pp. * <a 532 d. xv k. nov. post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.8.15.0. Si aliena res pignori data sit.

CJ.8.15.1: Imperatores Severus, Antoninus

Procurator citra domini voluntatem domum pignori frustra dedit. si tamen pecuniam creditoris in rem domini versam constabit, non inutilis erit exceptio dumtaxat quod numeratum est exsolvi desideranti. * sev. et ant. aa. carpo. * <a 194 pp. xi k. nov. severo a. ii et albino conss.>

CJ.8.15.2: Imperatores Severus, Antoninus

Si probaveris praesidi hortos de quibus agebatur tuos esse, intellegis obligari eos creditori ab alio non potuisse, si non sciens hoc agi in fraudem creditoris ignorantis dissimulasti. * sev. et ant. aa. latinae. * <a 205 pp. prid. id. oct. antonino a. ii et geta ii conss.>

CJ.8.15.3: Imperator Antoninus

Curator adulti vel tutor pupilli propriam rem mobilem eius, cuius negotia tuetur , pignoris iure obligare non potest, nisi in rem eius pecuniam mutuam accipiat. * ant. a. marciae. * <a 212 pp. vi k. febr. duobus aspris conss.>

CJ.8.15.4: Imperator Alexander Severus

Nec si maior annis viginti quinque fuisset filius tuus, qui in potestate tua erat, te invito rem tuam obligare potuit. * alex. a. secundo. * <a 223 pp. v k. nov. maximo ii et aeliano conss.>

CJ.8.15.5: Imperatores Diocletianus, Maximianus

Cum res, quae necdum in bonis debitoris est, pignori data ab eo postea in bonis eius esse incipiat, ordinariam quidem actionem super pignore non competere manifestum est, sed tamen aequitatem facere, ut facile utilis persecutio exemplo pignoraticiae daretur. * diocl. et maxim. aa. eutycho. * <a 286 pp. xiii k. iun. maximo ii et aquilino conss.>

CJ.8.15.6: Imperatores Diocletianus, Maximianus

Quae praedium in filios a se titulo donationis translatum creditori suo dat pignori, se magis contrario pigneraticio obligavit iudicio, quam quicquam dominis nocet, cum serviana etiam actio declarat evidenter iure pignoris teneri non posse, nisi quae obligantis in bonis fuerint, et per alium alienam rem invito domino pignori obligari non posse certissimum est. * diocl. et maxim. aa. et cc. zosimo. * <a 293 s. v id. iul. philippopoli aa. conss.>

CJ.8.15.7: Imperatores Diocletianus, Maximianus

Si in rem suam accepta pecunia mutua tutor mancipium tuum pignori dedit nec huic post perfectam aetatem consensum accommodasti, pignori res obligari non potuit. * diocl. et maxim. aa. et cc. corneliae. * <a 293 s. vi k. ian. aa. conss.>

CJ.8.15.8: Imperatores Honorius, Theodosius

Nexum non facit praediorum nisi persona, quae iure potuit obligare. per servum aut procuratorem colonum vel actorem seu conductorem praeiudicium possessioni invito vel inscio domino imponi non posse et iure et legum auctoritatibus decantatur. * honor. et theodos. aa. iohanni pp. * <a 422 d. id. iul. ravennae honorio xiii et theodosio x aa. conss.>

CJ.8.16.0. Quae res pignori obligari possunt vel non et qualiter pignus contrahatur.

CJ.8.16.1: Imperatores Severus, Antoninus

Alumnos tuos et ceteras res, quas neminem credibile est pignori specialiter daturum fuisse, generali pacti conventione, quae de bonis tuis facta est, in causam pignoris non fuisse rationis est. * sev. et ant. aa. optato. * <a 197 pp. xii k. april. laterano et rufino conss.>

CJ.8.16.2: Imperatores Severus, Antoninus

Cum constet pignus consensu contrahi, non dubitamus eum, qui emptiones agrorum suorum pignori posuit, de ipsis agris obligandis cogitasse. * sev. et ant. aa. rogato. * <a 207 pp. v k. iul. apro et maximo conss.>

CJ.8.16.3: Imperator Antoninus

Si monumento corpus filiae tuae intulisti, religiosum id fecisti: quo facto obligari a quoquam prohibente iuris religione non posse in dubium non venit. * ant. a. restituto. * <a 215 pp. iii k. april. laeto ii et cereale conss.>

CJ.8.16.4: Imperator Alexander Severus

Nomen quoque debitoris pignerari et generaliter et specialiter posse pridem placuit. quare si debitor is satis non facit, cui tu credidisti, ille, cuius nomen tibi pignori datum est, nisi ei cui debuit solvit nondum certior a te de obligatione tua factus, utilibus actionibus satis tibi facere usque ad id, quod tibi deberi a creditore eius probaveris, compelletur, quatenus tamen ipse debet. * alex. a. .... evocato.* <a 225 pp. prid. k. mart. fusco et dextro conss.>

CJ.8.16.5: Imperator Alexander Severus

Spem eorum praemiorum, quae pro coronis athletis pensitanda sunt, privata pactione pignerare minime admittendum est: et ideo nec si generale pactum de omnibus bonis pignori obligandis intervenerit, tenet. * alex. a. septimio. * <a 233 pp. iii k. mai. maximo ii et paterno conss.>

CJ.8.16.6: Imperatores Diocletianus, Maximianus

Qui filios vestros vel liberos homines pro pecunia quam vobis credebat pignoris titulo accepit, dissimulatione iuris se circumvenit, cum sit manifestum obligationem pignoris non consistere nisi in his, quae quis de bonis suis facit obnoxia. * diocl. et maxim. aa. et cc. rufo. * <a 293 s. k. mai. heracliae aa. conss.>

CJ.8.16.7pr.: Imperator Constantinus

Exsecutores a quocumque iudice dati ad exigenda debita ea, quae civiliter poscuntur, servos aratores aut boves aratorios aut instrumentum aratorium pignoris causa de possessionibus abstrahunt, ex quo tributorum illatio retardatur. * const. a. ad universos provinciales. * <a 315 d. iii non. iun. sirmi constantino a. iiii et licinio iiii conss.>

CJ.8.16.7.1: Imperator Constantinus

Si quis igitur intercessor aut creditor vel praefectus pagi vel vici vel decurio in hac re fuerit detectus, aestimando a iudice supplicio subiugetur. <a 315 d. iii non. iun. sirmi constantino a. iiii et licinio iiii conss.>

CJ.8.16.8: Imperatores Honorius, Theodosius

Pignorum gratia aliquid quod ad culturam agri pertinet auferri non convenit. * honor. et theodos. aa. probo com. sacr. larg. * <a 414 d. iii id. iun. constante et constantio conss.>

CJ.8.16.9pr.: Imperator Justinianus

Si quis in cuiuscumque contractus instrumento ea verba posuerit: " fide et periculo rerum ad me pertinentium" vel " per earum exactionem satisfieri tibi permitto", sufficere ea verba ad rerum tam earum quas in praesenti debitor habet quam futurarum hypothecam, nec ex prioribus sanctionibus minus habere speciali hypothecae memoria videri, cum sit iustum voluntates contrahentium magis quam verborum conceptionem inspicere. * iust. a. menae pp. * <a 528 d. iii id. dec. constantinopoli dn. iustiniano a. pp. ii cons.>

CJ.8.16.9.1: Imperator Justinianus

Super qua generali hypotheca illud quoque ad conservandam contrahentium voluntatem sancimus, ut et, si " res suas" supponere debitor dixerit, non adiecto" tam praesentes quam futuras", ius tamen generalis hypothecae etiam ad futuras res producatur. <a 528 d. iii id. dec. constantinopoli dn. iustiniano a. pp. ii cons.>

CJ.8.17.0. Qui potiores in pignore habeantur.

CJ.8.17.1: Imperatores Severus, Antoninus

Qui pignus secundo loco accepit, ita ius suum confirmare potest, si priori creditori debitam pecuniam solverit aut, cum obtulisset isque accipere noluisset, eam obsignavit et deposuit nec in usus suos convertit. * sev. et ant. aa. secundo. * <a 197 pp. k. febr. laterano et rufino conss.>

CJ.8.17.2: Imperator Antoninus

Si decreto praetoris, qui de fideicommisso ius dixit, in possessionem fundi hereditarii fideicommissi condicionalis servandi gratia prius inducti estis, quam adversarius vester in causa iudicati eiusdem fundi pignus occupavit iussu eius, qui iure sententiam exsequebatur, tempore potiores estis. nam cum de pignore utraque pars contendat, praevalet iure, qui praevenit tempore. * ant. a. chresto. * <a 212 pp. v id. mai. duobus aspris conss.>

CJ.8.17.3: Imperator Antoninus

Si fundum pignori accepisti, antequam rei publicae obligaretur, sicut prior es tempore, ita potior iure. * ant. a. varo. * <a 213 pp. v id. oct. antonino a. iiii et balbino conss.>

CJ.8.17.4: Imperator Antoninus

Cum rem publicam heliopolitanorum propter emolumentum sententiae in rerum tam heredis quam hereditariarum possessionem missam esse proponas, intellegis, quamvis pater tuus cum sossiano contraxerit, tamen, si personali actione eum habuit obligatum, praeponi rem publicam iure pignoris, quae ex auctoritate eius qui iubere potuit servandi iudicati causa occupavit. * ant. a. silvano. * <a 215 pp. v id. dec. laeto ii et cereale conss.>

CJ.8.17.5: Imperator Alexander Severus

Prior quidem creditor compelli non potest tibi, qui posteriore loco pignus accepisti, debitum offerre: sed si tu ei omne quod debetur solveris, pignoris tui causa firmabitur. * alex. a. septimio. * <a 233 pp. iii k. mai. maximo ii et paterno conss.>

CJ.8.17.6: Imperatores valer., gallien.

Si generaliter bona sint obligata et postea res alii specialiter pignori dentur, quoniam ex generali obligatione potior habetur creditor qui ante contraxit, si ab illo tu comparasti, non oportet te ab eo qui postea credidit inquietari. * valer. et gallien. aa. philoxeno. * <a 260 pp. prid. id. mai. saeculare ii et donato conss.>

CJ.8.17.7: Imperatores Diocletianus, Maximianus

Licet isdem pignoribus multis creditoribus diversis temporibus datis priores habeantur potiores, tamen eum, cuius pecunia praedium comparatum probatur, quod ei pignori esse specialiter statim convenit, omnibus anteferri iuris auctoritate declaratur. * diocl. et maxim. aa. et cc. iuliano. * <a 293 subscripta xvii k. febr. aa. conss.>

CJ.8.17.8: Imperatores Diocletianus, Maximianus

Diversis temporibus eadem re duobus iure pignoris obligata eum, qui prior data mutua pecunia pignus accepit, potiorem haberi certi ac manifesti iuris est, nec alias secundum distrahendi potestatem huius pignoris consequi, nisi superiori creditori debita fuerit soluta quantitas. * diocl. et maxim. aa. et cc. fabricio. * <a 293 s. prid. k. mai heracliae aa. conss.>

CJ.8.17.9: Imperatores Diocletianus, Maximianus

Eos qui acceperunt pignora, cum in rem habeant actionem, privilegiis omnibus, quae personalibus actionibus competunt, praeferri constitit. * diocl. et maxim. aa. et cc. asclepiodoto. * <a 294 s. iiii non. dec. cc. conss.>

CJ.8.17.10: Imperatores Diocletianus, Maximianus

Cum tibi pro dote quam acceperat res maritus obligavit, eo mortuo hi, quibus easdem pignori dederat, non offerentes debitum nulla possunt persequi ratione. nam chirographarios creditores nec in rem nec in personam eos, qui debitori non probantur successisse, ulla ratione convenire posse manifestum est. * diocl. et maxim. aa. et cc. polydeucae. * <a 294 pp. non. dec. cc. conss.>

CJ.8.17.11pr.: Imperator Leo

Scripturas, quae saepe adsolent a quibusdam secrete fieri, intervenientibus amicis nec ne, transigendi vel paciscendi seu fenerandi vel societatis coeundae gratia seu de aliis quibuscumque causis vel contractibus conficiuntur, quae idiochira graece appellantur, sive tota series eorum manu contrahentium vel notarii aut alterius cuiuslibet scripta fuerit, ipsorum tamen habeant subscriptiones, sive testibus adhibitis sive non, licet condicionales sint, quos vulgo tabularios appellant, sive non, quasi publice scriptas, si personalis actio exerceatur, s uum robur habere decernimus. * leo a. erythrio pp. * <a 472 d. k. iul. constantinopoli marciano cons.>

CJ.8.17.11.1: Imperator Leo

Sin autem ius pignoris vel hypothecae ex huiusmodi instrumentis vindicare quis sibi contenderit, eum qui instrumentis publice confectis nititur praeponi, etiamsi posterior dies his contineatur, nisi forte probatae atque integrae opinionis trium vel amplius virorum subscriptiones isdem idiochiris contineantur: tunc enim quasi publice confecta accipiuntur. <a 472 d. k. iul. constantinopoli marciano cons.>

CJ.8.17.12pr.: Imperator Justinianus

Adsiduis aditionibus mulierum inquietati sumus, per quas suas dotes deperditas esse lugebant et ab anterioribus creditoribus substantias maritorum detentas. * iust. a. iohanni pp. * <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc. >

CJ.8.17.12.1: Imperator Justinianus

Nos itaque ad antiquas leges perspeximus in personalibus actionibus rei uxoriae actioni, quam in praesenti sustulimus, magnam praerogativam praestantes, ut contra omnes paene personales actiones habeat privilegia et creditores alios antecedat, licet fuerant anteriores. <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc. >

CJ.8.17.12.2: Imperator Justinianus

Et haec cum in personalibus statuerant actionibus, si hypothecam respiciebant, ilico iustitiae vigorem relaxabant et senioribus hypothecis novas mulieris hypothecas, si habebat actiones, expellebant, nec ad fragilitatem muliebrem respicientes nec quod et corpore et substantia et omni vita sua marito fungitur, cum paene mulieribus tota substantia in dote constituta est. <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc. >

CJ.8.17.12.3: Imperator Justinianus

Oportebat enim disponi maritos creditoribus suis ex sua substantia satisfacere, non dote muliebri, quam ad suos victus suasque alimonias mulier possidet, vel a semet ipsa data vel pro ea ab alio. <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc. >

CJ.8.17.12.4: Imperator Justinianus

(1) ad haec omnia respicientes et reminiscentes, quod et alias duas constitutiones fecimus pro dotibus mulieribus subvenientes, et omnia in unum colligentes sancimus ex stipulatu actionem, quam mulieribus iam pro dote instituendam dedimus cuique etiam tacitam donavimus inesse hypothecam, potiora iura contra omnes habere mariti creditores. licet anterioris sint temporis privilegio vallati. <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc. >

CJ.8.17.12.5: Imperator Justinianus

Cum enim in personalibus actionibus secundum quod diximus tali privilegio utebatur res uxoria, quapropter non et in hypothecam hoc mulieri et nunc indulgemus beneficium, licet res dotales vel ex his aliae comparatae non extent, sed quocumque modo vel dissipatae vel consumptae sunt, si tamen re ipsa fuerint parti mariti datae? quis enim eas non miseretur propter obsequia, quae maritis praestant , propter partus periculum et ipsam liberorum creationem, pro qua multa nostris legibus inventa sunt privilegia? <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc. >

CJ.8.17.12.6: Imperator Justinianus

Ideo quod antiquitas quidem dare incepit, ad effectum autem non pertulit, nos pleno legis articulo consumavimus et, sive liberos habet mulier sive ab initio non habuit sive progenitos amisit, hoc ei privilegium indulgemus. <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc. >

CJ.8.17.12.7: Imperator Justinianus

Exceptis videlicet contra novercas anterioris matrimonii filiis, quibus pro dote matris suae iam quidem dedimus hypothecas contra paternas res vel eius creditores, in praesenti autem similem praerogativam servamus, ne, quod posteriori datum est uxori, hoc anteriori denegetur, sed sic maneat eis ius incorruptum, quasi adhuc vivente matre eorum: duabus enim dotibus ab eadem substantia debitis es tempore praerogativam manere volumus. <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc. >

CJ.8.17.12.8: Imperator Justinianus

(2) haec autem tantum ad dotem sancimus, non ad ante nuptias donationem, quam suo tempori servire disponimus et habere inter creditores sui temporis ordinem. non enim pro lucro fovemus mulieres, sed ne damnum patiantur suisque rebus defraudentur curamus. <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc. >

CJ.8.17.12.9: Imperator Justinianus

(3) quam legem ex praesenti tempore locum habere sancimus et non retrorsus referimus. <a 531 d. v k. dec. constantinopoli post consulatum lampadii et orestis vv. cc. >

CJ.8.18.0. De his qui in priorum creditorum locum succedunt.

CJ.8.18.1pr.: Imperatores Severus, Antoninus

Non omnimodo succedunt in locum hypothecarii creditoris hi, quorum pecunia ad creditorem transit. hoc enim tunc observatur, cum is, qui pecuniam postea dat, sub hoc pacto credat, ut idem pignus ei obligetur et in locum eius succedat. * sev. et ant. aa. Marcellinae. * <a 209 pp. id. iul. pompeiano et avito conss.>

CJ.8.18.1.1: Imperatores Severus, Antoninus

Quod cum in tua persona factum non sit (iudicatum est enim te pignora non accepisse), frustra putas tibi auxilio opus esse constitutionis nostrae ad eam rem pertinentis. <a 209 pp. id. iul. pompeiano et avito conss.>

CJ.8.18.2pr.: Imperator Antoninus

Cum pro parte, in cuius potestate non eras, pecuniam fisco intuleris, et iure privilegio eius successisti et eius locum cui pecuniam numerasti consecutus es, nec hi creditores patris tui, qui personalem habuerunt actionem vel cum eo postea sub pignoribus contraxerunt, pignora tua te ignorante distrahendo iuri tuo aliquid derogaverunt. * ant. a. felici. * <a 216 pp. k. oct. romae sabino ii et anullino conss.>

CJ.8.18.2.1: Imperator Antoninus

Unde intellegis, si quid tuo nomine te absente ab actoribus tuis solutum est, ut indebitum numeratum restitui pignoraque tibi nexa persequi te posse. <a 216 pp. k. oct. romae sabino ii et anullino conss.>

CJ.8.18.3: Imperator Alexander Severus

Si potiores creditores pecunia tua dimissi sunt, quibus obligata fuit possessio, quam emisse te dicis, ita ut pretium perveniret ad eosdem priores creditores, in ius eorum successisti et contra eos, qui infirmiores illis fuerunt, iusta defensione te tueri potes. * alex. a. valenti. * <a 224 pp. k. febr. iuliano et crispino conss.>

CJ.8.18.4: Imperatores Diocletianus, Maximianus

Si prior res publica contraxit fundusque ei est obligatus, tibi secundo creditori offerendi pecuniam potestas est, ut succedas etiam in ius rei publicae. * diocl. et maxim. aa. carpophoro. * <a 286 pp. xv k. iun. maximo ii et aquilino conss.>

CJ.8.19.0. Si antiquior creditor pignus vendiderit.

CJ.8.19.1pr.: Imperator Alexander Severus

Si vendidit is qui ante pignus accepit, persecutio tibi hypothecaria superesse non potest. * alex. a. athenioni. * <a 230 pp. v id. mai. agricola et clemente conss.>

CJ.8.19.1.1: Imperator Alexander Severus

Cum autem debitor ipsi priori creditori eadem pignora in solutum dederit vel vendiderit, non magis tibi persecutio adempta est, quam si aliis easdem res debitor venumdedisset: sed ita persequens res obligatas audieris, si, quod eidem possessori propter praecedentis contractus auctoritatem debitum est, obtuleris. <a 230 pp. v id. mai. agricola et clemente conss.>

CJ.8.19.2: Imperatores Diocletianus, Maximianus

Obligata pignoris iure creditore recte distrahente post debitor emptori pretium offerens vel creditori quod debuit evincere non potest. * diocl. et maxim. aa. et cc. endemiae. * <a 293 s. xvi k. ian. aa. conss.>

CJ.8.19.3: Imperatores Diocletianus, Maximianus

Quominus creditor, qui ante pignus accepit, distrahat, non offerendo secundus priori debitum interpellare non potest. * diocl. et maxim. aa. et cc. theophilo. * <a 294 d. vi k. april. cc. conss.>

CJ.8.20.0. Si communis res pignorata sit.

CJ.8.20.1: Imperator Antoninus

Frater tuus, sicut vobis invitis portionem vobis competentem obligare non potuit , ita suam dando obligationem creditori quaesiit. unde intellegis nullum praeiudicium dominio vestro contractum eius facere potuisse. * ant. a. venusto. * <a 214 accepta xiiii k. dec. messalla et sabino conss.>

CJ.8.21.0. De praetorio pignore et ut in actionibus etiam debitorum missio praetorii pignoris procedat.

CJ.8.21.1: Imperator Justinianus

Si praetorium pignus quicumque iudices dandum alicui perspexerint, non solum super rebus mobilibus et immobilibus et se moventibus, sed etiam super actionibus quae debitori competunt praecipimus hoc eis licere decernere. * iust. a. menae pp. * <a 529 d. k. april. constantinopoli decio vc. cons.>

CJ.8.21.2pr.: Imperator Justinianus

Veteris iuris dubitationem decidentes ad duplum genus hypothecarum respeximus, unum quidem, quod ex conventionibus et pactis hominum nascitur, aliud, quod a iudicibus datur et praetorium nuncupatur. * iust. a. iuliano pp. * <a 530 d. k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.21.2.1: Imperator Justinianus

Et cum invenimus in conventionalibus pignoribus vel hypothecis non solum tenentem creditorem adiuvari, sed etiam si ab eo cadat, sive sua culpa sive non sive fortuito casu, humanius esse perspeximus et in praetorio pignore dare recuperationem creditori, quocumque modo possessionem amittat, sive culpa sua sive non sive fortuito casu. <a 530 d. k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.21.2.2: Imperator Justinianus

Licet enim debuerat incumbere suo pignori, ne aliquam patiatur iacturam, tamen, ne quid amarum in creditoribus consequatur, benignius causam interpretamur et ei recuperationem donamus. <a 530 d. k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.22.0. Si in in causa iudicati pignus captum sit.

CJ.8.22.1: Imperator Antoninus

Res ob causam iudicati eius iussu, cui ius iubendi fuit, pignoris iure teneri ac distrahi posse saepe rescriptum est. nam in vicem iustae obligationis succedit ex causa contractus auctoritas iubentis. * ant. a. gabinio. * <a 213 pp. v k. aug. romae antonino a. iiii et balbino conss.>

CJ.8.22.2pr.: Imperator Alexander Severus

Cum in causa iudicati aliqua res pignori capitur, per officium eius qui ita decrevit venumdari solet, non per eum, qui iudicatum fieri postulavit. * alex. a. valeriano. * <a 223 pp. vi k. mai. maximo ii et aeliano conss.>

CJ.8.22.2.1: Imperator Alexander Severus

Et si alio emptore non existente, vel existente quidem, sed non dignum pretium offerente is cui iudicatus satis non fecit ad licitationem secundum constituta fuerit admissus, cuiuslibet alterius vice ex officio emere debet. <a 223 pp. vi k. mai. maximo ii et aeliano conss.>

CJ.8.22.3: Imperator Gordianus

In causa iudicati pignora ex auctoritate praesidis capta potius distrahi quam iure dominii possideri consuerunt. si tamen per calliditatem condemnati emptor inveniri non potest, tunc auctoritate principis dominium creditori addici solet. * gord. a. antigono. * <a 239 pp. id. aug. gordiano a. et aviola conss.>

CJ.8.23.0. Si pignus pignori datum sit.

CJ.8.23.1pr.: Imperator Gordianus

Etiam id quod pignori obligatum est a creditore pignori obstringi posse iam dudum placuit, scilicet ut sequenti creditori utilis actio detur tamdiuque eum is qui ius repraesentat tueatur, quamdiu in causa pignoris manet eius qui dedit. * gord. a. lamponi. * <a 238 pp. id. sept. pio et pontiano conss.>

CJ.8.23.1.1: Imperator Gordianus

Sed si vos usum fructum possessionis tantummodo pignori dedistis, isque qui accepit alii eam possessionem, cuius usum fructum nexum habebat, sine vestra voluntate pigneravit, creditor eius in id, quo pignoris vinculum non constitit, distrahens dominio vos privare nequivit. <a 238 pp. id. sept. pio et pontiano conss.>

CJ.8.23.1.2: Imperator Gordianus

Quod si non fuit vestro creditori usus fructus, sed ipsa possessio pignerata, et ante exsolutam a domino pecuniam creditor secundus pignus acceptum vendidit, non posse venditionem post soluta pecunia rescindi divorum principum placitis continetur. <a 238 pp. id. sept. pio et pontiano conss.>

CJ.8.23.2: Imperatores Diocletianus, Maximianus

Si creditor possessionem, quae a parentibus tuis pignoris iure fuerat obligata, non vendidit, sed alii creditori pignori dedit, examinata fide veri poteris eam soluto eo, quod ex hac causa creditori debetur, intercessu praesidis provinciae recuperare. * diocl. et maxim. aa. gemello. * <a 290 pp. xiii k. ian. ipsis iiii et iii aa. conss.>

CJ.8.24.0. De partu pignoris et omni causa.

CJ.8.24.1: Imperator Alexander Severus

Partus pigneratae ancillae in pari causa qua mater esse olim placuit. * alex. a. mestriano. * <a 230 pp. id. mai. agricola et clemente conss.>

CJ.8.24.2: Imperatores Diocletianus, Maximianus

Cum pignoris titulo mancipia vos obligasse pro mutua quam accepistis pecunia proponatis, horum mancipiorum operis, quas creditor accepit vel quas percipere potuit, in usuras computatis et post in sortem, extenuato debito residuum offerentibus vel, si non accipiat, consignatum deponentibus mancipia vobis praeses provinciae restitui iubebit. * diocl. et maxim. aa. et cc. nonnoso et antonino. * <a 293 s. v k. ian. aa. conss.>

CJ.8.25.0. De remissione pignoris.

CJ.8.25.1: Imperatores Severus, Antoninus

Si te manumissum et in libertate moratum sciente ea, cui pignoris nomine obligatus diceris, praesidi probaveris, ex consensu creditricis remissam pignoris obligationem apparebit, et per hoc iure te manumissum nec ab herede debitricis in servitutem peti posse certum est. * sev. et ant. aa. proculo. * <a 205 pp. xii k. mai. antonino a. ii et geta ii conss.>

CJ.8.25.2: Imperator Antoninus

Si probaveris te fundum mercatum possessionemque eius tibi traditam sciente et consentiente ea, quae sibi eum a venditore obligatum dicit, eam exceptione removebis. nam obligatio pignoris consensu et contrahitur et dissolvitur. * ant. a. materno. * <a 208 pp. ii id. febr. antonino a. iii et geta iii conss.>

CJ.8.25.3: Imperator Alexander Severus

Si ignorante vel invito te debitor tuus, qui universa bona sua ob pecuniam debitam tibi obligaverat, etsi cum re publica, postea contraxit, ius tuum non laesit. * alex. a. tauro. * <a 227 pp. iii id. april. albino et maximo conss.>

CJ.8.25.4: Imperator Gordianus

Cum te a debitore mercatum proponas eam rem, quae alii pignerata erat, si sciente eo ac pignus suum remittente eam mercatus es, cum eius consensu nexus pignoris evanuerit, si non nova voluntas intercessit, quae denuo obligationem pignoris constitueret, ea res veluti obstricta non potest vindicari. * gord. a. aquilino. * <a 239 pp. xi k. mai. gordiano a. et aviola conss.>

CJ.8.25.5: Imperator Gordianus

Debitum, cuius meministi, quod per pacti conventionem inutiliter factam remisisti, etiam nunc petere non vetaris et usitato more pignora vindicare. * gord. a. asclepiadi. * <a 241 pp. vi id. sept. gordiano a. ii et pompeiano conss.>

CJ.8.25.6: Imperatores Diocletianus, Maximianus

Si eo tempore, quo praedium distrahebatur, programmate admoniti creditores, cum praesentes essent, ius suum exsecuti non sunt, possunt videri obligationem pignoris amisisse. * diocl. et maxim. aa. argio. * <a 286 pp. iii id. febr. maximo ii et aquilino conss.>

CJ.8.25.7: Imperatores Diocletianus, Maximianus

Creditricem patrui tui sub obligatione fundi, qui per chirographum nexus pignori fuerat, iubentem eandem cautionem reddi pignoris etiam ius remisisse videri manifestum est. * diocl. et maxim. aa. paulo. * <a 287 pp. v id. sept. diocletiano iii et maximiano aa. conss.>

CJ.8.25.8: Imperatores Diocletianus, Maximianus

Si hypothecas fisco distrahente creditores silentio tradiderunt negotium, palam est actionem suam amisisse eos, quam in rem habebant. nam fiscalis hastae fides facile convelli non debet. * diocl. et maxim. aa. apollonio. * <a 290 pp. xiii k. sept. ipsis iiii et iii aa. conss.>

CJ.8.25.9pr.: Imperatores Diocletianus, Maximianus

Cum ex causa mandati pro socero tuo te fenebrem pecuniam exsolvisse proponas, curabit praeses provinciae in restituenda pecunia, quam pro eo exsolvisti, nec non etiam usuris eius indemnitati tuae prospicere. * diocl. et maxim. aa. hermiano. * <a 290 pp. x k. oct. ipsis iiii et iii aa. conss.>

CJ.8.25.9.1: Imperatores Diocletianus, Maximianus

Nam si recepta a creditore mancipia, quae pignori fuerant data, hac mente socero tuo tradidisti, ut pignoris vinculum dissolvatur, obligatio semel extincta instaurari non potest. <a 290 pp. x k. oct. ipsis iiii et iii aa. conss.>

CJ.8.25.10: Imperatores Diocletianus, Maximianus

Res pignoris hypothecaeve iure creditoribus obnoxias citra consensum eorum debitores alienantes praecedentem non dissolvunt obligationem. * diocl. et maxim. aa. et cc. quintillae. * <a 293 d. k. dec. aa. conss.>

CJ.8.25.11pr.: Imperator Justinianus

Solita providentia utimur etiam de pignoribus vel hypothecis rerum, quae quibusdam creditoribus suppositae postea a debitoribus venduntur vel alio modo transferuntur creditore suum consensum contractui praebente et quodam legitimo postea modo ad priorem dominum revertuntur. * iust. a. iohanni pp. * <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.8.25.11.1: Imperator Justinianus

In hoc etenim casu diversae sententiae legum prudentibus habitae sunt, quibusdam dicentibus ius pignoris creditori renovari propter verbum " futurarum rerum", quod in generalibus hypothecis poni solitum est, aliis penitus extingui. <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.8.25.11.2: Imperator Justinianus

Nobis autem visum est eum, qui semel consensit alienationi hypothecae et hoc modo suum ius respuit, indignum esse eandem rem utpote ab initio ei suppositam vindicare vel tenentem inquietare. <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.8.26.0. Etiam ob chirographariam pecuniam pignus teneri.

CJ.8.26.1pr.: Imperator Gordianus

Pignus intercidit, si novatione facta in alium ius obligationis transtulisti nec , ut ea res pignoris nomine teneretur, cautum est. * gord. a. festo. * <a 239 pp. id. mart. gordiano a. et aviola conss.>

CJ.8.26.1.1: Imperator Gordianus

Quod si pactum inter te eumque, qui postea dominus fundi constitutus novam obligationem susceperat, intercessit, ut idem fundus tibi pignoris nomine teneatur, quamvis personali actione expertus feceris condemnationem, pignoris tamen habes persecutionem. <a 239 pp. id. mart. gordiano a. et aviola conss.>

CJ.8.26.1.2: Imperator Gordianus

Ac si in possessione fueris constitutus, nisi ea quoque pecunia tibi a debitore reddatur vel offeratur, quae sine pignore debetur, eam restituere propter exceptionem doli mali non cogeris. iure enim contendis debitores eam solam pecuniam, cuius nomine pignora obligaverunt, offerentes audiri non oportere, nisi pro illa etiam satisfecerint, quam mutuam simpliciter acceperint. <a 239 pp. id. mart. gordiano a. et aviola conss.>

CJ.8.26.1.3: Imperator Gordianus

Quod in secundo creditore locum non habet: nec enim necessitas ei imponitur chirographarium etiam debitum priori creditori offerre. <a 239 pp. id. mart. gordiano a. et aviola conss.>

CJ.8.27.0. De distractione pignorum.

CJ.8.27.1: Imperator Alexander Severus

Fundum pignori obligatum, si creditor ex fructibus debitum persecutus est, cum ipso iure pignus obligatione liberatum sit, distrahere minime potest. * alex. a. pacatae. * <a 223 pp. id. ian. maximo ii et aeliano conss.>

CJ.8.27.2: Imperator Alexander Severus

Creditor, qui hypothecae seu pignori rem sibi nexam vendiderit, rem litigiosam non videtur vendere, quia precario debitor possidet. * alex. a. maximo. * <a 223 pp. xii k. oct. maximo ii et aeliano conss.>

CJ.8.27.3: Imperator Alexander Severus

Hypothecis vel pignoribus a creditore venumdatis in id quod deest adversus reum vel fideiussorem actio competit. * alex. a. luciano. * <a 223 pp. iii non. nov. maximo ii et aeliano conss.>

CJ.8.27.4: Imperator Alexander Severus

Creditor hypothecas sive pignus cum proscribit, notum debitori facere, si bona fide rem gerit, et quando licet testato dicere debet. si quid itaque per fraudem in pignore villae venditae commissum probare potes, ut inferatur actio, quae eo nomine competit, adi eum cuius de ea re notio est. * alex. a. crescenti. * <a 225 pp. k. iun. fusco et dextro conss.>

CJ.8.27.5: Imperator Alexander Severus

Si residuum debiti paratus es solvere, praeses provinciae dabit arbitrum, apud quem, quantum sit quod superest ex debito, examinabitur: et sive ad iudicem venire diversa pars cessaverit sive oblato superfluo ad venditionem prosiluerit, improba alienatio proprietatis tuae ius non auferet. * alex. a. sossiano. * <a 231 pp. xii k. aug. pompeiano et peligno conss.>

CJ.8.27.6: Imperator Gordianus

Quamdiu non est integra pecunia creditori numerata, etiamsi pro parte maiore eam consecutus sit, distrahendi rem obligatam non amittit facultatem. * gord. a. rogato. * <a 238 pp. xiii k. sept. pio et pontiano conss.>

CJ.8.27.7: Imperator Gordianus

Si cessante solutione creditor non reluctante lege contractus ea quae pignori sibi nexa erant distraxit, revocari venditionem iniquum est, cum, si quid in ea re fraudulenter fecerit, non emptor a te, sed creditor conveniendus sit. * gord. a. caro. * <a 238 pp. v k. nov. pio et pontiano conss.>

CJ.8.27.8: Imperator Gordianus

Si prius, quam distraheretur pignorata possessio, pecuniam creditori obtulisti, eoque non accipiente contestatione facta eam deposuisti et hodieque in eadem causa permanet, pignoris distractio non valet. quod si prius, quam offerres, legem venditionis exercuit, quod iure subsistit revocari non debet. * gord. a. maximo. * <a 239 pp. iii non. april. gordiano a. et aviola conss.>

CJ.8.27.9: Imperatores Diocletianus, Maximianus

Quae specialiter vobis obligata sunt, debitoribus detractantibus solutionem bona fide debetis et sollemniter vendere: ita enim parebit, an ex pretio pignoris debito satisfieri potest. quod si quid deerit, non prohibemini etiam cetera bona iure conventionis consequi. * diocl. et maxim. aa. cyrillo. * <a 287 pp. xiii k. iun. diocletiano iii et maximiano aa. conss.>

CJ.8.27.10pr.: Imperatores Diocletianus, Maximianus

Et qui sub imagine alterius personae, quam supposuerat, iugiter tenet, cum sibi negotium gerat, alienasse non videtur. iure enim pignoris obligatum praedium neque si per subiectam personam creditor comparaverit neque si sibi addixerit, debitori adfert praeiudicium, sed in eadem causa permanet, in qua fuit ante huiusmodi collusionem. * diocl. et maxim. aa. rufino. * <a 290 pp. iii non. oct. ipsis iiii et iii aa. conss.>

CJ.8.27.10.1: Imperatores Diocletianus, Maximianus

Sane si debitore distrahente comparaverit, consensu emptionem perfectam, si neque dolus adversarii neque metus causa gesta arguentur, revocari exemplo grave est. <a 290 pp. iii non. oct. ipsis iiii et iii aa. conss.>

CJ.8.27.10.2: Imperatores Diocletianus, Maximianus

Si igitur poteris evidentibus probationibus monstrare creditorem per suppositam imaginarii emptoris personam semper possessionem tenuisse nec vendita bona fide praedia postea sinceriter comparasse, potes oblata pecunia cum usuris ad restitutionem creditorem compellere. <a 290 pp. iii non. oct. ipsis iiii et iii aa. conss.>

CJ.8.27.11: Imperatores Diocletianus, Maximianus

Mulier licet res specialiter pignori dederit pro alio, creditor eas distrahendi non habet facultatem, nisi dissimulatione, marito obligante velut proprias, creditoris ignorantiam circumscripserit. * diocl. et maxim. aa. et cc. rufinae. * <a 293 pp. v k. mai. heracliae aa. conss.>

CJ.8.27.12: Imperatores Diocletianus, Maximianus

Si debitor rem tibi iure pignoris obligatam te non consentiente distraxit, dominium cum sua causa transtulit ad emptorem. * diocl. et maxim. aa. et cc. zotico. * <a 293 s. prid. k. mai. heracliae aa. conss.>

CJ.8.27.13: Imperatores Diocletianus, Maximianus

Qui praedium obligatum a creditore comparavit, si in vacuam possessionem inductus non est, nullam in rem actionem habet. * diocl. et maxim. aa. et cc. theodotae. * <a 293 >

CJ.8.27.14: Imperatores Diocletianus, Maximianus

Si in hoc quod iure debetur tibi satisfactum non fuit, et debitoribus res obligatas tenentibus aditus praeses provinciae tibi distrahendi iubebit fieri facultatem. * diocl. et maxim. aa. et cc. modesto. * <a 293 pp. xvi k. dec. sirmi aa. conss.>

CJ.8.27.15: Imperatores Diocletianus, Maximianus

Obligatis pignori mancipiis a creditore distractis ac traditis si post debitor quondam haec sollicitaverit, non venditori, sed emptori contra possidentem in rem competit actio. * diocl. et maxim. aa. et cc. avianae. * <a 294 d. k. mart. sirmi cc. conss.>

CJ.8.27.16: Imperatores Diocletianus, Maximianus

Unus ex multis debitoris qui pignora tradiderat heredibus, quod ab eo personali actione peti potuit, solvendo res obligatas distrahendi creditori facultatem non ademit. * diocl. et maxim. aa. et cc. silviano. * <a 294 s. iii non. april. cc. conss.>

CJ.8.27.17: Imperatores Diocletianus, Maximianus

Rei creditor obligatae generali sive speciali conventione per creditorem alium, cui non fuerat nexa, venumdatae non amittit persecutionem. * diocl. et maxim. aa. et cc. agapae. * <a 294 d. prid. non. april. cc. conss.>

CJ.8.27.18: Imperatores Diocletianus, Maximianus

Qui a creditore pignori obligatum iure emit, de proprietate vinci non potest. * diocl. et maxim. aa. et cc.Gaiano. * <a 294 subscripta vi k. mai. cc. conss.>

CJ.8.27.19: Imperatores Diocletianus, Maximianus

Si maritus tuus mutuam, licet tuam, dedit pecuniam, eorum, quae pignoris titulo accepit, si ei non successisti, distrahendi nomine tuo nullam habes facultatem. * diocl. et maxim. aa. et cc. liviae. * <a 294 s. vi id. nov. heracliae cc. conss.>

CJ.8.27.20: Imperatores Diocletianus, Maximianus

Secundum placiti fidem, si nihil convenit specialiter, pignoribus a creditore maiore quam ei debebatur pretio distractis, licet ex eo fundus comparatus sit, non super hoc in rem, sed in personam, id est pigneraticia, de superfluo competit actio. * diocl. et maxim. aa. et cc. sabino. * <a 294 s. iiii id. nov. byzantio cc. conss.>

CJ.8.28.0. Debitorem venditionem pignorum impedire non posse.

CJ.8.28.1: Imperatores Severus, Antoninus

Si sunt, qui emere praedia tibi obligata velint, non impediuntur scriptura testamenti, qua complexus est debitor nulla a se praedia venumdari et poenam addidit , ut fisci fierent. nec enim potuisse eum huiusmodi lege ius creditoris facere deterius manifestum est. * sev. et ant. aa. Marcello. * <a 207 d. vi k. mai. apro et maximo conss.>

CJ.8.28.2pr.: Imperator Gordianus

Debitoris denuntiatio, qui creditori suo, ne sibi rem pignori obligatam distrahat, vel his qui ab eo volunt comparare denuntiat, ita demum efficax est, si universum tam sortis quam usurarum offerat debitum creditori eoque non accipiente idonea fide probationis ita ut oportet depositum ostendat. * gord. a. nepoti. * <a 239 pp. iii non. aug. gordiano a. et aviola conss.>

CJ.8.28.2.1: Imperator Gordianus

Nam si vel modicum de sorte vel usuris in debito perseveret, distractio rei obligatae non potest impediri, neque ea ratione emptor, tametsi sciat interpositam a debitore creditori denuntiationem, mala fide fit possessor. <a 239 pp. iii non. aug. gordiano a. et aviola conss.>

CJ.8.29.0. Si vendito pignore agatur.

CJ.8.29.1pr.: Imperator Alexander Severus

Praeses provinciae aditus, si probatum fuerit tuum creditorem, cui ius distrahendi pignora fuit, dolo malo fundum vendidisse, quanti tua interest restituere tibi eundem creditorem iubebit. * alex. a. agrippae. * <a 222 pp. k. sept. alexandro a. cons.>

CJ.8.29.1.1: Imperator Alexander Severus

Quod si de bonis creditoris condemnati solvi pecunia non potuerit et probatum fuerit emptorem mala fide emisse, offerenti pecuniam cum usuris, quanti fundus veniit, restituere tibi fundum cum fructibus malae fidei emptorem iubebit. <a 222 pp. k. sept. alexandro a. cons.>

CJ.8.29.2: Imperator Alexander Severus

Servos, quos nullo iure a creditore venisse dicis, pater tuus vel tu, si hereditas eius ad te pertinet, a possessoribus petere potes. quod si usucapti sunt, petat pater tuus pretium eorum a creditore, qui non iure eos servos vendidit. * alex. a. aemilio. * <a 222 pp. iii k. ian. alexandro a. cons.>

CJ.8.29.3: Imperator Alexander Severus

Si uxor tua praesidi probaverit, cum aureos triginta deberet, servos suos amplioris pretii per gratiam aureis viginti creditorem venumdedisse eumque solvendo non fuisse, iubebit emptores recepto pretio restituere servos. * alex. a. claudio. * <a 223 pp. xvi k. oct. maximo ii et aeliano conss.>

CJ.8.29.4: Imperator Gordianus

Cum contra bonam fidem venditionem obligatae possessionis a creditore factam adleges, non observatis, quae in distrahendis pignoribus celebrari consueverunt, adito praeside provinciae experire actione competenti non tantum adversus creditorem, verum etiam adversus possessorem, si fraudem eum participasse cum creditore potueris docere, ut revocatis, quae mala fide gesta constiterit, et fructuum ratio et damni quod inrogatum apparuerit haberi possit. * gord. a. eudemo. * <a 240 pp. k. april. sabino ii et venusto conss.>

CJ.8.29.5: Imperatores Diocletianus, Maximianus

Si creditore pignus priusquam ei satisfieret distrahente non per collusionem emptor comparavit, successor eius de superfluo, non emptoris heres, qui rem possidet, conveniendus est. * diocl. et maxim. aa. et cc. nonnae. * <a 294 s. xvi k. ian. nicomediae cc. conss.>

CJ.8.30.0. De luitione pignoris.

CJ.8.30.1: Imperatores Severus, Antoninus

Qui pro parte heres extitit, nisi totum debitum exsolvat, suam portionem ex pignoribus recipere non potest. * sev. et ant. aa. antiochiae. * <a 206 pp. iii k. aril. albino et aemiliano conss.>

CJ.8.30.2: Imperator Gordianus

Intellegere debes vincula pignoris durare personali actione submota. * gord. a. domitio. * <a 240 pp. xii k. iun. sabino ii et venusto conss.>

CJ.8.30.3: Imperatores Diocletianus, Maximianus

Si reddita debita quantitate vel rebus in solutum datis sive distractis compensato pretio satis ei contra quem supplicas factum adito praeside probaveris, vel si quod residuum debetur obtuleris ac, si non acceperit, deposueris consignatum, restitui tibi res pacto pignoris obligatas providebit, cum etiam edicto perpetuo, actione proposita pecunia soluta creditori vel si per eum factum sit, quominus solveretur, ad reddenda quae pignoris acceperat iure eum satis evidenter urgueri manifestum sit. * diocl. et maxim. aa. et cc. floro. * <a 293 s. vi id. oct. aa. conss.>

CJ.8.31.0. Si unus ex pluribus heredibus creditoris vel debitoris partem suam debiti solverit vel acceperit.

CJ.8.31.1: Imperatores valer., gallien.

Manifesti et indubitati iuris est defuncto creditore multis relictis heredibus actionem quidem personalem inter eos ex lege duodecim tabularum dividi, pignus vero in solidum unicuique teneri. * valer. et gallien. aa. tauro. * <a 257 d. xv k. mai. ipsis iiii et iii aa. conss.>

CJ.8.31.2: Imperatores Diocletianus, Maximianus

Actio quidem personalis inter heredes pro singulis portionibus quaesita scinditur, pignoris autem iure multis obligatis rebus, quas diversi possident, cum eius vindicatio non personam obliget, sed rem sequitur, qui possident tenentes non pro modo singularum substantiae conveniuntur, sed in solidum, ut vel totum debitum reddant vel eo quod detinent cedant. * diocl. et maxim. aa. et cc. claudiae. * <a 294 s. v k. nov. anchiali cc. conss.>

CJ.8.32.0. Si pignoris conventionem numeratio secuta non sit.

CJ.8.32.1: Imperatores Severus, Antoninus

Si pecuniam tibi non esse numeratam atque ideo frustra cautionem emissam et pignus datum probaturus es, in rem experiri potes: nam intentio dati pignoris neque redditae pecuniae non aliter tenebit, quam si de fide debiti constiterit. eademque ratione veritas servetur, si te possidente pignus adversarius tuus agere coeperit. * sev. et ant. aa. hilaro. * <a 197 pp.K. sept. laterano et rufino conss.>

CJ.8.32.2: Imperator Alexander Severus

Si, ut nunc adseveras, nihil creditor numeravit uxori tuae quae pignus dedit, sed inanem extorsit cautionem, mendaci scriptura contra fidem veritatis obligari eius res non potest. * alex. a. peregrino. * <a xxx s. sine die et conss.>

CJ.8.33.0. De iure dominii impetrando.

CJ.8.33.1: Imperator Alexander Severus

Dominii iure pignora possidere desiderans nomina debitorum, quos in solutione cessare dicis, exprimere et, an sollemnia peregisti, significare debuisti, dummodo scias omnia bona debitoris, qui pignori dedit, ut universa dominio tuo generaliter addicantur, impetrare te non posse. * alex. a. nicolaae. * <a 229 pp. xiii k. dec. alexandro a. iii et dione conss.>

CJ.8.33.2: Imperator Gordianus

Si creditor pignus iure dominii a nostra serenitate possidere petiit et post formam praescripti alio anno usuras a vobis accepit, a beneficio impetrato recessisse videtur. * gord. a. .Tae. * <a 238 pp. prid. non. dec. pio et pontiano conss.>

CJ.8.33.3pr.: Imperator Justinianus

Vetustissimam observationem, quae nullatenus in ipsis rerum claruit documentis, penitus esse duximus amputandam, immo magis clarioribus remediis corrigendam. igitur in pignoribus, quae iure dominii possidere aliquis cupiebat, proscriptio publica et annus luitionis antiquus introducti sunt, pignus autem publice proscriptum neque vidimus neque nisi tantummodo ex librorum recitatione audivimus. * iust. a. demostheni pp. * <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.33.3.1: Imperator Justinianus

Sancimus itaque, si quis rem creditori suo pigneraverit, si quidem in pactione cautum est, quemadmodum debet pignus distrahi, sive in tempore sive in aliis conventionibus ea observari, pro quibus inter creditorem et debitorem conventum est. sin autem nulla pactio intercesserit, licentia dabitur feneratori ex denuntiatione vel ex sententia iudiciali post biennium, ex quo attestatio missa est vel sententia prolata est, numerandum eam vendere. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.33.3.2: Imperator Justinianus

Sin vero nemo est, qui comparare eam maluerit, ut necessarium fiat creditori saltem sibi eam iure dominii possidere, in huiusmodi casibus causam esse observandam censemus, ut, sive praesens sit debitor, denuntiatio ei scilicet post biennium mittatur, sive afuerit, provinciale tribunale creditor petat et iudicem certiorare festinet, quatenus ille eum requisierit, certo tempore super hoc ab eo statuendo, ut fiat debitori manifestum per apparationem iudicis, quod a creditore petitum est, et certum tempus statuatur, intra quod et, si fuerit inventus, debet qui pecunias creditas accepit debitum offerre et pignus recuperare. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.33.3.3: Imperator Justinianus

Sin autem nullatenus fuerit inventus, iudex certum tempus definiat, intra quod licentia ei dabitur sese manifestare et offerre pecunias et pignus ab oppigneratione liberare. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.33.3.3a: Imperator Justinianus

Sin autem in tempore statuto vel minime fuerit inventus vel creditam pecuniam totam offerre noluerit, tunc creditor adeat culmen principale et precibus porrectis iure dominii habere eandem rem expetat habeatque ex divino oraculo eam in suo dominio. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.33.3.3b: Imperator Justinianus

Et postquam hoc fuerit subsecutum, pietatis intuitu habeat debitor intra biennii tempus in suam rem humanum reversum ex die sacri oraculi numerandum, et liceat ei, creditori qui iam dominus factus est offerre debitum cum usuris et damnis vitio eius creditori illatis, quorum quantitatem creditor debet suo iuramento manifestare, et suum pignus recuperare. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.33.3.3c: Imperator Justinianus

Sin autem biennium fuerit elapsum, plenissime habeat rem creditor idemque dominus iam inrevocabilem factam. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.33.3.4: Imperator Justinianus

Sed si quidem minus in pignore, plus in debito inveniatur, in hoc, quod noscitur abundare, sit creditori omnis ratio integra. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.33.3.4a: Imperator Justinianus

Sin autem ex utraque parte quantitas aequa inveniatur, sine omni dubitatione totam rem antea pigneratam retineat. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.33.3.4b: Imperator Justinianus

Sin autem minus quidem in debito, amplius autem in pignore fiat, tunc in hoc quod debitum excedit debitori omnia iura integra lege nostra servabuntur, creditoribus quidem feneratoris non suppositum, aliis autem debitoris creditoribus vel ipsi debitori servatum. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.33.3.4c: Imperator Justinianus

Et ne ex communicatione fiat aliqua difficultas, licentia dabitur creditori seu domino aestimationem superflui debitori vel creditori debitoris cum competenti cautela in eum exponenda offerre. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.33.3.5: Imperator Justinianus

Sin vero creditor, postquam iure dominii hoc possideat, vendere hoc maluerit, liceat quidem ei hoc facere, si quid autem superfluum sit, debitori servare. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.33.3.5a: Imperator Justinianus

Sin autem dubitatio exorta fuerit pro venditione utpote viliore pretio facta, sacramenti religionem creditor praestare compellatur, quod nulla machinatione vel circumscriptione usus est, sed tanti vendidit rem, quanti potuerit venire: et hoc tantummodo reddi, quod ex iuramento superfluum fuerit visum. sin autem ex iureiurando etiam minus habuisse creditor inveniatur, in residuo habeat integram actionem. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.33.3.6: Imperator Justinianus

Aestimationem autem pignoris, donec apud creditorem eundemque dominum permaneat, sive amplioris sive minoris quantum ad debitum quantitatis est, iudicialis esse volumus disceptationis, ut, quod iudex super hoc statuerit, hoc in aestimatione pignoris obtineat. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.34.0. De pactis pignorum et de commissoria lege in pignoribus rescindenda.

CJ.8.34.1: Imperator Alexander Severus

Qui pactus est, nisi intra certum tempus pecuniam quam mutuam accepit solveret, cessurum creditoribus, hypothecae venditionem non contraxit, sed id comprehendit , quod iure suo creditor in adipiscendo pignore habiturus erat. communi itaque iure creditor hypothecam vendere debet. * alex. a. victorino. * <a 222 pp. id. oct. alexandro a. cons.>

CJ.8.34.2: Imperatores Diocletianus, Maximianus

Si fundi nomine, quem vendideras, emptori ab alio mota proprietatis quaestione alterum fundum pro eius evictione pignoris hypothecaeve titulo emptionis instrumentis ea lege dedisti, ut, quem secundo tradideras, si is quem vendideras evictus non fuerit, obtineas, de hoc contra eum qui moverat quaestionem lata sententia emptori parata securitate, circa eum quem obligaveras restituendum conventionis fidem impleri, si negotium integrum est, praeses iubebit. * diocl. et maxim. aa. et cc. dionysio. * <a 293 s. k. dec. sirmi aa. conss.>

CJ.8.34.3pr.: Imperator Constantinus

Quoniam inter alias captiones praecipue commissoriae pignorum legis crescit asperitas, placet infirmari eam et in posterum omnem eius memoriam aboleri. * const. a. ad pop. * <a 326 d. ii k. febr. serdicae constantino a. vii et constantio c. conss.>

CJ.8.34.3.1: Imperator Constantinus

Si quis igitur tali contractu laborat, hac sanctione respiret, quae cum praeteritis praesentia quoque depellit et futura prohibet. creditores enim re amissa iubemus recuperare quod dederunt. <a 326 d. ii k. febr. serdicae constantino a. vii et constantio c. conss.>

CJ.8.35.0. De exceptionibus sive praescriptionibus.

CJ.8.35.1: Imperator Antoninus

Debitores quidem hereditarii unicuique heredum pro portione hereditaria antiqua lege obligati sunt. sed si eis heredibus omnem pecuniam exsolvisti, quibus nomen patris tui testator in divisione adscripserat, doli mali exceptione adversus alios agentes tueri te potes. * ant. a. claudio. * <a 212 pp. xv k. aug. duobus aspris conss.>

CJ.8.35.2: Imperator Antoninus

Pro portione tua, qua domum ad te pertinere dicis, si iudicatum non est, actiones dirigere potes. nam exceptio rei iudicatae ei demum obstat vel successoribus eius, inter quos cognitum super ea re et pronuntiatum est. * ant. a. iulio. * <a 213 pp. xv k. mart. antonino a. iiii et balbino conss.>

CJ.8.35.3: Imperator Antoninus

Adversus fratrem tuum quondam tutorem legitimum tutelae iudicio si expertus non es, proposita actione consiste. nec timueris exceptionem pacti, si in eo fraudem dolumque admissum probare potes: nam replicatio doli opposita bonae fidei iudicium facit et commentum fraudis repellit. * ant. a. vitali. * <a xxx >

CJ.8.35.4: Imperator Alexander Severus

Cum nondum finitam sententia causam, sed dilatam adlegetis, non est dubium omnes integras defensiones vobis esse. * alex. a. iunio et aliis. * <a 223 pp. ii non. oct. maximo ii et aeliano conss.>

CJ.8.35.5: Imperatores Diocletianus, Maximianus

Licet unde vi interdictum intra annum locum habet, tamen exceptione perpetua ei succurri, qui per vim expulsus post retinuit possessionem, auctoritate manifestatur. * diocl. et maxim. aa. et cc. basilio. * <a 293 s. k. mai. trallis aa. conss.>

CJ.8.35.6: Imperatores Diocletianus, Maximianus

Si pactum intercessit, in exceptione sine temporis praefinitione de dolo replicari potest. * diocl. et maxim. aa. et cc. helenae. * <a 293 s. k. sept. viminacii aa. conss.>

CJ.8.35.7: Imperatores Diocletianus, Maximianus

Si ex maiore debiti quantitate minor tibi soluta est nec liberationem debitori tuo praestitisti, petere quod non probatur redditum, contra exceptionem pacti replicatione tuam adiuvans intentionem, minime prohiberis. * diocl. et maxim. aa. et cc. menandrae. * <a 294 s. ii k. mart. cc. conss.>

CJ.8.35.8: Imperatores Diocletianus, Maximianus

Praescriptionem peremptoriam, quam ante contestari sufficit, vel omissam, priusquam sententia feratur, obicere quandoque licet. * diocl. et maxim. aa. et cc. aurelio. * <a 294 s. xv k. nov. cc. conss.>

CJ.8.35.9: Imperatores Diocletianus, Maximianus

Si quidem intentionem actoris probatione deficere confidis, nulla tibi defensio necessaria est. si vero de hac confitendo exceptione te munitum adseveres, de hac tantum agi convenit. nam si etiam de intentione dubitas, habita de exceptione contestatione tunc demum, cum intentionem secundum adseverationem suam petitor probaverit, huic esse locum monstrari convenit. * diocl. et maxim. aa. et cc. muciano. * <a 294 s. iii non. nov. burtudizi cc. conss.>

CJ.8.35.10: Imperatores Diocletianus, Maximianus

Non exceptionibus actores, quibus reis auxilium tribuitur certis ex causis, sed replicationibus suam intentionem, si quam habent, muniunt. * diocl. et maxim. aa. et cc. aquilinae. * <a 294 s. k. dec. nicomediae cc. conss.>

CJ.8.35.11: Imperatores Diocletianus, Maximianus

Defensiones sive exceptiones ad intercessores extendi, quibus reus principalis integro manente statu munitus est, constat. * diocl. et maxim. aa. et cc. neoni. * <a xxx sub die xv k. ian.>

CJ.8.35.12: Imperator Julianus

Si quis advocatus inter exordia litis praetermissam dilatoriam praescriptionem postea voluerit exercere et ab huiusmodi opitulatione submotus nihilo minus perseveret atque praeposterae defensioni institerit, unius librae auri condemnatione multetur. * iul. a. ad iulianum com. orientis. * <a 363 d. vii id. mart. antiochiae iuliano a. iiii et salustio conss.>

CJ.8.35.13: Imperatores Honorius, Theodosius

Praescriptiones fori in principio a litigatoribus opponendas esse legum decrevit auctoritas. * honor. et theodos. aa. symmacho procons. africae. * <a 415 d. v k. sept. ravennae honorio x et theodosio vi aa. conss.>

CJ.8.36.0. De litigiosis.

CJ.8.36.1: Imperatores Severus, Antoninus

Cum creditor pignus vendit, non potest videri litigiosae rei emptio contrahi, etsi debitor interdicat, ne venditio perficiatur. * sev. et ant. aa. paulinae. * <a 207 pp. k. mai. apro et maximo conss.>

CJ.8.36.2: Imperator Constantinus

Lite pendente actiones, quae in iudicium deductae sunt, vel res, pro quibus actor a reo detentis intendit, in coniunctam personam vel extraneam donationibus vel emptionibus vel quibuslibet aliis contractibus minime transferri ab eodem actore liceat, tamquam si nihil factum sit, lite nihilo minus peragenda. * const. a. ad provinciales. * <a 331 d. k. aug. basso et ablabio conss.>

CJ.8.36.3pr.: Imperatores Gratianus, Valentinianus, Theodosius

Quicumque rem litigiosam vel ambiguum chirographum, quodlibet denique mobile vel immobile fisco nostro vel potentiori seu aliis personis in testamento sive codicillo legaverit fideive commiserit aut per hereditatem reliquerit, nullam fiscus noster vel alia persona licentiam habeat iurgiorum, nec iudicium subeat, sed aestimatio eius litis ineatur praestanda his, quibus actiones vel res litigiosae relictae sunt. * grat. valentin. et theodos. aaa. tatiano pp. * <a 380 d. xv k. iul. thessalonicae gratiano v et theodosio aa. conss.>

CJ.8.36.3.1: Imperatores Gratianus, Valentinianus, Theodosius

Eandem litem ipsi heredes peragant, suarum actionum periculo ea quae litigiosa relicta fuerant vindicantes. <a 380 d. xv k. iul. thessalonicae gratiano v et theodosio aa. conss.>

CJ.8.36.3.2: Imperatores Gratianus, Valentinianus, Theodosius

Quod et de chirographis placet, ut heredes relictorum fisco vel aliis personis praesentem pecuniam numerent et iudicio eos, quos obnoxios existimant, persequantur. <a 380 d. xv k. iul. thessalonicae gratiano v et theodosio aa. conss.>

CJ.8.36.4

* * <a 501 xiii k. ian. constantinopoli pompeio et avieno conss.>

CJ.8.36.5pr.: Imperator Justinianus

Censemus, ut, si quis lite pendente vel actiones vel res quas possidet ad alium quendam transtulerit sive scientem sive ignorantem, vitio litigiosi contractus subiacere: distinctione quadam inter contrahentes observanda, ut, si quis sciens vel ad venditiones vel donationes seu ad alios contractus accesserit, cognoscat se compellendum non tantum rem redhibere, sed etiam pretio eius privari, non ut lucro cedat ei qui rem alienavit, sed ut etiam alia tanta quantitas ab eo fisci viribus inferatur: * iust. a. iohanni pp. * <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.8.36.5.1: Imperator Justinianus

Sin autem ignorans rem litigiosam emerit vel per aliam speciem contractus eam acceperit, tunc irrita rei alienatione facta pretium cum alia tertia parte recipiat. iustum est etenim propter dolosam mentem et absconditam machinationem, cum non emptori manifestaverit rem in iudicium deductam fuisse, tertia parte pretii, sicut iam disposuimus, eum puniri. <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.8.36.5.2: Imperator Justinianus

Tali videlicet poena non solum in aliis contractibus, verum etiam in donationibus porrigenda, ut vera aestimatione facta, cum pretii datio non est, rem ad alium transferens multetur: omnibus instrumentis, quae super hoc constituuntur, nullam vim obtinentibus. <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.8.36.5.3: Imperator Justinianus

Exceptis videlicet huius sanctionis dispositione his, qui vel dotis nomine vel ante nuptias donationis vel transactionis aut divisionis rerum hereditariarum factae vel per legati vel fideicommissi causam tales res vel actiones dederint vel acceperint. <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.8.37.0. De contrahenda et committenda stipulatione.

CJ.8.37.1: Imperatores Severus, Antoninus

Licet epistulae, quam libello inseruisti, additum non sit stipulatum esse eum cui cavebatur, tamen si res inter praesentes gesta est, credendum est praecedente stipulatione vocem spondentis secutam. * sev. et ant. aa. secundo. * <a 200 accepta xvii k. mai. severo iii et victorino conss.>

CJ.8.37.2: Imperatores Severus, Antoninus

Si filiae tuae, quam in potestate habebas, pecuniam dari stipulatus es, paratam obligationem exercere non prohiberis. * sev. et ant. aa. diocleti. * <a 210 pp. prid. non. nov. faustino et rufino conss.>

CJ.8.37.3pr.: Imperator Antoninus

Si, cum tuam pecuniam crederes accommodato nomine iuliani, stipulatio in personam eius absentis directa est, cum nihil sit actum ea verborum conceptione, intellegis superfuisse tibi rei contractae obligationem. * ant. a. hadriano. * <a 217 pp. vi k. mart. praesente et extricato conss.>

CJ.8.37.3.1: Imperator Antoninus

Ac propterea si pecuniam a debitore tuo iulianus exegit eamque solutionem ratam habuisti, habes adversus eum negotiorum gestorum actionem. <a 217 pp. vi k. mart. praesente et extricato conss.>

CJ.8.37.4: Imperator Alexander Severus

Secundum responsum domitii ulpiani praefecti annonae iuris consulti amici mei ea , quae stipulata est, cum moreretur, partem dimidiam dotis cui velit relinquere, reddi sibi, cum moreretur, eam partem dotis stipulata videtur. * alex. a. sabinae. * <a 222 pp. ii k. april. alexandro a. cons.>

CJ.8.37.5pr.: Imperatores Diocletianus, Maximianus

Nuda pollicitatione secundum ea, quae saepe constituta sunt, ad praestanda quae promiserat urgueri quemquam non semper iura permittunt. * diocl. et maxim. aa. et cc. isidorae. * <a 293 s. v k. dec. aa. conss.>

CJ.8.37.5.1: Imperatores Diocletianus, Maximianus

Verum quoniam praeterea, si contra pactum fecerit, quanti ea res est, tibi dari stipulanti adversarium tuum promisisse proponas, huius etiam obligationis post motam litem extitisse condicionem et eius summae, quae in hac quoque stipulatione continetur, petitioni locum factum convenit. <a 293 s. v k. dec. aa. conss.>

CJ.8.37.6: Imperatores Diocletianus, Maximianus

Scire debuisti, quae sub transactione dari placita sunt, certi vel incerti stipulatione subsecuta peti posse. * diocl. et maxim. aa. et cc. erotio. * <a 293 s. xvi k. ian. sirmi aa. conss.>

CJ.8.37.7: Imperatores Diocletianus, Maximianus

Neque tutoris neque curatoris absentia quicquam stipulationi nocet, cum et feminam minorem viginti quinque annis absente curatore stipulari posse non ambigitur. * diocl. et maxim. aa. et cc. antonino. * <a 294 s.Xvii k.Febr.Cc conss.>

CJ.8.37.8: Imperatores Diocletianus, Maximianus

Non moriturum praestari servum impossibilis promissio est. post mortem autem eius stipulatus recte solutionem postulat. * diocl. et maxim. aa. et cc. posidonio. * <a 294 s. xii k. mart. cc. conss.>

CJ.8.37.9pr.: Imperatores Diocletianus, Maximianus

Si quidem zenoni stipulanti mortis vel cruciatus corporis territus timore spopondisti, adversus experientem exceptione proposita defendi potes. * diocl. et maxim. aa. et cc. capitoni. * <a 294 s. iii id. oct. varianae cc. conss.>

CJ.8.37.9.1: Imperatores Diocletianus, Maximianus

Si vero nihil tale probetur, accusationis institutae vel futurae praetextu non ob turpem, sed probabilem causam habita stipulatione promissio non infirmatur. <a 294 s. iii id. oct. varianae cc. conss.>

CJ.8.37.9.2: Imperatores Diocletianus, Maximianus

Sin autem ob non instituendam accusationem criminis pecunia promissa sit, cum de huiusmodi causis pacisci non liceat, petitio negatur. <a 294 s. iii id. oct. varianae cc. conss.>

CJ.8.37.10: Imperator Leo

Omnes stipulationes, etiamsi non sollemnibus vel directis, sed quibuscumque verbis pro consensu contrahentium compositae sint, legibus cognitae suam habeant firmitatem. * leo a. erythrio pp. * <a 472 d. k. ian. constantinopoli marciano cons.>

CJ.8.37.11: Imperator Justinianus

Scrupulosam inquisitionem, utrum post mortem an cum morietur vel pridie quam morietur stipulatus sit aliquis vel in testamento legati vel fideicommissi nomine aliquid dereliquerit, penitus amputantes omnia, quae vel in quocumque contractu stipulati vel pacti sunt contrahentes, vel testator in suo testamento disposuit, etiamsi post mortem vel pridie quam morietur scripta esse noscuntur, nihilo minus pro tenore contractus vel testamenti valere praecipimus. * iust. a. menae pp. * <a 528 d. iii id. dec. constantinopoli dn. iustiniano pp. a. ii cons.>

CJ.8.37.12: Imperator Justinianus

Magnam legum veterum obscuritatem, quae protrahendarum litium maximam occasionem usque adhuc praebebat, amputantes sancimus, ut, si quis certo tempore facturum se aliquid vel daturum se stipuletur vel quae stipulator voluit promiserit et addiderit, quod, si statuto tempore minime haec perfecta fuerint, certam poenam dabit, sciat minime posse ad evitandam poenam adicere, quod nullus eum admonuit: sed etiam citra ullam admonitionem eidem poenae pro tenore stipulationis fiet obnoxius, cum ea quae promisit ipse in memoria sua servare, non ab aliis sibi manifestari poscere debeat. * iust. a. menae pp. * <a 529 d. viiii id. april. constantinopoli decio vc. cons.>

CJ.8.37.13pr.: Imperator Justinianus

Veteris iuris altercationes decidentes generaliter sancimus omnem stipulationem, sive in dando sive in faciendo sive mixta ex dando et faciendo inveniatur, et ad heredes et contra heredes transmitti, sive specialis heredum fiat mentio sive non: cur enim, quod in principalibus personis iustum est, non ad heredes et adversus eos transmittatur? * iust. a. iuliano pp. * <a 530 d. k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.37.13.1: Imperator Justinianus

Et sic existimentur huiusmodi stipulationes, quasi tantummodo in dandum fuerant conceptae, cum nihilo minus et heredes factum possint adimplere: illa subtili et supervacua scrupulositate explosa, per quam putabant non esse possibile factum ab alio compleri, quod alii impositum est. <a 530 d. k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.37.13.2: Imperator Justinianus

Et quare, cum paene similis omnium natura est, non et facta omnes vel plus vel paulo minus adimplere possint, ne ex huiusmodi subtilitate cadant hominum voluntates? <a 530 d. k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.37.14pr.: Imperator Justinianus

Optimam quaestionem et frequenter in iudiciis versatam satis humanum est saltem in praesenti dirimere, ne diutius nostram rem publicam molestare concedatur. in multis etenim contractibus et maxime in feneraticiis cautionibus solitum est adscribi, stipulationes per certos servos celebrari. sed quidam indevotione tenti ex hoc materiam altercationis acceperunt: et alii quidem non esse servum adhibitum contendebant, alii vero non eius esse servum, ad quem pertinere scriptura protestabatur: et si non per servum, sed inter praesentes celebratam esse rem fuerit scriptum, et hoc iterum dubitabatur, debere ostendi partes esse praesentes. * iust. a. iohanni pp. * <a 531 d. k. nov. post consulatum lampadii et orestis vv. cc.>

CJ.8.37.14.1: Imperator Justinianus

Cum itaque satis utile est in contractibus et servos adhiberi et praesentes esse personas adscribi, forte propter personas dignitate excelsas vel mulieres, quas naturalis pudor non omnibus perperam sese manifestare concedit, sancimus tales scripturas omnifariam esse credendas et, sive adscriptus fuerit servus et ad quandam personam dicitur pertinere, credi omnimodo et servum adesse et fecisse stipulationem et eam esse scripto domino adquisitam et non dubitari, si servus ipse praesto fuerit vel eius domini fuit is, pro quo scriptus est fecisse stipulationem: <a 531 d. k. nov. post consulatum lampadii et orestis vv. cc.>

CJ.8.37.14.2: Imperator Justinianus

Et si inter praesentes partes res acta esse dicitur, et hoc esse credendum, si tamen in eadem civitate utraque persona in eo die commanet, in quo huiusmodi instrumentum scriptum est, nisi is, qui dicit sese vel adversarium abesse, liquidis ac manifestissimis probationibus et melius quidem, si per scripturam, sed saltem per testes undique idoneos et omni exceptione maiores ostenderit sese vel adversarium suum eo die civitate afuisse: sed huiusmodi scripturas propter utilitatem contrahentium esse credendas. <a 531 d. k. nov. post consulatum lampadii et orestis vv. cc.>

CJ.8.37.15pr.: Imperator Justinianus

Si quis spoponderat insulam, cum moriebatur, aedificare stipulatori, impossibilis veteribus videbatur huiusmodi stipulatio. sed nobis sensum contrahentium discutientibus veri simile esse videtur hoc inter eos actum, ut incipiat quidem contra morientem obligatio, immineat autem heredibus eius, donec ad effectum perducatur. nemo enim ita stultus invenitur, ut tali animo faceret stipulationem, ut putaret posse tantum aedificium in uno momento horae extollere, vel eum qui moritur talem habere sensum, quod ipse sufficiet ad huiusmodi operis completionem. * iust. a. iohanni pp. * <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.8.37.15.1: Imperator Justinianus

Sancimus itaque, si quid tale evenerit, heredes teneri, ut factum, quod mortis tempore facere promisit, hoc heredes eius adimpleant quasi speciali heredis mentione habita, licet hoc minime fuerit expressum. quemadmodum enim, si in dando fuerit stipulatio, et contra heredes transmittebatur, ita et si in faciendo est, licet in mortis tempus colligatur, attamen ad similitudinem in dando conceptae stipulationis et heredes obligari, ut non discrepet factum a datione, sed sit lex nostra per omnia sibi consentanea. <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.8.37.15.2: Imperator Justinianus

Quod et in legatis simili modo relictis observari censemus. <a 532 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.8.38.0. De inutilibus stipulationibus.

CJ.8.38.1: Imperator Antoninus

Ex stipulatione, in qua impubes sine tutore auctore spopondisti, non es obligatus. * ant. a. paulino. * <a 215 pp. k. iul. romae laeto ii et cerale conss.>

CJ.8.38.2: Imperator Alexander Severus

Libera matrimonia esse antiquitus placuit. ideoque pacta, ne liceret divertere, non valere et stipulationes, quibus poenae inrogarentur ei qui divortium fecisset, ratas non haberi constat. * alex. a. menophilo. * <a 223 pp. iii non. febr. maximo ii et aeliano conss.>

CJ.8.38.3pr.: Imperatores Diocletianus, Maximianus

Ut inter absentes verborum obligatio contrahi non potest, ita alteri, cuius iuri subiectus non est, aliquid dari vel restitui, nisi sua intersit, nemo stipulari potest. * diocl. et maxim. aa. isidoro. * <a 290 pp. id. dec. ipsis iiii et iii aa. conss.>

CJ.8.38.3.1: Imperatores Diocletianus, Maximianus

Cum igitur, defuncta in matrimonio filia tua, superstitis filii nomine partem dimidiam dotis a marito detineri, alteram vero partem nepoti tuo vel, si is in rebus humanis non esset, iuliano restitui per pactum convenisse proponas, praeventoque morte nepote etiam stipulationem ad iulianum factam ob absentiam eius non valuisse significes, ac propterea ex persona ac stipulatione tua, qua restitui cuncta iuxta pactorum tenorem provideras, reddi tibi desideres: super stipulatu tuo adi praesidem provinciae, ut examinatis partium adlegationibus, quantum constituerit interesse tua, iuxta placiti fidem dotis portionem iuliano restitutam fuisse, ob incertae actionis effectum concludat condemnationem taxatae quantita tis. <a 290 pp. id. dec. ipsis iiii et iii aa. conss.>

CJ.8.38.4: Imperatores Diocletianus, Maximianus

Ex eo instrumento nullam vos habere actionem, quia contra bonos mores de successione futura interposita fuit stipulatio, manifestum est, cum omnia, quae contra bonos mores vel in pacto vel in stipulatione deducuntur, nullius momenti sint. * diocl. et maxim. aa. et cc. domnae. * <a 293 pp. iii k. mai. aa. conss.>

CJ.8.38.5: Imperatores Diocletianus, Maximianus

Dolo vel metu adhibito actio quidem nascitur, si subdita stipulatio sit, per doli tamen vel metus exceptionem submoveri petitio debet. * diocl. et maxim. aa. et cc. aquilinae. * <a 293 s. xiii k. oct. aa. conss.>

CJ.8.38.6: Imperatores Diocletianus, Maximianus

Si avia vestra sibi et eustolio, quam mutuam dederat pecuniam, dari fuit stipulata, nihil ei, cuius subiecta iuri non fuerit, quaerere potuit. sane si ipse quod ei solvi placuerat in stipulatione suo nomine deduxit, obligationem in eius etiam personam constitisse non ambigitur. * diocl. et maxim. aa. et cc. septimio et eustolio. * <a 294 s. v k. oct. cc. conss.>

CJ.8.39.0. De duobus reis stipulandi et duobus reis promittendi.

CJ.8.39.1pr.: Imperatores Diocletianus, Maximianus

Creditor prohiberi non potest exigere debitum, cum sint duo rei promittendi eiusdem pecuniae, a quo velit. * diocl. et maxim. aa. diogeni. * <a 287 pp. v k. mart. diocletiano iii et maximiano aa. conss.>

CJ.8.39.1.1: Imperatores Diocletianus, Maximianus

Et ideo, si probaveris te conventum in solidum exsolvisse, rector provinciae iuvare te adversus eum, cum quo communiter mutuam pecuniam accepisti, non cunctabitur. <a 287 pp. v k. mart. diocletiano iii et maximiano aa. conss.>

CJ.8.39.2: Imperatores Diocletianus, Maximianus

Exprimere debueras tuis precibus, utrumne in partem an in solidum singuli vos obligaveritis ac duo rei promittendi extiteritis, cum, si quidem ab initio unusquisque pro parte sit obligatus, egredi contractus fidem non possit, si vero in solidum, electio rescripto adimi non debeat. * diocl. et maxim. aa. et cc. fabricio. * <a 293 s. id. april. byzantii aa. conss.>

CJ.8.39.3: Imperatores Diocletianus, Maximianus

Propter mutuam uni datam pecuniam aliis reis promittendi factis, ob non numeratam sibi pecuniam obligationem remitti desiderio postulantium iura refragantur. * diocl. et maxim. aa. et cc. andronico. * <a 294 s. v id. febr. sirmi cc. conss.>

CJ.8.39.4pr.: Imperator Justinianus

Cum quidam rei stipulandi certos habebant reos promittendi, vel unus forte creditor duos vel plures debitores habebat, vel contrario multi creditores unum debitorem, et alii ex reis promittendi ad certos creditores debitum agnoverint vel per solutionem vel per alios modos, quos in anterioribus sanctionibus interruptionibus et invenimus positos et nos ampliavimus, vel forte ad unum creditorem quidam ex debitoribus devotionem suam ostenderunt, vel cum plures essent creditores, debitor qui solus existeret ad unum ex his vel quosdam debitum agnovit, et quaerebatur, si eis vel ei datur licentia adversus alios indevotionem suam exercere et quasi tempore emenso exactionem recusare, vel quibusdam ex debitoribus debitum agnoscentibus vel in iudicio pulsatis debent et alii ab omni contradictione repelli: * iust. a. iohanni pp. * <a 531 d. k. sept. constantinopoli post c onsulatum lampadii et orestis vv. cc.>

CJ.8.39.4.1: Imperator Justinianus

Nobis pietate suggerente videtur esse humanum semel in uno eodemque contractu qualicumque interruptione vel agnitione adhibita omnes simul compelli ad debitum persolvendum, sive plures sint rei sive unus, sive plures creditores vel non amplius quam unus. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.8.39.4.2: Imperator Justinianus

Sancimus in omnibus casibus, quos noster sermo complexus est, aliorum devotionem vel agnitionem vel ex libello admonitionem aliis debitoribus praeiudicare et aliis prodesse creditoribus. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.8.39.4.3: Imperator Justinianus

Si itaque generalis devotio et nemini liceat alienam indevotionem sequi, cum ex una stirpe unoque fonte unus effluxit contractus vel debiti causa ex eadem actione apparuit. <a 531 d. k. sept. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.8.40.0. De fideiussoribus et mandatoribus.

CJ.8.40.1: Imperatores Severus, Antoninus

Si lysias adempta parte bonorum exulare iussus est, non nisi pro parte quam retinuerit creditoribus obligatus est. verum qui pro eo fidem suam adstrinxerint, iure pristino conveniri possunt. * severus et ant. aa. lysiae. * <a 200 pp. id. oct. severo a. iii et victorino conss.>

CJ.8.40.2pr.: Imperatores Severus, Antoninus

Creditori, qui pro eodem debito et pignora et fideiussorem accepit, licet, si malit, fideiussorem convenire in eam pecuniam, in qua se obligaverit. quod cum facit, debet ius pignorum in eum transferre. * sev. et ant. aa. plotio. * <a 207 d. v k. febr. apro et maximo conss.>

CJ.8.40.2.1: Imperatores Severus, Antoninus

Sed cum in alia quoque causa eadem pignora vel hypothecas habet obligatas, non prius compellendus est transferre pignora, quam omne debitum exsolvatur. <a 207 d. v k. febr. apro et maximo conss.>

CJ.8.40.3pr.: Imperatores Severus, Antoninus

Non recte procuratores nostri, si adlegationi tuae fides adesset, audire te noluerunt ex bonis fideiussoris quae ad fiscum pervenerunt pecuniam repetentem, sed reum principalem convenire iusserunt, cum electionis potestas permittatur creditori. * sev. et ant. aa. maximo. * <a 208 pp. xvii k. sept. antonino a. iii et geta iii conss.>

CJ.8.40.3.1: Imperatores Severus, Antoninus

Sed cum tu duos fideiussores accepisse te proponas, si et alter idoneus est, intellegis te divisa quantitate partem competentem a procuratore petere debere et adversus alium fideiussorem experiri. <a 208 pp. xvii k. sept. antonino a. iii et geta iii conss.>

CJ.8.40.3.2: Imperatores Severus, Antoninus

Nam licet significes adiectum in obligatione, ut singuli in solidum tenerentur, tamen nihil haec res mutat condicionem iuris et constitutionem. nam et cum hoc non adiciatur, singuli tamen in solidum tenentur: sed ubi sunt omnes idonei, in portionem obligatio dividitur. <a 208 pp. xvii k. sept. antonino a. iii et geta iii conss.>

CJ.8.40.4: Imperator Antoninus

Novatione legitime perfecta debiti in alium translati prioris contractus fideiussores vel mandatores liberatos non ambigitur, si modo in sequenti se non obligaverunt. * ant. a. rufae. * <a 213 pp. xv k. oct. antonino a. iiii et balbino conss.>

CJ.8.40.5: Imperator Antoninus

Iure nostro est potestas creditori relicto reo eligendi fideiussores, nisi inter contrahentes aliud placitum doceatur. * ant. a. potamoni. * <a 214 pp. vi non. mai messala et sabino conss.>

CJ.8.40.6: Imperator Antoninus

Si pater tuus pro cornelio, cum pecuniam mutuam acciperet, se non obligavit, frustra ex eo, quod tabulas obligationis ut testis adsignavit, conveniris. * ant. a. pollae. * <a 214 pp. xi k. iul. messala et sabino conss.>

CJ.8.40.7: Imperator Antoninus

Si creditor condicioni mandato adscriptae, cum pecuniam mutuam daret, in accipiendis hypothecis non paruit, frustra te iudicio mandati convenit, quando non alias te obligasse intellegaris, quam si pignoribus contraheretur obligatio. * ant. a. eroti. * <a 215 pp. k. iul.Laeto ii et cereale conss.>

CJ.8.40.8: Imperator Alexander Severus

Filius familias, qui pro patre, quamvis in venditione fundi, fideiussit, tenetur. * alex. a. longo. * <a 223 pp. ii id. oct. maximo ii et aeliano conss.>

CJ.8.40.9: Imperator Alexander Severus

Etiamsi de iure obligationis pignorum actum fuerit, fideiussoribus liberatio non contingit. * alex. a. aristocrati. * <a 223 pp. v k. dec. maximo ii et aeliano conss.>

CJ.8.40.10pr.: Imperator Alexander Severus

Fideiussor seu mandator si in usuras quoque obligatus est, iustam causam recusandi solvere eas non habet. * alex. a. vitali. * <a xxx pp.>

CJ.8.40.10.1: Imperator Alexander Severus

Ut autem is, qui cum altero fideiussit, non solus conveniatur, sed dividatur actio inter eos qui solvendo sunt, ante condemnationem ex ordine postulari solet. <a xxx pp.>

CJ.8.40.11pr.: Imperator Alexander Severus

Cum alter ex fideiussoribus in solidum debito satisfaciat, actio ei adversus eum qui una fideiussit non competit. * alex. a. sallustio. * <a 229 pp. vii k. nov. alexandro a. iii et dione conss.>

CJ.8.40.11.1: Imperator Alexander Severus

Potuisti sane, cum fisco solveres, desiderare, ut ius pignoris quod fiscus habuit in te transferretur, et si hoc ita factum est, cessis actionibus uti poteris. quod et in privatis debitis observandum est. <a 229 pp. vii k. nov. alexandro a. iii et dione conss.>

CJ.8.40.12: Imperator Alexander Severus

Blanditus tibi est, qui non teneri te persuasit, quod, cum pro alio intervenires , egguwmai dixisti, cum et his verbis obligationem verborum contrahi pridem receptum est. * alex. a. theodoto. * <a 230 pp.Vi k.Sept. agricola et clemente conss.>

CJ.8.40.13: Imperator Gordianus

Si barsagoram latronem lysanias decurio inventurum se spopondisset, aut exhibere compellendus est aut transmittendus ad praefectum praetorio vel ad praesidem provinciae. * gord. a. pars ex epistula. * <a xxx >

CJ.8.40.14pr.: Imperator Gordianus

Mandati actio personalis est. quae si nomine fideiussoris vel adversus debitorem seu heredes eius competit, praeses provinciae quae deberi compererit reddi iubebit. * gord. a. salvio. * <a 239 pp. iii non. iul. gordiano a. et aviola conss.>

CJ.8.40.14.1: Imperator Gordianus

Pignora etenim, quae reo stipulandi nexa fuerunt, ita demum ad vos transeunt, si facta nominis redemptione solutio celebrata est vobisque mandatae sunt actiones. <a 239 pp. iii non. iul. gordiano a. et aviola conss.>

CJ.8.40.14.2: Imperator Gordianus

Quod si factum est, ea quoque vobis persequentibus adversus possessores extraordinariam iurisdictionem idem vir clarissimus impertiet. <a 239 pp. iii non. iul. gordiano a. et aviola conss.>

CJ.8.40.15pr.: Imperator Gordianus

Si indebitam pecuniam quasi ex causa fideiussionis obstrictus in cautionem per errorem deduxisti, tam doli mali exceptione uti quam condicere, ut obligatio tibi accepto feratur, potes. * gord. a. claudiano. * <a 239 pp. v k. dec. gordiano a. et aviola conss.>

CJ.8.40.15.1: Imperator Gordianus

Non est autem dubium fideiussorem, rei promittendi bonis ad fiscum devolutis si idem fiscus ob debitum restituendum fuerit conventus et solverit, liberari. <a 239 pp. v k. dec. gordiano a. et aviola conss.>

CJ.8.40.16: Imperator Gordianus

Fuit liberum, antequam adversus omnes fideiussores lis contestaretur, unum eorum eligere creditori, si modo ceteros minus idoneos existimaret. at nunc post litis contestationem petitionem divisam redintegrari iuris ratio non patitur. * gord. a. maximo. * <a 241 pp. ii id. iun. gordiano a. ii et pompeiano conss.>

CJ.8.40.17: Imperator Gordianus

Omissis quoque pignoribus fideiussorem a creditoribus utiliter conveniri, nisi in id quod ex his refici non potuerit acceptus sit, explorati iuris est. * gord. a. brasidae. pars ex epistula. * <a 242 pp. vi id. mart. attico et praetextato conss.>

CJ.8.40.18: Imperator Philippus

Si, ut proponis, fundum ob debitum obligatum non iusto pretio vendidisti, residuam quantitatem, quam ex pretio eiusdem servare potuisses, refundi tibi a fideiussore non iure poscis. * philipp. a. et philipp. c. smyrnae. * <a 244 pp. v k. aug. peregrino et aemiliano conss.>

CJ.8.40.19: Imperatores Diocletianus, Maximianus

Si alienam reo principaliter constituto obligationem suscepisti vel fideiussorio sive mandatorio vel quocumque alieno nomine pro debitore intercessisti, non posse urgueri creditorem, eum qui mutuam accepit pecuniam quam te convenire, scire debueras, cum, si hoc in initio contractus specialiter non placuit, habeat liberam electionem. * diocl. et maxim. aa. et cc. sabiniano. * <a 293 s. ii k. mai. aa. conss.>

CJ.8.40.20: Imperatores Diocletianus, Maximianus

Sententia bonorum omnium ademptionem continente rei damnati principalis intercessores eligendi creditori potestas non adimitur. * diocl. et maxim. aa. et cc. aurelio. * <a 293 >

CJ.8.40.21: Imperatores Diocletianus, Maximianus

Sicut eligendi fideiussores creditor habet potestatem, ita intercessorem postulantem cedi sibi hypothecae sive pignori obligata iure non prius ad solutionem, nisi mandata super hac re fuerit persecutio, convenit urgueri. * diocl. et maxim. aa. et cc. iuliano. * <a 293 s. xi k. nov. aa. conss.>

CJ.8.40.22: Imperatores Diocletianus, Maximianus

Si ultra hoc, quod accepit ea, pro qua te mandatorio nomine intercessisse commemoras, daturum te scripsisti, praeses provinciae ex hoc, quod ultra mandatum tuum numeratum est, a te nihil exigi patietur. * diocl. et maxim. aa. et cc. hermiano. * <a 294 s. xii k. mai. cc. conss.>

CJ.8.40.23: Imperatores Diocletianus, Maximianus

Reos principales vel mandatores simpliciter acceptos eligere vel pro parte convenire vel, satis non faciente contra quem egeras primo, post ad alium reverti, cum nullus de his electione liberetur, licet. * diocl. et maxim. aa. et cc. antipatro. * <a 294 s. non. dec. nicomediae cc. conss.>

CJ.8.40.24: Imperatores Diocletianus, Maximianus

Fideiussoris quidem heres exemplo rei principalis tenetur. sed si idem utrisque succedat, intercessionis obligatione finita velut principalis tantum debitoris heres conveniri potest. * diocl. et maxim. aa. et cc. pergamio. * <a 294 s. xi k. ian. cc. conss.>

CJ.8.40.25: Imperatores Diocletianus, Maximianus

Pignoribus datis a reo principali distractis nec post longi temporis intervallum residuum a fideiussore creditor petere prohibetur. * diocl. et maxim. aa. et cc. philippo. * <a 294 s. vi k. ian. cc. conss.>

CJ.8.40.26pr.: Imperator Justinianus

Sancimus, si quis pro alio spoponderit, quatenus eum intra certum tempus tradat vel certam quantitatem pecuniarum pro eo inferat, et tempore statuto iam effluente non poterit eum repraesentare, non statim pecunias pro eo stipulatas inferre , sed competere quidem post temporis lapsum omnimodo poenalem actionem, non autem statim summam, pro qua fideiussor admissus est, profligari. * iust. a. iuliano pp. * <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.40.26.1: Imperator Justinianus

Sed si quidem usque ad sex mensuum spatium tempus statutum sit, aliud tantum ei indulgeri, intra quod si possit personam exhibere et eam tradere, poena sit liberatus. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.40.26.2: Imperator Justinianus

Sin autem amplius quam sex mensuum tempus ab initio constitutum est, tunc, quanticumque temporis curricula data sunt, tamen post lapsum eorum semenstres tantum habere eum indutias, intra quas sit ei licentia personam et non pecunias reddere. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.40.26.3: Imperator Justinianus

Sin autem et secunda adiectio temporis excedat, tunc omnimodo poenam pecuniariam persolvat. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.40.26.4: Imperator Justinianus

Sed si quidem post statutum ab initio tempus completum maluerit reum pro quo convenitur defendere, licere ei hoc facere, nisi pacti tenor ad hoc reclamaverit, si forsitan sine defensione facienda pro eo fideiussit: sed si defensionem subierit, eam usque ad finem adimplere, nulla ei licentia concedenda in medio personam tradere et pecuniarium dationem effugere. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.40.26.5: Imperator Justinianus

Sin autem et secundum tempus effluxerit, nullo modo ei licentia concedatur nec ad defensionis venire praesidium, sed omnimodo poenam conferat, nisi intra primum tempus quod statutum est reus principalis ab hac luce fuerit subtractus: tunc enim penitus ab exactione poenae liberum eum custodiri oportet. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.40.26.6: Imperator Justinianus

Quod si secundo tempore instante mortuus fuerit, nihilo minus poena iam commissa a fideiussore exigatur. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.40.26.7: Imperator Justinianus

Omnibus, quae in fideiussores, quando tali poenae fuerint illigati, statuimus, et in heredes pro utilitate eorum obtinentibus. <a 530 d. vi k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.40.27pr.: Imperator Justinianus

Si fideiussor nullam quidem cautionem faciat ostendens se fideiussorem extitisse , praesentibus autem tabulariis hoc confessus est, quod in fide sua eum suscepit , dubitabatur a palaestina advocatione, utrumne post duos menses liberatur quasi sine scriptis fideiussione facta, secundum generalia edicta sublimissimae praetorianae sedis, an utpote scriptura interveniente teneatur: et divisio alia introducebatur, si id iuris esse debet tam in publicis causis quam in privatis. * iust. a. iuliano pp. * <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.8.40.27.1: Imperator Justinianus

Sancimus itaque, nisi confessio litteris exposita fuerit a fideiussoribus ex repraesentatione personarum, licet attestatio super hoc praecesserit, attamen adhuc sine scriptis esse fideiussionem, videlicet in causis privatis, existimari et duobus mensibus effluentibus ab huiusmodi nexu fideiussores liberari, nisi in tempus certum data est fideiussio: tunc enim in tantum eam extendi, in quantum etiam attestatio fuerit expressa. <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.8.40.27.2: Imperator Justinianus

Sin autem publica causa interveniat, tunc omnimodo attestationem pro scriptura haberi. multis etenim privilegiis propter publicas necessitates publico iuri praestitis non ab re est et nos huiusmodi praerogativam ei condonare. <a 531 d. x k. mart. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.8.40.28pr.: Imperator Justinianus

Generaliter sancimus, quemadmodum in mandatoribus statutum est, ut contestatione contra unum ex his facta alter non liberetur, ita et in fideiussoribus observari. * iust. a. iohanni pp. * <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.8.40.28.1: Imperator Justinianus

Invenimus enim et in fideiussorum cautionibus plerumque ex pacto huiusmodi causae esse prospectum, et ideo generali lege sancimus nullo modo electione unius ex fideiussoribus vel ipsius rei alterum liberari, vel ipsum reum fideiussoribus vel uno ex his electo liberationem mereri, nisi satisfiat creditori, sed manere ius integrum, donec in solidum ei pecuniae persolvantur vel alio modo satis ei fiat. <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.8.40.28.2: Imperator Justinianus

Idemque in duobus reis promittendi constituimus, ex unius rei electione praeiudicium creditori adversus alium fieri non concedentes, sed remanere et ipsi creditori actiones integras et personales et hypothecarias, donec per omnia ei satisfiat. <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.8.40.28.3: Imperator Justinianus

Si enim pactis conventis hoc fieri conceditur et in usu quotidiano semper hoc versari adspicimus, quare non ipsa legis auctoritate hoc permittatur, ut nec simplicitas suscipientium contractus ex quacumque parte possit ius creditoris mutilare? <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.8.41.0. De novationibus et delegationibus.

CJ.8.41.1: Imperator Alexander Severus

Delegatio debiti nisi consentiente et stipulanti promittente debitore iure perfici non potest: nominis autem venditio et ignorante vel invito eo, adversus quem actiones mandantur, contrahi solet. * alex. a. quintiano et timotheo. * <a 223 pp. v id. febr. maximo ii et aeliano conss.>

CJ.8.41.2: Imperator Gordianus

Ex contractu pecuniae creditae actio inefficax dirigitur, si delegatione personae rite facta iure novationis vetustior contractus evanuit. * gord. a. firmino. * <a 238 pp. k. sept. pio et pontiano conss.>

CJ.8.41.3pr.: Imperator Gordianus

Si delegatio non est interposita debitoris tui ac propterea actiones apud te remanserunt, quamvis creditori tuo adversus eum solutionis causa mandaveris actiones, tamen, antequam lis contestetur vel aliquid ex debito accipiat vel debitori tuo denuntiaverit, exigere a debitore tuo debitam quantitatem non vetaris et eo modo tui creditoris exactionem contra eum inhibere. * gord. a. muciano. * <a 239 pp. v id. iun. gordiano a. et aviola conss.>

CJ.8.41.3.1: Imperator Gordianus

Quod si delegatione facta iure novationis tu liberatus es, frustra vereris, ne eo, quod quasi a cliente suo non faciat exactionem, ad te periculum redundet, cum per verborum obligationem voluntate novationis interposita debito liberatus sis. <a 239 pp. v id. iun. gordiano a. et aviola conss.>

CJ.8.41.4: Imperator Gordianus

Non abstulit tibi procurator tuus actionem, si, cum ei mandasses exactionem pecuniae, quam hi tibi debebant, contra quos supplicas, parte accepta de reliquo eos liberavit, cum neque contra voluntatem tuam novationem facere neque in eo quod non solvebatur eos liberare potuerit. * gord. a. stratonico. * <a 239 pp. id. nov. gordiano a. et aviola conss.>

CJ.8.41.5: Imperatores Diocletianus, Maximianus

Si pater tuus, cui te successisse proponis, creditori pro alexandro suscepto nomine certam pecuniam stipulanti spopondit, licet per improbitatem alexander ei satis non fecit, tamen summae repromissae nimis improbe solutio negatur. * diocl. et maxim. aa. et cc. septimiae. * <a 294 s. ii id. april. sirmi cc. conss.>

CJ.8.41.6: Imperatores Diocletianus, Maximianus

Nec creditoris creditori quisquam invitus delegari potest. * diocl. et maxim. aa. et cc. ziparo. * <a 294 s. xii k. nov. dorostolo cc. conss.>

CJ.8.41.7: Imperatores Diocletianus, Maximianus

Si solvere tibi pecuniam delegatus eucarpus dare spopondit vel debitum constituit, suo nomine conveniri potest. alioquin adversus eum experiri pro chirographario debitore tuo frustra conaris. * diocl. et maxim. aa. et cc. zoilo. * <a 294 s. xvii k. ian. cc. conss.>

CJ.8.41.8pr.: Imperator Justinianus

Novationum nocentia corrigentes volumina et veteris iuris ambiguitates resecantes sancimus, si quis vel aliam personam adhibuerit vel mutaverit vel pignus acceperit vel quantitatem augendam vel minuendam esse crediderit vel condicionem seu tempus addiderit vel detraxerit vel cautionem iuniorem acceperit vel aliquid fecerit, ex quo veteris iuris conditores introducebant novationes, nihil penitus priori cautelae innovari, sed anteriora stare et posteriora incrementum illis accedere, nisi ipsi specialiter remiserint quidem priorem obligationem et hoc expresserint, quod secundam magis pro anterioribus elegerint. * iust. a. ad sena tum. * <a 530 d. xi k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.41.8.1: Imperator Justinianus

Et generaliter definimus voluntate solum esse, non lege novandum, etsi non verbis exprimatur, ut sine novatione, quod solito vocabulo anobateutws dicunt, causa procedat: hoc enim naturalibus inesse rebus volumus et non verbis extrinsecus supervenire. <a 530 d. xi k. aug. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.42.0. De solutionibus et liberationibus.

CJ.8.42.1: Imperator Antoninus

In potestate eius est, qui ex pluribus contractibus pecuniam debet, tempore solutionis exprimere, in quam causam reddat. quod si debitor id non fecit, convertitur electio ad eum qui accepit. si neuter voluntatem suam expressit, prius in usuras id quod solvitur, deinde in sortem accepto feretur. * ant. a. aristaenetae. * <a 212 pp. prid. non. iun. duobus aspris conss.>

CJ.8.42.2: Imperator Alexander Severus

Liberari fideiussores, quotiens fiscus tam creditori quam debitori, licet diversis stationibus, succedit, ius certum est. quod et in tua persona procuratores mei custodient. * alex. a. bassae. * <a 232 s. k. iun. lupo et maximo conss.>

CJ.8.42.3: Imperator Gordianus

Si, cum servus liberam peculii administrationem haberet, mutuam pecuniam ab eo accepisti, eique ante ademptum peculium vel priusquam ademptum cognosceres eam exsolvisti, ea solutione liberatus es. * gord. a. apollonio. * <a 238 pp. v k. oct. pio et pontiano conss.>

CJ.8.42.4: Imperator Gordianus

Nihil interest, utrum creditori pecuniam mutuam solveris, an ex eius voluntate servo numeraveris. nec enim ex eo, quod creditor in fatum concessit, priusquam instrumenta redderet, evacuatae obligationis vires reparari queunt. * gord. a. rufinae. * <a 238 pp. prid. id. oct. pio et pontiano conss.>

CJ.8.42.5: Imperator Gordianus

Nulla tibi adversus creditorem alienum actio superest eo, quod debitam ei quantitatem offerens ius obligationis in te transferri desideras, cum ab eo te nomen comparasse non suggeras, licet solutione ab alio facta nomine debitoris evanescere soleat obligatio. * gord. a. celso. * <a 238 pp. vii k. nov. pio et pontiano conss.>

CJ.8.42.6: Imperator Gordianus

Si inter patrem tuum eosque, quos debitores esse dicebas, non de dubia lite transactio facta est, sed parte tantummodo recuperata universum se recepisse cavit nec de superfluo eos qui verbis obligati erant per acceptilationem liberavit nec donationis causa id factum est, exuberantis debiti integra ei repetitio competit. * gord. a. alexandro. * <a 239 pp. iii id. febr. gordiano a. et aviola conss.>

CJ.8.42.7: Imperator Philippus

Eius quantitatis, cuius petitionem ratio compensationis excludit, usuram non posse reposci manifestum est. * philipp. a. et philipp. c. antiocho. * <a 244 pp. vi k. aug. peregrino et aemiliano conss.>

CJ.8.42.8: Imperator Philippus

Usuras, quae quotannis in urbe numerandae sunt, promittere alio loco dependi nisi ex iusta causa exempli ratio minime sinit. * philipp. a. et c. rufo. * <a 245 pp. v id. mai. philippo a. et titiano conss.>

CJ.8.42.9: Imperatores Diocletianus, Maximianus

Obsignatione totius debitae pecuniae sollemniter facta liberationem contingere manifestum est. sed ita demum oblatio debiti liberationem parit, si eo loco, quo debetur solutio, fuerit celebrata. * diocl. et maxim. aa. cassio. * <a 286 pp. v id. mai. maximo ii et aquilino conss.>

CJ.8.42.10: Imperatores Diocletianus, Maximianus

Successores eius, qui maior quinque et viginti annis in solutum pro debito iure mancipia dedit, haec revocare non posse constat. * diocl. et maxim. aa. et cc. ambrosio. * <a 293 s. v id. april. byzantii aa. conss.>

CJ.8.42.11: Imperatores Diocletianus, Maximianus

Cum maritum tuum a debitoribus tuis minoris viginti et quinque annis constitutae velut ex causa tibi debiti aliquas accepisse quantitates nec tamen te consensum commodasse significes, nullum tibi potuit praeiudicium fieri, nisi factam solutionem post maiorem aetatem ratam feceris. * diocl. et maxim. aa. et cc. capitolinae. * <a 293 s. v k. mai. heracliae aa. conss.>

CJ.8.42.12: Imperatores Diocletianus, Maximianus

Invito vel ignorante creditore qui solvit alii, non se liberat obligatione. quod si hoc vel mandante vel ratum habente eo fecerit, non minus liberationem consequitur, quam si eidem creditori solvisset. * diocl. et maxim. aa. et cc. eutycho. * <a 293 s. iii id. mai. aa. conss.>

CJ.8.42.13: Imperatores Diocletianus, Maximianus

Si obligatum ex causa mandati non per stipulationem facta novatione, post acceptilatione liberasti, sed tantum receptam ex eadem causa debitam quantitatem falso scripsisti, figmento veritatis extingui non potuit obligatio. * diocl. et maxim. aa. et cc. philotimo. * <a 293 s. vii k. iun. aa. conss.>

CJ.8.42.14: Imperatores Diocletianus, Maximianus

Pecuniae solutae professio collata instrumento maiorem gestae rei probationem continet, quam si chirographum acceptae mutuae pecuniae fuisset redditum. * diocl. et maxim. aa. et cc. cutae. * <a 293 s. v id. iul. aa. conss.>

CJ.8.42.15: Imperatores Diocletianus, Maximianus

Quod debitori tuo chirographum redditum contra voluntatem tuam adseveres, nihil de iure tuo deminutum est. quibuscumque itaque argumentis iure proditis hanc obligationem tibi probanti eum per huiusmodi factum liberationem minime consecutum iudex ad solutionem iure debiti compellet. * diocl. et maxim. aa. et cc. quartioni. * <a 293 s. v k. sept. aa. conss.>

CJ.8.42.16: Imperatores Diocletianus, Maximianus

Eum, a quo mutuam sumpsisti pecuniam, in solutum nolentem suscipere nomen debitoris tui compelli iuris ratio non permittit. * diocl. et maxim. aa. et cc. charidemo. * <a 293 s. xv k. nov. aa. conss.>

CJ.8.42.17: Imperatores Diocletianus, Maximianus

Manifesti iuris est tam alio pro debitore solvente quam rebus pro numerata pecunia consentiente creditore datis tolli comparatam obligationem. * diocl. et maxim. aa. et cc. cassio. * <a 293 s. k. dec. sirmi aa. conss.>

CJ.8.42.18: Imperatores Diocletianus, Maximianus

Inquisitio veritatis tolli non potuit, quod chirographa, quae fecerat procurator tuus, recepta tibique restituta ab ipsius herede proponas cum subscriptione procuratoris significante, quod nihil creditoribus debeatur, cum nihil prohibeat et creditoribus satisfactum et non vestrae pecuniae, sed ipsius, cui negotium gerendum mandaveras, processisse solutionem. * diocl. et maxim. aa. et cc. domitio aphobio. * <a 294 s. id. febr. cc. conss.>

CJ.8.42.19: Imperatores Diocletianus, Maximianus

Si, actore tam mutuis pecuniis dandis quam debitis recipiendis praeposito, in hoc quod susceperas eius dominae per ipsum fecisti satis, instrumentum inane solutione celebrata nihil tibi nocere potest. aliter enim solventes servo de actione domini liberare se minime possunt. * diocl. et maxim. aa. et cc. diogeni. * <a 294 s. v id. oct. cc. conss.>

CJ.8.42.20: Imperatores Diocletianus, Maximianus

Si operas certi servi pecunia sumpta creditorem sibi in debitum compensare placuit, his secundum conventionis fidem praestitis de mancipio restituendo pacti tenor servari debet. * diocl. et maxim. aa. et cc. eucratidi. * <a 294 s. v k. nov. hadrianopoli cc. conss.>

CJ.8.42.21: Imperatores Diocletianus, Maximianus

Interest multum, utrumne spe futurae numerationis suscepisse te quod instrumento continetur scripsisti, an accepta minore quantitate tantum quantum lectio probat in scriptura conferri placuit. nam superiori quidem casu residui petitio debiti manet integra, posteriori vero consensu transactionis finitis stare convenit. * diocl. et maxim. aa. et cc. rufo. * <a 294 s. iii non. dec. cc. conss.>

CJ.8.42.22: Imperatores Diocletianus, Maximianus

Inductum (id est cancellatum) nec ne sit chirographum, vestrum solutionem semel debiti factam ei, qui exigendi potestatem habuit, probantium nihil interest. * diocl. et maxim. aa. et cc. grato. * <a 294 s. v id. dec. cc. conss.>

CJ.8.42.23: Imperatores Diocletianus, Maximianus

Si litterarum auxanonis contemplatione, quas ad aristonem de numeranda tibi pecunia dederat, recepisse scripsisti debitum ab aristone, mandato non impleto, cum petitio debiti manet integra, nihil legitimam exactionem impedire potest. * diocl. et maxim. aa. et cc. vatio. * <a 294 s. xv k. ian. nicomediae cc. conss.>

CJ.8.42.24: Imperatores Diocletianus, Maximianus

Cum pro pecunia quam acceperas secundum placitum euandro te fundum dedisse profitearis, eius industriam vel eventum meliorem tibi, non ipsi prodesse, contrarium non postulaturus, si minoris distraxisset, non iusta petis. * diocl. et maxim. aa. et cc. rufino. * <a 294 s. vii k. ian. nicomediae cc. conss.>

CJ.8.42.25: Imperatores Diocletianus, Maximianus

Solutionem adseveranti probationis onus incumbit: quo facto chirographum condicere potest. * diocl. et maxim. aa. et cc. antelliano. * <a 294 s. iii k. ian. nicomediae cc. conss.>

CJ.8.43.0. De acceptilationibus.

CJ.8.43.1: Imperator Antoninus

Iam tibi rescripsi posse apud iudicem quaeri, an sollemnibus verbis tutoris auctoritate interveniente soror tua acceptilatione debitorem suum liberaverit. quare si in repetenda pecunia, quam exsolvit, diversa pars perseveraverit, uteris defensionibus competentibus. * ant. a. apronio. * <a 212 pp. iii id. febr. duobus aspris conss.>

CJ.8.43.2: Imperatores Diocletianus, Maximianus

Si donationis gratia novatione facta per acceptilationem praestiteris liberationem, omnis agendi via perempta est. * diocl. et maxim. aa. et cc. claro. * <a 293 s. vi k. ian. aa. conss.>

CJ.8.43.3: Imperatores Diocletianus, Maximianus

Per aquilianam stipulationem pacto subditam obligatione praecedente sublata et acceptilatione, quae fuerit inducta, perempta ei, qui ex nulla causa restitui potest, omnis agendi via praecluditur. * diocl. et maxim. aa. et cc. demetriae. * <a 294 s. v k. dec. cc. conss.>

CJ.8.44.0. De evictionibus.

CJ.8.44.1: Imperatores Severus, Antoninus

Emptor hereditatis rem a possessoribus sumptu ac periculo suo persequi debet. evictio quoque non praestatur in singulis, cum hereditatem iure venisse constet, nisi aliud nominatim inter contrahentes convenit. * sev. et ant. aa. munatio. * <a 200 pp. vi k. mart. severo ii et victorino conss.>

CJ.8.44.2: Imperatores Severus, Antoninus

Quoniam avus tuus, cum praedia tibi donaret, de evictione eorum cavit, potes adversus coheredes tuos ex causa stipulationis consistere ob evictionem praediorum , pro portione scilicet hereditaria. nudo autem pacto interveniente minime donatorem hac actione teneri certum est. * sev. et ant. aa. quartae. * <a 205 pp. ii k. mart. antonino a. ii et geta ii conss.>

CJ.8.44.3: Imperatores Severus, Antoninus

Qui rem emit et possidet, quamdiu evicta non est, auctorem suum propterea, quod aliena vel obligata res dicatur, convenire non potest. * sev. et ant. aa. aureliano. * <a 210 pp. viii k. aug. faustino et rufino conss.>

CJ.8.44.4: Imperator Antoninus

Si praedium tibi pro soluto datum aliis creditoribus fuerat obligatum, causa pignoris mutata non est. igitur si hoc iure fuerit evictum, utilis tibi actio contra debitorem competit. nam eiusmodi contractus vicem venditionis obtinet. * ant. a. georgio. * <a 212 pp. xi k. aug. duobus aspris conss.>

CJ.8.44.5: Imperator Antoninus

Ex praediis, quae mercata es, si aliqua a venditore obligata et necdum tibi tradita sunt, ex empto actione consequeris, ut ea a creditrice liberentur: id enim fiet, si adversus venditorem ex vendito actione pretium petentem doli exceptionem opposueris. * ant. a. patroinae. * <a 212 pp. xv k. oct. duobus aspris conss.>

CJ.8.44.6: Imperator Alexander Severus

Non dubitatur, etsi specialiter venditor evictionem non promiserit, re evicta ex empto competere actionem. * alex. a. octavio. * <a 222 pp. viii id. mart. alexandro a. cons.>

CJ.8.44.7: Imperator Alexander Severus

Auctore laudato si evicta res est, fideiussorem, etiamsi agi causam ignoraverit, conveniri evictionis nomine posse non ambigitur. * alex. a. hilariano. * <a 222 pp. iii non. april. alexandro a. cons.>

CJ.8.44.8: Imperator Alexander Severus

Emptor fundi, nisi auctori aut heredi eius denuntiaverit, evicto praedio neque ex stipulatu neque ex dupla neque ex empto actionem contra venditorem vel fideiussores eius habet. sed et si iudicio emptor non adfuit aut praesens per iniuriam iudicis victus est absente auctore vel fideiussore, regressum adversus eum non habet. * alex. a. clementio. * <a 222 pp. viii id. dec. alexandro a. cons.>

CJ.8.44.9: Imperator Alexander Severus

Si controversia tibi possessionis, quam bona fide te emisse adlegas, ab aliquo movetur, auctori heredive eius denuntia. et si quidem obtinueris, habebis quod emisti. sin autem evictum erit, a venditrice successoresve eius consequeris, quanti tua interest: in quo continetur etiam eorum persecutio, quae in rem emptam a te, ut melior fieret, erogata sunt. * alex. a. terentio. * <a 222 pp. xi k. ian. alexandro a. cons.>

CJ.8.44.10: Imperator Alexander Severus

Si fines agri venditor demonstravit et legem dixit intra eos neminem ingressurum , si quid inde evincatur, periculo fit auctoris. quod si finibus suis quos demonstravit agrum vendidit, lis finalis ad venditorem non pertinet. * alex. a. largo. * <a 223 pp. vii k. dec. maximo ii et aeliano conss.>

CJ.8.44.11: Imperator Alexander Severus

Exceptione doli recte eum submovebis, quem ab auctore tuo fideiussorem accepisti , si eius nomine controversiam refert, quasi per uxorem suam, antequam tu emeres , comparaverit, qui vendenti adeo consensum dedit, ut se etiam pro evictione obligaverit. * alex. a. clementi. * <a 231 pp. non. febr. pompeiano et peligno conss.>

CJ.8.44.12: Imperator Gordianus

Sive in libertatem evictus est servus quem mercatus es, sive cum comparares convenit, si qua quaestio eius nomine relata esset, etsi necdum evictus esset, ut pretium recuperares, praeses provinciae, quod tibi praestandum animadverterit, restitui iubebit. * gord. a. philippo. * <a 239 pp. vii id. mart. gordiano a. et aviola conss.>

CJ.8.44.13: Imperator Gordianus

Si ob causam iudicati pignora capta sunt ex eius auctoritate, cui praecipiendi ius fuit, ea de quibus complecteris, eaque tu mercatus es, frustra ab ea quae condemnata est vel quae in eius locum successit eorum refertur quaestio, quandoquidem, etsi evictio eorum ab alio subsecuta fuisset, adversus eos debuisse dari actionem, quibus pretii solutio proficit, meritissime rescriptum est. * gord. a. zoilo. * <a 239 pp. xvi k. iun. gordiano a. et aviola conss.>

CJ.8.44.14: Imperator Gordianus

Sive possessio venditoris fuit, filius eiusdemque patris heres frustra quaestionem movet, sive non patris, sed filii eius possessio fuit, de qua iure hereditario auctor laudari potest, controversiam movere non potest. * gord. a. secundino. * <a 239 pp. xiiii k. aug. gordiano a. et aviola conss.>

CJ.8.44.15: Imperator Philippus

Si non iniuria iudicantis, sed iuris ratione superatus es, pignus ob evictionem acceptum sollemniter persequi potes. * philipp. a. et philipp. c. menandro. * <a 245 pp. k. aug. philippo a. et titiano conss.>

CJ.8.44.16: Imperatores Diocletianus, Maximianus

Super empti agri quaestione disceptabit praeses provinciae et, si portionem diversae partis esse cognoverit, impensas, quas ad meliorandam rem vos erogasse constiterit, habita fructuum ratione restitui vobis iubebit. nam super pretio evictae portionis non eum qui dominium evicerit, sed auctricem conveniri consequens est. * diocl. et maxim. aa. alexandro et diogeni. * <a 290 pp. x k. iul. ipsis iiii et iii aa. conss.>

CJ.8.44.17: Imperatores Diocletianus, Maximianus

Si, cum quaestio tibi super eo quem comparaveras commoveretur, auctorem tuum certum fecisti nec citra iudicis disceptationem eum quem emeras tradidisti, praeses provinciae in damnis, quae te tolerasse meministi, medelam iuris adhibebit. * diocl. et maxim. aa. muciano. * <a 290 pp. v id. nov. ipsis iiii et iii aa. conss.>

CJ.8.44.18: Imperatores Diocletianus, Maximianus

Si status super homine tibi venumdato mota quaestio est, sollemnibus, quae iuris admitti ratio, interpositis si secundum libertatem fuerit lata sententia, poteris de evictione, si nesciens condicionem eius comparasti, sine aliqua dubitatione auctorem vel eius fideiussores heredesve eorum convenire. quod si fuisse servum sententia declaraverit, intellegis ad venditorem te reverti non posse. * diocl. et maxim. aa. et cc. eutychio. * <a 293 >

CJ.8.44.19: Imperatores Diocletianus, Maximianus

Si obligata praedia venumdedisti et longi temporis praescriptione solita emptores se tueri possunt, evictionis periculum timere non potes. * diocl. et maxim. aa. et cc. theodoro. * <a 293 s. ii k. mai. aa. conss.>

CJ.8.44.20pr.: Imperatores Diocletianus, Maximianus

Si parentes vestri mancipia venumdederunt quaestioque dominii mota est, emptoribus adesse ac defendere causam non prohibemini. * diocl. et maxim. aa. et cc. solido et aliis. * <a 293 s. vi k. iul. aa. conss.>

CJ.8.44.20.1: Imperatores Diocletianus, Maximianus

Quod si eis haec iam evicta sunt, instauratio litis ex persona vestra, si appellationem non interposuistis, contra ius desideratur. <a 293 s. vi k. iul. aa. conss.>

CJ.8.44.20.2: Imperatores Diocletianus, Maximianus

Empti sane iudicio pro evictione si conveniri coeperitis, nec vobis, ut defendatis, negotium denuntiatum probetur, intellegitis, quatenus vosmet ipsos tueri debeatis. <a 293 s. vi k. iul. aa. conss.>

CJ.8.44.21pr.: Imperatores Diocletianus, Maximianus

Empti actio longi temporis praescriptione non submovetur, licet post multa spatia rem evictam emptori fuerit comprobatum. * diocl. et maxim. aa. et cc. heliodoro. * <a 293 s. xi k. iul. serdicae aa. conss.>

CJ.8.44.21.1: Imperatores Diocletianus, Maximianus

Si itaque is, quem te comparasse commemoras, nunc in libertatem proclamet, interpellare venditorem sive successores eius debes, ut tibi adsistant causamque instruant. <a 293 s. xi k. iul. serdicae aa. conss.>

CJ.8.44.21.2: Imperatores Diocletianus, Maximianus

Quem si liberum esse vel servum non esse fuerit pronuntiatum, nec te conventione remisisse periculum evictionis fuerit comprobatum, praeses provinciae, si res integra est, quanti tua interest restitui tibi providebit. <a 293 s. xi k. iul. serdicae aa. conss.>

CJ.8.44.22: Imperatores Diocletianus, Maximianus

Cum tibi liberum venumdatum fundum ab auctore proponas, si ex antecedente obligatione quod debebatur iure solvisti, stipulationem, quam subiectam emptioni de indemnitate proponis, ipsius conceptio commissam manifeste declarat. * diocl. et maxim. aa. et cc. iulio. * <a 293 s. vii k. sept. viminacii aa. conss.>

CJ.8.44.23: Imperatores Diocletianus, Maximianus

Cum successores etiam venditoris pro evictione teneri possint, si velut obligata sibi res publica thessalonicensium pignoris instituat iure persequi quae comparasti, auctoris heredibus quocumque gradu constitutis adsistere negotio denuntia. quod sive praesentibus his fundus quem emisti fuerit evictus sive absentibus, postea quanti tua interest rem evictam non esse teneri, non quantum pretii nomine dedisti, si aliud non placuit, publice notum est. * diocl. et maxim. aa. et cc. eustochiae. * <a 293 s. ii k. ian. sirmi aa. conss.>

CJ.8.44.24pr.: Imperatores Diocletianus, Maximianus

Si post perfectam venditionem ante pretium numeratum rei venumdatae mota fuerit quaestio vel mancipia venumdata proclament in libertatem, cum in ipso limine contractus immineat evictio, emptorem, si satis ei non offeratur, ad totius vel residui pretii solutionem non compelli iuris auctoritate monstratur. * diocl. et maxim. aa. et cc. eutychio. * <a 294 s. vi k. febr. sirmi cc. conss.>

CJ.8.44.24.1: Imperatores Diocletianus, Maximianus

Unde cum parte pretii numerata, domus quam emisti tibi velut pignoris iure obligatae ne ad emptionem accederes, denuntiatum ab aliquo proponas, iudex tibi quae ex emptione veniunt praestari providebit. <a 294 s. vi k. febr. sirmi cc. conss.>

CJ.8.44.25: Imperatores Diocletianus, Maximianus

Si tibi liberam saturninus condicionem eius ignorans distraxit ac nunc eam defendit in libertatem, hac libera pronuntiata venditorem vel ex stipulatione duplae , quantum in hanc deductum est, vel empti actione quanti tua interest convenire potes. * diocl. et maxim. aa. et cc. saturninae. * <a 294 s. id. febr. cc. conss.>

CJ.8.44.26: Imperatores Diocletianus, Maximianus

Si quis tibi servum vendidit, postquam is rebus humanis exemptus est, cum evictionis periculum finitum sit, a te conveniri non potest. * diocl. et maxim. aa. et cc. neoni. * <a 294 s. ii k. april. sirmi cc. conss.>

CJ.8.44.27: Imperatores Diocletianus, Maximianus

Si fundum sciens alienum vel obligatum comparavit athenocles nec quicquam de evictione convenit, quod eo nomine dedit, contra iuris poscit rationem. nam si ignorans, desiderio tuo iuris forma negantis hoc reddi refragatur. * diocl. et maxim. aa. et cc. theophilo. * <a 294 s. xvii k. oct. cc. conss.>

CJ.8.44.28: Imperatores Diocletianus, Maximianus

Emptori etiam venditoris iura prodesse non ambigitur. si igitur vobis propter rei proprietatem mota fuerit quaestio, tam propriis quam venditoris defensionibus uti poteritis. * diocl. et maxim. aa. et cc. maximiano. * <a 294 s. iii non. oct. scuppis cc. conss.>

CJ.8.44.29: Imperatores Diocletianus, Maximianus

Si permutationis gratia praedia curatoribus quondam fratris tui mater tua dedit, his, quae in eorum vicem accepit, posteaquam ad defensionem fuerit denuntiatum, vel cum eorum non haberet facultatem, evictis quanti interest eos conveniri posse rationis est. * diocl. et maxim. aa. et cc. rheso. * <a 294 s. vii id. dec. nicomediae cc. conss.>

CJ.8.44.30: Imperatores Diocletianus, Maximianus

Non ex eo, quod duplam qui a matre tua mancipium comparavit evictionis nomine stipulatus est, alienae rei scientia convincitur, nec opinio eius ex hoc laeditur , ut malae fidei emptor existimetur. aliis itaque hoc indiciis, si vis, probare debes. * diocl. et maxim. aa. et cc. hastio. * <a 294 s. id. dec. cc. conss.>

CJ.8.44.31: Imperatores Diocletianus, Maximianus

Heredem fideiussoris rerum, pro quibus defunctus apud emptorem intercesserat pro venditore, factum eius cui successit ex sua persona dominium vindicare non impedit, scilicet evictionis causa durante actione. * diocl. et maxim. aa. et cc. agatho. * <a 294 s. xviii k. ian. nicomediae cc. conss.>

CJ.8.45.0. Creditorem evictionem non debere.

CJ.8.45.1pr.: Imperator Alexander Severus

Cum iure creditoris propter fisci debita praedium obligatum procurator meus vendidit, evictio non debetur, quia et privatus creditor eodem iure utitur, nisi nominatim hoc repromissum a privato fuerit. * alex. a. publicio. * <a 223 pp. xv k. nov. maximo ii et aeliano conss.>

CJ.8.45.1.1: Imperator Alexander Severus

Si tamen fiscus in ius alterius creditoris successit, emptori non iusta fisci nomine movetur controversia, sive quia potior fuerat, quando vendebat, sive quia infirmior, quoniam hoc utique praestare debet, qui pignoris iure vendat, potiorem se ceteris esse creditoribus. <a 223 pp. xv k. nov. maximo ii et aeliano conss.>

CJ.8.45.2: Imperator Gordianus

Si a creditrice iure pignoris fundos pater tuus comparaverit, evictis praediis ita demum petitionem adversus creditricem habere iure potes, si, cum vendiderit, de evictione rei promisit vel etiam dolo malo, cum sciret prudensque esset rem sine vitio non esse, eam patri tuo, cui successisti, venumdedit. nam sicut genus eiusmodi contractus inscium creditorem vinculo evictionis non adstringit, ita eum, qui fraudem admisit vel decepit, non excusat. * gord. a. sabino. * <a 240 pp. viii id. april. sabino ii et venusto conss.>

CJ.8.46.0. De patria potestate.

CJ.8.46.1: Imperatores Antoninus, verus

Si filium tuum in potestate tua dicis esse, praeses provinciae aestimabit, an audire te debeat, cum diu passus sis ut patris familias rem eius agi per eos, qui testamento matris tutores nominati fuerunt. * ant. et verus aa. titio. * <a xxx pp. sine die et conss.>

CJ.8.46.2: Imperator Antoninus

Eius, quod in potestate patris agens habuisti, dominium ad patrem tuum pertinuit extra ea, quae non adquiruntur. * ant. a. maroniae. * <a 215 pp. xiii k. mart. laeto ii et cereale conss.>

CJ.8.46.3: Imperator Alexander Severus

Si filius tuus in potestate tua est, res adquisitas tibi alienare non potuit: quem, si pietatem patri debitam non agnoscit, castigare iure patriae potestatis non prohiberis, artiore remedio usurus, si in pari contumacia perseveraverit, eumque praesidi provinciae oblaturus dicturo sententiam, quam tu quoque dici volueris. * alex. a. artemidoro. * <a 227 pp. v id. dec. albino et maximo conss.>

CJ.8.46.4pr.: Imperatores valer., gallien.

Congruentius quidem videtur intra domum, inter te ac filios tuos si quae controversiae oriuntur, terminari. * valer. et gallien. aa. et valer. c. gallae. * <a 259 pp. xvi k. iun. aemiliano et basso conss.>

CJ.8.46.4.1: Imperatores valer., gallien.

Sed si ita res fuit, ut iniuriis eorum et ad ius experiundum et ad vindictam processeris, aditus praeses provinciae super disceptationibus quidem pecuniariis consuetum exerceri iubebit ordinem iuris: reverentiam autem debitam exhibere matri filios coget et, si provectam ad inclementiores iniurias improbitatem deprehenderit, laesam pietatem severius vindicabit. <a 259 pp. xvi k. iun. aemiliano et basso conss.>

CJ.8.46.5: Imperatores Diocletianus, Maximianus

Filia tua non solum reverentiam, sed et subsidium vitae ut exhibeat tibi, rectoris provinciae auctoritate compelletur. * diocl. et maxim. aa. donatio. * <a 287 pp. k. mart. diocletiano iii et maximiano aa. conss.>

CJ.8.46.6: Imperatores Diocletianus, Maximianus

Abdicatio, quae graeco more ad alienandos liberos usurpabatur et apoceryxis dicebatur, romanis legibus non comprobatur. * diocl. et maxim. aa. hermogeni. * <a 288 pp. xvii k. dec. maximiano a. ii et ianuario conss.>

CJ.8.46.7: Imperatores Diocletianus, Maximianus

Si maritus tuus, licet militans, in patria potestate constitutus filium legitimis suscepit nuptiis, eum in potestate avi perseverasse non ambigitur. * diocl. et maxim. aa. et cc. duplianae. * <a 294 s. prid. non. april. cc. conss.>

CJ.8.46.8: Imperatores Diocletianus, Maximianus

Libertos exemplo ingenuorum filios suos post libertatem ex legitimis nuptiis natos in potestate habere non est prohibitum. * diocl. et maxim. aa. et cc. aemilianae. * <a 294 s. xvi k. mai. sirmi cc. conss.>

CJ.8.46.9: Imperatores Diocletianus, Maximianus

Nec filium negare cuiquam esse liberum senatus consulta de partu agnoscendo ac denuntiata poena, item praeiudicium edicto perpetuo propositum et remedium alimentorum apud praesidem maiori trimo petenti monstratum iure manifesto declarant. * diocl. et maxim. aa. et cc. nicagorae. * <a 294 s. v k. mai. sirmi cc. conss.>

CJ.8.46.10: Imperator Constantinus

Libertati a maioribus tantum impensum est, ut patribus, quibus ius vitae in liberos necisque potestas olim erat permissa, eripere libertatem non liceret. * const. a. ad maximum pu. * <a 323 d. xv k. iun. thessalonicae severo et rufino conss.>

CJ.8.47.0. De adoptionibus.

CJ.8.47.1: Imperator Gordianus

Hi, qui in aliena sunt potestate, iuxta ius civile non nisi apud eum, apud quem plena legis actio est, adoptari possunt. * gord. a. marciae. * <a 239 pp. k. iun. gordiano a. et aviola conss.>

CJ.8.47.2pr.: Imperatores Diocletianus, Maximianus

Impuberem, quem ad vicem naturalis subolis adrogare desideras, si hi, qui sanguinis necessitudine iunguntur, id ei expedire apud praesidem provinciae confirmaverint, filium habebis, ita ut bonorum tuorum quarta pars tam in postremo iudicio tuo, quam si a te emancipatus fuerit, ei praebeatur et super patrimonio eius idoneis fideiussoribus datis servo publico caveatur, ne sub copulandae adoptionis obtentu in facultates eius, quae ei diligenti provisione servandae sunt, inruas. * diocl. et maxim. aa. timotheo. * <a 286 pp. v id. mart. maximo ii et aquilino conss.>

CJ.8.47.2.1: Imperatores Diocletianus, Maximianus

Adrogatio etenim ex indulgentia principali facta proinde valet apud praetorem vel praesidem intimata, ac si per populum iure antiquo facta esset. <a 286 pp. v id. mart. maximo ii et aquilino conss.>

CJ.8.47.3: Imperatores Diocletianus, Maximianus

Cum eum, quem adrogare vis, libertum tuum esse profitearis nec ullam idoneam causam precibus indideris, id est quod non liberos habes, intellegis iuris auctoritatem desiderio tuo refragari. * diocl. et maxim. aa. marciano. * <a 286 pp. xvi k. iul. maximo ii et aquilino conss.>

CJ.8.47.4: Imperatores Diocletianus, Maximianus

Adoptio non tabulis, licet per tabellionem conficiendis, sed sollemni iuris ordine apud praesidem solet copulari. * diocl. et maxim. aa. proculiano. * <a 290 pp. k. sept. ipsis iiii et iii aa. conss.>

CJ.8.47.5: Imperatores Diocletianus, Maximianus

A muliere quidem, quae nec suos filios habet in potestate, adrogari non posse certum est. verum quoniam in solacium amissorum tuorum filiorum privignum tuum cupis in vicem legitimae subolis obtinere, adnuimus votis tuis secundum ea, quae adnotavimus, et eum proinde atque ex te progenitum ad fidem naturalis legitimique filii habere permittimus. * diocl. et maxim. aa. et cc. syrae. * <a 291 s. prid. non. dec. triballis tiberiano et dione conss.>

CJ.8.47.6: Imperatores Diocletianus, Maximianus

Adrogationes eorum, qui sui iuris sunt, nec in regia urbe nec in provinciis nisi ex rescripto principali fieri possunt. * diocl. et maxim. aa. et cc. melitoni. * <a 293 s. iiii non. april. byzantii aa. conss.>

CJ.8.47.7: Imperatores Diocletianus, Maximianus

In adoptionem quidem alienae civitatis civi recte dato additur, non mutatur patria, ac propterea ius originis in honorum ac munerum obsequio per adoptionem non minui perspicis. * diocl. et maxim. aa. et cc. attico. * <a 294 s. xi k. febr. sirmi cc. conss.>

CJ.8.47.8: Imperatores Diocletianus, Maximianus

In adoptionem patre, in cuius est potestate, libertae filiam dante, matris patronus adoptare non prohibetur. nam sui iuris adrogatio feminae nisi ex nostro rescripto numquam procedit. * diocl. et maxim. aa. et cc. isioni. * <a 294 s. v id. febr. cc. conss.>

CJ.8.47.9: Imperatores Diocletianus, Maximianus

Adoptatum, licet ex beneficio nostro, emancipatione sollemni separare familia sua pater adoptivus minime prohibetur. * diocl. et maxim. aa. et cc. marciano. * <a 294 v k. nov. anchiali cc. conss.>

CJ.8.47.10pr.: Imperator Justinianus

Cum in adoptivis filiis, qui filii familias constituti a patribus naturalibus aliis dantur, antiquae sapientiae incidit quaedam dubitatio, si oportet talem filium, si praeteritus a naturali patre fuerat, habere contra eius testamentum de inofficioso actionem (quam papinianus quidem negat, paulus autem sine effectu derelinquit, marcianus vero distinguit, ne ex hac causa utriusque patris perderet successionem, naturalis quidem voluntate eius circumventus, adoptivi propter egestatem, quam forte habebat), et iterum aliud vitium erat exortum: si enim post patris naturalis obitum pater adoptivus per emancipationis modum iura adoptionis dissolvisset, nulla spes ei remanebat neque contra patris naturalis voluntatem, quia mortis eius tempore in aliena fuerat familia constitutus, neque cont ra adoptivum patrem, quia per emancipationem eius familia exemptus est: ideo talem dubitationem et tale vitium corrigentes sancimus per adoptionem quidem ad extraneam personam factam iura naturalis patris minime dissolvi, sed ita eum permanere, quasi non fuisset in alienam familiam translatus. cum enim tanta fragilitas est adoptionis, ut possit in ipso die et filius fieri et extraneus per emancipationem inveniri, quis patiatur iura patris naturalis nexu divino copulata ludibrio defraudari, cum in hoc casu et contradicendi filio ex iure vetere datur licentia et invitus transire ad aliam familiam non cogitur? * iust. a. iohanni pp. * <a 530 d. k. sept. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.47.10.1: Imperator Justinianus

Omnia igitur, secundum quod iam disposuimus, cum ad extraneum patrem filius per adoptionem transfertur, maneant integra iura sive ad de inofficiosi querellam sive ad alias omnes successiones sive ab intestato sive ex testamento, quae liberis deferuntur, ut et ipse possit prodesse patri naturali et ab eo naturalia debita percipere. <a 530 d. k. sept. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.47.10.1a: Imperator Justinianus

Si vero pater naturalis avo materno filii sui vel, si ipse fuerit emancipatus, etiam paterno, vel proavo simili modo paterno vel materno filium suum dederit in adoptionem, in hoc casu, quia in unam personam concurrunt et naturalia et adoptiva iura, maneat stabile ius patris adoptivi et naturali vinculo copulatum et legitimo adoptionis modo constrictum: et ad eum solum respiciat filius, cui eum et natura adgregavit et lex per adoptionem adsignavit, et papiniani sententia in hac specie procedat, et ad eum tantummodo filius adoptivus spes totas extendat et non patris naturalis successionem molestare concedatur, sed avita et proavita tantummodo reverentia protegetur, eique adquirat quae possunt adquiri et prodesse, et is ei solus pater intellegatur, quem lex fecit et natura non dereliquit. <a 530 d. k. sept. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.47.10.1b: Imperator Justinianus

Neque enim marciani distinctioni locum esse in hoc casu invenimus, ubi nullius circumventionis suspicio potest aliquam sibi vindicare licentiam, avita et proavita adfectione haec omnia resecante. <a 530 d. k. sept. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.47.10.1c: Imperator Justinianus

Sed haec manere integra, nisi avus et proavus emancipatum fecerint filium adoptivum: tunc etenim necesse est iterum ad patrem naturalem eum reverti, cum emancipationis interventu adoptio in quamcumque personam facta dissolvitur. <a 530 d. k. sept. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.47.10.1d: Imperator Justinianus

(1) sed ne articulum adoptionis et in extraneam personam factae sine lege relinquamus, licentiam damus tali adoptivo patri, id est extraneo, si voluerit, nihil ei testamento suo relinquere, sed quidquid ei reliquerit, hoc libertatis sit, non legitimo vinculo adstrictum: cum enim per omnia naturae suae filium adgregavimus, manifestissimum est, quod et adquisitiones omnium rerum, quae ad filium familias pervenerint, secundum leges nostras non adoptivo extraneo patri, sed naturali usque ad modum usus fructus perveniunt, et remaneat in sacris patris naturalis, quasi imaginaria quadam et nova adfectione ei adquisita, non pristinae cognationis deminutione introducta. <a 530 d. k. sept. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.47.10.1e: Imperator Justinianus

Sed si quidem remaneat in tali adoptione nulla interveniente emancipatione, in hoc tantummodo prodesse ei volumus adoptionem, ut non successione ab intestato patris extranei adoptivi defraudetur, sed habeat accessionem fortunae ex patris naturalis sibi voluntate adquisitam. <a 530 d. k. sept. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.47.10.1f: Imperator Justinianus

Neque enim ex vetere iure cognationis nexus naturalis patris per adoptionem filio dissolvebatur, sed accedebant iura adoptiva certis reliquiis ex iure naturali remanentibus, et qui legitimus erat familiae adoptivae, is naturalis fuerat cognatus. quis enim materna iura possit abolere, cum videbatur et antiquo iure patrem quidem habere adoptivum, matrem autem eam, quam natura cognoscit? <a 530 d. k. sept. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.47.10.1g: Imperator Justinianus

Et ideo sancimus, etsi habet huiusmodi filius iura integra naturae, tamen, si intestatus pater extraneus adoptivus decesserit, habere eum etiam sui heredis ius ad eius tantummodo successionem, ut non etiam legitima iura ad familiam extranei patris adoptivi habeat, nec ipsa ad eum communionem aliquam habeat, sed quasi extraneus ita ad illam familiam inveniatur. <a 530 d. k. sept. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.47.10.2: Imperator Justinianus

Sin autem per emancipationem iura adoptiva fuerint dissoluta, tunc nullus ei penitus regressus ad adoptivum extraneum patrem, etsi moriatur intestatus, relinquatur, sed maneat tantummodo patrem naturalem cognoscens, tamquam non fuisset ab initio in adoptionem translatus. <a 530 d. k. sept. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.47.10.3: Imperator Justinianus

Quae autem de aliis adoptivis diximus, haec sancimus etiam de his, qui ex afiniano senatus consulto ex tribus maribus fuerant ab extraneo adoptati, nulla penitus differentia inter alios adoptivos et eos introducenda. <a 530 d. k. sept. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.47.10.4: Imperator Justinianus

Quae in filio diximus in adoptionem a patre dato, haec et in filia et in nepote et in nepte et deinceps personis utriusque sexus in sacris constitutis extendimus, si tamen tempore mortis avi sui parentes eos vel eas non antecedant. si enim patres eos antecedant (ubi nec imponitur necessitas avo aliquid nepoti vel nepti relinquere), maneant omnia iura adoptiva ei intacta. haec enim omnis sanctio de filio et filia et nepote et nepte et deinceps personis in sacris constitutis introducta est, ubi dubitabatur, quid statuendum est, quasi duobus patribus ei, uno ex natura, altero ex lege positis. <a 530 d. k. sept. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.47.10.5: Imperator Justinianus

Ubi autem homo sui iuris constitutus per adrogationem ex augusta liberalitate sese dederit in adoptionem, tunc omnia iura patris adoptivi habeat intacta. cum enim nullum inter patres inducitur discrimen, sit suus heres adoptivus patri adrogatori et familiae eius adgregetur, et omnia, quae ad filium adrogatum veteres legum latores induxerunt, intacta illibataque in eorum personis reserventur. <a 530 d. k. sept. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.47.11: Imperator Justinianus

Veteres circuitus in adoptionibus, quae per tres emancipationes et duas manumissiones in filio aut per unam emancipationem in ceteris liberis fieri solebant, corrigentes sive tollentes censemus licere parenti, qui liberos in potestate sua constitutos in adoptionem dare desiderat, sine vetere observatione emancipationum et manumissionum hoc ipsum actis intervenientibus apud competentem iudicem manifestare, praesente et eo qui adoptatur et non contradicente, nec non eo qui eum adoptat. * iust. a. iohanni pp. * <a 530 d. v k. nov. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.48.0. De emancipationibus liberorum.

CJ.8.48.1: Imperatores Diocletianus, Maximianus

Si lex municipii, in quo te pater emancipavit, potestatem duumviris dedit, ut etiam alienigenae liberos suos emancipare possint, id quod a patre factum est suam obtinet firmitatem. * diocl. et maxim. aa. herennio. * <a 290 pp. iii non. dec. ipsis iiii et iii aa. conss.>

CJ.8.48.2: Imperatores Diocletianus, Maximianus

In emancipationibus liberorum nec non donationibus non tam scriptura quam veritas considerari solet. * diocl. et maxim. aa. gennadiae. * <a 291 pp. v id. mart. tiberiano et dione conss.>

CJ.8.48.3: Imperatores Diocletianus, Maximianus

Non nudo consensu patria liberi potestate, sed actu sollemni vel casu liberantur , nec causae, quibus metus pater emancipavit filium, sed actus sollemnitas quaeritur. * diocl. et maxim. aa. et cc. heliodoro. * <a 293 s. xv k. oct. sirmi aa. conss.>

CJ.8.48.4: Imperatores Diocletianus, Maximianus

Nec avus neptem suam liberare potestate cogitur nec in cuiusquam iniuriam beneficia tribuere moris est nostri. * diocl. et maxim. aa. et cc. coloniae. * <a xxx d. id. oct.>

CJ.8.48.5: Imperator anast.

Iubemus licere parentibus, id est patri avo paterno seu proavo ceterisque ulterius per masculini sexus personas continua generis serie coniunctis, si liberos, quos habent in potestate propria, id est filium filiam, nepotem seu neptem ex filio, pronepotem seu proneptem ceterosque itidem per masculini sexus personas continua generis linea sibi coniunctos, per emancipationem vel absentes et peregre degentes vel in isdem locis seu regionibus et civitatibus commorantes, in iudicio vero non praesentes, iuris sui constituere maluerint, supplicationibus porrectis mereri super hoc divinum oraculum hocque apud competentem iudicem, ad cuius iurisdictionem actus emancipationis pertinet, insinuare superque precibus a semet oblatis apud eum deponere, ut hoc subsecuto et auctoritate praecedente p rincipali plenissimum robur emancipatio sortiatur, et personae, in quas talis liberalitas collata sit, de aliena potestate quasi a parentibus ex emancipatione manumissae liberentur: si tamen ipsae nihilo minus sub gestorum testificatione vel apud eundem iudicem vel apud alium quemlibet proposito parentum suam etiam voluntatem consonare vel ante preces oblatas et sacros apices promulgatos vel postea deposuerint, nisi infantes sint, qui et sine consensu etiam hoc modo sui iuris efficiuntur. * anastas. a. constantino pp. * <a 502 d. xi k. aug. constantinopoli probo et avieno iuniore conss.>

CJ.8.48.6: Imperator Justinianus

Cum inspeximus in emancipationibus vanam observationem custodiri et venditiones in liberas personas figuratas et circumductiones inextricabiles et iniuriosa rhapismata, quorum nullus rationabilis invenitur exitus, iubemus huiusmodi circuitu in posterum quiescente licentiam esse ei, qui emancipare vult, vel ex lege anastasiana hoc facere vel sine sacro rescripto intrare competentis iudicis tribunal vel eos adire magistratus, quibus hoc facere vel legibus vel ex longa consuetudine permissum est, et filios suos vel filias, nepotes vel neptes vel deinceps progeniem in potestate sua constitutam a sua manu dimittere et legitima iura omnimodo habere, etsi non specialiter haec sibi servaverit, et peculium donare vel alias res liberalitatis titulo in eos transferre, et eas res, quae adquiri indignantur, per usum fructum secundum nostrae constitutionis modum detinere et omnia facere, vana tantummodo secundum quod dictum est observatione sublata. * iust. a. iohanni pp. * <a 531 d. k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.8.49.0. De ingratis liberis.

CJ.8.49.1: Imperatores Valentinianus, Valens, Gratianus

Filios et filias ceterosque liberos contumaces, qui parentes vel acerbitate convicii vel cuiuscumque atrocis iniuriae dolore pulsassent, leges emancipatione rescissa damno libertatis immeritae multare voluerunt. * valentin. valens et grat. aaa. ad praetextatum pu. * <a 367 d. xv k. sept. ambianis lupicinio et iovino conss.>

CJ.8.50.0. De postliminio et de redemptis ab hostibus.

CJ.8.50.1pr.: Imperatores Severus, Antoninus

Ex duobus captivis sarmatia nata patris originem ita secuta videtur, si ambo parentes in civitatem nostram redissent. quamquam enim iure proprio postliminium habere non possit quae capta non est, tamen parentum restitutio reddet patri filiam. * sev. et ant. aa. ovinio. * <a xxx pp. sine die et consule.>

CJ.8.50.1.1: Imperatores Severus, Antoninus

Qui cum ab hostibus interemptus sit, matris dumtaxat condicionem, quae secum filiam duxit, videtur necessario secuta. nam fictio legis corneliae, quae legitimos apud hostes defuncto constituit heredes, ad eam quae illic suscepta est non pertinet, cum eo tempore quo captus est diem suum pater obisse existimetur. <a xxx pp. sine die et consule.>

CJ.8.50.2pr.: Imperator Gordianus

Ab hostibus redempti, quoad exsolvatur pretium, in causam pignoris constituti quam in servilem condicionem videntur esse detrusi: et ideo si nummi eo nomine expensi donatio intercedat, pristinae condicioni eos reddi manifestum est. * gord. a. publiciano. * <a 241 pp. ii id. iun. gordiano a. ii et pompeiano conss.>

CJ.8.50.2.1: Imperator Gordianus

Proinde si ab hostibus redemptam post dissolutum veluti naturalis pignoris vinculum in matrimonio habere coepisti, nihil est, quod de statu eius seu liberorum communium debeas pertimescere. <a 241 pp. ii id. iun. gordiano a. ii et pompeiano conss.>

CJ.8.50.3: Imperatores Diocletianus, Maximianus

Cum cognatos tuos nondum postliminio regressos adfirmes, sed adhuc in rebus esse humanis, et bona eorum fraudibus diversae partis dissipari, interpellatus rector provinciae providebit eum sub observatione constituere, qui stipulante servo publico satis idonee dederit. * diocl. et maxim. aa. varo. * <a 287 pp. v k. sept. diocletiano iii et maximiano conss.>

CJ.8.50.4pr.: Imperatores Diocletianus, Maximianus

Nec nos praeteriit hereditatem eius, quam incognitum erat ab hostibus interfecta an capta esset, a filio adiri non potuisse (quando eorum bona, qui in hostium potestatem rediguntur, eo demum tempore successionis iure adquiri possunt, cum captos apud hostes mortuos esse cognoscitur) , nec super facultatibus eius, cuius incerta vita ac fortuna fuit, transigi vel iudicari potuit. * diocl. et maxim. aa. hermogeni. * <a 290 pp. v k. iun. ipsis aa. iiii et iii conss.>

CJ.8.50.4.1: Imperatores Diocletianus, Maximianus

Unde posteaquam apud hostes materteram vestram fati munus implesse innotuit, tunc vobis licentia permittitur agnoscendae per bonorum possessionem successionis: non officientibus enim, quae perperam gesta sunt, si priorem gradum obtinetis, successionis compendium ad vos pertinet. <a 290 pp. v k. iun. ipsis aa. iiii et iii conss.>

CJ.8.50.5: Imperatores Diocletianus, Maximianus

Cum non redemptum ab hostibus filium tuum, sed sine ullo contracto traditum a barbaris praefecto legionis dicas, postliminii ius locum habuit et ilico ingenuitati suae reddi eum praeses provinciae iubebit. * diocl. et maxim. aa. ursae. * <a 290 pp. xvi k. iun. ipsis aa. iiii et iii conss.>

CJ.8.50.6: Imperatores Diocletianus, Maximianus

Cum et postliminii ius et communis utilitatis ratio exigat, ut, si qui captos ab hostibus redemerint, accepto pretio redemptos suae ingenuitati restituant, proponasque redemptorem noluisse oblatum pretium a te vel ab alio recipere, praeses provinciae efficaci instantia compellet eum legibus obtemperare et recepto eo quod pretii nomine dependitur status securitatem non inquietare. * diocl. et maxim. aa. .To. * <a 291 pp. k. febr. tiberiano et dione conss.>

CJ.8.50.7: Imperatores Diocletianus, Maximianus

Foedissimae mulieris nequitia permovemur. cum igitur filiam tuam captam ac prostitutam ab ea quae eam redemerat ob retinendae pudicitiae cultum ac servandam natalium honestatem ad te confugisse proponas, praeses provinciae, si filiae tuae supra dictam iniuriam ab ea, quae sciebat ingenuam esse, inflictam cognoverit, cum huiusmodi persona indigna sit pretium recipere propter odium detestabilis quaestus, etiamsi pretium compensatum non est ex necessitate miserabili, custodita ingenuitate natae tuae adversus flagitiosae mulieris turpitudinem tutam eam defensamque praestabit. * diocl. et maxim. aa. claudio. * <a 291 pp. iii non. febr. tiberiano et dione conss.>

CJ.8.50.8: Imperatores Diocletianus, Maximianus

Praeses provinciae, ne ulterius in servitutis iugo detinearis, curae habebit: qui pro sollertia tua parum ignorat magis filiorum tuorum statum tueri, quos, posteaquam redempta es, enixam te esse significas, cum eos, qui post redemptionem nascuntur, ne pignoris quidem vinculo ob pretium, quod pro his datum non est, teneri nullis auctoribus visum est. * diocl. et maxim. aa. matronae. * <a 291 pp. v id. febr. tiberiano et dione conss.>

CJ.8.50.9pr.: Imperatores Diocletianus, Maximianus

Captum ab hostibus filium, patre mortuo medio tempore, lex cornelia reversum, si in potestate patris tempore quo capiebatur fuit, suum facit heredem. * diocl. et maxim. aa. et cc. gregorio. * <a 293 pp. v id. april. aa. conss.>

CJ.8.50.9.1: Imperatores Diocletianus, Maximianus

Unde si ex testamento ad te sive intestato successionem patris tui pertinere apud praesidem provinciae probaveris, restitui tibi res hereditarias iubebit, si non tantum postquam reversus es tempus effluxit, quantum intentionem tuam temporis prolixitate conquiescere facit. <a 293 pp. v id. april. aa. conss.>

CJ.8.50.10: Imperatores Diocletianus, Maximianus

Sicut liberis captis ab hostibus ac postliminio reversis status pristinus restituitur, sic servi domino. unde si haec, cuius meministi, ancilla patris tui fuit nec commercio redempta est, reversa dominum vel eius successorem sequitur, qui per captivitatem hanc amiserat. * diocl. et maxim. aa. et cc. apollodorae. * <a 293 s. iii k. mai. hadrianopoli aa.Conss.>

CJ.8.50.11: Imperatores Diocletianus, Maximianus

Si liberum captum te ab hostibus commercio redemit sabinus et eum vinculum pignoris superstitem remisisse tibi probetur, non libertus effectus, sed ingenuitati quam amiseras restitutus nullum filiis eius obsequium debes. * diocl. et maxim. aa. et cc. eutychio. * <a 293 s. xv k. ian. aa. conss.>

CJ.8.50.12: Imperatores Diocletianus, Maximianus

Ab hostibus capti et non commercio redempti, sed virtute militum nostrorum liberati ilico statum, quem captivitatis casu amiserant, recipiunt: servi autem dominis suis restituentur: receptos enim eos, non captos iudicare debemus, et militem nostrum defensorem eorum decet esse, non dominum. * diocl. et maxim. aa. et cc. quintianae. * <a 293 s. v k. ian. aa. conss.>

CJ.8.50.13: Imperatores Diocletianus, Maximianus

Si is, qui te ab hostibus ingenuam captam commercio redemit, sibi matrimonio coniunxit, dignitate nuptiarum et voto futurae iustae subolis vinculo pignoris tibi remisso redditos natales pristinos rationis est. * diocl. et maxim. aa. et cc. * <a 294 s. v id. mart. cc. conss.>

CJ.8.50.14: Imperatores Diocletianus, Maximianus

Ius postliminii filiam rebus humanis exempta matre, dum in servitutis ipsa necessitate per captivitatis causam fuit, eventu purgato vigore ad eius legitimam invitat hereditatem, nec tibi medii temporis fortuna, quominus res maternas successione quaesitas persequi possis, iniuriam fieri patimur. * diocl. et maxim. aa. et cc. severae. * <a 294 s. xvi k. april. cc. conss.>

CJ.8.50.15: Imperatores Diocletianus, Maximianus

Is, qui liber constitutus captus ab hostibus commercio redimitur, et antequam restituatur pro eo data pecunia, successionis iura sibi vindicare favore ingenuitatis potest, ut ex ea possit pretium pro se datum exsolvere. * diocl. et maxim. aa. et cc. mucatraulo. * <a 294 >

CJ.8.50.16: Imperatores Diocletianus, Maximianus

Commercio redemptae filios, licet ex servo medio susceptos tempore, origini ingenuitatis matris iuxta ea quae benigne placuerunt reddi convenit. * diocl. et maxim. aa. et cc. basilinae. * <a 293 s. v k. sept. viminacii aa. conss.>

CJ.8.50.17pr.: Imperatores Diocletianus, Maximianus

Liber captus ab hostibus et commercio redemptus tunc demum cum pretium solverit vel hoc ei qualicumque remittatur indicio, statum pristinum recipit. * diocl. et maxim. aa. et cc. diogeniae. * <a 294 s. iii k. nov. develto cc. conss.>

CJ.8.50.17.1: Imperatores Diocletianus, Maximianus

Quo genere matre filium redimente, cum huiusmodi contractus non de mercede, sed de tristitia repudianda cogitatur, voti recipiendi filium cogitatio cum optabili condicione filium ilico matri restituit, ita ut et civilium obsequio munerum propter casum praeteritum non excusetur. <a 294 s. iii k. nov. develto cc. conss.>

CJ.8.50.17.2: Imperatores Diocletianus, Maximianus

Pro pietatis itaque ratione ab hostibus redempto filio facti te paenitere ac de pretio quicquam tractare non convenit: dotem tamen ab eo debitam iure concesso reddi postulas. <a 294 s. iii k. nov. develto cc. conss.>

CJ.8.50.18: Imperatores Diocletianus, Maximianus

Ab hostibus captis ac postliminio reversis pro huiusmodi casu amissa, quae in eadem causa quidem durant, omnimodo directa, quae vero per usucapionem vel liberationem ex bonis subtracta vel non utendo finita esse videntur, intra annum utilem experientibus actione rescissoria restituuntur. * diocl. et maxim. aa. et cc. tryphoniano. * <a 294 pp. xii k. dec. cc. conss.>

CJ.8.50.19pr.: Imperatores Valentinianus, Valens, Gratianus

Si quos forte necessitas captivitatis abduxit, sciant, si non transierunt, sed hostilis inruptionis necessitate transducti sunt, ad proprias terras festinare debere, recepturos iure postliminii ea, quae in agris vel mancipiis seu aliis rebus ante tenuerunt, etsi a fisco nostro possideantur. * valentin. valens et grat. aaa. ad severianum ducem. * <a 366 d. v k. iul. remis gratiano a. et dagalaifo conss.>

CJ.8.50.19.1: Imperatores Valentinianus, Valens, Gratianus

Nec timeat quisquam alicuius contradictionis moram, cum hoc solum requirendum sit, utrum aliquis cum barbaris voluntate fuerit an coactus. <a 366 d. v k. iul. remis gratiano a. et dagalaifo conss.>

CJ.8.50.20pr.: Imperatores Honorius, Theodosius

Diversarum homines provinciarum cuiuslibet sexus condicionis aetatis, quos barbarica feritas captiva necessitate transvexerat, invitos nemo retineat, sed ad propria redire cupientibus libera sit facultas. * honor. et theodos. aa. theodoro pp. * <a 409 d. iii id. dec. ravennae honorio viii et theodosio iii aa. conss.>

CJ.8.50.20.1: Imperatores Honorius, Theodosius

Quibus si quicquam in usum vestium vel alimoniae impensum est, humanitati sit praestitum nec maneat victualis sumptus repetitio: exceptis his, quos barbaris vendentibus emptos esse docebitur, a quibus status sui pretium propter utilitatem publicam emptoribus aequum est redhiberi. <a 409 d. iii id. dec. ravennae honorio viii et theodosio iii aa. conss.>

CJ.8.50.20.2: Imperatores Honorius, Theodosius

Ne quando enim damni consideratio in tali necessitate positis negari faciat emptionem, decet redemptos aut datum pro se pretium emptoribus restituere aut laboris obsequio vel opere quinquennii vicem referre beneficii, habituros incolumem, si in ea nati sunt, libertatem. <a 409 d. iii id. dec. ravennae honorio viii et theodosio iii aa. conss.>

CJ.8.50.20.3: Imperatores Honorius, Theodosius

Reddantur igitur sedibus propriis sub moderatione qua iussimus, quibus iure postliminii etiam veterum responsis incolumia cuncta servanda sunt. <a 409 d. iii id. dec. ravennae honorio viii et theodosio iii aa. conss.>

CJ.8.50.20.4: Imperatores Honorius, Theodosius

(1) si quis itaque huic praecepto fuerit conatus obsistere actor conductor procuratorque, dari se metallis cum poena deportationis non ambiget: si vero possessionis dominus, rem suam fisco noverit vindicandam seque deportandum. <a 409 d. iii id. dec. ravennae honorio viii et theodosio iii aa. conss.>

CJ.8.50.20.5: Imperatores Honorius, Theodosius

Et ut facilis exsecutio proveniat, christianos proximorum locorum volumus huius rei sollicitudinem gerere: curiales quoque proximarum civitatum placuit admoneri , ut emergentibus talibus causis sciant legis nostrae auxilium deferendum: ita ut noverint rectores universi decem libras auri a se et tantundem a suis apparitoribus exigendum, si praeceptum neglexerint. <a 409 d. iii id. dec. ravennae honorio viii et theodosio iii aa. conss.>

CJ.8.51.0. De infantibus expositis liberis et servis et de his qui sanguinolentos emptos vel nutriendos acceperunt.

CJ.8.51.1: Imperator Alexander Severus

Si invito vel ignorante te partus ancillae vel adscripticiae tuae expositus est, repetere eum non prohiberis. sed restitutio eius, si non a fure vindicaveris, ita fiet, ut, si qua in alendo eo vel forte ad discendum artificium iuste consumpta fuerint, restitueris. * alex. a. claudio. * <a 224 pp. iii k. iun. iuliano et crispino conss.>

CJ.8.51.2pr.: Imperatores Valentinianus, Valens, Gratianus

Unusquisque subolem suam nutriat. quod si exponendam putaverit, animadversioni quae constituta est subiacebit. * valentin. valens et grat. aaa. ad probum pp. * <a 374 d. iii non. mart. gratiano a. iii et equitio conss.>

CJ.8.51.2.1: Imperatores Valentinianus, Valens, Gratianus

Sed nec dominis vel patronis repetendi aditum relinquimus, si ab ipsis expositos quodammodo ad mortem voluntas misericordiae amica collegerit: nec enim dicere suum poterit, quem pereuntem contempsit. <a 374 d. iii non. mart. gratiano a. iii et equitio conss.>

CJ.8.51.3pr.: Imperator Justinianus

Sancimus nemini licere, sive ab ingenuis genitoribus puer parvulus procreatus sive a libertina progenie sive servili condicione maculatus expositus sit, eum puerum in suum dominium vindicare sive nomine dominii sive adscripticiae sive colonariae condicionis: sed neque his, qui eos nutriendos sustulerunt, licentiam concedi penitus (cum quadam distinctione) eos tollere et educationem eorum procurare, sive masculi sint sive feminae, ut eos vel loco libertorum vel loco servorum aut colonorum aut adscripticiorum habeant. * iust. a. demostheni pp. * <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.8.51.3.1: Imperator Justinianus

Sed nullo discrimine habito hi, qui ab huiusmodi hominibus educati sunt, liberi et ingenui appareant et sibi adquirant et in posteritatem suam vel extraneos heredes omnia quae habuerint, quomodo voluerint, transmittant, nulla macula vel servitutis vel adscripticiae aut colonariae condicionis imbuti: nec quasi patronatus iura in rebus eorum his qui eos susceperunt vel susceperint praetendere concedi, sed in omnem terram, quae romanae dicioni supposita est, haec obtinere. <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.8.51.3.2: Imperator Justinianus

Neque enim oportet eos, qui ab initio infantes abegerunt et mortis forte spem circa eos habuerunt, incertos constitutos, si qui eos susceperunt, hos iterum ad se revocare conari et servili necessitati subiugare: neque hi, qui eos pietatis ratione suadente sustulerunt, ferendi sunt denuo suam mutantes sententiam et in servitutem eos retrahentes, licet ab initio huiusmodi cogitationem habentes ad hoc prosiluerint, ne videantur quasi mercimonio contracto ita pietatis officium gerere. <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.8.51.3.3: Imperator Justinianus

Haec conservantibus tam viris clarissimis praesidibus provinciarum quam viris religiosissimis episcopis nec non officiis praesidalibus et patribus et defensoribus civitatum et omni civili auxilio. <a 529 d. xv k. oct. chalcedone decio vc. cons.>

CJ.8.52.0. Quae sit longa consuetudo.

CJ.8.52.1: Imperator Alexander Severus

Praeses provinciae probatis his, quae in oppido frequenter in eodem genere controversiarum servata sunt, causa cognita statuet. nam et consuetudo praecedens et ratio quae consuetudinem suasit custodienda est, et ne quid contra longam consuetudinem fiat, ad sollicitudinem suam revocabit praeses provinciae. * alex. a. apro evocato. * <a 224 pp. vi k. april. iuliano et crispino conss.>

CJ.8.52.2: Imperator Constantinus

Consuetudinis ususque longaevi non vilis auctoritas est, verum non usque adeo sui valitura momento, ut aut rationem vincat aut legem. * const. a. ad proculum. * <a 319 d. viii k. mai. constantino a. v et licinio c. conss.>

CJ.8.52.3: Imperatores Leo, Anthemius

Leges quoque ipsas antiquitus probata et servata tenaciter consuetudo imitatur et retinet: et quod officiis curiis civitatibus principiis vel collegiis praestitum fuisse cognoscitur, perpetuae legis vicem obtinere statuimus. * leo et anthem. aa. alexandro. * <a 469 d. vii id. sept. zenone cons.>

CJ.8.53.0. De donationibus.

CJ.8.53.1: Imperatores Severus, Antoninus

Emptionum mancipiorum instrumentis donatis et tarditis et ipsorum mancipiorum traditionem factam intellegis: et ideo potes adversus donatorem in rem actionem exercere. * sev. et ant. aa. lucio. * <a 210 pp. v k. iul. faustino et rufino conss.>

CJ.8.53.2: Imperator Gordianus

Si nominis persecutionem in te emancipatam pater tuus titulo donationis transtulit, frustra praetendit, qui debitori tuo heres extitit, consensum fuisse debitoris necessarium, cum satis fuerit actiones eo nomine tibi mandatas fuisse. * gord. a. leonidi. * <a 241 pp. ii id. mart. gordiano a. ii et pompeiano conss.>

CJ.8.53.3: Imperator dec.

Spem futurae actionis plena intercedente donatoris voluntate posse transferri non immerito placuit. * dec. a. Marcellino. * <a 250 pp. non mart. decio a. ii et grato conss.>

CJ.8.53.4: Imperator probus

Si functiones per eum, cui donata res non erat, vel ab actoribus ipsius nomine celebratae sunt, tibi obesse non potest. * probus a. massiciae. * <a 280 pp. v k. ian. messala et grato conss.>

CJ.8.53.5: Imperatores carus, carinus, numer.

Si donatio per epistulam facta non paret, verba tamen testamenti, quibus liberalitas testatricis confirmata est, fideicommissum continere non ambigitur. * carus carinus et numer. aaa. falconillae. * <a 284 pp. vi k. febr. romae carino ii et numeriano aa. conss.>

CJ.8.53.6: Imperatores Diocletianus, Maximianus

Nec ambigi oportet donationes etiam inter absentes, maxime si ex voluntate donantium possessionem ii quibus donatum est nanciscantur, validas esse. * diocl. et maxim. aa. calpurniae aristaenetae. * <a 286 pp. iiii id. febr. mediolani maximo ii et aquilino conss.>

CJ.8.53.7: Imperatores Diocletianus, Maximianus

Censualis quidem professio domino praeiudicare non solet. sed si in censum velut sua mancipia deferenti privigno tuo consensisti, donationem in eum contulisse videris. * diocl. et maxim. aa. iulio. * <a 290 pp. id. iul. ipsis aa. iiii et iii conss.>

CJ.8.53.8: Imperatores Diocletianus, Maximianus

Si praeses provinciae non donandi voluntate filiorum tuorum nomine praedia in censum detulisse te manifestis probationibus cognoverit, quod fides veri suggesserit, statuet. * diocl. et maxim. aa. florae. * <a 290 pp. viii id. sept. ipsis aa. iiii et iii conss.>

CJ.8.53.9: Imperatores Diocletianus, Maximianus

Legem, quam rebus tuis donando dixisti, sive stipulatione tibi prospexisti, ex stipulatu, sive non, incerto iudicio (id est praescriptis verbis) apud praesidem provinciae debes agere, ut hanc impleri provideat. * diocl. et maxim. aa. et cc. augustinae. * <a 293 pp. xvi k. mai. aa. conss.>

CJ.8.53.10: Imperatores Diocletianus, Maximianus

Nec ignorans nec invitus quisque donat. unde si de hoc fundo non cogitasti, cuius velut donationi consensisse continetur instrumento, maiores veritate rei quam scriptura vires obtinente intellegis, de quo non cogitasti nec specialiter subscripsisti, nihil te perdidisse. * diocl. et maxim. aa. et cc. hermionae. * <a 293 s. v k. mai. aa. conss.>

CJ.8.53.11pr.: Imperatores Diocletianus, Maximianus

Cum de bonis tuis partem quidem penes te retinuisse, partem vero in eum quem in potestate habes donationis titulo contulisse commemores, non est incerti iuris in eum, qui in sacris familiae tuae remanet, destinationem magis paternae voluntatis factam, quam perfectam donationem pervenisse. * diocl. et maxim. aa. et cc. septimio sabiniano. * <a 293 s. prid. k. mai. heraclea aa. conss.>

CJ.8.53.11.1: Imperatores Diocletianus, Maximianus

Delegationes autem nominum in emancipatum collatae perfectam donationem efficiunt. <a 293 s. prid. k. mai. heraclea aa. conss.>

CJ.8.53.12: Imperatores Diocletianus, Maximianus

Portionem propriam rebus necdum divisis nemo prohibetur titulo donationis in alium transferre. * diocl. et maxim. aa. et cc. aurelio. * <a 293 d. xvii k. iun. aa. conss.>

CJ.8.53.13: Imperatores Diocletianus, Maximianus

Si aliquid per epistulam donatum tibi probetur, brevitas chartulae donationi, si haec recte facta probetur, nihil quicquam derogat. * diocl. et maxim. aa. et cc. uraniae. * <a 293 d. xv k. iun. sirmi aa. conss.>

CJ.8.53.14: Imperatores Diocletianus, Maximianus

Si filius tuus res ad te pertinentes sponsae suae te non consentiente donavit, ad eam quod non habuit transferre non potuit. * diocl. et maxim. aa. et cc. idaeae. * <a 293 s. xv k. oct. aa. conss.>

CJ.8.53.15pr.: Imperatores Diocletianus, Maximianus

Aeris alieni, quod ex hereditaria causa venit, non eius, qui donationis titulo possidet, sed totius iuris successoris onus est. * diocl. et maxim. aa. et cc. severae. * <a 293 s. xv k. dec. aa. conss.>

CJ.8.53.15.1: Imperatores Diocletianus, Maximianus

Si itaque nemini obligata praedia pro donatione consecuta es, supervacuam geris sollicitudinem, ne vel heredes donatricis vel eius creditores te iure possint convenire. <a 293 s. xv k. dec. aa. conss.>

CJ.8.53.16: Imperatores Diocletianus, Maximianus

Senectus ad donationem faciendam sola non est impedimento. * diocl. et maxim. aa. et cc. theodoro. * <a 293 d. v k. dec. aa. conss.>

CJ.8.53.17pr.: Imperatores Diocletianus, Maximianus

Sive emancipatis filiis res donasti sive in potestate constitutis et sui iuris effectis ac tenentibus non ademisti, blandiri tibi non debes, velut res donatas ex paenitentia liceat auferre. * diocl. et maxim. aa. et cc. hermiae. * <a 293 s. vi k. ian. aa. conss.>

CJ.8.53.17.1: Imperatores Diocletianus, Maximianus

Sane si ea, quae in tua positis potestate donaveras, post emancipationem contra tuam tenuerunt voluntatem, horum penes te dominium remansit, si quidem nec tempore quo voluisti propter vinculum potestatis sibi quicquam quaerere, nec post invito te de rebus tuis potuerunt. <a 293 s. vi k. ian. aa. conss.>

CJ.8.53.18: Imperatores Diocletianus, Maximianus

Si donationis causa furti actio tibi remissa probetur, supervacuam geris sollicitudinem. * diocl. et maxim. aa. et cc. audiano. * <a 293 s. v k. ian. aa. conss.>

CJ.8.53.19: Imperatores Diocletianus, Maximianus

Si avia vestra proprias res quacumque ratione factas titulo liberalitatis in eum contra quem preces funditis contulit, quominus haec rata maneant, quod ex origine patris vel avi vestri descendunt, nihil prodest. * diocl. et maxim. aa. et cc. alexandriae. * <a 294 s. xvi k. febr. sirmi cc. conss.>

CJ.8.53.20: Imperatores Diocletianus, Maximianus

Vice donatricis alio voluntate eius subscribente iure facta donatio non habebitur irrita. * diocl. et maxim. aa. et cc. helvio. * <a 294 s. vii k. febr. cc. conss.>

CJ.8.53.21: Imperatores Diocletianus, Maximianus

Constante matrimonio dotem penes maritum suum constitutam avia tua donare tibi non potuit. * diocl. et maxim. aa. et cc. antoniae. * <a 294 s. v id. mart. cc. conss.>

CJ.8.53.22pr.: Imperatores Diocletianus, Maximianus

Cum res filio emancipato ea condicione, ut creditoribus tuis solveret, te donasse proponas, si stipulatione vel in continenti habito pacto huic rei prospexisti , creditoribus quidem non contra eum ex placito vestro, sed adversus te competit actio. * diocl. et maxim. aa. et cc. diomedi. * <a 294 s. vii k. april. sirmi cc. conss.>

CJ.8.53.22.1: Imperatores Diocletianus, Maximianus

Eum autem, cui certa lege praedia donasti, incerta civili actione ad placitorum obsequium urgueri secundum legem donationibus dictam convenit. <a 294 s. vii k. april. sirmi cc. conss.>

CJ.8.53.23: Imperatores Diocletianus, Maximianus

Si ea quae donaveras posteriori placito qui acceperat donum tibi reddidit, donationis antecedens instrumentum actis sequentibus nihil obesse potest. * diocl. et maxim. aa. et cc. olympiadi. * <a 294 s. v k. oct. cc. conss.>

CJ.8.53.24: Imperatores Diocletianus, Maximianus

Si patri tuo heres non extitisti, ex facta ab eo liberalitate titulo donationis non posse iura tua laedi manifestissimi iuris est. * diocl. et maxim. aa. et cc. macario. * <a 299 pp. non. febr. antiochiae diocletiano vii et maximiano vi aa. conss.>

CJ.8.53.25pr.: Imperator Constantinus

Donatio, sive directa sit sive mortis causa instituta, sive condicionibus faciendi ac non faciendi suspensa sive ex aliquo notato tempore promissa, sive animo dantium accipientiumve sententiis quantum ius sinit cognominata, sub hac fieri debet observatione, ut quas leges indulgent actiones condiciones pactionesque contineat, hisque penitus cognitis vel recipiantur, si complacitae sunt, vel reiciantur, si sunt molestae. * constant. a. ad maximum pu. * <a 316 d. iii non. febr. romae sabino et rufino conss.>

CJ.8.53.25.1: Imperator Constantinus

In conscribendis autem donationibus nomen donatoris, ius ac rem notari oportet, neque id occulte aut privatim, sed ut tabulae aut quodcumque aliud materiae tempus dabit vel ab ipso vel ab eo quem sors ministraverit perscribatur: actis etiam adnectendis, quae apud iudicem vel magistratus conficienda sunt, ubi hoc leges expostulant. <a 316 d. iii non. febr. romae sabino et rufino conss.>

CJ.8.53.26pr.: Imperator Constantinus

Si quis in emancipatum minorem, priusquam fari possit aut habere rei quae sibi donatur adfectum, fundum crediderit conferendum, omne ius compleat instrumentis ante praemissis. * constant. a. aconio catullino procons. africae. * <a 316 d. xii k. mai. serdicae sabino et rufino conss.>

CJ.8.53.26.1: Imperator Constantinus

Quod per eum servum, quem idoneum esse constiterit, transigi placuit, ut per eum infanti adquiratur. <a 316 d. xii k. mai. serdicae sabino et rufino conss.>

CJ.8.53.27pr.: Imperator Constantinus

Data iam pridem lege statuimus, ut donationes interveniente actorum testificatione conficiantur. quod vel maxime inter necessarias coniunctissimasque personas convenit custodiri, si quidem clandestinis ac domesticis fraudibus facile quidvis pro negotii opportunitate configi potest, vel id quod vere gestum est aboleri. * const. a. ad severum com. hispaniarum. * <a 333 d. iiii non. mai. constantinopoli dalmatio et zenophilo conss.>

CJ.8.53.27.1: Imperator Constantinus

Cum igitur ne liberos quidem ac parentes lex nostra ab actorum confectione secernat, id, quod necessario super donationibus apud acta conficiendis iam pridem statuimus, universos teneat. <a 333 d. iiii non. mai. constantinopoli dalmatio et zenophilo conss.>

CJ.8.53.27.2: Imperator Constantinus

Gesta autem confici super rebus etiam alibi collocatis ubicumque sufficit. <a 333 d. iiii non. mai. constantinopoli dalmatio et zenophilo conss.>

CJ.8.53.28: Imperatores Honorius, Theodosius

Quisquis rem aliquam donando vel in dotem dando vel vendendo usum fructum eius retinuerit, etiamsi stipulatus non fuerit, eam continuo tradidisse credatur, ne quid amplius requiratur, quo magis videatur facta traditio, sed omnimodo idem sit in his causis usum fructum retinere, quod tradere. * honor. et theodos. aa. monaxio pp. * <a 417 d. prid id. mart. constantinopoli honorio a. xi et constantio ii conss.>

CJ.8.53.29: Imperatores Theodosius, Valentinianus

In extraneos et saepe ignotos donationem collatam valere receptum est: et si sine scripto donatum quod fuerit, adhibitis aliis idoneis documentis hoc quod geritur comprobetur. * theodos. et valentin. aa. hierio pp. * <a 428 d. xi k. mai. felice et tauro conss.>

CJ.8.53.30pr.: Imperator Leo

In hac sacratissima urbe conscriptae donationes ubicumque positarum rerum apud magistrum census insinuentur. * leo a. constantino pp. * <a 459 d. v non. mart. constantinopoli patricio cons.>

CJ.8.53.30.1: Imperator Leo

In aliis vero civitatibus, sive absens sive praesens rector provinciae sit, sive eadem civitas habeat magistratus sive non habeat et defensor tantummodo sit, donator habeat liberam facultatem donationes rerum suarum ubicumque positarum sive apud moderatorem cuiuslibet provinciae sive apud magistratus sive apud defensorem cuiuscumque civitatis prout maluerit publicare: atque ut ipsa donatio sita est in voluntate donantis, ita ei liceat donationem suam apud quemcumque ex memoratis voluerit intimare. <a 459 d. v non. mart. constantinopoli patricio cons.>

CJ.8.53.30.2: Imperator Leo

Et hae donationes, quae in diversis provinciis et civitatibus apud quemlibet ex praedictis fuerint publicatae, obtineant inconcussam ac perpetuam firmitatem. <a 459 d. v non. mart. constantinopoli patricio cons.>

CJ.8.53.31pr.: Imperator Zeno

In donationibus, quae actis insinuantur, non esse necessarium iudicamus vicinos vel alios testes adhibere: nam superfluum est privatum testimonium, cum publica monumenta sufficiant. * zeno a. sebastiano pp. * <a 478 d. k. mart. constantinopoli ello vc. cons.>

CJ.8.53.31.1: Imperator Zeno

Verum et alias donationes, quas gestis non est necessarium adlegari, si forte per tabellionem vel alium scribantur, et sine testium subnotatione valere praecipimus, ita tamen, si ipse donator vel alius voluntate eius secundum solitam observationem subscripserit: donationibus, quae sine scriptis conficiuntur, suam firmitatem habentibus secundum constitutionem theodosii et valentiniani ad hierium praefectum praetorio promulgatam. <a 478 d. k. mart. constantinopoli ello vc. cons.>

CJ.8.53.32: Imperator Anastasius

Secundum divi leonis constitutionem donationes apud virum clarissimum magistrum census tantummodo insinuari praecipimus, huiusmodi forma in illis instrumentis observanda, quae in hac regia urbe confecta seu celebrata fuerint: nec concedi quemquam vel apud defensores seu magistratus aliarum civitatum vel in aliis quibuslibet locis praeter memoratum iudicium insinuare: scientibus tam his qui ad huiuscemodi insinuationem pervenerint quam his qui eam susceperint nec non tabellionibus, quicumque testimonium suum non in competenti (ut dictum est) loco v el iudicio praebuerint, vicenarum librarum auri multa et alia gravissima indignatione se feriendos. * anastas. a. euphemio pp. * <a 496 d. prid. k. mai. paulo vc. cons.>

CJ.8.53.33pr.: Imperator Justinianus

Illam subtilem observationem amputamus, per quam donationis titulo cessiones actionum accipientes non aliter eas suis transmittere heredibus poterant, nisi litem ex his contestati essent vel ius contestationis divino rescripto meruissent. nam sicut venditionis titulo cessas actiones etiam ante litis contestationem ad heredes transmitti permittitur, simili modo et donatas ad eos transferri volumus, licet nulla contestatio vel facta vel petita sit. * iust. a. menae pp. * <a 528 d. k. iun. constantinopoli dn. iustiniano a. pp. ii cons.>

CJ.8.53.33.1: Imperator Justinianus

Quod et in procuratore constituendo ad movendas easdem cessas actiones similiter observandum erit, ut minime quis impediatur procuratorem cessarum sibi per donationem actionum dare, licet nulla litis contestatio facta vel petita sit. <a 528 d. k. iun. constantinopoli dn. iustiniano a. pp. ii cons.>

CJ.8.53.33.2: Imperator Justinianus

Quae in his tantum personis locum habere censemus, quae susceptis per donationem cessionibus adhuc superesse noscuntur: nam iam mortuis huiusmodi personis vetera iura super hisdem cessionibus posita servari concedimus. <a 528 d. k. iun. constantinopoli dn. iustiniano a. pp. ii cons.>

CJ.8.53.34pr.: Imperator Justinianus

Sancimus omnem donationem sive communem sive ante nuptias factam usque ad trecentos solidos cumulatam non indigere monumentis, sed communem fortunam habere, ut non usque ad ducentorum solidorum summam teneat, sed in huiusmodi observatione similes sint tam communes quam ante nuptias donationes. * iust. a. demostheni pp. * <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.8.53.34.1: Imperator Justinianus

Si quid autem supra legitimam definitionem fuerit donatum, hoc quod superfluum est tantummodo non valere reliquam vero quantitatem quae intra legis terminos constituta est in suo robore perdurare, quasi nullo penitus alio adiecto, sed hoc pro non scripto vel intellecto esse credatur. <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.8.53.34.1a: Imperator Justinianus

Exceptis donationibus tam imperialibus quam his, quae in causas piissimas procedunt: quarum imperiales quidem donationes merito indignari sub observatione monumentorum fieri tam a retro principibus quam a nobis sancitum est, sed firmam habere propriam maiestatem: alias vero, quae ad pietatem respiciunt, usque ad quingentorum summam et sine monumentis esse validas censemus. <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.8.53.34.1b: Imperator Justinianus

His insuper ante nuptias donationibus, quae in adultas minores sui iuris constitutas cuiuscumque summae procedunt, secundum veterum legum scita, et nisi actis intervenientibus corroboratae sunt, suam retinentibus firmitatem. <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.8.53.34.1c: Imperator Justinianus

(1) sin autem non in auro res donationis fuerint datae, sed per res mobiles vel immobiles vel se moventes, quantitatum earum aestimari et, si quidem usque ad legitimam solidorum summam erigatur, validam eam et sine monumentis conservari: sin autem amplioris summae inveniatur et minime actis comprobata est, superfluum tantum vacuari. <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.8.53.34.2: Imperator Justinianus

Ne autem communione inducta donatori et qui liberalitatem suscepit aliqua oriatur contentio, electionem damus ei, qui ampliorem summam in re donata habuerit, reliquae aestimationis quantitatem offerre ei, qui minorem causam habuit, et totum possidere. <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.8.53.34.2a: Imperator Justinianus

Sin autem hoc minime facere maluerit, tunc omnimodo res dividi secundum quantitatem utrique parti competentem, si res dividi sine suo periculo possibilis est. <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.8.53.34.2b: Imperator Justinianus

Sin autem huiusmodi casibus, in quibus partitio utiliter celebrari minime potest , amplioris summae dominus noluerit aestimationem offerre, tunc licebit etiam ei , qui minoris summae habet potestatem, offerre pretium et totum sibi vindicare. <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.8.53.34.3: Imperator Justinianus

Si quis autem per diversa tempora in eandem personam multas faciat liberalitates , quarum singulae quidem legitimam quantitatem non excedunt, in unum autem compositae et praedicto modo exaggeratae redundare videntur et maioris esse quantitatis, non videatur eas oportere in unum coadunare et introducere modos, per quos non convaleant et in irritum devocentur, sed e contrario et plures intellegantur et singulae secundum sui naturam obtineant et monumentorum observatione non indigeant. <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.8.53.34.3a: Imperator Justinianus

Cum enim a veteribus super hac re variatum est, aliis multas aliis unam eas definientibus, nobis causa placuit humanior, ut et multae intellegantur et omnes validae, et hi qui liberalitates accipiunt sciant veros non falsos suos esse donatores. <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.8.53.34.4: Imperator Justinianus

Si quis autem talem receperit donationem, in qua stipulatus fuerit annuam cuidam praestare quantitatem tantae summae, quae non excedit legitimum donationis modum, variabatur, utrum eum ex particulari donatione multas fecisse donationes existimandum est et eas actis non indigere, an ex totius stipulationis fundamento et fonte eius, ex quo annuae donationes profluxerunt, et unam esse eam donationem putandam et procul dubio monumentorum observatione vallandam. <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.8.53.34.4a: Imperator Justinianus

Quod veteres quidem sat abundeque variaverunt, nos autem certa divisione concludimus, ut, si huiusmodi quidem fuerit donatio, ut intra vitam personarum stetur vel dantis vel accipientis, multae intellegantur donationes et liberae monumentorum observatione. incertus etenim fortunae exitus hoc nobis suggessit, ut possibile sit unius anni tantummodo vel brevioris vel etiam amplioris temporis metas supervivere vel donatorem vel eum qui donationem accepit, et ex hoc inveniri totam summam donationis non excedere legitimam quantitatem. <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.8.53.34.4b: Imperator Justinianus

Sin autem etiam heredum ex utraque parte fuerit mentio, vel adiciatur tempus vitae vel donatoris vel qui donationem accipiet, tunc, quasi perpetuata donatione et continuatione eius magnam et opulentiorem eam efficiente, et una intellegatur et quasi densioribus donationibus cumulata excedere legitimum modum et omnimodo acta reposcere et aliter minime convalere. <a 529 recitata septimo in novo consistorio palatii iustiniani. d. iii k. nov. decio vc. cons.>

CJ.8.53.35pr.: Imperator Justinianus

Si quis argentum donaverit certumque pondus nominaverit, non autem vasa vel generaliter vel specialiter expresserit, necessitatem ei imponi omnimodo praefatum pondus argenti dare, sive in vasis quibus voluerit, non tamen peioribus aestimatione massae, sive in ipsa aestimatione, quae pro massa rudi in illis locis frequentata est. * iust. a. iuliano pp. * <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.53.35.1: Imperator Justinianus

Si vero reditum certum ex possessionibus donaverit, non tamen nomina possessionum edixerit, necesse habere de sua substantia fundos tradere tantum reditum inferre valentes, quantum in donatione posuerit, in talibus tamen agris, qui nec omnibus quos habet in possessione anteponuntur nec deteriores omnibus sunt, sed status mediocris inveniuntur. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.53.35.2: Imperator Justinianus

Similique modo, si quis certum numerum servorum donaverit, non tamen et is nominatim servos inscripserit, et hic mediocris figurae servos tradere et neque tales, quos non habere magis quam habere prodest, nec iterum eos, qui omnem servorum familiam donatoris antecellunt: sed et hic mediocritas spectetur. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.53.35.3: Imperator Justinianus

Sin autem donator neque argentum neque servos habens vel non tantum quantum donavit fecerit eorum donationem, aestimationem in his celebrari pro eo quod deest, ita tamen, ut argenti quidem secundum quod praediximus aestimatio detur, in servis autem non amplius nec minus quindecim solidis quantitas pro singulis reddetur, in reditibus autem in quindecim annos aestimationem praestet. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.53.35.3a: Imperator Justinianus

Sed in his omnibus, si quidem intra legitimam summam donatio fiat, nulla monumenta requirantur: sin autem amplioris summae, tunc ad acta publica decurratur, ita ut in his, quae amplioris sunt aestimationis, secundum nostram legem non totum, sed solum superfluum evanescat. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.53.35.4: Imperator Justinianus

Sed et si quis universitatis faciat donationem, sive bessis sive dimidiae partis suae substantiae sive tertiae sive quartae sive quantaecumque vel etiam totius, si non de inofficiosis donationibus ratio ad hoc reclamaverit, coartari donatorem legis nostrae auctoritate tantum quantum donavit praestare: observatione et hic monumentorum secundum quod iam sanximus omnimodo requirenda. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.53.35.5: Imperator Justinianus

Sed si quidem in omnibus supra dictis casibus usus fructus fuerit a donatore retentus, et traditionem iure intellegi fieri. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.53.35.5a: Imperator Justinianus

Sin autem hoc minime donator expresserit, si quidem stipulatio donationi inserta sit, ex eius auctoritate traditionem compelli fieri. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.53.35.5b: Imperator Justinianus

Sin vero et hoc praetermissum sit et usum fructum minime detinuerit, nihilo minus ex lege nostra necessitatem ei imponi etiam tradere hoc quod donare existimavit, ut non ex hoc inutilis sit donatio, quod res non traditae sunt, nec confirmetur ex traditione donatio, sed liberalitatem plenam et secundum legem nostram perfectissimam constitutam necessarius traditionis effectus sequatur, et necessitatem habeat donator omnimodo res vel partem substantiae quam nominaverit vel totam substantiam tradere. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.53.35.5c: Imperator Justinianus

Cum enim in arbitrio cuiuscumque sit hoc facere quod instituit, oportet eum vel minime ad hoc prosilire vel, cum ad hoc venire properavit, non quibusdam excogitatis artibus suum propositum defraudare tantamque indevotionem quibusdam quasi legitimis velamentis protegere. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.53.35.5d: Imperator Justinianus

Tantoque magis haec firma esse, si piis actibus vel religiosis personis donatio deputata sit (monumentorum observatione in his modis secundum quod specialiter a nobis in huiusmodi casibus praedictum est observanda), ne in praefatis causis ex quibusdam machinationibus non solum indevotus, sed etiam impius donator intellegatur poenasque non solum legitimas, sed etiam caelestes expectet. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.53.35.5e: Imperator Justinianus

Resque donatas in omnibus supra dictis casibus non solum eos, dum supersunt, sed etiam eorum successores reddere compelli, non tantum his, in quos donatio facta est, sed etiam eorum heredibus. <a 530 d. xv k. april. constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.53.36pr.: Imperator Justinianus

Si quis pro redemptione captivorum pecunias dederit sive per cautionem dare promiserit cuiuscumque quantitatis, cognoscat se neque repetitionem habere neque exactionem cautionis posse declinare, utpote gestis sicut in donationibus non subsecutis super insinuatione eiusdem quantitatis: eo videlicet, qui pecunias accepit vel prima vice vel post cautionem, necessitatem habente piissimam administrationem adimplere, nulla ei molestia vel inquietudine inferenda vel ab eo qui pecunias praebuit vel ab aliis ex legum auctoritate permissis hoc requirere, sed tantummodo sacramentum praestare, quod re vera omnem quantitatem sine dolo vel aliqua deminutione ad redemptionem dederit captivorum. * iust. a. iohanni pp. * <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.8.53.36.1: Imperator Justinianus

Simili etiam modo gestorum absolvimus ordinatione donationes rerum mobilium vel sese moventium, quas viri gloriosissimi magistri militum fortissimis praestant militibus tam ex sua substantia quam ex spoliis hostium, sive in ipsa bellorum occupatione sive in quibuscumque locis degere noscuntur. <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.8.53.36.2: Imperator Justinianus

Eandem liberalitatem nostrae legis indulgemus etiam his, quorum incendio vel ruina domus corruptae sunt, quibusdam forte pecunias cuiuscumque quantitatis praebentibus vel cautionem conficientibus, ut et ipsi nec repetitionem timeant, verum etiam exactionem pecuniarum confessioni insertarum facere possint, licet non gesta fuerint subsecuta: nulla eis licentia danda pecunias ad alias causas nisi ad refectionem domorum erogare. quod si aliqua dubitatio orta fuerit, utrum tota quantitas an pars eius in aedificiis expensa est, hoc domini domus sacramento dirimetur. <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et ores tis vv. cc.>

CJ.8.53.36.3: Imperator Justinianus

Ceteris etiam donationibus, quae gestis intervenientibus minime sunt insinuatae, sine aliqua distinctione quingentos usque ad solidos valituris. hoc etenim tantummodo ad augendas huiusmodi donationes addendum esse ex praesenti lege decernimus: anteriore tempore nostra lege praecedente moderando, qua usque trecentos solidos factae donationes et sine insinuatione firmitatem obtinere iussae sunt. <a 531 d. xv k. nov. constantinopoli post consulatum lampadii et orestis vv. cc.>

CJ.8.53.37: Imperator Justinianus

Verba superflua, quae in donationibus poni solebant, id est sestertii nummi unius assium quattuor, penitus esse reicienda censemus. quid enim verbis opus est, quae rerum effectus nullus sequitur? sancimus itaque nullo modo eorum mentionem vel in imperialibus donationibus vel in aliis omnibus de cetero fieri, sed et si quisquam per verbositatem aliquid tale inscripserit sive remiserit, nulla differentia sit. * iust. a. iohanni pp. * <a xxx >

CJ.8.54.0. De donationibus quae sub modo vel condicione vel ex certo tempore conficiuntur.

CJ.8.54.1pr.: Imperatores valer., gallien.

Si doceas, ut adfirmas, nepti tuae ea lege a te esse donatum, ut certa tibi alimenta praeberet, vindicationem etiam hoc casu utilem eo. quod legi illa obtemperare noluerit, impetrare potes, id est actionem, qua dominium pristinum restituatur tibi. * valer. et gallien. aa. gamicae. * <a 258 pp.Vi k.Dec.Tusco et basso conss.>

CJ.8.54.1.1: Imperatores valer., gallien.

Nam condictio quidem hoc casu (id est in personam actio) iure procedit: verum vindicationem quoque divi principes in hoc casu dandam esse sanxerunt. <a 258 pp.Vi k.Dec.Tusco et basso conss.>

CJ.8.54.2: Imperatores Diocletianus, Maximianus

Si praediorum proprietatem dono dedisti ita, ut post mortem eius qui accepit ad te rediret, donatio valet, cum etiam ad tempus certum vel incertum ea fieri potest, lege scilicet quae ei imposita est conservanda. * diocl. et maxim. aa. aurelio zenoni. * <a 286 pp.V id.Mart. maximo ii et aquilino conss.>

CJ.8.54.3pr.: Imperatores Diocletianus, Maximianus

Quotiens donatio ita conficitur, ut post tempus id quod donatum est alii restituatur, veteris iuris auctoritate rescriptum est, si is in quem liberalitatis compendium conferebatur stipulatus non sit, placiti fide non impleta, ei qui liberalitatis auctor fuit vel heredibus eius condicticiae actionis persecutionem competere. * diocl. et maxim. aa.Iuliae Marcellae. * <a 290 pp.Sirmi xi k.Oct.Ipsis iiii et iii aa. conss.>

CJ.8.54.3.1: Imperatores Diocletianus, Maximianus

Sed cum postea benigna iuris interpretatione divi principes ei qui stipulatus non sit utilem actionem iuxta donatoris voluntatem competere admiserint, actio, quae sorori tuae, si in rebus humanis ageret, competebat, tibi accommodabitur. <a 290 pp.Sirmi xi k.Oct.Ipsis iiii et iii aa. conss.>

CJ.8.54.4: Imperatores Diocletianus, Maximianus

Perfecta donatio condiciones postea non capit. quare si pater tuus donatione facta quasdam post aliquantum temporis fecisse condiciones videtur, officere hoc nepotibus eius fratris tui filiis minime posse non dubium est. * diocl. et maxim. aa. * <a 291 d.K.Oct.Tiberiano et dione conss.>

CJ.8.54.5: Imperatores Diocletianus, Maximianus

Si quid mater filiae suae in potestate patris constitutae sub hac condicione, si fuerit intra biennium emancipata, donavit, licet hoc matris voluntate sui iuris effecta non tenuit, tamen prius marito defuncto sui iuris quocumque modo effecta ad similitudinem legati ita relicti rem donatam firmiter habere vel vindicare potest. * diocl. et maxim. aa. et cc. dexippo. * <a 294 s id.Dec.Nicomediae cc.Conss.>

CJ.8.55.0. De revocandis donationibus.

CJ.8.55.1pr.: Imperator Philippus

Etsi perfectis donationibus in possessionem inductus libertus quantolibet tempore ea quae sibi donata sunt pleno iure ut dominus possederit, tamen, si ingratus sit, omnis donatio mutata patronorum voluntate revocanda sit. * philipp. a. agilio cosmiano. * <a 249 d xv k.Iul.Aemiliano et aquilino conss.>

CJ.8.55.1.1: Imperator Philippus

Quod observabitur et circa ea, quae libertorum nomine, pecunia tamen patronorum et beneficio comparata sunt. <a 249 d xv k.Iul.Aemiliano et aquilino conss.>

CJ.8.55.1.2: Imperator Philippus

Nam qui obsequiis suis liberalitatem patronorum provocaverunt, non sunt digni, qui eam retineant, cum coeperint obsequia neglegere, cum magis in eos collata liberalitas ad obsequium inclinare debet quam ad insolentiam erigere. <a 249 d xv k.Iul.Aemiliano et aquilino conss.>

CJ.8.55.1.3: Imperator Philippus

Hoc tamen ius stabit intra ipsos tantum, qui liberalitatem dederunt. ceterum neque filii eorum neque successores ad hoc beneficium pertinebunt: neque enim fas est ullo modo inquietari donationes, quas is qui donaverat in diem vitae suae non retractavit. <a 249 d xv k.Iul.Aemiliano et aquilino conss.>

CJ.8.55.2: Imperator probus

Si apud provinciae praesidem aviam filiae tuae quasi paenitentia ductam subtracta instrumenta donationum igni exussisse constiterit, vereri te non oportet, ne id, quod iure vires acceperat, ex post facto possit in dubium revocari. * probus a. felici. * <a 277 pp. iii non. mai. sirmi probo a. et paulino conss.>

CJ.8.55.3: Imperatores carus, carinus, numer.

Possessionem, quam in vos emancipatos per donationem mater contulit, ex paenitentia sola alienare non potuit. * carus carinus et numer. aaa. ianuario et felici. * <a 284 pp. ii id. ian. carino ii et numeriano aa. conss.>

CJ.8.55.4: Imperatores Diocletianus, Maximianus

Confiteri in fraudem te alterius donasse professionem inhonestam continere intellegas. itaque si donationem perfecisti, eam revocare non potes ex memorata adlegatione sub obtentu paenitentiae. * diocl. et maxim. aa. et cc. proculae. * <a 293 pp. k. april. heracliae aa. conss.>

CJ.8.55.5: Imperatores Diocletianus, Maximianus

Si donationem rite fecisti, hanc auctoritate rescripti nostri rescindi non oportet. * diocl. et maxim. aa. et cc. epagatho. * <a 293 s. v k. mai. heracliae aa. conss.>

CJ.8.55.6: Imperatores Diocletianus, Maximianus

Velles nec ne filio tuo praedia itemque mancipia donare, fuit initio tibi liberum. desine itaque postulare, ut donatio quam perfeceras revocetur sub praetextu mariti ac liberorum absentiae, cum huius firmitas ipsorum praesentia non indigeret. * diocl. et maxim. aa. et cc. herenniae. * <a 294 s.V k.Oct. viminacii cc. conss.>

CJ.8.55.7pr.: Imperatores Constantius, constans

His solis matribus, quae non in secundi matrimonii foedus nupserint, sed unius tantum matrimonii sunt, revocandarum donationum quas in filios fecerint ita decernimus facultatem, si in eos ingratos circa se esse ostenderint.

* constantius et constans aa. ad philippum pp. * <a 349 d.Xii k. oct. limenio et catullino conss.>

CJ.8.55.7.1: Imperatores Constantius, constans

Quidquid igitur is qui a matre impietatis arguitur ex titulo donationis tenet eo die, quo controversiae qualecumque principium iussu iudicantis datur, matri cogatur reddere. <a 349 d.Xii k. oct. limenio et catullino conss.>

CJ.8.55.7.2: Imperatores Constantius, constans

Ceterum quae ante adhuc matre pacifica iure perfecta sunt et ante inchoatum coeptumque iurgium vendita donata mutata in dotem data ceterisque causis legitime alienata, minime revocamus. <a 349 d.Xii k. oct. limenio et catullino conss.>

CJ.8.55.7.3: Imperatores Constantius, constans

Actionem vero matris ita personalem esse volumus, ut vindicationis tantum habeat effectum nec in heredem detur nec tribuatur heredi. <a 349 d.Xii k. oct. limenio et catullino conss.>

CJ.8.55.7.4: Imperatores Constantius, constans

De ceteris autem, quae portentuosae vilitatis abiectaeque pudicitiae sunt, satis etiam tacite cautum putamus. quis est enim, qui his aliquid arbitretur tribuendum esse, cum etiam illis, quae iure, secundas tamen contraxerunt nuptias, nihil ex his privilegiis tributum esse vellemus? <a 349 d.Xii k. oct. limenio et catullino conss.>

CJ.8.55.8: Imperatores Constantius, constans

Si umquam libertis patronus filios non habens bona omnia vel partem aliquam facultatum fuerit donatione largitus et postea susceperit liberos, totum quidquid largitus fuerit revertatur in eiusdem donatoris arbitrio ac dicione mansurum. * constantius et constans aa. ad orfitum pu. * <a 355 d.V k.April.Arbitione et lolliano conss.>

CJ.8.55.9: Imperatores Theodosius, Valentinianus

Donationes circa filium filiamve, nepotem neptemve, pronepotem proneptemve emancipatos celebratas pater seu avus vel proavus revocare non poterit nisi edoctis manifestissimis causis, quibus eam personam in quam collata donatio est contra ipsam venire pietatem et ex causis quae legibus continentur fuisse constabit ingratam. * theodos. et valentin. aa. ad senatum. * <a 426 d.Viii id. nov.Ravennae theodosio xii et valentiniano ii aa.Conss.>

CJ.8.55.10pr.: Imperator Justinianus

Generaliter sancimus omnes donationes lege confectas firmas illibatasque manere, si non donationis acceptor ingratus circa donatorem inveniatur, ita ut iniurias atroces in eum effundat vel manus impias inferat vel iacturae molem ex insidiis suis ingerat, quae non levem sensum substantiae donatoris imponit vel vitae periculum aliquid ei intulerit vel quasdam conventiones sive in scriptis donationi impositas sive sine scriptis habitas, quas donationis acceptor spopondit, minime implere voluerit. * iust. a. iuliano pp. * <a 530 d.Xv k.April.Constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.55.10.1: Imperator Justinianus

Ex his enim tantummodo causis, si fuerint in iudicio dilucidis argumentis cognitionaliter adprobatae, etiam donationes in eos factas everti concedimus, ne sit cuidam licentia et alienas res capere et fragilitatem ridere donatoris et iterum ipsum donatorem suasque res perdere et praefatis malis ab ingrato donationis acceptore adfici. <a 530 d.Xv k.April.Constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.55.10.2: Imperator Justinianus

Haec tamen usque ad primas personas tantummodo stare censemus, nulla licentia concedenda donatoris successoribus huiusmodi querimoniarum primordium instituere. etenim si ipse qui haec passus est tacuit, silentium eius maneat semper et non a posteritate eius suscitari concedatur vel adversus ipsum qui ingratus esse dicitur vel adversus eius successionem. <a 530 d.Xv k.April.Constantinopoli lampadio et oreste vv. cc. conss.>

CJ.8.56.0. De mortis causa donationibus.

CJ.8.56.1: Imperator Alexander Severus

Si donationi contineatur, ut altero defuncto ad alterum portio eorum quae donabantur pertineret, existente condicione, si mortis causa donatio perficiebatur, fideicommissi actio competit. * alex. a. daphenae. * <a 223 pp.Iiii k.Oct.Maximo ii et aeliano conss.>

CJ.8.56.2pr.: Imperator Gordianus

Intestata mortua quondam nuru tua neptis tua, quae ex ea filio tuo quaesita est, quandoque potest ad eius venire successionem. * gord. a. zoilo. * <a 239 pp.X k.Febr.Gordiano a. et aviola conss.>

CJ.8.56.2.1: Imperator Gordianus

Nec tamen ea post mortem filii tui, ex quo quaesierat filiam, alii nuptui se collocando dotem dans prohibebatur quam vellet condicionem eidem doti dicere. <a 239 pp.X k.Febr.Gordiano a. et aviola conss.>

CJ.8.56.2.2: Imperator Gordianus

Sed si mortis causa donationem in fratrem suum conferens in casum mortis suae eam dotem eundem fratrem suum stipulari passa est, cum divi severi constitutione etiam in mortis causa donationibus, si de cetero patrimonio quantum falcidia iubet heres non habet, provisum sit, is qui nurui tuae heres extiterit eius constitutionis beneficium non prohibebitur postulare. <a 239 pp.X k.Febr.Gordiano a. et aviola conss.>

CJ.8.56.3: Imperatores Diocletianus, Maximianus

Nec fratris sui mortis causa recte factam donationem sorori rescindere licet. * diocl. et maxim. aa. et cc. heredi. * <a 293 s. iii k. ian. sirmi aa. conss.>

CJ.8.56.4: Imperator Justinianus

Cum de mortis causa donatione dubitabatur et alii quidem inter ultimas voluntates eam posuerunt et legatis adgregandam esse censuerunt, alii autem inter donationes quae inter vivos consistunt eam posuerunt, dubietate eorum explosa sancimus omnes mortis causa donationes, sive iuxta mortem facientis fuerint celebratae sive longiore cogitatione mortis subsecutae sunt, actis minime indigere neque exspectare publicarum personarum praesentiam et ea quae super huiusmodi monumentis solent adhiberi. sed ita res procedat, ut, si quinque testibus praesentibus vel in scriptis vel sine litterarum suppositione aliquis voluerit mortis causa donationem facere, et sine monumentorum accessione res gesta maneat firmitate v allata et nullam calumniam accipiat neque propter hoc, quod gesta ei non accesserunt, inefficax esse atque inutilis videatur et omnes effectus sortiatur, quos ultimae habent liberalitates, nec ex quacumque parte absimiles esse intellegantur. * iust. a. iohanni pp. * <a 530 d. k. sept. constantinopoli lampadio oreste vv. cc. conss.>

CJ.8.57.0. De infirmandis poenis caelibatus et orbitatis et decimariis sublatis.

CJ.8.57.1pr.: Imperator Constantinus

Qui iure veteri caelibes habebantur, imminentibus legum terroribus liberentur atque ita vivant, ac si numero maritorum matrimonii foedere fulcirentur, sitque omnibus aequa condicio capessendi quod quisque mereatur. nec vero quisquam orbus habeatur: proposita huic nomini damna non noceant. * const. a. ad pop. * <a 320 pp. k. april. romae constantino a. vi et constantino c. conss.>

CJ.8.57.1.1: Imperator Constantinus

Quam rem et circa feminas aestimamus earumque cervicibus imposita iuris imperia velut quaedam iuga solvimus promiscue omnibus. <a 320 pp. k. april. romae constantino a. vi et constantino c. conss.>

CJ.8.57.2: Imperatores Honorius, Theodosius

Inter virum et uxorem rationem cessare ex lege papia decimarum et, quamvis non interveniant liberi, ex suis quoque eos solidum capere testamentis, nisi forte lex alia minuerit derelicta, decernimus. tantum igitur post haec maritus vel uxor sibi invicem derelinquant, quantum superstes amor exegerit. * honor. et theodos. aa. isidoro pu. * <a 410 d. prid. non. sept. varane cons.>

CJ.8.58.0. De iure liberorum.

CJ.8.58.1: Imperatores Honorius, Theodosius

Nemo post haec a nobis ius liberorum petat, quod simul hac lege omnibus concedimus. * honor. et theodos. aa. isidoro pu. * <a 410 d. prid. non. sept. varane cons.>

CJ.8.58.2: Imperator Justinianus

Illam iniuriam, quae contra matrem defuncti vel defunctae prateritis fiebat temporibus, pro iustitiae ratione amputamus et legitima iura, quae ex tertulliano senatus consulto ei praestantur, omnimodo eam habere sancimus, licet tres liberos ingenua vel libertina quattuor minime pepererit. * iust. a. menae pp. * <a 528 d. k. iun. constantinopoli ipso a. ii cons.>

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CJ.9.1.0. Qui accusare non possunt.

CJ.9.1.1: Imperatores Severus, Antoninus

Prius est, ut criminibus, quae tibi ut graviora ab adversario tuo obiciuntur, caedis atque vulnerum respondeas, et tunc ex eventu causae iudex aestimabit, an tibi permittendum sit eundem accusare, tametsi prior inscriptionem deposuisti. * sev. et ant. aa. silvano. * <a 195 pp. v id. mart. tertullo et clemente conss.>

CJ.9.1.2pr.: Imperator Antoninus

Si cautiones, quibus secundinus solutam ingenuo pecuniam probare se dicit, tutores vel curatores tui suspectas ut falsas habent, proprio nomine, cum non liceat alieno, non prohibentur in crimine falsi subscribere. * ant. a. ingenuo. * <a 205 pp. xii k. oct. antonino et geta conss.>

CJ.9.1.2.1: Imperator Antoninus

Nec enim facile tutores vel curatores, qui officio et periculo suo res pupillorum vel adulescentium administrant, sententia notantur, nisi evidens eorum calumnia iudicanti apparebit. <a 205 pp. xii k. oct. antonino et geta conss.>

CJ.9.1.3pr.: Imperator Alexander Severus

Qui crimen publicum instituere properant, non aliter ad hoc admittantur, nisi prius inscriptionum pagina processerit et fideiussor de exercenda lite adhibitus fuerit. * alex. a. rufo. * <a 222 pp. iii non. febr. alexandro a. cons.>

CJ.9.1.3.1: Imperator Alexander Severus

Sin vero post satisdationem praesentes non fuerint, edicto admonendi sunt, ut veniant ad causam agendam, et si non adfuerint, non solum extra ordinem puniendi sunt, sed etiam sumptus, quos in eam rem et circa ipsum iter ad litem vocati fecerunt, dependere cogentur. <a 222 pp. iii non. febr. alexandro a. cons.>

CJ.9.1.4: Imperator Alexander Severus

Uxor tua, si consobrini sui necem vindicandam existimat, adeat praesidem provinciae. * alex. a. dionysio. * <a 222 pp. xvi k. iul. alexandro a. cons.>

CJ.9.1.5: Imperator Alexander Severus

Senatus consulto permissum non est mulieri legis corneliae crimine reum facere, nisi res ad eam pertineat. cum igitur filii tui tutores et curatores habent, ipsi deliberare debent, an instrumenta, ex quibus adversarium filiorum tuorum obtinuisse dicis, falsa esse accusare debeant. * alex. a. Marcellinae. * <a 222 pp. k. oct. alexandro a. cons.>

CJ.9.1.6: Imperator Alexander Severus

Accusationem, a qua discedere te professus es, repetere non debes. * alex. a. probo. * <a 224 pp. v non. mai. iuliano et crispino conss.>

CJ.9.1.7: Imperator Alexander Severus

Si ea quae crimen intendit cognitionem moratur, certa perferendae accusationi tempora iudex competens praestet, intra quae si agere supersederit, renuntiasse causae intellegitur. * alex. a. felici. * <a 230 pp. xv k. sept. agricola et clemente conss.>

CJ.9.1.8: Imperator Gordianus

Non prohibentur milites actiones quae iudicii publici instar obtineant intendere , si suas suorumque iniurias exsequantur. ideoque consobrini tui necem defendere tibi permittimus. * gord. a. gaio mil. * <a 238 pp. xvii k. aug. pio et pontiano conss.>

CJ.9.1.9: Imperator Gordianus

Non ignorat competens iudex eam, quae ultionem et mortem filii persequi adlegat, non temere ad accusationem esse admittendam, nisi prius matrem se esse probaverit. * gord. a. severiano. * <a 239 pp. vi non. mart. gordiano a. et aviola conss.>

CJ.9.1.10: Imperator Gordianus

Si crimen ad tuam tuorumque iniuriam pertinens exsequeris, sollemnibus te inscriptionibus adstringe, ut praesidem provinciae habere iudicem possis. * gord. a. mucatraulo mil. * <a 239 pp. k. aug. gordiano a. et aviola conss.>

CJ.9.1.11: Imperator Philippus

Data opera partis adversae res vestras incendio exarsas esse adseverantes crimen corneliae de sicariis exsequi potestis. * philipp. a. et philipp. c. saturnino. * <a 244 pp. xiii k. iul. peregrino et aemiliano conss.>

CJ.9.1.12pr.: Imperatores Diocletianus, Maximianus

De crimine quod publicorum fuerit iudiciorum mulieri accusare non permittitur nisi certis ex causis, id est si suam suorumque iniuriam persequatur, secundum antiquitus statuta tantum de quibus specialiter eis concessum est non exacta subscriptione. * diocl. et maxim. aa. et cc. corinthiae. * <a 293 s. v k. mai. aa. conss.>

CJ.9.1.12.1: Imperatores Diocletianus, Maximianus

Unde aditus praeses provinciae in primis examinabit, an tale sit crimen, cuius accusationem mulier subire non prohibetur. <a 293 s. v k. mai. aa. conss.>

CJ.9.1.13: Imperatores Diocletianus, Maximianus

Si magnum et capitale crimen ac non leve frater contra fratrem suum instituerit, non solum audiendus non est, sed etiam exilii poena plectendus. * diocl. et maxim. aa. et cc. ad asclepium. * <a 294 d. x k. febr. cc. conss.>

CJ.9.1.14: Imperatores Diocletianus, Maximianus

Propter insidias, quas tuae vitae paratas contendis, accusationem apud praesidem provinciae contra filium tuum, si pietas et ratio naturalis animi tui non revocat intentionem, instituere potes. * diocl. et maxim. aa. et cc. aeliae. * <a 294 s. xvi k. mart. cc. conss.>

CJ.9.1.15: Imperatores Diocletianus, Maximianus

Criminis accusationem instituere cum periculo calumniae, si tibi existimatio integra est, minime prohiberis. * diocl. et maxim. aa. et cc. lupioni. * <a 294 s. iii k. mart. cc. conss.>

CJ.9.1.16: Imperatores Diocletianus, Maximianus

Cum rationibus iuris congruit desiderium tuum postulantis accusationem tertiam ei qui tuos reos delatos habet non permitti contra legis praescripta, nisi suas suorumque iniurias quis persequatur. * diocl. et maxim. aa. et cc. callitycho. * <a 294 s. xii k. dec. nicomediae cc. conss.>

CJ.9.1.17: Imperatores Diocletianus, Maximianus

Iniquum et longe a beatitudine saeculi nostri esse credidimus, ut thaumastus accusandi eius haberet facultatem, in cuius domo eum, licet ingenuum, a prima tamen aetate fuisse constabit. quare ex nomine thaumasti mentio super conflictu criminali symmacho conquiescat. si quam sane civilem petitionem idem thaumastus sibi competere confidit, iudicio praesidiali poterit experiri. * diocl. et maxim. aa. et cc. pars sent. d. v id.Ian.Diocl. vii. et maxim. vi. aa. conss.* <a 299 >

CJ.9.1.18: Imperatores Diocletianus, Maximianus

Si sororem tuam leviorum commissorum ream facis, accusationem non prohiberis exercere in iudicio praesidali, quo temerarie commissa congrua ultione plectantur. * diocl. et maxim. aa. et cc. iuliano. * <a 304 d. iii k. mart. diocletiano viiii et maximiano viii aa. conss.>

CJ.9.1.19: Imperatores Valentinianus, Valens, Gratianus

Neganda est accusatis, qui non suas suorumque iniurias exsequantur, licentia criminandi in pari vel minori crimine, priusquam se crimine quo premuntur exuerint , secundum scita veterum iuris conditorum, ita tamen, ut et ipsi inscriptiones contra eos etiam pendente accusatione deponere possint. * valentin. valens et grat. aaa. laodicio praes. sardiniae. * <a 374 d. prid. id. aug. carnunti gratiano a. iii et equitio conss.>

CJ.9.1.20: Imperatores Arcadius, Honorius

Si quis ex familiaribus vel ex servis cuiuslibet domus cuiuscumque criminis delator atque accusator emerserit, eius existimationem caput atque fortunas petiturus, cuius familiaritati vel dominio inhaeserit, ante exhibitionem testium, ante examinationem iudicii, in ipsa expositione criminum atque accusationis exordio ultore gladio feriatur. vocem enim funestam intercidi oportet potius quam audiri. maiestatis autem crimen excipimus. * arcad. et honor. aa. eutychiano pp. * <a 397 d. vi id. nov. constantinopoli caesario et attico conss.>

CJ.9.1.21: Imperatores Honorius, Theodosius

Liberti si accusatores manumissorum heredumve esse praesumpserint, eodem quo servi supplicio tenebuntur, luituri poenas ante prohibitae delationis exordium. * honor. et theodos. aa. conss. praetoribus tribunis plebi senatui s.D.* <a 423 d. viii id. aug. ravennae asclepiodoto et mariniano conss.>

CJ.9.2.0. De accusationibus et inscriptionibus.

CJ.9.2.1: Imperator Alexander Severus

Eos qui terminos effoderunt extraordinaria animadversione coerceri debere praeses provinciae non ignorabit. * alex. a. marciano. * <a 222 pp.Iii k.Aug.Alexandro a. cons.>

CJ.9.2.2pr.: Imperator Alexander Severus

Si cuiusdam criminis obnoxius servus postulatur, dominus eum defendere potest et in iudicio sistere accusatoris intentionibus responsurum. * alex. a. syro. * <a 222 pp.Xi k.Dec.Alexandro a. cons.>

CJ.9.2.2.1: Imperator Alexander Severus

Post probationes autem criminis non ipse dominus, sed servus pro suo delicto condemnationem sustineat. ideo enim servum suum domino defendere permissum est, ut pro eo possit competentes adlegationes offerre. <a 222 pp.Xi k.Dec.Alexandro a. cons.>

CJ.9.2.3: Imperator Alexander Severus

Reos capitalium criminum absentes etiam per procuratorem defendi leges publicorum iudiciorum permittunt. * alex. a. stephanidi. * <a 223 pp.Iiii non.Nov.Maximo ii et aeliano conss.>

CJ.9.2.4: Imperator Gordianus

Si accusatoribus absentibus et non per contumaciam adesse iudicio cessantibus ex una postulatione aditus praeses provinciae non causa cognita sententiam dixit, qua eum de quo querimoniam detulisti liberandum existimavit, criminatione etiam nunc perseverante, quae contumacia vel cessatione accusatorum non interveniente auferri non potuit, causa intentati criminis apud eundem vel successorem eius more iudiciorum tractabitur. * gord. a. archelao. * <a 241 pp.Non.Mart.Gordiano a. ii et pompeiano conss.>

CJ.9.2.5: Imperator Gordianus

Non ideo minus crimine seu atrociorum iniuriarum iudicio tenetur is qui in istam accusationem incidit, quod dicat alium se huius facti mandatorem habuisse. namque hoc casu praeter principalem reum mandatorem quoque ex sua persona conveniri posse ignotum non est. * gord. a. paulino. * <a 241 pp.Iii id.Sept.Gordiano a.Ii et pompeiano conss.>

CJ.9.2.6pr.: Imperator Gordianus

Absentem capitali crimine accusari non posse, sed requirendum tantummodo adnotari solere, si desit, vetus ius est. * gord. a. avidiano. * <a 243 pp.Iiii non. april.Arriano et papo conss.>

CJ.9.2.6.1: Imperator Gordianus

Et ideo cum absentem te et ignorantem, cui numquam ullum crimen denuntiatum esset, per iniuriam a praeside provinciae in metallum datum dicas, quo magis in praesenti te agente, ut adseveras, iam nunc fides veri possit illuminari, praefectos praetorio adire cura, qui, quidquid novo more et contra formam constitutionum gestum deprehenderint, pro sua iustitia reformabunt. <a 243 pp.Iiii non. april.Arriano et papo conss.>

CJ.9.2.7: Imperator Gordianus

Ea quidem, quae per officium praesidibus nuntiantur, et citra sollemnia accusationum posse perpendi incognitum non est. verum falsis nec ne notoriis insimulatus sit, perpenso iudicio dispici debet. * gord. a. proculo. * <a 244 pp.Viii id.Ian.Peregrino et aemiliano conss.>

CJ.9.2.8: Imperatores Diocletianus, Maximianus

Si quis se iniuriam ab aliquo passum putaverit et querellam deferre voluerit, non ad stationarios decurrat, sed praesidalem, adeat potestatem aut libellos offerens aut querellas suas apud acta deponens. * diocl. et maxim. aa. exempl. sacr. litt.* <a xxx pp. sine die et consule.>

CJ.9.2.9pr.: Imperatores Diocletianus, Maximianus

Qui de crimine publico in accusationem deductus est, ab alio super eodem crimine deferri non potest. * diocl. et maxim. aa. honorato. * <a 289 pp. xiiii k. sept. basso et quintiano conss.>

CJ.9.2.9.1: Imperatores Diocletianus, Maximianus

Si tamen ex eodem facto plurima crimina nascuntur et de uno crimine in accusationem fuerit deductus, de altero non prohibetur ab alio deferri. <a 289 pp. xiiii k. sept. basso et quintiano conss.>

CJ.9.2.9.2: Imperatores Diocletianus, Maximianus

Iudex autem super utroque crimine audientiam accommodabit: nec enim licebit ei separatim de uno crimine sententiam proferre, priusquam plenissima examinatio super altero quoque crimine fiet. <a 289 pp. xiiii k. sept. basso et quintiano conss.>

CJ.9.2.10: Imperatores Diocletianus, Maximianus

Qui explicandi negotii spem, cuius finis in iudicis potestate ac motu situs est, pollicetur, non minus ob illicitam sponsionem crimen contrahit, quam qui ad huiusmodi promissionis commercium contra disciplinam publicam adspirat. * diocl. et maxim. aa. ursae. * <a 290 pp.Iii k.Nov.Ipsis iiii et iii aa. conss.>

CJ.9.2.11: Imperatores Diocletianus, Maximianus

Si quis homicidii crimen existimat persequendum, secundum iuris publici formam debebit eum, qui in primordio homicidii postulaverat reum neque probaverat ideoque reus absolutus est, praevaricationis arguere: id enim salubriter statutis principum parentum nostrorum iurisque forma praescriptum est: vel si id non putaverit agendum, ad sequens crimen, id est pastorum latronumve, descendere eum coges atque id exsequi iudicio tuo, cum, si quidem id ab incusato appareat esse commissum, ob ultionem publicam obnoxius legibus fiat. * diocl. et maxim. aa. have crispine cariss. nobis.* <a 292 d.Iii id.April.Hannibaliano et asclepiodoto conss.>

CJ.9.2.12: Imperatores Diocletianus, Maximianus

Factum sponte se praecipitantis innocenti criminis periculum adferre non potest. * diocl. et maxim. aa. et cc. aurelio. * <a 293 s.Xiiii k.Iun.Sirmi aa. conss.>

CJ.9.2.13: Imperatores Gratianus, Valentinianus, Theodosius

Si quis servos crediderit accusandos, non prius ad corporum tormenta veniatur, quam se vinculo subscriptionis adstrinxerit. * grat. valentin. et theodos. aaa. mariniano vic. hispaniae.* <a 383 d.Vi k.Iun.Patavi merobaude iterum et saturnino conss.>

CJ.9.2.14: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

Singuli universique iudices cognoscant in publicis criminibus non oportere emendicatis suffragiis decretorum aut relationibus a publicis personis destinandis credere, sed rei veritatem requirere. * grat. valentin. et theodos. et arcad. a. cynegio pp. * <a 385 d.Prid.K.Mai.Constantinopoli arcadio a. et bautone conss.>

CJ.9.2.15: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

Tunc convenit potentiores viros adesse iudiciis, cum eorum praesentiam in criminibus publicis per inscriptionem causa deposcat, licet in pecuniariis causis per procuratores lites sustineant. * grat. valentin. theodos. et arcad. aaaa. tatiano pp. * <a 390 d.Xv k.Mart.Mediolani valentiniano a.Iiii et neoterio conss.>

CJ.9.2.16pr.: Imperatores Arcadius, Honorius

In causis criminalibus dignum est, ut inscriptiones proponantur, quae magnitudinem videlicet criminis tempusque designant, ut alterutram partem digna legum tenere possit auctoritas. * arcad. et honor. aa. pasiphilo. * <a 395 d.Viii k.Ian.Mediolani olybrio et probino conss.>

CJ.9.2.16.1: Imperatores Arcadius, Honorius

Quod statutum si fuerit forte contemptum, hi qui ex officio ingrediuntur secretarium quinque librarum auri condemnatione ferientur. <a 395 d.Viii k.Ian.Mediolani olybrio et probino conss.>

CJ.9.2.17pr.: Imperatores Honorius, Theodosius

In causis criminalibus dignum est, ut inscriptiones proponantur, quae magnitudinem videlicet criminis tempusque designant, ut alterutram partem digna legum tenere possit auctoritas. * honor. et theodos. aa. conss. praetoribus tribunis plebis senatui s.D.* <a 423 d.Viii id. aug. ravennae asclepiodoto et mariniano conss.>

CJ.9.2.17.1: Imperatores Honorius, Theodosius

Nemo tamen sibi blandiatur obiectu cuiuslibet criminis de se in quaestione confessus, veniam sperans propter flagitia adiuncti, vel communione criminis consortium personae superioris optans, aut inimici supplicio in ipsa supremorum suorum sorte sociandus, aut eripi se posse confidens aut studio aut privilegio nominati, cum veteris iuris auctoritas de se confessos ne interrogari quidem de aliorum conscientia sinat. nemo igitur de proprio crimine confitentem super conscientia scrutetur aliena. <a 423 d.Viii id. aug. ravennae asclepiodoto et mariniano conss.>

CJ.9.3.0. De exhibendis vel transmittendis reis.

CJ.9.3.1: Imperatores Valentinianus, Valens

Si miles in provincia repertus crimen publicum commiserit, eum rector provinciae sub custodia constituat atque ita vel causae meritum vel personae qualitatem ad magistrum militum referat. * valentin. et valens aa. valentino consulari piceni. * <a 365 d. xi k. febr. mediolani valentiniano et valente aa. conss.>

CJ.9.3.2pr.: Imperatores Gratianus, Valentinianus, Theodosius

Nullus in carcerem prius quam convincatur omnino vinciatur. * grat. valentin. et theodos. aaa. eutropio pp. * <a 380 d. iii k. ian. constantinopoli gratiano v et theodosio aa. conss.>

CJ.9.3.2.1: Imperatores Gratianus, Valentinianus, Theodosius

Ex longinquo si quis est acciendus, non prius insimulanti accommodetur adsensus, quam sollemni lege se vinxerit. <a 380 d. iii k. ian. constantinopoli gratiano v et theodosio aa. conss.>

CJ.9.3.2.2: Imperatores Gratianus, Valentinianus, Theodosius

Eique qui deducendus erit ad disponendas res suas componendosque maestos penates spatium coram loci iudice aut etiam magistratibus sufficientium dierum, non minus tamen triginta tribuatur, nulla remanente apud eum qui ad exhibendum missus est copia nundinandi. <a 380 d. iii k. ian. constantinopoli gratiano v et theodosio aa. conss.>

CJ.9.3.2.3: Imperatores Gratianus, Valentinianus, Theodosius

Qui posteaquam ad iudicem venerit, adhibita advocatione ius debebit explorare quaesitum ac tamdiu pari cum accusatore fortuna retineri, donec reppererit cognitio celebrata discrimen. <a 380 d. iii k. ian. constantinopoli gratiano v et theodosio aa. conss.>

CJ.9.3.3: Imperatores Valentinianus, Theodosius, Arcadius

Neminem iudicio exhibendum esse praecipimus, nisi de cuius exhibitione iudex pronuntiaverit. * valentin. theodos. et arcad. aaa. drepanio procons. africae. * <a 390 d. prid. non. febr. mediolani valentiniano a. iiii et neoterio conss.>

CJ.9.4.0. De custodia reorum.

CJ.9.4.1pr.: Imperator Constantinus

In quacumque causa reo exhibito, sive accusator existat sive eum publicae sollicitudinis cura produxerit, statim debet quaestio fieri, ut noxius puniatur, innocens absolvatur. * const. a. ad florentium rationalem. * <a 320 d. prid. k. iul. serdicae constantino a. vi et constantino c.Conss.>

CJ.9.4.1.1: Imperator Constantinus

Quod si accusator aberit ad tempus aut sociorum praesentia necessaria videatur, id quidem debet quam celerrime procurari. <a 320 d. prid. k. iul. serdicae constantino a. vi et constantino c.Conss.>

CJ.9.4.1.2: Imperator Constantinus

Interea vero exhibito non ferreas manicas et inhaerentes ossibus mitti oportet, sed prolixiores catenas, si criminis qualitas etiam catenarum acerbitatem postulaverit, ut et cruciatio desit et permaneat fida custodia. <a 320 d. prid. k. iul. serdicae constantino a. vi et constantino c.Conss.>

CJ.9.4.1.3: Imperator Constantinus

Nec vero sedis intimae tenebras pati debebit inclusus, sed usurpata luce vegetari et, ubi nox geminaverit custodiam, vestibulis carcerum et salubribus locis recipi ac revertente iterum die ad primum solis ortum ilico ad publicum lumen educi, ne poenis carceris perimatur, quod innocentibus miserum, noxiis non satis severum esse dignoscitur. <a 320 d. prid. k. iul. serdicae constantino a. vi et constantino c.Conss.>

CJ.9.4.1.4: Imperator Constantinus

Illud etiam observabitur, ut neque his qui stratorum funguntur officio neque ministris eorum liceat crudelitatem suam accusatoribus vendere et innocentes intra carcerum saepta leto dare aut subtractos audientiae longa tabe consumere. <a 320 d. prid. k. iul. serdicae constantino a. vi et constantino c.Conss.>

CJ.9.4.1.5: Imperator Constantinus

Non enim existimationis tantum, sed etiam periculi metus iudici imminebit, si aliquem ultra debitum tempus inedia aut quocumque modo aliquis stratorum exhauserit, et non statim eum penes quem officium custodiae est atque eius ministros capitali poena subiecerit. <a 320 d. prid. k. iul. serdicae constantino a. vi et constantino c.Conss.>

CJ.9.4.2pr.: Imperator Constantinus

Si quis in ea culpa vel crimine fuerit deprehensus, quod dignum claustris carceris et custodiae squalore videtur, auditus apud acta, cum de admisso constiterit , poenam carceris sustineat atque ita postmodum eductus apud acta audiatur. * const. a. ad euagrium. * <a 326 d. iii non. febr. heracleae constantino a. vii et constantio c. conss.>

CJ.9.4.2.1: Imperator Constantinus

Ita enim quasi sub publico testimonio commemoratio admissi criminis fiet, ut iudicibus immodice saevientibus freni quidam ac temperies adhibita videatur. <a 326 d. iii non. febr. heracleae constantino a. vii et constantio c. conss.>

CJ.9.4.3: Imperator Constantinus

Quoniam unum carceris conclave permixtos secum criminosos includit, hac lege sancimus, ut, etiamsi ponae qualitas permixtione iungenda est, sexum tamen disparem diversa claustrorum habere tutamina iubeatur. * constant. a. acindyno pp. * <a 340 d. non. april. acindyno et proculo conss.>

CJ.9.4.4pr.: Imperatores Valentinianus, Valens, Gratianus

Ad commentariensem receptarum personarum custodia observatioque pertineat, nec putet hominem abiectum atque vilem obiciendum esse iudici, si reus modo aliquo fuerit elapsus. nam ipsum volumus eiusmodi poena consumi, cui obnoxius docebitur fuisse qui fugerit. * valentin. valens et grat. aaa. ad probum pp. * <a 371 d. iii k. iul. contionaci gratiano a. ii et probo conss.>

CJ.9.4.4.1: Imperatores Valentinianus, Valens, Gratianus

Si vero commentariensis necessitate aliqua procul ab officio egerit, adiutorem eius pari iubemus invigilare cura et eadem statuimus legis severitate constringi. <a 371 d. iii k. iul. contionaci gratiano a. ii et probo conss.>

CJ.9.4.5pr.: Imperatores Gratianus, Valentinianus, Theodosius

De his quos tenet carcer id aperta definitione sancimus, ut aut convictum velox poena subducat aut liberandum custodia diuturna non maceret. * grat. valentin. et theodos. aaa. eutropio pp. * <a 380 d. iii k. ian. constantinopoli gratiano v et theodosio aa. conss.>

CJ.9.4.5.1: Imperatores Gratianus, Valentinianus, Theodosius

Iubemus autem, ut intra tricesimum diem semper commentariensis ingesserit numerum personarum, varietatem delictorum, clausorum ordinem aetatemque vinctorum. officium viginti libras auri aerario nostro iubemus inferre, iudicem desidem ac resupina cervice tantum titulum gerentem extorrem impetrata fortuna decem libras auri multandum esse censemus. <a 380 d. iii k. ian. constantinopoli gratiano v et theodosio aa. conss.>

CJ.9.5.0. De privatis carceribus inhibendis.

CJ.9.5.1pr.: Imperator Zeno

Iubemus nemini penitus licere per alexandrinam splendidissimam civitatem vel aegyptiacam dioecesin aut quibuslibet imperii nostri provinciis vel in agris suis aut ubicumque domi privati carceris exercere custodiam, viro spectabili pro tempore praefecto augustali, et viris clarissimis omnium provinciarum rectoribus daturis operam semperque futuris in speculis, ut saepe dicta nefandissimorum hominum adrogantia modis omnibus opprimatur. * zeno a. basilio pp. * <a 486 d.K.Iul.Constantinopoli longino vc.Cons.>

CJ.9.5.1.1: Imperator Zeno

Nam post hanc saluberrimam constitutionem et vir spectabilis pro tempore augustalis et quicumque provinciae moderator maiestatis crimen procul dubio incursurus est, qui cognito huiusmodi scelere laesam non vindicaverit maiestatem: primatibus insuper officiorum eiusdem criminis laqueis constringendis, qui, simulatque noverint memoratum interdictum facinus in quocumque loco committi, proprios iudices de opprimendo nefandissimo scelere non protinus curaverint, instruendos. <a 486 d.K.Iul.Constantinopoli longino vc.Cons.>

CJ.9.5.1.2: Imperator Zeno

Nam illud perspicuum est eos qui hoc criminum genus commiserint pro veterum etiam legum et constitutionum tenore tamquam ipsius maiestatis violatores ultimo subiugandos esse supplicio. <a 486 d.K.Iul.Constantinopoli longino vc.Cons.>

CJ.9.6.0. Si reus vel accusator mortuus fuerit.

CJ.9.6.2: Imperator Antoninus

Etsi Marcellus qui crimine falsi postulabatur vita functus est ac per hoc crimen in persona eius sit extinctum, accusatio tamen non est abolita, cum tam uxorem eius quam te eodem crimine postulatos proponas. * ant. a. eutychiano. * <a 215 pp.Vii.K.Oct. laeto ii et cereale conss.>

CJ.9.6.3: Imperator Antoninus

Si is, quem homicidii seu cuiusvis criminis postulasti reum, vita functus est, frustra ob poenam desertae accusationis conveniris, cum morte eius crimen cum poena eius sit extinctum ac per hoc tibi adempta est necessitas accusationis. * ant. a. proculo. * <a 216 pp.Iiii k.Oct.Romae sabino et anullino conss.>

CJ.9.6.4pr.: Imperator Alexander Severus

Si, ut proponis, causa pecuniaria ad emolumentum tuum spectat, licet annianus, cui falsi crimen auctor tuus intendebat, vita functus sit, non prohiberis, si quis adversus te instrumento quod in dubium vocatur uti coeperit, accusationem instituere. * alex. a. veroniciano. * <a 227 pp.Vi k.Ian.Albino et aemiliano conss.>

CJ.9.6.4.1: Imperator Alexander Severus

Quamvis enim in persona principalis rei morte subducti iam subsistere non possit , tamen si quis illo uti voluerit, intellegit se periculo criminis esse subiectum. <a 227 pp.Vi k.Ian.Albino et aemiliano conss.>

CJ.9.6.5: Imperator Gordianus

Defunctis reis publicorum criminum, sive ipsi per se ea commiserunt sive aliis mandaverunt, pendente accusatione, praeterquam si sibi mortem consciverint, bona successoribus eorum non denegari notissimi iuris est. * gord. a. rufo. * <a 238 pp.Vii k.Nov.Pio et pontiano conss.>

CJ.9.6.6pr.: Imperator Gordianus

Si quis, cum capitali poena vel deportatione damnatus esset, appellatione interposita et in suspenso constituta fati diem functus est, crimen morte finitum est. * gord. a. iuliano. * <a 239 pp.Vi k.Aug.Gordiano a. et aviola conss.>

CJ.9.6.6.1: Imperator Gordianus

Idem observatur et si accusator pendente appellationis tempore ultimum diem obisset. <a 239 pp.Vi k.Aug.Gordiano a. et aviola conss.>

CJ.9.6.6.2: Imperator Gordianus

Sin autem relegationis poenam sustinuit et in parte bonorum damnatus appellatione usus est, etiam post mortem eius nihilo minus appellationis ratio examinabitur, cum desideretur, utrum valeat nec ne particularis publicatio. <a 239 pp.Vi k.Aug.Gordiano a. et aviola conss.>

CJ.9.7.0. Si quis imperatori maledixerit.

CJ.9.7.1pr.: Imperatores Theodosius, Arcadius, Honorius

Si quis modestiae nescius et pudoris ignarus improbo petulantique maledicto nomina nostra crediderit lacessenda ac temulentia turbulentus obtrectator temporum fuerit, eum poenae nolumus subiugari neque durum aliquid nec asperum sustinere, quoniam, si id ex levitate processit, contemnendum est, si ex insania, miseratione dignissimum, si ab iniuria, remittendum. * theodos. arcad. et honor. aaa. rufino pp. * <a 393 d.V id.Aug.Constantinopoli theodosio a. iii et abundantio conss.>

CJ.9.7.1.1: Imperatores Theodosius, Arcadius, Honorius

Unde integris omnibus ad nostram scientiam referatur, ut ex personis hominum dicta pensemus et, utrum praetermitti an exsequi rite debeat, censeamus, <a 393 d.V id.Aug.Constantinopoli theodosio a. iii et abundantio conss.>

CJ.9.8.0. Ad legem iuliam maiestatis.

CJ.9.8.1: Imperator Alexander Severus

Etiam ex aliis causis maiestatis crimina cessant meo saeculo, nedum etiam admittam te paratum accusare iudicem propterea crimine maiestatis, quod contra constitutionem eius dicis pronuntiasse. * alex. a. paulino. * <a 223 pp.Iii id.April. maximo ii et aeliano conss.>

CJ.9.8.2: Imperator Alexander Severus

Alienam sectae meae sollicitudinem concepisti, quasi crimen maiestatis sustineres, etsi servo tuo iratus esse non perseveres, quod semper te facturum inconsultius iuraveris. * alex. a. faustiniano. * <a 224 pp.Iii non febr. iuliano et crispino conss.>

CJ.9.8.3pr.: Imperator Constantinus

Si quis alicui maiestatis crimen intenderit, cum in huiuscemodi re convictus minime quisquam privilegio dignitatis alicuius a strictiore inquisitione defendatur, sciat se quoque tormentis esse subdendum, si aliis manifestis indiciis accusationem suam non potuerit comprobare. * const. a. ad maximum pu. * <a 314 pp.K.Ian.Volusiano et anniano conss.>

CJ.9.8.3.1: Imperator Constantinus

Cum eo, qui huius esse temeritatis deprehenditur, illum quoque tormentis subdi oportet, cuius consilio atque instinctu ad accusationem accessisse videbatur, ut ab omnibus commissi consciis statuta vindicta possit reportari. <a 314 pp.K.Ian.Volusiano et anniano conss.>

CJ.9.8.4: Imperatores Valentinianus, Valens, Gratianus

Nullus omnino, cui inconsultis ac nescientibus nobis fidicularum tormenta offerentur, militiae vel generis aut dignitatis defensione uti prohibeatur, excepta tamen maiestatis causa, in qua sola omnibus aequa condicio est. * valentin. valens et grat. aaa. ad olybrium pu. * <a 369 d. viii id. iul. valentiniano np. et victore conss.>

CJ.9.8.5pr.: Imperatores Arcadius, Honorius

Quisquis cum militibus vel privatis, barbaris etiam scelestam inierit factionem aut factionis ipsius susceperit sacramenta vel dederit, de nece etiam virorum illustrium qui consiliis et consistorio nostro intersunt, senatorum etiam (nam et ipsi pars corporis nostri sunt), cuiuslibet postremo qui nobis militat cogitarit (eadem enim severitate voluntatem sceleris qua effectum puniri iura voluerunt), ipse quidem utpote maiestatis reus gladio feriatur, bonis eius omnibus fisco nostro addictis: * arcad. et honor. aa. eutychiano pp. * <a 397 d. prid. non. sept. ancyrae caesario et attico conss.>

CJ.9.8.5.1: Imperatores Arcadius, Honorius

Filii vero eius, quibus vitam imperatoria specialiter lenitate concedimus (paterno enim deberent perire supplicio, in quibus paterni, hoc est hereditarii, criminis exempla metuentur), a materna vel avita, omnium etiam proximorum hereditate ac successione habeantur alieni, testamentis extraneorum nihil capiant, sint perpetuo egentes et pauperes, infamia eos paterna semper comitetur, ad nullos umquam honores, nulla prorsus sacramenta perveniant, sint postremo tales, ut his perpetua egestate sordentibus sit et mors solacio et vita supplicio. <a 397 d. prid. non. sept. ancyrae caesario et attico conss.>

CJ.9.8.5.2: Imperatores Arcadius, Honorius

Denique iubemus etiam eos notabiles esse sine venia, qui pro talibus umquam apud nos intervenire temptaverint. <a 397 d. prid. non. sept. ancyrae caesario et attico conss.>

CJ.9.8.5.3: Imperatores Arcadius, Honorius

Ad filias sane eorum, quolibet numero fuerint, falcidiam tantum ex bonis matris, sive testata sive intestata defecerit, volumus pervenire, ut habeant mediocrem potius filiae alimoniam quam integrum emolumentum ac nomen heredis. mitior enim circa eas debet esse sententia, quas pro infirmitate sexus minus ausuras esse confidimus. <a 397 d. prid. non. sept. ancyrae caesario et attico conss.>

CJ.9.8.5.4: Imperatores Arcadius, Honorius

Emancipatio, quae a praedictis sive in filios, post legem dumtaxat latam, sive in filias fuerit collata, non valeat. dotes donationes, quarumlibet postremo rerum alienationes, quas ex eo tempore qualibet fraude vel iure factas esse constiterit, quo primum memorati de ineunda factione ac societate cogitaverint, nullius statuimus esse momenti. <a 397 d. prid. non. sept. ancyrae caesario et attico conss.>

CJ.9.8.5.5: Imperatores Arcadius, Honorius

Uxores sane praedictorum recuperatas dotes, si in ea condicione fuerint, ut, quae a viris titulo donationis acceperunt, filiis debeant reservare, tempore quo usus fructus absumitur omnia ea fisco nostro se relicturas esse cognoscant, quae iuxta legem filiis debebantur: falcidia etiam ex his rebus filiabus tantum, non etiam filiis deputata. <a 397 d. prid. non. sept. ancyrae caesario et attico conss.>

CJ.9.8.5.6: Imperatores Arcadius, Honorius

Id, quod de praedictis eorumque filiis cavimus, etiam de satellitibus consciis ac ministris filiisque eorum simili severitate censemus. <a 397 d. prid. non. sept. ancyrae caesario et attico conss.>

CJ.9.8.5.7: Imperatores Arcadius, Honorius

Sane si quis ex his in exordio initae factionis, studio verae laudis accensus, ipse prodiderit factionem, et praemio a nobis et honore donabitur. is vero, qui usus fuerit factione, si vel sero, tamen incognita adhuc consiliorum arcana patefecerit, absolutione tantum ac venia dignus habebitur. <a 397 d. prid. non. sept. ancyrae caesario et attico conss.>

CJ.9.8.6pr.

Paulus de publicis iudiciis. meminisse oportebit, si quid contra maiestatem imperatoris commissum dicatur, etiam post mortem rei id crimen instaurari solere, posteaquam divus marcus depitiani utpote senatoris, qui cassiani furoris socius fuerat, bona post mortem fisco vindicari iussit et nostro tempore multis heredibus ablata sunt. * paulus de publicis iudiciis.* <a xxx d. iii non. mart.>

CJ.9.8.6.1

In hoc item crimine, quod ad laesam maiestatem imperatoris pertinet, etiam in caput domini servos torqueri. * marcianus libro primo de publicis iudiciis titulo ad legem iuliam maiestatis.* <a xxx d. iii non. mart.>

CJ.9.8.6.2

Post divi marci constitutionem hoc iure uti coepimus, ut etiam post mortem nocentium hoc crimen inchoari possit, ut convicto mortuo memoria eius damnetur et bona eius successoribus eripiantur: nam ex quo sceleratissimum quis consilium cepit, exinde quodammodo sua mente punitus est. <a xxx d. iii non. mart.>

CJ.9.8.6.3

Sic et divus severus et antoninus constituerunt, ex quo quis tale crimen contraxit, neque alienare neque manumittere eum posse: nec ei solvere iure debitorem magnus antoninus rescripsit. <a xxx d. iii non. mart.>

CJ.9.8.6.4

In hac causa in caput domini servi torquentur, id est propter causam maiestatis. et si decesserit quis, propter incertam personam successoris bona observantur, si in causa maiestatis fuisse mortuus arguatur, ut severus et antoninus litteris ad rationales missis rescripserunt. . . <a xxx d. iii non. mart.>

CJ.9.9.0. Ad legem iuliam de adulteriis et de stupro.

CJ.9.9.1: Imperatores Severus, Antoninus

Publico iudicio non habere mulieres adulterii accusationem, quamvis de matrimonio suo violato queri velint, lex iulia declarat, quae, cum masculis iure mariti facultatem accusandi detulisset, non idem feminis privilegium detulit. * sev. et ant. aa. cassiae. * <a 197 pp. xiii k. aug. laterano et rufino conss.>

CJ.9.9.2: Imperatores Severus, Antoninus

Crimen lenocinii contrahunt, qui deprehensam in adulterio uxorem in matrimonio detinuerunt, non qui suspectam adulteram habuerunt. * sev. et ant. aa. cyro. * <a 199 pp.K.Iul.Anullino et frontone conss.>

CJ.9.9.3: Imperator Antoninus

Verba legis iuliae de adulteriis coercendis, sed etiam sententia per quaestionem quoque servorum sive ancillarum crimen admissum probari volentis ad earum tantum personarum servos ei rei exhibendos pertinet, de quibus specialiter comprehendit, id est mulieris et patris eius, non naturalis, sed iusti dumtaxat, quos intra sexagesimum diem ex dissolutione matrimonii numerandum manumitti vel distrahi prohibet et quorum dominis caveri praecipit, si defuncti fuerint in quaestione vel facti deteriores, secuta absolutione. * ant. a. iuliano. * <a 213 pp.Xv k.Aug.Antonino a iiii et balbino conss.>

CJ.9.9.4pr.: Imperator Alexander Severus

Gracchus, quem numerius in adulterio noctu deprehensum interfecerit, si eius condicionis fuit, ut per legem iuliam impune occidi potuerit, quod legitime factum est, nullam poenam meretur: idemque filiis eius qui patri paruerunt praestandum est. * alex. a. iuliano procons. narbonensis. * <a xxx pp. sine die et consule.>

CJ.9.9.4.1: Imperator Alexander Severus

Sed si legis auctoritate cessante inconsulto dolore adulterum interemit, quamvis homicidium perpetratum sit, tamen quia et nox et dolor iustus factum eius relevat, potest in exilium dari. <a xxx pp. sine die et consule.>

CJ.9.9.5: Imperator Alexander Severus

Adulter post quinquennium, quam commissum adulterium dicitur, quod continuum numeratur, accusari non potest: easque praescriptiones legibus reis datas auferri non oportet. * alex. a. vadanti. * <a 223 pp.Id.Iun.Maximo ii et aeliano conss.>

CJ.9.9.6pr.: Imperator Alexander Severus

Iure mariti adulterii accusare volenti sexaginta dies utiles computantur, quibus in publico eius facultas fuerit, apud quem reus vel rea postulari potest. et cum praeterierint dies isti utiles, maritus quoque iure extranei agere potest. * alex. a. sebastiano. * <a 223 pp.Ii id.Aug.Maximo ii et aeliano conss.>

CJ.9.9.6.1: Imperator Alexander Severus

Et qui confidit accusationi, calumniae notam timere non debet: nam ad probationem sceleris divi parentes mei quaestionem de mancipiis eodem modo haberi permiserunt, quo si iure mariti ageretur. <a 223 pp.Ii id.Aug.Maximo ii et aeliano conss.>

CJ.9.9.7pr.: Imperator Alexander Severus

Propter violatam virginem adultam qui postea maritus esse coepit accusator iustus non est et ideo iure mariti crimen exercere non potest, nisi puella violata sponsa eius fuerit. * alex. a. herculano. * <a 223 pp.Xii k.Ian.Maximo ii et aeliano conss.>

CJ.9.9.7.1: Imperator Alexander Severus

Sed si ipsa iniurias suas adsistentibus curatoribus, per quos etiam negotia eius gerenda sunt, persequatur, praeses provinciae pro debita tanto delicto, si probetur, severitate examinabit. <a 223 pp.Xii k.Ian.Maximo ii et aeliano conss.>

CJ.9.9.8: Imperator Alexander Severus

Reos adulterii duos simul marem et feminam ex eadem causa fieri lex iulia de pudicitia vetat: sed ordine peragi utrosque licet. * alex. a. domnae. * <a 224 pp.Id.Ian.Iuliano et crispino conss.>

CJ.9.9.9: Imperator Alexander Severus

Castitati temporum meorum convenit lege iulia de pudicitia damnatam in poenis legitimis perseverare. qui autem adulterii damnatam, si quocumque modo poenam capitalem evaserit, sciens duxit uxorem vel reduxit, eadem lege ex causa lenocinii punietur. * alex. a. proculo. * <a 224 pp.Vii k.Febr.Iuliano et crispino conss.>

CJ.9.9.10: Imperator Alexander Severus

De crimine adulterii pacisci non licet et par delictum accusatoris praevaricatoris et refugientis veritatis inquisitionem est. qui autem pretium pro comperto stupro accepit, poena legis iuliae de adulteriis tenetur. * alex. a. demetriano. * <a 225 pp.V non.Mai.Fusco et dextro conss.>

CJ.9.9.11: Imperator Alexander Severus

Crimen adulterii maritum retenta in matrimonio uxore inferre non posse nemini dubium est. * alex. a. norbano. * <a 226 pp.K.Sept.Alexandro ii et Marcello conss.>

CJ.9.9.12: Imperator Gordianus

Si, dum in tuo matrimonio uxor tua esset, se adulterio polluit, in ea provincia in qua id factum est adulterium more solito persequi debes nec enim ab ea quae iam nupta est adulterium passa exordium accusationis sumi potest, si denuntiatio criminis nuptias non praecessit. * gord. a. aquilae. * <a 239 pp.Non.Dec.Gordiano a et aviola conss.>

CJ.9.9.13: Imperator Gordianus

Etsi crimine adulterii damnatus restitutus non esset, ut proponis, si tamen soror tua, cum qua adulterium commissum dicebatur, non est accusata, nec poenae nec infamiae subici potuit, et multo magis, cum et accusatorem vita esse functum proponas. * gord. a. basso. * <a 240 pp.K.Iun.Sabino ii et venusto conss.>

CJ.9.9.14: Imperator Gordianus

Adulteram, si postea quam crimen contra eam inchoatum est provincia excessit, etiam absentem inter reos recipi posse explorati iuris est. * gord. a. silvano. * <a 242 pp.Non.Mart.Attico et praetextato conss.>

CJ.9.9.15pr.: Imperator Gordianus

Si quondam uxor tua, antequam crimine adulterii peteretur, provincia excessit, neque absens accusari potest neque in eam provinciam in qua stipendium facis transmitti iure deposcitur. * gord. a. hilariano mil. * <a 242 pp. iiii id. mart. attico et praetextato conss.>

CJ.9.9.15.1: Imperator Gordianus

Sane cum per occupationes militares licuerit, accusare eam sollemniter poteris: nec enim tempus, quo muneribus militaribus occuparis, vindictam tibi, quam maritali dolore percussus reposcis, debet auferre. <a 242 pp. iiii id. mart. attico et praetextato conss.>

CJ.9.9.16pr.: Imperatores valer., gallien.

Abolitionem adulterii criminis postulans praesidem in cuius officio accusatio fuerit instituta adire debes. * valer. et gallien. aa. et valer. c. arcesilao. * <a 256 pp. xv k. iun. maximo et glabrione conss.>

CJ.9.9.16.1: Imperatores valer., gallien.

Ceterum erras tu marite existimans, etiam si simpliciter, id est sine abolitione , destitisses, senatus consulto in persona tua futurum locum non fuisse: diversum enim divi principes saepe sanxerunt. <a 256 pp. xv k. iun. maximo et glabrione conss.>

CJ.9.9.16.2: Imperatores valer., gallien.

Quin hoc amplius scias nullam fuisse tibi ulterius potestatem instituendae huiusmodi accusationis, quia et decreto patrum et lege petronia ei, qui iure viri delatum adulterium non peregit, numquam postea id crimen deferre permittitur. <a 256 pp. xv k. iun. maximo et glabrione conss.>

CJ.9.9.17pr.: Imperatores valer., gallien.

Sine metu legis iuliae de adulteriis coercendis revocare uxorem in matrimonium potes, cum nihil amplius quam libellos accusationis obtulisti, quia postea comperisse te adfirmas, quod vana indignatione ad accusationem incitatus fueris. * valer. et gallien. aa. et c. victorino. * <a 257 pp. vi k. aug. ipsis aa. iiii et iii conss.>

CJ.9.9.17.1: Imperatores valer., gallien.

Is enim committit in poenam, quam lex certo capite denuntiat, qui vel publice adulterio damnatam habet vel adulteram sciens, ut ignorationem simulare non possit, retinet uxorem. <a 257 pp. vi k. aug. ipsis aa. iiii et iii conss.>

CJ.9.9.18pr.: Imperatores valer., gallien.

Eum qui duas simul habuit uxores sine dubitatione comitatur infamia. in ea namque re non iuris effectus, quo cives nostri matrimonia contrahere plura prohibentur, sed animi destinatio cogitatur. * valer. et gallien. aa. et c. theod. * <a 258 accepta id. mai. antiochiae tusco et basso conss.>

CJ.9.9.18.1: Imperatores valer., gallien.

Verumtamen ei, qui te ficto caelibatu, cum aliam matrem familias in provincia reliquisset, sollicitavit ad nuptias, crimen etiam stupri, a quo tu remota es, quod uxorem te esse credebas, ab accusatore legitimo sollemniter inferetur. <a 258 accepta id. mai. antiochiae tusco et basso conss.>

CJ.9.9.18.2: Imperatores valer., gallien.

Certe res tuas omnes, quas ab eo interceptas matrimonii simulatione deploras, restitui tibi omni exactionis instantia impetrabis a rectore provinciae: nam ea quidem, quae se tibi ut sponsae daturum promisit, quomodo repetere cum effectu potes quasi sponsa? <a 258 accepta id. mai. antiochiae tusco et basso conss.>

CJ.9.9.19: Imperatores Diocletianus, Maximianus

Quamvis indubitati iuris sit, quotiens adulterii crimen intenditur, praesentiam accusatoris procedere oportere, tamen quoniam ex litteris tuis cognovimus materiam praepositi viatoris uxorem habitis quaestionibus cum iuliano quondam adulterium commisisse detectam sub ipsa prolatione sententiae viatoris ipsius praesentiam postulasse, non putavimus confecto paene in iudicio facinore et iam agitata quaestione convicto praepositum ab excubiis limitis revocandum. * diocl. et maxim. aa. ad pompeianum. * <a 287 d. s. non. dec. aa. conss.>

CJ.9.9.20: Imperatores Diocletianus, Maximianus

Foedissimam earum nequitiam, quae pudorem suum alienis libidinibus prosternunt, non etiam earum, quae per vim stupro comprehensae sunt, inreprehensam voluntatem leges ulciscuntur, quando etiam inviolatae existimationis esse nec nuptiis earum aliis interdici merito placuit. * diocl. et maxim. aa. didymo. * <a 290 pp. iii non. oct. ipsis iiii et iii aa. conss.>

CJ.9.9.21pr.: Imperatores Diocletianus, Maximianus

Ob commissa adulteria atque accusandas uxores certa tempora, quae utiliter computari solent, praescripta sunt. * diocl. et maxim. aa. silano. * <a 290 pp. xiiii k. nov. ipsis iiii et iii aa. conss.>

CJ.9.9.21.1: Imperatores Diocletianus, Maximianus

Si igitur per occupationes publicas accusationem instituere non potuisti nec ante creditum tibi munus praescripta tempora transacta sunt, post depositam sollicitudinem qua detineris integram accusandi potestatem habebis. <a 290 pp. xiiii k. nov. ipsis iiii et iii aa. conss.>

CJ.9.9.21.2: Imperatores Diocletianus, Maximianus

Ad quam, cum vacare coeperis, properare debebis, ne effrenata licentia ad terrendam adversariam futurae accusationis speciem praetendas. <a 290 pp. xiiii k. nov. ipsis iiii et iii aa. conss.>

CJ.9.9.22: Imperatores Diocletianus, Maximianus

Si ea quae tibi stupro cognita est passim venalem formam exhibuit ac prostituta meretricio more vulgo se praebuit, adulterii crimen in ea cessat. * diocl. et maxim. aa. obrimo. * <a 290 pp. xii k. nov. ipsis iiii et iii aa. conss.>

CJ.9.9.23pr.: Imperatores Diocletianus, Maximianus

Servi ob violatum contubernium adulterii accusare non possunt. * diocl. et maxim. aa. proculo. * <a 290 pp. k. nov. ipsis iiii et iii aa. conss.>

CJ.9.9.23.1: Imperatores Diocletianus, Maximianus

Is autem, qui post dissociatum matrimonium uxorem licito iure duxerit obque intentatae accusationis ac potentis patrocinii metum ei qui accusationem instituerat aurum et argentum dedit, ad recipiendum id ulciscendamque turpis lucri cupiditatem adire praesidem potest, qui examinatis partium adlegationibus et inquisita fide veri, si quid ab eo qui innocens est ob illati criminis timorem datum esse cognoverit, quemadmodum sententiam formare debeat, evidentibus iuris placitis instruetur. <a 290 pp. k. nov. ipsis iiii et iii aa. conss.>

CJ.9.9.23.2: Imperatores Diocletianus, Maximianus

Sin vero constiterit corrupti matrimonii velut mercedem ad captandam impunitatem solutam esse, eum, qui etiam adversus senatus consulti censuram cum foedissimo flagitio accepit, puniri iubebit. <a 290 pp. k. nov. ipsis iiii et iii aa. conss.>

CJ.9.9.24: Imperatores Diocletianus, Maximianus

Etsi libidine intemperatae cupiditatis ex actorum lectione exarsisse te cognitum est, tamen cum ancillam comprehendisse et non liberam stuprasse detectum sit, ex huiusmodi sententia gravatam potius opinionem tuam quam infamia adflictam esse manifestum est. * diocl. et maxim. aa. sossiano. * <a 291 pp. v id. mart. tiberiano et dione conss.>

CJ.9.9.25: Imperatores Diocletianus, Maximianus

Quoniam alexandrum, qui in crimen vocatur, etiam praescriptionem esse pollicitum eo nomine, quod accusator uxorem post comprehensum adulterium penes se habuisse videatur, et de statu suo agere nunc velle perspeximus, ita ordo quaestionis dirimendus videtur, ut in primis quidem de statu alexandri quaeratur, ita ut, si eum liberum esse adhibita audientia deprehenderis, praescriptionis ei obiciendae facias potestatem: sin vero eundem servum esse cognoveris, remotis praescriptionis impedimentis in adulterium crimen protinus debebis inquirere ac, si eum detectum in eo flagitio esse perspexeris, poenam decernere, quam in adulterii crimen legum sanctio statuit. * diocl. et maxim. aa. et cc. crispino. * <a 293 d. v k. sept. aa. conss.>

CJ.9.9.26: Imperatores Diocletianus, Maximianus

Commissum ante adulterium cum eo, cui se postea nuptiis sociavit, velamento matrimonii non extinguitur. * diocl. et maxim. aa. et cc. phoebo. * <a 294 pp. xviii k. ian. cc. conss.>

CJ.9.9.27: Imperatores Diocletianus, Maximianus

Ita nobis pudor cordi est, ut removeamus prisci iuris ambages et constituamus in adulterii quaestione abolitis de medio ceteris praescriptionibus praeter quinquennii temporis et lenocinii quod marito obicitur exceptionem, illam etiam, quae post solutum prius matrimonium ante denuntiationem nuptae competit, fidem criminis nosci. indignum est enim, ut ultionem pudoris praestigiae versuti iuris excludant. * diocl. et maxim. aa. et cc. concordio praes. numidiae. * <a 295 pp. k. iun. tusco et anullino conss.>

CJ.9.9.28: Imperator Constantinus

Quae adulterium commisit, utrum domina cauponae an ministra fuerit, requiri debebit, et ita obsequio famulata servili, ut plerumque ipsa intemperantiae vina praebuerit: ut, si domina tabernae fuerit, non sit a vinculis iuris excepta, si vero potantibus ministerium praebuit, pro vilitate eius quae in reatum deducitur accusatione exclusa liberi qui accusantur abscedant, cum ab his feminis pudicitiae ratio requiratur, quae iuris nexibus detinentur et matris familias nomen obtinent, hae autem immunes ab iudiciaria severitate praestentur, quas vilitas vitae dignas legum observatione non credidit. * const. a. africano. * <a 326 d.Iii non.Febr.Heracleae constantino a.Vii et constantio c. conss.>

CJ.9.9.29pr.: Imperator Constantinus

Quamvis adulterii crimen inter publica referatur, quorum delatio in commune omnibus sine aliqua legis interpretatione conceditur, tamen ne volentibus temere liceat foedare conubia, proximis necessariisque personis solummodo placet deferri copiam accusandi, hoc est patri fratri nec non patruo et avunculo, quos verus dolor ad accusationem impellit. * const. a. ad euagrium. * <a 326 pp. nicomediae vii k. mai. constantino a. vii et constantio c. conss.>

CJ.9.9.29.1: Imperator Constantinus

Sed et his personis legem imponimus, ut crimen abolitione, si voluerint, compescant. <a 326 pp. nicomediae vii k. mai. constantino a. vii et constantio c. conss.>

CJ.9.9.29.2: Imperator Constantinus

In primis maritum genialis tori vindicem esse oportet, cui quidem ex suspicione ream coniugem facere licet, vel eam, si tantum suspiciatur, penes se detinere non prohibetur: nec inscriptionis vinculo contineri, cum iure mariti accusaret, veteres retro principes adnuerunt. <a 326 pp. nicomediae vii k. mai. constantino a. vii et constantio c. conss.>

CJ.9.9.29.3: Imperator Constantinus

Extraneos autem procul arceri ab accusatione censemus: nam etsi omne genus accusationis necessitas inscriptionis adstringat, nonnulli tamen proterve id faciunt et falsis contumeliis matrimonia deformant. <a 326 pp. nicomediae vii k. mai. constantino a. vii et constantio c. conss.>

CJ.9.9.29.4: Imperator Constantinus

Sacrilegos autem nuptiarum gladio puniri oportet. <a 326 pp. nicomediae vii k. mai. constantino a. vii et constantio c. conss.>

CJ.9.9.30: Imperatores Constantius, constans

Cum vir nubit in feminam, femina viros proiectura quid cupiat? ubi sexus perdidit locum, ubi scelus est id quod non proficit scire, ubi venus mutatur in alteram formam, ubi amor quaeritur nec videtur: iubemus insurgere leges, armari iura gladio ultore, ut exquisitis poenis subdantur infames, qui sunt vel qui futuri sunt rei. * constantius et constans aa. ad pop. * <a 342 pp. romae xvii k. ian. constantio iii et constante ii aa. conss.>

CJ.9.9.31: Imperatores Gratianus, Valentinianus, Theodosius

In adulterii quaestione ab omni familia non solum mariti, sed etiam uxoris, quae tamen tunc temporis domi fuerit, quo adulterium dicatur admissum, quaerendum est sine defensione cuiusquam. * grat. valentin. et theodos. aaa. cynegio pp. * <a 385 d. iii id. dec. constantinopoli arcadio a. et bautone conss.>

CJ.9.9.32: Imperatores Theodosius, Arcadius, Honorius

Adulterii accusatione proposita praescriptiones civiles, quibus aut dos repeti fingitur aut ex ratione aliqua debitum flagitatur, quae occurrere atque perstrepere examini consuerunt, iussimus sequestrari nec earum obice aliquid negotio tarditatis adferri: sed accusatione fundata, hoc est cum constiterit, quo iure (id est mariti vel extranei) quove tempore actio fuerit intromissa, discutiatur crimen, facti qualitas publicetur, cum et iurgia quae magnitudine superant praeponantur et civilis actio criminali iure postponatur, idem tamen, cum competere coeperit, habitura momenti, dummodo non obsit examini. * theodos. arcad. et honor. aaa. rufino pp. * <a 392 d. vii id. dec. constantinopoli arcadio a. ii et rufino conss.>

CJ.9.9.33pr.: Imperatores Theodosius, Arcadius, Honorius

Si qui adulterii fuerint accusati et obtentu proximitatis intentata depulerint, per commemorationem necessitudinis fidem crimini derogando, dum existimatur non debere credi quod adlegatur, non potuisse committi, hi si postmodum in nuptias suas consortiumque convenerint, facinus illud, in quo fuerint accusati, manifesta fide atque indiciis evidentibus publicabunt. * theodos. arcad. et honor. aaa. rufino pp. * <a 393 d. prid. non. dec. constantinopoli theodosio a. iii et abundantio conss.>

CJ.9.9.33.1: Imperatores Theodosius, Arcadius, Honorius

Unde si qui eiusmodi reperti fuerint, iussimus in eosdem severissime vindicari et veluti convictum facinus confessumque puniri. <a 393 d. prid. non. dec. constantinopoli theodosio a. iii et abundantio conss.>

CJ.9.9.34: Imperatores Honorius, Theodosius

Si mulier repudii oblatione sine ulla legitima causa a se dati discesserit, ne viduitatem stupri procacitate commaculet, accusationem repudiato marito iure deferimus. * honor. et theodos. aa. palladio pp. * <a 421 d. vi id. mart. ravennae eustathio et agricola conss.>

CJ.9.9.35pr.: Imperator Justinianus

Libertatem servorum, qui ad dominium pertinent uxoris vel mariti vel parentium eorum, repudio misso propter suspicionem criminis adulterii, legum conditores intra duorum mensum spatium post missionem repudii numerandum suspendi definiunt propter tormentorum quaestionem, si opus exegerit, eis imponendam. * iust. a. iohanni pp. * <a 532 d. v k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.9.9.35.1: Imperator Justinianus

Sin vero uxor matrimonio sub praefato modo dissoluto rebus humanis exempta fuerit, nihil de tempore, quousque servos eos propter memoratam causam permanere deceat, adiciunt. <a 532 d. v k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.9.9.35.2: Imperator Justinianus

Nobis vero necessarium esse videtur certum tempus etiam in hoc casu statuere propter dotis quaestionem, utrum in lucrum marito cedat an heredibus mulieris restituatur. <a 532 d. v k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.9.9.35.3: Imperator Justinianus

Sancimus itaque duos etiam menses post mortem mulieris servari, ut intra eos ante dicti servi permaneant et facultatem maritus habeat probationes adulterii per eos praestare: transacto vero memorato tempore licentiam habere heredem mulieris libertatem eis imponere, nisi per culpam eius maritus prohibitus fuerit causam adulterii, ipse videlicet imminens, exercere. <a 532 d. v k. nov. constantinopoli post consulatum lampadii et orestis vv. cc. anno secundo.>

CJ.9.10.0. Si quis eam cuius tutor fuerit corruperit.

CJ.9.10.1: Imperator Constantinus

Si tutor pupillam quondam suam violata castitate stupraverit, deportatione subiugetur atque universae eius facultates fisci viribus vindicentur, quamvis eam poenam debuerit sustinere, quam raptori leges imponunt. * const. a. ad bassum vic. italiae. * <a 326 d. prid. non. april. aquileiae constantino a. vii et constantio c. conss.>

CJ.9.11.0. De mulieribus quae servis propriis se iunxerunt.

CJ.9.11.1pr.: Imperator Constantinus

Si qua cum servo suo occulte rem habere detegitur, capitali sententia subiugetur , tradendo ignibus verberone. * const. a. ad pop. * <a 326 d.Iiii k.Iun.Serdicae constantino a. vii et constantio c. conss.>

CJ.9.11.1.1: Imperator Constantinus

Sitque omnibus facultas crimen publicum arguendi, sit officio copia nuntiandi, sit etiam servo licentia deferendi, cui probato crimine libertas dabitur. <a 326 d.Iiii k.Iun.Serdicae constantino a. vii et constantio c. conss.>

CJ.9.11.1.2: Imperator Constantinus

Filii etiam, quos ex hac coniunctione habuit, exuti omnibus dignitatis insignibus in nuda maneant libertate, neque per se neque per interpositam personam quolibet titulo voluntatis accepturi aliquid ex facultatibus mulieris. <a 326 d.Iiii k.Iun.Serdicae constantino a. vii et constantio c. conss.>

CJ.9.11.1.3: Imperator Constantinus

Successio autem mulieris ab intestato vel filiis, si erunt legitimi, vel proximis cognatisque deferatur vel ei, quem ratio iuris admittit: ita ut et quod ille qui quondam amatus est et quod ex eo suscepti filii quolibet casu in sua videantur habuisse substantia, mulieris dominio sociatum a memoratis successoribus vindicetur. <a 326 d.Iiii k.Iun.Serdicae constantino a. vii et constantio c. conss.>

CJ.9.12.0. Ad legem iuliam de vi publica seu privata.

CJ.9.12.1: Imperatores Severus, Antoninus

Ob debitum viri vel civile munus res uxoris qui pignori capiunt, vim contrahere videntur. * sev. et ant. aa. peliae. * <a 205 d.K.Iul.Romae antonino a. ii et gaeta ii conss.>

CJ.9.12.2: Imperator Antoninus

Tutoris tui lege iulia de vi privata damnati si tertia pars bonorum fisco vindicata est, tutelae actionem pro ea portione adversus fiscum dirige, modo si nulla praescriptio locum habeat. nam successio oneribus portionis suae respondet. * ant. a. vero. * <a 213 pp.Xv k.Mart.Antonino a.Iiii et balbino conss.>

CJ.9.12.3: Imperatores Diocletianus, Maximianus

Si confidis sponsam filii tui raptam esse vel filium tuum inclusum, instituere sollemni more legis iuliae de vi accusationem apud praesidem provinciae non prohiberis. * diocl. et maxim. aa.Et cc. bianori. * <a 293 pp.Viii k.Mai.Veronae aa. conss.>

CJ.9.12.4pr.: Imperatores Diocletianus, Maximianus

Si criminis accusationem propter res a servo raptas intentandam putaveris, non contra dominum, sed contra eum quem facinus commisisse proponis hanc instituere debes. * diocl. et maxim. aa. et cc. liberatio. * <a 293 s.Xvii k.Iul.Sirmi aa. conss.>

CJ.9.12.4.1: Imperatores Diocletianus, Maximianus

Sed quoniam a fuscinillo etiam te verberibus adflictum adseveras, si hominibus coactis hoc fecit, de hoc etiam, si legis iuliae de vi privata reum deferendum putaveris, apud praesidem provinciae age non ignarum, quemadmodum criminibus probatis res vindicari debeat. <a 293 s.Xvii k.Iul.Sirmi aa. conss.>

CJ.9.12.5: Imperatores Diocletianus, Maximianus

In possessionem fundi licet creditor per vim ingrediatur, iuliae legis vis privatae reus deferri potest. * diocl. et maxim. aa et cc. oploni. * <a 294 s.Vi id.Dec. nicomediae cc. conss.>

CJ.9.12.6: Imperator Constantinus

Quoniam multa facinora sub uno violentiae nomine continentur, cum aliis vim inferre certantibus, aliis cum indignatione resistentibus verbera caedesque crebro deteguntur admissae, placuit, si forte quis vel ex possidentis parte vel eius qui possessionem temerare temptaverit interemptus sit, in eum supplicium exerceri , qui vim facere temptavit et alterutri parti causam malorum praebuit: et non iam relegatione aut deportatione insulae plectetur, sed supplicium capitale excipiat nec interposita provocatione sententiam quae in eum fuerit dicta suspendat. * constant. a. ad catullinum procons. africae. * <a 317 d.Xv k.Mai.Aquileiae gallicano et basso conss.>

CJ.9.12.7pr.: Imperator Constantinus

Si quis ad se fundum vel quodcumque aliud adserit pertinere ac restitutionem sibi competere possessionis putat, civiliter super possidendo agat aut impleta sollemnitate iuris crimen violentiae opponat, non ignarus eam se sententiam subiturum, si crimen obiectum non potuerit comprobare, quam reus debet excipere. * const. a. ad bassum pu. * <a 319 pp.Prid.Non.Oct.Romae constantino a.V et licinio c. conss.>

CJ.9.12.7.1: Imperator Constantinus

Quod si omissa interpellatione vim possidenti intulerit, ante omnia violentiae causam examinari praecipimus et in ea requiri, quis ad quem venerit possidentem, ut ei quem constiterit expulsum amissae possessionis iura reparentur, eademque protinus restituta, si criminalis quaestio agitetur, violentus poenae non immerito destinatus in totius litis terminum differatur, ut agitato negotio principali, si contra eum fuerit iudicatum, in insulam deportetur bonis omnibus abrogatis. <a 319 pp.Prid.Non.Oct.Romae constantino a.V et licinio c. conss.>

CJ.9.12.8pr.: Imperatores Valentinianus, Theodosius, Arcadius

Servos, qui fecisse violentiam confessionibus testium aut propriis docebuntur, si id inscio domino commiserint, postremo supplicio deditos luere perpetrata censemus. * valentin. theodos. et arcad. aaa. ad albinum pu. * <a 390 d. prid. non. mart. mediolani valentiniano a. iiii et neoterio conss.>

CJ.9.12.8.1: Imperatores Valentinianus, Theodosius, Arcadius

Quod si illi metu atque exhortatione dominorum violentiam admiserint, palam est secundum legem iuliam dominum infamem pronuntiatum loci aut originis propriae dignitate non uti, servos vero, quos furoribus talium paruisse constiterit, metallis post sententiam dedi. <a 390 d. prid. non. mart. mediolani valentiniano a. iiii et neoterio conss.>

CJ.9.12.8.2: Imperatores Valentinianus, Theodosius, Arcadius

Viles autem infamesque personae et hi, qui bis aut saepius violentiam perpetrasse convincentur, constitutionum divalium poena teneantur. <a 390 d. prid. non. mart. mediolani valentiniano a. iiii et neoterio conss.>

CJ.9.12.8.3: Imperatores Valentinianus, Theodosius, Arcadius

Iudicem vero nosse oportet, quod gravi infamia sit notandus, si violentiae crimen apud se probatum distulerit omiserit vel impunitate donaverit aut molliorem puam praestituimus poenam protulerit. <a 390 d. prid. non. mart. mediolani valentiniano a. iiii et neoterio conss.>

CJ.9.12.9: Imperatores Honorius, Theodosius

Crimen non dissimile est rapere et ei qui rapuerit rapta scientem delictum servare. * honor. et theodos. aa. aureliano pp. * <a 415 d. iii non. mart. constantinopoli honorio x et theodosio vi aa. conss.>

CJ.9.12.10pr.: Imperatores Leo, Anthemius

Omnibus per civitates et agros habendi bucellarios vel isauros armatosque servos licentiam volumus esse praeclusam. * leo et anthem. aa. nicostrato pp. * <a 468 d. v k. sept. anthemio a. ii cons.>

CJ.9.12.10.1: Imperatores Leo, Anthemius

Quod si quis praeter haec, quae nostra mansuetudo salubriter ordinavit, armata mancipia seu bucellarios aut isauros in suis praediis aut iuxta se habere temptaverit, post exactam centum librarum auri condemnationem vindictam in eos severissimam proferri sancimus. <a 468 d. v k. sept. anthemio a. ii cons.>

CJ.9.12.10.2: Imperatores Leo, Anthemius

Viri quoque clarissimi provinciarum rectores in speculis esse debebunt, ne quis audeat statuta nostrae mansuetudinis in aliquo violare, scientes, quod ex dissimulatione dignitatis et administrationis cingulo privabuntur et post centum librarum auri multam salutis vitaeque suae periculum sustinebunt: primatibus videlicet apparitionis suae personis praeter amissionem fortunarum suarum capitali quoque supplicio feriendis. <a 468 d. v k. sept. anthemio a. ii cons.>

CJ.9.13.0. De raptu virginum seu viduarum nec non sanctimonialium.

CJ.9.13.1pr.: Imperator Justinianus

Raptores virginum honestarum vel ingenuarum, sive iam desponsatae fuerint sive non, vel quarumlibet viduarum feminarum, licet libertinae vel servae alienae sint, pessima criminum peccantes capitis supplicio plectendos decernimus, et maxime si deo fuerint virgines vel viduae dedicatae (quod non solum ad iniuriam hominum, sed ad ipsius omnipotentis dei inreverentiam committitur, maxime cum virginitas vel castitas corrupta restitui non potest): et merito mortis damnantur supplicio, cum nec ab homicidii crimine huiusmodi raptores sint vacui. * iust. a. hermogeni mag. off. * <a 533 d.Xv k.Dec.Constantinopoli dn.Iustiniano pp.A.Iii cons.>

CJ.9.13.1.1: Imperator Justinianus

Ne igitur sine vindicta talis crescat insania, sancimus per hanc generalem constitutionem, ut hi, qui huiusmodi crimen commiserint et qui eis auxilium tempore invasionis praebuerint, ubi inventi fuerint in ipsa rapina et adhuc flagrante crimine comprehensi a parentibus virginum vel viduarum vel ingenuarum vel quarumlibet feminarum aut earum consanguineis aut tutoribus vel curatoribus vel patronis vel dominis, convicti interficiantur. <a 533 d.Xv k.Dec.Constantinopoli dn.Iustiniano pp.A.Iii cons.>

CJ.9.13.1.1a: Imperator Justinianus

Quae multo magis contra eos obtinere sancimus, qui nuptas mulieres ausi sunt rapere, quia duplici crimine tenentur tam adulterii quam rapinae et oportet acerbius adulterii crimen ex hac adiectione puniri. <a 533 d.Xv k.Dec.Constantinopoli dn.Iustiniano pp.A.Iii cons.>

CJ.9.13.1.1b: Imperator Justinianus

Quibus connumerabimus etiam eum, qui saltem sponsam suam per vim rapere ausus fuerit. <a 533 d.Xv k.Dec.Constantinopoli dn.Iustiniano pp.A.Iii cons.>

CJ.9.13.1.1c: Imperator Justinianus

Sin autem post commissum tam detestabile crimen aut potentatu raptor se defendere aut fuga evadere potuerit, in hac quidem regia urbe tam viri excelsi praefecti praetorio quam vir gloriosissimus praefectus urbis, in provinciis autem tam viri eminentissimi praefecti praetorio per illyricum et africam quam magistri militum per diversas nostri orbis regiones nec non viri spectabiles praefectus aegypti vel comes orientis et vicarii et proconsules et nihilo minus omnes viri spectabiles duces et viri clarissimi rectores provinciarum nec non alii cuiuslibet ordinis iudices, qui in locis inventi fuerint, simile studium cum magna sollicitudine adhibeant, ut eos possint comprehendere et comprehensos in tali crimine post legitimas et iuri cognitas probationes sine fori praescriptione durissimis poenis adficiant et mortis condemnent supplicio. <a 533 d.Xv k.Dec.Constant inopoli dn.Iustiniano pp.A.Iii cons.>

CJ.9.13.1.1d: Imperator Justinianus

Quibus et, si appellare voluerint, nullam damus licentiam secundum antiquae constantinianae legis definitionem. <a 533 d.Xv k.Dec.Constantinopoli dn.Iustiniano pp.A.Iii cons.>

CJ.9.13.1.1e: Imperator Justinianus

Et si quidem ancillae vel libertinae sint quae rapinam passae sunt, raptores tantummodo supra dicta poena plectentur, substantiis eorum nullam deminutionem passuris. <a 533 d.Xv k.Dec.Constantinopoli dn.Iustiniano pp.A.Iii cons.>

CJ.9.13.1.1f: Imperator Justinianus

Sin autem in ingenuam personam tale facinus perpetretur, etiam omnes res mobiles seu immobiles et se moventes tam raptorum quam etiam eorum, qui eis auxilium praebuerint, ad dominium raptarum mulierum liberarum transferantur providentia iudicum et cura parentum earum vel maritorum vel tutorum seu curatorum. <a 533 d.Xv k.Dec.Constantinopoli dn.Iustiniano pp.A.Iii cons.>

CJ.9.13.1.1g: Imperator Justinianus

Et si non nuptae mulieres alii cuilibet praeter raptorem legitime coniungentur, in dotem liberarum mulierum easdem res vel quantas ex his voluerint procedere, sive maritum nolentes accipere in sua pudicitia remanere voluerint, pleno dominio eis sancimus applicari, nemine iudice vel alia quacumque persona haec audente contemnere. <a 533 d.Xv k.Dec.Constantinopoli dn.Iustiniano pp.A.Iii cons.>

CJ.9.13.1.2: Imperator Justinianus

Nec sit facultas raptae virgini vel viduae vel cuilibet mulieri raptorem suum sibi maritum exposcere, sed cui parentes voluerint excepto raptore, eam legitimo copulent matrimonio, quoniam nullo modo nullo tempore datur a nostra serenitate licentia eis consentire, qui hostili more in nostra re publica matrimonium student sibi coniungere. oportet etenim, ut, quicumque uxorem ducere voluerit sive ingenuam sive libertinam, secundum nostras leges et antiquam consuetudinem parentes vel alios quos decet petat et cum eorum voluntate fiat legitimum coniugium. <a 533 d.Xv k.Dec.Constantinopoli dn.Iustiniano pp.A.Iii cons.>

CJ.9.13.1.3: Imperator Justinianus

Poenas autem quas praediximus, id est mortis et bonorum amissionis, non tantum adversus raptores, sed etiam contra eos qui hos comitati in ipsa invasione et rapina fuerint constituimus. <a 533 d.Xv k.Dec.Constantinopoli dn.Iustiniano pp.A.Iii cons.>

CJ.9.13.1.3a: Imperator Justinianus

Ceteros autem omnes, qui conscii et ministri huiusmodi criminis reperti et convicti fuerint vel eos susceperint vel quacumque opem eis intulerint, sive masculi sive feminae sunt, cuiuscumque condicionis vel gradus vel dignitatis, poenae tantummodo capitali subicimus, ut huic poenae omnes subiaceant, sive volentibus sive nolentibus virginibus seu aliis mulieribus tale facinus fuerit perpetratum. <a 533 d.Xv k.Dec.Constantinopoli dn.Iustiniano pp.A.Iii cons.>

CJ.9.13.1.3b: Imperator Justinianus

Si enim ipsi raptores metu atrocitatis poenae ab huiusmodi facinore temptaverint se, nulli mulieri sive volenti sive nolenti peccandi locus relinquetur, quia hoc ipsum velle mulieri ab insidiis nequissimi hominis qui meditatur rapinam inducitur. nisi etenim eam sollicitaverit, nisi odiosis artibus circumvenerit, non facit eam velle in tantum dedecus sese prodere. <a 533 d.Xv k.Dec.Constantinopoli dn.Iustiniano pp.A.Iii cons.>

CJ.9.13.1.3c: Imperator Justinianus

Parentibus, quorum maxime vindicta intererat, si patientiam praebuerint ac dolorem remiserint, deportatione plectendis. <a 533 d.Xv k.Dec.Constantinopoli dn.Iustiniano pp.A.Iii cons.>

CJ.9.13.1.4: Imperator Justinianus

Et si quis inter haec ministeria servilis condicionis fuerit deprehensus, citra sexus discretionem eum concremari iubemus, cum hoc etiam constantiniana lege recte fuerat prospectum. <a 533 d.Xv k.Dec.Constantinopoli dn.Iustiniano pp.A.Iii cons.>

CJ.9.13.1.5: Imperator Justinianus

Omnibus legis iuliae capitulis, quae de raptu virginum vel viduarum seu sanctimonialium sive antiquis legum libris sive in sacris constitutionibus posita sunt, de cetero abolitis, ut haec tantummodo lex in hoc capite pro omnibus sufficiat. <a 533 d.Xv k.Dec.Constantinopoli dn.Iustiniano pp.A.Iii cons.>

CJ.9.13.1.6: Imperator Justinianus

Quae de sanctimonialibus etiam virginibus et viduis locum habere sancimus. <a 533 d.Xv k.Dec.Constantinopoli dn.Iustiniano pp.A.Iii cons.>

CJ.9.14.0. De emendatione servorum.

CJ.9.14.1pr.: Imperator Constantinus

Si virgis aut loris servum dominus adflixerit aut custodiae causa in vincula coniecerit, dierum distinctione sive interpretatione depulsa nullum criminis metum mortuo servo sustineat. * const. a. ad bassum. * <a 319 d.V id.Mai.Romae constantino a.V et licinio conss.>

CJ.9.14.1.1: Imperator Constantinus

Nec vero immoderate suo iure utatur, sed tunc reus homicidii sit, si voluntate eum ictu fustis aut lapidis occiderit vel certe telo usus letale vulnus inflixerit aut suspendi laqueo praeceperit vel iussione taetra praecipitandum esse mandaverit aut veneni virus infuderit vel dilaniaverit poenis publicis corpus, ferarum unguibus latera persecando vel exurendo oblatis ignibus membra, aut tabescentes artus atro sanguine permixta sanie defluentes prope in ipsis adegerit cruciatibus vitam relinquere saevitia immanium barbarorum. <a 319 d.V id.Mai.Romae constantino a.V et licinio conss.>

CJ.9.15.0. De emendatione propinquorum.

CJ.9.15.1pr.: Imperatores Valentinianus, Valens

In corrigendis minoribus pro qualitate delicti senioribus propinquis tribuimus potestatem, ut, quos ad vitae decora domesticae laudis exempla non provocant, saltem correctionis medicina compellat. * valentin. et valens aa. ad senatum. * <a 365 d.Prid.K.Dec.Valentiniano et valente aa. conss.>

CJ.9.15.1.1: Imperatores Valentinianus, Valens

Neque nos in puniendis morum vitiis potestatem in immensum extendi volumus, sed iure patrio auctoritas corrigat propinqui iuvenis erratum et privata animadversione compescat. <a 365 d.Prid.K.Dec.Valentiniano et valente aa. conss.>

CJ.9.15.1.2: Imperatores Valentinianus, Valens

Quod si atrocitas facti ius domesticae emendationis excedit, placet enormis delicti reos dedi iudicum notioni. <a 365 d.Prid.K.Dec.Valentiniano et valente aa. conss.>

CJ.9.16.0. Ad legem corneliam de sicariis.

CJ.9.16.1pr.: Imperator Antoninus

Frater vester rectius fecerit, si se praesidi provinciae obtulerit: qui si probaverit non occidendi animo iustum a se percussum esse, remissa homicidii poena secundum disciplinam militarem sententiam proferet. * ant. a. aurelio herculiano et aliis mil. * <a 215 pp.Prid.K.Febr.Laeto ii et cereale conss.>

CJ.9.16.1.1: Imperator Antoninus

Crimen enim contrahitur, si et voluntas nocendi intercedat. ceterum ea, quae ex improviso casu potius quam fraude accidunt, fato plerumque, non noxae imputantur. <a 215 pp.Prid.K.Febr.Laeto ii et cereale conss.>

CJ.9.16.2: Imperator Gordianus

Is, qui adgressorem vel quemcunque alium in dubio vitae discrimine constitutus occiderit, nullam ob id factum calumniam metuere debet. * gord. a. quintiano. * <a 243 pp.Iii non.April.Arriano et papo conss.>

CJ.9.16.3: Imperator gallien.

Si, ut adlegas, latrocinantem peremisti, dubium non est eum, qui inferendae caedis voluntate praecesserat, iure caesum videri. * gallien. a. munatio. * <a 265 pp.Xiii k.Febr.Valeriano et lucillo conss.>

CJ.9.16.4: Imperatores Diocletianus, Maximianus

Eum, qui adseverat homicidium se non voluntate, sed casu fortuito fecisse, cum calcis ictu mortis occasio praebita videatur, si hoc ita est neque super hoc ambigi poterit, omni metu ac suspicione, quam ex admissae rei discrimine sustinet, secundum id quod adnotatione nostra comprehensum est volumus liberari. * diocl. et maxim. aa. exempl. sacr. litt. agathoni.* <a 290 d.Prid.K.Dec.Sirmi ipsis aa.Iiii et iii conss.>

CJ.9.16.5: Imperatores Diocletianus, Maximianus

Si quis te reum corneliae legis de sicariis fecerit, innocentia purgari crimen, non adulta aetate defendi convenit. * diocl. et maxim. aa. et cc. agotio. * <a 294 s.Vi k.Nov.Romae cc. conss.>

CJ.9.16.6: Imperatores Diocletianus, Maximianus

Is, qui cum telo ambulaverit hominis necandi causa, sicut is, qui hominem occiderit vel cuius dolo malo factum erit commissum, legis corneliae de sicariis poena coercetur. * diocl. et maxim. aa. et cc. philisco. * <a 294 s.Vii k.Ian.Nicomediae cc. conss.>

CJ.9.16.7: Imperatores Valentinianus, Valens, Gratianus

Si quis necandi infantis piaculum adgressus adgressave sit, sciat se capitali supplicio esse puniendum. * valentin. valens et grat. aaa. ad probum pp. * <a 374 pp.Vii id.Febr.Romae gratiano a.Iii et equitio conss.>

CJ.9.16.8: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

Si forte mulier marito mortis parasse insidias vel quolibet alio genere voluntatem occidendi habuisse inveniatur, vel forte maritus eo modo insectetur uxorem, in eadem quaestione ab omni familia non solum mariti, sed etiam uxoris, quae tamen tunc temporis domi fuerit, quaerendum est sine cuiusquam defensione. * grat. valentin. theodos. et arcad. aaaa. cynegio pp. * <a 385 d.Iii id.Dec.Arcadio a. et bautone conss.>

CJ.9.17.0. De his qui parentes vel liberos occiderunt.

CJ.9.17.1: Imperator Constantinus

Si quis in parentis aut filii aut omnino adfectionis eius quae nuncupatione parricidii continetur fata properaverit, sive clam sive palam id fuerit enisus, poena parricidii punietur neque gladio neque ignibus neque ulla alia sollemni poena subiugetur, sed insutus culleo et inter eius ferales angustias comprehensus serpentium contuberniis misceatur et, ut regionis qualitas tulerit, vel in vicinum mare vel in amnem proiciatur, ut omni elementorum usu vivus carere incipiat, ut ei caelum superstiti, terra mortuo auferatur. * const. a. ad verinum vic. africae. * <a 318-319 d.Xvi k.Dec.Licinio v et crispo c. conss. accepta prid.Id.Mart carthagine constantino a.V et licinio c. conss.>

CJ.9.18.0. De maleficiis et mathematicis et ceteris similibus.

CJ.9.18.1: Imperator Antoninus

Plus est hominem veneno extinguere quam occidere gladio. * ant. a. * <a xxx pp. sine die et consule.>

CJ.9.18.2: Imperatores Diocletianus, Maximianus

Artem geometriae discere atque exerceri publice intersit. ars autem mathematica damnabilis interdicta est. * diocl. et maxim. aa. et cc. tiberio. * <a 294 s.Xiii k.Sept.Sirmi cc. conss.>

CJ.9.18.3pr.: Imperator Constantinus

Nullus haruspex, nullus sacerdos, nullus eorum, qui huic ritui adsolent ministrare, limen alterius accedat nec ob alteram causam, sed huiusmodi hominum amicitia quamvis vetus repellatur: concremando illo haruspice, qui ad domum alienam accesserit, et illo in insulam detrudendo post ademptionem bonorum, qui eum evocaverit suasionibus vel praemiis. * const. a. ad maximum. * <a 319 pp.K.Febr.Romae constantino a.V et licinio c.Conss.>

CJ.9.18.3.1: Imperator Constantinus

Accusatorem autem huius criminis non delatorem esse, sed dignum magis praemio arbitramur. <a 319 pp.K.Febr.Romae constantino a.V et licinio c.Conss.>

CJ.9.18.4pr.: Imperator Constantinus

Eorum est scientia punienda et severissimis merito legibus vindicanda, qui magicis adcincti artibus aut contra salutem hominum moliti aut pudicos animos ad libidinem deflexisse detegentur. * const. a. et c. ad bassum pp. * <a 321 d.X k.Iun.Aquileiae crispo et constantino cc. conss.>

CJ.9.18.4.1: Imperator Constantinus

Nullis vero criminationibus implicanda sunt remedia humanis quaesita corporibus aut in agrestibus locis innocenter adhibita suffragia, ne maturis vindemiis metuerentur imbres aut ruentis grandinis lapidatione quaterentur, quibus non cuiusque salus aut aestimatio laederetur, sed quorum proficerent actus, ne divina munera et labores hominum sternerentur. <a 321 d.X k.Iun.Aquileiae crispo et constantino cc. conss.>

CJ.9.18.5: Imperator Constantius

Nemo haruspicem consulat aut mathematicum, nemo hariolum. augurum et vatum prava confessio conticescat. chaldaei ac magi et ceteri, quos maleficos ob facinorum magnitudinem vulgus appellat, nec ad hanc partem aliquid moliantur. sileat omnibus perpetuo divinandi curiositas. etenim supplicium capitis feret gladio ultore prostratus, quicumque iussis obsequium denegaverit. * constantius a. ad pop. * <a 357 d.Viii k.Febr.Mediolani constantio a.Viiii et iuliano c. ii conss.>

CJ.9.18.6: Imperator Constantius

Multi magicis artibus usi elementa turbare, vitas insontium labefactare non dubitant et manibus accitis audent ventilare, ut quisque suos conficiat malis artibus inimicos. hos, quoniam naturae peregrini sunt, feralis pestis absumat. * constantius a. et c. ad pop. * <a 357 d.Prid.Non.Dec.Mediolani constantio a.Viiii et iuliano c. conss.>

CJ.9.18.7pr.: Imperator Constantius

Etsi excepta tormentis sunt corpora honoribus praeditorum (praeter illa videlicet crimina, quae legibus demonstrantur), etsi homines magi, in quacumque sint parte terrarum, humani generis inimici credendi sunt, tamen quoniam qui in comitatu nostro sunt ipsam pulsant propemodum maiestatem, si quis magus vel magicis contaminibus adsuetus, qui maleficus vulgi consuetudine nuncupatur, aut haruspex aut hariolus aut certe augur vel etiam mathematicus aut narrandis somniis occultans artem aliquam divinandi aut certe aliquid horum simile exercens in comitatu meo vel caesaris fuerit deprehensus, praesidio dignitatis cruciatus et tormenta non fugiat. * constantius a. et c. ad taurum pp. * <a 358 d.Iii non.Iul.Arimini datiano et cereale conss.>

CJ.9.18.7.1: Imperator Constantius

Si convictus ad proprium facinus detegentibus repugnaverit pernegando, sit eculeo deditus ungulisque sulcantibus latera perferat poenas proprio dignas facinore. <a 358 d.Iii non.Iul.Arimini datiano et cereale conss.>

CJ.9.18.8: Imperatores Valentinianus, Valens

Culpa similis est prohibita discere quam docere. * valentin. et valens aa. ad modestum pp. * <a 365 d.Prid.Id.Dec.Constantinopoli valentiniano et valente aa. conss.>

CJ.9.18.9pr.: Imperatores Valentinianus, Theodosius, Arcadius

Quicumque maleficiorum labe pollutum audierit deprehenderit occupaverit, ilico ad publicum protrahat et iudiciorum oculis communis hostem salutis ostendat. * valentin. theodos. et arcad. aaa. albino pu. * <a 389 d.Xvii k.Sept.Romae timasio et promoto conss.>

CJ.9.18.9.1: Imperatores Valentinianus, Theodosius, Arcadius

Quod si quisquam ex agitatoribus (id est aurigis) seu ex quolibet alio genere hominum contra hoc interdictum venire temptaverit aut clandestinis suppliciis etiam manifestum reum maleficae artis oppresserit, ultimum supplicium non evadat geminae suspicionis obnoxius, quod aut publicum reum, ne facinoris socios publicaret, severitati legum et debitae subtraxerit quaestioni aut proprium fortassis inimicum sub huiusmodi vindictae nomine consilio atrociore confecerit. <a 389 d.Xvii k.Sept.Romae timasio et promoto conss.>

CJ.9.19.0. De sepulchro violato.

CJ.9.19.1: Imperator Gordianus

Res religioni destinatas, quin immo religionis effectas, scientes qui contigerint et emere et distrahere non dubitaverint, tametsi iure venditio non subsistat, laesae tamen religionis in crimen inciderunt. * gord. a. zenoni. * <a 240 pp.Iii k.Mart.Sabino ii et venusto conss.. >

CJ.9.19.2: Imperator Constantius

Si servus in demoliendis sepulchris fuerit apprehensus, si id sine domini scientia faciat, metallo addicetur, si vero domini auctoritate vel iussione urguetur, relegatione plectetur. et si forte detractum aliquid de sepulchris ad domum eius villamque provectum reperietur, villa sive domus aut aedificium quodcumque erit fisci viribus vindicetur. * constantius a. ad titianum pu. * <a 340 d.Vii k.Iul.Mediolani acyndino et proculo conss.>

CJ.9.19.3: Imperator Constantius

Si quis sepulchrum laesurus attigerit, locorum iudices si hoc vindicare neglexerint, non minus nota quam viginti librarum auri in sepulchrorum violatores statuta poena grassetur, ut eam largitionibus nostris inferre cogantur. * constantius a. ad limenium pp. * <a 349 d.V k.April.Limenio et catullino conss.>

CJ.9.19.4pr.: Imperator Constantius

Qui sepulchra violant, domus ut ita dixerim defunctorum, geminum videntur facinus perpetrare: nam et sepultos spoliant destruendo et vivos polluunt fabricando. * constantius a. ad pop. * <a 357 d.Id.Iun.Mediolani constantio a.Viiii et iuliano c.Ii conss. >

CJ.9.19.4.1: Imperator Constantius

Si quis igitur de sepulchro abstulerit saxa vel marmora vel columnas aliamve quamcumque materiam, fabricandi gratia sive id fecerit venditurus, decem pondo auri cogatur fisco inferre, sive quis propria sepulchra defendens hanc in iudicium querellam detulerit sive quicumque alius accusaverit vel officium nuntiaverit. <a 357 d.Id.Iun.Mediolani constantio a.Viiii et iuliano c.Ii conss. >

CJ.9.19.4.2: Imperator Constantius

Quae poena priscae severitati accedit: nihil enim derogatum est illi supplicio, quod sepulchra violantibus videtur impositum. <a 357 d.Id.Iun.Mediolani constantio a.Viiii et iuliano c.Ii conss. >

CJ.9.19.4.3: Imperator Constantius

Huic autem poenae subiacebunt et qui corpora sepulta aut reliquias contrectaverint. <a 357 d.Id.Iun.Mediolani constantio a.Viiii et iuliano c.Ii conss. >

CJ.9.19.5pr.: Imperator Julianus

Pergit audacia ad busta diem functorum et aggeres consecratos, cum et lapidem hinc movere et terram sollicitare et cespitem vellere proximum sacrilegio maiores semper habuerunt: sed et ornamenta quaedam tricliniis aut porticibus auferri de sepulchris. * iul. a. ad pop. * <a 363 d.Prid.Id.Febr.Antiochiae iuliano a.Iiii et sallustio conss. >

CJ.9.19.5.1: Imperator Julianus

Quibus primis consulentes, ne in piaculum incidant contaminata religione bustorum, hoc fieri prohibemus poena sacrilegii cohibentes. <a 363 d.Prid.Id.Febr.Antiochiae iuliano a.Iiii et sallustio conss. >

CJ.9.19.6: Imperator Justinus

Cum sit iniustum et nostris alienum temporibus iniuriam fieri reliquiis defunctorum ab his, qui debitorem sibi esse mortuum dicendo debitumque exigendo sepulturam eius impediunt, ne in posterum eadem iniuria procederet cogendis his ad quos funus mortui pertinet sua iura perdere, ea quidem, quae mortuo posito ante sepulturam eius facta fuerint vel exigendo quod debitum esse dicitur vel confessiones aliquas aut fideiussorem aut pignora capiendo, penitus amputari praecipimus: redditis vero pignoribus vel pecuniis quae solutae sunt vel absolutis fideiussoribus et generaliter omnibus sine ulla innovatione in pristinum statum reducendis principale negotium ex integro disceptari: eum vero, qui in huiusmodi deprehensus fuerit flagitio, quinquaginta libras auri dependere vel, si minus idoneus sit ad persolvendum, suo corpore sub competenti iudice poenas luere. * iustinus a. theodoto pu. * <a 526 d.K.Dec.Constantinopoli olybrio vc.Cons.>

CJ.9.20.0. Ad legem fabiam.

CJ.9.20.1: Imperator Antoninus

Pater tuus adversus eum, a quo sollicitatam ancillam, plagio quoque facto exportatam queritur, apud suum iudicem civiliter in rem actione instituta consistat. si in causa tenuerit, etiam legis fabiae crimen persequi poterit. quod si per violentiam mancipium abreptum est, accusationem vis non prohibetur intendere. * ant. a. placido. * <a 213 pp.Xii k.April. antonino a. iiii et balbino conss.>

CJ.9.20.2: Imperator Antoninus

Si ab aeliano servum tuum susceptum et aliquamdiu occultatum moxque eo suadente fugae datum probare potes, legis fabiae crimen per te vel actionem ad eam rem propositam, id est servi corrupti, per procuratorem tuum persequi potes. * ant. a. aurelio. * <a 213 pp.Vii k.Aug.Antonino a. iiii et balbino conss.>

CJ.9.20.3: Imperator Alexander Severus

Ut legis fabiae poena debeatur, in crimen subscriptio et accusatio et sententia necessaria est. * alex. a. cornelio. * <a 224 pp.Viii k.Iul.Iuliano et crispino conss.>

CJ.9.20.4: Imperator Gordianus

Non valet procuratoris sententia, si vicem praesidis non tueatur, qui legi fabiae locum esse pronuntiavit, cum eius legis disceptatio ad praesidis provinciae pertineat notionem. * gord. a. paulinae. * <a 239 pp.Iii.Non.Dec.Gordiano a.Et aviola conss.>

CJ.9.20.5: Imperatores valer., gallien.

Si fratrem tuum adversarius supprimit, legis eum fabiae, adito praeside provinciae reum debes postulare. * valer. et gallien. aa. et valer. c.Iulianae. * <a 259 pp.Non.Mai aemiliano et basso conss.>

CJ.9.20.6: Imperatores Diocletianus, Maximianus

In fuga servum constitutum neque vendere neque donare licet. unde intellegis te in legem incidisse, quae super huiusmodi delictis certam poenam fisco inferendam statuit, exceptis coheredibus et sociis, quibus in divisione communium rerum licitationem de fugitivo servo invicem facere permissum est. ita vero liceat fugitivum vendere, ut tunc venditio valeat, quando ab emptore requisitus fuerit deprehensus. * diocl. et maxim. aa. marcianae. * <a 287 pp.Iii id.Mart.Diocletiano et maximiano aa. conss.>

CJ.9.20.7pr.: Imperatores Diocletianus, Maximianus

Quoniam servos a plagiariis alienari ex urbe significas atque ita interdum ingenuos homines eorum scelere asportari solere perscribis, horum delictorum licentiae maiore severitate occurrendum esse decernimus. * diocl. et maxim. aa. maximo pu. * <a 287 d.Vi id.Dec.Diocletiano iii et maximiano aa. conss.>

CJ.9.20.7.1: Imperatores Diocletianus, Maximianus

Ac propterea si quem in huiusmodi facinore deprehenderis, capite eum plecti non dubitabis, ut poenae genere deterreri ceteri possint, quominus istiusmodi audacia vel servos vel liberos ab urbe abstrahere atque alienare audeant. <a 287 d.Vi id.Dec.Diocletiano iii et maximiano aa. conss.>

CJ.9.20.8: Imperatores Diocletianus, Maximianus

Praeses provinciae discreto prius iure dominii intellegat, audiendum sit plagii crimen nec ne. nam si proprietatis tuae mancipium esse constiterit, expirasse criminis intentionem emersa dominii luce manifestabit: si vero servum alienum esse constiterit, post disceptatam proprietatis quaestionem et criminis causam audiet. * diocl. et maxim. aa. constant. * <a 290 pp.Viii k.Sept.Ipsis aa. iiii et iii conss.>

CJ.9.20.9: Imperatores Diocletianus, Maximianus

Eum, qui mancipium alienum celat, fabiae legis crimine teneri non est incerti iuris. * diocl. et maxim. aa. et cc. eugenio. * <a 293 s.Id.Mai.Heracliae aa. conss.>

CJ.9.20.10: Imperatores Diocletianus, Maximianus

Comparantem ab eo, qui abduxit plagio mancipia, si delicti socius non probetur, nullo crimine teneri convenit. * diocl. et maxim. aa. et cc.Dizae. * <a 293 s.Non.Nov.Lucione aa.Conss.>

CJ.9.20.11: Imperatores Diocletianus, Maximianus

Abducti plagio facta venditio statum non mutat: liberae enim personae sollicitatione crimen committitur, non condicioni praeiudicatur. * diocl. et maxim. aa. et cc. ampliatae. * <a 293 s.Non.Nov.Lucionae aa. conss.>

CJ.9.20.12: Imperatores Diocletianus, Maximianus

Si quis servum fugitivum sciens cum rebus furtivis suscepit, cum horum nomine furti actione teneatur, haec tibi rector provinciae cum solita poena restitui efficiet. sed et si criminis plagii accusationem institueris, tibi audientiam praebere non dubitabit. * diocl. et maxim. aa. et cc.Muciano. * <a 294 s.Prid.Id.Sept.Singiduni cc.Conss.>

CJ.9.20.13: Imperatores Diocletianus, Maximianus

Plagii criminis accusatio publici sit iudicii. * diocl. et maxim. aa. et cc.Severino. * <a 294 s.V k.Dec.Cc.Conss.>

CJ.9.20.14: Imperatores Diocletianus, Maximianus

Plagii criminis accusatio cessat, si vos servos vel liberos adseverent qui suppressisse dicuntur, non commissi velandi, sed ad hanc opinionem iusta ducti ratione. * diocl. et maxim. aa. et cc.Callistheni. * <a 294 s.Prid.Non dec.Nicomediae cc.Conss.>

CJ.9.20.15: Imperatores Diocletianus, Maximianus

Liberum sciens condicionem eius invitum venumdando plagii criminis poena tenetur. * diocl. et maxim. aa. et cc. pomponio. * <a 294 d.Xiii k.Ian nicomediae cc. conss.>

CJ.9.20.16pr.: Imperator Constantinus

Plagiarii, qui viventium filiorum miserandas infligunt parentibus orbitates, metalli poena cum ceteris ante cognitis suppliciis tenebantur. * const. a. ad domitium celsum vic. africae. * <a 315 d.K.Aug.Constantino a.Iiii et licinio iiii conss.>

CJ.9.20.16.1: Imperator Constantinus

Si quis tamen eiusmodi reus fuerit oblatus, posteaquam super crimine patuerit, servus quidem vel libertate donatus bestiis obiciatur, ingenuus autem gladio consumatur. <a 315 d.K.Aug.Constantino a.Iiii et licinio iiii conss.>

CJ.9.21.0. Ad legem viselliam.

CJ.9.21.1pr.: Imperatores Diocletianus, Maximianus

Lex visellia libertinae condicionis homines persequitur, si ea quae ingenuorum sunt circa honores et dignitates ausi fuerint attemptare vel decurionatum adripere, nisi iure aureorum anulorum impetrato a principe sustentantur. tunc enim quoad vivunt imaginem, non statum ingenuitatis obtinent et sine periculo ingenuorum etiam officia peragunt publica. * diocl. et maxim. aa. et cc.Baccho. * <a 300 ? pp.Ii id.Febr.Antiochiae cc.Conss.>

CJ.9.21.1.1: Imperatores Diocletianus, Maximianus

Qui autem libertinus se dicit ingenuum, tam de operis civiliter quam etiam lege visellia criminaliter poterit perurgueri: in curiam autem se immiscens damno quidem cum infamia adficitur: muneribus vero personalibus in patria patroni, quae congruunt huiusmodi hominibus, singulos pro viribus adstrictos esse non dubium est. <a 300? pp.Ii id.Febr.Antiochiae cc.Conss.>

CJ.9.22.0. Ad legem corneliam de falsis.

CJ.9.22.1: Imperator Antoninus

Si partus subiecti crimen diversae parti obicitis, causa capitalis in tempus pubertatis pueri differri non debuit, sicut iam pridem mihi et divo severo patri meo placuit. neque enim verisimile est eam quae arguitur non ex fide causam suam defensuram, cum periculum capitis subeat. * ant. a. severino. * <a 212 pp.Non.Mart.Duobus aspris conss.>

CJ.9.22.2: Imperator Alexander Severus

Satis aperte divorum parentum meorum rescriptis declaratum est, cum morandae solutionis gratia a debitore falsi crimen obicitur, nihilo minus salva exsecutione criminis debitorem ad solutionem compelli oportere. * alex. a. valerio. * <a 223 pp.Iii non.Mai.Maximo ii et aeliano conss.>

CJ.9.22.3: Imperator Alexander Severus

Maiorem severitatem exigit, ut merita eorum qui falsis rescriptionibus utuntur digna poena coerceantur. sed qui deceptus est per alium, si suam innocentiam probat et eum a quo accepit exhibet, se liberat. * alex. a. maximo. * <a 227 pp.Iiii k.Ian.Albino et maximo conss.>

CJ.9.22.4: Imperator Alexander Severus

Licet ex tabulis, quas sub nomine patris tui uxorem eius, id est novercam tuam, subrepto vero testamento falsas protulisse adlegas, cum crimen admissum ignores, legatum adscriptum tibi consecutus sis, tamen non impedieris accusationem contra eam impletis sollemnibus instituere. * alex. a. cassio. * <a 227 pp.Xi k.Ian.Albino et maximo conss.>

CJ.9.22.5: Imperator Alexander Severus

Falsi quidem crimen vel aliud capitale movere vos matri vestrae secta mea non patitur. sed ea res pecuniarium compendium non aufert. si enim de fide scripturae , unde eadem mater vestra fideicommissum sibi vindicat, dubitatio est, inquiri fides veritatis etiam sine metu criminis potest. * alex. a. petronio. * <a 230 pp. iii k. sept. agricola et clemente conss.>

CJ.9.22.6: Imperator Philippus

Qui falsas tabulas dixerit nec tenuerit, ad defuncti iudicium adspirare non potest. * philipp. a. et philipp. c. ulpio. * <a 245 pp. xv k. april. philippo a. et titiano conss.>

CJ.9.22.7: Imperatores valer., gallien.

Ipse significas, cum primo adversarii instrumenta protulerunt, fidem eorum te habuisse suspectam. facta igitur transactione difficile est, ut is qui provinciam regit velut falsum, cui semel adquievisti, tibi accusare permittat. * valer. et gallien. aa. et valer. c. heliodoro. * <a 258 pp. iii k. iul. tusco et basso conss.>

CJ.9.22.8: Imperatores valer., gallien.

Si falsos codicillos ab his contra quos supplicas factos esse contendis, non ideo accusationem evadere possunt, quod se illis negent uti. nam illis prodest instrumenti usu abstinere, qui non ipsi machinatores falsi esse dicuntur et quos periculo solus usus adstrinxerit. qui autem compositis per scelus codicillis in severitatem legis corneliae inciderunt, non possunt defensiones eius recusando crimen evitare. * valer. et gallien. aa. et c. marino. * <a 259 pp. iii k. iul. aemiliano et basso conss.>

CJ.9.22.9pr.: Imperatores carinus, numer.

Si docueris apud praesidem provinciae ab intestato te heredem eius extitisse, qui codicillos scripserat, ordinarium est, ut in hereditatis possessione constitutus fideicommissa praebeas, quae iure relicta sunt, nisi consilium est codicillos falsos arguere. * carinus et numer. aa. messio. * <a 284 pp. iii k. april. carino ii et numeriano aa. conss.>

CJ.9.22.9.1: Imperatores carinus, numer.

Quod si criminaliter coeptum interventu indulgentiae sopitum est, habes tamen residuam indagnationem, potest de fide scripturae civiliter quaeri. <a 284 pp. iii k. april. carino ii et numeriano aa. conss.>

CJ.9.22.10: Imperatores Diocletianus, Maximianus

Cum suppositi partus crimen patrui tui uxori moveas, apud rectorem provinciae instituta accusatione id proba. * diocl. et maxim. aa. legitimo. * <a 285 pp. xi k. oct. diocletiano a. ii et aristobulo conss.>

CJ.9.22.11: Imperatores Diocletianus, Maximianus

Si lis pecuniaria apud pedaneos iudices remissa est, etiam de fide instrumenti civiliter apud eos iuxta responsum viri prudentissimi pauli requiretur. * diocl. et maxim. aa. isidoro. * <a 287 pp.X k.Iul.Diocletiano iii et maximiano aa. conss.>

CJ.9.22.12: Imperatores Diocletianus, Maximianus

Querella falsi temporalibus praescriptionibus non excluditur nisi viginti annorum exceptione, sicut cetera quoque fere crimina. * diocl. et maxim. aa. et cc.Primo. * <a 293 s.Vi id.Aug.Viminacio aa. conss.>

CJ.9.22.13: Imperatores Diocletianus, Maximianus

Qui veluti praesentem scripsisse res recepisse suas, cum absens esset, conscripsit, non ignoranti quicquam aufert, sed se criminis obligat periculo. * diocl. et maxim. aa. et cc. marco. * <a 293 pp.Vi k.Ian.Sirmi aa.Conss.>

CJ.9.22.14: Imperatores Diocletianus, Maximianus

Eum, qui celavit vel amovit testamentum, committere crimen falsi publice notum est. * diocl. et maxim. aa. et cc. gentianae. * <a 293 s.Iii k.Ian.Sirmi aa. conss.>

CJ.9.22.15: Imperatores Diocletianus, Maximianus

Si creditor colludens cum debitore suo tibi praedium venumdedit, falsum commisit et tibi nihil officit, sed se magis criminis accusationi fecit obnoxium. * diocl. et maxim. aa. et.Cc rufo. * <a 294 s.Xiii k.Febr.Cc.Conss.>

CJ.9.22.16: Imperatores Diocletianus, Maximianus

De fide testamenti querenti duplex via litigandi tributa est. quamvis itaque per procuratorem accusationem persequi non potes, disceptatione privata tamen de eius fide queri non prohiberis, cum reus ita conventus non tantum ab alio iuste, sed etiam eo qui civiliter egit sollemniter accusari possit. * diocl. et maxim. aa. et cc. fortunato. * <a 294 s.Viii id.Febr.Sirmi cc.Conss.>

CJ.9.22.17pr.: Imperatores Diocletianus, Maximianus

Sicut falsi testamenti vel codicillorum scriptura temporis intervallo firmari non potest, ita vera quae iure subsistit non evanescit. * diocl. et maxim. aa. et cc. menelao. * <a 294 s.Iii id.Febr.Sirmi cc.Conss.>

CJ.9.22.17.1: Imperatores Diocletianus, Maximianus

Si itaque de fide delicti vel per accusationem vel per privatum iudicium quereris, rector provinciae tunc demum eos exhiberi de quibus interrogatio fieri potest iubebit, si prius ceteris indiciis fuerit commotus. <a 294 s.Iii id.Febr.Sirmi cc.Conss.>

CJ.9.22.18: Imperatores Diocletianus, Maximianus

Ex initio falsi commissi iusta possessio non paratur. unde contra eos, quos de dominio fundi tecum contendere proponis, accusationem instituere potes. * diocl. et maxim. aa. et cc. maximo. * <a 294 s.Iii non.Mart.Cc.Conss.>

CJ.9.22.19pr.: Imperatores Diocletianus, Maximianus

Etsi ad te negotium pertinuit, etiam atque etiam tecum deliberare debueras, ne improbam institueres accusationem, hoc instrumentum falsum in quo subscripseras arguere contendens. * diocl. et maxim. aa. et cc. cosmiae. * <a 294 s.Viii id.Mart.Cc.Conss.>

CJ.9.22.19.1: Imperatores Diocletianus, Maximianus

At cum mulieribus in aliena causa falsi non sit concessum accusare, tu autem haec eadem praedia te prius alii donasse proponas, fieri tibi facultatem accusandi contra iuris postulas formam. <a 294 s.Viii id.Mart.Cc.Conss.>

CJ.9.22.20: Imperatores Diocletianus, Maximianus

Nec exemplum precum editionis aliter per errorem scriptum, cum non nisi dolo falsum committentes crimini subiugentur, cognitionem dati iudicis moratur. * diocl. et maxim. aa. et cc. rufino. * <a 294 s.Xi k.Nov.Dorostoli cc.Conss.>

CJ.9.22.21pr.: Imperator Constantinus

Si quis decurio testamentum vel codicillos aut aliquam deficientis scripserit voluntatem vel conscribendis publicis privatisque instrumentis praebuerit officium, si falsi quaestio moveatur, decurionatus honore seposito quaestioni, si ita poposcerit causa, subdatur. * const. a. maecilio hilariano correctori lucaniae et brittiorum. * <a 316 d.Iii k.Febr.Sabino et rufino conss.>

CJ.9.22.21.1: Imperator Constantinus

Sed non statim desinit esse decurio, qui in huiusmodi facto fuerit : quantum enim ad municipales pertinet necessitates, decurio permanet: quantum ad rem gestam et veritatem reserandam uti decurionatus honore non poterit. <a 316 d.Iii k.Febr.Sabino et rufino conss.>

CJ.9.22.21.2: Imperator Constantinus

Nec vero is, qui ante fuerit tabellio, ad eludendam quaestionem super his quae ante conscripsit factus decurio defendi hac poterit dignitate, quoniam scripturae veritas, si res poposcerit, per ipsum debet probari auctorem. <a 316 d.Iii k.Febr.Sabino et rufino conss.>

CJ.9.22.22pr.: Imperator Constantinus

Ubi falsi examen inciderit, tunc acerrima fiat indago argumentis testibus scripturarum collatione aliisque vestigiis veritatis. * const. a. ad maximum pu. * <a 320 pp.Viii k.April.In foro traiani constantino a.Vi et constantino c.Conss.>

CJ.9.22.22.1: Imperator Constantinus

Ne accusatori tantum quaestio incumbat nec probationis ei tota necessitas indicatur, sed inter utramque personam sit iudex medius nec ulla interlocutione divulget quae sentiat, sed tamquam ad imitationem relationis, quae solum audiendi mandat officium, praebeat notionem, postrema sententia quid sibi liqueat proditurus. <a 320 pp.Viii k.April.In foro traiani constantino a.Vi et constantino c.Conss.>

CJ.9.22.22.2: Imperator Constantinus

Ultimum autem finem strepitus criminalis compendioso spatio limitamus, quem litigantem disceptantemque fas non sit excedere, cuius exordium nascetur auspicio testatae actionis apud iudicem competentem: capitali post probationem supplicio, si id exigat magnitudo commissi, vel deportatione ei qui falsum commiserit imminente. <a 320 pp.Viii k.April.In foro traiani constantino a.Vi et constantino c.Conss.>

CJ.9.22.23pr.: Imperatores Valens, Gratianus, Valentinianus

Damus licentiam litigantibus, si apud iudicem proferatur scriptura, de qua oritur aliqua disputatio, utrum de falso criminaliter statuat, qui dubitet de instrumenti fide, experiri an civiliter. * valens grat. et valentin. aaa. ad maximinum pp. * <a 376 pp.Xvi k.Mai.Romae valente v et valentiniano aa. conss.>

CJ.9.22.23.1: Imperatores Valens, Gratianus, Valentinianus

Quod si expetens vindictam falsi crimen intenderit, tunc quaestione civili per sententiam terminata criminis fiat indago, ut, si quis tabulas testamenti chirographa testationesque nec non etiam rationes privatas vel publicas, pacta et epistulas vel ultimas voluntates, donationes venditiones, vel si quid prolatum aliud instituere conabitur, habeat accusandi facultatem. <a 376 pp.Xvi k.Mai.Romae valente v et valentiniano aa. conss.>

CJ.9.22.23.2: Imperatores Valens, Gratianus, Valentinianus

Civilis autem inquisitionis inter utrasque partes confligentium lenior examinatio procedat, cum iudex, qui praeerit quaestioni, intentiones actoris falsas et convicta crimina reorum ex legibus poenis competentibus possit ulcisci. <a 376 pp.Xvi k.Mai.Romae valente v et valentiniano aa. conss.>

CJ.9.22.24: Imperatores Valentinianus, Theodosius, Arcadius

Praebemus licentiam, ut civiliter sive criminaliter, ut actor elegerit, super prolatis codicillis vel aliis instrumentis requiratur et incumbat probatio fidei instrumenti ei primitus, qui scripturam obtulerit, deinde ei, qui stricta instantia falsum arguere paratus est. * valentin. theodos. et arcad. aaa. proculo pu. * <a 389 d.Mediolani x.K.Febr.Timasio et promoto conss.>

CJ.9.23.0. De his qui sibi adscribunt in testamento.

CJ.9.23.1: Imperator Antoninus

Quamquam ita interpretentur iuris periti, ut contra legem corneliam videatur se scribere heredem filius emancipatus patre dictante, tamen cum et, si testamentum non esset scriptum, iustus successor futurus esset accepta bonorum possessione filius patri, perinde habebitur, atque si sua manu pater tuus te heredem scripsisset functus dulci officio. * ant. a. vallatio. * <a 212 pp.Non.Sept.Duobus aspris conss.>

CJ.9.23.2pr.: Imperator Antoninus

Si testator codicillis quos scripsisti legatum quoque seu fideicommissum reliquisse tibi sua manu adscripsit, non videris in poenam senatus consulti incidisse. * ant. a. atticio. * <a 213 pp. id. dec. antonino a. iiii et balbino conss.>

CJ.9.23.2.1: Imperator Antoninus

Quod si testamentum dictasse codicillis significavit, legato quidem vel fideicommisso abstinere debes, poena vero falsi tibi principali beneficio remittitur. <a 213 pp. id. dec. antonino a. iiii et balbino conss.>

CJ.9.23.3: Imperator Alexander Severus

Senatus consulto et edicto divi claudii prohibitum est eos, qui ad scribenda testamenta adhibentur, quamvis dictante testatore aliquid emolumentum ipsis futurum scribere, et poena legis corneliae facienti inrogata est: cuius veniam deprecantibus ob ignorantiam et profitentibus a relicto discedere raro amplissimus ordo vel divi principes veniam dederunt. * alex. a. martiali. * <a 223 pp. xvii k. april. maximo ii et aeliano conss.>

CJ.9.23.4: Imperator Alexander Severus

Quae in testamento uxoris maritus sua manu legata sibi adscripserit, pro non scriptis habentur, et legis corneliae poena, si venia impetrata non est, locum habet. * alex. a. crescenti. * <a 225 pp. iii non. febr. fusco ii et dextro conss.>

CJ.9.23.5: Imperator Alexander Severus

Quod adhibitus ad testamentum commilitonis scribendum iussu eius servum tibi adscripsisti, pro non scripto habetur et ideo id legatum petere non potes. sed secutus tenorem indulgentiae meae poenam legis corneliae tibi remitto, in quam credo te magis errore quam malitia incidisse. * alex. a. gallicano mil. * <a 225 pp. xvii k. iul. fusco ii et dextro conss.>

CJ.9.23.6: Imperatores Diocletianus, Maximianus

Si libertatem tibi manu tua imperante domino adscripsisti, cum proponas dominium non subscripsisse et suis litteris tuam libertatem expressim agnovisse, ad impetrandam libertatem senatus consulti auctoritas tibi obest. poena tamen falsi tibi remittitur, quoniam non potueras contra domini voluntatem venire. * diocl. et maxim. aa. aufidio. * <a 290 pp. vi id. dec. ipsis iiii et iii aa. conss.>

CJ.9.24.0. De falsa moneta.

CJ.9.24.1pr.: Imperator Constantinus

Quoniam nonnulli monetarii adulterinam monetam clandestinis sceleribus exercent, cuncti cognoscant necessitatem sibi incumbere huiusmodi homines inquirendi, ut investigati tradantur iudiciis, facti conscios per tormenta ilico prodituri ac sic dignis suppliciis addicendi. * const. a. ad ianuarium. * <a 321 d. xii k. dec. romae crispo ii et constantino ii cc. conss.>

CJ.9.24.1.1: Imperator Constantinus

Accusatoribus etiam eorum immunitatem permittimus, cuius modus, quoniam dispar patrimonium est, a nobis per singulos statuetur. <a 321 d. xii k. dec. romae crispo ii et constantino ii cc. conss.>

CJ.9.24.1.2: Imperator Constantinus

Si quis autem militum huiusmodi personam susceptam de custodia exire fecerit, capite puniatur <a 321 d. xii k. dec. romae crispo ii et constantino ii cc. conss.>

CJ.9.24.1.3: Imperator Constantinus

Appellandi etiam privato licentia denegetur: si vero miles aut promotus in gradu huiusmodi crimen incurrerit, super eius nomine et gradu ad competentes iudices referatur. <a 321 d. xii k. dec. romae crispo ii et constantino ii cc. conss.>

CJ.9.24.1.4: Imperator Constantinus

Domus vero vel fundus, in quo haec perpetrata sunt, si dominus in proximo constitutus sit, cuius incuria vel neglegentia punienda est, etsi ignoret, fisco vindicetur, nisi dominus, ante ignorans, ut primum reppererit, scelus prodiderit perpetratum: tunc enim possessio vel domus ipsius proscriptionis iniuriae minime subiacebit. <a 321 d. xii k. dec. romae crispo ii et constantino ii cc. conss.>

CJ.9.24.1.5: Imperator Constantinus

Sin vero longissime ab ea domo vel possessione afuerit, nullum sustineat detrimentum: actore videlicet fundi vel servis vel incolis vel colonis, qui hoc ministerium praebuerunt, cum eo qui fecit supplicio capitali plectendis. <a 321 d. xii k. dec. romae crispo ii et constantino ii cc. conss.>

CJ.9.24.1.6: Imperator Constantinus

Viduas autem ac pupillos speciali dignos indulgentia credidimus, ut viduae nec in proximo constitutae domo sua vel possessione careant, si nulla apud ipsas tam gravis conscientiae noxa resideat, impuberes vero, etiamsi conscii fuerint, nullum sustineant detrimentum, quia aetas eorum quid videat ignorat. <a 321 d. xii k. dec. romae crispo ii et constantino ii cc. conss.>

CJ.9.24.1.7: Imperator Constantinus

Tutores tamen eorum, si in proximo sint, quoniam ignorare eos, quid in re pupilli geritur, non oportet, haec poena expectabit, ut de rebus eorum, si idonei fuerint, tantum fisco inferatur, quantum a pupillo fuerat inferendum. <a 321 d. xii k. dec. romae crispo ii et constantino ii cc. conss.>

CJ.9.24.2: Imperator Constantinus

Si quis nummum falsa fusione formaverit, universas eius facultates fisco nostro addici praecipimus: in monetis etenim tantum nostris cudendae pecuniae studium frequentari volumus. cuius obnoxii maiestatis crimen committunt, et praemio accusatoribus proposito, quicumque solidorum adulter poterit reperiri vel a quoquam fuerit publicatus, ilico omni dilatione submota flammarum exustionibus mancipetur. * const. a. ad tertullianum procons. africae. * <a 326 d. prid. non. iul. mediolani constantino a. vii et constantio c. conss.>

CJ.9.24.3: Imperatores Valentinianus, Theodosius, Arcadius

Si quis super cudendo aere vel rescripto aliquo vel etiam adnotatione nostra sibi eripuerit facultatem, non solum fructum propriae petitionis amittat, verum etiam poenam quam meretur excipiat. * valentin. theodos. et arcad. aaa. rufino pp. * <a 393 d. iiii id. iul. constantinopoli theodosio a. iii et abundantio conss.>

CJ.9.25.0. De mutatione nominis.

CJ.9.25.1: Imperatores Diocletianus, Maximianus

Sicut initio nominis cognominis praenominis recognoscendi singulos imposito privatim libera est, ita horum mutatio innocentibus periculosa non est.Mutare itaque nomen sive praenomen sine aliqua fraude licito iure, si liber es, secundum ea quae saepe statuta sunt minime prohiberis, nulli ex hoc praeiudicio futuro. * diocl. et maxim. aa. et cc.Iuliano. * <a 293 s.Xv k.Ian.Aa. conss.>

CJ.9.26.0. Ad legem iuliam de ambitu.

CJ.9.26.1pr.: Imperatores Arcadius, Honorius

Nullus omnino principatum vel numeratum seu commentariensis gradum vel cetera officia repetere audeat, cum publicae disciplinae semel gesta sufficiant. * arcad. et honor. aa. pompeiano procons. africae. * <a 400 d.Prid.K.Iun.Mediolani stilichone et aureliano conss.>

CJ.9.26.1.1: Imperatores Arcadius, Honorius

Ac si quispiam promotorum denuo ad munus etiam per sacras litteras inrepserit, quod ante docebitur gessisse, cassatis quae hoc modo sunt impetrata, ad solutionem debiti primitus artetur, et qui contra fecerint poenam deportationis ad instar legis iuliae ambitus excipiant. <a 400 d.Prid.K.Iun.Mediolani stilichone et aureliano conss.>

CJ.9.27.0. Ad legem iuliam repetundarum.

CJ.9.27.1: Imperatores Gratianus, Valentinianus, Theodosius

Ut unius poena metus possit esse multorum, ducem qui male egit ad provinciam quam nudaverat cum custodia competenti ire praecipimus, ut non solum, quod eius non dicam domesticus, sed manipularius et minister accepit, verum etiam quod ipse a provincialibus nostris rapuit aut sustulit, in quadruplum invitus exsolvat. * grat. valentin. et theodos. aaa. matroniano duci et praes. isauriae.* <a 382 d.Prid.Id.Iun.Constantinopoli antonio et syagrio conss.>

CJ.9.27.2: Imperatores Gratianus, Valentinianus, Theodosius

Sciant iudices super admissis propriis aut a se aut ab heredibus suis poenam esse repetendam. * grat. valentin. et theodos. aaa. floro pp. * <a 382 d.X k.Sept.Antonio et syagrio conss.>

CJ.9.27.3: Imperatores Gratianus, Valentinianus, Theodosius

Omnes cognitores et iudices a pecuniis atque patrimoniis manus abstineant neque alienum iurgium putent suam praedam. etenim privatarum quoque litium cognitor idemque mercator statutam legibus cogetur subire iacturam. * grat. valentin. et theodos. aaa. Marcellino. * <a 383 d.Prid.Non.April.Mediolani merobaude ii et saturnino conss. >

CJ.9.27.4: Imperatores Gratianus, Valentinianus, Theodosius

Iubemus hortamur, ut, si quis forte honoratorum decurionum possessorum, postremo etiam colonorum aut cuiuslibet ordinis a iudice fuerit aliqua ratione concussus , si quis scit venalem de iure fuisse sententiam, si quis poenam vel pretio remissam vel vitio cupiditatis ingestam, si quis postremo quacumque de causa improbum iudicem potuerit approbare, is vel administrante eo vel post administrationem depositam in publicum prodeat, crimen deferat, delatum approbet, cum probaverit, et victoriam reportaturus et gloriam. * grat. valentin. et theodos. aaa. et arcad. a. edictum ad p * <a 386 d.X k.Iul.Constantinopoli honorio np.Et euodio conss.>

CJ.9.27.5pr.: Imperatores Valentinianus, Theodosius, Arcadius

Unusquisque procurator, praepositus gynaecei, tabularius susceptor colonus vel quicumque se a comite domorum meminerit esse concussum, cum ipse cui pecuniam numeraverit administratione decesserit, intra anni spatia ad iudicium spectabilitatis tuae quidquid dederit repetiturus occurrat, ut prosit pensionibus, quidquid ille reddiderit. * valentin. theodos. et arcad. aaa. severino com. rer. privat * <a 390 d. prid. non. iun. mediolani valentiniano a. iiii et neoterio conss.>

CJ.9.27.5.1: Imperatores Valentinianus, Theodosius, Arcadius

Sin vero ex tempore depositae administrationis praestituti temporis curricula transfluxerint, nulla vox advocationis emergat, sed ipsos procuratores praepositos colonos tabularios susceptores obnoxios ad solutionem volumus artari. <a 390 d. prid. non. iun. mediolani valentiniano a. iiii et neoterio conss.>

CJ.9.27.6pr.: Imperatores Theodosius, Valentinianus

Sancimus eiusmodi viros ad provincias regendas accedere, qui honoris insignia non ambitione vel pretio, sed probatae vitae et amplitudinis tuae solent testimonio promoveri, ita sane ut, quibus hi honores per sedis tuae vel nostram fuerint electionem commissi, iurati inter gesta depromant se pro administrationibus sortiendis neque dedisse quippiam neque daturos umquam postmodum fore, sive per se sive per interpositam in fraudem legis sacramentique personam, aut donationis venditionisve titulo aut alio velamento cuiuscumque contractus, et ob hoc exceptis salariis nihil penitus tam in administratione positos quam post depositum officium pro aliquo praestito beneficio tempore administrationis, quam gratuito meruerint, accepturos. * theodos. et valentin. aa. florentio pp. * <a 439 d. vi k. dec. constantinopoli theodosio a. xvii et festo conss.>

CJ.9.27.6.1: Imperatores Theodosius, Valentinianus

Et licet neminem divini timoris contemnendo iureiurando arbitramur immemorem, ut saluti propriae ullum commodum anteponat, tamen, ut ad salutis timorem et necessitas periculi subiungatur, tunc si quis ausus fuerit praebita sacramenta neglegere, non modo adversus accipientem, sed etiam adversus dantem accusandi cunctis tamquam crimen publicum concedimus facultatem, quadrupli poena eo qui convictus fuerit modis omnibus feriendo. <a 439 d. vi k. dec. constantinopoli theodosio a. xvii et festo conss.>

CJ.9.28.0. De crimine peculatus.

CJ.9.28.1: Imperatores Theodosius, Arcadius, Honorius

Iudices, qui tempore administrationis publicas pecunias subtraxerunt, lege iulia peculatus obnoxii sunt et capitali animadversioni eos subdi iubemus: his nihilo minus, qui ministerium eis ad hoc adhibuerunt vel qui subtracta ab his scientes susceperunt, eadem poena percellendis. * theodos. arcad. et honor. aaa. rufino pp. * <a 415 d. iii non. mart. constantinopoli honorio x et theodosio vi aa. conss.>

CJ.9.29.0. De crimine sacrilegii.

CJ.9.29.1: Imperatores Gratianus, Valentinianus, Theodosius

Qui divinae legis sanctitatem aut nesciendo confundunt aut neglegendo violant et offendunt, sacrilegium committunt. * grat. valentin. et theodos. aaa. * <a 380 d. iii k. mart. thessalonicae gratiano a. v et theodosio a. conss.>

CJ.9.29.2: Imperatores Gratianus, Valentinianus, Theodosius

Disputari de principali iudicio non oportet: sacrilegii enim instar est dubitare , an is dignus sit, quem elegerit imperator. * grat. valentin. et theodos. aaa. ad symmachum pu. * <a 384 d. v k. ian. mediolani ricomere et clearcho conss.>

CJ.9.29.3: Imperatores Gratianus, Valentinianus, Theodosius

Ne quis sine sacrilegii crimine desiderandum intellegat gerendae ac suscipiendae administrationis officium intra eam provinciam, in qua provincialis et civis habetur, nisi hoc cuidam ultronea liberalitate per divinos adfatus imperator indulgeat. * grat. valentin. et theodos. aaa. et arcad. a. eutropio pp. * <a 385 d. xvi k. aug. arcadio a. et bautone conss.>

CJ.9.30.0. De seditiosis et his qui plebem audent contra publicam quietem colligere.

CJ.9.30.1: Imperatores Gratianus, Valentinianus, Theodosius

Si quis contra evidentissimam iussionem suscipere plebem et adversus publicam disciplinam defendere fortasse temptaverit, multam gravissimam sustinebunt. * grat. valentin. et theodos. aaa. florentio praef. augusta * <a 384 d. xiii k. ian. constantinopoli ricomere et clearcho conss.>

CJ.9.30.2: Imperator Leo

In nullis locis aut civitatibus tumultuosis clamoribus cuiusquam interpellatio contumeliosa procedat nec ad solam cuiusquam invidiam petulantia verba iactentur : scituris his, qui huiusmodi voces emiserint moverintque tumultus, se quidem fructum ex his quae postulant nullatenus habituros, subdendos autem poenis his, quas de seditionum et tumultus auctoribus vetustissima decreta sanxerunt. * leo a. erythrio pp. * <a 466 d. ii non. mart. constantinopoli leone a. iii cons.>

CJ.9.31.0. Quando civilis actio criminali praeiudicet et an utraque ab eodem exerceri potest.

CJ.9.31.1pr.: Imperatores Valens, Gratianus, Valentinianus

A plerisque prudentium generaliter definitum est, quotiens de re familiari et civilis et criminalis competit actio, utraque licere experiri, sive prius criminalis sive civilis actio moveatur, nec si civiliter fuerit actum, criminalem posse consumi, et similiter e contrario. * valens grat. et valentin. aaa. antonio pp. * <a 378 d. prid. id. ian. treviris valente vi et valentiniano ii aa. conss.>

CJ.9.31.1.1: Imperatores Valens, Gratianus, Valentinianus

Sic denique et per vim possessione deiectus, si de ea recuperanda interdicto unde vi erit usus, non prohibetur tamen etiam lege iulia de vi publico iudicio instituere accusationem: et suppresso testamento cum ex interdicto de tabulis exhibendis fuerit actum, nihilo minus ex lege cornelia testamentaria poterit crimen inferri: et cum libertus se dicit ingenuum, tam de operis civiliter quam etiam lege viselli criminaliter poterit perurgueri. <a 378 d. prid. id. ian. treviris valente vi et valentiniano ii aa. conss.>

CJ.9.31.1.2: Imperatores Valens, Gratianus, Valentinianus

Quo in genere habetur furti actio et legis fabiae constitutum, et plurima alia sunt, quae enumerari non possunt, ut, cum altera prius actio intentata sit, per alteram quae supererit iudicatum liceat retractari. <a 378 d. prid. id. ian. treviris valente vi et valentiniano ii aa. conss.>

CJ.9.31.1.3: Imperatores Valens, Gratianus, Valentinianus

Qua iuris definitione non ambigitur etiam falsi crimen, de quo civiliter iam actum est, criminaliter esse repetendum. <a 378 d. prid. id. ian. treviris valente vi et valentiniano ii aa. conss.>

CJ.9.32.0. De crimine expilatae hereditatis.

CJ.9.32.1: Imperatores Severus, Antoninus

Expilatae quidem hereditatis crimen intentare non potes, quando communis arcae rebus inspectis claves traditas coheredi profitearis. sed cum de his exhibendis apud iudicem quaereretur, rationem compensationis induci non oportuit. exhibitis enim quae desiderantur suis iudicibus directa quaestio derelinquenda est. * sev. et ant. aa. euphratae. * <a 205 pp. xii k. mai. antonino a.Ii et geta ii conss.>

CJ.9.32.2: Imperator Antoninus

Expilatae hereditatis crimen adversus vitricum adito praeside provinciae persequi non prohiberis. * ant. a. primo. * <a 215 pp. vii k. mart. laeto ii et cereale conss.>

CJ.9.32.3: Imperator Antoninus

Si avi tui hereditatem adisti, expilatae hereditatis crimine adversus novercam quondam tuam experiri non prohiberis. * ant. a. helenae. * <a 216 pp. iii non. ian. sabino et anullino conss.>

CJ.9.32.4pr.: Imperator Gordianus

Adversus uxorem, quae socia rei humanae atque divinae domus suscipitur, mariti diem suum functi successores expilatae hereditatis crimen intendere non possunt. * gord. a. basso. * <a 242 pp. vi k. mart. attico et praetextato conss.>

CJ.9.32.4.1: Imperator Gordianus

Et ideo res, quas per eandem abesse quereris, competenti in rem actione vel, si dolo malo fecerit, quo minus res mobiles possideret, ad exhibendum persequere. <a 242 pp. vi k. mart. attico et praetextato conss.>

CJ.9.32.4.2: Imperator Gordianus

Fructus autem rerum quas mala fide tenuit, licet expilatae hereditatis non teneatur crimine, suos non facit, sed extantes quidem vindicari, absumptos vero condici posse procul dubio est. <a 242 pp. vi k. mart. attico et praetextato conss.>

CJ.9.32.5: Imperator Philippus

Obtentu expilatae hereditatis emolumentum legatorum, maxime suspensa cognitione, legatariis isdemque libertis defuncti auferri non oportet. * philipp. a. et philipp. c. sulpicio. * <a 245 pp. xv k. febr. philippo a. et titiano conss.>

CJ.9.32.6: Imperator Philippus

Expilatae hereditatis crimen loco deficientis actionis intendi consuevisse non est iuris ambigui. * philipp. a.Et c.Basiliae. * <a 249 pp. x k. mart. aemiliano et aquilino conss.>

CJ.9.33.0. Vi bonorum raptorum.

CJ.9.33.1: Imperator Gordianus

Vi bonorum raptorum actionem, quae cum poena sua retrahit ablata, potius ad mobilia moventiaque quam ad fundos per iniuriam occupatos spectare explorati iuris est. * gord. a. valerio. * <a 242 pp. k. mart. attico et praetextato conss.>

CJ.9.33.2: Imperatores valer., gallien.

Si res mobiles, quarum in te fuerat dominium perfecta donatione translatum, violenter heres donatricis abripuit, vi bonorum raptorum actionem intra annum quidem, quo experiundi potestas fuit, in quadruplum, post annum in simplum intendere non vetaris. * valer. et gallien. aa. longino. * <a 260 pp. vii k. mai. saeculare et donato conss.>

CJ.9.33.3: Imperatores Diocletianus, Maximianus

Res obligatas sibi creditorem vi rapientem non rem licitam facere, sed crimen committere convenit, eumque etiam vi bonorum raptorum infra annum utilem in quadruplum, post simpli actione conveniri posse non ambigitur. * diocl. et maxim. aa. et cc. euelpisto. * <a 293 s. vii id. ian. sirmi aa. conss.>

CJ.9.33.4: Imperatores Diocletianus, Maximianus

De his, quae servum alienum nesciente domino vi rapuisse dicis, infra annum in quadruplum vi bonorum raptorum et post in simplum dominus eius noxali actione apud competentem iudicem conveniri potest. * diocl. et maxim. aa. et cc. attalo. * <a 293 s. vii id. ian. sirmi aa. conss.>

CJ.9.33.4: Imperatores Diocletianus, Maximianus

Sive negotiorum gestorum contra novercam tuam sive actione vi bonorum raptorum, quae in quadruplum intra annum utilem ac post in simplum constituta est, putaveris agendum, notione praesidali poteris experiri. * diocl. et maxim. aa. et cc. dominae. * <a 293 s. vii id. ian. sirmi aa. conss.>

CJ.9.34.0. De crimine stellionatus.

CJ.9.34.1: Imperator Alexander Severus

Improbum quidem et criminosum fateris easdem res pluribus pignorasse, dissimulato in posteriore obligatione, quod eaedem aliis pignori tenentur. verum securitati tuae consules, si oblato omnibus debito criminis instituendi causam peremeris. * alex. a. alexandro. * <a 231 pp. v id. febr. pompeiano et peligno conss.>

CJ.9.34.2: Imperator Gordianus

Si pater tuus in te donationem contulit et, cum emancipatus esses, traditionibus dominium corporum in te transtulit posteaque creditorem sortitus quasdam earum rerum sine tua voluntate velut proprias suas obstrinxit, ius tuum non laesit. nec tamen iniuria stellionatus crimine petetur, cum sciens alienam rem te non consentiente velut propriam suo nexuit creditori. * gord. a. valenti. * <a 239 pp. ii k. ian. gordiano a. et aviola conss.>

CJ.9.34.3: Imperator Gordianus

Stellionatus accusatio inter crimina publica non habetur. * gord. a. hadriano. * <a 242 pp. id. april. attico et praetextato conss.>

CJ.9.34.4pr.: Imperator Philippus

Ignorantia creditoris, cui res pridem apud alios obligatae pignoris seu hypothecae iure obligantur, non sine periculo capi consuevit. etenim eiusmodi fraudes ad extraordinariam criminis exsecutionem spectare ac stellionatus commissum severissime esse vindicandum saepe rescriptum est. * philipp. a. euprepeti. * <a 244 pp. vi id. mai. peregrino et aemiliano conss.>

CJ.9.34.4.1: Imperator Philippus

Proinde sive ignorantiam tuam debitor circumvenire temptaverit, seu obligatione rite perfecta participato fraudis consilio per subiectam quasi anteriorem personam dispendium tuum ad occultum compendium suum pertemptat, adire suum iudicem potes congruentem iuri ac debitae religioni sententiam relaturum. <a 244 pp. vi id. mai. peregrino et aemiliano conss.>

CJ.9.35.0. De iniuriis.

CJ.9.35.1: Imperator Alexander Severus

Nec servis quidem alienis licet facere iniuriam. * alex. a. syro. * <a 222 pp. xi k. dec. alexandro a. cons.>

CJ.9.35.2: Imperator Alexander Severus

Iniuriarum actio tibi duplici ex causa competit, cum et maritus in uxoris pudore et pater in existimatione filiorum propriam iniuriam pati intelleguntur. * alex. a. davo. * <a 230 pp. prid. idus maias agricola et clemente conss.>

CJ.9.35.3: Imperator Gordianus

Si non es nuntiator, vereri non debes, ne eapropter, quod iniuriae faciendae gratia quidam te veluti delatorem esse dixerunt, opinio tua maculata sit. quin immo adversus eos, quos minuendae opinionis tuae causa aliquid confecisse comperietur, more solito iniuriarum iudicio experiri potes. * gord. a. donato. * <a 239 pp. ii id. iul. gordiano a. et aviola conss.>

CJ.9.35.4: Imperatores valer., gallien.

Atrocem sine dubio iniuriam esse factam manifestum est, si tibi illata est, cum esses in sacerdotio et dignitatis habitum et ornamenta proferres: et ideo vindictam potes eo nomine exsequi. * valer. et gallien. aa. et valer. c. vindi. * <a 259 pp. ii... aemiliano et basso conss.>

CJ.9.35.5: Imperatores Diocletianus, Maximianus

Si non convicii consilio te aliquid iniuriosum dixisse probare potes, fides veri a calumnia te defendit. si in rixa inconsulto calore prolapsus homicidii convicium obiecisti et ex eo die annus excessit, cum iniuriarum actio annuo tempore praescripta sit, ob iniuriae admissum conveniri non potes. * diocl. et maxim. aa. victorino. * <a 290 pp. vi id. iul. ipsis iiii et iii aa. conss.>

CJ.9.35.6: Imperatores Diocletianus, Maximianus

Cum nec patronos iniuriam facere libertis iuris aequitas permittat, proponasque patronae heredes eum, qui libertatem a defuncta acceperat, iniuriis adficere, curabit praeses provinciae contumeliam heredum compescere. * diocl. et maxim. aa. flaviano. * <a 290 pp. id. iul. ipsis iiii et iii aa. conss.>

CJ.9.35.7: Imperatores Diocletianus, Maximianus

Iniuriarum causa non publici iudicii, sed privati continet querellam. * diocl. et maxim. aa. et cc. paenentiano. * <a 293 s. id. febr. sirmi aa. conss.>

CJ.9.35.8: Imperatores Diocletianus, Maximianus

Dominum pro atroci iniuria, quam servus eius passus est, edicti perpetui actione proposita, qua damni etiam haberi rationem verbis evidenter exprimitur, agere posse convenit. * diocl. et maxim. aa. et cc. marciano. * <a 294 s. xv k. nov. cc. conss.>

CJ.9.35.9: Imperatores Diocletianus, Maximianus

Qui liberos infamandi gratia dixerunt servos, iniuriarum conveniri posse non ambigitur. * diocl. et maxim. aa. et cc. nonnae. * <a 294 s. vi k. dec. nicomediae cc. conss.>

CJ.9.35.10: Imperatores Diocletianus, Maximianus

Si quidem aviam tuam ancillam infamandi causa rei publicae civitatis comanensium dixit zenodorus ac recessit, iniuriarum actione statim conveniri potest. nam si perseveret in causa facultatem habens agendi, super hac deferri querellam ac tunc demum, si non esse serva fuerit pronuntiata, postulari convenit. * diocl. et maxim. aa. et cc. paulo. * <a 294 s. xv k. ian. nicomediae cc. conss.>

CJ.9.35.11: Imperator Zeno

Si quando iniuriarum actio, quam inter privata delicta veteris iuris auctores connumerant, a quibuslibet illustribus viris, militantibus seu sine cingulo constitutis, vel uxoribus eorum vel liberis masculini sexus vel filiabus, superstitibus videlicet patribus aut maritis illustribus, vel si adversus aliquam huiusmodi personam criminaliter forte movetur, ipsos quidem, qui super iniuria queruntur, inscribere aliaque omnia, quae in huiusmodi causis de more procedunt, sollemniter observare decernimus: licere autem illustri accusatori vel reo, uxori vel liberis masculini sexus seu filiae itidem illustris superstitis causam iniuriarum in quocumque iudicio competenti per procuratorem criminaliter suscipere vel movere, sententiam iudice contra eum qui procuratorem dederit, etsi ipse non adesset iudiciis nec causam per procuratorem diceret, legibus prolaturo: ita tamen, ut nullus alius idem sibi audeat vindicare vel a nostro numine postulare: sed in ceteris mos iudiciorum qui hactenus obtinuit et in posterum servetur intactus. * zeno a. alexandro viro illustri. * <a 478 d. v non. constantinopoli illo vc. cons.>

CJ.9.36.0. De famosis libellis.

CJ.9.36.2pr.: Imperatores Valentinianus, Valens

Si quis famosum libellum sive domi sive in publico vel quocumque loco ignarus reppererit, aut corrumpat priusquam alter inveniat, aut nulli confiteatur inventum. * valentin. et valens aa. edictum. * <a 365 d. xiiii k. mart. constantinopoli valentiniano et valente aa. conss.>

CJ.9.36.2.1: Imperatores Valentinianus, Valens

Sin vero non statim easdem chartulas vel corruperit vel igni consumpserit, sed vim earum manifestaverit, sciat se quasi auctorem huiusmodi delicti capitali sententia subiugandum. <a 365 d. xiiii k. mart. constantinopoli valentiniano et valente aa. conss.>

CJ.9.36.2.2: Imperatores Valentinianus, Valens

Sane si quis devotionis suae ac salutis publicae custodiam gerit, nomen suum profiteatur et ea, quae per famosum persequenda putavit, ore proprio edicat, ita ut absque ulla trepidatione accedat, sciens, quod si adsertionibus veri fides fuerit opitulata, laudem maximam ac praemium a nostra clementia consequetur. <a 365 d. xiiii k. mart. constantinopoli valentiniano et valente aa. conss.>

CJ.9.36.2.3: Imperatores Valentinianus, Valens

Sin vero minime haec vera ostenderit, capitali poena plectetur. huiusmodi autem libellus alterius opinionem non laedat. <a 365 d. xiiii k. mart. constantinopoli valentiniano et valente aa. conss.>

CJ.9.37.0. De abigeis.

CJ.9.37.1: Imperatores Arcadius, Honorius

Abacti animalis accusatio non solum cum inscriptionibus, sed etiam sine ea observatione proponitur. * arcad. et honor. aa. pasiphilo. * <a 395 d.Viii k.Ian.Mediolani olybrio et probino conss.>

CJ.9.38.0. De nili aggeribus non rumpendis.

CJ.9.38.1: Imperatores Honorius, Theodosius

Si quis posthac per aegyptum intra duodecimum cubitum fluminis nili ulla fluenta de propriis ac vetustis usibus praeter fas praeterque morem antiquitatis usurpaverit, flammis eo loco consumatur, in quo vetustatis reverentiam et propemodum ipsius imperii appetierit securitatem: consciis et consortibus eius deportatione constringendis, ita ut numquam supplicandi eis vel recipiendi civitatem vel dignitatem vel substantiam licentia tribuatur. * honor. et theodos. aa. anthemio pp. * <a 409 d.X k.Oct.Constantinopoli honorio viii et theodosio iii aa.Conss. >

CJ.9.39.0. De his qui latrones vel in aliis criminibus reos occultaverint.

CJ.9.39.1pr.: Imperatores Valentinianus, Valens, Gratianus

Eos, qui se cum alieni criminis reo occultando eum sociarunt, par ipsos et reos poena expectet. * valentin. valens et grat. aaa. simplicio vic. * <a 374 pp.Romae x k.April.Gratiano a.Iii et equitio conss.>

CJ.9.39.1.1: Imperatores Valentinianus, Valens, Gratianus

Et latrones quisquis sciens susceperit vel offerre iudiciis supersederit, supplicio corporali aut dispendio facultatum pro qualitate personae et iudicis aestimatione plectatur. <a 374 pp.Romae x k.April.Gratiano a.Iii et equitio conss.>

CJ.9.39.2pr.: Imperator Marcianus

Si qui latrones seu aliis criminibus obnoxii in possessione degunt seu latitant, dominus possessionis, si praesto est, aut procuratores, si dominus abest, seu primates possessionis ultro eos offerant aut, si scientes hoc sponte non fecerint, conveniantur a civili officio, ut tradant provinciali iudicio eos qui requiruntur, prout iuris est sub examine iudicis arguendos et poenas post documenta congruas subituros. si vero exhibere eos domini vel procuratores aut primates possessionis distulerint, tunc ad detinendos eos a rectore provinciae omnia civilia dirigantur auxilia. * marcian. a. palladio pp. * <a 451 d.Xii k.Ian.Constantinopoli marciano a. cons.>

CJ.9.39.2.1: Imperator Marcianus

Si autem propter multitudinem forte eorum, qui in praedio sunt, civile adminiculum sufficere non posse constiterit et memorati audaces exsecutoribus obiecerint manus vel alias parere distulerint, tunc iudex provinciae memor periculi sui a viro devoto tribuno seu primatibus militum qui in locis sunt auxilium postulet, ut per militarem manum correpti accusati sine damno atque laesione cuiuslibet legibus offerantur et convicti poenas subeant competentes: non ignaro iudice, quod, si adversus innocentes vel ob aliam causam praeter latronum vel aliorum nocentium investigationem militare auxilium postulaverit aut dispendiis adfici provinciales concesserit, commotione severissima, prout tua celsitudo iudicaverit, ferietur. <a 451 d.Xii k.Ian.Constantinopoli marciano a. cons.>

CJ.9.39.2.1a: Imperator Marcianus

Tribuni etiam seu primates numerorum, qui in locis sunt, admoniti per litteras iudicis si adminiculum militare praebere noluerint, aut si ab ipsis militibus damna provincialibus inflicta fuerint, et damna et laesiones restituent et acerrima condemnatione pro arbitrio virorum illustrium magistrorum militum ferientur. <a 451 d.Xii k.Ian.Constantinopoli marciano a. cons.>

CJ.9.39.2.2: Imperator Marcianus

Domini etiam praediorum seu procuratores vel primates possessionum impunes non manebunt, si praesentes et scientes ultro non obtulerint nocentes vel admoniti eos exhibere distulerint: nam dominus quidem possessionis dominio privabitur, procurator vero seu primates perpetuo exilio subiacebunt. ipsi quoque procuratori vel domino vel primatibus possessionis, si se ad comprimendam multitudinem rusticanorum sufficere non posse firmaverint et id provinciali iudicio palam fecerint, militare auxilium rector provinciae a tribuno vel primatibus numeri faciet dari, si civilia sufficere non posse perspexerit. <a 451 d.Xii k.Ian.Constantinopoli marciano a. cons.>

CJ.9.39.2.3: Imperator Marcianus

Si vero post exhibitionem eorum qui accusantur innocentes eos esse et nihil criminis admisisse patuerit, accusatores poenam quae in calumniatores exercenda est subire cogantur. exemplo autem grave est sic latronem requirere, ut innocentibus periculum fiat. <a 451 d.Xii k.Ian.Constantinopoli marciano a. cons.>

CJ.9.40.0. De requirendis.

CJ.9.40.1pr.: Imperator Antoninus

Cum absenti reo gravia crimina intentantur, sententia festinari non solet, sed adnotari, ut requiratur, non utique ad poenam, sed ut potestas ei sit purgandi se, si potuerit. * ant. a. rustico. * <a 211 d.Gentiano et basso conss.>

CJ.9.40.1.1: Imperator Antoninus

Postquam vero requirendus factus intra annum redierit, si se crimine purgaverit, res arbitrio iudicis signatas recipiat: sin vero intra id tempus reversus post intimationem suam fuerit defunctus, etsi necdum se purgaverit, ad heredes proprios res transmittit. <a 211 d.Gentiano et basso conss.>

CJ.9.40.2: Imperator Constantinus

Quicumque ex eo die, quo reus fuerit in iudicio petitus, intra anni spatium noluerit adesse iudicio, res eius fisco vindicentur, et si postea repertus nocens fuerit deprehensus, saeviori sententiae subiugetur. sed et si argumentis evidentibus et probatione dilucida innocentiam suam purgare suffecerit, nihilo minus facultates eius penes fiscum remaneant. * const. a. ad ianuarium. * <a 319 d.Id.Ian.Acc.V k.Aug.Corintho constantino a.V et licinio c.Conss.>

CJ.9.40.3: Imperatores Honorius, Theodosius

In pecuniariis causis edictum contra latentem propositum existimationem eius non laedit. criminalis vero programmatis tenor hanc tantum ferat de iure censuram, ut inter reos adnotati non iam patrimonium debeat transferre, sed famae existimationem laedere. * honor. et theodos. aa. palladio pp. * <a 421 d.Viii id.Iul.Ravennae eustathio et agricola conss.>

CJ.9.41.0. De quaestionibus.

CJ.9.41.1pr.: Imperatores Severus, Antoninus

Quaestionem de servis contra dominos haberi non oportet, exceptis adulterii criminibus, item fraudati census accusationibus et crimine maiestatis, quod ad salutem principis pertinet. * sev. et ant. aa. spicio antigono. * <a 196 pp.K.Ian.Dextro et prisco conss.>

CJ.9.41.1.1: Imperatores Severus, Antoninus

In ceteris autem, quamquam ea, quae servus contra dominum dixit, iudicaturi sententiam formare non debeant, tamen si aliis quoque probationibus fides veritatis investigetur, praescriptionis invidia evanescit. <a 196 pp.K.Ian.Dextro et prisco conss.>

CJ.9.41.1.2: Imperatores Severus, Antoninus

In pecuniariis vero causis nec inopia probationum servos contra dominum interrogari posse manifestum est. <a 196 pp.K.Ian.Dextro et prisco conss.>

CJ.9.41.2: Imperatores Severus, Antoninus

Insolitum est et grave exemplo audiri servos adversus tutores vel matrem dominorum suorum, nisi tutelae agatur. * sev. et ant. aa. catulo. * <a 204 pp.Iii id.Sept.Cilone et libone conss.>

CJ.9.41.3: Imperator Antoninus

Primum servi alieni interrogabuntur. si praestita fuerint ex tanto scelere argumenta, ut videantur accedere ad verisimilia causae crimina, ipsa quoque mulier torquebitur: neque enim aegre feret, si torqueatur, quae venenis viscera hominis extinxit. * ant. a. cum cognitionaliter audisset, dixit: * <a 216 pp.Vii k.April.Sabino et anullino conss.>

CJ.9.41.4: Imperator Antoninus

Sicuti convictis confessisque ad societatem scelerum vocantibus eos, a quibus apprehensi custoditive sunt, facile credi non oportet, ita, si evidentibus rationibus post commissum communiter facinus ad evitandam de se sententiam id fecisse fuerint probati, publicae vindictae non sunt subtrahendi. * ant. a. pars ex rescripto * <a 216 pp.V k.April.Sabino et anullino conss.>

CJ.9.41.5: Imperator Alexander Severus

Nec si mors testatoris vindicanda est, quaestioni indiscrete subiciuntur hi, qui libertatem supremo iudicio acceperunt. * alex. a. respecto. * <a 224 pp.Vi id.Mart.Iuliano et crispino conss.>

CJ.9.41.6: Imperator Gordianus

Pridem placuit domestica servorum seu libertorum propriorum vel maternorum interrogatione in causis ad dominos vel patronos pertinentibus abstinendum esse, ut neque pro his neque adversus eos in capitalibus vel pecuniariis quaestionibus veritatis vim obtinere possit, quod in confessionem ab eis fuerit deductum. * gord. a. herodiano. * <a 240 pp.Vii id.Mai.Sabino et venusto conss.>

CJ.9.41.7: Imperatores Diocletianus, Maximianus

Servos, qui proprii indubitate iuris tui probabuntur, ad interrogationem nec offerente te produci sineremus: tantum abest, ut et invita te contra dominam vocem rumpere cogantur. * diocl. et maxim. aa. urbanae. * <a 286 pp.K.Nov.Maximo ii et aquilino conss.>

CJ.9.41.8pr.: Imperatores Diocletianus, Maximianus

Milites neque tormentis neque plebeiorum poenis in causis criminum subiungi concedimus, etiamsi non emeritis stipendiis videantur esse dimissi, exceptis scilicet his, qui ignominiose sunt soluti. quod et in filiis militum et veteranorum servabitur. * diocl. et maxim. aa. ad sallustianum praes. * < pp. s. die et consule.>

CJ.9.41.8.1: Imperatores Diocletianus, Maximianus

Oportet autem iudices nec in his criminibus, quae publicorum iudiciorum sunt, in investigatione veritatis a tormentis initium sumere, sed argumentis primum verisimilibus probabilibusque uti. < pp. s. die et consule.>

CJ.9.41.8.2: Imperatores Diocletianus, Maximianus

Et si his veluti certis indiciis ducti investigandae veritatis gratia ad tormenta putaverint esse veniendum, tunc id demum facere debebunt, si personarum condicio pateretur. hac enim ratione etiam universi provinciales nostri fructum ingenitae nobis benevolentiae consequentur. < pp. s. die et consule.>

CJ.9.41.9: Imperatores Diocletianus, Maximianus

Super statu ingenuitatis per omnia interrogationum et quaestionum vestigia decurrendum est, ne alieni forte sordidae stirpis splendidis et ingenuis natalibus audeant subrogari, vel propria ac debita per compositam quaestionem quibus competit successio denegetur. * diocl. et maxim. aa. et cc. ad charisium praes. syriae. * <a 290 d.Vi id.Mai.Hemesa ipsis iiii et iii aa. conss.>

CJ.9.41.10: Imperatores Diocletianus, Maximianus

Cum testamentum falsum esse proponas, ad illuminandam veritatem servos hereditarios, etsi libertas eis ab eo qui se heredem esse adfirmat praestita est, etiam per tormenta interrogari constitutionibus principum est permissum. * diocl. et maxim. aa. ptolemaeo. * <a 290 pp.Vi k.Sept.Ipsis iiii et iii aa. conss.>

CJ.9.41.11pr.: Imperatores Diocletianus, Maximianus

Divo marco placuit eminentissimorum quidem necnon etiam perfectissimorum virorum usque ad pronepotes liberos plebeiorum poenis vel quaestionibus non subici, si tamen propioris gradus liberos, per quos id privilegium ad ulteriorem gradum transgreditur, nulla violati pudoris macula adspergit. * diocl. et maxim. aa. boetho. * <a 290 pp.V k.Dec.Ipsis iiii et iii aa.Conss.>

CJ.9.41.11.1: Imperatores Diocletianus, Maximianus

In decurionibus autem et filiis eorum hoc observari vir prudentissimus domitius ulpianus in publicarum disputationum libris ad perennem scientiae memoriam refert. <a 290 pp.V k.Dec.Ipsis iiii et iii aa.Conss.>

CJ.9.41.12: Imperatores Diocletianus, Maximianus

Quotiens de dominio mancipiorum tractatur, si aliis probationibus veritas illuminari non possit, de se ipsa esse cum tormentis interroganda iuris auctores probant. * diocl. et maxim. aa. aspro. * <a 291 pp.Iii id.Mai.Sirmi tiberiano et dione conss.>

CJ.9.41.13: Imperatores Diocletianus, Maximianus

Hoc, quod placet, si de hereditate quaeratur, hereditarios servos interrogari, tibi opitulari non potest. ibi enim, dum de dominio incertum est, ad quem ex hereditate pertineat, merito per interrogationem hereditarii servi ad veritatis indaginem perveniatur. tu autem adseverando servum communem esse non dubitas portionem ad eum pertinere, contra quem interrogari eum cupis: quae res quaestionem ab eo haberi non permittit, cum nec communis servus adversus dominum, qui non occidisse socium suum dicatur, interrogari possit. * diocl. et maxim. aa. et cc. philippae. * <a 293 s.Iii k.Mai.Heracliae aa. conss.>

CJ.9.41.14: Imperatores Diocletianus, Maximianus

Servos non solum pro dominis, sub quorum dominio sunt constituti, sed nec pro his quorum antea fuerunt interrogari posse constat. * diocl. et maxim. aa. et cc. constantio. * <a 294 s.Viii id.April.Cc. conss.>

CJ.9.41.15: Imperatores Diocletianus, Maximianus

Interrogari servos de facto suo non solum in criminali causa, sed etiam in pecuniaria (veluti quando per eum depositi vel commodati nomine vel in aliis causis legibus cognitis res aliis praestitae sunt) posse non ambigitur. * diocl. et maxim. aa. et cc.Maximo. * <a 294 s.V id.April.Cc.Conss.>

CJ.9.41.16pr.: Imperatores Valentinianus, Valens, Gratianus

Decuriones sive ob alienum sive ob suum debitum exsortes omnino earum volumus esse poenarum, quas fidiculae et tormenta constituunt. quod quidem capitale iudici erit, si in contumeliam ordinis exitiumque temptetur. * valentin. valens et grat. aaa. ad antonium pp.Galliarum. * <a 376 d.Xv k.Oct.Treviris valente v et valentiniano aa. conss.>

CJ.9.41.16.1: Imperatores Valentinianus, Valens, Gratianus

Maiestatis tantummodo reos et quae nefanda dictu sunt conscios aut molientes ex ordine municipali maneat tam cruenta condicio. <a 376 d.Xv k.Oct.Treviris valente v et valentiniano aa. conss.>

CJ.9.41.17pr.: Imperatores Arcadius, Honorius

Nihil sibi deflectens a iustitia indignatio cognitorum, nihil venalis exigentium terror in eas, quae aut innocentia securae aut principalis sunt honore munitae, intellegat licere personas ad inferendas iniurias corporales. habeat hanc mercedem laboris multorum munerum testimoniis commendata devotio. * arcad. et honor. aa. messalae pp. * <a 399 d.Xii k.Sept.Theodoro cons.>

CJ.9.41.17.1: Imperatores Arcadius, Honorius

Idem est et si munia decurionatus quis deposuit: nam et ipse propter pristinam dignitatem quaestionem non patitur. <a 399 d.Xii k.Sept.Theodoro cons.>

CJ.9.41.18: Imperator Justinianus

De tormentis hereditariorum servorum sancimus, nullo discrimine secundum anteriores leges et constitutiones interposito, sive de iure hereditatis aliqua moveatur inter heredes quaestio sive de corporibus tantum hereditariis sive de utroque eorum, servos de corporibus tantum hereditariis interrogari: et licere servos eos tantummodo, qui res regendas detinent, sive in servitute relicti sunt sive libertatem adipisci per ultimam testatoris voluntatem praecepti sunt, in quaestionem rerum hereditariarum deduci et ex his ea quae occultata sunt revelari: prius sacramento super his a nobis statuto praestando. * iust. a. demostheni pp. * <a 529 d.Xv k.Oct.Chalcedone decio vc.Cons.>

CJ.9.42.0. De abolitionibus.

CJ.9.42.1: Imperatores Diocletianus, Maximianus

Praeses provinciae si perspexerit abolitionem ad omnia crimina quae mota sunt pertinentem a se impetratam, ne semel finita instaurentur, intercessione auctoritatis suae prospiciet. supplicatione vero porrecta nutui principali praefata abolitione sopitum crimen ab eadem persona renovari potest. * diocl. et maxim. aa. paternae. * <a 287 pp.Xv k.Dec.Diocletiano iii et maximiano aa.Conss.>

CJ.9.42.2pr.: Imperator Constantinus

Abolitio praesentibus partibus causa cognita non a principe, sed a competenti iudice postulari debet, id est si per errorem seu temeritatem seu calorem ad accusationem prosiluerit: hoc enim accusator explanans abolitioni locum faciet. * const. a. ad ianuarinum pu. * <a 319 d.Vi k.Dec.Serdicae constantino a.V et licinio c.Conss.>

CJ.9.42.2.1: Imperator Constantinus

Sin autem per depectionem vel pecuniis a reo corruptus ad postulandam abolitionem venit, redemptae miserationis vox minime admittatur, sed adversus nocentem reum inquisitione facta poena competens exseratur. <a 319 d.Vi k.Dec.Serdicae constantino a.V et licinio c.Conss.>

CJ.9.42.2.2: Imperator Constantinus

Hi autem, qui suas suorumque iniurias defendunt et qui cognatos suos in accusationem deduxerunt, omnimodo abolitionem petere non prohibentur. <a 319 d.Vi k.Dec.Serdicae constantino a.V et licinio c.Conss.>

CJ.9.42.3pr.: Imperatores Valentinianus, Valens, Gratianus

Fallaciter incusantibus accusationis abolitio non dabitur. * valentin. valens et grat. aaa. ad probum pp. * <a 369 d prid.Id.Oct.Treviris valentiniano np.Et victore conss.>

CJ.9.42.3.1: Imperatores Valentinianus, Valens, Gratianus

Sin autem sincera mente accusationem instituerit et reus aliquid iniuriae inscriptionis illatae toleraverit, id est si vel carcerem sustinuerit vel tormenta vel verbera vel catenas, abolitio non petetur, nisi forte ille qui haec passus est suum consensum ad petendam abolitionem accommodavit. <a 369 d prid.Id.Oct.Treviris valentiniano np.Et victore conss.>

CJ.9.42.3.2: Imperatores Valentinianus, Valens, Gratianus

Quando autem reus nihil tale passus est, postquam fuerit officii custodiae traditus, intra dies triginta accusatori petenti, etiam invito reo, dari permittitur. post hoc vero tempus, nisi reus consentiat, censemus non esse tribuendam. <a 369 d prid.Id.Oct.Treviris valentiniano np.Et victore conss.>

CJ.9.42.3.3: Imperatores Valentinianus, Valens, Gratianus

Quod si ingenuorum, licet plebeiorum, qui conscii vel participes criminum non erant, testimonii gratia corpora fuerint lacessita verberibus tormentisque vexata , abolitionem etiam duarum partium consensu petitam iubemus vigore iudicis denegari et crimen propositum, cuius examen tormentis iam coeperat, agitari. <a 369 d prid.Id.Oct.Treviris valentiniano np.Et victore conss.>

CJ.9.42.3.4: Imperatores Valentinianus, Valens, Gratianus

Sin autem testibus tormenta minime sunt illata, et sic abolitio non dabitur in illis criminibus, ut in violata maiestate aut patria oppugnata vel prodita aut peculatus admissio aut sacramentis desertis, omniaque quae iuri veteri continentur: in quibus iudex non minus accusatorem ad docenda quae detulit, quam reum purganda quae negat debet urguere. <a 369 d prid.Id.Oct.Treviris valentiniano np.Et victore conss.>

CJ.9.43.0. De generali abolitione.

CJ.9.43.1: Imperator Antoninus

Qui potentatus et vis aliorumque criminum reum fecit, si post abolitionem ex forma solita reorum factam et edicta proposita intra diem statutum repetere supersederit, persequi crimina volens non est audiendus. * ant. a. rutiliano consulari lyciae. * <a 215 pp.Viii k.Mai.Laeto ii et cereale conss.>

CJ.9.43.2: Imperatores Diocletianus, Maximianus

Cum eo tempore, quo indulgentia nostra crimina extinxit, accusatio a te instituta non fuerit, publicae abolitionis praescriptio cessat. * diocl. et maxim. aa. paulino. * <a 286 pp.Vi id.Febr. maximo ii et aquilino conss.>

CJ.9.43.3: Imperatores Valentinianus, Valens, Gratianus

Indulgentia, patres conscripti, quos liberat notat nec infamiam criminis tollit, sed poenae gratiam facit. * valentin. valens et grat. aaa. ad senatum. * <a 371 d.Xiiii k.Iun.Treviris gratiano a.Ii et probo conss.>

CJ.9.44.0. Ut intra certum tempus criminalis quaestio terminetur.

CJ.9.44.1: Imperatores Valentinianus, Theodosius, Arcadius

Quisquis accusator reum in iudicium sub inscriptione detulerit, si intra certum tempus accusationem coeptam persequi supersederit vel, quod est contumacius, ultimo die adesse neglexerit, quarta bonorum omnium parte multatus aculeos consultissimae legis incurrat, scilicet manente infamia, quam veteres iusserant sanctiones. * valentin. theodos. et arcad. aaa. desiderio vic. * <a 385 d.Iiii id.Iul.Treviris arcadio a.Et bautone conss.>

CJ.9.44.2pr.: Imperatores Honorius, Theodosius

Noverint iudices cuilibet culmini honorive praesidentes, necessariis utrique parti, si petantur, dilationibus non negatis praecedentibus scilicet inscriptionibus, intra certum tempus criminales causas limitandas: quo emenso subeat accusator, quia destitit, poenam legibus constitutam, et si persona vilior fuerit, cui damnum famae non sit iniuria, poenam patiatur exilii, nisi forte intra statuti temporis metas consensus partium abolitionem poposcerit. * honor. et theodos. aa. caeciliano pp. * <a 409 d.Xii k.Febr.Ravennae honorio viii et theodosio iii aa. conss.>

CJ.9.44.2.1: Imperatores Honorius, Theodosius

In iudicum autem debet esse diligentia, ut, si nulla rationabilis a reo vel accusatore dilatio postuletur, urgueant talium causarum notionem non expectatis moris. <a 409 d.Xii k.Febr.Ravennae honorio viii et theodosio iii aa. conss.>

CJ.9.44.3: Imperator Justinianus

Criminales causas omnimodo intra duos annos a contestatione litis connumerandos finiri censemus nec ulla occasione ad ampliora produci tempora, sed post bienii excessum minime ulterius lite durante accusatum absolvi, scientibus iudicibus eorumque officiis, quod, si litigatoribus admonentibus ipsis litis introductionem vel examinationem distulerint, poena vicenarum librarum auri ferientur. * iust. a. menae. pp. * <a 529 d.K.April.Decio vc.Cons.>

CJ.9.45.0. Ad senatus consultum turpillianum.

CJ.9.45.1: Imperator Antoninus

Is demum in senatus consultum incidisse videtur, qui crimen publici iudicii detulit et causa ordinata, id est inscriptionibus depositis et fideiussore de exercenda lite praestito eoque qui accusatur sub custodia officii facto, non impetrata abolitione ab exsecutione criminis destitit. * ant. a. anniano. * <a xxx . >

CJ.9.45.2: Imperator Gordianus

Si pro eo, qui in crimen subscripsit, fidem tuam adstrinxisti isque destitit et commissa stipulatio est, non ultra quantitatem quam spopondisti obligatus es: eo qui destitit infamia nihilo minus notando et extra ordinem secundum iudicialem motum puniendo. * gord. a. appio. * <a 239 pp.Vi id.Iun.Gordiano a.Et aviola conss.>

CJ.9.45.3: Imperatores valer., gallien.

Quamvis eum ordinem scriptura contineat, ut primo abolitio criminis posceretur, tunc de omnibus placitis obtemperaretur, non observantibus tamen adversariis pactorum fidem instaurare accusationem minime potes, a qua ipse destitisti. * valer. et gallien. aa. arcadio. * <a 258 pp.Prid non.Iul.Tusco et basso conss.>

CJ.9.45.4: Imperatores valer., gallien.

Si is, de quo supplicas, contra parentes vestros desertam, ut dicis, accusationem coeperit persequi, praescriptio illi in iudicio praesidis destitutae rei poterit opponi. * valer. et gallien. aa. patrophilo. * <a 260 pp.Prid.Non.Mai.Saeculare et donato conss.>

CJ.9.45.5: Imperatores Diocletianus, Maximianus

Si femina suam suorumque iniuriam exsequatur, cum ipsa pacto contra vetitum destitisse profiteatur, in senatus consulti turpilliani poenam eam incidisse certi iuris est. * diocl. et maxim. aa. et cc.Matronae. * <a 294 s.Vi non.April.Pisi cc.Conss.>

CJ.9.45.6: Imperatores Diocletianus, Maximianus

In exsecutionibus criminum obtinuisse videtur illos destitisse, qui animum accusationis implendae prorsus deseruerunt. cum igitur aliis ex causis vel simplicitatis ratione necdum te ad finem vindictae pervenisse preces tuae testentur, poteris postposita formidine impedimenti super aliquantulo silentio institutam accusationem secundum leges perferens quam probabis tibi debitam vindictam reportare. * diocl. et maxim. aa. et cc.Luciliano. * <a xxx pp.Iii k.Iul.Diocletiano vi et maximiano aa.Conss.>

CJ.9.46.0. De calumniatoribus.

CJ.9.46.1: Imperator Alexander Severus

Calumnia eo tempore coerceri solet, quo de causa praesente accusatore iudicatur. ideoque posteaquam de causa iudicatum est, contra consuetudinem calumniam accusatoris puniri desideras. * alex. a. sabino. * <a xxx >

CJ.9.46.2pr.: Imperator Alexander Severus

Mater inter eas personas est, quae sine calumniae timore necem filii sui vindicare possunt: idque beneficium senatus consulti et in aliis publicis iudiciis servatum est. * alex. a. apolloniae. * <a 224 pp.Vi k.Iul.Iuliano et crispino conss.>

CJ.9.46.2.1: Imperator Alexander Severus

Sed et extraneus heres, qui suspicionem, quam de morte sua habuisse defunctus cavit, exsequitur, hoc nomine a calumnia excusatus est, cum inter voluntariam accusationem et officii necessitatem heredis multum intersit. <a 224 pp.Vi k.Iul.Iuliano et crispino conss.>

CJ.9.46.3: Imperator Alexander Severus

Qui non probasse crimen quod intendit pronuntiatur, si calumniae non damnetur, detrimentum existimationis non patitur. non enim, si reus absolutus est, ex eo solo etiam accusator, qui potest iustam habuisse veniendi ad crimen rationem, calumniator credendus est. * alex. a. eumeliano. * <a xxx >

CJ.9.46.4: Imperatores carus, carinus, numer.

Calumniae poena in paternae mortis accusatione cessat. * carus carinus et numer. aaa. archelao. * <a 283 pp.Xi k.Dec.Caro et carino aa. conss.>

CJ.9.46.5: Imperatores Diocletianus, Maximianus

Qui calumniatores pronuntiantur, in publicorum dumtaxat iudiciorum quaestionibus , non etiam in liberalibus causis, quae privatas disceptationes continent, periclitari solent. * diocl. et maxim. aa. caesio. * <a xxx pp. >

CJ.9.46.6: Imperatores Diocletianus, Maximianus

Dominis servorum per accusatoris calumniam tortorum adversus eum poena dupli lege iulia providetur. * diocl. et maxim. aa. et cc.Domitio. * <a 290 vel 293 s.Xvi k.Sept.Ipsis aa. conss.>

CJ.9.46.7: Imperatores Valentinianus, Valens

Non prius quemquam sinceritas tua ad tuae sedis examen iubebit adduci, quam sollemnibus satisfecerit, qui nititur fidem doloris adserere, cum iuxta formam iuris antiqui ei qui coeperit arguere aut vindicta proposita sit, si vera detulerit , aut supplicium, si fefellerit. * valentin. et valens aa. ad valerianum. * <a 366 d.Vii k.Dec.Remis gratiano np.Et dagalaifo conss.>

CJ.9.46.8pr.: Imperatores Gratianus, Valentinianus, Theodosius

Nostris et parentum nostrorum constitutionibus comprehensum est eos, qui accusationem alienis nominibus praesumpsissent, delatorum numero esse ducendos. * grat. valentin. et theodos. aaa. menandro vic. asiae. * <a 385 d.Viii id.Mai.Constantinopoli arcadio a.Et bautone conss.>

CJ.9.46.8.1: Imperatores Gratianus, Valentinianus, Theodosius

Atque ideo calumniosissimum caput et personam iudicio irritae delationis infamem supplicium sequatur, quo posthac singuli universique cognoscant non licere in eo quod non possit ostendi iudicium animos commovere. <a 385 d.Viii id.Mai.Constantinopoli arcadio a.Et bautone conss.>

CJ.9.46.9: Imperatores Gratianus, Valentinianus, Theodosius

Fallaciter incusantibus, maxime post exhibitionem accusati, nullius iuris color velut derivata accusatione proficiat: non publica abolitio, non privata talibus prospiciat subveniatque personis: non specialis indulgentia, ne beneficium quidem eos generale subducat. * grat. valentin. et theodos. aaa. floro pp. * <a 382 d xv k.Iun.Constantinopoli antonio et syagrio conss.>

CJ.9.46.10: Imperatores Honorius, Theodosius

Quisquis crimen intendit, non impunitam fore noverit licentiam mentiendi, cum calumniantes ad vindictam poscat similitudo supplicii. * honor. et theodos. aa. conss. praett. tribb. plebis senatui s.D.* <a 423 d.Viii id.Aug. ravennae asclepiodoto et mariniano conss.>

CJ.9.47.0. De poenis.

CJ.9.47.1: Imperator t. ael. ant.

Etiam in opus perpetuum damnati non dissimilis condicionis sunt ab his qui deportantur in insulam. * titus ael. ant. a. * < pp. sine die et cons.>

CJ.9.47.2: Imperator Antoninus

Procurator meus, qui vice praesidis non fungebatur, exilii poenam tibi non potuit inrogare, ac propterea frustra vereris sententiam, quae nulla iuris ratione subnixa est. * ant. a. valerio. * <a 212 pp.Vi k.Iul.Duobus aspris conss.>

CJ.9.47.3: Imperator Antoninus

Decurionem in opus publicum dari non oportere manifestum est. * ant. a. geminio. * <a xxx >

CJ.9.47.4: Imperator Antoninus

Si ante conceptus est puer, de quo libellos dedisti, quam mater eius in metallum daretur, natus condicionis eius est, cuius ante condemnationem mater eius fuit. * ant. a. marinae. * <>

CJ.9.47.5: Imperator Antoninus

Honor veteranis etiam in eo habitus est, ut liberi eorum usque ad primum dumtaxat gradum poena metalli vel operis publici non adficiantur, sed in insulam relegentur. * ant. a. senecioni. * <a xxx >

CJ.9.47.6: Imperator Antoninus

Incredibile est, quod adlegas liberum hominem, ut vinculis perpetuis contineretur, esse damnatum: hoc enim vix in sola servili condicione procedere potest. * ant. a. apioni. * <a 214 pp.Iii id.Febr.Messala et sabino conss.>

CJ.9.47.7: Imperator Alexander Severus

Impunitas delictis propter aetatem non datur, si modo in ea quis sit, in quam crimen quod intenditur cadere potest. * alex. a. isidoro. * <a xxx >

CJ.9.47.8: Imperator Alexander Severus

Deportatorum in insulam ab eo, cui id faciendi ius erat, bona fisco vindicantur, relegatorum autem non nisi sententia specialiter adempta fuerint. * alex. a. victorino. * <a xxx >

CJ.9.47.9: Imperator Alexander Severus

Si matrem tuam decurionis filiam fuisse probatum fuerit, apparebit eam non oportuisse in ministerium metallicorum nec in opus metalli dari. * alex. a. demetriano. * <a xxx >

CJ.9.47.10: Imperator Alexander Severus

Servus sub poena vinculorum sine temporis praefinitione domino reddi iussus sententia praesidis provinciae perpetuo vinctus esse debet. * alex. a. catulino. * <a 224 pp.Viiii k.Sept. iuliano et crispino conss.>

CJ.9.47.11: Imperator Gordianus

Metalli supplicium tam ad personas liberas quam etiam ad serviles pertinet condiciones. * gord. a. attiano. * <a xxx >

CJ.9.47.12: Imperatores Diocletianus, Maximianus

Decurionum filii non debent bestiis subici. nec enim vocibus eorum credi oportet , quando aut obnoxium crimine absolvi aut innocentem condemnari desideraverint. * diocl. et maxim. aa. in consistorio dixerunt: * < s. die et consule>

CJ.9.47.13: Imperatores Diocletianus, Maximianus

Servo ex sententia damnato si quoquo modo ex sententia proprietatis ius amputatum non sit, domino suo obsequi eum par est. * diocl. et maxim. aa. ursiano. * <a xxx >

CJ.9.47.14: Imperatores Diocletianus, Maximianus

Si operis publici temporalis poenae sententia praefinitus necdum excessit dies, hunc expectari convenit, cum non remitti poenam facile publice intersit, ne ad maleficia temere quisquam prosiliat. * diocl. et maxim. aa. et cc.Vitali. * <a xxx >

CJ.9.47.15: Imperatores Diocletianus, Maximianus

Poenam sua dictam sententia praesidi provinciae revocare non licet. * diocl. et maxim. aa. et cc.Agathemero. * <>

CJ.9.47.16: Imperator Constantinus

Qui sententiam laturus est, temperamentum hoc teneat, ut non prius capitalem in quempiam promat severamque sententiam, quam in adulterii vel homicidii vel maleficii crimen aut sua confessione aut certe omnium, qui tormentis vel interrogationibus fuerint dediti, in unum conspirantem concordantemque rei finem convictus sit et sic in obiecto flagitio deprehensus, ut vix etiam ipse ea quae commiserit negare sufficiat. * const. a. ad catullinum. * <a 314 d.Iii non.Nov.Treviris accepta xv k.Mai.Hadrumeti volusiano et anniano conss.>

CJ.9.47.17: Imperator Constantinus

Si quis in metallum fuerit pro criminum deprehensorum qualitate damnatus, minime in eius facie scribatur, cum et in manibus et in suris possit poena damnationis una scriptione comprehendi, quo facies, quae ad similitudinem pulchritudinis caelestis est figurata, minime maculetur. * const. a. eumelio. * <a 315 d.Xii k.April.Cabilluno constantino a.Iiii et licinio iiii conss.>

CJ.9.47.18pr.: Imperator Constantius

Dum reis manifesta probatione convictis spatium ante sententiam temporis datur, facultas supplicandi vel quibusdam malignis artibus tam praesidum quam officiorum poenas evitandi criminosissimis patet, cum in homicidii crimine et in aliis detectis gravioribus causis ultio differenda non sit. * constantius a. theodoro praesidi arabiae. * <a 346 d.Id.Oct.Constantio a.Iiii et constante c.Conss.>

CJ.9.47.18.1: Imperator Constantius

Igitur de cetero iuxta criminis qualitatem legem oportet servari et in scelerosos et in noxios proferri iuris sententiam. <a 346 d.Id.Oct.Constantio a.Iiii et constante c.Conss.>

CJ.9.47.19: Imperatores Gratianus, Valentinianus

Ne quis pro coercitione delicti vel pistoribus vel cuicumque alteri corpori, cum alterius sit corporis, addicatur: sed unusquisque pro crimine, in quo fuerit deprehensus, motum congruae severitatis excipiat. * grat. et valentin. aa. olybrio pu. * <a 365 <d iii id.April.Valentiniano et valente aa. conss.>

CJ.9.47.20pr.: Imperatores Gratianus, Valentinianus, Theodosius

Si vindicari in aliquos severius contra nostram consuetudinem pro causae intuitu iusserimus, nolumus statim eos aut subire poenam aut excipere sententiam: sed per dies triginta super statu eorum sors et fortuna suspensa sit. * grat. valentin. et theodos. aaa. flaviano pp. illyrici. * <a 382 d.Xv k.Sept.Veronae antonio et syagrio conss.>

CJ.9.47.20.1: Imperatores Gratianus, Valentinianus, Theodosius

Reos sane accipiat vinciatque custodia et excubiis sollertibus vigilanter observet. <a 382 d.Xv k.Sept.Veronae antonio et syagrio conss.>

CJ.9.47.21: Imperatores Gratianus, Valentinianus, Theodosius

Ne diu apparitorum prava admodum venalisque perfidia in publica impune commoda desaeviret, censemus etiam in absentes eos pro competenti ultione debere consurgi. * grat. valentin. et theodos. aaa. et arcad. a. ad principium pp.* <a 385 d.K.Iun.Arcadio a.Et bautone conss.>

CJ.9.47.22pr.: Imperatores Arcadius, Honorius

Sancimus ibi esse poenam, ubi et noxa est. * arcad. et honor. aa. eutychiano pp. * <a 399 d.Viii k.Aug.Constantinopoli theodoro vc.Cons.>

CJ.9.47.22.1: Imperatores Arcadius, Honorius

Propinquos notos familiares procul a calumnia submovemus, quos reos sceleris societas non facit: nec enim adfinitas vel amicitia nefarium crimen admittunt. <a 399 d.Viii k.Aug.Constantinopoli theodoro vc.Cons.>

CJ.9.47.22.2: Imperatores Arcadius, Honorius

Peccata igitur suos teneant auctores nec ulterius progrediatur metus, quam reperietur delictum. <a 399 d.Viii k.Aug.Constantinopoli theodoro vc.Cons.>

CJ.9.47.22.3: Imperatores Arcadius, Honorius

Hoc singulis quibusque iudicibus intimetur. <a 399 d.Viii k.Aug.Constantinopoli theodoro vc.Cons.>

CJ.9.47.23pr.: Imperatores Honorius, Theodosius

Omnes, quos damnationis condicio diversis exiliis destinatos metas temporis praestituti in carceris implesse custodia deprehendit, solutos poena vinculisque laxatos custodia liberari praecipimus nec formidare miserias ullas exilii. * honor. et theodos. aa. ad anthemium pp. * <a 414 d.Xiiii k.Mai.Constantio et constante conss.>

CJ.9.47.23.1: Imperatores Honorius, Theodosius

Sit satis immensorum cruciatuum semel luisse supplicia, ne, qui diu privati sunt aurae communis haustu et lucis adspectu non intra breve spatium catenarum ponderibus praegravati, etiam exilii poenam sustinere iterum compellantur. <a 414 d.Xiiii k.Mai.Constantio et constante conss.>

CJ.9.47.24: Imperatores Honorius, Theodosius

Rectores provinciarum conveniri praecipimus, ut hi, quo pro suo crimine poenam exilii sub certo temporis spatio subire decreti sunt, exacto praefinito tempore nec claustris carceralibus nec in locis quibus exules versati sunt teneantur. * honor. et theodos. aa. monaxio pp. * <a 416 d.Iii k.Sept.Eudoxiopoli theodosio a.Vii et palladio vc.Conss.>

CJ.9.47.25: Imperatores Honorius, Theodosius

His, qui conficiendi naves incognitam ante peritiam barbaris tradiderunt, capitale supplicium proponi decernimus. * honor. et theodos. aa. monaxio pp. * <a 419 d.Viii k.Oct.Constantinopoli monaxio et plinta conss.>

CJ.9.48.0. Ne sine iussu principis certis iudicibus liceat confiscare.

CJ.9.48.1: Imperator Theodosius

Nulli iudicum liceat, exceptis his, qui in summa administrationis sunt positi potestate, proscriptionis tempestate totius substantiae aliquem percellere, nisi ad nostras aures hoc ipsum referatur. * theodos. a. et valentin. c.Ad hierium pp. * <a 425 d.X k.Febr.Constantinopoli theodosio a.Xi et valentiniano c. conss.>

CJ.9.49.0. De bonis conscriptorum seu damnatorum.

CJ.9.49.1pr.: Imperator Antoninus

Servorum capitis crimine damnatorum peculia dominis non auferri notum est, sed quod servum dominus habuisse probaverit, recipiet pretiumque rerum, si quae ex eo distractae sunt. * ant. a. Marcello. * <a 213 pp.Iii k.Aug.Antonino a. et balbino conss.>

CJ.9.49.1.1: Imperator Antoninus

Ipsius quoque praesentiae potestas ei dabitur, quoad rationes per eum administratae reddantur ac dispungantur. sed meminisse dominum oportebit instare, ut id velocius fiat, ut poenae suae reddi possit. <a 213 pp.Iii k.Aug.Antonino a. et balbino conss.>

CJ.9.49.2: Imperator Alexander Severus

Deportati nec earum quidem rerum, quas post poenam inrogatam habuerint, heredem habere possunt, sed hae publicantur. * alex. a. frontoni. * <a xxx pp. non.Febr.>

CJ.9.49.3: Imperator Alexander Severus

Si filius tuus, cum esset in tua potestate, in insulam deportari meruit, peculium eius nec quod in castris adquisivit vel quod ei militaturo donasti auferri tibi debet. * alex. a. iuliano. * <a 226 pp.Iiii id.Sept.Alexandro ii et Marcello conss.>

CJ.9.49.4: Imperator Gordianus

In metallum damnatus poenae servus efficitur et ideo eiusmodi sententiam passi bona vindicantur rationibus fisci. quare si quid rerum habuit is, quem postea indulgentia liberatum esse proponis, ad ius fisci potius quam ad ipsius dominium pertinet. * gord. a. callimorpho. * <a xxx pp.X k.Nov.>

CJ.9.49.5: Imperator Philippus

Si, ut proponis, bona eius, qui tutelam tuam administravit, sententiam passi ad fiscum sunt devoluta, procuratorem nostrum adire cura, qui, si quid iure posci animadverterit, non negabit. * philipp. a. et philipp. c. arruntiano. * <a xxx >

CJ.9.49.6: Imperatores Diocletianus, Maximianus

De bonis matris deportatae filiis nihil deberi iuris absolutissimi est. * diocl. et maxim. aa. et cc.Gaudentio. * <a xxx s.Xiii.>

CJ.9.49.7pr.: Imperatores Valentinianus, Valens, Gratianus

Si quis intra provinciam pro qualitate delicti stilum proscriptionis incurrerit, per ordinarii officii sollicitudinem bonorum eius indago diligentissime celebretur, ne quid rei privatae commodis per gratiam atque colludium furto subducatur. * valentin. valens et grat. aaa. ad probum pp. * <a 369 d.Iii non.Mai.Treviris valentiniano np.Et victore conss.>

CJ.9.49.7.1: Imperatores Valentinianus, Valens, Gratianus

Et plena descriptio comprehendat, quod spatium et quod sit ruris ingenium, quid aut cultum sit aut colatur, quid in vineis olivis aratoriis pascuis silvis fuerit inventum, quae etiam gratia et quae amoenitas sit locorum, quis aedificiis ac possessionibus ornatus, quotve mancipia in praediis occupatis vel urbana vel rustica vel quarum artium generibus imbuta teneantur, quot sint casarii vel coloni, quot boum exercitiis terrarum atque vomeribus instruenium, quot pecorum et armentorum greges et in qua diversitate numerati sint, quantum auri et argenti, vestium ac monilium vel in specie vel in pondere et in quibus speciebus, quidve in enthecis sit repertum. <a 369 d.Iii non.Mai.Treviris valentiniano np.Et victore conss.>

CJ.9.49.7.2: Imperatores Valentinianus, Valens, Gratianus

Tum demum omnia ea, quae velle nos perspicis, inquisitione constricta rationalis rei privatae tradantur officio aut palatinis super hac causa missis nostro nectenda patrimonio. <a 369 d.Iii non.Mai.Treviris valentiniano np.Et victore conss.>

CJ.9.49.7.3: Imperatores Valentinianus, Valens, Gratianus

Mox vero ad nos sub litteris publicis iudicis singillatim de omnibus nominatimque referatur, procul dubio neglegentia multanda. <a 369 d.Iii non.Mai.Treviris valentiniano np.Et victore conss.>

CJ.9.49.7.4: Imperatores Valentinianus, Valens, Gratianus

Nam si quid post factam a praedicto officio investigationem rationalis rei privatae, cui inquisitio secunda mandata est, amplius fortassis invenenerit, officium fraudulentum ea condemnatione ferietur, ut aliud tantum quantum fuerat subtractum ex propriis facultatibus inferat. <a 369 d.Iii non.Mai.Treviris valentiniano np.Et victore conss.>

CJ.9.49.8pr.: Imperatores Gratianus, Valentinianus, Theodosius

Si deportatus suos et emancipatos filios habuerit, pars, quae ex bonis eius liberis concessa est, ad eos tantum qui in potestate erant transferatur, si emancipati ea, quae consecuti erant emancipationis tempore, damnose existimant conferenda. * grat. valentin. et theodos. aaa eutropio pp. * <a 380 d.Xv k.Iul.Thessalonicae gratiano v et theodosio aa. conss. >

CJ.9.49.8.1: Imperatores Gratianus, Valentinianus, Theodosius

Sin autem confusionem bonorum et donationis elegerint, omnia ea, quae fiscus liberis damnati concedit, aequae divisionis partibus sortiantur. <a 380 d.Xv k.Iul.Thessalonicae gratiano v et theodosio aa. conss. >

CJ.9.49.8.2: Imperatores Gratianus, Valentinianus, Theodosius

Quae regula etiam in dote filiae vel neptis ex filio deportati conferenda custodienda erit. <a 380 d.Xv k.Iul.Thessalonicae gratiano v et theodosio aa. conss. >

CJ.9.49.9pr.: Imperatores Arcadius, Honorius

Si quis posthac stilum, quod absit, proscriptionis exceperit, uxor res proprias ex quocumque titulo sibi quaesitas veluti manu iniecta mox vindicet aut certe quoquo modo occupatas statim recipiat. dos etiam, non quae aliquotiens inaniter dotalium instrumentorum tenore conscribitur, sed quam se corporaliter tradidisse docuerit, repraesentetur. ea etiam, quae ab innoxio adhuc ante nuptias titulo donationis acceperit, vel durante matrimonio largitione viri ad eam ante proscriptionem pervenerint, apud eam firmiter permaneant. * arcad. et honor. aa. caesario pp. * <a 396 d.Iii non.Aug.Constantinopoli arcadio iiii et honorio iii aa.Conss.>

CJ.9.49.9.1: Imperatores Arcadius, Honorius

Si quid etiam in emancipatos liberos ante tempus criminis ac reatus patrem contulisse claruerit, integrum isdem citra inquietudinem reservetur. quod vero nec uxor nec emancipati liberi potuerint vindicare, captum a publicis personis ita ad me referri specialiter censeo, ut illud quoque addatur, utrum filios habeat qui damnatus est, simulque adiciatur, utrum idem apud se ex causa donationis aliquid vindicaverint. <a 396 d.Iii non.Aug.Constantinopoli arcadio iiii et honorio iii aa.Conss.>

CJ.9.49.9.2: Imperatores Arcadius, Honorius

Sed in his, qui fiscalibus actibus nexi sunt et pro ratiociniis proscribuntur et condemnantur, placuit, si quid proprium uxor habuit vel a marito datum ante initium actum, ex quo origo fraudis ac vitii in iudicium deducta est, si quid deinde in emancipatos filios donatione collatum est, antequam crimen oriatur, intemeratum apud accipientium iura persistere: nec quicquam fisco in qualibet causa teneatur obnoxium, nisi quod in dominio proprio cum obligari ortus est habuit vel quod agens tam suo quam uxoris vel filiorum vel cuiuscumque praeterea nomine comparavit. <a 396 d.Iii non.Aug.Constantinopoli arcadio iiii et honorio iii aa.Conss.>

CJ.9.49.9.3: Imperatores Arcadius, Honorius

Exceptis dumtaxat caesarianis, id est catholicianis, qui ab omni iuris beneficio excluduntur, nisi probata a me purgataque ratiocinia fuerint, ut, quod innoxie habuerint, transmittendi copiam habeant. <a 396 d.Iii non.Aug.Constantinopoli arcadio iiii et honorio iii aa.Conss.>

CJ.9.49.10pr.: Imperatores Theodosius, Valentinianus

Quando quis quolibet crimine damnatus capitalem poenam vel deportationem sustineat, si quidem sine liberis mortuus sit, bona eius ad fiscum perveniant: si vero filii vel nepotes ex defunctis filiis relicti erunt, dimidia parte aerario vindicata alia eis reservetur. idem est et si postumos dereliquerit. * theodos. et valentin. aa. hierio pp. * <a 426 d.X k.Febr.Constantinopoli theodosio xii et valentiniano ii aa. conss.>

CJ.9.49.10.1: Imperatores Theodosius, Valentinianus

Decurioni vero, qui hoc incurrerit, si liberos non habeat, succedat curia bonaque universa detineat aut ipsa per se aut suo ordinatura periculo munera subiturum. <a 426 d.X k.Febr.Constantinopoli theodosio xii et valentiniano ii aa. conss.>

CJ.9.49.10.2: Imperatores Theodosius, Valentinianus

Sin autem erit suboles curiali, etsi ea necdum procreata est, integris patris fortunis fulciatur. <a 426 d.X k.Febr.Constantinopoli theodosio xii et valentiniano ii aa. conss.>

CJ.9.49.10.3: Imperatores Theodosius, Valentinianus

Si filia vel filiae fuerint, pars dimidia ad eas deveniat facultatum, pars ad curiam. <a 426 d.X k.Febr.Constantinopoli theodosio xii et valentiniano ii aa. conss.>

CJ.9.49.10.4: Imperatores Theodosius, Valentinianus

Sin mares curiales fuerint intermixti, dimidia pars eis curiae nomine deferatur, et aliam, quam in commune omnibus tribuit indulgentia principalis, pro virili dividant portione. <a 426 d.X k.Febr.Constantinopoli theodosio xii et valentiniano ii aa. conss.>

CJ.9.49.10.5: Imperatores Theodosius, Valentinianus

Excepta sola maiestatis quaestione: quam si quis sacrilego animo adsumpserit, iuste poenam ad suos etiam posteros mittit. <a 426 d.X k.Febr.Constantinopoli theodosio xii et valentiniano ii aa. conss.>

CJ.9.50.0. De bonis mortem sibi consciscentium.

CJ.9.50.1pr.: Imperator Antoninus

Eorum demum bona fisco vindicantur, qui conscientia delati admissique criminis metuque futurae sententiae manus sibi intulerint. * ant. a. aquilae. * <a 212 pp.Xii k.Ian.Duobus aspris conss.>

CJ.9.50.1.1: Imperator Antoninus

Eapropter fratrem vel patrem tuum si nullo delato crimine, dolore aliquo corporis aut taedio vitae aut furore aut insania aut aliquo casu suspendio vitam finisse constiterit, bona eorum tam ex testamento quam ab intestato ad successores pertinebunt. <a 212 pp.Xii k.Ian.Duobus aspris conss.>

CJ.9.50.2: Imperator Alexander Severus

Eorum, qui in reatu diem suum functi sunt, si non perduellionis causam sustinuerunt nec ob metum criminis mortem sibi consciverunt, bona ad successores transmittuntur. * alex. a. rustico. * <a 226 d.Id.Mai.Alexandro a.Iterum et Marcello conss.>

CJ.9.51.0. De sententiam passis et restitutis.

CJ.9.51.1: Imperator Antoninus

Restituo te in integrum provinciae tuae. ut autem scias, quid sit in integrum: honoribus et ordini tuo et omnibus ceteris. * ant. a. cum salutatus ab oclatinio advento et opellio macrino pp. pp. clariss. viris, item amicis et principal. officiorum et utr. ord. viris et processisset, oblatus est ei iulianus licinianus ab a <xx >

CJ.9.51.2: Imperator Antoninus

Cum patrem tuum in metallum damnatum fuisse proponas eiusque bona merito a fisco occupata sunt, non ideo, quod ex indulgentia mea poena tantummodo metalli liberatus esset, etiam bonorum restitutionem impetravit, nisi speciale beneficium super hoc fuerit impetratum. * ant. a. quieto. * <a xxx >

CJ.9.51.3pr.: Imperator Alexander Severus

Si debitor poenam sententiae passus est, quam bonorum ademptio secuta est, quamvis postea civitati romanae restitutus non totam substantiam, sed aliquid ex indulgentia principis ut haberet impetravit, aeris tamen alieni ex praecedente tempore poena liberatus est. * alex. a. stratoniciano. * <a xxx >

CJ.9.51.3.1: Imperator Alexander Severus

Sin vero partem bonorum accepit, pro rata portione eius tenetur. quod si ob pecuniam debitam fisco bona eius occupata sunt, mansit una cum fideiussoribus propriis creditoribus obligatus. <a xxx >

CJ.9.51.4: Imperator Alexander Severus

Tutor filiorum, quorum te bonorum possessionem accepisse dicis, in metallum damnatus et postea ex indulgentia generali regressus, quamquam locupletior sit, actione tutelae administratae tibi non tenetur, si non gratia sententiae facta specialiter statum pristinum cum bonis recuperaverit. * alex. a. valentinae. * <a xxx >

CJ.9.51.5: Imperator Alexander Severus

Si ademptis bonis in insulam datus sis, quamvis ex indulgentia communi redisti, actiones tamen, quascumque habuisti, remanent in causa bonorum publicatorum, nec ex ordine est quod petis, ut contra heredes tutorum actiones tibi praestentur. * alex. a. iuliano. * <a xxx >

CJ.9.51.6: Imperator Gordianus

In insulam filio deportato hacque ratione vinculo paternae potestatis exempto, si postea ex indulgentia divi alexandri, ut proponis, reditus in patrium solum praecedensque dignitas restituta sit, potestas tamen patria repetita non videtur. * gord. a. fabiano. * <a xxx >

CJ.9.51.7: Imperator Philippus

Generalis indulgentia nostra reditum exsulibus seu deportatis tribuit, non etiam loca militiae pridem adempta concessit neque integram atque illibatam existimationem reservavit. * philipp. a. et philipp. c. cassio. * <a xxx >

CJ.9.51.8: Imperatores valer., gallien.

Frustra adhuc servum esse tui iuris existimas, qui in metallum datus poena eius postea liberatus est. per huiusmodi enim indulgentiae occasionem integrari dominium prius non placuit. verum idcirco tamen impune tibi eum praeses provinciae iniuriosum esse non patietur. quod si quid rerum tuarum tenet, procurator vobis iudex erit: fisci enim coepit esse mancipium. * valer. et gallien. aa. seleuco. * <a xxx >

CJ.9.51.9: Imperatores Diocletianus, Maximianus

Si pater vester in insulam deportatus generali indulgentia restitutus est nec, ut liberos in potestatem reciperet, specialiter impetravit, in dubium non venit hereditatis commodum per vos ei adquiri, quos sententia contra eum prolata patres familias effecit, nequaquam potuisse. * diocl. et maxim. aa. restitutae et aliis. * <a xxx >

CJ.9.51.10: Imperatores Diocletianus, Maximianus

Cum indulgentia nostra interveniente sis reversus ad lares tuos, frustra vereris , ne ex adnotatione praesidis quae iam abolita est calumniam patiaris. * diocl. et maxim. aa. demetrio. * <a xxx >

CJ.9.51.11: Imperatores Diocletianus, Maximianus

Casus eius, qui fundi moverat quaestionem, et ex benignitate nostra facta cum bonis restitutio statum pristinum causae non immutavit. * diocl. et maxim. aa. et cc. philippo. * <a xxx >

CJ.9.51.12: Imperatores Diocletianus, Maximianus

Si deportationis sententiae veniam indulgentia nostra consecuta recepit substantiam, se protegere sceleris poena contra creditores, quo minus iure debitum solvat, improbe conatur. * diocl. et maxim. aa. et cc. tryphoni. * <a xxx >

CJ.9.51.13pr.: Imperator Constantinus

In quaestione testamenti, quod deportati filius remeante patre fecisset, remotis ulpiani atque pauli notis papiniani placet valere sententiam, ut in patris sit filius potestate, cui dignitas ac bona restituta sunt. * const. a. ad maximum pu. * <a 321 d. xviii k. oct. sirmi crispo ii et constantino ii cc. conss.>

CJ.9.51.13.1: Imperator Constantinus

Ita tamen, ut gesta per filium, cuius consilia legitima aetas firmaverat, rata sint eodem in potestate patria redeunte, ne eorum rescissio efficiat, quod est maxime absurdum, eodem tempore nec in patris nec in sua quemquam fuisse potestate. <a 321 d. xviii k. oct. sirmi crispo ii et constantino ii cc. conss.>

CJ.9.51.13.2: Imperator Constantinus

Minores enim aetate iure quicquam agere prohibentur. quibus si damnato patre tutor datus est, necesse est, ut ab officio suo recedat regresso eo, quem non solum nomine redire, sed etiam officium suum nulla pravitate corruptum liberis praebere oportet, ut eorum bona tueatur et augeat. <a 321 d. xviii k. oct. sirmi crispo ii et constantino ii cc. conss.>

CJ.9.51.13.2a: Imperator Constantinus

Nam si patria potestate ad corrumpendi atque effundendi patrimonii licentiam abutetur, ut furioso ac dementi, item prodigo, libidinum omnium vitiorumque servo non est eorum pecunia committenda. <a 321 d. xviii k. oct. sirmi crispo ii et constantino ii cc. conss.>

CJ.9.51.13.2b: Imperator Constantinus

Ab administratione fugiat neque tutor esse desinat omniaque minoris dispendia suis ipse damnis praestet. <a 321 d. xviii k. oct. sirmi crispo ii et constantino ii cc. conss.>

CJ.9.51.13.2c: Imperator Constantinus

Sententia vero deportationis nullo patrem praeiudicio deminuat. quem si comperta integritas ut natura, ita officio liberis restituerit, ei gubernacula rerum tradenda sunt, cuius ad imitationem publici iuris provisa custodia est. quae nisi bonis patribus detur, luctuosior erit reditus quam discessus. <a 321 d. xviii k. oct. sirmi crispo ii et constantino ii cc. conss.>

CJ.9.51.13.3: Imperator Constantinus

Ideoque tantum ad restitutionem indulgentia valeat, quantum ad correctionem sententia valuit, utque deportationis ipsum per se nomen rerum omnium spoliatio est , ita indulgentiae restitutio bonorum ac dignitatis uno nomine amissorum omnium sit recuperatio. et filii emancipationem a patribus officiis petant, ut libertatem non damnationis, sed lenitatis paternae testem habeant. <a 321 d. xviii k. oct. sirmi crispo ii et constantino ii cc. conss.>

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CJ.10.1.0. De iure fisci.

CJ.10.1.1: Imperatores Severus, Antoninus

Si prius, quam fisci rationibus pater vester obligaretur, perfectam praediorum donationem fecisse fuerit probatus, quod citra fraudem creditorum gestum est, non rescinditur. * sev. et ant. aa. attico et severo. * <a xxx >

CJ.10.1.2: Imperator Gordianus

Instar obtinere minime potest rei iudicatae computatio a tabulariis facta, nisi sententia procuratoris fuerit comprobata. * gord. a. sereno. * <a xxx >

CJ.10.1.3: Imperator Gordianus

Si minori pretio, quam res est, aperta fraude emptoris vel gratia quae obligata sunt a fisco venierunt, aditus procurator meus debitam quantitatem inferenti restitui ea praedia iubebit. * gord. a. atticae. * <a xxx >

CJ.10.1.4pr.: Imperatores Diocletianus, Maximianus

Certa forma super metoecis data est, qui iussu principis in aliam civitatem translati sunt. nam praedia eorum, quae antequam demigrarent habuerint, si ab his distracta non essent, fisci rationibus vindicari iam pridem decretum est, nisi aliud speciali praecepto augusta maiestas decreverit. * diocl. et maxim. aa. mucatraulo. * <a xxx >

CJ.10.1.4.1: Imperatores Diocletianus, Maximianus

Ut igitur a principibus salubriter statutum est, ita salvis his, quae utiliter placuerunt, parentibus heredes eos exsistere minime oportere nulla legis sanctione statutum est. <a xxx >

CJ.10.1.5pr.: Imperatores Diocletianus, Maximianus

Prohibitum est cuiuscumque bona, qui fisco locum fecisse existimabitur capi prius, quam a nobis forma fuerit data. * diocl. et maxim. aa. exempl. sacr. litt. ad flaccum.* <x >

CJ.10.1.5.1: Imperatores Diocletianus, Maximianus

Et ut omni improvisionis genere occursum sit caesarianis, sancimus licere universis quorum interest obicere manus his, qui ad capienda bona alicuius venerint, qui succubuerit legibus, ut, etiamsi officiales ausi fuerint a tenore datae legis desistere, ipsis privatis resistentibus a facienda iniuria arceantur. <x >

CJ.10.1.5.2: Imperatores Diocletianus, Maximianus

Tunc enim is, cuius interest bona alicuius non interpellari, officialibus volentibus ea capere debet adquiescere, cum litteris nostris cognoverit non ex arbitrio suo caesarianos ad capiendas easdem venisse facultates, sed iustitiae vigorem id fieri statuisse. <x >

CJ.10.1.6: Imperator Constantinus

Iustas etiam et quae locum habent fisci actiones praecipimus concremari ob hoc solum, quod suis temporibus prolatae non sunt. iam calumniae privatorum eo saltem arceantur exemplo, quo iustas fisci lites silere praecipimus. * constant. a. ad provinciales. * <a 319 d.Iii k.Iun.Constantino a.V et licinio c.Conss.>

CJ.10.1.7pr.: Imperator Constantinus

Defensionis facultas danda est his, quibus aliquam inquietudinem fiscus infert, cum facultates eorundem adhuc controversia pendente inquietari describique fas non sit. * const. a. * <a 326 d.Prid.K.Ian.Sirmio constantino a.Vii et constantio c.Conss>

CJ.10.1.7.1: Imperator Constantinus

Ubi ergo controversia extiterit fisco alicuius patrimonium vindicante, apud eum omnibus facultatibus constitutis cognitio ventiletur, ut, cum rei exitus debere eas vindicari probaverit, tum demum res persequi liceat et super modo facultatum ac rerum interrogationem haberi, quae per condicionales servos investiganda est , ut, si quid subtractum fuerit, exigatur et extrinsecus tantum aliud multae nomine, quantum fuerat per fraudem ablatum. <a 326 d.Prid.K.Ian.Sirmio constantino a.Vii et constantio c.Conss>

CJ.10.1.7.2: Imperator Constantinus

Sane in huiuscemodi quaestione si caesariani nomen inciderit, ad usurpationem constitutionis istius non debebit accedere, si quidem consuetudo fraudium, quibus praedicti omnia temerare consueverunt, exceptionem eorundem meruerit. <a 326 d.Prid.K.Ian.Sirmio constantino a.Vii et constantio c.Conss>

CJ.10.1.8: Imperatores Valentinianus, Valens

Qui in contractibus scaelestis ac fisco perniciosis interversorum maculosis se fraudibus implicuerunt, in quadrupli redhibitionem teneantur. * valentin. et valens aa. ad dracontium vic. africae. * <a 365 d.Xv k.Dec.Hadrumeto valentiniano et valente aa.Conss.>

CJ.10.1.9: Imperatores Honorius, Theodosius

Super creandis susceptoribus periculo procuratorum rei dominiciae dispositionem tuae sublimitatis firmam esse praecipimus, ita ut, omni ambitione cessante, quae statuta sunt quaeque antiqua consuetudine commendantur, in pabulis vel sumptu familiae ministrando intemerata permaneant: super irenarcho et optione omni antiqua consuetudine observanda. * honor. et theodos. aa. patricio com. rer. privat. * <a 420 d.Iii k.Ian.Constantinopoli theodosio a.Viiii et constantio iii conss.>

CJ.10.1.10: Imperatores Honorius, Theodosius

Eorum patrimonia mortuorum, qui vitae suae tempore diversis conscientiam suam dicuntur polluisse criminibus, fisci rationibus nequaquam competere vel ab eo alienari censemus, nisi post publicam accusationem eos constiterit fuisse convictos. * honor. et theodos. aa. palladio pp. * <a 421 d.Viii id iul.Ravennae eustathio et agricola conss.>

CJ.10.2.0. De conveniendis fisci debitoribus.

CJ.10.2.1: Imperator Gordianus

Non iniusta ratione desideratis repromissa fisco indemnitate eos principali loco conveniri, qui reliqua contraxerunt, mox ad vos perveniri, qui ab his quaedam mercati estis. * gord. a. saturnino et aliis. * <a xxx >

CJ.10.2.2: Imperatores valer., gallien.

Fisco quidem contra te manet actio, quod argentum, quod inferre debebas, rationibus fuit relatum, si cautioni, quae tibi super eo exposita est, tabularius non subnotavit. aequum est tamen, ut prius de bonis eius qui exactor fuit, si solvendo est et conveniendi eius facultas datur, indemnitati fisci satisfiat, tunc a te, si servari hic modus non possit, reposcatur. * valer. et gallien. aa. et valer. c.Patrophilo. * <a xxx >

CJ.10.2.3pr.: Imperatores Diocletianus, Maximianus

Quoniam augurio ac filio eius ad exigenda reliqua consortes vos atque sociatos esse dicatis eisque certorum dumtaxat nominum exactionem mandatam nec inter eum et ceteros, qui exactores fuerant nominati, confusae exactionis mutuum periculum constitutum, sed separato muneris obsequio discretam sollicitudinis rationem fuisse adseveratis, a iure non discrepat, ut prius ex bonis exactorum, qui principali loco ad exactionem fuerant destinati, indemnitati fiscali satisfiat, postque eos, si solidum debitum exsolutum non sit, nominatores conveniri. * diocl. et maxim. aa. ianuario. * <a xxx >

CJ.10.2.3.1: Imperatores Diocletianus, Maximianus

Rationalis igitur noster iuris ordinem sequetur, excussisque exactorum facultatibus nec non etiam nominatorum, si fiscus in universi debiti quantitate securitatem indemnitatis consecutus non fuerit, etiam vos ad restituenda fiscalia debita adstringet. <a xxx >

CJ.10.2.4: Imperatores Valentinianus, Valens, Gratianus

Hi, qui fisco nostrae mansuetudinis obnoxii sunt, omissa frustratione teneantur, ut, quod suis nominibus debent, de suis facultatibus cogantur exsolvere, servatis, cum compleverint, adlegationibus propriis, si quas adversus quoscumque ex suis contractibus debitores competere sibi ex iure crediderint, ita ut adversus eos, quos sibi obnoxios adseverant, legibus et iudiciis experiendum esse cognoscant. * valentin. valens et grat. aaa. ad archelaum com. orientis. * <a 369 d.Iii non.Iul.Novioduno valentiniano np.Et victore conss.>

CJ.10.2.5pr.: Imperatores Valens, Gratianus, Valentinianus

Inter chartulas confiscati brevis quidam adseveratur inventus, qui nomina continebat debitorum seu contractorum. * valens grat. et valentin. aaa. fortunatiano com. rer. privat.* <a 377 d.Prid.Non.Iul.Hierapoli gratiano a.Iiii et merobaude conss. >

CJ.10.2.5.1: Imperatores Valens, Gratianus, Valentinianus

Cum tamen neque testibus credita pecunia probaretur neque cautionibus ea quae brevi inserta sunt ostendantur, iniquum esse perspeximus, ut sub propriae adnotationis manu unusquisque faciat debitorem. <a 377 d.Prid.Non.Iul.Hierapoli gratiano a.Iiii et merobaude conss. >

CJ.10.2.5.2: Imperatores Valens, Gratianus, Valentinianus

Occasionis igitur huius calumniam praesenti volumus iussione cohiberi, ut brevis vanitate reiecta nullus ad redhibitionem de his, quorum nomina conscripta sunt, urgeatur. <a 377 d.Prid.Non.Iul.Hierapoli gratiano a.Iiii et merobaude conss. >

CJ.10.2.5.3: Imperatores Valens, Gratianus, Valentinianus

Quod et in aliis similibus causis observandum esse censemus. <a 377 d.Prid.Non.Iul.Hierapoli gratiano a.Iiii et merobaude conss. >

CJ.10.3.0. De fide et iure hastae fiscalis et de adiectionibus.

CJ.10.3.1: Imperator Antoninus

Quod in libellum contulisti, procuratori meo, ad cuius officium desiderium tuum pertinet, adlega. cui si probaveris non auctore procuratore vel eo, cui vendendi fuit facultas, neque habitis hastis nec omni ordine peracto venditas res esse, et id quod ex causa iudicati debes exsolveris, rescissa venditione mala fide facta easdem res recipies cum fructibus, quos ad emptorem mala fide pervenisse vel pervenire debere constiterit. * ant. a. agortiae. * <a 213 pp.Non.Ian.Antonino a.Iiii et balbino conss.>

CJ.10.3.2: Imperator Gordianus

Duplex ratio desiderium tuum iuvat, et quod praetermissa hastarum sollemnitate possessiones tuas ex officio distractas suggeris, et quod pretii vilitate ob exiguum debitum gratiosam emptionem in fraudem tuam utilitatemque rationum mearum adversarium commentum fuisse dicis. quapropter illicita ista redargue, tam indemnitati fisci consulturus quam tuae securitati opem laturus. * gord. a. heracleoni. * <a 239 pp.V k... gordiano a.Et aviola conss.>

CJ.10.3.3: Imperator Gordianus

Etsi instrumenta emptionis non extent, quibuscumque tamen probationibus uxor tua ostenderit ad se eam domum pertinere, quam a fisco eius nomine dicis comparatam , pretiumque ab ea exsolutum et in eam dominium translatum, frustra fiscum ex persona matris eius referre quaestionem procurator meus non sinet. * gord. a. crispo. * <a 239 pp.V k.Nov.Gordiano a.Et aviola conss.>

CJ.10.3.4: Imperatores Diocletianus, Maximianus

Si tempora, quae in fiscalibus hastis statuta sunt, patiuntur, cum etiam augmentum te facturam esse profitearis, adi rationalem nostrum, ut iuxta ius pretii uberioris oblationem admittat. * diocl. et maxim. aa. Marcellinae. * <a 290 pp.Iii id.Ian.Sirmi ipsis iiii et iii aa. conss.>

CJ.10.3.5pr.: Imperatores Valentinianus, Valens, Gratianus

Quaecumque pro reliquis prodigorum in annonario titulo ceterisve fiscalibus debitis in quibuscumque corporibus sub auctione licitanda sunt, fisco auctore vendantur, ut perpetuo penes eos sint iure dominii, quibus res huiusmodi sub hastae sollemnis arbitrio fiscus addixerit. * valentin. valens et grat. aaa. ad viventium pp.Galliarum. * <a 369 d.Iii id.Nov.Treviris valentiniano np.Et victore conss.>

CJ.10.3.5.1: Imperatores Valentinianus, Valens, Gratianus

Et si quid umquam, ut a fisco facta venditio possit infringi, auctoritate rescripti fuerit impetratum, nullus obtemperet, cum etiam minoribus, si quando aliquid ex rebus eorum pro fiscalibus debitis adiudicatur emptoribus, repetitionis facultas in omnem intercipiatur aetatem. <a 369 d.Iii id.Nov.Treviris valentiniano np.Et victore conss.>

CJ.10.3.6: Imperatores Valentinianus, Valens, Gratianus

Si qui proscribente ac distrahente fisco debitorum fiscalium emerint facultates, pro earum rerum tantum pretio obnoxii sint, quas eos patuerit decursis hastis et proscriptione habita comparasse. nam ita eos munimus, ut nullius conventioni reliquorum fiscalium nomine patiamur extrinsecus subiacere. * valentin. valens et grat. aaa. ad felicem com. sacr. lar * <a 370 d.Vii id.Mart.Marcianopoli valentiniano et valente aa.Conss. >

CJ.10.4.0. De venditione rerum fiscalium cum privatis communium.

CJ.10.4.1pr.: Imperator Alexander Severus

Forma est, quotiens ad fiscum vel minima portio rei pertineat, ut universa a procuratoribus meis distrahantur, sed pretium partis tantum in fiscum redigatur, reliquum dominis partium restituatur. * alex. a. victorio. * <a 225 pp.Vii k.Oct.Fusco et dextro conss.>

CJ.10.4.1.1: Imperator Alexander Severus

Emptorem igitur praediorum, de quibus libellum dedisti, apud suum iudicem conveni usurum defensionibus, si quae sibi competunt. <a 225 pp.Vii k.Oct.Fusco et dextro conss.>

CJ.10.5.0. Ne fiscus rem quam vendidit evincat.

CJ.10.5.1pr.: Imperator Alexander Severus

Gravissimum verecundia mea duxit, ut, cuius rei pretium, cum bona fide esset addicta, semel fiscus acceperit, eius controversiam referat. * alex. a. ad rationales. * <a 228 d.Xv k.Mai.Modesto et probo conss.>

CJ.10.5.1.1: Imperator Alexander Severus

Non solum ergo emptorem ab eadem statione, sed ne ab alia quidem quaestionem pati debere aequum est, cum et in his venditionibus emptore non inquietato officia inter se possint experiri. <a 228 d.Xv k.Mai.Modesto et probo conss.>

CJ.10.5.2: Imperator Marcianus

Retractare fiscum, quod semel vendidit, aequitatis honestatisque ratio non patitur. * marcian. a. palladio pp. orientis. * <a 451 d.V k.Ian.Constantinopoli marciano a. cons.>

CJ.10.6.0. De his qui ex publicis rationibus mutuam pecuniam acceperunt.

CJ.10.6.1: Imperatores Valentinianus, Valens

Si quis ab exactoribus tabulariis arcariis officiisve rationum fenebrem pecuniam sumpserit, detectus in eodem ad quadrupli poenam ex hac auctoritate teneatur. * valentin. et valens aa. ad probum pp. * <a 368 vel 370 d.Iiii id.Mart.Treviris valentiniano et valente aa. conss.>

CJ.10.6.2pr.: Imperatores Gratianus, Valentinianus, Theodosius

Sciant omnes accipiendi mutuo ex largitionibus sacris auri non patere cuiquam facultatem. * grat. valentin. et theodos. aaa. palladio com. sacr. larg. * <a 381 d.Xii k.Aug.Heracleae eucherio et syagrio conss.>

CJ.10.6.2.1: Imperatores Gratianus, Valentinianus, Theodosius

Quod si quis aurum ex nostro aerario privatis commodis profuturum occulte aut cautionis aut sponsionis fide ut debitor redditurus sine nostra auctoritate acceperit, ablatis bonis omnibus perpetuae deportationis subdetur exilio. <a 381 d.Xii k.Aug.Heracleae eucherio et syagrio conss.>

CJ.10.6.2.2: Imperatores Gratianus, Valentinianus, Theodosius

Is etiam, qui ex memoratis thesauris sub specie publici creditoris aurum cuiquam commodarit ac dederit, capitali sententia subiugetur. <a 381 d.Xii k.Aug.Heracleae eucherio et syagrio conss.>

CJ.10.7.0. Poenis fiscalibus creditores praeferri.

CJ.10.7.1: Imperator Alexander Severus

Rem suam persequentibus poenae exactio postponitur. sicut itaque in sortis quantitate fisci persecutio potior est, ita in triplo quod poenae nomine adiectum est propria forma ferenda est. * alex. a. Marcello. * <a 224 pp.K.Iul.Iuliano et crispino conss.>

CJ.10.8.0. De fiscalibus usuris.

CJ.10.8.1: Imperator Antoninus

Eius summae, quam tibi poenae nomine inflictam probaturus es, usurae non exigentur: nec enim multam tibi procurator meus inrogavit ultra quam placitum est, sed poenam te iussit inferre. * ant. a. antiocho. * <a 216 pp.Xv k.Dec.Sabino et anullino conss.>

CJ.10.8.2: Imperator Alexander Severus

Si sub pignore creditum fuit, etiam fiscum, qui successit in locum debitoris, usuras praestare oportet, si eas dependi saltem pacto placuit. * alex. a. victorino. * <a 224 pp.Iii non.Sept iuliano et crispino conss.>

CJ.10.8.3: Imperator Justinianus

Fiscum etiam nostrum parere sanctioni nostri numinis iubemus, per quam usque ad dimidiam centesimae usuras stipulari creditoribus exceptis certis personis permisimus, ut ipse etiam fiscus ultra dimidiam centesimae partem a debitoribus suis minime exigat, sive principaliter ei promiserunt sive a prioribus suis creditoribus actiones ad eum quocumque modo devolutae sunt. * iust. a. menae pp. * <a 529 d.Viii id.April.Constantinopoli decio vc.Cons.>

CJ.10.9.0. De sententiis adversus fiscum latis retractandis.

CJ.10.9.1: Imperator Antoninus

Causas, in quibus contra fiscum iudicatum est, intra triennium retractari posse, et post id tempus, si praevaricatio arguatur vel manifesta fraus probetur, notum est. * ant. a. aristaeo. * <a 212 pp.Non.Iul. duobus aspris conss.>

CJ.10.10.0. De bonis vacantibus et de incorporatione.

CJ.10.10.1: Imperatores Diocletianus, Maximianus

Scire debet gravitas tua intestatorum res, qui sine legitimo herede decesserint, fisci nostri rationibus vindicandas nec civitates audiendas, quae sibi earum vindicandarum ius veluti ex permissu vindicare nituntur: et deinceps quaecumque intestatorum bona a civitatibus obtentu privilegiorum suorum occupata esse compereris, ad officium nostrum eadem revocare non dubites. * diocl. et maxim. aa. scyrioni rationali. * <a 292 d.Prid.Id.April.Hannibaliano et asclepiodoto conss.>

CJ.10.10.2: Imperator Constantinus

Si quando adnotationes nostrae contineant possessionem sive domum, quam donaverimus, " integro statu" donatam, hoc verbo ea vis continebitur, quam ante scribebamus " cum adiacentibus et mancipiis et pecoribus et fructibus et omni iure suo ": ut ea, quae ad instructum possessionis vel domus pertinent, tradenda sint. * const. a. ad aemilium rationalem. * <a 313 d.Vi id.Mart.Mediolani constantino a.Iii et licinio conss.>

CJ.10.10.3pr.: Imperatores Valentinianus, Valens, Gratianus

Si quando aut alicuius publicatione aut ratione iuris aliquid rei nostrae addendum est, rite atque sollemniter per comitem rerum privatarum, deinde rationales in singulis quibusque provinciis commorantes incorporatio impleatur et diligens stilus singillatim omnia adscribat. * valentin. valens et grat. aaa. ad florianum com. rer. privat.* <a 369 d.Iiii k.April.Valentiniano np.Et victore conss.>

CJ.10.10.3.1: Imperatores Valentinianus, Valens, Gratianus

Tituli vero, quorum adiectione praedia nostris sunt consecranda substantiis, non nisi publica testificatione ponantur: gravissimis statim subdendis suppliciis, qui huiusmodi aliquid propria usurpatione temptaverint. <a 369 d.Iiii k.April.Valentiniano np.Et victore conss.>

CJ.10.10.4: Imperatores Honorius, Theodosius

Vacantia mortuorum bona tunc ad fiscum iubemus transferri, si nullum ex qualibet sanguinis linea vel iuris titulo legitimum reliquerit intestatus heredem. * honor. et theodos. aa. palladio pp. * <a 421 d.Viii id.Iul.Ravennae eustathio et agricola conss.>

CJ.10.10.5pr.: Imperatores Theodosius, Valentinianus

Si vacantia vel alio modo bona delata legibus ad aerarium perhibeantur, certi palatini electi et iureiurando obstricti mittantur, ut eorum instantia praeses provinciae praesente fisci patrono diligenter inquirat, cuius vacans cadensque fuerit patrimonium, quantumque vel quale videatur. * theodos. et valentin. aa. hermocrati com. rer. privat. * <a 435 d.Vii id.Oct.Constantinopoli theodosio xv et valentiniano iiii aa.Conss.>

CJ.10.10.5.1: Imperatores Theodosius, Valentinianus

Et cum data reclamandi copia nullum id iure possidere vel vindicare constiterit locumque aerario factum esse tam ipsius relatione quam publicorum monumentorum fide constiterit, rerum nobis notitia intimetur, ut iussu nostro vacantia vel aliae res nomine occupentur aerarii. <a 435 d.Vii id.Oct.Constantinopoli theodosio xv et valentiniano iiii aa.Conss.>

CJ.10.10.5.2: Imperatores Theodosius, Valentinianus

Quae forma etiam in parte bonorum vel in una alterave re seu actione una vel etiam pluribus servetur. nam si quid per fraudem in dispendium aerarii fuerit admissum, missi quidem exsecutores non evitant indignationem, praeses autem facultatum parte dimidia multabitur, fisci vero patronus detrimentum quod vitio eius fisco ingeritur resarcire urguebitur. <a 435 d.Vii id.Oct.Constantinopoli theodosio xv et valentiniano iiii aa.Conss.>

CJ.10.11.0. De delatoribus.

CJ.10.11.1: Imperator Alexander Severus

Si ei qui capere potest tacitum fideicommissum relictum est, cessat delatio. his enim prohibetur tacite relinqui, qui palam relictum capere non possunt. * alex. a. basso. * <a 223 pp.Xiii k.Mai.Maximo ii et aeliano conss.>

CJ.10.11.2pr.: Imperator Gordianus

Monente officii sollicitudine, quin immo iussu procuratoris, ut causam ab alio delatam convenienti diligentia instrueres, non ipsum voluntarium delationis munus suscepisse te actorum lectio, quae precibus intexta sunt, manifeste declarat. * gord. a. eutychemo. * <a 238 pp.Viii id.Sept.Pio et pontiano conss.>

CJ.10.11.2.1: Imperator Gordianus

Eapropter ne quid in persona tua quod est sectae temporum meorum alienum attemptetur, praeses provinciae vir clarissimus ad sollicitudinem suam revocabit. <a 238 pp.Viii id.Sept.Pio et pontiano conss.>

CJ.10.11.3: Imperator Gordianus

Nulla macula vel crimine delatoris adspergitur is, qui, cum ab officialibus fundum seu domum fisci possidere contenderetur, non se sed alium eius rei possessorem esse monstravit. * gord. a. caecilio. * <a 241 pp.Prid.K.Iul.Gordiano a.Ii et pompeiano conss.>

CJ.10.11.4: Imperatores carinus, numer.

Ex varia statutorum diversitate ad id decursum est, ut hi, qui rei publicae causas defendunt, delatorum criminibus non teneantur, cum omnibus notissimum est eos solos exsecrabiles nuntiatores esse, qui fisco deferunt. * carinus et numer. aa. candido. * <a 284 pp.Iii k.Sept.Carino et numeriano aa.Conss.>

CJ.10.11.5pr.: Imperator Constantinus

Omnes iudices invigilare praecipimus delatores sine fisci advocato denuntiantes poenis adficere. apertissimi enim iuris est, ut, quod ex cuiuscumque patrimonio ceciderit in casum, et legibus et retro iuris ordine fisci advocatis agentibus vindicetur. * const. a. ad provinciales. * <a 335 d.Xi k.April.Constantinopoli constantio et albino conss.>

CJ.10.11.5.1: Imperator Constantinus

Sed quia nonnulli praecipites secundum ius possessa patrimonia deferre non cessant, damus omnibus qui se laesos existimant contra delatores severitatem iudicum implorare ferro destrictam. <a 335 d.Xi k.April.Constantinopoli constantio et albino conss.>

CJ.10.11.6: Imperatores Gratianus, Valentinianus, Theodosius

Servum domini delatorem iubemus in exemplum omnium proditorum severissimae sententiae subiugari, etiamsi obiecta probaverit, excepto crimine maiestatis. * grat. valentin. et theodos. aaa. panhellenio consulari lydiae.* <a 382 d.Vii k.Nov.Constantinopoli antonio et syagrio conss.>

CJ.10.12.0. De petitionibus bonorum sublatis.

CJ.10.12.1pr.: Imperatores Gratianus, Valentinianus, Theodosius

Quisquis in crimine maiestatis deprehensus fuerit et punitus bonaque eius, sicut plectendi consuetudo criminis habet, fiscus invaserit, nullus eadem sub spe munificentiae principalis audeat proprio iure poscere. qui contra legem id ausus fuerit sperare, quod non licet, reus violatae legis habeatur. * grat. valentin. et theodos. aaa. eutropio pp. * <a 380 d.Xvi k.Dec.Thessalonicae gratiano v et theodosio aa.Conss. >

CJ.10.12.1.1: Imperatores Gratianus, Valentinianus, Theodosius

Sed quoniam plerumque ita in nonnullis inverecunda petentium inhiatione constringimur, ut etiam non concedenda tribuamus, nec rescripto quidem nostro adversus formam latae legis loci aliquid relinquatur. <a 380 d.Xvi k.Dec.Thessalonicae gratiano v et theodosio aa.Conss. >

CJ.10.12.1.2: Imperatores Gratianus, Valentinianus, Theodosius

Si quid autem ex bonis talibus nostro iudicio, nullo tamen desiderante atque poscente, concedi cuiquam voluerimus, huiusmodi tantum valeat liberalitas. <a 380 d.Xvi k.Dec.Thessalonicae gratiano v et theodosio aa.Conss. >

CJ.10.12.2pr.: Imperatores Theodosius, Valentinianus

Omne semen alienas appetendi fortunas stirpitus eruere cupientes nulli deinceps volumus petitionis rerum esse licentiam, etsi intestatus quisquam quaeve ac nullis e numero propinquorum extantibus vel uxore vel marito fati munus impleverit et cuiuscumque sit condicionis aut sectae, seu quolibet titulo res fuerit fiscalis. * theodos. et valentin. aa. zoilo pp. * <a 444 d.X k.Mai.Constantinopoli theodosio a.Xviii et albino conss. >

CJ.10.12.2.1: Imperatores Theodosius, Valentinianus

Nemo audeat ad petitionem rerum defuncti defunctaeve, cuiuscumque fortunae aut sectae sit, etsi fisco nostro locus pateat, adspirare, cum nec illis quidem, quorum actu atque officio petitionem procedebat effectus, impune liceat nostris sanctionibus adversari. <a 444 d.X k.Mai.Constantinopoli theodosio a.Xviii et albino conss. >

CJ.10.12.2.1a: Imperatores Theodosius, Valentinianus

Sed vir illustris quidem cuiuscumque temporis quaestor, si oblatae petitioni subscripserit vel etiam responsum dederit, virque illustris comes rerum privatarum , si vel instrui permiserit vel petitionem, si qua insinuatur, admiserit, indignationem nostri numinis sustinebunt, ceterisque fient vindictae temeritatis exemplum. <a 444 d.X k.Mai.Constantinopoli theodosio a.Xviii et albino conss. >

CJ.10.12.2.1b: Imperatores Theodosius, Valentinianus

Memoriales vero, qui excipienda eiusmodi rescripta vel implenda ciraverint, et palatinos, qui instruxerint vel gesta admissae petitionis ediderint, bonorum proscriptione puniri decernimus. <a 444 d.X k.Mai.Constantinopoli theodosio a.Xviii et albino conss. >

CJ.10.12.2.2: Imperatores Theodosius, Valentinianus

Pari forma res etiam civiles et ad ius publicum pertinentes ab omni petitione muniendas esse censemus, scilicet nec pragmatica iussione vel sacra adnotatione vel quolibet oraculo divino seu mandatis, si qua contra hanc sanctionem nostram fuerint impetrata, quodcumque roboris habere valituris. <a 444 d.X k.Mai.Constantinopoli theodosio a.Xviii et albino conss. >

CJ.10.13.0. De his qui se deferunt.

CJ.10.13.1pr.: Imperator Constantinus

Is, cuius tacite fidei commissa fuerit hereditas, statim officio gravitatis tuae nuntiet et gesta prodat et continuo quod actum fuerit renuntiet, et post hanc fidem tertiam ab omnibus defuncti bonis percipiat portionem. * const. a. rationalibus hispaniarum. * <a 317 d.Id.Mart.Gallicano et basso conss.>

CJ.10.13.1.1: Imperator Constantinus

Quod si ab uxore defuncti istud officio devotionis tuae fuerit revelatum, ipsa etiam, quam defunctus esse voluit heredem, si gesta aperuit, tali praemio mancipetur, ut ex omni patrimonio medium consequatur et cum fisco nostro celebret divisionem, id etiam habitura privilegium, ut prior eligat portionem: et tunc occultator ille gestorum, fisci et mulieris pariter inimicus, exutus omni patrimonio suo ac fisco vindicato in insulam deportetur. <a 317 d.Id.Mart.Gallicano et basso conss.>

CJ.10.14.0. Si liberalitatis imperialis socius sine herede defecerit.

CJ.10.14.1: Imperator Constantius

Iubemus, ut, si quis forte ex his, quibus communiter a nobis aliquid donatum sit , nullo herede relicto decesserit, ad consortem potius solacium quam ad personam aliam pars perveniat decedentis. * constantius a. orioni com. rer. privat. * <a 348 d.Xv k.Iul.Mediolani philippo et salia conss.>

CJ.10.15.0. De thesauris.

CJ.10.15.1pr.: Imperatores Leo, Zeno

Nemo in posterum super requirendo in suo vel alieno loco thesauro vel super invento ab alio vel a se effusis precibus pietatis nostrae benignas aures audeat molestare. * leo et zeno aa. epinico consulari. * <a 474 d.Vi id.Oct.Leone iuniore a.Cons.>

CJ.10.15.1.1: Imperatores Leo, Zeno

Nam in suis quidem locis unicuique, dummodo sine sceleratis ac puniendis sacrificiis aut alia qualibet arte legibus odiosa, thesaurum (id est condita ab ignotis dominis tempore vetustiore mobilia) quaerere et invento uti liberam tribuimus facultatem, ne ulterius dei beneficium invidiosa calumnia persequatur, ut superfluum sit hoc precibus postulare, quod iam lege permissum est, et imperatoriae magnanimitatis videatur praevenire liberalitas postulanda. <a 474 d.Vi id.Oct.Leone iuniore a.Cons.>

CJ.10.15.1.2: Imperatores Leo, Zeno

In alienis vero terrulis nemo audeat invitis, immo nec volentibus vel ignorantibus dominis opes abditas suo nomine perscrutari. <a 474 d.Vi id.Oct.Leone iuniore a.Cons.>

CJ.10.15.1.3: Imperatores Leo, Zeno

Quod si nobis super hoc aliquis crediderit supplicandum aut praeter huius legis tenorem in alieno loco thesaurum scrutatus invenerit, totum hoc locorum domino cedere compellatur et velut temerator legis saluberrimae puniatur. <a 474 d.Vi id.Oct.Leone iuniore a.Cons.>

CJ.10.15.1.4: Imperatores Leo, Zeno

Quod si forte vel arando vel alias terram alienam colendo vel quocumque casu, non studio perscrutandi, in alienis locis thesaurum invenerit, id quod repertum fuerit dimidia retenta altera data cum locorum domino patiatur. ita enim eveniet , ut unusquisque suis fruatur et non inhiet alienis. <a 474 d.Vi id.Oct.Leone iuniore a.Cons.>

CJ.10.16.0. De annona et tributis.

CJ.10.16.2: Imperatores valer., gallien.

Aes quidem alienum pro portionibus, ex qua quisque defuncto heres extitit, praestare oportet, annonas autem is solvere debet, qui possessiones tenet et fructus percipit. * valer. et gallien. aa. et valer. c. antiocho. * <a 260 pp... saeculare et donato conss.>

CJ.10.16.3: Imperator dec.

Indictiones non personis, sed rebus indici solent: et ideo, ne ultra modum earundem possessionum quas possides conveniaris, praeses provinciae prospiciet. * dec. a. citicio. * <a 249 pp. xvii k. nov. aemiliano et aquilino conss.>

CJ.10.16.4: Imperator Constantinus

Omnes pensitare debebunt, quae manus nostrae delegationibus adscribuntur, nihil amplius exigendi. nam si quis vicarius aut rector provinciae aliquid iam cuiquam crediderit remittendum, quod aliis remiserit, de propriis dare facultatibus compelletur. * const. a. ad proclianum. * <a 315 d. xv k. iul. constantino a. iiii et licinio iiii conss.>

CJ.10.16.5: Imperator Constantius

Omnes omnino ad oblationem functionum publicarum oportet urgueri. lege enim nostra signatum est nec esse extraordinaria nec vocari, quae sollemniter a provincialibus devotissimis conferenda sunt. * constantius a. ad uranium. * <a 339 d. iii non. febr. constantio a. ii et constante conss.>

CJ.10.16.6: Imperatores Valentinianus, Valens

Pro locis ac proximitate possessionum annonam ad limitem transvehi praecipimus. * valentin. et valens aa. ad dracontium vic. africae. * <a 365 d. xv k. iul. mediolani valentiniano et valente aa. conss.>

CJ.10.16.7: Imperatores Gratianus, Valentinianus, Theodosius

In fraudem annonariae rei ac devotionis publicae elicitum damnabili subreptione rescriptum manifestum est vires non posse sortiri circa omnes igitur par atque aequalis illationis forma teneat. * grat. valentin. et theodos. aaa. ad principium pp. * <a 385 d. viii k. oct. aquileia arcadio a. et bautone conss.>

CJ.10.16.8: Imperatores Valentinianus, Theodosius, Arcadius

Nemo possessorum ad instruendas mansiones vel conferendas species longius delegetur, sed omnis itineris ac necessitatis habita ratione delegentur. * valentin. theodos. et arcad. aaa. cynegio pp. * <a 385 d. x k. ian. constantinopoli arcadio a. et bautone conss.>

CJ.10.16.9: Imperatores Valentinianus, Theodosius, Arcadius

Mediterraneae civitates antea maritimis et maritimae mediterraneis onerabantur expensis, ut plus haberet dispendii translatio quam devotionis illatio. hoc non solum in praesens, verum etiam in posterum prohibemus ea lege, ut se ultimo noverint supplicio puniendos, qui ista commiserint. * valentin. theodos. et arcad. aaa. cynegio pp. * <a 386 d. iii non. sept. valentiae honorio np. et euodio conss.>

CJ.10.16.10: Imperatores Arcadius, Honorius

Obsistere commodis publicis et statutis necessitatibus non possunt privilegia dignitatum. unde ut quisque praedii emolumenta consequitur, si non is evoluto anni spatio intra sex menses omnem cui esse constrictus dicitur reliquorum intulerit cumulum, ad ipsos qui sunt domini praedii exactionem volumus pertinere. * arcad. et honor. aa. minervio com. rer. privat. * <a 398 pp. romae honorio a. iiii et eutychiano conss.>

CJ.10.16.11: Imperatores Arcadius, Honorius

Iudices, quos circa profliganda aerarii nostri compendia neglegentes ac desides fuisse constiterit, omnia quae in administratione positi perceperunt emolumenta reddere compellantur. * arcad. et honor. aa. hadriano pp. * <a 401 d. iii k. mart. mediolani vincentio et fravito conss.>

CJ.10.16.12pr.: Imperator Theodosius

Id ab unaquaque provincia censuimus expetendum, quod ab isdem nuper esse promissum tua sublimitas indicavit. * theodos. a. isidoro pp. illyrici. * <a 424 d. vi id. oct. constantinopoli victore vc. cons.>

CJ.10.16.12.1: Imperator Theodosius

Ut nullus vero de cetero ad possessiones eorum (quod maxime formidant) inspector accedat, macedonum reliqui exemplum secuti mediae quantitatis, ut obtulisse noscuntur, tributa sucipiant(!). <a 424 d. vi id. oct. constantinopoli victore vc. cons.>

CJ.10.16.12.2: Imperator Theodosius

Sed achivi, qui protestati sunt nihil a se ultra tertiam partem posse conferri, illud exsolvant, ad quod se indubitanter fore idoneos pollicentur. <a 424 d. vi id. oct. constantinopoli victore vc. cons.>

CJ.10.16.12.3: Imperator Theodosius

Quae dispositio in perpetuum observabitur: sacrosancta thessalonicensis ecclesia civitatis excepta, ita tamen, ut aperta sciat propriae tantummodo capitationis modum beneficio mei numinis sublevandum, nec externorum gravamine tributorum rem publicam ecclesiastici nominis abusione laedendam. <a 424 d. vi id. oct. constantinopoli victore vc. cons.>

CJ.10.17.0. De indictionibus.

CJ.10.17.1pr.: Imperatores Honorius, Theodosius

Omnes omnino quocumque titulo possidentes, quod delegatio superindicti nomine videtur amplexa, velut canonem cogantur inferre: et ne qua sit dubietas, hac aperta definitione decernimus, ut id potius canonis vocabulo postuletur. * honor. et theodos. aa. palladio pp. * <a 416 d. vii id. ian. ravennae theodosio a. vii et palladio conss.>

CJ.10.17.1.1: Imperatores Honorius, Theodosius

Nulla igitur domus vel sacri patrimonii vel emphyteutici iuris vel hominum privatorum, etiamsi privilegium aliquod habere doceantur, ab hac necessitate seiuncta sit, quae iam non extraordinarium, ut hactenus, sed ipsis facientibus canonicum nomen accepit. <a 416 d. vii id. ian. ravennae theodosio a. vii et palladio conss.>

CJ.10.17.2: Imperatores Theodosius, Valentinianus

Particulari delegationum notitia ante indictionis exordium singulis transmissa provinciis, collationis modum a possessoribus multo ante prospectum devotionis solitae, non subitis calumniis, tua sublimitas faciat imputari, ut et provincialibus subeundi dispendii necessitas auferatur et officiis ingerendi damna licentia denegetur. * theodos. et valentin. aa. dario pp. * <a 436 d. v k. sept. apameae isidoro et senatore conss.>

CJ.10.18.0. De superindicto.

CJ.10.18.1: Imperatores Gratianus, Valentinianus, Theodosius

Nihil superindictorum nomine ad solas praefecturae litteras quisquam provincialis exsolvat, neque ullius omnino indictionis titulus etiam sollemnis immineat, nisi eum nostro confirmata iudicio et imperialibus nexa praeceptis sedis amplissimae deposcat indictio et cogat exactio. * grat. valentin. et theodos. aaa. ad proconsules vics omn. rectorres.* <a 382 d. vii k. iun. mediolani antonio et syagrio conss.>

CJ.10.19.0. De exactionibus tributorum.

CJ.10.19.1: Imperator Constantinus

Ducenarii et centenarii sive sexagenarii non prius debent aliquem ex debitoribus convenire, quam a tabulario civitatis nominatim breves accipiant debitorum. quam quidem exactionem sine omni fieri concussione oportet. * const. a. ad aelianum procons. africae. * <a 315 d. k. nov. treviris constantino a. iiii et licinio iiii conss.>

CJ.10.19.2pr.: Imperator Constantinus

Nemo carcerem plumbatarumque verbera aut pondera aliaque ab insolentia iudicium reperta supplicia in debitorum solutionibus vel a perversis vel ab iratis iudicibus expavescat. carcer poenalium, carcer hominum noxiorum est: officialium et cum denotatione eorum iudicum, quorum de officio coercitiores esse debebunt, qui contra hanc legem admiserint. * const. a. ad pop. * <a 320 d. k. febr. constantino a. vi et constantino c. conss.>

CJ.10.19.2.1: Imperator Constantinus

Securi iuxta praesidem transeant solutores: vel certe, si quis tam alienus ab humano sensu est, ut hac indulgentia ad contumaciam abutatur, contineatur aperta et libera et in usum hominum instituta custodia militari. <a 320 d. k. febr. constantino a. vi et constantino c. conss.>

CJ.10.19.2.2: Imperator Constantinus

Si in obdurata nequitia permanebit, ad res eius omnemque substantiam eius exactor accedat solutionis obsequio cum substantiae proprietate suscepto. qua facultate praebita omnes fore credimus proniores ad solvenda ea, quae ad nostri usus exercitus pro communi salute poscuntur. <a 320 d. k. febr. constantino a. vi et constantino c. conss.>

CJ.10.19.3: Imperator Constantius

Quotiens quis et privati debitor invenitur et fisci, et abreptus ab uno officio teneatur, ad universi debiti solutionem qui eum abstulit coartetur ac totius summae exactionem in se suscipiat, qui eundem avellendum subtrahendumque crediderit. * constantius a. nemesiano com. larg. * <a 345 d. iiii id. mai. nizibi amantio et albino conss.>

CJ.10.19.4: Imperator Constantius

Actores ceterique rei privatae nostrae ad solutionem specierum sollemnium debiti vigoris auctoritate cogantur, ne provinciales rei privatae nostrae fatiget immunitas. * constantius a. eustathium pp. * <a 349 d. viii id. mart. pp. romae limenio et catullino conss.>

CJ.10.19.5: Imperatores Theodosius, Arcadius, Honorius

Apparitores, quicumque in collatione auri praecepti fuerint officii sui adhibere servitium, titulorum debita et collationum summas relationis suae fide et adnotatione praescribant, sitque ex officialis instructione officium conscium, quid exactum quidve perlatum esse videatur, ne longinqui itineris diversitate susceptor abductus et curiae suae desit et rei familiaris detrimenta sustineat. * theodos. arcad. et honor. aaa. rufino pp. * <a 393 d. prid. id. april. constantinopoli theodosio a. iii et abundantio conss.>

CJ.10.19.6: Imperatores Arcadius, Honorius

In fiscalibus debitis, hoc est annonariis ceterisque titulis, qui ad arcam eminentissimae pertinent praefecturae, nec non in iis debitis, quae rationalis usurpat officium, rectores provinciarum constringantur et eos necessitas maneat exigendi, a quibus expectatur auctoritas. * arcad. et honor. aa. theodoro pp. * <a 398 d. viii k. iun. mediolani honorio a. iiii et eutychiano conss.>

CJ.10.19.7pr.: Imperatores Arcadius, Honorius

Missi opinatores cum delegatoriis iudicibus eorumque officiis insistant, ut intra anni metas id quod debetur accipiant: nihil his sit cum possessore commune, cui non militem, sed exactorem, si sit obnoxius, convenit imminere. * arcad. et honor. aa. hadriano pp. * <a 401 d. iii id. iul. mediolani vincentio et fravito conss.>

CJ.10.19.7.1: Imperatores Arcadius, Honorius

Iudices itaque, qui provinciales passi fuerint opinatoribus delegari, eiusdem quantitatis duplex poena retinebit: et apparitores ex quodlibet officio sententiam deportationis excipient, si per semet exigendos voluerint delegare militibus: et curiales temporale manebit exilium, si eos quos sollemniter exigere consuerunt opinatoribus putaverint esse tradendos, cum iudicem oporteat inquirere debitores, tabularios fideliter providere nomina debitorum, apparitores sive curiales consuetudine servata regionum convictis debitoribus imminere: ut perceptis congruis emolumentis opinatores impleto anno ad proprios numeros valeant remeare. <a 401 d. iii id. iul. mediolani vincentio et fravito conss.>

CJ.10.19.7.2: Imperatores Arcadius, Honorius

Qui si ultra annum protracti fuerint, iudices et officia absque ulla mora de proprio cogantur exsolvere militibus quod debetur, ipsis adversus obnoxios repetitione servata. <a 401 d. iii id. iul. mediolani vincentio et fravito conss.>

CJ.10.19.7.3: Imperatores Arcadius, Honorius

Quod si ad nos aliqua de retentis opinatoribus querella pervenerit, in duplum ab his protinus exigetur, ut partem debitam miles, reliquum fiscus accipiat. <a 401 d. iii id. iul. mediolani vincentio et fravito conss.>

CJ.10.19.7.4: Imperatores Arcadius, Honorius

Iudicibus quoque eorumque officiis eatenus subvenimus, ut in contumaces debitores cuiuslibet dignitatis auctoritatem suam exserant ac, si impudenter solutio differatur, actores procuratores eorumque praedia persequantur, de eorum quoque nominibus ad nostram scientiam relaturi. <a 401 d. iii id. iul. mediolani vincentio et fravito conss.>

CJ.10.19.8: Imperatores Leo, Anthemius

Si divina domus aut quilibet cuiuscumque dignitatis atque fortunae re vera fundos extra metrocomias non patrocinii gratia, sed emptionis iure vel quolibet alio titulo legitimo possederit et non impositas rei publicae functiones agnoverit, quemadmodum prior dominus dependebat, omnibus modis possessiones eorum publico vindicentur et curiae eiusdem civitatis sub qua vici siti sunt adsignentur, ut publicis commoditatibus circa tributarias functiones undique nostra provisione videatur esse consultum. * leo et anthem. aa. nicostrato pp. * <a 468 d. k. sept. anthemio a. ii cons.>

CJ.10.20.0. De superexactionibus.

CJ.10.20.1pr.: Imperatores Arcadius, Honorius

Quidquid ultra debitum elicitum fuerit a curialibus vel cohortalibus vel aliis exactoribus, in duplum eruatur, quod provincialibus restitui protinus oportebit. * arcad. et honor. aa. apollodoro procons. africae. * <a 400 d. prid. id. mart. mediolani stilichone et aureliano conss.>

CJ.10.20.1.1: Imperatores Arcadius, Honorius

Si quis autem exactorum in superexactionis crimen fuerit confutatus, capitali periculo cupiditas eius amovenda atque prohibenda est, si in isdem sceleribus perseveret. <a 400 d. prid. id. mart. mediolani stilichone et aureliano conss.>

CJ.10.21.0. De capiendis et distrahendis pignoribus tributorum causa.

CJ.10.21.1: Imperator Constantinus

Res eorum, qui fiscalibus debitis per contumaciam satisfacere differunt, distrahantur: comparatoribus data firmitate perpetua possidendi. * const. a. ad afros. * <a 327 d. xv k. iun. serdicae constantio et maximo conss.>

CJ.10.21.2: Imperator Constantinus

Satis sit debitorem annonarum ad solvendi necessitatem capione pignorum conveniri. * const. a. restituto praes. sardiniae. * <a xxxx d. viii id. dec. thessalonicae constantio vi et constante iii aa. conss.>

CJ.10.22.0. De apochis publicis et descriptionibus curialium.

CJ.10.22.1pr.: Imperatores Honorius, Theodosius

Ad inferiorem curialium relevandas fortunas et impressionem potentium itidem curialium cohibendam placuit, ut descriptiones, si quae per singulos ordines cogentibus diversis negotiis agitantur, non sumant ante principium, quam apud acta provinciarum rectoribus intimentur et ex eorum fuerint receptae sententiis. * honor. et theodos. aa. anthemio pp. * <a 410 d. vii k. sept. constantinopoli varane cons.>

CJ.10.22.1.1: Imperatores Honorius, Theodosius

Sed et aurum, quod ex huiusmodi contributione redigitur, ita debet susceptori aurario consignari, ut securitatibus nomen inferentis, dies consul mensis causa et summa comprehendatur, quo et descriptionis aequitas illustretur et descriptus documentis evidentibus fulciatur. <a 410 d. vii k. sept. constantinopoli varane cons.>

CJ.10.22.1.2: Imperatores Honorius, Theodosius

Hoc etiam observando, ut in quadrimenstruis quoque brevibus, qui ad excellentiae tuae officium sollemniter diriguntur, celebratae descriptionis dispunctio societur, ut omnes vestrae potestatis scientiam formidantes nihil ad relevationem locupletum atque inopum perniciem audeant pertemptare. <a 410 d. vii k. sept. constantinopoli varane cons.>

CJ.10.22.1.3: Imperatores Honorius, Theodosius

Quod et tunc optimum est custodiri, cum lucrativae facultates ex bonis curialium curiae obvenerint, ut et inopes et locupletes fructu provisionis simillimae potiantur. <a 410 d. vii k. sept. constantinopoli varane cons.>

CJ.10.22.1.4: Imperatores Honorius, Theodosius

Quam dispositionem si quis iudicum numerariorum vel curialium mutilandam esse crediderit, interminationi quam vestra sedes statuerit subiacebit. <a 410 d. vii k. sept. constantinopoli varane cons.>

CJ.10.22.2: Imperatores Theodosius, Valentinianus

Semel securitatem de refusione munerum emissam ab alio iudice non liceat refricari.Et ideo spectabilitas tua saluberrimae ac iustissim1e praeceptionis formam secuta prohibebit in posterum eos ad discussionem transacti muneris constringi, quos claruit accepta securitatis prosperitate laetari. * theodos. et valentin. aa. celeri procons. africae. * <a 429 d. v k. mai. ravennae post consulatum felicis et tauri vv. cc.>

CJ.10.22.3: Imperator Marcianus

Quicumque de provincialibus et collatoribus decurso posthac quantolibet annorum numero, cum probatio aliqua ab eo tributariae solutionis exposcitur, trium cohaerentium sibi annorum apochas securitatesque protulerit, superiorum temporum apochas non cogatur ostendere, neque de praeterito ad illationem functionis tributariae coartetur, nisi forte aut curialis aut quicumque apparitor vel optio vel actuarius vel quilibet publici debiti exactor sive compulsor possessorum vel collatorum habuerit cautionem, aut id quod deposcit deberi sibi manifesta gestorum adsertione patefecerit. * marcian. a. constantino pp. * <a 456 d. xv k. aug. varane et iohanne conss.>

CJ.10.22.5: Imperator Justinianus

Securitatibus, quae publicarum functionum gratia sive in solidum sive ex parte solutae esse conscribuntur, nullam exceptionem non numeratae pecuniae penitus opponi concedimus. * iust. a. menae pp. * <a 528 d. k. iun. constantinopoli dn. iustiniano a. ii cons.>

CJ.10.23.0. De canone largitionalium titulorum.

CJ.10.23.1: Imperatores Gratianus, Valentinianus, Theodosius

Omnem summam auri vel argenti reliquarumque specierum, quae sacris largitionibus ex more penduntur, statim ut exactio fuerit celebrata, ad thesauros uniuscuiusque provinciae vel ad proximos referri sub obsignatione tabularii ceterorumque, quos sollicitos esse debere praecedentia iussa decreverant, et thesaurorum praepositis consignari praecipimus, ut exinde ad sacrum comitatum integer omnium titulorum numerus dirigatur. * grat. valentin. et theodos. aaa. lolliano. * <a 383 d. xii k. aug. merobaude ii et saturnino conss.>

CJ.10.23.2pr.: Imperatores Honorius, Theodosius

Neque sacrarum privatarum vel largitionum palatina officia ex quacumque causa ex quocumque titulo fiscalis debiti, cum ad provinciam mittuntur, possessores per se audeant convenire, sive id ex praeterito reliquum trahatur seu praesentis temporis tributo solvi conveniat: sed rectores provinciarum frequenter adeundo commoneant eorumque officiis incumbant. * honor. et theodos. aa. ad anthemium pp. * <a 408 d. vii id. dec. constantinopoli basso et philippo conss.>

CJ.10.23.2.1: Imperatores Honorius, Theodosius

Quod si rector provinciae imminentem sibi memoratorum declinare molestiam quaerens vel qualibet alia ratione isdem propria auctoritate publicae exactionis permiserit curam, tam ipse quam officium eius vicena auri pondo fisco dependent. <a 408 d. vii id. dec. constantinopoli basso et philippo conss.>

CJ.10.23.3pr.: Imperatores Leo, Anthemius

Praecepit nostra serenitas neque veloci cursui neque alii praeter veterem consuetudinem gravamini subiacere chartularios, qui de cohortalibus officiis uniuscuiusque provinciae largitionales titulos retractare constituuntur, cum et idem amplissima praefectura disposuisse perhibeatur, ut his necessitatibus liberati fideliter largitionales titulos valeant retractare. * leo et anthem. aa. heliodoro com. sacr. larg. * <a 468 d. viii k. aug. constantinopoli anthemio a. ii cons.>

CJ.10.23.3.1: Imperatores Leo, Anthemius

Quod si aliquo tempore nostra iussio temerario ausu ex aliqua parte fuerit violata, tam rector provinciae quam apparitio eius triginta librarum auri condemnatione plectentur. <a 468 d. viii k. aug. constantinopoli anthemio a. ii cons.>

CJ.10.23.3.2: Imperatores Leo, Anthemius

Insuper virum spectabilem orientis comitem eiusque officium licentiam habere conatus nefarios inhibendi tam moderatorum quam cohortalis officii, cum de hac re admoniti fuerint a palatinis et eandem poenam formidantibus, si non omnibus modis pietatis nostrae decreta congruum mereantur effectum. <a 468 d. viii k. aug. constantinopoli anthemio a. ii cons.>

CJ.10.23.3.3: Imperatores Leo, Anthemius

Illud etiam generali forma sancimus, ut in omnibus provinciis tam nominatio specialium susceptorum largitionalium titulorum quam defensio tractatorum non tantum per viros clarissimos moderatores provinciarum, sed etiam per viros spectabiles proconsules et praefectum augustalem ac laudabiles vicarios una cum eorum officiis, admonentibus semper nec non imminentibus palatinis procuretur providentibus, ut post nominationem etiam specialium susceptorum largitionalium titulorum nulla minuendae exactionis ad sacrum pertinentis aerarium aut transferendi ad arcarios aut quoslibet alios extraneos titulos rectoribus provinciarum aut eorum officiis, sed etiam curialibus licentia permittatur: quadrimenstruis brevibus per idoneum tractatorem eorundem titulorum super commendandis ratiociniis publicis periculo rectorum provinciarum ad sacratissimam urbem transmittendis. <a 468 d. viii k. aug. constantinopoli anthemio a. ii cons.>

CJ.10.23.3.4: Imperatores Leo, Anthemius

Nam quacumque ex parte, quam iussit nostra tranquillitas, si minus fuerit procuratum, poena superius designata tam ipsi iudices quam eorum officia se noverint esse plectendos. <a 468 d. viii k. aug. constantinopoli anthemio a. ii cons.>

CJ.10.23.4: Imperatores Leo, Anthemius

Praecipimus, ut, si forte delegatio, quae ab amplissima praefectura in diversas provincias ex more quotannis emittitur, minus contineat omnes largitionales titulos aut quo modo exactio eorum debet procedere, nihilo minus competentem a viris spectabilibus tam proconsulibus quam vicariis et viro spectabili comite orientis et praefecto augustali nec non rectoribus provinciarum eorumque officiis et curialibus omnium largitionalium titulorum exactionem procurari: vicenarum librarum auri condemnationem prae oculis habentibus, si quid minus exactum vel illatum sacro fuerit aerario, quam prisca et inveterata consuetudo sacris largitionibus inferri constituit. * leo et anthem. aa. heliodoro com. sacr. larg. * <a 468 d. k. iul. constantinopoli anthemio a. ii cons.>

CJ.10.24.0. Ne operae a collatoribus exigantur.

CJ.10.24.1: Imperatores Valentinianus, Valens, Gratianus

Operarum praebitionem, quae illicite a provincialibus hactenus expetita est, sinceritas tua cessare praecipiat. * valentin. valens et grat. aaa. ad viventium pp. * <a 369 d. x k. mart. treveris valentiniano np. et victore conss.>

CJ.10.25.0. De immunitate nemini concedenda.

CJ.10.25.1: Imperatores Gratianus, Valentinianus, Theodosius

His nostrae serenitatis edictis civitatum tabulariis erit flamma supplicium, si cuiusquam fraude ambitu potestate iniusta cuiuspiam profiteretur immunitas, ac non secundum praecedentem definitionem omnes omnino abolita specialium immunitatum gratia necessitas tributariae functionis firmata censitorum peraequatorum provincialium iudicium peraequatione constrinxerit. * grat. valentin. et theodos. aaa. ad pop. * <a 383 d. iii non. mart. mediolani merobaude ii et saturnino conss.>

CJ.10.25.2: Imperatores Honorius, Theodosius

Per bithyniam ceterasque provincias possessores et reparationi publici aggeris et ceteris eiusmodi muneribus pro iugorum numero vel capitum, quae possidere noscuntur, adstringi cogantur. * honor. et theodos. aa. anthemio pp. * <a 412 d. vii k. nov. constantinopoli honorio viiii et theodosio v aa. conss.>

CJ.10.26.0. De conditis in publicis horreis.

CJ.10.26.1pr.: Imperatores Valentinianus, Valens

Omnia quae in horreis habentur expendi volumus, ita ut non prius ad frumentum tendatur expensio, quod sub praefectura tua urbis horreis infertur, quam vetera condita fuerint erogata. * valentin. et valens aa. ad volusianum pu. * <a 364 d. vi id. april. divo ioviano et varroniano conss.>

CJ.10.26.1.1: Imperatores Valentinianus, Valens

Et si forte vetustate species ita corrupta est, ut per semet erogari sine querella non possit, eidem ex nova portione misceatur, cuius adiectione corruptio velata damnum fisco non faciat. <a 364 d. vi id. april. divo ioviano et varroniano conss.>

CJ.10.26.1.2: Imperatores Valentinianus, Valens

Ad istud autem negotium arbitratu ac iudicio tuo nobilis prudens fidelis optime sibi conscius pro integritatis meritis adponatur custos ac mensor, qui vel frumenta modio metiatur vel iustis aestimationibus colligat, quanta habeantur in condito. <a 364 d. vi id. april. divo ioviano et varroniano conss.>

CJ.10.26.2pr.: Imperatores Valentinianus, Valens

Cum ad quamlibet urbem mansionemve accesseris, protinus horrea inspicere te volumus, ut devotissimis militibus effloratae et incorruptae species praebeantur. * valentin. et valens aa. artemio praesidi. * <a 364 d. viii k. sept. arelate divo ioviano et varroniano conss.>

CJ.10.26.2.1: Imperatores Valentinianus, Valens

Nam si per incuriam officii gravitatis tuae sartorum tectorum neglecta procuratione aliqua pluviis infecta perierint, iam ad damnum tuum referentur. <a 364 d. viii k. sept. arelate divo ioviano et varroniano conss.>

CJ.10.26.3pr.: Imperatores Arcadius, Honorius

Nulli posthac horreaticas species contingendi copia praebeatur. * arcad. et honor. aa. anatolio pp. per illyricum. * <a 397 d. vii id. iul. constantinopoli caesario et attico conss.>

CJ.10.26.3.1: Imperatores Arcadius, Honorius

Sin vero quisquam temerator horreorum extiterit, qui sibi ex praedictis aliquid audeat usurpare, hanc poenam sciat nostro arbitrio definitam, ut deportationis poenae subiectus totius substantiae cogatur subire iacturam. <a 397 d. vii id. iul. constantinopoli caesario et attico conss.>

CJ.10.27.0. Ut nemini liceat in coemptione specierum se excusare et de munere sitoniae.

CJ.10.27.1pr.: Imperator Anastasius

Quotiens urguente necessitate comparationes frumenti vel hordei aliarumque specierum quibuslibet provinciis indicentur, nulli penitus possidentium sese sub cuiuscumque privilegii occasione excusandi tribui facultatem censemus, omnique, cuicumque possidentium quocumque modo quocumque tempore per sacros apices vel etiam pragmaticam sanctionem aut iudicialem forte dispositionem huiusmodi excusatio data est vel postea data fuerit, licentia minime umquam contra tenorem nostrae legis saluberrimae valitura. * anastas. a. matroniano pp. * <a 491 d. iii k. aug. constantinopoli olybrio vc. cons.>

CJ.10.27.1.1: Imperator Anastasius

Adeo namque huiusmodi onera cunctis, pro qua singulos portione contingit, volumus inrogari, ut ab isdem comparationibus nec sacratissimam nostrae pietatis nec serenissimae nostrae coniugis domum pateremur subtrahere. <a 491 d. iii k. aug. constantinopoli olybrio vc. cons.>

CJ.10.28.0. De collatione donatorum vel relevatorum aut translatorum seu adaeratorum.

CJ.10.28.1pr.: Imperatores Theodosius, Valentinianus

Dispositionem amplissimae recordationis antiochi, quae certam quantitatem ante se relevatis possessionibus nomine canonis indixit, non imminui decernimus: id enim, quoniam in canonem cecidit et anniversaria debet pensitatione persolvi, nec in praeteritum nec in posterum patimur esse concessum. * theodos. et valentin. aa. hermocrati pp. * <a 444 d. xii k. dec. constantinopoli theodosio a. xviii et albino conss.>

CJ.10.28.1.1: Imperatores Theodosius, Valentinianus

Indulgentiam vero memoratae descriptionis et in anteactum et in posterum tempus non solum in relevatis, verum etiam in donatis adaeratis translatisque, seu quodlibet aliud nomen novae descriptionis excogitatum est, volumus observari nullamque super his umquam exactionis molestiam formidari, quibus non tantum reliqua praeteriti temporis relaxamus, sed nec in posterum quicquam innovationis aut oneris adiciendum esse censemus, nullique licere deinceps contra divalia statuta relevare suas possessiones. <a 444 d. xii k. dec. constantinopoli theodosio a. xviii et albino conss.>

CJ.10.28.1.2: Imperatores Theodosius, Valentinianus

Noverit tamen amplissimae tuae sedis officium, quod si aliquando nobis suggestio huic nostrae sanctioni contraria porrigatur, vel si sacris mandatis (si qua forte citra suggestionem his piis dispositionibus adversa manaverint) obsequatur et aliquos tamquam debitores ex huiusmodi titulo crediderit exponendos, ducentarum librarum auri se condemnatione multandum. <a 444 d. xii k. dec. constantinopoli theodosio a. xviii et albino conss.>

CJ.10.29.0. De collatione aeris.

CJ.10.29.1: Imperatores Arcadius, Honorius

Aeris pretia, quae a provincialibus postulantur, ita exigi volumus, ut pro viginti libris aeris solidus a possessore reddatur. * arcad. et honor. aa. hilario. * <a 396 d. v k. ian. mediolani arcadio iiii et honorio iii aa. conss.>

CJ.10.30.0. De discussoribus.

CJ.10.30.1: Imperatores Valentinianus, Valens, Gratianus

Quotiens in discrepatione constiterit inique discussionem fuisse confectam et fidem facti non poterit approbare discussor, ipse in eodem titulo et in eodem modo ad solvendum protinus urgeatur, in quo alterum perperam fecerit debitorem. * valentin. valens et grat. aaa. ad arthemium vic. hispaniarum.* <a 369 d. prid. id. mai. valentiniano np. et victore conss.>

CJ.10.30.2: Imperatores Arcadius, Honorius

Ne casu amissa securitate publica quaedam praeda nascatur collatoribus, decernimus, ut, quando securitates a discussoribus seu apparatioribus expositae ratiociniis publicis continentur, rursus per iniuriam non petantur. * arcad. et honor. aa. messalae pp. * <a 400 d. v k. dec. mediolani stilichone et aureliano conss.>

CJ.10.30.3: Imperatores Theodosius, Valentinianus

Per singulas provincias vel civitates honoratis usque ad comitivam consistorianam nec non etiam militantibus et suis obsequiis non adhaerentibus, advocatis quin etiam fori provincialis mandari discussionis iugorum sollicitudinem decernimus. * theodos. et valentin. aa. apollonio pp. * <a 442 d. v k. ian. eudoxio et dioscoro conss.>

CJ.10.32.0. De decurionibus et filiis eorum et qui decuriones habentur quibus modis a fortuna curiae liberentur.

CJ.10.32.1: Imperatores valer., gallien.

Si, cum te pater decurionem esse voluisset, illo in rebus humanis agente honor tibi iste delatus est, tenetur quidem etiam heredes eius rei publicae (nam in hac parte vice fideiussoris pater accipitur), sed non ante nisi tuis rebus excussis. * valer. et gallien. aa. et valer. c. caesoni. * <a 259 pp. v k. dec. aemiliano et basso conss.>

CJ.10.32.2: Imperatores Diocletianus, Maximianus

Observare magistratus oportebit, ut decurionibus sollemniter in curiam convocatis nominationem ad certa munera faciant eamque statim in notitiam eius qui fuerit nominatus per officialem publicum perferre curent, habituro appellandi, si voluerit, atque agendi facultatem apud praesidem causam suam iure consueto: quem si constiterit nominari minime debuisse, sumptus litis eidem a nominatore restitui oportebit. * diocl. et maxim. aa. exempl. sacr. litt.* <a xxx sine die et consule.>

CJ.10.32.3: Imperatores Diocletianus, Maximianus

Cum decurionatus honorem sponte susceperis, albo eximi, licet annosum te esse dicis, non potes. * diocl. et maxim. aa. iulio.* <a 285 pp. id. nov. diocletiano a.Ii et aristobulo conss.>

CJ.10.32.4: Imperatores Diocletianus, Maximianus

Cum adoptivum filium ex adoptantis dignitate decurionis filium effici nulla dubitatio est, pro atrocibus iniuriis eum, quem ad vicem naturalis pignoris tibi adscribebas, a praeside provinciae illicitis corporis cruciatibus adfici non oportuit hocque congruenti poena coercebitur. * diocl. et maxim. aa. cassiano.* <a 285 pp. xii k. dec. diocletiano a. ii et aristobulo conss.>

CJ.10.32.5: Imperatores Diocletianus, Maximianus

Filios in potestate patris positos ad munera seu honores non posse devocari falso tibi persuasum est. sane si ad nominationem filii consensum non accommodaveris, ob administrationem ipsius minime conveniri poteris. * diocl. et maxim. aa. alexandro.* <a 286 pp. vi id.... maximo ii et aquilino conss.>

CJ.10.32.6: Imperatores Diocletianus, Maximianus

Expertes litterarum decurionis munera peragere non prohibent iura. * diocl. et maxim. aa. et cc. leontio.* <a 293 d. viii k. mai. aa. conss.>

CJ.10.32.7: Imperatores Diocletianus, Maximianus

Licet indivisa bona fratres habent, nihilo minus tamen singuli suo nomine civilibus tenentur muneribus. * diocl. et maxim. aa. et cc. diogeniano.* <a 293 pp. iiii id. mai. paulino ipsis aa. conss.>

CJ.10.32.8: Imperatores Diocletianus, Maximianus

Infamia, quae tibi abominanda est, non etiam amissionis oculorum casus quaesitum adimit honorem. * diocl. et maxim. aa. et cc. platoniano.* <a 294 d. xvi k. febr. nicomediae cc. conss.>

CJ.10.32.9: Imperatores Diocletianus, Maximianus

In albo decurionum perscriptis patrem non habenti filios anteferri constitit. * diocl. et maxim. aa. et cc. aurelio.* <a 294 >

CJ.10.32.10: Imperatores Diocletianus, Maximianus

Si ultra septuagesimum annum aetatis patrem tuum esse praeses provinciae perspexerit, eum personalium munerum vacatione perfrui providebit. * diocl. et maxim. aa. et cc. aurelio.* <a 294 >

CJ.10.32.11: Imperatores Diocletianus, Maximianus

Uxorem pro marito decurione conveniri non posse procul dubio est. * diocl. et maxim. aa. et cc. maximo.* <a 294 >

CJ.10.32.12: Imperatores Diocletianus, Maximianus

Nec infames immunitatem habere, cum hoc privilegii, non notae sit, convenit. * diocl. et maxim. aa. et cc. zotico.* <a 293 d. v k. dec. aa. conss.>

CJ.10.32.13: Imperatores Diocletianus, Maximianus

A muneribus decurionatus nec sententia praesidis in perpetuum nec anni quinquaginta nec podagrae valitudo praestat excusationem. * diocl. et maxim. aa. et cc. proto.* <a xxxx >

CJ.10.32.14: Imperator Constantinus

Nemo iudex aliquem suo arbitrio de curia liberet. nam si quis fuerit eiusmodi infortunio depravatus, ut debeat sublevari, de eius nomine ad nostram scientiam referri oportet, ut certo temporis spatio civilium munerum ei vacatio porrigatur. * const. a. ad euagrium. * <a 313 pp. id. mart. constantino a. iii et licinio iii conss.>

CJ.10.32.15: Imperator Constantinus

Universos decuriones volumus a tabellionum officiis temperare. * const. a. hilariano correctori lucaniae et brittiorum. * <a 316 d. iii k. febr. sabino et rufino conss.>

CJ.10.32.16: Imperator Constantinus

Si quis decurio vel propriae rei causa vel rei publicae cogatur nostrum adire comitatum, is non ante discedat, quam insinuato iudici desiderio profiscendi licentiam consequatur. quod si pro sua audacia parvi aliquis hanc fecerit iussionem , indignationem competentem sortiatur. * const. a. ad hilarianum procons. africae. * <a 324 pp. vii id. iul. carthagine crispo iii et constantino iii conss.>

CJ.10.32.17: Imperator Constantinus

Qui derelicta curia militaverit, revocetur ad curiam. * const. a. ad euagrium pp. * <a 326 d. xvi k. iun. constantino a. vii et constantio c. conss.>

CJ.10.32.18pr.: Imperator Constantinus

Si ad magistratum nominati aufugerint, requirantur et, si pertinaci animo latere potuerint, his ipsorum bona permittantur, qui praesenti tempore in locum eorum ad duumviratus munera vocabuntur, ita ut, si postea reperti fuerint, biennio integro onera duumviratus cogantur agnoscere. * const. a. * <a 329 d. iii k. oct. serdicae constantino a. viii et constantio iiii conss.>

CJ.10.32.18.1: Imperator Constantinus

Omnes enim, qui obsequia publicorum munerum declinare temptaverint, simili condicione teneri oportet. <a 329 d. iii k. oct. serdicae constantino a. viii et constantio iiii conss.>

CJ.10.32.19: Imperator Constantinus

Vacuatis rescriptis, per quae munerum civilium nonnullis est vacatio praestita, omnes civilibus necessitatibus adgregentur, ita ut nec consensu civium vel curiae praestita cuiquam immunitas valeat, sed omnes ad munerum societatem conveniantur. * const. a. ad lucretium paternum. * <a 329 d. viii k. nov. heracleae constantino a. viii et constantio iiii conss.>

CJ.10.32.20: Imperatores Constantius, constans

Magistratus desertores ad eam gravitas tua faciat necessitatem condicionis urgueri, ut, quascumque pro his expensas civitas prorogavit, refundere protinus ac repraesentare cogantur. * constantius et constans aa. ordini civitatis constantiae cirtensium. * <a 340 d.Xiiii k.Febr.Naisso acindyno et proculo conss.>

CJ.10.32.21: Imperatores Constantius, constans

Curiales omnium civitatium nullam pro re privata nostra debent inquietudinem sustinere nec huiusmodi oneribus velut extraordinariis occupari, quoniam satis est , si civitatum munera per eos congrue compleantur. * constantius et constans aa. nemesiano com. * <a 340 d.Prid.Id. aug. bessae acindyno et proculo conss.>

CJ.10.32.22: Imperator Julianus

Eos indulserunt veteres principes ex materno genere curialibus antiochensis adscribi, quos patris condicio nullius vindicaret iuri civitatis. * iul. a. iuliano com. orientis. * <a 362 d.V k.Sept.Antiochiae mamertino et nevitta conss.>

CJ.10.32.23: Imperator Julianus

Providendum est eorum novitati decurionum, qui nuper nomen curiis addiderunt, ne praeteritis debitis susceptorum onerentur: sed conventis propter haec debita, qui ea praecedentibus delegationibus contraxerunt, nullam eos molestiam pro sarcina nominationis alienae sustinere patiaris. * iul. a. iuliano com. orientis. * <a 362 pp.Beryto k.Nov.Mamertino et nevitta conss.>

CJ.10.32.24: Imperator Julianus

Si quis decurio pater sit tredecim liberorum, honoratissimae munerum quieti donetur. * iul. a. leontio consulari palaestinae. * <a olo d.K.Mart.Antiochiae iuliano a.Iiii et sallustio conss.>

CJ.10.32.25: Imperatores Valentinianus, Valens

Curiales ultra terminos propriae civitatis non iubeantur a moderatoribus provinciarum sui exhibere praesentiam, nisi publica necessitas exegerit. * valentin. et valens aa. ad byzacenos. * <a 364 d.Prid.Id.Sept.Aquileiae divo ioviano et varroniano conss. >

CJ.10.32.26pr.: Imperatores Valentinianus, Valens

Quidam ignaviae sectatores desertis civitatium muneribus captant solitudines ac secreta et specie religionis cum coetibus monazonton congregantur. * valentin. et valens aa. ad modestum pp. * <a 373 pp.Beryto k.Ian.Valentiniano et valente aa.Conss.>

CJ.10.32.26.1: Imperatores Valentinianus, Valens

Hos igitur atque huiusmodi deprehensos erui latebris consulta praeceptione mandamus atque ad munia patriarum subeunda revocari, aut pro tenore nostrae sanctionis familiarum rerum carcere illecebris, quas per eos censuimus vindicandas, qui publicarum essent subituri munera functionum. <a 373 pp.Beryto k.Ian.Valentiniano et valente aa.Conss.>

CJ.10.32.27: Imperatores Valentinianus, Valens

Privilegio militiae paternae se non vindicet, quem avitus curiae nexus adstringit. quod si militari avo et patre decurione nascetur, paternae erit succedaneus functioni. * valentin. et valens aa. mauris sitifensibus. * <a 368 vel 370 d.Viiii k.Ami.Treviris valentiniano et valente aa.Conss.>

CJ.10.32.28: Imperatores Valentinianus, Valens

Nullus qualibet praerogativa fultus a debitis muneribus habeatur immunis. * valentin. et valens aa. ad volusianum pu. * <a 365 d.Iiii k.Iul.Mediolani valentiniano et valente aa.Conss.>

CJ.10.32.29: Imperatores Valentinianus, Valens

Nati ex inquilinarum nostrae domus matrimonio et patre decurione non patrum suorum, verum matrum condicionem sequantur. * valentin. et valens aa. germaniano pp. galliarum. * <a 365 d.Iii id.Oct.Valentiniano et valente aa.Conss.>

CJ.10.32.30: Imperatores Valentinianus, Valens

Procuratores rei publicae actionibus publicis debere uti non venit in dubium. * valentin. et valens aa. ad modestum pp. * <a 370-371 >

CJ.10.32.31: Imperatores Valentinianus, Valens

Ex omnibus domibus producti, qui origine sunt curiali, ad subeundam publicorum munerum functionem protrahantur, quippe cum occultatoribus talium praeter iacturam existimationis etiam rerum discrimen incumbat, si ulterius progressi utilitatem publicam privatis studiis et patrociniis postponant. * valentin. et valens aa.Et grat. a. ad modestum pp. * <a 371 d.Iii id.Iul.Ancyrae gratiano a.Ii et probo conss.>

CJ.10.32.32: Imperatores Gratianus, Valentinianus, Theodosius

Fabricenses ordinibus restituantur, qui originem curialem et propriae munera declinaverint civitatis: reliqui ne levi quidem inquietudine pulsentur. * grat. valentin. et theodos. aaa. ad neoterium pp. * <a 380 d xvi k.April.Thessalonicae gratiano v et theodosio aa.Conss.>

CJ.10.32.33pr.: Imperatores Gratianus, Valentinianus, Theodosius

Omnes iudices provinciarumque rectores a consuetudine temerariae usurpationis abstineant sciantque neminem omnino principalium aut decurionum sub qualibet culpae aut erroris offensa cruciatibus esse subdendum. * grat. valentin. et theodos. aaa. eutropio pp. * <a 381 d.Xii k.Aug.Heracleae eucherio et syagrio conss.>

CJ.10.32.33.1: Imperatores Gratianus, Valentinianus, Theodosius

Quod si quis forte iudicum in hac pertinaciam illiciti furoris eruperit, quod audeat principalem ac decurionem et suae, si sic dici oportet, curiae senatorem tormentis subdere, viginti librarum auri illatione multatus et perpetua infamia inustus nec speciali quidem rescripto notam eluere mereatur: et officium quinquaginta librarum auri multam fisco nostro cogetur inferre, quoniam, ut pertinaciae iudicis sui resistat, liberam eidem contradicendi permittimus facultatem. <a 381 d.Xii k.Aug.Heracleae eucherio et syagrio conss.>

CJ.10.32.34pr.: Imperatores Gratianus, Valentinianus, Theodosius

Si quis procurationem facultatum suarum curiali crediderit esse mandatam, totius dignitatis exceptione depulsa gravissima poena plectetur. * grat. valentin. et theodos. aaa. floro pp. * <a 382 d.X k.Nov.Constantinopoli antonio et syagrio conss.>

CJ.10.32.34.1: Imperatores Gratianus, Valentinianus, Theodosius

Ille vero, qui immemor libertatis et generis infamissimam suscipiens vilitatem existimationem suam servili obsecundatione damnaverit, tradatur exsilio. <a 382 d.X k.Nov.Constantinopoli antonio et syagrio conss.>

CJ.10.32.35pr.: Imperatores Gratianus, Valentinianus, Theodosius

In filiis decurionum retinendis priorum praeceptorum decreta sublimitas tua custodiat. * grat. valentin. et theodos. aaa. postumiano pp. * <a 383 d.Viii id.April.Constantinopoli merobaude ii et saturnino conss.>

CJ.10.32.35.1: Imperatores Gratianus, Valentinianus, Theodosius

Eos quoque, qui advocationis obtentu curialia onera declinant, agere universa compellat, quae et si necessitas non exigit, tamen patria non remittit. <a 383 d.Viii id.April.Constantinopoli merobaude ii et saturnino conss.>

CJ.10.32.35.2: Imperatores Gratianus, Valentinianus, Theodosius

Ipsos quin etiam filios magistrorum, qui ex curiali stirpe descendunt, simili modo obnoxios esse decernat. <a 383 d.Viii id.April.Constantinopoli merobaude ii et saturnino conss.>

CJ.10.32.36: Imperatores Gratianus, Valentinianus, Theodosius

Exemplo senatorii ordinis patris originem unusquisque sequatur, nec valeant specialiter delata rescripta, si quis se matris origine defendens a maiore curia ad minorem transferri fortasse promeruerit: neque ulla pro more provinciae referri sinatur exceptio. * grat. valentin. et theodos. aaa. ad basilium com. sacr. larg. * <a 383 d.Xvi k.Iul.Romae merobaude ii et saturnino conss.>

CJ.10.32.37: Imperatores Gratianus, Valentinianus, Theodosius

Quotienscumque se ex rescriptis nostris aliquid impetrasse contendent ii, quos obnoxios curiae vel origo fecerit vel latum inter partes iudicium designaverit, nullam prorsus spem curias declinandi ex colore sacrae iussionis accipiant. * grat. valentin. et theodos. aaa. postumiano pp. * <a 383 d. xiiii k. aug. constantinopoli merobaude ii et saturnino conss.>

CJ.10.32.38pr.: Imperatores Gratianus, Valentinianus, Theodosius

Ne quis officialium poenae specie atque aestimatione curiae dedatur, nisi si quis forte curiam diffugiens ob hoc coeperit militare, ne ingenitis fungatur officiis. * grat. et valentin. et theodos. aaa. ad cynegium pp. * <a 384 d. viii id. nov. constantinopoli ricomere et clearcho conss.>

CJ.10.32.38.1: Imperatores Gratianus, Valentinianus, Theodosius

Omnes itaque omnino iudices tuae censurae subditos admonebis, ne quis eorum aestimet curiae loco supplici quemquam deputandum, cum utique unumque criminosum non dignitas debeat, sed poena comitari. <a 384 d. viii id. nov. constantinopoli ricomere et clearcho conss.>

CJ.10.32.39: Imperatores Gratianus, Valentinianus, Theodosius

Curiales, qui sese privilegio domus nostrae defendi posse crediderint, ad curiam retrahantur et propriis functionibus mancipentur et publica damna sarciant. * grat. et valentin. et theodos. aaa. et arcad. a. ad eusignium pp.* <a 386 d. viii k. ian. honorio np. et euodio conss.>

CJ.10.32.40: Imperatores Gratianus, Valentinianus, Theodosius

Quilibet principalium vel decurionum vel decoctor pecuniae publicae vel fraudulentus in adscriptionibus illicitis vel immoderatus in exactione fuerit inventus, iuxta pristinam consuetudinem non solum a vobis, quibus propter loci dignitatem rerum summa commissa est, verum a iudicibus ordinariis plumbatarum ictibus subiciatur. * grat. valentin. et theodos. aaa. cynegio pp. * <a 387 d. die k. april. constantinopoli valentiniano a. iii et eutropio conss.>

CJ.10.32.41: Imperatores Gratianus, Valentinianus, Theodosius

Decurio fortunam quam nascendo meruit suffragiis atque ambitione non mutet: et si vacare per senectutem potuerit, propter ordinationem, quae per plurimus cito definiri solet, curiam non relinquat. * grat. valentin. et theodos. aaa. cyneaio pp. * <a 387 d. prid. non. iul. constantinopoli valentiniano a. iii et eutropio conss.>

CJ.10.32.42pr.: Imperatores Theodosius, Arcadius, Honorius

Militaribus viris nihil sit commune cum curiis: nihil sibi licitum sciant, quod suae non subiectum est potestati: nullum iniuria, nullum verbere, nullum gravi pulsatione tribunus, dux ille an comes sit, curialem principalemve contingat. * theodos. arcad. et honor. aaa. abundantio com. et mag. utr. mil.* <a 392 d. prid. k. aug. constantinopoli arcadio a. ii et rufino conss.>

CJ.10.32.42.1: Imperatores Theodosius, Arcadius, Honorius

Si quis posthac temerario et inconsiderato ausu ullum ex principalibus viris usurpata attrectaverit iniuria, sciat se decem auri libris esse multandum. <a 392 d. prid. k. aug. constantinopoli arcadio a. ii et rufino conss.>

CJ.10.32.43: Imperatores Theodosius, Arcadius, Honorius

Omnes, qui curiali obstricti sanguine diversis se officiorum privilegiis et actuum praeiudiciis adgregarunt, reddendos muniis esse non ambiges. sed nec rescripta aut adnotationes ad munerum fugam prodesse permittimus. * theodos. arcad. et honor. aaa. rufino pp. * <a 393 d. prid. id. april. constantinopoli theodosio a. iii at abundantio conss.>

CJ.10.32.44: Imperatores Theodosius, Arcadius, Honorius

Nullus solius materni sanguinis vinculis illigetur, quia mulierum infirmitas numquam huiusmodi functionibus reddit obnoxios, a quibus ipsa habetur immunis. * theodos. arcad. et honor. aaa. rufino pp. * <a 393 d. v id. aug. constantinopoli theodosio a. iii et abundantio conss.>

CJ.10.32.45: Imperatores Arcadius, Honorius

Nominationum forma vacillare non debet, si omnes qui albo curiae detinentur adesse non possunt, ne paucorum absentia sive necessaria sive fortuita debilitet, quod a maiore parte ordinis salubriter fuerit constitutum, cum duae partes ordinis in urbe positae totius curiae instar exhibeant. * arcad. et honor. aa. ennodio procons. africae. * <a 395 d.Xvii k.Iun.Mediolani olybrio et probino conss.>

CJ.10.32.46: Imperatores Arcadius, Honorius

Ad subeunda patriae munera dignissimi et meritis et facultatibus curiales eligantur, ne tales forte nominentur, qui functiones publicas implere non possint. * arcad. et honor. aa. theodoro pp. * <a 395 d.Iiii k.Oct.Mediolani olybrio et probino conss.>

CJ.10.32.47pr.: Imperatores Arcadius, Honorius

Curiales, qui honorariam adepti sunt comitivam, formidare debent eos, quorum sunt moderationi commissi, nec se existimare ideo meruisse dignitatem, ut iudicum praecepta despiciant. * arcad. et honor. aa. caesario pp. * <a 395 d.Iiii k.Ian.Constantinopoli olybrio et probino conss.>

CJ.10.32.47.1: Imperatores Arcadius, Honorius

Quod si in eadem culpa perseverent, quinque librarum auri multae obnoxius subiugetur, honore quoque quem prodidit spoliandus. <a 395 d.Iiii k.Ian.Constantinopoli olybrio et probino conss.>

CJ.10.32.48: Imperatores Arcadius, Honorius

In successione curialium decernimus, ut, etiam si patres decesserint, teneatur agnatio. * arcad. et honor. aa. florentino pu. * <a 397 d.Xii k.Ian.Mediolani caesario et attico conss.>

CJ.10.32.49: Imperatores Arcadius, Honorius

Omnes, qui quolibet curiae iure debentur, cuiuscumque superstitionis sint, ad implenda munia teneantur. * arcad. et honor. aa. theodoro pp. * <a 398 d.Id.Febr.Mediolani honorio a.Iiii et eutychiano conss.>

CJ.10.32.50: Imperatores Arcadius, Honorius

Omnes omnino curiales in originalibus ac debitis perpetuo curiis perseverent, et qui ex his ad provinciarum regimen atque administrationem qualibet fraude atque ambitione pervenerint, sciant se non solum in sua curia remansuros, sed etiam cunctis rursus ab exordio muneribus servituros. * arcad. et honor. aa. eutychiano pp. * <a 398 d.Viii k.Nov.Constantinopoli honorio a.Iiii et eutychiano conss.>

CJ.10.32.51pr.: Imperatores Arcadius, Honorius

Quamvis provisum fuerat congruae emendationis occursu, quemadmodum curiales militiae nomine et honore suspenso officiis redderentur, tamen quia hoc callido consilio reppererent, ut evitatis provinciae suae finibus, tamquam his eorum tantum interdictis fuisset accessus, peregrinos expeterent commeatus, ne diutius in perniciem curiarum latitandi spes et solacium eos impunitatis exacuat, horum cupiditatibus obviamus, ut ex eorum bonis, qui se vel prosecutioni vel muniis civitatum interdictae dudum ambitione militiae vel qualibet fraude subtrahere conati fuerint, curiis quas deseruerant consulatur. * arcad. et honor. aa. messalae pp. * <a 399 d.Xvii k.Sept.Theodoro vc.Cons.>

CJ.10.32.51.1: Imperatores Arcadius, Honorius

Itaque si vocati edictis intra anni metas (ii tamen, qui manifestis curiae nexibus illigantur) latere potius quam redire maluerint, sciant post emensum annum interpellatis provinciarum moderatoribus ex facultatibus suis curiis quas destituerunt consulendum. neque enim de immaturo praeiudicio temporis possunt brevitatem causari. <a 399 d.Xvii k.Sept.Theodoro vc.Cons.>

CJ.10.32.52: Imperatores Arcadius, Honorius

Quis tam inveniri iniquus arbiter rerum potest, qui in urbibus magnifico statu praeditis ac votiva curialium numerositate locupletibus ad iterationem quempiam transacti oneris compellat, ut, cum alii necdum paene initiati curiae sacris fuerint, alios continuatio et repetitae saepe functiones adficiant? * arcad. et honor. aa. probino procons. africae. * <a 397 d.Xvi k.April.Mediolani caesario et attico conss.>

CJ.10.32.53: Imperatores Honorius, Theodosius

Duumvirum impune non liceat extollere potestatem fascinum extra metas territorii propriae civitatis. * honor. et theodos. aa. euchario procons. africae. * <a 412 d.Vi id.Mart.Ravennae honorio viiii et theodosio v aa.Conss.>

CJ.10.32.54: Imperatores Honorius, Theodosius

Generali lege sancimus, ut, si quis tuum decurionem curiae vindicare maluerit, si praesidis desit copia, eundem manus iniectione concessa sciat ad examen cognitoris resultantem esse deducendum, ita ut moderator provinciae, si quaestio fortasse fiducis defensionis ulla generatur, nisi intra tres menses causam originis competenti disceptatione cognoverit atque convictum cum poena restituerit debitis muneribus vel liberum ab inquietudine pronuntiaverit, decem librarum auri multam cogatur exsolvere, eius etiam officium pari damni inrogatione teneatur. * honor. et theodos. aa. aplladio pp. * <a 416 d.V non.Mai.Ravennae theodosio a.Vii et palladio conss.>

CJ.10.32.55: Imperatores Theodosius, Valentinianus

Si quis decurio aut subiectus curiae ausus fuerit ullam adfectare militiam, nulla praescriptione temporis muniatur, sed ad condicionem propriam retrahatur, ne ipse vel eius liberi post talem ipsius statum procreati quod patriae debetur valeant declinare. * theodos. et valentin. aa. isidoro pp. * <a 436 d.Iii non.April.Constantinopoli isidoro et senatore conss. >

CJ.10.32.56pr.: Imperatores Theodosius, Valentinianus

Alexandrinis principalibus, etsi advocatione fungantur, nihilo minus peregrinationi incumbat, nec cura publica nisi in sua tantum civitate committatur. * theodos. et valentin. aa. isidoro pp. * <a 436 d.Prid.Non.Iun.Constantinopoli isidoro et senatore conss. >

CJ.10.32.56.1: Imperatores Theodosius, Valentinianus

Et primus curiae, cum muneribus universis expletis ad summum pervenerit gradum, comitivae primi ordinis fruatur post biennium dignitate praestita, in curialibus tamen permaneat. <a 436 d.Prid.Non.Iun.Constantinopoli isidoro et senatore conss. >

CJ.10.32.57: Imperatores Theodosius, Valentinianus

Quinque summates ordinis alexandrini corporalibus iniuriis immunes esse censemus , ut voce libera commoditates patriae defendant, cum possint, si quid egerint criminose, pecuniariis coerceri dispendiis. aestimabuntur autem praesente curia viri spectabilis augustalis iudicio. * theodos. et valentin. aa. isidoro pp. * <a 436 d.Prid.Non.Iun.Constantinopoli isidoro et senatore conss. >

CJ.10.32.58: Imperatores Theodosius, Valentinianus

Eum, qui triginta annos in alexandrina civitate civilibus inhaeserit muneribus, corporalibus muniis, non pecuniariis excusari convenit: habita consideratione videlicet meritorum, ut hoc bene cogniti privilegium consequantur nec eo passim fruantur indigni. * theodos. et valentin. aa. isidoro pp. * <a 436 d.Prid.Non.Iun.Constantinopoli isidoro et senatore conss. >

CJ.10.32.59pr.: Imperatores Theodosius, Valentinianus

Si quos spontaneos hypomnematographi munificos suis exhortationibus ad publicas nominaverint functiones, iubemus non expectandum esse consensum pro tempore viri spectabilis augustalis, qui fit plerumque venalis, sed utriusque partis sufficere voluntatem, ut incipiat functio, quam nullus incusat: tunc ad memoratum iudicem tam nominati quam etiam creatores consona relatione currente. * theodos. et valentin. aa. isidoro pp. * <a 436 d.Prid.Non.Aug.Constantinopoli isidoro et senatore conss. >

CJ.10.32.59.1: Imperatores Theodosius, Valentinianus

Quam si suscipere vel confirmare distulerit, sciat se viginti quinque auri librarum condemnatione plectendum. <a 436 d.Prid.Non.Aug.Constantinopoli isidoro et senatore conss. >

CJ.10.32.60pr.: Imperatores Theodosius, Valentinianus

Nullus, qui nexu generis curiae tenetur obnoxius, per substitutam quamcumque personam curiales impleat functiones, sed ipse per se debitum patriae munus exsolvat, etsi spectabili dignitate decoratus sit, nisi hoc ei speciali beneficio sit concessum. * theodos. et valentin. aa. thomae pp. * <a 442 d.V k.Mart.Constantinopoli eudoxio et dioscoro conss.>

CJ.10.32.60.1: Imperatores Theodosius, Valentinianus

Ii vero, qui honorario titulo illustrem dignitatem consecuti sunt, per substitutos periculo suarum facultatum curiae muneribus satisfacere non vetentur. <a 442 d.V k.Mart.Constantinopoli eudoxio et dioscoro conss.>

CJ.10.32.61pr.: Imperator Leo

Neque dorotheum virum illustrem et totam eius substantiam neque irenaeum virum spectabilem tribunum et notarium, etsi ante paternas illustres dignitates natus est, ullam inquietudinem pro curiali genere et condicione sustinere decernimus: liberos quoque eorum, vel qui iam sunt vel futuri, eorumque posteros, quotienscumque continuata temporum et successionum perpetuitate nascentur, a curiali condicione et functione esse liberos: lege divae memoriae iuliani, quae de materno curialium antiochenae civitatis genere promulgata est, nihil in persona viri illustris dorothei vel viri spectabilis irenaei vel adversus facultates eorum vel adversus liberos eorundem, qui iam vel nati sunt vel postmodum quoquo tempore nascentur, vel adversus substantias eorum roboris habitura, * leo a. viviano pp. * <a 457-465 >

CJ.10.32.61.1: Imperator Leo

Circa alias sane universas personas de materno genere ad memoratae antiochenae civitatis tantummodo curiam pertinentes eandem legem praecipimus obtinere propriam firmitatem. <a 457-465 >

CJ.10.32.62pr.: Imperator Leo

Si ille, qui ex filia decurionis antiochenae splendidissimae civitatis et patre, qui nullius alterius civitatis muniis debeatur, procreatus est, sub examine provincialis iudicis vel sponte confessus vel certe convictus fuerit, quod ex filia sit curialis progenitus et albo decurionum adscriptus fuerit, nullam sibi superesse facultatem negandae vel evitandae condicionis existimet et curialem non adspernari fortunam avi materni sui pertemptet nec dubitet se muniis curialibus subiacere. * leo a. constantino pp. * <a 457-465 >

CJ.10.32.62.1: Imperator Leo

Quod si quem curia, de qua praesens sanctio loquitur, natum ex filia curialis minime secundum praestitutam ordinationem sibi sociandum curaverit, prolem eius pulsare nullo modo penitus poterit: nec enim patimur conventionem eiusmodi praetermisso filio, quem filia curialis ediderat, a nepote vel pronepote vel ulterius incipere. <a 457-465 >

CJ.10.32.63: Imperator Leo

Docticii viri clarissimi iuvenis fortuna super curiali condicione nullo modo inquietanda nec facultatibus eius, sed eo, qui huiusmodi conamen inierit, sacrilegii poenam luituro omnes, qui post peractam illustrem administrationem vel adhuc in ea posito patri suo giguntur, a curialium intentione defendantur una cum paternis sine dubio substantiis, quas cum persona patris a curiali nexu liberas esse nemo dissimulet. * leo a. ad senatum. * <a xxx >

CJ.10.32.64pr.: Imperator Zeno

Neminem ex his, qui obnoxii curiae constituti ab initio felicissimi nostrae pietatis imperii comitum privatarum nostrae vel augustae partis, seu comitis largitionum vel comitis domesticorum, quaestoris vel magistri officiorum ad actum administrationis gerendum provecti sunt vel in posterum provehentur, ob hoc curialium munerum laqueos volumus evitare: sed obligatos cum liberis suis quandocumque progenitis et facultatibus suis post administrationem depositam curiae commoditatibus inservire, nisi forte aliis privilegiis super hoc legibus cognitis muniantur. nam alia universa legitima vel ex constitutionibus data privilegia integra volumus illibataque observari. * zeno a. sebastiano pp. * <a xxx >

CJ.10.32.64.1: Imperator Zeno

Ne tamen indulti honoris inane nomen retinere videantur, dignitatum titulis potiantur, per substitutos suarum periculo facultatum curialibus muneribus respondentes habeant integra illibataque privilegia dignitatis. <a xxx >

CJ.10.32.64.2: Imperator Zeno

Eos vero, qui vel praefatas dignitates ante initium nostri imperii consecuti sunt, cum facultatibus suis et post eam dignitatem progenitis filiis a curialibus nexibus vel onere decernimus liberari. <a xxx >

CJ.10.32.64.3: Imperator Zeno

Hos autem, qui quocumque tempore patricii vel consules aut consulares facti sunt aut in posterum fuerint, aut magistri militum vel praefecti praetorio orientis vel illyrici vel urbis administrationem in actu positi quandoque gesserunt aut postea gesserint, omnimodo cum facultatibus suis et post eam dignitatem progenitis filiis a curiarum nexibus vel onere decernimus liberari. <a xxx >

CJ.10.32.66pr.: Imperator Anastasius

Divae memoriae zenonis sacratissimam constitutionem, quae de curialibus post certas excelsas administrationes seu dignitates condicionis nexu liberandis lata est, in hac tantummodo parte duximus corrigendam, qua cavetur eos etiam, qui ante eandem constitutionem, ab initio tamen eiusdem divae recordationis zenonis imperii, comitis privatarum nostrae vel piissimae augustae partis, seu comitis largitionum vel comitis domesticorum, quaestoris aut magistri officiorum licet ad actum administrationis gerendum provecti sunt, minime curialium munerum laqueos ob hoc evitare, sed obligatos cum liberis suis quandocumque progenitis et facu ltatibus suis post administrationem depositam curiae commoditatibus inservire, nisi forte aliis privilegiis super hoc legibus cognitis muniantur. * anastas. a. polycarpo pp. * <a 497-499 >

CJ.10.32.66.1: Imperator Anastasius

His etenim, qui memoratas administrationes vel unam ex his peregerunt, nec non liberis et rebus eorum beneficium, quod ante per illustrem administrationem peractam eis adquisitum est, intactum illibatumque iubemus servari, ut relaxatione condicionis et munerum curialium per anteriores principales dispositiones sibi concessa tam ipsi quam liberi eorum post huiusmodi administrationem adeptam procreati una cum propriis substantiis potiantur, etsi contigit eos post divae memoriae zenonis constitutionem sive per se sive per substitutos suos curiae competentia munera subisse: eadem videlicet constitutione divae memoriae zenonis ex die quo promulgata est suas vires obtinente, cum conveniat leges futuris regulas imponere, non praeteritis calumnias excitare. <a 497-499 >

CJ.10.32.67pr.: Imperator Justinianus

Curialibus consortiis consulentes censemus, ut nemo sibi blandiatur et non certis modis sese liberum esse existimet, sed pro nostra forma tantummodo sciat posse libertatem sibi curialis competere condicionis: omnibus anterioribus modis, quos non comprehendit praesens sanctio, ex praesenti die antiquandis. * iust. a. demostheni pp. * <a 529 >

CJ.10.32.67.1: Imperator Justinianus

Si quis igitur vel summum patriciatus honorem fuerit consecutus, sive infulis consultatus honorarii aut ordinarii fuerit ampliatus, ut vel consul vel consularis efficiatur, seu praefectorum praetorio infulas susceperit gubernandas, vel urbicariam (in ipso tamen actu) meruerit praefecturam, nec non magistri militum officium gerendum susceperit, is gaudeat se huiusmodi condicionis esse exsortem et liberum cum suis facultatibus suaque posteritate, quam postquam meruit dignitatem vel actum gessit ediderit, anterioribus filiis in condicione pristina remansuris. <a 529 >

CJ.10.32.67.2: Imperator Justinianus

Tam praefecturae quaestoris quam viri eloquentissimi fisci patroni tam praefecturae, quae orientalibus et illyricianis praesidet sedibus, quam urbicariae nexibus curiae liberantur, cum ad fisci patronatum pervenerint, una cum substantiis et liberis suis, quos vel ante habuerint vel postquam ad eundem gradum provecti sunt. <a 529 >

CJ.10.32.67.3: Imperator Justinianus

Viri etiam clarissimi principes argentium in rebus curiae libertatem ex antiquis legibus consecuti sunt, et viri spectabiles proximi sacri scrinii memoriae et sacrarum epistularum nec non sacri scrinii libellorum sacrarumque cognitionum et dispositionum cum substantiis suis et liberis, quos post emensa stipendia susceperant. <a 529 >

CJ.10.32.67.4: Imperator Justinianus

Hoc etiam nos corroborantes intuitu laborum, quos multos longo prolixoque tempore pertulerunt, intactum illibatumque conservamus, ut ii omnes fortuna curiali liberentur cum sua substantia suaque subole secundum ea quae praediximus. <a 529 >

CJ.10.32.67.5: Imperator Justinianus

Ex aevo autem sequente progenitos antea nullius futuri fisci patroni liberos concedimus liberandos, ut ne, quod summis apicibus dignitatum non est concessum, hoc alii sibi audeant vindicare: sed progeniti filii ante, quam ad fisci patronatum pervenerint, in condicione pristina remaneant. <a 529 >

CJ.10.32.67.6: Imperator Justinianus

Aliis autem modis, quam his, quos singillatim enumeravimus, sive legibus antiquis comprehensi sunt (qualis erat is, quem ex tribus maribus concessum ante fuerat patri maximo senatui sociare) sive comprehensi anterioribus scitis non fuerant, liberationem competere cuidam curialis fortunae nullo patimur modo: sed sive pragmatica sanctio super hoc processit sive sententia eminentissimae praefecturae, sive alius quicumque modus excogitatus est, omnia ea penitus vacuari et pro infectis haberi, et curialia corpora suis reddi civitatibus et substantias eorum subiacere nulla excusatione eis penitus competente. <a 529 >

CJ.10.33.0. Si libertus aut servus ad decurionatum adspiraverit.

CJ.10.33.1: Imperatores Diocletianus, Maximianus

Si libertus vel ius aureorum anulorum adeptus non est vel natalibus suis non restitutus, praeses provinciae non tantum curiae participare non permittet, sed iuxta legis severitatem congruenti poena ulciscetur. * diocl. et maxim. aa. saturnino. * <a xxx >

CJ.10.33.2: Imperatores Diocletianus, Maximianus

Praeses provinciae, si eum qui aedilitate fungitur servum tuum esse cognoverit, si quidem non ignarum condicionis suae ad aedilitatem adspirasse perspexerit, ob violatam servili macula curiae dignitatem congruenti poena adficiet: si vero, cum opinione publica mater eius pro libera haberetur, ex decurione procreatus ad capessendum honorem errore lapsus processit, dominio tuo eum subiugabit. * diocl. et maxim. aa. orcinae. * <a xxx >

CJ.10.34.0. De praediis curialium sine decreto non alienandis.

CJ.10.34.1pr.: Imperatores Valentinianus, Theodosius, Arcadius

Si quis decurionum vel rustica praedia vel urbana venditor necessitate coactus addicit, interpellet iudicem competentem omnesque causas singillatim quibus strangulatur exponat et ita demum distrahendae possessionis facultatem accipiat, si alienationis necessitatem probaverit. infirma enim erit vinditio, si haec fuerit forma neglecta. * valentin. theodos. et arcad. aaa. cynegio pp. * <a 386 d.Viii k.Dec.Constantinopoli honorio np.Et euodio conss.>

CJ.10.34.1.1: Imperatores Valentinianus, Theodosius, Arcadius

Ita enim fiet, ut nec immoderatus venditor nec emptor, cuiuscumque sit condicionis, inveniatur iniustus. denique nihil erit postmodum, quo venditor vel circumventum se insidiis vel oppressum potentia comparatoris queri debeat, quandoquidem sub fide actorum et de necessitate distrahentis et de voluntate patuerit comparantis. <a 386 d.Viii k.Dec.Constantinopoli honorio np.Et euodio conss.>

CJ.10.34.1.2: Imperatores Valentinianus, Theodosius, Arcadius

Quod si quis contra vetitum occultis molitionibus per suppositas fraude personas cuiuslibet loci, quem tamen decurio distrahat, comparator extiterit, sciat se pretio quod dedit esse privandum et locum quem comparavit cum fructibus esse restituendum. <a 386 d.Viii k.Dec.Constantinopoli honorio np.Et euodio conss.>

CJ.10.34.2pr.: Imperatores Theodosius, Valentinianus

Nec venditio rei hereditariae curiae adquisitae aut debitoris hereditarii qui solverit liberatio aliter admittenda est, nisi apud acta totius vel maioris partis ordinis intercedente decreto ineundi contractus vel dissolvendae obligationis causa probetur. * theodos. et valentin. aa. florentino pp. * <a 428 d.V id.Iun.Constantinopoli felice et tauro conss.>

CJ.10.34.2.1: Imperatores Theodosius, Valentinianus

Ita enim id quod ex ea redigitur ad praediorum iubemus comparationem expendi, quorum reditus omnes, sicut dictum est, eiusdem curiae publicis muneribus, quae solacio egere constiterit, iustissime servabuntur: ex consensu omnium et maxime ditiorum, vel idonea fideiussione oblata conductoribus eligendis. <a 428 d.V id.Iun.Constantinopoli felice et tauro conss.>

CJ.10.34.3pr.: Imperator Zeno

Curiales vendere quidem res immobiles vel mancipia rustica prohibemus sine interpositione decreti: donationes vero vel permutationes vel quoslibet alios etiam sine decreto permittimus celebrare contractus, quoniam et sacrae constitutiones, quae super hoc a retro principibus latae sunt, in plurimis suis partibus de pretio non redhibendo locutae sunt, ut ex hoc apertissime detur intellegi solum emptionis decurionibus sine decreto interdictum fuisse contractum. * zeno a. sebastiano pp. * <>

CJ.10.34.3.1: Imperator Zeno

Cum tamen venditione intercedente, ut dictum est, decretum agitur, nihil eos vel qui ab his comparant dispendium, cuiuscumque personae vel causae vel theatralis liberalitatis nomine, quod frequenter fieri dicitur, sustinere decernimus, ne ex tabella decretum recitari, sed curialium vel maioris partis curiae relatione currente sine ulla malignitate referentium vel damno contrahentium ad confrimandam emptionem competentis iudicis proferri sententiam. <>

CJ.10.35.0. Quando et quibus debetur quarta pars ex bonis decurionum et de modo distributionis eorum.

CJ.10.35.1: Imperatores Theodosius, Valentinianus

Si decurionum consortio sit alienus qui curiali successit, competentis eidem iuris (sive ex asse sive ex parte heres sit bonorumve possessor) partem quartam iure optimo a curia peti decernimus. * theodos. et valentin. aa. florentio pp. * <a 428 d.V id.Iun.Constantinopoli felice et tauro conss.>

CJ.10.35.2pr.: Imperator Zeno

Meminimus nuper emissa lege divali portionem quartam de facultatibus curialium fati munus implentium, ex qualibet novissima voluntate vel ab intestato etiam ad quemcumque praeterquam si ad filios curiales deferantur, curiarum deputasse corporibus. sed multi tamquam corrumpendi totius patrimonii occasione captata uniuscuiusque rei sibi particulam vindicando adeo totas dilacerant facultates, ut, dum participibus relictarum opum nocere cupiant, sua quoque iura praecipitent. * zeno a. apollonio pp. * <a 443 d.Viii id.Mart.Constantinopoli post consulatum dioscuri et eudoxii vv.Cc.>

CJ.10.35.2.1: Imperator Zeno

Quorum nimiam licentiam provida dispositione frenantes ipsis quidem curialibus occupandi sua auctoritate res mortui copiam denegamus: heres autem, ad quem ab intestato vel ex postrema voluntate directis vel fideicommissariis verbis decurrit hereditas, omne patrimonium quod relictum est in partes quattuor dividi procuret, ut, rebus totis in sortitum casumque deductis vel curiae quadrantis vel heredi vel fideicommissario per universitatem dodrantis electio ex sortis felicitate contingat. <a 443 d.Viii id.Mart.Constantinopoli post consulatum dioscuri et eudoxii vv.Cc.>

CJ.10.35.2.1a: Imperator Zeno

Ita scilicet et praefati successores et curia promiscui rerum dominii liberabuntur incommodo. naturale quippe vitium est neglegi, quod communiter possidetur, utque se nihil habere, qui non totum habeat, arbitretur, denique suam quoque partem corrumpi patiatur, dum invidet alienae. <a 443 d.Viii id.Mart.Constantinopoli post consulatum dioscuri et eudoxii vv.Cc.>

CJ.10.35.2.2: Imperator Zeno

Sed ubi quarta pars bonorum mortui curiae debet offerri, immobiles quidem res, quae nec latere facile possunt nec quicquam si divulgentur officiunt, sub adspectu etiam curialium aestimari dividique concedimus: mobiles autem res vel se moventes vel instrumenta, vel si quid etiam in huiusmodi iure consistat, in medium proferri divulgarique non patimur, sed iuratis successoribus, cum apud se diligenter aestimaverint, quae quantique sint pretii facultates, credi oportere decernimus. quid enim tam durum tamque inhumanum est, quam publicatione pompaque rerum familiarium et paupertatis detegi vilitatem et invidiae patere divitias? <a 443 d.Viii id.Mart.Constantinopoli post consulatum dioscuri et eudoxii vv.Cc.>

CJ.10.35.2.3: Imperator Zeno

In exigendis vero debitis, si pretium, quod pro quarta parte actionum curiae competit, successores praestare noluerint, cautionibus iurata fide prolatis in medium unusquisque a debitoribus convenientem sibi exigat portionem: eque diverso aes alienum, si cui defunctus fuerat obligatus, tam idem successores quam curia pro sua sorte restituere compellentur. <a 443 d.Viii id.Mart.Constantinopoli post consulatum dioscuri et eudoxii vv.Cc.>

CJ.10.35.2.4: Imperator Zeno

Quod si saepe dicti successores sacramentum sibi crediderint excusandum, tum vero ad similitudinem rerum immobilium diligentior curialibus omnium rerum indago praebebitur, scilicet ut universis mortui facultatibus in aperto propositis vel aestimatio rerum vel divisio sub praesentia curialium celebretur. <a 443 d.Viii id.Mart.Constantinopoli post consulatum dioscuri et eudoxii vv.Cc.>

CJ.10.35.2.5: Imperator Zeno

In omnibus autem casibus, ubi quarta pars curiae competit, transactiones interpositas firmas illibatasque manere decernimus. <a 443 d.Viii id.Mart.Constantinopoli post consulatum dioscuri et eudoxii vv.Cc.>

CJ.10.35.2.6: Imperator Zeno

Ad filiorum vero curialium vel nepotum ac pronepotum, scilicet decurionum, similitudinem, ad quos integras opes pervenire censuimus, filiam quin etiam neptem proneptemve principali eiusdem civitatis, unde pater avus vel proavus oritur, nuptam rerum vel ab intestato vel ex dispositione ultimae voluntatis quaesitarum integrum nullaque parte minutum dominium habere sancimus. <a 443 d.Viii id.Mart.Constantinopoli post consulatum dioscuri et eudoxii vv.Cc.>

CJ.10.35.2.7: Imperator Zeno

Quod si post parentum obitum inveniantur innuptae vel viduae, in impuberibus quidem post transactam pubertatem, in aliis vero, quae pubertatem excesserint, vel etiam in viduis post mortem parentis triennium dumtaxat volumus expectari, ut interim quarta portio suspensa aut apud eam, si in matrimonio curialis eiusdem civitatis fuerit collocata, perpetuo iure permaneat vel, si intra id temporis alienum eadem curia sortiatur maritum penitusve nupta non fuerit, memorata pars totius substantiae curiae cum triennii tam urbanorum quam rusticorum praediorum dumtaxat fructibus addicatur: ita tamen, ut sacramenti tam de quantitate quam de aestimatione rerum mobilium deque actionibus inferendis excipiendisve, sicut in extraneis personis dictum est, ratio conservetur. <a 443 d.Viii id.Mart.Constantinopoli post consulatum dioscuri et eudoxii vv.Cc.>

CJ.10.35.2.8: Imperator Zeno

Sed et si mater mortui vel avia tempore, quo filius neposve moritur, in coniugio eiusdem civitatis curialis inventa fuerit, ne ipsas quidem patimur quartae portionis subire iacturam. <a 443 d.Viii id.Mart.Constantinopoli post consulatum dioscuri et eudoxii vv.Cc.>

CJ.10.35.2.9: Imperator Zeno

Extraneum quin etiam heredem propinquitatis quidem iure discretum, curiae tamen eiusdem civitatis obnoxium supra dictae portionis dispendio liberamus. <a 443 d.Viii id.Mart.Constantinopoli post consulatum dioscuri et eudoxii vv.Cc.>

CJ.10.35.3pr.: Imperator Justinianus

Si quis curialibus muniis obnoxius, uno forte vel pluribus filiis vel filiabus derelictis, filio quidem vel filiis suae substantiae partem minimam dereliquerit , eam tamen, quae excludere eos de inofficiosi querella potest, aliis autem suam substantiam dereliquit, ut ex hac patrimonii distributione ad filium quidem vel filios curiales minima pars substantiae remaneat, totum autem curiale munus masculis immineat, sive filii sive nepotes sint vel pronepotes, curiali tamen condicioni obnoxii: sancimus huiusmodi iniquitatem resecari et non minus quarta portione in masculos posse testatorem transmittere, sive unus est filius sive plures, nulla deminutione ex permixtione sororum eis facienda, ut non solum corporibus, sed etiam substantiis laborantes possint curiales habere consortium. * iu st. a. menae pp. * <a 528 d.K.Iun.Constantinopoli iustiniano a.Ii cons.>

CJ.10.35.3.1: Imperator Justinianus

Ad hoc sancimus, si quis curialis filiabus pluribus derelictis ab hac luce fuerit subtractus, quarum una curiali eiusdem nupserit civitatis, aliis filiabus, quae ad huiusmodi vota non migraverint, vel extraneis in reliquam partem heredibus derelictis, non videri curiae ex sententia legis theodosianae ad apollonium scriptae satisfieri: sed omnino quartam partem patrimonii curia consequatur, sive uni filiae, quae curialibus nuptiis copulata sit, deputanda sive ex aliis heredibus colligenda, filia procul dubio que curiali nupsit immuni ab huiusmodi quartae datione servanda, cum per maritum eius quantum ad ipsius personam curiae sit satisfactum: et hoc observari non solum si ultimo elogio condito testator curialis decesserit, sed etiam si intestato diem suum obierit. <a 528 d.K.Iun.Constantinopoli iustiniano a.Ii cons.>

CJ.10.35.3.2: Imperator Justinianus

Sed si quid minus fuerit vel minime derelictum, hoc modis omnibus filio curiali vel filiae, quae nupta est eiusdem civitatis decurioni, ex substantia patris curialis vel deputari vel adimpleri: nullo obstaculo curiae opponendo, si secundum praedictam legem filius nepos pronepos pater avus proavus curiali morienti fuerint derelicti, qui nexibus curialibus ex quacumque vel dignitate vel occasione fuerint absoluti: in hoc etenim theodosianae legi apertissime volumus esse derogatum. <a 528 d.K.Iun.Constantinopoli iustiniano a.Ii cons.>

CJ.10.35.3.3: Imperator Justinianus

Et generaliter definimus ex omni causa neque masculos liberos neque filias copulatas matrimonio curialis minus quarta parentis substantiae habere, vel non extantibus filiis vel filiabus, sed aliis heredibus ipsam curiam secundum anteriores leges quartae curialis morientis habere solacium. <a 528 d.K.Iun.Constantinopoli iustiniano a.Ii cons.>

CJ.10.36.0. De imponenda lucrativis descriptione.

CJ.10.36.1pr.: Imperatores Theodosius, Valentinianus

Descriptionis onere siliquarum quattuor, quas ex lucrativis iugationibus tantum, non humanis vel animalium censibus neque mobilibus rebus iubemus indici, etsi curiales non sit, maiores ac posteros liberamus, ut, si pater avus vel proavus filio nepoti pronepotive vel filiae nepti proneptive (nec interest, nuptae sint curialibus nec ne) postrema voluntate vel inter vivos etiam donatione quicquam de suis opibus largiatur, memoratae descriptionis cesset indictio: eque diverso ut, si posteriores ad maiores praedicta sibi consanguinitate devinctos praefatis titulis suas conferant facultates, nullius accessione gravaminis huiusmodi liberalitas oneretur: ita enim necessariis sibi coniunctisque personis sub liberalitatis appellatione debitum naturale persolvitur. * theodos. et valentin. aa. apollonio pp. * <a 442 d.Vii id.Mart.Constantinopoli post consulatum dioscuri et eudoxii vv.Cc.>

CJ.10.36.1.1: Imperatores Theodosius, Valentinianus

Cuius auctoritatem iuris pariter valere sancimus, et si ab intestato succedant praefiniti sibi generis ordine sociati: ex his enim successionibus maxime debiti potius solutio quam muneris oblatio comprobatur, quae non largientibus etiam dominis ipsa propinquitatis serie deferuntur. <a 442 d.Vii id.Mart.Constantinopoli post consulatum dioscuri et eudoxii vv.Cc.>

CJ.10.36.1.2: Imperatores Theodosius, Valentinianus

Ceteri vero, licet quadam inter se cognatione iungantur, numquam tamen curiale praedium sine praedicto onere lucrabuntur, nisi is forte, cui lucro res cesserit , eiusdem civitatis ordini sit obstrictus, qui, licet inter extraneos numeretur, vacuum tamen ea functione quod datum est consequatur: nam cum personae condicio non mutetur, nec rei quidem statum convenit immutari. <a 442 d.Vii id.Mart.Constantinopoli post consulatum dioscuri et eudoxii vv.Cc.>

CJ.10.36.1.3: Imperatores Theodosius, Valentinianus

(1) lucravitas vero res eas tantum volumus appellari atque praedictae descriptionis gravamen excipere, quae hereditatis legati fideicommissi iure mortis causa donatione vel cuiuslibet postremae voluntatis arbitrio ad quempiam delabuntur. <a 442 d.Vii id.Mart.Constantinopoli post consulatum dioscuri et eudoxii vv.Cc.>

CJ.10.36.1.4: Imperatores Theodosius, Valentinianus

Inter vivos etiam donatio simplici liberalitate confecta lucrativae merebitur et nomen et sarcinam. si vero vel socer futurus filii nepotis vel pronepotis sponsae adfinitatis coeundae causa donaverit, vel parens etiam filiam neptem vel proneptem curiali seu extraneo nubentem dotaverit, licet casus eventu res eius cui data est vertatur ad lucrum, nec inter lucrativas numerabitur nec descriptionis oneri subiacebit. nec enim iuris optimi est matrimonium, cum tot tantisque suis difficultatibus opprimatur, adventiciis etiam cumulare ponderibus. <a 442 d.Vii id.Mart.Constantinopoli post consulatum dioscuri et eudoxii vv.Cc.>

CJ.10.36.1.5: Imperatores Theodosius, Valentinianus

Res vero, quae memoratis causis lucrativae semel nomen exordiumque sortita est, licet ab eo qui susceperit ad alterum emptionis vel cuiuscumque contractus iure migraverit, cum praedicto descriptionis gravamine procul dubio transferetur, ut vel sciens sibi imputet, qui accepit oneratam, vel, si ignoraverit, quod interest consequatur: contraque si cuiuslibet contractus exordio lucrativae nomen evaserit, etsi postea lucri titulo in dominatum alicuius ceciderit, sarcinam memoratae descriptionis effugiet. <a 442 d.Vii id.Mart.Constantinopoli post consulatum dioscuri et eudoxii vv.Cc.>

CJ.10.36.1.6: Imperatores Theodosius, Valentinianus

Nulla enim in huiuscemodi causis confusionis intercedit occasio, si ad primordium tituli posterior quoque formetur eventus, nisi forte res decurionis, quae ad eum cuiuslibet mercimonii iure pervenerit, ad alterum fuerit postrema eius voluntate vel ab intestato vel inter vivos donatione translata: tunc enim, quia semel in personam cecidit principalis, veterum titulorum nequaquam ratione perspecta condicionem et onus merebitur lucrativae. <a 442 d.Vii id.Mart.Constantinopoli post consulatum dioscuri et eudoxii vv.Cc.>

CJ.10.37.0. De praebendo salario.

CJ.10.37.1: Imperator Constantius

Nulli salarium tribuatur ex viribus rei publicea nisi ei, qui iubentibus nobis specialiter fuerit consecutus. * constantius a. ad Marcellinum com. orientis. * <a 349 d. v non. oct. constantinopoli limenio et catullino conss.>

CJ.10.38.0. Si curialis relicta civitate rus habitare maluerit.

CJ.10.38.1: Imperatores Arcadius, Honorius

Curiales omnes iubemus interminatione moneri, ne civitates fugiant aut deserant rus habitandi causa, fundum, quem civitati praetulerint, scientes fisco esse sociandum eoque rure esse carituros, cuius causa impios se patriam vitando demonstraverint. * arcad. et honor. aa. eutychiano pp. * <a 396 d. xviii k. ian. constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.10.39.0. De municipibus et originariis.

CJ.10.39.1: Imperator Antoninus

Cum te byblium origine, incolam autem apud berytios esse proponis, merito apud utrasque civitates muneribus fungi compelleris. * ant. a. silvano. * <a xxx >

CJ.10.39.2: Imperator Gordianus

Si, ut proponis, ea, quae ex causa fideicommissi te manumisit, ab ea libertatem iustam fuerit consecuta, quae originem ex provincia aquitania ducebat, tu quoque eius condicionis eiusque civitatis ius obtines, unde quae te manumisit fuit. eorum enim condicionem sequi ex causa fideicommissi manumissos pridem placuit, qui libertatem praestiterunt, non qui rogaverunt. * gord. a. frontoni. * <a xxx >

CJ.10.39.3: Imperator Philippus

Filios apud originem patris, non in materna civitate, etsi ibi nati sunt, si modo non domiciliis retineantur, ad honores seu munera posse compelli explorati iuris est. * philipp. a. patroclo. * <a xxx >

CJ.10.39.4: Imperatores Diocletianus, Maximianus

Origine propria neminem posse voluntate sua eximi manifestum est. * diocl. et maxim. aa. secundo. * <a xxx >

CJ.10.39.5: Imperator Constantinus

Si quis vel ex maiore vel ex minore civitate originem ducit, si eandem evitare studens ad alienam se civitatem incolatus occasione contulerit et super hoc vel preces dare temptaverit vel qualibet fraude niti, ut originem propriae civitatis eludat, duarum civitatum decurionatus onera sustineat, in una voluntatis, in una originis gratia. * constant. a. ad maximum vic. orientis. * <a 325 pp. viii k. ian. paulino et iuliano conss.>

CJ.10.40.0. De incolis et ubi quis domicilium habere videtur et de his qui studiorum causa in alia civitate degunt.

CJ.10.40.1: Imperator Antoninus

Non tibi obest, si, cum incola esses, aliquod munus suscepisti, modo si ante, quam ad alios honores vocareris, domicilium transtulisti. * ant. a. paulino. * <a xxx >

CJ.10.40.2pr.: Imperator Alexander Severus

Nec ipsi, qui studiorum causa aliquo loci morantur, domicilium ibi habere creduntur, nisi decem annis transactis eo loci sedes sibi constituerunt, secundum epistulam divi hadriani, nec pater, qui propter filium studentem frequentius ad eum commeat. * alex. a. crispo. * <a xxx >

CJ.10.40.2.1: Imperator Alexander Severus

Sed si aliis rationibus domicilium in splendidissima civitate laodicenorum habere probatus fueris, mendacium, quo minus muneribus fungaris, non proderit. <a xxx >

CJ.10.40.3: Imperatores Diocletianus, Maximianus

Est verum eos, qui in territorio alicuius civitatis commorantur, velut incolas ad subeunda munera vel capiendos honores non adstringi. * diocl. et maxim. aa. alexandro. * <a xxx >

CJ.10.40.4: Imperatores Diocletianus, Maximianus

Cum neque originales neque incolas vos esse memoratis, ob solam domus sive possessionis, licet ex substantia decurionis adquisita sit, causam publici iuris auctoritas muneribus subiugari vos non sinet. * diocl. et maxim. aa. alexandro. * <a xxx >

CJ.10.40.5: Imperatores Diocletianus, Maximianus

Si in patria uxoris tuae vel in qualibet alia domicilium defixisti, incolatus iure ultro te eiusdem civitatis muneribus obligasti. * diocl. et maxim. aa. maximo. * <a xxx >

CJ.10.40.6: Imperatores Diocletianus, Maximianus

Privilegio speciali civitatis non interveniente tantum originis ratione ac domicilii voluntate ad munera civilia quemque vocari certissimum est. * diocl. et maxim. aa. et cc. Marcello. * <a xxx >

CJ.10.40.7pr.: Imperatores Diocletianus, Maximianus

Cives quidem origo manumissio adlectio adoptio, incolas vero, sicut et divus hadrianus edicto suo manifestissime declaravit, domicilium facit. * diocl. et maxim. aa. et cc. aurelio. * <a xxx >

CJ.10.40.7.1: Imperatores Diocletianus, Maximianus

Et in eodem loco singulos habere domicilium non ambigitur, ubi quis larem rerumque ac fortunarum suarum summam constituit, unde rursus non sit discessurus, si nihil avocet, unde cum profectus est, peregrinari videtur, quo si rediit, peregrinari iam destitit. <a xxx >

CJ.10.40.8: Imperatores Valentinianus, Theodosius, Arcadius

Senatores in sacratissima urbe domicilium dignitatis habere videntur. * valentin. theodos. et arcad. aaa. . . . praef. augustali.* <a 390 d. k. mart. valentiniano a. et neoterio conss.>

CJ.10.40.9pr.: Imperatores Valentinianus, Theodosius, Arcadius

Mulieres honore maritorum erigimus et genere nobilitamus et forum ex eorum persona statuimus et domicilia mutamus. * valentin. theodos. et arcad. aaa. martiniano com. orientis. * <a 392 d. iiii id. nov. constantinopoli arcadio a. ii et rufino conss.>

CJ.10.40.9.1: Imperatores Valentinianus, Theodosius, Arcadius

Sin autem minoris ordinis virum postea sortitae fuerint, priore dignitate privatae posterioris mariti sequantur condicionem. <a 392 d. iiii id. nov. constantinopoli arcadio a. ii et rufino conss.>

CJ.10.41.0. De honoribus et muneribus non continuandis inter patrem et filium et de intervallis.

CJ.10.41.1pr.: Imperatores Severus, Antoninus

Sicut honores et munera, cum pater et filius decuriones sunt, in eadem domo continuari non oportet, ita vacationum concessa tempora non aliis prodesse possunt, quam qui ad eosdem vel alios honores eademque vel alia munera denuo vocantur. * sev. et ant. aa. septimio zenoni. * <a xxx >

CJ.10.41.1.1: Imperatores Severus, Antoninus

Pro infante vero filio, quem decurionem esse voluisti, quamquam fidem tuam in posterum adstrinxeris, tamen onera sustinere non cogeris, cum ad ea quae mandari possunt voluntatem dedisse videaris. <a xxx >

CJ.10.41.2: Imperator Gordianus

Ab honoribus ad eosdem honores quonquennii datur vacatio, triennii vero ad alios. legatione autem perfunctis biennii vacatio concessa est. * gord. a. cyrillo. * <a xxx >

CJ.10.41.3pr.: Imperatores Diocletianus, Maximianus

Intervalla temporum, quae in unius persona locum habent, fratribus, licet communia possideant bona, minime prodesse frequenter constitutum est. * diocl. et maxim. aa. et cc. niciae. * <a xxx >

CJ.10.41.3.1: Imperatores Diocletianus, Maximianus

Sane his missis, qui necdum functi muneribus ad haec idonei constituti vocari debent, vos, si ad obsequium civilium munerum reppererit paruisse, ne iterum interpellemini, praeses provinciae providebit. <a xxx >

CJ.10.42.0. De muneribus patrimoniorum.

CJ.10.42.1: Imperator Antoninus

Civilia munera per ordinem pro modo fortunarum sustinenda sunt. * ant. a. philogyrio. * <a xxx >

CJ.10.42.2: Imperator Antoninus

Munera, quae patrimoniis publicae utilitatis gratia indicuntur, ab omnibus subeunda sunt. * ant. a. materno. * <a xxx >

CJ.10.42.3: Imperator Alexander Severus

Qui immunitatem munerum publicorum consecuti sunt, onera patrimoniorum sustinere debent. in quibus causis et hospites recipiendi sunt. * alex. a. atilio. * <a xxx >

CJ.10.42.4: Imperatores valer., gallien.

Non videtur abhorrere ratione sententia, qua praeses provinciae equos curules alere non personarum, sed patrimonii esse decrevit. et tamen si iniqua esset, omisso a te appellationis auxilio necessario permanet. * valer. et gallien. aa. neroni. * <a xxx >

CJ.10.42.5: Imperatores carus, carinus, numer.

Neque tempore aetatis neque numero liberorum a muneribus quae patrimoniorum sunt excusationem quis habere potest. * carus carinus et numer. aaa. antepisto. * <a xxx >

CJ.10.42.6: Imperatores Diocletianus, Maximianus

Professio et desiderium tuum inter se discrepant. nam cum philosophum te esse proponas, vinceris avaritiae caecitate et onera quae patrimonio tuo iniunguntur solus recusare conaris. quod frustra te facere ceterorum exemplo poteris edoceri. * diocl. et maxim. aa. polymnestro. * <>

CJ.10.42.7: Imperatores Diocletianus, Maximianus

Etiam minores aetate patrimoniorum muneribus subiugari solent. unde intellegis te frustra plenam immunitatem desiderare, cum munera quae impensas exigunt subire te necesse sit. * diocl. et maxim. aa. alexandro. * <>

CJ.10.42.8: Imperatores Diocletianus, Maximianus

Nec protostasiae vel sacerdotii vel decaprotiae munera corporalia sunt, sed tantum patrimonii esse non ambigitur. * diocl. et maxim. aa. et cc. longino. * <a xxx >

CJ.10.42.9: Imperatores Diocletianus, Maximianus

Patrimoniorum munera mulieres etiam sustinere debent. * diocl. et maxim. aa. et cc.Marciae. * <>

CJ.10.42.10: Imperatores Diocletianus, Maximianus

Quantum ad extraordinarias indictiones pertinet, praesidibus significamus, ut omnes possessores ceterosque sciant conveniri debere, quandoquidem ea patrimonii munera esse constet meritoque ab omnibus agnosci debeant, quo facilius obsequiis publicis pareatur. * diocl. et maxim. aa. et cc. exempl. sacr. litt. ad praefectos.* <x>

CJ.10.43.0. Quemadmodum civilia munera indicuntur.

CJ.10.43.1: Imperatores carus, carinus, numer.

Cum te curatorem ad cogendas angarias creatum appellationem interposuisse proponas, praeses provinciae, si alterius curiae te esse animadverterit, ad alieni corporis munera vocari non sinet, quia eius partis oneribus respondere debes, cui te attributum esse commemoras. * carus carinus et numer. aaa. feliciano. * <a xxx >

CJ.10.43.2: Imperatores Diocletianus, Maximianus

Maioribus honoribus functos ad minores devocari non oportere rationis est. * diocl. et maxim. aa. dionysio. * <>

CJ.10.43.3: Imperatores Diocletianus, Maximianus

Cum te omnibus muneribus functum esse adseveras, ad eadem munera, si aliorum civium copia est, qui obsequiis civilibus fungi possunt, praeses provinciae devocari te non permittet. * diocl. et maxim. aa. eutychiano. * <>

CJ.10.43.4: Imperatores Diocletianus, Maximianus

Ultra modum sumptuum te muneribus civilibus gravari levatis aliis praeses provinciae non patietur, sed aequalitatem tam iuris quam censurae memor circa ordinem custodiet. * diocl. et maxim. aa. et cc.Regino. * <>

CJ.10.44.0. De his qui sponte munera susceperunt.

CJ.10.44.1: Imperator Alexander Severus

Veterani, qui, cum possent se tueri immunitate his concessa, decuriones se fieri in patria sua maluerunt, redire ad excusationem quam reliquerunt non possunt, nisi certa lege et pacto servandae immunitatis vel partem eius oneris agnoverunt. * alex. a. feliciano. * <>

CJ.10.44.2: Imperatores Diocletianus, Maximianus

Qui publici muneris vacationem habet, si aliquem honorem excepto decurionatu sponte susceperit, ob id, quod patriae suae utilitatibus cesserit vel gloriae cupiditate paulisper ius publicum relaxaverit, competens privilegium non amittit. * diocl. et maxim. aa. valerio. * <>

CJ.10.44.3pr.: Imperator Leo

Qui condicioni non obnoxius curiali quemlibet honorem vel munus voluntate propria in quacumque gesserit civitate, nullum praeiudicium circa fortunam suam statumque sustineat: sed tam ipse quam liberi eius et qui ex his in posterum procreandi sunt ab omni huiusmodi nexu cum suis facultatibus liberi alienique permaneant, ita tamen ut, si aliqua functio volentibus eis fuerit iniuncta, ex qua necesse sit aliquid eos accipere, quod ex data sibi pecunia in reliquis apud eos mansisse constiterit, solventes sine ulla molestia vel condicionis suae formidine discedant. * leo a. pusaeo pp. * <a 465 d.V id.Nov.Constantinopoli basilisco et herminerico conss.>

CJ.10.44.3.1: Imperator Leo

Si quis vero ex his omnia decurionum munera vel functiones vel honores nulla imminente necessitate, sed sua sponte peregerit, eum pro sua liberalitate patrem civitatis, in qua voluntarius municeps apparebit, si hoc ei libuerit, fieri constituique hac lege decernimus. <a 465 d.V id.Nov.Constantinopoli basilisco et herminerico conss.>

CJ.10.44.4pr.: Imperator Justinianus

Eos, qui liberi fortuna curiali constituti postea se curiae cuiuscumque civitatis obtulerunt, confidere volumus, quod posteritas eorum non solum iam procreata, sed etiam post talem deditionem procreanda huiusmodi fortuna libera manebit, sive specialiter sub hac lege curiae se obtulerint, ut ab his descendentes tali fortuna liberi maneant, sive nullam huiusmodi fecerint mentionem, nullo audente dicere, quod nati vel concepti post talem deditionem sequi paternam condicionem debeant: hoc enim speciali beneficio alacriores omnes ad conferendam civitatibus huiusmodi opitulationem constituere properavimus: ita tamen, ut nec occasione quartae portionis bonorum huiusmodi decurionis quicumque successores eius aliquam inquietudinem patiantur, utpote libera eius substantia omni curiali gravamine conservanda. * iust. a. menae pp. * <>

CJ.10.44.4.1: Imperator Justinianus

Et si quid defunctus vel ex administratione curialium munerum vel ex quarta portione ad eandem curiam semel vel saepius devoluta vel ex alia quacumque causa eidem curiae debuisse probetur, hoc idem successores curialibus reddere minime dubitent. <>

CJ.10.44.4.2: Imperator Justinianus

Illis scilicet, quae super naturalibus filiis, quos naturalis pater sub hac lege curiae dedit vel postea dederit, ut legitimos tam ex testamento quam ab intestato successores habeat, non solum veteribus legibus, sed etiam nostris sanctionibus disposita sunt, praesenti lege excipiendis, ut non ipsi tantum filii naturales, sed etiam ex his procreandi mares paternam sequantur fortunam, vel maribus liberis minime subsistentibus pars quarta substantiae mortui curiae deputetur. <>

CJ.10.45.0. De his qui a principe vacationem acceperunt.

CJ.10.45.1: Imperatores Theodosius, Arcadius, Honorius

Nullus vacationem temporariam curialis accipiat, nisi id forte veris ac probatis causis adnotatio nostra concesserit. * theodos. arcad. et honor. aaa. rufino pp. * <a 393 d.Prid.Non.Iun.Constantinopoli theodosio a.Iii et abundantio conss.>

CJ.10.46.0. De vacatione muneris.

CJ.10.46.1: Imperator Gordianus

Muneris publici vacationem ea continere, quae lege, non senatus consulto, non constitutionibus principum iniunguntur, merito responsum est. ad quam formam iuris pertinens si coeperis ad munera extraordinaria a magistratibus devocari, appellatione interposita poteris apud praesidem iuris rationibus protegi. * gord. a. ianuario. * <a xxx >

CJ.10.47.0. De decretis decurionum super immunitate quibusdam concedenda.

CJ.10.47.1: Imperatores Diocletianus, Maximianus

Exceptis qui liberalium studiorum antistites sunt et qui medendi cura funguntur, decreto decurionum immunitas nemini tribui potest. * diocl. et maxim. aa. ursino. * <a xxx >

CJ.10.47.2: Imperatores Diocletianus, Maximianus

Ordinis ambitiosa decreta sacris constitutionibus reprobantur. * diocl. et maxim. aa. et cc. cassio. * <a xxx >

CJ.10.48.0. De excusationibus munerum.

CJ.10.48.1: Imperatores carus, carinus, numer.

Etiam ii, qui nostra procurasse monstrantur, muneribus civilibus quae dignitati eorum congruunt fungi debent. * carus carinus et numer. aaa. demetrio. * <a xxx >

CJ.10.48.2: Imperatores Diocletianus, Maximianus

Certis dignitatibus data a nobis indulgentia est munerum civilium et personalium , id est his, qui aut ex protectoribus sunt aut ex praepositis. ii ergo ad munera personalia aut civilia non vocabuntur. * diocl. et maxim. aa. pars id. febr.. ind. firmino et apollinario et cet. principal. antiochensium adstantibus sabinus dixit:... diocl.:* <a xxx >

CJ.10.48.3: Imperatores Diocletianus, Maximianus

Tutelae sollicitudo a muneribus civilibus non excusat, utpote nec tres simul iniunctae diversarum domuum eiusmodi beneficium praestent. * diocl. et maxim. aa. marino. * <a xxx >

CJ.10.48.4: Imperatores Diocletianus, Maximianus

Hydraulae munerum civilium immunitatem sibi iure concessam probare minime possunt. * diocl. et maxim. aa. attalo. * <a xxx >

CJ.10.48.5: Imperatores Diocletianus, Maximianus

Procuratores absentium rei publicae causa munerum civilium vacationem non habent. * diocl. et maxim. aa. et cc. Marcellino. * <a xxx >

CJ.10.48.6: Imperatores Diocletianus, Maximianus

Veneratoribus immunitas ab hanc professionem solam nullo iure concessa probari potest. * diocl. et maxim. aa. et cc. gaio. * <a xxx >

CJ.10.48.7: Imperator Constantius

Negotiantes vestiarios linteones purpurarios et parthicarios, qui devotioni nostrae deserviunt, visum est secundum veterem consuetudinem ab omni munere immunes esse. * constantius a. ad catulinum vic. * <a xxx >

CJ.10.48.8pr.: Imperator Constantius

Placet nullum omnino iudicem de cetero provincialibus inferendum aliquid indicere, ut ea tantum sedulo cunctorum studio pensitentur, quae canonis instituti forma complectitur vel nostra clementia decernit inferenda vel delegatione sollemniter sanciente vel epistulis praecedentibus. * constantius a. ad taurum pp. * <a 357 d. k. april. mediolani constantio a. viiii et iuliano c. ii conss.>

CJ.10.48.8.1: Imperator Constantius

Sed si quid urguere forsitan coeperit, referri ad celsitudinem tuam statuimus et auctore te fieri et eo persoluto referri ad scientiam nostram, ut nobis iubentibus roboretur. <a 357 d. k. april. mediolani constantio a. viiii et iuliano c. ii conss.>

CJ.10.48.8.2: Imperator Constantius

Si quis autem usurpatoria temeritate amplius aliquid fuerit conatus exigere, obnoxius quadrupli repetitione teneatur. <a 357 d. k. april. mediolani constantio a. viiii et iuliano c. ii conss.>

CJ.10.48.8.3: Imperator Constantius

Quae severitas iussionis ad ordinariorum iudicum officiorumque terrorem debebit excurrere, ut, si eorum vel gratiosa coniventia vel ignobili dissimulatione temeritas admiserit curialis, eos quoque damni simplicis poena castiget. <a 357 d. k. april. mediolani constantio a. viiii et iuliano c. ii conss.>

CJ.10.48.9: Imperatores Valentinianus, Valens, Gratianus

Illud convenit praecaveri, ne quis hanc, quae personalis est functio, pretio putet esse taxandam. * valentin. valens et grat. aaa. ad claudium procons. africae = * <a 368 vel 370 d. k. dec. triveris valentiniano et valente aa. conss.>

CJ.10.48.10: Imperatores Gratianus, Valentinianus, Theodosius

Privatae rei nostrae privilegiis permanentibus nihil extra ordinem praedia iure perpetuo consignata sustineant, neque adiectis saepius ac praeter primum delegationis canonem postulatis adficiantur impendiis, quandoquidem neque aurario canoni sub privilegiis aestimato aliquid ex ea iubentibus nobis praebitionum diversitate decutitur, et pari cum ceteris aestimari sorte non convenit, quos praeter annonarias functiones aestimata perpetuo pensitationum praerogativa nexuerint. * grat. valentin. et theodos. aaa. ad hypatium pp. * <a 382 pp. karthagine id. april. post consulatum syagrii et eucherii.>

CJ.10.48.11pr.: Imperatores Gratianus, Valentinianus, Theodosius

Eos, qui cum honore comitum nomine magistrorum memoriae praefuerint vel epistulis vel libellis, item eos, qui ibidem peragendis signandisque responsis nostrae mansuetudini obsecundant, omnium civilium munerum fieri iubemus exsortes. * grat. et valentin. et theodos. aaa. ad syagrium pp. * <a 382 lecta iii k. sept. capuae antonio et syagrio conss.>

CJ.10.48.11.1: Imperatores Gratianus, Valentinianus, Theodosius

Igitur qui ex eo gradu palatio nostro abscesserint, adesse sibi competentia privilegia glorientur: qui vero superioribus dignitatibus creverint, nihilo minus huius loci privilegia praesto sibi fuisse laetentur. <a 382 lecta iii k. sept. capuae antonio et syagrio conss.>

CJ.10.48.12pr.: Imperatores Gratianus, Valentinianus, Theodosius

Maximarum culmina dignitatum, consistoriani quoque comites, notarii etiam nostri et cubicularii omnes atque ex cubiculariis ab omnibus sordidis muneribus vindicentur. * grat. valentin. et theodos. aaa. ad hypatium pp. * <a 382 d. v id. dec. antonio et syagrio conss.>

CJ.10.48.12.1: Imperatores Gratianus, Valentinianus, Theodosius

Ceteros autem, palatina vel militari intra palatium praerogativa munitos ita demum privilegium simile contineat, si prioribus statutis se ad eiusmodi exceptionem docuerint pertinere, ut non singulis indulta personis, sed in commune dignitati vel corpori huiusmodi beneficia doceantur fuisse concessa: circa rhetores atque grammaticos eruditionis utriusque vetusto more durante. <a 382 d. v id. dec. antonio et syagrio conss.>

CJ.10.48.12.2: Imperatores Gratianus, Valentinianus, Theodosius

Sordidorum vero munerum talis exceptio sit, ut patrimoniis dignitatum superius digestarum nec conficiendi pollinis cura mandetur aut panis excoctio aut obsequium pistrini, nec paraveredorum huiusmodi viris aut parangariarum praebitio mandetur, exceptis his, quibus ex more raeticus limes includitur, vel expeditionis illyricae pro necessitate vel tempore utilitas adiuvatur. <a 382 d. v id. dec. antonio et syagrio conss.>

CJ.10.48.12.3: Imperatores Gratianus, Valentinianus, Theodosius

Operarum atque artificum diversorum, excoquendae etiam calcis obsequia nulla de talibus adiumenta poscantur: materiam lignorum atque tabulata exceptorum virorum patrimonia non praebeant: carbonis quoque nisi eum, quem moneta sollemniter vel fabricatio secundum veterem morem poscit armorum, ab huiusmodi viris praebitio desistat: publicis vel sacris aedibus construendis atque reparandis, capituli atque temonis necessitas nulla mandetur: legatis atque adlectis sumptus possessio huiusmodi privilegiis munita non conferat. <a 382 d. v id. dec. antonio et syagrio conss.>

CJ.10.48.12.4: Imperatores Gratianus, Valentinianus, Theodosius

Hoc tamen his patrimoniis prosit, quae dignitatem proprio videntur nomine possidere. <a 382 d. v id. dec. antonio et syagrio conss.>

CJ.10.48.12.5: Imperatores Gratianus, Valentinianus, Theodosius

Etiam eos, qui simili honore functi sunt, generali praerogativa a praebitione sordidorum munerum vindicamus. <a 382 d. v id. dec. antonio et syagrio conss.>

CJ.10.48.13: Imperatores Gratianus, Valentinianus, Theodosius

Sordidorum munerum excusatio delata personis ad heredem successoremve transire non potest. neque enim potest esse perpetuum, quod non rebus, sed personis contemplatione dignitatis atque militiae indulsisse nos constat. * grat. valentin. et theodos. aaa. et arcad. a. ad neoterium pp.* <a 385 d. xviii k. mai. mediolani arcadio a. et bautone conss.>

CJ.10.48.14: Imperatores Valentinianus, Theodosius, Arcadius

Eam legem, quam de extraordinariis sordidisque muneribus expressis vocabulis functionum et insignibus dignitatum sine ulla ambage praescripsimus, ita circa eos , in quos nostra munera redundarunt, servandam esse praecipimus, ut isdem beneficiis non quamdiu militaverint, sed quamdiu vixerint perfruantur. * valentin. theodos. et arcad. aaa. tatiano pp. * <a 391 d. xi k. april. mediolani tatiano et symmacho conss.>

CJ.10.48.15pr.: Imperatores Arcadius, Honorius

Evidenter atque absolute iubemus, ne fundi ad patrimonium nostrum pertinentes, seu conductionis titulo seu perpetuo iure teneantur, aliquid praeter ordinem superindicti vel pretii petiti nomine vel de sordidis quibuscumque muneribus agnoscant. nam hoc et a divis principibus impetratum est et a nostra serenitate reparatum. * arcad. et honor. aa. ad messianum com. rer. privat. * <a 395 d. xvii k. iul. mediolani olybrio et probino conss.>

CJ.10.48.15.1: Imperatores Arcadius, Honorius

Quisquis igitur iudicum contra fecerit, quinque pondo auri de facultatibus, alia de officiis suis, totidem et de facultatibus, alia de officiis suis, totidem et de curialibus, qui exsequi male iussa festinant, noverit eruenda. <a 395 d. xvii k. iul. mediolani olybrio et probino conss.>

CJ.10.48.16: Imperatores Arcadius, Honorius

Ab illustribus personis sordida munera et extraordinariae necessitatis damna removemus. * arcad. et honor. aa. et theodos. a. melitio pp. * <a 412 d. xv k. mart. ravennae honorio viiii et theodosio v aa. conss.>

CJ.10.49.0. De quibus muneribus vel praestationibus nemini liceat se excusare.

CJ.10.49.1pr.: Imperatores Honorius, Theodosius

Comparationi transvectionique specierum universi sine ullo privilegio coartentur ad necessitates illyricianas: nam in his dumtaxat titulis nullum sub quodam cessare privilegii velamento censemus. * honor. et theodos. aa. herculio pp. * <a 408 d. iii id. april. constantinopoli basso et philippo conss.>

CJ.10.49.1.1: Imperatores Honorius, Theodosius

Sed sub hac condicione, cum tempus exegerit, huiusmodi collationi succumbant, ut non tantum requiratur idoneus, verum universi pro portione suae possessionis iugationisque ad haec munia coartentur, et a summis sarcina ad infimos usque decurrat. <a 408 d. iii id. april. constantinopoli basso et philippo conss.>

CJ.10.49.2: Imperatores Theodosius, Valentinianus

Cum ad felicissimam expeditionem numinis nostri omnium provincialium per loca, qua iter adripimus, debeant nobis ministeria exhiberi, neminem ab angariis vel parangariis vel plaustris vel quolibet munere penitus excusari praecipimus, sed omnes, sive ad divinam nostram domum sive ad venerabilis augustae vel ad sacrosanctas ecclesias vel quaslibet illustres domos pertinent, nec lege pragmatica nec divina adnotatione sacrove oraculo excusatos indictionibus magnificae tuae sedis tempore nostrae expeditionis oboedire decernimus. * theodos. et valentin. aa. ad taurum pp. * <a 445 d. xiii k. mart. constantinopoli valentiniano a. vi et nomo conss.>

CJ.10.49.3: Imperator Leo

Hac providentissima lege statuimus omni excusatione cessante nullaque persona vel dignitate penitus excepta, in quibuscumque locis administrationi sublimitatis tuae commissis opus exegerit, murorum constructionem seu comparationem frumenti aliarumque specierum sine ullo impedimento, prout commodum atque necessarium magnitudo tua perspexerit, fieri. * leo a. dioscoro pp. * <a 472 ? >

CJ.10.50.0. Qui aetate se excusant.

CJ.10.50.1: Imperatores Diocletianus, Maximianus

Cum vos adfirmetis liberalibus studiis operam dare, maxime circa professionem iuris, consistendo in civitate berytorum provinciae phoenices, providendum utilitati publicae et spei vestrae decernimus, ut singuli usque ad vicesimum quintum annum aetatis suae studiis non avocentur. * diocl. et maxim. aa. severino et ceteris scholasticis arabiis.* <a xxx >

CJ.10.50.2: Imperatores Diocletianus, Maximianus

Cum filios tuos patria potestate liberatos adhuc minores legitima aetate esse dicas, merito postulas, ut liberalibus studiis non avocentur. et ideo muneribus personalibus quae ad patrimonium non pertinent non adstringentur, si civium non est inopia. * diocl. et maxim. aa. theodoro. * <a xxx >

CJ.10.50.3pr.: Imperatores Diocletianus, Maximianus

Manifesti iuris est maiores quinquaginta quinque annis invitos ad munera personalia vocari non posse. * diocl. et maxim. aa. protelao. * <a xxx >

CJ.10.50.3.1: Imperatores Diocletianus, Maximianus

Cum itaque septuagenario maiorem te esse profitearis, si nominatione facta appellationis auxilium interposuisti, tueri te notione praesidis provinciae potes iure concesso. <a xxx >

CJ.10.51.0. Qui morbo.

CJ.10.51.1: Imperator Gordianus

Si ea caecitate pater tuus oppressus est, ut utriusque oculi aciem prorsus amiserit, levamentum personalium munerum sentiet. * gord. a. cassiano. * <a xxx >

CJ.10.51.2: Imperatores Diocletianus, Maximianus

Cum articulari morbo debilitatum te esse dicas, iuxta iuris publici auctoritatem a personalibus muneribus vacationem habebis. * diocl. et maxim. aa. iuliano. * <a xxx >

CJ.10.51.3: Imperatores Diocletianus, Maximianus

Podagrae quidem valitudo nec personalium munerum prodest ad excusationem: verum cum ita te valitudine pedum adflictum dicas, ut rebus propriis intercessum commodare non possis, adi rectorem provinciae, qui si adlegationibus tuis fidem adesse perspexerit, ad corporalia munera vocari te non patietur. * diocl. et maxim. aa. et cc. celeri. * <a xxx >

CJ.10.51.4: Imperatores Diocletianus, Maximianus

Casus patris corporis munerum personalium filio iure non praestat excusationem. * diocl. et maxim. aa. et cc. regino. * <a xxx >

CJ.10.52.0. De his qui numero liberorum vel paupertate excusationem meruerunt.

CJ.10.52.1: Imperator Alexander Severus

Numerus liberorum ab honoribus non excusat. * alex. a. verecundo. * <a xxx >

CJ.10.52.2: Imperator Philippus

Filium ab hostibus captum ac necdum reversum ad excusationem munerum personalium patri proficere non posse magis placuit. * philipp. a. et philipp. c. severino. * <a xxx >

CJ.10.52.3pr.: Imperator Philippus

Nepotes in locum parentum succedentes vice eorum prodesse consueverunt. * philipp. a. et c. nonno. * <a xxx >

CJ.10.52.3.1: Imperator Philippus

Et ideo si quinque numerus liberorum ex amissorum filiorum nepotibus suppletur, a muneribus personalibus is, quem patrem tuum esse dicis, iuxta constituta excusatur. <a xxx >

CJ.10.52.4: Imperatores Diocletianus, Maximianus

Cum facultates tuas in filium tuum contulisse te nec quicquam habere proponas, respectu eius patrimonii quod tuum esse desiit muneribus civilibus non adstringeris. * diocl. et maxim. aa. domno. * <a xxx >

CJ.10.52.5: Imperatores Diocletianus, Maximianus

De personalibus muneribus, quae feminis pro sexus condicione indicuntur, exemplo marium quinque superstitum numero liberorum eas excusari divi parentes nostri constituerunt. * diocl. et maxim. aa. et cc. marciae. * <a xxx >

CJ.10.52.6pr.: Imperator Constantinus

Eos qui cuiuscumque sexus liberos quinque habeant, impetrata semel vacatione potiri convenit, ita ut, si in hoc numero filius legitimae aetatis inveniatur, obeundis statim pro suo patre muneribus applicetur, patribus, qui filios vel filias quinque habuerint, promissa legibus immunitate servanda. * const. a. dalmatio. * <a xxx d. xiiii k. febr. sirmio crispo iii et constantino ii conss.>

CJ.10.52.6.1: Imperator Constantinus

Quod si quis propter censum tenuiorem vacationem meruerit atque hoc probaverit, beneficio potiatur, si propter rerum angustias ad personalia vocatur obsequia. <a xxx d. xiiii k. febr. sirmio crispo iii et constantino ii conss.>

CJ.10.53.0. De professoribus et medicis.

CJ.10.53.1: Imperator Antoninus

Cum te medicum legionis secundae adiutricis esse dicas, munera civilia, quamdiu rei publicae causa afueris, suscipere non cogeris: cum autem abesse desieris, post finitam eo iure vacationem, si in eorum numero eris, qui ad beneficia medicis concessa pertinent, ea immunitate uteris. * ant. a. numisio. * <a xxx >

CJ.10.53.2: Imperator Gordianus

Grammaticos seu oratores decreto ordinis probatos, si non se utiles studentibus praebeant, denuo ab eodem ordine reprobari posse incognitum non est. * gord. a. heracliano. * <a xxx >

CJ.10.53.3: Imperator Philippus

Poetae nulla immunitatis praerogativa iuvantur. * philipp. a. et philipp. c. ulpiano. * <a xxx >

CJ.10.53.4: Imperatores Diocletianus, Maximianus

Oratione divi pii liberalium studiorum professores, non etiam calculatores continentur. * diocl. et maxim. aa. malcho. * <a xxx >

CJ.10.53.5: Imperatores Diocletianus, Maximianus

Nec intra numerum praestitutum ordine invito medicos immunitatem habere saepe constitutum est, cum oportet eis decreto decurionum immunitatem tribui. * diocl. et maxim. aa. et cc. concedemoni. * <a xxx >

CJ.10.53.6pr.: Imperator Constantinus

Medicos et maxime archiatros vel ex archiatris, grammaticos et professores alios litterarum una cum uxoribus et filiis nec non etiam rebus, quas in civitatibus suis possident, ab omni functione et ab omnibus muneribus civilibus vel publicis immunes esse praecipimus neque in provinciis hospites recipere nec ullo fungi munere nec ad iudicium deduci vel exhiberi vel iniuriam pati, ut, si quis eos vexaverit, poena arbitrario iudicis plectetur. * const. a. ad pop. * <a 333 pp. v k. oct. constantinopoli dalmatio et zenophilo conss.>

CJ.10.53.6.1: Imperator Constantinus

Mercedes etiam eorum et salaria reddi iubemus, quo facilius liberalibus studiis et memoratis artibus multos instituant. <a 333 pp. v k. oct. constantinopoli dalmatio et zenophilo conss.>

CJ.10.53.7pr.: Imperator Julianus

Magistros studiorum doctoresque excellere oportet moribus primum, deinde facundia. * iul. a. * <a 362 d. xv k. iul. acc. iiii k. aug. spoletio mamertino et nevitta conss.>

CJ.10.53.7.1: Imperator Julianus

Sed quia singulis civitatibus adesse ipse non possum, iubeo, quisquis docere vult, non repente nec temere prosiliat ad hoc munus, sed iudicio ordinis probatus decretum curialium mereatur, optimorum conspirante consensu. <a 362 d. xv k. iul. acc. iiii k. aug. spoletio mamertino et nevitta conss.>

CJ.10.53.8: Imperatores Valentinianus, Valens, Gratianus

Reddatur unusquisque patriae suae, qui habitum philosophiae indebite et insolenter usurpare cognoscitur, exceptis his, qui a probatissimis approbati ab hac debent colluvione secerni. turpe enim est, ut patriae functiones ferre non possit, qui etiam fortunae vim se ferre profitetur. * valentin. valens et grat. aaa. ad probum pp. * <a 369 d. xiiii k. febr. sirmio valentiniano np. et victore conss.>

CJ.10.53.9pr.: Imperatores Valentinianus, Valens, Gratianus

Archiatri scientes annonaria sibi commoda a populi commodis ministrari honeste obsequi tenuioribus malint quam turpiter servire divitibus. * valentin. valens et grat. aaa. ad praetextatum pu. * <a 370 d. iii k. febr. triveris valentiniano et valente iii aa. conss.>

CJ.10.53.9.1: Imperatores Valentinianus, Valens, Gratianus

Quos etiam ea patimur accipere, quae sani offerunt pro obsequiis, non ea, quae periclitantes pro salute promittunt. <a 370 d. iii k. febr. triveris valentiniano et valente iii aa. conss.>

CJ.10.53.10: Imperatores Valentinianus, Valens, Gratianus

Si quis in archiatri defuncti est locum promotionis meritis adgregandus, non ante eorum particeps fiat, quam primis qui in ordine reperientur septem vel eo amplius iudicantibus idoneus approbetur: ita tamen ut, quicumque fuerit admissus, non in priorem numerum statim veniat, sed eum ordinem consequatur, qui ceteris ad priora subvectis ultimus poterit inveniri. * valentin. valens et grat. aaa. ad olybrium pu. * <a 370 d. vi id. mart. valentiniano et valente iii aa. conss.>

CJ.10.53.11pr.: Imperatores Honorius, Theodosius

Grammaticos oratores atque philosophiae praeceptores nec non etiam medicos praeter haec, quae retro latarum sanctionum auctoritate consecuti sunt privilegia immunitatesque, frui hac praerogativa praecipimus, ut universi, qui in sacro palatio inter archiatros militarunt, cum comitivam primi ordinis vel secundi adepti fuerint aut maioris gradum dignitatis adscenderint, nulla municipali, nulla curialium conventione vexentur, seu indepta administratione seu accepta testimoniali meruerint missionem: sint ab omni functione omnibusque muneribus publicis immunes, nec eorum domus ubicumque positae militem seu iudicem suscipiant hospitandum. * honor. et theodos. aa. monaxio pp. * <a 414 d. prid. k. dec. constantinopoli constantio et constante conss.>

CJ.10.53.11.1: Imperatores Honorius, Theodosius

Quae omnia filiis etiam eorum et coniugibus illibata praecipimus custodiri. <a 414 d. prid. k. dec. constantinopoli constantio et constante conss.>

CJ.10.53.11.2: Imperatores Honorius, Theodosius

Haec autem et professoribus memoratis eorumque liberis deferenda mandamus. <a 414 d. prid. k. dec. constantinopoli constantio et constante conss.>

CJ.10.54.0. De athletis.

CJ.10.54.1: Imperatores Diocletianus, Maximianus

Athletis ita demum, si per omnem aetatem certasse, coronis quoque non minus tribus certaminis sacri, in quibus vel semel romae seu antiquae graetiae, merito coronati non aemulis corruptis ac redemptis probentur, civilium munerum tribui solet vacatio. * diocl. et maxim. aa. et cc. hermogeni. * <a xxx >

CJ.10.55.0. De his qui non impletis stipendiis sacramento soluti sunt.

CJ.10.55.1: Imperator Antoninus

Ignominiae causa sacramento liberati honoribus abstinere debent, a muneribus autem civilibus excusati non sunt. * ant. a. verino. * <a xxx >

CJ.10.55.2pr.: Imperatores Diocletianus, Maximianus

Cum ob provectae aetatis senium sis dimissus, honestam missionem consecutum te esse ambigi non potest. * diocl. et maxim. aa. caro veterano. * <a xxx >

CJ.10.55.2.1: Imperatores Diocletianus, Maximianus

Habebis itaque a civilibus muneribus nec non etiam honoribus vacationem: non tamen ea privilegia, quae his competunt qui pleno stipendiorum numero funguntur, usurpare te ius permittit, quando non perfecto statuto militiae tempore nec omnibus stipendiis decursis sacramento solutum te esse etiam ipse confitearis. <a xxx >

CJ.10.55.3pr.: Imperatores Diocletianus, Maximianus

Veteranis ita demum honorum et munerum personalium vacatio iure conceditur, si post vicesimum annum militiae, quam in legione vel vexillatione militaverunt, honestam vel causariam missionem consecuti esse ostendantur. * diocl. et maxim. aa. philopatori. * <a xxx >

CJ.10.55.3.1: Imperatores Diocletianus, Maximianus

Unde cum te in cohorte militasse commemoras, intellegis supervacuo vacationem tibi velle flagitare. <a xxx >

CJ.10.56.0. Quibus muneribus excusantur ii, qui post impletam militiam vel advocationem per provincias suis commodis vacantes commorantur et de privilegiis eorum.

CJ.10.57.0. De conductoribus vectigalium fisci.

CJ.10.57.1: Imperatores Diocletianus, Maximianus

Non alios a muneribus et honoribus vacationem habere, quam qui mancipatum suo nomine vectigal a fisco conducunt, certum est. quare eos, qui ab his quaedam exercenda accipiunt, nullis privilegiis esse munitos haud dubii iuris est. * diocl. et maxim. aa. punico. * < s>

CJ.10.58.0. De libertinis.

CJ.10.58.1: Imperatores Diocletianus, Maximianus

Condicio libertinitatis de muneribus civilibus tribuere non potest excusationem nec in ea quidem civitate, ubi domicilium libertinus habet. * diocl. et maxim. aa. et cc. lucillo. * <>

CJ.10.59.0. De infamibus.

CJ.10.59.1: Imperatores Diocletianus, Maximianus

Infames personae, licet nullis honoribus, qui integrae dignitatis hominibus deferri solent, uti possunt, curialium tamen vel civilium munerum vacationem non habent: sed et sollemnibus indictionibus ob tutelam publicam eos satisfacere necesse est. * diocl. et maxim. aa. charitoni. * <>

CJ.10.60.0. De reis postulatis.

CJ.10.60.1: Imperator Alexander Severus

Reos criminis postulatos novos honores appetere non debere, antequam purgarent innocentiam suam, et a divis parentibus nostris et a me saepe rescriptum est. * alex. a. niciae. * <a xxx >

CJ.10.61.0. De his qui in exsilium dati vel ordine moti sunt.

CJ.10.61.1: Imperator Antoninus

Quibus posthac ordine suo vel advocationibus ad tempus interdicetur, post impletum temporis spatium non prorogabitur infamia. * ant. a. pars ed. prop. romae v.Id.Iul. duobus aspris conss.* <a 212 >

CJ.10.61.2: Imperator Gordianus

Ad tempus exsulare decurio iussus et impleto tempore regressus pristinam quidem dignitatem recipit, ad novos vero honores non admittitur, nisi tanto tempore his abstinuerit quanto per fugam afuit. * gord. a. ulpio. * <a xxx >

CJ.10.62.0. De filiis familias et quemadmodum pater pro his teneatur.

CJ.10.62.1: Imperatores Severus, Antoninus

Patrem emancipato filio consentientem ad decurionatum non teneri dubii iuris non est: tunc enim consentiendo pater ad decurionatum obligatur, si filium in potestate habeat. consentire autem etiam is videtur, qui non testificatur dissentire nominationi. * sev. et ant. aa. eutycho. * <a xxx >

CJ.10.62.2: Imperator aurel.

Cum appellasse te dicas, ostendis causam ad te pertinere: potueras enim nominato filio tantum contestari et non consentire honori ei delato. * aurel. a. aspasio. * < >

CJ.10.62.3pr.: Imperatores Diocletianus, Maximianus

Si ii, qui cum patre ad protostasiae munus vocati sunt, etiam nunc in patria potestate constituti sunt, ab huiusmodi necessitatibus liberentur, cum ex eadem familia ac domo duos ad ista obsequia destinari periniquum videatur. * diocl. et maxim. aa. crispino. * < >

CJ.10.62.3.1: Imperatores Diocletianus, Maximianus

Sane eos, quos emancipatos esse atque ex familia exisse manifestum est, sine cunctatione retinere debebis. < >

CJ.10.62.4pr.: Imperatores Diocletianus, Maximianus

Sine periculo tuo magistratus filium tuum curatorem constituit nec appellandi tibi necessitas incumbebat. * diocl. et maxim. aa. alexandro. * < >

CJ.10.62.4.1: Imperatores Diocletianus, Maximianus

Sane nominator, qui filium in potestate positum non consentiente patre ad munus devocavit, si tamen ex voluntate tua antea filius decurio factus non erat, detrimento muneris obligabitur. < >

CJ.10.63.0. De peculo successorum parentis.

CJ.10.63.1: Imperator Alexander Severus

Si de proprio suo patrimonio muneris editionem tuo nomine pater tuus repromisit ideoque etiam sacerdotem te creari impetravit, onus erogationis commune omnium heredum eius esse praeses provinciae non ignorabit. * alex. a. claudiano. * < >

CJ.10.64.0. De mulieribus in quo loco munera sexui congruentia et honores agnoscant.

CJ.10.64.1: Imperator Philippus

Malchaeam, quae aliunde oriunda alibi nupta est, si non in urbe roma maritus eius consistat, non apud originem suam, sed apud incolatum mariti ad honores seu munera, quae personis cohaerent quorumque is sexus capax esse potest, compelli posse saepe rescriptum est. patrimonii vero munera necesse est mulieres in his locis in quibus possident sustinere. * philipp. a. claudio. * < >

CJ. c.10.65.0. De legationibus.

CJ.10.65.1: Imperatores valer., gallien.

Pater trium incolumium liberorum legationibus publicis liberatur. * valer. et gallien. aa. achillino. * < >

CJ.10.65.2pr.: Imperatores valer., gallien.

Cum vos proprio nomine sumptus ob defensionem publicam susceperitis, id, quod ad proprias erogationes collega vester acceperat, non vobis reddere heredes eius, sed si in ea causa est, ut restitui omnino oporteat, rei publicae debent potius inferre. * valer. et gallien. aa. et valer. c. marco. * < >

CJ.10.65.2.1: Imperatores valer., gallien.

Sane si honorariis advocatorum erat ea quantitas destinata, restitui illud vobis , qui haec praestaturi estis, non iniuria postulatis. < >

CJ.10.65.2.2: Imperatores valer., gallien.

Eum autem collegam vestrum, quem defensione patriae destitisse dicitis, apud provinciae praesidem desertae adlegationis arguere potestis. < >

CJ.10.65.3: Imperatores Diocletianus, Maximianus

Transmarina legatione apud nos perfunctos constitutum est biennii vacationem munerum civilium et honorum habere, non eos, qui de proximo obsequium rei publicae videntur exhibuisse. * diocl. et maxim. aa. muciano. * < >

CJ.10.65.4pr.: Imperator Constantius

Universi omnino ex comitibus vel ex praesidibus, qui suffragio perceperint dignitates, civilibus oneribus muneribusque teneantur adstricti, ne commoda publica cum umbratili suffragiorum pactione lacerentur. * constantius a. ad titianum. * <a 343 d. prid. k. iul. triveris placido et romulo conss.>

CJ.10.65.4.1: Imperator Constantius

Eos tamen a praedictis oneribus excipi oportebit, qui in legationibus publicis versati sunt. <a 343 d. prid. k. iul. triveris placido et romulo conss.>

CJ.10.65.5pr.: Imperatores Theodosius, Arcadius, Honorius

Si quod extraordinarium concilium postulatur, cum vel ad nos est mittenda legatio vel vestrae sedi aliquid intimandum, id, quod inter omnes communi consilio tractatuque convenerit, minime in examen cognitoris ordinarii referatur. * theodos. arcad. et honor. aaa. apodemio pp. illyrici. * <a 392 d. v k. aug. constantinopoli arcadio a. ii et rufino conss.>

CJ.10.65.5.1: Imperatores Theodosius, Arcadius, Honorius

Provincialium enim desideria, quibus necessaria saepe fortuitis remedia deposcuntur, vobis agnoscere atque explorare permittimus, ut sit examinis tui, quae ex his auxilio tuo protinus implenda sunt, et quae clementiae nostrae auribus intimanda videantur. <a 392 d. v k. aug. constantinopoli arcadio a. ii et rufino conss.>

CJ.10.65.5.2: Imperatores Theodosius, Arcadius, Honorius

In loco autem publico de communi utilitate provincialium sententia proferatur, atque id, quod maioris partis probaverit adsensus, sollemnis firmet auctoritas. <a 392 d. v k. aug. constantinopoli arcadio a. ii et rufino conss.>

CJ.10.65.6: Imperatores Honorius, Theodosius

Quotiens ab alexandrina civitate legatio destinatur, universos curiales praecipimus, qui intra urbem consistunt, si non aegritudine vel alia inexcusabili necessitate impediuntur, in locum curiae convenire et decreta sua propria subscriptione firmata viro spectabili praefecto augustali insinuare, ut eius relatione comitati tuis virtutibus suas petitiones intiment et sub exame tuo perpensa legatione res ordinetur. * honor. et theodos. aa. monaxio pp. * <a 416 d. iii non. oct. constantinopoli theodosio a. vii et palladio vc. conss.>

CJ.10.66.0. De excusationibus artificum.

CJ.10.66.1: Imperator Constantinus

Artifices artium brevi subdito comprehensarum per singulas civitates morantes ab universis muneribus vacare praecipimus, si quidem ediscendis artibus otium sit accommodandum, quo magis cupiant et ipsi peritiores fieri et suos filios erudire. et est notitia ista: architecti medici mulomedici pictores statuarii marmorarii lectarii seu laccarii clavicarii quadrigarii quadratarii (quos graeco vocabulo livovyktas appellant) structores (id est aedificatores) sculptores ligni musarii deauratores albini (quos graeci ckoniatasc appellant) argentarii barbaricarii diatretarii aerarii fusores signarii fabri bracarii aquae libratores figuli (qui graece kerameis dicuntur) aurifices vitrearii plumarii specula rii eborarii pelliones fullones carpentarii sculptores dealbatores cusores linarii tignarii blattearii (id est petalourgoi). * constant. a. ad maximum pp. * <a 337 d. iiii non. aug. feliciano et titiano conss.>

CJ.10.66.2: Imperatores Constantius, constans

Mechanicos et geometras et architectos, qui divisiones partium omnium incisionesque servant mensurisque et institutis operam fabricationibus stringunt, et eos, qui aquarum inventos ductus et modos docili libratione ostendunt, in par studium docendi atque discendi nostro sermone compellimus. itaque immunitatibus gaudeant et suscipiant docendos, qui docere sufficiunt. * constantius et constans aa. ad leontinum pp. * <a 344 d.Prid.Non.Iul.Leontino et sallustio conss.>

CJ.10.67.0. De potioribus ad munera nominandis.

CJ.10.67.1: Imperator Antoninus

Si ipse vocatus ad munera civilia potiorem alium nominandum putaveris, age causam tuam. * ant. a. basilidae. * <a xxx >

CJ.10.68.0. Si propter inimicitias creatio facta sit.

CJ.10.68.1: Imperator Alexander Severus

Si propter inimicitias ad munera civilia creatus es, hanc tibi nominationem non nocere praesidis aequitas faciet, cum et publicae utilitatis intersit non ex inimicitia creationes fieri debere, sed existimatione vera et commodo rei publicae. * alex. a. aniceto. * <a xxx >

CJ.10.69.0. De sumptuum recuperatione.

CJ.10.69.1: Imperator Gordianus

Muneribus civilibus non fugeris, quae personis mandantur, si quinque filios incolumes habeas. at si contra id privilegium ad munus fatigandi tui causa quidam te devocaverint tuque appellatione interposita securitatem reportaveris, a nominatoribus sumptus quos in litem feceris recuperabis. * gord. a. dionysio. * <a xxx >

CJ.10.70.0. Si post creationem quis decesserit.

CJ.10.70.1: Imperator Gordianus

Si ante diem subeundi honoris atque muneris pater tuus defunctus est, conveniri eo nomine heredes eius non oportere praeses provinciae minime ambigit. * gord. a. asiatico. * <a xxx >

CJ.10.71.0. De tabulariis scribis logographis et censualibus.

CJ.10.71.1: Imperator Constantius

Nullus omnino ex tabulariis vel scribis vel logographis eorumque filiis in quocumque officio militet, sed ex omnibus officiis, nec non et si intra nostrum palatium militant, necdum impleto quinquennio reperti et retracti protinus officiis municipalibus reddantur. * constantius a. ad catullinum pp. * <a 341 d.Viii k.Iul.Lauriaco Marcellino et probino conss.>

CJ.10.71.2: Imperatores Gratianus, Valentinianus, Theodosius

Quicumque decurionum sponte se casuali ministerio manciparit, condicionem habeat , quam ipse delegit, depositurus sui ordinis penitus dignitatem, si eum necessitas quaestioni subdendum invenerit. * grat. valentin. et theodos. aaa. * <a 384 d.Xv k.Oct.Constantinopoli ricomere et clearcho conss.>

CJ.10.71.3pr.: Imperatores Arcadius, Honorius

Generali lege sancimus, ut, sive solidis provinciis sive singulis civitatibus necessarii fuerint tabularii, liberi homines ordinentur neque ulli deinceps ad hoc officium patescat aditus, qui sit obnoxius servituti. * arcad. et honor. aa. hadriano pp. * <a 401 d.Viii k.April.Mediolani vincentio et fravito conss.>

CJ.10.71.3.1: Imperatores Arcadius, Honorius

Sed et si quis dominorum servum suum sive colonum chartas publicas agere permiserit (consensum enim, non ignorantiam volumus obligari), ipsum quidem, in quantum interfuerit publicae utilitati, pro ratociniis, quae servo sive colono agente tractata sunt, obnoxium attineri, servum autem competentibus adfectum verberibus fisco addici. dominorum enim interfuit ab initio providere, ne publicis actibus privata servitia immiscerentur. <a 401 d.Viii k.April.Mediolani vincentio et fravito conss.>

CJ.10.71.4: Imperatores Theodosius, Valentinianus

Boethos logistarum demogrammateos logographos diastoleos, quae vocabula publicis dicuntur subiacere necessitatibus, sive quolibet alio nomine nuncupentur, non honore aut alicuius privilegii colore subnixos pro definitione legum inexorabilium suam fortunam subire compelli, quatenus nec publicis quicquam noceatur aut minuatur utilitatibus, et suis corporibus illi reddantur, quos vel patris vel maiorum obligatio vel sua constringit. * theodos. et valentin. aa. cyro pp. * <a 440-441 >

CJ.10.72.0. De susceptoribus praepositis et arcariis.

CJ.10.72.1pr.: Imperator Constantinus

Susceptores publicos absque omni mora aurum suscipere censemus, ne quis per hanc occasionem sumptus facere compellatur. * const. a. ad euphrasium rationalem trium provinciarum. * <a 325 d.Xiiii k.Aug.Paulino et iuliano conss.>

CJ.10.72.1.1: Imperator Constantinus

Nam si solvere volens a suscipiente fuerit contemptus, testibus adhibitis contestationem debebit proponere, ut hoc probato et ipse securitatem debitam commissi nexu liberatus cum emolumentis accipiat et, qui suscipere neglexerit, eius ponderis quod debebatur in duplum fisci rationibus per vigorem officii praesidis inferre cogatur. <a 325 d.Xiiii k.Aug.Paulino et iuliano conss.>

CJ.10.72.1.2: Imperator Constantinus

Quod autem susceptores iudice cuius interest neglegente violaverint, ex ipsius iudicis facultatibus sarcietur. <a 325 d.Xiiii k.Aug.Paulino et iuliano conss.>

CJ.10.72.2: Imperatores Valentinianus, Valens

Iuxta inveteratas leges nominatores susceptorum et eorum, qui ad praeposituram horreorum et pagorum creantur, teneantur obnoxii, si minus idonei sint, qui ab isdem fuerint nominati, nec quicquam ex eorum substantia celebrata per interpositam personam emptione mercentur. * valentin. et valens aa. ad secundum pp. * <a 365 d.Iii k.Aug.Constantinopoli valentiniano et valente aa.Conss.>

CJ.10.72.3: Imperatores Valentinianus, Valens

Susceptores novi non modo praesentis anni debita, verum etiam species, quas ex reliquis inferunt, quia novae sunt ac recentes, suscipiant. * valentin. et valens aa. ad mamertinum pp. * <a 365 d.Prid.K.Nov.Romae valentiniano et valente aa.Conss.>

CJ.10.72.4pr.: Imperatores Valentinianus, Valens

Neminem susceptionis munere functum ad idem munus adstringi, nisi prius se vinculo sollicitudinis superioris absolverit. nam neque eos qui placuerint gravare iusti est, neque illos qui displicuerint tenere prudentis. * valentin. et valens aa. ad florentium com. sacr. larg. * <a 366 d. xv k.Oct.Mantebri gratiano nob. puero et dagalaifo conss. >

CJ.10.72.4.1: Imperatores Valentinianus, Valens

Integro igitur singuli anniversario anno transcurso cogantur exponere, quibus titulis suscepta disperserint, ut facilius, si quis in furto fuerit deprehensus, recentem queat redintegrare iacturam. <a 366 d. xv k.Oct.Mantebri gratiano nob. puero et dagalaifo conss. >

CJ.10.72.4.2: Imperatores Valentinianus, Valens

Non perpetui autem exactores teneantur in continuata vexandorum provincialium potestate, veluti concussionum dominatione, sed per annos singulos iudicaria sedulitate mutentur, nisi aut consuetudo civitatis aut raritas ordinis eos per biennium esse compellat. <a 366 d. xv k.Oct.Mantebri gratiano nob. puero et dagalaifo conss. >

CJ.10.72.5: Imperatores Valentinianus, Valens

Quotienscumque certa summa solidorum pro tituli qualitate debetur et auri massa transmittitur, in septuaginta duos solidos libra feratur accepta. * valentin. et valens aa. ad geramnianum cometem sacr. larg. * <a 367 d.Vi id.Ian.Romae lupicino et iovino conss.>

CJ.10.72.6: Imperatores Valentinianus, Valens

Frumenta, quae horreis inferuntur, pro illationis modo ilico apocharum cautionibus adnotentur. non autem oportet in horreis fiscalibus nisi fiscalia frumenta constitui. * valentin. et valens aa. ad chilonem. * <a 375 d.V id.April.Treviris post consulatum gratiani a.Iii et equitii vc.>

CJ.10.72.7: Imperatores Gratianus, Valentinianus, Theodosius

Minime diu penes ipsos susceptores maneant facta collatio, sed statim quodcumque a provincialibus fuerit exsolutum sacris thesauris inferatur. * grat. valentin. et theodos. aaa. have hypati carissime nobis.* <a 383 d.Iii k.Mai constantinopoli post consulatum antonii et syargrii.>

CJ.10.72.8: Imperatores Valentinianus, Theodosius, Arcadius

Exactores vel susceptores in celeberrimo coetu curiae consensu et iudicio omnium sub actorum testificatione firmentur, provinciarumque rectoribus eorum nomina, qui ad publici munus officii editi atque obligati fuerint, innotescant. et animadvertant, quicumque nominaverint, ad discrimen suum universa quae illi gesserint redundare. * valentin. theodos. et arcad. aaa. cynegio pp. * <a 386 d.Vi k.Nov.Constantinopoli honorio np.Et euodio conss.>

CJ.10.72.9pr.: Imperatores Valentinianus, Theodosius, Arcadius

Modios aeneos atque lapideos cum sextariis atque ponderibus per mansiones singulasque civitates iussimus collocari, ut unusquisque tributarius sub oculis constitutis rerum omnium modis sciat, quid debeat susceptoribus dare : ita ut, si quis susceptorum conditorum modiorum sexagintorumque vel ponderum normam putaverit excedendam, poenam se sciat competentem esse subiturum. * valentin. theodos. et arcad. aaa. cynegio pp. * <a 386 d.Iiii k.Dec.Constantinopoli honorio np.Et euodio vc.Conss. >

CJ.10.72.9.1: Imperatores Valentinianus, Theodosius, Arcadius

Et submotis, quae contra utilitatem populorum omnium hactenus gesta sunt, frumenti quinquagesimas, hordei quadragesimas, vini et laridi vicesimas susceptoribus dari praecipimus. <a 386 d.Iiii k.Dec.Constantinopoli honorio np.Et euodio vc.Conss. >

CJ.10.72.9.2: Imperatores Valentinianus, Theodosius, Arcadius

Humanitatis autem necessitate commoti in armeniae susceptionibus longinquitatis causa frumenti et hordei quadragesimas, vini et laridi quintas decimas dari praecipimus. <a 386 d.Iiii k.Dec.Constantinopoli honorio np.Et euodio vc.Conss. >

CJ.10.72.10: Imperatores Valentinianus, Theodosius, Arcadius

Susceptores praesentibus defensoribus et modum iugationis possessorum et species singulas vel earum numerum quantitatemque perscribant. * valentin. theodos. et arcad. aaa. cynegio pp. * <a 389 d.Iiii k.Dec.Constantinopoli timasio et promoto conss.>

CJ.10.72.11: Imperatores Arcadius, Honorius

Securitates semel publicatas et gestis lectas vini susceptoribus imputari et coeptam arcae discussionem volumus in apertum quaesita ratione deduci et omnes publicas securitates quae gestis tenentur a susceptoribus accepto ferri. * arcad. et honor. aa. benigno vic. urb. romae. * <a 400 d.Vi id.Iun.Mediolani stilichone et aureliano conss.>

CJ.10.72.12: Imperatores Arcadius, Honorius

Si aliquid a susceptore vel tabulario fraudis admissum esse possessor deprehendat, nemo eorum semel in interversione convictus id rursus officium gerat, in quo ante decoxit, etsi rescriptum nostrum elicitum clandestina supplicatione tulerit. * arcad. et honor. aa. pompeiano suo salutem. * <a 400 d.Prid.K.Ian.Mediolani stilichone et aureliano conss.>

CJ.10.72.13pr.: Imperatores Arcadius, Honorius

Duos tabularios seu numerarios et susceptores totidem per universas provincias oportere constitui clementia nostra praecepit. * arcad. et honor. aa. lucio com. sacr. larg. * <a 408 d.Vi k.Febr.Basso et philippo conss.>

CJ.10.72.13.1: Imperatores Arcadius, Honorius

Scire autem volumus praetorianam amplissimam praefecturam eos, qui aurum largitionale susceperunt, nihil cum arcae ratociniis habere commune, iudices autem provinciarum quinque libris auri multandos et primates officiorum capitali poena plectendos, si hoc non fuerit custoditum. <a 408 d.Vi k.Febr.Basso et philippo conss.>

CJ.10.72.14pr.: Imperatores Honorius, Theodosius

Humilioribus officiis aut extraordinariis oneribus occupari curiales non patimur , ne publica vacillet utilitas. * honor. et theodos. aa. euchario suo salutem. * <a 412 d.Prid.K.Mart.Ravennae honorio viiii et theodosio v aa.Conss. >

CJ.10.72.14.1: Imperatores Honorius, Theodosius

Susceptionem itaque vestium aequius est ab officio proconsulari vel ab his qui in eodem meruerunt sollemniter procurari. horum namque interest huiusmodi explorare rationem et quaerere qualitatem eorum, quorum ad contuendum cura commodior est. neque enim aequum est, ut ad officium lucra, ad curialem susceptionis tantum damna pertineant. <a 412 d.Prid.K.Mart.Ravennae honorio viiii et theodosio v aa.Conss. >

CJ.10.72.14.2: Imperatores Honorius, Theodosius

Hanc igitur ab ordinibus iniuriam submovemus, exceptis his, si qui curialium in officio memorato aut militasse aut militare fuerit deprehensus. <a 412 d.Prid.K.Mart.Ravennae honorio viiii et theodosio v aa.Conss. >

CJ.10.72.15pr.: Imperatores Theodosius, Valentinianus

Aurum sive argentum quodcumque a possessore confertur, arcarius vel susceptor accipiat, ita ut provinciae moderator eiusque officium ad crimen suum noverit pertinere, si possessoribus ullum fuerit ex aliqua ponderum iniquitate illatum dispendium. * theodos. et valentin. aa. volusiano pp. * <a 429 d.Iii k.Mart.Ravennae post consulatum felicis et tauri vv.Cc.>

CJ.10.72.15.1: Imperatores Theodosius, Valentinianus

Et quidquid ex provinciis ad nostrum dirigetur aerarium, id ad illustres viros aerarii nostri comites ralatione deferatur. <a 429 d.Iii k.Mart.Ravennae post consulatum felicis et tauri vv.Cc.>

CJ.10.73.0. De ponderatoribus et auri illatione.

CJ.10.73.1: Imperator Constantinus

Aurum, quod infertur a collatoribus, si quis vel solidos voluerit vel materiam appendere, aequa lance et libramentis paribus suscipiatur. * const. a. ad euphrasium rationalem trium provinciarum. * <a 325 pp.Xiiii k.Aug.Paulino et iuliano conss.>

CJ.10.73.2: Imperator Julianus

Quotiens de qualitate solidorum orta fuerit dubitatio, placet quem sermo graecus appellat per singulas civitates constitutum zygostaten, qui pro sua fide atque industria neque fallat neque fallatur, contentionem dirimere. * iul. a. ad mamaertinum pp. * <a 363 d.Viiii k.Mai.Salonae iuliano a.Iiii et sallustio conss.>

CJ.10.74.0. De auri publici prosecutoribus.

CJ.10.74.1pr.: Imperatores Honorius, Theodosius

Auri prosecutores partim nulla praemissa, ut adsolet, prosecutoria aurum praesumunt, partim diutius retentant, quod statim fuerat adsignandum. * honor. et theodos. aa. antehmio pp. * <a 409 d.Xiii k.Aug.Honorio viii et theodosio iii aa.Conss.>

CJ.10.74.1.1: Imperatores Honorius, Theodosius

Ideoque censemus, ne quis absque praecepto viri illustris comitis sacrarum largitionum vel coquendum aurum sumat vel capiat deinceps retinendum. <a 409 d.Xiii k.Aug.Honorio viii et theodosio iii aa.Conss.>

CJ.10.75.0. De his quae ex publica collatione illata sunt non usurpandis.

CJ.10.75.1: Imperator Constantinus

Nullus iudicum id, quod a re publica ex collatione susceperit, mutui interventione opposita vel invadat vel conetur invadere. * const. a. * <a 325 d.Prid.Non.Mart.Treviris paulino et iuliano conss.>

CJ.10.75.2: Imperatores Gratianus, Valentinianus, Theodosius

Nullus penitus ex eo, quod refertur in conditis vel in arca continetur, ad quemlibet titulum usurpet, nisi forte praesumendi facultatem sublimium potestatum iussione perceperit. * grat. valentin. et theodos. aaa. palladio. * <a 382 d.Iii id.April.Constantinopoli antonio et syagrio conss.>

CJ.10.75.3: Imperatores Arcadius, Honorius

Sciant iudices nihil sibi ex privatae rei canone vel ex eo, quod ex isdem titulis exegerint, ad necessitates alias transferre licere, nisi malint gravissima severitate suam licentiam coerceri. * arcad. et honor. aa. messalae pp. * <a 399 d.Xvi k.Iun.Mediolani theodoro cons.>

CJ.10.76.0. De auro coronario.

CJ.10.76.1: Imperatores Gratianus, Valentinianus, Theodosius

Ad collationem auri coronarii placuit neminem absque consuetudine esse cogendum. * grat. valentin. et theodos. aaa. cynegio pp. * <a 384 d.Xv k.Febr.Constantinopoli ricomere et clearcho conss.>

CJ.10.77.0. De irenarchis.

CJ.10.77.1: Imperatores Honorius, Theodosius

Irenarchae, qui ad provinciarum tutelam quietis ac pacis per singula territoria faciunt stare concordiam, a decurionibus iudicio praesidum provinciarum idonei nominentur. * honor. et theodos. aa. antehmio pp. * <a 409 d.Viii k.Ian.Constantinopoli honorio viii et theodosio iii aa.Conss.>

CJ.10.78.0. De argenti pretio quod thesauris infertur.

CJ.10.78.1: Imperatores Arcadius, Honorius

Iubemus, ut pro argenti summa, quam quis thesauris fuerat illaturus, inferendi auri accipiat facultatem, ita ut pro singulis libris argenti quinos solidos inferat. * arcad. et honor. aa. eutychiano pp. * <a 397 d.Xi k.Mart.Constantinopoli caesario et attico conss.>

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CJ.11.1.0. De tollenda lustralis auri collatione.

CJ.11.2.0. De naviculariis seu naucleris publicas species transportantibus.

CJ.11.2.1: Imperator Constantius

Nullam vim oportet navicularios sustinere delegatas species annonarias transferentes nec concussiones perpeti nec aliquod genus incommodi, sed venientes ac remeantes omni securitate potiri: decem auri librarum multa proponenda his, qui eos inquietare temptaverint. * constantius a. et iul. c.Olybrio pu. *<a 357 d.K.Iun.Romae constantio viiii et iuliano c.Ii conss.>

CJ.11.2.2: Imperatores Arcadius, Honorius

Comperimus naucleros susceptas species in negotiationis emolumenta convertere. ideoque decernimus, ut intra annum quas susceperint inferant species et securitates reportent, quae etiam diem illationis edoceant, ut intra alterum annum eis reddantur, a quibus species praestitae sunt. * arcad. et honor. aa. eusebio pp. *<a 396 d.X k.Ian.Mediolani arcadio iiii et honorio iii aa.Conss.>

CJ.11.2.3: Imperatores Arcadius, Honorius

Ab his, qui in naucleros praedas egerunt, volumus eorum commodis satisfieri. et ideo ne crescat in posterum eorum audacia, sancimus, ut, quicumque in rapinis fuerit deprehensus, poena quadrupli teneatur. * arcad. et honor. aa. flaviano pu. *<a 400 pp.Romae in foro aproniani viiii k.Febr.Stilichone et aureliano conss.>

CJ.11.2.4: Imperatores Honorius, Theodosius

Cum nauarchorum coetus circiter provincias orientis inopia navium tribuaret et investigandae classis obtentu insularum secessus obiret et navigandi opportunitate transacta iudiciorum indignatio sine transvectionis expectaretur effectu, merito celsitudo tua praefecto augustali et insularum praeside conventis alexandrinae et carpathiae classis summates et nonnullos alios naucleros eo professionis adduxit, ut onus frumentarii commeatus, qui per orientales nauarchos ex alexandrinae civitatis conditis consueverat ad sacratissimam urbem transferri, in suam fidem susceptum ad eadem augustissimae urbis horrea comportarent, solaciis pro mercedula praestitis ex tributariae pensitationis immunitate vel ex eo, quod vocatur éphilikoné, nec non etiam aliis, quae tuae cognitionis limavit examen. * honor. et theodos. aa. anthemio pp. *<a 409 d.Xiiii k.Febr.Honorio viii et theodosio iii aa.Conss.>

CJ.11.2.5: Imperatores Honorius, Theodosius

Qui fiscales species suscepit deportandas, si recta navigatione contempta litora devia sectatus eas avertendo distraxerit, capitali poena plectetur. * honor. et theodos. aa. anthemio pp. *<a 409 d.Xiiii k.Aug.Constantinopoli honorio viii et theodosio iii aa.Conss.>

CJ.11.2.6pr.: Imperatores Honorius, Theodosius

Iudices, qui in portibus dioeceseos suae onusta navigia, cum prosperior flatus invitat, sub praetextu hiemis immorari permiserint, una cum municipibus et corporatis eiusdem loci fortunarum propriarum feriantur dispendiis. * honor. et theodos. aa. faustino pp. *<a 410 d.Xviii k.Sept.Ravennae varane vc.Cons.>

CJ.11.2.6.1: Imperatores Honorius, Theodosius

Naucleri praeterea poenam deportationis excipiant, si aliquid fraudis eos admisisse fuerit revelatum.<a 410 d.Xviii k.Sept.Ravennae varane vc.Cons.>

CJ.11.3.0. De praediis naviculariorum.

CJ.11.3.1: Imperatores Valentinianus, Valens

Domum etiam mansuetudinis nostrae in his, quae naviculario nomine obnoxia sunt, agnoscere praecipimus debitam functionem. * valentin. et valens aa. aureliano praef. annonae. *<a 367 d.Iii k.Oct.Lupicino et iovino conss.>

CJ.11.3.2pr.: Imperatores Valentinianus, Valens, Gratianus

In his, quae navicularii vendunt, quoniam intercipere contractum emendi vendendique fas prohibet, emptor navicualrii functionem pro modo portionis comparatae subeat: res enim oneri addicta est, non persona mercatoris. * valentin. et valens et grat. aaa. chiloni procons. africae. *<a 375 d.Iii non.Aug.Post consulatum gratiani a.Iii et equitii vc. >

CJ.11.3.2.1: Imperatores Valentinianus, Valens, Gratianus

Neque navicularium iubemus fieri eum, qui aliquid comparavit, sed eam partem quae empta est pro suo modo ac ratione esse munificam: nec enim totum patrimonium ad functionem naviculariam occupandum erit, quod habuerit qui rei exiguae mercator accessit, sed illa portio, quae ab initio navicularii fuit, ad pensionem huiusmodi functionis sola tenenda est, residuo patrimonio, quod ab hoc vinculo liberum est, otioso et immuni servando.<a 375 d.Iii non.Aug.Post consulatum gratiani a.Iii et equitii vc. >

CJ.11.3.2.2: Imperatores Valentinianus, Valens, Gratianus

Domus vero, quarum cultu decus urbium potius quam fructus adquiritur, ubi a naviculariis veneunt, pro tanto modo ad hanc pensionem obligari placet, quantum habebant emolumentum, cum pecunia mutuarentur.<a 375 d.Iii non.Aug.Post consulatum gratiani a.Iii et equitii vc. >

CJ.11.3.2.3: Imperatores Valentinianus, Valens, Gratianus

Ubi vero spatia loci et exiguitas nullam habuit pensionem aut extructio, cuius est ardua difficilisque molitio, aut decus sumptuosum, aut, ut est plerumque liberale institutum, habitationem quis suam ornamento urbis adiecit, nolumus munificentiam quae postea addita est improbam licitationem aestimationis excipere: sed vetusta potius loci species et pensio cogitetur quam cultus hodiernus, qui per industriam hominis animosi accessit.<a 375 d.Iii non.Aug.Post consulatum gratiani a.Iii et equitii vc. >

CJ.11.3.3: Imperatores Arcadius, Honorius

Hi, qui fundos naviculariae functioni adscriptos a naviculariis acceperunt quodlibet ad se titulo transeuntes, secundum agri opinionem, quae antiquitus habetur adscripta, naviculariam functionem suscipere cogantur neque eas condiciones sibi aestiment profuturas, quas venditor minus idoneus in se recipit impositas ementis arbitrio: hac tamen ratione servata, ut, si ad minus idoneum fuerit translata possessio, etiam auctores transscripti praedii teneantur obnoxii, sitque hoc in promptu, ut damnis fiscalibus primitus ab idoneis consulatur. * arcad. et honor. aa. messalae pp. *<a 399 d.Xiiii k.Mart.Mediolani theodoro pvc.Cons.>

CJ.11.4.0. De navibus non excusandis.

CJ.11.4.1pr.: Imperatores Arcadius, Honorius

Multi naves suas diversorum nominibus et titulis tuentur. cui fraudi obviantes praecipimus, ut, si quis ad evitationem publicae necessitatis titulum crediderit apponendum, sciat navem esse fisco sociandam. * arcad. et honor. aa. longiniano pp. *<a 406 d.Iii id.Ian.Ravennae arcadio a.Vi et probo conss.>

CJ.11.4.1.1: Imperatores Arcadius, Honorius

Nam ut privatos quoque non prohibemus habere navigia, ita fraudi locum esse non sinimus, cum omnes in commune, si necessitas exegerit, conveniat utilitatibus publicis oboedire et subvectionem sine dignitatis privilegio celebrare.<a 406 d.Iii id.Ian.Ravennae arcadio a.Vi et probo conss.>

CJ.11.4.2pr.: Imperatores Theodosius, Valentinianus

Iubemus nullam navem ultra duorum milium modiorum capacem ante felicem embolam vel publicarum specierum transvectionem aut privilegio dignitatis aut religionis intuitu aut praerogativa personae publicis utilitatibus excusari posse subtractam: nec si caeleste contra proferatur oraculum, sive adnotatio sit sive divina pragmatica, providentissimae legis regulas oppugnare debebit. * theodos. et valentin. aa. florentio pp. *<a 439 d.Vii id.April.Constantinopoli theodosio a.Xvii et festo conss.>

CJ.11.4.2.1: Imperatores Theodosius, Valentinianus

Quod etiam in omnibus causis huiusmodi contra ius vel utilitatem publicam in quolibet negotio proferatur, non valeat. quidquid enim in fraudem istius legis quolibet modo fuerit attemptatum, id navigii quod excusatur publicatione corrigimus.<a 439 d.Vii id.April.Constantinopoli theodosio a.Xvii et festo conss.>

CJ.11.5.0. Ne quid oneri publico imponatur.

CJ.11.5.1: Imperatores Arcadius, Honorius

Oneri publico sarcinam privatam ne quis imponat nec audeat portitores frumenti ad suscipiendum onus aliqua necessitate compellere. hoc enim facto atque commisso non in dispendium solum atque naufragii damnum tenebitur obligatus, verum etiam publicae coercitionis experietur vigorem. * arcad. et honor. aa. rufino pp. *<a 395 d.V id.Ian.Constantinopoli olybrio et probino conss.>

CJ.11.6.0. De naufragiis.

CJ.11.6.1: Imperator Antoninus

Si quando naufragio navis expulsa fuerit ad litus vel si quando reliquam terram attigerit, ad dominos pertineat: fiscus meus sese non interponat. quod enim ius habet fiscus in aliena calamitite, ut de re tam luctuosa compendium sectetur? * ant. a. maximo. *<>

CJ.11.6.2: Imperatores Valentinianus, Valens, Gratianus

Si quis navicularius naufragium sustinuisse adfirmat, provinciae iudicem, eius videlicet, in qua res agitur, adire festinet ac probet apud eum testibus eventum , relatioque ad sublimissimam referatur praefecturam, ita ut intra anni spatium veritate revelata competens dispositio procedat. quod si per neglegentiam praefinitum anni spatium fortasse claudatur, supervacuas serasque interpellationes emenso anno placuit non admitti. * valentin. valens et grat. aaa. ad modestum pp. *<a 372 d.Pp.Bersti non.Iun.Modesto et arintheo conss.>

CJ.11.6.3pr.: Imperatores Gratianus, Valentinianus, Theodosius

Quotiens obruta vel submersa fluctibus navi examen adhibetur competentis iudicis , duorum vel trium nautarum quaestione habita ceteri ab huiusmodi nexu liberentur. quid est enim, quod non abunde intra praefinitum numerum sollers quaesitor inveniat? * grat. valentin. et theodos. aaa. naviculariis afris salutem. *<a 380. d.Viii id.Febr.Triveris gratiano v et theodosio aa.Conss.>

CJ.11.6.3.1: Imperatores Gratianus, Valentinianus, Theodosius

Circa magistros navium, quibus est scientia plenior, immoretur: qui si fatali sorte defuerint, in alios inquisitio transferatur.<a 380. d.Viii id.Febr.Triveris gratiano v et theodosio aa.Conss.>

CJ.11.6.3.2: Imperatores Gratianus, Valentinianus, Theodosius

Sane si universos violentia tempestatis obruerit, ne veritas lateat, a liberis nautarum sive magistrorum intra iudicia constitutis super eorum quaeratur interitu, quos navicularius naufragio perisse contendit.<a 380. d.Viii id.Febr.Triveris gratiano v et theodosio aa.Conss.>

CJ.11.6.3.3: Imperatores Gratianus, Valentinianus, Theodosius

Susceptionis autem necessitas ex kalendis aprilibus in diem kalendarum octobrium mansura servabitur.<a 380. d.Viii id.Febr.Triveris gratiano v et theodosio aa.Conss.>

CJ.11.6.4: Imperatores Valentinianus, Theodosius, Arcadius

Pro his, quae semel a collatoribus illata naufragiis perierunt, nolumus nobis aliquam cum possessoribus, sive senatores sive privati sint, esse communionem vel aliquid periculi ad eos redundare. * valentin. theodos. et arcad. aaa. tatiano pp. *<a 391 d.Xv k.Aug.Constantinopoli tatiano et symmacho conss.>

CJ.11.6.5pr.: Imperatores Honorius, Theodosius

De submersis navibus decernimus, ut levato velo istae causae cognoscantur. et si quisquam de talibus negotiis aliquid accepisse detegitur, iudex, apud quem constiterit, his conquerentibus qui nudantur pro qualitatibus personarum multandi removendi proscribendi habeat potestatem. * honor. et theodos. aa. naviculariis per africam. *<a 412 d.Xvi k.April.Ravennae honorio viiii et theodosio v aa.Conss. >

CJ.11.6.5.1: Imperatores Honorius, Theodosius

Si vero causarum talium cognitores, libelli datione vel planaria interpellatione commoniti intra biennium has causas audire neglexerint, et hoc fuerit tempus elapsum, praeiudicium noceat eatenus cognitori, ut naviculario propter vitium iudicis absoluto mediam oneris eius partem, propter cuius probandam amissionem legitimo dumtaxat tempore cognitio petebatur, iudex cogatur inferre, residuam vero officium eius exsolvat.<a 412 d.Xvi k.April.Ravennae honorio viiii et theodosio v aa.Conss. >

CJ.11.6.6: Imperatores Honorius, Theodosius

Super naufragiorum quae contigerint casibus usitato more habita quaestione si quis calculus modiationis dicatur tempestate maris deperisse, sub tuae sedis auditione nequaquam feratur acceptus, sed haec dispendii iactura in omne naviculariorum concilium, pro rata scilicet contingentis muneris, deferatur. * honor. et theodos. aa. anthemio pp. *<a 409 d. xiiii k. febr. honorio viii et theodosio iii aa. conss.>

CJ.11.7.0. De metallariis et metallis et procuratoribus metallorum.

CJ.11.7.1pr.: Imperatores Valentinianus, Valens

Perpensa deliberatione duximus sanciendum, ut, quicumque exercitium metallorum vellet adfluere, is labore proprio et sibi et rei publicae commoda compararet. * valentin. et valens aa. ad cresconium com. metallorum. *<a 365 d. iiii id. dec. parisiis valentiniano et valente aa. conss.>

CJ.11.7.1.1: Imperatores Valentinianus, Valens

Itaque si qui sponte confluxerint, eos laudabilitas, tua octonos scripulos in balluca, quae graece é krusammos é appellatur, cogat exsolvere.<a 365 d. iiii id. dec. parisiis valentiniano et valente aa. conss.>

CJ.11.7.1.2: Imperatores Valentinianus, Valens

Quidquid autem amplius colligere potuerint, fisco potissimum distragant, a quo competentia ex largitionibus nostris pretia suscipiant.<a 365 d. iiii id. dec. parisiis valentiniano et valente aa. conss.>

CJ.11.7.2: Imperatores Valentinianus, Valens

Ob metallicum canonem, in quo propria consuetudo retinenda est, quattuordecim unicas ballucae pro singulis libris constat inferri. * valentin. et valens aa. ad germanianum com. sacr. larg. *<a 367 d. vi id. ian. romae lupicino et iovino conss.>

CJ.11.7.3: Imperatores Gratianus, Valentinianus, Theodosius

Cuncti, qui per privatorum loca saxorum venam laboriosis effossionibus persequuntur, decimas fisco, decimas etiam domino repraesentent, cetero modo suis desideriis vindicando. * grat. valentin. et theodos. aaa. floro pp. *<a 382 d. iii k. sept. constantinopoli antonio et syagrio conss.>

CJ.11.7.4: Imperatores Gratianus, Valentinianus, Theodosius

Cum procuratores metallorum intra macedoniam daciam mediterraneam moesiam seu dardaniam soliti ex curialibus ordinari, per quos sollemnis profligatur exactio, simulato hostili metu huic se necessitati subtraxerint, ad implendum munus retrahantur, et nulli deinceps licentia laxetur prius indebitas expetere dignitates, quam subeundam procurationem fideli sollertique exactione compleverint. * grat. valentin. et theodos. aaa. eusignio pp. *<a 386 d. iiii k. aug. mediolani honorio np. et euodio conss.>

CJ.11.7.5: Imperatores Valentinianus, Theodosius, Arcadius

Per annos singulos septeni per hominem scripuli largitionibus inferantur ab aurilegulis, non solum in pontica dioecesi, verum etiam in asiana. * valentin. theodos. et arcad. aaa. romulo com. sacr. larg. *<a 392 d. xi k. mart. constantinopoli arcadio a. ii et rufino conss.>

CJ.11.7.6: Imperatores Valentinianus, Theodosius, Arcadius

Quosdam operta humo esse saxa dicentes id agere cognovimus, ut defossis in altum cuniculis alienarum aedium fundamenta labefactent. qua de re, si quando huiusmodi marmora sub aedificiis latere dicantur, perquirendi eadem copia denegetur. * valentin. theodos. et arcad. aaa. paterno. *<a 393 d. xvii k. april. constantinopoli theodosio a. iii et abundantio conss.>

CJ.11.7.7: Imperator Theodosius

Metallarii sive metallariae, qui quaeve ea regione deserta, ex qua videntur oriundi vel oriundae, ad externa migraverint, indubitanter sine ulla temporis praescriptione ad propriae originis stirpem laremque una cum sua subole revocentur, et quos domus nostrae secreta retineant. sciant autem nullum exinde praeiudicium fisco esse generandum, etiamsi is, quem metallicum esse constiterit, privatis censibus suum nomen indiderit. * theodos. a. maximino com. sacr. larg. *<a 424 d. v id. iul. constantinopoli victore vc. cons.>

CJ.11.8.0. De murilegulis et gynaeciariis et procuratoribus gynaecii et de monetariis et bastagariis.

CJ.11.8.1: Imperator Constantinus

Monetarios in sua semper durare condicione oportet nec dignitatis cuiuscumque privilegio ab huiusmodi condicione liberari. * constant. a. ad bithynos. *<a 317 d. xii k. aug. gallicano et basso conss.>

CJ.11.8.2: Imperator Constantinus

Procuratores rei privatae baphii et gynaecii, per quos et privata nostra substantia tenuatur et species in gynaeciis confectae corrumpuntur, in baphyiis etiam admixta temeratio naevum adducit inquinatae adluvionis, suffragiis abstineant, per quae memoratas administrationes adipiscuntur, vel, si contra hoc fecerint, gladio feriantur. * const. a. ad felicem. *<a 333 d.... k. nov. aquil. dalmatio et zenophilo conss.>

CJ.11.8.3: Imperatores Valentinianus, Valens

Ingenuae mulieres, quae se gynaeciariis sociaverint, si conventae denuntiatione sollemni splendorem generis contuberniorum vilitati praeferre noluerint, suorum maritorum condicione teneantur. * valentin. et valens aa. ad germanum consularem. *<a 365 d. iiii k. iul. mediolani valentiniano et valente aa. conss.>

CJ.11.8.4: Imperatores Valentinianus, Valens

Quod ad praesens remedium pertinet, quintum animal bastagariis pro reparatione praebeatur. * valentin. et valens aa. ad auxonium pp. *<a 368 d. id. dec. marcianopoli valentiniano et valente aa. conss.>

CJ.11.8.5: Imperatores Valentinianus, Valens

Qui aliquem ex familiis gynaecii in latebris habere comperti sunt, quinque librarum auri damno subicientur. * valentin. et valens aa. et grat. a. ad philematium com. sacr. larg.*<a 372 d. xii k. sept. ciliciae modesto et arintheo conss.>

CJ.11.8.6: Imperatores Gratianus, Valentinianus, Theodosius

Qui textrini nostri mancipia occultatione celaverit, ternis libris auri pro singulorum hominum suppressione plectetur. * grat. valentin. et theodos. aaa. ad eucherium. *<a 380 pp. karthagine iii k. mart. post consulatum ausonii et olybrii.>

CJ.11.8.7pr.: Imperatores Gratianus, Valentinianus, Theodosius

Edicimus, ne qua mulier splendidioris gradus monetarii adhaerens consortio decus nativae libertatis amittat. quod si quam ab hac praeceptione statutum nostrae perennitatis abduxerit, ea vel legitima admonita conventione discedat vel, si complexui monetarii putaverit inhaerendum, non ambigat se et liberis praeiudicaturam et eius condicioni esse nectendam. * grat. valentin. et theodos. aaa. ad hesperium pp. *<a 380 d. prid. id. mart. aquileiae post consulatum ausonii et olybrii.>

CJ.11.8.7.1: Imperatores Gratianus, Valentinianus, Theodosius

Si qua vero originaria seu colonaria possessionis alienae ignaro domino seu sciente monetario adsociabitur, ii conventi mox iuri agrorum debitas personas retrahere festinent vel de cetero sciant repetendi facultatem silentii sui coniventia perdidisse.<a 380 d. prid. id. mart. aquileiae post consulatum ausonii et olybrii.>

CJ.11.8.7.2: Imperatores Gratianus, Valentinianus, Theodosius

Sed ut monetario nullam extraneam necti volumus, ita et monetario patre susceptas prohibemus extraneis copulari.<a 380 d. prid. id. mart. aquileiae post consulatum ausonii et olybrii.>

CJ.11.8.8: Imperatores Gratianus, Valentinianus, Theodosius

Aeternam fiximus legem, ne umquam bastagariis militiam vel suam deserere liceat vel aliam, antequam eam impleverint, subreptiva impetratione temptare.

> * grat. valentin. et theodos. aaa. trifolio com. sacr. larg. *<a 384 d.Viiii k.Aug.Heracleae ricomere et clearcho conss.>

CJ.11.8.9: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

Si quis naviculam functioni muricis et legendis conchyllis deputatam ausus fuerit usurpare, duarum librarum auri illatione teneatur. * grat. valentin. theodos. et arcad. aaaa. ad principium pp. *<a 385 d.Vi k.Oct.Aquileiae arcadio a.Et bautone cosss.>

CJ.11.8.10: Imperatores Arcadius, Honorius, Theodosius

Lotas in posterum sericoblattae et metaxae huiusmodi species inferri praecipimus : viginti librarum auri condemnatione proposita his, qui scrinium canonum tractant, prioribus etiam cuiuscumque officii, si statuta caelestia a quodam passi fuerint temerari. * arcad. honor. et theodos. aaa. philometori com. sacr. larg. *<a 406 d.V k.Iul.Constantinopoli arcadio a.Vi et probo conss.>

CJ.11.8.11pr.: Imperator Theodosius

Murileguli, qui relicto atque despecto propriae condicionis officio vetitis se infulis dignitatum et cingulis penitus denegatis munisse dicuntur, ad propriae artis et originis vincula revocentur. * theodos. a. et valentin. c.Maximino com. sacr. larg. *<a 424 d.Xvii k.Nov.Constantinopoli voctore cons.>

CJ.11.8.11.1: Imperator Theodosius

Ab illis autem, qui rebus eorum videntur inhiasse, quos in sua origine permanere et sollemnibus ministeriis inservire manifestum est, omnia quaecumque constiterit ex quocumque titulo possessa antiquis possessoribus restituantur.<a 424 d.Xvii k.Nov.Constantinopoli voctore cons.>

CJ.11.8.11.2: Imperator Theodosius

Quod si alienigenae detentatores oneribus condicionis externae maluerint subiacere quam restituere facultates, et futura deinceps agnoscant munia sibi esse subeunda et de praeterito, si qua ipsis possidentibus reliqua colliguntur, a semet ipsis sciant sine aliqua excusatione solvenda.<a 424 d.Xvii k.Nov.Constantinopoli voctore cons.>

CJ.11.8.12: Imperatores Theodosius, Valentinianus

Ii, qui ex filiabus murilegulorum et alienae originis patribus sunt vel fuerint procreati, iura maternae condicionis agnoscant. * theodos. a.Et valentin.

c.Maximino com. sacr. larg. *<a 425 d.Viiii k.Iun.Theodosio a.Xi et valentiniano c.Conss.>

CJ.11.8.13: Imperatores Theodosius, Valentinianus

Si quis ex corpore gynaeciariorum vel lineariorum vel linyphariorum monetariorumve aut murilegulorum vel aliorum similium ad divinas largitiones nexu sanguinis pertinentium voluerit posthac de suo collegio liberari, non quoscumque nec facile in locum proprium, freti dextrae triumphalis absolutione, substituant, sed eos, quos omnibus idoneos modis sub ipsis quodammodo amplissimae tuae sedis obtutibus approbaverint: ita tamen, ut is, qui ab huiusmodi condicione iuxta formam caelitus datam beneficio principali fuerit absolutus, universi generis sui prosapiam in functione memorati corporis permanentem cum omnibus eius qui absolvitur rebus obnoxiam largitionibus sacris futuram esse non dubitet. * theodos. et valentin. aa. acacio com. sacr. larg. *<a 426 d.Vii k.Mart.Constantinopoli the odosio xii et valentiniano ii aa.Conss.>

CJ.11.8.14: Imperatores Theodosius, Valentinianus

Privatae vel linteae vestis magistri, thesaurorum praepositi vel baphiorum ac textrinorum procuratores ceterique, quibus huiusmodi sollicitudo committitur, non ante ad rem sacri aerarii procurandam permittantur accedere, quam satisdationibus dignis eorum administratio roboretur: scituri nec prosecutorias quidem sacras posthac sibimet postulandas. * theodos. et valentin. aa. acacio com. sacr. larg. *<a 426 >

CJ.11.8.15: Imperatores Theodosius, Valentinianus

Qui aut patre conchyliolegulo geniti probabuntur aut matre, memoratae adscriptioni obnoxios se esse non ambigant. * theodos. et valentin. aa. valerio com. sacr. larg. *<a 427 d.X k.April.Constantinopoli hierio et ardabure conss.>

CJ.11.9.0. De vestibus holoveris et auratis et de intinctione sacri muricis.

CJ.11.9.1: Imperatores Valentinianus, Valens, Gratianus

Auratas ac sericas paragaudas auro intextas viriles privatis usibus contexere conficereque prohibemus et a gynaeciariis tantum nostris fieri praecipimus. * valentin. valens et grat. aaa. archelao com. sacr. larg. *<a 369 d.V non.Iul.Nebiodumi acc.Xv k.Aug.Marcianopoli valentiniano np.Et victore conss.>

CJ.11.9.2: Imperatores Gratianus, Valentinianus, Theodosius

Nemo vir auratas habeat aut in tunicis aut in lineis paragaudas, nisi ii tantummodo, quibus hoc propter imperiale ministerium concessum est. non enim levi animadversione plectetur, quisquis vetito se et indebito non abdicaverit indumento. * grat. valentin. et theodos. aaa. floro pp. *<a 382 d.Iii k.April.Constantinopoli antonio et suagrio conss.>

CJ.11.9.3: Imperatores Theodosius, Arcadius, Honorius

Vellera adulterino colore fucata in speciem sacri muricis tingere non sinimus nec tinctum cum rhodino prius sericum alio postea colore fucari, cum de albo omnium colorum tingendi copia non negetur: nam capitalem poenam illicita temptantes suscipient. * theodos. arcad. et honor. aaa. *<a xxx >

CJ.11.9.4pr.: Imperator Theodosius

Temperent universi, cuiuscumque sint sexus dignitatis artis professionis et generis, ab huiusmodi speciei possessione, quae soli principi eiusque domui dedicatur. * theodos. a. maxinino com. sacr. larg. *<a 424 d.Xvii k.Febr.Constantinopoli victore vc.Cons.>

CJ.11.9.4.1: Imperator Theodosius

Nec pallia tunicasque domi quis sericas contexat aut faciat, quae tincta conchylio nullius alterius permixtione subtexta sunt.<a 424 d.Xvii k.Febr.Constantinopoli victore vc.Cons.>

CJ.11.9.4.2: Imperator Theodosius

Proferantur ex aedibus tradanturque tunicae et pallia ex omni parte texturae cruore infecta conchylii. nulla stamina subtextantur tincta conchylio, nec eiusdem infectionis arguto pectine solidanda fila decurrant. reddenda aerario holovera vestimenta virilia protinus offerantur.<a 424 d.Xvii k.Febr.Constantinopoli victore vc.Cons.>

CJ.11.9.4.3: Imperator Theodosius

Nec est, ut quisquam de abiurato pretio conqueratur, quia sufficit calcatae legis impunitas.<a 424 d.Xvii k.Febr.Constantinopoli victore vc.Cons.>

CJ.11.9.4.4: Imperator Theodosius

Ne quis vero nunc huiusmodi suppressione in laqueos novae constitutionis incurrat: alioquin ad similitudinem laesae maiestatis periculum sustinebit.<a 424 d.Xvii k.Febr.Constantinopoli victore vc.Cons.>

CJ.11.9.5: Imperatores Theodosius, Valentinianus

Purpurae nundinas, licet innumeris sint constitutionibus prohibitae, recenti quoque interminatione vetamus. et ideo septimum de scrinio exceptorum, sextum de scrinio canonum, quintum de scrinio tabulariorum ad baphia phoenices per certum tempus mitti praecipimus, ut fraus omnis eorum prohibeatur sollertia timentium, ne quaesitis longo sudore stipendiis careant: etiam viginti librarum auri condemnatione proposita. * theodos. et valentin. aa. apollonio com. sacr. larg. *<a 436 d.Viii id.Mart.Constantinopoli isidoro et senatore conss.>

CJ.11.10.0. De fabricensibus.

CJ.11.10.1: Imperatores Valentinianus, Theodosius, Arcadius

Omnibus fabricis non pecunias pro speciebus, sed ipsas species sine dilatione inferri praecipimus, ut venae nobilis et quae facile deducatur ignibus seu liquescat ferri materies praebeatur, quo promptius adempta fraudibus facultate commodo publico consulatur. * valentin. theodos. et arcad. aaa. tatiano pp. *<a 388 d xv k.Nov.Theodosio a.Ii et cynegio cosss.>

CJ.11.10.2: Imperatores Valentinianus, Theodosius, Arcadius

Primicerium fabricae post biennium non solum vacatione, verum etiam honore donari praecipimus, ita ut inter protectores eiusdem fabricae per biennium adoraturus aeternitatem nostram suo quisque tempore dirigatur. * valentin. theodos. et arcad. aaa. rufino mag. off. *<a 390 d.Viii id.Mart.Mediolani valentiniano a.Iiii et neoterio conss.>

CJ.11.10.3: Imperatores Arcadius, Honorius

Stigmata, hoc est nota publica fabricensium brachiis ad imitationem tironum infligatur, ut hoc modo saltem possint latitantes agnosci (his, qui eos susceperint vel eorum liberos, sine dubio fabricae vindicandis) et qui subreptione quadam declinandi operis ad publicae cuiuslibet sacramenta militiae transierunt. * arcad. et honor. aa. osio mag. off. *<a 398 d.Xviii k.Ian.Constantinopoli honorio a.Iiii et eutychiano conss.>

CJ.11.10.4pr.: Imperatores Honorius, Theodosius

Si quis consortium fabricensium crediderit eligendum, in ea urbe, qua natus est vel in qua domicilium collocavit, his quorum interest convocatis primitus acta conficiat, sese doceat non avo non patre curiali progenitum, nihil ordini civitatis debere, nulli se civico muneri obnoxium, atque ita demum gestis confectis vel apud moderatorem provinciae vel si is absit apud defensorem civitatis, ad militiam quam optaverit suscipiatur. * honor. et theodos. aa.

antehmio pp. *<a 412 d.Xv k.Iun.Constantinopoli honorio viiii et theodosio v aa.Conss.>

CJ.11.10.4.1: Imperatores Honorius, Theodosius

Quod si absque hac cautione quispiam ad fabricensium consortium obrepserit, sciat se ad ordinis cui debetur patriaque suae munera esse reducendum, ita ut nulla eum nec temporis nec stipendiorum praerogativa defendat.<a 412 d.Xv k.Iun.Constantinopoli honorio viiii et theodosio v aa.Conss.>

CJ.11.10.5pr.: Imperatores Theodosius, Valentinianus

Iure provisum est fabricenses artibus propriis inservire, ut exhaustis laboribus immorentur cum subole professioni, cui nati sunt. * theodos. et valentin. aa. aureliano com. rer. privat. *<a 439 d. prid. non. nov. constantinopoli theodosio a. xvii et festo conss.>

CJ.11.10.5.1: Imperatores Theodosius, Valentinianus

Denique quod ab uno committitur, totius delinquitur periculo numeri, ut constricti nominationibus suis sociorum actibus quandam speculam gerant, et unius damnum ad omnium transit dispendium.<a 439 d. prid. non. nov. constantinopoli theodosio a. xvii et festo conss.>

CJ.11.10.5.2: Imperatores Theodosius, Valentinianus

Universi itaque, velut in corpore unius formae, unius decoctionis, si ita res tulerit, respondere cogentur.<a 439 d. prid. non. nov. constantinopoli theodosio a. xvii et festo conss.>

CJ.11.10.6: Imperatores Leo, Anthemius

Eos, qui inter fabricenses sacrae fabricae sociati sunt, vel eorum uxores aut filios, qui itidem inter fabricenses militare dicuntur, non alibi pulsare volentibus respondere praecipimus, nisi in iudicio tuae sublimitatis, ad cuius iurisdictionem potestatemque pertinent: nec eos post stipendiorum finem militiae super civilibus vel curialibus muneribus, quibus nullo modo subiacere monstrantur, a viris clarissimis rectoribus provinciarum vel eorum officiis praeter licitum inquietari. * leo et anthem. aa. euphemio mag. off. *<a xxx >

CJ.11.10.7pr.: Imperatores Leo, Anthemius

Nullus fabricensium conductioni vel administrationi vel agriculturae alienarum rerum se posthac immiscere conetur: dominis quidem, si qui contra haec statuta meae pietatis venire ausi fuerint, res vel praedia, quae scientes quod fabricenses sunt isdem fabricensibus ministranda commiserint, amissuris, fabricensibus vero gravissime coercitis post facultatum suarum amissionem perpetua exilii poena et animadversione retinendis. * leo et anthem. aa. euphemio mag. off. *<a xxx >

CJ.11.10.7.1: Imperatores Leo, Anthemius

Quotiens sane in translatione armorum angariae necessariae fuerint, sublimitas tua litteras ad eminentissimam iubeat dirigi praefecturam et numerum ei armorum et ex quo loco transferenda sunt indicare, ut continuo super praebendis angariis pro numero eorum quae transferuntur armorum praeceptione sua viros clarissimos provinciae moderatores conveniat, ut secundum missam a sublimitate tua notitiam naves vel angariae confestim de publico praebeantur.<a xxx >

CJ.11.10.7.2: Imperatores Leo, Anthemius

Quod si aliqua tarditas vel neglegentia post datas a sublimitate tua ad eminentissimam praefecturam litteras in destinandis auctoritatibus amplissimae sedis intercesserit et ex hoc armorum transvectio fuerit impedita, quinquaginta libris auri tam numerarium pro tempore officii eiusdem amplissimae sedis quam alios quorum interest condemnari praecipimus eamque auri quantitatem protinus exactam fisci viribus adgregari: multa praeterea triginta librarum auri proposita tam viris clarissimis qui provincias regunt quam eorum apparitionibus, si coniventibus his armorum subvectio tarditate aliqua fuerit praepedita.<a xxx >

CJ.11.11.0. De veteris numismatis potestate.

CJ.11.11.1: Imperatores Valentinianus, Valens

Solidos veterum principum veneratione formatos ita tradi ac suscipi ab ementibus et distrahentibus iubemus, ut nihil omnino refragationis oriatur, modo ut debiti ponderis sint et speciei probae: scituris universis, qui aliter fecerint, haud leviter in se vindicandum. * valentin. et valens aa. germano pp. *<a xxx >

CJ.11.11.2: Imperatores Valentinianus, Valens

Pro imminutione, quae in aestimatione solidi forte tractatur, omnium quoque specierum pretia decrescere oportet. * valentin. et valens aa. et grat. a. ad iulianum pp. *<a xxx >

CJ.11.11.3: Imperatores Gratianus, Valentinianus, Theodosius

Universos auctoritas tua proposito edicto commoneat obryziacorum omnium solidorum uniforme pretium postulare, scilicet capitali supplicio puniendo, qui vel iussa nostrae maiestatis avaritiae caecitate contempserit, vel aeternales vultus, dum fraudibus studet, duxerit viliores. * grat. valentin. et theodos. aaa. arintheo pp. *<a xxx >

CJ.11.12.0. Nulli licere in frenis et equestribus sellis et in balteis margaritas et smaragdos et hyacinthos aptare et de artificibus palatinis.

CJ.11.12.1pr.: Imperator Leo

Nulli prorsus liceat in frenis et equestribus sellis vel in balteis suis margaritas et smaragdos et hyacinthos aptare posthac vel inserere. aliis autem gemmis frena et equestres sellas et balteos suos privatos exornare permittimus. de curcumis vero omnem prorsus qualiumcumque gemmarum habitum praecipimus submoveri. fibulis quoque in chlamydibus his utantur, quae solo auro et arte pretiosae sunt. si quis autem contra interdictum pietatis meae fecerit, sciat se continuo quinquaginta libris auri esse multandum. * leo a. leontico. *<a xxx >

CJ.11.12.1.1: Imperator Leo

Nulli praeterea privatorum liceat (exceptis scilicet ornamentis matronalibus et tam muliebrium quam virilium anulorum habitu) aliquid ex auro et gemmis quod ad cultum et ornatum imperatorium pertinet facere neque illud sub hoc colore et praetextu praeparare, quod velit clementiae principali velut aliquod munus offerre: pietas enim mea huiusmodi dona non expetit neque regium sibi offerri a privatis cultum requirit.<a xxx >

CJ.11.12.1.2: Imperator Leo

Sane si quis posthac aliquid contra vetitum huiusmodi sanctionis effecerit et offerenda clementiae meae ornamenta, quae usibus regiis deputata sunt, gemmis auroque decorata ausus fuerit praeparare, centum librarum auri condemnatione sciat se esse feriendum, capitali quoque subdendum esse supplicio: ornamenta enim regia intra aulam meam fieri a palatinis artificibus debent, non passim in privatis domibus vel officiis parari.<a xxx >

CJ.11.12.1.3: Imperator Leo

Unde summa severitate sancimus, ut quod in cultu ornatuque nostro sacrum et adoptabile est, id facere temeritas privata non audeat.<a xxx >

CJ.11.12.1.4: Imperator Leo

Si quis sane contra vetitum tranquillitatis meae aliquid fecerit, definitam superius multam ab his per officia palatinorum exigi et sacris largitionibus nostris iubemus inferri.<a xxx >

CJ.11.13.0. De classicis.

CJ.11.13.1: Imperatores Valentinianus, Valens

Classem seleucenam aliasque universas ad officium, quod magnitudini tuae obsequitur, volumus pertinere, ut classicorum numerus ex incensitis vel adcrescentibus compleatur et seleucena ad auxilium purgandi orontis aliasque necessitates orientis comiti deputetur. * valentin. et valens aa. auxonio pp. *<a 369 data indictione xii>

CJ.11.14.0. De decuriis urbis romae.

CJ.11.14.1: Imperatores Valentinianus, Theodosius, Arcadius

Si quis decurialem de auferendis privilegiis putaverit lite pulsandum, intellegat se decuriae interpellare debere iudicem. * valentin. theodos. et arcad. aaa. ad trifolium pp. *<a 389 d. xiiii k. febr. mediolani timasio et promoto conss.>

CJ.11.14.2pr.: Imperatores Arcadius, Honorius, Theodosius

Leges tam a superioribus principibus quam a divo parente nostro conditas nostra auctoritate firmamus. * arcad. honor. et theodos. aaa. exsuperantio iulio et ceteris decurialib.*<a 404 d.Viii id.Iul.Romae honorio a.Vi et aristaeneto conss.>

CJ.11.14.2.1: Imperatores Arcadius, Honorius, Theodosius

Singulos itaque iudices scire volumus, ne quis huic collegio iniuriis corporalibus temptet notam atterere neque ab his commodis, quae rationibus approbantur, audeat sperare. huic enim collegio volumus antiquam privilegiorum praerogativam servari.<a 404 d.Viii id.Iul.Romae honorio a.Vi et aristaeneto conss.>

CJ.11.15.0. De privilegiis corporatorum urbis romae.

CJ.11.15.1pr.: Imperatores Valentinianus, Theodosius, Arcadius

Nulli sit liberum, nulli permissum, ut novum aliquid urbis incolae in urbe sustineant, sed in honorem aeternae urbis coproratis indulta suffragia valere praecipimus. * valentin. theodos. et arcad. aaa. ad alypium pu. *<a 391 d.Prid.Id.Iul.Aquileiae tatiano et symmacho conss.>

CJ.11.15.1.1: Imperatores Valentinianus, Theodosius, Arcadius

Cura autem rectorum provinciarum corporati urbis romae, qui in peregrina transgressi sunt, redire cogantur, ut servire possint functionibus, quas imposuit antiqua sollemnitas.<a 391 d.Prid.Id.Iul.Aquileiae tatiano et symmacho conss.>

CJ.11.16.0. De pistoribus.

CJ.11.16.1pr.: Imperator Leo

Quicumque ex mancipibus comitis horreorum dignitatem et officium vel ambitione vel gratia vel pecunia seu quolibet alio modo posthac fuerit adsecutus, exutus dignitate, quam contra interdictum nostrae serenitatis adeptus est, multatus etiam viginti libris auri ad mancipum denuo consortium collegiumque revocetur. * leo a. viviano pp. *<a 457-465 >

CJ.11.16.1.1: Imperator Leo

Omne etiam speciale beneficium, quocumque modo contra hanc sanctionem fuerit impetratum, penitus conquiescat.<a 457-465 >

CJ.11.17.0. De suariis et susceptoribus vini et ceteris corporatis.

CJ.11.17.1: Imperatores Valentinianus, Theodosius, Arcadius

Porcinarii urbis aeternae cum pervilegem laborem populi romani commodis exhibeant, sordidis semper muneribus liberentur. * valentin. theodos. et arcad. aaa. ad albinum pu. *<a 389 d.Viii k.Sept.Romae timasio et promoto conss.>

CJ.11.17.2: Imperatores Arcadius, Honorius

Quicumque ex corporibus suariorum sive excipiendae necessitate litis adstrictus seu inferendae voluntate spontanea provocatus iudicium voluerit experiri, fori urbani auditorium praestoletur. * arcad. et honor. aa. florentino pu. *<a 395-397 >

CJ.11.18.0. De collegiatis et chartopratis et nummulariis.

CJ.11.18.1pr.: Imperatores Theodosius, Valentinianus

Qui sub praetextu decanorum seu collegiatorum, cum id munus non impleant, aliis se muneribus conantur subtrahere, eorum fraudibus credidimus obviandum, ne quis sub specie muneris, quod minus exsequitur, alterius muneris oneribus relevetur, ne argentariorum vel nummulariorum munera declinentur ab his, qui dici tantum collegiati vel decani festinant. * theodos. et valentin. aa. cyro pu. *<a 439 d.X k.April.Theodosio xvii et festo conss.>

CJ.11.18.1.1: Imperatores Theodosius, Valentinianus

Ideoque si quis eorum sub nudae appellationis velamine collegiatum se seu decanum appellat, sciat pro se alium subrogandum, qui praedicto muneri sufficiens approbatur, subrogatione videlicet memoratorum vel eorum qui moriuntur primatum eius qui subrogatur admisso iudicio.<a 439 d.X k.April.Theodosio xvii et festo conss.>

CJ.11.18.1.2: Imperatores Theodosius, Valentinianus

Quod autem supra numerum, qui encautis brevibus continetur, nemo se quolibet patrocinio vel cuiuslibet adsumpta potentia debeat excusare, hoc nostrae est serenitatis censere, tuae sublimitatis tuique officii cautius observare.<a 439 d.X k.April.Theodosio xvii et festo conss.>

CJ.11.18.1.3: Imperatores Theodosius, Valentinianus

Hoc inter omnes aequa lance servari praecipimus, nullo divinae domus patrocinio, nullo sacrosanctarum ecclesiarum reverentia, nullo qualibet vel cuiuslibet se potentia excusante.<a 439 d.X k.April.Theodosio xvii et festo conss.>

CJ.11.18.1.4: Imperatores Theodosius, Valentinianus

Sed ne tantum circa munera relevanda supplicibus consuluisse noscamur, illud etiam dicendum observandumque esse censemus, ut chartae venditio, quae de provinciis ad corporatos supplicum per innovationem translata est, primae constitutionis terminis concludatur, hoc est, quod initio dispositionis constitutum est, id in posterum nulla addita novatione servetur.<a 439 d.X k.April.Theodosio xvii et festo conss.>

CJ.11.19.0. De studiis liberalibus urbis romae et constantinopolitanae.

CJ.11.19.1pr.: Imperator Theodosius

Universos, qui usurpantes sibi nomina magistrorum in publicis magistrationibus cellulisque collectos undecumque discipulos circumferre consuerunt, ab ostentatione vulgari praecipimus amoveri, ita ut, si qui eorum post emissos divinae sanctionis adfatus quae prohibemus atque damnamus iterum forte temptaverit, non solum eius quam meretur infamiae notam subeat, verum etiam pellendum se ex ipsa ubi versatur illicite urbe cognoscat. * theodos. a. et valentin. c. constantio pu. *<a 425 d.Iii j.Mart.Constantinopoli theodosio a.Xi et valentiniano conss.>

CJ.11.19.1.1: Imperator Theodosius

Illos vero, qui intra plurimorum domus eadem exercere privatim studia consueverunt, si ipsis tantummodo discipulis vacare maluerint, quos intra parietes domesticos docent, nulla huiusmodi interminatione prohibemus: sin autem ex eorum numero fuerint, qui videntur intra capitolii auditorium constituti, ii omnibus modis privatarum aedium studia sibi interdicta esse cognoscant, scituri, quod, si adversus caelestia statuta facientes fuerint deprehensi, nihil penitus ex illis privilegiis consequantur, quae his, qui in capitolio tantum docere praecepti sunt, merito deferuntur.<a 425 d.Iii j.Mart.Constantinopoli theodosio a.Xi et valentiniano conss.>

CJ.11.19.1.2: Imperator Theodosius

Habeat igitur auditorium specialiter nostrum in his primum, quos romanae eloquentiae doctrina commendat, oratores quidem tres numero, decem vero grammaticos: in his etiam, qui facundia graecitatis pollere noscuntur, quinque numero sint sophistae et grammatici aeque decem.<a 425 d.Iii j.Mart.Constantinopoli theodosio a.Xi et valentiniano conss.>

CJ.11.19.1.3: Imperator Theodosius

Et quoniam non his artibus tantum adulescentiam gloriosam optamus institui, profundioris quoque scientiae atque doctrinae memoratis magistris sociamus auctores.<a 425 d.Iii j.Mart.Constantinopoli theodosio a.Xi et valentiniano conss.>

CJ.11.19.1.4: Imperator Theodosius

Unum igitur adiungi ceteris volumus, qui philosophiae arcana rimetur, duo quoque , qui iuris ac legum voluntates pandant, ita ut unicuique loca specialiter deputata adsignari faciat tua sublimitas, ne discipuli sibi invicem possint obstrepere vel magistri, neve linguarum confusio permixta vel vocum aures quorundam aut mentes a studio litterarum avertat.<a 425 d.Iii j.Mart.Constantinopoli theodosio a.Xi et valentiniano conss.>

CJ.11.20.0. De honoratorum vehiculis.

CJ.11.20.1: Imperatores Gratianus, Valentinianus, Theodosius

Omnes honorati seu civilium seu militarium vehiculis dignitatis suae, id est carrucis, intra urbem sacratissimi nominis semper utantur. * grat. valentin. et theodos. aaa. nebridio pu. *<a 386 d.Iii k.Febr.Constantinopoli honorio np.Et euodio conss.>

CJ.11.21.0. De privilegiis urbus constantinopolitanae.

CJ.11.21.1: Imperatores Honorius, Theodosius

Urbs constantinopolitana non solum iuris italici, sed etiam ipsius romae veteris praerogativa laetetur. * honor. et theodos. aa. philippo pp. illyrici. *<a 421 d.Prid.Id.Iul.Eustathio et agricola conss.>

CJ.11.22.0. De metropoli beryto.

CJ.11.22.1: Imperatores Theodosius, Valentinianus

Propter multas iustasque causas metropolitano nomine ac dignitate berytum decernimus exornandum iam suis virtutibus coronatam. igitur haec quoque metropolitanam habeat dignitatem. tyro nihil de iure suo derogatur. sit illa mater provinciae maiorum nostrorum beneficio, haec nostro, et utraque dignitate simili perfruatur. * theodos. et valentin. aa. hormisdae pp. *<a 448-450 >

CJ.11.23.0. De canone frumentario urbis romae.

CJ.11.23.1: Imperatores Valentinianus, Valens

Nautici apud praesidum vel magistratuum acta confiteantur incorruptas species suscepisse, eorumque, apud quos deponitur ista testatio, praesens adspectus probet nihil in his esse vitii. quod eo tempore, quo ad sacrae urbis portum pervenit , praefecturam iugiter observare praeceptum est. * valentin. et valens aa. ad iulianum praef. annonae. *<a 366 d.Xviii k.Iul.Remis gratiano a.Et dagalaifo conss.>

CJ.11.23.2: Imperatores Arcadius, Honorius

Si quid frumenti vel olei urbicarii canonis remissione indultum est speciali beneficio, contra commodum publicum elicita non valeant. * arcad. et honor. aa. ad senatum et pop. *<a 397 d.Xvii k.Mai.Mediolani caesario et attico conss.>

CJ.11.23.3pr.: Imperatores Arcadius, Honorius

Neminem patimur in mutando canone urbis romae nostrae clementiae beneficium postulare: sed etiam ea rescripta, quae quoquo modo potuerint impetrari, suscipi non sinimus. eos vero, qui contra haec fecerint, in duplum retinendos esse decernimus. * arcad. et honor. aa. messalae pp. *<a 399 d.Prid.Non.Sept.Altino theodoro vc.Cons.>

CJ.11.23.3.1: Imperatores Arcadius, Honorius

Vicarios quin etiam ceterosque iudices, nisi deinceps ab usurpatione urbicarii canonis abstineant, deportationis poena detineri, primates officiorum capitali supplicio subiugari perpetua auctoritate sancimus.<a 399 d.Prid.Non.Sept.Altino theodoro vc.Cons.>

CJ.11.24.0. De frumento urbis constantinopolitanae.

CJ.11.24.1: Imperatores Honorius, Theodosius

Nulli, ne divinae quidem domui nostrae frumentum de horreis publicis pro annona penitus praebeatur, sed integer canon mancipibus consignetur, annona in pane cocto domibus exhibenda. ita enim debet canon ab inclitae memoriae constantino praestitus nec non a divo pietatis meae avo theodosio auctus expendi, quoniam crescit inopia, si frumenta, quae pro annona tribuuntur, ad usus alios deputata cogentur sibi de publico emere, quae aliis vendere potuissent. * honor. et theodos. aa. urso pu. *<a 416 d. x k. aug. constantinopoli theodosio a. vii et palladio conss.>

CJ.11.24.2pr.: Imperatores Theodosius, Valentinianus

Auri statuta quantitas ad coemptionem frumentariam sit perpetuo dedicata, nec liceat cuiquam postea administratione urbicariae potestatis percepta aliquid ex eadem summa minuere vel ad quoscumque alios usus convertere: sed sub gestorum testificatione certum fiat, et quod mancipibus mutui nomine datum est et quod ab isdem sit excepta omni concussione solvendum. * theodos. et valentin. aa. leontio pu. *<a 434 d. v k. dec. constantinopoli areobindo et aspare conss.>

CJ.11.24.2.1: Imperatores Theodosius, Valentinianus

Eum autem, qui hanc formam ausus fuerit inquinare, quantitatem, in qua suam calliditatem exercuerit, in duplum redhibere iubemus, et quidquid ex praedicta ratione adcreverit, ad cumulum eiusdem auri quantitatis et frumentarii tituli fomitem redundare, legisque huius tenorem aeneis tabulis incidi.<a 434 d. v k. dec. constantinopoli areobindo et aspare conss.>

CJ.11.25.0. De annonis civilibus.

CJ.11.25.1pr.: Imperatores Theodosius, Arcadius, Honorius

Annonas publicas non tam titulis dignitatum quam singulorum viritim meritis attributas divi constantini liberalitate sat claruit. * theodos. arcad. et honor. aaa. proculo pu. *<a 392 d. vii k. iul. constantinopoli arcadio a. ii et rufino conss.>

CJ.11.25.1.1: Imperatores Theodosius, Arcadius, Honorius

Ideoque nihil ex his scholarum nomine vindicetur, sed pro uniuscuiusque merito quae sunt concessa serventur, ut, quicumque perceptarum annonarum emolumenta vel in heredes proprios iure sanguinis transfuderunt vel in extraneos distractionis titulo transscripserunt, maneat, quod gestum est vel hereditatis merito vel alienationis arbitrio.<a 392 d. vii k. iul. constantinopoli arcadio a. ii et rufino conss.>

CJ.11.25.2pr.: Imperatores Theodosius, Arcadius, Honorius

Centum viginti quinque modios frumenti praeter solitum canonem per singulos dies de praesenti sexta indictione ex die kalendarum ianuariarum nomine parapeteumatis de horreis publicis huius almae urbis insita nostrae pietatis liberalitate tribuimus, datis sacris apicibus ad sublimissimam quoque per orientem praefecturam, quibus possit et modum nostrae donationis agnoscere et incunctanter praebere quae iussimus. * theodos. arcad. et honor. aaa. tatiano pp. *<a 392 >

CJ.11.25.2.1: Imperatores Theodosius, Arcadius, Honorius

Quam modiationem iugiter et in perpetuum civibus nostris debere conferri valitura in aevum hac lege sancimus.<a 392 >

CJ.11.26.0. De mendicantibus validis.

CJ.11.26.1: Imperatores Gratianus, Valentinianus, Theodosius

Cunctis adfatim, quos in publicum quaestum incerta mendicitas vocabit, inspectis exploretur in singulis et integritas corporum et robur annorum, atque inertibus et absque ulla debilitate miserandis necessitas inferatur, ut eorum quidem, quos tenet condicio servilis, proditor studiosus et diligens dominium consequatur, eorum vero, quos natalium sola libertas prosequatur, colonatu perpetuo fulciatur, quisquis huiusmodi lenitudinem prodiderit ac probaverit: salva dominis actione in eos, qui vel latebram forte fugitivis vel mendicitatis subeundae consilium praestiterunt. * grat. valentin. et theodos. aaa. ad severum pu. *<a 382 d. xii k. iul. patavi antonio et syagrio conss.>

CJ.11.27.0. De nautis tiberinis.

CJ.11.27.1: Imperatores Valentinianus, Valens

Qui navem tiberinam habere fuerit ostensus, onus rei publicae necessarium agnoscat. quaecumque igitur navigia in alveo tiberis inveniuntur, competentibus et solitis obsequiis mancipentur, ita ut nullius dignitas aut privilegium ab hoc officio vindicetur. * valentin. et valens aa. ad symmachum pu. *<a 364 d. viii id. oct. altino divo ioviano et varroniano conss.>

CJ.11.28.0. De frumento alexandrino.

CJ.11.28.1pr.: Imperatores Honorius, Theodosius

In aestimatione frumenti, quod ad civitatem alexandrinam convehitur, quidquid de crithologia et zygostasii munere et pro naucleriorum tuenda substantia eminentia tua disposuit, roboramus. * honor. et theodos. aa. anthemio pp. *<a 412 d. v k. febr. constantinopoli honorio viiii et theodosio v aa. conss.>

CJ.11.28.1.1: Imperatores Honorius, Theodosius

Atque ut curialibus praedae auferatur occasio, iubemus eos ad huiusmodi sollicitudinem adfectandam numquam accedere, sed designata officia tuis provisionibus examinata sollicitudinem praedictam implere.<a 412 d. v k. febr. constantinopoli honorio viiii et theodosio v aa. conss.>

CJ.11.28.2: Imperatores Theodosius, Valentinianus

Diurnos centum et decem modios alimoniis alexandrinae civitatis addi decernimus, ut nemo privetur eo, quod nunc usque percepit, et perissochoregiae nomen penitus amputetur et tesserae designentur et nostrae pietatis nomine censeantur. * theodos. et valentin. aa. isidoro pp. *<a 436 d. prid. non. iun. constantinopoli isidoro et senatore conss.>

CJ.11.29.0. De alexandriae primatibus.

CJ.11.29.1: Imperatores Theodosius, Valentinianus

Corporatos civitatis alexandrinae repurgandi fluminis onere liberamus et pro tenore et dispositione tua quadringentos solidos ex dinummio vectigali memoratae civitatis praecommodari decernimus, ita ut ex titulo navium omnibus modis repensetur. * theodos. et valentin. aa. isidoro pp. *<a 436 d. prid. non. iun. constantinopoli isidoro et senatore conss.>

CJ.11.30.0. De iure rei publicae.

CJ.11.30.1: Imperator Antoninus

Si quid adversus rem publicam indefensam in ea specie, in qua neque defensores creati fuerint neque ut crearentur placuerit, statutum est, actionibus eius nihil est praeiudicatum. * ant. a. dionysio. *< >

CJ.11.30.2: Imperator Antoninus

An res publica, in cuius locum vos successistis eo, quod satisfecisse debito proponitis, ius pignoris in eo fundo habeat, apud suum iudicem quaeritur. si enim neque beneficio sibi concesso id ius nacta est neque specialiter in obligatione pignoris sibi prospexit, causa eius non separatur a ceteris creditoribus, qui habent personalem actionem. * ant. a. aphrodisio. *< >

CJ.11.30.3: Imperator Alexander Severus

Rem publicam ut pupillam extra ordinem iuvari moris est. * alex. a. saturnino. *< >

CJ.11.30.4: Imperatores Diocletianus, Maximianus

Si secundum legem civitatis res publica, cuius meministi, ruina collapsis aedificiis tuis distraxit aream, nihil contra huius legis tenorem rector provinciae fieri patietur. * diocl. et maxim. aa. urbano. *< x>

CJ.11.31.0. De administratione rerum publicarum.

CJ.11.31.1: Imperator Philippus

Fundum vectigalem, si suis quibusque temporibus debitae quantitates inferantur, invito possessore auferri non posse manifestum est. * philipp. a. crescentiae. *<a xx>

CJ.11.31.2: Imperatores Diocletianus, Maximianus

Contra eos, qui rem publicam administrantes per officii necessitatem sub condicione relicti fideicommissi satis accipere debuerunt, quanti rei publicae interest satis non esse acceptum, dirigendam actionem perspicitis. * diocl. et maxim. aa. et cc. iulio et zenodoro. *<a 294 pp. vii k. dec. cc. conss.>

CJ.11.32.0. De vendendis rebus civitatis.

CJ.11.32.1: Imperatores Severus, Antoninus

Si sine ulla condicione praedia vendente re publica comparasti, perfecta venditione nulla ratione vereris, ne adiectione facta auferri tibi dominium possit. tempora enim adiectionibus praestituta ad causas fisci pertinent, nisi si qua civitas propriam legem habeat. * sev. et ant. aa. herculiano. *<a xx>

CJ.11.32.2: Imperator Antoninus

Quamvis incrementum conductioni factae publici praedii videtur offerri, non tamen additamenti specie oportet fidem locationis infringi, praesertim cum tantum iam temporis ex contractu decessisse proponas. * ant. a. *<a xx>

CJ.11.32.3pr.: Imperator Leo

Si qua hereditatis vel legati seu fideicommissi aut donationis titulo domus aut annonae civiles aut quaelibet aedificia vel mancipia ad ius inclitae urbis vel alterius cuiuslibet civitatis pervenerunt sive pervenerint, super his licebit civitatibus venditionis pro suo commodo inire contractum, ut summa pretii exinde collecta ad renovanda sive restauranda publica moenia dispensata proficiat. * leo a. erythrio pp. *<a 469 d. v k. mart. marciano et zenone conss.>

CJ.11.32.3.1: Imperator Leo

Indefessa vero cura prospicientes, ne quis adversus commoda civitatum quicquam moliri possit incommodum, sed sine ulla fraude seu nundinatione vel colludio seu coniventia huiusmodi venditiones procedant, hoc in posterum observandum esse censemus, ut, si quidem ad hanc inclitam urbem domum vel civiles annonas aut alia quaelibet aedificia aut mancipia pertinentia contigerit venumdari, non aliter nisi imperiali auctoritate vendantur.<a 469 d. v k. mart. marciano et zenone conss.>

CJ.11.32.3.2: Imperator Leo

In provinciis vero praesentibus omnibus seu plurima parte tam curialium quam honoratorum et possessorum civitatis, ad quam res pertinent praedictae, propositis sacrosanctis scripturis singillatim unumquemque eorum qui convenerint iubemus sententiam quam putent utilem patriae suae designare, ut ita demum decreti recitatione in provinciali iudicio interveniente emptor competentem possit habere cautelam.<a 469 d. v k. mart. marciano et zenone conss.>

CJ.11.32.3.3: Imperator Leo

Hos autem venditionum contractus, sive iam completi fuerunt seu postea ineundi fuerint, stabiles esse censemus.<a 469 d. v k. mart. marciano et zenone conss.>

CJ.11.33.0. De debitoribus civitatum.

CJ.11.33.1: Imperator Antoninus

Non prius debitorem rei publicae honorem in re publica subire quam id quod debere constiterit conventus exsolverit, tam meis quam divorum principum constitutionibus declaratur. * ant. a. diodoto. *<>

CJ.11.33.2pr.: Imperator Constantinus

Apud eos, quos superstites integris facultatibus esse pervideris vel quorum heredes incolumia retinent patrimonia, sortes rei publicae perseverare debebunt, ita tamen, ut annuas usuras suis quibusque temporibus exsolvant, cum simul et rei publicae utile sit retinere idoneos debitores et ipsis commodum cumulum debiti minime nutriri. * constant. a. verino suo salutem. *<a 314 pp.Iii k.Febr.Volusiano et anniano conss.>

CJ.11.33.2.1: Imperator Constantinus

Et quia nefas est obnoxiis corporibus alienatis circumscribi civitates, placuit, si qui debitor rei publicae civitatis quippiam ex eo patrimonio, quod habuit, cum pecuniam rei publicae sumeret, donaverit vel distraxerit vel qualibet in alium ratione contulerit, qualitate rei alienatae perspecta atque omnibus debitoris facultatibus consideratis, quas habuit, cum ei pecunia crederetur, pro rata ab eo, qui ex debitoris facultatibus aliquid detinet, ex sorte atque usuris postulari.<a 314 pp.Iii k.Febr.Volusiano et anniano conss.>

CJ.11.33.2.1a: Imperator Constantinus

Itaque quotiens minus idoneum deprehenditur eius patrimonium, cuius nomen civitati alicui invenitur obnoxium, iudex omni diligentiae sollicitudine debebit inquirere, ad quos ex qualibet condicione transierint debitoris facultates, ut singuli aequa aestimatione habita pro rata rerum quas possident conveniantur, personalem actionem contra eum habituri debitorem, qui ipsis solventibus liberatur.<a 314 pp.Iii k.Febr.Volusiano et anniano conss.>

CJ.11.33.2.1b: Imperator Constantinus

Ab eo autem, a quo constat fortunarum suarum partem maximam recessisse, etiam reliquam portionem quae apud eum resederit transferri ad idoneum oportebit.<a 314 pp.Iii k.Febr.Volusiano et anniano conss.>

CJ.11.33.2.2: Imperator Constantinus

Quod si quispiam debitor rei publicae civitatis fisco nostro locum fecerit, emptores, qui ex fisco nostro comparaverint, manifestum est secundum ius vetus et rescripta divorum constitutionesque nostras nullam debere molestiam sustinere.<a 314 pp.Iii k.Febr.Volusiano et anniano conss.>

CJ.11.33.2.3: Imperator Constantinus

Quod si quis debitor non comparaverit vel certe ita omnia sua consumpserit, ut nemo aliquam rem ex eius bonis possideat, id debitum convenit ad dispendium rei publicae pertinere. ideoque cura patris civitatis apud idoneos vel dominos rusticorum praediorum pecunia collocanda est.<a 314 pp.Iii k.Febr.Volusiano et anniano conss.>

CJ.11.34.0. De periculo nominatorum.

CJ.11.34.1: Imperator Gordianus

Hi, qui a te collegaque tuo magistratus creati sunt, etiamsi maxime fideiussores non exegistis, tamen si per id temporis quo magistratus honor deponebatur solvendo fuerunt, periculo vos creationis non fecerunt obnoxios ex eo, quod casu aliquo patrimonium eorum mutilatum sit, cum cessationi suae id debeant imputare damnaque rei publicae, si qua ob culpam eorum passa est, sarcire, qui, cum nomine publico eos convenire potuissent, id facere supersederunt. * gord. a. severino. *<a xxx >

CJ.11.34.2: Imperator Gordianus

Si successoris tui successor non idoneum loco suo magistratum denominavit, administrationis eius periculum ad personam tuam spectare nequaquam potest. etenim nominati successoris dumtaxat quisque periculum suscipere compellitur nec ad nominatoris nominatorem manus iure porrigi possunt. * gord. a. rufino. *<a xxx >

CJ.11.35.0. De periculo eorum qui pro magistratibus intervenerunt.

CJ.11.35.1: Imperator Antoninus

Fideiussorem magistratuum in his quae ad rei publicae administrationem pertinent teneri, non in his quae ob culpam vel delictum eis poenae nomine inrogentur, tam mihi quam divo severo patri meo placuit. * ant. a. augustali. *<>

CJ.11.36.0. Quo quisque ordine conveniatur.

CJ.11.36.1pr.: Imperator Antoninus

Etsi duobus simul cura pecuniae civitatis, non tamen separatis portionibus mandetur, singuli non pro virili portione, sed in solidum rei publicae obligantur. * ant. a. luciano. *<a xxx >

CJ.11.36.1.1: Imperator Antoninus

Cum autem de indemnitate eius quaeritur, prius eius bona qui administravit ac mox, si satisfieri non potuerit, collegae conveniuntur.<a xxx >

CJ.11.36.1.2: Imperator Antoninus

Vos tamen, qui heredes unius ex curatoribus extitistis, damnum si quod post mortem eius dolo vel culpa collegarum accessit, onerari non est rationis.<a xxx >

CJ.11.36.2pr.: Imperator Gordianus

Quotiens duobus non separatim, sed pro indiviso munus iniungitur, et ita, ut unusquisque eorum periculo soliditatis videatur obstrictus, manus ad nominatorem, priusquam utrique qui id munus administraverunt sollemniter fuerint excussi, nulla ratione possunt porrigi. * gord. a. valenti. *<a xxx >

CJ.11.36.2.1: Imperator Gordianus

Si vero separatis portionibus ad munus nominati sunt, prius pro portione conveniantur qui administraverint, item fideiussores eorum: si nec ab his quidem indemnitas fuerit servata, tunc demum creatorem ac, si nec is quidem sufficiat, novissime participem muneris conveniri debere praeses non ignoret.<a xxx >

CJ.11.36.3: Imperatores carus, carinus, numer.

Si ita duumviri creati estis, ut mutuo periculo teneamini, in dubium non venit vicariis damnis vos esse obstrictos, cum in magistratibus prius nominatores conveniendos esse (hoc quod in persona vestra custodiri considerastis) constitutum est. * carus carinus et numer. aaa. theodosio. *<a xxx >

CJ.11.36.4: Imperatores Diocletianus, Maximianus

Cum te et collegam tuum magistratus vestri tempore publicum fenus collocasse proponas nec potuisse debitum a quibusdam rei publicae restitui, cum paratus sis pro te id quod solus gessisti satis rei publicae facere, consequens est rem publicam, si separati actus vestri fuerint, contra successores collegae tui vel rerum eius possessores prius ob personam eius progredi et, si solida indemnitas rei publicae servata non fuerit, nominatores eius interpellare ac postremo loco, si quid ex nomine collegae tui defuerit, ob culpae nexum te interpellare. priores nominatores enim veluti fideiussores placuit obstringi. * diocl. et maxim. aa. dioni. *<a xxx >

CJ.11.37.0. Ne quis liber invitus actum rei publicae gerere cogatur.

CJ.11.37.1: Imperator Alexander Severus

Si, ut proponis, decreto ordinis ad libertatem ductus es, non debere te invitum actum rei publicae administrare curator rei publicae non ignorat, praesertim cum servi eiusmodi officia administrare debeant. * alex. a. urbico. *<a xxx >

CJ.11.37.2: Imperatores Diocletianus, Maximianus

Si, cum ingenuus esses, ad actum gerendum a re publica compelleris, auxilium praesidis et iuris praesidia prout usus exigebat implorare potuisti. * diocl. et maxim. aa. tiberio. *<a xxx >

CJ.11.38.0. Iniuncti muneris sumptus ad omnes collegas pertinere.

CJ.11.38.1: Imperatores Diocletianus, Maximianus

Cum ad munus exhibendarum angariarum cum aliis creatus a consortibus muneris sollicitudine deserta solum te functum esse proponas, sumptuum detrimenta, si qua acciderunt, collatione eorum, quos munus oportuit participare, provisione praesidis dividentur. qui si etiam a te obsequium derelictum esse cognoverit, quid censurae publicae congruit, non ignoret. * diocl. et maxim. aa. diodoro. *<a xxx >

CJ.11.39.0. De his qui ex officio quod administraverunt conveniuntur.

CJ.11.39.1: Imperator Alexander Severus

Fenoris rei publicae, quod non tua culpa perditum esse apparuerit, sufficit sortis damnum, non etiam usurarum sustinere. * alex. a. octavio. *<a xxx >

CJ.11.40.0. De solutionibus et liberationibus debitorum civitatis.

CJ.11.40.1pr.: Imperator Alexander Severus

Cautiones servorum publicorum ita demum firmam securitatem debitoribus praestant , si curatorum adsignantium vel eorum quibus exigendi ius est auctoritate subnixae sunt. * alex. a. quattuorviris et decurionibus fabraternorum. *<a xxx >

CJ.11.40.1.1: Imperator Alexander Severus

Cum autem is qui exsolvisse dicitur solam scripturam actoris suscipientis pecuniam promet, ea tantum defensio consuevit admitti, si quod exsolutum est rationi rei publicae profecisse doceatur.<a xxx >

CJ.11.40.1.2: Imperator Alexander Severus

Sane curator vester, si fraude servi constiterit effectum, ut interciperentur a curatore illatae a debitoribus quantitates, de peculio eius quod eo modo deest restituet.<a xxx >

CJ.11.41.0. De spectaculis et scaenicis et lenonibus.

CJ.11.41.1: Imperatores Valens, Gratianus, Valentinianus

Non invidemus, sed potius cohortamur amplectenda felicis populi studia, gymnici ut agonis spectacula reformentur. verumtamen cum primates viri populi studiis ac voluptatibus grati esse cupiant, promptius permittimus, ut integra sit voluptas , quae volentium celebretur impensis. * valens grat. et valentin. aaa. ad hesperium procons. africae. *<a 376 d.Vi id.Mart.Triveris valente v et valentiniano aa.Conss.>

CJ.11.41.2: Imperatores Gratianus, Valentinianus, Theodosius

Quisquis equosus, quos vel serenitas nostra vel ordinarii consules tribuunt voluptatibus, ad commodum compendiumque privatum abduxerit, unius librae auri condemnatione multetur. * grat. valentin. et theodos. aaa. ad valerianum pu. *<a 381 d.Viii k.Mai.Triveris eucherio et syagrio conss.>

CJ.11.41.3: Imperatores Gratianus, Valentinianus, Theodosius

Eos qui agitandi munus exercent illustris auctoritas tua nullis praeter circense certamen adfici noverit oportere suppliciis. * grat. valentin. et theodos. aaa. ad valerianum pu. *<a 381 d.Viii id.Mai.Eucherio et syagrio conss.>

CJ.11.41.4pr.: Imperatores Theodosius, Arcadius, Honorius

Si qua in publicis porticibus vel in his civitatum locis, in quibus nostrae solent imagines consecrari, pictura pantomimum veste humili et rugosis sinibus agitatorem aut vilem offerat histrionem, ilico revellatur neque umquam posthac liceat in loco honesto inhonestas adnotare personas. * theodos. arcad. et honor. aaa. rufino pp. *<a 394 d.Iii k.Iul.Heracleae arcadio a.Iii et honorio a.Ii conss. >

CJ.11.41.4.1: Imperatores Theodosius, Arcadius, Honorius

In aditu vero circi vel in theatri proscaeniis ut collocentur, non vetamus.<a 394 d.Iii k.Iul.Heracleae arcadio a.Iii et honorio a.Ii conss. >

CJ.11.41.5: Imperatores Honorius, Theodosius

Nemo iudicum ex quamcumque civitate in aliud oppidum vel ex provinciae solo equos curules aurigas bestias histriones cives temptet traducere, ne, dum popularibus plausibus intemperanter serviunt, et publicarum rerum statum fatigent et festivitatem impediant in cunctis oppidis celebrandam: ita ut, si quis hanc violaverit iussionem, poena teneatur ea, quae legum violatores persequitur. * honor. et theodos. aa. anthemio pp. *<a 409 d.Viii id.Aug.Constantinopoli honorio viii et theodosio iii aa.Conss.>

CJ.11.41.6pr.: Imperatores Theodosius, Valentinianus

Lenones patres et dominos, qui suis filiabus vel ancillis peccandi necessitatem imponunt, nec iure frui dominii nec tanti criminis patimur libertate gaudere. * theodos. et valentin. aa. florentio pp. *<a 428 d.Xi k.Mai.Felice et tauro conss.>

CJ.11.41.6.1: Imperatores Theodosius, Valentinianus

Igitur tali placet eos indignatione subduci, ne potestatis iure frui valeant neve quid eis ita possit adquiri. sed ancillis filiabusque, si velint, conductisve pro paupertate personis, quas sors damnavit humilior, episcoporum liceat, iudicum etiam defensorumque implorato suffragio omni miseriarum necessitate absolvi, ita ut, si insistendum eis lenones esse crediderint vel peccandi ingerant necessitatem invitis, non amittant solum eam quam habuerant potestatem, sed proscripti poenae mancipentur exilii metallis addicendi publicis: quae minor poena est, quam si praecepto lenonis cogatur quispiam coitionis sordes ferre, quas nolit.<a 428 d.Xi k.Mai.Felice et tauro conss.>

CJ.11.42.0. De expensis publicorum ludorum.

CJ.11.42.1pr.: Imperatores Diocletianus, Maximianus

Cum praesidem provinciae impensas, quae in certaminis editione erogabantur, ad refectionem murorum transtulisse dicas, et quod salubriter derivatum est non revocabitur et sollemne certaminis spectaculum post restitutam murorum fabricam iuxta veteris consuetudinis legem celebrabitur. * diocl. et maxim. aa. Marcello. *<>

CJ.11.42.1.1: Imperatores Diocletianus, Maximianus

Ita enim et tutelae civitatis instructae murorum praesidio providebitur et instaurandi agonis voluptas, confirmatis his quae ad securitatis cautionem spectant, insecuti temporis circuitione repraesentabitur.<>

CJ.11.43.0. De aquaeductu.

CJ.11.43.1pr.: Imperator Constantinus

Possessores, per quorum fines formarum meatus transeunt, ab extraordinariis oneribus volumus esse immunes, ut eorum opera aquarum ductus sordibus oppleti mundentur, nec ad aliud superindictae rei onus isdem possessoribus attinendis, ne circa res alias occupati repurgium formarum facere non occurrant. * const. a. ad maximilianum consularem aquarum. *<a 330 d.Xv k.Iun.Gallicano et symmacho conss.>

CJ.11.43.1.1: Imperator Constantinus

Quod si neglexerint, amissione possessionum multabuntur: nam fiscus eius praedium obtinebit, cuius neglegentia perniciem formae congesserit.<a 330 d.Xv k.Iun.Gallicano et symmacho conss.>

CJ.11.43.1.2: Imperator Constantinus

Praeterea scire eos oportet, per quorum praedia aquaeductus commeat, ut dextra laevaque de ipsis formis quindecim pedibus intermissis arbores habeant: observante officio iudicis, ut, si quo tempore pullulaverint, excidantur, ne earum radices fabricam formae corrumpant.<a 330 d.Xv k.Iun.Gallicano et symmacho conss.>

CJ.11.43.2: Imperatores Valentinianus, Theodosius, Arcadius

Si quis de cetero vetiti furoris audacia florentissimae urbis commoda voluerit mutilare aquam ad suum fundum ex aquaeductu publico derivando, sciat eundem fundum fiscalis tituli proscriptione signatum privatis rebus nostris adgregandum. * valentin. theodos. et arcad. aaa. pancratio pu. *<a 389 d.Viii. . . constantinopoli timasio et promoto conss.>

CJ.11.43.3pr.: Imperatores Valentinianus, Theodosius, Arcadius

Eos, qui aquae copiam vel olim vel nunc per nostra indulta meruerunt, usum aut ex castellis aut ex ipsis formis iubemus elicere neque earum fistularum quas matrices vocant cursum ac soliditatem attemptare vel ab ipso aquaeductu trahere. * valentin. theodos. et arcad. aaa. albino pu.Romae. *<a 389 d.V k.Sept.Romae.Timasio et promoto conss.>

CJ.11.43.3.1: Imperatores Valentinianus, Theodosius, Arcadius

Quod si quis aliter fecerit, non solum id quod prius iure beneficii fuerat consecutus amittat, verum pro condicione quoque personae severissima poena plectetur.<a 389 d.V k.Sept.Romae.Timasio et promoto conss.>

CJ.11.43.4: Imperatores Arcadius, Honorius

Usum aquae veterem longoque dominio constitutum singulis civibus manere censemus nec ulla novatione turbari, ita tamen, ut quantitatem singuli, quam veteri licentia percipiunt, more usque in praesentem diem perdurante percipiant: mansura poena in eos, qui ad inrigationes agrorum vel hortorum delicias furtivis aquarum meatibus abutuntur. * arcad. et honor. aa. asterio com. orientis. *<a 397 d.K.Nov.Caesario et attico conss.>

CJ.11.43.5: Imperatores Theodosius, Valentinianus

Si quis per divinam liberalitatem meruerit ius aquae, non viris clarissimis rectoribus provinciarum, sed tuae praecellentissimae sedi caelestes apices intimare debebit: condemnatione contra illum qui preces moderatoribus insinuare conatur quinquaginta librarum auri et contra universos administratores qui rescriptum per subreptionem elicitum suscipere moliuntur proponenda, apparitoribus nihilo minus eorundem virorum clarissimorum provinciae moderatorum animadversionibus pro vigore tui culminis subiugandis: et amplissima tua sede dispositura, quid in publicis thermis, quid in nympheis pro abundantia civium convenit deputari, quid his personis, quibus nostra perennitas indulsit, ex aqua superflua debeat impertiri. * theodos. et valentin. aa. cyro pp. *<a 440-441 >

CJ.11.43.6pr.: Imperatores Theodosius, Valentinianus

Omnis servitus aquarum aquaeductus hadriani sive domorum sive possessionum sive suburbanorum sive balneorum vel per divinos adfatus intimatos in quolibet iudicio vel per usurpationem impertitos penitus exprobretur: maluimus etenim praedictum aquaeductum nostri palatii publicarum thermarum ac nymphaeorum commoditatibus inservire. et decernimus hanc dispositionem modis omnibus in posterum servari , nemini licentia tribuenda ab eodem aquaeductu precibus oblatis usum aquae petere vel eum audere perforare: scientibus his, qui qualibet ratione putaverint ad huiusmodi molimen accedere, vel officio, si ausum fuerit instruere vel minus instructis precibus parere, centena pondo auri multae nomine fiscalibus rationibus se esse illaturos. * theodos. et valentin. aa. cyro pp. *<a 440?>

CJ.11.43.6.1: Imperatores Theodosius, Valentinianus

Super his sancimus sulcum publicum aquarum nullis intra decem pedes arboribus coartari, sed ex utroque latere decempedale spatium integrum illibatumque servari.<a 440?>

CJ.11.43.6.2: Imperatores Theodosius, Valentinianus

Praeterea de plumbeis fistulis ducentibus ad thermas, quae achillis nuncupantur, quas providentia tuae magnificentiae factas esse cognovimus, eandem formam servari censemus.<a 440?>

CJ.11.43.6.3: Imperatores Theodosius, Valentinianus

Etenim memoratas fistulas thermis tantum et nymphaeis, quibus eminentia tua deputaverit, volumus inservire: facultate praebenda tuae sublimitatis apparitoribus circumeundi sine formidine domus suburbana balnea ad requirendum, ne qua deceptio vel suppressio vel insidiae contra publicam utilitatem a quoquam penitus attemptetur.<a 440?>

CJ.11.43.7: Imperatores Theodosius, Valentinianus

Ad reparationem aquaeductus huius almae urbis omnia vectigalia, quae colligi possunt ex universis scalis huius inclitae urbis et ex operariis qui cyzicenii dicuntur, ad refectionem eiusdem aquaeductus procedere: illo videlicet observando, ut nemo eorum qui ius aquae possident quamcumque descriptionem sustineat: nam exsecrabile videtur domos huius almae urbis aquam habere venalem. * theodos. et valentin. aa. eutychiano pp. *<a xxx >

CJ.11.43.8pr.: Imperator Zeno

Hac lege sancimus, ut si quis amplissimam praefecturam gubernans aurum aquaeductui deputatum ad alterum quodlibet opus non aquaeductibus vel aquae publicae competens extruendum vel curandum putaverit convertendum, de suis facultatibus eandem summam aquaeductus titulo repensare cogatur. * zeno a. adamantio pu. *<a xxx >

CJ.11.43.8.1: Imperator Zeno

Separatus vero arcarius aurum aquaeductus suscipiat gloriosissimorum consulum liberalitate vel ex aliis titulis ad aquas publicas pertinentibus collectum vel postea colligendum.<a xxx >

CJ.11.43.9: Imperator Zeno

Diligenter investigari decernimus, qui publici ab initio fontes vel, cum essent ab initio privati, postquam publice usum praebuerunt, ad privatorum usum conversi sunt, sive sacris apicibus per subreptionem impetratis, ac multo amplius si auctoritate illicita nec appetito colore sacri oraculi huiusmodi aliquid pertemptatum fuisse dignoscitur, ut ius suum regiae civitati restituatur et, quod publicum fuerit aliquando, minime sit privatum, sed ad communes usus recurrat: sacris oraculis vel pragmaticis sanctionibus adversus commoditatem urbis quibusdam impertitis iure cassandis nec longi temporis praescriptione ad circumscribenda civitatis iura profutura. * zeno a. sporacio. *<a xxx >

CJ.11.43.10pr.: Imperator Zeno

Decernimus, ne quid a quacumque persona qualibet dignitate praedita contra munuscularios aquaeductus vel fontes publicos qui ad aquaeductus confluunt pertemptetur. * zeno a. spontio. *<a xxx >

CJ.11.43.10.1: Imperator Zeno

Sed et si quis clam vel palam auctoritate confisus de isdem paragogiis vel fontibus aquam transduxerit vel clandestinis insidiis forte subripuerit, publicis aquaeductibus eam restituere compellatur.<a xxx >

CJ.11.43.10.2: Imperator Zeno

Hoc etiam praecipimus, ne in posterum a quolibet iuxta eosdem aquaeductus plantari qualescumque arbores possint, ne ex stirpibus labefactentur parietes aquaeductuum, quod antiquis etiam constitutionibus interdictum esse dignoscitur.<a xxx >

CJ.11.43.10.3: Imperator Zeno

Scientibus universis, quod in posterum super huiusmodi commissis suburbanum vel praedium vel balneum vel aquae mola vel hortus, ad cuius usum aqua publica fuerit derivata, vel si quid ex his iuxta aquaeductum positum ad eum pertinet, qui plantavit arbores aquaeductibus noxias, ad quemcumque pertineat locum vel hominem vel domum, proscriptionis titulo subiacebit et fisci viribus vindicabitur: nulli super huiusmodi poena nec per sacros apices venia tribuenda.<a xxx >

CJ.11.43.10.4: Imperator Zeno

Universos autem aquarios vel aquarum custodes, quos hydrophylacas nominant, qui omnium aquaeductuum huius regiae urbis custodiae deputati sunt, singulis manibus eorum felici nomine nostrae pietatis impresso signari decernimus, ut huiusmodi adnotatione manifesti sint omnibus nec a procuratoribus domorum vel quolibet alio ad usus alios avellantur vel angariarum vel operarum nomine teneantur.<a xxx >

CJ.11.43.10.5: Imperator Zeno

Quod si quem ex isdem aquariis mori contigerit, eum nihilo minus qui in locum defuncti subrogatur signo eodem notari praecipimus, ut militiae quodammodo sociati excubiis aquae custodiendae incessanter inhaereant nec muneribus aliis occupentur.<a xxx >

CJ.11.43.11: Imperator Anastasius

Divinam dispositionem ab inclitae recordationis principe theodosio super his, qui aquam sibi de publicis aquaeductibus seu fontibus praeberi desiderant, promulgatam hac etiam lege in sua firmitate durare sancimus, quatenus nemo vel in hac sacratissima civitate vel in provinciis sine divinis apicibus de sacro epistularum scrinio more solito edendis et iudicio tuae celsitudinis vel aliis quorum interest intimatis vel intimandis aquam de publico aquaeductu seu fonte trahere permittatur: his, quicumque nostra iussa violaverint seu violari concesserint, denarum librarum auri condemnatione aliaque gravissima indignatione feriendis. * anastas. a. sergio pp. *<a xxx >

CJ.11.44.0. De gladiatoribus penitus tollendis.

CJ.11.44.1: Imperator Constantinus

Cruenta spectacula in otio civili et domestica quiete non placent. quapropter omnino gladiatores esse prohibemus. * constant. a. maximo pp. *<a 325 pp. beryto k. oct. paulino et iuliano conss.>

CJ.11.45.0. De venatione ferarum.

CJ.11.45.1pr.: Imperatores Honorius, Theodosius

Occidendorum leonum cunctis facimus potestatem neque aliquam sinimus quemquam calumniam formidare. * honor. et theodos. aa. mauriano com. domesticorum et vices agenti mag. mil.*<a 414 d. xiii k. iun. constantio et constante vv. cc. conss.>

CJ.11.45.1.1: Imperatores Honorius, Theodosius

Bestias autem, quae ad comitatum ab omnibus limitum ducibus transmittuntur, non plus quam septem diebus intra singulas civitates retineri praecipimus: violatoribus eorum quinas libras auri fisci viribus illaturis.<a 414 d. xiii k. iun. constantio et constante vv. cc. conss.>

CJ.11.46.0. De maiuma.

CJ.11.46.1: Imperatores Arcadius, Honorius

Clementiae nostrae placuit, ut maiumae provincialibus laetitia reddatur, ita tamen ut servetur honestas et verecundia castis moribus perseveret. * arcad. et honor. aa. caesario pp. *<a 396 d. vii k. mai. constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.11.47.0. Ut armorum usus inscio principe interdictus sit.

CJ.11.47.1: Imperatores Valentinianus, Valens

Nulli prorsus nobis insciis atque inconsultis quorumlibet armorum movendorum copia tribuatur. * valentin. et valens aa. ad bulephorum consularem campaniae. *<a 364 d. iii non. oct. altino divo ioviano et varroniano conss.>

CJ.11.48.0. De agricolis censitis vel colonis.

CJ.11.48.1: Imperator Constantinus

Numquam rationibus vel colligendis frugibus insistens agricola ad extraordinaria onera trahatur, cum providentiae sit opportuno tempore his necessitatibus satisfacere. * const. a. ad aemilianum pp. *<a 328 lecta vii id. mai. romae ianuarino et iusto conss.>

CJ.11.48.2pr.: Imperator Constantius

Si quis praedium vendere voluerit vel donare, retinere sibi transferendos ad alia loca colonos privata pactione non possit. * constantius a. ad dulcitium consularem aemiliae. *<a 357 d. iii k. mai. mediolani constantio a. viiii et iuliano c. ii conss.>

CJ.11.48.2.1: Imperator Constantius

Qui enim colonos utiles credunt, aut cum praediis eos tenere debent aut profuturos aliis derelinquere, si ipsi sibi praedium prodesse desperant.<a 357 d. iii k. mai. mediolani constantio a. viiii et iuliano c. ii conss.>

CJ.11.48.3pr.: Imperatores Valentinianus, Valens

Quisquis ex desertis agris veluti vagos servos liberalitate nostra fuerit consecutus, pro fiscalibus pensitationibus ad integram terrae professionem, ex qua videlicet servi manere videntur, habeatur obnoxius. * valentin. et valens aa. ad faventium vic. italiae. *<a 365 d. prid. k. aug. mediolani valentiniano et valente aa. conss.>

CJ.11.48.3.1: Imperatores Valentinianus, Valens

Id etiam circa eos observari volumus, qui ex huiusmodi fundis servos ad possessiones suas transire permiserint.<a 365 d. prid. k. aug. mediolani valentiniano et valente aa. conss.>

CJ.11.48.4pr.: Imperatores Valentinianus, Valens

Ii, penes quos fundorum dominia sunt, pro his colonis originalibus, quos in locis isdem censitos esse constabit, vel per se vel per actores proprios recepta compulsionis sollicitudine implenda munia functionis agnoscant. * valentin. et valens aa. ad modestum pp. *<a 366 d. k. mai. constantinopoli gratiano a. et dagalaifo conss.>

CJ.11.48.4.1: Imperatores Valentinianus, Valens

Sane quibus terrarum erit quantulacumque possessio, qui in suis conscripti locis proprio nomine libris censualibus detinentur, ab huius praecepti communione discernimus: eos enim convenit propriae commissos mediocritati annonarias functiones sub solito exactore cognoscere.<a 366 d. k. mai. constantinopoli gratiano a. et dagalaifo conss.>

CJ.11.48.5: Imperatores Valentinianus, Valens

Domini praediorum id quod terra praestat accipiant, pecuniam non requirant, quam rustici optare non audent, nisi consuetudo praedii hoc exigat. * valentin. et valens aa. ad oricum praes. tripolit. *<a 366 >

CJ.11.48.6: Imperatores Valentinianus, Valens

Omnes omnino fugitivos adscripticios colonos vel inquilinos sine ullo sexus muneris condicionisque discrimine ad antiquos penates, ubi censiti atque educati natique sunt, provinciis praesidentes redire compellant. * valentin. et et valens aa. ad germanicum pp. galliarum. *<a 366 >

CJ.11.48.7pr.: Imperatores Valentinianus, Valens, Gratianus

Quemadmodum originarios absque terra, ita rusticos censitosque servos vendi omnifariam non licet. * valentin. valens et grat. aaa. ad maximum pp. *<a xxx >

CJ.11.48.7.1: Imperatores Valentinianus, Valens, Gratianus

Neque vero commento fraudis id usurpet legis illusio, quod in originariis saepe actitatum est, ut parva portione terrae emptori tradita omnis integri fundi cultura adimatur.<a xxx >

CJ.11.48.7.2: Imperatores Valentinianus, Valens, Gratianus

Sed cum soliditas fundorum vel certa portio ad unumquemque perveniat, tanti quoque servi et originarii transeant, quanti apud superiores dominos et possessores vel in soliditate vel in parte manserunt: et emptor pretium quod dederit amissum existimet, nihilo minus venditori ad repetendos servos cum agnatione eorum vindicatione concessa.<a xxx >

CJ.11.48.7.3: Imperatores Valentinianus, Valens, Gratianus

Et si aliqua denique ex causa dissimulaverit legis usurpare beneficium atque iste sub hac taciturnitate decesserit, et heredibus eius et contra heredes emptoris vindicationem damus longi temporis praescriptione submota: mala fide namque possessorem esse nullus ambiget, qui aliquid contra legum interdicta mercatur.<a xxx >

CJ.11.48.8pr.: Imperatores Valentinianus, Valens, Gratianus

Omnes profugi in alieno latebras collocantes cum emolumentis tributariis, salva tamen moderatione, revocentur, scilicet ut si, apud quos homines reperiuntur, alienos esse noverant fugitivos et profugis in lucrum suum usi sunt, hoc est sive excoluerunt agros fructibus dominis profuturos sive aliqua ab isdem sibi iniuncta novaverunt nec mercedem laboris debitam consecuti sunt, ab illis tributa quae publicis perierunt functionibus exigantur. * valentin. valens et grat. aaa. ad probum pp. *<a xxx >

CJ.11.48.8.1: Imperatores Valentinianus, Valens, Gratianus

Ceterum si occultato eo profugi, quod alieni esse videntur, quasi sui arbitrii ac liberi apud aliquem se collocaverunt aut excolentes terras partem fructuum pro solo debitam dominis praestiterunt cetera proprio peculio reservantes, vel quibuscumque operis impensis mercedem placitam consecuti sunt, ab ipsis profugis quaecumque debentur exigantur: nam manifestum est privatum iam esse contractum.<a xxx >

CJ.11.48.8.2: Imperatores Valentinianus, Valens, Gratianus

Si qui vero inter agricolas, ut solet, ex quibuscumque commerciis huiusmodi hominibus inveniuntur esse debitores, coram partibus constitutis iudex ab obnoxiis quod debetur exposcat.<a xxx >

CJ.11.48.9: Imperatores Gratianus, Valentinianus, Theodosius

Immunitates specialiter datae et iugatio et capitatio libris publicis et civitatum ac provinciarum encautariis sine aliqua probatione factae penes fruentes ereptae in functionem pristinam redeant. * grat. valentin. et theodos. aaa. ad pop. *<a 383 d.Iii non.Mart.Mediolani merobaude ii et saturnino conss.>

CJ.11.48.10pr.: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

Cum antea per singulos viros, per binas vero mulieres capitis norma sit censa, nunc binis ac ternis viris, mulieribus autem quaternis unius pendendi capitis attributum est. * grat. valentin. theodos. et arcad. aaaa. cynegio pp. *<a 386 d.Vi k.April.Constantinopoli honorio et euodio conss.>

CJ.11.48.10.1: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

Quocirca sublimitas tua huiusmodi census per comanensium et ariarathensium armeniae secundae, amasenorum helenoponti et diocaesarensium cappadociae secundae urbes salubris et temperatae per aequationis modum monumentis publicis iubebit adnecti.<a 386 d.Vi k.April.Constantinopoli honorio et euodio conss.>

CJ.11.48.11: Imperatores Arcadius, Honorius

Originarios colonos nullis privilegiis, nulla dignitate, nulla census auctoritate excusari praecipimus, sed amputatis omnibus, quae aliquotiens per gratiam sunt elicita, domino vel fundo esse reddendos. * arcad. et honor. aa. ad pop. *<a xxx >

CJ.11.48.12pr.: Imperatores Arcadius, Honorius

Servos vel tributarios vel inquilinos apud dominos volumus remanere. nam cum metu damni deterritus unusquisque eum quem incognitum habuerit coeperit propulsare , voluntas fugiendi servis non erit: nemo enim dominum suum deserit sciens nusquam sibi latendi locum esse derelictum. * arcad. et honor. aa. florentio. *<a xxx >

CJ.11.48.12.1: Imperatores Arcadius, Honorius

Sed aut cognitum sibi ingenuum unusquisque suscipiet, aut eum qui se liberum esse simulaverit a se submovebit metuens his quae statuta sunt obnoxius fieri.<a xxx >

CJ.11.48.12.2: Imperatores Arcadius, Honorius

Si quis igitur ex memoratis fugitivis apud quemlibet fuerit repertus, duodecim libras argenti fisco nostro inferat detentator, ipsi autem cuius fuit praeter eundem fugitivum alterum etiam eiusdem aestimationis inferre decernimus.<a xxx >

CJ.11.48.13pr.: Imperatores Arcadius, Honorius

Definimus, ut inter inquilinos colonosve, quorum quantum ad originem pertinet vindicandam indiscreta eademque paene videtur esse condicio, licet sit discrimen in nomine, suscepti liberi vel utroque vel neutro parente censito statum paternae condicionis agnoscant. * arcad. et honor. aa. vincentio pp. galliarum.*<a 400 d.Iii id.Iul.Stilichone et aureliano conss.>

CJ.11.48.13.1: Imperatores Arcadius, Honorius

Illud etiam servandum est, ut, si quando utriusque fundi idem dominus de possessione referta cultoribus ad eam colonos quae laborabat tenuitate transtulerit, idemque fundi ad diversorum iura dominorum qualibet sorte transierint, maneat quidem facta translatio, sed ita, ut praedii eius dominus, a quo coloni probantur fuisse transducti, translatorum agnationem restituat.<a 400 d.Iii id.Iul.Stilichone et aureliano conss.>

CJ.11.48.14: Imperatores Arcadius, Honorius

Si coloni, quos bona fide quisque possedit, ad alios fugae vitio transeuntes necessitatem condicionis propriae declinare temptaverint, bonae fidei possessori primum oportet celeri reformatione succurri, tunc causam originis et proprietatis agitari. * arcad. et honor. aa. vincentio pp. galliarum.*<a 400 d.Iiii id.Iul.Mediolani stilichone et aureliano conss.>

CJ.11.48.15: Imperatores Honorius, Theodosius

Colonos numquam fiscalium nomine debitorum ullius exactoris pulset intentio: quos ita glebis inhaerere praecipimus, ut ne puncto quidem temporis debeant amoveri. * honor. et theodos. aa. probo. *<a xxx >

CJ.11.48.16: Imperatores Honorius, Theodosius

Mulier, quae fuisse originaria docebitur, si cuiuscumque liberi hominis secuta consortium in urbibus vel in quibuscumque locis victura constitit, eius omnem subolem secundum vetera constituta conveniet revocari. * honor. et theodos. aa. palladio pp. *<a 419 d.Vi k.Iul. ravennae monaxio et plinta conss.>

CJ.11.48.17: Imperatores Honorius, Theodosius

Per colonum praeiudicium possessioni invito vel inscio domino imponi non posse et iure et legum auctoritatibus decantatur. * honor. et theodos. aa. iohanni pp. *<a 422 d.Id.Iul.Ravennae honorio xiii et theodosio x.Aa.Conss.>

CJ.11.48.18: Imperatores Theodosius, Valentinianus

Colonos nulla ratione ad ullum quamvis humilioris militiae locum sinimus admitti : sed nec apparitores magisteriae potestatis censibus adscriptos probari concedimus, quia in hac parte et dominorum iuri et publicae consulimus honestati. * theodos. et valentin. aa. basso pp. *<a 426 >

CJ.11.48.20pr.: Imperator Justinianus

Litibus imponentes celeritatem sancimus, si quando coloni cuiuscumque condicionis contra dominos terrae declamaverint super hoc ipso dubitantes, utrum is terrae dominus est nec ne (eos tamen dicimus, qui non ex longo prolixoque tempore vel longinqua et inveterata redituum susceptione sufficientem habent cautelam, in quibus casibus ne contradicendi quidem licentia colonis relinquitur, longi temporis praescriptione vel redituum frequentissima consequentia colonorum impetus excludente): talem esse super redituum vel publicarum functionum praestatione formam censemus, ut, si tales coloni, quales supra diximus, idoneum fideiussorem totius summae quae ab his dependitur praestiterint, quod omnes reditus sine ulla procrastinatione, si melior causa dominorum iudicetur, eis restituent, et talis fideiussor per triennium accipiatur eoque impleto iterum renovetur, coloni in medio nullo modo super reditibus a dominis inquietentur. * iust. a. demostheni pp. *<a 529 recitata septimo in novo consistorio palatii iustiniani.D.Decio vc.Cons. >

CJ.11.48.20.1: Imperator Justinianus

Sin autem hoc coloni minime facere voluerint vel potuerint, tunc idem reditus per officium iudicis annui exigantur per solita tempora, in quae etiam dominis dependebantur, et deponantur in aede sacra, id est in cimeliarchio civitatis, sub qua possessio sita est, vel si localis ecclesia ad susceptionem pecuniarum idonea non sit, in metropolitana ecclesia, ut remaneant cum omni cautela et post plenissimam definitionem vel dominis dentur vel colonis restituantur.<a 529 recitata septimo in novo consistorio palatii iustiniani.D.Decio vc.Cons. >

CJ.11.48.20.2: Imperator Justinianus

Sin autem reditus non in auro, sed in speciebus inferuntur, vel in totum vel ex parte, interim per officium iudicis fructus vendantur et pretia eorum secundum praedictum modum deponantur.<a 529 recitata septimo in novo consistorio palatii iustiniani.D.Decio vc.Cons. >

CJ.11.48.20.3: Imperator Justinianus

Haec de reditibus definientes ad publicas transeamus functiones. et si quidem coloni more solito eas dependant, ipsi maneant in pristina consuetudine, nullo praeiudicio dominis generando, qui et quiescentibus colonis et non contradicentibus ad publicum tributarias functiones minime inferebant.<a 529 recitata septimo in novo consistorio palatii iustiniani.D.Decio vc.Cons. >

CJ.11.48.20.3a: Imperator Justinianus

Sin autem moris erat dominos totam summam accipere et ex ea partem quidem in publicas vetere functiones, partem autem in suos reditus habere, tunc, si quidem fideiussor a colonis detur, eundem fideiussorem dominis sine praeiudicio litis tantam summam inferre, quantam tributa publica faciunt, ut a dominis publicis rationibus persolvatur: nullo ex hoc colonis praeiudicio generando. super reditibus enim domini fideiussore fiant contenti.<a 529 recitata septimo in novo consistorio palatii iustiniani.D.Decio vc.Cons. >

CJ.11.48.20.4: Imperator Justinianus

Sin autem fideiussione cessante ad sequestrationem res veniat et pecuniae deponantur, ex earum summa tantam iudices separare, quanta ad publicas sufficiat functiones, et eam disponere dominum accipere, quatenus ipse eam persolvens publicas accipiat securitates: reliqua quantitate, quae in reditus puros remanet, in tuto collocanda et litis terminum expectante:<a 529 recitata septimo in novo consistorio palatii iustiniani.D.Decio vc.Cons. >

CJ.11.48.20.5: Imperator Justinianus

Nullo praeiudicio sive colonis sive dominis ex huiusmodi fideiussione vel sequestratione vel publicarum functionum solutione generando: sed omni causa in suspenso manente, donec iudicialis sententia, quae de toto negotio procedit, omnem rem aperiat et ostendat, quis dominus terrae constitutus est et ad quem publicarum functionum securitas debet in posterum fieri, seu reditus vel pervenire vel permanere.<a 529 recitata septimo in novo consistorio palatii iustiniani.D.Decio vc.Cons. >

CJ.11.48.21pr.: Imperator Justinianus

Ne diutius dubitetur, si quis ex adscripticia et servo vel adscripticio et ancilla fuisset editus, cuius status sit, vel quae peior fortuna sit, utrumne adscripticia an servilis, sancimus ea quidem, quae in anterioribus legibus cauta sunt pro tali progenie, quae ex mulieribus adscripticiis et viris liberis progenita sit, in suo statu relinqui, et sit adscripticia proles ex tali copulatione procreata. * iust. a. ad senatum. *<a 530 >

CJ.11.48.21.1: Imperator Justinianus

Si quis autem vel ex servo et adscripticia, vel ancilla et adscripticio fuerit editus, matris suae ventrem sequatur et talis sit condicionis, qualis et genetrix fuit, sive ancilla sive adscripticia: quod hactenus in liberis tantum et servis observabatur. quae etenim differentia inter servos et adscripticios intellegetur, cum uterque in domini sui positus est potestate, et possit servum cum peculio manumittere et adscripticium cum terra suo dominio expellere?<a 530 >

CJ.11.48.22pr.: Imperator Justinianus

Cum scimus nostro iure nullum praeiudicium generari cuidam circa condicionem neque ex confessionibus neque ex scriptura, nisi etiam ex aliis argumentis aliquid accesserit incrementum, sancimus solam conductionem vel aliam quamcumque scripturam ad hoc minime sufficere nec adscripticiam condicionem cuidam inferre, sed debere huiusmodi scripturae aliquid advenire adiutorium, quatenus vel ex publici census adscriptione vel ex aliis legitimis modis talis scriptura adiuvetur. * iust. a. iuliano pp. *<a 531 d.X k...Constantinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.11.48.22.1: Imperator Justinianus

Melius etenim est in huiusmodi difficultatibus ex pluribus capitulis condiciones ostendi et non solis confessionibus neque scripturis homines forte liberos ad deteriorem detrahi fortunam.<a 531 d.X k...Constantinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.11.48.22.2: Imperator Justinianus

Sin autem et scriptura et post scripturam confessio seu depositio, sine vi et necessitate tamen, intervenerit (quid enim, si etiam conductionale instrumentum vel alium chartulam, in qua subscripsit, intimavit et inter acta deposuit sese colonum fuisse adscripticium?), tunc ex utroque genere obligationis, id est tam scripturae quam confessionis vel depositionis, talem eum esse credendum, qualem et scripsit et inter acta deposuit.<a 531 d.X k...Constantinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.11.48.22.3: Imperator Justinianus

Illud quoque non ineleganter dubitabatur, si coloni filius per triginta annorum curricula vel forsitan quadraginta seu ampliora, adhuc vivente patre et agriculturam peragente, ipse in libera conversatione morabatur, et dominus terrae, quia per patrem ei satisfiebat, non etiam eius praesentiam exigebat, an post obitum patris, vel postquam inutilis is forte existat et ruri non idoneus, potest excusari filius, longinqua libertate abutendo et quod per multos annos neque agrum coluit neque aliquid colonarii operis celebravit, cum non possit dominus incusari propter suam desidiam, cui per patrem eius omne quod voluerat accedebat.<a 531 d.X k...Constantinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.11.48.22.4: Imperator Justinianus

In omnibus itaque huiuscemodi speciebus satis acerbum nobis videtur domino praeiudicari colonorum absentia eorum, qui in rure nati et postea absentes per suos vel patres vel fratres vel cognatos agriculturam peragebant. cum enim pars quodammodo corporis eius per cognationem in fundo remanebat, non videtur neque peregrinari neque in libertate morari.<a 531 d.X k...Constantinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.11.48.22.5: Imperator Justinianus

Maneat itaque domino ius inconcussum, et donec eius vel antiquitas vel posteritas vel cognatio in agrum remanet, ipse videatur ibi resedisse.<a 531 d.X k...Constantinopoli post consulatum lampadii et orestis vv.Cc.>

CJ.11.48.23pr.: Imperator Justinianus

Cum satis inhumanum est terram quae ab initio adscripticios habebat suis quodammodo membris defraudari et colonos in aliis terris demorantes dominos terrae maximis damnis adficere, censemus, quemadmodum in curialium condicione nemo ex temporali cursu liberatur, ita nec adscripticiae condicioni suppositus ex annalibus curriculis, quantacumque emanaverint, vel quacumque prolixa negotiatione aliquis sibi vindicet libertatem: sed remaneat adscripticius et inhaereat terrae. et si se celaverit vel separare conatus fuerit, secundum exemplum servi fugitivi sese diutinis insidiis furari intellegatur et sit suppositus una cum subole sua , etsi in alia terra eam fecerit, huiusmodi fortunae et capitali illationi, nulla liberatione ei penitus competente. * iust. a. iohanni pp. *<a 531-534 >

CJ.11.48.23.1: Imperator Justinianus

Cum autem anastasiana lex homines qui per triginta annos colonaria detenti sunt condicione voluit liberos quidem permanere, non autem habere facultatem terra derelicta in alia loca migrare, et ex hoc quaerebatur, si etiam liberi eorum cuiuscumque sexus, licet non triginta annos fecerint in fundis vel vicis, deberent colonariae esse condicionis an tantummodo genitor eorum, qui per triginta annos huiusmodi condicioni illigatus est: sancimus liberos colonorum esse quidem in perpetuum secundum praefatam legem liberos et nulla deteriore condicione praegravari, non autem habere licentiam relicto suo rure in aliud migrare, sed semper terrae inhaereant, quam semel colendam patres eorum susceperunt.<a 531-534 >

CJ.11.48.23.2: Imperator Justinianus

Caveant autem possessionum domini, in quibus tales coloni constituti sunt, aliquam innovationem vel violentiam eis inferre. si enim hoc approbatum fuerit et per iudicem pronuntiatum, ipse provinciae moderator, in qua aliquid tale fuerit perpetratum, omnimodo provideat et laesionem, si qua subsecuta est, eis resarcire et veterem consuetudinem in reditibus praestandis eis observare: nulla nec tunc licentia concedenda colonis fundum ubi commorantur relinquere.<a 531-534 >

CJ.11.48.23.3: Imperator Justinianus

Et hoc tam in ipsis colonis quam in subole eorum qualiscumque sexus vel aetatis sancimus, ut et ipsa semel in fundo nata remaneat in possessione sub isdem modis isdemque condicionibus, sub quibus etiam genitores eius manere in alienis fundis definivimus.<a 531-534 >

CJ.11.48.23.4: Imperator Justinianus

Nemini autem liceat vel adscripticium vel colonum alienum scienti prudentique in suum ius suscipere.<a 531-534 >

CJ.11.48.23.5: Imperator Justinianus

Sed et si bona fide eum susceperit, postea autem reppererit eum alienum esse constitutum, admonente domino vel ipsius adscripticii vel terrae et hoc faciente per se vel per procuratorem suum hunc restituere cum omni peculio et subole sua: et si hoc facere supersederit, omnis quidem temporis, quo apud eum remoratus est, publicas functiones sive terrenas sive animales pro eo inferre compelletur cura et provisione tam eminentissimae praefecturae quam praesidis provinciae: coartetur autem et sic ad restitutionem eius secundum veteres constitutiones et poenas eis insertas.<a 531-534 >

CJ.11.48.24pr.: Imperator Justinianus

Si qui adscripticiae condicionis constituti mulieres liberas quacumque mente aut quacumque machinatione sive scientibus dominis sive ignorantibus sibi uxores coniunxerunt vel postea coniunxerint, in sua libertate permanere tam eas quam prolem quae ex eis cognoscitur procreata sancimus: illo procul dubio observando, ut, si ex libero marito et adscripticia uxore partus fuerit editus, is maternae condicionis maculam, non paternam sequatur libertatem. * iust. a. hermogeni mag. off. *<a xxx >

CJ.11.48.24.1: Imperator Justinianus

Sed ne adscripticii putent sibi impunitum esse tale conamen, quod maxime verendum est, ne liberarum mulierum nuptiis ab his excogitatis paulatim huiusmodi hominum condicio decrescat, sancimus, si quid tale fuerit ab adscripticio perpetratum, liberam habere potestatem dominum eius sive per se sive per praesidem provinciae talem hominem castigatione moderata corrigere et abstrahere a tali muliere. quod si neglexerit, sciat in suum damnum huiusmodi desidiam reversuram.<a xxx >

CJ.11.49.0. De capitatione civium censibus eximenda.

CJ.11.49.1: Imperator Constantinus

Plebs urbana, sicut in orientalibus quoque provinciis observatur, minime in censibus pro capitatione sua conveniatur, sed iuxta hanc iussionem nostram immunis habeatur. * constant. a. ad eusebium virum perfectissimum praes. lyciae et pamphyliae.*<a 313 d.K.Iun.Constantino a.Iii et licinio iii conss.>

CJ.11.50.0. In quibus causis coloni censiti dominos accusare possunt.

CJ.11.50.1: Imperator Constantinus

Quisquis colonus plus a domino exigitur, quam ante consueverat et quam in anterioribus temporibus exactus est, adeat iudicem, cuius primum poterit habere praesentiam, et facinus comprobet, ut ille, qui convincitur amplius postulare, quam accipere consueverat, hoc facere in posterum prohibeatur, prius reddito quod superexactione perpetrata noscitur extorsisse. * const. a. ad maximum vic. orientis. *<a xxx pp.Id. >

CJ.11.50.2pr.: Imperatores Arcadius, Honorius

Coloni censibus dumtaxat adscripti, sicuti ab his liberi sunt, quibus eos tributa subiectos non faciunt, ita his, quibus annuis functionibus et debito condicionis obnoxii sunt, paene est ut quadam servitute dediti videantur. * arcad. et honor. aa. nebridio com. asiae. *<a xxx >

CJ.11.50.2.1: Imperatores Arcadius, Honorius

Quo minus est ferendum, ut eos audeant lite pulsare, a quibus ipsos utpote a dominis una cum possessionibus distrahi posse dubium non est.<a xxx >

CJ.11.50.2.2: Imperatores Arcadius, Honorius

Quam de cetero licentiam submovemus, ne quis audeat domini in iudicio nomen lacessere, et cuius ipsi sunt, eiusdem omnia sua esse cognoscant.<a xxx >

CJ.11.50.2.3: Imperatores Arcadius, Honorius

Cum enim saepissime decretum sit, ne quid de peculio suo cuiquam colonorum ignorante domino praedii aut vendere aut alio modo alienare liceret, quemadmodum contra eius personam aequo poterit consistere iure, quem nec propria quidem leges sui iuris habere voluerunt et adquirendi tantum, non etiam transferendi potestate permissa, domino et adquirere et habere voluerunt?<a xxx >

CJ.11.50.2.4: Imperatores Arcadius, Honorius

Sed ut in causis civilibus huiusmodi hominum generi adversus dominos vel patronos et aditum intercludimus et vocem negamus exceptis superexactionibus, in quibus retro principes facultatem eis super hoc interpellandi praebuerunt, ita in criminum accusatione quae publica est non adimitur eis propter suam suorumque iniuriam experiendi licentia.<a xxx >

CJ.11.51.0. De colonis palaestinis.

CJ.11.51.1: Imperatores Valentinianus, Theodosius, Arcadius

Cum per alias provincias, quae subiacent nostrae serenitatis imperio, lex a maioribus constituta colonos quodam aeternitatis iure detineat, ita ut illis non liceat ex his locis quorum fructu relevantur abscedere nec ea deserere quae semel colenda susceperunt, neque id palaestinae provinciae possessoribus suffragetur, sancimus, ut etiam per palaestinas nullus omnino colonorum suo iure velut vagus ac liber exsultet, sed exemplo aliarum provinciarum ita domino fundi teneatur, ut sine poena suscipientis non possit abscedere: addito eo, ut possessionis domino revocandi eius plena tribuatur auctoritas. * valentin. theodos. et arcad. aaa. cynegio pp. *<a xxx >

CJ.11.52.0. De colonis thracensibus.

CJ.11.52.1pr.: Imperatores Theodosius, Arcadius, Honorius

Per universam dioecesim thraciarum sublato in perpetuum humanae capitationis censu iugatio tantum terrena solvatur. * theodos. arcad. et honor. aaa. rufino pp. *<a xxx >

CJ.11.52.1.1: Imperatores Theodosius, Arcadius, Honorius

Et ne forte colonis tributariae sortis nexibus absolutis vagandi et quo libuerit recedendi facultas permissa videatur, ipsi quidem originario iure teneantur, et licet condicione videantur ingenui, servi tamen terrae ipsius cui nati sunt aestimentur nec recedendi quo velint aut permutandi loca habeant facultatem, sed possessor eorum iure utatur et patroni sollicitudine et domini potestate.<a xxx >

CJ.11.52.1.2: Imperatores Theodosius, Arcadius, Honorius

Si quis vero alienum colonum suscipiendum retinendumve crediderit, duas auri libras ie cogatur exsolvere, cuius agros transfuga cultore vacuaverit, ita ut eundem cum omni peculio suo et agnatione restituat.<a xxx >

CJ.11.53.0. De colonis illyricianis.

CJ.11.53.1pr.: Imperatores Valentinianus, Valens, Gratianus

Colonos inquilinosque per illyricum vicinasque regiones abeundi rure, in quo eos originis agnationisque merito certum est immorari, licentiam habere non posse censemus. * valentin. valens et grat. aaa. ad probum pp. *<a 371 d. iii id. iul. gratiano a. ii et probo conss.>

CJ.11.53.1.1: Imperatores Valentinianus, Valens, Gratianus

Inserviant terris non tributario nexu, sed nomine et titulo colonorum, ita ut, si abscesserint ad aliumve transierint, revocati vinculis poenisque subdantur, maneatque eos poena, qui alienum et incognitum recipiendum esse duxerint, tam in redhibitione operarum et damni, quod locis quae deseruerant factum est, quam multae, cuius modum in auctoritate iudicis collocamus: ita ut etiam dominus fundi , in quo alienus fuisse monstrabitur, pro qualitate peccati coercitionem subire cogatur nec sit ignorantiae locus, cum ad criminis rationem solum illud sufficiat, quod incognitum sibi tenuit.<a 371 d. iii id. iul. gratiano a. ii et probo conss.>

CJ.11.53.1.2: Imperatores Valentinianus, Valens, Gratianus

Servum etiam in memoratis regionibus si quis receperit, ignorationis excusatione sublata quadrupli poena teneatur, operarum praeterea compendiis damnisque praestitis.<a 371 d. iii id. iul. gratiano a. ii et probo conss.>

CJ.11.53.1.3: Imperatores Valentinianus, Valens, Gratianus

In libertis etiam, quos pari usurpatione susceperit, is modus sit, quem circa liberos duximus colonos retinendum.<a 371 d. iii id. iul. gratiano a. ii et probo conss.>

CJ.11.54.0. Ut nemo ad suum patrocinium suscipiat vicos vel rusticanos eorum.

CJ.11.54.1pr.: Imperatores Leo, Anthemius

Si quis post hanc nostri numinis sanctionem in fraudem circumscriptionemque publicae functionis ad patrocinium cuiuscumque confugerit, id, quod huius rei gratia geritur sub praetextu donationis vel venditionis seu conductionis aut cuiuslibet alterius contractus, nullam habeat firmitatem: tabellionibus, qui talia instrumenta perficere ausi fuerint, bonorum proscriptione plectendis, qui tamen scientes ausi fuerint huiusmodi instrumenta conscribere: vicis etiam vel possessionibus ad patrocinia confugientium publico vindicandis. * leo et anthem. aa. nicostrato pp orientis. *<a 468 d.K.Sept.Antehmio a.Ii cons.>

CJ.11.54.1.1: Imperatores Leo, Anthemius

Eae autem personae, quae contra publicam commoditatem in clientelam suam suscepisse collatores detectae fuerint, nobiliores quidem centum librarum auri condemnationem subire cogentur, mediocris vero fortunae facultatum suarum amissione plectentur: eadem poena multandis etiam his, qui intercedentes ministerium suum huiusmodi nefariis actibus improba mente praebuerint.<a 468 d.K.Sept.Antehmio a.Ii cons.>

CJ.11.54.1.2: Imperatores Leo, Anthemius

Quam formam ex eo quidem tempore, quod sacra constitutio a divae memoriae marciano promulgata continet, id est in thracica quidem dioecesi abhinc annis triginta, hoc est a consulatu aetii iterum et sigisbuldi, in orientali vero et aegyptiaca et pontica et asiana dioecesi viginti octo, hoc est a consulatu cyri valere atque exsecutioni mandari praecipimus.<a 468 d.K.Sept.Antehmio a.Ii cons.>

CJ.11.55.0. Ut rusticani ad nullum obsequium devocentur.

CJ.11.55.1: Imperatores Diocletianus, Maximianus

Ne quis ex rusticana plebe, quae extra muros posita capitationem suam detulit et annonam congruam praestat, ad ullum aliud obsequium devocetur neque a rationali nostro mularum fiscalium vel equorum ministerium subire cogatur. * diocl. et maxim. aa. exempl sacr. litt. ad charisium.*<a xxx sine die et consule.>

CJ.11.55.2: Imperatores Valentinianus, Valens

Si qui eorum, qui provinciarum rectoribus obsequuntur quique in diversis agunt officiis principatus et qui sub quocumque praetextu muneris publici possunt esse terribiles, rusticano cuipiam necessitatem obsequii quasi mancipio sui iuris imponant aut servum eius vel forte bovem in usus proprios necessitatesque converterint, ablatis omnibus facultatibus perpetuo subiugentur exilio, et nihilo minus rusticanum, qui se in eiusdem operas sponte propria detulisse responderit, par poenae severitudo constringat. * valentin. et valens aa. ad probum pp.Illyrici. *<a 368 d.Prid.K.Oct.Agrippinae valentiniano et valente aa.Conss.>

CJ.11.56.0. Non licere metrocomiae habitatoribus loca sua ad extraneum transferre.

CJ.11.56.1: Imperatores Leo, Anthemius

In illis, quae metrocomiae communi vocabulo nuncupantur, hoc adiciendum necessario nostra putavit humanitas, ut nulli extraneo illic quoquo modo possidendi licentia tribuatur: sed si quis ex isdem vicanis loca sui iuris alienare voluerit, non licere ei nisi ad habitatorem adscriptum eidem metrocomiae per qualemcumque contractum terrarum suarum dominium possessionemque transferre: sciente persona extranea, quod, si contra vetitum se huic negotio immiscere vel illic possidere temptaverit, quicumque contractus initus fuerit, carebit effectu et contractu soluto, si quid praestitum est, hoc tantum reddetur. * leo et anthem. aa. nicostrato pp. *<a 468 d.K.Sept.Anthemio a.Ii cons.>

CJ.11.57.0. Ut nullus ex vicanis pro alienis debitis vicanorum teneatur.

CJ.11.57.1: Imperator Zeno

Grave est et non solum legibus, verum etiam aequitati naturali contrarium, pro alienis debitis alios molestari. idcirco huiusmodi iniquitates contra omnes vicanos perpetrari modis omnibus prohibemus. * zeno a. *<a xxx >

CJ.11.58.0. De censibus et censitoribus et peraequatoribus et inspectoribus.

CJ.11.58.1: Imperator Constantinus

Quoniam tabularii civitatum per collusionem potentiorum sarcinam ad inferiores transferunt, iubemus, ut, quisquis se gravatum probaverit, suam tantum pristinam professionem agnoscat. * const. a. ad populum. *<a 313 pp.Xv k.Febr.Romae constantino a.Iii et licinio iii conss. >

CJ.11.58.2pr.: Imperatores Gratianus, Valentinianus, Theodosius

Quisquis vitem succiderit aut feracium ramorum fetus hebetaverit, quo declinet fidem censuum et mentiatur callide paupertatis ingenium, mox detectus competenti indignationi subiciatur. * grat. valentin. et theodos. aaa. eutropio pp. *<a 381 d.Prid.Non.Iun.Constantinopoli eucherio et syagrio conss.>

CJ.11.58.2.1: Imperatores Gratianus, Valentinianus, Theodosius

Illo videlicet evitante calumniam, qui forte detegitur laborasse pro copia ac reparandis agrorum fetibus, non sterilitatem aut inopiam procurasse.<a 381 d.Prid.Non.Iun.Constantinopoli eucherio et syagrio conss.>

CJ.11.58.3: Imperatores Gratianus, Valentinianus, Theodosius

Si peraequatore misso aliquis aut procuratorem suum retraxerit aut colonum per contumaciam retractationis fugaverit, ad eum censuum modum, quem vel eo vel procuratore illius absente peraequator apposuerit, nostrae sanctionis auctoritate tenebitur. * grat. valentin. et theodos. aaa. cynegio pp. *<a 386 d.Vi k.April.Constantinopoli honorio np.Et euodio conss.>

CJ.11.58.4: Imperatores Theodosius, Arcadius, Honorius

Omne territorium censeatur, quotiens defectorum levamen exposcitur, ut sterilia atque ieiuna his quae culta vel opima sunt compensentur. * theodos. arcad. et honor. aaa. rufino pp. *<a 393 d.Iii non.April.Constantinopoli theodosio a.Iii et abundantio conss.>

CJ.11.58.5pr.: Imperatores Theodosius, Arcadius, Honorius

Qui gravatos se a peraequatoribus conqueruntur et iniusto oneri impares esse proclamant, competitionis habeant facultatem, ut, quid remissum gratia, quid interceptum fuerit fraude, convincant et ex eo levamen accipiant, quod per deformia et criminosa commercia sibi impositum esse deplorant, ut aliis demeretur. * theodos. arcad. et honor. aaa. rufino pp. *<a 393 d.Iii k.Dec.Constantinopoli theodosio a.Iii et abundantio vc. conss.>

CJ.11.58.5.1: Imperatores Theodosius, Arcadius, Honorius

Quod intra annum post codicum oblationem cui videbitur de iniusto onere conqueratur, iniquitatem peraequatoris accuset ac praestitam gratiam habita competitione convincat, ut, quod ei fuerat superfusum, ille cognoscat, quem debitae functioni fraus clandestina subtraxerat.<a 393 d.Iii k.Dec.Constantinopoli theodosio a.Iii et abundantio vc. conss.>

CJ.11.58.5.2: Imperatores Theodosius, Arcadius, Honorius

Emenso autem eo tempore actio denegabitur, exceptis minoribus qui fuerint indefensi, his etiam qui aberunt rei publicae causa: qui tamen ex eo tempore quae sunt statuta custodient, ex quo ad agendum habuerunt facultatem.<a 393 d.Iii k.Dec.Constantinopoli theodosio a.Iii et abundantio vc. conss.>

CJ.11.58.6: Imperatores Arcadius, Honorius

Peraequatores ac discussores, si incurrerint culpam neglegentiae vel gratiae, non solum honorum iacturam, verum etiam annonarum in quadruplum multam subire debebunt: ea vero, quae in damnum provincialium fuerint accepisse convicti, in quadruplum cogentur exsolvere. * arcad. et honor. aa. eusebio pp. *<a 396 d.Iiii k.April.Mediolani arcadio iiii et honorio iii aa.Conss.>

CJ.11.58.7pr.: Imperatores Honorius, Theodosius

Apud eum possessio firma permaneat, cui a peraequatore semel eam traditam fuisse constiterit. * honor. et theodos. aa. sebastio com. primi ordinis. *<a 417 d.Prid.Id.Mart.Ravennae honorio a.Xi et constantio ii conss.>

CJ.11.58.7.1: Imperatores Honorius, Theodosius

Reliqua vero temporis anteacti a novo domino fiscum postulare non patimur, ne alterius culpa alter incipiat subiacere dispendio.<a 417 d.Prid.Id.Mart.Ravennae honorio a.Xi et constantio ii conss.>

CJ.11.58.7.2: Imperatores Honorius, Theodosius

Si quis vero privatus aut obligatam sibi possessionem, quae deserta huc usque permansit, aut ex aliquo titulo deberi sibi iure confirmat, adlegationes suas sine mora vel per se vel per aliam personam legibus ordinatam manifestare debebit, ita ut, si aequitatis ratione suadente ad petitorem fuerit translata possessio, is, qui eam a peraequatore susceperit, rei melioratae receptis sublevetur expensis.<a 417 d.Prid.Id.Mart.Ravennae honorio a.Xi et constantio ii conss.>

CJ.11.58.7.3: Imperatores Honorius, Theodosius

Verum ne sub specie litis dominationes semel constitutae turbentur, sex mensum spatium censemus debere servari, intra quod is, qui putat sibi rem probabili ratione competere, debitas exserat actiones.<a 417 d.Prid.Id.Mart.Ravennae honorio a.Xi et constantio ii conss.>

CJ.11.58.7.4: Imperatores Honorius, Theodosius

Quod si tempus adscriptum silentio fuerit interveniente transactum, nullum penitus repetendi volumus esse principium.<a 417 d.Prid.Id.Mart.Ravennae honorio a.Xi et constantio ii conss.>

CJ.11.58.7.5: Imperatores Honorius, Theodosius

Quod si quis eo tempore, quo peraequator praedium alicui addicit, de suo iure vel per se vel per homines suos non crediderit actitandum, sex mensum curriculis evolutis in perpetuum conquiescat.<a 417 d.Prid.Id.Mart.Ravennae honorio a.Xi et constantio ii conss.>

CJ.11.59.0. De omni agro deserto et quando steriles fertilibus imponuntur.

CJ.11.59.1: Imperator Constantinus

Cum divus aurelianus parens noster civitatum ordines pro desertis possessionibus iusserit conveniri et pro his fundis, qui invenire dominos non potuerunt quos praeceperamus, earundem possessionum triennii immunitate percepta de sollemnibus satisfacere, servato hoc tenore praecipimus, ut, si constiterit ad suscipiendas easdem possessiones ordines minus idoneos esse, eorundem agrorum onera possessionibus et territoriis dividantur. * const. a. capestrino. *< acc.>

CJ.11.59.2: Imperator Constantinus

Si quis ab emphyteuticario seu patrimoniali possessore privati iuris quippiam comparaverit, cuius substantia alias possessiones sustentare consueverat, et succisis quasi quarundam virium nervis reliqua labuntur, earum possessionum onera subiturus est, quae penes distractores inutiles permanebunt. * const. a. *<a 337 d.Viii id.Dec.Thessalonicae feliciano et titiano conss.>

CJ.11.59.3: Imperatores Valentinianus, Valens

Quicumque deserta praedia meruerint sub certa immunitate, ad possessionem impetratorum non prius sinantur accedere, quam vel fideiussoribus idoneis periculo curialium datis vel fundis patrimonii sui maxime utilibus obligatis idonea cautione firmaverunt susceptam a se possessionem nullo detrimento publico relinquendam. * valentin. et valens aa. ad mamertinum pp. *<a 364 d.Vii k.Iun.Dibo ioviano et varroniano conss.>

CJ.11.59.4: Imperatores Valentinianus, Valens, Gratianus

Heredes scripti etiam pro minus idoneis fundis fiscale onus cogantur agnoscere, vel si renuntiandum hereditati putent, cedant his omnibus rebus, quas ex isdem bonis quocumque titulo et iure perceperint. * valentin. valens et grat. aaa. ad crescentem vic. africae. *<a 371 d.Iiii id.Iul.Contionaci gratiano a.Ii et probo conss.>

CJ.11.59.5: Imperatores Valens, Gratianus, Valentinianus

Qui utilia rei publicae loca possident, permixtione facta etiam deserta suscipiant, ut, si earum partium graventur accessu, quas antea per fastidium relinquerunt, cedant aliis curialibus, qui utraque hac condicione retineant, ut praestatione salva cum desertis et culta possideant sublata a paucis, quos iniquum est electa retinere, cum municipes gravatura sit pars relicta. * valens grat. et valentin. aaa. ad antonium pp. *<a xxx >

CJ.11.59.6pr.: Imperatores Gratianus, Valentinianus, Theodosius

Ut quisque conductor fuerit inventus possessor fundi, qui ex publico vel templorum iure descendit, huic ager iungatur inutilior. * grat. valentin. et theodos. aaa. nebridio com. rer. privat.*<a 383 d.Xv k.Febr.Constantinopoli merobaude ii et saturnino conss.. >

CJ.11.59.6.1: Imperatores Gratianus, Valentinianus, Theodosius

Quod si contra id reluctandum existimaverit, alius possessor sub eadem praestatione quaeratur, vel si voluntarius qui sit conductor non invenietur, tunc ad possessores antiquos, id est decuriones vel quoslibet alios, loca iuris praedicti adiunctis inutilibus revertantur, idoneis fideiussoribus praestitis.<a 383 d.Xv k.Febr.Constantinopoli merobaude ii et saturnino conss.. >

CJ.11.59.7pr.: Imperatores Gratianus, Valentinianus, Theodosius

Quicumque defectum fundum patrimonialem exercuerit, fertilem idoneumque praestiterit, salvo patrimoniali canone perpetuo ac privato iure defendat velut domesticum et avita successione quaesitum, sibi habeat, suis relinquat, neque eum aut promulgatione rescripti aut reverentia sacrae adnotationis quisquam a fructu impensi operis excludat. * grat. et valentin. et theodos. aaa. et arcad. a. cynegio pp.*<a 386 d. viii k. nov. constantinopoli honorio np. et euodio conss.>

CJ.11.59.7.1: Imperatores Gratianus, Valentinianus, Theodosius

Ceterum eos, qui opimas ac fertiles possident terras aut etiam nunc sibi aestimant eligendas, pro defecta scilicet portione summam debiti praesentis iubemus implere: illos etiam, qui emphyteuticario nomine nec ad plenum idoneas nec omnibus modis vacuas detinent, sic ex illis quoque quae praesidio indigent iustam ac debitam quantitatem debere suscipere, ut indulto temporis spatio post biennium decretum canonem solvendum esse meminerint.<a 386 d. viii k. nov. constantinopoli honorio np. et euodio conss.>

CJ.11.59.7.2: Imperatores Gratianus, Valentinianus, Theodosius

Nemo tamen qualibet meriti et potestatis obiectione submoveatur, quominus ad diacatochiae vicem defectas possessiones patrimonialis iuris accipiat, earum tributa et canonem soluturus: illud speciali observatione procurans, ut primum vicinas et in eodem territorio sortiatur, dehinc si neque finitimas neque in isdem locis reppererit constitutas, tunc demum etiam longius positas, sed in quantum fieri valet pro interiecto spatio sibimet cohaerentes pro modo et aequitate suscipiat, ut id consensu omnium fiat, quod omnibus profuturum est.<a 386 d. viii k. nov. constantinopoli honorio np. et euodio conss.>

CJ.11.59.8: Imperatores Valentinianus, Theodosius, Arcadius

Qui agros domino cessante desertos vel longe positos vel in finitimis ad privatum pariter publicumque compendium excolere festinat, voluntati suae nostrum noverit adesse responsum: ita tamen, ut, si vacanti ac destituto solo novus cultor insederit, ac vetus dominus intra biennium eadem ad suum ius voluerit revocare, restitutis primitus quae expensa constiterit facultatem loci proprii consequatur. nam si biennii fuerit tempus emensum, omni possessionis et dominii carebit iure qui siluit. * valentin. theodos. et arcad. aaa. tatiano pp. orientis. *<a 388 - 392 >

CJ.11.59.9: Imperatores Theodosius, Arcadius, Honorius

Qui fundos patrimoniales iure privato salvo canone susceperunt, hanc omnes sine ullius exceptione personae propositam intellegant optionem, ut aut ea loca, quibus minor est soli fecunditas, cum his, ex quibus fructus uberes capiunt, suscipere et tenere non abnuant, aut si eorum refugiunt sterilitatem, opimioribus cedant. * theodos. arcad. et honor. aaa. rufino pp. orientis. *<a 394 d. viii id. nov. tyro arcadio iii et honorio ii aa. conss.>

CJ.11.59.10: Imperatores Arcadius, Honorius

Qui per potentiam fundos opimos ac fertiles occuparunt, cum quaestuosis uberibusque pro rata portione suscipiant infecundos ex eadem substantia. * arcad. et honor. aa. eutychiano pp. *<a 398 d. non. mart. constantinopoli honorio a. iiii et eutychiano conss.>

CJ.11.59.11pr.: Imperatores Arcadius, Honorius

Locorum domini intra sex menses edictis vocati revertantur. qui si adfuerint, et propria teneant et ea quae ex praeterito contraxerint debita redhibere cogantur. * arcad. et honor. aa. hadriano pp. *<a 400 d. vi k. sept. stilichone et aureliano conss.>

CJ.11.59.11.1: Imperatores Arcadius, Honorius

Sin vero impares esse earum rerum tributis propria confitentur absentia nec adesse voluerint, penes eos, qui haec susceperint et certum quem tributorum canonem promittunt, proprietas possessionis intemerata permaneant, ut, postquam ea exsolverint, sciant sibi inquietudinem submovendam nec subreptione cuiusquam competitionis loca quae tenuerunt auferenda.<a 400 d. vi k. sept. stilichone et aureliano conss.>

CJ.11.59.11.2: Imperatores Arcadius, Honorius

Quibus etiam illud indulsimus, ut ex eo tempore, ex quo primum loca de quibus agitur coeperint possidere, tributa poscantur.<a 400 d. vi k. sept. stilichone et aureliano conss.>

CJ.11.59.12: Imperatores Honorius, Theodosius

Hac definitione sancimus nullum possessorem neque munificum praedium pro alienis debitis vel destitutione esse retinendum neque eorum praediorum depectione praegravari, quae ex isdem bonis quae retinentur nequaquam esse monstrantur, ne ullis praestigiis atque commentis exactio mutiletur. * honor. et theodos. aa. seleuco pp. *<a 412 d. prid. k. febr. ravennae honorio viiii et theodosio v aa. conss.>

CJ.11.59.13: Imperatores Honorius, Theodosius

Omnium praediorum actores ac domini requirantur. quorum si vitio probantur debita fuisse contracta, in absoluto est, ut debeat dominium commutari. * honor. et theodos. aa. ad probum. *<a 414 d.Iii id.Iun.Constantinopoli constante et constantio conss. >

CJ.11.59.14: Imperatores Honorius, Theodosius

Rura et possessiones, quas curiales quolibet pacto publicatis apud acta provincialia desideriis suis vel reliquerunt vel possidere alios permiserunt, penes eos , qui eas excoluerunt et functiones publicas recognoscunt, firmiter perdurabunt, nullam habentibus curialibus copiam repetendi. * honor. et theodos. aa. aureliano pp. *<a 415 d.Iii non.Dec.Honorio x et theodosio vi aa.Conss.>

CJ.11.59.15: Imperatores Honorius, Theodosius

Si quis deserta praedia, quae navalem sustinent functionem et in desertis nunc usque remanent, sub peraequationis iure perceperit, meliore condicione in omnibus titulis convenit ea relevari, ut gravis sors navalis esse non possit pro ea quae resederit portiuncula, cum aliis fuerit dispendiis liberata. * honor. et theodos. aa. sebastio com. primi ordinis. *<a 417 d.Prid.Mart.Ravennae honorio a.Xi et constantio ii conss. >

CJ.11.59.16: Imperatores Theodosius, Valentinianus

Iubemus neminem curialem pro alieni territorii debitis attineri, sed tantum municipem pro gleba propria conveniri. * theodos. et valentin. aa. celeri procons. africae. *<a 429 d.V k.Mai.Ravennae post cons. felicis et tauri vv.Cc.>

CJ.11.59.17: Imperatores Theodosius, Valentinianus

Si quis auctoritate nostri numinis de fundis patrimonialibus steriles sub certi canonis pollicitatione susceperit, firmiter eum volumus possidere sub eiusdem tantum canonis solutione, quem nostrae maiestatis auctoritas per annos singulos solvendum esse praescripserit, nullamque eos descriptionem aut adiectionem aut innovationem in posterum sustinere, quoniam nimis absurdum est eos, qui nobis hortantibus fundus inopes atque egenos magno labore impenso aut exhausto patrimonio vix forte meliorare potuerint, utpote deceptos inopinatum onus suscipere illudque velut quadam circumventione deposci, quod si se daturos praescissent, fundos minime suscipere aut etiam colere paterentur. * theodos. et valentin. aa. hermocrati pp. orientis. *<a 444 d.Xii k.Dec.Constantinopoli theodosio a.Xviii et albino conss.>

CJ.11.60.0. De fundis limitotrophis et terris et paludibus et pascuis limitaneis vel castellorum.

CJ.11.60.1pr.: Imperatores Valentinianus, Valens, Gratianus

Tiberianus ad possibilitatem singulorum quorumque locorum intuens statuit certas possessiones, quae ad limitem frumenta conveherent. * valentin. valens et grat. aaa. ad licinium pp. *<a 385 d.Xviii k.Oct.Aquileiae arcadio a.Et bautone conss.>

CJ.11.60.1.1: Imperatores Valentinianus, Valens, Gratianus

Quocirca generali lege sancimus tiberiani dispositionem oportere servari, amoventes, quidquid vel potentia uniuscuiusque elicuit vel furtiva deprecatio, addentesque nihilo minus in futurum nulli licere adversus utilem vetustatem et praesentem legem nostram importuna et respuenda reposcere.<a 385 d.Xviii k.Oct.Aquileiae arcadio a.Et bautone conss.>

CJ.11.60.2pr.: Imperatores Honorius, Theodosius

Quicumque castellorum loca quocumque titulo possident, cedant ac deserant, quia ab his tantum fas est possideri castellorum territoria, quibus adscripta sunt et de quibus iudicavit antiquitas. * honor. et theodos. aa. asclepiodoto pp. et cons. ordinario. *<a 423 d.Non.Mart.Constantinopoli asclepiodoto et mariniano conss. >

CJ.11.60.2.1: Imperatores Honorius, Theodosius

Quod si ulterius vel privatae condicionis quispiam in his locis vel non castellanus miles fuerit detentator inventus, capitali sententia cum bonorum publicatione plectatur.<a 423 d.Non.Mart.Constantinopoli asclepiodoto et mariniano conss. >

CJ.11.60.3pr.: Imperatores Theodosius, Valentinianus

Agros limitaneos universos cum paludibus omnique iure, quos ex prisca dispositione limitanei milites ab omni munere vacuos ipsi curare pro suo compendio atque arare consueverunt, et si in praesenti coluntur, ab his firmiter ac sine ullo concussionis gravamine detineri, et si ab aliis possidentur, cuiuslibet spatii temporis praescriptione cessante ab universis detentatoribus vindicatos isdem militibus sine ullo prorsus, sicut antiquitus statutum est, collationis onere volumus adsignari: in his etiam contra eos, qui praeceptionibus nostris obviam venire temptaverint, proscriptionis poena valitura. * theodos. et valentin. aa. nomo mag. off. *<a 443 d.Prid.Id.Sept.Constantinopoli maximo ii et paterio conss.>

CJ.11.60.3.1: Imperatores Theodosius, Valentinianus

Nam si quis forte, quod minime audere debuerat, emptionis titulo memorati iuris possidet praedia, competens ei actio contra venditorem intacta servabitur.<a 443 d.Prid.Id.Sept.Constantinopoli maximo ii et paterio conss.>

CJ.11.61.0. De pascuis publicis vel privatis.

CJ.11.61.1pr.: Imperatores Valentinianus, Valens

Cum nulla ratio sit, cur in pascuis saltibus rei privatae pensio debeat ampliari , nequaquam pro libidine ordinum augmenta facienda sunt. * valentin. et valens aa. ad rufinum pp. *<a 365 d.Viiii k.Oct.Luceriae valentiniano et valente aa. conss.>

CJ.11.61.1.1: Imperatores Valentinianus, Valens

Etenim idcirco graviorem pensionem imponi ab ordinibus accipimus, ut animalia ex rebus privatis nostris a locorum pastibus arceantur: quod fieri non oportere divae memoriae iulianus prorogata iussione constituit.<a 365 d.Viiii k.Oct.Luceriae valentiniano et valente aa. conss.>

CJ.11.61.1.2: Imperatores Valentinianus, Valens

Quare excellens auctoritas tua conventis rectoribus provinciarum non eam licitationis necessitatem patiatur inferri, quam repentinam faciunt civitates, sed eam manere decernat, quam statuit antiquitas.<a 365 d.Viiii k.Oct.Luceriae valentiniano et valente aa. conss.>

CJ.11.61.2: Imperatores Arcadius, Honorius

Insignis auctoritas tua hac condicione a publicis pratis apamenis animalia militum prohiberi praecipiat, ut universi cognoscant de emolumentis eorum tuique officii facultatibus duodecim libras auri fisci commodis exigendas, si quisquam posthac memorata prata mutilare temptaverit: non minore decernenda poena, si etiam prata privatorum antiochenorum fuerint devastata: ita tamen, ut sine laesione provincialium provideant curiales, quo pacto animalium militarium pastui consulatur. * arcad. et honor. aa.Simplicio com. et mag. utr. mil. *<a 398 d.V id.Mart.Constantinopoli honorio a.Iiii et eutychiano vc.Conss.>

CJ.11.61.3pr.: Imperatores Honorius, Theodosius

Prata provincialium nostrorum et praecipue rei privatae nostrae perniciosum est militum molestia fatigari, ideoque lege ad amplissimam praefecturam promulgata censuimus, ne hoc deinceps usurpetur. * honor. et theodos. aa. comm. et magg. mil. *<a 415 d.Non sept.Honorio x et theodosio vi aa.Conss.>

CJ.11.61.3.1: Imperatores Honorius, Theodosius

Super qua re universos quorum interest convenire tua magnificentia non moretur, ne permittant possessores vel colonos pratorum gratia qualibet importunitate vexari.<a 415 d.Non sept.Honorio x et theodosio vi aa.Conss.>

CJ.11.62.0. De fundis patrimonialibus et saltuensibus et emphyteuticis et eorum conductoribus.

CJ.11.62.1: Imperator Constantinus

Si quis fundos emphyteutici iuris salva lege fisci citra iudicis auctoritatem donaverit, donationes firmae sint, dummodo suis quibusque temporibus ea quae fisco pensitanda sunt repraesentare cogantur. * const. a. cupito. *<a 315 pp.Xvii k.Iul.Treviris constantino aa.Iiii et licinio iiii conss.>

CJ.11.62.2: Imperator Constantinus

Patrimonialis fundi pensitationem aurariam seu frumentariam intra tempus omissam minorum dominio non nocere praecipimus nec ad fraudem iuris eorum evadere, si, quod sollemniter debetur, paulo serius inferatur: ita tamen, ut permanente substantia parvulorum iudex tutorem vel curatorem, per quem differtur illatio, neglegentiae suae et deserti officii poenas exigat et damna deplorare compellat. * const. a. ad dracontium. *<a xxx >

CJ.11.62.3pr.: Imperatores Valentinianus, Valens

Quicumque possessiones ex emphyteutico iure susceperint, ea ad refundendum uti occasione non possunt, qua adserant desertas esse coepisse, tametsi rescripta per obreptionem meruerint. * valentin. et valens aa. ad germanianum com. sacr. larg. *<a 365 d.Viii k.Oct.Mediolani valentiniano et valente aa.Conss.>

CJ.11.62.3.1: Imperatores Valentinianus, Valens

Sed nec avelli eas ab his posse, nec si licitatio ab alio fuerit promissa, sed eas in perpetuum apud eos qui eas susceperint et eorum posteritatem remanere, nec si super hoc rescriptum fuerit adversus eos impetratum.<a 365 d.Viii k.Oct.Mediolani valentiniano et valente aa.Conss.>

CJ.11.62.4: Imperatores Valentinianus, Valens

Fundi patrimoniales et qui ex emphyteutico iure ad domum nostram diversis generibus devoluti sunt, sic eis qui eos poposcerint cedunt, ut commissi metus esse non possit. neque enim magis commodamus nostra, quam tradimus ea iure dominii: ita tamen, ut ea, quae in nostra possessione positi praestiterint, et in posterum dissolvant. * vanentin. et valens aa. ad florianum com. rer. privat. *<a 368 d.Id.Mart.Treveris valentiniano ii et valente ii aa.Conss. >

CJ.11.62.5: Imperatores Valens, Gratianus, Valentinianus

Si qui a prioribus colonis vel emphyteuticariis destitutum patrimonialem fundum a peraequatore vel censitore susceperint, perpetuo eundem atque inconcusso iure possideant, nec quisquam secundus petitor accedat. * valens grat. et valentin. aaa. ad modestum pp. *<a 377 d.Iiii non.Nov.Gratiano a.Iiii et merobaude conss.>

CJ.11.62.6pr.: Imperatores Gratianus, Valentinianus, Theodosius

Hi, quibus patrimoniales possessiones per asianam ac ponticam dioecesin vel a nobis vel a divis parentibus nostris sacra largitate donatae sunt, inconcusse possideant atque ad suos posteros mittant. * grat. valentin. et theodos. aaa.

nebridio com. rer. privat. *<a 384 d.Iii k.April.Constantinopoli ricomere et clearcho conss.>

CJ.11.62.6.1: Imperatores Gratianus, Valentinianus, Theodosius

Quod quidem non solum in heredibus, sed et in contractoribus omni genere volumus custodiri.<a 384 d.Iii k.April.Constantinopoli ricomere et clearcho conss.>

CJ.11.62.7pr.: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

Quicumque ad emphyteusin fundorum patrimonialium vel rei publicae iussu nostri numinis venerit, is si redundantia fortunarum idoneus fuerit ad restituenda, quae desertis forte possessionibus requirentur, patrimonium suum publicis implicet nexibus. * grat. valentin. theodos. et arcad. aaaa. cynegio pp. *<a 386 d.Vi k.Mart.Constantinopoli honorio nob.Puero et euodio conss.>

CJ.11.62.7.1: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

Si vero minor facultatibus probabitur, datis fideiussoribus idoneis ad emphyteusin accedat: scientibus his, quos talium rerum cura sollicitat, in se neglegentiae damna, si huiusmodi cautio defuerit, esse vertenda.<a 386 d.Vi k.Mart.Constantinopoli honorio nob.Puero et euodio conss.>

CJ.11.62.8: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

Omnes fundi patrimoniales per mesopotamiam et osrhoenam provincias, quos constat divorum retro principum sanctionibus limiti deputatos, ad ius pristinum sine ullius adsertionis revocetur obstaculo praebituri omnia quae antea impendenda necessitatibus limitis praebere consueverant, ita ut nulli penitus audiantur, qui aut rescripto aut adnotatione dominium vel emphyteusin vel conductionem quolibet genere largitatis de nostra liberalitate meruerint. * grat. valentin. theodos. et arcad. aaaa. clearcho pp. *<a 386 d.Prid.K.Mai.Constnatinopoli honorio np.Et euodio conss.>

CJ.11.62.9: Imperatores Arcadius, Honorius

Universi cognoscant nihil privato iure salvo canone fundis emptis cum patrimonialibus esse commune, ita ut ad eos numquam patrimonialium fundorum peraequator accedat: gravi multa feriendo eo, qui statuta nostrae clementiae ausus fuerit temerare. * arcad. et honor. aa. eutychiano pp. *<a 398 d.Prid.Non.Iul.Nicomediae honorio a.Iiii et eutychiano conss.>

CJ.11.62.10: Imperatores Arcadius, Honorius

Fundos patrimoniales eos dumtaxat, qui salvo canone iure privato nostra liberalitate concessi sunt, cum his patrimonialibus, qui in condicione propria constituti sunt, illustris auctoritas tua iubebit exaequari, ita ut relevato, quod imminet fatigatis, translatio in eos, qui integris viribus florent, adscriptio tributorum aequa lance dividatur. * arcad. et honor. aa. eutychiano pp. *<a 399 d.Iiii id.April.Constantinopoli theodoro cons.>

CJ.11.62.11: Imperatores Honorius, Theodosius

Ius emphyteutici praedii, quod sine obligationis vinculo retentatum est, nostro iudicio immutabile perdurare praecipimus: possessionem autem, quae sine obligatione speciali fuerit vitiosa, vetustate temporis volumus adiuvari. * honor. et theodos. aa. probo com. sacr. larg. *<a 412 d.Id.April.Ravennae honorio viiii et theodosio v aa.Conss. >

CJ.11.62.12pr.: Imperatores Theodosius, Valentinianus

Possessores vel emphyteuticarii patrimoniales, qui fundos minime nunc usque compararunt, eodem largitatis modo nequaquam ad eorum comparationem urgueantur, sed tamquam pretiis depensis, sic eis nostri numinis beneficio potiantur, ut, quod iuris alter inferendo pretium consecutus est, hoc nostra liberalitate praedictus emphyteuticarius habeat. * theodos. et valentin. aa. tauro pp.Et patricio. *<a 434 d.Xiiii k.Iul.Constantinopoli ariobindo et aspare conss.>

CJ.11.62.12.1: Imperatores Theodosius, Valentinianus

Illud quoque ius, in quibus coluit praediis, quod aut ex successione aut ex comparatione privata aut nostri numinis liberalitate aut quocumque modo possedit, sciat inlibatum intemeratumque servari: licentia eis concedenda etiam libertates mancipiis ex fundis patrimonialibus atque emphyteuticariis, cum fundorum sunt domini, praestare.<a 434 d.Xiiii k.Iul.Constantinopoli ariobindo et aspare conss.>

CJ.11.62.13: Imperatores Theodosius, Valentinianus

Nulli iam in posterum licere praecipimus patrimoniales seu limitotrophos vel saltuenses fundos, qui per tractum orientis positi sunt, ad ius transferre privatum, sive dempto sive salvo canone iuris fundorum immutatio postuletur: legis temeratores quinquaginta librarum auri poena coercentes tam videlicet petitorem quam officium, quod petitionem concedit admitti, licet adnotatio nostra, licet divina pragmatica contra vetitum proferatur. * theodos. et valentin. aa. ad florentium pp. *<a 439 d.Vi id.Iun.Constantinopoli theodosio a.Xvii et festo conss.>

CJ.11.62.14pr.: Imperator Anastasius

Iubemus omnes, qui in quacumque dioecesi in quacumque provincia vel quolibet saltu fundos patrimoniales vel templorum aut agonothetici seu relevatorum iugorum vel cuiuscumque iuris per quadraginta iugiter annos (possessione scilicet non solum eorum qui nunc detinent, verum etiam eorum quoque qui antea possederant computanda) ex quocumque titulo vel etiam sine titulo hactenus possederunt vel postea per memoratum quadraginta annorum spatium possederint, nullam penitus super dominio memoratorum omnium fundorum vel locorum vel domorum a publico actionem vel molestiam aut quamlibet inquietudinem formidare. * anastas. a. matroniano pp. *<a 491 d. iii k. aug. constantinopoli olybrio vc. cons.>

CJ.11.62.14.1: Imperator Anastasius

Sed impositum canonem pro qualitate iuris, cuius praedia sunt vel loca, per singulos annos solventes pro certo habeant suum esse quod possident vel postea possederint, ita ut omnibus ad excludendam omnem quolibet modo e publico movendam quaestionem nudae et ex quocumque titulo vel etiam sine titulo corporalis quadraginta annorum iugis possessionis exceptio possit sufficere.<a 491 d. iii k. aug. constantinopoli olybrio vc. cons.>

CJ.11.62.14.2: Imperator Anastasius

Hoc etiam adiciendo, ut illi quoque, qui dempto canone huiusmodi fundos ab initio principali iussione datos sibi fuisse confirmant, si per quadragesimos annos adempti canonis beneficium iugiter possederunt, nec canonem, cuius ademptionem quadraginta, sicut dictum est, annorum possessio testatur, possint penitus profligari, eo quod nostrae pietati placuit in utroque casu, id est tam salvo quam dempto canone, possessorum iura nostrorum in eo statu, in quo per quadragesimos, sicut dictum est, iugiter annos manserunt, absque ulla innovatione durare.<a 491 d. iii k. aug. constantinopoli olybrio vc. cons.>

CJ.11.63.0. De mancipiis et colonis patrimonialium et saltuensium et emphyteuticariorum fundorum.

CJ.11.63.1pr.: Imperator Constantinus

Emphyteuticarios gravant coloni agros praeter consuetudinem usurpantes, quos nullis culturis erudierunt, cum sollemnitas id eos attractare permittat, quod eorum labore vel olivetis est obsitum vel vinetis. sed et inriguas fontium aquas usurpare conantur, quarum fructus solis emphyteuticariis debentur. * const. a. *<a 319 pp. vii id. mart. carthagine constantino a. v et licinio c. conss.>

CJ.11.63.1.1: Imperator Constantinus

Ideoque placuit, ut deinceps aquarum ius potestatesque penes emphyteuticarios permaneant, tantumque ex eis colonis impertiatur, quantum culturis eorum agrorum sufficere manifestum est, quos ipsi colunt.<a 319 pp. vii id. mart. carthagine constantino a. v et licinio c. conss.>

CJ.11.63.1.2: Imperator Constantinus

Pro modo autem superfluae inrigationis, quam ultra culturas suas usurpaverint, emphyteuticariis possessoribus pensiones accessionesque praebeant.<a 319 pp. vii id. mart. carthagine constantino a. v et licinio c. conss.>

CJ.11.63.2: Imperatores Valentinianus, Valens

Libertates, quas mancipiis ex fundis patrimonialibus atque emphyteuticis qui fundorum non sunt domini praestiterunt, rationales huiusmodi praecepti auctoritate rescindant. * valentin. et valens aa. ad germanianum com. sacr. larg. *<a 367 pp. xiii k. mai. lupicino et iovino conss.>

CJ.11.63.3: Imperatores Gratianus, Valentinianus, Theodosius

Cognovimus a nonnullis, qui patrimoniales fundos meruerunt, colonos antiquissimos proturbari atque in eorum locum vel servos proprios vel alios colonos subrogari. edicti itaque huius auctoritate sancimus eos, qui deinceps huiusmodi aliquid crediderint attemptandum, isdem possessionibus esse privandos. * grat. valentin. et theodos. aaa. postumiano pp. *<a 383 ?>

CJ.11.63.4pr.: Imperatores Gratianus, Valentinianus, Theodosius

Super patrimonialium refectione fundorum dudum nostris est legibus constitutum, ut ii, qui eos colentes solum eorum verterant, nunc alia loca deligentes, nunc ad militiam convolantes, ad avitas condiciones et propria iura revocentur. * grat. valentin. et theodos. aaa. et arcad. a. cynegio pp. *<a 384 - 389 >

CJ.11.63.4.1: Imperatores Gratianus, Valentinianus, Theodosius

Ceterum eos, qui castrensibus stipendiis otia quieta meruerunt veterani constituti, nequaquam placet tela in usum vomeris ligonisque convertere.<a 384 - 389 >

CJ.11.64.0. De fugitivis colonis patrimonialibus et emphyteuticis et saltuensibus.

CJ.11.64.1: Imperatores Gratianus, Valentinianus, Theodosius

Quicumque parvuli ex municipibus vel colonis patrimonialibus aut saltuensibus, quorum tamen avi ac patres implicati huiusmodi functionibus fuerint, coniventia militaris officii ad stipendium castrense vel officia diversa transierint, ad munera patriae vel agrorum cultus conventis ducibus tribunis ac praepositis revocentur neque his prosint stipendia. * grat. valentin. et theodos. aaa. cynegio pp. *<>

CJ.11.64.2: Imperatores Gratianus, Valentinianus, Theodosius

Quisquis colonum patrimonialem aut sollicitatione susceperit aut occultatione celaverit, non solum ipsum restituere, sed etiam libram auri poenae nomine cogatur inferre. * grat. valentin. et theodos. aaa. ad cynegium pp. *<a 386 d.Viii k.Nov.Constantinopoli honorio np.Et euodio conss.>

CJ.11.64.3: Imperatores Honorius, Theodosius

Cuiuscumque adnotationis vel oraculi dudum impetrati vel postea eliciendi auctoritate submota omnes, quos patrimonialium agrorum vinculis fortuna tenet adstrictos, sub quibuslibet gradibus militantes ad provinciae moderatoris iudicium ilico sub idonea intercessione mittentur. * honor. et theodos. aa. anthemio pp. *<a 408-415 >

CJ.11.65.0. De collatione fundorum patrimonialium et emphyteuticorum.

CJ.11.65.1: Imperator Constantinus

Emphyteuticarii possessores, qui mansuetudinis nostrae beneficio ad extraordinaria minime devocantur munera, sicut ceteri provinciales obsequium suum muniendis itineribus impendant. nulla enim ratione debent ab hoc, quod in commune omnibus profuturum est, seiungi. * const. a. ad proculum procons. africae. *<a 319 pp.Non.Mai.Karthagine constantino a.V et licinio c.Conss.>

CJ.11.65.2: Imperator Constantinus

Patrimoniales fundos extraordinariis oneribus vel mediae aut tertiae portionis obsequiis fatigari non convenit, cum eosdem et auri speciem et frumenti plurimum modum constet persolvere: ita ut, qui violare statuta temptaverit, puniatur. * const. a. ad catullinum procons. africae. *<a 319 pp. vi k. sept. carthagini constantino a. v et licinio conss.>

CJ.11.65.3: Imperator Julianus

Omnes, qui patrimoniales fundos sive communiter sive ex asse retinent, pro his conveniendi sunt ad universorum munerum ad eosdem fundos pertinentium pro rata portione vel in solidum functiones, sicut unumquemque privatorum necessitas publicae pensitationis adstringit. * iul. a.*<a 362 d. v k. april. mamertino et nevitta conss.>

CJ.11.65.4pr.: Imperatores Valentinianus, Valens

Placuit, ut emphyteuticorum fundorum patrimonialiumque possessores, quo voluerint tempore et quantum habuerint pensionis paratum (dummodo non amplius quam in tribus per singulos annos vicibus) officio rationalis adsignent ac de suscepto ab eodem securitatem eodem die pro more percipiant, modo ut intra ianuariarum iduum diem omnis summa ratiociniis publicis inferatur: gravissimae poenae subdendo officio, si cuiquam quolibet anni tempore (dummodo nequaquam numerum trinae illationis excedat) solutionem facere gestienti negaverit susceptionis officium, vel si moram fecerit in chirographo securitatis edendo. * valentin. et valens aa. ad germanianum com. sacr. larg. *<a 366>

CJ.11.65.4.1: Imperatores Valentinianus, Valens

Super quo possessores apud curatores vel magistratus aut quicumque in locis fuerint, qui conficiendorum actorum habeant potestatem, conveniet contestari, ut et de officii insolentia constet, in quod exercenda vindicta est, et his possit esse consultum.<a 366>

CJ.11.65.5pr.: Imperatores Arcadius, Honorius

Per omnes provincias patrimonialium fundorum ab ordinariis iudicibus canon exigatur, et quidquid exactum fuerit, dirigatur. * arcad. et honor. aa. messalae pp. *<a 399 d. xvi k. iun. mediolani theodoro cons.>

CJ.11.65.5.1: Imperatores Arcadius, Honorius

Sciant vero memorati iudices nihil sibi ex privatae rei canone vel ex eo, quod ex isdem titulis contigerit, ad necessitates alias transferendum, nisi malint gravissima severitate eorum licentiam coerceri.<a 399 d. xvi k. iun. mediolani theodoro cons.>

CJ.11.66.0. De fundis rei privatae et saltibus divinae domus.

CJ.11.66.1: Imperatores Constantius, constans

Universi cognoscant has possessiones quas de fisco nostro comparaverunt seu comparant, nullo a nobis iure retrahi, sed propria firmitate possessas etiam ad posteros suos dominii perpetui durabilitate dimitti. * constantius et constans aa. edictum ad heliopolitanos. *<a 341 d. prid. id. febr.Antiochiae Marcellino et probino conss.>

CJ.11.66.2pr.: Imperatores Valentinianus, Valens

Ii, quos commoditas privatae rei praediorum ad ea postulanda sollicitat, adeant tuae dicationis officium et modum suae deliberationis indicent per libellos certumque habeant pro unaquaque villa, cum eo onere vel forma cui nunc habetur obnoxia ad novi domini iura migraverit, ut, si quid adiecerit sumptus cura sollertia, quidquid mancipiorum vel pecoris adcreverit, capitationis aut canonis augmenta non patiatur, sed solis dominis heredibusque dominorum sit cessura felicitas. * valentin. et valens aa. ad florianum com. rer. privat. *<a xxx >

CJ.11.66.2.1: Imperatores Valentinianus, Valens

Si quis autem in annis singulis non solverit debitum, ex re ipsius, quod in reliquis remansisse claruerit, sine aliquibus dependere cogetur indutiis.<a xxx >

CJ.11.66.2.2: Imperatores Valentinianus, Valens

Sane si quem postea minus idoneum factum esse constabit nec ita ut expedit rationem reddere pensionis, res, quas ex nostris rebus acceperat, ad alium idoneum iure quo sanximus transferentur: nec tamen decoctoris cuiusque reliquis qui novus accedit onerari.<a xxx >

CJ.11.66.3: Imperatores Gratianus, Valentinianus, Theodosius

Quicumque possessionem rei privatae nostrae acceptam suo nomine vel iure perpetuo vel titulo conductionis ei crediderit esse tradendam, qui pensare utilitatem patrimonii nostri solvendo non valeat, is pro eo quem succedaneum subrogavit perpetuae solutioni statuatur obnoxius. * grat. valentin. et theodos. aaa. ad hesperium procons. africae.*<a 376?>

CJ.11.66.4: Imperatores Gratianus, Valentinianus, Theodosius

Universi fundi templorum ad rationalium rei privatae sollicitudinem curamque pertineant atque ab his anniversariis solutionibus postulatis peculiari, ut semper fuit, studio defendantur. * grat. valentin. et theodos. aaa. ad nebridium com. rer. privat.*<a 382-384 >

CJ.11.66.5pr.: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

Usus aquae, quae fundorum nostrorum utilitatibus serviebat, plurimorum dicitur usurpatione sublatus, idque procuratorum coniventia vel dissimulatione perfectum , ut agrorum fertilitas destituta nullos fructus cultoribus praestet. * grat. valentin. et theodos. et arcad. aaaa. ad nebridium com. rer. privat.*<a 383-384 >

CJ.11.66.5.1: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

Quia igitur satis iniustum est statum florentis ante patrimonii aridae sitis molestia fatigari, ad meatus pristinos universum aquae modum temporis praescriptione submota praecipimus revocari.<a 383-384 >

CJ.11.66.6: Imperatores Arcadius, Honorius

Eum, qui curiae vel collegio vel burgis ceterisque corporibus per triginta annos sine interpellatione servierit, res dominica vel intentio privata non inquietabit, si colonatus vel inquilinatus quaestionem movere temptaverit: sed in curia vel in corpore, in quo servierit, remaneat. * arcad. et honor. aa. vincentio pp. galliarum. *<a 400 d. iii k. iul. mediolani stilichone et aureliano conss.>

CJ.11.66.7pr.: Imperatores Theodosius, Valentinianus

Nemo dempto canone ad comparationem dominicae possessionis accedat. * theodos. et valentin. aa. ad eudoxium com. rer. privat. *<a 440 d. xiii k. iun. constantinopoli anatolio vc. cons.>

CJ.11.66.7.1: Imperatores Theodosius, Valentinianus

Quod si quis in posterum ad interdictum contractum accesserit, eum volumus pretia perdere fundos reddere fructus redhibere perpetuo nec expensarum vel melioratae rei fructuum exactioni compensationem opponere nec temporis sibimet contra nostra commoda praescriptione, excepto vetustatis auxilio, blandiri.<a 440 d. xiii k. iun. constantinopoli anatolio vc. cons.>

CJ.11.66.7.2: Imperatores Theodosius, Valentinianus

Palatinum etiam officium, si quoquo modo contractus eiusmodi fuerit celebratus vel si talem petitionem instruxerit, quinquaginta pondo auri poenae nomine inferre privato nostrae mansuetudinis aerario.<a 440 d. xiii k. iun. constantinopoli anatolio vc. cons.>

CJ.11.66.7.3: Imperatores Theodosius, Valentinianus

Nulla liberalitate nostrae clementiae, nulla sanctione contra tanta rei privatae commoda valitura, licet adnotatio vel divina pragmatica sit, quae contra vetita canonem vendere concedit vel poenam palatino remittit officio.<a 440 d. xiii k. iun. constantinopoli anatolio vc. cons.>

CJ.11.67.0. De fundis et saltibus rei dominicae.

CJ.11.67.1: Imperatores Valentinianus, Theodosius, Arcadius

Si quis ovium vel equarum greges in saltus rei dominicae alienus immiserit, fisco ilico vindicetur. quod si venalis procuratorum coniventia, ut id deinceps temptetur, admiserit, gravissimo eos iubemus supplicio subiacere. * valentin. theodos. et arcad. aaa. deprianio com. rer. privat. *<a xxx >

CJ.11.67.2pr.: Imperatores Theodosius, Arcadius, Honorius

Si qua loca ad sacrum dominium pertinentia cuiuslibet temeritas occupavit, secundum veteris census fidem in sua iura retrahantur: rescriptis per obreptionem impetratis et praescriptione longi temporis et novi census praeiudicio in hac causa submovendis. * theodos. arcad. et honor. aaa. ad apulum com. domorum. *<a 396 d.V k.April.Constantinopoli arcadio iiii et honorio iii aa.Conss.>

CJ.11.67.2.1: Imperatores Theodosius, Arcadius, Honorius

Neque enim aut precatio colorata aut incubatio diuturna aut novella professio proprietatis nostrae privilegium abolere potuerunt.<a 396 d.V k.April.Constantinopoli arcadio iiii et honorio iii aa.Conss.>

CJ.11.68.0. De agricolis et mancipiis dominicis vel fiscalibus sive rei privatae.

CJ.11.68.1: Imperator Constantinus

Nullus omnino originalis colonus rei privatae nostrae ad aliquos honores vel quaelibet alia civitatis munera devocetur. nec enim civitatum ordinibus et ceteris , ex quibus pro multitudine fieri nominationes oportet, per omnia florentibus ad haec suprema praesidia iniuriosa nominatione descendendum est. * const. a. ad constantium pp. *<a xxx >

CJ.11.68.2: Imperator Constantinus

Colonos nostros, qui sunt privati vel ad ratiocinia gerenda vel ad colendos agros idonei, retrahi iubemus ac tantum colendis nostris rebus addici, quin etiam in posterum observari, ne quis eorum rem privatam cuiusquam gerendam aut aliquid ministrandum suscipiat. * const. a. ianiuario com. orientis. *< >

CJ.11.68.3: Imperatores Valentinianus, Valens

Servi atque coloni, etiam eorum filii vel nepotes, vel quicumque de fundis ac possessionibus nostris clanculo ad officia convolaverint diversa, reddantur, etiamsi armatae habuerint sacramenta militiae. nos enim etiam eos discingi iubemus ac reddi, qui protectorum fuerint nomen adepti. * valentin. et valens aa. ad equitium mag. equitum et peditum. *<a xxx >

CJ.11.68.4: Imperatores Valentinianus, Valens

Ex ingenuo et colonis ancillisque nostris natos natasve origini, ex qua matres eorum sunt, facies deputari. * valentin. et valens aa. et grat. a. ad florianum com. rer. privat.*<a xxx >

CJ.11.68.5: Imperatores Valentinianus, Theodosius, Arcadius

Dominicos colonos neque ad descriptionem patimur devocari neque extraordinarias pati functiones, maxime cum adversus consuetudinem memoratis onera dicantur inferri. * valentin. theodos. et arcad. aaa. cynegio pp. *<a xxx >

CJ.11.68.6: Imperator Theodosius

Quotiens alicui colonorum agrum privati patrimonii nostri placuerit venumdari, non usus tantum, qui forte consortibus suis gravis ac molestus existat, sed alii quoque duo vel plures ex simili origine ac iure venientes in supra dicta emptione socientur. * theodos. a. et valentin. c. valerio com. rer. privat. *<a 425 d. id. dec. constantinopoli theodosio a. xi et valentiniano c. conss.>

CJ.11.69.0. De praediis tamiacis et de his qui ex colonis dominicis aliisque liberare condicionis procreantur.

CJ.11.69.1pr.: Imperator Zeno

Si liber colonus vel colona libera tamiaco vel tamiacae matrimonii iure copuletur, filii vel filiae ex huiusmodi contubernio procreati vel procreatae colonis dominicis adnectentur. * zeno a. chryseroti praeposito sacri cubiculi. *<a xxx >

CJ.11.69.1.1: Imperator Zeno

Sin autem adscripticius vel servus alienus colonam vel ancillam dominicam ducat uxorem vel adscripticia vel ancilla colono vel servo nubat dominico et ex huiusmodi coniunctionibus nati sunt liberi, legum veterum ius tenere sancimus.<a xxx >

CJ.11.69.2pr.: Imperator Zeno

Meminimus pragmatica sanctione iussisse fundos tamiaci iuris in provinciis positos nec non etiam possessiones gonatici saltus sub certa forma (salvo scilicet canone et tributariis collationibus isdem praediis impositis) volentibus distrahi, quatenus, quidquid ex pretiis memoratorum fundorum possit restitui, publico inferatur. * zeno a. sebastiano pp. *<a xxx >

CJ.11.69.2.1: Imperator Zeno

Sed licet per eandem sanctionem huiusmodi venditionum contractibus plenissima delata sit cautio, attamen perpetuae emptionis securitati consulentes huius etiam perpetuae constitutionis auctoritate muniri eosdem emptores praecipimus.<a xxx >

CJ.11.70.0. De diversis praediis urbanis et rusticis templorum et civitatum et omni reditu civili.

CJ.11.70.1: Imperator Julianus

Pro aedibus, quas nonnulli in solo rei publicae extruxerunt, placitam praestare pensionem cogantur. * iul. a. atarbino. *<a x >

CJ.11.70.2: Imperator Julianus

Pamphyliae etiam civitates et quaecumque aliae quidquid sibi adquirant, id firmiter habeant. * iul. a. secundo pp. *<a x >

CJ.11.70.3: Imperatores Arcadius, Honorius

Restaurationi moenium publicorum tertiam portionem eius canonis, qui ex locis fundisve rei publicae annua praestatione confertur, certum est satis posse sufficere. * arcad. et honor. aa. hadriano com. sacr. larg. *<a 395 d. viii id. aug. olybrio et probino conss.>

CJ.11.70.4: Imperatores Arcadius, Honorius

Eos, qui auctione prima fundorum iuris patrimonialis sive templorum possessores effecti sunt vel fuerint, firmum dominium tenere decernimus, ne ulterius vacillet uniuscuiusque possessio, sed teneat quisque ius proprium, quod dato pretio roboratum est vel fuerit. * arcad. et honor. aa. caesario pp. *<a x >

CJ.11.70.5pr.: Imperatores Valentinianus, Marcianus

Si qui ex titulo donationis vel ex emptione sive ex alio quolibet titulo possessiones vel domus vel ergasteria iuris dumtaxat civilis, quae huius iuris esse vere probantur, cuiuslibet civitatis et praecipue huius aeternae urbis, cui maiorem debemus favorem, tam civilis, ut dictum est, iuris quam etiam agnotheticas possessiones a consulatu ausonii et olybrii dempto civili canone acceperunt, eos impositum eis canonem iuxta fidem publicorum monumentorum civitatis, ad quam eaedem res pertinuerunt, praebere iubemus. * valentin. et marcian. aa. ad palladium pp. orientis. *<a 451 d. xv k. febr. constantinopoli marciano a. cons.>

CJ.11.70.5.1: Imperatores Valentinianus, Marcianus

Nam si privatis viris debita non patimur denegari, multo magis praebenda sunt civitatibus quae iure debentur, cum sufficiat possessoribus, quod apud eos dominium in perpetuum ex nostra liberalitate permaneat.<a 451 d. xv k. febr. constantinopoli marciano a. cons.>

CJ.11.70.5.2: Imperatores Valentinianus, Marcianus

Si quae tamen possessiones iuris civilis canonem privatis largitionibus in praesenti praebent vel numquam ademptum vel postea impositum, ad hanc iussionem non pertinebunt, sed privato aerario canonem quem nunc agnoscunt inferre ex more debebunt, dominio firmiter apud eos successoresque eorum et detentatores pari modo permanente.<a 451 d. xv k. febr. constantinopoli marciano a. cons.>

CJ.11.70.6: Imperator Zeno

Hac in perpetuum valitura lege sancimus et nicaeensium civitati seu habitatoribus eius tam ius exactionis quadringentorum solidorum annui canonis civilis reditus ad suam patriam pertinentis ex possessionibus, id est calamo et heliobomo nec non emptorio variario cum emptio eorum sub territorio apamenae civitatis constitutis, ex nuper lapsa tertia indictione cum ipsa restitui, quam si quid, ex quo sanctio marciani divae memoriae lata est, ad eiusdem civitatis praeiudicium gestum est, infirmari et, quod ex eadem provisione civitatibus delatum interea qualibet occasione imminutum est, ex auctoritate constitutionis nostrae serenitatis isdem civitatibus redhiberi, ita ut neque iudiciaria auctoritas nec imperiale rescriptum, quacumque videlicet adiectione munitum, saepe dictae generalis legis vires possit refringere. quod si quis aliter fecerit, poena gravi plectetur. * zeno a. aeliano pp. *<a 480 ? >

CJ.11.71.0. De locatione praediorum civilium vel fiscalium sive templorum sive rei privatae vel dominicae.

CJ.11.71.1pr.: Imperatores Gratianus, Valentinianus, Theodosius

Divi patris nostri aperta praeceptio est fundos ex re privata nostra ita tradi perpetuariis, ut periculo collocantium officiorumque tradantur. * grat. valentin. et theodos. aaa. ad florum pp. *<a 380 - 383 >

CJ.11.71.1.1: Imperatores Gratianus, Valentinianus, Theodosius

Neque enim quicquam potest ex devotionis plenitudine vacillare, si apparitione iudiciaria et fundi idoneis attributi sunt et sit fiscalis indemnitas idonea fideiussione munita.<a 380 - 383 >

CJ.11.71.1.2: Imperatores Gratianus, Valentinianus, Theodosius

Quorum si alterum vel utrumque neglectum est, quae ex hoc titulo pensitatio canonica desiderat, ex officiorum facultatibus seruentur.<a 380 - 383 >

CJ.11.71.2: Imperatores Gratianus, Valentinianus, Theodosius

Fundi rei publicae ab his, qui nec titulo conductionis eos detinent quique meliores cultu patrocinante reddiderunt, ne nostrarum quidem sanctionum (si forte quispiam per subreptionem meruerit) nutibus auferantur, iuxta legem veterem semel tantum licentia faciendae adiectionis indulta. * grat. valentin. et theodos. aaa. nebridio com. rer. privat. *<a 382-384 >

CJ.11.71.3: Imperatores Arcadius, Honorius

Loca omnia fundive rei publicae propositis prius licenter edictis dehinc, ubi in eum canonis modum contendentium augmenta succreverint, ut extendi ultra aut superari alterius oblatione non possint, perpetuariis conductoribus locentur. * arcad. et honor. aa. hadriano pp. *<a 400-405 >

CJ.11.71.4: Imperatores Arcadius, Honorius

Congruit aequitati, ut veteres possessores fundorum publicorum novis conductoribus praeferantur, si facta per alios augmenta suscipiant. * arcad. et honor. aa. minervio com. sacr. larg. *< >

CJ.11.71.5pr.: Imperatores Theodosius, Valentinianus

Praedia domus nostrae, si semel iure perpetuo vel nostra praeceptione vel auctoritate illustris viri comitis aerarii privati apud aliquem fuerint vel iam dudum sunt collocata, ad alium transferri perpetuarium non oportet. * theodos. et valentin. aa. volusiano pp. *< >

CJ.11.71.5.1: Imperatores Theodosius, Valentinianus

Aperte enim definimus hoc edicto, ut a perpetuario numquam possessio transferatur, etiamsi alteri eam imperator vel exoratus vel sponte donaverit sive adnotatione sive pragmatica.< >

CJ.11.71.5.2: Imperatores Theodosius, Valentinianus

Cui si forte contra perpetuarium vir illustris comes privatarum, dum adlegabitur , adquiescet, et ipse de proprio centum libras auri et alias centum fisci viribus palatinum inferre cogatur officium.< >

CJ.11.71.5.3: Imperatores Theodosius, Valentinianus

Nec tamen post adlegationem habebit huiusmodi iussio firmitatem, sed nec locabitur alteri, licet ingenti superare videatur augmento, possessio.< >

CJ.11.71.5.4: Imperatores Theodosius, Valentinianus

Iure igitur perpetuo publici contractus firmitate perpetuarius securus sit et intellegat neque a se neque a posteris suis vel his, ad quos ea res vel successione vel donatione sive venditione vel quolibet titulo pervenit sive aliquando pervenerit, esse retrahendam.< >

CJ.11.71.5.5: Imperatores Theodosius, Valentinianus

Sane quia non ex omni parte excludenda est largitas principalis, rem divinae domus suae imperator, si velit, donabit ei, qui eam possidet iure perpetuo, sive ipse iam meruit sive cuiuslibet tituli iure successit. videtur enim suam concedere pensionem, non alteri nocere liberalitas, quae possidentem iure perpetuo dominum vult vocari.< >

CJ.11.71.5.6: Imperatores Theodosius, Valentinianus

Sane si quis non perpetuo iure, sed ad tempus locatam ab illustri viro comite rerum privatarum possessionem videtur adeptus, non erit obstaculo principali largitati, si voluerit in alterum donatione transferre, quod ad definitum tempus alter forte conduxit.< >

CJ.11.71.5.7: Imperatores Theodosius, Valentinianus

Si vero pro tali praedio ab altero conductore offeratur augmentum, sit in arbitrio conductoris prioris, cui res ad tempus locata est, ut, si ipse quod alter adiecit obtulerit, maneat penes eum temporalis illa conductio.< >

CJ.11.71.5.8: Imperatores Theodosius, Valentinianus

Si vero idem hanc ipsam rem aliquando meruerit iure perpetuo possidere, habebit et ipse superius expressam perpetuam firmitatem.< >

CJ.11.72.0. De conductoribus et procuratoribus sive actoribus praediorum fiscalium et domus augustae.

CJ.11.72.1: Imperatores Theodosius, Valentinianus

Conductores hominesve augustissimae domus nostrae, quotiens de causa ad domum regiam pertinente aliquid quaestionis emerserit, non aliter quam ex legum ordine, quibus similiter omne hominum genus tenetur, vel excipiant vel inferant actiones: nec aliorum litigatorum negotio intercedant nec sententiam iudicantium aut illicito patrocinii sui fomite iura conturbent, nullive exsecutionis suae turbulentum ministerium audeant commodare: non privatis se negotiis, non publicis misceant: nec quiescentem domum delatio ulla sollicitet, ne eos inconsultae pertinaciae sero paeniteat. gravior enim poena constituenda est in hos, qui nostri iuris sunt et nostra debent custodire mandata. * theodos. et valentin. aa. basso pp. *<a 426 d. prid. non. mart. ravennae theodosio xii et valentiniano ii aa. conss.>

CJ.11.73.0. Quibus ad conductionem praediorum fiscalium accedere non licet.

CJ.11.73.1: Imperatores Arcadius, Honorius

Nullus palatinorum, qui in officio rei privatae nostrae militat, conductoris nomine vel per se vel per quamlibet personam possessionum huiusmodi conducendarum habeat facultatem, cum neque militi neque curiali hoc faciendum permittimus. * arcad. et honor. aa. nestorio com. rer. privat. *<a 401 d. vi k. aug. vincentio et fravitta conss.>

CJ.11.74.0. De collatione fundorum fiscalium vel rei privatae vel dominicae vel civitatum vel templorum.

CJ.11.74.1: Imperatores Arcadius, Honorius

Ordinariorum iudicum officiis nec non ipsis rectoribus provinciarum actores seu conductores dominicos conveniendi licentiam damus, ita tamen, ut rationalibus privatae rei ad exigenda fiscalia debita immineant. * arcad. et honor. aa. firmino com. sacr. larg. *<a 398 d. viiii k. iul. mediolani honorio a. iiii et eutychiano conss.>

CJ.11.74.2pr.: Imperatores Arcadius, Honorius

Palatinos, qui a viro illustri comite rerum privatarum cum publicis litteris destinantur ad commonitionem iudicis, quo facilius ex praediis rei nostrae conferantur debitae pensiones, cum summa degere praecipimus disciplina. *

arcad. et honor. aa. messalae pp. *<a 400 d. k. dec. mediolani stilichone et aureliano conss.>

CJ.11.74.2.1: Imperatores Arcadius, Honorius

De quorum nominibus, si temere versati fuerint, ad sublimitatem tuam referri per ordinarios iudices oportebit, ut in eos severissime vindicetur.<a 400 d. k. dec. mediolani stilichone et aureliano conss.>

CJ.11.74.3: Imperatores Arcadius, Honorius, Theodosius

Omnia praedia, tam ea, quae in re privata olim tenentur, quam illa, quae ex proscriptorum bonis ad fiscum sunt devoluta, eatenus ab huiusmodi privilegiis et excusationibus submoveantur, ut omnes species annonarias, cursitationes etiam debitas atque integram opinionem sciant esse solvendam. * arcad. et honor. et theodos. aaa. petronio pp. *< >

CJ.11.75.0. De privilegiis domus augustae vel rei privatae et quarum collationum excusationem habent.

CJ.11.75.1: Imperator Constantius

Privatas possessiones nostras ab universis muneribus sordidis placet esse immunes, neque earum conductores nec colonos vel ad extraordinaria munera vel superindictiones aliquas conveniri. * constantius a. ad italicum. *<a 343 d. viii k. febr. bononiae placido et romulo conss.>

CJ.11.75.2pr.: Imperatores Valentinianus, Valens, Gratianus

Rem privatam nostram levandorum provincialium causa canonicas necessitates ea condicione, qua cunctos, volumus sustinere. * valentin. valens et grat. aaa. ad claudium. *<a 368-370 >

CJ.11.75.2.1: Imperatores Valentinianus, Valens, Gratianus

Sed excessit occasio iussionem, quandoquidem non locis solitis frumenta quae ex diversis sunt saltibus convehenda trahantur, sed eo usque portentur, quo grave atque damnosum est provehere.<a 368-370 >

CJ.11.75.2.2: Imperatores Valentinianus, Valens, Gratianus

Proinde spectata sinceritas tua rem eandem in isdem locis implere faciat proprias functiones, quibus antea frumenta praebebat.<a 368-370 >

CJ.11.75.3: Imperatores Arcadius, Honorius

Pro tironibus in corporibus postulatis pretia conferri ex fundis perpetuariis nostrae rei privatae praecipimus. * arcad. et honor. aa. minervio com. rer. privat. *<a 397-398 >

CJ.11.75.4pr.: Imperatores Honorius, Theodosius

Absit, ut nos instructionem viae publicae et pontium stratarumque opera titulis magnorum principum dedicata inter sordida munera numeremus. * honor. et theodos. aa. asclepiodoto pp. *<a 423 d. xv k. mart. constantinopoli asclepiodoto et mariniano conss.>

CJ.11.75.4.1: Imperatores Honorius, Theodosius

Igitur ad instructiones reparationesque itinerum pontiumque nullum genus hominum nulliusque dignitatis ac venerationis meritis cessare oportet.<a 423 d. xv k. mart. constantinopoli asclepiodoto et mariniano conss.>

CJ.11.75.4.2: Imperatores Honorius, Theodosius

Domos etiam divinas tam laudabili titulo libenter adscribimus.<a 423 d. xv k. mart. constantinopoli asclepiodoto et mariniano conss.>

CJ.11.75.5: Imperatores Theodosius, Valentinianus

Excepto patrimonio pietatis nostrae, cuius quidem reditus necessitatibus publicis frequentissime deputamus, universos possessores functiones in superindicticiis titulis absque ullius beneficii exceptione agnoscere oportere censemus. * theodos. et valentin. aa. flaviano pp. *<a 431 d. iii k. mai. ravennae basso et antiocho conss.>

CJ.11.76.0. De grege dominico.

CJ.11.76.1: Imperatores Arcadius, Honorius

Propositis edictis sublimis magnificentiae tuae minimi maximique moneantur, ut sciant singulas auri libras ex propriis facultatibus eruendas pro singulis equis vel equabus sive hermogenianis sive palmatis, nisi eos sponte obtulerint: in his vero, quos ex aliis gregibus occupatos esse constiterit, sex auri uncias fisci viribus inferendas. * arcad. et honor. aa. caesario pp. *<a 395 d. prid. d. dec. constantinopoli olybrio et probino conss.>

CJ.11.77.0. De palatiis et domibus dominicis.

CJ.11.77.1: Imperatores Theodosius, Valentinianus

Consecratas nobis aedes, id est inclita palatia, ab omni privatorum usu et communi habitatione excipimus. * theodos. et valentin. aa. iohanni com. rer. privat. *<a xxx >

CJ.11.78.0. De cupressis ex luco daphnensi vel perseis per aegyptum non excidendis vel vendendis.

CJ.11.78.1: Imperatores Arcadius, Honorius

Si quis daphnensis luci in syria vel persei in aegypto arborem comparaverit, quinque libris auri noverit se esse multandum: non minore dispendio et illo feriendo, qui vendere arbores ausus fuerit, quas non licet emptoribus comparare. * arcad. et honor. aa. silvano com. rer. privat. *< >

CJ.11.78.2pr.: Imperatores Theodosius, Valentinianus

Omnes iudices cuiuscumque dignitatis sciant posthac absque permissu magnitudinis tuae arborem ex daphnensi luco antiochenae civitatis praecidendi vel quolibet modo lapsas transferendi licentiam sibimet denegandam. * theodos. et valentin. aa. eudoxio com. sacr. larg. *< >

CJ.11.78.2.1: Imperatores Theodosius, Valentinianus

Sed nec alytarcha unam cupressum aliis plantatis excidere sibi licere contendat. ac ne solacio antiquitus ei concesso privari per omnia videatur, pro eo, quod ei cupressum excidere denegatur, unam auri libram eum de privatis nostris largitionibus accipere decernimus: quinque librarum auri condemnatione huius legis temeratore plectendo.< >

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CJ.12.1.0. De dignitatibus.

CJ.12.1.1: Imperator Alexander Severus

Si, ut proponitis, et avum consularem et patrem praetorium virum habuistis, et non privatae condicionis hominibus, sed clarissimis nupseritis, claritatem generis retinetis. * alex. a. severianae. * <a xxx sine die et consule >

CJ.12.1.2: Imperator Constantinus

Neque famosis et notatis et quos scelus aut vitae turpitudo inquinat et quos infamia ab honestorum coetu segregat, dignitatis portae patebunt. * const. a. volusiano pp. * <a 313-315 >

CJ.12.1.3: Imperator Constantinus

Maior dignitatis nulli debet circa prioris dignitatis seu militiae privilegia praeiudicium facere. * const. a. ad rufinum pp. * <a 319 d.V k.Mai.Sirmio constantino a.V et licinio c.Conss.>

CJ.12.1.4: Imperatores Constantius, constans

Senatorum substantias, quas in diversis locis et provinciis possident, et homines eorum tam a temonariis oneribus conferendis quam a ceteris praestationibus, quas iudices describunt, nec non etiam ab omnibus sordidis extraordinariisque et vilioribus muneribus liberos esse praecipimus nullaque sorte constringi functionis indignae. * constantius et constans aa. philippo pp. * <a 346-349 >

CJ.12.1.5pr.: Imperator Constantius

Nemo praefectus urbis citra praeceptionem vel scientiam nostram ulli muneri subiuget senatorem: nemo curiam nostram immani pulset iniuria. * constantius a. ad clearchum pu. * <a xxx >

CJ.12.1.5.1: Imperator Constantius

Si quid enim senatoria praeditis dignitate fuerit forte mandandum, nostro est iudicio reservandum: sit namque dignitas, si nobis iubentibus sustinetur. <a xxx >

CJ.12.1.6: Imperator Constantius

Ne quis ex ultimis negotiatoribus vel monetariis abiectisque officiis vel deformis ministerii stationariis omnique officiorum faece diversisque pastis turpibus lucris aliqua frui dignitate pertemptet. sed et si quis meruerit, repellatur: repulsos autem etiam propriis reddi consortiis oportebit. * constantius a. ad orfitum. * <a 357-360 >

CJ.12.1.7: Imperator Constantius

Quoniam diversi iudices nonnulla opera in quibusdam aestimant urbibus extruenda, ad huiusmodi necessitatem senatorum substantia non vocetur. * constantius a. ad senatum. * <a 361 d.V non.Mai.Tauro et florentio conss.>

CJ.12.1.8: Imperator Julianus

Ius senatorum et auctoritatem eius ordinis, in quo nos quoque ipsos numeramus, necesse est ab omni iniuria defendere. * iul. a. sallustio pp. * <a 362 d.Non.Febr.Constantinopoli mamertino et nevitta conss.>

CJ.12.1.9: Imperatores Valentinianus, Valens

Libertorum filios adipisci clarissimam dignitatem non prohibemus. * valentin. et valens aa. ad symmachum pu. * <a 364-365>

CJ.12.1.10: Imperatores Valens, Gratianus, Valentinianus

Severam indagationem per tormenta quaerendi a clarissimo nomine submovemus. * valens grat. et valentin. aaa. ad gracchum pu. * <a 377 d.Prid.Non.Ian.Treviris gratiano a.Iiii et merobaude conss. >

CJ.12.1.11pr.: Imperatores Valens, Gratianus, Valentinianus

Senator vel alius clarissimus privatos habeat filios, editos quippe, antequam susciperet dignitatem: quod non solum circa masculos dignoscitur constitutum, verum etiam circa filias simili condicione servandum. * valens grat. et valentin. aaa. ad procopium. * <a 377 d.Xviii k... hierapoli gratiano a.Iiii et merobaude conss. >

CJ.12.1.11.1: Imperatores Valens, Gratianus, Valentinianus

Cum autem paternos honores invidere filiis non oportet, a senatore vel solo clarissimo susceptum in clarissimatus sciendum est dignitate mansurum. <a 377 d.Xviii k... hierapoli gratiano a.Iiii et merobaude conss. >

CJ.12.1.12: Imperatores Gratianus, Valentinianus, Theodosius

Iudices, qui se furtis et sceleribus fuerint maculasse convicti, ablatis codicillorum insignibus et honore exuti inter pessimos quosque et plebeios habeantur, nec sibi posthac de eo honore blandiantur, quo se ipsi indignos iudicaverunt. * grat. valentin. et theodos. aaa. neoterio pp. * <a 380 d.Xviii k.Febr.Thessalonicae gratiano v et theodosio aa.Conss.>

CJ.12.1.13: Imperatores Valentinianus, Theodosius, Arcadius

Mulieres honore maritorum erigimus, genere nobilitamus et forum ex eorum persona statuimus et domicilia mutamus. sin autem minoris ordinis virum postea sortitae sunt, priore dignitate privatae posterioris mariti sequantur condicionem. * valentin. theodos. et arcad. aaa. marciano com. orientis. * <a 392 d.Iiii id.Nov.Constantinopoli arcadio a.Ii et rufino conss.>

CJ.12.1.14: Imperatores Theodosius, Valentinianus

Praecipimus, ut senatori in qualibet provincia constituto nullam habeant iudices iniungendi aliquid forte publici muneris potestatem. * theodos. et valentin. aa. basso pp. * <a 426 >

CJ.12.1.15: Imperatores Theodosius, Valentinianus

Clarissimis vel spectabilibus universis ad genitale solum vel quolibet alio et sine commeatu proficiscendi et ubi voluerint commorandi habitandive permittimus facultatem. * theodos. et valentin. aa. ad neuthium pu. * <>

CJ.12.1.16: Imperatores Theodosius, Valentinianus

Si gravius ullum facinus admittatur, nocente persona extra carceralem custodiam substitutione habita, super illustribus quidem nobis suggeri iubemus, super ceteris vero quadam minore dignitate decoratis ad tui referri culminis notionem, ut ita demum, quid de admisso crimine constitui oporteat, iudicetur. * theodos. et valentin. aa. apollonio pp. * <a 442-443 >

CJ.12.1.17pr.: Imperator Zeno

Quotiens ex privata cuiuslibet interpellatione civili vel criminali viri illustres conveniendi sunt, nulla dandae fideiussionis concussione vexentur, sed per speciale privilegium suae committi fidei consequantur, iuratoria ab his cautione tantummodo exponenda. * zeno a. arcadio pp. * <a 485-486? >

CJ.12.1.17.1: Imperator Zeno

Quam si neglexerint et contra insertum cautioni sacramentum ipsi vel eorum procuratores afuerint, in pecuniariis quidem causis super possessione rerum ad eos pertinentium iudex competens, quod et iuris auctoritas et rei qualitas suggerit, ordinabit: in criminalibus vero negotiis dignitate quoque, qua se per suum videlicet periurium indignos esse probaverint, spolientur, ut in eos utpote illustri dignitate per suum facinus privatos inconsulta etiam nostra pietate iudicibus legum severitatem liceat exercere. <a 485-486? >

CJ.12.1.17.2: Imperator Zeno

Quibus illustrium dignitatum privilegiis hoc etiam adiciendum statuimus, ut huiusmodi personae nullam ex cuiuslibet iudicis sine scriptis habita sententia conventionem neque in civili neque in criminali causa sustineant. <a 485-486? >

CJ.12.1.18: Imperator Anastasius

Iubemus salvo honore, qui per evocationem sacrae revocatoriae defertur, durante licere cunctis tam maiores quam minores potestates gerentibus nec non etiam honorariis illustribus sive ex hac urbe regia, principali videlicet praecedente consensu, profecti fuerint, sive in provinciis habitantes sacratissimum, suis scilicet poscentibus negotiis, petere maluerint comitatum, sine sacra quoque revocatoria ad hanc regiam urbem pervenire. * anastas. a. eusebio mag. off. * <a xxx >

CJ.12.2.0. De praetoribus et honore praeturae et gleba et folli et septem solidorum functione sublata.

CJ.12.2.1: Imperatores Valentinianus, Marcianus

Nemo ex clarissimis et spectabilibus qui in provinciis degunt ad praeturam postea devocetur: maneat unusquisque domi suae tutus atque securus et sua dignitate laetetur. * valentin. et marcian. aa. tatiano. pu. * <a 450 d.Xv k.Ian.Constantinopoli valentiniano a.Vii et avieno conss.>

CJ.12.2.2: Imperatores Valentinianus, Marcianus

Glebam vel follem sive septem solidorum functionem sive quamlibet eiusmodi collationem tam circa personas quam circa res ac praedia funditus iubemus aboleri, ut omnis huiusmodi sopita perpetuo conquiescat exactio. * valentin. et marcian. aa. ad senatum. * <a xxx >

CJ.12.3.0. De consulibus et non spargendis ab his pecuniis et de praefectis et magistris militum et patriciis.

CJ.12.3.1pr.: Imperatores Theodosius, Valentinianus

Antiquitus statutum est consularibus viris ceteros quidem honoratos ipsius trabeae summitate, pares vero infulis consideratione tantum temporis anteire. * theodos. et valentin. aa. ad senatum urb. * <a xxx >

CJ.12.3.1.1: Imperatores Theodosius, Valentinianus

Quis enim in uno eodemque genere dignitatis prior esse debuerat, nisi qui prior meruit dignitatem? cum posterior, et si eiusdem honoris praetendat auspicia, cedere tamen illius temporis consuli debeat, quo ipse non fuerit. <a xxx >

CJ.12.3.1.2: Imperatores Theodosius, Valentinianus

Hoc observando et si iterata vice fastigia consulatus aliquis adscenderit: repetiti etenim fasces virtutes saepe meriti comprobant, non augent, quia nihil est altius dignitate. <a xxx >

CJ.12.3.1.3: Imperatores Theodosius, Valentinianus

Quod si quis prior consul posteriori consuli eidemque patricio posthabitus patriciatum postea consequatur, vinci eum oportet qui prior meruit patriciatum, postquam iste honore patriciae dignitatis decoratus est. <a xxx >

CJ.12.3.2pr.: Imperatores Valentinianus, Marcianus

Ordinem consulatus ad antiquam reduximus sanctionem, ut sellam nostram honoris merito, non rapiendi studio populorum agmina sectarentur ac lucrandi cupiditate deposita venerabilem parentum habitum et felicissima antiquitatis ornamenta conspicerent. * valentin. et marcian. aa. sporacio com. domest. et cons.* <a 452 >

CJ.12.3.2.1: Imperatores Valentinianus, Marcianus

Hoc ego exemplo etiam ceteros procedere consules volumus nec expendere eos sine effectu patimur. <a 452 >

CJ.12.3.2.2: Imperatores Valentinianus, Marcianus

Cessante ergo ista spargendi vilitate amplissimi consules procedentes deinceps abstineant hoc errore perdendi, optimoque consilio operi necessario proficiat, quod erat incompetenter proiciendum. <a 452 >

CJ.12.3.2.3: Imperatores Valentinianus, Marcianus

Ad instaurationem itaque aquaeductuum huius amplissimae urbis centena pondo auri praestentur per singulos consulatus, ut et consul patriae se dedisse noverit et data notum sit mansura esse perpetuo. <a 452 >

CJ.12.3.3pr.: Imperator Zeno

Nemini ad sublimen patriciatus honorem, qui ceteris omnibus anteponitur, adscendere liceat, nisi prius aut consulatus honore potiatur aut praefecturae praetorio vel illyrici vel urbis administrationem aut magistri militum aut magistri officiorum, in actu videlicet positus, gessisse noscatur, ut huiusmodi tantum personis sive adhuc administrationem gerendo seu postea liceat (quando hoc nostrae sederit maiestati) patriciam consequi dignitatem. * zeno a. * <>

CJ.12.3.3.1: Imperator Zeno

Quoniam vero gloriosissimae huic urbi, quae caput orbis terrarum est, omnifariam credimus consulendum, universos, qui posthac honorarii consulatus insignibus principali munificentia decorantur, centum auri libras ad reficiendum aquaeductum publicum ministrare censemus ad similitudinem eorum, qui per annale tempus consularium editione munerum gloriantur. nam ipsis quoque expedit, ut florentissima civitas centum auri librarum munificentia sustentata honorarium quoque sentiat consulatum. <>

CJ.12.3.4pr.: Imperator Zeno

Sancimus viris excellentissimis conaularibus omnibus, qui iam facti sunt vel postea fuerint, procedendi quoque et re ipsa per annum gerendi consulatus, impetrato videlicet principali iudicio, legitimam tribui facultatem, ita ut acta quam meruerint processione non novum aliquid vel quod nondum habeant adipisci, sed consulatus ius, quod semel eis consularitas detulerat, processionis iterasse beneficio videantur et adoranda nostra purpura vel in consequendis cunctis consulum honoribus et privilegiis ex anteriore tempore provectionis ordinem sibimet noverint vindicandum. * zeno a. sebastiano pp. * <a xxx >

CJ.12.3.4.1: Imperator Zeno

Hoc etiam observando, ut huiusmodi consul nec centum libras auri aquaeductibus huius inclitae civitatis pro tenore sacrae constitutionis praebendas, quas cum esset consularis praestiterat, consul postea creatus persolvere denuo compellatur. <a xxx >

CJ.12.3.5pr.: Imperator Justinianus

Sancimus viros excelsos patricios, quos in huiusmodi dignitatis apicem augusta maiestatis rettulerit, ilico ab imperialibus codicillis praestitis patres familias effici ac potestate liberari paterna, ne bideantur, qui a nobis loco patris honorantur, alieno iuri esse subiecti. * iust. a. iohanni pp. * <a 531-533>

CJ.12.3.5.1: Imperator Justinianus

Quis enim patiatur patrem quidem posse per emancipationis modum suis nexibus filium relaxare, imperatoriam autem celsitudinem non valere eum quem sibi patrem elegit ab aliena eximere potestate? ne, si contrarium approbetur, per quamcumque machinationem imperialis maiestas minui videatur. <a 531-533>

CJ.12.3.5.2: Imperator Justinianus

Et hoc quidem raro contingere satis certum est: nemo enim facile respexit filium familias in patriciatus honorem provectum, quemadmodum in consulibus haec res usitata est. <a 531-533>

CJ.12.3.5.3: Imperator Justinianus

Sed ne quid in parte temporis tale eveniat et sine legibus inveniatur, ideo haec nobis visa sunt sancienda. <a 531-533>

CJ.12.4.0. De praefectis praetorio sive urbis et magistris militum in dignitatibus exaequandis.

CJ.12.4.1: Imperatores Valentinianus, Valens, Gratianus

Praefectum urbis praefectum praetorio magistros equitum ac peditum indiscretae ducimus dignitatis, usque adeo videlicet, ut, cum ad privatam secesserint vitam, eum loco velimus esse potiorem, qui alios promotionis tempore et codicillorum adeptione praecesserit. * valentin. valens et grat. aaa. ad ampleium pu. * <a 372 d.Iii non.Iul.Nasonaci.Acc.Iii non.Sept.Modesto et arintheo conss.>

CJ.12.4.2pr.: Imperatores Gratianus, Valentinianus, Theodosius

Quisquis magisterium equitum peditumque susceperit et gesserit ante captam a quoquam praefecturam, is, cum privatus erit et honorem deposuerit, ex praefectis qui provecti fuerint praeferatur. * grat. valentin. et theodos. aaa. restituto pu. * <a 380 d.Viii k.Iul.Theossalonicae gratiano v et theodosio aa.Conss.>

CJ.12.4.2.1: Imperatores Gratianus, Valentinianus, Theodosius

Si igitur sedes prior ante provectis, locus conspectior, decernendi loquendique facultas antiquior, cui est splendor adepti magistratus vetustior. <a 380 d.Viii k.Iul.Theossalonicae gratiano v et theodosio aa.Conss.>

CJ.12.5.0. De praepositis sacri cubiculi et de omnibus cubiculariis et privilegiis eorum.

CJ.12.5.1: Imperatores Honorius, Theodosius

Sacri cubiculi praepositi ea dignitate fungantur, qua sunt praediti, qui eminentissimam praetorianam vel urbanam meruerint praefecturam aut certe militarem magisteriam potestatem, ita ut sit inter eos post depositas administrationes nulla discretio, sive nostrae serenitatis adoraturi admittuntur imperium sive pro suo arbitrio sollemnes festivitates et coetus vel salutationes vel quaelibet alia officia frequentent, ut in sedibus et in concessu is eis ordo servetur, quem ordo provectionis ostenderit, sub habitu ipsis videlicet consueto, cum manifeste decretum sit eum esse qui praecesserit potiorem, vel illum subsequi, quem recentius probavit examen. * honor. et theodos. aa. florentio pu. * <a 422 d. viii id. nov. constantinopoli honorio xiii et theodosio x aa. conss.>

CJ.12.5.2pr.: Imperatores Theodosius, Valentinianus

Hac nostrae mansuetudinis aeterna lege sancimus, ut omnes cubicularii, qui de nostro cubiculo exeunt, antequam primum locum obtineant, excepto castrensi et comite domorum his privilegiis perfruantur, id est ut nec possessiones eorum angarias sive parangarias vel etiam paraveredos in posterum dispositione tui culminis vel alicuius calumnia dare cogantur, ne sordidis adstricti muneribus decus ministerii, quod militando videbantur adepti, otii tempore et quietis amittant. * theodos. et valentin. aa. proculo pu. * <a 428 >

CJ.12.5.2.1: Imperatores Theodosius, Valentinianus

Domos quoque eorum vel in hac sacratissima urbe vel in qualibet alia positas civitate ab omni hospitum cuiuslibet dignitatis inquietudine vindicamus. <a 428 >

CJ.12.5.2.2: Imperatores Theodosius, Valentinianus

Provinciarum rectoribus eorumque apparationibus denarum librarum auri dispendio feriendis, si mansuetudinis nostrae statuta dissimulare et ex aliqua parte violare temptaverint. <a 428 >

CJ.12.5.3: Imperatores Leo, Anthemius

Cubicularios tam sacri cubiculi mei quam venerabilis augustae, quos utrosque certum est obsequiis occupatos et aulae penetralibus inhaerentes diversa iudicia obire non posse, ab observatione aliorum tribunalium liberamus, ut in sublimitatis solummodo tuae iudicio propositas adversus se excipiant actiones. * leo et anthem. aa. iohanni com. et mag. off. * <a x >

CJ.12.5.4pr.: Imperator Leo

Iubemus omnes, qui vel iam in sacrum cubiculum cuiuspiam liberalitate donati aliove titulo dati vel dandi principalibus obsequiis inhaerere vel ante meruerunt vel postea meruerint, licet nulla interveniente scriptura, nulla confectione gestorum, postquam devotissimis cubiculariis fuerint sociati, ad condicionem libertatis ingenuitatisque rapiantur raptique videantur. * leo a. pusaeo pp. * <a x >

CJ.12.5.4.1: Imperator Leo

Hoc non solum circa superstites, sed etiam circa mortuos volumus custodiri. nam cum hoc privilegium videatur principalis esse proprium maiestatis, ut non famulorum, sicut privatae condicionis homines, sed liberorum honestis utantur obsequiis, periniquum est eos dumtaxat pati fortunae deterioris incommoda. <a x >

CJ.12.5.4.2: Imperator Leo

Sed testamenta quidem ad similitudinem aliorum, qui ingenuitatis infulis decorantur, pro sua liceat eis condere voluntate. intestatorum vero nemo dubitet facultates utpote sine legitimis successoribus defunctorum fisci viribus vindicari. <a x >

CJ.12.5.4.3: Imperator Leo

Haec omnia tunc diligenti observatione volumus custodiri, cum sponte suaque voluntate quis dederit eunuchum sacri cubiculi ministeriis adhaesurum. <a x >

CJ.12.5.4.4: Imperator Leo

Si vero cuidam fuerit violenter extortus, aut invito domino vel ignaro intra sacrum ausus sit militare cubiculum, liceat domino destinatum sacra ex lege cubiculariis interpellare iudicium et eum, quem probaverit nolente se vel inscio sacrum penetrasse cubiculum, ut suum famulum cum peculio consequatur. <a x >

CJ.12.5.4.5: Imperator Leo

Sed sicut laesis implorandi praesidii facultatem denegari non convenit, ita nec calumniandi viam patimur diutius esse patefactam. ideoque tempus quinquennii praefinimus, intra quoc contra eum suas debeant exercere quaestiones, ut, si medio tempore movere distulerint, ulterius eis tamquam in suum famulum vindicandi vel eius ut servi peculium vel bona quasi liberti copia denegetur. <a x >

CJ.12.5.4.6: Imperator Leo

Haec omnia, quae super devotissimis cubiculariis sancimus, etiam ad cubicularias , quae a dominis in sacrum cubiculum datae vel dandae sunt, superstites atque mortuas extendi propagarique decernimus. <a x >

CJ.12.5.5: Imperator Anastasius

Iubemus duobus viris illustribus praepositis utriusque sacri cubiculi tam nostrae pietatis quam nostrae serenissimae coniugis, post finitam militiam si senatorio fuerint consortio sociati, licere, quotiens ad adspiciendos agros suos vel ob aliam causam proficisci voluerint, cingulo uti, cum hoc ad implendum eorum desiderium et ad nullius laesionem respicere videatur. * anastas. a. eusebio mag. off. * <a xxx >

CJ.12.6.0. De quaestoribus magistris officiorum comitibus sacrarum largitionum et rei privatae.

CJ.12.6.1: Imperatores Gratianus, Valentinianus, Theodosius

Qui ex quaesturae honore aut efficaci magisterio aut comitiva utriusque aerarii nostri attonito splendore viguerunt, acclamatione excipiantur solita nec praetereantur ut incogniti. * grat. valentin. et theodos. aaa. restituto pu. * <a 380 d.Viii k.Iun.Thessalonicae gratiano v et theodosio aa. conss.>

CJ.12.7.0. De primicerio et secundocerio et notariis.

CJ.12.7.1pr.: Imperatores Gratianus, Valentinianus, Theodosius

Praecipua est nostrae pietatis intentio circa notariorum nomen: atque ideo, si umquam huius ordinis viri laborem quiete mutaverint vel senectute posuerint seu cum alia dignitate post hanc qualibet usi sunt, non omittant prioris vocabulum militiae, sed compendium sequentis honoris adsumant. * grat. valentin. et theodos. aaa. eutropio pp. * <a 380 d.Xvii k.Iul.Thessalonicae gratiano v et theodosio aa. conss.>

CJ.12.7.1.1: Imperatores Gratianus, Valentinianus, Theodosius

Et si quis ex officio vel praecipue sublimitatis tuae temerarius ad census discussiones peraequationes, aliam denique ullam rem inquietator extiterit, officium suum noverit vel levis culpae offensione detecta gravis multae discrimine fatigandum et numerariorum corpus extincto iniuriae auctore minuendum. <a 380 d.Xvii k.Iul.Thessalonicae gratiano v et theodosio aa. conss.>

CJ.12.7.2pr.: Imperator Zeno

Praeclaram nobilemque militiam spectabilium tribunorum notariorum, quo gloriosis obsequiis nonnihil rei publicae commodatis adferunt et decoris, diversis beneficiorum titulis muniendam credidimus et augendam. * zeno a. hilariano mag. off. * <a xxx >

CJ.12.7.2.1: Imperator Zeno

Nam biennales metas viro spectabili pro tempore primicerio agendis numeris duximus statuendas. <a xxx >

CJ.12.7.2.2: Imperator Zeno

Hos autem tribunos, qui suis negotiis occupati minime sacrum palatium curaverint frequentandum, nisi intra annale spatium revertantur, quamvis commeatus iura praetendunt, pro absentia quidem unius anni unius gradus, si vero duobus annis afuerint, duorum, si tribus, trium, si quattuor, similiter quattuor graduum subire iacturam his qui inferiores eis fuerint postponendos. <a xxx >

CJ.12.7.2.3: Imperator Zeno

Qui vero per quinquennium integrum se repraesentare cessaverint, exemptos matricula tantum nomine tribunorum, nec vero ordine perpotiri, his in hunc modum dispositis vacationem census discullionis peraequationes et cuiuslibet alterius rei habituros. <a xxx >

CJ.12.7.2.4: Imperator Zeno

Illud praecipue privisionem nostram flagitare perspeximus, ne per ambitionem aut gratiam aut cuiuslibet occasionis obtentu vel laborum seu sollicitudinum specie publicorum cuiquam liceat aliquando graduum seriem conturbare et temporum ratione calcata dudum militantibus anteferri et, quae longis prolixisque stipendiis defensa iam pollicetur senectus, gratiosa festinatione subripere. <a xxx >

CJ.12.7.2.5: Imperator Zeno

Hoc etiam adiciendo, ut primicerius post depositam publicam numerorum sollicitudinem, ac si ipsam gessisset administrationem, cuius consequitur dignitatem, magistri officiorum pro antiqua consuetudine infulas sortiatur, omnibus vacantibus quamvis tempore praecedentibus praeponendus. <a xxx >

CJ.12.8.0. Ut dignitatum ordo servetur.

CJ.12.8.1: Imperatores Gratianus, Valentinianus, Theodosius

Si quis indebitum sibi locum usurpaverit, nulla se ignoratione defendat sitque plane sacrilegii reus, qui divina praecepta neglexerit. * grat. valentin. et theodos. aaa. ad praetextatum pp. * <a 384 d.Xii k.Iun.Mediolani ricomere et clearcho vv.Cc.Conss.>

CJ.12.8.2pr.: Imperatores Theodosius, Valentinianus

Omnes privilegia dignitatum hoc ordine servanda cognoscant, ut primo loco habeantur ii, qui in actu positi illustres peregerint administrationes: secundo venient vacantes, qui praesentes in comitatu illustris dignitatis cingulum meruerint : tertium ordinem eorum prospicimus, quibus absentibus cingulum illustris mittitur dignitatis: quartum honorariorum, qui praesentes a nostro numine sine cingulo codicillos tantum honorariae dignitatis adepti sunt: quintum eorum, quibus absentibus similiter sine cingulo mittuntur illustris insignia dignitatis. * theodos. et valentin. aa. cyro pp. * <a 440-441 >

CJ.12.8.2.1: Imperatores Theodosius, Valentinianus

Sed administratores quidem, etiam comites rei privatae, omnibus vacantibus omnibus honorariis anteponi censemus. <a 440-441 >

CJ.12.8.2.2: Imperatores Theodosius, Valentinianus

Vacantes autem post administratores venientes non omnes iam omnibus honorariis credidimus praeponendos, sed eos vacantes illis honorariis, qui similem adepti sunt dignitatem, ut praefectorius praefectorio, non quaestorius praefectorio praeponatur, parique modo quaestorius quaestorio, non vacans comes thesaurorum vel comes rei privatae honorario quaestorio vel ex magistro officiorum praeferatur. <a 440-441 >

CJ.12.8.2.3: Imperatores Theodosius, Valentinianus

Inter administratores illos etiam numerari decernimus, quibus illustribus in sacro nostro consistorio cinctis aliquid ordinariae dignitatis vel antea commisimus vel postea committemus peragendum, verbi gratia si vacanti magistro militum belli cura committatur. <a 440-441 >

CJ.12.8.2.4: Imperatores Theodosius, Valentinianus

Cur enim aut vir magnificus germanus magister militum vacans appellatur, cui bellum contra hostes mandavimus? aut cur excellentissimus pentadius non egisse dicitur praefecturam, cuius illustribus cincti dispositionibus vice praetorianae praefecturae miles in expeditione copia commeatuum abundavit. <a 440-441 >

CJ.12.9.0. De magistris scriniorum.

CJ.12.9.1pr.: Imperatores Theodosius, Valentinianus

Viris spectabilibus magistris omnium sacrorum scriniorum nostrae benivolentiae liberalitas tribuenda est, qui nostrae quodammodo adsidere maiestati videntur. * theodos. et valentin. aa. zoilo pp.Orientis. * <a 444 d.V k.Mart.Theodosio a.Xviii et albino conss.>

CJ.12.9.1.1: Imperatores Theodosius, Valentinianus

Idqoeue post depositum etiam officium ab omni indictionis onere seu civilium seu militarium iudicium prorsus immunes esse praecipimus, ut nec ab amplissima quidem sede tui culminis eis ulla molestia super suscipiendo quolibet gravamine privato vel publico penitus iniungatur. <a 444 d.V k.Mart.Theodosio a.Xviii et albino conss.>

CJ.12.9.1.2: Imperatores Theodosius, Valentinianus

Hoc beneficium ad proximos etiam sacrorum scriniorum et ex proximis volumus propagari. <a 444 d.V k.Mart.Theodosio a.Xviii et albino conss.>

CJ.12.9.1.3: Imperatores Theodosius, Valentinianus

Quinquaginta librarum auri officio tui culminis damnatione multando, si quid adversus statuta clementiae nostrae innovari concesserit. <a 444 d.V k.Mart.Theodosio a.Xviii et albino conss.>

CJ.12.10.0. De comitibus consistorianis.

CJ.12.10.1: Imperatores Arcadius, Honorius

Eos, qui tranquillitatis nostrae consistorii dici comites meruerunt, spectabilibus proconsulibus aequari generaliter decernimus. * arcad. et honor. aa. severino pu. * <a 399 d. vii k. oct. constantinopoli theodoro vc. cons.>

CJ.12.10.2: Imperator Anastasius

Viros spectabiles comites consistorianos et coniuges et liberos, servos quin etiam atque colonos eorum isdem privilegiis tam intentiones ab aliis proponendas excipiendo quam suas contra alios exercendo perfrui, quibus viri clarissimi principes scholae agentium in rebus per sacram pragmaticam sanctionem divae memoriae zenonis utuntur. * anastas. a. eusebio mag. off. * <a xxx >

CJ.12.11.0. De comitibus et tribunis scholarum.

CJ.12.11.1pr.: Imperatores Honorius, Theodosius

Praepositos ac tribunos scholarum, qui et divinis epulis adhibentur et adorandi principis facultatem antiquitus meruerunt, inter quos comites etiam sacri stabuli et cura palatii numerantur, si primi ordinis comitivam cum praepositura meruerunt et casu ad altiora non pervenerint, deposito sacramento inter eos, qui comites aegypti vel ponticae dioeceseos fuerint, quorum par dignitas est, haberi praecipimus. * honor. et theodos. aa. prisciano pu. * <a 413 d. xii k. april. constantinopoli lucio vc. cons.>

CJ.12.11.1.1: Imperatores Honorius, Theodosius

Sin absque honore comitivae regimen fuerint nacti, absolutos militia inter eos qui duces fuerint provinciarum numerari iubemus. <a 413 d. xii k. april. constantinopoli lucio vc. cons.>

CJ.12.12.0. De comitibus rei militaris.

CJ.12.12.1: Imperatores Valentinianus, Valens, Gratianus

Qui contemplatione meritorum, ducto intra provincias transmarinas strenuissimo milite, primi ordinis comitivam fuerint consecuti, ea reverentia altissimarum dignitatum viris subiungantur, ut his locum praestent, qui proconsulatus insignibus adornantur. * valentin. valens et grat. aaa. ampelio pu. * <a 372 d. iii non. iul. nasonaci modesto et arintheo conss.>

CJ.12.12.2: Imperatores Honorius, Theodosius

Eos, qui sub comitivae primi ordinis dignitate peculiariter ad quamlibet provinciam vel provincias defendendas milite credito auctoritate nostri numinis destinantur, et eos, qui vicem illustrium virorum magistrorum militum susceperint peragendam, ducibus, qui praeter aegyptum et ponticam in aliis provinciis administraverint, adaequamus. * honor. et theodos. aa. prisciano pu. * <a 413 d. xii k. april. constantinopoli lucio vc. cons.>

CJ.12.13.0. De comitibus et archiatris sacri palatii.

CJ.12.13.1: Imperatores Honorius, Theodosius

Archiatros intra palatium militantes si comitivae primi ordinis nobilitaverit gradus, inter vicarios taxari praecipimus, sive iam pridem deposuerunt militiam sive postea deposuerint, ita ut inter vicarios et duces qui administraverint et hos qui comitivam primi ordinis meruerint nihil intersit nisi tempus, quo quis administraverit vel comitivae indeptus est insignia. * honor. et theodos. aa. prisciano pu. * <a 413 d. xii k. april. constantinopoli lucio vc. cons.>

CJ.12.14.0. De comitibus qui provincias regunt.

CJ.12.14.1: Imperatores Honorius, Theodosius

Hos, qui in administratione civili ac provinciae gubernaculis sub iurisdictionis licentia comites quoque primi ordinis esse meruerint, vicariae dignitatis post depositam administrationem privilegiis frui oportet. * honor. et theodos. aa. prisciano pu. * <a 413 d. xii k. april. constantinopoli lucio vc. cons.>

CJ.12.15.0. De professoribus qui in urbe constantinopolitana docentes ex lege meruerint comitivam.

CJ.12.15.1: Imperator Theodosius

Grammaticos tam graecos quam latinos, sophistas et iuris peritos in hac regia urbe professionem suam exercentes et inter statutos connumeratos, si laudabilem in se probis moribus vitam esse monstraverint, si docendi peritiam facundiamque dicendi interpretandi subtilitatem copiam disserendi se habere patefecerint, et coetu amplissimo iudicante digni fuerint aestimati, cum ad viginti annos observatione iugi ac sedulo docendi labore pervenerint, placuit honorari et his qui sunt ex vicaria dignitate connumerari. * theodos. a. et valentin. c. theophilo pu. * <a 425 d. id. mart. constantinopoli theodosio a. xi et valentiniano c. conss.>

CJ.12.16.0. De decurionibus et silentiariis.

CJ.12.16.1: Imperatores Honorius, Theodosius

Decuriones nostri palatii post emensum fideliter obsequium postque deposita sacramenta militiae electionem habeant, sive ex magistro officiorum velut agentes dignitatem consequi a nostra maiestate maluerint, sive inter viros illustres comites domesticorum, videlicet inter agentes, taxari, ut tam in adoranda nostra serenitate quam in salutandis administratoribus et reliquis praedicti honoris privilegiis nec non in nostro consistorio his honor omnifariam observetur. * honor. et theodos. aa. urso pu. et aureliano pp. orientis et strategio pp per illyricum.* <a 415 d. prid. k. nov. constantinopoli honorio x et theodosio vi aa. conss.>

CJ.12.16.2: Imperatores Honorius, Theodosius

Unusquisque decurio vel silentiarius a tironum et equorum praestatione habeatur immunis: nullam collationem, quae plerumque poscitur, solvat: nihil his ulla potestas iniungat aut necessitas imponat. * honor. et theodos. aa. venatio pp. * <a 423 d. vii id. mart. ravennae asclepiodoto et mariniano conss.>

CJ.12.16.3pr.: Imperatores Theodosius, Valentinianus

Decurionibus et silentiariis, etiam si ad superiorem gradum successu meliore transcendunt, omnia privilegia, quae iam dudum divorum principum iudicio meruerunt , legis istius praeceptione noveris esse firmata, non praeiudicatura quacumque generalitate pragmatica. * theodos. et valentin. aa. flaviano pp. * <a 432 d. viiii k. april. ravennae aetio et valerio conss.>

CJ.12.16.3.1: Imperatores Theodosius, Valentinianus

Nec angarias vel parangarias sive paraveredos ulla eis amplissimae praeceptionis imponat auctoritas. sordidis quoque muneribus, excoctione calcis et superindicti gravamine eos liberamus. <a 432 d. viiii k. april. ravennae aetio et valerio conss.>

CJ.12.16.3.2: Imperatores Theodosius, Valentinianus

Domus quoque eorum non tantum in hac sacratissima urbe, sed in qualibet alia positas civitate immunes ab omni hospitum cuiuslibet dignitatis inquietudine vindicamus: permissa eis veniendi ad comitatum licentia praeter evocatoriae securitatem. multa decem librarum auri iudicibus provinciarum eorumque officiis infligenda, si statuta numinis nostri crediderint esse contemnenda. <a 432 d. viiii k. april. ravennae aetio et valerio conss.>

CJ.12.16.3.3: Imperatores Theodosius, Valentinianus

His addimus, ut, cum optatam quietem acceperint et inter viros illustres senatores coeperint numerari, honore curiae sine aliqua functione laetentur, immunitatisque gaudio plena dignitatis laetitia potiantur, ut dignitatem solam habeant ex senatu: sub hac videlicet definitione, ut triginta tantummodo numero ea privilegia consequantur, decuriones quoque tres. <a 432 d. viiii k. april. ravennae aetio et valerio conss.>

CJ.12.16.3.4: Imperatores Theodosius, Valentinianus

Sed eos tunc demum perpotiri decernimus beneficiis supra scriptis, cum per continuos tredecim annos inculpatas excubias peregerint. <a 432 d. viiii k. april. ravennae aetio et valerio conss.>

CJ.12.16.4: Imperator Zeno

Ne ad diversa tracti viri devoti silentiarii iudicia sacris abstrahi videantur obsequiis, iubemos eos, qui quemlibet devotissimorum silentiariorum scholae vel eius uxorem civiliter vel etiam criminaliter pulsare maluerint, minime eum ex cuiuslibet alterius iudicio nisi ex iudicio tantummodo viri excellentissimi magistri officiorum conveniri. * zeno a. cosmae praeposito sacri cubiculi. * <a xxx >

CJ.12.16.5pr.: Imperator Anastasius

Iubemus clarissimorum silentiariorum militia praeditos, etsi genitorum suorum in potestate sint constituti, quaecumque solaciorum sive emolumentorum vel donationum seu hereditatum nomine per militiam vel quamlibet eius causam his adquisita sunt vel fuerint, iure castrensis peculii possidere, nec ea posse vel perentes superstites sibimet vindicare vel auferre, vel etiam post eorum obitum fratres vel alios heredes eorum quasi ad defunctorum dominium pertinentia in divisionem deducere: nec enim oportet labores eorum aliis fructum vel lucrum adferre. * anastas. a. polycarpo pp. * <a 497-499 >

CJ.12.16.5.1: Imperator Anastasius

Hac namque ratione simul et contemplatione nec ipsam militiam vel suffragium, quodcumque pro ea vel ab isdem viris devotis silentiariis vel a parentibus eorum vel quolibet alio datum est vel fuerit, ab his patimur in successionem defunctorum parentum conferri seu nomine collationis in medium easdem offerri pecunias vel his imputari. <a 497-499 >

CJ.12.16.5.2: Imperator Anastasius

Ad haec de tutelis et curationibus eos excusari sancimus, ne alienarum rerum administrationem subire compellantur, qui propter nostra ministeria nec suis curam seu provisionem diligenter deferre possunt. <a 497-499 >

CJ.12.16.5.3: Imperator Anastasius

Liberos insuper eorum, qui dignitate virorum spectabilium comitum seu tribunorum decorati sunt vel fuerint, nullatenus nolentes administrationem praeturae suscipere seu peragere. <a 497-499 >

CJ.12.16.5.4: Imperator Anastasius

Omnibus videlicet antelatis privilegiis in persona non tantum in praesenti militantium, sed etiam postea eidem consortio inserendorum tam tempore militiae quam post eam depositam observandis. <a 497-499 >

CJ.12.17.0. De domesticis protectoribus.

CJ.12.17.1: Imperatores Valentinianus, Theodosius, Arcadius

Domestici ac protectores osculandi, cum salutaverint, vicarios tui culminis habeant potestatem. poena enim sacrilegii similis erit, si his honorificentia non deferatur, qui contingere nostram purpuram digni sunt aestimati. * valentin. theodos. et arcad. aaa. ad eusignium pp. * <a 387 d.Prid.Non.Mart.Mediolani valentiniano a.Iii et eutropio conss.>

CJ.12.17.2pr.: Imperatores Theodosius, Valentinianus

Primicerius quidem domesticorum et protectorum utriusque scholae post acceptum tribunatum inter eos spectabili dignitate potiatur, qui ducatum agere meruerint. * theodos. et valentin. aa. heliodoro pu. * <a 432 d.Iii id.Iun.Constantinopoli aetio et valerio vv.Cc.Conss. >

CJ.12.17.2.1: Imperatores Theodosius, Valentinianus

Alii vero, qui decursis stipendiis ab eodem decem usque numero subsequuntur, consulari, id est clarissimatus dignitate, perfruantur cum ipsa loci decem primorum accessione. <a 432 d.Iii id.Iun.Constantinopoli aetio et valerio vv.Cc.Conss. >

CJ.12.17.3pr.: Imperatores Theodosius, Valentinianus

Si quis domesticorum nulla negotii publici abstrahente sollicitudine nec ei per commeatum sollemniter, ut abesset, facultate concessa biennium obsequiis serenitatis nostrae defuerit, is retrorsum in ordinem tractus inferiorem quinque sequentibus postponatur. * theodos. et valentin. aa. sporacio com. domesticorum peditum. * <a xxx >

CJ.12.17.3.1: Imperatores Theodosius, Valentinianus

Si vero triennium eius absentia continuasse monstretur, usque ad decimum locum procul dubio regradetur. quod si quadriennio tenus afuerit, novissimus collocetur. quinquennio autem si fuerit devagatus, ipso iam cingulo spoliandus est. indignum quippe est desides ac propriis tam diu muniis aberrantes, quos esse convenit adsiduos, numerari. <a xxx >

CJ.12.17.4: Imperator Justinianus

Lege pragmatica sine fine victura praefiniendum ac constituendum credidimus, ut, si quis virorum fortium praesentalium domesticorum in equitum schola secundocerii locum indeptus diem interea supremum clauserit, heredes eius non reliqui tantum temporis, quod eidem gradui superesse monstratur, verum etiam insequentis anni, hoc est primiceratus, solaciis ac emolumentis fruantur omnibus, ut, quod ad quaestum et compendium militiaeque fructum prolixe pertinet, similis habeatur , ac si superstes permanserit ad finem usque supremum. * iust. a. vigilantio com. domesticorum consulari ac patricio. * <a xxx >

CJ.12.18.0. De praepositis labarum.

CJ.12.18.1: Imperatores Honorius, Theodosius

Qui praepositi labarum nostro iudicio promoventur, clarissimi sint inter adlectos, ita ut ex consularibus habeantur. nam et immunitate digni sunt, quos nostri lateris comitatus illustrat. * honor. et theodos. aa. monaxio pp. * <a 416 d.Iii id.Nov.Constantinopoli theodosio a.Vii et palladio conss.>

CJ.12.19.0. De proximis sacrorum scriniorum ceterisque qui in sacris scriniis militant.

CJ.12.19.1: Imperatores Gratianus, Valentinianus, Theodosius

Proximos memoriae, epistularum ac libellorum atque dispositionum ita vicariorum honore cumulamus, ut inter eos merito dignitatis habeantur, qui pro praefectis dioeceses sibi creditas temperarunt, ex eo tempore, ex quo eos splendor indepti proximatus ostendat, insequentibus praeponendi, qui vicarias postea administraverint. et nullam iniuriam descriptionis perhorrescant. * grat. valentin. et theodos. aaa. cynegio pp. * <a 386 d.Prid.K.Ami.Constantinopoli honorio nobilissimo puero et euodio conss.>

CJ.12.19.2: Imperatores Valentinianus, Theodosius, Arcadius

In sacris scriniis nostris militantes in provinciis ordinarii vel spectabiles iudices a salutatione non arceant, etiam inviti in consessum accipiant: scituris vel principe vel corniculario vel capitibus officii, ternas libras auri ex suis facultatibus eruendas, si consistorium nostrum saepe ingredientibus secretarii iudicum non patuerit ingressus, aut reverentia non fuerit in salutatione delata aut sedendi cum iudice societas denegata. * valentin. theodos. et arcad. aaa. constantio pp. * <a 389 d.Vi id.Nov.Triveris timasio et promoto vv.Cc.Conss.>

CJ.12.19.3: Imperatores Arcadius, Honorius

In scriniis palatii militantes, id est memoriae epistularum libellorumque ac dispositionum, post viginti annos transactae militiae si discedendum sibi esse decreverint, consulari honore fulti inter adlectos habeantur huncque honorem dignitatis teneant, qui ex consularibus deferri consueverit. nec eos quisquam iniungendo aliquid iubendo possit ab impertito otio separare. * arcad. et honor. aa. claudio pu. * <a 396 d.Xv k.Mart.Constantinopoli arcadio iiii et honorio iii aa.Conss.>

CJ.12.19.4pr.: Imperatores Arcadius, Honorius, Theodosius

Iubemus, ut primum omnium sit eorum, qui in sacris scriniis nostris, id est memoriae, epistularum libellorum et dispositionum, referuntur, secura possessio ab omnibus sordidis muneribus excusata: superindictum non timeant, venalicium non petantur solumque canonicae indictionis praestent tributum: labore dignitas conquisita extraordinarium munus ignoret nec ullam temonis patiatur iniuriam: equorum tironumque praestationem nullus agnoscat, qui vel adhuc in scriniis militat vel honorem proximi et comitivam primi dispositionum longi temporis sudore quaesivit. et haec quidem patrimoniis censuimus deferenda. * arcad. honor. et theodos. aaa. epiphanio pu. * <a 407 d.Id.Oct.Ravennae honorio vii et theodosio ii aa.Conss.>

CJ.12.19.4.1: Imperatores Arcadius, Honorius, Theodosius

Quod autem omnibus constat deferri, adiectu alterius dignitatis perire non patimur, ut, etiamsi prosperioris fortunae iudicio ad honoris ornamenta processerint , vetera tamen eis scrinii labore privilegia quaesita serventur. <a 407 d.Id.Oct.Ravennae honorio vii et theodosio ii aa.Conss.>

CJ.12.19.5pr.: Imperatores Honorius, Theodosius

Peculiari praeceptionis nostrae favore praestamus, ut in scriniis memoriae, epistularum libellorumque ab exceptoribus usque ad melloproximos dignitatem clarissimorum honoremque percipiant. * honor. et theodos. aa. faustino pp. * <a 413 d.Viii id.Iun.Ravennae lucio vc.Cons.>

CJ.12.19.5.1: Imperatores Honorius, Theodosius

Et sicuti reliqui, qui in isdem scriniis militant, liberum cum ordinariis iudicibus ingressum in secretarium concessumque habere legibus meruerunt, ii quoque, in quos hanc stipendiorum meritis clarissimatus conferimus dignitatem, cum spectabilibus etiam sese ferimus reverentiam recognoscant, ut consedendi ingrediendique secretarium sciant a nobis licentiam contributam. <a 413 d.Viii id.Iun.Ravennae lucio vc.Cons.>

CJ.12.19.6: Imperatores Honorius, Theodosius

Pro biennio annum solum agere deinceps decernimus eos, qui in tribus scriniis memoriae epistularum libellorumque ordine ac merito stipendiorum ad gradum pervenerint proximorum. * honor. et theodos. aa. eustathio quaest. et heloni mag. off.* <a 416 d.Viii id.Febr.Constantinopoli theodosio a.Vii et palladio conss.>

CJ.12.19.7pr.: Imperatores Theodosius, Valentinianus

Unicuique, qui in sacris scriniis militat, sui loci merita servari oportere constituimus, et universos, qui ultra numerum statutorum in isdem scriniis militant , sui gradus respectu per ordinem quem sortiti sunt in deficientium statutorum locum, ut tamen ultimis socientur, subire decernimus: scilicet ut nemini penitus liceat, cum sit posterior tempore, in locum praecedentis ambire, nisi forte adeo qui tempore vincitur laborum comparatione superat, ut quindecim primatum eiusdem scrinii testimonio cum sacramenti religione subnixus praecedentibus dignior iudicetur. * theodos. et valentin. aa. nomo mag. off. * <a 443-444 ? >

CJ.12.19.7.1: Imperatores Theodosius, Valentinianus

Hanc quoque observationem extra filios proximorum volumus custodiri. etenim cuique proximo unum de suis filiis, qui temporis dumtaxat suffragio nititur, licet parum observasse militiam cognoscatur, insequentibus tempore, qui laborum meritis muniuntur, anteferre posse decernimus. <a 443-444 ? >

CJ.12.19.7.2: Imperatores Theodosius, Valentinianus

Illum tamen, qui locum statuti meretur, proximo quidem ducentos quinquaginta solidos, melloproximo vero vel adiutori pro consuetudine uniuscuiusque scrinii viginti aut quindecim solidos offerre praecipimus. <a 443-444 ? >

CJ.12.19.7.3: Imperatores Theodosius, Valentinianus

Quod si quis de supernumerariis, qui in statuti locum subire debuerat, ne pecuniam offerat, statuti etiam gradum recusare voluerit, sequenti tam offerendae quantitatis praedictae quam subrogandi licentia permittatur, ita videlicet, ut si secundus etiam vel tertius vel cuiuslibet numeri in eadem excusationis voluntate duraverit, accedenti semper eadem copia quam praecedens excusaverat tribuatur. <a 443-444 ? >

CJ.12.19.7.4: Imperatores Theodosius, Valentinianus

Hos autem, qui ad statutorum ordinem progredi noluerint, nec de suo gradu volumus removeri et, cum vacaverit statuti locus, condicionem quam antea repudiaverant, id est offerendae pecuniae et adipiscendi statuti locum liberam habere praecipimus facultatem. <a 443-444 ? >

CJ.12.19.8pr.: Imperatores Theodosius, Valentinianus

Proximos sacrorum scriniorum, quos fides ac diuturnae observationis industria litterataque militia, comitem quin etiam dispositionum, quem probitas ac strenuitas merito commendat, completo tempore suae militiae comitivae sacri nostri consistorii cingulo in diem vitae potiri, manentibus videlicet iam dudum praestitis salvis privilegiis, decernimus. * theodos. et valentin. aa. nomo mag. off. * <a 443-444? >

CJ.12.19.8.1: Imperatores Theodosius, Valentinianus

Quibus enim arcana pietatis nostrae merito committuntur, his pietas nostra vitam cingulo supra dictae comitivae ornandam decorandamque decrevit. <a 443-444? >

CJ.12.19.9: Imperator Leo

In sacris nostris scriniis militantes per commeatum non continuatim praestitum ante conventionem profecti intra indultum temporis spatium erunt cum suis coniugibus et liberis a conventione securi: ab indictionibus etiam publicorum et civilium munerum et post completam militiam excusatione potiantur: super domibus quoque, quas in provinciis possident, metatorum molestia liberentur. * leo a. patricio mag. off. * <a xxx >

CJ.12.19.10pr.: Imperator Leo

Statutos memoriales praecipimus esse in scrinio quidem memoriae sexaginta duos, epistularum vero triginta quattuor, libellorum quoque triginta quattuor: antiquarios vero, qui habentur in scrinio memoriae, numquam minus esse quam quattuor. * leo a. hilariano com. et mag. off. ac patricio. * <a xxx >

CJ.12.19.10.1: Imperator Leo

Supra scripti autem memoriales nullo modo duplici fungantur officio nec geminis chartis inrepserint, ut non occupentur plura in unum se commoda collaturi nihilque reliquis relicturi. <a xxx >

CJ.12.19.11: Imperator Anastasius

Si quis in sacris nostris scriniis, id est memoriae dispositionum epistularum et libellorum, statutis iam connumeratus ab hac luce fuerit subtractus, ab eo, quicumque utpote vacante loco de substitutis in statutorum consortio fuerit ultimus subrogatus, pro solacio vel suffragio proximi definitam sacraeque constitutioni divae memoriae theodosii et valentiniani principum insertam quantitatem defuncti heredes vel successores vel liberi eius seu creditores, qui fenus cum mortuo pro statuti loco ei adquirendo contraxerint, consequantur: ita scilicet ut, si hereditas vel successio diem functi minime fuerit suscepta vel adita, tales personae, id est creditores quidem contra ceteros praerogativa sibi servata, li beri autem vel agnati seu cognati non hereditatis sed privilegii nomine simili modo huiusmodi summam percipiant sibique petere ac vindicare permittantur: nullius machinatione huiusmodi nostra dispositione retractanda seu violanda, maxime cum viros etiam pro tempore spectabiles eorundem proximos scriniorum, si quis eorum ante completum proximatus actum morte praeventus sit, ad heredes successoresque suos residui temporis proximatus solacia sine quadam imminutione transmittere non dubitetur. * anastas. a. eusebio mag. off. * <a xxx >

CJ.12.19.12pr.: Imperator Anastasius

In sacris scriniis militantes et parentes atque uxores eorum nec non liberos ex sententia tantummodo tuae celsitudinis criminales et civiles intentiones agentium excipere iubemus, insuper etiam colonos seu adscripticios et servos eorum in hac regia urbe degentes eodem beneficio potiri, fidei pro tempore adiutoris viri spectabilis proximi vel unius ex statutis committendos: ita ut, si in provincia quicumque memorialis repertus fuerit, iuratoriae cautioni committatur, etsi non possideat immobilem substantiam, servi nihilo minus et coloni ad eum pertinentes fidei eius tradantur. * anastas. a. celeri mag. off. * <a xxx >

CJ.12.19.12.1: Imperator Anastasius

Modum insuper sportularum ad mediocrem deduci quantitatem et exsecutoribus de schola agentium in rebus attribuendis unum solidum singulos usque ad finem negotii proque ingressu in iudicio tuae magnitudinis quolibet modo faciendo duos solidos et pro editione gestorum exceptoribus dimidiam solidi partem et, si apud arbitrum negotium ventilari contigerit, ipsi quidem arbitrio unum solidum et nihil amplius, exceptoribus autem eum observantibus tam pro ipso quod implere videntur ministerio quam pro editione gestorum seu relationis vel definitionis tertiam partem solidi praebere sancimus: nec pro tempore virum spectabilem fisci patronum vel exsecutores, quibus imminendi litibus sollicitudo iniuncta est, quicquam ab his exigere seu profligare concedi: dimidia scilicet expensarum, quas in iudicio tui culminis a memoratis personis praeberi statuimus, portione in iudi ciis provincialibus ab his agnoscenda: ita ut, si de civilibus annonis vel tutela seu curatione vel novi operis nuntiatione litem eos subire contigerit, in maiore quidem iudicio ad similitudinem sumptuum, quos in iudicio eminentiae tuae dependere praecepti sunt, apud virum autem clarissimum praefectum annonae seu fisci patronum urbicariae magnificae praefecturae vel architectos pro modo eorum, quae super arbitris et litibus apud eos exercendis superius statuta sunt, solventes expensas nihil amplius agnoscere seu dependere cogantur. <a xxx >

CJ.12.19.12.2: Imperator Anastasius

Quae omnia custodiri iubemus, sive per se sive per procuratores aut defensores lites exercere maluerint. haec, si prolata scriptis sententia moniti sunt. <a xxx >

CJ.12.19.12.3: Imperator Anastasius

Si vero ex depositione seu aliter quis eorum conventus fuerit, nihil eum vel scrinio viri clarissimi adiutoris vel cuilibet alii nomine sportularum offerre compelli. <a xxx >

CJ.12.19.12.3a: Imperator Anastasius

Omnibus ante latis privilegiis postea, quibus per anteriores divorum principum sanctiones defenduntur, in persona tam eorum, qui adhuc militant et qui postea eandem militiam sortiti sunt, quam eorum, qui praedictam militiam gradu vocante iam deposuerunt vel postea deposuerint, servandis, ut eorum commodo ipsi quoque una cum uxoribus et liberis, colonis praeterea et servis propriis perfruantur. <a xxx >

CJ.12.19.12.4: Imperator Anastasius

Et quoniam in controversiis, quas in iudiciis moveri contigerit, aequalitatem litigatoribus volumus servari, et adversariis eorum pro sumptibus et expensis similem ante latorum beneficiorum praerogativam custodiri. <a xxx >

CJ.12.19.12.5: Imperator Anastasius

Propter hanc etenim causam et viros devotos memoriales non tantum agendo in quolibet iudicio, sed etiam actiones ab aliis ingerendas excipiendo privilegiis a nobis indultis potiri decernimus. <a xxx >

CJ.12.19.12.6: Imperator Anastasius

His videlicet, qui militiam virorum devotissimorum memorialium gradu soluto deposuerunt seu deposuerint, et si quietis amore per provincias domicilium fovere maluerint, omnibus nihilo minus privilegiis, quae huiusmodi personis per sacratissimam legem nuper promulgatam a nostra serenitate praestita sunt, muniendis et eorum commodis atque auxilio potituris. <a xxx >

CJ.12.19.13pr.: Imperator Justinus

Comperimus divinitus quidem fuisse dispositum viros devotos adiutores tuae magnitudinis certo esse in numero nec ad huiusmodi nomen vel operam plures licitum esse adspirare, quam in scrinio quidem sacrae memoriae duodecim tantum, septenos vero in duobus reliquis scriniis, id est sacrarum epistularum sacrorumque libellorum, sed posterioris licentiam temporis supra modum indulgendo ambitionibus disturbasse rei merita ac in multitudinem divulgasse, ut inter memorialium et adiutorum numerum non longum paene intersit. * iustinus a. proculo quaest. sacri palatii. * <a xxx >

CJ.12.19.13.1: Imperator Justinus

Sancimus itaque reduci ac renovari statutum ordinis terminum, non ut eximantur adiutoribus ii, qui praeter praedictam dispositionem in praesenti exuberant, sed ut interea omnibus aliis interdicatur ab adfectando hoc nomen, donec exeuntibus singulis ac recedentibus decrescere possit vetita conglomeratio legitimusque iam resideat numerus: non prohibendis viris devotis adiutoribus desistentibus eodem officio, cum vel ad laterculensis gradum in scrinio sacrae memoriae provecti fuerint vel secundum locum obtinuerint in duobus aliis scriniis, post quem proximi creabuntur, licet nondum redacta sit quantitas pristina, tamen alios pro se quos elegerint subrogandos adiutores petere, qui posteriores erunt ceteris. <a xxx >

CJ.12.19.13.2: Imperator Justinus

Illud etiam disponendum duximus utpote nonnullis anterioribus exemplis subnixum nec non iustitiae congruum, ut ab his, quibus concessum est adiutorum agmini pro se sociare, libellus offeratur viro illustri pro tempore quaestori petendaque eius subscriptio tempus atque hominem nec non rem ipsam continens, id est quod inter adiutores ei quem pro se subrogat merere permissum est: ordinandis videlicet isdem adiutoribus pro ratione temporum, quibus libelli porrecti sunt, ut, etiamsi memorialium matricula inferiore loco sit, qui prior in adiutoribus meruit , adiutor quidem habeatur superior, memorialis vero posterior pro utriusque ordinis modo vel discrimine: quod etiam in aliis quoque paene omnibus officiis observari dignoscitur. <a xxx >

CJ.12.19.14pr.: Imperator Justinus

Hac lege sancimus, si quando adiutores viri magnifici pro tempore quaestoris sacri nostri palatii in accusationem civilis causae vel criminalis deducti fuerint , strictum iuris et integritati congruum ordinem conservari, ut, si sine scriptis conveniendi sint, nomen eius praecipientis ore designatum esse sufficiat: sin autem scriptis in querimoniam unus adiutorum aut plures forte ferendi sint, monumenta sententiarum in persona tantummodo conveniendi adiutoris praecedentium aequum et iustum initium futuro praestent certamini. * iustinus a. tatiano mag. off. * <a xxx >

CJ.12.19.14.1: Imperator Justinus

Et quoniam probatioribus exemplis quam indecorae consuetudini deceat indulgeri, quod in universo scrinio devotissimorum libellensium evicisse monstratur, id in adiutores sacrae memoriae, sacrarum etiam epistularum transferendum censemus, ut , qui liberam proficiscendi licentiam pronuntiatione commeatus indepti fuerint, sine qualibet stipendiorum aut emolumentorum deductione peregre degant, etenim pro tempore viris clarissimis proximis et melloproximis aut eorum adiutoribus absentiae causa vel offerre de suo proprio aut ex annonis aut stipendiis quicquam relinquere cogendi, quamvis ianuarias kalendas indultum excedat spatium et int ra se festum diem contineat. <a xxx >

CJ.12.19.14.2: Imperator Justinus

Ad haec illud observandum sancimus, ne alius adiutor propter quamcumque ambitionem his, qui in praesenti sunt, vel post eorum deminutionem addatur, licet in veterem numerum redacti fuerint. <a xxx >

CJ.12.19.15pr.: Imperatores Justinus, Justinianus

Certae quidem sunt dispositiones nostri numinis, quas super adiutoribus viri illustris pro tempore quaestoris nostri palatii, quorum obsequio res agitur quaestoria, dedimus. * iustinus et iust. aa. tatiano mag. off. * <a 527>

CJ.12.19.15.1: Imperatores Justinus, Justinianus

Quarum prima quidem ad supplicationem eorundem adiutorum emissa numero eorum, qui erant illo tempore, quo preces nobis obtulerunt, neque aliquem eximi neque aliquem addi praecepit, praeterquam si quis eorum vel ad laterculensis gradum in scrinio sacrae memoriae vel ad secundum locum in duobus aliis scriniis, id est sacrarum epistularum sacrorumque libellorum et cognitionum, provectus fuerit: nam his licere desistentibus ab adiutoris officio alios pro se quos voluerint adiutores subrogare ultimum locum in isdem adiutoribus obtenturos, licet superiorem in memoralibus habeant. <a 527>

CJ.12.19.15.2: Imperatores Justinus, Justinianus

Altera vero per sacram pragmaticam facta est, per quam excelsae memoriae proculo viro suggerente praecipimus illos etiam adiutores posse in suum locum alios inducere, qui per aliquem fortuitum casum minus implere suum officium valeant, veluti senium vel morbum vel aliam necessariam causam: quod ex ipsorum adiutorum petitione idem magnificae memoriae proculus ad nos rettulit. <a 527>

CJ.12.19.15.3: Imperatores Justinus, Justinianus

Sed in praesenti, ab aliis memorialibus tam in scrinio sacrae memoriae quam in ceteris duobus sacrarum epistularum sacrorumque libellorum et cognitionum relatis aditi comperimus deminutionem eorundem adiutorum impediri per memoratam pragmaticam sanctionem et insuper venditionis quodammodo memorati officii locum introductum esse. <a 527>

CJ.12.19.15.4: Imperatores Justinus, Justinianus

Quod ne de cetero fiat, praesentem sanctionem ad tuam magnitudinem mittimus, per quam iubemus illis tantummodo permissum esse secundum prius nostrae serenitatis rescriptum alios in suum locum subrogare, qui vel laterculensis gradum in scrinio memoriae vel secundum locum in aliis duobus scriniis adepti fuerint, secunda nostra sanctione super hoc capitulo de cetero cessante: nulli danda licentia eorundem adiutorum, praeterquam si ad memoratos gradus adscenderit, alium pro se isdem adiutoribus ex quocumque fortuito casu connumerare, ut eo modo ad veterem numerum idem adiutores redeant et duodecim quidem in scrinio sacrae memoriae, s epteni vero in aliis duobus sint, id est sacrarum epistularum sacrorumque libellorum et cognitionum. <a 527>

CJ.12.19.15.5: Imperatores Justinus, Justinianus

Illo videlicet observando, ne alius adiutor per quamcumque ambitionem his qui in praesenti sunt vel post eorum deminutionem, licet in veterem numerum redacti fuerint, addatur: nam si permutationem, licet fortuito casus inciderint, prohiberi disposuimus, multo magis prioribus manentibus alios introduci vetamus: ceteris scilicet anterioris sanctionis capitulis in suo robore permansuris. <a 527>

CJ.12.20.0. De agentibus in rebus.

CJ.12.20.1: Imperatores Arcadius, Honorius, Theodosius

Nullus de schola agentium in rebus de cetero locum mortui conetur invadere, sed is, qui ordine stipendiorum et laborum merito ad gradum militiae sequebatur, statim atque illum fata subduxerint in eius praemia percipienda succedat omni obreptione cessante. * arcad. honor. et theodos. aaa. antehmio mag. off. * <a 404 d.Prid.K.Iul.Constantinopoli honorio a.Vi et aristaeneto conss.>

CJ.12.20.2: Imperatores Arcadius, Honorius, Theodosius

Nulli posthac sine nostrae maiestatis auctoritate discingendi agentem in rebus, nulli eximendi pateat copia: nam probata schola et animadversionem vereri iudicis et nullam debet timere contumeliam vilitatis. * arcad. honor. et theodos. aaa. helioni mag. off. * <a 415 d.Iii id.Nov.Constantinopoli honorio x et theodosio vi aa.Conss.>

CJ.12.20.3pr.: Imperator Leo

Matriculam agentum in rebus a tua celsitudine confectam amittentes iubemus, ne ducenarii plus quam quadraginta octo in cingulis habeantur in posterum: et numerum centenariorum ducenti viri, quos vocante tempore gradus competentes admiserint, parique modo biarchorum nomen meritumque ducenti quinquaginta viri dumtaxat , praeterea circitorum trecenti et equitum quadringenti quinquaginta impleant. * leo a. patricio mag. off. rum. * <a xxx >

CJ.12.20.3.1: Imperator Leo

Sit in aeternum illa quoque fixa stabilisque tuae sublimitatis dispositio, ut, si quis de numero ducenariorum, quos quadraginta octo quotannis esse censuimus, forsitan de luce migraverit, laborum eius fructum successores ab intestato vel ex testamento venientes luctui dispenset, et ita omnibus inter ceteros superstites potiantur solaciis, tamquam si vivus, qui haec eadem diu speraverat, sibimet vindicasset: qua de causa locum etiam eius successorum intuitu vacare conveniet. <a xxx >

CJ.12.20.3.2: Imperator Leo

Nemo autem sine divali probatoria, quam codices in sacro nostro scrinio memoriae positi debeant inserendam accipere, militaribus eiusdem devotissimae scholae stipendiis vel privilegiis potiatur. <a xxx >

CJ.12.20.4pr.: Imperator Leo

Ex eo, quo primum ducenae vel centenariorum gradum in schola agentum in rebus militantes meruerint, desinant in sacratissima videlicet civitate constituti alterius iudicis cuiuslibet auctoritate pulsari, vel in alio quolibet examine praeterquam viri magnifici magistri officiorum et cui forsitan ipse concesserit actionibus sui quisque adversarii respondere. quod multo magis in criminalibus causis observari decernimus: absurdum est enim, ut in eius salutem vel existimationem valeat quisquam proferre sententiam, cuius de nulla re possit pecuniaria iudicare. * leo a. patricio mag. off. * <a xxx >

CJ.12.20.4.1: Imperator Leo

Huius autem beneficii praerogativam subadiuvis etiam, qui singulis inveniuntur temporibus, deferri iubemus, licet hanc in eorum persona more quoque vetere servari cognoverimus: ut tamen post depositum officium memoratum, si non inter centenarios numerentur, communi iam lege respondere non ambigant. <a xxx >

CJ.12.20.4.2: Imperator Leo

Praedictas autem omnes centenariorum personas in provincia repertas concessa nunc speciali fori praerogativa, nisi publicae exsecutionis sollicitudo his iniuncta sit, uti prohibemus eosque ordinariorum etiam iudicum pro vetere iure sententiis oboedire praecipimus. <a xxx >

CJ.12.20.5pr.: Imperator Leo

Agentes in rebus, qui per ordinem consequi solent principatus insignia, in unoquoque scrinio fabricarum et barbarorum quaternos subadiuvarum sollicitudine per annum dumtaxat integrum procedentes gradatim subire hac in aeternum valitura lege decernimus: exceptis videlicet universis negotiatoribus quodlibet mercimonium per se gerentibus interpositasve personas, cum eis ante sacratissimis constitutionibus interdictum sit militare: exceptis nihilo minus his, qui possessionum alienarum sollicitudinem procurationemve susceperint. eos enim ad haec officia volumus adspirare, quorum labores scholae agentum in rebus testimonio comproban tur. * leo a. patricio mag. off. * <a xxx >

CJ.12.20.5.1: Imperator Leo

Illi quoque sunt ab hac liberalitate nostrae mansuetudinis excludendi, qui, cum scholae eidem socientur, in sacris scriniis, quibus vir spectabilis primicerius et tertiocerius praesunt, adiuvantes eos publicarum chartarum tractatibus occupantur et duobus officiis operam suam adhibere non possunt: nam praeter emolumenta, quae de praedictis scriniis consequuntur, principatus etiam solacio debent esse contenti. <a xxx >

CJ.12.20.5.2: Imperator Leo

Quod si morbo vel aetatis senio capti vel imperiti huiusmodi rerum vel quocumque alio vitio praepediti per se memorati officii curam subire nequiverint, consideratis praecedentibus eorum laboribus per substitutum chartularium eiusdem scrinii, cui praefuturus est ipse, idoneum et tam moribus optimis praeditum quam scientiam peritiamque rerum habentem electione sua suarumque periculo facultatum praefatum munus eos implere praecipimus. <a xxx >

CJ.12.20.6pr.: Imperator Anastasius

Hac saluberrima sanctione decernimus agentes in rebus pro conventionibus et modo sportularum exsecutoribus praebendarum pro quantitate sumptuum, quae circa litigia sibimet ab aliis inferenda vel a se contra alios per semet ipsos seu per ordinandos a se procuratores exercenda convenit ab his agnosci, beneficiis, quae in sacro nostro militantibus ministerio iam pridem per divinas sanctiones indulta sunt, perpotiri, fideiussorem idoneum de eadem schola, non autem extraneum offerre compelli: * anastas. a. celeri mag. off. * <a xxx >

CJ.12.20.6.1: Imperator Anastasius

Ita tamen, ut privilegia, quaecumque centenariis seu ducenariis vel chartulariis seu viris clarissimis principibus post depositam quoque militiam iam per dispositiones principales impertita et nunc usque observata esse noscuntur, intacta inviolataque custodiantur, cum perabsurdum perque temerarium sit hanc nostrae pietatis liberalitatem quemquam astuta interpretatione non ad augmentum anteriorum privilegiorum, sed imminutionem convertere concedi: <a xxx >

CJ.12.20.6.2: Imperator Anastasius

Simili videlicet forma pro matribus et uxoribus eorum nec non etiam liberis sub eorum potestate constitutis nec aliam sortitis vel sortituris militiam nec non etiam servis ad eos pertinentibus servanda: <a xxx >

CJ.12.20.6.3: Imperator Anastasius

Ita ut in provinciis quoque supra dictae personae degentes simili beneficio perfruantur, sportulas tamen et litium expensas pro tertia superius enarratae quantitatis soluturae: <a xxx >

CJ.12.20.6.4: Imperator Anastasius

Denarum librarum auri condemnatione aliaque gravissima indignatione his feriendis, quicumque nostra iussa quolibet modo seu tempore violaverint seu violari concesserint. <a xxx >

CJ.12.21.0. De principibus agentum in rebus.

CJ.12.21.1pr.: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

Agentes in rebus post palmam laboris emeriti principatus honore remuneramus. atque ideo officiales tam ad necessitates publicas quam privatas non nisi principe mittantur auctore, nullarumque sine ipso cuiquam mandetur exhibitio personarum, etiamsi intercessio in locis degentis officii fuerit impertita. * grat. valentin. theodos. et arcad. aaaa. cynegio pp. * <a 386 d.Prid.K.Mart.Constantinopoli honorio np.Et euodio conss.>

CJ.12.21.1.1: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

Causarum etiam patronos volumus esse conventos, ne ignorante principe ullam postulationem introducant, neve sub unius persona suscepti fraude quadam aliena negotia inserenda esse pertemptent. <a 386 d.Prid.K.Mart.Constantinopoli honorio np.Et euodio conss.>

CJ.12.21.1.2: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

Quod si fuerit definitio contempta, decem libras auri fisco nostro ab officio tuo iubemus inferri. <a 386 d.Prid.K.Mart.Constantinopoli honorio np.Et euodio conss.>

CJ.12.21.2: Imperatores Arcadius, Honorius

Omnia citatoria, omnium scilicet causarum atque personarum, licet sint senatoriae dignitatis, ad principes specialiter revocari praecipimus, actus vero ceteros , qui in sacratissimo coetu senatus tractari consueverunt, censualium sollicitudine celebrari, nec aliquid praeiudicium ex subreptivo rescripto supplicibus inferri. * arcad. et hohor. aa. theodoto pu. * <a 395 d.Xii k.Iun.Constantinopoli olybrio et probino conss.>

CJ.12.21.3: Imperatores Honorius, Theodosius

Proconsularis apicis dignitatis adiectione principes agentum in rebus praecipimus decorari. * honor. et theodos. aa. palladio procons. africae. * <a 410 d.Vii k.Oct.Ravennae varane vc.Cons.>

CJ.12.21.4pr.: Imperatores Theodosius, Valentinianus

Ex agentibus in rebus principibus domesticos in suis actibus habere liceat eos, quorum fidem industriamque probatam sibi aestimant, etsi saepe eodem officio fuerint ante perfuncti. * theodos. et valentin. aa. valerio mag. off. * <a 436 d.Iiii k.Febr.Constantinopoli theodosio a.Xv et qui fuerit nuntiatus.>

CJ.12.21.4.1: Imperatores Theodosius, Valentinianus

Et si quis agens in rebus post viginti quinque annorum curricula ob adversam corporis valitudinem militiae finem minime valuerit expectare, sed ad honorariam ex principe dignitatem testimonio scholae procilierit, isdem eum privilegiis muniri censemus, quibus ii qui ad principatus actum progressi sunt potiuntur. <a 436 d.Iiii k.Febr.Constantinopoli theodosio a.Xv et qui fuerit nuntiatus.>

CJ.12.21.4.2: Imperatores Theodosius, Valentinianus

Sed in salutationibus iudicum concessibusque priores eos, qui per longae militiae metas ad principatus actum pervenerint, etsi actus tempore posteriores sint, esse praecipimus. <a 436 d.Iiii k.Febr.Constantinopoli theodosio a.Xv et qui fuerit nuntiatus.>

CJ.12.21.4.3: Imperatores Theodosius, Valentinianus

Nihil censualibus vel apparitoribus adversus privilegia eorum excogitantibus, tamquam in actu principatus fuerit versati, vicenarum librarum auri condemnatione contra eos proposita. <a 436 d.Iiii k.Febr.Constantinopoli theodosio a.Xv et qui fuerit nuntiatus.>

CJ.12.21.5: Imperatores Theodosius, Valentinianus

Eos, qui ordine transcursa militia post ducenam ad desideratum principis pervenerint gradum aut adiutores viri illustris magistri officiorum extiterint, cum inter honoratos coeperint numerari, vicarianae dignitatis titulis decorari censemus. * theodos. et valentin. aa. cyro pp. * <a 440.441 >

CJ.12.21.6: Imperatores Theodosius, Valentinianus

Principes agentum in rebus, quos saepe saeva pericula vitaeque interdum renuntiatio ad memoratum gradum adduxit, completo tempore suae militiae comitivae primi ordinis cingulo in diem vitae potiri, manentibus videlicet dudum praestitis salvis privilegiis, decernimus. * theodos. et valentin. aa. nomo mag. off. * <a 443.444? >

CJ.12.21.7pr.: Imperator Leo

Quicumque ex corpore cohortalium militans in schola agentum in rebus filium procreaverit, antequam ad metas militiae suae perveniat, principatus honore decoretur, licet ipse post finitam militiam utpote liber nulla debeat huiusmodi conventione pulsari, filium tamen cohortali condicioni relinquat obnoxium. * leo a. nicostrato pp. * <a 468 >

CJ.12.21.7.1: Imperator Leo

Si vero, postquam adeptus fuerit principatum, ediderit filium, is qui natus est, etiamsi in schola devotissimorum agentum in rebus militiam sortitus non fuerit, ita sit liber ac securus nec ullis cohortalis officii nexibus obligetur, quasi iam ex patre libero et ab hac condicione penitus alieno progenitus. <a 468 >

CJ.12.21.8pr.: Imperator Zeno

Multis devotissimae scholae agentum in rebus aditionibus permoti viros clarissimos eiusdem scholae principes, qui finitis militiae stipendiis exeunt, quotiens ex maioris iudicis sententiis ipsi vel eorum coniuges aut liberi vel servi aut coloni sive per se sive per procuratores conveniantur, non amplius quam unum solidum exsecutoribus sportularum nomine praebere compelli, apparitoribus vicarianis seu praesidalis iudicii non nisi tertia parte solidi tantum praestanda: * zeno a. iohanni mag. off. * <a 484 d.K.Sept.Theodorico cons.>

CJ.12.21.8.1: Imperator Zeno

Nullasque eisdem concussiones aut vexationes in praebendis fideiussoribus ingeri , sed eos fideiussores quos locorum defensor existimaverit dare, ita videlicet, ut pro tenore generalium edictorum ii, qui vel in sacratissima urbe vel in provinciis immobiles possident facultates, iuratoriae cautioni et substantiae suae credantur. <a 484 d.K.Sept.Theodorico cons.>

CJ.12.21.8.2: Imperator Zeno

Hoc etiam adiciendo, ut numquam nisi ex sententia in scriptis prolata penitus moneantur. <a 484 d.K.Sept.Theodorico cons.>

CJ.12.21.8.3: Imperator Zeno

Ad similitudinem insuper aliorum officiorum, quotiens civiles vel criminales contra eosdem cognitiones moventur, exsecutorem quidem negotii usque ad finem litis civilis seu criminalis unius esse solidi praestatione contentum. <a 484 d.K.Sept.Theodorico cons.>

CJ.12.21.8.4: Imperator Zeno

Et pro insinuandis nostrae serenitatis apicibus vel simplici contra obnoxios eorum postulatione deponenda binos solidos ab his vel coniugibus eorum praeberi. <a 484 d.K.Sept.Theodorico cons.>

CJ.12.21.8.5: Imperator Zeno

Et quotiens exemplaria postulantur, ii quorum interest accepto solido quod petitur praebere non differant. <a 484 d.K.Sept.Theodorico cons.>

CJ.12.21.8.6: Imperator Zeno

Pro implendis vero monumentis, unde conveniendi tribuitur exsecutoribus facultas , non ultra quam tres solidos quibus competit impertiri praecipimus. <a 484 d.K.Sept.Theodorico cons.>

CJ.12.21.8.7: Imperator Zeno

Arbitro vero non amplius quam solidum et fisci patronis dimidiam solidi partem, notariis vero tertiam usque ad finem, sicut dictum est, causae praestare: super editione quoque chartularum solidi partem dimidiam praebere. <a 484 d.K.Sept.Theodorico cons.>

CJ.12.21.8.8: Imperator Zeno

Quod si non apud arbitrum, sed in competentibus iudiciis maioribus cognitio celebretur, inducendi quidem negotii gratia non nisi quattuor solidos eosdem viros clarissimos erogare, gestorum vero excipiendorum causa duos tantummodo solidos dare et nullius ultra supra scriptas quantitates cuilibet alteri praestandi sumptus exactione vexari. <a 484 d.K.Sept.Theodorico cons.>

CJ.12.21.8.9: Imperator Zeno

His omnibus locum habentibus, sive ipsi aliis litem ingerunt sive ab aliis pulsantur. <a 484 d.K.Sept.Theodorico cons.>

CJ.12.22.0. De curiosis.

CJ.12.22.1: Imperator Constantius

Curiosi et stationarii, vel quicumque funguntur hoc munere, crimina iudicibus nuntianda meminerint et sibi necessitatem probationis incumbere, non citra periculum sui, si insontibus eos calumnias nexuisse constiterit. cesset ergo prava consuetudo, per quam carceri aliquos immittebant. * constantius a. ad lollianum pp. * <a 355 d.Xi k.Aug.Mediolani acc.Xii k.Sept.Arbitrione et lolliano conss.>

CJ.12.22.2pr.: Imperator Constantius

Agentes in rebus in curiis agendis et evectionibus publici cursus inspiciendis nostrorum memores praeceptorum credimus in omnibus velle profutura rei publicae: ideoque solos agentes in rebus in hoc genere iussimus obsequium adhibere, et non ab alio penitus officio. * constantius a. et iul. c.Ad taurum pp. * <a 357 d.Xv k.Mai.Mediolani constantio a.Viiii et iuliano c.Ii conss.>

CJ.12.22.2.1: Imperator Constantius

Hi vero pervigili diligentia providebunt, ne quis contra evectionis auctoritatem moveat cursum vel amplius postulet, quam concessit evectio. quisquis igitur aliquid tale perpetrare temptaverit, improbi coepti privetur effectu. <a 357 d.Xv k.Mai.Mediolani constantio a.Viiii et iuliano c.Ii conss.>

CJ.12.22.2.2: Imperator Constantius

Demonstretur etiam iudicibus vel curiosis evectio, etiamsi quis nobis iubentibus festinare memoret in obsequium necessarium, nec praevaleat contumacia vel dignitas. <a 357 d.Xv k.Mai.Mediolani constantio a.Viiii et iuliano c.Ii conss.>

CJ.12.22.2.3: Imperator Constantius

Ergo nummum vetamus exposci pro animalibus in cursu minime constitutis. quod si forte aliquis aestimaverit perpetrandum, eius quadruplum quod accepit inferre cogatur. <a 357 d.Xv k.Mai.Mediolani constantio a.Viiii et iuliano c.Ii conss.>

CJ.12.22.3: Imperator Constantius

Per id tempus, quo cursus tuendi sollicitudinem sustinetis, condemnationes praefectorum praetorio circa eos solos irritae sunt futurae, qui servaverint honestatem. erga eos vero, qui inhoneste et contra decus saeculi vel honorem militiae versabuntur, non solum condemnatio mansura est, verum etiam gravior poena statuenda. * constantius a. ad agentes in rebus. * <a 359 pp.Prid.K.Dec.Eusebio et hypatio conss.>

CJ.12.22.4pr.: Imperatores Arcadius, Honorius

Agentes in rebus singulos per singulas provincias mittendos esse censemus, quibus tamen inspiciendarum evectionum tantum debeat cura mandari, ut nihil prorsus commune aut cum iudicibus aut cum provincialibus habeant. * arcad. et honor. aa. Marcello mag. off. * <a 395 d.K.Iun.Constantinopoli olybrio et probino conss.>

CJ.12.22.4.1: Imperatores Arcadius, Honorius

Nec naves debebunt illicita concussione vexare nec libellos aut attestationes litis gratia suscipere aut in carcerem quemquam trudere, sed cursui solum vacare. <a 395 d.K.Iun.Constantinopoli olybrio et probino conss.>

CJ.12.23.0. De palatinis sacrarum largitionum et rerum privatarum.

CJ.12.23.1: Imperatores Constantius, constans

Palatini pro capitibus seu iugis suis tantum pensitationem atque obsequia recognoscant, extraordinariis et sordidis muneribus et susceptionibus et temonariis oneribus liberati. * constantius et constans aa. ad veronicianum vic. asiae. * <a 346 d. non. mai. constantinopoli constantio iiii et constante iii aa. conss.>

CJ.12.23.2: Imperatores Valentinianus, Valens, Gratianus

Nullus thesaurensis vel officialis comitis thesaurorum semel deprehensus eversor quocumque pacto aut repetat militiam suam aut aliam sibi requirat per ambitum dignitatem vel sese transferat ad aliam quamcumque militiam. * valentin. valens et grat. aaa. titiano com. sacr. larg. * <a 377 d. viii k. febr. antiochiae gratiano a. iiii et merobaude conss.>

CJ.12.23.3pr.: Imperatores Gratianus, Valentinianus, Theodosius

Prisco iam nunc ordine revocato de palatino potius officio ad gerendum principatum officii comitis domorum per cappadociam mittantur, quales comes etiam domorum, si inhonestum aliquid gesserit, vereatur. * grat. valentin. et theodos. aaa. pancratio com. rer. priv * <a 379 d. prid. non. iul. scupis ausonio et alybrio conss.>

CJ.12.23.3.1: Imperatores Gratianus, Valentinianus, Theodosius

Idoneos itaque singulis annis e numero mittendariorum ad hoc eligere debebis et mittere. <a 379 d. prid. non. iul. scupis ausonio et alybrio conss.>

CJ.12.23.4: Imperatores Gratianus, Valentinianus, Theodosius

Nihil omnino ullis iudicibus cum palatinis nostrae clementiae, quicumque a comitibus diriguntur, sit commune atque coniunctum, sed excepta reverentia, quae non solum ab inferioribus, sed etiam a maioribus et in provincia degentibus rectoribus proviniarum debetur atque defertur, suis quisque necessitatibus obsecundet. * grat. valentin. et theodos. aaa. ad hesperium pp. * <a 379 d. viii id. dec. sirmio ausonio et olybrio conss.>

CJ.12.23.5: Imperatores Gratianus, Valentinianus, Theodosius

Quidam post impletum ordinem militiae palatinae quam gesserant honoremque transactum ad exceptorum scrinia transire nituntur. hac igitur lege sancimus, ut nulli prorsus dehinc ista audendi relinquatur occasio: sed unusquisque eius scrinii , quod primum militando elegit, ordinem persequatur nec in alterius loco finem militiae requirat, qui iam proprii ordinis transegerit principatum. * grat. valentin. et theodos. aaa. nebridio com. rer. privat. * <a 383 d. v id. oct. constantinopoli merobaude ii et saturnino conss.>

CJ.12.23.6: Imperatores Gratianus, Valentinianus, Theodosius

Ab officiis palatinorum excellentia tua sciat ita penitus recedendum, ut neque ipsa postmodum licitum sibi credat isdem aliquid iniungere et praeterea provinciarum rectores prohibeat quicquam ulterius tale conari. * grat. valentin. et theodos. aaa. ad probum pp. * <a 384 d.Vii k.Nov. mediolani post cons. merobaudis ii et saturnini.>

CJ.12.23.7pr.: Imperatores Gratianus, Valentinianus, Theodosius

Scriniis omnibus largitionum comitatensium infra scriptas decernimus dignitates, ut his contenti ambiendi sibi aditum interclusum esse cognoscant, etiamsi speciale beneficium emendicato suffragio quisquam valuerit impetrare. annonas etiam iuxta definitum dignitatum modum volumus postulari nec amplius quicquam praesumi. * grat. valentin. et theodos. aaa. trifolio com. sacr. lar * <a 384 d.Iii id.Iun.Heracliae ricomere et clearcho conss.>

CJ.12.23.7.1: Imperatores Gratianus, Valentinianus, Theodosius

Brevis, quas dignitates per singula scrinia officiorum sacrarum largitionum habere statuimus, hic est: <a 384 d.Iii id.Iun.Heracliae ricomere et clearcho conss.>

CJ.12.23.7.2: Imperatores Gratianus, Valentinianus, Theodosius

Scrinii exceptorum: perfectissimus ordinis secundi numero unus, id est primicerius omnis scholae. perfectissimus id est primicerius exceptorum numero unus. ducenarii duo, id est tertiocerius et quartocerius. centenarius unus, id est primicerius instrumentorum. epistulares numero duo. formae primae numero triginta sex. formae secundae numero quattuor. formae tertiae numero tres. <a 384 d.Iii id.Iun.Heracliae ricomere et clearcho conss.>

CJ.12.23.7.3: Imperatores Gratianus, Valentinianus, Theodosius

Scrinii numerorum: perfectissimus ordinis tertii numero unus. ducenarius numero unus. centenarii numero duo. epistulares numero duo. formae primae numero tres. formae secundae numero unus. formae tertiae numero duo. <a 384 d.Iii id.Iun.Heracliae ricomere et clearcho conss.>

CJ.12.23.7.4: Imperatores Gratianus, Valentinianus, Theodosius

Sacri scrinii tabulariorum: perfectissimus ordinis tertii numero unus. ducenarius numero unus. centenarius numero unus. epistularis numero unus. formae primae numero tres. formae secundae numero quinque. <a 384 d.Iii id.Iun.Heracliae ricomere et clearcho conss.>

CJ.12.23.7.5: Imperatores Gratianus, Valentinianus, Theodosius

Scrinii canonum: perfectissimus ordinis tertii numero unus. ducenarius numero unus. centenarius numero unus. epistulares numero duo. formae primae numero quattuor. formae secundae numero quattuor. <a 384 d.Iii id.Iun.Heracliae ricomere et clearcho conss.>

CJ.12.23.7.6: Imperatores Gratianus, Valentinianus, Theodosius

Scrinii mittendariorum: ducenarius numero unus. centenarii numero quinque. epistulares numero novem. formae primae numero septem. formae secundae numero triginta tres. <a 384 d.Iii id.Iun.Heracliae ricomere et clearcho conss.>

CJ.12.23.7.7: Imperatores Gratianus, Valentinianus, Theodosius

Scrinii auri massae: perfectissimus ordinis tertii numero unus. id est primicerius sacrae massae. perfectissimus numero unus, id est secundocerius. ducenarii numero duo, id est tertiocerius et quartocerius. centenarii numero quattuor. epistulares numero quattuor. <a 384 d.Iii id.Iun.Heracliae ricomere et clearcho conss.>

CJ.12.23.7.8: Imperatores Gratianus, Valentinianus, Theodosius

Aurifices specierum: perfectissimus numero unus. ducenarii numero tres. centenarii numero sex. epistulares numero octo. formae primae numero decem et octo. formae secundae numero quattuor. <a 384 d.Iii id.Iun.Heracliae ricomere et clearcho conss.>

CJ.12.23.7.9: Imperatores Gratianus, Valentinianus, Theodosius

Aurifices solidorum: ducenarius numero unus. centenarii numero septem. epistulares numero sex. formae primae numero novem. formae secundae numero triginta. <a 384 d.Iii id.Iun.Heracliae ricomere et clearcho conss.>

CJ.12.23.7.10: Imperatores Gratianus, Valentinianus, Theodosius

Sculptores et ceteri aurifices: centenarius numero unus. epistulares numero quinque. formae primae numero sex. formae secundae numero decem et octo. <a 384 d.Iii id.Iun.Heracliae ricomere et clearcho conss.>

CJ.12.23.7.11: Imperatores Gratianus, Valentinianus, Theodosius

Scrinii auri ad responsum: perfectissimus ordinis secundi numero unus. perfectissimi ordinis secundi numero duo. ducenarii numero tres. centenarii numero duo. epistulares numero tres. formae primae numero tres. formae secundae numero duo. formae tertiae numero unus. <a 384 d.Iii id.Iun.Heracliae ricomere et clearcho conss.>

CJ.12.23.7.12: Imperatores Gratianus, Valentinianus, Theodosius

Scrinii a militarensibus: perfectissimus ordinis primi numero unus. ducenarius numero unus. formae primae numero unus. formae secundae numero duo. formae tertiae numero tres. <a 384 d.Iii id.Iun.Heracliae ricomere et clearcho conss.>

CJ.12.23.7.13: Imperatores Gratianus, Valentinianus, Theodosius

Scrinii vestis: perfectissimus primi ordinis numero unus. perfectissimus secundi ordinis numero unus. ducenarius numero unus. centenarius numero unus. epistulares numero duo. formae primae numero septem. formae secundae numero decem. formae tertiae numero quattuor. <a 384 d.Iii id.Iun.Heracliae ricomere et clearcho conss.>

CJ.12.23.7.14: Imperatores Gratianus, Valentinianus, Theodosius

Officialium sacrarum vestium: ducenarii numero duo. centenarii numero duo. epistulares numero duo. formae primae numero septem. formae secundae numero decem. formae tertiae numero novem. <a 384 d.Iii id.Iun.Heracliae ricomere et clearcho conss.>

CJ.12.23.7.15: Imperatores Gratianus, Valentinianus, Theodosius

Deputati sacrae vestis: perfectissimi secundi ordinis numero duo. ducenarii numero duo. centenarii numero duo. epistulares numero duo. formae primae numero tres. <a 384 d.Iii id.Iun.Heracliae ricomere et clearcho conss.>

CJ.12.23.7.16: Imperatores Gratianus, Valentinianus, Theodosius

Scrinii ab argento: perfectissimus ordinis secundi numero unus. centenarius numero unus. epistularis numero unus. formae primae numero quattuor. formae secundae numero tres. formae tertiae numero unus. <a 384 d.Iii id.Iun.Heracliae ricomere et clearcho conss.>

CJ.12.23.7.17: Imperatores Gratianus, Valentinianus, Theodosius

Ad pecunias: perfectissimus ordinis secundi numero unus. formae primae numero duo. formae secundae numero duo. formae tertiae numero quinque. <a 384 d.Iii id.Iun.Heracliae ricomere et clearcho conss.>

CJ.12.23.7.18: Imperatores Gratianus, Valentinianus, Theodosius

Argentarii comitatenses: ducenarius numero unus. centenarii numero duo. epistulares numero duo. formae primae numero octo. formae secundae numero viginti quinque. <a 384 d.Iii id.Iun.Heracliae ricomere et clearcho conss.>

CJ.12.23.7.19: Imperatores Gratianus, Valentinianus, Theodosius

Barbaricarii: centenarius numero unus. epistulares numero duo. formae primae numero octo. formae secundae numero unus. . . <a 384 d.Iii id.Iun.Heracliae ricomere et clearcho conss.>

CJ.12.23.8: Imperatores Gratianus, Valentinianus, Theodosius

Placuit iusta et omnibus mittendariis palatini officii profutura suggestio, qua insinuasti, ut ex isdem annui singuli ex ducenariis, terni ex centenariis habito provisionis intuitu cingulo liberentur. * grat. valentin. et theodos. aaa. et arcad. a. trifolio com. sacr. larg.* <a 385 d.Iiii id.Mart.Constantinopoli arcadio a.Et bautone vc.Conss.>

CJ.12.23.9: Imperatores Arcadius, Honorius, Theodosius

Non aliter quilibet in officio sacrarum largitionum vel privatarum cingulum militiae sibi sumendum existimet, nisi nostrae mansuetudinis adnotationem meruerit. * arcad. honor. et theodos. aaa. nestori com. rer. privat. * <a 405 d.Prid.Id.Aug.Ancyrae stilichone ii et anthemio conss.>

CJ.12.23.10: Imperatores Honorius, Theodosius

Palatinos, qui sacrarum remunerationum rationem tractantes inculpanter ad calcem terminumque militiae pervenerint, adiutorem et primicerios diversorum officiorum praecepimus habere privilegia, quae nuper agentum in rebus scholae a nostra sunt mansuetudine contributa, scilicet ut a tironum praebitione memorati reddantur exsortes ceteraque onera non agnoscant. * honor. et theodos. aa. iohanni pp. * <a 413 d.Vii id.Iun.Ravennae post cons.Honorii viiii et theodosii v aa.>

CJ.12.23.11: Imperatores Honorius, Theodosius

Ad similitudinem sanctionis, quam de proximis sacrorum promulgavimus scriniorum, etiam in officio sacrarum largitionum atque privatarum pro biennio annum sub perpetua observatione praecipimus custodiri, ita ut et privilegia, quae huiusmodi officiis vel primiceriis sacris legibus deferuntur, integra illibataque serventur. * honor. et theodos. aa. anysio com. sacr. larg. et tauro com. rer. privat.* <a 416 d.Iii k.Iul.Constnatinopoli theodosio a.Vii et palladio conss.>

CJ.12.23.12pr.: Imperator Theodosius

Viros devotos palatinos non oportere in hac regia urbe apud virum illustrem praefectum urbis litigare compelli, nisi de aedificatione domorum et servitutibus et annonis orta videatur causa: in aliis vero causis tam pecuniariis quam criminalibus apud viros illustres tantummodo comites suos respondere. * theodos. a. et valentin. c.Maximino com. sacr. larg. * <a xxx >

CJ.12.23.12.1: Imperator Theodosius

Rectoribus autem provinciarum intra administrationis suae fines inter praesentes palatinos nec causis publicis occupatos cognoscere tam pro civili quam pro criminali causa permittimus, sic tamen, ut non aliter criminalis sententia adversus eos proferatur, nisi ex suggestione provincialis iudicii vir illustris comes sub quo militat certioratus hoc ei permiserit. <a xxx >

CJ.12.23.13: Imperatores Theodosius, Valentinianus

Inter alias praerogativas, quas ante meruerant scholae societatis sacrarum largitionum, primicerius et tres primicerii scriniorum tribuni praetoriani militaris dignitate fruantur, nulla eis ex cuiuslibet iudicis praeceptione iniungenda publica vel privata necessitate. * theodos. et valentin. aa. eudoxio com. sacr. larg. * <a xxx >

CJ.12.23.14pr.: Imperatores Theodosius, Valentinianus

Iubemus viros devotos palatinos rei nostri numinis privatae isdem privilegiis decorari, quibus etiam palatini qui in sacris largitionibus deferuntur. cum enim par similisque militia sint, iustum et competens videtur isdem utrumque officium privilegiis gloriari. * theodos. et valentin. aa. florentio pp. * <a xxx >

CJ.12.23.14.1: Imperatores Theodosius, Valentinianus

Primicerios itaque officii tresque primates scriniorum rerum privatarum finito tempore militiae inter tribunos militares praetorianos, salvis isdem praestitis privilegiis sacris constitutionibus, nostram clementiam adorare decernimus, ita tamen, ut nullam iniunctionem nullam sollicitudinem privati vel publici negotii quolibet iudiciario praecepto sustinere possint, sed excepta omni necessitate omnique fatigatione indeptae dignitatis honore potiantur. <a xxx >

CJ.12.24.0. De stratoribus.

CJ.12.24.1pr.: Imperatores Valentinianus, Valens

Per omnes provincias edictum generale misimus, ut ab stratoribus unus tantum solidus probae nomine posceretur, et in offerendis equis certam formam staturam aetatem proviciales nostri custodiendam esse cognoscant. * valentin. et valens aa. ad zosimum praes. novae epiri. * <a 373 d. xiii k. iul. apolloniae valentiniano et valente aa. conss.>

CJ.12.24.1.1: Imperatores Valentinianus, Valens

Quos etiam fisco certo solidorum modo obnoxios fecimus, si, quod stratores petere interdictum est, illi dare stratoribus non timerent. <a 373 d. xiii k. iul. apolloniae valentiniano et valente aa. conss.>

CJ.12.24.1.2: Imperatores Valentinianus, Valens

Officium quoque gravitatis tuae centum argenti libris multabitur, si sciens praedictam rem gestam fuisse non ilico eam severitati iudiciariae prodidisset. <a 373 d. xiii k. iul. apolloniae valentiniano et valente aa. conss.>

CJ.12.25.0. De castrensianis et ministerianis.

CJ.12.25.1: Imperatores Honorius, Theodosius

In officio spectabilitatis tuae secundum formam divalium responsorum post completum tempus praefinitum, id est biennium, prioribus decedentibus insequentes ad locum pro merito laborum stipendiorumque succedant, nec ulla licentia tribuatur his, qui impletum deposuerint officium, denuo ad eandem militiam vel sollicitudinem remeandi. * honor. et theodos. aa. narsi com. et castrensi sacri palatii. * <a 416 d. vi id. febr. constantinopoli theodosio a. vii et qui fuerit nuntiatus. >

CJ.12.25.2: Imperatores Honorius, Theodosius

Si quis primae vel secundae vel tertiae formae specialiter inter statutos gradum caelitus valuerit impetrare, supernumerarius ultimus formae tertiae in matriculis habeatur. * honor. et theodos. aa. scholastico com. et castrensi sacri palatii. * <a 422 d. prid. id. ian. constantinopoli honorio xiii et theodosio x aa. conss.>

CJ.12.25.3: Imperatores Leo, Anthemius

Ii, qui in schola vestis sacrae militant, vel matres eorum vel uxores criminalem vel litem contra se commovendam in nullo alio nisi in sublimitatis tuae suscipiant examine. * leo et anthem. aa. iohanni com. et mag. off. * <a xxx >

CJ.12.25.4pr.: Imperatores Leo, Zeno

Ante omnia nullius penitus alterius iudicis minoris vel maioris sacro ministerio nostro deputatos, quorum officia singillatim brevis subter adnexus continet, nisi a tuae dumtaxat magnitudinis sententiis conveniri, ut in nullo penitus alterius iudicis foro pulsantium nisi in tuae tantummodo amplitudinis examine praebeant aliquando responsum. * leo et zeno aa. hilariano com. et mag. off. * <a 474 >

CJ.12.25.4.1: Imperatores Leo, Zeno

Sed ne in hoc ipso iudicio enormibus molestentur dispendiis, vel ex nudis conveniantur facile cuiuscumque mandatis, ipsis quoque sportulis et fideiussionibus modum constituimus observandum, ante omnia decernentes, ne quando sine scriptura vel interpellatione deposita ac sententia prorogata tuae magnitudinis eademque non edita conveniri posse, conventos vero non alium fideiussorem nisi actuarium vel unum e primatibus suae scholae exsecutoribus pro suae personae responsione sine scripto praestare, sive per se ipsi sive procuratore dato in iudicio responsuri sunt, et sive in causis civilibus appetantur sive in criminalibus incusentur. <a 474 >

CJ.12.25.4.2: Imperatores Leo, Zeno

Nec ultra conventionis nomine sportularum quam unum aureum exsecutoribus usque ad finem litis praestent, quemcumque contigerit conveniri. inducendorum sane nomine et cognitionum exercendarum standaeque personae gratia ex simplici postulatione contra eos habita, sive ex appellatione subsecuta vel quolibet alio modo in iudicio deponatur, tribus tantummodo solidis usque ad terminum negotii eos qui accepturi sunt praecipimus semper esse contentos. in cognitionalibus vero gestis edendis duos tantummodo praestari solidos. <a 474 >

CJ.12.25.4.3: Imperatores Leo, Zeno

Haec autem privilegia non in eorum tantummodo, sed in matrum quoque et uxorum personis valere et ad integrum permanere: filiis quoque et maritis easdem fideiussionis nomine, si necessitas interpellationis exegerit, tradi nec alios vades exigi: ipsosque, dum militant, et post emensam militiam cum his, qui ex tempore prioris praestitae sibi pragmaticae sanctionis eiusdem militiae stipendia implesse noscuntur, omnibus privilegiis perfrui (cunctis nihilo minus capitulis sacris adfatibus divae recordationis marciani, quos se meruisse adserunt, valituris , excepto hoc, quod in diversis iudiciis tunc respondere praedepti sunt) hac sa nctione decernimus. <a 474 >

CJ.12.25.4.4: Imperatores Leo, Zeno

Advocato quoque fisci, exceptoribus etiam, qui apud arbitros hoc utuntur officio , ab exordio incipiendo usque ad terminum finemque negotii tertiam dumtaxat partem solidi praebituros: in huiusmodi autem arbitrorum gestis edendis non ultra praestare quam dimidiam solidi partem: et cum per provincias constitutus fideiussore conventus caruerit, adiuratoriae tantummodo cautioni committi nec ullo tempore nisi ex tuae dumtaxat magnitudinis sententia conveniri (exceptis tributariis et munerum functionibus et criminibus, quae in locis inquiri flagitari et vindicari generalia legum praecepta constituunt), praesenti sanctione decernimus : viro clarissimo adiutore sublimitatis tuae in speculis constituto, ne quid ex his quae statuimus aliqua subreptione violetur. <a 474 >

CJ.12.26.0. De decanis.

CJ.12.26.1: Imperatores Honorius, Theodosius

Quattuor, qui ex corpore decanorum ad primum militiae gradum pervenerint, biennii spatio primiceratus gerant officium, neque ulterius cuiquam hoc loco liceat immorari, ut omni gratia et ambitione cessante post duorum annorum curricula succedant prioribus subsequentes. * honor. et theodos. aa. helioni coniti et mag. off. * <a 416 d. prid. non. nov. constantinopoli theodosio a. vii et palladio vc. conss.>

CJ.12.26.2pr.: Imperatores Theodosius, Valentinianus

Nostrae pietatis famulationibus adhaerentes decanos non oportet pro desiderio pulsantium ad alia protrahi iudicia, sed viri illustris tantum magistri officiorum observare examen. * theodos. et valentin. aa. nomo mag. off. * <a 443-444?>

CJ.12.26.2.1: Imperatores Theodosius, Valentinianus

Hoc namque modo neque mansuetudinis nostrae obsequia decipiuntur et agentibus adversus eos iure adhibetur responsum. <a 443-444?>

CJ.12.26.2.2: Imperatores Theodosius, Valentinianus

Ad exemplum itaque devotissimorum scholarium nulli licere memoratos ad aliud iudicium trahere et pulsatos priorum fidei scholae permitti praecipimus. <a 443-444 ?>

CJ.12.27.0. De mensoribus.

CJ.12.27.1: Imperatores Honorius, Theodosius

Primicerius mensorum biennio expleto agentis in rebus ultimi militiam sortiatur. * honor. et theodos. aa. aemiliano mag. off. * <a 405 d. x k. aug. ancyrae stilichone ii et anthemio conss.>

CJ.12.28.0. De privilegiis eorum qui in sacro palatio militant.

CJ.12.28.1: Imperator Constantinus

A palatinis tam his, qui obsequiis nostris inculpata officia praebuerunt, quam illis, qui in scriniis nostris, id est memoriae epistularum libellorumque, versati sunt, procul universas calumnias sive nominationes iubemus esse submotas, idque beneficium ad filios eorum atque nepotes ipso ordine sanguinis pervenire, atque immunes eos a cunctis muneribus sordidis et personalibus permanere cum universis mobilibus et mancipiis urbanis, neque iniurias eis ab aliquibus inferri: ita ut, qui haec contempserit, indiscreta dignitate poenas debitas exigatur. * const. a. palatinis bene meritis salutem. * <a 314 d. iiii k. nov. triveris volusiano et anniano conss.>

CJ.12.28.2pr.: Imperator Constantinus

De cubiculis nostris vacatione donatos vel diversis obsequiis palatinis, memoriales etiam, qui in scriniis memoriae epistularum libellorum sacrarumque dispositionum referuntur, nec non et si qui in utroque officio palatinorum comitatensium singularumve urbium et officio admissionum et castrensis sacri palatii militant, privilegia volumus habere, ut nec ipsi nec filii nec nepotes eorum ad honores vel munera municipalia devocentur. * const. a. rufino pp. * <a 319 d. v k. mai. sirmio constantino a. v et licinio c. conss.>

CJ.12.28.2.1: Imperator Constantinus

Quibus omnibus condonamus, ne exactorum vel turmariorum, quos capitularios vocant, curam subeant vel obsequium temonariorum vel pentaprotiae aut etiam tironis praestationem agnoscant. <a 319 d. v k. mai. sirmio constantino a. v et licinio c. conss.>

CJ.12.28.2.2: Imperator Constantinus

Nam beneficiis nostris ita digni sunt, ut etiam censualibus vel personalibus vel corporalibus muneribus liberentur et habeant castrense peculium, sive adhuc palatium observant sive optata quiete donati sunt. <a 319 d. v k. mai. sirmio constantino a. v et licinio c. conss.>

CJ.12.28.2.3: Imperator Constantinus

Quibus omnibus privilegiis coniungimus agentes in rebus, licet militaribus videantur esse subnixi. <a 319 d. v k. mai. sirmio constantino a. v et licinio c. conss.>

CJ.12.28.3: Imperatores Gratianus, Valentinianus, Theodosius

Ex aula nostra decedentes viri ab omnibus iniunctis habeantur immunes: numerariorum fastus vel rapaces quaestus tamquam experientes et idonei non patiantur. * grat. valentin. et theodos. aaa. eutropio pp. * <a 381 d. iii non. febr. constantinopoli eucherio et syagrio vv. cc. conss.>

CJ.12.28.4pr.: Imperatores Gratianus, Valentinianus, Theodosius

Omnes, qui in palatio militando diversis actibus paruerunt, in tantum eius dignitatis, cuius meruerint missionem, obtinere noverint insignia, ut his omnibus praeferantur in ordine atque concessu, qui posteriore tempore regendas provincias dignitatesque susceperint palatinas. * grat. valentin. et theodos. aaa. et arcad. a. ad pinianum pu.* <a 386 d. prid. non. iul. mediolani. acc. iiii k. sept. honorio np. et euodio conss.>

CJ.12.28.4.1: Imperatores Gratianus, Valentinianus, Theodosius

Si quis autem temeraria usurpatione violare statuta temptaverit, sacrilegii poenam sustineat. <a 386 d. prid. non. iul. mediolani. acc. iiii k. sept. honorio np. et euodio conss.>

CJ.12.29.0. De privilegiis scholarum.

CJ.12.29.1pr.: Imperatores Theodosius, Valentinianus

Viris spectabilibus comitibus scholarum verberandi regradandive senatores ac ducenarios licentiam denegamus. ea namque, quae tali commotione digna sunt, ad tuae sublimitatis volumus referri notitiam. * theodos. et valentin. aa. phlegetio com. et mag. off. * <a 441 d. xv k. mai. constantinopoli cyro vc. cons.>

CJ.12.29.1.1: Imperatores Theodosius, Valentinianus

Insuper etiam domesticos eorum non senatores vel ducenarios centenariosve fieri decernimus: poena quinque librarum auri plectendo, quisquis hanc divinam iussionem excesserit, scrinio vero barbarorum, si tale quid vel attemptari passum fuerit vel attemptatum contra leges non suggesserit, decem librarum auri condemnatione percellendo. <a 441 d. xv k. mai. constantinopoli cyro vc. cons.>

CJ.12.29.1.2: Imperatores Theodosius, Valentinianus

Illud etiam observari non sine ratione conveniet, ne is, cui domestici officium per militiae gradum vel quinquennii tempus interdici censuimus, familiaritate comitis simulata rem prohibitam alio nomine valeat usurpare. <a 441 d. xv k. mai. constantinopoli cyro vc. cons.>

CJ.12.29.2pr.: Imperatores Leo, Zeno

Hac lege decernimus, ut, qui in singulis scholis militant quique post emensa stipendiorum curricula ad primiceriorum gradum pervenerint et adorata nostrae divinitatis purpura virorum clarissimorum comitum meruerint dignitatem, tam cingulo quam privilegiis omnibus sibimet competentibus perfruantur ac deinceps usque ad finem vitae foro tuae celsitudinis tantummodo subiaceant nec ex alterius cuiuslibet sententia civile subire litigium compellantur. * leo et zeno aa. eusebio mag. off. * <a 474 >

CJ.12.29.2.1: Imperatores Leo, Zeno

In criminalibus sane controversiis et in publicis tributis et adversus tales viros provincias moderantium congruam iurisdictionem volumus observari, ne sub praetextu concessi privilegii vel flagitiorum crescat auctoritas vel publica vacillet utilitas. <a 474 >

CJ.12.29.3pr.: Imperator Zeno

Quotiens super causa civili vel etiam criminali, ex sententia videlicet iudicii tui culminis, scholares vel eorum coniuges, sive adhuc vivent mariti sive post mortem eorum in viduitate constitutae sunt, matresve eorum in viduitate permanentes aut liberi, qui non specialiter alterius iudicis iurisdictioni subiectam condicionem sortiti sunt, et servi ad eos pertinentes conveniuntur, minime eos easve extranei fideiussoris exactione vexari, sed pro consuetudine vetustissima et iugiter observata numerarium suae scholae fideiussorem praebere iubemus. * zeno a. longino mag. off. * <a x >

CJ.12.29.3.1: Imperator Zeno

Hoc videlicet observando, ut in criminalibus causis quinque alios primates ex triginta viris, a primicerio usque ad tricesimum retro numerandis una cum numerario, volentes scilicet et non recusantes, praebeant fideiussores, aut recusantibus quinque sicut dictum est viris extraneus in criminibus tantummodo publicis fideiussor una cum numerario praebeatur: ita ut exsecutoribus non amplius ab his quam unus solidus, sive per se sive per procuratorem respondere maluerint, praebeatur. <a x >

CJ.12.29.3.1a: Imperator Zeno

In subeundis autem cognitionalibus certaminibus, quotiens causa fuerit arbitro delegata, pro contestatione litis unum solidum et pro definitione ab arbitro recitanda alterum unum et nihil amplius dari decernimus. <a x >

CJ.12.29.3.2: Imperator Zeno

Quod si causa in iudicio tui culminis ab ipsa contestatione litis vel relatione iudicis aut appellatione interposita ventilatur, pro inducenda cognitione non amplius quam tres solidos, et chartarum vel recitandorum in cognitionibus instrumentorum nomine, editionis quin etiam gestorum duos tantummodo solidos dabunt. <a x >

CJ.12.29.3.3: Imperator Zeno

Quotiens sane apud viros clarissimos provinciarum moderatores, ex delegatione scilicet sententiae tuae magnitudinis, contra viros fortissimos scholares vel eorum coniuges vel liberos vel servos cognitio celebretur, non amplius quam dimidiam partem consuetorum sumptuum praeberi decernimus. <a x >

CJ.12.29.3.3a: Imperator Zeno

Hoc etiam adiciendo, ut, qui acceptis commeatibus ad provincias profecti fuerint , usque ad quinque mensium spatium, intra quod ipsis erit remeandi licentia, nullam penitus actionem, super civili videlicet negotio (exceptis criminibus et tributariis functionibus) sustineant. <a x >

CJ.12.29.3.3b: Imperator Zeno

Ne tamen ibi quoque, post quinque scilicet commeatus menses, ex sententia iudicii tuae magnitudinis conventi in exigendis fideiussoribus aliquod sentiant detrimentum, iuratoriae eos cautioni iubemus committi. <a x >

CJ.12.29.3.4: Imperator Zeno

Quotiens autem ex verbis et sine ulla scriptis prolata sententia idem fortissimi scholares vel eorum matres seu coniuges, ut dictum est, aut liberi vel servi moneantur, nihil ipsa exsecutione sportularum nomine penitus eos vel eorum matres seu coniuges aut liberos secundum superius datam distinctionem vel servos praebere decernimus. <a x >

CJ.12.29.3.5: Imperator Zeno

Sed si talis sit negotii vilitas, ut etiam sine scriptis, consentientibus videlicet partibus, super ea possit cognosci, expectato sine scriptis, sicut dictum est, habendae cognitionis eventu, si deteriorem calculum reportaverint, sportularum nomine unum tantummodo solidum exsecutori praestabunt. <a x >

CJ.12.29.3.6: Imperator Zeno

Sin vero causae qualitas in scriptis habendam cognitionem flagitaverit, in hoc necesse est casu interlocutione in scriptis proferenda ea, quae superius de quantitate sportularum decidendarumque cognitionum disposita sunt, observari. <a x >

CJ.12.30.0. De castrensi omnium palatinorum peculio.

CJ.12.30.1pr.: Imperator Constantinus

Omnes palatinos, quos edicti nostri iam dudum certa privilegia superfundunt, rem , si quam, dum in palatio nostro morantur, vel si parsimonia propria quaesierint vel donis nostris fuerint consecuti, ut castrense peculium habere praecipimus. quid enim tam ex castris est, quam quod nobis conscii ac prope sub conspectibus nostris adquiritur? * const. a. ad severum pu. * <a 326 pp. x k. iun. constantino a. vii et constantio c. conss.>

CJ.12.30.1.1: Imperator Constantinus

Sed nec alieni sunt a pulvere et labore castrorum, qui signa nostra comitantur, qui praesto sunt semper actibus, quos intentos eruditis studiis itinerum prolixitas et expeditionum difficultas exercet. <a 326 pp. x k. iun. constantino a. vii et constantio c. conss.>

CJ.12.30.1.2: Imperator Constantinus

Ideoque palatini nostri, qui privilegiis edicti uti potuerunt, peculia sua praecipua retineant, quae, dum in palatio constituti sunt, aut labore, ut dictum est , proprio aut dignatione nostra quaesierint. <a 326 pp. x k. iun. constantino a. vii et constantio c. conss.>

CJ.12.31.0. De equestri dignitate.

CJ.12.31.1: Imperatores Valentinianus, Valens

Equites romanos secundum gradum post clarissimatus dignitatem obtinere iubemus. * valentin. et valens aa. ad mamertinum pp. * <a 364 d. prid. k. nov. philippopoli divo ioviano et varroniano conss.>

CJ.12.32.0. De perfectissimatus dignitate.

CJ.12.32.1: Imperator Constantinus

Codicillis perfectissimatus fruantur, qui impetraverint, si abhorreant a condicione servili vel fisco aut curiae obnoxii non sint vel si pistores non fuerint vel non in aliquo negotio constiterint nec sibi honorem venali suffragio emerint nec rem alicuius administraverint. * const. a. ad paternum valerianum. * <a x>

CJ.12.33.0. Qui militare possunt vel non et de servis ad militiam vel dignitatem adspirantibus et ut nemo duplici militia vel dignitate et militia simul utatur.

CJ.12.33.1: Imperatores Severus, Antoninus

Si militiae nomen dare vultis, offerte vos his qui probandi ius habent. non autem ignoratis eos, qui litis causa militiam appetierunt, postulantibus adversariis solvi sacramento solere. * sev. et ant. aa. antonio suo salutem. * <a x>

CJ.12.33.2: Imperatores Diocletianus, Maximianus

Non tantum decurionum filiis, sed omnibus in fraudem civilium munerum nomina armatae militiae dantibus fraudem prodesse displicuit. * diocl. et maxim. aa. valerio mil. * <a x>

CJ.12.33.3: Imperatores Arcadius, Honorius

Cura pervigili observare debebit sublimitas tua, ne coloni vel saltuenses aut ultro se offerentes ad militiam suscipiantur armatam aut cogantur inviti. * arcad. et honor. aa. pulchro mag. utr. mil. * <a x >

CJ.12.33.4: Imperator Leo

Omnes omnino curialis vel cohortalis condicionis constituti nullam armatam militiam in posterum adripiant. * leo a. dioscoro pp. * <a 472 ? >

CJ.12.33.5pr.: Imperator Justinus

Eis quidem, quibus indultum hactenus demonstratur, quo binis aut ternis pluribusve mereantur cingulis non coniunctis e prisca consuetudine, sed absectis atque discrepantibus, detur electio, quem retinendum sibi potius censeant, quem deserendum cognoscant, ut in eo quod optaverint firmiter maneant, eo quod despexerint sine dubitatione reppellantur. * iustinus a. licinio mag. off. * <a 524 d. viii k. ian. constantinopoli iustino a. iterum et opilione conss.>

CJ.12.33.5.1: Imperator Justinus

In posterum vero nemini prorsus facultas pateat eodem tempore plus quam unius ordinis nomen adfectare, interdicendis in commune cunctis ut dictum est binis pluribusve militiis, nec dignitatem coniungere cuilibet alii cingulo concedendis, ut et qui supplicandum de re vetita nobis existimaverint, poena decem librarum auri pro temeritate quamvis infructuosa plectantur, et qui susceperint iussionem augustam per subreptionem elicitam, quod nonnumquam contingit, decem librarum auri multa feriantur: scriniis etiam nec non officiis, quorum haec intersit, si non restiterint et hanc pragmaticam legem obiecerint, decem librarum auri dispe ndio puniendis. <a 524 d. viii k. ian. constantinopoli iustino a. iterum et opilione conss.>

CJ.12.33.5.1a: Imperator Justinus

Si quid autem contra haec perpetretur, sciant omnes, quod extra concessum admissum est aut actum fuerit vel notis conscriptum publicis, simile habeatur, ac si nec impetratum nec pronuntiatum omnino nec insertum esset ullis matriculis. <a 524 d. viii k. ian. constantinopoli iustino a. iterum et opilione conss.>

CJ.12.33.5.2: Imperator Justinus

Scituris etiam omnibus, qui merentes in ordinibus armatis sive civilibus administrandas provincias seu regendos quoslibet numeros vel iam sunt seu de cetero fuerint iussione nostra sortiti et, ut servetur eis gradus, augusta promeriti sanctione, parem indulgendam sibi licentiam, postquam deposuerint sollicitudinem, aut in priore cingulo protinus persistendi, nullo vindicando titulo dignitatis, quem sollicitudo media praestiterint, aut retinendi splendorem, quem adquisierint administrationis obtentu, verum priore cingulo desistendi. <a 524 d. viii k. ian. constantinopoli iustino a. iterum et opilione conss.>

CJ.12.33.5.3: Imperator Justinus

Monente tamen innata nobis clementia liberum esse cunctis prospeximus, si militia, qua decedendum est, inter eas habetur, quas volentibus licet distrahere, et in alios eam conferendi et pretia consequendi, prout in isdem agminibus consuevit hactenus. <a 524 d. viii k. ian. constantinopoli iustino a. iterum et opilione conss.>

CJ.12.33.5.4: Imperator Justinus

Excipiendis videlicet nec deducendis in hanc perpetuo conservandam legem pragmaticam eis, qui binas militias simul compositas et sociali nexas consortio fuerint adsecuti, ut in viris dicatissimis scholaribus atque candidatis fieri moris est nec non in viris devotis laterculensibus et pragmaticariis vel a secretis contigit, quos memorialium etiam aut agentum in rebus adornat cingulus, et si qui simili stipendiorum iunguntur copula. <a 524 d. viii k. ian. constantinopoli iustino a. iterum et opilione conss.>

CJ.12.33.6pr.: Imperator Justinianus

Super servis, qui postea ad quandam militiam adspirare temptaverint vel scientibus vel ignorantibus dominis, praecipimus, si quidem ignorantibus his eam meruerint, licere dominis adire competentem iudicem et suam ignorantiam eo, quod contrarium minime probatur, ostendere eoque modo spoliatos eos militia in suum dominium trahere: sin vero scientibus his servi militaverint, cadere quidem eos non tantum dominio eorum, sed etiam omni patronatus iure, illos vero ingenuos effectos, si quidem utiles ad militiam eis datam visi fuerint, in ea durare, sin vero minime idonei sint, ea privari. * iust. a. menae pp. * <a 529 d. viii id. april. constantinopoli decio cons.>

CJ.12.33.6.1: Imperator Justinianus

Super illis autem servis, qui iam militarunt et adhuc in eadem militia perseverant, licentiam dominis damus intra triginta dierum spatium ab eo tempore connumerandorum, quo praesens sanctio divulgata fuerit, vel nostram adire clementiam vel competentes iudices et suam innocentiam commendare eosque in suum recipere dominium. <a 529 d. viii id. april. constantinopoli decio cons.>

CJ.12.33.6.2: Imperator Justinianus

Quo tempore transacto simili modo tam dominio quam omni patronatus iure cadere eos necesse est. <a 529 d. viii id. april. constantinopoli decio cons.>

CJ.12.33.7pr.: Imperator Justinianus

Si quis servum suum dignitatem habere, quemadmodum militiam, fuerit passus, spolietur et dominio servi et iure, quod pervenit ad patronos. * iust. a. iohanni pp. * <a 531 d. k. sept. post consulatum lampadii et orestis vv. cc.>

CJ.12.33.7.1: Imperator Justinianus

Cui enim ferendum est homines a nostra manu donationes accipientes adhuc inter servos haberi et forte cum suis dominis nostram purpuram adorantes? <a 531 d. k. sept. post consulatum lampadii et orestis vv. cc.>

CJ.12.33.7.2: Imperator Justinianus

In his itaque casibus, in quibus non militia, sed dignitas volentibus dominis servis adquiritur, eadem iura reserventur, quae antea posita sunt, ne videatur nostra sanctio aliquid habere imperfectum. <a 531 d. k. sept. post consulatum lampadii et orestis vv. cc.>

CJ.12.33.7.3: Imperator Justinianus

Sciant autem domini ad exemplum praeteritae nostrae constitutionis, quae de huiusmodi servis loquitur, quod, nisi hoc intra triginta dies, ex quo hoc eis fuerit notum, manifestaverint et competentem iudicem adierint et spoliare eos dignitatibus curaverint, dominium eorum et ius patronatus amittant, nobis deliberantibus, postquam dominio fuerint servi liberati et inter ingenuos connumerati, si oportet eos habere dignitatem vel ea quasi indignos spoliari. <a 531 d. k. sept. post consulatum lampadii et orestis vv. cc.>

CJ.12.34.0. Negotiatores ne militent.

CJ.12.34.1pr.: Imperator Justinianus

Eos, qui vel in hac alma urbe vel in provinciis cuidam ergasterio praesunt, militare de cetero prohibemus, exceptis argenti distractoribus, qui in hac alma urbe negotiantur. * iust. a. menae pp. * <a 528-529>

CJ.12.34.1.1: Imperator Justinianus

Hos enim utpote omnium contractibus utiles armata quidem militia penitus abstinere sancimus, aliam vero quamcumque sine metu praesentis sanctionis posse sibi adquirere. <a 528-529>

CJ.12.34.1.2: Imperator Justinianus

Si qui vero negotiatores, quos omni militia prohibuimus, iam militarunt, licentiam eis damus negotiationem quidem relinquere, militiam vero retinere, scientibus quod, si postea negotiantes appareant, militia privabuntur. <a 528-529>

CJ.12.34.1.3: Imperator Justinianus

Quod et in argenti distractoribus huius almae urbis, si armatam militiam iam sortiti sunt, tenere volumus, ut relicta negotiatione liceat eis in eadem militia durare. <a 528-529>

CJ.12.34.1.4: Imperator Justinianus

Negotiantes etenim post hanc sanctionem huiusmodi militia privabuntur: illis, qui ad armorum structionem suam professionem contulerint, minime prohibendis ad competentem suae professionis venire militiam et huiusmodi negotiationem nihilo minus retinere. <a 528-529>

CJ.12.35.0. De re militari.

CJ.12.35.1: Imperator Antoninus

Stipendia et donativa temporis, quo apud hostes fuisse te dicis, restitui tibi postliminio regresso restitutoque non iure desideras. * ant. a. annaeo mil. * <a x>

CJ.12.35.2: Imperator Antoninus

Viginti stipendia si implestis, sordida munera militiae vobis non indicentur. * ant. a. mil. cohortis primae. * <a xxx >

CJ.12.35.3: Imperator Antoninus

Milites ignominia missi, cum infamia notantur, nullis honoribus, qui integrae dignitatis hominibus deferri solent, uti possunt. habeant autem morandi ubi velint potestatem, praeterquam in eis locis, quibus specialiter arcentur. * ant. a. iuliano. * <a xxx >

CJ.12.35.4: Imperator Alexander Severus

Defunctorum in desertione bona confiscari divus marcus et antoninus pater meus constituit. * alex. a. attico. * <a xxx >

CJ.12.35.5pr.: Imperator Gordianus

Cum adlegatis septem annos in desertione egisse maritum sororis vestrae et indulgentia nostra esse restitutum, non recte desideratis, ut id tempus, ac si in castris fuerit, habeatur. * gord. a. valentino et aliis mil. * <a xxx >

CJ.12.35.5.1: Imperator Gordianus

Proinde excepto eo tempore, quod ad desertores pertinet, restitutus nostra indulgentia residuo militare debebit: ideoque nec stipendia temporis, quo in desertione fuerit, exigere poterit. <a xxx >

CJ.12.35.6: Imperator Gordianus

Semel causaria missis militibus instauratio non solet concedi obtentu recuperatae valitudinis melioris, quando non temere dimittantur, nisi quos constet medicis denuntiantibus et iudice competente diligenter etiam investigante vitium contraxisse. * gord. a. bruto mil. * <a xxx >

CJ.12.35.7: Imperator Gordianus

Frustra vereris, ne nota, quae propter delictum militare intercessit, existimationem tuam iam veterani laesisse videatur, maxime cum nec ex eo delicto, quod et in paganorum potest cadere personam, notatos milites post missionem placuerit esse famosos. * gord. a. domno veterano. * <a xxx >

CJ.12.35.8: Imperator Philippus

Causaria missus nulla existimationis macula adspergitur. * philipp. a. et philipp. c. maccio. * <a xxx >

CJ.12.35.9: Imperator Constantinus

Si quis barbaris scelerata factione facultatem depraedationis in romanos dederit , vel si quis alio modo factam diviserit, vivus amburatur. * const. a. et c. aelio pp. * <a 323 d. iiii k. mai. severo et rufino conss.>

CJ.12.35.10: Imperator constans

Quicumque militum ex nostra auctoritate familias suas ad se venire meruerint, non amplius quam coniugia liberos, servos etiam de peculio castrensi emptos neque adscriptos censibus ad eosdem excellentia tua dirigi faciat. * constans a. titiano pp. * <a 349 d. iii k. iun. limenio et catullino conss.>

CJ.12.35.11: Imperatores Gratianus, Valentinianus, Theodosius

Tribuni vel milites nullam evagandi per possessiones habeant facultatem: cum signis propriis in mansionibus solitis ac publicis maneant: aut si quis tam necessaria scita contempserit, de eo ac tribuno eius ad nostram scientiam rectorum ac defensorum relationibus protinus referatur, quatenus severissime in eos animadvertatur. * grat. valentin. et theodos. aaa. cynegio pp. * <a 384 d. iiii id. april. constantinopoli ricomere et clearcho conss.>

CJ.12.35.12: Imperatores Theodosius, Arcadius, Honorius

Cum supra virentes fluminum ripas omnis legionum multitudo consistit, id provida auctoritate decernimus, ut nullus omnino immundo fimo sorditatis fluentis commune poculum polluat, neve abluendo equorum sudore deproperus publicos oculos nudatus incestet, sed procul a cunctorum obtutibus in inferioribus partibus fluviorum hoc ipsum faciat. * theodos. arcad. et honor. aaa. ricomeri com. et mag. utr. mil.* <a 391 d. vi k. iun. vincentiae tatiano et symmacho conss.>

CJ.12.35.13pr.: Imperatores Arcadius, Honorius

Nemo miles ex his, qui praesentes divino obsequio nostrae clementiae deputati sunt et qui in hac esse urbe praesente comitatu concessi sunt quive de aliis numeris vel legionibus sunt, vel sibi vacet vel aliena obsequia sine nutu principali peragere audeat. qui autem in huiusmodi facinore fuerint convicti, militia exuti poenas consentaneas luere compellantur: ii autem, qui in privato obsequio militem retinere fuerint reperti, quinque libris auri multae nomine feriantur. * arcad. et honor. aa. romuliano pu. * <a 398 d. k. febr. constantinopoli honorio a. iiii et eutychiano conss.>

CJ.12.35.13.1: Imperatores Arcadius, Honorius

Sin vero quisquam missus a numero vel a tribuno ad comitatum serenitatis nostrae pervenerit (aliter enim eos hoc facere vetamus), ilico se viris illustribus comitibus, sub quorum regimine constituti sunt, offerre festinet et causas profectionis exponat, ut et responsum caeleste mereatur et citam remeandi accipiat facultatem. <a 398 d. k. febr. constantinopoli honorio a. iiii et eutychiano conss.>

CJ.12.35.13.2: Imperatores Arcadius, Honorius

Si quos autem milites per provincias relictis propriis numeris passim vagari praesides earum cognoverint, correptos faciant custodiri, donec de his clementiae nostrae auribus intimetur et, quid fieri oporteat, decernamus. <a 398 d. k. febr. constantinopoli honorio a. iiii et eutychiano conss.>

CJ.12.35.14pr.: Imperatores Arcadius, Honorius

Contra publicam utilitatem nolumus a numeris ad alios numeros milites nostros transferri. sciant igitur comites vel duces, quibus regendae militiae cura commissa est, non solum de comitatensibus ac palatinis numeris ad alios numeros milites transferri non licere, sed ne ipsis quidem seu de comitatensibus legionibus seu de riparensibus castricianis ceterisque cuiquam eorum transferendi militem copiam attributam, nisi hoc augusta maiestas publicae utilitatis gratia fieri iusserit: quia honoris augmentum non ambitione, sed labore ad unumquemque convenit devenire. * arcad. et honor. aa. stilichoni mag. mil. * <a 400 d.Xiiii k.April.Mediolani stilichone et aureliano conss.>

CJ.12.35.14.1: Imperatores Arcadius, Honorius

Quod si contra fecerint, per singulos milites singulas auri libras a se noverint exigendas. <a 400 d.Xiiii k.April.Mediolani stilichone et aureliano conss.>

CJ.12.35.15pr.: Imperator Leo

Milites, qui a re publica armantur et aluntur, solis debent publicis utilitatibus occupari nec agrorum cultui et custodiae animalium vel mercimoniorum quaestui , sed propriae muniis insudare militiae. * leo a. aspari mag. mil. * <a 458 d.Prid.Non.Iul.Constantinopoli leone a.Cons.>

CJ.12.35.15.1: Imperator Leo

Nullam praeterea ex militibus posthac praedictis obsequiis vacare magnitudo tua patiatur, sed frequentes esse in numero suo iubeat, ut armorum quotidiano exercitio ad bella se praeparent. <a 458 d.Prid.Non.Iul.Constantinopoli leone a.Cons.>

CJ.12.35.15.2: Imperator Leo

Quod si quis ex militaribus iudicibus ullos militum tam divinis quam regiis vel privatis domibus ac possessionibus diversisque aliis obsequiis contra interdictum serenitatis nostrae crediderit deputandos, sciat ab eo, qui contra vetitum fecerit, et ab eo, qui ausus accipere militem fuerit, per singulos milites singulas libras auri protinus exigendas. <a 458 d.Prid.Non.Iul.Constantinopoli leone a.Cons.>

CJ.12.35.16: Imperator Leo

Militares viros civiles curas adripere prohibemus, aut si aliquam huiusmodi sollicitudinem forte susceperint, et militia statim et privilegiis omnibus denudari decernimus: formidantibus his motum nostrae serenitatis, qui temeritate saluberrimis statutis obviam ire temptaverint. * leo a. dioscoro pp. * <a xxx >

CJ.12.35.17pr.: Imperator Zeno

Neminem in ullo numero equitum vel peditum vel in quolibet limite sine nostri numinis sacra probatoria in posterum sociari concedimus, consuetudine quae hactenus tenuit antiquata, quae magisteriae potestati vel ducibus probatorias militum facere vel militibus adiungere licentiam tribuebat, ut ii tantum in numeris vel in limitibus militent, qui a nostra divinitate probatorias consequuntur. * zeno a. marciano mag. mil. * <a 472? >

CJ.12.35.17.1: Imperator Zeno

Viros autem eminentissimos pro tempore magistros militum nec non etiam viros spectabiles duces, si supplere numeros pro his qui fatalibus sortibus decrescent necessarium esse putaverint, veritate discussa per suggestionem suam nostrae mansuetudini declarare, qui et quanti et in quo numero vel limite debeant subrogari, ut ita demum, prout nostrae sederit maiestati, divina subnotatione subnixi militiam sortiantur; officio, quod tuae sublimitatis actibus obsecundat, centum librarum auri dispendio feriendo, si ex aliqua parte, quae statuit nostra serenitas, fuerint violata. <a 472? >

CJ.12.35.18pr.: Imperator Anastasius

Tam collatores et provinciales quam fortissimos milites prout oportet gubernari minimeque laesionem aliquam seu dispendium perpeti properantes necessarium esse perspeximus dicatissimos milites, qui de diversis praesentalibus numeris per orientis partes noscuntur consistere, virorum spectabilium ducum iussionibus oboedire, ut, quidquid emerserit, quod pro communi securitate curandum est, hoc protinus utpote militari praesidio in proximis locis constituto competens possit mereri remedium: ita videlicet, ut etiam agentibus causas tam criminaliter quam civiliter praefati milites iam non apud magnificam magisteriam per orientem potestatem vel ex sententiis seu praeceptionibus eius, sed per interlocutiones seu dispositiones tam excelsae tuae sedis, sub cuius iurisdictione consistunt, quam eorundem ducum respondeant. * anastas. a. iohanni mag. mil. praesentalium. * <a 492 d. k. ian. constantinopoli anastasio a. et rufo conss.>

CJ.12.35.18.1: Imperator Anastasius

Eo scilicet observando, ut ad responsum, qui de officio tuae sublimitatis huc usque ad praedictam magisteriam per orientem potestatem moris erat destinari, viris spectabilibus ducibus inhaesurus mittatur tam per se quam per adiutores suos eosdem iudices observare et iussiones eorum implere curaturus: licentia ei non deneganda, etiam ad responsum, qui de officio alterius viri excelsi magistri militum praesentalis pro hac nostra dispositione destinatur, in locis, in quibus apparitionis tuae sublimitatis ad responsum non contigerit reperiri, suam sollicitudinem pro emergentibus maxime causis peragere. <a 492 d. k. ian. constantinopoli anastasio a. et rufo conss.>

CJ.12.35.18.1a: Imperator Anastasius

Cuius etiam illi qui de altero officio mittendus est praebemus facultatem, ut non tantum per adiutores suos, id est ad responsum, sed etiam invicem se adiuvando nec publicis nec privatis causis vel exsecutionibus abesse videantur. <a 492 d. k. ian. constantinopoli anastasio a. et rufo conss.>

CJ.12.35.18.1b: Imperator Anastasius

Ad singulos etenim duces ad responsum de apparitionibus vestris non prospeximus oportere destinari, ne per multitudinem eorum qualibet machinatione damna contra milites nostros augeri contingat. <a 492 d. k. ian. constantinopoli anastasio a. et rufo conss.>

CJ.12.35.18.2: Imperator Anastasius

Ut autem omnifariam tam publicae commoditati quam fortissimis prospiciatur militibus, sportularum nihilo minus exactionem merito censuimus moderandam. et iubemus nec ipsis ad responsum nec adiutoribus eorum pro criminalibus seu civilibus causis, etsi ex publicis causis descendere vel ad publicam causam pertinere dicantur, licere aliquid plus quam unum solidum a singulis vel nolentibus vel spontanea voluntate offerentibus suscipere militibus, ita ut, si universitas numeri seu principiorum monenda sit, duplicata quantitate tantummodo sportulas accipiant: in his etenim causis nec plures quam duos primates, quorum nomina semel ac primum gestis intervenientibus fuerint publicata, patimur conveniri, syndico videlicet, prout consuetudo deposcit legibusque cautum est, ordinando. <a 492 d. k. ian. constantinopoli anastasio a. et rufo conss.>

CJ.12.35.18.2a: Imperator Anastasius

Hoc quoque adiecto, ut pro omnibus quibuslibet expensis ingressus in iudicio duciano faciendi unum tantum solidum nihilque amplius milites vel syndici litigantes dependere compellantur, ut huiusmodi solacium ad commodum ad responsum et eius adiutorum et exceptorum proficiat: nihil sibi usurpare vel suo nomine poscere vel viris devotis principibus, qui ducianum observant iudicium, vel duciana apparitione de praefatis litibus concedendis: ita videlicet, ut super litis expensis in personis etiam eorum, quicumque milites pulsare maluerint, eadem forma servetur. <a 492 d. k. ian. constantinopoli anastasio a. et rufo conss.>

CJ.12.35.18.3: Imperator Anastasius

Erit autem arbitrii atque aestimationis virorum spectabilium ducum pro qualitate negotiorum vel quantitate, quae devotissimis militibus ab adversariis eorum ingeritur, vel suam audientiam interponere litigiis vel eorum discussionem dicatissimis principiis seu arbitris in locis degentibus committere. <a 492 d. k. ian. constantinopoli anastasio a. et rufo conss.>

CJ.12.35.18.4: Imperator Anastasius

Quibus viris spectabilibus ducibus et eos observantibus ad responsum seu adiutoribus eorum curae sit, si quando ad eosdem duces milites fuerint arcessiti vel de locis in quibus constituti sunt movere praecepti, ne quolibet modo curiales seu collatores quibusdam adficiantur dispendiis, ita scilicet, ut pro militibus inspiciendis, quandocumque voluerint viri spectabiles duces etiam praesentales devotissimos milites adhibere, non immodicam multitudinem eorum tempore pacis convocare procurent. <a 492 d. k. ian. constantinopoli anastasio a. et rufo conss.>

CJ.12.35.18.5: Imperator Anastasius

Sin vero etiam necessitate poscente milites ad alia perveniant loca, laesionibus contra curiales seu collatores nihilo minus modis omnibus abstineant. <a 492 d. k. ian. constantinopoli anastasio a. et rufo conss.>

CJ.12.35.18.5a: Imperator Anastasius

Et si tam eundo quam redeundo triginta tantum dies oportet eos proficisci, ipsi suas expensas sibi praebendas collatoribus seu curialibus minime praegravandis suscipere non cessent: sin autem ulteriore tempore in aliis locis necesse sit eos commorari, expensas eis ulterioris ut dictum est temporis, ad quae pervenerint loca, ministrari. <a 492 d. k. ian. constantinopoli anastasio a. et rufo conss.>

CJ.12.35.18.6: Imperator Anastasius

Quoniam vero comperimus quosdam temerario atque iniquo proposito anteriore tempore certos e memoratis militibus tam in iudicio sublimitatis tuae quam apud excelsam magisteriam per orientem potestatem in accusationem deduxisse et eos eodem tempore ad diversa quoque protraxisse iudicia diversasque super isdem personis isdemque causis et negotiis prolatas fuisse sententias, ne postea nihilo minus tantae contra milites nostros insidiae tantaque confusio querellis, quas eis ingeri contingit, generetur, nemini licere apud sedem magnitudinis tuae accusatione contra militem seu milites praesentales deposita conventioneque oblata eundem vel eosdem milites criminaliter seu civiliter per iussionem virorum spectabilium ducum inquietare, antequam negotium ex priore actione prioreque conventione finem legitimum sortiatur. <a 492 d. k. ian. constantinopoli anastasio a. et rufo conss.>

CJ.12.35.18.6a: Imperator Anastasius

Idemque versa vice observari, ut, si quidam miles seu milites praesentales iussione viri spectabilis ducis incusati ac moniti fuerint, licentia denegetur agenti postulationem seu accusationem in iudicio tuae sublimitatis contra eundem militem vel eosdem milites deponere. <a 492 d. k. ian. constantinopoli anastasio a. et rufo conss.>

CJ.12.35.18.6b: Imperator Anastasius

Nec si eundem vel eosdem tam criminaliter quam civiliter obnoxios esse firmaverit, facultatem eidem agenti superesse separatis intentionibus suis pro criminalibus quidem iudicium tuae celsitudinis, pro civilibus autem viri spectabilis ducis seu versa vice occupare. <a 492 d. k. ian. constantinopoli anastasio a. et rufo conss.>

CJ.12.35.18.7: Imperator Anastasius

Si quis vero ad huiusmodi tam audacissimum tamque aequitati contrarium conamen prosiluerit, eum pro pecuniariis quidem negotiis iactura litis et damnorum quae vitio eius contigerunt solutione percelli, pro criminalibus autem quasi calumniatorem convictum legum aculeos sentire. <a 492 d. k. ian. constantinopoli anastasio a. et rufo conss.>

CJ.12.35.18.8: Imperator Anastasius

Dispositiones autem ante latas non ad imminuendam potestatem magisteriae per orientem administrationis, sed pro tuitione locorum ac securitate publica noscimur praestitisse, cum non dubium sit ipsos etiam duces, quibus fortissimi praesentales milites parare praecepti sunt, sub eadem excelsa potestate esse constitutos. <a 492 d. k. ian. constantinopoli anastasio a. et rufo conss.>

CJ.12.36.0. De castrensi peculio militum et praefectianorum.

CJ.12.36.1pr.: Imperator Alexander Severus

Si in potestate tua filius tuus fuit eo tempore, quo quaedam nomine eius emisti, ea tua esse non dubitatur. * alex. a. prisciano. * <a 223 pp. id. nov. maximo ii et aeliano conss.>

CJ.12.36.1.1: Imperator Alexander Severus

Peculio autem castrensi cedunt res mobiles, quae eunti in militiam a patre vel a matre aliisve propinquis vel amicis donatae sunt, item quae in castris per occasionem militiae quaeruntur. <a 223 pp. id. nov. maximo ii et aeliano conss.>

CJ.12.36.1.2: Imperator Alexander Severus

In quibus sunt etiam hereditates eorum, qui non alias noti esse potuerunt nisi per militiae occasionem, etiamsi res immobiles in his erunt. <a 223 pp. id. nov. maximo ii et aeliano conss.>

CJ.12.36.1.3: Imperator Alexander Severus

Matris autem hereditas, quamvis in militia delata sit, ad peculium castrense non pertinet. <a 223 pp. id. nov. maximo ii et aeliano conss.>

CJ.12.36.1.4: Imperator Alexander Severus

In castrensi vero peculio praedium donatum non esse constat, quamvis empta ex castrensi peculio praedia eius condicionis efficiantur. <a 223 pp. id. nov. maximo ii et aeliano conss.>

CJ.12.36.2: Imperator Alexander Severus

Filius familias alienationem nullius rei sine voluntate patris habet, nisi si castrensi peculium habeat. * alex. a. felici. * <a 224 pp. viii k. iul. iuliano et crispino conss.>

CJ.12.36.3: Imperator Alexander Severus

Errat, qui tibi persuasit, quod nexu paternae potestatis iure sacramenti solutus es. manent enim nihilo minus milites in potestate parentium, sed peculium castrense proprium habent nec in eo ius ullum patris est. * alex. a. feliciano mil. * <a 224 pp. iii id. oct. iuliano et crispino conss.>

CJ.12.36.4pr.: Imperator Gordianus

Cum adlegas te a fratre tuo eodemque commilitone in isdem castris institutum heredem, successionem eius potius ex castrensi peculio tuo quam patri cuius in potestae es per te quaesitam videri rationis est. * gord. a. gallo mil. * < >

CJ.12.36.4.1: Imperator Gordianus

Etenim peregrinationis labor sociatus commilitii eius et obeundorum munerum consortium adfectioni fraternae nonnihilum addidisse, quin immo vice mutua cariores invicem sibi reddidisse credendum est. < >

CJ.12.36.5: Imperatores Diocletianus, Maximianus

Intellegis filio qui militavit defuncto peculium eius penes patrem remansisse, non hereditatem patri quaesitam. * diocl. et maxim. aa. et cc. philostrato. * < >

CJ.12.36.6: Imperatores Theodosius, Valentinianus

Ius castrensis peculii tam scriniarios quam exceptores ceterosque, qui in officio tui culminis merendi licentiam habere noscuntur, ac si in legione prima adiutrice nostra militent, inviolatum habere praecipimus. * theodos. et valentin. aa. zoilo pp. * <a 444 ?>

CJ.12.37.0. De erogatione militaris annonae.

CJ.12.37.1: Imperator Constantius

Repetita consuetudo monstravit expeditionis tempore buccellatum ac panem, vinum quoque atque acetum, sed et lardum, carnem vervecinam etiam milites nostros ita solere percipere: biduo buccellatum. tertio die panem: uno die vinum, alio die acetum: uno die lardum, biduo carnem vervecinam. * constantius a. et iul. c.Helpidio pp. * <a 360 d.Xvi k.Iun.Hierapoli constantio x et iuliano c.Iii conss. >

CJ.12.37.2: Imperatores Valentinianus, Valens

E vicesimo, non amplius, lapide milites sibi iubemus paleas convectare. * valentin. et valens aa. secundo pp. * <a 363.364 d.V k.Oct. edessa ioviano et varroniano conss.>

CJ.12.37.3: Imperatores Valentinianus, Valens

Cenaticorum nomine milites et eorum superstantes nihil penitus a provincialibus accipere audeant. sciant enim milites, quod oportet eos commoda sua, quae in annonarum perceptione adipiscuntur, accipientes extrinsecus detrimentis provinciales non adficere. * valentin. et valens aa. ad victorem mag. mil. * <a 364 d.Vi k.Ian.Bonamansione divo ioviano et varroniano conss.>

CJ.12.37.4: Imperatores Valentinianus, Valens

Sicut fieri per omnes limites salubri prospectione praecipimus, species annonarias vicinioribus limitibus a provincialibus ordinabis ad castra conferri. sed in veteranis castris constituti milites duas alimoniarum partes ibidem de conditis sumant nec amplius quam tertiam partem ipsi vehere cogantur. * valentin. et valens aa. et grat. a. ad auxonium pp. * <a 369 d.V non.Mai.Marcianopoli valentiniano np.Et victore conss. >

CJ.12.37.5: Imperatores Valentinianus, Valens, Gratianus

Actuarii nisi expleto triginta dierum spatio pittacia authentica confestim tradiderint, species, quas ex fiscalibus conditis dissimulaverint excludere vel numero cuius ratiocinia pertractant supersederint erogare, de propriis facultatibus vel militibus ipsis vel fiscalibus horreis adigantur inferre. * valentin. valens et grat. aaa. ad probum pp. * <a 370.373 d.Vi id.April.Sirmio valentiniano et valente aa.Conss. >

CJ.12.37.6: Imperatores Valens, Gratianus, Valentinianus

Fortissimi ac devotissimi milites annonas et capita singulis diebus aut certe competenti tempore, id est priusquam annus elabatur, de horreis consequantur: aut si perceptionem suam ac si debitam studio voluerint protelare, id, quod competenti tempore minime perceperint, fisci nostri commodis vindicetur. *

valens grat. et valentin. aaa. ad modestum pp. * <a 377 d.Prid.Non.April.Antiochiae gratiano a.Iiii et merobaude vc.Conss.>

CJ.12.37.7: Imperatores Valentinianus, Theodosius, Arcadius

Nulli militarium pro his annonis, quae in provinciis delegantur, repudiata ad tempus specierum copia et inopiae occasione captata pretia liceat postulare: ita ut, si quis propter anni abundantiam suscipere oblata neglexerit ac postea impositis pro necessitate rerum pretiis repudiata taxaverit, neque id quod contra hanc legem expetit sinatur exigere, neque id quod accipere dissimulaverit consequatur. * valentin. theodos. et arcad. aaa. rufino pp. * <a 393 d.Iii k.Aug.Constantinopoli theodosio a.Iii et abundantio vc.Conss.>

CJ.12.37.8: Imperatores Arcadius, Honorius

Provincialium commodis nos convenit subvenire. ad omnium itaque numerorum sive vexillationum aut etiam scholarum tribunos vel viros illustres comites sublimitas tua faciat pervenire, ut meminerint fenum militibus iustis capitibus praestandum iuxta legem divi valentiniani nec tamen ad oppidum deferendum. * arcad. et honor. aa. hilario pp. * <a 396 d.Xvi k.Iul.Arcadio iiii et honorio iii aa. conss.>

CJ.12.37.9pr.: Imperatores Arcadius, Honorius

Excellentia tua erogationis per susceptores factae modum quantitate brevium conferri perficiat, ita ut, quo die numeris datum sit, diligentius exploretur ac, si quid amplius actuarios vel optiones accepisse constiterit, quam brevium datorum scriniis nostris veritas continet, memorati in duplum reddere compellantur: susceptoribus ea summa imputanda, quam semel flagitantibus eisdem erogasse monstraverint. * arcad. et honor. aa. * <a 398 d.Viii k.April. constantinopoli honorio a.Iiii et eutychiano vc.Conss.>

CJ.12.37.9.1: Imperatores Arcadius, Honorius

Nam ad illustres quoque magistros utriusque militiae sacri apices cucurrerunt, quibus provida sanctione decrevimus, ut breves ante indictionis principium summa fide ac veritate confecti ad nostra scrinia dirigantur, secundum quos a susceptoribus erogatio celebretur. <a 398 d.Viii k.April. constantinopoli honorio a.Iiii et eutychiano vc.Conss.>

CJ.12.37.10: Imperatores Arcadius, Honorius

Iubemus per omnes provincias cunctis numeris ac militibus a novembri mense de novello vino annonam dari, quoniam veteris dispendiosa videtur erogatio. * arcad. et honor. aa. eutychiano pp. * <a 398 d.X k.Iun.Constantinopoli honorio a.Iiii et eutychiano vc.Conss.>

CJ.12.37.11: Imperatores Arcadius, Honorius

Opinatoribus, id est exactoribus militaris annonae, nullum sit cum provinciali commercium, ita ut a iudicibus vel officio provinciali omnis summa debiti postuletur intra anni spatium conferenda. * arcad. et honor. aa. provincialibus prov. proconsularis.* <a 401 d.Prid.K.April.Mediolani vincentio et fravito conss.>

CJ.12.37.12: Imperatores Arcadius, Honorius, Theodosius

Septem dierum, per quas tribuni emolumenti gratia sollemniter stillaturae nomine consequuntur resistentes species, non aliter adaerentur, nisi ut in foro rerum venalium distrahuntur. * arcad. et honor. et theodos. aaa. anthemio pp. * <a 406 d.V id.April. constantinopoli arcadio a.Vi et probo vc.Conss.>

CJ.12.37.13: Imperatores Honorius, Theodosius

Lege repetita censemus, ut, si quis militum interclusam specierum exactionem refricare temptaverit vel adaerationes statutas ausus fuerit immutare, tam vir spectabilis dux centum librarum auri quam etiam eius officium pari condemnationis summa quatiatur, adiecta sacrilegii poena, quae divalium scitorum violatores palam insequitur. * honor. et theodos. aa. anthemio pp. * <a 409 d.X k.April. constantinopoli honorio viii et theodosio iii aa. conss.>

CJ.12.37.14: Imperatores Honorius, Theodosius

His scholaribus, quibus laborum intuitu regendos numeros dederimus, de aerariis annonis singulos solidos per opinatores, caballationis quoque rationem pro administrato tempore debitam, quando militibus erogatur, sine mora praeberi oportet vel, si quis eorum antequam accipiat in fata concesserit, quod ex utraque causa ei debebatur, heredibus eius restituti. * honor. et theodos. aa. constantio mag. mil. * <a 414 d.Xiii k.Dec.Constantio et constante vv.Cc.Conss.>

CJ.12.37.15: Imperatores Honorius, Theodosius

Annonas omnes, quae universis officiis atque sacri palatii ministeriis et sacris scriniis ceterisque cunctarum adminiculis dignitatum adsolent delegari, quasque ii, qui ad earum exactionem mittuntur, pro cupiditate et libidine sua graviter ex provincialium visceribus eruebant, ad similitudinem militum, quibus aerariae praebentur annonae, adaerari praecipimus, ut omnibus superius designatis emolumenta debita in pretiis dispositio culminis tui pro publica utilitate taxatis praecipiat erogari. * honor. et theodos. aa. asclepiodoto pp. * <a 423 d.Xvi k.Mart.Constantinopoli asclepiodoto et mariniano conss.>

CJ.12.37.16pr.: Imperator Anastasius

Per hanc divinam dispositionem iubemus eos, quibus ex officio tuae sublimitatis militarium meritorum seu cuiuslibet praestationis committitur erogatio, in primis iurare pro iustitiae ratione iniunctam sibi sollicitudinem peracturos. * anastas. a. longino mag. equitum ac peditum. * <a xxx >

CJ.12.37.16.1: Imperator Anastasius

Et secundum praesentem saluberrimae nostrae dispositionis observationem solacium , sicut dictum est, publicum erogator manu sua sine ullo dolo vel fraude singulis militibus numeret, quatenus unusquisque miles accepto per suam manum solacio ipse cum actuario de negotiatione actuariis permissa secundum rationem agat iustitiae. <a xxx >

CJ.12.37.16.1a: Imperator Anastasius

Hoc videlicet observando, ut pro singulis solidis actuario, sive statim sive post unum duosve seu amplius annos restitutum fuerit debitum, minus quidem uno tremisse, pro temporis scilicet brevitate, pacisci liceat. <a xxx >

CJ.12.37.16.1b: Imperator Anastasius

Amplius autem quam unum tremissem nullus actuarius pro quoquo tempore seu annorum spatio pacisci penitus permittatur, nec ulla possit actuarius machinatione pro temporis prolixitate unius quantitatem tremissis excedere. <a xxx >

CJ.12.37.16.1c: Imperator Anastasius

Si qua tamen inter actuarium et militem super pactione seu negotiatione tempore erogationis emerserit dubitatio, iubemus eidem militi dandas pecunias ab erogatore principiis dari et non secundum obtinentem hactenus consuetudinem easdem pecunias vel ab erogatore vel ab actuario retineri, quatenus causa apud devotissima principia propositis sacrosanctis scripturis inter actuarium et militem tractetur, ut ex omni parte miles nullum damnum sub quacumque occasione praeterquam id, quod eum ex iusta et permissa actuariis negotiatione debere constiterit, patiatur. <a xxx >

CJ.12.37.16.2: Imperator Anastasius

Super his vero, quos datis forte commeatibus abesse contigerit, haec volumus observari, ut pecuniae quae erogandae sunt usque ad triginta milites, quos tantummodo datis commeatibus dimitti sacra constitutio continet, apud devotissima principia sequestrentur, illorum scilicet tantummodo militum, quorum intra triginta commeatales viros constitutorum actuarius tempore erogationis pittacia utpote habita super pactione protulerit, quatenus, cum idem redierint milites, causa apud devotissima principia secundum praefatum modum tractata utriusque partis indemnitati similiter consuletur: non danda pro tempore tribuno licentia triginta viris amplius sub commeatus occasione dimittere. <a xxx >

CJ.12.37.16.3: Imperator Anastasius

Sin vero saluberrimam constitutionem offendendo amplius quam triginta viros datis commeatibus tribunus dimittere ausus fuerit, pecunias quidem, quae post praefatorum triginta virorum numerum per commeatus dimissis militibus erogandae fuerant, publicae rationi erogatur non dubitet reportandas. <a xxx >

CJ.12.37.16.4: Imperator Anastasius

Sciat vero tribunus praeter iam constitutas super huiusmodi facinore interminationes sese de propriis facultatibus singulis militibus, quibus ultra numerum triginta virorum sub nomine commeatuum eos dimittendo causam non consequendi publica solacia dederit, quidquid ob iniquam dimissionem amiserint, soluturum. <a xxx >

CJ.12.37.16.4a: Imperator Anastasius

Nec prius idem tribunus ab eodem discedat numero, nisi omnes huiusmodi milites, id est quos post permissam triginta virorum quantitatem commeatus nomine dimiserit, indemnes in hac parte atque illaesos reddiderit. <a xxx >

CJ.12.37.16.5: Imperator Anastasius

Hoc etiam adiciendo, ut sub gestorum testificatione tam decem ex devotissimis principiis, primates eorum videlicet, quam unusquisque caput scholae iuratus deponat, sub sua praestantia rem sicut superius dispositum est fuisse subsecutam, et sub obtutibus suis unumquemque militem solacium suum manu sua ab erogatoris dextera suscepisse: et huiusmodi gesta relatione a viro clarissimo tribuno vel devotissimis principiis intra tres menses mittenda, ex quo profectus fuerit, numerandos ad nostram referat pietatem. <a xxx >

CJ.12.37.16.6: Imperator Anastasius

Hoc videlicet ante omnia curando, ut pro tempore erogator, postquam datae fuerint ex publico pecuniae, intra duos vel tres menses seu quattuor, pro qualitate scilicet spatiorum, commissam sibi sollicitudinem erogationis non dubitet faciendam: vel si ulterius apud se pecunias publicas differendo erogationem ausus fuerit retinere, sciat se modis omnibus damnum, quod ex negotiatione miles sustinuerit, ex propriis facultatibus militi soluturum. <a xxx >

CJ.12.37.16.7: Imperator Anastasius

Scientibus his, qui praefatae dispositionis observantiam sive in differenda ultra sigillatim definitum temporis spatium erogatione sive in qualibet alia parte fuerint egressi, non solum sese militiae cinguli amissionem, verum etiam facultatum quoque suarum publicationem pro tanto subituros flagitio: et insuper erogationum quoque sollicitudinem ab officio tuae celsitudinis, si imperatoria violata fuerit dispositio, ad alios transferendam, si non idem officium, simulac huiusmodi fuerit a quolibet facinus perpetratum, ad notitiam nostrae mansuetudinis vel certe ad scientiam illustrissimae magisteriae referre curaverit potestatis, ut eiusdem apparitionis periculo tale flagitium principales minime possit aures latere, quatenus ex omni parte eodem delicto revelato, quicumque saluberrimas nostrae pietatis ordinationes ausus fuerit violare, interminatas minime possit poenas evadere: ita ut in singulis militibus, qui non observato in eorum persona tenore datae dispositionis laesi fuerint, liceat sacratissimum nostrum, per unum forte vel etiam binos milites pro omnibus verba facturos, petere comitatum et porrectis precibus quod contra nostram dispositionem passi sunt approbare, eoque facto statutis violator imperatoriae dispositionis suppliciis percellatur. <a xxx >

CJ.12.37.16.8: Imperator Anastasius

Illud praeterea modis omnibus observari decernimus, ut erogator omnes pecunias, quae mortuis militibus usque ad diem mortis eorum debitae fuerant, secundum datam iam divalem dispositionem uxoribus vel liberis eorum non dubitet ministrandas. <a xxx >

CJ.12.37.17pr.: Imperator Anastasius

Cum saepe contingit propter quasdam maximas et inexcusabiles rationes quibusdam ad custodiam vel aliam huiusmodi causam milites deputari vel etiam deputatos esse, et non convenit hoc modo publicum aliquod damnum seu dispendium sustinere, iubemus, si qui fortissimi milites ex quocumque numero curiis vel quibusdam corporibus vel sacrosanctis ecclesiis vel aliis personis pro custodia, ut dictum est, vel tali alia causa a nostro numine deputati sunt vel fuerint, ne per eorum translationes circa annonarum vel capitum eis praebendorum erogationem publicis rationibus quaedam laesio ingeratur, eadem de proprio personam seu personas, cui et quibus deputati sunt vel fuerint, modis omnibus agnoscere: hoc tantummodo de publico pro isdem annonis et capitu praebendo et imputando, quod in locis, ex quibus praefati milites perveniunt seu pervenerunt, imputabatur, vel si antelatam praestationem supradictae personae recusaverint, eosdem milites de suis locis non recedere, vel eos qui recesserint ad ea sine quadam mora redire. * anastas. a. arcadio pp. * <a xxx >

CJ.12.37.17.1: Imperator Anastasius

Hoc omnifariam custodiendo, ut nemo devotissimorum militum cuicumque personae seu corpori sine speciali nostrae serenitatis iussione scriptis proferenda deputetur. <a xxx >

CJ.12.37.17.2: Imperator Anastasius

Officio tuae celsitudinis, si hanc nostrae mansuetudinis formam, quotiens super militibus quibusdam deputandis aliquid statutum fuerit, gestis insinuare et, quid eos, quibus dati sunt, prout nobis placuit, agnoscere oportet, itidem publicare minime curaverit, tam dispendium, quodcumque publicum hac ex causa sustinuerit, ei de proprio resarcire, quam triginta librarum auri multam propter suam desidiam, immo magis coniventiam dependere cogendo. <a xxx >

CJ.12.37.17.3: Imperator Anastasius

Rectoribus nihilo minus provinciarum et apparitionibus eorum, si statuta nostra violaverint seu violari concesserint, eiusdem condemnationis solutione percellendis. <a xxx >

CJ.12.38.0. De excoctione et translatione militarium annonarum.

CJ.12.38.1pr.: Imperatores Arcadius, Honorius

Opinatores, quibus species in diversis provinciis delegantur, contra omnem consuetudinem nullis consistentibus familiis excoctionem panis efflagitant. * arcad. et honor. aa. stilichoni com. et mag. utr. mil. * <a 399 d.Id.Sept.Mediolani theodoro vc.Cons.>

CJ.12.38.1.1: Imperatores Arcadius, Honorius

Illustris igitur auctoritas tua novam usurpationem congrua auctoritate repellat, ut, cum opinatores in provinciis delegantur, vetus consuetudo servetur. <a 399 d.Id.Sept.Mediolani theodoro vc.Cons.>

CJ.12.38.2pr.: Imperatores Arcadius, Honorius

In excoctione buccellati, quod devotissimis militibus convenit praeparari, in translatione etiam annonae nullius excipiatur persona, videlicet ut ne nostra quidem domus ab his habeatur immunis. * arcad. et honor. aa.Et theodos. a. hadriano pp. * <a 404 d.Viiii k.April. romae honorio a.Vi et aristaeneto conss.>

CJ.12.38.2.1: Imperatores Arcadius, Honorius

Et si quisquam, quod non opinamur, implere quae sunt praecepta neglexerit, in procuratorem eius severissime vindicetur, ita ut, si huiusmodi contumaciae dominum conscium esse constiterit, quadruplum id, quod pro eius capitatione poscitur, posthabita dilatione solvatur. <a 404 d.Viiii k.April. romae honorio a.Vi et aristaeneto conss.>

CJ.12.39.0. De militari veste.

CJ.12.39.1: Imperatores Valentinianus, Valens

Omnem canonem vestium ex kalendis septembribus ad kalendas apriles nostris largitionibus tradi praecipimus: proposita poena rectori provinciae vel eius officio condemnationis, quae tuae iustitiae videbitur. * valentin. et valens aa. auxonio pp. * <a 368 d.Xiiii k.Dec.Marcianopoli valentiniano et valente conss.>

CJ.12.39.2: Imperatores Valens, Gratianus, Valentinianus

Provinciae thraciarum per viginti iuga seu capita conferant vestem: scythia et mysia in triginta iugis seu capitibus interim annua solutione dependant: per aegyptum et orientis partes in triginta terrenis iugis, per asianam vero et ponticam dioecesin ad eundem numerum in capitibus seu iugis annuae vestis collatio dependatur, ita ut per orientem provinciae in titulo auri comparaticii, quod per iugationem redditur, compensationis gratia perfruantur, exceptis osrhoena et isauria: nam easdem constat aurum comparaticium minime redhibere. * valens grat. et valentin. aaa. modesto pp. * <a 377 d.V id.Aug.Hierapoli gratiano a.Iiii et merobaude vc.Conss. >

CJ.12.39.3: Imperatores Arcadius, Honorius

Fortissimis militibus nostris per illyricum non binos tremisses pro singulis chlamydibus, sed singulos solidos dari praecipimus. * arcad. et honor. aa. martiniano com. sacr. larg. * <a 396 d.Xvi k.Febr.Constantinopoli arcadio iiii et honorio iii aa. conss.>

CJ.12.39.4: Imperatores Honorius, Theodosius

Militaris adaeratio vestis a collatoribus exigatur, sacratissimis videlicet largitionibus inferenda, ita ut quinque eius partes fortissimis militibus erogentur in pretio, sexta vero portio a gynaeciariis clementiae nostrae absque ulla vel ipsorum vel publica incommoditate pro eadem contextione suscepta iunioribus gregariisque militibus in ipsa, quam maxime eos desiderare constitit, specie praebeatur. * honor. et theodos. aa. asclepiodoto pp. * <a 423 d.Vii id.Mart.Constantinopoli asclepiodoto et mariniano conss.>

CJ.12.40.0. De metatis et epidemeticis.

CJ.12.40.1: Imperatores Valentinianus, Theodosius, Arcadius

Si quis mensorum nostrorum manum, qua deputatas singulis quibusque domus enotant et postibus hospitaturi nomen adscribunt, delere non dubitaverit, ad instar falsi reus ex hac auctoritate teneatur. * valentin. theodos. et arcad. aaa. theodoto mag. off. * <a 393 d.Vi k.Nov.Constantinopoli theodosio a.Iii et abundantio vc.Conss.>

CJ.12.40.2pr.: Imperatores Arcadius, Honorius

In qualibet vel nos ipsi urbe fuerimus vel ii qui nobis militant commorentur, omni tam mensorum quam etiam hospitum iniquitate submota duas dominus propriae domus, tertia hospiti deputata, eatenus intrepidus ac securus possideat portiones , ut in tres domus divisae partes primam eligendi dominus habeat facultatem, secundam hospes quam voluerit exsequatur, tertia domino relinquenda. plenum enim aequitate atque iustitia est, ut, qui aut successione fruitur aut empto vel extructione gaudet, electam praecipue iudicio suam rem teneat et relictam. * arcad. et honor. aa. hosio mag. off. * <a 398 d.Viii id.Febr.Constantinopoli honorio iiii et eutychiano conss.>

CJ.12.40.2.1: Imperatores Arcadius, Honorius

Ergasteria vero, quae mercimoniis deputantur, ad praedictam divisionis iniuriam non vocentur, sed quieta sint et libera et ab omni hospitum iniuria defensata solis dominis conductoribusque deserviant. sane si stabulum, ut adsolet, militari viro in tertia domus parte defuerit, ex ergasteriis, nisi id dominus qualibet occasione providerit, pro animalium numero vel domus qualitate deputabitur. <a 398 d.Viii id.Febr.Constantinopoli honorio iiii et eutychiano conss.>

CJ.12.40.2.2: Imperatores Arcadius, Honorius

Illustribus sane viris non tertiam partem domus, sed mediam hospitalitatis gratia deputari decernimus: ea dumtaxat condicione servata, ut alter ex his quilibet , quive maluerit, divisionem arbitraria aequitate faciat, alter eligendi habeat optionem. <a 398 d.Viii id.Febr.Constantinopoli honorio iiii et eutychiano conss.>

CJ.12.40.2.3: Imperatores Arcadius, Honorius

Et firmissimum perpetuo quod iussimus perseveret, ita ut triginta libras auri qui illustri sunt praediti dignitate fisco nostro se illaturos esse cognoscant, ceteri vero militia sciant se esse privandos, si generale praeceptum amplius usurpando quam iussimus reprehensibili temeritate violaverint. <a 398 d.Viii id.Febr.Constantinopoli honorio iiii et eutychiano conss.>

CJ.12.40.3: Imperatores Arcadius, Honorius

Cunctos iudices scire volumus a praetoriis ordinariorum iudicum his praesentibus abstinendum. * arcad. et honor. aa. vincentio pp. * <a 400 d.Xvi k.Febr.Mediolani stilichone et aureliano vv.Cc.Conss.>

CJ.12.40.4: Imperatores Arcadius, Honorius

Fabricensium domibus ubique constitutis omnem molestiam hospitum praecipimus amoveri, quo et antiochensibus et ceterarum civitatum fabricis similis domorum excusatio praebeatur, absente scilicet sacro comitatu. * arcad. et honor. aa. aemiliano mag. off. * <a 400 d.Xi k.Febr. constantinopoli stilichone et aureliano conss.>

CJ.12.40.5pr.: Imperatores Honorius, Theodosius

Devotum possessorem ab omni inquietudine liberamus. * honor. et theodos. aa. iohanni pp. * <a 413 d. prid. id. iun. ravennae post consulatum honorii viiii et theodosii v aa.>

CJ.12.40.5.1: Imperatores Honorius, Theodosius

Primo igitur omnium ad nullum praedium publicum vel privatum domus nostrae vel cuiuscumque iuris nullus metator accedat, si a quoquam fuerit destinatus. <a 413 d. prid. id. iun. ravennae post consulatum honorii viiii et theodosii v aa.>

CJ.12.40.5.1a: Imperatores Honorius, Theodosius

Licentiam enim domino actori ipsique plebi serenitas nostra commisit, ut eum, qui praeparandi gratia ad possessionem venerit, expellendi habeat facultatem nec crimen aliquod pertimescat, cum sibi arbitrium ultionis suae sciat esse concessum: recteque sacrilegium prior arceat, qui primus invenerit. <a 413 d. prid. id. iun. ravennae post consulatum honorii viiii et theodosii v aa.>

CJ.12.40.5.1b: Imperatores Honorius, Theodosius

Administrantem vero eiusque officii proceres, quorum praecepto inhibitam personam ad agrum aliquem destinaverit, in tempore proscribi debere censuimus. <a 413 d. prid. id. iun. ravennae post consulatum honorii viiii et theodosii v aa.>

CJ.12.40.5.2: Imperatores Honorius, Theodosius

Solam sane hospitalitatem sub hac observatione concedimus, ut nihil ab hospite, quod vel hominum vel animalium pastui necessarium creditur, postuletur, omniumque sit acceleratum iter atque continuum nec ulli liceat residere, ne diuturnitas commanentium ulla ex parte praedium vexet. <a 413 d. prid. id. iun. ravennae post consulatum honorii viiii et theodosii v aa.>

CJ.12.40.5.3: Imperatores Honorius, Theodosius

Decem etiam librarum auri multa ferietur, quisquis administrator togatus apparitor ullus aut militans vel iter agens ullo in loco aliquid ab hospite postulaverit. <a 413 d. prid. id. iun. ravennae post consulatum honorii viiii et theodosii v aa.>

CJ.12.40.5.4: Imperatores Honorius, Theodosius

In tantum enim inhiberi sceleratum morem iubemus, ut ipsis quoque praebentibus impunitum esse non patiamur, si quid sponte contra praeceptum nostrum probati fuerint obtulisse. <a 413 d. prid. id. iun. ravennae post consulatum honorii viiii et theodosii v aa.>

CJ.12.40.6: Imperatores Honorius, Theodosius

Africae hoc prospectum est, ut infausta hospitalitatis praebitio tolleretur nec balneum quisquam a domino aedium postulet. * honor. et theodos. aa. hadriano pp. * <a 414 d. v non. mart. ravennae constantio et constante conss.>

CJ.12.40.7: Imperatores Honorius, Theodosius

Devotissimos milites ex procinctu redeuntes vel proficiscentes ad bella muri novi sacratissimae urbis singulae turres in pedeplanis suis suscipiant. * honor. et theodos. aa. eustathio pp. * <a 422 d. v non. mart. constantinopoli honorio xiii et theodosio x aa. conss.>

CJ.12.40.8: Imperatores Theodosius, Valentinianus

Archiatros nostri palatii nec non urbis romae et magistros litterarum pro necessariis artibus et liberalibus disciplinis nec non picturae professores, si modo ingenui sunt, hospitali molestia quoad vivent liberari praecipimus. * theodos. et valentin. aa. helioni mag. off. * <a 427 d. xiiii k. sept. hierio et ardaburio conss.>

CJ.12.40.9pr.: Imperatores Theodosius, Valentinianus

Omnes, qui metata in suis domibus praestant, sive hospitia praebuerint metatoribus seu quolibet pacto satis eis fecerint, nullam vel pensionis vel discussionis domus gratia molestiam sustinere cogantur. * theodos. et valentin. aa. nomo mag. off. * <a 444 d. xvii k. febr. constantinopoli theodosio a. xviii cons.>

CJ.12.40.9.1: Imperatores Theodosius, Valentinianus

Deinde neminem volumus cuiuslibet loci vel ordinis in hac florentissima urbe domum propriam excusantem metatum sibi in alienis aedibus privilegio militiae vindicare. quod et in provinciis observari oportet. <a 444 d. xvii k. febr. constantinopoli theodosio a. xviii cons.>

CJ.12.40.9.2: Imperatores Theodosius, Valentinianus

Ceteris vero, quibus illustris dignitas sub cingulo vel citra cingulum pro solo honore delata est, excusandarum aedium licentiam penitus denegamus. <a 444 d. xvii k. febr. constantinopoli theodosio a. xviii cons.>

CJ.12.40.9.3: Imperatores Theodosius, Valentinianus

Hoc iuris in his etiam praecipimus observari, quos ipsa quidem administrationis condicio spectabiles novit, honor tamen additus a nostra liberalitate reddit illustres. <a 444 d. xvii k. febr. constantinopoli theodosio a. xviii cons.>

CJ.12.40.9.4: Imperatores Theodosius, Valentinianus

Scituris omnibus, quod si quis, cum cingulo perfruatur et excusationem ita propriae domus impetraverit, ut a pensione etiam portionis tertiae sit immunis, et militiae causa metatum in alienis domibus sibi crediderit vindicandum, si quidem honore praeditus excusationis ius habeat, carebit legum privilegiis, quas fraudare conatus est: si vero inter eos quibus nulla suffragatur dignitas numeretur, centum librarum auri sacratissimis largitionibus pendendarum illatione multabitur. <a 444 d. xvii k. febr. constantinopoli theodosio a. xviii cons.>

CJ.12.40.10pr.: Imperatores Valentinianus, Marcianus

Hac lege sancimus, ut, si quis consularem et patriciam meruerit dignitatem, tres domos proprias dum superest habeat hospitum immunitate securas, heredes vero eius filii aut pater aut mater nepotes aut frater aut soror aut uxor duarum domorum suarum excusatione potiantur. * valentin. et marcian. aa. .... mag. off. * < >

CJ.12.40.10.1: Imperatores Valentinianus, Marcianus

Si quis vero consulatu tantummodo gloriatur, duas semis domos suas immunes habeat: post fata vero eius memorati heredes unam semis domum suam habeant nullis hospitiis praegravatam. < >

CJ.12.40.10.2: Imperatores Valentinianus, Marcianus

Pari privilegio perfruatur cum memoratis heredibus, qui solius patriciae dignitatis sine consulatu decoratur insignibus. < >

CJ.12.40.10.3: Imperatores Valentinianus, Marcianus

Praefectorii vero nec non et magistri militum duas domus suas habeant quoad vixerint hospitibus liberatas: heredes vero eorum memorati unam defendant domum suam simili excusatione munitam. < >

CJ.12.40.10.4: Imperatores Valentinianus, Marcianus

Magistri vero officiorum vel quaestores unam semis domum suam quoad vixerint habeant hospitum onere liberatam: heredes vero eorum praedicti unam ab hospitibus iure defendant. < >

CJ.12.40.10.5: Imperatores Valentinianus, Marcianus

Comites autem domesticorum et protectorum et sacrarum largitionum et privatarum et vir spectabilis primicerius notariorum singulas domus suas ab hospitum gravamine dum vivunt gaudeant esse securas: memorati vero heredes eorum mediam partem unius domus suae sciant excusatione muniri, residuae vero dimidiae partis tertiam portionem hospitibus deputandam esse cognoscant. < >

CJ.12.40.10.6: Imperatores Valentinianus, Marcianus

Si qui illustres honorarias dignitates quascumque sine actu caelitus impetrarunt , aequo animo suas domus hospitibus post hanc legem pandant pro tertia quae legibus praefinita est portione: exceptis videlicet ergasteriis, quae in plateis vel angiportis esse noscuntur. < >

CJ.12.40.10.7: Imperatores Valentinianus, Marcianus

Quod in omnibus domibus quae hospitales sunt observari iubemus: ita ut nemo vel ex sacro rescripto vel ex divina adnotatione seu pragmatica sanctione contra hanc legem uti possit excusationis auxilio. < >

CJ.12.40.10.8: Imperatores Valentinianus, Marcianus

His omnibus, quae per hanc legem constituimus, in hac aeterna urbe observandis. < >

CJ.12.40.11: Imperator Zeno

Decem post primicerium tribunos in domibus, quas in hac regia urbe possident, metatorum iussimus vacationem mereri. * zeno a. illyriciano mag. off. * <a xxx >

CJ.12.41.0. De salgamo hospitibus non praebendo.

CJ.12.41.1: Imperatores Constantius, constans

Ne quis comitum vel tribunorum aut praepositorum aut militum nomine salgami gratia, id est culcitas lignum oleum a suis extorqueat hospitibus: sed nec volentibus hospitibus in praedictis speciebus aliquid auferant: sed provinciales sint nostri ab hac praebitione securi: comitibus tribunis vel certe praepositis militibusque gravi vexationi subiacentibus. * constantius et constans aa. leontio pp. * <a 340 ? d. v id. oct......Conss.>

CJ.12.42.0. De commeatu.

CJ.12.42.1pr.: Imperator Constantinus

Ne cui liceat praepositorum vel tribunorum cohortium vel vicariorum et familiarium eorum tempore expeditionis quocumque genere cuiquam de militibus a castris atque signis vel his etiam locis, in quibus pertendant, discedendi commeatum dare. * const. a. et c. aeliano. * <a 323 d. iiii k. mai. severo et rufino conss.>

CJ.12.42.1.1: Imperator Constantinus

Si quis vero contra hanc legem facere ausus fuerit et militem contra interdictum commeatu dimiserit eo tempore, in quo barbarorum incursio extiterit, et tunc, cum praesentes in castris atque apud signa milites esse debeant, quisquam afuerit, capite vindicetur. . <a 323 d. iiii k. mai. severo et rufino conss.>

CJ.12.42.2: Imperatores Gratianus, Valentinianus, Theodosius

Quicumque de scriniis aut agentibus in rebus vel etiam ex officiis palatinis, his videlicet, qui sacrarum et privatarum remunerationum comitibus obsecundant, sex mensium spatium supra diem commeatus aut iussionem evectionis afuerit, is in inferiorem locum quinque antelatis posterioribus devolvatur: is vero, qui anni vacationem arbitratu proprio iudiciarii praecepti oblitus adsumpserit, a decem post se militantibus transeatur: ac deinde cum iam aliquis desidia quadriennio officium proprium adire neglexerit, quadraginta de sequentibus postferatur: qui vero nec post quadriennii quidem tempus, militantum non immerito matriculis auf eratur. * grat. valentin. et theodos. aaa. ad syagrium mag. off. * <a 379 d. k. oct. ausonio et olybrio conss.>

CJ.12.42.3: Imperatores Honorius, Theodosius

Si qui sine commeatu aliquo annum in penatibus propriis vel in quibuslibet locis desidiosa quiete transegerit, decem sequentibus postponatur: in quo vero biennium talis culpa deprehenditur, viginti sibi antepositos congemiscat: tertius autem annus triginta praelatos iure deflebit, ita ut quartus exempto matriculae nullam veniam derelinquat. * honor. et theodos. aa. gaisoni com. mag. mil.* <a 413 d. prid. id. iun. ravennae post consulatum honorii viiii et theodosii v aa.>

CJ.12.43.0. De tironibus.

CJ.12.43.1: Imperatores Valentinianus, Valens

Nullus tiro vagus aut veteranus aut censibus obnoxius ad militiam accedat. * valentin. et valens aa. modesto pp. * <a 370 d.Xiiii k.Oct.Hierapoli valentiniano et valente iii aa. conss.>

CJ.12.43.2: Imperatores Gratianus, Valentinianus, Theodosius

Quisquis mancipium iuris alieni in tirocinio militiae scribi curaverit, convictus ac proditus auri libram aerario nostro cogatur inferre, mancipio scilicet domino, si factum ignoraverit, reddendo. * grat. valentin. et theodos. aaa. eutropio pp. * <a 382 d.Id.Mai.Tyro metropoli pp. beryto antonio et syagrio conss.>

CJ.12.43.3: Imperatores Honorius, Theodosius

Tirones in scholis loco semper posteriore ponantur. nec enim patimur quemquam celsiorem gradum obtinere, nisi cui et laborum adsiduitas et stipendiorum prolixitas suffragatur. * honor. et theodos. aa. .Com. sacr. larg. * <a 408 d.Vii k.Dec.Ravenna basso et philippo conss.>

CJ.12.44.0. De litorum et itinerum custodia.

CJ.12.44.1: Imperatores Honorius, Theodosius

Saluberrima sanctione censemus, ne merces illicitae ad nationes barbaras deferantur. et quaecumque naves ex quolibet portu seu litore dimittuntur, nullam concussionem vel damna sustineant: ita tamen, ut earum naucleri deponant, in quam provinciam ituri sunt, ut hoc manifestato nulla contra eos postea indignatio seu concussio procedat. * honor. et theodos. aa. eustathio pp. * <a 420 d.Xiiii k.Oct.Constantinopoli theodosio a.Viiii et qui fuerit nuntiatus.>

CJ.12.45.0. De desertoribus et occultatoribus eorum.

CJ.12.45.1pr.: Imperatores Gratianus, Valentinianus, Theodosius

Si quis forte desertorem agro tectoque susceperit atque apud se diu passus fuerit delitescere, actor quidem vel procurator loci, qui hoc sciens prudensque commiserit, capitali supplicio subiugetur, dominus vero, si huius rei conscius fuerit, praedii, in quo latuerit desertor, amissione puniatur. * grat. valentin. et theodos. aaa. ad syagrium pp. * <a 380 pp.Id.Iul.Romae gratiano v et theodosio aa. ccnss.>

CJ.12.45.1.1: Imperatores Gratianus, Valentinianus, Theodosius

Si quis autem desertorem prodiderit mediocris loci ingenuus, immunitate potiatur. <a 380 pp.Id.Iul.Romae gratiano v et theodosio aa. ccnss.>

CJ.12.45.1.2: Imperatores Gratianus, Valentinianus, Theodosius

Neque solum de his loquimur, qui proxime signis felicibus applicati militiae rudimenta timuerunt, verum etiam qui stipendiis militaribus degenerem latebram praebuisse monstrantur. <a 380 pp.Id.Iul.Romae gratiano v et theodosio aa. ccnss.>

CJ.12.45.1.3: Imperatores Gratianus, Valentinianus, Theodosius

Desertor autem habebitur quisquis belli tempore aberit a signis. horum qui sponte processerit, peccati anterioris supplicium non timebit. sin vero flagitiosa ignavia delitescat, per eum, in cuius domo fuerit, invigilantibus extrinsecus quoque officiis publicis, ubicumque correptus severitati iudicis offeratur, degeneri morte gladium subiturus. <a 380 pp.Id.Iul.Romae gratiano v et theodosio aa. ccnss.>

CJ.12.45.1.4: Imperatores Gratianus, Valentinianus, Theodosius

Si autem rector provinciae propositam severitatem vel gratia vel dissimulatione distulerit, patrimonii atque existimationis damno subiciatur et in officii primores capitaliter vindicetur. <a 380 pp.Id.Iul.Romae gratiano v et theodosio aa. ccnss.>

CJ.12.45.2: Imperatores Arcadius, Honorius, Theodosius

Si desertores inventi resistendum atque armis obtinendum putaverint, tamquam rebelles in ipsis temeritatis suae conatibus opprimantur: ita tamen, ut provinciarum iudices sollicita cautione disquirant, ne sub falsarum tractoriarum nomine desertionis suae crimen defendere moliantur, nec suppositis aut commentis epistulis evadendi habeant facultatem. * arcad. honor. et theodos. aaa. hadriano pp. * <a 403 d.Vi k.Mart.Ravennae theodosio a.Et rumorido conss.>

CJ.12.45.3: Imperatores Arcadius, Honorius, Theodosius

Qui relictis militaribus castris se ad depraedationes vel latrocinium contulerint, severitatem iudicis non evadant. * arcad. honor. et theodos. aaa. longiano pp. * <a 406 d. viiii k. april. ravennae arcadio a. vi et probo vc. conss.>

CJ.12.46.0. De veteranis.

CJ.12.46.1pr.: Imperator Constantinus

Auguste constantine, deus te nobis servet: vestra salus nostra salus: vere dicimus, iurati dicimus. * const. a. cum introisset principia et salutatus esset a praeff. et tribb. et vv. eminentiss. acclamatum est:* <a 320 d. k. mart. in civitate velovocorum constantino a. vi et constantino c. conss.>

CJ.12.46.1.1: Imperator Constantinus

Adunati veterani exclamaverunt: constantine auguste, quo nos veteranos factos, si nullam indulgentiam habemus? constantinus a. dixit: magis magisque conveteranis meis beatitudinem augere debeo quam minuere. <a 320 d. k. mart. in civitate velovocorum constantino a. vi et constantino c. conss.>

CJ.12.46.1.2: Imperator Constantinus

Victorinus veteranus dixit: muneribus et oneribus universis locis conveniri non sinamur. constantinus a. dixit: apertius indica: quae sunt maxime munera, quae vos contumaciter gravant? <a 320 d. k. mart. in civitate velovocorum constantino a. vi et constantino c. conss.>

CJ.12.46.1.3: Imperator Constantinus

Universi veterani dixerunt: ipse perspicis scilicet. constantinus a. dixit: iam nunc magnificentia mea omnibus veteranis id esse concessum perspicuum sit, ne quis eorum in nullo munere civili neque in operibus publicis conveniatur neque in nulla collatione neque a magistratibus neque vectigalibus. <a 320 d. k. mart. in civitate velovocorum constantino a. vi et constantino c. conss.>

CJ.12.46.1.4: Imperator Constantinus

In quibuscumque nundinis interfuerint, nulla ad venditionem proponenda dare debebunt. <a 320 d. k. mart. in civitate velovocorum constantino a. vi et constantino c. conss.>

CJ.12.46.1.5: Imperator Constantinus

Publicani quoque, ut solent agentibus super compellere, ab isdem veteranis amoveantur. quiete post labores suos perenniter perfruantur. <a 320 d. k. mart. in civitate velovocorum constantino a. vi et constantino c. conss.>

CJ.12.46.1.6(1): Imperator Constantinus

Fisco nostro quoque eadem epistula interdiximus, ut nullum omnino ex his inquietaret: sed liceat eis emere et vendere, optimis negotiis pecuniam tractare et mercimonia agitare, ut integra beneficia eorum sub saeculi nostri otio et pace perfruantur. <a 320 d. k. mart. in civitate velovocorum constantino a. vi et constantino c. conss.>

CJ.12.46.1.7: Imperator Constantinus

Sed etiam nullo munere civili, id est corporali sive personali, vel de portorio onere eos adfici concedimus. <a 320 d. k. mart. in civitate velovocorum constantino a. vi et constantino c. conss.>

CJ.12.46.2: Imperator Constantinus

Providendum est, ne veterani protectoria dignitate cumulati, aut qui honores varios pro meritis suis consecuti sunt, incongruis pulsentur iniuriis, cum, si quis in hoc crimine fuerit deprehensus, rectores provinciarum pro iurisdictione sua examinantes factum pro sui qualitate eos coerceant. * const. a. maximo pp. * <a 328 d. iiii k. ian. triveris ianuarino et iusto conss.>

CJ.12.46.3: Imperator Constantius

Veterani, qui ex neglegentia vitae neque rus colunt neque aliquid honestum peragunt, sed latrociniis sese dederunt, omnibus veteranorum privilegiis exuti poenis competentibus a provinciarum rectoribus subiciantur. * constantius a. ad euagrium pp. * <a 353 d. iii id. aug. constantio a. vi et constante ii conss.>

CJ.12.46.4: Imperatores Honorius, Theodosius

Nullus eorum, qui sacramentis inhaerere desierit, vel volens permittatur vel invitus militare cogatur observare iudicium: sententiis, quae non his observatis latae fuerint, nullam firmitatem habentibus, nisi forte reperiatur ibi tempore militiae coepta cognitio: tunc enim velut necdum cingulo deposito sub militare iudice rem tractari finirique praecipimus, nisi principali beneficio specialiter indulto quidam ex his sese defendant. * honor. et theodos. aa. eustathio pp.Et nestorio pp. illyrici. * <a 421-422 >

CJ.12.47.0. De filiis officialium militarium qui in bello moriuntur.

CJ.12.47.1: Imperator Constantinus

Ii, qui ex officialibus quorumcumque officiorum geniti sunt, sive eorundem parentes adhuc sacramento tenentur sive iam dimissi erunt, in parentum militiam vocentur. * constant. a. ad euagrium pp. * <a 331 d. prid. non. aug. basso et ablabio conss.>

CJ.12.47.2: Imperatores Gratianus, Valentinianus, Theodosius

Filios primipilariorum paternam sequi condicionem oportet. * grat. valentin. et theodos. aaa. neoterio. * <a 380? >

CJ.12.48.0. De oblatione votorum.

CJ.12.48.1: Imperatores Arcadius, Honorius

Quando votis communibus felix annus aperitur, in una libra auri et solidis obryziacis principibus offerendi devotionem animo libenti suscipimus statuentes, ut deinceps sequentibus annis uniuscuiusque sedulitas principibus suis talia ingerant semper et deferant. * arcad. et honor. aa. basilio pu. * <a 395 d. iii non. mart. mediolani olybrio et probino conss.>

CJ.12.49.0. De numerariis actuariis et chartulariis et adiutoribus scriniariis et exceptoribus sedis excelsae ceterorumque iudicum tam civilium quam militarium.

CJ.12.49.1: Imperator Constantinus

Vorax et fraudulentum numerariorum propositum, qui diversis obsequiis rectoribus obsequuntur, ita inhibendum est, ut antea sanximus et nunc itidem sancimus condicioni eos subdi tormentorum et eculeis atque lacerationibus subiacere. * constant. a. veroniciano vic. asiae. * <a 334 d. xiiii k. iun. optato et paulino conss.>

CJ.12.49.2pr.: Imperatores Valentinianus, Valens

Qui numerarii appellari consueverant consularium ac praesidum dumtaxat, tabularii post hanc nostram sanctionem vocabuntur, scientes se tormentis esse subiectos , nisi iudicibus vel his, qui provecti nostro iudicio ad provincias venerint, vel exactoribus debitorum aut reliquorum modum frequenter ingesserint sub actorum testificatione: quos scire oportet cum his qui debitores sunt sese ad solutionem esse retinendos, nisi omnia debita ipsis fuerint indicantibus persoluta. * valentin. et valens aa. ad clearchum. * <a 365 d. xiiii k. mart. constantinopoli valentiniano et valente aa. conss.>

CJ.12.49.2.1: Imperatores Valentinianus, Valens

Triennii tamen spatio tabulariorum decet tempus omne concludi. <a 365 d. xiiii k. mart. constantinopoli valentiniano et valente aa. conss.>

CJ.12.49.3: Imperatores Valentinianus, Valens

Numerarios amplissimae tuae sedis cingulum habere et militiae ordinem tenere iubemus. * valentin. et valens aa. rufino pp. * <a 365 d. prid. id. dec. parisiis valentiniano et valente aa. conss.>

CJ.12.49.4: Imperatores Gratianus, Valentinianus, Theodosius

In provinciis singulis duo numerarii, qui et tabularii, collocentur, quo ad unum fiscalis arcae ratiocinium, ad alterum largitionales pertinere tituli iubeantur : scituri, quod, si ex alienis quicquam actibus ad alteram partem illicita fuerit usurpatione translatum, is, qui iudicis culpam dissimulatione texerit, gravissimo sit supplicio subiugandus. * grat. valentin. et theodos. aaa. omn. rectoribus provinciarum.* <a 382 d. iii k. april. constantinopoli antonio et syagrio conss.>

CJ.12.49.5: Imperatores Gratianus, Valentinianus, Theodosius

Exceptores omnes iudicibus provincialibus obsequentes, qui nec cohortalem militiam sustinere videntur neque a fisco ullas consequuntur annonas, absque metu dare coeptis operam, etiamsi decuriones sint, minime prohibemus, dummodo munia propriae civitatis agnoscant et peracto secundum morem exceptionis officio ad propriam sibi curiam redeundum esse non nesciant. * grat. valentin. et theodos. aaa. et arcad. a. principio pp. * <a 385 d. iiii id. dec. aquileiae arcadio a. et bautone conss.>

CJ.12.49.6pr.: Imperatores Arcadius, Honorius

Ne diutius ad cunctorum perniciem actuarii numerariorum consortiis adiuventur, illustris auctoritas tua cunctos ex numerariis actuariorum societate praecipiat abstinere atque ab eorum communione discedere. * arcad. et honor. aa. severo pu. * <a 398 d.Iiii k.Iul.Nicaeae honorio a.Iiii et eutychiano conss.>

CJ.12.49.6.1: Imperatores Arcadius, Honorius

Quod si haec moniti custodire neglexerint, isdem poenis se quibus actuarios non ambigant subiacere. <a 398 d.Iiii k.Iul.Nicaeae honorio a.Iiii et eutychiano conss.>

CJ.12.49.7pr.: Imperatores Theodosius, Valentinianus

Actuarios tam classium urbis constantinopolitanae quam thymelae equorumque curulium civitatum diversarum non aliter nisi, ut consueverat, manus sanxerit principalis, sublimitas tua praecipiat ordinari. * theodos. et valentin. aa. hierio pp. * <a 426 d.X k.Iul.Nicomediae theodosio xii et valentiniano ii aa.Conss.>

CJ.12.49.7.1: Imperatores Theodosius, Valentinianus

Quod si quis talis sub tua fuerit iudicatione convictus, profectio irritis his, quae vetita contrectavit, etiam congruam indignationem incurret. <a 426 d.X k.Iul.Nicomediae theodosio xii et valentiniano ii aa.Conss.>

CJ.12.49.8: Imperatores Theodosius, Valentinianus

Scriniarios vel numerarios officii magnitudinis tuae iubemus nullatenus in posterum aut mutuam pecuniam sumere aut polliceri cuiquam pro publicis cogi expensis : quos nullam post depositam militiam inquietudinem sustinere volumus. * theodos. et valentin. aa. protogeni pp. * <a xxx >

CJ.12.49.9: Imperator Leo

Nemini licere deinceps iubemus in quacumque militia connumeratio sollicitudinem actuarii subire vel post depositam eandem curam ad militiam adspirare, quatenus inter privatos agens omnique militari privilegio denudatus nihil nundinationis vel fraudis circa commendanda ratiocinia quibus obnoxius est attemptare valeat. * leo a. dioscoro pp. * <a 472? >

CJ.12.49.10pr.: Imperator Zeno

Nulli scriniario liceat pro tempore numerarios plus quam quaternis vicibus, nec his tamen continuandis, adiuvare: idemque hoc super chartulariis praebenda pro tempore numerariis opera observari decernimus, ita ut adiutorum quidem bienii, chartulariorum vero unius anni intervallo continuatio interrumpatur: nulla adiutoribus ad chartulariorum sollicitudinem, quam semel dedignati sunt, descendendi danda licentia: ita ut orientalis quidem tractus pro tempore numerariis non nisi ab his scriniariis, qui intra triginta viros a numerario retro numerandos, asianae vero dioeceseos numerariis non nisi ab his, qui intra quinquaginta a num erario similiter retro numerandos inveniuntur, ponticae vero et thracicae dioeceseos passim et pro suo libitu ex omni multitudine eligendorum adiutorum tribuatur facultas. * zeno a. arcadio pp. * <a 485-486? >

CJ.12.49.10.1: Imperator Zeno

Omnia sane commonitoria vel praeceptiones aut evectiones seu quaelibet publica instrumenta non solum adiutori, verum etiam provinciae illius de qua disponitur tractatori inspiciendi itidemque subscribendi, aliorum quoque, qui una cum eo tractant, in eadem subscriptione mentione habenda, necessitatem incumbere. <a 485486? >

CJ.12.49.10.2: Imperator Zeno

Si quid autem sine hac observatione ex orientali vel asiano vel thracico scrinio fuerit emissum, falsi suspicione non careat: exceptis publicis instrumentis, quae ex scrinio ponticae dioeceseos emittuntur, quod in isdem instrumentis solum numerarium eiusdem dioeceseos eiusque adiutorem et chartularium subscribere magnitudo tua disposuit: ita ut, si quid huius legis fuerit violatum, numerarii quidem tam gradus sui quam sollemnitatum seu solaciorum universi anni iacturam, adiutores vero quinquaginta librarum auri et chartularii quindecim itidem librarum auri poenam subeant. <a 485-486? >

CJ.12.49.11: Imperator Zeno

Officio magnitudinis tuae datis precibus postulante, ut numerariorum actus non in biennium, sed in unum annum statuatur, nostra pietas huiusmodi petitionibus adnuens dispositionem, quae promulgata fuerat super biennio, super uno tantummodo anno revocavit. * zeno a. catoni mag. mil. * <a 485-486? >

CJ.12.49.12pr.: Imperator Anastasius

Per hanc divinam pragmaticam sanctionem decernimus, quod antea, dum tribuni praetoriani dignitas eis, qui in scriniis seu gradibus officii tuae celsitudinis deponunt militiam, praebeatur, custoditum fuisse dignoscitur, hoc super honore quoque comitivae dignitatis eis impertiri, ut sententia pro fine eorum militiae proferenda dignitatis etiam mentionem contineat, haec quoque tantummodo et sine speciali codicillorum vel divinorum apicum sanctione ad eandem dignitatem adipiscendam et privilegia eam sequentia sufficiat: ita tamen, ut primi ordinis comitivam per interlocutionem eiusdem potestatis mereantur cornicularius et primiscrinius et numerarius scrinii macedoniae et scrinii daciae et scrinii operum et scrinii auri. * anastas. a. spartiatio pp.Illyrici. * <a xxx >

CJ.12.49.12.1: Imperator Anastasius

Hoc eodem in his etiam, qui post novellam dispositionem divae memoriae zenonis, quae de isdem personis loquitur, deposuerunt militiam, obtinente. <a xxx >

CJ.12.50.0. De cursu publico angariis et parangariis.

CJ.12.50.1: Imperator Constantinus

Equos, qui publico cursui deputati sunt, non lignis vel fustibus, sed flagellis tantummodo agitari decernimus: poena non defutura contra eum, qui aliter fecerit. * const. a. ad titianum. * <a 316 d.Prid.Id.Mai.Sabino et rufino conss.>

CJ.12.50.2pr.: Imperator Constantinus

Praesidibus et rationalibus ceterisque, quibus propterea res publica et annonas et alimenta pecoribus subministrat, usurpandi paraveredi licentia derogetur. * const. a. ad acyndinum pp. * <a 326 pp.Xv.K.Mart.Constantino.A.Vii et constantio c.Conss.>

CJ.12.50.2.1: Imperator Constantinus

Sed nec alia via eundi quisquam habeat facultatem, nisi per quam cursus publicus stare dignoscitur: excepta videlicet tua sublimissima sede, cui cursus publicus et proficiscendi per eum licentia et ubi ratio exegerit praesto est. <a 326 pp.Xv.K.Mart.Constantino.A.Vii et constantio c.Conss.>

CJ.12.50.3pr.: Imperator Constantius

Evectiones ab omnibus postulentur, et tam iudices quam custodes publici cursus minime transire patiantur, antequam seriem evectionis adspexerint. * constantius a. ad taurum pp. * <a 357 d.Viii k.Iul.Mediolani constantio a.Viiii et iuliano c.Ii conss.>

CJ.12.50.3.1: Imperator Constantius

Quod si quis putaverit resistendum et sine evectione iter facere detegitur, vel ultra tempus quod evectioni insertum est publico cursu uti conatus sit, ubi repertus fuerit, eundem iussimus detineri et, si quidem dignitate praeditus sit, de eius nomine ad prudentiam tuam et ad illustrem virum comitem et magistrum officiorum referri. adversus ceteros vero protinus indignatio competens exercenda est, quos sinceritas tua pro loco graduque militiae ibidem coerceri posse crediderit. <a 357 d.Viii k.Iul.Mediolani constantio a.Viiii et iuliano c.Ii conss.>

CJ.12.50.4pr.: Imperator Julianus

Parhippum eum videri et habendum esse, si quis usurpato uno vel duobus veredis, quos solos evectio continebit. alterum tertiumve extra ordinem commoveat. * iul. a. ad mamertinum pp. * <a 362 d. v id. sept. mamertino et nevitta conss.>

CJ.12.50.4.1: Imperator Julianus

Nihil autem interesse debet nec ad crimen vocari, utrum agens in rebus suo anne mulionis itineris subiugando, modo evectionis datae formam et licentiam non excedat. <a 362 d. v id. sept. mamertino et nevitta conss.>

CJ.12.50.5: Imperatores Valentinianus, Valens

Si quis per publicum cursum iter faciens cuiuscumque dignitatis vel militiae ab itinere recto deverterit, poena in eum competens proferatur. * valentin. et valens aa. ad symmachum correctorem lucaniae et brittiorum.* <a 365 d. viii k. april. mediolani valentiniano et valente aa. conss.>

CJ.12.50.6pr.: Imperatores Valentinianus, Valens, Gratianus

Evictionum copiam senatui, cum proficiscendi ad nos necessitas fuerit, serenitas nostra largita est, ita tamen, ut cum a nobis evocatur aut a clementiae nostrae veneratione discedat. * valentin. et valens et grat. aaa. ad ampelium pu. * <a 371 d. iii id. dec. triveris gratiano a. ii et probo conss.>

CJ.12.50.6.1: Imperatores Valentinianus, Valens, Gratianus

Si quis ergo posthac contra vetitum sibi cursum publicum illicita temeritate praesumpserit, motum in se nostrae mansuetudinis excitabit. <a 371 d. iii id. dec. triveris gratiano a. ii et probo conss.>

CJ.12.50.7pr.: Imperatores Valentinianus, Valens, Gratianus

In omnibus provinciis veredorum pars quarta reparetur. * valentin. et valens et grat. aaa. ad hesperium pp. * <a 377 d. iii k. mart. triveris gratiano a. iiii et merobaude conss.>

CJ.12.50.7.1: Imperatores Valentinianus, Valens, Gratianus

Stabula autem ut impensis publicis extruantur, contra rationem est, cum provincialium sumptu, in quorum locis stabula constituta sunt, citius arbitremur apparanda et utilius tam publico quam his, quos stercus animalium pro suo solacio habere concedimus. <a 377 d. iii k. mart. triveris gratiano a. iiii et merobaude conss.>

CJ.12.50.8: Imperatores Valens, Gratianus, Valentinianus

Ut agendi itineris possit esse moderatio, deni veredi per dies singulos ex utraque parte dimittantur: poena quinque librarum auri minime defutura contra eos, qui statuta nostra neglexerint. * valens grat. et valentin. aaa. ad ausonium pp. * <a 378 d. xii k. mai. triveris valente vi et valentiniano ii aa. conss.>

CJ.12.50.9pr.: Imperatores Gratianus, Valentinianus, Theodosius

Iudicibus faciendae evectionis copiam denegamus, cum id tantum nostro numini et tuae sedi nec non viro illustri magistro officiorum sit reservandum, cum neque praefecto urbis neque magistris militum neque ducibus neque vicariis nec cuiquam alii praeter memoratas duas potestates hoc a nobis concessum sit. * grat. valentin. et theodos. aaa. floro pp. * <a 382 d. x k. aug. constantinopoli antonio et syagrio conss.>

CJ.12.50.9.1: Imperatores Gratianus, Valentinianus, Theodosius

His enim tantum ambulandi facultatem iudices ex suo arbitrio praebituri sunt, quos in transmissione publicarum functionum prosecutores viderint constitutos: scituri, si definitionem nostram excesserint, se quidem viginti quinque auri libris, officia vero quinquaginta esse multandos. <a 382 d. x k. aug. constantinopoli antonio et syagrio conss.>

CJ.12.50.10: Imperatores Gratianus, Valentinianus, Theodosius

Gravissimae poenae acerbitate proposita evectionum contractus, animalium quoque publicorum merces et ementis et distrahentis coercitione prohibemus. * grat. valentin. et theodos. aaa. philagrio com. orientis. * <a 382 pp. beryto. d. xii k. oct. antonio et syagrio conss.>

CJ.12.50.11: Imperatores Gratianus, Valentinianus, Theodosius

Nullus evectione utatur privatus, tametsi valuerit impetrare. * grat. valentin. et theodos. aaa. cynegio pp. * <a 384 d. vi non. mart. constantinopoli ricomere et clearcho conss.>

CJ.12.50.12: Imperatores Valentinianus, Theodosius, Arcadius

Quoniam veredorum quoque cura pari ratione tractanda est, sexaginta libras sella cum frenis, sexaginta itidem averta non transeat: ea condicione, ut, si quis praescripta moderaminis imperatorii libramenta transcenderit, eius sella in frusta caedatur, averta vero fisci viribus deputetur: exceptis auri centenariis, quae necesse est ab hippocomis in solitis sacculis reportari. * valentin. theodos. et arcad. aaa. cynegio pp. * <a 385 d. xv k. iul. constantinopoli arcadio a. et bautone conss.>

CJ.12.50.13pr.: Imperatores Valentinianus, Theodosius, Arcadius

Non patimur hippocomos per eos qui veredis uterentur indigna spoliatione vexari, si quidem nonnulli veredarii saga eorum dicuntur auferre vel praecidere. * valentin. theodos. et arcad. aaa. floro pp. * <a 390 pp. xv k. iul. triveris valentiniano a. iiii et neoterio conss.>

CJ.12.50.13.1: Imperatores Valentinianus, Theodosius, Arcadius

Quocirca per omnes iudices et curiosos miserabilis removeatur iniuria, scientibus cunctis, quod, si observata non fuerit nostra sanctio, non solum damna resarcire, verum etiam notam et multam qui neglexerit subire cogetur. <a 390 pp. xv k. iul. triveris valentiniano a. iiii et neoterio conss.>

CJ.12.50.14: Imperatores Valentinianus, Theodosius, Arcadius

Publici cursus exhibitio secundum locorum consuetudinem vel curialibus vel cohortalibus debet committi vel his, qui suo periculo ab eminentissima praefectura sub competenti cautela excipiunt. * valentin. theodos. et arcad. aaa. potamio praef. augustali. * <a 392 d. iii k. aug. constantinopoli arcadio a. ii et rufino conss.>

CJ.12.50.15: Imperatores Arcadius, Honorius

Si quis vel per unam mutationem veredum superducendum esse crediderit, in quadruplum superductorum animalium pretium fisci viribus inferat. * arcad. et honor. aa. dextro pp. * <a 395 d. xv k. april. mediolano olybrio et probino conss.>

CJ.12.50.16: Imperatores Arcadius, Honorius

His tantummodo utendi cursus publici facultas concessa est, qui legati de diversis gentibus ad nostram clementiam properare festinant. * arcad. et honor. aa. remistheo duci armeniae. * <a 397 d. vi k. mart. constantinopoli caesario et attico conss.>

CJ.12.50.17: Imperatores Arcadius, Honorius

Nemo mulionem mutationibus deputatum vel per sollicitationem vel per receptionem subtrahere audeat, decem libras argenti poenae nomine reformidans inferre. * arcad. et honor. aa. vicentio pp. * <a 398 d. xii k. mart. mediolani honorio a.Iiii et eutychiano conss.>

CJ.12.50.18: Imperatores Arcadius, Honorius

Animalia publica, dum longe maiore ac periniquo pretio pabula aestimantur per mancipes atque apparitores, aperte vexantur. ne id contingat, sublimitas tua disponat, ut neque pabula mutationibus desint, neque provinciales ultra quam iustitiae sinit ratio praegraventur. * arcad. et honor. aa. messalae pp. * <a 400 d. v k. dec. stilichone et aureliano conss.>

CJ.12.50.19pr.: Imperatores Arcadius, Honorius, Theodosius

Comperimus provinciales et pabula et pecuniam pro equorum cursualium sollemni ratione conferre et extrinsecus etiam paraveredorum onere praegravari. * arcad. honor. et theodos. a. septimino procons. africae. * <a 403 d. vii k. april. ravennae theodosio a. et rumorido conss.>

CJ.12.50.19.1: Imperatores Arcadius, Honorius, Theodosius

Provinciarum igitur rectores procurent, ne umquam cursus publicus veniat in querellam et occasio deceptionis curiales vel provinciales animalia indebita praestare compellat. <a 403 d. vii k. april. ravennae theodosio a. et rumorido conss.>

CJ.12.50.20pr.: Imperatores Arcadius, Honorius, Theodosius

Nemo ducum ingressus semel provinciam suam postmodum itineribus faciendis cursu atque angariis ipse sive suum utatur officium, sed expeditionem militarem iumentis propriis exsequantur. * arcad. honor. et theodos. aaa. anthemio pp. * <a 407 d. iiii non. aug. constantinopoli honorio vii et theodosio ii aa. conss.>

CJ.12.50.20.1: Imperatores Arcadius, Honorius, Theodosius

De cohortalinis etiam officiis eadem lege sancimus, ne quis ex his per provinciam suam discurrens veredo uti conetur in posterum, cum sacra prohibitum sanctione cognoscant. <a 407 d. iiii non. aug. constantinopoli honorio vii et theodosio ii aa. conss.>

CJ.12.50.20.2: Imperatores Arcadius, Honorius, Theodosius

Quod si quis ducum vel apparitorum vel cohortalium temerario animo ea quae decernimus contemnenda putaverit, per singula animalia quibus usus fuerit singularum librarum auri illatione multabitur. <a 407 d. iiii non. aug. constantinopoli honorio vii et theodosio ii aa. conss.>

CJ.12.50.21: Imperatores Theodosius, Valentinianus

Nullus penitus cuiuslibet ordinis seu dignitatis vel sacrosancta ecclesia vel domus regia tempore expeditionis excusationem angariarum seu parangariarum habeat. * theodos. et valentin. aa. cyro pp. * <a 440-441 >

CJ.12.50.22pr.: Imperator Leo

Cursum clavularem ab omni orientali tractu nec non ab his civitatibus aliarum regionum, quarum instructio tui culminis meminit, tolli amputarique decernimus, ita tamen, ut in transitu fortissimorum militum (quando nostra serenitas disposuerit ex aliis ad alia eos loca deduci, evectionesque animalium secundum consuetudinem a nostra fuerint aeternitate consecuti)et in armorum tam confectione quam translatione servata consuetudine, in profectione quin etiam legatorum animalium dominis, qui ea solent accepta mercede locare, praebenda pensio arcae tui culminis imputetur. * leo a. pusaeo pp. * < >

CJ.12.50.22.1: Imperator Leo

Tractorias videlicet animalium super memoratis causis nulli alii iudici, cuiuscumque sit dignitatis, nisi tuo tantummodo culmini faciendi licentiam patere decernimus. < >

CJ.12.50.23pr.: Imperator Anastasius

Iubemus nemini licere cuiuscumque scholae vel officii vel militiae seu condicionis per totius orientalis tractus partes ob quamcumque causam profiscenti seu redeunti supra unum veredum unumque paraveredum, cum evectione tamen iudiciali, movere, nisi specialis ei praestita sit nostrae serenitatis quantitatem animalium continens evectio. * anastas. a. armenio pp. * < >

CJ.12.50.23.1: Imperator Anastasius

Exceptis procul dubio his, qui pecunias publicas devehunt, cum in hac parte sine nostra quoque speciali auctoritate tanta convenit animalia moveri, quanta transvehendae pecuniae summa et eius tuitio deposcit. < >

CJ.12.50.23.2: Imperator Anastasius

Quinquaginta librarum auri condemnatione his feriendis, quicumque nostra iussa quolibet modo seu tempore violaverint seu violare concesserint. < >

CJ.12.51.0. De tractoriis et stativis.

CJ.12.51.1pr.: Imperatores Theodosius, Arcadius, Honorius

Tractoriae cum stativis solitis bidui tantummodo tempus accipiant. * theodos. arcad. et honor. aaa. rufino pp. * <a 392 d.Vii k.Sept constantinopoli arcadio a.Ii et rufino conss. >

CJ.12.51.1.1: Imperatores Theodosius, Arcadius, Honorius

Nulli vero penitus cum necessariis sibi personis praebeantur, nisi his tantummodo, qui animalia atque equos sacro usui necessarios prosequuntur: ita tamen, ut his dimissis in tractoriarum corpore quinque dierum numerus adscribatur, ut nullus ultra hoc temporis spatium ad residendum in quo libitum fuerit loco copiam nanciscatur. <a 392 d.Vii k.Sept constantinopoli arcadio a.Ii et rufino conss. >

CJ.12.52.0. De apparitoribus praefectorum praetorio et privilegiis eorum.

CJ.12.52.1: Imperatores Valentinianus, Valens

Praefecturae cornicularios, qui annis singulis exeunt post transactos corniculos nostram adorare purpuram volumus: quo honore perfunctis, cum iam missionem tenuerint, liberum otium damus, ut ad susceptionem vel cuiuslibet necessitatis officium minime devocentur. * valentin. et valens aa. ad mamertinum pp. * <a 365 d. iii k.Dec.Mediolani valentiniano et valente aa.Conss.>

CJ.12.52.2pr.: Imperatores Valentinianus, Valens

Praefectianos ad perniciem provincialium exactionibus in provinciis vel potius lucris et quaestibus suis sese immiscere vetamus: praeterea vel horreorum gerere custodiam vel curarum ius atque arbitrium sibi praesumere his denegamus. * valentin. et valens aa. ad zosium praes. epiri novae. * <a 373 d.Xiiii k.Dec.Mediolani valentiniano et valente iiii aa. conss.>

CJ.12.52.2.1: Imperatores Valentinianus, Valens

Horum si quis praesentis legis temerator existat, volumus eum competenti motu indignatione percelli. <a 373 d.Xiiii k.Dec.Mediolani valentiniano et valente iiii aa. conss.>

CJ.12.52.3pr.: Imperatores Theodosius, Valentinianus

Cornicularii et primiscrinii, numerarii insuper, qui in officio tuae sublimitatis per ordinem obsequiis militiae terminatis desideratam laborum requiem sortiuntur, pro multis erga rem publicam sudoribus ab omnibus indictionibus tam militarium quam civilium iudicum semper habeantur immunes, et civilium tantum iudicum , non etiam militarium iurisdictioni subiaceant. * theodos. et valentin. aa. zoilo pp. * <a 444?>

CJ.12.52.3.1: Imperatores Theodosius, Valentinianus

Huic sanctioni addendum esse censemus, ut, si quis praefectianus dum militat vel post depositum cingulum sine testamento quod legibus comprobatur nullisque ab intestato successoribus derelictis fati munus impleverit, omnes eius patrimonii facultates provisione magnificae tuae sedis non fisci viribus, sed arcae tui culminis rationibus vindicentur. <a 444?>

CJ.12.52.3.2: Imperatores Theodosius, Valentinianus

Scriniariis autem exceptoribus ceterisque, qui in officio tui culminis merent, cum in legione prima adiutrice nostra militant, audientiam tantummodo in causis in quibus pulsantur tuae celsitudinis deputamus. in provinciis vero commorantes rectoribus earum eos respondere iubemus, nisi publicum officium aliquod eis iniunctum sit. <a 444?>

CJ.12.53.0. De apparitoribus praefecti urbis.

CJ.12.53.1: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

Praeter eos, qui de officio eminentium potestatum numero stipendiorum et curriculis evolutis urbique praefecti serenitatis nostrae annis singulis attingere purpuram venerarique praecepti sunt, nulli prorsus eorum, qui provincialia officia peregerunt, tranquillitatis nostrae muricem adorare sit liberum, omnium suffragiorum obreptione cessante. * grat. valentin. theodos. et arcad. aaaa. ad principium pp.* <a 385 d. xiiii k. oct. aquileiae arcadio a. et bautone vc. conss.>

CJ.12.53.2: Imperatores Honorius, Theodosius

Quicumque illustris urbanae sedis apparitor clandestina fraude pistorem concusserit, accusatus atque convictus perpetuis paneficii nexibus addicatur. * honor. et theodos. aa. palladio pp. * <a 417 d. vii k. ian. ravennae honorio a. xi et constantio ii vc. conss.>

CJ.12.54.0. De apparitoribus magistrorum militum et privilegiis eorum.

CJ.12.54.1: Imperatores Valentinianus, Valens

Qui sese in officiis magistrorum equitum ac peditum militare monstraverint, ab omni nominationis iniuria excusentur. * valentin. et valens aa. ad artemium correctorem. * <a 364 d. xiii k. oct. aquileiae. acc. xv k. nov. salerni divo ioviano et varroniano conss.>

CJ.12.54.2: Imperatores Valentinianus, Valens

Qui in officio magistrorum equitum ac peditum militiam sortiti sunt, ordinis sint militaris. * valentin. et valens aa. ad mamertinum pp. * <a x>

CJ.12.54.3: Imperatores Theodosius, Valentinianus

Probari apparitores magisteriae potestatis neque curiales neque cohortales neque censibus volumus adscriptos. * theodos. et valentin. aa. cyro pp. * <a 441 d. prid. non. mart. constantinopoli cyro vc. cons.>

CJ.12.54.4pr.: Imperatores Theodosius, Valentinianus

Numerarios virorum illustrium magistrorum militum tam praesentalium quam orientalium qui ordine stipendiis militiae fuerint decorati, exeuntes tribunis praetorianis partis militaris, sudoribus eorum beneficium deferentes, sociari praecipimus: ita videlicet, ut post completam militiam ab omnibus indictionibus tam militarium quam civilium iudicum semper habeantur immunes. * theodos. et valentin. aa. apollonio mag. mil. praesentali anatolio mag. mil. per orientem.* <a x>

CJ.12.54.4.1: Imperatores Theodosius, Valentinianus

Principatus vero munere functos tribunis vigilum militaribus volumus adgregari. <a x>

CJ.12.54.5: Imperator Anastasius

Eos, qui in officiis vestris merentes statutorum tantummodo numero inserti sunt, fori praescriptione muniri, ceteros vero, qui supra huiusmodi numerum militare noscuntur, quasi nec militantes et apud illustrissimas praefecturas et apud clarissimos provinciarum rectores de quolibet pulsari et conveniri et sine cinguli praescriptione respondere negotio sancimus. * anastas. a. magistris mil. * <a x >

CJ.12.55.0. De apparitoribus proconsulis et legati.

CJ.12.55.1: Imperatores Valentinianus, Theodosius, Arcadius

Officio, quod tuis meritis obsecundat, non curialem quemquam nec ex ceteris corporibus volumus adgregari: ac si qui erunt inter apparitores huiusmodi, restitui eos debitis muniis mox iubemus. * valentin. theodos. et arcad. aaa. ad flavianum procons. africae.* <a 393 d.Non.Oct.Constantinopoli theodosio a.Iii et abundantio conss.>

CJ.12.55.2: Imperatores Arcadius, Honorius

Apparitioni tuae et legatorum quadringentos censuimus deputandos de his dumtaxat , quos sibi esse detractos rei publicae membra non queruntur. * arcad. et honor. aa. victorio procons. africae et dominatori vic. africae.* <a 398 d.Xii k.Iun.Mediolani honorio a.Iiii et eutychiano conss.>

CJ.12.55.3: Imperatores Arcadius, Honorius

In proconsulari provincia officium proconsulare postulet, quod exigere consuevit , nec alienis se partibus impudenter inserat. * arcad. et honor. aa. messalae pp. * <a 399 d.Iii k.Oct.Altino theodoro vc.Cons.>

CJ.12.56.0. De apparitoribus comitis orientis.

CJ.12.56.1: Imperatores Theodosius, Arcadius, Honorius

In officio comitis orientis non amplius quam sescenti apparitores habeantur, quos quidem publicis necessitatibus novimus abunde suppetere. * theodos. arcad. et honor. aaa. rufino pp. orientis. * <a 394 d.Iii k.Ian.Heracliae arcadio iii et honorio ii aa.Conss.>

CJ.12.57.0. De cohortalibus principibus corniculariis et primipilaribus.

CJ.12.57.1: Imperator Constantinus

Omnes stationarii neque superexactionem audeant neque carcerem habeant, neve quis personam licet pro manifesto crimine apud se habeat in custodia, sciens quod, si quid tale fuerit commissum, capite puniendus est. * const. a. edicto suo ad afros. * <a 315 pp.Vi id.Mai.Karthagine constantino a.Iiii et licinio iiii conss.>

CJ.12.57.2pr.: Imperatores Constantius, constans

Nullus iudicum quemquam sine sacra probatoria probare audeat vel provehere. * constantius et constans aa. ad taurum pp. * <a 358 d.Vi k.Iun.Mediolani acc.Viii id.Iul.Datiano et cereale conss.>

CJ.12.57.2.1: Imperatores Constantius, constans

Excipimus tamen officia provincialia cursus publici sollicitudinem sustinentia: nec enim tanto muneri adminiculum denegari publica permittit utilitas. <a 358 d.Vi k.Iun.Mediolani acc.Viii id.Iul.Datiano et cereale conss.>

CJ.12.57.3: Imperatores Valentinianus, Valens

Solita cohortalibus syriae privilegia, quae a divo diocletiano porrecta sunt atque concessa, nos quoque porreximus ac iubemus eos non ad sollicitudinem bastagae, non ad functionem naviculariam devocandos, non invitos curialibus coetibus adscribendos, verum peracto labore militiae, pastus primipili competenti sedulitate functione transacta praerogativam his recusationis offerrimus. * valentin. et valens aa. festo consulari syriae. * <a 365 ? d.Vi non.Oct.Valentiniano et valente aa.Conss.>

CJ.12.57.4: Imperatores Valentinianus, Valens

Officia rectorum provinciarum tuae magnificentiae litteris volumus admoneri, ut susceptos in officio proprio vel probatos cohortium nomine legionumve privilegiis aestiment inserendos. * valentin. et valens aa. et grat. a. ad probum pp. * <a 372 d.Xvi k.Iun.Modesto et arintheo conss.>

CJ.12.57.5pr.: Imperatores Valentinianus, Valens, Gratianus

Quicumque per osdroenam primipilarium maiore laetatur numero filiorum, unum loco suo veluti hereditario iure substituat, alterum pro amore patriae edessenae curiae tradat obsequiis, ceteris quam voluerit militiam provisurus. sin autem duos tantum procreaverit, cohorti satisfacere cogatur et curiae. quod si unum procreaverit, eundem ordini patriae restituat, nullo contra hanc formam beneficio valituro. * valentin. et valens et grat. aaa. modesto pp. * <a 375 d.Iii non.Dec.Antiochiae post consulatum gratiani a.Iii et equitii vc. >

CJ.12.57.5.1: Imperatores Valentinianus, Valens, Gratianus

Damus sane licentiam tam patribus eorum quam ipsis, qui huius legis auctoritate civitatum obsequio adgregantur, ut, si quos curiales patrocinio principalium invenerint excusari, in medium proferant, ut et ipsi similibus officiis deputati pareant impetratis. <a 375 d.Iii non.Dec.Antiochiae post consulatum gratiani a.Iii et equitii vc. >

CJ.12.57.6pr.: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

Si apparitor diffugerit criminosus, edictum, quo revocari possit, adiecta condicione legibus subsequatur: cui nisi fuerit satisfactum, merito in latitantem a iudice pro qualitate peccati sententia proferatur. * grat. valentin. theodos. et arcad. aaaa. ad neoterium pp. * <a 385 d.Prid.Id.Iun.Mediolani arcadio a.Et bautone conss.>

CJ.12.57.6.1: Imperatores Gratianus, Valentinianus, Theodosius, Arcadius

Veniam enim talibus non permittimus nec indulgentiis crimina sublevamus. <a 385 d.Prid.Id.Iun.Mediolani arcadio a.Et bautone conss.>

CJ.12.57.7pr.: Imperatores Valentinianus, Theodosius, Arcadius

Ordinariorum iudicum apparitores, qui vel speculatorum vel ordinariorum attigerint gradum, nullo annorum numero, nulla stipendiorum contemplatione laxentur, priusquam primipili pastum digesta ratione compleverint. * valentin. theodos. et arcad. aaa. tatiano pp. * <a 389 d.Iii non.Mai.Mediolani timasio et promoto conss.>

CJ.12.57.7.1: Imperatores Valentinianus, Theodosius, Arcadius

Quod si ante debitum locum, qui huic functioni habetur obnoxius, vel aegri corporis labem vel defessae senectutis extrema ad impetrandam quietem crediderit praetendenda, non prius otio condonetur, quam omne quod primipilio debetur expenderit. <a 389 d.Iii non.Mai.Mediolani timasio et promoto conss.>

CJ.12.57.7.2: Imperatores Valentinianus, Theodosius, Arcadius

Eos etiam, qui pro sceleribus suis soluto militiae cingulo addicuntur infamiae, ne integro peculio sub hac occasione laetentur, ita condignae ultioni volumus subiacere, ut functioni quoque, quae extrema militiae debetur, nihil ex eorum facultatibus subtrahatur. <a 389 d.Iii non.Mai.Mediolani timasio et promoto conss.>

CJ.12.57.8: Imperatores Arcadius, Honorius

Speciebus primipilaribus adaerandis eadem pretiorum taxatio servetur, quae in venalibus publicis poterit reperiri. * arcad. et honor. aa. euthymio vic. asiae. * <a 396 d.V k.Mart.Constantinopoli arcadio iiii et honorio iii aa.Conss.>

CJ.12.57.9pr.: Imperatores Arcadius, Honorius

Per illyricum, in quo plurima ac maxima necessitatum publicarum emolumenta officiis constat praesidalibus expediri, centeni numero singulis iudicibus obsecundent: nec ultra hunc modum vel ad militiam ullus adspiret vel coniventia iudicum perseveret. * arcad. et honor. aa. clearcho pp. illyrici. * <a xxx >

CJ.12.57.9.1: Imperatores Arcadius, Honorius

Adhibendi autem sunt ad huiusmodi ministeriorum obsequia non illi, qui vano militiae nomine immania lucra sectentur, sed qui necessitatem officii sollicitudinibus debitis exsequantur. <a xxx >

CJ.12.57.10: Imperatores Arcadius, Honorius

Quicumque ad chartas vel tabulas vel quodcumque aliud ministerium cohortalis optaverit, non ante accedere permittatur, nisi eius nomen matriculis receptum primitus fuerit: poena proposita his, qui contra statuta caelestia crediderint suscipiendos aliquos aut quodlibet eis officium iniungendum. * arcad. et honor. aa. et theodos. a. anthemio pp. * <a 407 d. xvi k. april. constantinopoli honorio vii et theodosio iterum aa. conss.>

CJ.12.57.11: Imperatores Honorius, Theodosius

Si quis ex grege cohortalinorum urguente criminis insectatione stipendiis fuerit exemptus, aut otio traditus quietis artibus immoretur, aut si ad pristina sacramenta precum miseratione maluerit repedare, indultum nostrae maiestatis oraculum amplissimae tuae sedi offerat adlegandum. * honor. et theodos. aa. anthemio pp. * <a 415 d. xiii k. mart. constantinopoli honorio x et theodosio vi aa. conss.>

CJ.12.57.12pr.: Imperatores Theodosius, Valentinianus

Si cohortalis apparitor aut obnoxius cohorti ad ullam adspiraverit dignitatem, spoliatus omnibus impetrati honoris insignibus ad statum pristinum revocetur: liberis etiam in tali eius condicione susceptis fortunae patriae mancipandis. * theodos. et valentin. aa. isidoro pp. * <a 436 d. iii non. april. constantinopoli isidoro et senatore conss.>

CJ.12.57.12.1: Imperatores Theodosius, Valentinianus

Quod si quis ex his ausus fuerit ullam adfectare militiam, nulla praescriptione temporis muniatur praeter eam scilicet, quae ex quadraginta annis colligitur: sed ad condicionem propriam retrahatur, ne ipse vel eius liberi post talem ipsius statum procreati quod cohorti debetur valeant declinare. <a 436 d. iii non. april. constantinopoli isidoro et senatore conss.>

CJ.12.57.12.2: Imperatores Theodosius, Valentinianus

Sed nec ad aliam cohortalinus vel cohortalini filius audeat adspirare fortunam, cui maiorum suorum exempla praeiudicant. <a 436 d. iii non. april. constantinopoli isidoro et senatore conss.>

CJ.12.57.12.3: Imperatores Theodosius, Valentinianus

Sed etiam cunctos, qui diversarum rerum negotiationibus detinentur, trapezitas scilicet vel gemmarum argentique vestiumve venditores, apothecarios etiam ceterosque institores aliarum mercium quibuscumque ergasteriis adhaerentes iubemus a provincialibus officiis removeri, ut omnis honor atque militia contagione huiusmodi segregetur. <a 436 d. iii non. april. constantinopoli isidoro et senatore conss.>

CJ.12.57.13pr.: Imperatores Theodosius, Valentinianus

Nullum ex primipilaribus, nullum ex principe cohortalis officii vel ad aliam posse militiam adspirare vel ministeriis sibi contra publicam utilitatem blandiri vel ad quamlibet aliam dignitatem ad praeiudicium praeteriti status accedere concedimus. * theodos. et valentin. aa. thomae pp. * <a 442 ? >

CJ.12.57.13.1: Imperatores Theodosius, Valentinianus

Quod si contra hanc tam saluberrimam formam vel responsa caelestia quaedam militia aut dignitas audacter eliciatur, pro ingestis haberi, etiamsi speciali adnotatione nostrae indulgentiae eam obtinuisse videatur, nec adsertionem ei quoquo modo patere, qui se memoratis artibus publicae studet commoditati subtrahere, sed statim civitatis unde oriundus est curiae tradi praecipimus. <a 442 ? >

CJ.12.57.14pr.: Imperator Leo

Quisquis cohortalibus adhuc obsequiis obligatus vel regimen provinciae vel cingulum cuiuslibet militiae dignitatisve quoquo modo meruit, ante omnia contra licitum usurpatis impetratisve careat, etiamsi ultronea nostra liberalitate ius gerendae provinciae vel militiae seu dignitatis cuiuspiam sibi iactaverit fuisse delatum. * leo a. constantino pp. * <a 471 d. vi k. ian. constantinopoli leone a. iiii et probiano conss.>

CJ.12.57.14.1: Imperator Leo

Dehinc universis solaciis condicionis quam spreverat defraudatus, ne quid eorum omnino per se vel interpositam personam possit adquirere, primipili tantum munus implere cogatur: mox curialibus civitatis, in qua natus est, in diem vitae suae functionibus inhaesurus, ita scilicet, ut etiam ii, qui post impletam talem militiam quodlibet militiae dignitatisve genus adfectaverint, curiae patriae suae restituantur. <a 471 d. vi k. ian. constantinopoli leone a. iiii et probiano conss.>

CJ.12.58.0. De apparitoribus praefecti annonae.

CJ.12.58.1: Imperatores Valens, Gratianus, Valentinianus

Apparitores urbanae praefecturae annonario officio se non inserant, sed apparitorum aemulatione secreta ministerio suo annonae praefectura fungatur. * valens grat. et valentin. aaa. rufino pu. * <a 376 d. iii id. iul. valente a. v et valentiniano iuniore conss.>

CJ.12.58.2: Imperatores Arcadius, Honorius

Praefectus annonae canonem, qui ad officium suum pertinet, per compulsores suos exigat, et cum officio suo retineatur obnoxius, qui ad implendum canonem devotionis suae exactionem non ostenderit. * arcad. et honor. aa. messalae pp. * <a 399 ? >

CJ.12.59.0. De diversis officiis et apparitoribus iudicum et probatoriis eorum.

CJ.12.59.1: Imperatores Valentinianus, Valens, Gratianus

Si quando praefectus praetorio vel vicarius aut rector provinciae significaverit eum, qui chartis ac ratiociniis publicis invenitur obnoxius, ad praeposituram castri ac militum transisse, retractus illi adsignetur officio, a quo ad necessitatem praestandi ratiocinii devocatur: in reiecti vero locum is potissimum destinetur, cui meritorum adstipulentur insignia. * valentin. valens et grat. aaa. ad severum mag. mil. * <a 371 d. x k. ian. gratiano a. ii et probo conss.>

CJ.12.59.2: Imperatores Gratianus, Valentinianus, Theodosius

Nullus ex his, quos claruerit militia resolutos, indebita denuo sacramenta sine augustis adfatibus suscipiat. si quis autem id per obreptionem forte meruerit, quinque librarum auri multetur incommodo. * grat. valentin. et theodos. aaa. ad eusignium pp. * <a 386 d. prid. id. iul. mediolani honorio np. et euodio conss.>

CJ.12.59.3pr.: Imperatores Gratianus, Valentinianus, Theodosius

Nullus apparitor amplitudinis tuae vel de officiis palatinis ad eam provinciam, ex qua oriundus est vel in qua collocaverit larem, vel qui iam in huiusmodi officio fuerit commoratus, obtentu publicae necessitatis vel exsecutor privati negotii dirigatur. * grat. valentin. et theodos. aaa. ad eusignium pp. * <a 386 d. iii non. dec. mediolani honorio np. et euodio conss.>

CJ.12.59.3.1: Imperatores Gratianus, Valentinianus, Theodosius

Etenim officii celsitudinis tuae primiscrinius tres libras auri fisci utilitatibus sine dilatione persolvet, si statuta fuerint temerata: apparitor vero qui huic se muneri passus est deputari, militia spoliabitur. <a 386 d. iii non. dec. mediolani honorio np. et euodio conss.>

CJ.12.59.3.2: Imperatores Gratianus, Valentinianus, Theodosius

Haec vero poena etiam ceteris inrogata est, ut, si domesticus aut protector, strator vel agens in rebus vel palatinus utriusque officii vel ad eandem provinciam, in qua natus est, vel ad eam, in qua collocarit larem, cum huiusmodi usurpatione perrexerit, matriculis quidem exemptus ipse, qui se voluit mitti, auri libram unam fisci viribus inferre cogetur, adiutores vero officiorum palatinorum ac numerarii comitum illustrium virorum sive actuarii libram fisci viribus solvant, nisi statuta fuerint custodita. <a 386 d. iii non. dec. mediolani honorio np. et euodio conss.>

CJ.12.59.4: Imperatores Theodosius, Arcadius, Honorius

Qui vel exiguam rei familiaris substantiam habent, militare in apparitorum numero non vetentur. * theodos. arcad. et honor. aaa. silvano duci et correctori limitiitis tripolitani.* <a 393 d. vi k. april. constantinopoli theodosio a. iii et abundantio conss.>

CJ.12.59.5: Imperatores Honorius, Theodosius

Quicumque apparitores ob culpam vel neglegentiam fuerint iudicato distincti, ad nullam militiam adspirandi habeant facultatem: nec ex rescripto his ullus aditus reseretur, quos congruit poenae gravissimae subiugari, si contra inhibita quoque sacratissimis constitutis adspirare contempserint. * honor. et theodos. aa. graccho pu. * <a 415 d. viii k. aug. ravennae honorio x et theodosio vi aa. conss.>

CJ.12.59.6pr.: Imperatores Theodosius, Valentinianus

In his officiis, id est virorum spectabilium proconsulis asiae comitis orientis praefecti augustalis et vicariorum, quos etiam monuimus sub viginti interminatione librarum auri, nemo aliter admittatur, nisi eum emissa ex sacris scriniis probatoria consecrarit. * theodos. et valentin. aa. hierio pp. * <a 426 d. x k. iul. nicomediae theodosio xii et valentiniano ii aa. conss.>

CJ.12.59.6.1: Imperatores Theodosius, Valentinianus

Quod si quis talis sub tua fuerit iudicatione convictus, profecto irritis his quae vetita contrectavit etiam congruam indignationem incurret. <a 426 d. x k. iul. nicomediae theodosio xii et valentiniano ii aa. conss.>

CJ.12.59.7: Imperatores Theodosius, Valentinianus

Ad splendidioris militiae privilegia, posteaquam priorem continuo labore compleverint, eos venientes admittimus, qui ea voto adipiscendi honoris crediderint expetenda, non eos, qui studio exercendae cupiditatis ambierint, ut velut in meliore fortuna positi aut ea scelera quae prius commusisse doceantur occultent aut alia deinceps possint impune committere. * theodos. et valentin. aa. anatolio mag. mil. * <a 438-443 >

CJ.12.59.8: Imperator Leo

Viros spectabiles duces eorumque apparitores nec non limitaneos castrorumque praepositos tantummodo ex sublimis tui iudicii sententia conveniri nec aliis subiacere iudicibus praecipimus: illustribus scilicet ac magnificis viris magistris militum consuetudine ac potestate, si qua ad limites aliquos orientis thraciarum et illyrici ex longo tempore hactenus obtinuit, reservata. * leo a. iohanni mag. off. * <a xxx >

CJ.12.59.9pr.: Imperator Leo

Probatorias memorialium et agentium in rebus, ceterorum nihilo minus apparitorum praetorianae per orientem amplissimae praefecturae, eorum etiam, qui in diversorum iudicum officiis numerantur, ex sacris probatoriis solito more militiae sacramenta sortiri decernimus, non passim nec licenter solis auctoritatibus vel sacrarum litterarum exemplaribus: sed ex authenticis tantum sacris probatoriis manu nostra subscriptis et nostro arbitrio praestandis, ita ut nullus his dolus aut fraus possit adnecti, de his etiam, qui sunt verae et catholicae fidei, iubemus admitti. * leo a. hilariano mag. off. * <a 470 ?>

CJ.12.59.9.1: Imperator Leo

Aliter vero militantes, nisi ex his sint, quos solis auctoritatibus apparitioni adgregari vetusta consuetudo perdocuit, detecta fraude cuiuscumque accusandi studio non solum mendaci carere militia, sed etiam proscriptionis stilum subire decernimus et bonorum omnium amissione multamus. <a 470 ?>

CJ.12.59.10pr.: Imperator Leo

Hac sanctione decernimus, ut in posterum nemini licentia sit edendi exemplaria his, qui sociandi sunt cuicumque militiae, quam sine divinis probatoriis adipisci non possunt, sed periculo primatum uniuscuiusque officii ipsas authenticas sacras, quae divinam nostrae pietatis continent adnotationem, cum subscriptione administrantium, sub quorum iurisdictione consistunt, his qui militare volunt praestari: exemplaribus videlicet earum cum subscriptione eorundem iudicum apud singula quoque officia, prout convenit, reservandis. * leo a. erythrio pp. * <a xxx >

CJ.12.59.10.1: Imperator Leo

Quamvis autem manifestum sit de huiusmodi probatoriarum observatione excepta esse certorum iudicum officia, tamen ne ullius ignorantiae relinquatur occasio, omnium officiorum, quibus necesse est per sacras probatorias militiae sociari, notitiam in sacris apicibus subdendam esse censuimus. <a xxx >

CJ.12.59.10.2: Imperator Leo

Sub hac igitur observatione omnes, qui sive in hoc sacro palatio nostro sive in aliis quibuscumque officiis deinceps militare cupiunt, qui tamen, ut dictum est, non possunt pro tenore sacrarum constitutionum vel vetere consuetudine nisi praecedentibus sacris probatoriis militiae sociari, sicut subnexa notitia demonstrat, adipisci praecipimus: scientibus his, qui ex aliqua parte praesentis nostrae serenitatis legis formam conventia vel neglegentia quadam colludere temptaverint, non tantum amissione bonorum omnium, sed etiam capitis periculo utpote criminis falsitatis obnoxios semet esse plectendos. <a xxx >

CJ.12.59.10.3: Imperator Leo

Et est notitia. scrinii memoriae probatoriae agentium in rebus, palatinorum largitionum, palatinorum rerum privatarum partis augustae. <a xxx >

CJ.12.59.10.4: Imperator Leo

Item scrinii sacrarum epistularum sic: in officiis virorum illustrium praefectorum praetorio orientis et illyrici et urbis, officii proconsulum asiae et achaiae, officii praefecti augustalis, officii comitis orientis, officii comitis divinarum domorum, officii vicariorum thraciae ponti asiae et macedoniae et thesauriensium classis. <a xxx >

CJ.12.59.10.5: Imperator Leo

Item scrinii sacrorum libellorum: officii virorum illustrium magistrorum militum utriusque militiae in praesenti, orientis et illyrici, invitatorum, admissionalium, memorialium omniumque paedagogorum, cellariorum, mensorum, lampadariorum eorum, qui sacris scriniis deputati sunt, decanorum partis augustae, cursorum partis augustae, officii virorum spectabilium ducum palaestinae, mesopotamiae, novi limitis phoenices, osrhoenae, syriae et augustae euphratensis, arabiae et thebaidis, libyae, pentapoleos, utriusque armeniae, utriusque ponti, scythiae, mysiae primae, secundae, daciae, pannoniae, officii virorum spectabilium comitum aegypti, pamphyliae, isauriae, lycaoniae et pisidiae. <a xxx >

CJ.12.60.0. De exsecutoribus et exactoribus.

CJ.12.60.1: Imperatores Arcadius, Honorius

Ne per diversas provinciarum partes aut palatinus exactor accederet aut illustrium virorum apparitor vagaretur vel militaris terror inferret formidinem, hac lege sancimus, ut omnis memoratis intentio ad provinciae rectorem sit, cum eo agant, illo insistente disponente et agnoscente suo periculo rem peragant et impleant universa. * arcad. et honor. aa. ad provinciales et ad proconsules. * <a 395 d. xvii k. iul. mediolani olybrio et probino conss.>

CJ.12.60.2: Imperatores Arcadius, Honorius

Quicumque e palatio nostro cuiuslibet tituli ad provincias commeaverit compulsor exactor admonitor portitorve praecepti, agens in rebus vel palatinus vel apparitor illustrium potestatum, hoc tantum potestatis adripiat, quod mandatum curae suae specialiter approbatur, nec quod iniunctum alteri fuit collegii iure praesumat, ne, dum hoc sibi invicem mutui officii licentia partiuntur, agant cuncti, quod singulis credebatur. * arcad. et honor. aa. andromacho pp. * <a 395 d. prid. id. iu. mediolani olybrio et probino conss.>

CJ.12.60.3pr.: Imperatores Honorius, Theodosius

Sive ex praetoriano officio sive illustris comitivae sedis largitionum nec non et rei privatae nostrae vel ex quacumque apparitione ad quamcumque necessitatem profligandam quis fuerit destinatus, sciat intra anni metas debere collectis ratiociniis ad proprium iudicem remeare eique suam efficaciam ostendere, quid eius instantia exactum fuerit quidve in debitis habetur vel penes quos resederit vel cuius culpa aut causa in eadem provincia fuerit derelictum. * honor. et theodos. aa. palladio pp. * <a 416 d.X k.Oct.Ravennae theodosio a.Vii et palladio conss.>

CJ.12.60.3.1: Imperatores Honorius, Theodosius

Quod si exacto spatio anni eius regionis visceribus praedator insidens deprehensus fuerit remorari, tunc absolutus cingulo militia abicietur, primoribus eius militiae decem librarum auri multa proposita. <a 416 d.X k.Oct.Ravennae theodosio a.Vii et palladio conss.>

CJ.12.60.3.2: Imperatores Honorius, Theodosius

Si redire dissimulet, per vices officiorum ligatus ferreis nexibus cura provincialis officii ad debitum mittatur examen nec ei liberum sit, ut hoc se privilegio aut occasione defendat, quod sibi aliud negotium vel aliam necessitatem post iniunctam esse causetur, cum isdem licentiam auferamus in eadem provincia continuare exactionem. <a 416 d.X k.Oct.Ravennae theodosio a.Vii et palladio conss.>

CJ.12.60.4: Imperatores Honorius, Theodosius

Nullam possessionem alterius pro alienis debitis publicis sive privatis praecipimus conveniri. * honor. et theodos. aa. iohanni pp. * <a 422 d.V id.Iul.Ravennae honorio xiii et theodosio x aa.Conss.>

CJ.12.60.5: Imperatores Theodosius, Valentinianus

Contra nostra praecepta si quisquam vetito ausu exsecutor audebit, licebit provinciae moderatori eundem correptum ad sublimitatis tuae iudicium sub prosecutione dirigere, licebit provinciali, etsi probatur obnoxius, exsecutoris contra vetitum exactionem sibi vindicantis temeritatem legitime repellere. * theodos. et valentin. aa. volusiano pp. * <a 429 a.Iii k.Mart.Ravennae post cons.Felicis et tauri vv.Cc.>

CJ.12.60.6pr.: Imperator Zeno

Sancimus, ut eum, cui ex iudicio tui culminis quocumque modo sive studio numerariorum aut tractatorum vel ipsorum iussu, qui pro tempore amplissimae tuae sedis administrationem suscipiunt, exactio publicarum pecuniarum iniungatur, minime prius liceat aliam sollicitudinem gerendam suscipere, antequam reversus iniunctae sibi causae responsum praebuerit. * zeno a. arcadio pp. * <a 485-486 ? >

CJ.12.60.6.1: Imperator Zeno

Si tamen ita sors tulerit, ut in ea provincia, ad quam exsequendi causa publici negotii aliquis proficiscitur, alia quoque causa sit exsequenda, non prohiberi unum eundemque exsecutorem ab hac urbe regia proficiscentem duorum simul, non plurium negotiorum exsecutionem suscipere, dum ipsi quoque tertii negotii non sit iniungendi, antequam superioribus responsum portaverit. <a 485-486 ? >

CJ.12.60.6.2: Imperator Zeno

Exsecutoribus his, qui secundam, si non simul duas, vel etiam tertiam causam passi fuerint exsequendam suscipere, non solum cinguli et bonorum suorum amissionem, verum etiam perpetui exsilii supplicium subituris. <a 485-486 ? >

CJ.12.60.6.3: Imperator Zeno

Eandemque hanc poenam numerarium quoque et eius adiutores, ad quorum curam quod violatum est pertinet, formidare. <a 485-486 ? >

CJ.12.61.0. De lucris advocatorum et concussionibus officiorum sive apparitorum.

CJ.12.61.1: Imperator Constantinus

Si quis se a ducenariis vel centenariis vel fisci advocatis laesum esse cognoscit, adire iudicia et probare iniuriam non moretur, ut in eum qui convictus fuerit competenti severitate vindicetur. * constant. a. procons. africae. * <a 314. 315 d. vi id. nov. triveris. acc. xv k. mart. karthagine constantino a. iiii et licinio iiii conss.>

CJ.12.61.2pr.: Imperator Constantius

Praeter sollemnes et canonicas pensitationes multa a provincialibus indignissime postulantur ab officialibus et scholasticis non modo in civitatibus singulis, sed et mansionibus, dum ipsis et animalibus eorundem alimoniae sine pretio ministrantur. * constantius a. eubulidae vic. africae. * <a 344 d. iii k. iul. leontio et sallustio conss.>

CJ.12.61.2.1: Imperator Constantius

Provinciales itaque cuncti iudices tueantur nec iniurias inultas transire permittant. <a 344 d. iii k. iul. leontio et sallustio conss.>

CJ.12.61.3: Imperatores Arcadius, Honorius

Quotiens compulsor arguitur in depraedatione convictus, etiam non consulta clementia nostra poenam subeat legibus competentem. * arcad. et honor. aa. pompeiano procons. africae. * <a 400 d. prid. k. ian. mediolani stilichone et aureliano conss.>

CJ.12.61.4: Imperatores Honorius, Theodosius

Curialibus et naviculariis omnibusque corporibus ita subveniri volumus, ut nihil apparitoribus universorum iudicum liceat, quod ad praedam provinciarum pertinet. * honor. et theodos. aa. hadriano pp. * < >

CJ.12.62.0. De primipilo.

CJ.12.62.1: Imperatores valer., gallien.

Commoda primipilatus post administrationem deberi incipiunt, et si is, qui ea percipere debuit, prius rebus humanis eximatur, heredibus petitio salva sit. * valer. et gallien. aa. domitio. * < >

CJ.12.62.2: Imperatores Diocletianus, Maximianus

Obtentu nominis primipili civiles actiones ad alios iudices transferendae non sunt. * diocl. et maxim. aa. alexandro. * < >

CJ.12.62.3: Imperatores Diocletianus, Maximianus

Utilitas publica praeferenda est privatorum contractibus: et ideo si constiterit fisco satisfactum esse ob causam primipili, poteris obligatam tibi possessionem dotis titulo petere, ut satis doti fieri possit. * diocl. et maxim. aa. domnae. * < >

CJ.12.62.4: Imperatores Diocletianus, Maximianus

Cum ex sola primipili causa liberos, etiam si patribus heredes non existant, teneri divus aurelianus sanxerit, si neque successistis patri vestro nec quicquam ex bonis eius tenetis, consequens est a paternis creditoribus vos non conveniri. * diocl. et maxim. aa. dionysio. * < >

CJ.12.63.0. Publicae laetitiae vel consulum nuntiatores vel insinuatores constitutionum et aliarum sacrarum vel iudicialium litterarum ex descriptione vel ab invitis ne quid accipiant immodicum.

CJ.12.63.1pr.: Imperatores Gratianus, Valentinianus, Theodosius

Quidquid nostrorum umquam nuntiari coeperit prosperorum, bella si desinent, si oriuntur victoriae, fastis si honor datus fuerit regalium trabearum, compositae pacis si erit efferenda tranquillitas, sacros vultus inhiantibus si forte populis inferimus, haec sine immodico pretio nuntiari excipique sancimus. * grat. valentin. et theodos. aaa. floro pp. * <a 383 d. iiii non. febr. constantinopoli merobaude ii et saturnino conss.>

CJ.12.63.1.1: Imperatores Gratianus, Valentinianus, Theodosius

Gerulum iubemus esse castissimum: indices nummarios esse prohibemus: iudices statuimus esse sollicitos, ne turpi colludio quaeratur ex miseris pretium gaudiorum. <a 383 d. iiii non. febr. constantinopoli merobaude ii et saturnino conss.>

CJ.12.63.1.2: Imperatores Gratianus, Valentinianus, Theodosius

Quod si id sacrilega fuerit dissimulatione violatum, et accipientem pudoris fortunarumque manebit excidium et cogentem par poena multabit et officium triginta librarum auri vexatione quatiatur. <a 383 d. iiii non. febr. constantinopoli merobaude ii et saturnino conss.>

OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER PRIMUS

Dig. 1.1.0. De iustitia et iure.
Dig. 1.2.0. De origine iuris et omnium magistratuum et successione prudentium.
Dig. 1.3.0. De legibus senatusque consultis et longa consuetudine.
Dig. 1.4.0. De constitutionibus principum.
Dig. 1.5.0. De statu hominum.
Dig. 1.6.0. De his qui sui vel alieni iuris sunt.
Dig. 1.7.0. De adoptionibus et emancipationibus et aliis modis quibus potestas solvitur.
Dig. 1.8.0. De divisione rerum et qualitate.
Dig. 1.9.0. De senatoribus.
Dig. 1.10.0. De officio consulis.
Dig. 1.11.0. De officio praefecti praetorio.
Dig. 1.12.0. De officio praefecti urbi.
Dig. 1.13.0. De officio quaestoris.
Dig. 1.14.0. De officio praetorum.
Dig. 1.15.0. De officio praefecti vigilum.
Dig. 1.16.0. De officio proconsulis et legati.
Dig. 1.17.0. De officio praefecti augustalis.
Dig. 1.18.0. De officio praesidis.
Dig. 1.19.0. De officio procuratoris caesaris vel rationalis.
Dig. 1.20.0. De officio iuridici.
Dig. 1.21.0. De officio eius, cui mandata est iurisdictio.
Dig. 1.22.0. De officio adsessorum.

Dig. 1.1.0. De iustitia et iure.

Dig. 1.1.1pr.

Ulpianus 1 inst.

Iuri operam daturum prius nosse oportet, unde nomen iuris descendat. est autem a iustitia appellatum: nam, ut eleganter celsus definit, ius est ars boni et aequi.

Dig. 1.1.1.1

Ulpianus 1 inst.

Cuius merito quis nos sacerdotes appellet: iustitiam namque colimus et boni et aequi notitiam profitemur, aequum ab iniquo separantes, licitum ab illicito discernentes, bonos non solum metu poenarum, verum etiam praemiorum quoque exhortatione efficere cupientes, veram nisi fallor philosophiam, non simulatam affectantes.

Dig. 1.1.1.2

Ulpianus 1 inst.

Huius studii duae sunt positiones, publicum et privatum. publicum ius est quod ad statum rei romanae spectat, privatum quod ad singulorum utilitatem: sunt enim quaedam publice utilia, quaedam privatim. publicum ius in sacris, in sacerdotibus, in magistratibus constitit. privatum ius tripertitum est: collectum etenim est ex naturalibus praeceptis aut gentium aut civilibus.

Dig. 1.1.1.3

Ulpianus 1 inst.

Ius naturale est, quod natura omnia animalia docuit: nam ius istud non humani generis proprium, sed omnium animalium, quae in terra, quae in mari nascuntur, avium quoque commune est. hinc descendit maris atque feminae coniunctio, quam nos matrimonium appellamus, hinc liberorum procreatio, hinc educatio: videmus etenim cetera quoque animalia, feras etiam istius iuris peritia censeri.

Dig. 1.1.1.4

Ulpianus 1 inst.

Ius gentium est, quo gentes humanae utuntur. quod a naturali recedere facile intellegere licet, quia illud omnibus animalibus, hoc solis hominibus inter se commune sit.

Dig. 1.1.2

Pomponius l.S. enchir.

Veluti erga deum religio: ut parentibus et patriae pareamus:

Dig. 1.1.3

Florus 1 inst.

Ut vim atque iniuriam propulsemus: nam iure hoc evenit, ut quod quisque ob tutelam corporis sui fecerit, iure fecisse existimetur, et cum inter nos cognationem quandam natura constituit, consequens est hominem homini insidiari nefas esse.

Dig. 1.1.4

Ulpianus 1 inst.

Manumissiones quoque iuris gentium sunt. est autem manumissio de manu missio, id est datio libertatis: nam quamdiu quis in servitute est, manui et potestati suppositus est, manumissus liberatur potestate. quae res a iure gentium originem sumpsit, utpote cum iure naturali omnes liberi nascerentur nec esset nota manumissio, cum servitus esset incognita: sed posteaquam iure gentium servitus invasit, secutum est beneficium manumissionis. et cum uno naturali nomine homines appellaremur, iure gentium tria genera esse coeperunt: liberi et his contrarium servi et tertium genus liberti, id est hi qui desierant esse servi.

Dig. 1.1.5

Hermogenianus 1 iuris epit.

Ex hoc iure gentium introducta bella, discretae gentes, regna condita, dominia distincta, agris termini positi, aedificia collocata, commercium, emptiones venditiones, locationes conductiones, obligationes institutae: exceptis quibusdam quae iure civili introductae sunt.

Dig. 1.1.6pr.

Ulpianus 1 inst.

Ius civile est, quod neque in totum a naturali vel gentium recedit nec per omnia ei servit: itaque cum aliquid addimus vel detrahimus iuri communi, ius proprium, id est civile efficimus.

Dig. 1.1.6.1

Ulpianus 1 inst.

Hoc igitur ius nostrum constat aut ex scripto aut sine scripto, ut apud graecos: twn nomwn ohi men eggrafoi, ohi de agrafoi.

Dig. 1.1.7pr.

Papinianus 2 def.

Ius autem civile est, quod ex legibus, plebis scitis, senatus consultis, decretis principum, auctoritate prudentium venit.

Dig. 1.1.7.1

Papinianus 2 def.

Ius praetorium est, quod praetores introduxerunt adiuvandi vel supplendi vel corrigendi iuris civilis gratia propter utilitatem publicam. quod et honorarium dicitur ad honorem praetorum sic nominatum.

Dig. 1.1.8

Marcianus 1 inst.

Nam et ipsum ius honorarium viva vox est iuris civilis.

Dig. 1.1.9

Gaius 1 inst.

Omnes populi, qui legibus et moribus reguntur, partim suo proprio, partim communi omnium hominum iure utuntur. nam quod quisque populus ipse sibi ius constituit, id ipsius proprium civitatis est vocaturque ius civile, quasi ius proprium ipsius civitatis: quod vero naturalis ratio inter omnes homines constituit, id apud omnes peraeque custoditur vocaturque ius gentium, quasi quo iure omnes gentes utuntur.

Dig. 1.1.10pr.

Ulpianus 1 reg.

Iustitia est constans et perpetua voluntas ius suum cuique tribuendi.

Dig. 1.1.10.1

Ulpianus 1 reg.

Iuris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere.

Dig. 1.1.10.2

Ulpianus 1 reg.

Iuris prudentia est divinarum atque humanarum rerum notitia, iusti atque iniusti scientia.

Dig. 1.1.11

Paulus 14 ad sab.

Ius pluribus modis dicitur: uno modo, cum id quod semper aequum ac bonum est ius dicitur, ut est ius naturale. altero modo, quod omnibus aut pluribus in quaque civitate utile est, ut est ius civile. nec minus ius recte appellatur in civitate nostra ius honorarium. praetor quoque ius reddere dicitur etiam cum inique decernit, relatione scilicet facta non ad id quod ita praetor fecit, sed ad illud quod praetorem facere convenit. alia significatione ius dicitur locus in quo ius redditur, appellatione collata ab eo quod fit in eo ubi fit. quem locum determinare hoc modo possumus: ubicumque praetor salva maiestate imperii sui salvoque more maiorum ius dicere constituit, is locus recte ius appellatur.

Dig. 1.1.12

Marcianus 1 inst.

Nonnumquam ius etiam pro necessitudine dicimus veluti " est mihi ius cognationis vel adfinitatis. "

Dig. 1.2.0. De origine iuris et omnium magistratuum et successione prudentium.

Dig. 1.2.1

Gaius 1 ad l. xii tab.

Facturus legum vetustarum interpretationem necessario prius ab urbis initiis repetendum existimavi, non quia velim verbosos commentarios facere, sed quod in omnibus rebus animadverto id perfectum esse, quod ex omnibus suis partibus constaret: et certe cuiusque rei potissima pars principium est. deinde si in foro causas dicentibus nefas ut ita dixerim videtur esse nulla praefatione facta iudici rem exponere: quanto magis interpretationem promittentibus inconveniens erit omissis initiis atque origine non repetita atque illotis ut ita dixerim manibus protinus materiam interpretationis tractare ? namque nisi fallor istae praefationes et libentius nos ad lectionem propositae materiae producunt et cum ibi venerimus, evidentiorem praestant intellectum.

Dig. 1.2.2pr.

Pomponius l.S. enchir.

Necessarium itaque nobis videtur ipsius iuris originem atque processum demonstrare.

Dig. 1.2.2.1

Pomponius l.S. enchir.

Et quidem initio civitatis nostrae populus sine lege certa, sine iure certo primum agere instituit omniaque manu a regibus gubernabantur.

Dig. 1.2.2.2

Pomponius l.S. enchir.

Postea aucta ad aliquem modum civitate ipsum romulum traditur populum in triginta partes divisisse, quas partes curias appellavit propterea quod tunc reipublicae curam per sententias partium earum expediebat. et ita leges quasdam et ipse curiatas ad populum tulit: tulerunt et sequentes reges. quae omnes conscriptae exstant in libro sexti papirii, qui fuit illis temporibus, quibus superbus demarati corinthii filius, ex principalibus viris. is liber, ut diximus, appellatur ius civile papirianum, non quia papirius de suo quicquam ibi adiecit, sed quod leges sine ordine latas in unum composuit.

Dig. 1.2.2.3

Pomponius l.S. enchir.

Exactis deinde regibus lege tribunicia omnes leges hae exoleverunt iterumque coepit populus romanus incerto magis iure et consuetudine aliqua uti quam per latam legem, idque prope viginti annis passus est.

Dig. 1.2.2.4

Pomponius l.S. enchir.

Postea ne diutius hoc fieret, placuit publica auctoritate decem constitui viros, per quos peterentur leges a graecis civitatibus et civitas fundaretur legibus: quas in tabulas eboreas perscriptas pro rostris composuerunt, ut possint leges apertius percipi: datumque est eis ius eo anno in civitate summum, uti leges et corrigerent, si opus esset, et interpretarentur neque provocatio ab eis sicut a reliquis magistratibus fieret. qui ipsi animadverterunt aliquid deesse istis primis legibus ideoque sequenti anno alias duas ad easdem tabulas adiecerunt: et ita ex accedenti appellatae sunt leges duodecim tabularum. quarum ferendarum auctorem fuisse decemviris hermodorum quendam ephesium exulantem in italia quidam rettulerunt.

Dig. 1.2.2.5

Pomponius l.S. enchir.

His legibus latis coepit (ut naturaliter evenire solet, ut interpretatio desideraret prudentium auctoritatem) necessariam ^ necessarium^ esse disputatione ^ disputationem^ fori. haec disputatio et hoc ius, quod sine scripto venit compositum a prudentibus, propria parte aliqua non appellatur, ut ceterae partes iuris suis nominibus designantur, datis propriis nominibus ceteris partibus, sed communi nomine appellatur ius civile.

Dig. 1.2.2.6

Pomponius l.S. enchir.

Deinde ex his legibus eodem tempore fere actiones compositae sunt, quibus inter se homines disceptarent: quas actiones ne populus prout vellet institueret certas solemnesque esse voluerunt: et appellatur haec pars iuris legis actiones, id est legitimae actiones. et ita eodem paene tempore tria haec iura nata sunt: lege duodecim tabularum ex his fluere coepit ius civile, ex isdem legis actiones compositae sunt. omnium tamen harum et interpretandi scientia et actiones apud collegium pontificum erant, ex quibus constituebatur, quis quoquo anno praeesset privatis. et fere populus annis prope centum hac consuetudine usus est.

Dig. 1.2.2.7

Pomponius l.S. enchir.

Postea cum appius claudius proposuisset et ad formam redegisset has actiones, gnaeus flavius scriba eius libertini filius subreptum librum populo tradidit, et adeo gratum fuit id munus populo, ut tribunus plebis fieret et senator et aedilis curulis. hic liber, qui actiones continet, appellatur ius civile flavianum, sicut ille ius civile papirianum: nam nec gnaeus flavius de suo quicquam adiecit libro. augescente civitate quia deerant quaedam genera agendi, non post multum temporis spatium sextus aelius alias actiones composuit et librum populo dedit, qui appellatur ius aelianum.

Dig. 1.2.2.8

Pomponius l.S. enchir.

Deinde cum esset in civitate lex duodecim tabularum et ius civile, essent et legis actiones, evenit, ut plebs in discordiam cum patribus perveniret et secederet sibique iura constitueret, quae iura plebi scita vocantur. mox cum revocata est plebs, quia multae discordiae nascebantur de his plebis scitis, pro legibus placuit et ea observari lege hortensia: et ita factum est, ut inter plebis scita et legem species constituendi interesset, potestas autem eadem esset.

Dig. 1.2.2.9

Pomponius l.S. enchir.

Deinde quia difficile plebs convenire coepit, populus certe multo difficilius in tanta turba hominum, necessitas ipsa curam rei publicae ad senatum deduxit: ita coepit senatus se interponere et quidquid constituisset observabatur, idque ius appellabatur senatus consultum.

Dig. 1.2.2.10

Pomponius l.S. enchir.

Eodem tempore et magistratus iura reddebant et ut scirent cives, quod ius de quaque re quisque dicturus esset seque praemuniret ^ praemunirent^, edicta proponebant. quae edicta praetorum ius honorarium constituerunt: honorarium dicitur, quod ab honore praetoris venerat.

Dig. 1.2.2.11

Pomponius l.S. enchir.

Novissime sicut ad pauciores iuris constituendi vias transisse ipsis rebus dictantibus videbatur per partes, evenit, ut necesse esset rei publicae per unum consuli (nam senatus non perinde omnes provincias probe gerere poterant): igitur constituto principe datum est ei ius, ut quod constituisset, ratum esset.

Dig. 1.2.2.12

Pomponius l.S. enchir.

Ita in civitate nostra aut iure, id est lege, constituitur, aut est proprium ius civile, quod sine scripto in sola prudentium interpretatione consistit, aut sunt legis actiones, quae formam agendi continent, aut plebi scitum, quod sine auctoritate patrum est constitutum, aut est magistratuum edictum, unde ius honorarium nascitur, aut senatus consultum, quod solum senatu constituente inducitur sine lege, aut est principalis constitutio, id est ut quod ipse princeps constituit pro lege servetur.

Dig. 1.2.2.13

Pomponius l.S. enchir.

Post originem iuris et processum cognitum consequens est, ut de magistratuum nominibus et origine cognoscamus, quia, ut exposuimus, per eos qui iuri dicundo praesunt effectus rei accipitur: quantum est enim ius in civitate esse, nisi sint, qui iura regere possint? post hoc dein de auctorum successione dicemus, quod constare non potest ius, nisi sit aliquis iuris peritus, per quem possit cottidie in melius produci.

Dig. 1.2.2.14

Pomponius l.S. enchir.

Quod ad magistratus attinet, initio civitatis huius constat reges omnem potestatem habuisse.

Dig. 1.2.2.15

Pomponius l.S. enchir.

Isdem temporibus et tribunum celerum fuisse constat: is autem erat qui equitibus praeerat et veluti secundum locum a regibus optinebat: quo in numero fuit iunius brutus, qui auctor fuit regis eiciendi.

Dig. 1.2.2.16

Pomponius l.S. enchir.

Exactis deinde regibus consules constituti sunt duo: penes quos summum ius uti esset, lege rogatum est: dicti sunt ab eo, quod plurimum rei publicae consulerent. qui tamen ne per omnia regiam potestatem sibi vindicarent, lege lata factum est, ut ab eis provocatio esset neve possent in caput civis romani animadvertere iniussu populi: solum relictum est illis, ut coercere possent et in vincula publica duci iuberent.

Dig. 1.2.2.17

Pomponius l.S. enchir.

Post deinde cum census iam maiori tempore agendus esset et consules non sufficerent huic quoque officio, censores constituti sunt.

Dig. 1.2.2.18

Pomponius l.S. enchir.

Populo deinde aucto cum crebra orerentur bella et quaedam acriora a finitimis inferrentur, interdum re exigente placuit maioris potestatis magistratum constitui: itaque dictatores proditi sunt, a quibus nec provocandi ius fuit et quibus etiam capitis animadversio data est. hunc magistratum, quoniam summam potestatem habebat, non erat fas ultra sextum mensem retineri.

Dig. 1.2.2.19

Pomponius l.S. enchir.

Et his dictatoribus magistri equitum iniungebantur sic, quo modo regibus tribuni celerum: quod officium fere tale erat, quale hodie praefectorum praetorio, magistratus tamen habebantur legitimi.

Dig. 1.2.2.20

Pomponius l.S. enchir.

Isdem temporibus cum plebs a patribus secessisset anno fere septimo decimo post reges exactos, tribunos sibi in monte sacro creavit, qui essent plebeii magistratus. dicti tribuni, quod olim in tres partes populus divisus erat et ex singulis singuli creabantur: vel quia tribuum suffragio creabantur.

Dig. 1.2.2.21

Pomponius l.S. enchir.

Itemque ut essent qui aedibus praeessent, in quibus omnia scita sua plebs deferebat, duos ex plebe constituerunt, qui etiam aediles appellati sunt.

Dig. 1.2.2.22

Pomponius l.S. enchir.

Deinde cum aerarium populi auctius esse coepisset, ut essent qui illi praeessent, constituti sunt quaestores, qui pecuniae praeessent, dicti ab eo quod inquirendae et conservandae pecuniae causa creati erant.

Dig. 1.2.2.23

Pomponius l.S. enchir.

Et quia, ut diximus, de capite civis romani iniussu populi non erat lege permissum consulibus ius dicere, propterea quaestores constituebantur a populo, qui capitalibus rebus praeessent: hi appellabantur quaestores parricidii, quorum etiam meminit lex duodecim tabularum.

Dig. 1.2.2.24

Pomponius l.S. enchir.

Et cum placuisset leges quoque ferri, latum est ad populum, uti omnes magistratu se abdicarent, quo decemviri constituti anno uno cum magistratum prorogarent sibi et cum iniuriose tractarent neque vellent deinceps sufficere magistratibus, ut ipsi et factio sua perpetuo rem publicam occupatam retineret: nimia atque aspera dominatione eo rem perduxerant, ut exercitus a re publica secederet. initium fuisse secessionis dicitur verginius quidam, qui cum animadvertisset appium claudium contra ius, quod ipse ex vetere iure in duodecim tabulas transtulerat, vindicias filiae suae a se abdixisse et secundum eum, qui in servitutem ab eo suppositus petierat, dixisse captumque amore virginis omne fas ac nefas miscuisse: indignatus, quod vetustissima iuris observantia in persona filiae suae defecisset (utpote cum brutus, qui primus romae consul fuit, vindicias secundum libertatem dixisset in persona vindicis vitelliorum servi, qui proditionis coniurationem indicio suo detexerat) et castitatem filiae vitae quoque eius praeferendam putaret, arrepto cultro de taberna lanionis filiam interfecit in hoc scilicet, ut morte virginis contumeliam stupri arceret, ac protinus recens a caede madenteque adhuc filiae cruore ad commilitones confugit. qui universi de algido, ubi tunc belli gerendi causa legiones erant, relictis ducibus pristinis signa in aventinum transtulerunt, omnisque plebs urbana mox eodem se contulit, populique consensu partim in carcere necati. ita rursus res publica suum statum recepit.

Dig. 1.2.2.25

Pomponius l.S. enchir.

Deinde cum post aliquot annos duodecim tabulae latae sunt et plebs contenderet cum patribus et vellet ex suo quoque corpore consules creare et patres recusarent: factum est, ut tribuni militum crearentur partim ex plebe, partim ex patribus consulari potestate. hique constituti sunt vario numero: interdum enim viginti fuerunt, interdum plures, nonnumquam pauciores.

Dig. 1.2.2.26

Pomponius l.S. enchir.

Deinde cum placuisset creari etiam ex plebe consules, coeperunt ex utroque corpore constitui. tunc, ut aliquo pluris patres haberent, placuit duos ex numero patrum constitui:

Dig. 1.2.2.27

Pomponius l.S. enchir.

Ita facti sunt aediles curules. cumque consules avocarentur bellis finitimis neque esset qui in civitate ius reddere posset, factum est, ut praetor quoque crearetur, qui urbanus appellatus est, quod in urbe ius redderet.

Dig. 1.2.2.28

Pomponius l.S. enchir.

Post aliquot deinde annos non sufficiente eo praetore, quod multa turba etiam peregrinorum in civitatem veniret, creatus est et alius praetor, qui peregrinus appellatus est ab eo, quod plerumque inter peregrinos ius dicebat.

Dig. 1.2.2.29

Pomponius l.S. enchir.

Deinde cum esset necessarius magistratus qui hastae praeessent, decemviri in litibus iudicandis sunt constituti.

Dig. 1.2.2.30

Pomponius l.S. enchir.

Constituti sunt eodem tempore et quattuorviri qui curam viarum agerent, et triumviri monetales aeris argenti auri flatores, et triumviri capitales qui carceris custodiam haberent, ut cum animadverti oporteret interventu eorum fieret.

Dig. 1.2.2.31

Pomponius l.S. enchir.

Et quia magistratibus vespertinis temporibus in publicum esse inconveniens erat, quinqueviri constituti sunt cis tiberim et ultis tiberim, qui possint pro magistratibus fungi.

Dig. 1.2.2.32

Pomponius l.S. enchir.

Capta deinde sardinia mox sicilia, item hispania, deinde narbonensi provincia totidem praetores, quot provinciae in dicionem venerant, creati sunt, partim qui urbanis rebus, partim qui provincialibus praeessent. deinde cornelius sulla quaestiones publicas constituit, veluti de falso, de parricidio, de sicariis, et praetores quattuor adiecit. deinde gaius iulius caesar duos praetores et duos aediles qui frumento praeessent et a cerere cereales constituit. ita duodecim praetores, sex aediles sunt creati. divus deinde augustus sedecim praetores constituit. post deinde divus claudius duos praetores adiecit qui de fideicommisso ius dicerent, ex quibus unum divus titus detraxit: et adiecit divus nerva qui inter fiscum et privatos ius diceret. ita decem et octo praetores in civitate ius dicunt.

Dig. 1.2.2.33

Pomponius l.S. enchir.

Et haec omnia, quotiens in re publica sunt magistratus, observantur: quotiens autem proficiscuntur, unus relinquitur, qui ius dicat: is vocatur praefectus urbi. qui praefectus olim constituebatur: postea fere latinarum feriarum causa introductus est et quotannis observatur. nam praefectus annonae et vigilum non sunt magistratus, sed extra ordinem utilitatis causa constituti sunt. et tamen hi, quos cistiberes diximus, postea aediles senatus consulto creabantur.

Dig. 1.2.2.34

Pomponius l.S. enchir.

Ergo his omnibus decem tribuni plebis, consules duo, decem et octo praetores, sex aediles in civitate iura reddebant.

Dig. 1.2.2.35

Pomponius l.S. enchir.

Iuris civilis scientiam plurimi et maximi viri professi sunt: sed qui eorum maximae dignationis apud populum romanum fuerunt, eorum in praesentia mentio habenda est, ut appareat, a quibus et qualibus haec iura orta et tradita sunt. et quidem ex omnibus, qui scientiam nancti sunt, ante tiberium coruncanium publice professum neminem traditur: ceteri autem ad hunc vel in latenti ius civile retinere cogitabant solumque consultatoribus vacare potius quam discere volentibus se praestabant.

Dig. 1.2.2.36

Pomponius l.S. enchir.

Fuit autem in primis peritus publius papirius, qui leges regias in unum contulit. ab hoc appius claudius unus ex decemviris, cuius maximum consilium in duodecim tabulis scribendis fuit. post hunc appius claudius eiusdem generis maximam scientiam habuit: hic centemmanus appellatus est, appiam viam stravit et aquam claudiam induxit et de pyrrho in urbe non recipiendo sententiam tulit: hunc etiam actiones scripsisse traditum est primum de usurpationibus, qui liber non exstat: idem appius claudius, qui videtur ab hoc processisse, r litteram invenit, ut pro valesiis valerii essent et pro fusiis furii.

Dig. 1.2.2.37

Pomponius l.S. enchir.

Fuit post eos maximae scientiae sempronius, quem populus romanus sofon appellavit, nec quisquam ante hunc aut post hunc hoc nomine cognominatus est. gaius scipio nasica, qui optimus a senatu appellatus est: cui etiam publice domus in sacra via data est, quo facilius consuli posset. deinde quintus mucius, qui ad carthaginienses missus legatus, cum essent duae tesserae positae una pacis altera belli, arbitrio sibi dato, utram vellet referret romam, utramque sustulit et ait carthaginienses petere debere, utram mallent accipere.

Dig. 1.2.2.38

Pomponius l.S. enchir.

Post hos fuit tiberius coruncanius, ut dixi, qui primus profiteri coepit: cuius tamen scriptum nullum exstat, sed responsa complura et memorabilia eius fuerunt. deinde sextus aelius et frater eius publius aelius et publius atilius maximam scientiam in profitendo habuerunt, ut duo aelii etiam consules fuerint, atilius autem primus a populo sapiens appellatus est. sextum aelium etiam ennius laudavit et exstat illius liber qui inscribitur " tripertita", qui liber veluti cunabula iuris continet: tripertita autem dicitur, quoniam lege duodecim tabularum praeposita iungitur interpretatio, deinde subtexitur legis actio. eiusdem esse tres alii libri referuntur, quos tamen quidam negant eiusdem esse: hos sectatus ad aliquid est cato. deinde marcus cato princeps porciae familiae, cuius et libri exstant: sed plurimi filii eius, ex quibus ceteri oriuntur.

Dig. 1.2.2.39

Pomponius l.S. enchir.

Post hos fuerunt publius mucius et brutus et manilius, qui fundaverunt ius civile. ex his publius mucius etiam decem libellos reliquit, brutus septem, manilius tres: et extant volumina scripta manilii monumenta. illi duo consulares fuerunt, brutus praetorius, publius autem mucius etiam pontifex maximus.

Dig. 1.2.2.40

Pomponius l.S. enchir.

Ab his profecti sunt publius rutilius rufus, qui romae consul et asiae proconsul fuit, paulus verginius et quintus tubero ille stoicus pansae auditor, qui et ipse consul. etiam sextus pompeius gnaei pompeii patruus fuit eodem tempore: et coelius antipater, qui historias conscripsit, sed plus eloquentiae quam scientiae iuris operam dedit: etiam lucius crassus frater publii mucii, qui munianus dictus est: hunc cicero ait iurisconsultorum disertissimum.

Dig. 1.2.2.41

Pomponius l.S. enchir.

Post hos quintus mucius publii filius pontifex maximus ius civile primus constituit generatim in libros decem et octo redigendo.

Dig. 1.2.2.42

Pomponius l.S. enchir.

Mucii auditores fuerunt complures, sed praecipuae auctoritatis aquilius gallus, balbus lucilius, sextus papirius, gaius iuventius: ex quibus gallum maximae auctoritatis apud populum fuisse servius dicit. omnes tamen hi a servio sulpicio nominantur: alioquin per se eorum scripta non talia exstant, ut ea omnes appetant: denique nec versantur omnino scripta eorum inter manus hominum, sed servius libros suos complevit, pro cuius scriptura ipsorum quoque memoria habetur.

Dig. 1.2.2.43

Pomponius l.S. enchir.

Servius autem sulpicius cum in causis orandis primum locum aut pro certo post marcum tullium optineret, traditur ad consulendum quintum mucium de re amici sui pervenisse cumque eum sibi respondisse de iure servius parum intellexisset, iterum quintum interrogasset et a quinto mucio responsum esse nec tamen percepisse, et ita obiurgatum esse a quinto mucio: namque eum dixisse turpe esse patricio et nobili et causas oranti ius in quo versaretur ignorare. ea velut contumelia servius tactus operam dedit iuri civili et plurimum eos, de quibus locuti sumus, audiit, institutis a balbo lucilio, instructus autem maxime a gallo aquilio, qui fuit cercinae: itaque libri complures eius extant cercinae confecti. hic cum in legatione perisset, statuam ei populus romanus pro rostris posuit, et hodieque exstat pro rostris augusti. huius volumina complura exstant: reliquit autem prope centum et octoginta libros.

Dig. 1.2.2.44

Pomponius l.S. enchir.

Ab hoc plurimi profecerunt, fere tamen hi libros conscripserunt: alfenus varus gaius, aulus ofilius, titus caesius, aufidius tucca, aufidius namusa, flavius priscus, gaius ateius, pacuvius labeo antistius labeonis antisti pater, cinna, publicius gellius. ex his decem libros octo conscripserunt, quorum omnes qui fuerunt libri digesti sunt ab aufidio namusa in centum quadraginta libros. ex his auditoribus plurimum auctoritatis habuit alfenus varus et aulus ofilius, ex quibus varus et consul fuit, ofilius in equestri ordine perseveravit. is fuit caesari familiarissimus et libros de iure civili plurimos et qui omnem partem operis fundarent reliquit. nam de legibus vicensimae primus conscribit: de iurisdictione idem edictum praetoris primus diligenter composuit, nam ante eum servius duos libros ad brutum perquam brevissimos ad edictum subscriptos reliquit.

Dig. 1.2.2.45

Pomponius l.S. enchir.

Fuit eodem tempore et trebatius, qui idem cornelii maximi auditor fuit: aulus cascellius, quintus mucius volusii auditor, denique in illius honorem testamento publium mucium nepotem eius reliquit heredem. fuit autem quaestorius nec ultra proficere voluit, cum illi etiam augustus consulatum offerret. ex his trebatius peritior cascellio, cascellius trebatio eloquentior fuisse dicitur, ofilius utroque doctior. cascellii scripta non exstant nisi unus liber bene dictorum, trebatii complures, sed minus frequentantur.

Dig. 1.2.2.46

Pomponius l.S. enchir.

Post hos quoque tubero fuit, qui ofilio operam dedit: fuit autem patricius et transiit a causis agendis ad ius civile, maxime postquam quintum ligarium accusavit nec optinuit apud gaium caesarem. is est quintus ligarius, qui cum africae oram teneret, infirmum tuberonem applicare non permisit nec aquam haurire, quo nomine eum accusavit et cicero defendit: exstat eius oratio satis pulcherrima, quae inscribitur pro quinto ligario. tubero doctissimus quidem habitus est iuris publici et privati et complures utriusque operis libros reliquit: sermone etiam antiquo usus affectavit scribere et ideo parum libri eius grati habentur.

Dig. 1.2.2.47

Pomponius l.S. enchir.

Post hunc maximae auctoritatis fuerunt ateius capito, qui ofilium secutus est, et antistius labeo, qui omnes hos audivit, institutus est autem a trebatio. ex his ateius consul fuit: labeo noluit, cum offerretur ei ab augusto consulatus, quo suffectus fieret, honorem suscipere, sed plurimum studiis operam dedit: et totum annum ita diviserat, ut romae sex mensibus cum studiosis esset, sex mensibus secederet et conscribendis libris operam daret. itaque reliquit quadringenta volumina, ex quibus plurima inter manus versantur. hi duo primum veluti diversas sectas fecerunt: nam ateius capito in his, quae ei tradita fuerant, perseverabat, labeo ingenii qualitate et fiducia doctrinae, qui et ceteris operis sapientiae operam dederat, plurima innovare instituit.

Dig. 1.2.2.48

Pomponius l.S. enchir.

Et ita ateio capitoni massurius sabinus successit, labeoni nerva, qui adhuc eas dissensiones auxerunt. hic etiam nerva caesari familiarissimus fuit. massurius sabinus in equestri ordine fuit et publice primus respondit: posteaque hoc coepit beneficium dari, a tiberio caesare hoc tamen illi concessum erat.

Dig. 1.2.2.49

Pomponius l.S. enchir.

Et, ut obiter sciamus, ante tempora augusti publice respondendi ius non a principibus dabatur, sed qui fiduciam studiorum suorum habebant, consulentibus respondebant: neque responsa utique signata dabant, sed plerumque iudicibus ipsi scribebant, aut testabantur qui illos consulebant. primus divus augustus, ut maior iuris auctoritas haberetur, constituit, ut ex auctoritate eius responderent: et ex illo tempore peti hoc pro beneficio coepit. et ideo optimus princeps hadrianus, cum ab eo viri praetorii peterent, ut sibi liceret respondere, rescripsit eis hoc non peti, sed praestari solere et ideo, si quis fiduciam sui haberet, delectari se populo ad respondendum se praepararet.

Dig. 1.2.2.50

Pomponius l.S. enchir.

Ergo sabino concessum est a tiberio caesare, ut populo responderet: qui in equestri ordine iam grandis natu et fere annorum quinquaginta receptus est. huic nec amplae facultates fuerunt, sed plurimum a suis auditoribus sustentatus est.

Dig. 1.2.2.51

Pomponius l.S. enchir.

Huic successit gaius cassius longinus natus ex filia tuberonis, quae fuit neptis servii sulpicii: et ideo proavum suum servium sulpicium appellat. hic consul fuit cum quartino temporibus tiberii, sed plurimum in civitate auctoritatis habuit eo usque, donec eum caesar civitate pelleret.

Dig. 1.2.2.52

Pomponius l.S. enchir.

Expulsus ab eo in sardiniam, revocatus a vespasiano diem suum obit. nervae successit proculus. fuit eodem tempore et nerva filius: fuit et alius longinus ex equestri quidem ordine, qui postea ad praeturam usque pervenit. sed proculi auctoritas maior fuit, nam etiam plurimum potuit: appellatique sunt partim cassiani, partim proculiani, quae origo a capitone et labeone coeperat.

Dig. 1.2.2.53

Pomponius l.S. enchir.

Cassio caelius sabinus successit, qui plurimum temporibus vespasiani potuit: proculo pegasus, qui temporibus vespasiani praefectus urbi fuit: caelio sabino priscus iavolenus: pegaso celsus: patri celso celsus filius et priscus neratius, qui utique consules fuerunt, celsus quidem et iterum: iavoleno prisco aburnius valens et tuscianus, item salvius iulianus.

Dig. 1.3.0. De legibus senatusque consultis et longa consuetudine.

Dig. 1.3.1

Papinianus 1 def.

Lex est commune praeceptum, virorum prudentium consultum, delictorum quae sponte vel ignorantia contrahuntur coercitio, communis rei publicae sponsio.

Dig. 1.3.2

Marcianus 1 inst.

Nam et demosthenes orator sic definit: touto estin nomos, hw pantas anvrwpous prosykei peivesvai dia polla, kai malista hoti pas estin nomos ehurema men kai dwron veou, dogma de anvrwpwn fronimwn, epanorvwma de twn hekousiwn kai akousiwn hamartymatwn, polews de sunvyky koiny, kav' hyn hapasi prosykei zyn tois en ty polei . sed et philosophus summae stoicae sapientiae chrysippus sic incipit libro, quem fecit peri nomou: ho nomos pantwn esti basileus veiwn te kai anvrwpinwn pragmatwn: dei de auton prostatyn te einai twn kalwn kai twn aisxrwn kai arxonta kai hygemona, kai kata touto kanona te einai dikaiwn kai adikwn kai twn fusei politikwn zwwn prostaktikon men hwn poiyteon, apagoreutikon de hwn ou poiyteon .

Dig. 1.3.3

Pomponius 25 ad sab.

Iura constitui oportet, ut dixit theophrastus, in his, quae epi to pleiston accidunt, non quae ek paralogou .

Dig. 1.3.4

Celsus 5 Dig.

Ex his, quae forte uno aliquo casu accidere possunt, iura non constituuntur:

Dig. 1.3.5

Celsus 17 Dig.

Nam ad ea potius debet aptari ius, quae et frequenter et facile, quam quae perraro eveniunt.

Dig. 1.3.6

Paulus 17 ad plaut.

To gar hapac y dis , ut ait theophrastus, parabainousin hoi nomovetai .

Dig. 1.3.7

Modestinus 1 reg.

Legis virtus haec est imperare vetare permittere punire.

Dig. 1.3.8

Ulpianus 3 ad sab.

Iura non in singulas personas, sed generaliter constituuntur.

Dig. 1.3.9

Ulpianus 16 ad ed.

Non ambigitur senatum ius facere posse.

Dig. 1.3.10

Iulianus 59 Dig.

Neque leges neque senatus consulta ita scribi possunt, ut omnes casus qui quandoque inciderint comprehendantur, sed sufficit ea quae plerumque accidunt contineri.

Dig. 1.3.11

Iulianus 90 Dig.

Et ideo de his, quae primo constituuntur, aut interpretatione aut constitutione optimi principis certius statuendum est.

Dig. 1.3.12

Iulianus 15 Dig.

Non possunt omnes singillatim aut legibus aut senatus consultis comprehendi: sed cum in aliqua causa sententia eorum manifesta est, is qui iurisdictioni praeest ad similia procedere atque ita ius dicere debet.

Dig. 1.3.13

Ulpianus 1 ad ed. aedil. curul.

Nam, ut ait pedius, quotiens lege aliquid unum vel alterum introductum est, bona occasio est cetera, quae tendunt ad eandem utilitatem, vel interpretatione vel certe iurisdictione suppleri.

Dig. 1.3.14

Paulus 54 ad ed.

Quod vero contra rationem iuris receptum est, non est producendum ad consequentias.

Dig. 1.3.15

Iulianus 27 Dig.

In his, quae contra rationem iuris constituta sunt, non possumus sequi regulam iuris.

Dig. 1.3.16

Paulus l.S. de iure singulari.

Ius singulare est, quod contra tenorem rationis propter aliquam utilitatem auctoritate constituentium introductum est.

Dig. 1.3.17

Celsus 26 Dig.

Scire leges non hoc est verba earum tenere, sed vim ac potestatem.

Dig. 1.3.18

Celsus 29 Dig.

Benignius leges interpraetandae sunt, quo voluntas earum conservetur.

Dig. 1.3.19

Celsus 33 Dig.

In ambigua voce legis ea potius accipienda est significatio, quae vitio caret, praesertim cum etiam voluntas legis ex hoc colligi possit.

Dig. 1.3.20

Iulianus 55 Dig.

Non omnium, quae a maioribus constituta sunt, ratio reddi potest,

Dig. 1.3.21

Nerva 6 membr.

Et ideo rationes eorum, quae constituuntur, inquiri non oportet: alioquin multa ex his quae certa sunt subvertuntur.

Dig. 1.3.22

Ulpianus 35 ad ed.

Cum lex in praeteritum quid indulget, in futurum vetat.

Dig. 1.3.23

Paulus 4 ad plaut.

Minime sunt mutanda, quae interpretationem certam semper habuerunt.

Dig. 1.3.24

Celsus 9 Dig.

Incivile est nisi tota lege perspecta una aliqua particula eius proposita iudicare vel respondere.

Dig. 1.3.25

Modestinus 8 resp.

Nulla iuris ratio aut aequitatis benignitas patitur, ut quae salubriter pro utilitate hominum introducuntur, ea nos duriore interpretatione contra ipsorum commodum producamus ad severitatem.

Dig. 1.3.26

Paulus 4 quaest.

Non est novum, ut priores leges ad posteriores trahantur.

Dig. 1.3.27

Tertullianus 1 quaest.

Ideo, quia antiquiores leges ad posteriores trahi usitatum est, semper quasi hoc legibus inesse credi oportet, ut ad eas quoque personas et ad eas res pertinerent, quae quandoque similes erunt.

Dig. 1.3.28

Paulus 5 ad l. iul. et pap.

Sed et posteriores leges ad priores pertinent, nisi contrariae sint, idque multis argumentis probatur.

Dig. 1.3.29

Paulus l.S. ad l. cinc.

Contra legem facit, qui id facit quod lex prohibet, in fraudem vero, qui salvis verbis legis sententiam eius circumvenit.

Dig. 1.3.30

Ulpianus 4 ad ed.

Fraus enim legi fit, ubi quod fieri noluit, fieri autem non vetuit, id fit: et quod distat hryton apo dianoias, hoc distat fraus ab eo, quod contra legem fit.

Dig. 1.3.31

Ulpianus 13 ad l. iul. et pap.

Princeps legibus solutus est: augusta autem licet legibus soluta non est, principes tamen eadem illi privilegia tribuunt, quae ipsi habent.

Dig. 1.3.32pr.

Iulianus 84 Dig.

De quibus causis scriptis legibus non utimur, id custodiri oportet, quod moribus et consuetudine inductum est: et si qua in re hoc deficeret, tunc quod proximum et consequens ei est: si nec id quidem appareat, tunc ius, quo urbs roma utitur, servari oportet.

Dig. 1.3.32.1

Iulianus 84 Dig.

Inveterata consuetudo pro lege non immerito custoditur, et hoc est ius quod dicitur moribus constitutum. nam cum ipsae leges nulla alia ex causa nos teneant, quam quod iudicio populi receptae sunt, merito et ea, quae sine ullo scripto populus probavit, tenebunt omnes: nam quid interest suffragio populus voluntatem suam declaret an rebus ipsis et factis? quare rectissime etiam illud receptum est, ut leges non solum suffragio legis latoris, sed etiam tacito consensu omnium per desuetudinem abrogentur.

Dig. 1.3.33

Ulpianus 1 de off. procons.

Diuturna consuetudo pro iure et lege in his quae non ex scripto descendunt observari solet.

Dig. 1.3.34

Ulpianus 4 de off. procons.

Cum de consuetudine civitatis vel provinciae confidere quis videtur, primum quidem illud explorandum arbitror, an etiam contradictio aliquando iudicio consuetudo firmata sit.

Dig. 1.3.35

Hermogenianus 1 epit.

Sed et ea, quae longa consuetudine comprobata sunt ac per annos plurimos observata, velut tacita civium conventio non minus quam ea quae scripta sunt iura servantur.

Dig. 1.3.36

Paulus 7 ad sab.

Immo magnae auctoritatis hoc ius habetur, quod in tantum probatum est, ut non fuerit necesse scripto id comprehendere.

Dig. 1.3.37

Paulus 1 quaest.

Si de interpretatione legis quaeratur, in primis inspiciendum est, quo iure civitas retro in eiusmodi casibus usa fuisset: optima enim est legum interpres consuetudo.

Dig. 1.3.38

Callistratus 1 quaest.

Nam imperator noster severus rescripsit in ambiguitatibus quae ex legibus proficiscuntur consuetudinem aut rerum perpetuo similiter iudicatarum auctoritatem vim legis optinere debere.

Dig. 1.3.39

Celsus 23 Dig.

Quod non ratione introductum, sed errore primum, deinde consuetudine optentum est, in aliis similibus non optinet.

Dig. 1.3.40

Modestinus 1 reg.

Ergo omne ius aut consensus fecit aut necessitas constituit aut firmavit consuetudo.

Dig. 1.3.41

Ulpianus 2 inst.

Totum autem ius constitit aut in adquirendo aut in conservando aut in minuendo: aut enim hoc agitur, quemadmodum quid cuiusque fiat, aut quemadmodum quis rem vel ius suum conservet, aut quomodo alienet aut admittat.

Dig. 1.4.0. De constitutionibus principum.

Dig. 1.4.1pr.

Ulpianus 1 inst.

Quod principi placuit, legis habet vigorem: utpote cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem conferat.

Dig. 1.4.1.1

Ulpianus 1 inst.

Quodcumque igitur imperator per epistulam et subscriptionem statuit vel cognoscens decrevit vel de plano interlocutus est vel edicto praecepit, legem esse constat. haec sunt quas volgo constitutiones appellamus.

Dig. 1.4.1.2

Ulpianus 1 inst.

Plane ex his quaedam sunt personales nec ad exemplum trahuntur: nam quae princeps alicui ob merita indulsit vel si quam poenam irrogavit vel si cui sine exemplo subvenit, personam non egreditur.

Dig. 1.4.2

Ulpianus 4 fideic.

In rebus novis constituendis evidens esse utilitas debet, ut recedatur ab eo iure, quod diu aequum visum est.

Dig. 1.4.3

Iavolenus 13 epist.

Beneficium imperatoris, quod a divina scilicet eius indulgentia proficiscitur, quam plenissime interpretari debemus.

Dig. 1.4.4

Modestinus 2 excus.

Ahi metagenesterai diataceis isxuroterai twn pro autwn eisin .

Dig. 1.5.0. De statu hominum.

Dig. 1.5.1

Gaius 1 inst.

Omne ius quo utimur vel ad personas pertinet vel ad res vel ad actiones.

Dig. 1.5.2

Hermogenianus 1 iuris epit.

Cum igitur hominum causa omne ius constitutum sit, primo de personarum statu ac post de ceteris, ordinem edicti perpetui secuti et his proximos atque coniunctos applicantes titulos ut res patitur, dicemus.

Dig. 1.5.3

Gaius 1 inst.

Summa itaque de iure personarum divisio haec est, quod omnes homines aut liberi sunt aut servi.

Dig. 1.5.4pr.

Florus 9 inst.

Libertas est naturalis facultas eius quod cuique facere libet, nisi si quid vi aut iure prohibetur.

Dig. 1.5.4.1

Florus 9 inst.

Servitus est constitutio iuris gentium, qua quis dominio alieno contra naturam subicitur.

Dig. 1.5.4.2

Florus 9 inst.

Servi ex eo appellati sunt, quod imperatores captivos vendere ac per hoc servare nec occidere solent.

Dig. 1.5.4.3

Florus 9 inst.

Mancipia vero dicta, quod ab hostibus manu capiantur.

Dig. 1.5.5pr.

Marcianus 1 inst.

Et servorum quidem una est condicio: liberorum autem hominum quidam ingenui sunt, quidam libertini.

Dig. 1.5.5.1

Marcianus 1 inst.

Servi autem in dominium nostrum rediguntur aut iure civili aut gentium: iure civili, si quis se maior viginti annis ad pretium participandum venire passus est. iure gentium servi nostri sunt, qui ab hostibus capiuntur aut qui ex ancillis nostris nascuntur.

Dig. 1.5.5.2

Marcianus 1 inst.

Ingenui sunt, qui ex matre libera nati sunt: sufficit enim liberam fuisse eo tempore quo nascitur, licet ancilla concepit. et e contrario si libera conceperit, deinde ancilla pariat, placuit eum qui nascitur liberum nasci. (nec interest iustis nuptiis concepit an volgo), quia non debet calamitas matris nocere ei qui in ventre est.

Dig. 1.5.5.3

Marcianus 1 inst.

Ex hoc quaesitum est, si ancilla praegnas manumissa sit, deinde ancilla postea facta aut expulsa civitate pepererit, liberum an servum pariat. et tamen rectius probatum est liberum nasci et sufficere ei qui in ventre est liberam matrem vel medio tempore habuisse.

Dig. 1.5.6

Gaius 1 inst.

Libertini sunt, qui ex iusta servitute manumissi sunt.

Dig. 1.5.7

Paulus l.S. de port., q. lib. dam.

Quae liberis damnatorum conceduntur. qui in utero est, perinde ac si in rebus humanis esset custoditur, quotiens de commodis ipsius partus quaeritur: quamquam alii antequam nascatur nequaquam prosit.

Dig. 1.5.8

Papinianus 3 quaest.

Imperator titus antoninus rescripsit non laedi statum liberorum ob tenorem instrumenti male concepti.

Dig. 1.5.9

Papinianus 31 quaest.

In multis iuris nostri articulis deterior est condicio feminarum quam masculorum.

Dig. 1.5.10

Ulpianus 1 ad sab.

Quaeritur: hermaphroditum cui comparamus? et magis puto eius sexus aestimandum, qui in eo praevalet.

Dig. 1.5.11

Paulus 18 resp.

Paulus respondit eum, qui vivente patre et ignorante de coniunctione filiae conceptus est, licet post mortem avi natus sit, iustum filium ei ex quo conceptus est esse non videri.

Dig. 1.5.12

Paulus 19 resp.

Septimo mense nasci perfectum partum iam receptum est propter auctoritatem doctissimi viri hippocratis: et ideo credendum est eum, qui ex iustis nuptiis septimo mense natus est, iustum filium esse.

Dig. 1.5.13

Hermogenianus 1 iuris epit.

Servus in causa capitali fortunae iudici a domino commissus, etsi fuerit absolutus, non fit liber.

Dig. 1.5.14

Paulus 4 sent.

Non sunt liberi, qui contra formam humani generis converso more procreantur: veluti si mulier monstrosum aliquid aut prodigiosum enixa sit. partus autem, qui membrorum humanorum officia ampliavit, aliquatenus videtur effectus et ideo inter liberos connumerabitur.

Dig. 1.5.15

Tryphonus 10 disp.

Arescusa, si tres peperit libera esse testamento iussa, primo partu unum, secundo tres peperit: quaesitum est, an et quis eorum liber esset. haec condicio libertati adposita iam implenda mulieri est. sed non dubitari debet, quin ultimus liber nascatur: nec enim natura permisit simul uno impetu duos infantes de utero matris excedere, ut ordine incerto nascentium non appareat, uter in servitute libertateve nascatur. incipiente igitur partu existens condicio efficit, ut ex libera edatur quod postea nascitur, veluti si quaelibet alia condicio libertati mulieris adposita parturiente ea existat. vel manumissa sub hac condicione, si decem milia heredi titiove dederit, eo momento quo parit per alium impleverit condicionem: iam libera peperisse credenda est.

Dig. 1.5.16

Ulpianus 6 disp.

Idem erit, si eadem arescusa primo duo pepererat, postea geminos ediderat: dicendum est enim non posse dici utrumque ingenuum nasci, sed eum qui posterior nascitur. quaestio ergo facti potius est, non iuris.

Dig. 1.5.17

Ulpianus 22 ad ed.

In orbe romano qui sunt ex constitutione imperatoris antonini cives romani effecti sunt.

Dig. 1.5.18

Ulpianus 27 ad sab.

Imperator hadrianus publicio Marcello rescripsit liberam, quae praegnas ultimo supplicio damnata est, liberum parere et solitum esse servari eam, dum partum ederet. sed si ei, quae ex iustis nuptiis concepit, aqua et igni interdictum est, civem romanum parit et in potestate patris.

Dig. 1.5.19

Celsus 29 Dig.

Cum legitimae nuptiae factae sint, patrem liberi sequuntur: volgo quaesitus matrem sequitur.

Dig. 1.5.20

Ulpianus 38 ad sab.

Qui furere coepit, et statum et dignitatem in qua fuit et magistratum et potestatem videtur retinere, sicut rei suae dominium retinet.

Dig. 1.5.21

Modestinus 7 reg.

Homo liber, qui se vendidit, manumissus non ad suum statum revertitur, quo se abdicavit, sed efficitur libertinae condicionis.

Dig. 1.5.22

Modestinus 12 resp.

Herennius modestinus respondit, si eo tempore enixa est ancilla, quo secundum legem donationis manumissa esse debuit, cum ex constitutione libera fuerit, ingenuum ex ea natum.

Dig. 1.5.23

Modestinus 1 pand.

Volgo concepti dicuntur qui patrem demonstrare non possunt, vel qui possunt quidem, sed eum habent, quem habere non licet. qui et spurii appellantur para tyn sporan .

Dig. 1.5.24

Ulpianus 27 ad sab.

Lex naturae haec est, ut qui nascitur sine legitimo matrimonio matrem sequatur, nisi lex specialis aliud inducit.

Dig. 1.5.25

Ulpianus 1 ad l. iul. et pap.

Ingenuum accipere debemus etiam eum, de quo sententia lata est, quamvis fuerit libertinus: quia res iudicata pro veritate accipitur.

Dig. 1.5.26

Iulianus 69 Dig.

Qui in utero sunt, in toto paene iure civili intelleguntur in rerum natura esse. nam et legitimae hereditates his restituuntur: et si praegnas mulier ab hostibus capta sit, id quod natum erit postliminium habet, item patris vel matris condicionem sequitur: praeterea si ancilla praegnas subrepta fuerit, quamvis apud bonae fidei emptorem pepererit, id quod natum erit tamquam furtivum usu non capitur: his consequens est, ut libertus quoque, quamdiu patroni filius nasci possit, eo iure sit, quo sunt qui patronos habent.

Dig. 1.5.27

Ulpianus 5 opin.

Eum, qui se libertinum esse fatetur, nec adoptando patronus ingenuum facere potuit.

Dig. 1.6.0. De his qui sui vel alieni iuris sunt.

Dig. 1.6.1pr.

Gaius 1 inst.

De iure personarum alia divisio sequitur, quod quaedam personae sui iuris sunt, quaedam alieno iuri subiectae sunt. videamus itaque de his, quae alieno iuri subiectae sunt: nam si cognoverimus quae istae personae sunt, simul intellegemus quae sui iuris sunt. dispiciamus itaque de his, quae in aliena potestate sunt.

Dig. 1.6.1.1

Gaius 1 inst.

Igitur in potestate sunt servi dominorum (quae quidem potestas iuris gentium est: nam apud omnes peraeque gentes animadvertere possumus dominis in servos vitae necisque potestatem fuisse) et quodcumque per servum adquiritur, id domino adquiritur.

Dig. 1.6.1.2

Gaius 1 inst.

Sed hoc tempore nullis hominibus, qui sub imperio romano sunt, licet supra modum et sine causa legibus cognita in servos suos saevire. nam ex constitutione divi antonini qui sine causa servum suum occiderit, non minus puniri iubetur, quam qui alienum servum occiderit. sed et maior asperitas dominorum eiusdem principis constitutione coercetur.

Dig. 1.6.2

Ulpianus 8 de off. procons.

Si dominus in servos saevierit vel ad impudicitiam turpemque violationem compellat, quae sint partes praesidis, ex rescripto divi pii ad aelium marcianum proconsulem baeticae manifestabitur. cuius rescripti verba haec sunt: " dominorum quidem potestatem in suos servos illibatam esse oportet nec cuiquam hominum ius suum detrahi: sed dominorum interest, ne auxilium contra saevitiam vel famem vel intolerabilem iniuriam denegetur his qui iuste deprecantur. ideoque cognosce de querellis eorum, qui ex familia iulii sabini ad statuam confugerunt, et si vel durius habitos quam aequum est vel infami iniuria affectos cognoveris, veniri iube ita, ut in potestate domini non revertantur. qui si meae constitutioni fraudem fecerit, sciet me admissum severius exsecuturum". divus etiam hadrianus umbriciam quandam matronam in quinquennium relegavit, quod ex levissimis causis ancillas atrocissime tractasset.

Dig. 1.6.3

Gaius 1 inst.

Item in potestate nostra sunt liberi nostri, quos ex iustis nuptiis procreaverimus: quod ius proprium civium romanorum est.

Dig. 1.6.4

Ulpianus 1 inst.

Nam civium romanorum quidam sunt patres familiarum, alii filii familiarum, quaedam matres familiarum, quaedam filiae familiarum. patres familiarum sunt, qui sunt suae potestatis sive puberes sive impuberes: simili modo matres familiarum; filii familiarum et filiae, quae sunt in aliena potestate. nam qui ex me et uxore mea nascitur, in mea potestate est: item qui ex filio meo et uxore eius nascitur, id est nepos meus et neptis, aeque in mea sunt potestate, et pronepos et proneptis et deinceps ceteri.

Dig. 1.6.5

Ulpianus 36 ad sab.

Nepotes ex filio mortuo avo reccidere solent in filii potestatem, hoc est patris sui: simili modo et pronepotes et deinceps vel in filii potestate, si vivit et in familia mansit, vel in eius parentis, qui ante eos in potestate est. et hoc non tantum in naturalibus, verum in adoptivis quoque iuris est.

Dig. 1.6.6

Ulpianus 9 ad sab.

Filium eum definimus, qui ex viro et uxore eius nascitur. sed si fingamus afuisse maritum verbi gratia per decennium, reversum anniculum invenisse in domo sua, placet nobis iuliani sententia hunc non esse mariti filium. non tamen ferendum iulianus ait eum, qui cum uxore sua adsidue moratus nolit filium adcognoscere quasi non suum. sed mihi videtur, quod et scaevola probat, si constet maritum aliquamdiu cum uxore non concubuisse infirmitate interveniente vel alia causa, vel si ea valetudine paterfamilias fuit ut generare non possit, hunc, qui in domo natus est, licet vicinis scientibus, filium non esse.

Dig. 1.6.7

Ulpianus 25 ad sab.

Si qua poena pater fuerit affectus, ut vel civitatem amittat vel servus poenae efficiatur, sine dubio nepos filii loco succedit.

Dig. 1.6.8pr.

Ulpianus 26 ad sab.

Patre furioso liberi nihilominus in patris sui potestate sunt: idem et in omnibus est parentibus, qui habent liberos in potestate. nam cum ius potestatis moribus sit receptum nec possit desinere quis habere in potestate, nisi exierint liberi quibus casibus solent, nequaquam dubitandum est remanere eos in potestate. quare non solum eos liberos in potestate habebit, quos ante furorem genuit, verum et si qui ante furorem concepti in furore editi sunt. sed et si in furore agente eo uxor concipiat, videndum an in potestate eius nascatur filius: nam furiosus licet uxorem ducere non possit, retinere tamen matrimonium potest: quod cum ita se habeat, in potestate filium habebit. proinde et si furiosa sit uxor, ex ea ante conceptus in potestate nascetur: sed et in furore eius conceptus ab eo qui non furebat sine dubio in potestate nascetur, quia retinetur matrimonium. sed et si ambo in furore agant et uxor et maritus et tunc concipiat, partus in potestate patris nascetur, quasi voluntatis reliquiis in furiosis manentibus: nam cum consistat matrimonium altero furente, consistet et utroque.

Dig. 1.6.8.1

Ulpianus 26 ad sab.

Adeo autem retinet ius potestatis pater furiosus, ut et adquiratur illi commodum eius, quod filius adquisivit.

Dig. 1.6.9

Pomponius 16 ad q. muc.

Filius familias in publicis causis loco patris familias habetur, veluti ut magistratum gerat, ut tutor detur.

Dig. 1.6.10

Ulpianus 4 ad l. iul. et pap.

Si iudex nutriri vel ali oportere pronuntiaverit, dicendum est de veritate quaerendum, filius sit an non: neque enim alimentorum causa veritati facit praeiudicium.

Dig. 1.6.11

Modestinus 1 pand.

Inviti filii naturales vel emancipati non rediguntur in patriam potestatem.

Dig. 1.7.0. De adoptionibus et emancipationibus et aliis modis quibus potestas solvitur.

Dig. 1.7.1pr.

Modestinus 2 reg.

Filios familias non solum natura, verum et adoptiones faciunt.

Dig. 1.7.1.1

Modestinus 2 reg.

Quod adoptionis nomen est quidem generale, in duas autem species dividitur, quarum altera adoptio similiter dicitur, altera adrogatio. adoptantur filii familias, adrogantur qui sui iuris sunt.

Dig. 1.7.2pr.

Gaius 1 inst.

Generalis enim adoptio duobus modis fit, aut principis auctoritate aut magistratus imperio. principis auctoritate adoptamus eos qui sui iuris sunt: quae species adoptionis dicitur adrogatio, quia et is qui adoptat rogatur, id est interrogatur, an velit eum quem adoptaturus sit iustum sibi filium esse, et is qui adoptatur rogatur, an id fieri patiatur. imperio magistratus adoptamus eos qui in potestate parentis sunt, sive primum gradum liberorum optineant, qualis est filius filia, sive inferiorem, qualis est nepos neptis, pronepos proneptis.

Dig. 1.7.2.1

Gaius 1 inst.

Illud utriusque adoptionis commune est, quod et hi qui generare non possunt, quales sunt spadones, adoptare possunt.

Dig. 1.7.2.2

Gaius 1 inst.

Hoc vero proprium est eius adoptionis, quae per principem fit, quod is qui liberos in potestate habet si se adrogandum dederit, non solum ipse potestati adrogatoris subicitur, sed et liberi eius in eiusdem fiunt potestate tamquam nepotes.

Dig. 1.7.3

Paulus 4 ad sab.

Si consul vel praeses filius familias sit, posse eum apud semet ipsum vel emancipari vel in adoptionem dari constat.

Dig. 1.7.4

Modestinus 2 reg.

Magistratum, apud quem legis actio est, et emancipare filios suos et in adoptionem dare apud se posse neratii sententia est.

Dig. 1.7.5

Celsus 28 Dig.

In adoptionibus eorum dumtaxat, qui suae potestatis sunt, voluntas exploratur: sin autem a patre dantur in adoptionem, in his utriusque arbitrium spectandum est vel consentiendo vel non contradicendo.

Dig. 1.7.6

Paulus 35 ad ed.

Cum nepos adoptatur quasi ex filio natus, consensus filii exigitur, idque etiam iulianus scribit.

Dig. 1.7.7

Celsus 39 Dig.

Cum adoptio fit, non est necessaria in eam rem auctoritas eorum, inter quos iura adgnationis consequuntur.

Dig. 1.7.8

Modestinus 2 reg.

Quod ne curatoris auctoritas intercederet in adrogatione ante tenuerat, sub divo claudio recte mutatum est.

Dig. 1.7.9

Ulpianus 1 ad sab.

Etiam caecus adoptare vel adoptari potest.

Dig. 1.7.10

Paulus 2 ad sab.

Si quis nepotem quasi ex filio natum quem in potestate habet consentiente filio adoptaverit, non adgnascitur avo suus heres, quippe cum post mortem avi quasi in patris sui reccidit potestatem.

Dig. 1.7.11

Paulus 4 ad sab.

Si quis qui filium haberet in nepotis locum adoptasset perinde atque si ex eo filio natus esset, et is filius auctor factus non esset: mortuo avo non esse nepotem in potestate filii.

Dig. 1.7.12

Ulpianus 14 ad sab.

Qui liberatus est patria potestate, is postea in potestatem honeste reverti non potest nisi adoptione.

Dig. 1.7.13

Papinianus 36 quaest.

In omni fere iure finita patris adoptivi potestate nullum ex pristino retinetur vestigium: denique et patria dignitas quaesita per adoptionem finita ea deponitur.

Dig. 1.7.14

Pomponius 5 ad sab.

Sed etiam nepos ex filio apud adoptatum patrem conceptus et natus per emancipationem iura omnia perdit.

Dig. 1.7.15pr.

Ulpianus 26 ad sab.

Si pater familias adoptatus sit, omnia quae eius fuerunt et adquiri possunt tacito iure ad eum transeunt qui adoptavit: hoc amplius liberi eius qui in potestate sunt eum sequuntur: sed et hi, qui postliminio redeunt, vel qui in utero fuerunt cum adrogaretur, simili modo in potestatem adrogatoris rediguntur.

Dig. 1.7.15.1

Ulpianus 26 ad sab.

Qui duos filios et ex altero eorum nepotem habet, si vult nepotem quasi ex altero natum sic adoptare, potest hoc efficere, si eum emancipaverit et sic adoptaverit quasi ex altero natum. facit enim hoc quasi quilibet, non quasi avus, et qua ratione quasi ex quolibet natum potest adoptare, ita potest et quasi ex altero filio.

Dig. 1.7.15.2

Ulpianus 26 ad sab.

In adrogationibus cognitio vertitur, num forte minor sexaginta annis sit qui adrogat, quia magis liberorum creationi studere debeat: nisi forte morbus aut valetudo in causa sit aut alia iusta causa adrogandi, veluti si coniunctam sibi personam velit adoptare.

Dig. 1.7.15.3

Ulpianus 26 ad sab.

Item non debet quis plures adrogare nisi ex iusta causa, sed nec libertum alienum, nec maiorem minor.

Dig. 1.7.16

Iavolenus 6 ex cass.

Adoptio enim in his personis locum habet, in quibus etiam natura potest habere.

Dig. 1.7.17pr.

Ulpianus 26 ad sab.

Nec ei permittitur adrogare, qui tutelam vel curam alicuius administravit, si minor viginti quinque annis sit qui adrogatur, ne forte eum ideo adroget, ne rationes reddat. item inquirendum est, ne forte turpis causa adrogandi subsit.

Dig. 1.7.17.1

Ulpianus 26 ad sab.

Eorum dumtaxat pupillorum adrogatio permittenda est his, qui vel naturali cognatione vel sanctissima affectione ducti adoptarent, ceterorum prohibenda, ne esset in potestate tutorum et finire tutelam et substitutionem a parente factam extinguere.

Dig. 1.7.17.2

Ulpianus 26 ad sab.

Et primum quidem excutiendum erit, quae facultates pupilli sint et quae eius, qui adoptare eum velit, ut aestimetur ex comparatione earum, an salubris adoptio possit pupillo intellegi: deinde cuius vitae sit is, qui velit pupillum redigere in familiam suam: tertio cuius idem aetatis sit, ut aestimetur, an melius sit de liberis procreandis cogitare eum quam ex aliena familia quemquam redigere in potestatem suam.

Dig. 1.7.17.3

Ulpianus 26 ad sab.

Praeterea videndum est, an non debeat permitti ei, qui vel unum habebit vel plures liberos, adoptare alium, ne aut illorum, quos iustis nuptiis procreaverit, deminuatur spes quam unusquisque liberorum obsequio paret sibi, aut qui adoptatus fuit minus percipiat quam dignum erit eum consequi.

Dig. 1.7.17.4

Ulpianus 26 ad sab.

Interdum et ditiorem permittetur adoptare pauperiori, si vitae eius sobrietas clara sit vel affectio honesta nec incognita.

Dig. 1.7.17.5

Ulpianus 26 ad sab.

Satisdatio autem in his casibus dari solet.

Dig. 1.7.18

Marcellus 26 Dig.

Non aliter enim voluntati eius, qui adrogare pupillum volet, si causam eius ob alia probabit, subscribendum erit, quam si caverit servo publico se restituturum ea, quae ex bonis eius consecutus fuerit, illis, ad quos res perventura esset, si adrogatus permansisset in suo statu.

Dig. 1.7.19pr.

Ulpianus 26 ad sab.

His verbis satisdationis quae ab adrogatore praestari debet " ad quos ea res pertinet " et libertatibus prospectum esse, quae secundis tabulis datae sunt, et multo magis substituto servo, item legatariis, nemo dubitat.

Dig. 1.7.19.1

Ulpianus 26 ad sab.

Quae satisdatio si omissa fuerit, utilis actio in adrogatorem datur.

Dig. 1.7.20

Marcellus 26 Dig.

Haec autem satisdatio locum habet, si impubes decessit. sed etsi de pupillo loquitur, tamen hoc et in pupilla observandum est.

Dig. 1.7.21

Gaius l.S. reg.

Nam et feminae ex rescripto principis adrogari possunt.

Dig. 1.7.22pr.

Ulpianus 26 ad sab.

Si adrogator decesserit impubere relicto filio adoptivo et mox impubes decedat, an heredes adrogatoris teneantur? et dicendum est heredes quoque restituturus et bona adrogati et praeterea quartam partem.

Dig. 1.7.22.1

Ulpianus 26 ad sab.

Sed an impuberi adrogator substituere possit, quaeritur: et puto non admitti substitutionem, nisi forte ad quartam solam quam ex bonis eius consequitur, et hactenus ut ei usque ad pubertatem substituat. ceterum si fidei eius committat, ut quandoque restituat, non oportet admitti fideicommissum, quia hoc non iudicio eius ad eum pervenit, sed principali providentia.

Dig. 1.7.22.2

Ulpianus 26 ad sab.

Haec omnia dicenda sunt, sive in locum filii sive in locum nepotis aliquis impuberem adrogaverit.

Dig. 1.7.23

Paulus 35 ad ed.

Qui in adoptionem datur, his quibus adgnascitur et cognatus fit, quibus vero non adgnascitur nec cognatus fit: adoptio enim non ius sanguinis, sed ius adgnationis adfert. et ideo si filium adoptavero, uxor mea illi matris loco non est, neque enim adgnascitur ei, propter quod nec cognata eius fit: item nec mater mea aviae loco illi est, quoniam his, qui extra familiam meam sunt, non adgnascitur: sed filiae meae is quem adoptavi frater fit, quoniam in familia mea est filia: nuptiis tamen etiam eorum prohibitis.

Dig. 1.7.24

Ulpianus 1 disp.

Neque absens neque dissentiens adrogari potest.

Dig. 1.7.25pr.

Ulpianus 5 opin.

Post mortem filiae suae, quae ut mater familias quasi iure emancipata vixerat et testamento scriptis heredibus decessit, adversus factum suum, quasi non iure eam nec praesentibus testibus emancipasset, pater movere controversiam prohibetur.

Dig. 1.7.25.1

Ulpianus 5 opin.

Neque adoptare neque adrogare quis absens nec per alium eiusmodi sollemnitatem peragere potest.

Dig. 1.7.26

Iulianus 70 Dig.

Quem filius meus emancipatus adoptaverit, is nepos meus non erit.

Dig. 1.7.27

Iulianus 85 Dig.

Ex adoptivo natus adoptivi locum optinet in iure civili.

Dig. 1.7.28

Gaius 1 inst.

Liberum arbitrium est ei, qui filium et ex eo nepotem in potestate habebit, filium quidem potestate demittere, nepotem vero in potestate retinere: vel ex diverso filium quidem in potestate retinere, nepotem vero manumittere: vel omnes sui iuris efficere. eadem et de pronepote dicta esse intellegemus.

Dig. 1.7.29

Callistratus 2 inst.

Si pater naturalis loqui quidem non possit, alio tamen modo quam sermone manifestum facere possit velle se filium suum in adoptionem dare: perinde confirmatur adoptio, ac si iure facta esset.

Dig. 1.7.30

Paulus 1 reg.

Et qui uxores non habent filios adoptare possunt.

Dig. 1.7.31

Marcianus 5 reg.

Non potest filius, qui est in potestate patris, ullo modo compellere eum, ne sit in potestate, sive naturalis sive adoptivus.

Dig. 1.7.32pr.

Papinianus 31 quaest.

Nonnumquam autem impubes qui adoptatus est audiendus erit, si pubes factus emancipari desideret, idque causa cognita per iudicem statuendum erit.

Dig. 1.7.32.1

Papinianus 31 quaest.

Imperator titus antoninus rescripsit privignum suum tutori adoptare permittendum.

Dig. 1.7.33

Marcianus 5 reg.

Et si pubes factus non expedire sibi in potestatem eius redigi probaverit, aequum esse emancipari eum a patre adoptivo atque ita pristinum ius reciperare.

Dig. 1.7.34

Paulus 11 quaest.

Quaesitum est, si tibi filius in adoptionem hac lege sit datus, ut post triennium puta eundem mihi in adoptionem des, an actio ulla sit. et labeo putat nullam esse actionem: nec enim moribus nostris convenit filium temporalem habere.

Dig. 1.7.35

Paulus 1 resp.

Per adoptionem dignitas non minuitur, sed augetur. unde senator etsi a plebeio adoptatus est, manet senator: similiter manet et senatoris filius.

Dig. 1.7.36pr.

Paulus 18 resp.

Emancipari filium a patre quocumque loco posse constat, ut exeat de patria potestate.

Dig. 1.7.36.1

Paulus 18 resp.

Apud proconsulem etiam in ea provincia, quam sortitus non est, et manumitti et in adoptionem dari posse placet.

Dig. 1.7.37pr.

Paulus 2 sent.

Adoptare quis nepotis loco potest, etiam si filium non habet.

Dig. 1.7.37.1

Paulus 2 sent.

Eum quem quis adoptavit, emancipatum vel in adoptionem datum iterum non potest adoptare.

Dig. 1.7.38

Marcellus 26 Dig.

Adoptio non iure facta a principe confirmari potest.

Dig. 1.7.39

Ulpianus 3 de off. cons.

Nam ita divus marcus eutychiano rescripsit: " quod desideras an impetrare debeas, aestimabunt iudices adhibitis etiam his, qui contra dicent, id est qui laederentur confirmatione adoptionis".

Dig. 1.7.40pr.

Modestinus 1 diff.

Adrogato patre familias liberi, qui in eius erant potestate, nepotes apud adrogatorem efficiuntur simulque cum suo patre in eius reccidunt potestatem. quod non similiter in adoptionem contingit: nam nepotes ex eo in avi naturalis retinentur potestate.

Dig. 1.7.40.1

Modestinus 1 diff.

Non tantum cum quis adoptat, sed et cum adrogat, maior esse debet eo, quem sibi per adrogationem vel per adoptionem filium facit, et utique plenae pubertatis: id est decem et octo annis eum praecedere debet.

Dig. 1.7.40.2

Modestinus 1 diff.

Spado adrogando suum heredem sibi adsciscere potest nec ei corporale vitium impedimento est.

Dig. 1.7.41

Modestinus 2 reg.

Si pater filium, ex quo nepos illi est in potestate, emancipaverit et postea eum adoptaverit: mortuo eo nepos in patris non revertitur potestatem. nec is nepos in patris revertitur potestatem, quem avus retinuerit filio dato in adoptionem, quem denuo redadoptavit.

Dig. 1.7.42

Modestinus 1 pand.

Etiam infantem in adoptionem dare possumus.

Dig. 1.7.43

Pomponius 20 ad q. muc.

Adoptiones non solum filium, sed et quasi nepotum fiunt, ut aliquis nepos noster esse videatur perinde quasi ex filio vel incerto natus sit.

Dig. 1.7.44

Proculus 8 epist.

Si is, qui nepotem ex filio habet, in nepotis loco aliquem adoptavit, non puto mortuo avo iura consanguinitatis inter nepotes futura esse. sed si sic adoptavit, ut etiam iure legis nepos suus esset, quasi ex lucio puta filio suo et ex matre familias eius natus esset, contra puto.

Dig. 1.7.45

Paulus 3 ad l. iul. et pap.

Onera eius, qui in adoptionem datus est, ad patrem adoptivum transferuntur.

Dig. 1.7.46

Ulpianus 4 ad l. iul. et pap.

In servitute mea quaesitus mihi filius in potestatem meam redigi beneficio principis potest: libertinum tamen eum manere non dubitatur.

Dig. 1.8.0. De divisione rerum et qualitate.

Dig. 1.8.1pr.

Gaius 2 inst.

Summa rerum divisio in duos articulos deducitur: nam aliae sunt divini iuris, aliae humani. divini iuris sunt veluti res sacrae et religiosae. sanctae quoque res, veluti muri et portae, quodammodo divini iuris sunt. quod autem divini iuris est, id nullius in bonis est: id vero, quod humani iuris est, plerumque alicuius in bonis est, potest autem et nullius in bonis esse: nam res hereditariae, antequam aliquis heres existat, nullius in bonis sunt. hae autem res, quae humani iuris sunt, aut publicae aut privatae. quae publicae sunt, nullius in bonis esse creduntur, ipsius enim universitatis esse creduntur: privatae autem sunt, quae singulorum sunt.

Dig. 1.8.1.1

Gaius 2 inst.

Quaedam praeterea res corporales sunt, quaedam incorporales. corporales hae sunt, quae tangi possunt, veluti fundus homo vestis aurum argentum et denique aliae res innumerabiles: incorporales sunt, quae tangi non possunt, qualia sunt ea, quae in iure consistunt, sicut hereditas, usus fructus, obligationes quoquo modo contractae. nec ad rem pertinet, quod in hereditate res corporales continentur: nam et fructus, qui ex fundo percipiuntur, corporales sunt, et id quod ex aliqua obligatione nobis debetur plerumque corporale est, veluti fundus homo pecunia: nam ipsum ius successionis et ipsum ius utendi fruendi et ipsum ius obligationis incorporale est. eodem numero sunt et iura praediorum urbanorum et rusticorum, quae etiam servitutes vocantur.

Dig. 1.8.2pr.

Marcianus 3 inst.

Quaedam naturali iure communia sunt omnium, quaedam universitatis, quaedam nullius, pleraque singulorum, quae variis ex causis cuique adquiruntur.

Dig. 1.8.2.1

Marcianus 3 inst.

Et quidem naturali iure omnium communia sunt illa: aer, aqua profluens, et mare, et per hoc litora maris.

Dig. 1.8.3

Florus 6 inst.

Item lapilli, gemmae ceteraque, quae in litore invenimus, iure naturali nostra statim fiunt.

Dig. 1.8.4pr.

Marcianus 3 inst.

Nemo igitur ad litus maris accedere prohibetur piscandi causa, dum tamen ullius et aedificiis et monumentis abstineatur, quia non sunt iuris gentium sicut et mare: idque et divus pius piscatoribus formianis et capenatis rescripsit.

Dig. 1.8.4.1

Marcianus 3 inst.

Sed flumina paene omnia et portus publica sunt.

Dig. 1.8.5pr.

Gaius 2 rer. cott.

Riparum usus publicus est iure gentium sicut ipsius fluminis. itaque navem ad eas appellere, funes ex arboribus ibi natis religare, retia siccare et ex mare reducere, onus aliquid in his reponere cuilibet liberum est, sicuti per ipsum flumen navigare. sed proprietas illorum est, quorum praediis haerent: qua de causa arbores quoque in his natae eorundem sunt.

Dig. 1.8.5.1

Gaius 2 rer. cott.

In mare piscantibus liberum est casam in litore ponere, in qua se recipiant,

Dig. 1.8.6pr.

Marcianus 3 inst.

In tantum, ut et soli domini constituantur qui ibi aedificant, sed quamdiu aedificium manet: alioquin aedificio dilapso quasi iure postliminii revertitur locus in pristinam causam, et si alius in eodem loco aedificaverit, eius fiet.

Dig. 1.8.6.1

Marcianus 3 inst.

Universitatis sunt non singulorum veluti quae in civitatibus sunt theatra et stadia et similia et si qua alia sunt communia civitatium. ideoque nec servus communis civitatis singulorum pro parte intellegitur, sed universitatis et ideo tam contra civem quam pro eo posse servum civitatis torqueri divi fratres rescripserunt. ideo et libertus civitatis non habet necesse veniam edicti petere, si vocet in ius aliquem ex civibus.

Dig. 1.8.6.2

Marcianus 3 inst.

Sacrae res et religiosae et sanctae in nullius bonis sunt.

Dig. 1.8.6.3

Marcianus 3 inst.

Sacrae autem res sunt hae, quae publice consecratae sunt, non private: si quis ergo privatim sibi constituerit sacrum ^ sacrum constituerit^, sacrum non est, sed profanum. semel autem aede sacra facta etiam diruto aedificio locus sacer manet.

Dig. 1.8.6.4

Marcianus 3 inst.

Religiosum autem locum unusquisque sua voluntate facit, dum mortuum infert in locum suum. in commune autem sepulchrum etiam invitis ceteris licet inferre. sed et in alienum locum concedente domino licet inferre: et licet postea ratum habuerit quam illatus est mortuus, religiosus locus fit.

Dig. 1.8.6.5

Marcianus 3 inst.

Cenotaphium quoque magis placet locum esse religiosum, sicut testis in ea re est Vergilius.

Dig. 1.8.7

Ulpianus 25 ad ed.

Sed divi fratres contra rescripserunt.

Dig. 1.8.8pr.

Marcianus 4 reg.

Sanctum est, quod ab iniuria hominum defensum atque munitum est.

Dig. 1.8.8.1

Marcianus 4 reg.

Sanctum autem dictum est a sagminibus: sunt autem sagmina quaedam herbae, quas legati populi romani ferre solent, ne quis eos violaret, sicut legati graecorum ferunt ea quae vocantur cerycia.

Dig. 1.8.8.2

Marcianus 4 reg.

In municipiis quoque muros esse sanctos sabinum recte respondisse cassius refert, prohiberique oportere ne quid in his immitteretur.

Dig. 1.8.9pr.

Ulpianus 68 ad ed.

Sacra loca ea sunt, quae publice sunt dedicata, sive in civitate sint sive in agro.

Dig. 1.8.9.1

Ulpianus 68 ad ed.

Sciendum est locum publicum tunc sacrum fieri posse, cum princeps eum dedicavit vel dedicandi dedit potestatem.

Dig. 1.8.9.2

Ulpianus 68 ad ed.

Illud notandum est aliud esse sacrum locum, aliud sacrarium. sacer locus est locus consecratus, sacrarium est locus, in quo sacra reponuntur, quod etiam in aedificio privato esse potest, et solent, qui liberare eum locum religione volunt, sacra inde evocare.

Dig. 1.8.9.3

Ulpianus 68 ad ed.

Proprie dicimus sancta, quae neque sacra neque profana sunt, sed sanctione quadam confirmata: ut leges sanctae sunt, sanctione enim quadam sunt subnixae. quod enim sanctione quadam subnixum est, id sanctum est, etsi deo non sit consecratum: et interdum in sanctionibus adicitur, ut qui ibi aliquid commisit, capite puniatur.

Dig. 1.8.9.4

Ulpianus 68 ad ed.

Muros autem municipales nec reficere licet sine principis vel praesidis auctoritate nec aliquid eis coniungere vel superponere.

Dig. 1.8.9.5

Ulpianus 68 ad ed.

Res sacra non recipit aestimationem.

Dig. 1.8.10

Pomponius 6 ex plaut.

Aristo ait, sicut id, quod in mare aedificatum sit, fieret privatum, ita quod mari occupatum sit, fieri publicum.

Dig. 1.8.11

Pomponius 2 ex var. lect.

Si quis violaverit muros, capite punitur, sicuti si quis transcendet scalis admotis vel alia qualibet ratione. nam cives romanos alia quam per portas egredi non licet, cum illud hostile et abominandum sit: nam et romuli frater remus occisus traditur ob id, quod murum transcendere voluerit.

Dig. 1.9.0. De senatoribus.

Dig. 1.9.1pr.

Ulpianus 62 ad ed.

Consulari feminae utique consularem virum praeferendum nemo ambigit. sed vir praefectorius an consulari feminae praeferatur, videndum. putem praeferri, quia maior dignitas est in sexu virili.

Dig. 1.9.1.1

Ulpianus 62 ad ed.

Consulares autem feminas dicimus consularium uxores: adicit saturninus etiam matres, quod nec usquam relatum est nec umquam receptum.

Dig. 1.9.2

Marcellus 3 Dig.

Cassius longinus non putat ei permittendum, qui propter turpitudinem senatu motus nec restitutus est, iudicare vel testimonium dicere, quia lex iulia repetundarum hoc fieri vetat.

Dig. 1.9.3

Modestinus 6 reg.

Senatorem remotum senatu capite non minui, sed romae morari, divus severus et antoninus permiserunt.

Dig. 1.9.4

Pomponius 12 ex var. lect.

Qui indignus est inferiore ordine, indignior est superiore.

Dig. 1.9.5

Ulpianus 1 ad l. iul. et pap.

Senatoris filium accipere debemus non tantum eum qui naturalis est, verum adoptivum quoque: neque intererit, a quo vel qualiter adoptatus fuerit nec interest, iam in senatoria dignitate constitutus eum susceperit an ante dignitatem senatoriam.

Dig. 1.9.6pr.

Paulus 2 ad l. iul. et pap.

Senatoris filius est et is, quem in adoptionem accepit, quamdiu tamen in familia eius manet: emancipatus vero nomen filii emancipatione amittit.

Dig. 1.9.6.1

Paulus 2 ad l. iul. et pap.

A senatore in adoptionem filius datus ei qui inferioris dignitatis est, quasi senatoris filius videtur, quia non amittitur senatoria dignitas adoptione inferioris dignitatis, non magis quam ut consularis desinat esse.

Dig. 1.9.7pr.

Ulpianus 1 ad l. iul. et pap.

Emancipatum a patre senatore quasi senatoris filium haberi placet.

Dig. 1.9.7.1

Ulpianus 1 ad l. iul. et pap.

Item labeo scribit etiam eum, qui post mortem patris senatoris natus sit, quasi senatoris filium esse. sed eum, qui posteaquam pater eius de senatu motus est, concipitur et nascitur, proculus et pegasus opinantur non esse quasi senatoris filium, quorum sententia vera est: nec enim proprie senatoris filius dicetur is, cuius pater senatu motus est antequam iste nasceretur. si quis conceptus quidem sit, antequam pater eius senatu moveatur, natus autem post patris amissam dignitatem, magis est ut quasi senatoris filius intellegatur: tempus enim conceptionis spectandum plerisque placuit.

Dig. 1.9.7.2

Ulpianus 1 ad l. iul. et pap.

Si quis et patrem et avum habuerit senatorem, et quasi filius et quasi nepos senatoris intellegitur. sed si pater amiserit dignitatem ante conceptionem huius, quaeri poterit an, quamvis quasi senatoris filius non intellegatur, quasi nepos tamen intellegi debeat: et magis est ut debeat, ut avi potius ei dignitas prosit, quam obsit casus patris.

Dig. 1.9.8

Ulpianus 6 fideic.

Feminae nuptae clarissimis personis clarissimarum personarum appellatione continentur. clarissimarum feminarum nomine senatorum filiae, nisi quae viros clarissimos sortitae sunt, non habentur: feminis enim dignitatem clarissimam mariti tribuunt, parentes vero, donec plebeii nuptiis fuerint copulatae: tamdiu igitur clarissima femina erit, quamdiu senatori nupta est vel clarissimo aut separata ab eo alii inferioris dignitatis non nupsit.

Dig. 1.9.9

Papinianus 4 resp.

Filiam senatoris nuptias liberti secutam patris casus non facit uxorem: nam quaesita dignitas liberis propter casum patris remoti a senatu auferenda non est.

Dig. 1.9.10

Ulpianus 34 ad ed.

Liberos senatorum accipere debemus non tantum senatorum filios, verum omnes, qui geniti ex ipsis exve liberis eorum dicantur, sive naturales sive adoptivi sint liberi senatorum, ex quibus nati dicuntur. sed si ex filia senatoris natus sit, spectare debemus patris eius condicionem.

Dig. 1.9.11

Paulus 41 ad ed.

Senatores licet in urbe domicilium habere videantur, tamen et ibi, unde oriundi sunt, habere domicilium intelleguntur, quia dignitas domicilii adiectionem potius dedisse quam permutasse videtur.

Dig. 1.9.12pr.

Ulpianus 2 de cens.

Nuptae prius consulari viro impetrare solent a principe, quamvis perraro, ut nuptae iterum minoris dignitatis viro nihilominus in consulari maneant dignitate: ut scio antoninum augustum iuliae mamaeae consobrinae suae indulsisse.

Dig. 1.9.12.1

Ulpianus 2 de cens.

Senatores autem accipiendum est eos, qui a patriciis et consulibus usque ad omnes illustres viros descendunt, quia et hi soli in senatu sententiam dicere possunt.

Dig. 1.10.0. De officio consulis.

Dig. 1.10.1pr.

Ulpianus 2 de off. cons.

Officium consulis est consilium praebere manumittere volentibus.

Dig. 1.10.1.1

Ulpianus 2 de off. cons.

Consules et seorsum singuli manumittunt: sed non potest is, qui apud alterum nomina ediderit, apud alterum manumittere: separatae enim sunt manumissiones. sane si qua ex causa collega manumittere non poterit infirmitate vel aliqua iusta causa impeditus, collegam posse manumissionem expedire senatus censuit.

Dig. 1.10.1.2

Ulpianus 2 de off. cons.

Consules apud se servos suos manumittere posse nulla dubitatio est. sed si evenerit, ut minor viginti annis consul sit, apud se manumittere non poterit, cum ipse sit, qui ex senatus consulto consilii causam examinat: apud collegam vero causa probata potest.

Dig. 1.11.0. De officio praefecti praetorio.

Dig. 1.11.1pr.

Arcadius l.S. de off. praef. pr.

Breviter commemorare necesse est, unde constituendi praefectorum praetorio officii origo manaverit. ad vicem magistri equitum ppaefectus praetorio antiquitus institutos esse a quibusdam scriptoribus traditum est. nam cum apud veteres dictatoribus ad tempus summa potestas crederetur et magistros equitum sibi eligerent, qui adsociati participales curae ad militiae gratia secundam post eos potestatem gererent: regimentis rei publicae ad imperatores perpetuos translatis ad similitudinem magistrorum equitum praefecti praetorio a principibus electi sunt. data est plenior eis licentia ad disciplinae publicae emendationem.

Dig. 1.11.1.1

Arcadius l.S. de off. praef. pr.

His cunabulis praefectorum auctoritas initiata in tantum meruit augeri, ut appellari a praefectis praetorio non possit. nam cum ante quaesitum fuisset, an liceret a praefectis praetorio appellare et iure liceret et extarent exempla eorum qui provocaverint: postea publice sententia principali lecta appellandi facultas interdicta est. credidit enim princeps eos, qui ob singularem industriam explorata eorum fide et gravitate ad huius officii magnitudinem adhibentur, non aliter iudicaturos esse pro sapientia ac luce dignitatis suae, quam ipse foret iudicaturos.

Dig. 1.11.1.2

Arcadius l.S. de off. praef. pr.

Subnixi sunt etiam alio privilegio praefecti praetorio, ne a sententiis eorum minores aetate ab aliis magistratibus nisi ab ipsis praefectis praetorio restitui possint.

Dig. 1.12.0. De officio praefecti urbi.

Dig. 1.12.1pr.

Ulpianus l.S. de off. praef. urb.

Omnia omnino crimina praefectura urbis sibi vindicavit, nec tantum ea, quae intra urbem admittuntur, verum ea quoque, quae extra urbem intra italiam, epistula divi severi ad fabium cilonem praefectum urbi missa declaratur.

Dig. 1.12.1.1

Ulpianus l.S. de off. praef. urb.

Servos qui ad statuas confugerint, vel sua pecunia emptos ut manumittantur, de dominis querentes audiet.

Dig. 1.12.1.2

Ulpianus l.S. de off. praef. urb.

Sed et patronos egentes de suis libertis querentes audiet, maxime si aegros se esse dicant desiderentque a libertis exhiberi.

Dig. 1.12.1.3

Ulpianus l.S. de off. praef. urb.

Relegandi deportandique in insulam, quam imperator adsignaverit, licentiam habet.

Dig. 1.12.1.4

Ulpianus l.S. de off. praef. urb.

Initio eiusdem epistulae ita scriptum est: " cum urbem nostram fidei tuae commiserimus": quidquid igitur intra urbem admittitur, ad praefectum urbi videtur pertinere. sed et si quid intra centensimum miliarium admissum sit, ad praefectum urbi pertinet: si ultra ipsum lapidem, egressum est praefecti urbi notionem.

Dig. 1.12.1.5

Ulpianus l.S. de off. praef. urb.

Si quis servum suum adulterium commisisse dicat in uxorem suam, apud praefectum urbi erit audiendus.

Dig. 1.12.1.6

Ulpianus l.S. de off. praef. urb.

Sed et ex interdictis quod vi aut clam aut interdicto unde vi audire potest.

Dig. 1.12.1.7

Ulpianus l.S. de off. praef. urb.

Solent ad praefecturam urbis remitti etiam tutores sive curatores, qui male in tutela sive cura versati graviore animadversione indigent, quam ut sufficiat eis suspectorum infamia: quos probari poterit vel nummis datis tutelam occupasse, vel praemio accepto operam dedisse ut non idoneus tutor alicui daretur, vel consulto circa edendum patrimonium quantitatem minuisse, vel evidenti fraude pupilli bona alienasse.

Dig. 1.12.1.8

Ulpianus l.S. de off. praef. urb.

Quod autem dictum est, ut servos de dominis querentes praefectus audiat, sic accipiemus non accusantes dominos (hoc enim nequaquam servo permittendum est nisi ex causis receptis) sed si verecunde expostulent, si saevitiam, si duritiam, si famem, qua eos premant, si obscenitatem, in qua eos compulerint vel compellant, apud praefectum urbi exponant. hoc quoque officium praefecto urbi a divo severo datum est, ut mancipia tueatur ne prostituantur.

Dig. 1.12.1.9

Ulpianus l.S. de off. praef. urb.

Praeterea curare debebit praefectus urbi, ut nummularii probe se agant circa omne negotium suum et temperent his, quae sunt prohibita.

Dig. 1.12.1.10

Ulpianus l.S. de off. praef. urb.

Cum patronus contemni se a liberto dixerit vel contumeliosum sibi libertum queratur vel convicium se ab eo passum liberosque suos vel uxorem vel quid huic simile obicit: praefectus urbi adiri solet et pro modo querellae corrigere eum. aut comminari aut fustibus castigare aut ulterius procedere in poena eius solet: nam et puniendi plerumque sunt liberti. certe si se delatum a liberto vel conspirasse eum contra se cum inimicis doceat, etiam metalli poena in eum statui debet.

Dig. 1.12.1.11

Ulpianus l.S. de off. praef. urb.

Cura carnis omnis ut iusto pretio praebeatur ad curam praefecturae pertinet, et ideo et forum suarium sub ipsius cura est: sed et ceterorum pecorum sive armentorum quae ad huiusmodi praebitionem spectant ad ipsius curam pertinent.

Dig. 1.12.1.12

Ulpianus l.S. de off. praef. urb.

Quies quoque popularium et disciplina spectaculorum ad praefecti urbi curam pertinere videtur: et sane debet etiam dispositos milites stationarios habere ad tuendam popularium quietem et ad referendum sibi quid ubi agatur.

Dig. 1.12.1.13

Ulpianus l.S. de off. praef. urb.

Et urbe interdicere praefectus urbi et qua alia solitarum regionum potest, et negotiatione et professione et advocationibus et foro, et ad tempus et in perpetuum: interdicere poterit et spectaculis: et si quem releget ab italia, summovere eum etiam a provincia sua.

Dig. 1.12.1.14

Ulpianus l.S. de off. praef. urb.

Divus severus rescripsit eos etiam, qui illicitum collegium coisse dicuntur, apud praefectum urbi accusandos.

Dig. 1.12.2

Paulus l.S. de off. praef. urb.

Adiri etiam ab argentariis vel adversus eos ex epistula divi hadriani et in pecuniariis causis potest.

Dig. 1.12.3

Ulpianus 2 ad ed.

Praefectus urbi cum terminos urbis exierit, potestatem non habet: extra urbem potest iubere iudicare.

Dig. 1.13.0. De officio quaestoris.

Dig. 1.13.1pr.

Ulpianus l.S. de off. quaest.

Origo quaestoribus creandis antiquissima est et paene ante omnes magistratus. gracchanus denique iunius libro septimo de potestatibus etiam ipsum romulum et numam pompilium binos quaestores habuisse, quos ipsi non sua voce, sed populi suffragio crearent, refert. sed sicuti dubium est, an romulo et numa regnantibus quaestor fuerit, ita tullo hostilio rege quaestores fuisse certum est: et sane crebrior apud veteres opinio est tullum hostilium primum in rem publicam induxisse quaestores.

Dig. 1.13.1.1

Ulpianus l.S. de off. quaest.

Et a genere quaerendi quaestores initio dictos et iunius et trebatius et faenestella scribunt.

Dig. 1.13.1.2

Ulpianus l.S. de off. quaest.

Ex quaestoribus quidam solebant provincias sortiri ex senatus consulto, quod factum est decimo druso et porcina consulibus, sane non omnes quaestores provincias sortiebantur, verum excepti erant candidati principis: hi etenim solis libris principalibus in senatu legendis vacant.

Dig. 1.13.1.3

Ulpianus l.S. de off. quaest.

Hodieque optinuit indifferenter quaestores creari tam patricios quam plebeios: ingressus est enim et quasi primordium gerendorum honorum sententiaeque in senatu dicendae.

Dig. 1.13.1.4

Ulpianus l.S. de off. quaest.

Ex his, sicut dicimus, quidam sunt qui candidati principis dicebantur quique epistulas eius in senatu legunt.

Dig. 1.14.0. De officio praetorum.

Dig. 1.14.1

Ulpianus 26 ad sab.

Apud filium familias praetorem potest pater eius manumittere.

Dig. 1.14.2

Paulus 4 ad sab.

Sed etiam ipsum apud se emancipari vel in adoptionem dari placet.

Dig. 1.14.3

Ulpianus 38 ad sab.

Barbarius philippus cum servus fugitivus esset, romae praeturam petiit et praetor designatus est. sed nihil ei servitutem obstetisse ait pomponius, quasi praetor non fuerit: atquin verum est praetura eum functum. et tamen videamus: si servus quamdiu latuit, dignitate praetoria functus sit, quid dicemus? quae edixit, quae decrevit, nullius fore momenti? an fore propter utilitatem eorum, qui apud eum egerunt vel lege vel quo alio iure? et verum puto nihil eorum reprobari: hoc enim humanius est: cum etiam potuit populus romanus servo decernere hanc potestatem, sed et si scisset servum esse, liberum effecisset. quod ius multo magis in imperatore observandum est.

Dig. 1.14.4

Ulpianus 1 de omn. trib.

Praetor neque tutorem neque specialem iudicem ipse se dare potest.

Dig. 1.15.0. De officio praefecti vigilum.

Dig. 1.15.1

Paulus l.S. de off. praef. vig.

Apud vetustiores incendiis arcendis triumviri praeerant, qui ab eo, quod excubias agebant nocturni dicti sunt: interveniebant nonnumquam et aediles et tribuni plebis. erant autem familia publica circa portam et muros disposita, unde si opus esset evocabatur: fuerant et privatae familiae, quae incendia vel mercede vel gratia extinguerent, deinde divus augustus maluit per se huic rei consuli.

Dig. 1.15.2

Ulpianus l.S. de off. praef. vig.

Pluribus uno die incendiis exortis:

Dig. 1.15.3pr.

Paulus l.S. de off. praef. vig.

Nam salutem rei publicae tueri nulli magis credidit convenire nec alium sufficere ei rei, quam caesarem. itaque septem cohortes oportunis locis constituit, ut binas regiones urbis unaquaeque cohors tueatur, praepositis eis tribunis et super omnes spectabili viro qui praefectus vigilum appellatur.

Dig. 1.15.3.1

Paulus l.S. de off. praef. vig.

Cognoscit praefectus vigilum de incendiariis effractoribus furibus raptoribus receptatoribus, nisi si qua tam atrox tamque famosa persona sit, ut praefecto urbi remittatur. et quia plerumque incendia culpa fiunt inhabitantium, aut fustibus castigat eos qui neglegentius ignem habuerunt, aut severa interlocutione comminatus fustium castigationem remittit.

Dig. 1.15.3.2

Paulus l.S. de off. praef. vig.

Effracturae fiunt plerumque in insulis in horreisque, ubi homines pretiosissimam partem fortunarum suarum reponunt, cum vel cella effringitur vel armarium vel arca: et custodes plerumque puniuntur, et ita divus antoninus erucio claro rescripsit. ait enim posse eum horreis effractis quaestionem habere de servis custodibus, licet in illis ipsius imperatoris portio esset.

Dig. 1.15.3.3

Paulus l.S. de off. praef. vig.

Sciendum est autem praefectum vigilum per totam noctem vigilare debere et coerrare calciatum cum hamis et dolabris, ut curam adhibeant omnes inquilinos admonere, ne neglegentia aliqua incendii casus oriatur.

Dig. 1.15.3.4

Paulus l.S. de off. praef. vig.

Praeterea ut aquam unusquisque inquilinus in cenaculo habeat, iubetur admonere.

Dig. 1.15.3.5

Paulus l.S. de off. praef. vig.

Adversus capsarios quoque, qui mercede servanda in balineis vestimenta suscipiunt, iudex est constitutus, ut, si quid in servandis vestimentis fraudulenter admiserint, ipse cognoscat.

Dig. 1.15.4

Ulpianus l.S. de off. praef. urb.

Imperatores severus et antoninus iunio rufino praefecto vigilum ita rescripserunt: " insularios et eos, qui neglegenter ignes apud se habuerint, potes fustibus vel flagellis caedi iubere: eos autem, qui dolo fecisse incendium convincentur, ad fabium cilonem praefectum urbi amicum nostrum remittes: fugitivos conquirere eosque dominis reddere debes. "

Dig. 1.16.0. De officio proconsulis et legati.

Dig. 1.16.1

Ulpianus 1 disp.

Proconsul ubique quidem proconsularia insignia habet statim atque urbem egressus est: potestatem autem non exercet nisi in ea provincia sola, quae ei decreta est.

Dig. 1.16.2pr.

Marcianus 1 inst.

Omnes proconsules statim quam urbem egressi fuerint habent iurisdictionem, sed non contentiosam, sed voluntariam: ut ecce manumitti apud eos possunt tam liberi quam servi et adoptiones fieri.

Dig. 1.16.2.1

Marcianus 1 inst.

Apud legatum vero proconsulis nemo manumittere potest, quia non habet iurisdictionem talem.

Dig. 1.16.3

Ulpianus 26 ad sab.

Nec adoptare potest: omnino enim non est apud eum legis actio.

Dig. 1.16.4pr.

Ulpianus 1 de off. procons.

Observare autem proconsulem oportet, ne in hospitiis praebendis oneret provinciam, ut imperator noster cum patre aufidio severiano rescripsit.

Dig. 1.16.4.1

Ulpianus 1 de off. procons.

Nemo proconsulum stratores suos habere potest, sed vice eorum milites ministerio in provinciis funguntur.

Dig. 1.16.4.2

Ulpianus 1 de off. procons.

Proficisci autem proconsulem melius quidem est sine uxore: sed et cum uxore potest, dummodo sciat senatum cotta et messala consulibus censuisse futurum, ut si quid uxores eorum qui ad officia proficiscuntur deliquerint, ab ipsis ratio et vindicta exigatur.

Dig. 1.16.4.3

Ulpianus 1 de off. procons.

Antequam vero fines provinciae decretae sibi proconsul ingressus sit, edictum debet de adventu suo mittere continens commendationem aliquam sui, si qua ei familiaritas sit cum provincialibus vel coniunctio, et maxime excusantis, ne publice vel privatim occurrant ei: esse enim congruens, ut unusquisque in sua patria eum exciperet.

Dig. 1.16.4.4

Ulpianus 1 de off. procons.

Recte autem et ordine faciet, si edictum decessori suo miserit significetque, qua die fines sit ingressurus: plerumque enim incerta haec et inopinata turbant provinciales et actus impediunt.

Dig. 1.16.4.5

Ulpianus 1 de off. procons.

Ingressum etiam hoc eum observare oportet, ut per eam partem provinciam ingrediatur, per quam ingredi moris est, et quas graeci epidymias appellant sive kataploun observare, in quam primum civitatem veniat vel applicet: magni enim facient provinciales servari sibi consuetudinem istam et huiusmodi praerogativas. quaedam provinciae etiam hoc habent, ut per mare in eam provinciam proconsul veniat, ut asia, scilicet usque adeo, ut imperator noster antoninus augustus ad desideria asianorum rescripsit proconsuli necessitatem impositam per mare asiam applicare kai twn mytropolewn efeson primam attingere.

Dig. 1.16.4.6

Ulpianus 1 de off. procons.

Post haec ingressus provinciam mandare iurisdictionem legato suo debet nec hoc ante facere, quam fuerit provinciam ingressus; est enim perquam absurdum, antequam ipse iurisdictionem nanciscatur (nec enim prius ei competit, quam in eam provinciam venerit) alii eam mandare, quam non habet. sed si et ante fecerit et ingressus provinciam in eadem voluntate fuerit, credendum est videri legatum habere iurisdictionem, non exinde ex quo mandata est, sed ex quo provinciam proconsul ingressus est.

Dig. 1.16.5

Papinianus 1 quaest.

Aliquando mandare iurisdictionem proconsul potest, etsi nondum in provinciam pervenerit. quid enim si necessariam moram in itinere patiatur, maturissime autem legatus in provinciam perventurus sit?

Dig. 1.16.6pr.

Ulpianus 1 de off. procons.

Solent etiam custodiarum cognitionem mandare legatis, scilicet ut praeauditas custodias ad se remittant, ut innocentem ipse liberet. sed hoc genus mandati extraordinarium est: nec enim potest quis gladii potestatem sibi datam vel cuius alterius coercitionis ad alium transferre, nec liberandi igitur reos ius, cum accusari apud eum non possint.

Dig. 1.16.6.1

Ulpianus 1 de off. procons.

Sicut autem mandare iurisdictionem vel non mandare est in arbitrio proconsulis, ita adimere mandatam iurisdictionem licet quidem proconsuli, non autem debet inconsulto principe hoc facere.

Dig. 1.16.6.2

Ulpianus 1 de off. procons.

Legatos non oportet principem consulere, sed proconsulem suum, et is ad consultationes legatorum debebit respondere.

Dig. 1.16.6.3

Ulpianus 1 de off. procons.

Non vero in totum xeniis abstinere debebit proconsul, sed modum adicere, ut neque morose in totum abstineat neque avare modum xeniorum excedat. quam rem divus severus et imperator antoninus elegantissime epistula sunt moderati, cuius epistulae verba haec sunt: " quantum ad xenia pertinet, audi quid sentimus: vetus proverbium est: oute panta oute pantote oute para pantwn . nam valde inhumanum est a nemine accipere, sed passim vilissimum est et omnia avarissimum. " et quod mandatis continetur, ne donum vel munus ipse proconsul vel qui in alio officio erit accipiat ematve quid nisi victus cottidiani causa, ad xeniola non pertinet, sed ad ea quae edulium excedant usum. sed nec xenia producenda sunt ad munerum qualitatem.

Dig. 1.16.7pr.

Ulpianus 2 de off. procons.

Si in aliam quam celebrem civitatem vel provinciae caput advenerit, pati debet commendari sibi civitatem laudesque suas non gravate audire, cum honori suo provinciales id vindicent: et ferias secundum mores et consuetudinem quae retro optinuit dare.

Dig. 1.16.7.1

Ulpianus 2 de off. procons.

Aedes sacras et opera publica circumire inspiciendi gratia, an sarta tectaque sint vel an aliqua refectione indigeant, et si qua coepta sunt ut consummentur, prout vires eius rei publicae permittunt, curare debet curatoresque operum diligentes sollemniter praeponere, ministeria quoque militaria, si opus fuerit, ad curatores adiuvandos dare.

Dig. 1.16.7.2

Ulpianus 2 de off. procons.

Cum plenissimam autem iurisdictionem proconsul habeat, omnium partes, qui romae vel quasi magistratus vel extra ordinem ius dicunt, ad ipsum pertinent:

Dig. 1.16.8

Ulpianus 39 ad ed.

Et ideo maius imperium in ea provincia habet omnibus post principem.

Dig. 1.16.9pr.

Ulpianus 1 de off. procons.

Nec quicquam est in provincia, quod non per ipsum expediatur. sane si fiscalis pecuniaria causa sit, quae ad procuratorem principis respicit, melius fecerit, si abstineat.

Dig. 1.16.9.1

Ulpianus 1 de off. procons.

Ubi decretum necessarium est, per libellum id expedire proconsul non poterit: omnia enim, quaecumque causae cognitionem desiderant, per libellum non possunt expediri.

Dig. 1.16.9.2

Ulpianus 1 de off. procons.

Circa advocatos patientem esse proconsulem oportet, sed cum ingenio, ne contemptibilis videatur, nec adeo dissimulare, si quos causarum concinnatores vel redemptores deprehendat, eosque solos pati postulare, quibus per edictum eius postulare permittitur.

Dig. 1.16.9.3

Ulpianus 1 de off. procons.

De plano autem proconsul potest expedire haec: ut obsequium parentibus et patronis liberisque patronum exhiberi iubeat: comminari etiam et terrere filium a patre oblatum, qui non ut oportet conversari dicatur, poterit de plano: similiter et libertum non obsequentem emendare aut verbis aut fustium castigatione.

Dig. 1.16.9.4

Ulpianus 1 de off. procons.

Observare itaque eum oportet, ut sit ordo aliquis postulationum, scilicet ut omnium desideria audiantur, ne forte dum honori postulantium datur vel improbitati ceditur, mediocres desideria sua non proferant, qui aut omnino non adhibuerunt, aut minus frequentes neque in aliqua dignitate positos advocatos sibi prospexerunt.

Dig. 1.16.9.5

Ulpianus 1 de off. procons.

Advocatos quoque petentibus debebit indulgere plerumque: feminis vel pupillis vel alias debilibus vel his, qui suae mentis non sunt, si quis eis petat: vel si nemo sit qui petat, ultro eis dare debebit. sed si qui per potentiam adversarii non invenire se advocatum dicat, aeque oportebit ei advocatum dare. ceterum oprimi aliquem per adversarii sui potentiam non oportet: hoc enim etiam ad invidiam eius qui provinciae praeest spectat, si quis tam impotenter se gerat, ut omnes metuant adversus eum advocationem suscipere.

Dig. 1.16.9.6

Ulpianus 1 de off. procons.

Quae etiam omnium praesidum communia sunt et debent et ab his observari.

Dig. 1.16.10pr.

Ulpianus 10 de off. procons.

Meminisse oportebit usque ad adventum successoris omnia debere proconsulem agere, cum sit unus proconsulatus et utilitas provinciae exigat esse aliquem, per quem negotia sua provinciales explicent: ergo in adventum successoris debebit ius dicere.

Dig. 1.16.10.1

Ulpianus 10 de off. procons.

Legatum suum ne ante se de provincia dimittat, et lege iulia repetundarum et rescripto divi hadriani ad calpurnium rufum proconsulem achaiae admonetur.

Dig. 1.16.11

Venonius 2 de off. procons.

Si quid erit quod maiorem animadversionem exigat, reicere legatus apud proconsulem debet: neque enim animadvertendi coercendi vel atrociter verberandi ius habet.

Dig. 1.16.12

Paulus 2 ad ed.

Legatus mandata sibi iurisdictione iudicis.

Dig. 1.16.13

Pomponius 10 ad q. muc.

Legati proconsulis nihil proprium habent, nisi a proconsule eis mandata fuerit iurisdictio.

Dig. 1.16.14

Ulpianus 20 ad l. iul. et pap.

Proconsules non amplius quam sex fascibus utuntur.

Dig. 1.16.15

Licinius 3 reg.

Et legati proconsulum tutores dare possunt.

Dig. 1.16.16

Ulpianus 2 ad ed.

Proconsul portam romae ingressus deponit imperium.

Dig. 1.17.0. De officio praefecti augustalis.

Dig. 1.17.1

Ulpianus 15 ad ed.

Praefectus aegypti non prius deponit praefecturam et imperium, quod ad similitudinem proconsulis lege sub augusto ei datum est, quam alexandriam ingressus sit successor eius, licet in provinciam venerit: et ita mandatis eius continetur.

Dig. 1.18.0. De officio praesidis.

Dig. 1.18.1

Macer 1 de off. praesid.

Praesidis nomen generale est eoque et proconsules et legati caesaris et omnes provincias regentes, licet senatores sint, praesides appellantur: proconsulis appellatio specialis est.

Dig. 1.18.2

Ulpianus 26 ad sab.

Praeses apud se adoptare potest, quemadmodum et emancipare filium et manumittere servum potest.

Dig. 1.18.3

Paulus 13 ad sab.

Praeses provinciae in suae provinciae homines tantum imperium habet, et hoc dum in provincia est: nam si excesserit, privatus est. habet interdum imperium et adversus extraneos homines, si quid manu commiserint: nam et in mandatis principum est, ut curet is, qui provinciae praeest, malis hominibus provinciam purgare, nec distinguuntur unde sint.

Dig. 1.18.4

Ulpianus 39 ad ed.

Praeses provinciae maius imperium in ea provincia habet omnibus post principem.

Dig. 1.18.5

Ulpianus 1 de omn. trib.

Praeses provinciae non magis tutorem quam specialem iudicem ipse se dare potest.

Dig. 1.18.6pr.

Ulpianus 1 opin.

Illicitas exactiones et violentia factas, et extortas metu venditiones et cautiones vel sine pretii numeratione prohibeat praeses provinciae. item ne quis iniquum lucrum aut damnum sentiat, praeses provinciae provideat.

Dig. 1.18.6.1

Ulpianus 1 opin.

Veritas rerum erroribus gestarum non vitiatur: et ideo praeses provinciae id sequatur quod convenit eum ex fide eorum quae probabuntur.

Dig. 1.18.6.2

Ulpianus 1 opin.

Ne potentiores viri humiliores iniuriis adficiant neve defensores eorum calumniosis criminibus insectentur innocentes, ad religionem praesidis provinciae pertinet.

Dig. 1.18.6.3

Ulpianus 1 opin.

Illicita ministeria sub praetextu adiuvantium militares viros ad concutiendos homines procedentia prohibere et deprehensa coercere praeses provinciae curet, et sub specie tributorum illicitas exactiones fieri prohibeat.

Dig. 1.18.6.4

Ulpianus 1 opin.

Neque licita negotiatione aliquos prohiberi neque prohibita exerceri neque innocentibus poenas irrogari ad sollicitudinem suam praeses provinciae revocet.

Dig. 1.18.6.5

Ulpianus 1 opin.

Ne tenuis vitae homines sub praetextu adventus officiorum vel militum, lumine unico vel brevi suppellectili ad aliorum usus translatis, iniuriis vexentur, praeses provinciae providebit.

Dig. 1.18.6.6

Ulpianus 1 opin.

Ne quid sub nomine militum, quod ad utilitates eorum in commune non pertinet, a quibusdam propria sibi commoda inique vindicantibus committatur, praeses provinciae provideat.

Dig. 1.18.6.7

Ulpianus 1 opin.

Sicuti medico imputari eventus mortalitatis non debet, ita quod per imperitiam commisit, imputari ei debet: praetextu humanae fragilitatis delictum decipientis in periculo homines innoxium esse non debet.

Dig. 1.18.6.8

Ulpianus 1 opin.

Qui universas provincias regunt, ius gladii habent et in metallum dandi potestas eis permissa est.

Dig. 1.18.6.9

Ulpianus 1 opin.

Praeses provinciae si multam quam irrogavit ex praesentibus facultatibus eorum, quibus eam dixit, redigi non posse deprehenderit: necessitate solutionis moderetur reprehensa exactorum illicita avaritia. remissa propter inopiam multa a provincias regentibus exigi non debet.

Dig. 1.18.7

Ulpianus 3 opin.

Praeses provinciae inspectis aedificiis dominos eorum causa cognita reficere ea compellat et adversus detractantem competenti remedio deformitati auxilium ferat.

Dig. 1.18.8

Iulianus 1 Dig.

Saepe audivi caesarem nostrum dicentem hac rescriptione: " eum qui provinciae praeest adire potes" non imponi necessitatem proconsuli vel legato eius vel praesidi provinciae suscipiendae cognitionis, sed eum aestimare debere, ipse cognoscere an iudicem dare debeat.

Dig. 1.18.9

Callistratus 1 de cogn.

Generaliter quotiens princeps ad praesides provinciarum remittit negotia per rescriptiones, veluti " eum qui provinciae praeest adire poteris" vel cum hac adiectione " is aestimabit, quid sit partium suarum", non imponitur necessitas proconsuli vel legato suscipiendae cognitionis, quamvis non sit adiectum " is aestimabit quid sit partium suarum": sed is aestimare debet, utrum ipse cognoscat an iudicem dare debeat.

Dig. 1.18.10

Hermogenianus 2 iuris epit.

Ex omnibus causis, de quibus vel praefectus urbi vel praefectus praetorio itemque consules et praetores ceterique romae cognoscunt, correctorum et praesidum provinciarum est notio.

Dig. 1.18.11

Marcianus 3 inst.

Omnia enim provincialia desideria, quae romae varios iudices habent, ad officium praesidum pertinent.

Dig. 1.18.12

Proculus 4 epist.

Sed licet is, qui provinciae praeest, omnium romae magistratuum vice et officio fungi debeat, non tamen spectandum est, quid romae factum est, quam quid fieri debeat.

Dig. 1.18.13pr.

Ulpianus 7 de off. procons.

Congruit bono et gravi praesidi curare, ut pacata atque quieta provincia sit quam regit. quod non difficile optinebit, si sollicite agat, ut malis hominibus provincia careat eosque conquirat: nam et sacrilegos latrones plagiarios fures conquirere debet et prout quisque deliquerit, in eum animadvertere, receptoresque eorum coercere, sine quibus latro diutius latere non potest.

Dig. 1.18.13.1

Ulpianus 7 de off. procons.

Furiosis, si non possint per necessarios contineri, eo remedio per praesidem obviam eundum est: scilicet ut carcere contineantur. et ita divus pius rescripsit. sane excutiendum divi fratres putaverunt in persona eius, qui parricidium admiserat, utrum simulato furore facinus admisisset an vero re vera compos mentis non esset, ut si simulasset, plecteretur, si fureret, in carcere contineretur.

Dig. 1.18.14

Macer 2 de iudic. publ.

Divus marcus et commodus scapulae tertullo rescripserunt in haec verba: " si tibi liquido compertum est aelium priscum in eo furore esse, ut continua mentis alienatione omni intellectu careat, nec subest ulla suspicio matrem ab eo simulatione dementiae occisam: potes de modo poenae eius dissimulare, cum satis furore ipso puniatur. et tamen diligentius custodiendus erit ac, si putabis, etiam vinculo coercendus, quoniam tam ad poenam quam ad tutelam eius et securitatem proximorum pertinebit. si vero, ut plerumque adsolet, intervallis quibusdam sensu saniore, non forte eo momento scelus admiserit nec morbo eius danda est venia, diligenter explorabis et si quid tale compereris, consules nos, ut aestimemus, an per immanitatem facinoris, si, cum posset videri sentire, commiserit, supplicio adficiendus sit. cum autem ex litteris tuis cognoverimus tali eum loco atque ordine esse, ut a suis vel etiam in propria villa custodiatur: recte facturus nobis videris, si eos, a quibus illo tempore observatus esset, vocaveris et causam tantae neglegentiae excusseris et in unumquemque eorum, prout tibi levari vel onerari culpa eius videbitur, constitueris. nam custodes furiosis non ad hoc solum adhibentur, ne quid perniciosius ipsi in se moliantur, sed ne aliis quoque exitio sint: quod si committatur, non immerito culpae eorum adscribendum est, qui neglegentiores in officio suo fuerint. "

Dig. 1.18.15

Marcianus 1 de iudic. publ.

Illud observandum est, ne qui provinciam regit fines eius excedat nisi voti solvendi causa, dum tamen abnoctare ei non liceat.

Dig. 1.18.16

Macer 1 de off. praesid.

Senatus consulto cavetur, ut de his, quae provincias regentes, comites aut libertini eorum, antequam in provinciam venerint, contraxerunt, parcissime ius dicatur, ita ut actiones, quae ob eam causam institutae non essent, posteaquam quis eorum ea provincia excesserit, restituerentur. si quid tamen invito accidit, veluti si iniuriam aut furtum passus est, hactenus ei ius dicendum est, ut litem contestetur resque ablata exhibeatur et deponatur aut sisti exhiberive satisdato promittatur.

Dig. 1.18.17

Celsus 3 Dig.

Si forte praeses provinciae manumiserit vel tutorem dederit, priusquam cognoverit successorem advenisse, erunt haec rata.

Dig. 1.18.18

Modestinus 5 reg.

Plebi scito continetur, ut ne quis praesidum munus donum caperet nisi esculentum potulentumve, quod intra dies proximos prodigatur.

Dig. 1.18.19pr.

Callistratus 1 de cogn.

Observandum est ius reddenti, ut in adeundo quidem facilem se praebeat, sed contemni non patiatur. unde mandatis adicitur, ne praesides provinciarum in ulteriorem familiaritatem provinciales admittant: nam ex conversatione aequali contemptio dignitatis nascitur.

Dig. 1.18.19.1

Callistratus 1 de cogn.

Sed et in cognoscendo neque excandescere adversus eos, quos malos putat, neque precibus calamitosorum inlacrimari oportet: id enim non est constantis et recti iudicis, cuius animi motum vultus detegit. et summatim ita ius reddi debet, ut auctoritatem dignitatis ingenio suo augeat.

Dig. 1.18.20

Papinianus 1 resp.

Legatus caesaris, id est praeses vel corrector provinciae, abdicando se non amittit imperium.

Dig. 1.18.21

Paulus l.S. de off. adsess.

Praeses cum cognoscat de servo corrupto vel ancilla devirginata vel servo stuprato, si actor rerum agentis corruptus esse dicetur vel eiusmodi homo, ut non ad solam iacturam adversus substantiam, sed ad totius domus eversionem pertineat: severissime debet animadvertere.

Dig. 1.19.0. De officio procuratoris caesaris vel rationalis.

Dig. 1.19.1pr.

Ulpianus 16 ad ed.

Quae acta gestaque sunt a procuratore caesaris, sic ab eo comprobantur, atque si a caesare gesta sunt.

Dig. 1.19.1.1

Ulpianus 16 ad ed.

Si rem caesaris procurator eius quasi rem propriam tradat, non puto eum dominium transferre: tunc enim transfert, cum negotium caesaris gerens consensu ipsius tradit. denique si venditionis vel donationis vel transactionis causa quid agat, nihil agit: non enim alienare ei rem caesaris, sed diligenter gerere commissum est.

Dig. 1.19.1.2

Ulpianus 16 ad ed.

Est hoc praecipuum in procuratore caesaris, quod et eius iussu servus caesaris adire hereditatem potest et, si caesar heres instituatur, miscendo se opulentae hereditati procurator heredem caesarem facit.

Dig. 1.19.2

Paulus 5 sent.

Quod si ea bona, ex quibus imperator heres institutus est, solvendo non sint, re perspecta consulitur imperator: heredis enim instituti in adeundis vel repudiandis huiusmodi hereditatibus voluntas exploranda est.

Dig. 1.19.3pr.

Callistratus 6 de cogn.

Curatores caesaris ius deportandi non habent, quia huius poenae constituendae ius non habent.

Dig. 1.19.3.1

Callistratus 6 de cogn.

Si tamen quasi tumultuosum vel iniuriosum adversus colonos caesaris prohibuerint in praedia caesariana accedere, abstinere debebit idque divus pius iulio rescripsit.

Dig. 1.19.3.2

Callistratus 6 de cogn.

Deinde neque redire cuiquam permittere possunt idque imperatores nostri severus et antoninus ad libellum hermiae rescripserunt.

Dig. 1.20.0. De officio iuridici.

Dig. 1.20.1

Ulpianus 26 ad sab.

Adoptare quis apud iuridicum potest, quia data est ei legis actio.

Dig. 1.20.2

Ulpianus 39 ad sab.

Iuridico, qui alexandriae agit, datio tutoris constitutione divi marci concessa est.

Dig. 1.21.0. De officio eius, cui mandata est iurisdictio.

Dig. 1.21.1pr.

Papinianus 1 quaest.

Quaecumque specialiter lege vel senatus consulto vel constitutione principum tribuuntur, mandata iurisdictione non transferuntur: quae vero iure magistratus competunt, mandari possunt. et ideo videntur errare magistratus, qui cum publici iudicii habeant exercitionem lege vel senatus consulto delegatam, veluti legis iuliae de adulteriis et si quae sunt aliae similes, iurisdictionem suam mandant. huius rei fortissimum argumentum, quod lege iulia de vi nominatim cavetur, ut is, cui optigerit exercitio, possit eam si proficiscatur mandare: non aliter itaque mandare poterit, quam si abesse coeperit, cum alias iurisdictio etiam a praesente mandetur. et si a familia dominus occisus esse dicetur, cognitionem praetor, quam ex senatus consulto habet, mandare non poterit.

Dig. 1.21.1.1

Papinianus 1 quaest.

Qui mandatam iurisdictionem suscepit, proprium nihil habet, sed eius, qui mandavit, iurisdictione utitur. verius est enim more maiorum iurisdictionem quidem transferri, sed merum imperium quod lege datur non posse transire: quare nemo dicit animadversionem legatum proconsulis habere mandata iurisdictione. paulus notat: et imperium, quod iurisdictioni cohaeret, mandata iurisdictione transire verius est.

Dig. 1.21.2pr.

Ulpianus 3 de omn. trib.

Mandata iurisdictione a praeside consilium non potest exercere is, cui mandatur.

Dig. 1.21.2.1

Ulpianus 3 de omn. trib.

Si tutores vel curatores velint praedia vendere, causa cognita id praetor vel praeses permittat: quod si mandaverit iurisdictionem, nequaquam poterit mandata iurisdictione eam quaestionem transferre.

Dig. 1.21.3

Iulianus 5 Dig.

Et si praetor sit is, qui alienam iurisdictionem exsequitur, non tamen pro suo imperio agit, sed pro eo cuius mandatu ius dicit, quotiens partibus eius fungitur.

Dig. 1.21.4pr.

Macer 1 de off. praesid.

Cognitio de suspectis tutoribus mandari potest. immo etiam ex mandata generali iurisdictione propter utilitatem pupillorum eam contingere constitutum est in haec verba: " imperatores severus et antoninus braduae proconsuli africae. cum propriam iurisdictionem legatis tuis dederis, consequens est, ut etiam de suspectis tutoribus possint cognoscere. "

Dig. 1.21.4.1

Macer 1 de off. praesid.

Ut possessio bonorum detur, vel si cui damni infecti non caveatur ut is possidere iubeatur, aut ventris nomine in possessionem mulier, vel is cui legatum est legatorum servandorum causa in possessionem mittatur, mandari potest.

Dig. 1.21.5pr.

Paulus 18 ad plaut.

Mandatam sibi iurisdictionem mandare alteri non posse manifestum est.

Dig. 1.21.5.1

Paulus 18 ad plaut.

Mandata iurisdictione privato etiam imperium quod non est merum videtur mandari, quia iurisdictio sine modica coercitione nulla est.

Dig. 1.22.0. De officio adsessorum.

Dig. 1.22.1

Paulus l.S. de off. adsess.

Omne officium adsessoris, quo iuris studiosi partibus suis funguntur, in his fere causis constat: in cognitionibus postulationibus libellis edictis decretis epistulis.

Dig. 1.22.2

Marcianus 1 de iudic. publ.

Liberti adsidere possunt. infames autem licet non prohibeantur legibus adsidere, attamen arbitror, ut aliquo quoque decreto principali refertur constitutum, non posse officio adsessoris fungi.

Dig. 1.22.3

Macer 1 de off. praesid.

Si eadem provincia postea divisa sub duobus praesidibus constituta est, velut germania, mysia, ex altera ortus in altera adsidebit nec videtur in sua provincia adsedisse.

Dig. 1.22.4

Papinianus 4 resp.

Diem functo legato caesaris salarium comitibus residui temporis, quod a legatis praestitutum est, debetur, modo si non postea comites cum aliis eodem tempore fuerunt. diversum in eo servatur, qui successorem ante tempus accepit.

Dig. 1.22.5

Paulus 1 sent.

Consiliari eo tempore quo adsidet negotia tractare in suum quidem auditorium nullo modo concessum est, in alienum autem non prohibetur.

Dig. 1.22.6

Papinianus 1 resp.

In consilium curatoris rei publicae vir eiusdem civitatis adsidere non prohibetur, quia publico salario non fruitur.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER SECUNDUS

Dig. 2.1.0. De iurisdictione.
Dig. 2.2.0. Quod quisque iuris in alterum statuerit, ut ipse eodem iure utatur.
Dig. 2.3.0. I quis ius dicenti non obtemperaverit.
Dig. 2.4.0. De in ius vocando.
Dig. 2.5.0. Si quis in ius vocatus non ierit sive quis eum vocaverit, quem ex edicto non debuerit.
Dig. 2.6.0. In ius vocati ut eant aut satis vel cautum dent.
Dig. 2.7.0. Ne quis eum qui in ius vocabitur vi eximat.
Dig. 2.8.0. Qui satisdare cogantur vel iurato promittant vel suae promissioni committantur.
Dig. 2.9.0. Si ex noxali causa agatur, quemadmodum caveatur.
Dig. 2.10.0. De eo per quem factum erit quominus quis in iudicio sistat.
Dig. 2.11.0. Si quis cautionibus in iudicio sistendi causa factis non obtemperaverit.
Dig. 2.12.0. De feriis et dilationibus et diversis temporibus.
Dig. 2.13.0. De edendo.
Dig. 2.14.0. De pactis.
Dig. 2.15.0. De transactionibus.

Dig. 2.1.0. De iurisdictione.

Dig. 2.1.1

Ulpianus 1 reg.

Ius dicentis officium latissimum est: nam et bonorum possessionem dare potest et in possessionem mittere, pupillis non habentibus tutores constituere, iudices litigantibus dare.

Dig. 2.1.2

Iavolenus 6 ex cass.

Cui iurisdictio data est, ea quoque concessa esse videntur, sine quibus iurisdictio explicari non potuit.

Dig. 2.1.3

Ulpianus 2 de off. quaest.

Imperium aut merum aut mixtum est. merum est imperium habere gladii potestatem ad animadvertendum facinorosos homines, quod etiam potestas appellatur. mixtum est imperium, cui etiam iurisdictio inest, quod in danda bonorum possessione consistit. iurisdictio est etiam iudicis dandi licentia.

Dig. 2.1.4

Ulpianus 1 ad ed.

Iubere caveri praetoria stipulatione et in possessionem mittere imperii magis est quam iurisdictionis.

Dig. 2.1.5

Iulianus 1 Dig.

More maiorum ita comparatum est, ut is demum iurisdictionem mandare possit, qui eam suo iure, non alieno beneficio habet:

Dig. 2.1.6

Paulus 2 ad ed.

Et quia nec principaliter ei iurisdictio data est nec ipsa lex defert, sed confirmat mandatam iurisdictionem. ideoque si is, qui mandavit iurisdictionem, decesserit, antequam res ab eo, cui mandata est iurisdictio, geri coeperit, solvi mandatum labeo ait, sicut in reliquis causis.

Dig. 2.1.7pr.

Ulpianus 3 ad ed.

Si quis id, quod iurisdictionis perpetuae causa, non quod prout res incidit, in albo vel in charta vel in alia materia propositum erit, dolo malo corruperit: datur in eum quingentorum aureorum iudicium, quod populare est.

Dig. 2.1.7.1

Ulpianus 3 ad ed.

Servi quoque et filii familias verbis edicti continentur: sed et utrumque sexum praetor complexus est.

Dig. 2.1.7.2

Ulpianus 3 ad ed.

Quod si dum proponitur vel ante propositionem quis corruperit, edicti quidem verba cessabunt, pomponius autem ait sententiam edicti porrigendam esse ad haec.

Dig. 2.1.7.3

Ulpianus 3 ad ed.

In servos autem, si non defenduntur a dominis, et eos qui inopia laborant corpus torquendum est.

Dig. 2.1.7.4

Ulpianus 3 ad ed.

Doli mali autem ideo in verbis edicti fit mentio, quod, si per imperitiam vel rusticitatem vel ab ipso praetore iussus vel casu aliquis fecerit, non tenetur.

Dig. 2.1.7.5

Ulpianus 3 ad ed.

Hoc vero edicto tenetur et qui tollit, quamvis non corruperit: item et qui suis manibus facit et qui alii mandat. sed si alius sine dolo malo fecit, alius dolo malo mandavit, qui mandavit tenebitur: si uterque dolo malo fecerit, ambo tenebuntur: nam et si plures fecerint vel corruperint vel mandaverint, omnes tenebuntur:

Dig. 2.1.8

Gaius 1 ad ed.

Adeo quidem, ut non sufficiat unum eorum poenam luere.

Dig. 2.1.9

Paulus 3 ad ed.

Si familia alicuius album corruperit, non similiter hic edicitur ut in furto, ne in reliquos actio detur, si tantum dominus, cum defendere voluit, unius nomine praestiterit, quantum liber praestaret: fortasse quia hic et contempta maiestas praetoris vindicatur et plura facta intelleguntur: quemadmodum cum plures servi iniuriam fecerunt vel damnum dederunt, quia plura facta sunt, non ut in furto unum. octavenus hic quoque domino succurrendum ait: sed hoc potest dici, si dolo malo curaverint, ut ab alio album corrumperetur, quia tunc unum consilium sit, non plura facta. idem pomponius libro decimo notat.

Dig. 2.1.10

Ulpianus 3 ad ed.

Qui iurisdictioni praeest, neque sibi ius dicere debet neque uxori vel liberis suis neque libertis vel ceteris, quos secum habet.

Dig. 2.1.11pr.

Gaius 1 ad ed. provinc.

Si idem cum eodem pluribus actionibus agat, quarum singularum quantitas intra iurisdictionem iudicantis sit, coacervatio vero omnium excedat modum iurisdictionis eius: apud eum agi posse sabino cassio proculo placuit: quae sententia rescripto imperatoris antonini confirmata est.

Dig. 2.1.11.1

Gaius 1 ad ed. provinc.

Sed et si mutuae sunt actiones et alter minorem quantitatem, alter maiorem petat, apud eundem iudicem agendum est ei qui quantitatem minorem petit, ne in potestate calumniosa adversarii mei sit, an apud eum litigare possim.

Dig. 2.1.11.2

Gaius 1 ad ed. provinc.

Si una actio communis sit plurium personarum, veluti familiae erciscundae ^ herciscundae^, communi dividundo, finium regundorum, utrum singulae partes spectandae sunt circa iurisdictionem eius qui cognoscit, quod ofilio et proculo placet, quia unusquisque de parte sua litigat: an potius tota res, quia et tota res in iudicium venit et vel uni adiudicari potest, quod cassio et pegaso placet: et sane eorum sententia probabilis est.

Dig. 2.1.12

Ulpianus 18 ad ed.

Magistratibus municipalibus supplicium a servo sumere non licet, modica autem castigatio eis non est deneganda.

Dig. 2.1.13pr.

Ulpianus 51 ad sab.

Eum qui iudicare iubet magistratum esse oportet.

Dig. 2.1.13.1

Ulpianus 51 ad sab.

Magistratus autem vel is qui in potestate aliqua sit, ut puta proconsul vel praetor vel alii qui provincias regunt, iudicare iubere eo die, quo privati futuri essent, non possunt.

Dig. 2.1.14

Ulpianus 39 ad ed.

Est receptum eoque iure utimur, ut si quis maior vel aequalis subiciat se iurisdictioni alterius, possit ei et adversus eum ius dici.

Dig. 2.1.15

Ulpianus 2 de omn. trib.

Si per errorem alius pro alio praetor fuerit aditus, nihil valebit quod actum est. nec enim ferendus est qui dicat consensisse eos in praesidem, cum, ut iulianus scribit, non consentiant qui errent: quid enim tam contrarium consensui est quam error, qui imperitiam detegit?

Dig. 2.1.16

Ulpianus 3 de omn. trib.

Solet praetor iurisdictionem mandare: et aut omnem mandat aut speciem unam: et is cui mandata iurisdictio est fungetur vice eius qui mandavit, non sua.

Dig. 2.1.17

Ulpianus 1 opin.

Praetor sicut universam iurisdictionem mandare alii potest, ita et in personas certas vel de una specie potest, maxime cum iustam causam susceptae ante magistratum advocationis alterius partis habuerat.

Dig. 2.1.18

Africanus 7 quaest.

Si convenerit, ut alius praetor, quam cuius iurisdictio esset, ius diceret et priusquam adiretur mutata voluntas fuerit, procul dubio nemo compelletur eiusmodi conventioni stare.

Dig. 2.1.19pr.

Ulpianus 6 fideic.

Cum quaedam puella apud competentem iudicem litem susceperat, deinde condemnata erat, posteaque ad viri matrimonium alii iurisdictioni subiecti pervenerat, quaerebatur, an prioris iudicis sententia exsequi possit. dixi posse, quia ante fuerat sententia dicta: sed et si post susceptam cognitionem ante sententiam hoc eveniet, idem putarem, sententiaque a priore iudice recte fertur. quod generaliter et in omnibus huiuscemodi casibus observandum est.

Dig. 2.1.19.1

Ulpianus 6 fideic.

Quotiens de quantitate ad iurisdictionem pertinente quaeritur, semper quantum petatur quaerendum est, non quantum debeatur.

Dig. 2.1.20

Paulus 1 ad ed.

Extra territorium ius dicenti impune non paretur. idem est, et si supra iurisdictionem suam velit ius dicere.

Dig. 2.2.0. Quod quisque iuris in alterum statuerit, ut ipse eodem iure utatur.

Dig. 2.2.1pr.

Ulpianus 3 ad ed.

Hoc edictum summam habet aequitatem, et sine cuiusquam indignatione iusta: quis enim aspernabitur idem ius sibi dici, quod ipse aliis dixit vel dici effecit?

Dig. 2.2.1.1

Ulpianus 3 ad ed.

"qui magistratum potestatemve habebit, si quid in aliquem novi iuris statuerit, ipse quandoque adversario postulante eodem iure uti debet. si quis apud eum, qui magistratum potestatemque habebit, aliquid novi iuris optinuerit, quandoque postea adversario eius postulante eodem iure adversus eum decernetur": scilicet ut quod ipse quis in alterius persona aequum esse credidisset, id in ipsius quoque persona valere patiatur.

Dig. 2.2.1.2

Ulpianus 3 ad ed.

Haec autem verba: "quod statuerit qui iurisdictioni praeest" cum effectu accipimus, non verbo tenus: et ideo si, cum vellet statuere, prohibitus sit nec effectum decretum habuit, cessat edictum. nam statuit verbum rem perfectam significat et consummatam iniuriam, non coeptam. et ideo si inter eos quis dixerit ius, inter quos iurisdictionem non habuit, quoniam pro nullo hoc habetur nec est ulla sententia, cessare edictum putamus: quid enim offuit conatus, cum iniuria nullum habuerit effectum?

Dig. 2.2.2

Paulus 3 ad ed.

Hoc edicto dolus debet ius dicentis puniri: nam si adsessoris imprudentia ius aliter dictum sit quam oportuit, non debet hoc magistratui officere, sed ipsi adsessori.

Dig. 2.2.3pr.

Ulpianus 3 ad ed.

Si quis iniquum ius adversus aliquem impetravit, eo iure utatur ita demum, si per postulationem eius hoc venerit: ceterum si ipso non postulante, non coercetur. sed si impetravit, sive usus est iure aliquo, sive impetravit ut uteretur licet usus non sit, hoc edicto puniatur.

Dig. 2.2.3.1

Ulpianus 3 ad ed.

Si procurator meus postulavit, quaeritur, quis eodem iure utatur: et putat pomponius me solum, utique si hoc ei specialiter mandavi vel ratum habui. si tamen tutor vel curator furiosi postulaverit vel adulescentis, ipse hoc edicto coercetur. item adversus procuratorem id observandum est, si in rem suam fuerit datus.

Dig. 2.2.3.2

Ulpianus 3 ad ed.

Haec poena adversus omnem statuitur, qui in edictum incidit, non solum eo postulante qui ab eo laesus est, sed omni, qui quandoque experitur.

Dig. 2.2.3.3

Ulpianus 3 ad ed.

Si is pro quo spopondisti impetraverit, ne aliquis debitor ipsius adversus eum exceptione utatur, deinde tu in negotio, in quo spopondisti, velis exceptione uti: nec te nec ipsum oportet hoc impetrare, etsi interdum patiaris iniuriam, si solvendo debitor non sit. sed si tu incidisti in edictum, reus quidem utetur exceptione, tu non utaris: nec poena tua ad reum promittendi pertinebit: et ideo mandati actionem non habebis.

Dig. 2.2.3.4

Ulpianus 3 ad ed.

Si filius meus in magistratu in hoc edictum incidit, an in his actionibus, quas ex persona eius intendo, hoc edicto locus sit? et non puto, ne mea condicio deterior fiat.

Dig. 2.2.3.5

Ulpianus 3 ad ed.

Quod autem ait praetor, ut is eodem iure utatur, an etiam ad heredem haec poena transmittatur? et scribit iulianus non solum ipsi denegari actionem, sed etiam heredi eius.

Dig. 2.2.3.6

Ulpianus 3 ad ed.

Illud quoque non sine ratione scribit non solum in his actionibus pati eum poenam edicti, quas tunc habuit cum incideret in edictum, verum si quae postea ei adquirentur.

Dig. 2.2.3.7

Ulpianus 3 ad ed.

Ex hac causa solutum repeti non posse iulianus putat: superesse enim naturalem causam, quae inhibet repetitionem.

Dig. 2.2.4

Gaius 1 ad ed. provinc.

Illud eleganter praetor excipit: "praeterquam si quis eorum contra eum fecerit, qui ipse eorum quid fecisset": et recte, ne scilicet vel magistratus, dum studet hoc edictum defendere, vel litigator, dum vult beneficio huius edicti uti, ipse in poenam ipsius edicti committat.

Dig. 2.3.0. I quis ius dicenti non obtemperaverit.

Dig. 2.3.1pr.

Ulpianus 1 ad ed.

Omnibus magistratibus, non tamen duumviris, secundum ius potestatis suae concessum est iurisdictionem suam defendere poenali iudicio.

Dig. 2.3.1.1

Ulpianus 1 ad ed.

Is videtur ius dicenti non obtemperasse, qui quod extremum in iurisdictione est non fecit: veluti si quis rem mobilem vindicari a se passus non est, sed duci eam vel ferri passus est: ceterum si et sequentia recusavit, tunc non obtemperasse videtur.

Dig. 2.3.1.2

Ulpianus 1 ad ed.

Si procurator tuus vel tutor vel curator ius dicenti non obtemperavit, ipse punitur, non dominus vel pupillus.

Dig. 2.3.1.3

Ulpianus 1 ad ed.

Non solum autem reum, qui non obtemperavit, hoc edicto teneri labeo ait, verum etiam petitorem.

Dig. 2.3.1.4

Ulpianus 1 ad ed.

Hoc iudicium non ad id quod interest, sed quanti ea res est concluditur: et cum meram poenam contineat, neque post annum neque in heredem datur.

Dig. 2.4.0. De in ius vocando.

Dig. 2.4.1

Paulus 4 ad ed.

In ius vocare est iuris experiundi causa vocare.

Dig. 2.4.2

Ulpianus 5 ad ed.

In ius vocari non oportet neque consulem neque praefectum neque praetorem neque proconsulem neque ceteros magistratus, qui imperium habent, qui et coercere aliquem possunt et iubere in carcerem duci: nec pontificem dum sacra facit: nec eos qui propter loci religionem inde se movere non possunt: sed nec eum qui equo publico in causa publica transvehatur. praeterea in ius vocari non debet qui uxorem ducat aut eam quae nubat: nec iudicem dum de re cognoscat: nec eum dum quis apud praetorem causam agit: neque funus ducentem familiare iustave mortuo facientem:

Dig. 2.4.3

Callistratus 1 cogn.

Vel qui cadaver prosequuntur, quod etiam videtur ex rescripto divorum fratrum comprobatum esse:

Dig. 2.4.4pr.

Ulpianus 5 ad ed.

Quique litigandi causa necesse habet in iure vel certo loco sisti: nec furiosos vel infantes.

Dig. 2.4.4.1

Ulpianus 5 ad ed.

Praetor ait: "parentem, patronum patronam, liberos parentes patroni patronae in ius sine permissu meo ne quis vocet".

Dig. 2.4.4.2

Ulpianus 5 ad ed.

Parentem hic utriusque sexus accipe: sed an in infinitum, quaeritur. quidam parentem usque ad tritavum appellari aiunt, superiores maiores dici: hoc veteres existimasse pomponius refert: sed gaius cassius omnes in infinitum parentes dicit, quod et honestius est et merito optinuit.

Dig. 2.4.4.3

Ulpianus 5 ad ed.

Parentes etiam eos accipi labeo existimat, qui in servitute susceperunt: nec tamen, ut severus dicebat, ad solos iustos liberos: sed et si volgo quaesitus sit filius, matrem in ius non vocabit,

Dig. 2.4.5

Paulus 4 ad ed.

Quia semper certa est, etiam si volgo conceperit: pater vero is est, quem nuptiae demonstrant.

Dig. 2.4.6

Paulus 1 sent.

Parentes naturales in ius vocare nemo potest: una est enim omnibus parentibus servanda reverentia.

Dig. 2.4.7

Paulus 4 ad ed.

Patris adoptivi parentes impune vocabit, quoniam hi eius parentes non sunt, cum his tantum cognatus fiat quibus et adgnatus.

Dig. 2.4.8pr.

Ulpianus 5 ad ed.

Adoptivum patrem, quamdiu in potestate est, in ius vocare non potest iure magis potestatis quam praecepto praetoris, nisi sit filius qui castrense habuit peculium: tunc enim causa cognita permittetur. sed naturalem parentem ne quidem dum est in adoptiva familia in ius vocari.

Dig. 2.4.8.1

Ulpianus 5 ad ed.

"patronum", inquit, "patronam". patroni hic accipiendi sunt, qui ex servitute manumiserunt: vel si collusionem detexit: vel si qui praeiudicio pronuntietur esse libertus cum alioquin non fuerit, aut si iuravi eum libertum meum esse: quemadmodum per contrarium pro patrono non habebor, si contra me iudicatum est aut si me deferente iuraverit se libertum non esse.

Dig. 2.4.8.2

Ulpianus 5 ad ed.

Sed si ad iusiurandum adegi, ne uxorem ducat, ne nubat, impune in ius vocabor. et celsus quidem ait in tali liberto ius ad filium meum me vivo non transire: sed iulianus contra scribit. plerique iuliani sententiam probant. secundum quod eveniet, ut patronus quidem in ius vocetur, filius quasi innocens non vocetur.

Dig. 2.4.9

Paulus 4 ad ed.

Is quoque, qui ex causa fideicommissi manumittit, non debet in ius vocari, quamvis ut manumittat, in ius vocetur.

Dig. 2.4.10pr.

Ulpianus 5 ad ed.

Sed si hac lege emi ut manumittam, et ex constitutione divi marci venit ad libertatem: cum sim patronus, in ius vocari non potero. sed si suis nummis emi et fidem fregi, pro patrono non habebor.

Dig. 2.4.10.1

Ulpianus 5 ad ed.

Prostituta contra legem venditionis venditorem habebit patronum, si hac lege venierat, ut si prostituta esset, fieret libera. at si venditor, qui manus iniectionem excepit, ipse prostituit, quoniam et haec pervenit ad libertatem, sub illo quidem, qui vendidit, libertatem consequitur, sed honorem haberi ei aequum non est, ut et Marcellus libro sexto digestorum existimat.

Dig. 2.4.10.2

Ulpianus 5 ad ed.

Patronum autem accipimus etiam si capite minutus sit: vel si libertus capite minutus, dum adrogetur per obreptionem. cum enim hoc ipso, quo adrogatur, celat condicionem, non id actum videtur ut fieret ingenuus.

Dig. 2.4.10.3

Ulpianus 5 ad ed.

Sed si ius anulorum accepit, puto eum reverentiam patrono exhibere debere, quamvis omnia ingenuitatis munia habet. aliud si natalibus sit restitutus: : nam princeps ingenuum facit.

Dig. 2.4.10.4

Ulpianus 5 ad ed.

Qui manumittitur a corpore aliquo vel collegio vel civitate, singulos in ius vocabit: nam non est illorum libertus. sed rei publicae honorem habere debet et si adversus rem publicam vel universitatem velit experiri, veniam edicti petere debet, quamvis actorem eorum constitutum in ius sit vocaturus.

Dig. 2.4.10.5

Ulpianus 5 ad ed.

Liberos parentesque patroni patronaeque utriusque sexus accipere debemus.

Dig. 2.4.10.6

Ulpianus 5 ad ed.

Sed si per poenam deportationis ad peregrinitatem redactus sit patronus, putat pomponius eum amisisse honorem. sed si fuerit restitutus, erit ei etiam huius edicti commodum salvum.

Dig. 2.4.10.7

Ulpianus 5 ad ed.

Parentes patroni etiam adoptivi excipiuntur: sed tamdiu quamdiu adoptio durat.

Dig. 2.4.10.8

Ulpianus 5 ad ed.

Si filius meus in adoptionem datus sit, vocari a liberto meo in ius non poterit: sed nec nepos in adoptiva familia susceptus. sed si filius meus emancipatus adoptaverit filium, hic nepos in ius vocari poterit: nam mihi alienus est.

Dig. 2.4.10.9

Ulpianus 5 ad ed.

Liberos autem secundum cassium, ut in parentibus, et ultra trinepotem accipimus.

Dig. 2.4.10.10

Ulpianus 5 ad ed.

Si liberta ex patrono fuerit enixa, mutuo se ipsa et filius eius in ius non vocabunt.

Dig. 2.4.10.11

Ulpianus 5 ad ed.

Sin autem liberi patroni capitis accusaverunt libertum paternum vel in servitutem petierunt, nullus eis honor debetur.

Dig. 2.4.10.12

Ulpianus 5 ad ed.

Praetor ait: "in ius nisi permissu meo ne quis vocet". permissurus enim est, si famosa actio non sit vel pudorem non suggilat, qua patronus convenitur vel parentes. et totum hoc causa cognita debet facere: nam interdum etiam ex causa famosa, ut pedius putat, permittere debet patronum in ius vocari a liberto: si eum gravissima iniuria adfecit, flagellis forte cecidit.

Dig. 2.4.10.13

Ulpianus 5 ad ed.

Semper autem hunc honorem patrono habendum, etsi quasi tutor vel curator vel defensor vel actor interveniat patronus. sed si patroni tutor vel curator interveniat, impune posse eos in ius vocari pomponius scribit et verius est.

Dig. 2.4.11

Paulus 4 ad ed.

Quamvis non adiciat praetor causa cognita se poenale iudicium daturum, tamen labeo ait moderandam iurisdictionem: veluti si paeniteat libertum et actionem remittat: vel si patronus vocatus non venerit: aut si non invitus vocatus sit, licet edicti verba non patiantur.

Dig. 2.4.12

Ulpianus 57 ad ed.

Si libertus in ius vocaverit contra praetoris edictum filium patroni sui, quem ipse patronus in potestate habet: probandum est absente patre subveniendum esse filio qui in potestate est et ei poenalem in factum actionem, id est quinquaginta aureorum, adversus libertum competere.

Dig. 2.4.13

Modestinus 10 pand.

Generaliter eas personas, quibus reverentia praestanda est, sine iussu praetoris in ius vocare non possumus.

Dig. 2.4.14

Papinianus 1 resp.

Libertus a patrono reus constitutus, qui se defendere paratus pro tribunali praesidem provinciae frequenter interpellat, patronum accusatorem in ius non videtur vocare.

Dig. 2.4.15

Paulus 1 quaest.

Libertus adversus patronum dedit libellum non dissimulato se libertum esse eius: an si ad desiderium eius rescribatur, etiam edicti poena remissa esse videtur? respondi non puto ad hunc casum edictum praetoris pertinere. neque enim qui libellum principi vel praesidi dat, in ius vocare patronum videtur.

Dig. 2.4.16

Paulus 2 resp.

Quaesitum est, an tutor pupilli nomine patronam suam sine permissu praetoris vocare possit. respondi eum, de quo quaeritur, pupilli nomine etiam in ius vocare patronam suam potuisse sine permissu praetoris.

Dig. 2.4.17

Paulus 1 sent.

Eum, pro quo quis apud officium cavit, exhibere cogitur. item eum qui apud acta exhibiturum se esse quem promisit, etsi officio non caveat, ad exhibendum tamen cogitur.

Dig. 2.4.18

Gaius 1 ad l. xii tab.

Plerique putaverunt nullum de domo sua in ius vocari licere, quia domus tutissimum cuique refugium atque receptaculum sit, eumque qui inde in ius vocaret vim inferre videri.

Dig. 2.4.19

Paulus 1 ad ed.

Satisque poenae subire eum, si non defendatur et latitet, certum est, quod mittitur adversarius in possessionem bonorum eius. sed si aditum ad se praestet aut ex publico conspiciatur, recte in ius vocari eum iulianus ait.

Dig. 2.4.20

Gaius 1 ad l. xii tab.

Sed etiam ab ianua et balineo et theatro nemo dubitat in ius vocari licere.

Dig. 2.4.21

Paulus 1 ad ed.

Sed etsi is qui domi est interdum vocari in ius potest, tamen de domo sua nemo extrahi debet.

Dig. 2.4.22pr.

Gaius 1 ad l. xii tab.

Neque impuberes puellas, quae alieno iuri subiectae essent, in ius vocare permissum est.

Dig. 2.4.22.1

Gaius 1 ad l. xii tab.

Qui in ius vocatus est, duobus casibus dimittendus est: si quis eius personam defendet, et si, dum in ius venitur, de re transactum fuerit.

Dig. 2.4.23

Marcianus 3 inst.

Communis libertus licet plurium sit, debet a praetore petere, ut ei liceat vel quendam ex patronis in ius vocare, ne in poenam incidat ex edicto praetoris.

Dig. 2.4.24

Ulpianus 5 ad ed.

In eum, qui adversus ea fecerit, quinquaginta aureorum iudicium datur: quod nec heredi nec in heredem nec ultra annum datur.

Dig. 2.4.25

Modestinus 1 de poen.

Si sine venia edicti impetrata libertus patronum in ius vocaverit, ex querella patroni vel supradictam poenam, id est quinquaginta aureos dat vel a praefecto urbi quasi inofficiosus castigatur, si inopia dinoscitur laborare.

Dig. 2.5.0. Si quis in ius vocatus non ierit sive quis eum vocaverit, quem ex edicto non debuerit.

Dig. 2.5.1

Ulpianus 1 ad ed.

Si quis in ius vocatus fideiussorem dederit in iudicio sistendi causa non suppositum iurisdictioni illius, ad quem vocatur, pro non dato fideiussor habetur, nisi suo privilegio specialiter renuntiaverit.

Dig. 2.5.2pr.

Paulus 1 ad ed.

Ex quacumque causa ad praetorem vel alios, qui iurisdictioni praesunt, in ius vocatus venire debet, ut hoc ipsum sciatur, an iurisdictio eius sit.

Dig. 2.5.2.1

Paulus 1 ad ed.

Si quis in ius vocatus non ierit, ex causa a competenti iudice multa pro iurisdictione iudicis damnabitur: rusticitati enim hominis parcendum erit: item si nihil intersit actoris eo tempore in ius adversarium venisse, remittit praetor poenam, puta quia feriatus dies fuit.

Dig. 2.5.3

Ulpianus 47 ad sab.

Cum quis in iudicio sisti promiserit neque adiecerit poenam, si status non esset: incerti cum eo agendum esse in id quod interest verissimum est, et ita celsus quoque scribit.

Dig. 2.6.0. In ius vocati ut eant aut satis vel cautum dent.

Dig. 2.6.1

Paulus 1 ad ed.

Edicto cavetur, ut fideiussor iudicio sistendi causa datus pro rei qualitate locuples detur exceptis necessariis personis: ibi enim qualemcumque accipi iubet: veluti pro parente patrono,

Dig. 2.6.2

Callistratus 1 ad ed. monit.

Item pro patrona liberisve suis vel uxore nuruve. tunc enim qualiscumque fideiussor accipi iubetur: et in eum, qui non acceperit, cum sciret eam necessitudinem personarum, quinquaginta aureorum iudicium competit,

Dig. 2.6.3

Paulus 4 ad ed.

Quoniam pro locuplete accipitur fideiussor in necessariis personis.

Dig. 2.6.4

Ulpianus 48 ad ed.

Qui duos homines in iudicio sisti promisit, si alterum exhibet, alterum non, ex promissione non videtur eos stetisse, cum alter eorum non sit exhibitus.

Dig. 2.7.0. Ne quis eum qui in ius vocabitur vi eximat.

Dig. 2.7.1pr.

Ulpianus 5 ad ed.

Hoc edictum praetor proposuit, ut metu poenae compesceret eos, qui in ius vocatos vi eripiunt.

Dig. 2.7.1.1

Ulpianus 5 ad ed.

Denique pomponius scribit servi quoque nomine noxale iudicium reddendum, nisi sciente domino id fecit: tunc enim sine noxae deditione iudicium suscipiet.

Dig. 2.7.1.2

Ulpianus 5 ad ed.

Ofilius putat locum hoc edicto non esse, si persona, quae in ius vocari non potuit, exempta est, veluti parens et patronus ceteraeque personae: quae sententia mihi videtur verior. et sane si deliquit qui vocat, non deliquit qui exemit.

Dig. 2.7.2pr.

Paulus 4 ad ed.

Nam cum uterque contra edictum faciat, et libertus qui patronum vocat, et is qui patronum vi eximat: deteriore tamen loco libertus est, qui in simili delicto petitoris partes sustinet.

Dig. 2.7.2.1

Paulus 4 ad ed.

Eadem aequitas est in eo, qui alio quam quo debuerat in ius vocabatur: sed et fortius dicendum est non videri vi eximi eum, cui sit ius ibi non conveniri.

Dig. 2.7.3pr.

Ulpianus 5 ad ed.

Quod si servum quis exemit in ius vocatum, pedius putat cessare edictum, quoniam non fuit persona, quae in ius vocari potuit. quid ergo? ad exhibendum erit agendum.

Dig. 2.7.3.1

Ulpianus 5 ad ed.

Si quis ad pedaneum iudicem vocatum quem eximat, poena eius edicti cessabit.

Dig. 2.7.3.2

Ulpianus 5 ad ed.

Quod praetor praecepit "vi eximat": vi an et dolo malo? sufficit vi, quamvis dolus malus cesset.

Dig. 2.7.4pr.

Paulus 4 ad ed.

Sed eximendi verbum generale est, ut pomponius ait. eripere enim est de manibus auferre per raptum: eximere quoquo modo auferre. ut puta si quis non rapuerit quem, sed moram fecerit quo minus in ius veniret, ut actionis dies exiret vel res tempore amitteretur: videbitur exemisse, quamvis corpus non exemerit. sed et si eo loco retinuerit, non abduxit, his verbis tenetur.

Dig. 2.7.4.1

Paulus 4 ad ed.

Item si quis eum, qui per calumniam vocabatur, exemerit: constat eum hoc edicto teneri.

Dig. 2.7.4.2

Paulus 4 ad ed.

Praetor ait "neve faciat dolo malo, quo magis eximeretur": nam potest sine dolo malo id fieri, veluti cum iusta causa est exemptionis.

Dig. 2.7.5pr.

Ulpianus 5 ad ed.

Si per alium quis exemerit, hac clausula tenetur, sive praesens fuit sive absens.

Dig. 2.7.5.1

Ulpianus 5 ad ed.

In eum autem, qui vi exemit, in factum iudicium datur: quo non id continetur quod in veritate est, sed quanti ea res est ab actore aestimata, de qua controversia est. hoc enim additum est, ut appareat etiam si calumniator quis sit, tamen hanc poenam eum persequi.

Dig. 2.7.5.2

Ulpianus 5 ad ed.

Docere autem debet quis per hanc exemptionem factum quo minus in ius produceretur. ceterum si nihilo minus productus est, cessat poena: quoniam verba cum effectu sunt accipienda.

Dig. 2.7.5.3

Ulpianus 5 ad ed.

Hoc iudicium in factum est: et si plures deliquerint in singulos dabitur, et nihilo minus manet qui exemptus est obligatus:

Dig. 2.7.5.4

Ulpianus 5 ad ed.

Heredibus autem ita dabitur, si eorum intersit: neque autem in heredem neque post annum dabitur.

Dig. 2.7.6

Ulpianus 35 ad ed.

Is qui debitorem vi exemit, si solverit, reum non liberat, quia poenam suam solvit.

Dig. 2.8.0. Qui satisdare cogantur vel iurato promittant vel suae promissioni committantur.

Dig. 2.8.1

Gaius 5 ad ed. provinc.

Satisdatio eodem modo appellata est quo satisfactio. nam ut satisfacere dicimur ei, cuius desiderium implemus, ita satisdare dicimur adversario nostro, qui pro eo, quod a nobis petiit, ita cavit, ut eum hoc nomine securum faciamus datis fideiussoribus.

Dig. 2.8.2pr.

Ulpianus 5 ad ed.

Fideiussor in iudicio sistendi causa locuples videtur dari non tantum ex facultatibus, sed etiam ex conveniendi facilitate.

Dig. 2.8.2.1

Ulpianus 5 ad ed.

Si quis his personis, quae agere non potuerunt, fideiussorem iudicio sistendi causa dederit, frustra erit datio.

Dig. 2.8.2.2

Ulpianus 5 ad ed.

Praetor ait: "si quis parentem, patronum patronam, liberos aut parentes patroni patronae, liberosve suos eumve quem in potestate habebit, vel uxorem, vel nurum in iudicium vocabit: qualiscumque fideiussor iudicio sistendi causa accipiatur."

Dig. 2.8.2.3

Ulpianus 5 ad ed.

Quod ait praetor "liberosve suos", accipiemus et ex feminino sexu descendentes liberos. parentique dabimus hoc beneficium non solum sui iuris, sed etiam si in potestate sit alicuius: hoc enim pomponius scribit. et filius fideiussor pro patre fieri potest, etiam si in alterius potestate sit. nurum etiam pronurum et deinceps accipere debemus.

Dig. 2.8.2.4

Ulpianus 5 ad ed.

Quod ait praetor "qualiscumque fideiussor accipiatur": hoc quantum ad facultates, id est etiam non locuples.

Dig. 2.8.2.5

Ulpianus 5 ad ed.

In fideiussorem, qui aliquem iudicio sisti promiserit, tanti quanti ea res erit actionem dat praetor. quod utrum veritatem contineat an vero quantitatem, videamus. et melius est ut in veram quantitatem fideiussor teneatur, nisi pro certa quantitate accessit.

Dig. 2.8.3

Gaius 1 ad ed. provinc.

Sive in duplum est actio sive tripli aut quadrupli, tanti eundem fideiussorem omnimodo teneri dicimus, quia tanti res esse intellegitur.

Dig. 2.8.4

Paulus 4 ad ed.

Si decesserit qui fideiussorem dederit iudicio sistendi causa, non debebit praetor iubere exhibere eum. quod si ignorans iusserit exhiberi vel post decretum eius ante diem exhibitionis decesserit, deneganda erit actio. si autem post diem exhibitionis decesserit aut amiserit civitatem, utiliter agi potest.

Dig. 2.8.5pr.

Gaius 1 ad ed. provinc.

Si vero pro condemnato fideiusserit et condemnatus decesserit aut civitatem romanam amiserit, recte nihilo minus cum fideiussore eius agetur.

Dig. 2.8.5.1

Gaius 1 ad ed. provinc.

Qui pro rei qualitate evidentissime locupletem vel, si dubitetur, adprobatum fideiussorem iudicio sistendi causa non acceperit: iniuriarum actio adversus eum esse potest, quia sane non quaelibet iniuria est duci in ius eum, qui satis idoneum fideiussorem det. sed et ipse fideiussor, qui non sit acceptus, tamquam de iniuria sibi facta queri poterit.

Dig. 2.8.6

Paulus 12 ad ed.

Quotiens vitiose cautum vel satisdatum est, non videtur cautum.

Dig. 2.8.7pr.

Ulpianus 14 ad ed.

Si fideiussor non negetur idoneus, sed dicatur habere fori praescriptionem et metuat petitor, ne iure fori utatur: videndum quid iuris sit. et divus pius (ut et pomponius libro epistularum refert et Marcellus libro tertio digestorum et papinianus libro tertio quaestionum) cornelio proculo rescripsit merito petitorem recusare talem fideiussorem: sed si alias caveri non possit, praedicendum ei non usurum eum privilegio, si conveniatur.

Dig. 2.8.7.1

Ulpianus 14 ad ed.

Si necessaria satisdatio fuerit et non facile possit reus ibi eam praestare, ubi convenitur: potest audiri, si in alia eiusdem provinciae civitate satisdationem praestare paratus sit. si autem satisdatio voluntaria est, non in alium locum remittitur: neque enim meretur qui ipse sibi necessitatem satisdationis imposuit.

Dig. 2.8.7.2

Ulpianus 14 ad ed.

Si satisdatum pro re mobili non sit et persona suspecta sit, ex qua satis desideratur: apud officium deponi debebit si hoc iudici sederit, donec vel satisdatio detur vel lis finem accipiat.

Dig. 2.8.8pr.

Paulus 14 ad ed.

De die ponenda in stipulatione solet inter litigatores convenire. si non conveniat, pedius putat in potestate stipulatoris esse moderato spatio: de hoc a iudice statuendum ^ statuendo^.

Dig. 2.8.8.1

Paulus 14 ad ed.

Qui mulierem adhibet ad satisdandum, non videtur cavere: sed nec miles nec minor viginti quinque annis probandi sunt: nisi hae personae in rem suam fideiubeant, ut pro suo procuratore. quidam etiam, si a marito fundus dotalis petatur, in rem suam fideiussuram mulierem.

Dig. 2.8.8.2

Paulus 14 ad ed.

Si servus inveniatur, qui antequam iudicium accipiatur fideiussit iudicatum solvi: succurrendum est actori, ut ex integro caveatur. minori quoque viginti quinque annis succurrendum est, fortasse et mulieri propter imperitiam.

Dig. 2.8.8.3

Paulus 14 ad ed.

Si fideiussor iudicatum solvi stipulatori heres extiterit aut stipulator fideiussori, ex integro cavendum erit.

Dig. 2.8.8.4

Paulus 14 ad ed.

Tutor et curator, ut rem salvam fore pupillo caveant, mittendi sunt in municipium, quia necessaria est satisdatio: item de re restituenda domino proprietatis, cuius usus fructus datus est: item legatarius, ut caveat evicta hereditate legata reddi, et quod amplius per legem falcidiam ceperit: heres quoque ut legatorum satisdet audiendus est, ut in municipium mittatur. plane si misso iam legatario in possessionem, cum per heredem staret quominus caveret, heres postulet uti de possessione decedat paratumque se dicat in municipio cavere: impetrare non debebit. diversum, si sine culpa aut dolo heredis missus sit in possessionem.

Dig. 2.8.8.5

Paulus 14 ad ed.

Iubetur iurare de calumnia, ne quis vexandi magis adversarii causa, forsitan cum romae possit satisdare, in municipium evocet: sed quibusdam hoc iusiurandum de calumnia remittitur, velut parentibus et patronis. sic autem iurare debet qui in municipium remittitur "romae se satisdare non posse et ibi posse, quo postulat remitti, idque se non calumniae causa facere": nam sic non est compellendus iurare "alibi se quam eo loco satisdare non posse", quia si romae non potest, pluribus autem locis possit, cogitur peierare.

Dig. 2.8.8.6

Paulus 14 ad ed.

Hoc autem tunc impetrabitur, cum iusta causa esse videbitur. quid enim si, cum erat in municipio, noluit cavere? hoc casu non debet impetrare, cum per eum steterit, quominus ibi, ubi ire desiderat, satisdaret.

Dig. 2.8.9

Gaius 5 ad ed. provinc.

Arbitro ad fideiussores probandos constituto, si in alterutram partem iniquum arbitrium videatur, perinde ab ed atque ab iudicibus appellare licet.

Dig. 2.8.10

Paulus 75 ad ed.

Si ab arbitro probati sunt fideiussores, pro locupletibus habendi sunt, cum potuerit querella ad competentem iudicem deferri, qui ex causa improbat ab arbitro probatos, alias improbatos probat: multoque magis, si sua voluntate accepit fideiussores, contentus his esse debet. quod si medio tempore calamitas fideiussoribus insignis vel magna inopia accidit, causa cognita ex integro satisdandum erit.

Dig. 2.8.11

Ulpianus 75 ad ed.

Iulianus ait, si antequam ^ ante, quam^ mandarem tibi ut fundum peteres, satis acceperis petiturus fundum et postea mandatu meo agere institueris, fideiussores teneri.

Dig. 2.8.12

Ulpianus 77 ad ed.

Inter omnes convenit heredem sub condicione, pendente condicione possidentem hereditatem, substituto cavere debere de hereditate, et, si defecerit condicio, adeuntem hereditatem substitutum et petere hereditatem posse et, si optinuerit, committi stipulationem. et plerumque ipse praetor et ante condicionem existentem et ante diem petitionis venientem ex causa iubere solet stipulationem interponi.

Dig. 2.8.13

Paulus 75 ad ed.

Sed et si plures substituti sint, singulis cavendum est.

Dig. 2.8.14

Paulus 2 resp.

Filius familias defendit absentem patrem: quaero an iudicatum solvi satisdare debeat. paulus respondit eum qui absentem defendit, etiam si filius vel pater sit, satisdare petituro ex forma edicti debere.

Dig. 2.8.15pr.

Macer 1 de appellat.

Sciendum est possessores immobilium rerum satisdare non compelli.

Dig. 2.8.15.1

Macer 1 de appellat.

Possessor autem is accipiendus est, qui in agro vel civitate rem soli possidet aut ex asse aut pro parte. sed et qui vectigalem, id est emphyteuticum agrum possidet, possessor intellegitur. item qui solam proprietatem habet, possessor intellegendus est. eum vero, qui tantum usum fructum habet, possessorem non esse ulpianus scripsit.

Dig. 2.8.15.2

Macer 1 de appellat.

Creditor, qui pignus accepit, possessor non est, tametsi possessionem habeat aut sibi traditam aut precario debitori concessam.

Dig. 2.8.15.3

Macer 1 de appellat.

Si fundus in dotem datus sit, tam uxor quam maritus propter possessionem eius fundi possessores intelleguntur.

Dig. 2.8.15.4

Macer 1 de appellat.

Diversa causa est eius, qui fundi petitionem personalem habet.

Dig. 2.8.15.5

Macer 1 de appellat.

Tutores, sive pupilli eorum sive ipsi possideant, possessorum loco habentur: sed et si unus ex tutoribus possessor fuit, idem dicendum erit.

Dig. 2.8.15.6

Macer 1 de appellat.

Si fundum, quem possidebam, a me petieris, deinde cum secundum te esset iudicatum, appellaverim: an possessor eiusdem fundi sim? et recte dicetur possessorem me esse, quia nihilominus possideo, nec ad rem pertinet, quod evinci mihi ea possessio possit.

Dig. 2.8.15.7

Macer 1 de appellat.

Possessor autem quis nec ne fuerit, tempus cautionis spectandum est: nam sicuti ei, qui post cautionem possessionem vendidit, nihil obest, ita nec prodest ei, qui post cautionem possidere coepit.

Dig. 2.8.16

Paulus 6 ad ed.

Qui iurato promisit iudicio sisti, non videtur peierasse, si ex concessa causa hoc deseruerit.

Dig. 2.9.0. Si ex noxali causa agatur, quemadmodum caveatur.

Dig. 2.9.1pr.

Ulpianus 7 ad ed.

Si quis eum, de quo noxalis actio est, iudicio sisti promisit, praetor ait in eadem causa eum exhibere, in qua tunc est, donec iudicium accipiatur.

Dig. 2.9.1.1

Ulpianus 7 ad ed.

"in eadem causa" quid sit, videamus: et puto verius eum videri in eadem causa sistere, qui ad experiendum non facit ius actoris deterius. si desinat servus esse promissoris vel actio amissa sit, non videri in eadem causa statum labeo ait: vel si qui pari loco erat in litigando, coepit esse in duriore, vel loco vel persona mutata: itaque si quis ei qui in foro promissoris conveniri non potest venditus aut potentiori datus sit, magis esse putat, ut non videatur in eadem causa sisti. sed et si noxae deditus sit, ofilius non putat in eadem causa sisti, cum noxae deditione ceteris noxalem actionem peremi putat.

Dig. 2.9.2pr.

Paulus 6 ad ed.

Sed alio iure utimur. nam ex praecedentibus causis non liberatur noxae deditus: perinde enim noxa caput sequitur, ac si venisset.

Dig. 2.9.2.1

Paulus 6 ad ed.

Si absens sit servus, pro quo noxalis actio alicui competit: si quidem dominus non negat in sua potestate esse, compellendum putat vindius vel iudicio eum sisti promittere vel iudicium accipere, aut, si nolit defendere, cauturum, cum primum potuerit, se exhibiturum: sin vero falso neget in sua potestate esse, suscepturum iudicium sine noxae deditione. idque iulianus scribit et si dolo fecerit, quominus in eius esset potestate. sed si servus praesens est, dominus abest nec quisquam servum defendit, ducendus erit iussu praetoris: sed causa cognita domino postea dabitur defensio, ut pomponius et vindius scribunt, ne ei absentia sua noceat: ergo et actori actio restituenda est, perempta eo quod ductus servus in bonis eius esse coepit.

Dig. 2.9.3

Ulpianus 7 ad ed.

Si cum usufructuario noxali iudicio agetur isque servum non defenderit, denegatur ei per praetorem usus fructus persecutio.

Dig. 2.9.4

Gaius 6 ad ed. provinc.

Si cum uno ex dominis noxalis agetur, an pro parte socii satisdare deberet? sabinus ait non debere: quia quodammodo totum suum hominem defenderet, cui in solidum defendendi necessitas esset, nec auditur, si pro parte paratus sit defendere.

Dig. 2.9.5

Ulpianus 47 ad sab.

Si servum in eadem causa sistere quidam promiserit et liber factus sistatur: si de ipso controversia est capitalium actionum iniuriarumque nomine, non recte sistitur: quia aliter de servo supplicium et verberibus de iniuria satisfit, aliter de libero vindicta sumitur vel condemnatio pecuniaria. quod autem ad ceteras noxales causas pertinet, etiam in meliorem causam videtur pervenisse.

Dig. 2.9.6

Paulus 11 ad sab.

Sed si statu liberum sisti promissum sit, in eadem causa sisti videtur, quamvis liber sistatur, quod implicitus ei casus libertatis fuerit.

Dig. 2.10.0. De eo per quem factum erit quominus quis in iudicio sistat.

Dig. 2.10.1pr.

Ulpianus 7 ad ed.

Aequissimum putavit praetor dolum eius coercere, qui impedit aliquem iudicio sisti.

Dig. 2.10.1.1

Ulpianus 7 ad ed.

Fecisse autem dolo malo non tantum is putatur, qui suis manibus vel per suos retinuerit ^ retinuit^, verum qui alios quoque rogavit ut eum detinerent vel abducerent, ne iudicio sistat, sive scientes sive ignorantes quid esset quod commnisceretur.

Dig. 2.10.1.2

Ulpianus 7 ad ed.

Dolum autem malum sic accipimus, ut si quis venienti ad iudicium aliquid pronuntiaverit triste, propter quod is necesse habuerit ad iudicium non venire, teneatur ex hoc edicto: quamvis quidam putent sibi eum imputare, qui credulus fuit.

Dig. 2.10.1.3

Ulpianus 7 ad ed.

Si reus dolo actoris non steterit, non habebit reus adversus eum actionem ex hoc edicto, cum contentus esse possit exceptione, si ex stipulatu conveniatur de poena, quod ad iudicium non venerit. aliter atque si ab alio sit impeditus: nam actionem propositam adversus eum exercebit.

Dig. 2.10.1.4

Ulpianus 7 ad ed.

Si plures dolo fecerint, omnes tenentur: sed si unus praestitit poenam, ceteri liberantur, cum nihil intersit.

Dig. 2.10.1.5

Ulpianus 7 ad ed.

Servi nomine ex hac causa noxali iudicio agendum omnes consentiunt.

Dig. 2.10.1.6

Ulpianus 7 ad ed.

Et heredi datur, sed non ultra annum. adversus heredem autem hactenus puto dandam actionem, ut ex dolo defuncti heres non lucretur.

Dig. 2.10.2

Paulus 6 ad ed.

Si actoris servus domino sciente et cum possit non prohibente dolo fecerit, quo minus in iudicio sistam, ofilius dandam mihi exceptionem adversus dominum ait, ne ex dolo servi dominus lucretur. si vero sine voluntate domini servus hoc fecerit, sabinus noxale iudicium dandum ait nec factum servi domino obesse debere nisi hactenus, ut ipso careat: quando ipse nihil deliquit.

Dig. 2.10.3pr.

Iulianus 2 Dig.

Ex hoc edicto adversus eum, qui dolo fecit, quo minus quis in iudicium vocatus sistat, in factum actio competit quanti actoris interfuit eum sisti. in quo iudicio deducitur si quid amiserit actor ob eam rem: veluti si reus tempore dominium rei interim sibi adquirat aut actione liberatus fuerit.

Dig. 2.10.3.1

Iulianus 2 Dig.

Plane si is, qui dolo fecerit, quo minus in iudicio sistatur, solvendo non fuerit, aequum erit adversus ipsum reum restitutoriam actionem competere, ne propter dolum alienum reus lucrum faciat et actor damno adficiatur.

Dig. 2.10.3.2

Iulianus 2 Dig.

Si et stipulator dolo titii et promissor dolo maevi impeditus fuerit, quo minus in iudicio sistatur: uterque adversus eum, cuius dolo impeditus fuerit, actione in factum experietur.

Dig. 2.10.3.3

Iulianus 2 Dig.

Si et stipulator dolo promissoris et promissor dolo stipulatoris impeditus fuerit quo minus ad iudicium veniret: neutri eorum praetor succurrere debebit, ab utraque parte dolo compensando.

Dig. 2.10.3.4

Iulianus 2 Dig.

Si a fideiussore quinquaginta stipulatus fuero, si in iudicium reus non venerit, petiturus a reo centum, et dolo malo sempronii factum fuerit, ne in iudicium reus veniat: centum a sempronio consequar. tanti enim mea interfuisse videtur, quia, si venisset in iudicium, actio mihi centum adversus reum vel adversus heredem eius competebat, licet fideiussor minorem summam mihi promiserit.

Dig. 2.11.0. Si quis cautionibus in iudicio sistendi causa factis non obtemperaverit.

Dig. 2.11.1

Gaius 1 ad ed. provinc.

Vicena milia passum in singulos dies dinumerari praetor iubet praeter eum diem, quo cautum promittitur, et in quem sistere in iudicium oportet. nam sane talis itineris dinumeratio neutri litigatorum onerosa est.

Dig. 2.11.2pr.

Ulpianus 74 ad ed.

Non exigimus reum iudicio sisti, si negotium, propter quod iudicio sisti promisit, fuerit transactum: sed hoc ita, si prius id negotium transactum sit, quam sisti oporteret. ceterum si postea transactum est, exceptio doli opponi debet: quis enim de poena promissa laborat post negotium transactum? cum etiam transacti negotii exceptionem putaverit quis nocere, quasi etiam de poena transactum sit, nisi contrarium specialiter partibus placuerit.

Dig. 2.11.2.1

Ulpianus 74 ad ed.

Si quis municipalis muneris causa sine suo dolo malo impeditus in iudicio secundum suam promissionem non stetit, aequissimum est tribui ei exceptionem.

Dig. 2.11.2.2

Ulpianus 74 ad ed.

Simili modo et si ad testimonium desideratus ad iudicium occurrere non potuit, erit ei subveniendum.

Dig. 2.11.2.3

Ulpianus 74 ad ed.

Si quis iudicio se sisti promiserit et valetudine vel tempestate vel vi fluminis prohibitus se sistere non possit, exceptione adiuvatur, nec immerito. cum enim in tali promissione praesentia opus sit, quemadmodum potuit se sistere qui adversa valetudine impeditus est? et ideo etiam lex duodecim tabularum, si iudex vel alteruter ex litigatoribus morbo sontico impediatur, iubet diem iudicii esse diffisum.

Dig. 2.11.2.4

Ulpianus 74 ad ed.

Si non propter valetudinem mulier non steterit iudicio, sed quod gravida erat, exceptionem ei dandam labeo ait: si tamen post partum decubuerit, probandum erit quasi valetudine impeditam.

Dig. 2.11.2.5

Ulpianus 74 ad ed.

Idem est et si quis furere coeperit: nam qui furore impeditur, valetudine impeditur.

Dig. 2.11.2.6

Ulpianus 74 ad ed.

Quod diximus succurri etiam ei, qui tempestate aut vi fluminis prohibitus non venit, tempestatem sic intellegere debemus, sive maritima sive terrestris sit. tempestatem intellegere debemus talem, quae impedimento sit itineri vel navigationi.

Dig. 2.11.2.7

Ulpianus 74 ad ed.

Vis fluminis etiam sine tempestate accipienda est: vim fluminis intellegimus, et si magnitudo eius impedimento sit sive pons solutus sit vel navigium non stet.

Dig. 2.11.2.8

Ulpianus 74 ad ed.

Si quis tamen cum posset non incidere in tempestatem vel in fluminis vim, si ante profectus esset vel tempore oportuno navigasset, ipse se artaverit: numquid exceptio ei minime prosit? quod quidem causa cognita erit statuendum. nam neque sic artandus sit, ut possit ei dici, cur non multo ante profectus est quam dies promissionis veniret: neque iterum permittendum ei, si quid sit quod ei imputetur, causari tempestatem vel vim fluminis. quid enim si quis, cum romae esset ipso tempore promissionis sistendi, nulla necessitate urguente voluptatis causa in municipium profectus sit? nonne indignus est, cui haec exceptio patrocinetur? aut quid si tempestas quidem in mari fuit, terra autem iste potuit venire: vel flumen circumire? aeque dicendum non semper ei exceptionem prodesse: nisi angustiae non patiebatur terra iter metiri vel circumire. cum tamen vel flumen sic abundasset, ut implesset omnem locum, in quo sisti oportuit, vel aliqua fortuita calamitas eundem locum evertit vel praesentiam venienti periculosam fecit, ex bono et aequo et hic exceptio ei accommodanda est.

Dig. 2.11.2.9

Ulpianus 74 ad ed.

Simili modo exceptio datur ei, qui cum ad iudicium venire volebat, a magistratu retentus est, et retentus sine dolo malo ipsius: nam si ipse hoc affectavit vel causam praestitit, non ei proderit exceptio: sed ipsius quidem dolus ei oberit, ceterorum non oberit, qui dolo fecerunt ut retineretur. sed si privatus eum detinuerit, nullo modo ei proderit haec exceptio,

Dig. 2.11.3

Paulus 69 ad ed.

Sed actio ei datur adversus eum qui detinuit in id quod eius interest.

Dig. 2.11.4pr.

Ulpianus 74 ad ed.

Sed et si quis rei capitalis ante condemnatus iudicio sistere se non potuit, merito huic ignoscitur: rei capitalis condemnatum accipere debemus, qui morte exiliove coercitus est. dixerit aliquis, quo ergo haec exceptio damnato? sed respondebitur fideiussoribus eius esse necessariam: aut si forte in exilium salva civitate abiit, ubi defensori eius exceptio ista proderit.

Dig. 2.11.4.1

Ulpianus 74 ad ed.

Illud sciendum est eum, qui idcirco non stetit, quia capitis reus factus est, in ea causa esse, ut exceptione uti non possit: damnato enim datur. plane si vinculis vel custodia militari impeditus ideo non stetit, in ea erit causa, ut exceptione utatur.

Dig. 2.11.4.2

Ulpianus 74 ad ed.

Praeterea si funere quis domestico impeditus non venit, debet ei exceptio dari.

Dig. 2.11.4.3

Ulpianus 74 ad ed.

Item si quis in servitute hostium fuerit ac per hoc in iudicium non stetit, debet exceptione adiuvari.

Dig. 2.11.4.4

Ulpianus 74 ad ed.

Quaesitum est an possit conveniri, ne ulla exceptio in promissione deserta iudicio sistendi causa facta obiciatur: et ait atilicinus conventionem istam non valere. sed ego puto conventionem istam ita valere, si specialiter causae exceptionum expressae sint, quibus a promissore sponte renuntiatum est.

Dig. 2.11.4.5

Ulpianus 74 ad ed.

Item quaeritur, si quis, cum iudicio sistendi causa satisdare non deberet, satisdato promiserit, an fideiussoribus eius exceptio detur. puto interesse, utrum per errorem satisdato promissum est an ex conventione: si per errorem, dandam fideiussoribus exceptionem: si ex conventione, minime dandam. nam et iulianus scribit, si iudicio sistendi causa pluris quam statutum est per ignorantiam promissum fuerit, exceptionem dari debere: si autem ex conventione tantae summae promissio facta sit, exceptionem pacti conventi replicatione infirmandam iulianus ait.

Dig. 2.11.5pr.

Paulus 69 ad ed.

Si duo rei stipulandi sint et uni debitor iudicio se sisti cum poena promiserit, alter autem impedierit: ita demum exceptio adversus alterum danda est, si socii sint: ne prosit ei dolus propter societatem.

Dig. 2.11.5.1

Paulus 69 ad ed.

Item si duo rei promittendi sint et unus ad iudicium non venerit contempta sua promissione iudicio sistendi causa facta, actor autem ab altero rem petat, ab altero poenam desertionis: petendo poenam exceptione summovebitur.

Dig. 2.11.5.2

Paulus 69 ad ed.

Aeque si a patre facta fuerit promissio iudicio sistendi gratia ex filii contractu, deinde de re actor egerit cum filio, exceptione summovebitur, si cum patre ex eius promissione agat. et contra idem erit, si filius promiserit et actor egerit cum patre de peculio.

Dig. 2.11.6

Gaius 1 ad l. xii tab.

Si is qui fideiussorem dedit ideo non steterit, quod rei publicae causa afuit: iniquum est fideiussorem ob alium necessitate sistendi obligatum esse, cum ipsi liberum esset non sistere.

Dig. 2.11.7

Paulus 69 ad ed.

Si quis servum in iudicio sisti promiserit vel alium qui in aliena potestate est, isdem exceptionibus utitur, quibus si pro libero vel patre familias fideiussit, praeterquam si rei publicae causa abesse diceretur servus: nam servus rei publicae causa abesse non potest. praeter hanc autem exceptionem ceterae, quia communes sunt, tam in libero homine quam in servo locum habent.

Dig. 2.11.8

Gaius 29 ad ed. provinc.

Et si post tres aut quinque pluresve dies, quam iudicio sisti se reus promisit, secum agendi potestatem fecerit nec actoris ius ex mora deterius factum sit, consequens est dici defendi eum debere per exceptionem.

Dig. 2.11.9pr.

Ulpianus 77 ad ed.

Si servus iudicio se sisti promittat, non committitur stipulatio neque in eum neque in fideiussores eius.

Dig. 2.11.9.1

Ulpianus 77 ad ed.

Si plurium servorum nomine iudicio sistendi causa una stipulatione promittatur, poenam quidem integram committi, licet unus status non sit, labeo ait, quia verum sit omnes statos non esse: verum si pro rata unius offeratur poena, exceptione doli usurum eum, qui ex hac stipulatione convenitur.

Dig. 2.11.10pr.

Paulus 1 ad plaut.

Si eum iudicio sisti promisero, qui iam tempore liberatus esse dicebatur, quia iam actione forte non tenebatur: actio in me danda est, ut vel exhibeam eum vel defendam, ut veritas inquiratur.

Dig. 2.11.10.1

Paulus 1 ad plaut.

Homo sisti promissus ante diem dolo promissoris periit: certo iure utimur non ante poenam peti posse, quam dies venerit: tota enim stipulatio in diem collata videtur.

Dig. 2.11.10.2

Paulus 1 ad plaut.

Qui iniuriarum acturus est, stipulatus erat ante litem contestatam ut adversarius suus iudicio sistat: commissa stipulatione mortuus est. non competere heredi eius ex stipulatu actionem placuit, quia tales stipulationes propter rem ipsam darentur, iniuriarum autem actio heredi non competit. quamvis enim haec stipulatio iudicio sistendi causa facta ad heredem transeat, tamen in hac causa danda non est: nam et defunctus si vellet omissa iniuriarum actione ex stipulatu agere, non permitteretur ei. idem dicendum esse et si is, cum quo iniuriarum agere volebam, stipulatione tali commissa decesserit: nam non competit mihi adversus heredem eius ex stipulatu actio, et hoc iulianus scribit. secundum quod et si fideiussores dati erant, minime dabitur in eos actio mortuo reo. idem pomponius, si non post longum tempus decesserit: quia si ad iudicium venisset, litem cum eo contestari actor potuisset.

Dig. 2.11.11

Ulpianus 47 ad sab.

Si quis quendam in iudicio sisti promiserit ^ promisit^, in eadem causa eum debet sistere. in eadem autem causa sistere hoc est ita sistere, ut actori persecutio loco deteriori non sit, quamvis exactio rei possit esse difficilior. licet enim difficilior exactio sit, tamen dicendum est videri in eadem causa eum stetisse: nam et si novum aes alienum contraxisset vel pecuniam perdidisset, videtur tamen in eadem causa stetisse: ergo et qui alii iudicatus sistitur, in eadem causa stare videtur.

Dig. 2.11.12pr.

Paulus 11 ad sab.

Qui autem novo privilegio utitur, non videtur in eadem causa sisti.

Dig. 2.11.12.1

Paulus 11 ad sab.

Illud tenendum est, quod aestimationem eius quod intersit agentis ad illud tempus referendum est, quo sisti debuit, non ad id, quo agitur, quamvis desierit eius interesse.

Dig. 2.11.13

Iulianus 55 Dig.

Quotiens servus iudicio sistendi causa ut ipse litigaturus vel ab alio stipulatur vel ipse promittit: nec committitur stipulatio nec fideiussores tenentur, quia servus conveniri vel convenire non potest.

Dig. 2.11.14

Nerva 2 membr.

Si procurator ita stipulatus est, ut sistat dumtaxat eum quem stipularetur, non etiam poenam si status non esset stipularetur: propemodum nullius momenti est ea stipulatio, quia procuratoris, quod ad ipsius utilitatem pertinet, nihil interest sisti. sed cum alienum negotium in stipulando egerit, potest defendi non procuratoris, sed eius cuius negotium gesserit utilitatem in ea re spectandam esse: ut quantum domini litis interfuit sisti, tantum ex ea stipulatione non stato reo procuratori debeatur. eadem et fortius adhuc dici possunt, si procurator ita stipulatus esset "quanti ea res erit": ut hanc conceptionem verborum non ad ipsius, sed ad domini utilitatem relatam interpretemur.

Dig. 2.11.15

Papinianus 2 quaest.

Si tutor iudicio sisti promiserit et stipulationi non obtemperaverit, et interea pupillus adoleverit aut mortem obierit aut etiam abstentus sit hereditate: denegabitur ex stipulatu actio. nam et ipsius rei, quae petebatur, si tutor iudicatus fuerit et eorum quid acciderit, non esse dandam in eum actionem iudicati probatum est.

Dig. 2.12.0. De feriis et dilationibus et diversis temporibus.

Dig. 2.12.1pr.

Ulpianus 4 de omn. trib.

Ne quis messium vindemiarumque tempore adversarium cogat ad iudicium venire, oratione divi marci exprimitur, quia occupati circa rem rusticam in forum compellendi non sunt.

Dig. 2.12.1.1

Ulpianus 4 de omn. trib.

Sed si praetor aut per ignorantiam vel socordiam evocare eos perseveraverit hique sponte venerint: si quidem sententiam dixerit praesentibus illis et sponte litigantibus, sententia valebit, tametsi non recte fecerit qui eos evocaverit: sin vero, cum abesse perseveraverint, sententiam protulerit etiam absentibus illis, consequens erit dicere sententiam nullius esse momenti (neque enim praetoris factum iuri derogare oportet): et citra appellationem igitur sententia infirmabitur.

Dig. 2.12.1.2

Ulpianus 4 de omn. trib.

Sed excipiuntur certae causae, ex quibus cogi poterimus et per id temporis, cum messes vindemiaeque sunt, ad praetorem venire: scilicet si res tempore peritura sit, hoc est si dilatio actionem sit peremptura. sane quotiens res urguet, cogendi quidem sumus ad praetorem venire, verum ad hoc tantum cogi aequum est ut lis contestetur, et ita ipsis verbis orationis exprimitur: denique alterutro recusante post litem contestatam litigare dilationem oratio concessit.

Dig. 2.12.2

Ulpianus 5 ad ed.

Eadem oratione divus marcus in senatu recitata effecit de aliis speciebus praetorem adiri etiam diebus feriaticis: ut puta ut tutores aut curatores dentur: ut offici admoneantur cessantes: excusationes allegentur: alimenta constituantur: aetates probentur: ventris nomine in possessionem mittatur, vel rei servandae causa, vel legatorum fideive commissorum, vel damni infecti: item de testamentis exhibendis: ut curator detur bonorum eius, cui an heres exstaturus sit incertum est: aut de alendis liberis parentibus patronis: aut de adeunda suspecta hereditate: aut ut aspectu atrox iniuria aestimetur: vel fideicommissaria libertas praestanda.

Dig. 2.12.3pr.

Ulpianus 2 ad ed.

Solet etiam messis vindemiarumque tempore ius dici de rebus quae tempore vel morte periturae sunt. morte: veluti furti: damni iniuriae: iniuriarum atrocium: qui de incendio ruina naufragio rate nave expugnata rapuisse dicuntur: et si quae similes sunt. item si res tempore periturae sunt aut actionis dies exiturus est.

Dig. 2.12.3.1

Ulpianus 2 ad ed.

Liberalia quoque iudicia omni tempore finiuntur.

Dig. 2.12.3.2

Ulpianus 2 ad ed.

Item in eum, qui quid nundinarum nomine adversus communem utilitatem acceperit, omni tempore ius dicitur.

Dig. 2.12.4

Paulus 1 ad ed.

Praesides provinciarum ex consuetudine cuiusque loci solent messis vindemiarumque causa tempus statuere.

Dig. 2.12.5

Ulpianus 62 ad ed.

Pridie kalendas ianuarias magistratus neque ius dicere, sed nec sui potestatem facere consuerunt.

Dig. 2.12.6

Ulpianus 77 ad ed.

Si feriatis diebus fuerit iudicatum, lege cautum est, ne his diebus iudicium sit nisi ex voluntate partium, et quod aliter adversus ea iudicatum erit ne quis iudicatum facere neve solvere debeat, neve quis ad quem de ea re in ius aditum erit iudicatum facere cogat.

Dig. 2.12.7

Ulpianus 1 de off. cons.

Oratione quidem divi marci amplius quam semel non esse dandam instrumentorum dilationem expressum est: sed utilitatis litigantium gratia causa cognita et iterum dilatio tam ex eadem quam ex alia provincia secundum moderamen locorum impertiri solet, et maxime si aliquid inopinatum emergat. illud videndum, si defunctus acceperit aliquam dilationem propter instrumenta, an successori quoque eius dari debeat, an vero, quia iam data est, amplius dari non possit? et magis est, ut et hic causa cognita dari debeat.

Dig. 2.12.8

Paulus 13 ad sab.

More romano dies a media nocte incipit et sequentis noctis media parte finitur. itaque quidquid in his viginti quattuor horis, id est duabus dimidiatis noctibus et luce media, actum est, perinde est, quasi quavis hora lucis actum esset.

Dig. 2.12.9

Ulpianus 7 de off. procons.

Divus traianus minicio natali rescripsit ferias a forensibus tantum negotiis dare vacationem, ea autem, quae ad disciplinam militarem pertinet, etiam feriatis diebus peragenda: inter quae custodiarum quoque cognitionem esse.

Dig. 2.12.10

Paulus 5 sent.

In pecuniariis causis omnibus dilatio singulis causis plus semel tribui non potest: in capitalibus autem reo tres dilationes, accusatori duae dari possunt: sed utrumque causa cognita.

Dig. 2.13.0. De edendo.

Dig. 2.13.1pr.

Ulpianus 4 ad ed.

Qua quisque actione agere volet, eam edere debet: nam aequissimum videtur eum qui acturus est edere actionem, ut proinde sciat reus, utrum cedere an contendere ultra debeat, et, si contendendum putat, veniat instructus ad agendum cognita actione qua conveniatur.

Dig. 2.13.1.1

Ulpianus 4 ad ed.

Edere est etiam copiam describendi facere: vel in libello complecti et dare: vel dictare. eum quoque edere labeo ait, qui producat adversarium suum ad album et demonstret quod dictaturus est vel id dicendo, quo uti velit.

Dig. 2.13.1.2

Ulpianus 4 ad ed.

Editiones sine die et consule fieri debent, ne quid excogitetur edito die et consule et praelato die fiat. diem autem et consulem excepit praetor quo instrumentum conscriptum est, non in quem solutio concepta est: nam dies solutionis sicuti summa pars est stipulationis. rationes tamen cum die et consule edi debent, quoniam accepta et data non alias possunt apparere, nisi dies et consul fuerit editus.

Dig. 2.13.1.3

Ulpianus 4 ad ed.

Edenda sunt omnia, quae quis apud iudicem editurus est: non tamen ut et instrumenta, quibus quis usurus non est, compellatur edere.

Dig. 2.13.1.4

Ulpianus 4 ad ed.

Edere non videtur qui stipulationem totam non edidit.

Dig. 2.13.1.5

Ulpianus 4 ad ed.

Eis, qui ob aetatem vel rusticitatem vel ob sexum lapsi non ediderunt vel alia ex iusta causa, subvenietur.

Dig. 2.13.2

Paulus 3 ad ed.

Si legatum petatur, non iubet praetor verba testamenti edere: ideo fortasse, quia heredes solent habere exemplum testamenti.

Dig. 2.13.3

Mauricius 2 de poen.

Senatus censuit, ne quisquam eorum, a quibus quid fisco petetur, alia instrumenta delatori cogatur edere, quam quae ad eam causam pertinerent, ex qua se deferre professus est.

Dig. 2.13.4pr.

Ulpianus 4 ad ed.

Praetor ait: "argentariae mensae exercitores rationem, quae ad se pertinet, edent adiecto die et consule".

Dig. 2.13.4.1

Ulpianus 4 ad ed.

Huius edicti ratio aequissima est: nam cum singulorum rationes argentarii conficiant, aequum fuit id quod mei causa confecit meum quodammodo instrumentum mihi edi.

Dig. 2.13.4.2

Ulpianus 4 ad ed.

Sed et filius familias continetur his verbis, ut vel ipse cogatur edere: an et pater, quaeritur. labeo scribit patrem non cogendum, nisi sciente eo argentaria exercetur: sed recte sabinus respondit tunc id admittendum, cum patri quaestum refert.

Dig. 2.13.4.3

Ulpianus 4 ad ed.

Sed si servus argentariam faciat (potest enim), si quidem voluntate domini fecerit, compellendum dominum edere ac perinde in eum dandum est iudicium, ac si ipse fecisset. sed si inscio domino fecit, satis esse dominum iurare eas se rationes non habere: si servus peculiarem faciat argentariam, dominus de peculio vel de in rem verso tenetur: sed si dominus habet rationes nec edit, in solidum tenetur.

Dig. 2.13.4.4

Ulpianus 4 ad ed.

Etiam is qui desit ^ desiit^ argentariam facere, ad editionem compellitur.

Dig. 2.13.4.5

Ulpianus 4 ad ed.

Sed ibi quis compellitur edere, ubi argentariam exercuit, et hoc est constitutum. quod si instrumentum argentariae in alia provincia habeat, in alia administraverit, ibi puto cogendum edere, ubi argentariam exercuit: hoc enim primum deliquit, quod alio instrumentum transtulit. quod si in alio loco argentariam exercet, alibi autem ad editionem compelletur, minime hoc facere cogitur: nisi descriptum velis ubi de ea re agitur eum tibi dare, tuis videlicet sumptibus:

Dig. 2.13.5

Paulus 3 ad ed.

Spatiumque ad perferendas eas tribuendum est.

Dig. 2.13.6pr.

Ulpianus 4 ad ed.

Si quis ex argentariis, ut plerique eorum, in villa habeat instrumentum vel in horreo: aut ad locum te perducet aut descriptas rationes dabit.

Dig. 2.13.6.1

Ulpianus 4 ad ed.

Cogentur et successores argentarii edere rationes. quod si plures sunt heredes et unus habeat, solus ad editionem compelletur: sed si omnes habeant et unus ediderit, omnes ad editionem compellendi sunt. quid enim si humilis et deploratus unus edidit, ut dubitare quis merito de fide editionis possit? ut igitur comparari rationes possint, etiam ceteri edere debent aut certe unius editioni subscribere. hoc idem erit et si plures fuerint argentarii, a quibus editio desideratur. nam et si plures tutores tutelam administraverunt simul, aut omnes edere debent aut unius editioni subscribere.

Dig. 2.13.6.2

Ulpianus 4 ad ed.

Exigitur autem ab adversario argentarii iusiurandum non calumniae causa postulare edi sibi: ne forte vel supervacuas rationes vel quas habet edi sibi postulet vexandi argentarii causa.

Dig. 2.13.6.3

Ulpianus 4 ad ed.

Rationem autem esse labeo ait ultro citro dandi accipiendi, credendi, obligandi solvendi sui causa negotiationem: nec ullam rationem nuda dumtaxat solutione debiti incipere. nec si pignus acceperit aut mandatum, compellendum edere: hoc enim extra rationem esse. sed et quod solvi constituit, argentarius edere debet: nam et hoc ex argentaria venit.

Dig. 2.13.6.4

Ulpianus 4 ad ed.

Ex hoc edicto in id quod interfuit actio competit:

Dig. 2.13.6.5

Ulpianus 4 ad ed.

Unde apparet ita demum tenere hoc edictum, si ad eum pertineat. pertinere autem videtur ad me ratio, si modo eam tractaveris me mandante. sed si procurator meus absente me mandaverit, an mihi edenda sit, quasi ad me pertineat? et magis est ut edatur. procuratori quoque meo edendam rationem, quam mecum habet, non dubito, quasi ad eum pertineat: et cauturum de rato, si mandatum ei non sit.

Dig. 2.13.6.6

Ulpianus 4 ad ed.

Si initium tabularum habet diem, in quibus titii ratio scripta est, postmodum mea sine die et consule, etiam mihi edendus est dies et consul: communis enim omnis rationis est praepositio diei et consulis.

Dig. 2.13.6.7

Ulpianus 4 ad ed.

Edi autem est vel dictare vel tradere libellum vel codicem proferre.

Dig. 2.13.6.8

Ulpianus 4 ad ed.

Praetor ait: "argentario eive, qui iterum edi postulabit, causa cognita edi iubebo".

Dig. 2.13.6.9

Ulpianus 4 ad ed.

Prohibet argentario edi illa ratione, quod etiam ipse instructus esse potest instrumento suae professionis: et absurdum est, cum ipse in ea sit causa, ut edere debeat, ipsum petere ut edatur ei. an nec heredi argentarii edi ratio debeat, videndum: et si quidem instrumentum argentariae ad eum pervenit, non debet ei edi, si minus, edenda est ex causa. nam et ipsi argentario ex causa ratio edenda est: si naufragio vel ruina vel incendio vel alio simili casu rationes perdidisse probet aut in longinquo habere, veluti trans mare.

Dig. 2.13.6.10

Ulpianus 4 ad ed.

Nec iterum postulanti edi praetor iubet, nisi ex causa:

Dig. 2.13.7pr.

Paulus 3 ad ed.

Veluti si peregre habere quod primum editum est doceat: vel minus plene editum: vel eas rationes, quas casu maiore, non vero neglegentia perdiderit. nam si eo casu amisit, cui ignosci debeat, ex integro edi iubebit.

Dig. 2.13.7.1

Paulus 3 ad ed.

Haec vox iterum duas res significat: alteram, qua demonstraretur tempus secundum, quod graeci deuteron dicunt: alteram, quae ad insequentia quoque tempora pertinet, quae graece dicitur palin , quod ita accipitur "quotiens opus erit". nam potest fieri ut bis editam sibi rationem quis perdiderit: ut verbum iterum pro saepius accipiatur.

Dig. 2.13.8pr.

Ulpianus 4 ad ed.

Ubi exigitur argentarius rationes edere, tunc punitur, cum dolo malo non exhibet: sed culpam non praestabit nisi dolo proximam. dolo malo autem non edidit et qui malitiose edidit et qui in totum non edidit.

Dig. 2.13.8.1

Ulpianus 4 ad ed.

Is autem, qui in hoc edictum incidit, id praestat, quod interfuit mea rationes edi, cum decerneretur a praetore, non quod hodie interest: et ideo licet interesse desiit vel minoris vel pluris interesse coepit, locum actio non habebit neque augmentum neque deminutionem.

Dig. 2.13.9pr.

Paulus 3 ad ed.

Quaedam sunt personae, quas rationes nobis edere oportet nec tamen a praetore per hoc edictum compelluntur. veluti cum procurator res rationesve nostras administravit, non cogitur a praetore per metum in factum actionis rationes edere: scilicet quia id consequi possumus per mandati actionem. et cum dolo malo socius negotia gessit, praetor per hanc clausulam non intervenit: est enim pro socio actio. sed nec tutorem cogit praetor pupillo edere rationes: sed iudicio tutelae solet cogi edere.

Dig. 2.13.9.1

Paulus 3 ad ed.

Nihil interest, si successores aut pater aut dominus argentarii eiusdem fuerunt professionis: quia cum in locum et in ius succedant argentarii, partibus eius fungi debent. is autem, cui argentarius rationes suas legavit, non videbitur contineri, quia iuris successor his verbis significatur: non magis, quam si ei vivus eas donasset. sed nec heres tenebitur, cum nec possideat nec dolo malo fecerit: sed si ei, antequam eas legatario traderet, renuntiatum fuerit, ne ante eas tradat, tenebitur quasi dolo fecerit: item antequam eas tradat, tenebitur. quod si nihil dolo fecerit, causa cognita legatarius cogendus est edere.

Dig. 2.13.9.2

Paulus 3 ad ed.

Nummularios quoque non esse iniquum cogi rationes edere pomponius scribit: quia et hi nummularii sicut argentarii rationes conficiunt, quia et accipiunt pecuniam et erogant per partes, quarum probatio scriptura codicibusque eorum maxime continetur: et frequentissime ad fidem eorum decurritur.

Dig. 2.13.9.3

Paulus 3 ad ed.

Ceterum omnibus postulantibus et iurantibus non calumniae causa petere rationes, quae ad se pertineant, edi iubet.

Dig. 2.13.9.4

Paulus 3 ad ed.

Ad nos enim pertinet non tantum cum ipsi contraximus vel successimus ei qui contraxit, sed etiam si is qui in nostra potestate est contraxit.

Dig. 2.13.10pr.

Gaius 1 ad ed. provinc.

Argentarius rationes edere iubetur: nec interest cum ipso argentario controversia sit an cum alio.

Dig. 2.13.10.1

Gaius 1 ad ed. provinc.

Ideo autem argentarios tantum neque alios ullos absimiles eis edere rationes cogit, quia officium eorum atque ministerium publicam habet causam et haec principalis eorum opera est, ut actus sui rationes diligenter conficiant.

Dig. 2.13.10.2

Gaius 1 ad ed. provinc.

Edi autem ratio ita intellegitur, si a capite edatur, nam ratio nisi a capite inspiciatur, intellegi non potest: scilicet ut non totum cuique codicem rationum totasque membranas inspiciendi describendique potestas fiat, sed ut ea sola pars rationum, quae ad instruendum aliquem pertineat, inspiciatur et describatur.

Dig. 2.13.10.3

Gaius 1 ad ed. provinc.

Cum autem in id actio competit, quanti agentis intersit editas sibi rationes esse: eveniet, ut, sive quis condemnatus sit sive quod petierit non optinuerit eo, quod non habuerit rationes ex quibus causam suam tueri possit, id ipsum, quod ita perdiderit, hac actione consequatur. sed an hoc procedat videamus: nam si apud hunc iudicem, qui inter eum et argentarium iudicat, potest probare se illo iudicio, quo victus est, vincere potuisse, poterat et tunc probare: et si non probavit aut probantem iudex non curavit, de se ipso aut de iudice queri debet. sed non ita est. fieri enim potest, ut nunc, rationes vel ipso edente vel alio modo nanctus, aut aliis instrumentis vel testibus, quibus illo tempore aliqua ex causa uti non potuit, possit probare potuisse se vincere. sic enim et de cautione subrepta aut corrupta competit condictio et damni iniuriae actio: quia quod ante non potuimus intercepta cautione probare et ob id amisimus, hoc nunc aliis instrumentis aut testibus, quibus tum uti non potuimus, probare possumus.

Dig. 2.13.11

Modestinus 3 reg.

Exempla instrumentorum etiam sine subscriptione edentis edi posse receptum est.

Dig. 2.13.12

Callistratus 1 ed. monit.

Feminae remotae videntur ab officio argentarii, cum ea opera virilis sit.

Dig. 2.13.13

Ulpianus 4 ad ed.

Haec actio neque post annum neque in heredem nisi ex suo facto dabitur. heredi autem dabitur.

Dig. 2.14.0. De pactis.

Dig. 2.14.1pr.

Ulpianus 4 ad ed.

Huius edicti aequitas naturalis est. quid enim tam congruum fidei humanae, quam ea quae inter eos placuerunt servare?

Dig. 2.14.1.1

Ulpianus 4 ad ed.

Pactum autem a pactione dicitur (inde etiam pacis nomen appellatum est)

Dig. 2.14.1.2

Ulpianus 4 ad ed.

Et est pactio duorum pluriumve in idem placitum et consensus.

Dig. 2.14.1.3

Ulpianus 4 ad ed.

Conventionis verbum generale est ad omnia pertinens, de quibus negotii contrahendi transigendique causa consentiunt qui inter se agunt: nam sicuti convenire dicuntur qui ex diversis locis in unum locum colliguntur et veniunt, ita et qui ex diversis animi motibus in unum consentiunt, id est in unam sententiam decurrunt. adeo autem conventionis nomen generale est, ut eleganter dicat pedius nullum esse contractum, nullam obligationem, quae non habeat in se conventionem, sive re sive verbis fiat: nam et stipulatio, quae verbis fit, nisi habeat consensum, nulla est.

Dig. 2.14.1.4

Ulpianus 4 ad ed.

Sed conventionum pleraeque in aliud nomen transeunt: veluti in emptionem, in locationem, in pignus vel in stipulationem.

Dig. 2.14.2pr.

Paulus 3 ad ed.

Labeo ait convenire posse vel re: vel per epistulam vel per nuntium inter absentes quoque posse. sed etiam tacite consensu convenire intellegitur.

Dig. 2.14.2.1

Paulus 3 ad ed.

Et ideo si debitori meo reddiderim cautionem, videtur inter nos convenisse ne peterem, profuturamque ei conventionis exceptionem placuit.

Dig. 2.14.3

Modestinus 3 reg.

Postquam pignus vero debitori reddatur, si pecunia soluta non fuerit, debitum peti posse dubium non est, nisi specialiter contrarium actum esse probetur.

Dig. 2.14.4pr.

Paulus 3 ad ed.

Item quia conventiones etiam tacite valent, placet in urbanis habitationibus locandis invecta illata pignori esse locatori, etiamsi nihil nominatim convenerit.

Dig. 2.14.4.1

Paulus 3 ad ed.

Secundum haec et mutus pacisci potest.

Dig. 2.14.4.2

Paulus 3 ad ed.

Huius rei argumentum etiam stipulatio dotis causa facta est: nam ante nuptias male petitur, quasi si hoc expressum fuisset, et nuptiis non secutis ipso iure evanescit stipulatio. idem iuliano placet.

Dig. 2.14.4.3

Paulus 3 ad ed.

Ex facto etiam consultus, cum convenisset, ut donec usurae solverentur sors non peteretur, et stipulatio pure concepta fuisset, condicionem inesse stipulationi, atque si hoc expressum fuisset.

Dig. 2.14.5

Ulpianus 4 ad ed.

Conventionum autem tres sunt species. aut enim ex publica causa fiunt aut ex privata: privata aut legitima aut iuris gentium. publica conventio est, quae fit per pacem, quotiens inter se duces belli quaedam paciscuntur.

Dig. 2.14.6

Paulus 3 ad ed.

Legitima conventio est quae lege aliqua confirmatur. et ideo interdum ex pacto actio nascitur vel tollitur, quotiens lege vel senatus consulto adiuvatur.

Dig. 2.14.7pr.

Ulpianus 4 ad ed.

Iuris gentium conventiones quaedam actiones pariunt, quaedam exceptiones.

Dig. 2.14.7.1

Ulpianus 4 ad ed.

Quae pariunt actiones, in suo nomine non stant, sed transeunt in proprium nomen contractus: ut emptio venditio, locatio conductio, societas, commodatum, depositum et ceteri similes contractus.

Dig. 2.14.7.2

Ulpianus 4 ad ed.

Sed et si in alium contractum res non transeat, subsit tamen causa, eleganter aristo celso respondit esse obligationem. ut puta dedi tibi rem ut mihi aliam dares, dedi ut aliquid facias: hoc sunallagma esse et hinc nasci civilem obligationem. et ideo puto recte iulianum a mauriciano reprehensum in hoc: dedi tibi stichum, ut pamphilum manumittas: manumisisti: evictus est stichus. iulianus scribit in factum actionem a praetore dandam: ille ait civilem incerti actionem, id est praescriptis verbis sufficere: esse enim contractum, quod aristo sunallagma dicit, unde haec nascitur actio.

Dig. 2.14.7.3

Ulpianus 4 ad ed.

Si ob maleficium ne fiat promissum sit, nulla est obligatio ex hac conventione.

Dig. 2.14.7.4

Ulpianus 4 ad ed.

Sed cum nulla subest causa, propter conventionem hic constat non posse constitui obligationem: igitur nuda pactio obligationem non parit, sed parit exceptionem.

Dig. 2.14.7.5

Ulpianus 4 ad ed.

Quin immo interdum format ipsam actionem, ut in bonae fidei iudiciis: solemus enim dicere pacta conventa inesse bonae fidei iudiciis. sed hoc sic accipiendum est, ut si quidem ex continenti pacta subsecuta sunt, etiam ex parte actoris insint: si ex intervallo, non inerunt, nec valebunt, si agat, ne ex pacto actio nascatur. ut puta post divortium convenit, ne tempore statuto dilationis dos reddatur, sed statim: hoc non valebit, ne ex pacto actio nascatur: idem Marcellus scribit. et si in tutelae actione convenit, ut maiores quam statutae sunt usurae praestentur, locum non habebit, ne ex pacto nascatur actio: ea enim pacta insunt, quae legem contractui dant, id est quae in ingressu contractus facta sunt. idem responsum scio a papiniano, et si post emptionem ex intervallo aliquid extra naturam contractus conveniat, ob hanc causam agi ex empto non posse propter eandem regulam, ne ex pacto actio nascatur. quod et in omnibus bonae fidei iudiciis erit dicendum. sed ex parte rei locum habebit pactum, quia solent et ea pacta, quae postea interponuntur, parere exceptiones.

Dig. 2.14.7.6

Ulpianus 4 ad ed.

Adeo autem bonae fidei iudiciis exceptiones postea factae, quae ex eodem sunt contractu, insunt, ut constet in emptione ceterisque bonae fidei iudiciis re nondum secuta posse abiri ab emptione. si igitur in totum potest, cur non et pars eius pactione mutari potest? et haec ita pomponius libro sexto ad edictum scribit. quod cum est, etiam ex parte agentis pactio locum habet, ut et ad actionem proficiat nondum re secuta, eadem ratione. nam si potest tota res tolli, cur non et reformari? ut quodammodo quasi renovatus contractus videatur. quod non insuptiliter dici potest. unde illud aeque non reprobo, quod pomponius libris lectionum probat, posse in parte recedi pacto ab emptione, quasi repetita partis emptione. sed cum duo heredes emptori exstiterunt, venditor cum altero pactus est, ut ab emptione recederetur: ait iulianus valere pactionem et dissolvi pro parte emptionem: quoniam et ex alio contractu paciscendo alter ex heredibus adquirere sibi potuit exceptionem. utrumque itaque recte placet, et quod iulianus et quod pomponius.

Dig. 2.14.7.7

Ulpianus 4 ad ed.

Ait praetor: "pacta conventa, quae neque dolo malo, neque adversus leges plebis scita senatus consulta decreta edicta principum, neque quo fraus cui eorum fiat facta erunt, servabo."

Dig. 2.14.7.8

Ulpianus 4 ad ed.

Pactorum quaedam in rem sunt, quaedam in personam. in rem sunt, quotiens generaliter paciscor ne petam: in personam, quotiens ne a persona petam, id est ne a lucio titio petam. utrum autem in rem an in personam pactum factum est, non minus ex verbis quam ex mente convenientium aestimandum est:

plerumque enim, ut pedius ait, persona pacto inseritur, non ut personale pactum fiat, sed ut demonstretur, cum quo pactum factum est.

Dig. 2.14.7.9

Ulpianus 4 ad ed.

Dolo malo ait praetor pactum se non servaturum. dolus malus fit calliditate et fallacia: et ut ait pedius, dolo malo pactum fit, quotiens circumscribendi alterius causa aliud agitur et aliud agi simulatur.

Dig. 2.14.7.10

Ulpianus 4 ad ed.

Sed si fraudandi causa pactum factum dicatur, nihil praetor adicit: sed eleganter labeo ait hoc aut iniquum esse, aut supervacuum. iniquum, si quod semel remisit creditor debitori suo bona fide, iterum hoc conetur destruere: supervacuum, si deceptus hoc fecerit, inest enim dolo et fraus.

Dig. 2.14.7.11

Ulpianus 4 ad ed.

Sive autem ab initio dolo malo pactum factum est sive post pactum dolo malo aliquid factum est, nocebit exceptio propter haec verba edicti "neque fiat".

Dig. 2.14.7.12

Ulpianus 4 ad ed.

Quod fere novissima parte pactorum ita solet inseri "rogavit titius, spopondit maevius", haec verba non tantum pactionis loco accipiuntur, sed etiam stipulationis: ideoque ex stipulatu nascitur actio, nisi contrarium specialiter adprobetur, quod non animo stipulantium hoc factum est, sed tantum paciscentium.

Dig. 2.14.7.13

Ulpianus 4 ad ed.

Si paciscar, ne pro iudicati vel incensarum aedium agatur, hoc pactum valet.

Dig. 2.14.7.14

Ulpianus 4 ad ed.

Si paciscar, ne operis novi nuntiationem exsequar, quidam putant non valere pactionem, quasi in ea re praetoris imperium versetur: labeo autem distinguit, ut si ex re familiari operis novi nuntiatio sit facta, liceat pacisci, si de re publica, non liceat: quae distinctio vera est. et in ceteris igitur omnibus ad edictum praetoris pertinentibus, quae non ad publicam laesionem, sed ad rem familiarem respiciunt, pacisci licet: nam et de furto pacisci lex permittit.

Dig. 2.14.7.15

Ulpianus 4 ad ed.

Sed et si quis paciscatur, ne depositi agat, secundum pomponium valet pactum. item si quis pactus sit, ut ex causa depositi omne periculum praestet, pomponius ait pactionem valere nec quasi contra iuris formam factam non esse servandam.

Dig. 2.14.7.16

Ulpianus 4 ad ed.

Et generaliter quotiens pactum a iure communi remotum est, servari hoc non oportet: nec legari, nec iusiurandum de hoc adactum ne quis agat servandum Marcellus libro secundo digestorum scribit: et si stipulatio sit interposita de his, pro quibus pacisci non licet, servanda non est, sed omnimodo rescindenda.

Dig. 2.14.7.17

Ulpianus 4 ad ed.

Si ante aditam hereditatem paciscatur quis cum creditoribus ut minus solvatur, pactum valiturum est.

Dig. 2.14.7.18

Ulpianus 4 ad ed.

Sed si servus sit, qui paciscitur, priusquam libertatem et hereditatem apiscatur, quia sub condicione heres scriptus fuerat, non profuturum pactum vindius scribit: Marcellus autem libro octavo decimo digestorum et suum heredem et servum necessarium pure scriptos, paciscentes priusquam se immisceant putat recte pacisci, quod verum est. idem et in extraneo herede: qui si mandatu creditorum adierit, etiam mandati putat eum habere actionem. sed si quis, ut supra rettulimus, in servitute pactus est, negat Marcellus, quoniam non solet ei proficere, si quid in servitute egit, post libertatem: quod in pacti exceptione admittendum est. sed an vel doli ei prosit exceptio, quaeritur. Marcellus in similibus speciebus licet antea dubitavit, tamen admisit: ut puta filius familias heres institutus pactus est cum creditoribus et emancipatus adiit hereditatem: et dicit doli eum posse uti exceptione. idem probat, et si filius vivo patre cum creditoribus paternis pactus sit: nam et hic doli exceptionem profuturam. immo et in servo doli exceptio non est respuenda.

Dig. 2.14.7.19

Ulpianus 4 ad ed.

Hodie tamen ita demum pactio huiusmodi creditoribus obest, si convenerint in unum et communi consensu declaraverint, quota parte debiti contenti sint: si vero dissentiant, tunc praetoris partes necessariae sunt, qui decreto suo sequetur maioris partis voluntatem.

Dig. 2.14.8

Papinianus 10 resp.

Maiorem esse partem pro modo debiti, non pro numero personarum placuit. quod si aequales sint in cumulo debiti, tunc plurium numerus creditorum praeferendus est. in numero autem pari creditorum auctoritatem eius sequetur praetor, qui dignitate inter eos praecellit. sin autem omnia undique in unam aequalitatem concurrant, humanior sententia a praetore eligenda est. hoc enim ex divi marci rescripto colligi potest.

Dig. 2.14.9pr.

Paulus 62 ad ed.

Si plures sint qui eandem actionem habent, unius loco habentur. ut puta plures sunt rei stipulandi vel plures argentarii, quorum nomina simul facta sunt: unius loco numerabuntur, quia unum debitum est. et cum tutores pupilli creditoris plures convenissent, unius loco numerantur, quia unius pupilli nomine convenerant. nec non et unus tutor plurium pupillorum nomine unum debitum praetendentium si convenerit, placuit unius loco esse. nam difficile est, ut unus homo duorum vicem sustineat. nam nec is, qui plures actiones habet, adversus eum, qui unam actionem habet, plurium personarum loco accipitur.

Dig. 2.14.9.1

Paulus 62 ad ed.

Cumulum debiti et ad plures summas referemus, si uni forte minutae summae centum aureorum debeantur, alii vero una summa aureorum quinquaginta:

nam in hunc casum spectabimus summas plures, quia illae excedunt in unam summam coadunatae.

Dig. 2.14.9.2

Paulus 62 ad ed.

Summae autem applicare debemus etiam usuras.

Dig. 2.14.10pr.

Ulpianus 4 ad ed.

Rescriptum autem divi marci sic loquitur, quasi omnes creditores debeant convenire. quid ergo si quidam absentes sint ? num exemplum praesentium absentes sequi debeant ? sed an et privilegiariis absentibus haec pactio noceat, eleganter tractatur: si modo valet pactio et contra absentes. et repeto ante formam a divo marco datam divum pium rescripsisse fiscum quoque in his casibus, in quibus hypothecas non habet, et ceteros privilegiarios exemplum creditorum sequi oportere. haec enim omnia in his creditoribus, qui hypothecas non habent, conservanda sunt.

Dig. 2.14.10.1

Ulpianus 4 ad ed.

Si pacto subiecta sit poenae stipulatio, quaeritur, utrum pacti exceptio locum habeat an ex stipulatu actio. sabinus putat, quod est verius, utraque via uti posse prout elegerit qui stipulatus est: si tamen ex causa pacti exceptione utatur, aequum erit accepto eum stipulationem ferre.

Dig. 2.14.10.2

Ulpianus 4 ad ed.

Plerumque solemus dicere doli exceptionem subsidium esse pacti exceptionis: quosdam denique, qui exceptione pacti uti non possunt, doli exceptione usuros et iulianus scribit et alii plerique consentiunt. ut puta si procurator meus paciscatur, exceptio doli mihi proderit, ut trebatio videtur, qui putat, sicuti pactum procuratoris mihi nocet, ita et prodesse,

Dig. 2.14.11

Paulus 3 ad ed.

Quia et solvi ei potest.

Dig. 2.14.12

Ulpianus 4 ad ed.

Nam et nocere constat, sive ei mandavi ut pacisceretur, sive omnium rerum mearum procurator fuit: ut et puteolanus libro primo adsessoriorum scribit: cum placuit eum etiam rem in iudicium deducere.

Dig. 2.14.13pr.

Paulus 3 ad ed.

Sed si tantum ad actionem procurator factus sit, conventio facta domino non nocet, quia nec solvi ei possit.

Dig. 2.14.13.1

Paulus 3 ad ed.

Sed si in rem suam datus sit procurator, loco domini habetur: et ideo servandum erit pactum conventum.

Dig. 2.14.14

Ulpianus 4 ad ed.

Item magistri societatium pactum et prodesse et obesse constat.

Dig. 2.14.15

Paulus 3 ad ed.

Tutoris quoque, ut scribit iulianus, pactum pupillo prodest.

Dig. 2.14.16pr.

Ulpianus 4 ad ed.

Si cum emptore hereditatis pactum sit factum et venditor hereditatis petat, doli exceptio nocet. nam ex quo rescriptum est a divo pio utiles actiones emptori hereditatis dandas, merito adversus venditorem hereditatis exceptione doli debitor hereditarius uti potest.

Dig. 2.14.16.1

Ulpianus 4 ad ed.

Sed et si inter dominum rei venditae et emptorem convenisset, ut homo qui emptus erat redderetur, ei qui pro domino rem vendidit petenti pretium doli exceptio nocebit.

Dig. 2.14.17pr.

Paulus 3 ad ed.

Si tibi decem dem et paciscar, ut viginti mihi debeantur, non nascitur obligatio ultra decem: re enim non potest obligatio contrahi, nisi quatenus datum sit.

Dig. 2.14.17.1

Paulus 3 ad ed.

Quaedam actiones per pactum ipso iure tolluntur: ut iniuriarum, item furti.

Dig. 2.14.17.2

Paulus 3 ad ed.

De pignore iure honorario nascitur ex pacto actio: tollitur autem per exceptionem, quotiens paciscor ne petam.

Dig. 2.14.17.3

Paulus 3 ad ed.

Si quis paciscatur, ne a se petatur, sed ut ab herede petatur, heredi exceptio non proderit.

Dig. 2.14.17.4

Paulus 3 ad ed.

Si pactus sim, ne a me neve a titio petatur, non proderit titio, etiamsi heres extiterit, quia ex post facto id confirmari non potest. hoc iulianus scribit in patre, qui pactus erat, ne a se neve a filia peteretur, cum filia patri heres extitisset.

Dig. 2.14.17.5

Paulus 3 ad ed.

Pactum conventum cum venditore factum si in rem constituatur, secundum plurium sententiam et emptori prodest, et hoc iure nos uti pomponius scribit: secundum sabini autem sententiam etiam si in personam conceptum est, et in emptorem valet: qui hoc esse existimat et si per donationem successio facta sit.

Dig. 2.14.17.6

Paulus 3 ad ed.

Cum possessor alienae hereditatis pactus est, heredi, si evicerit, neque nocere neque prodesse plerique putant.

Dig. 2.14.17.7

Paulus 3 ad ed.

Filius servusve si paciscantur, ne a patre dominove petatur,

Dig. 2.14.18

Gaius 1 ad ed. provinc.

Sive de eo paciscantur, quod cum ipsis, sive de eo, quod cum patre dominove contractum est,

Dig. 2.14.19pr.

Paulus 3 ad ed.

Adquirent exceptionem. idem est et in his, qui bona fide serviunt.

Dig. 2.14.19.1

Paulus 3 ad ed.

Item si filius familias pactus fuerit ne a se petatur, proderit ei, et patri quoque, si de peculio conveniatur.

Dig. 2.14.20

Gaius 1 ad ed. provinc.

Vel de in rem verso, vel si quasi defensor filii, si hoc maluerit conveniatur,

Dig. 2.14.21pr.

Paulus 3 ad ed.

Et heredi patris vivo filio: post mortem vero filii nec patri nec heredi eius, quia personale pactum est.

Dig. 2.14.21.1

Paulus 3 ad ed.

Quod si servus, ne a se peteretur, pactus fuerit, nihil valebit pactum: de doli exceptione videamus. et si in rem paciscatur, proderit domino et heredi eius pacti conventi exceptio: quod si in personam pactum conceptum est, tunc domino doli superest exceptio.

Dig. 2.14.21.2

Paulus 3 ad ed.

Nos autem his, qui in nostra potestate sunt, paciscendo prodesse non possumus: sed nobis id profuturum, si nomine eorum conveniamur, proculus ait: quod ita recte dicitur, si in paciscendo id actum sit. ceterum si paciscar, ne a titio petas, deinde actionem adversus me nomine eius instituas, non est danda pacti conventi exceptio: nam quod ipsi inutile est, nec defensori competit. iulianus quoque scribit, si pater pactus sit, ne a se neve a filio petatur, magis est ut pacti exceptio filio familias danda non sit, sed doli prosit.

Dig. 2.14.21.3

Paulus 3 ad ed.

Filia familias pacisci potest, ne de dote agat, cum sui iuris esse coeperit.

Dig. 2.14.21.4

Paulus 3 ad ed.

Item filius familias de eo, quod sub condicione legatum est, recte paciscetur.

Dig. 2.14.21.5

Paulus 3 ad ed.

In his, qui eiusdem pecuniae exactionem habent in solidum, vel qui eiusdem pecuniae debitores sunt, quatenus alii quoque prosit vel noceat pacti exceptio, quaeritur. et in rem pacta omnibus prosunt, quorum obligationem dissolutam esse eius qui paciscebatur interfuit. itaque debitoris conventio fideiussoribus proficiet,

Dig. 2.14.22

Ulpianus 4 ad ed.

Nisi hoc actum est, ut dumtaxat a reo non petatur, a fideiussore petatur: tunc enim fideiussor exceptione non utetur.

Dig. 2.14.23pr.

Paulus 3 ad ed.

Fideiussoris autem conventio nihil proderit reo, quia nihil eius interest a debitore pecuniam non peti. immo nec confideiussoribus proderit.

Dig. 2.14.23.1

Paulus 3 ad ed.

Neque enim quoquo modo cuiusque interest, cum alii conventio facta prodest, sed tunc demum, cum per eum, cui exceptio datur, principaliter ei qui pactus est proficiat: sicut in reo promittendi et his qui pro reo obligati sunt.

Dig. 2.14.24

Paulus 3 ad plaut.

Sed si fideiussor in rem suam spopondit, hoc casu fideiussor pro reo accipiendus est et pactum cum eo factum cum reo factum esse videtur.

Dig. 2.14.25pr.

Paulus 3 ad ed.

Idem in duobus reis promittendi et duobus argentariis sociis.

Dig. 2.14.25.1

Paulus 3 ad ed.

Personale pactum ad alium non pertinere, quemadmodum nec ad heredem, labeo ait.

Dig. 2.14.25.2

Paulus 3 ad ed.

Sed quamvis fideiussoris pactum reo non prosit, plerumque tamen doli exceptionem reo profuturam iulianus scribit,

Dig. 2.14.26

Ulpianus 4 ad ed.

Videlicet si hoc actum sit, ne a reo quoque petatur. idem et in confideiussoribus est.

Dig. 2.14.27pr.

Paulus 3 ad ed.

Si unus ex argentariis sociis cum debitore pactus sit, an etiam alteri noceat exceptio? neratius atilicinus proculus, nec si in rem pactus sit, alteri nocere: tantum enim constitutum, ut solidum alter petere possit. idem labeo: nam nec novare alium posse, quamvis ei recte solvatur: sic enim et his, qui in nostra potestate sunt, recte solvi quod crediderint, licet novare non possint. quod est verum. idemque in duobus reis stipulandi dicendum est.

Dig. 2.14.27.1

Paulus 3 ad ed.

Si cum reo ad certum tempus pactio facta sit, ultra neque reo neque fideiussori prodest. quod si sine persona sua reus pepigerit, ne a fideiussore petatur, nihil id prodesse fideiussori quidam putant, quamquam id rei intersit: quia ea demum competere ei debeat exceptio, quae et reo. ego didici prodesse fideiussori exceptionem: non sic enim illi per liberam personam adquiri, quam ipsi, qui pactus sit, consuli videmur: quo iure utimur.

Dig. 2.14.27.2

Paulus 3 ad ed.

Pactus, ne peteret, postea convenit ut peteret: prius pactum per posterius elidetur, non quidem ipso iure, sicut tollitur stipulatio per stipulationem, si hoc actum est, quia in stipulationibus ius continetur, in pactis factum versatur: et ideo replicatione exceptio elidetur. eadem ratione contingit, ne fideiussoribus prius pactum prosit. sed si pactum conventum tale fuit, quod actionem quoque tolleret, velut iniuriarum, non poterit, postea paciscendo ut agere possit, agere: quia et prima actio sublata est et posterius pactum ad actionem parandam inefficax est: non enim ex pacto iniuriarum actio nascitur, sed ex contumelia.

idem dicemus et in bonae fidei contractibus, si pactum conventum totam obligationem sustulerit, veluti empti: non enim ex novo pacto prior obligatio resuscitatur, sed proficiet pactum ad novum contractum. quod si non ut totum contractum tolleret, pactum conventum intercessit, sed ut imminueret, posterius pactum potest renovare primum contractum. quod et in specie dotis actionis procedere potest. puta pactam mulierem, ut praesenti die dos redderetur, deinde pacisci, ut tempore ei legibus dato dos reddatur: incipiet dos redire ad ius suum. nec dicendum est deteriorem condicionem dotis fieri per pactum: quotiens enim ad ius, quod lex naturae eius tribuit, de dote actio redit, non fit causa dotis deterior, sed formae suae redditur. haec et scaevolae nostro placuerunt.

Dig. 2.14.27.3

Paulus 3 ad ed.

Illud nulla pactione effici potest, ne dolus praestetur: quamvis si quis paciscatur ne depositi agat, vi ipsa id pactus videatur, ne de dolo agat: quod pactum proderit.

Dig. 2.14.27.4

Paulus 3 ad ed.

Pacta, quae turpem causam continent, non sunt observanda: veluti si paciscar ne furti agam vel iniuriarum, si feceris: expedit enim timere furti vel iniuriarum poenam: sed post admissa haec pacisci possumus. item ne experiar interdicto unde vi, quatenus publicam causam contingit, pacisci non possumus. et in summa, si pactum conventum a re privata remotum sit, non est servandum: ante omnia enim animadvertendum est, ne conventio in alia re facta aut cum alia persona in alia re aliave persona noceat.

Dig. 2.14.27.5

Paulus 3 ad ed.

Si cum decem mihi deberes, pepigero, ne a te viginti petam: in decem prodesse tibi pacti conventi vel doli exceptionem placet. item si cum viginti deberes, pepigerim, ne decem petam: efficeretur per exceptionem mihi opponendam, ut tantum reliqua decem exigere debeam.

Dig. 2.14.27.6

Paulus 3 ad ed.

Sed si stipulatus decem aut stichum de decem pactus sim et petam stichum aut decem: exceptionem pacti conventi in totum obstaturam: nam ut solutione et petitione et acceptilatione unius rei tota obligatio solveretur, ita pacto quoque convento de una re non petenda interposito totam obligationem summoveri. sed si id actum inter nos sit, ne decem mihi, sed stichus praestetur: possum efficaciter de sticho agere, nulla exceptione opponenda. idem est et si de sticho non petendo convenerit.

Dig. 2.14.27.7

Paulus 3 ad ed.

Sed si generaliter mihi hominem debeas et paciscar, ne stichum petam: stichum quidem petendo pacti exceptio mihi opponetur, alium autem hominem si petam, recte agam.

Dig. 2.14.27.8

Paulus 3 ad ed.

Item si pactus, ne hereditatem peterem, singulas res ut heres petam: ex eo, quod pactum erit, pacti conventi exceptio aptanda erit, quemadmodum si convenerit ne fundum peterem et usum fructum petam, aut ne navem aedificiumve peterem et dissolutis his singulas res petam: nisi specialiter aliud actum est.

Dig. 2.14.27.9

Paulus 3 ad ed.

Si acceptilatio inutilis fuit, tacita pactione id actum videtur, ne peteretur.

Dig. 2.14.27.10

Paulus 3 ad ed.

Servus hereditarius heredi post adituro nominatim pacisci non potest, quia nondum is dominus sit: sed si in rem pactum conventum factum sit, heredi adquiri potest.

Dig. 2.14.28pr.

Gaius 1 ad ed. provinc.

Contra iuris civilis regulas pacta conventa rata non habentur: veluti si pupillus sine tutoris auctoritate pactus sit ne a debitore suo peteret, aut ne intra certum tempus veluti quinquennium peteret: nam nec solvi ei sine tutoris auctoritate potest. ex diverso autem si pupillus paciscatur, ne quod debeat a se peteretur, ratum habetur pactum conventum: quia meliorem condicionem suam facere ei etiam sine tutoris auctoritate concessum est.

Dig. 2.14.28.1

Gaius 1 ad ed. provinc.

Si curator furiosi aut prodigi pactus sit, ne a furioso aut prodigo peteretur, longe utile est curatoris recipi pactiones: sed non contra.

Dig. 2.14.28.2

Gaius 1 ad ed. provinc.

Si filius aut servus pactus sit, ne ipse peteret, inutile est pactum. si vero in rem pacti sunt, id est ne ea pecunia peteretur, ita pactio eorum rata habenda erit adversus patrem dominumve, si liberam peculii administrationem habeant et ea res, de qua pacti sint, peculiaris sit. quod et ipsum non est expeditum: nam cum verum est, quod iuliano placet, etiamsi maxime quis administrationem peculii habeat concessam, donandi ius eum non habere: sequitur ut, si donandi causa de non petenda pecunia pactus sit, non debeat ratum haberi pactum conventum. quod si pro eo ut ita pacisceretur aliquid, in quo non minus vel etiam amplius esset, consecutus fuerit, rata habenda est pactio.

Dig. 2.14.29

Ulpianus 4 ad ed.

Sin autem dominicam pecuniam crediderit, quod credendi tempore pactus est valere celsus ait.

Dig. 2.14.30pr.

Gaius 1 ad ed. provinc.

In persona tamen filii familias videndum est, ne aliquando, et si pactus sit ne ageret, valeat pactio: quia ^ puis^ aliquando filius familias habet actionem, veluti iniuriarum. sed cum propter iniuriam filio factam habeat et pater actionem, quin pactio filii nocitura non sit patri agere volenti, dubitari non oportet.

Dig. 2.14.30.1

Gaius 1 ad ed. provinc.

Qui pecuniam a servo stipulatus est, quam sibi titius debebat, si a titio petat, an exceptione pacti conventi summoveri et possit et debeat, quia pactus videatur, ne a titio petat, quaesitum est. iulianus ita summovendum putat, si stipulatori in dominum istius servi de peculio actio danda est, id est si iustam causam intercedendi servus habuit, quia forte tantandem pecuniam titio debuit: quod si quasi fideiussor intervenit, ex qua causa in peculium actio non daretur, non esse inhibendum creditorem, quo minus a titio petat: aeque nullo modo prohiberi eum debere, si eum servum liberum esse credidisset.

Dig. 2.14.30.2

Gaius 1 ad ed. provinc.

Si sub condicione stipulatus fuerim a te quod titius mihi pure deberet: an deficiente condicione si a titio petam, exceptione pacti conventi et possim et debeam summoveri? et magis est exceptionem non esse opponendam.

Dig. 2.14.31

Ulpianus 1 ad ed. aedil. curul.

Pacisci contra edictum aedilium omnimodo licet, sive in ipso negotio venditionis gerendo convenisset sive postea.

Dig. 2.14.32

Paulus 3 ad plaut.

Quod dictum est, si cum reo pactum sit, ut non petatur, fideiussori quoque competere exceptionem: propter rei personam placuit, ne mandati iudicio conveniatur. igitur si mandati actio nulla sit, forte si donandi animo fideiusserit, dicendum est non prodesse exceptionem fideiussori.

Dig. 2.14.33

Celsus 1 Dig.

Avus neptis nomine, quam ex filio habebat, dotem promisit et pactus est, ne a se neve a filio suo dos peteretur. si a coherede filii dos petatur, ipse quidem exceptione conventionis tuendus non erit, filius vero exceptione conventionis recte utetur. quippe heredi consuli concessum est nec quicquam obstat uni tantum ex heredibus providere si heres factus sit, ceteris autem non consuli.

Dig. 2.14.34

Modestinus 5 reg.

Ius adgnationis non posse pacto repudiari, non magis quam ut quis dicat nolle suum esse, iuliani sententia est.

Dig. 2.14.35

Modestinus 2 resp.

Tres fratres titius et maevius et seia communem hereditatem inter se diviserunt instrumentis interpositis, quibus divisisse maternam hereditatem dixerunt nihilque sibi commune remansisse caverunt. sed postea duo de fratribus, id est maevius et seia, qui absentes erant tempore mortis matris suae, cognoverunt pecuniam auream a fratre suo esse substractam, cuius nulla mentio instrumento divisionis continebatur. quaero an post pactum divisionis de subrepta pecunia fratribus adversus fratrem competit actio. modestinus respondit, si agentibus ob portionem eius, quod subreptum a titio dicitur, generalis pacti conventi exceptio his, qui fraudem a titio commissam ignorantes transegerunt, obiciatur, de dolo utiliter replicari posse.

Dig. 2.14.36

Proculus 5 epist.

Si cum fundum meum possides, convenisset mihi tecum, ut eius possessionem attio traderes: vindicantem eum fundum a te non aliter me conventionis exceptione excludi debere, quam si aut iam tradidisses, aut si tua causa id inter nos convenisset et per te non staret quo minus traderes.

Dig. 2.14.37

Papirius 2 de const.

Imperatores antoninus et verus rescripserunt debitori rei publicae a curatore permitti pecunias non posse et, cum philippensibus remissae essent, revocandas.

Dig. 2.14.38

Papinianus 2 quaest.

Ius publicum privatorum pactis mutari non potest.

Dig. 2.14.39

Papinianus 5 quaest.

Veteribus placet pactionem obscuram vel ambiguam venditori et qui locavit nocere, in quorum fuit potestate legem apertius conscribere.

Dig. 2.14.40pr.

Papinianus 1 resp.

Tale pactum "profiteor te non teneri" non in personam dirigitur, sed cum generale sit, locum inter heredes quoque litigantes habebit.

Dig. 2.14.40.1

Papinianus 1 resp.

Qui provocavit, pactus est intra diem certum pecunia, qua transegerat, non soluta iudicatis se satisfacturum: iudex appellationis nullo alio de principali causa discusso iustam conventionem velut confessi sequetur.

Dig. 2.14.40.2

Papinianus 1 resp.

Post divisionem bonorum et aeris alieni singuli creditores a singulis heredibus non interpositis delegationibus in solidum, ut convenerat, usuras acceptaverunt: actiones, quas adversus omnes pro partibus habent, impediendae non erunt, si non singuli pro fide rei gestae totum debitum singulis offerant.

Dig. 2.14.40.3

Papinianus 1 resp.

Pater, qui dotem promisit, pactus est, ut post mortem suam in matrimonio sine liberis defuncta filia portio dotis apud heredem suum fratrem remaneret. ea conventio liberis a socero postea susceptis et heredibus testamento relictis per exceptionem doli proderit, cum inter contrahentes id actum sit, ut heredibus consulatur et illo tempore, quo pater alios filios non habuit, in fratrem suum iudicium supremum contulisse videatur.

Dig. 2.14.41

Papinianus 11 resp.

"intra illum diem debiti partem mihi si solveris, acceptum tibi residuum feram et te liberabo." licet actionem non habet, pacti tamen exceptionem competere debitori constitit.

Dig. 2.14.42

Papinianus 17 resp.

Inter debitorem et creditorem convenerat, ut creditor onus tributi praedii pignerati non adgnosceret, sed eius solvendi necessitas debitorem spectaret. talem conventionem quantum ad fisci rationem non esse servandam respondi: pactis etenim privatorum formam iuris fiscalis convelli non placuit.

Dig. 2.14.43

Paulus 5 quaest.

In emptionibus scimus, quid praestare debitor debeat quidque ex contrario emptor: quod si in contrahendo aliquid exceptum fuerit, id servari debebit.

Dig. 2.14.44

Scaevola 5 resp.

Cum in eo esset pupillus, ut ab hereditate patris abstineretur, tutor cum plerisque creditoribus decidit, ut certam portionem acciperent: idem curatores cum aliis fecerunt. quaero, an et tutor idemque creditor patris eandem portionem retinere debeat. respondi eum tutorem, qui ceteros ad portionem vocaret, eadem parte contentum esse debere.

Dig. 2.14.45

Hermogenianus 2 iuris epit.

Divisionis placitum nisi traditione vel stipulatione sumat effectum, ad actionem, ut nudum pactum, nulli prodesse poterit.

Dig. 2.14.46

Tryphonus 2 disp.

Pactum inter heredem et legatarium factum, ne ab eo satis accipiatur, cum in semestribus relata est constitutio divi marci servari in hoc quoque defuncti voluntatem, validum esse constat. nec a legatario remissa heredi satisdatio per pactionem ex paenitentia revocari debet, cum liceat sui iuris persecutionem aut spem futurae perceptionis deteriorem constituere.

Dig. 2.14.47pr.

Scaevola 1 Dig.

Emptor praedii viginti caverat se soluturum et stipulanti spoponderat: postea venditor cavit sibi convenisse, ut contentus esset tredecim et ut ea intra praefinita tempora acciperet: debitor ad eorum solutionem conventus pactus est, si ea soluta intra praefinitum tempus non essent, ut ex prima cautione ab eo petitio esset. quaesitum est an, cum posteriore pacto satisfactum non sit, omne debitum ex prima cautione peti potest. respondi secundum ea, quae proponerentur, posse.

Dig. 2.14.47.1

Scaevola 1 Dig.

Lucius titius gaium seium mensularium, cum quo rationem implicitam habebat propter accepta et data, debitorem sibi constituit et ab eo epistulam accepit in haec verba: "ex ratione mensae, quam mecum habuisti, in hunc diem ex contractibus plurimis remanserunt apud me ad mensam meam trecenta octaginta sex et usurae quae competierint. summam aureorum, quam apud me tacitam habes, refundam tibi. si quod instrumentum a te emissum, id est scriptum, cuiuscumque summae ex quacumque causa apud me remansit, vanum et pro cancellato habebitur." quaesitum est, cum lucius titius ante hoc chirographum seio nummulario mandaverat, uti patrono eius trecenta redderet, an propter illa verba epistulae, quibus omnes cautiones ex quocumque contractu vanae et pro cancellato ut haberentur cautum est, neque ipse neque filii eius eo nomine conveniri possunt. respondi, si tantum ratio accepti atque expensi esset computata, ceteras obligationes manere in sua causa.

Dig. 2.14.48

Gaius 3 ad l. xii tab.

In traditionibus rerum quodcumque pactum sit, id valere manifestissimum est.

Dig. 2.14.49

Ulpianus 36 ad sab.

Si quis crediderit pecuniam et pactus sit ut, quatenus facere possit debitor, eatenus agat: an pactum valeat? et magis est hoc pactum valere. nec enim improbum est, si quis hactenus desideret conveniri, quatenus facultates patiuntur.

Dig. 2.14.50

Ulpianus 42 ad sab.

Non impossibile puto in contractibus depositi, commodati et locati et ceteris similibus hoc pactum: "ne facias furem vel fugitivum servum meum", hoc est: ne sollicites ut fur fiat, ut fugitivus fiat: ne ita neglegas servum, ut fur efficiatur. sicut enim servi corrupti actio locum habet, ita potest etiam haec pactio locum habere, quae ad non corrumpendos servos pertinet.

Dig. 2.14.51pr.

Ulpianus 26 ad ed.

Si cum te ex causa legati debere pacisci debitori tuo existimas, pactus sit ne ab eo peteres: neque iure ipso liberatur debitor neque petentem summovebit exceptione conventionis, ut celsus libro vicensimo scribit.

Dig. 2.14.51.1

Ulpianus 26 ad ed.

Idem eodem loco scribit, si debitorem tuum iussisti solvere titio, cui legatum falso debere existimas, et debitor pactus sit cum titio suo debitor constituto: neque tibi adversus tuum debitorem neque ipsi adversus suum actionem peremptam.

Dig. 2.14.52pr.

Ulpianus 1 opin.

Epistula, qua quis coheredem sibi aliquem esse cavit, petitionem nullam adversus possessores rerum hereditariarum dabit.

Dig. 2.14.52.1

Ulpianus 1 opin.

Si inter debitorem et eum, qui fundum pigneratum a creditore quasi debitoris negotium gereret emerit, placuit ut habita compensatione fructuum solutoque, quod reliquum deberetur, fundus debitori restitueretur: etiam heres pacto, quod defunctus fecit, fidem praestare debet.

Dig. 2.14.52.2

Ulpianus 1 opin.

Pactum, ut si quas summas propter tributiones praedii pignori nexi factas creditor solvisset, a debitore reciperet, et ut tributa eiusdem praedii debitor penderet, iustum ideoque servandum est.

Dig. 2.14.52.3

Ulpianus 1 opin.

De inofficioso patris testamento acturis, ut eis certa quantitas, quoad viveret heres, praestaretur, pactus est: produci ad perpetuam praestationem id pactum postulabatur: rescriptum est neque iure ullo neque aequitate tale desiderium admitti.

Dig. 2.14.53

Ulpianus 4 opin.

Sumptus quidem prorogare litiganti honestum est: pacisci autem, ut non quantitas eo nomine expensa cum usuris licitis restituatur, sed pars dimidia eius, quod ex ea lite datum erit, non licet.

Dig. 2.14.54

Scaevola not. ad iul. 22 Dig.

Si pactus sim, ne stichum, qui mihi debebatur, petam: non intellegitur mora mihi fieri mortuoque sticho puto non teneri reum, qui ante pactum moram non fecerat.

Dig. 2.14.55

Iulianus 35 Dig.

Si debitor sit fructuarius et paciscatur servus, in quo usum fructum habet, ne ab eo petatur: paciscendo meliorem condicionem eius facit. item si creditor esset fructuarius et pactus esset, ne peteret, servus autem fructuarius pacisceretur, ut peteret: beneficio pacti, quod servus interposuisset, utiliter ad petitionem admittetur.

Dig. 2.14.56

Iulianus 6 ad minic.

Si convenerit, ne dominus a colono quid peteret, et iusta causa conventionis fuerit: nihilo minus colonus a domino petere potest.

Dig. 2.14.57pr.

Florus 8 inst.

Qui in futurum usuras a debitore acceperat, tacite pactus videtur, ne intra id tempus sortem petat.

Dig. 2.14.57.1

Florus 8 inst.

Si ex altera parte in rem, ex altera in personam pactum conceptum fuerit, veluti ne ego petam vel ne a te petatur: heres meus ab omnibus vobis petitionem habebit et ab herede tuo omnes petere poterimus.

Dig. 2.14.58

Nerva 3 membr.

Ab emptione venditione, locatione conductione ceterisque similibus obligationibus quin integris omnibus consensu eorum, qui inter se obligati sint, recedi possit, dubium non est. aristoni hoc amplius videbatur, si ea, quae me ex empto praestare tibi oporteret, praestitissem et cum tu mihi pretium deberes, convenisset mihi tecum, ut rursus praestitis mihi a te in re vendita omnibus, quae ego tibi praestitissem, pretium mihi non dares tuque mihi ea praestitisses: pretium te debere desinere, quia bonae fidei, ad quam omnia haec rediguntur, interpretatio hanc quoque conventionem admittit. nec quicquam interest, utrum integris omnibus, in quae obligati essemus, conveniret, ut ab eo negotio discederetur, an in integrum restitutis his, quae ego tibi praestitissem, consentiremus, ne quid tu mihi eo nomine praestares. illud plane conventione, quae pertinet ad resolvendum id quod actum est, perfici non potest, ut tu quod iam ego tibi praestiti contra praestare mihi cogaris: quia eo modo non tam hoc agitur, ut a pristino negotio discedamus, quam ut novae quaedam obligationes inter nos constituantur.

Dig. 2.14.59

Paulus 3 reg.

Per quos adquiri nobis stipulatione potest, per eosdem etiam pactis conventis meliorem condicionem nostram fieri posse placet.

Dig. 2.14.60

Papirius 8 const.

Imperator antoninus avidio cassio rescrpisit, si creditores parati sint partem ex bonis licet ab extraneo consequi, rationem habendam prius necessariarum personarum, si idoneae sint.

Dig. 2.14.61

Pomponius 9 ad sab.

Nemo paciscendo efficere potest, ne sibi locum suum dedicare liceat aut ne sibi in suo sepelire mortuum liceat aut ne vicino invito praedium alienet.

Dig. 2.14.62

Furius 1 ad ed.

Si reus, postquam pactus sit a se non peti pecuniam ideoque coepit id pactum fideiussori quoque prodesse, pactus sit ut a se peti liceat: an utilitas prioris pacti sublata sit fideiussori, quaesitum est. sed verius est semel adquisitam fideiussori pacti exceptionem ulterius ei invito extorqueri non posse.

Dig. 2.15.0. De transactionibus.

Dig. 2.15.1

Ulpianus 40 ad ed.

Qui transigit, quasi de re dubia et lite incerta neque finita transigit. qui vero paciscitur, donationis causa rem certam et indubitatam liberalitate remittit.

Dig. 2.15.2

Ulpianus 74 ad ed.

Transactum accipere quis potest non solum, si aquiliana stipulatio fuerit subiecta, sed et si pactum conventum fuerit factum.

Dig. 2.15.3pr.

Scaevola 1 Dig.

Imperatores antoninus et verus ita rescripserunt: "privatis pactionibus non dubium est non laedi ius ceterorum. quare transactione, quae inter heredem et matrem defuncti facta est, neque testamentum rescissum videri posse neque manumissis vel legatariis actiones suae ademptae. quare quidquid ex testamento petunt, scriptum heredem convenire debent: qui in transactione hereditatis aut cavit sibi pro oneribus hereditatis, aut si non cavit, non debet neglegentiam suam ad alienam iniuriam referre."

Dig. 2.15.3.1

Scaevola 1 Dig.

Cum transactio propter fideicommissum facta esset et postea codicilli reperti sunt: quaero, an quanto minus ex transactione consecuta mater defuncti fuerit quam pro parte sua est, id ex fideicommissi causa consequi debeat. respondit debere.

Dig. 2.15.3.2

Scaevola 1 Dig.

Debitor, cuius pignus creditor distraxit, cum maevio, qui se legitimum creditoris heredem esse iactabat, minimo transegit: postea testamento prolato septicium heredem esse apparuit. quaesitum est, si agat pigneraticia debitor cum septicio, an is uti possit exceptione transactionis factae cum maevio, qui heres eo tempore non fuerit: possitque septicius pecuniam, quae maevio ut heredi a debitore numerata est, condictione repetere, quasi sub praetextu hereditatis acceptam. respondit secundum ea quae proponerentur non posse, quia neque cum eo ipse transegit nec negotium septicii maevius gerens accepit.

Dig. 2.15.4

Ulpianus 46 ad sab.

Aquiliana stipulatio omnimodo omnes praecedentes obligationes novat et peremit ipsaque peremitur per acceptilationem: et hoc iure utimur. ideoque etiam legata sub condicione relicta in stipulationem aquilianam deducuntur.

Dig. 2.15.5

Papinianus 1 def.

Cum aquiliana stipulatio interponitur, quae ex consensu redditur, lites, de quibus non est cogitatum, in suo statu retinentur. liberalitatem enim captiosam interpretatio prudentium fregit.

Dig. 2.15.6

Gaius 17 ad ed. provinc.

De his controversiis, quae ex testamento proficiscuntur, neque transigi neque exquiri veritas aliter potest quam inspectis cognitisque verbis testamenti.

Dig. 2.15.7pr.

Ulpianus 7 disp.

Et post rem iudicatam transactio valet, si vel appellatio intercesserit vel appellare potueris.

Dig. 2.15.7.1

Ulpianus 7 disp.

Si fideiussor conventus et condemnatus fuisset, mox reus transegisset cum eo, cui erat fideiussor condemnatus: an transactio valeat quaeritur: et puto valere, quasi omni causa et adversus reum et adversus fideiussorem dissoluta. si tamen ipse fideiussor condemnatus transegit, etsi transactio non peremit rem iudicatam, tamen eo quod datum est relevari rem iudicatam oportet.

Dig. 2.15.7.2

Ulpianus 7 disp.

Usque adeo autem quod datum est etiamsi non proficit ad transactionem, extenuat tamen rem iudicatam, ut inde sit et dictum et rescriptum circa alimentorum transactionem citra praetoris auctoritatem factam, ut quod datum est proficiat ad alimenta: ita ut, si quid amplius ex causa alimentorum deberi potest, id praestetur, quod autem datum est, imputetur.

Dig. 2.15.8pr.

Ulpianus 5 de omn. trib.

Cum hi, quibus alimenta relicta erant, facile transigerent contenti modico praesenti: divus marcus oratione in senatu recitata effecit, ne aliter alimentorum transactio rata esset, quam si auctore praetore facta. solet igitur praetor intervenire et inter consentientes arbitrari, an transactio vel quae admitti debeat.

Dig. 2.15.8.1

Ulpianus 5 de omn. trib.

Eiusdem praetoris notio ob transactionem erit, sive habitatio sive vestiarium sive de praediis alimentum legabitur.

Dig. 2.15.8.2

Ulpianus 5 de omn. trib.

Haec oratio pertinet ad alimenta, quae testamento vel codicillis fuerint relicta sive ad testamentum factis sive ab intestato. idem erit dicendum et si mortis causa donata fuerint relicta vel ab eo, cui mortis causa donata sunt, relicta. sed et si condicionis implendae gratia relicta sunt, adhuc idem dicemus. plane de alimentis, quae non mortis causa donata sunt, licebit et sine praetore auctore transigi.

Dig. 2.15.8.3

Ulpianus 5 de omn. trib.

Sive igitur in menses singulos sive in dies sive in annos fuerint relicta, oratio locum habet. sed et si non fuerint perpetuo relicta, sed usque ad annos certos, idem est.

Dig. 2.15.8.4

Ulpianus 5 de omn. trib.

Si integra quantitas alicui fuerit legata, ut ex usuris eius se alat et mortis tempore pecunias restituat: non cessabit oratio, licet non in annos singulos videatur id relictum.

Dig. 2.15.8.5

Ulpianus 5 de omn. trib.

Sed et si sit certa quantitas relicta titio vel res ita, ut inde alimenta seio praestentur: magis est ut transigere titius possit, nec enim transactione titii minuuntur alimenta seii. idemque est et si per fideicommissum alimenta ad hoc legatario fuerint relicta.

Dig. 2.15.8.6

Ulpianus 5 de omn. trib.

Eam transactionem oratio improbat, quae idcirco fit, ut quis repraesentatam pecuniam consumat. quid ergo si quis citra praetoris auctoritatem transegerit, ut quod per singulos annos erat ei relictum, consequeretur per singulos menses? aut quid si, quod per singulos menses ei relictum erat, consequeretur per singulos dies? quid deinde si, quod consummato anno ut acciperet, initio anni consequatur? et puto eam transactionem valere, quia meliorem condicionem suam alimentarius tali transactione facit: noluit enim oratio alimenta per transactionem intercipi.

Dig. 2.15.8.7

Ulpianus 5 de omn. trib.

Nihil autem interest, utrum libertini sint quibus alimenta relicta sunt an ingenui, satis locupletes an minus.

Dig. 2.15.8.8

Ulpianus 5 de omn. trib.

Vult igitur oratio apud praetorem de istis quaeri: in primis de causa transactionis, dein de modo, tertio de persona transigentium.

Dig. 2.15.8.9

Ulpianus 5 de omn. trib.

In causa hoc erit requirendum, quae causa sit transigendi: sine causa enim neminem transigentem audiet praetor. causae fere huiusmodi solent allegari: si alibi domicilium heres, alibi alimentarius habeat: aut si destinet domicilium transferre alteruter ^ alter^ eorum: aut si causa aliqua urgueat praesentis pecuniae: aut si a pluribus ei alimenta relicta sint et minutatim singulos convenire difficile ei sit: aut si qua alia causa fuit, ut plures solent incidere, quae praetori suadeant transactionem admittere.

Dig. 2.15.8.10

Ulpianus 5 de omn. trib.

Modus quoque pecuniae, quae in transactionem venit, aestimandus est: ut puta quantitas transactionis. nam etiam ex modo fides transactionis aestimabitur. modus autem pro aetate eius, qui transigit, arbitrandus est et valetudine: nam alias cum puero, alias cum iuvene, alias cum sene transigi palam est: constat enim alimenta cum vita finiri.

Dig. 2.15.8.11

Ulpianus 5 de omn. trib.

Sed et personarum contemplatio habenda est, hoc est, cuius vitae sint hi, quibus alimenta relicta sunt: utrum frugi vitae hi sint, qui alias sufficere sibi possint, an sequioris, qui de alimentis pendeant. in persona eius, a quo alimenta relicta sunt, haec erunt specienda: in quibus sunt facultatibus, cuius propositi, cuius opinionis. tunc enim apparebit, numquid circumvenire velit eum, cum quo transigit.

Dig. 2.15.8.12

Ulpianus 5 de omn. trib.

Qui transigit de alimentis, non videbitur neque de habitatione neque de vestiario transegisse, cum divus marcus specialiter etiam de istis transigi voluerit.

Dig. 2.15.8.13

Ulpianus 5 de omn. trib.

Sed et si quis de alimentis transegerit, non habebit necesse etiam de habitatione vel ceteris invitus transigere: poterit igitur vel de omnibus simul vel de quibusdam facere transactionem.

Dig. 2.15.8.14

Ulpianus 5 de omn. trib.

De calciario quoque arbitrio praetoris transigendum est.

Dig. 2.15.8.15

Ulpianus 5 de omn. trib.

Si uni pluribusve fundus ad alimenta fuerit relictus velintque eum distrahere: necesse est praetorem de distractione eius et transactione arbitrari. sed si pluribus fundus ad alimenta fuerit relictus et hi inter se transigant: sine praetoris auctoritate facta transactio rata esse non debet. idem est et si ager fuerit in alimenta obligatus: nam nec pignus ad hoc datum inconsulto praetore poterit liberari.

Dig. 2.15.8.16

Ulpianus 5 de omn. trib.

Arbitratu praetoris vel de universis alimentis vel de parte eorum transigi oportere plus quam manifestum est.

Dig. 2.15.8.17

Ulpianus 5 de omn. trib.

Si praetor aditus citra causae cognitionem transigi permiserit, transactio nullius erit momenti: praetori enim ea res quaerenda commissa est, non neglegenda nec donanda. sed et si non de omnibus inquisierit, quae oratio mandat, hoc est de causa de modo de personis transigentium, dicendum est, quamvis de quibusdam quaesierit, transactionem esse irritam.

Dig. 2.15.8.18

Ulpianus 5 de omn. trib.

Sed nec mandare ex hac causa iurisdictionem vel praeses provinciae vel praetor poterit.

Dig. 2.15.8.19

Ulpianus 5 de omn. trib.

Transactiones alimentorum etiam apud procuratorem caesaris fieri possunt: scilicet si a fisco petantur alimenta. secundum quae et apud praefectos aerarii transigi poterit.

Dig. 2.15.8.20

Ulpianus 5 de omn. trib.

Si cum lis quidem esset de alimentis, transactum autem de lite fuisset: transactio valere inconsulto praetore non potest, ne circumveniatur oratio. fingi enim lites poterunt, ut transactio etiam citra praetoris fiat auctoritatem.

Dig. 2.15.8.21

Ulpianus 5 de omn. trib.

Si eidem alimenta et praeterea legatum praesenti die datum sit, et transactum fuerit citra praetoris auctoritatem: id quod datum est imputabitur prius in legatum quod praesenti die datum est, superfluum in alimentariam causam.

Dig. 2.15.8.22

Ulpianus 5 de omn. trib.

Si quis de alimentis transegerit sine praetoris auctoritate, id quod datum est in praeterita alimenta cedet. nec interest tantum in quantitate sit debita, quantum datum est, an minus, an plus: nam et si minus sit, adhuc tamen id quod in solutum datum est in praeterita alimenta imputabitur. sane si is, qui de alimentis transegit, locupletior factus sit ea solutione: in quod factus sit locupletior aequissimum erit in eum dari repetitionem: nec enim debet ex alieno damno esse locuples.

Dig. 2.15.8.23

Ulpianus 5 de omn. trib.

Si in annos singulos certa quantitas alicui fuerit relicta homini honestioris loci veluti salarium annuum vel usus fructus, transactio et sine praetore fieri poterit: ceterum si usus fructus modicus alimentorum vice sit relictus, dico transactionem citra praetorem factam nullius esse momenti.

Dig. 2.15.8.24

Ulpianus 5 de omn. trib.

Si cui non nummus ad alimenta, sed frumentum atque oleum et cetera, quae ad victum necessaria sunt, fuerint relicta: non poterit de his transigere, sive annua sive menstrua ei relinquantur. si tamen ita sine praetore transegerit, ut in vicem eorum nummum quotannis vel quotmensibus acciperet et neque diem neque modum permutavit, sed tantum genus: vel ex contrario si pactus fuerit, ut in generibus alimenta acciperet, quae in nummis ei relicta fuissent: vel si vinum pro oleo vel oleum pro vino vel quid aliud commutavit: vel locum permutavit, ut quae erant ei romae alimenta relicta, in municipio vel in provincia acciperet vel contra: vel personam commutavit, ut quod a pluribus erat accepturus, ab uno acciperet: vel alium pro alio debitorem acceperit: haec omnia habent disceptationem praetoris et pro utilitate alimentarii recipienda sunt.

Dig. 2.15.8.25

Ulpianus 5 de omn. trib.

Si ad habitationem certa quantitas sit annua relicta et ita sit transactum sine praetore, ut habitatio praestetur, valet transactio, quia fructus habitationis praestatur, licet ruinae vel incendio subiecta transactio est. per contrarium quoque si pro habitatione, quae erat relicta, placuerit certam quantitatem praestari, transactio rata est et citra praetorem.

Dig. 2.15.9pr.

Ulpianus 1 opin.

Qui cum tutoribus suis de sola portione administratae tutelae suae egerat et transegerat, adversus eosdem tutores ex persona fratris sui, cui heres extiterat, agens praescriptione factae transactionis non summovetur.

Dig. 2.15.9.1

Ulpianus 1 opin.

Transactio quaecumque fit, de his tantum, de quibus inter convenientes placuit, interposita creditur.

Dig. 2.15.9.2

Ulpianus 1 opin.

Qui per fallaciam coheredis ignorans universa, quae in vero erant, instrumentum transactionis sine aquiliana stipulatione interposuit, non tam paciscitur quam decipitur.

Dig. 2.15.9.3

Ulpianus 1 opin.

Ei qui, nondum certus ad se querellam contra patris testamentum pertinere, de aliis causis cum adversariis pacto transegit, tantum in his interpositum pactum nocebit, de quibus inter eos actum esse probatur. his tantum transactio obest, quamvis maior annis viginti quinque eam interposuit, de quibus actum probatur. nam ea, quorum actiones competere ei postea compertum est, iniquum est peremi pacto. id de quo cogitatum non docetur.

Dig. 2.15.10

Ulpianus 1 resp.

De re filiorum, quos in potestate non habuit, transigentem patrem minime eis obesse placet.

Dig. 2.15.11

Ulpianus 4 ad ed.

Post rem iudicatam etiam si provocatio non est interposita, tamen si negetur iudicatum esse vel ignorari potest an iudicatum sit: quia adhuc lis obesse possit, transactio fieri potest.

Dig. 2.15.12

Celsus 3 Dig.

Non est ferendus qui generaliter in his, quae testamento ei relicta sunt, transegerit, si postea causetur de eo solo se cogitasse, quod prima parte testamenti ac non etiam quod posteriore legatum sit. si tamen postea codicilli proferuntur, non improbe mihi dicturus videtur de eo dumtaxat se cogitasse, quod illarum tabularum, quas tunc noverat, scriptura continerentur.

Dig. 2.15.13

Macer 1 ad l. vices. hered.

Nulli procuratorum principis inconsulto principe transigere licet.

Dig. 2.15.14

Scaevola 2 resp.

Controversia inter legitimum et scriptum heredem orta est eaque transactione facta certa lege finita est: quaero creditores quem convenire possunt? respondit, si idem creditores essent, qui transactionem fecissent, id observandum de aere alieno, quod inter eos convenisset: si alii creditores essent, propter incertum successionis pro parte hereditatis, quam uterque in transactione expresserit, utilibus actionibus conveniendus est.

Dig. 2.15.15

Paulus 1 sent.

Pacto convento aquiliana quidem stipulatio subici solet: sed consultius est huic poenalem quoque stipulationem subiungere, quia rescisso forte pacto poena ex stipulatu peti potest.

Dig. 2.15.16

Hermogenianus 1 iuris epit.

Qui fidem licitae transactionis rupit, non exceptione tantum summovebitur, sed et poenam, quam, si contra placitum fecerit rato manente pacto, stipulanti recte promiserat, praestare cogetur.

Dig. 2.15.17

Papinianus 2 quaest.

Venditor hereditatis emptori mandatis actionibus cum debitore hereditario, qui ignorabat venditam esse hereditatem, transegit: si emptor hereditatis hoc debitum ab eo exigere velit, exceptio transacti negotii debitori propter ignorantiam suam accommodanda est. idem respondendum est et in eo, qui fideicommissam recepit hereditatem, si heres cum ignorante debitore transegit.

OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER TERTIUS

Dig. 3.1.0. De postulando.
Dig. 3.2.0. De his qui notantur infamia.
Dig. 3.3.0. De procuratoribus et defensoribus.
Dig. 3.4.0. Quod cuiuscumque universitatis nomine vel contra eam agatur.
Dig. 3.5.0. De negotiis gestis.
Dig. 3.6.0. De calumniatoribus.

Dig. 3.1.0. De postulando.

Dig. 3.1.1pr.

Ulpianus 6 ad ed.

Hunc titulum praetor proposuit habendae rationis causa suaeque dignitatis tuendae et decoris sui causa, ne sine delectu passim apud se postuletur.

Dig. 3.1.1.1

Ulpianus 6 ad ed.

Eapropter tres fecit ordines: nam quosdam in totum prohibuit postulare, quibusdam vel pro se permisit, quibusdam et pro certis dumtaxat personis et pro se permisit.

Dig. 3.1.1.2

Ulpianus 6 ad ed.

Postulare autem est desiderium suum vel amici sui in iure apud eum, qui iurisdictioni praeest, exponere: vel alterius desiderio contradicere.

Dig. 3.1.1.3

Ulpianus 6 ad ed.

Initium autem fecit praetor ab his, qui in totum prohibentur postulare. in quo edicto aut pueritiam aut casum excusavit. pueritiam: dum minorem annis decem et septem, qui eos non in totum complevit, prohibet postulare, quia moderatam hanc aetatem ratus est ad procedendum in publicum, qua aetate aut paulo maiore fertur nerva filius et publice de iure responsitasse. propter casum surdum qui prorsus non audit prohibet apud se postulare: nec enim erat permittendum ei postulare, qui decretum praetoris exaudire non poterat, quod etiam ipsi erat periculosum futurum: nam non exaudito decreto praetoris, quasi non obtemperasset, poena ut contumax plecteretur.

Dig. 3.1.1.4

Ulpianus 6 ad ed.

Ait praetor: "si non habebunt advocatum, ego dabo." nec solum his personis hanc humanitatem praetor solet exhibere, verum et si quis alius sit, qui certis ex causis vel ambitione adversarii vel metu patronum non invenit.

Dig. 3.1.1.5

Ulpianus 6 ad ed.

Secundo loco edictum proponitur in eos, qui pro aliis ne postulent: in quo edicto excepit praetor sexum et casum, item notavit personas in turpitudine notabiles. sexum: dum feminas prohibet pro aliis postulare. et ratio quidem prohibendi, ne contra pudicitiam sexui congruentem alienis causis se immisceant, ne virilibus officiis fungantur mulieres: origo vero introducta est a carfania improbissima femina, quae inverecunde postulans et magistratum inquietans causam dedit edicto. casum: dum caecum utrisque luminibus orbatum praetor repellit: videlicet quod insignia magistratus videre et revereri non possit. refert etiam labeo publilium caecum asprenatis noni patrem aversa sella a bruto destitutum, cum vellet postulare. quamvis autem caecus pro alio postulare non possit, tamen et senatorium ordinem retinet et iudicandi officio fungitur. numquid ergo et magistratus gerere possit? sed de hoc deliberabimus. exstat quidem exemplum eius, qui gessit: appius denique claudius caecus consiliis publicis intererat et in senatu severissimam dixit sententiam de pyrrhi captivis. sed melius ^ milius^ est, ut dicamus retinere quidem iam coeptum magistratum posse, adspirare autem ad novum penitus prohiberi: idque multis comprobatur exemplis.

Dig. 3.1.1.6

Ulpianus 6 ad ed.

Removet autem a postulando pro aliis et eum, qui corpore suo muliebria passus est. si quis tamen vi praedonum vel hostium stupratus est, non debet notari, ut et pomponius ait. et qui capitali crimine damnatus est, non debet pro alio postulare. item senatus consulto etiam apud iudices pedaneos postulare prohibetur calumniae publici iudicii damnatus. et qui operas suas, ut cum bestiis depugnaret, locaverit. bestias autem accipere debemus ex feritate magis, quam ex animalis genere: nam quid si leo sit, sed mansuetus, vel alia dentata mansueta? ergo qui locavit solus notatur, sive depugnaverit sive non: quod si depugnaverit, cum non locasset operas suas, non tenebitur: non enim qui cum bestiis depugnavit, tenebitur, sed qui operas suas in hoc locavit. denique eos, qui virtutis ostendendae causa hoc faciunt sine mercede, non teneri aiunt veteres, nisi in harena passi sunt se honorari: eos enim puto notam non evadere. sed si quis operas suas locaverit, ut feras venetur, vel ut depugnaret feram quae regioni nocet, extra harenam: non est notatus. his igitur personis, quae non virtutis causa cum bestiis pugnaverunt, pro se praetor permittit allegare, pro alio prohibet. sed est aequissimum, si tutelam vel curam huiusmodi personae administrent, postulare eis pro his, quorum curam gerunt, concedi. qui adversus ea fecisse monstretur, et pro aliis interdicta postulatione repellitur et pro aestimatione iudicis extra ordinem pecuniaria poena multabitur.

Dig. 3.1.1.7

Ulpianus 6 ad ed.

Ut initio huius tituli diximus, tres ordines praetor fecit non postulantium: quorum hic tertius est, quibus non in totum denegat postulandi facultatem, sed ne pro omnibus postularent: quasi minus deliquerint quam hi qui superioribus captibus notantur.

Dig. 3.1.1.8

Ulpianus 6 ad ed.

Ait praetor: " qui lege, plebis scito, senatus consulto, edicto, decreto principum nisi pro certis personis postulare prohibentur: hi pro alio, quam pro quo licebit, in iure apud me ne postulent. " hoc edicto continentur etiam alii omnes, qui edicto praetoris ut infames notantur, qui omnes nisi pro se et certis personis ne postulent.

Dig. 3.1.1.9

Ulpianus 6 ad ed.

Deinde adicit praetor: " qui ex his omnibus, qui supra scripti sunt, in integrum restitutus non erit. " " eum qui ex his, qui supra scripti sunt" sic accipe: si fuerit inter eos, qui tertio edicto continentur et nisi pro certis personis postulare prohibentur: ceterum si ex superioribus, difficile in integrum restitutio impetrabitur.

Dig. 3.1.1.10

Ulpianus 6 ad ed.

De qua autem restitutione praetor loquitur? utrum de ea quae a principe vel a senatu? pomponius quaerit: et putat de ea restitutione sensum, quam princeps vel senatus indulsit. an autem et praetor restituere possit, quaeritur: et mihi videtur talia praetorum decreta non esse servanda, nisi sicubi ex officio iurisdictionis suae subvenerunt: ut in aetate observatur, si quis deceptus sit, ceterisque speciebus quas sub titulo de in integrum restitutione exsequemur. pro qua sententia est, quod si quis famoso iudicio condemnatus per in integrum restitutionem fuerit absolutus, pomponius putat hunc infamia eximi.

Dig. 3.1.1.11

Ulpianus 6 ad ed.

Deinde adicit praetor: " pro alio ne postulent praeterquam pro parente, patrono patrona, liberis parentibusque patroni patronae": de quibus personis sub titulo de in ius vocando plenius diximus. item adicit: " liberisve suis, fratre sorore, uxore, socero socru, genero nuru, vitrico noverca, privigno privigna, pupillo pupilla, furioso furiosa, "

Dig. 3.1.2

Gaius 1 ad ed. provinc.

" fatuo fatua": cum istis quoque personis curator detur.

Dig. 3.1.3pr.

Ulpianus 6 ad ed.

" cui eorum a parente, aut de maioris partis tutorum sententia, aut ab eo cuius de ea re iurisdictio fuit ea tutela curatiove data erit. "

Dig. 3.1.3.1

Ulpianus 6 ad ed.

Adfinitates non eas accipere debemus, quae quondam fuerunt, sed praesentes.

Dig. 3.1.3.2

Ulpianus 6 ad ed.

Item pomponius nurus et generi appellatione et soceri et socrus et ulteriores, quibus pro praepositio solet accedere, contineri ait.

Dig. 3.1.3.3

Ulpianus 6 ad ed.

In curatoribus debuisse eum adicere: muti ceterorumque, quibus dare solent, id est surdo prodigo et adulescenti:

Dig. 3.1.4

Paulus 5 ad ed.

Item quibus propter infirmitatem curatorem praetor dare solet,

Dig. 3.1.5

Ulpianus 9 ad ed.

Et qui negotiis suis aliquo perpetuo morbo superesse non possunt.

Dig. 3.1.6

Ulpianus 6 ad ed.

Puto autem omnes, qui non sponte, sed necessario officio funguntur, posse sine offensa edicti postulare, etiamsi hi sint, qui non nisi pro se postulare possunt. si quis advocationem praestare fuerit prohibitus, si quidem apud se, ut solent facere, tempore magistratus sui, puto eum postea apud successorem eius adesse posse.

Dig. 3.1.7

Gaius 3 ad ed. provinc.

Quos prohibet praetor apud se postulare, omnimodo prohibet, etiam si adversarius eos patiatur postulare.

Dig. 3.1.8

Papinianus 2 quaest.

Imperator titus antoninus rescripsit eum, cui advocationibus in quinquennio interdictum esset, post quinquennium pro omnibus postulare non prohiberi. divus quoque hadrianus rescripserat de exilio reversum postulare posse. nec adhibetur distinctio, quo crimine silentium vel exilium sit irrogatum, ne scilicet poena tempore determinata contra sententiae fidem ulterius porrigatur.

Dig. 3.1.9

Papinianus 1 resp.

Ex ea causa prohibitus pro alio postulare, quae infamiam non irrogat ideoque ius pro omnibus postulandi non aufert, in ea tantum provincia pro aliis non recte postulat, in qua praeses fuit qui sententiam dixit, in alia vero non prohibetur, licet eiusdem nominis sit.

Dig. 3.1.10

Paulus l.S. reg.

Hi qui fisci causas agunt suam vel filiorum et parentium suorum vel pupillorum quorum tutelas gerunt causam et adversus fiscum agere non prohibentur. decuriones quoque contra patriam suam causas agere prohibentur, praeter superiores personas.

Dig. 3.1.11pr.

Tryphonus 5 disp.

A principe nostro rescriptum est non prohiberi tutorem adesse pupillo in negotio, in quo advocatus contra patrem eius fuisset. sed et illud permissum ab eo est agere tutorem pupilli causam adversus fiscum, in qua adversus patrem pupilli antea advocatus fisci fuisset.

Dig. 3.1.11.1

Tryphonus 5 disp.

Qui autem inter infames sunt, sequenti titulo explanabitur.

Dig. 3.2.0. De his qui notantur infamia.

Dig. 3.2.1

Iulianus 1 ad ed.

Praetoris verba dicunt: " infamia notatur qui ab exercitu ignominiae causa ab imperatore eove, cui de ea re statuendi potestas fuerit, dimissus erit: qui artis ludicrae pronuntiandive causa in scaenam prodierit: qui lenocinium fecerit: qui in iudicio publico calumniae praevaricationisve causa quid fecisse iudicatus erit: qui furti, vi bonorum raptorum, iniuriarum, de dolo malo et fraude suo nomine damnatus pactusve erit: qui pro socio, tutelae, mandati depositi suo nomine non contrario iudicio damnatus erit: qui eam, quae in potestate eius esset, genero mortuo, cum eum mortuum esse sciret, intra id tempus, quo elugere virum moris est, antequam virum elugeret, in matrimonium collocaverit: eamve sciens quis uxorem duxerit non iussu eius, in cuius potestate est: et qui eum, quem in potestate haberet, eam, de qua supra comprehensum est, uxorem ducere passus fuerit: quive suo nomine non iussu eius in cuius potestate esset, eiusve nomine quem quamve in potestate haberet bina sponsalia binasve nuptias in eodem tempore constitutas habuerit. "

Dig. 3.2.2pr.

Ulpianus 6 ad ed.

Quod ait praetor: " qui ab exercitu dimissus erit": dimissum accipere debemus militem caligatum, vel si quis alius usque ad centurionem, vel praefectum cohortis vel alae vel legionis, vel tribunum sive cohortis sive legionis dimissus est. hoc amplius pomponius ait etiam eum, qui exercitui praeest, licet consularibus insignibus utitur, ignominiae causa ab imperatore missum hac nota laborare: ergo et si dux cum exercitui praeest dimissus erit, notatur, et si princeps dimiserit et adiecerit ignominiae causa se mittere, ut plerumque facit, non dubitabis et ex edicto praetoris eum infamia esse notatum: non tamen si citra indignationem principis successor ei datus est.

Dig. 3.2.2.1

Ulpianus 6 ad ed.

Exercitum autem non unam cohortem neque unam alam dicimus, sed numeros multos militum: nam exercitui praeesse dicimus eum, qui legionem vel legiones cum suis auxiliis ab imperatore commissas administrat: sed hic etiam eum, qui ab aliquo numero militum missus est, quasi ab exercitu missum sic accipiemus.

Dig. 3.2.2.2

Ulpianus 6 ad ed.

" ignominiae causa missum " : hoc ideo adiectum est, quoniam multa genera sunt missionum. est honesta, quae emeritis stipendiis vel ante ab imperatore indulgetur: est causaria, quae propter valetudinem laboribus militiae solvit: est ignominiosa. ignominiosa autem missio totiens est, quotiens is qui mittit addidit nominatim ignominiae causa se mittere: semper enim debet addere, cur miles mittatur. sed et si eum exauctoraverit, id est insignia militaria detraxerit, inter infames efficit, licet non addidisset ignominiae causa se eum exauctorasse. est et quartum genus missionis, si quis evitandorum munerum causa militiam subisset: haec autem missio existimationem non laedit, ut est saepissime rescriptum.

Dig. 3.2.2.3

Ulpianus 6 ad ed.

Miles, qui lege iulia de adulteriis fuerit damnatus, ita infamis est, ut etiam ipsa sententia eum sacramento ignominiae causa solvat.

Dig. 3.2.2.4

Ulpianus 6 ad ed.

Ignominia autem missis neque in urbe neque alibi, ubi imperator est, morari licet.

Dig. 3.2.2.5

Ulpianus 6 ad ed.

Ait praetor: " qui in scaenam prodierit, infamis est". scaena est, ut labeo definit, quae ludorum faciendorum causa quolibet loco, ubi quis consistat moveaturque spectaculum sui praebiturus, posita sit in publico privatove vel in vico, quo tamen loco passim homines spectaculi causa admittantur. eos enim, qui quaestus causa in certamina descendunt et omnes propter praemium in scaenam prodeuntes famosos esse pegasus et nerva filius responderunt.

Dig. 3.2.3

Gaius 1 ad ed. provinc.

Qui autem operas suas locavit, ut prodiret artis ludicrae causa neque prodit, non notatur: quia non est ea res adeo turpis, ut etiam consilium puniri debeat.

Dig. 3.2.4pr.

Ulpianus 6 ad ed.

Athletas autem sabinus et cassius responderunt omnino artem ludicram non facere: virtutis enim gratia hoc facere. et generaliter ita omnes opinantur et utile videtur, ut neque thymelici neque xystici neque agitatores nec qui aquam equis spargunt ceteraque eorum ministeria, qui certaminibus sacris deserviunt, ignominiosi habeantur.

Dig. 3.2.4.1

Ulpianus 6 ad ed.

Designatores autem, quos graeci brabeutas appellant, artem ludicram non facere celsus probat, quia ministerium, non artem ludicram exerceant. et sane locus iste hodie a principe non pro modico beneficio datur.

Dig. 3.2.4.2

Ulpianus 6 ad ed.

Ait praetor: " qui lenocinium fecerit". lenocinium facit qui quaestuaria mancipia habuerit: sed et qui in liberis hunc quaestum exercet, in eadem causa est. sive autem principaliter hoc negotium gerat sive alterius negotiationis accessione utatur (ut puta si caupo fuit vel stabularius et mancipia talia habuit ministrantia et occasione ministerii quaestum facientia: sive balneator fuerit, velut in quibusdam provinciis fit, in balineis ad custodienda vestimenta conducta habens mancipia hoc genus observantia in officina), lenocinii poena tenebitur.

Dig. 3.2.4.3

Ulpianus 6 ad ed.

Pomponius et eum, qui in servitute peculiaria mancipia prostituta habuit, notari post libertatem ait.

Dig. 3.2.4.4

Ulpianus 6 ad ed.

Calumniator ita demum notatur, si fuerit calumniae causa damnatus: neque enim sufficit calumniatum: item praevaricator. praevaricator autem est quasi varicator, qui diversam partem adiuvat prodita causa sua: quod nomen labeo a varia certatione tractum ait, nam qui praevaricatur, ex utraque parte constitit, quin immo ex adversa.

Dig. 3.2.4.5

Ulpianus 6 ad ed.

Item " si qui furti, vi bonorum raptorum, iniuriarum, de dolo malo suo nomine damnatus pactusve erit" simili modo infames sunt,

Dig. 3.2.5

Paulus 5 ad ed.

Quoniam intellegitur confiteri crimen qui paciscitur.

Dig. 3.2.6pr.

Ulpianus 6 ad ed.

" furti" accipe sive manifesti sive nec manifesti.

Dig. 3.2.6.1

Ulpianus 6 ad ed.

Sed si furti vel aliis famosis actionibus quis condemnatus provocavit, pendente iudicio nondum inter famosos habetur: si autem omnia tempora provocationis lapsa sunt, retro infamis est: quamvis si iniusta appellatio eius visa sit, hodie notari puto, non retro notatur.

Dig. 3.2.6.2

Ulpianus 6 ad ed.

Si quis alieno nomine condemnatus fuerit, non laborat infamia: et ideo nec procurator meus vel defensor vel tutor vel curator vel heres furti vel ex alia simili specie condemnatus infamia notabuntur, nec ego, si ab initio per procuratorem causa agitata est.

Dig. 3.2.6.3

Ulpianus 6 ad ed.

" pactusve" inquit " erit": pactum sic accipimus, si cum pretio quantocumque pactus est: alioquin et qui precibus impetravit ne secum ageretur erit notatus nec erit veniae ulla ratio, quod est inhumanum.

Dig. 3.2.6.4

Ulpianus 6 ad ed.

Qui iussu praetoris pretio dato pactus est, non notatur.

Dig. 3.2.6.4a

Ulpianus 6 ad ed.

Sed et si iureiurando delato iuraverit quis se non deliquisse, non erit notatus: nam quodammodo innocentiam suam iureiurando adprobavit.

Dig. 3.2.6.5

Ulpianus 6 ad ed.

" mandati condemnatus": verbis edicti notatur non solum qui mandatum suscepit, sed et is, qui fidem, quam adversarius secutus est, non praestat. ut puta fideiussi pro te et solvi: mandati te si condemnavero, famosum facio.

Dig. 3.2.6.6

Ulpianus 6 ad ed.

Illud plane addendum est, quod interdum et heres suo nomine damnatur et ideo infamis fit, si in deposito vel in mandato male versatus sit: non tamen in tutela vel pro socio heres suo nomine damnari potest, quia heres neque in tutelam neque in societatem succedit, sed tantum in aes alienum defuncti.

Dig. 3.2.6.7

Ulpianus 6 ad ed.

Contrario iudicio damnatus non erit infamis: nec immerito. nam in contrariis non de perfidia agitur, sed de calculo, qui fere iudicio solet dirimi.

Dig. 3.2.7

Paulus 5 ad ed.

In actionibus, quae ex contractu proficiscuntur, licet famosae sint et damnati notantur, attamen pactus non notatur, merito: quoniam ex his causis non tam turpis est pactio quam ex superioribus.

Dig. 3.2.8

Ulpianus 6 ad ed.

" genero" inquit"mortuo": merito adiecit praetor: " cum eum mortuum esse sciret", ne ignorantia puniatur. sed cum tempus luctus continuum est, merito et ignoranti cedit ex die mortis mariti: et ideo si post legitimum tempus cognovit, labeo ait ipsa die et sumere eam lugubria et deponere.

Dig. 3.2.9pr.

Paulus 5 ad ed.

Uxores viri lugere non compelluntur.

Dig. 3.2.9.1

Paulus 5 ad ed.

Sponsi nullus luctus est.

Dig. 3.2.10pr.

Paulus 8 ad ed.

Solet a principi impetrari, ut intra legitimum tempus mulieri nubere liceat.

Dig. 3.2.10.1

Paulus 8 ad ed.

Quae virum eluget, intra id tempus sponsam fuisse non nocet.

Dig. 3.2.11pr.

Ulpianus 6 ad ed.

Liberorum autem et parentium luctus impedimento nuptiis non est.

Dig. 3.2.11.1

Ulpianus 6 ad ed.

Etsi talis sit maritus, quem more maiorum lugeri non oportet, non posse eam nuptum intra legitimum tempus collocari: praetor enim ad id tempus se rettulit, quo vir elugeretur: qui solet elugeri propter turbationem sanguinis.

Dig. 3.2.11.2

Ulpianus 6 ad ed.

Pomponius eam, quae intra legitimum tempus partum ediderit, putat statim posse nuptiis se collocare: quod verum puto.

Dig. 3.2.11.3

Ulpianus 6 ad ed.

Non solent autem lugeri, ut neratius ait, hostes vel perduellionis damnati nec suspendiosi nec qui manus sibi intulerunt non taedio vitae, sed mala conscientia: si quis ergo post huiusmodi exitum mariti nuptum se collocaverit, infamia notabitur.

Dig. 3.2.11.4

Ulpianus 6 ad ed.

Notatur etiam " qui eam duxit", sed si sciens: ignorantia enim excusatur non iuris, sed facti. excusatur qui iussu eius, in cuius potestate erat, duxerit, et ipse, qui passus est ducere, notatur, utrumque recte: nam et qui obtemperavit, venia dignus est et qui passus est ducere, notari ignominia.

Dig. 3.2.12

Paulus 5 ad ed.

Qui iussu patris duxit, quamvis liberatus potestate patria eam retinuit, non notatur.

Dig. 3.2.13pr.

Ulpianus 6 ad ed.

Quid ergo si non ducere sit passus, sed posteaquam duxit ratum habuerit? ut puta initio ignoraverit talem esse, postea scit? non notabitur: praetor enim ad initium nuptiarum se rettulit.

Dig. 3.2.13.1

Ulpianus 6 ad ed.

Si quis alieno nomine bina sponsalia constituerit, non notatur, nisi eius nomine constituat, quem quamve in potestate haberet: certe qui filium vel filiam constituere patitur, quodammodo ipse videtur constituisse.

Dig. 3.2.13.2

Ulpianus 6 ad ed.

Quod ait praetor " eodem tempore " , non initium sponsaliorum eodem tempore factum accipiendum est, sed si in idem tempus concurrant.

Dig. 3.2.13.3

Ulpianus 6 ad ed.

Item si alteri sponsa, alteri nupta sit, ex sententia edicti punitur.

Dig. 3.2.13.4

Ulpianus 6 ad ed.

Cum autem factum notetur, etiam si cum ea quis nuptias vel sponsalia constituat, quam uxorem ducere vel non potest vel fas non est, erit notatus.

Dig. 3.2.13.5

Ulpianus 6 ad ed.

Ex compromisso arbiter infamiam non facit, quia non per omnia sententia est.

Dig. 3.2.13.6

Ulpianus 6 ad ed.

Quantum ad infamiam pertinet, multum interest, in causa quae agebatur causa cognita aliquid pronuntiatum sit an quaedam extrinsecus sunt elocuta: nam ex his infamia non irrogatur.

Dig. 3.2.13.7

Ulpianus 6 ad ed.

Poena gravior ultra legem imposita existimationem conservat, ut et constitutum est et responsum. ut puta si eum, qui parte bonorum multari debuit, praeses relegaverit: dicendum erit duriori sententia cum eo transactum de existimatione eius idcircoque non esse infamem. sed si in causa furti nec manifesti in quadruplum iudex condemnavit, oneratum quidem reum poena aucta, nam ex furto non manifesto in duplum conveniri debuit: verum hanc rem existimationem ei non conservasse, quamvis si in poena non pecuniaria eum onerasset, transactum cum eo videtur.

Dig. 3.2.13.8

Ulpianus 6 ad ed.

Crimen stellionatus infamiam irrogat damnato, quamvis publicum non est iudicium.

Dig. 3.2.14

Paulus 5 ad ed.

Servus, cuius nomine noxale iudicium dominus acceperit, deinde eundem liberum et heredem instituerit, ex eodem iudicio damnatus non est famosus, quia non suo nomine condemnatur: quippe cum initio lis in eum contestata non sit.

Dig. 3.2.15

Ulpianus 8 ad ed.

Notatur quae per calumniam ventris nomine in possessionem missa est, dum se adseverat praegnatem,

Dig. 3.2.16

Paulus 8 ad ed.

Cum non praegnas esset vel ex alio concepisset:

Dig. 3.2.17

Ulpianus 8 ad ed.

Debuit enim coerceri quae praetorem decepit. sed ea notatur, quae cum suae potestatis esset hoc facit.

Dig. 3.2.18

Gaius 3 ad ed. provinc.

Ea, quae falsa existimatione decepta est, non potest videri per calumniam in possessione fuisse.

Dig. 3.2.19

Ulpianus 8 ad ed.

Non alia autem notatur quam ea, de qua pronuntiatum est calumniae causa eam fuisse in possessionem missam. idque et in patre erit servandum, qui calumniae causa passus est filiam, quam in potestate habebat, in possessionem ventris nomine mitti.

Dig. 3.2.20

Papinianus 1 resp.

Ob haec verba sententiae praesidis provinciae " callido commento videris accusationis instigator fuisse" pudor potius oneratur, quam ignominia videtur irrogari: non enim qui exhortatur mandatoris opera fungitur.

Dig. 3.2.21

Paulus 2 resp.

Lucius titius crimen intendit gaio seio quasi iniuriam passus atque in eam rem testationem apud praefectum praetorio recitavit: praefectus fide non habita testationis nullam iniuriam lucium titium passum esse a gaio seio pronuntiavit. quaero, an testes, quorum testimonium reprobatum est, quasi ex falso testimonio inter infames habentur. paulus respondit nihil proponi, cur hi, de quibus quaeritur, infamium loco haberi debeant, cum non oportet ex sententia sive iusta sive iniusta pro alio habita alium praegravari.

Dig. 3.2.22

Marcellus 2 publ.

Ictus fustium infamiam non importat, sed causa, propter quam id pati meruit, si ea fuit, quae infamiam damnato irrogat. in ceteris quoque generibus poenarum eadem forma statuta est.

Dig. 3.2.23

Ulpianus 8 ad ed.

Parentes et liberi utriusque sexus nec non et ceteri adgnati vel cognati secundum pietatis rationem et animi sui patientiam, prout quisque voluerit, lugendi sunt: qui autem eos non eluxit, non notatur infamia.

Dig. 3.2.24

Ulpianus 6 ad ed.

Imperator severus rescripsit non offuisse mulieris famae quaestum eius in servitute factum.

Dig. 3.2.25pr.

Papinianus 2 quaest.

Exheredatum quoque filium luctum habere patris memoriae placuit, idemque et in matre iuris est, cuius hereditas ad filium non pertinet.

Dig. 3.2.25.1

Papinianus 2 quaest.

Si quis in bello ceciderit, etsi corpus eius non compareat, lugebitur.

Dig. 3.3.0. De procuratoribus et defensoribus.

Dig. 3.3.1pr.

Ulpianus 9 ad ed.

Procurator est qui aliena negotia mandatu domini administrat.

Dig. 3.3.1.1

Ulpianus 9 ad ed.

Procurator autem vel omnium rerum vel unius rei esse potest constitutus vel coram vel per nuntium vel per epistulam: quamvis quidam, ut pomponius libro vicensimo quarto scribit, non putent unius rei mandatum suscipientem procuratorem esse: sicuti ne is quidem, qui rem perferendam vel epistulam vel nuntium perferendum suscepit, proprie procurator appellatur. sed verius est eum quoque procuratorem esse qui ad unam rem datus sit.

Dig. 3.3.1.2

Ulpianus 9 ad ed.

Usus autem procuratoris perquam necessarius est, ut qui rebus suis ipsi superesse vel nolunt vel non possunt, per alios possint vel agere vel conveniri.

Dig. 3.3.1.3

Ulpianus 9 ad ed.

Dari autem procurator et absens potest,

Dig. 3.3.2pr.

Paulus 8 ad ed.

Dummodo certus sit qui datus intellegetur et is ratum habuerit.

Dig. 3.3.2.1

Paulus 8 ad ed.

Furiosus non est habendus absentis loco, quia in eo animus deest, ut ratum habere non possit.

Dig. 3.3.3

Ulpianus 9 ad ed.

Item ad litem futuram et in diem et sub condicione et usque ad diem dari potest.

Dig. 3.3.4

Paulus 8 ad ed.

Et in perpetuum.

Dig. 3.3.5

Ulpianus 7 ad ed.

Praesens habetur et qui in hortis est.

Dig. 3.3.6

Paulus 6 ad ed.

Et qui in foro et qui in urbe et in continentibus aedificiis:

Dig. 3.3.7

Ulpianus 7 ad ed.

Et ideo procurator eius praesentis esse videtur.

Dig. 3.3.8pr.

Ulpianus 8 ad ed.

Filius familias et ad agendum dare procuratorem potest, si qua sit actio, qua ipse experiri potest: non solum si castrense peculium habeat, sed et quivis filius familias: ut puta iniuriam passus dabit ad iniuriarum actionem, si forte neque pater praesens sit nec patris procurator velit experiri, et erit iure ab ipso filio familias procurator datus. hoc amplius iulianus scribit et si filio familias patri per filium eius in eadem potestate manentem fiat iniuria neque avus praesens sit, posse patrem procuratorem dare ad ulciscendam iniuriam, quam nepos absentis passus est. ad defendendum quoque poterit filius familias procuratorem dare. sed et filia familias poterit dare procuratorem ad iniuriarum actionem. nam quod ad dotis exactionem cum patre dat procuratorem, supervacuum esse valerius severus scribit, cum sufficiat patrem dare ex filiae voluntate. sed puto, si forte pater absens sit vel suspectae vitae, quo casu solet filiae competere de dote actio, posse eam procuratorem dare. ipse quoque filius procurator dari poterit et ad agendum et ad defendendum.

Dig. 3.3.8.1

Ulpianus 8 ad ed.

Invitus procurator non solet dari. invitum accipere debemus non eum tantum qui contradicit, verum eum quoque qui consensisse non probatur.

Dig. 3.3.8.2

Ulpianus 8 ad ed.

Veterani procuratores fieri possunt: milites autem nec si velit adversarius procuratores dari possunt, nisi hoc tempore litis contestatae quocumque casu praetermissum est: excepto eo qui in rem suam procurator datus est, vel qui communem causam omnis sui numeri persequatur vel suscipit, quibus talis procuratio concessa est.

Dig. 3.3.8.3

Ulpianus 8 ad ed.

" procuratorem ad litem suscipiendam datum, pro quo consentiente dominus iudicatum solvi exposuit", praetor ait, " iudicium accipere cogam". verum ex causa non debebit compelli. ut puta inimicitiae capitales intervenerunt inter ipsum procuratorem et dominum: scribit iulianus debere in procuratorem denegari actionem. item si dignitas accesserit procuratori: vel rei publicae causa afuturus sit:

Dig. 3.3.9

Gaius 3 ad ed. provinc.

Aut si valetudinem aut si necessariam peregrinationem alleget:

Dig. 3.3.10

Ulpianus 8 ad ed.

Vel hereditas superveniens eum occupet: vel ex alia iusta causa. hoc amplius et si habeat praesentem dominum, non debere compelli procuratorem,

Dig. 3.3.11

Paulus 8 ad ed.

Si tamen dominus cogi possit.

Dig. 3.3.12

Gaius 3 ad ed. provinc.

Sed etiam ex his causis dicitur aliquando cogendum procuratorem iudicium accipere: veluti si dominus praesens non sit et actor adfirmet tractu temporis futurum ut res pereat.

Dig. 3.3.13

Ulpianus 8 ad ed.

Sed haec neque passim admittenda sunt neque destricte deneganda, sed a praetore causa cognita temperanda.

Dig. 3.3.14

Paulus 8 ad ed.

Si post datum procuratorem capitales inimicitiae intercesserunt, non cogendum accipere iudicium nec stipulationem ob rem non defensam committi, quoniam nova causa sit.

Dig. 3.3.15pr.

Ulpianus 8 ad ed.

Si defunctus sit dominus ante litem contestatam, iudicatum solvi stipulatione pro suo procuratore data, procurator compellendus est ad iudicium accipiendum: ita tamen si hoc dominus sciente procuratore et non contradicente fecit. quod si aliter actum est, inscium quidem procuratorem teneri satis incivile est, committitur autem ob rem non defensam stipulationis clausula.

Dig. 3.3.15.1

Ulpianus 8 ad ed.

Qui ad communi dividundo iudicium datus est, ad agendum item et ad defendendum videbitur datus duplici cautela interponenda.

Dig. 3.3.16

Paulus 8 ad ed.

Ante litem contestatam libera potestas est vel mutandi procuratoris vel ipsi domino iudicium accipiendi.

Dig. 3.3.17pr.

Ulpianus 9 ad ed.

Post litem autem contestatam reus qui procuratorem dedit mutare quidem eum vel in se litem transferre a vivo procuratore vel in civitate manente potest, causa tamen prius cognita.

Dig. 3.3.17.1

Ulpianus 9 ad ed.

Non solum autem ipsi qui dedit procuratorem hoc permittitur, sed etiam heredi eius et ceteris successoribus.

Dig. 3.3.17.2

Ulpianus 9 ad ed.

In causae autem cognitione non solum haec versantur, quae supra diximus in procuratore non compellendo suscipere iudicium, verum et aetas.

Dig. 3.3.18

Modestinus 10 pand.

Aut religionis beneficium.

Dig. 3.3.19

Ulpianus 9 ad ed.

Item si suspectus sit procurator aut in vinculis aut in hostium praedonumve potestate,

Dig. 3.3.20

Paulus 8 ad ed.

Vel iudicio publico privatove vel valetudine vel maiore re sua distringatur.

Dig. 3.3.21

Gaius 3 ad ed. provinc.

Vel exilio, vel si latitet, vel inimicus postea fiat,

Dig. 3.3.22

Paulus 8 ad ed.

Aut adfinitate aliqua adversario iungatur, vel heres ei existat,

Dig. 3.3.23

Ulpianus 9 ad ed.

Aut longa peregrinatio et aliae similes causae impedimento sint,

Dig. 3.3.24

Paulus 8 ad ed.

Mutari debebit vel ipso procuratore postulante.

Dig. 3.3.25

Ulpianus 9 ad ed.

Quae omnia non solum ex parte rei, sed etiam in persona actoris observabuntur. sed si adversarius vel ipse procurator dicat dominum mentiri, apud praetorem haec finiri oportet. nec ferendus est procurator qui sibi adserit procurationem: nam hoc ipso suspectus est qui operam suam ingerit invito. nisi forte purgare magis convicium quam procurationem exsequi maluit. et hactenus erit audiendus, si dicat se procuratione quidem carere velle, sed si id inlaesa existimatione sua fiat: ceterum ferendus erit pudorem suum purgans. plane si dicat in rem suam se procuratorem datum et hoc probaverit, non debet carere propria lite. item si retentione aliqua procurator uti velit, non facile ab eo lis erit transferenda,

Dig. 3.3.26

Paulus 8 ad ed.

Nisi dominus ei solvere paratus sit.

Dig. 3.3.27pr.

Ulpianus 9 ad ed.

In causae cognitione etiam hoc versabitur, ut ita demum transferri a procuratore iudicium permittatur, si quis omnia iudicii ab eo transferre paratus sit. ceterum si velit quaedam transferre, quaedam relinquere, iuste procurator hanc inconstantiam recusabit. sed haec ita, si mandato domini procurator egit. ceterum si mandatum non est, cum neque in iudicium quicquam deduxerit, nec tu ea comprobasti: quae invito te acta sunt tibi non praeiudicant ideoque translatio earum litium non est tibi necessaria, ne alieno facto onereris. haec autem cognitio procuratoris mutandi praetoris est.

Dig. 3.3.27.1

Ulpianus 9 ad ed.

Si ex parte actoris litis transactio fiat, dicimus committi iudicatum solvi stipulationem a reo factam, idque et neratius probat et iulianus et hoc iure utimur: scilicet si dominus satis accepit. sed et si procurator satis accepit et transferatur iudicium in dominum: verius est committi et ex stipulatu actionem a procuratore in dominum transferri. sed et si a domino vel a procuratore in procuratorem iudicium transferatur, non dubitat Marcellus, quin committatur stipulatio. et haec vera sunt. et licet procuratori commissa sit stipulatio, tamen domino erit danda utilis ex stipulatu actio, directa penitus tollenda.

Dig. 3.3.28

Ulpianus 1 disp.

Si procurator meus iudicatum solvi satis acceperit, mihi ex stipulatu actio utilis est, sicuti iudicati actio mihi indulgetur. sed et si egit procurator meus ex ea stipulatione me invito, nihilo minus tamen mihi ex stipulatu actio tribuetur. quae res facit ut procurator meus ex stipulatu agendo exceptione debeat repelli: sicuti cum agit iudicati non in rem suam datus nec ad eam rem procurator factus. per contrarium autem si procurator meus iudicatus solvi satisdederit, in me ex stipulatu actio non datur. sed et si defensor meus satisdederit, in me ex stipulatu actio non datur, quia nec iudicati mecum agi potest.

Dig. 3.3.29

Ulpianus 9 ad ed.

Si actor malit dominum potius convenire quam eum qui in rem suam procurator est, dicendum est ei licere.

Dig. 3.3.30

Paulus 1 sent.

Actoris procurator non in rem suam datus propter impensas quas in litem fecit potest desiderare, ut sibi ex iudicatione satisfiat, si dominus litis solvendo non sit.

Dig. 3.3.31pr.

Ulpianus 9 ad ed.

Si quis, cum procuratorio nomine condemnatus esset, heres extiterit domino litis: iudicati actionem non recte recusabit. hoc si ex asse. sin autem ex parte heres extiterit et totum solverit, si quidem ei mandatum est hoc quoque ut solvat, mandati actionem adversus coheredes habebit: si non sit mandatum, negotiorum gestorum actio datur. quod est et si heres procurator non exstiterit et solverit.

Dig. 3.3.31.1

Ulpianus 9 ad ed.

Unius litis plurium personarum plures dari procuratores non est prohibitum.

Dig. 3.3.31.2

Ulpianus 9 ad ed.

Iulianus ait eum, qui dedit diversis temporibus procuratores duos, posteriorem dando priorem prohibuisse videri.

Dig. 3.3.32

Paulus 8 ad ed.

Pluribus procuratoribus in solidum simul datis occupantis melior condicio erit, ut posterior non sit in eo quod prior petit procurator.

Dig. 3.3.33pr.

Ulpianus 9 ad ed.

Servum quoque et filium familias procuratorem posse habere aiunt. et quantum ad filium familias verum est: in servo subsistimus. et negotia quidem peculiaria servi posse gerere aliquem et hoc casu procuratorem eius esse admittimus, quod et labeoni videtur: actionem autem intendere vetamus.

Dig. 3.3.33.1

Ulpianus 9 ad ed.

Eum vero qui de statu suo litigat procuratorem habere posse non dubitamus non solum in administratione rerum, sed etiam in actionibus, quae ei vel adversus eum competant, ex possessione sive servitutis sive libertatis de suo statu litigat. ex contrario quoque eum procuratorem dari posse manifestum est.

Dig. 3.3.33.2

Ulpianus 9 ad ed.

Publice utile est absentes a quibuscumque defendi: nam et in capitalibus iudiciis defensio datur. ubicumque itaque absens quis damnari potest, ibi quemvis verba pro eo facientem et innocentiam excusantem audiri aequum est et ordinarium admittere: quod et ex rescripto imperatoris nostri apparet.

Dig. 3.3.33.3

Ulpianus 9 ad ed.

Ait praetor: " cuius nomine quis actionem dari sibi postulabit, is eum viri boni arbitratu defendat: et ei quo nomine aget id ratum habere eum ad quem ea res pertinet, boni viri arbitratu satisdet".

Dig. 3.3.33.4

Ulpianus 9 ad ed.

Aequum praetori visum est eum, qui alicuius nomine procurator experitur, eundem etiam defensionem suscipere.

Dig. 3.3.33.5

Ulpianus 9 ad ed.

Si quis in rem suam procurator interveniat, adhuc erit dicendum debere eum defendere: nisi forte ex necessitate fuerit factus.

Dig. 3.3.34

Gaius 3 ad ed. provinc.

Si quis in rem suam procuratorio nomine agit, veluti emptor hereditatis: an debeat invicem venditorem defendere? et placet, si bona fide et non in fraudem eorum qui invicem agere vellent gestum sit negotium, non oportere eum invicem defendere.

Dig. 3.3.35pr.

Ulpianus 9 ad ed.

Sed et hae personae procuratorum debebunt defendere, quibus sine mandatu agere licet: ut puta liberi, licet sint in potestate, item parentes et fratres et adfines et liberti.

Dig. 3.3.35.1

Ulpianus 9 ad ed.

Patronus libertum et per procuratorem ut ingratum accusare potest et libertus per procuratorem respondere.

Dig. 3.3.35.2

Ulpianus 9 ad ed.

Non solum autem si actio postuletur a procuratore, sed et si praeiudicium vel interdictum, vel si stipulatione legatorum vel damni infecti velit caveri: debebit absentem defendere in competenti tribunali et eadem provincia. ceterum cogi eum etiam in provincia de roma abire vel e contrario vel a provincia in aliam provinciam et defendere durum est.

Dig. 3.3.35.3

Ulpianus 9 ad ed.

Defendere autem est id facere quod dominus in litem faceret, et cavere idonee: nec debebit durior condicio procuratoris fieri quam est domini, praeterquam in satisdando. praeter satisdationem procurator ita defendere videtur, si iudicium accipiat. unde quaesitum est apud iulianum, an compellatur, an vero sufficiat ob rem non defensam stipulationem committi. et iulianus scribit libro tertio digestorum compellendum accipere iudicium: nisi et agendum causa cognita recusaverit vel ex iusta causa remotus fuerit. defendere videtur procurator et si in possessionem venire patiatur, cum quis damni infecti satis vel legatorum desideret,

Dig. 3.3.36

Paulus 8 ad ed.

Vel in operis novi nuntiatione. sed et si servum ex causa noxali patiatur duci, defendere videtur: ita tamen, ut in his omnibus ratam rem dominum habiturum caveat.

Dig. 3.3.37pr.

Ulpianus 9 ad ed.

Omnium autem actionum nomine debet defendere, etiam earum quae in heredem non dantur.

Dig. 3.3.37.1

Ulpianus 9 ad ed.

Unde est quaesitum: si adversarius plures intendat actiones et in singulas singuli existant defensores suscipere parati, videri eum recte defendi iulianus ait. quo iure nos uti pomponius scribit.

Dig. 3.3.38

Ulpianus 40 ad ed.

Non tamen eo usque procedendum erit, ut, si decem ^ milia^ petantur et exstant duo defensores parati in quina defendere, audiantur.

Dig. 3.3.39pr.

Ulpianus 9 ad ed.

Non solum autem in actionibus et interdictis et in stipulationibus debet dominum defendere, verum in interrogationibus quoque, ut in iure interrogatus ex omnibus causis respondeat, ex quibus dominus. an igitur heres sit absens, respondere debebit et si responderit vel tacuerit, tenebitur.

Dig. 3.3.39.1

Ulpianus 9 ad ed.

Qui alieno nomine agit quamcumque actionem, id ratum habiturum eum ad quem ea res pertinebit cavere debet. sed interdum licet suo nomine procurator experiatur, tamen de rato debebit cavere, ut pomponius libro vicensimo quarto scribit. ut puta iusiurandum procuratori rettulit, iuravit absenti dari oportere: agit hoc iudicio suo nomine propter suum iusiurandum (neque enim haec actio domino competere potuit): sed debebit de rato cavere. sed et si procuratori constitutum est et ex ea causa agat: dubitandum non est, quin locus sit de rato cautioni, idque pomponius scribit.

Dig. 3.3.39.2

Ulpianus 9 ad ed.

Quaeritur apud iulianum: utrum dominum solum ratam rem habere debet satisdare an etiam ceteros creditores? et ait dumtaxat de domino cavendum nec illis verbis " ad quem ea res pertinet" creditores contineri: nam nec ipsi domino haec incumbebat cautio.

Dig. 3.3.39.3

Ulpianus 9 ad ed.

Si de dote agat pater, cavere debet ratam rem filiam habituram: sed et defendere eam debet, ut et Marcellus scribit.

Dig. 3.3.39.4

Ulpianus 9 ad ed.

Si pater filii nomine iniuriarum agat, cum duae sint actiones una patris altera filii, cessat de rato cautio.

Dig. 3.3.39.5

Ulpianus 9 ad ed.

Si status controversiam cui faciat procurator, sive ex servitute in libertatem adversus eum quis litiget sive ipse ex libertate in servitutem petat, debet cavere ratam rem dominum habiturum. et ita edicto scriptum est, ut ex utroque latere quasi actor habeatur.

Dig. 3.3.39.6

Ulpianus 9 ad ed.

Est et casus, quo quis eiusdem actionis nomine et de rato caveat et iudicatum solvi. ut puta postulata est cognitio de in integrum restitutione, cum minor circumscriptus in venditione diceretur: alterius procurator existit: debet cavere hic procurator et ratam rem dominum habiturum, ne forte dominus reversus velit quid petere, item iudicatum solvi, ut si quid forte propter hanc restitutionem in integrum praestari adulescenti debeat, hoc praestetur. et haec ita pomponius libro vicensimo quinto ad edictum scribit.

Dig. 3.3.39.7

Ulpianus 9 ad ed.

Item ait, si suspectus tutor postuletur, defensorem eius oportere etiam de rato cavere, ne reversus ille velit retractare quod actum est. sed non facile per procuratorem quis suspectus accusabitur, quoniam famae causa est, nisi constet ei a tutore mandatum nominatim, aut si etiam absente tutore, quasi non defenderetur, praetor erat cogniturus.

Dig. 3.3.40pr.

Ulpianus 9 ad ed.

Pomponius scribit non omnes actiones per procuratorem posse quem instituere. denique ut liberi, qui in potestate absentis dicuntur, ducantur, interdictum non posse desiderare ait nisi, ut iulianus ait, causa cognita, id est si et nominatim ei mandatum sit et pater valetudine vel alia iusta causa impediatur.

Dig. 3.3.40.1

Ulpianus 9 ad ed.

Si stipuletur procurator damni infecti vel legatorum, debebit de rato cavere.

Dig. 3.3.40.2

Ulpianus 9 ad ed.

Sed et is, qui quasi defensor in rem actione convenitur, praeter solitam satisdationem iudicatum solvi etiam de rato debet cavere. quid enim si hoc iudicio rem meam esse pronuntietur, reversus ille, cuius defensor extiterat, velit fundum vindicare: nonne ratum non videbitur habere quod iudicatum est? denique si verus procurator extitisset vel ipse praesens causam suam egisset et victus esset: si a me vindicaret, exceptione rei iudicatae summoveretur, et ita iulianus libro quinquagensimo digestorum scribit: nam cum iudicatur rem meam esse, simul iudicatur illius non esse.

Dig. 3.3.40.3

Ulpianus 9 ad ed.

Ratihabitionis autem satisdatio ante litis contestationem a procuratore exigitur: ceterum semel lite contestata non compelletur ad cautionem.

Dig. 3.3.40.4

Ulpianus 9 ad ed.

In his autem personis, in quibus mandatum non exigimus, dicendum est, si forte evidens sit contra voluntatem eos experiri eorum pro quibus interveniunt, debere eos repelli. ergo non exigimus ut habeant voluntatem vel mandatum, sed ne contraria voluntas probetur: quamvis de rato offerant cautionem.

Dig. 3.3.41

Paulus 9 ad ed.

Feminas pro parentibus agere interdum permittetur causa cognita, si forte parentes morbus aut aetas impediat, nec quemquam qui agat habeant.

Dig. 3.3.42pr.

Paulus 8 ad ed.

Licet in popularibus actionibus procurator dari non possit, tamen dictum est merito eum qui de via publica agit et privato damno ex prohibitione adficitur, quasi privatae actionis dare posse procuratorem. multo magis dabit ad sepulchri violati actionem is ad quem ea res pertinet.

Dig. 3.3.42.1

Paulus 8 ad ed.

Ad actionem iniuriarum ex lege cornelia procurator dari potest: nam etsi pro publica utilitate exercetur, privata tamen est.

Dig. 3.3.42.2

Paulus 8 ad ed.

Ea obligatio, quae inter dominum et procuratorem consistere solet, mandati actionem parit. aliquando tamen non contrahitur obligatio mandati: sicut evenit, cum in rem suam procuratorem praestamus eoque nomine iudicatum solvi promittimus: nam si ex ea promissione aliquid praestiterimus, non mandati, sed ex vendito si hereditatem vendidimus, vel ex pristina causa mandati agere debemus: ut fit cum fideiussor reum procuratorem dedit.

Dig. 3.3.42.3

Paulus 8 ad ed.

Is cui hereditas ex trebelliano senatus consulto restituta est heredem iure dabit procuratorem.

Dig. 3.3.42.4

Paulus 8 ad ed.

Sed et dominum pignoris creditor recte dabit procuratorem ad servianam.

Dig. 3.3.42.5

Paulus 8 ad ed.

Porro si uni ex reis credendi constitutum sit isque alium in constitutam pecuniam det, non negabimus posse dare. sed et ex duobus reis promittendi alter alterum ad defendendum procuratorem dabit.

Dig. 3.3.42.6

Paulus 8 ad ed.

Si plures heredes sint et familiae erciscundae aut communi dividundo agatur, pluribus eundem procuratorem non est permittendum dare, quoniam res expediri non potest circa adiudicationes et condemnationes: plane permittendum dare, si uni coheredi plures heredes existant.

Dig. 3.3.42.7

Paulus 8 ad ed.

Reo latitante post litem contestatam ita demum fideiussores eum defendere videbuntur, si vel unus ex his eum pro solido defendat, vel omnes vel qui ex his unum dederint in quem iudicium transferetur.

Dig. 3.3.43pr.

Paulus 9 ad ed.

Mutus et surdus per eum modum qui procedere potest procuratorem dare non prohibentur: forsitan et ipsi dantur non quidem ad agendum, sed ad administrandum.

Dig. 3.3.43.1

Paulus 9 ad ed.

Cum quaeretur, an alicui procuratorem habere liceat, inspiciendum erit, an non prohibeatur procuratorem dare, quia hoc edictum prohibitorium est.

Dig. 3.3.43.2

Paulus 9 ad ed.

In popularibus actionibus, ubi quis quasi unus ex populo agit, defensionem ut procurator praestare cogendus non est.

Dig. 3.3.43.3

Paulus 9 ad ed.

Is, qui curatorem alicui praesenti petat, non aliter audietur nisi adulto consentiente: quod si absenti, ratam rem eum habiturum necesse habet dare.

Dig. 3.3.43.4

Paulus 9 ad ed.

Poena non defendentis procuratoris haec est, ut denegetur ei actio.

Dig. 3.3.43.5

Paulus 9 ad ed.

Si procurator agat et praesens sit absentis servus, atilicinus ait servo cavendum, non procuratori.

Dig. 3.3.43.6

Paulus 9 ad ed.

Qui non cogitur defendere absentem, tamen si iudicatum solvi satisdedit defendendi absentis gratia, cogendum procuratorem iudicium accipere, ne decipiatur is qui satis accepit: nam eos, qui non coguntur rem defendere, post satisdationem cogi. labeo causa cognita temperandum, et si captio actoris sit propter temporis tractum, iudicium eum accipere cogendum: quod si aut adfinitas dirempta sit aut inimicitiae intercesserint aut bona absentis possideri coeperint.

Dig. 3.3.44

Ulpianus 7 disp.

Vel si longinquo sit afuturus vel alia iusta causa intervenerit,

Dig. 3.3.45pr.

Paulus 9 ad ed.

Non cogendum. sabinus autem nullas praetoris partes esse ad compellendum defendere, sed ex stipulatu ob rem non defensam agi posse: at si iustas causas habeat, cur iudicium accipere nolit, fideiussores non teneri, quia vir bonus arbitraturus non fuerit, ut qui iustam excusationem adferret, defendere cogeretur. sed et si satis non dedit, sed repromittenti ei creditum est, idem statuendum est.

Dig. 3.3.45.1

Paulus 9 ad ed.

Qui ita de publico agunt, ut et privatum commodum defendant, causa cognita permittuntur procuratorem dare, et postea alius agens exceptione repelletur.

Dig. 3.3.45.2

Paulus 9 ad ed.

Si procuratori opus novum nuntiatum sit isque interdicto utatur " ne ei vis fiat aedificanti", defensoris partes eum sustinere nec compelli cavere ratam rem dominum habiturum iulianus ait, et si satisdederit, non animadverto, inquit iulianus, quo casu stipulatio committatur.

Dig. 3.3.46pr.

Gaius 3 ad ed. provinc.

Qui proprio nomine iudicium accepisset, si vellet procuratorem dare, in quem actor transferat iudicium, audiri debet sollemniterque pro iudicatum solvi satisdatione cavere.

Dig. 3.3.46.1

Gaius 3 ad ed. provinc.

Ei qui defendit eum, cuius nomine ipse non agat, liberum est vel in unam rem defendere.

Dig. 3.3.46.2

Gaius 3 ad ed. provinc.

Qui alium defendit, satisdare cogitur: nemo enim alienae litis idoneus defensor sine satisdatione intellegitur.

Dig. 3.3.46.3

Gaius 3 ad ed. provinc.

Item quaeritur, si iudicium acceperit defensor et actor in integrum restitutus sit, an cogendus sit restitutorium iudicium accipere: et magis placet cogendum.

Dig. 3.3.46.4

Gaius 3 ad ed. provinc.

Procurator ut in ceteris quoque negotiis gerendis, ita et in litibus ex bona fide rationem reddere debet. itaque quod ex lite consecutus erit sive principaliter ipsius rei nomine sive extrinsecus ob eam rem, debet mandati iudicio restituere usque adeo, ut et si per errorem aut iniuriam iudicis non debitum consecutus fuerit, id quoque reddere debeat.

Dig. 3.3.46.5

Gaius 3 ad ed. provinc.

Item contra quod ob rem iudicatam procurator solverit, contrario mandati iudicio reciperare debet: poenam autem, quam ex suo delicto praestitit, reciperare non debet.

Dig. 3.3.46.6

Gaius 3 ad ed. provinc.

Litis impendia bona fide facta vel ab actoris procuratore vel a rei debere ei restitui aequitas suadet.

Dig. 3.3.46.7

Gaius 3 ad ed. provinc.

Si duobus mandata sit administratio negotiorum, quorum alter debitor sit mandatoris, an alter cum eo recte acturus sit? et utique recte: non enim ob id minus procurator intellegitur, quod is quoque cum quo agitur procurator sit.

Dig. 3.3.47

Iulianus 4 ad urs. ferocem.

Qui duos procuratores omnium rerum suarum reliquit, nisi nominatim praecepit ut alter ab altero pecuniam petat, non videtur mandatum utrilibet eorum dedisse.

Dig. 3.3.48

Gaius 3 ad ed. provinc.

Itaque, si hoc specialiter mandatum est, tunc excipiente eo cum quo agitur " si non mihi mandatum sit, ut a debitoribus peterem" actorem ita debere replicare" aut si mihi mandatum est ut a te peterem".

Dig. 3.3.49

Paulus 54 ad ed.

Ignorantis domini condicio deterior per procuratorem fieri non debet.

Dig. 3.3.50

Gaius 22 ad ed. provinc.

Quacumque ratione procurator tuus a me liberatus est, id tibi prodesse debet.

Dig. 3.3.51pr.

Ulpianus 60 ad ed.

Minor viginti quinque annis si defensor existat, ex quibus causis in integrum restitui possit, defensor idoneus non est, quia et ipsi et fideiussoribus eius per in integrum restitutionem succurritur.

Dig. 3.3.51.1

Ulpianus 60 ad ed.

Quoniam tamen defendere est eandem vicem quam reus subire, defensor mariti in amplius quam maritus facere possit non est condemnandus.

Dig. 3.3.51.2

Ulpianus 60 ad ed.

Is qui suscepit defensionem, etsi locupletissimus sit,

Dig. 3.3.52

Paulus 57 ad ed.

Etsi consularis sit,

Dig. 3.3.53

Ulpianus 60 ad ed.

Non videtur defendere, nisi satisdare fuerit paratus.

Dig. 3.3.54pr.

Paulus 50 ad ed.

Neque femina neque miles neque qui rei publicae causa afuturus est aut morbo perpetuo tenetur aut magistratum initurus est aut invitus iudicium pati non potest, idoneus defensor intellegitur.

Dig. 3.3.54.1

Paulus 50 ad ed.

Tutores, qui in aliquo loco administraverunt, eodem loco et defendi debent.

Dig. 3.3.55

Ulpianus 65 ad ed.

Procuratore in rem suam dato praeferendus non est dominus procuratori in litem movendam vel pecuniam suscipiendam: qui enim suo nomine utiles actiones habet, rite eas intendit.

Dig. 3.3.56

Ulpianus 66 ad ed.

Ad rem mobilem petendam datus procurator ad exhibendum recte aget.

Dig. 3.3.57pr.

Ulpianus 74 ad ed.

Qui procuratorem dat, ut confestim agat, is intellegendus est permittere procuratori et postea litem peragere.

Dig. 3.3.57.1

Ulpianus 74 ad ed.

Si quis remisit exceptionem procuratoriam, non poterit ex paenitentia eam opponere.

Dig. 3.3.58

Paulus 71 ad ed.

Procurator, cui generaliter libera administratio rerum commissa est, potest exigere, novare, aliud pro alio permutare.

Dig. 3.3.59

Paulus 10 ad plaut.

Sed et id quoque ei mandari videtur, ut solvat creditoribus.

Dig. 3.3.60

Paulus 4 resp.

Mandato generali non contineri etiam transactionem decidendi causa interpositam: et ideo si postea is qui mandavit transactionem ratam non habuit, non posse eum repelli ab actionibus exercendis.

Dig. 3.3.61

Paulus 1 ad plaut.

Plautius ait: procuratorem damnatum non debere conveniri, nisi aut in rem suam datus esset aut optulisset se, cum sciret cautum non esse, omnibus placuit. idem erit observandum et si defensoris loco cum satisdatione se liti optulerit.

Dig. 3.3.62

Pomponius 2 ex plaut.

Ad legatum petendum procurator datus si interdicto utatur adversus heredem de tabulis exhibendis, procuratoria exceptio, quasi non et hoc esset ei mandatum non obstat.

Dig. 3.3.63

Modestinus 6 diff.

Procurator totorum bonorum, cui res administrandae mandatae sunt, res domini neque mobiles vel immobiles neque servos sine speciali domini mandatu alienare potest, nisi fructus aut alias res, quae facile corrumpi possunt.

Dig. 3.3.64

Modestinus 3 reg.

Is, cuius nomine defensor exstiterit, si ante litem contestatam in praesentia fuerit et postulet suo nomine litem suscipere, causa cognita audiendus est.

Dig. 3.3.65

Modestinus l.S. de heuremat.

Si procuratorem absentem dominus satisdatione relevare velit, litteras suas ad adversarium derigere debebit, quibus significet, quem adversus eum procuratorem et in qua causa fecerit, ratumque se habiturum quod cum eo actum sit: hoc enim casu litteris eius adprobatis velut praesentis procuratorem intervenire intellegendum est. itaque etsi postea mutata voluntate procuratorem esse noluerit, tamen iudicium, quo quasi procurator expertus est, ratum esse debet.

Dig. 3.3.66

Papinianus 9 quaest.

Si is qui stichum vel damam, utrum eorum ipse vellet, stipulatus est et ratum habeat, quod alterum procuratorio nomine titius petit: facit, ut res in iudicium deducta videatur, et stipulationem consumit.

Dig. 3.3.67

Papinianus 2 resp.

Procurator, qui pro evictione praediorum quae vendidit fidem suam adstrinxit, etsi negotia gerere desierit, obligationis tamen onere praetoris auxilio non levabitur: nam procurator, qui pro domino vinculum obligationis suscepit, onus eius frustra recusat.

Dig. 3.3.68

Papinianus 3 resp.

Quod procurator ex re domini mandato non refragante stipulatur, invito procuratore dominus petere non potest.

Dig. 3.3.69

Paulus 3 resp.

Paulus respondit etiam eum, qui ad litem suscipiendam procuratorem dedit, causae suae adesse non prohiberi.

Dig. 3.3.70

Scaevola 1 resp.

Pater filio suo pupillo tutorem dedit sempronium creditorem suum: is administrata tutela reliquit fratrem suum heredem, qui et ipse decessit et per fideicommissum nomen debitoris titio reliquit eique mandatae sunt actiones ab heredibus: quaero, cum tam tutelae actio quam pecuniae creditae ex hereditate sempronii descendant, an non aliter mandata actio ei detur, quam si defendat heredes, a quibus ei actiones mandatae sunt. respondi debere defendere.

Dig. 3.3.71

Paulus 1 sent.

Absens reus causas absentiae per procuratorem reddere potest.

Dig. 3.3.72

Paulus 1 manual.

Per procuratorem non semper adquirimus actiones, sed retinemus: veluti si reum conveniat intra legitimum tempus: vel si prohibeat opus novum fieri, ut interdictum nobis utile sit quod vi aut clam, nam et hic pristinum ius nobis conservat.

Dig. 3.3.73

Paulus l.S. de off. adsess.

Si reus paratus sit ante litem contestatam pecuniam solvere, procuratore agente quid fieri oportet? nam iniquum est cogi eum iudicium accipere. propter quod suspectus videri potest, qui praesente domino non optulit pecuniam? quid si tunc facultatem pecuniae non habuit, numquid cogi debeat iudicium accipere? quid enim si et famosa sit actio? sed hoc constat, ut ante litem contestatam praeses iubeat in aede sacra pecuniam deponi: hoc enim fit et in pupillaribus pecuniis. quod si lis contestata est, hoc omne officio iudicis dirimendum est.

Dig. 3.3.74

Ulpianus 4 opin.

Nec civitatis actor negotium publicum per procuratorem agere potest.

Dig. 3.3.75

Iulianus 3 Dig.

Qui absentem emptorem eundemque possessorem fundi defendebat et iudicium nomine eius accipiebat, postulabat a venditore fundi, ut ab eo defenderetur: venditor desiderabat caveri sibi ratam rem emptorem habiturum: puto eum venditori de rato satisdare debere, quia si fundum agenti restituerit, nihil prohibet dominum rem petere et cogi venditorem rursus defendere.

Dig. 3.3.76

Iulianus 5 ad minic.

Titius cum absentem defenderet, satisdedit et prius quam iudicium acciperet desiit reus solvendo esse: quam ob causam defensor recusabat iudicium in se reddi oportere. quaero, an id ei concedi oporteat. iulianus respondit: defensor cum satisdedit, domini loco habendus est. nec multum ei praestaturus est praetor, si eum non coegerit iudicium accipere, cum ad fideiussores eius iri possit et hi quidquid praestiterint a defensore consecuturi sint.

Dig. 3.3.77

Paulus 57 ad ed.

Omnis qui defenditur boni viri arbitratu defendendus est.

Dig. 3.3.78pr.

Africanus 6 quaest.

Et ideo non potest videri boni viri arbitratu litem defendere is, qui actorem frustrando efficiat, ne ad exitum controversia deducatur.

Dig. 3.3.78.1

Africanus 6 quaest.

Ad duas res petendas procurator datus si unam rem petat, exceptione non excluditur et rem in iudicium deducit.

Dig. 3.4.0. Quod cuiuscumque universitatis nomine vel contra eam agatur.

Dig. 3.4.1pr.

Gaius 3 ad ed. provinc.

Neque societas neque collegium neque huiusmodi corpus passim omnibus habere conceditur: nam et legibus et senatus consultis et principalibus constitutionibus ea res coercetur. paucis admodum in causis concessa sunt huiusmodi corpora: ut ecce vectigalium publicorum sociis permissum est corpus habere vel aurifodinarum vel argentifodinarum et salinarum. item collegia romae certa sunt, quorum corpus senatus consultis atque constitutionibus principalibus confirmatum est, veluti pistorum et quorundam aliorum, et naviculariorum, qui et in provinciis sunt.

Dig. 3.4.1.1

Gaius 3 ad ed. provinc.

Quibus autem permissum est corpus habere collegii societatis sive cuiusque alterius eorum nomine, proprium est ad exemplum rei publicae habere res communes, arcam communem et actorem sive syndicum, per quem tamquam in re publica, quod communiter agi fierique oporteat, agatur fiat.

Dig. 3.4.1.2

Gaius 3 ad ed. provinc.

Quod si nemo eos defendat, quod eorum commune erit possideri et, si admoniti non excitentur ad sui defensionem, venire se iussurum proconsul ait. et quidem non esse actorem vel syndicum tunc quoque intellegimus, cum is absit aut valetudine impedietur aut inhabilis sit ad agendum.

Dig. 3.4.1.3

Gaius 3 ad ed. provinc.

Et si extraneus defendere velit universitatem, permittit proconsul, sicut in privatorum defensionibus observatur, quia eo modo melior condicio universitatis fit.

Dig. 3.4.2

Ulpianus 8 ad ed.

Si municipes vel aliqua universitas ad agendum det actorem, non erit dicendum quasi a pluribus datum sic haberi: hic enim pro re publica vel universitate intervenit, non pro singulis.

Dig. 3.4.3

Ulpianus 9 ad ed.

Nulli permittitur nomine civitatis vel curiae experiri nisi ei, cui lex permittit, aut lege cessante ordo dedit, cum duae partes adessent aut amplius quam duae.

Dig. 3.4.4

Paulus 9 ad ed.

Plane ut duae partes decurionum adfuerint, is quoque quem decernent numerari potest.

Dig. 3.4.5

Ulpianus 8 ad ed.

Illud notandum pomponius ait, quod et patris suffragium filio proderit et filii patri,

Dig. 3.4.6pr.

Paulus 9 ad ed.

Item eorum, qui in eiusdem potestate sunt: quasi decurio enim hoc dedit, non quasi domestica persona. quod et in honorum petitione erit servandum, nisi lex municipii vel perpetua consuetudo prohibeat.

Dig. 3.4.6.1

Paulus 9 ad ed.

Si decuriones decreverunt actionem per eum movendam quem duumviri elegerint, is videtur ab ordine electus et ideo experiri potest: parvi enim refert, ipse ordo elegerit an is cui ordo negotium dedit. sed si ita decreverint, ut quaecumque incidisset controversia, eius petendae negotium titius haberet, ipso iure id decretum nullius momenti esse, quia non possit videri de ea re, quae adhuc in controversia non sit, decreto datam persecutionem. sed hodie haec omnia per syndicos solent secundum locorum consuetudinem explicari.

Dig. 3.4.6.2

Paulus 9 ad ed.

Quid si actor datus postea decreto decurionum prohibitus sit, an exceptio ei noceat? et puto sic hoc accipiendum, ut ei permissa videatur, cui et permissa durat.

Dig. 3.4.6.3

Paulus 9 ad ed.

Actor universitatis si agat, compellitur etiam defendere, non autem compellitur cavere de rato. sed interdum si de decreto dubitetur, puto interponendam et de rato cautionem. actor itaque iste procuratoris partibus fungitur et iudicati actio ei ex edicto non datur nisi in rem suam datus sit. et constitui ei potest. ex isdem causis mutandi actoris potestas erit, ex quibus etiam procuratoris. actor etiam filius familias dari potest.

Dig. 3.4.7pr.

Ulpianus 10 ad ed.

Sicut municipum nomine actionem praetor dedit, ita et adversus eos iustissime edicendum putavit. sed et legato, qui in negotium publicum sumptum fecit, puto dandam actionem in municipes.

Dig. 3.4.7.1

Ulpianus 10 ad ed.

Si quid universitati debetur, singulis non debetur: nec quod debet universitas singuli debent.

Dig. 3.4.7.2

Ulpianus 10 ad ed.

In decurionibus vel aliis universitatibus nihil refert, utrum omnes idem maneant an pars maneat vel omnes immutati sint. sed si universitas ad unum redit, magis admittitur posse eum convenire et conveniri, cum ius omnium in unum recciderit et stet nomen universitatis.

Dig. 3.4.8

Iavolenus 15 ex cass.

Civitates si per eos qui res earum administrant non defenduntur nec quicquam est corporale rei publicae quod possideatur, per actiones debitorum civitatis agentibus satisfieri oportet.

Dig. 3.4.9

Pomponius 13 ad sab.

Si tibi cum municipibus hereditas communis erit, familiae erciscundae iudicium inter vos redditur. idemque dicendum est et in finium regundorum et aquae pluviae arcendae iudicio.

Dig. 3.4.10

Paulus 1 manual.

Constitui potest actor etiam ad operis novi nuntiationem et ad stipulationes interponendas, veluti legatorum, damni infecti, iudicatum solvi, quamvis servo potius civitatis caveri debeat: sed et si actori cautum fuerit, utilis actio administratori rerum civitatis dabitur.

Dig. 3.5.0. De negotiis gestis.

Dig. 3.5.1

Ulpianus 10 ad ed.

Hoc edictum necessarium est, quoniam magna utilitas absentium versatur, ne indefensi rerum possessionem aut venditionem patiantur vel pignoris distractionem vel poenae committendae actionem, vel iniuria rem suam amittant.

Dig. 3.5.2

Gaius 3 ad ed. provinc.

Si quis absentis negotia gesserit licet ignorantis, tamen quidquid utiliter in rem eius impenderit vel etiam ipse se in rem absentis alicui obligaverit, habet eo nomine actionem: itaque eo casu ultro citroque nascitur actio, quae appellatur negotiorum gestorum. et sane sicut aequum est ipsum actus sui rationem reddere et eo nomine condemnari, quidquid vel non ut oportuit gessit vel ex his negotiis retinet: ita ex diverso iustum est, si utiliter gessit, praestari ei, quidquid eo nomine vel abest ei vel afuturum est.

Dig. 3.5.3pr.

Ulpianus 10 ad ed.

Ait praetor: " si quis negotia alterius, sive quis negotia, quae cuiusque cum is moritur fuerint, gesserit: iudicium eo nomine dabo. "

Dig. 3.5.3.1

Ulpianus 10 ad ed.

Haec verba " si quis" sic sunt accipienda " sive quae": nam et mulieres negotiorum gestorum agere posse et conveniri non dubitatur.

Dig. 3.5.3.2

Ulpianus 10 ad ed.

" negotia" sic accipe, sive unum sive plura.

Dig. 3.5.3.3

Ulpianus 10 ad ed.

" alterius", inquit: et hoc ad utrumque sexum refertur.

Dig. 3.5.3.4

Ulpianus 10 ad ed.

Pupillus sane si negotia gesserit, post rescriptum divi pii etiam conveniri potest in id quod factus est locupletior: agendo autem compensationem eius quod gessit patitur.

Dig. 3.5.3.5

Ulpianus 10 ad ed.

Et si furiosi negotia gesserim, competit mihi adversus eum negotiorum gestorum actio: curatori autem furiosi vel furiosae adversus eum eamve dandam actionem labeo ait.

Dig. 3.5.3.6

Ulpianus 10 ad ed.

Haec verba: " sive quis negotia, quae cuiusque cum is moritur fuerint, gesserit" significant illud tempus, quo quis post mortem alicuius negotia gessit: de quo fuit necessarium edicere, quoniam neque testatoris iam defuncti neque heredis qui nondum adiit negotium gessisse videtur. sed si quid accessit post mortem, ut puta partus et fetus et fructus, vel si quid servi adquisierint: etsi his verbis non continentur, pro adiecto tamen debent accipi.

Dig. 3.5.3.7

Ulpianus 10 ad ed.

Haec autem actio cum ex negotio gesto oriatur, et heredi et in heredem competit.

Dig. 3.5.3.8

Ulpianus 10 ad ed.

Si exsecutor a praetore in negotio meo datus dolum mihi fecerit, dabitur mihi adversus eum actio.

Dig. 3.5.3.9

Ulpianus 10 ad ed.

Interdum in negotiorum gestorum actione labeo scribit dolum solummodo versari: nam si affectione coactus, ne bona mea distrahantur, negotiis te meis optuleris, aequissimum esse dolum dumtaxat te praestare: quae sententia habet aequitatem.

Dig. 3.5.3.10

Ulpianus 10 ad ed.

Hanc actione tenetur non solum is qui sponte et nulla necessitate cogente immiscuit se negotiis alienis et ea gessit, verum et is qui aliqua necessitate urguente vel necessitatis suspicione gessit.

Dig. 3.5.3.11

Ulpianus 10 ad ed.

Apud Marcellum libro secundo digestorum quaeritur, si, cum proposuissem negotia titii gerere, tu mihi mandaveris ut geram, an utraque actione uti possim? et ego puto utramque locum habere. quemadmodum ipse Marcellus scribit, si fideiussorem accepero negotia gesturus: nam et hic dicit adversus utrumque esse actionem.

Dig. 3.5.4

Ulpianus 45 ad sab.

Sed videamus, an fideiussor hic habere aliquam actionem possit: et verum est negotiorum gestorum eum agere posse, nisi donandi animo fideiussit.

Dig. 3.5.5pr.

Ulpianus 10 ad ed.

Item si, cum putavi a te mihi mandatum, negotia gessi, et hic nascitur negotiorum gestorum actio cessante mandati actione. idem est etiam, si pro te fideiussero, dum puto mihi a te mandatum esse.

Dig. 3.5.5.1

Ulpianus 10 ad ed.

Sed et si, cum putavi titii negotia esse, cum essent sempronii, ea gessi, solus sempronius mihi actione negotiorum gestorum tenetur.

Dig. 3.5.5.2

Ulpianus 10 ad ed.

Iulianus libro tertio digestorum scribit, si pupilli tui negotia gessero non mandato tuo, sed ne tutelae iudicio tenearis, negotiorum gestorum te habebo obligatum: sed et pupillum, modo si locupletior fuerit factus.

Dig. 3.5.5.3

Ulpianus 10 ad ed.

Item si procuratori tuo mutuam pecuniam dedero tui contemplatione, ut creditorem tuum vel pignus tuum liberet, adversus te negotiorum gestorum habebo actionem, adversus eum cum quo contraxi nullam. quid tamen si a procuratore tuo stipulatus sum? potest dici superesse mihi adversus te negotiorum gestorum actionem, quia ex abundanti hanc stipulationem interposui.

Dig. 3.5.5.4

Ulpianus 10 ad ed.

Si quis pecuniam vel aliam quandam rem ad me perferendam acceperit: quia meum negotium gessit, negotiorum gestorum mihi actio adversus eum competit.

Dig. 3.5.5.5

Ulpianus 10 ad ed.

Sed et si quis negotia mea gessit non mei contemplatione, sed sui lucri causa, labeo scripsit suum eum potius quam meum negotium gessisse (qui enim depraedandi causa accedit, suo lucro, non meo commodo studet): sed nihilo minus, immo magis et is tenebitur negotiorum gestorum actione. ipse tamen si circa res meas aliquid impenderit, non in id quod ei abest, quia improbe ad negotia mea accessit, sed in quod ego locupletior factus sum habet contra me actionem.

Dig. 3.5.5.6

Ulpianus 10 ad ed.

Si quis ita simpliciter versatus est, ut suum negotium in suis bonis quasi meum gesserit, nulla ex utroque latere nascitur actio, quia nec fides bona hoc patitur. quod si et suum et meum quasi meum gesserit, in meum tenebitur: nam et si cui mandavero, ut meum negotium gerat, quod mihi tecum erat commune, dicendum esse labeo ait, si et tuum gessit sciens, negotiorum gestorum eum tibi teneri.

Dig. 3.5.5.7

Ulpianus 10 ad ed.

Si quis quasi servus meus negotium meum gesserit, cum esset vel libertus vel ingenuus, dabitur negotiorum gestorum actio.

Dig. 3.5.5.8

Ulpianus 10 ad ed.

Sed si ego tui filii negotia gessero vel servi, videamus, an tecum negotiorum gestorum habeam actionem. et mihi videtur verum, quod labeo distinguit et pomponius libro vicensimo sexto probat, ut si quidem contemplatione tui negotia gessi peculiaria, tu mihi tenearis: quod si amicitia filii tui vel servi, vel eorum contemplatione, adversus patrem vel dominum de peculio dumtaxat dandam actionem. idemque est et si sui iuris esse eos putavi. nam et si servum non necessarium emero filio tuo et tu ratum habueris, nihil agitur ratihabitione eodem loco pomponius scribit hoc adiecto, quod putat, etsi nihil sit in peculio, quoniam plus patri dominove debetur, et in patrem dandam actionem, in quantum locupletior ex mea administratione factus sit.

Dig. 3.5.5.9

Ulpianus 10 ad ed.

Sed si hominis liberi qui tibi bona fide serviebat negotia gessero: si quidem putans tuum esse servum gessi, pomponius scribit earum rerum peculiarium causa, quae te sequi debent, tecum mihi fore negotiorum gestorum actionem, earum vero rerum, quae ipsum sequuntur, non tecum, sed cum ipso. sed si liberum scivi, earum quidem rerum, quae eum sequuntur, habebo adversus eum actionem, earum vero, quae te sequuntur, adversus te.

Dig. 3.5.5.10

Ulpianus 10 ad ed.

Si titii servum putans qui erat sempronii, dedero pecuniam ne occideretur, ut pomponius ait, habebo negotiorum gestorum adversus sempronium actionem.

Dig. 3.5.5.11

Ulpianus 10 ad ed.

Item quaeritur apud pedium libro septimo, si titium quasi debitorem tuum extra iudicium admonuero et is mihi solverit, cum debitor non esset, tuque postea cognoveris et ratum habueris: an negotiorum gestorum actione me possis convenire. et ait dubitari posse, quia nullum negotium tuum gestum est, cum debitor tuus non fuerit. sed ratihabitio, inquit, fecit tuum negotium: et sicut ei a quo exactum est adversus eum datur repetitio qui ratum habuit, ita et ipsi debebit post ratihabitionem adversus me competere actio. sic ratihabitio constituet tuum negotium, quod ab initio tuum non erat, sed tua contemplatione gestum.

Dig. 3.5.5.12

Ulpianus 10 ad ed.

Idem ait, si titii debitorem, cui te heredem putabam, cum esset seius heres, convenero similiter et exegero, mox tu ratum habueris: esse mihi adversus te et tibi mutuam negotiorum gestorum actionem. adquin alienum negotium gestum est: sed ratihabitio hoc conciliat: quae res efficit, ut tuum negotium gestum videatur et a te hereditas peti possit.

Dig. 3.5.5.13

Ulpianus 10 ad ed.

Quid ergo, inquit pedius, si, cum te heredem putarem, insulam fulsero hereditariam tuque ratum habueris, an sit mihi adversus te actio? sed non fore ait, cum hoc facto meo alter sit locupletatus et alterius re ipsa gestum negotium sit, nec possit, quod alii adquisitum est ipso gestu, hoc tuum negotium videri.

Dig. 3.5.5.14

Ulpianus 10 ad ed.

Videamus in persona eius, qui negotia administrat, si quaedam gessit quaedam non, contemplatione tamen eius alius ad haec non accessit, et si vir diligens (quod ab eo exigimus) etiam ea gesturus fuit: an dici debeat negotiorum gestorum eum teneri et propter ea quae non gessit? quod puto verius. certe si quid a se exigere debuit, procul dubio hoc ei imputabitur. quamquam enim hoc ei imputari non possit, cur alios debitores non convenerit, quoniam conveniendi eos iudicio facultatem non habuit, qui nullam actionem intendere potuit: tamen a semet ipso cur non exegerit, ei imputabitur: et si forte non fuerit usurarium debitum, incipit esse usurarium, ut divus pius flavio longino rescripsit: nisi forte, inquit, usuras ei remiserat:

Dig. 3.5.6

Paulus 9 ad ed.

Quia tantundem in bonae fidei iudiciis officium iudicis valet, quantum in stipulatione nominatim eius rei facta interrogatio.

Dig. 3.5.7pr.

Ulpianus 10 ad ed.

Si autem is fuit qui negotia administravit a quo mandatum non exigebatur, posse ei imputari, cur oblata de rato cautione eum non convenit: si modo facile ei fuerit satisdare. certe in sua persona indubitatum est: et ideo si ex causa fuit obligatus, quae certo tempore finiebatur, et tempore liberatus est, nihilo minus negotiorum gestorum actione erit obligatus. idem erit dicendum et in ea causa, ex qua heres non teneretur, ut Marcellus scribit.

Dig. 3.5.7.1

Ulpianus 10 ad ed.

Item si fundum tuum vel civitatis per obreptionem petiero negotium tuum vel civitatis gerens et ampliores quam oportuit fructus fuero consecutus, debebo hoc ipsum tibi vel rei publicae praestare, licet petere non potuerim.

Dig. 3.5.7.2

Ulpianus 10 ad ed.

Si quocumque modo ratio compensationis habita non est a iudice, potest contrario iudicio agi: quod si post examinationem reprobatae fuerint pensationes, verius est quasi re iudicata amplius agi contrario iudicio non posse, quia exceptio rei iudicatae opponenda est.

Dig. 3.5.7.3

Ulpianus 10 ad ed.

Iulianus libro tertio tractat, si ex duobus sociis alter me prohibuerit administrare, alter non: an adversus eum qui non prohibuit habebam negotiorum gestorum actionem? movetur eo, quod, si data fuerit adversus eum actio, necesse erit et eum pertingi qui vetuit: sed et illud esse iniquum eum qui non prohibuit alieno facto liberari, cum et si mutuam pecuniam alteri ex sociis prohibente socio dedissem, utique eum obligarem. et puto secundum iulianum debere dici superesse contra eum qui non prohibuit negotiorum gestorum actionem, ita tamen ut is qui prohibuit ex nulla parte neque per socium neque per ipsum aliquid damni sentiat.

Dig. 3.5.8

Scaevola 1 quaest.

Pomponius scribit, si negotium a te quamvis male gestum probavero, negotiorum tamen gestorum te mihi non teneri. videndum ergo ne in dubio hoc, an ratum habeam, actio negotiorum gestorum pendeat: nam quomodo, cum semel coeperit, nuda voluntate tolletur? sed superius ita verum se putare, si dolus malus a te absit. scaevola: immo puto et si comprobem, adhuc negotiorum gestorum actionem esse, sed eo dictum te mihi non teneri, quod reprobare non possim semel probatum: et quemadmodum quod utiliter gestum est necesse est apud iudicem pro rato haberi, ita omne quod ab ipso probatum est. ceterum si ubi probavi, non est negotiorum actio: quid fiet, si a debitore meo exegerit et probaverim? quemadmodum recipiam? item si vendiderit? ipse denique si quid impendit, quemadmodum recipiet? nam utique mandatum non est. erit igitur et post ratihabitionem negotiorum gestorum actio.

Dig. 3.5.9pr.

Ulpianus 10 ad ed.

Sed an ultro mihi tribuitur actio sumptuum quos feci? et puto competere, nisi specialiter id actum est, ut neuter adversus alterum habeat actionem.

Dig. 3.5.9.1

Ulpianus 10 ad ed.

Is autem qui negotiorum gestorum agit non solum si effectum habuit negotium quod gessit, actione ista utetur, sed sufficit, si utiliter gessit, etsi effectum non habuit negotium. et ideo si insulam fulsit vel servum aegrum curavit, etiamsi insula exusta est vel servus obit, aget negotiorum gestorum: idque et labeo probat. sed ut celsus refert, proculus apud eum notat non semper debere dari. quid enim si eam insulam fulsit, quam dominus quasi inpar sumptui deliquerit vel quam sibi necessariam non putavit? oneravit, inquit, dominum secundum labeonis sententiam, cum unicuique liceat et damni infecti nomine rem derelinquere. sed istam sententiam celsus eleganter deridet: is enim negotiorum gestorum, inquit, habet actionem, qui utiliter negotia gessit: non autem utiliter negotia gerit, qui rem non necessariam vel quae oneratura est patrem familias adgreditur. iuxta hoc est et, quod iulianus scribit, eum qui insulam fulsit vel servum aegrotum curavit, habere negotiorum gestorum actionem, si utiliter hoc faceret, licet eventus non sit secutus. ego quaero: quid si putavit se utiliter facere, sed patri familias non expediebat? dico hunc non habiturum negotiorum gestorum actionem: ut enim eventum non spectamus, debet utiliter esse coeptum.

Dig. 3.5.10

Pomponius 21 ad q. muc.

Si negotia absentis et ignorantis geras, et culpam et dolum praestare debes. sed proculus interdum etiam casum praestare debere, veluti si novum negotium, quod non sit solitus absens facere, tu nomine eius geras: veluti venales novicios coemendo vel aliquam negotiationem ineundo. nam si quid damnum ex ea re secutum fuerit, te sequetur, lucrum vero absentem: quod si in quibusdam lucrum factum fuerit, in quibusdam damnum, absens pensare lucrum cum damno debet.

Dig. 3.5.11pr.

Ulpianus 10 ad ed.

Successori eius, cuius fuerunt negotia, qui apud hostes decessit, haec actio danda erit.

Dig. 3.5.11.1

Ulpianus 10 ad ed.

Sed si filii familias militis defuncti testamento facto gessi, similiter erit danda actio.

Dig. 3.5.11.2

Ulpianus 10 ad ed.

Sicut autem in negotiis vivorum gestis sufficit utiliter negotium gestum, ita et in bonis mortuorum, licet diversus exitus sit secutus.

Dig. 3.5.12

Paulus 9 ad ed.

Debitor meus, qui mihi quinquaginta debebat, decessit: huius hereditatis curationem suscepi et impendi decem: deinde redacta ex venditione rei hereditariae centum in arca reposui: haec sine culpa mea perierunt. quaesitum est, an ab herede, qui quandoque extitisset, vel creditam pecuniam quinquaginta petere possim vel decem quae impendi. iulianus scribit in eo verti quaestionem, ut animadvertamus, an iustam causam habuerim seponendorum centum: nam si debuerim et mihi et ceteris hereditariis creditoribus solvere, periculum non solum sexaginta, sed et reliquorum quadraginta me praestaturum, decem tamen quae impenderim retenturum, id est sola nonaginta restituenda. si vero iusta causa fuerit, propter quam integra centum custodirentur, veluti si periculum erat, ne praedia in publicum committerentur, ne poena traiecticiae pecuniae augeretur aut ex compromisso committeretur: non solum decem, quae in hereditaria negotia impenderim, sed etiam quinquaginta quae mihi debita sunt ab herede me consequi posse.

Dig. 3.5.13

Ulpianus 10 ad ed.

Si filius familias negotia gessisse proponatur, aequissimum erit in patrem quoque actionem dari, sive peculium habet sive in patris sui vertit: et si ancilla, simili modo.

Dig. 3.5.14

Paulus 9 ad ed.

Pomponius libro vicensimo sexto in negotiis gestis initio cuiusque temporis condicionem spectandam ait. quid enim, inquit, si pupilli negotia coeperim gerere et inter moras pubes factus sit? vel servi aut filii familias et interea liber aut pater familias effectus sit? hoc ego verius esse didici, nisi si ab initio quasi unum negotium gesturus accessero, deinde alio animo ad alterum accessero eo tempore, quo iam pubes vel liber vel pater familias effectus est: hic enim quasi plura negotia gesta sunt et pro qualitate personarum et actio formatur et condemnatio moderatur.

Dig. 3.5.15

Paulus 7 ad plaut.

Sed et cum aliquis negotia mea gerat, non multa negotia sunt, sed unus contractus, nisi si ab initio ad unum negotium accessit, ut finito eo discederet: hoc enim casu si nova voluntate aliquid quoque adgredi coeperit, alius contractus est.

Dig. 3.5.16

Ulpianus 35 ad ed.

Eum actum, quem quis in servitute egit, manumissus non cogitur reddere. plane si quid conexum fuit, ut separari ratio eius quod in servitute gestum est ab eo quod in libertate gessit non possit: constat venire in iudicium vel mandati vel negotiorum gestorum et quod in servitute gestum est. denique si tempore servitutis aream emerit et in ea insulam aedificaverit eaque corruerit, deinde manumissus fundum locaverit: sola locatio fundorum in iudicio negotiorum gestorum deducetur, quia ex superioris temporis administratione nihil amplius in iudicio deduci potest quam id, sine quo ratio libertatis tempore administratorum negotiorum expediri non potest.

Dig. 3.5.17

Paulus 9 ad ed.

Proculus et pegasus bonam fidem eum, qui in servitute gerere coepit, praestare debere aiunt: ideoque quantum, si alius eius negotia gessisset, servare potuisset, tantum eum, qui a semet ipso non exegerit, negotiorum gestorum actione praestaturum, si aliquid habuit in peculio, cuius retentione id servari potest. idem neratius.

Dig. 3.5.18pr.

Paulus 2 ad ner.

Adquin natura debitor fuit etiam si in peculio nihil habuit, et si postea habuit, sibi postea solvere debet in eodem actu perseverans: sicut is, qui temporali actione tenebatur, etiam post tempus exactum negotiorum gestorum actione id praestare cogitur.

Dig. 3.5.18.1

Paulus 2 ad ner.

Scaevola noster ait putare se, quod sabinus scribit debere a capite rationem reddendum sic intellegi, ut appareat, quid reliquum fuerit tunc, cum primum liber esse coeperit, non ut dolum aut culpam in servitute admissam in obligationem revocet: itaque si inveniatur vel malo more pecunia in servitute erogata, liberabitur.

Dig. 3.5.18.2

Paulus 2 ad ner.

Si libero homini, qui bona fide mihi serviebat, mandem, ut aliquid agat, non fore cum eo mandati actionem labeo ait, quia non libera voluntate exsequitur rem sibi mandatam, sed quasi ex necessitate servili: erit igitur negotiorum gestorum actio, quia et gerendi negotii mei habuerit affectionem et is fuit, quem obligare possem.

Dig. 3.5.18.3

Paulus 2 ad ner.

Cum me absente negotia mea gereres, imprudens rem meam emisti et ignorans usucepisti: mihi negotiorum gestorum ut restituas obligatus non es. sed si, antequam usucapias, cognoscas rem meam esse, subicere debes aliquem, qui a te petat meo nomine, ut et mihi rem et tibi stipulationem evictionis committat: nec videris dolum malum facere in hac subiectione: ideo enim hoc facere debes, ne actione negotiorum gestorum tenearis.

Dig. 3.5.18.4

Paulus 2 ad ner.

Non tantum sortem, verum etiam usuras ex pecunia aliena perceptas negotiorum gestorum iudicio praestabimus, vel etiam quas percipere potuimus. contra quoque usuras, quas praestavimus vel quas ex nostra pecunia percipere potuimus quam in aliena negotia impendimus, servabimus negotiorum gestorum iudicio.

Dig. 3.5.18.5

Paulus 2 ad ner.

Dum apud hostes esset titius, negotia eius administravi, postea reversus est: negotiorum gestorum mihi actio competit, etiamsi eo tempore quo gerebantur dominum non habuerunt.

Dig. 3.5.19

Ulpianus 10 ad ed.

Sin autem apud hostes constitutus decessit, et successori et adversus successorem eius negotiorum gestorum directa et contraria competit.

Dig. 3.5.20pr.

Paulus 9 ad ed.

Nam et servius respondit, ut est relatum apud alfenum libro trigensimo nono digestorum: cum a lusitanis tres capti essent et unus ea condicione missus, uti pecuniam pro tribus adferret, et nisi redisset, ut duo pro eo quoque pecuniam darent, isque reverti noluisset et ob hanc causam illi pro tertio quoque pecuniam solvissent: servius respondit aequum esse praetorem in eum reddere iudicium.

Dig. 3.5.20.1

Paulus 9 ad ed.

Qui negotia hereditaria gerit, quodammodo sibi hereditatem seque ei obligat: ideoque nihil refert an etiam pupillus heres existat, quia id aes alienum cum ceteris hereditariis oneribus ad eum transit.

Dig. 3.5.20.2

Paulus 9 ad ed.

Si vivo titio negotia eius administrare coepi, intermittere mortuo eo non debeo: nova tamen inchoare necesse mihi non est, vetera explicare ac conservare necessarium est. ut accidit, cum alter ex sociis mortuus est: nam quaecumque prioris negotii explicandi causa geruntur, nihilum refert, quo tempore consummentur, sed quo tempore inchoarentur.

Dig. 3.5.20.3

Paulus 9 ad ed.

Mandatu tuo negotia mea lucius titius gessit: quod is non recte gessit, tu mihi actione negotiorum gestorum teneris non in hoc tantum, ut actiones tuas praestes, sed etiam quod imprudenter eum elegeris, ut quidquid detrimenti neglegentia eius fecit, tu mihi praestes.

Dig. 3.5.21

Gaius 3 ad ed. provinc.

Sive hereditaria negotia sive ea, quae alicuius essent, gerens aliquis necessario rem emerit, licet ea interierit, poterit quod impenderit iudicio negotiorum gestorum consequi: veluti si frumentum aut vinum familiae paraverit idque casu quodam interierit, forte incendio ruina. sed ita scilicet hoc dici potest, si ipsa ruina vel incendium sive vitio eius acciderit: nam cum propter ipsam ruinam aut incendium damnandus sit, absurdum est eum istarum rerum nomine, quae ita consumptae sunt, quicquam consequi.

Dig. 3.5.22

Paulus 20 ad ed.

Si quis negotia aliena gerens indebitum exegerit, restituere cogitur: de eo autem, quod indebitum solvit, magis est ut sibi imputare debeat.

Dig. 3.5.23

Paulus 24 ad ed.

Si ego hac mente pecuniam procuratori dem, ut ea ipsa creditoris fieret, proprietas quidem per procuratorem non adquiritur, potest tamen creditor etiam invito me ratum habendo pecuniam suam facere, quia procurator in accipiendo creditoris dumtaxat negotium gessit: et ideo creditoris ratihabitione liberor.

Dig. 3.5.24

Paulus 27 ad ed.

Si quis negotia aliena gerens plus quam oportet impenderit, reciperaturum eum id, quod praestari debuerit.

Dig. 3.5.25

Modestinus 1 resp.

Cum alicui civitati per fideicommissum restitui iussa esset hereditas, magistratus actores horum bonorum titium et seium et gaium idoneos creaverunt: postmodum hi actores inter se diviserunt administrationem bonorum idque egerunt sine auctoritate et sine consensu magistratuum. post aliquod tempus testamentum, per quod restitui civitati hereditas fideicommissa esset, irritum probatum est pro tribunali atque ita ab intestato sempronius legitimus heres defuncti extitit: sed ex his actoribus unus non solvendo decessit et nemo heres eius extitit. quaero, si sempronius conveniet actores horum bonorum, periculum inopis defuncti ad quos pertinet? herennius modestinus respondit, quod ab uno ex actoribus ob ea quae solus gessit negotiorum gestorum actione servari non potest, ad damnum eius cui legitima hereditas quaesita est pertinere.

Dig. 3.5.26pr.

Modestinus 2 resp.

Ex duobus fratribus uno quidem suae aetatis, alio vero minore annis, cum haberent communia praedia rustica, maior frater in saltu communi habenti habitationes paternas ampla aedificia aedificaverat: cumque eundem saltum cum fratre divideret, sumptus sibi quasi re meliore ab eo facta desiderabat fratre minore iam legitimae aetatis constituto. herennius modestinus respondit ob sumptus nulla re urguente, sed voluptatis causa factos eum de quo quaeritur actionem non habere.

Dig. 3.5.26.1

Modestinus 2 resp.

Titium, si pietatis respectu sororis aluit filiam, actionem hoc nomine contra eam non habere respondi.

Dig. 3.5.27

Iavolenus 8 ex cass.

Si quis mandatu titii negotia seii gessit, titio mandati tenetur lisque aestimari debet, quanto seii et titii interest: titii autem interest, quantum is seio praestare debet, cui vel mandati vel negotiorum gestorum nomine obligatus est. titio autem actio competit cum eo, cui mandavit aliena negotia gerenda, et antequam ipse quicquam domino praestet, quia id ei abesse videtur in quo obligatus est.

Dig. 3.5.28

Callistratus 3 ed. monit.

Cum pater testamento postumo tutorem dederit isque tutelam interim administraverit nec postumus natus fuerit, cum eo non tutelae, sed negotiorum gestorum erit agendum: quod si natus fuerit postumus, tutelae erit actio et in eam utrumque tempus veniet, et quo, antequam nasceretur infans, gessit et quo, posteaquam natus sit.

Dig. 3.5.29

Iulianus 3 Dig.

Ex facto quaerebatur: quendam ad siliginem emendam curatorem decreto ordinis constitutum: eidem alium subcuratorem constitutum siliginem miscendo corrupisse atque ita pretium siliginis, quae in publicum empta erat, curatori adflictum esse: quaque actione curator cum subcuratore experiri possit et consequi id, ut ei salvum esset, quod causa eius damnum cepisset. valerius severus respondit adversus contutorem negotiorum gestorum actionem tutori dandam: idem respondit, ut magistratui adversus magistratum eadem actio detur, ita tamen, si non sit conscius fraudis, secundum quae etiam in subcuratore idem dicendum est.

Dig. 3.5.30pr.

Papinianus 2 resp.

Liberto vel amico mandavit pecuniam accipere mutuam: cuius litteras creditor secutus contraxit et fideiussor intervenit: etiamsi pecunia non sit in rem eius versa, tamen dabitur in eum negotiorum gestorum actio creditori vel fideiussori, scilicet ad exemplum institoriae actionis.

Dig. 3.5.30.1

Papinianus 2 resp.

Inter negotia sempronii, quae gerebat, ignorans titii negotium gessit: ob eam quoque speciem sempronio tenebitur, sed ei cautionem indemnitatis officio iudicis praeberi necesse est adversus titium, cui datur actio. idem in tutore iuris est.

Dig. 3.5.30.2

Papinianus 2 resp.

Litem in iudicium deductam et a reo desertam frustratoris amicus ultro egit, causas absentiae eius allegans iudici: culpam contraxisse non videbitur, quod sententia contra absentem dicta ipse non provocavit. ulpianus notat: hoc verum est, quia frustrator condemnatus est: ceterum si amicus, cum absentem defenderet condemnatus, negotiorum gestorum aget, poterit ei imputari, si cum posset non appellasset.

Dig. 3.5.30.3

Papinianus 2 resp.

Qui aliena negotia gerit, usuras praestare cogitur eius scilicet pecuniae, quae purgatis necessariis sumptibus superest.

Dig. 3.5.30.4

Papinianus 2 resp.

Libertos certam pecuniam accipere testator ad sumptum monumenti voluit: si quid amplius fuerit erogatum, iudicio negotiorum gestorum ab herede non recte petetur nec iure fideicommissi, cum voluntas finem erogationis fecerit.

Dig. 3.5.30.5

Papinianus 2 resp.

Tutoris heres impubes filius ob ea, quae tutor eius in rebus pupillae paternae gessit, non tenetur, sed tutor proprio nomine iudicio negotiorum gestorum convenietur.

Dig. 3.5.30.6

Papinianus 2 resp.

Quamquam mater filii negotia secundum patris voluntatem pietatis fiducia gerat, tamen ius actoris periculo suo litium causa constituendi non habebit, quia nec ipsa filii nomine recte agit aut res bonorum eius alienat vel debitorem impuberis accipiendo pecuniam liberat.

Dig. 3.5.30.7

Papinianus 2 resp.

Uno defendente causam communis aquae sententia praedio datur: sed qui sumptus necessarios ac probabiles in communi lite fecit, negotiorum gestorum actionem habet.

Dig. 3.5.31pr.

Papinianus 3 resp.

Fideiussor imperitia lapsus alterius quoque contractus, qui personam eius non contingebat, pignora vel hypothecas suscepit et utramque pecuniam creditori solvit, existimans indemnitati suae confusis praediis consuli posse. ob eas res iudicio mandati frustra convenietur et ipse debitorem frustra conveniet, negotiorum autem gestorum actio utrique necessaria erit: in qua lite culpam aestimari satis est, non etiam casum, quia praedo fideiussor non videtur. creditor ob id factum ad restituendum iudicio, quod de pignore dato redditur, cum videatur ius suum vendidisse, non tenebitur.

Dig. 3.5.31.1

Papinianus 3 resp.

Ignorante virgine mater a sponso filiae res donatas suscepit: quia mandati vel depositi cessat actio, negotiorum gestorum agitur.

Dig. 3.5.32

Papinianus 10 resp.

Heres viri defuncti uxorem, quae res viri tempore nuptiarum in sua potestate habuit, compilatae hereditatis postulare non debet. prudentius itaque faciet, si ad exhibendum et negotiorum gestorum, si negotia quoque viri gessit, cum ea fuerit expertus.

Dig. 3.5.33

Paulus 1 quaest.

Nesennius apollinaris iulio paulo salutem. avia nepotis sui negotia gessit: defunctis utrisque aviae heredes conveniebantur a nepotis heredibus negotiorum gestorum actione: reputabant heredes aviae alimenta praestita nepoti. respondebatur aviam iure pietatis de suo praestitisse: nec enim aut desiderasse, ut decernerentur alimenta, aut decreta essent. praeterea constitutum esse dicebatur, ut si mater aluisset, non posset alimenta, quae pietate cogente de suo praestitisset, repetere. ex contrario dicebatur tunc hoc recte dici, ut de suo aluisse mater probaretur: at in proposito aviam, quae negotia administrabat, verisimile esse de re ipsius nepotis eum aluisse. tractatum est, numquid utroque patrimonio erogata videantur. quaero quid tibi iustius videatur. respondi: haec disceptatio in factum constitit: nam et illud, quod in matre constitutum est, non puto ita perpetuo observandum. quid enim si etiam protestata est se filium ideo alere, ut aut ipsum aut tutores eius conveniret? pone peregre patrem eius obisse et matrem, dum in patriam revertitur, tam filium quam familiam eius exhibuisse: in qua specie etiam in ipsum pupillum negotiorum gestorum dandam actionem divus pius antoninus constituit. igitur in re facti facilius putabo aviam vel heredes eius audiendos, si reputare velint alimenta, maxime si etiam in ratione impensarum ea rettulisse aviam apparebit. illud nequaquam admittendum puto, ut de utroque patrimonio erogata videantur.

Dig. 3.5.34pr.

Scaevola 1 quaest.

Divortio facto negotia uxoris gessit maritus: dos non solum dotis actione, verum negotiorum gestorum servari potest. haec ita, si in negotiis gestis maritus dum gerit facere potuit: alias enim imputari non potest, quod a se non exegerit. sed et posteaquam patrimonium amiserit, plena erit negotiorum gestorum actio, quamvis si dotis actione maritus conveniatur, absolvendus est. sed hic quidam modus servandus est, ut ita querellae locus sit " quantum facere potuit, quamvis postea amiserit", si illo tempore ei solvere potuit: non enim e vestigio in officio deliquit, si non protinus res suas distraxit ad pecuniam redigendam: praeterire denique aliquid temporis debebit, quo cessasse videatur. quod si interea priusquam officium impleat, res amissa est, perinde negotiorum gestorum non tenetur, ac si numquam facere possit. sed et si facere possit maritus, actio negotiorum gestorum inducitur, quia forte periculum est, ne facere desinat.

Dig. 3.5.34.1

Scaevola 1 quaest.

Illum autem non credimus teneri, qui gerit negotia debitoris, ad reddendum pignus, cum pecunia ei debeatur nec fuerit quod sibi possit exsolvere.

Dig. 3.5.34.2

Scaevola 1 quaest.

Sed nec redhibitoriae speciem venire in negotiorum gestorum actionem et per hoc sex mensibus exactis perire, si vel mancipium in rebus non invenit: vel eo invento quod accessionum nomine additum est, vel quod deterior homo factus esset, vel quod per eum esset adquisitum non ex re emptoris, nec invenit nec recepisset: nec esset in ipsis emptoris negotiis quae gerebat, unde sibi in praesenti redderet.

Dig. 3.5.34.3

Scaevola 1 quaest.

Ceterum si ex alia causa perpetuae obligationis, cum sit locuples, debeat, non est imputandum, quod non solverit, utique si neque usurarum ratio querellam movet. diversumque est in tutore debitore, quia ibi interfuit ex priore obligatione solvi, ut deberetur ex tutelae actione.

Dig. 3.5.35

Paulus 4 quaest.

Si liber homo bona fide mihi serviens mutuam pecuniam sumpserit eamque in rem meam verterit, qua actione id, quod in rem nostram vertit, reddere debeam, videndum est: non enim quasi amici, sed quasi domini negotium gessit. sed negotiorum gestorum actio danda est: quae desinit competere, si creditori eius soluta sit.

Dig. 3.5.36pr.

Paulus 1 sent.

Litis contestatae tempore quaeri solet, an pupillus, cuius sine tutoris auctoritate negotia gesta sunt, locupletior sit ex ea re factus, cuius patitur actionem.

Dig. 3.5.36.1

Paulus 1 sent.

Si pecuniae quis negotium gerat, usuras quoque praestare cogitur et periculum eorum nominum, quae ipse contraxit: nisi fortuitis casibus debitores ita suas fortunas amiserunt, ut tempore litis ex ea actione contestatae solvendo non essent.

Dig. 3.5.36.2

Paulus 1 sent.

Pater si emancipati filii res a se donatas administravit, filio actione negotiorum gestorum tenebitur.

Dig. 3.5.37

Tryphonus 2 disp.

Qui sine usuris pecuniam debebat, creditoris sui gessit negotia: quaesitum est, an negotiorum gestorum actione summae illius usuras praestare debeat. dixi, si a semet ipso exigere eum oportuit, debiturum usuras: quod si dies solvendae pecuniae tempore quo negotia gerebat nondum venerat, usuras non debiturum: sed die praeterito si non intulit rationibus creditoris cuius negotia gerebat eam pecuniam a se debitam, merito usuras bonae fidei iudicio praestaturum. sed quas usuras debebit, videamus: utrum eas, quibus aliis idem creditor faenerasset, an et maximas usuras: quoniam ubi quis eius pecuniam, cuius tutelam negotiave administrat, aut magistratus municipii publicam in usus suos convertit, maximas usuras praestat, ut est constitutum a divis principibus. sed istius diversa causa est, qui non sibi sumpsit ex administratione nummos, sed ab amico accepit et ante negotiorum administrationem. nam illi, de quibus constitutum est, cum gratuitam certe integram et abstinentem omni lucro praestare fidem deberent, licentia, qua videntur abuti, maximis usuris vice cuiusdam poenae subiciuntur: hic bona ratione accepit ab alio mutuum et usuris, quia non solvit, non quia ex negotiis quae gerebat ad se pecuniam transtulit, condemnandus est. multum autem refert, incipiat nunc debitum an ante nomen fuerit debitoris, quod satis est ex non usurario facere usurarium.

Dig. 3.5.38

Gaius 3 de verb. oblig.

Solvendo quisque pro alio licet invito et ignorante liberat eum: quod autem alicui debetur, alius sine voluntate eius non potest iure exigere. naturalis enim simul et civilis ratio suasit alienam condicionem meliorem quidem etiam ignorantis et inviti nos facere posse, deteriorem non posse.

Dig. 3.5.39

Paulus 10 ad sab.

Si communes aedes tecum habeam et pro tua parte damni infecti vicino cavero, dicendum est quod praestitero negotiorum gestorum actione potius quam communi dividundo iudicio posse me petere, quia potui partem meam ita defendere, ut socii partem defendere non cogerer.

Dig. 3.5.40

Paulus 30 ad ed.

Qui servum meum me ignorante vel absente in noxali causa defenderit, negotiorum gestorum in solidum mecum, non de peculio aget.

Dig. 3.5.41

Paulus 32 ad ed.

Si servi mei rogatu negotia mea susceperis, si dumtaxat admonitus a servo meo id feceris, erit inter nos negotiorum gestorum actio: si vero quasi mandatu servi, etiam de peculio et de in rem verso agere te posse responsum est.

Dig. 3.5.42

Labeo 6 post. epit. a iav.

Cum pecuniam eius nomine solveres, qui tibi nihil mandaverat, negotiorum gestorum actio tibi competit, cum ea solutione debitor a creditore liberatus sit: nisi si quid debitoris interfuit eam pecuniam non solvi.

Dig. 3.5.43

Ulpianus 6 disp.

Is, qui amicitia ductus paterna pupillis tutorem petierit vel suspectos tutores postulavit, nullam adversus eos habet actionem secundum divi severi constitutionem.

Dig. 3.5.44pr.

Ulpianus 4 opin.

Quae utiliter in negotia alicuius erogantur, in quibus est etiam sumptus honeste ad honores per gradus pertinentes factus, actione negotiorum gestorum peti possunt.

Dig. 3.5.44.1

Ulpianus 4 opin.

Qui pure testamento libertatem acceperunt, actus, quem viventibus dominis administraverunt, rationem reddere non compelluntur.

Dig. 3.5.44.2

Ulpianus 4 opin.

Titius pecuniam creditoribus hereditariis solvit existimans sororem suam defuncto heredem testamento extitisse. quamvis animo gerendi sororis negotia id fecisset, veritate tamen filiorum defuncti, qui sui heredes patri sublato testamento erant, gessisset: quia aequum est in damno eum non versari, actione negotiorum gestorum id eum petere placuit.

Dig. 3.5.45pr.

Africanus 7 quaest.

Mandasti filio meo, ut tibi fundum emeret: quod cum cognovissem, ipse eum tibi emi. puto referre, qua mente emerim: nam si propter ea, quae tibi necessaria esse scirem, et te eius voluntatis esse, ut emptum habere velles, agemus inter nos negotiorum gestorum, sicut ageremus, si aut nullum omnino mandatum intercessisset, aut titio mandasses et ego, quia per me commodius negotium possim conficere, emissem. si vero propterea emerim, ne filius mandati iudicio teneatur, magis est, ut ex persona eius et ego tecum mandati agere possim et tu mecum actionem habeas de peculio, quia et si titius id mandatum suscepisset et, ne eo nomine teneretur, ego emissem, agerem cum titio negotiorum gestorum, et ille tecum et tu cum illo mandati. idem est, et si filio meo mandaveris, ut pro te fideiuberet, et ego pro te fideiusserim.

Dig. 3.5.45.1

Africanus 7 quaest.

Si proponatur te titio mandasse, ut pro te fideiuberet, meque, quod is aliqua de causa impediretur quo minus fideiuberet, liberandae fidei eius causa fideiussisse, negotiorum gestorum mihi competit actio.

Dig. 3.5.46pr.

Paulus 1 sent.

Actio negotiorum gestorum illi datur, cuius interest hoc iudicio experiri.

Dig. 3.5.46.1

Paulus 1 sent.

Nec refert directa quis an utili actione agat vel conveniatur, quia in extraordinariis iudiciis, ubi conceptio formularum non observatur, haec suptilitas supervacua est, maxime cum utraque actio eiusdem potestatis est eundemque habet effectum.

Dig. 3.5.47

Papinianus 3 quaest.

Ignorante quoque sorore si frater negotium eius gerens dotem a viro stipulatus sit, iudicio negotiorum gestorum ut virum liberaret iure convenitur.

Dig. 3.5.48

Africanus 8 quaest.

Si rem, quam servus venditus subripuisset a me venditore, emptor vendiderit eaque in rerum natura esse desierit, de pretio negotiorum gestorum actio mihi danda sit, ut dari deberet, si negotium, quod tuum esse existimares, cum esset meum, gessisses: sicut ex contrario in me tibi daretur, si, cum hereditatem quae ad me pertinet tuam putares, res tuas proprias legatas solvisses, quandoque de ea solutione liberarer.

Dig. 3.6.0. De calumniatoribus.

Dig. 3.6.1pr.

Ulpianus 10 ad ed.

In eum qui, ut calumniae causa negotium faceret vel non faceret, pecuniam accepisse dicetur, intra annum in quadruplum eius pecuniae, quam accepisse dicetur, post annum simpli in factum actio competit.

Dig. 3.6.1.1

Ulpianus 10 ad ed.

Hoc autem iudicium non solum in pecuniariis causis, sed et ad publica crimina pertinere pomponius scribit, maxime cum et lege repetundarum teneatur, qui ob negotium faciendum aut non faciendum per calumniam pecuniam accepit.

Dig. 3.6.1.2

Ulpianus 10 ad ed.

Qui autem accepit pecuniam sive ante iudicium sive post iudicium acceptum, tenetur.

Dig. 3.6.1.3

Ulpianus 10 ad ed.

Sed et constitutio imperatoris nostri, quae scripta est ad cassium sabinum, prohibuit iudici vel adversario in publicis vel privatis vel fiscalibus causis pecuniam dare, et ex hac causa litem perire iussit. nam tractari potest, si adversarius non per calumniam transigendi animo accepit, an constitutio cessat? et puto cessare sicuti hoc quoque iudicium: neque enim transactionibus est interdictum, sed sordidis concussionibus.

Dig. 3.6.1.4

Ulpianus 10 ad ed.

Pecuniam autem accepisse dicemus etiam si aliquid pro pecunia accepimus.

Dig. 3.6.2

Paulus 10 ad ed.

Quin etiam si quis obligatione liberatus sit, potest videri cepisse: idemque si gratuita pecunia utenda data sit, aut minoris locata venditave res sit. nec refert, ipse pecuniam acceperit an alii dari iusserit vel acceptum suo nomine ratum habuerit.

Dig. 3.6.3pr.

Ulpianus 10 ad ed.

Et generaliter idem erit, si quid omnino compendii sensit propter hoc, sive ab adversario sive ab alio quocumque.

Dig. 3.6.3.1

Ulpianus 10 ad ed.

Si igitur accepit ut negotium faceret, sive fecit sive non fecit, et qui accepit ne faceret etsi fecit, tenetur.

Dig. 3.6.3.2

Ulpianus 10 ad ed.

Hoc edicto tenetur etiam is qui depectus est: depectus autem dicitur turpiter pactus.

Dig. 3.6.3.3

Ulpianus 10 ad ed.

Illud erit notandum, quod qui dedit pecuniam, ut negotium quis pateretur, non habebit ipse repetitionem: turpiter enim fecit: sed ei dabitur petitio, propter quem datum est ut calumnia ei fiat. quare si quis et a te pecuniam accepit, ut mihi negotium faceret, et a me, ne mihi faceret, duobus iudiciis mihi tenebitur.

Dig. 3.6.4

Gaius 4 ad ed. provinc.

Haec actio heredi quidem non competit, quia sufficere ei debet, quod eam pecuniam quam defunctus dedit repetere potest.

Dig. 3.6.5pr.

Ulpianus 10 ad ed.

In heredem autem competit in id quod ad eum pervenit. nam est constitutum turpia lucra heredibus quoque extorqueri, licet crimina extinguantur: ut puta ob falsum vel iudici ob gratiosam sententiam datum et heredi extorquebitur et si quid aliud scelere quaesitum.

Dig. 3.6.5.1

Ulpianus 10 ad ed.

Sed etiam praeter hanc actionem condictio competit, si sola turpitudo accipientis versetur: nam si et dantis, melior causa erit possidentis. quare si fuerit condictum, utrum tollitur haec actio, an vero in triplum danda sit? an exemplo furis et in quadruplum actionem damus et condictionem? sed puto sufficere alterutram actionem. ubi autem condictio competit, ibi non est necesse post annum dare in factum actionem.

Dig. 3.6.6

Gaius 4 ad ed. provinc.

Annus autem in personam quidem eius, qui dedit pecuniam ne secum ageretur, ex eo tempore cedit, ex quo dedit, si modo potestas ei fieret experiundi. in illius vero personam, cum quo ut agatur alius pecuniam dedit, dubitari potest, utrum ex die datae pecuniae numerari debeat, an potius ex quo cognovit datam esse: quia qui nescit, is videtur experiundi potestatem non habere. et verius est ex eo annum numerari, ex quo cognovit.

Dig. 3.6.7pr.

Paulus 10 ad ed.

Si quis ab alio acceperit pecuniam ne mihi negotium faciat, si quidem mandatu meo datum est, vel a procuratore meo omnium rerum, vel ab eo qui negotium meum gerere volebat et ratum habui: ego dedisse intellegor. si autem non mandatu meo alius licet misericordiae causa dederit ne fiat neque ratum habui, tunc et ipsum repetere et me in quadruplum agere posse.

Dig. 3.6.7.1

Paulus 10 ad ed.

Si ut filio familias negotium fieret acceptum est, etiam ^ et^ patri actio danda est. item si filius familias pecuniam acceperit, ut faceret negotium vel non faceret, in ipsum iudicium dabitur: et si alius non meo mandatu ei dederit ne fiat, tunc etiam ipsum repetere et me in quadruplum agere posse.

Dig. 3.6.7.2

Paulus 10 ad ed.

Cum publicanus mancipia retineret dataque ei pecunia esset quae non deberetur, et ipse ex hac parte edicti in factum actione tenetur.

Dig. 3.6.8

Ulpianus 4 opin.

Si ab eo, qui innocens fuit, sub specie criminis alicuius, quod in eo probatum non est, pecuniam acceptam is cuius de ea re notio est edoctus fuerit: id quod illicite extortum est secundum edicti formam, quod de his est, qui pecuniam ut negotium facerent aut non facerent accepisse dicerentur, restitui iubeat et ei, qui id commisit, pro modo delicti poenam irroget.

Dig. 3.6.9

Papinianus 2 de adult.

De servo qui accusatur, si postuletur, quaestio habetur: quo absoluto in duplum pretium accusator domino damnatur: sed et citra pretii aestimationem quaeritur de calumnia eius. separatum est etenim calumniae crimen a damno quod in servo propter quaestionem domino datum est.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER QUARTUS

Dig. 4.1.0. De in integrum restitutionibus.
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Dig. 4.3.0. De dolo malo.
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Dig. 4.1.0. De in integrum restitutionibus.

Dig. 4.1.1

Ulpianus 11 ad ed.

Utilitas huius tituli non eget commendatione, ipse enim se ostendit. nam sub hoc titulo plurifariam praetor hominibus vel lapsis vel circumscriptis subvenit, sive metu sive calliditate sive aetate sive absentia inciderunt in captionem.

Dig. 4.1.2

Paulus 1 sent.

Sive per status mutationem aut iustum errorem.

Dig. 4.1.3

Modestinus 8 pand.

Omnes in integrum restitutiones causa cognita a praetore promittuntur, scilicet ut iustitiam earum causarum examinet, an verae sint, quarum nomine singulis subvenit.

Dig. 4.1.4

Callistratus 1 ed. monit.

Scio illud a quibusdam observatum, ne propter satis minimam rem vel summam, si maiori rei vel summae praeiudicetur, audiatur is qui in integrum restitui postulat.

Dig. 4.1.5

Paulus 7 ad ed.

Nemo videtur re exclusus, quem praetor in integrum se restituturum polliceatur.

Dig. 4.1.6

Ulpianus 13 ad ed.

Non solum minoris, verum eorum quoque, qui rei publicae causa afuerunt, item omnium, qui ipsi potuerunt restitui in integrum, successores in integrum restitui possunt, et ita saepissime est constitutum. sive igitur heres sit sive is cui hereditas restituta est sive filii familias militis successor, in integrum restitui poterit. proinde et si minor in servitutem redigatur vel ancilla fiat, dominis eorum dabitur non ultra tempus statutum in integrum restitutio. sed et si forte hic minor erat captus in hereditate quam adierit, iulianus libro septimo decimo digestorum scribit abstinendi facultatem dominum posse habere non solum aetatis beneficio, verum et si aetas non patrocinetur: quia non apiscendae hereditatis gratia legum beneficio usi sunt, sed vindictae gratia.

Dig. 4.1.7pr.

Marcellus 3 Dig.

Divus antoninus marcio avito praetori de succurrendo ei, qui absens rem amiserat, in hanc sententiam rescripsit: " etsi nihil facile mutandum est ex sollemnibus, tamen ubi aequitas evidens poscit, subveniendum est. itaque si citatus non respondit et ob hoc more pronuntiatum est, confestim autem pro tribunali te sedente adiit: existimari potest non sua culpa sed parum exaudita voce praeconis defuisse, ideoque restitui potest. "

Dig. 4.1.7.1

Marcellus 3 Dig.

Nec intra has solum species consistet huius generis auxilium: etenim deceptis sine culpa sua, maxime si fraus ab adversario intervenerit, succurri oportebit, cum etiam de dolo malo actio competere soleat, et boni praetoris est potius restituere litem, ut et ratio aequitatis postulabit, quam actionem famosam constituere, ad quam tunc demum descendendum est, cum remedio locus esse non potest.

Dig. 4.1.8

Macer 2 de appellat.

Inter minores viginti quinque annis et eos qui rei publicae causa absunt hoc interest, quod minores annis etiam qui per tutores curatoresve suos defensi sunt, nihilo minus in integrum contra rem publicam restituuntur, cognita scilicet causa: ei vero qui rei publicae causa absit, ceteris quoque qui in eadem causa habentur, si per procuratores suos defensi sunt, hactenus in integrum restitutione subveniri solet, ut appellare his permittatur.

Dig. 4.2.0. Quod metus causa gestum erit.

Dig. 4.2.1

Ulpianus 11 ad ed.

Ait praetor: " quod metus causa gestum erit, ratum non habebo " . olim ita edicebatur " quod vi metusve causa " : vis enim fiebat mentio propter necessitatem impositam contrariam voluntati: metus instantis vel futuri periculi causa mentis trepidatio. sed postea detracta est vis mentio ideo, quia quodcumque vi atroci fit, id metu quoque fieri videtur.

Dig. 4.2.2

Paulus 1 sent.

Vis autem est maioris rei impetus, qui repelli non potest.

Dig. 4.2.3pr.

Ulpianus 11 ad ed.

Continet igitur haec clausula et vim et metum, et si quis vi compulsus aliquid fecit, per hoc edictum restituitur.

Dig. 4.2.3.1

Ulpianus 11 ad ed.

Sed vim accipimus atrocem et eam, quae adversus bonos mores fiat, non eam quam magistratus recte intulit, scilicet iure licito et iure honoris quem sustinet. ceterum si per iniuriam quid fecit populi romani magistratus vel provinciae praeses, pomponius scribit hoc edictum locum habere: si forte, inquit, mortis aut verberum terrore pecuniam alicui extorserit.

Dig. 4.2.4

Paulus 11 ad ed.

Ego puto etiam servitutis timorem similiumque admittendum.

Dig. 4.2.5

Ulpianus 11 ad ed.

Metum accipiendum labeo dicit non quemlibet timorem, sed maioris malitatis.

Dig. 4.2.6

Gaius 4 ad ed. provinc.

Metum autem non vani hominis, sed qui merito et in homine constantissimo cadat, ad hoc edictum pertinere dicemus.

Dig. 4.2.7pr.

Ulpianus 11 ad ed.

Nec timorem infamiae hoc edicto contineri pedius dicit libro septimo, neque alicuius vexationis timorem per hoc edictum restitui. proinde si quis meticulosus rem nullam frustra timuerit, per hoc edictum non restituitur, quoniam neque vi neque metus causa factum est.

Dig. 4.2.7.1

Ulpianus 11 ad ed.

Proinde si quis in furto vel adulterio deprehensus vel in alio flagitio vel dedit aliquid vel se obligavit, pomponius libro vicensimo octavo recte scribit posse eum ad hoc edictum pertinere: timuit enim vel mortem vel vincula. quamquam non omnem adulterum liceat occidere, vel furem, nisi se telo defendat: sed potuerunt vel non iure occidi, et ideo iustus fuerit metus. sed et si, ne prodatur ab eo qui deprehenderit, alienaverit, succurri ei per hoc edictum videtur, quoniam si proditus esset, potuerit ea pati quae diximus.

Dig. 4.2.8pr.

Paulus 11 ad ed.

Isti quidem et in legem iuliam incidunt, quod pro comperto stupro acceperunt. praetor tamen etiam ut restituant intervenire debet: nam et gestum est malo more, et praetor non respicit, an adulter sit qui dedit, sed hoc solum, quod hic accepit metu mortis illato.

Dig. 4.2.8.1

Paulus 11 ad ed.

Si is accipiat pecuniam, qui instrumenta status mei interversurus est nisi dem, non dubitatur quin maximo metu compellat, utique si iam in servitutem petor et illis instrumentis perditis liber pronuntiari non possum.

Dig. 4.2.8.2

Paulus 11 ad ed.

Quod si dederit ne stuprum patiatur vir seu mulier, hoc edictum locum habet, cum viris bonis iste metus maior quam mortis esse debet.

Dig. 4.2.8.3

Paulus 11 ad ed.

Haec, quae diximus ad edictum pertinere, nihil interest in se quis veritus sit an in liberis suis, cum pro affectu parentes magis in liberis terreantur.

Dig. 4.2.9pr.

Ulpianus 11 ad ed.

Metum autem praesentem accipere debemus, non suspicionem inferendi eius: et ita pomponius libro vicensimo octavo scribit. ait enim metum illatum accipiendum, id est si illatus est timor ab aliquo. denique tractat, si fundum meum dereliquero audito, quod quis cum armis veniret, an huic edicto locus sit? et refert labeonem existimare edicto locum non esse et unde vi interdictum cessare, quoniam non videor vi deiectus, qui deici non expectavi sed profugi. aliter atque si, posteaquam armati ingressi sunt, tunc discessi: huic enim edicto locum facere. idem ait, et si forte adhibita manu in meo solo per vim aedifices, et interdictum quod vi aut clam et hoc edictum locum habere, scilicet quoniam metu patior id te facere. sed et si per vim tibi possessionem tradidero, dicit pomponius hoc edicto locum esse.

Dig. 4.2.9.1

Ulpianus 11 ad ed.

Animadvertendum autem, quod praetor hoc edicto generaliter et in rem loquitur nec adicit a quo gestum: et ideo sive singularis sit persona, quae metum intulit, vel populus vel curia vel collegium vel corpus, huic edicto locus erit. sed licet vim factam a quocumque praetor complectatur, eleganter tamen pomponius ait, si quo magis te de vi hostium vel latronum vel populi tuerer vel liberarem, aliquid a te accepero vel te obligavero, non debere me hoc edicto teneri, nisi ipse hanc tibi vim summisi: ceterum si alienus sum a vi, teneri me non debere, ego enim operae potius meae mercedem accepisse videor.

Dig. 4.2.9.2

Ulpianus 11 ad ed.

Idem pomponius scribit quosdam bene putare etiam servi manumissionem vel aedificii depositionem, quam quis coactus fecit, ad restitutionem huius edicti porrigendam esse.

Dig. 4.2.9.3

Ulpianus 11 ad ed.

Sed quod praetor ait ratum se non habiturum, quatenus accipiendum est videamus. et quidem aut imperfecta res est, licet metus intervenerit, ut puta stipulationem numeratio non est secuta, aut perfecta, si post stipulationem et numeratio facta est aut per metum accepto debitor liberatus est vel quid simile contigerit quod negotium perficeret. et pomponius scribit in negotiis quidem perfectis et exceptionem interdum et actionem competere, in imperfectis autem solam exceptionem. sed ex facto scio, cum campani metu cuidam illato extorsissent cautionem pollicitationis, rescriptum esse ab imperatore nostro posse eum a praetore in integrum restitutionem postulare, et praetorem me adsidente interlocutum esse, ut sive actione vellet adversus campanos experiri, esse propositam, sive exceptione adversus petentes, non deesse exceptionem. ex qua constitutione colligitur, ut sive perfecta sive imperfecta res sit, et actio et exceptio detur.

Dig. 4.2.9.4

Ulpianus 11 ad ed.

Volenti autem datur et in rem actio et in personam rescissa acceptilatione vel alia liberatione.

Dig. 4.2.9.5

Ulpianus 11 ad ed.

Iulianus libro tertio digestorum putat eum, cui res metus causa tradita est, non solum reddere, verum et de dolo repromittere debere.

Dig. 4.2.9.6

Ulpianus 11 ad ed.

Licet tamen in rem actionem dandam existimemus, quia res in bonis est eius, qui vim passus est, verum non sine ratione dicetur, si in quadruplum quis egerit, finiri in rem actionem vel contra.

Dig. 4.2.9.7

Ulpianus 11 ad ed.

Ex hoc edicto restitutio talis facienda est, id est in integrum, officio iudicis, ut, si per vim res tradita est, retradatur et de dolo sicut dictum est repromittatur, ne forte deterior res sit facta. et si acceptilatione liberatio intervenit, restituenda erit in pristinum statum obligatio, usque adeo, ut iulianus scribat libro quarto digestorum, si pecunia debita fuit, quae accepta per vim facta est, nisi vel solvatur vel restituta obligatione iudicium accipiatur, quadruplo eum condemnandum. sed et si per vim stipulanti promisero, stipulatio accepto facienda erit. sed et si usus fructus vel servitutes amissae sunt, restituendae erunt.

Dig. 4.2.9.8

Ulpianus 11 ad ed.

Cum autem haec actio in rem sit scripta nec personam vim facientis coercerat, sed adversus omnes restitui velit quod metus causa factum est: non immerito iulianus a Marcello notatus est scribens, si fideiussor vim intulit, ut accepto liberetur, in reum non esse restituendam actionem, sed fideiussorem, nisi adversus reum quoque actionem restituat, debere in quadruplum condemnari. sed est verius, quod Marcellus notat: etiam adversus reum competere hanc actionem, cum in rem sit scripta.

Dig. 4.2.10

Gaius 4 ad ed. provinc.

Illud verum est, si ex facto debitoris metum adhibentis fideiussores acceptilatione liberati sunt, etiam adversus fideiussores agi posse, ut se reponant in obligationem. si metu a te coactus acceptam tibi stipulationem fecerim, arbitratu iudicis, apud quem ex hoc edicto agitur, non solum illud continetur, ut in tua persona redintegretur obligatio, sed ut fideiussores quoque vel eosdem vel alios non minus idoneos adhibeas: praeterea ut et pignora quae dederas in eandem causam restituas.

Dig. 4.2.11

Paulus not. ad iul. 4 Dig.

Si quis alius sine malitia fideiussoris ut fideiussori accepto fieret vim fecit, non tenebitur fideiussor, ut rei quoque obligationem restituat.

Dig. 4.2.12pr.

Ulpianus 11 ad ed.

Sed et partus ancillarum et fetus pecorum et fructus restitui et omnem causam oportet: nec solum eos qui percepti sunt, verum si plus ego percipere potui et per metum impeditus sum, hoc quoque praestabit.

Dig. 4.2.12.1

Ulpianus 11 ad ed.

Quaeri poterit, an etiam ei qui vim fecerat passo vim restitui praetor velit per hoc edictum ea quae alienavit. et pomponius scribit libro vicensimo octavo non oportere ei praetorem opem ferre: nam cum liceat, inquit, vim vi repellere, quod fecit passus est. quare si metu te coegerit sibi promittere, mox ego eum coegero metu te accepto liberare, nihil esse quod ei restituatur.

Dig. 4.2.12.2

Ulpianus 11 ad ed.

Iulianus ait eum, qui vim adhibuit debitori suo ut ei solveret, hoc edicto non teneri propter naturam metus causa actionis quae damnum exigit: quamvis negari non possit in iuliam eum de vi incidisse et ius crediti amisisse.

Dig. 4.2.13

Callistratus 5 de cogn.

Exstat enim decretum divi marci in haec verba: " optimum est, ut, si quas putas te habere petitiones, actionibus experiaris. cum marcianus diceret: vim nullam feci, caesar dixit: tu vim putas esse solum, si homines vulnerentur ? vis est et tunc, quotiens quis id, quod deberi sibi putat, non per iudicem reposcit. quisquis igitur probatus mihi fuerit rem ullam debitoris vel pecuniam debitam non ab ipso sibi sponte datam sine ullo iudice temere possidere vel accepisse, isque sibi ius in eam rem dixisse: ius crediti non habebit " .

Dig. 4.2.14pr.

Ulpianus 11 ad ed.

Item si, cum exceptione adversus te perpetua tutus essem, coegero te acceptum mihi facere, cessare hoc edictum, quia nihil tibi abest.

Dig. 4.2.14.1

Ulpianus 11 ad ed.

Si quis non restituat, in quadruplum in eum iudicium pollicetur: quadruplabitur autem omne quodcumque restitui oportuit. satis clementer cum reo praetor egit, ut daret ei restituendi facultatem, si vult poenam evitare. post annum vero in simplum actionem pollicetur, sed non semper, sed causa cognita.

Dig. 4.2.14.2

Ulpianus 11 ad ed.

In causae autem cognitione versatur, ut, si alia actio non sit, tunc haec detur: et sane cum per metum facta iniuria anno et quidem utili exoleverit, idonea esse causa debet, ut post annum actio haec dari debeat. alia autem actio esse sic potest: si is cui vis admissa est decesserit, heres eius habet hereditatis petitionem, quoniam pro possessore qui vim intulit possidet: propter quod heredi non erit metus causa actio, quamvis, si annus largiretur, etiam heres in quadruplum experiri possit. ideo autem successoribus datur, quoniam et rei habet persecutionem.

Dig. 4.2.14.3

Ulpianus 11 ad ed.

In hac actione non quaeritur, utrum is qui convenitur an alius metum fecit: sufficit enim hoc docere metum sibi illatum vel vim, et ex hac re eum qui convenitur, etsi crimine caret, lucrum tamen sensisse. nam cum metus habeat in se ignorantiam, merito quis non adstringitur ut designet, quis ei metum vel vim adhibuit: et ideo ad hoc tantum actor adstringitur, ut doceat metum in causa fuisse, ut alicui acceptam pecuniam faceret vel rem traderet vel quid aliud faceret. nec cuiquam iniquum videtur ex alieno facto alium in quadruplum condemnari, quia non statim quadrupli est actio, sed si res non restituatur.

Dig. 4.2.14.4

Ulpianus 11 ad ed.

Haec autem actio cum arbitraria sit, habet reus licentiam usque ad sententiam ab arbitro datam restitutionem, secundum quod supra diximus, rei facere: quod si non fecerit, iure meritoque quadrupli condemnationem patietur.

Dig. 4.2.14.5

Ulpianus 11 ad ed.

Aliquando tamen et si metus adhibitus proponatur, arbitrium absolutionem adfert. quid enim si metum quidem titius adhibuit me non conscio, res autem ad me pervenit, et haec in rebus humanis non est sine dolo malo meo: nonne iudicis officio absolvar? aut si servus in fuga est, aeque, si cavero iudicis officio me, si in meam potestatem pervenerit, restituturum, absolvi debebo. unde quidam putant bona fide emptorem ab eo qui vim intulit comparantem non teneri nec eum qui dono accepit vel cui res legata est. sed rectissime viviano videtur etiam hos teneri, ne metus, quem passus sum, mihi captiosus sit. pedius quoque libro octavo scribit arbitrium iudicis in restituenda re tale esse, ut eum quidem qui vim admisit iubeat restituere, etiamsi ad alium res pervenit, eum autem ad quem pervenit, etiamsi alius metum fecit: nam in alterius praemium verti alienum metum non oportet.

Dig. 4.2.14.6

Ulpianus 11 ad ed.

Labeo ait, si quis per metum reus sit constitutus et fideiussorem volentem dederit, et ipse et fideiussor liberatur: si solus fideiussor metu accessit, non etiam reus, solus fideiussor liberabitur.

Dig. 4.2.14.7

Ulpianus 11 ad ed.

Quadruplatur autem id quanti ea res erit, id est cum fructibus et omni causa.

Dig. 4.2.14.8

Ulpianus 11 ad ed.

Si quis per vim sisti promittendo postea fideiussorem adhibeat, is quoque liberatur.

Dig. 4.2.14.9

Ulpianus 11 ad ed.

Sed et si quis per vim stipulatus, cum acceptum non faceret, fuerit in quadruplum condemnatus, ex stipulatu eum agentem adversus exceptionem replicatione adiuvari iulianus putat, cum in quadruplo et simplum sit reus consecutus. labeo autem etiam post quadrupli actionem nihilo minus exceptione summovendum eum, qui vim intulit, dicebat: quod cum durum videbatur, ita temperandum est, ut tam tripli condemnatione plectatur, quam acceptilationem omnimodo facere compellatur.

Dig. 4.2.14.10

Ulpianus 11 ad ed.

Quatenus autem diximus quadruplo simplum inesse, si hoc disponendum est, ut in condemnatione quadrupli res quidem omnimodo contineatur et eius restitutio fiat, poenae autem usque ad triplum stetur.

Dig. 4.2.14.11

Ulpianus 11 ad ed.

Quid si homo sine dolo malo et culpa eius, qui vim intulit et condemnatus est, periit? in hoc casu a rei condemnatione ideo relaxabitur, si intra tempora iudicati actionis moriatur, quia tripli poena propter facinus satisfacere cogitur. pro eo autem, qui in fuga esse dicitur, cautio ab eo extorquenda est, quatenus et persequatur et omnimodo eum restituat: et nihilominus in rem vel ad exhibendum vel si qua alia ei competit actio ad eum recipiendum integra ei qui vim passus est servabitur, ita ut, si dominus eum quoquo modo receperit, is qui ex stipulatione convenitur exceptione tutus fiat. haec si post condemnationem: si autem ante sententiam homo sine dolo malo et culpa mortuus fuerit, tenebitur, et hoc fit his verbis edicti " neque ea res arbitrio iudicis restituetur". ergo si in fuga sit servus sine dolo malo et culpa eius cum quo agetur, cavendum est per iudicem, ut eum servum persecutus reddat. sed et si non culpa ab eo quocum agitur aberit, si tamen peritura res non fuit, si metum non adhibuisset, tenebitur reus: sicut in interdicto unde vi vel quod vi aut clam observatur. itaque interdum hominis mortui pretium recipit, qui eum venditurus fuit, si vim passus non esset.

Dig. 4.2.14.12

Ulpianus 11 ad ed.

Qui vim intulit, cum possessionem a me sit consecutus, fur non est: quamvis qui rapuit, fur improbior esse videatur, ut iuliano placet.

Dig. 4.2.14.13

Ulpianus 11 ad ed.

Eum qui metum fecit et de dolo teneri certum est, et ita pomponius, et consumi alteram actionem per alteram exceptione in factum opposita.

Dig. 4.2.14.14

Ulpianus 11 ad ed.

Iulianus ait quod interest quadruplari solum, et ideo eum, qui ex causa fideicommissi quadraginta debebat, si trecenta promiserit per vim et solverit, ducentorum sexaginta quadruplum consecuturum: in his enim cum effectu vim passus est.

Dig. 4.2.14.15

Ulpianus 11 ad ed.

Secundum haec si plures metum adhibuerint et unus fuerit conventus, si quidem sponte rem ante sententiam restituerit, omnes liberati sunt: sed et si id non fecerit, sed ex sententia quadruplum restituerit, verius est etiam sic peremi adversus ceteros metus causa actionem.

Dig. 4.2.15

Paulus 11 ad ed.

Aut in id dabitur adversus ceteros actio, quod minus ab illo exactum sit.

Dig. 4.2.16pr.

Ulpianus 11 ad ed.

Quod diximus si plures metum admiserunt, idem dicendum erit et si ad alium res pervenit, alter metum adhibuit.

Dig. 4.2.16.1

Ulpianus 11 ad ed.

Sed si servi metum adhibuerint, noxalis quidem actio ipsorum nomine erit, poterit autem quis dominum ad quem res pervenerit convenire: qui conventus sive rem sive secundum quod iam dictum est quadruplum praestiterit, proderit et servis. si vero noxali conventus maluerit noxae dedere, nihilo minus ipse poterit conveniri, si ad eum res pervenit.

Dig. 4.2.16.2

Ulpianus 11 ad ed.

Haec actio heredi ceterisque successoribus datur, quoniam rei habet persecutionem. in heredem autem et ceteros in id, quod pervenit ad eos, datur non immerito: licet enim poena ad heredem non transeat, attamen quod turpiter vel scelere quaesitum est, ut est et rescriptum, ad compendium heredis non debet pertinere.

Dig. 4.2.17

Paulus 1 quaest.

Videamus ergo, si heres, ad quem aliquid pervenerit, consumpserit id quod pervenit, an desinat teneri, an vero sufficit semel pervenisse? et, si consumpto eo decesserit, utrum adversus heredem eius omnimodo competit actio, quoniam hereditariam suscepit obligationem, an non sit danda, quoniam ad secundum heredem nihil pervenit? et melius est omnimodo competere in heredem heredis actionem: sufficit enim semel pervenisse ad proximum heredem, et perpetua actio esse coepit: alioquin dicendum erit nec ipsum, qui consumpsit quod ad eum pervenit, teneri.

Dig. 4.2.18

Iulianus 64 Dig.

Si ipsa res, quae ad alium pervenit, interiit, non esse locupletiorem dicemus: sin vero in pecuniam aliamve rem conversa sit, nihil amplius quaerendum est, quis exitus sit, sed omnimodo locuples factus videtur, licet postea deperdat. nam et imperator titus antoninus claudio frontino de pretiis rerum hereditarium rescripsit ob id ipsum peti ab eo hereditatem posse, quia licet res quae in hereditate fuerant apud eum non sint, tamen pretium earum quo, locupletem eum vel saepius mutata specie faciendo, perinde obligat, ac si corpora ipsa in eadem specie mansissent.

Dig. 4.2.19

Gaius 4 ad ed. provinc.

Quod autem in heredem eatenus pollicetur actionem proconsul, quatenus ad eum pervenerit, intellegendum est ad perpetuo dandam actionem pertinere.

Dig. 4.2.20

Ulpianus 11 ad ed.

Quantum autem ad heredem pervenerit, litis contestatae tempore spectabitur, si modo certum sit aliquid pervenisse. idem et si ipsius qui vim intulit sic in corpus patrimonii pervenit aliquid, ut certum sit ad heredem perventurum, id est si debitor liberatus est.

Dig. 4.2.21pr.

Paulus 11 ad ed.

Si mulier contra patronum suum ingrata facta sciens se ingratam, cum de suo statu periclitabatur, aliquid patrono dederit vel promiserit, ne in servitutem redigatur: cessat edictum, quia hunc sibi metum ipsa infert.

Dig. 4.2.21.1

Paulus 11 ad ed.

Quod metus causa gestum erit, nullo tempore praetor ratum habebit.

Dig. 4.2.21.2

Paulus 11 ad ed.

Qui possessionem non sui fundi tradidit, non quanti fundus, sed quanti possessio est, eius quadruplum vel simplum cum fructibus consequetur: aestimatur enim quod restitui oportet, id est quod abest: abest autem nuda possessio cum suis fructibus. quod et pomponius.

Dig. 4.2.21.3

Paulus 11 ad ed.

Si dos metu promissa sit, non puto nasci obligationem, quia est verissimum nec talem promissionem dotis ullam esse.

Dig. 4.2.21.4

Paulus 11 ad ed.

Si metu coactus sim ab emptione locatione discedere, videndum est, an nihil sit acti et antiqua obligatio remaneat, an hoc simile sit acceptilationi, quia nulla ex bonae fidei obligatione possimus niti, cum finita sit dum amittitur: et magis est ut similis species acceptilationis sit, et ideo praetoria actio nascitur.

Dig. 4.2.21.5

Paulus 11 ad ed.

Si metu coactus adii hereditatem, puto me heredem effici, quia quamvis si liberum esset noluissem, tamen coactus volui: sed per praetorem restituendus sum, ut abstinendi mihi potestas tribuatur.

Dig. 4.2.21.6

Paulus 11 ad ed.

Si coactus hereditatem repudiem, duplici via praetor mihi succurrit aut utiles actiones quasi heredi dando aut actionem metus causa praestando, ut quam viam ego elegerim, haec mihi pateat.

Dig. 4.2.22

Paulus 1 sent.

Qui in carcerem quem detrusit, ut aliquid ei extorqueret, quidquid ob hanc causam factum est, nullius momenti est.

Dig. 4.2.23pr.

Ulpianus 4 opin.

Non est verisimile compulsum in urbe inique indebitum solvisse eum, qui claram dignitatem se habere praetendebat, cum potuerit ius publicum invocare et adire aliquem potestate praeditum, qui utique vim eum pati prohibuisset: sed huiusmodi praesumptioni debet apertissimas probationes violentiae opponere.

Dig. 4.2.23.1

Ulpianus 4 opin.

Si iusto metu perterritus cognitionem, ad quam ut vinctus iret, potens adversarius minabatur, id quod habere licebat compulsus vendidit, res suae aequitati per praesidem provinciae restituitur.

Dig. 4.2.23.2

Ulpianus 4 opin.

Si faenerator inciviliter custodiendo athletam et a certaminibus prohibendo cavere compulerit ultra quantitatem debitae pecuniae, his probatis competens iudex rem suae aequitati restitui decernat.

Dig. 4.2.23.3

Ulpianus 4 opin.

Si quis, quod adversario non debebat, delegante eo per vim, apparitione praesidis interveniente, sine notione iudicis, coactus est dare, iudex inciviliter extorta restitui ab eo, qui rei damnum praestiterit, iubeat. quod si debitis satisfecit simplici iussione et non cognitione habita, quamvis non extra ordinem exactionem fieri, sed civiliter oportuit, tamen quae solutioni debitarum ab eo quantitatium profecerunt, revocare incivile est.

Dig. 4.3.0. De dolo malo.

Dig. 4.3.1pr.

Ulpianus 11 ad ed.

Hoc edicto praetor adversus varios et dolosos, qui aliis offuerunt calliditate quadam, subvenit, ne vel illis malitia sua sit lucrosa vel istis simplicitas damnosa.

Dig. 4.3.1.1

Ulpianus 11 ad ed.

Verba autem edicti talia sunt: " quae dolo malo facta esse dicentur, si de his rebus alia actio non erit et iusta causa esse videbitur, iudicium dabo. "

Dig. 4.3.1.2

Ulpianus 11 ad ed.

Dolum malum servius quidem ita definiit machinationem quandam alterius decipiendi causa, cum aliud simulatur et aliud agitur. labeo autem posse et sine simulatione id agi, ut quis circumveniatur: posse et sine dolo malo aliud agi, aliud simulari, sicuti faciunt, qui per eiusmodi dissimulationem deserviant et tuentur vel sua vel aliena: itaque ipse sic definiit dolum malum esse omnem calliditatem fallaciam machinationem ad circumveniendum fallendum decipiendum alterum adhibitam. labeonis definitio vera est.

Dig. 4.3.1.3

Ulpianus 11 ad ed.

Non fuit autem contentus praetor dolum dicere, sed adiecit malum, quoniam veteres dolum etiam bonum dicebant et pro sollertia hoc nomen accipiebant, maxime si adversus hostem latronemve quis machinetur.

Dig. 4.3.1.4

Ulpianus 11 ad ed.

Ait praetor: " si de his rebus alia actio non erit. " merito praetor ita demum hanc actionem pollicetur, si alia non sit, quoniam famosa actio non temere debuit a praetore decerni, si sit civilis vel honoraria, qua possit experiri: usque adeo, ut et pedius libro octavo scribit, etiam si interdictum sit quo quis experiri, vel exceptio qua se tueri possit, cessare hoc edictum. idem et pomponius libro vicensimo octavo: et adicit, et si stipulatione tutus sit quis, eum actionem de dolo habere non posse, ut puta si de dolo stipulatum sit.

Dig. 4.3.1.5

Ulpianus 11 ad ed.

Idem pomponius ait et si actionem in nos dari non oporteat, veluti si stipulatio tam turpis dolo malo facta sit, ut nemo daturus sit ex ea actionem, non debere laborare, ut habeam de dolo malo actionem, cum nemo sit adversus me daturus actionem.

Dig. 4.3.1.6

Ulpianus 11 ad ed.

Idem pomponius refert labeonem existimare, etiam si quis in integrum restitui possit, non debere ei hanc actionem competere: et si alia actio tempore finita sit, hanc competere non debere, sibi imputaturo eo qui agere supersedit: nisi in hoc quoque dolus malus admissus sit ut tempus exiret.

Dig. 4.3.1.7

Ulpianus 11 ad ed.

Si quis cum actionem civilem haberet vel honorariam, in stipulatum deductam acceptilatione vel alio modo sustulerit, de dolo experiri non poterit, quoniam habuit aliam actionem: nisi in amittenda actione dolum malum passus est.

Dig. 4.3.1.8

Ulpianus 11 ad ed.

Non solum autem si adversus eum sit alia actio, adversus quem de dolo quaeritur,

Dig. 4.3.2

Paulus 11 ad ed.

Vel ab eo res servari poterit,

Dig. 4.3.3

Ulpianus 11 ad ed.

Non habet hoc edictum locum, verum etiam si adversus alium.

Dig. 4.3.4

Paulus 11 ad ed.

Sit actio vel si ab alio res mihi servari potest.

Dig. 4.3.5

Ulpianus 11 ad ed.

Ideoque si quis pupillus a titio, tutore auctore colludente, circumscriptus sit, non debere eum de dolo actionem adversus titium habere, cum habeat tutelae actionem, per quam consequatur quod sua intersit. plane si tutor solvendo non sit, dicendum erit de dolo actionem dari ei.

Dig. 4.3.6

Gaius 4 ad ed. provinc.

Nam is nullam videtur actionem habere, cui propter inopiam adversarii inanis actio est.

Dig. 4.3.7pr.

Ulpianus 11 ad ed.

Et eleganter pomponius haec verba " si alia actio non sit" sic excipit, quasi res alio modo ei ad quem ea res pertinet salva esse non poterit. nec videtur huic sententiae adversari, quod iulianus libro quarto scribit, si minor annis viginti quinque consilio servi circumscriptus eum vendidit cum peculio emptorque eum manumisit, dandam in manumissum de dolo actionem (hoc enim sic accipimus carere dolo emptorem, ut ex empto teneri non possit) aut nullam esse venditionem, si in hoc ipso ut venderet circumscriptus est. et quod minor proponitur, non inducit in integrum restitutionem: nam adversus manumissum nulla in integrum restitutio potest locum habere.

Dig. 4.3.7.1

Ulpianus 11 ad ed.

Secundum quae et si poenali actione indemnitati eius consuli possit, dicendum erit cessare de dolo actionem.

Dig. 4.3.7.2

Ulpianus 11 ad ed.

Pomponius autem, etiam si popularis actio sit, cessare de dolo ait actionem.

Dig. 4.3.7.3

Ulpianus 11 ad ed.

Non solum autem si alia actio non sit, sed et si dubitetur an alia sit, putat labeo de dolo dandam actionem et adfert talem speciem. qui servum mihi debebat vel ex venditione vel ex stipulatu, venenum ei dedit et sic eum tradidit: vel fundum, et dum tradit, imposuit ei servitutem vel aedificia diruit, arbores excidit vel extirpavit: ait labeo, sive cavit de dolo sive non, dandam in eum de dolo actionem, quoniam si cavit, dubium est, an competat ex stipulatu actio. sed est verius, si quidem de dolo cautum est, cessare actionem de dolo, quoniam est ex stipulatu actio: si non est cautum, in ex empto quidem actione cessat de dolo actio, quoniam est ex empto, in ex stipulatu de dolo actio necessaria est.

Dig. 4.3.7.4

Ulpianus 11 ad ed.

Si servum usurarium proprietarius occidit, legis aquiliae actioni et ad exhibendum accedit, si possidens proprietarius occidit, ideoque cessat de dolo actio.

Dig. 4.3.7.5

Ulpianus 11 ad ed.

Item si servum legatum heres ante aditam hereditatem occiderit, quoniam priusquam factus sit legatarii, interemptus est, cessat legis aquiliae actio: de dolo autem actio, quocumque tempore eum occiderit, cessat, quia ex testamento actio competit.

Dig. 4.3.7.6

Ulpianus 11 ad ed.

Si quadrupes tua dolo alterius damnum mihi dederit, quaeritur, an de dolo habeam adversus eum actionem. et placuit mihi, quod labeo scribit, si dominus quadrupedis non sit solvendo, dari debere de dolo, quamvis, si noxae deditio sit secuta, non puto dandam nec in id quod excedit.

Dig. 4.3.7.7

Ulpianus 11 ad ed.

Idem labeo quaerit, si compeditum servum meum ut fugeret solveris, an de dolo actio danda sit? et ait quintus apud eum notans: si non misericordia ductus fecisti, furti teneris: si misericordia, in factum actionem dari debere.

Dig. 4.3.7.8

Ulpianus 11 ad ed.

Servus pactionis pro libertate reum domino dedit ea condicione, ut post libertatem transferatur in eum obligatio: manumissus non patitur in se obligationem transferri. pomponius scribit locum habere de dolo actionem. sed si per patronum stabit, quo minus obligatio transferatur, dicendum ait patronum exceptione a reo summovendum. ego moveor: quemadmodum de dolo actio dabitur, cum sit alia actio? nisi forte quis dicat, quoniam exceptione patronus summoveri potest, si agat cum reo, debere dici, quasi nulla actio sit quae exceptione repellitur, de dolo decernendam: atquin patronus tunc summovetur, si nolit expromissorem ipsum manumissum accipere. expromissori plane adversus manumissum dari debebit de dolo: aut si non sit solvendo expromissor, domino dabitur.

Dig. 4.3.7.9

Ulpianus 11 ad ed.

Si dolo malo procurator passus sit vincere adversarium meum, ut absolveretur, an de dolo mihi actio adversus eum qui vicit competat, potest quaeri. et puto non competere, si paratus sit reus transferre iudicium sub exceptione hac " si collusum est": alioquin de dolo actio erit danda, scilicet si cum procuratore agi non possit, quia non esset solvendo.

Dig. 4.3.7.10

Ulpianus 11 ad ed.

Idem pomponius refert caecidianum praetorem non dedisse de dolo actionem adversus eum, qui adfirmaverat idoneum esse eum, cui mutua pecunia dabatur, quod verum est: nam nisi ex magna et evidenti calliditate non debet de dolo actio dari.

Dig. 4.3.8

Gaius 4 ad ed. provinc.

Quod si cum scires eum facultatibus labi, tui lucri gratia adfirmasti mihi idoneum esse, merito adversus te, cum mei decipiendi gratia alium falso laudasti, de dolo iudicium dandum est.

Dig. 4.3.9pr.

Ulpianus 11 ad ed.

Si quis adfirmavit minimam esse hereditatem et ita eam ab herede emit, non est de dolo actio, cum ex vendito sufficiat.

Dig. 4.3.9.1

Ulpianus 11 ad ed.

Si autem mihi persuaseris, ut repudiem hereditatem, quasi minus solvendo sit, vel ut optem servum, quasi melior eo in familia non sit: dico de dolo dandam, si callide hoc feceris.

Dig. 4.3.9.2

Ulpianus 11 ad ed.

Item si tabulae testamenti, ne de inofficioso diceretur, diu suppressae sint, mox mortuo filio prolatae, heredes filii adversus eos qui suppresserunt et lege cornelia et de dolo posse experiri.

Dig. 4.3.9.3

Ulpianus 11 ad ed.

Labeo libro trigensimo septimo posteriorum scribit, si oleum tuum quasi suum defendat titius, et tu hoc oleum deposueris apud seium, ut is hoc venderet et pretium servaret, donec inter vos deiudicetur cuius oleum esset, neque titius velit iudicium accipere: quoniam neque mandati neque sequestraria seium convenire potes nondum impleta condicione depositionis, de dolo adversus titium agendum. sed pomponius libro vicensimo septimo posse cum sequestre praescriptis verbis actione agi, vel si is solvendo non sit, cum titio de dolo. quae distinctio vera esse videtur.

Dig. 4.3.9.4

Ulpianus 11 ad ed.

Et si servum pigneratum noxae mihi dederis per iudicem et sis absolutus: de dolo teneris, si apparuerit esse eum pigneri datum.

Dig. 4.3.9.4a

Ulpianus 11 ad ed.

Haec de dolo actio noxalis erit: ideo labeo quoque libro trigensimo praetoris peregrini scribit de dolo actionem servi nomine interdum de peculio, interdum noxalem dari. nam si ea res est, in quam dolus commissus est, ex qua de peculio daretur actio, et nunc in peculio dandam: sin vero ea sit, ex qua noxalis, hoc quoque noxale futurum.

Dig. 4.3.9.5

Ulpianus 11 ad ed.

Merito causae cognitionem praetor inseruit: neque enim passim haec actio indulgenda est. nam ecce in primis, si modica summa sit,

Dig. 4.3.10

Paulus 11 ad ed.

Id est usque ad duos aureos,

Dig. 4.3.11pr.

Ulpianus 11 ad ed.

Non debet dari.

Dig. 4.3.11.1

Ulpianus 11 ad ed.

Et quibusdam personis non dabitur, ut puta liberis vel libertis adversus parentes patronosve, cum sit famosa. sed nec humili adversus eum qui dignitate excellet debet dari: puta plebeio adversus consularem receptae auctoritatis, vel luxurioso atque prodigo aut alias vili adversus hominem vitae emendatioris. et ita labeo. quid ergo est ? in horum persona dicendum est in factum verbis temperandam actionem dandam, ut bonae fidei mentio fiat,

Dig. 4.3.12

Paulus 11 ad ed.

Ne ex dolo suo lucrentur.

Dig. 4.3.13pr.

Ulpianus 11 ad ed.

Heredibus tamen harum personarum, item adversus heredes de dolo actio erit danda.

Dig. 4.3.13.1

Ulpianus 11 ad ed.

Item in causae cognitione versari labeo ait, ne in pupillum de dolo detur actio, nisi forte nomine hereditario conveniatur. ego arbitror et ex suo dolo conveniendum, si proximus pubertati est, maxime si locupletior ex hoc factus est.

Dig. 4.3.14

Paulus 11 ad ed.

Quid enim, si impetraverit a procuratore petitoris, ut ab eo absolveretur, vel si de tutore mentitus pecuniam accepit, vel alia similia admisit, quae non magnam machinationem exigunt?

Dig. 4.3.15pr.

Ulpianus 11 ad ed.

Sed et ex dolo tutoris, si factus est locupletior, puto in eum dandam actionem, sicut exceptio datur.

Dig. 4.3.15.1

Ulpianus 11 ad ed.

Sed an in municipes de dolo detur actio, dubitatur. et puto ex suo quidem dolo non posse dari: quid enim municipes dolo facere possunt? sed si quid ad eos pervenit ex dolo eorum, qui res eorum administrant, puto dandam. de dolo autem decurionum in ipsos decuriones dabitur de dolo actio.

Dig. 4.3.15.2

Ulpianus 11 ad ed.

Item si quid ex dolo procuratoris ad dominum pervenit, datur in dominum de dolo actio in quantum ad eum pervenit: nam procurator ex dolo suo procul dubio tenetur.

Dig. 4.3.15.3

Ulpianus 11 ad ed.

In hanc actione designari oportet, cuius dolo factum sit, quamvis in metu non sit necesse.

Dig. 4.3.16

Paulus 11 ad ed.

Item exigit praetor, ut comprehendatur, quid dolo malo factum sit: scire enim debet actor, in qua re circumscriptus sit, nec in tanto crimine vagari.

Dig. 4.3.17pr.

Ulpianus 11 ad ed.

Si plures dolo fecerint et unus restituerit, omnes liberantur: quod si unus quanti ea res est praestiterit, puto adhuc ceteros liberari.

Dig. 4.3.17.1

Ulpianus 11 ad ed.

Haec actio in heredem et ceteros successores datur dumtaxat de eo quod ad eos pervenit.

Dig. 4.3.18pr.

Paulus 11 ad ed.

Arbitrio iudicis in hac quoque actione restitutio comprehenditur: et nisi fiat restitutio, sequitur condemnatio quanti ea res est. ideo autem et hic et in metus causa actione certa quantitas non adicitur, ut possit per contumaciam suam tanti reus condemnari, quanti actor in litem iuraverit: sed officio iudicis debet in utraque actione taxatione iusiurandum refrenari.

Dig. 4.3.18.1

Paulus 11 ad ed.

Non tamen semper in hoc iudicio arbitrio iudicis dandum est: quid enim si manifestum sit restitui non posse (veluti si servus dolo malo traditus defunctus sit) ideoque protinus condemnari debeat in id quod intersit actoris?

Dig. 4.3.18.2

Paulus 11 ad ed.

Si dominus proprietatis insulam, cuius usus fructus legatus erat, incenderit, non est de dolo actio, quoniam aliae ex hoc oriuntur actiones.

Dig. 4.3.18.3

Paulus 11 ad ed.

De eo qui sciens commodasset pondera, ut venditor emptori merces adpenderet, trebatius de dolo dabat actionem. atquin si maiora pondera commodavit, id quod amplius mercis datum est repeti condictione potest, si minora, ut reliqua merx detur ex empto agi potest: nisi si ea condictione merx venit, ut illis ponderibus traderetur, cum ille decipiendi causa adfirmasset se aequa pondera habere.

Dig. 4.3.18.4

Paulus 11 ad ed.

Dolo cuius effectum est, ut lis temporibus legitimis transactis pereat: trebatius ait de dolo dandum iudicium, non ut arbitrio iudicis res restituatur, sed ut tantum actor consequatur, quanti eius interfuerit id non esse factum, ne aliter observantibus lex circumscribatur.

Dig. 4.3.18.5

Paulus 11 ad ed.

Si servum, quem tu mihi promiseras, alius occiderit, de dolo malo actionem in eum dandam plerique recte putant, quia tu a me liberatus sis: ideoque legis aquiliae actio tibi denegabitur.

Dig. 4.3.19

Papinianus 37 quaest.

Si fideiussor promissum animal ante moram occiderit, de dolo actionem reddi adversus eum oportere neratius priscus et iulianus responderunt, quoniam debitore liberato per consequentias ipse quoque dimittitur.

Dig. 4.3.20pr.

Paulus 11 ad ed.

Servus tuus cum tibi deberet nec solvendo esset, hortatu tuo pecuniam mutuam a me accepit et tibi solvit: labeo ait de dolo malo actionem in te dandam, quia nec de peculio utilis sit, cum in peculio nihil sit, nec in rem domini versum videatur, cum ob debitum dominus acceperit.

Dig. 4.3.20.1

Paulus 11 ad ed.

Si persuaseris mihi nullam societatem tibi fuisse cum eo, cui heres sum, et ob id iudicio absolvi te passus sim: dandam mihi de dolo actionem iulianus scribit.

Dig. 4.3.21

Ulpianus 11 ad ed.

Quod si deferente me iuraveris et absolutus sis, postea periurium fuerit adprobatum, labeo ait de dolo actionem in eum dandam: pomponius autem per iusiurandum transactum videri, quam sententiam et Marcellus libro octavo digestorum probat: stari enim religioni debet.

Dig. 4.3.22

Paulus 11 ad ed.

Nam sufficit periurii poena.

Dig. 4.3.23

Gaius 4 ad ed. provinc.

Si legatarius, cui supra modum legis falcidiae legatum est, heredi adhuc ignoranti substantiam hereditatis ultro iurando vel quadam alia fallacia persuaserit, tamquam satis abundeque ad solida legata solvenda sufficiat hereditas, atque eo modo solida legata fuerit consecutus: datur de dolo actio.

Dig. 4.3.24

Ulpianus 11 ad ed.

Si dolo acciderit eius, qui verba faciebat pro eo, qui de libertate contendebat, quo minus praesente adversario secundum libertatem pronuntietur, puto statim de dolo dandam in eum actionem, quia semel pro libertate dictam sententiam retractari non oportet.

Dig. 4.3.25

Paulus 11 ad ed.

Cum a te pecuniam peterem eoque nomine iudicium acceptum est, falso mihi persuasisti, tamquam eam pecuniam servo meo aut procuratori solvisses, eoque modo consecutus es, ut consentiente me absolveris: quaerentibus nobis, an in te doli iudicium dari debeat, placuit de dolo actionem non dari, quia alio modo mihi succurri potest: nam ex integro agere possum et si obiciatur exceptio rei iudicatae, replicatione iure uti potero.

Dig. 4.3.26

Gaius 4 ad ed. provinc.

In heredem eatenus daturum se eam actionem proconsul pollicetur, quatenus ad eum pervenerit, id est quatenus ex ea re locupletior ad eum hereditas venerit.

Dig. 4.3.27

Paulus 11 ad ed.

Dolove malo eius factum est, quo minus pervenerit.

Dig. 4.3.28

Gaius 4 ad ed. provinc.

Itaque si accepto lata sit tibi pecunia, omnimodo cum herede tuo agetur. at si res tibi tradita sit, si quidem mortuo te ea res extitit, agetur cum herede tuo, si minus, non agetur. sed utique in heredem perpetuo dabitur, quia non debet lucrari ex alieno damno. cui conveniens est, ut et in ipso, qui dolo commiserit, in id quod locupletior esset perpetuo danda sit in factum actio.

Dig. 4.3.29

Paulus 11 ad ed.

Sabinus putat calculi ratione potius quam maleficii heredem conveniri, denique famosum non fieri: ideoque in perpetuum teneri oportere.

Dig. 4.3.30

Ulpianus 11 ad ed.

Neque causae cognitio in heredis persona erit necessaria.

Dig. 4.3.31

Proculus 2 epist.

Cum quis persuaserit familiae meae, ut de possessione decedat, possessio quidem non amittitur, sed de dolo malo iudicium in eum competit, si quid damni mihi accesserit.

Dig. 4.3.32

Scaevola 2 Dig.

Filius legatum sibi servum per praeceptionem rogatus manumittere post certum tempus, posteaquam rationes ipsi et coheredibus fratribus reddidisset, ante diem et ante redditas rationes ad libertatem vindicta manumittendo perduxerat: quaesitum est, an ex fideicommisso fratribus tenetur, ut rationes eorum pro portionibus redderet. respondi, cum liberum fecisset, ex causa quidem fideicommissi non teneri: verum si ideo properasset manumittere, ne rationes fratribus redderet, posse de dolo actionem in eum exercere.

Dig. 4.3.33

Ulpianus 4 opin.

Rei, quam venalem possessor habebat, litem proprietatis adversarius movere coepit et posteaquam oportunitatem emptoris, cui venundari potuit, peremit, destitit: placuit possessori hoc nomine actionem in factum cum sua indemnitate competere.

Dig. 4.3.34

Ulpianus 42 ad sab.

Si cum mihi permisisses saxum ex fundo tuo eicere vel cretam vel harenam fodere, et sumptum in hanc rem fecerim, et non patiaris me tollere: nulla alia quam de dolo malo actio locum habebit.

Dig. 4.3.35

Ulpianus 30 ad ed.

Si quis tabulas testamenti apud se depositas post mortem testatoris delevit vel alio modo corruperit, heres scriptus habebit adversus eum actionem de dolo. sed et his, quibus legata data sunt, danda erit de dolo actio.

Dig. 4.3.36

Marcianus 2 reg.

Si duo dolo malo fecerint, invicem de dolo non agent.

Dig. 4.3.37

Ulpianus 44 ad sab.

Quod venditor ut commendet dicit, sic habendum, quasi neque dictum neque promissum est. si vero decipiendi emptoris causa dictum est, aeque sic habendum est, ut non nascatur adversus dictum promissumve actio, sed de dolo actio.

Dig. 4.3.38

Ulpianus 5 opin.

Quidam debitor epistulam quasi a titio mitti creditori suo effecit, ut ipse liberetur: hac epistula creditor deceptus aquiliana stipulatione et acceptilatione liberavit debitorem: postea epistula falsa vel inani reperta creditor maior quidem annis viginti quinque de dolo habebit actionem, minor autem in integrum restituetur.

Dig. 4.3.39

Gaius 27 ad ed. provinc.

Si te titio optuleris de ea re quam non possidebas in hoc ut alius usucapiat, et iudicatum solvi satisdederis: quamvis absolutus sis, de dolo malo tamen teneberis: et ita sabino placet.

Dig. 4.3.40

Furius 1 ad ed.

Is, qui decepit aliquem, ut hereditatem non idoneam adiret, de dolo tenebitur, nisi fortasse ipse creditor erat et solus erat: tunc enim sufficit contra eum doli mali exceptio.

Dig. 4.4.0. De minoribus viginti quinque annis.

Dig. 4.4.1pr.

Ulpianus 11 ad ed.

Hoc edictum praetor naturalem aequitatem secutus proposuit, quo tutelam minorum suscepit. nam cum inter omnes constet fragile esse et infirmum huiusmodi aetatium consilium et multis captionibus suppositum, multorum insidiis expositum: auxilium eis praetor hoc edicto pollicitus est et adversus captiones opitulationem.

Dig. 4.4.1.1

Ulpianus 11 ad ed.

Praetor edicit: " quod cum minore quam viginti quinque annis natu gestum esse dicetur, uti quaeque res erit, animadvertam".

Dig. 4.4.1.2

Ulpianus 11 ad ed.

Apparet minoribus annis viginti quinque eum opem polliceri: nam post hoc tempus compleri virilem vigorem constat.

Dig. 4.4.1.3

Ulpianus 11 ad ed.

Et ideo hodie in hanc usque aetatem adulescentes curatorum auxilio reguntur, nec ante rei suae administratio eis committi debebit, quamvis bene rem suam gerentibus.

Dig. 4.4.2

Ulpianus 19 ad l. iul. et pap.

Nec per liberos suos rem suam maturius a curatoribus recipiat. quod enim legibus cavetur, ut singuli anni per singulos liberos remittantur, ad honores pertinere divus severus ait, non ad rem suam recipiendam.

Dig. 4.4.3pr.

Ulpianus 11 ad ed.

Denique divus severus et imperator noster huiusmodi consulum vel praesidum decreta quasi ambitiosa esse interpretati sunt, ipsi autem perraro minoribus rerum suarum administrationem extra ordinem indulserunt: et eodem iure utimur.

Dig. 4.4.3.1

Ulpianus 11 ad ed.

Si quis cum minore contraxerit et contractus inciderit in tempus quo maior efficitur: utrum initium spectamus an finem? et placet, ut est et constitutum, si quis maior factus comprobaverit, quod minor gesserat, restitutionem cessare. unde illud non ineleganter celsus epistularum libro undecimo et digestorum secundo tractat, ex facto a flavio respecto praetore consultus. minor annis viginti quinque, annos forte viginti quattuor agens, iudicium tutelae heredi tutoris dictaverat: mox factum ut (non finito iudicio iam eo maiore effecto viginti quinque annis) tutoris heres absolutus proponeretur: in integrum restitutio desiderabatur. celsus igitur respecto suasit non facile hunc quondam minorem in integrum restitui, sed si ei probaretur calliditate adversarii id actum, ut maiore eo facto liberaretur: neque enim extremo, inquit, iudicii die videtur solum deceptus hic minor, sed totum hoc structum, ut maiore eo facto liberaretur. idem tamen confitetur, si levior sit suspicio adversarii quasi dolose versati, non debere hunc in integrum restitui.

Dig. 4.4.3.2

Ulpianus 11 ad ed.

Scio etiam illud aliquando incidisse. minor viginti quinque annis miscuerat se paternae hereditati maiorque factus exegerat aliquid a debitoribus paternis, mox desiderabat restitui in integrum, quo magis abstineret paterna hereditate: contradicebatur ei, quasi maior factus comprobasset, quod minori sibi placuit: putavimus tamen restituendum in integrum initio inspecto. idem puto, et si alienam adiit hereditatem.

Dig. 4.4.3.3

Ulpianus 11 ad ed.

Minorem autem viginti quinque annis natu videndum, an etiam die natalis sui adhuc dicimus ante horam qua natus est, ut si captus sit restituatur? et cum nondum compleverit, ita erit dicendum, ut a momento in momentum tempus spectetur. proinde et si bissexto natus est, sive priore sive posteriore die celsus scripsit nihil referre: nam id biduum pro uno die habetur et posterior dies kalendarum intercalatur.

Dig. 4.4.3.4

Ulpianus 11 ad ed.

Sed utrum solis patribus familiarum an etiam filiis familiarum succurri debeat, videndum. movet dubitationem, quod, si quis dixerit etiam filiis familiarum in re peculiari subveniendum, efficiet, ut per eos etiam maioribus subveniatur, id est patribus eorum: quod nequaquam fuit praetori propositum: praetor enim minoribus auxilium promisit, non maioribus. ego autem verissimam arbitror sententiam existimantium, filium familias minorem annis in integrum restitui posse ex his solis causis quae ipsius intersint, puta si sit obligatus. proinde si iussu patris obligatus sit, pater utique poterit in solidum conveniri: filius autem cum et ipse possit vel in potestate manens conveniri, vel etiam emancipatus vel exheredatus in id quod facere potest, et quidem in potestate manens etiam invito patre ex condemnatione conveniri: auxilium impetrare debebit, si ipse conveniatur. sed an hoc auxilium patri quoque prosit, ut solet interdum fideiussori eius prodesse, videamus: et non puto profuturum. si igitur filius conveniatur, postulet auxilium: si patrem conveniat creditor, auxilium cessat: excepta mutui datione: in hanc enim si iussu patris mutuam pecuniam accepit, non adiuvatur. proinde et si sine iussu patris contraxit et captus est, si quidem pater de peculio conveniatur, filius non erit restituendus: si filius conveniatur, poterit restitui. nec eo movemur, quasi intersit filii peculium habere: magis enim patris quam filii interest, licet aliquo casu ad filium peculium spectet: ut puta si patris eius bona a fisco propter debitum occupata sunt: nam peculium ei ex constitutione claudii separatur.

Dig. 4.4.3.5

Ulpianus 11 ad ed.

Ergo etiam filiam familias in dote captam, dum patri consentit stipulanti dotem non statim quam dedit, vel adhibenti aliquem qui dotem stipularetur, puto restituendam, quoniam dos ipsius filiae proprium patrimonium est.

Dig. 4.4.3.6

Ulpianus 11 ad ed.

Si quis minor viginti quinque annis adrogandum se dedit et in ipsa adrogatione se circumventum dicat (finge enim a praedone eum hominem locupletem adrogatum): dico debere eum audiri in integrum se restituentem.

Dig. 4.4.3.7

Ulpianus 11 ad ed.

Si quid minori fuerit filio familias legatum post mortem patris vel fideicommissum relictum et captus est, forte dum consentit patri paciscenti, ne legatum peteretur: potest dici in integrum restituendum, quoniam ipsius interest propter spem legati, quod ei post mortem patris competit. sed et si ei legatum sit aliquid quod personae eius cohaeret, puta ius militiae, dicendum est posse eum restitui in integrum: interfuit enim eius non capi, cum hanc patri non adquireret, sed ipse haberet.

Dig. 4.4.3.8

Ulpianus 11 ad ed.

Et si heres sit institutus, si a patre in diebus centum sit emancipatus: mox patrem debuerit certiorare nec fecerit cum posset: qui eum emancipasset, si cognovisset: dicendum erit posse eum restitui in integrum parato patre eum emancipare.

Dig. 4.4.3.9

Ulpianus 11 ad ed.

Pomponius adicit ex his causis, ex quibus in re peculiari filii familias restituuntur, posse et patrem quasi heredem nomine filii post obitum eius impetrare cognitionem.

Dig. 4.4.3.10

Ulpianus 11 ad ed.

Si autem filius familias sit, qui castrense peculium habeat, procul dubio ex his, quae ad castrense peculium spectant, in integrum restituendus erit quasi in proprio patrimonio captus.

Dig. 4.4.3.11

Ulpianus 11 ad ed.

Servus autem minor annis viginti quinque nullo modo restitui poterit, quoniam domini persona spectatur, qui sibi debebit imputare, cur minori rem commisit. quare et si per impuberem contraxerit, idem erit dicendum, ut et Marcellus libro secundo digestorum scribit. et si forte libera peculii administratio minori servo sit concessa, maior dominus ex hac causa non restituetur.

Dig. 4.4.4

Africanus 7 quaest.

Etenim quodcumque servus ita gerit, voluntate domini gerere intellegendus est. et magis hoc apparebit, si aut de institoria actione quaeratur, aut si proponatur maiorem annis viginti quinque negotium aliquod gerendum minori mandasse et illum in ea re deceptum esse.

Dig. 4.4.5

Ulpianus 11 ad ed.

Si tamen is servus fuit, cui fideicommissaria libertas debebatur praesens, et fuit captus, cum re mora ei fit, poterit dici praetorem ei succurrere oportere.

Dig. 4.4.6

Ulpianus 10 ad ed.

Minoribus viginti quinque annis subvenitur per in integrum restitutionem non solum, cum de bonis eorum aliquid minuitur, sed etiam cum intersit ipsorum litibus et sumptibus non vexari.

Dig. 4.4.7pr.

Ulpianus 11 ad ed.

Ait praetor: " gestum esse dicetur". gestum sic accipimus qualiterqualiter, sive contractus sit, sive quid aliud contigit.

Dig. 4.4.7.1

Ulpianus 11 ad ed.

Proinde si emit aliquid, si vendidit, si societatem coit, si mutuam pecuniam accepit, et captus est, ei succurretur.

Dig. 4.4.7.2

Ulpianus 11 ad ed.

Sed et si ei pecunia a debitore paterno soluta sit vel proprio et hanc perdidit, dicendum est ei subveniri, quasi gestum sit cum eo. et ideo si minor conveniat debitorem, adhibere debet curatores, ut ei solvatur pecunia: ceterum non ei compelletur solvere. sed hodie solet pecunia in aedem deponi, ut pomponius libro vicensimo octavo scribit, ne vel debitor ultra usuris oneretur vel creditor minor perdat pecuniam, aut curatoribus solvi, si sunt. permittitur etiam ex constitutione principum debitori compellere adulescentem ad petendos sibi curatores. quid tamen: si praetor decernat solvendam pecuniam minori sine curatoribus et solverit, an possit esse securus? dubitari potest: puto autem, si allegans minorem esse compulsus sit ad solutionem, nihil ei imputandum: nisi forte quasi adversus iniuriam appellandum quis ei putet. sed credo praetorem hunc minorem in integrum restitui volentem auditurum non esse.

Dig. 4.4.7.3

Ulpianus 11 ad ed.

Non solum autem in his ei succurritur, sed etiam in interventionibus, ut puta si fideiussorio nomine se vel rem suam obligavit. pomponius autem videtur adquiescere distinguentibus: arbiter ad fideiussores probandos constitutus eum probavit an vero ipse adversarius? mihi autem semper succurrendum videtur, si minor sit et se circumventum doceat.

Dig. 4.4.7.4

Ulpianus 11 ad ed.

Sed et in iudiciis subvenitur, sive dum agit sive dum convenitur captus sit.

Dig. 4.4.7.5

Ulpianus 11 ad ed.

Sed et si hereditatem minor adiit minus lucrosam, succurritur ei ut se possit abstinere: nam et hic captus est. idem et in bonorum possessione vel alia successione. non solum autem filius, qui se miscuit paternae hereditati, sed et si aliquis sit ex necessariis minor annis, simili modo restitutionem impetrabit, veluti si servus sit cum libertate institutus: dicendum enim erit, si se miscuit, posse ei subveniri aetatis beneficio, ut habeat bonorum suorum separationem. plane qui post aditam hereditatem restituitur, debet praestare, si quid ex hereditate in rem eius pervenit nec periit per aetatis inbecillitatem.

Dig. 4.4.7.6

Ulpianus 11 ad ed.

Hodie certo iure utimur, ut et in lucro minoribus succurratur.

Dig. 4.4.7.7

Ulpianus 11 ad ed.

Pomponius quoque libro vicensimo octavo scribit et si sine dolo cuiusquam legatum repudiaverit, vel in optionis legato captus sit dum elegit deteriorem, vel si duas res promiserit illam aut illam et pretiosiorem dederit, debere subveniri: et subveniendum est.

Dig. 4.4.7.8

Ulpianus 11 ad ed.

Quaesitum est ex eo, quod in lucro quoque minoribus subveniendum dicitur, si res eius venierit et existat qui plus liceatur, an in integrum propter lucrum restituendus sit? et cottidie praetores eos restituunt, ut rursum admittatur licitatio. idem faciunt et in his rebus, quae servari eis debent. quod circumspecte erit faciendum: ceterum nemo accedet ad emptionem rerum pupillarium, nec si bona fide distrahantur. et destricte probandum est in rebus, quae fortuitis casibus subiectae sunt, non esse minori adversus emptorem succurrendum, nisi aut sordes aut evidens gratia tutorum sive curatorum doceatur.

Dig. 4.4.7.9

Ulpianus 11 ad ed.

Restitutus autem cum se hereditati misceat vel eam adeat quam repudiavit, rursus restitui poterit, ut se abstineat: et hoc et rescriptum et responsum est.

Dig. 4.4.7.10

Ulpianus 11 ad ed.

Sed quod papinianus libro secundo responsorum ait minori substitutum servum necessarium repudiante quidem hereditatem minore necessarium fore, et si fuerit restitutus minor, liberum nihilo minus remanere: si autem prius minor adiit hereditatem, mox abstentus est, substitutum pupillo servum cum libertate non posse heredem existere neque liberum esse: non per omnia verum est. nam si non est solvendo hereditas, abstinente se herede et divus pius rescripsit et imperator noster, et quidem in extraneo pupillo locum fore necessario substituto. et quod ait liberum manere, tale est, quasi non et heres maneat, cum pupillus impetrat restitutionem posteaquam abstentus est: cum enim pupillus heres non fiat, sed utiles actiones habeat, sine dubio heres manebit, qui semel extitit.

Dig. 4.4.7.11

Ulpianus 11 ad ed.

Item si non provocavit intra diem, subvenitur ut provocet: finge enim hoc desiderare.

Dig. 4.4.7.12

Ulpianus 11 ad ed.

Item et in eremodiciis ei subvenitur. constat autem omnis aetatis hominibus restaurationem eremodicii praestari, si se doceant ex iusta causa afuisse.

Dig. 4.4.8

Hermogenianus 1 iuris epit.

Minor etiam si quasi contumax condemnatus sit, in integrum restitutionis auxilium implorabit.

Dig. 4.4.9pr.

Ulpianus 11 ad ed.

Si ex causa iudicati pignora minoris capta sint et distracta, mox restitutus sit adversus sententiam praesidis vel procuratoris caesaris, videndum, an ea revocari debeant, quae distracta sunt: nam illud certum est pecuniam ex causa iudicati solutam ei restituendam. sed interest ipsius corpora potius habere: et puto interdum permittendum, id est si grande damnum sit minoris.

Dig. 4.4.9.1

Ulpianus 11 ad ed.

In dotis quoque modo mulieri subvenitur, si ultra vires patrimonii vel totum patrimonium circumscripta in dotem dedit.

Dig. 4.4.9.2

Ulpianus 11 ad ed.

Nunc videndum minoribus utrum in contractibus captis dumtaxat subveniatur, an etiam delinquentibus: ut puta dolo aliquid minor fecit in re deposita vel commodata vel alias in contractu, an ei subveniatur, si nihil ad eum pervenit? et placet in delictis minoribus non subveniri. nec hic itaque subvenietur. nam et si furtum fecit vel damnum iniuria dedit, non ei subvenietur. sed si, cum ex damno dato confiteri possit ne dupli teneatur, maluit negare: in hoc solum restituendus sit, ut pro confesso habeatur. ergo et si potuit pro fure damnum decidere magis quam actionem dupli vel quadrupli pati, ei subvenietur.

Dig. 4.4.9.3

Ulpianus 11 ad ed.

Si mulier, cum culpa divertisset, velit sibi subveniri, vel si maritus, puto restitutionem non habendam: est enim delictum non modicum. nam et si adulterium minor commisit, ei non subvenitur.

Dig. 4.4.9.4

Ulpianus 11 ad ed.

Papinianus ait, si maior annis viginti minor viginti quinque se in servitutem venire patiatur, id est si pretium participatus est, non solere restitui: sed hoc merito, quoniam res nec capit restitutionem cum statum mutat.

Dig. 4.4.9.5

Ulpianus 11 ad ed.

Si in commissum incidisse vectigalis dicatur, erit in integrum restitutio. quod sic erit accipiendum, si non dolus ipsorum interveniat: ceterum cessabit restitutio.

Dig. 4.4.9.6

Ulpianus 11 ad ed.

Adversus libertatem quoque minori a praetore subveniri impossibile est,

Dig. 4.4.10

Paulus 11 ad ed.

Nisi ex magna causa hoc a principe fuerit consecutus.

Dig. 4.4.11pr.

Ulpianus 11 ad ed.

Verum vel de dolo vel utilis actio erit in id quod minoris interfuit non manumitti: proinde quidquid hic haberet, si non manumisisset, id ei nunc praestabitur. sed et nomine earum rerum, quas dominicas servus manumissus supprimebat, competunt adversus eum actiones ad exhibendum et furti et condictio, videlicet quoniam et manumissus eas contrectabat. ceterum ex delicto in servitutem facto domino adversus eum post libertatem actio non competit: et hoc rescripto divi severi continetur.

Dig. 4.4.11.1

Ulpianus 11 ad ed.

Quid si minor viginti quinque annis, maior viginti hac lege vendiderit, ut manumittatur? ideo proposui maiorem viginti, quoniam et scaevola scribit libro quarto decimo quaestionum et magis est, ut sententia constitutionis divi marci ad aufidium victorinum hunc, id est minorem viginti annis non complectatur. quare videndum, an maiori viginti annis subveniatur: et si quidem ante desideret, quam libertas competat, audietur: sin vero postea, non possit. item quaeri potest, si is qui emit hac lege minor sit, an restitui possit. et si quidem nondum libertas competit, erit dicendum posse ei subveniri: sin vero posteaquam dies venit, voluntas maioris venditoris libertatem imponit.

Dig. 4.4.11.2

Ulpianus 11 ad ed.

Ex facto quaesitum est: adulescentes quidam acceperant curatorem salvianum quendam nomine: hic cum curam administrasset, beneficio principis urbicam procurationem erat adeptus et apud praetorem se a cura adulescentium excusaverat absentibus eis: adulescentes adierant praetorem desiderantes in integrum adversus eum restitui, quod esset contra constitutiones excusatus. cum enim susceptam tutelam non alii soleant deponere, quam qui trans mare rei publicae causa absunt vel hi qui circa principem sunt occupati, ut in consiliarii menandri arrii persona est indultum, meruisset autem salvianus excusationem, adulescentes quasi capti in integrum restitui a praetore desideraverant. aetrius severus quia dubitabat, ad imperatorem severum rettulit: ad quam consultationem successori eius venidio quieto rescripsit nullas partes esse praetoris: neque enim contractum proponi cum minore annis viginti quinque: sed principes intervenire et reducere hunc ad administrationem, qui perperam esset a praetore excusatus.

Dig. 4.4.11.3

Ulpianus 11 ad ed.

Sciendum est autem non passim minoribus subveniri, sed causa cognita, si capti esse proponantur.

Dig. 4.4.11.4

Ulpianus 11 ad ed.

Item non restituetur, qui sobrie rem suam administrans occasione damni non inconsulte accidentis, sed fato velit restitui: nec enim eventus damni restitutionem indulget, sed inconsulta facilitas. et ita pomponius libro vicensimo octavo scripsit. unde Marcellus apud iulianum notat, si minor sibi servum necessarium comparaverit, mox decesserit, non debere eum restitui: neque enim captus est emendo sibi rem pernecessariam, licet mortalem.

Dig. 4.4.11.5

Ulpianus 11 ad ed.

Si locupleti heres extitit et subito hereditas lapsa sit (puta praedia fuerunt quae chasmate perierunt, insulae exustae sunt, servi fugerunt aut decesserunt): iulianus quidem libro quadragensimo sexto sic loquitur, quasi possit minor in integrum restitui. Marcellus autem apud iulianum notat cessare in integrum restitutionem: neque enim aetatis lubrico captus est adeundo locupletem hereditatem, et quod fato contingit, cuivis patri familias quamvis diligentissimo possit contingere. sed haec res adferre potest restitutionem minori, si adiit hereditatem, in qua res erant multae mortales vel praedia urbana, aes autem alienum grave, quod non prospexit posse evenire, ut demoriantur mancipia, praedia ruant, vel quod non cito distraxerit haec, quae multis casibus obnoxia sunt.

Dig. 4.4.11.6

Ulpianus 11 ad ed.

Item quaeritur, si minor adversus minorem restitui desiderat, an sit audiendus. et pomponius simpliciter scribit non restituendum. puto autem inspiciendum a praetore, quis captus sit: proinde si ambo capti sunt, verbi gratia minor minori pecuniam dedit et ille perdidit, melior est causa secundum pomponium eius, qui accepit et vel dilapidavit vel perdidit.

Dig. 4.4.11.7

Ulpianus 11 ad ed.

Plane si minor annis cum filio familias maiore contraxerit, et iulianus libro quarto digestorum et Marcellus libro secundo digestorum scribit posse in integrum restitui, ut magis aetatis ratio quam senatus consulti habeatur.

Dig. 4.4.12

Gaius 4 ad ed. provinc.

Si apud minorem mulier pro alio intercesserit, non est ei actio in mulierem danda, sed perinde atque ceteri per exceptionem summoveri debet: scilicet quia communi iure in priorem debitorem ei actio restituitur. haec si solvendo sit prior debitor: alioquin mulier non utetur senatus consulti auxilio.

Dig. 4.4.13pr.

Ulpianus 11 ad ed.

In causae cognitione versabitur, utrum soli ei succurrendum sit, an etiam his qui pro eo obligati sunt, ut puta fideiussoribus. itaque si cum scirem minorem et ei fidem non haberem, tu fideiusseris pro eo, non est aequum fideiussori in necem meam subveniri, sed potius ipsi deneganda erit mandati actio. in summa perpendendum erit praetori, cui potius subveniat, utrum creditori an fideiussori: nam minor captus neutri tenebitur. facilius in mandatore dicendum erit non debere ei subvenire: hic enim velut adfirmator fuit et suasor, ut cum minore contraheretur. unde tractari potest, minor in integrum restitutionem utrum adversus creditorem an et adversus fideiussorem implorare debeat. et puto tutius adversus utrumque: causa enim cognita et praesentibus adversariis vel si per contumaciam desint in integrum restitutiones perpendendae sunt.

Dig. 4.4.13.1

Ulpianus 11 ad ed.

Interdum autem restitutio et in rem datur minori, id est adversus rei eius possessorem, licet cum eo non sit contractum. ut puta rem a minore emisti et alii vendidisti: potest desiderare interdum adversus possessorem restitui, ne rem suam perdat vel re sua careat, et hoc vel cognitione praetoria vel rescissa alienatione dato in rem iudicio. pomponius quoque libro vicensimo octavo scribit labeonem existimasse, si minor viginti quinque annis fundum vendidit et tradidit, si emptor rursus eum alienavit, si quidem emptor sequens scit rem ita gestam, restitutionem adversus eum faciendam: si ignoravit et prior emptor solvendo esset, non esse faciendam: sin vero non esset solvendo, aequius esse minori succurri etiam adversus ignorantem, quamvis bona fide emptor est.

Dig. 4.4.14

Paulus 11 ad ed.

Plane quamdiu is qui a minore rem accepit aut heres eius idoneus sit, nihil novi constituendum est in eum, qui rem bona fide emerit, idque et pomponius scribit.

Dig. 4.4.15

Gaius 4 ad ed. provinc.

Sed ubi restitutio datur, posterior emptor reverti ad auctorem suum poterit: per plures quoque personas si emptio ambulaverit, idem iuris erit.

Dig. 4.4.16pr.

Ulpianus 11 ad ed.

In causae cognitione etiam hoc versabitur, num forte alia actio possit competere citra in integrum restitutionem. nam si communi auxilio et mero iure munitus sit, non debet ei tribui extraordinarium auxilium: ut puta cum pupillo contractum est sine tutoris auctoritate nec locupletior factus est.

Dig. 4.4.16.1

Ulpianus 11 ad ed.

Item relatum est apud labeonem, si minor circumscriptus societatem coierit vel etiam donationis causa, nullam esse societatem nec inter maiores quidem et ideo cessare partes praetoris: idem et ofilius respondit: satis enim ipso iure munitus est.

Dig. 4.4.16.2

Ulpianus 11 ad ed.

Pomponius quoque refert libro vicensimo octavo, cum quidam heres rogatus esset fratris filiae complures res dare ea condicione, ut, si sine liberis decessisset, restitueret eas heredi et haec defuncto herede heredi eius cavisset se restituturam, aristonem putasse in integrum restituendam. sed et illud pomponius adicit, quod potuit incerti condici haec cautio etiam a maiore: non enim ipso iure, sed per condictionem munitus est.

Dig. 4.4.16.3

Ulpianus 11 ad ed.

Et generaliter probandum est, ubi contractus non valet, pro certo praetorem se non debere interponere.

Dig. 4.4.16.4

Ulpianus 11 ad ed.

Idem pomponius ait in pretio emptionis et venditionis naturaliter licere contrahentibus se circumvenire.

Dig. 4.4.16.5

Ulpianus 11 ad ed.

Nunc videndum, qui in integrum restituere possunt. et tam praefectus urbi quam alii magistratus pro iurisdictione sua restituere in integrum possunt, tam in aliis causis quam contra sententiam suam.

Dig. 4.4.17

Hermogenianus 1 iuris epit.

Praefecti etiam praetorio ex sua sententia in integrum possunt restituere, quamvis appellari ab his non possit. haec idcirco tam varie. quia appellatio quidem iniquitatis sententiae querellam, in integrum vero restitutio erroris proprii veniae petitionem vel adversarii circumventionis allegationem continet.

Dig. 4.4.18pr.

Ulpianus 11 ad ed.

Minor autem magistratus contra sententiam maiorum non restituet.

Dig. 4.4.18.1

Ulpianus 11 ad ed.

Si autem princeps sententiam dixit, perraro solet permittere restitutionem et induci in auditorium suum eum, qui per infirmitatem aetatis captum se dicat, dum ea, quae pro causa sunt, dicta non allegat vel ab advocatis proditum queratur. denique glabrionem acilium divus severus et imperator antoninus non audierunt incolorate restitui desiderantem adversus fratrem post speciem in auditorio eorum finitam.

Dig. 4.4.18.2

Ulpianus 11 ad ed.

Sed et percennio severo contra res bis iudicatas in integrum restitui divus severus et imperator antoninus permiserunt in auditorio suo examinari.

Dig. 4.4.18.3

Ulpianus 11 ad ed.

Idem imperator licinnio frontoni rescripsit insolitum esse post sententiam vice sua ex appellatione dictam alium in integrum restitutionem tribuere nisi solum principem.

Dig. 4.4.18.4

Ulpianus 11 ad ed.

Sed et si ab imperatore iudex datus cognoscat, restitutio ab alio nisi a principe, qui iudicem destinavit, non fiet.

Dig. 4.4.18.5

Ulpianus 11 ad ed.

Non solum autem minoribus, verum successoribus quoque minorum datur in integrum restitutio, etsi sint ipsi maiores.

Dig. 4.4.19

Ulpianus 13 ad ed.

Interdum tamen successori plus quam annum dabimus, ut est edicto expressum, si forte aetas ipsius subveniat: nam post annum vicensimum quintum habebit legitimum tempus. hoc enim ipso deceptus videtur, quod, cum posset restitui intra tempus statutum ex persona defuncti, hoc non fecit. plane si defunctus ad in integrum restitutionem modicum tempus ex anno utili habuit, huic heredi minori post annum vicensimum quintum completum non totum statutum tempus dabimus ad in integrum restitutionem, sed id dumtaxat tempus, quod habuit is cui heres extitit.

Dig. 4.4.20pr.

Ulpianus 11 ad ed.

Papinianus libro secundo responsorum ait exuli reverso non debere prorogari tempus in integrum restitutionis statutum, quia afuit, cum potuerit adire praetorem per procuratorem, nec dixit, vel praesidem ubi erat. sed quod idem dicit et indignum esse propter irrogatam poenam, non recte: quid enim commune habet delictum cum venia aetatis?

Dig. 4.4.20.1

Ulpianus 11 ad ed.

Si quis tamen maior viginti quinque annis intra tempus restitutionis statutum contestatus postea destiterit, nihil ei proficit ad in integrum restitutionem contestatio, ut est saepissime rescriptum.

Dig. 4.4.21

Ulpianus 10 ad ed.

Destitisse autem is videtur non qui distulit, sed qui liti renuntiavit in totum.

Dig. 4.4.22

Ulpianus 11 ad ed.

In integrum vero restitutione postulata adversus aditionem a minore factam, si quid legatis expensum est, vel pretia eorum qui ad libertatem aditione eius pervenerunt, a minore refundenda non sunt. quemadmodum per contrarium cum minor restituitur ad adeundam hereditatem, quae antea gesta erant per curatorem bonorum decreto praetoris ad distrahenda bona secundum iuris formam constitutum, rata esse habenda calpurnio flacco severus et antoninus rescripserunt.

Dig. 4.4.23

Paulus 11 ad ed.

Cum mandatu patris filius familias res administraret, non habet beneficium restitutionis: nam et si alius ei mandasset, non succurreretur, cum eo modo maiori potius consuleretur, cuius damno res sit cessura. sed si eventu damnum minor passurus sit, quia quod praestiterit servare ab eo cuius negotia gessit non potest, quia is non erit solvendo, sine dubio praetor interveniet. si autem ipse dominus minor sit, procurator vero maioris aetatis, non potest facile dominus audiri, nisi si mandatu eius gestum erit nec a procuratore servari res possit. ergo et si procuratorio nomine minor circumscriptus sit, imputari debet hoc domino, qui tali commisit sua negotia. idque et Marcello placet.

Dig. 4.4.24pr.

Paulus 1 sent.

Quod si minor sua sponte negotiis maioris intervenerit, restituendus erit, ne maiori damnum accidat. quod si hoc facere recusaverit, tunc si conventus fuerit negotiorum gestorum, adversus hanc actionem non restituitur: sed compellendus est sic ei cedere auxilio in integrum restitutionis, ut procuratorem eum in rem suam faciat, ut possit per hunc modum damnum sibi propter minorem contingens resarcire.

Dig. 4.4.24.1

Paulus 1 sent.

Non semper autem ea, quae cum minoribus geruntur, rescindenda sunt, sed ad bonum et aequum redigenda sunt. ne magno incommodo huius aetatis homines adficiantur nemine cum his contrahente et quodammodo commercio eis interdicetur. itaque nisi aut manifesta circumscriptio sit aut tam neglegenter in ea causa versati sunt, praetor interponere se non debet.

Dig. 4.4.24.2

Paulus 1 sent.

Scaevola noster aiebat, si quis iuvenili levitate ductus omiserit vel repudiaverit hereditatem vel bonorum possessionem, si quidem omnia in integro sint, omnimodo audiendus est: si vero iam distracta hereditate et negotiis finitis ad paratam pecuniam laboribus substituti veniat, repellendus est: multoque parcius ex hac causa heredem minoris restituendum esse.

Dig. 4.4.24.3

Paulus 1 sent.

Si servus vel filius familias minorem circumscripserit, pater dominusve quod ad eum pervenerit restituere iubendus est, quod non pervenerit ex peculio eorum praestare: si ex neutro satisfiet et dolus servi intervenerit, aut verberibus castigandus aut noxae dedendus erit. sed et si filius familias hoc fecit, ob dolum suum condemnabitur.

Dig. 4.4.24.4

Paulus 1 sent.

Restitutio autem ita facienda est, ut unusquisque integrum ius suum recipiat. itaque si in vendendo fundo circumscriptus restituetur, iubeat praetor emptorem fundum cum fructibus reddere et pretium recipere, nisi si tunc dederit, cum eum perditurum non ignoraret: sicuti facit in ea pecunia, quae ei consumpturo creditur, sed parcius in venditione, quia aes alienum ei solvitur, quod facere necesse est, credere autem non est necesse. nam et si origo contractus ita constitit, ut infirmanda sit, si tamen necesse fuit pretium solvi, non omnimodo emptor damno adficiendus est.

Dig. 4.4.24.5

Paulus 1 sent.

Ex hoc edicto nulla propria actio vel cautio proficiscitur: totum enim hoc pendet ex praetoris cognitione.

Dig. 4.4.25pr.

Gaius 4 ad ed. provinc.

Illud nullam habet dubitationem, quin minor si non debitum solverit ex ea causa, ex qua iure civili repetitio non est, danda sit ei utilis actio ad repetendum: cum et maioribus viginti quinque annis iustis ex causis dari solet repetitio.

Dig. 4.4.25.1

Gaius 4 ad ed. provinc.

Si talis interveniat iuvenis, cui praestanda sit restitutio, ipso postulante praestari debet aut procuratori eius, cui id ipsum nominatim mandatum sit: qui vero generale mandatum de universis negotiis gerendis alleget, non debet audiri.

Dig. 4.4.26pr.

Paulus 11 ad ed.

Quod si de speciali mandatu dubitetur, cum restitutio postuletur, interposita stipulatione ratam rem dominum habiturum rei potest mederi.

Dig. 4.4.26.1

Paulus 11 ad ed.

Quod si is, qui circumscripsisse dicitur, absit, defensor eius satis iudicatum solvi dare debebit.

Dig. 4.4.27pr.

Gaius 4 ad ed. provinc.

Patri pro filio omnimodo praestanda restitutio est, licet filius restitui nolit, quia patris periculum agitur qui de peculio tenetur. ex quo apparet ceteros cognatos vel adfines alterius esse condicionis, nec aliter audiri oportere, quamsi ex voluntate adulescentis postulent aut eius vitae sit iste adulescens, ut merito etiam bonis ei debeat interdici.

Dig. 4.4.27.1

Gaius 4 ad ed. provinc.

Si pecuniam, quam mutuam minor accepit, dissipavit, denegare debet proconsul creditori adversus eum actionem. quod si egenti minor crediderit, ulterius procedendum non est, quam ut iubeatur iuvenis actionibus suis, quas habet adversus eum cui ipse credidisset, cedere creditori suo. praedium quoque si ex ea pecunia pluris quam oporteret emit, ita temperanda res erit, ut iubeatur venditor reddito pretio reciperare praedium, ita ut sine alterius damno etiam creditor a iuvene suum consequatur. ex quo scilicet simul intellegimus, quid observari oporteat, si sua pecunia pluris quam oportet emerit, ut tamen hoc et superiore casu venditor, qui pretium reddidit, etiam usuras, quas ex ea pecunia perceperit aut percipere potuit, reddat, et fructus, quibus locupletior factus est iuvenis, recipiat. item ex diverso si minore pretio quam oportet vendiderit adulescens, emptor quidem iuberi debebit praedia cum fructibus restituere, iuvenis autem eatenus ex pretio reddere, quatenus ex ea pecunia locupletior est.

Dig. 4.4.27.2

Gaius 4 ad ed. provinc.

Si minor annis viginti quinque sine causa debitori acceptum tulerit, non solum in ipsum, sed et in fideiussores et in pignora actio restitui debet. et si ex duobus reis alteri acceptum tulerit, in utrumque restituenda est actio.

Dig. 4.4.27.3

Gaius 4 ad ed. provinc.

Ex hoc intellegimus, si damnosam sibi novationem fecerit, forte si ab idoneo debitore ad inopem novandi causa transtulerit obligationem, oportere eum in priorem debitorem restitui.

Dig. 4.4.27.4

Gaius 4 ad ed. provinc.

Adversus eos quoque restitutio praestanda est, quorum de dolo agere non permittitur, nisi quaedam personae speciali lege exceptae sint.

Dig. 4.4.28

Celsus 2 Dig.

Cum minor quam quinque et viginti annis adversus eum, cum quo tutelae egit, restituitur, non ideo tutori contrarium tutelae iudicium restituendum est.

Dig. 4.4.29pr.

Modestinus 2 resp.

Etiamsi patre eodemque tutore auctore pupillus captus probari possit, curatorem postea ei datum nomine ipsius in integrum restitutionem postulare non prohiberi.

Dig. 4.4.29.1

Modestinus 2 resp.

Ex causa curationis condemnata pupilla adversus num caput sententiae restitui volebat, et quia videtur in ceteris litis speciebus relevata fuisse, actor maior aetate, qui adquievit tunc temporis sententiae, dicebat totam debere litem restaurari. herennius ^ ^ modestinus respondit, si species, in qua pupilla in integrum restitui desiderat, ceteris speciebus non cohaeret, nihil proponi, cur a tota sententia recedi actor postulans audiendus est.

Dig. 4.4.29.2

Modestinus 2 resp.

Si hereditate patris aetatis beneficio in integrum restitutus abstinuit se nemine de creditoribus paternis praesente vel ad agendum a praeside evocato, an ea restitutio recte facta videatur, quaeritur. herennius ^ ^ modestinus respondit, cum non evocatis creditoribus in integrum restitutionis decretum interpositum proponatur, minime id creditoribus praeiudicasse.

Dig. 4.4.30

Papinianus 3 quaest.

Si filius emancipatus contra tabulas non accepta possessione, post inchoatam restitutionis quaestionem, legatum ex testamento patris maior viginti quinque annis petisset, liti renuntiare videtur, cum et si bonorum possessionis tempus largiretur, electo iudicio defuncti repudiatum beneficium praetoris existimaretur.

Dig. 4.4.31

Papinianus 9 resp.

Si mulier, postquam heres extitit, propter aetatem abstinendi causa in integrum restituta fuerit, servos hereditarios ex fideicommisso ab ea recte manumissos retinere libertatem respondit: nec erunt cogendi viginti aureos pro libertate retinenda dependere, quam iure optimo consecuti videntur. nam et si quidam ex creditoribus pecuniam suam ante restitutionem ab ea reciperassent, ceterorum querella contra eos qui acceperunt ut pecunia communicetur non admittetur.

Dig. 4.4.32

Paulus 1 quaest.

Minor viginti quinque annis adito praeside ex aspectu corporis falso probavit perfectam aetatem: curatores cum intellexissent esse minorem perseveraverunt in administratione: medio tempore post probatam aetatem ante impletum vicensimum quintum annum solutae sunt adulescenti pecuniae debitae easque male consumpsit. quaero cuius sit periculum: et quid si curatores quoque in eodem errore perseverassent, ut putarent maiorem esse et abstinuissent se ab administratione, curationem etiam restituissent, an periculum temporis, quod post probatam aetatem cessit, ad eos pertineat? respondi: hi qui debita exsoluerunt liberati iure ipso non debent iterum conveniri. plane curatores, qui scientes eum minorem esse perseveraverunt in eodem officio, non debuerunt eum pati accipere pecunias debitas et debebunt hoc nomine conveniri. quod si et ipsi decreto praesidis crediderunt et administrare cessaverunt vel etiam rationem reddiderunt, similes sunt ceteris debitoribus, ideoque non conveniuntur.

Dig. 4.4.33

Valens 6 fideic.

Si minor viginti quinque annis servum suum, qui pluris, quam in testamento ei legatum sit, manumittere rogatus fuerit et legatum acceperit, non cogendum praestare libertatem, si legatum reddere paratus sit, iulianus respondit: ut quemadmodum maioribus liberum sit non accipere, si nolint manumittere, sic huic reddenti legatum necessitas manumittendi remittatur.

Dig. 4.4.34pr.

Paulus 1 sent.

Si minor viginti quinque annis filio familias minori pecuniam credidit, melior est causa consumentis, nisi locupletior ex hoc inveniatur litis contestatae tempore is qui accepit.

Dig. 4.4.34.1

Paulus 1 sent.

Minores si in iudicem compromiserunt et tutore auctore stipulati sunt, integri restitutionem adversus talem obligationem iure desiderant.

Dig. 4.4.35

Hermogenianus 1 iuris epit.

Si in emptionem penes se collatam minor adiectione ab alio superetur, implorans in integrum restitutionem audietur, si eius interesse emptam ab eo rem fuisse adprobetur, veluti quod maiorum eius fuisset: ita ^ ^ tamen ut id, quod ex licitatione accessit, ipse offerat venditori.

Dig. 4.4.36

Paulus 5 sent.

Minor viginti quinque annis omissam allegationem per in integrum restitutionis auxilium repetere potest.

Dig. 4.4.37pr.

Tryphonus 3 disp.

Auxilium in integrum restitutionis exsecutionibus poenarum paratum non est: ideoque iniuriarum iudicium semel omissum repeti non potest.

Dig. 4.4.37.1

Tryphonus 3 disp.

Sed et in sexaginta diebus praeteritis, in quibus iure mariti sine calumnia vir accusare mulierem adulterii potest, denegatur ei in integrum restitutio: quod ius omissum si nunc repetere vult, quid aliud quam delicti veniam, id est calumniae deprecatur? et cum neque in delictis neque calumniatoribus praetorem succurrere oportere certi iuris sit, cessabit in integrum restitutio. in delictis autem minor annis viginti quinque non meretur in integrum restitutionem, utique atrocioribus, nisi quatenus interdum miseratio aetatis ad mediocrem poenam iudicem produxerit. sed ut ad legis iuliae de adulteriis coercendis praecepta veniamus, utique nulla deprecatio adulterii poenae est, si se minor annis adulterum fateatur. dixi, nec si quid eorum commiserit, quae pro adulterio eadem lex punit, veluti si adulterii damnatam sciens uxorem duxerit, aut in adulterio deprehensam uxorem non dimiserit, quaestumve de adulterio uxoris fecerit, pretiumve pro comperto stupro acceperit, aut domum praebuerit ad stuprum adulteriumve in eam committendum: et non sit aetatis excusatio adversus praecepta legum ei, qui dum leges invocat, contra eas committit.

Dig. 4.4.38pr.

Paulus 1 decr.

Aemilius larianus ab ovinio fundum rutilianum lege commissoria emerat data parte pecuniae, ita ut si intra duos menses ab emptione reliqui pretii partem dimidiam non solvisset, inemptus esset, item si intra alios duos menses reliquum pretium non numerasset, similiter esset inemptus. intra priores duos menses lariano defuncto rutiliana pupillaris aetatis successerat, cuius tutores in solutione cessaverunt. venditor denuntiationibus tutoribus saepe datis post annum eandem possessionem claudio telemacho vendiderat. pupilla in integrum restitui desiderabat: victa tam apud praetorem quam apud praefectum urbi provocaverat. putabam bene iudicatum, quod pater eius, non ipsa contraxerat: imperator autem motus est, quod dies committendi in tempus pupillae incidisset eaque effecisset, ne pareretur legi venditionis. dicebam posse magis ea ratione restitui eam, quod venditor denuntiando post diem, quo placuerat esse commissum, et pretium petendo recessisse a lege sua videretur: non me moveri quod dies postea transisset, non magis quam si creditor pignus distraxisset, post mortem debitoris die solutionis finita. quia tamen lex commissoria displicebat ei, pronuntiavit in integrum restituendam. movit etiam illud imperatorem, quod priores tutores, qui non restitui desiderassent, suspecti pronuntiati erant.

Dig. 4.4.38.1

Paulus 1 decr.

Quod dicitur non solere filiis familias post emancipationem adhuc minoribus succurri in his, quae omisissent manentes in potestate, tunc recte dicitur, cum patri adquirere possunt.

Dig. 4.4.39pr.

Scaevola 2 Dig.

Intra utile tempus restitutionis apud praesidem petierunt in integrum restitutionem minores et de aetate sua probaverunt: dicta pro aetate sententia adversarii, ut impedirent cognitionem praesidis, ad imperatorem appellaverunt: praeses in eventum appellationis cetera cognitionis distulit. quaesitum est: si finita appellationis apud imperatorem cognitione et iniusta appellatione pronuntiata egressi aetatem deprehendantur, an cetera negotii implere possunt, cum per eos non steterit, quo minus res finem accipiat? respondi secundum ea quae proponuntur perinde cognosci atque si nunc intra aetatem essent.

Dig. 4.4.39.1

Scaevola 2 Dig.

Vendentibus curatoribus minoris fundum emptor extitit lucius titius et sex fere annis possedit et longe longeque rem meliorem fecit: quaero, cum sint idonei curatores, an minor adversus titium emptorem in integrum restitui possit. respondi ex omnibus quae proponerentur vix esse restituendum, nisi si maluerit omnes expensas, quas bona fide emptor fecisse adprobaverit, ei praestare, maxime cum sit ei paratum promptum auxilium curatoribus eis idoneis constitutis.

Dig. 4.4.40pr.

Ulpianus 5 opin.

Minor annis viginti quinque, cui fideicommissum solvi pronuntiatum erat, caverat id se accepisse et cautionem eidem debitor quasi creditae pecuniae fecerat. in integrum restitui potest, quia partam ex causa iudicati persecutionem novo contractu ad initium alterius petitionis redegerat.

Dig. 4.4.40.1

Ulpianus 5 opin.

Praedia patris sui minor annis viginti quinque ob debita rationis tutelae aliorum, quam pater administraverat, in solutum inconsulte dedit: ad suam aequitatem per in integrum restitutionem revocanda res est, usuris pecuniae, quam constiterit ex tutela deberi, reputatis et cum quantitate fructuum perceptorum compensatis.

Dig. 4.4.41

Iulianus 45 Dig.

Si iudex circumvento in venditione adulescenti iussit fundum restitui eumque pretium emptori reddere, et hic nolit uti hac in integrum restitutione paenitentia acta, exceptionem utilem adversus petentem pretium quasi ex causa iudicati adulescens habere poterit, quia unicuique licet contemnere haec, quae pro se introducta sunt. nec queri poterit venditor, si restitutus fuerit in eam causam, in qua se ipse constituit et quam mutare non potuisset, si minor auxilium praetoris non implorasset.

Dig. 4.4.42

Ulpianus 2 de off. procons.

Praeses provinciae minorem in integrum restituere potest etiam contra suam vel decessoris sui sententiam: quod enim appellatio interposita maioribus praestat, hoc beneficio aetatis consequuntur minores.

Dig. 4.4.43

Marcellus 1 de off. praesid.

De aetate eius, qui se maiorem annis viginti quinque dicit, causa cognita probandum est, quia per eam probationem in integrum restitutioni eiusdem adulescentis et aliis causis praeiudicatur.

Dig. 4.4.44

Ulpianus 5 opin.

Non omnia, quae minores annis viginti quinque gerunt, irrita sunt, sed ea tantum, quae causa cognita eiusmodi deprehensa sunt, vel ab aliis circumventi vel sua facilitate decepti aut quod habuerunt amiserunt, aut quod adquirere emolumentum potuerunt omiserint, aut se oneri quod non suscipere licuit obligaverunt.

Dig. 4.4.45pr.

Callistratus 1 ed. monit.

Etiam ei, qui prius quam ^ priusquam^ nasceretur usucaptum amisit, restituendam actionem labeo scribit.

Dig. 4.4.45.1

Callistratus 1 ed. monit.

Imperator titus antoninus rescripsit eum, qui fraude tutoris adversarium suum diceret absolutum et agere cum eo ex integro vellet, licentiam habere prius cum tutore agere.

Dig. 4.4.46

Paulus 2 resp.

Eum, qui ex sua voluntate minorem annis in iudicio defendit et condemnatus est, ex causa iudicati posse conveniri nec eius quem defendit aetatem ad restitutionem impetrandam ei prodesse, cum causam iudicati recusare non possit. ex quo apparet nec eum, cuius nomine condemnatus est, auxilium restitutionis propter eam sententiam implorare posse.

Dig. 4.4.47pr.

Scaevola 1 resp.

Tutor urguentibus creditoribus rem pupillarem bona fide vendidit, denuntiante tamen matre emptoribus: quaero, cum urguentibus creditoribus distracta sit nec de sordibus tutoris merito quippiam dici potest, an pupillus in integrum restitui potest. respondi cognita causa aestimandum, nec idcirco, si iustum sit restitui, denegandum id auxilium, quod tutor delicto vacaret.

Dig. 4.4.47.1

Scaevola 1 resp.

Curator adulescentium praedia communia sibi et his, quorum curam administrabat, vendidit: quaero, si decreto praetoris adulescentes in integrum restituti fuerint, an eatenus venditio rescindenda sit, quatenus adulescentium pro parte fundus communis fuit? respondi eatenus rescindi, nisi si emptor a toto contractu velit discedi, quod partem empturus non esset. item quaero, emptor utrum a seio et sempronio pupillis pretium cum usuris recipere deberet an vero ab herede curatoris? respondi heredes quidem curatoris teneri, verum in seium et sempronium pro parte, qua eorum fundus fuit, actiones dandas: utique si ad eos accepta pecunia pro eadem parte pervenisset.

Dig. 4.4.48pr.

Paulus 1 sent.

Minor se in id, quod fideiussit vel mandavit, in integrum restituendo reum principalem non liberat.

Dig. 4.4.48.1

Paulus 1 sent.

Minor ancillam vendidit: si eam emptor manumiserit, ob hoc in integrum restitui non poterit, sed adversus emptorem quanti sua interest actionem habebit.

Dig. 4.4.48.2

Paulus 1 sent.

Mulier minor viginti quinque annis si pactione dotis deterior condicio eius fiat et tale pactum inierit, quod numquam maioris aetatis constitutae paciscerentur, atque ideo revocare velit: audienda est.

Dig. 4.4.49

Ulpianus 35 ad ed.

Si res pupillaris vel adulescentis distracta fuerit, quam lex distrahi non prohibet, venditio quidem valet, verumtamen si grande damnum pupilli vel adulescentis versatur, etiam si collusio non intercessit, distractio per in integrum restitutionem revocatur.

Dig. 4.4.50

Pomponius 9 epist. et var. lect.

Iunius diophantus pomponio suo salutem. minor viginti quinque annis novandi animo intercessit pro eo, qui temporali actione tenebatur, tunc cum adhuc supererant decem dies, et postea in integrum restitutus est: utrum restitutio, quae creditori adversus priorem debitorem datur, decem dierum sit an plenior? ego didici ex tempore in integrum restitutionis tantundem temporis praestandum, quantum supererat: tu quid de eo putas velim rescribas. respondit: sine dubio, quod de temporali actione, in qua intercessit minor, sensisti, puto verius esse: ideoque et pignus quod dederat prior debitor, manet obligatum.

Dig. 4.5.0. De capite minutis.

Dig. 4.5.1

Gaius 4 ad ed. provinc.

Capitis minutio est status permutatio.

Dig. 4.5.2pr.

Ulpianus 12 ad ed.

Pertinet hoc edictum ad eas capitis deminutiones, quae salva civitate contingunt. ceterum sine amissione civitatis sive libertatis amissione contingat capitis deminutio, cessabit edictum neque possunt hi penitus conveniri: dabitur plane actio in eos, ad quos bona pervenerunt eorum.

Dig. 4.5.2.1

Ulpianus 12 ad ed.

Ait praetor: " qui quaeve, posteaquam quid cum his actum contractumve sit, capite deminuti deminutae esse dicentur, in eos easve perinde, quasi id factum non sit, iudicium dabo".

Dig. 4.5.2.2

Ulpianus 12 ad ed.

Hi qui capite minuuntur ex his causis, quae capitis deminutionem praecesserunt, manent obligati naturaliter: ceterum si postea, imputare quis sibi debebit cur contraxerit, quantum ad verba huius edicti pertinet. sed interdum, si contrahatur cum his post capitis deminutionem, danda est actio: et quidem si adrogatus sit, nullus labor: nam perinde obligabitur ut filius familias.

Dig. 4.5.2.3

Ulpianus 12 ad ed.

Nemo delictis exuitur, quamvis capite minutus sit.

Dig. 4.5.2.4

Ulpianus 12 ad ed.

Ei, qui debitorem suum adrogavit, non restituitur actio in eum, postquam sui iuris fiat.

Dig. 4.5.2.5

Ulpianus 12 ad ed.

Hoc iudicium perpetuum est et in heredes et heredibus datur.

Dig. 4.5.3pr.

Paulus 11 ad ed.

Liberos qui adrogatum parentem sequuntur placet minui caput, cum in aliena potestate sint et cum familiam mutaverint.

Dig. 4.5.3.1

Paulus 11 ad ed.

Emancipato filio et ceteris personis capitis minutio manifesto accidit, cum emancipari nemo possit nisi in imaginariam servilem causam deductus: aliter atque cum servus manumittitur, quia servile caput nullum ius habet ideoque nec minui potest:

Dig. 4.5.4

Modestinus 1 pand.

Hodie enim incipit statum habere.

Dig. 4.5.5pr.

Paulus 11 ad ed.

Amissione civitatis fit capitis minutio, ut in aqua et igni interdictione.

Dig. 4.5.5.1

Paulus 11 ad ed.

Qui deficiunt, capite minuuntur (deficere autem dicuntur, qui ab his, quorum sub imperio sunt, desistunt et in hostium numerum se conferunt): sed et hi, quos senatus hostes iudicavit vel lege lata: utique usque eo, ut civitatem amittant.

Dig. 4.5.5.2

Paulus 11 ad ed.

Nunc respiciendum, quae capitis deminutione pereant: et primo de ea capitis deminutione, quae salva civitate accidit, per quam publica iura non interverti constat: nam manere magistratum vel senatorem vel iudicem certum est.

Dig. 4.5.6

Ulpianus 51 ad sab.

Nam et cetera officia quae publica sunt, in eo non finiuntur: capitis enim minutio privata hominis et familiae eius iura, non civitatis amittit.

Dig. 4.5.7pr.

Paulus 11 ad ed.

Tutelas etiam non amittit capitis minutio exceptis his, quae in iure alieno personis positis deferuntur. igitur testamento dati vel ex lege vel ex senatus consulto erunt nihilo minus tutores: sed legitimae tutelae ex duodecim tabulis intervertuntur eadem ratione, qua et hereditates exinde legitimae, quia adgnatis deferuntur, qui desinunt esse familia mutati. ex novis autem legibus et hereditates et tutelae plerumque sic deferuntur, ut personae naturaliter designentur: ut ecce deferunt hereditatem senatus consulta matri et filio.

Dig. 4.5.7.1

Paulus 11 ad ed.

Iniuriarum et actionum ex delicto venientium obligationes cum capite ambulant.

Dig. 4.5.7.2

Paulus 11 ad ed.

Si libertate adempta capitis deminutio subsecuta sit, nulli restitutioni adversus servum locus est, quia nec praetoria iurisdictione ita servus obligatur, ut cum eo actio sit: sed utilis actio adversus dominum danda est, ut iulianus scribit, et nisi in solidum defendatur, permittendum mihi est in bona quae habuit mitti.

Dig. 4.5.7.3

Paulus 11 ad ed.

Item cum civitas amissa est, nulla restitutionis aequitas est adversus eum, qui amissis bonis et civitate relicta nudus exulat.

Dig. 4.5.8

Gaius 4 ad ed. provinc.

Eas obligationes, quae naturalem praestationem habere intelleguntur, palam est capitis deminutione non perire, quia civilis ratio naturalia iura corrumpere non potest. itaque de dote actio, quia in bonum et aequum concepta est, nihilo minus durat etiam post capitis deminutionem,

Dig. 4.5.9

Paulus 11 ad ed.

Ut quandoque emancipata agat.

Dig. 4.5.10

Modestinus 8 diff.

Legatum in annos singulos vel menses singulos relictum, vel si habitatio legetur, morte quidem legatarii legatum intercidit, capitis deminutione tamen interveniente perseverat: videlicet quia tale legatum in facto potius quam in iure consistit.

Dig. 4.5.11

Paulus 2 ad sab.

Capitis deminutionis tria genera sunt, maxima media minima: tria enim sunt quae habemus, libertatem civitatem familiam. igitur cum omnia haec amittimus, hoc est libertatem et civitatem et familiam, maximam esse capitis deminutionem: cum vero amittimus civitatem, libertatem retinemus, mediam esse capitis deminutionem: cum et libertas et civitas retinetur, familia tantum mutatur, minimam esse capitis deminutionem constat.

Dig. 4.6.0. Ex quibus causis maiores viginti quinque annis in integrum restituuntur.

Dig. 4.6.1pr.

Ulpianus 12 ad ed.

Huius edicti causam nemo non iustissimam esse confitebitur: laesum enim ius per id tempus, quo quis rei publicae operam dabat vel adverso casu laborabat, corrigitur, nec non et adversus eos succurritur, ne vel obsit vel prosit quod evenit.

Dig. 4.6.1.1

Ulpianus 12 ad ed.

Verba autem edicti talia sunt: " si cuius quid de bonis, cum is metus aut sine dolo malo rei publicae causa abesset, inve vinculis servitute hostiumque potestate esset: sive cuius actionis eorum cui dies exisse dicetur: item si quis quid usu suum fecisset, aut quod non utendo amisit, consecutus, actioneve qua solutus ob id, quod dies eius exierit, cum absens non defenderetur, inve vinculis esset, secumve agendi potestatem non faceret, aut cum eum invitum in ius vocari non liceret neque defenderetur: cumve magistratus de ea re appellatus esset sive cui pro magistratu ^ per magistratus^ sine dolo ipsius actio exempta esse dicetur: earum rerum actionem intra annum, quo primum de ea re experiundi potestas erit, item si qua alia mihi iusta causa esse videbitur, in integrum restituam, quod eius per leges plebis scita senatus consulta edicta decreta principum licebit. "

Dig. 4.6.2pr.

Callistratus 2 ed. monit.

Hoc edictum, quod ad eos pertinet, qui ei continentur, minus in usu frequentatur: huiusmodi enim personis extra ordinem ius dicitur ex senatus consultis et principalibus constitutionibus.

Dig. 4.6.2.1

Callistratus 2 ed. monit.

Hoc autem capite adiuvantur in primis hi, qui metus causa afuissent: scilicet si non supervacuo timore deterriti afuissent.

Dig. 4.6.3

Ulpianus 12 ad ed.

Metus autem causa abesse videtur, qui iusto timore mortis vel cruciatus corporis conterritus abest: et hoc ex affectu eius intellegitur. sed non sufficit quolibet terrore abductum timuisse, sed huius rei disquisitio iudicis est.

Dig. 4.6.4

Callistratus 2 ed. monit.

Item hi, qui rei publicae causa sine dolo malo afuissent. dolum malum eo pertinere accepi, ut qui reverti potest neque reverteretur, in eo, quod per id tempus adversus eum factum est, non adiuvetur: veluti si alterius grandis commodi captandi gratia id egerit, ut rei publicae causa abesset, et revocatur ab isto privilegio,

Dig. 4.6.5pr.

Ulpianus 12 ad ed.

Et qui data opera et sine lucro hoc affectaverit: vel qui maturius profectus est: vel litis gratia coepit rei publicae causa abesse. sed haec adiectio doli mali ad rei publicae causa absentes refertur, non etiam ad eum, qui metus causa: quoniam nullus metus est, si dolus intercedit.

Dig. 4.6.5.1

Ulpianus 12 ad ed.

Sed qui romae rei publicae causa operam dant, rei publicae causa non absunt.

Dig. 4.6.6

Paulus 12 ad ed.

Ut sunt magistratus.

Dig. 4.6.7

Ulpianus 12 ad ed.

Milites plane, qui romae militant, pro rei publicae causa absentibus habentur.

Dig. 4.6.8

Paulus 3 brev.

Legatis quoque municipiorum succurritur ex principum marci et commodi constitutione.

Dig. 4.6.9

Callistratus 2 ed. monit.

Succurritur etiam ei, qui in vinculis fuisset. quod non solum ad eum pertinet, qui publica custodia coercetur, sed ad eum quoque, qui a latronibus aut praedonibus vel potentiore vi oppressus vinculis coercebatur. vinculorum autem appellatio latius accipitur: nam etiam inclusos veluti lautumiis vinctorum numero haberi placet, quia nihil intersit, parietibus an compedibus teneatur. custodiam autem solam publicam accipi labeo putat.

Dig. 4.6.10

Ulpianus 12 ad ed.

In eadem causa sunt et qui a militibus statoribusque vel a municipalibus ministeriis adservantur, si probentur rei suae superesse non potuisse. in vinculis autem etiam eos accipimus, qui ita alligati sunt, ut sine dedecore in publico parere non possint.

Dig. 4.6.11

Callistratus 2 ed. monit.

Ei quoque succurritur, qui in servitute fuerit, sive bona fide serviat homo liber, sive detentus sit.

Dig. 4.6.12

Ulpianus 12 ad ed.

Is autem, qui de statu suo litigat, ex quo lis inchoata est hoc edicto non continetur: tamdiu igitur in servitute esse videtur, quamdiu non est eiusmodi lis coepta.

Dig. 4.6.13pr.

Paulus 12 ad ed.

Recte labeo ait eum non contineri, qui liber et heres institutus sit, antequam sit heres, quia nec bona habeat et praetor de liberis hominibus loquatur.

Dig. 4.6.13.1

Paulus 12 ad ed.

Puto tamen filium familias in castrensi peculio pertinere ad hoc edictum.

Dig. 4.6.14

Callistratus 2 ed. monit.

Item ei succurritur, qui in hostium potestate fuit, id est ab hostibus captus. nam transfugis nullum credendum est beneficium tribui, quibus negatum est postliminium. poterant tamen, qui in hostium potestate essent, illa parte edicti contineri, qua loquitur de his qui in servitute fuerint.

Dig. 4.6.15pr.

Ulpianus 12 ad ed.

Ab hostibus autem captis postliminio reversis succurritur aut ibi mortuis, quia nec procuratorem habere possunt: cum aliis supra scriptis etiam per procuratorem possit subveniri praeter eos, qui in servitute detinentur. ego autem etiam nomine eius, qui hostium potitus est, si curator (ut plerumque) fuerit bonis constitutus, auxilium competere existimo.

Dig. 4.6.15.1

Ulpianus 12 ad ed.

Non minus autem ab hostibus capto quam ibi nato, qui postliminium habet, succursum videtur.

Dig. 4.6.15.2

Ulpianus 12 ad ed.

Si damni infecti missus sit in aedes militis, si quidem praesente eo iussit praetor possideri, non restituitur, sin vero absente eo, dicendum subveniri ei debere.

Dig. 4.6.15.3

Ulpianus 12 ad ed.

Sed quod simpliciter praetor edixit " posteave" ita accipiendum est, ut si inchoata sit bonae fidei possessoris detentatio ante absentiam, finita autem reverso, restitutionis auxilium locum habeat non quandoque, sed ita demum, si intra modicum tempus quam rediit hoc contigit, id est dum hospitium quis conducit, sarcinulas componit, quaerit advocatum: nam eum, qui differt restitutionem, non esse audiendum neratius scribit.

Dig. 4.6.16

Paulus 12 ad ed.

Non enim neglegentibus subvenitur, sed necessitate rerum impeditis. totumque istud arbitrio praetoris temperabitur, id est ut ita demum restituat, si non neglegentia, sed temporis angustia non potuerunt litem contestari.

Dig. 4.6.17pr.

Ulpianus 12 ad ed.

Iulianus libro quarto scribit non solum adversus possessorem hereditatis succurrendum militi, verum adversus eos quoque, qui a possessore emerunt, ut vindicari res possint, si miles hereditatem adgnoverit: quod si non adgnoverit, ex post facto usucapionem processisse manifestatur.

Dig. 4.6.17.1

Ulpianus 12 ad ed.

Eum quoque cui sic legatum sit: " vel in annos singulos, quibus in italia esset", restituendum, ut capiat, atque si in italia fuisset, et labeo scribit et iulianus libro quarto et pomponius libro trigensimo primo probant: non enim dies actionis exit, ubi praetoris auxilium necessarium erat, sed condicio in causa est.

Dig. 4.6.18

Paulus 12 ad ed.

Sciendum est, quod in his casibus restitutionis auxilium maioribus damus in quibus rei dumtaxat persequendae gratia queruntur, non cum et lucri faciendi ex alterius poena vel damno auxilium sibi impertiri desiderant.

Dig. 4.6.19

Papinianus 3 quaest.

Denique si emptor, priusquam per usum sibi adquireret, ab hostibus captus sit, placet interruptam possessionem postliminio non restitui, quia haec sine possessione non constitit, possessio autem plurimum facti habet: causa vero facti non continetur postliminio.

Dig. 4.6.20

Papinianus 13 quaest.

Nec utilem actionem ei tribui oportet, cum sit iniquissimum auferre domino, quod usus non abstulit: neque enim intellegitur amissum, quod ablatum alteri non est.

Dig. 4.6.21pr.

Ulpianus 12 ad ed.

" item", ait praetor," si quis usu suum fecisset, aut quod non utendo sit amissum consecutus, actioneve qua solutus ob id, quod dies eius exierit, cum absens non defenderetur. " quam clausulam praetor inseruit, ut quemadmodum succurrit supra scriptis personis, ne capiantur, ita et adversus ipsas succurrit, ne capiant.

Dig. 4.6.21.1

Ulpianus 12 ad ed.

Et erit notandum, quod plus praetor expressit, cum adversus eos restituit, quam cum ipsis subvenit: nam hic non certas personas enumeravit adversus quas subvenit, ut supra, sed adiecit clausulam, qua omnes qui absentes non defenduntur complexus est.

Dig. 4.6.21.2

Ulpianus 12 ad ed.

Haec autem restitutio locum habet, sive per se sive per subiectas sibi personas usu adquisierunt, qui absentes non defendebantur, et ita, si nemo eorum erat defensor. nam si fuit procurator, cum habueris quem convenias, non debet inquietari. ceterum si non existebat defensor, aequissimum erat subveniri, eo potius, quod eorum qui non defenduntur, si quidem latitent, praetor ex edicto pollicetur in bona eorum mittere, ut si res exegerit etiam distrahantur, si vero non latitent, licet non defendantur, in bona tantum mitti.

Dig. 4.6.21.3

Ulpianus 12 ad ed.

Defendi autem non is videtur, cuius se defensor ingerit, sed qui requisitus ab actore non est defensioni defuturus, plenaque defensio accipietur, si et iudicium non detrectetur et iudicatum solvi satisdetur.

Dig. 4.6.22pr.

Paulus 12 ad ed.

Ergo sciendum est non aliter hoc edictum locum habere, quam si amici eius interrogati fuerint, an defendant, aut si nemo sit, qui interrogari potest. ita enim absens defendi non videtur, si actor ultro interpellat nec quisquam defensioni se offerat: eaque testatione complecti oportet.

Dig. 4.6.22.1

Paulus 12 ad ed.

Sicut igitur damno eos adfici non vult, ita lucrum facere non patitur.

Dig. 4.6.22.2

Paulus 12 ad ed.

Quod edictum etiam ad furiosos et infantes et civitates pertinere labeo ait.

Dig. 4.6.23pr.

Ulpianus 12 ad ed.

Ait praetor: " inve vinculis esset, secumve agendi potestatem non faceret". haec persona merito adiecta est: fieri enim poterat, ut quis in vinculis praesens esset, vel in publica vel in privata vincula ductus: nam eteum qui in vinculis est, si modo non sit in servitute, posse usu adquirere constat. sed et is, qui in vinculis est si defendatur, cessat restitutio.

Dig. 4.6.23.1

Ulpianus 12 ad ed.

Is autem, qui apud hostes est, nihil per usum sibi adquirere potest, nec coeptam possessionem poterit implere, dum est apud hostes: hoc amplius nec postliminio reversus reciperabit per usum dominii adquisitionem.

Dig. 4.6.23.2

Ulpianus 12 ad ed.

Item ei, qui per captivitatem fundi possessionem vel usus fructus quasi possessionem amisit, succurrendum esse papinianus ait, et fructus quoque medio tempore ab alio ex usu fructu perceptos debere captivo restitui aequum putat.

Dig. 4.6.23.3

Ulpianus 12 ad ed.

Hi plane, qui fuerunt in potestate captivi, usu rem adquirere possunt ex re peculiari: et aequum erit ex hac clausula praesentibus, id est qui non sunt in captivitate, subveniri, si cum non defenderentur usucaptum quid sit. sed et si dies actionis, quae adversus captivum competebat, exierit, succurretur adversus eum.

Dig. 4.6.23.4

Ulpianus 12 ad ed.

Deinde adicit praetor: " secumve agendi potestatem non faceret", ut si, dum hoc faciat, per usum adquisitio impleta vel quid ex supra scriptis contigit, restitutio concedatur: merito, nec enim sufficit semper in possessionem bonorum eius mitti, quia ea interdum species esse potest, ut in bonis latitantis mitti non possit aut non latitet: finge enim, dum advocationes postulat, diem exisse, vel dum alia mora iudicii contingit.

Dig. 4.6.24

Paulus 12 ad ed.

Sed et ad eos pertinet, qui conventi frustrantur et qualibet tergiversatione et sollertia efficiunt, ne cum ipsis agi possit.

Dig. 4.6.25

Gaius 4 ad ed. provinc.

Quod quidem simili modo ad eum quoque pertinere dicemus, qui non frustrandi gratia id faceret, sed quod multitudine rerum distringeretur.

Dig. 4.6.26pr.

Ulpianus 12 ad ed.

Sed et si per praetorem stetit, restitutio indulgebitur.

Dig. 4.6.26.1

Ulpianus 12 ad ed.

Adversus relegatum restitutionem faciendam ex generali clausula pomponius ait: sed non et ipsi concedendam, quia potuit procuratorem relinquere: ex causa tamen puto etiam ipsi succurrendum.

Dig. 4.6.26.2

Ulpianus 12 ad ed.

Ait praetor: " aut cum eum invitum in ius vocare non liceret neque defenderetur". haec clausula ad eos pertinet, quos more maiorum sine fraude in ius vocare non licet, ut consulem praetorem ceterosque, qui imperium potestatemve quam habent. sed nec ad eos pertinet hoc edictum, quos praetor prohibet sine permissu suo vocari, quoniam aditus potuit permittere: patronos puta et parentes.

Dig. 4.6.26.3

Ulpianus 12 ad ed.

Deinde adicit " neque defenderetur": quod ad omnes supra scriptos pertinet praeterquam ad eum, qui absens quid usucepit: quoniam plene supra de eo cautum est.

Dig. 4.6.26.4

Ulpianus 12 ad ed.

Ait praetor: " sive cui per magistratus sine dolo malo ipsius actio exempta esse dicetur". hoc quo? ut si per dilationes iudicis effectum sit, ut actio eximatur, fiat restitutio. sed et si magistratus copia non fuit, labeo ait restitutionem faciendam. per magistratus autem factum ita accipiendum est, si ius non dixit: alioquin si causa cognita denegavit actionem, restitutio cessat: et ita servio videtur. item per magistratus factum videtur, si per gratiam aut sordes magistratus ius non dixerit: et haec pars locum habebit, nec non et superior " secumve agendi potestatem non faciat": nam id egit litigator, ne secum agatur, dum iudicem corrumpit.

Dig. 4.6.26.5

Ulpianus 12 ad ed.

Actio exempta sic erit accipienda, si desiit agere posse.

Dig. 4.6.26.6

Ulpianus 12 ad ed.

Et adicitur: " sine dolo malo ipsius", videlicet ut, si dolus eius intervenit, ne ei succurratur: ipsis enim delinquentibus praetor non subvenit. proinde si, dum vult apud sequentem praetorem agere, tempus frustratus est, non ei subvenietur. sed et si, dum decreto praetoris non obtemperat, iurisdictionem ei denegaverit, non esse eum restituendum labeo scribit. idemque si ex alia iusta causa non fuerit ab eo auditus.

Dig. 4.6.26.7

Ulpianus 12 ad ed.

Si feriae extra ordinem sint indictae, ob res puta prospere gestas vel in honorem principis, et propterea magistratus ius non dixerit, gaius cassius nominatim edicebat restituturum se, quia per praetorem videbatur factum: sollemnium enim feriarum rationem haberi non debere, quia prospicere eas potuerit et debuerit actor, ne in eas incidat. quod verius est, et ita celsus libro secundo digestorum scribit. sed cum feriae tempus eximunt, restitutio dumtaxat ipsorum dierum facienda est, non totius temporis. et ita iulianus libro quarto digestorum scribit: ait enim rescissionem usucapionis ita faciendam, ut hi dies restituantur, quibus actor agere voluit et interventu feriarum impeditus est.

Dig. 4.6.26.8

Ulpianus 12 ad ed.

Quotiens per absentiam quis non toto tempore aliquem exclusit, ut puta rem tuam possedi uno minus die statuto in usucapionibus tempore, deinde rei publicae causa abesse coepi, restitutio adversus me unius diei facienda est.

Dig. 4.6.26.9

Ulpianus 12 ad ed.

" item", inquit praetor, " si qua alia mihi iusta causa videbitur, in integrum restituam. " haec clausula edicto inserta est necessario: multi enim casus evenire potuerunt, qui deferrent restitutionis auxilium, nec singillatim enumerari potuerunt, ut, quotiens aequitas restitutionem suggerit, ad hanc clausulam erit descendendum. ut puta legatione quis pro civitate functus est: aequissimum est eum restitui, licet rei publicae causa non absit: et saepissime constitutum est adiuvari eum debere, sive habuit procuratorem sive non. idem puto, et si testimonii causa sit evocatus ex qualibet provincia vel in urbem vel ad principem: nam et huic saepissime est rescriptum subveniri. sed et his, qui cognitionis gratia vel appellationis peregrinati sunt, similiter subventum. et generaliter quotienscumque quis ex necessitate, non ex voluntate afuit, dici oportet ei subveniendum.

Dig. 4.6.27

Paulus 12 ad ed.

Et sive quid amiserit vel lucratus non sit, restitutio facienda est, etiam si non ex bonis quid amissum sit.

Dig. 4.6.28pr.

Ulpianus 12 ad ed.

Nec non et si quis de causa probabili afuerit, deliberare debet praetor, an ei subveniri debeat, puta studiorum causa, forte procuratore suo defuncto: ne decipiatur per iustissimam absentiae causam.

Dig. 4.6.28.1

Ulpianus 12 ad ed.

Item si quis nec in custodia nec in vinculis sit, sed sub fideiussorum satisdatione et, dum propter hoc recedere non potest, captus sit, restituetur et adversus eum dabitur restitutio.

Dig. 4.6.28.2

Ulpianus 12 ad ed.

" quod eius" inquit praetor " per leges plebis scita senatus consulta edicta decreta principum licebit. " quae clausula non illud pollicetur restituturum, si leges permittant, sed si leges non prohibeant.

Dig. 4.6.28.3

Ulpianus 12 ad ed.

Si quis saepius rei publicae causa afuit, ex novissimo reditu tempus restitutionis esse ei computandum labeo putat. sed si omnes quidem absentiae annum colligant, singulae minus anno, utrum annum ei damus ad restitutionem an vero tantum temporis, quantum novissima eius absentia occupavit, videndum: et puto annum dandum.

Dig. 4.6.28.4

Ulpianus 12 ad ed.

Si cum in provincia domicilium haberes, esses autem in urbe, an mihi annus cedat, quasi experiundi potestatem habeam? et ait labeo non cedere. ego autem puto hoc ita verum, si ius revocandi domum adversarius habuit: si minus, videri esse experiundi potestatem, quia et romae contestari litem potuit.

Dig. 4.6.28.5

Ulpianus 12 ad ed.

Exemplo rescissoriae actionis etiam exceptio ei, qui rei publicae causa afuit, competit: forte si res ab eo possessionem nancto vindicentur.

Dig. 4.6.28.6

Ulpianus 12 ad ed.

In actione rescissoria, quae adversus militem competit, aequissimum esse pomponius ait eius quoque temporis, quo absens defensus non est, fructus eum praestare: ergo et militi debebunt restitui: utrimque actio erit,

Dig. 4.6.29

Africanus 7 quaest.

Videlicet ne cui officium publicum vel damno vel compendio sit.

Dig. 4.6.30pr.

Paulus 12 ad ed.

Cum miles qui usucapiebat decesserit et heres impleverit usucapionem, aequum est rescindi quod postea usucaptum est, ut eadem in heredibus, qui in usucapionem succedunt, servanda sint: quia possessio defuncti quasi iniuncta descendit ad heredem et plerumque nondum hereditate adita completur.

Dig. 4.6.30.1

Paulus 12 ad ed.

Si is, qui rei publicae causa afuit, usucepit et post usucapionem alienaverit rem, restitutio facienda erit et licet sine dolo afuerit et usuceperit, lucro eius occurri oportet. item ex reliquis omnibus causis restitutio facienda erit, veluti si adversus eum pronuntiatum sit.

Dig. 4.6.31

Paulus 53 ad ed.

Si is, cuius rem usucepit rei publicae causa absens, possessionem suae rei ab illo usucaptae nanctus sit, etsi postea amiserit, non temporalem, sed perpetuam habet actionem.

Dig. 4.6.32

Modestinus 9 reg.

Abesse rei publicae causa intellegitur et is, qui ab urbe profectus est, licet nondum provinciam excesserit: sed et is qui excessit, donec in urbem revertatur. et hoc ad proconsules legatosque eorum et ad eos, qui provinciis praesunt, procuratoresve principum, qui in provinciis tenentur, pertinet, et ad tribunos militum et praefectos et comites legatorum, qui ad aerarium delati aut in commentarium principis delati sunt.

Dig. 4.6.33pr.

Modestinus l.S. de enucl. cas.

Inter eos, qui ex generali clausula adiuvantur, et fisci patronus connumeratur.

Dig. 4.6.33.1

Modestinus l.S. de enucl. cas.

Eos, qui notis scribunt acta praesidum, rei publicae causa non abesse certum est.

Dig. 4.6.33.2

Modestinus l.S. de enucl. cas.

Militum medici, quoniam officium quod gerunt et publice prodest et fraudem eis adferre non debet, restitutionis auxilium implorare possunt.

Dig. 4.6.34pr.

Iavolenus 15 ex cass.

Miles commeatu accepto si domo sua est, rei publicae causa abesse non videtur.

Dig. 4.6.34.1

Iavolenus 15 ex cass.

Qui operas in publico, quod vectigalium causa locatum est, dat, rei publicae causa non abest.

Dig. 4.6.35pr.

Paulus 3 ad l. iul. et pap.

Qui mittuntur, ut milites ducerent aut reducerent aut legendi curarent, rei publicae causa absunt.

Dig. 4.6.35.1

Paulus 3 ad l. iul. et pap.

Hi quoque, qui missi sunt ad gratulandum principi.

Dig. 4.6.35.2

Paulus 3 ad l. iul. et pap.

Item procurator caesaris, non solum cui rerum provinciae cuiusque procuratio mandata erit, sed et is, cui rerum quamvis non omnium. itaque plures sibi procuratores diversarum rerum rei publicae causa abesse intelleguntur.

Dig. 4.6.35.3

Paulus 3 ad l. iul. et pap.

Praefectus quoque aegypti rei publicae causa abest, quive aliam ob causam rei publicae gratia extra urbem aberit.

Dig. 4.6.35.4

Paulus 3 ad l. iul. et pap.

Sed et in urbanicianis militibus idem divus pius constituit.

Dig. 4.6.35.5

Paulus 3 ad l. iul. et pap.

Quaesitum est de eo, qui ad compescendos malos homines missus est, an rei publicae causa abesset: et placuit rei publicae causa eum abesse.

Dig. 4.6.35.6

Paulus 3 ad l. iul. et pap.

Item paganum, qui in expeditione consularis iussu transierat ibique in acie ceciderat: heredi enim eius succurrendum est.

Dig. 4.6.35.7

Paulus 3 ad l. iul. et pap.

Qui rei publicae causa romam profectus est, abesse rei publicae causa videtur. sed et si extra patriam suam rei publicae causa profectus sit, etiam, si per urbem ei iter competit, rei publicae causa abest.

Dig. 4.6.35.8

Paulus 3 ad l. iul. et pap.

Similiter qui in provincia est, ut primum aut domo sua profectus est aut, cum in eadem provincia degit rei publicae administrandae causa, simul agere rem publicam coepit, ad similitudinem absentis habetur.

Dig. 4.6.35.9

Paulus 3 ad l. iul. et pap.

Et dum eat in castra et redeat, rei publicae causa abest, quod et eundum sit in castra militaturo et redeundum. vivianus scribit proculum respondisse militem, qui commeatu absit, dum domum vadit aut redit, rei publicae causa abesse, dum domi sit, non abesse.

Dig. 4.6.36

Ulpianus 6 ad l. iul. et pap.

Rei publicae causa abesse eos solos intellegimus, qui non sui commodi causa, sed coacti absunt.

Dig. 4.6.37

Paulus 3 ad l. iul. et pap.

Hi, qui in provincia sua ultra tempus a constitutionibus concessum adsident, publica causa abesse non intelleguntur.

Dig. 4.6.38pr.

Ulpianus 6 ad l. iul. et pap.

Si cui in provincia sua princeps adsidere speciali beneficio permiserit, puto eum rei publicae causa abesse: quod si non ex permissu hoc fecerit, consequenter dicemus, cum crimen admisit, non habere eum privilegia eorum, qui rei publicae causa absunt.

Dig. 4.6.38.1

Ulpianus 6 ad l. iul. et pap.

Tamdiu rei publicae causa abesse quis videbitur, quamdiu officio aliquo praeest: quod si finitum fuerit officium, iam desinit abesse rei publicae causa. sed ad revertendum illi tempora computabimus statim atque desiit rei publicae causa abesse ea quibus reverti in urbem potuit: et erit moderatum tempora ei dare, quae lex revertentibus praestitit. quare si quo deflexerit suae rei causa, non dubitamus id tempus ei non proficere, habitaque dinumeratione temporis, quo reverti potuit, statim eum dicemus desisse rei publicae causa abesse. plane si infirmitate impeditus continuare iter non potuit, habebitur ratio humanitatis, sicuti haberi solet et hiemis et navigationis et ceterorum quae casu contingunt.

Dig. 4.6.39

Paulus 1 sent.

Is qui rei publicae causa afuturus erat, si procuratorem reliquerit, per quem defendi potuit in integrum volens restitui non auditur.

Dig. 4.6.40pr.

Ulpianus 5 opin.

Si qua militi accusatio competat tempore, quo rei publicae operam dedit, non peremitur.

Dig. 4.6.40.1

Ulpianus 5 opin.

Quod eo tempore, quo in insula aliquis fuit ex poena ei irrogata, cuius restitutionem impetravit, ab alio usurpatum ex bonis, quae non erant adempta, probatum fuerit, suae causae restituendum est.

Dig. 4.6.41

Iulianus 35 Dig.

Si quis titio legaverit, si mortis suae tempore in italia esset, aut in annos singulos, quod in italia esset, et ei succursum fuerit, quia ob id, quod rei publicae causa afuit, exclusus fuerit a legato: fideicommissum ab eo relictum praestare cogitur. Marcellus notat: quis enim dubitabit salva legatorum et fideicommissorum causa militi restitui hereditatem, quam ob id perdidit, quod rei publicae causa afuit?

Dig. 4.6.42

Alfenus 5 Dig.

Non vere dicitur rei publicae causa abesse eum, qui sui privati negotii causa in legatione est.

Dig. 4.6.43

Africanus 7 quaest.

Si quis stipulatus sit in annos singulos, quoad in italia esset vel ipse vel promissor, et alteruter rei publicae causa abesse coeperit, officium praetoris est introducere utilem actionem. eadem dicemus, et si ita concepta stipulatio fuerit: " si quinquennio proximo romae fuerit", vel ita: " si romae non fuerit, centum dare spondes?"

Dig. 4.6.44

Paulus 2 ad sab.

Is, qui rei publicae causa abest, in aliqua re laesus non restituitur, in qua, etiam si rei publicae causa non afuisset, damnum erat passurus.

Dig. 4.6.45

Scaevola 1 reg.

Milites omnes, qui discedere signis sine periculo non possunt, rei publicae causa abesse intelleguntur.

Dig. 4.6.46

Marcianus 2 reg.

Qui rei publicae causa afuit, etiam adversus eum, qui pariter rei publicae causa afuerit, restituendus est, si aliquid damni iuste queritur.

Dig. 4.7.0. De alienatione iudicii mutandi causa facta.

Dig. 4.7.1pr.

Gaius 4 ad ed. provinc.

Omnibus modis proconsul id agit, ne cuius deterior causa fiat ex alieno facto, et cum intellegeret iudiciorum exitum interdum duriorem nobis constitui opposito nobis alio adversario, in eam quoque rem prospexit, ut si quis alienando rem alium nobis adversarium suo loco substituerit idque data opera in fraudem nostram fecerit, tanti nobis in factum actione teneatur, quanti nostra intersit alium adversarium nos non habuisse.

Dig. 4.7.1.1

Gaius 4 ad ed. provinc.

Itaque si alterius provinciae hominem aut potentiorem nobis opposuerit adversarium, tenebitur:

Dig. 4.7.2

Ulpianus 13 ad ed.

Aut alium, qui vexaturus sit adversarium:

Dig. 4.7.3pr.

Gaius 4 ad ed. provinc.

Quia etiam si cum eo, qui alterius provinciae sit, experiar, in illius provincia experiri debebo et potentiori pares esse non possumus.

Dig. 4.7.3.1

Gaius 4 ad ed. provinc.

Sed et si hominem quem petebamus manumiserit, durior nostra condicio fit, quia praetores faveant libertatibus.

Dig. 4.7.3.2

Gaius 4 ad ed. provinc.

Item si locum, in quo opus feceris, cuius nomine interdicto quod vi aut clam vel actione aquae pluviae arcendae tenebaris, alienaveris, durior nostra condicio facta intellegitur, quia si tecum ageretur, tuis impensis id opus tollere deberes, nunc vero cum incipiat mihi adversus alium actio esse quam qui fecerit, compellor meis impensis id tollere, quia ab alio factum possidet, hactenus istis actionibus tenetur, ut patiatur id opus tolli.

Dig. 4.7.3.3

Gaius 4 ad ed. provinc.

Opus quoque novum si tibi nuntiaverim tuque eum locum alienaveris et emptor opus fecerit, dicitur te hoc iudicio teneri, quasi neque tecum ex operis novi nuntiatione agere possim, quia nihil feceris, neque cum eo cui id alienaveris, quia ei nuntiatum non sit.

Dig. 4.7.3.4

Gaius 4 ad ed. provinc.

Ex quibus apparet, quod proconsul in integrum restituturum se pollicetur, ut hac actione officio tantum iudicis consequatur actor, quantum eius intersit alium adversarium non habuisse: forte si quas impensas fecerit aut si quam aliam incommoditatem passus erit alio adversario substituto.

Dig. 4.7.3.5

Gaius 4 ad ed. provinc.

Quid ergo est, si is, adversus quem talis actio competit, paratus sit utile iudicium pati perinde ac si possideret? recte dicitur denegandam esse adversus eum ex hoc edicto actionem.

Dig. 4.7.4pr.

Ulpianus 3 ad ed.

Item si res fuerint usucaptae ab eo cui alienatae sint nec peti ab hoc possint, locum habet hoc edictum.

Dig. 4.7.4.1

Ulpianus 3 ad ed.

Itemque fieri potest, ut sine dolo malo quidem possidere desierit, verum iudicii mutandi causa id fiat. sunt et alia complura talia. potest autem aliquis dolo malo desinere possidere nec tamen iudicii mutandi causa fecisse nec hoc edicto teneri: neque enim alienat, qui dumtaxat omittit possessionem. non tamen eius factum improbat praetor, qui tanti habuit re carere, ne propter eam saepius litigaret (haec enim verecunda cogitatio eius, qui lites exsecratur, non est vituperanda), sed eius dumtaxat, qui cum rem habere vult, litem ad alium transfert, ut molestum adversarium pro se subiciat.

Dig. 4.7.4.2

Ulpianus 3 ad ed.

Pedius libro nono non solum ad dominii translationem hoc edictum pertinere ait, verum ad possessionis quoque: alioquin cum quo in rem agebatur, inquit, si possessione cessit, non tenebitur.

Dig. 4.7.4.3

Ulpianus 3 ad ed.

Si quis autem ob valetudinem aut aetatem aut occupationes necessarias litem in alium transtulerit, in ea causa non est, ut hoc edicto teneatur, cum in hoc edicto doli mali fiat mentio. ceterum erit interdictum et per procuratores litigare dominio in eos plerumque ex iusta causa translato.

Dig. 4.7.4.4

Ulpianus 3 ad ed.

Ad iura etiam praediorum hoc edictum pertinet, modo si dolo malo fiat alienatio.

Dig. 4.7.4.5

Ulpianus 3 ad ed.

Haec actio in id quod interest competit, proinde si res non fuit petitoris aut si is qui alienatus est sine culpa decessit, cessat iudicium, nisi si quid actoris praeterea interfuit.

Dig. 4.7.4.6

Ulpianus 3 ad ed.

Haec actio non est poenalis, sed rei persecutionem arbitrio iudicis continet, quare et heredi dabitur: in heredem autem.

Dig. 4.7.5

Paulus 11 ad ed.

Vel similem.

Dig. 4.7.6

Ulpianus 13 ad ed.

Vel post annum non dabitur,

Dig. 4.7.7

Gaius 4 ad ed. provinc.

Quia pertinet quidem ad rei persecutionem, videtur autem ex delicto dari.

Dig. 4.7.8pr.

Paulus 12 ad ed.

Ex hoc edicto tenetur et qui rem exhibet, si arbitratu iudicis pristinam iudicii causam non restituit.

Dig. 4.7.8.1

Paulus 12 ad ed.

Ait praetor: " quaeve alienatio iudicii mutandi causa facta erit": id est si futuri iudicii causa, non eius quod iam sit.

Dig. 4.7.8.2

Paulus 12 ad ed.

Alienare intellegitur etiam qui alienam rem vendidit.

Dig. 4.7.8.3

Paulus 12 ad ed.

Sed heredem instituendo vel legando si quis alienet, huic edicto locus non erit.

Dig. 4.7.8.4

Paulus 12 ad ed.

Si quis alienaverit, deinde receperit, non tenebitur hoc edicto.

Dig. 4.7.8.5

Paulus 12 ad ed.

Qui venditori suo redhibet, non videtur iudicii mutandi causa abalienare,

Dig. 4.7.9

Paulus 1 ad ed. aedil. curul.

Quia redhibitio homine omnia retro aguntur: et ideo non videtur iudicii mutandi causa alienare qui redhibet: nisi si propter hoc ipsum redhibet non redhibiturus alias.

Dig. 4.7.10pr.

Ulpianus 12 ad ed.

Nam et si obligatus solvero quod a me petere velles, huic edicto locus non erit.

Dig. 4.7.10.1

Ulpianus 12 ad ed.

Si tutor pupilli vel adgnatus furiosi alienaverint, utilis actio competit, quia consilium huius fraudis inire non possunt.

Dig. 4.7.11

Ulpianus 5 opin.

Cum miles postulabat suo nomine litigare de possessionibus, quas sibi donatas esse dicebat, responsum est, si iudicii mutandi causa donatio facta fuerit, priorem dominum experiri oportere, ut rem magis quam litem in militem transtulisse credatur.

Dig. 4.7.12

Marcianus 14 inst.

Si quis iudicii communi dividundo evitandi causa rem alienaverit, ex lege licinnia ei interdicitur, ne communi dividundo iudicio experiatur: verbi gratia ut potentior emptor per licitationem vilius eam accipiat et per hoc iterum ipse recipiat. sed ipse quidem qui partem alienaverit communi dividundo iudicio si agere velit, non audietur: is vero qui emit si experiri velit, ex illa parte edicti vetatur, qua cavetur, ne qua alienatio iudicii mutandi causa fiat.

Dig. 4.8.0. De receptis: qui arbitrium receperint ut sententiam dicant.

Dig. 4.8.1

Paulus 2 ad ed.

Compromissum ad similitudinem iudiciorum redigitur et ad finiendas lites pertinet.

Dig. 4.8.2

Ulpianus 4 ad ed.

Ex compromisso placet exceptionem non nasci, sed poenae petitionem.

Dig. 4.8.3pr.

Ulpianus 13 ad ed.

Labeo ait, si compromisso facto sententia dicta est, quo quis a minore viginti quinque annis tutelae absolveretur, ratum id a praetore non habendum: neque poenae eo nomine commissae petitio dabitur.

Dig. 4.8.3.1

Ulpianus 13 ad ed.

Tametsi neminem praetor cogat arbitrium recipere, quoniam haec res libera et soluta est et extra necessitatem iurisdictionis posita, attamen ubi semel quis in se receperit arbitrium, ad curam et sollicitudinem suam hanc rem pertinere praetor putat: non tantum quod studeret lites finiri, verum quoniam non deberent decipi, qui eum quasi virum bonum disceptatorem inter se elegerunt. finge enim post causam iam semel atque iterum tractatam, post nudata utriusque intima et secreta negotii aperta, arbitrum vel gratiae dantem vel sordibus corruptum vel alia qua ex causa nolle sententiam dicere: quisquamne potest negare aequissimum fore praetorem interponere se debuisse, ut officium quod in se recepit impleret?

Dig. 4.8.3.2

Ulpianus 13 ad ed.

Ait praetor: " qui arbitrium pecunia compromissa receperit".

Dig. 4.8.3.3

Ulpianus 13 ad ed.

Tractemus de personis arbitrantium. et quidem arbitrum cuiuscumque dignitatis coget officio quod susceperit perfungi, etiam si sit consularis: nisi forte sit in aliquo magistratu positus vel potestate, consul forte vel praetor, quoniam in hoc imperium non habet.

Dig. 4.8.4

Paulus 13 ad ed.

Nam magistratus superiore aut pari imperio nullo modo possunt cogi: nec interest ante an in ipso magistratu arbitrium susceperint. inferiores possunt cogi.

Dig. 4.8.5

Ulpianus 13 ad ed.

Sed et filius familias compelletur.

Dig. 4.8.6

Gaius 5 ad ed. provinc.

Quin etiam de re patris dicitur, filium familias arbitrum esse posse: nam et iudicem eum esse posse plerisque placet.

Dig. 4.8.7pr.

Ulpianus 13 ad ed.

Pedius libro nono et pomponius libro trigensimo tertio scribunt parvi referre, ingenuus quis an libertinus sit, integrae famae quis sit arbiter an ignominiosus. in servum labeo compromitti non posse libro undecimo scribit: et est verum.

Dig. 4.8.7.1

Ulpianus 13 ad ed.

Unde iulianus ait, si in titium et servum compromissum sit, nec titium cogendum sententiam dicere, quia cum alio receperit: quamvis servi, inquit, arbiterium nullum sit. quid tamen si dixerit sententiam titius? poena non committitur, quia non, ut receperit, dixit sententiam.

Dig. 4.8.8

Paulus 13 ad ed.

Sed si ita compromissum sit, ut vel alterutrius sententia valeat, titium cogendum.

Dig. 4.8.9pr.

Ulpianus 13 ad ed.

Sed si in servum compromittatur et liber sententiam dixerit, puto, si liber factus fecerit consentientibus partibus, valere.

Dig. 4.8.9.1

Ulpianus 13 ad ed.

Sed neque in pupillum neque in furiosum aut surdum aut mutum compromittetur, ut pomponius libro trigensimo tertio scribit.

Dig. 4.8.9.2

Ulpianus 13 ad ed.

Si quis iudex sit, arbitrium recipere eius rei, de qua iudex est, inve se compromitti iubere prohibetur lege iulia: et si sententiam dixerit non est danda poenae persecutio.

Dig. 4.8.9.3

Ulpianus 13 ad ed.

Sunt et alii, qui non coguntur sententiam dicere, ut puta si sordes aut turpitudo arbitri manifesta sit.

Dig. 4.8.9.4

Ulpianus 13 ad ed.

Iulianus ait, si eum infamaverunt litigatores, non omnimodo praetorem debere eum excusare, sed causa cognita.

Dig. 4.8.9.5

Ulpianus 13 ad ed.

Idem et si spreta auctoritate eius ad iudicium.

Dig. 4.8.10

Paulus 13 ad ed.

Vel alium arbitrum.

Dig. 4.8.11pr.

Ulpianus 13 ad ed.

Litigatores ierint, mox ad eundem arbitrum redierint, praetorem non debere eum cogere inter eos disceptare, qui ei contumeliam hanc fecerunt, ut eum spernerent et ad alium irent.

Dig. 4.8.11.1

Ulpianus 13 ad ed.

Arbitrum autem cogendum non esse sententiam dicere, nisi compromissum intervenerit.

Dig. 4.8.11.2

Ulpianus 13 ad ed.

Quod ait praetor: " pecuniam compromissam", accipere nos debere, non si utrimque poena nummaria, sed si et alia res vice poenae, si quis arbitri sententia non steterit, promissa sit: et ita pomponius scribit. quid ergo, si res apud arbitrum depositae sunt eo pacto, ut ei daret qui vicerit, vel ut eam rem daret, si non pareatur sententiae, an cogendus sit sententiam dicere? et puto cogendum. tantundem et si quantitas certa ad hoc apud eum deponatur. proinde et si alter rem, alter pecuniam stipulanti promiserit, plenum compromissum est et cogetur sententiam dicere.

Dig. 4.8.11.3

Ulpianus 13 ad ed.

Interdum, ut pomponius scribit, recte nudo pacto fiet compromissum, ut puta si ambo debitores fuerunt et pacti sunt, ne petat quod sibi debetur qui sententiae arbitri non paruit.

Dig. 4.8.11.4

Ulpianus 13 ad ed.

Item iulianus scribit non cogendum arbitrum sententiam dicere, si alter promiserit, alter non. idem dicit, et si sub condicione fuerit poena compromissa, veluti " si navis ex asia venerit, tot milia": non enim prius arbitrum cogendum sententiam dicere, quam condicio exstiterit: ne sit inefficax deficiente condicione. et ita pomponius libro trigensimo tertio ad edictum scribit.

Dig. 4.8.12

Paulus 13 ad ed.

Quo casu ad praetorem pertinebit in eo forsitan solo, ut si possit dies compromissi proferri, proferatur.

Dig. 4.8.13pr.

Ulpianus 13 ad ed.

Pomponius ait, et si alteri accepto lata sit poena compromissi, non debere eum compelli sententiam dicere.

Dig. 4.8.13.1

Ulpianus 13 ad ed.

Idem pomponius scribit, si de meis solis controversiis sit compromissum et de te poenam sim stipulatus, videndum ne non sit compromissum. sed cui rei moveatur, non video: nam si ideo, quia de unius controversiis solum compromissum est, nulla ratio est: licet enim et de una re compromittere: si vero ideo, quia ex altera dumtaxat parte stipulatio intervenit, est ratio. quamquam si petitor fuit qui stipulatus est, possit dici plenum esse compromissum, quia is qui convenitur tutus est veluti pacti exceptione, is qui convenit, si arbitro non pareatur, habet stipulationem. sed id verum esse non puto: neque enim sufficit exceptionem habere, ut arbiter sententiam dicere cogatur.

Dig. 4.8.13.2

Ulpianus 13 ad ed.

Recepisse autem arbitrium videtur, ut pedius libro nono dicit, qui iudicis partes suscepit finemque se sua sententia controversiis impositurum pollicetur. quod si, inquit, hactenus intervenit, ut experiretur, an consilio suo vel auctoritate discuti litem paterentur, non videtur arbitrium recepisse.

Dig. 4.8.13.3

Ulpianus 13 ad ed.

Arbiter ex compromisso his diebus non cogitur sententiam dicere, quibus iudex non cogetur, nisi dies compromissi exitura sit nec proferri possit.

Dig. 4.8.13.4

Ulpianus 13 ad ed.

Proinde si forte urgueatur a praetore ad sententiam, aequissimum erit, si iuret sibi de causa nondum liquere, spatium ei ad pronuntiandum dari.

Dig. 4.8.14

Pomponius 11 ad q. muc.

Sed si compromissum sine die confectum est, necesse est arbitro omnimodo dies statuere, partibus scilicet consentientibus, et ita causam disceptari: quod si hoc praetermiserit, omni tempore cogendus est sententiam dicere.

Dig. 4.8.15

Ulpianus 13 ad ed.

Licet autem praetor destricte edicat sententiam se arbitrum dicere coacturum, attamen interdum rationem eius habere debet et excusationem recipere causa cognita: ut puta si fuerit infamatus a litigatoribus, aut si inimicitiae capitales inter eum et litigatores aut alterum ex litigatoribus intercesserint, aut si aetas aut valetudo quae postea contigit id ei munus remittat, aut occupatio negotiorum propriorum vel profectio urguens aut munus aliquod rei publicae: et ita labeo:

Dig. 4.8.16pr.

Paulus 13 ad ed.

Et si qua alia incommoditas ei post arbiterium susceptum incidat. sed in causa valetudinis similibusve causa cognita differre cogitur.

Dig. 4.8.16.1

Paulus 13 ad ed.

Arbiter iudicii sui nomine, quod publicum aut privatum habet, excusatus esse debet a compromisso, utique si dies compromissi proferri non potest: quod si potest, quare non cogat eum, cum potest, proferre? quod sine ulla distinctione ipsius interdum futurum est. si tamen uterque velit eum sententiam dicere, an, quamvis cautum non sit de die proferenda, non alias impetret, quia iudicium habet, ne cogatur, quam si consentiat denuo in se compromitti? haec scilicet si dies exitura est.

Dig. 4.8.17pr.

Ulpianus 13 ad ed.

Item si unus ex litigatoribus bonis suis cedat, iulianus libro quarto digestorum scribit non esse cogendum arbitrum sententiam dicere, cum neque agere neque conveniri possit.

Dig. 4.8.17.1

Ulpianus 13 ad ed.

Si multo post revertantur ad arbitrum litigatores, non esse cogendum sententiam dicere labeo scribit.

Dig. 4.8.17.2

Ulpianus 13 ad ed.

Item si plures sunt qui arbitrium receperunt, nemo unus cogendus erit sententiam dicere, sed aut omnes aut nullus.

Dig. 4.8.17.3

Ulpianus 13 ad ed.

Inde pomponius libro trigensimo tertio quaerit, si ita sit compromissum, ut quod titio disceptatori placet, id seius pronuntiet, quis sit cogendus? et puto tale arbitrium non valere, in quo libera facultas arbitri sententiae non est futura.

Dig. 4.8.17.4

Ulpianus 13 ad ed.

Sed si ita sit compromissum arbitratu titii aut seii fieri, pomponius scribit et nos putamus compromissum valere: sed is erit cogendus sententiam dicere, in quem litigatores consenserint.

Dig. 4.8.17.5

Ulpianus 13 ad ed.

Si in duos fuerit sic compromissum, ut si dissentirent, tertium adsumant, puto tale compromissum non valere: nam in adsumendo possunt dissentire. sed si ita sit, ut eis tertius adsumeretur sempronius, valet compromissum, quoniam in adsumendo dissentire non possunt.

Dig. 4.8.17.6

Ulpianus 13 ad ed.

Principaliter tamen quaeramus, si in duos arbitros sit compromissum, an cogere eos praetor debeat sententiam dicere, quia res fere sine exitu futura est propter naturalem hominum ad dissentiendum facilitatem. in inpari enim numero idcirco compromissum admittitur, non quoniam consentire omnes facile est, sed quia et si dissentiant, invenitur pars maior, cuius arbitrio stabitur. sed usitatum est etiam in duos compromitti, et debet praetor cogere arbitros, si non consentiant, tertiam certam eligere personam, cuius auctoritati pareatur.

Dig. 4.8.17.7

Ulpianus 13 ad ed.

Celsus libro secundo digestorum scribit, si in tres fuerit compromissum, sufficere quidem duorum consensum, sed si praesens fuerit et tertius: alioquin absente eo licet duo consentiant, arbitrium non valere, quia in plures fuit compromissum et potuit praesentia eius trahere eos in eius sententiam:

Dig. 4.8.18

Pomponius 17 epist. et var. lect.

Sicuti tribus iudicibus datis quod duo ex consensu absente tertio iudicaverunt, nihil valet, quia id ^ tum^ demum, quod maior pars omnium iudicavit, ratum est, cum et omnes iudicasse palam est.

Dig. 4.8.19pr.

Paulus 13 ad ed.

Qualem autem sententiam dicat arbiter, ad praetorem non pertinere labeo ait, dummodo dicat quod ipsi videtur. et ideo si sic fuit in arbitrium compromissum, ut certam sententiam dicat, nullum esse arbitrium, nec cogendum sententiam dicere iulianus scribit libro quarto digestorum.

Dig. 4.8.19.1

Paulus 13 ad ed.

Dicere autem sententiam existimamus eum, qui ea mente quid pronuntiat, ut secundum id discedere eos a tota controversia velit, sed si de pluribus rebus sit arbiterium receptum, nisi omnes controversias finierit, non videtur dicta sententia, sed adhuc erit a praetore cogendus.

Dig. 4.8.19.2

Paulus 13 ad ed.

Unde videndum erit, an mutare sententiam possit. et alias quidem est agitatum, si arbiter iussit dari, mox vetuit, utrum eo quod iussit an eo quod vetuit stari debeat. et sabinus quidem putavit posse. cassius sententiam magistri sui bene excusat et ait sabinum non de ea sensisse sententia, quae arbitrium finiat, sed de praeparatione causae: ut puta si iussit litigatores calendis adesse, mox idibus iubeat: nam mutare eum diem posse. ceterum si condemnavit vel absolvit, dum arbiter esse desierit, mutare sententiam non posse,

Dig. 4.8.20

Gaius 5 ad ed. provinc.

Quia arbiter, etsi erraverit in sententia dicenda, corrigere eam non potest.

Dig. 4.8.21pr.

Ulpianus 13 ad ed.

Quid tamen si de pluribus controversiis sumptus est nihil sibi communibus et de una sententiam dixit, de aliis nondum, numquid desiit esse arbiter? videamus igitur, an in prima controversia possit mutare sententiam, de qua iam dixerat. et multum interest, de omnibus simul ut dicat sententiam compromissum est, an non: nam si de omnibus, poterit mutare (nondum enim dixit sententiam): quod si et separatim, quasi plura sunt compromissa, et ideo quantum ad illam controversiam pertinet, arbiter esse desierat.

Dig. 4.8.21.1

Ulpianus 13 ad ed.

Si arbiter ita pronuntiasset nihil videri titium debere seio: tametsi seium non vetuisset petere, tamen si quid petisset, videri contra sententiam arbitri fecisse: et id ofilius et trebatius responderunt.

Dig. 4.8.21.2

Ulpianus 13 ad ed.

Solutioni diem posse arbitrum statuere puto: et ita et trebatius videtur sentire.

Dig. 4.8.21.3

Ulpianus 13 ad ed.

Pomponius ait inutiliter arbitrum incertam sententiam dicere, ut puta: " quantum ei debes redde " : " divisioni vestrae stari placet": " pro ea parte, quam creditoribus tuis solvisti, accipe".

Dig. 4.8.21.4

Ulpianus 13 ad ed.

Item si arbiter poenam ex compromisso peti vetuerit, in libro trigensimo tertio apud pomponium scriptum habeo non valere: et habet rationem, quia non de poena compromissum est.

Dig. 4.8.21.5

Ulpianus 13 ad ed.

Papinianus libro tertio quaestionum ait, si cum dies compromissi finiretur, prolato die litigatores denuo in eum compromiserint nec secundi compromissi arbitrium receperit, non esse cogendum recipere, si ipse in mora non fuit, quo minus partibus suis fungeretur: quod si per eum factum est, aequissimum esse cogi eum a praetore sequens recipere. quae quaestio ita procedit, si nihil in priore compromisso de die proferendo caveatur: ceterum si cavebatur et ipse protulit, mansit arbiter.

Dig. 4.8.21.6

Ulpianus 13 ad ed.

Plenum compromissum appellatur, quod " de rebus controversiisve " compositum est: nam ad omnes controversias pertinet. sed si forte de una re sit disputatio, licet pleno compromisso actum sit, tamen ex ceteris causis actiones superesse: id enim venit in compromissum, de quo actum est ut veniret. sed est tutius, si quis de certa re compromissum facturus sit, de ea sola exprimere in compromisso.

Dig. 4.8.21.7

Ulpianus 13 ad ed.

Non debent autem obtemperare litigatores, si arbiter aliquid non honestum iusserit.

Dig. 4.8.21.8

Ulpianus 13 ad ed.

Si intra diem compromissi aditus arbiter post diem compromissi adesse iusserit, poena non committetur.

Dig. 4.8.21.9

Ulpianus 13 ad ed.

Si quis ex litigatoribus ideo non adfuerit, quod valetudine vel rei publicae causa absentia impeditus sit aut magistratu aut alia iusta de causa, poenam committi proculus et atilicinus aiunt: sed si paratus sit in eundem compromittere, actionem denegari aut exceptione tutum fore. sed hoc ita demum verum erit, si arbiter recipere in se arbiterium fuerit paratus: nam invitum non esse cogendum iulianus libro quarto digestorum recte scribit: ipse autem nihilo minus poena absolvitur.

Dig. 4.8.21.10

Ulpianus 13 ad ed.

Si arbiter iussit puta in provincia adesse litigatores, cum romae esset in eum compromissum, an ei impune non pareatur, quaeritur. et est verius, quod iulianus ait libro quarto, eum locum compromisso inesse, de quo actum sit ut promitteretur: impune igitur ei non parebitur, si alio loci adesse iusserit. quid ergo, si non appareat, de quo loco actum sit? melius dicetur eum locum contineri, ubi compromissum est. quid tamen si in eo loco, qui sit circa urbem, adesse iusserit? pegasus admittit valere iussum. quod puto ita verum esse, si et eius sit auctoritatis arbiter, ut in secessibus soleat agere, et litigatores facile eo loci venire possint.

Dig. 4.8.21.11

Ulpianus 13 ad ed.

Sed si in aliquem locum inhonestum adesse iusserit, puta in popinam vel in lupanarium, ut vivianus ait, sine dubio impune ei non parebitur: quam sententiam et celsus libro secundo digestorum probat. unde eleganter tractat, si is sit locus, in quem alter ex litigatoribus honeste venire non possit, alter possit, et is non venerit, qui sine sua turpitudine eo venire possit, is venerit, qui inhoneste venerat, an committatur poena compromissi an quasi opera non praebita. et recte putat non committi: absurdum enim esse iussum in alterius persona ratum esse, in alterius non.

Dig. 4.8.21.12

Ulpianus 13 ad ed.

Intra quantum autem temporis, nisi detur quod arbiter iusserit, committatur stipulatio, videndum est. et si quidem dies adiectus non sit, celsus scribit libro secundo digestorum inesse quoddam modicum tempus: quod ubi praeterierit, poena statim peti potest: et tamen, inquit, et si dederit ante acceptum iudicium, agi ex stipulatu non poterit:

Dig. 4.8.22

Paulus 13 ad ed.

Utique nisi eius interfuerit tunc solvi.

Dig. 4.8.23pr.

Ulpianus 13 ad ed.

Celsus ait, si arbiter intra kalendas septembres dari iusserit nec datum erit, licet postea offeratur, attamen semel commissam poenam compromissi non evanescere, quoniam semper verum est intra kalendas datum non esse: sin autem oblatum accepit, poenam petere non potest doli exceptione removendus. contra, ubi dumtaxat dare iussus est.

Dig. 4.8.23.1

Ulpianus 13 ad ed.

Idem ait, si iusserit me tibi dare et valetudine sis impeditus, quo minus accipias, aut alia iusta ex causa, proculum existimare poenam non committi, nec si post kalendas te parato accipere non dem. sed ipse recte putat duo esse arbitri praecepta, unum pecuniam dari, aliud intra kalendas dari: licet igitur in poenam non committas, quod intra calendas non dederis, quoniam per te non stetit, tamen committis in eam partem, quod non das.

Dig. 4.8.23.2

Ulpianus 13 ad ed.

Idem ait nihil aliud esse sententiae stare posse, quam id agere, quantum in ipso sit, ut arbitri pareatur sententiae.

Dig. 4.8.23.3

Ulpianus 13 ad ed.

Idem celsus ait, si arbiter me tibi certa die pecuniam dare iusserit, tu accipere noluisti, posse defendi ipso iure poenam non committi.

Dig. 4.8.24

Paulus 13 ad ed.

Sed si postea ille paratus sit accipere, non impune me non daturum: non enim ante feceram.

Dig. 4.8.25pr.

Ulpianus 13 ad ed.

Labeo ait, si arbiter, cum in compromisso cautum esset, ut eadem die de omnibus sententiam diceret et ut posset diem proferre, de quibusdam rebus dicta sententia, de quibusdam non dicta diem protulit: valere prolationem sententiaeque eius posse impune non pareri. et pomponius probat labeonis sententiam, quod et mihi videtur: quia officio in sententia functus non est.

Dig. 4.8.25.1

Ulpianus 13 ad ed.

Haec autem clausula " diem compromissi proferre" nullam aliam dat arbitro facultatem quam diem prorogandi: et ideo condicionem primi compromissi neque minuere neque immutare potest: et ideo cetera quoque discutere et pro omnibus unam sententiam ferre debebit.

Dig. 4.8.25.2

Ulpianus 13 ad ed.

Si per fideiussorem fuerit cautum in primo compromisso, et sequens similiter proferendum labeo dicit. sed pomponius dubitat, utrum isdem an et aliis tam idoneis: quid enim, inquit, si idem fideiubere noluerint? sed puto, si noluerint fideiubere, tunc alios non absimiles adhibendos,

Dig. 4.8.26

Paulus 13 ad ed.

Ne in potestate sit fideiussorum postea se non obligantium, ut poena committatur. idemque et si decesserint.

Dig. 4.8.27pr.

Ulpianus 13 ad ed.

Diem proferre vel praesens vel per nuntium vel per epistulam potest.

Dig. 4.8.27.1

Ulpianus 13 ad ed.

Si heredis mentio vel ceterorum facta in compromisso non fuerit, morte solvetur compromissum: nec utimur labeonis sententia, qui existimavit, si arbiter aliquem pecuniam dare iusserit et is decesserit antequam daret, poenam committi, licet heres eius paratus sit offerre.

Dig. 4.8.27.2

Ulpianus 13 ad ed.

Stari autem debet sententiae arbitri, quam de ea re dixerit, sive aequa sive iniqua sit: et sibi imputet qui compromisit. nam et divi pii rescripto adicitur: " vel minus probabilem sententiam aequo animo ferre debet".

Dig. 4.8.27.3

Ulpianus 13 ad ed.

Si plures arbitri fuerint et diversas sententias dixerint, licebit sententia eorum non stari: sed si maior pars consentiat, ea stabitur, alioquin poena committetur. inde quaeritur apud iulianum, si ex tribus arbitris unus quindecim, alius decem, tertius quinque condemnent, qua sententia stetur: et iulianus scribit quinque debere praestari, quia in hanc summam omnes consenserunt.

Dig. 4.8.27.4

Ulpianus 13 ad ed.

Si quis litigatorum defuerit, quia per eum factum est, quo minus arbitretur, poena committetur. proinde sententia quidem dicta non coram litigatoribus non valebit, nisi in compromissis hoc specialiter expressum sit, ut vel uno vel utroque absente sententia promatur: poenam autem is qui defuit committit, quia per eum factum est quo minus arbitretur.

Dig. 4.8.27.5

Ulpianus 13 ad ed.

Coram autem dicere sententiam videtur, qui sapientibus dicit: ceterum coram furioso vel demente non videtur dici: item coram pupillo non videri sententiam dictam, nisi tutor praesens fuit: et ita de his omnibus iulianus libro quarto digestorum scribit.

Dig. 4.8.27.6

Ulpianus 13 ad ed.

Et si quis praesens arbitrum sententiam dicere prohibuit, poena committetur.

Dig. 4.8.27.7

Ulpianus 13 ad ed.

Sed si poena non fuisset adiecta compromisso, sed simpliciter sententia stari quis promiserit, incerti adversus eum foret actio.

Dig. 4.8.28

Paulus 13 ad ed.

Non autem interest, certa an incerta summa compromissa sit, ut puta " quanti ea res erit".

Dig. 4.8.29

Ulpianus 13 ad ed.

Adversus sententiam arbitri fit, si petatur ab eo a quo arbiter peti vetuit. quid ergo si a fideiussore eius petatur, an poena committatur? et puto committi, et ita sabinus scribit: nam ty dunamei a reo petit. sed si cum fideiussore compromisi et a reo petatur, nisi intersit fideiussoris, non committetur.

Dig. 4.8.30

Paulus 13 ad ed.

Si quis rem, de qua compromissum sit, in iudicium deducat, quidam dicunt praetorem non intervenire ad cogendum arbitrum sententiam dicere, quia iam poena non potest esse, atque si solutum est compromissum. sed si hoc optinuerit, futurum est, ut in potestate eius, quem paenitet compromisisse, sit compromissum eludere. ergo adversus eum poena committenda est lite apud iudicem suo ordine peragenda.

Dig. 4.8.31

Ulpianus 13 ad ed.

Ita demum autem committetur stipulatio, cum adversus eam quid fit, si sine dolo malo stipulantis factum est: sub hac enim condicione committitur stipulatio, ne quis doli sui praemium ferat. sed si quidem compromisso adiciatur " ut si quid dolo in ea re factum sit", ex stipulatu conveniri qui dolo fecit potest: et ideo si arbitrum quis corrupit vel pecunia vel ambitione, vel advocatum diversae partis, vel aliquem ex his, quibus causam suam commiserat, ex doli clausula poterit conveniri, vel si adversarium callide circumvenit, et omnino si in hac lite dolose versatus est, locum habebit ex stipulatu actio: et ideo si velit de dolo actionem exercere adversarius, non debebit, cum habeat ex stipulatu actionem. quod si huiusmodi clausula in compromisso adscripta non est, tunc de dolo actio vel exceptio locum habebit. hoc autem compromissum plenum est, quod et doli clausulae habet mentionem.

Dig. 4.8.32pr.

Paulus 13 ad ed.

Non distinguemus in compromissis, minor an maior sit poena quam res de qua agitur.

Dig. 4.8.32.1

Paulus 13 ad ed.

Non cogetur arbiter sententiam dicere, si poena commissa sit.

Dig. 4.8.32.2

Paulus 13 ad ed.

Si mulier alieno nomine compromittat, non erit pecunia compromissa propter intercessionem.

Dig. 4.8.32.3

Paulus 13 ad ed.

Summa rei est, ut praetor se non interponat, sive initio nullum sit compromissum: sive sit, sed pendeat, an ex eo poena exigi potest: sive postea deficiat poena compromisso soluto die morte acceptilatione iudicio pacto.

Dig. 4.8.32.4

Paulus 13 ad ed.

Sacerdotio obveniente videbimus an cogatur arbiter sententiam dicere: id enim non tantum honori personarum, sed et maiestati dei indulgetur, cuius sacris vacare sacerdotes oportet. ceterum si postea suscepit, iste quoque omnimodo sententiam ferre debet.

Dig. 4.8.32.5

Paulus 13 ad ed.

Item non est cogendus, si de negotio transactum est, vel homo mortuus est de quo erat compromissum: nisi si posteriore casu aliquid litigantium intersit.

Dig. 4.8.32.6

Paulus 13 ad ed.

Iulianus indistincte scribit: si per errorem de famoso delicto ad arbitrum itum est, vel de ea re, de qua publicum iudicium sit constitutum, veluti de adulteriis sicariis et similibus, vetare debet praetor sententiam dicere nec dare dictae exsecutionem.

Dig. 4.8.32.7

Paulus 13 ad ed.

De liberali causa compromisso facto recte non compelletur arbiter sententiam dicere, quia favor libertatis est, ut maiores iudices habere debeat. eadem dicenda sunt, sive de ingenuitate sive de libertinitate quaestio sit et si ex fideicommissi causa libertas deberi dicatur. idem dicendum est in populari actione.

Dig. 4.8.32.8

Paulus 13 ad ed.

Si servus compromiserit, non cogendum dicere sententiam arbitrum, nec si dixerit, poenae exsecutionem dandam de peculio putat octavenus. sed an, si liber cum eo compromiserit, exsecutio adversus liberum detur, videamus: sed magis est, ut non detur.

Dig. 4.8.32.9

Paulus 13 ad ed.

Item si quis romae compromiserit, mox romam in legationem venerit: non est cogendus arbiter sententiam dicere, non magis quam cogeretur, si litem ante contestatus esset, nunc eam exercere: nec interest, tunc quoque in legatione fuerit an non. sed si nunc in legatione compromittat, puto cogendum arbitrum sententiam dicere, quia et si iudicium sponte accepisset, cogeretur peragere. sunt tamen qui de isto non recte dubitant: qui utique nullo modo dubitabunt, si de ea re in legatione compromisit, quam in legatione contraxit: quia et iudicium eo nomine accipere cogeretur. illud in prima specie potest dispici, an, si ante compromisit legatus, cogendus sit arbiter sententiam dicere, si ipse legatus postulet: quod prima ratione poterit videri iniquum, ut in ipsius potestate sit. sed hoc tale erit, quale si actionem velit dictare, quod facere ei licet. sed compromissum istud comparabimus ordinariae actioni, ut non alias audiatur desiderans, ut arbiter sententiam dicat, quam si se defendat.

Dig. 4.8.32.10

Paulus 13 ad ed.

Si is faciat controversiam hereditatis, qui cum defuncto compromiserat, futurum est praeiudicium hereditati, si arbiter sententiam dicat: ergo interea inhibendus est arbiter.

Dig. 4.8.32.11

Paulus 13 ad ed.

Dies compromissi proferri potest, non cum ex conventione, sed cum iussu arbitri eam proferri necesse est, ne poena committatur.

Dig. 4.8.32.12

Paulus 13 ad ed.

Si arbiter sese celare temperaverit, praetor eum investigare debet, et si diu non paruerit, multa adversus eum dicenda est.

Dig. 4.8.32.13

Paulus 13 ad ed.

Cum in plures compromissum est ea condicione, ut quilibet vel unus dixisset sententiam, eo staretur, absentibus ceteris nihilo minus qui praesens est cogetur: at si ea condicione, ut omnes dicant, vel quod de maioris partis sententia placuerit, non debet singulos separatim cogere, quia singulorum sententia ad poenam non facit.

Dig. 4.8.32.14

Paulus 13 ad ed.

Cum quidam arbiter ex aliis causis inimicus manifeste apparuisset, testationibus etiam conventus, ne sententiam diceret, nihilo minus nullo cogente dicere perseverasset, libello cuiusdam id querentis imperator antoninus subscripsit posse eum uti doli mali exceptione. et idem, cum a iudice consuleretur, apud quem poena petebatur, rescripsit, etiamsi appellari non potest, doli mali exceptionem in poenae petitione obstaturam. per hanc ergo exceptionem quaedam appellandi species est, cum liceat retractare de sententia arbitri.

Dig. 4.8.32.15

Paulus 13 ad ed.

De officio arbitri tractantibus sciendum est omnem tractatum ex ipso compromisso sumendum: nec enim aliud illi licebit, quam quod ibi ut efficere possit cautum est: non ergo quod libet statuere arbiter poterit nec in qua re libet nisi de qua re compromissum est et quatenus compromissum est.

Dig. 4.8.32.16

Paulus 13 ad ed.

Quaesitum est de sententia dicenda, et dictum non quamlibet, licet de quibusdam variatum sit. et puto vere non committi, si dicat ad iudicem de hoc eundum vel in se vel in alium compromittendum. nam et iulianus impune non pareri, si iubeat ad alium arbitrum ire, ne finis non sit: quod si hoc modo dixerit, ut arbitrio publii maevii fundus traderetur aut satisdatio detur, parendum esse sententiae. idem pedius probat: ne propagentur arbitria, aut in alios interdum inimicos agentium transferantur, sua sententia finem controversiae eum imponere oportet: non autem finiri controversiam, cum aut differatur arbitrium aut in alium transferatur: partemque sententiae esse, quemadmodum satisdetur, quibus fideiussoribus, idque delegari non posse, nisi ad hoc compromissum sit, ut arbiter statueret, cuius arbitratu satisdaretur.

Dig. 4.8.32.17

Paulus 13 ad ed.

Item si iubeat sibi alium coniungi, cum id in compromisso non sit, non dicit sententiam: nam sententia esse debet de re compromissa, de hoc autem compromissum non est.

Dig. 4.8.32.18

Paulus 13 ad ed.

Si domini, qui invicem stipulati sint, procuratores suos agere apud arbitrum velint, potest iubere ipsos etiam adesse:

Dig. 4.8.32.19

Paulus 13 ad ed.

Sed si et heredis in compromissis mentio fit, potest iubere etiam heredem eorum adesse.

Dig. 4.8.32.20

Paulus 13 ad ed.

Arbitri officio continetur et quemadmodum detur vacua possessio. an et satis ratam rem habiturum? sextus pedius putat, quod nullam rationem habet: nam si ratum non habeat dominus, committetur stipulatio.

Dig. 4.8.32.21

Paulus 13 ad ed.

Arbiter nihil extra compromissum facere potest et ideo necessarium est adici de die compromissi proferenda: ceterum impune iubenti non parebitur.

Dig. 4.8.33

Papinianus 1 quaest.

Arbiter ita sumptus ex compromisso, ut et diem proferre possit, hoc quidem facere potest: referre autem contradicentibus litigatoribus non potest.

Dig. 4.8.34pr.

Paulus 13 ad ed.

Si duo rei sunt aut credendi aut debendi et unus compromiserit isque vetitus sit petere aut ne ab eo petatur: videndum est, an si alius petat vel ab alio petatur, poena committatur: idem in duobus argentariis quorum nomina simul eunt. et fortasse poterimus ita fideiussoribus coniungere, si socii sunt: alias nec a te petitur, nec ego peto, nec meo nomine petitur, licet a te petatur.

Dig. 4.8.34.1

Paulus 13 ad ed.

Semel commissa poena solvi compromissum rectius puto dici nec amplius posse committi, nisi id actum sit ut in singulas causas totiens committatur.

Dig. 4.8.35

Gaius 5 ad ed. provinc.

Si pupillus sine tutoris auctoritate compromiserit, non est arbiter cogendus pronuntiare, quia si contra eum pronuntietur, poena non tenetur: praeterquam si fideiussorem dederit, a quo poena peti possit. idque et iulianus sentit.

Dig. 4.8.36

Ulpianus 77 ad ed.

Si feriatis diebus cogente praetore arbiter dicat sententiam et petatur ex compromisso poena, exceptionem locum non habere constat, nisi alia lege eadem dies feriata, in qua sententia dicta est, excepta.

Dig. 4.8.37

Celsus 2 Dig.

Quamvis arbiter alterum ab altero petere vetuit, si tamen heres petit, poenam committet: non enim differendarum litium causa, sed tollendarum ad arbitros itur.

Dig. 4.8.38

Modestinus 6 reg.

Cum poena ex compromisso petitur, is qui commisit damnandus est, nec interest, an adversarii eius interfuit arbitri sententia stari nec ne.

Dig. 4.8.39pr.

Iavolenus 11 ex cass.

Non ex omnibus causis, ex quibus arbitri paritum sententiae non est, poena ex compromisso committitur, sed ex his dumtaxat, quae ad solutionem pecuniae aut operam praebendam pertinent. idem. contumaciam litigatoris arbiter punire poterit pecuniam eum adversario dare iubendo: quo in numero haberi non oportet, si testium nomina ex sententia arbitri exhibita non sunt.

Dig. 4.8.39.1

Iavolenus 11 ex cass.

Cum arbiter diem compromissi proferri iussit, cum hoc ei permissum est, alterius mora alteri ad poenam committendam prodest.

Dig. 4.8.40

Pomponius 11 ex var. lect.

Arbiter calendis ianuariis adesse iussit et ante eum diem decessit: alter ex litigatoribus non adfuit. procul dubio poena minime commissa est: nam et cassium audisse se dicentem aristo ait in eo arbitro, qui ipse non venisset, non esse commissam: quemadmodum servius ait, si per stipulatorem stet, quo minus accipiat, non committi poenam.

Dig. 4.8.41

Callistratus 1 ed. monit.

Cum lege iulia cautum sit, ne minor viginti annis iudicare cogatur, nemini licere minorem viginti annis compromissarium iudicem eligere: ideoque poena ex sententia eius nullo modo committitur. maiori tamen viginti annis, si minor viginti quinque annis sit, ex hac causa succurrendum, si temere auditorium receperit, multi dixerunt.

Dig. 4.8.42

Papinianus 2 resp.

Arbiter intra certum diem servos restitui iussit, quibus non restitutis poenae causa fisco secundum formam compromissi condemnavit: ob eam sententiam fisco nihil adquiritur, sed nihilo minus stipulationis poena committitur, quod ab arbitro statuto non sit obtemperatum.

Dig. 4.8.43

Scaevola 1 resp.

De rebus controversiisque omnibus compromissum in arbitrum a lucio titio et maevio sempronio factum est, sed errore quaedam species in petitionem a lucio titio deductae non sunt nec arbiter de his quicquam pronuntiavit: quaesitum est an species omissae peti possint. respondit peti posse nec poenam ex compromisso committi. quod si maligne hoc fecit, petere quidem potest, sed poenae subiugabitur.

Dig. 4.8.44

Scaevola 2 Dig.

Inter castellianum et seium controversia de finibus orta est et arbiter electus est, ut arbitratu eius res terminetur: ipse sententiam dixit praesentibus partibus et terminos posuit: quaesitum est, an si ex parte castelliani arbitro paritum non esset, poena ex compromisso commissa est. respondi, si arbitro paritum non esset in eo, quod utroque praesente arbitratus esset, poenam commissam.

Dig. 4.8.45

Ulpianus 28 ad sab.

In compromissis arbitrium personae insertum personam non egreditur.

Dig. 4.8.46

Paulus 12 ad sab.

De his rebus et rationibus et controversiis iudicare arbiter potest, quae ab initio fuissent inter eos qui compromiserunt, non quae postea supervenerunt.

Dig. 4.8.47pr.

Iulianus 4 Dig.

Si compromissum ita factum est, ut praesente utroque aut heredibus eorum arbiter sententiam dicat et alter ex litigatoribus decesserit pupillo herede relicto, non aliter videtur sententia dicta esse, nisi tutoris auctoritas interposita fuerit.

Dig. 4.8.47.1

Iulianus 4 Dig.

Item si alter ex compromittentibus furere coeperit,

Dig. 4.8.48

Modestinus 4 reg.

Arbiter ad ferendam sententiam non compelletur:

Dig. 4.8.49pr.

Iulianus 4 Dig.

Sed et interpellatur, quo minus sententiam dicat, quia nihil coram furioso fieri intellegitur. quod si furiosus curatorem habet vel habuerit adhuc litigio pendente, potest praesente curatore sententia dici.

Dig. 4.8.49.1

Iulianus 4 Dig.

Arbiter adesse litigatores vel per nuntium vel epistulam iubere potest.

Dig. 4.8.49.2

Iulianus 4 Dig.

Si ab altera dumtaxat parte heredis mentio comprehensa fuerit, compromissum solvetur morte cuiusque ex litigatoribus, sicut solveretur altero mortuo, si neutrius heredis persona comprehenderetur.

Dig. 4.8.50

Alfenus 7 Dig.

Arbiter ex compromisso sumptus cum ante eum diem, qui constitutus compromisso erat, sententiam dicere non posset, diem compromissi proferri iusserat: alter ex litigatoribus dicto audiens non fuerat: consulebatur possetne ab eo pecunia ex compromisso peti. respondi non posse, ideo quod non esset arbitro permissum ut id iuberet.

Dig. 4.8.51

Marcianus 2 reg.

Si de re sua quis arbiter factus sit, sententiam dicere non potest, quia se facere iubeat aut petere prohibeat: neque autem imperare sibi neque se prohibere quisquam potest.

Dig. 4.8.52

Marcianus 4 reg.

Si qui iussus est ab arbitro ex compromisso solvere pecuniam moram fecerit, poenam ex compromisso debet, sed postea solvendo poena liberatur.

Dig. 4.9.0. Nautae caupones stabularii ut recepta restituant.

Dig. 4.9.1pr.

Ulpianus 14 ad ed.

Ait praetor: " nautae caupones stabularii quod cuiusque salvum fore receperint nisi restituent, in eos iudicium dabo".

Dig. 4.9.1.1

Ulpianus 14 ad ed.

Maxima utilitas est huius edicti, quia necesse est plerumque eorum fidem sequi et res custodiae eorum committere. ne quisquam putet graviter hoc adversus eos constitutum: nam est in ipsorum arbitrio, ne quem recipiant, et nisi hoc esset statutum, materia daretur cum furibus adversus eos quos recipiunt coeundi, cum ne nunc quidem abstineant huiusmodi fraudibus.

Dig. 4.9.1.2

Ulpianus 14 ad ed.

Qui sunt igitur, qui teneantur, videndum est. ait praetor " nautae". nautam accipere debemus eum qui navem exercet: quamvis nautae appellantur omnes, qui navis navigandae causa in nave sint: sed de exercitore solummodo praetor sentit. nec enim debet, inquit pomponius, per remigem aut mesonautam obligari, sed per se vel per navis magistrum: quamquam si ipse alicui e nautis committi iussit, sine dubio debeat obligari.

Dig. 4.9.1.3

Ulpianus 14 ad ed.

Et sunt quidam in navibus, qui custodiae gratia navibus praeponuntur, ut naufulakes et diaetarii. si quis igitur ex his receperit, puto in exercitorem dandam actionem, quia is, qui eos huiusmodi officio praeponit, committi eis permittit, quamquam ipse navicularius vel magister id faciat, quod xeirembolon appellant. sed et si hoc non exercet, tamen de recepto navicularius tenebitur.

Dig. 4.9.1.4

Ulpianus 14 ad ed.

De exercitoribus ratium, item lyntrariis nihil cavetur: sed idem constitui oportere labeo scribit, et hoc iure utimur.

Dig. 4.9.1.5

Ulpianus 14 ad ed.

Caupones autem et stabularios aeque eos accipiemus, qui cauponam vel stabulum exercent, institoresve eorum. ceterum si qui opera mediastini fungitur, non continetur, ut puta atriarii et focarii et his similes.

Dig. 4.9.1.6

Ulpianus 14 ad ed.

Ait praetor: " quod cuiusque ^ cuius^ salvum fore receperint": hoc est quamcumque rem sive mercem receperint. inde apud vivianum relatum est ad eas quoque res hoc edictum pertinere, quae mercibus accederent, veluti vestimenta quibus in navibus uterentur et cetera quae ad cottidianum usum habemus.

Dig. 4.9.1.7

Ulpianus 14 ad ed.

Item pomponius libro trigensimo quarto scribit parvi referre, res nostras an alienas intulerimus, si tamen nostra intersit salvas esse: etenim nobis magis, quam quorum sunt, debent solvi. et ideo si pignori merces accepero ob pecuniam nauticam, mihi magis quam debitori nauta tenebitur, si ante eas suscepit.

Dig. 4.9.1.8

Ulpianus 14 ad ed.

Recipit autem salvum fore utrum si in navem res missae ei adsignatae sunt: an et si non sint adsignatae, hoc tamen ipso, quod in navem missae sunt, receptae videntur? et puto omnium eum recipere custodiam, quae in navem illatae sunt, et factum non solum nautarum praestare debere, sed et vectorum,

Dig. 4.9.2

Gaius 5 ad ed. provinc.

Sicut et caupo viatorum.

Dig. 4.9.3pr.

Ulpianus 14 ad ed.

Et ita de facto vectorum etiam pomponius libro trigensimo quarto scribit. idem ait, etiamsi nondum sint res in navem receptae, sed in litore perierint, quas semel recepit, periculum ad eum pertinere.

Dig. 4.9.3.1

Ulpianus 14 ad ed.

Ait praetor: " nisi restituent, in eos iudicium dabo". ex hoc edicto in factum actio proficiscitur. sed an sit necessaria, videndum, quia agi civili actione ex hac causa poterit: si quidem merces intervenerit, ex locato vel conducto: sed si tota navis locata sit, qui conduxit ex conducto etiam de rebus quae desunt agere potest: si vero res perferendas nauta conduxit, ex locato convenietur: sed si gratis res susceptae sint, ait pomponius depositi agi potuisse. miratur igitur, cur honoraria actio sit inducta, cum sint civiles: nisi forte, inquit, ideo, ut innotesceret praetor curam agere reprimendae improbitatis hoc genus hominum: et quia in locato conducto culpa, in deposito dolus dumtaxat praestatur, at hoc edicto omnimodo qui receperit tenetur, etiam si sine culpa eius res periit vel damnum datum est, nisi si quid damno fatali contingit. inde labeo scribit, si quid naufragio aut per vim piratarum perierit, non esse iniquum exceptionem ei dari. idem erit dicendum et si in stabulo aut in caupona vis maior contigerit.

Dig. 4.9.3.2

Ulpianus 14 ad ed.

Eodem modo tenentur caupones et stabularii, quo exercentes negotium suum recipiunt: ceterum si extra negotium receperunt, non tenebuntur.

Dig. 4.9.3.3

Ulpianus 14 ad ed.

Si filius familias aut servus receperit et voluntas patris domini intervenit, in solidum erit conveniendus. item si servus exercitoris subripuit vel damnum dedit, noxalis actio cessabit, quia ob receptum suo nomine dominus convenitur. sin vero sine voluntate exerceant, de peculio dabitur.

Dig. 4.9.3.4

Ulpianus 14 ad ed.

Haec autem rei persecutionem continet, ut pomponius ait, et ideo et in heredem et perpetuo datur.

Dig. 4.9.3.5

Ulpianus 14 ad ed.

Novissime videndum, an eiusdem rei nomine et de recepto honoraria actione et furti agendum sit: et pomponius dubitat: sed magis est, ut vel officio iudicis vel doli exceptione alterutra esse contentus debeat.

Dig. 4.9.4pr.

Paulus 13 ad ed.

Sed et ipsi nautae furti actio competit, cuius sit periculo, nisi si ipse subripiat et postea ab eo subripiatur, aut alio subripiente ipse nauta solvendo non sit.

Dig. 4.9.4.1

Paulus 13 ad ed.

Si nauta nautae, stabularius stabularii, caupo cauponis receperit, aeque tenebitur.

Dig. 4.9.4.2

Paulus 13 ad ed.

Vivianus dixit etiam ad eas res hoc edictum pertinere, quae post impositas merces in navem locatasque inferentur, etsi earum vectura non debetur, ut vestimentorum, penoris cottidiani, quia haec ipsa ceterarum rerum locationi accedunt.

Dig. 4.9.5pr.

Gaius 5 ad ed. provinc.

Nauta et caupo et stabularius mercedem accipiunt non pro custodia, sed nauta ut traiciat vectores, caupo ut viatores manere in caupona patiatur, stabularius ut permittat iumenta apud eum stabulari: et tamen custodiae nomine tenentur. nam et fullo et sarcinator non pro custodia, sed pro arte mercedem accipiunt, et tamen custodiae nomine ex locato tenentur.

Dig. 4.9.5.1

Gaius 5 ad ed. provinc.

Quaecumque de furto diximus, eadem et de damno debent intellegi: non enim dubitari oportet, quin is, qui salvum fore recipit, non solum a furto, sed etiam a damno recipere videatur.

Dig. 4.9.6pr.

Paulus 22 ad ed.

Licet gratis navigaveris vel in caupona gratis deverteris, non tamen in factum actiones tibi denegabuntur, si damnum iniuria passus es.

Dig. 4.9.6.1

Paulus 22 ad ed.

Si servo meo in nave vel in caupona utaris et damnum mihi det vel furtum faciat, quamquam et furti actio et damni iniuria mecum sit, haec tamen actio, quia in factum est, etiam servi mei nomine adversus te competit. idem dicetur, et si communis sit: tu tamen quod mihi praestiteris eius nomine, vel communi dividundo vel pro socio actione, aut si partem eius vel totum conduxisti, etiam ex conducto habebis me obligatum.

Dig. 4.9.6.2

Paulus 22 ad ed.

Sed si damnum in eo datum sit ab alio, qui in eadem nave vel caupona est, cuius factum praetor aestimare solet, non putat pomponius eius nomine hanc actionem utilem futuram.

Dig. 4.9.6.3

Paulus 22 ad ed.

In factum actione caupo tenetur pro his, qui habitandi causa in caupona sunt: hoc autem non pertinet ad eum, qui hospitio repentino recipitur, veluti viator.

Dig. 4.9.6.4

Paulus 22 ad ed.

Possumus autem furti vel damni iniuriae actione uti cum nautis, ut certi hominis factum arguamus: sed una contenti esse debebimus, et si cum exercitore egerimus, praestare ei debemus actiones nostras, quamvis ex conducto actio adversus eos competat exercitori. sed si absolutus sit exercitor hac actione, deinde agatur cum nauta, exceptio dabitur, ne saepius de eiusdem hominis admisso quaeratur. et contra, si de admisso unius hominis actum sit, deinde in factum actione agatur, exceptio dabitur.

Dig. 4.9.7pr.

Ulpianus 18 ad ed.

Debet exercitor omnium nautarum suorum, sive liberi sint sive servi, factum praestare: nec immerito factum eorum praestat, cum ipse eos suo periculo adhibuerit. sed non alias praestat, quam si in ipsa nave damnum datum sit: ceterum si extra navem licet a nautis, non praestabit. item si praedixerit, ut unusquisque vectorum res suas servet neque damnum se praestaturum, et consenserint vectores praedictioni, non convenitur.

Dig. 4.9.7.1

Ulpianus 18 ad ed.

Haec actio in factum in duplum est.

Dig. 4.9.7.2

Ulpianus 18 ad ed.

Sed si quid nautae inter se damni dederint. hoc ad exercitorem non pertinet. sed si quis sit nauta et mercator, debiti illi dari: quod si quis quos volgo nautepibatas dicunt, et huic tenebitur, sed huius factum praestat, cum sit et nauta.

Dig. 4.9.7.3

Ulpianus 18 ad ed.

Si servus nautae damnum dederit, licet servus nauta non sit, aequissimum erit in exercitorem actionem utilem dare.

Dig. 4.9.7.4

Ulpianus 18 ad ed.

Hac autem actione suo nomine exercitor tenetur, culpae scilicet suae qui tales adhibuit: et ideo et si decesserint, non relevabitur. servorum autem suorum nomine noxali dumtaxat tenetur: nam cum alienos adhibet, explorare eum oportet, cuius fidei, cuius innocentiae sint: in suis venia dignus est, si qualesquales ad instruendam navem adhibuerit.

Dig. 4.9.7.5

Ulpianus 18 ad ed.

Si plures navem exerceant, unusquisque pro parte, qua navem exercet, convenitur.

Dig. 4.9.7.6

Ulpianus 18 ad ed.

Haec iudicia quamvis honoraria sunt, tamen perpetua sunt: in heredem autem non dabuntur. proinde et si servus navem exercuit et mortuus est, de peculio non dabitur actio in dominum nec intra annum. sed cum voluntate patris vel domini servus vel filius exercent navem vel cauponam vel stabulum, puto etiam hanc actionem in solidum eos pati debere, quasi omnia, quae ibi contingunt, in solidum receperint.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER QUINTUS

Dig. 5.2.0. De inofficioso testamento.
Dig. 5.3.0. De hereditatis petitione.
Dig. 5.4.0. Si pars hereditatis petatur.
Dig. 5.5.0. De possessoria hereditatis petitione.
Dig. 5.6.0. De fideicommissaria hereditatis petitione.

Dig. 5.1.0.R rubrica: de iudiciis: ubi quisque agere vel conveniri debeat.

Dig. 5.1.1

Ulpianus 2 ad ed.

Si se subiciant aliqui iurisdictioni et consentiant, inter consentientes cuiusvis iudicis, qui tribunali praeest vel aliam iurisdictionem habet, est iurisdictio.

Dig. 5.1.2pr.

Ulpianus 3 ad ed.

Consensisse autem videntur, qui sciant se non esse subiectos iurisdictioni eius et in eum consentiant. ceterum si putent eius iurisdictionem esse, non erit eius iurisdictio: error enim litigatorum, ut iulianus quoque libro primo digestorum scribit, non habet consensum. aut si putaverunt alium esse praetorem pro alio, aeque error non dedit iurisdictionem. aut si, cum restitisset quivis ex litigatoribus, viribus praeturae compulsus est, nulla iurisdictio est.

Dig. 5.1.2.1

Ulpianus 3 ad ed.

Convenire autem utrum inter privatos sufficit an vero etiam ipsius praetoris consensus necessarius est? lex iulia iudiciorum ait " quo minus inter privatos conveniat": sufficit ergo privatorum consensus. proinde si privati consentiant, praetor autem ignoret consentire et putet suam iurisdictionem, an legi satisfactum sit, videndum est: et puto posse defendi eius esse iurisdictionem.

Dig. 5.1.2.2

Ulpianus 3 ad ed.

Si et iudex ad tempus datus et omnes litigatores consentiant: nisi specialiter principali iussione prorogatio fuerit inhibita, possunt tempora, intra quae iussus est litem dirimere, prorogari.

Dig. 5.1.2.3

Ulpianus 3 ad ed.

Legatis in eo quod ante legationem contraxerunt, item his qui testimonii causa evocati sunt vel si qui iudicandi causa arcessiti sunt vel in provinciam destinati, revocandi domum suam ius datur. eo quoque qui ipse provocavit non imponitur necessitas intra tempora provocationis exercendae romae vel alio loco ubi provocatio exercetur aliis pulsantibus respondere: nam celsus huic etiam domus revocationem dandam ait, quoniam ob aliam causam venerit: haec celsi sententia et rationabilis est. nam et divus pius plotio celsiano rescripsit eum, qui tutelae reddendae causa romam erat a se evocatus, alterius tutelae causa, cuius causa non erat evocatus, non debere compelli iudicium suscipere. idem claudio flaviano rescripsit minorem viginti quinque annis, qui desiderarat in integrum restitui adversus asinianum, qui alterius negotii causa venerat, non esse romae audiendum.

Dig. 5.1.2.4

Ulpianus 3 ad ed.

Omnes autem isti domum revocant, si non ibi contraxerunt, ubi conveniuntur. ceterum si contraxerunt ibi, revocandi ius non habent: exceptis legatis, qui licet ibi contraxerunt, dummodo ante legationem contraxerunt, non compelluntur se romae defendere, quamdiu legationis causa hic demorantur. quod et iulianus scribit et divus pius rescripsit. plane si perfecta legatione subsistant, conveniendos eos divus pius rescripsit.

Dig. 5.1.2.5

Ulpianus 3 ad ed.

Item si extra provinciam suam contraxerunt, licet non in italia, quaestionis est, an romae conveniri possint. et Marcellus in eo solo privilegio eos uti domum revocandi, quod in civitate sua vel certe intra provinciam contraxerunt: quod est verum. sed et si agant, compelluntur se adversus omnes defendere: non tamen si iniuriam suam persequantur vel furtum vel damnum quod nunc passi sunt: alioquin, ut et iulianus eleganter ait, aut impune contumeliis et damnis adficientur aut erit in potestate cuiusque pulsando eos subicere ipsos iurisdictioni, dum se vindicant.

Dig. 5.1.2.6

Ulpianus 3 ad ed.

Sed si dubitetur, utrum in ea quis causa sit, ut domum revocare possit, nec ne, ipse praetor debet causa cognita statuere. quod si constiterit in ea eum esse causa, ut domum revocet, debebit cavere in iudicio sisti, statuente praetore in quem diem promittat. sed utrum nuda cautione an satisdato, Marcellus dubitat: mihi videtur sola promissione, quod et mela scribit: alioquin compelletur iudicium accipere quam invenire eos qui satis pro eo dent.

Dig. 5.1.2.7

Ulpianus 3 ad ed.

In omnibus autem, in quibus protelatur admonitio, hoc procedere sine temporali damno creditorum oportet.

Dig. 5.1.2.8

Ulpianus 3 ad ed.

His datur multae dicendae ius, quibus publice iudicium est, et non aliis: nisi hoc specialiter eis permissum est.

Dig. 5.1.3

Ulpianus 4 ad ed.

Non videtur frustrandae actionis causa latitare, qui praesens suscipere iudicium non compellitur.

Dig. 5.1.4

Gaius 1 ad ed. provinc.

Lis nulla nobis esse potest cum eo quem in potestate habemus, nisi ex castrensi peculio.

Dig. 5.1.5

Ulpianus 5 ad ed.

Si quis ex aliena iurisdictione ad praetorem vocetur, debet venire, ut et pomponius et vindius scripserunt: praetoris est enim aestimare, an sua sit iurisdictio, vocati autem non contemnere auctoritatem praetoris: nam et legati ceterique qui revocandi domum ius habent in ea sunt causa, ut in ius vocati veniant privilegia sua allegaturi.

Dig. 5.1.6

Ulpianus 6 ad ed.

Caecus iudicandi officio fungitur.

Dig. 5.1.7

Ulpianus 7 ad ed.

Si quis, posteaquam in ius vocatus est, miles vel alterius fori esse coeperit, in ea causa ius revocandi forum non habebit quasi praeventus.

Dig. 5.1.8

Gaius 2 ad ed. provinc.

Si quis in legatione constituerit quod ante legationem debuerit, non cogi eum ibi iudicium pati ubi constituerit.

Dig. 5.1.9

Ulpianus 9 ad ed.

Insulae italiae pars italiae sunt et cuiusque provinciae.

Dig. 5.1.10

Ulpianus 10 ad ed.

Destitisse is ^ ^ videtur non qui distulit, sed qui liti renuntiavit in totum: desistere enim est de negotio abstinere, quod calumniandi animo instituerat. plane si quis cognita rei veritate suum negotium deseruerit nolens in lite improba perseverare, quam calumniae causa non instituerat, is destitisse non videtur.

Dig. 5.1.11

Ulpianus 12 ad ed.

Si a me fuerit adrogatus qui mecum erat litem contestatus vel cum quo ego: solvi iudicium Marcellus libro tertio digestorum scribit, quoniam nec ab initio inter nos potuit consistere.

Dig. 5.1.12pr.

Paulus 17 ad ed.

Cum praetor unum ex pluribus iudicare vetat, ceteris id committere videtur.

Dig. 5.1.12.1

Paulus 17 ad ed.

Iudicem dare possunt, quibus hoc lege vel constitutione vel senatus consulto conceditur. lege, sicut proconsuli. is quoque cui mandata est iurisdictio iudicem dare potest: ut sunt legati proconsulum. item hi quibus id more concessum est propter vim imperii, sicut praefectus urbi ceterique romae magistratus.

Dig. 5.1.12.2

Paulus 17 ad ed.

Non autem omnes iudices dari possunt ab his qui iudicis dandi ius habent: quidam enim lege impediuntur ne iudices sint, quidam natura, quidam moribus. natura, ut surdus mutus: et perpetuo furiosus et impubes, quia iudicio carent. lege impeditur, qui senatu motus est. moribus feminae et servi, non quia non habent iudicium, sed quia receptum est, ut civilibus officiis non fungantur.

Dig. 5.1.12.3

Paulus 17 ad ed.

Qui possunt esse iudices, nihil interest in potestate an sui iuris sint.

Dig. 5.1.13

Gaius 7 ad ed. provinc.

In tribus istis iudiciis familiae erciscundae, communi dividundo et finium regundorum quaeritur quis actor intellegatur, quia par causa omnium videtur. sed magis placuit eum videri actorem qui ad iudicium provocasset.

Dig. 5.1.14

Ulpianus 2 disp.

Sed cum ambo ad iudicium provocant, sorte res discerni solet.

Dig. 5.1.15pr.

Ulpianus 21 ad ed.

Filius familias iudex si litem suam faciat, in tantam quantitatem tenetur, quae tunc in peculio fuit, cum sententiam dicebat.

Dig. 5.1.15.1

Ulpianus 21 ad ed.

Iudex tunc litem suam facere intellegitur, cum dolo malo in fraudem legis sententiam dixerit (dolo malo autem videtur hoc facere, si evidens arguatur eius vel gratia vel inimicitia vel etiam sordes), ut veram aestimationem litis praestare cogatur.

Dig. 5.1.16

Ulpianus 5 ad ed.

Iulianus autem in heredem iudicis, qui litem suam fecit, putat actionem competere: quae sententia vera non est et a multis notata est.

Dig. 5.1.17

Ulpianus 22 ad ed.

Iulianus ait, si alter ex litigatoribus iudicem solum heredem vel ex parte fecerit, alius iudex necessario sumendus est, quia iniquum est aliquem suae rei iudicem fieri.

Dig. 5.1.18pr.

Ulpianus 23 ad ed.

Si longius spatium intercessurum erit, quo minus iudex datus operam possit dare, mutari eum iubet praetor: hoc est si forte occupatio aliqua iudicem non patiatur operam iudicio dare, incidente infirmitate vel necessaria profectione vel rei suae familiaris periculo.

Dig. 5.1.18.1

Ulpianus 23 ad ed.

Si filius familias ex aliqua noxa, ex qua patri actio competit, velit experiri, ita demum permittimus ei agere, si non sit qui patris nomine agat. nam et iuliano placet, si filius familias legationis vel studiorum gratia aberit et vel furtum vel damnum iniuria passus sit: posse eum utili iudicio agere, ne dum pater exspectatur impunita sint maleficia, quia pater venturus non est vel dum venit, se subtrahit is qui noxam commisit. unde ego semper probavi, ut, si res non ex maleficio veniat, sed ex contractu, debeat filius agere utili iudicio, forte depositum repetens vel mandati agens vel pecuniam quam credidit petens, si forte pater in provincia sit, ipse autem forte romae vel studiorum causa vel alia iusta ex causa agat: ne, si ei non dederimus actionem, futurum sit, ut impune fraudem patiatur et egestate romae laboret viaticulo suo non recepto, quod ad sumptum pater ei destinaverat. et finge senatorem esse filium familias qui patrem habet in provincia, nonne augetur utilitas per dignitatem?

Dig. 5.1.19pr.

Ulpianus 60 ad ed.

Heres absens ibi defendendus est, ubi defunctus debuit, et conveniendus, si ibi inveniatur, nulloque suo proprio privilegio excusatur.

Dig. 5.1.19.1

Ulpianus 60 ad ed.

Si quis tutelam vel curam vel negotia vel argentariam vel quid aliud, unde obligatio oritur, certo loci administravit: etsi ibi domicilium non habuit, ibi se debebit defendere et, si non defendat neque ibi domicilium habeat, bona possideri patietur.

Dig. 5.1.19.2

Ulpianus 60 ad ed.

Proinde et si merces vendidit certo loci vel disposuit vel comparavit: videtur, nisi alio loci ut defenderet convenit, ibidem se defendere. numquid dicimus eum, qui a mercatore quid comparavit advena, vel ei vendidit quem scit inde confestim profecturum, non oportet ibi bona possideri, sed domicilium sequi eius? at si quis ab eo qui tabernam vel officinam certo loci conductam habuit, in ea causa est ut illic conveniatur: quod magis habet rationem. nam ubi sic venit ut confestim discedat, quasi a viatore emptis, vel eo qui transvehebatur, vel eo qui paraplei, emit: durissimum est, quotquot locis quis navigans vel iter faciens delatus est, tot locis se defendi. at si quo constitit, non dico iure domicilii, sed tabernulam pergulam horreum armarium officinam conduxit ibique distraxit egit: defendere se eo loci debebit.

Dig. 5.1.19.3

Ulpianus 60 ad ed.

Apud labeonem quaeritur, si homo provincialis servum institorem vendendarum mercium gratia romae habeat: quod cum eo servo contractum est, ita habendum atque si cum domino contractum sit: quare ibi se debebit defendere.

Dig. 5.1.19.4

Ulpianus 60 ad ed.

Illud sciendum est eum, qui ita fuit obligatus ut in italia solveret, si in provincia habuit domicilium, utrubique posse conveniri et hic et ibi: et ita et iuliano et multis aliis videtur.

Dig. 5.1.20

Paulus 58 ad ed.

Omnem obligationem pro contractu habendam existimandum est, ut ubicumque aliquis obligetur, et contrahi videatur, quamvis non ex crediti causa debeatur.

Dig. 5.1.21

Ulpianus 70 ad ed.

Si debitori meo velim actionem edere, probandum erit, si fateatur se debere paratumque dicat solvere, audiendum eum, dandumque diem cum competenti cautela ad solvendam pecuniam: neque enim magnum damnum est in mora modici temporis. modicum autem tempus hic intellegendum est, quod post condemnationem reis indultum est.

Dig. 5.1.22

Paulus 3 ad plaut.

Qui non cogitur in aliquo loco iudicium pati, si ipse ibi agat, cogitur excipere actiones et ad eundem iudicem mitti.

Dig. 5.1.23

Paulus 7 ad plaut.

Non potest videri in iudicium venisse id quod post iudicium acceptum accidisset: ideoque alia interpellatione opus est.

Dig. 5.1.24pr.

Paulus 17 ad plaut.

Non alias in eos, quos princeps evocavit, romae competit actio, quam si hoc tempore contraxerint.

Dig. 5.1.24.1

Paulus 17 ad plaut.

Legati ex delictis in legatione commissis coguntur iudicium romae pati, sive ipsi admiserunt sive servi eorum.

Dig. 5.1.24.2

Paulus 17 ad plaut.

Sed si postulatur in rem actio adversus legatum, numquid danda sit, quoniam ex praesenti possessione haec actio est? cassius respondit sic servandum, ut si subducatur ministerium ei, non sit concedenda actio, si vero ex multis servis de uno agatur, non sit inhibenda: iulianus sine distinctione denegandam actionem: merito: ideo enim non datur actio, ne ab officio suscepto legationis avocetur.

Dig. 5.1.25

Iulianus 1 Dig.

Si legationis tempore quis servum vel aliam rem emerit aut ex alia causa possidere coeperit, non inique cogetur eius nomine iudicium accipere: aliter enim potestas dabitur legatis sub hac specie res alienas domum auferendi.

Dig. 5.1.26

Paulus 17 ad plaut.

De eo autem qui adiit hereditatem cassius scribit, quamvis romae adierit hereditatem, non competere in eum actionem, ne impediatur legatio, et hoc verum est. sed nec legatariis datur actio, sed nisi satisdet, mittuntur in possessionem rerum hereditariarum: quod et in hereditariis creditoribus dicendum est.

Dig. 5.1.27

Iulianus 1 Dig.

Quid enim prohibet legatum publico munere fungi et actorem custodiae causa in possessione rerum hereditariarum esse?

Dig. 5.1.28pr.

Paulus 17 ad plaut.

Sed et si restituatur ei hereditas ex trebelliano, actio in eum non dabitur, sive sponte sive coactus heres eam adierit: commodius enim est reddi quidem ei hereditatem, perinde autem habendum, ac si ipse adisset hereditatem.

Dig. 5.1.28.1

Paulus 17 ad plaut.

Contra si legatus tempore legationis adierit et restituerit, datur in fideicommissarium actio, nec exceptio trebelliani obstat ex persona legati, quia hoc legati personale beneficium est.

Dig. 5.1.28.2

Paulus 17 ad plaut.

Ex quibus autem causis non cogitur legatus iudicium accipere, nec iurare cogendus est se dare non oportere, quia hoc iusiurandum in locum litis contestatae succedit.

Dig. 5.1.28.3

Paulus 17 ad plaut.

Aedium nomine legatus damni infecti promittere debet aut vicinum admittere in possessionem.

Dig. 5.1.28.4

Paulus 17 ad plaut.

Sed et si dies actionis exitura erit, causa cognita adversus eum iudicium praetor dare debet, ut lis contestetur ita, ut in provinciam transferatur.

Dig. 5.1.28.5

Paulus 17 ad plaut.

Si pater familias mortuus esset relicto uno filio et uxore praegnate, non recte filius a debitoribus partem dimidiam crediti petere potest, quamvis postea unus filius natus sit, quia poterant plures nasci: cum per rerum naturam certum fuerit unum nasci. sed sabinus cassius partem quartam peti debuisse, quia incertum esset an tres nascerentur: nec rerum naturam intuendam, in qua omnia certa essent, cum futura utique fierent, sed nostram inscientiam aspici debere.

Dig. 5.1.29

Paulus 8 ad plaut.

Qui appellat prior, agit.

Dig. 5.1.30

Marcellus 1 Dig.

Ubi acceptum est semel iudicium, ibi et finem accipere debet.

Dig. 5.1.31

Celsus 27 Dig.

Si petitor plures heredes reliquerit unusque eorum iudicio egerit, non erit verum totam rem quae in priore iudicio fuerit deductam esse: nec enim quisquam alienam actionem in iudicium invito coherede perducere potest.

Dig. 5.1.32

Ulpianus 1 de off. cons.

Si iudex, cui certa tempora praestita erant, decesserit et alius in locum eius datus fuerit, tanta ex integro tempora in persona eius praestituta intellegemus, quamvis magistratus nominatim hoc in sequentis datione non expresserit: ita tamen ut legitimum tempus non excedat.

Dig. 5.1.33

Modestinus 3 reg.

Non videtur in iudicem consensisse, qui edi sibi genus apud eundem iudicem desiderat actionis.

Dig. 5.1.34

Iavolenus 15 ex cass.

Si is qui romae iudicium acceperat decessit, heres eius quamvis domicilium trans mare habet, romae tamen defendi debet, quia succedit in eius locum, a quo heres relictus est.

Dig. 5.1.35

Iavolenus 10 epist.

Non quemadmodum fideiussoris obligatio in pendenti potest esse et vel in futurum concipi, ita iudicium in pendenti potest esse vel de his rebus quae postea in obligationem adventurae sunt. nam neminem puto dubitaturum, quin fideiussor ante obligationem rei accipi possit: iudicium vero, antequam aliquid debeatur, non posse.

Dig. 5.1.36pr.

Callistratus 1 cogn.

Interdum ex iustis causis et ex certis personis sustinendae sunt cognitiones: veluti si instrumenta litis apud eos esse dicantur qui rei publicae causa aberunt: idque divi fratres in haec verba rescripserunt. humanum est propter fortuitos casus dilationem accipi, veluti quod pater litigator filium vel filiam vel uxor virum vel filius parentem amiserit, et in similibus causis cognitionem ad aliquem modum sustineri.

Dig. 5.1.36.1

Callistratus 1 cogn.

Senator si negotiis alienis se optulerit in provincia, non debet iudicium recusare negotiorum gestorum, sed actionem eum excipere oportere iulianus respondit, cum sua sponte sibi hanc obligationem contraxerit.

Dig. 5.1.37

Callistratus 5 cogn.

Si de vi et possessione quaeratur, prius cognoscendum de vi quam de proprietate rei divus hadrianus tw koinw twn vessalwn graece rescripsit.

Dig. 5.1.38

Licinius 4 reg.

Quod legatur, si quidem per personalem actionem exigetur, ibi dari debet ubi est, nisi si dolo malo heredis subductum fuerit: tunc enim ibi dari debet ubi petitur. praeterea quod pondere aut numero aut mensura continetur, ibi dari debet ubi petitur, nisi si adiectum fuerit " centum modios ex illo horreo" aut " vini amphoras ex illo dolio". si autem per in rem actionem legatum petetur, etiam ibi peti debet ubi res est. et si mobilis sit res, ad exhibendum agi cum herede poterit, ut exhibeat rem: sic enim vindicari a legatario poterit.

Dig. 5.1.39pr.

Papinianus 3 quaest.

Cum furiosus iudex addicitur, non ideo minus iudicium erit, quod hodie non potest iudicare: ut scilicet suae mentis effectus quod sententiae dixerit, ratum sit: neque enim in addicendo praesentia vel scientia iudicis necessaria est.

Dig. 5.1.39.1

Papinianus 3 quaest.

Qui legationis causa romam venit, ex qualibet causa fideiubere potest, cum privilegio suo, cum sit in italia contractum, uti non potest.

Dig. 5.1.40pr.

Papinianus 4 quaest.

Non quidquid iudicis potestati permittitur, id subicitur iuris necessitati.

Dig. 5.1.40.1

Papinianus 4 quaest.

Iudex si quid adversus legis praeceptum in iudicando dolo malo praetermiserit, legem offendit.

Dig. 5.1.41

Papinianus 11 quaest.

In omnibus bonae fidei iudicis, cum nondum dies praestandae pecuniae venit, si agat aliquis ad interponendam cautionem, ex iusta causa condemnatio fit.

Dig. 5.1.42

Papinianus 24 quaest.

Si uxor a legato romae diverterit, dotis nomine defendendum romae virum responsum est.

Dig. 5.1.43

Papinianus 27 quaest.

Eum, qui insulam capuae fieri certo tempore stipulatus est, eo finito quocumque loco agere posse in id quod interest constat.

Dig. 5.1.44pr.

Papinianus 2 resp.

Non idcirco iudicis officium impeditur, quod quidam ex tutoribus post litem adversus omnes inchoatam rei publicae causa abesse coeperunt, cum praesentium et eorum qui non defenduntur administratio discerni et aestimari possit.

Dig. 5.1.44.1

Papinianus 2 resp.

Cum postea servus apparuit, cuius nomine per procuratorem fuerat actum, absolvi debitorem oportet: quae res domino quandoque propriam litem inferenti non obstabit.

Dig. 5.1.45pr.

Papinianus 3 resp.

Argentarium ubi contractum est conveniri oportet nec in hoc dilationem nisi ex iusta causa dari, ut ex provincia codices adferantur. idem in actione tutelae placuit.

Dig. 5.1.45.1

Papinianus 3 resp.

Nomine puellae tutoribus in provincia condemnatis curatores puellae iudicatum romae facere coguntur, ubi mutuam pecuniam mater accepit, cui filia heres extitit.

Dig. 5.1.46

Paulus 2 quaest.

Iudex datus in eodem officio permanet, licet furere coeperit, quia recte ab initio iudex addictus est: sed iudicandi necessitatem morbus sonticus remittit. ergo mutari debet.

Dig. 5.1.47

Callistratus 1 quaest.

Observandum est, ne is iudex detur quem altera pars nominatim petat: id enim iniqui exempli esse divus hadrianus rescripsit: nisi hoc specialiter a principe ad verecundiam petiti iudicis respiciente permittetur.

Dig. 5.1.48

Paulus 2 resp.

Pars litterarum divi hadriani: tous arxontas en hw arxousin eniautw myte eisienai dikyn idian myte diwkontwn myte feugontwn, myte peri hwn epitropoi y kouratores eien krinetwsan. epeidan de ecyky hy arxy, kai autois pros tous feugontas kai tois feugousi pros autous eisagwgimous einai tas dikas.

Dig. 5.1.49pr.

Paulus 3 resp.

Venditor ab emptore denuntiatus, ut eum evictionis nomine defenderet, dicit se privilegium habere sui iudicis: quaeritur, an possit litem ab eo iudice, apud quem res inter petitorem et emptorem coepta est, ad suum iudicem revocare. paulus respondit venditorem emptoris iudicem sequi solere.

Dig. 5.1.49.1

Paulus 3 resp.

Iudices a praeside dati solent etiam in tempus successorum eius durare et cogi pronuntiare easque sententias servari. in eundem sensum etiam scaevola respondit.

Dig. 5.1.50pr.

Ulpianus 6 fideic.

Si fideicommissum ab aliquo petatur isque dicat alibi esse maiorem partem hereditatis, non erit ad praestationem compellendus: et ita multis constitutionibus cavetur, ut ibi petatur fideicommissum, ubi maior pars hereditatis est: nisi si probetur eo loco voluisse testatorem fideicommissum praestari, ubi petitur.

Dig. 5.1.50.1

Ulpianus 6 fideic.

Tractatum est de aere alieno: si in ea provincia, ubi fideicommissum petitur, plus esset aeris alieni, an quasi maior pars alibi esset, praescriptio locum haberet. sed et hic placuit nihil facere aeris alieni nomen, cum non loci sit aes alienum, sed universarum facultatium: aes enim alienum patrimonium totum imminuere constitit, non certi loci facultates. quid tamen si forte certis oneribus destinatum sit id patrimonium, ut puta alimentis praestandis quae romae praestari pater familias iusserat, vel tributis vel quibusdam aliis inexcusabilibus oneribus, an possit praescriptio locum habere? hic putem iustius dici locum habere.

Dig. 5.1.50.2

Ulpianus 6 fideic.

Sed et rescriptum est, ut illic fideicommissum petatur, ubi domicilium heres habet. quotiens autem coepit quis fideicommissum solvere, non potest hac praescriptione uti,

Dig. 5.1.51

Marcianus 8 inst.

Quamvis ad eum hereditas fuerit devoluta qui domicilium in provincia habet. sed et divi severus et antoninus rescripserunt, si consenserit fideicommissarius alio loco dare, necesse habere secundum consensum dare ubi consenserit.

Dig. 5.1.52pr.

Ulpianus 6 fideic.

Sed et si suscepit actionem fideicommissi et aliis defensionibus usus hanc omisit, postea, quamvis ante sententiam, reverti ad hanc defensionem non potest.

Dig. 5.1.52.1

Ulpianus 6 fideic.

Si libertis suis tesseras frumentarias emi voluerit, quamvis maior pars hereditatis in provincia sit, tamen romae debere fideicommissum solvi dicendum est, cum apparet id testatorem sensisse ex genere comparationis.

Dig. 5.1.52.2

Ulpianus 6 fideic.

Sed et si proponas quibusdam clarissimis viris argenti vel auri pondo relicta et sit sufficiens ad huiusmodi fideicommissa romae patrimonium: licet maior pars totius patrimonii in provincia sit, dici oportet romae esse praestandum: nec enim verisimile est testatorem, qui honorem habitum voluit his quibus reliquit tam modica fideicommissa, in provincia praestari voluisse.

Dig. 5.1.52.3

Ulpianus 6 fideic.

Si ea res quae per fideicommissum relicta est eo loci sit, dicendum est non debere praescribi ei qui petit, quasi maior pars hereditatis alibi sit.

Dig. 5.1.52.4

Ulpianus 6 fideic.

Sed si non fideicommissum petatur eo loci, sed fideicommisso satis, videndum est, an haec praescriptio locum habeat: et non puto habere, quin immo, et si nihil sit eo loci, attamen iubendum satisdare. quid enim veretur, cum, si satis non dederit, mittatur adversarius in possessionem fideicommissi servandi causa?

Dig. 5.1.53

Hermogenianus 1 iuris epit.

Vix certis ex causis adversus dominos servis consistere permissum est: id est si qui suppressas tabulas testamenti dicant, in quibus libertatem sibi relictam adseverant. item artioris annonae populi romani, census etiam et falsae monetae criminis reos dominos detegere servis permissum est. praeterea fideicommissam libertatem ab his petent: sed et si qui suis nummis redemptos se et non manumissos contra placiti fidem adseverent. liber etiam esse iussus si rationes reddiderit, arbitrum contra dominum rationibus excutiendis recte petet. sed et si quis fidem alicuius elegerit, ut nummis eius redimatur atque his solutis manumittatur, nec ille oblatam pecuniam suscipere velle dicat, contractus fidem detegendi servo potestas tributa est.

Dig. 5.1.54

Paulus 1 sent.

Per minorem causam maiori cognitioni praeiudicium fieri non oportet: maior enim quaestio minorem causam ad se trahit.

Dig. 5.1.55

Paulus l.S. de off. adsess.

Edictum, quod ab antecessore datum est, in numero trium edictorum connumerari debet. plane licet omnis ab antecessore numerus finitus sit, solet successor unum edictum dare.

Dig. 5.1.56

Ulpianus 30 ad sab.

Licet verum procuratorem in iudicio rem deducere verissimum est, tamen et si quis, cum procurator non esset, litem sit contestatus, deinde ratum dominus habuerit, videtur retro res in iudicium recte deducta.

Dig. 5.1.57

Ulpianus 41 ad sab.

Tam ex contractibus quam ex delictis in filium familias competit actio: sed mortuo filio post litis contestationem transfertur iudicium in patrem dumtaxat de peculio et quod in rem eius versum est. certe si quasi procurator alicuius filius familias iudicium acceperit, mortuo eo in eum quem defenderit transactio vel iudicati datur.

Dig. 5.1.58

Paulus 13 ad sab.

Iudicium solvitur vetante eo qui iudicare iusserat, vel etiam eo qui maius imperium in eadem iurisdictione habet, vel etiam si ipse iudex eiusdem imperii esse coeperit, cuius erat qui iudicare iussit.

Dig. 5.1.59

Ulpianus 51 ad sab.

Si locus in iubendo iudicare non est comprehensus, videtur eo loco iudicare iussisse quo solet iudicari, sine incommodo litigantium.

Dig. 5.1.60

Paulus 14 ad sab.

Mortuo iudice quod eum iudicare oportuerat idem eum qui subditus est sequi oportet.

Dig. 5.1.61pr.

Ulpianus 26 ad ed.

Solemus quidem dicere id venire in iudicium, de quo actum est inter litigantes: sed celsus ait periculose esse ex persona rei hoc metiri, qui semper ne condemnetur hoc dicet non convenisse. quid ergo? melius est dicere id venire in iudicium non de quo actum est ut veniret, sed id non venire, de quo nominatim actum est ne veniret.

Dig. 5.1.61.1

Ulpianus 26 ad ed.

Latrunculator de re pecuniaria iudicare non potest.

Dig. 5.1.62

Ulpianus 39 ad ed.

Inter litigantes non aliter lis expediri potest, quam si alter petitor, alter possessor sit: esse enim debet qui onera petitoris sustineat et qui commodo possessoris fungatur.

Dig. 5.1.63

Ulpianus 49 ad ed.

Recte defendi hoc est iudicium accipere vel per se vel per alium, sed cum satisdatione: nec ille videtur defendi, qui quod iudicatum est non solvit.

Dig. 5.1.64pr.

Ulpianus 1 disp.

Non ab iudice doli aestimatio ex eo quod interest fit, sed ex eo quod in litem iuratur: denique et praedoni depositi et commodati ob eam causam competere actionem non dubitatur.

Dig. 5.1.64.1

Ulpianus 1 disp.

Si quis alio iudicio acturus iudicatum solvi satis acceperit, deinde in alio iudicio agat, non committetur stipulatio, quia de alia re cautum videtur.

Dig. 5.1.65

Ulpianus 34 ad ed.

Exigere dotem mulier debet illic, ubi maritus domicilium habuit, non ubi instrumentum dotale conscriptum est: nec enim id genus contractus est, ut et eum locum spectari oporteat, in quo instrumentum dotis factum est, quam eum, in cuius domicilium et ipsa mulier per condicionem matrimonii erat reditura.

Dig. 5.1.66

Ulpianus 2 disp.

Si quis intentione ambigua vel oratione usus sit, id quod utilius ei est accipiendum est.

Dig. 5.1.67

Ulpianus 6 disp.

Qui se dicit suis nummis redemptum, si hoc probaverit, exinde liber erit ex quo redemptus est, quia constitutio non liberum pronuntiari praecipit, sed restitui ei libertatem iubet. proinde compellendus erit manumittere eum qui se suis nummis redemit. sed et si latitet, exempla senatus consultorum ad fideicommissam libertatem pertinentium debere induci oportet.

Dig. 5.1.68

Ulpianus 8 disp.

Ad peremptorium edictum hoc ordine venitur, ut primo quis petat post absentiam adversari edictum primum, mox alterum.

Dig. 5.1.69

Ulpianus 4 de omn. trib.

Per intervallum non minus decem dierum.

Dig. 5.1.70

Ulpianus 8 disp.

Et tertium: quibus propositis tunc peremptorium impetret. quod inde hoc nomen sumpsit, quod peremeret disceptationem, hoc est ultra non pateretur adversarium tergiversari.

Dig. 5.1.71

Ulpianus 4 de omn. trib.

In peremptorio autem comminatur is qui edictum dedit etiam absente diversa parte cogniturum se et pronuntiaturum.

Dig. 5.1.72

Ulpianus 8 disp.

Nonnumquam autem hoc edictum post tot numero edicta quae praecesserint datur, nonnumquam post unum vel alterum, nonnumquam statim, quod appellatur unum pro omnibus. hoc autem aestimare oportet eum qui ius dixit et pro condicione causae vel personae vel temporis ita ordinem edictorum vel compendium moderari.

Dig. 5.1.73pr.

Ulpianus 4 de omn. trib.

Et post edictum peremptorium impetratum, cum dies eius supervenerit, tunc absens citari debet: et sive responderit sive non responderit, agetur causa et pronuntiabitur, non utique secundum praesentem, sed interdum vel absens, si bonam causam habuit, vincet.

Dig. 5.1.73.1

Ulpianus 4 de omn. trib.

Quod si is qui edictum peremptorium impetravit absit die cognitionis, is vero adversus quem impetratum est adsit, tum circumducendum erit edictum peremptorium neque causa cognoscetur nec secundum praesentem pronuntiabitur.

Dig. 5.1.73.2

Ulpianus 4 de omn. trib.

Circumducto edicto videamus an amplius reus conveniri possit, an vero salva quidem lis est, verum instantia tantum edicti periit: et magis est ut instantia tantum perierit, ex integro autem litigari possit.

Dig. 5.1.73.3

Ulpianus 4 de omn. trib.

Sciendum est ex peremptorio absentem condemnatum si appellet non esse audiendum, si modo per contumaciam defuit: si minus, audietur.

Dig. 5.1.74pr.

Iulianus 5 Dig.

De qua re cognoverit iudex, pronuntiare quoque cogendus erit.

Dig. 5.1.74.1

Iulianus 5 Dig.

Iudex, qui usque ad certam summam iudicare iussus est, etiam de re maiori iudicare potest, si inter litigatores conveniat.

Dig. 5.1.74.2

Iulianus 5 Dig.

Cum absentem defendere vellem, iudicium mortuo iam eo accepi et condemnatus solvi: quaesitum est an heres liberaretur, item quae actio mihi adversus eum competeret. respondi iudicium, quod iam mortuo debitore per defensorem eius accipitur, nullum esse et ideo heredem non liberari: defensorem autem, si ex causa iudicati solverit, repetere quidem non posse, negotiorum tamen gestorum ei actionem competere adversus heredem: qui sane exceptione doli mali tueri se possit, si ab actore conveniatur.

Dig. 5.1.75

Iulianus 36 Dig.

Si praetor iusserit eum a quo debitum petebatur adesse et ordine edictorum peracto pronuntiaverit absentem debere, non utique iudex, qui de iudicato cognoscit, debet de praetoris sententia cognoscere: alioquin lusoria erunt huiusmodi edicta et decreta praetorum. Marcellus notat: si per dolum sciens falso aliquid allegavit et hoc modo consecutum eum sententiam praetoris liquido fuerit adprobatum, existimo debere iudicem querellam rei admittere. paulus notat: si autem morbo impeditus aut rei publicae causa avocatus adesse non potuit reus, puto vel actionem iudicati eo casu in eum denegandam vel exsequi praetorem ita iudicatum non debere.

Dig. 5.1.76

Alfenus 6 Dig.

Proponebatur ex his iudicibus, qui in eandem rem dati essent, nonullos causa audita excusatos esse inque eorum locum alios esse sumptos, et quaerebatur, singulorum iudicum mutatio eandem rem an aliud iudicium fecisset. respondi, non modo si unus aut alter, sed et si omnes iudices mutati essent, tamen et rem eandem et iudicium idem quod antea fuisset permanere: neque in hoc solum evenire, ut partibus commutatis eadem res esse existimaretur, sed et in multis ceteris rebus: nam et legionem eandem haberi, ex qua multi decessissent, quorum in locum alii subiecti essent: et populum eundem hoc tempore putari qui abhinc centum annis fuissent, cum ex illis nemo nunc viveret: itemque navem, si adeo saepe refecta esset, ut nulla tabula eadem permaneret quae non nova fuisset, nihilo minus eandem navem esse existimari. quod si quis putaret partibus commutatis aliam rem fieri, fore ut ex eius ratione nos ipsi non idem essemus qui abhinc anno fuissemus, propterea quod, ut philosophi dicerent, ex quibus particulis minimis constiteremus, hae cottidie ex nostro corpore decederent aliaeque extrinsecus in earum locum accederent. quapropter cuius rei species eadem consisteret, rem quoque eandem esse existimari.

Dig. 5.1.77

Africanus 3 quaest.

In privatis negotiis pater filium vel filius patrem iudicem habere potest:

Dig. 5.1.78

Paulus 16 ad plaut.

Quippe iudicare munus publicum est.

Dig. 5.1.79pr.

Ulpianus 5 de off. procons.

Eum, quem temere adversarium suum in iudicium vocasse constitit, viatica litisque sumptus adversario suo reddere oportebit.

Dig. 5.1.79.1

Ulpianus 5 de off. procons.

Iudicibus de iure dubitantibus praesides respondere solent: de facto consulentibus non debent praesides consilium impertire, verum iubere eos prout religio suggerit sententiam proferre: haec enim res nonnumquam infamat et materiam gratiae vel ambitionis tribuit.

Dig. 5.1.80

Pomponius 2 ad sab.

Si in iudicis nomine praenomine erratum est, servius respondit, si ex conventione litigatorum is iudex addictus esset, eum esse iudicem, de quo litigatores sensissent.

Dig. 5.1.81

Ulpianus 5 opin.

Qui neque iurisdictioni praeest neque a principe potestate aliqua praeditus est neque ab eo qui ius dandorum iudicum habet datus est nec ex compromisso sumptus vel ex aliqua lege confirmatus est, iudex esse non potuit.

Dig. 5.1.82

Ulpianus 1 de off. cons.

Nonnumquam solent magistratus populi romani viatorem nominatim vice arbitri dare: quod raro et non nisi re urguente faciendum est.

Dig. 5.2.0. De inofficioso testamento.

Dig. 5.2.1

Ulpianus 14 ad ed.

Sciendum est frequentes esse inofficiosi querellas: omnibus enim tam parentibus quam liberis de inofficioso licet disputare. cognati enim proprii qui sunt ultra fratrem melius facerent, si se sumptibus inanibus non vexarent, cum optinere spem non haberent.

Dig. 5.2.2

Marcianus 4 inst.

Hoc colore inofficioso testamento agitur, quasi non sanae mentis fuerunt, ut testamentum ordinarent. et hoc dicitur non quasi vere furiosus vel demens testatus sit, sed recte quidem fecit testamentum, sed non ex officio pietatis: nam si vere furiosus esset vel demens, nullum est testamentum.

Dig. 5.2.3

Marcellus 3 Dig.

Inofficiosum testamentum dicere hoc est allegare, quare exheredari vel praeteriri non debuerit: quod plerumque accidit, cum falso parentes instimulati liberos suos vel exheredant vel praetereunt.

Dig. 5.2.4

Gaius l.S. ad l. glitiam.

Non est enim consentiendum parentibus, qui iniuriam adversus liberos suos testamento inducunt: quod plerumque faciunt, maligne circa sanguinem suum inferentes iudicium, novercalibus delenimentis instigationibusve corrupti.

Dig. 5.2.5

Marcellus 3 Dig.

Nam et his, qui non ex masculis descendunt, facultas est agendi, cum et de matris testamento agant et optinere adsidue soleant. huius autem verbi " de inofficioso" vis illa ut dixi est docere immerentem se et ideo indigne praeteritum vel etiam exheredatione summotum: resque illo colore defenditur apud iudicem, ut videatur ille quasi non sanae mentis fuisse, cum testamentum inique ordinaret.

Dig. 5.2.6pr.

Ulpianus 14 ad ed.

Postumus inofficiosum testamentum potest dicere eorum, quibus suus heres vel legitimus potuisset fieri, si in utero fuerit mortis eorum tempore: sed et cognatorum, quia et horum ab intestato potuit bonorum possessionem accipere. quid ergo? eis imputatur, cur intestati non decesserant? sed hoc nemo apud iudicem potest impetrare: non enim interdicitur testamenti factione. hoc plane ei imputare potest, cur eum heredem non scripserit: potuit enim scriptus heres in possessionem mitti ex clausula de ventre in possessionem mittendo: item natus secundum tabulas haberet. simili modo et eum, qui post testamentum matris factum exsecto ventre extractus est, posse queri dico.

Dig. 5.2.6.1

Ulpianus 14 ad ed.

Si quis ex his personis, quae ad successionem ab intestato non admittuntur, de inofficioso egerit (nemo enim eum repellit) et casu optinuerit, non ei prosit victoria, sed his qui habent ab intestato successionem: nam intestatum patrem familias facit.

Dig. 5.2.6.2

Ulpianus 14 ad ed.

Si quis instituta accusatione inofficiosi decesserit, an ad heredem suum querellam transferat? papinianus respondit, quod et quibusdam rescriptis significatur, si post adgnitam bonorum possessionem decesserit, esse successionem accusationis. et si non sit petita bonorum possessio, iam tamen coepta controversia vel praeparata, vel si cum venit ad movendam inofficiosi querellam decessit, puto ad heredem transire.

Dig. 5.2.7

Paulus l.S. de septemvir. iud.

Quemadmodum praeparasse litem quis videatur, ut possit transmittere actionem, videamus. et ponamus in potestate fuisse eum, ut neque bonorum possessio ei necessaria et aditio hereditatis supervacua sit: is si comminatus tantum accusationem fuerit vel usque ad denuntiationem vel libelli dationem praecesserit, ad heredem suum accusationem transmittet: idque divus pius de libelli datione et denuntiatione rescripsit. quid ergo si in potestate non fuerit, an ad heredem actionem transmittat ? et recte videtur litem praeparasse, si ea fecerit quorum supra mentionem habuimus.

Dig. 5.2.8pr.

Ulpianus 14 ad ed.

Papinianus libro quinto quaestionum recte scribit inofficiosi querellam patrem filii sui nomine instituere non posse invito eo: ipsius enim iniuria est. sequenti loco scribit, si filius post adgnitam litis ordinandae gratia bonorum possessionem decesserit, finitam esse inofficiosi querellam, quae non patri, sed nomine dabatur filii.

Dig. 5.2.8.1

Ulpianus 14 ad ed.

Si quis post rem inofficiosi ordinatam litem dereliquerit, postea non audietur.

Dig. 5.2.8.2

Ulpianus 14 ad ed.

Si imperator sit heres institutus, posse inofficiosum dici testamentum saepissime rescriptum est.

Dig. 5.2.8.3

Ulpianus 14 ad ed.

Papinianus libro secundo responsorum ait contra veterani patris familias testamentum esse inofficiosi querellam, etsi ea sola bona habuit quae in castris quaesierat.

Dig. 5.2.8.4

Ulpianus 14 ad ed.

Si quis in militia fecerit testamentum et intra annum post militiam decesserit, dubito an, quia ad hoc usque temporis iure militari testamentum eius valet, querella inofficiosi cesset: et potest dici querellam inofficiosi cessare.

Dig. 5.2.8.5

Ulpianus 14 ad ed.

Sed nec impuberis filii mater inofficiosum testamentum dicit, quia pater ei hoc fecit (et ita papinianus respondit): nec patris frater, quia filii testamentum est: ergo nec frater impuberis, si patris non dixit. sed si in patris obtentum est, nec hoc valebit: nisi si pro parte patris rescissum est: tunc enim pupillare valet.

Dig. 5.2.8.6

Ulpianus 14 ad ed.

Si quis mortis causa filio donaverit quartam partem eius quod ad eum esset perventurum, si intestatus pater familias decessisset, puto secure eum testari.

Dig. 5.2.8.7

Ulpianus 14 ad ed.

Si quis impuberi filio substituit secundas tabulas faciendo, non ob hoc admittemus ipsum impuberem ad inofficiosi querellam.

Dig. 5.2.8.8

Ulpianus 14 ad ed.

Quoniam autem quarta debitae portionis sufficit ad excludendam querellam, videndum erit an exheredatus partem faciat qui non queritur: ut puta sumus duo filii exheredati. et utique faciet, ut papinianus respondit, et si dicam inofficiosum, non totam hereditatem debeo, sed dimidiam petere. proinde si sint ex duobus filiis nepotes, ex uno plures, tres puta, ex uno unus: unicum sescuncia, unum ex illis semuncia querella excludit.

Dig. 5.2.8.9

Ulpianus 14 ad ed.

Quarta autem accipietur scilicet deducto aere alieno et funeris impensa: sed an et libertates quartam minuant, videndum est. et numquid minuant? nam si, cum quis ex asse heres institutus est, ideo non potest dicere inofficiosum, quia habet falcidiam, falcidia autem libertates non minuit: potest dici deductis libertatibus quartam ineundam. cum igitur placet quartam minui per libertates, eveniet ut, qui servos tantum habet in patrimonio suo, dando eis libertatem inofficiosi querellam excludat: nisi forte hic filius, si non fuit in potestate, a patre heres institutus merito omittit hereditatem et ad substitutum transmittens querellam inofficiosi instituet, vel ab intestato citra edicti poenam habeat hereditatem.

Dig. 5.2.8.10

Ulpianus 14 ad ed.

Si condicioni parere testator heredem iussit in persona filii vel alterius qui eandem querellam movere potest et sciens is accepit, videndum, ne ab inofficiosi querella excludatur: adgnovit enim iudicium. idem est et si legatarius ei vel statuliber dedit. et potest dici excludi eum, maxime si heredem ei iusserat dare: ceterum si legatarium, numquid semel natam inofficiosi querellam non peremat legatarii oblatio? cur ergo in herede absolute diximus? quoniam ante aditam hereditatem nec nascitur querella. ego eventum puto sequendum in hac re, ut, si forte antequam iudicium moveatur oblatio ei fiat eius quod relictum est, quasi ex voluntate testatoris oblato eo satis ei factum videatur.

Dig. 5.2.8.11

Ulpianus 14 ad ed.

Unde si quis fuit institutus forte ex semisse, cum ei sextans ex substantia testatoris deberetur, et rogatus esset post certum temporis restituere hereditatem, merito dicendum est nullum iudicium movere, cum debitam portionem et eius fructus habere possit: fructus enim solere in falcidiam imputari non est incognitum. ergo et si ab initio ex semisse heres institutus rogetur post decennium restituere hereditatem, nihil habet quod queratur, quoniam facile potest debitam portionem eiusque fructus medio tempore cogere.

Dig. 5.2.8.12

Ulpianus 14 ad ed.

Si quis et irritum dicat testamentum vel ruptum et inofficiosum, condicio ei deferri debet, utrum prius movere volet.

Dig. 5.2.8.13

Ulpianus 14 ad ed.

Si filius exheredatus in possessione sit hereditatis, scriptus quidem heres petet hereditatem, filius vero in modum contradictionis querellam inducat, quemadmodum ageret, si non possideret, sed peteret.

Dig. 5.2.8.14

Ulpianus 14 ad ed.

Meminisse autem oportebit eum, qui testamentum inofficiosum improbe dixit et non optinuit, id quod in testamento accepit perdere et id fisco vindicari quasi indigno ablatum. sed ei demum aufertur quod testamento datum est, qui usque ad sententiam iudicum lite improba perseveraverit: ceterum si ante sententiam destitit vel decessit, non ei aufertur quod datum est: proinde et si absente eo secundum praesentem pronuntietur, potest dici conservandum ei quod accepit. eo autem solo carere quis debet, cuius emolumentum ad eum pertinet: ceterum si id rogatus fuit restituere, non debet iniuria fieri. unde non male papinianus libro secundo responsorum refert, si heres fuit institutus et rogatus restituere hereditatem, deinde in querella inofficiosi non optinuit, id quod iure falcidiae potuit habere solum perdere.

Dig. 5.2.8.15

Ulpianus 14 ad ed.

Si quis impubes adrogatus sit ex his personis, quae et citra adoptionem et emancipationem queri de inofficioso possunt, hunc puto removendum a querella, cum habeat quartam ex constitutione divi pii. quod si egit nec optinuit, an quartam perdat? et puto aut non admittendum ad inofficiosum, aut si admittatur, etsi non optinuerit, quartam ei quasi aes alienum concedendam.

Dig. 5.2.8.16

Ulpianus 14 ad ed.

Si ex causa de inofficiosi cognoverit iudex et pronuntiaverit contra testamentum nec fuerit provocatum, ipso iure rescissum est: et suus heres erit secundum quem iudicatum est et bonorum possessor, si hoc se contendit: et libertates ipso iure non valent: nec legata debentur, sed soluta repetuntur aut ab eo qui solvit, aut ab eo qui optinuit et haec utili actione repetuntur. fere autem si ante controversiam motam soluta sunt, qui optinuit repetit: et ita divus hadrianus et divus pius rescripserunt.

Dig. 5.2.8.17

Ulpianus 14 ad ed.

Plane si post quinquennium inofficiosum dici coeptum est ex magna et iusta causa, libertates non esse revocandas, quae competierunt vel praestitae sunt, sed viginti aureos a singulis praestandos victori.

Dig. 5.2.9

Modestinus l.S. de inoff. testam.

Si autem intra quinquennium egerit, libertates non competunt. sed paulus ait praestaturum fidei commissas libertates, scilicet viginti aureis et in hoc casu a singulis praestandis.

Dig. 5.2.10pr.

Marcellus 3 Dig.

Si pars iudicantium de inofficioso testamento contra testamentum, pars secundum id sententiam dederit, quod interdum fieri solet, humanius erit sequi eius partis sententiam quae secundum testamentum spectavit: nisi si aperte iudices inique secundum scriptum heredem pronuntiasse apparebit.

Dig. 5.2.10.1

Marcellus 3 Dig.

Illud notissimum est eum qui legatum perceperit non recte de inofficioso testamento dicturum, nisi id totum alii administravit.

Dig. 5.2.11

Modestinus 3 resp.

Etiamsi querella inofficiosi testamenti optinuerit, non ideo tamen donationes, quas vivus ei perfecisse proponitur, infirmari neque in dotem datorum partem vindicari posse respondi.

Dig. 5.2.12pr.

Modestinus l.S. de praescr.

Nihil interest sibi relictum legatum filius exheredatus adgnoverit an filio servove relictum consecutus sit: utrubique enim praescriptione submovebitur. quin etiam si idem institutum servum priusquam adire hereditatem iuberet manumiserit, ut ille suo arbitrio adeat hereditatem, idque fraudulento consilio fecerit, summovebitur ab actione.

Dig. 5.2.12.1

Modestinus l.S. de praescr.

Si a statulibero exheredatus pecuniam petere coeperit, videri adgnovisse parentis iudicium.

Dig. 5.2.12.2

Modestinus l.S. de praescr.

Si cum filius ademptum legatum instituerit petere, summotus repetat inofficiosi querellam, praescriptione removendus non est: quamvis enim agendo testamentum comprobaverit, tamen est aliquid, quod testatoris vitio reputetur, ut merito repellendus non sit.

Dig. 5.2.12.3

Modestinus l.S. de praescr.

Filius testatoris, qui cum titio eiusdem pecuniae reus fuerat, liberatione titio legata per acceptilationem titii liberatus ab actione inofficiosi non summovebitur.

Dig. 5.2.13

Scaevola 3 resp.

Titia filiam heredem instituit, filio legatum dedit: eodem testamento ita cavit: " ea omnia quae supra dari fieri iussi, ea dari fieri volo ab omni herede bonorumve possessore qui mihi erit etiam iure intestato: item quae dari iussero, ea uti dentur fiantque, fidei eius committo. " quaesitum est, si soror centumvirali iudicio optinuerit, an fideicommissa ex capite supra scripto debeantur. respondi: si hoc quaeratur, an iure eorum, quos quis sibi ab intestato heredes bonorumve possessores successuros credat, fidei committere possit, respondi posse. paulus notat: probat autem nec fideicommissa ab intestato data deberi, quasi a demente.

Dig. 5.2.14

Papinianus 5 quaest.

Pater filium emancipavit et nepotem ex eo retinuit: emancipatus suscepto postea filio, duobus exheredatis patre praeterito vita decessit. in quaestione de inofficiosi testamenti praecedente causa filiorum patris intentio adhuc pendet. quod si contra filios iudicetur, pater ad querellam vocatur et suam intentionem implere potest.

Dig. 5.2.15pr.

Papinianus 14 quaest.

Nam etsi parentibus non debetur filiorum hereditas propter votum parentium et naturalem erga filios caritatem: turbato tamen ordine mortalitatis non minus parentibus quam liberis pie relinqui debet.

Dig. 5.2.15.1

Papinianus 14 quaest.

Heredi eius, qui post litem de inofficioso praeparatam mutata voluntate decessit, non datur de inofficioso querella: non enim sufficit litem instituere, si non in ea perseveret.

Dig. 5.2.15.2

Papinianus 14 quaest.

Filius, qui de inofficiosi actione adversus duos heredes expertus diversas sententias iudicum tulit et unum vicit, ab altero superatus est, et debitores convenire et ipse a creditoribus conveniri pro parte potest et corpora vindicare et hereditatem dividere: verum enim est familiae erciscundae iudicium competere, quia credimus eum legitimum heredem pro parte esse factum: et ideo pars hereditatis in testamento remansit, nec absurdum videtur pro parte intestatum videri.

Dig. 5.2.16pr.

Papinianus 2 resp.

Filio, qui de inofficioso matris testamento contra fratrem institutum de parte ante egit et optinuit, filia, quae non egit aut non optinuit, in hereditate legitima fratri non concurrit.

Dig. 5.2.16.1

Papinianus 2 resp.

Contra tabulas filii possessionem iure manumissionis pater accepit et bonorum possessionem adeptus est: postea filia defuncti, quam ipse exheredaverat, quaestionem inofficiosi testamenti recte pertulit: possessio, quam pater accepit, ad irritum reccidit: nam priore iudicio de iure patris, non de iure testamenti quaesitum est: et ideo universam hereditatem filiae cum fructibus restitui necesse est.

Dig. 5.2.17pr.

Paulus 2 quaest.

Qui repudiantis animo non venit ad accusationem inofficiosi testamenti, partem non facit his qui eandem querellam movere volunt. unde si de inofficioso testamento patris alter ex liberis exheredatis ageret, quia rescisso testamento alter quoque ad successionem ab intestato vocatur, et ideo universam hereditatem non recte vindicasset: hic si optinuerit, uteretur rei iudicatae auctoritate, quasi centumviri hunc solum filium in rebus humanis esse nunc, cum facerent intestatum, crediderint.

Dig. 5.2.17.1

Paulus 2 quaest.

Cum contra testamentum ut inofficiosum iudicatur, testamenti factionem habuisse defunctus non creditur. non idem probandum est, si herede non respondente secundum praesentem iudicatum sit: hoc enim casu non creditur ius ex sententia iudicis fieri: et ideo libertates competunt et legata petuntur.

Dig. 5.2.18

Paulus l.S. de inoff. testam.

De qua re etiam constitutio exstat divorum fratrum, quae huiusmodi distinctionem admittit.

Dig. 5.2.19

Paulus 2 quaest.

Mater decedens extraneum ex dodrante heredem instituit, filiam unam ex quadrante, alteram praeteriit: haec de inofficioso egit et optinuit. quaero, scriptae filiae quomodo succurrendum sit. respondi: filia praeterita id vindicare debet, quod intestata matre habitura esset: itaque dici potest eam quae omissa est etiam, si totam hereditatem ab intestato petat et optineat, solam habituram universam successionem, quemadmodum si altera omisisset legitimam hereditatem. sed non est admittendum, ut adversus sororem audiatur agendo de inofficioso: praeterea dicendum est non esse similem omittenti eam, quae ex testamento adiit: et ideo ab extraneo semissem vindicandum et defendendum totum semissem esse auferendum, quasi semis totus ad hanc pertineat. secundum quod non in totum testamentum infirmatur, sed pro parte intestata efficitur, licet quasi furiosae iudicium ultimum eius damnetur. ceterum si quis putaverit filia optinente totum testamentum infirmari, dicendum est etiam institutam ab intestato posse adire hereditatem: nec enim quae ex testamento adiit, quod putat valere, repudiare legitimam hereditatem videtur, quam quidem nescit sibi deferri: cum et hi qui sciant ius suum, eligentes id quod putant sibi competere, non amittant. quod evenit in patrono, qui iudicium defuncti falsa opinione motus amplexus est: is enim non videtur bonorum possessionem contra tabulas repudiasse. ex quibus apparet non recte totam hereditatem praeteritam vindicare, cum rescisso testamento etiam institutae salvum ius sit adeundae hereditatis.

Dig. 5.2.20

Scaevola 2 quaest.

Qui de inofficioso vult dicere, licet negetur filius, carbonianam bonorum possessionem non debet accipere (totiens enim ea indulgenda est, quotiens, si vere filius esset, heres esset aut bonorum possessor, ut interim et possideat et alatur et actionibus praeiudicium non patiatur: qui vero de inofficioso dicit, nec actiones movere debet nec aliam ullam quam hereditatis petitionem exercere nec ali), ne umquam melioris sit condicionis, quam si confitetur adversarius.

Dig. 5.2.21pr.

Paulus 3 resp.

Eum, qui inofficiosi testamenti querellam instituit et fraude heredis scripti, quasi tertiam partem hereditatis tacite rogatus esset ei restituere, reliquit eam actionem, non videri deseruisse querellam et ideo non prohiberi eum repetere inchoatam actionem.

Dig. 5.2.21.1

Paulus 3 resp.

Item quaesitum est, an heres audiendus est, ante de inofficiosi querellam actam desiderans restitui sibi ea quae solvit. respondit ei, qui sciens indebitum fideicommissum solvit, nullam repetitionem ex ea causa competere.

Dig. 5.2.21.2

Paulus 3 resp.

Idem respondit, evicta hereditate per inofficiosi querellam ab eo qui heres institutus esset, perinde omnia observari oportere, ac si hereditas adita non fuisset: et ideo et petitionem integram debiti heredi instituto adversus eum qui superavit competere et compensationem debiti.

Dig. 5.2.22pr.

Tryphonus 17 disp.

Filius non impeditur, quo minus inofficiosum testamentum matris accusaret, si pater eius legatum ex testamento matris accipiet vel adisset hereditatem, quamquam in eius esset potestate: nec prohiberi patrem dixi iure filii accusare: nam indignatio filii est.

Dig. 5.2.22.1

Tryphonus 17 disp.

Et quaerebatur, si non optinuisset in accusando, an quod patri datum est publicaretur? quoniam alii commodum victoriae parat et in hac causa nihil ex officio patris, sed totum de meritis filii agitur. et inclinandum est non perdere patrem sibi datum, si secundum testamentum pronuntiatum fuisset.

Dig. 5.2.22.2

Tryphonus 17 disp.

Multo magis si mihi legatum testator dedit, cuius de inofficioso testamento filius agens decessit me herede relicto, egoque hereditariam causam peregi et victus sum: id quod mihi eo testamento relictum est, non perdam: utique si iam defunctus agere coeperat.

Dig. 5.2.22.3

Tryphonus 17 disp.

Item si adrogavi eum, qui instituerat litem de inofficioso testamento eius qui mihi legatum dedit, litemque peregero nomine filii nec optinuero: perdere me legatum non oportet, quia non sum indignus, ut auferatur mihi a fisco id quod derelictum est: cum non proprio nomine, sed iure cuiusdam successionis egi.

Dig. 5.2.23pr.

Paulus l.S. de inoff. testam.

Si ponas filium emancipatum praeteritum et ex eo nepotem in potestate retentum heredem institutum esse: filius potest contra filium suum, testatoris nepotem petere bonorum possessionem, queri autem de inofficioso testamento non poterit. quod si exheredatus sit filius emancipatus, poterit queri et ita iungetur filio suo et simul cum eo hereditatem optinebit.

Dig. 5.2.23.1

Paulus l.S. de inoff. testam.

Si hereditatem ab heredibus institutis exheredati emerunt vel res singulas scientes eos heredes esse: aut conduxerunt praedia aliudve quid simile fecerunt: vel solverunt heredi quod testatori debebant: iudicium defuncti adgnoscere videntur et a querella excluduntur.

Dig. 5.2.23.2

Paulus l.S. de inoff. testam.

Si duo sint filii exheredati et ambo de inofficioso testamento egerunt et unus postea constituit non agere, pars eius alteri adcrescit. idemque erit, et si tempore exclusus sit.

Dig. 5.2.24

Ulpianus 48 ad sab.

Circa inofficiosi querellam evenire plerumque adsolet, ut in una atque eadem causa diversae sententiae proferantur. quid enim si fratre agente heredes scripti diversi iuris fuerunt? quod si fuerit, pro parte testatus, pro parte intestatus decessisse videbitur.

Dig. 5.2.25pr.

Ulpianus 2 disp.

Si non mortis causa fuerit donatum, sed inter vivos, hac tamen contemplatione, ut in quartam habeatur: potest dici inofficiosi querellam cessare, si quartam in donatione habet aut, si minus habeat, quod deest viri boni arbitratu repleatur: aut certe conferri oportere id quod donatum est.

Dig. 5.2.25.1

Ulpianus 2 disp.

Si quis, cum non possit de inofficioso queri, ad querellam admissus pro parte rescindere testamentum temptet et unum sibi heredem eligat, contra quem inofficiosi querellam instituat, dicendum est, quia testamentum pro parte valet et praecedentes eum personae exclusae sunt, cum effectu eum querellam instituisse.

Dig. 5.2.26

Ulpianus 8 disp.

Si sub hac condicione fuerit heres institutus " si stichum manumiserit " et manumisisset, et posteaquam manumisit inofficiosum vel iniustum testamentum pronuntietur: aequum est huic quoque succurri, ut servi pretium a manumisso accipiat, ne frustra servum perdat.

Dig. 5.2.27pr.

Ulpianus 6 opin.

Si instituta de inofficioso testamento accusatione de lite pacto transactum est nec fides ab herede transactioni praestatur, inofficiosi causam integram esse placuit.

Dig. 5.2.27.1

Ulpianus 6 opin.

Ei, qui se filium eius esse adfirmat, qui testamento id denegavit, tamen eum exheredavit, de inofficioso testamento causa superest.

Dig. 5.2.27.2

Ulpianus 6 opin.

De inofficioso testamento militis dicere nec miles potest.

Dig. 5.2.27.3

Ulpianus 6 opin.

De inofficioso testamento nepos contra patruum suum vel alium scriptum heredem pro portione egerat et optinuerat, sed scriptus heres appellaverat: placuit interim propter inopiam pupilli alimenta pro modo facultatium, quae per inofficiosi testamenti accusationem pro parte ei vindicabantur, decerni eaque adversarium ei subministrare necesse habere usque ad finem litis.

Dig. 5.2.27.4

Ulpianus 6 opin.

De testamento matris, quae existimans perisse filium alium heredem instituit, de inofficioso queri potest.

Dig. 5.2.28

Paulus l.S. de septemvir. iud.

Cum mater militem filium falso audisset decessisse et testamento heredes alios instituisset, divus hadrianus decrevit hereditatem ad filium pertinere ita, ut libertates et legata praestentur. hic illud adnotatum quod de libertatibus et legatis adicitur: nam cum inofficiosum testamentum arguitur, nihil ex eo testamento valet.

Dig. 5.2.29pr.

Ulpianus 5 opin.

Si suspecta collusio sit legatariis inter scriptos heredes et eum qui de inofficioso testamento agit: adesse etiam legatarios et voluntatem defuncti tueri constitutum est, eisdemque permissum est etiam appellare, si contra testamentum pronuntiatum fuerit.

Dig. 5.2.29.1

Ulpianus 5 opin.

De inofficioso testamento matris spurii quoque filii dicere possunt.

Dig. 5.2.29.2

Ulpianus 5 opin.

Quamvis instituta inofficiosi testamenti accusatione res transactione decisa sit, tamen testamentum in suo iure manet: et ideo datae in eo libertates atque legata, usque quo falcidia permittit, suam habent potestatem.

Dig. 5.2.29.3

Ulpianus 5 opin.

Quoniam femina nullum adoptare filium sine iussu principis potest, nec de inofficioso testamento eius, quam quis sibi matrem adoptivam falso esse existimabat, agere potest.

Dig. 5.2.29.4

Ulpianus 5 opin.

In ea provincia de inofficioso testamento agi oportet, in qua scripti heredes domicilium habent.

Dig. 5.2.30pr.

Marcianus 4 inst.

Adversus testamentum filii in adoptionem dati pater naturalis recte de inofficioso testamento agere potest.

Dig. 5.2.30.1

Marcianus 4 inst.

Tutoribus pupilli nomine sine periculo eius, quod testamento datum est, agere posse de inofficioso vel falso testamento divi severus et antoninus rescripserunt.

Dig. 5.2.31pr.

Paulus l.S. de septemvir. iud.

Si is qui admittitur ad accusationem, nolit aut non possit accusare, an sequens admittatur, videndum est. et placuit posse, ut fiat successioni locus.

Dig. 5.2.31.1

Paulus l.S. de septemvir. iud.

Quantum ad inofficiosi liberorum vel parentium querellam pertinet, nihil interest, quis sit heres scriptus ex liberis an extraneis vel municipibus.

Dig. 5.2.31.2

Paulus l.S. de septemvir. iud.

Si heres extiterim ei, qui eo testamento institutus est quod de inofficioso arguere volo, non mihi nocebit, maxime si eam portionem non possideam vel iure suo possideam.

Dig. 5.2.31.3

Paulus l.S. de septemvir. iud.

Diversum dicemus, si legaverit mihi eam rem, quam quis ex eo testamento acceperat: nam si eam adgnoscam, repellar ab accusatione.

Dig. 5.2.31.4

Paulus l.S. de septemvir. iud.

Quid ergo si alias voluntatem testatoris probaverim? puta in testamento adscripserim post mortem patris consentire me? repellendus sum ab accusatione.

Dig. 5.2.32pr.

Paulus l.S. de inoff. testam.

Si exheredatus petenti legatum ex testamento advocationem praebuit procurationemve susceperit, removetur ab accusatione: adgnovisse enim videtur, qui qualequale iudicium defuncti comprobavit.

Dig. 5.2.32.1

Paulus l.S. de inoff. testam.

Si legatario heres extiterit exheredatus petieritque legatum, videbimus an sit summovendus ab hac accusatione: certum est enim iudicium defuncti et rursus nihil ei ex testamento relictum verum est. tutius tamen fecerit, si se abstinuerit a petitione legati.

Dig. 5.3.0. De hereditatis petitione.

Dig. 5.3.1

Gaius 6 ad ed. provinc.

Hereditas ad nos pertinet aut vetere iure aut novo. vetere e lege duodecim tabularum vel ex testamento, quod iure factum est.

Dig. 5.3.2

Ulpianus 15 ad ed.

(sive suo nomine sive per se sive per alios effecti sumus,

Dig. 5.3.3

Gaius 6 ad ed. provinc.

Veluti si eam personam, quae in nostra potestate sit, institutam iusserimus adire hereditatem: sed et si titio, qui seio heres extitit, nos heredes facti sumus, sicuti titii hereditatem nostram esse intendere possumus, ita et seii) vel ab intestato (forte quod sui heredes defuncto sumus, vel adgnati, vel quod manumisimus defunctum, quodve parens noster manumiserit). novo iure fiunt heredes omnes qui ex senatus consultis aut ex constitutionibus ad hereditatem vocantur.

Dig. 5.3.4

Paulus 1 ad ed.

Si hereditatem petam ab eo, qui unam rem possidebat, de qua sola controversia erat, etiam id quod postea coepit possidere restituet.

Dig. 5.3.5pr.

Ulpianus 14 ad ed.

Divus pius rescripsit prohibendum possessorem hereditatis, de qua controversia erit, antequam lis inchoaretur, aliquid ex ea distrahere: nisi maluerit pro omni quantitate hereditatis vel rerum eius restitutione satisdare: causa autem cognita, etsi non talis data sit satisdatio, sed solita cautio, etiam post litem coeptam deminutionem se concessurum praetor edixit, ne in totum deminutio impedita in aliquo etiam utilitates alias impediat. ut puta si ad funus sit aliquid necessarium: nam funeris gratia deminutionem permittit. item si futurum est, ut, nisi pecunia intra diem solvatur, pignus distrahatur. sed et propter familiae cibaria necessaria erit deminutio. sed et res tempore perituras permittere debet praetor distrahere.

Dig. 5.3.5.1

Ulpianus 14 ad ed.

Divus hadrianus trebio sergiano rescripsit, ut aelius asiaticus daret satis de hereditate quae ab eo petitur, et sic falsum dicat: hoc ideo, quia sustinetur hereditatis petitionis iudicium, donec falsi causa agatur.

Dig. 5.3.5.2

Ulpianus 14 ad ed.

Eorum iudiciorum, quae de hereditatis petitione sunt, ea auctoritas est, ut nihil in praeiudicium eius iudicii fieri debeat.

Dig. 5.3.6

Ulpianus 75 ad ed.

Si testamentum falsum esse dicatur et ex eo legatum petatur, vel praestandum est oblata cautione vel quaerendum an debeatur, etsi testamentum falsum esse dicatur. ei tamen qui falsi accusat, si suscepta cognitio est, non est dandum.

Dig. 5.3.7pr.

Ulpianus 14 ad ed.

Si quis libertatem ex testamento sibi competisse dicat, non debebit iudex de libertate sententiam dicere, ne praeiudicium de testamento cognituro faciat: et ita senatus censuit: sed et divus traianus rescripsit differendum de libertate iudicium, donec de inofficioso iudicium aut inducatur aut finem accipiat.

Dig. 5.3.7.1

Ulpianus 14 ad ed.

Ita demum autem sustinentur liberalia iudicia, si iam de inofficioso iudicium contestatum est: ceterum si non contestetur, non exspectantur liberalia iudicia: et ita divus pius rescripsit. nam cum quidam licinnianus de statu suo quaestionem patiebatur et, ne maturius pronuntiaretur de condicione sua, nolebat ad liberale iudicium ire, dicens suscepturum se de inofficioso testamento iudicium et petiturum hereditatem, quia libertatem et hereditatem ex testamento sibi defendebat: divus pius ait, si quidem possessor esset hereditatis licinnianus, facilius audiendum, quoniam esset hereditatis nomine iudicium suscepturus et erat in arbitrio eius, qui se dominum esse dicit, agere de inofficioso testamento iudicium. nunc vero sub obtentu iudicii de inofficioso testamento ab ipso licinniano non suscepti per quinquennium non debere moram fieri servituti. plane summatim aestimandum iudici concessit, an forte bona fide imploretur iudicium de testamento: et si id deprehenderit, praestituendum modicum tempus, intra quod si non fuerit contestatum, iubeat iudicem libertatis partibus suis fungi.

Dig. 5.3.7.2

Ulpianus 14 ad ed.

Quotiens autem quis patitur controversiam libertatis et hereditatis, sed se non ex testamento liberum dicit, sed alias vel a vivo testatore manumissum, non debere impediri liberalem causam, licet iudicium de testamento moveri speretur, divus pius rescripsit: adiecit plane in rescripto, dummodo praedicatur iudici liberalis causae, ne ullum adminiculum libertatis ex testamento admittat.

Dig. 5.3.8

Paulus 16 ad ed.

Legitimam hereditatem vindicare non prohibetur is qui, cum ignorabat vires testamenti, iudicium defuncti secutus est.

Dig. 5.3.9

Ulpianus 15 ad ed.

Regulariter definiendum est eum demum teneri petitione hereditatis, qui vel ius pro herede vel pro possessore possidet vel rem hereditariam.

Dig. 5.3.10pr.

Gaius 6 ad ed. provinc.

Licet minimam.

Dig. 5.3.10.1

Gaius 6 ad ed. provinc.

Itaque qui ex asse vel ex parte heres est, intendit quidem hereditatem suam esse totam vel pro parte, sed hoc solum ei officio iudicis restituitur quod adversarius possidet, aut totum, si ex asse sit heres, aut pro parte ex qua heres est.

Dig. 5.3.11pr.

Ulpianus 15 ad ed.

Pro herede possidet, qui putat se heredem esse. sed an et is, qui scit se heredem non esse, pro herede possideat, quaeritur: et arrianus libro secundo de interdictis putat teneri, quo iure nos uti proculus scribit. sed enim et bonorum possessor pro herede videtur possidere.

Dig. 5.3.11.1

Ulpianus 15 ad ed.

Pro possessore vero possidet praedo,

Dig. 5.3.12

Ulpianus 67 ad ed.

Qui interrogatus cur possideat, responsurus sit " quia possideo" nec contendet se heredem vel per mendacium,

Dig. 5.3.13pr.

Ulpianus 15 ad ed.

Nec ullam causam possessionis possit dicere: et ideo fur et raptor petitione hereditatis tenentur.

Dig. 5.3.13.1

Ulpianus 15 ad ed.

Omnibus etiam titulis hic pro possessore haeret et quasi iniunctus est. denique et pro emptore titulo haeret: nam si a furioso emero sciens, pro possessore possideo. item in titulo pro donato quaeritur, an quis pro possessore possideat, ut puta uxor vel maritus: et placet nobis iuliani sententia pro possessore possidere eum, et ideo petitione hereditatis tenebitur. item pro dote titulus recipit pro possessore possessionem, ut puta si a minore duodecim annis nupta mihi quasi dotem sciens accepi. et si legatum mihi solutum est ex falsa causa scienti, utique pro possessore possidebo.

Dig. 5.3.13.2

Ulpianus 15 ad ed.

Is autem qui restituit hereditatem teneri hereditatis petitione non potest, nisi dolo fecit, id est si scit et restituit: nam et dolus praeteritus venit in hereditatis petitione, quasi dolo desierit possidere.

Dig. 5.3.13.3

Ulpianus 15 ad ed.

Neratius libro sexto membranarum scribit ab herede peti hereditatem posse, etiam si ignoret pro herede vel pro possessore defunctum possedisse. idem esse libro septimo ait etiam si putavit heres eas res ex hac hereditate esse quae sibi delata est.

Dig. 5.3.13.4

Ulpianus 15 ad ed.

Quid si quis hereditatem emerit, an utilis in eum petitio hereditatis deberet dari, ne singulis iudiciis vexaretur? venditorem enim teneri certum est: sed finge non extare venditorem vel modico vendidisse et bonae fidei possessorem fuisse: an porrigi manus ad emptorem debeant? et putat gaius cassius dandam utilem actionem.

Dig. 5.3.13.5

Ulpianus 15 ad ed.

Idem erit dicendum et si parvo pretio iussus vendere heres titio hereditatem vendidit: nam putat dicendum papinianus adversus fideicommissarium dari actionem: ab herede enim peti non expedit perexiguum pretium habente.

Dig. 5.3.13.6

Ulpianus 15 ad ed.

Sed et si retenta certa quantitate restituere rogatus sit, idem erit dicendum. plane si accepta certa quantitate restituere rogatus est, non putat papinianus ab herede petendam hereditatem, quoniam pro herede, quod condicionis implendae gratia accepit, non possidetur. sed sabinus in statulibero contra: et id verius est, quia pecunia hereditaria est.

Dig. 5.3.13.7

Ulpianus 15 ad ed.

Idem et in eo qui solus fructus ex hereditate retinet, dicendum erit: tenetur enim et is hereditatis petitione.

Dig. 5.3.13.8

Ulpianus 15 ad ed.

Si quis sciens alienam emit hereditatem, quasi pro possessore possidet: et sic peti ab eo hereditatm quidam putant. quam sententiam non puto veram: nemo enim praedo est qui pretium numeravit: sed ut emptor universitatis utili tenetur.

Dig. 5.3.13.9

Ulpianus 15 ad ed.

Item si quis a fisco hereditatem quasi vacantem emerit, aequissimum erit utilem actionem adversus eum dari.

Dig. 5.3.13.10

Ulpianus 15 ad ed.

Apud Marcellum libro quarto digestorum relatum est, si mulier hereditatem in dotem dedit, maritum pro dote quidem possidere hereditatem, sed petitione hereditatis utili teneri: sed et ipsam mulierem directa teneri Marcellus scribit, maxime si iam factum divortium est.

Dig. 5.3.13.11

Ulpianus 15 ad ed.

Heredem autem etiam earum rerum nomine, quas defunctus pro emptore possedit, hereditatis petitione teneri constat, quasi pro herede possideat:

quamvis etiam earum rerum nomine, quas pro herede vel pro possessore defunctus possedit, utique teneatur.

Dig. 5.3.13.12

Ulpianus 15 ad ed.

Si quis absentis nomine possideat hereditatem, cum sit incertum an ille ratum habeat, puto absentis nomine petendam hereditatem, ipsius vero nequaquam, quia non videtur pro herede vel pro possessore possidere, qui contemplatione alterius possidet: nisi forte quis dixerit, cum ratum non habet, iam procuratorem quasi praedonem esse: tunc enim suo nomine teneri potest.

Dig. 5.3.13.13

Ulpianus 15 ad ed.

Non solum autem ab eo peti hereditas potest, qui corpus hereditarium possidet, sed et si nihil. et videndum, si non possidens optulerit tamen se petitioni, an teneatur. et celsus libro quarto digestorum scribit ex dolo eum teneri: dolo enim facere eum qui se offert petitioni. quam sententiam generaliter Marcellus apud iulianum probat: omnem, qui se offert petitioni, quasi possidentem teneri.

Dig. 5.3.13.14

Ulpianus 15 ad ed.

Item si quis dolo fecerit, quo minus possideat, hereditatis petitione tenebitur. sed si alius nanctus possessionem, quam ego dolo malo amiseram, paratus sit iudicium pati, Marcellus libro quarto digestorum tractat, ne forte evanescat adversus eum qui desiit litis aestimatio: et magis evanescere ait, nisi petentis interest: certe, inquit, si rem paratus sit restituere, indubitatum erit evanescere. sed si is qui dolo desiit ante conveniatur, eum qui possidet non liberabit.

Dig. 5.3.13.15

Ulpianus 15 ad ed.

Item a debitore hereditario quasi a iuris possessore: nam et a iuris possessoribus posse hereditatem peti constat.

Dig. 5.3.14

Paulus 20 ad ed.

Sed utrum ex delicto an ex contractu debitor sit, nihil refert. debitor autem hereditarius intellegitur is quoque qui servo hereditario promisit, vel qui ante aditam hereditatem damnum dedit.

Dig. 5.3.15

Gaius 6 ad ed. provinc.

Vel aliquam rem hereditariam subripuerit.

Dig. 5.3.16pr.

Ulpianus 15 ad ed.

Quod si in diem sit debitor vel sub condicione, a quo petita est hereditas, non debere eum damnari. rei plane iudicatae tempus spectandum esse secundum octaveni sententiam, ut apud pomponium scriptum est, an dies venerit: quod et in stipulatione condicionali erit dicendum. si autem non venerit, cavere officio iudicis debeat de restituendo hoc debito, cum dies venerit vel condicio extiterit.

Dig. 5.3.16.1

Ulpianus 15 ad ed.

Sed et is qui pretia rerum hereditariarum possidet, item qui a debitore hereditario exegit, petitione hereditatis tenetur.

Dig. 5.3.16.2

Ulpianus 15 ad ed.

Unde iulianus libro sexto digestorum ait ab eo, qui petit hereditatem et litis aestimationem consecutus est, hereditatem peti posse.

Dig. 5.3.16.3

Ulpianus 15 ad ed.

Non solum autem a debitore defuncti, sed etiam a debitore hereditario peti hereditas potest: denique ab eo, qui negotia hereditaria gessit, et celso et iuliano videtur peti hereditatem posse, sed si heredis negotium gessit, nequaquam: ab heredis enim debitore peti hereditas non potest.

Dig. 5.3.16.4

Ulpianus 15 ad ed.

Iulianus scribit, si is, qui pro herede possidebat, vi fuerit deiectus, peti ab eo hereditatem posse quasi a iuris possessore, quia habet interdictum unde vi, quo victus cedere debet: sed et eum qui deiecit petitione hereditatis teneri, quia res hereditarias pro possessore possidet.

Dig. 5.3.16.5

Ulpianus 15 ad ed.

Idem iulianus ait, sive quis possidens sive non rem vendiderit, petitione hereditatis eum teneri, sive iam pretium recepit sive petere possit, ut et hic actionibus cedat.

Dig. 5.3.16.6

Ulpianus 15 ad ed.

Idem scribit patronum hereditatem petere non posse ab eo, cui libertus in fraudem alienavit, quia calvisiana actione ei tenetur: patroni enim iste debitor est, non hereditarius. ergo nec ab eo, cui mortis causa donatum est, peti hereditas potest.

Dig. 5.3.16.7

Ulpianus 15 ad ed.

Idem iulianus scribit, si quis ex causa fideicommissi restituerit hereditatem vel singulas res praestiterit, peti ab eo hereditatem posse, quia habet condictionem earum, quae sunt ex ea causa solutae, et veluti iuris possessor est.

Dig. 5.3.16.8

Ulpianus 15 ad ed.

Sed et si pretia rerum, quas distraxit, ex causa fideicommissi solvit, peti hereditatem ab eo posse, quia repetere potest. sed his casibus actiones suas dumtaxat eum praestaturum, cum et res exstant et potest petitor etiam per in rem actionem eas vindicare.

Dig. 5.3.17

Gaius 6 ad ed. provinc.

Quod si possessor hereditatis ob id, quod ex testamento heredem se esse putaret, legatorum nomine de suo solvit, si quis ab intestato eam hereditatem evincat, licet damnum videtur esse possessoris, quod sibi non prospexerit stipulatione " evicta hereditate legata reddi", attamen quia fieri potest, ut eo tempore solverit legata, quo adhuc nulla controversia mota sit, et ob id nullam interposuerit cautionem, placet in eo casu evicta hereditate dandam ei esse repetitionem. sed cum cessante cautione repetitio datur, periculum est, ne propter inopiam eius, cui solutum est legatum, nihil repeti possit, et ideo secundum senatus consulti sententiam subveniendum ei est, ut ipse quidem ex retentione rerum hereditariarum sibi satisfaciat, cedat autem actionibus petitori, ut suo periculo eas exerceat.

Dig. 5.3.18pr.

Ulpianus 15 ad ed.

Item videndum, si possessor hereditatis venditione per argentarium facta pecuniam apud eum perdiderit, an petitione hereditatis teneatur, quia nihil habet nec consequi potest. sed labeo putat eum teneri, quia suo periculo male argentario credidit: sed octavenus ait nihil eum praeter actiones praestaturum, ob has igitur actiones petitione hereditatis teneri. mihi autem in eo, qui mala fide possedit, labeonis sententia placet: in altero vero, qui bona fide possessor est, octaveni sententia sequenda esse videtur.

Dig. 5.3.18.1

Ulpianus 15 ad ed.

Si quis, cum peteretur ab eo hereditas, neque rei neque iuris velut possessor erat, verum postea aliquid adeptus est, an petitione hereditatis videatur teneri? et celsus libro quarto digestorum recte scribit hunc condemnandum, licet initio nihil possedit.

Dig. 5.3.18.2

Ulpianus 15 ad ed.

Nunc videamus, quae veniant in hereditatis petitione. et placuit universas res hereditarias in hoc iudicium venire, sive iura sive corpora sint,

Dig. 5.3.19pr.

Paulus 20 ad ed.

Et non tantum hereditaria corpora, sed et quae non sunt hereditaria, quorum tamen periculum ad heredem pertinet: ut res pignori datae defuncto vel commodatae depositaeve. et quidem rei pignori datae etiam specialis petitio est, ut et hereditatis petitione contineatur, sicut illae quarum nomine publiciana competit. sed licet earum nomine, quae commodatae vel depositae sunt, nulla sit facile actio, quia tamen periculum earum ad nos pertinet, aequum est eas restitui.

Dig. 5.3.19.1

Paulus 20 ad ed.

Quod si pro emptore usucapio ab herede impleta sit, non veniet in hereditatis petitione: quia heres, id est petitor, eam vindicare potest nec ulla exceptio datur possessori.

Dig. 5.3.19.2

Paulus 20 ad ed.

Veniunt et hae res in hereditatis petitionem, in quibus possessor retentionem habuit, non etiam petitionem: veluti si iuraverat defunctus petitoris rem non esse et decesserit, debent hae quoque restitui. immo et si possessor sua culpa eas amiserit, tenebitur hoc nomine. idemque erit et in praedone, licet hic propter culpam non teneatur: quia nec hic debet has res retinere.

Dig. 5.3.19.3

Paulus 20 ad ed.

Servitutes in restitutionem hereditatis non venire ego didici, cum nihil eo nomine possit restitui, sicut est in corporibus et fructibus, sed si non patiatur ire et agere, propria actione convenietur.

Dig. 5.3.20pr.

Ulpianus 15 ad ed.

Item veniunt in hereditatem etiam ea, quae hereditatis causa comparata sunt, ut puta mancipia pecoraque et si qua alia, quae necessario hereditati sunt comparata. et si quidem pecunia hereditaria sint comparata, sine dubio venient: si vero non pecunia hereditaria, videndum erit: et puto etiam haec venire, si magna utilitas hereditatis versetur, pretium scilicet restituturo herede.

Dig. 5.3.20.1

Ulpianus 15 ad ed.

Sed non omnia, quae ex hereditaria pecunia comparata sunt, in hereditatis petitionem veniunt. denique scribit iulianus libro sexto digestorum, si possessor ex pecunia hereditaria hominem emerit et ab eo petatur hereditas, ita venire in hereditatis petitionem, si hereditatis interfuit eum emi: at si sui causa emit, pretium venire.

Dig. 5.3.20.2

Ulpianus 15 ad ed.

Simili modo et si fundum hereditarium distraxerit, si quidem sine causa, et ipsum fundum et fructus in hereditatis petitionem venire: quod si aeris exsolvendi gratia hereditarii id fecit, non amplius venire quam pretium.

Dig. 5.3.20.3

Ulpianus 15 ad ed.

Item non solum ea quae mortis tempore fuerunt, sed si qua postea augmenta hereditati accesserunt, venire in hereditatis petitionem: nam hereditas et augmentum recipit et deminutionem. sed ea, quae post aditam hereditatem accedunt, si quidem ex ipsa hereditate, puto hereditati accedere: si extrinsecus, non, quia personae possessoris accedunt. fructus autem omnes augent hereditatem, sive ante aditam sive post aditam hereditatem accesserint. sed et partus ancillarum sine dubio augent hereditatem.

Dig. 5.3.20.4

Ulpianus 15 ad ed.

Cum praediximus omnes hereditarias actiones in hereditatis petitionem venire, quaeritur, utrum cum sua natura veniant an contra. ut puta est quaedam actio, quae infitiatione crescit: utrum cum suo incremento an vero in simplum venit, ut legis aquiliae? et iulianus libro sexto digestorum scribit simplum soluturum.

Dig. 5.3.20.5

Ulpianus 15 ad ed.

Idem recte ait, si noxali iudicio condemnatus sit possessor defuncto, non posse eum dedentem noxae officio iudicis liberari: quia tamdiu quis habet noxae dedendae facultatem, quamdiu iudicati conveniatur, post susceptum iudicium non potest noxae dedendo se liberare: suscepit autem per petitionem hereditatis.

Dig. 5.3.20.6

Ulpianus 15 ad ed.

Praeter haec multa repperimus tractata et de petitione hereditatis, de distractis rebus hereditariis, de dolo praeterito et de fructibus. de quibus cum forma senatus consulto sit data, optimum est ipsius senatus consulti interpretationem facere verbis eius relatis. " pridie idus martias quintus iulius balbus et publius iuventius celsus titius aufidius oenus severianus consules verba fecerunt de his, quae imperator caesar traiani parthici filius divi nervae nepos hadrianus augustus imperator maximusque princeps proposuit quinto nonas martias quae proximae fuerunt libello complexus esset, quid fieri placeat, de qua re ita censuerunt.

Dig. 5.3.20.6a

Ulpianus 15 ad ed.

Cum, antequam partes caducae ex bonis rustici fisco peterentur, hi, qui se heredes esse existimant, hereditatem distraxerint, placere redactae ex pretio rerum venditarum pecuniae usuras non esse exigendas idemque in similibus causis servandum.

Dig. 5.3.20.6b

Ulpianus 15 ad ed.

Item placere, a quibus hereditas petita fuisset, si adversus eos iudicatum esset, pretia, quae ad eos rerum ex hereditate venditarum pervenissent, etsi eae ante petitam hereditatem deperissent deminutiaeve fuissent, restituere debere.

Dig. 5.3.20.6c

Ulpianus 15 ad ed.

Item eos qui bona invasissent, cum scirent ad se non pertinere, etiamsi ante litem contestatam fecerint, quo minus possiderent, perinde condemnandos, quasi possiderent: eos autem, qui iustas causas habuissent, quare bona ad se pertinere existimassent, usque eo dumtaxat, quo locupletiores ex ea re facti essent.

Dig. 5.3.20.6d

Ulpianus 15 ad ed.

Petitam autem fisco hereditatem ex eo tempore existimandum esse, quo primum scierit quisque eam a se peti, id est cum primum aut denuntiatum esset ei aut litteris vel edicto evocatus esset. censuerunt". aptanda est igitur nobis singulis verbis senatus consulti congruens interpretatio.

Dig. 5.3.20.7

Ulpianus 15 ad ed.

Ait senatus: " cum antequam partes caducae fisco peterentur". hoc evenerat, ut partes caducae fisco peterentur: sed et si ex asse fiat, senatus consultum locum habebit: idem, et si vacantia bona fisco vindicentur vel si ex alia quacumque causa bona ad eum pervenerunt, senatus consultum hoc locum habebit:

Dig. 5.3.20.8

Ulpianus 15 ad ed.

Et si civitati peteretur.

Dig. 5.3.20.9

Ulpianus 15 ad ed.

In privatorum quoque petitionibus senatus consultum locum habere nemo est qui ambigit, licet in publica causa factum sit.

Dig. 5.3.20.10

Ulpianus 15 ad ed.

Non solum autem in hereditate utimur senatus consulto, sed et in peculio castrensi vel alia universitate.

Dig. 5.3.20.11

Ulpianus 15 ad ed.

" petitam autem hereditatem" et cetera: id est ex quo quis scit a se peti: nam ubi scit, incipit esse malae fidei possessor. " id est cum primum aut denuntiatum esset": quid ergo si scit quidem, nemo autem ei denuntiavit, an incipiat usuras debere pecuniae redactae? et puto debere: coepit enim malae fidei possessor esse. sed ponamus denuntiatum esse, non tamen scit, quia non ipsi, sed procuratori eius denuntiatum est: senatus ipsi denuntiari exigit et ideo non nocebit, nisi forte is cui denuntiatum est eum certioraverit, sed non si certiorare potuit nec fecit. a quo denuntiatum est senatus non exigit: quicumque ergo fuit qui denuntiavit, nocebit.

Dig. 5.3.20.12

Ulpianus 15 ad ed.

Haec adversus bonae fidei possessores, nam ita senatus locutus est: " eos qui se heredes existimassent". ceterum si quis sciens ad se hereditatem non pertinere distraxit, sine dubio non pretia rerum, sed ipsae res veniunt in petitionem hereditatis et fructus earum. sed imperator severus epistula ad celerem idem videtur fecisse et in malae fidei possessoribus: atquin senatus de his est locutus qui se heredes existimant. nisi forte ad eas res referemus, quas distrahi expedierat, quae onerabant magis hereditatem quam fructui erant: ut sit in arbitrio petitoris, qualem computationem faciat adversus malae fidei possessorem, utrum ipsius rei et fructuum an pretii et usurarum post motam controversiam.

Dig. 5.3.20.13

Ulpianus 15 ad ed.

Licet autem senatus de his locutus sit, qui se heredes existiment, tamen et si bonorum possessores se existiment vel alios successores iustos vel sibi restitutam hereditatem, in eadem erunt condicione.

Dig. 5.3.20.14

Ulpianus 15 ad ed.

Papinianus autem libro tertio quaestionum, si possessor hereditatis pecuniam inventam in hereditate non attingat, negat eum omnino in usuras conveniendum.

Dig. 5.3.20.15

Ulpianus 15 ad ed.

" redactae " , inquit, " pecuniae ex pretio rerum venditarum. " redactam sic accipiemus, non solum iam exactam, verum et si exigi potuit nec exacta est.

Dig. 5.3.20.16

Ulpianus 15 ad ed.

Quid si post petitam hereditatem res distraxerit ? hic ipsae res venient fructusque earum. sed si forte tales fuerunt, quae vel steriles erant vel tempore periturae, et hae distractae sunt vero pretio, fortassis possit petitor eligere, ut sibi pretia et usurae praestentur.

Dig. 5.3.20.17

Ulpianus 15 ad ed.

Ait senatus: " placere, a quibus petita hereditas fuisset, si adversus eos iudicatum esset, pretia, quae ad eos rerum ex hereditate venditarum pervenissent, etsi ante petitam hereditatem deperissent deminutaeve essent, restituere debere. " bonae fidei possessor si vendiderit res hereditarias, sive exegit pretium sive non, quia habet actionem, debebit pretium praestare: sed ubi habet actionem, sufficiet eum actiones praestare.

Dig. 5.3.20.18

Ulpianus 15 ad ed.

Sed si vendidit et evicta re restituit quod accepit, non videbitur ad eum pervenisse: quamquam possit dici nec ab initio pretium venire, quia non fuit res hereditaria quae distracta est: sed etsi senatus rerum ex hereditate distractarum, non hereditariarum fecit mentionem, restitui tamen non debet, quia nihil apud eum remanet. nam et iulianus libro sexto digestorum scribit quod indebitum exegit restituere eum non debere nec imputaturum quod non debitum solvit.

Dig. 5.3.20.19

Ulpianus 15 ad ed.

Sed si res sit redhibita, hic utique et hereditaria est et pretium non veniet quod refusum est.

Dig. 5.3.20.20

Ulpianus 15 ad ed.

Sed et si ob venditionem obstrictus sit emptori possessor hereditatis, dicendum erit prospici ei cautione.

Dig. 5.3.20.21

Ulpianus 15 ad ed.

Restituere autem pretia debebit possessor, etsi deperditae sunt res vel deminutae. sed utrum ita demum restituat, si bonae fidei possessor est, an et si malae fidei? et si quidem res apud emptorem exstent nec deperditae nec deminutae sunt, sine dubio ipsas res debet praestare malae fidei possessor aut, si recipere eas ab emptore nullo modo possit, tantum quantum in litem esset iuratum. at ubi deperditae sunt et deminutae, verum pretium debet praestari, quia si petitor rem consecutus esset, distraxisset et verum pretium rei non perderet.

Dig. 5.3.21

Gaius 6 ad ed. provinc.

Deperditum intellegitur, quod in rerum natura esse desiit: deminutum vero, quod usucaptum esset et ob id de hereditate exiit.

Dig. 5.3.22

Paulus 20 ad ed.

Si et rem et pretium habeat bonae fidei possessor, puta quod eandem redemerit: an audiendus sit, si velit rem dare, non pretium? in praedone dicimus electionem esse debere actoris: an hic magis possessor audiendus sit, si velit rem tradere licet deteriorem factam, non petitor, si pretium desideret, quod inverecundum sit tale desiderium: an vero, quia ex re hereditaria locupletior sit, et id quod amplius habet ex pretio restituere debeat, videndum. nam et in oratione divi hadriani ita est: " dispicite, patres conscripti, numquid sit aequius possessorem non facere lucrum et pretium, quod ex aliena re perceperit, reddere, quia potest existimari in locum hereditariae rei venditae pretium eius successisse et quodammodo ipsum hereditarium factum. " oportet igitur possessorem et rem restituere petitori et quod ex venditione eius rei lucratus est.

Dig. 5.3.23pr.

Ulpianus 15 ad ed.

Utrum autem omne pretium restituere debebit bonae fidei possessor an vero ita demum, si factus sit locupletior, videndum: finge pretium acceptum vel perdidisse vel consumpsisse vel donasse. et verbum quidem pervenisse ambiguum est, solumne hoc contineret, quod prima ratione fuerit, an vero et id quod durat. et puto sequentem clausulam senatus consulti, etsi haec sit ambigua, ut ita demum competat, si factus sit locupletior.

Dig. 5.3.23.1

Ulpianus 15 ad ed.

Proinde si non solum pretium, sed etiam poena tardius pretio soluto pervenerit, poterit dici, quia locupletior in totum factus est, debere venire, licet de pretio solummodo senatus sit locutus.

Dig. 5.3.24

Paulus 20 ad ed.

At ubi vi deiectus fuit, non debet restituere poenam ex eo commissam, quod eam actor habere non potest. sic nec poena restitui debet, quam adversarius ei promisit, si ad iudicium non venerit.

Dig. 5.3.25pr.

Ulpianus 15 ad ed.

Sed et si lege commissoria vendidit, idem erit dicendum lucrum, quod sensit lege commissoria, praestaturum.

Dig. 5.3.25.1

Ulpianus 15 ad ed.

Item si rem distraxit et ex pretio aliam rem comparavit, veniet pretium in petitionem hereditatis, non res quam in patrimonium suum convertit. sed si res minoris valet quam comparata est, hactenus locupletior factus videbitur, quatenus res valet: quemadmodum si consumpsisset, in totum locupletior factus non videbitur.

Dig. 5.3.25.2

Ulpianus 15 ad ed.

Quod ait senatus: " eos qui bona invasissent, quae scirent ad se non pertinere, etiam si ante litem contestatam fecerint quo minus possiderent, perinde condemnandos quasi possiderent", ita intellegendum est, ut et dolus praeteritus in petitionem hereditatis deduceretur: sed et culpa. et ideo ab eo qui ab alio non exegit vel a semet ipso, si tempore esset liberatus, peti hereditatem posse: hoc utique si exigere potuit.

Dig. 5.3.25.3

Ulpianus 15 ad ed.

Quod autem ait senatus " eos qui bona invasissent", loquitur de praedonibus, id est de his qui, cum scirent ad se non pertinere hereditatem, invaserunt bona, scilicet cum nullam causam haberent possidendi.

Dig. 5.3.25.4

Ulpianus 15 ad ed.

Sed et fructus non quos perceperunt, inquit, sed quos percipere debuerunt, eos praestaturos.

Dig. 5.3.25.5

Ulpianus 15 ad ed.

De eo autem loquitur senatus, qui ab initio mente praedonis res hereditarias adprehendit. quod si ab initio quidem iustam causam habuit adipiscendae possessionis, postea vero conscius ad se nihil hereditatem pertinere praedonio more versari coepit, nihil senatus loqui videtur: puto tamen et ad eum mentem senatus consulti pertinere: parvi etenim refert, ab initio quis dolose in hereditate sit versatus an postea hoc facere coepit.

Dig. 5.3.25.6

Ulpianus 15 ad ed.

Scire ad se non pertinere utrum is tantummodo videatur, qui factum scit, an et is qui in iure erravit? putavit enim recte factum testamentum, cum inutile erat: vel cum eum alius praecederet adgnatus, sibi potius deferri. et non puto hunc esse praedonem qui dolo caret, quamvis in iure erret.

Dig. 5.3.25.7

Ulpianus 15 ad ed.

" si ante litem contestatam", inquit, " fecerit": hoc ideo adiectum, quoniam post litem contestatam omnes incipiunt malae fidei possessores esse, quin immo post controversiam motam. quamquam enim litis contestatae mentio fiat in senatus consulto, tamen et post motam controversiam omnes possessores pares fiunt et quasi praedones tenentur. et hoc iure hodie utimur: coepit enim scire rem ad se non pertinentem possidere se is qui interpellatur. qui vero praedo est, et ante litem contestatam doli nomine tenebitur: hic est enim dolus praeteritus.

Dig. 5.3.25.8

Ulpianus 15 ad ed.

" perinde", inquit, " condemnandos quasi possiderent": merito: nam is qui dolo fecit quo minus possideret, ut possessor condemnatur. accipies, sive dolo desierit possidere sive dolo possessionem noluerit admittere. sive autem ab alio res possideatur sive in totum non extet, locum habebit haec clausula. unde si sit alius possessor, ab utroque hereditas peti possit: et si per multos ambulaverit possessio, omnes tenebuntur.

Dig. 5.3.25.9

Ulpianus 15 ad ed.

Sed utrum is solus qui possidet fructus praestabit an etiam is qui dolo fecit quo minus possideret? et dicendum erit post senatus consultum ambo teneri.

Dig. 5.3.25.10

Ulpianus 15 ad ed.

Haec verba senatus consulti etiam adversus eum qui non possidet iusiurandum inducunt: tam enim adversus eum qui dolo fecit quo minus possideat quam adversus possidentem in litem iuratur.

Dig. 5.3.25.11

Ulpianus 15 ad ed.

Consuluit senatus bonae fidei possessoribus, ne in totum damno adficiantur, sed in id dumtaxat teneantur, in quo locupletiores facti sunt. quemcumque igitur sumptum fecerint ex hereditate, si quid dilapidaverunt perdiderunt, dum re sua se abuti putant, non praestabunt. nec si donaverint, locupletiores facti videbuntur, quamvis ad remunerandum sibi aliquem naturaliter obligaverunt. plane si antidwra acceperunt, dicendum est eatenus locupletiores factos, quatenus acceperunt: velut genus quoddam hoc esset permutationis.

Dig. 5.3.25.12

Ulpianus 15 ad ed.

Si quis re sua lautius usus sit contemplatione delatae sibi hereditatis, Marcellus libro quinto digestorum putat nihil eum ex hereditate deducturum, si eam non attigit.

Dig. 5.3.25.13

Ulpianus 15 ad ed.

Simili modo et si mutuam pecuniam accepit, quasi dives se deceperit.

Dig. 5.3.25.14

Ulpianus 15 ad ed.

Si tamen pignori res hereditarias dedit, videndum, an vel sic attingatur hereditas: quod est difficile, cum ipse sit obligatus.

Dig. 5.3.25.15

Ulpianus 15 ad ed.

Adeo autem qui locupletior factus non est non tenetur, ut si quis putans se ex asse heredem partem dimidiam hereditatis sine dolo malo consumpserit, Marcellus libro quarto digestorum tractat, num non teneatur, quasi id quod erogaverit ex eo fuerit, quod ad eum non pertinebat, sed ad coheredes: nam et si is qui heres non erat totum, quidquid apud se fuit, consumpsisset, sine dubio non tenetur, quasi locupletior non factus. sed in proposita quaestione tribus visionibus relatis, una prima: deinde alia posse dici totum quod superest restituere eum debere, quasi suam partem consumpserit: tertia utrique quod consumptum est decedere: ait utique nonnihil restituendum, de illo dubitat, utrum totum an partem restituendam dicat: puto tamen residuum integrum non esse restituendum, sed partem eius dimidiam.

Dig. 5.3.25.16

Ulpianus 15 ad ed.

Quod autem quis ex hereditate erogavit, utrum totum decedat an vero pro rata patrimonii eius? ut puta penum hereditarium ebibit: utrum totum hereditarii expensum feratur an aliquid et patrimonio eius? ut in id factus locupletior videatur, quod solebat ipse erogare ante delatam hereditatem: ut si quid lautius contemplatione hereditatis impendit, in hoc non videatur factus locupletior, in statutis vero suis sumptibus videatur factus locupletior: utique enim etsi non tam laute erogasset, aliquid tamen ad victum cottidianum erogasset. nam et divus marcus in causa pythodori, qui rogatus erat quod sibi superfuisset ex hereditate reddere, decrevit ea, quae alienata erant non minuendi fideicommissi nec pretium in corpus patrimonii pythodori redisse, et ex proprio pythodori patrimonio et ex hereditate decedere, non tantum ex hereditate. et nunc igitur statuti sumptus utrum ex hereditate decedent exemplo rescripti divi marci an ex solo patrimonio, videndum erit: et verius est, ut ex suo patrimonio decedant ea quae et si non heres fuisset erogasset.

Dig. 5.3.25.17

Ulpianus 15 ad ed.

Item si rem distraxit bonae fidei possessor nec pretio factus sit locupletior, an singulas res, si nondum usucaptae sint, vindicare petitor ab emptore possit ? et si vindicet, an exceptione non repellatur " quod praeiudicium hereditati non fiat inter actorem et eum qui venum dedit " , quia non videtur venire in petitionem hereditatis pretium earum, quamquam victi emptores reversuri sunt ad eum qui distraxit ? et puto posse res vindicari, nisi emptores regressum ad bonae fidei possessorem habent.

Dig. 5.3.25.17a

Ulpianus 15 ad ed.

Quid tamen si is qui vendidit paratus sit ita defendere hereditatem, ut perinde atque si possideret conveniatur? incipit exceptio locum habere ex persona emptorum. certe si minori pretio res venierint et pretium quodcumque illud actor sit consecutus, multo magis poterit dici exceptione eum summoveri. nam et si id quod a debitoribus exegit possessor petitori hereditatis solvit, liberari debitores iulianus libro quarto digestorum scribit, sive bonae fidei possessor sive praedo fuit qui debitum ab his exegerat, et ipso iure eos liberari.

Dig. 5.3.25.18

Ulpianus 15 ad ed.

Petitio hereditatis, etsi in rem actio sit, habet tamen praestationes quasdam personales, ut puta eorum quae a debitoribus sunt exacta, item pretiorum.

Dig. 5.3.25.19

Ulpianus 15 ad ed.

Hoc senatus consultum ad petitionem hereditatis factum etiam in familiae herciscundae iudicio locum habere placet, ne res absurda sit, ut quae peti possint dividi non possint.

Dig. 5.3.25.20

Ulpianus 15 ad ed.

Augent hereditatem gregum et pecorum partus.

Dig. 5.3.26

Paulus 20 ad ed.

Quod si oves natae sunt, deinde ex his aliae, hae quoque quasi augmentum restitui debent.

Dig. 5.3.27pr.

Ulpianus 15 ad ed.

Ancillarum etiam partus et partuum partus quamquam fructus esse non existimantur, quia non temere ancillae eius rei causa comparantur ut pariant, augent tamen hereditatem: quippe cum ea omnia fiunt hereditaria, dubium non est, quin ea possessor, si aut possideat aut post petitam hereditatem dolo malo fecit quo minus possideret, debeat restituere.

Dig. 5.3.27.1

Ulpianus 15 ad ed.

Sed et pensiones, quae ex locationibus praediorum urbanorum perceptae sunt, venient, licet a lupanario perceptae sint: nam et in multorum honestorum virorum praediis lupanaria exercentur.

Dig. 5.3.28

Paulus 20 ad ed.

Post senatus consultum enim omne lucrum auferendum esse tam bonae fidei possessori quam praedoni dicendum est.

Dig. 5.3.29

Ulpianus 15 ad ed.

Mercedes plane a colonis acceptae loco sunt fructuum. operae quoque servorum in eadem erunt causa, qua sunt pensiones: item vecturae navium et iumentorum.

Dig. 5.3.30

Paulus 20 ad ed.

Iulianus scribit actorem eligere debere, utrum sortem tantum an et usuras velit cum periculo nominum agnoscere. atquin secundum hoc non observabimus quod senatus voluit, bonae fidei possessorem teneri quatenus locupletior sit: quid enim si pecuniam eligat actor, quae servari non potest? dicendum itaque est in bonae fidei possessore haec tantummodo eum praestare debere, id est vel sortem et usuras eius si et eas percepit, vel omnia cum eorum cessione in id facienda, quod ex his adhuc deberetur, periculo scilicet petitoris.

Dig. 5.3.31pr.

Ulpianus 15 ad ed.

Si quid possessor solvit creditoribus, reputabit, quamquam ipso iure non liberaverit petitorem hereditatis: nam quod quis suo nomine solvit, non debitoris, debitorem non liberat. et ideo iulianus libro sexto digestorum scribit ita id imputaturum possessorem, si caverit se petitorem defensum iri. sed an et bonae fidei possessor debeat defendendum cavere, videndum erit, quia in eo quod solvit non videtur locupletior factus: nisi forte habeat condictionem et hoc nomine videtur locupletior, quia potest repetere: finge enim eum, dum se heredem putat, solvisse suo nomine. et videtur mihi iulianus de solo praedone ut caveat sensisse, non etiam de bonae fidei possessore: condictionem tamen praestare debebit. sed et petitor si a creditoribus conveniatur, exceptione uti debebit.

Dig. 5.3.31.1

Ulpianus 15 ad ed.

Sed si ipsi aliquid praedoni debebatur, hoc deducere non debebit: maxime si id fuit debitum, quod natura debebatur. quid tamen si expediebat petitori id debitum esse dissolutum propter poenam vel aliam causam? potest dici ipsum sibi vel solvisse vel debuisse solvere.

Dig. 5.3.31.2

Ulpianus 15 ad ed.

Iustus autem possessor dubio procul debebit deducere, quod sibi debetur.

Dig. 5.3.31.3

Ulpianus 15 ad ed.

Sicut autem sumptum quem fecit deducit, ita si facere debuit nec fecit, culpae huius reddat rationem, nisi bonae fidei possessor est: tunc enim, quia quasi suam rem neglexit, nulli querellae subiectus est ante petitam hereditatem: postea vero et ipse praedo est.

Dig. 5.3.31.4

Ulpianus 15 ad ed.

Illud plane praedoni imputari non potest, cur passus est debitores liberari et pauperiores fieri et non eos convenit, cum actionem non habuerit.

Dig. 5.3.31.5

Ulpianus 15 ad ed.

Quod autem possessori solutum est an restituere debeat, videamus: et si bonae fidei possessor fuit sive non, debere restituere placet, et quidem si restituerit, ut cassius scribit et iulianus libro sexto, liberari ipso iure debitores.

Dig. 5.3.32

Paulus 20 ad ed.

Per servum adquisitae res heredi restituendae sunt: quod procedit in hereditate liberti et cum de inofficioso agitur, cum interim in bonis esset heredis:

Dig. 5.3.33pr.

Ulpianus 15 ad ed.

Nisi ex re heredis scripti stipulatus sit.

Dig. 5.3.33.1

Ulpianus 15 ad ed.

Iulianus scribit, si hominem possessor distraxerit, si quidem non necessarium hereditati, petitione hereditatis pretium praestaturum: imputaretur enim ei, si non distraxisset: quod si necessarium hereditati, si quidem vivit, ipsum praestandum, si decesserit, fortassis nec pretium: sed non passurum iudicem qui cognoscit possessorem pretium lucrari scribit, et verius est.

Dig. 5.3.34pr.

Paulus 20 ad ed.

Filii familias militis puto peti posse hereditatem ex testamento nobis obvenientem.

Dig. 5.3.34.1

Paulus 20 ad ed.

Si servus vel filius familias res hereditarias teneat, a patre dominove peti hereditas potest, si facultatem restituendarum rerum habet. certe si pretium rerum hereditariarum venditarum in peculio servi habeat, et iulianus existimat posse a domino quasi a iuris possessore hereditatem peti.

Dig. 5.3.35

Gaius 6 ad ed. provinc.

Idem iulianus ait etiam si nondum pretia rerum consecutus sit servus, posse a domino quasi a iuris possessore hereditatem peti, quia habet actionem, qua eam pecuniam consequatur, quae quidem actio etiam ignoranti adquireretur.

Dig. 5.3.36pr.

Paulus 20 ad ed.

Si a domino vel a patre, qui pretia possidet, hereditas petatur, an filio vel servo mortuo vel servo manumisso vel emancipato filio intra annum agi debeat? et an debitum sibi dominus vel pater deducere potest? iulianus verius esse ait, id quod proculus quoque respondit, perpetuo actionem dandam nec deduci oportere id quod ipsi debetur, quia non de peculio agatur, sed hereditas petatur. haec recte, si pretia habeat servus vel filius familias. quod si propterea hereditas petatur a domino, quod servus debitor fuit, perinde haberi debebit, atque si de peculio ageretur. idem dicendum mauricianus ait etiam si pecuniam ex pretio perceptam servus vel filius consumpserit, sed alias ex peculio eius solvi potest.

Dig. 5.3.36.1

Paulus 20 ad ed.

Sed et a filio familias peti hereditatem posse non est dubium, quia restituendi facultatem habet, sicut ad exhibendum. multo magis dicimus posse peti hereditatem a filio familias, qui, cum pater familias esset et possideret hereditatem, adrogandum se praestavit.

Dig. 5.3.36.2

Paulus 20 ad ed.

Si possessor hereditarium servum occiderit, id quoque in hereditatis petitione veniet: sed pomponius ait actorem debere eligere, utrum velit sibi eum condemnari, ut caveat se non acturum lege aquilia, an malit integram sibi esse actionem legis aquiliae omissa eius rei aestimatione a iudice. quae electio locum habet, si ante aditam hereditatem occisus sit servus: nam si postea, ipsius actio propria effecta est nec veniet in hereditatis petitionem.

Dig. 5.3.36.3

Paulus 20 ad ed.

Si praedo dolo desisset possidere, res autem eo modo interierit, quo esset interitura et si eadem causa possessionis mansisset: quantum ad verba senatus consulti melior est causa praedonis quam bonae fidei possessoris, quia praedo, si dolo desierit possidere, ita condemnatur atque si possideret, nec adiectum esset, si res interierit. sed non est dubium, quin non debeat melioris esse condicionis quam bonae fidei possessor. itaque et si pluris venierit res, electio debebit esse actoris, ut pretium consequatur: alioquin lucretur aliquid praedo.

Dig. 5.3.36.4

Paulus 20 ad ed.

Quo tempore locupletior esse debeat bonae fidei possessor, dubitatur: sed magis est rei iudicatae tempus spectandum esse.

Dig. 5.3.36.5

Paulus 20 ad ed.

Fructus intelleguntur deductis impensis, quae quaerendorum cogendorum conservandorumque eorum gratia fiunt. quod non solum in bonae fidei possessoribus naturalis ratio expostulat, verum etiam in praedonibus, sicut sabino quoque placuit.

Dig. 5.3.37

Ulpianus 15 ad ed.

Quod si sumptus quidem fecit, nihil autem fructuum perceperit, aequissimum erit rationem horum quoque in bonae fidei possessoribus haberi.

Dig. 5.3.38

Paulus 20 ad ed.

Plane in ceteris necessariis et utilibus impensis posse separari, ut bonae fidei quidem possessores has quoque imputent, praedo autem de se queri debeat, qui sciens in rem alienam impendit. sed benignius est in huius quoque persona haberi rationem impensarum (non enim debet petitor ex aliena iactura lucrum facere) et id ipsum officio iudicis continebitur: nam nec exceptio doli mali desideratur. plane potest in eo differentia esse, ut bonae fidei quidem possessor omnimodo impensas deducat, licet res non exstet in quam fecit, sicut tutor vel curator consequuntur, praedo autem non aliter, quam si res melior sit.

Dig. 5.3.39pr.

Gaius 6 ad ed. provinc.

Utiles autem necessariaeque sunt veluti quae fiunt reficiendorum aedificorum gratia: aut in novelleta: aut cum servorum gratia litis aestimatio solvitur, cum id utilius sit quam ipsos dedi: denique alias complures eiusdem generis esse impensas manifestum est.

Dig. 5.3.39.1

Gaius 6 ad ed. provinc.

Videamus tamen, ne et ad picturarum quoque et marmorum et ceterarum voluptariarum rerum impensas aeque proficiat nobis doli exceptio, si modo bonae fidei possessores simus: nam praedoni probe dicetur non debuisse in alienam rem supervacuas impensas facere: ut tamen potestas ei fieret tollendorum eorum, quae sine detrimento ipsius rei tolli possint.

Dig. 5.3.40pr.

Paulus 20 ad ed.

Illud quoque quod in oratione divi hadriani est, ut post acceptum iudicium id actori praestetur, quod habiturus esset, si eo tempore quo petit restituta esset hereditas, interdum durum est. quid enim, si post litem contestatam mancipia aut iumenta aut pecora deperierint? damnari debebit secundum verba orationis, quia potuit petitor restituta hereditate distraxisse ea. et hoc iustum esse in specialibus petitionibus proculo placet: cassius contra sensit. in praedonis persona proculus recte existimat, in bonae fidei possessoribus cassius. nec enim debet possessor aut mortalitatem praestare, aut propter metum huius periculi temere indefensum ius suum relinquere.

Dig. 5.3.40.1

Paulus 20 ad ed.

Praedo fructus suos non facit, sed augent hereditatem: ideoque eorum quoque fructus praestabit. in bonae fidei autem possessore hi tantum veniunt in restitutione quasi augmenta hereditatis, per quos locupletior factus est.

Dig. 5.3.40.2

Paulus 20 ad ed.

Actiones si quas possessor nanctus est, evicta hereditate restituere debet, veluti si interdictum unde vi, aut quod precario concessit. contra quoque si possessor caverit damni infecti, cavendum est possessori.

Dig. 5.3.40.3

Paulus ad ed.

Ad officium iudicis pertinebunt et noxales actiones, ut, si paratus sit possessor noxae dedere servum qui damnum dederit in re hereditaria vel furtum fecerit, absolvatur, sicut fit in interdicto quod vi aut clam.

Dig. 5.3.41pr.

Gaius 6 ad ed. provinc.

Si quo tempore conveniebatur possessor hereditatis, pauciores res possidebat, deinde aliarum quoque rerum possessionem adsumpsit, eas quoque victus restituere debebit, sive ante acceptum iudicium sive postea adquisierit possessionem. et si fideiussores, quos dederat, ad litem non sufficiant, iubere eum debebit proconsul ut idonee caveat. ex diverso quoque si pauciores postea possidebit, quam initio possidebat, si modo id sine dolo eius acciderit, absolvi debet quod ad eas res quas desiit possidere.

Dig. 5.3.41.1

Gaius 6 ad ed. provinc.

Fructus computandos etiam earum rerum, quas defunctus pignori accepit, iulianus ait.

Dig. 5.3.42

Ulpianus 67 ad ed.

Si debitor hereditarius non ideo nolit solvere, quod se dicat heredem, sed ideo quod neget aut dubitet, an hereditas pertineat ad eum qui petit hereditatem, non tenetur hereditatis petitione.

Dig. 5.3.43

Paulus 2 ad plaut.

Postquam legatum a te accepi, hereditatem peto. atilicinus quibusdam placuisse ait non aliter mihi adversus te dandam petitionem, quam si legatum redderem. videamus tamen, ne non aliter petitor hereditatis legatum restituere debeat, quam ut ei caveatur, si contra eum de hereditate iudicatum fuerit, reddi ei legatum: cum sit iniquum eo casu possessorem hereditatis legatum, quod solverit, retinere, et maxime si non per calumniam, sed per errorem hereditatem petierit adversarius: idque et laelius probat. imperator autem antoninus rescripsit ei, qui legatum ex testamento abstulisset, causa cognita hereditatis petitionem negandam esse, scilicet si manifesta calumnia sit.

Dig. 5.3.44

Iavolenus 1 ex plaut.

Cum is, qui legatum ex testamento percepit, hereditatem petit, si legatum quocumque modo redditum non sit, iudicis officio continetur, ut victori deducto eo quod accepit restituatur hereditas.

Dig. 5.3.45

Celsus 4 Dig.

Qui se liti optulit, cum rem non possideret, condemnatur, nisi si evidentissimis probationibus possit ostendere actorem ab initio litis scire eum non possidere: quippe isto modo non est deceptus et qui se hereditatis petitioni optulit ex doli clausula tenetur: aestimari scilicet oportebit, quanti eius interfuit non decipi.

Dig. 5.3.46

Modestinus 6 diff.

Praedonis loco intellegendus est is, qui tacitam fidem interposuerit, ut non capienti restitueret hereditatem.

Dig. 5.3.47

Modestinus 8 resp.

Lucius titius cum in falsi testamenti propinqui accusatione non optinuerit, quaero, an de non iure facto nec signato testamento querella illi competere possit. respondit non ideo repelli ab intentione non iure facti testamenti, quod in falsi accusatione non optinuerit.

Dig. 5.3.48

Iavolenus 3 ex cass.

In aestimationibus hereditatis ita venit pretium venditae hereditatis, ut id quoque accedat, quod plus fuit in hereditate, si ea negotiationis causa veniit: sin autem ex fideicommissi causa, nihil amplius quam quod bona fide accepit.

Dig. 5.3.49

Papinianus 3 quaest.

Si bonae fidei possessor hereditatis velit cum debitoribus hereditariis aut qui res hereditarias occupaverint consistere, audietur, utique si periculum erit, ne inter moras actiones intercidant. petitor autem hereditatis citra metum exceptionis in rem agere poterit: quid enim si possessor hereditatis neglegat? quid si nihil iuris habere se sciat?

Dig. 5.3.50pr.

Papinianus 6 quaest.

Hereditas etiam sine ullo corpore iuris intellectum habet.

Dig. 5.3.50.1

Papinianus 6 quaest.

Si defuncto monumentum condicionis implendae gratia bonae fidei possessor fecerit, potest dici, quia voluntas defuncti vel in hoc servanda est, utique si probabilem modum faciendi monumenti sumptus, vel quantum testator iusserit, non excedat, eum, cui aufertur hereditas, impensas ratione doli exceptione aut retenturum aut actione negotiorum gestorum repetiturum, veluti hereditario negotio gesto: quamvis enim stricto iure nulla teneantur actione heredes ad monumentum faciendum, tamen principali vel pontificali auctoritate compelluntur ad obsequium supremae voluntatis.

Dig. 5.3.51pr.

Papinianus 2 resp.

Heres furiosi substituto vel sequentis gradus cognato fructus medii temporis, quibus per curatorem furiosus locupletior factus videtur, praestabit: exceptis videlicet impensis, quae circa eandem substantiam tam necessarie quam utiliter factae sunt. sed et si quid circa furiosum necessarie fuerit expensum, et hoc excipiatur, nisi alia sufficiens substantia est furioso, ex qua sustentari potest.

Dig. 5.3.51.1

Papinianus 2 resp.

Fructuum post hereditatem petitam perceptorum usurae non praestantur: diversa ratio est eorum, qui ante actionem hereditatis illatam percepti hereditatem auxerunt.

Dig. 5.3.52

Hermogenianus 2 iuris epit.

Si possessor ex hereditate inhonestos habuerit quaestus, hos etiam restituere cogitur, ne honesta interpretatio non honesto quaestui lucrum possessori faciat.

Dig. 5.3.53

Paulus 10 ad sab.

Non solum ad aes alienum hereditarium exsolvendum necessaria alienatio possessori est, sed et si impensae necessariae in rem hereditariam factae sunt a possessore, vel si mora periturae deterioresve futurae erant.

Dig. 5.3.54pr.

Iulianus 6 Dig.

Ei, qui partes hereditarias vel totam a fisco mercatus fuerit, non est iniquum dari actionem, per quam universa bona persequatur, quemadmodum ei, cui ex trebelliano senatus consulto hereditas restituta est, petitio hereditatis datur.

Dig. 5.3.54.1

Iulianus 6 Dig.

Heres debitoris id quod defunctus pignori dederat quin hereditatem petendo consequi possit, dubium non est.

Dig. 5.3.54.2

Iulianus 6 Dig.

Cum praedia urbana et rustica neglegentia possessorum peiora sint facta, veluti quia vineae pomaria horti extra consuetudinem patris familias defuncti culta sunt: litis aestimationem earum rerum, quanto peiores sint factae, possessores pati debent.

Dig. 5.3.55

Iulianus 60 Dig.

Evicta hereditate bonae fidei possessor quod lege aquilia exegisset non simplum, sed duplum restituet: lucrum enim ex eo, quod propter hereditatem acceperit, facere non debet.

Dig. 5.3.56

Africanus 4 quaest.

Cum hereditas petita sit, eos fructus, quos possessor percepit, omnimodo restituendos, etsi petitor eos percepturus non fuerat.

Dig. 5.3.57

Nerva 7 membr.

Cum idem eandem hereditatem adversus duos defendit et secundum alterum ex his iudicatum est, quaeri solet, utrum perinde ei hereditatem restitui oporteat, atque oporteret, si adversus alium defensa non esset: ut scilicet si mox et secundum alium fuerit iudicatum, absolvatur is cum quo actum est, quia neque possideat neque dolo malo fecerit, quo minus possideret quod iudicio revictus restituerit: an quia possit et secundum alium iudicari, non aliter restituere debeat quam si cautum ei fuerit, quod adversus alium eandem hereditatem defendit. sed melius est officio iudicis cautione vel satisdatione victo mederi, cum et res salva sit ei, qui in exsecutione tardior venit adversus priorem victorem.

Dig. 5.3.58

Scaevola 3 Dig.

Filius a patre emancipatus secundum condicionem testamenti matris adiit hereditatem, quam pater, antequam filium emanciparet, possedit fructusque ex ea possedit, sed erogationem in honorem filii cum esset senator fecit ex ea. quaesitum est, cum paratus sit pater restituere hereditatem habita ratione eorum quae in eum erogavit, an filius nihilo minus perseverans petere hereditatem doli mali exceptione summoveri possit. respondi, et si non exciperetur, satis per officium iudicis consuli.

Dig. 5.4.0. Si pars hereditatis petatur.

Dig. 5.4.1pr.

Ulpianus 5 ad ed.

Post actionem, quam proposuit praetor ei qui ad se solum hereditatem pertinere contendit, consequens fuit et ei proponere qui partem hereditatis petit.

Dig. 5.4.1.1

Ulpianus 5 ad ed.

Qui hereditatem vel partem hereditatis petit, is non ex eo metitur quod possessor occupavit, sed ex suo iure: et ideo sive ex asse heres sit, totam hereditatem vindicabit, licet tu unam rem possideas, sive ex parte, partem, licet tu totam hereditatem possideas.

Dig. 5.4.1.2

Ulpianus 5 ad ed.

Quin immo si duo possideant hereditatem et duo sint, qui ad se partes pertinere dicant, non singuli a singulis petere contenti esse debent, puta primus a primo vel secundus a secundo, sed ambo a primo et ambo a secundo: neque enim alter primi, alter secundi partem possidet, sed ambo utriusque pro herede. et si possessor et petitor possideant hereditatem, cum unusquisque eorum partem dimidiam hereditatis sibi adserat, invicem petere debebunt, ut partes rerum consequantur: aut si controversiam sibi non faciunt hereditatis, familiae herciscundae experiri eos oportebit.

Dig. 5.4.1.3

Ulpianus 5 ad ed.

Si ego ex parte me dicam heredem, coheres autem meus possideat hereditatem cum extraneo, cum non plus coheres haberet sua parte, utrum a solo extraneo an vero et a coherede deberem petere hereditatem, quaeritur. et pegasus fertur existimasse a solo extraneo me petere debere eumque restituturum quidquid possidet, et fortassis hoc officio iudicis debeat fieri: ceterum ratio facit, ut a duobus petam hereditatem, hoc est et a coherede meo, et ille quoque dirigat actionem adversus exterum possessorem: sed pegasi sententia utilior est.

Dig. 5.4.1.4

Ulpianus 5 ad ed.

Item si, cum me ex parte dimidia heredem dicerem, trientem hereditatis possiderem, deinde residuum sextantem velim persequi, qualiter agam videamus. et labeo scribit utique partem dimidiam me petere debere a singulis: sic fieri ut a singulis sextantem consequar, et habebo bessem: quod verum puto: sed ipse tenebor ad restitutionem sextantis ex triente quem possidebam. et ideo officio iudicis invicem compensatio erit admittenda eius quod possideo, si forte coheredes sint a quibus hereditatem peto.

Dig. 5.4.1.5

Ulpianus 5 ad ed.

Interdum praetor incertae partis hereditatis petitionem indulget idoneis causis intervenientibus: ut puta est defuncti fratris filius, sunt et uxores defunctorum fratrum praegnates: quam partem fratris filius hereditatis vindicet incertum est, quia quot edantur fratrum defuncti filii incertum est. aequissimum igitur est incertae partis vindicationem ei concedi. non audenter itaque dicetur, ubicumque merito quis incertus est quam partem vindicet, debere ei incertae partis vindicationem concedi.

Dig. 5.4.2

Gaius 6 ad ed. provinc.

Si ex pluribus, ad quos eadem hereditas pertinet, quidam adierint, quidam adhuc deliberent: eos qui adierint, si petant hereditatem, non maiorem partem petere debere, quam habituri essent ceteris adeuntibus: nec eis proderit, si ceteri non adierint. non adeuntibus autem ceteris poterunt tunc partes eorum petere, si modo ad eos pertinerent.

Dig. 5.4.3

Paulus 17 ad plaut.

Antiqui libero ventri ita prospexerunt, ut in tempus nascendi omnia ei iura integra reservarent: sicut apparet in iure hereditatium, in quibus qui post eum gradum sunt adgnationis, quo est id quod in utero est, non admittuntur, dum incertum est, an nasci possit. ubi autem eodem gradu sunt ceteri quo et venter, tunc quae portio in suspenso esse debeat, quaesierunt ideo, quia non poterant scire, quot nasci possunt: ideo nam multa de huiusmodi re tam varia et incredibilia creduntur, ut fabulis adnumerentur. nam traditum est et quattuor pariter puellas a matre familias natas esse: alioquin tradidere non leves auctores quinquies quaternos enixam peloponensi, multas aegypti uno utero septenos. sed et tregeminos senatores cinctos vidimus horatios. sed et laelius scribit se vidisse in palatio mulierem liberam, quae ab alexandria perducta est, ut hadriano ostenderetur, cum quinque liberis, ex quibus quattuor eodem tempore enixa, inquit, dicebatur, quintum post diem quadragensimum. quid est ergo? prudentissime iuris auctores medietatem quandam secuti sunt, ut quod fieri non rarum admodum potest, intuerentur, id est quia fieri poterat, ut tregemini nascerentur, quartam partem superstiti filio adsignaverint: to gar hapac y dis, ut ait theophrastus, parabainousin ohi nomovetai. ideoque et si unum paritura sit, non ex parte dimidia, sed ex quarta interim heres erit:

Dig. 5.4.4

Ulpianus 15 ad ed.

Et si pauciores fuerint nati, residuum ei pro rata adcrescere, si plures quam tres, decrescere de ea parte ex qua heres factus est.

Dig. 5.4.5pr.

Paulus 17 ad plaut.

Illud sciendum est, si mulier praegnans non sit, existimetur autem praegnans esse, interim filium heredem esse ex asse, quamquam ignoret se ex asse heredem esse.

Dig. 5.4.5.1

Paulus 17 ad plaut.

Idem est in extraneo, si ex certa portione heres institutus sit, ex reliqua postumi. quod si forte ita institutio facta est: " quotcumque mihi nati erunt et lucius titius pro virilibus portionibus heredes mihi sunto", habebit haesitationem, numquid adire non possit, atque qui in testamento portionem suam nescit. sed utilius est posse eum adire qui nescit portionem, si cetera, quae oportet eum scire, non ignoret.

Dig. 5.4.6pr.

Ulpianus 6 opin.

Sorori, quam coheredem fratribus quattuor in bonis matris esse placuit, quinta portio pro portionibus quae ad eos pertinuit cedet, ita ut singuli in quarta, quam antehac habere credebantur, non amplius ei quintam conferant.

Dig. 5.4.6.1

Ulpianus 6 opin.

Sumptus, qui propter onera totius hereditatis iusti fiunt, ei, qui patroni iure portionem evicerit, pro rata computentur.

Dig. 5.4.7

Iulianus 8 Dig.

Non possumus consequi per hereditatis petitionem id quod familiae erciscundae iudicio consequimur, ut a communione discedamus, cum ad officium iudicis nihil amplius pertineat, quam ut partem hereditatis pro indiviso restitui mihi iubeat.

Dig. 5.4.8

Iulianus 48 Dig.

Permittendum erit possessori hereditatis partem quidem hereditatis defendere, parte vero cedere, nec enim prohibet aliquem totam hereditatem possidere et partem scire dimidiam ad se pertinere, de altera parte controversiam non facere.

Dig. 5.4.9

Paulus 3 epit. alf. Dig.

Cum multi heredes instituti essent, ex his unus in asia erat: eius procurator venditionem fecit et pecuniam pro parte eius abstulerat: postea apparuerit eum qui in asia erat antea decessisse instituto ex parte dimidia herede procuratore suo et ex parte alio. quaesitum est, quemadmodum pecunia ex hereditate petenda esset. responsum est ab eo, qui procurator eius fuisset, totam hereditatem, quia ex hereditate ea pecunia fuisset quae ad procuratorem ex venditione pervenisset, petere eos oportere: et nihilo minus partem dimidiam hereditatis a coheredibus eius. ita fore, sive omnis ea pecunia penes eum qui procurator fuisset resideret, ut omnem per iudicem ab eodem recuperarent, sive is partem dimidiam coheredi suo reddidisset, ipsum ex dimidia parte et ex dimidia coheredes eius condemnarent.

Dig. 5.4.10

Papinianus 6 quaest.

Cum heredis ex parte instituti filius, qui patrem suum ignorabat vivo testatore decessisse, partem hereditatis nomine patris ut absentis administraverit et pecunias distractis rebus acceperit, hereditas ab eo peti non potest, quia neque pro herede neque pro possessore pretia possidet, sed ut filius patris negotium curavit. negotiorum autem gestorum actio ceteris coheredibus, ad quos portio defuncti pertinet, dabitur. illud enim utique non est metuendum, ne etiam patris, a quo forte exheredatus est, teneatur heredibus, quasi negotia hereditaria gesserit, cum id quod administravit non fuerit paternae hereditatis. nam etsi negotiorum gestorum actio sit ei, cuius nomine perceptum est: ei cuius nomine perceptum ^ ^ est ^ ^ perceptum ^ ^ alieno ^ ^ nomine ^ ^

restitui aequum est. sed in proposito neque patris negotia fuerunt, qui esse desierat, neque paternae successionis, quae fuerunt alterius hereditatis. quod si filius iste patri suo heres extitit et movet controversiam, quod pater eius, postquam heres extitit, mortem obierit, ille tractatus incurrit, an ipse sibi causam possessionis mutare videatur. quoniam tamen qui negotia hereditaria gessit et debitor esse coepit, postea faciens controversiam hereditatis ut iuris possessor convenitur, idem etiam in hoc filio respondendum erit.

Dig. 5.5.0. De possessoria hereditatis petitione.

Dig. 5.5.1

Ulpianus 15 ad ed.

Ordinarium fuit post civiles actiones heredibus propositas rationem habere praetorem etiam eorum quos ipse velut heredes facit, hoc est eorum quibus bonorum possessio data est.

Dig. 5.5.2

Gaius 6 ad ed. provinc.

Per quam hereditatis petitionem tantundem consequitur bonorum possessor, quantum superioribus civilibus actionibus heres consequi potest.

Dig. 5.6.0. De fideicommissaria hereditatis petitione.

Dig. 5.6.1

Ulpianus 16 ad ed.

Ex ordine occurrit actio quae proponitur his, quibus restituta est hereditas. nam quisquis susceperit ^ suscepit^ restitutam hereditatem ex senatus consulto, ex quo actiones transeunt, fideicommissaria hereditatis petitione uti poterit.

Dig. 5.6.2

Paulus 20 ad ed.

Quae actio eadem recipit, quae hereditatis petitio civilis.

Dig. 5.6.3pr.

Ulpianus 16 ad ed.

Nec interest, mihi quis rogatus fuerit restituere an ei cui heres extiti. sed et si bonorum possessor sim eius cui fideicommissaria hereditas relicta est vel alius successor, per hanc actionem experiri poterim.

Dig. 5.6.3.1

Ulpianus 16 ad ed.

Hanc actionem sciendum est adversus eum, qui restituit hereditatem, non competere.

Dig. 5.6.3.2

Ulpianus 16 ad ed.

Hae autem actiones mihi dantur, quae heredi et in heredem competunt.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER SEXTUS

Dig. 6.1.0. De rei vindicatione.
Dig. 6.2.0. De publiciana in rem actione.
Dig. 6.3.0. Si ager vectigalis, id est emphyteuticarius, petatur.

Dig. 6.1.0. De rei vindicatione.

Dig. 6.1.1pr.

Ulpianus 16 ad ed.

Post actiones, quae de universitate propositae sunt, subicitur actio singularum rerum petitionis.

Dig. 6.1.1.1

Ulpianus 16 ad ed.

Quae specialis in rem actio locum habet in omnibus rebus mobilibus, tam animalibus quam his quae anima carent, et in his quae solo continentur.

Dig. 6.1.1.2

Ulpianus 16 ad ed.

Per hanc autem actionem liberae personae, quae sunt iuris nostri, ut puta liberi qui sunt in potestate, non petuntur: petuntur igitur aut praeiudiciis aut interdictis aut cognitione praetoria, et ita pomponius libro trigensimo septimo: nisi forte, inquit, adiecta causa quis vindicet: si quis ita petit " filium suum" vel " in potestate ex iure romano", videtur mihi et pomponius consentire recte eum egisse: ait enim adiecta causa ex lege quiritium vindicare posse.

Dig. 6.1.1.3

Ulpianus 16 ad ed.

Per hanc autem actionem non solum singulae res vindicabuntur, sed posse etiam gregem vindicari pomponius libro lectionum vicensimo quinto scribit. idem et de armento et de equitio ceterisque, quae gregatim habentur, dicendum est. sed enim gregem sufficiet ipsum nostrum esse, licet singula capita nostra non sint: grex enim, non singula corpora vindicabuntur.

Dig. 6.1.2

Paulus 21 ad ed.

Sed si par numerus duorum interfuerit, neuter solidum gregem, sed ne partem dimidiam totius eius vindicabit. sed si maiorem numerum alter habeat, ut detracto alieno nihilo minus gregem vindicaturus sit, in restitutionem non veniunt aliena capita.

Dig. 6.1.3pr.

Ulpianus 16 ad ed.

Marcellus libro quarto digestorum scribit: qui gregem habebat capitum trecentorum, amissis centum redemit totidem capita aliena ab eo, qui dominium eorum habebat vel aliena ab eo, qui bona fide ea possidebat: et haec utique gregis, inquit, vindicatione continebuntur. sed et si ea sola supersint capita, quae redempta sunt, adhuc eum posse gregem vindicare.

Dig. 6.1.3.1

Ulpianus 16 ad ed.

Armamenta navis singula erunt vindicanda: scapha quoque separatim vindicabitur.

Dig. 6.1.3.2

Ulpianus 16 ad ed.

Pomponius scribit, si quid quod eiusdem naturae est ita confusum est atque commixtum, ut deduci et separari non possint, non totum sed pro parte esse vindicandum. ut puta meum et tuum argentum in massam redactum est: erit nobis commune, et unusquisque pro rata ponderis quod in massa habemus vindicabimus, etsi incertum sit, quantum quisque ponderis in massa habet.

Dig. 6.1.4

Paulus 21 ad ed.

Quo quidem casu etiam communi dividundo agi poterit: sed et furti et ad exhibendum tenebitur, qui dolo malo confundendum id argentum curavit: ita ut in ad exhibendum actione pretii ratio haberi debeat, in vindicatione vel communi dividundo actione hoc amplius ferat, cuius argentum pretiosius fuerat.

Dig. 6.1.5pr.

Ulpianus 16 ad ed.

Idem pomponius scribit: si frumentum duorum non voluntate eorum confusum sit, competit singulis in rem actio in id, in quantum paret in illo acervo suum cuiusque esse: quod si voluntate eorum commixta sunt, tunc communicata videbuntur et erit communi dividundo actio.

Dig. 6.1.5.1

Ulpianus 16 ad ed.

Idem scribit, si ex melle meo, vino tuo factum sit mulsum, quosdam existimasse id quoque communicari: sed puto verius, ut et ipse significat, eius potius esse qui fecit, quoniam suam speciem pristinam non continet. sed si plumbum cum argento mixtum sit, quia deduci possit, nec communicabitur nec communi dividundo agetur, quia separari potest: agetur autem in rem actio. sed si deduci, inquit, non possit, ut puta si aes et aurum mixtum fuerit, pro parte esse vindicandum: nec quaquam erit dicendum, quod in mulso dictum est, quia utraque materia etsi confusa manet tamen.

Dig. 6.1.5.2

Ulpianus 16 ad ed.

Idem scribit, si equam meam equus tuus praegnatem fecerit, non esse tuum, sed meum, quod natum est.

Dig. 6.1.5.3

Ulpianus 16 ad ed.

De arbore, quae in alienum agrum translata coaluit et radices immisit, varus et nerva utilem in rem actionem dabant: nam si nondum coaluit, mea esse non desinet.

Dig. 6.1.5.4

Ulpianus 16 ad ed.

Cum in rem agatur, si de corpore conveniat, error autem sit in vocabulo, recte actum esse videtur.

Dig. 6.1.5.5

Ulpianus 16 ad ed.

Si plures sint eiusdem nominis servi, puta plures erotes, nec appareat de quo actum sit, pomponius dicit nullam fieri condemnationem.

Dig. 6.1.6

Paulus 6 ad ed.

Si in rem aliquis agat, debet designare rem, et utrum totam an partem et quotam petat: appellatio enim rei non genus, sed speciem significat. octavenus ita definit, quod infectae quidem materiae pondus, signatae vero numerum, factae autem speciem dici oportet: sed et mensura dicenda erit, cum res mensura continebitur. et si vestimenta nostra esse vel dari oportere nobis petamus, utrum numerum eorum dicere debebimus an et colorem? et magis est ut utrumque: nam illud inhumanum est cogi nos dicere, trita sint an nova. quamvis et in vasis occurrat difficultas, utrum lancem dumtaxat dici oporteat an etiam, quadrata vel rutunda, vel pura an caelata sint, quae ipsa in petitionibus quoque adicere difficile est. nec ita coartanda res est: licet in petendo homine nomen eius dici debeat et utrum puer an adulescens sit, utique si plures sint: sed si nomen eius ignorem, demonstratione eius utendum erit: veluti " qui ex illa hereditate est", " qui ex illa natus est". item fundum petiturus nomen eius et quo loci sit dicere debebit.

Dig. 6.1.7

Paulus 11 ad ed.

Si is, qui optulit se fundi vindicationi, damnatus est, nihilo minus a possessore recte petitur, sicut pedius ait.

Dig. 6.1.8

Paulus 12 ad ed.

Pomponius libro trigensimo sexto probat, si ex aequis partibus fundum mihi tecum communem tu et lucius titius possideatis, non ab utrisque quadrantes petere me debere, sed a titio, qui non sit dominus, totum semissem. aliter atque si certis regionibus possideatis eum fundum: nam tunc sine dubio et a te et a titio partes fundi petere me debere: quotiens enim certa loca possidebuntur, necessario in his aliquam partem meam esse: et ideo te quoque a titio quadrantem petere debere. quae distinctio neque in re mobili neque in hereditatis petitione locum habet: nunquam enim pro diviso possideri potest.

Dig. 6.1.9

Ulpianus 16 ad ed.

Officium autem iudicis in hac actione in hoc erit, ut iudex inspiciat, an reus possideat: nec ad rem pertinebit, ex qua causa possideat: ubi enim probavi rem meam esse, necesse habebit possessor restituere, qui non obiecit aliquam exceptionem. quidam tamen, ut pegasus, eam solam possessionem putaverunt hanc actionem complecti, quae locum habet in interdicto uti possidetis vel utrubi. denique ait ab eo, apud quem deposita est vel commodata vel qui conduxerit aut qui legatorum servandorum causa vel dotis ventrisve nomine in possessione esset vel cui damni infecti nomine non cavebatur, quia hi omnes non possident, vindicari non posse. puto autem ab omnibus, qui tenent et habent restituendi facultatem, peti posse.

Dig. 6.1.10

Paulus 21 ad ed.

Si res mobilis petita sit, ubi restitui debeat, scilicet si praesens non sit? et non malum est, si bonae fidei possessor sit is cum quo agitur, aut ibi restitui ubi res sit: aut ubi agitur: sed sumptibus petitoris, qui extra cibaria in iter vel navigationem faciendi sunt.

Dig. 6.1.11

Ulpianus 16 ad ed.

Nisi si malit petitor suis impensis et periculo ibi, ubi iudicatur, rem restitui: tunc enim de restitutione cum satisdatione cavebitur.

Dig. 6.1.12

Paulus 21 ad ed.

Si vero malae fidei sit possessor, qui in alio loco eam rem nactus sit, idem statui debet: si vero ab eo loco, ubi lis contestata est, eam substractam alio transtulerit, illic restituere debet, unde subtraxit, sumptibus suis.

Dig. 6.1.13

Ulpianus 16 ad ed.

Non solum autem rem restitui, verum et si deterior res sit facta, rationem iudex habere debebit: finge enim debilitatum hominem vel verberatum vel vulneratum restitui: utique ratio per iudicem habebitur, quanto deterior sit factus. quamquam et legis aquiliae actione conveniri possessor possit: unde quaeritur an non alias iudex aestimare damnum debeat, quam si remittatur actio legis aquiliae. et labeo putat cavere petitorem oportere lege aquilia non acturum, quae sententia vera est.

Dig. 6.1.14

Paulus 21 ad ed.

Quod si malit actor potius legis aquiliae actione uti, absolvendus est possessor. itaque electio actori danda est, non ut triplum, sed duplum consequatur.

Dig. 6.1.15pr.

Ulpianus 16 ad ed.

Item si verberatum tradidit, labeo ait etiam iniuriarum competere actionem petitori.

Dig. 6.1.15.1

Ulpianus 16 ad ed.

Si quis rem ex necessitate distraxit, fortassis huic officio iudicis succurretur. ut pretium dumtaxat debeat restituere. nam et si fructus perceptos distraxit, ne corrumpantur, aeque non amplius quam pretium praestabit.

Dig. 6.1.15.2

Ulpianus 16 ad ed.

Item si forte ager fuit qui petitus est et militibus adsignatus est modico honoris gratia possessori dato, an hoc restituere debeat? et puto praestaturum.

Dig. 6.1.15.3

Ulpianus 16 ad ed.

Si servus petitus vel animal aliud demortuum sit sine dolo malo et culpa possessoris, pretium non esse praestandum plerique aiunt: sed est verius, si forte distracturus erat petitor si accepisset, moram passo debere praestari: nam si ei restituisset, distraxisset et pretium esset lucratus.

Dig. 6.1.16pr.

Paulus 21 ad ed.

Utique autem etiam mortuo homine necessaria est sententia propter fructus et partus et stipulationem de evictione: non enim post litem contestatam utique et fatum possessor praestare debet.

Dig. 6.1.16.1

Paulus 21 ad ed.

Culpa non intellegitur, si navem petitam tempore navigationis trans mare misit, licet ea perierit: nisi si minus idoneis hominibus eam commisit.

Dig. 6.1.17pr.

Ulpianus 16 ad ed.

Iulianus libro sexto digestorum scribit, si hominem, qui maevii erat, emero a titio, deinde cum eum maevius a me peteret, eundem vendidero eumque emptor occiderit, aequum esse me pretium maevio restituere.

Dig. 6.1.17.1

Ulpianus 16 ad ed.

Idem iulianus eodem libro scribit, si moram fecerit in homine reddendo possessor et homo mortuus sit, et fructuum rationem usque ad rei iudicatae tempus spectandam esse. idem iulianus ait non solum fructus, sed etiam omnem causam praestandam: et ideo et partum venire in restitutionem et partuum fructus. usque adeo autem et causae veniunt, ut iulianus libro septimo scribit, si per eum servum possessor adquisierit actionem legis aquiliae, restituere cogendum. quod si dolo malo ipse possessor desierit possidere et aliquis hominem iniuria occiderit, aut pretium hominis aut actiones suas praestare cogetur, utrum eorum voluerit actor. sed et fructus, quos ab alio possessore percepit, restituere eum oportet: lucrum enim ex eo homine, qui in lite esse coeperit, facere non debet. sed fructus eius temporis, quo tempore possessus est ab eo qui evicerit, restituere non debet: sed quod dicit de actione legis aquiliae, procedit, si post litem contestatam usucepit possessor, quia plenum ius incipit habere.

Dig. 6.1.18

Gaius 7 ad ed. provinc.

Si post acceptum iudicium possessor usu hominem cepit, debet eum tradere eoque nomine de dolo cavere: periculum est enim, ne eum vel pigneraverit vel manumiserit.

Dig. 6.1.19

Ulpianus 16 ad ed.

Ipsi quoque reo cavendum esse labeo dicit " his rebus recte praestari", si forte fundi nomine damni infecti cavit.

Dig. 6.1.20

Gaius 7 ad ed. provinc.

Praeterea restituere debet possessor et quae post acceptum iudicium per eum non ex re sua adquisivit: in quo hereditates quoque legataque, quae per eum servum obvenerunt, continentur. nec enim sufficit corpus ipsum restitui, sed opus est, ut et causa rei restituatur, id est ut omne habeat petitor, quod habiturus foret, si eo tempore, quo iudicium accipiebatur, restitutus illi homo fuisset. itaque partus ancillae restitui debet, quamvis postea editus sit, quam matrem eius, post acceptum scilicet iudicium, possessor usuceperit: quo casu etiam de partu, sicut de matre, et traditio et cautio de dolo necessaria est.

Dig. 6.1.21

Paulus 21 ad ed.

Si a bonae fidei possessore fugerit servus, requiremus, an talis fuerit, ut et custodiri debuerit. nam si integrae opinionis videbatur, ut non debuerit custodiri, absolvendus est possessor, ut tamen, si interea eum usuceperat, actionibus suis cedat petitori et fructus eius temporis quo possedit praestet. quod si nondum eum usucepit, absolvendum eum sine cautionibus, ut nihil caveat petitori de persequenda ea re: quo minus enim petitor eam rem persequi potest, quamvis interim, dum in fuga sit, usucapiat? nec iniquum id esse pomponius libro trigensimo nono ad edictum scribit. si vero custodiendus fuit, etiam ipsius nomine damnari debebit, ut tamen, si usu eum non cepit, actor ei actionibus suis cedat. iulianus autem in his casibus, ubi propter fugam servi possessor absolvitur, etsi non cogitur cavere de persequenda re, tamen cavere debere possessorem, si rem nanctus fuerit, ut eam restituat, idque pomponius libro trigensimo quarto variarum lectionum probat: quod verius est.

Dig. 6.1.22

Ulpianus 16 ad ed.

Quod si dolo possessoris fugerit, damnandum eum, quasi possideret.

Dig. 6.1.23pr.

Paulus 21 ad ed.

In rem actio competit ei, qui aut iure gentium aut iure civili dominium adquisiit.

Dig. 6.1.23.1

Paulus 21 ad ed.

Loca sacra, item religiosa, quasi nostra in rem actione peti non possunt.

Dig. 6.1.23.2

Paulus 21 ad ed.

Si quis rei suae alienam rem ita adiecerit, ut pars eius fieret, veluti si quis statuae suae bracchium aut pedem alienum adiecerit, aut scypho ansam vel fundum, vel candelabro sigillum, aut mensae pedem, dominum eius totius rei effici vereque statuam suam dicturum et scyphum plerique recte dicunt.

Dig. 6.1.23.3

Paulus 21 ad ed.

Sed et id, quod in charta mea scribitur aut in tabula pingitur, statim meum fit: licet de pictura quidam contra senserint propter pretium picturae: sed necesse est ei rei cedi, quod sine illa esse non potest.

Dig. 6.1.23.4

Paulus 21 ad ed.

In omnibus igitur istis, in quibus mea res per praevalentiam alienam rem trahit meamque efficit, si eam rem vindicem, per exceptionem doli mali cogar pretium eius quod accesserit dare.

Dig. 6.1.23.5

Paulus 21 ad ed.

Item quaecumque aliis iuncta sive adiecta accessionis loco cedunt, ea quamdiu cohaerent dominus vindicare non potest, sed ad exhibendum agere potest, ut separentur et tunc vindicentur: scilicet excepto eo, quod cassius de ferruminatione scribit. dicit enim, si statuae suae ferruminatione iunctum bracchium sit, unitate maioris partis consumi et quod semel alienum factum sit, etiamsi inde abruptum sit, redire ad priorem dominum non posse. non idem in eo quod adplumbatum sit, quia ferruminatio per eandem materiam facit confusionem, plumbatura non idem efficit. ideoque in omnibus his casibus, in quibus neque ad exhibendum neque in rem locum habet, in factum actio necessaria est. at in his corporibus, quae ex distantibus corporibus essent, constat singulas partes retinere suam propriam speciem, ut singuli homines singulae oves: ideoque posse me gregem vindicare, quamvis aries tuus sit immixtus, sed et te arietem vindicare posse. quod non idem in cohaerentibus corporibus eveniret: nam si statuae meae bracchium alienae statuae addideris, non posse dici bracchium tuum esse, quia tota statua uno spiritu continetur.

Dig. 6.1.23.6

Paulus 21 ad ed.

Tignum alienum aedibus iunctum nec vindicari potest propter legem duodecim tabularum, nec eo nomine ad exhibendum agi nisi adversus eum, qui sciens alienum iunxit aedibus: sed est actio antiqua de tigno iuncto, quae in duplum ex lege duodecim tabularum descendit.

Dig. 6.1.23.7

Paulus 21 ad ed.

Item si quis ex alienis cementis in solo suo aedificaverit, domum quidem vindicare poterit, cementa autem resoluta prior dominus vindicabit, etiam si post tempus usucapionis dissolutum sit aedificium, postquam a bonae fidei emptore possessum sit: nec enim singula cementa usucapiuntur, si domus per temporis spatium nostra fiat.

Dig. 6.1.24

Gaius 7 ad ed. provinc.

Is qui destinavit rem petere animadvertere debet, an aliquo interdicto possit nancisci possessionem, quia longe commodius est ipsum possidere et adversarium ad onera petitoris compellere quam alio possidente petere.

Dig. 6.1.25

Ulpianus 70 ad ed.

Is qui se optulit rei defensioni sine causa, cum non possideret nec dolo fecisset, quo minus possideret: si actor ignoret, non est absolvendus, ut Marcellus ait: quae sententia vera est. sed hoc post litem contestatam: ceterum ante iudicium acceptum non decipit actorem qui se negat possidere, cum vere non possideret: nec videtur se liti optulisse qui discessit.

Dig. 6.1.26

Paulus 2 ad plaut.

Nam si actor scit, tunc is non ab alio, sed a se decipitur: et ideo reus absolvitur.

Dig. 6.1.27pr.

Paulus 21 ad ed.

Sin autem cum a titio petere vellem, aliquis dixerit se possidere et ideo liti se optulit, et hoc ipsum in re agenda testatione probavero, omnimodo condemnandus est.

Dig. 6.1.27.1

Paulus 21 ad ed.

Possidere autem aliquis debet utique et litis contestatae tempore et quo res iudicatur. quod si litis contestationis tempore possedit, cum autem res iudicatur sine dolo malo amisit possessionem, absolvendus est possessor. item si litis contestatae temporis non possedit, quo autem iudicatur possidet, probanda est proculi sententia, ut omnimodo condemnetur: ergo et fructuum nomine ex quo coepit possidere damnabitur.

Dig. 6.1.27.2

Paulus 21 ad ed.

Si homo petitus dolo possessoris deterior factus sit, deinde sine culpa eius ex alia causa mortuus sit, aestimatio non fiet eius, quod deteriorem eum fecerat, quia nihil interest petitoris: sed haec quantum ad in rem actionem: legis autem aquiliae actio durat.

Dig. 6.1.27.3

Paulus 21 ad ed.

Sed et is, qui ante litem contestatam dolo desiit rem possidere, tenetur in rem actione: idque ex senatus consulto colligi potest, quo cautum est, ut diximus, ut dolus praeteritus in hereditatis petitionem veniat: cum enim in hereditatis petitione, quae et ipsa in rem est, dolus praeteritus fertur, non est absurdum per consequentias et in speciali in rem actione dolum praeteritum deduci.

Dig. 6.1.27.4

Paulus 21 ad ed.

Si per filium aut per servum pater vel dominus possideat et is sine culpa patris dominive rei iudicandae tempore absit: vel tempus dandum vel cavendum est de possessione restituenda.

Dig. 6.1.27.5

Paulus 21 ad ed.

In rem petitam si possessor ante litem contestatam sumptus fecit, per doli mali exceptionem ratio eorum haberi debet, si perseveret actor petere rem suam non redditis sumptibus. idem est etiam, si noxali iudicio servum defendit et damnatus praestitit pecuniam, aut in area quae fuit petitoris per errorem insulam aedificavit: nisi tamen paratus sit petitor pati tollere eum aedificium. quod et in area uxori donata per iudicem, qui de dote cognoscit, faciendum dixerunt. sed si puerum meum, cum possideres, erudisses, non idem observandum proculus existimat, quia neque carere servo meo debeam nec potest remedium idem adhiberi, quod in area diximus:

Dig. 6.1.28

Gaius 7 ad ed. provinc.

Forte quod pictorem aut librarium docueris. dicitur non aliter officio iudicis aestimationem haberi posse,

Dig. 6.1.29

Pomponius 21 ad q. muc.

Nisi si venalem eum habeas et plus ex pretio eius consecuturus sis propter artificium,

Dig. 6.1.30

Gaius 7 ad ed. provinc.

Aut si ante denuntiatum sit actori, ut impensam solveret, et eo dissimulante posita sit doli mali exceptio.

Dig. 6.1.31

Paulus 21 ad ed.

Ceterum cum de fructibus servi petiti quaeritur, non tantum pubertas eius spectanda est, quia etiam impuberis aliquae operae esse possunt. improbe tamen desiderabit petitor fructus aestimari, qui ex artificio eius percipi potuerunt, quod artificium sumptibus possessoris didicit.

Dig. 6.1.32

Modestinus 8 diff.

Quod si artificem fecerit, post vicensimum quintum annum eius, qui artificium consecutus est, impensae factae poterunt pensari.

Dig. 6.1.33

Paulus 21 ad ed.

Fructus non modo percepti, sed et qui percipi honeste potuerunt aestimandi sunt: et ideo si dolo aut culpa possessoris res petita perierit, veriorem putat pomponius trebatii opinionem putantis eo usque fructuum rationem habendam, quo usque haberetur, si non perisset, id est ad rei iudicandae tempus: quod et iuliano placet. hac ratione si nudae proprietatis dominus petierit et inter moras usus fructus amissus sit, ex eo tempore, quo ad proprietatem usus fructus reversus est, ratio fructuum habetur.

Dig. 6.1.34

Iulianus 7 Dig.

Idem est et si per alluvionem pars fundo accesserit.

Dig. 6.1.35pr.

Paulus 21 ad ed.

Et ex diverso si petitor lite contestata usum fructum legaverit, ex eo tempore, ex quo discessit a proprietate, fructuum rationem non habendam quidam recte putant.

Dig. 6.1.35.1

Paulus 21 ad ed.

Ubi autem alienum fundum petii et iudex sententia declaravit meum esse, debet etiam de fructibus possessorem condemnare: eodem enim errore et de fructibus condemnaturum: non debere enim lucro possessoris cedere fructus, cum victus sit: alioquin, ut mauricianus ait, nec rem arbitrabitur iudex mihi restitui, et quare habeat quod non esset habiturus possessor, si statim possessionem restituisset?

Dig. 6.1.35.2

Paulus 21 ad ed.

Petitor possessori de evictione cavere non cogitur rei nomine, cuius aestimationem accepit: sibi enim possessor imputare debet, qui non restituit rem.

Dig. 6.1.35.3

Paulus 21 ad ed.

Eorum quoque, quae sine interitu dividi non possunt, partem petere posse constat.

Dig. 6.1.36pr.

Gaius 7 ad ed. provinc.

Qui petitorio iudicio utitur, ne frustra experiatur, requirere debet, an is, cum quo instituat actionem, possessor sit vel dolo desiit possidere.

Dig. 6.1.36.1

Gaius 7 ad ed. provinc.

Qui in rem convenitur, etiam culpae nomine condemnatur. culpae autem reus est possessor, qui per insidiosa loca servum misit, si is periit, et qui servum a se petitum in harena esse concessit, et is mortuus sit: sed et qui fugitivum a se petitum non custodit, si is fugit, et qui navem a se petitam adverso tempore navigatum misit, si ea naufragio perempta est.

Dig. 6.1.37

Ulpianus 17 ad ed.

Iulianus libro octavo digestorum scribit: si in aliena area aedificassem, cuius bonae fidei quidem emptor fui, verum eo tempore aedificavi, quo iam sciebam alienam, videamus, an nihil mihi exceptio prosit: nisi forte quis dicat prodesse de damno sollicito. puto autem huic exceptionem non prodesse: nec enim debuit iam alienam certus aedificium ponere: sed hoc ei concedendum est, ut sine dispendio domini areae tollat aedificium quod posuit.

Dig. 6.1.38

Celsus 3 Dig.

In fundo alieno, quem imprudens emeras, aedificasti aut conseruisti, deinde evincitur: bonus iudex varie ex personis causisque constituet. finge et dominum eadem facturum fuisse: reddat impensam, ut fundum recipiat, usque eo dumtaxat, quo pretiosior factus est, et si plus pretio fundi accessit, solum quod impensum est. finge pauperem, qui, si reddere id cogatur, laribus sepulchris avitis carendum habeat: sufficit tibi permitti tollere ex his rebus quae possis, dum ita ne deterior sit fundus, quam si initio non foret aedificatum. constituimus vero, ut, si paratus est dominus tantum dare, quantum habiturus est possessor his rebus ablatis, fiat ei potestas: neque malitiis indulgendum est, si tectorium puta, quod induxeris, picturasque corradere velis, nihil laturus nisi ut officias. finge eam personam esse domini, quae receptum fundum mox venditura sit: nisi reddit, quantum prima parte reddi oportere diximus, eo deducto tu condemnandus es.

Dig. 6.1.39pr.

Ulpianus 17 ad ed.

Redemptores, qui suis cementis aedificant, statim cementa faciunt eorum, in quorum solo aedificant.

Dig. 6.1.39.1

Ulpianus 17 ad ed.

Iulianus recte scribit libro duodecimo digestorum mulierem, quae intercedens fundum pignori dedit, quamvis a creditore distractum posse in rem actione petere:

Dig. 6.1.40

Gaius 7 ad ed. provinc.

Quia nullum pignus creditor vendidisse videtur.

Dig. 6.1.41pr.

Ulpianus 17 ad ed.

Si quis hac lege emerit, ut, si alius meliorem condicionem attulerit, recedatur ab emptione, post allatam condicionem iam non potest in rem actione uti. sed et si cui in diem addictus sit fundus, antequam adiectio sit facta, uti in rem actione potest: postea non poterit.

Dig. 6.1.41.1

Ulpianus 17 ad ed.

Si servus mihi vel filius familias fundum vendidit et tradidit habens liberam peculii administrationem, in rem actione uti potero. sed et si domini voluntate domini rem tradat, idem erit dicendum: quemadmodum cum procurator voluntate domini vendidit vel tradidit, in rem actionem mihi praestabit.

Dig. 6.1.42

Paulus 26 ad ed.

Si in rem actum sit, quamvis heres possessoris, si non ^ possideat, absolvatur, tamen si quid ex^ persona defuncti commissum sit, omnimodo in damnationem veniet.

Dig. 6.1.43

Paulus 27 ad ed.

Quae religiosis adhaerent, religiosa sunt et idcirco nec lapides inaedificati postquam remoti sunt vindicari possunt: in factum autem actione petitori extra ordinem subvenitur, ut is, qui hoc fecit, restituere eos compellatur. sed si alieni sine voluntate domini inaedificati fuerint et nondum functo monumento in hoc detracti erunt, ut alibi reponerentur, poterunt a domino vindicari. quod si in hoc detracti erunt, ut reponerentur, similiter dominum eos repetere posse constat.

Dig. 6.1.44

Gaius 29 ad ed. provinc.

Fructus pendentes pars fundi videntur.

Dig. 6.1.45

Ulpianus 68 ad ed.

Si homo sit, qui post conventionem restituitur, si quidem a bonae fidei possessore, puto cavendum esse de dolo solo, debere ceteros etiam de culpa sua: inter quos erit et bonae fidei possessor post litem contestatam.

Dig. 6.1.46

Paulus 10 ad sab.

Eius rei, quae per in rem actionem petita tanti aestimata est, quanti in litem actor iuraverit, dominium statim ad possessorem pertinet: transegisse enim cum eo et decidisse videor eo pretio, quod ipse constituit.

Dig. 6.1.47

Paulus 17 ad plaut.

Haec si res praesens sit: si absens, tunc cum possessionem eius possessor nactus sit ex voluntate actoris: et ideo non est alienum non aliter litem aestimari a iudice, quam si caverit actor, quod per se non fiat possessionem eius rei non traditum iri.

Dig. 6.1.48

Papinianus 2 resp.

Sumptus in praedium, quod alienum esse apparuit, a bona fide possessore facti neque ab eo qui praedium donavit neque a domino peti possunt, verum exceptione doli posita per officium iudicis aequitatis ratione servantur, scilicet si fructuum ante litem contestatam perceptorum summam excedant: etenim admissa compensatione superfluum sumptum meliore praedio facto dominus restituere cogitur.

Dig. 6.1.49pr.

Celsus 18 Dig.

Solum partem esse aedium existimo nec alioquin subiacere uti mare navibus.

Dig. 6.1.49.1

Celsus 18 Dig.

Meum est, quod ex re mea superest, cuius vindicandi ius habeo.

Dig. 6.1.50pr.

Callistratus 2 ed. monit.

Si ager ex emptionis causa ad aliquem pertineat, non recte hac actione agi poterit, antequam traditus sit ager tuncque possessio amissa sit.

Dig. 6.1.50.1

Callistratus 2 ed. monit.

Sed heres de eo quod hereditati obvenerit recte aget, etiamsi possessionem eius adhuc non habuerit.

Dig. 6.1.51

Pomponius 16 ad sab.

Si in rem actum sit et in heredem possessoris iudicium datum sit, culpa quoque et dolus malus heredis in hoc iudicium venit.

Dig. 6.1.52

Iulianus 55 Dig.

Cum autem fundi possessor ante litem contestatam dolo malo fundum possidere desiit, heredes eius in rem quidem actionem suscipere cogendi non sunt, sed in factum actio adversus eos reddi debebit, per quam restituere cogantur, quanto locupletes ex ea re facti fuerunt.

Dig. 6.1.53

Pomponius 31 ad sab.

Si fundi possessor eum excoluisset sevissetve et postea fundus evincatur, consita tollere non potest.

Dig. 6.1.54

Ulpianus 6 opin.

Inter officium advocationis et rei suae defensionem multum interest: nec propterea quis, si postea cognoverit rem ad se pertinere, quod alii eam vindicanti tunc ignorans suam esse adsistebat, dominium suum amisit.

Dig. 6.1.55

Iulianus 55 Dig.

Si possessor fundi ante iudicium acceptum duobus heredibus relictis decesserit et ab altero ex his, qui totum fundum possidebat, totus petitus fuerit, quin in solidum condemnari debeat, dubitari non oportet.

Dig. 6.1.56

Iulianus 78 Dig.

Vindicatio non ut gregis, ita et peculii recepta est, sed res singulas is, cui legatum peculium est, petet.

Dig. 6.1.57

Alfenus 6 Dig.

Is a quo fundus petitus erat ab alio eiusdem fundi nomine conventus est: quaerebatur, si alterutri eorum iussu iudicis fundum restituisset et postea secundum alterum petitorem res iudicaretur, quemadmodum non duplex damnum traheret. respondi, uter prior iudex iudicaret, eum oportere ita fundum petitori restitui iubere, ut possessori caveret vel satisdaret, si alter fundum evicisset, eum praestare.

Dig. 6.1.58

Paulus 3 epit. alf. Dig.

A quo servus petebatur et eiusdem servi nomine cum eo furti agebatur, quaerebat, si utroque iudicio condemnatus esset, quid se facere oporteret. si prius servus ab eo evictus esset, respondit, non oportere iudicem cogere, ut eum traderet, nisi ei satisdatum esset, quod pro eo homine iudicium accepisset, si quid ob eam rem datum esset, id recte praestari. sed si prius de furto iudicium factum esset et hominem noxae dedisset, deinde de ipso homine secundum petitorem iudicium factum esset, non debere ob eam rem iudicem, quod hominem non traderet, litem aestimare, quoniam nihil eius culpa neque dolo contigisset, quo minus hominem traderet.

Dig. 6.1.59

Iulianus 6 ex minic.

Habitator in aliena aedificia fenestras et ostia imposuit, eadem post annum dominus aedificiorum dempsit: quaero, is qui imposuerat possetne ea vindicare. respondit posse: nam quae alienis aedificiis conexa essent, ea quamdiu iuncta manerent, eorundem aedificiorum esse, simul atque inde dempta essent, continuo in pristinam causam reverti.

Dig. 6.1.60

Pomponius 29 ad sab.

Quod infans vel furiosus possessor perdidit vel corrupit, impunitum est.

Dig. 6.1.61

Iulianus 6 ex minic.

Minicius interrogatus, si quis navem suam aliena materia refecisset, num nihilo minus eiusdem navis maneret, respondit manere. sed si in aedificanda ea idem fecisset, non posse iulianus notat: nam proprietas totius navis carinae causam sequitur.

Dig. 6.1.62pr.

Papinianus 6 quaest.

Si navis a malae fidei possessore petatur, et fructus aestimandi sunt, ut in taberna et area quae locari solent. quod non est ei contrarium, quod de pecunia deposita, quam heres non attingit, usuras praestare non cogitur: nam etsi maxime vectura sicut usura non natura pervenit, sed iure percipitur, tamen ideo vectura desiderari potest, quoniam periculum navis possessor petitori praestare non debet, cum pecunia periculo dantis faeneretur.

Dig. 6.1.62.1

Papinianus 6 quaest.

Generaliter autem cum de fructibus aestimandis quaeritur, constat animadverti debere, non an malae fidei possessor fruitus sit, sed an petitor frui potuerit, si ei possidere licuisset. quam sententiam iulianus quoque probat.

Dig. 6.1.63

Papinianus 12 quaest.

Si culpa, non fraude quis possessionem amiserit, quoniam pati debet aestimationem, audiendus erit a iudice, si desideret, ut adversarius actione sua cedat: cum tamen praetor auxilium quandoque laturus sit quolibet alio possidente, nulla captione adficietur. ipso quoque, qui litis aestimationem perceperit, possidente debet adiuvari: nec facile audiendus erit ille, si velit postea pecuniam, quam ex sententia iudicis periculo iudicati recepit, restituere.

Dig. 6.1.64

Papinianus 20 quaest.

Cum in rem agitur, eorum quoque nomine, quae usui non fructui sunt, restitui fructus certum est.

Dig. 6.1.65pr.

Papinianus 2 resp.

Emptor praedium, quod a non domino emit, exceptione doli posita non aliter restituere domino cogetur, quam si pecuniam creditori eius solutam, qui pignori datum praedium habuit, usurarumque medii temporis superfluum reciperaverit, scilicet si minus in fructibus ante litem perceptis fuit: nam eos usuris novis dumtaxat compensari sumptuum in praedium factorum exemplo aequum est.

Dig. 6.1.65.1

Papinianus 2 resp.

Ancillam, quae non in dotem data, sed in peculium filiae concessa est, peculio filiae non legato mancipium hereditarium esse convenit. si tamen pater dotis ac peculii contemplatione filiam exheredavit et ea ratione reddita nihil ei testamento reliquit aut eo minus legavit, filiam defensio tuebitur voluntatis.

Dig. 6.1.66

Paulus 2 quaest.

Non ideo minus recte quid nostrum esse vindicabimus, quod abire a nobis dominium speratur, si condicio legati vel libertatis extiterit.

Dig. 6.1.67

Scaevola 1 resp.

A tutore pupilli domum mercatus ad eius refectionem fabrum induxit: is pecuniam invenit: quaeritur ad quem pertineat. respondi, si non thensauri fuerunt, sed pecunia forte perdita vel per errorem ab eo ad quem pertinebat non ablata, nihilo minus eius eam esse, cuius fuerat.

Dig. 6.1.68

Ulpianus 51 ad ed.

Qui restituere iussus iudici non paret contendens non posse restituere, si quidem habeat rem, manu militari officio iudicis ab eo possessio transfertur et fructuum dumtaxat omnisque causae nomine condemnatio fit. si vero non potest restituere, si quidem dolo fecit quo minus possit, is, quantum adversarius in litem sine ulla taxatione in infinitum iuraverit, damnandus est. si vero nec potest restituere nec dolo fecit quo minus possit, non pluris quam quanti res est, id est quanti adversarii interfuit, condemnandus est. haec sententia generalis est et ad omnia, sive interdicta, sive actiones in rem sive in personam sunt, ex quibus arbitratu iudicis quid restituitur, locum habet.

Dig. 6.1.69

Paulus 13 ad sab.

Is qui dolo fecit quo minus possideret hoc quoque nomine punitur, quod actor cavere ei non debet actiones quas eius rei nomine habeat, se ei praestaturum.

Dig. 6.1.70

Pomponius 29 ad sab.

Nec quasi publicianam quidem actionem ei dandam placuit, ne in potestate cuiusque sit per rapinam ab invito domino rem iusto pretio comparare.

Dig. 6.1.71

Paulus 13 ad sab.

Quod si possessor quidem dolo fecit, actor vero iurare non vult, sed quanti res sit adversarium condemnari maluit, mos ei gerendus est.

Dig. 6.1.72

Ulpianus 16 ad ed.

Si a titio fundum emeris sempronii et tibi traditus sit pretio soluto, deinde titius sempronio heres extiterit et eundem alii vendiderit et tradiderit, aequius est, ut tu potior sis. nam et si ipse venditor eam rem a te peteret, exceptione eum summoveres. sed et si ipse possideret et tu peteres, adversus exceptionem dominii replicatione utereris.

Dig. 6.1.73pr.

Ulpianus 17 ad ed.

In speciali actione non cogitur possessor dicere, pro qua parte eius sit: hoc enim petitoris munus est, non possessoris: quod et in publiciana observatur.

Dig. 6.1.73.1

Ulpianus 17 ad ed.

Superficiario,

Dig. 6.1.74

Paulus 21 ad ed.

Id est qui in alieno solo superficiem ita habeat, ut certam pensionem praestet,

Dig. 6.1.75

Ulpianus 16 ad ed.

Praetor causa cognita in rem actionem pollicetur.

Dig. 6.1.76pr.

Gaius 7 ad ed. provinc.

Quae de tota re vindicanda dicta sunt, eadem et de parte intellegenda sunt, officioque iudicis continetur pro modo partis ea quoque restitui iubere, quae simul cum ipsa parte restitui debent.

Dig. 6.1.76.1

Gaius 7 ad ed. provinc.

Incertae partis vindicatio datur, si iusta causa interveniat. iusta autem causa esse potest, si forte legi falcidiae locus sit in testamento, propter incertam detractionem ex legatis, quae vix apud iudicem examinatur: iustam enim habet ignorantiam legatarius, cui homo legatus est, quotam partem vindicare debeat: itaque talis dabitur actio. eadem et de ceteris rebus intellegemus.

Dig. 6.1.77

Ulpianus 17 ad ed.

Quaedam mulier fundum non marito donavit per epistulam et eundem fundum ab eo conduxit: posse defendi in rem ei competere, quasi per ipsam adquisierit possessionem veluti per colonam. proponebatur, quod etiam in eo agro qui donabatur fuisset, cum epistula emitteretur: quae res sufficiebat ad traditam possessionem, licet conductio non intervenisset.

Dig. 6.1.78

Labeo 4 pith. a paulo epit.

Si eius fundi, quem alienum possideres, fructum non coegisti, nihil eius fundi fructuum nomine te dare oportet. paulus. immo, quaeritur: huius fructus idcirco factus est, quod is eum suo nomine perceperit? perceptionem fructus accipere debemus non si perfecti collecti, sed etiam coepti ita percipi, ut terra continere se fructus desierint: veluti si olivae uvae lectae, nondum autem vinum oleum ab aliquo factum sit: statim enim ipse accepisse fructum existimandus est.

Dig. 6.1.79

Labeo 6 pith. a paulo epit.

Si hominem a me petieris et is post litem contestatam mortuus sit, fructus quoad is vixerit aestimari oportet. paulus. ita id verum esse puto, si non prius is homo in eam valetudinem inciderit, propter quam operae eius inutiles factae sunt: nam ne si vixisset quidem in ea valetudine, fructus eius temporis nomine aestimari conveniret.

Dig. 6.1.80

Furius 1 ad ed.

In rem actionem pati non compellimur, quia licet alicui dicere se non possidere, ita ut, si possit adversarius convincere rem ab adversario possideri, transferat ad se possessionem per iudicem, licet suam esse non adprobaverit.

Dig. 6.2.0. De publiciana in rem actione.

Dig. 6.2.1pr.

Ulpianus 16 ad ed.

Ait praetor: " si quis id quod traditur ex iusta causa non a domino et nondum usucaptum petet, iudicium dabo. "

Dig. 6.2.1.1

Ulpianus 16 ad ed.

Merito praetor ait " nondum usucaptum": nam si usucaptum est, habet civilem actionem nec desiderat honorariam.

Dig. 6.2.1.2

Ulpianus 16 ad ed.

Sed cur traditionis dumtaxat et usucapionis fecit mentionem, cum satis multae sunt iuris partes, quibus dominium quis nancisceretur? ut puta legatum.

Dig. 6.2.2

Paulus 19 ad ed.

Vel mortis causa donationes factae: nam amissa possessione competit publiciana, quia ad exemplum legatorum capiuntur.

Dig. 6.2.3pr.

Ulpianus 16 ad ed.

Sunt et aliae pleraeque.

Dig. 6.2.3.1

Ulpianus 16 ad ed.

Ait praetor: " ex iusta causa petet. " qui igitur iustam causam traditionis habet, utitur publiciana: et non solum emptori bonae fidei competit publiciana, sed et aliis, ut puta ei cui dotis nomine tradita res est necdum usucapta: est enim iustissima causa, sive aestimata res in dotem data sit sive non. item si res ex causa iudicati sit tradita.

Dig. 6.2.4

Paulus 19 ad ed.

Vel solvendi causa.

Dig. 6.2.5

Ulpianus 16 ad ed.

Vel ex causa noxae deditionis, sive vera causa sit sive falsa.

Dig. 6.2.6

Paulus 19 ad ed.

Item si servum ex causa noxali, quia non defendebatur, iussu praetoris duxero et amisero possessionem, competit mihi publiciana.

Dig. 6.2.7pr.

Ulpianus 16 ad ed.

Sed et si res adiudicata sit, publiciana actio competit.

Dig. 6.2.7.1

Ulpianus 16 ad ed.

Si lis fuerit aestimata, similis est venditioni: et ait iulianus libro vicensimo secundo digestorum, si optulit reus aestimationem litis, publicianam competere.

Dig. 6.2.7.2

Ulpianus 16 ad ed.

Marcellus libro septimo decimo digestorum scribit eum, qui a furioso ignorans eum furere emit, posse usucapere: ergo et publicianam habebit.

Dig. 6.2.7.3

Ulpianus 16 ad ed.

Sed et si quis ex lucrativis causis rem accepit, habet publicianam, quae etiam adversus donatorem competit: est enim iustus possessor et petitor, qui liberalitatem accepit.

Dig. 6.2.7.4

Ulpianus 16 ad ed.

Si a minore quis emerit ignorans eum minorem esse, habet publicianam.

Dig. 6.2.7.5

Ulpianus 16 ad ed.

Sed et si permutatio facta sit, eadem actio competit.

Dig. 6.2.7.6

Ulpianus 16 ad ed.

Publiciana actio ad instar proprietatis, non ad instar possessionis respicit.

Dig. 6.2.7.7

Ulpianus 16 ad ed.

Si petenti mihi rem iusiurandum detuleris egoque iuravero rem meam esse, competit publiciana mihi, sed adversus te dumtaxat: ei enim soli nocere debet iusiurandum, qui detulit. sed si possessori delatum erit iusiurandum et iuraverit rem petitoris non esse, adversus eum solum petentem exceptione utetur, non ut et habeat actionem.

Dig. 6.2.7.8

Ulpianus 16 ad ed.

In publiciana actione omnia eadem erunt, quae et in rei vindicatione diximus.

Dig. 6.2.7.9

Ulpianus 16 ad ed.

Haec actio et heredi et honorariis successoribus competit.

Dig. 6.2.7.10

Ulpianus 16 ad ed.

Si ego non emero, sed servus meus, habebo publicianam. idem est et si procurator meus vel tutor vel curator vel quis alius negotium meum gerens emerit.

Dig. 6.2.7.11

Ulpianus 16 ad ed.

Praetor ait: " qui bona fide emit. " non igitur omnis emptio proderit, sed ea, quae bonam fidem habet: proinde hoc sufficit me bonae fidei emptorem fuisse, quamvis non a domino emerim, licet ille callido consilio vendiderit: neque enim dolus venditoris mihi nocebit.

Dig. 6.2.7.12

Ulpianus 16 ad ed.

In hac actione non oberit mihi, si successor suum et dolo feci, cum is, in cuius locum successi, bona fide emisset: nec proderit, si dolo careo, cum emptor, cui successi, dolo fecisset.

Dig. 6.2.7.13

Ulpianus 16 ad ed.

Sed enim si servus meus emit, dolus eius erit spectandus, non meus, vel contra.

Dig. 6.2.7.14

Ulpianus 16 ad ed.

Publiciana tempus emptionis continet, et ideo neque quod ante emptionem neque quod postea dolo malo factum est in hac actione deduci pomponio videtur.

Dig. 6.2.7.15

Ulpianus 16 ad ed.

Bonam autem fidem solius emptoris continet.

Dig. 6.2.7.16

Ulpianus 16 ad ed.

Ut igitur publiciana competat, haec debent concurrere, ut et bona fide quis emerit et ei res empta eo nomine sit tradita: ceterum ante traditionem, quamvis bonae fidei quis emptor sit, experiri publiciana non poterit.

Dig. 6.2.7.17

Ulpianus 16 ad ed.

Iulianus libro septimo digestorum scripsit traditionem rei emptae oportere bona fide fieri: ideoque si sciens alienam possessionem adprehendit, publiciana eum experiri non posse, quia usucapere non poterit. nec quisquam putet hoc nos existimare sufficere initio traditionis ignorasse rem alienam, uti quis possit publiciana experiri, sed oportere et tunc bona fide emptorem esse.

Dig. 6.2.8

Gaius 7 ad ed. provinc.

De pretio vero soluto nihil exprimitur: unde potest coniectura capi, quasi nec sententia praetoris ea sit, ut requiratur, an solutum sit pretium.

Dig. 6.2.9pr.

Ulpianus 16 ad ed.

Sive autem emptori res tradita est sive heredi emptoris, publiciana competit actio.

Dig. 6.2.9.1

Ulpianus 16 ad ed.

Si quis rem apud se depositam vel sibi commodatam emerit vel pignori sibi datam, pro tradita erit accipienda, si post emptionem apud eum remansit.

Dig. 6.2.9.2

Ulpianus 16 ad ed.

Sed et si praecessit traditio emptionem, idem erit dicendum.

Dig. 6.2.9.3

Ulpianus 16 ad ed.

Item si hereditatem emero et traditam mihi rem hereditariam petere velim, neratius scribit esse publicianam.

Dig. 6.2.9.4

Ulpianus 16 ad ed.

Si duobus quis separatim vendiderit bona fide ementibus, videamus, quis magis publiciana uti possit, utrum is cui priori res tradita est an is qui tantum emit. et iulianus libro septimo digestorum scripsit, ut, si quidem ab eodem non domino emerint, potior sit cui priori res tradita est, quod si a diversis non dominis, melior causa sit possidentis quam petentis. quae sententia vera est.

Dig. 6.2.9.5

Ulpianus 16 ad ed.

Haec actio in his quae usucapi non possunt, puta furtivis vel in servo fugitivo, locum non habet.

Dig. 6.2.9.6

Ulpianus 16 ad ed.

Si servus hereditarius ante aditam hereditatem aliquam rem emerit et traditam sibi possessionem amiserit, recte heres publiciana utitur, quasi ipse possedisset. municipes quoque, quorum servo res tradita est, in eadem erunt condicione,

Dig. 6.2.10

Paulus 19 ad ed.

Sive peculiari nomine servus emerit sive non.

Dig. 6.2.11pr.

Ulpianus 16 ad ed.

Si ego emi et mea voluntate alii res sit tradita, imperator severus rescripsit publicianam illi dandam.

Dig. 6.2.11.1

Ulpianus 16 ad ed.

Si de usu fructu agatur tradito, publiciana datur: itemque servitutibus urbanorum praediorum per traditionem constitutis vel per patientiam (forte si per domum quis suam passus est aquae ductum transduci): item rusticorum, nam et hic traditionem et patientiam tuendam constat.

Dig. 6.2.11.2

Ulpianus 16 ad ed.

Partus ancillae furtivae, qui apud bonae fidei emptorem conceptus est, per hanc actionem petendus est, etiamsi ab eo qui emit possessus non est. sed heres furis hanc actionem non habet, quia vitiorum defuncti successor est.

Dig. 6.2.11.3

Ulpianus 16 ad ed.

Interdum tamen, licet furtiva mater distracta non sit, sed donata ignoranti mihi et apud me conceperit et pepererit, competit mihi in partu publiciana, ut iulianus ait, si modo eo tempore, quo experiar, furtivam matrem ignorem.

Dig. 6.2.11.4

Ulpianus 16 ad ed.

Idem iulianus generaliter dicit, ex qua causa matrem usucapere possem, si furtiva non esset, ex ea causa partum me usucapere, si furtivam esse matrem ignorabam: ex omnibus igitur causis publicianam habebo.

Dig. 6.2.11.5

Ulpianus 16 ad ed.

Idem est et si ex partu partus est et si non natus, sed post mortem matris exsecto ventre eius extractus est, ut et pomponius libro quadragensimo scripsit.

Dig. 6.2.11.6

Ulpianus 16 ad ed.

Idem ait aedibus emptis, si fuerint dirutae, ea quae aedificio accesserunt huiusmodi actione petenda.

Dig. 6.2.11.7

Ulpianus 16 ad ed.

Quod tamen per alluvionem fundo accessit, simile fit ei cui accedit: et ideo si ipse fundus publiciana peti non potest, non hoc petetur, si autem potest, et ad partem, quae per alluvionem accessit: et ita pomponius scribit.

Dig. 6.2.11.8

Ulpianus 16 ad ed.

Idem adicit et si statuae emptae partes recisae petantur, similem actionem proficere.

Dig. 6.2.11.9

Ulpianus 16 ad ed.

Idem scribit, si aream emero et insulam in ea aedificavero, recte me publiciana usurum.

Dig. 6.2.11.10

Ulpianus 16 ad ed.

Item, inquit, si insulam emi et ad aream ea pervenit, aeque potero uti publiciana.

Dig. 6.2.12pr.

Paulus 19 ad ed.

Cum sponsus sponsae servum donasset eumque in dotem accepisset ante usucapionem, rescriptum est a divo pio divortio facto restituendum esse servum: nam valuisse donationem inter sponsum et sponsam. dabitur ergo et possidenti exceptio et amissa possessione publiciana, sive extraneus sive donator possideat.

Dig. 6.2.12.1

Paulus 19 ad ed.

Is cui ex trebelliano hereditas restituta est, etiamsi non fuerit nactus possessionem, uti potest publiciana.

Dig. 6.2.12.2

Paulus 19 ad ed.

In vectigalibus et in aliis praediis, quae usucapi non possunt, publiciana competit, si forte bona fide mihi tradita est.

Dig. 6.2.12.3

Paulus 19 ad ed.

Idem est et si superficiariam insulam a non domino bona fide emero.

Dig. 6.2.12.4

Paulus 19 ad ed.

Si res talis sit, ut eam lex aut constitutio alienari prohibeat, eo casu publiciana non competit, quia his casibus neminem praetor tuetur, ne contra leges faciat.

Dig. 6.2.12.5

Paulus 19 ad ed.

Publiciana actionem etiam de infante servo nondum anniculo uti possumus.

Dig. 6.2.12.6

Paulus 19 ad ed.

Si pro parte quis rem petere vult, publiciana actione uti potest.

Dig. 6.2.12.7

Paulus 19 ad ed.

Sed etiam is, qui momento possedit, recte hac actione experiretur.

Dig. 6.2.13pr.

Gaius 7 ad ed. provinc.

Quaecumque sunt iustae causae adquirendarum rerum, si ex his causis nacti res amiserimus, dabitur nobis earum rerum persequendarum gratia haec actio.

Dig. 6.2.13.1

Gaius 7 ad ed. provinc.

Interdum quibusdam nec ex iustis possessionibus competit publicianum iudicium: namque pigneraticiae et precariae possessiones iustae sunt, sed ex his non solet competere tale iudicium, illa scilicet ratione, quia neque creditor neque is qui precario rogavit eo animo nanciscitur possessionem, ut credat se dominum esse.

Dig. 6.2.13.2

Gaius 7 ad ed. provinc.

Qui a pupillo emit, probare debet tutore auctore lege non prohibente se emisse. sed et si deceptus falso tutore auctore emerit, bona fide emisse videtur.

Dig. 6.2.14

Ulpianus 16 ad ed.

Papinianus libro sexto quaestionum scribit: si quis prohibuit vel denuntiavit ex causa venditionis tradi rem, quae ipsius voluntate a procuratore fuerat distracta, et is nihilo minus tradiderit, emptorem tuebitur praetor, sive possideat sive petat rem. sed quod iudicio empti procurator emptori praestiterit, contrario iudicio mandati consequetur: potest enim fieri, ut emptori res auferatur ab eo, qui venire mandavit, quia per ignorantiam non est usus exceptione, quam debuit opponere, veluti: " si non auctor meus ex voluntate tua vendidit. "

Dig. 6.2.15

Pomponius 3 ad sab.

Si servus meus, cum in fuga sit, rem a non domino emat, publiciana mihi competere debet, licet possessionem rei traditae per eum nactus non sim.

Dig. 6.2.16

Paulus not. ad pap. 10 quaest.

Exceptio iusti dominii publicianae obicienda est.

Dig. 6.2.17

Nerva 3 membr.

Publiciana actio non ideo comparata est, ut res domino auferatur: eiusque rei argumentum est primo aequitas, deinde exceptio " si ea res possessoris non sit": sed ut is, qui bona fide emit possessionemque eius ex ea causa nactus est, potius rem habeat.

Dig. 6.3.0. Si ager vectigalis, id est emphyteuticarius, petatur.

Dig. 6.3.1pr.

Paulus 21 ad ed.

Agri civitatium alii vectigales vocantur, alii non. vectigales vocantur qui in perpetuum locantur, id est hac lege, ut tamdiu pro his vectigal pendatur, quamdiu neque ipsis, qui conduxerint, neque his, qui in locum eorum successerunt, auferri eos liceat: non vectigales sunt, qui ita colendi dantur, ut privatim agros nostros colendos dare solemus.

Dig. 6.3.1.1

Paulus 21 ad ed.

Qui in perpetuum fundum fruendum conduxerunt a municipibus, quamvis non efficiantur domini, tamen placuit competere eis in rem actionem adversus quemvis possessorem, sed et adversus ipsos municipes,

Dig. 6.3.2

Ulpianus 17 ad sab.

Ita tamen si vectigal solvant.

Dig. 6.3.3

Paulus 21 ad ed.

Idem est et si ad tempus habuerint conductum nec tempus conductionis finitum sit.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER SEPTIMUS

Dig. 7.1.0. De usu fructu et quemadmodum quis utatur fruatur.
Dig. 7.2.0. De usu fructu adcrescendo.
Dig. 7.3.0. Quando dies usus fructus legati cedat.
Dig. 7.4.0. Quibus modis usus fructus vel usus amittitur.
Dig. 7.5.0. De usu fructu earum rerum, quae usu consumuntur vel minuuntur.
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Dig. 7.7.0. De operis servorum
Dig. 7.8.0. De usu et habitatione.
Dig. 7.9.0. Usufructuarius quemadmodum caveat.

Dig. 7.1.0. De usu fructu et quemadmodum quis utatur fruatur.

Dig. 7.1.1

Paulus 3 ad vitell.

Usus fructus est ius alienis rebus utendi fruendi salva rerum substantia.

Dig. 7.1.2

Celsus 18 Dig.

Est enim usus fructus ius in corpore, quo sublato et ipsum tolli necesse est.

Dig. 7.1.3pr.

Gaius 2 rer. cott.

Omnium praediorum iure legati potest constitui usus fructus, ut heres iubeatur dare alicui usum fructum. dare autem intellegitur, si induxerit in fundum legatarium eumve patiatur uti frui. et sine testamento autem si quis velit usum fructum constituere, pactionibus et stipulationibus id efficere potest.

Dig. 7.1.3.1

Gaius 2 rer. cott.

Constitit autem usus fructus non tantum in fundo et aedibus, verum etiam in servis et iumentis ceterisque rebus.

Dig. 7.1.3.2

Gaius 2 rer. cott.

Ne tamen in universum inutiles essent proprietates semper abscedente usu fructu, placuit certis modis extingui usum fructum et ad proprietatem reverti.

Dig. 7.1.3.3

Gaius 2 rer. cott.

Quibus autem modis usus fructus et constitit et finitur, isdem modis etiam nudus usus solet et constitui et finiri.

Dig. 7.1.4

Paulus 2 ad ed.

Usus fructus in multis casibus pars dominii est, et exstat, quod vel praesens vel ex die dari potest.

Dig. 7.1.5

Papinianus 7 quaest.

Usus fructus et ab initio pro parte indivisa vel divisa constitui et legitimo tempore similiter amitti eademque ratione per legem falcidiam minui potest: reo quoque promittendi defuncto in partes hereditarias usus fructus obligatio dividitur: et si ex communi praedio debeatur, uno ex sociis defendente pro parte defendentis fiet restitutio.

Dig. 7.1.6pr.

Gaius 7 ad ed. provinc.

Usus fructus pluribus modis constituitur: ut ecce, si legatus fuerit. sed et proprietas deducto usu fructu legari potest, ut apud heredem maneat usus fructus.

Dig. 7.1.6.1

Gaius 7 ad ed. provinc.

Constituitur adhuc usus fructus et in iudicio familiae herciscundae et communi dividundo, si iudex alii proprietatem adiudicaverit, alii usum fructum.

Dig. 7.1.6.2

Gaius 7 ad ed. provinc.

Adquiritur autem nobis usus fructus non solum per nosmet ipsos, sed etiam per eas quoque personas, quas iuri nostro subiectas habemus.

Dig. 7.1.6.3

Gaius 7 ad ed. provinc.

Nihil autem vetat servo meo herede instituto legari proprietatem deducto usu fructu.

Dig. 7.1.7pr.

Ulpianus 17 ad sab.

Usu fructu legato omnis fructus rei ad fructuarium pertinet. et aut rei soli aut rei mobilis usus fructus legatur.

Dig. 7.1.7.1

Ulpianus 17 ad sab.

Rei soli, ut puta aedium, usu fructu legato quicumque reditus est, ad usufructuarium pertinet quaeque obventiones sunt ex aedificiis, ex areis et ceteris, quaecumque aedium sunt. unde etiam mitti eum in possessionem vicinarum aedium causa damni infecti placuit, et iure dominii possessurum eas aedes, si perseveretur non caveri, nec quicquam amittere finito usu fructu. hac ratione labeo scribit nec aedificium licere domino te invito altius tollere, sicut nec areae usu fructu legato potest in area aedificium poni: quam sententiam puto veram.

Dig. 7.1.7.2

Ulpianus 17 ad sab.

Quoniam igitur omnis fructus rei ad eum pertinet, reficere quoque eum ad aedes per arbitrum cogi celsus scribit celsus libro octavo decimo digestorum, hactenus tamen, ut sarta tecta habeat: si qua tamen vetustate corruissent, neutrum cogi reficere, sed si heres refecerit, passurum fructuarium uti. unde celsus de modo sarta tecta habendi quaerit, si quae vetustate corruerunt reficere non cogitur: modica igitur refectio ad eum pertinet, quoniam et alia onera adgnoscit usu fructu legato: ut puta stipendium vel tributum vel salarium vel alimenta ab ea re relicta. et ita Marcellus libro tertio decimo scribit.

Dig. 7.1.7.3

Ulpianus 17 ad sab.

Cassius quoque scribit libro octavo iuris civilis fructuarium per arbitrum cogi reficere, quemadmodum adserere cogitur arbores: et aristo notat haec vera esse. neratius autem libro quarto membranarum ait non posse fructuarium prohiberi, quo minus reficiat, quia nec arare prohiberi potest aut colere: nec solum necessarias refectiones facturum, sed etiam voluptatis causa ut tectoria et pavimenta et similia facere, neque autem ampliare nec utile detrahere posse,

Dig. 7.1.8

Ulpianus 40 ad ed.

Quamvis melius repositurus sit: quae sententia vera est.

Dig. 7.1.9pr.

Ulpianus 17 ad sab.

Item si fundi usus fructus sit legatus, quidquid in fundo nascitur, quidquid inde percipi potest, ipsius fructus est, sic tamen ut boni viri arbitratu fruatur. nam et celsus libro octavo decimo digestorum scribit cogi eum posse recte colere.

Dig. 7.1.9.1

Ulpianus 17 ad sab.

Et si apes in eo fundo sint, earum quoque usus fructus ad eum pertinet.

Dig. 7.1.9.2

Ulpianus 17 ad sab.

Sed si lapidicinas habeat et lapidem caedere velit vel cretifodinas habeat vel harenas, omnibus his usurum sabinus ait quasi bonum patrem familias: quam sententiam puto veram.

Dig. 7.1.9.3

Ulpianus 17 ad sab.

Sed si haec metalla post usum fructum legatum sint inventa, cum totius agri relinquatur usus fructus, non partium, continentur legato.

Dig. 7.1.9.4

Ulpianus 17 ad sab.

Huic vicinus tractatus est, qui solet in eo quod accessit tractari: et placuit alluvionis quoque usum fructum ad fructuarium pertinere. sed si insula iuxta fundum in flumine nata sit, eius usum fructum ad fructuarium non pertinere pegasus scribit, licet proprietati accedat: esse enim veluti proprium fundum, cuius usus fructus ad te non pertineat. quae sententia non est sine ratione: nam ubi latitet incrementum, et usus fructus augetur, ubi autem apparet separatum, fructuario non accedit.

Dig. 7.1.9.5

Ulpianus 17 ad sab.

Aucupiorum quoque et venationum reditum cassius ait libro octavo iuris civilis ad fructuarium pertinere: ergo et piscationum.

Dig. 7.1.9.6

Ulpianus 17 ad sab.

Seminarii autem fructum puto ad fructuarium pertinere ita tamen, ut et vendere ei et seminare liceat: debet tamen conserendi agri causa seminarium paratum semper renovare quasi instrumentum agri, ut finito usu fructu domino restituatur.

Dig. 7.1.9.7

Ulpianus 17 ad sab.

Instrumenti autem fructum habere debet: vendendi tamen facultatem non habet. nam et si fundi usus fructus fuerit legatus et sit ager, unde palo in fundum, cuius usus fructus legatus est, solebat pater familias uti, vel salice vel harundine, puto fructuarium hactenus uti posse, ne ex eo vendat, nisi forte salicti ei vel silvae palaris vel harundineti usus fructus sit legatus: tunc enim et vendere potest. nam et trebatius scribit silvam caeduam et harundinetum posse fructuarium caedere, sicut pater familias caedebat, et vendere, licet pater familias non solebat vendere, sed ipse uti: ad modum enim referendum est, non ad qualitatem utendi.

Dig. 7.1.10

Pomponius 5 ad sab.

Ex silva caedua pedamenta et ramos ex arbore usufructuarium sumpturum: ex non caedua in vineam sumpturum, dum ne fundum deteriorem faciat.

Dig. 7.1.11

Paulus 2 epit. alf. Dig.

Sed si grandes arbores essent, non posse eas caedere.

Dig. 7.1.12pr.

Ulpianus 17 ad sab.

Arboribus evolsis vel vi ventorum deiectis usque ad usum suum et villae posse usufructuarium ferre labeo ait: nec materia eum pro ligno usurum, si habeat unde utatur ligno. quam sententiam puto veram: alioquin et si totus ager sit hunc casum passus, omnes arbores auferret fructuarius: materiam tamen ipsum succidere quantum ad villae refectionem putat posse: quemadmodum calcem, inquit, coquere vel harenam fodere aliudve quid aedificio necessarium sumere.

Dig. 7.1.12.1

Ulpianus 17 ad sab.

Navis usu fructu legato navigandum mittendam puto, licet naufragii periculum immineat: navis etenim ad hoc paratur, ut naviget.

Dig. 7.1.12.2

Ulpianus 17 ad sab.

Usufructuarius vel ipse frui ea re vel alii fruendam concedere vel locare vel vendere potest: nam et qui locat utitur, et qui vendit utitur. sed et si alii precario concedat vel donet, puto eum uti atque ideo retinere usum fructum, et hoc cassius et pegasus responderunt et pomponius libro quinto ex sabino probat. non solum autem si ego locavero, retineo usum fructum, sed et si alius negotium meum gerens locaverit usum fructum, iulianus libro trigensimo quinto scripsit retinere me usum fructum. quid tamen si non locavero, sed absente et ignorante me negotium meum gerens utatur quis et fruatur? nihilo minus retineo usum fructum (quod et pomponius libro quinto probat) per hoc, quod negotiorum gestorum actionem adquisivi.

Dig. 7.1.12.3

Ulpianus 17 ad sab.

De illo pomponius dubitat, si fugitivus, in quo meus usus fructus est, stipuletur aliquid ex re mea vel per traditionem accipiat: an per hoc ipsum, quasi utar, retineam usum fructum? magisque admitti retinere. nam saepe etiamsi praesentibus servis non utamur, tamen usum fructum retinemus: ut puta aegrotante servo vel infante, cuius operae nullae sunt, vel defectae senectutis homine: nam et si agrum aremus, licet tam sterilis sit, ut nullus fructus nascatur, retinemus usum fructum. iulianus tamen libro trigensimo quinto digestorum scribit, etiamsi non stipuletur quid servus fugitivus, retineri tamen usum fructum: nam qua ratione, inquit, retinetur a proprietario possessio, etiamsi in fuga servus sit, pari ratione etiam usus fructus retinetur.

Dig. 7.1.12.4

Ulpianus 17 ad sab.

Idem tractat: quid si quis possessionem eius nactus sit, an, quemadmodum a proprietario possideri desinit, ita etiam usus fructus amittatur? et primo quidem ait posse dici amitti usum fructum, sed licet amittatur, tamen dicendum, quod intra constitutum tempus ex re fructuarii stipulatus est, fructuario adquiri potest. per quod colligi posse dici, ne quidem si possideatur ab alio, amitti usum fructum, si modo mihi aliquid stipuletur, parvique referre, ab herede possideatur vel ab alio cui hereditas vendita sit vel cui proprietas legata sit, an a praedone: sufficere enim ad retinendum usum fructum esse affectum retinere volentis et servum nomine fructuarii aliquid facere: quae sententia habet rationem.

Dig. 7.1.12.5

Ulpianus 17 ad sab.

Iulianus libro trigensimo quinto digestorum tractat, si fur decerpserit vel desecuerit fructus maturos pendentes, cui condictione teneatur, domino fundi an fructuario? et putat, quoniam fructus non fiunt fructuarii, nisi ab eo percipiantur, licet ab alio terra separentur, magis proprietario condictionem competere, fructuario autem furti actionem, quoniam interfuit eius fructus non esse ablatos. Marcellus autem movetur eo, quod, si postea fructus istos nactus fuerit fructuarius, fortassis fiant eius: nam si fiunt, qua ratione hoc evenit? nisi ea, ut interim fierent proprietarii, mox adprehensi fructuarii efficientur, exemplo rei sub condicione legatae, quae interim heredis est, existente autem condicione ad legatarium transit. verum est enim condictionem competere proprietario: cum autem in pendenti est dominium (ut ipse iulianus ait in fetu qui summittitur et in eo quod servus fructuarius per traditionem accepit nondum quidem pretio soluto, sed tamen ab eo satisfacto), dicendum est condictionem pendere magisque in pendenti esse dominium.

Dig. 7.1.13pr.

Ulpianus 18 ad sab.

Si cuius rei usus fructus legatus erit, dominus potest in ea re satisdationem desiderare, ut officio iudicis hoc fiat: nam sicuti debet fructuarius uti frui, ita et proprietatis dominus securus esse debet de proprietate. haec autem ad omnem usum fructum pertinere iulianus libro trigensimo octavo digestorum probat. si usus fructus legatus sit, non prius dandam actionem usufructuario, quam satisdederit se boni viri arbitratu usurum fruiturum: sed et si plures sint, a quibus usus fructus relictus est, singulis satisdari oportet.

Dig. 7.1.13.1

Ulpianus 18 ad sab.

Cum igitur de usu fructu agitur, non solum quod factum est arbitratur, sed etiam in futurum quemadmodum uti frui debet.

Dig. 7.1.13.2

Ulpianus 18 ad sab.

De praeteritis autem damnis fructuarius etiam lege aquilia tenetur et interdicto quod vi aut clam, ut iulianus ait: nam fructuarium quoque teneri his actionibus nec non furti certum est, sicut quemlibet alium, qui in aliena re tale quid commiserit. denique consultus, quo bonum fuit actionem polliceri praetorem, cum competat legis aquiliae actio, respondit, quia sunt casus, quibus cessat aquiliae actio, ideo iudicem dari, ut eius arbitratu utatur: nam qui agrum non proscindit, qui vites non subserit, item aquarum ductus conrumpi patitur, lege aquilia non tenetur. eadem et in usuario dicenda sunt.

Dig. 7.1.13.3

Ulpianus 18 ad sab.

Sed si inter duos fructuarios sit controversia, iulianus libro trigensimo octavo digestorum scribit aequissimum esse quasi communi dividundo iudicium dari vel stipulatione inter se eos cavere, qualiter fruantur: cur enim, inquit iulianus, ad arma et rixam procedere patiatur praetor, quos potest iurisdictione sua componere? quam sententiam celsus quoque libro vicensimo digestorum probat, et ego puto veram.

Dig. 7.1.13.4

Ulpianus 18 ad sab.

Fructuarius causam proprietatis deteriorem facere non debet, meliorem facere potest. et aut fundi est usus fructus legatus, et non debet neque arbores frugiferas excidere neque villam diruere nec quicquam facere in perniciem proprietatis. et si forte voluptarium fuit praedium, virdiaria vel gestationes vel deambulationes arboribus infructuosis opacas atque amoenas habens, non debebit deicere, ut forte hortos olitorios faciat vel aliud quid, quod ad reditum spectat.

Dig. 7.1.13.5

Ulpianus 18 ad sab.

Inde est quaesitum, an lapidicinas vel cretifodinas vel harenifodinas ipse instituere possit: et ego puto etiam ipsum instituere posse, si non agri partem necessariam huic rei occupaturus est. proinde venas quoque lapidicinarum et huiusmodi metallorum inquirere poterit: ergo et auri et argenti et sulpuris et aeris et ferri et ceterorum fodinas vel quas pater familias instituit exercere poterit vel ipse instituere, si nihil agriculturae nocebit. et si forte in hoc quod instituit plus reditus sit quam in vineis vel arbustis vel olivetis quae fuerunt, forsitan etiam haec deicere poterit, si quidem ei permittitur meliorare proprietatem.

Dig. 7.1.13.6

Ulpianus 18 ad sab.

Si tamen quae instituit usufructuarius aut caelum corrumpant agri aut magnum apparatum sint desideratura opificum forte vel legulorum, quae non potest sustinere proprietarius, non videbitur viri boni arbitratu frui: sed nec aedificium quidem positurum in fundo, nisi quod ad fructum percipiendum necessarium sit.

Dig. 7.1.13.7

Ulpianus 18 ad sab.

Sed si aedium usus fructus legatus sit, nerva filius et lumina immittere eum posse ait: sed et colores et picturas et marmora poterit et sigilla et si quid ad domus ornatum. sed neque diaetas transformare vel coniungere aut separare ei permittetur, vel aditus posticasve vertere, vel refugia aperire, vel atrium mutare, vel virdiaria ad alium modum convertere: excolere enim quod invenit potest qualitate aedium non immutata. item nerva eum, cui aedium usus fructus legatus sit, altius tollere non posse, quamvis lumina non obscurentur, quia tectum magis turbatur: quod labeo etiam in proprietatis domino scribit. idem nerva nec obstruere eum posse.

Dig. 7.1.13.8

Ulpianus 18 ad sab.

Item si domus usus fructus legatus sit, meritoria illic facere fructuarius non debet nec per cenacula dividere domum: atquin locare potest, sed oportebit quasi domum locare. nec balineum ibi faciendum est. quod autem dicit meritoria non facturum ita accipe quae volgo deversoria vel fullonica appellant. ego quidem, et si balineum sit in domo usibus dominicis solitum vacare in intima parte domus vel inter diaetas amoenas, non recte nec ex boni viri arbitratu facturum, si id locare coeperit, ut publice lavet, non magis quam si domum ad stationem iumentorum locaverit, aut si stabulum quod erat ^ orat^ domus iumentis et carruchis vacans, pistrino locaverit,

Dig. 7.1.14

Paulus 3 ad sab.

Licet multo minus ex ea re fructum percipiat.

Dig. 7.1.15pr.

Ulpianus 18 ad sab.

Sed si quid inaedificaverit, postea eum neque tollere hoc neque refigere posse: refixa plane posse vindicare.

Dig. 7.1.15.1

Ulpianus 18 ad sab.

Mancipiorum quoque usus fructus legato non debet abuti, sed secundum condicionem eorum uti: nam si librarium rus mittat et qualum et calcem portare cogat, histrionem balniatorem faciat, vel de symphonia atriensem, vel de palaestra stercorandis latrinis praeponat, abuti videbitur proprietate.

Dig. 7.1.15.2

Ulpianus 18 ad sab.

Sufficienter autem alere et vestire debet secundum ordinem et dignitatem mancipiorum.

Dig. 7.1.15.3

Ulpianus 18 ad sab.

Et generaliter labeo ait in omnibus rebus mobilibus modum eum tenere debere, ne sua feritate vel saevitia ea corrumpat: alioquin etiam lege aquilia eum conveniri.

Dig. 7.1.15.4

Ulpianus 18 ad sab.

Et si vestimentorum usus fructus legatus sit non sic, ut quantitatis usus fructus legetur, dicendum est ita uti eum debere, ne abutatur: nec tamen locaturum, quia vir bonus ita non uteretur.

Dig. 7.1.15.5

Ulpianus 18 ad sab.

Proinde etsi scaenicae vestis usus fructus legetur vel aulaei vel alterius apparatus, alibi quam in scaena non utetur, sed an et locare possit, videndum est: et puto locaturum, et licet testator commodare, non locare fuerit solitus, tamen ipsum fructuarium locaturum tam scaenicam quam funebrem vestem.

Dig. 7.1.15.6

Ulpianus 18 ad sab.

Proprietatis dominus non debebit impedire fructuarium ita utentem, ne deteriorem eius condicionem faciat. de quibusdam plane dubitatur, si eum uti prohibeat, an iure id faciat: ut puta doleis, si forte fundi usus fructus sit legatus, et putant quidam, etsi defossa sint, uti prohibendum: idem et in seriis et in cuppis et in cadis et amphoris putant: idem et in specularibus, si domus usus fructus legetur. sed ego puto, nisi sit contraria voluntas, etiam instrumentum fundi vel domus contineri.

Dig. 7.1.15.7

Ulpianus 18 ad sab.

Sed nec servitutem imponere fundo potest proprietarius nec amittere servitutem: adquirere plane servitutem eum posse etiam invito fructuario iulianus scripsit. quibus consequenter fructuarius quidem adquirere fundo servitutem non potest, retinere autem potest: et si forte fuerint non utente fructuario amissae, hoc quoque nomine tenebitur. proprietatis dominus ne quidem consentiente fructuario servitutem imponere potest,

Dig. 7.1.16

Paulus 3 ad sab.

Nisi per quam deterior fructuarii condicio non fiat, veluti si talem servitutem vicino concesserit ius sibi non esse altius tollere.

Dig. 7.1.17pr.

Ulpianus 18 ad sab.

Locum autem religiosum facere potest consentiente usufructuario: et hoc verum est favore religionis. sed interdum et solus proprietatis dominus locum religiosum facere potest: finge enim eum testatorem inferre, cum non esset tam oportune, ubi sepeliretur.

Dig. 7.1.17.1

Ulpianus 18 ad sab.

Ex eo, ne deteriorem condicionem fructuarii faciat proprietarius, solet quaeri, an servum dominus coercere possit. et aristo apud cassium notat plenissimam eum coercitionem habere, si modo sine dolo malo faciat: quamvis usufructuarius nec contrariis quidem ministeriis aut inusitatis artificium eius corrumpere possit nec servum cicatricibus deformare.

Dig. 7.1.17.2

Ulpianus 18 ad sab.

Proprietarius autem et servum noxae dedere poterit, si hoc sine dolo malo faciat, quoniam noxae deditio iure non peremit usum fructum, non magis quam usucapio proprietatis, quae post constitutum usum fructum contingit. debebit plane denegari usus fructus persecutio, si ei qui noxae accepit litis aestimatio non offeratur a fructuario.

Dig. 7.1.17.3

Ulpianus 18 ad sab.

Si quis servum occiderit, utilem actionem exemplo aquiliae fructuario dandam numquam dubitavi.

Dig. 7.1.18

Paulus 3 ad sab.

Agri usu fructu legato in locum demortuarum arborum aliae substituendae sunt et priores ad fructuarium pertinent.

Dig. 7.1.19pr.

Pomponius 5 ad sab.

Proculus putat insulam posse ita legari, ut ei servitus imponatur, quae alteri insulae hereditariae debeatur, hoc modo: " si ille heredi meo promiserit per se non fore, quo altius ea aedificia tollantur, tum ei eorum aedificiorum usum fructum do lego" vel sic: " aedium illarum, quoad altius, quam uti nunc sunt, aedificatae non erunt, illi usum fructum do lego. "

Dig. 7.1.19.1

Pomponius 5 ad sab.

Si arbores vento deiectas dominus non tollat, per quod incommodior is sit usus fructus vel iter, suis actionibus usufructuario cum eo experiundum.

Dig. 7.1.20

Ulpianus 18 ad sab.

Si quis ita legaverit: " fructus annuos fundi corneliani gaio maevio do lego", perinde accipi debet hic sermo ac si usus fructus fundi esset legatus.

Dig. 7.1.21

Ulpianus 17 ad sab.

Si servi usus fructus sit legatus, quidquid is ex opera sua adquirit vel ex re fructuarii, ad eum pertinet, sive stipuletur sive ei possessio fuerit tradita. si vero heres institutus sit vel legatum acceperit, labeo distinguit, cuius gratia vel heres instituitur vel legatum acceperit.

Dig. 7.1.22

Ulpianus 18 ad sab.

Sed et si quid donetur servo, in quo usus fructus alterius est, quaeritur, quid fieri oporteat. et in omnibus istis, si quidem contemplatione fructuarii aliquid ei relictum vel donatum est, ipsi adquiret: sin vero proprietarii, proprietario: si ipsius servi, adquiretur domino, nec distinguimus, unde cognitum eum et cuius merito habuit, qui donavit vel reliquit. sed et si condicionis implendae causa quid servus fructuarius consequatur et constiterit contemplatione fructuarii eam condicionem adscriptam, dicendum est ipsi adquiri: nam et in mortis causa donatione idem dicendum est.

Dig. 7.1.23pr.

Ulpianus 17 ad sab.

Sed sicuti stipulando fructuario adquirit, ita etiam paciscendo eum adquirere exceptionem fructuario iulianus libro trigensimo digestorum scribit. idemque et si acceptum rogaverit, liberationem ei parere.

Dig. 7.1.23.1

Ulpianus 17 ad sab.

Quoniam autem diximus quod ex operis adquiritur ad fructuarium pertinere, sciendum est etiam cogendum eum operari: etenim modicam quoque castigationem fructuario competere sabinus respondit et cassius libro octavo iuris civilis scripsit, ut neque torqueat, neque flagellis caedat.

Dig. 7.1.24

Paulus 10 ad sab.

Si quis donaturus usufructuario spoponderit servo in quem usum fructum habet stipulanti, ipsi usufructuario obligabitur, quia ut ei servus talis stipulari possit, usitatum est.

Dig. 7.1.25pr.

Ulpianus 18 ad sab.

Sed et si quid stipuletur sibi aut sticho servo fructuario donandi causa, dum vult fructuario praestitum, dicendum, si ei solvatur, fructuario adquiri.

Dig. 7.1.25.1

Ulpianus 18 ad sab.

Interdum tamen in pendenti est, cui adquirat iste fructuarius servus: ut puta si servum emit et per traditionem accepit necdum pretium numeravit, sed tantummodo pro eo fecit satis, interim cuius sit, quaeritur. et iulianus libro trigensimo quinto digestorum scripsit in pendenti esse dominium eius et numerationem pretii declaraturam, cuius sit: nam si ex re fructuarii, retro fructuarii fuisse. idemque est et si forte stipulatus sit servus numeraturus pecuniam: nam numeratio declarabit, cui sit adquisita stipulatio. ergo ostendimus in pendenti esse dominium, donec pretium numeretur. quid ergo si amisso usu fructu tunc pretium numeretur? iulianus quidem libro trigensimo quinto digestorum scripsit adhuc interesse, unde sit pretium numeratum: Marcellus vero et mauricianus amisso usu fructu iam putant dominium adquisitum proprietatis domino: sed iuliani sententia humanior est. quod si ex re utriusque pretium fuerit solutum, ad utrumque dominium pertinere iulianus scripsit, scilicet pro rata pretii soluti. quid tamen si forte simul solverit ex re utriusque, ut puta decem milia pretii nomine debebat et dena solvit ex re singulorum: cui magis servus adquirat? si numeratione solvat, intererit, cuius priores nummos solvat: nam quos postea solverit, aut vindicabit aut, si fuerint nummi consumpti, ad condictionem pertinent: si vero simul in sacculo solvit, nihil fecit accipientis et ideo nondum adquisisse cuiquam dominium videtur, quia cum plus pretium solvit servus, non faciet nummos accipientis.

Dig. 7.1.25.2

Ulpianus 18 ad sab.

Si operas suas iste servus locaverit et in annos singulos certum aliquid stipuletur, eorum quidem annorum stipulatio, quibus usus fructus mansit, adquiretur fructuario, sequentium vero stipulatio ad proprietarium transit semel adquisita fructuario, quamvis non soleat stipulatio semel cui quaesita ad alium transire nisi ad heredem vel adrogatorem. proinde si forte usus fructus in annos singulos fuerit legatus et iste servus operas suas locavit et stipulatus est ut supra scriptum est, prout capitis minutione amissus fuerit usus fructus, mox restitutus, ambulabit stipulatio profectaque ad heredem redibit ad fructuarium.

Dig. 7.1.25.3

Ulpianus 18 ad sab.

Quaestionis est, an id quod adquiri fructuario non potest proprietario adquiratur. et iulianus quidem libro trigensimo quinto digestorum scripsit, quod fructuario adquiri non potest proprietario quaeri. denique scribit eum, qui ex re fructuarii stipuletur nominatim proprietario vel iussu eius, ipsi adquirere. contra autem nihil agit, si non ex re fructuarii nec ex operis suis fructuario stipuletur.

Dig. 7.1.25.4

Ulpianus 18 ad sab.

Servus fructuarius si usum fructum in se dari stipuletur aut sine nomine aut nominatim proprietario, ipsi adquirit exemplo servi communis, qui stipulando rem alteri ex dominis cuius res est, nihil agit, quoniam rem suam stipulando quis nihil agit, alteri stipulando adquirit solidum.

Dig. 7.1.25.5

Ulpianus 18 ad sab.

Idem iulianus eodem libro scripsit: si servo fructuarius operas eius locaverit, nihil agit: nam et si ex re mea, inquit, a me stipulatus sit, nihil agit, non magis quam servus alienus bona fide mihi serviens idem agendo domino quicquam adquirit. simili modo, ait, ne quidem si rem meam a me fructuario conducat, me non obligabit. et regulariter definiit: quod quis ab alio stipulando mihi adquirit, id a me stipulando nihil agit: nisi forte, inquit, nominatim domino suo stipuletur a me vel conducat.

Dig. 7.1.25.6

Ulpianus 18 ad sab.

Si duos fructuarios proponas et ex alterius re servus sit stipulatus, quaeritur, utrum totum an pro parte, qua habet usum fructum, ei quaeratur. nam et in duobus bonae fidei possessoribus hoc idem est apud scaevolam agitatum libro secundo quaestionum, et ait volgo creditum rationemque hoc facere, ut si ex re alterius stipuletur, partem ei dumtaxat quaeri, partem domino: quod si nominatim sit stipulatus, nec dubitari debere, quin adiecto nomine solidum ei quaeratur. idemque ait et si iussu eius stipuletur, quoniam iussum pro nomine accipimus. idem et in fructuariis erit dicendum, ut quo casu non totum adquiretur fructuario, proprietatis domino erit quaesitum, quoniam ex re fructuarii quaeri ei posse ostendimus.

Dig. 7.1.25.7

Ulpianus 18 ad sab.

Quod autem diximus ex re fructuarii vel ex operis posse adquirere, utrum tunc locum habeat, quotiens iure legati usus fructus sit constitutus, an et si per traditionem vel stipulationem vel alium quemcumque modum, videndum. et vera est pegasi sententia, quam et iulianus libro sexto decimo secutus est, omni fructuario adquiri.

Dig. 7.1.26

Paulus 3 ad sab.

Si operas suas locaverit servus fructuarius et imperfecto tempore locationis usus fructus interierit, quod superest ad proprietarium pertinebit. sed et si ab initio certam summam propter operas certas stipulatus fuerit, capite deminuto eo idem dicendum est.

Dig. 7.1.27pr.

Ulpianus 18 ad sab.

Si pendentes fructus iam maturos reliquisset testator, fructuarius eos feret, si die legati cedente adhuc pendentes deprehendisset: nam et stantes fructus ad fructuarium pertinent.

Dig. 7.1.27.1

Ulpianus 18 ad sab.

Si dominus solitus fuit tabernis ad merces suas uti vel ad negotiationem, utique permittetur fructuario locare eas et ad alias merces, et illud solum observandum, ne vel abutatur usufructuarius vel contumeliose iniurioseve utatur usu fructu.

Dig. 7.1.27.2

Ulpianus 18 ad sab.

Si servi usus fructus legatus est, cuius testator quasi ministerio vacuo utebatur, si eum disciplinis vel arte instituerit usufructuarius, arte eius vel peritia utetur.

Dig. 7.1.27.3

Ulpianus 18 ad sab.

Si quid cloacarii nomine debeatur vel si quid ob formam aquae ductus, quae per agrum transit, pendatur, ad onus fructuarii pertinebit: sed et si quid ad collationem viae, puto hoc quoque fructuarium subiturum: ergo et quod ob transitum exercitus confertur ex fructibus: sed et si quid municipio, nam solent possessores certam partem fructuum municipio viliori pretio addicere: solent et fisco fusiones praestare. haec onera ad fructuarium pertinebunt.

Dig. 7.1.27.4

Ulpianus 18 ad sab.

Si qua servitus imposita est fundo, necesse habebit fructuarius sustinere: unde et si per stipulationem servitus debeatur, idem puto dicendum.

Dig. 7.1.27.5

Ulpianus 18 ad sab.

Sed et si servus sub poena emptus sit interdictis certis quibusdam, an si usus fructus eius fuerit legatus, observare haec fructuarius debeat ? et puto debere eum observare: alioquin non boni viri arbitratu utitur et fruitur.

Dig. 7.1.28

Pomponius 5 ad sab.

Nomismatum aureorum vel argenteorum veterum, quibus pro gemmis uti solent, usus fructus legari potest.

Dig. 7.1.29

Ulpianus 18 ad sab.

Omnium bonorum usum fructum posse legari, nisi excedat dodrantis aestimationem, celsus libro trigensimo secundo digestorum et iulianus libro sexagensimo primo scribit: et est verius.

Dig. 7.1.30

Paulus 3 ad sab.

Si is, qui binas aedes habeat, aliarum usum fructum legaverit, posse heredem Marcellus scribit alteras altius tollendo obscurare luminibus, quoniam habitari potest etiam obscuratis aedibus. quod usque adeo temperandum est, ut non in totum aedes obscurentur, sed modicum lumen, quod habitantibus sufficit, habeant.

Dig. 7.1.31

Paulus 10 ad sab.

Ex re fructuarii etiam id intellegitur, quod ei fructuarius donaverit concesseritve vel ex administratione rerum eius compendii servus fecerit.

Dig. 7.1.32

Pomponius 33 ad sab.

Si quis unas aedes, quas solas habet, vel fundum tradit, excipere potest id, quod personae, non praedii est, veluti usum et usum fructum. sed et si excipiat, ut pascere sibi vel inhabitare liceat, valet exceptio, cum ex multis saltibus pastione fructus perciperetur. et habitationis exceptione, sive temporali sive usque ad mortem eius qui excepit, usus videtur exceptus.

Dig. 7.1.33pr.

Papinianus 17 quaest.

Si titio fructus, maevio proprietas legata sit et vivo testatore titius decedat, nihil apud scriptum heredem relinquetur: et id neratius quoque respondit.

Dig. 7.1.33.1

Papinianus 17 quaest.

Usum fructum in quibusdam casibus non partis effectum optinere convenit: unde si fundi vel fructus portio petatur et absolutione secuta postea pars altera quae adcrevit vindicetur, in lite quidem proprietatis iudicatae rei exceptionem obstare, in fructus vero non obstare scribit iulianus, quoniam portio fundi velut alluvio portioni, personae fructus adcresceret.

Dig. 7.1.34pr.

Iulianus 35 Dig.

Quotiens duobus usus fructus legatur ita, ut alternis annis utantur fruantur, si quidem ita legatus fuerit " titio et maevio", potest dici priori titio, deinde maevio legatum datum. si vero duo eiusdem nominis fuerint et ita scriptum fuerit " titiis usum fructum alternis annis do": nisi consenserint, uter eorum prior utatur, invicem sibi impedient. quod si titius eo anno, quo frueretur, proprietatem accepisset, interim legatum non habebit, sed ad maevium alternis annis usus fructus pertinebit: et si titius proprietatem alienasset, habebit eum usum fructum, quia et si sub condicione usus fructus mihi legatus fuerit et interim proprietatem ab herede accepero, pendente autem condicione eandem alienavero, ad legatum admittar.

Dig. 7.1.34.1

Iulianus 35 Dig.

Si colono tuo usum fructum fundi legaveris, usum fructum vindicabit et cum herede tuo aget ex conducto et consequetur, ut neque mercedes praestet et impensas, quas in culturam fecerat, recipiat.

Dig. 7.1.34.2

Iulianus 35 Dig.

Universorum bonorum an singularum rerum usus fructus legetur, hactenus interesse puto, quod, si aedes incensae fuerint, usus fructus specialiter aedium legatus peti non potest, bonorum autem usu fructu legato areae usus fructus peti poterit: quoniam qui bonorum suorum usum fructum legat, non solum eorum, quae in specie sunt, sed et substantiae omnis usum fructum legare videtur: in substantia autem bonorum etiam area est.

Dig. 7.1.35pr.

Iulianus 1 ad urs. ferocem.

Si usus fructus legatus est, sed heres scriptus ob hoc tardius adit, ut tardius ad legatum perveniretur, hoc quoque praestabitur, ut sabino placuit.

Dig. 7.1.35.1

Iulianus 1 ad urs. ferocem.

Usus fructus servi mihi legatus est isque, cum ego uti frui desissem, liber esse iussus est: deinde ego ab herede aestimationem legati tuli: nihilo magis eum liberum fore sabinus respondit (namque videri me uti frui homine, pro quo aliquam rem habeam), condicionem autem eius libertatis eandem manere, ita ut mortis meae aut capitis deminutionis interventu liber futurus esset.

Dig. 7.1.36pr.

Africanus 5 quaest.

Qui usum fructum areae legaverat, insulam ibi aedificavit: ea vivo eo decidit vel deusta est: usum fructum deberi existimavit. contra autem non idem iuris esse, si insulae usu fructu legato area, deinde insula facta sit. idemque esse, et si scyphorum usus fructus legatus sit, deinde massa facta et iterum scyphi: licet enim pristina qualitas scyphorum restituta sit, non tamen illos esse, quorum usus fructus legatus sit.

Dig. 7.1.36.1

Africanus 5 quaest.

Stipulatus sum de titio fundum cornelianum detracto usu fructu: titius decessit: quaesitum est, quid mihi heredem eius praestare oportet. respondit referre, qua mente usus fructus exceptus sit: nam si quidem hoc actum est, ut in cuiuslibet persona usus fructus constitueretur, solam proprietatem heredem debiturum: sin autem id actum sit, ut promissori dumtaxat usus fructus reciperetur, plenam proprietatem heredem eius debiturum. hoc ita se habere manifestius in causa legatorum apparere: etenim si heres, a quo detracto usu fructu proprietas legata sit, priusquam ex testamento ageretur, decesserit, minus dubitandum, quin heres eius plenam proprietatem sit debiturus. idemque et si sub condicione similiter legatum sit et pendente condicione heres decessit.

Dig. 7.1.36.2

Africanus 5 quaest.

Usus fructus servi titio legatus est: cum per heredem staret, quo minus praestaretur, servus mortuus est: aliud dici non posse ait, quam in id obligatum esse heredem, quanti legatarii intersit moram factam non esse, ut scilicet ex eo tempore in diem, in quo servus sit mortuus, usus fructus aestimetur. cui illud quoque consequens esse, ut si ipse titius moriatur, similiter ex eo tempore, quo mora sit facta, in diem mortis aestimatio usus fructus heredi eius praestaretur.

Dig. 7.1.37

Africanus 7 quaest.

Quaesitum est, si, cum in annos decem proximos usum fructum de te dari stipulatus essem, per te steterit quo minus dares et quinquennium transierit, quid iuris sit. item si stichi decem annorum proximorum operas de te dari stipulatus sim et similiter quinquennium praeteriit. respondit eius temporis usum fructum et operas recte peti, quod per te transactum est quo minus darentur.

Dig. 7.1.38

Marcianus 3 inst.

Non utitur usufructuarius, si nec ipse utatur nec nomine eius alius, puta qui emit vel qui conduxit vel cui donatus est vel qui negotium eius gerit. plane illud interest, quod, si vendidero usum fructum, etiamsi emptor non utatur, videor usum fructum retinere,

Dig. 7.1.39

Gaius 7 ad ed. provinc.

Quia qui pretio fruitur, non minus habere intellegitur, quam qui principali re utitur fruitur.

Dig. 7.1.40

Marcianus 3 inst.

Quod si donavero, non alias retineo, nisi ille utatur.

Dig. 7.1.41pr.

Marcianus 7 inst.

Statuae et imaginis usum fructum posse relinqui magis est, quia et ipsae habent aliquam utilitatem, si quo loco oportuno ponantur.

Dig. 7.1.41.1

Marcianus 7 inst.

Licet praedia quaedam talia sint, ut magis in ea impendamus, quam de illis adquiramus, tamen usus fructus eorum relinqui potest.

Dig. 7.1.42pr.

Florus 11 inst.

Si alii usus, alii fructus eiusdem rei legetur, id percipiet fructuarius, quod usuario supererit: nec minus et ipse fruendi causa et usum habebit.

Dig. 7.1.42.1

Florus 11 inst.

Rerum an aestimationis usus fructus tibi legetur, interest: nam si quidem rerum legetur, deducto eo, quod praeterea tibi legatum est, ex reliquis bonis usum fructum feres: sin autem aestimationis usus fructus legatus est, id quoque aestimabitur, quod praeterea tibi legatum est. nam saepius idem legando non ampliat testator legatum: re autem legata etiam aestimationem eius legando ampliare legatum possumus.

Dig. 7.1.43

Ulpianus 7 reg.

Etiam partis bonorum usus fructus legari potest. si tamen non sit specialiter facta partis mentio, dimidia pars bonorum continetur.

Dig. 7.1.44

Nerva 3 membr.

Usufructuarius novum tectorium parietibus, qui rudes fuissent, imponere non potest, quia tametsi meliorem excolendo aedificium domini causam facturus esset, non tamen id iure suo facere potest, aliudque est tueri quod accepisset an novum faceret.

Dig. 7.1.45

Gaius 7 ad ed. provinc.

Sicut impendia cibariorum in servum, cuius usus fructus ad aliquem pertinet, ita et valetudinis impendia ad eum respicere natura manifestum est.

Dig. 7.1.46pr.

Paulus 9 ad plaut.

Si extraneo scripto et emancipato praeterito matri defuncti deducto usu fructu proprietas legata sit, petita contra tabulas bonorum possessione plena proprietas pietatis respectu matri praestanda est.

Dig. 7.1.46.1

Paulus 9 ad plaut.

Si testator iusserit, ut heres reficeret insulam, cuius usum fructum legavit, potest fructuarius ex testamento agere, ut heres reficeret.

Dig. 7.1.47

Pomponius 5 ex plaut.

Quod si heres hoc non fecisset et ob id fructuarius frui non potuisset, heres etiam fructuarii eo nomine habebit actionem, quanti fructuarii interfuisset non cessasse heredem, licet usus fructus morte eius interisset.

Dig. 7.1.48pr.

Paulus 9 ad plaut.

Si absente fructuario heres quasi negotium eius gerens reficiat, negotiorum gestorum actionem adversus fructuarium habet, tametsi sibi in futurum heres prospiceret. sed si paratus sit recedere ab usu fructu fructuarius, non est cogendus reficere, sed actione negotiorum gestorum liberatur.

Dig. 7.1.48.1

Paulus 9 ad plaut.

Silvam caeduam, etiamsi intempestive caesa sit, in fructu esse constat, sicut olea immatura lecta, item faenum immaturum caesum in fructu est.

Dig. 7.1.49

Pomponius 7 ad plaut.

Si mihi et tibi a sempronio et mucio heredibus usus fructus legatus sit, ego in partem sempronii quadrantem, in partem mucii alterum quadrantem habebo, tu item in utriusque parte eorum quadrantes habes.

Dig. 7.1.50

Paulus 3 ad vitell.

Titius maevio fundum tusculanum reliquit eiusque fidei commisit, ut eiusdem fundi partis dimidiae usum fructum titiae praestaret: maevius villam vetustate corruptam necessariam cogendis et conservandis fructibus aedificavit: quaesitum est, an sumptus partem pro portione usus fructus titia adgnoscere debeat. respondit scaevola, si priusquam usus fructus praestaretur, necessario aedificasset, non alias cogendum restituere quam eius sumptus ratio haberetur.

Dig. 7.1.51

Modestinus 9 diff.

Titio " cum morietur" usus fructus inutiliter legari intellegitur, in id tempus videlicet collatus, quo ^ qua^ a persona discedere incipit.

Dig. 7.1.52

Modestinus 9 reg.

Usu fructu relicto si tributa eius rei praestentur, ea usufructuarium praestare debere dubium non est, nisi specialiter nomine fideicommissi testatori placuisse probetur haec quoque ab herede dari.

Dig. 7.1.53

Iavolenus 2 epist.

Si cui insulae usus fructus legatus est, quamdiu quaelibet portio eius insulae remanet, totius soli usum fructum retinet.

Dig. 7.1.54

Iavolenus 3 epist.

Sub condicione usus fructus fundi a te herede titio legatus est: tu fundum mihi vendidisti et tradidisti detracto usu fructu: quaero, si non extiterit condicio, aut extiterit et interiit usus fructus, ad quem pertineat. respondit: intellego te de usu fructu quaerere qui legatus est: itaque si condicio eius legati extiterit, dubium non est, quin ad legatarium is usus fructus pertineat et si aliquo casu ab eo amissus fuerit, ad proprietatem fundi revertatur: quod si condicio non extiterit, usus fructus ad heredem pertinebit, ita ut in eius persona omnia eadem serventur, quae ad amittendum usum fructum pertinent et servari solent. ceterum in eiusmodi venditione spectandum id erit, quod inter ementem vendentemque convenerit, ut, si apparuerit legati causa eum usum fructum exceptum esse, etiamsi condicio non extiterit, restitui a venditore emptori debeat.

Dig. 7.1.55

Pomponius 26 ad q. muc.

Si infantis usus tantummodo legatus sit, etiamsi nullus interim sit, cum tamen infantis aetatem excesserit, esse incipit.

Dig. 7.1.56

Gaius 17 ad ed. provinc.

An usus fructus nomine actio municipibus dari debeat, quaesitum est: periculum enim esse videbatur, ne perpetuus fieret, quia neque morte nec facile capitis deminutione periturus est, qua ratione proprietas inutilis esset futura semper abscedente usu fructu. sed tamen placuit dandam esse actionem. unde sequens dubitatio est, quousque tuendi essent in eo usu fructu municipes: et placuit centum annos tuendos esse municipes, quia is finis vitae longaevi hominis est.

Dig. 7.1.57pr.

Papinianus 7 resp.

Dominus fructuario praedium, quod ei per usum fructum serviebat, legavit, idque praedium aliquamdiu possessum legatarius restituere filio, qui causam inofficiosi testamenti recte pertulerat, coactus est: mansisse fructus ius integrum ex post facto apparuit.

Dig. 7.1.57.1

Papinianus 7 resp.

Per fideicommissum fructu praediorum ob alimenta libertis relicto partium emolumentum ex persona vita decedentium ad dominum proprietatis recurrit.

Dig. 7.1.58pr.

Scaevola 3 resp.

Defuncta fructuaria mense decembri iam omnibus fructibus, qui in his agris nascuntur, mense octobri per colonos sublatis quaesitum est, utrum pensio heredi fructuariae solvi deberet, quamvis fructuaria ante kalendas martias, quibus pensiones inferri debeant, decesserit, an dividi debeat inter heredem fructuariae et rem publicam, cui proprietas legata est. respondi rem publicam quidem cum colono nullam actionem habere, fructuariae vero heredem sua die secundum ea quae proponerentur integram pensionem percepturum.

Dig. 7.1.58.1

Scaevola 3 resp.

" sempronio do lego ex redactu fructuum holeris et porrinae, quae habeo in agro farrariorum, partem sextam". quaeritur, an his verbis usus fructus legatus videatur. respondi non usum fructum, sed ex eo quod redactum esset partem legatam.

Dig. 7.1.58.2

Scaevola 3 resp.

Item quaesitum est, si usus fructus non esset, an quotannis partem sextam redactam legaverit. respondi quotannis videri relictum, nisi contrarium specialiter ab herede adprobetur.

Dig. 7.1.59pr.

Paulus 3 sent.

Arbores vi tempestatis, non culpa fructuarii eversas ab eo substitui non placet.

Dig. 7.1.59.1

Paulus 3 sent.

Quidquid in fundo nascitur vel quidquid inde percipitur, ad fructuarium pertinet, pensiones quoque iam antea locatorum agrorum, si ipsae quoque specialiter comprehensae sint. sed ad exemplum venditionis, nisi fuerint specialiter exceptae, potest usufructuarius conductorem repellere.

Dig. 7.1.59.2

Paulus 3 sent.

Caesae harundinis vel pali compendium, si in eo quoque fundi vectigal esse consuevit, ad fructuarium pertinet.

Dig. 7.1.60pr.

Paulus 5 sent.

Cuiuscumque fundi usufructuarius prohibitus aut deiectus de restitutione omnium rerum simul occupatarum agit: sed et si medio tempore alio casu interciderit usus fructus, aeque de perceptis antea fructibus utilis actio tribuitur.

Dig. 7.1.60.1

Paulus 5 sent.

Si fundus, cuius usus fructus petitur, non a domino possideatur, actio redditur. et ideo si de fundi proprietate inter duos quaestio sit, fructuarius nihilo minus in possessione esse debet satisque ei a possessore cavendum est, quod non sit prohibiturus frui eum, cui usus fructus relictus est, quamdiu de iure suo probet. sed si ipsi usufructuario quaestio moveatur, interim usus fructus eius differtur: sed caveri de restituendo eo, quod ex his fructibus percepturus est, vel si satis non detur, ipse frui permittitur.

Dig. 7.1.61

Nerva 2 resp.

Usufructuarius novum rivum parietibus non potest imponere. aedificium inchoatum fructuarium consummare non posse placet, etiamsi eo loco aliter uti non possit, sed nec eius quidem usum fructum esse: nisi in constituendo vel legando usu fructu hoc specialiter adiectum sit, ut utrumque ei liceat.

Dig. 7.1.62pr.

Tryphonus 7 disp.

Usufructuarium venari in saltibus vel montibus possessionis probe dicitur: nec aprum aut cervum quem ceperit proprium domini capit, sed aut fructus iure aut gentium suos facit.

Dig. 7.1.62.1

Tryphonus 7 disp.

Si vivariis inclusae ferae in ea possessione custodiebantur, quando usus fructus coepit, num exercere eas fructuarius possit, occidere non possit? alias si quas initio incluserit operis suis vel post sibimet ipsae inciderint delapsaeve fuerint, hae fructuarii iuris sint? commodissime tamen, ne per singula animalia facultatis fructuarii propter discretionem difficilem ius incertum sit, sufficit eundem numerum per singula quoque genera ferarum finito usu fructu domino proprietatis adsignare, qui fuit coepti usus fructus tempore.

Dig. 7.1.63

Paulus l.S. de iure singulari.

Quod nostrum non est, transferemus ad alios: veluti is qui fundum habet, quamquam usum fructum non habeat, tamen usum fructum cedere potest.

Dig. 7.1.64

Ulpianus 51 ad ed.

Cum fructuarius paratus est usum fructum derelinquere, non est cogendus domum reficere, in quibus casibus et usufructuario hoc onus incumbit. sed et post acceptum contra eum iudicium parato fructuario derelinquere usum fructum dicendum est absolvi eum debere a iudice.

Dig. 7.1.65pr.

Pomponius 5 ex plaut.

Sed cum fructuarius debeat quod suo suorumque facto deterius factum sit reficere, non est absolvendus, licet usum fructum derelinquere paratus sit: debet enim omne, quod diligens pater familias in sua domo facit, et ipse facere.

Dig. 7.1.65.1

Pomponius 5 ex plaut.

Non magis heres reficere debet quod vetustate iam deterius factum reliquisset testator, quam si proprietatem alicui testator legasset.

Dig. 7.1.66

Paulus 47 ad ed.

Cum usufructuario non solum legis aquiliae actio competere potest, sed et servi corrupti et iniuriarum, si servum torquendo deteriorem fecerit.

Dig. 7.1.67

Iulianus 1 ex minic.

Cui usus fructus legatus est, etiam invito herede eum extraneo vendere potest.

Dig. 7.1.68pr.

Ulpianus 17 ad sab.

Vetus fuit quaestio, an partus ad fructuarium pertineret: sed bruti sententia optinuit fructuarium in eo locum non habere: neque enim in fructu hominis homo esse potest. hac ratione nec usum fructum in eo fructuarius habebit. quid tamen si fuerit etiam partus usus fructus relictus, an habeat in eo usum fructum? et cum possit partus legari, poterit et usus fructus eius.

Dig. 7.1.68.1

Ulpianus 17 ad sab.

Fetus tamen pecorum sabinus et cassius opinati sunt ad fructuarium pertinere.

Dig. 7.1.68.2

Ulpianus 17 ad sab.

Plane si gregis vel armenti sit usus fructus legatus, debebit ex adgnatis gregem supplere, id est in locum capitum defunctorum.

Dig. 7.1.69

Pomponius 5 ad sab.

Vel inutilium alia summittere, ut post substituta fiant propria fructuarii, ne lucro ea res cedat domino. et sicut substituta statim domini fiunt, ita priora quoque ex natura fructus desinunt eius esse: nam alioquin quod nascitur fructuarii est et cum substituit, desinit eius esse.

Dig. 7.1.70pr.

Ulpianus 17 ad sab.

Quid ergo si non faciat nec suppleat? teneri eum proprietario gaius cassius scribit libro decimo iuris civilis.

Dig. 7.1.70.1

Ulpianus 17 ad sab.

Interim tamen, quamdiu summittantur et suppleantur capita quae demortua sunt, cuius sit fetus quaeritur. et iulianus libro tricensimo quinto digestorum scribit pendere eorum dominium, ut, si summittantur, sint proprietarii, si non summittantur, fructuarii: quae sententia vera est.

Dig. 7.1.70.2

Ulpianus 17 ad sab.

Secundum quae si decesserit fetus, periculum erit fructuarii, non proprietarii et necesse habebit alios fetus summittere. unde gaius cassius libro octavo scribit carnem fetus demortui ad fructuarium pertinere.

Dig. 7.1.70.3

Ulpianus 17 ad sab.

Sed quod dicitur debere eum summittere, totiens verum est, quotiens gregis vel armenti vel equitii, id est universitatis usus fructus legatus est: ceterum si singulorum capitum, nihil supplebit.

Dig. 7.1.70.4

Ulpianus 17 ad sab.

Item si forte eo tempore, quo fetus editi sunt, nihil fuit quod summitti deberet, nunc et ^ est^ post editionem: utrum ex his quae edentur summittere debebit, an ex his quae edita sunt, videndum est. puto autem verius ea, quae pleno grege edita sunt, ad fructuarium pertinere, sed posteriorem gregis casum nocere debere fructuario.

Dig. 7.1.70.5

Ulpianus 17 ad sab.

Summittere autem facti est et iulianus proprie dicit dispertire et dividere et divisionem quandam facere: quod dominium erit summissorum proprietarii.

Dig. 7.1.71

Marcellus 17 Dig.

Si in area, cuius usus fructus alienus esset, quis aedificasset, intra tempus quo usus fructus perit superficie sublata restitui usum fructum veteres responderunt.

Dig. 7.1.72

Ulpianus 17 ad sab.

Si dominus nudae proprietatis usum fructum legaverit, verum est, quod maecianus scripsit libro tertio quaestionum de fideicommissis, valere legatum: et si forte in vita testatoris vel ante aditam hereditatem proprietati accesserit, ad legatarium pertinere. plus admittit maecianus, etiamsi post aditam hereditatem accessisset usus fructus, utiliter diem cedere et ad legatarium pertinere.

Dig. 7.1.73

Pomponius 5 ad sab.

Si areae usus fructus legatus sit mihi, posse me casam ibi aedificare custodiae causa earum rerum, quae in area sint.

Dig. 7.1.74

Gaius 7 ad ed. provinc.

Si sticho servo tuo et pamphilo meo legatus fuerit usus fructus, tale est legatum, quale si mihi et tibi legatus esset: et ideo dubium non est, quin aequaliter ad nos pertineat.

Dig. 7.2.0. De usu fructu adcrescendo.

Dig. 7.2.1pr.

Ulpianus 17 ad sab.

Quotiens usus fructus legatus est, ita inter fructuarios est ius adcrescendi, si coniunctim sit usus fructus relictus: ceterum si separatim unicuique partis rei usus fructus sit relictus, sine dubio ius adcrescendi cessat.

Dig. 7.2.1.1

Ulpianus 17 ad sab.

Denique apud iulianum libro trigensimo quinto digestorum quaeritur, si communi servo usus fructus sit relictus et utrique domino adquisitus, an altero repudiante vel amittente usum fructum alter totum habeat: et putat ad alterum pertinere, et licet dominis usus fructus non aequis partibus, sed pro dominicis adquiratur, tamen persona ipsius, non dominorum inspecta ad alterum ex dominis pertinere, non proprietati accedere.

Dig. 7.2.1.2

Ulpianus 17 ad sab.

Idem ait et si communi servo et separatim titio usus fructus legatus sit, amissum ab altero ex sociis usum fructum non ad titium, sed ad solum socium pertinere debere quasi solum coniunctum: quae sententia vera est: nam quamdiu vel unus utitur, potest dici usum fructum in suo statu esse. idem est, si duobus coniunctim et alteri separatim usus fructus esset relictus.

Dig. 7.2.1.3

Ulpianus 17 ad sab.

Interdum tamen etsi non sint coniuncti, tamen usus fructus legatus alteri adcrescit: ut puta si mihi fundi usus fructus separatim totius et tibi similiter fuerit relictus. nam, ut et celsus libro octavo decimo digestorum et iulianus libro tricensimo quinto scribit, concursu partes habemus: quod et in proprietate contingeret: nam altero repudiante alter totum fundum haberet. sed in usu fructu hoc plus est, quia et constitutus et postea amissus nihilo minus ius adcrescendi admittit: omnes enim auctores apud plautium de hoc consenserunt et, ut celsus et iulianus eleganter aiunt, usus fructus cottidie constituitur et legatur, non, ut proprietas, eo solo tempore quo vindicatur. cum primum itaque non inveniet alter eum, qui sibi concurrat, solus utetur in totum, nec refert, coniunctim an separatim relinquatur.

Dig. 7.2.1.4

Ulpianus 17 ad sab.

Idem iulianus libro trigensimo quinto digestorum scripsit, si duobus heredibus institutis deducto usu fructu proprietas legetur, ius adcrescendi heredes non habere: nam videri usum fructum constitutum, non per concursum divisum:

Dig. 7.2.2

Africanus 5 quaest.

Ideoque amissa pars usus fructus ad legatarium eundemque proprietarium redibit.

Dig. 7.2.3pr.

Ulpianus 17 ad sab.

Idem neratius putat cessare ius adcrescendi libro primo responsorum: cui sententiae congruit ratio celsi dicentis totiens ius adcrescendi esse, quotiens in duobus, qui in solidum habuerunt, concursu divisus est.

Dig. 7.2.3.1

Ulpianus 17 ad sab.

Unde celsus libro octavo decimo scribit, si duo fundi domini deducto usu fructu proprietatem tradiderint, uter eorum amiserit, usum fructum ad proprietatem redire, sed non ad totam, sed cuiusque usum fructum ei parti accedere, quam ipse tradiderit: ad eam enim partem redire debet, a qua initio divisus est.

Dig. 7.2.3.2

Ulpianus 17 ad sab.

Non solum autem si duobus usus fructus legetur, est ius adcrescendi, verum et si alteri usus fructus, alteri fundus legatus est: nam amittente usum fructum altero, cui erat legatus, magis iure adcrescendi ad alterum pertinet quam redit ad proprietatem. nec novum: nam et si duobus usus fructus legetur et apud alterum sit consolidatus, ius adcrescendi non perit neque ei, apud quem consolidatus est, neque ab eo, et ipse quibus modis amitteret ante consolidationem, isdem et nunc amittet, et ita et neratio et aristoni videtur et pomponius probat.

Dig. 7.2.4

Iulianus 35 Dig.

Si tibi proprietas fundi legata fuerit, mihi autem et maevio et tibi fundi eiusdem usus fructus, habebimus ego et maevius trientes in usu fructu, unus triens proprietate miscebitur. sive autem ego sive maevius capite minuti fuerimus, triens inter te et alterutrum nostrum dividetur, ita ut semissem in usu fructu habeat is, qui ex nobis capite minutus non fuerat, ad te proprietas cum parte dimidia usus fructus pertineat:

Dig. 7.2.5

Gaius 7 ad ed. provinc.

Et si tradideris alicui proprietatem deducto usu fructu, nihilo minus putat iulianus adcrescere, nec videri novum tibi adquiri usum fructum.

Dig. 7.2.6pr.

Ulpianus 17 ad sab.

Idem et si apud unum ex tribus fructuariis consolidatus sit usus fructus.

Dig. 7.2.6.1

Ulpianus 17 ad sab.

Sed si cui proprietas deducto usu fructu legata sit et mihi pars usus fructus, videndum erit, an inter me et heredem ius adcrescendi versetur: et verum est, ut, quisquis ^ quiquis^ amiserit, ad proprietatem revertetur.

Dig. 7.2.6.2

Ulpianus 17 ad sab.

Si mihi usus fructus fundi pure, tibi sub condicione legatus sit, potest dici totius fundi usum fructum ad me pertinere interim et, si capite minutus fuero, totum amittere: sed si extiterit condicio, totum usum fructum ad te pertinere, si forte capite deminutus sum, ceterum cum in meo statu maneo, communicandum usum fructum.

Dig. 7.2.7

Paulus 3 ad sab.

Si quis attio et heredibus suis usum fructum legaverit, dimidiam attius, dimidiam heredes habebunt: quod si ita scriptum sit " attio et seio cum heredibus meis", tres partes fient, ut unam habeant heredes, tertiam attius, tertiam seius: nec enim interest ita legetur " illi et illi cum maevio" an ita " illi et illi et maevio".

Dig. 7.2.8

Ulpianus 17 ad sab.

Si mulieri cum liberis suis usus fructus legetur, amissis liberis ea usum fructum habet: sed et matre mortua liberi eius nihilo minus usum fructum habent iure adcrescendi. nam et iulianus libro trigensimo digestorum ait idem intellegendum in eo, qui solos liberos heredes scripserit, licet non ut legatarios eos nominaverit, sed ut ostenderet magis velle se matrem ita frui, ut liberos secum habeat fruentes. sed et pomponius quaerit: quid si mixti fuerint liberi et extranei heredes? et ait filios legatarios esse intellegendos et per contrarium, si voluit eos liberos simul cum matre frui, debere dici matrem legatariam esse intellegendam et per omnia similem esse et in hoc casu iuris eventum.

Dig. 7.2.9

Africanus 5 quaest.

Si proprietas fundi duobus, usus fructus uni legatus sit, non trientes in usu fructu habent, sed semissem duo, semissem fructuarius: item contra, si duo fructuarii et unus fundi legatarius sit.

Dig. 7.2.10

Ulpianus 17 ad ed.

Interdum pars usus fructus et non habenti partem suam, sed amittenti adcrescit: nam si usus fructus duobus fuerit legatus et alter lite contestata amiserit usum fructum, mox et collegatarius, qui litem contestatus non erat, usum fructum amisit, partem dimidiam dumtaxat, quam amisit qui litem contestatus est adversus eum qui se liti optulit, a possessore consequitur: pars enim collegatarii ipsi adcrescit, non domino proprietatis: usus fructus enim personae adcrescit et si fuerit amissus.

Dig. 7.2.11

Papinianus 2 def.

Cum singulis ab heredibus singulis eiusdem rei fructus legatur, fructuarii separari videntur non minus, quam si aequis portionibus duobus eiusdem rei fructus legatus fuisset: unde fit, ut inter eos ius adcrescendi non sit,

Dig. 7.2.12

Ulpianus 17 ad sab.

Cum alius ab alio herede usum fructum vindicat.

Dig. 7.3.0. Quando dies usus fructus legati cedat.

Dig. 7.3.1pr.

Ulpianus 17 ad sab.

Quamquam usus fructus ex fruendo consistat, id est facto aliquo eius qui fruitur et utitur, tamen semel cedit dies: aliter atque si cui in menses vel in dies vel in annos singulos quid legetur: tunc enim per dies singulos vel menses vel annos dies legati cedit. unde quaeri potest, si usus fructus cui per dies singulos legetur vel in annos singulos, an semel cedat: et puto non cedere simul, sed per tempora adiecta, ut plura legata sint: et ita libro quarto digestorum Marcellus probat in eo, cui alternis diebus usus fructus legatus est.

Dig. 7.3.1.1

Ulpianus 17 ad sab.

Et ideo si is fructus legatus sit, qui cottidie percipi non potest, non erit inutile legatum, sed dies habebunt legatum, quibus frui potest.

Dig. 7.3.1.2

Ulpianus 17 ad sab.

Dies autem usus fructus, item usus non prius cedet quam hereditas adeatur: tunc enim constituitur usus fructus, cum quis iam frui potest. hac ratione et si servo hereditario usus fructus legetur, iulianus scribit, quamvis cetera legata hereditati adquirantur, in usu fructu tamen personam domini exspectari, qui uti et frui possit.

Dig. 7.3.1.3

Ulpianus 17 ad sab.

Item si ex die usus fructus legetur, dies eius nondum cedet, nisi cum dies venit: posse enim usum fructum ex die legari et in diem constat.

Dig. 7.3.1.4

Ulpianus 17 ad sab.

Non solum autem usus fructus ante aditam hereditatem dies non cedit, sed nec actio de usu fructu: idemque et si ex die fuerit legatus usus fructus: denique scaevola ait agentem ante diem usus fructus nihil facere, quamvis alias qui ante diem agit, male agit.

Dig. 7.4.0. Quibus modis usus fructus vel usus amittitur.

Dig. 7.4.1pr.

Ulpianus 17 ad sab.

Non solum usum fructum amitti capitis minutione constat, sed et actionem de usu fructu. et parvi refert, utrum iure sit constitutus usus fructus an vero tuitione praetoris: proinde traditus quoque usus fructus, item in fundo vectigali vel superficie non iure constitutus capitis minutione amittitur.

Dig. 7.4.1.1

Ulpianus 17 ad sab.

Sed ita demum amittitur capitis deminutione usus fructus, si iam constitutus est: ceterum si ante aditam hereditatem aut ante diem cedentem quis capite minutus est, constat non amitti.

Dig. 7.4.1.2

Ulpianus 17 ad sab.

Si tibi fundus ex die legatus est et usum fructum mihi rogatus es restituere, videndum erit, si capite minutus fuero intra diem legato tuo insertum, ne forte salvus sit mihi usus fructus, quasi ante diem cedentem capitis minutio interveniat: quod benigne dici poterit.

Dig. 7.4.1.3

Ulpianus 17 ad sab.

Usque adeo autem capitis minutio eum demum usum fructum peremit, qui iam constitutus est, ut si in singulos annos vel menses vel dies legatus sit, is demum amittitur, qui iam processit et, si forte in annos singulos legatus est, illius dumtaxat anni usus fructus amittetur et si in menses, eius mensis, si in dies, eius diei.

Dig. 7.4.2pr.

Papinianus 17 quaest.

Si duobus separatim alternis annis usus fructus relinquatur, continuis annis proprietas nuda est, cum, si legatarium unum substituas, cui alternis annis legatus sit usus fructus, plena sit apud heredem proprietas eo tempore, quo ius fruendi legatario non est. quod si ex duobus illis alter decedat, per vices temporum plena proprietas erit: neque enim adcrescere alteri quicquam potest, quoniam propria quisque tempora non concurrente altero fructus integri habuit.

Dig. 7.4.2.1

Papinianus 17 quaest.

Si non mors, sed capitis deminutio intercesserit, quia plura legata sunt, illius anni tantum, si modo ius fruendi habuit, fructus amissus erit: quod et in uno legatario, qui fructum in singulos annos accepit, defendendum est, ut commemoratio temporum repetitionis potestatem habeat.

Dig. 7.4.2.2

Papinianus 17 quaest.

Cum singulis fructus alternis annis legatur, si consentiant in eundem annum, impediuntur, quod non id actum videtur, ut concurrerent: multum etenim refert, duobus simul alternis annis legetur (quod sane ultra primum annum procedere non poterit, non magis quam si uni legatus ita fuisset) an singulis alternis annis: nam si concurrere volent, aut impedient invicem propter voluntatem aut, si ea non refragabitur, singulorum annorum fructus vacabit.

Dig. 7.4.3pr.

Ulpianus 17 ad sab.

Sicut in annos singulos usus fructus legari potest, ita et capitis minutione amissus legari potest, ut adiciatur: " quotiensque capite minutus erit, ei lego", vel sic " quotiens amissus erit": et tunc, si capitis minutione amittatur, repetitus videbitur. unde tractatum est, si cui quamdiu vivat usus fructus legatus sit, an videatur repetitus, quotiens amissus est? quod et maecianus temptat: et puto repetitum videri. quare si usque ad tempus sit legatus, ut puta usque ad decennium, idem erit dicendum.

Dig. 7.4.3.1

Ulpianus 17 ad sab.

Haec autem repetitio, quae fit post amissum capitis minutione usum fructum, quaeritur an et ius adcrescendi secum salvum habeat: ut puta titio et maevio usus fructus legatus est et, si titius capite minutus esset, eidem usum fructum legavit: quaesitum est, si titius ex repetitione usum fructum haberet, an inter eos ius adcrescendi salvum esset. et papinianus libro septimo decimo quaestionum scribit salvum esse, perinde ac si alius esset titio in usu fructu substitutus: hos enim tametsi non verbis, re tamen coniunctos videri.

Dig. 7.4.3.2

Ulpianus 17 ad sab.

Idem papinianus quaerit, si titio et maevio usu fructu legato in repetitione usus fructus non totum, sed partem titio relegasset, an viderentur coniuncti. et ait, si quidem titius amiserit, totum socio adcrescere: quod si maevius amisisset, non totum adcrescere, sed partem ad eum, partem ad proprietatem redire. quae sententia habet rationem: neque enim potest dici eo momento, quo quis amittit usum fructum et resumit, etiam ipsi quicquam ex usu fructu adcrescere: placet enim nobis ei qui amittit usum fructum ex eo quod amittit nihil adcrescere.

Dig. 7.4.3.3

Ulpianus 17 ad sab.

Morte quoque amitti usum fructum non recipit dubitationem, cum ius fruendi morte extinguatur, sicuti si quid aliud, quod personae cohaeret.

Dig. 7.4.4

Marcianus 3 inst.

Si legatum usum fructum legatarius alii restituere rogatus est, id agere praetor debet, ut ex fideicommissarii persona magis quam ex legatarii pereat usus fructus.

Dig. 7.4.5pr.

Ulpianus 17 ad sab.

Repeti potest legatus usus fructus amissus qualicumque ratione, dummodo non morte: nisi forte heredibus legaverit.

Dig. 7.4.5.1

Ulpianus 17 ad sab.

Si quis usum fructum solum servi alienaverit, per quem usus fructus ei adquisitus est, dubium non est, quin usus fructus per eum adquisitus retineatur.

Dig. 7.4.5.2

Ulpianus 17 ad sab.

Rei mutatione interire usum fructum placet: veluti usus fructus mihi aedium legatus est, aedes corruerunt vel exustae sunt: sine dubio extinguitur. an et areae? certissimum est exustis aedibus nec areae nec cementorum usum fructum deberi. et ita et iulianus.

Dig. 7.4.5.3

Ulpianus 17 ad sab.

Si areae sit usus fructus legatus et in ea aedificium sit positum, rem mutari et usum fructum extingui constat. plane si proprietarius hoc fecit, ex testamento vel de dolo tenebitur,

Dig. 7.4.6

Pomponius 5 ad sab.

(sed et interdictum quod vi aut clam usufructuario competit)

Dig. 7.4.7

Iulianus 35 Dig.

Nisi sublato aedificio usum fructum areae mihi cesserit, tempore scilicet quo usus fructus perit transacto.

Dig. 7.4.8

Ulpianus 17 ad sab.

Fundi usu fructu legato si villa diruta sit, usus fructus non extinguetur, quia villa fundi accessio est: non magis quam si arbores deciderint.

Dig. 7.4.9

Paulus 3 ad sab.

Sed et eo quoque solo, in quo fuit villa, uti frui potero.

Dig. 7.4.10pr.

Ulpianus 17 ad sab.

Quid tamen si fundus villae fuit accessio? videamus, ne etiam fundi usus fructus extinguatur. et idem dicendum est, ut non extinguatur.

Dig. 7.4.10.1

Ulpianus 17 ad sab.

Non tantum si aedes ad aream redactae sint, usus fructus extinguitur, verum etiam si demolitis aedibus testator alias novas restituerit: plane si per partes reficiat, licet omnis nova facta sit, aliud erit nobis dicendum.

Dig. 7.4.10.2

Ulpianus 17 ad sab.

Agri vel loci usus fructus legatus, si fuerit inundatus, ut stagnum iam sit aut palus, procul dubio extinguetur.

Dig. 7.4.10.3

Ulpianus 17 ad sab.

Sed et si stagni usus fructus legetur et exaruerit sic, ut ager sit factus, mutata re usus fructus extinguitur.

Dig. 7.4.10.4

Ulpianus 17 ad sab.

Non tamen, si arvi usus fructus legetur et ibi vineae sint positae vel contra, puto extingui. certe silvae usu fructu legato si silva caesa illic sationes fuerint factae, sine dubio usus fructus extinguitur.

Dig. 7.4.10.5

Ulpianus 17 ad sab.

Si massae usus fructus legetur et ex ea vasa sint facta vel contra, cassius apud urseium scribit interire usum fructum: quam sententiam puto veram.

Dig. 7.4.10.6

Ulpianus 17 ad sab.

Proinde et ornamentum dissolutum aut transfiguratum extinguit usum fructum.

Dig. 7.4.10.7

Ulpianus 17 ad sab.

In navis quoque usu fructu sabinus scribit, si quidem per partes refecta sit, usum fructum non interire: si autem dissoluta sit, licet isdem tabulis nulla praeterea adiecta restaurata sit, usum fructum extinctum: quam sententiam puto veriorem. nam et si domus fuerit restituta, usus fructus extinguitur.

Dig. 7.4.10.8

Ulpianus 17 ad sab.

Quadrigae usu fructu legato si unus ex equis decesserit, an extinguatur usus fructus quaeritur. ego puto multum interesse, equorum an quadrigae usus fructus sit legatus: nam si equorum, supererit in residuis, si quadrigae, non remanebit, quoniam quadriga esse desiit:

Dig. 7.4.11

Paulus 3 ad sab.

Nisi alius ante diem legati cedentem substitutus sit.

Dig. 7.4.12pr.

Ulpianus 17 ad sab.

Si cui balinei usus fructus legatus sit et testator habitationem hoc fecerit, vel si tabernae et diaetem fecerit, dicendum est usum fructum extinctum.

Dig. 7.4.12.1

Ulpianus 17 ad sab.

Proinde et si histrionis reliquerit usum fructum et eum ad aliud ministerium transtulerit, extinctum esse usum fructum dicendum erit.

Dig. 7.4.13

Paulus 3 ad sab.

Si fructuarius messem fecit et decessit, stipulam, quae in messe iacet, heredis eius esse labeo ait, spicam, quae terra teneatur, domini fundi esse fructumque percipi spica aut faeno caeso aut uva adempta aut excussa olea, quamvis nondum tritum frumentum aut oleum factum vel vindemia coacta sit. sed ut verum est, quod de olea excussa scripsit, ita aliter observandum de ea olea, quae per se deciderit, iulianus ait: fructuarii fructus tunc fieri, cum eos perceperit, bonae fidei autem possessoris, mox quam a solo separati sint.

Dig. 7.4.14

Pomponius 5 ad sab.

Excepta capitis minutione vel morte reliquae causae vel pro parte interitum usus fructus recipiunt.

Dig. 7.4.15

Ulpianus 18 ad sab.

Interdum proprietarius ad libertatem perducet, si forte usus fructus fuerit tamdiu legatus, quamdiu manumittatur: nam incipiente proprietario manumittere extinguetur usus fructus.

Dig. 7.4.16

Ulpianus 5 disp.

Si sub condicione mihi legatus sit usus fructus medioque tempore sit penes heredem, potest heres usum fructum alii legare: quae res facit, ut, si condicio extiterit mei legati, usus fructus ab herede relictus finiatur. quod si ego usum fructum amisero, non revertetur ad legatarium, cui ab herede pure legatus fuerat, quia ex diversis testamentis ius coniunctionis non contingit.

Dig. 7.4.17

Iulianus 35 Dig.

Si tibi fundi usus fructus pure, proprietas autem sub condicione titio legata fuerit, pendente condicione dominium proprietatis adquisieris, deinde condicio extiterit, pleno iure fundum titius habebit neque interest, quod detracto usu fructu proprietas legata sit: enim dum proprietatem adquiris, ius omne legati usus fructus amisisti.

Dig. 7.4.18

Pomponius 3 ad sab.

Si servo hereditario ante aditam hereditatem legatus usus fructus fuisset, magis placet adita hereditate eum usum fructum ad te transire nec interire quasi mutato dominio, quia nec dies ante cesserit, quam tu heres extiteris.

Dig. 7.4.19

Gaius 7 ad ed. provinc.

Neque usus fructus neque iter actusve dominii mutatione amittitur.

Dig. 7.4.20

Paulus 15 ad plaut.

Is qui usum fructum habet si tantum utatur, quia existimet se usum tantum habere, an usum fructum retineat? et si quidem sciens se usum fructum habere tantum uti velit, nihilo minus et frui videtur: si vero ignoret, puto eum amittere fructum: non enim ex eo quod habet utitur, sed ex eo quod putavit se habere.

Dig. 7.4.21

Modestinus 3 diff.

Si usus fructus civitati legetur et aratrum in ea inducatur, civitas esse desinit, ut passa est carthago, ideoque quasi morte desinit habere usum fructum.

Dig. 7.4.22

Pomponius 6 ad q. muc.

Si mulieri usus domus legatus sit et illa trans mare profecta sit et constituto tempore ad amittendum usum afuerit, maritus vero domo usus fuerit, retinetur nihilo minus usus, quemadmodum si familiam suam in domu reliquisset eaque peregrinaretur. et hoc magis dicendum est, si uxorem in domu reliquerit maritus, cum ipsi marito usus domus legatus sit.

Dig. 7.4.23

Pomponius 26 ad q. muc.

Si ager, cuius usus fructus noster sit, flumine vel mari inundatus fuerit, amittitur usus fructus, cum etiam ipsa proprietas eo casu amittatur: ac ne piscando quidem retinere poterimus usum fructum. sed quemadmodum, si eodem impetu discesserit aqua, quo venit, restituitur proprietas, ita et usum fructum restituendum dicendum est.

Dig. 7.4.24pr.

Iavolenus 3 post. lab.

Cum usum fructum horti haberem, flumen hortum occupavit, deinde ab eo recessit: ius quoque usus fructus restitutum esse labeoni videtur, quia id solum perpetuo eiusdem iuris mansisset. ita id verum puto, si flumen inundatione hortum occupavit: nam si alveo mutato inde manare coeperit, amitti usum fructum existimo, cum is locus alvei publicus esse coeperit, neque in pristinum statum restitui posse.

Dig. 7.4.24.1

Iavolenus 3 post. lab.

Idem iuris in itinere et actu custodiendum esse ait labeo: de quibus rebus ego idem quod in usu fructu sentio.

Dig. 7.4.24.2

Iavolenus 3 post. lab.

Labeo. nec si summa terra sublata ex fundo meo et alia regesta esset, idcirco meum solum esse desinit, non magis quam stercorato agro.

Dig. 7.4.25

Pomponius 11 ex var. lect.

Placet vel certae partis vel pro indiviso usum fructum non utendo amitti.

Dig. 7.4.26

Paulus 1 ad ner.

Si ager ab hostibus occupatus servusve captus liberatus fuerit, iure postliminii restituetur usus fructus.

Dig. 7.4.27

Paulus 1 manual.

Si servus, in quo usus fructus alienus est, noxae dedatur a domino proprietatis usufructuario, liberabitur confusa servitute proprietatis comparatione.

Dig. 7.4.28

Paulus 13 ad plaut.

Si usus fructus alternis annis legetur, non posse non utendo eum amitti, quia plura sunt legata.

Dig. 7.4.29pr.

Ulpianus 17 ad sab.

Pomponius quaerit, si fundum a me proprietarius conduxerit eumque fundum vendidit seio non deducto usu fructu, an usum fructum per emptorem retineam. et ait, licet proprietarius mihi pensionem solverit, tamen usum fructum amitti, quia non meo nomine, sed suo fruitus est emptor: teneri plane mihi ex locato proprietarium, quanti mea interfuit id factum non esse. quamquam si a me conductum usum fructum quis alii locaverit, retinetur usus fructus: sed si proprietarius eum locasset suo nomine, dicendum amitti: non enim meo nomine fruitur colonus.

Dig. 7.4.29.1

Ulpianus 17 ad sab.

Sed si emptum a me usum fructum proprietarius vendidisset, amitterem usum fructum, quaerendum est. et puto amitti, quoniam et hic non ut a me empto fruitur fundi emptor.

Dig. 7.4.29.2

Ulpianus 17 ad sab.

Idem pomponius quaerit, si legatum mihi usum fructum rogatus sim tibi restituere, an per te frui videar nec amittatur usus fructus. et ait dubitare se de hac quaestione: sed est verius, quod Marcellus notat, nihil hanc rem fideicommissario nocere: suo enim nomine utilem actionem eum habiturum.

Dig. 7.4.30

Gaius 7 ad ed. provinc.

Caro et corium mortui pecoris in fructu non est, quia mortuo eo usus fructus extinguitur.

Dig. 7.4.31

Pomponius 4 ad q. muc.

Cum gregis usus fructus legatus est et usque eo numerus pervenit gregis, ut grex non intellegatur, perit usus fructus.

Dig. 7.5.0. De usu fructu earum rerum, quae usu consumuntur vel minuuntur.

Dig. 7.5.1

Ulpianus 18 ad sab.

Senatus censuit, ut omnium rerum, quas in cuiusque patrimonio esse constaret, usus fructus legari possit: quo senatus consulto inductum videtur, ut earum rerum, quae usu tolluntur vel minuuntur, possit usus fructus legari.

Dig. 7.5.2pr.

Gaius 7 ad ed. provinc.

Sed de pecunia recte caveri oportet his, a quibus eius pecuniae usus fructus legatus erit.

Dig. 7.5.2.1

Gaius 7 ad ed. provinc.

Quo senatus consulto non id effectum est, ut pecuniae usus fructus proprie esset (nec enim naturalis ratio auctoritate senatus commutari potuit), sed remedio introducto coepit quasi usus fructus haberi.

Dig. 7.5.3

Ulpianus 18 ad sab.

Post quod omnium rerum usus fructus legari poterit. an et nominum? nerva negavit: sed est verius, quod cassius et proculus existimant, posse legari. idem tamen nerva ipsi quoque debitori posse usum fructum legari scribit et remittendas ei usuras.

Dig. 7.5.4

Paulus 1 ad ner.

Ergo cautio etiam ab hoc exigenda erit.

Dig. 7.5.5pr.

Ulpianus 18 ad sab.

Hoc senatus consultum non solum ad eum pertinet, qui pecuniae usum fructum vel ceterarum rerum quas habuit legavit, verum et si fuerint alienae.

Dig. 7.5.5.1

Ulpianus 18 ad sab.

Si pecuniae sit usus fructus legatus vel aliarum rerum, quae in abusu consistunt, nec cautio interveniat, videndum, finito usu fructu an pecunia quae data sit, vel ceterae res, quae in absumptione sunt, condici possint. sed si quidem adhuc constante usu fructu cautionem quis velit condicere, dici potest omissam cautionem posse condici incerti condictione: sed si finito usu fructu ipsam quantitatem, sabinus putat posse condici: quam sententiam et celsus libro octavo decimo digestorum probat: quae mihi non inarguta videtur.

Dig. 7.5.5.2

Ulpianus 18 ad sab.

Quae in usu fructu pecuniae diximus vel ceterarum rerum, quae sunt in abusu, eadem et in usu dicenda sunt, nam idem continere usum pecuniae et usum fructum et iulianus scribit et pomponius libro octavo de stipulationibus.

Dig. 7.5.6pr.

Iulianus 35 Dig.

Si tibi decem milia legata fuerint, mihi eorundem decem milium usus fructus, fient quidem tua tota decem milia: sed mihi quinque numerari debebunt ita, ut tibi caveam tempore mortis meae aut capitis deminutionis restitutum iri. nam et si fundus tibi legatus fuisset et mihi eiusdem fundi usus fructus, haberes tu quidem totius fundi proprietatem, sed partem cum usu fructu, partem sine usu fructu, et non heredi, sed tibi caverem boni viri arbitratu.

Dig. 7.5.6.1

Iulianus 35 Dig.

Sed si duobus eorundem decem milium usus fructus legatus fuerit, quina milia accipient et invicem et heredi satisdabunt.

Dig. 7.5.7

Gaius 7 ad ed. provinc.

Si vini olei frumenti usus fructus legatus erit, proprietas ad legatarium transferri debet et ab eo cautio desideranda est, ut, quandoque is mortuus aut capite deminutus sit, eiusdem qualitatis res restituatur, aut aestimatis rebus certae pecuniae nomine cavendum est, quod et commodius est. idem scilicet de ceteris quoque rebus, quae usu continentur, intellegemus.

Dig. 7.5.8

Papinianus 17 quaest.

Tribus heredibus institutis usum fructum quindecim milium titio legavit et duos ex heredibus iussit pro legatario satisdare: placebat utile esse cautionis quoque legatum nec refragari senatus consultum, quia cautio non impediretur, et esse alterum legatum velut certi, alterum incerti. usus fructus itaque nomine partem pecuniae petendam ab eo, qui satis accepit a coherede, incertique cum eodem agendum, si satis non dedisset. eum vero, qui satis praestitit ac propter moram coheredis satis non accepit, neque fructus nomine interim teneri propter senatus consultum neque actione incerti, quia coheredi satisdedit. illud etiam nobis placet legatarium cogendum promittere. finito autem usu fructu si coheredes ex causa fideiussoria convenirentur, eos mandati non acturos: non enim suscepisse mandatum, sed voluntati paruisse: denique cautionis legato liberatos. de illo nec diu tractandum fuit secundum legatum, id est cautionis, non heredum videri, sed eius, cui pecuniae usus fructus relictus est cuique testator prospicere voluit et cuius interesse credidit fideiussores non suo periculo quaerere.

Dig. 7.5.9

Paulus 1 ad ner.

In stipulatione de reddendo usu fructu pecuniae duo soli casus interponuntur, mortis et capitis deminutionis,

Dig. 7.5.10pr.

Ulpianus 79 ad ed.

Quoniam pecuniae usus aliter amitti non potest quam his casibus.

Dig. 7.5.10.1

Ulpianus 79 ad ed.

Si usus tantum pecuniae legatus sit, quia in hac specie usus appellatione etiam fructum contineri magis accipiendum est, stipulatio ista erit interponenda. et quidam aiunt non ante hanc interponi stipulationem, quam data fuerit pecunia: ego autem puto, sive antea sive postea pecunia data sit, tenere stipulationem.

Dig. 7.5.11

Ulpianus 18 ad sab.

Si lanae alicui legatus sit usus fructus vel odorum vel aromatum, nullus videtur usus fructus in istis iure constitutus, sed ad senatus consultum erit descendendum, quod de cautione eorum loquitur.

Dig. 7.5.12

Marcianus 7 inst.

Cum pecunia erat relicta titio ita, ut post mortem legatarii ad maevium rediret, quamquam adscriptum sit, ut usum eius titius haberet, proprietatem tamen ei legatam et usus mentionem factam, quia erat restituenda ab eo pecunia post mortem eius, divi severus et antoninus rescripserunt.

Dig. 7.6.0. Si usus fructus petetur vel ad alium pertinere negetur.

Dig. 7.6.1pr.

Ulpianus 18 ad sab.

Si fundo fructuario servitus debeatur, Marcellus libro octavo apud iulianum labeonis et nervae sententiam probat existimantium servitutem quidem eum vindicare non posse, verum usum fructum vindicaturum ac per hoc vicinum, si non patiatur eum ire et agere, teneri ei, quasi non patiatur uti frui.

Dig. 7.6.1.1

Ulpianus 18 ad sab.

Usus fructus legatus adminiculis eget, sine quibus uti frui quis non potest: et ideo si usus fructus legetur, necesse est tamen ut sequatur eum aditus, usque adeo, ut, si quis usum fructum loci leget ita, ne heres cogatur viam praestare, inutiliter hoc adiectum videatur: item si usu fructu legato iter ademptum sit, inutilis est ademptio, quia semper sequitur usum fructum.

Dig. 7.6.1.2

Ulpianus 18 ad sab.

Sed si usus fructus sit legatus, ad quem aditus non est per hereditarium fundum, ex testamento utique agendo fructuarius consequetur, ut cum aditu sibi praestetur usus fructus.

Dig. 7.6.1.3

Ulpianus 18 ad sab.

Utrum autem aditus tantum et iter an vero et via debeatur fructuario legato ei usu fructu, pomponius libro quinto dubitat: et recte putat, prout usus fructus perceptio desiderat, hoc ei praestandum.

Dig. 7.6.1.4

Ulpianus 18 ad sab.

Sed an et alias utilitates et servitutes ei heres praestare debeat, puta luminum et aquarum, an vero non? et puto eas solas praestare compellendum, sine quibus omnino uti non potest: sed si cum aliquo incommodo utatur, non esse praestandas.

Dig. 7.6.2

Pomponius 5 ad sab.

Si ab herede ex testamento fundi usus fructus petitus sit, qui arbores deiecisset aut aedificium demolitus esset aut aliquo modo deteriorem usum fructum fecisset aut servitutes imponendo aut vicinorum praedia liberando, ad iudicis religionem pertinet, ut inspiciat, qualis ante iudicium acceptum fundus fuerit, ut usufructuario hoc quod interest ab eo servetur.

Dig. 7.6.3

Iulianus 7 Dig.

Qui usum fructum traditum sibi ex causa fideicommissi desiit in usu habere tanto tempore, quanto, si legitime eius factus esset, amissurus eum fuerit, actionem ad restituendum eum habere non debet: est enim absurdum plus iuris habere eos, qui possessionem dumtaxat usus fructus, non etiam dominium adepti sint.

Dig. 7.6.4

Iulianus 35 Dig.

Fundus detracto usu fructu legatus est titio et eiusdem fundi usus fructus sempronio sub condicione: dixi interim cum proprietate usum fructum esse, licet placeat, cum detracto usu fructu fundus legatur, apud heredem usum fructum esse: quia pater familias cum detracto usu fructu fundum legat et alii usum fructum sub condicione, non hoc agit, ut apud heredem usus fructus remaneat.

Dig. 7.6.5pr.

Ulpianus 17 ad ed.

Uti frui ius sibi esse solus potest intendere, qui habet usum fructum, dominus autem fundi non potest, quia qui habet proprietatem, utendi fruendi ius separatum non habet: nec enim potest ei suus fundus servire: de suo enim, non de alieno iure quemque agere oportet. quamquam enim actio negativa domino competat adversus fructuarium, magis tamen de suo iure agere videtur quam alieno, cum invito se negat ius esse utendi fructuario vel sibi ius esse prohibendi. quod si forte qui agit dominus proprietatis non sit, quamvis fructuarius ius utendi non habet, vincet tamen iure, quo possessores sunt potiores, licet nullum ius habeant.

Dig. 7.6.5.1

Ulpianus 17 ad ed.

Utrum autem adversus dominum dumtaxat in rem actio usufructuario competat an etiam adversus quemvis possessorem, quaeritur. et iulianus libro septimo digestorum scribit hanc actionem adversus quemvis possessorem ei competere: nam et si fundo fructuario servitus debeatur, fructuarius non servitutem, sed usum fructum vindicare debet adversus vicini fundi dominum.

Dig. 7.6.5.2

Ulpianus 17 ad ed.

Si partis fundi usus fructus constituatur, potest de eo in rem agi, sive vindicet quis usum fructum sive alii neget.

Dig. 7.6.5.3

Ulpianus 17 ad ed.

In his autem actionibus, quae de usu fructu aguntur, etiam fructus venire plus quam manifestum est.

Dig. 7.6.5.4

Ulpianus 17 ad ed.

Si post litem de usu fructu contestatam fuerit finitus usus fructus, an ulterius fructus desinant deberi? et puto desinere: nam et si mortuus fuerit fructuarius, heredi eius actionem praeteritorum dumtaxat fructuum dandam pomponius libro quadragensimo scribit.

Dig. 7.6.5.4a

Ulpianus 17 ad ed.

Fructuario qui vicit omnis causa restituenda est: et ideo si servi fuerit usus fructus legatus, quidquid ex re fructuarii vel ex operis suis consecutus est, possessor debebit restituere.

Dig. 7.6.5.5

Ulpianus 17 ad ed.

Sed et si forte tempore usus fructus amissus est alio quidem possidente, alio autem liti se offerente, non sufficit eum usum fructum iterum renovare, verum cavere quoque eum de evictione usus fructus oportet: quid enim si servum aut fundum is qui possidebat pignori dedit isque ab eo qui pignori accepit iure uti prohibetur? debebit itaque habere cautum.

Dig. 7.6.5.6

Ulpianus 17 ad ed.

Sicut fructuario in rem confessoriam agenti fructus praestandi sunt, ita et proprietatis domino, si negatoria actione utatur: sed in omnibus ita demum, si non sit possessor qui agat (nam et possessori competunt): quod si possident, nihil fructuum nomine consequentur. quid ergo officium erit iudicis quam hoc, ut securus consequatur fructuarius fruendi licentiam, proprietatis dominus, ne inquietetur?

Dig. 7.6.6

Paulus 21 ad ed.

Qui de usu fructu iudicium accepit, si desierit possidere sine dolo, absolvetur: quod si liti se obtulit et quasi possessor actionem de usu fructu accepit, damnabitur.

Dig. 7.7.0. De operis servorum

Dig. 7.7.1

Paulus 2 ad ed.

Opera in actu consistit nec ante in rerum natura est, quam si dies venit, quo praestanda est, quemadmodum cum stipulamur " quod ex arethusa natum erit".

Dig. 7.7.2

Ulpianus 17 ad ed.

Operae servi legatae capitis minutione non amittuntur.

Dig. 7.7.3

Gaius 7 ad ed. provinc.

In hominis usu fructu operae sunt et ob operas mercedes.

Dig. 7.7.4

Gaius 2 de liberali c. ed. urb.

Fructus hominis in operis constitit et retro in fructu hominis operae sunt. et ut in ceteris rebus fructus deductis necessariis impensis intellegitur, ita et in operis servorum.

Dig. 7.7.5

Clementius 18 ad l. iul. et pap.

Operis servi legatis usum datum intellegi et ego didici et iulianus existimat.

Dig. 7.7.6pr.

Ulpianus 55 ad ed.

Cum de servi operis artificis agitur, pro modo restituendae sunt, sed mediastini secundum ministerium: et ita mela scribit.

Dig. 7.7.6.1

Ulpianus 55 ad ed.

Si minor annis quinque vel debilis servus sit vel quis alius, cuius nulla opera esse apud dominum potuit, nulla aestimatio fiet.

Dig. 7.7.6.2

Ulpianus 55 ad ed.

Item voluptatis vel affectionis aestimatio non habebitur, veluti si dilexerit eum dominus aut in deliciis habuerit.

Dig. 7.7.6.3

Ulpianus 55 ad ed.

Ceterum deductis necessariis impensis fiet aestimatio.

Dig. 7.8.0. De usu et habitatione.

Dig. 7.8.1pr.

Gaius 7 ad ed. provinc.

Nunc videndum de usu et habitatione.

Dig. 7.8.1.1

Gaius 7 ad ed. provinc.

Constituitur etiam nudus usus, id est sine fructu: qui et ipse isdem modis constitui solet, quibus et usus fructus.

Dig. 7.8.2pr.

Ulpianus 17 ad sab.

Cui usus relictus est, uti potest, frui non potest. et de singulis videndum.

Dig. 7.8.2.1

Ulpianus 17 ad sab.

Domus usus relictus est aut marito aut mulieri: si marito, potest illic habitare non solus, verum cum familia quoque sua. an et cum libertis, fuit quaestionis, et celsus scripsit, et cum libertis: posse hospitem quoque recipere, nam ita libro octavo decimo digestorum scripsit, quam sententiam et tubero probat. sed an etiam inquilinum recipere possit, apud labeonem memini tractatum libro posteriorum, et ait labeo eum, qui ipse habitat, inquilinum posse recipere: idem et hospites et libertos suos.

Dig. 7.8.3

Paulus 3 ad vitell.

Et clientes:

Dig. 7.8.4pr.

Ulpianus 17 ad sab.

Ceterum sine eo ne hos quidem habitare posse. proculus autem de inquilino notat non belle inquilinum dici, qui cum eo habitet. secundum haec et si pensionem percipiat, dum ipse quoque inhabitet, non erit ei invidendum: quid enim si tam spatiosae domus usus sit relictus homini mediocri, ut portiuncula contentus sit? sed et cum his, quos loco servorum in operis habet, habitabit, licet liberi sint vel servi alieni.

Dig. 7.8.4.1

Ulpianus 17 ad sab.

Mulieri autem si usus relictus sit, posse eam et cum marito habitare quintus mucius primus admisit, ne ei matrimonio carendum foret, cum uti vult domo.

nam per contrarium quin uxor cum marito possit habitare, nec fuit dubitatum. quid ergo si viduae legatus sit, an nuptiis contractis post constitutum usum mulier habitare cum marito possit? et est verum, ut et pomponius libro quinto et papinianus libro nono decimo quaestionum probat, posse eam cum viro et postea nubentem habitare. hoc amplius pomponius ait et cum socero habitaturam.

Dig. 7.8.5

Paulus 3 ad sab.

Immo et socer cum nuru habitabit, utique cum vir una sit.

Dig. 7.8.6

Ulpianus 17 ad sab.

Non solum autem cum marito, sed et cum liberis libertisque habitare et cum parentibus poterit: et ita et aristo notat apud sabinum. et huc usque erit procedendum, ut eosdem quos masculi recipere et mulieres possint.

Dig. 7.8.7

Pomponius 5 ad sab.

Non aliter autem mulier hospitem recipere potest, quam si is sit, qui honeste cum ea quae usum habeat habitaturus sit.

Dig. 7.8.8pr.

Ulpianus 17 ad sab.

Sed neque locabunt seorsum neque concedent habitationem sine se nec vendent usum.

Dig. 7.8.8.1

Ulpianus 17 ad sab.

Sed si usus aedium mulieri legatus sit ea condicione " si a viro divortisset", remittendam ei condicionem et cum viro habitaturam, quod et pomponius libro quinto probat.

Dig. 7.8.9

Paulus 3 ad sab.

Ceterarum quoque rerum usu legato dicendum est uxorem cum viro in promiscuo usu eas res habere posse.

Dig. 7.8.10pr.

Ulpianus 17 ad sab.

Si habitatio legetur, an perinde sit atque si usus, quaeritur. et effectu quidem idem paene esse legatum usus et habitationis et papinianus consensit libro octavo decimo quaestionum. denique donare non poterit, sed eas personas recipiet, quas et usuarius: ad heredem tamen nec ipsa transit nec non utendo amittitur nec capitis deminutione.

Dig. 7.8.10.1

Ulpianus 17 ad sab.

Sed si xrysis sit relicta, an usus sit, videndum: et papinianus libro septimo responsorum ait usum esse, non etiam fructum relictum.

Dig. 7.8.10.2

Ulpianus 17 ad sab.

Sed si sic relictus sit: " illi domus usus fructus habitandi causa", utrum habitationem solam an vero et usum fructum habeat, videndum. et proculus et neratius putant solam habitationem legatam, quod est verum. plane si dixisset testator " usum habitandi causa", non dubitaremus, quin valeret.

Dig. 7.8.10.3

Ulpianus 17 ad sab.

Utrum autem unius anni sit habitatio an usque ad vitam, apud veteres quaesitum est: et rutilius donec vivat habitationem competere ait, quam sententiam et celsus probat libro octavo decimo digestorum.

Dig. 7.8.10.4

Ulpianus 17 ad sab.

Si usus fundi sit relictus, minus utique esse quam fructum longeque nemo dubitat. sed quid in ea causa sit, videndum. et labeo ait habitare eum in fundo posse dominumque prohibiturum illo venire: sed colonum non prohibiturum nec familiam, scilicet eam, quae agri colendi causa illic sit: ceterum si urbanam familiam illo mittat, qua ratione ipse prohibetur, et familiam prohibendam eiusdem rationis est. idem labeo ait et cella vinaria et olearia eum solum usurum, dominum vero invito eo non usurum.

Dig. 7.8.11

Gaius 2 rer. cott.

Inque eo fundo hactenus ei morari licet, ut neque domino fundi molestus sit neque his, per quos opera rustica fiunt, impedimento sit: nec ulli alii ius quod habet aut vendere aut locare aut gratis concedere potest.

Dig. 7.8.12pr.

Ulpianus 17 ad sab.

Plenum autem usum debet habere, si et villae et praetorii ei relictus est. venire plane proprietarium ad fructus percipiendos magis dicendum est, et per tempora fructuum colligendorum etiam habitare illic posse admittendum est.

Dig. 7.8.12.1

Ulpianus 17 ad sab.

Praeter habitationem quam habet, cui usus datus est deambulandi quoque et gestandi ius habebit. sabinus et cassius et lignis ad usum cottidianum et horto et pomis et holeribus et floribus et aqua usurum, non usque ad compendium, sed ad usum, scilicet non usque ad abusum: idem nerva, et adicit stramentis et sarmentis etiam usurum, sed neque foliis neque oleo neque frumento neque frugibus usurum. sed sabinus et cassius et labeo et proculus hoc amplius etiam ex his quae in fundo nascuntur, quod ad victum sibi suisque sufficiat sumpturum et ex his quae nerva negavit: iuventius etiam cum convivis et hospitibus posse uti: quae sententia mihi vera videtur: aliquo enim largius cum usuario agendum est pro dignitate eius, cui relictus est usus. sed utetur his, ut puto, dumtaxat in villa: pomis autem et oleribus et floribus et lignis videndum, utrum eodem loco utatur dumtaxat an etiam in oppidum ei deferri possint: sed melius est accipere et in oppidum deferenda, neque enim grave onus est horum, si abundent in fundo.

Dig. 7.8.12.2

Ulpianus 17 ad sab.

Sed si pecoris ei usus relictus est, puta gregis ovilis, ad stercorandum usurum dumtaxat labeo ait, sed neque lana neque agnis neque lacte usurum: haec enim magis in fructu esse. hoc amplius etiam modico lacte usurum puto: neque enim tam stricte interpretandae sunt voluntates defunctorum.

Dig. 7.8.12.3

Ulpianus 17 ad sab.

Sed si boum armenti usus relinquatur, omnem usum habebit et ad arandum et ad cetera, ad quae boves apti sunt.

Dig. 7.8.12.4

Ulpianus 17 ad sab.

Equitii quoque legato usu videndum, ne et domare possit et ad vehendum sub iugo uti. et si forte auriga fuit, cui usus equorum relictus est, non puto eum circensibus his usurum, quia quasi locare eos videtur: sed si testator sciens eum huius esse instituti et vitae reliquit, videtur etiam de hoc usu sensisse.

Dig. 7.8.12.5

Ulpianus 17 ad sab.

Si usus ministerii alicui fuerit relictus, ad suum ministerium utetur et ad liberorum coniugisque, neque videbitur alii concessisse, si simul cum ipsis utatur: quamquam, si filio familias usus servi sit relictus vel servo, patri dominove adquisitus ipsius dumtaxat usum exigat, non etiam eorum qui sunt in potestate.

Dig. 7.8.12.6

Ulpianus 17 ad sab.

Operas autem servi usuarii non locabit neque alii utendo concedet, et ita labeo: quemadmodum enim concedere alii operas poterit, cum ipse uti debeat? idem tamen labeo putat, si fundum conduxerit quis, usuarium servum posse ibi operari: quid enim interest, in qua re opera eius utatur? quare et si lanam conduxerit usuarius expediendam, poterit etiam per usuarias ancillas opus perficere, idemque, si vestimenta texenda redemerit vel insulam vel navem fabricandam, poterit ad haec operis uti usuarii: nec offendetur illa sabini sententia ancillae usu dato ad lanificium eam non mitti nec ex operis mercedem capi, sed sibi lanam facere iure cogere: sibi enim facere videtur, qui non operas eius locavit, sed opus quod conduxit expediit. idem et octavenus probat.

Dig. 7.8.13

Gaius 7 ad ed. provinc.

Sed ipsi servo ancillaeve pro opera mercedem imponi posse labeoni placet.

Dig. 7.8.14pr.

Ulpianus 17 ad sab.

Per servum usuarium si stipuler vel per traditionem accipiam, an adquiram, quaeritur, si ex re mea vel ex operis eius. et si quidem ex operis eius, non valebit, quoniam nec locare operas eius possumus: sed si ex re mea, dicimus servum usuarium stipulantem vel per traditionem accipientem mihi adquirere, cum hac opera eius utar.

Dig. 7.8.14.1

Ulpianus 17 ad sab.

Usus fructus an fructus legetur, nihil interest, nam fructui et usus inest, usui fructus deest: et fructus quidem sine usu esse non potest, usus sine fructu potest. denique si tibi fructus deducto usu legatus sit, inutile esse legatum pomponius libro quinto ad sabinum scribit: et si forte usu fructu legato fructus adimatur, totum videri ademptum scribit: sed si fructus sine usu, usum videri constitutum, qui et ab initio constitui potest. sed si usu fructu legato usus adimatur, aristo scribit nullam esse ademptionem: quae sententia benignior est.

Dig. 7.8.14.2

Ulpianus 17 ad sab.

Usu legato si eidem fructus legetur, pomponius ait confundi eum cum usu, idem ait et si tibi usus, mihi fructus legetur, concurrere nos in usu, me solum fructum habiturum.

Dig. 7.8.14.3

Ulpianus 17 ad sab.

Poterit autem apud alium esse usus, apud alium fructus sine usu, apud alium proprietas: veluti si qui habet fundum, legaverit titio usum, mox heres eius tibi fructum legaverit vel alio modo constituerit.

Dig. 7.8.15pr.

Paulus 3 ad sab.

Fundi usu legato licebit usuario et ex penu quod in annum dumtaxat sufficiat capere, licet mediocris praedii eo modo fructus consumantur: quia et domo et servo ita uteretur, ut nihil alii fructuum nomine superesset.

Dig. 7.8.15.1

Paulus 3 ad sab.

Sicuti is, cui usus fundi legatus est, quo minus dominus agri colendi causa ibi versetur, prohibere non potest (alioquin et frui dominum prohibebit), ita nec heres quicquam facere debet, quo minus is cui usus legatus est utatur, ut bonus pater familias uti debet.

Dig. 7.8.16pr.

Pomponius 5 ad sab.

Si ita legatus esset usus fundi, ut instructus esset, earum rerum, quae instrumento fundi essent, perinde ad legatarium usus pertinet, ac si nominatim ei earum rerum usus legatus fuisset.

Dig. 7.8.16.1

Pomponius 5 ad sab.

Dominus proprietatis etiam invito usufructuario vel usuario fundum vel aedes per saltuarium vel insularium custodire potest: interest enim eius fines praedii tueri. eaque omnia dicenda sunt, quolibet modo constitutus usus fructus vel usus fuerit.

Dig. 7.8.16.2

Pomponius 5 ad sab.

Servo, cuius usum dumtaxat, non etiam fructum habemus, potest et a nobis quid donari vel etiam ex pecunia nostra negotiatum esse, ut quidquid eo modo adquisierit, in peculio nostro sit.

Dig. 7.8.17

Africanus 5 quaest.

Filio familias vel servo aedium usu legato et utile legatum esse existimo et eodem modo persecutionem eius competituram, quo competeret, si fructus quoque legatus esset. itaque non minus absente quam praesente filio servove pater dominusve in his aedibus habitabit.

Dig. 7.8.18

Paulus 9 ad plaut.

Si domus usus legatus sit sine fructu, communis refectio est rei in sartis tectis tam heredis quam usuarii. videamus tamen, ne, si fructum heres accipiat, ipse reficere debeat, si vero talis sit res, cuius usus legatus est, ut heres fructum percipere non possit, legatarius reficere cogendus est: quae distinctio rationem habet.

Dig. 7.8.19

Paulus 3 ad vitell.

Usus pars legari non potest: nam frui quidem pro parte possumus, uti pro parte non possumus.

Dig. 7.8.20

Marcellus 13 Dig.

Servus, cuius mihi usus legatus est, adquirit mihi, si institor erit et operis eius utar in taberna: nam mercibus vendundis emendisque adquirit mihi: sed et si iussu meo per traditionem accipiet.

Dig. 7.8.21

Modestinus 2 reg.

Usus aquae personalis est et ideo ad heredem usuarii transmitti non potest.

Dig. 7.8.22pr.

Pomponius 5 ad q. muc.

Divus hadrianus, cum quibusdam usus silvae legatus esset, statuit fructum quoque eis legatum videri, quia nisi liceret legatariis caedere silvam et vendere, quemadmodum usufructuariis licet, nihil habituri essent ex eo legato.

Dig. 7.8.22.1

Pomponius 5 ad q. muc.

Licet tam angustus est legatarius, cui domus usus legatus est, ut non possit occupare totius domus usum, tamen eis quae vacabunt proprietarius non utetur, quia licebit usuario aliis et aliis temporibus tota domo uti, cum interdum domini quoque aedium, prout temporis condicio exigit, quibusdam utantur, quibusdam non utantur.

Dig. 7.8.22.2

Pomponius 5 ad q. muc.

Usu legato si plus usus sit legatarius quam oportet, officio iudicis, qui iudicat quemadmodum utatur, quid continetur? ne aliter quam debet utatur.

Dig. 7.8.23

Paulus 1 ad ner.

Neratius: usuariae rei speciem is cuius proprietas est nullo modo commutare potest. paulus: deteriorem enim causam usuarii facere non potest: facit autem deteriorem etiam in meliorem statum commutata.

Dig. 7.9.0. Usufructuarius quemadmodum caveat.

Dig. 7.9.1pr.

Ulpianus 79 ad ed.

Si cuius rei usus fructus legatus sit, aequissimum praetori visum est de utroque legatarium cavere: et usurum se boni viri arbitratu et, cum usus fructus ad eum pertinere desinet, restituturum quod inde exstabit.

Dig. 7.9.1.1

Ulpianus 79 ad ed.

Haec stipulatio, sive mobilis res sit sive soli, interponi debet,

Dig. 7.9.1.2

Ulpianus 79 ad ed.

Illud sciendum est ad fideicommissa etiam aptari eam debere. plane et si ex mortis causa donatione usus fructus constituatur, exemplo legatorum debebit haec cautio praestari: sed et si ex alia quacumque causa constitutus fuerit usus fructus, idem dicendum est.

Dig. 7.9.1.3

Ulpianus 79 ad ed.

Cavere autem debet viri boni arbitratu perceptu iri usum fructum, hoc est non deteriorem se causam usus fructus facturum ceteraque facturum, quae in re sua faceret.

Dig. 7.9.1.4

Ulpianus 79 ad ed.

Recte autem facient et heres et legatarius, qualis res sit, cum frui incipit legatarius, si in testatum redegerint: ut inde possit apparere, an et quatenus rem peiorem legatarius fecerit.

Dig. 7.9.1.5

Ulpianus 79 ad ed.

Utilis autem visum est stipulatione de hoc caveri, ut, si quis non viri boni arbitratu utatur, committatur stipulatio statim, nec expetabimus, ut amittitur usus fructus.

Dig. 7.9.1.6

Ulpianus 79 ad ed.

Habet autem stipulatio ista duas causas, unam, si aliter quis utatur quam vir bonus arbitrabitur, aliam de usu fructu restituendo: quarum prior statim committetur, quam aliter fuerit usus, et saepius committetur, sequens committetur finito usu fructu.

Dig. 7.9.1.7

Ulpianus 79 ad ed.

Sed quod diximus id quod inde exstabit restitutu iri, non ipsam rem stipulatur proprietarius (inutiliter enim rem suam stipulari videretur), sed stipulatur restitutu iri quod inde exstabit. interdum autem inerit proprietatis aestimatio, si forte fructuarius, cum possit usucapionem interpellare, neglexit: omnem enim rei curam suscipit.

Dig. 7.9.2

Paulus 75 ad ed.

Nam fructuarius custodiam praestare debet.

Dig. 7.9.3pr.

Ulpianus 79 ad ed.

Omnes autem casus continentur huic stipulationi, quibus usus fructus amittitur.

Dig. 7.9.3.1

Ulpianus 79 ad ed.

Desinere pertinere usum fructum accipiemus etiam si nec coeperit pertinere, quamvis legatus sit, et committetur nihilo minus stipulatio, quasi desinat pertinere quod nec coepit.

Dig. 7.9.3.2

Ulpianus 79 ad ed.

Si usus fructus repetitus erit legato, quotiensque amissus fuerit (nisi utiliter fuerit cautum), committetur ista stipulatio: sed exceptione opus erit.

Dig. 7.9.3.3

Ulpianus 79 ad ed.

Sed et si quis usum fructum tibi legaverit et sub condicione " si liberos habueris" proprietatem, amisso usu fructu committetur quidem stipulatio, sed exceptio locum habebit.

Dig. 7.9.3.4

Ulpianus 79 ad ed.

Si heres alienaverit proprietatem et postea amittatur usus fructus, an ex stipulatu agere possit, videamus. et fortius dici potest ipso iure non committi stipulationem, quia neque heredi successoribusve eius restitui potest neque is cui potest, id est ad quem pervenit proprietas, pertinet ad stipulationem: sed is ad quem pervenit tempore quaesiti dominii sibi prospicere alia cautione debet: quod etsi non fecerit, nihilo minus in rem actione uti potest.

Dig. 7.9.4

Venonius 12 stipul.

Si fructuarius proprietatem adsecutus fuerit, desinit quidem usus fructus ad eum pertinere propter confusionem: sed si ex stipulatu cum eo agatur, aut ipso iure inutiliter agi dicendum est, si viri boni arbitrium huc usque porrigitur, aut in factum excipere debebit.

Dig. 7.9.5pr.

Ulpianus 79 ad ed.

Huic stipulationi " dolum malum abesse afuturumque esse" continetur: et cum in rem sit doli mali mentio concepta, omnium dolum comprehendere videtur successorum et adoptivi patris.

Dig. 7.9.5.1

Ulpianus 79 ad ed.

Sed si usus sine fructu legatus erit, adempta fructus causa satisdari iubet praetor: hoc merito, ut de solo usu, non etiam de fructu caveatur.

Dig. 7.9.5.2

Ulpianus 79 ad ed.

Ergo et si fructus sine usu optigerit, stipulatio locum habebit.

Dig. 7.9.5.3

Ulpianus 79 ad ed.

Et si habitatio vel operae hominis vel cuius alterius animalis relictae fuerint, stipulatio locum habebit, licet per omnia haec usum fructum non imitantur.

Dig. 7.9.6

Paulus 75 ad ed.

Idem est et in reditu praedii, sicuti si vindemia legata esset vel messis, quamvis ex usu fructu ea percipiantur, quae legato morte legatarii ad heredem redeunt.

Dig. 7.9.7pr.

Ulpianus 79 ad ed.

Si usus fructus nomine re tradita satisdatum non fuerit, proculus ait posse heredem rem vindicare, et si obiciatur exceptio de re usus fructus nomine tradita, replicandum erit. quae sententia habet rationem: sed et ipsa stipulatio condici poterit.

Dig. 7.9.7.1

Ulpianus 79 ad ed.

Cum usus fructus pecuniae legatus esset, exprimi debent hi duo casus in stipulatione: " cum morieris aut capite minueris, dari " : idcirco hi duo soli casus, quoniam pecuniae usus aliter amitti non potest quam his casibus.

Dig. 7.9.8

Paulus 75 ad ed.

Si tibi usus fructus et mihi proprietas legata sit, mihi cavendum est: sed si mihi sub condicione proprietas legata sit, quidam et marcianus et heredi et mihi cavendum esse putant: quae sententia vera est. item si mihi legata sit et, cum ad me pertinere desierit, alii, et hic utrisque cavendum ut supra placuit. quod si duobus coniunctim usus fructus legatus sit, et invicem sibi cavere debebunt et heredi in casum illum: " si ad socium non pertineat usus fructus, heredi reddi".

Dig. 7.9.9pr.

Ulpianus 51 ad ed.

Si usus fructus mihi legatus sit eumque restituere sim titio rogatus, videndum est, quis debeat cavere, utrum titius an ego qui legatarius sum: an illud dicimus mecum heredem acturum, cum fideicommissario me agere debere? et est expeditius hoc dicere: si mihi spes aliqua durat usus fructus et, cum tu amiseris, potest ad me reccidere, hoc est ad legatarium, ita rem expediri, ut tu mihi, ego domino proprietatis caveam. quod si fideicommissarii causa usus fructus mihi relictus est nec est ulla spes ad me revertendi fructus, recta via fideicommissarium cavere oportet domino proprietatis.

Dig. 7.9.9.1

Ulpianus 51 ad ed.

Illud sciendum est sive iure ipso quis usum fructum habet sive etiam per tuitionem praetoris, nihilo minus cogendum esse fructuarium cavere aut actiones suscipere.

Dig. 7.9.9.2

Ulpianus 51 ad ed.

Plane si ex die proprietas alicui legata sit, usus fructus pure, dicendum esse pomponius ait remittendam esse hanc cautionem fructuario, quia certum sit ad eum proprietatem vel ad heredem eius perventuram.

Dig. 7.9.9.3

Ulpianus 51 ad ed.

Si vestis usus fructus legatus sit, scripsit pomponius, quamquam heres stipulatus sit finito usu fructu vestem reddi, attamen non obligari promissorem, si eam sine dolo malo adtritam reddiderit.

Dig. 7.9.9.4

Ulpianus 51 ad ed.

Si plures domini sint proprietatis, unusquisque pro sua parte stipulabitur.

Dig. 7.9.10

Paulus 40 ad ed.

Si servi, qui nobis communis erat, usum fructum tibi legavero, necessaria erit haec cautio heredi meo: quamvis enim de proprietate possit communi dividundo experiri, tamen causa usus fructus, qui tuus proprius est, ad officium communi dividundo iudicis non pertinebit.

Dig. 7.9.11

Papinianus 7 resp.

Usu quoque domus relicto viri boni arbitratu cautionem interponi oportet: nec mutat, si pater heredes filios simul habitare cum uxore legataria voluit.

Dig. 7.9.12

Ulpianus 18 ad sab.

Si vasorum ipsorum usus fructus relictus sit, non erit cautio senatus consulti necessaria, sed illa sola " boni viri arbitratu usurum fruiturum". si igitur tradita sunt fruendi causa, nemo dubitat non fieri eius qui accepit: non enim ideo traduntur, ut dominium recedat ab eo qui tradit, sed ut utatur fruatur legatarius. ergo cum non fiant fructuarii vasa, vindicari a proprietario possunt cautione non data. videndum est de condictione, an possit locum habere: et proditum est neminem rem suam nisi furi condicere posse.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER OCTAVUS

Dig. 8.2.0. De servitutibus praediorum urbanorum.
Dig. 8.3.0. De servitutibus praediorum rusticorum.
Dig. 8.4.0. Communia praediorum tam urbanorum quam rusticorum.
Dig. 8.5.0. Si servitus vindicetur vel ad alium pertinere negetur.
Dig. 8.6.0. Quemadmodum servitutes amittuntur.

Dig. 8.1.0. De servitutibus.

Dig. 8.1.1

Marcianus 3 reg.

Servitutes aut personarum sunt, ut usus et usus fructus, aut rerum, ut servitutes rusticorum praediorum et urbanorum.

Dig. 8.1.2

Ulpianus 17 ad ed.

Unus ex dominis communium aedium servitutem imponere non potest.

Dig. 8.1.3

Paulus 21 ad ed.

Servitutes praediorum aliae in solo, aliae in superficie consistunt.

Dig. 8.1.4pr.

Papinianus 7 quaest.

Servitutes ipso quidem iure neque ex tempore neque ad tempus neque sub condicione neque ad certam condicionem (verbi gratia " quamdiu volam") constitui possunt: sed tamen si haec adiciantur, pacti vel per doli exceptionem occurretur contra placita servitutem vindicanti: idque et sabinum respondisse cassius rettulit et sibi placere.

Dig. 8.1.4.1

Papinianus 7 quaest.

Modum adici servitutibus posse constat: veluti quo genere vehiculi agatur vel non agatur (veluti ut equo dumtaxat) vel ut certum pondus vehatur vel grex ille transducatur aut carbo portetur.

Dig. 8.1.4.2

Papinianus 7 quaest.

Intervalla dierum et horarum non ad temporis causam, sed ad modum pertinent iure constitutae servitutis.

Dig. 8.1.5pr.

Gaius 7 ad ed. provinc.

Via iter actus ductus aquae isdem fere modis constituitur, quibus et usum fructum constitui diximus.

Dig. 8.1.5.1

Gaius 7 ad ed. provinc.

Usus servitutium temporibus secerni potest, forte ut quis post horam tertiam usque in horam decimam eo iure utatur vel ut alternis diebus utatur.

Dig. 8.1.6

Paulus 21 ad ed.

Ad certam partem fundi servitus tam remitti quam constitui potest.

Dig. 8.1.7

Ulpianus 13 ad l. iul. et pap.

Ius cloacae mittendae servitus est.

Dig. 8.1.8pr.

Paulus 15 ad plaut.

Ut pomum decerpere liceat et ut spatiari et ut cenare in alieno possimus, servitus imponi non potest.

Dig. 8.1.8.1

Paulus 15 ad plaut.

Si praedium tuum mihi serviat, sive ego partis praedii tui dominus esse coepero sive tu mei, per partes servitus retinetur, licet ab initio per partes adquiri non poterat.

Dig. 8.1.9

Celsus 5 Dig.

Si cui simplicius via per fundum cuiuspiam cedatur vel relinquatur, in infinito, videlicet per quamlibet eius partem, ire agere licebit, civiliter modo: nam quaedam in sermone tacite excipiuntur. non enim per villam ipsam nec per medias vineas ire agere sinendus est, cum id aeque commode per alteram partem facere possit minore servientis fundi detrimento. verum constitit, ut qua primum viam direxisset, ea demum ire agere deberet nec amplius mutandae eius potestatem haberet: sicuti sabino quoque videbatur, qui argumento rivi utebatur, quem primo qualibet ducere licuisset, posteaquam ductus esset, transferre non liceret: quod et in via servandum esse verum est.

Dig. 8.1.10

Celsus 18 Dig.

Si iter legatum sit, qua nisi opere facto iri non possit, licere fodiendo substruendo iter facere proculus ait.

Dig. 8.1.11

Modestinus 6 diff.

Pro parte dominii servitutem adquiri non posse volgo traditur: et ideo si quis fundum habens viam stipuletur et partem fundi sui postea alienet, corrumpit stipulationem in eum casum deducendo, a quo stipulatio incipere non possit. pro parte quoque neque legari neque adimi via potest et, si id factum est, neque legatum neque ademptio valet.

Dig. 8.1.12

Iavolenus 4 epist.

Non dubito, quin fundo municipum per servum recte servitus adquiratur.

Dig. 8.1.13

Pomponius 14 ad q. muc.

Si tam angusti loci demonstratione facta via concessa fuerit, ut neque vehiculum neque iumentum ea inire possit, iter magis quam via aut actus adquisitus videbitur: sed si iumentum ea duci poterit, non etiam vehiculum, actus videbitur adquisitus.

Dig. 8.1.14pr.

Paulus 15 ad sab.

Servitutes praediorum rusticorum etiamsi corporibus accedunt, incorporales tamen sunt et ideo usu non capiuntur: vel ideo, quia tales sunt servitutes, ut non habeant certam continuamque possessionem: nemo enim tam perpetuo, tam continenter ire potest, ut nullo momento possessio eius interpellari videatur. idem et in servitutibus praediorum urbanorum observatur.

Dig. 8.1.14.1

Paulus 15 ad sab.

Servitus itineris ad sepulchrum privati iuris manet et ideo remitti domino fundi servientis potest: et adquiri etiam post religionem sepulchri haec servitus potest.

Dig. 8.1.14.2

Paulus 15 ad sab.

Publico loco interveniente vel via publica haustus servitus imponi potest, aquae ductus non potest: a principe autem peti solet, ut per viam publicam aquam ducere sine incommodo publico liceat. sacri et religiosi loci interventus etiam itineris servitutem impedit, cum servitus per ea loca nulli deberi potest.

Dig. 8.1.15pr.

Pomponius 33 ad sab.

Quotiens nec hominum nec praediorum servitutes sunt, quia nihil vicinorum interest, non valet, veluti ne per fundum tuum eas aut ibi consistas: et ideo si mihi concedas ius tibi non esse fundo tuo uti frui, nihil agitur: aliter atque si concedas mihi ius tibi non esse in fundo tuo aquam quaerere minuendae aquae meae gratia.

Dig. 8.1.15.1

Pomponius 33 ad sab.

Servitutium non ea natura est, ut aliquid faciat quis, veluti viridia tollat aut amoeniorem prospectum praestet, aut in hoc ut in suo pingat, sed ut aliquid patiatur aut non faciat.

Dig. 8.1.16

Iulianus 49 Dig.

Ei, qui pignori fundum accepit, non est iniquum utilem petitionem servitutis dari, sicuti ipsius fundi utilis petitio dabitur. idem servari convenit et in eo, ad quem vectigalis fundus pertinet.

Dig. 8.1.17

Pomponius l.S. reg.

Viae itineris actus aquae ductus pars in obligationem deduci non potest, quia usus eorum indivisus est: et ideo si stipulator decesserit pluribus heredibus relictis, singuli solidam viam petunt: et si promissor decesserit pluribus heredibus relictis, a singulis heredibus solida petitio est.

Dig. 8.1.18

Paulus not. ad pap. 31 quaest.

In omnibus servitutibus, quae actione confusae sunt, responsum est doli exceptionem nocituram legatario, si non patiatur eas iterum imponi.

Dig. 8.1.19

Labeo 4 post. a iav. epit.

Ei fundo, quem quis vendat, servitutem imponi, et si non utilis sit, posse existimo: veluti si aquam alicui dedere ducere non expediret, nihilo minus constitui ea servitus possit: quaedam enim debere habere possumus, quamvis ea nobis utilia non sunt.

Dig. 8.1.20

Iavolenus 5 ex post. lab.

Quotiens via aut aliquid ius fundi emeretur, cavendum putat esse labeo per te non fieri, quo minus eo iure uti possit, quia nulla eiusmodi iuris vacua traditio esset. ego puto usum eius iuris pro traditione possessionis accipiendum esse ideoque et interdicta veluti possessoria constituta sunt.

Dig. 8.2.0. De servitutibus praediorum urbanorum.

Dig. 8.2.1pr.

Paulus 21 ad ed.

Si intercedat solum publicum vel via publica, neque itineris actusve neque altius tollendi servitutes impedit: sed immittendi protegendi prohibendi, item fluminum et stillicidiorum servitutem impedit, quia caelum, quod supra id solum intercedit, liberum esse debet.

Dig. 8.2.1.1

Paulus 21 ad ed.

Si usus fructus tuus sit, aedium proprietas mea, quae onera vicini sustinere debeant, mecum in solidum agi potest, tecum nullo modo.

Dig. 8.2.2

Gaius 7 ad ed. provinc.

Urbanorum praediorum iura talia sunt: altius tollendi et officiendi luminibus vicini aut non extollendi: item stillicidium avertendi in tectum vel aream vicini aut non avertendi: item immittendi tigna in parietem vicini et denique proiciendi protegendive ceteraque istis similia.

Dig. 8.2.3

Ulpianus 29 ad sab.

Est et haec servitus, ne prospectui officiatur.

Dig. 8.2.4

Paulus 2 inst.

Luminum in servitute constituta id adquisitum videtur, ut vicinus lumina nostra excipiat: cum autem servitus imponitur, ne luminibus officiatur, hoc maxime adepti videmur, ne ius sit vicino invitis nobis altius aedificare atque ita minuere lumina nostrorum aedificiorum.

Dig. 8.2.5

Ulpianus 17 ad ed.

Invitum autem in servitutibus accipere debemus non eum qui contra dicit, sed eum qui non consentit. ideo pomponius libro quadragensimo et infantem et furiosum invitos recte dici ait: non enim ad factum, sed ad ius servitutis haec verba referuntur.

Dig. 8.2.6

Gaius 7 ad ed. provinc.

Haec autem iura similiter ut rusticorum quoque praediorum certo tempore non utendo pereunt: nisi quod haec dissimilitudo est, quod non omnimodo pereunt non utendo, sed ita, si vicinus simul libertatem usucapiat. veluti si aedes tuae aedibus meis serviant, ne altius tollantur, ne luminibus mearum aedium officiatur, et ego per statutum tempus fenestras meas praefixas habuero vel obstruxero, ita demum ius meum amitto, si tu per hoc tempus aedes tuas altius sublatas habueris: alioquin si nihil novi feceris, retineo servitutem. item si tigni immissi aedes tuae servitutem debent et ego exemero tignum, ita demum amitto ius meum, si tu foramen, unde exemptum est tignum, obturaveris et per constitutum tempus ita habueris: alioquin si nihil novi feceris, integrum ius suum permanet.

Dig. 8.2.7

Pomponius 26 ad q. muc.

Quod autem aedificio meo me posse consequi, ut libertatem usucaperem, dicitur, idem me non consecuturum, si arborem eodem loco sitam habuissem, mucius ait, et recte, quia non ita in suo statu et loco maneret arbor quemadmodum paries, propter motum naturalem arboris.

Dig. 8.2.8

Gaius 7 ad ed. provinc.

Parietem, qui naturali ratione communis est, alterutri vicinorum demoliendi eum et reficiendi ius non est, quia non solus dominus est.

Dig. 8.2.9

Ulpianus 53 ad ed.

Cum eo, qui tollendo obscurat vicini aedes, quibus non serviat, nulla competit actio.

Dig. 8.2.10

Marcellus 4 Dig.

Gaurus Marcello: binas aedes habeo, alteras tibi lego, heres aedes alteras altius tollit et luminibus tuis officit: quid cum illo agere potes? et an interesse putes, suas aedes altius tollat an hereditarias? et de illo quaero, an per alienas aedes accessum heres ad eam rem quae legatur praestare debet, sicut solet quaeri, cum usus fructus loci legatus est, ad quem locum accedi nisi per alienum non potest. Marcellus respondit: qui binas aedes habebat, si alteras legavit, non dubium est, quin heres alias possit altius tollendo obscurare lumina legatarum aedium: idem dicendum est, si alteri aedes, alteri aliarum usum fructum legaverit. non autem semper simile est itineris argumentum, quia sine accessu nullum est fructus legatum, habitare autem potest et aedibus obscuratis. ceterum usu fructu loci legato etiam accessus dandus est, quia et haustu relicto iter quoque ad hauriendum praestaretur. sed ita officere luminibus et obscurare legatas aedes conceditur, ut non penitus lumen recludatur, sed tantum relinquatur, quantum sufficit habitantibus in usus diurni moderatione.

Dig. 8.2.11pr.

Ulpianus 1 de off. cons.

Qui luminibus vicinorum officere aliudve quid facere contra commodum eorum vellet, sciet se formam ac statum antiquorum aedificiorum custodire debere.

Dig. 8.2.11.1

Ulpianus 1 de off. cons.

Si inter te et vicinum tuum non convenit, ad quam altitudinem extolli aedificia, quae facere instituisti, oporteat, arbitrum accipere poteris.

Dig. 8.2.12

Iavolenus 10 ex cass.

Aedificia, quae servitutem patiantur ne quid altius tollatur, viridia supra eam altitudinem habere possunt: at si de prospectu est eaque obstatura sunt, non possunt.

Dig. 8.2.13pr.

Proculus 2 epist.

Quidam hiberus nomine, qui habet post horrea mea insulam, balnearia fecit secundum parietem communem: non licet autem tubulos habere admotos ad parietem communem, sicuti ne parietem quidem suum per parietem communem: de tubulis eo amplius hoc iuris est, quod per eos flamma torretur paries: qua de re volo cum hibero loquaris, ne rem illicitam faciat. proculus respondit: nec hiberum pro ea re dubitare puto, quod rem non permissam facit tubulos secundum communem parietem extruendo.

Dig. 8.2.13.1

Proculus 2 epist.

Parietem communem incrustare licet secundum capitonis senteniam, sicut licet mihi pretiosissimas picturas habere in pariete communi: ceterum is demolitus sit vicinus et ex stipulatu actione damni infecti agatur, non pluris quam vulgaria tectoria aestimari debent: quod observari et in incrustatione oportet.

Dig. 8.2.14

Papirius 1 de const.

Imperatores antoninus et severus ^ verus^ augusti rescripserunt in area, quae nulli servitutem debet, posse dominum vel alium voluntate eius aedificare intermisso legitimo spatio a vicina insula.

Dig. 8.2.15

Ulpianus 29 ad sab.

Inter servitutes ne luminibus officiatur et ne prospectui offendatur aliud et aliud observatur: quod in prospectu plus quis habet, ne quid ei officiatur ad gratiorem prospectum et liberum, in luminibus autem, non officiere ne lumina cuiusquam obscuriosa fiant. quodcumque igitur faciat ad luminis impedimentum, prohiberi potest, si servitus debeatur, opusque ei novum nuntiari potest, si modo sic faciat, ut lumini noceat.

Dig. 8.2.16

Paulus 2 epit. alf. Dig.

Lumen id est, ut caelum videretur, et interest inter lumen et prospectum: nam prospectus etiam ex inferioribus locis est, lumen ex inferiore loco esse non potest.

Dig. 8.2.17pr.

Ulpianus 29 ad sab.

Si arborem ponat, ut lumini officiat, aeque dicendum erit contra impositam servitutem eum facere: nam et arbor efficit, quo minus caeli videri possit. si tamen id quod ponitur lumen quidem nihil impediat, solem autem auferat, si quidem eo loci, quo gratum erat eum non esse, potest dici nihil contra servitutem facere: sin vero heliocamino vel solario, dicendum erit, quia umbram facit in loco, cui sol fuit necessarius, contra servitutem impositam fieri.

Dig. 8.2.17.1

Ulpianus 29 ad sab.

Per contrarium si deponat aedificium vel arboris ramos, quo facto locus opacus quondam coepit solis esse plenus, non facit contra servitutem: hanc enim debuit, ne luminibus officiat, nunc non luminibus officit, sed plus aequo lumen facit.

Dig. 8.2.17.2

Ulpianus 29 ad sab.

Interdum dici potest eum quoque, qui tollit aedificium vel deprimit, luminibus officiere: si forte kata antanaklasin vel pressura quadam lumen in eas aedes devolvatur.

Dig. 8.2.17.3

Ulpianus 29 ad sab.

Haec lex traditionis " stillicidia uti nunc sunt, ut ita sint" hoc significat impositam vicinis necessitatem stillicidiorum excipiendorum, non illud, ut etiam emptor stillicidia suscipiat aedificiorum vicinorum: hoc igitur pollicetur venditor sibi quidem stillicidiorum servitutem deberi, se autem nulli debere.

Dig. 8.2.17.4

Ulpianus 29 ad sab.

Quae de stillicidio scripta sunt, etiam in ceteris servitutibus accipienda sunt, si in contrarium nihil nominatim actum est.

Dig. 8.2.18

Pomponius 10 ad sab.

Si fistulae, per quas aquam ducas, aedibus meis applicatae damnum mihi dent, in factum actio mihi competit: sed et damni infecti stipulari a te potero.

Dig. 8.2.19pr.

Paulus 6 ad sab.

Fistulam iunctam parieti communi, quae aut ex castello aut ex caelo aquam capit, non iure haberi proculus ait: sed non posse prohiberi vicinum, quo minus balineum habeat secundum parietem communem, quamvis umorem capiat paries: non magis quam si vel in triclinio suo vel in cubiculo aquam effunderet. sed neratius ait, si talis sit usus tepidarii, ut adsiduum umorem habeat et id noceat vicino, posse prohiberi eum.

Dig. 8.2.19.1

Paulus 6 ad sab.

Iuxta communem parietem cameram ex figlino opere factam, si ita retineatur, ut etiam sublato pariete maneat, si modo non impediat refectionem communis parietis, iure haberi licet.

Dig. 8.2.19.2

Paulus 6 ad sab.

Scalas posse me ad parietem communem habere sabinus recte scribit, quia removeri hae possunt.

Dig. 8.2.20pr.

Paulus 15 ad sab.

Servitutes, quae in superficie consistunt, possessione retinentur. nam si forte ex aedibus meis in aedes tuas tignum immissum habuero, hoc, ut immissum habeam, per causam tigni possideo habendi consuetudinem. idem eveniet et si menianum in tuum immissum habuero aut stillicidium in tuum proiecero, quia in tuo aliquid utor et si quasi facto quodam possideo.

Dig. 8.2.20.1

Paulus 15 ad sab.

Si domo mea altior area tua esset tuque mihi per aream tuam in domum meam ire agere cessisti nec ex plano aditus ad domum meam per aream tuam esset, vel gradus vel clivos propius ianuam meam iure facere possum, dum ne quid ultra quam quod necesse esset itineris causa demoliar.

Dig. 8.2.20.2

Paulus 15 ad sab.

Si sublatum sit aedificium, ex quo stillicidium cadit, ut eadem specie et qualitate reponatur, utilitas exigit, ut idem intellegatur: nam alioquin si quid strictius interpretetur, aliud est quod sequenti loco ponitur: et ideo sublato aedificio usus fructus interit, quamvis area pars est aedificii.

Dig. 8.2.20.3

Paulus 15 ad sab.

Si servitus stillicidii imposita sit, non licet domino servientis areae ibi aedificare, ubi cassitare coepisset stillicidium.

Dig. 8.2.20.4

Paulus 15 ad sab.

Si antea ex tegula cassitaverit stillicidium, postea ex tabulato vel ex alia materia cassitare non potest.

Dig. 8.2.20.5

Paulus 15 ad sab.

Stillicidium quoquo modo adquisitum sit, altius tolli potest: levior enim fit eo facto servitus, cum quod ex alto, cadet lenius et interdum direptum nec perveniat ad locum servientem: inferius demitti non potest, quia fit gravior servitus, id est pro stillicidio flumen. eadem causa retro duci potest stillicidium, quia in nostro magis incipiet cadere, produci non potest, ne alio loco cadat stillicidium, quam in quo posita servitus est: lenius facere poterimus, acrius non. et omnino sciendum est meliorem vicini condicionem fieri posse, deteriorem non posse, nisi aliquid nominatim servitute imponenda immutatum fuerit.

Dig. 8.2.20.6

Paulus 15 ad sab.

Qui in area, in qua stillicidium cadit, aedificat, usque ad eum locum perducere aedificium potest, unde stillicidium cadit: sed et si in aedificio cadit stillicidium, supra aedificare ei conceditur, dum tamen stillicidium recte recipiatur.

Dig. 8.2.21

Pomponius 33 ad sab.

Si domus tua aedificiis meis utramque servitutem deberet, ne altius tolleretur et ut stillicidium aedificiorum meorum recipere deberet, et tibi concessero ius esse invito me altius tollere aedificia tua, quod ad stillicidium meum attinet, sic statui debebit, ut, si altius sublatis aedificiis tuis stillicidia mea cadere in ea non possint, ea ratione altius tibi aedificare non liceat: si non impediantur stillicidia mea, liceat tibi altius tollere.

Dig. 8.2.22

Iulianus 2 ex minic.

Qui aedificium habet, potest servitutem vicino imponere, ut non solum de his luminibus, quae in praesentia erunt, sed etiam de his quae postea fuerint, caveat.

Dig. 8.2.23pr.

Pomponius 33 ad sab.

Si servitus imposita fuerit " lumina quae nunc sunt, ut ita sint", de futuris luminibus nihil caveri videtur: quod si ita sit cautum " ne luminibus officiatur", ambigua est scriptura, utrum ne his luminibus officiatur quae nunc sint, an etiam his quae postea quoque fuerint: et humanius est verbo generali omne lumen significari, sive quod in praesenti sive quod post tempus conventionis contigerit.

Dig. 8.2.23.1

Pomponius 33 ad sab.

Futuro quoque aedificio, quod nondum est, vel imponi vel adquiri servitus potest.

Dig. 8.2.24

Paulus 15 ad sab.

Cuius aedificium iure superius est, ei ius est in infinito supra suum aedificium imponere, dum inferiora aedificia non graviore servitute oneret quam pati debent.

Dig. 8.2.25pr.

Pomponius 33 ad sab.

Hoc, quod dictum est de immissis, locum habet ex aedificio alio in aliud: aliter enim supra alienum aedificium superius habere nemo potest.

Dig. 8.2.25.1

Pomponius 33 ad sab.

Si ex tribus aedibus in loco inpari positis aedes mediae superioribus serviant aedibus, inferiores autem nulli serviant, et paries communis, qui sit inter aedes inferiores et medias, altius a domino inferiorum aedium sublatus sit, iure eum altius habiturum sabinus ait.

Dig. 8.2.26

Paulus 15 ad sab.

In re communi nemo dominorum iure servitutis neque facere quicquam invito altero potest neque prohibere, quo minus alter faciat (nulli enim res sua servit): itaque propter immensas contentiones plerumque res ad divisionem pervenit. sed per communi dividundo actionem consequitur socius, quo minus opus fiat aut ut id opus quod fecit tollat, si modo toti societati prodest opus tolli.

Dig. 8.2.27pr.

Pomponius 33 ad sab.

Sed si inter te et me communes sunt titianae aedes et ex his aliquid non iure in alias aedes meas proprias immissum sit, nempe tecum mihi agere licet aut rem perdere. idem fiet, si ex tuis propriis aedibus in communes meas et tuas aedes quid similiter esset proiectum: mihi enim soli tecum est actio.

Dig. 8.2.27.1

Pomponius 33 ad sab.

Si in area communi aedificare velis, socius prohibendi ius habet, quamvis tu aedificandi ius habeas a vicino concessum, quia invito socio in iure communi non habeas ius aedificandi.

Dig. 8.2.28

Paulus 15 ad sab.

Foramen in imo pariete conclavis vel triclinii, quod esset proluendi pavimenti causa, id neque flumen esse neque tempore adquiri placuit. hoc ita verum est, si in eum locum nihil ex caelo aquae veniat (neque enim perpetuam causam habet quod manu fit): at quod ex caelo cadit, etsi non adsidue fit, ex naturali tamen causa fit et ideo perpetuo fieri existimatur. omnes autem servitutes praediorum perpetuas causas habere debent, et ideo neque ex lacu neque ex stagno concedi aquae ductus potest. stillicidii quoque immittendi naturalis et perpetua causa esse debet.

Dig. 8.2.29

Pomponius 32 ad q. muc.

Si quid igitur ex eo foramine, ex quo servitus non consistit, damnum vicinus sensisset, dicendum est damni infecti stipulationem locum habere.

Dig. 8.2.30pr.

Paulus 15 ad sab.

Si quis aedes, quae suis aedibus servirent, cum emisset traditas sibi accepit, confusa sublataque servitus est, et si rursus vendere vult, nominatim imponenda servitus est: alioquin liberae veniunt.

Dig. 8.2.30.1

Paulus 15 ad sab.

Si partem praedii nanctus sim, quod mihi aut cui ego serviam, non confundi servitutem placet, quia pro parte servitus retinetur. itaque si praedia mea praediis tuis serviant et tuorum partem mihi et ego meorum partem tibi tradidero, manebit servitus. item usus fructus in alterutris praediis adquisitus non interrumpit servitutem.

Dig. 8.2.31

Paulus 48 ad ed.

Si testamento damnatus heres, ne officeret vicini luminibus servitutemque praestaret, deposuit aedificium, concedenda erit legatario utilis actio, qua prohibeatur heres, si postea extollere supra priorem modum aedificium conabitur.

Dig. 8.2.32pr.

Iulianus 7 Dig.

Si aedes meae serviant aedibus lucii titii et aedibus publii maevii, ne altius aedificare mihi liceat, et a titio precario petierim, ut altius tollerem, atque ita per statutum tempus aedificatum habuero, libertatem adversus publium maevium usucapiam: non enim una servitus titio et maevio debebatur, sed duae. argumentum rei praebet, quod, si alter ex his servitutem mihi remisisset, ab eo solo liberarer, alteri nihilo minus servitutem deberem.

Dig. 8.2.32.1

Iulianus 7 Dig.

Libertas servitutis usucapitur, si aedes possideantur: quare si is, qui altius aedificatum habebat, ante statutum tempus aedes possidere desiit, interpellata usucapio est. is autem, qui postea easdem aedes possidere coeperit, integro statuto tempore libertatem usucapiet. natura enim servitutium ea est, ut possideri non possint, sed intellegatur possessionem earum habere, qui aedes possidet.

Dig. 8.2.33

Paulus 5 epit. alf. Dig.

Eum debere columnam restituere, quae onus vicinarum aedium ferebat, cuius essent aedes quae servirent, non eum, qui imponere vellet. nam cum in lege aedium ita scriptum esset: " paries oneri ferundo uti nunc est, ita sit", satis aperte significari in perpetuum parietem esse debere: non enim hoc his verbis dici, ut in perpetuum idem paries aeternus esset, quod ne fieri quidem posset, sed uti eiusdem modi paries in perpetuum esset qui onus sustineret: quemadmodum si quis alicui cavisset, ut servitutem praeberet, qui onus suum sustineret, si ea res quae servit et tuum onus ferret, perisset, alia in locum eius dari debeat.

Dig. 8.2.34

Iulianus 2 ex minic.

Et qui duas areas habet, alteram tradendo servam alteri efficere potest.

Dig. 8.2.35

Marcianus 3 reg.

Si binarum aedium dominus dixisset eas quas venderet servas fore, sed in traditione non fecisset mentionem servitutis, vel ex vendito agere potest vel incertum condicere, ut servitus imponatur.

Dig. 8.2.36

Papinianus 7 quaest.

Binas quis aedes habebat una contignatione tectas: utrasque diversis legavit. dixi, quia magis placeat tignum posse duorum esse ita, ut certae partes cuiusque sint contignationis, ex regione cuiusque domini fore tigna nec ullam invicem habituros actionem ius non esse immissum habere: nec interest, pure utrisque an sub condicione alteri aedes legatae sint.

Dig. 8.2.37

Iulianus 7 Dig.

Idemque esse et si duobus aedes cesserit.

Dig. 8.2.38

Paulus 2 quaest.

Si aedes meae a tuis aedibus tantum distent, ut prospici non possint, aut medius mons earum conspectum auferat, servitus imponi non potest:

Dig. 8.2.39

Paulus 1 manual.

Nemo enim propriis aedificiis servitutem imponere potest, nisi et is qui cedit et is cui ceditur in conspectu habeant ea aedificia, ita ut officere alterum alteri possit.

Dig. 8.2.40

Paulus 3 resp.

Eos, qui ius luminis immittendi non habuerunt, aperto pariete communi nullo iure fenestras immisisse respondi.

Dig. 8.2.41pr.

Scaevola 1 resp.

Olympico habitationem et horreum, quod in ea domo erat, quoad viveret, legavit: iuxta eandem domum hortus et cenaculum, quod olympico legatum non est, fuerunt: ad hortum autem et cenaculum semper per domum, cuius habitatio relicta erat, aditus fuit: quaesitum est, an olympicus aditum praestare deberet. respondi servitutem quidem non esse, sed heredem transire per domum ad ea quae commemorata sunt posse, dum non noceat legatario.

Dig. 8.2.41.1

Scaevola 1 resp.

Lucius titius aperto pariete domus suae, quatenus stillicidii rigor et tignorum protectus competebat, ianuam in publico aperuit: quaero, cum neque luminibus publii maevii vicini neque itineri vicini officeret neque stillicidium ne vicini domo cadat, an aliquam actionem publius maevius vicinus ad prohibendum haberet. respondi secundum ea quae proponerentur nullam habere.

Dig. 8.3.0. De servitutibus praediorum rusticorum.

Dig. 8.3.1pr.

Ulpianus 2 inst.

Servitutes rusticorum praediorum sunt hae: iter actus via aquae ductus. iter est ius eundi ambulandi homini, non etiam iumentum agendi. actus est ius agendi vel iumentum vel vehiculum: itaque qui iter habet, actum non habet, qui actum habet, et iter habet etiam sine iumento. via est ius eundi et agendi et ambulandi: nam et iter et actum in se via continet. aquae ductus est ius aquam dicendi per fundum alienum.

Dig. 8.3.1.1

Ulpianus 2 inst.

In rusticis computanda sunt aquae haustus, pecoris ad aquam adpulsus, ius pascendi, calcis coquendae, harenae fodiendae.

Dig. 8.3.1.2

Ulpianus 2 inst.

Traditio plane et patientia servitutium inducet officium praetoris.

Dig. 8.3.2pr.

Nerva 4 reg.

Rusticorum praediorum servitutes sunt licere altius tollere et officere praetorio vicini, vel cloacam habere licere per vicini domum vel praetorium, vel protectum habere licere.

Dig. 8.3.2.1

Nerva 4 reg.

Aquae ductus et haustus aquae per eundem locum ut ducatur, etiam pluribus concedi potest: potest etiam, ut diversis diebus vel horis ducatur:

Dig. 8.3.2.2

Nerva 4 reg.

Si aquae ductus vel haustus aquae sufficiens est, potest et pluribus per eundem locum concedi, ut et isdem diebus vel horis ducatur.

Dig. 8.3.3pr.

Ulpianus 17 ad ed.

Item sic possunt servitutes imponi, et ut boves, per quos fundus colitur, in vicino agro pascantur: quam servitutem imponi posse neratius libro secundo membranarum scribit.

Dig. 8.3.3.1

Ulpianus 17 ad ed.

Idem neratius etiam ut fructus in vicini villa cogantur coactique habeantur et pedamenta ad vineam ex vicini praedio sumantur, constitui posse scribit.

Dig. 8.3.3.2

Ulpianus 17 ad ed.

Eodem libro ait vicino, cuius lapidicinae fundo tuo immineant, posse te cedere ius ei esse terram rudus saxa iacere posita habere, et ut in tuum lapides provolvantur ibique positi habeantur indeque exportentur.

Dig. 8.3.3.3

Ulpianus 17 ad ed.

Qui habet haustum, iter quoque habere videtur ad hauriendum et, ut ait neratius libro tertio membranarum, sive ei ius hauriendi et adeundi cessum sit, utrumque habebit, sive tantum hauriendi, inesse et aditum sive tantum adeundi ad fontem, inesse et haustum. haec de haustu ex fonte privato. ad flumen autem publicum idem neratius eodem libro scribit iter debere cedi, haustum non oportere et si quis tantum haustum cesserit, nihil eum agere.

Dig. 8.3.4

Papinianus 2 resp.

Pecoris pascendi servitutes, item ad aquam appellendi, si praedii fructus maxime in pecore consistat, praedii magis quam personae videtur: si tamen testator personam demonstravit, cui servitutem praestari voluit, emptori vel heredi non eadem praestabitur servitus.

Dig. 8.3.5pr.

Ulpianus 17 ad ed.

Ergo secundum eum et vindicari poterit.

Dig. 8.3.5.1

Ulpianus 17 ad ed.

Neratius libris ex plautio ait nec haustum nec appulsum pecoris nec cretae eximendae calcisque coquendae ius posse in alieno esse, nisi fundum vicinum habeat: et hoc proculum et atilicinum existimasse ait. sed ipse dicit, ut maxime calcis coquendae et cretae eximendae servitus constitui possit, non ultra posse, quam quatenus ad eum ipsum fundum opus sit:

Dig. 8.3.6pr.

Paulus 15 ad plaut.

Veluti si figlinas haberet, in quibus ea vasa fierent, quibus fructus eius fundi exportarentur (sicut in quibusdam fit, ut amphoris vinum evehatur aut ut dolina fiant), vel tegulae vel ad villam aedificandam. sed si, ut vasa venirent, figlinae exercerentur, usus fructus erit.

Dig. 8.3.6.1

Paulus 15 ad plaut.

Item longe recedit ab usu fructu ius calcis coquendae et lapidis eximendi et harenae fodiendae aedificandi eius gratia quod in fundo est, item silvae caeduae, ut pedamenta in vineas non desint. quid ergo si praediorum meliorem causam haec faciant? non est dubitandum, quin servitutis sit: et hoc et maecianus probat in tantum, ut et talem servitutem constitui posse putet, ut tugurium mihi habere liceret in tuo, scilicet si habeam pascui servitutem aut pecoris appellendi, ut si hiemps ingruerit, habeam quo me recipiam.

Dig. 8.3.7pr.

Paulus 21 ad ed.

Qui sella aut lectica vehitur, ire, non agere dicitur: iumentum vero ducere non potest, qui iter tantum habet. qui actum habet, et plostrum ducere et iumenta agere potest. sed trahendi lapidem aut tignum neutri eorum ius est: quidam nec hastam rectam ei ferre licere, quia neque eundi neque agendi gratia id faceret et possent fructus eo modo laedi. qui viam habent, eundi agendique ius habent: plerique et trahendi quoque et rectam hastam referendi, si modo fructus non laedat.

Dig. 8.3.7.1

Paulus 21 ad ed.

In rusticis autem praediis impedit servitutem medium praedium, quod non servit.

Dig. 8.3.8

Gaius 7 ad ed. provinc.

Viae latitudo ex lege duodecim tabularum in porrectum octo pedes habet, in anfractum, id est ubi flexum est, sedecim.

Dig. 8.3.9

Paulus 1 sent.

Servitus aquae ducendae vel hauriendae nisi ex capite vel ex fonte constitui non potest: hodie tamen ex quocumque loco constitui solet.

Dig. 8.3.10

Paulus 49 ad ed.

Labeo ait talem servitutem constitui posse, ut aquam quaerere et inventam ducere liceat: nam si liceat nondum aedificato aedificio servitutem constituere, quare non aeque liceat nondum inventa aqua eandem constituere servitutem? et si, ut quaerere liceat, cedere possumus, etiam ut inventa ducatur, cedi potest.

Dig. 8.3.11

Celsus 27 Dig.

Per fundum, qui plurium est, ius mihi esse eundi agendi potest separatim cedi. ergo suptili ratione non aliter meum fiet ius, quam si omnes cedant et novissima demum cessione superiores omnes confirmabuntur: benignius tamen dicetur et antequam novissimus cesserit, eos, qui antea cesserunt, vetare uti cesso iure non posse.

Dig. 8.3.12

Modestinus 9 diff.

Inter actum et iter nonnulla est differentia: iter est enim, qua quis pedes vel eques commeare potest, actus vero, ubi et armenta traicere et vehiculum ducere liceat.

Dig. 8.3.13pr.

Iavolenus 10 ex cass.

Certo generi agrorum adquiri servitus potest, velut vineis, quod ea ad solum magis quam ad superficiem pertinet. ideo sublatis vineis servitus manebit: sed si in contrahenda servitute aliud actum erit, doli mali exceptio erit necessaria.

Dig. 8.3.13.1

Iavolenus 10 ex cass.

Si totus ager itineri aut actui servit, dominus in eo agro nihil facere potest, quo servitus impediatur, quae ita diffusa est, ut omnes glaebae serviant, aut si iter actusve sine ulla determinatione legatus est: modo determinabitur et qua primum iter determinatum est, ea servitus constitit, ceterae partes agri liberae sunt: igitur arbiter dandus est, qui utroque casu viam determinare debet.

Dig. 8.3.13.2

Iavolenus 10 ex cass.

Latitudo actus itinerisque ea est, quae demonstrata est: quod si nihil dictum est, hoc ab arbitro statuendum est. in via aliud iuris est: nam si dicta latitudo non est, legitima debetur.

Dig. 8.3.13.3

Iavolenus 10 ex cass.

Si locus non adiecta latitudine nominatus est, per eum qualibet iri poterit: sin autem praetermissus est aeque latitudine non adiecta, per totum fundum una poterit eligi via dumtaxat eius latitudinis, quae lege comprehensa est: pro quo ipso, si dubitabitur, arbitri officium invocandum est.

Dig. 8.3.14

Pomponius 32 ad q. muc.

Per quem locum viam alii cessero, per eundem alii aquae ductum cedere non potero: sed et si aquae ductum alii concessero, alii iter per eundem locum vendere vel alias cedere non potero.

Dig. 8.3.15

Pomponius 31 ad q. muc.

Quintus mucius scribit, cum iter aquae vel cottidianae vel aestivae vel quae intervalla longiora habeat per alienum fundum erit, licere fistulam suam vel fictilem vel cuiuslibet generis in rivo ponere, quae aquam latius exprimeret, et quod vellet in rivo facere, licere, dum ne domino praedii aquagium deterius faceret.

Dig. 8.3.16

Callistratus 3 de cogn.

Divus pius aucupibus ita rescripsit: ouk estin eulogon akontwn twn despotwn humas en allotriois xwriois iceuein.

Dig. 8.3.17

Papirius 1 de const.

Imperatores antoninus et verus augusti rescripserunt aquam de flumine publico pro modo possessionum ad irrigandos agros dividi oportere, nisi proprio iure quis plus sibi datum ostenderit. item rescripserunt aquam ita demum permitti duci, si sine iniuria alterius id fiat.

Dig. 8.3.18

Ulpianus 14 ad sab.

Una est via et si per plures fundos imponatur, cum una servitus sit. denique quaeritur, an, si per unum fundum iero, per alium non per tantum tempus, quanto servitus amittitur, an retineam servitutem? et magis est, ut aut tota amittatur aut tota retineatur: ideoque si nullo usus sum, tota amittitur, si vel uno, tota servatur.

Dig. 8.3.19

Paulus 6 ad sab.

Si unus ex sociis stipuletur iter ad communem fundum, inutilis est stipulatio, quia nec dari ei potest: sed si omnes stipulentur sive communis servus, singuli ex sociis sibi dari oportere petere possunt, quia ita dari eis potest: ne, si stipulator viae plures heredes reliquerit, inutilis stipulatio fiat.

Dig. 8.3.20pr.

Pomponius 33 ad sab.

Si mihi eodem tempore concesseris et ire agere per tuum locum et uti frui eo ius esse, deinde ego tibi concessero ius mihi uti frui non esse: non aliter eo loco uteris frueris, quam ut ire agere mihi recte liceat. item si et ducere per tuum fundum aquam iure potuero et in eo tibi aedificare invito me ius non fuerit: si tibi concessero ius esse aedificare, nihilo minus hanc servitutem mihi praestare debebis, ne aliter aedifices, quam ut ductus aquae meus maneat, totiusque eius rei condicio talis esse debet, qualis esset, si una dumtaxat initio concessio facta esset.

Dig. 8.3.20.1

Pomponius 33 ad sab.

Servitus naturaliter, non manu facto laedere potest fundum servientem: quemadmodum si imbri crescat aqua in rivo aut ex agris in eum confluat aut aquae fons secundum rivum vel in eo ipso inventus postea fuerit.

Dig. 8.3.20.2

Pomponius 33 ad sab.

Si fundo seiano confinis fons fuerit, ex quo fonte per fundum seianum aquam iure ducebam, meo facto fundo seiano manet servitus.

Dig. 8.3.20.3

Pomponius 33 ad sab.

Hauriendi ius non hominis, sed praedii est.

Dig. 8.3.21

Paulus 15 ad sab.

Si mihi concesseris iter aquae per fundum tuum non destinata parte, per quam ducerem, totus fundus tuus serviet:

Dig. 8.3.22

Pomponius 33 ad sab.

Sed quae loca eius fundi tunc, cum ea fieret cessio, aedificiis arboribus vineis vacua fuerint, ea sola eo nomine servient.

Dig. 8.3.23pr.

Paulus 15 ad sab.

Via constitui vel latior octo pedibus vel angustior potest, ut tamen eam latitudinem habeat, qua vehiculum ire potest: alioquin iter erit, non via.

Dig. 8.3.23.1

Paulus 15 ad sab.

Si lacus perpetuus in fundo tuo est, navigandi quoque servitus, ut perveniatur ad fundum vicinum, imponi potest.

Dig. 8.3.23.2

Paulus 15 ad sab.

Si fundus serviens vel is cui servitus debetur publicaretur, utroque casu durant servitutes, quia cum sua condicione quisque fundus publicaretur.

Dig. 8.3.23.3

Paulus 15 ad sab.

Quaecumque servitus fundo debetur, omnibus eius partibus debetur: et ideo quamvis particulatim venierit, omnes partes servitus sequitur et ita, ut singuli recte agant ius sibi esse eundi. si tamen fundus, cui servitus debetur, certis regionibus inter plures dominos divisus est, quamvis omnibus partibus servitus debeatur, tamen opus est, ut hi, qui non proximas partes servienti fundo habebunt, transitum per reliquas partes fundi divisi iure habeant aut, si proximi patiantur, transeant.

Dig. 8.3.24

Pomponius 33 ad sab.

Ex meo aquae ductu labeo scribit cuilibet posse me vicino commodare: proculus contra, ut ne in meam partem fundi aliam, quam ad quam servitus adquisita sit, uti ea possit. proculi sententia verior est.

Dig. 8.3.25

Pomponius 34 ad sab.

Si partem fundi mei certam tibi vendidero, aquae ductus ius, etiamsi alterius partis causa plerumque ducatur, te quoque sequetur: neque ibi aut bonitatis agri aut usus eius aquae ratio habenda est ita, ut eam solam partem fundi, quae pretiosissima sit aut maxime usum eius aquae desideret, ius eius ducendae sequatur, sed pro modo agri detenti aut alienati fiat eius aquae divisio.

Dig. 8.3.26

Paulus 47 ad ed.

Si via iter actus aquae ductus legetur simpliciter per fundum, facultas est heredi, per quam partem fundi velit, constituere servitutem, si modo nulla captio legatario in servitute fit.

Dig. 8.3.27

Iulianus 7 Dig.

Si communi fundo meo et tuo serviat fundus sempronianus et eundem in commune redemerimus, servitus extinguitur, quia par utriusque domini ius in utroque fundo esse incipit. at si proprio meo fundo et proprio tuo idem serviat, manebit servitus, quia proprio fundo per communem servitus deberi potest.

Dig. 8.3.28

Iulianus 34 Dig.

Itinere ad praedium commune duorum legato nisi uterque de loco itineris consentiat, servitus neque adquiritur neque deperit.

Dig. 8.3.29

Paulus 2 epit. alf. Dig.

Qui duo praedia confinia habuerat, superiorem fundum vendiderat: in lege ita dixerat, ut aquam sulco aperto emptori educere in fundum inferiorem recte liceat: si emptor ex alio fundo aquam acciperet et eam in inferiorem ducere vellet, quaesitum est, an possit id suo iure facere nec ne. respondi nihil amplius, quam quod ipsius fundi siccandi causa derivaret, vicinum inferiorem recipere debere.

Dig. 8.3.30

Paulus 4 epit. alf. Dig.

Qui duo praedia habebat, in unius venditione aquam, quae in fundo nascebatur, et circa eam aquam late decem pedes exceperat: quaesitum est, utrum dominium loci ad eum pertineat an ut per eum locum accedere possit. respondit, si ita recepisset: " circa eam aquam late pedes decem", iter dumtaxat videri venditoris esse.

Dig. 8.3.31

Iulianus 2 ex minic.

Tria praedia continua trium dominorum adiecta erant: imi praedii dominus ex summo fundo imo fundo servitutem aquae quaesierat et per medium fundum domino concedente in suum agrum ducebat: postea idem summum fundum emit: deinde imum fundum, in quem aquam induxerat, vendidit. quaesitum est, num imus fundus id ius aquae amisisset, quia, cum utraque praedia eiusdem domini facta essent, ipsa sibi servire non potuissent. negavit amisisse servitutem, quia praedium, per quod aqua ducebatur, alterius fuisset et quemadmodum servitus summo fundo, ut in imum fundum aqua veniret, imponi aliter non potuisset, quam ut per medium quoque fundum duceretur, sic eadem servitus eiusdem fundi amitti aliter non posset, nisi eodem tempore etiam per medium fundum aqua duci desisset aut omnium tria simul praedia unius domini facta essent.

Dig. 8.3.32

Africanus 6 quaest.

Fundus mihi tecum communis est: partem tuam mihi tradidisti et ad eundem viam per vicinum tuum proprium. recte eo modo servitutem constitutam ait neque quod dici soleat per partes nec adquiri nec imponi servitutes posse isto casu locum habere: hic enim non per partem servitutem adquiri, utpote cum in id tempus adquiratur, quo proprius meus fundus futurus sit.

Dig. 8.3.33pr.

Africanus 9 quaest.

Cum essent mihi et tibi fundi duo communes titianus et seianus et in divisione convenisset, ut mihi titianus, tibi seianus cederet, invicem partes eorum tradidimus et in tradendo dictum est, ut alteri per alterum aquam ducere liceret: recte esse servitutem impositam ait, maxime si pacto stipulatio subdita sit.

Dig. 8.3.33.1

Africanus 9 quaest.

Per plurium praedia aquam ducis quoquo modo imposita servitute: nisi pactum vel stipulatio etiam de hoc subsecuta est, neque eorum cuivis neque alii vicino poteris haustum ex rivo cedere: pacto enim vel stipulatione intervenientibus et hoc concedi solet, quamvis nullum praedium ipsum sibi servire neque servitutis fructus constitui potest.

Dig. 8.3.34pr.

Papinianus 7 quaest.

Unus ex sociis fundi communis permittendo ius esse ire agere nihil agit: et ideo si duo praedia, quae mutuo serviebant, inter eosdem fuerint communicata, quoniam servitutes pro parte retineri placet, ab altero servitus alteri remitti non potest: quamvis enim unusquisque sociorum solus sit, cui servitus debetur, tamen quoniam non personae, sed praedia deberent, neque adquiri libertas neque remitti servitus per partem poterit.

Dig. 8.3.34.1

Papinianus 7 quaest.

Si fons exaruerit, ex quo ductum aquae habeo isque post constitutum tempus ad suas venas redierit, an aquae ductus amissus erit, quaeritur:

Dig. 8.3.35

Paulus 15 ad plaut.

Et atilicinus ait caesarem statilio tauro rescripsisse in haec verba: " hi, qui ex fundo sutrino aquam ducere soliti sunt, adierunt me proposueruntque aquam, qua per aliquot annos usi sunt ex fonte, qui est in fundo sutrino, ducere non potuisse, quod fons exaruisset, et postea ex eo fonte aquam fluere coepisse: petieruntque a me, ut quod ius non neglegentia aut culpa sua amiserant, sed quia ducere non poterant, his restitueretur. quorum mihi postulatio cum non iniqua visa sit, succurrendum his putavi. itaque quod ius habuerunt tunc, cum primum ea aqua pervenire ad eos non potuit, id eis restitui placet. "

Dig. 8.3.36

Paulus 2 resp.

Cum fundo, quem ex duobus retinuit venditor, aquae ducendae servitus imposita sit, empto praedio quaesita servitus distractum denuo praedium sequitur: nec ad rem pertinet, quod stipulatio, qua poenam promitti placuit, ad personam emptoris, si ei forte frui non licuisset, relata est.

Dig. 8.3.37

Paulus 3 resp.

Loukios titios gaiw seiw tw adelfw pleista xairein. hudatos tou hreontos eis tyn krynyn tyn kataskeuasveisan en isvmw hupo tou patros mou didwmi kai xarizomai soi daktulon eis tyn oikian sou tyn en tw isvmw, y hopou d' an bouly. quaero, an ex hac scriptura usus aquae etiam ad heredes gaii seii pertineat. paulus respondit usum aquae personalem ad heredem seii quasi usuarii transmitti non oportere.

Dig. 8.3.38

Paulus 1 manual.

Flumine interveniente via constitui potest, si aut vado transiri potest aut pontem habeat: diversum, si pontonibus traicitur. haec ita, si per unius praedia flumen currat: alioquin si tua praedia mihi vicina sint, deinde flumen, deinde titii praedia, deinde via publica, in quam iter mihi adquiri volo, dispiciamus ne nihil vetet a te mihi viam dari usque ad flumen, deinde a titio usque ad viam publicam. sed videamus, num et si tu eorum praediorum dominus sis, quae trans flumen intra viam publicam sint, idem iuris sit, quia via consummari solet vel civitate tenus vel usque ad viam publicam vel usque ad flumen, in quo pontonibus traiciatur vel usque ad proprium aliud eiusdem domini praedium: quod si est, non videtur interrrumpi servitus, quamvis inter eiusdem domini praedia flumen publicum intercedat.

Dig. 8.4.0. Communia praediorum tam urbanorum quam rusticorum.

Dig. 8.4.1pr.

Ulpianus 2 inst.

Aedificia urbana quidem praedia appellamus: ceterum etsi in villa aedificia sint, aeque servitutes urbanorum praediorum constitui possunt.

Dig. 8.4.1.1

Ulpianus 2 inst.

Ideo autem hae servitutes praediorum appellantur, quoniam sine praediis constitui non possunt: nemo enim potest servitutem adquirere vel urbani vel rustici praedii, nisi qui habet praedium ^ nec quisquam debere, nisi qui habet praedium^.

Dig. 8.4.2

Ulpianus 17 ad ed.

De aqua per rotam tollenda ex flumine vel haurienda, vel si quis servitutem castello imposuerit, quidam dubitaverunt, ne hae servitutes non essent: sed rescripto imperatoris antonini ad tullianum adicitur, licet servitus iure non valuit, si tamen hac lege comparavit seu alio quocumque legitimo modo sibi hoc ius adquisivit, tuendum esse eum, qui hoc ius possedit.

Dig. 8.4.3

Gaius 7 ad ed. provinc.

Duorum praediorum dominus si alterum ea lege tibi dederit, ut id praedium quod datur serviat ei quod ipse retinet, vel contra, iure imposita servitus intellegitur.

Dig. 8.4.4

Iavolenus 10 ex cass.

Caveri, ut ad certam altitudinem monumentum aedificetur, non potest, quia id, quod humani iuris esse desiit, servitutem non recipit: sicut ne illa quidem servitus consistere potest, ut certus numerus hominum in uno loco humetur.

Dig. 8.4.5

Iavolenus 2 epist.

Proprium solum vendendo an servitutem talem iniungere possim, ut mihi et vicino serviat? similiter si commune solum vendo, ut mihi et socio serviat, an consequi possim? respondi: servitutem recipere nisi sibi nemo potest: adiectio itaque vicini pro supervacuo habenda est, ita ut tota servitus ad eum, qui receperit, pertineat. solum autem communem vendendo ut mihi et socio serviat, efficere non possum, quia per unum socium communi solo servitus adquiri non potest.

Dig. 8.4.6pr.

Ulpianus 28 ad sab.

Si quis duas aedes habeat et alteras tradat, potest legem traditioni dicere, ut vel istae quae non traduntur servae sint his quae traduntur, vel contra ut traditae retentis aedibus serviant: parvique refert, vicinae sint ambae aedes an non. idem erit et in praediis rusticis: nam et si quis duos fundos habeat, alium alii potest servum facere tradendo. duas autem aedes simul tradendo non potest efficere alteras alteris servas, quia neque adquirere alienis aedibus servitutem neque imponere potest.

Dig. 8.4.6.1

Ulpianus 28 ad sab.

Si quis partem aedium tradet vel partem fundi, non potest servitutem imponere, quia per partes servitus imponi non potest, sed nec adquiri. plane si divisit fundum regionibus et sic partem tradidit pro diviso, potest alterutri servitutem imponere, quia non est pars fundi, sed fundus. quod et in aedibus potest dici, si dominus pariete medio aedificato unam domum in duas diviserit, ut plerique faciunt: nam et hic pro duabus domibus accipi debet.

Dig. 8.4.6.2

Ulpianus 28 ad sab.

Item si duo homines binas aedes communes habeamus, simul tradendo idem efficere possumus, ac si ego solus proprias binas aedes haberem. sed et si separatim tradiderimus, idem fiet, sic tamen, ut novissima traditio efficiat etiam praecedentem traditionem efficacem.

Dig. 8.4.6.3

Ulpianus 28 ad sab.

Si tamen alterae unius propriae sint aedes, alterae communes, neutris servitutem vel adquirere vel imponere me posse pomponius libro octavo ex sabino scripsit.

Dig. 8.4.6.3a

Ulpianus 28 ad sab.

Si in venditione quis dixerit servas fore aedes quas vendidit, necesse non habet liberas tradere: quare vel suis aedibus eas servas facere potest vel vicino concedere servitutem, scilicet ante traditionem. plane si titio servas fore dixit, si quidem titio servitutem concesserit, absolutum est: si vero alii concesserit, ex empto tenebitur. a quo non abhorret, quod Marcellus libro sexto digestorum scribit, si quis in tradendo dixerit fundum titio servire, cum ei non serviret, esset autem obligatus venditor titio ad servitutem praestandam, an agere possit ex vendito, ut emptor servitutem imponi patiatur praedio quod mercatus est: magisque putat permittendum agere. idemque ait et si possit venditor titio servitutem vendere, aeque agere permittendum. haec ita demum, si recipiendae servitutis gratia id in traditione expressum est: ceterum si quis, inquit, veritus, ne servitus titio debeatur, ideo hoc excepit, non erit ex vendito actio, si nullam servitutem promisit.

Dig. 8.4.7pr.

Paulus 5 ad sab.

In tradendis unis aedibus ab eo, qui binas habet, species servitutis exprimenda est, ne, si generaliter servire dictum erit, aut nihil valeat, quia incertum sit, quae servitus excepta sit, aut omnis servitus imponi debeat.

Dig. 8.4.7.1

Paulus 5 ad sab.

Interpositis quoque alienis aedibus imponi potest, veluti ut altius tollere vel non tollere liceat vel etiam si iter debeatur, ut ita convalescat, si mediis aedibus servitus postea imposita fuerit: sicuti per plurium praedia servitus imponi etiam diversis temporibus potest. quamquam dici potest, si tria praedia continua habeam et extremum tibi tradam, vel tuo vel meis praediis servitutem adquiri posse: si vero extremo, quod retineam, quia et medium meum sit, servitutem consistere, sed si rursus aut id, cui adquisita sit servitus, aut medium alienavero, interpellari eam, donec medio praedio servitus imponatur.

Dig. 8.4.8

Pomponius 8 ad sab.

Si cum duas haberem insulas, duobus eodem momento tradidero, videndum est, an servitus alterutris imposita valeat, quia alienis quidem aedibus nec imponi nec adquiri servitus potest. sed ante traditionem peractam suis magis adquirit vel imponit is qui tradit ideoque valebit servitus.

Dig. 8.4.9

Pomponius 10 ad sab.

Si ei, cuius praedium mihi serviebat, heres exstiti et eam hereditatem tibi vendidi, restitui in pristinum statum servitus debet, quia id agitur, ut quasi tu heres videaris exstitisse.

Dig. 8.4.10

Ulpianus 10 ad sab.

Quidquid venditor servitutis nomine sibi recipere vult, nominatim recipi oportet: nam illa generalis receptio " quibus est servitus utique est" ad extraneos pertinet, ipsi nihil prospicit venditori ad iura eius conservanda: nulla enim habuit, quia nemo ipse sibi servitutem debet: quin immo et si debita fuit servitus, deinde dominium rei servientis pervenit ad me, consequenter dicitur extingui servitutem.

Dig. 8.4.11pr.

Pomponius 33 ad sab.

Refectionis gratia accedendi ad ea loca, quae non serviant, facultas tributa est his, quibus servitus debetur, qua tamen accedere eis sit necesse, nisi in cessione servitutis nominatim praefinitum sit, qua accederetur: et ideo nec secundum rivum nec supra eum (si forte sub terra aqua ducatur) locum religiosum dominus soli facere potest, ne servitus intereat: et id verum est. sed et depressurum vel adlevaturum rivum, per quem aquam iure duci potestatem habes, nisi si ne id faceres cautum sit.

Dig. 8.4.11.1

Pomponius 33 ad sab.

Si prope tuum fundum ius est mihi aquam rivo ducere, tacita haec iura sequuntur, ut reficere mihi rivum liceat, ut adire, qua proxime possim, ad reficiendum eum ego fabrique mei, item ut spatium relinquat mihi dominus fundi, qua dextra et sinistra ad rivum adeam et quo terram limum lapidem harenam calcem iacere possim.

Dig. 8.4.12

Paulus 15 ad sab.

Cum fundus fundo servit, vendito quoque fundo servitutes sequuntur. aedificia quoque fundis et fundi aedificiis eadem condicione serviunt.

Dig. 8.4.13pr.

Ulpianus 6 opin.

Venditor fundi geroniani fundo botriano, quem retinebat, legem dederat, ne contra eum piscatio thynnaria exerceatur. quamvis mari, quod natura omnibus patet, servitus imponi privata lege non potest, quia tamen bona fides contractus legem servari venditionis exposcit, personae possidentium aut in ius eorum succedentium per stipulationis vel venditionis legem obligantur.

Dig. 8.4.13.1

Ulpianus 6 opin.

Si constat in tuo agro lapidicinas esse, invito te nec privato nec publico nomine quisquam lapidem caedere potest, cui id faciendi ius non est: nisi talis consuetudo in illis lapidicinis consistat, ut si quis voluerit ex his caedere, non aliter hoc faciat, nisi prius solitum solacium pro hoc domino praestat: ita tamen lapides caedere debet, postquam satisfaciat domino, ut neque usus necessarii lapidis intercludatur neque commoditas rei iure domino adimatur.

Dig. 8.4.14

Iulianus 41 Dig.

Iter nihil prohibet sic constitui, ut quis interdiu dumtaxat eat: quod fere circa praedia urbana etiam necessarium est.

Dig. 8.4.15

Paulus 1 epit. alf. Dig.

Qui per certum locum iter aut actum alicui cessisset, eum pluribus per eundem locum vel iter vel actum cedere posse verum est: quemadmodum si quis vicino suas aedes servas fecisset, nihilo minus aliis quot vellet multis eas aedes servas facere potest.

Dig. 8.4.16

Gaius 2 rer. cott.

Potest etiam in testamento heredem suum quis damnare, ne altius aedes suas tollat, ne luminibus aedium vicinarum officiat, vel ut patiatur eum tignum in parietem immittere, vel stillicidia adversus eum habere, vel ut patiatur vicinum per fundum suum vel heredis ire agere aquamve ex eo ducere.

Dig. 8.4.17

Papinianus 7 quaest.

Si precario vicinus in tuo maceriam duxerit, interdicto " quod precario habet" agi non poterit, nec maceria posita donatio servitutis perfecta intellegitur, nec utiliter intendetur ius sibi esse invito te aedificatum habere, cum aedificium soli condicionem secutum inutilem faciat intentionem. ceterum si in suo maceriam precario, qui servitutem tibi debuit, duxerit, neque libertas usucapietur et interdicto " quod precario habet" utiliter cum eo agetur. quod si donationis causa permiseris, et interdicto agere non poteris et servitus donatione tollitur.

Dig. 8.4.18

Paulus 1 manual.

Receptum est, ut plures domini et non pariter cedentes servitutes imponant vel adquirant, ut tamen ex novissimo actu etiam superiores confirmentur perindeque sit, atque si eodem tempore omnes cessissent. et ideo si is qui primus cessit vel defunctus sit vel alio genere vel alio modo partem suam alienaverit, post deinde socius cesserit, nihil agetur: cum enim postremus cedat, non retro adquiri servitus videtur, sed perinde habetur, atque si, cum postremus cedat, omnes cessissent: igitur rursus hic actus pendebit, donec novus socius cedat. idem iuris est et si uni ex dominis cedatur, deinde in persona socii aliquid horum acciderit. ergo et ex diverso si ei, qui non cessit, aliquid tale eorum contigerit, ex integro omnes cedere debebunt: tantum enim tempus eis remissum est, quo dare facere possunt, vel diversis temporibus possint, et ideo non potest uni vel unus cedere. idemque dicendum est et si alter cedat, alter leget servitutes. nam si omnes socii legent servitutes et pariter eorum adeatur hereditas, potest dici utile esse legatum: si diversis temporibus, inutiliter dies legati cedit: nec enim sicut viventium, ita et defunctorum actus suspendi receptum est.

Dig. 8.5.0. Si servitus vindicetur vel ad alium pertinere negetur.

Dig. 8.5.1

Ulpianus 14 ad ed.

Actiones de servitutibus rusticis sive urbanis eorum sunt, quorum praedia sunt: sepulchra autem nostri dominii non sunt: adquin viam ad sepulchrum possumus vindicare.

Dig. 8.5.2pr.

Ulpianus 17 ad ed.

De servitutibus in rem actiones competunt nobis ad exemplum earum quae ad usum fructum pertinent, tam confessoria quam negatoria, confessoria ei qui servitutes sibi competere contendit, negatoria domino qui negat.

Dig. 8.5.2.1

Ulpianus 17 ad ed.

Haec autem in rem actio confessoria nulli alii quam domino fundi competit: servitutem enim nemo vindicare potest quam is qui dominium in fundo vicino habet, cui servitutem dicit deberi.

Dig. 8.5.2.2

Ulpianus 17 ad ed.

Recte neratius scribit, si medii loci usus fructus legetur, iter quoque sequi (per ea scilicet loca fundi, per quae qui usum fructum cessit constitueret) quatenus est ad fruendum necessarium: namque sciendum est iter, quod fruendi gratia fructuario praestatur, non esse servitutem, neque enim potest soli fructuario servitus deberi: sed si fundo debeatur, et ipse fructuarius ea utetur.

Dig. 8.5.2.3

Ulpianus 17 ad ed.

Pomponius dicit fructuarium interdicto de itinere uti posse, si hoc anno usus est: alibi enim de iure, id est in confessoria actione, alibi de facto, ut in hoc interdicto, quaeritur: quod et iulianus libro quadragensimo octavo digestorum scribit. pro sententia iuliani facit, quod labeo scribit, etiam si testator usus sit qui legavit usum fructum, debere utile interdictum fructuario dari, quemadmodum heredi vel emptori competunt haec interdicta.

Dig. 8.5.3

Ulpianus 70 ad ed.

Sed et si partem fundi quis emerit, idem dicendum est.

Dig. 8.5.4pr.

Ulpianus 17 ad ed.

Loci corpus non est dominii ipsius, cui servitus debetur, sed ius eundi habet.

Dig. 8.5.4.1

Ulpianus 17 ad ed.

Qui iter sine actu vel actum sine itinere habet, actione de servitute utetur.

Dig. 8.5.4.2

Ulpianus 17 ad ed.

In confessoria actione, quae de servitute movetur, fructus etiam veniunt. sed videamus, qui esse fructus servitutis possunt: et est verius id demum fructuum nomine computandum, si quid sit quod intersit agentis servitute non prohiberi. sed et in negatoria actione, ut labeo ait, fructus computantur, quanti interest petitoris non uti fundi sui itinere adversarium: et hanc sententiam et pomponius probat.

Dig. 8.5.4.3

Ulpianus 17 ad ed.

Si fundus, cui iter debetur, plurium sit, unicuique in solidum competit actio, et ita et pomponius libro quadragensimo primo scribit: sed in aestimationem id quod interest veniet, scilicet quod eius interest, qui experietur. itaque de iure quidem ipso singuli experientur et victoria et aliis proderit, aestimatio autem ad quod eius interest revocabitur, quamvis per unum adquiri servitus non possit.

Dig. 8.5.4.4

Ulpianus 17 ad ed.

Sed et si duorum fundus sit qui servit, adversus unumquemque poterit ita agi et, ut pomponius libro eodem scribit, quisquis defendit, solidum debet restituere, quia divisionem haec res non recipit.

Dig. 8.5.4.5

Ulpianus 17 ad ed.

Si quis mihi itineris vel actus vel viae controversiam non faciat, sed reficere sternere non patiatur, pomponius libro eodem scribit confessoria actione mihi utendum: nam et si arborem impendentem habeat vicinus, qua viam vel iter invium vel inhabile facit, Marcellus quoque apud iulianum notat iter petendum vel viam vindicandam. sed de refectione viae et interdicto uti possumus, quod de itinere actuque reficiendo competit: non tamen si silice quis sternere velit, nisi nominatim id convenit.

Dig. 8.5.4.6

Ulpianus 17 ad ed.

Sed et de haustu, quia servitus est, competunt nobis in rem actiones.

Dig. 8.5.4.7

Ulpianus 17 ad ed.

Competit autem de servitute actio domino aedificii neganti servitutem se vicino debere, cuius aedes non in totum liberae sunt, sed ei cum quo agitur servitutem non debent. verbi gratia habeo aedes, quibus sunt vicinae seianae et sempronianae, sempronianis servitutem debeo, adversus dominum seianarum volo experiri altius me tollere prohibentem: in rem actione experiar: licet enim serviant aedes meae, ei tamen cum quo agitur non serviunt: hoc igitur intendo habere me ius altius tollendi invito eo cum quo ago: quantum enim ad eum pertinet, liberas aedes habeo.

Dig. 8.5.4.8

Ulpianus 17 ad ed.

Si cui omnino altius tollere non liceat, adversus eum recte agetur ius ei non esse tollere. haec servitus et ei, qui ulteriores aedes habet, deberi poterit.

Dig. 8.5.5

Paulus 21 ad ed.

Et ideo si inter meas et titii aedes tuae aedes intercedant, possum titii aedibus servitutem imponere, ne liceat ei altius tollere, licet tuis non imponatur: quia donec tu non extollis, est utilitas servitutis.

Dig. 8.5.6pr.

Ulpianus 17 ad ed.

Et si forte qui medius est, quia servitutem non debebat, altius extulerit aedificia sua, ut iam ego non videar luminibus tuis obstaturus, si aedificavero, frustra intendes ius mihi non esse ita aedificatum habere invito te: sed si intra tempus statutum rursus deposuerit aedificium suum vicinus, renasceretur tibi vindicatio.

Dig. 8.5.6.1

Ulpianus 17 ad ed.

Sciendum tamen in his servitutibus possessorem esse eum iuris et petitorem. et si forte non habeam aedificatum altius in meo, adversarius meus possessor est: nam cum nihil sit innovatum, ille possidet et aedificantem me prohibere potest et civili actione et interdicto quod vi aut clam: idem et si lapilli iactu impedierit. sed et si patiente eo aedificavero, ego possessor ero effectus.

Dig. 8.5.6.2

Ulpianus 17 ad ed.

Etiam de servitute, quae oneris ferendi causa imposita erit, actio nobis competit, ut et onera ferat et aedificia reficiat ad eum modum, qui servitute imposita comprehensus est. et gallus putat non posse ita servitutem imponi, ut quis facere aliquid cogeretur, sed ne me facere prohiberet: nam in omnibus servitutibus refectio ad eum pertinet, qui sibi servitutem adserit, non ad eum, cuius res servit. sed evaluit servi sententia, in proposita specie ut possit quis defendere ius sibi esse cogere adversarium reficere parietem ad onera sua sustinenda. labeo autem hanc servitutem non hominem debere, sed rem, denique licere domino rem derelinquere scribit.

Dig. 8.5.6.3

Ulpianus 17 ad ed.

Haec autem actio in rem magis est quam in personam et non alii competit quam domino aedium et adversus dominum, sicuti ceterarum servitutium intentio.

Dig. 8.5.6.4

Ulpianus 17 ad ed.

Si aedes plurium dominorum sint, an in solidum agatur, papinianus libro tertio quaestionum tractat: et ait singulos dominos in solidum agere, sicuti de ceteris servitutibus excepto usu fructu. sed non idem respondendum inquit, si communes aedes essent, quae onera vicini sustinerent.

Dig. 8.5.6.5

Ulpianus 17 ad ed.

Modus autem refectionis in hac actione ad eum modum pertinet, qui in servitute imposita continetur: forte ut reficiat lapide quadrato vel lapide structili vel quovis alio opere, quod in servitute dictum est.

Dig. 8.5.6.6

Ulpianus 17 ad ed.

Veniunt et fructus in hac actione, id est commodum quod haberet, si onera aedium eius vicinus sustineret.

Dig. 8.5.6.7

Ulpianus 17 ad ed.

Parietem autem meliorem quidem, quam in servitute impositum est, facere licet: deteriorem si facit, aut per hanc actionem aut per operis novi nuntiationem prohibetur.

Dig. 8.5.7

Paulus 21 ad ed.

Harum actionum eventus hic est, ut victori officio iudicis aut res praestetur aut cautio. res ipsa haec est, ut iubeat adversarium iudex emendare vitium parietis et idoneum praestare. cautio haec est, ut eum iubeat de reficiendo pariete cavere neque se neque successores suos prohibituros altius tollere sublatumque habere: et si caverit, absolvetur. si vero neque rem praestat neque cautionem, tanti condemnet, quanti actor in litem iuraverit.

Dig. 8.5.8pr.

Ulpianus 17 ad ed.

Sicut autem refectio parietis ad vicinum pertinet, ita fultura aedificiorum vicini cui servitus debetur, quamdiu paries reficitur, ad inferiorem vicinum non debet pertinere: nam si non vult superior fulcire, deponat, et restituet, cum paries fuerit restitutus. et hic quoque sicut in ceteris servitutibus actio contraria dabitur, hoc est ius tibi non esse me cogere.

Dig. 8.5.8.1

Ulpianus 17 ad ed.

Competit mihi actio adversus eum, qui cessit mihi talem servitutem, ut in parietem eius tigna immittere mihi liceat supraque ea tigna verbi gratia porticum ambulatoriam facere superque eum parietem columnas structiles imponere, quae tectum porticus ambulatoriae sustineant.

Dig. 8.5.8.2

Ulpianus 17 ad ed.

Distant autem hae actiones inter se, quod superior quidem locum habet etiam ad compellendum vicinum reficere parietem meum, haec vero locum habet ad hoc solum, ut tigna suscipiat, quod non est contra genera servitutium.

Dig. 8.5.8.3

Ulpianus 17 ad ed.

Sed si quaeritur, quis possessoris, quis petitoris partes sustineat, sciendum est possessoris partes sustinere, si quidem tigna immissa sint, eum, qui servitutem sibi deberi ait, si vero non sunt immissa, eum qui negat.

Dig. 8.5.8.4

Ulpianus 17 ad ed.

Et si quidem is optinuerit, qui servitutem sibi defendit, non debet ei servitus cedi, sive recte pronuntiatum est, quia habet, sive perperam, quia per sententiam non debet servitus constitui, sed quae est declarari. plane si non utendo amisit dolo malo domini aedium post litem contestatam, restitui ei oportet, quemadmodum placet in domino aedium.

Dig. 8.5.8.5

Ulpianus 17 ad ed.

Aristo cerellio vitali respondit non putare se ex taberna casiaria fumum in superiora aedificia iure immitti posse, nisi ei rei servitutem talem admittit. idemque ait: et ex superiore in inferiora non aquam, non quid aliud immitti licet: in suo enim alii hactenus facere licet, quatenus nihil in alienum immittat, fumi autem sicut aquae esse immissionem: posse igitur superiorem cum inferiore agere ius illi non esse id ita facere. alfenum denique scribere ait posse ita agi ius illi non esse in suo lapidem caedere, ut in meum fundum fragmenta cadant. dicit igitur aristo eum, qui tabernam casiariam a minturnensibus conduxit, a superiore prohiberi posse fumum immittere, sed minturnenses ei ex conducto teneri: agique sic posse dicit cum eo, qui eum fumum immittat, ius ei non esse fumum immittere. ergo per contrarium agi poterit ius esse fumum immittere: quod et ipsum videtur aristo probare. sed et interdictum uti possidetis poterit locum habere, si quis prohibeatur, qualiter velit, suo uti.

Dig. 8.5.8.6

Ulpianus 17 ad ed.

Apud pomponium dubitatur libro quadragensimo primo lectionum, an quis possit ita agere licere fumum non gravem, puta ex foco, in suo facere aut non licere. et ait magis non posse agi, sicut agi non potest ius esse in suo ignem facere aut sedere aut lavare.

Dig. 8.5.8.7

Ulpianus 17 ad ed.

Idem in diversum probat: nam et in balineis, inquit, vaporibus cum quintilla cuniculum pergentem in ursi iuli instruxisset, placuit potuisse tales servitutes imponi.

Dig. 8.5.9pr.

Paulus 21 ad ed.

Si eo loco, per quem mihi iter debetur, tu aedificaveris, possum intendere ius mihi esse ire agere: quod si probavero, inhibebo opus tuum. item iulianus scripsit, si vicinus in suo aedificando effecerit, ne stillicidium meum reciperet, posse me agere de iure meo, id est ius esse immittendi stillicidium, sicut in via diximus. sed si quidem nondum aedificavit, sive usum fructum sive viam habet, ius sibi esse ire agere vel frui intendere potest: quod si iam aedificavit dominus, is qui iter et actum habet adhuc potest intendere ius sibi esse, fructuarius autem non potest, quia amisit usum fructum: et ideo de dolo actionem dandam hoc casu iulianus ait. contra si in itinere, quod per fundum tibi debeo, aedifices, recte intendam ius tibi non esse aedificare vel aedificatum habere, quemadmodum si in area mea quid aedifices.

Dig. 8.5.9.1

Paulus 21 ad ed.

Qui latiore via vel angustiore usus est, retinet servitutem, sicuti qui aqua, ex qua ius habet utendi, alia mixta usus est, retinet ius suum.

Dig. 8.5.10pr.

Ulpianus 53 ad ed.

Si quis diuturno usu et longa quasi possessione ius aquae ducendae nactus sit, non est ei necesse docere de iure, quo aqua constituta est, veluti ex legato vel alio modo, sed utilem habet actionem, ut ostendat per annos forte tot usum se non vi non clam non precario possedisse.

Dig. 8.5.10.1

Ulpianus 53 ad ed.

Agi autem hac actione poterit non tantum cum eo, in cuius agro aqua oritur vel per cuius fundum ducitur, verum etiam cum omnibus agi poterit, quicumque aquam non ducere impediunt, exemplo ceterarum servitutium. et generaliter quicumque aquam ducere impediat, hac actione cum eo experiri potero.

Dig. 8.5.11

Marcellus 6 Dig.

An unus ex sociis in communi loco invitis ceteris iure aedificare possit, id est an, si prohibeatur a sociis, possit cum his ita experiri ius sibi esse aedificare, et an socii cum eo ita agere possint ius sibi prohibendi esse vel illi ius aedificandi non esse: et si aedificatum iam sit, non possit cum eo ita experiri ius tibi non esse ita aedificatum habere, quaeritur. et magis dici potest prohibendi potius quam faciendi esse ius socio, quia magis ille, qui facere conatur ut dixi, quodammodo sibi alienum quoque ius praeripit, si quasi solus dominus ad suum arbitrium uti iure communi velit.

Dig. 8.5.12

Iavolenus 2 epist.

Egi ius illi non esse tigna in parietem meum immissa habere: an et de futuris non immittendis cavendum est? respondi: iudicis officio contineri puto, ut de futuro quoque opere caveri debeat.

Dig. 8.5.13

Proculus 5 epist.

Fistulas, quibus aquam duco, in via publica habeo et hae ruptae inundant parietem tuum: puto posse te mecum recte agere ius mihi non esse flumina ex meo in tuum parietem fluere.

Dig. 8.5.14pr.

Pomponius 33 ad sab.

Si, cum meus proprius esset paries, passus sim te immittere tigna quae antea habueris: si nova velis immittere, prohiberi a me potes: immo etiam agere tecum potero, ut ea, quae nova immiseris, tollas.

Dig. 8.5.14.1

Pomponius 33 ad sab.

Si paries communis opere abs te facto in aedes meas se inclinaverit, potero tecum agere ius tibi non esse parietem illum ita habere.

Dig. 8.5.15

Ulpianus 6 opin.

Altius aedes suas extollendo, ut luminibus domus minoris annis viginti quinque vel impuberis, cuius curator vel tutor erat, officiatur, efficit: quamvis hoc quoque nomine actione ipse heredesque teneantur, quia quod alium facientem prohibere ex officio necesse habuit, id ipse committere non debuit, tamen et adversus possidentem easdem aedes danda est impuberi vel minori actio, ut quod non iure factum est tollatur.

Dig. 8.5.16

Iulianus 7 Dig.

Si a te emero, ut mihi liceat ex aedibus meis in aedes tuas stillicidium immittere et postea te sciente ex causa emptionis immissum habeam, quaero, an ex hac causa actione quadam vel exceptione tuendus sim. respondi utroque auxilio me usurum.

Dig. 8.5.17pr.

Alfenus 2 Dig.

Si quando inter aedes binas paries esset, qui ita ventrem faceret, ut in vicini domum semipedem aut amplius procumberet, agi oportet ius non esse illum parietem ita proiectum in suum esse invito se.

Dig. 8.5.17.1

Alfenus 2 Dig.

Cum in domo gaii sei locus quidam aedibus anni ita serviret, ut in eo loco positum habere ius seio non esset, et seius in eo silvam sevisset, in qua labra et tenes cucumellas positas haberet, annio consilium omnes iuris periti dederunt, ut cum eo ageret ius ei non esse in eo loco ea posita habere invito se.

Dig. 8.5.17.2

Alfenus 2 Dig.

Secundum cuius parietem vicinus sterculinum fecerat, ex quo paries madescebat, consulebatur, quemadmodum posset vicinum cogere, ut sterculinum tolleret. respondi, si in loco publico id fecisset, per interdictum cogi posse, sed si in privato, de servitute agere oportere: si damni infecti stipulatus esset, possit per eam stipulationem, si quid ex ea re sibi damni datum esset, servare.

Dig. 8.5.18

Iulianus 6 ex minic.

Is, cuius familia vicinum prohibebat aquam ducere, sui potestatem non faciebat, ne secum agi posset: quaerit actor, quid sibi faciendum esset. respondi oportere praetorem causa cognita iubere bona adversarii possideri et non ante inde discedere, quam is actori ius aquae ducendae constituisset et si quid, quia aquam ducere prohibitus esset, siccitatibus detrimenti cepisset, veluti si prata arboresve exaruisset.

Dig. 8.5.19

Marcianus 5 reg.

Si de communi servitute quis bene quidem deberi intendit, sed aliquo modo litem perdidit culpa sua, non est aequum hoc ceteris damno esse: sed si per collusionem cessit lite adversario, ceteris dandam esse actionem de dolo celsus scripsit, idque ait sabino placuisse.

Dig. 8.5.20pr.

Scaevola 4 Dig.

Testatrix fundo, quem legaverat, casas iunctas habuit: quaesitum est, si hae fundo legato non cederent eumque legatarius vindicasset, an iste fundus aliquam servitutem casis deberet aut, si ex fideicommissi causa cum sibi dari legatarius desideraret, heredes servitutem aliquam casis excipere deberent. respondit deberi.

Dig. 8.5.20.1

Scaevola 4 Dig.

Plures ex municipibus, qui diversa praedia possidebant, saltum communem, ut ius compascendi haberent, mercati sunt idque etiam a successoribus eorum est observatum: sed nonnulli ex his, qui hoc ius habebant, praedia sua illa propria venum dederunt. quaero, an in venditione etiam ius illud secutum sit praedia, cum eius voluntatis venditores fuerint, ut et hoc alienarent. respondit id observandum, quod actum inter contrahentes esset: sed si voluntas contrahentium manifesta non sit, et hoc ius ad emptores transire. item quaero, an, cum pars illorum propriorum fundorum legato ad aliquem transmissa sit, aliquid iuris secum huius compascui traxerit. respondit, cum id quoque ius fundi, qui legatus esset, videretur, id quoque cessurum legatario.

Dig. 8.5.21

Labeo 1 pith. a paulo epit.

Si qua aqua nondum apparet, eius iter ductus constitui non potest. paulus: immo puto idcirco id falsum esse, quia cedi potest, ut aquam quaereres et inventam ducere liceret.

Dig. 8.6.0. Quemadmodum servitutes amittuntur.

Dig. 8.6.1

Gaius 7 ad ed. provinc.

Servitutes praediorum confunduntur, si idem utriusque praedii dominus esse coeperit.

Dig. 8.6.2

Paulus 21 ad ed.

Qui iter et actum habet, si statuto tempore tantum ierit, non perisse actum, sed manere sabinus cassius octavenus aiunt: nam ire quoque per se eum posse qui actum haberet.

Dig. 8.6.3

Gaius 7 ad ed. provinc.

Iura praediorum morte et capitis deminutione non perire volgo traditum est.

Dig. 8.6.4

Paulus 27 ad ed.

Iter sepulchro debitum non utendo numquam amittitur.

Dig. 8.6.5

Paulus 66 ad ed.

Servitus et per socium et fructuarium et bonae fidei possessorem nobis retinetur:

Dig. 8.6.6pr.

Celsus 5 Dig.

Nam satis est fundi nomine itum esse.

Dig. 8.6.6.1

Celsus 5 Dig.

Si ego via, quae nobis per vicini fundum debebatur, usus fuero, tu autem constituto tempore cessaveris, an ius tuum amiseris? et e contrario, si vicinus, cui via per nostrum fundum debebatur, per meam partem ierit egerit, tuam partem ingressus non fuerit, an partem tuam liberaverit? celsus respondit: si divisus est fundus inter socios regionibus, quod ad servitutem attinet, quae ei fundo debebatur, perinde est, atque si ab initio duobus fundis debita sit: et sibi quisque dominorum usurpat servitutem, sibi non utendo deperdit nec amplius in ea re causae eorum fundorum miscentur: nec fit ulla iniuria ei cuius fundus servit, immo si quo melior, quoniam alter dominorum utendo sibi, non toti fundo proficit.

Dig. 8.6.6.1a

Celsus 5 Dig.

Sed si is fundus qui servierit ita divisus est, plusculum dubitationis ea res habet: nam si certus ac finitus viae locus est, tunc, si per longitudinem eius fundus divisus est, eadem omnia servanda erunt, quae si initio constituendae eius servitutis similiter hic duo fundi fuissent: si vero per latitudinem viae fundus divisus est (nec multum refert, aequaliter id factus est an inaequaliter), tunc manet idem ius servitutis, quod fundo indiviso fuerat, nec aut usu detineri aut non utendo deperire nisi tota via poterit: nec si forte inciderit, ut semita, quae per alterum dumtaxat fundum erit, uteretur, idcirco alter fundus liberabitur, quoniam unum atque eo modo individuum viae ius est.

Dig. 8.6.6.1b

Celsus 5 Dig.

Possunt tamen alterutrum fundum liberare, si modo hoc specialiter convenit: certe si is cui servitus debebatur alterum ex ea divisione fundum redemerit, num ideo minus ea re fundi alterius servitus permanebit? nec video, quid absurde consecuturum sit eam sententiam fundo altero manente servo: si modo et ab initio potuit angustior constitui via quam lege finita est et adhuc id loci superest in eo fundo, cui remissa servitus non est, ut sufficiat viae: quod si minus loci superest quam viae sufficiat, uterque fundus liberabitur, alter propter redemptionem, alter, quia per eum locum qui superest via constitui non potest.

Dig. 8.6.6.1c

Celsus 5 Dig.

Ceterum si ita constitutum est ius viae, ut per quamlibet partem fundi ire agere liceat, idque vel subinde mutare nihil prohibet atque ita divisus est fundus: si per quamlibet eius partem aeque ire atque agi possit, tunc perinde observabimus atque si ab initio duobus fundis duae servitutes iniunctae fuissent, ut altera retineri, altera non utendo possit deperire.

Dig. 8.6.6.1d

Celsus 5 Dig.

Nec me fallit alieno facto ius alterius immutatu iri, quoniam ante satius fuerat per alteram partem ire agere, ut idem ius ei in altera parte fundi retineretur: contra illud commodum acessisse ei cui via debebatur, quod per duas pariter vias ire agere possit bisque octonos in porrectum et senos denos in anfractum.

Dig. 8.6.7

Paulus 13 ad plaut.

Si sic constituta sit aqua, ut vel aestate ducatur tantum vel uno mense, quaeritur quemadmodum non utendo amittatur, quia non est continuum tempus, quo cum uti non potest, non sit usus. itaque et si alternis annis vel mensibus quis aquam habeat, duplicato constituto tempore amittitur. idem et de itinere custoditur. si vero alternis diebus aut die toto aut tantum nocte, statuto legibus tempore amittitur, quia una servitus est: nam et si alternis horis vel una hora cottidie servitutem habeat, servius scribit perdere eum non utendo servitutem, quia id quod habet cottidianum sit.

Dig. 8.6.8pr.

Paulus 15 ad plaut.

Si stillicidii immittendi ius habeam in aream tuam et permisero ius tibi in ea area aedificandi, stillicidii immittendi ius amitto. et similiter si per tuum fundum via mihi debeatur et permisero tibi in eo loco, per quem via mihi debetur, aliquid facere, amitto ius viae.

Dig. 8.6.8.1

Paulus 15 ad plaut.

Is qui per partem itineris it totum ius usurpare videtur.

Dig. 8.6.9

Iavolenus 3 ex plaut.

Aqua si in partem aquagi influxit, etiamsi non ad ultima loca pervenit, omnibus tamen partibus usurpatur.

Dig. 8.6.10pr.

Paulus 15 ad plaut.

Si communem fundum ego et pupillus haberemus, licet uterque non uteretur, tamen propter pupillum et ego viam retineo.

Dig. 8.6.10.1

Paulus 15 ad plaut.

Si is, qui nocturnam aquam habet, interdiu per constitutum ad amissionem tempus usus fuerit, amisit nocturnam servitutem, qua usus non est. idem est in eo, qui certis horis aquae ductum habens aliis usus fuerit nec ulla parte earum horarum.

Dig. 8.6.11pr.

Marcellus 4 Dig.

Is cui via vel actus debebatur, ut vehiculi certo genere uteretur, alio genere fuerat usus: videamus ne amiserit servitutem et alia sit eius condicio, qui amplius oneris quam licuit vexerit, magisque hic plus quam aliud egisse videatur: sicuti latiore itinere usus esset aut si plura iumenta egerit quam licuit aut aquae admiscuerit aliam. ideoque in omnibus istis quaestionibus servitus quidem non amittitur, non autem conceditur plus quam pactum est in servitute habere.

Dig. 8.6.11.1

Marcellus 4 Dig.

Heres, cum legatus esset fundus sub condicione, imposuit ei servitutes: extinguentur, si legati condicio existat. videamus, an adquisitae sequantur legatarium: et magis dicendum est, ut sequantur.

Dig. 8.6.12

Celsus 23 Dig.

Qui fundum alienum bona fide emit, itinere quod ei fundo debetur usus est: retinetur id ius itineris: atque etiam si precario aut vi deiecto domino possidet: fundus enim qualiter se habens ita, cum in suo habitu possessus est, ius non deperit, neque refert, iuste nec ne possideat, qui talem eum possidet. quare fortius et si aqua per rivum sua sponte perfluxit, ius aquae ducendae retinetur, quod et sabino recte placet, ut apud neratium libro quarto membranarum scriptum est.

Dig. 8.6.13

Marcellus 17 Dig.

Si quis ex fundo, cui viam vicinus deberet, vendidisset locum proximum servienti fundo non imposita servitute et intra legitimum tempus, quo servitutes pereunt, rursus eum locum adquisisset, habiturus est servitutem, quam vicinus debuisset.

Dig. 8.6.14pr.

Iavolenus 10 ex cass.

Si locus, per quem via aut iter aut actus debebatur, impetu fluminis occupatus esset et intra tempus, quod ad amittendam servitutem sufficit, alluvione facta restitutus est, servitus quoque in pristinum statum restituitur: quod si id tempus praeterierit, ut servitus amittatur, renovare eam cogendus est.

Dig. 8.6.14.1

Iavolenus 10 ex cass.

Cum via publica vel fluminis impetu vel ruina amissa est, vicinus proximus viam praestare debet.

Dig. 8.6.15

Iavolenus 2 epist.

Si, cum servitus mihi per plures fundos deberetur, medium fundum adquisivi, manere servitutem puto, quia totiens servitus confunditur, quotiens uti ea is ad quem pertineat non potest: medio autem fundo adquisito potest consistere, ut per primum et ultimum iter debeatur.

Dig. 8.6.16

Proculus 1 epist.

Aquam, quae oriebatur in fundo vicini, plures per eundem rivum iure ducere soliti sunt, ita ut suo quisque die a capite duceret, primo per eundem rivum eumque communem, deinde ut quisque inferior erat, suo quisque proprio rivo, et unus statuto tempore, quo servitus amittitur, non duxit. existimo eum ius ducendae aquae amisisse nec per ceteros qui duxerunt eius ius usurpatum esse: proprium enim cuiusque eorum ius fuit neque per alium usurpari potuit. quod si plurium fundo iter aquae debitum esset, per unum eorum omnibus his, inter quos is fundus communis fuisset, usurpari potuisset. item si quis eorum, quibus aquae ductus servitus debebatur et per eundem rivum aquam ducebant, ius aquae ducendae non ducendo eam amisit, nihil iuris eo nomine ceteris, qui rivo utebantur, adcrevit idque commodum eius est, per cuius fundum id iter aquae, quod non utendo pro parte unius amissum est: libertate enim huius partis servitutis fruitur.

Dig. 8.6.17

Pomponius 11 ex var. lect.

Labeo ait, si is, qui haustum habet, per tempus, quo servitus amittitur, ierit ad fontem nec aquam hauserit, iter quoque eum amisisse.

Dig. 8.6.18pr.

Paulus 15 ad sab.

Si quis alia aqua usus fuerit, quam de qua in servitute imponenda actum est, servitus amittitur.

Dig. 8.6.18.1

Paulus 15 ad sab.

Tempus, quo non est usus praecedens fundi dominus, cui servitus debetur, imputatur ei, qui in eius loco successit.

Dig. 8.6.18.2

Paulus 15 ad sab.

Si, cum ius haberes immittendi, vicinus statuto tempore aedificatum non habuerit ideoque nec tu immittere poteris, non ideo magis servitutem amittes, quia non potest videri usucepisse vicinus tuus libertatem aedium suarum, qui ius tuum non interpellavit.

Dig. 8.6.19pr.

Pomponius 32 ad sab.

Si partem fundi vendendo lege caverim, uti per eam partem in reliquum fundum meum aquam ducerem, et statutum tempus intercesserit, antequam rivum facerem, nihil iuris amitto, quia nullum iter aquae fuerit, sed manet mihi ius integrum: quod si fecissem iter neque usus essem, amittam.

Dig. 8.6.19.1

Pomponius 32 ad sab.

Si per fundum meum viam tibi legavero et adita mea hereditate per constitutum tempus ad amittendam servitutem ignoraveris eam tibi legatam esse, amittes viam non utendo. quod si intra idem tempus, antequam rescires tibi legatam servitutem, tuum fundum vendideris, ad emptorem via pertinebit, si reliquo tempore ea usus fuerit, quia scilicet tua esse coeperat: ut iam nec ius repudiandi legatum tibi possit contingere, cum ad te fundus non pertineat.

Dig. 8.6.20

Scaevola 1 reg.

Usu retinetur servitus, cum ipse cui debetur utitur quive in possessionem eius est aut mercennarius aut hospes aut medicus quive ad visitandum dominum venit vel colonus aut fructuarius:

Dig. 8.6.21

Paulus 5 sent.

Fructuarius licet suo nomine.

Dig. 8.6.22

Scaevola 1 reg.

Denique quicumque quasi debita via usus fuerit,

Dig. 8.6.23

Paulus 5 sent.

(sive ad fundum nostrum facit, vel ex fundo)

Dig. 8.6.24

Scaevola 1 reg.

Licet malae fidei possessor sit, retinebitur servitus.

Dig. 8.6.25

Paulus 5 sent.

Servitute usus non videtur nisi is, qui suo iure uti se credidit: ideoque si quis pro via publica vel pro alterius servitute usus sit, nec interdictum nec actio utiliter competit.

Ius Romanum Justinian The Latin Library The Classics Page

OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER NONUS

Dig. 9.1.0. Si quadrupes pauperiem fecisse dicatur.
Dig. 9.2.0. Ad legem aquiliam.
Dig. 9.3.0. De his, qui effuderint vel deiecerint.
Dig. 9.4.0. De noxalibus actionibus.

Dig. 9.1.0. Si quadrupes pauperiem fecisse dicatur.

Dig. 9.1.1pr.

Ulpianus 18 ad ed.

Si quadrupes pauperiem fecisse dicetur, actio ex lege duodecim tabularum descendit: quae lex voluit aut dari id quod nocuit, id est id animal quod noxiam commisit, aut aestimationem noxiae offerre.

Dig. 9.1.1.1

Ulpianus 18 ad ed.

Noxia autem est ipsum delictum.

Dig. 9.1.1.2

Ulpianus 18 ad ed.

Quae actio ad omnes quadrupedes pertinet.

Dig. 9.1.1.3

Ulpianus 18 ad ed.

Ait praetor " pauperiem fecisse". pauperies est damnum sine iniuria facientis datum: nec enim potest animal iniuria fecisse, quod sensu caret.

Dig. 9.1.1.4

Ulpianus 18 ad ed.

Itaque, ut servius scribit, tunc haec actio locum habet, cum commota feritate nocuit quadrupes, puta si equus calcitrosus calce percusserit, aut bos cornu petere solitus petierit, aut mulae propter nimiam ferociam: quod si propter loci iniquitatem aut propter culpam mulionis, aut si plus iusto onerata quadrupes in aliquem onus everterit, haec actio cessabit damnique iniuriae agetur.

Dig. 9.1.1.5

Ulpianus 18 ad ed.

Sed et si canis, cum duceretur ab aliquo, asperitate sua evaserit et alicui damnum dederit: si contineri firmius ab alio poterit vel si per eum locum induci non debuit, haec actio cessabit et tenebitur qui canem tenebat.

Dig. 9.1.1.6

Ulpianus 18 ad ed.

Sed et si instigatu alterius fera damnum dederit, cessabit haec actio.

Dig. 9.1.1.7

Ulpianus 18 ad ed.

Et generaliter haec actio locum habet, quotiens contra naturam fera mota pauperiem dedit: ideoque si equus dolore concitatus calce petierit, cessare istam actionem, sed eum, qui equum percusserit aut vulneraverit, in factum magis quam lege aquilia teneri, utique ideo, quia non ipse suo corpore damnum dedit. at si, cum equum permulsisset quis vel palpatus esset, calce eum percusserit, erit actioni locus.

Dig. 9.1.1.8

Ulpianus 18 ad ed.

Et si alia quadrupes aliam concitavit ut damnum daret, eius quae concitavit nomine agendum erit.

Dig. 9.1.1.9

Ulpianus 18 ad ed.

Sive autem corpore suo pauperiem quadrupes dedit, sive per aliam rem, quam tetigit quadrupes, haec actio locum habebit: ut puta si plaustro bos obtrivit aliquem vel alia re deiecta.

Dig. 9.1.1.10

Ulpianus 18 ad ed.

In bestiis autem propter naturalem feritatem haec actio locum non habet: et ideo si ursus fugit et sic nocuit, non potest quondam dominus conveniri, quia desinit dominus esse, ubi fera evasit: et ideo et si eum occidi, meum corpus est.

Dig. 9.1.1.11

Ulpianus 18 ad ed.

Cum arietes vel boves commisissent et alter alterum occidit, quintus mucius distinxit, ut si quidem is perisset qui adgressus erat, cessaret actio, si is, qui non provocaverat, competeret actio: quamobrem eum sibi aut noxam sarcire aut in noxam dedere oportere.

Dig. 9.1.1.12

Ulpianus 18 ad ed.

Et cum etiam in quadrupedibus noxa caput sequitur, adversus dominum haec actio datur, non cuius fuerit quadrupes, cum noceret, sed cuius nunc est.

Dig. 9.1.1.13

Ulpianus 18 ad ed.

Plane si ante litem contestatam decesserit animal, extincta erit actio.

Dig. 9.1.1.14

Ulpianus 18 ad ed.

Noxae autem dedere est animal tradere vivum. demum si commune plurium sit animal, adversus singulos erit in solidum noxalis actio, sicuti in homine.

Dig. 9.1.1.15

Ulpianus 18 ad ed.

Interdum autem dominus in hoc non convenietur, ut noxae dedat, sed etiam in solidum, ut puta si iure interrogatus, an sua quadrupes esset, responderit non esse suam: nam si constiterit esse eius in solidum condemnabitur.

Dig. 9.1.1.16

Ulpianus 18 ad ed.

Si post litem contestatam ab alio sit animal occisum, quia domino legis aquiliae actio competit, ratio in iudicio habebitur legis aquiliae, quia dominus noxae dedendae facultatem amiserit: ergo ex iudicio proposito litis aestimationem offeret, nisi paratus fuerit actionem mandare adversus eum qui occidit.

Dig. 9.1.1.17

Ulpianus 18 ad ed.

Hanc actionem nemo dubitaverit heredi dari ceterisque successoribus: item adversus heredes ceterosque non iure successionis, sed eo iure, quo domini sint, competit.

Dig. 9.1.2pr.

Paulus 22 ad ed.

Haec actio non solum domino, sed etiam ei cuius interest competit, veluti ei cui res commodata est, item fulloni, quia eo quod tenentur damnum videntur pati.

Dig. 9.1.2.1

Paulus 22 ad ed.

Si quis aliquem evitans, magistratum forte, in taberna proxima se immisisset ibique a cane feroce laesus esset, non posse agi canis nomine quidam putant: at si solutus fuisset, contra.

Dig. 9.1.3

Gaius 7 ad ed. provinc.

Ex hac lege iam non dubitatur etiam liberarum personarum nomine agi posse, forte si patrem familias aut filium familias vulneraverit quadrupes: scilicet ut non deformitatis ratio habeatur, cum liberum corpus aestimationem non recipiat, sed impensarum in curationem factarum et operarum amissarum quasque amissurus quis esset inutilis factus.

Dig. 9.1.4

Paulus 22 ad ed.

Haec actio utilis competit et si non quadrupes, sed aliud animal pauperiem fecit.

Dig. 9.1.5

Alfenus 2 Dig.

Agaso cum in tabernam equum deduceret, mulam equus olfecit, mula calcem reiecit et crus agasoni fregit: consulebatur, possetne cum domino mulae agi, quod ea pauperiem fecisset. respondi posse.

Dig. 9.2.0. Ad legem aquiliam.

Dig. 9.2.1pr.

Ulpianus 18 ad ed.

Lex aquilia omnibus legibus, quae ante se de damno iniuria locutae sunt, derogavit, sive duodecim tabulis, sive alia quae fuit: quas leges nunc referre non est necesse.

Dig. 9.2.1.1

Ulpianus 18 ad ed.

Quae lex aquilia plebiscitum est, cum eam aquilius tribunus plebis a plebe rogaverit.

Dig. 9.2.2pr.

Gaius 7 ad ed. provinc.

Lege aquilia capite primo cavetur: " ut qui servum servamve alienum alienamve quadrupedem vel pecudem iniuria occiderit, quanti id in eo anno plurimi fuit, tantum aes dare domino damnas esto":

Dig. 9.2.2.1

Gaius 7 ad ed. provinc.

Et infra deinde cavetur, ut adversus infitiantem in duplum actio esset.

Dig. 9.2.2.2

Gaius 7 ad ed. provinc.

Ut igitur apparet, servis nostris exaequat quadrupedes, quae pecudum numero sunt et gregatim habentur, veluti oves caprae boves equi muli asini. sed an sues pecudum appellatione continentur, quaeritur: et recte labeoni placet contineri. sed canis inter pecudes non est. longe magis bestiae in numero non sunt, veluti ursi leones pantherae. elefanti autem et cameli quasi mixti sunt (nam et iumentorum operam praestant et natura eorum fera est) et ideo primo capite contineri eas oportet.

Dig. 9.2.3

Ulpianus 18 ad ed.

Si servus servave iniuria occisus occisave fuerit, lex aquilia locum habet. iniuria occisum esse merito adicitur: non enim sufficit occisum, sed oportet iniuria id esse factum.

Dig. 9.2.4pr.

Gaius 7 ad ed. provinc.

Itaque si servum tuum latronem insidiantem mihi occidero, securus ero: nam adversus periculum naturalis ratio permittit se defendere.

Dig. 9.2.4.1

Gaius 7 ad ed. provinc.

Lex duodecim tabularum furem noctu deprehensum occidere permittit, ut tamen id ipsum cum clamore testificetur: interdiu autem deprehensum ita permittit occidere, si is se telo defendat, ut tamen aeque cum clamore testificetur.

Dig. 9.2.5pr.

Ulpianus 18 ad ed.

Sed et si quemcumque alium ferro se petentem quis occiderit, non videbitur iniuria occidisse: et si metu quis mortis furem occiderit, non dubitabitur, quin lege aquilia non teneatur. sin autem cum posset adprehendere, maluit occidere, magis est ut iniuria fecisse videatur: ergo et cornelia tenebitur.

Dig. 9.2.5.1

Ulpianus 18 ad ed.

Iniuriam autem hic accipere nos oportet non quemadmodum circa iniuriarum actionem contumeliam quandam, sed quod non iure factum est, hoc est contra ius, id est si culpa quis occiderit: et ideo interdum utraque actio concurrit et legis aquiliae et iniuriarum, sed duae erunt aestimationes, alia damni, alia contumeliae. igitur iniuriam hic damnum accipiemus culpa datum etiam ab eo, qui nocere noluit.

Dig. 9.2.5.2

Ulpianus 18 ad ed.

Et ideo quaerimus, si furiosus damnum dederit, an legis aquiliae actio sit? et pegasus negavit: quae enim in eo culpa sit, cum suae mentis non sit? et hoc est verissimum. cessabit igitur aquiliae actio, quemadmodum, si quadrupes damnum dederit, aquilia cessat, aut si tegula ceciderit. sed et si infans damnum dederit, idem erit dicendum. quodsi impubes id fecerit, labeo ait, quia furti tenetur, teneri et aquilia eum: et hoc puto verum, si sit iam iniuriae capax.

Dig. 9.2.5.3

Ulpianus 18 ad ed.

Si magister in disciplina vulneraverit servum vel occiderit, an aquilia teneatur, quasi damnum iniuria dederit? et iulianus scribit aquilia teneri eum, qui eluscaverat discipulum in disciplina: multo magis igitur in occiso idem erit dicendum. proponitur autem apud eum species talis: sutor, inquit, puero discenti ingenuo filio familias, parum bene facienti quod demonstraverit, forma calcei cervicem percussit, ut oculus puero perfunderetur. dicit igitur iulianus iniuriarum quidem actionem non competere, quia non faciendae iniuriae causa percusserit, sed monendi et docendi causa: an ex locato, dubitat, quia levis dumtaxat castigatio concessa est docenti: sed lege aquilia posse agi non dubito:

Dig. 9.2.6

Paulus 22 ad ed.

Praeceptoris enim nimia saevitia culpae adsignatur.

Dig. 9.2.7pr.

Ulpianus 18 ad ed.

Qua actione patrem consecuturum ait, quod minus ex operis filii sui propter vitiatum oculum sit habiturus, et impendia, quae pro eius curatione fecerit.

Dig. 9.2.7.1

Ulpianus 18 ad ed.

Occisum autem accipere debemus, sive gladio sive etiam fuste vel alio telo vel manibus (si forte strangulavit eum) vel calce petiit vel capite vel qualiter qualiter.

Dig. 9.2.7.2

Ulpianus 18 ad ed.

Sed si quis plus iusto oneratus deiecerit onus et servum occiderit, aquilia locum habet: fuit enim in ipsius arbitrio ita se non onerare. nam et si lapsus aliquis servum alienum onere presserit, pegasus ait lege aquilia eum teneri ita demum, si vel plus iusto se oneraverit vel neglegentius per lubricum transierit.

Dig. 9.2.7.3

Ulpianus 18 ad ed.

Proinde si quis alterius impulsu damnum dederit, proculus scribit neque eum qui impulit teneri, quia non occidit, neque eum qui impulsus est, quia damnum iniuria non dedit: secundum quod in factum actio erit danda in eum qui impulit.

Dig. 9.2.7.4

Ulpianus 18 ad ed.

Si quis in colluctatione vel in pancratio, vel pugiles dum inter se exercentur alius alium occiderit, si quidem in publico certamine alius alium occiderit, cessat aquilia, quia gloriae causa et virtutis, non iniuriae gratia videtur damnum datum. hoc autem in servo non procedit, quoniam ingenui solent certare: in filio familias vulnerato procedit. plane si cedentem vulneraverit, erit aquiliae locus, aut si non in certamine servum occidit, nisi si domino committente hoc factum sit: tunc enim aquilia cessat.

Dig. 9.2.7.5

Ulpianus 18 ad ed.

Sed si quis servum aegrotum leviter percusserit et is obierit, recte labeo dicit lege aquilia eum teneri, quia aliud alii mortiferum esse solet.

Dig. 9.2.7.6

Ulpianus 18 ad ed.

Celsus autem multum interesse dicit, occiderit an mortis causam praestiterit, ut qui mortis causam praestitit, non aquilia, sed in factum actione teneatur. unde adfert eum qui venenum pro medicamento dedit et ait causam mortis praestitisse, quemadmodum eum qui furenti gladium porrexit: nam nec hunc lege aquilia teneri, sed in factum.

Dig. 9.2.7.7

Ulpianus 18 ad ed.

Sed si quis de ponte aliquem praecipitavit, celsus ait, sive ipso ictu perierit aut continuo submersus est aut lassatus vi fluminis victus perierit, lege aquilia teneri, quemadmodum si quis puerum saxo inlisisset.

Dig. 9.2.7.8

Ulpianus 18 ad ed.

Proculus ait, si medicus servum imperite secuerit, vel ex locato vel ex lege aquilia competere actionem.

Dig. 9.2.8

Gaius 7 ad ed. provinc.

Idem iuris est, si medicamento perperam usus fuerit. sed et qui bene secuerit et dereliquit curationem, securus non erit, sed culpae reus intellegitur. mulionem quoque, si per imperitiam impetum mularum retinere non potuerit, si eae alienum hominem obtriverint, volgo dicitur culpae nomine teneri. idem dicitur et si propter infirmitatem sustinere mularum impetum non potuerit: nec videtur iniquum, si infirmitas culpae adnumeretur, cum affectare quisque non debeat, in quo vel intellegit vel intellegere debet infirmitatem suam alii periculosam futuram. idem iuris est in persona eius, qui impetum equi, quo vehebatur, propter imperitiam vel infirmitatem retinere non poterit.

Dig. 9.2.9pr.

Ulpianus 18 ad ed.

Item si obstetrix medicamentum dederit et inde mulier perierit, labeo distinguit, ut, si quidem suis manibus supposuit, videatur occidisse: sin vero dedit, ut sibi mulier offerret, in factum actionem dandam, quae sententia vera est: magis enim causam mortis praestitit quam occidit.

Dig. 9.2.9.1

Ulpianus 18 ad ed.

Si quis per vim vel suasum medicamentum alicui infundit vel ore vel clystere vel si eum unxit malo veneno, lege aquilia eum teneri, quemadmodum obstetrix supponens tenetur.

Dig. 9.2.9.2

Ulpianus 18 ad ed.

Si quis hominem fame necaverit, in factum actione teneri neratius ait.

Dig. 9.2.9.3

Ulpianus 18 ad ed.

Si servum meum equitantem concitato equo effeceris in flumen praecipitari atque ideo homo perierit, in factum esse dandam actionem ofilius scribit: quemadmodum si servus meus ab alio in insidias deductus, ab alio esset occisus.

Dig. 9.2.9.4

Ulpianus 18 ad ed.

Sed si per lusum iaculantibus servus fuerit occisus, aquiliae locus est: sed si cum alii in campo iacularentur, servus per eum locum transierit, aquilia cessat, quia non debuit per campum iaculatorium iter intempestive facere. qui tamen data opera in eum iaculatus est, utique aquilia tenebitur:

Dig. 9.2.10

Paulus 22 ad ed.

Nam lusus quoque noxius in culpa est.

Dig. 9.2.11pr.

Ulpianus 18 ad ed.

Item mela scribit, si, cum pila quidam luderent, vehementius quis pila percussa in tonsoris manus eam deiecerit et sic servi, quem tonsor habebat, gula sit praecisa adiecto cultello: in quocumque eorum culpa sit, eum lege aquilia teneri. proculus in tonsore esse culpam: et sane si ibi tondebat, ubi ex consuetudine ludebatur vel ubi transitus frequens erat, est quod ei imputetur: quamvis nec illud male dicatur, si in loco periculoso sellam habenti tonsori se quis commiserit, ipsum de se queri debere.

Dig. 9.2.11.1

Ulpianus 18 ad ed.

Si alius tenuit, alius interemit, is qui tenuit, quasi causam mortis praebuit, in factum actione tenetur.

Dig. 9.2.11.2

Ulpianus 18 ad ed.

Sed si plures servum percusserint, utrum omnes quasi occiderint teneantur, videamus. et si quidem apparet cuius ictu perierit, ille quasi occiderit tenetur: quod si non apparet, omnes quasi occiderint teneri iulianus ait, et si cum uno agatur, ceteri non liberantur: nam ex lege aquilia quod alius praestitit, alium non relevat, cum sit poena.

Dig. 9.2.11.3

Ulpianus 18 ad ed.

Celsus scribit, si alius mortifero vulnere percusserit, alius postea exanimaverit, priorem quidem non teneri quasi occiderit, sed quasi vulneraverit, quia ex alio vulnere periit, posteriorem teneri, quia occidit. quod et Marcello videtur et est probabilius.

Dig. 9.2.11.4

Ulpianus 18 ad ed.

Si plures trabem deiecerint et hominem oppresserint, aeque veteribus placet omnes lege aquilia teneri.

Dig. 9.2.11.5

Ulpianus 18 ad ed.

Item cum eo, qui canem irritaverat et effecerat, ut aliquem morderet, quamvis eum non tenuit, proculus respondit aquiliae actionem esse: sed iulianus eum demum aquilia teneri ait, qui tenuit et effecit ut aliquem morderet: ceterum si non tenuit, in factum agendum.

Dig. 9.2.11.6

Ulpianus 18 ad ed.

Legis autem aquiliae actio ero competit, hoc est domino.

Dig. 9.2.11.7

Ulpianus 18 ad ed.

Si in eo homine, quem tibi redhibiturus essem, damnum iniuria datum esset, iulianus ait legis aquiliae actionem mihi competere meque, cum coepero redhibere, tibi restituturum.

Dig. 9.2.11.8

Ulpianus 18 ad ed.

Sed si servus bona fide alicui serviat, an ei competit aquiliae actio? et magis in factum actio erit danda.

Dig. 9.2.11.9

Ulpianus 18 ad ed.

Eum, cui vestimenta commodata sunt, non posse, si scissa fuerint, lege aquilia agere iulianus ait, sed domino eam competere.

Dig. 9.2.11.10

Ulpianus 18 ad ed.

An fructuarius vel usuarius legis aquiliae actionem haberet, iulianus tractat: et ego puto melius utile iudicium ex hac causa dandum.

Dig. 9.2.12

Paulus 10 ad sab.

Sed et si proprietatis dominus vulneraverit servum vel occiderit, in quo usus fructus meus est, danda est mihi ad exemplum legis aquiliae actio in eum pro portione usus fructus, ut etiam ea pars anni in aestimationem veniat, qua nondum usus fructus meus fuit.

Dig. 9.2.13pr.

Ulpianus 18 ad ed.

Liber homo suo nomine utilem aquiliae habet actionem: directam enim non habet, quoniam dominus membrorum suorum nemo videtur. fugitivi autem nomine dominus habet.

Dig. 9.2.13.1

Ulpianus 18 ad ed.

Iulianus scribit, si homo liber bona fide mihi serviat, ipsum lege aquilia mihi teneri.

Dig. 9.2.13.2

Ulpianus 18 ad ed.

Si servus hereditarius occidatur, quaeritur, quis aquilia agat, cum dominus nullus sit huius servi. et ait celsus legem domino damna salva esse voluisse: dominus ergo hereditas habebitur. quare adita hereditate heres poterit experiri.

Dig. 9.2.13.3

Ulpianus 18 ad ed.

Si servus legatus post aditam hereditatem sit occisus, competere legis aquiliae actionem legatario, si non post mortem servi adgnovit legatum: quod si repudiavit, consequens esse ait iulianus dicere heredi competere.

Dig. 9.2.14

Paulus 22 ad ed.

Sed si ipse heres eum occiderit, dictum est dandam in eum legatario actionem.

Dig. 9.2.15pr.

Ulpianus 18 ad ed.

Huic scripturae consequens est dicere, ut, si ante aditam hereditatem occidatur legatus servus, apud heredem remaneat aquiliae actio per hereditatem adquisita. quod si vulneratus sit ante aditam hereditatem, in hereditate quidem actio remansit, sed cedere ea legatario heredem oportet.

Dig. 9.2.15.1

Ulpianus 18 ad ed.

Si servus vulneratus mortifere postea ruina vel naufragio vel alio ictu maturius perierit, de occiso agi non posse, sed quasi de vulnerato, sed si manumissus vel alienatus ex vulnere periit, quasi de occiso agi posse iulianus ait. haec ita tam varie, quia verum est eum a te occisum tunc cum vulnerabas, quod mortuo eo demum apparuit: at in superiore non est passa ruina apparere an sit occisus. sed si vulneratum mortifere liberum et heredem esse iusseris, deinde decesserit, heredem eius agere aquilia non posse,

Dig. 9.2.16

Marcianus 4 reg.

Quia in eum casum res pervenit, a quo incipere non potest.

Dig. 9.2.17

Ulpianus 18 ad ed.

Si dominus servum suum occiderit, bonae fidei possessori vel ei qui pignori accepit in factum actione tenebitur.

Dig. 9.2.18

Paulus 10 ad sab.

Sed et si is qui pignori servum accepit occidit eum vel vulneravit, lege aquilia et pigneraticia conveniri potest, sed alterutra contentus esse debebit actor.

Dig. 9.2.19

Ulpianus 18 ad ed.

Sed si communem servum occiderit quis, aquilia teneri eum celsus ait: idem est et si vulneraverit:

Dig. 9.2.20

Ulpianus 42 ad sab.

Scilicet pro ea parte, pro qua dominus est qui agat.

Dig. 9.2.21pr.

Ulpianus 18 ad ed.

Ait lex: " quanti is homo in eo anno plurimi fuisset". quae clausula aestimationem habet damni, quod datum est.

Dig. 9.2.21.1

Ulpianus 18 ad ed.

Annus autem retrorsus computatur, ex quo quis occisus est: quod si mortifere fuerit vulneratus et postea post longum intervallum mortuus sit, inde annum numerabimus secundum iulianum, ex quo vulneratus est, licet celsus contra scribit.

Dig. 9.2.21.2

Ulpianus 18 ad ed.

Sed utrum corpus eius solum aestimamus, quanti fuerit cum occideretur, an potius quanti interfuit nostra non esse occisum? et hoc iure utimur, ut eius quod interest fiat aestimatio.

Dig. 9.2.22pr.

Paulus 22 ad ed.

Proinde si servum occidisti, quem sub poena tradendum promisi, utilitas venit in hoc iudicium.

Dig. 9.2.22.1

Paulus 22 ad ed.

Item causae corpori cohaerentes aestimantur, si quis ex comoedis aut symphoniacis aut gemellis aut quadriga aut ex pari mularum unum vel unam occiderit: non solum enim perempti corporis aestimatio facienda est, sed et eius ratio haberi debet, quo cetera corpora depretiata sunt.

Dig. 9.2.23pr.

Ulpianus 18 ad ed.

Inde neratius scribit, si servus heres institutus occisus sit, etiam hereditatis aestimationem venire.

Dig. 9.2.23.1

Ulpianus 18 ad ed.

Iulianus ait, si servus liber et heres esse iussus occisus fuerit, neque substitutum neque legitimum actione legis aquiliae hereditatis aestimationem consecuturum, quae servo competere non potuit: quae sententia vera est. pretii igitur solummodo fieri aestimationem, quia hoc interesse solum substituti videretur: ego autem puto nec pretii fieri aestimationem, quia, si heres esset, et liber esset.

Dig. 9.2.23.2

Ulpianus 18 ad ed.

Idem iulianus scribit, si institutus fuero sub condicione " si stichum manumisero" et stichus sit occisus post mortem testatoris, in aestimationem etiam hereditatis pretium me consecuturum: propter occisionem enim defecit condicio: quod si vivo testatore occisus sit, hereditatis aestimationem cessare, quia retrorsum quanti plurimi fuit inspicitur.

Dig. 9.2.23.3

Ulpianus 18 ad ed.

Idem iulianus scribit aestimationem hominis occisi ad id tempus referri, quo plurimi in eo anno fuit: et ideo et si pretioso pictori pollex fuerit praecisus et intra annum, quo praecideretur, fuerit occisus, posse eum aquilia agere pretioque eo aestimandum, quanti fuit priusquam artem cum pollice amisisset.

Dig. 9.2.23.4

Ulpianus 18 ad ed.

Sed et si servus, qui magnas fraudes in meis rationibus commiserat, fuerit occisus, de quo quaestionem habere destinaveram, ut fraudium participes eruerentur, rectissime labeo scribit tanti aestimandum, quanti mea intererat fraudes servi per eum commissas detegi, non quanti noxa eius servi valeat.

Dig. 9.2.23.5

Ulpianus 18 ad ed.

Sed et si bonae frugi servus intra annum mutatis moribus occisus sit, pretium id aestimabitur, quanto valeret, priusquam mores mutaret.

Dig. 9.2.23.6

Ulpianus 18 ad ed.

In summa omnia commoda, quae intra annum, quo interfectus est, pretiosiorem servum facerent, haec accedere ad aestimationem eius dicendum est.

Dig. 9.2.23.7

Ulpianus 18 ad ed.

Si infans sit occisus nondum anniculus, verius est sufficere hanc actionem, ut aestimatio referatur ad id tempus, quo intra annum vixit.

Dig. 9.2.23.8

Ulpianus 18 ad ed.

Hanc actionem et heredi ceterisque successoribus dari constat: sed in heredem vel ceteros haec actio non dabitur, cum sit poenalis, nisi forte ex damno locupletior heres factus sit.

Dig. 9.2.23.9

Ulpianus 18 ad ed.

Si dolo servus occisus sit, et lege cornelia agere dominum posse constat: et si lege aquilia egerit, praeiudicium fieri corneliae non debet.

Dig. 9.2.23.10

Ulpianus 18 ad ed.

Haec actio adversus confitentem competit in simplum, adversus negantem in duplum.

Dig. 9.2.23.11

Ulpianus 18 ad ed.

Si quis hominem vivum falso confiteatur occidisse et postea paratus sit ostendere hominem vivum esse, iulianus scribit cessare aquiliam, quamvis confessus sit se occidisse: hoc enim solum remittere actori confessoriam actionem, ne necesse habeat docere eum occidisse: ceterum occisum esse hominem a quocumque oportet.

Dig. 9.2.24

Paulus 22 ad ed.

Hoc apertius est circa vulneratum hominem: nam si confessus sit vulnerasse nec sit vulneratus, aestimationem cuius vulneris faciemus? vel ad quod tempus recurramus?

Dig. 9.2.25pr.

Ulpianus 18 ad ed.

Proinde si occisus quidem non sit, mortuus autem sit, magis est, ut non teneatur in mortuo, licet fassus sit.

Dig. 9.2.25.1

Ulpianus 18 ad ed.

Si procurator aut tutor aut curator aut quivis alius confiteatur aut absentem vulnerasse, confessoria in eos utilis actio danda est.

Dig. 9.2.25.2

Ulpianus 18 ad ed.

Notandum, quod in hac actione, quae adversus confitentem datur, iudex non rei iudicandae, sed aestimandae datur: nam nullae partes sunt iudicandi in confitentes.

Dig. 9.2.26

Paulus 22 ad ed.

Puta enim, quod qui convenitur fateatur se occidisse et paratus sit aestimationem solvere, et adversarius magni litem aestimat.

Dig. 9.2.27pr.

Ulpianus 18 ad ed.

Si servus servum alienum subripuerit et occiderit, et iulianus et celsus scribunt et furti et damni iniuriae competere actionem.

Dig. 9.2.27.1

Ulpianus 18 ad ed.

Si servus communis, id est meus et tuus, servum meum occiderit, legi aquiliae locus est adversus te, si tua voluntate fecit: et ita proculum existimasse urseius refert. quod si non voluntate tua fecit, cessare noxalem actionem, ne sit in potestate servi, ut tibi soli serviat: quod puto verum esse.

Dig. 9.2.27.2

Ulpianus 18 ad ed.

Item si servus communis meus et tuus sit occisus a servo titii, celsus scribit alterum ex dominis agentem aut litis aestimationem consecuturum pro parte aut noxae dedi ei in solidum oportere, quia haec res divisionem non recipit.

Dig. 9.2.27.3

Ulpianus 18 ad ed.

Servi autem occidentis nomine dominus tenetur, is vero cui bona fide servit non tenetur. sed an is, qui servum in fuga habet, teneatur nomine eius aquiliae actione, quaeritur: et ait iulianus teneri et est verissimum: cum et Marcellus consentit.

Dig. 9.2.27.4

Ulpianus 18 ad ed.

Huius legis secundum quidem capitulum in desuetudinem abiit.

Dig. 9.2.27.5

Ulpianus 18 ad ed.

Tertio autem capite ait eadem lex aquilia: " ceterarum rerum praeter hominem et pecudem occisos si quis alteri damnum faxit, quod usserit fregerit ruperit iniuria, quanti ea res erit in diebus triginta proximis, tantum aes domino dare damnas esto".

Dig. 9.2.27.6

Ulpianus 18 ad ed.

Si quis igitur non occiderit hominem vel pecudem, sed usserit fregerit ruperit, sine dubio ex his verbis legis agendum erit. proinde si facem servo meo obieceris et eum adusseris, teneberis mihi.

Dig. 9.2.27.7

Ulpianus 18 ad ed.

Item si arbustum meum vel villam meam incenderis, aquiliae actione habebo.

Dig. 9.2.27.8

Ulpianus 18 ad ed.

Si quis insulam voluerit meam exurere et ignis etiam ad vicini insulam pervenerit, aquilia tenebitur etiam vicino: non minus etiam inquilinis tenebitur ob res eorum exustas.

Dig. 9.2.27.9

Ulpianus 18 ad ed.

Si fornicarius servus coloni ad fornacem obdormisset et villa fuerit exusta, neratius scribit ex locato conventum praestare debere, si neglegens in eligendis ministeriis fuit: ceterum si alius ignem subiecerit fornaci, alius neglegenter custodierit, an tenebitur qui subiecerit? nam qui custodit, nihil fecit, qui recte ignem subiecit, non peccavit: quid ergo est? puto utilem competere actionem tam in eum qui ad fornacem obdormivit quam in eum qui neglegenter custodit, nec quisquam dixerit in eo qui obdormivit rem eum humanam et naturalem passum, cum deberet vel ignem extinguere vel ita munire, ne evagetur.

Dig. 9.2.27.10

Ulpianus 18 ad ed.

Si furnum secundum parietem communem haberes, an damni iniuria tenearis? et ait proculus agi non posse, quia nec cum eo qui focum haberet: et ideo aequius puto in factum actionem dandam, scilicet si paries exustus sit: sin autem nondum mihi damnum dederis, sed ita ignem habeas, ut metuam, ne mihi damnum des, damni infecti puto sufficere cautionem.

Dig. 9.2.27.11

Ulpianus 18 ad ed.

Proculus ait, cum coloni servi villam exussissent, colonum vel ex locato vel lege aquilia teneri, ita ut colonus possit servos noxae dedere, et si uno iudicio res esset iudicata, altero amplius non agendum. sed haec ita, si culpa colonus careret: ceterum si noxios servos habuit, damni eum iniuria teneri, cur tales habuit. idem servandum et circa inquilinorum insulae personas scribit: quae sententia habet rationem.

Dig. 9.2.27.12

Ulpianus 18 ad ed.

Si, cum apes meae ad tuas advolassent, tu eas exusseris, legis aquiliae actionem competere celsus ait.

Dig. 9.2.27.13

Ulpianus 18 ad ed.

Inquit lex " ruperit". rupisse verbum fere omnes veteres sic intellexerunt " corruperit".

Dig. 9.2.27.14

Ulpianus 18 ad ed.

Et ideo celsus quaerit, si lolium aut avenam in segetem alienam inieceris, quo eam tu inquinares, non solum quod vi aut clam dominum posse agere vel, si locatus fundus sit, colonum, sed et in factum agendum, et si colonus eam exercuit, cavere eum debere amplius non agi, scilicet ne dominus amplius inquietet: nam alia quaedam species damni est ipsum quid corrumpere et mutare, ut lex aquilia locum habeat, alia nulla ipsius mutatione applicare aliud, cuius molesta separatio sit.

Dig. 9.2.27.15

Ulpianus 18 ad ed.

Cum eo plane, qui vinum spurcavit vel effudit vel acetum fecit vel alio modo vitiavit, agi posse aquilia celsus ait, quia etiam effusum et acetum factum corrupti appellatione continentur.

Dig. 9.2.27.16

Ulpianus 18 ad ed.

Et non negat fractum et ustum contineri corrupti appellatione, sed non esse novum, ut lex specialiter quibusdam enumeratis generale subiciat verbum, quo specialia complectatur: quae sententia vera est.

Dig. 9.2.27.17

Ulpianus 18 ad ed.

Rupisse eum utique accipiemus, qui vulneraverit, vel virgis vel loris vel pugnis cecidit, vel telo vel quo alio, ut scinderet alicui corpus, vel tumorem fecerit, sed ita demum, si damnum iniuria datum est: ceterum si nullo servum pretio viliorem deterioremve fecerit, aquilia cessat iniuriarumque erit agendum dumtaxat: aquilia enim eas ruptiones, quae damna dant, persequitur. ergo etsi pretio quidem non sit deterior servus factus, verum sumptus in salutem eius et sanitatem facti sunt, in haec mihi videri damnum datum: atque ideoque lege aquilia agi posse.

Dig. 9.2.27.18

Ulpianus 18 ad ed.

Si quis vestimenta sciderit vel inquinaverit, aquilia quasi ruperit tenetur.

Dig. 9.2.27.19

Ulpianus 18 ad ed.

Sed et si quis milium vel frumentum meum effuderit in flumen, sufficit aquiliae actio.

Dig. 9.2.27.20

Ulpianus 18 ad ed.

Item si quis frumento harenam vel aliud quid immiscuit, ut difficilis separatio sit, quasi de corrupto agi poterit.

Dig. 9.2.27.21

Ulpianus 18 ad ed.

Si quis de manu mihi nummos excusserit, sabinus existimat damni iniuriae esse actionem, si ita perierint, ne ad aliquem pervenirent, puta si in flumen vel in mare vel in cloacam ceciderunt: quod si ad aliquem pervenerunt, ope consilio furtum factum agendum, quod et antiquis placuit. idem etiam in factum dari posse actionem ait.

Dig. 9.2.27.22

Ulpianus 18 ad ed.

Si mulier pugno vel equa ictu a te percussa eiecerit, brutus ait aquilia teneri quasi rupto.

Dig. 9.2.27.23

Ulpianus 18 ad ed.

Et si mulum plus iusto oneraverit et aliquid membri ruperit, aquiliae locum fore.

Dig. 9.2.27.24

Ulpianus 18 ad ed.

Si navem venaliciarum mercium perforasset, aquiliae actionem esse, quasi ruperit, vivianus scribit.

Dig. 9.2.27.25

Ulpianus 18 ad ed.

Si olivam immaturam decerpserit vel segetem desecuerit immaturam vel vineas crudas, aquilia tenebitur: quod si iam maturas, cessat aquilia: nulla enim iniuria est, cum tibi etiam impensas donaverit, quae in collectionem huiusmodi fructuum impenduntur: sed si collecta haec interceperit, furti tenetur. octavenus in uvis adicit, nisi inquit, in terram uvas proiecit, ut effunderentur.

Dig. 9.2.27.26

Ulpianus 18 ad ed.

Idem et in silva caedua scribit, ut, si immatura, aquilia teneatur, quod si matura interceperit, furti teneri eum et arborum furtim caesarum.

Dig. 9.2.27.27

Ulpianus 18 ad ed.

Si salictum maturum ita, ne stirpes laederes, tuleris, cessare aquiliam.

Dig. 9.2.27.28

Ulpianus 18 ad ed.

Et si puerum quis castraverit et pretiosiorem fecerit, vivianus scribit cessare aquiliam, sed iniuriarum erit agendum aut ex edicto aedilium aut in quadruplum.

Dig. 9.2.27.29

Ulpianus 18 ad ed.

Si calicem diatretum faciendum dedisti, si quidem imperitia fregit, damni iniuria tenebitur: si vero non imperitia fregit, sed rimas habebat vitiosas, potest esse excussatus: et ideo plerumque artifices convenire solent, cum eiusmodi materiae dantur, non periculo suo se facere, quae res ex locato tollit actionem et aquiliae.

Dig. 9.2.27.30

Ulpianus 18 ad ed.

Si cum maritus uxori margaritas extricatas dedisset in usu eaque invito vel inscio viro perforasset, ut pertusis in linea uteretur, teneri eam lege aquilia, sive divertit sive nupta est adhuc.

Dig. 9.2.27.31

Ulpianus 18 ad ed.

Si quis aedificii mei fores confregerit vel refregerit aut si ipsum aedificium diruit, lege aquilia tenetur.

Dig. 9.2.27.32

Ulpianus 18 ad ed.

Si quis aquae ductum meum diruerit, licet cementa mea sunt, quae diruta sunt, tamen quia terra mea non sit, qua aquam duco, melius est dicere actionem utilem dandam.

Dig. 9.2.27.33

Ulpianus 18 ad ed.

Si ex plostro lapis ceciderit et quid ruperit vel fregerit, aquiliae actione plostrarium teneri placet, si male composuit lapides et ideo lapsi sunt.

Dig. 9.2.27.34

Ulpianus 18 ad ed.

Si quis servum conductum ad mulum regendum commendaverit ei mulum ille ad pollicem suum eum alligaverit de loro et mulus eruperit sic, ut et pollicem avelleret servo et se praecipitaret, mela scribit, si pro perito imperitus locatus sit, ex conducto agendum cum domino ob mulum ruptum vel debilitatum, sed si ictu aut terrore mulus turbatus sit, tum dominum eius, id est muli, et servi cum eo qui turbavit habiturum legis aquiliae actionem. mihi autem videtur et eo casu, quo ex locato actio est, competere etiam aquiliae.

Dig. 9.2.27.35

Ulpianus 18 ad ed.

Item si tectori locaveris laccum vino plenum curandum et ille eum pertudit, ut vinum sit effusum, labeo scribit in factum agendum.

Dig. 9.2.28pr.

Paulus 10 ad sab.

Qui foveas ursorum cervorumque capiendorum causa faciunt, si in itineribus fecerunt eoque aliquid decidit factumque deterius est, lege aquilia obligati sunt: at si in aliis locis, ubi fieri solent, fecerunt, nihil tenentur.

Dig. 9.2.28.1

Paulus 10 ad sab.

Haec tamen actio ex causa danda est, id est si neque denuntiatum est neque scierit aut providere potuerit: et multa huiusmodi deprehenduntur, quibus summovetur petitor, si evitare periculum poterit.

Dig. 9.2.29pr.

Ulpianus 18 ad ed.

Quemadmodum si laqueos eo loci posuisses, quo ius ponendi non haberes, et pecus vicini in eos laqueos incidisset.

Dig. 9.2.29.1

Ulpianus 18 ad ed.

Si protectum meum, quod supra domum tuam nullo iure habebam, reccidisses, posse me tecum damni iniuria agere proculus scribit: debuisti enim mecum ius mihi non esse protectum habere agere: nec esse aequum damnum me pati recisis a te meis tignis. aliud est dicendum ex rescripto imperatoris severi, qui ei, per cuius domum traiectus erat aquae ductus citra servitutem, rescripsit iure suo posse eum intercidere, et merito: interest enim, quod hic in suo protexit, ille in alieno fecit.

Dig. 9.2.29.2

Ulpianus 18 ad ed.

Si navis tua impacta in meam scapham damnum mihi dedit, quaesitum est, quae actio mihi competeret. et ait proculus, si in potestate nautarum fuit, ne id accideret, et culpa eorum factum sit, lege aquilia cum nautis agendum, quia parvi refert navem immittendo aut serraculum ad navem ducendo an tua manu damnum dederis, quia omnibus his modis per te damno adficior: sed si fune rupto aut cum a nullo regeretur navis incurrisset, cum domino agendum non esse.

Dig. 9.2.29.3

Ulpianus 18 ad ed.

Item labeo scribit, si, cum vi ventorum navis impulsa esset in funes anchorarum alterius et nautae funes praecidissent, si nullo alio modo nisi praecisis funibus explicare se potuit, nullam actionem dandam. idemque labeo et proculus et circa retia piscatorum, in quae navis piscatorum inciderat, aestimarunt. plane si culpa nautarum id factum esset, lege aquilia agendum. sed ubi damni iniuria agitur ob retia, non piscium, qui ideo capti non sunt, fieri aestimationem, cum incertum fuerit, an caperentur. idemque et in venatoribus et in aucupibus probandum.

Dig. 9.2.29.4

Ulpianus 18 ad ed.

Si navis alteram contra se venientem obruisset, aut in gubernatorem aut in ducatorem actionem competere damni iniuriae alfenus ait: sed si tanta vis navi facta sit, quae temperari non potuit, nullam in dominum dandam actionem: sin autem culpa nautarum id factum sit, puto aquiliae sufficere.

Dig. 9.2.29.5

Ulpianus 18 ad ed.

Si funem quis, quo religata navis erat, praeciderit, de nave quae periit in factum agendum.

Dig. 9.2.29.6

Ulpianus 18 ad ed.

Hac actione ex hoc legis capite de omnibus animalibus laesis, quae pecudes non sunt, agendum est, ut puta de cane: sed et de apro et leone ceterisque feris et avibus idem erit dicendum.

Dig. 9.2.29.7

Ulpianus 18 ad ed.

Magistratus municipales, si damnum iniuria dederint, posse aquilia teneri. nam et cum pecudes aliquis pignori cepisset et fame eas necavisset, dum non patitur te eis cibaria adferre, in factum actio danda est. item si dum putat se ex lege capere pignus, non ex lege ceperit et res tritas corruptasque reddat, dicitur legem aquiliam locum habere: quod dicendum est et si ex lege pignus cepit. si quid tamen magistratus adversus resistentem violentius fecerit, non tenebitur aquilia: nam et cum pignori servum cepisset et ille se suspenderit, nulla datur actio.

Dig. 9.2.29.8

Ulpianus 18 ad ed.

Haec verba: " quanti in triginta diebus proximis fuit", etsi non habent " plurimi", sic tamen esse accipienda constat.

Dig. 9.2.30pr.

Paulus 22 ad ed.

Qui occidit adulterum deprehensum servum alienum, hac lege non tenebitur.

Dig. 9.2.30.1

Paulus 22 ad ed.

Pignori datus servus si occisus sit, debitori actio competit. sed an et creditori danda sit utilis, quia potest interesse eius, quod debitor solvendo non sit aut quod litem tempore amisit, quaeritur. sed hic iniquum est et domino et creditori eum teneri. nisi si quis putaverit nullam in ea re debitorem iniuriam passurum, cum prosit ei ad debiti quantitatem et quod sit amplius consecuturus sit ab eo, vel ab initio in id, quod amplius sit quam in debito, debitori dandam actionem: et ideo in his casibus, in quibus creditori danda est actio propter inopiam debitoris vel quod litem amisit, creditor quidem usque ad modum debiti habebit aquiliae actionem, ut prosit hoc debitori, ipsi autem debitori in id quod debitum excedit competit aquiliae actio.

Dig. 9.2.30.2

Paulus 22 ad ed.

Si quis alienum vinum vel frumentum consumpserit, non videtur damnum iniuria dare ideoque utilis danda est actio.

Dig. 9.2.30.3

Paulus 22 ad ed.

In hac quoque actione, quae ex hoc capitulo oritur, dolus et culpa punitur: ideoque si quis in stipulam suam vel spinam comburendae eius causa ignem immiserit et ulterius evagatus et progressus ignis alienam segetem vel vineam laeserit, requiramus, num imperitia eius aut neglegentia id accidit. nam si die ventoso id fecit, culpae reus est (nam et qui occasionem praestat, damnum fecisse videtur): in eodem crimine est et qui non observavit, ne ignis longius procederet. at si omnia quae oportuit observavit vel subita vis venti longius ignem produxit, caret culpa.

Dig. 9.2.30.4

Paulus 22 ad ed.

Si vulneratus fuerit servus non mortifere, neglegentia autem perierit, de vulnerato actio erit, non de occiso.

Dig. 9.2.31

Paulus 10 ad sab.

Si putator ex arbore ramum cum deiceret vel machinarius hominem praetereuntem occidit, ita tenetur, si is in publicum decidat nec ille proclamavit, ut casus eius evitari possit. sed mucius etiam dixit, si in privato idem accidisset, posse de culpa agi: culpam autem esse, quod cum a diligente provideri poterit, non esset provisum aut tum denuntiatum esset, cum periculum evitari non possit. secundum quam rationem non multum refert, per publicum an per privatum iter fieret, cum plerumque per privata loca volgo iter fiat. quod si nullum iter erit, dolum dumtaxat praestare debet, ne immittat in eum, quem viderit transeuntem: nam culpa ab eo exigenda non est, cum divinare non potuerit, an per eum locum aliquis transiturus sit.

Dig. 9.2.32pr.

Gaius 7 ad ed. provinc.

Illud quaesitum est, an quod proconsul in furto observat quod a familia factum sit (id est ut non in singulos detur poenae persecutio, sed sufficeret id praestari, quod praestandum foret, si id furtum unus liber fecisset), debeat et in actione damni iniuriae observari. sed magis visum est idem esse observandum, et merito: cum enim circa furti actionem haec ratio sit, ne ex uno delicto tota familia dominus careat eaque ratio similiter et in actionem damni iniuriae interveniat, sequitur, ut idem debeat aestimari, praesertim cum interdum levior sit haec causa delicti, veluti si culpa et non dolo damnum daretur.

Dig. 9.2.32.1

Gaius 7 ad ed. provinc.

Si idem eundem servum vulneraverit, postea deinde etiam occiderit, tenebitur et de vulnerato et de occiso: duo enim sunt delicta. aliter atque si quis uno impetu pluribus vulneribus aliquem occiderit: tunc enim una erit actio de occiso.

Dig. 9.2.33pr.

Paulus 2 ad plaut.

Si servum meum occidisti, non affectiones aestimandas esse puto, veluti si filium tuum naturalem quis occiderit quem tu magno emptum velles, sed quanti omnibus valeret. sextus quoque pedius ait pretia rerum non ex affectione nec utilitate singulorum, sed communiter fungi: itaque eum, qui filium naturalem possidet, non eo locupletiorem esse, quod eum plurimo, si alius possideret, redempturus fuit, nec illum, qui filium alienum possideat, tantum habere, quanti eum patri vendere posset. in lege enim aquilia damnum consequimur: et amisisse dicemur, quod aut consequi potuimus aut erogare cogimur.

Dig. 9.2.33.1

Paulus 2 ad plaut.

In damnis, quae lege aquilia non tenentur, in factum datur actio.

Dig. 9.2.34

Marcellus 21 Dig.

Titio et seio stichum legavit: deliberante seio, cum titius vindicasset legatum, stichus occisus est: deinde seius repudiavit legatum. perinde titius agere possit, ac si soli legatus esset,

Dig. 9.2.35

Ulpianus 18 ad ed.

Quia retro adcrevisse dominium ei videtur:

Dig. 9.2.36pr.

Marcellus 21 Dig.

Nam sicut repudiante legatario legatum heredis est actio perinde ac si legatus non esset, ita huius actio est ac si soli legatus esset.

Dig. 9.2.36.1

Marcellus 21 Dig.

Si dominus servum, quem titius mortifere vulneraverat, liberum et heredem esse iusserit eique postea maevius exstiterit heres, non habebit maevius cum titio legis aquiliae actionem, scilicet secundum sabini opinionem, qui putabat ad heredem actionem non transmitti, quae defuncto competere non potuit: nam sane absurdum accidet, ut heres pretium quasi occisi consequatur eius, cuius heres exstitit. quod si ex parte eum dominus heredem cum libertate esse iusserit, coheres eius mortuo eo aget lege aquilia.

Dig. 9.2.37pr.

Iavolenus 14 ex cass.

Liber homo si iussu alterius manu iniuriam dedit, actio legis aquiliae cum eo est qui iussit, si modo ius imperandi habuit: quod si non habuit, cum eo agendum est qui fecit.

Dig. 9.2.37.1

Iavolenus 14 ex cass.

Si quadrupes, cuius nomine actio esset cum domino, quod pauperiem fecisset, ab alio occisa est et cum eo lege aquilia agitur, aestimatio non ad corpus quadrupedis, sed ad causam eius (in quo de pauperie actio est) referri debet et tanti damnandus est is qui occidit iudicio legis aquiliae, quanti actoris interest noxae potius deditione defungi quam litis aestimatione.

Dig. 9.2.38

Iavolenus 9 epist.

Si eo tempore, quo tibi meus servus quem bona fide emisti serviebat, ipse a servo tuo vulneratus est, placuit omnimodo me tecum recte lege aquilia experiri.

Dig. 9.2.39pr.

Pomponius 17 ad q. muc.

Quintus mucius scribit: equa cum in alieno pasceretur, in cogendo quod praegnas erat eiecit: quaerebatur, dominus eius possetne cum eo qui coegisset lege aquilia agere, quia equam in iciendo ruperat. si percussisset aut consulto vehementius egisset, visum est agere posse.

Dig. 9.2.39.1

Pomponius 17 ad q. muc.

Pomponius. quamvis alienum pecus in agro suo quis deprehendit, sic illud expellere debet, quomodo si suum deprehendisset, quoniam si quid ex ea re damnum cepit, habet proprias actiones. itaque qui pecus alienum in agro suo deprehenderit, non iure id includit, nec agere illud aliter debet quam ut supra diximus quasi suum: sed vel abigere debet sine damno vel admonere dominum, ut suum recipiat.

Dig. 9.2.40

Paulus 3 ad ed.

In lege aquilia, si deletum chirographum mihi esse dicam, in quo sub condicione mihi pecunia debita fuerit, et interim testibus quoque id probare possim, qui testes possunt non esse eo tempore, quo condicio extitit, et si summatim re exposita ad suspicionem iudicem adducam, debeam vincere: sed tunc condemnationis exactio competit, cum debiti condicio extiterit: quod si defecerit, condemnatio nullas vires habebit.

Dig. 9.2.41pr.

Ulpianus 41 ad sab.

Si quis testamentum deleverit, an damni iniuriae actio competat, videamus. et Marcellus libro quinto digestorum dubitans negat competere. quemadmodum enim, inquit, aestimatio inibitur? ego apud eum notavi in testatore quidem hoc esse verum, quia quod interest eius aestimari non potest, verum tamen in herede vel legatariis diversum, quibus testamenta paene chirographa sunt. ibidem Marcellus scribit chirographo deleto competere legis aquiliae actionem. sed et si quis tabulas testamenti apud se depositas deleverit vel pluribus praesentibus legerit, utilius est in factum et iniuriarum agi, si iniuriae faciendae causa secreta iudiciorum publicavit.

Dig. 9.2.41.1

Ulpianus 41 ad sab.

Interdum evenire pomponius eleganter ait, ut quis tabulas delendo furti non teneatur, sed tantum damni iniuriae, ut puta si non animo furti faciendi, sed tantum damni dandi delevit: nam furti non tenebitur: cum facto enim etiam animum furis furtum exigit.

Dig. 9.2.42

Iulianus 48 Dig.

Qui tabulas testamenti depositas aut alicuius rei instrumentum ita delevit, ut legi non possit, depositi actione et ad exhibendum tenetur, quia corruptam rem restituerit aut exhibuerit. legis quoque aquiliae actio ex eadem causa competit: corrupisse enim tabulas recte dicitur et qui eas interleverit.

Dig. 9.2.43

Pomponius 19 ad sab.

Ob id, quod ante quam hereditatem adires damnum admissum in res hereditarias est, legis aquiliae actionem habes, quod post mortem eius, cui heres sis, acciderit: dominum enim lex aquilia appellat non utique eum, qui tunc fuerit, cum damnum daretur: nam isto modo ne ab eo quidem, cui heres quis erit, transire ad eum ea actio poterit: neque ob id, quod tum commissum fuerit, cum in hostium potestate esses, agere postliminio reversus poteris: et hoc aliter constitui sine magna captione postumorum liberorum, qui parentibus heredes erunt, non poterit. eadem dicemus et de arboribus eodem tempore furtim caesis. puto eadem dici posse etiam de hac actione quod vi aut clam, si modo quis aut prohibitus fecerit, aut apparuerit eum intellegere debuisse ab eis, ad quos ea hereditas pertineret, si rescissent, prohibitum iri.

Dig. 9.2.44pr.

Ulpianus 42 ad sab.

In lege aquilia et levissima culpa venit.

Dig. 9.2.44.1

Ulpianus 42 ad sab.

Quotiens sciente domino servus vulnerat vel occidit, aquilia dominum teneri dubium non est.

Dig. 9.2.45pr.

Paulus 10 ad sab.

Scientiam hic pro patientia accipimus, ut qui prohibere potuit teneatur, si non fecerit.

Dig. 9.2.45.1

Paulus 10 ad sab.

Lege aquilia agi potest et sanato vulnerato servo.

Dig. 9.2.45.2

Paulus 10 ad sab.

Si meum servum, cum liberum putares, occideris, lege aquilia teneberis.

Dig. 9.2.45.3

Paulus 10 ad sab.

Cum stramenta ardentia transilirent duo, concurrerunt amboque ceciderunt et alter flamma consumptus est: nihil eo nomine potest ^ ^ agi, si non intellegitur, uter ab utro eversus sit.

Dig. 9.2.45.4

Paulus 10 ad sab.

Qui, cum aliter tueri se non possent, damni culpam dederint, innoxii sunt: vim enim vi defendere omnes leges omniaque iura permittunt. sed si defendendi mei causa lapidem in adversarium misero, sed non eum, sed praetereuntem percussero, tenebor lege aquilia: illum enim solum qui vim infert ferire conceditur, et hoc, si tuendi dumtaxat, non etiam ulciscendi causa factum sit.

Dig. 9.2.45.5

Paulus 10 ad sab.

Qui idoneum parietem sustulit, damni iniuria domino eius tenetur.

Dig. 9.2.46

Ulpianus 50 ad sab.

Si vulnerato servo lege aquilia actum sit, postea mortuo ex eo vulnere agi lege aquilia nihilo minus potest.

Dig. 9.2.47

Iulianus 86 Dig.

Sed si priore iudicio aestimatione facta, postea mortuo servo, de occiso agere dominus instituerit, exceptione doli mali opposita compelletur, ut ex utroque iudicio nihil amplius consequatur, quam consequi deberet, si initio de occiso homine egisset.

Dig. 9.2.48

Paulus 39 ad ed.

Si servus ante aditam hereditatem damnum in re hereditaria dederit et liber factus in ea re damnum det, utraque actione tenebitur, quia alterius et alterius facti hae res sunt.

Dig. 9.2.49pr.

Ulpianus 9 disp.

Si quis fumo facto apes alienas fugaverit vel etiam necaverit, magis causam mortis praestitisse videtur quam occidisse, et ideo in factum actione tenebitur.

Dig. 9.2.49.1

Ulpianus 9 disp.

Quod dicitur damnum iniuria datum aquilia persequi, sic erit accipiendum, ut videatur damnum iniuria datum, quod cum damno iniuriam attulerit: nisi magna vi cogente fuerit factum, ut celsus scribit circa eum, qui incendii arcendi gratia vicinas aedes intercidit: nam hic scribit cessare legis aquiliae actionem: iusto enim metu ductus, ne ad se ignis perveniret, vicinas aedes intercidit: et sive pervenit ignis sive ante extinctus est, existimat legis aquiliae actionem cessare.

Dig. 9.2.50

Ulpianus 6 opin.

Qui domum alienam invito domino demolit et eo loco balneas exstruxit, praeter naturale ius, quod superficies ad dominum soli pertinet, etiam damni dati nomine actioni subicitur.

Dig. 9.2.51pr.

Iulianus 86 Dig.

Ita vulneratus est servus, ut eo ictu certum esset moriturum: medio deinde tempore heres institutus est et postea ab alio ictus decessit: quaero, an cum utroque de occiso lege aquilia agi possit. respondit: occidisse dicitur vulgo quidem, qui mortis causam quolibet modo praebuit: sed lege aquilia is demum teneri visus est, qui adhibita vi et quasi manu causam mortis praebuisset, tracta videlicet interpretatione vocis a caedendo et a caede. rursus aquilia lege teneri existimati sunt non solum qui ita vulnerassent, ut confestim vita privarent, sed etiam hi, quorum ex vulnere certum esset aliquem vita excessurum. igitur si quis servo mortiferum vulnus inflixerit eundemque alius ex intervallo ita percusserit, ut maturius interficeretur, quam ex priore vulnere moriturus fuerat, statuendum est utrumque eorum lege aquilia teneri.

Dig. 9.2.51.1

Iulianus 86 Dig.

Idque est consequens auctoritati veterum, qui, cum a pluribus idem servus ita vulneratus esset, ut non appareret cuius ictu perisset, omnes lege aquilia teneri iudicaverunt.

Dig. 9.2.51.2

Iulianus 86 Dig.

Aestimatio autem perempti non eadem in utriusque persona fiet: nam qui prior vulneravit, tantum praestabit, quanto in anno proximo homo plurimi fuerit repetitis ex die vulneris trecentum sexaginta quinque diebus, posterior in id tenebitur, quanti homo plurimi venire poterit in anno proximo, quo vita excessit, in quo pretium quoque hereditatis erit. eiusdem ergo servi occisi nomine alius maiorem, alius minorem aestimationem praestabit, nec mirum, cum uterque eorum ex diversa causa et diversis temporibus occidisse hominem intellegatur. quod si quis absurde a nobis haec constitui putaverit, cogitet longe absurdius constitui neutrum lege aquilia teneri aut alterum potius, cum neque impunita maleficia esse oporteat nec facile constitui possit, uter potius lege teneatur. multa autem iure civili contra rationem disputandi pro utilitate communi recepta esse innumerabilibus rebus probari potest: unum interim posuisse contentus ero. cum plures trabem alienam furandi causa sustulerint, quam singuli ferre non possent, furti actione omnes teneri existimantur, quamvis subtili ratione dici possit neminem eorum teneri, quia neminem verum sit eam sustulisse.

Dig. 9.2.52pr.

Alfenus 2 Dig.

Si ex plagis servus mortuus esset neque id medici inscienta aut domini neglegentia accidisset, recte de iniuria occiso eo agitur.

Dig. 9.2.52.1

Alfenus 2 Dig.

Tabernarius in semita noctu supra lapidem lucernam posuerat: quidam praeteriens eam sustulerat: tabernarius eum consecutus lucernam reposcebat et fugientem retinebat: ille flagello, quod in manu habebat, in quo dolor inerat, verberare tabernarium coeperat, ut se mitteret: ex eo maiore rixa facta tabernarius ei, qui lucernam sustulerat, oculum effoderat: consulebat, num damnum iniuria non videtur dedisse, quoniam prior flagello percussus esset. respondi, nisi data opera effodisset oculum, non videri damnum iniuria fecisse, culpam enim penes eum, qui prior flagello percussit, residere: sed si ab eo non prior vapulasset, sed cum ei lucernam eripere vellet, rixatus esset, tabernarii culpa factum videri.

Dig. 9.2.52.2

Alfenus 2 Dig.

In clivo capitolino duo plostra onusta mulae ducebant: prioris plostri muliones conversum plostrum sublevabant, quo facile mulae ducerent: inter superius plostrum cessim ire coepit et cum muliones, qui inter duo plostra fuerunt, e medio exissent, posterius plostrum a priore percussum retro redierat et puerum cuiusdam obtriverat: dominus pueri consulebat, cum quo se agere oporteret. respondi in causa ius esse positum: nam ^ eam^ si muliones, qui superius plostrum sustinuissent, sua sponte se subduxissent et ideo factum esset, ut mulae plostrum retinere non possint atque onere ipso retraherentur, cum domino mularum nullam esse actionem, cum hominibus, qui conversum plostrum sustinuissent, lege aquilia agi posse: nam nihilo minus eum damnum dare, qui quod sustineret mitteret sua voluntate, ut id aliquem feriret: veluti si quis asellum cum agitasset non retinuisset, aeque si quis ex manu telum aut aliud quid immisisset, damnum iniuria daret. sed si mulae, quia aliquid reformidassent et muliones timore permoti, ne opprimerentur, plostrum reliquissent, cum hominibus actionem nullam esse, cum domino mularum esse. quod si neque mulae neque homines in causa essent, sed mulae retinere onus nequissent aut cum coniterentur lapsae concidissent et ideo plostrum cessim redisset atque hi quo conversum fuisset onus sustinere nequissent, neque cum domino mularum neque cum hominibus esse actionem. illud quidem certe, quoquo modo res se haberet, cum domino posteriorum mularum agi non posse, quoniam non sua sponte, sed percussae retro redissent.

Dig. 9.2.52.3

Alfenus 2 Dig.

Quidam boves vendidit ea lege, uti daret experiundos: postea dedit experiundos: emptoris servus in experiundo percussus ab altero bove cornu est: quaerebatur, num venditor emptori damnum praestare deberet. respondi, si emptor boves emptos haberet, non debere praestare: sed si non haberet emptos, tum, si culpa hominis factum esset, ut a bove feriretur, non debere praestari, si vitio bovis, debere.

Dig. 9.2.52.4

Alfenus 2 Dig.

Cum pila complures luderent, quidam ex his servulum, cum pilam percipere conaretur, impulit, servus cecidit et crus fregit: quaerebatur, an dominus servuli lege aquilia cum eo, cuius impulsu ceciderat, agere potest. respondi non posse, cum casu magis quam culpa videretur factum.

Dig. 9.2.53

Nerva 1 membr.

Boves alienos in angustum locum coegisti eoque effectum est, ut deicerentur: datur in te ad exemplum legis aquiliae in factum actio.

Dig. 9.2.54

Papinianus 37 quaest.

Legis aquiliae debitori competit actio, cum reus stipulandi ante moram promissum animal vulneravit: idem est et si occiderit animal. quod si post moram promissoris qui stipulatus fuerat occidit, debitor quidem liberatur, lege autem aquilia hoc casu non recte experietur: nam creditor ipse sibi potius quam alii iniuriam fecisse videtur.

Dig. 9.2.55

Paulus 22 quaest.

Stichum aut pamphilum promisi titio, cum stichus esset decem milium, pamphilus viginti: stipulator stichum ante moram occidit: quaesitum est de actione legis aquiliae. respondi: cum viliorem occidisse proponitur, in hunc tractatum nihilum differt ab extraneo creditor. quanti igitur fiet aestimatio, utrum decem milium, quanti fuit occisus, an quanti est, quem necesse habeo dare, id est quanti mea interest? et quid dicemus, si et pamphilus decesserit sine mora? iam pretium stichi minuetur, quoniam liberatus est promissor? et sufficiet fuisse pluris cum occideretur vel intra annum. hac quidem ratione etiam si post mortem pamphili intra annum occidatur, pluris videbitur fuisse.

Dig. 9.2.56

Paulus 2 sent.

Mulier si in rem viri damnum dederit, pro tenore legis aquiliae convenitur.

Dig. 9.2.57

Iavolenus 6 ex post. lab.

Equum tibi commodavi: in eo tu cum equitares et una complures equitarent, unus ex his irruit in equum teque deiecit et eo casu crura equi fracta sunt. labeo negat tecum ullam actionem esse, sed si equitis culpa factum esset, cum equite: sane non cum equi domino agi posse. verum puto.

Dig. 9.3.0. De his, qui effuderint vel deiecerint.

Dig. 9.3.1pr.

Ulpianus 23 ad ed.

Praetor ait de his, qui deiecerint vel effuderint: " unde in eum locum, quo volgo iter fiet vel in quo consistetur, deiectum vel effusum quid erit, quantum ex ea re damnum datum factumve erit, in eum, qui ibi habitaverit, in duplum iudicium dabo. si eo ictu homo liber perisse dicetur, quinquaginta aureorum iudicium dabo. si vivet nocitumque ei esse dicetur, quantum ob eam rem aequum iudici videbitur eum cum quo agetur condemnari, tanti iudicium dabo. si servus insciente domino fecisse dicetur, in iudicio adiciam: aut noxam dedere. "

Dig. 9.3.1.1

Ulpianus 23 ad ed.

Summa cum utilitate id praetorem edixisse nemo est qui neget: publice enim utile est sine metu et periculo per itinera commeari.

Dig. 9.3.1.2

Ulpianus 23 ad ed.

Parvi autem interesse debet, utrum publicus locus sit an vero privatus, dummodo per eum volgo iter fiat, quia iter facientibus prospicitur, non publicis viis studetur: semper enim ea loca, per quae volgo iter solet fieri, eandem securitatem debent habere. ceterum si aliquando vulgus in illa via non commeabat et tunc deiectum quid vel effusum, cum adhuc secreta loca essent, modo coepit commeari, non debet hoc edicto teneri.

Dig. 9.3.1.3

Ulpianus 23 ad ed.

Quod, cum suspenderetur, decidit, magis deiectum videri, sed et quod suspensum decidit, pro deiecto haberi magis est. proinde et si quid pendens effusum sit, quamvis nemo hoc effuderit, edictum tamen locum habere dicendum est.

Dig. 9.3.1.4

Ulpianus 23 ad ed.

Haec in factum actio in eum datur, qui inhabitat, cum quid deiceretur vel effunderetur, non in dominum aedium: culpa enim penes eum est. nec adicitur culpae mentio vel infitiationis, ut in duplum detur actio, quamvis damni iniuriae utrumque exiget.

Dig. 9.3.1.5

Ulpianus 23 ad ed.

Sed cum homo liber periit, damni aestimatio non fit in duplum, quia in homine libero nulla corporis aestimatio fieri potest, sed quinquaginta aureorum condemnatio fit.

Dig. 9.3.1.6

Ulpianus 23 ad ed.

Haec autem verba " si vivet nocitumque ei esse dicetur" non pertinent ad damna, quae in rem hominis liberi facta sunt, si forte vestimenta eius vel quid aliud scissum corruptumve est, sed ad ea, quae in corpus eius admittuntur.

Dig. 9.3.1.7

Ulpianus 23 ad ed.

Si filius familias cenaculum conductum habuit et inde deiectum vel effusum quid sit, de peculio in patrem non datur, quia non ex contractu venit: in ipsum itaque filium haec actio competit.

Dig. 9.3.1.8

Ulpianus 23 ad ed.

Cum servus habitator est, utrum noxalis actio danda sit, quia non est ex negotio gesto? an de peculio, quia non ex delicto servi venit? neque enim recte servi dicitur noxa, cum servus nihil nocuerit. sed ego puto impunitum servum esse non oportere, sed extra ordinem officio iudicis corrigendum.

Dig. 9.3.1.9

Ulpianus 23 ad ed.

Habitare autem dicimus vel in suo vel in conducto vel in gratuito. hospes plane non tenebitur, quia non ibi habitat, sed tantisper hospitatur, sed is tenetur, qui hospitium dederit: multum autem interest inter habitatorem et hospitem, quantum interest inter domicilium habentem et peregrinantem.

Dig. 9.3.1.10

Ulpianus 23 ad ed.

Si plures in eodem cenaculo habitent, unde deiectum est, in quemvis haec actio dabitur,

Dig. 9.3.2

Gaius 6 ad ed. provinc.

Cum sane impossibile est scire, quis deiecisset vel effudisset,

Dig. 9.3.3

Ulpianus 23 ad ed.

Et quidem in solidum: sed si cum uno fuerit actum, ceteri liberabuntur.

Dig. 9.3.4

Paulus 19 ad ed.

Perceptione, non litis contestatione, praestaturi partem damni societatis iudicio vel utili actione ei qui solvit.

Dig. 9.3.5pr.

Ulpianus 23 ad ed.

Si vero plures diviso inter se cenaculo habitent, actio in eum solum datur, qui inhabitabat eam partem, unde effusum est.

Dig. 9.3.5.1

Ulpianus 23 ad ed.

Si quis gratuitas habitationes dederit libertis et clientibus vel suis vel uxoris, ipsum eorum nomine teneri trebatius ait: quod verum est. idem erit dicendum et si quis amicis suis modica hospitiola distribuerit. nam et si quis cenaculariam exercens ipse maximam partem cenaculi habeat, solus tenebitur: sed si quis cenaculariam exercens modicum sibi hospitium retinuerit, residuum locaverit pluribus, omnes tenebuntur quasi in hoc cenaculo habitantes, unde deiectum effusumve est.

Dig. 9.3.5.2

Ulpianus 23 ad ed.

Interdum tamen, quod sine captione actoris fiat, oportebit praetorem aequitate motum in eum potius dare actionem, ex cuius cubiculo vel exedra deiectum est, licet plures in eodem cenaculo habitent: quod si ex mediano cenaculi quid deiectum sit, verius est omnes teneri.

Dig. 9.3.5.3

Ulpianus 23 ad ed.

Si horrearius aliquid deiecerit vel effuderit aut conductor apothecae vel qui in hoc dumtaxat conductum locum habebat, ut ibi opus faciat vel doceat, in factum actioni locus est, etiam si quis operantium deiecerit vel effuderit vel si quis discentium.

Dig. 9.3.5.4

Ulpianus 23 ad ed.

Cum autem legis aquiliae actione propter hoc quis condemnatus est, merito ei, qui ob hoc, quod hospes vel quis alius de cenaculo deiecit, in factum dandam esse labeo dicit adversus deiectorem, quod verum est. plane si locaverat deiectori, etiam ex locato habebit actionem.

Dig. 9.3.5.5

Ulpianus 23 ad ed.

Haec autem actio, quae competit de effusis et deiectis, perpetua est et heredi competit, in heredem vero non datur. quae autem de eo competit, quod liber perisse dicetur, intra annum dumtaxat competit, neque in heredem datur neque heredi similibusque personis: nam est poenalis et popularis: dummodo sciamus ex pluribus desiderantibus hanc actionem ei potissimum dari debere cuius interest vel qui adfinitate cognationeve defunctum contingat. sed si libero nocitum sit, ipsi perpetua erit actio: sed si alius velit experiri, annua erit haec actio, nec enim heredibus iure hereditario competit, quippe quod in corpore libero damni datur, iure hereditario transire ad successores non debet, quasi non sit damnum pecuniarium, nam ex bono et aequo oritur.

Dig. 9.3.5.6

Ulpianus 23 ad ed.

Praetor ait:" ne quis in suggrunda protectove supra eum locum, qua ^ quo^ volgo iter fiet inve quo consistetur, id positum habeat, cuius casus nocere cui possit. qui adversus ea fecerit, in eum solidorum decem in factum iudicium dabo. si servus insciente domino fecisse dicetur, aut noxae dedi iubebo. "

Dig. 9.3.5.7

Ulpianus 23 ad ed.

Hoc edictum superioris portio est: consequens etenim fuit praetorem etiam in hunc casum prospicere, ut, si quid in his partibus aedium periculose positum esset, non noceret.

Dig. 9.3.5.8

Ulpianus 23 ad ed.

Ait praetor:" ne quis in suggrunda protectove." haec verba " ne quis" ad omnes pertinent vel inquilinos vel dominos aedium, sive inhabitent sive non, habent tamen aliquid expositum his locis.

Dig. 9.3.5.9

Ulpianus 23 ad ed.

" supra eum locum, qua volgo iter fieret inve quo consistetur, id positum habeat." accipere debemus positum sive in habitationis vel cenaculi, sive etiam in horrei vel cuius alterius aedificii.

Dig. 9.3.5.10

Ulpianus 23 ad ed.

Positum habere etiam is recte videtur, qui ipse quidem non posuit, verum ab alio positum patitur: quare si servus posuerit, dominus autem positum patiatur, non noxali iudicio dominus, sed suo nomine tenebitur.

Dig. 9.3.5.11

Ulpianus 23 ad ed.

Praetor ait " cuius casus nocere posset". ex his verbis manifestatur non omne quidquid positum est, sed quidquid sic positum est, ut nocere possit, hoc solum prospicere praetorem, ne possit nocere: nec spectamus ut noceat, sed omnino si nocere possit, edicto locus sit. coercetur autem, qui positum habuit, sive nocuit id quod positum erat sive non nocuit.

Dig. 9.3.5.12

Ulpianus 23 ad ed.

Si id quod positum erat deciderit et nocuerit, in eum competit actio qui posuit, non in eum qui habitaverit, quasi haec actio non sufficiat, quia positum habuisse non utique videtur qui posuit, nisi vel dominus fuit aedium vel inhabitator. nam et cum pictor in pergula clipeum vel tabulam expositam habuisset eaque excidisset et transeunti damni quid dedisset, servius respondit ad exemplum huius actionis dari oportere actionem: hanc enim non competere palam esse, quia neque in suggrunda neque in protecto tabula fuerat posita. idem servandum respondit et si amphora ex reticulo suspensa decidisset et damni dedisset, quia et legitima et honoraria actio deficit.

Dig. 9.3.5.13

Ulpianus 23 ad ed.

Ista autem actio popularis est et heredi similibusque competit, in heredes autem non competit, quia poenalis est.

Dig. 9.3.6pr.

Paulus 19 ad ed.

Hoc edictum non tantum ad civitates et vicos, sed et ad vias, per quas volgo iter fit, pertinet.

Dig. 9.3.6.1

Paulus 19 ad ed.

Labeo ait locum habere hoc edictum, si interdiu deiectum sit, non nocte: sed quibusdam locis et nocte iter fit.

Dig. 9.3.6.2

Paulus 19 ad ed.

Habitator suam suorumque culpam praestare debet.

Dig. 9.3.6.3

Paulus 19 ad ed.

Si de nave deiectum sit, dabitur actio utilis in eum qui navi praepositus sit.

Dig. 9.3.7

Gaius 6 ad ed. provinc.

Cum liberi hominis corpus ex eo, quod deiectum effusumve quid erit, laesum fuerit, iudex computat mercedes medicis praestitas ceteraque impendia, quae in curatione facta sunt, praeterea operarum, quibus caruit aut cariturus est ob id, quod inutilis factus est. cicatricium autem aut deformitatis nulla fit aestimatio, quia liberum corpus nullam recipit aestimationem.

Dig. 9.4.0. De noxalibus actionibus.

Dig. 9.4.1

Gaius 2 ad ed. provinc.

Noxales actiones appellantur, quae non ex contractu, sed ex noxa atque maleficio servorum adversus nos instituuntur: quarum actionum vis et potestas haec est, ut, si damnati fuerimus, liceat nobis deditione ipsius corporis quod deliquerit evitare litis aestimationem.

Dig. 9.4.2pr.

Ulpianus 18 ad ed.

Si servus sciente domino occidit, in solidum dominum obligat, ipse enim videtur dominus occidisse: si autem insciente, noxalis est, nec enim debuit ex maleficio servi in plus teneri, quam ut noxae eum dedat.

Dig. 9.4.2.1

Ulpianus 18 ad ed.

Is qui non prohibuit, sive dominus manet sive desiit esse dominus, hac actione tenetur: sufficit enim, si eo tempore dominus, quo non prohibeat, fuit, in tantum, ut celsus putet, si fuerit alienatus servus in totum vel in partem vel manumissus, noxam caput non sequi: nam servum nihil deliquisse, qui domino iubenti obtemperavit. et sane si iussit, potest hoc dici: si autem non prohibuit, quemadmodum factum servi excusabimus? celsus tamen differentiam facit inter legem aquiliam et legem duodecim tabularum: nam in lege antiqua, si servus sciente domino furtum fecit vel aliam noxam commisit, servi nomine actio est noxalis nec dominus suo nomine tenetur, at in lege aquilia, inquit, dominus suo nomine tenetur, non servi. utriusque legis reddit rationem, duodecim tabularum, quasi voluerit servos dominis in hac re non obtemperare, aquiliae, quasi ignoverit servo, qui domino paruit, periturus si non fecisset. sed si placeat, quod iulianus libro octagensimo sexto scribit " si servus futurum faxit noxiamve nocuit" etiam ad posteriores leges pertinere, poterit dici etiam servi nomine cum domino agi posse noxali iudicio, ut quod detur aquilia adversus dominum, non servum excuset, sed dominum oneret. nos autem secundum iulianum probavimus, quae sententia habet rationem et a Marcello apud iulianum probatur.

Dig. 9.4.3

Ulpianus 3 ad ed.

In omnibus noxalibus actionibus, ubicumque scientia exigitur domini, sic accipienda est, si, cum prohibere posset, non prohibuit: aliud est enim auctorem esse servo delinquenti, aliud pati delinquere.

Dig. 9.4.4pr.

Paulus 3 ad ed.

In delictis servorum scientia domini quemadmodum accipienda est? utrum cum consilio? an et si viderit tantum, quamvis prohibere non potuerit? quid enim si ad libertatem proclamans domino sciente faciat aut qui contemnat dominum? vel cum trans flumen sit servus, vidente quidem, sed invito domino noxiam noceat? rectius itaque dicitur scientiam eius accipiendam, qui prohibere potest: et hoc in toto edicto intellegendum est circa scientiae verbum.

Dig. 9.4.4.1

Paulus 3 ad ed.

Si extraneus servus sciente me fecerit eumque redemero, noxalis actio in me dabitur, quia non videtur domino sciente fecisse, cum eo tempore dominus non fuerim.

Dig. 9.4.4.2

Paulus 3 ad ed.

Cum dominus ob scientiam teneatur, an servi quoque nomine danda sit actio, videndum est: nisi forte praetor unam poenam a domino exigi voluit. ergo dolus servi impunitus erit? quod est iniquum: immo utroque modo dominus tenebitur, una autem poena exacta, quam actor elegerit, altera tollitur.

Dig. 9.4.4.3

Paulus 3 ad ed.

Si detracta noxae deditione quasi cum conscio domino actum sit, qui non erat conscius: absolutione facta et finito iudicio amplius agendo cum noxae deditione exceptione rei iudicatae summovebitur, quia res in superius iudicium deducta et finita est. donec autem prius iudicium agitatur, licentia agenti est, si eum de scientia domini arguenda paeniteat, tunc ad noxalem causam transire. contra quoque si cum eo qui scit cum noxae deditione actum sit, amplius in dominum detracta noxae deditione danda actio non est: in ipso autem iudicio si voluerit et scientiam domini arguere, non est prohibendus.

Dig. 9.4.5pr.

Ulpianus 3 ad ed.

Si plurium servus deliquerit omnibus ignorantibus, noxale iudicium in quemvis dabitur: sed si omnibus scientibus, quivis eorum tenebitur detracta noxae deditione, quemadmodum si plures deliquissent, nec altero convento alter liberabitur: sed si alter scit, alter ignoravit, qui scit detracta noxae deditione convenitur, qui nescit, cum noxae deditione.

Dig. 9.4.5.1

Ulpianus 3 ad ed.

Differentia autem harum actionum non solum illa est, quod qui scit in solidum tenetur, verum illa quoque, quod, sive alienaverit servum qui scit sive manumiserit sive decesserit servus, dominus tenetur: sed si ipse dominus decesserit, heres eius non tenetur.

Dig. 9.4.6

Ulpianus 18 ad ed.

Sed et ipse servus manumissus tenetur.

Dig. 9.4.7pr.

Ulpianus 3 ad ed.

Noxalis autem non alias datur, nisi apud me sit servus: et si apud me sit, licet eo tempore non fuit, quo delinquebat, teneor, et heres meus tenetur, si noxius vivat.

Dig. 9.4.7.1

Ulpianus 3 ad ed.

Pomponius ait, si emptor servi noxali conventus sit, venditorem, quo sciente factum est, conveniri iam non posse.

Dig. 9.4.8

Ulpianus 37 ad ed.

Si servus communis furtum fecerit, quivis ex dominis in solidum noxali iudicio tenetur: eoque iure utimur. sed non alias poterit is qui conventus est evadere litis aestimationem, nisi in solidum noxae dederit servum, nec ferendus est, si partem dedere fuerit paratus. plane si propter hoc, quod socii dedere parati non fuerint, in solidum fuerit condemnatus, communi dividundo vel familiae erciscundae iudicio adversus eos experietur. ante noxale sane iudicium acceptum poterit sua parte cedendo securitatem consequi, ne necesse habeat suscipere iudicium: quamquam quis possit dicere evenire, ut, dum pars eive data amittat actionem: dominus enim pro parte factus non potest cum socio noxali experiri. fortassis nec communi dividundo agere possit eius maleficii nomine, quod ante communionem admissum est: quod si non potest, evidenti iniuria adficietur. sed melius est dicere, competere ei communi dividundo iudicium.

Dig. 9.4.9

Paulus 39 ad ed.

Si communis familia vel communis servus furtum fecerit altero ex dominis sciente, is qui scit omnium nomine tenebitur et conventus alterum quoque liberat nec a socio quicquam debebit consequi: sui enim facti nomine poenam meruit. quod si is qui ignoravit duplum praestiterit, a socio simplum consequetur.

Dig. 9.4.10

Paulus 22 ad ed.

Sed et eo nomine agere cum socio poterit, quod servum communem deteriorem fecit, quemadmodum cum quolibet alio, qui rem communem deteriorem fecisset. ceterum si nihil praeterea post noxae deditionem commune habebit, pro socio vel, si socii non fuerunt, in factum agi poterit.

Dig. 9.4.11

Ulpianus 7 ad ed.

Bona fide servi possessor eius nomine furti actione tenebitur, dominus non tenetur. sed noxae dedendo non facit quidem actoris: cum autem coeperit istum servum dominus vindicare, doli exceptione summovebitur vel officio iudicis consequetur, ut indemnis maneat.

Dig. 9.4.12

Paulus 6 ad ed.

Si bona fide possessor eum servum, quem bona fide possidebat, dimiserit, ne agi cum eo ex noxali causa possit, obligari eum actione, quae datur adversus eos, qui servum in potestate habeant aut dolo fecerint, quo minus haberent, quia per hoc adhuc possidere videntur.

Dig. 9.4.13

Gaius 13 ad ed. provinc.

Non solum adversus bona fide possessorem, sed etiam adversus eos qui mala fide possident noxalis actio datur: nam et absurdum videtur eos quidem qui bona fide possiderent excipere actionem, praedones vero securos esse.

Dig. 9.4.14pr.

Ulpianus 18 ad ed.

Si quis a multis conveniatur ex noxa eiusdem servi, vel si ab uno, ex pluribus tamen delictis, non necesse habet, quia omnibus dedere non potest, litis aestimationem offerre his, quibus dedere non potest. quid ergo est, si a pluribus conveniatur? si quidem unus occupavit, an melior sit condicio, ut ipsi soli dedatur? an vero vel omnibus dedi debeat vel cavere debeat defensu iri adversus ceteros? et verius est occupantis meliorem esse condicionem. ei itaque dedetur non qui prior egit, sed qui prior ad sententiam pervenit: et ideo ei, qui postea vicerit, actionem denegari iudicati.

Dig. 9.4.14.1

Ulpianus 18 ad ed.

Sed et si statuliber sit et ante deditionem exstiterit condicio vel fideicommissa libertas fuerit ante praestita vel existente condicione legati dominium fuerit translatum, arbitrio iudicis absolvi eum oportet: et officii iudicis hoc quoque erit, ut caveatur ei cui deditur ob evictionem ob suum factum contingentem.

Dig. 9.4.15

Gaius 6 ad ed. provinc.

Praetor decernere debet translationem iudicii in statuliberum fieri: si vero rei iudicandae tempore adhuc in suspenso sit statuta libertas, sabinus et cassius liberari heredem putant tradendo servum, quia toto suo iure cederet: quod et verum est.

Dig. 9.4.16

Iulianus 22 Dig.

Si heres dolo malo fecerit, ne statuliberum in potestate haberet, et propter hoc iudicium sine noxae deditione acceperit: et impleta condicione statutae libertatis condemnari debebit, sicuti mortuo servo condemnaretur.

Dig. 9.4.17pr.

Paulus 22 ad ed.

Si ex duobus dominis uno sciente, altero ignorante servus deliquit, si ante cum altero qui nesciebat actum sit et noxae dediderit servum, iniquum est vilissimi hominis deditione alterum quoque liberari: igitur agetur et cum altero, et si quid amplius est in damni persecutione, consequetur computato pretio hominis noxae dediti. ipsi tamen inter se sic debent pensare communi dividundo iudicium, ut, si ille quo sciente fecit praestiterit, non totius partem ferat, sed partem eius, quanti servus est: sic et si alter aliquid praestiterit, eius partem fieri. illud iniquum est eum, qui iussit servum facere, consequi aliquid a socio, cum ex suo delicto damnum patiatur.

Dig. 9.4.17.1

Paulus 22 ad ed.

Si plures eiusdem servi nomine noxali mecum agere velint vel si unus pluribus iudiciis eiusdem servi nomine agat, in quo usus fructus tuus, proprietas mea sit, officio iudicis continebitur, cum eum noxae dedero, ut etiam usum fructum actoris faciam: sed per praetorem id consequar ego dominus proprietatis, ut aut cogat praetor te pro aestimatione usus fructus conferre ad litis aestimationem aut usu fructu cedere, si hoc expediat. et si ego dominus proprietatis eum servum nolui defendere, defensio tibi permittenda est, et si damnatus hominem tradas, et adversus me tueris.

Dig. 9.4.18

Pomponius 18 ad sab.

Is qui usum fructum in servo habet, perinde cum domino habet actionem furti, atque si quilibet alius esset: sed cum eo non est, quamvis serviat ei, et ideo dominus damnatus fructuario noxae dedens liberatur ^ liberabitur^.

Dig. 9.4.19pr.

Paulus 22 ad ed.

Si in re communi mea et tua damnum nobis dederit titii servus, si cum eo agemus, erit noxali aquiliae actioni locus, ne damnatus in solidum singulis noxae dedere cogatur. sed potest dici, quasi unius damnum sit et una obligatio, aut utrisque pecuniam sufferendam aut officio iudicis simul utrisque noxae dedendum: sed et si alterutri nostrum in solidum noxae deditus fuerit et ob id ab utroque dominus sit absolutus, recte dicitur eum, cui noxae deditus sit, alteri teneri communi dividundo iudicio, ut communicet servum noxae sibi deditum, cum ob rem communem aliquid ad socium pervenerit.

Dig. 9.4.19.1

Paulus 22 ad ed.

Si servi, in quo usus fructus alienus est, dominus proprietatis operas conduxerit, verba efficiunt, ut cum noxae deditione damnetur.

Dig. 9.4.19.2

Paulus 22 ad ed.

Si servus tuus navem exercuerit eiusque vicarius et idem nauta in eadem nave damnum dederit, perinde in te actio danda est ac si is exercitor liber et hic vicarius servus eius esset, ut de peculio servi tui ad noxam dedere vicarium damneris: ut tamen, si servi tui iussu vel sciente et patiente eo damnum vicarius dederit, noxalis actio servi tui nomine esse debeat. idemque sit etiam, si nautam facere iusserit.

Dig. 9.4.20

Gaius 7 ad ed. provinc.

Qui ex pluribus noxis diversis temporibus experitur, ex una noxia servi dominium nanctus nullam amplius actionem habet adversus eum, qui dominus fuerat, cum actio noxalis caput sequatur: at si maluit dominus priori iudicio litis aestimationem sufferre, vel eidem vel alii ex alio maleficio agenti nihilo minus tenetur.

Dig. 9.4.21pr.

Ulpianus 23 ad ed.

Quotiens dominus ex noxali causa convenitur, si nolit suscipere iudicium, in ea causa res est, ut debeat noxae dedere eum, cuius nomine iudicium non suscipitur: aut si id non faciat, iudicium suscipiet omnimodo, sed non alias condemnabitur, quam si in potestate habeat dolove malo fecerit, quo minus haberet.

Dig. 9.4.21.1

Ulpianus 23 ad ed.

Eos, quorum nomine noxali iudicio agitur, etiam absentes defendi posse placuit, sed hoc ita demum, si proprii sint servi: nam si alieni, praesentes esse oportet, aut si dubitetur, utrum proprii sint an alieni. quod ita puto accipiendum, ut si constet vel bona fide servire, etiam absentes possint defendi.

Dig. 9.4.21.2

Ulpianus 23 ad ed.

Praetor ait: " si is in cuius potestate esse dicetur negabit se in sua potestate servum habere: utrum actor volet, vel deierare iubebo in potestate sua non esse neque se dolo malo fecisse, quo minus esset, vel iudicium dabo sine noxae deditione. "

Dig. 9.4.21.3

Ulpianus 23 ad ed.

" in potestate" sic accipere debemus, ut facultatem et potestatem exhibendi eius habeat: ceterum si in fuga sit vel peregre, non videbitur esse in potestate.

Dig. 9.4.21.4

Ulpianus 23 ad ed.

Quod si reus iurare nolit, similis est ei, qui neque defendit absentem neque exhibet: qui condemnantur quasi contumaces.

Dig. 9.4.21.5

Ulpianus 23 ad ed.

Si tutor vel curator extent, ipsi iurare debent in potestate domini non esse: si autem procurator sit, dominus ipse iuret necesse est.

Dig. 9.4.21.6

Ulpianus 23 ad ed.

Si iusiurandum exegit actor reusque iuravit, deinde postea noxali velit actor experiri, videndum est, an exceptio iurisiurandi debeat adversus actorem dari. et sabinus putat non esse dandam, quasi de alia re sit iuratum, hoc est tunc non fuisse in potestate: modo vero cum in potestate deprehendatur, de facto eius posse agi. neratius quoque dicebat post exactum iusiurandum posse actorem detracta noxae deditione experiri, si modo hoc contendat, posteaquam iuratum est coepisse in potestate habere.

Dig. 9.4.22pr.

Paulus 18 ad ed.

Si servus depositus vel commodatus sit, cum domino agi potest noxali actione: ei enim servire intellegitur et, quod ad hoc edictum attinet, in potestate eius est, maxime si copiam habeat reciperandi hominis.

Dig. 9.4.22.1

Paulus 18 ad ed.

Is qui pignori accepit vel qui precario rogavit non tenetur noxali actione: licet enim iuste possideant, non tamen opinione domini possident: sed hos quoque in potestate domini intellegi, si facultatem repetendi eos dominus habeat.

Dig. 9.4.22.2

Paulus 18 ad ed.

Quid est habere facultatem repetendi? habeat pecuniam, ex qua liberari potest: nam non debet cogi vendere res suas, ut solvat pecuniam et repetat servum.

Dig. 9.4.22.3

Paulus 18 ad ed.

Dominus, qui servum in sua potestate esse confitetur, aut exhibere eum debet aut absentem defendere: quod nisi faciat, punitur atque si praesentem non noxae dederit.

Dig. 9.4.22.4

Paulus 18 ad ed.

Si negavit dominus in sua potestate esse servum, permittit praetor actori arbitrium, utrum iureiurando id decidere an iudicium dictare sine noxae deditione velit, per quod vincet, si probaverit eum in potestate esse vel dolo eius factum, quo minus esset: qui autem non probaverit in potestate adversarii esse servum, rem amittit.

Dig. 9.4.23

Gaius 6 ad ed. provinc.

Sed et si postea adversarius eius in potestate habere coeperit servum, tenetur ex nova possessione denegata ei exceptione.

Dig. 9.4.24

Paulus 18 ad ed.

De illo videndum, utrum adversus eum tantum, qui dolo fecit, quo minus in potestate haberet, actio locum habeat noxalis, si ex dolo eius acciderit, ut cesset noxalis actio (forte si servo suo fugam mandavit) an et si possit nihilo minus cum alio agi (quod accidit, cum alienatus manumissusve est). quod est verius: in quo casu electio est actoris, cum quo velit agere. iulianus autem ait de eo qui manumisit, si paratus sit defendere se manumissus, exceptionem dandam ei qui manumisit. hoc et labeo.

Dig. 9.4.25

Gaius 6 ad ed. provinc.

Idem est, et si novus dominus servi iudicium patiatur.

Dig. 9.4.26pr.

Paulus 18 ad ed.

Electio vero alterum liberabit: id enim praetor introduxit, ne eluderetur actor, non ut etiam lucrum faceret: ideoque exceptione a sequenti summovebitur.

Dig. 9.4.26.1

Paulus 18 ad ed.

His consequens est, ut, si plures dolo fecerint, quo minus in potestate haberent, eligere debeat actor, quem velit convenire.

Dig. 9.4.26.2

Paulus 18 ad ed.

Item si ex pluribus dominis quidam dolo malo partes suas desierint possidere, electio erit actoris, utrum directo agere velit cum eo qui possidet, an praetoria cum eo qui desiit possidere.

Dig. 9.4.26.3

Paulus 18 ad ed.

Si servum alienum alius in iure suum esse responderit, altero solvente alter liberatur.

Dig. 9.4.26.4

Paulus 18 ad ed.

Si is, quem desieris dolo possidere, decesserit, priusquam hac actione convenireris, liberaris, quia haec actio in locum directae actionis succedit: diversum dicemus, si moram feceris in iudicio accipiendo.

Dig. 9.4.26.5

Paulus 18 ad ed.

Neque heredi neque in heredem, quod defunctus mentitus est, actio danda est, nec in ipsum quolibet tempore: nam liberum esse debet defendenti absentem servum huius edicti poenam evitare, id est ut sine noxae deditione conveniatur. et ideo si negaveris servum in tua potestate esse, postea fateri poteris, nisi si iam lis adversus te contestata est: nam tunc audiri non debebis, ut labeo ait: octavenus ex causa etiam lite contestata tibi succurrendum, utique si aetas tua ea sit, ut ignosci tibi debeat.

Dig. 9.4.26.6

Paulus 18 ad ed.

Si absente domino ductus sit servus vel etiam praesente et in eadem causa sit, ut in integrum restitui possit, defensio permittitur eius nomine qui ductus est: postulantibus enim exhiberi eum ad defendendum indulgere praetor debet. idem concedendum est fructuario vel cui pignoris nomine obligatus est, si praesens dominus defendere noluerit, ne alterius dolus aut desidia aliis noceat. idem praestandum est in servo communi, quem alter ex dominis praesens noluit defendere. sed et actori his casibus succurrendum est, quia placet dominii adquisitione extingui actionem: iussu enim praetoris ductus in bonis fit eius qui duxit.

Dig. 9.4.27pr.

Gaius 6 ad ed. provinc.

Si noxali iudicio agitur de servo qui pignoris iure tenetur aut de eo cuius usus fructus alterius est, admonendi sumus, si creditor vel usufructuarius praesens defensionem suscipere noluerit, proconsulem interventurum et pignoris persecutionem vel usus fructus actionem negaturum. quo casu dici potest ipso iure pignus liberari (nullum enim pignus est, cuius persecutio negatur): usus fructus autem, etiamsi persecutio eius denegetur, ipso iure durat eo usque, donec non utendo constituto tempore pereat.

Dig. 9.4.27.1

Gaius 6 ad ed. provinc.

Ex his quae diximus de servo qui alicui pignoris iure obligatus est deque statulibero et de eo cuius usus fructus alienus est, apparet eum, qui alienum servum in iure suum esse responderit, quamvis noxali iudicio teneantur, non tamen posse noxae deditione ipso iure liberari, quia nullum ad actorem dominium transferre possunt, cum ipsi domini non sint. certe tamen, si ex ea causa traditum postea dominus vindicet nec litis aestimationem offerat, poterit per exceptionem doli mali repelli.

Dig. 9.4.28

Africanus 6 quaest.

Et generaliter si alieni servi nomine, qui tibi iustam servitutem serviret, noxali tecum egerim tuque eum mihi noxae dederis: sive me possidente dominus eum vindicet, exceptione doli mali, nisi litis aestimationem offerat, eum summovere possum, sive ipse possideat, publiciana mihi datur, et adversus excipientem " si dominus eius sit" utilem mihi replicationem doli mali profuturam et secundum haec usu quoque me capturum, quamvis sciens alienum possideam: alioquin si aliter constituatur, futurum, ut summa iniquitate bonae fidei possessor adficiatur, si, cum ipso iure noxalis actio adversus eum competit, necessitas ei imponatur, ut litis aestimationem sufferat. eademque dicenda sunt et si, cum ab eo non defenderetur, iussu praetoris eum duxerim, quoniam isto quoque casu iustam causam possidendi habeo.

Dig. 9.4.29

Gaius 6 ad ed. provinc.

Non solum autem qui in potestate non habet recusare potest noxale iudicium, verum et habenti in potestate liberum est evitare iudicium, si indefensam eam personam relinquat: sed huic necesse est ius suum ad actorem transferre, perinde ac si damnatus esset.

Dig. 9.4.30

Gaius ad ed. pu. de damno inf.

In noxalibus actionibus eorum qui bona fide absunt ius non corrumpitur, sed reversis defendendi ex bono et aequo potestas datur, sive domini sint sive aliquid in ea re ius habeant, qualis est creditor et fructuarius.

Dig. 9.4.31

Paulus 7 ad plaut.

Quod ait praetor, cum familia furtum faciat, ad eum modum se actionem daturum, ut tantum actor consequatur, quantum si liber fecisset consequeretur, quaeritur, utrum ad pecuniae praestationem respiciat an etiam ad noxae deditionem, ut puta si ex pretiis noxae deditorum duplum colligatur, sequentes actiones inhibeantur. sabinus et cassius putant pretium quoque noxae deditorum imputari debere, quod pomponius probat et est verum: nam et si servus indefensus ductus sit, aestimatio eius imputanda est. certe non tantum duplationis, sed et condictionis rationem habendam iulianus putat. furti faciendi tempus spectandum esse, an eiusdem familiae sint servi: nam si hi, qui plurium dominorum erunt, unius esse postea coeperint, locus edicto non erit.

Dig. 9.4.32

Callistratus 2 ed. monit.

Is qui in aliena potestate est si noxam commisisse dicatur, si non defendatur, ducitur: et si praesens est dominus, tradere eum et de dolo malo promittere debet.

Dig. 9.4.33

Pomponius 14 ad sab.

Noxali iudicio invitus nemo cogitur alium defendere, sed carere debet eo quem non defendit, si servus est: quod si liber est qui in potestate sit, indistincte ipsi sui defensio danda est:

Dig. 9.4.34

Iulianus 4 ad urs. ferocem.

Quotiens enim nemo filium familias ex causa delicti defendit, in eum iudicium datur.

Dig. 9.4.35

Ulpianus 41 ad sab.

Et si condemnatus fuerit, filius iudicatum facere debet: tenet enim condemnatio. quin immo etiam illud dicendum est patrem quoque post condemnationem filii dumtaxat de peculio posse conveniri.

Dig. 9.4.36

Ulpianus 37 ad ed.

Si quis servum pigneratum, deinde a debitore subreptum emerit a debitore, nomine eius furti tenebitur dominio servi adquisito, nec oberit, quod serviana potest ei homo avocari. idemque et si a minore quis viginti quinque annis emerit vel in fraudem creditorum sciens: hi enim, quamvis auferri eis dominium possit, interim tamen conveniendi sunt.

Dig. 9.4.37

Tryphonus 15 disp.

Si alienus servus furtum mihi fecerit, qui postea in meum dominium pervenerit, extinguitur furti actio, quae mihi competierat, nondum in iudicium deducta, nec si postea alienavero eum, quem ante litem contestatam emeram, furti actio restaurabitur: quod si post litem contestatam eum redemero, condemnandus erit venditor,

Dig. 9.4.38pr.

Ulpianus 37 ad ed.

Quemadmodum si alii vendidisset: parvi enim refert, cui vendiderit, adversario an alii: suaque culpa litis aestimationem sublaturum, qui vendendo noxae deditionem sibi ademit.

Dig. 9.4.38.1

Ulpianus 37 ad ed.

Iulianus autem libro vicensimo secundo digestorum scribit, si servum pro derelicto habeam, qui tibi furtum fecerat, liberari me, quia statim meus esse desinit, ne eius nomine, qui sine domino sit, furti sit actio.

Dig. 9.4.38.2

Ulpianus 37 ad ed.

Si servus meus rem tuam subtraxerit et vendiderit tuque nummos quos ex pretio habebat ei excusseris, locus erit furti actioni ultro citroque: nam et tu adversus me furti ages noxali servi nomine et ego adversus te nummorum nomine.

Dig. 9.4.38.3

Ulpianus 37 ad ed.

Sed et si servo creditoris mei solverim nummos, ut is eos domino suo det, aeque locus erit furti actioni, si is nummos acceptos interceperit.

Dig. 9.4.39pr.

Iulianus 9 Dig.

Si plurium servus furtum fecerit et omnes dolo fecerint, quo minus eum in potestate haberent, subsequi debet praetor iuris civilis actionem et iudicium honorarium, quod ex hac causa pollicetur, in eum dare, quem actor elegerit: neque enim amplius praestare actori debet, quam ut detracta noxae deditione agere possit cum eo, cum quo noxali iudicio experiri potuisset, si servus exhiberetur.

Dig. 9.4.39.1

Iulianus 9 Dig.

Qui alienum servum suum esse fatetur, quamvis noxali actione obligetur, nihilo minus causa cognita satisdare debet: qui autem pro servo convenitur, satisdatione onerandus non est: non enim offert se defensioni alieni servi.

Dig. 9.4.39.2

Iulianus 9 Dig.

Si quis dicet dominum dolo fecisse, quo minus in potestate eius servus esset, ille autem contendat eum servum ab alio defendi cum satisdatione, doli mali exceptioni locus erit.

Dig. 9.4.39.3

Iulianus 9 Dig.

Sed et si post iudicium acceptum cum domino servus apparuerit et, quia non defendebatur, ductus sit, exceptione doli mali posita dominus absolvetur.

Dig. 9.4.39.4

Iulianus 9 Dig.

Sed et mortuo servo antequam iudicium accipiatur, omnino hac actione non tenebitur dominus.

Dig. 9.4.40

Iulianus 22 Dig.

Si servus legatus ante aditam hereditatem rem heredis futuri subtraxerit, poterit is cum legatario qui legatum agnoverit furti agere: sed si idem servus hereditariam rem subtraxerit, furti actio cessabit, quia huiusmodi rerum furtum non fit: ad exhibendum autem actio competit.

Dig. 9.4.41

Iulianus 2 ad urs. ferocem.

Cum servus communis alteri dominorum damnum iniuria dedit, idcirco legis aquiliae actio non est, quia, si extraneo damnum dedisset, cum altero in solidum lege aquilia agi posset: sicuti, cum servus communis furtum fecerit, cum altero domino furti agi non potest, sed communi dividundo agi potest.

Dig. 9.4.42pr.

Ulpianus 37 ad ed.

Si ad libertatem proclamaverit is cuius nomine noxale iudicium susceptum est, sustineri debet id iudicium, quoad de statu eius iudicetur: et sic, si quidem servus fuerit pronuntiatus, noxale iudicium exercebitur, si liber, inutile videbitur.

Dig. 9.4.42.1

Ulpianus 37 ad ed.

Si quis pro servo mortuo ignorans eum decessisse noxale iudicium acceperit, absolvi debet, quia desit ^ desiit^ verum esse propter eum dare oportere.

Dig. 9.4.42.2

Ulpianus 37 ad ed.

Hae actiones perpetuae sunt locumque habebunt tamdiu, quamdiu servi dedendi facultatem habemus: nec tantum nobis, verum etiam successoribus nostris competent, item adversus successores, sed non quasi in successores, sed iure dominii. proinde et si servus ad alium pervenisse proponatur, iure dominii noxali iudicio novus dominus convenietur.

Dig. 9.4.43

Pomponius 8 epist.

Servi, quorum noxa caput sequitur, ibi defendendi sunt, ubi deliquisse arguentur: itaque servos dominus eodem loco exhibere debet, ubi vim intulisse dicentur et carere omnium dominio potest, si eos non defendat.

OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER DECIMUS

Dig. 10.1.0. Finium regundorum.
Dig. 10.2.0. Familiae erciscundae.
Dig. 10.3.0. Communi dividundo.
Dig. 10.4.0. Ad exhibendum.

Dig. 10.1.0. Finium regundorum.

Dig. 10.1.1

Paulus 23 ad ed.

Finium regundorum actio in personam est, licet pro vindicatione rei est.

Dig. 10.1.2pr.

Ulpianus 19 ad ed.

Haec actio pertinet ad praedia rustica, quamvis aedificia interveniant: neque enim multum interest, arbores quis in confinio an aedificium ponat.

Dig. 10.1.2.1

Ulpianus 19 ad ed.

Iudici finium regundorum permittitur, ut, ubi non possit dirimere fines, adiudicatione controversiam dirimat: et si forte amovendae veteris obscuritatis gratia per aliam regionem fines dirigere iudex velit, potest hoc facere per adiudicationem et condemnationem.

Dig. 10.1.3

Gaius 7 ad ed. provinc.

Quo casu opus est, ut ex alterutrius praedio alii adiudicandum sit, quo nomine is cui adiudicatur in vicem pro eo quod ei adiudicatur certa pecunia condemnandus est.

Dig. 10.1.4pr.

Paulus 23 ad ed.

Sed et loci unius controversia in partes res scindi adiudicationibus potest, prout cuiusque dominium in eo loco iudex compererit.

Dig. 10.1.4.1

Paulus 23 ad ed.

In iudicio finium regundorum etiam eius ratio fit quod interest. quid enim si quis aliquam utilitatem ex eo loco percepit, quem vicini esse appareat? non inique damnatio eo nomine fiet. sed et si mensor ab altero solo conductus sit, condemnatio erit facienda eius, qui non conduxit, in partem mercedis.

Dig. 10.1.4.2

Paulus 23 ad ed.

Post litem autem contestatam etiam fructus venient in hoc iudicio: nam et culpa et dolus exinde praestantur: sed ante iudicium percepti non omnimodo hoc in iudicium venient: aut enim bona fide percepit, et lucrari eum oportet, si eos consumpsit, aut mala fide, et condici oportet.

Dig. 10.1.4.3

Paulus 23 ad ed.

Sed et si quis iudici non pareat in succidenda arbore vel aedificio in fine posito deponendo parteve eius, condemnabitur.

Dig. 10.1.4.4

Paulus 23 ad ed.

Si dicantur termini deiecti vel exarati, iudex, qui de crimine cognoscit, etiam de finibus cognoscere potest.

Dig. 10.1.4.5

Paulus 23 ad ed.

Si alter fundus duorum, alter trium sit, potest iudex uni parti adiudicare locum de quo quaeritur, licet plures dominos habeat, quoniam magis fundo quam personis adiudicari fines intelleguntur: hic autem cum fit adiudicatio pluribus, unusquisque portionem habebit,

Dig. 10.1.4.6

Paulus 23 ad ed.

Quam in fundo habet, et pro indiviso qui communem fundum habent, inter se non condemnantur: neque enim inter ipsos accipi videtur iudicium.

Dig. 10.1.4.7

Paulus 23 ad ed.

Si communem fundum ego et tu habemus et vicinum fundum ego solus, an finium regundorum iudicium accipere possumus? et scribit pomponius non posse nos accipere, quia ego et socius meus in hac actione adversarii esse non possumus, sed unius loco habemur. idem pomponius ne utile quidem iudicium dandum dicit, cum possit, qui proprium habeat, vel communem vel proprium fundum alienare et sic experiri.

Dig. 10.1.4.8

Paulus 23 ad ed.

Non solum autem inter duos fundos, verum etiam inter tres pluresve fundos accipi iudicium finium regundorum potest: ut puta singuli plurium fundorum confines sunt, trium forte vel quattuor.

Dig. 10.1.4.9

Paulus 23 ad ed.

Finium regundorum actio et in agris vectigalibus et inter eos qui usum fructum habent vel fructuarium et dominum proprietatis vicini fundi et inter eos qui iure pignoris possident competere potest.

Dig. 10.1.4.10

Paulus 23 ad ed.

Hoc iudicium locum habet in confinio praediorum rusticorum: nam in confinio praediorum urbanorum displicuit, neque enim confines hi, sed magis vicini dicuntur et ea communibus parietibus plerumque disterminantur. et ideo et si in agris aedificia iuncta sint, locus huic actioni non erit: et in urbe hortorum latitudo contingere potest, ut etiam finium regundorum agi possit.

Dig. 10.1.4.11

Paulus 23 ad ed.

Sive flumen sive via publica intervenit, confinium non intellegitur, et ideo finium regundorum agi non potest,

Dig. 10.1.5

Paulus 15 ad sab.

Quia magis in confinio meo via publica vel flumen sit quam ager vicini.

Dig. 10.1.6

Paulus 23 ad ed.

Sed si rivus privatus intervenit, finium regundorum agi potest.

Dig. 10.1.7

Modestinus 11 pand.

De modo agrorum arbitri dantur et is, qui maiorem locum in territorio habere dicitur, ceteris, qui minorem locum possident, integrum locum adsignare compellitur: idque ita rescriptum est.

Dig. 10.1.8pr.

Ulpianus 6 opin.

Si irruptione fluminis fines agri confudit inundatio ideoque usurpandi quibusdam loca, in quibus ius non habent, occasionem praestat, praeses provinciae alieno eos abstinere et domino suum restitui terminosque per mensorem declarari iubet.

Dig. 10.1.8.1

Ulpianus 6 opin.

Ad officium de finibus cognoscentis pertinet mensores mittere et per eos dirimere ipsam finium quaestionem, ut aequum est, si ita res exigit, oculisque suis subiectis locis.

Dig. 10.1.9

Iulianus 8 Dig.

Iudicium finium regundorum manet, quamvis socii communi dividundo egerint vel alienaverint fundum.

Dig. 10.1.10

Iulianus 51 Dig.

Iudicium communi dividundo, familiae erciscundae, finium regundorum tale est, ut in eo singulae personae duplex ius habeant agentis et eius quocum agitur.

Dig. 10.1.11

Papinianus 2 resp.

In finalibus quaestionibus vetera monumenta census auctoritas ante litem inchoatam ordinati sequenda est, modo si non varietate successionum et arbitrio possessorum fines additis vel detractis agris postea permutatos probetur.

Dig. 10.1.12

Paulus 3 resp.

Eos terminos, quantum ad dominii quaestionem pertinet, observari oportere fundorum, quos demonstravit is, qui utriusque praedii dominus fuit, cum alterum eorum venderet: non enim termini, qui singulos fundos separabant, observari debent, sed demonstratio adfinium novos fines inter fundos constituere.

Dig. 10.1.13

Gaius 4 ad l. xii tab.

Sciendum est in actione finium regundorum illud observandum esse, quod ad exemplum quodammodo eius legis scriptum est, quam athenis solonem dicitur tulisse: nam illic ita est: ean tis ahimasian par' allotriw xwriw orugy, ^ orutty^ ton horon my parabainein: ean teixion, poda apoleipein: ean de oikyma, duo podas. ean de tafon y bovron orutty, hoson to bavos y, tosouton apoleipein: ean de frear, orguian. elaian de kai sukyn ennea podas apo tou allotriou futeuein ta de alla dendra pente podas.

Dig. 10.2.0. Familiae erciscundae.

Dig. 10.2.1pr.

Gaius 7 ad ed. provinc.

Haec actio proficiscitur e lege duodecim tabularum: namque coheredibus volentibus a communione discedere necessarium videbatur aliquam actionem constitui, qua inter eos res hereditariae distribuerentur.

Dig. 10.2.1.1

Gaius 7 ad ed. provinc.

Quae quidem actio nihilo minus ei quoque ipso iure competit, qui suam partem non possidet: sed si is qui possidet neget eum sibi coheredem esse, potest eum excludere per hanc exceptionem " si in ea re, qua de agitur, praeiudicium hereditati non fiat". quod si possideat eam partem, licet negetur esse coheres, non nocet talis exceptio: quo fit, ut eo casu ipse iudex, apud quem hoc iudicium agitur, cognoscat, an coheres sit: nisi enim coheres sit, neque adiudicari quicquam ei oportet neque adversarius ei condemnandus est.

Dig. 10.2.2pr.

Ulpianus 19 ad ed.

Per familiae erciscundae actionem dividitur hereditas, sive ex testamento sive ab intestato, sive lege duodecim tabularum sive ex aliqua lege deferatur hereditas vel ex senatus consulto vel etiam constitutione: et generaliter eorum dumtaxat dividi hereditas potest, quorum peti potest hereditas.

Dig. 10.2.2.1

Ulpianus 19 ad ed.

Si quarta ad aliquem ex constitutione divi pii adrogatum deferatur, quia hic neque heres neque bonorum possessor fit, utile erit familiae erciscundae iudicium necessarium.

Dig. 10.2.2.2

Ulpianus 19 ad ed.

Item si filii familias militis peculium sit. fortius defendi potest hereditatem effectam per constitutiones, et ideo hoc iudicio locus erit.

Dig. 10.2.2.3

Ulpianus 19 ad ed.

In familiae erciscundae iudicio unusquisque heredum et rei et actoris partes sustinet.

Dig. 10.2.2.4

Ulpianus 19 ad ed.

Dubitandum autem non est, quin familiae erciscundae iudicium et inter pauciores heredes ex pluribus accipi possit.

Dig. 10.2.2.5

Ulpianus 19 ad ed.

In hoc iudicium etsi nomina non veniunt, tamen, si stipulationes interpositae fuerint de divisione eorum, ut stetur ei et ut alter alteri mandet actiones procuratoremque eum in suam rem faciat, stabitur divisioni.

Dig. 10.2.3

Gaius 7 ad ed. provinc.

Plane ad officium iudicis nonnumquam pertinet, ut debita et credita singulis pro solido aliis alia adtribuat, quia saepe et solutio et exactio partium non minima incommoda habet. nec tamen scilicet haec adtributio illud efficit, ut quis solus totum debeat vel totum alicui soli debeatur, sed ut, sive agendum sit, partim suo partim procuratorio nomine agat, sive cum eo agatur, partim suo partim procuratorio nomine conveniatur. nam licet libera potestas esse maneat creditoribus cum singulis experiundi, tamen et his libera potestas est suo loco substituendi eos, in quos onera actionis officio iudicis translata sunt.

Dig. 10.2.4pr.

Ulpianus 19 ad ed.

Ceterae itaque res praeter nomina veniunt in hoc iudicium. sin autem nomen uni ex heredibus legatum sit, iudicio familiae erciscundae hoc heres consequitur.

Dig. 10.2.4.1

Ulpianus 19 ad ed.

Mala medicamenta et venena veniunt quidem in iudicium, sed iudex omnino interponere se in his non debet: boni enim et innocentis viri officio eum fungi oportet: tantundem debebit facere et in libris improbatae lectionis, magicis forte vel his similibus. haec enim omnia protinus corrumpenda sunt.

Dig. 10.2.4.2

Ulpianus 19 ad ed.

Sed et si quid ex peculatu vel ex sacrilegio quaesitum erit vel vi aut latrocinio aut adgressura, hoc non dividetur.

Dig. 10.2.4.3

Ulpianus 19 ad ed.

Sed et tabulas testamenti debebit aut apud eum, qui ex maiore parte heres est, iubere manere aut in aede deponi. nam et labeo scribit vendita hereditate tabulas testamenti descriptas deponi oportere: heredem enim exemplum debere dare, tabulas vero authenticas ipsum retinere aut in aede deponere.

Dig. 10.2.5

Gaius 7 ad ed. provinc.

Si quae sunt cautiones hereditariae, eas iudex curare debet ut apud eum maneant, qui maiore ex parte heres sit, ceteri descriptum et recognitum faciant, cautione interposita, ut, cum res exegerit, ipsae exhibeantur. si omnes isdem ex partibus heredes sint nec inter eos conveniat, apud quem potius esse debeant, sortiri eos oportet: aut ex consensu vel suffragio eligendus est amicus, apud quem deponantur: vel in aede sacra deponi debent.

Dig. 10.2.6

Ulpianus 19 ad ed.

Nam ad licitationem rem deducere, ut qui licitatione vicit hic habeat instrumenta hereditaria, non placet neque mihi neque pomponio.

Dig. 10.2.7

Venonius 7 stipul.

Si heres unus, cum sub condicione adiectum coheredem aut apud hostes haberet, dixerit se heredem esse et actione expertus vicerit, deinde condicio heredis exstiterit vel postliminio redierit, an victoriae commodum debeat cum eo communicare? nam indubitate iudicati actio ei in solidum competit. et electionem coheredi dandam, id est aut communicandam eam aut experiundi faciendam potestatem huic, qui post victoriam coheredis effectus sit heres aut reversus sit in civitatem. idemque observandum, si postea natus sit postumus. non enim his personis silentium imputari potest, cum ad hereditatem post victoriam coheredis pervenerint.

Dig. 10.2.8pr.

Ulpianus 19 ad ed.

Pomponius scribit, si uni ex heredibus praelegatae fuerint rationes, non prius ei tradendas, quam coheredes descripserint. nam et si servus actor, inquit, fuerit legatus, non alias eum tradendum, quam rationes reddiderit. nos videbimus, numquid et cautio sit interponenda, ut, quotiens desideratae fuerint rationes vel actor praelegatus, copia eorum fiat? plerumque enim authenticae rationes sunt necessariae actori ad instruenda ea, quae postea emergunt ad notitiam eius spectantia. et necessarium est cautionem ab eo super hoc coheredibus praestari.

Dig. 10.2.8.1

Ulpianus 19 ad ed.

Idem pomponius ait columbas, quae emitti solent de columbario, venire in familiae herciscundae iudicium, cum nostrae sint tamdiu, quamdiu consuetudinem habeant ad nos revertendi: quare si quis eas adprehendisset, furti nobis competit actio. idem et in apibus dicitur, quia in patrimonio nostro computantur.

Dig. 10.2.8.2

Ulpianus 19 ad ed.

Sed et si quid de pecoribus nostris a bestia ereptum sit, venire in familiae erciscundae iudicium putat, si feram evaserit: nam magis esse, ut non desinat nostrum esse, inquit, quod a lupo eripitur vel alia bestia, tamdiu, quamdiu ab eo non fuerit consumptum.

Dig. 10.2.9

Paulus 23 ad ed.

Veniunt in hoc iudicium res, quas heredes usuceperunt, cum defuncto traditae essent: hae quoque res, quae heredibus traditae sunt, cum defunctus emisset:

Dig. 10.2.10

Ulpianus 19 ad ed.

Item praedia, quae nostri patrimonii sunt, sed et vectigalia vel superficiaria: nec minus hae quoque res, quas alienas defunctus bona fide possidet.

Dig. 10.2.11

Paulus 23 ad ed.

Partum quoque editum et post aditam hereditatem.

Dig. 10.2.12pr.

Ulpianus 19 ad ed.

Et post litem contestatam sabinus scribit in familiae erciscundae iudicium venire et adiudicari posse.

Dig. 10.2.12.1

Ulpianus 19 ad ed.

Idem erit et si servis hereditariis ab extraneo aliquid datum sit.

Dig. 10.2.12.2

Ulpianus 19 ad ed.

Res, quae sub condicione legata est, interim heredum est et ideo venit in familiae erciscundae iudicium et adiudicari potest cum sua scilicet causa, ut existente condicione eximatur ab eo cui adiudicata est aut deficiente condicione ad eos revertatur a quibus relicta est. idem et in statulibero dicitur, qui interim est heredum, existente autem condicione ad libertatem perveniat.

Dig. 10.2.13

Papinianus 7 quaest.

Alienationes enim post iudicium acceptum interdictae sunt dumtaxat voluntariae, non quae vetustiorem causam et originem iuris habent necessariam.

Dig. 10.2.14pr.

Ulpianus 19 ad ed.

Sed et si usucapio fuerit coepta ab eo, qui heres non erat, ante litem contestatam et postea impleta fuerit, rem de iudicio subducit.

Dig. 10.2.14.1

Ulpianus 19 ad ed.

Usus fructus an in iudicium deducatur, quaeritur: ut puta si deducto usu fructu fundus fuit ab heredibus legatus.

Dig. 10.2.15

Paulus 23 ad ed.

Vel si servo hereditario usus fructus legatus sit: nec enim a personis discedere sine interitu sui potest.

Dig. 10.2.16pr.

Ulpianus 19 ad ed.

Et puto officio iudicis contineri, ut, si volent heredes a communione usus fructus discedere, morem eis gerat cautionibus interpositis.

Dig. 10.2.16.1

Ulpianus 19 ad ed.

Iulianus ait, si alii fundum, alii usum fructum fundi iudex adiudicaverit, non communicari usum fructum.

Dig. 10.2.16.2

Ulpianus 19 ad ed.

Usus fructus et ex certo tempore et usque ad certum tempus et alternis annis adiudicari potest.

Dig. 10.2.16.3

Ulpianus 19 ad ed.

Id quod amnis fundo post litem contestatam alluit, aeque venit in hoc iudicium.

Dig. 10.2.16.4

Ulpianus 19 ad ed.

Sed et si dolo vel culpa quid in usum fructum ab uno ex heredibus factum sit, hoc quoque in iudicium venire pomponius ait: nam et omnia, quae quis in hereditate dolo aut culpa fecit, in iudicium familiae erciscundae veniunt, sic tamen, si quasi heres fecerit. et ideo si vivo testatore unus ex heredibus pecuniam sustulerit, in familiae erciscundae iudicium ea non venit, quia tunc nondum heres erat: ubi autem quasi heres fecit, etsi aliam praeterea quis actionem habeat, tamen teneri eum familiae erciscundae iudicio iulianus scribit.

Dig. 10.2.16.5

Ulpianus 19 ad ed.

Denique ait, si unus ex heredibus rationes hereditarias deleverit vel interleverit, teneri quidem lege aquilia, quasi corruperit: non minus autem etiam familiae erciscundae iudicio.

Dig. 10.2.16.6

Ulpianus 19 ad ed.

Item si servus hereditarius propriam rem heredum unius subripuerit, ofilius ait esse familiae erciscundae actionem et communi dividundo furtique actionem cessare. quare agentem familiae erciscundae iudicio consecuturum, ut aut ei servus adiudicetur aut litis aestimatio in simplum offeratur.

Dig. 10.2.17

Gaius 7 ad ed. provinc.

Damno commisso ab uno herede conveniens est dicere simpli habendam aestimationem in familiae erciscundae iudicio.

Dig. 10.2.18pr.

Ulpianus 19 ad ed.

His consequenter iulianus ait: si ex pluribus heredibus uni servus sit generaliter per optionem legatus et heredes stichum tabulas hereditarias interlevisse dicant vel corrupisse et propter hoc renuntiaverint, ne optaretur servus, deinde optatus vindicetur, poterunt, si ab eis vindicetur, doli mali exceptione uti et de servo quaestionem habere.

Dig. 10.2.18.1

Ulpianus 19 ad ed.

Sed an in familiae erciscundae iudicium de morte testatoris vel de morte uxoris liberorumque suorum habebunt quaestionem heredes, quaeritur: et rectissime pomponius ait haec ad divisionem rerum hereditariarum non pertinere.

Dig. 10.2.18.2

Ulpianus 19 ad ed.

Idem quaerit, si quis testamento caverit, ut servus exportandus veneat, officio familiae erciscundae iudicis contineri, ut voluntas defuncti non intercidat. sed et cum monumentum iussit testator fieri, familiae erciscundae agent, ut fiat. idem tamen temptat, quia heredum interest, quos ius monumenti sequitur, praescriptis verbis posse eos experiri, ut monumentum fiat.

Dig. 10.2.18.3

Ulpianus 19 ad ed.

Sumptuum, quos unus ex heredibus bona fide fecerit, usuras quoque consequi potest a coherede ex die morae secundum rescriptum imperatorum severi et antonini.

Dig. 10.2.18.4

Ulpianus 19 ad ed.

Celsus etiam illud eleganter adicit coheredem et si non solvit habere familiae erciscundae iudicium, ut cogatur coheres solvere, cum alias non sit liberaturus rem creditor, nisi in solidum ei satisfiat.

Dig. 10.2.18.5

Ulpianus 19 ad ed.

Si filius familias patri heres pro parte extitisset et a creditoribus peculiaribus conveniretur, cum paratus sit solvere id omne quod debetur, per doli exceptionem consequetur a creditoribus mandari sibi actiones: sed etiam familiae erciscundae iudicium cum coheredibus haberet ^ habet^.

Dig. 10.2.18.6

Ulpianus 19 ad ed.

Cum unus ex heredibus legatum exsolvit ei, qui missus fuerat in possessionem legatorum servandorum causa, putat papinianus, et verum est, familiae erciscundae iudicium ei competere adversus coheredes, quia non alias discederet legatarius a possessione, quam vice pignoris erat consecutus, quam si totum ei legatum fuisset exsolutum.

Dig. 10.2.18.7

Ulpianus 19 ad ed.

Sed et si quis titio debitum solverit, ne pignus veniret, neratius scribit familiae erciscundae iudicio eum posse experiri.

Dig. 10.2.19

Gaius 7 ad ed. provinc.

Item ex diverso similiter prospicere iudex debet, ut quod unus ex heredibus ex re hereditaria percepit stipulatusve est non ad eius solius lucrum pertineat. quae ita scilicet consequetur iudex, si aut reputationes inter eos fecerit aut si curaverit cautiones interponi, quibus inter eos communicentur commoda et incommoda.

Dig. 10.2.20pr.

Ulpianus 19 ad ed.

Si filia nupta, quae dotem conferre debuit, per errorem coheredum ita cavit, ut, quod a marito reciperasset, pro partibus hereditariis solveret, nihilo minus arbitrum familiae erciscundae sic arbitraturum papinianus scribit, ut, etiamsi constante matrimonio ipsa diem suum obierit, conferatur dos: nam imperitia, inquit, coheredum iurisdictionis formam mutare non potuit.

Dig. 10.2.20.1

Ulpianus 19 ad ed.

Si filius familias iussu patris obligatus sit, debebit hoc debitum praecipere: sed et si in rem patris vertit, idem placet, et si de peculio, peculium praecipiet: et ita imperator noster rescripsit.

Dig. 10.2.20.2

Ulpianus 19 ad ed.

Hoc amplius filius familias heres institutus dotem uxoris suae praecipiet, nec immerito, quia ipse onera matrimonii sustinet. integram igitur dotem praecipiet et cavebit defensum iri coheredes, qui ex stipulatu possunt conveniri. idem et si alius dotem dedit et stipulatus est. nec solum uxoris suae dotem, sed etiam filii sui uxoris, quasi hoc quoque matrimonii onus ad ipsum spectet, quia filii onera et nurus ipse adgnoscere necesse habet. praecipere autem non solum patri datam dotem filium oportere, verum etiam ipsi filio Marcellus scribit, sed filio datam tamdiu, quamdiu peculium patitur vel in rem patris versum sit.

Dig. 10.2.20.3

Ulpianus 19 ad ed.

Si pater inter filios sine scriptura bona divisit et onera aeris alieni pro modo possessionum distribuit, non videri simplicem donationem, sed potius supremi iudicii divisionem papinianus ait. plane, inquit, si creditores eos pro portionibus hereditariis conveniant et unus placita detrectet, posse cum eo praescriptis verbis agi, quasi certa lege permutationem fecerint, scilicet si omnes res divisae sint.

Dig. 10.2.20.4

Ulpianus 19 ad ed.

Familiae erciscundae iudicium amplius quam semel agi non potest nisi causa cognita: quod si quaedam res indivisae relictae sunt, communi dividundo de his agi potest.

Dig. 10.2.20.5

Ulpianus 19 ad ed.

Papinianus ait, si uni ex heredibus onus aeris alieni iniungatur citra speciem legati, officio iudicis familiae erciscundae cognoscentis suscipere eum id oportere, sed non ultra dodrantem portionis suae, ut quadrantem illibatum habeat: indemnes igitur coheredes suos praestare cavebit.

Dig. 10.2.20.6

Ulpianus 19 ad ed.

Idem scribit et si filius in muneribus publicis, in quibus pater ei consentit, reliquatus est et pro parte heres scriptus est, hoc quoque debere praecipere, quia et hoc patris aes alienum fuit: sed si qua munera post mortem patris suscepit, ab his heredes patris soluti sunt.

Dig. 10.2.20.7

Ulpianus 19 ad ed.

Neratius autem respondit: eum, qui plures filios haberet, unum ex filiis agwonovesian suscepturum professum esse et priusquam honore fungeretur, mortuum esse omnibus filiis heredibus institutis, et quaesitum esse, an is filius, quod in eam rem impendisset, familiae erciscundae consequatur: eique respondisse nulla actione idem consequi posse. quod merito displicet. debet itaque hoc in familiae erciscundae iudicium venire.

Dig. 10.2.20.8

Ulpianus 19 ad ed.

Item papinianus scribit, si maritus alterum ex heredibus onus dotis solvendae, quae in stipulationem venit, suscipere iussit et mulier adversus utrumque dirigat dotis petitionem, coheredem esse defendendum ab eo, qui suscipere onus iussus est. sed legata, quae ab utroque pro dote data electa dote retinentur, in compendio coheredis esse, qui debito levatur, non oportet, videlicet ut coheres, qui onus aeris alieni suscepit, officio iudicis legatum consequatur. et verum est hoc, nisi aliud testator edixit.

Dig. 10.2.20.9

Ulpianus 19 ad ed.

Idem scribit, quod uni ex coheredibus statuliber condicionis implendae nomine dedit de peculio, in hoc iudicium non venire nec communicari debere:

Dig. 10.2.21

Paulus 23 ad ed.

Idem et in communi dividundo.

Dig. 10.2.22pr.

Ulpianus 19 ad ed.

Item labeo scribit, si unus heredum ^ heredem^ thensaurum relictum a testatore effodit, familiae erciscundae iudicio eum teneri, etsi cum extraneo conscio partitus sit.

Dig. 10.2.22.1

Ulpianus 19 ad ed.

Familiae erciscundae iudex ita potest pluribus eandem rem adiudicare, si aut pluribus fuerit unius rei praeceptio relicta (ubi etiam necessitatem facere pomponius scribit, ut pluribus adiudicetur) vel si certam partem unicuique coheredum adsignet: sed potest etiam licitatione admissa uni rem adiudicare:

Dig. 10.2.22.2

Ulpianus 19 ad ed.

Sed et regionibus divisum fundum posse adiudicare secundum divisionem nemo dubitaverit.

Dig. 10.2.22.3

Ulpianus 19 ad ed.

Sed etiam cum adiudicat, poterit imponere aliquam servitutem, ut alium alii servum faciat ex is ^ iis^ quos adiudicat: sed si pure alii adiudicaverit fundum, alium adiudicando amplius servitutem imponere non poterit.

Dig. 10.2.22.4

Ulpianus 19 ad ed.

Familiae erciscundae iudicium ex duobus constat, id est rebus atque praestationibus, quae sunt personales actiones.

Dig. 10.2.22.5

Ulpianus 19 ad ed.

Papinianus de re quae apud hostes est Marcellum reprehendit, quod non putat in praestationes eius rei venire in familiae erciscundae iudicium, quae apud hostes est. quid enim impedimentum est rei praestationem venire, cum et ipsa veniat.

Dig. 10.2.23

Paulus 23 ad ed.

Propter spem postliminii? scilicet cum cautione, quia possunt non reverti: nisi si tantum aestimatus sit dubius eventus.

Dig. 10.2.24pr.

Ulpianus 19 ad ed.

Sed et eius rei, quae in rebus humanis esse desiit, veniunt praestationes: et ego papiniano consentio.

Dig. 10.2.24.1

Ulpianus 19 ad ed.

Familiae erciscundae iudicium et inter bonorum possessores et inter eum cui restituta est hereditas ex trebelliano senatus consulto et ceteros honorarios successores locum habet.

Dig. 10.2.25pr.

Paulus 23 ad ed.

Heredes eius, qui apud hostes decessit, hoc iudicio experiri possunt.

Dig. 10.2.25.1

Paulus 23 ad ed.

Si miles alium castrensium, alium ceterorum bonorum heredem fecerit, non est locus familiae erciscundae iudicio: divisum est enim per constitutiones inter eos patrimonium, quemadmodum cessat familiae erciscundae iudicium, cum nihil in corporibus, sed omnia in nominibus sunt.

Dig. 10.2.25.2

Paulus 23 ad ed.

Quantum vero ad accipiendum familiae erciscundae iudicium nihil interest, possideat quis hereditatem nec ne.

Dig. 10.2.25.3

Paulus 23 ad ed.

De pluribus hereditatibus, quae inter eosdem ex diversis causis communes sint, unum familiae erciscundae iudicium sumi potest.

Dig. 10.2.25.4

Paulus 23 ad ed.

Si inter me et te titiana hereditas communis sit, inter me autem et te et titium seiana, posse unum iudicium accipi inter tres pomponius scribit.

Dig. 10.2.25.5

Paulus 23 ad ed.

Item si plures hereditates inter nos communes sunt, possumus de una familiae erciscundae iudicium experiri.

Dig. 10.2.25.6

Paulus 23 ad ed.

Si testator rem communem cum extraneo habebat sive rei suae partem alicui legavit aut heres ante iudicium familiae erciscundae acceptum partem suam alienavit, ad officium iudicis pertinet, ut eam partem, quae testatoris fuit, alicui iubeat tradi.

Dig. 10.2.25.7

Paulus 23 ad ed.

Quod pro emptore vel pro donato puta coheres possidet, in familiae erciscundae iudicium venire negat pomponius.

Dig. 10.2.25.8

Paulus 23 ad ed.

Idem scribit, cum ego et tu heredes titio extitissemus, si tu partem fundi, quem totum hereditarium dicebas, a sempronio petieris et victus fueris, mox eandem partem a sempronio emero et traditus mihi fuerit, agente te familiae erciscundae iudicio non veniet non solum hoc quod pro herede possidetur, sed nec id quod pro emptore: cum enim per iudicem priorem apparuit totam non esse hereditatis, quemadmodum in familiae erciscundae iudicium veniat?

Dig. 10.2.25.9

Paulus 23 ad ed.

An ea stipulatio, qua singuli heredes in solidum habent actionem, veniat in hoc iudicium, dubitatur: veluti si is qui viam iter actus stipulatus erat decesserit, quia talis stipulatio per legem duodecim tabularum non dividitur, quia nec potest. sed verius est non venire eam in iudicium, sed omnibus in solidum competere actionem et, si non praestetur via, pro parte hereditaria condemnationem fieri oportet.

Dig. 10.2.25.10

Paulus 23 ad ed.

Contra si promissor viae decesserit pluribus heredibus institutis, nec dividitur obligatio nec dubium est quin duret, quoniam viam promittere et is potest, qui fundum non habet. igitur quia singuli in solidum tenentur, officio iudicis cautiones interponi debere, ut, si quis ex his conventus litis aestimationem praestiterit, id pro parte a ceteris consequatur.

Dig. 10.2.25.11

Paulus 23 ad ed.

Idem dicendum est et si testator viam legaverit.

Dig. 10.2.25.12

Paulus 23 ad ed.

In illa quoque stipulatione prospiciendum est coheredibus, si testator promiserat " neque per se neque per heredem suum fieri, quo minus ire agere possit", quoniam uno prohibente in solidum committitur stipulatio, ne unius factum ceteris damnosum sit.

Dig. 10.2.25.13

Paulus 23 ad ed.

Idem iuris est in pecunia promissa a testatore, si sub poena promissa sit: nam licet haec obligatio dividatur per legem duodecim tabularum, tamen quia nihilum prodest ad poenam evitandam partem suam solvere, sive nondum soluta est pecunia nec dies venit, prospiciendum est per cautionem, ut de indemnitate caveat per quem factum fuerit, ne omnis pecunia solveretur, aut ut caveat se ei qui solidum solverit partem praestaturum: sive etiam solvit unus universam pecuniam quam defunctus promittit, ne poena committeretur, familiae erciscundae iudicio a coheredibus partes recipere poterit.

Dig. 10.2.25.14

Paulus 23 ad ed.

Idem observatur in pignoribus luendis: nam nisi universum quod debetur offeratur, iure pignus creditor vendere potest.

Dig. 10.2.25.15

Paulus 23 ad ed.

Si unus ex coheredibus noxali iudicio servum hereditarium defenderit et litis aestimationem optulerit, cum hoc expediret, id pro parte hoc iudicio consequatur. idem est et si unus legatorum nomine caverit, ne in possessionem mitterentur. et omnino quae pro parte expediri non possunt si unus cogente necessitate fecerit, familiae erciscundae iudicio locus est.

Dig. 10.2.25.16

Paulus 23 ad ed.

Non tantum dolum, sed et culpam in re hereditaria praestare debet coheres, quoniam cum coherede non contrahimus, sed incidimus in eum: non tamen diligentiam praestare debet, qualem diligens pater familias, quoniam hic propter suam partem causam habuit gerendi et ideo negotiorum gestorum ei actio non competit: talem igitur diligentiam praestare debet, qualem in suis rebus. eadem sunt, si duobus res legata sit: nam et hos coniunxit ad societatem non consensus, sed res.

Dig. 10.2.25.17

Paulus 23 ad ed.

Si incerto homine legato et postea defuncto legatario aliquis ex heredibus legatarii non consentiendo impedierit legatum, is qui impedit hoc iudicio ceteris quanti intersit eorum damnabitur. idem est, si e contrario unus ex heredibus, a quibus generaliter homo legatus est quem ipsi elegerint, noluerit consentire, ut praestetur quem solvi omnibus expediebat, et ideo conventi a legatario iudicio pluris damnati fuerint.

Dig. 10.2.25.18

Paulus 23 ad ed.

Item culpae nomine tenetur, qui, cum ante alios ipse adisset hereditatem, servitutes praediis hereditariis debitas passus est non utendo amitti.

Dig. 10.2.25.19

Paulus 23 ad ed.

Si filius cum patrem defenderet condemnatus solverit vel vivo eo vel post mortem, potest aequius dici habere petitionem a coherede in familiae erciscundae iudicio.

Dig. 10.2.25.20

Paulus 23 ad ed.

Iudex familiae erciscundae nihil debet indivisum relinquere.

Dig. 10.2.25.21

Paulus 23 ad ed.

Item curare debet, ut de evictione caveatur his quibus adiudicat.

Dig. 10.2.25.22

Paulus 23 ad ed.

Si pecunia, quae domi relicta non est, per praeceptionem relicta sit, utrum universa a coheredibus praestanda sit an pro parte hereditaria, quemadmodum si pecunia in hereditate relicta esset, dubitatur. et magis dicendum est, ut id praestandum sit, quod praestaretur, si pecunia esset inventa.

Dig. 10.2.26

Gaius 7 ad ed. provinc.

Officio autem iudicis convenit iubere rem hereditariam venire unam pluresve pecuniamque ex pretio redactam ei numerari, cui legata sit.

Dig. 10.2.27

Paulus 23 ad ed.

In hoc iudicio condemnationes et absolutiones in omnium persona faciendae sunt: et ideo si in alicuius persona omissa sit damnatio, in ceterorum quoque persona quod fecit iudex non valebit, quia non potest ex uno iudicio res iudicata in partem valere, in partem non valere.

Dig. 10.2.28

Gaius 7 ad ed. provinc.

Rem pignori creditori datam si per praeceptionem legaverit testator, officio iudicis continetur, ut ex communi pecunia luatur eamque ferat is cui eo modo fuerat legata.

Dig. 10.2.29

Paulus 23 ad ed.

Si pignori res data defuncto sit, dicendum est in familiae erciscundae iudicium venire: sed is cui adiudicabitur in familiae erciscundae iudicio pro parte coheredi erit damnandus nec cavere debet coheredi indemnem eum fore adversus eum qui pignori dederit, quia pro eo erit, ac si hypothecaria vel serviana actione petita litis aestimatio oblata sit, ut et is qui optulerit adversus dominum vindicantem exceptione tuendus sit. contra quoque si is heres, cui pignus adiudicatum est, velit totum reddere, licet debitor nolit, audiendus est. non idem dici potest, si alteram partem creditor emerit: adiudicatio enim necessaria est, emptio voluntaria: nisi si obiciatur creditori, quod animose licitus sit. sed huius rei ratio habebitur, quia quod creditor egit, pro eo habendum est ac si debitor per procuratorem egisset et eius, quod propter necessitatem impendit, etiam ultro est actio creditori.

Dig. 10.2.30

Modestinus 6 resp.

Fundus mihi communis est pupillae coheredi: in eo fundo reliquiae sunt conditae, quibus religio ab utriusque patribus debebatur, nam parentes quoque eiusdem pupillae ibi sepulti sunt: sed tutores distrahere fundum volunt: ego non consentio, sed portionem meam possidere malo, cum universitatem emere non possim et velim pro meo arbitrio exsequi ius religionis. quaero, an recte arbitrum communi dividundo ad hunc fundum partiendum petam an etiam is arbiter, qui familiae erciscundae datur, isdem partibus fungi possit, ut hanc possessionem exemptis ceteris corporibus hereditariis pro iure cuique nobis partiatur. herennius modestinus respondit nihil proponi, cur familiae erciscundae iudicio addictus arbiter officium suum etiam in eius fundi de quo agitur divisionem interponere non possit: sed religiosa loca in iudicium non deduci eorumque ius singulis heredibus in solidum competere.

Dig. 10.2.31

Papinianus 7 quaest.

Si servus pignori obligatus luatur ab uno ex heredibus, quamvis postea decedat, officium tamen arbitri durat: sufficit enim communionis causa quae praecessit quaeque hodie duraret, si res non intercidisset.

Dig. 10.2.32

Papinianus 2 resp.

Quae pater inter filios non divisit post datas actiones vice divisionis, ad singulos pro hereditaria portione pertinent, modo si cetera, quae non divisit, in unum generaliter non contulit vel res datas non sequuntur.

Dig. 10.2.33

Papinianus 7 resp.

Si pater familias singulis heredibus fundos legando divisionis arbitrio fungi voluit, non aliter partem suam coheres praestare cogetur, quam si vice mutua partem nexu pignoris liberam consequatur.

Dig. 10.2.34

Papinianus 8 resp.

Servos inter coheredes tempore divisionis aestimatos non emendi, sed dividendi animo pretiis adscriptos videri placuit: quare suspensa condicione mortuos tam heredi quam fideicommissario deperisse.

Dig. 10.2.35

Papinianus 12 resp.

Pomponius philadelphus dotis causa praedia filiae quam habebat in potestate tradidit et reditus eorum genero solvi mandavit: an ea praecipua filia retinere possit, cum omnes filios heredes instituisset, quaerebatur. iustam causam retinendae possessionis habere filiam, quoniam pater praedia de quibus quaerebatur dotis esse voluit et matrimonium post mortem quoque patris steterat, respondi: filiam etenim, quae naturaliter agros tenuit, specie dotis cuius capax fuisset defendi.

Dig. 10.2.36

Paulus 2 quaest.

Cum putarem te coheredem meum esse idque verum non esset, egi tecum familiae erciscundae iudicio et a iudice invicem adiudicationes et condemnationes factae sunt: quaero, rei veritate cognita utrum condictio invicem competat an vindicatio? et an aliud in eo qui heres est, aliud in eo qui heres non sit dicendum est? respondi: qui ex asse heres erat, si, cum putaret se titium coheredem habere, acceperit cum eo familiae erciscundae iudicium et condemnationibus factis solverit pecuniam, quoniam ex causa iudicati solvit, repetere non potest. sed tu videris eo moveri, quod non est iudicium familiae erciscundae nisi inter coheredes acceptum: sed quamvis non sit iudicium, tamen sufficit ad impendiendam repetitionem, quod quis se putat condemnatum. quod si neuter eorum heres fuit, sed quasi heredes essent acceperint familiae erciscundae iudicium, de repetitione idem in utrisque dicendum est, quod diximus in altero. plane si sine iudice diviserint res, etiam condictionem earum rerum, quae ei cesserunt, quem coheredem esse putavit qui fuit heres, competere dici potest: non enim transactum inter eos intellegitur, cum ille coheredem esse putaverit.

Dig. 10.2.37

Scaevola 12 quaest.

Qui familiae erciscundae iudicio agit, confitetur adversarium sibi esse coheredem.

Dig. 10.2.38

Paulus 3 resp.

Lucius et titia fratres emancipati a patre adulti curatores acceperunt: hi communes pecunias ex reditibus redactas singulis subministraverunt: postea omne patrimonium diviserunt: et post divisionem titia soror lucio fratri suo coepit quaestionem movere, quasi amplius accepisset quam ipsa acceperat. cum lucius frater eius non amplius sua portione, immo minus quam dimidiam consecutus sit, quaero, an titiae competat adversus fratrem actio. paulus respondit, secundum ea quae proponuntur, si lucius non amplius ex reditu praediorum communium accepit, quam pro hereditaria portione ei competeret, nullam sorori eius adversus eum competere actionem. idem respondit, cum ex decretis alimentis a praetore amplius fratrem accepisse diceretur quam sororem, non tamen ultra partem dimidiam.

Dig. 10.2.39pr.

Scaevola 1 resp.

Ex parte heres institutus causam de totis bonis, quam omnes heredes patiebantur ob inultam mortem, suscepit et optinuit: coheres ab eo partem suam petebat nec partem sumptuum factorum in litem praestare volebat: quaesitum est, an doli exceptio noceret. respondi, si idcirco amplius erogatum esset, quod ipsius quoque causa defensa esset, habendam rationem sumptuum. sed et si omiserit doli exceptionem, agere potest de recipienda portione sumptuum.

Dig. 10.2.39.1

Scaevola 1 resp.

Intestato moriens codicillis praedia sua omnia et patrimonium inter liberos divisit ita, ut longe amplius filio quam filiae relinqueret: quaesitum est, an soror fratri dotem conferre deberet. respondi secundum ea quae proponerentur, si nihil indivisum reliquisset, rectius dici ex voluntate defuncti collationem dotis cessare.

Dig. 10.2.39.2

Scaevola 1 resp.

Servo libertatem dedit qui erat annorum quindecim, " cum erit annorum triginta", eidem ex die mortis suae quoad viveret cibariorum nomine denarios denos, vestiarii denarios viginti quinque praestari se velle significavit: quaesitum est, an utile esset cibariorum et vestiariorum legatum, cum stichus ante libertatis tempus decesserit, et an, si non est utile, heres qui praestiterat a coherede repetere possit, apud quem morabatur. respondi non quidem debita fuisse, sed si id, quod datum est, in alimenta consumptum sit, repeti non posse.

Dig. 10.2.39.3

Scaevola 1 resp.

Filius rei publicae debita, quae post mortem patris contraxit, fratri suo pro parte hereditaria reputare non potest, si non in omnibus socii essent, licet hereditatem paternam communem haberent et pater pro altero filio in patria magistratu functus decessit.

Dig. 10.2.39.4

Scaevola 1 resp.

Duos filios scripsit heredes et certos homines unicuique eorum praelegavit, in quibus uni stephanum cum peculio: is vivo testatore manumissus decessit, deinde pater: quaesitum est, an id, quod in peculio habuit stephanus priusquam manumitteretur, ad utrosque filios pertineat an vero ad eum solum, cui cum peculio praelegatus fuerat. respondi secundum ea quae proponerentur ad utrosque.

Dig. 10.2.39.5

Scaevola 1 resp.

Pater inter filios divisit bona et eam divisionem testamento confirmavit et cavit, ut aes alienum, quod unusquisque eorum habet sive habebit, solus sustineret: postea unus ex filiis cum pecuniam mutuaretur, intervenit pater eiusque consensu praedia quae filio adsignaverat pignori data sunt: post mortem patris eadem praedia idem filius possedit, usuras solvit: quaero, an familiae erciscundae iudicio, si praedia pignori data distrahat creditor, aliquid ei a coherede praestandum sit. respondi secundum ea quae proponerentur non esse praestandum.

Dig. 10.2.40

Gaius 2 fideic.

Si ex asse heres institutus rogatus sit mihi partem aliquam restituere, veluti dimidiam, utile familiae erciscundae iudicium recte inter nos agetur.

Dig. 10.2.41

Paulus 1 decr.

Quaedam mulier ab iudice appellaverat, quod diceret eum de dividenda hereditate inter se et coheredem non tantum res, sed et libertos divisisse et alimenta, quae dari testator certis libertis iussisset: nullo enim iure id eum fecisse. ex diverso respondebatur consensisse eos divisioni et multis annis alimenta secundum divisionem praestitisse. placuit standum esse alimentorum praestationi: sed et illud adiecit nullam esse libertorum divisionem:

Dig. 10.2.42

Pomponius 6 ad sab.

Si ita legatum fuerit uni ex heredibus: " quod mihi debet, praecipito", officio iudicis familiae erciscundae continetur, ne ab eo coheredes exigant: nam et si quod alius deberet praecipere unus iussus fuerit, officio iudicis actiones ei praestari debebunt pro portione coheredis.

Dig. 10.2.43

Ulpianus 30 ad sab.

Arbitrum familiae erciscundae vel unus petere potest: nam provocare apud iudicem vel unum heredem posse palam est: igitur et praesentibus ceteris et invitis poterit vel unus arbitrum poscere.

Dig. 10.2.44pr.

Paulus 6 ad sab.

Inter coheredes etiam communi dividundo agi potest, ut res dumtaxat quae eorum communes sint et causae ex his rebus pendentes in iudicium veniant, de ceteris vero in integro sit familiae erciscundae iudicium.

Dig. 10.2.44.1

Paulus 6 ad sab.

Si familiae erciscundae vel communi dividundo actum sit, adiudicationes praetor tuetur exceptiones aut actiones dando.

Dig. 10.2.44.2

Paulus 6 ad sab.

Si coheredes absente uno coherede rem vendiderunt et in ea re dolo malo fecerunt, quo plus ad eos perveniret, vel familiae erciscundae iudicio praestabunt ei qui afuit vel hereditatis petitione.

Dig. 10.2.44.3

Paulus 6 ad sab.

Fructus, quos ante aditam hereditatem ex fundo hereditario heres capit, non aliter familiae erciscundae iudicio praestare eum iulianus ait, quam si, cum sciret hereditarium fundum esse, ceperit.

Dig. 10.2.44.4

Paulus 6 ad sab.

Qui familiae erciscundae et communi dividundo et finium regundorum agunt, et actores sunt et rei et ideo iurare debent non calumniae causa litem intendere et non calumniae causa ad infitias ire.

Dig. 10.2.44.5

Paulus 6 ad sab.

Quod ex facto suo unus ex coheredibus ex stipulatione hereditaria praestat, a coherede non repetet: veluti si a se heredeque suo dolum malum afuturum defunctus spopondit vel neque per se neque per heredem suum fore, quo minus quis eat agat. immo et si reliqui propter factum unius teneri coeperint, quasi condicio stipulationis hereditariae exstiterit, habebunt familiae erciscundae iudicium cum eo, propter quem commissa sit stipulatio.

Dig. 10.2.44.6

Paulus 6 ad sab.

Si quis stipulatus fuerit titium heredemque eius ratum habiturum et titius pluribus heredibus relictis decesserit, eum solum teneri qui non habuit ratum et solum ex heredibus stipulatoris acturum a quo fuerit petitum.

Dig. 10.2.44.7

Paulus 6 ad sab.

Usu fructu uxori legato donec ei dos solvatur, per arbitrum familiae erciscundae tam id, quod coheredis nomine ex dote solutum sit, reciperare potest, quam ut coheres solvat effici posse cassius ait: et verum est.

Dig. 10.2.44.8

Paulus 6 ad sab.

Si duo coheredes damnati sint statuam ponere et altero cessante alter eam fecerit, non esse iniquum iulianus ait familiae erciscundae iudicium dare, ut pars impendiorum boni viri arbitratu praestetur.

Dig. 10.2.45pr.

Pomponius 13 ad sab.

Si quid contendis ex hereditate mihi tecum commune esse, quod ego ex alia causa meum proprium esse dico, id in familiae erciscundae iudicium non venit.

Dig. 10.2.45.1

Pomponius 13 ad sab.

Dolus, quem servus heredis admisit, in iudicium familiae erciscundae non venit, nisi si domini culpa in hoc erat, quod non idoneum servum rei communi applicuerit.

Dig. 10.2.46

Paulus 7 ad sab.

Si maritus sub condicione a patre heres institutus sit, interim uxoris de dote actionem pendere. plane si post mortem soceri divortium factum sit, quamvis pendente condicione institutionis dicendum est praeceptioni dotis locum esse, quia mortuo patre quaedam filios sequuntur etiam antequam fiant heredes, ut matrimonium, ut liberi, ut tutela. igitur et dotem praecipere debet qui onus matrimonii post mortem patris sustinuit: et ita scaevolae quoque nostro visum est.

Dig. 10.2.47pr.

Pomponius 21 ad sab.

In iudicio familiae erciscundae vel communi dividundo si, dum res in arbitrio sit, de iure praedii controversia sit, placet omnes eos, inter quos arbiter sumptus sit, et agere et opus novum nuntiare pro sua quemque parte posse, et cum adiudicationes ab arbitro fiant, si uni adiudicetur totus fundus, caveri oportet, ut quae ex his actionibus recepta fuerint reddantur aut quae in eas impensae factae fuerint praestentur: et si, cum res in iudicio esset, eo nomine actum non fuerit, eum sequi integram actionem, cui totus fundus adiudicatus fuerit, aut pro quacumque parte adiudicatus erit.

Dig. 10.2.47.1

Pomponius 21 ad sab.

Item quae res moveri possint et in ea iudicia veniant, si interea subreptae sint, furti agere eos, quorum istae res periculo fuerint, posse.

Dig. 10.2.48

Paulus 12 ad sab.

Si familiae erciscundae vel communi dividundo vel finium regundorum actum sit et unus ex litigatoribus decesserit pluribus heredibus relictis, non potest in partes iudicium scindi, sed aut omnes heredes accipere id debent aut dare unum procuratorem, in quem omnium nomine iudicium agatur.

Dig. 10.2.49

Ulpianus 2 disp.

Qui erat heres ex parte institutus, testatorem iussus a praetore sepelire servum, cui erat testamento data libertas, ideo distraxit duplamque promisit et ex ea cautione conventus praestitit: quaesitum est, an familiae erciscundae iudicio consequatur, quod ex duplae stipulatione abest. primo videamus, an hic debuerit duplam cavere. et mihi videtur non debuisse: hi enim demum ad duplae cautionem compelluntur, qui sponte sua distrahunt: ceterum si officio distrahentis fungitur, non debet adstringi, non magis quam si quis ad exsequendam sententiam a praetore datus distrahat: nam et hic in ea condicione est, ne cogatur implere quod coguntur hi qui suo arbitrio distrahunt: nam inter officium suscipientis et voluntatem distrahentis multum interest. quapropter re quidem integra stipulationem duplae interponere non debuit, sed decernere praetor debet esse emptori adversus heredem existentem actionem ex empto, si res distracta fuisset evicta. si autem heres erravit et cavit et servus perveniat ad libertatem, stipulatio committetur: quae si fuerit commissa, aequum erit utilem actionem ei adversus coheredem dari deficiente directo iudicio familiae erciscundae, ne in damno moretur. nam ut familiae erciscundae iudicio agere quis possit, non tantum heredem esse oportet, verum ex ea causa agere vel conveniri, quam gessit quodque admisit, posteaquam heres effectus sit: ceterum cessat familiae erciscundae actio. et ideo si ante, quam quis sciret se heredem esse, in hereditate aliquid gesserit, familiae erciscundae iudicio non erit locus, quia non animo heredis gessisse videtur. quare qui ante aditam hereditatem quid gessit, veluti si testatorem sepelivit, familiae erciscundae iudicium non habet: sed si post aditam hereditatem id fecit, consequenter dicemus familiae erciscundae iudicio consequi eum posse sumptum quem fecit in funus.

Dig. 10.2.50

Ulpianus 6 opin.

Quae pater filio emancipato studiorum causa peregre agenti subministravit, si non credendi animo pater misisse fuerit comprobatus, sed pietate debita ductus: in rationem portionis, quae ex defuncti bonis ad eundem filium pertinuit, computari aequitas non patitur.

Dig. 10.2.51pr.

Iulianus 8 Dig.

Fundus, qui dotis nomine socero traditus fuerit, cum socer filium ex aliqua parte heredem instituerit, per arbitrum familiae erciscundae praecipi ita debet, ut ea causa filii sit, in qua futura esset, si dos per praeceptionem legata fuisset. quare fructus post litem contestatam percepti ad eum redigendi sunt habita ratione impensarum: qui vero ante litem contestatam percepti fuerint, aequaliter ad omnes heredes pertinebunt. et impensarum ratio haberi debet, quia nullus casus intervenire potest, qui hoc genus deductionis impediat.

Dig. 10.2.51.1

Iulianus 8 Dig.

Si ego a te hereditatem petere vellem, tu mecum familiae erciscundae agere, ex causa utrique nostrum mos gerendus est: nam si ego totam hereditatem possideo et te ex parte dimidia heredem esse confiteor, sed a communione discedere volo, impetrare debeo familiae erciscundae iudicium, quia aliter dividi inter nos hereditas non potest. item si tu iustam causam habes, propter quam per hereditatis petitionem potius quam familiae erciscundae iudicium negotium distrahere velis, tibi quoque permittendum erit hereditatem petere: nam quaedam veniunt in hereditatis petitionem, quae in familiae erciscundae iudicio non deducuntur: veluti si ego debitor hereditarius sim, iudicio familiae erciscundae non consequeris id quod defuncto debui, per hereditatis petitionem consequeris.

Dig. 10.2.52pr.

Iulianus 2 ad urs. ferocem.

Maevius, qui nos heredes fecit, rem communem habuit cum attio: si cum attio communi dividundo egissemus et nobis ea res adiudicata esset, venturam eam in familiae erciscundae iudicio proculus ait.

Dig. 10.2.52.1

Iulianus 2 ad urs. ferocem.

Servus liber et heres esse iussus id quod ex rationibus quas patri familias gessisset penes se retineret iudicio familiae erciscundae coheredibus suis praestabit.

Dig. 10.2.52.2

Iulianus 2 ad urs. ferocem.

Arbiter familiae erciscundae inter me et te sumptus quaedam mihi, quaedam tibi adiudicare volebat, pro his rebus alterum alteri condemnandos esse intellegebat: quaesitum est, an possit pensatione ultro citroque condemnationis facta eum solum, cuius summa excederet, eius dumtaxat summae, quae ita excederet, damnare. et placuit posse id arbitrum facere.

Dig. 10.2.52.3

Iulianus 2 ad urs. ferocem.

Cum familiae erciscundae vel communi dividundo agitur, universae res aestimari debent, non singularum rerum partes.

Dig. 10.2.53

Ulpianus 2 resp.

Pecuniam, quam filius emancipatus ita credidit, ut patri solveretur, ita demum in hereditatem patris numerari, si patri adversus filium eiusdem quantitatis nomine actio competebat.

Dig. 10.2.54

Nerva 3 membr.

Ex hereditate lucii titii, quae mihi et tibi communis erat, fundi partem meam alienavi, deinde familiae erciscundae iudicium inter nos acceptum est. neque ea pars quae mea fuit in iudicio veniet, cum alienata de hereditate exierit, neque tua, quia etiamsi remanet in pristino iure hereditariaque est, tamen alienatione meae partis exit de communione. utrum autem unus heres partem suam non alienaverit an plures, nihil interest, si modo aliqua portio alienata ab aliquo ex heredibus hereditaria esse desiit.

Dig. 10.2.55

Ulpianus 2 ad ed.

Si familiae erciscundae vel communi dividundo iudicium agatur et divisio tam difficilis sit, ut paene impossibilis esse videatur, potest iudex in unius personam totam condemnationem conferre et adiudicare omnes res.

Dig. 10.2.56

Paulus 23 ad ed.

Non solum in finium regundorum, sed et familiae erciscundae iudicio praeteriti quoque temporis fructus veniunt.

Dig. 10.2.57

Papinianus 2 resp.

Arbitro quoque accepto fratres communem hereditatem consensu dividentes pietatis officio funguntur, quam revocari non oportet, licet arbiter sententiam iurgio perempto non dixerit, si non intercedat aetatis auxilium.

Dig. 10.3.0. Communi dividundo.

Dig. 10.3.1

Paulus 23 ad ed.

Communi dividundo iudicium ideo necessarium fuit, quod pro socio actio magis ad personales invicem praestationes pertinet quam ad communium rerum divisionem. denique cessat communi dividundo iudicium, si res communis non sit.

Dig. 10.3.2pr.

Gaius 7 ad ed. provinc.

Nihil autem interest, cum societate an sine societate res inter aliquos communis sit: nam utroque casu locus est communi dividundo iudicio. cum societate res communis est veluti inter eos, qui pariter eandem rem emerunt: sine societate communis est veluti inter eos, quibus eadem res testamento legata est.

Dig. 10.3.2.1

Gaius 7 ad ed. provinc.

In tribus duplicibus iudiciis familiae erciscundae, communi dividundo, finium regundorum quaeritur, quis actor intellegatur, quia par causa omnium videtur: sed magis placuit eum videri actorem, qui ad iudicium provocasset.

Dig. 10.3.3pr.

Ulpianus 30 ad sab.

In communi dividundo iudicio nihil pervenit ultra divisionem rerum ipsarum quae communes sint et si quid in his damni datum factumve est sive quid eo nomine aut abest alicui sociorum aut ad eum pervenit ex re communi.

Dig. 10.3.3.1

Ulpianus 30 ad sab.

Si quid ipsi sine dolo malo inter se pepigerunt, id in primis et familiae erciscundae et communi dividundo iudex servare debet.

Dig. 10.3.4pr.

Ulpianus 19 ad ed.

Per hoc iudicium corporalium rerum fit divisio, quarum rerum dominium habemus, non etiam hereditatis.

Dig. 10.3.4.1

Ulpianus 19 ad ed.

De puteo quaeritur an communi dividundo iudicio agi possit: et ait mela ita demum posse, si solum eius commune sit.

Dig. 10.3.4.2

Ulpianus 19 ad ed.

Hoc iudicium bonae fidei est: quare si una res indivisa relicta sit, valebit utique et ceterarum divisio et poterit iterum communi dividundo agi de ea quae indivisa mansit.

Dig. 10.3.4.3

Ulpianus 19 ad ed.

Sicut autem ipsius rei divisio venit in communi dividundo iudicio, ita etiam praestationes veniunt: et ideo si quis impensas fecerit, consequatur. sed si non cum ipso socio agat, sed cum herede socii, labeo recte existimat impensas et fructus a defuncto perceptos venire. plane fructus ante percepti, quam res communis esset, vel sumptus ante facti in communi dividundo iudicium non veniunt.

Dig. 10.3.4.4

Ulpianus 19 ad ed.

Eapropter scribit iulianus, si missi in possessionem damni infecti simus et ante, quam possidere iuberemur, ego insulam fulsero, sumptum istum communi dividundo iudicio consequi me non posse.

Dig. 10.3.5

Iulianus 2 ad urs. ferocem.

Sed si res non defenderetur et ideo iussi sumus a praetore eas aedes possidere et ex hoc dominium earum nancisceremur, respondit proculus communi dividundo iudicio partem eius impensae me servaturum esse.

Dig. 10.3.6pr.

Ulpianus 19 ad ed.

Si quis putans sibi cum titio fundum communem esse fructus perceperit vel sumptum fecerit, cum esset cum alio communis, agi poterit utili communi dividundo iudicio.

Dig. 10.3.6.1

Ulpianus 19 ad ed.

Quare et si fundum titius alienaverit, licet hic communi dividundo iudicio locus non sit, quia a communione discessum est, utili tamen locum futurum, quod datur de praestationibus, quotiens communis esse desiit.

Dig. 10.3.6.2

Ulpianus 19 ad ed.

Sive autem locando fundum communem sive colendo de fundo communi quid socius consecutus sit, communi dividundo iudicio tenebitur, et si quidem communi nomine id fecit, neque lucrum neque damnum sentire eum oportet, si vero non communi nomine, sed ut lucretur solus, magis esse oportet, ut damnum ad ipsum respiciat. hoc autem ideo praestat communi dividundo iudicio, quia videtur partem suam non potuisse expedite locare. ceterum non alias communi dividundo iudicio locus erit, ut et papinianus scribit, nisi id demum gessit, sine quo partem suam recte administrare non potuit: alioquin si potuit, habet negotiorum gestorum actionem eaque tenetur.

Dig. 10.3.6.3

Ulpianus 19 ad ed.

Si quid post acceptum communi dividundo iudicium fuerit impensum, nerva recte existimat etiam hoc venire.

Dig. 10.3.6.4

Ulpianus 19 ad ed.

Sed et partum venire sabinus et atilicinus responderunt.

Dig. 10.3.6.5

Ulpianus 19 ad ed.

Sed et accessionem et decessionem hoc iudicium accipere idem existimaverunt.

Dig. 10.3.6.6

Ulpianus 19 ad ed.

Si quis in communem locum mortuum intulerit, an religiosum fecerit videndum. et sane ius quidem inferendi in sepulchrum unicuique in solidum competit, locum autem purum alter non potest facere religiosum. trebatius autem et labeo quamquam putant non esse locum religiosum factum, tamen putant in factum agendum.

Dig. 10.3.6.7

Ulpianus 19 ad ed.

Si damni infecti in solidum pro aedibus caveris, labeo ait communi dividundo iudicium tibi non esse, cum necesse tibi non fuerit in solidum cavere, sed sufficere pro parte tua: quae sententia vera est.

Dig. 10.3.6.8

Ulpianus 19 ad ed.

Si fundus communis nobis sit, sed pignori datus a me, venit quidem in communi dividundo iudicio, sed ius pignoris creditori manebit, etiamsi adiudicatus fuerit: nam et si pars socio tradita fuisset, integrum maneret. arbitrum autem communi dividundo hoc minoris partem aestimare debere, quod ex pacto vendere eam rem creditor potest, iulianus ait.

Dig. 10.3.6.9

Ulpianus 19 ad ed.

Idem iulianus scribit, si is, cum quo servum communem habebam, partem suam mihi pignori dederit et communi dividundo agere coeperit, pigneraticia exceptione eum summoveri debere: sed si exceptione usus non fuero, officium iudicis erit, ut, cum debitori totum hominem adiudicaverit, partis aestimatione eum condemnet. manere enim integrum ius pignoris: quod si adiudicaverit iudex mihi, tanti dumtaxat me condemnet, quanto pluris pignus sit quam pecunia credita, et debitorem a me iubeat liberari.

Dig. 10.3.6.10

Ulpianus 19 ad ed.

Officio iudicis etiam talis adiudicatio fieri potest, ut alteri fundum, alteri usum fructum adiudicet.

Dig. 10.3.6.11

Ulpianus 19 ad ed.

Cetera eadem sunt, quae in familiae erciscundae iudicio tractavimus.

Dig. 10.3.6.12

Ulpianus 19 ad ed.

Urseius ait, cum in communi aedificio vicinus nuntiavit ne quid operis fieret, si unus ex sociis ex hac causa damnatus fuisset, posse eam poenam a socio pro parte servare: iulianus autem recte notat ita demum hoc verum esse, si interfuit aedium hoc fieri.

Dig. 10.3.7pr.

Ulpianus 20 ad ed.

Communi dividundo iudicium locum habet et in vectigali agro. vectigalis ager an regionibus dividi possit, videndum: magis autem debet iudex abstinere huiusmodi divisione: alioquin praestatio vectigalis confundetur.

Dig. 10.3.7.1

Ulpianus 20 ad ed.

Neratius scribit arbitrum, si regionibus fundum non vectigalem divisum duobus adiudicaverit, posse quasi in duobus fundis servitutem imponere.

Dig. 10.3.7.2

Ulpianus 20 ad ed.

Qui in rem publicianam habent, etiam communi dividundo iudicium possunt exercere.

Dig. 10.3.7.3

Ulpianus 20 ad ed.

Ex quibusdam autem causis vindicatio cessat, si tamen iusta causa est possidendi, utile communi dividundo competit, ut puta si ex causa indebiti soluti res possideatur.

Dig. 10.3.7.4

Ulpianus 20 ad ed.

Inter praedones autem hoc iudicium locum non habet, nec si precario possideant locum habebit nec si clam, quia iniusta est possessio ista precaria vero iusta quidem, sed quae non pergat ad iudicii vigorem.

Dig. 10.3.7.5

Ulpianus 20 ad ed.

Iulianus scribit, si alter possessor provocet, alter dicat eum vi possidere, non debere hoc iudicium dari nec post annum quidem, quia placuit etiam post annum in eum qui vi deiecit interdictum reddi. et si precario, inquit, dicat eum possidere, adhuc cessabit hoc iudicium, quia et de precario interdictum datur. sed et si clam dicatur possidere qui provocat, dicendum esse ait cessare hoc iudicium: nam de clandestina possessione competere iudicium inquit.

Dig. 10.3.7.6

Ulpianus 20 ad ed.

Si duo sint qui rem pignori acceperunt, aequissimum esse utile communi dividundo iudicium dari.

Dig. 10.3.7.7

Ulpianus 20 ad ed.

Sed et si de usu fructu sit inter duos controversia, dari debet.

Dig. 10.3.7.8

Ulpianus 20 ad ed.

Item si duo a praetore missi sint in possessionem legatorum: est enim iusta causa possidendi custodiae gratia. ergo et si duo ventres, idem erit dicendum: quod habet rationem.

Dig. 10.3.7.9

Ulpianus 20 ad ed.

Plane si iam damni infecti missus iussus sit possidere, non erit huic utili iudicio locus, cum vindicationem habere possit.

Dig. 10.3.7.10

Ulpianus 20 ad ed.

Cum de usu fructu communi dividundo iudicium agitur, iudex officium suum ita diriget, ut vel regionibus eis uti frui permittat: vel locet usum fructum uni ex illis: vel tertiae personae, ut hi pensiones sine ulla controversia percipiant: vel si res mobiles sint, etiam sic poterit, ut inter eos conveniat caveantque per tempora se usuros et fruituros, hoc est ut apud singulos mutua vice certo tempore sit usus fructus.

Dig. 10.3.7.11

Ulpianus 20 ad ed.

Neque colonis neque eis qui depositum susceperunt hoc iudicium competit, quamvis naturaliter possideant.

Dig. 10.3.7.12

Ulpianus 20 ad ed.

Inter eos, qui pignori acceperunt, talis divisio fieri debet, ut non vero pretio aestimetur pars, sed in tantum dumtaxat, quantum pro ea parte debetur, et adsignetur quidem pignus uni ex creditoribus, licentia tamen non denegetur debitori debitum offerre et pignus suum luere. idemque dicitur et si possessor pignoris litis aestimationem pigneraticiam in rem agenti offerat.

Dig. 10.3.7.13

Ulpianus 20 ad ed.

Si debitor communis praedii partem pignori dedit et a domino alterius partis provocatus creditor eius aut ab alio creditore alterius debitoris licendo superavit et debitor eius cui res fuit adiudicata velit partem suam praedii reciperare soluto eo quod ipse debuit: eleganter dicitur non esse audiendum, nisi et eam partem paratus sit reciperare, quam creditor per adiudicationem emit. nam et si partem vendideris rei et prius, quam traderes emptori, communi dividundo iudicio provocatus fueris aliaque pars tibi adiudicata sit, consequenter dicitur ex empto agi non posse, nisi totam rem suscipere fuerit paratus, quia haec pars beneficio alterius venditori accessit: quin immo etiam ex vendito posse conveniri emptorem, ut recipiat totum: solum illud spectandum erit, num forte fraus aliqua venditoris intervenit. sed et si distracta parte cesserit victus licitatione venditor, aeque, pretium ut restituat, ex empto tenebitur. haec eadem et in mandato ceterisque huius generis iudiciis servantur.

Dig. 10.3.8pr.

Paulus 23 ad ed.

Et si non omnes, qui rem communem habent, sed certi ex his dividere desiderant, hoc iudicium inter eos accipi potest.

Dig. 10.3.8.1

Paulus 23 ad ed.

Si incertum sit, an lex falcidia locum habeat inter legatarium et heredem, communi dividundo agi potest aut incertae partis vindicatio datur. similiter fit et si peculium legatum sit, quia in quantum res peculiares deminuit id quod domino debetur, incertum est.

Dig. 10.3.8.2

Paulus 23 ad ed.

Venit in communi dividundo iudicium etiam si quis rem communem deteriorem fecerit, forte servum vulnerando aut animum eius corrumpendo aut arbores ex fundo excidendo.

Dig. 10.3.8.3

Paulus 23 ad ed.

Si communis servi gratia noxae nomine plus praestiterit, aestimabitur servus et eius partem consequetur.

Dig. 10.3.8.4

Paulus 23 ad ed.

Item si unus in solidum de peculio conventus et damnatus sit, est cum socio communi dividundo actio, ut partem peculii consequatur.

Dig. 10.3.9

Africanus 7 quaest.

Sed postquam socius servi communis nomine de peculio in solidum damnatus esset, si apud socium res peculiares intercidant, nihilo minus utile erit iudicium communi dividundo ad reciperandam partem pecuniae: alioquin iniquum fore, si tota ea res ad damnum eius qui iudicium acceperit pertineat, cum utriusque domini periculum in rebus peculiaribus esse debeat. nam et eum, qui mandatu domini defensionem servi suscepit, omne quod bona fide praestiterit servaturum, quamvis peculium postea interciderit. haec ita, si neutrius culpa intervenerit: etenim dominum, cum quo de peculio agitur, si paratus sit rebus peculiaribus petitori cedere, ex causa audiendum putavit, scilicet si sine dolo malo et frustratione id faciat.

Dig. 10.3.10pr.

Paulus 23 ad ed.

Item quamvis legis aquiliae actio in heredem non competat, tamen hoc iudicio heres socii praestet, si quid defunctus in re communi admisit, quo nomine legis aquiliae actio nascitur.

Dig. 10.3.10.1

Paulus 23 ad ed.

Si usus tantum noster sit, qui neque venire neque locari potest, quemadmodum divisio potest fieri in communi dividundo iudicio, videamus. sed praetor interveniet et rem emendabit, ut, si iudex alteri usum adiudicaverit, non videatur alter qui mercedem accipit non uti, quasi plus faciat qui videtur frui, quia hoc propter necessitatem fit.

Dig. 10.3.10.2

Paulus 23 ad ed.

In communi dividundo iudicio iusto pretio rem aestimare debebit iudex et de evictione quoque cavendum erit.

Dig. 10.3.11

Gaius 7 ad ed. provinc.

In summa admonendi sumus, quod, si post interitum rei communis is, cui aliquid ex communione praestari oportet, eo nomine agere velit, communi dividundo iudicium utile datur: veluti si actor impensas aliquas in rem communem fecit, sive socius eius solus aliquid ex ea re lucratus est, velut operas servi mercedesve, hoc iudicio eorum omnium ratio habetur.

Dig. 10.3.12

Ulpianus 71 ad ed.

Si aedes communes sint aut paries communis et eum reficere vel demolire vel in eum immittere quid opus sit, communi dividundo iudicio erit agendum, aut interdicto uti possidetis experimur.

Dig. 10.3.13

Ulpianus 75 ad ed.

In iudicium communi dividundo omnes res veniunt, nisi si quid fuerit ex communi consensu exceptum nominatim, ne veniat.

Dig. 10.3.14pr.

Paulus 3 ad plaut.

In hoc iudicium hoc venit, quod communi nomine actum est aut agi debuit ab eo, qui scit se socium habere.

Dig. 10.3.14.1

Paulus 3 ad plaut.

Impendia autem, quae dum proprium meum fundum existimo feci, quae scilicet, si vindicaretur fundi pars, per exceptionem doli retinere possem, an etiam, si communi dividundo iudicio mecum agetur, aequitate ipsius iudicii retinere possim, considerandum est. quod quidem magis puto, quia bonae fidei iudicium est communi dividundo: sed hoc ita, si mecum agatur. ceterum si alienavero partem meam, non erit unde retinere possim. sed is, qui a me emerit, an retinere possit, videndum est: nam et si vindicaretur ab eo pars, impendiorum nomine, quae ego fecissem, ita ut ego poterat retentionem facere: et verius est, ut et in hac specie expensae retineantur. quae cum ita sint, rectissime dicitur etiam impendiorum nomine utile iudicium dari debere mihi in socium etiam manente rei communione. diversum est enim, cum quasi in rem meam impendo, quae sit aliena aut communis: hoc enim casu, ubi quasi in rem meam impendo, tantum retentionem habeo, quia neminem mihi obligare volui. at cum puto rem titii esse, quae sit maevii, aut esse mihi communem cum alio quam est, id ago, ut alium mihi obligem, et sicut negotiorum gestorum actio datur adversus eum cuius negotia curavi, cum putarem alterius ea esse, ita et in proposito. igitur et si abalienavero praedium, quia in ea causa fuit, ut mihi actio dari deberet, danda mihi erit, ut iulianus quoque scribit, negotiorum gestorum actio.

Dig. 10.3.14.2

Paulus 3 ad plaut.

Si conveniat, ne omnino divisio fiat, huiusmodi pactum nullas vires habere manifestissimum est. sin autem intra certum tempus, quod etiam ipsius rei qualitati prodest, valet.

Dig. 10.3.14.3

Paulus 3 ad plaut.

Si inter socios convenisset, ne intra certum tempus societas divideretur, quin vendere liceat ei, qui tali conventione tenetur, non est dubium: quare emptor quoque communi dividundo agendo eadem exceptione summovebitur, qua auctor eius summoveretur.

Dig. 10.3.14.4

Paulus 3 ad plaut.

Si paciscatur socius, ne partem suam petat, effectu tollitur societas.

Dig. 10.3.15

Paulus 5 ad plaut.

Si socius servi communis nomine conventus et condemnatus sit, aget communi dividundo et antequam praestet: nam et si noxali iudicio cum uno actum sit, statim aget cum socio, ut ei pars traderetur, cautionibus interpositis, ut, si non dederit, reddat.

Dig. 10.3.16

Paulus 6 ad plaut.

Cum socii dividunt societatem, de eo, quod sub condicione deberetur, cautiones intervenire solent.

Dig. 10.3.17

Modestinus 9 reg.

Qui coheredes habet, si fundum pignori datum a testatore suo comparaverit a creditore, non debet a coheredibus iudicio communi dividundo conveniri.

Dig. 10.3.18

Iavolenus 2 epist.

Ut fundus hereditarius fundo non hereditario serviat, arbiter disponere non potest, quia ultra id quod in iudicium deductum est excedere potestas iudicis non potest.

Dig. 10.3.19pr.

Paulus 6 ad sab.

Arbor quae in confinio nata est, item lapis qui per utrumque fundum extenditur quamdiu cohaeret fundo, e regione cuiusque finium utriusque sunt nec in communi dividundo iudicium veniunt: sed cum aut lapis exemptus aut arbor eruta vel succisa est, communis pro indiviso fiet et veniet in communi dividundo iudicium: nam quod erat finitis partibus, rursus confunditur. qua re duabus massis duorum dominorum conflatis tota massa communis est, etiamsi aliquid ex prima specie separatum maneat: ita arbor et lapis separatus a fundo confundit ius dominii.

Dig. 10.3.19.1

Paulus 6 ad sab.

De vestibulo communi binarum aedium arbiter communi dividundo invito utrolibet dari non debet, quia qui de vestibulo liceri cogatur, necesse habeat interdum totarum aedium pretium facere, si alias aditum non habeat.

Dig. 10.3.19.2

Paulus 6 ad sab.

Si per eundem locum via nobis debeatur et in eam impensa facta sit, durius ait pomponius communi dividundo vel pro socio agi posse: quae enim communio iuris separatim intellegi potest? sed negotiorum gestorum agendum.

Dig. 10.3.19.3

Paulus 6 ad sab.

Iudex communi dividundo, item familiae erciscundae de servo qui in fuga est iubere debet liceri eos inter quos iudex est et tunc eum adiudicare, penes quem licitatio remansit: nec erit periculum, ne ex senatus consulto poena legis fabiae committatur.

Dig. 10.3.19.4

Paulus 6 ad sab.

Aquarum iter in iudicium communi dividundo non venire labeo ait: nam aut ipsius fundi est et ideo in iudicium non venit, aut separatum a fundo, divisum tamen aut mensura aut temporibus. sed possunt iura interdum et separata a fundo esse et nec mensura nec temporibus divisa, veluti cum is cuius fuerunt plures heredes reliquit: quod cum accidit, consentaneum est et ea in arbitrio familiae erciscundae venire, nec videre inquit pomponius, quare minus in communi dividundo quam familiae erciscundae iudicium veniant. igitur in huiusmodi speciebus etiam in communi dividundo iudicio venit, ut praefata iura aut mensura aut temporibus dividantur.

Dig. 10.3.20

Pomponius 13 ad sab.

Si is, cum quo fundum communem habes, ad delictum non respondit et ob id motu iudicis villa diruta est aut arbusta succisa sunt, praestabitur tibi detrimentum iudicio communi dividundo: quidquid enim culpa socii amissum est, eo iudicio continetur.

Dig. 10.3.21

Ulpianus 30 ad sab.

Iudicem in praediis dividundis quod omnibus utilissimum est vel quod malint litigatores sequi convenit.

Dig. 10.3.22

Pomponius 33 ad sab.

Si meo et vicini nomine parietem aedificem vel repetiturus ab eo pro parte impensam vel donationis gratia, communis fiet paries.

Dig. 10.3.23

Ulpianus 32 ad ed.

Si convenerit inter te et socium tuum, ut alternis annis fructum perciperetis, et non patiatur te socius tui anni fructum percipere, videndum, utrum ex conducto sit actio an vero communi dividundo. eadem quaestio est et si socius, qui convenerat, ut alternis annis frueretur, pecus immisit et effecit, ut futuri anni fructus, quos socium percipere oportuit, corrumperentur. et puto magis communi dividundo iudicium quam ex conducto locum habere (quae enim locatio est, cum merces non intercesserit?) aut certe actionem incerti civilem reddendam.

Dig. 10.3.24pr.

Iulianus 8 Dig.

Communis servus si ex re alterius dominorum adquisierit, nihilo minus commune id erit: sed is, ex cuius re adquisitum fuerit, communi dividundo iudicio eam summam percipere potest, quia fidei bonae convenit, ut unusquisque praecipuum habeat, quod ex re eius servus adquisierit.

Dig. 10.3.24.1

Iulianus 8 Dig.

Cum agere tecum communi dividundo vellem, partem tuam titio tradidisti mutandi iudicii causa: teneris mihi praetoria actione, quod fecisses, ne tecum communi dividundo ageretur.

Dig. 10.3.25

Iulianus 12 Dig.

Si stichus communis meus et tuus servus habuerit pamphilum vicarium aureorum decem et mecum actum de peculio fuerit condemnatusque decem praestitero: quamvis postea pamphilus decesserit, nihilo minus actione communi dividundo vel pro socio quinque milia praestare debebis, quia te hoc aere alieno liberavi. longe magis consequar, si stichus post mortem pamphili alium vicarium adquisierat.

Dig. 10.3.26

Alfenus 2 Dig.

Communis servus cum apud alterum esset, crus fregit in opere: quaerebatur, alter dominus quid cum eo, penes quem fuisset, ageret. respondi, si quid culpa illius magis quam casu res communis damni cepisset, per arbitrum communi dividundo posse reciperare.

Dig. 10.3.27

Paulus 3 epit. alf. Dig.

De communi servo unus ex sociis quaestionem habere nisi communis negotii causa iure non potest.

Dig. 10.3.28

Papinianus 7 quaest.

Sabinus ait in re communi neminem dominorum iure facere quicquam invito altero posse. unde manifestum est prohibendi ius esse: in re enim pari potiorem causam esse prohibentis constat. sed etsi in communi prohiberi socius a socio ne quid faciat potest, ut tamen factum opus tollat, cogi non potest, si, cum prohibere poterat, hoc praetermisit: et ideo per communi dividundo actionem damnum sarciri poterit. sin autem facienti consensit, nec pro damno habet actionem. quod si quid absente socio ad laesionem eius fecit, tunc etiam tollere cogitur.

Dig. 10.3.29pr.

Paulus 2 quaest.

Si quis, cum existimaverit fundum communem sibi cum maevio esse, quem cum titio communem habebat, impendisset, recte dicitur etiam communi dividundo iudicium ei sufficere: hoc enim est, si sciam rem communem esse, ignorem autem cuius socii: neque enim negotia socii gero, sed propriam rem tueor et magis ex re, in quam impenditur, quam ex persona socii actio nascitur. denique ea actione pupillum teneri dicimus, ut impendia restituat officio iudicis. diversa causa est eius, qui putat se in rem propriam impendere, cum sit communis: huic enim nec communi dividundo iudicium competit nec utile dandum est. ille enim qui scit rem esse communem vel aliena negotia eo animo gerit, ut aliquem sibi obliget, et in persona labitur.

Dig. 10.3.29.1

Paulus 2 quaest.

Pomponius scripsit posci iudicem posse a quolibet sociorum: sed etiamsi unus ex sociis mutus erit, recte cum eo communi dividundo agi.

Dig. 10.3.30

Scaevola 1 resp.

Communi dividundo iudicio recte agi, sive neuter possideat sive alter sociorum fundum non possideat.

Dig. 10.3.31

Paulus 15 resp.

Bina mancipia, quae ex hereditate paterna iussu praetoris pupillis ministerii causa reservata essent, divisa non videri, sed omnium communia permansisse.

Dig. 10.4.0. Ad exhibendum.

Dig. 10.4.1

Ulpianus 24 ad ed.

Haec actio perquam necessaria est et vis eius in usu cottidiano est et maxime propter vindicationes inducta est.

Dig. 10.4.2

Paulus 21 ad ed.

Exhibere est facere in publico potestatem, ut ei qui agat experiundi sit copia.

Dig. 10.4.3pr.

Ulpianus 24 ad ed.

In hac actione actor omnia nosse debet et dicere argumenta rei de qua agitur.

Dig. 10.4.3.1

Ulpianus 24 ad ed.

Qui ad exhibendum agit, non utique dominum se dicit nec debet ostendere, cum multae sint causae ad exhibendum agendi.

Dig. 10.4.3.2

Ulpianus 24 ad ed.

Praeterea in hac actione notandum est, quod reus contumax per in litem iusiurandum petitoris damnari possit ei iudice quantitatem taxante.

Dig. 10.4.3.3

Ulpianus 24 ad ed.

Est autem personalis haec actio et ei competit qui in rem acturus est qualicumque in rem actione, etiam pigneraticia serviana sive hypothecaria, quae creditoribus competunt.

Dig. 10.4.3.4

Ulpianus 24 ad ed.

Sed et usum fructum petituro competere ad exhibendum pomponius ait.

Dig. 10.4.3.5

Ulpianus 24 ad ed.

Sed et si quis interdicturus rem exhiberi desideret, audietur.

Dig. 10.4.3.6

Ulpianus 24 ad ed.

Item si optare velim servum vel quam aliam rem, cuius optio mihi relicta est, ad exhibendum me agere posse constat, ut exhibitis possim vindicare.

Dig. 10.4.3.7

Ulpianus 24 ad ed.

Si quis noxali iudicio experiri velit, ad exhibendum ei actio est necessaria: quid enim si dominus quidem paratus sit defendere, actor vero destinare non possit nisi ex praesentibus, quia aut servum non recognoscit aut nomen non tenet? nonne aequum est ei familiam exhiberi, ut noxium servum adgnoscat? quod ex causa debet fieri ad designandum eum, cuius nomine noxali quis agit, recensitione servorum facta.

Dig. 10.4.3.8

Ulpianus 24 ad ed.

Si quis extra heredem tabulas testamenti vel codicillos vel quid aliud ad testamentum pertinens exhiberi velit, dicendum est per hanc actionem agendum non esse, cum sufficiunt sibi interdicta in hanc rem competentia: et ita pomponius.

Dig. 10.4.3.9

Ulpianus 24 ad ed.

Sciendum est autem non solum eis quos diximus competere ad exhibendum actionem, verum ei quoque, cuius interest exhiberi: iudex igitur summatim debebit cognoscere, an eius intersit, non an eius res sit, et sic iubere vel exhiberi, vel non, quia nihil interest.

Dig. 10.4.3.10

Ulpianus 24 ad ed.

Plus dicit iulianus, etsi vindicationem non habeam, interim posse me agere ad exhibendum, quia mea interest exhiberi: ut puta si mihi servus legatus sit quem titius optasset: agam enim ad exhibendum, quia mea interest exhiberi, ut titius optet et sic vindicem, quamvis exhibitum ego optare non possim.

Dig. 10.4.3.11

Ulpianus 24 ad ed.

Si mecum fuerit actum ad exhibendum, ego ob hoc, quod conventus sum ad exhibendum actione, agere ad exhibendum non possum, quamvis videatur interesse mea ob hoc, quod teneor ad restituendum. sed hoc non sufficit: alioquin et qui dolo fecit quo minus possideret poterit ad exhibendum agere, cum neque vindicaturus neque interdicturus sit, et fur vel raptor poterit: quod nequaquam verum est. eleganter igitur definit neratius iudicem ad exhibendum hactenus cognoscere, an iustam et probabilem causam habeat actionis, propter quam exhiberi sibi desideret.

Dig. 10.4.3.12

Ulpianus 24 ad ed.

Pomponius scribit eiusdem hominis nomine recte plures ad exhibendum agere posse: forte si homo primi sit, secundi in eo usus fructus sit, tertius possessionem suam contendat, quartus pigneratum sibi eum adfirmet: omnibus igitur ad exhibendum actio competit, quia omnium interest exhiberi hominem.

Dig. 10.4.3.13

Ulpianus 24 ad ed.

Ibidem subiungit iudicem per arbitrium sibi ex hac actione commissum etiam exceptiones aestimare, quas possessor obicit, et si qua tam evidens sit, ut facile repellat agentem, debere possessorem absolvi, si obscurior vel quae habeat altiorem quaestionem, differendam in directum iudicium re exhiberi iussa: de quibusdam tamen exceptionibus omnimodo ipsum debere disceptare, qui ad exhibendum actione iudicat, veluti pacti conventi, doli mali, iurisiurandi reique iudicatae.

Dig. 10.4.3.14

Ulpianus 24 ad ed.

Interdum aequitas exhibitionis efficit, ut, quamvis ad exhibendum agi non possit, in factum tamen actio detur, ut iulianus tractat. servus, inquit, uxoris meae rationes meas conscripsit: hae rationes a te possidentur: desidero eas exhiberi. ait iulianus, si quidem mea charta scriptae sint, locum esse huic actioni, quia et vindicare eas possum: nam cum charta mea sit, et quod scriptum est meum est: sed si charta mea non fuit, quia vindicare non possum, nec ad exhibendum experiri: in factum igitur mihi actionem competere .

Dig. 10.4.3.15

Ulpianus 24 ad ed.

Sciendum est adversus possessorem hac actione agendum non solum eum qui civiliter, sed et eum qui naturaliter incumbat possessioni. denique creditorem, qui pignori rem accepit, ad exhibendum teneri placet:

Dig. 10.4.4

Pomponius 6 ad sab.

Nam et cum eo, apud quem deposita vel cui commodata vel locata res sit, agi potest.

Dig. 10.4.5pr.

Ulpianus 24 ad ed.

Celsus scribit: si quis merces, quas exvehendas conduxit, in horreo posuit, cum conductore ad exhibendum agi potest: item si mortuo conductore heres existat, cum herede agendum: sed si nemo heres sit, cum horreario agendum: nam si a nullo, inquit, possidentur, verum est aut horrearium possidere aut certe ille est, qui possit exhibere. idem ait: quomodo autem possidet qui vehendas conduxit? an quia pignus tenet? quae species ostendit etiam eos, qui facultatem exhibendi habent, ad exhibendum teneri.

Dig. 10.4.5.1

Ulpianus 24 ad ed.

Iulianus autem ita scribit ad exhibendum actione teneri eum, qui rerum vel legatorum servandorum causa in possessione sit, sed et eum, qui usus fructus nomine rem teneat, quamvis nec hic utique possideat. inde iulianus quaerit, quatenus hos oporteat exhibere: et ait priorem quidem sic, ut actor possessionem habeat, is autem cum quo agetur rei servandae causa sit in possessione: eum vero qui usum fructum habeat sic, ut actor rem possideat, is cum quo agetur utatur fruatur.

Dig. 10.4.5.2

Ulpianus 24 ad ed.

Idem iulianus scribit emptorem, qui ruta caesa non restituit, ad exhibendum teneri in quantum in litem iuravero: sed ibi adicit, si emptor possideat aut dolo fecit quo minus possideat.

Dig. 10.4.5.3

Ulpianus 24 ad ed.

Item celsus scribit stercus, quod in aream meam congessisti, per ad exhibendum actionem posse te consequi ut tollas, sic tamen ut totum tollas: ceterum alias non posse.

Dig. 10.4.5.4

Ulpianus 24 ad ed.

Sed et si ratis delata sit vi fluminis in agrum alterius, posse eum conveniri ad exhibendum neratius scribit. unde quaerit neratius, utrum de futuro dumtaxat damno an et de praeterito domino agri cavendum sit, et ait etiam de praeterito caveri oportere.

Dig. 10.4.5.5

Ulpianus 24 ad ed.

Sed et si de ruina aliquid in tuam aream vel in tuas aedes deciderit, teneberis ad exhibendum, licet non possideas.

Dig. 10.4.5.6

Ulpianus 24 ad ed.

Item si quis facultatem restituendi non habeat, licet possideat, tamen ad exhibendum non tenebitur, ut puta si in fuga servus sit: ad hoc plane solum tenebitur, ut caveat se exhibiturum, si in potestatem eius pervenerit. sed et si non sit in fuga, permiseris autem ei ubi velit morari, idem erit dicendum, aut peregre a te missus sit, vel in praediis tuis agat, ad hoc solum teneberis, ut caveas.

Dig. 10.4.6

Paulus 14 ad sab.

Gemma inclusa auro alieno vel sigillum candelabro vindicari non potest, sed ut excludatur, ad exhibendum agi potest: aliter atque in tigno iuncto aedibus, de quo nec ad exhibendum agi potest, quia lex duodecim tabularum solvi vetaret: sed actione de tigno iuncto ex eadem lege in duplum agitur.

Dig. 10.4.7pr.

Ulpianus 24 ad ed.

Tigni appellatione omnem materiam in lege duodecim tabularum accipimus, ut quibusdam recte videtur.

Dig. 10.4.7.1

Ulpianus 24 ad ed.

Sed si rotam meam vehiculo aptaveris, teneberis ad exhibendum (et ita pomponius scribit), quamvis tunc civiliter non possideas.

Dig. 10.4.7.2

Ulpianus 24 ad ed.

Idem et si armario vel navi tabulam meam vel ansam scypho iunxeris vel emblemata phialae, vel purpuram vestimento intexeris, aut bracchium statuae coadunaveris.

Dig. 10.4.7.3

Ulpianus 24 ad ed.

Item municipes ad exhibendum conveniri possunt, quia facultas est restituendi: nam et possidere et usucapere eos posse constat: idem et in collegiis ceterisque corporibus dicendum erit.

Dig. 10.4.7.4

Ulpianus 24 ad ed.

Si quis non possideat litis contestatae tempore, sed postea ante sententiam possidere coeperit, oportere dici putamus debere condemnari, nisi restituat.

Dig. 10.4.7.5

Ulpianus 24 ad ed.

Si quis, cum iudicii accepti tempore possideret, postea sine dolo malo possidere desierit, absolvi eum oportet: quamvis sit, inquit pomponius, quod ei imputetur, cur non statim restituit, sed passus est secum litem contestari.

Dig. 10.4.7.6

Ulpianus 24 ad ed.

Idem scribit, si quis litis contestatae tempore possederit, deinde desierit possidere, mox coeperit sive ex eadem causa sive ex alia, condemnari eum oportere, nisi restituat.

Dig. 10.4.7.7

Ulpianus 24 ad ed.

Ibidem non male pomponius iungit eius, qui ad exhibendum egit, utroque tempore interfuisse oportere rem ei restitui, hoc est et quo lis contestatur et quo fit condemnatio: et ita labeoni placet.

Dig. 10.4.8

Iulianus 9 Dig.

Si ad exhibendum actum est cum eo, qui neque possidebat neque dolo malo fecerat quo minus possideret, deinde eo defuncto heres eius possidet rem, exhibere eam cogendus erit. nam si fundum vel hominem petiero et heres ex eadem causa possidere coeperit, restituere cogitur.

Dig. 10.4.9pr.

Ulpianus 24 ad ed.

Iulianus scribit: si quis hominem quem possidebat occiderit sive ad alium transtulerit possessionem sive ita rem corruperit ne haberi possit, ad exhibendum tenebitur, quia dolo fecit quo minus possideret. proinde et si vinum vel oleum vel quid aliud effuderit vel confregerit, ad exhibendum tenebitur.

Dig. 10.4.9.1

Ulpianus 24 ad ed.

Glans ex arbore tua in fundum meum decidit, eam ego immisso pecore depasco: qua actione possum teneri? pomponius scribit competere actionem ad exhibendum, si dolo pecus immissi, ut glandem commederet: nam et si glans extaret nec patieris me tollere, ad exhibendum teneberis, quemadmodum si materiam meam delatam in agrum suum quis auferre non pateretur. et placet nobis pomponii sententia, sive glans extet sive consumpta sit. sed si extet, etiam interdicto de glande legenda, ut mihi tertio quoque die legendae glandis facultas esset, uti potero, si damni infecti cavero.

Dig. 10.4.9.2

Ulpianus 24 ad ed.

Si quis rem fecit ad alium pervenire, videtur dolo fecisse quo minus possideat, si modo hoc dolose fecerit.

Dig. 10.4.9.3

Ulpianus 24 ad ed.

Sed si quis in rem deteriorem exhibuerit, aeque ad exhibendum eum teneri sabinus ait. sed hoc ibi utique verum est, si dolo malo in aliud corpus res sit translata, veluti si ex scypho massa facta sit: quamquam enim massam exhibeat, ad exhibendum tenebitur, nam mutata forma prope interemit substantiam rei.

Dig. 10.4.9.4

Ulpianus 24 ad ed.

Marcellus scribit, si tibi decem nomismata sint sub condicione legata et mihi decem usus fructus pure, deinde heres pendente condicione non exacta cautione decem fructuario solverit, ad exhibendum eum actione teneri, quasi dolo fecerit quo minus possideret: dolus autem in eo est, quod cautionem exigere supersedit a fructuario effectumque, ut legatum tuum evanesceret, cum iam nummos vindicare non possis. ita demum autem locum habebit ad exhibendum actio, si condicio extiterit legati. potuisti tamen tibi prospicere stipulatione legatorum et, si prospexisti, non erit tibi necessaria ad exhibendum actio. si tamen ignarus legati tui a fructuario satis non exegit, dicit Marcellus cessare ad exhibendum, scilicet quia nullus dolus est: succurrendum tamen legatario in factum adversus fructuarium actione ait.

Dig. 10.4.9.5

Ulpianus 24 ad ed.

Quantum autem ad hanc actionem attinet, exhibere est in eadem causa praestare, in qua fuit, cum iudicium acciperetur, ut quis copiam rei habens possit exsequi actione quam destinavit in nullo casu quam intendit laesa, quamvis non de restituendo, sed de exhibendo agatur.

Dig. 10.4.9.6

Ulpianus 24 ad ed.

Proinde si post litem contestatam usucaptum exhibeat, non videtur exhibuisse, cum petitor intentionem suam perdiderit, et ideo absolvi eum non oportere, nisi paratus sit repetita die intentionem suscipere, ita ut fructus secundum legem aestimentur.

Dig. 10.4.9.7

Ulpianus 24 ad ed.

Quia tamen causa petitori in hac actione restituitur, sabinus putavit partum quoque restituendum, sive praegnas fuerit mulier sive postea conceperit: quam sententiam et pomponius probat.

Dig. 10.4.9.8

Ulpianus 24 ad ed.

Praeterea utilitates, si quae amissae sunt ob hoc quod non exhibetur vel tardius quid exhibetur, aestimandae a iudice sunt: et ideo neratius ait utilitatem actoris venire in aestimationem, non quanti res sit, quae utilitas, inquit, interdum minoris erit quam res erit.

Dig. 10.4.10

Paulus 26 ad ed.

Si optione intra certum tempus data iudicium in id tempus extractum est, quo frustra exhibetur, utilitas petitoris conservetur: quod si per heredem non stetit quo minus exhiberet tempore iudicii accipiendi, absolvendus est heres.

Dig. 10.4.11pr.

Ulpianus 24 ad ed.

Sed et si hereditas amissa sit ob hoc, quod servus non exhibeatur, aequissimum est aestimari officio iudicis damnum hereditatis.

Dig. 10.4.11.1

Ulpianus 24 ad ed.

Quo autem loco exhiberi rem oporteat vel cuius sumptibus, videamus. et labeo ait ibi exhibendum, ubi fuerit cum lis contestaretur, periculo et impendiis actoris perferendam perducendamve eo loci ubi actum sit. pascere plane servum vestire curare possessorem oportere ait. ego autem arbitror interdum etiam haec actorem agnoscere oportere, si forte ipse servus ex operis vel artificio suo solebat se exhibere, nunc vero cogitur vacare. proinde et si apud officium fuerit depositus exhibendus, cibaria debebit adgnoscere qui exhiberi desideravit, si non solebat possessor servum pascere: nam si solebat, sicuti pascit, ita et cibaria potest non recusare. interdum tamen eo loci exhibere debet suis sumptibus, si forte proponas data opera eum in locum abditum res contulisse, ut actori incommodior esset exhibitio: nam in hunc casum suis sumptibus et periculo debebit exhibere in eum locum ubi agatur, ne ei calliditas sua prosit.

Dig. 10.4.11.2

Ulpianus 24 ad ed.

Si de pluribus rebus quis conveniatur et litis contestatae tempore omnes possedit, licet postea quasdam desierit quamvis sine dolo malo possidere, damnandum, nisi exhibeat eas quas potest.

Dig. 10.4.12pr.

Paulus 26 ad ed.

De eo exhibendo, quem quis in libertatem vindicare velit, huic actioni locus esse potest.

Dig. 10.4.12.1

Paulus 26 ad ed.

Et filius familias ea actione tenetur, si facultatem rei exhibendae habet.

Dig. 10.4.12.2

Paulus 26 ad ed.

Saepius ad exhibendum agenti, si ex eadem causa agat, obstaturam exceptionem iulianus ait: novam autem causam intervenire, si is, qui vindicandi gratia egisset, post acceptum iudicium eam ab aliquo accepit, et ideo exceptionem ei non officere. item si ei, qui furti acturus ad exhibendum egisset, iterum furtum factum sit. denique si quis optandi gratia ad exhibendum egisset et post litem contestatam alterius testamento optio data sit, ad exhibendum agere potest.

Dig. 10.4.12.3

Paulus 26 ad ed.

Si quis ex uvis meis mustum fecerit vel ex olivis oleum vel ex lana vestimenta, cum sciret haec aliena esse, utriusque nomine ad exhibendum actione tenebitur, quia quod ex re nostra fit nostrum esse verius est.

Dig. 10.4.12.4

Paulus 26 ad ed.

Si post iudicium acceptum homo mortuus sit, quamvis sine dolo malo et culpa possessoris, tamen interdum tanti damnandus est, quanti actoris interfuit per eum non effectum, quo minus tunc cum iudicium acciperetur homo exhiberetur: tanto magis si apparebit eo casu mortuum esse, qui non incidisset, si tum exhibitus fuisset.

Dig. 10.4.12.5

Paulus 26 ad ed.

Si iusta ex causa statim exhiberi res non possit, iussu iudicis cavere debebit se illo die exhibiturum.

Dig. 10.4.12.6

Paulus 26 ad ed.

Heres non quasi heres, sed suo nomine hac actione uti potest: item heres possessoris suo nomine tenetur: igitur non procedit quaerere, an heredi et in heredem danda sit. plane ex dolo defuncti danda est in heredem actio, si locupletior hereditas eo nomine facta sit, veluti quod pretium rei consecutus sit.

Dig. 10.4.13

Gaius ad ed. pu. de liberali c.

Si liber homo detineri ab aliquo dicatur, interdictum adversus eum, qui detinere dicitur, de exhibendo eo potest quis habere: nam ad exhibendum actio in eam rem inutilis videtur, quia haec actio ei creditur competere, cuius pecuniariter interest.

Dig. 10.4.14

Pomponius 14 ad sab.

Si vir nummos ab uxore sibi donatos, sciens suos factos non esse, pro re empta dederit, dolo malo fecit quo minus possideat et ideo ad exhibendum actione tenetur.

Dig. 10.4.15

Pomponius 18 ad sab.

Thensaurus meus in tuo fundo est nec eum pateris me effodere: cum eum loco non moveris, furti quidem aut ad exhibendum eo nomine agere recte non posse me labeo ait, quia neque possideres eum neque dolo feceris quo minus possideres, utpote cum fieri possit, ut nescias eum thensaurum in tuo fundo esse. non esse autem iniquum iuranti mihi non calumniae causa id postulare vel interdictum vel iudicium ita dari, ut, si per me non stetit, quo minus damni infecti tibi operis nomine caveatur, ne vim facias mihi, quo minus eum thensaurum effodiam tollam exportem. quod si etiam furtivus iste thensaurus est, etiam furti agi potest.

Dig. 10.4.16

Paulus 10 ad sab.

Cum servus tenet aliquid, dominus ad exhibendum suo nomine tenetur: si autem servus citra scientiam domini dolo fecit quo minus habeat, vel furti actio vel de dolo malo noxalis servi nomine danda est, ad exhibendum autem utilis nulla constituenda est.

Dig. 10.4.17

Ulpianus 9 de omn. trib.

Si quis hominem debilitatum exhibeat vel eluscatum, ad exhibendum quidem absolvi debet: exhibuit enim et nihil impedit directam actionem talis exhibitio, poterit tamen agere actor ex lege aquilia de hoc damno.

Dig. 10.4.18

Ulpianus 6 opin.

Solutione chirographo inani facto et pignoribus liberatis nihilo minus creditor, ut instrumenta ad eum contractum pertinentia ab alio quam debitore exhibeantur, agere potest.

Dig. 10.4.19

Paulus 4 epit. alf.

Ad exhibendum possunt agere omnes quorum interest. sed quidam consuluit, an possit efficere haec actio, ut rationes adversarii sibi exhiberentur, quas exhiberi magni eius interesset. respondit non oportere ius civile calumniari neque verba captari, sed qua mente quid diceretur, animadvertere convenire. nam illa ratione etiam studiosum alicuius doctrinae posse dicere sua interesse illos aut illos libros sibi exhiberi, quia, si essent exhibiti, cum eos legisset, doctior et melior futurus esset.

Dig. 10.4.20

Ulpianus 2 reg.

Quaestionis habendae causa ad exhibendum agitur ex delictis servorum ad vindicandos conscios suos.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER UNDECIMUS

Dig. 11.1.0. De interrogationibus in iure faciendis et interrogatoriis actionibus.
Dig. 11.2.0. De quibus rebus ad eundem iudicem eatur.
Dig. 11.3.0. De servo corrupto.
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Dig. 11.1.0. De interrogationibus in iure faciendis et interrogatoriis actionibus.

Dig. 11.1.1pr.

Callistratus 2 ed. monit.

Totiens heres in iure interrogandus est, qua ex parte heres sit, quotiens adversus eum actio instituitur et dubitat actor, qua ex parte is, cum quo agere velit, heres sit. est autem interrogatio tunc necessaria, cum in personam sit actio et ita, si certum petetur, ne, dum ignoret actor, qua ex parte adversarius defuncto heres exstiterit, interdum plus petendo aliquid damni sentiat.

Dig. 11.1.1.1

Callistratus 2 ed. monit.

Interrogatoriis autem actionibus hodie non utimur, quia nemo cogitur ante iudicium de suo iure aliquid respondere, ideoque minus frequentantur et in desuetudinem abierunt. sed tantummodo ad probationes litigatoribus sufficiunt ea, quae ab adversa parte expressa fuerint apud iudices vel in hereditatibus vel in aliis rebus, quae in causis vertuntur.

Dig. 11.1.2

Ulpianus 22 ad ed.

Edictum de interrogationibus ideo praetor proposuit, quia sciebat difficile esse ei, qui heredem bonorumve possessorem convenit, probare aliquem esse heredem bonorumve possessorem,

Dig. 11.1.3

Paulus 17 ad ed.

Quia plerumque difficilis probatio aditae hereditatis est.

Dig. 11.1.4pr.

Ulpianus 22 ad ed.

Voluit praetor adstringere eum qui convenitur ex sua in iudicio responsione, ut vel confitendo vel mentiendo sese oneret, simul etiam portionis, pro qua quisque heres extitit, ex interrogatione certioretur.

Dig. 11.1.4.1

Ulpianus 22 ad ed.

Quod ait praetor: " qui in iure interrogatus responderit" sic accipiendum est apud magistratus populi romani vel praesides provinciarum vel alios iudices: ius enim eum solum locum esse, ubi iuris dicendi vel iudicandi gratia consistat, vel si domi vel itinere hoc agat.

Dig. 11.1.5

Gaius 3 ad ed. provinc.

Qui interrogatur, an heres vel quota ex parte sit vel an in potestate habeat eum, cuius nomine noxali iudicio agitur, ad deliberandum tempus impetrare debet, quia, si perperam confessus fuerit, incommodo adficitur:

Dig. 11.1.6pr.

Ulpianus 22 ad ed.

Et quia hoc defunctorum interest, ut habeant successores, interest et viventium, ne praecipitentur, quamdiu iuste deliberant.

Dig. 11.1.6.1

Ulpianus 22 ad ed.

Interdum interrogatus quis, an heres sit, non cogitur respondere, ut puta si controversiam hereditatis ab alio patiatur: et ita divus hadrianus constituit, ne aut negando se heredem praeiudicet sibi aut dicendo heredem illigetur etiam ablata sibi hereditate.

Dig. 11.1.7

Ulpianus 18 ad ed.

Si quis in iure interrogatus, an quadrupes quae pauperiem fecit eius sit, responderit, tenetur.

Dig. 11.1.8

Paulus 22 ad ed.

Si quis interrogatus de servo qui damnum dedit, respondit suum esse servum, tenebitur lege aquilia quasi dominus et, si cum eo actum sit qui respondit, dominus ea actione liberatur.

Dig. 11.1.9pr.

Ulpianus 22 ad ed.

Si sine interrogatione quis responderit se heredem, pro interrogato habetur.

Dig. 11.1.9.1

Ulpianus 22 ad ed.

Interrogatum non solum a praetore accipere debemus, sed et ab adversario.

Dig. 11.1.9.2

Ulpianus 22 ad ed.

Sed si servus interrogetur, nulla erit interrogatio, non magis quam si servus interroget.

Dig. 11.1.9.3

Ulpianus 22 ad ed.

Alius pro alio non debet respondere cogi, an heres sit: de se enim debet quis in iudicio interrogari, hoc est cum ipse convenitur.

Dig. 11.1.9.4

Ulpianus 22 ad ed.

Celsus libro quinto digestorum scribit: si defensor in iudicio interrogatus, an is quem defendit heres vel quota ex parte sit, falso responderit, ipse quidem defensor adversario tenebitur, ipsi autem quem defendit nullum facit praeiudicium. veram itaque esse celsi sententiam dubium non est. an ergo non videatur defendere, si non responderit, videndum: quod utique consequens erit dicere, quia non plene defendit.

Dig. 11.1.9.5

Ulpianus 22 ad ed.

Qui interrogatus heredem se responderit nec adiecerit ex qua parte, ex asse respondisse dicendum est, nisi forte ita interrogetur, an ex dimidia parte heres sit, et responderit " heres sum": hic enim magis eum puto ad interrogatum respondisse.

Dig. 11.1.9.6

Ulpianus 22 ad ed.

Illud quaeritur, an quis cogatur respondere, utrum ex testamento heres sit, et utrum suo nomine ei quaesita sit hereditas an per eos quos suo iuri subiectos habet vel per eum cui heres extitit. summatim igitur praetor cognoscere debebit, cum quaeratur, an quis respondere debeat quo iure heres sit, ut, si valde interesse compererit, plenius responderi iubeat. quae optinere debent non solum in heredibus sed etiam in honorariis successoribus.

Dig. 11.1.9.7

Ulpianus 22 ad ed.

Denique iulianus scribit eum quoque, cui est hereditas restituta, debere in iure interrogatum respondere, an ei hereditas sit restituta.

Dig. 11.1.9.8

Ulpianus 22 ad ed.

Si de peculio agatur, non oportere responderi a patre vel domino, an in potestate habeat filium vel servum, quia hoc solum quaeritur, an peculium apud eum cum quo agitur est.

Dig. 11.1.10

Paulus 48 ad ed.

Non alienum est eum, a quo damni infecti stipulari velimus, interrogare in iure, an aedes eius vel locus sit, ex quo damnum timeatur, et pro qua parte, ut, si neget suum praedium esse nec caveat damni infecti, aut cedere aut, resistendum putaverit, quasi dolo versatus tradere compellatur.

Dig. 11.1.11pr.

Ulpianus 22 ad ed.

De aetate quoque interdum interrogatus respondere debebit.

Dig. 11.1.11.1

Ulpianus 22 ad ed.

Si quis, cum heres non esset, interrogatus responderit ex parte heredem esse, sic convenietur, atque si ex ea parte heres esset: fides enim ei contra se habebitur.

Dig. 11.1.11.2

Ulpianus 22 ad ed.

Qui ex quadrante heres vel omnino cum heres non esset responderit se heredem ex asse, in assem instituta actione convenietur.

Dig. 11.1.11.3

Ulpianus 22 ad ed.

Si, cum esset quis ex semisse heres, dixerit se ex quadrante, mendacii hanc poenam feret, quod in solidum convenitur: non enim debuit mentiri, dum se minoris portionis heredem adseverat. interdum tamen iusta ratione potest opinari esse heredem ex minore parte: quid enim, si nescit sibi partem adcrevisse vel ex incerta parte fuit institutus? cur ei responsum noceat?

Dig. 11.1.11.4

Ulpianus 22 ad ed.

Qui tacuit quoque apud praetorem, in ea causa est, ut instituta actione in solidum conveniatur, quasi negaverit se heredem esse. nam qui omnino non respondit, contumax est: contumaciae autem poenam hanc ferre debet, ut in solidum conveniatur, quemadmodum si negasset, quia praetorem contemnere videtur.

Dig. 11.1.11.5

Ulpianus 22 ad ed.

Quod autem ait praetor " omnino non respondisse", posteriores sic exceperunt, ut omnino non respondisse videatur, qui ad interrogatum non respondit, id est pros epos.

Dig. 11.1.11.6

Ulpianus 22 ad ed.

Si interrogatus quis, an ex asse heres esset, responderit ex parte, si ex dimidia esset, nihil ei nocere responsum: quae sententia humana est.

Dig. 11.1.11.7

Ulpianus 22 ad ed.

Nihil interest, neget quis an taceat interrogatus an obscure respondeat, ut incertum dimittat interrogatorem.

Dig. 11.1.11.8

Ulpianus 22 ad ed.

Ex causa succurri ei, qui interrogatus respondit, non dubitamus: nam et si quis interrogatus, an patri heres esset, responderit, mox prolato testamento inventus sit exheredatus, aequissimum est succurri ei: et ita celsus scribit, hic quidem et alia ratione, quod ea quae postea emergunt auxilio indigent: quid enim si occultae tabulae et remotae postea prolatae sunt? cur noceat ei, qui id responderit, quod in praesentiarum videbatur? idem dico et si qui heredem se responderit, mox falsum vel inofficiosum vel irritum testamentum fuerit pronuntiatum: non enim improbe respondit, sed scriptura ductus.

Dig. 11.1.11.9

Ulpianus 22 ad ed.

Qui interrogatus responderit, sic tenetur quasi ex contractu obligatus pro quo pulsabitur, dum ab adversario interrogatur: sed et si a praetore fuerit interrogatus, nihil facit praetoris auctoritas, sed ipsius responsum sive mendacium.

Dig. 11.1.11.10

Ulpianus 22 ad ed.

Qui iusto errore ductus negaverit se heredem, venia dignus est.

Dig. 11.1.11.11

Ulpianus 22 ad ed.

Sed et si quis sine dolo malo, culpa tamen responderit, dicendum erit absolvi eum debere, nisi culpa dolo proxima sit.

Dig. 11.1.11.12

Ulpianus 22 ad ed.

Celsus scribit licere responsi paenitere, si nulla captio ex eius paenitentia sit actoris: quod verissimum mihi videtur, maxime si quis postea plenius instructus quid faciat, instrumentis vel epistulis amicorum iuris sui edoctus.

Dig. 11.1.12pr.

Paulus 17 ad ed.

Si filius, qui abstinuit se paterna hereditate, in iure interrogatus responderit se heredem esse, tenebitur: nam ita respondendo pro herede gessisse videtur. sin autem filius, qui se abstinuit, interrogatus tacuerit, succurrendum est ei: quia hunc qui abstinuit praetor non habet heredis loco.

Dig. 11.1.12.1

Paulus 17 ad ed.

Exceptionibus, quae institutis in iudicio contra reos actionibus opponuntur, etiam is uti potest, qui ex sua responsione convenitur, veluti pacti conventi, rei iudicatae et ceteris.

Dig. 11.1.13pr.

Paulus 2 ad plaut.

Confessionibus falsis respondentes ita obligantur, si eius nomine, de quo quis interrogatus sit, cum aliquo sit actio, quia quae cum alio actio esset, si dominus esset, in nosmet confessione nostra conferimus. et si eum, qui in potestate patris esset, respondissem filium meum esse, ita me obligari, si aetas eius pateretur, ut filius meus esse possit, quia falsae confessiones naturalibus convenire deberent. propter quae fiat, ut patris familias nomine respondendo non obliger.

Dig. 11.1.13.1

Paulus 2 ad plaut.

Eum, qui patrem familias suum esse responderit servum, non teneri noxali actione: ac ne, si bona fide liber homo mihi serviat, mecum noxali iudicio agi potest et, si actum fuerit, manebit integra actio cum ipso qui admisit.

Dig. 11.1.14pr.

Iavolenus 9 ex cass.

Si is, cuius nomine noxae iudicium acceptum est, manente iudicio liber iudicatus est, reus absolvi debet, nec quicquam interrogatio in iure facta proderit, quia eius personae, cuius nomine quis cum alio actionem habet, obligationem transferre potest in eum, qui in iure suum esse confitetur, velut alienum servum suum esse confitendo: liberi autem hominis nomine quia cum alio actio non est, ne per interrogationem quidem aut confessionem transferri poterit. quo casu eveniet, ut non recte hominis liberi nomine actum sit cum eo qui confessus est.

Dig. 11.1.14.1

Iavolenus 9 ex cass.

In totum autem confessiones ita ratae sunt, si id, quod in confessionem venit, et ius et naturam recipere potest.

Dig. 11.1.15pr.

Pomponius 18 ad sab.

Si ante aditam hereditatem servum hereditarium meum esse respondeam, teneor, quia domini loco habetur hereditas.

Dig. 11.1.15.1

Pomponius 18 ad sab.

Mortuo servo, quem in iure interrogatus suum esse confessus sit, non tenetur is qui respondit, quemadmodum, si proprius eius fuisset, post mortem eius non teneretur.

Dig. 11.1.16pr.

Ulpianus 37 ad ed.

Si servus ab hostibus captus sit, de quo quis in iure interrogatus responderit in sua potestate esse, quamvis iura postliminiorum possint efficere dubitare nos, adtamen non puto locum esse noxali actioni, quia non est in nostra potestate.

Dig. 11.1.16.1

Ulpianus 37 ad ed.

Quamquam autem placet etiam eum teneri, qui alienum servum suum fassus esset, adtamen rectissime placuit eum demum teneri, qui suum potuit habere, ceterum, si dominium quaerere non potuit, non teneri.

Dig. 11.1.17

Ulpianus 38 ad ed.

Si servus non sit unius, sed plurium et omnes mentiti sunt eum in sua potestate non esse vel quidam ex illis, aut dolo fecerunt quo minus sit in potestate, unusquisque illorum tenebitur in solidum, quemadmodum tenerentur, si haberent in potestate: is vero, qui nihil dolo fecerit quo minus in potestate haberet, vel non negavit, non tenebitur.

Dig. 11.1.18

Iulianus 4 ad urs. ferocem.

Qui ex parte dimidia heres erat cum absentem coheredem suum defendere vellet, ut satisdationis onus evitare possit, respondit se solum heredem esse et condemnatus est: quaerebat actor, cum ipse solvendo non esset, an rescisso superiore iudicio in eum, qui re vera heres erat, actio dari deberet. proculus respondit rescisso iudicio posse agi, idque est verum.

Dig. 11.1.19

Papinianus 8 quaest.

Si filius, cum pro patre suo ageret, taceat interrogatus, omnia perinde observanda erunt, ac si non esset interrogatus.

Dig. 11.1.20pr.

Paulus 2 quaest.

Qui servum alienum responderit suum esse, si noxali iudicio conventus sit, dominum liberat: aliter atque si quis confessus sit se occidisse servum quem alius occidit, vel si quis responderit se heredem: nam his casibus non liberatur qui fecit vel qui heres est. nec haec inter se contraria sunt: nam superiore casu ex persona servi duo tenentur, sicut in servo communi dicimus, ubi altero convento alter quoque liberatur: at is qui confitetur se occidisse vel vulnerasse suo nomine tenetur, nec debet impunitum esse delictum eius qui fecit propter eum qui respondit: nisi quasi defensor eius qui admisit vel heredis litem subiit hoc genere: tunc enim in factum exceptione data summovendus est actor, quia ille negotiorum gestorum vel mandati actione recepturus est quod praestitit: idem est in eo, qui mandatu heredis heredem se esse respondit vel cum eum alias defendere vellet.

Dig. 11.1.20.1

Paulus 2 quaest.

In iure interrogatus, an fundum possideat, quaero an respondere cogendus sit et quota ex parte fundum possideat. respondi: iavolenus scribit possessorem fundi cogi debere respondere, quota ex parte fundum possideat, ut si minore ex parte possidere se dicat, in aliam partem, quae non defenderetur, in possessionem actor mittatur.

Dig. 11.1.20.2

Paulus 2 quaest.

Idem et si damni infecti caveamus: nam et hic respondere debet, quota ex parte eius sit praedium, ut ad eam partem stipulationem accomodemus: poena autem non repromittentis haec est, ut in possessionem eamus, et ideo eo pertinet scire an possideat.

Dig. 11.1.21

Ulpianus 22 ad ed.

Ubicumque iudicem aequitas moverit, aeque oportere fieri interrogationem dubium non est.

Dig. 11.1.22

Scaevola 4 Dig.

Procuratore caesaris ob debitum fiscale interrogante unus ex filiis, qui nec bonorum possessionem acceperat nec heres erat, respondit se heredem esse: an quasi interrogatoria creditoribus ceteris teneatur? respondit ab his, qui in iure non interrogassent, ex responso suo conveniri non posse.

Dig. 11.2.0. De quibus rebus ad eundem iudicem eatur.

Dig. 11.2.1

Pomponius 13 ad sab.

Si inter plures familiae erciscundae agetur et inter eosdem communi dividundo aut finium regundorum, eundem iudicem sumendum: praeterea, quo facilius coire coheredes vel socii possunt, in eundem locum omnium praesentiam fieri oportet.

Dig. 11.2.2

Papinianus 2 quaest.

Cum ex pluribus tutoribus unus, quod ceteri non sint idonei, convenitur, postulante eo omnes ad eundem iudicem mittuntur: et hoc rescriptis principum continetur.

Dig. 11.3.0. De servo corrupto.

Dig. 11.3.1pr.

Ulpianus 23 ad ed.

Ait praetor: " qui servum servam alienum alienam recepisse persuasisseve quid ei dicetur dolo malo, quo eum eam deteriorem faceret, in eum quanti ea res erit in duplum iudicium dabo. "

Dig. 11.3.1.1

Ulpianus 23 ad ed.

Qui bona fide servum emit, hoc edicto non tenebitur, quia nec ipse poterit servi corrupti agere, quia nihil eius interest servum non corrumpi: et sane, si quis hoc admiserit, eveniet, ut duobus actio servi corrupti competat, quod est absurdum. sed nec eum, cui bona fide homo liber servit, hanc actionem posse exercere opinamur.

Dig. 11.3.1.2

Ulpianus 23 ad ed.

Quod autem praetor ait " recepisse", ita accipimus, si susceperit servum alienum ad se: et est proprie recipere refugium abscondendi causa servo praestare vel in suo agro vel in alieno loco aedificiove.

Dig. 11.3.1.3

Ulpianus 23 ad ed.

Persuadere autem est plus quam compelli atque cogi sibi parere. sed persuadere twn meswn estin, nam et bonum consilium quis dando potest suadere et malum: et ideo praetor adiecit " dolo malo, quo eum deteriorem faceret": neque enim delinquit, nisi qui tale aliquid servo persuadet, ex quo eum faciat deteriorem. qui igitur servum sollicitat ad aliquid vel faciendum vel cogitandum improbe, hic videtur hoc edicto notari.

Dig. 11.3.1.4

Ulpianus 23 ad ed.

Sed utrum ita demum tenetur, si bonae frugi servum perpulit ad delinquendum, an vero et si malum hortatus est vel malo monstravit, quemadmodum faceret? et est verius etiam si malo monstravit, in quem modum delinqueret, teneri eum. immo et si erat servus omnimodo fugiturus vel furtum facturus, hic vero laudator huius propositi extitit, tenetur: non enim oportet laudando augeri malitiam. sive ergo bonum servum fecerit malum sive malum fecerit deteriorem, corrupisse videbitur.

Dig. 11.3.1.5

Ulpianus 23 ad ed.

Is quoque deteriorem facit, qui servo persuadet, ut iniuriam faceret vel furtum vel fugeret vel alienum servum ut sollicitaret vel ut peculium intricaret, aut amator existeret vel erro vel malis artibus esset deditus vel in spectaculis nimius vel seditiosus: vel si actori suasit verbis sive pretio, ut rationes dominicas intercideret adulteraret vel etiam ut rationem sibi commissam turbaret:

Dig. 11.3.2

Paulus 19 ad ed.

Vel luxuriosum vel contumacem fecit: quive ut stuprum pateretur persuadet.

Dig. 11.3.3pr.

Ulpianus 23 ad ed.

Dolo malo adiecto calliditatem notat praetor eius qui persuadet: ceterum si quis sine dolo deteriorem fecerit, non notatur, et si lusus gratia fecit, non tenetur.

Dig. 11.3.3.1

Ulpianus 23 ad ed.

Unde quaeritur, si quis servo alieno suaserit in tectum ascendere vel in puteum descendere et ille parens ascenderit vel descenderit et ceciderit crusque vel quid aliud fregerit vel perierit, an teneatur: et si quidem sine dolo malo fecerit, non tenetur, si dolo malo, tenebitur.

Dig. 11.3.4

Paulus 19 ad ed.

Sed commodius est utili lege aquilia eum teneri.

Dig. 11.3.5pr.

Ulpianus 23 ad ed.

Doli verbum etiam ad eum qui recepit referendum est, ut non alius teneatur, nisi qui dolo malo recepit: ceterum si quis, ut domino custodiret, recepit vel humanitate vel misericordia ductus vel alia probata atque iusta ratione, non tenebitur.

Dig. 11.3.5.1

Ulpianus 23 ad ed.

Si quis dolo malo persuaserit quid servo quem liberum putabat, mihi videtur teneri eum oportere: maius enim delinquit, qui liberum putans corrumpit: et ideo, si servus fuerit, tenebitur.

Dig. 11.3.5.2

Ulpianus 23 ad ed.

Haec actio etiam adversus fatentem in duplum est, quamvis aquilia infitiantem dumtaxat coerceat.

Dig. 11.3.5.3

Ulpianus 23 ad ed.

Si servus servave fecisse dicetur, iudicium cum noxae deditione redditur.

Dig. 11.3.5.4

Ulpianus 23 ad ed.

Haec actio refertur ad tempus servi corrupti vel recepti, non ad praesens, et ideo et si decesserit vel alienatus sit vel manumissus, nihilo minus locum habebit actio, nec extinguitur manumissione semel nata actio:

Dig. 11.3.6

Paulus 19 ad ed.

Praeteritae enim utilitatis aestimatio in hoc iudicium versatur:

Dig. 11.3.7

Ulpianus 23 ad ed.

Nam et mali servi forsitan consequuntur libertatem et posterior causa interdum tribuit manumissionis iustam rationem.

Dig. 11.3.8

Paulus 19 ad ed.

Sed et heres eius, cuius servus corruptus est, habet hanc actionem, non solum si manserit in hereditate servus, sed et si exierit, forte legatus.

Dig. 11.3.9pr.

Ulpianus 23 ad ed.

Si quis servum communem meum et suum corruperit, apud iulianum libro nono digestorum quaeritur, an hac actione teneri possit, et ait teneri eum socio: praeterea poterit et communi dividundo et pro socio, si socii sint, teneri, ut iulianus ait. sed cur deteriorem facit iulianus condicionem socii, si cum socio agat, quam si cum extraneo agit? nam qui cum extraneo agit, sive recepit sive corruperit agere potest, qui cum socio, sine alternatione, id est si corrupit. nisi forte non putavit iulianus hoc cadere in socium: nemo enim suum recipit. sed si celandi animo recepit, potest defendi teneri eum.

Dig. 11.3.9.1

Ulpianus 23 ad ed.

Si in servo ego habeam usum fructum, tu proprietatem, si quidem a me sit deterior factus, poteris mecum experiri, si tu id feceris, ego agere utili actione possum; ad omnes enim corruptelas haec actio pertinet et interesse fructuarii videtur bonae frugi servum esse, in quo usum fructum habet. et si forte alius eum receperit vel corruperit, utilis actio fructuario competit.

Dig. 11.3.9.2

Ulpianus 23 ad ed.

Datur autem actio quanti ea res erit eius dupli.

Dig. 11.3.9.3

Ulpianus 23 ad ed.

Sed quaestionis est, aestimatio utrum eius dumtaxat fieri debeat, quod servus in corpore vel in animo damni senserit, hoc est quanto vilior servus factus sit, an vero et ceterorum. et neratius ait tanti condemnandum corruptorem, quanti servus ob id, quod subpertus sit, minoris sit.

Dig. 11.3.10

Paulus 19 ad ed.

In hoc iudicium etiam rerum aestimatio venit, quas secum servus abstulit, quia omne damnum duplatur, neque intererit, ad eum perlatae fuerint res an ad alium sive etiam consumptae sint: etenim iustius est eum teneri, qui princeps fuerit delicti, quam eum quaeri, ad quem res perlatae sunt.

Dig. 11.3.11pr.

Ulpianus 23 ad ed.

Neratius ait postea furta facta in aestimationem non venire. quam sententiam veram puto: nam et verba edicti " quanti ea res erit" omne detrimentum recipiunt.

Dig. 11.3.11.1

Ulpianus 23 ad ed.

Servo persuasi, ut chirografa debitorum corrumpat: videlicet tenebor. sed si consuetudine peccandi postea et rationes ceteraque similia instrumenta subtraxerit vel interleverit deleverit, dicendum erit corruptorem horum nomine non teneri.

Dig. 11.3.11.2

Ulpianus 23 ad ed.

Quamvis autem rerum subtractarum nomine servi corrupti competat actio, tamen et furti agere possumus, ope enim consilio sollicitatoris videntur res abesse: nec sufficiet alterutra actione egisse, quia altera alteram non minuit. idem et in eo, qui servum recepit et celavit et deteriorem fecit, iulianus scribit: sunt enim diversa maleficia furis et eius qui deteriorem servum facit: hoc amplius et condictionis nomine tenebitur. quamvis enim condictione hominem, poenam autem furti actione consecutus sit, tamen et quod interest debebit consequi actione servi corrupti,

Dig. 11.3.12

Paulus 19 ad ed.

Quia manet reus obligatus etiam rebus redditis.

Dig. 11.3.13pr.

Ulpianus 23 ad ed.

Haec actio perpetua est, non temporaria: et heredi ceterisque successoribus competit, in heredem non dabitur, quia poenalis est.

Dig. 11.3.13.1

Ulpianus 23 ad ed.

Sed et si quis servum hereditarium corruperit, hac actione tenebitur: sed et petitione hereditatis quasi praedo tenebitur,

Dig. 11.3.14pr.

Paulus 19 ad ed.

Ut tantum veniat in hereditatis petitionem quantum in hanc actionem.

Dig. 11.3.14.1

Paulus 19 ad ed.

De filio filiave familias corruptis huic edicto locus non est, quia servi corrupti constituta actio est, qui in patrimonio nostro esset, et pauperiorem se factum esse dominus probare potest dignitate et fama domus integra manente: sed utilis competit officio iudicis aestimanda, quoniam interest nostra animum liberorum nostrorum non corrumpi.

Dig. 11.3.14.2

Paulus 19 ad ed.

Si servus communis meus et tuus proprium meum servum corruperit, sabinus non posse agi cum socio, perinde atque si proprius meus servus corrupisset conservum. item si servus communis extraneum corruperit, videndum est, utrum cum duobus agi debeat an et cum singulis exemplo ceterarum noxarum: et magis est, ut unusquisque in solidum teneatur, altero autem solvente alterum liberari.

Dig. 11.3.14.3

Paulus 19 ad ed.

Si is, in quo usum fructum habeo, servum meum corruperit, erit mihi actio cum domino proprietatis.

Dig. 11.3.14.4

Paulus 19 ad ed.

Pignoris dati nomine debitor habet hanc actionem.

Dig. 11.3.14.5

Paulus 19 ad ed.

In hac actione non extra rem duplum est: id enim quod damni datum est duplatur.

Dig. 11.3.14.6

Paulus 19 ad ed.

His consequenter et illud probatur, ut si servo meo persuaseris, ut titio furtum faciat, non solum in id teneris, quo deterior servus effectus est, sed et in id quod titio praestaturus sim.

Dig. 11.3.14.7

Paulus 19 ad ed.

Item non solum si mihi damnum dederit consilio tuo, sed etiam si extraneo, eo quoque nomine mihi teneris, quod ego lege aquilia obnoxius sim: aut si ex conducto teneor alicui, quod ei servum locavi et propter te deterior factus sit, teneberis et hoc nomine, et si qua talia sint.

Dig. 11.3.14.8

Paulus 19 ad ed.

Aestimatio autem habetur in hac actione, quanti servus utilior factus sit, quod officio iudicis expedietur:

Dig. 11.3.14.9

Paulus 19 ad ed.

Interdum tamen et inutilis sit, ut non expediat talem servum habere. utrum ergo et pretium cogitur dare sollicitator et servum dominus lucrifacit, an vero cogi debet dominus restituere servum et pretium servi accipere? et verius est electionem domino dari, sive servum detinere cupit et damnum, quanti deterior servus factus est, in duplum accipere, vel servo restituto, si copiam huius rei habeat, pretium consequi, quod si non habeat, pretium quidem simili modo accipere, cedere autem sollicitatori periculo eius de dominio servi actionibus. quod tamen de restitutione hominis dicitur, tunc locum habet, cum homine vivo agitur. quid autem si manumisso eo agatur? non facile apud iudicem audietur dicendo ideo se manumisisse, quoniam habere noluerat domi, ut et pretium habeat et libertum.

Dig. 11.3.15

Gaius 6 ad ed. provinc.

Corrumpitur animus servi et si persuadeatur ei, ut dominum contemneret.

Dig. 11.3.16

Alfenus 2 Dig.

Dominus servum dispensatorem manumisit, postea rationes ab eo accepit et cum eis non constaret, comperit apud quandam mulierculam pecuniam eum consumpsisse: quaerebatur, possetne agere servi corrupti cum ea muliere, cum is servus iam liber esset. respondi posse, sed etiam furti de pecuniis quas servus ad eam detulisset.

Dig. 11.3.17

Marcianus 4 reg.

Servi corrupti nomine et constante matrimonio marito in mulierem datur actio, sed favore nuptiarum in simplum.

Dig. 11.4.0. De fugitivis.

Dig. 11.4.1pr.

Ulpianus 1 ad ed.

Is qui fugitivum celavit fur est.

Dig. 11.4.1.1

Ulpianus 1 ad ed.

Senatus censuit, ne fugitivi admittantur in saltus neque protegantur a vilicis vel procuratoribus possessorum et multam statuit: his autem, qui intra viginti dies fugitivos vel dominis reddidissent vel apud magistratus exhibuissent, veniam in ante actum dedit: sed et deinceps eodem senatus consulto impunitas datur ei, qui intra praestituta tempora, quam repperit fugitivos in agro suo, domino vel magistratibus tradiderit.

Dig. 11.4.1.2

Ulpianus 1 ad ed.

Hoc autem senatus consultum aditum etiam dedit militi vel pagano ad investigandum fugitivum in praedia senatorum vel paganorum (cui rei etiam lex fabia prospexerat et senatus consultum modesto consule factum), ut fugitivos inquirere volentibus litterae ad magistratus dentur, multa etiam centum solidorum in magistratus statuta, si litteris acceptis inquirentes non adiuvent. sed et in eum, qui quaeri apud se prohibuit, eadem poena statuta. est etiam generalis epistula divorum marci et commodi, qua declaratur et praesides et magistratus et milites stationarios dominum adiuvare debere inquirendis fugitivis, et ut inventos redderent, et ut hi, apud quos delitescant, puniantur, si crimine contingantur.

Dig. 11.4.1.3

Ulpianus 1 ad ed.

Unusquisque eorum, qui fugitivum adprehendit, in publicum deducere debet.

Dig. 11.4.1.4

Ulpianus 1 ad ed.

Et merito monentur magistratus eos diligenter custodire, ne evadant.

Dig. 11.4.1.5

Ulpianus 1 ad ed.

Fugitivum accipe et si quis erro sit. fugitivi autem appellatione ex fugitiva natum non contineri labeo libro primo ad edictum scribit.

Dig. 11.4.1.6

Ulpianus 1 ad ed.

In publicum deduci intelleguntur qui magistratibus municipalibus traditi sunt vel publicis ministeriis.

Dig. 11.4.1.7

Ulpianus 1 ad ed.

Diligens custodia etiam vincire permittit.

Dig. 11.4.1.8

Ulpianus 1 ad ed.

Tamdiu autem custodiuntur, quamdiu ad praefectum vigilum vel ad praesidem deducantur.

Dig. 11.4.1.8a

Ulpianus 1 ad ed.

Eorumque nomina et notae et cuius se quis esse dicat ad magistratus deferantur, ut facilius adgnosci et percipi fugitivi possint (notae autem verbo etiam cicatrices continentur): idem iuris est, si haec in scriptis publice vel in aedes proponas.

Dig. 11.4.2

Callistratus 6 cogn.

Fugitivi simplices dominis reddendi sunt: sed si pro libero se gesserint, gravius coerceri solent.

Dig. 11.4.3

Ulpianus 7 de off. procons.

Divus pius rescripsit eum, qui fugitivum vult requirere in praediis alienis, posse adire praesidem litteras ei daturum et, si ita res exegerit, apparitorem quoque, ut ei permittatur ingredi et inquirere, et poenam eundem praesidem in eum constituere, qui inquiri non permiserit. sed et divus marcus oratione, quam in senatu recitavit, facultatem dedit ingrediendi tam caesaris quam senatorum et paganorum praedia volentibus fugitivos inquirere scrutarique cubilia atque vestigia occultantium.

Dig. 11.4.4

Paulus 1 sent.

Limenarchae et stationarii fugitivos deprehensos recte in custodiam retinent. magistratus municipales ad officium praesidis provinciae vel proconsulis comprehensos fugitivos recte transmittunt.

Dig. 11.4.5

Tryphonus 1 disp.

Si in harenam fugitivus servus se dederit, ne isto quidem periculo, discriminis vitae tantum, sibi irrogato potestatem domini evitare poterit: nam divus pius rescripsit omnimodo eos dominis suis reddere sive ante pugnam ad bestias sive post pugnam, quoniam interdum aut pecunia interversa aut commisso aliquo maiore maleficio ad fugiendam inquisitionem vel iustitiam animadversionis in harenam se dare mallent. reddi ergo eos oportet.

Dig. 11.5.0. De aleatoribus.

Dig. 11.5.1pr.

Ulpianus 23 ad ed.

Praetor ait: " si quis eum, apud quem alea lusum esse dicetur, verberaverit damnumve ei dederit sive quid eo tempore dolo eius subtractum est, iudicium non dabo. in eum, qui aleae ludendae causa vim intulerit, uti quaeque res erit, animadvertam. "

Dig. 11.5.1.1

Ulpianus 23 ad ed.

Si rapinas fecerint inter se collusores, vi bonorum raptorum non denegabitur actio: susceptorem enim dumtaxat prohibuit vindicari, non et collusores, quamvis et hi indigni videantur.

Dig. 11.5.1.2

Ulpianus 23 ad ed.

Item notandum, quod susceptorem verberatum quidem et damnum passum ubicumque et quandocumque non vindicat: verum furtum factum domi et eo tempore quo alea ludebatur, licet lusor non fuerit qui quid eorum fecerit, impune fit. domum autem pro habitatione et domicilio nos accipere debere certum est.

Dig. 11.5.1.3

Ulpianus 23 ad ed.

Quod autem praetor negat se furti actionem daturum, videamus utrum ad poenalem actionem solam pertineat an et si ad exhibendum velit agere vel vindicare vel condicere. et est relatum apud pomponium solummodo poenalem actionem denegatam, quod non puto verum: praetor enim simpliciter ait " si quid subtractum erit, iudicium non dabo. "

Dig. 11.5.1.4

Ulpianus 23 ad ed.

" in eum", inquit, " qui aleae ludendae causa vim intulerit, uti quaeque res erit, animadvertam. " haec clausula pertinet ad animadversionem eius qui compulit ludere, ut aut multa multetur aut in lautumias vel in vincula publica ducatur:

Dig. 11.5.2pr.

Paulus 19 ad ed.

Solent enim quidam et cogere ad lusum vel ab initio vel victi dum retinent.

Dig. 11.5.2.1

Paulus 19 ad ed.

Senatus consultum vetuit in pecuniam ludere, praeterquam si quis certet hasta vel pilo iaciendo vel currendo saliendo luctando pugnando quod virtutis causa fiat:

Dig. 11.5.3

Marcianus 5 reg.

In quibus rebus ex lege titia et publicia et cornelia etiam sponsionem facere licet: sed ex aliis, ubi pro virtute certamen non fit, non licet.

Dig. 11.5.4pr.

Paulus 19 ad ed.

Quod in convivio vescendi causa ponitur, in eam rem familia ludere permittitur.

Dig. 11.5.4.1

Paulus 19 ad ed.

Si servus vel filius familias victus fuerit, patri vel domino competit repetitio. item si servus acceperit pecuniam, dabitur in dominum de peculio actio, non noxalis, quia ex negotio gesto agitur: sed non amplius cogendus est praestare, quam id quod ex ea re in peculio sit.

Dig. 11.5.4.2

Paulus 19 ad ed.

Adversus parentes et patronos repetitio eius quod in alea lusum est utilis ex hoc edicto danda est.

Dig. 11.6.0. Si mensor falsum modum dixerit.

Dig. 11.6.1pr.

Ulpianus 24 ad ed.

Adversus mensorem agrorum praetor in factum actionem proposuit. a quo falli nos non oportet: nam interest nostra, ne fallamur in modi renuntiatione, si forte vel de finibus contentio sit vel emptor scire velit vel venditor, cuius modi ager veneat. ideo autem hanc actionem proposuit, quia non crediderunt veteres inter talem personam locationem et conductionem esse, sed magis operam beneficii loco praeberi et id quod datur ei, ad remunerandum dari et inde honorarium appellari: si autem ex locato conducto fuerit actum, dicendum erit nec tenere intentionem.

Dig. 11.6.1.1

Ulpianus 24 ad ed.

Haec actio dolum malum dumtaxat exigit: visum est enim satis abundeque coerceri mensorem, si dolus malus solus conveniatur eius hominis, qui civiliter obligatus non est. proinde si imperite versatus est, sibi imputare debet qui eum adhibuit: sed et si neglegenter, aeque mensor securus erit: lata culpa plane dolo comparabitur. sed et si mercedem accepit, non omnem culpam eum praestare propter verba edicti: utique enim scit praetor et mercede eos intervenire.

Dig. 11.6.1.2

Ulpianus 24 ad ed.

Is autem tenetur hac actione qui renuntiavit: sed renuntiasse et eum accipere debemus, qui per alium renuntiavit.

Dig. 11.6.2pr.

Paulus 25 ad ed.

Vel per litteras.

Dig. 11.6.2.1

Paulus 25 ad ed.

Sed si ego tibi, cum esses mensor, mandaverim, ut mensuram agri ageres et tu id titio delegaveris et ille dolo malo quid in ea re fecerit, tu teneberis, quia dolo malo versatus es, qui tali homini credidisti.

Dig. 11.6.3pr.

Ulpianus 24 ad ed.

Si duobus mandavero et ambo dolose fecerint, adversus singulos in solidum agi poterit, sed altero convento, si satisfecerit, in alterum actionem denegari oportebit.

Dig. 11.6.3.1

Ulpianus 24 ad ed.

Competit autem haec actio ei, cuius interfuit falsum modum renuntiatum non esse, hoc est vel emptori vel venditori, cui renuntiatio offuit.

Dig. 11.6.3.2

Ulpianus 24 ad ed.

Pomponius tamen scribit, si emptor plus dederit venditori propter renuntiationem, quia condicere potest quod plus dedit, agi cum mensore non posse: nihil enim emptoris interesse, cum possit condicere: nisi solvendo venditor non fuit: tunc enim mensor tenebitur.

Dig. 11.6.3.3

Ulpianus 24 ad ed.

Sed si venditor maiorem modum tradiderit fraudatus a mensore, consequenter dicit pomponius non esse actionem adversus mensorem, quia est ex vendito actio adversus emptorem, nisi et hic emptor solvendo non sit.

Dig. 11.6.3.4

Ulpianus 24 ad ed.

Idem pomponius scribit, si propter iudicium adhibitus mensor fraudaverit me in renuntiatione, teneri eum, si ob hoc de iudicio minus tuli: plane si a iudice adhibitus contra me renuntiaverit dolo malo, dubitat, an teneri mihi debeat? quod magis admittit.

Dig. 11.6.3.5

Ulpianus 24 ad ed.

Hanc actionem heredi similibusque personis dandam pomponius scribit: sed in heredem similesque personas denegandam ait.

Dig. 11.6.3.6

Ulpianus 24 ad ed.

Servi autem nomine magis noxale quam de peculio competere ait, quamvis civilis actio de peculio competat.

Dig. 11.6.4

Paulus 25 ad ed.

Haec actio perpetua est, quia initium rei non ad circumscriptionem, sed a suscepto negotio originem accipit.

Dig. 11.6.5pr.

Ulpianus 24 ad ed.

Si mensor non falsum modum renuntiaverit, sed traxerit renuntiationem et ob hoc evenerit ut venditor liberetur, qui adsignaturum se modum intra certum diem promisit, haec actio locum non habet: sed nec dari utilem debere pomponius ait. erit ergo ad actionem de dolo decurrendum.

Dig. 11.6.5.1

Ulpianus 24 ad ed.

Si, cum falsus modus renuntiatus esset, emptor cum venditore ex empto egisset, agere poterit etiam cum mensore: sed si nihil eius interest, condemnari mensorem non oportet. quod si non de toto modo qui deerat cum venditore egerit, sed de minore, consequenter scribit pomponius de residuo cum mensore agi posse.

Dig. 11.6.5.2

Ulpianus 24 ad ed.

Hoc iudicium latius praetor porrexit: nam et si cuius alterius rei mensuram falsam renuntiavisse dicetur, haec actio competit. proinde si in aedificii mensura fefellit vel in frumenti vel in vini,

Dig. 11.6.6

Paulus 24 ad ed.

Sive de itineris latitudine sive de servitute immittendi proiciendique quaeratur, sive aream vel tignum vel lapidem metiendo mentitus fuerit.

Dig. 11.6.7pr.

Ulpianus 24 ad ed.

Vel cuius alterius rei, tenebitur.

Dig. 11.6.7.1

Ulpianus 24 ad ed.

Et si mensor machinarius fefellerit, haec actio dabitur.

Dig. 11.6.7.2

Ulpianus 24 ad ed.

Nec non illud quoque pomponius dicit etiam in eum, qui mensor non fuit, fefellit tamen in modo, competere hanc actionem.

Dig. 11.6.7.3

Ulpianus 24 ad ed.

Hoc exemplo etiam adversus architectum actio dari debet qui fefellit: nam et divus severus adversus architectum et redemptorem actiones dandas decreverit.

Dig. 11.6.7.4

Ulpianus 24 ad ed.

Ego etiam adversus tabularium puto actiones dandas, qui in computatione fefellit.

Dig. 11.7.0. De religiosis et sumptibus funerum et ut funus ducere liceat.

Dig. 11.7.1

Ulpianus 10 ad ed.

Qui propter funus aliquid impendit, cum defuncto contrahere creditur, non cum herede.

Dig. 11.7.2pr.

Ulpianus 25 ad ed.

Locum in quo servus sepultus est religiosum esse aristo ait.

Dig. 11.7.2.1

Ulpianus 25 ad ed.

Qui mortuum in locum alienum intulit vel inferre curavit, tenebitur in factum actione. " in locum alterius" accipere debemus sive in agro sive in aedificio. sed hic sermo domino dat actionem, non bonae fidei possessori: nam cum dicat " in locum alterius", apparet de domino eum sentire, id est eo cuius locus est. sed et fructuarius inferendo tenebitur domino proprietatis. an et socius teneatur, si ignorante socio intulerit, tractari potest: est tamen verius familiae erciscundae vel communi dividundo conveniri eum posse.

Dig. 11.7.2.2

Ulpianus 25 ad ed.

Praetor ait: " sive homo mortuus ossave hominis mortui in locum purum alterius aut in id sepulchrum, in quo ius non fuerit, illata esse dicentur. " qui hoc fecit, in factum actione tenetur et poena pecuniaria subicietur.

Dig. 11.7.2.3

Ulpianus 25 ad ed.

De ea autem illatione praetor sensit, quae sepulturae causa fit.

Dig. 11.7.2.4

Ulpianus 25 ad ed.

Purus autem locus dicitur, qui neque sacer neque sanctus est neque religiosus, sed ab omnibus huiusmodi nominibus vacare videtur.

Dig. 11.7.2.5

Ulpianus 25 ad ed.

Sepulchrum est, ubi corpus ossave hominis condita sunt. celsus autem ait: non totus qui sepulturae destinatus est, locus religiosus fit, sed quatenus corpus humatum est.

Dig. 11.7.2.6

Ulpianus 25 ad ed.

Monumentum est, quod memoriae servandae gratia existat.

Dig. 11.7.2.7

Ulpianus 25 ad ed.

Si usum fructum quis habeat, religiosum locum non facit. sed et si alius proprietatem. alius usum fructum habuit, non faciet locum religiosum nec proprietarius, nisi forte ipsum qui usum fructum legaverit intulerit, cum in alium locum inferri tam oportune non posset: et ita iulianus scribit. alias autem invito fructuario locus religiosus non fiet: sed si consentiat fructuarius, magis est ut locus religiosus fiat.

Dig. 11.7.2.8

Ulpianus 25 ad ed.

Locum qui servit nemo religiosum facit, nisi consentiat is cui servitus debetur. sed si non minus commode per alium locum servitute uti potest, non videtur servitutis impediendae causa id fieri, et ideo religiosus fit: et sane habet hoc rationem.

Dig. 11.7.2.9

Ulpianus 25 ad ed.

Is qui pignori dedit agrum si in eum suorum mortuum intulerit, religiosum eum facit: sed et si ipse inferatur, idem est: ceterum alii concedere non potest.

Dig. 11.7.3

Paulus 27 ad ed.

Ex consensu tamen omnium utilius est dicere religiosum posse fieri, idque pomponius scribit.

Dig. 11.7.4

Ulpianus 25 ad ed.

Scriptus heres prius quam hereditatem adeat patrem familias mortuum inferendo locum facit religiosum, nec quis putet hoc ipso pro herede eum gerere: finge enim adhuc eum deliberare de adeunda hereditate. ego etiam si non heres eum intulerit, sed quivis alius herede cessante vel absente vel verente ne pro herede gerere videatur, tamen locum religiosum facere puto: plerumque enim defuncti ante sepeliuntur, quam quis heres eis existet. sed tunc locus fit religiosus, cum defuncti fuit: naturaliter enim videtur ad mortuum pertinere locus in quem infertur, praesertim si in eum locum inferatur, in quem ipse destinavit: usque adeo, ut etiamsi in legatum locum sit illatus ab herede, illatione tamen testatoris fit religiosus, si modo in alium locum tam oportune inferri non potuit.

Dig. 11.7.5

Gaius 19 ad ed. provinc.

Familiaria sepulchra dicuntur, quae quis sibi familiaeque suae constituit, hereditaria autem, quae quis sibi heredibusque suis constituit.

Dig. 11.7.6pr.

Ulpianus 25 ad ed.

Vel quod pater familias iure hereditario adquisiit. sed in utroque heredibus quidem ceterisque successoribus qualescumque fuerint licet sepeliri et mortuum inferre, etiamsi ex minima parte heredes ex testamento vel ab intestato sint, licet non consentiant alii. liberis autem cuiuscumque sexus vel gradus etiam filiis familiae et emancipatis idem ius concessum est, sive extiterint heredes sive sese abstineant. exheredatis autem, nisi specialiter testator iusto odio commotus eos vetuerit, humanitatis gratia tantum sepeliri, non etiam alios praeter suam posteritatem inferre licet. liberti autem nec sepeliri nec alios inferre poterunt, nisi heredes extiterint patrono, quamvis quidam inscripserint monumentum sibi libertisque suis fecisse: et ita papinianus respondit et saepissime idem constitutum est.

Dig. 11.7.6.1

Ulpianus 25 ad ed.

Si adhuc monumentum purum est, poterit quis hoc et vendere et donare. si cenotaphium fit, posse hoc venire dicendum est: nec enim esse hoc religiosum divi fratres rescripserunt.

Dig. 11.7.7pr.

Gaius 19 ad ed. provinc.

Is qui intulit mortuum in alienum locum aut tollere id quod intulit aut loci pretium praestare cogitur per in factum actionem, quae tam heredi quam in heredem competit et perpetua est.

Dig. 11.7.7.1

Gaius 19 ad ed. provinc.

Adversus eum, qui in alterius arcam lapideam, in qua adhuc mortuus non erit conditus, mortuum intulerit, utilem actionem in factum proconsul dat, quia non proprie vel in sepulchrum vel in locum alterius intulisse dici potest.

Dig. 11.7.8pr.

Ulpianus 25 ad ed.

Ossa quae ab alio illata sunt vel corpus an liceat domino loci effodere vel eruere sine decreto pontificum seu iussu principis, quaestionis est: et ait labeo exspectandum vel permissum pontificale seu iussionem principis, alioquin iniuriarum fore actionem adversus eum qui eiecit.

Dig. 11.7.8.1

Ulpianus 25 ad ed.

Si locus religiosus pro puro venisse dicetur, praetor in factum actionem in eum dat ei ad quem ea res pertinet: quae actio et in heredem competit, cum quasi ex empto actionem contineat.

Dig. 11.7.8.2

Ulpianus 25 ad ed.

Si in locum publicis usibus destinatum intulerit quis mortuum, praetor in eum iudicium dat, si dolo fecerit et erit extra ordinem plectendus, modica tamen coercitione: sed si sine dolo, absolvendus est.

Dig. 11.7.8.3

Ulpianus 25 ad ed.

In hac autem actione loci puri appellatio et ad aedificium producenda est.

Dig. 11.7.8.4

Ulpianus 25 ad ed.

Nec solum domino haec actio competit, verum ei quoque, qui eiusdem loci habet usum fructum vel aliquam servitutem, quia ius prohibendi etiam hi habent.

Dig. 11.7.8.5

Ulpianus 25 ad ed.

Ei, qui prohibitus est inferre in eum locum, quo ei ius inferendi esset, in factum actio competit et interdictum, etiamsi non ipse prohibitus sit, sed procurator eius, quia intellectu aliquo ipse prohibitus videtur.

Dig. 11.7.9

Gaius 19 ad ed. provinc.

Liberum est ei qui prohibetur mortuum ossave mortui inferre aut statim interdicto uti, quo prohibetur ei vis fieri, aut alio inferre et postea in factum agere: per quam consequetur actor, quanti eius interfuerit prohibitum non esse, in quam computationem cadit loci empti pretium aut conducti merces, item sui loci pretium, quem quis, nisi coactus est, religiosum facturus non esset. unde miror, quare constare videatur neque heredi neque in heredem dandam hanc actionem: nam ut apparet, pecuniariae quantitatis ratio in eam deducitur: certe perpetuo ea inter ipsos competit.

Dig. 11.7.10

Ulpianus 25 ad ed.

Si venditor fundi exceperit locum sepulchri ad hoc, ut ipse posterique eius illo inferrentur, si via uti prohibeatur, ut mortuum suum inferret, agere potest: videtur enim etiam hoc exceptum inter ementem et vendentem, ut ei per fundum sepulturae causa ire liceret.

Dig. 11.7.11

Paulus 27 ad ed.

Quod si locus monumenti hac lege venierit, ne in eum inferrentur, quos ius est inferri, pactum quidem ad hoc non sufficit, sed stipulatione id caveri oportet.

Dig. 11.7.12pr.

Ulpianus 25 ad ed.

Si quis sepulchrum habeat, viam autem ad sepulchrum non habeat et a vicino ire prohibeatur, imperator antoninus cum patre rescripsit iter ad sepulchrum peti precario et concedi solere, ut quotiens non debetur, impetretur ab eo, qui fundum adiunctum habeat. non tamen hoc rescriptum, quod impetrandi dat facultatem, etiam actionem civilem inducit, sed extra ordinem interpelletur praeses et iam compellere debet iusto pretio iter ei praestari, ita tamen, ut iudex etiam de opportunitate loci prospiciat, ne vicinus magnum patiatur detrimentum.

Dig. 11.7.12.1

Ulpianus 25 ad ed.

Senatus consulto cavetur, ne usus sepulchrorum permutationibus polluatur, id est ne sepulchrum aliae conversationis usum accipiat.

Dig. 11.7.12.2

Ulpianus 25 ad ed.

Praetor ait: " quod funeris causa sumptus factus erit, eius reciperandi nomine in eum, ad quem ea res pertinet, iudicium dabo. "

Dig. 11.7.12.3

Ulpianus 25 ad ed.

Hoc edictum iusta ex causa propositum est, ut qui funeravit persequatur id quod impendit: sic enim fieri, ne insepulta corpora iacerent neve quis de alieno funeretur.

Dig. 11.7.12.4

Ulpianus 25 ad ed.

Funus autem eum facere oportet, quem decedens elegit: sed si non ille fecit, nullam esse huius rei poenam, nisi aliquid pro hoc emolumentum ei relictum est: tunc enim, si non paruerit voluntati defuncti, ab hoc repellitur. sin autem de hac re defunctus non cavit, nec ulli delegatum id munus est, scriptos heredes ea res contingit: si nemo scriptus est, legitimos vel cognatos: quosque suo ordine quo succedunt.

Dig. 11.7.12.5

Ulpianus 25 ad ed.

Sumptus funeris arbitrantur pro facultatibus vel dignitate defuncti.

Dig. 11.7.12.6

Ulpianus 25 ad ed.

Praetor vel magistratus municipalis ad funus sumptum decernere debet, si quidem est pecunia in hereditate, ex pecunia: si non est, distrahere debet ea, quae tempore peritura sunt, quorum retentio onerat hereditatem: si minus, si quid auri argentique fuerit, distrahi aut pignerari iubebit, ut pecunia expediatur:

Dig. 11.7.13

Gaius 19 ad ed. provinc.

Vel a debitoribus si facile exigi possit.

Dig. 11.7.14pr.

Ulpianus 25 ad ed.

Et si quis impediat eum qui emit, quo minus ei res tradantur, praetorem intervenire oportere tuerique huiusmodi factum si quid impediat quo minus ei res venditae tradantur.

Dig. 11.7.14.1

Ulpianus 25 ad ed.

Si colonus vel inquilinus sit is qui mortuus est nec sit unde funeretur, ex invectis illatis eum funerandum pomponius scribit et si quid superfluum remanserit, hoc pro debita pensione teneri. sed et si res legatae sint a testatore de cuius funere agitur nec sit unde funeretur, ad eas quoque manus mittere oportet: satius est enim de suo testatorem funerari, quam aliquos legata consequi. sed si adita fuerit postea hereditas, res emptori auferenda non est, quia bonae fidei possessor est et dominium habet, qui auctore iudice comparavit. legatarium tamen legato carere non oportet, si potest indemnis ab herede praestari: quod si non potest, melius est legatarium non lucrari, quam emptorem damno adfici.

Dig. 11.7.14.2

Ulpianus 25 ad ed.

Si cui funeris sui curam testator mandaverit et ille accepta pecunia funus non duxerit, de dolo actionem in eum dandam mela scripsit: credo tamen et extra ordinem eum a praetore compellendum funus ducere.

Dig. 11.7.14.3

Ulpianus 25 ad ed.

Funeris causa sumptus factus videtur is demum, qui ideo fuit ut funus ducatur, sine quo funus duci non possit, ut puta si quid impensum est in elationem mortui: sed et si quid in locum fuerit erogatum, in quem mortuus inferretur, funeris causa videri impensum labeo scribit, quia necessario locus paratur, in quo corpus conditur.

Dig. 11.7.14.4

Ulpianus 25 ad ed.

Impensa peregre mortui quae facta est ut corpus perferretur, funeris est, licet nondum homo funeretur: idemque et si quid ad corpus custodiendum vel etiam commendandum factum sit, vel si quid in marmor vel vestem collocandam.

Dig. 11.7.14.5

Ulpianus 25 ad ed.

Non autem oportet ornamenta cum corporibus condi, nec quid aliud huiusmodi, quod homines simpliciores faciunt.

Dig. 11.7.14.6

Ulpianus 25 ad ed.

Haec actio quae funeraria dicitur ex bono et aequo oritur: continet autem funeris causa tantum impensam, non etiam ceterorum sumptuum. aequum autem accipitur ex dignitate eius qui funeratus est, ex causa, ex tempore et ex bona fide, ut neque plus imputetur sumptus nomine quam factum est neque tantum quantum factum est, si immodice factum est: deberet enim haberi ratio facultatium eius, in quem factum est, et ipsius rei, quae ultra modum sine causa consumitur. quid ergo si ex voluntate testatoris impensum est? sciendum est nec voluntatem sequendam, si res egrediatur iustam sumptus rationem, pro modo autem facultatium sumptum fieri.

Dig. 11.7.14.7

Ulpianus 25 ad ed.

Sed interdum is, qui sumptum in funus fecit, sumptum non recipit, si pietatis gratia fecit, non hoc animo quasi recepturus sumptum quem fecit: et ita imperator noster rescripsit. igitur aestimandum erit arbitro et perpendendum, quo animo sumptus factus sit, utrum negotium quis vel defuncti vel heredis gerit vel ipsius humanitatis, an vero misericordiae vel pietati tribuens vel affectioni. potest tamen distingui et misericordiae modus, ut in hoc fuerit misericors vel pius qui funeravit, ut eum sepeliret, ne insepultus iaceret, non etiam ut suo sumptu fecerit: quod si iudici liqueat, non debet eum qui convenitur absolvere: quis enim sine pietatis intentione alienum cadaver funerat? oportebit igitur testari, quem quo animo funerat, ne postea patiatur quaestionem.

Dig. 11.7.14.8

Ulpianus 25 ad ed.

Plerique filii cum parentes suos funerant, vel alii qui heredes fieri possunt, licet ex hoc ipso neque pro herede gestio neque aditio praesumitur, tamen ne vel miscuisse se necessarii vel ceteri pro herede gessisse videantur. solent testari pietatis gratia facere se sepulturam. quod si supervacuo fuerit factum, ad illud se munire videntur, ne miscuisse se credantur, ad illud non, ut sumptum consequantur: quippe protestantur pietatis gratia id se facere. plenius igitur eos testari oportet, ut et sumptum possint servare.

Dig. 11.7.14.9

Ulpianus 25 ad ed.

Fortassis quis possit dicere interdum partem sumptus facti posse reciperari, ut quis pro parte quasi negotium gerens, pro parte pietatis gratia id faciat: quod est verius: partem igitur sumptus consequetur, quem non donandi animo fecit.

Dig. 11.7.14.10

Ulpianus 25 ad ed.

Iudicem, qui de ea aequitate cognoscit, interdum sumptum omnino non debere admittere modicum factum, si forte in contumeliam defuncti hominis locupletis modicus factus sit: nam non debet huius rationem habere, cum contumeliam defuncto fecisse videatur ita eum funerando.

Dig. 11.7.14.11

Ulpianus 25 ad ed.

Si quis, dum se heredem putat, patrem familias funeraverit, funeraria actione uti non poterit, quia non hoc animo fecit, quasi alienum negotium gerens: et ita trebatius et proculus putat. puto tamen et ei ex causa dandam actionem funerariam.

Dig. 11.7.14.12

Ulpianus 25 ad ed.

Labeo ait, quotiens quis aliam actionem habet de funeris impensa consequenda, funeraria eum agere non posse: et ideo si familiae erciscundae agere possit, funeraria non acturum: plane si iam familiae erciscundae iudicio actum sit, posse agi.

Dig. 11.7.14.13

Ulpianus 25 ad ed.

Idem labeo ait, si prohibente herede funeraveris testatorem, ex causa competere tibi funerariam: quid enim si filium testatoris heres eius prohibuit? huic contradici potest: " ergo pietatis gratia funerasti". sed pone me testatum: habiturum me funerariam actionem: de suo enim expedit mortuos funerari. et quid si testator quidem funus mihi mandavit, heres prohibet, ego tamen nihilo minus funeravi? nonne aequum est mihi funerariam competere? et generaliter puto iudicem iustum non meram negotiorum gestorum actionem imitari, sed solutius aequitatem sequi, cum hoc ei et actionis natura indulget.

Dig. 11.7.14.14

Ulpianus 25 ad ed.

Divus autem marcus rescripsit eum heredem, qui prohibet funerari ab eo quem testator elegit, non recte facere: poenam tamen in eum statutam non esse.

Dig. 11.7.14.15

Ulpianus 25 ad ed.

Qui mandatu alterius funeravit, non habet funerariam actionem, sed is scilicet, qui mandavit funerandum sive solvit ei cui mandavit sive debet. quod si pupillus mandavit sine tutore auctore, utilem funerariam dandam adversus heredem ei qui impendit: lucrari enim heredem iniquum est. si autem pupillus funus ad se pertinens sine tutoris auctoritate mandavit, dandam in eum actionem arbitror, si et heres extitit ei qui funeratus est solvendoque hereditas est. contra si quis mandatu heredis funeravit, non posse eum funeraria agere labeo scribit, quia habet mandati actionem.

Dig. 11.7.14.16

Ulpianus 25 ad ed.

Si tamen quasi negotium heredis gerens funeravit, licet ratum non habeat, tamen funeraria eum agere posse labeo scribit.

Dig. 11.7.14.17

Ulpianus 25 ad ed.

Datur autem haec actio adversus eos ad quos funus pertinet, ut puta adversus heredem bonorumve possessorem ceterosque successores.

Dig. 11.7.15

Pomponius 5 ad sab.

Funeris impensam et patronus, qui bonorum possessionem petit contra tabulas, praestat.

Dig. 11.7.16

Ulpianus 25 ad ed.

In eum, ad quem dotis nomine quid pervenerit, dat praetor funerariam actionem: aequissimum enim visum est veteribus mulieres quasi de patrimoniis suis ita de dotibus funerari et eum, qui morte mulieris dotem lucratur, in funus conferre debere, sive pater mulieris est sive maritus.

Dig. 11.7.17

Papinianus 3 resp.

Sed si nondum pater dotem reciperaverit, vir solus convenietur reputaturus patri, quod eo nomine praestiterit:

Dig. 11.7.18

Iulianus 10 Dig.

Impensa enim funeris aes alienum dotis est:

Dig. 11.7.19

Ulpianus 15 ad sab.

Ideoque etiam dos sentire hoc aes alienum debet.

Dig. 11.7.20pr.

Ulpianus 25 ad ed.

Neratius quaerit, si is, qui dotem dederat pro muliere, stipulatus est duas partes dotis reddi, tertiam apud maritum remanere, pactus sit, ne quid maritus in funus conferret, an funeraria maritus teneatur. et ait, si quidem ipse stipulator mulierem funeravit, locum esse pacto et inutilem ei funerariam fore: si vero alius funeravit, posse eum maritum convenire, quia pacto hoc publicum ius infringi non possit. quid tamen si quis dotem hac lege dederit pro muliere, ut ad ipsum rediret, si in matrimonio mortua esset, aut quoquo modo soluto matrimonio? numquid hic in funus non conferat? sed cum dos morte mulieris ad eum pervenerit, potest dici conferre eum.

Dig. 11.7.20.1

Ulpianus 25 ad ed.

Si maritus lucratur dotem, convenietur funeraria, pater autem non. sed in hunc casum puto, si dos, quia permodica fuit, in funus non sufficit, in superfluum in patrem debere actionem dari.

Dig. 11.7.20.2

Ulpianus 25 ad ed.

Cum mater familias decedit nec est eius solvendo hereditas, funerari eam ex dote tantum oportet. et ita celsus scribit.

Dig. 11.7.21

Paulus 27 ad ed.

In patrem, cuius in potestate fuerit is cuius funus factum erit, competit funeraria actio pro dignitate et facultatibus.

Dig. 11.7.22

Ulpianus 25 ad ed.

Celsus scribit: quotiens mulier decedit, ex dote, quae penes virum remanet, et ceteris mulieris bonis pro portione funeranda est.

Dig. 11.7.23

Paulus 27 ad ed.

Veluti si in dotem centum sint, in hereditate ducenta, duas partes heres, unam vir conferet.

Dig. 11.7.24

Ulpianus 25 ad ed.

Iulianus scribit: non deductis legatis.

Dig. 11.7.25

Paulus 27 ad ed.

Nec pretiis manumissorum.

Dig. 11.7.26

Pomponius 15 ad sab.

Nec aere alieno deducto.

Dig. 11.7.27pr.

Ulpianus 25 ad ed.

Sic pro rata et maritum et heredem conferre in funus oportet.

Dig. 11.7.27.1

Ulpianus 25 ad ed.

Maritus funeraria non convenietur, si mulieri in matrimonio dotem solverit, ut Marcellus scribit: quae sententia vera est: in his tamen casibus, in quibus hoc ei facere legibus permissum est.

Dig. 11.7.27.2

Ulpianus 25 ad ed.

Praeterea maritum puto funeraria in id demum teneri quod facere potest: id enim lucrari videtur quod praestaret mulieri si conveniretur.

Dig. 11.7.28

Pomponius 15 ad sab.

Quod si nulla dos esset, tunc omnem impensam patrem praestare debere atilicinus ait aut heredes eius mulieris, puta emancipatae. quod si neque heredes habeat neque pater solvendo sit, maritum in quantum facere potest pro hoc conveniri, ne iniuria eius videretur quondam uxorem eius insepultam relinqui.

Dig. 11.7.29pr.

Gaius 19 ad ed. provinc.

Si mulier post divortium alii nupta decesserit, non putat fulcinius priorem maritum, licet lucri dotem faciat, funeris impensam praestare.

Dig. 11.7.29.1

Gaius 19 ad ed. provinc.

Is qui filiam familias funeravit antequam dos patri reddatur, cum marito recte agit: reddita dote patrem obligatum habet. utique autem, si cum marito actum fuerit, is eo minus patri mulieris restituturus est.

Dig. 11.7.30pr.

Pomponius 15 ad sab.

Contra quoque quod pater in funus filiae impendit aut alio agente secum funeraticia praestitit, ipse actione de dote a marito recipit.

Dig. 11.7.30.1

Pomponius 15 ad sab.

Sed si emancipata in matrimonio decedat, collaturos heredes bonorumve possessores et patrem pro portione dotis quam recipit et virum pro portione dotis quam lucratus est.

Dig. 11.7.31pr.

Ulpianus 25 ad ed.

Si filius familias miles sit et habeat castrense peculium, puto successores eius ante teneri, sic deinde ad patrem venire.

Dig. 11.7.31.1

Ulpianus 25 ad ed.

Qui servum alienum vel ancillam sepelivit, habet adversus dominum funerariam actionem.

Dig. 11.7.31.2

Ulpianus 25 ad ed.

Haec actio non est annua, sed perpetua, et heredi ceterisque successoribus et in successores datur.

Dig. 11.7.32pr.

Paulus 27 ad ed.

Si possessor hereditatis funus fecerit, deinde victus in restitutione non deduxerit quod impenderit, utilem esse ei funerariam.

Dig. 11.7.32.1

Paulus 27 ad ed.

Si eodem momento temporis vir et uxor decesserit, labeo ait in heredem viri pro portione dotis dandam hanc actionem, quoniam id ipsum dotis nomine ad eum pervenit.

Dig. 11.7.33

Ulpianus 68 ad ed.

Si quis fuit heres, deinde hereditas ablata sit ei quasi indigno, magis est, ut penes eum iura sepulchrorum remaneant.

Dig. 11.7.34

Paulus 64 ad ed.

Si locus sub condicione legatus sit, interim heres inferendo mortuum non facit locum religiosum.

Dig. 11.7.35

Marcellus 5 Dig.

Minime maiores lugendum putaverunt eum, qui ad patriam delendam et parentes et liberos interficiendos venerit: quem si filius patrem aut pater filium occidisset, sine scelere, etiam praemio adficiendum omnes constituerunt.

Dig. 11.7.36

Pomponius 26 ad q. muc.

Cum loca capta sunt ab hostibus, omnia desinunt religiosa vel sacra esse, sicut homines liberi in servitutem perveniunt: quod si ab hac calamitate fuerint liberata, quasi quodam postliminio reversa pristino statui restituuntur.

Dig. 11.7.37pr.

Macer 1 ad l. vices. hered.

Funeris sumptus accipitur, quidquid corporis causa veluti unguentorum erogatum est, et pretium loci in quo defunctus humatus est, et si qua vectigalia sunt, vel sarcophagi et vectura: et quidquid corporis causa antequam sepeliatur consumptum est, funeris impensam esse existimo.

Dig. 11.7.37.1

Macer 1 ad l. vices. hered.

Monumentum autem sepulchri id esse divus hadrianus rescripsit, quod monumenti, id est causa muniendi eius loci factum sit, in quo corpus impositum sit. itaque si amplum quid aedificari testator iusserit, veluti incircum porticationes, eos sumptus funeris causa non esse.

Dig. 11.7.38

Ulpianus 9 de omn. trib.

Ne corpora aut ossa mortuorum detinerentur aut vexarentur neve prohiberentur quo minus via publica transferrentur aut quominus sepelirentur, praesidis provinciae officium est.

Dig. 11.7.39

Marcianus 3 inst.

Divi fratres edicto admonuerunt, ne iustae sepulturae traditum, id est terra conditum corpus inquietetur: videtur autem terra conditum et si in arcula conditum hoc animo sit, ut non alibi transferatur. sed arculam ipsam, si res exigat, in locum commodiorem licere transferre non est denegandum.

Dig. 11.7.40

Paulus 3 quaest.

Si quis enim eo animo corpus intulerit, quod cogitaret inde alio postea transferre magisque temporis gratia deponere, quam quod ibi sepeliret mortuum et quasi aeterna sede dare destinaverit, manebit locus profanus.

Dig. 11.7.41

Callistratus 2 inst.

Si plures sint domini eius loci, ubi mortuus infertur, omnes consentire debent, cum extranei inferantur: nam ex ipsis dominis quemlibet recte ibi sepeliri constat etiam sine ceterorum consensu, maxime cum alius non sit locus in quo sepeliretur.

Dig. 11.7.42

Florus 7 inst.

Monumentum generaliter res est memoriae causa in posterum prodita: in qua si corpus vel reliquiae inferantur, fiet sepulchrum, si vero nihil eorum inferatur, erit monumentum memoriae causa factum, quod graeci kenotafion appellant.

Dig. 11.7.43

Papinianus 8 quaest.

Sunt personae, quae, quamquam religiosum locum facere non possunt, interdicto tamen de mortuo inferendo utiliter agunt, ut puta dominus proprietatis, si in fundum, cuius fructus alienus est, mortuum inferat aut inferre velit: nam si intulerit, non faciet iustum sepulchrum, sed si prohibeatur, utiliter interdicto, qui de iure dominii quaeritur, aget. eademque sunt in socio, qui in fundum communem invito socio mortuum inferre vult. nam propter publicam utilitatem, ne insepulta cadavera iacerent, strictam rationem insuper habemus, quae nonnumquam in ambiguis religionum quaestionibus omitti solent: nam summam esse rationem, quae pro religione facit.

Dig. 11.7.44

Paulus 3 quaest.

Cum in diverisis locis sepultum est, uterque quidem locus religiosus non fit, quia una sepultura plura sepulchra efficere non potest: mihi autem videtur illum religiosum esse, ubi quod est principale conditum est, id est caput, cuius imago fit, inde cognoscimur. cum autem impetratur, ut reliquiae transferantur, desinit locus religiosus esse.

Dig. 11.7.45

Maecenatus 8 fideic.

Impensa funeris semper ex hereditate deducitur, quae etiam omne creditum solet praecedere, cum bona solvendo non sint.

Dig. 11.7.46pr.

Scaevola 2 quaest.

Si plura praedia quis habuit et omnium usum fructum separatim legaverit, poterit in unum inferri et electio erit heredis et gratificationi locus: sed fructuario utilem actionem in heredem dandam ad id recipiendum, quod propter eam electionem minutus est usus fructus.

Dig. 11.7.46.1

Scaevola 2 quaest.

Si heres mulieris inferat mortuam in hereditarium fundum, a marito qui debet in funus conferre pro aestimatione loci consequatur.

Dig. 11.7.46.2

Scaevola 2 quaest.

Ei, cui vestimenta legantur, si in funus erogata sint, utilem actionem in heredem dandam placuit et privilegium funerarium.

Dig. 11.8.0. De mortuo inferendo et sepulchro aedificando.

Dig. 11.8.1pr.

Ulpianus 68 ad ed.

Praetor ait: " quo quave illi mortuum inferre invito te ius est, quo minus illi eo eave mortuum inferre et ibi sepelire liceat, vim fieri veto. "

Dig. 11.8.1.1

Ulpianus 68 ad ed.

Qui inferendi mortuum ius habet, non prohibetur inferre: prohiberi autem inferre videtur, sive in locum inferre prohibeatur sive itinere arceatur.

Dig. 11.8.1.2

Ulpianus 68 ad ed.

Hoc interdicto de mortuo inferendo dominus proprietatis uti potest, quod etiam de loco puro competit.

Dig. 11.8.1.3

Ulpianus 68 ad ed.

Item si mihi in fundum via debeatur, in quem fundum inferre volo, et via prohibear, hoc interdicto posse me experiri placuit, quia inferre prohibeor qui via uti prohibeor: idque erit probandum et si alia servitus debeatur.

Dig. 11.8.1.4

Ulpianus 68 ad ed.

Hoc interdictum prohibitorium esse palam est.

Dig. 11.8.1.5

Ulpianus 68 ad ed.

Praetor ait: " quo illi ius est invito te mortuum inferre, quominus illi in eo loco sepulchrum sine dolo malo aedificare liceat, vim fieri veto. "

Dig. 11.8.1.6

Ulpianus 68 ad ed.

Interdictum hoc propterea propositum est, quia religionis interest monumenta exstrui et exornari.

Dig. 11.8.1.7

Ulpianus 68 ad ed.

Facere sepulchrum sive monumentum in loco, in quo ei ius est, nemo prohibetur.

Dig. 11.8.1.8

Ulpianus 68 ad ed.

Aedificare videtur prohibere et qui prohibet eam materiam convehi, quae aedificio necessaria sit. proinde et si operi necessarios prohibuit quis venire, interdictum locum habet, et si machinam alligare quis prohibeat, si tamen eo loci prohibeat, qui servitutem debeat: ceterum si in meo solo velis machinam ponere, non tenebor interdicto, si iure te non patiar.

Dig. 11.8.1.9

Ulpianus 68 ad ed.

Aedificare autem non solum qui novum opus molitur intellegendus est, verum is quoque, qui vult reficere.

Dig. 11.8.1.10

Ulpianus 68 ad ed.

Is qui id agit, ut labatur sepulchrum, hoc interdicto tenetur.

Dig. 11.8.2

Marcellus 28 Dig.

Negat lex regia mulierem, quae praegnas mortua sit, humari, antequam partus ei excidatur: qui contra fecerit, spem animantis cum gravida peremisse videtur.

Dig. 11.8.3pr.

Pomponius 9 ad sab.

Si propius aedes tuas quis aedificet sepulchrum, opus novum tu nuntiare poteris, sed facto opere nullam habebis actionem nisi quod vi aut clam.

Dig. 11.8.3.1

Pomponius 9 ad sab.

Si propius aedificium alienum intra legitimum modum mortuus illatus sit, postea eum prohibere non poterit aedificii dominus, quominus alium mortuum eo inferat vel monumentum aedificet, si ab initio domino sciente hoc fecerit.

Dig. 11.8.4

Ulpianus 2 resp.

Longa possessione ius sepulchri non tribui ei, cui iure non competit.

Dig. 11.8.5pr.

Ulpianus 1 opin.

Si in eo monumento, quod imperfectum esse dicitur, reliquiae hominis conditae sunt, nihil impedit quominus id perficiatur.

Dig. 11.8.5.1

Ulpianus 1 opin.

Sed si religiosus locus iam factus sit, pontifices explorare debent, quatenus salva religione desiderio reficiendi operis medendum sit.

Ius Romanum   Justinian   The Latin Library   The Classics Page

OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER DUODECIMUS

Dig. 12.1.0. De rebus creditis si certum petetur et de condictione.
Dig. 12.2.0. De iureiurando sive voluntario sive necessario sive iudiciali.
Dig. 12.3.0. De in litem iurando.
Dig. 12.4.0. De condictione causa data causa non secuta.
Dig. 12.5.0. De condictione ob turpem vel iniustam causam.

Dig. 12.6.0. De condictione indebiti.
Dig. 12.7.0. De condictione sine causa.

Dig. 12.1.0. De rebus creditis si certum petetur et de condictione.

Dig. 12.1.1pr.

Ulpianus 26 ad ed.

E re est, priusquam ad verborum interpretationem perveniamus, pauca de significatione ipsius tituli referre.

Dig. 12.1.1.1

Ulpianus 26 ad ed.

Quoniam igitur multa ad contractus varios pertinentia iura sub hoc titulo praetor inseruit, ideo rerum creditarum titulum praemisit: omnes enim contractus, quos alienam fidem secuti instituimus, complectitur: nam, ut libro primo quaestionum celsus ait, credendi generalis appellatio est: ideo sub hoc titulo praetor et de commodato et de pignore edixit. nam cuicumque rei adsentiamur alienam fidem secuti mox recepturi quid, ex hoc contractu credere dicimur. rei quoque verbum ut generale praetor elegit.

Dig. 12.1.2pr.

Paulus 28 ad ed.

Mutuum damus recepturi non eandem speciem quam dedimus (alioquin commodatum erit aut depositum), sed idem genus: nam si aliud genus, veluti ut pro tritico vinum recipiamus, non erit mutuum.

Dig. 12.1.2.1

Paulus 28 ad ed.

Mutui datio consistit in his rebus, quae pondere numero mensura consistunt, quoniam eorum datione possumus in creditum ire, quia in genere suo functionem recipiunt per solutionem quam specie: nam in ceteris rebus ideo in creditum ire non possumus, quia aliud pro alio invito creditori solvi non potest.

Dig. 12.1.2.2

Paulus 28 ad ed.

Appellata est autem mutui datio ab eo, quod de meo tuum fit: et ideo, si non faciat tuum, non nascitur obligatio.

Dig. 12.1.2.3

Paulus 28 ad ed.

Creditum ergo a mutuo differt qua genus a specie: nam creditum consistit extra eas res, quae pondere numero mensura continentur sic, ut, si eandem rem recepturi sumus, creditum est. item mutuum non potest esse, nisi proficiscatur pecunia, creditum autem interdum etiam si nihil proficiscatur, veluti si post nuptias dos promittatur.

Dig. 12.1.2.4

Paulus 28 ad ed.

In mutui datione oportet dominum esse dantem, nec obest, quod filius familias et servus dantes peculiares nummos obligant: id enim tale est, quale si voluntate mea tu des pecuniam: nam mihi actio adquiritur, licet mei nummi non fuerint.

Dig. 12.1.2.5

Paulus 28 ad ed.

Verbis quoque credimus quodam actu ad obligationem comparandam interposito, veluti stipulatione.

Dig. 12.1.3

Pomponius 27 ad sab.

Cum quid mutuum dederimus, etsi non cavimus, ut aeque bonum nobis redderetur, non licet debitori deteriorem rem, quae ex eodem genere sit, reddere, veluti vinum novum pro vetere: nam in contrahendo quod agitur pro cauto habendum est, id autem agi intellegitur, ut eiusdem generis et eadem bonitate solvatur, qua datum sit.

Dig. 12.1.4pr.

Ulpianus 34 ad sab.

Si quis nec causam nec propositum faenerandi habuerit et tu empturus praedia desideraveris mutuam pecuniam nec volueris creditae nomine antequam emisses suscipere atque ita creditor, quia necessitatem forte proficiscendi habebat, deposuerit apud te hanc eandem pecuniam, ut, si emisses, crediti nomine obligatus esses, hoc depositum periculo est eius qui suscepit. nam et qui rem vendendam acceperit, ut pretio uteretur, periculo suo rem habebit.

Dig. 12.1.4.1

Ulpianus 34 ad sab.

Res pignori data pecunia soluta condici potest. et fructus ex iniusta causa percepti condicendi sunt: nam et si colonus post lustrum completum fructus perceperit, condici eos constat ita demum, si non ex voluntate domini percepti sunt: nam si ex voluntate, procul dubio cessat condictio.

Dig. 12.1.4.2

Ulpianus 34 ad sab.

Ea, quae vi fluminum importata sunt, condici possunt.

Dig. 12.1.5

Pomponius 22 ad sab.

Quod te mihi dare oporteat si id postea perierit, quam per te factum erit quominus id mihi dares, tuum fore id detrimentum constat. sed cum quaeratur, an per te factum sit, animadverti debebit, non solum in potestate tua fuerit id nec ne aut dolo malo feceris quominus esset vel fuerit nec ne, sed etiam si aliqua iusta causa sit, propter quam intellegere deberes te dare oportere.

Dig. 12.1.6

Paulus 28 ad ed.

Certum est, cuius species vel quantitas, quae in obligatione versatur, aut nomine suo aut ea demonstratione quae nominis vice fungitur qualis quantaque sit ostenditur. nam et pedius libro primo de stipulationibus nihil referre ait, proprio nomine res appelletur an digito ostendatur an vocabulis quibusdam demonstretur: quatenus mutua vice fungantur, quae tantundem praestent.

Dig. 12.1.7

Ulpianus 26 ad ed.

Omnia, quae inseri stipulationibus possunt, eadem possunt etiam numerationi pecuniae, et ideo et condiciones.

Dig. 12.1.8

Pomponius 6 ex plaut.

Proinde mutui datio interdum pendet, ut ex post facto confirmetur: veluti si dem tibi mutuos nummos, ut, si condicio aliqua exstiterit, tui fiant sisque mihi obligatus: item si legatam pecuniam heres crediderit, deinde legatarius eam noluit ad se pertinere, quia heredis ex die aditae hereditatis videntur nummi fuisse, ut credita pecunia peti possit. nam iulianus ait et traditiones ab herede factas ad id tempus redigi, quo hereditas adita fuerit, cum repudiatum sit legatum aut adpositum.

Dig. 12.1.9pr.

Ulpianus 26 ad ed.

Certi condictio competit ex omni causa, ex omni obligatione, ex qua certum petitur, sive ex certo contractu petatur sive ex incerto: licet enim nobis ex omni contractu certum condicere, dummodo praesens sit obligatio: ceterum si in diem sit vel sub condicione obligatio, ante diem vel condicionem non potero agere.

Dig. 12.1.9.1

Ulpianus 26 ad ed.

Competit haec actio etiam ex legati causa et ex lege aquilia. sed et ex causa furtiva per hanc actionem condicitur. sed et si ex senatus consulto agetur, competit haec actio, veluti si is cui fiduciaria hereditas restituta est agere volet.

Dig. 12.1.9.2

Ulpianus 26 ad ed.

Sive autem suo nomine quis obligatus sit sive alieno, per hanc actionem recte convenitur.

Dig. 12.1.9.3

Ulpianus 26 ad ed.

Quoniam igitur ex omnibus contractibus haec certi condictio competit, sive re fuerit contractus factus sive verbis sive coniunctim, referendae sunt nobis quaedam species, quae dignum habent tractatum, an haec actio ad petitionem eorum sufficiat.

Dig. 12.1.9.4

Ulpianus 26 ad ed.

Numeravi tibi decem et haec alii stipulatus sum: nulla est stipulatio: an condicere decem per hanc actionem possim, quasi duobus contractibus intervenientibus, uno qui re factus est, id est numeratione, alio qui verbis, id est inutiliter, quoniam alii stipulari non potui? et puto posse.

Dig. 12.1.9.5

Ulpianus 26 ad ed.

Idem erit, si a pupillo fuero sine tutoris auctoritate stipulatus, cui tutore auctore credidi: nam et tunc manebit mihi condictio ex numeratione.

Dig. 12.1.9.6

Ulpianus 26 ad ed.

Item quaeri potest et si, quod tibi numeravi, sub impossibili condicione stipuler: cum enim nulla sit stipulatio, manebit condictio.

Dig. 12.1.9.7

Ulpianus 26 ad ed.

Sed et si ei numeravero, cui postea bonis interdictum est, mox ab eo stipuler, puto pupillo eum comparandum, quoniam et stipulando sibi adquirit.

Dig. 12.1.9.8

Ulpianus 26 ad ed.

Si nummos meos tuo nomine dedero velut tuos absente te et ignorante, aristo scribit adquiri tibi condictionem: iulianus quoque de hoc interrogatus libro decimo scribit veram esse aristonis sententiam nec dubitari, quin, si meam pecuniam tuo nomine voluntate tua dedero, tibi adquiritur obligatio, cum cottidie credituri pecuniam mutuam ab alio poscamus, ut nostro nomine creditor numeret futuro debitori nostro.

Dig. 12.1.9.9

Ulpianus 26 ad ed.

Deposui apud te decem, postea permisi tibi uti: nerva proculus etiam antequam moveantur, condicere quasi mutua tibi haec posse aiunt, et est verum, ut et Marcello videtur: animo enim coepit possidere. ergo transit periculum ad eum, qui mutuam rogavit et poterit ei condici.

Dig. 12.1.10

Ulpianus 2 ad ed.

Quod si ab initio, cum deponerem, uti tibi si voles permisero, creditam non esse antequam mota sit, quoniam debitu iri non est certum.

Dig. 12.1.11pr.

Ulpianus 26 ad ed.

Rogasti me, ut tibi pecuniam crederem: ego cum non haberem, lancem tibi dedi vel massam auri, ut eam venderes et nummis utereris. si vendideris, puto mutuam pecuniam factam. quod si lancem vel massam sine tua culpa perdideris prius quam venderes, utrum mihi an tibi perierit, quaestionis est. mihi videtur nervae distinctio verissima existimantis multum interesse, venalem habui hanc lancem vel massam nec ne, ut, si venalem habui, mihi perierit, quemadmodum si alii dedissem vendendam: quod si non fui proposito hoc ut venderem, sed haec causa fuit vendendi, ut tu utereris, tibi eam perisse, et maxime si sine usuris credidi.

Dig. 12.1.11.1

Ulpianus 26 ad ed.

Si tibi dedero decem sic, ut novem debeas, proculus ait, et recte, non amplius te ipso iure debere quam novem. sed si dedero, ut undecim debeas, putat proculus amplius quam decem condici non posse.

Dig. 12.1.11.2

Ulpianus 26 ad ed.

Si fugitivus servus nummos tibi crediderit, an condicere tibi dominus possit, quaeritur. et quidem si servus meus, cui concessa est peculii administratio, crediderit tibi, erit mutua: fugitivus autem vel alius servus contra voluntatem domini credendo non facit accipientis. quid ergo? vindicari nummi possunt, si extant ^ exstant^, aut, si dolo malo desinant possideri, ad exhibendum agi: quod si sine dolo malo consumpsisti, condicere tibi potero.

Dig. 12.1.12

Pomponius 6 ex plaut.

Si a furioso, cum eum compotem mentis esse putares, pecuniam quasi mutuam acceperis eaque in rem tuam versa fuerit, condictionem furioso adquiri iulianus ait: nam ex quibus causis ignorantibus nobis actiones adquiruntur, ex isdem etiam furioso adquiri. item si is qui servo crediderat furere coeperit, deinde servus in rem domini id verterit, condici furiosi nomine posse. et si alienam pecuniam credendi causa quis dederit, deinde furere coeperit et consumpta sit ea pecunia, condictionem furioso adquiri.

Dig. 12.1.13pr.

Ulpianus 26 ad ed.

Nam et si fur nummos tibi credendi animo dedit, accipientis non facit, sed consumptis eis nascitur condictio.

Dig. 12.1.13.1

Ulpianus 26 ad ed.

Unde papinianus libro octavo quaestionum ait: si alienos nummos tibi mutuos dedi, non ante mihi teneris, quam eos consumpseris. quod si per partes eos consumpseris, an per partes tibi condicam, quaerit: et ait condicturum, si admonitus alienos nummos fuisse ideo per partem condico, quia nondum totos consumptos compereram.

Dig. 12.1.13.2

Ulpianus 26 ad ed.

Si servus communis decem crediderit, puto, sive administratio servo concessa est, sive non et consumantur nummi, quinum competere actionem: nam et si communes tibi nummos credidero centum, posse me quinquaginta condicere libro octavo quaestionum papinianus scribit, etiamsi singula corpora communia fuerint.

Dig. 12.1.14

Ulpianus 29 ad ed.

Si filius familias contra senatus consultum mutuatus pecuniam solverit, patri nummos vindicanti nulla exceptio obicietur: sed si fuerint consumpti a creditore nummi, Marcellus ait cessare condictionem, quoniam totiens condictio datur, quotiens ex ea causa numerati sunt, ex qua actio esse potuisset, si dominium ad accipientem transisset: in proposito autem non esset. denique per errorem soluti contra senatus consultum crediti magis est cessare repetitionem.

Dig. 12.1.15

Ulpianus 31 ad ed.

Singularia quaedam recepta sunt circa pecuniam creditam. nam si tibi debitorem meum iussero dare pecuniam, obligaris mihi, quamvis meos nummos non acceperis. quod igitur in duabus personis recipitur, hoc et in eadem persona recipiendum est, ut, cum ex causa mandati pecuniam mihi debeas et convenerit, ut crediti nomine eam retineas, videatur mihi data pecunia et a me ad te profecta.

Dig. 12.1.16

Paulus 32 ad ed.

Si socius propriam pecuniam mutuam dedit, omnimodo creditam pecuniam facit, licet ceteri dissenserint: quod si communem numeravit, non alias creditam efficit, nisi ceteri quoque consentiant, quia suae partis tantum alienationem habuit.

Dig. d.12.1.17

Ulpianus 1 disp.

Cum filius familias viaticum suum mutuum dederit, cum studiorum causa romae ageret, responsum est a scaevola extraordinario iudicio esse illi subveniendum.

Dig. 12.1.18pr.

Ulpianus 7 disp.

Si ego pecuniam tibi quasi donaturus dedero, tu quasi mutuam accipias, iulianus scribit donationem non esse: sed an mutua sit, videndum. et puto nec mutuam esse magisque nummos accipientis non fieri, cum alia opinione acceperit. quare si eos consumpserit, licet condictione teneatur, tamen doli exceptione uti poterit, quia secundum voluntatem dantis nummi sunt consumpti.

Dig. 12.1.18.1

Ulpianus 7 disp.

Si ego quasi deponens tibi dedero, tu quasi mutuam accipias, nec depositum nec mutuum est: idem est et si tu quasi mutuam pecuniam dederis, ego quasi commodatam ostendendi gratia accepi: sed in utroque casu consumptis nummis condictioni sine doli exceptione locus erit.

Dig. 12.1.19pr.

Iulianus 10 Dig.

Non omnis numeratio eum qui accepit obligat, sed quotiens id ipsum agitur, ut confestim obligaretur. nam et is, qui mortis causa pecuniam donat, numerat pecuniam, sed non aliter obligabit accipientem, quam si exstitisset casus, in quem obligatio collata fuisset, veluti si donator convaluisset aut is qui accipiebat prior decessisset. et cum pecunia daretur, ut aliquid fieret, quamdiu in pendenti esset, an id futurum esset, cessabit obligatio: cum vero certum esse coepisset futurum id non esse, obligabitur qui accepisset: veluti si titio decem dedero, ut stichum intra calendas manumitteret, ante kalendas nullam actionem habebo, post kalendas ita demum agere potero, si manumissus non fuerit.

Dig. 12.1.19.1

Iulianus 10 Dig.

Si pupillus sine tutoris auctoritate crediderit aut solvendi causa dederit, consumpta pecunia condictionem habet vel liberatur non alia ratione, quam quod facto eius intellegitur ad eum qui acceperit pervenisse: quapropter si eandem pecuniam is, qui in creditum vel in solutum acceperat, alii porro in creditum vel in solutum dederit, consumpta ea et ipse pupillo obligatur vel eum a se liberabit et eum cui dederit obligatum habebit vel se ab eo liberabit. nam omnino qui alienam pecuniam credendi causa dat, consumpta ea habet obligatum eum qui acceperit: item qui in solutum dederit, liberabitur ab eo qui acceperit.

Dig. 12.1.20

Iulianus 18 Dig.

Si tibi pecuniam donassem, ut tu mihi eandem crederes, an credita fieret? dixi in huiusmodi propositionibus non propriis verbis nos uti, nam talem contractum neque donationem esse neque pecuniam creditam: donationem non esse, quia non ea mente pecunia daretur, ut omnimodo penes accipientem maneret: creditam non esse, quia exsolvendi causa magis daretur, quam alterius obligandi. igitur si is, qui pecuniam hac condicione accepit, ut mihi in creditum daret, acceptam dederit, non fore creditam: magis enim meum accepisse intellegi debeo. sed haec intellegenda sunt propter suptilitatem verborum: benignius tamen est utrumque valere.

Dig. 12.1.21

Iulianus 48 Dig.

Quidam existimaverunt neque eum, qui decem peteret, cogendum quinque accipere et reliqua persequi, neque eum, qui fundum suum diceret, partem dumtaxat iudicio persequi: sed in utraque causa humanius facturus videtur praetor, si actorem compulerit ad accipiendum id quod offeratur, cum ad officium eius pertineat lites deminuere.

Dig. 12.1.22

Iulianus 4 ex minic.

Vinum, quod mutuum datum erat, per iudicem petitum est: quaesitum est, cuius temporis aestimatio fieret, utrum cum datum esset an cum litem contestatus fuisset an cum res iudicaretur. sabinus respondit, si dictum esset quo tempore redderetur, quanti tunc fuisset, si dictum non esset, quanti tunc fuisset, cum petitum esset. interrogavi, cuius loci pretium sequi oporteat. respondit, si convenisset, ut certo loco redderetur, quanti eo loco esset, si dictum non esset, quanti ubi esset petitum.

Dig. 12.1.23

Africanus 2 quaest.

Si eum servum, qui tibi legatus sit, quasi mihi legatum possederim et vendiderim, mortuo eo posse te mihi pretium condicere iulianus ait, quasi ex re tua locupletior factus sim.

Dig. 12.1.24

Ulpianus l.S. pand.

Si quis certum stipulatus fuerit, ex stipulatu actionem non habet, sed illa condicticia actione id persequi debet, per quam certum petitur.

Dig. 12.1.25

Ulpianus l.S. de off. consularium

Creditor, qui ob restitutionem aedificiorum crediderit in pecuniam quam crediderit privilegium exigendi habebit.

Dig. 12.1.26

Ulpianus 5 opin.

Si pecuniam militis procurator eius mutuam dedit fideiussoremque accepit, exemplo eo quo si tutor pupilli aut curator iuvenis pecuniam alterutrius eorum creditam stipulatus fuerit, actionem dari militi cuius pecunia fuerit placuit.

Dig. 12.1.27

Ulpianus 10 ad ed.

Civitas mutui datione obligari potest, si ad utilitatem eius pecuniae versae sunt: alioquin ipsi soli qui contraxerunt, non civitas tenebuntur.

Dig. 12.1.28

Gaius 21 ad ed. provinc.

Creditor, qui non idoneum pignus accepit, non amittit exactionem eius debiti quantitatis, in quam pignus non sufficit.

Dig. 12.1.29

Paulus 4 ad plaut.

Si institorem servum dominus habuerit, posse dici iulianus ait etiam condici ei posse, quasi iussu eius contrahatur, a quo praepositus sit.

Dig. 12.1.30

Paulus 5 ad plaut.

Qui pecuniam creditam accepturus spopondit creditori futuro, in potestate habet, ne accipiendo se ei obstringat.

Dig. 12.1.31pr.

Paulus 17 ad plaut.

Cum fundus vel homo per condictionem petitus esset, puto hoc nos iure uti, ut post iudicium acceptum causa omnis restituenda sit, id est omne, quod habiturus esset actor, si litis contestandae tempore solutus fuisset.

Dig. 12.1.31.1

Paulus 17 ad plaut.

Servum tuum imprudens a fure bona fide emi: is ex peculio, quod ad te pertinebat, hominem paravit, qui mihi traditus est. sabinus cassius posse te mihi hominem condicere: sed si quid mihi abesset ex negotio quod is gessisset, invicem me tecum acturum. et hoc verum est: nam et iulianus ait videndum, ne dominus integram ex empto actionem habeat, venditor autem condicere possit bonae fidei emptori. quod ad peculiares nummos attinet, si exstant, vindicare eos dominus potest, sed actione de peculio tenetur venditori, ut pretium solvat: si consumpti sint, actio de peculio evanescit. sed adicere debuit iulianus non aliter domino servi venditorem ex empto teneri, quam si ei pretium solidum et quaecumque, si cum libero contraxisset, deberentur, dominus servi praestaret. idem dici debet, si bonae fidei possessori solvissem, si tamen actiones, quas adversus eum habeam, praestare domino paratus sim.

Dig. 12.1.32

Celsus 5 Dig.

Si et me et titium mutuam pecuniam rogaveris et ego meum debitorem tibi promittere iusserim, tu stipulatus sis, cum putares eum titii debitorem esse, an mihi obligaris? subsisto, si quidem nullum negotium mecum contraxisti: sed propius est ut obligari te existimem, non quia pecuniam tibi credidi (hoc enim nisi inter consentientes fieri non potest): sed quia pecunia mea ad te pervenit, eam mihi a te reddi bonum et aequum est.

Dig. 12.1.33

Modestinus 10 pand.

Principalibus constitutionibus cavetur, ne hi qui provinciam regunt quive circa eos sunt negotientur mutuamve pecuniam dent faenusve exerceant.

Dig. 12.1.34pr.

Paulus 2 sent.

Praesidis provinciae officiales, quia perpetui sunt, mutuam pecuniam dare et faenebrem exercere possunt.

Dig. 12.1.34.1

Paulus 2 sent.

Praeses provinciae mutuam pecuniam faenebrem sumere non prohibetur.

Dig. 12.1.35

Modestinus 3 resp.

Periculum nominum ad eum, cuius culpa deterius factum probari potest, pertinet.

Dig. 12.1.36

Iavolenus 1 epist.

Pecuniam, quam mihi sine condicione debebas, iussu meo promisisti attio sub condicione: cum pendente condicione in eo statu sit obligatio tua adversus me, tamquam sub contrariam condicionem eam mihi spopondisti, si pendente condicione petam, an nihil acturus sum? respondit: non dubito, quin mea pecunia, quam ipse sine condicione stipulatus sum, etiam si condicio in persona atii, qui ex mea voluntate eandem pecuniam sub condicione stipulatus est, non extiterit, credita esse permaneat (perinde est enim, ac si nulla stipulatio intervenisset): pendente autem causa condicionis idem petere non possum, quoniam, cum incertum sit, an ex ea stipulatione deberi possit, ante tempus petere videor.

Dig. 12.1.37

Papinianus 1 def.

Cum ad praesens tempus condicio confertur, stipulatio non suspenditur et, si condicio vera sit, stipulatio tenet, quamvis tenere contrahentes condicionem ignorent, veluti " si rex parthorum vivit, centum mihi dari spondes?" eadem sunt et cum in praeteritum condicio confertur.

Dig. 12.1.38

Scaevola 1 quaest.

Respiciendum enim esse, an, quantum in natura hominum sit, possit scire eam debitu iri.

Dig. 12.1.39

Papinianus 1 def.

Itaque tunc potestatem condicionis optinet, cum in futurum confertur.

Dig. 12.1.40

Paulus 3 quaest.

Lecta est in auditorio aemilii papiniani praefecti praetorio iuris consulti cautio huiusmodi: " lucius titius scripsi me accepisse a publio maevio quindecim mutua numerata mihi de domo et haec quindecim proba recte dari kalendis futuris stipulatus est publius maevius, spopondi ego lucius titius. si die supra scripta summa publio maevio eive ad quem ea res pertinebit data soluta satisve eo nomine factum non erit, tunc eo amplius, quo post solvam, poenae nomine in dies triginta inque denarios centos denarios singulos dari stipulatus est publius maevius, spopondi ego lucius titius. convenitque inter nos, uti pro maevio ex summa supra scripta menstruos refundere debeam denarios trecenos ex omni summa ei heredive eius. " quaesitum est de obligatione usurarum, quoniam numerus mensium, qui solutioni competebat, transierat. dicebam, quia pacta in continenti facta stipulationi inesse creduntur, perinde esse, ac si per singulos menses certam pecuniam stipulatus, quoad tardius soluta esset, usuras adiecisset: igitur finito primo mense primae pensionis usuras currere et similiter post secundum et tertium tractum usuras non solutae pecuniae pensionis crescere nec ante sortis non solutae usuras peti posse quam ipsa sors peti potuerat. pactum autem quod subiectum est quidam dicebant ad sortis solutionem tantum pertinere, non etiam ad usurarum, quae priore parte simpliciter in stipulationem venissent, pactumque id tantum ad exceptionem prodesse et ideo non soluta pecunia statutis pensionibus ex die stipulationis usuras deberi, atque si id nominatim esset expressum. sed cum sortis petitio dilata sit, consequens est, ut etiam usurae ex eo tempore, quo moram fecit, accedant, et si, ut ille putabat, ad exceptionem tantum prodesset pactum (quamvis sententia diversa optinuerit), tamen usurarum obligatio ipso iure non committetur: non enim in mora est is, a quo pecunia propter exceptionem peti non potest. sed quantitatem, quae medio tempore colligitur, stipulamur, cum condicio exstiterit, sicut est in fructibus: idem et in usuris potest exprimi, ut ad diem non soluta pecunia quo competit usurarum nomine ex die interpositae stipulationis praestetur.

Dig. 12.1.41

Africanus 8 quaest.

Eius, qui in provincia stichum servum kalendario praeposuerat, romae testamentum recitatum erat, quo idem stichus liber et ex parte heres erat scriptus: qui status sui ignarus pecunias defuncti aut exegit aut credidit, ut interdum stipularetur et pignora acciperet. consulebatur quid de his iuris esset. placebat debitores quidem ei qui solvissent liberatos esse, si modo ipsi quoque ignorassent dominum decessisse. earum autem summarum nomine, quae ad stichum pervenissent, familiae herciscundae quidem actionem non competere coheredibus, sed negotiorum gestorum dari debere. quas vero pecunias ipse credidisset, eas non ex maiore parte, quam ex qua ipse heres sit, alienatas esse:

nam et si tibi in hoc dederim nummos, ut eos sticho credas, deinde mortuo me ignorans dederis, accipientis non facies: neque enim sicut illud receptum est, ut debitores solventes ei liberentur, ita hoc quoque receptum, ut credendo nummos alienaret. quare si nulla stipulatio intervenisset, neque ut creditam pecuniam pro parte coheredis peti posse neque pignora teneri. quod si stipulatus quoque esset, referret, quemadmodum stipulatus esset: nam si nominatim forte titio domino suo mortuo iam dari stipulatus sit, procul dubio inutiliter esset stipulatus. quod si sibi dari stipulatus esset, dicendum hereditati eum adquisisse: sicut enim nobismet ipsis ex re nostra per eos, qui liberi vel alieni servi bona fide serviant, adquiratur, ita hereditati quoque ex re hereditaria adquiri. post aditam vero a coheredibus hereditatem non aeque idem dici potest, utique si scierint eum sibi coheredem datum, quoniam tunc non possunt videri bonae fidei possessores esse, qui nec possidendi animum haberent. quod si proponatur coheredes eius id ignorasse, quod forte ipsi quoque ex necessariis fuerint, potest adhuc idem responderi: quo quidem casu illud eventurum, ut, si suae condicionis coheredes iste servus habeat, invicem bona fide servire videantur.

Dig. 12.1.42pr.

Celsus 6 Dig.

Si ego decem stipulatus a titio deinceps stipuler a seio, quanto minus a titio consequi possim: si decem petiero a titio, non liberatur seius, alioquin nequicquam mihi cavetur: at si iudicatum fecerit titius, nihil ultra seius tenebitur. sed si cum seio egero, quantumcumque est quo minus a titio exigere potuero eo tempore, quo iudicium inter me et seium acceptum est, tanto minus a titio postea petere possum.

Dig. 12.1.42.1

Celsus 6 Dig.

Labeo ait, cum decem dari curari stipulatus sis, ideo non posse te decem dare oportere intendere, quia etiam reum locupletiorem dando promissor liberari possit: quo scilicet significat non esse cogendum eum accipere iudicium, si reum locupletem offerat.

Dig. 12.2.0. De iureiurando sive voluntario sive necessario sive iudiciali.

Dig. 12.2.1

Gaius 5 ad ed. provinc.

Maximum remedium expediendarum litium in usum venit iurisiurandi religio, qua vel ex pactione ipsorum litigatorum vel ex auctoritate iudicis deciduntur controversiae.

Dig. 12.2.2

Paulus 18 ad ed.

Iusiurandum speciem transactionis continet maioremque habet auctoritatem quam res iudicata.

Dig. 12.2.3pr.

Ulpianus 22 ad ed.

Ait praetor: " si is cum quo agetur condicione delata iuraverit". eum cum quo agetur accipere debemus ipsum reum. nec frustra adicitur " condicione delata": nam si reus iuraverit nemine ei iusiurandum deferente, praetor id iusiurandum non tuebitur: sibi enim iuravit: alioquin facillimus quisque ad iusiurandum decurrens nemine sibi deferente iusiurandum oneribus actionum se liberabit.

Dig. 12.2.3.1

Ulpianus 22 ad ed.

Quacumque autem actione quis conveniatur, si iuraverit, proficiet ei iusiurandum, sive in personam sive in rem sive in factum sive poenali actione vel quavis alia agatur sive de interdicto.

Dig. 12.2.3.2

Ulpianus 22 ad ed.

Sed et si de condicione personae fuerit iuratum, praetor iusiurandum tuebitur: ut puta detuli iusiurandum et iurasti in potestate mea te non esse: tuendum erit iusiurandum.

Dig. 12.2.3.3

Ulpianus 22 ad ed.

Unde Marcellus scribit etiam de eo iurari posse, an praegnas sit mulier vel non sit, et iuriiurando standum: denique ait, si de possessione erat quaestio, servari oportere, si forte quasi praegnas ire in possessionem volebat et, cum ei contradiceretur, vel ipsa iuravit se praegnatem vel contra eam iuratum est:

nam si ipsa, ibit in possessionem sine metu, si contra eam, non ibit, quamvis vere praegnas fuerit: proderitque, inquit Marcellus, mulieri iuranti iusiurandum, ne conveniatur quasi calumniae causa ventris nomine fuerit in possessionem neve vim patiatur in possessione. sed an iusiurandum eo usque prosit, ut post editum partum non quaeratur, ex eo editus sit an non sit cuius esse dicitur, Marcellus tractat: et ait veritatem esse quaerendam, quia iusiurandum alteri neque prodest neque nocet: matris igitur iusiurandum partui non proficiet: nec nocebit, si mater detulerit et iuretur ex eo praegnas non esse.

Dig. 12.2.3.4

Ulpianus 22 ad ed.

Iurari autem oportet, ut delatum est iusiurandum: ceterum si ego detuli ut per deum iurares, tu per caput tuum iurasti.

Dig. 12.2.4

Paulus 18 ad ed.

Vel filiorum tuorum,

Dig. 12.2.5pr.

Ulpianus 22 ad ed.

Non erit ratum habendum iusiurandum: quod si exegi, ut per salutem tuam iurares, et iurasti, stabitur. omne enim omnino licitum iusiurandum, per quod voluit quis sibi iurari, idoneum est et si ex eo fuerit iuratum, praetor id tuebitur.

Dig. 12.2.5.1

Ulpianus 22 ad ed.

Divus pius iureiurando, quod propria superstitione iuratum est, standum rescripsit.

Dig. 12.2.5.2

Ulpianus 22 ad ed.

Dato iureiurando non aliud quaeritur, quam an iuratum sit, remissa quaestione an debeatur, quasi satis probatum sit iureiurando.

Dig. 12.2.5.3

Ulpianus 22 ad ed.

Sed si quis illicitum iusiurandum detulerit, scilicet improbatae publice religionis, videamus an pro eo habeatur atque si iuratum non esset: quod magis existimo dicendum.

Dig. 12.2.5.4

Ulpianus 22 ad ed.

Si neque iuratum est neque remissum iusiurandum, pro eo debet haberi, atque si res in iusiurandum admissa non esset. proinde si postea iurare paratus sit, nihil ei hoc iusiurandum proficiet, quia ex eo quod delatum est iuratum non est.

Dig. 12.2.6

Paulus 19 ad ed.

Remittit iusiurandum, qui deferente se cum paratus esset adversarius iurare gratiam ei facit contentus voluntate suscepti iurisiurandi. quod si non suscepit iusiurandum, licet postea parato iurare actor nolit deferre, non videbitur remissum: nam quod susceptum est remitti debet.

Dig. 12.2.7

Ulpianus 22 ad ed.

Ait praetor: " eius rei, de qua iusiurandum delatum fuerit, neque in ipsum neque in eum ad quem ea res pertinet actionem dabo. " eius rei sic erit accipiendum, sive de tota re sive de parte sit iuratum: nam de eo quod iuratum est pollicetur se actionem non daturum neque in eum qui iuravit neque in eos qui in locum eius cui iusiurandum delatum est succedunt,

Dig. 12.2.8

Paulus 18 ad ed.

Etiamsi in rem successerint.

Dig. 12.2.9pr.

Ulpianus 22 ad ed.

Nam posteaquam iuratum est, denegatur actio: aut, si controversia erit, id est si ambigitur. an iusiurandum datum sit, exceptioni locus est.

Dig. 12.2.9.1

Ulpianus 22 ad ed.

Iureiurando dato vel remisso reus quidem adquirit exceptionem sibi aliisque, actor vero actionem adquirit, in qua hoc solum quaeritur, an iuraverit dari sibi oportere vel, cum iurare paratus esset, iusiurandum ei remissum sit.

Dig. 12.2.9.2

Ulpianus 22 ad ed.

Si damnetur quis post iusiurandum ex famoso iudicio, famosum esse magis est.

Dig. 12.2.9.3

Ulpianus 22 ad ed.

Si is, qui temporaria actione mihi obligatus erat, detulerit iusiurandum, ut iurem eum dare oportere, egoque iuravero, tempore non liberatur, quia post litem contestatam cum eo perpetuatur adversus eum obligatio.

Dig. 12.2.9.4

Ulpianus 22 ad ed.

Si minor viginti quinque annis detulerit et hoc ipso captum se dicat, adversus exceptionem iurisiurandi replicari debebit, ut pomponius ait. ego autem puto hanc replicationem non semper esse dandam, sed plerumque ipsum praetorem debere cognoscere, an captus sit, et sic in integrum restituere: nec enim utique qui minor est statim et circumscriptum se docuit. praeterea exceptio ista sive cognitio statutum tempus post annum vicensimum quintum non debet egredi.

Dig. 12.2.9.5

Ulpianus 22 ad ed.

Sed et si quis in fraudem creditorum iusiurandum detulerit debitori, adversus exceptionem iurisiurandi replicatio fraudis creditoribus debet dari. praeterea si fraudator detulerit iusiurandum creditori, ut iuret sibi decem dari oportere, mox bonis eius venditis experiri volet, aut denegari debet actio aut exceptio opponitur fraudatorum creditorum.

Dig. 12.2.9.6

Ulpianus 22 ad ed.

Iusiurandum defensoris vel procuratoris ei ab adversario delatum prodesse exceptionemque domino parere iulianus scribit. idem ergo dicendum erit et si datus ad petendum procurator reo deferente iuraverit dari mihi oportere: nam actionem mihi parit. quae sententia habet rationem.

Dig. 12.2.9.7

Ulpianus 22 ad ed.

Si petitor iuravit possessore deferente rem suam esse, actori dabitur actio, sed hoc dumtaxat adversus eum qui iusiurandum detulit eosque qui in eius locum successerunt: ceterum adversus alium si velit praerogativa iurisiurandi uti, nihil ei proderit,

Dig. 12.2.10

Paulus 18 ad ed.

Quia non deberet alii nocere, quod inter alios actum esset.

Dig. 12.2.11pr.

Ulpianus 22 ad ed.

Sed si possessori fuerit iusiurandum delatum iuraverit rem petitoris non esse, quamdiu quidem possidet, adversus eum qui detulit iusiurandum, si petat, exceptione iurisiurandi utetur: si vero amiserit possessionem, actionem non habebit, ne quidem si is possideat qui ei iusiurandum detulit: non enim rem suam esse iuravit, sed eius non esse.

Dig. 12.2.11.1

Ulpianus 22 ad ed.

Proinde si, cum possideret, deferente petitore rem suam iuravit, consequenter dicemus amissa quoque possessione, si is qui detulit iusiurandum nanctus sit possessionem, actionem in factum ei dandam. et fructus perceptos ex re, quam meam esse iuravi, restitui mihi placuit: sed et partum editum fetusque pecorum restituendos constat post iusiurandum delatum.

Dig. 12.2.11.2

Ulpianus 22 ad ed.

Item si iuravero usum fructum alicuius rei vel meum esse vel dari mihi oportere, eatenus mihi competit actio, quatenus, si vere usum fructum haberem, duraret: quibus vero casibus amitteretur, non competit mihi actio. sed si rerum, in quibus usus fructus propter abusum constitui non potest, iuraverit usum fructum se habere vel sibi deberi, effectum iurisiurandi sequendum arbitror ideoque tunc quoque videri eum recte iurasse puto et ex eo iureiurando posse petere usum fructum cautione oblata.

Dig. 12.2.11.3

Ulpianus 22 ad ed.

Si, cum de hereditate inter me et te controversia esset, iuravero hereditatem meam esse, id consequi debeo, quod haberem, si secundum me de hereditate pronuntiatum esset. et non solum eas res restituere debes, quas tunc possidebas, sed et si quas postea coepisses possidere, perindeque haberi quod iuratum est atque si probatum esset: idcirco utilis actio mihi competit, quod si ego ex eadem hereditate possiderem tuque coepisses petere eam a me, cum adversus te iurassem, exceptione me uti debere iurisiurandi. plane si alius a me hereditatem petere coeperit, dubium non erit, ut et iulianus scribit, nihil mihi iusiurandum prodesse.

Dig. 12.2.12

Iulianus 9 Dig.

Idem est et si ego a quolibet alio possidente res hereditarias petere velim, quia et si petissem a te hereditatem et probassem meam, nihilo minus ab altero petendo id ipsum probare necesse haberem.

Dig. 12.2.13pr.

Ulpianus 22 ad ed.

Si duo patroni essent et libertus altero deferente iurasset se libertum eius non esse, utrum alteri totius debitae patronis portionis an vero dimidiae debitae eis partis bonorum possessio competeret? et ait, si is cui iuratum est patronus fuisset, alteri suae partis bonorum possessionem competere nec ei prodesse, quod adversus alterum libertus iurasset: multum tamen fidei et auctoritatis apud iudicem patronum habiturum, quo magis solum se patronum probaret, quod libertus iurasset alterum patronum non esse.

Dig. 12.2.13.1

Ulpianus 22 ad ed.

Iulianus ait eum, qui iuravit fundum suum esse, post longi temporis praescriptionem etiam utilem actionem habere debere.

Dig. 12.2.13.2

Ulpianus 22 ad ed.

Idem iulianus scribit eum, qui iuravit furtum se non fecisse, videri de toto iurasse, atque ideo neque furti neque condicticia tenetur, quia condicticia, inquit, solus fur tenetur. numquid ergo qui iuravit se furtum ne fecisse hoc solo nomine, condictione si conveniatur, exceptione utatur? ceterum si contendat qui condicit quasi cum herede se furis agere, non debet repelli et quasi monomerys condictio ei dari debet adversus furis heredem nec pati eum iudex debet, si coeperit temptare probare furem.

Dig. 12.2.13.3

Ulpianus 22 ad ed.

Si quis iuraverit vendidisse me ei rem centum, ex empto agere poterit, ut ei cetera praestentur, id est res tradatur et de evictione caveatur: an tamen ad pretium consequendum ex venditio conveniri possit, videndum. et si quidem et de hoc ipso iuratum est, quod pretium solutum est, nulla pro pretio actio superest: si vero hoc non fuerit iuratum, tunc consequens est de pretio eum teneri.

Dig. 12.2.13.4

Ulpianus 22 ad ed.

Idem dicemus et si quis societatem fecisse iuraverit: nam et is pro socio poterit conveniri.

Dig. 12.2.13.5

Ulpianus 22 ad ed.

Marcellus etiam scribit, si quis iuraverit ob decem pignori dedisse fundum, non alias eum pigneraticia agere posse, quam si decem solverit: sed et illud adici fortassis eum etiam in decem ex iureiurando suo posse conveniri, quod magis probat. cui quintus saturninus consentit argumentoque utitur eius, qui iuravit eam, quae uxor sua fuerit, rem sibi in dotem dedisse: nam et hic uxori ait utilem de dote actionem dandam. quae non esse extra aequitatem posita non negaverim.

Dig. 12.2.13.6

Ulpianus 22 ad ed.

Si quis iuraverit in re pecuniaria per genium principis dare se non oportere et peieraverit vel dari sibi oportere, vel intra certum tempus iuraverit se soluturum nec solvit: imperator noster cum patre rescripsit fustibus eum castigandum dimittere et ita ei superdici: propetws my omnue.

Dig. 12.2.14

Paulus 3 ad ed.

Quotiens propter rem iuratur, nec parenti nec patrono remittitur iusiurandum: propter rem autem iusiurandum exigitur veluti de pecunia credita, cum iurat actor sibi dari oportere vel reus se dare non oportere. idem est, cum de pecunia constituta iusiurandum exigitur.

Dig. 12.2.15

Paulus 6 ad ed.

Ad personas egregias eosque qui valetudine impediuntur domum mitti oportet ad iurandum.

Dig. 12.2.16

Ulpianus 10 ad ed.

Si patronus libertam suam uxorem duxerit, non compelletur iurare de rerum amotarum iudicio. sed et si ipse deferat iusiurandum libertae suae, de calumnia non debet iurare.

Dig. 12.2.17pr.

Paulus 18 ad ed.

Iusiurandum, quod ex conventione extra iudicium defertur, referri non potest.

Dig. 12.2.17.1

Paulus 18 ad ed.

Pupillus tutore auctore iusiurandum deferre debet: quod si sine tutore auctore detulerit, exceptio quidem obstabit, sed replicabitur, quia rerum administrandarum ius ei non competit.

Dig. 12.2.17.2

Paulus 18 ad ed.

Si tutor qui tutelam gerit aut curator furiosi prodigive iusiurandum detulerit, ratum id haberi debet: nam et alienare res et solvi eis potest et agendo rem in iudicium deducunt.

Dig. 12.2.17.3

Paulus 18 ad ed.

Procurator quoque quod detulit ratum habendum est, scilicet si aut universorum bonorum administrationem sustinet aut si id ipsum nominatim mandatum sit aut si in rem suam procurator sit:

Dig. 12.2.18

Ulpianus 26 ad ed.

Alias autem procuratorem deferentem iusiurandum non esse audiendum iulianus libro decimo digestorum scribit, ne postea reus, qui semel iuravit, a domino conveniatur: nec multum ei proficere, si fuerit ei de rato cautum: sive enim dominus petat, cogetur docere reus liquido se iurasse posita scilicet exceptione, sive ex stipulatione de rato agat, necesse habebit ipse de periurio suo docere.

Dig. 12.2.19

Ulpianus 26 ad ed.

Si itaque mandatum fuit procuratori, ut petat, ille iusiurandum detulit, aliud fecit quam quod mandatum est.

Dig. 12.2.20

Paulus 18 ad ed.

Servus quod detulit vel iuravit, servetur, si peculii administrationem habuit:

Dig. 12.2.21

Gaius 5 ad ed. provinc.

Huic enim solvi quoque recte potest et novandae obligationis ius habuit.

Dig. 12.2.22

Paulus 18 ad ed.

Quidam et de peculio actionem dandam in dominum, si actori detulerit servus iusiurandum. eadem de filio familias dicenda sunt.

Dig. 12.2.23

Ulpianus 26 ad ed.

Si servus iuraverit dominum dare non oportere, exceptio domino indulgenda est sibique adversarius imputabit, qui servo detulit iusiurandum.

Dig. 12.2.24

Paulus 28 ad ed.

Multo magis proderit patri religio filii, cum quo etiam iudicium consistere potest. ipsi autem referentes condicionem eorum, quibus subiecti sunt, non faciunt deteriorem.

Dig. 12.2.25

Ulpianus 26 ad ed.

Sed et si servus meus delato vel relato ei iureiurando, iuravit rem domini esse vel ei dari oportere, puto dandam mihi actionem vel pacti exceptionem propter religionem et conventionem.

Dig. 12.2.26pr.

Paulus 18 ad ed.

Qui iurasse dicitur nihil refert cuius sexus aetatisve sit: omni enim modo custodiri debet iusiurandum adversus eum, qui contentus eo cum deferret fuit: quamvis pupillus non videatur peierare, quia sciens fallere non videatur.

Dig. 12.2.26.1

Paulus 18 ad ed.

Si pater filium dare non oportere iuraverit, cassius respondit et patri et filio dandam exceptionem iurisiurandi: si pater iuraverit in peculio nihil esse, filius conveniri poterit: sed et pater ita convenietur, ut post adquisiti peculii ratio habeatur.

Dig. 12.2.26.2

Paulus 18 ad ed.

Iurisiurandi condicio ex numero esse potest videri novandi delegandive, quia proficiscitur ex conventione, quamvis habeat et instar iudicii.

Dig. 12.2.27

Gaius 5 ad ed. provinc.

Iusiurandum etiam loco solutionis cedit.

Dig. 12.2.28pr.

Paulus 18 ad ed.

In duobus reis stipulandi ab altero delatum iusiurandum etiam alteri nocebit.

Dig. 12.2.28.1

Paulus 18 ad ed.

Quod reus iuravit, etiam fideiussori proficit. a fideiussore exactum iusiurandum prodesse etiam reo cassius et iulianus aiunt: nam quia in locum solutionis succedit, hic quoque eodem loco habendum est: si modo ideo interpositum est iusiurandum, ut de ipso contractu et de re, non de persona iurantis ageretur.

Dig. 12.2.28.2

Paulus 18 ad ed.

Si ei, qui debitorem meum in iudicium exhibere promisit, iusiurandum detulerim isque iuraverit se omnino exhibitionem eius non promisisse, prodesse debitori meo id non debet: si vero iuraverit se nihil mihi praestare oportere, distinguendum sit et replicatione emendandum, utrum ideo iuraverit an quia post promissionem exhibuerit an vero quia solverit: quod et in fideiussorem debiti distinguendum est.

Dig. 12.2.28.3

Paulus 18 ad ed.

Ex duobus reis promittendi eiusdem pecuniae alter iuravit: alteri quoque prodesse debebit.

Dig. 12.2.28.4

Paulus 18 ad ed.

Exceptio iurisiurandi non tantum si ea actione quis utatur, cuius nomine exegit iusiurandum, opponi debet, sed etiam si alia, si modo eadem quaestio in hoc iudicium deducatur, forte si ob actionem mandati negotiorum gestorum societatis ceterasque similes iusiurandum exactum sit, deinde ex isdem causis certum condicatur, quia per alteram actionem altera quoque consumitur.

Dig. 12.2.28.5

Paulus 18 ad ed.

Si quis iuraverit se non rapuisse, non debet adiuvari hoc iureiurando in actione furti aut condictione, quia aliud est furtum fecisse, quod vel clam fieri potest.

Dig. 12.2.28.6

Paulus 18 ad ed.

Colonus, cum quo propter succisas forte arbores agebatur ex locato, si iuraverit se non succidisse, sive e lege duodecim tabularum de arboribus succisis sive e lege aquilia damni iniuria sive interdicto quod vi aut clam postea convenietur, per exceptionem iurisiurandi defendi poterit.

Dig. 12.2.28.7

Paulus 18 ad ed.

Quae iuravit divortii causa rem se non amovisse, non debet defendi per exceptionem, si cum ea in rem agatur, et si contendat suam esse, alio iureiurando opus est: contra si iuraverit suam esse, debet in actione rerum amotarum defendi. et omnino hoc observandum est, licet per aliam actionem eadem quaestio moveatur, ut exceptio iurisiurandi locum habeat.

Dig. 12.2.28.8

Paulus 18 ad ed.

Igitur si quis iuravit se non esse condemnatum, etiamsi ex stipulatu iudicatum solvi ob rem iudicatam conveniatur, defendetur per exceptionem. contra si, cum ex stipulatu iudicatum solvi conveniretur, iuravit se dare non oportere, agenti iudicati non utique obstabit exceptio: potest enim fieri, ut non sit commissa stipulatio, licet res iudicata sit: nisi ideo iurasset, quod nec damnatum se esse diceret.

Dig. 12.2.28.9

Paulus 18 ad ed.

Item pomponius ait eum, qui furtum sibi factum alicuius rei iuravit, non statim etiam condictionis causam nancisci.

Dig. 12.2.28.10

Paulus 18 ad ed.

Item cum ex hac parte iusiurandum et actionem et exceptionem inducat, si forte reus extra iudicium actore inferente iuraverit se dare non oportere et actor reo deferente dari sibi oportere, vel contra, posterior causa iurisiurandi potior habebitur: nec tamen praeiudicium periurio alterius fiet, quia non quaeretur, an dare eum oportet, sed an actor iuraverit.

Dig. 12.2.29

Tryphonus 6 disp.

Quod si iuravi te deferente non iurasse te dare tibi oportere, et adversus utilem actionem, qua hoc quaeritur, an iuraveris tibi dari oportere, opponenda est exceptio iurisiurandi perementis quaestionem actione comprehensam.

Dig. 12.2.30pr.

Paulus 18 ad ed.

Eum, qui iuravit ex ea actione quae infitiando crescit aliquid sibi deberi, simpli, non dupli persecutionem sibi adquirere pedius ait: abunde enim sufficere exonerare petitorem probandi necessitate, cum omissa hac parte edicti dupli actio integra maneat: et potest dici hoc iudicio non principalem causam exerceri, sed iusiurandum actoris conservari.

Dig. 12.2.30.1

Paulus 18 ad ed.

Si iuravero te stichum mihi dare oportere, qui non sit in rerum natura, nec aestimationem mihi praestare reus debet nisi ex causa furtiva vel propter moras: tunc enim etiam post mortem servi aestimatio praestatur.

Dig. 12.2.30.2

Paulus 18 ad ed.

Si mulier iuraverit decem dotis sibi deberi, tota ea summa praestanda est: sed si iuravit decem se dedisse in dotem, hoc solum non erit quaerendum, an data sint, sed quasi data sint, quod ex eo reddi oportet praestandum erit.

Dig. 12.2.30.3

Paulus 18 ad ed.

In popularibus actionibus iusiurandum exactum ita demum adversus alios proderit, si bona fide exactum fuerit: nam et si quis egerit, ita demum consumit publicam actionem, si non per collusionem actum sit.

Dig. 12.2.30.4

Paulus 18 ad ed.

Si libertus deferente patrono iuravit se libertum non esse, ratum habendum est iusiurandum, ut nec operarum petitio nec bonorum possessio contra tabulas dari debeat.

Dig. 12.2.30.5

Paulus 18 ad ed.

Si iuravero usum fructum mihi dari oportere, non aliter dari debet, quam si caveam boni viri arbitratu me usurum et finito usu fructu restituturum.

Dig. 12.2.31

Gaius 30 ad ed. provinc.

Admonendi sumus interdum etiam post iusiurandum exactum permitti constitutionibus principum ex integro causam agere, si quis nova instrumenta se invenisse dicat, quibus nunc solis usurus sit. sed hae constitutiones tunc videntur locum habere, cum a iudice aliquis absolutus fuerit (solent enim saepe iudices in dubiis causis exacto iureiurando secundum eum iudicare qui iuraverit): quod si alias inter ipsos iureiurando transactum sit negotium, non conceditur eandem causam retractare.

Dig. 12.2.32

Modestinus libro diff.

Iurisiurandi gratiam facere pupillus non potest.

Dig. 12.2.33

Ulpianus 28 ad sab.

Qui per salutem suam iurat, licet per deum iurare videtur (respectu enim divini numinis ita iurat), attamen, si non ita specialiter iusiurandum ei delatum est, iurasse non videtur: et ideo ex integro sollemniter iurandum est.

Dig. 12.2.34pr.

Ulpianus 26 ad ed.

Iusiurandum et ad pecunias et ad omnes res locum habet: etiam de operis iusiurandum deferri potest. nec de iniuria queri adversarius potest, cum possit iusiurandum referre. quid tamen, si ideo dicat reus se liberatum, quoniam stichum, quem promiserat, putat decessisse? non erit tutus per relationem. et ideo ex hac causa putat Marcellus, et recte, aut remittendum ei iusiurandum aut spatium dandum, ut certioretur et sic iuret.

Dig. 12.2.34.1

Ulpianus 26 ad ed.

Defensor municipum vel cuiusvis corporis iusiurandum deferre potest, si super hoc mandatum habeat.

Dig. 12.2.34.2

Ulpianus 26 ad ed.

Pupillo non defertur iusiurandum.

Dig. 12.2.34.3

Ulpianus 26 ad ed.

Procurator non compellitur iurare nec defensor, et ita iulianus scribit libro decimo digestorum defensorem iurare non compelli sufficereque ad plenam defensionem, si paratus sit iudicium accipere.

Dig. 12.2.34.4

Ulpianus 26 ad ed.

Qui iusiurandum defert, prior de calumnia debet iurare, si hoc exigatur, deinde sic ei iurabitur. hoc iusiurandum de calumnia aeque patrono parentibusque remittitur.

Dig. 12.2.34.5

Ulpianus 26 ad ed.

Si de qualitate iuramenti fuerit inter partes dubitatum, conceptio eius arbitri iudicantis est.

Dig. 12.2.34.6

Ulpianus 26 ad ed.

Ait praetor: " eum, a quo iusiurandum petetur, solvere aut iurare cogam": alterum itaque eligat reus, aut solvat aut iuret: si non iurat, solvere cogendus erit a praetore.

Dig. 12.2.34.7

Ulpianus 26 ad ed.

Datur autem et alia facultas reo, ut, si malit, referat iusiurandum: et si is qui petet condicione iurisiurandi non utetur, iudicium ei praetor non dabit. aequissime enim hoc facit, cum non deberet displicere condicio iurisiurandi ei qui detulit: sed nec iusiurandum de calumnia referenti defertur, quia non est ferendus actor, si condicionis quam ipse detulit de calumnia velit sibi iurari.

Dig. 12.2.34.8

Ulpianus 26 ad ed.

Non semper autem consonans est per omnia referri iusiurandum quale defertur, forsitan ex diversitate rerum vel personarum quibusdam emergentibus, quae varietatem inducunt: ideoque si quid tale inciderit, officio iudicis conceptio huiuscemodi iurisiurandi terminetur.

Dig. 12.2.34.9

Ulpianus 26 ad ed.

Cum res in iusiurandum demissa sit, iudex iurantem absolvit: referentem audiet et, si actor iuret, condemnet reum: nolentem iurare reum si solvat, absolvit, non solventem condemnat: ex relatione non iurante actore absolvit reum.

Dig. 12.2.35pr.

Paulus 28 ad ed.

Tutor pupilli omnibus probationibus aliis deficientibus iusiurandum deferens audiendus est: quandoque enim pupillo denegabitur actio.

Dig. 12.2.35.1

Paulus 28 ad ed.

Prodigus si deferat iusiurandum, audiendus non est: idemque in ceteris similibus ei dicendum est. nam sive pro pacto convento sive pro solutione sive pro iudicio hoc iusiurandum cedit, non ab aliis delatum probari debet, quam qui ad haec habiles sunt.

Dig. 12.2.35.2

Paulus 28 ad ed.

Qui non compelluntur romae iudicium accipere, nec iurare compellendi sunt, ut legati provinciales.

Dig. 12.2.36

Ulpianus 27 ad ed.

Si actor deferat iusiurandum de sola constituta pecunia et reus iuraverit, exceptione utetur, si de constituta conveniatur: sed si de sorte, id est de priore obligatione conveniatur, exceptio cessabit, nisi de hac quoque iuraverit adversario deferente.

Dig. 12.2.37

Ulpianus 33 ad ed.

Si non fuerit remissum iusiurandum ab eo qui detulerit, sed de calumnia non iuratur, consequens est, ut debeat denegari ei actio: sibi enim imputet, qui processit ad delationem iurisiurandi nec prius de calumnia iuravit, ut sit iste remittendi similis.

Dig. 12.2.38

Paulus 37 ad ed.

Manifestae turpitudinis et confessionis est nolle nec iurare nec iusiurandum referre.

Dig. 12.2.39

Iulianus 10 Dig.

Si quis cum debitore suo pepigerit, ne ab eo pecunia peteretur, si iurasset se capitolium non ascendisse vel aliud quodlibet fecisse vel non fecisse, isque iuraverit, et exceptio iurisiurandi dari debebit et solutum repeti poterit: est enim iusta conventio, si quaelibet causa in condicione iurisiurandi deducta fuerit.

Dig. 12.2.40

Iulianus 13 Dig.

Iusiurandum a debitore exactum efficit, ut pignus liberetur: est enim hoc acceptilationi simile: perpetuam certe exceptionem parit. idcirco poenam quoque petentem creditorem exceptione summoveri oportet et solutum repeti potest, utpote cum interposito eo ab omni controversia discedatur.

Dig. 12.2.41

Pomponius l.S. reg.

Labeo etiam absenti et ignoranti iurisiurandi gratiam fieri posse respondit: sed et per epistulam gratia iurisiurandi fieri potest.

Dig. 12.2.42pr.

Pomponius 18 epist.

Creditore, qui de mutua pecunia contra pupillum contendebat, iusiurandum deferente pupillus iuravit se dare non oportere: eandem pecuniam a fideiussore eius petit: an excludendus sit exceptione iurisiurandi? quid tibi placet, rescribe mihi. eam rem apertius explicat iulianus. nam si controversia inter creditorem et pupillum fuerit, an omnino pecuniam mutuam accepisset, et convenit, ut ab omni condicione discederetur, si pupillus iurasset, isque iuraverit se dare non oportere, naturalis obligatio hac pactione tolletur et soluta pecunia repeti poterit. sin vero creditor quidem se mutuam dedisse contendebat, pupillus autem hoc solo defendebatur, quod tutor eius non intervenisset et hoc tale iusiurandum interpositum est, hoc casu fideiussorem praetor non tuebitur. si autem liquido probari non potest, quid actum sit, et in obscuro erit (ut plerumque fit), de facto an de iure inter creditorem et pupillum controversia fuerit deferente creditore pupillum iurasse, intellegere debemus id actum inter eos, ut, si iurasset se dare non oportere, ab omni condicione discederetur: atque ita et solutam pecuniam repeti posse et fideiussoribus exceptionem dari debere existimavimus.

Dig. 12.2.42.1

Pomponius 18 epist.

Si fideiussor iuraverit se dare non oportere, exceptione iurisiurandi reus promittendi tutus est: atquin si, quasi omnino idem non fideiussisset, iuravit, non debet hoc iusiurandum reo promittendi prodesse.

Dig. 12.2.42.2

Pomponius 18 epist.

Sed et si actore deferente defensor absentis vel praesentis iuravit eum quem defendit dare non oportere, exceptio iurisiurandi ei cuius nomine iurandum fuerit dari debebit. eadem ratio est et si fideiussoris defensor iuraverit: reo enim detur exceptio:

Dig. 12.2.42.3

Pomponius 18 epist.

Item si reus iuravit, fideiussor tutus sit, quia res iudicata secundum alterutrum eorum utrique proficeret.

Dig. 12.3.0. De in litem iurando.

Dig. 12.3.1

Ulpianus 51 ad sab.

Rem in iudicio deductam non idcirco pluris esse opinamur, quia crescere condemnatio potest ex contumacia non restituentis per iusiurandum in litem: non enim res pluris fit per hoc, sed ex contumacia aestimatur ultra rei pretium.

Dig. 12.3.2

Paulus 13 ad sab.

Sive nostrum quid petamus sive ad exhibendum agatur, interdum quod intersit agentis solum aestimatur, veluti cum culpa non restituentis vel non exhibentis punitur: cum vero dolus aut contumacia non restituentis vel non exhibentis, quanti in litem iuraverit actor.

Dig. 12.3.3

Ulpianus 30 ad ed.

Nummis depositis iudicem non oportet in litem iusiurandum deferre, ut iuret quisque quod sua interfuit, cum certa sit nummorum aestimatio. nisi forte de eo quis iuret, quod sua interfuit nummos sibi sua die redditos esse: quid enim, si sub poena pecuniam debuit? aut sub pignore, quod, quia deposita ei pecunia adnegata est, distractum est?

Dig. 12.3.4pr.

Ulpianus 36 ad ed.

Videamus in tutelari causa quis iurare et adversus quem possit. et quidem ipse pupillus, si impubes est, non potest: hoc enim saepissime rescriptum est. sed nec tutorem cogendum vel matrem pupilli admittendam, etsi parata esset iurare, divi fratres rescripserunt: grave enim videbatur et ignorantes et invitos tutores sub alieni compendii emolumento etiam periurium anceps subire. curatores quoque pupilli vel adulescentis non esse cogendos in litem iurare rescriptis imperatoris nostri et divi patris eius continetur. si tamen tantam affectionem pupillo suo vel adulescenti tutores vel curatores praestare volunt, auctoritas iuris non refragabitur, quin iudicio, quod inter ipsos acceptum est, finis eiusmodi possit adhiberi. non enim ad suam utilitatem iurisiurandi referenda aestimatio est, sed ad domini, cuius nomine tutelae ratio postulatur. adulescens vero si velit iurare potest.

Dig. 12.3.4.1

Ulpianus 36 ad ed.

Deferre autem iusiurandum iudicem oportet: ceterum si alius detulerit iusiurandum vel non delato iuratum sit, nulla erit religio nec ullum iusiurandum: et ita constitutionibus expressum est imperatoris nostri et divi patris eius.

Dig. 12.3.4.2

Ulpianus 36 ad ed.

Iurare autem in infinitum licet. sed an iudex modum iuriiurando statuere possit, ut intra certam quantitatem iuretur, ne arrepta occasione in immensum iuretur, quaero. et quidem in arbitrio esse iudicis deferre iusiurandum nec ne constat: an igitur qui possit iusiurandum non deferre, idem possit et taxationem iuriiurando adicere, quaeritur: arbitrio tamen bonae fidei iudicis etiam hoc congruit.

Dig. 12.3.4.3

Ulpianus 36 ad ed.

Item videndum, an possit iudex, qui detulit iusiurandum, non sequi id, sed vel prorsus absolvere vel etiam minoris condemnare quam iuratum est: et magis est, ut ex magna causa et postea repertis probationibus possit.

Dig. 12.3.4.4

Ulpianus 36 ad ed.

Ex culpa autem non esse iusiurandum deferendum constat, sed aestimationem a iudice faciendam.

Dig. 12.3.5pr.

Marcianus 4 reg.

In actionibus in rem et in ad exhibendum et in bonae fidei iudiciis in litem iuratur.

Dig. 12.3.5.1

Marcianus 4 reg.

Sed iudex potest praefinire certam summam, usque ad quam iuretur: licuit enim ei a primo nec deferre.

Dig. 12.3.5.2

Marcianus 4 reg.

Item et si iuratum fuerit, licet iudici vel absolvere vel minoris condemnare.

Dig. 12.3.5.3

Marcianus 4 reg.

Sed in his omnibus ob dolum solum in litem iuratur, non etiam ob culpam: haec enim iudex aestimat.

Dig. 12.3.5.4

Marcianus 4 reg.

Plane interdum et in actione stricti iudicii in litem iurandum est, veluti si promissor stichi moram fecerit et stichus decesserit, quia iudex aestimare sine relatione iurisiurandi non potest rem quae non extat:

Dig. 12.3.6

Paulus 26 ad ed.

Alias, si ex stipulatu vel ex testamento agatur, non solet in litem iurari.

Dig. 12.3.7

Ulpianus 8 ad ed.

Volgo praesumitur alium in litem non debere iurare quam dominum litis: denique papinianus ait alium non posse iurare quam eum, qui litem suo nomine contestatus est.

Dig. 12.3.8

Marcellus 8 Dig.

Tutor rem adulti, quam possidet, restituere ei non vult: quaero, utrum quanti res est an quanti in litem iuratum fuerit condemnari debet, respondi: non est aequum pretio, id est quanti res est, litem aestimari, cum et contumacia punienda sit et arbitrio potius domini rei pretium statuendum sit potestate petitori in litem iurandi concessa.

Dig. 12.3.9

Iavolenus 15 ex cass.

Cum furti agitur, iurare ita oportet " tanti rem fuisse cum furtum factum sit", non adici " eo plurisve", quia quod res pluris est, utique tanti est.

Dig. 12.3.10

Callistratus 1 quaest.

In instrumentis, quae quis non exhibet, actori permittitur in litem iurare, quanti sua interest ea proferri, ut tanti condemnetur reus: idque etiam divus commodus rescripsit.

Dig. 12.3.11

Paulus 3 resp.

De periurio eius, qui ex necessitate iuris in litem iuravit, quaeri facile non solere.

Dig. 12.4.0. De condictione causa data causa non secuta.

Dig. 12.4.1pr.

Ulpianus 26 ad ed.

Si ob rem non inhonestam data sit pecunia, ut filius emanciparetur vel servus manumitteretur vel a lite discedatur, causa secuta repetitio cessat.

Dig. 12.4.1.1

Ulpianus 26 ad ed.

Si parendi condicioni causa tibi dedero decem, mox repudiavero hereditatem vel legatum, possum condicere.

Dig. 12.4.2

Hermogenianus 2 iuris epit.

Sed et si falsum testamentum sine scelere eius qui dedit vel inofficiosum pronuntietur, veluti causa non secuta decem repetentur.

Dig. 12.4.3pr.

Ulpianus 26 ad ed.

Dedi tibi pecuniam, ne ad iudicem iretur: quasi decidi. an possim condicere, si mihi non caveatur ad iudicem non iri? et est verum multum interesse, utrum ob hoc solum dedi, ne eatur, an ut et mihi repromittatur non iri: si ob hoc, ut et repromittatur, condici poterit, si non repromittatur: si ut ne eatur, condictio cessat quamdiu non itur.

Dig. 12.4.3.1

Ulpianus 26 ad ed.

Idem erit et si tibi dedero, ne stichum manumittas: nam secundum distinctionem supra scriptam aut admittenda erit repetitio aut inhibenda.

Dig. 12.4.3.2

Ulpianus 26 ad ed.

Sed si tibi dedero, ut stichum manumittas: si non facis, possum condicere, aut si me paeniteat, condicere possum.

Dig. 12.4.3.3

Ulpianus 26 ad ed.

Quid si ita dedi, ut intra certum tempus manumittas? si nondum tempus praeteriit, inhibenda erit repetitio, nisi paeniteat: quod si praeteriit, condici poterit. sed si stichus decesserit, an repeti quod datum est possit? proculus ait, si post id temporis decesserit, quo manumitti potuit, repetitionem esse, si minus, cessare.

Dig. 12.4.3.4

Ulpianus 26 ad ed.

Quin immo et si nihil tibi dedi, ut manumitteres, placuerat tamen, ut darem, ultro tibi competere actionem, quae ex hoc contractu nascitur, id est condictionem defuncto quoque eo.

Dig. 12.4.3.5

Ulpianus 26 ad ed.

Si liber homo, qui bona fide serviebat, mihi pecuniam dederit, ut eum manumittam, et fecero: postea liber probatus an mihi condicere possit, quaeritur. et iulianus libro undecimo digestorum scribit competere manumisso repetitionem. neratius etiam libro membranarum refert paridem pantomimum a domitia neronis filia decem, quae ei pro libertate dederat, repetisse per iudicem nec fuisse quaesitum, an domitia sciens liberum accepisset.

Dig. 12.4.3.6

Ulpianus 26 ad ed.

Si quis quasi statuliber mihi decem dederit, cum iussus non esset, condicere eum decem celsus scribit.

Dig. 12.4.3.7

Ulpianus 26 ad ed.

Sed si servus, qui testamento heredi iussus erat decem dare et liber esse, codicillis pure libertatem accepit et id ignorans dederit heredi decem, an repetere possit? et refert patrem suum celsum existimasse repetere eum non posse: sed ipse celsus naturali aequitate motus putat repeti posse. quae sententia verior est, quamquam constet, ut et ipse ait, eum qui dedit ea spe, quod se ab eo qui acceperit remunerari existimaret vel amiciorem sibi esse eum futurum, repetere non posse opinione falsa deceptum.

Dig. 12.4.3.8

Ulpianus 26 ad ed.

Suptilius quoque illud tractat, an ille, qui se statuliberum putaverit, nec fecerit nummos accipientis, quoniam heredi dedit quasi ipsius heredis nummos daturus, non quasi suos, qui utique ipsius fuerunt, adquisiti scilicet post libertatem ei ex testamento competentem. et puto, si hoc animo dedit, non fieri ipsius: nam et cum tibi nummos meos quasi tuos do, non facio tuos. quid ergo, si hic non heredi, sed alii dedit, cui putabat se iussum? si quidem peculiares dedit, nec fecit accipientis: si autem alius pro eo dedit aut ipse dedit iam liber factus, fient accipientis.

Dig. 12.4.3.9

Ulpianus 26 ad ed.

Quamquam permissum sit statulibero etiam de peculio dare implendae condicionis causa, si tamen vult heres nummos salvos facere, potest eum vetare dare: sic enim fiet, ut et statuliber perveniat ad libertatem quasi impleta condicione cui parere prohibitus est, et nummi non peribunt. sed is, quem testator accipere voluit, adversus heredem in factum actione agere potest, ut testatori pareatur.

Dig. 12.4.4

Ulpianus 39 ad ed.

Si quis accepto tulerit debitori suo, cum conveniret, ut expromissorem daret, nec ille det, potest dici condici posse ei, qui accepto sit liberatus.

Dig. 12.4.5pr.

Ulpianus 2 disp.

Si pecuniam ideo acceperis, ut capuam eas, deinde parato tibi ad proficiscendum condicio temporis vel valetudinis impedimento fuerit, quo minus proficiscereris, an condici possit, videndum: et cum per te non steterit, potest dici repetitionem cessare: sed cum liceat paenitere ei qui dedit, procul dubio repetetur id quod datum est, nisi forte tua intersit non accepisse te ob hanc causam pecuniam. nam si ita se res habeat, ut, licet nondum profectus sis, ita tamen rem composueris, ut necesse habeas proficisci, vel sumptus, qui necessarii fuerunt ad profectionem, iam fecisti, ut manifestum sit te plus forte quam accepisti erogasse, condictio cessabit: sed si minus erogatum sit, condictio locum habebit, ita tamen, ut indemnitas tibi praestetur eius quod expendisti.

Dig. 12.4.5.1

Ulpianus 2 disp.

Si servum quis tradiderit alicui ita, ut ab eo intra certum tempus manumitteretur, si paenituerit eum qui tradiderit et super hoc eum certioraverit et fuerit manumissus post paenitentiam, attamen actio propter paenitentiam competit ei qui dedit. plane si non manumiserit, constitutio succedit facitque eum liberum, si nondum paenituerat eum qui in hoc dedit.

Dig. 12.4.5.2

Ulpianus 2 disp.

Item si quis dederit titio decem, ut servum emat et manumittat, deinde paeniteat, si quidem nondum emptus est, paenitentia dabit condictionem, si hoc ei manifestum fecerit, ne si postea emat, damno adficietur: si vero iam sit emptus, paenitentia non facit iniuriam ei qui redemit, sed pro decem quae accepit ipsum servum quem emit restituet aut, si ante decessisse proponatur, nihil praestabit, si modo per eum factum non est. quod si fugit nec culpa eius contigit qui redemit, nihil praestabit: plane repromittere eum oportet, si in potestatem suam pervenerit, restitutum iri.

Dig. 12.4.5.3

Ulpianus 2 disp.

Sed si accepit pecuniam ut servum manumittat isque fugerit prius quam manumittatur, videndum, an condici possit quod accepit. et si quidem distracturus erat hunc servum et propter hoc non distraxit, quod acceperat ut manumittat non oportet ei condici: plane cavebit, ut, si in potestatem suam pervenerit servus, restituat id quod accepit eo minus, quo vilior servus factus est propter fugam. plane si adhuc eum manumitti velit is qui dedit, ille vero manumittere nolit propter fugam offensus, totum quod accepit restituere eum oportet. sed si eligat is, qui decem dedit, ipsum servum consequi, necesse est aut ipsum ei dari aut quod dedit restitui. quod si distracturus non erat eum, oportet id quod accepit restitui, nisi forte diligentius eum habiturus esset, si non accepisset ut manumitteret: tunc enim non est aequum eum et servo et toto pretio carere.

Dig. 12.4.5.4

Ulpianus 2 disp.

Sed ubi accepit, ut manumitteret, deinde servus decessit, si quidem moram fecit manumissioni, consequens est, ut dicamus refundere eum quod accepit: quod si moram non fecit, sed cum profectus esset ad praesidem vel apud quem manumittere posset, servus in itinere decesserit, verius est, si quidem distracturus erat vel quo ipse usurus, oportere dici nihil eum refundere debere. enimvero si nihil eorum facturus, ipsi adhuc servum obisse: decederet enim et si non accepisset ut manumitteret: nisi forte profectio manumissionis gratia morti causam praebuit, ut vel a latronibus sit interfectus, vel ruina in stabulo oppressus, vel vehiculo obtritus, vel alio quo modo, quo non periret, nisi manumissionis causa proficisceretur.

Dig. 12.4.6

Ulpianus 3 disp.

Si extraneus pro muliere dotem dedisset et pactus esset, ut, quoquo modo finitum esset matrimonium, dos ei redderetur, nec fuerint nuptiae secutae, quia de his casibus solummodo fuit conventum qui matrimonium sequuntur, nuptiae autem secutae non sint, quaerendum erit, utrum mulieri condictio an ei qui dotem dedit competat. et verisimile est in hunc quoque casum eum qui dat sibi prospicere: nam quasi causa non secuta habere potest condictionem, qui ob matrimonium dedit, matrimonio non copulato, nisi forte evidentissimis probationibus mulier ostenderit hoc eum ideo fecisse, ut ipsi magis mulieri quam sibi prospiceret. sed et si pater pro filia det et ita convenit, nisi evidenter aliud actum sit, condictionem patri competere Marcellus ait.

Dig. 12.4.7pr.

Iulianus 16 Dig.

Qui se debere pecuniam mulieri putabat, iussu eius dotis nomine promisit sponso et solvit: nuptiae deinde non intercesserunt: quaesitum est, utrum ipse potest repetere eam pecuniam qui dedisset, an mulier. nerva, atilicinus responderunt, quoniam putasset quidem debere pecuniam, sed exceptione doli mali tueri se potuisset, ipsum repetiturum. sed si, cum sciret se nihil mulieri debere, promisisset, mulieris esse actionem, quoniam pecunia ad eam pertineret. si autem vere debitor fuisset et ante nuptias solvisset et nuptiae secutae non fuissent, ipse possit condicere, causa debiti integra mulieri ad hoc solum manente, ut ad nihil aliud debitor compellatur, nisi ut cedat ei condicticia actione.

Dig. 12.4.7.1

Iulianus 16 Dig.

Fundus dotis nomine traditus, si nuptiae insecutae non fuerint, condictione repeti potest: fructus quoque condici poterunt. idem iuris est de ancilla et partu eius.

Dig. 12.4.8

Nerva 2 membr.

Quod servius in libro de dotibus scribit, si inter eas personas, quarum altera nondum iustam aetatem habeat, nuptiae factae sint, quod dotis nomine interim datum sit, repeti posse, sic intellegendum est, ut, si divortium intercesserit, priusquam utraque persona iustam aetatem habeat, sit eius pecuniae repetitio, donec autem in eodem habitu matrimonii permanent, non magis id repeti possit, quam quod sponsa sponso dotis nomine dederit, donec maneat inter eos adfinitas: quod enim ex ea causa nondum coito matrimonio datur, cum sic detur tamquam in dotem perventurum, quamdiu pervenire potest, repetitio eius non est.

Dig. 12.4.9pr.

Paulus 17 ad plaut.

Si donaturus mulieri iussu eius sponso numeravi nec nuptiae secutae sunt, mulier condicet. sed si ego contraxi cum sponso et pecuniam in hoc dedi, ut, si nuptiae secutae essent, mulieri dos adquireretur, si non essent secutae, mihi redderetur, quasi ob rem datur et re non secuta ego a sponso condicam.

Dig. 12.4.9.1

Paulus 17 ad plaut.

Si quis indebitam pecuniam per errorem iussu mulieris sponso eius promisisset et nuptiae secutae fuissent, exceptione doli mali uti non potest: maritus enim suum negotium gerit et nihil dolo facit nec decipiendus est: quod fit, si cogatur indotatam uxorem habere. itaque adversus mulierem condictio ei competit, ut aut repetat ab ea quod marito dedit aut ut liberetur, si nondum solverit. sed si soluto matrimonio maritus peteret, in eo dumtaxat exceptionem obstare debere, quod mulier receptura esset.

Dig. 12.4.10

Iavolenus 1 ex plaut.

Si mulier ei cui nuptura erat cum dotem dare vellet, pecuniam quae sibi debebatur acceptam fecit neque nuptiae insecutae sunt, recte ab eo pecunia condicetur, quia nihil interest, utrum ex numeratione pecunia ad eum sine causa an per acceptilationem pervenerit.

Dig. 12.4.11

Iulianus 10 Dig.

Si heres arbitratu liberti certa summa monumentum iussus facere dederit liberto pecuniam et is accepta pecunia monumentum non faciat, condictione tenetur.

Dig. 12.4.12

Paulus 6 ad l. iul. et pap.

Cum quis mortis causa donationem, cum convaluisset donator, condicit, fructus quoque donatarum rerum et partus et quod adcrevit rei donatae repetere potest.

Dig. 12.4.13

Marcianus 3 reg.

Si filius contulerit fratri quasi adgniturus bonorum possessionem et non adgnovit, repetere eum posse Marcellus libro quinto digestorum scribit.

Dig. 12.4.14

Paulus 3 ad sab.

Si procuratori falso indebitum solutum sit, ita demum a procuratore repeti non potest, si dominus ratum habuerit, sed ipse dominus tenetur, ut iulianus scribit. quod si dominus ratum non habuisset, etiamsi debita pecunia soluta fuisset, ab ipso procuratore repetetur: non enim quasi indebitum datum repetetur, sed quasi ob rem datum nec res secuta sit ratihabitione non intercedente: vel quod furtum faceret pecuniae falsus procurator, cum quo non tantum furti agi, sed etiam condici ei posse.

Dig. 12.4.15

Pomponius 22 ad sab.

Cum servus tuus in suspicionem furti attio venisset, dedisti eum in quaestionem sub ea causa, ut, si id repertum in eo non esset, redderetur tibi: is eum tradidit praefecto vigilum quasi in facinore deprehensum: praefectus vigilum eum summo supplicio adfecit. ages cum attio dare eum tibi oportere, quia et ante mortem dare tibi eum oportuerit. labeo ait posse etiam ad exhibendum agi, quoniam fecerit quo minus exhiberet. sed proculus dari oportere ita ait, si fecisses eius hominem, quo casu ad exhibendum agere te non posse: sed si tuus mansisset, etiam furti te acturum cum eo, quia re aliena ita sit usus, ut sciret se invito domino uti aut dominum si sciret prohibiturum esse.

Dig. 12.4.16

Celsus 3 Dig.

Dedi tibi pecuniam, ut mihi stichum dares: utrum id contractus genus pro portione emptionis et venditionis est, an nulla hic alia obligatio est quam ob rem dati re non secuta? in quod proclivior sum: et ideo, si mortuus est stichus, repetere possum quod ideo tibi dedi, ut mihi stichum dares. finge alienum esse stichum, sed te tamen eum tradidisse: repetere a te pecuniam potero, quia hominem accipientis non feceris: et rursus, si tuus est stichus et pro evictione eius promittere non vis, non liberaberis, quo minus a te pecuniam repetere possim.

Dig. 12.5.0. De condictione ob turpem vel iniustam causam.

Dig. 12.5.1pr.

Paulus 10 ad sab.

Omne quod datur aut ob rem datur aut ob causam, et ob rem aut turpem aut honestam: turpem autem, aut ut dantis sit turpitudo, non accipientis, aut ut accipientis dumtaxat, non etiam dantis, aut utriusque.

Dig. 12.5.1.1

Paulus 10 ad sab.

Ob rem igitur honestam datum ita repeti potest, si res, propter quam datum est, secuta non est.

Dig. 12.5.1.2

Paulus 10 ad sab.

Quod si turpis causa accipientis fuerit, etiamsi res secuta sit, repeti potest:

Dig. 12.5.2pr.

Ulpianus 26 ad ed.

Ut puta dedi tibi ne sacrilegium facias, ne furtum, ne hominem occidas. in qua specie iulianus scribit, si tibi dedero, ne hominem occidas, condici posse:

Dig. 12.5.2.1

Ulpianus 26 ad ed.

Item si tibi dedero, ut rem mihi reddas depositam apud te vel ut instrumentum mihi redderes.

Dig. 12.5.2.2

Ulpianus 26 ad ed.

Sed si dedi, ut secundum me in bona causa iudex pronuntiaret, est quidem relatum condictioni locum esse: sed hic quoque crimen contrahit (iudicem enim corrumpere videtur) et non ita pridem imperator noster constituit litem eum perdere.

Dig. 12.5.3

Paulus 10 ad sab.

Ubi autem et dantis et accipientis turpitudo versatur, non posse repeti dicimus: veluti si pecunia detur, ut male iudicetur.

Dig. 12.5.4pr.

Ulpianus 26 ad ed.

Idem si ob stuprum datum sit, vel si quis in adulterio deprehensus redemerit se: cessat enim repetitio, idque sabinus et pegasus responderunt.

Dig. 12.5.4.1

Ulpianus 26 ad ed.

Item si dederit fur, ne proderetur, quoniam utriusque turpitudo versatur, cessat repetitio.

Dig. 12.5.4.2

Ulpianus 26 ad ed.

Quotiens autem solius accipientis turpitudo versatur, celsus ait repeti posse: veluti si tibi dedero, ne mihi iniuriam facias.

Dig. 12.5.4.3

Ulpianus 26 ad ed.

Sed quod meretrici datur, repeti non potest, ut labeo et Marcellus scribunt, sed nova ratione, non ea, quod utriusque turpitudo versatur, sed solius dantis: illam enim turpiter facere, quod sit meretrix, non turpiter accipere, cum sit meretrix.

Dig. 12.5.4.4

Ulpianus 26 ad ed.

Si tibi indicium dedero, ut fugitivum meum indices vel furem rerum mearum, non poterit repeti quod datum est: nec enim turpiter accepisti. quod si a fugitivo meo acceperis ne eum indicares, condicere tibi hoc quasi furi possim: sed si ipse fur indicium a me accepit vel furis vel fugitivi socius, puto condictionem locum habere.

Dig. 12.5.5

Iulianus 3 ad urs. ferocem.

Si a servo meo pecuniam quis accepisset, ne furtum ab eo factum indicaret, sive indicasset sive non, repetitionem fore eius pecuniae proculus respondit.

Dig. 12.5.6

Ulpianus 18 ad sab.

Perpetuo sabinus probavit veterum opinionem existimantium id, quod ex iniusta causa apud aliquem sit, posse condici: in qua sententia etiam celsus est.

Dig. 12.5.7

Pomponius 22 ad sab.

Ex ea stipulatione, quae per vim extorta esset, si exacta esset pecunia, repetitionem esse constat.

Dig. 12.5.8

Paulus 3 quaest.

Si ob turpem causam promiseris titio, quamvis si petat, exceptione doli mali vel in factum summovere eum possis, tamen si solveris, non posse te repetere, quoniam sublata proxima causa stipulationis, quae propter exceptionem inanis esset, pristina causa, id est turpitudo, superesset: porro autem si et dantis et accipientis turpis causa sit, possessorem potiorem esse et ideo repetitionem cessare, tametsi ex stipulatione solutum est.

Dig. 12.5.9pr.

Paulus 5 ad plaut.

Si vestimenta utenda tibi commodavero, deinde pretium, ut reciperem, dedissem, condictione me recte acturum responsum est: quamvis enim propter rem datum sit et causa secuta sit, tamen turpiter datum est.

Dig. 12.5.9.1

Paulus 5 ad plaut.

Si rem locatam tibi vel venditam a te vel mandatam ut redderes, pecuniam acceperis, habebo tecum ex locato vel vendito vel mandati actionem: quod si, ut id, quod ex testamento vel ex stipulatu debebas, redderes mihi, pecuniam tibi dederim, condictio dumtaxat pecuniae datae eo nomine erit. idque et pomponius scribit.

Dig. 12.6.0. De condictione indebiti.

Dig. 12.6.1pr.

Ulpianus 26 ad ed.

Nunc videndum de indebito soluto.

Dig. 12.6.1.1

Ulpianus 26 ad ed.

Et quidem si quis indebitum ignorans solvit, per hanc actionem condicere potest: sed si sciens se non debere solvit, cessat repetitio.

Dig. 12.6.2pr.

Ulpianus 16 ad sab.

Si quis sic solverit, ut, si apparuisset esse indebitum vel falcidia emerserit, reddatur, repetitio locum habebit: negotium enim contractum est inter eos.

Dig. 12.6.2.1

Ulpianus 16 ad sab.

Si quid ex testamento solutum sit, quod postea falsum vel inofficiosum vel irritum vel ruptum apparuerit, repetetur, vel si post multum temporis emerserit aes alienum, vel codicilli diu celati prolati, qui ademptionem continent legatorum solutorum vel deminutionem per hoc, quia aliis quoque legata relicta sunt. nam divus hadrianus circa inofficiosum et falsum testamentum rescripsit actionem dandam ei, secundum quem de hereditate iudicatum est.

Dig. 12.6.3

Papinianus 28 quaest.

Idem est et si solutis legatis nova et inopinata causa hereditatem abstulit, veluti nato postumo, quem heres in utero fuisse ignorabat, vel etiam ab hostibus reverso filio, quem pater obisse falso praesumpserat: nam utiles actiones postumo vel filio, qui hereditatem evicerat, dari oportere in eos, qui legatum perceperunt, imperator titus antoninus rescripsit, scilicet quod bonae fidei possessor in quantum locupletior factus est tenetur nec periculum huiusmodi nominum ad eum, qui sine culpa solvit, pertinebit.

Dig. 12.6.4

Paulus 3 ad sab.

Idem divus hadrianus rescripsit et si aliud testamentum proferatur.

Dig. 12.6.5

Ulpianus 16 ad sab.

Nec novum, ut quod alius solverit alius repetat. nam et cum minor viginti quinque annis inconsulte adita hereditate solutis legatis in integrum restituitur, non ipsi repetitionem competere, sed ei, ad quem bona pertinent, arrio titiano rescriptum est.

Dig. 12.6.6pr.

Paulus 3 ad sab.

Si procurator tuus indebitum solverit et tu ratum non habeas, posse repeti labeo libris posteriorum scripsit: quod si debitum fuisset, non posse repeti celsus: ideo, quoniam, cum quis procuratorem rerum suarum constituit, id quoque mandare videtur, ut solvat creditori, neque postea exspectandum sit, ut ratum habeat.

Dig. 12.6.6.1

Paulus 3 ad sab.

Idem labeo ait, si procuratori indebitum solutum sit et dominus ratum non habeat, posse repeti.

Dig. 12.6.6.2

Paulus 3 ad sab.

Celsus ait eum, qui procuratori debitum solvit, continuo liberari neque ratihabitionem considerari: quod si indebitum acceperit, ideo exigi ratihabitionem, quoniam nihil de hoc nomine exigendo mandasse videretur, et ideo, si ratum non habeatur, a procuratore repetendum.

Dig. 12.6.6.3

Paulus 3 ad sab.

Iulianus ait neque tutorem neque procuratorem solventes repetere posse neque interesse, suam pecuniam an pupilli vel domini solvant.

Dig. 12.6.7

Pomponius 9 ad sab.

Quod indebitum per errorem solvitur, aut ipsum aut tantundem repetitur.

Dig. 12.6.8

Paulus 6 ad sab.

Quod nomine mariti, qui solvendo non sit, alius mulieri solvisset, repetere non potest: adeo debitum esset mulieri.

Dig. 12.6.9

Ulpianus 66 ad ed.

Nam et maritus, si, cum facere nihil possit, dotem solverit, in ea causa est, ut repetere non possit.

Dig. 12.6.10

Paulus 7 ad sab.

In diem debitor adeo debitor est, ut ante diem solutum repetere non possit.

Dig. 12.6.11

Ulpianus 35 ad sab.

Si is, cum quo de peculio actum est, per imprudentiam plus quam in peculio est solverit, repetere non potest.

Dig. 12.6.12

Paulus 7 ad sab.

Si fundi mei usum fructum tibi dedero falso existimans me eum tibi debere et antequam repetam decesserim, condictio eius ad heredem quoque meum transibit.

Dig. 12.6.13pr.

Paulus 10 ad sab.

Naturaliter etiam servus obligatur: et ideo, si quis nomine eius solvat vel ipse manumissus, ut pomponius scribit, ex peculio, cuius liberam administrationem habeat, repeti non poterit: et ob id et fideiussor pro servo acceptus tenetur et pignus pro eo datum tenebitur et, si servus, qui peculii administrationem habet, rem pignori in id quod debeat dederit, utilis pigneraticia reddenda est.

Dig. 12.6.13.1

Paulus 10 ad sab.

Item quod pupillus sine tutoris auctoritate mutuum accepit et locupletior factus est, si pubes factus solvat, non repetit.

Dig. 12.6.14

Pomponius 21 ad sab.

Nam hoc natura aequum est neminem cum alterius detrimento fieri locupletiorem.

Dig. 12.6.15pr.

Paulus 10 ad sab.

Indebiti soluti condictio naturalis est et ideo etiam quod rei solutae accessit, venit in condictionem, ut puta partus qui ex ancilla natus sit vel alluvione accessit: immo et fructus, quos is cui solutum est bona fide percepit, in condictionem venient.

Dig. 12.6.15.1

Paulus 10 ad sab.

Sed et si nummi alieni dati sint, condictio competet. ut vel possessio eorum reddatur: quemadmodum si falso existimans possessionem me tibi debere alicuius rei tradidissem, condicerem. sed et si possessionem tuam fecissem ita, ut tibi per longi temporis praescriptionem avocari non possit, etiam sic recte tecum per indebitam condictionem agerem.

Dig. 12.6.15.2

Paulus 10 ad sab.

Sed et si usus fructus in re soluta alienus sit, deducto usu fructu a te condicam.

Dig. 12.6.16pr.

Pomponius 15 ad sab.

Sub condicione debitum per errorem solutum pendente quidem condicione repetitur, condicione autem existente repeti non potest.

Dig. 12.6.16.1

Pomponius 15 ad sab.

Quod autem sub incerta die debetur, die existente non repetitur.

Dig. 12.6.17

Ulpianus 2 ad ed.

Nam si cum moriar dare promisero et antea solvam, repetere me non posse celsus ait: quae sententia vera est.

Dig. 12.6.18

Ulpianus 47 ad sab.

Quod si ea condicione debetur, quae omnimodo exstatura est, solutum repeti non potest, licet sub alia condicione, quae an impleatur incertum est, si ante solvatur, repeti possit.

Dig. 12.6.19pr.

Pomponius 22 ad sab.

Si poenae causa eius cui debetur debitor liberatus est, naturalis obligatio manet et ideo solutum repeti non potest.

Dig. 12.6.19.1

Pomponius 22 ad sab.

Quamvis debitum sibi quis recipiat, tamen si is qui dat non debitum dat, repetitio competit: veluti si is qui heredem se vel bonorum possessorem falso existimans creditori hereditario solverit: hic enim neque verus heres liberatus erit et is quod dedit repetere poterit: quamvis enim debitum sibi quis recipiat, tamen si is qui dat non debitum dat, repetitio competit.

Dig. 12.6.19.2

Pomponius 22 ad sab.

Si falso existimans debere nummos solvero, qui pro parte alieni, pro parte mei fuerunt, eius summae partem dimidiam, non corporum condicam.

Dig. 12.6.19.3

Pomponius 22 ad sab.

Si putem me stichum aut pamphilum debere, cum stichum debeam, et pamphilum solvam, repetam quasi indebitum solutum: nec enim pro eo quod debeo videor id solvisse.

Dig. 12.6.19.4

Pomponius 22 ad sab.

Si duo rei, qui decem debebant, viginti pariter solverint, celsus ait singulos quina repetituros, quia, cum decem deberent, viginti solvissent, et quod amplius ambo solverint, ambo repetere possunt.

Dig. 12.6.20

Iulianus 10 Dig.

Si reus et fideiussor solverint pariter, in hac causa non differunt a duobus reis promittendi; quare omnia, quae de his dicta sunt, et ad hos transferre licebit.

Dig. 12.6.21

Paulus 3 quaest.

Plane si duos reos non eiusdem pecuniae, sed alterius obligationis constitueris, ut puta stichi aut pamphili, et pariter duos datos, aut togam vel denaria mille, non idem dici poterit in repetitione ut partes repetant, quia nec solvere ab initio sic potuerunt. igitur hoc casu electio est creditoris, cui velit solvere, ut alterius repetitio impediatur.

Dig. 12.6.22pr.

Pomponius 22 ad sab.

Sed et si me putem tibi aut titio promisisse, cum aut neutrum factum sit aut titii persona in stipulatione comprehensa non sit, et titio solvero, repetere a titio potero.

Dig. 12.6.22.1

Pomponius 22 ad sab.

Cum iter excipere deberem, fundum liberum per errorem tradidi: incerti condicam, ut iter mihi concedatur.

Dig. 12.6.23pr.

Ulpianus 43 ad sab.

Eleganter pomponius quaerit, si quis suspicetur transactionem factam vel ab eo cui heres est vel ab eo cui procurator est et quasi ex transactione dederit, quae facta non est, an locus sit repetitioni. et ait repeti posse: ex falsa enim causa datum est. idem puto dicendum et si transactio secuta non fuerit, propter quam datum est: sed et si resoluta sit transactio, idem erit dicendum.

Dig. 12.6.23.1

Ulpianus 43 ad sab.

Si post rem iudicatam quis transegerit et solverit, repetere poterit idcirco, quia placuit transactionem nullius esse momenti: hoc enim imperator antoninus cum divo patre suo rescripsit. retineri tamen atque compensari in causam iudicati, quod ob talem transactionem solutum est, potest. quid ergo si appellatum sit vel hoc ipsum incertum sit, an iudicatum sit vel an sententia valeat? magis est, ut transactio vires habeat: tunc enim rescriptis locum esse credendum est, cum de sententia indubitata, quae nullo remedio adtemptari potest, transigitur.

Dig. 12.6.23.2

Ulpianus 43 ad sab.

Item si ob transactionem alimentorum testamento relictorum datum sit, apparet posse repeti quod datum est, quia transactio senatus consulto infirmatur.

Dig. 12.6.23.3

Ulpianus 43 ad sab.

Si quis post transactionem nihilo minus condemnatus fuerit, dolo quidem id fit, sed tamen sententia valet. potuit autem quis, si quidem ante litem contestatam transegerit, volenti litem contestari opponere doli exceptionem: sed si post litem contestatam transactum est, nihilo minus poterit exceptione doli uti post secuti: dolo enim facit, qui contra transactionem expertus amplius petit. ideo condemnatus repetere potest, quod ex causa transactionis dedit. sane quidem ob causam dedit neque repeti solet quod ob causam datum est causa secuta: sed hic non videtur causa secuta, cum transactioni non stetur. cum igitur repetitio oritur, transactionis exceptio locum non habet: neque enim utrumque debet locum habere et repetitio et exceptio.

Dig. 12.6.23.4

Ulpianus 43 ad sab.

Si qua lex ab initio dupli vel quadrupli statuit actionem, dicendum est solutum ex falsa eius causa repeti posse.

Dig. 12.6.24

Ulpianus 46 ad sab.

Si is, qui perpetua exceptione tueri se poterat, cum sciret sibi exceptionem profuturam, promiserit aliquid ut liberaretur, condicere non potest.

Dig. 12.6.25

Ulpianus 47 ad sab.

Cum duo pro reo fideiussissent decem, deinde reus tria solvisset et postea fideiussores quina, placuit eum qui posterior solvit repetere tria posse: hoc merito, quia tribus a reo solutis septem sola debita supererant, quibus persolutis tria indebita soluta sunt.

Dig. 12.6.26pr.

Ulpianus 26 ad ed.

Si non sortem quis, sed usuras indebitas solvit, repetere non poterit, si sortis debitae solvit: sed si supra legitimum modum solvit, divus severus rescripsit (quo iure utimur) repeti quidem non posse, sed sorti imputandum et, si postea sortem solvit, sortem quasi indebitam repeti posse. proinde et si ante sors fuerit soluta, usurae supra legitimum modum solutae quasi sors indebita repetuntur. quid si simul solverit? poterit dici et tunc repetitionem locum habere.

Dig. 12.6.26.1

Ulpianus 26 ad ed.

Supra duplum autem usurae et usurarum usurae nec in stipulatum deduci nec exigi possunt et solutae repetuntur, quemadmodum futurarum usurarum usurae.

Dig. 12.6.26.2

Ulpianus 26 ad ed.

Si quis falso se sortem debere credens usuras solverit, potest condicere nec videtur sciens indebitum solvisse.

Dig. 12.6.26.3

Ulpianus 26 ad ed.

Indebitum autem solutum accipiemus non solum si omnino non debeatur, sed et si per aliquam exceptionem perpetuam peti non poterat: quare hoc quoque repeti poterit, nisi sciens se tutum exceptione solvit.

Dig. 12.6.26.4

Ulpianus 26 ad ed.

Si centum debens, quasi ducenta deberem, fundum ducentorum solvi, competere repetitionem Marcellus libro vicensimo digestorum scribit et centum manere stipulationem: licet enim placuit rem pro pecunia solutam parere liberationem, tamen si ex falsa debiti quantitate maioris pretii res soluta est, non fit confusio partis rei cum pecunia (nemo enim invitus compellitur ad communionem), sed et condictio integrae rei manet et obligatio incorrupta: ager autem retinebitur, donec debita pecunia solvatur.

Dig. 12.6.26.5

Ulpianus 26 ad ed.

Idem Marcellus ait, si pecuniam debens oleum dederit pluris pretii quasi plus debens, vel cum oleum deberet, oleum dederit quasi maiorem modum debens, superfluum olei esse repetendum, non totum et ob hoc peremptam esse obligationem.

Dig. 12.6.26.6

Ulpianus 26 ad ed.

Idem Marcellus adicit, si, cum fundi pars mihi deberetur, quasi totus deberetur aestimatione facta, solutio pecuniae solidi pretii fundi facta sit, repeti posse non totum pretium, sed partis indebitae pretium.

Dig. 12.6.26.7

Ulpianus 26 ad ed.

Adeo autem perpetua exceptio parit condictionem, ut iulianus libro decimo scripsit, si emptor fundi damnaverit heredem suum, ut venditorem nexu venditi liberaret, mox venditor ignorans rem tradiderit, posse eum fundum condicere: idemque et si debitorem suum damnaverit liberare et ille ignorans solverit.

Dig. 12.6.26.8

Ulpianus 26 ad ed.

Qui filio familias solverit, cum esset eius peculiaris debitor, si quidem ignoravit ademptum ei peculium, liberatur: si scit et solvit, condictionem non habet, quia sciens indebitum solvit.

Dig. 12.6.26.9

Ulpianus 26 ad ed.

Filius familias contra macedonianum mutuatus si solverit et patri suo heres effectus velit vindicare nummos, exceptione summovebitur a vindicatione nummorum.

Dig. 12.6.26.10

Ulpianus 26 ad ed.

Si quis quasi ex compromisso condemnatus falso solverit, repetere potest.

Dig. 12.6.26.11

Ulpianus 26 ad ed.

Hereditatis vel bonorum possessori, si quidem defendat hereditatem, indebitum solutum condici poterit: si vero is non defendat, etiam debitum solutum repeti potest.

Dig. 12.6.26.12

Ulpianus 26 ad ed.

Libertus cum se putaret operas patrono debere, solvit: condicere eum non posse, quamvis putans se obligatum solvit, iulianus libro decimo digestorum scripsit: natura enim operas patrono libertus debet. sed et si non operae patrono sunt solutae, sed, cum officium ab eo desideraretur, cum patrono decidit pecunia et solvit, repetere non potest. sed si operas patrono exhibuit non officiales, sed fabriles, veluti pictorias vel alias, dum putat se debere, videndum an possit condicere. et celsus libro sexto digestorum putat eam esse causam operarum, ut non sint eaedem neque eiusdem hominis neque eidem exhibentur: nam plerumque robur hominis, aetas temporis opportunitasque naturalis mutat causam operarum, et ideo nec volens quis reddere potest. sed hae, inquit, operae recipiunt aestimationem: et interdum licet aliud praestemus, inquit, aliud condicimus: ut puta fundum indebitum dedi et fructus condico: vel hominem indebitum, et hunc sine fraude modico distraxisti, nempe hoc solum refundere debes, quod ex pretio habes: vel meis sumptibus pretiosiorem hominem feci, nonne aestimari haec debent? sic et in proposito, ait, posse condici, quanti operas essem conducturus. sed si denegatus sit a patrono officiales operas, apud Marcellum libro vicensimo digestorum quaeritur. et dicit Marcellus non teneri eum, nisi forte in artificio sint (hae enim iubente patrono et alii edendae sunt): sed si solverit officiales delegatus, non potest condicere neque ei cui solvit creditori, cui alterius contemplatione solutum est quique suum recipit, neque patrono, quia natura ei debentur.

Dig. 12.6.26.13

Ulpianus 26 ad ed.

Si decem aut stichum stipulatus solvam quinque, quaeritur, an possim condicere: quaestio ex hoc descendit, an liberer in quinque: nam si liberor, cessat condictio, si non liberor, erit condictio. placuit autem, ut celsus libro sexto et Marcellus libro vicensimo digestorum scripsit, non peremi partem dimidiam obligationis ideoque eum, qui quinque solvit, in pendenti habendum, an liberaretur, petique ab eo posse reliqua quinque aut stichum et, si praestiterit residua quinque, videri eum et priora debita solvisse, si autem stichum praestitisset, quinque eum posse condicere quasi indebita. sic posterior solutio comprobabit, priora quinque utrum debita an indebita solverentur. sed et si post soluta quinque et stichus solvatur et malim ego habere quinque et stichum reddere, an sim audiendus, quaerit celsus. et putat natam esse quinque condictionem, quamvis utroque simul soluto mihi retinendi quod vellem arbitrium daretur.

Dig. 12.6.26.14

Ulpianus 26 ad ed.

Idem ait et si duo heredes sint stipulatoris, non posse alteri quinque solutis alteri partem stichi solvi: idem et si duo sint promissoris heredes. secundum quae liberatio non contingit, nisi aut utrique quina aut utrique partes stichi fuerunt solutae.

Dig. 12.6.27

Paulus 28 ad ed.

Qui loco certo debere existimans indebitum solvit, quolibet loco repetet: non enim existimationem solventis eadem species repetitionis sequitur.

Dig. 12.6.28

Paulus 32 ad ed.

Iudex si male absolvit et absolutus sua sponte solverit, repetere non potest.

Dig. 12.6.29

Ulpianus 2 disp.

Interdum persona locum facit repetitioni, ut puta si pupillus sine tutoris auctoritate vel furiosus vel is cui bonis interdictum est solverit: nam in his personis generaliter repetitioni locum esse non ambigitur. et si quidem exstant nummi, vindicabuntur, consumptis vero condictio locum habebit.

Dig. 12.6.30

Ulpianus 10 disp.

Qui invicem creditor idemque debitor est, in his casibus, in quibus compensatio locum non habet, si solvit, non habet condictionem veluti indebiti soluti, sed sui crediti petitionem.

Dig. 12.6.31

Ulpianus 1 opin.

Is, qui plus quam hereditaria portio efficit per errorem creditori caverit, indebiti promissi habet condictionem.

Dig. 12.6.32pr.

Iulianus 10 Dig.

Cum is qui pamphilum aut stichum debet simul utrumque solverit, si, posteaquam utrumque solverit, aut uterque aut alter ex his desiit in rerum natura esse, nihil repetet: id enim remanebit in soluto quod superest.

Dig. 12.6.32.1

Iulianus 10 Dig.

Fideiussor cum paciscitur, ne ab eo pecunia petatur, et per imprudentiam solverit, condicere stipulatori poterit et ideo reus quidem manet obligatus, ipse autem sua exceptione tutus est. nihil autem interest, fideiussor an heres eius solvat: quod si huic fideiussori reus heres extiterit et solverit, nec repetet et liberabitur.

Dig. 12.6.32.2

Iulianus 10 Dig.

Mulier si in ea opinione sit, ut credat se pro dote obligatam, quidquid dotis nomine dederit, non repetit: sublata enim falsa opinione relinquitur pietatis causa, ex qua solutum repeti non potest.

Dig. 12.6.32.3

Iulianus 10 Dig.

Qui hominem generaliter promisit, similis est ei, qui hominem aut decem debet: et ideo si, cum existimaret se stichum promisisse, eum dederit, condicet, alium autem quemlibet dando liberari poterit.

Dig. 12.6.33

Iulianus 39 Dig.

Si in area tua aedificassem et tu aedes possideres, condictio locum non habebit, quia nullum negotium inter nos contraheretur: nam is, qui non debitam pecuniam solverit, hoc ipso aliquid negotii gerit: cum autem aedificium in area sua ab alio positum dominus occupat, nullum negotium contrahit. sed et si is, qui in aliena area aedificasset, ipse possessionem tradidisset, condictionem non habebit, quia nihil accipientis faceret, sed suam rem dominus habere incipiat. et ideo constat, si quis, cum existimaret se heredem esse, insulam hereditariam fulsisset, nullo alio modo quam per retentionem impensas servare posse.

Dig. 12.6.34

Iulianus 40 Dig.

Is cui hereditas tota per fideicommissum relicta est et praeterea fundus, si decem dedisset heredi, et heres suspectam hereditatem dixerit et eam ex trebelliano restituerit, causam dandae pecuniae non habet, et ideo quod eo nomine quasi implendae condicionis gratia dederit, condictione repetet.

Dig. 12.6.35

Iulianus 45 Dig.

Qui ob rem non defensam solvit, quamvis postea defendere paratus est, non repetet quod solverit.

Dig. 12.6.36

Paulus 5 epit. alf. Dig.

Servus cuiusdam insciente domino magidem commodavit: is cui commodaverat pignori eam posuit et fugit: qui accepit non aliter se redditurum aiebat, quam si pecuniam accepisset: accepit a servulo et reddidit magidem: quaesitum est, an pecunia ab eo repeti possit. respondit, si is qui pignori accepisset magidem alienam scit apud se pignori deponi, furti eum se obligasse ideoque, si pecuniam a servulo accepisset redimendi furti causa, posse repeti: sed si nescisset alienam apud se deponi, non esse furem, item, si pecunia eius nomine, a quo pignus acceperat, a servo ei soluta esset, non posse ab eo repeti.

Dig. 12.6.37

Iulianus 3 ad urs. ferocem.

Servum meum insciens a te emi pecuniamque tibi solvi: eam me a te repetiturum et eo nomine condictionem mihi esse omnimodo puto, sive scisses meum esse sive ignorasses.

Dig. 12.6.38pr.

Africanus 9 quaest.

Frater a fratre, cum in eiusdem potestate essent, pecuniam mutuatus post mortem patris ei solvit: quaesitum est, an repetere possit. respondit utique quidem pro ea parte, qua ipse patri heres exstitisset, repetiturum, pro ea vero, qua frater heres exstiterit, ita repetiturum, si non minus ex peculio suo ad fratrem pervenisset: naturalem enim obligationem quae fuisset hoc ipso sublatam videri, quod peculii partem frater sit consecutus, adeo ut, si praelegatum filio eidemque debitori id fuisset, deductio huius debiti a fratre ex eo fieret. idque maxime consequens esse ei sententiae, quam iulianus probaret, si extraneo quid debuisset et ab eo post mortem patris exactum esset, tantum iudicio eum familiae herciscundae reciperaturum a coheredibus fuisse, quantum ab his creditor actione de peculio consequi potuisset. igitur et si re integra familiae herciscundae agatur, ita peculium dividi aequum esse, ut ad quantitatem eius indemnis a coherede praestetur: porro eum, quem adversus extraneum defendi oportet, longe magis in eo, quod fratri debuisset, indemnem esse praestandum.

Dig. 12.6.38.1

Africanus 9 quaest.

Quaesitum est, si pater filio crediderit isque emancipatus solvat, an repetere possit. respondit, si nihil ex peculio apud patrem remanserit, non repetiturum: nam manere naturalem obligationem argumento esse, quod extraneo agente intra annum de peculio deduceret pater, quod sibi filius debuisset.

Dig. 12.6.38.2

Africanus 9 quaest.

Contra si pater quod filio debuisset eidem emancipato solverit, non repetet: nam hic quoque manere naturalem obligationem eodem argumento probatur, quod, si extraneus intra annum de peculio agat, etiam quod pater ei debuisset computetur. eademque erunt et si extraneus heres exheredato filio solverit id, quod ei pater debuisset.

Dig. 12.6.38.3

Africanus 9 quaest.

Legati satis accepi et cum fideiussor mihi solvisset, apparuit indebitum fuisse legatum: posse eum repetere existimavit.

Dig. 12.6.39

Marcianus 8 inst.

Si quis, cum a fideicommissario sibi cavere poterat, non caverit, quasi indebitum plus debito eum solutum repetere posse divi severus et antoninus rescripserunt.

Dig. 12.6.40pr.

Marcianus 3 reg.

Qui exceptionem perpetuam habet, solutum per errorem repetere potest: sed hoc non est perpetuum. nam si quidem eius causa exceptio datur cum quo agitur, solutum repetere potest, ut accidit in senatus consulto de intercessionibus: ubi vero in odium eius cui debetur exceptio datur, perperam solutum non repetitur, veluti si filius familias contra macedonianum mutuam pecuniam acceperit et pater familias factus solverit, non repetit.

Dig. 12.6.40.1

Marcianus 3 reg.

Si pars domus, quae in diem per fideicommissum relicta est, arserit ante diem fideicommissi cedentem et eam heres sua impensa refecerit, deducendam esse impensam ex fideicommisso constat et, si sine deductione domum tradiderit, posse incerti condici, quasi plus debito dederit.

Dig. 12.6.40.2

Marcianus 3 reg.

Si pactus fuerit patronus cum liberto, ne operae ab eo petantur, quidquid postea solutum fuerit a liberto, repeti potest.

Dig. 12.6.41

Nerva 6 membr.

Quod pupillus sine tutoris auctoritate stipulanti promiserit solverit, repetitio est, quia nec natura debet.

Dig. 12.6.42

Ulpianus 68 ad ed.

Poenae non solent repeti, cum depensae sunt.

Dig. 12.6.43

Paulus 3 ad plaut.

Si quis iurasset se dare non oportere, ab omni contentione discedetur atque ita solutam pecuniam repeti posse dicendum est.

Dig. 12.6.44

Paulus 14 ad plaut.

Repetitio nulla est ab eo qui suum recepit, tametsi ab alio quam vero debitore solutum est.

Dig. 12.6.45

Iavolenus 2 ex plaut.

Si is, qui hereditatem vendidit et emptori tradidit, id, quod sibi mortuus debuerat, non retinuit, repetere poterit, quia plus debito solutum per condictionem recte recipietur.

Dig. 12.6.46

Iavolenus 4 ex plaut.

Qui heredis nomine legata non debita ex nummis ipsius heredis solvit, ipse quidem repetere non potest: sed si ignorante herede nummos eius tradidit, dominus, ait, eos recte vindicabit. eadem causa rerum corporalium est.

Dig. 12.6.47

Celsus 6 Dig.

Indebitam pecuniam per errorem promisisti: eam qui pro te fideiusserat solvit. ego existimo, si nomine tuo solverit fideiussor, te fideiussori, stipulatorem tibi obligatum fore: nec exspectandum est, ut ratum habeas, quoniam potes videri id ipsum mandasse, ut tuo nomine solveretur: sin autem fideiussor suo nomine solverit quod non debebat, ipsum a stipulatore repetere posse, quoniam indebitam iure gentium pecuniam solvit: quo minus autem consequi poterit ab eo cui solvit, a te mandati iudicio consecuturum, si modo per ignorantiam petentem exceptione non summoverit.

Dig. 12.6.48

Celsus 6 Dig.

Qui promisit, si aliquid a se factum sit vel cum aliquid factum sit, dare se decem, si, priusquam id factum fuerit, quod promisit dederit, non videbitur fecisse quod promisit atque ideo repetere potest.

Dig. 12.6.49

Modestinus 3 reg.

His solis pecunia condicitur, quibus quoquo modo soluta est, non quibus proficit.

Dig. 12.6.50

Pomponius 5 ad q. muc.

Quod quis sciens indebitum dedit hac mente, ut postea repeteret, repetere non potest.

Dig. 12.6.51

Pomponius 6 ad q. muc.

Ex quibus causis retentionem quidem habemus, petitionem autem non habemus, ea si solverimus, repetere non possumus.

Dig. 12.6.52

Pomponius 27 ad q. muc.

Damus aut ob causam aut ob rem: ob causam praeteritam, veluti cum ideo do, quod aliquid a te consecutus sum vel quia aliquid a te factum est, ut, etiamsi falsa causa sit, repetitio eius pecuniae non sit: ob rem vero datur, ut aliquid sequatur, quo non sequente repetitio competit.

Dig. 12.6.53

Proculus 7 epist.

Dominus testamento servo suo libertatem dedit, si decem det: servo ignorante id testamentum non valere data sunt mihi decem: quaeritur, quis repetere potest. proculus respondit: si ipse servus peculiares nummos dedit, cum ei a domino id permissum non esset, manent nummi domini eosque non per condictionem, sed in rem actione petere debet. si autem alius rogatu servi suos nummos dedit, facti sunt mei eosque dominus servi, cuius nomine dati sunt, per condictionem petere potest: sed tam benignius quam utilius est recta via ipsum qui nummos dedit suum recipere.

Dig. 12.6.54

Papinianus 2 quaest.

Ex his omnibus causis, quae iure non valuerunt vel non habuerunt effectum, secuta per errorem solutione condictioni locus erit.

Dig. 12.6.55

Papinianus 6 quaest.

Si urbana praedia locaverit praedo, quod mercedis nomine ceperit, ab eo qui solvit non repetetur, sed domino erit obligatus. idemque iuris erit in vecturis navium, quas ipse locaverit aut exercuerit, item mercedibus servorum, quorum operae per ipsum fuerint locatae. nam si servus non locatus mercedem ut domino praedoni rettulit, non fiet accipientis pecunia. quod si vecturas navium, quas dominus locaverat, item pensiones insularum acceperit, ob indebitum ei tenebitur, qui non est liberatus solvendo. quod ergo dici solet praedoni fructus posse condici, tunc locum habet, cum domini fructus fuerunt.

Dig. 12.6.56

Papinianus 8 quaest.

Sufficit ad causam indebiti incertum esse, temporaria sit an perpetua exceptionis defensio. nam si qui, ne conveniatur, donec titius consul fiat, paciscatur, quia potest titio decedente perpetua fieri exceptio, quae ad tempus est titio consulatum ineunte, summa ratione dicetur, quod interim solvitur, repeti: ut enim pactum, quod in tempus certum collatum est, non magis inducit condictionem, quam si ex die debitor solvit, ita prorsum defensio iuris, quae causam incertam habet, condictionis instar optinet.

Dig. 12.6.57pr.

Papinianus 3 resp.

Cum indebitum impuberis nomine tutor numeravit, impuberis condictio est.

Dig. 12.6.57.1

Papinianus 3 resp.

Creditor, ut procuratori suo debitum redderetur, mandavit: maiore pecunia soluta procurator indebiti causa convenietur: quod si nominatim, ut maior pecunia solveretur, delegavit, indebiti cum eo qui delegavit erit actio, quae non videtur perempta, si frustra cum procuratore lis fuerit instituta.

Dig. 12.6.58

Papinianus 9 resp.

Servo manumisso fideicommissum ita reliquit, si ad libertatem ex testamento pervenerit: post acceptam sine iudice pecuniam ingenuus pronuntiatus est: indebiti fideicommissi repetitio erit.

Dig. 12.6.59

Papinianus 2 def.

Si fideiussor iure liberatus solverit errore pecuniam, repetenti non oberit: si vero reus promittendi per errorem et ipse postea pecuniam solverit, non repetet, cum prior solutio, quae fuit irrita, naturale vinculum non dissolvit, nec civile, si reus promittendi tenebatur.

Dig. 12.6.60pr.

Paulus 3 quaest.

Iulianus verum debitorem post litem contestatam manente adhuc iudicio negabat solventem repetere posse, quia nec absolutus nec condemnatus repetere posset: licet enim absolutus sit, natura tamen debitor permanet: similemque esse ei dicit, qui ita promisit, sive navis ex asia venerit sive non venerit, quia ex una causa alterius solutionis origo proficiscitur.

Dig. 12.6.60.1

Paulus 3 quaest.

Ubi autem quis quod pure debet sub condicione novandi animo promisit, plerique putant pendente novatione solutum repetere posse, quia ex qua obligatione solvat, adhuc incertum sit: idemque esse etiam, si diversas personas ponas eandem pecuniam pure et sub condicione novandi animo promisisse. sed hoc dissimile est: in stipulatione enim pura et condicionali eundem debiturum certum est.

Dig. 12.6.61

Scaevola 5 resp.

Tutores pupilli quibusdam creditoribus patris ex patrimonio paterno solverunt, sed postea non sufficientibus bonis pupillum abstinuerunt: quaeritur, an quod amplius creditoribus per tutores pupilli solutum est vel totum quod acceperunt restituere debeant. respondi, si nihil dolo factum esset, tutori quidem vel pupillo non deberi, creditoribus autem aliis in id, quod amplius sui debiti solutum est, teneri.

Dig. 12.6.62

Maecenatus 4 fideic.

Fideicommissum in stipulatione deductum tametsi non debitum fuisset, quia tamen a sciente fidei explendae causa promissum esset, debetur.

Dig. 12.6.63

Gaius l.S. de cas.

Neratius casum refert, ut quis id quod solverit repetere non possit, quasi debitum dederit, nec tamen liberetur: velut si is, qui cum certum hominem deberet, statuliberum dederit: nam ideo eum non liberari, quod non in plenum stipulatoris hominem fecerit, nec tamen repetere eum posse, quod debitum dederit.

Dig. 12.6.64

Tryphonus 7 disp.

Si quod dominus servo debuit, manumisso solvit, quamvis existimans ei aliqua teneri actione, tamen repetere non poterit, quia naturale adgnovit debitum: ut enim libertas naturali iure continetur et dominatio ex gentium iure introducta est, ita debiti vel non debiti ratio in condictione naturaliter intellegenda est.

Dig. 12.6.65pr.

Paulus 17 ad plaut.

In summa, ut generaliter de repetitione tractemus, sciendum est dari aut ob transactionem aut ob causam aut propter condicionem aut ob rem aut indebitum: in quibus omnibus quaeritur de repetitione.

Dig. 12.6.65.1

Paulus 17 ad plaut.

Et quidem quod transactionis nomine datur, licet res nulla media fuerit, non repetitur: nam si lis fuit, hoc ipsum, quod a lite disceditur, causa videtur esse. sin autem evidens calumnia detegitur et transactio imperfecta est, repetitio dabitur.

Dig. 12.6.65.2

Paulus 17 ad plaut.

Id quoque, quod ob causam datur, puta quod negotia mea adiuta ab eo putavi, licet non sit factum, quia donari volui, quamvis falso mihi persuaserim, repeti non posse.

Dig. 12.6.65.3

Paulus 17 ad plaut.

Sed agere per condictionem propter condicionem legati vel hereditatis, sive non sit mihi legatum sive ademptum legatum, possum, ut repetam quod dedi, quoniam non contrahendi animo dederim, quia causa, propter quam dedi, non est secuta. idem et si hereditatem adire nolui vel non potui. non idem potest dici, si servus meus sub condicione heres institutus sit et ego dedero, deinde manumissus adierit: nam hoc casu secuta res est.

Dig. 12.6.65.4

Paulus 17 ad plaut.

Quod ob rem datur, ex bono et aequo habet repetitionem: veluti si dem tibi, ut aliquid facias, nec feceris.

Dig. 12.6.65.5

Paulus 17 ad plaut.

Ei, qui indebitum repetit, et fructus et partus restitui debet deducta impensa.

Dig. 12.6.65.6

Paulus 17 ad plaut.

In frumento indebito soluto et bonitas est et, si consumpsit frumentum, pretium repetet.

Dig. 12.6.65.7

Paulus 17 ad plaut.

Sic habitatione data pecuniam condicam, non quidem quanti locari potuit, sed quanti tu conducturus fuisses.

Dig. 12.6.65.8

Paulus 17 ad plaut.

Si servum indebitum tibi dedi eumque manumisisti, si sciens hoc fecisti, teneberis ad pretium eius, si nesciens, non teneberis, sed propter operas eius liberti et ut hereditatem eius restituas.

Dig. 12.6.65.9

Paulus 17 ad plaut.

Indebitum est non tantum, quod omnino non debetur, sed et quod alii debetur, si alii solvatur, aut si id quod alius debebat alius quasi ipse debeat solvat.

Dig. 12.6.66

Papinianus 8 quaest.

Haec condictio ex bono et aequo introducta, quod alterius apud alterum sine causa deprehenditur, revocare consuevit.

Dig. 12.6.67pr.

Scaevola 5 Dig.

Stichus testamento eius, quem dominum suum arbitrabatur, libertate accepta, si decem annis ex die mortis annuos decem heredibus praestitisset, per octo annos praefinitam quantitatem ut iussus erat dedit, postmodum se ingenuum comperit nec reliquorum annorum dedit et pronuntiatus est ingenuus: quaesitum est, an pecuniam, quam heredibus dedit, ut indebitam datam repetere et qua actione possit. respondit, si eam pecuniam dedit, quae neque ex operis suis neque ex re eius, cui bona fide serviebat, quaesita sit, posse repeti.

Dig. 12.6.67.1

Scaevola 5 Dig.

Tutor creditori pupilli sui plus quam debebatur exsolvit et tutelae iudicio pupillo non imputavit: quaero, an repetitionem adversus creditorem haberet. respondit habere.

Dig. 12.6.67.2

Scaevola 5 Dig.

Titius cum multos creditores haberet, in quibus et seium, bona sua privatim facta venditione maevio concessit, ut satis creditoribus faceret: sed maevius solvit pecuniam seio tamquam debitam, quae iam a titio fuerat soluta: quaesitum est, cum postea repperiantur apochae apud titium debitorem partim solutae pecuniae, cui magis repetitio pecuniae indebitae solutae competit, titio debitori an maevio, qui in rem suam procurator factus est. respondit secundum ea quae proponerentur ei, qui postea solvisset.

Dig. 12.6.67.3

Scaevola 5 Dig.

Idem quaesiit, an pactum, quod in pariationibus adscribi solet in hunc modum " ex hoc contractu nullam inter se controversiam amplius esse" impediat repetitionem. respondit nihil proponi, cur impediret.

Dig. 12.6.67.4

Scaevola 5 Dig.

Lucius titius gaio seio minori annis viginti quinque pecuniam certam credidit et ab eo aliquantum usurarum nomine accepi, et gaii seii minoris heres adversus publium maevium a praeside provinciae in integrum restitutus est, ne debitum hereditarium solveret, et nec quicquam de usuris eiusdem sortis, quas seius minor annis viginti quinque exsolveret, repetendis tractatum apud praesidem aut ab eo est pronuntiatum: quaero, an usuras, quas gaius seius minor annis viginti quinque quoad viveret creditori exsolveret, heres eius repetere possit. respondit secundum ea quae proponerentur condici id, quod usurarum nomine defunctus solvisset, non posse. item quaero, si existimes repeti non posse, an ex alio debito heres retinere eas possit. respondit ne hoc quidem.

Dig. 12.7.0. De condictione sine causa.

Dig. 12.7.1pr.

Ulpianus 43 ad sab.

Est et haec species condictionis, si quis sine causa promiserit vel si solverit quis indebitum. qui autem promisit sine causa, condicere quantitatem non potest quam non dedit, sed ipsam obligationem.

Dig. 12.7.1.1

Ulpianus 43 ad sab.

Sed et si ob causam promisit, causa tamen secuta non est, dicendum est condictionem locum habere.

Dig. 12.7.1.2

Ulpianus 43 ad sab.

Sive ab initio sine causa promissum est, sive fuit causa promittendi quae finita est vel secuta non est, dicendum est condictioni locum fore.

Dig. 12.7.1.3

Ulpianus 43 ad sab.

Constat id demum posse condici alicui, quod vel non ex iusta causa ad eum pervenit vel redit ad non iustam causam.

Dig. 12.7.2

Ulpianus 32 ad ed.

Si fullo vestimenta lavanda conduxerit, deinde amissis eis domino pretium ex locato conventus praestiterit posteaque dominus invenerit vestimenta, qua actione debeat consequi pretium quod dedit? et ait cassius eum non solum ex conducto agere, verum condicere domino posse: ego puto ex conducto omnimodo eum habere actionem: an autem et condicere possit, quaesitum est, quia non indebitum dedit: nisi forte quasi sine causa datum sic putamus condici posse: etenim vestimentis inventis quasi sine causa datum videtur.

Dig. 12.7.3

Iulianus 8 Dig.

Qui sine causa obligantur, incerti condictione consequi possunt ut liberentur: nec refert, omnem quis obligationem sine causa suscipiat an maiorem quam suscipere eum oportuerit, nisi quod alias condictione id agitur, ut omni obligatione liberetur, alias ut exoneretur: veluti qui decem promisit, nam si quidem nullam causam promittendi habuit, incerti condictione consequitur, ut tota stipulatio accepto fiat, at si, cum quinque promittere deberet, decem promisit, incerti consequetur, ut quinque liberetur.

Dig. 12.7.4

Africanus 8 quaest.

Nihil refert, utrumne ab initio sine causa quid datum sit an causa, propter quam datum sit, secuta non sit.

Dig. 12.7.5pr.

Papinianus 11 quaest.

Avunculo nuptura pecuniam in dotem dedit neque nupsit: an eandem repetere possit, quaesitum est. dixi, cum ob turpem causam dantis et accipientis pecunia numeretur, cessare condictionem et in delicto pari potiorem esse possessorem: quam rationem fortassis aliquem secutum respondere non habituram mulierem condictionem: sed recte defendi non turpem causam in proposito quam nullam fuisse, cum pecunia quae daretur in dotem converti nequiret: non enim stupri, sed matrimonii gratia datam esse.

Dig. 12.7.5.1

Papinianus 11 quaest.

Noverca privigno, nurus socero pecuniam dotis nomine dedit neque nupsit. cessare condictio prima facie videtur, quoniam iure gentium incestum committitur: atquin vel magis in ea specie nulla causa dotis dandae fuit, condictio igitur competit.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER TERTIUS DECIMUS

Dig. 13.1.0. De condictione furtiva.
Dig. 13.2.0. De condictione ex lege.
Dig. 13.3.0. De condictione triticiaria.
Dig. 13.4.0. De eo quod certo loco dari oportet.
Dig. 13.5.0. De pecunia constituta.
Dig. 13.6.0. Commodati vel contra.
Dig. 13.7.0. De pigneraticia actione vel contra.

Dig. 13.1.0. De condictione furtiva.

Dig. 13.1.1

Ulpianus 18 ad sab.

In furtiva re soli domino condictio competit.

Dig. 13.1.2

Pomponius 16 ad sab.

Condictione ex causa furtiva et furiosi et infantes obligantur, cum heredes necessarii exstiterunt, quamvis cum eis agi non possit.

Dig. 13.1.3

Paulus 9 ad sab.

Si condicatur servus ex causa furtiva, id venire in condictionem certum est quod intersit agentis, veluti si heres sit institutus et periculum subeat dominus hereditatis perdendae. quod et iulianus scribit. item si mortuum hominem condicat, consecuturum ait pretium hereditatis.

Dig. 13.1.4

Ulpianus 41 ad sab.

Si servus vel filius familias furtum commiserit, condicendum est domino id quod ad eum pervenit: in residuum noxae servum dominus dedere potest.

Dig. 13.1.5

Paulus 9 ad sab.

Ex furtiva causa filio familias condici potest: numquam enim ea condictione alius quam qui fecit tenetur aut heres eius.

Dig. 13.1.6

Ulpianus 38 ad ed.

Proinde etsi ope consilio alicuius furtum factum sit, condictione non tenebitur, etsi furti tenetur.

Dig. 13.1.7pr.

Ulpianus 42 ad sab.

Si pro fure damnum decisum sit, condictionem non impediri verissimum est: decisione enim furti quidem actio, non autem condictio tollitur.

Dig. 13.1.7.1

Ulpianus 42 ad sab.

Furti actio poenam petit legitimam, condictio rem ipsam. ea res facit, ut neque furti actio per condictionem neque condictio per furti actionem consumatur. is itaque, cui furtum factum est, habet actionem furti et condictionem et vindicationem, habet et ad exhibendum actionem.

Dig. 13.1.7.2

Ulpianus 42 ad sab.

Condictio rei furtivae, quia rei habet persecutionem, heredem quoque furis obligat, nec tantum si vivat servus furtivus, sed etiam si decesserit: sed et si apud furis heredem diem suum obiit servus furtivus vel non apud ipsum, post mortem tamen furis, dicendum est condictionem adversus heredem durare. quae in herede diximus, eadem erunt et in ceteris successoribus.

Dig. 13.1.8pr.

Ulpianus 27 ad ed.

In re furtiva condictio ipsorum corporum competit: sed utrum tamdiu, quamdiu exstent, an vero et si desierint esse in rebus humanis? et si quidem optulit fur, sine dubio nulla erit condictio: si non optulit, durat condictio aestimationis eius: corpus enim ipsum praestari non potest.

Dig. 13.1.8.1

Ulpianus 27 ad ed.

Si ex causa furtiva res condicatur, cuius temporis aestimatio fiat, quaeritur. placet tamen id tempus spectandum, quo res umquam plurimi fuit, maxime cum deteriorem rem factam fur dando non liberatur: semper enim moram fur facere videtur.

Dig. 13.1.8.2

Ulpianus 27 ad ed.

Novissime dicendum est etiam fructus in hac actione venire.

Dig. 13.1.9

Ulpianus 30 ad ed.

In condictione ex causa furtiva non pro parte quae pervenit, sed in solidum tenemur, dum soli heredes sumus, pro parte autem heres pro ea parte, pro qua heres est, tenetur.

Dig. 13.1.10pr.

Ulpianus 38 ad ed.

Sive manifestus fur sive nec manifestus sit, poterit ei condici. ita demum autem manifestus fur condictione tenebitur, si deprehensa non fuerit a domino possessio eius: ceterum nemo furum condictione tenetur, posteaquam dominus possessionem adprehendit. et ideo iulianus, ut procedat in fure manifesto tractare de condictione, ita proponit furem deprehensum aut occidisse aut fregisse aut effudisse id quod interceperat.

Dig. 13.1.10.1

Ulpianus 38 ad ed.

Ei quoque, qui vi bonorum raptorum tenetur, condici posse iulianus libro vicensimo secundo digestorum significat.

Dig. 13.1.10.2

Ulpianus 38 ad ed.

Tamdiu autem condictioni locus erit, donec domini facto dominium eius rei ab eo recedat: et ideo si eam rem alienaverit, condicere non poterit.

Dig. 13.1.10.3

Ulpianus 38 ad ed.

Unde celsus libro duodecimo digestorum scribit, si rem furtivam dominus pure legaverit furi, heredem ei condicere non posse: sed et si non ipsi furi, sed alii, idem dicendum est cessare condictionem, quia dominium facto testatoris, id est domini, discessit.

Dig. 13.1.11

Paulus 39 ad ed.

Sed nec legatarius condicere potest: ei enim competit condictio, cui res subrepta est, vel heredi eius: sed vindicare rem legatam ab eo potest.

Dig. 13.1.12pr.

Ulpianus 38 ad ed.

Et ideo eleganter Marcellus definit libro septimo: ait enim: si res mihi subrepta tua remaneat, condices. sed et si dominium non tuo facto amiseris, aeque condices.

Dig. 13.1.12.1

Ulpianus 38 ad ed.

In communi igitur re eleganter ait interesse, utrum tu provocasti communi dividundo iudicio an provocatus es, ut, si provocasti communi dividundo iudicio, amiseris condictionem, si provocatus es, retineas.

Dig. 13.1.12.2

Ulpianus 38 ad ed.

Neratius libris membranarum aristonem existimasse, refert eum, cui pignori res data sit, incerti condictione acturum, si ea subrepta sit.

Dig. 13.1.13

Paulus 39 ad ed.

Ex argento subrepto pocula facta condici posse fulcinius ait: ergo in condictione poculorum etiam caelaturae aestimatio fiet, quae impensa furis facta est, quemadmodum si infans subreptus adoleverit, aestimatio fit adulescentis, quamvis cura et sumptibus furis creverit.

Dig. 13.1.14pr.

Iulianus 22 Dig.

Si servus furtivus sub condicione legatus fuerit, pendente ea heres condictionem habebit et, si lite contestata condicio exstiterit, absolutio sequi debebit, perinde ac si idem servus sub condicione liber esse iussus fuisset et lite contestata condicio exstitisset: nam nec petitoris iam interest hominem recipere et res sine dolo malo furis eius esse desiit. quod si pendente condicione iudicaretur, iudex aestimare debebit, quanti emptorem invenerit.

Dig. 13.1.14.1

Iulianus 22 Dig.

Cavere autem ex hac actione petitor ei cum quo agitur non debebit.

Dig. 13.1.14.2

Iulianus 22 Dig.

Bove subrepto et occiso condictio et bovis et corii et carnis domino competit, scilicet si et corium et caro contrectata fuerint ^ fuerunt^: cornua quoque condicentur. sed si dominus condictione bovis pretium consecutus fuerit et postea aliquid eorum, de quibus supra dictum est, condicet, omnimodo exceptione summovetur. contra si corium condixerit et pretium eius consecutus bovem condicet, offerente fure pretium bovis detracto pretio corii doli mali exceptione summovebitur.

Dig. 13.1.14.3

Iulianus 22 Dig.

Idem iuris est uvis subreptis: nam et mustum et vinacia iure condici possunt.

Dig. 13.1.15

Celsus 12 Dig.

Quod ab alio servus subripuit, eius nomine liber furti tenetur: condici autem ei non potest, nisi liber contrectavit.

Dig. 13.1.16

Pomponius 38 ad q. muc.

Qui furtum admittit vel re commodata vel deposita utendo, condictione quoque ex furtiva causa obstringitur: quae differt ab actione commodati hoc, quod, etiamsi sine dolo malo et culpa eius interierit res, condictione tamen tenetur, cum in commodati actione non facile ultra culpam et in depositi non ultra dolum malum teneatur is, cum quo depositi agetur.

Dig. 13.1.17

Papinianus 10 quaest.

Parvi refert ad tollendam condictionem, offeratur servus furtivus an in aliud nomen aliumque statum obligationis transferatur: nec me movet, praesens homo fuerit nec ne, cum mora, quae eveniebat ex furto, veluti quadam delegatione finiatur.

Dig. 13.1.18

Scaevola 4 quaest.

Quoniam furtum fit, cum quis indebitos nummos sciens acceperit, videndum, si procurator suos nummos solvat, an ipsi furtum fiat. et pomponius epistularum libro octavo ipsum condicere ait ex causa furtiva: sed et me condicere, si ratum habeam quod indebitum datum sit. sed altera condictione altera tollitur.

Dig. 13.1.19

Paulus 3 ad ner.

Iulianus ex persona filiae, quae res amovit, dandam in patrem condictionem in peculium respondit.

Dig. 13.1.20

Tryphonus 15 disp.

Licet fur paratus fuerit excipere condictionem et per me steterit, dum in rebus humanis res fuerat, condicere eam, postea autem perempta est, tamen durare condictionem veteres voluerunt, quia videtur, qui primo invito domino rem contrectaverit, semper in restituenda ea, quam nec debuit auferre, moram facere.

Dig. 13.2.0. De condictione ex lege.

Dig. 13.2.1

Paulus 2 ad plaut.

Si obligatio lege nova introducta sit nec cautum eadem lege, quo genere actionis experiamur, ex lege agendum est.

Dig. 13.3.0. De condictione triticiaria.

Dig. 13.3.1pr.

Ulpianus 27 ad ed.

Qui certam pecuniam numeratam petit, illa actione utitur " si certum petetur": qui autem alias res, per triticariam condictionem petet. et generaliter dicendum est eas res per hanc actionem peti, si quae sint praeter pecuniam numeratam, sive in pondere sive in mensura constent, sive mobiles sint sive soli. quare fundum quoque per hanc actionem petimus et si vectigalis sit sive ius stipulatus quis sit, veluti usum fructum vel servitutem utrorumque praediorum.

Dig. 13.3.1.1

Ulpianus 27 ad ed.

Rem autem suam per hanc actionem nemo petet, nisi ex causis ex quibus potest, veluti ex causa furtiva vel vi mobili abrepta.

Dig. 13.3.2

Ulpianus 18 ad sab.

Sed et ei, qui vi aliquem de fundo deiecit, posse fundum condici sabinus scribit, et ita et celsus, sed ita, si dominus sit qui deiectus condicat: ceterum si non sit, possessionem eum condicere celsus ait.

Dig. 13.3.3

Ulpianus 27 ad ed.

In hac actione si quaeratur, res quae petita est cuius temporis aestimationem recipiat, verius est, quod servius ait, condemnationis tempus spectandum: si vero desierit esse in rebus humanis, mortis tempus, sed en platei secundum celsum erit spectandum: non enim debet novissimum vitae tempus aestimari, ne ad exiguum pretium aestimatio redigatur in servo forte mortifere vulnerato. in utroque autem, si post moram deterior res facta sit, Marcellus scribit libro vicensimo habendam aestimationem, quanto deterior res facta sit: et ideo, si quis post moram servum eluscatum dederit, nec liberari eum: quare ad tempus morae in his erit reducenda aestimatio.

Dig. 13.3.4

Gaius 9 ad ed. provinc.

Si merx aliqua, quae certo die dari debebat, petita sit, veluti vinum oleum frumentum, tanti litem aestimandam cassius ait, quanti fuisset eo die, quo dari debuit: si de die nihil convenit, quanti tunc, cum iudicium acciperetur. idemque iuris in loco esse, ut primum aestimatio sumatur eius loci, quo dari debuit, si de loco nihil convenit, is locus spectetur, quo peteretur. quod et de ceteris rebus iuris est.

Dig. 13.4.0. De eo quod certo loco dari oportet.

Dig. 13.4.1

Gaius 9 ad ed. provinc.

Alio loco, quam in quem sibi dari quisque stipulatus esset, non videbatur agendi facultas competere. sed quia iniquum erat, si promissor ad eum locum, in quem daturum se promisisset, numquam accederet (quod vel data opera faceret vel quia aliis locis necessario distringeretur), non posse stipulatorem ad suum pervenire, ideo visum est utilem actionem in eam rem comparare.

Dig. 13.4.2pr.

Ulpianus 27 ad ed.

Arbitraria actio utriusque utilitatem continet tam actoris quam rei: quod si rei interest, minoris fit pecuniae condemnatio quam intentum est, aut si actoris, maioris pecuniae fiat.

Dig. 13.4.2.1

Ulpianus 27 ad ed.

Haec autem actio ex illa stipulatione venit, ubi stipulatus sum a te ephesi decem dari.

Dig. 13.4.2.2

Ulpianus 27 ad ed.

Si quis ephesi decem aut capuae hominem dari stipulatus experiatur, non debet detracto altero loco experiri, ne auferat loci utilitatem reo.

Dig. 13.4.2.3

Ulpianus 27 ad ed.

Scaevola libro quinto decimo quaestionum ait non utique ea, quae tacite insunt stipulationibus, semper in rei esse potestate, sed quid debeat, esse in eius arbitrio, an debeat, non esse. et ideo cum quis stichum aut pamphilum promittit, eligere posse quod solvat, quamdiu ambo vivunt: ceterum ubi alter decessit, extingui eius electionem, ne sit in arbitrio eius, an debeat, dum non vult vivum praestare, quem solum debet. quare et in proposito eum, qui promisit ephesi aut capuae, si fuerit in ipsius arbitrio, ubi ab eo petatur, conveniri non potuisse: semper enim alium locum electurum: sic evenire, ut sit in ipsius arbitrio, an debeat: quare putat posse ab eo peti altero loco et sine loci adiectione: damus igitur actori electionem petitionis. et generaliter definit scaevola petitorem electionem habere ubi petat, reum ubi solvat, scilicet ante petitionem. proinde mixta, inquit, rerum alternatio locorum alternationi ex necessitate facit actoris electionem et in rem propter locum: alioquin tollis ei actionem, dum vis reservare reo optionem.

Dig. 13.4.2.4

Ulpianus 27 ad ed.

Si quis ita stipulatur " ephesi et capuae", hoc ait, ut ephesi partem et capuae partem petat.

Dig. 13.4.2.5

Ulpianus 27 ad ed.

Si quis insulam fieri stipuletur et locum non adiciat, non valet stipulatio.

Dig. 13.4.2.6

Ulpianus 27 ad ed.

Qui ita stipulatur " ephesi decem dari": si ante diem, quam ephesum pervenire possit, agat, perperam ante diem agi, quia et iulianus putat diem tacite huic stipulationi inesse. quare verum puto, quod iulianus ait eum, qui romae stipulatur hodie carthagine dari, inutiliter stipulari.

Dig. 13.4.2.7

Ulpianus 27 ad ed.

Idem iulianus tractat, an is, qui ephesi sibi aut titio dari stipulatus est, si alibi titio solvatur, nihilo minus possit intendere sibi dari oportere. et iulianus scribit liberationem non contigisse atque ideo posse peti quod interest. Marcellus autem et alias tractat et apud iulianum notat posse dici et si mihi alibi solvatur, liberationem contigisse, quamvis invitus accipere non cogar: plane si non contigit liberatio, dicendum ait superesse petitionem integrae summae, quemadmodum si quis insulam alibi fecisset quam ubi promiserat, in nihilum liberaretur. sed mihi videtur summae solutio distare a fabrica insulae et ideo quod interest solum petendum.

Dig. 13.4.2.8

Ulpianus 27 ad ed.

Nunc de officio iudicis huius actionis loquendum est, utrum quantitati contractus debeat servire an vel excedere vel minuere quantitatem debeat, ut, si interfuisset rei ephesi potius solvere quam eo loci quo conveniebatur, ratio eius haberetur. iulianus labeonis opinionem secutus etiam actoris habuit rationem, cuius interdum potuit interesse ephesi recipere: itaque utilitas quoque actoris veniet. quid enim si traiecticiam pecuniam dederat ^ dederit^ ephesi recepturus, ubi sub poena debebat pecuniam vel sub pignoribus, et distracta pignora sunt vel poena commissa mora tua? vel fisco aliquid debebatur et res stipulatoris vilissimo distracta est? in hanc arbitrariam quod interfuit veniet et quidem ultra legitimum modum usurarum. quid si merces solebat comparare: an et lucri ratio habeatur, non solius damni? puto et lucri habendam rationem.

Dig. 13.4.3

Gaius 9 ad ed. provinc.

Ideo in arbitrium iudicis refertur haec actio, quia scimus, quam varia sint pretia rerum per singulas civitates regionisque, maxime vini olei frumenti: pecuniarum quoque licet videatur una et eadem potestas ubique esse, tamem aliis locis facilius et levibus usuris inveniuntur, aliis difficilius et gravibus usuris.

Dig. 13.4.4pr.

Ulpianus 27 ad ed.

Quod si ephesi petetur, ipsa sola summa petetur nec amplius quid, nisi si quid esset stipulatus, vel si temporis utilitas intervenit.

Dig. 13.4.4.1

Ulpianus 27 ad ed.

Interdum iudex, qui ex hac actione cognoscit, cum sit arbitraria, absolvere reum debet cautione ab eo exacta de pecunia ibi solvenda ubi promissa est. quid enim si ibi vel oblata pecunia actori dicatur vel deposita vel ex facili solvenda? nonne debebit interdum absolvere? in summa aequitatem quoque ante oculos habere debet iudex, qui huic actioni addictus est.

Dig. 13.4.5

Paulus 28 ad ed.

Si heres a testatore iussus sit certo loco quid dare, arbitraria actio competit:

Dig. 13.4.6

Pomponius 22 ad sab.

Aut mutua pecunia sic data fuerit, ut certo loco reddatur.

Dig. 13.4.7pr.

Paulus 28 ad ed.

In bonae fidei iudiciis, etiamsi in contrahendo convenit, ut certo loco quid praestetur, ex empto vel vendito vel depositi actio competit, non arbitraria actio.

Dig. 13.4.7.1

Paulus 28 ad ed.

Si tamen certo loco traditurum se quis stipulatus sit, hac actione utendum erit.

Dig. 13.4.8

Africanus 3 quaest.

Centum capuae dari stipulatus fideiussorem accepisti: ea pecunia ab eo similiter ut ab ipso promissore peti debebit, id est ut, si alibi quam capuae petantur, arbitraria agi debeat lisque tanti aestimetur, quanti eius vel actoris interfuerit eam summam capuae potius quam alibi solvi. nec oportebit, quod forte per reum steterit, quo minus tota centum capuae solverentur, obligationem fideiussoris augeri: neque enim haec causa recte comparabitur obligationi usurarum: ibi enim duae stipulationes sunt, hic autem una pecuniae creditae est, circa cuius exsecutionem aestimationis ratio arbitrio iudicis committitur. eiusque differentiae manifestissimum argumentum esse puto, quod, si post moram factam pars pecuniae soluta sit et reliquum petatur, officium iudicis tale esse debeat, ut aestimet, quanti actoris intersit eam dumtaxat summam quae petetur capuae solutam esse.

Dig. 13.4.9

Ulpianus 47 ad sab.

Is qui certo loco dare promittit, nullo alio loco, quam in quo promisit, solvere invito stipulatore potest.

Dig. 13.4.10

Paulus 4 quaest.

Si post moram factam, quo minus capuae solveretur, cum arbitraria vellet agere, fideiussor acceptus sit eius actionis nomine, videamus, ne ea pecunia, quae ex sententia iudicis accedere potest, non debeatur nec sit in obligatione, adeo ut nunc quoque sorte soluta vel si capuae petatur, arbitrium iudicis cesset: nisi si quis dicat, si iudex centum et viginti condemnare debuerit, centum solutis ex universitate, tam ex sorte quam ex poena solutum videri, ut supersit petitio eius quod excedit sortem, et accedat poena pro eadem quantitate. quod non puto admittendum, tanto magis, quod creditor accipiendo pecuniam etiam remisisse poenam videtur.

Dig. 13.5.0. De pecunia constituta.

Dig. 13.5.1pr.

Ulpianus 27 ad ed.

Hoc edicto praetor favet naturali aequitati: qui constituta ex consensu facta custodit, quoniam grave est fidem fallere.

Dig. 13.5.1.1

Ulpianus 27 ad ed.

Ait praetor: " qui pecuniam debitam constituit". " qui" sic accipiendum est " quaeve", nam et mulieres de constituta tenentur, si non intercesserint.

Dig. 13.5.1.2

Ulpianus 27 ad ed.

De pupillo etsi nihil sit expressum edicto, attamen sine tutoris auctoritate constituendo non obligatur.

Dig. 13.5.1.3

Ulpianus 27 ad ed.

Sed si filius familias constituerit, an teneatur, quaeritur: sed puto verum et ipsum constituentem teneri et patrem de peculio.

Dig. 13.5.1.4

Ulpianus 27 ad ed.

Eum, qui inutiliter stipulatus est, cum stipulari voluerit, non constitui sibi, dicendum est de constituta experiri non posse, quoniam non animo constituentis, sed promittentis factum sit.

Dig. 13.5.1.5

Ulpianus 27 ad ed.

An potest aliud constitui quam quod debetur, quaesitum est. sed cum iam placet rem pro re solvi posse, nihil prohibet et aliud pro debito constitui: denique si quis centum debens frumentum eiusdem pretii constituat, puto valere constitutum.

Dig. 13.5.1.6

Ulpianus 27 ad ed.

Debitum autem ex quacumque causa potest constitui, id est ex quocumque contractu sive certi sive incerti, et si ex causa emptionis quis pretium debeat vel ex causa dotis vel ex causa tutelae vel ex quocumque alio contractu.

Dig. 13.5.1.7

Ulpianus 27 ad ed.

Debitum autem vel natura sufficit.

Dig. 13.5.1.8

Ulpianus 27 ad ed.

Sed et is, qui honoraria actione, non iure civili obligatus est, constituendo tenetur: videtur enim debitum et quod iure honorario debetur. et ideo et pater et dominus de peculio obstricti si constituerint, tenebuntur usque ad eam quantitatem, quae tunc fuit in peculio, cum constituebatur: ceterum si plus suo nomine constituit, non tenebitur in id quod plus est.

Dig. 13.5.2

Iulianus 11 Dig.

Quod si filii nomine constituerit se decem soluturum, quamvis in peculio quinque fuerint, de constituta in decem tenebitur.

Dig. 13.5.3pr.

Ulpianus 27 ad ed.

Quod si maritus plus constituit ex dote quam facere poterat, quia debitum constituerit, in solidum quidem tenetur, sed mulieri in quantum facere potest condemnatur.

Dig. 13.5.3.1

Ulpianus 27 ad ed.

Si quis autem constituerit quod iure civili debebat, iure praetorio non debebat, id est per exceptionem, an constituendo teneatur, quaeritur: et est verum, ut et pomponius scribit, eum non teneri, quia debita iuribus non est pecunia quae constituta est.

Dig. 13.5.3.2

Ulpianus 27 ad ed.

Si is, qui et iure civili et praetorio debebat, in diem sit obligatus, an constituendo teneatur? et labeo ait teneri constitutum, quam sententiam et pedius probat: et adicit labeo vel propter has potissimum pecunias, quae nondum peti possunt, constituta inducta: quam sententiam non invitus probarem: habet enim utilitatem, ut ex die obligatus constituendo se eadem die soluturum teneatur.

Dig. 13.5.4

Paulus 29 ad ed.

Sed et si citeriore die constituat se soluturum, similiter tenetur.

Dig. 13.5.5pr.

Ulpianus 27 ad ed.

Eum, qui ephesi promisit se soluturum, si constituat alio loco se soluturum, teneri constat.

Dig. 13.5.5.1

Ulpianus 27 ad ed.

Iulianus legatum romae constituentem, quod in provincia acceperat, putat conveniri debere, quod et verum est. sed et si non cum romae esset, sed in provincia adhuc, constituit se romae soluturum, denegatur in eum actio de constituta.

Dig. 13.5.5.2

Ulpianus 27 ad ed.

Quod exigimus, ut sit debitum quod constituitur, in rem exactum est, non utique ut is cui constituitur creditor sit: nam et quod ego debeo tu constituendo teneberis, et quod tibi debetur si mihi constituatur, debetur.

Dig. 13.5.5.3

Ulpianus 27 ad ed.

Iulianus quoque libro undecimo scribit: titius epistulam ad me talem emisit: " scripsi me secundum mandatum seii, si quid tibi debitum adprobatum erit me tibi cauturum et soluturum sine controversia. " tenetur titius de constituta pecunia.

Dig. 13.5.5.4

Ulpianus 27 ad ed.

Sed si quis constituerit alium soluturum, non se pro alio, non tenetur: et ita pomponius libro octavo scribit.

Dig. 13.5.5.5

Ulpianus 27 ad ed.

Item si mihi constituas te soluturum, teneberis: quod si mihi constitueris sempronio te soluturum, non teneberis.

Dig. 13.5.5.6

Ulpianus 27 ad ed.

Iulianus libro undecimo digestorum scribit procuratori constitui posse: quod pomponius ita interpretatur, ut ipsi procuratori constituas te soluturum, non domino.

Dig. 13.5.5.7

Ulpianus 27 ad ed.

Item tutori pupilli constitui potest et actori municipum et curatori furiosi:

Dig. 13.5.5.8

Ulpianus 27 ad ed.

Sed et ipsi constituentes tenebuntur.

Dig. 13.5.5.9

Ulpianus 27 ad ed.

Si actori municipum vel tutori pupilli vel curatori furiosi vel adulescentis ita constituatur municipibus solvi vel pupillo vel furioso vel adulescenti, utilitatis gratia puto dandam municipibus vel pupillo vel furioso vel adulescenti utilem actionem.

Dig. 13.5.5.10

Ulpianus 27 ad ed.

Servo quoque constitui posse constat et, si servo constituatur domino solvi vel ipsi servo, qualemqualem servum domino adquirere obligationem.

Dig. 13.5.6

Paulus 2 sent.

Idem est et si ei qui bona fide mihi servit constitutum fuerit.

Dig. 13.5.7pr.

Ulpianus 27 ad ed.

Sed et si filio familias constituatur, valet constitutum.

Dig. 13.5.7.1

Ulpianus 27 ad ed.

Si mihi aut titio stipuler, titio constitui suo nomine non posse iulianus ait, quia non habet petitionem, tametsi solvi ei possit.

Dig. 13.5.8

Paulus 29 ad ed.

Si vero mihi aut titio constitueris te soluturum, mihi competit actio: quod si, posteaquam soli mihi te soluturum constituisti, solveris titio, nihilo minus mihi teneberis.

Dig. 13.5.9

Papinianus 8 quaest.

Titius tamen indebiti condictione tenebitur, ut quod ei perperam solutum est ei qui solvit reddatur.

Dig. 13.5.10

Paulus 29 ad ed.

Idem est et si ex duobus reis stipulandi post alteri constitutum, alteri postea solutum est, quia loco eius, cui iam solutum est haberi debet is cui constituitur.

Dig. 13.5.11pr.

Ulpianus 27 ad ed.

Hactenus igitur constitutum valebit, si quod constituitur debitum sit, etiamsi nullus apparet, qui interim debeat: ut puta si ante aditam hereditatem debitoris vel capto eo ab hostibus constituat quis se soluturum: nam et pomponius scribit valere constitutum, quoniam debita pecunia constituta est.

Dig. 13.5.11.1

Ulpianus 27 ad ed.

Si quis centum aureos debens ducentos constituat, in centum tantummodo tenetur, quia ea pecunia debita est: ergo et is, qui sortem et usuras quae non debebantur constituit, tenebitur in sortem dumtaxat.

Dig. 13.5.12

Paulus 13 ad ed.

Sed et si decem debeantur et decem et stichum constituat, potest dici decem tantummodo nomine teneri.

Dig. 13.5.13

Paulus 29 ad ed.

Sed si quis viginti debens decem constituit se soluturum, tenebitur.

Dig. 13.5.14pr.

Ulpianus 27 ad ed.

Qui autem constituit se soluturum, tenetur, sive adiecit certam quantitatem sive non.

Dig. 13.5.14.1

Ulpianus 27 ad ed.

Si quis constituerit se pignus daturum: cum utilitas pignorum imrepserit, debet etiam hoc constitutum admitti.

Dig. 13.5.14.2

Ulpianus 27 ad ed.

Sed et si quis certam personam fideiussuram pro se constituerit, nihilo minus tenetur, ut pomponius scribit. quid tamen si ea persona nolit fideiubere? puto teneri eum qui constituit, nisi aliud actum est. quid si ante decessit? si mora interveniente, aequum est teneri eum qui constituit vel in id quod interest vel ut aliam personam non minus idoneam fideiubentem praestet: si nulla mora interveniente, magis puto non teneri.

Dig. 13.5.14.3

Ulpianus 27 ad ed.

Constituere autem et praesentes et absentes possumus, sicut pacisci, et per nuntium et per nosmet ipsos, et quibuscumque verbis.

Dig. 13.5.15

Paulus 29 ad ed.

Et licet libera persona sit, per quam tibi constitui, non erit impedimentum, quod per liberam personam adquirimus, quia ministerium tantummodo hoc casu praestare videtur.

Dig. 13.5.16pr.

Ulpianus 27 ad ed.

Si duo quasi duo rei constituerimus, vel cum altero agi poterit in solidum.

Dig. 13.5.16.1

Ulpianus 27 ad ed.

Sed et certo loco et tempore constituere quis potest, nec solum eo loci posse eum petere, ubi ei constitutum est, sed exemplo arbitrariae actionis ubique potest.

Dig. 13.5.16.2

Ulpianus 27 ad ed.

Ait praetor: " si appareat eum qui constituit neque solvere neque fecisse neque per actorem stetit, quo minus fieret quod constitutum est. "

Dig. 13.5.16.3

Ulpianus 27 ad ed.

Ergo si non stetit per actorem, tenet actio, etiamsi per rerum naturam stetit: sed magis dicendum est subveniri reo debere.

Dig. 13.5.16.4

Ulpianus 27 ad ed.

Haec autem verba praetoris " neque fecisse reum quod constituit" utrum ad tempus constituti pertinent an vero usque ad litis contestationem trahimus, dubitari potest: et puto ad tempus constituti.

Dig. 13.5.17

Paulus 29 ad ed.

Sed et si alia die offerat nec actor accipere voluit nec ulla causa iusta fuit non accipiendi, aequum est succurri reo aut exceptione aut iusta interpretatione, ut factum actoris usque ad tempus iudicii ipsi noceat: ut illa verba " neque fecisset" hoc significent, ut neque in diem in quem constituit fecerit neque postea.

Dig. 13.5.18pr.

Ulpianus 27 ad ed.

Item illa verba praetoris " neque per actorem stetisse" eandem recipiunt dubitationem. et pomponius dubitat, si forte ad diem constituti per actorem non steterit, ante stetit vel postea. et puto et haec ad diem constituti referenda. proinde si valetudine impeditus aut vi aut tempestate petitor non venit, ipsi nocere pomponius scribit.

Dig. 13.5.18.1

Ulpianus 27 ad ed.

Quod adicitur: " eamque pecuniam cum constituebatur debitam fuisse", interpretationem pleniorem exigit. nam primum illud efficit, ut, si quid tunc debitum fuit cum constitueretur, nunc non sit, nihilo minus teneat constitutum, quia retrorsum se actio refert. proinde temporali actione obligatum constituendo celsus et iulianus scribunt teneri debere, licet post constitutum dies temporalis actionis exierit. quare et si post tempus obligationis se soluturum constituerit, adhuc idem iulianus putat, quoniam eo tempore constituit, quo erat obligatio, licet in id tempus quo non tenebatur.

Dig. 13.5.18.2

Ulpianus 27 ad ed.

E re autem est hic subiungere, utrum poenam contineat haec actio an rei persecutionem: et magis est, ut etiam Marcellus putat, ut rei sit persecutio.

Dig. 13.5.18.3

Ulpianus 27 ad ed.

Vetus fuit dubitatio, an qui hac actione egit sortis obligationem consumat. et tutius est dicere solutione potius ex hac actione facta liberationem contingere, non litis contestatione, quoniam solutio ad utramque obligationem proficit.

Dig. 13.5.19pr.

Paulus 29 ad ed.

Id quod sub condicione debetur, sive pure sive certo die constituatur, eadem condicione suspenditur, ut existente condicione teneatur deficiente utraque actio depereat.

Dig. 13.5.19.1

Paulus 29 ad ed.

Sed is qui pure debet si sub condicione constituat, inquit pomponius in hunc utilem actionem esse.

Dig. 13.5.19.2

Paulus 29 ad ed.

Si pater vel dominus constituerit se soluturum quod fuit in peculio, non minueretur peculium eo, quod ex ea causa obstrictus esse coeperit: et licet interierit peculium, non tamen liberatur.

Dig. 13.5.20

Paulus 4 ad plaut.

Nec enim quod crescit peculium aut decrescit, pertinet ad constitutoriam actionem.

Dig. 13.5.21pr.

Paulus 29 ad ed.

Promissor stichi post moram ab eo factam mortuo sticho si constituerit se pretium eius soluturum, tenetur.

Dig. 13.5.21.1

Paulus 29 ad ed.

Si sine die constituas, potest quidem dici te non teneri, licet verba edicti late pateant: alioquin et confestim agi tecum poterit, si statim ut constituisti non solvas: sed modicum tempus statuendum est non minus decem dierum, ut exactio celebretur.

Dig. 13.5.21.2

Paulus 29 ad ed.

Constituto satis non facit, qui soluturum se constituit, si offerat satisfactionem. si quis autem constituat se satisdaturum, fideiussorem vel pignora det, non tenetur, quia nihil intersit, quemadmodum satisfaciat.

Dig. 13.5.22

Paulus 6 brev.

Si post constitutam tibi pecuniam hereditatem ex senatus consulto trebelliano restitueris, quoniam sortis petitionem transtulisti ad alium, deneganda est tibi pecuniae constitutae actio. idem est in hereditatis possessore post evictam hereditatem. sed magis est, ut fideicommissario vel ei qui vicit decernenda esset actio.

Dig. 13.5.23

Iulianus 11 Dig.

Promissor hominis homine mortuo, cum per eum staret quo minus traderetur, etsi hominem daturum se constituerit, de constituta pecunia tenebitur, ut pretium eius solvat.

Dig. 13.5.24

Marcellus l.S. resp.

Titius seio epistulam emisit in haec verba: " remanserunt apud me quinquaginta ex credito tuo ex contractu pupillorum meorum, quos tibi reddere debebo idibus maiis probos: quod si ad diem supra scriptum non dedero, tunc dare debebo usuras tot. " quaero, an lucius titius in locum pupillorum hac cautione reus successerit. Marcellus respondit si intercessisset stipulatio, successisse. item quaero, an, si non successisset, de constituta teneatur. Marcellus respondit in sortem teneri: est enim humanior et utilior ista interpretatio.

Dig. 13.5.25pr.

Papinianus 8 quaest.

Illud aut illud debuit et constituit alterum: an vel alterum quod non constituit solvere possit, quaesitum est. dixi non esse audiendum, si velit hodie fidem constitutae rei frangere.

Dig. 13.5.25.1

Papinianus 8 quaest.

Si iureiurando delato deberi tibi iuraveris, cum habeas eo nomine actionem, recte de constituta agis. sed et si non ultro detulero iusiurandum, sed referendi necessitate compulsus id fecero, quia nemo dubitat modestius facere qui referat, quam ut ipse iuret, nulla distinctio adhibetur, tametsi ob tuam facilitatem ac meam verecundiam subsecuta sit referendi necessitas.

Dig. 13.5.26

Scaevola 1 resp.

Quidam ad creditorem litteras eiusmodi fecit: " decem, quae lucius titius ex arca tua mutua acceperat, salva ratione usurarum habes penes me, domine. " respondit secundum ea quae proponerentur actione de constituta pecunia eum teneri.

Dig. 13.5.27

Ulpianus 14 ad ed.

Utrum praesente debitore an absente constituat quis, parvi refert. hoc amplius etiam invito constituere eum posse pomponius libro trigensimo quarto scribit: unde falsam putat opinionem labeonis existimantis, si, postquam quis constituit pro alio, dominus ei denuntiet ne solvat, in factum exceptionem dandam: nec immerito pomponius: nam cum semel sit obligatus qui constituit, factum debitoris non debet eum excusare.

Dig. 13.5.28

Gaius 5 ad ed. provinc.

Ubi quis pro alio constituit se soluturum, adhuc is, pro quo constituit, obligatus manet.

Dig. 13.5.29

Paulus 24 ad ed.

Qui iniuriarum vel furti vel vi bonorum raptorum tenetur actione, constituendo tenetur.

Dig. 13.5.30

Paulus 2 sent.

Si quis duobus pecuniam constituerit tibi aut titio, etsi stricto iure propria actione pecuniae constitutae manet obligatus, etiamsi titio solverit, tamen per exceptionem adiuvatur.

Dig. 13.5.31

Scaevola 5 Dig.

Lucius titius seiorum debitor decessit: hi persuaserunt publio maevio, quod hereditas ad eum pertineret et fecerunt, ut epistulam in eos exponat debitorem sese esse quasi heredem patrui sui confitentem, qui et addidit epistulae suae, quod in rationes suas eadem pecunia pervenit. quaesitum est, cum ad publium maevium ex hereditate lucii titii nihil pervenerit, an ex scriptura proposita de constituta pecunia conveniri possit et an doli exceptione uti possit. respondit nec civilem eo nomine actionem competere: sed nec de constituta secundum ea quae proponerentur. idem quaesiit, usurarum nomine quod ex causa supra scripta datum sit, an repeti possit. respondit secundum ea quae proponerentur posse.

Dig. 13.6.0. Commodati vel contra.

Dig. 13.6.1pr.

Ulpianus 28 ad ed.

Ait praetor: " quod quis commodasse dicetur, de eo iudicium dabo. "

Dig. 13.6.1.1

Ulpianus 28 ad ed.

Huius edicti interpretatio non est difficilis. unum solummodo notandum, quod qui edictum concepit commodati fecit mentionem, cum paconius utendi fecit mentionem. inter commodatum autem et utendum datum labeo quidem ait tantum interesse, quantum inter genus et speciem: commodari enim rem mobilem, non etiam soli, utendam dari etiam soli. sed ut apparet, proprie commodata res dicitur et quae soli est, idque et cassius existimat. vivianus amplius etiam habitationem commodari posse ait.

Dig. 13.6.1.2

Ulpianus 28 ad ed.

Impuberes commodati actione non tenentur, quoniam nec constitit commodatum in pupilli persona sine tutoris auctoritate, usque adeo ut, etiamsi pubes factus dolum aut culpam admiserit, hac actione non tenetur, quia ab initio non constitit.

Dig. 13.6.2

Paulus 29 ad ed.

Nec in furiosum commodati actio danda est. sed ad exhibendum adversus eos dabitur, ut res exhibita vindicetur.

Dig. 13.6.3pr.

Ulpianus 28 ad ed.

Sed mihi videtur, si locupletior pupillus factus sit, dandam utilem commodati actionem secundum divi pii rescriptum.

Dig. 13.6.3.1

Ulpianus 28 ad ed.

Si reddita quidem sit res commodata, sed deterior reddita, non videtur reddita, quae deterior facta redditur, nisi quid interest praestetur: proprie enim dicitur res non reddita, quae deterior redditur.

Dig. 13.6.3.2

Ulpianus 28 ad ed.

In hac actione sicut in ceteris bonae fidei iudiciis similiter in litem iurabitur: et rei iudicandae tempus, quanti res sit, observatur, quamvis in stricti litis contestatae tempus spectetur.

Dig. 13.6.3.3

Ulpianus 28 ad ed.

Heres eius qui commodatum accepit pro ea parte qua heres est convenitur, nisi forte habeat facultatem totius rei restituendae nec faciat: tunc enim condemnatur in solidum, quasi hoc boni iudicis arbitrio conveniat.

Dig. 13.6.3.4

Ulpianus 28 ad ed.

Si filio familias servove commodatum sit, dumtaxat de peculio agendum erit: cum filio autem familias ipso et directo quis poterit. sed et si ancillae vel filiae familias commodaverit, dumtaxat de peculio erit agendum.

Dig. 13.6.3.5

Ulpianus 28 ad ed.

Sed non tantum ex causa doli earum personarum pater vel dominus condemnetur, sed et ipsius quoque domini vel patris fraus dumtaxat venit, ut iulianus libro undecimo circa pigneraticiam actionem distinguit.

Dig. 13.6.3.6

Ulpianus 28 ad ed.

Non potest commodari id quod usu consumitur, nisi forte ad pompam vel ostentationem quis accipiat.

Dig. 13.6.4

Gaius 1 de verb. oblig.

Saepe etiam ad hoc commodantur pecuniae, ut dicis gratia numerationis loco intercedant.

Dig. 13.6.5pr.

Ulpianus 28 ad ed.

Si ut certo loco vel tempore reddatur commodatum convenit, officio iudicis inest, ut rationem loci vel temporis habeat.

Dig. 13.6.5.1

Ulpianus 28 ad ed.

Si quis hac actione egerit et oblatam litis aestimationem susceperit, rem offerentis facit.

Dig. 13.6.5.2

Ulpianus 28 ad ed.

Nunc videndum est, quid veniat in commodati actione, utrum dolus an et culpa an vero et omne periculum. et quidem in contractibus interdum dolum solum, interdum et culpam praestamus: dolum in deposito: nam quia nulla utilitas eius versatur apud quem deponitur, merito dolus praestatur solus: nisi forte et merces accessit (tunc enim, ut est et constitutum, etiam culpa exhibetur) aut si hoc ab initio convenit, ut et culpam et periculum praestet is penes quem deponitur. sed ubi utriusque utilitas vertitur, ut in empto, ut in locato, ut in dote, ut in pignore, ut in societate, et dolus et culpa praestatur.

Dig. 13.6.5.3

Ulpianus 28 ad ed.

Commodatum autem plerumque solam utilitatem continet eius cui commodatur, et ideo verior est quinti mucii sententia existimantis et culpam praestandam et diligentiam et, si forte res aestimata data sit, omne periculum praestandum ab eo, qui aestimationem se praestaturum recepit.

Dig. 13.6.5.4

Ulpianus 28 ad ed.

Quod vero senectute contigit vel morbo, vel vi latronum ereptum est, aut quid simile accidit, dicendum est nihil eorum esse imputandum ei qui commodatum accepit, nisi aliqua culpa interveniat. proinde et si incendio vel ruina aliquid contigit vel aliquid damnum fatale, non tenebitur, nisi forte, cum possit res commodatas salvas facere, suas praetulit.

Dig. 13.6.5.5

Ulpianus 28 ad ed.

Custodiam plane commodatae rei etiam diligentem debet praestare.

Dig. 13.6.5.6

Ulpianus 28 ad ed.

Sed an etiam hominis commodati custodia praestetur, apud veteres dubitatum est. nam interdum et hominis custodia praestanda est, si vinctus commodatus est, vel eius aetatis, ut custodia indigeret: certe si hoc actum est, ut custodiam is qui rogavit praestet, dicendum erit praestare.

Dig. 13.6.5.7

Ulpianus 28 ad ed.

Sed interdum et mortis damnum ad eum qui commodatum rogavit pertinet: nam si tibi equum commodavero, ut ad villam adduceres, tu ad bellum duxeris, commodati teneberis: idem erit et in homine. plane si sic commodavi, ut ad bellum duceres, meum erit periculum. nam et si servum tibi tectorem commodavero et de machina ceciderit, periculum meum esse namusa ait: sed ego ita hoc verum puto, si tibi commodavi, ut et in machina operaretur: ceterum si ut de plano opus faceret, tu eum imposuisti in machina, aut si machinae culpa factum minus diligenter non ab ipso ligatae vel funium perticarumque vetustate, dico periculum, quod culpa contigit rogantis commodatum, ipsum praestare debere: nam et mela scripsit, si servus lapidario commodatus sub machina perierit, teneri fabrum commodati, qui neglegentius machinam colligavit.

Dig. 13.6.5.8

Ulpianus 28 ad ed.

Quin immo et qui alias re commodata utitur, non solum commodati, verum furti quoque tenetur, ut iulianus libro undecimo digestorum scripsit. denique ait, si tibi codicem commodavero et in eo chirographum debitorem tuum cavere feceris egoque hoc interlevero, si quidem ad hoc tibi commodavero, ut caveretur tibi in eo, teneri me tibi contrario iudicio: si minus neque me certiorasti ibi chirographum esse scriptum, etiam teneris mihi, inquit, commodati: immo, ait, etiam furti, quoniam aliter re commodata usus es, quemadmodum qui equo, inquit, vel vestimento aliter quam commodatum est utitur, furti tenetur.

Dig. 13.6.5.9

Ulpianus 28 ad ed.

Usque adeo autem diligentia in re commodata praestanda est, ut etiam in ea, quae sequitur rem commodatam, praestari debeat: ut puta equam tibi commodavi, quam pullus comitabatur: etiam pulli te custodiam praestare debere veteres responderunt.

Dig. 13.6.5.10

Ulpianus 28 ad ed.

Interdum plane dolum solum in re commodata qui rogavit praestabit, ut puta si quis ita convenit: vel si sua dumtaxat causa commodavit, sponsae forte suae vel uxori, quo honestius culta ad se deduceretur, vel si quis ludos edens praetor scaenicis commodavit, vel ipsi praetori quis ultro commodavit.

Dig. 13.6.5.11

Ulpianus 28 ad ed.

Nunc videndum, in quibus speciebus commodati actio locum habeat. et est apud veteres de huiusmodi speciebus dubitatum.

Dig. 13.6.5.12

Ulpianus 28 ad ed.

Rem tibi dedi, ut creditori tuo pignori dares: dedisti: non repigneras, ut mihi reddas. labeo ait commodati actionem locum habere, quod ego puto verum esse, nisi merces intervenit: tunc enim vel in factum vel ex locato conducto agendum erit. plane si ego pro te rem pignori dedero tua voluntate, mandati erit actio. idem labeo recte dicit, si a me culpa absit repignerandi, creditor autem nolit reddere pignus, competere tibi ad hoc dumtaxat commodati, ut tibi actiones adversus eum praestem. abesse autem culpa a me videtur, sive iam solvi pecuniam sive solvere sum paratus. sumptum plane litis ceteraque aequum est eum adgnoscere, qui commodatum accepit.

Dig. 13.6.5.13

Ulpianus 28 ad ed.

Si me rogaveris, ut servum tibi cum lance commodarem et servus lancem perdiderit, cartilius ait periculum ad te respicere, nam et lancem videri commodatam: quare culpam in eam quoque praestandam. plane si servus cum ea fugerit, eum qui commodatum accepit non teneri, nisi fugae praestitit culpam.

Dig. 13.6.5.14

Ulpianus 28 ad ed.

Si de me petisses, ut triclinium tibi sternerem et argentum ad ministerium praeberem, et fecero, deinde petisses, ut idem sequenti die facerem et cum commode argentum domi referre non possem, ibi hoc reliquero et perierit: qua actione agi possit et cuius esset periculum? labeo de periculo scripsit multum interesse, custodem posui an non: si posui, ad me periculum spectare, si minus, ad eum penes quem relictum est. ego puto commodati quidem agendum, verum custodiam eum praestare debere, penes quem res relictae sunt, nisi aliud nominatim convenit.

Dig. 13.6.5.15

Ulpianus 28 ad ed.

Si duobus vehiculum commodatum sit vel locatum simul, celsus filius scribit ^ scripsit^ libro sexto digestorum quaeri posse, utrum unusquisque eorum in solidum an pro parte teneatur. et ait duorum quidem in solidum dominium vel possessionem esse non posse: nec quemquam partis corporis dominum esse, sed totius corporis pro indiviso pro parte dominium habere. usum autem balinei quidem vel porticus vel campi uniuscuiusque in solidum esse (neque enim minus me uti, quod et alius uteretur): verum in vehiculo commodato vel locato pro parte quidem effectu me usum habere, quia non omnia loca vehiculi teneam. sed esse verius ait et dolum et culpam et diligentiam et custodiam in totum me praestare debere: quare duo quodammodo rei habebuntur et, si alter conventus praestiterit, liberabit alterum et ambobus competit furti actio,

Dig. 13.6.6

Pomponius 5 ad sab.

Ut alterutro agente alterius actio contra furem tollatur.

Dig. 13.6.7pr.

Ulpianus 28 ad ed.

Unde quaeritur, si alter furti egerit, an ipse solus debeat commodati conveniri. et ait celsus, si alter conveniatur qui furti non egit, et paratus sit periculo suo conveniri alterum, qui furti agendo lucrum sensit ex re commodata, debere eum audiri et absolvi.

Dig. 13.6.7.1

Ulpianus 28 ad ed.

Sed si legis aquiliae adversus socium eius habuit commodator actionem, videndum erit, ne cedere debeat, si forte damnum dedit alter, quod hic qui convenitur commodati actione sarcire compellitur: nam et si adversus ipsum habuit aquiliae actionem commodator, aequissimum est, ut commodati agendo remittat actionem: nisi forte quis dixerit agendo eum e lege aquilia hoc minus consecuturum, quam ex causa commodati consecutus est: quod videtur habere rationem.

Dig. 13.6.8

Pomponius 5 ad sab.

Rei commodatae et possessionem et proprietatem retinemus:

Dig. 13.6.9

Ulpianus 2 ad ed.

Nemo enim commodando rem facit eius cui commodat.

Dig. 13.6.10pr.

Ulpianus 29 ad sab.

Eum, qui rem commodatam accepit, si in eam rem usus est in quam accepit, nihil praestare, si eam in nulla parte culpa sua deteriorem fecit, verum est: nam si culpa eius fecit deteriorem, tenebitur.

Dig. 13.6.10.1

Ulpianus 29 ad sab.

Si rem inspectori dedi, an similis sit ei cui commodata res est, quaeritur. et si quidem mea causa dedi, dum volo pretium exquirere, dolum mihi tantum praestabit: si sui, et custodiam: et ideo furti habebit actionem. sed et si dum refertur periit, si quidem ego mandaveram per quem remitteret, periculum meum erit: si vero ipse cui voluit commisit, aeque culpam mihi praestabit, si sui causa accepit,

Dig. 13.6.11

Paulus 5 ad sab.

Qui non tam idoneum hominem elegerit, ut recte id perferri possit:

Dig. 13.6.12pr.

Ulpianus 29 ad sab.

Si mei causa, dolum tantum.

Dig. 13.6.12.1

Ulpianus 29 ad sab.

Commodatam rem missus qui repeteret cum recepisset, aufugit. si dominus ei dari iusserat, domino perit: si commonendi causa miserat, ut referretur res commodata, ei qui commodatus est.

Dig. 13.6.13pr.

Pomponius 11 ad sab.

Is qui commodatum accepit si non apparentis rei nomine commodati condemnetur, cavendum ei est, ut repertam dominus ei praestet.

Dig. 13.6.13.1

Pomponius 11 ad sab.

Si quem quaestum fecit is qui experiendum quid accepit, veluti si iumenta fuerint eaque locata sint, id ipsum praestabit qui experiundum dedit: neque enim ante eam rem quaestui cuique esse oportet, priusquam periculo eius sit.

Dig. 13.6.13.2

Pomponius 11 ad sab.

Si libero homini, qui mihi bona fide serviebat, quasi servo rem commodavero, videamus, an habeam commodati actionem. nam et celsus filius aiebat, si iussissem eum aliquid facere, vel mandati cum eo vel praescriptis verbis experiri me posse: idem ergo et in commodato erit dicendum. nec obstat, quod non hac mente cum eo, qui liber bona fide nobis serviret, contraheremus quasi eum obligatum habituri: plerumque enim id accidit, ut extra id quod ageretur tacita obligatio nascatur, veluti cum per errorem indebitum solvendi causa datur.

Dig. 13.6.14

Ulpianus 48 ad sab.

Si servus meus rem meam tibi scienti nolle me tibi commodari commodaverit, et commodati et furti nascitur actio et praeterea condictio ex causa furtiva.

Dig. 13.6.15

Paulus 29 ad ed.

Commodare possumus etiam alienam rem, quam possidemus, tametsi scientes alienam possidemus,

Dig. 13.6.16

Marcellus 5 Dig.

Ita ut et si fur vel praedo commodaverit, habeat commodati actionem.

Dig. 13.6.17pr.

Paulus 29 ad ed.

In commodato haec pactio, ne dolus praestetur, rata non est.

Dig. 13.6.17.1

Paulus 29 ad ed.

Contraria commodati actio etiam sine principali moveri potest, sicut et ceterae quae dicuntur contrariae.

Dig. 13.6.17.2

Paulus 29 ad ed.

Si ex facto heredis agatur commodati, in solidum condemnatur, licet ex parte heres est.

Dig. 13.6.17.3

Paulus 29 ad ed.

Sicut autem voluntatis et officii magis quam necessitatis est commodare, ita modum commodati finemque praescribere eius est qui beneficium tribuit. cum autem id fecit, id est postquam commodavit, tunc finem praescribere et retro agere atque intempestive usum commodatae rei auferre non officium tantum impedit, sed et suscepta obligatio inter dandum accipiendumque. geritur enim negotium invicem et ideo invicem propositae sunt actiones, ut appareat, quod principio beneficii ac nudae voluntatis fuerat, converti in mutuas praestationes actionesque civiles. ut accidit in eo, qui absentis negotia gerere inchoavit: neque enim impune peritura deseret: suscepisset enim fortassis alius, si is non coepisset: voluntatis est enim suscipere mandatum, necessitatis consummare. igitur si pugillares mihi commodasti, ut debitor mihi caveret, non recte facies importune repetendo: nam si negasses, vel emissem vel testes adhibuissem. idemque est, si ad fulciendam insulam tigna commodasti, deinde protraxisti aut etiam sciens vitiosa commodaveris: adiuvari quippe nos, non decipi beneficio oportet. ex quibus causis etiam contrarium iudicium utile esse dicendum est.

Dig. 13.6.17.4

Paulus 29 ad ed.

Duabus rebus commodatis recte de altera commodati agi posse vivianus scripsit: quod ita videri verum, si separatae sint, pomponius scripsit: nam eum, qui carrucam puta vel lecticam commodavit, non recte acturum de singulis partibus.

Dig. 13.6.17.5

Paulus 29 ad ed.

Rem commodatam perdidi et pro ea pretium dedi, deinde res in potestate tua venit: labeo ait contrario iudicio aut rem mihi praestare te debere aut quod a me accepisti reddere.

Dig. 13.6.18pr.

Gaius 9 ad ed. provinc.

In rebus commodatis talis diligentia praestanda est, qualem quisque diligentissimus pater familias suis rebus adhibet, ita ut tantum eos casus non praestet, quibus resisti non possit, veluti mortes servorum quae sine dolo et culpa eius accidunt, latronum hostiumve incursus, piratarum insidias, naufragium, incendium, fugas servorum qui custodiri non solent. quod autem de latronibus et piratis et naufragio diximus, ita scilicet accipiemus, si in hoc commodata sit alicui res, ut eam rem peregre secum ferat: alioquin si cui ideo argentum commodaverim, quod is amicos ad cenam invitaturum se diceret, et id peregre secum portaverit, sine ulla dubitatione etiam piratarum et latronum et naufragii casum praestare debet. haec ita, si dumtaxat accipientis gratia commodata sit res, at si utriusque, veluti si communem amicum ad cenam invitaverimus tuque eius rei curam suscepisses et ego tibi argentum commodaverim, scriptum quidem apud quosdam invenio, quasi dolum tantum praestare debeas: sed videndum est, ne et culpa praestanda sit, ut ita culpae fiat aestimatio, sicut in rebus pignori datis et dotalibus aestimari solet.

Dig. 13.6.18.1

Gaius 9 ad ed. provinc.

Sive autem pignus sive commodata res sive deposita deterior ab eo qui acceperit facta sit, non solum istae sunt actiones, de quibus loquimur, verum etiam legis aquiliae: sed si qua earum actum fuerit, aliae tolluntur.

Dig. 13.6.18.2

Gaius 9 ad ed. provinc.

Possunt iustae causae intervenire, ex quibus cum eo qui commodasset agi deberet: veluti de impensis in valetudinem servi factis quaeve post fugam requirendi reducendique eius causa factae essent: nam cibariorum impensae naturali scilicet ratione ad eum pertinent, qui utendum accepisset. sed et id, quod de impensis valetudinis aut fugae diximus, ad maiores impensas pertinere debet: modica enim impendia verius est, ut sicuti cibariorum ad eundem pertineant.

Dig. 13.6.18.3

Gaius 9 ad ed. provinc.

Item qui sciens vasa vitiosa commodavit, si ibi infusum vinum vel oleum corruptum effusumve est, condemnandus eo nomine est.

Dig. 13.6.18.4

Gaius 9 ad ed. provinc.

Quod autem contrario iudicio consequi quisque potest, id etiam recto iudicio, quo cum eo agitur, potest salvum habere iure pensationis. sed fieri potest, ut amplius esset, quod invicem aliquem consequi oporteat, aut iudex pensationis rationem non habeat, aut ideo de restituenda re cum eo non agatur, quia ea res casu intercidit aut sine iudice restituta est: dicemus necessariam esse contrariam actionem.

Dig. 13.6.19

Iulianus 1 Dig.

Ad eos, qui servandum aliquid conducunt aut utendum accipiunt, damnum iniuria ab alio datum non pertinere procul dubio est: qua enim cura aut diligentia consequi possumus, ne aliquis damnum nobis iniuria det?

Dig. 13.6.20

Iulianus 3 ad urs. ferocem.

Argentum commodatum si tam idoneo servo meo tradidissem ad te perferendum, ut non debuerit quis aestimare futurum, ut a quibusdam malis hominibus deciperetur, tuum, non meum detrimentum erit, si id mali homines intercepissent.

Dig. 13.6.21pr.

Africanus 8 quaest.

Rem mihi commodasti: eandem subripuisti: deinde cum commodati ageres nec a te scirem esse subreptam, iudex me condemnavit et solvi: postea comperi a te esse subreptam: quaesitum est, quae mihi tecum actio sit. respondit furti quidem non esse, sed commodati contrarium iudicium utile mihi fore.

Dig. 13.6.21.1

Africanus 8 quaest.

In exercitu contubernalibus vasa utenda communi periculo dedi ac deinde meus servus subreptis his ad hostes profugit et postea sine vasis receptus est. habiturum me commodati actionem cum contubernalibus constat pro cuiusque parte: sed et illi mecum furti servi nomine agere possunt, quando et noxa caput sequitur. et si tibi rem periculo tuo utendam commodavero eaque a servo meo subripiatur, agere mecum furti possis servi nomine.

Dig. 13.6.22

Paulus 22 ad ed.

Si servus, quem tibi commodaverim, furtum fecerit, utrum sufficiat contraria commodati actio (quemadmodum competit, si quid in curationem servi impendisti) an furti agendum sit, quaeritur. et furti quidem noxalem habere qui commodatum rogavit procul dubio est, contraria autem commodati tunc eum teneri, cum sciens talem esse servum ignoranti commodavit.

Dig. 13.6.23

Pomponius 21 ad q. muc.

Si commodavero tibi equum, quo utereris usque ad certum locum, si nulla culpa tua interveniente in ipso itinere deterior equus factus sit, non teneris commodati: nam ego in culpa ero, qui in tam longum iter commodavi, qui eum laborem sustinere non potuit.

Dig. 13.7.0. De pigneraticia actione vel contra.

Dig. 13.7.1pr.

Ulpianus 40 ad sab.

Pignus contrahitur non sola tradidione, sed etiam nuda conventione, etsi non traditum est.

Dig. 13.7.1.1

Ulpianus 40 ad sab.

Si igitur contractum sit pignus nuda conventione, videamus, an, si quis aurum ostenderit quasi pignori daturus et aes dederit, obligaverit aurum pignori: et consequens est ut aurum obligetur, non autem aes, quia in hoc non consenserint.

Dig. 13.7.1.2

Ulpianus 40 ad sab.

Si quis tamen, cum aes pignori daret, adfirmavit hoc aurum esse et ita pignori dederit, videndum erit, an aes pignori obligaverit et numquid, quia in corpus consensum est, pignori esse videatur: quod magis est. tenebitur tamen pigneraticia contraria actione qui dedit, praeter stellionatum quem fecit.

Dig. 13.7.2

Pomponius 6 ad sab.

Si debitor rem pignori datam vendidit et tradidit tuque ei nummos credidisti, quos ille solvit ei creditori, cui pignus dederat, tibique cum eo convenit, ut ea res, quam iam vendiderat, pignori tibi esset, nihil te egisse constat, quia rem alienam pignori acceperis: ea enim ratione emptorem pignus liberatum habere coepisse neque ad rem pertinuisse, quod tua pecunia pignus sit liberatum.

Dig. 13.7.3

Pomponius 18 ad sab.

Si quasi recepturus a debitore tuo comminus pecuniam reddidisti ei pignus isque per fenestram id misit excepturo eo, quem de industria ad id posuerit, labeo ait furti te agere cum debitore posse et ad exhibendum: et, si agente te contraria pigneraticia excipiat debitor de pignore sibi reddito, replicabitur de dolo et fraude, per quam nec redditum, sed per fallaciam ablatum id intellegitur.

Dig. 13.7.4

Ulpianus 41 ad sab.

Si convenit de distrahendo pignore sive ab initio sive postea, non tantum venditio valet, verum incipit emptor dominium rei habere. sed etsi non convenerit de distrahendo pignore, hoc tamen iure utimur, ut liceat distrahere, si modo non convenit, ne liceat. ubi vero convenit, ne distraheretur, creditor, si distraxerit, furti obligatur, nisi ei ter fuerit denuntiatum ut solvat et cessaverit.

Dig. 13.7.5

Pomponius 19 ad sab.

Idque iuris est, sive omnino fuerint pacti, ne veneat, sive in summa aut condicione aut loco contra pactionem factum sit.

Dig. 13.7.6pr.

Pomponius 35 ad sab.

Quamvis convenerit, ut fundum pigneraticium tibi vendere liceret, nihilo magis cogendus es vendere, licet solvendo non sit is qui pignus dederit, quia tua causa id caveatur. sed atilicinus ex causa cogendum creditorem esse ad vendendum dicit: quid enim si multo minus sit quod debeatur et hodie pluris venire possit pignus quam postea? melius autem est dici eum, qui dederit pignus, posse vendere et accepta pecunia solvere id quod debeatur, ita tamen, ut creditor necessitatem habeat ostendere rem pigneratam, si mobilis sit, prius idonea cautela a debitore pro indemnitate ei praestanda. invitum enim creditorem cogi vendere satis inhumanum est.

Dig. 13.7.6.1

Pomponius 35 ad sab.

Si creditor pluris fundum pigneratum vendiderit, si id faeneret, usuram eius pecuniae praestare debet ei, qui dederit pignus: sed et si ipse usus sit ea pecunia, usuram praestari oportet. quod si eam depositam habuerit, usuras non debet.

Dig. 13.7.7

Paulus 2 sent.

Si autem tardius superfluum restituat creditor id quod apud eum depositum est, ex mora etiam usuras debitori hoc nomine praestare cogendus est.

Dig. 13.7.8pr.

Pomponius 35 ad sab.

Si necessarias impensas fecerim in servum aut in fundum, quem pignoris causa acceperim, non tantum retentionem, sed etiam contrariam pigneraticiam actionem habebo: finge enim medicis, cum aegrotaret servus, dedisse me pecuniam et eum decessisse, item insulam fulsisse vel refecisse et postea deustam esse, nec habere quod possem retinere.

Dig. 13.7.8.1

Pomponius 35 ad sab.

Si pignori plura mancipia data sint, et quaedam certis pretiis ita vendiderit creditor ut evictionem eorum praestaret, et creditum suum habeat, reliqua mancipia potest retinere, donec ei caveatur, quod evictionis nomine promiserit, indemnem eum futurum.

Dig. 13.7.8.2

Pomponius 35 ad sab.

Si unus ex heredibus debitoris portionem suam solverit, tamen tota res pignori data venire poterit, quemadmodum si ipse debitor portionem solvisset.

Dig. 13.7.8.3

Pomponius 35 ad sab.

Si annua bima trima die triginta stipulatus acceperim pignus pactusque sim, ut nisi sua quaque die pecunia soluta esset, vendere eam mihi liceret, placet, antequam omnium pensionum dies veniret, non posse me pignus vendere, quia eis verbis omnes pensiones demonstrarentur: nec verum est sua quaque die non solutam pecuniam, antequam omnes dies venirent. sed omnibus pensionibus praeteritis, etiamsi una portio soluta non sit, pignus potest venire. sed si ita scriptum sit: " si qua pecunia sua die soluta non erit", statim competit ei pacti conventio.

Dig. 13.7.8.4

Pomponius 35 ad sab.

De vendendo pignore in rem pactio concipienda est, ut omnes contineantur: sed et si creditoris dumtaxat persona fuerit comprehensa, etiam heres eius iure vendet, si nihil in contrarium actum est.

Dig. 13.7.8.5

Pomponius 35 ad sab.

Cum pignus ex pactione venire potest, non solum ob sortem non solutam venire poterit, sed ob cetera quoque, veluti usuras et quae in id impensa sunt.

Dig. 13.7.9pr.

Ulpianus 28 ad ed.

Si rem alienam mihi debitor pignori dedit aut malitiose in pignore versatus sit, dicendum est locum habere contrarium iudicium.

Dig. 13.7.9.1

Ulpianus 28 ad ed.

Non tantum autem ob pecuniam, sed et ob aliam causam pignus dari potest, veluti si quis pignus alicui dederit, ut pro se fideiubeat.

Dig. 13.7.9.2

Ulpianus 28 ad ed.

Proprie pignus dicimus, quod ad creditorem transit, hypothecam, cum non transit nec possessio ad creditorem.

Dig. 13.7.9.3

Ulpianus 28 ad ed.

Omnis pecunia exsoluta esse debet aut eo nomine satisfactum esse, ut nascatur pigneraticia actio. satisfactum autem accipimus, quemadmodum voluit creditor, licet non sit solutum: sive aliis pignoribus sibi caveri voluit, ut ab hoc recedat, sive fideiussoribus sive reo dato sive pretio aliquo vel nuda conventione, nascitur pigneraticia actio. et generaliter dicendum erit, quotiens recedere voluit creditor a pignore, videri ei satisfactum, si ut ipse voluit sibi cavit, licet in hoc deceptus sit.

Dig. 13.7.9.4

Ulpianus 28 ad ed.

Is quoque, qui rem alienam pignori dedit, soluta pecunia potest pigneraticia experiri.

Dig. 13.7.9.5

Ulpianus 28 ad ed.

Qui ante solutionem egit pigneraticia, licet non recte egit, tamen, si offerat in iudicio pecuniam, debet rem pigneratam et quod sua interest consequi.

Dig. 13.7.10

Gaius 9 ad ed. provinc.

Quod si non solvere, sed alia ratione satisfacere paratus est, forte si expromissorem dare vult, nihil ei prodest.

Dig. 13.7.11pr.

Ulpianus 28 ad ed.

Solutum non videtur, si lis contestata cum debitore sit de ipso debito vel si fideiussor conventus fuerit.

Dig. 13.7.11.1

Ulpianus 28 ad ed.

Novata autem debiti obligatio pignus peremit, nisi convenit, ut pignus repetatur.

Dig. 13.7.11.2

Ulpianus 28 ad ed.

Si quasi daturus tibi pecuniam pignus accepero nec dedero, pigneraticia actione tenebor et nulla solutione facta: idemque et si accepto lata sit pecunia, vel condicio defecit, ob quam pignus contractum est, vel si pactum, cui standum est, de pecunia non petenda factum est.

Dig. 13.7.11.3

Ulpianus 28 ad ed.

Si in sortem dumtaxat vel in usuras obstrictum est pignus, eo soluto propter quod obligatum est locum habet pigneraticia. sive autem usurae in stipulatum sint deductae sive non, si tamen pignus et in eas obligatum fuit, quamdiu quid ex his debetur, pigneraticia cessabit. alia causa est earum, quas quis supra licitum modum promisit: nam hae penitus illicitae sunt.

Dig. 13.7.11.4

Ulpianus 28 ad ed.

Si creditori plures heredes exstiterint et uni ex his pars eius solvatur, non debent ceteri heredes creditoris iniuria adfici, sed possunt totum fundum vendere oblato debitori eo, quod coheredi eorum solvit: quae sententia non est sine ratione.

Dig. 13.7.11.5

Ulpianus 28 ad ed.

Solutam autem pecuniam accipiendum non solum, si ipsi, cui obligata res est, sed et si alii sit soluta voluntate eius, vel ei cui heres exstitit, vel procuratori eius, vel servo pecuniis exigendis praeposito. unde si domum conduxeris et eius partem mihi locaveris egoque locatori tuo pensionem solvero, pigneraticia adversus te potero experiri (nam iulianus scribit solvi ei posse): et si partem tibi, partem ei solvero, tantundem erit dicendum. plane in eam dumtaxat summam invecta mea et illata tenebuntur, in quam cenaculum conduxi: non enim credibile est hoc convenisse, ut ad universam pensionem insulae frivola mea tenebuntur. videtur autem tacite et cum domino aedium hoc convenisse, ut non pactio cenacularii proficiat domino, sed sua propria.

Dig. 13.7.11.6

Ulpianus 28 ad ed.

Per liberam autem personam pignoris obligatio nobis non adquiritur, adeo ut ne per procuratorem plerumque vel tutorem adquiratur: et ideo ipsi actione pigneraticia convenientur. sed nec mutat, quod constitutum est ab imperatore nostro posse per liberam personam possessionem adquiri: nam hoc eo pertinebit, ut possimus pignoris nobis obligati possessionem per procuratorem vel tutorem adprehendere, ipsam autem obligationem libera persona nobis non semper adquiret.

Dig. 13.7.11.7

Ulpianus 28 ad ed.

Sed si procurator meus vel tutor rem pignori dederit, ipse agere pigneraticia poterit: quod in procuratore ita procedit, si ei mandatum fuit ^ fuerit^ pignori dare.

Dig. 13.7.12

Gaius 9 ad ed. provinc.

Vel universorum bonorum administratio ei permissa est ab eo, qui sub pignoribus solebat mutuas pecunias accipere.

Dig. 13.7.13pr.

Ulpianus 38 ad ed.

Si, cum venderet creditor pignus, convenerit inter ipsum et emptorem, ut, si solverit debitor pecuniam pretii emptori, liceret ei recipere rem suam, scripsit iulianus et est rescriptum ob hanc conventionem pigneraticiis actionibus teneri creditorem, ut debitori mandet ex vendito actionem adversus emptorem. sed et ipse debitor aut vindicare rem poterit aut in factum actione adversus emptorem agere.

Dig. 13.7.13.1

Ulpianus 38 ad ed.

Venit autem in hac actione et dolus et culpa, ut in commodato: venit et custodia: vis maior non venit.

Dig. 13.7.14

Paulus 29 ad ed.

Ea igitur, quae diligens pater familias in suis rebus praestare solet, a creditore exiguntur.

Dig. 13.7.15

Ulpianus 28 ad ed.

Creditor cum pignus reddit, de dolo debet debitori repromittere: et si praedium fuit pigneratum, et de iure eius repromittendum est, ne forte servitutes cessante uti creditore amissae sint.

Dig. 13.7.16pr.

Paulus 29 ad ed.

Tutor lege non refragante si dederit rem pupilli pignori, tuendum erit, scilicet si in rem pupilli pecuniam accipiat. idem est et in curatore adulescentis vel furiosi.

Dig. 13.7.16.1

Paulus 29 ad ed.

Contrariam pigneraticiam creditori actionem competere certum est: proinde si rem alienam vel alii pigneratam vel in publicum obligatam dedit, tenebitur, quamvis et stellionatus crimen committat. sed utrum ita demum, si scit, an et si ignoravit? et quantum ad crimen pertinet, excusat ignorantia: quantum ad contrarium iudicium, ignorantia eum non excusat, ut Marcellus libro sexto digestorum scribit. sed si sciens creditor accipiat vel alienum vel obligatum vel morbosum, contrarium ei non competit.

Dig. 13.7.16.2

Paulus 29 ad ed.

Etiam vectigale praedium pignori dari potest: sed et superficiarium, quia hodie utiles actiones superficiariis dantur.

Dig. 13.7.17

Marcianus l.S. ad form. hypoth.

Sane divi severus et antoninus rescripserunt, ut sine deminutione mercedis soli obligabitur.

Dig. 13.7.18pr.

Paulus 29 ad ed.

Si convenerit, ut nomen debitoris mei pignori tibi sit, tuenda est a praetore haec conventio, ut et te in exigenda pecunia et debitorem adversus me, si cum eo experiar, tueatur. ergo si id nomen pecuniarium fuerit, exactam pecuniam tecum pensabis, si vero corporis alicuius, id quod acceperis erit tibi pignoris loco.

Dig. 13.7.18.1

Paulus 29 ad ed.

Si nuda proprietas pignori data sit, usus fructus, qui postea adcreverit, pignori erit: eandem causa est alluvionis.

Dig. 13.7.18.2

Paulus 29 ad ed.

Si fundus pigneratus venierit, manere causam pignoris, quia cum sua causa fundus transeat: sicut in partu ancillae, qui post venditionem natus sit.

Dig. 13.7.18.3

Paulus 29 ad ed.

Si quis caverit, ut silva sibi pignori esset, navem ex ea materia factam non esse pignori cassius ait, quia aliud sit materia, aliud navis: et ideo nominatim in dando pignore adiciendum esse ait: " quaeque ex silva facta natave sint".

Dig. 13.7.18.4

Paulus 29 ad ed.

Servus rem peculiarem si pignori dederit, tuendum est, si liberam peculii administrationem habuit: nam et alienare eas res potest.

Dig. 13.7.19

Marcianus l.S. ad form. hypoth.

Eadem et de filio familias dicta intellegemus.

Dig. 13.7.20pr.

Paulus 29 ad ed.

Aliena res pignori dari voluntate domini potest: sed et si ignorante eo data sit et ratum habuerit, pignus valebit.

Dig. 13.7.20.1

Paulus 29 ad ed.

Si pluribus res simul pignori detur, aequalis omnium causa est.

Dig. 13.7.20.2

Paulus 29 ad ed.

Si per creditorem stetit, quo minus ei solvatur, recte agitur pigneraticia.

Dig. 13.7.20.3

Paulus 29 ad ed.

Interdum etsi soluta sit pecunia, tamen pigneraticia actio inhibenda est, veluti si creditor pignus suum emerit a debitore.

Dig. 13.7.21

Paulus 6 brev.

Domo pignori data et area eius tenebitur: est enim pars eius. et contra ius soli sequetur aedificium.

Dig. 13.7.22pr.

Ulpianus 30 ad ed.

Si pignore subrepto furti egerit creditor, totum, quidquid percepit, debito eum imputare papinianus confitetur, et est verum, etiamsi culpa creditoris furtum factum sit. multo magis hoc erit dicendum in eo, quod ex condictione consecutus est. sed quod ipse debitor furti actione praestitit creditori vel condictione, an debito sit imputandum videamus: et quidem non oportere id ei restitui, quod ipse ex furti actione praestitit, peraeque relatum est et traditum, et ita papinianus libro nono quaestionum ait.

Dig. 13.7.22.1

Ulpianus 30 ad ed.

Idem papinianus ait et si metus causa servum pigneratum debitori tradiderit, quem bona fide pignori acceperat: nam si egerit quod metus causa factum est et quadruplum sit consecutus, nihil neque restituet ex eo quod consecutus est nec debito imputabit.

Dig. 13.7.22.2

Ulpianus 30 ad ed.

Si praedo rem pignori dederit, competit ei et de fructibus pigneraticia actio, quamvis ipse fructus suos non faciet (a praedone enim fructus et vindicari extantes possunt et consumpti condici): proderit igitur ei, quod creditor bona fide possessor fuit.

Dig. 13.7.22.3

Ulpianus 30 ad ed.

Si post distractum pignus debitor, qui precario rogavit vel conduxit pignus, possessionem non restituat, contrario iudicio tenetur.

Dig. 13.7.22.4

Ulpianus 30 ad ed.

Si creditor, cum venderet pignus, duplam promisit (nam usu hoc evenerat et conventus ob evictionem erat et condemnatus), an haberet regressum pigneraticiae contrariae actionis ? et potest dici esse regressum, si modo sine dolo et culpa sic vendidit et ut pater familias diligens id gessit: si vero nullum emolumentum talis venditio attulit, sed tanti venderet, quanto vendere potuit, etiamsi haec non promisit, regressum non habere.

Dig. 13.7.23

Tryphonus 8 disp.

Nec enim amplius a debitore quam debiti summa consequi poterit. sed si stipulatio usurarum fuerat et post quinquennium forte, quam pretium ex re obligata victus eam emptori restituit, etiam medii temporis usuras a debitore petere potest, quia nihil ei solutum esse, ut auferri non possit, palam factum est: sed si simplum praestitit, doli exceptione repellendus erit ab usurarum petitione, quia habuit usum pecuniae pretii, quod ab emptore acceperat.

Dig. 13.7.24pr.

Ulpianus 30 ad ed.

Eleganter apud me quaesitum est, si impetrasset creditor a caesare, ut pignus possideret idque evictum esset, an habeat contrariam pigneraticiam. et videtur finita esse pignoris obligatio et a contractu recessum. immo utilis ex empto accommodata est, quemadmodum si pro soluto ei res data fuerit, ut in quantitatem debiti ei satisfiat vel in quantum eius intersit, et compensationem habere potest creditor, si forte pigneraticia vel ex alia causa cum eo agetur.

Dig. 13.7.24.1

Ulpianus 30 ad ed.

Qui reprobos nummos solvit creditori, an habet pigneraticiam actionem quasi soluta pecunia, quaeritur: et constat neque pigneraticia eum agere neque liberari posse, quia reproba pecunia non liberat solventem, reprobis videlicet nummis reddendis.

Dig. 13.7.24.2

Ulpianus 30 ad ed.

Si vendiderit quidem creditor pignus pluris quam debitum erat, nondum autem pretium ab emptore exegerit, an pigneraticio iudicio conveniri possit ad superfluum reddendum, an vero vel exspectare debeat, quoad emptor solvat, vel suscipere actiones adversus emptorem? et arbitror non esse urguendum ad solutionem creditorem, sed aut exspectare debere debitorem aut, si non exspectat, mandandas ei actiones adversus emptorem periculo tamen venditoris. quod si accepit iam pecuniam, superfluum reddit.

Dig. 13.7.24.3

Ulpianus 30 ad ed.

In pigneraticio iudicio venit et si res pignori datas male tractavit creditor vel servos debilitavit. plane si pro maleficiis suis coercuit vel vinxit vel optulit praefecturae vel praesidi, dicendum est pigneraticia creditorem non teneri. quare si prostituit ancillam vel aliud improbatum facere coegit, ilico pignus ancillae solvitur.

Dig. 13.7.25

Ulpianus 31 ad ed.

Si servos pigneratos artificiis instruxit creditor, si quidem iam imbutos vel voluntate debitoris, erit actio contraria: si vero nihil horum intercessit, si quidem artificiis necessariis, erit actio contraria, non tamen sic, ut cogatur servis carere pro quantitate sumptuum debitor. sicut enim neglegere creditorem dolus et culpa quam praestat non patitur, ita nec talem efficere rem pigneratam, ut gravis sit debitori ad reciperandum: puta saltum grandem pignori datum ab homine, qui vix luere potest, nedum excolere, tu acceptum pignori excoluisti sic, ut magni pretii faceres. alioquin non est aequum aut quaerere me alios creditores aut cogi distrahere quod velim receptum aut tibi paenuria coactum derelinquere. medie igitur haec a iudice erunt dispicienda, ut neque delicatus debitor neque onerosus creditor audiatur.

Dig. 13.7.26pr.

Ulpianus 3 disp.

Non est mirum, si ex quacumque causa magistratus in possessionem aliquem miserit, pignus constitui, cum testamento quoque pignus constitui posse imperator noster cum patre saepissime rescripsit.

Dig. 13.7.26.1

Ulpianus 3 disp.

Sciendum est, ubi iussu magistratus pignus constituitur, non alias constitui, nisi ventum fuerit in possessionem.

Dig. 13.7.27

Ulpianus 6 opin.

Petenti mutuam pecuniam creditori, cum prae manu debitor non haberet, species auri dedit, ut pignori apud alium creditorem poneret. si iam solutione liberatas receptasque eas is qui susceperat tenet, exhibere iubendus est: quod si etiam nunc apud creditorem creditoris sunt, voluntate domini nexae videntur, sed ut liberatae tradantur, domino earum propria actio adversus suum creditorem competit.

Dig. 13.7.28pr.

Iulianus 11 Dig.

Si creditor, qui rem pignori acceperat, amissa eius possessione serviana actione petierit et litis aestimationem consecutus sit, postea debitor eandem rem petens exceptione summovetur, nisi offerat ei debitor, quod pro eo solutum est.

Dig. 13.7.28.1

Iulianus 11 Dig.

Si servus pro peculiari nomine pignus acceperit, actio pigneraticia adversus dominum debitori competit.

Dig. 13.7.29

Iulianus 44 Dig.

Si rem alienam bona fide emeris et mihi pignori dederis ac precario rogaveris, deinde me dominus heredem instituerit, desinet ^ desinit ^ pignus esse et sola precarii rogatio supererit: idcirco usucapio tua interpellabitur.

Dig. 13.7.30

Paulus 5 epit. alf. Dig.

Qui ratiario crediderat, cum ad diem pecunia non solveretur, ratem in flumine sua auctoritate detinuit: postea flumen crevit et ratem abstulit. si invito ratiario retinuisset, eius periculo ratem fuisse respondit: sed si debitor sua voluntate concessisset, ut retineret, culpam dumtaxat ei praestandam, non vim maiorem.

Dig. 13.7.31

Africanus 8 quaest.

Si servus pignori datus creditori furtum faciat, liberum est debitori servum pro noxae deditione relinquere: quod si sciens furem pignori dederit, etsi paratus fuerit pro noxae dedito apud me relinquere, nihilo minus habiturum me pigneraticiam actionem, ut indemnem me praestet. eadem servanda esse iulianus ait etiam cum depositus vel commodatus servus furtum faciat.

Dig. 13.7.32

Marcianus 4 reg.

Cum debitore, qui alienam rem pignori dedit, potest creditor contraria pigneraticia agere, etsi solvendo debitor sit.

Dig. 13.7.33

Marcianus l.S. ad form. hypoth.

Si pecuniam debitor solverit, potest pigneraticia actione uti ad reciperandam antixrysin : nam cum pignus sit hoc verbo poterit uti.

Dig. 13.7.34

Marcellus l.S. resp.

Titius cum credidisset pecuniam sempronio et ob eam pignus accepisset futurumque esset, ut distraheret eam creditor, quia pecunia non solveretur, petit a creditore, ut fundum certo pretio emptum haberet, et cum impetrasset, epistulam, qua se vendidisse fundum creditori significaret, emisit: quaero, an hanc venditionem debitor revocare possit offerendo sortem et usuras quae debentur. Marcellus respondit secundum ea quae proposita essent, revocare non posse.

Dig. 13.7.35pr.

Florus 8 inst.

Cum et sortis nomine et usurarum aliquid debetur ab eo, qui sub pignoribus pecuniam debet, quidquid ex venditione pignorum recipiatur, primum usuris, quas iam tunc deberi constat, deinde si quid superest sorti accepto ferendum est: nec audiendus est debitor, si, cum parum idoneum se esse sciat, eligit, quo nomine exonerari pignus suum malit.

Dig. 13.7.35.1

Florus 8 inst.

Pignus manente proprietate debitoris solam possessionem transfert ad creditorem: potest tamen et precario et pro conducto debitor re sua uti.

Dig. 13.7.36pr.

Ulpianus 11 ad ed.

Si quis in pignore pro auro aes subiecisset creditori, qualiter teneatur, quaesitum est. in qua specie rectissime sabinus scribit, si quidem dato auro aes subiecisset, furti teneri: quod si in dando aes subiecisset, turpiter fecisse, non furem esse. sed et hic puto pigneraticium iudicium locum habere, et ita pomponius scribit. sed et extra ordinem stellionatus nomine plectetur, ut est saepissime rescriptum.

Dig. 13.7.36.1

Ulpianus 11 ad ed.

Sed et si quis rem alienam mihi pignori dederit sciens prudensque vel si quis alii obligatam mihi obligavit nec me de hoc certioraverit, eodem crimine plectetur. plane si ea res ampla est et ad modicum aeris fuerit pignerata, dici debebit cessare non solum stellionatus crimen, sed etiam pigneraticiam et de dolo actionem, quasi in nullo captus sit, qui pignori secundo loco accepit.

Dig. 13.7.37

Paulus 5 ad plaut.

Si pignus mihi traditum locassem domino, per locationem retineo possessionem, quia antequam conduceret debitor, non fuerit eius possessio, cum et animus mihi retinendi sit et conducenti non sit animus possessionem apiscendi.

Dig. 13.7.38

Modestinus 1 diff.

Pupillo capienti pignus propter metum pigneraticiae actionis necessaria est tutoris auctoritas.

Dig. 13.7.39

Modestinus 4 resp.

Gaius seius ob pecuniam mutuam fundum suum lucio titio pignori dedit: postea pactum inter eos factum est, ut creditor pignus suum in compensationem pecuniae suae certo tempore possideret: verum ante expletum tempus creditor cum suprema sua ordinaret, testamento cavit, ut alter ex filiis suis haberet eum fundum et addidit " quem de lucio titio emi", cum non emisset: hoc testamentum inter ceteros signavit et gaius seius, qui fuit debitor. quaero, an ex hoc quod signavit praeiudicium aliquod sibi fecerit, cum nullum instrumentum venditionis proferatur, sed solum pactum, ut creditor certi temporis fructus caperet. herennius modestinus respondit contractui pignoris non obesse, quod debitor testamentum creditoris, in quo se emisse pignus expressit, signasse proponitur.

Dig. 13.7.40pr.

Papinianus 3 resp.

Debitor a creditore pignus quod dedit frustra emit, cum rei suae nulla emptio sit: nec si minoris emerit et pignus petat aut dominium vindicet, ei non totum debitum offerenti creditor possessionem restituere cogetur.

Dig. 13.7.40.1

Papinianus 3 resp.

Debitoris filius, qui manet in patris potestate, frustra pignus a creditore patris peculiaribus nummis comparat: et ideo si patronus debitoris contra tabulas eius possessionem acceperit, dominii partem optinebit: nam pecunia, quam filius ex re patris in pretium dedit, pignus liberatur.

Dig. 13.7.40.2

Papinianus 3 resp.

Soluta pecunia creditor possessionem pignoris, quae corporalis apud eum fuit, restituere debet nec quicquam amplius praestare cogitur. itaque si medio tempore pignus creditor pignori dederit, domino solvente pecuniam quam debuit secundi pignoris neque persecutio dabitur neque retentio relinquetur.

Dig. 13.7.41

Paulus 3 quaest.

Rem alienam pignori dedisti, deinde dominus rei eius esse coepisti: datur utilis actio pigneraticia creditori. non est idem dicendum, si ego titio, qui rem meam obligaverat sine mea voluntate, heres extitero: hoc enim modo pignoris persecutio concedenda non est creditori, nec utique sufficit ad competendam utilem pigneraticiam actionem eundem esse dominum, qui etiam pecuniam debet. sed si convenisset de pignore, ut ex suo mendacio arguatur, improbe resistit, quo minus utilis actio moveatur.

Dig. 13.7.42

Papinianus 3 resp.

Creditor iudicio, quod de pignore dato proponitur, ut superfluum pretii cum usuris restituat, iure cogitur, nec audiendus erit, si velit emptorem delegare, cum in venditione, quae fit ex facto, suum creditor negotium gerat.

Dig. 13.7.43pr.

Scaevola 5 Dig.

Locum purum pignori creditori obligavit eique instrumentum emptionis tradidit: et cum eum locum inaedificare vellet, mota sibi controversia a vicino de latitudine, quod alias probare non poterat, petit a creditore, ut instrumentum a se traditum auctoritatis exhiberet: quo non exhibente minorem locum aedificavit atque ita damnum passus est. quaesitum est, an, si creditor pecuniam petat vel pignus vindicet, doli exceptione posita iudex huius damni rationem habere debeat. respondit, si operam non dedisset, ut instrumenti facultate subducta debitor caperetur, posse debitorem pecunia soluta pigneraticia agere: opera autem in eo data tunc et ante pecuniam solutam in id quod interest cum creditore agi.

Dig. 13.7.43.1

Scaevola 5 Dig.

Titius cum pecuniam mutuam accepit a gaio seio sub pignore culleorum: istos culleos cum seius in horreo haberet, missus ex officio annonae centurio culleos ad annonam sustulit ac postea instantia gaii seii creditoris reciperati sunt: quaero, intertrituram, quae ex operis facta est, utrum titius debitor an seius creditor adgnosecere debeat. respondit secundum ea quae proponerentur ob id, quod eo nomine intertrimenti adcidisset, non teneri.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER QUARTUS DECIMUS

Dig. 14.1.0. De exercitoria actione.
Dig. 14.2.0. De lege rodia ^ rhodia^ de iactu.
Dig. 14.3.0. De institoria actione.
Dig. 14.4.0. De tributoria actione.
Dig. 14.5.0. Quod cum eo, qui in aliena potestate est, negotium gestum esse dicetur.
Dig. 14.6.0. De senatus consulto macedoniano.

Dig. 14.1.0. De exercitoria actione.

Dig. 14.1.1pr.

Ulpianus 28 ad ed.

Utilitatem huius edicti patere nemo est qui ignoret. nam cum interdum ignari, cuius sint condicionis vel quales, cum magistris propter navigandi necessitatem contrahamus, aequum fuit eum, qui magistrum navi imposuit, teneri, ut tenetur, qui institorem tabernae vel negotio praeposuit, cum sit maior necessitas contrahendi cum magistro quam institore. quippe res patitur, ut de condicione quis institoris dispiciat et sic contrahat: in navis magistro non ita, nam interdum locus tempus non patitur plenius deliberandi consilium.

Dig. 14.1.1.1

Ulpianus 28 ad ed.

Magistrum navis accipere debemus, cui totius navis cura mandata est.

Dig. 14.1.1.2

Ulpianus 28 ad ed.

Sed si cum quolibet nautarum sit contractum, non datur actio in exercitorem, quamquam ex delicto cuiusvis eorum, qui navis navigandae causa in nave sint, detur actio in exercitorem: alia enim est contrahendi causa, alia delinquendi, si quidem qui magistrum praeponit, contrahi cum eo permittit, qui nautas adhibet, non contrahi cum eis permittit, sed culpa et dolo carere eos curare debet.

Dig. 14.1.1.3

Ulpianus 28 ad ed.

Magistri autem imponuntur locandis navibus vel ad merces vel vectoribus conducendis armamentisve emendis: sed etiamsi mercibus emendis vel vendendis fuerit praepositus, etiam hoc nomine obligat exercitorem.

Dig. 14.1.1.4

Ulpianus 28 ad ed.

Cuius autem condicionis sit magister iste, nihil interest, utrum liber an servus, et utrum exercitoris an alienus: sed nec cuius aetatis sit, intererit, sibi imputaturo qui praeposuit.

Dig. 14.1.1.5

Ulpianus 28 ad ed.

Magistrum autem accipimus non solum, quem exercitor praeposuit, sed et eum, quem magister: et hoc consultus iulianus in ignorante exercitore respondit: ceterum si scit et passus est eum in nave magisterio fungi, ipse eum imposuisse videtur. quae sententia mihi videtur probabilis: omnia enim facta magistri debeo praestare qui eum praeposui, alioquin contrahentes decipientur: et facilius hoc in magistro quam institore admittendum propter utilitatem. quid tamen si sic magistrum praeposuit, ne alium ei liceret praeponere? an adhuc iuliani sententiam admittimus, videndum est: finge enim et nominatim eum prohibuisse, ne titio magistro utaris. dicendum tamen erit eo usque producendam utilitatem navigantium.

Dig. 14.1.1.6

Ulpianus 28 ad ed.

Navem accipere debemus sive marinam sive fluviatilem sive in aliquo stagno naviget sive schedia sit.

Dig. 14.1.1.7

Ulpianus 28 ad ed.

Non autem ex omni causa praetor dat in exercitorem actionem, sed eius rei nomine, cuius ibi praepositus fuerit, id est si in eam rem praepositus sit, ut puta si ad onus vehendum locatum sit aut aliquas res emerit utiles naviganti vel si quid reficiendae navis causa contractum vel impensum est vel si quid nautae operarum nomine petent.

Dig. 14.1.1.8

Ulpianus 28 ad ed.

Quid si mutuam pecuniam sumpserit, an eius rei nomine videatur gestum? et pegasus existimat, si ad usum eius rei, in quam praepositus est, fuerit mutuatus, dandam actionem, quam sententiam puto veram: quid enim si ad armandam instruendamve navem vel nautas exhibendos mutuatus est?

Dig. 14.1.1.9

Ulpianus 28 ad ed.

Unde quaerit ofilius, si ad reficiendam navem mutuatus nummos in suos usus converterit, an in exercitorem detur actio. et ait, si hac lege accepit quasi in navem impensurus, mox mutavit voluntatem, teneri exercitorem imputaturum sibi, cur talem praeposuerit: quod si ab initio consilium cepit fraudandi creditoris et hoc specialiter non expresserit, quod ad navis causam accipit, contra esse: quam distinctionem pedius probat.

Dig. 14.1.1.10

Ulpianus 28 ad ed.

Sed et si in pretiis rerum emptarum fefellit magister, exercitoris erit damnum, non creditoris.

Dig. 14.1.1.11

Ulpianus 28 ad ed.

Sed si ab alio mutuatus liberavit eum, qui in navis refectionem crediderat, puto etiam huic dandam actionem, quasi in navem crediderit.

Dig. 14.1.1.12

Ulpianus 28 ad ed.

Igitur praepositio certam legem dat contrahentibus. quare si eum praeposuit navi ad hoc solum, ut vecturas exigat, non ut locet (quod forte ipse locaverat), non tenebitur exercitor, si magister locaverit: vel si ad locandum tantum, non ad exigendum, idem erit dicendum: aut si ad hoc, ut vectoribus locet, non ut mercibus navem praestet, vel contra, modum egressus non obligabit exercitorem: sed et si ut certis mercibus eam locet, praepositus est, puta legumini, cannabae, ille marmoribus vel alia materia locavit, dicendum erit non teneri. quaedam enim naves onerariae, quaedam (ut ipsi dicunt) epibatygoi sunt: et plerosque mandare scio, ne vectores recipiant, et sic, ut certa regione et certo mari negotietur, ut ecce sunt naves, quae brundisium a cassiopa vel a dyrrachio vectores traiciunt ad onera inhabiles, item quaedam fluvii capaces ad mare non sufficientes.

Dig. 14.1.1.13

Ulpianus 28 ad ed.

Si plures sint magistri non divisis officiis, quodcumque cum uno gestum erit, obligabit exercitorem: si divisis, ut alter locando, alter exigendo, pro cuiusque officio obligabitur exercitor.

Dig. 14.1.1.14

Ulpianus 28 ad ed.

Sed et si sic praeposuit, ut plerique ^ plerumque^ faciunt, ne alter sine altero quid gerat, qui contraxit cum uno sibi imputabit.

Dig. 14.1.1.15

Ulpianus 28 ad ed.

Exercitorem autem eum dicimus, ad quem obventiones et reditus omnes perveniunt, sive is dominus navis sit sive a domino navem per aversionem conduxit vel ad tempus vel in perpetuum.

Dig. 14.1.1.16

Ulpianus 28 ad ed.

Parvi autem refert, qui exercet masculus sit an mulier, pater familias an filius familias vel servus: pupillus autem si navem exerceat, exigemus tutoris auctoritatem.

Dig. 14.1.1.17

Ulpianus 28 ad ed.

Est autem nobis electio, utrum exercitorem an magistrum convenire velimus.

Dig. 14.1.1.18

Ulpianus 28 ad ed.

Sed ex contrario exercenti navem adversus eos, qui cum magistro contraxerunt, actio non pollicetur, quia non eodem auxilio indigebat, sed aut ex locato cum magistro, si mercede operam ei exhibet, aut si gratuitam, mandati agere potest. solent plane praefecti propter ministerium annonae, item in provinciis praesides provinciarum extra ordinem eos iuvare ex contractu magistrorum.

Dig. 14.1.1.19

Ulpianus 28 ad ed.

Si is, qui navem exercuerit, in aliena potestate erit eiusque voluntate navem exercuerit, quod cum magistro eius gestum erit, in eum, in cuius potestate is erit qui navem exercuerit, iudicium datur.

Dig. 14.1.1.20

Ulpianus 28 ad ed.

Licet autem detur ^ datur^ actio in eum, cuius in potestate est qui navem exercet, tamen ita demum datur, si voluntate eius exerceat. ideo autem ex voluntate in solidum tenentur qui habent in potestate exercitorem, quia ad summam rem publicam navium exercitio perinet. at institorum non idem usus est: ea propter in tributum dumtaxat vocantur, qui contraxerunt cum eo, qui in merce peculiari sciente domino negotiatur. sed si sciente dumtaxat, non etiam volente cum magistro contractum sit, utrum quasi in volentem damus actionem in solidum an vero exemplo tributoriae dabimus? in re igitur dubia melius est verbis edicti servire et neque scientiam solam et nudam patris dominive in navibus onerare neque in peculiaribus mercibus voluntatem extendere ad solidi obligationem. et ita videtur et pomponius significare, si sit in aliena potestate, si quidem voluntate gerat, in solidum eum obligari, si minus, in peculium.

Dig. 14.1.1.21

Ulpianus 28 ad ed.

In potestate autem accipiemus utriusque sexus vel filios vel filias vel servos vel servas.

Dig. 14.1.1.22

Ulpianus 28 ad ed.

Si tamen servus peculiaris volente filio familias in cuius peculio erat, vel servo vicarius eius navem exercuit, pater dominusve, qui voluntatem non accommodavit, dumtaxat de peculio tenebitur, sed filius ipse in solidum. plane si voluntate domini vel patris exerceant, in solidum tenebuntur et praeterea et filius, si et ipse voluntatem accommodavit, in solidum erit obligatus.

Dig. 14.1.1.23

Ulpianus 28 ad ed.

Quamquam autem, si cum magistro eius gestum sit, dumtaxat polliceatur praetor actionem, tamen, ut iulianus quoque scripsit, etiamsi cum ipso exercitore sit contractum, pater dominusve in solidum tenebitur.

Dig. 14.1.1.24

Ulpianus 28 ad ed.

Haec actio ex persona magistri in exercitorem dabitur, et ideo, si cum utro eorum actum est, cum altero agi non potest. sed si quid sit solutum, si quidem a magistro, ipso iure minuitur obligatio: sed et si ab exercitore, sive suo nomine, id est propter honorariam obligationem, sive magistri nomine solverit, minuetur obligatio, quoniam et alius pro me solvendo me liberat.

Dig. 14.1.1.25

Ulpianus 28 ad ed.

Si plures navem exerceant, cum quolibet eorum in solidum agi potest,

Dig. 14.1.2

Gaius 9 ad ed. provinc.

Ne in plures adversarios distringatur qui cum uno contraxerit:

Dig. 14.1.3

Paulus 29 ad ed.

Nec quicquam facere, quotam quisque portionem in nave habeat, eumque qui praestiterit societatis iudicio a ceteris consecuturum.

Dig. 14.1.4pr.

Ulpianus 29 ad ed.

Si tamen plures per se navem exerceant, pro portionibus exercitionis conveniuntur: neque enim invicem sui magistri videbuntur ^ videntur^.

Dig. 14.1.4.1

Ulpianus 29 ad ed.

Sed si plures exerceant, unum autem de numero suo magistrum fecerint, huius nomine in solidum poterunt conveniri.

Dig. 14.1.4.2

Ulpianus 29 ad ed.

Sed si servus plurium navem exerceat voluntate eorum, idem placuit quod in pluribus exercitoribus. plane si unius ex omnibus voluntate exercuit, in solidum ille tenebitur, et ideo puto et in superiore casu in solidum omnes teneri.

Dig. 14.1.4.3

Ulpianus 29 ad ed.

Si servus sit, qui navem exercuit voluntate domini, et alienatus fuerit, nihilo minus is qui eum alienavit tenebitur. proinde et si decesserit servus, tenebitur: nam et magistro defuncto tenebitur.

Dig. 14.1.4.4

Ulpianus 29 ad ed.

Hae actiones perpetuo et heredibus et in heredes dabuntur: proinde et si servus, qui voluntate domini exercuit, decessit, etiam post annum dabitur haec actio, quamvis de peculio ultra annum non detur.

Dig. 14.1.5pr.

Paulus 29 ad ed.

Si eum, qui in mea potestate sit, magistrum navis habeas, mihi quoque in te competit actio, si quid cum eo contraxero: idem est, si communis servus nobis erit. ex locato tamen mecum ages, quod operas servi mei conduxeris, quia et si cum alio contraxisset, ageres mecum, ut actiones, quas eo nomine habui, tibi praestarem, quemadmodum cum libero, si quidem conduxisses, experieris: quod si gratuitae operae fuerint, mandati ages.

Dig. 14.1.5.1

Paulus 29 ad ed.

Item si servus meus navem exercebit et cum magistro eius contraxero, nihil obstabit, quo minus adversus magistrum experiar actione, quae mihi vel iure civili vel honorario competit: nam et cuivis alii non obstat hoc edictum, quo minus cum magistro agere possit: hoc enim edicto non transfertur actio, sed adicitur.

Dig. 14.1.5.2

Paulus 29 ad ed.

Si unus ex his exercitoribus cum magistro navis contraxerit, agere cum aliis exercitoribus poterit,

Dig. 14.1.6pr.

Paulus 6 brev.

Si servus non voluntate domini navem exercuerit, si sciente eo, quasi tributoria, si ignorante, de peculio actio dabitur.

Dig. 14.1.6.1

Paulus 6 brev.

Si communis servus voluntate dominorum exerceat navem, in singulos dari debebit in solidum actio.

Dig. 14.1.7pr.

Africanus 8 quaest.

Lucius titius stichum magistrum navis praeposuit: is pecuniam mutuatus cavit se in refectionem navis eam accepisse: quaesitum est, an non aliter titius exercitoria teneretur, quam si creditor probaret pecuniam in refectionem navis esse consumptam. respondit creditorem utiliter acturum, si, cum pecunia crederetur, navis in ea causa fuisset, ut refici deberet: etenim ut non oportet creditorem ad hoc adstringi, ut ipse reficiendae navis curam suscipiat et negotium domini gerat (quod certe futurum sit, si necesse habeat probare pecuniam in refectionem erogatam esse), ita illud exigendum, ut sciat in hoc se credere, cui rei magister quis sit praepositus, quod certe aliter fieri non potest, quam si illud quoque scierit necessariam refectioni pecuniam esse: quare etsi in ea causa fuerit navis, ut refici deberet, multo tamen maior pecunia credita fuerit, quam ad eam rem esset necessaria, non debere in solidum adversus dominum navis actionem dari.

Dig. 14.1.7.1

Africanus 8 quaest.

Interdum etiam illud aestimandum, an in eo loco pecunia credita sit, in quo id, propter quod credebatur, comparari potuerit: quid enim, inquit, si ad velum emendum in eiusmodi insula pecuniam quis crediderit, in qua omnino velum comparari non potest? et in summa aliquam diligentiam in ea creditorem debere praestare.

Dig. 14.1.7.2

Africanus 8 quaest.

Eadem fere dicenda ait et si de institoria actione quaeratur: nam tunc quoque creditorem scire debere necessariam esse mercis comparationem, cui emendae servus sit praepositus, et sufficere, si in hoc crediderit, non etiam illud exigendum, ut ipse curam suscipiat, an in hanc rem pecunia eroganda est.

Dig. 14.2.0. De lege rodia ^ rhodia^ de iactu.

Dig. 14.2.1

Paulus 2 sent.

Lege rodia ^ rhodia^ cavetur, ut si levandae navis gratia iactus mercium factus est, omnium contributione sarciatur quod pro omnibus datum est.

Dig. 14.2.2pr.

Paulus 34 ad ed.

Si laborante nave iactus factus est, amissarum mercium domini, si merces vehendas locaverant, ex locato cum magistro navis agere debent: is deinde cum reliquis, quorum merces salvae sunt, ex conducto, ut detrimentum pro portione communicetur, agere potest. servius quidem respondit ex locato agere cum magistro navis debere, ut ceterorum vectorum merces retineat, donec portionem damni praestent. immo etsi ^ non^ retineat merces magister, ultro ex locato habiturus est actionem cum vectoribus: quid enim si vectores sint, qui nullas sarcinas habeant? plane commodius est, si sint, retinere eas. at si non totam navem conduxerit, ex conducto aget, sicut vectores, qui loca in navem conduxerunt: aequissimum enim est commune detrimentum fieri eorum, qui propter amissas res aliorum consecuti sunt, ut merces suas salvas haberent.

Dig. 14.2.2.1

Paulus 34 ad ed.

Si conservatis mercibus deterior facta sit navis aut si quid exarmaverit, nulla facienda est collatio, quia dissimilis earum rerum causa sit, quae navis gratia parentur et earum, pro quibus mercedem aliquis acceperit: nam et si faber incudem aut malleum fregerit, non imputaretur ei qui locaverit opus. sed si voluntate vectorum vel propter aliquem metum id detrimentum factum sit, hoc ipsum sarciri oportet.

Dig. 14.2.2.2

Paulus 34 ad ed.

Cum in eadem nave varia mercium genera complures mercatores coegissent praetereaque multi vectores servi liberique in ea navigarent, tempestate gravi orta necessario iactura facta erat: quaesita deinde sunt haec: an omnes iacturam praestare oporteat et si qui tales merces imposuissent, quibus navis non oneraretur, velut gemmas margaritas? et quae portio praestanda est? et an etiam pro liberis capitibus dari oporteat? et qua actione ea res expediri possit? placuit omnes, quorum interfuisset iacturam fieri, conferre oportere, quia id tributum observatae res deberent: itaque dominum etiam navis pro portione obligatum esse. iacturae summam pro rerum pretio distribui oportet. corporum liberorum aestimationem nullam fieri posse. ex conducto dominos rerum amissarum cum nauta, id est cum magistro acturos. itidem agitatum est, an etiam vestimentorum cuiusque et anulorum aestimationem fieri oporteat: et omnium visum est, nisi si qua consumendi causa imposita forent, quo in numero essent cibaria: eo magis quod, si quando ea defecerint in navigationem, quod quisque haberet in commune conferret.

Dig. 14.2.2.3

Paulus 34 ad ed.

Si navis a piratis redempta sit, servius ofilius labeo omnes conferre debere aiunt: quod vero praedones abstulerint, eum perdere cuius fuerint, nec conferendum ei, qui suas merces redemerit.

Dig. 14.2.2.4

Paulus 34 ad ed.

Portio autem pro aestimatione rerum quae salvae sunt et earum quae amissae sunt praestari solet, nec ad rem pertinet, si hae quae amissae sunt pluris veniri poterunt, quoniam detrimenti, non lucri fit praestatio. sed in his rebus, quarum nomine conferendum est, aestimatio debet haberi non quanti emptae sint, sed quanti venire possunt.

Dig. 14.2.2.5

Paulus 34 ad ed.

Servorum quoque qui in mare perierunt non magis aestimatio facienda est, quam si qui aegri in nave decesserint aut aliqui sese praecipitaverint.

Dig. 14.2.2.6

Paulus 34 ad ed.

Si quis ex vectoribus solvendo non sit, hoc detrimentum magistri navis non erit: nec enim fortunas cuiusque nauta excutere debet.

Dig. 14.2.2.7

Paulus 34 ad ed.

Si res quae iactae sunt apparuerint, exoneratur collatio: quod si iam contributio facta sit, tunc hi qui solverint agent ex locato cum magistro, ut is ex conducto experiatur et quod exegerit reddat.

Dig. 14.2.2.8

Paulus 34 ad ed.

Res autem iacta domini manet nec fit adprehendentis, quia pro derelicto non habetur.

Dig. 14.2.3

Papinianus 19 resp.

Cum arbor aut aliud navis instrumentum removendi communis periculi causa deiectum est, contributio debetur.

Dig. 14.2.4pr.

Callistratus 2 quaest.

Navis onustae levandae causa, quia intrare flumen vel portum non potuerat cum onere, si quaedam merces in scapham traiectae sunt, ne aut extra flumen periclitetur aut in ipso ostio vel portu, eaque scapha summersa est, ratio haberi debet inter eos, qui in nave merces salvas habent, cum his qui in scapha perdiderunt, proinde tamquam si iactura facta esset: idque sabinus quoque libro secundo responsorum probat. contra si scapha cum parte mercium salva est, navis periit, ratio haberi non debet eorum, qui in nave perdiderunt, quia iactus in tributum nave salva venit.

Dig. 14.2.4.1

Callistratus 2 quaest.

Sed si navis, quae in tempestate iactu mercium unius mercatoris levata est, in alio loco summersa est et aliquorum mercatorum merces per urinatores extractae sunt data mercede, rationem haberi debere eius, cuius merces in navigatione levandae navis causa iactae sunt, ab his, qui postea sua per urinatores servaverunt, sabinus aeque respondit. eorum vero, qui ita servaverunt, invicem rationem haberi non debere ab eo, qui in navigatione iactum fecit, si quaedam ex his mercibus per urinatores extractae sunt: eorum enim merces non possunt videri servandae navis causa iactae esse, quae perit.

Dig. 14.2.4.2

Callistratus 2 quaest.

Cum autem iactus de nave factus est et alicuius res, quae in navi remanserunt, deteriores factae sunt, videndum, an conferre cogendus sit, quia non debet duplici damno onerari et collationis et quod res deteriores factae sunt. sed defendendum est hunc conferre debere pretio praesente rerum: itaque verbi gratia si vicenum merces duorum fuerunt et alterius aspargine decem esse coeperunt, ille cuius res integrae sunt pro viginti conferat, hic pro decem. potest tamen dici etiam illa sententia distinguentibus nobis, deteriores ex qua causa factae sunt, id est utrum propter iacta nudatis rebus damnum secutum est an vero alia ex causa, veluti quod alicubi iacebant merces in angulo aliquo et unda penetravit. tunc enim conferre debebit: an ex priore causa collationis onus pati non debet, quia iactus etiam hunc laesit? adhuc numquid et si aspargine propter iactum res deteriores factae sunt? sed distinctio suptilior adhibenda est, quid plus sit, in damno an in collatione: si verbi gratia hae res viginti fuerunt et collatio quidem facit decem, damnum autem duo, deducto hoc, quod damnum passus est, reliquum conferre debeat. quid ergo, si plus in damno erit quam in collatione ? ut puta decem aureis res deteriores factae sunt, duo autem collationis sunt. indubitate utrumque onus pati non debet: sed hic videamus, num et ipsi conferre oporteat. quid enim interest iactatas res meas amiserim an nudatas deteriores habere coeperim: nam sicut ei qui perdiderit subvenitur, ita et ei subveniri oportet, qui deteriores propter iactum res habere coeperit. haec ita papirius fronto respondit.

Dig. 14.2.5pr.

Hermogenianus 2 iuris epit.

Amissae navis damnum collationis consortio non sarcitur per eos, qui merces suas naufragio liberaverunt: nam huius aequitatem tunc admitti placuit, cum iactus remedio ceteris in communi periculo salva navi consultum est.

Dig. 14.2.5.1

Hermogenianus 2 iuris epit.

Arbore caesa, ut navis cum mercibus liberari possit, aequitas contributionis habebit locum.

Dig. 14.2.6

Iulianus 86 Dig.

Navis adversa tempestate depressa ictu fulminis deustis armamentis et arbore et antemna hipponem delata est ibique tumultuariis armamentis ad praesens comparatis ostiam navigavit et onus integrum pertulit: quaesitum est, an hi, quorum onus fuit, nautae pro damno conferre debeant. respondit non debere: hic enim sumptus instruendae magis navis, quam conservandarum mercium gratia factus est.

Dig. 14.2.7

Paulus 3 epit. alf. Dig.

Cum depressa navis aut deiecta esset, quod quisque ex ea suum servasset, sibi servare respondit, tamquam ex incendio.

Dig. 14.2.8

Iulianus 2 ex minic.

Qui levandae navis gratia res aliquas proiciunt, non hanc mentem habent, ut eas pro derelicto habeant, quippe si invenerint eas, ablaturos et, si suspicati fuerint, in quem locum eiectae sunt, requisituros: ut perinde sint, ac si quis onere pressus in viam rem abiecerit mox cum aliis reversurus, ut eandem auferret.

Dig. 14.2.9

Maecenatus ex l. rhodia.

Aciwsis eudaimonos nikomydews pros antwninon basilea. kurie basileu antwnine, naufragion poiysantes en ty italia diyrpagymen hupo twn dymosiwn twn tas kukladas nysous oikountwn. antwninos eipen eudaimoni. egw men tou kosmou kurios, ho de nomos tys valassys. tw nomw twn hrodiwn krinesvw tw nautikw, en ohis mytis twn hymeterwn autw nomos enantioutai. touto de auto kai ho veiotatos augoustos ekrinen.

Dig. 14.2.10pr.

Labeo 1 pith. a paulo epit.

Si vehenda mancipia conduxisti, pro eo mancipio, quod in nave mortuum est, vectura tibi non debetur. paulus: immo quaeritur, quid actum est, utrum ut pro his qui impositi an pro his qui deportati essent, merces daretur: quod si hoc apparere non poterit, satis erit pro nauta, si probaverit impositum esse mancipium.

Dig. 14.2.10.1

Labeo 1 pith. a paulo epit.

Si ea condicione navem conduxisti, ut ea merces tuae portarentur easque merces nulla nauta necessitate coactus in navem deteriorem, cum id sciret te fieri nolle, transtulit et merces tuae cum ea nave perierunt, in qua novissime vectae sunt, habes ex conducto locato cum priore nauta actionem. paulus: immo contra, si modo ea navigatione utraque navis periit, cum id sine dolo et culpa nautarum factum esset. idem iuris erit, si prior nauta publice retentus navigare cum tuis mercibus prohibitus fuerit. idem iuris erit, cum ea condicione a te conduxisset, ut certam poenam tibi praestaret, nisi ante constitutum diem merces tuas eo loci exposuisset, in quem devehendas eas merces locasset, nec per eum staret, quo minus remissa sibi ea poena spectaret. idem iuris in eodem genere cogitationis observabimus, si probatum fuerit nautam morbo impeditum navigare non potuisse. idem dicemus, si navis eius vitium fecerit sine dolo malo et culpa eius.

Dig. 14.2.10.2

Labeo 1 pith. a paulo epit.

Si conduxisti navem amphorarum duo milium et ibi amphoras portasti, pro duobus milibus amphorarum pretium debes. paulus: immo si aversione navis conducta est, pro duobus milibus debetur merces: si pro numero impositarum amphorarum merces constituta est, contra se habet: nam pro tot amphoris pretium debes, quot portasti.

Dig. 14.3.0. De institoria actione.

Dig. 14.3.1

Ulpianus 28 ad ed.

Aequum praetori visum est, sicut commoda sentimus ex actu institorum, ita etiam obligari nos ex contractibus ipsorum et conveniri. sed non idem facit circa eum qui institorem praeposuit, ut experiri possit: sed si quidem servum proprium institorem habuit, potest esse securus adquisitis sibi actionibus: si autem vel alienum servum vel etiam hominem liberum, actione deficietur: ipsum tamen institorem vel dominum eius convenire poterit vel mandati vel negotiorum gestorum. Marcellus autem ait debere dari actionem ei qui institorem praeposuit in eos, qui cum eo contraxerint.

Dig. 14.3.2

Gaius 9 ad ed. provinc.

Eo nomine, quo institor contraxit, si modo aliter rem suam servare non potest.

Dig. 14.3.3

Ulpianus 28 ad ed.

Institor appellatus est ex eo, quod negotio gerendo instet: nec multum facit, tabernae sit praepositus an cuilibet alii negotiationi,

Dig. 14.3.4

Paulus 30 ad ed.

Cum interdum etiam ad homines honestos adferant merces et ibi vendant. nec mutat causam actionis locus vendendi emendive, cum utroque modo verum sit institorem emisse aut vendidisse.

Dig. 14.3.5pr.

Ulpianus 28 ad ed.

Cuicumque igitur negotio praepositus sit, institor recte appellabitur.

Dig. 14.3.5.1

Ulpianus 28 ad ed.

Nam et servius libro primo ad brutum ait, si quid cum insulario gestum sit vel eo, quem quis aedificio praeposuit vel frumento coemendo, in solidum eum teneri.

Dig. 14.3.5.2

Ulpianus 28 ad ed.

Labeo quoque scripsit, si quis pecuniis faenerandis, agris colendis, mercaturis redempturisque faciendis praeposuerit, in solidum eum teneri.

Dig. 14.3.5.3

Ulpianus 28 ad ed.

Sed et si in mensa habuit quis servum praepositum, nomine eius tenebitur.

Dig. 14.3.5.4

Ulpianus 28 ad ed.

Sed etiam eos institores dicendos placuit, quibus vestiarii vel lintearii dant vestem circumferendam et distrahendam, quos volgo circitores appellamus.

Dig. 14.3.5.5

Ulpianus 28 ad ed.

Sed et muliones quis proprie institores appellet,

Dig. 14.3.5.6

Ulpianus 28 ad ed.

Item fullonum et sarcinatorum praepositus. stabularii quoque loco institorum habendi sunt.

Dig. 14.3.5.7

Ulpianus 28 ad ed.

Sed et si tabernarius servum suum peregre mitteret ad merces comparandas et sibi mittendas, loco institoris habendum labeo scripsit.

Dig. 14.3.5.8

Ulpianus 28 ad ed.

Idem ait, si libitinarius servum pollinctorem habuerit isque mortuum spoliaverit, dandam in eum quasi institoriam actionem, quamvis et furti et iniuriarum actio competeret.

Dig. 14.3.5.9

Ulpianus 28 ad ed.

Idem labeo ait: si quis pistor servum suum solitus fuit in certum locum mittere ad panem vendendum, deinde is pecunia accepta praesenti, ut per dies singulos eis panem praestaret, conturbaverit, dubitari non oportet, quin, si permisit ei ita dari summas, teneri debeat.

Dig. 14.3.5.10

Ulpianus 28 ad ed.

Sed et cum fullo peregre proficiscens rogasset, ut discipulis suis, quibus tabernam instructam tradiderat, imperaret, post cuius profectionem vestimenta discipulus accepisset et fugisset, fullonem non teneri, si quasi procurator fuit relictus: sin vero quasi institor, teneri eum. plane si adfirmaverit mihi recte me credere operariis suis, non institoria, sed ex locato tenebitur.

Dig. 14.3.5.11

Ulpianus 28 ad ed.

Non tamen omne, quod cum institore geritur, obligat eum qui praeposuit, sed ita, si eius rei gratia, cui praepositus fuerit, contractum est, id est dumtaxat ad id quod eum praeposuit.

Dig. 14.3.5.12

Ulpianus 28 ad ed.

Proinde si praeposui ad mercium distractionem, tenebor nomine eius ex empto actione: item si forte ad emendum eum praeposuero, tenebor dumtaxat ex vendito: sed neque si ad emendum, et ille vendiderit, neque si ad vendendum, et ille emerit, debebit teneri, idque cassius probat.

Dig. 14.3.5.13

Ulpianus 28 ad ed.

Sed si pecuniam quis crediderit institori ad emendas merces praeposito, locus est institoriae, idemque et si ad pensionem pro taberna exsolvendam: quod ita verum puto, nisi prohibitus fuit mutuari.

Dig. 14.3.5.14

Ulpianus 28 ad ed.

Si ei, quem ad vendendum emendumve oleum praeposui, mutuum oleum datum sit, dicendum erit institoriam locum habere.

Dig. 14.3.5.15

Ulpianus 28 ad ed.

Item si institor, cum oleum vendidisset, anulum arrae nomine acceperit neque eum reddat, dominum institoria teneri: nam eius rei, in quam praepositus est, contractum est: nisi forte mandatum ei fuit praesenti pecunia vendere. quare si forte pignus institor ob pretium acceperit, institoriae locus erit.

Dig. 14.3.5.16

Ulpianus 28 ad ed.

Item fideiussori, qui pro institore intervenerit, institoria competit: eius enim rei sequella est.

Dig. 14.3.5.17

Ulpianus 28 ad ed.

Si ab alio institor sit praepositus, is tamen decesserit qui praeposuit et heres ei extiterit, qui eodem institore utatur, sine dubio teneri eum oportebit. nec non, si ante aditam hereditatem cum eo contractum est, aequum est ignoranti dari institoriam actionem.

Dig. 14.3.5.18

Ulpianus 28 ad ed.

Sed et si procurator meus, tutor, curator institorem praeposuerit, dicendum erit veluti a me praeposito dandam institoriam actionem.

Dig. 14.3.6

Paulus 30 ad ed.

Sed et in ipsum procuratorem, si omnium rerum procurator est, dari debebit institoria.

Dig. 14.3.7pr.

Ulpianus 28 ad ed.

Sed et si quis meam rem gerens praeposuerit et ratum habuero, idem erit dicendum.

Dig. 14.3.7.1

Ulpianus 28 ad ed.

Parvi autem refert, quis sit institor, masculus an femina, liber an servus proprius vel alienus. item quisquis praeposuit: nam et si mulier praeposuit, competet institoria exemplo exercitoriae actionis et si mulier sit praeposita, tenebitur etiam ipsa. sed et si filia familias sit vel ancilla praeposita, competit institoria actio.

Dig. 14.3.7.2

Ulpianus 28 ad ed.

Pupillus autem institor obligat eum, qui eum praeposuit, institoria actione, quoniam sibi imputare debet, qui eum praeposuit.

Dig. 14.3.8

Gaius 9 ad ed. provinc.

Nam et plerique pueros puellasque tabernis praeponunt.

Dig. 14.3.9

Ulpianus 28 ad ed.

Verum si ipse pupillus praeposuerit, si quidem tutoris auctoritate, obligabitur, si minus, non.

Dig. 14.3.10

Gaius 9 ad ed. provinc.

Eatenus tamen dabitur in eum actio, quatenus ex ea re locupletior est.

Dig. 14.3.11pr.

Ulpianus 28 ad ed.

Sed si pupillus heres extiterit ei qui praeposuerat, aequissimum erit pupillum teneri, quamdiu praepositus manet: removendus enim fuit a tutoribus, si nollent opera eius uti.

Dig. 14.3.11.1

Ulpianus 28 ad ed.

Sed et si minor viginti quinque annis erit qui praeposuit, auxilio aetatis utetur non sine causae cognitione.

Dig. 14.3.11.2

Ulpianus 28 ad ed.

De quo palam proscriptum fuerit, ne cum eo contrahatur, is praepositi loco non habetur: non enim permittendum erit cum institore contrahere, sed si quis nolit contrahi, prohibeat: ceterum qui praeposuit tenebitur ipsa praepositione.

Dig. 14.3.11.3

Ulpianus 28 ad ed.

Proscribere palam sic accipimus claris litteris, unde de plano recte legi possit, ante tabernam scilicet vel ante eum locum in quo negotiatio exercetur, non in loco remoto, sed in evidenti. litteris utrum graecis an latinis? puto secundum loci condicionem, ne quis causari possit ignorantiam litterarum. certe si quis dicat ignorasse se litteras vel non observasse quod propositum erat, cum multi legerent cumque palam esset propositum, non audietur.

Dig. 14.3.11.4

Ulpianus 28 ad ed.

Proscriptum autem perpetuo esse oportet: ceterum si per id temporis, quo propositum non erat, vel obscurata proscriptione contractum sit, institoria locum habebit. proinde si dominus quidem mercis proscripsisset, alius autem sustulit aut vetustate vel pluvia vel quo simili contingit, ne proscriptum esset vel non pareret, dicendum eum qui praeposuit teneri. sed si ipse institor decipiendi mei causa detraxit, dolus ipsius praeponenti nocere debet, nisi particeps doli fuerit qui contraxit.

Dig. 14.3.11.5

Ulpianus 28 ad ed.

Condicio autem praepositionis servanda est: quid enim si certa lege vel interventu cuiusdam personae vel sub pignore voluit cum eo contrahi vel ad certam rem? aequissimum erit id servari, in quo praepositus est. item si plures habuit institores, vel cum omnibus simul contrahi voluit vel cum uno solo. sed et si denuntiavit cui, ne cum eo contraheret, non debet institoria teneri: nam et certam personam possumus prohibere contrahere vel certum genus hominum vel negotiatorum, vel certis hominibus permittere. sed si alias cum alio contrahi vetuit continua variatione, danda est omnibus adversus eum actio: neque enim decipi debent contrahentes.

Dig. 14.3.11.6

Ulpianus 28 ad ed.

Sed si in totum prohibuit cum eo contrahi, praepositi loco non habetur, cum magis hic custodis sit loco quam institoris: ergo nec vendere mercem hic poterit nec modicum quid ex taberna.

Dig. 14.3.11.7

Ulpianus 28 ad ed.

Si institoria recte actum est, tributoria ipso iure locum non habet: neque enim potest habere locum tributoria in merce dominica. quod si non fuit institor dominicae mercis, tributoria superest actio.

Dig. 14.3.11.8

Ulpianus 28 ad ed.

Si a servo tuo operas vicarii eius conduxero et eum merci meae institorem fecero isque tibi mercem vendiderit, emptio est: nam cum dominus a servo emit, est emptio, licet non sit dominus obligatus, usque adeo, ut etiam pro emptore et possidere et usucapere dominus possit:

Dig. 14.3.12

Iulianus 11 Dig.

Et ideo utilis institoria actio adversus me tibi competet, mihi vero adversus te vel de peculio dispensatoris, si ex conducto agere velim, vel de peculio vicarii, quod ei mercem vendendam mandaverim: pretiumque, quo emisti, in rem tuam versum videri poterit eo, quod debitor servi tui factus esses.

Dig. 14.3.13pr.

Ulpianus 28 ad ed.

Habebat quis servum merci oleariae praepositum arelatae, eundem et mutuis pecuniis accipiendis: acceperat mutuam pecuniam: putans creditor ad merces eum accepisse egit proposita actione: probare non potuit mercis gratia eum accepisse. licet consumpta est actio nec amplius agere poterit, quasi pecuniis quoque mutuis accipiendis esset praepositus, tamen iulianus utilem ei actionem competere ait.

Dig. 14.3.13.1

Ulpianus 28 ad ed.

Meminisse autem oportebit institoria dominum ita demum teneri, si non novaverit quis eam obligationem vel ab institore vel ab alio novandi animo stipulando.

Dig. 14.3.13.2

Ulpianus 28 ad ed.

Si duo pluresve tabernam exerceant et servum, quem ex disparibus partibus habebant, institorem praeposuerint, utrum pro dominicis partibus teneantur an pro aequalibus an pro portione mercis an vero in solidum, iulianus quaerit. et verius esse ait exemplo exercitorum et de peculio actionis in solidum unumquemque conveniri posse, et quidquid is praestiterit qui conventus est, societatis iudicio vel communi dividundo consequetur, quam sententiam et supra probavimus.

Dig. 14.3.14

Paulus 4 ad plaut.

Idem erit et si alienus servus communi merci praepositus sit: nam adversus utrumque in solidum actio dari debet et quod quisque praestiterit, eius partem societatis vel communi dividundo iudicio consequetur. certe ubicumque actio societatis vel communi dividundo cessat, quemque pro parte sua condemnari oportere constat, veluti si is, cuius servo creditum est, duobus heredibus institutis ei servo libertatem dederit: nam heredum quisque pro sua parte conveniendi sunt, quia cessat inter eos communi dividundo iudicium.

Dig. 14.3.15

Ulpianus 28 ad ed.

Novissime sciendum est has actiones perpetuo dari et in heredem et heredibus.

Dig. 14.3.16

Paulus 29 ad ed.

Si cum vilico alicuius contractum sit, non datur in dominum actio, quia vilicus propter fructus percipiendos, non propter quaestum praeponitur. si tamen vilicum distrahendis quoque mercibus praepositum habuero, non erit iniquum exemplo institoriae actionem in me competere.

Dig. 14.3.17pr.

Paulus 30 ad ed.

Si quis mancipiis vel iumentis pecoribusve emendis vendendisque praepositus sit, non solum institoria competit adversus eum qui praeposuit, sed etiam redhibitoria vel ex stipulatu duplae simplaeve in solidum actio danda est.

Dig. 14.3.17.1

Paulus 30 ad ed.

Si servum titii institorem habueris, vel tecum ex hoc edicto vel cum titio ex inferioribus edictis agere potero. sed si tu cum eo contrahi vetuisti, cum titio dumtaxat agi poterit.

Dig. 14.3.17.2

Paulus 30 ad ed.

Si impubes patri habenti institores heres exstiterit, deinde cum his contractum fuerit, dicendum est in pupillum dari actionem propter utilitatem promiscui usus, quemadmodum ubi post mortem tutoris, cuius auctoritate institor praepositus est, cum eo contrahitur.

Dig. 14.3.17.3

Paulus 30 ad ed.

Eius contractus certe nomine, qui ante aditam hereditatem intercessit, etiamsi furiosus heres exsistat, dandam esse actionem etiam pomponius scripsit: non enim imputandum est ei, qui sciens dominum decessisse cum institore exercente mercem contrahat.

Dig. 14.3.17.4

Paulus 30 ad ed.

Proculus ait, si denuntiavero tibi, ne servo a me praeposito crederes, exceptionem dandam: " si ille illi non denuntiaverit, ne illi servo crederet". sed si ex eo contractu peculium habeat aut in rem meam versum sit nec velim quo locupletior sim solvere, replicari de dolo malo oportet: nam videri me dolum malum facere, qui ex aliena iactura lucrum quaeram.

Dig. 14.3.17.5

Paulus 30 ad ed.

Ex hac causa etiam condici posse verum est.

Dig. 14.3.18

Paulus l.S. de var. lect.

Institor est, qui tabernae locove ad emendum vendendumve praeponitur quique sine loco ad eundem actum praeponitur.

Dig. 14.3.19pr.

Papinianus 3 resp.

In eum, qui mutuis accipiendis pecuniis procuratorem praeposuit, utilis ad exemplum institoriae dabitur actio: quod aeque faciendum erit et si procurator solvendo sit, qui stipulanti pecuniam promisit.

Dig. 14.3.19.1

Papinianus 3 resp.

Si dominus, qui servum institorem apud mensam pecuniis accipiendis habuit, post libertatem quoque datam idem per libertum negotium exercuit, varietate status non mutabitur periculi causa.

Dig. 14.3.19.2

Papinianus 3 resp.

Tabernae praepositus a patre filius mercium causa mutuam pecuniam accepit: pro eo pater fideiussit: etiam institoria ab eo petetur, cum acceptae pecuniae speciem fideiubendo negotio tabernae miscuerit.

Dig. 14.3.19.3

Papinianus 3 resp.

Servus pecuniis tantum faenerandis praepositus per intercessionem aes alienum suscipiens ut institorem dominum in solidum iure praetorio non adstringit: quod autem pro eo, qui pecuniam faeneravit, per delegationem alii promisit, a domino recte petetur, cui pecuniae creditae contra eum qui delegavit actio quaesita est.

Dig. 14.3.20

Scaevola 5 Dig.

Lucius titius mensae nummulariae quam exercebat habuit libertum praepositum: is gaio seio cavit in haec verba: " octavius terminalis rem agens octavii felicis domitio felici salutem. habes penes mensam patroni mei denarios mille, quos denarios vobis numerare debebo pridie kalendas maias. " quaesitum est, lucio titio defuncto sine herede bonis eius venditis an ex epistula iure conveniri terminalis possit. respondit nec iure his verbis obligatum nec aequitatem conveniendi eum superesse, cum id institoris officio ad fidem mensae protestandam scripsisset.

Dig. 14.4.0. De tributoria actione.

Dig. 14.4.1pr.

Ulpianus 29 ad ed.

Huius quoque edicti non minima utilitas est, ut dominus, qui alioquin in servi contractibus privilegium habet (quippe cum de peculio dumtaxat teneatur, cuius peculii aestimatio deducto quod domino debetur fit), tamen, si scierit servum peculiari merce negotiari, velut extraneus creditor ex hoc edicto in tributum vocatur.

Dig. 14.4.1.1

Ulpianus 29 ad ed.

Licet mercis appellatio angustior sit, ut neque ad servos fullones vel sarcinatores vel textores vel venaliciarios pertineat, tamen pedius libro quinto decimo scribit ad omnes negotiationes porrigendum edictum.

Dig. 14.4.1.2

Ulpianus 29 ad ed.

Peculiarem autem mercem non sic uti peculium accipimus, quippe peculium deducto quod debetur accipitur, merx peculiaris, etiamsi nihil sit in peculio, dominum tributoria obligat, ita demum si sciente eo negotiabitur.

Dig. 14.4.1.3

Ulpianus 29 ad ed.

Scientiam hic eam accipimus, quae habet et voluntatem, sed ut ego puto, non voluntatem, sed patientiam: non enim velle debet dominus, sed non nolle. si igitur scit et non protestatur et contra dicit, tenebitur actione tributoria.

Dig. 14.4.1.4

Ulpianus 29 ad ed.

Potestatis verbum ad omnem sexum, item ad omnes, qui sunt alieno iuri subiecti, porrigendum erit.

Dig. 14.4.1.5

Ulpianus 29 ad ed.

Non solum ad servos pertinebit tributoria actio, verum ad eos quoque, qui nobis bona fide serviunt, sive liberi sive servi alieni sunt, vel in quibus usum fructum habemus,

Dig. 14.4.2

Paulus 30 ad ed.

Ut tamen merx, qua peculiariter negotietur, ad nos pertineat.

Dig. 14.4.3pr.

Ulpianus 29 ad ed.

Sed si servus communis sit et ambo sciant domini, in utrumlibet ex illis dabitur actio: at si alter scit, alter ignoravit, in eum qui scit dabitur actio, deducetur tamen solidum quod ei qui ignoravit debetur. quod si ipsum quis ignorantem convenerit, quoniam de peculio convenitur, deducetur etiam id quod scienti debetur et quidem in solidum: nam et si ipse de peculio conventus esset, solidum quod ei deberetur deduceretur, et ita iulianus libro duodecimo digestorum scripsit.

Dig. 14.4.3.1

Ulpianus 29 ad ed.

Si servus pupilli vel furiosi sciente tutore vel curatore in merce peculiari negotietur, dolum quidem tutoris vel curatoris nocere pupillo vel furioso non debere puto, nec tamen lucrosum esse debere, et ideo hactenus eum ex dolo tutoris tributoria teneri, si quid ad eum pervenerit: idem et in furioso puto. quamvis pomponius libro octavo epistularum, si solvendo tutor sit, ex dolo eius pupillum teneri scripsit: et sane hactenus tenebitur, ut actionem, quam contra tutorem habeat, praestet.

Dig. 14.4.3.2

Ulpianus 29 ad ed.

Sed et si ipsius pupilli dolo factum sit, si eius aetatis sit, ut doli capax sit, efficere ut teneatur, quamvis scientia eius non sufficiat ad negotiationem. quid ergo est? scientia quidem tutoris et curatoris debet facere locum huic actioni: dolus autem quatenus noceat, ostendi.

Dig. 14.4.4

Paulus 30 ad ed.

Si pupillus, cuius tutor scierit, pubes factus vel furiosus sanae mentis dolum admittant, tenentur ex hoc edicto.

Dig. 14.4.5pr.

Ulpianus 29 ad ed.

Procuratoris autem scientiam et dolum nocere debere domino neque pomponius dubitat nec nos dubitamus.

Dig. 14.4.5.1

Ulpianus 29 ad ed.

Si vicarius servi mei negotietur, si quidem me sciente, tributoria tenebor, si me ignorante, ordinario sciente, de peculio eius actionem dandam pomponius libro sexagensimo scripsit, nec deducendum ex vicarii peculio, quod ordinario debetur, cum id quod mihi debetur deducatur. sed si uterque scierimus, et tributoriam et de peculio actionem competere ait, tributoriam vicarii nomine, de peculio vero ordinarii: eligere tamen debere agentem, qua potius actione experiatur, sic tamen, ut utrumque tribuatur et quod mihi et quod servo debetur, cum, si servus ordinarius ignorasset, deduceretur integrum, quod ei a vicario debetur.

Dig. 14.4.5.2

Ulpianus 29 ad ed.

Sed et si ancilla negotiabitur, admittendam tributoriam dicimus.

Dig. 14.4.5.3

Ulpianus 29 ad ed.

Item parvi refert, cum ipso servo contrahatur an cum institore eius.

Dig. 14.4.5.4

Ulpianus 29 ad ed.

" mercis nomine" merito adicitur, ne omnis negotiatio cum eo facta tributoriam inducat.

Dig. 14.4.5.5

Ulpianus 29 ad ed.

Per hanc actionem tribui iubetur, quod ex ea merce et quod eo nomine receptum est.

Dig. 14.4.5.6

Ulpianus 29 ad ed.

In tributum autem vocantur, qui in potestate habent, cum creditoribus mercis.

Dig. 14.4.5.7

Ulpianus 29 ad ed.

Sed est quaesitum, dominus utrum ita demum partietur ex merce, si quid ei mercis nomine debeatur, an vero et si ex alia causa. et labeo ait, ex quacumque causa ei debeatur, parvique referret, ante mercem an postea ei debere quid servus coeperit: sufficere enim, quod privilegium deductionis perdidit.

Dig. 14.4.5.8

Ulpianus 29 ad ed.

Quid tamen si qui contrahebant ipsam mercem pignori acceperint? puto debere dici, praeferendos domino iure pignoris.

Dig. 14.4.5.9

Ulpianus 29 ad ed.

Sive autem domino sive his qui in potestate eius sunt, debeatur, utique erit tribuendum.

Dig. 14.4.5.10

Ulpianus 29 ad ed.

Sed si duo pluresve domini sint, utique omnibus tribuetur pro rata debiti sui.

Dig. 14.4.5.11

Ulpianus 29 ad ed.

Non autem totum peculium venit in tributum, sed id dumtaxat, quod ex ea merce est, sive merces manent sive pretium earum receptum conversumve est in peculium.

Dig. 14.4.5.12

Ulpianus 29 ad ed.

Sed et si adhuc debeatur mercis nomine a quibusdam, quibus solebat servus distrahere, hoc quoque tribuetur, prout fuerit receptum.

Dig. 14.4.5.13

Ulpianus 29 ad ed.

Si praeter mercem servus iste in tabernam habeat instrumentum, an hoc quoque tribuatur? et labeo ait et hoc tribui, et est aequissimum: plerumque enim hic apparatus ex merce est, immo semper. cetera tamen, quae extra haec in peculium habuit, non tribuentur, ut puta argentum habuit vel aurum, nisi si haec ex merce comparavit.

Dig. 14.4.5.14

Ulpianus 29 ad ed.

Item si mancipia in negotiatione habuit ex merce parata, etiam haec tribuentur.

Dig. 14.4.5.15

Ulpianus 29 ad ed.

Si plures habuit servus creditores, sed quosdam in mercibus certis, an omnes in isdem confundendi erunt et omnes in tributum vocandi? ut puta duas negotiationes exercebat, puta sagariam et linteariam, et separatos habuit creditores. puto separatim eos in tributum vocari: unusquisque enim eorum merci magis quam ipsi credidit.

Dig. 14.4.5.16

Ulpianus 29 ad ed.

Sed si duas tabernas eiusdem negotiationis exercuit et ego fui tabernae verbi gratia quam ad bucinum habuit ratiocinator, alius eius quam trans tiberim, aequissimum puto separatim tributionem faciendam, ne ex alterius re merceve alii indemnes fiant, alii damnum sentiant.

Dig. 14.4.5.17

Ulpianus 29 ad ed.

Plane si in eadem taberna merces deferebantur, licet hae quae extent ^ exstent^ ex unius creditoris pecunia sint comparatae, dicendum erit omnes in tributum venire, nisi fuerint creditori pigneratae.

Dig. 14.4.5.18

Ulpianus 29 ad ed.

Sed si dedi mercem meam vendendam et exstat, videamus, ne iniquum sit in tributum me vocari. et si quidem in creditum ei abiit, tributio locum habebit: enimvero si non abiit, quia res venditae non alias desinunt esse meae, quamvis vendidero; nisi aere soluto vel fideiussore dato vel alias satisfacto, dicendum erit vindicare me posse.

Dig. 14.4.5.19

Ulpianus 29 ad ed.

Tributio autem fit pro rata eius quod cuique debeatur, et ideo, si unus creditor veniat desiderans tribui, integram portionem consequitur, sed quoniam fieri potest, ut alius quoque vel alii exsistere possint mercis peculiaris creditores, cavere debet creditor iste pro rata se refusurum, si forte alii emerserint creditores.

Dig. 14.4.6

Paulus 30 ad ed.

Non enim haec actio sic ut de peculio occupantis meliorem causam facit, sed aequalem condicionem quandoque agentium.

Dig. 14.4.7pr.

Ulpianus 29 ad ed.

Illud quoque cavere debet, si quid aliud domini debitum emerserit, refusurum se ei pro rata. finge enim condicionale debitum imminere vel in occulto esse: hoc quoque admittendum est: nam iniuriam dominus pati non debet, licet in tributum vocatur.

Dig. 14.4.7.1

Ulpianus 29 ad ed.

Quid tamen si dominus tribuere nolit nec hanc molestiam suscipere, sed peculio vel mercibus cedere paratus sit? pedius refert audiendum eum, quae sententia habet aequitatem: et plerumque arbitrum in hanc rem praetor debebit dare, cuius interventu tribuantur merces peculiares.

Dig. 14.4.7.2

Ulpianus 29 ad ed.

Si cuius dolo malo factum est, quo minus ita tribueretur, in eum tributoria datur, ut quanto minus tributum sit quam debuerit, praestet: quae actio dolum malum coercet domini. minus autem tribuere videtur etiam si nihil tributum sit. si tamen ignorans in merce servum habere minus tribuit, non videtur dolo minus tribuisse, sed re comperta si non tribuat, dolo nunc non caret. proinde si sibi ex ea merce solvi fecit, utique dolo videtur minus tribuisse.

Dig. 14.4.7.3

Ulpianus 29 ad ed.

Sed et si mercem perire passus est aut eam avertit aut vilioris data opera distraxit vel si ab emptoribus pretium non exegerit, dicendum erit teneri eum tributoria, si dolus intervenit.

Dig. 14.4.7.4

Ulpianus 29 ad ed.

Sed et si negaverit dominus cuiquam deberi, videndum erit, an tributoriae locus sit: et est verior labeonis sententia tributoriam locum habere: alioquin expediet domino negare.

Dig. 14.4.7.5

Ulpianus 29 ad ed.

Haec actio et perpetuo et in heredem datur de eo dumtaxat quod ad eum pervenit,

Dig. 14.4.8

Iulianus 11 Dig.

Quia non de dolo est, sed rei persecutionem continet: quare etiam mortuo servo dominus, item heres eius perpetuo teneri debebit propter factum defuncti: quamvis non aliter quam dolo interveniente competat.

Dig. 14.4.9pr.

Ulpianus 29 ad ed.

Quod in herede dicimus, idem erit et in ceteris successoribus.

Dig. 14.4.9.1

Ulpianus 29 ad ed.

Eligere quis debet, qua actione experiatur, utrum de peculio an tributoria, cum scit sibi regressum ad aliam non futurum. plane si quis velit ex alia causa tributoria agere, ex alia causa de peculio, audiendus erit.

Dig. 14.4.9.2

Ulpianus 29 ad ed.

Si servo testamento manumisso peculium legatum sit, non debere heredem tributoria teneri, quasi neque ad eum pervenerit neque dolo fecerit, labeo ait. sed pomponius libro sexagensimo scripsit heredem nisi curaverit caveri sibi a servo vel deduxit a peculio quod tribuendum erat, teneri tributoria, quae sententia non est sine ratione: ipse enim auctor doli est, qui id egit, ne intribueret: totiens enim in heredem damus de eo quod ad eum pervenit, quotiens ex dolo defuncti convenitur, non quotiens ex suo.

Dig. 14.4.10

Paulus 30 ad ed.

De peculio actione etiam cum emptore servi agi potest, tributoria non potest,

Dig. 14.4.11

Gaius 9 ad ed. provinc.

Aliquando etiam agentibus expedit potius de peculio agere quam tributoria: nam in hac actione de qua loquimur hoc solum in divisionem venit, quod in mercibus est quibus negotiatur quodque eo nomine receptum est: at in actione de peculio totius peculii quantitas spectatur, in quo et merces continentur. et fieri potest, ut dimidia forte parte peculii aut tertia vel etiam minore negotietur: fieri praeterea potest, ut patri dominove nihil debeat.

Dig. 14.4.12

Iulianus 12 Dig.

Alius dumtaxat de peculio, alius tributoria servi nomine cum domino agit: quaesitum est, an deducere dominus de peculio debeat, quod tributoria agenti praestaturus sit. respondit: tributoria actione tunc demum agi potest, cum dominus in distribuendo pretio mercis edicto praetoris non satisfecit, id est cum maiorem partem debiti sui deduxit quam creditoribus tribuit, veluti si, cum in merce triginta fuissent, in quam ipse quidem quindecim crediderat, duo autem extranei triginta, tota quindecim deduxerit, et creditoribus reliqua quindecim dederit, cum deberet sola decem deducere, extraneis dena tribuere. cum igitur hoc fecit, nec intellegendus est servum a se liberasse eo, quod quinque adhuc nomine eius tributoria actione praestaturus sit: quare si agi de peculio coeperit, cum forte extra mercem peculium esset, quinque tamquam adhuc creditor servi deducere debebit.

Dig. 14.5.0. Quod cum eo, qui in aliena potestate est, negotium gestum esse dicetur.

Dig. 14.5.1

Gaius 9 ad ed. provinc.

Omnia proconsul agit, ut qui contraxit cum eo, qui in aliena potestate sit, etiamsi deficient superiores actiones, id est exercitoria institoria tributoriave, nihilo minus tamen in quantum ex bono et aequo res patitur suum consequatur. sive enim iussu eius, cuius in potestate sit, negotium gestum fuerit, in solidum eo nomine iudicium pollicetur: sive non iussu, sed tamen in rem eius versum fuerit, eatenus introducit actionem, quatenus in rem eius versum fuerit: sive neutrum eorum sit, de peculio actionem constituit.

Dig. 14.5.2pr.

Ulpianus 29 ad ed.

Ait praetor: " in eum, qui emancipatus aut exheredatus erit quive abstinuit se hereditate eius cuius in potestate cum moritur fuerit, eius rei nomine, quae cum eo contracta erit, cum is in potestate esset, sive sua voluntate sive iussu eius in cuius potestate erit contraxerit, sive in peculium ipsius sive in patrimonium eius cuius in potestate fuerit ea res redacta fuerit, actionem causa cognita dabo in quod facere potest. "

Dig. 14.5.2.1

Ulpianus 29 ad ed.

Sed et si citra emancipationem sui iuris factus sit vel in adoptionem datus, deinde pater naturalis decesserit, item si quis ex minima parte sit institutus, aequissimum est causa cognita etiam in hunc dari actionem in id quod facere potest.

Dig. 14.5.3

Ulpianus 3 disp.

Sed an hic detrahi debeat quod aliis debetur, tractari potest. et si quidem sint creditores, qui, cum esset alienae potestatis, cum eo contraxerunt, recte dicetur occupantis meliorem esse condicionem, nisi si quis privilegiarius veniat: huius enim non sine ratione prioris ratio habebitur. quod si qui sint, qui, posteaquam sui iuris factus est, cum eo contraxerunt, puto horum rationem habendam.

Dig. 14.5.4pr.

Ulpianus 29 ad ed.

Sed si ex parte non modica sit heres scriptus filius, in arbitrio est creditoris, utrum pro portione hereditaria an in solidum eum conveniat. sed et hic iudex aestimare debeat, ne forte in id quod facere potest debeat conveniri.

Dig. 14.5.4.1

Ulpianus 29 ad ed.

Interdum autem et si exheredatus filius vel emancipatus sit, in solidum actio adversus eum dabitur, ut puta si patrem familias se mentitus est, cum contraheretur cum eo: nam libro secundo digestorum Marcellus scripsit, etiamsi facere non possit, conveniendum propter mendacium.

Dig. 14.5.4.2

Ulpianus 29 ad ed.

Quamquam autem ex contractu in id quod facere potest actio in eum datur, tamen ex delictis in solidum convenietur.

Dig. 14.5.4.3

Ulpianus 29 ad ed.

Soli autem filio succurritur non etiam heredi eius: nam et papinianus libro nono quaestionum scribit in heredem filii in solidum dandam actionem.

Dig. 14.5.4.4

Ulpianus 29 ad ed.

Sed an etiam temporis haberi debeat ratio, ut, si quidem ex continenti cum filio agatur, detur actio in id quod facere potest, sin vero post multos annos, non debeat indulgeri? et mihi videtur rationem habendam esse: in hoc enim causae cognitio vertitur.

Dig. 14.5.4.5

Ulpianus 29 ad ed.

Is qui de peculio egit, cum posset quod iussu, in ea causa est, ne possit quod iussu postea agere, et ita proculus existimat: sed si deceptus de peculio egit, putat celsus succurrendum ei: quae sententia habet rationem.

Dig. 14.5.5pr.

Paulus 30 ad ed.

Si filius familias vivo patre conventus et condemnatus sit, in emancipatum vel exheredatum postea iudicati actio in id quod facere potest danda est.

Dig. 14.5.5.1

Paulus 30 ad ed.

Si filio exheredato ex senatus consulto trebelliano hereditas patris restituta sit, non debebit in quantum facere potest, sed in solidum condemnari, quia effectu quodammodo heres est.

Dig. 14.5.5.2

Paulus 30 ad ed.

Sed si coactus immiscuerit se, ut restituat hereditatem, perinde observandum, ac si se abstinuisset.

Dig. 14.5.6

Ulpianus 2 disp.

Eum, qui se patrem familias simulavit et mandante aliquo stipulatus est, mandati teneri Marcellus scripsit , quamvis rem praestare non possit: et sane verum est teneri eum debere, quia dolo fecit. hoc et in omnibus bonae fidei iudiciis dicendum erit.

Dig. 14.5.7

Scaevola 1 resp.

Pater filio permisit mutuam pecuniam accipere et per epistulam creditori mandavit, ut ei crederet: filius ex minima parte patri heres exstitit. respondi esse in potestate creditoris, utrum filium, cui credidisset, in solidum, an heres, pro qua parte quisque successisset, mallet convenire: sed filius condemnatur in quantum facere potest.

Dig. 14.5.8

Paulus 1 decr.

Titianus primus praeposuerat servum mutuis pecuniis dandis et pignoribus accipiendis: is servus etiam negotiatoribus hordei solebat pro emptore suscipere debitum et solvere. cum fugisset servus et is, cui delegatus fuerat dare pretium hordei, conveniret dominum nomine institoris, negabat eo nomine se conveniri posse, quia non in eam rem praepositus fuisset. cum autem et alia quaedam gessisse et horrea conduxisse et multis solvisse idem servus probaretur, praefectus annonae contra dominum dederat sententiam. dicebamus quasi fideiussionem esse videri, cum pro alio solveret debitum, non pro aliis suscipit debitum: non solere autem ex ea causa in dominum dari actionem nec videtur hoc dominum mandasse. sed quia videbatur in omnibus eum suo nomine substituisse, sententiam conservavit imperator.

Dig. 14.6.0. De senatus consulto macedoniano.

Dig. 14.6.1pr.

Ulpianus 29 ad ed.

Verba senatus consulti macedoniani haec sunt: " cum inter ceteras sceleris causas macedo, quas illi natura administrabat, etiam aes alienum adhibuisset, et saepe materiam peccandi malis moribus praestaret, qui pecuniam, ne quid amplius diceretur incertis nominibus crederet: placere, ne cui, qui filio familias mutuam pecuniam dedisset, etiam post mortem parentis eius, cuius in potestate fuisset, actio petitioque daretur, ut scirent, qui pessimo exemplo faenerarent, nullius posse filii familias bonum nomen exspectata patris morte fieri. "

Dig. 14.6.1.1

Ulpianus 29 ad ed.

Si pendeat, an sit in potestate filius, ut puta quoniam patrem apud hostes habet, in pendenti est, an in senatus consultum sit commissum: nam si recciderit in potestatem, senatus consulto locus est, si minus, cessat: interim igitur deneganda est actio.

Dig. 14.6.1.2

Ulpianus 29 ad ed.

Certe si adrogatus mutuam pecuniam acceperit, deinde sit restitutus, ut emanciparetur, senatus consultum locum habebit: fuit enim filius familias.

Dig. 14.6.1.3

Ulpianus 29 ad ed.

In filio familias nihil dignitas facit, quo minus senatus consultum macedonianum locum habeat: nam etiamsi consul sit vel cuiusvis dignitatis, senatus consulto locus est: nisi forte castrense peculium habeat: tunc enim senatus consultum cessabit.

Dig. 14.6.2

Ulpianus 64 ad ed.

Usque ad quantitatem castrensis peculii, cum filii familias in castrensi peculio vice patrum familiarum fungantur.

Dig. 14.6.3pr.

Ulpianus 29 ad ed.

Si quis patrem familias esse credidit non vana simplicitate deceptus nec iuris ignorantia, sed quia publice pater familias plerisque videbatur, sic agebat, sic contrahebat, sic muneribus fungebatur, cessabit senatus consultum.

Dig. 14.6.3.1

Ulpianus 29 ad ed.

Unde iulianus libro duodecimo in eo, qui vectigalia conducta habebat, scribit (et est saepe constitutum) cessare senatus consultum.

Dig. 14.6.3.2

Ulpianus 29 ad ed.

Proinde et in eo, qui scire non potuit, an filius familias sit, iulianus libro duodecimo cessare senatus consultum ait, ut puta in pupillo vel minore viginti quinque annis. sed in minore, causa cognita et a praetore succurrendum: in pupillo autem etiam alia ratione debuit dicere cessare senatus consultum, quod mutua pecunia non fit, quam sine tutoris auctoritate pupillus dat, quemadmodum ipse dicit iulianus libro duodecimo, si filius familias crediderit, cessare senatus consultum, quod mutua pecunia non fit, quamvis liberam peculii administrationem habuit: non enim perdere ei peculium pater concedit, cum peculii administrationem permittit: et ideo vindicationem nummorum patri superesse ait.

Dig. 14.6.3.3

Ulpianus 29 ad ed.

Is autem solus senatus consultum offendit, qui mutuam pecuniam filio familias dedit, non qui alias contraxit, puta vendidit locavit vel alio modo contraxit: nam pecuniae datio perniciosa parentibus eorum visa est. et ideo etsi in creditum abii filio familias vel ex causa emptionis vel ex alio contractu, in quo pecuniam non numeravi, etsi stipulatus sim: licet coeperit esse mutua pecunia, tamen quia pecuniae numeratio non concurrit, cessat senatus consultum. quod ita demum erit dicendum, si non fraus senatus consulto sit cogitata, ut qui credere non potuit magis ei venderet, ut ille rei pretium haberet in mutui vicem.

Dig. 14.6.3.4

Ulpianus 29 ad ed.

Si a filio familias stipulatus sim et patri familias facto crediderim, sive capite deminutus sit sive morte patris vel alias sui iuris sine capitis deminutione fuerit effectus, debet dici cessare senatus consultum, quia mutua iam patri familias data est:

Dig. 14.6.4

Scaevola 2 quaest.

Quia quod volgo dicitur filio familias credi non licere, non ad verba referendum est, sed ad numerationem.

Dig. 14.6.5

Paulus 3 quaest.

Ergo hic et in solidum damnabitur, non in id quod facere potest.

Dig. 14.6.6

Scaevola 2 quaest.

Contra etiam recte dicetur, si a patre familias stipulatus sis, credas postea filio familias facto, senatus potestatem exercendam, quia expleta est numeratione substantia obligationis.

Dig. 14.6.7pr.

Ulpianus 29 ad ed.

Item si filius familias fideiusserit, neratius libro primo et secundo responsorum cessare senatus consultum ait. idem celsus libro quarto. sed iulianus adicit, si color quaesitus sit, ut filius familias, qui mutuam accepturus erat, fideiuberet alio reo dato, fraudem senatus consulto factam nocere et dandam exceptionem tam filio familias quam reo, quoniam et fideiussori filii subvenitur.

Dig. 14.6.7.1

Ulpianus 29 ad ed.

Idem ait, si duos reos accepero filium familias et titium, cum ad filium familias esset perventura pecunia, ideo autem reum titium acceperim, ne quasi fideiussor auxilio senatus consulti uteretur, utilem esse exceptionem adversus fraudem dandam.

Dig. 14.6.7.2

Ulpianus 29 ad ed.

Sed et si filius familias patre suo relegato vel longo tempore absente dotem pro filia promiserit et rem patris pignori dederit, senatus consultum cessabit. patris tamen res non tenebitur: plane si patri heres exstiterit filius et pignus persequatur, exceptione doli summovebitur.

Dig. 14.6.7.3

Ulpianus 29 ad ed.

Mutui dationem non solum numeratae pecuniae, verum omnium, quae mutua dari possunt, an accipere debeamus, videndum. sed verba videntur mihi ad numeratam pecuniam referri: ait enim senatus " mutuam pecuniam dedisset". sed si fraus sit senatus consulto adhibita, puta frumento vel vino vel oleo mutuo dato, ut his distractis fructibus uteretur pecunia, subveniendum est filio familias.

Dig. 14.6.7.4

Ulpianus 29 ad ed.

Si filius in alterius erat potestate, cum mutua daretur, nunc in alterius, mens senatus consulti non cessat: dabitur itaque exceptio.

Dig. 14.6.7.5

Ulpianus 29 ad ed.

Sed et si patri eius non mors, sed alia causa inciderit quo minus sit in civitate, dicendum senatus consulto locum esse.

Dig. 14.6.7.6

Ulpianus 29 ad ed.

Non solum ei, qui mutuam dedisset, sed et successoribus eius deneganda est actio.

Dig. 14.6.7.7

Ulpianus 29 ad ed.

Proinde et si alius mutuam dedit, alius stipulatus est, dabitur adversus eum exceptio, licet hic non dederit. sed et si alteruter eorum ignoravit in patris esse potestate, severius dicendum est utrique nocere. idem est et in duobus reis stipulandi.

Dig. 14.6.7.8

Ulpianus 29 ad ed.

Item si duos filios familias accepero reos, sed alterum putavi patrem familias, intererit, ad quem pecunia pervenit, ut, si eum scivi filium familias ad quem pervenit pecunia, exceptione summovear, si ad eum quem ignorem, non summovear.

Dig. 14.6.7.9

Ulpianus 29 ad ed.

Sive autem sub usuris mutua data sunt sive sine usuris, ad senatus consultum spectat.

Dig. 14.6.7.10

Ulpianus 29 ad ed.

Quamquam autem non declaret senatus, cui exceptionem det, tamen sciendum est et heredem filii, si pater familias decesserit, et patrem eius, si filius familias decesserit, exceptione uti posse.

Dig. 14.6.7.11

Ulpianus 29 ad ed.

Interdum tamenetsi senatus consulto locus sit, tamen in alium datur actio, ut puta filius familias institor mutuam pecuniam accepit: scribit enim iulianus libro duodecimo ipsum quidem institorem exceptione senatus consulti usurum, si conveniatur, sed institoriam actionem adversus eum qui praeposuit competere. quamquam, inquit, si ipse pater eum praeposuisset merci suae vel peculiarem exercere passus esset, cessaret senatus consultum, quoniam patris voluntate contractum videretur: nam si scit eum negotiari, etiam hoc permisisse videtur, si non nominatim prohibuit merces accipere.

Dig. 14.6.7.12

Ulpianus 29 ad ed.

Proinde si acceperit pecuniam et in rem patris vertit, cessat senatus consultum: patri enim, non sibi accepit. sed et si ab initio non sic accepit, verum postea in rem patris vertit, cessare senatus consultum libro duodecimo digestorum iulianus ait intellegendumque ab initio sic accepisse, ut in rem verteret. non tamen vertisse videbitur, si mutuam pecuniam acceptam patri in proprium debitum solvit et ideo, si pater ignoravit, adhuc senatus consulto locus erit.

Dig. 14.6.7.13

Ulpianus 29 ad ed.

Quod dicitur in eo, qui studiorum causa absens mutuum acceperat, cessare senatus consultum, ita locum habet, si probabilem modum in mutua non excessit, certe eam quantitatem, quam pater solebat subministrare.

Dig. 14.6.7.14

Ulpianus 29 ad ed.

Si filius accepit mutuam pecuniam, ut eum liberaret, qui, si peteret, exceptione non summoveretur, senatus consulti cessabit exceptio.

Dig. 14.6.7.15

Ulpianus 29 ad ed.

Hoc amplius cessabit senatus consultum, si pater solvere coepit quod filius familias mutuum sumpserit, quasi ratum habuerit.

Dig. 14.6.7.16

Ulpianus 29 ad ed.

Si pater familias factus solverit partem debiti, cessabit senatus consultum nec solutum repetere potest.

Dig. 14.6.8

Paulus 30 ad ed.

Cum tamen a curatore per ignorantiam solutum sit, repeti debet.

Dig. 14.6.9pr.

Ulpianus 29 ad ed.

Sed si pater familias factus rem pignori dederit, dicendum erit senatus consulti exceptionem ei denegandam usque ad pignoris quantitatem.

Dig. 14.6.9.1

Ulpianus 29 ad ed.

Si ab alio donatam sibi pecuniam filius creditori solverit, an pater vindicare vel repetere possit? et ait iulianus, si quidem hac condicione ei donata sit pecunia, ut creditori solvat, videri a donatore profectam protinus ad creditorem et fieri nummos accipientis: si vero simpliciter ei donavit, alienationem eorum filium non habuisse et ideo, si solverit, condictionem patri ex omni eventu competere.

Dig. 14.6.9.2

Ulpianus 29 ad ed.

Hoc senatus consultum et ad filias quoque familiarum pertinet nec ad rem pertinet, si adfirmetur ornamenta ex ea pecunia comparasse: nam et ei quoque qui filio familias credidit decreto amplissimi ordinis actio denegatur nec interest, consumpti sint nummi an exstent in peculio. multo igitur magis severitate senatus consulti eius contractus improbabitur, qui filiae familias mutuum dedit.

Dig. 14.6.9.3

Ulpianus 29 ad ed.

Non solum filio familias et patri eius succurritur, verum fideiussori quoque et mandatori eius, qui et ipsi mandati habent regressum, nisi forte donandi animo intercesserunt: tunc enim, cum nullum regressum habeant, senatus consultum locum non habebit. sed et si non donandi animo, patris tamen voluntate intercesserunt, totus contractus a patre videbitur comprobatus.

Dig. 14.6.9.4

Ulpianus 29 ad ed.

Et hi tamen, qui pro filio familias sine voluntate patris eius intercesserunt, solvendo non repetent: hoc enim et divus hadrianus constituit et potest dici non repetituros. atquin perpetua exceptione tuti sunt: sed et ipse filius, et tamen non repetit, quia hi demum solutum non repetunt, qui ob poenam creditorum actione liberantur, non quoniam exonerare eos lex voluit.

Dig. 14.6.9.5

Ulpianus 29 ad ed.

Quamquam autem solvendo non repetunt ^ repetant^,

Dig. 14.6.10

Paulus 30 ad ed.

Quia naturalis obligatio manet,

Dig. 14.6.11

Ulpianus 29 ad ed.

Tamen, si non opposita exceptione condemnati sunt, utentur senatus consulti exceptione: et ita iulianus scribit in ipso filio familias exemplo mulieris intercedentis.

Dig. 14.6.12

Paulus 30 ad ed.

Si tantum sciente patre creditum sit filio, dicendum est cessare senatus consultum. sed si iusserit pater filio credi, deinde ignorante creditore mutaverit voluntatem, locus senatus consulto non erit, quoniam initium contractus spectandum est.

Dig. 14.6.13

Gaius 9 ad ed. provinc.

Si quod alii mutuum dedimus a filio familias novandi causa stipulemur, non esse impedimento senatus consultum iulianus scribit.

Dig. 14.6.14

Iulianus 12 Dig.

Filium habeo et ex eo nepotem: nepoti meo creditum est iussu patris eius: quaesitum est, an contra senatus consultum fieret. dixi, etiamsi verbis senatus consulti filii continerentur, tamen et in persona nepotis idem servari debere: iussum autem huius patris non efficere, quo minus contra senatus consultum creditum existimaretur, cum ipse in ea causa esset, ut pecuniam mutuam invito patre suo accipere non possit.

Dig. 14.6.15

Marcianus 14 inst.

Nihil interest, quis filio familias crediderit, utrum privatus an civitas: nam in civitate quoque senatus consultum locum habere divi severus et antoninus rescripserunt.

Dig. 14.6.16

Paulus 4 resp.

Si filius familias absente patre, quasi ex mandato eius pecuniam acceperit, cavisset et ad patrem litteras emisit, ut eam pecuniam in provincia solveret, debet pater, si actum filii sui improbat, continuo testationem interponere contrariae voluntatis.

Dig. 14.6.17

Paulus 2 sent.

Filius familias si in id acceperit mutuam pecuniam, ut eam pro sorore sua in dotem daret, pater eius de in rem verso actione tenebitur: ipsi enim mortua in matrimonio puella repetitio dotis datur.

Dig. 14.6.18

Venonius 2 stipul.

Creditorem filii familias mortuo eo fideiussorem accipere non posse iulianus scribit, quia nulla obligatio aut civilis aut naturalis supersit, cui fideiussor accedat: plane a patre eius actionis nomine, quae de peculio adversus eum competat, fideiussorem recte accipi.

Dig. 14.6.19

Pomponius 7 ex var. lect.

Iulianus scribit exceptionem senatus consulti macedoniani nulli obstare, nisi qui sciret aut scire potuisset filium familias esse eum cui credebat.

Dig. 14.6.20

Pomponius 5 sen. consult.

Si is, cui, dum in potestate patris esset, mutua pecunia data fuerat, pater familias factus per ignorantiam facti novatione facta eam pecuniam expromisit, si petatur ex ea stipulatione, in factum excipiendum erit.

OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER QUINTUS DECIMUS

Dig. 15.1.0. De peculio.
Dig. 15.2.0. Quando de peculio actio annalis est.
Dig. 15.3.0. De in rem verso.
Dig. 15.4.0. Quod iussu.

Dig. 15.1.0.R rubrica: de peculio.

Dig. 15.1.1pr.

Ulpianus 29 ad ed.

Ordinarium praetor arbitratus est prius eos contractus exponere eorum qui alienae potestati subiecti sunt, qui in solidum tribuunt actionem, sic deinde ad hunc pervenire, ubi de peculio datur actio.

Dig. 15.1.1.1

Ulpianus 29 ad ed.

Est autem triplex hoc edictum: aut enim de peculio aut de in rem verso aut quod iussu hinc oritur actio.

Dig. 15.1.1.2

Ulpianus 29 ad ed.

Verba autem edicti talia sunt: " quod cum eo, qui in alterius potestate esset, negotium gestum erit".

Dig. 15.1.1.3

Ulpianus 29 ad ed.

De eo loquitur, non de ea: sed tamen et ob eam quae est feminini sexus dabitur ex hoc edicto actio.

Dig. 15.1.1.4

Ulpianus 29 ad ed.

Si cum impubere filio familias vel servo contractum sit, ita dabitur in dominum vel patrem de peculio, si locupletius eorum peculium factum est.

Dig. 15.1.1.5

Ulpianus 29 ad ed.

Potestatis verbum communiter accipiendum est tam in filio quam in servo.

Dig. 15.1.1.6

Ulpianus 29 ad ed.

Nec magis dominium servorum esse spectandum quam facultatem habendi eos: non enim solum servorum propriorum nomine conveniemur, item communium, verum eorum quoque qui bona fide nobis serviunt, sive liberi sint sive servi alieni.

Dig. 15.1.2

Pomponius 5 ad sab.

Ex ea causa, ex qua soleret servus fructuarius vel usuarius adquirere, in eum, cuius usus fructus vel usus sit, actio dumtaxat de peculio ceteraeque honorariae dantur, ex reliquis in dominum proprietatis.

Dig. 15.1.3pr.

Ulpianus 29 ad ed.

Licet tamen praetor, si cum eo qui in potestate sit gestum sit polliceatur actionem, tamen sciendum est et si in nullius sit potestate, dari de peculio actionem, ut puta si cum servo hereditario contractum sit ante aditam hereditatem.

Dig. 15.1.3.1

Ulpianus 29 ad ed.

Unde labeo scribit et si secundo tertiove gradu substitutus sit servus et deliberantibus primis heredibus cum eo contractum sit, mox repudiantibus eis ipse liber heresque exstiterit, posse dici de peculio eum conveniri et de in rem verso.

Dig. 15.1.3.2

Ulpianus 29 ad ed.

Parvi autem refert, servus quis masculi an mulieris fuerit: nam de peculio et mulier convenietur.

Dig. 15.1.3.3

Ulpianus 29 ad ed.

Pedius etiam impuberes dominos de peculio obligari ait: non enim cum ipsis impuberibus contrahitur, ut tutoris auctoritatem spectes. idem adicit pupillum non posse servo peculium constituere nec tutoris auctoritate.

Dig. 15.1.3.4

Ulpianus 29 ad ed.

In furiosi quoque curatorem dicimus dandam de peculio actionem: nam et huius servus peculium habere potest, non si fuerit concessum, ut habeat, sed si non fuerit prohibitum, ne habeat.

Dig. 15.1.3.5

Ulpianus 29 ad ed.

Si filius familias vel servus pro aliquo fideiusserint vel alias intervenerint vel mandaverint, tractatum tum est, an sit de peculio actio. et est verius in servo causam fideiubendi vel mandandi spectandam, quam sententiam et celsus libro sexto probat in servo fideiussore. si igitur quasi intercessor servus intervenerit, non rem peculiarem agens, non obligabitur dominus de peculio.

Dig. 15.1.3.6

Ulpianus 29 ad ed.

Iulianus quoque libro duodecimo digestorum scribit, si servus mandaverit, ut creditori meo solveretur, referre ait, quam causam mandandi habuerit: si pro creditore suo solvi mandavit, esse obligatum dominum de peculio: quod si intercessoris officio functus sit, non obligari dominum de peculio.

Dig. 15.1.3.7

Ulpianus 29 ad ed.

Cui congruit, quod idem iulianus scribit, si a filio meo fideiussorem accepero, quidquid a fideiussore accepero, id me non de in rem verso, sed de peculio actione mandati praestaturum. idem accipias et in servi fideiussore, idemque si alius mihi pro filio meo debitore solvisset. quod si filius meus debitor non fuisset, exceptione doli fideiussorem usurum et, si solvisset, condicturum scribit.

Dig. 15.1.3.8

Ulpianus 29 ad ed.

Si servus, cum se pro libero gereret, compromiserit, quaeritur, an de peculio actio ex poena compromissi quasi ex negotio gesto danda sit, sicuti traiecticiae pecuniae datur. sed hoc et nervae filio et mihi videtur verius ex compromisso servi non dandam de peculio actionem, quia nec si iudicio condemnetur servus, datur in eum actio.

Dig. 15.1.3.9

Ulpianus 29 ad ed.

Sed si filius fideiussor vel quasi interventor acceptus sit, an de peculio patrem obligat, quaeritur. et est vera sabini et cassii sententia existimantium semper obligari patrem de peculio et distare in hoc a servo.

Dig. 15.1.3.10

Ulpianus 29 ad ed.

Quare et ex compromisso pater tenebitur. et ita papinianus quoque libro nono quaestionum scribit nec interesse ait, ex qua causa compromiserit, utrum ex ea causa, ex qua potuit cum patre de peculio agere, an vero ex ea qua non potuit, cum ex stipulatu pater conveniatur.

Dig. 15.1.3.11

Ulpianus 29 ad ed.

Idem scribit iudicati quoque patrem de peculio actione teneri, quod et Marcellus putat, etiam eius actionis nomine, ex qua non potuit pater de peculio actionem pati: nam sicut in stipulatione contrahitur cum filio, ita iudicio contrahi: proinde non originem iudicii spectandam, sed ipsam iudicati velut obligationem. quare et si quasi defensor condemnatus sit, idem putat.

Dig. 15.1.3.12

Ulpianus 29 ad ed.

Ex furtiva causa filio quidem familias condici posse constat. an vero in patrem vel in dominum de peculio danda est, quaeritur: et est verius, in quantum locupletior dominus factus esset ex furto facto, actionem de peculio dandam: idem labeo probat, quia iniquissimum est ex furto servi dominum locupletari impune. nam et circa rerum amotarum actionem filiae familias nomine in id quod ad patrem pervenit competit actio de peculio.

Dig. 15.1.3.13

Ulpianus 29 ad ed.

Si filius familias duumvir pupillo rem salvam fore caveri non curavit, papinianus libro nono quaestionum de peculio actionem competere ait. nec quicquam mutare arbitror, an voluntate patris decurio factus sit, quoniam rem publicam salvam fore pater obstrictus est.

Dig. 15.1.4pr.

Pomponius 7 ad sab.

Peculii est non id, cuius servus seorsum a domino rationem habuerit, sed quod dominus ipse separaverit suam a servi rationem discernens: nam cum servi peculium totum adimere vel augere vel minuere dominus possit, animadvertendum est non quid servus, sed quid dominus constituendi servilis peculii gratia fecerit.

Dig. 15.1.4.1

Pomponius 7 ad sab.

Sed hoc ita verum puto, si debito servum liberare voluit dominus, ut, etiamsi nuda voluntate remiserit dominus quod debuerit, desinat servus debitor esse: si vero nomina ita fecerit dominus, ut quasi debitorem se servo faceret, cum re vera debitor non esset, contra puto: re enim, non verbis peculium augendum est.

Dig. 15.1.4.2

Pomponius 7 ad sab.

Ex his apparet non quid servus ignorante domino habuerit peculii esse, sed quid volente: alioquin et quod subripuit servus domino, fiet peculii, quod non est verum.

Dig. 15.1.4.3

Pomponius 7 ad sab.

Sed saepe fit, ut ignorante domino incipiat minui servi peculium, veluti cum damnum domino dat servus aut furtum facit.

Dig. 15.1.4.4

Pomponius 7 ad sab.

Si opem ferente servo meo furtum mihi feceris, id ex peculio deducendum est, quo minus ob rem subreptam consequi possim.

Dig. 15.1.4.5

Pomponius 7 ad sab.

Si aere alieno dominico exhauriatur peculium servi, res tamen in causa peculiaria manent: nam si aut servo donasset debitum dominus aut nomine servi alius domino intulisset, peculium suppletur nec est nova concessione domini opus.

Dig. 15.1.4.6

Pomponius 7 ad sab.

Non solum id in peculio vicariorum ponendum est, cuius rei a domino, sed etiam id cuius ab eo cuius in peculio sint seorsum rationem habeant.

Dig. 15.1.5pr.

Ulpianus 29 ad ed.

Depositi nomine pater vel dominus dumtaxat de peculio conveniuntur et si quid dolo malo eorum captus sum.

Dig. 15.1.5.1

Ulpianus 29 ad ed.

Sed et si precario res filio familias vel servo data sit, dumtaxat de peculio pater dominusve obligantur.

Dig. 15.1.5.2

Ulpianus 29 ad ed.

Si filius familias iusiurandum detulerit et iuratum sit, de peculio danda est actio, quasi contractum sit: sed in servo diversum est:

Dig. 15.1.5.3

Ulpianus 29 ad ed.

Peculium dictum est quasi pusilla pecunia sive patrimonium pusillum.

Dig. 15.1.5.4

Ulpianus 29 ad ed.

Peculium autem tubero quidem sic definit, ut celsus libro sexto digestorum refert, quod servus domini permissu separatum a rationibus dominicis habet, deducto inde si quid domino debetur.

Dig. 15.1.6

Celsus 6 Dig.

Definitio peculii quam tubero exposuit, ut labeo ait, ad vicariorum peculia non pertinet, quod falsum est: nam eo ipso, quod dominus servo peculium constituit, etiam vicario constituisse existimandus est.

Dig. 15.1.7pr.

Ulpianus 29 ad ed.

Quam tuberonis sententiam et ipse celsus probat.

Dig. 15.1.7.1

Ulpianus 29 ad ed.

Et adicit pupillum vel furiosum constituere quidem peculium servo non posse: verum ante constitutum, id est ante furorem vel a patre pupilli, non adimetur ex his causis. quae sententia vera est et congruit cum eo, quod Marcellus apud iulianum notans adicit " posse fieri, ut apud alterum ex dominis servus peculium habeat, apud alterum non, ut puta si alter ex dominis furiosus sit vel pupillus, si (ut quidam, inquit, putant) peculium servus habere non potest nisi concedente domino. ego autem puto non esse opus concedi peculium a domino servum habere, sed non adimi, ut habeat". alia causa est peculii liberae administrationis: nam haec specialiter concedenda est.

Dig. 15.1.7.2

Ulpianus 29 ad ed.

Scire autem non utique singulas res debet, sed paxumeresteron, et in hanc sententiam pomponius inclinat.

Dig. 15.1.7.3

Ulpianus 29 ad ed.

Pupillum autem tam filium quam servum peculium habere posse pedius libro quinto decimo scribit, cum in hoc, inquit, totum ex domini constitutione pendeat. ergo et si furere coeperit servus vel filius, retinebunt peculium. in peculio autem res esse possunt omnes et mobiles et soli: vicarios quoque in peculium potest habere et vicariorum peculium: hoc amplius et nomina debitorum.

Dig. 15.1.7.5

Ulpianus 29 ad ed.

Sed et si quid furti actione servo deberetur vel alia actione, in peculium computabitur: hereditas quoque et legatum, ut labeo ait.

Dig. 15.1.7.6

Ulpianus 29 ad ed.

Sed et id quod dominus sibi debet in peculium habebit, si forte in domini rationem impendit et dominus ei debitor manere voluit aut si debitorem eius dominus convenit. quare si forte ex servi emptione evictionis nomine duplum dominus exegit, in peculium servi erit conversum, nisi forte dominus eo proposito fuit, ut nollet hoc esse in peculium servi.

Dig. 15.1.7.7

Ulpianus 29 ad ed.

Sed et si quid ei conservus debet, erit peculii, si modo ille habeat peculium vel prout habebit.

Dig. 15.1.8

Paulus 4 ad sab.

Non statim quod dominus voluit ex re sua peculii esse, peculium fecit, sed si tradidit aut, cum apud eum esset, pro tradito habuit: desiderat enim res naturalem dationem. contra autem simul atque noluit, peculium servi desinit peculium esse.

Dig. 15.1.9pr.

Ulpianus 29 ad ed.

Sed si damnum servo dominus dederit, in peculium hoc non imputabitur, non magis quam si subripuerit.

Dig. 15.1.9.1

Ulpianus 29 ad ed.

Plane si conservus dedit damnum vel subripuit, in peculium videtur haberi, et ita pomponius libro undecimo scribit: nam et si quid dominus ab eo qui rem peculiarem subripuit vel consecutus est vel consequi potest, in peculium esse ei imputandum neratius libro secundo responsorum scribit.

Dig. 15.1.9.2

Ulpianus 29 ad ed.

Peculium autem deducto quod domino debetur computandum esse, quia praevenisse dominus et cum servo suo egisse creditur.

Dig. 15.1.9.3

Ulpianus 29 ad ed.

Huic definitioni servius adiecit et si quid his debeatur qui sunt in eius potestate, quoniam hoc quoque domino deberi nemo ambigit.

Dig. 15.1.9.4

Ulpianus 29 ad ed.

Praeterea id etiam deducetur, quod his personis debetur, quae sunt in tutela vel cura domini vel patris vel quorum negotia administrant, dummodo dolo careant, quoniam et si per dolum peculium vel ademerint vel minuerint, tenentur: nam si semper praevenire dominus et agere videtur, cur non dicatur etiam hoc nomine eum secum egisse, quo nomine vel tutelae vel negotiorum gestorum vel utili actione tenebitur? nam ut eleganter pedius ait, ideo hoc minus in peculio est, quod domino vel patri debetur, quoniam non est verisimile dominum id concedere servo in peculium habere, quod sibi debetur. sane cum ex ceteris causis ipsum a semet ipso exegisse dicimus qui negotia vel tutelam geret, cur non etiam in specie peculiari exegerit, quod exigi debuit? defendendum igitur erit quasi sibi eum solvere, cum quis agere de peculio conabitur.

Dig. 15.1.9.5

Ulpianus 29 ad ed.

Sed et creditor servi, qui heres exstitit domino eius, deducit de peculio quod sibi debetur, si conveniatur, sive libertatem servus acceperit sive non, idemque et si legatus sit pure servus: nam quasi praevenerit et ipse secum egerit, sic deducet quod sibi debetur, licet nullo momento dominium in manumisso vel legato pure habuerit. et ita iulianus libro duodecimo scribit. certe si sub condicione servus libertatem acceperit, minus dubitanter iulianus eodem loco scribit heredem deducere: dominus enim factus est. ad defensionem sententiae suae iulianus etiam illud adfert, quod, si ei, qui post mortem servi vel filii intra annum potuit conveniri de peculio. heres exstitero, procul dubio deducam quod mihi debetur.

Dig. 15.1.9.6

Ulpianus 29 ad ed.

Sive autem ex contractu quid domino debeat sive ex rationum reliquis, deducet dominus. sed et si ex delicto ei debeat, ut puta ob furtum quod fecit, aeque deducetur. sed est quaestionis, utrum ipsa furti aestimatio, id est id solum quod domino abest, an vero tantum, quantum, si alienus servus commisisset, id est cum furti poenis? sed prior sententia verior est, ut ipsa furti aestimatio sola deducatur.

Dig. 15.1.9.7

Ulpianus 29 ad ed.

Si ipse servus sese vulneravit, non debet hoc damnum deducere, non magis quam si se occiderit vel praecipitaverit: licet enim etiam servis naturaliter in suum corpus saevire. sed si a se vulneratum servum dominus curaverit, sumptuum nomine debitorem eum domino puto effectum, quamquam, si aegrum eum curasset, rem suam potius egisset.

Dig. 15.1.9.8

Ulpianus 29 ad ed.

Item deducetur de peculio, si quid dominus servi nomine obligatus est aut praestitit obligatus: ita si quid ei creditum est iussu domini: nam hoc deducendum iulianus libro duodecimo digestorum scribit. sed hoc ita demum verum puto, si non in rem domini vel patris quod acceptum est pervenit: alioquin secum debebit compensare. sed et si pro servo fideiusserit, deducendum iulianus libro duodecimo digestorum scribit. Marcellus autem in utroque, si nondum quicquam domino absit, melius esse ait praestare creditori, ut caveat ille refusurum se, si quid praestiterit dominus hoc nomine conventus, quam ab initio deduci, ut medii temporis interusurium magis creditor consequatur. sed si de peculio conventus dominus condemnatus est, debebit de sequenti actione de peculio deduci: coepit enim dominus vel pater iudicati teneri: nam et si quid servi nomine non condemnatus praestitisset creditori, etiam hoc deduceret.

Dig. 15.1.10

Gaius 9 ad ed. provinc.

Si vero adhuc in suspenso est prius iudicium de peculio et ex posteriore iudicio res iudicaretur, nullo modo debet prioris iudicii ratio haberi in posteriore condemnatione, quia in actione de peculio occupantis melior est condicio, occupare autem videtur non qui prior litem contestatus est, sed qui prior ad sententiam iudicis pervenit.

Dig. 15.1.11pr.

Ulpianus 29 ad ed.

Si noxali iudicio conventus dominus litis aestimationem obtulerit, de peculio deducendum est: quod si noxae dederit, nihil est deducendum.

Dig. 15.1.11.1

Ulpianus 29 ad ed.

Sed et si quid dominus soluturum se servi nomine repromisit, deduci oportebit, quemadmodum si quid domino servus pro debitore expromiserat. idem est et si pro libertate quid domino expromisit, quasi debitor domino sit effectus, sed ita demum, si manumisso eo agatur.

Dig. 15.1.11.2

Ulpianus 29 ad ed.

Sed si a debitore dominico servus exegerit, an domini debitorem se fecerit, quaeritur: et iulianus libro duodecimo digestorum non aliter dominum deducturum ait, quam si ratum habuisset quod exactum est: eadem et in filio familias dicenda erunt. et puto veram iuliani sententiam: naturalia enim debita spectamus in peculii deductione: est autem natura aequum liberari filium vel servum obligatione eo quod indebitum videtur exegisse.

Dig. 15.1.11.3

Ulpianus 29 ad ed.

Est autem quaestionis, an id, quod dominus semel deduxit cum conveniretur, rursus si conveniatur, de peculio eximere debeat, an vero veluti solutum ei videatur semel facta deductione. et neratius et nerva putant, item iulianus libro duodecimo scribit, si quidem abstulit hoc de peculio, non debere deduci, si vero eandem positionem peculii reliquit, debere eum deducere.

Dig. 15.1.11.4

Ulpianus 29 ad ed.

Denique scribit, si servus vicarium quinque valentem in peculium habuit et domino quinque deberet, pro quibus vicarium dominus deduxisset, et mortuo postea vicario alium eiusdem pretii servus comparaverit, non desinere domini esse debitorem, quasi vicarius ille domino decesserit: nisi forte, cum eum servo ademisset et sibi solvisset, tunc decesserit.

Dig. 15.1.11.5

Ulpianus 29 ad ed.

Idem recte ait, si, cum vicarius valeret decem, dominus conventus de peculio quinque pro servo praestitisset, quoniam quinque ipsi debebantur, mox vicarius decessisset, adversus alium agentem de peculio decem dominum deducturum, quia et in eo, quod iam pro eo solvit, debitorem servum sibi fecerit. quae sententia vera est, nisi servo ademit vicarium, ut sibi solveret.

Dig. 15.1.11.6

Ulpianus 29 ad ed.

Quod autem deduci debere diximus id quod debetur ei qui de peculio convenitur, ita accipiendum est, si non hoc aliunde consequi potuit.

Dig. 15.1.11.7

Ulpianus 29 ad ed.

Denique iulianus scribit venditorem, qui servum cum peculio vendidit, si de peculio conveniatur, non debere deducere quod sibi debetur: potuit enim hoc ex ratione peculii detrahere et nunc condicere quasi indebitum (quoniam non est in peculio quod domino debetur). potest, inquit, etiam ex vendito agere. quod ita erit probandum, si tantum fuit in peculio cum venderet, ut satisfacere debito dominus possit: ceterum si postea quid accessit condicionibus debiti existentibus, quod dominus non distraxerat, contra erit dicendum.

Dig. 15.1.11.8

Ulpianus 29 ad ed.

Idem scribit, si quis servum, cuius nomine de peculio habebat actionem, comparasset, an possit deducere quod sibi debetur, quoniam adversus venditorem habeat actionem de peculio? et recte ait posse: nam et quivis alius potest eligere, utrum cum emptore an cum venditore ageret: hunc igitur eligere pro actione deductionem. nec video quid habeant creditores quod querantur, cum possint ipsi venditorem convenire, si quid forte putant esse in peculio.

Dig. 15.1.11.9

Ulpianus 29 ad ed.

Non solum autem quod ei debetur qui convenitur deducendum est, verum etiam si quid socio eius debetur, et ita iulianus libro duodecimo digestorum scribit: nam qua ratione in solidum alteruter convenitur, pari ratione deducere eum oportet quod alteri debetur: quae sententia recepta est:

Dig. 15.1.12

Iulianus 12 Dig.

Quia hoc casu etiam cum eo agi potest, penes quem peculium non est.

Dig. 15.1.13

Ulpianus 29 ad ed.

Sed in emptore et venditore vera non est, item in fructuario et proprietario et ceteris qui non sunt socii, et in domino et bonae fidei emptore: nam et iulianus libro duodecimo scribit neutrum horum deducere id quod alteri debetur.

Dig. 15.1.14pr.

Iulianus 12 Dig.

Item cum testamento praesenti die servus liber esse iussus est, cum omnibus heredibus de peculio agendum est nec quisquam eorum amplius deducet quam quod ipsi debeatur.

Dig. 15.1.14.1

Iulianus 12 Dig.

Item cum servus vivo domino mortuus est, deinde dominus intra annum plures heredes reliquit, et de peculio actio et deductionis ius scinditur.

Dig. 15.1.15

Ulpianus 29 ad ed.

Sed si duo sint bonae fidei possessores, adhuc dicendum erit neutrum plus deducturum quam quod sibi debetur. idemque et si duo sunt fructuarii, quia nullam inter se habent societatem. idem dicetur interdum et in sociis, si forte separata apud se peculia habeant, ut alter alterius peculii nomine non conveniatur: ceterum si commune sit peculium, et in solidum convenientur et deducetur quod utrique debetur.

Dig. 15.1.16

Iulianus 12 Dig.

Quis ergo casus est, quo peculium servi communis ad alterum ex dominis solum pertineat? in primis si quis servi partem dimidiam vendiderit nec peculium ei concesserit: deinde si quis servo communi pecuniam vel res aliquas ea mente dederit, ut proprietatem earum retineret, administrationem autem servo concederet. Marcellus notat: est etiam ille casus, si alter ademerit: vel si omni quidem modo concesserit dominus sed in nominibus erit concessio.

Dig. 15.1.17

Ulpianus 29 ad ed.

Si servus meus ordinarius vicarios habeat, id quod vicarii mihi debent an deducam ex peculio servi ordinarii? et prima illa quaestio est, an haec peculia in peculio servi ordinarii computentur. et proculus et atilicinus existimant, sicut ipsi vicarii sunt in peculio, ita etiam peculia eorum: et id quidem, quod mihi dominus eorum, id est ordinarius servus debet, etiam ex peculio eorum detrahetur: id vero quod ipsi vicarii debent, dumtaxat ex ipsorum peculio: sed et si quid non mihi, sed ordinario servo debent, deducetur de peculio eorum quasi conservo debitum: id vero, quod ipsis debet ordinarius servus, non deducetur de peculio ordinarii servi, quia peculium eorum in peculio ipsius est (et ita servius respondit), sed peculium eorum augebitur, ut opinor, quemadmodum si dominus servo suo debeat.

Dig. 15.1.18

Paulus 4 quaest.

Cui consequens est, ut, si sticho peculium suum legatum sit isque ex testamento agit, non aliter cogetur id, quod vicarius eius testatori debet, relinquere, nisi is, id est vicarius peculium habeat.

Dig. 15.1.19pr.

Ulpianus 29 ad ed.

Hinc quaeritur, si ordinarii servi nomine actum sit de peculio, an agi possit et vicariorum: et puto non posse. sed si actum sit de peculio vicarii, agi poterit et de peculio ordinarii.

Dig. 15.1.19.1

Ulpianus 29 ad ed.

Potest esse apud me duplicis iuris peculium: ut puta servus est dotalis, potest habere peculium, quod ad me respiciat, potest et quod ad mulierem, nam quod ex re mariti quaesiit vel ex operis suis, id ad maritum pertinet: et ideo, si respectu mariti heres sit institutus vel ei legatum datum, id eum non debere restituere pomponius scribit. si igitur mecum agatur ex eo contractu qui ad me respicit, utrum omne deducam quodquod debetur mihi, sive ex mea causa sive ex ea quae ad uxorem respicit? an vero separamus causas quasi in duobus peculiis, ut et causa debiti quod petitur spectetur? ut, si quidem ex eo peculio agatur, quod ad mulierem spectat, id deducam, quod ex eo contractu debeatur, si ex eo contractu, qui ad me respicit, meum deducam? quae quaestio dilucidius est in fructuario tractata, utrum ex eo demum contractu potest de peculio conveniri, quod ad se pertinet, an ex omni. et Marcellus etiam fructuarium teneri scribit et ex omni contractu: eum enim qui contrahit totum servi peculium velut patrimonium intuitum. certe illud admittendum omnimodo dicit, ut priore convento, ad quem res respicit, in superfluum is, cui quaesitum non est, conveniatur: quae sententia probabilior est et a papiniano probatur. quod et in duobus bonae fidei emptoribus erit dicendum. sed in marito melius est dicere simpliciter eum de peculio teneri. sin autem maritus huiusmodi servi nomine aliquid praestiterit, an adversus mulierem agentem dotis nomine deducere id possit? et ait, si id quod creditori praestitum est ad utriusque generis peculium pertinebit, pro rata utrique peculio decedere debere. ex quo intellegi potest, si ad alterum peculium contractus pertinebit, modo soli uxori detrahi, modo non detrahi, si ad id peculium pertinuit contractus, quod apud maritum resedit.

Dig. 15.1.19.2

Ulpianus 29 ad ed.

Interdum et ipsi fructuario adversus dominum datur actio de peculio, ut puta si apud eum habeat peculium, apud ipsum vero aut nihil aut minus, quam fructuario debetur. idem etiam contra eveniet, quamvis in duobus dominis sufficiat pro socio vel communi dividundo actio:

Dig. 15.1.20

Paulus 30 ad ed.

Nam inter se agere socii de peculio non possunt.

Dig. 15.1.21pr.

Ulpianus 29 ad ed.

Summa cum ratione etiam hoc peculio praetor imputavit, quod dolo malo domini factum est, quo minus in peculio esset. sed dolum malum accipere debemus, si ei ademit peculium: sed et si eum intricare peculium in necem creditorum passus est, mela scribit dolo malo eius factum. sed et si quis, cum suspicaretur alium secum acturum, alio peculium avertat, dolo non caret. sed si alii solvit, non dubito de hoc, quin non teneatur, quoniam creditori solvitur et licet creditori vigilare ad suum consequendum.

Dig. 15.1.21.1

Ulpianus 29 ad ed.

Si dolo tutoris vel curatoris furiosi vel procuratoris factum sit, an pupillus vel furiosus vel dominus de peculio conveniatur, videndum. et puto, si solvendo tutor sit, praestare pupillum ex dolo eius, maxime si quid ad eum pervenit, et ita pomponius libro octavo epistularum scribit. idem et in curatore et procuratore erit dicendum.

Dig. 15.1.21.2

Ulpianus 29 ad ed.

Emptor autem ex dolo venditoris non tenebitur nec heres vel alius successor, nisi in id quod ad se pervenit. sive autem post iudicium acceptum sive ante dolo factum sit, continetur officio iudicis.

Dig. 15.1.21.3

Ulpianus 29 ad ed.

Si dominus vel pater recuset de peculio actionem, non est audiendus, sed cogendus est quasi aliam quamvis personalem actionem suscipere.

Dig. 15.1.22

Pomponius 7 ad sab.

Si damni infecti aedium peculiarium nomine promiserit dominus, ratio eius haberi debet et ideo ab eo qui de peculio agit domino cavendum est.

Dig. 15.1.23

Pomponius 9 ad sab.

Aedium autem peculiarium nomine in solidum damni infecti promitti debet, sicut vicarii nomine noxale iudicium in solidum pati, quia pro pignore ea, si non defendantur, actor abducit vel possidet.

Dig. 15.1.24

Ulpianus 26 ad sab.

Curator furiosi administrationem peculii et dare et denegare potest tam servo furiosi quam filio.

Dig. 15.1.25

Pomponius 23 ad sab.

Id vestimentum peculii esse incipit, quod ita dederit dominus, ut eo vestitu servum perpetuo uti vellet eoque nomine ei traderet, ne quis alius eo uteretur idque ab eo eius usus gratia custodiretur. sed quod vestimentum servo dominus ita dedit utendum, ut non semper, sed ad certum usum certis temporibus eo uteretur, veluti cum sequeretur eum sive cenanti ministravit, id vestimentum non esse peculii.

Dig. 15.1.26

Paulus 30 ad ed.

Si semel ex ea causa, id est quod dolo fecerit, dominus praestiterit de peculio conventus, ceteris ex eadem causa nihil praestabit. sed et si tantundem servus ei debeat quantum dolo minuit, non erit condemnandus. his consequens erit, ut manumisso quoque vel alienato servo ex causa etiam doli intra annum teneatur.

Dig. 15.1.27pr.

Gaius 9 ad ed. provinc.

Et ancillarum nomine et filiarum familias in peculio actio datur: maxime si qua sarcinatrix aut textrix erit aut aliquod artificium vulgare exerceat, datur propter eam actio. depositi quoque et commodati actionem dandam earum nomine iulianus ait: sed et tributoriam actionem, si peculiari merce sciente patre dominove negotientur, dandam esse. longe magis non dubitatur, et si in rem versum est, quod iussu patris dominive contractum sit.

Dig. 15.1.27.1

Gaius 9 ad ed. provinc.

Constat heredem domini id quoque deducere debere, quod servus, cuius nomine cum eo de peculio ageretur, ante aditam hereditatem ex bonis hereditariis amovisset consumpsisset corrupisset.

Dig. 15.1.27.2

Gaius 9 ad ed. provinc.

Si servus alienatus sit, quamvis in eum, qui alienaverit, intra annum praetor de peculio actionem polliceatur, tamen nihilo minus et in novum dominum actio datur, et nihil interest, aliud apud eum adquisierit peculium an quod pariter cum eo emerit vel ex donatione acceperit eidem concesserit.

Dig. 15.1.27.3

Gaius 9 ad ed. provinc.

Illud quoque placuit, quod et iulianus probat, omnimodo permittendum creditoribus vel in partes cum singulis agere vel cum uno in solidum.

Dig. 15.1.27.4

Gaius 9 ad ed. provinc.

Sed ipsi, qui vendiderit servum, non putat iulianus de eo, quod ante venditionem crediderit, cum emptore de peculio agere permittendum.

Dig. 15.1.27.5

Gaius 9 ad ed. provinc.

Sed et si alieno credidero eumque redemero, deinde alienavero, aeque non putat mihi in emptorem dari debere iudicium.

Dig. 15.1.27.6

Gaius 9 ad ed. provinc.

In venditorem autem dumtaxat intra annum post redemptionem numerandum de eo, quod adhuc alieno crediderim, dandam esse mihi actionem existimat deducto eo, quod apud me peculii servus habebit.

Dig. 15.1.27.7

Gaius 9 ad ed. provinc.

Sicut autem de eo, quod ipse crediderim servo meo, non putat iulianus in emptorem alienato eo actionem mihi dari debere, ita et de eo, quod servus meus servo meo crediderit, si is, cui creditum fuerit, alienatus sit, negat permitti mihi debere cum emptore experiri.

Dig. 15.1.27.8

Gaius 9 ad ed. provinc.

Si quis cum servo duorum pluriumve contraxerit, permittendum est ei cum quo velit dominorum in solidum experiri: est enim iniquum in plures adversarios distringi eum, qui cum uno contraxerit: nec huius dumtaxat peculii ratio haberi debet, quod apud eum cum quo agitur is servus haberet, sed et eius quod apud alterum. nec tamen res damnosa futura est ei qui condemnatur, cum possit rursus ipse iudicio societatis vel communi dividundo quod amplius sua portione solverit a socio sociisve suis consequi. quod iulianus ita locum habere ait, si apud alterum quoque fuit peculium, quia eo casu solvendo quisque etiam socium aere alieno liberare videtur: at si nullum sit apud alterum peculium, contra esse, quia nec liberare ullo modo aere alieno eum intellegitur.

Dig. 15.1.28

Iulianus 12 Dig.

Quare et si socio neque heres neque bonorum possessor exstitisset, eatenus damnari debet is cum quo actum fuerit, quatenus peculium apud eum erit et quantum ex bonis consequi potest.

Dig. 15.1.29pr.

Gaius 9 ad ed. provinc.

Si quis servum testamento liberum esse iusserit relictis heredibus his, qui cum servo contraxerunt, possunt inter se coheredes vel de peculio agere, quia de eo quisque peculio, quod apud eum esset, quolibet alio agente teneatur.

Dig. 15.1.29.1

Gaius 9 ad ed. provinc.

Etiamsi prohibuerit contrahi cum servo dominus, erit in eum de peculio actio.

Dig. 15.1.30pr.

Ulpianus 29 ad ed.

Quaesitum est, an teneat actio de peculio, etiamsi nihil sit in peculio cum ageretur, si modo sit rei iudicatae tempore. proculus et pegasus nihilo minus teneri aiunt: intenditur enim recte, etiamsi nihil sit in peculio. idem et circa ad exhibendum et in rem actionem placuit, quae sententia et a nobis probanda est.

Dig. 15.1.30.1

Ulpianus 29 ad ed.

Si cum ex parte herede domini vel patris agatur, dumtaxat de peculio condemnandum, quod apud eum heredem sit qui convenitur: idem et in rem verso pro parte, nisi si quid in ipsius heredis rem vertit: nec quasi unum ex sociis esse hunc heredem conveniendum, sed pro parte dumtaxat.

Dig. 15.1.30.2

Ulpianus 29 ad ed.

Sed si ipse servus sit heres ex parte institutus, aeque cum eo agendum erit.

Dig. 15.1.30.3

Ulpianus 29 ad ed.

Sin vero filius sit quamvis ex parte institutus, nihilo minus in solidum actionem patietur. sed si velit pro parte nomen coheredis redimere, audiendus est: quid enim si in rem patris versum sit? cur non consequatur filius a coherede, quod in patris re est? idem et si peculium locuples sit.

Dig. 15.1.30.4

Ulpianus 29 ad ed.

Is, qui semel de peculio egit, rursus aucto peculio de residuo debiti agere potest.

Dig. 15.1.30.5

Ulpianus 29 ad ed.

Si annua exceptione sit repulsus a venditore creditor, subveniri ei adversus emptorem debet: sed si alia exceptione, hactenus subveniri, ut deducta ea quantitate, quam a venditore consequi potuisset, ab emptore residuum consequatur.

Dig. 15.1.30.6

Ulpianus 29 ad ed.

In dolo obiciendo temporis ratio habetur: fortassis enim post tempus de dolo actionis non patietur dolum malum obici praetor, quoniam nec de dolo actio post statutum tempus datur.

Dig. 15.1.30.7

Ulpianus 29 ad ed.

In heredem autem doli clausula in id quod ad eum pervenit fieri debet, ultra non.

Dig. 15.1.31

Paulus 30 ad ed.

Sed si ipse heres dolo fecit, solidum praestat.

Dig. 15.1.32pr.

Ulpianus 2 disp.

Si ex duobus vel pluribus heredibus eius, qui manumisso servo vel libero esse iusso vel alienato vel mortuo intra annum conveniri poterat, unus fuerit conventus, omnes heredes liberabuntur, quamvis non in maiorem quantitatem eius peculii, quod penes se habet qui convenitur, condemnetur, idque ita iulianus scripsit. idemque est et si in alterius rem fuerit versum. sed et si plures sint fructuarii vel bonae fidei possessores, unus conventus ceteros liberat, quamvis non maioris peculii, quam penes se est, condemnari debeat. sed licet hoc iure contingat, tamen aequitas dictat iudicium in eos dari, qui occasione iuris liberantur, ut magis eos perceptio quam intentio liberet: nam qui cum servo contrahit, universum peculium eius quod ubicumque est veluti patrimonium intuetur.

Dig. 15.1.32.1

Ulpianus 2 disp.

In hoc autem iudicio licet restauretur praecedens, tamen et augmenti et decessionis rationem haberi oportet, et ideo sive hodie nihil sit in peculio sive accesserit aliquid, praesens status peculii spectandus est. quare circa venditorem quoque et emptorem hoc nobis videtur verius, quod accessit peculio posse nos ab emptore consequi, nec retrorsus velut in uno iudicio ad id tempus conventionem reducere emptoris, quo venditor conventus sit.

Dig. 15.1.32.2

Ulpianus 2 disp.

Venditor servi si cum peculio servum vendidit et tradiderit peculium, ne intra annum quidem de peculio convenietur: neque enim hoc pretium servi peculium est, ut neratius scripsit.

Dig. 15.1.33

Iavolenus 12 ex cass.

Sed si quis servum ita vendidit, ut pretium pro peculio acciperet, penes eum videtur esse peculium, ad quem pretium peculii pervenit,

Dig. 15.1.34

Pomponius 12 ex var. lect.

Non penes quem res peculiaris sit.

Dig. 15.1.35

Iavolenus 12 ex cass.

At cum heres iussus est peculium dare accepta certa summa, non videtur penes heredem esse peculium.

Dig. 15.1.36

Ulpianus 2 disp.

In bonae fidei contractibus quaestionis est, an de peculio an in solidum pater vel dominus tenerentur: ut est in actione de dote agitatum, si filio dos data sit, an pater dumtaxat de peculio conveniretur. ego autem arbitror non solum de peculio, sed et si quid praeterea dolo malo patris capta fraudataque est mulier, competere actionem: nam si habeat res nec restituere sit paratus, aequum est eum quanti ea res est condemnari. nam quod in servo, cui res pignori data est, expressum est, hoc et in ceteris bonae fidei iudiciis accipiendum esse pomponius scripsit. namque si servo res pignori data sit, non solum de peculio et in rem verso competit actio, verum hanc quoque habet adiectionem " et si quid dolo malo domini captus fraudatusque actor est " . videtur autem dolo facere dominus, qui, cum haberet restituendi facultatem, non vult restituere.

Dig. 15.1.37pr.

Iulianus 12 Dig.

Si creditor filii tui heredem te instituerit et tu hereditatem eius vendideris, illa parte stipulationis " quanta pecunia ex hereditate ad te pervenerit" teneberis de peculio.

Dig. 15.1.37.1

Iulianus 12 Dig.

Si servo tuo permiseris vicarium emere aureis octo, ille decem emerit et tibi scripserit se octo emisse tuque ei permiseris eos octo ex tua pecunia solvere et is decem solverit, hoc nomine duos aureos tantum vindicabis, sed hi venditori praestabuntur dumtaxat de peculio servi.

Dig. 15.1.37.2

Iulianus 12 Dig.

Servum communem, quem cum titio habebam, vendidi sempronio: quaesitum est, si de peculio cum titio aut cum sempronio ageretur, an eius peculii, quod apud me esset, ratio haberi deberet. dixi, si cum sempronio ageretur, numquam rationem eius peculii, quod apud me esset, haberi debere, quia is nullam adversus me actionem haberet, per quam id quod praestitisset consequi posset. sed et si cum titio post annum quam vendidissem ageretur, similiter non esse computandum peculium quod apud me est, quia iam mecum agi de peculio non posset. sin autem intra annum ageretur, tunc quoque habendam huius peculii rationem, postquam placuit alienato homine permittendum creditori et cum venditore et cum emptore agere.

Dig. 15.1.37.3

Iulianus 12 Dig.

Si actum sit de peculio cum eo qui usum fructum in servo habet et minus consecutus sit creditor, non est iniquum, ut ex universo eius peculio, sive apud fructuarium sive apud proprietarium erit, rem consequatur. nihil interest, operas suas conduxerit servus a fructuario an pecuniam mutuam ab eo acceperit. dari itaque debebit actio ei adversus dominum proprietatis deducto eo, quod servus peculii nomine apud fructuarium habet.

Dig. 15.1.38pr.

Africanus 8 quaest.

Deposui apud filium familias decem et ago depositi de peculio. quamvis nihil patri filius debeat et haec decem teneat, nihilo magis tamen patrem damnandum existimavit, si nullum praeterea peculium sit: hanc enim pecuniam, cum mea maneat, non esse peculii. denique quolibet alio agente de peculio minime dubitandum ait computari non oportere. itaque ad exhibendum agere me et exhibitam vindicare debere.

Dig. 15.1.38.1

Africanus 8 quaest.

Si nuptura filio familias dotis nomine certam pecuniam promiserit et divortio facto agat de dote cum patre, utrumne tota promissione an deducto eo, quod patri filius debeat, liberari eam oporteret? respondit tota promissione eam liberandam esse, cum certe et si ex promissione cum ea ageretur, exceptione doli mali tueri se posset.

Dig. 15.1.38.2

Africanus 8 quaest.

Stichus habet in peculio pamphilum qui est decem, idem pamphilus debet domino quinque. si agatur de peculio stichi nomine, placebat aestimari debere pretium pamphili et quidem totum non deducto eo, quod domino pamphilus debet: neminem enim posse intellegi ipsum in suo peculio esse: hoc ergo casu damnum dominum passurum, ut pateretur, si cuilibet alii servorum suorum peculium non habenti credidisset. idque ita se habere evidentius appariturum ait, si sticho peculium legatum esse proponatur: qui certe si ex testamento agat, cogendus non est eius, quod vicarius suus debet, aliter quam ex peculio ipsius deductionem pati: alioquin futurum, ut, si tantundem vicarius domino debeat, ipse nihil in peculio habere intellegatur, quod certe est absurdum.

Dig. 15.1.38.3

Africanus 8 quaest.

Servo quem tibi vendideram pecuniam credidi: quaesitum est, an ita mihi in te actio de peculio dari debeat, ut deducatur id, quod apud me ex eo remanserit. quod quidem minime verum est, nec intererit, intra annum quam vendiderim an postea experiar: nam nec ceteris quidem, qui tunc cum eo contraxerint, in me actio datur. in contrarium quoque agentibus mecum his, qui antea cum eo servo contraxissent, non deducam id, quod postea mihi debere coeperit. ex quo apparet onus eius peculii, quod apud me remanserit, ad posterioris temporis contractus pertinere non debere.

Dig. 15.1.39

Florus 11 inst.

Peculium et ex eo consistit, quod parsimonia sua quis paravit vel officio meruerit a quolibet sibi donari idque velut proprium patrimonium servum suum habere quis voluerit.

Dig. 15.1.40pr.

Marcianus 5 reg.

Peculium nascitur crescit decrescit moritur, et ideo eleganter papirius fronto dicebat peculium simile esse homini.

Dig. 15.1.40.1

Marcianus 5 reg.

Quomodo autem peculium nascitur, quaesitum est. et ita veteres distinguunt, si id adquisiit servus quod dominus necesse non habet praestare, id esse peculium, si vero tunicas aut aliquid simile quod ei dominus necesse habet praestare, non esse peculium. ita igitur nascitur peculium: crescit, cum auctum fuerit: decrescit, cum servi vicarii moriuntur, res intercidunt: moritur, cum ademptum sit.

Dig. 15.1.41

Ulpianus 43 ad sab.

Nec servus quicquam debere potest nec servo potest deberi, sed cum eo verbo abutimur, factum magis demonstramus quam ad ius civile referimus obligationem. itaque quod servo debetur, ab extraneis dominus recte petet, quod servus ipse debet, eo nomine in peculium et si quid inde in rem domini versum est in dominum actio datur.

Dig. 15.1.42

Ulpianus 12 ad ed.

In adrogatorem de peculio actionem dandam quidam recte putant, quamvis sabinus et cassius ex ante gesto de peculio actionem non esse dandam existimant.

Dig. 15.1.43

Paulus 30 ad ed.

Si posteaquam tecum de peculio egi, ante rem iudicatam servum vendideris, labeo ait etiam eius peculii nomine, quod apud emptorem quaesierit, damnari te debere nec succurrendum tibi: culpa enim tua id accidisse, qui servum vendidisses.

Dig. 15.1.44

Ulpianus 63 ad ed.

Si quis cum filio familias contraxerit, duos habet debitores, filium in solidum et patrem dumtaxat de peculio.

Dig. 15.1.45

Paulus 61 ad ed.

Ideoque si pater filio peculium ademisset, nihilo minus creditores cum filio agere possunt.

Dig. 15.1.46

Paulus 60 ad ed.

Qui peculii administrationem concedit, videtur permittere generaliter, quod et specialiter permissurus est.

Dig. 15.1.47pr.

Paulus 4 ad plaut.

Quotiens in taberna ita scriptum fuisset " cum ianuario servo meo geri negotium veto", hoc solum consecutum esse dominum constat, ne institoria teneatur, non etiam de peculio.

Dig. 15.1.47.1

Paulus 4 ad plaut.

Sabinus respondit non alias dandam de peculio actionem in dominum, cum servus fideiussisset, nisi in rem domini aut ob rem peculiarem fideiussisset.

Dig. 15.1.47.2

Paulus 4 ad plaut.

Si semel actum sit de peculio, quamvis minus inveniatur rei iudicandae tempore in peculio quam debet, cautionibus locum esse non placuit de futuro incremento peculii: hoc enim in pro socio actione locum habet, quia socius universum debet.

Dig. 15.1.47.3

Paulus 4 ad plaut.

Si creditor servi ab emptore esset partem consecutus, competere in reliquum in venditorem utile iudicium proculus ait, sed re integra non esse permittendum actori dividere actionem, ut simul cum emptore et cum venditore experiatur: satis enim esse hoc solum ei tribui, ut rescisso superiore iudicio in alterum detur ei actio, cum electo reo minus esset consecutus: et hoc iure utimur.

Dig. 15.1.47.4

Paulus 4 ad plaut.

Non tantum autem quivis creditor cum venditore ex ante gesto agere potest, sed et ipse emptor, idque et iuliano videtur, quamvis et deducere ipse potest adversus alium agentem, dum tamen id, quod apud se habet, computet.

Dig. 15.1.47.5

Paulus 4 ad plaut.

Si servus deducto peculio venditus sit, procedit, ut venditor et deductione uti possit, et, si post venditionem coeperit aliquid venditori servus debere, non minuit peculia, quia non domino debet.

Dig. 15.1.47.6

Paulus 4 ad plaut.

Quae diximus in emptore et venditore, eadem sunt et si alio quovis genere dominium mutatum sit, ut legato, dotis datione, quia quasi patrimonium liberi hominis peculium servi intellegitur, ubicumque esset.

Dig. 15.1.48pr.

Paulus 17 ad plaut.

Libera peculii administratio non permanet neque in fugitivo neque in subrepto neque in eo, de quo nesciat quis, vivat an mortuus sit.

Dig. 15.1.48.1

Paulus 17 ad plaut.

Cui peculii administratio data est, delegare debitorem suum potest.

Dig. 15.1.49pr.

Pomponius 4 ad q. muc.

Non solum id peculium est, quod dominus servo concessit, verum id quoque, quod ignorante quidem eo adquisitum sit, tamen, si rescisset, passurus erat esse in peculio.

Dig. 15.1.49.1

Pomponius 4 ad q. muc.

Si ignorante me servus meus negotia mea administraverit, tantidem debitor mihi intellegetur, quanti tenebatur, si liber negotia mea administrasset.

Dig. 15.1.49.2

Pomponius 4 ad q. muc.

Ut debitor vel servus domino vel dominus servo intellegatur, ex causa civili computandum est: ideoque si dominus in rationes suas referat se debere servo suo, cum omnino neque mutuum acceperit neque ulla causa praecesserat debendi, nuda ratio non facit eum debitorem.

Dig. 15.1.50pr.

Papinianus 9 quaest.

Eo tempore, quo in peculio nihil est, pater latitat: in bonorum possessionem eius rei servandae causa mitti non possum, qui de peculio cum eo acturus sum, quia non fraudationis causa latitat qui, si iudicium acciperet, absolvi deberet. nec ad rem pertinet, quod fieri potest, ut damnatio sequatur: nam et si in diem vel sub condicione debeatur, fraudationis causa non videtur latitare, tametsi potest iudicis iniuria condemnari. sed fideiussorem datum eo tempore, quo nihil in peculio est, teneri putat iulianus, quoniam fideiussor futurae quoque actionis accipi possit, si tamen sic acceptus est.

Dig. 15.1.50.1

Papinianus 9 quaest.

Si creditor patrem, qui de peculio tenebatur, heredem instituerit, quia mortis tempus in falcidiae ratione spectatur, illius temporis peculium considerabitur.

Dig. 15.1.50.2

Papinianus 9 quaest.

Etiam postquam dominus de peculio conventus est, fideiussor pro servo accipi potest et ideo, qua ratione, si post actionem dictatam servus pecuniam exsolverit, non magis repetere potest quam si iudicium dictatum non fuisset, eadem ratione fideiussor quoque utiliter acceptus videbitur, quia naturalis obligatio, quam etiam servus suscipere videtur, in litem translata non est.

Dig. 15.1.50.3

Papinianus 9 quaest.

Servus alienus, cum bonae fidei serviret mihi, nummos a titio mutuatos mihi dedit, ut eum manumitterem, et manumissi: creditor quaerebat, quem de peculio conveniret. dixi, quamquam creditor electionem alias haberet, tamen in proposito dominum esse conveniendum et eum ad exhibendum mecum acturum pecuniae nomine, quae ipsi esset adquisita nec in eam causam alienata, quae pro capite servi facta proponeretur: neque enim admittendum esse distinctionem existimantium, si non manumittam, domini pecuniam esse, manumissione vero secuta videri pecuniam ex re mea quaesitam mihi, quoniam magis propter rem meam, quam ex re mea pecunia mihi daretur.

Dig. 15.1.51

Scaevola 2 quaest.

Quod debetur servo ab extraneis, agenti de peculio non omnimodo dominus ad quantitatem debiti condemnandus est, cum et sumptus in petendo et eventus exsecutionis possit esse incertus et cogitanda sit mora temporis quod datur iudicatis, aut venditionis bonorum, si id magis faciendum erit. ergo si paratus sit actiones mandare, absolvetur. quod enim dicitur, si cum uno ex sociis agatur, universum peculium computandum quia sit cum socio actio, in eodem redibit, si actiones paratus sit praestare: et in omnibus, quos idcirco teneri dicimus quia habent actionem, delegatio pro iusta praestatione est.

Dig. 15.1.52pr.

Paulus 4 quaest.

Ex facto quaeritur: qui tutelam quasi liber administrabat, servus pronuntiatus est. an si conveniatur eius dominus a pupillo, cuius quidem potiorem causam quam creditorum ceterorum servi habendam rescriptum est, an vel id deducatur ex peculio, quod domino debetur? et si putaveris posse deduci, an intersit, utrum, cum adhuc in libertate ageret, domini debitor factus est, an postea? et an de peculio impuberi competat? respondi nullum privilegium praeponi patri vel domino potest, cum ex persona filii vel servi de peculio conveniuntur. plane in ceteris creditoribus habenda est ratio privilegiorum: quid enim si filius dotem accepit, tutelam administravit? merito igitur et in servo, qui pro tutore egit, id rescriptum est, et quia occupantis melior solet esse condicio, quam ceterorum inhibebitur actio. plane si ex re pupilli nomina fecit vel pecuniam in arca deposuit, datur ei vindicatio nummorum et adversus debitores utilis actio, scilicet si nummos consumpserunt: hic enim alienare eos non potuit: quod et in quovis tutore dicendum est. nec tamen interesse puto, quando domino debere coepit, utrum cum in libertatis possessione esset an postea: nam et si titii servo credidero eiusque dominus esse coepero, deducam quod prius credidi, si conveniri de peculio coepero. quid ergo est? quia de peculio actio deficit, utilis actio in dominum quasi tutelae danda erit. ut quod ille pro patrimonio habuit, peculium esse intellegatur.

Dig. 15.1.52.1

Paulus 4 quaest.

Si dos filio familias sit data vel tutelam administraverit, habenda erit ratio privilegiorum in actione de peculio dilata interim ceterorum creditorum actione vel interposita cautione, si priores agant, qui privilegium non habent, restitutum iri quod acceperunt, si inferatur postea cum patre actio privilegii.

Dig. 15.1.53

Paulus 11 quaest.

Si sticho peculium cum manumitteretur ademptum non est, videtur concessum: debitores autem convenire nisi mandatis sibi actionibus non potest.

Dig. 15.1.54

Scaevola 1 resp.

Filio familias uni ex heredibus praedia praelegavit ut instructa erant cum servis: hi servi domini debitores fuerunt: quaesitum est, an ceteris heredibus adversus eum actio de peculio competat. respondit non competere.

Dig. 15.1.55

Nerva 1 resp.

Is cum quo de peculio agebam a te vi exemptus est: quod tunc cum vi eximeres in peculio fuerit, spectari.

Dig. 15.1.56

Paulus 2 ad ner.

Quod servus meus pro debitore meo mihi expromisit, ex peculio deduci debet et a debitore nihilo minus debetur. sed videamus, ne credendum sit peculiare fieri nomen eius, pro quo expromissum est. paulus: utique si de peculio agente aliquo deducere velit, illud nomen peculiare facit.

Dig. 15.1.57pr.

Tryphonus 8 disp.

Si filius vel servus, cuius nomine dumtaxat de peculio actum est, ante finitum iudicium decesserit, id peculium respicietur, quod aliquis eorum cum moriebatur habuit.

Dig. 15.1.57.1

Tryphonus 8 disp.

Sed eum, qui servum testamento liberum esse iubet et ei peculium legat, eius temporis peculium legare intellegi iulianus scribit, quo libertas competit: ideoque omnia incrementa peculii quoquo modo ante aditam hereditatem adquisita ad manumissum pertinere.

Dig. 15.1.57.2

Tryphonus 8 disp.

At si quis extraneo peculium servi legaverit, in coniectura voluntatis testatoris quaestionem esse, et verosimilius esse id legatum quod mortis tempore in peculio fuerit ita, ut quae ex rebus peculiaribus ante aditam hereditatem accesserint debeantur, veluti partus ancillarum et fetus pecudum, quae autem servo donata fuerint sive quid ex operis suis adquisierit, ad legatarium non pertinere.

Dig. 15.1.58

Scaevola 5 Dig.

Uni ex heredibus praedia legavit ut instructa erant cum servis et ceteris rebus et quidquid ibi esset: hi servi domino debitores fuerunt tam ex aliis causis quam ex ratione kalendarii: quaesitum est, an ceteris heredibus adversus eum pecuniae ab his debitae actio de peculio competit. respondit non competere.

Dig. 15.2.0. Quando de peculio actio annalis est.

Dig. 15.2.1pr.

Ulpianus 29 ad ed.

Praetor ait: " post mortem eius qui in alterius potestate fuerit, posteave quam is emancipatus manumissus alienatusve fuerit, dumtaxat de peculio et si quid dolo malo eius in cuius potestate est factum erit, quo minus peculii esset, in anno, quo primum de ea re experiundi potestas erit, iudicium dabo".

Dig. 15.2.1.1

Ulpianus 29 ad ed.

Quamdiu servus vel filius in potestate est, de peculio actio perpetua est: post mortem autem eius vel postquam emancipatus manumissus alienatusve fuerit, temporaria esse incipit, id est annalis.

Dig. 15.2.1.2

Ulpianus 29 ad ed.

Annus autem utilis computabitur: et ideo et si condicionalis sit obligatio, iulianus scripsit ex eo computandum annum, non ex quo emancipatus est, sed ex quo peti potuit condicione existente.

Dig. 15.2.1.3

Ulpianus 29 ad ed.

Merito autem temporariam in hoc casu fecit praetor actionem: nam cum morte vel alienatione extinguitur peculium, sufficiebat usque ad annum produci obligationem.

Dig. 15.2.1.4

Ulpianus 29 ad ed.

Alienatio autem et manumissio ad servos pertinet, non ad filios, mors autem tam ad servos quam ad filios refertur, emancipatio vero ad solum filium. sed et si alio modo sine emancipatione desierit esse in potestate, annalis erit actio. sed et si morte patris vel deportatione sui iuris fuerit effectus filius, de peculio intra annum heres patris vel fiscus tenebuntur.

Dig. 15.2.1.5

Ulpianus 29 ad ed.

In alienatione accipitur utique venditor, qui actione de peculio intra annum tenetur:

Dig. 15.2.1.6

Ulpianus 29 ad ed.

Sed et si donavit servum vel permutavit vel in dotem dedit, in eadem causa est:

Dig. 15.2.1.7

Ulpianus 29 ad ed.

Item heres eius, qui servum legavit non cum peculio. nam si cum peculio vel legavit vel liberum esse iussit, quaestionis fuit: et mihi verius videtur non dandam neque in manumissum neque in eum, cui legatum sit peculium, de peculio actionem. an ergo teneatur heres? et ait caecilius teneri, quia peculium penes eum sit, qui tradendo id legatario se liberavit. pegasus autem caveri heredi debere ait ab eo, cui peculium legatum sit, quia ad eum veniunt creditores: ergo si tradiderit sine cautione, erit conveniendus.

Dig. 15.2.1.8

Ulpianus 29 ad ed.

Si praecepto servo et peculio rogatus sit heres restituere hereditatem, si de peculio conveniatur, trebelliani exceptione non utetur, ut Marcellus tractans admittit: is autem cui restituta est hereditas non tenetur, ut scaevola ait, cum peculium non habeat nec dolo fecerit quo minus haberet.

Dig. 15.2.1.9

Ulpianus 29 ad ed.

Usu fructu quoque exstincto intra annum actionem dandam in usufructuarium pomponius libro sexagensimo primo scripsit.

Dig. 15.2.1.10

Ulpianus 29 ad ed.

Quaesitum est apud labeonem, si, cum filius viveret, tu credens eum mortuum annali actione egeris et, quia annus praeterierat, exceptione sis repulsus, an rursus experiri tibi comperto errore permittendum est. et ait permitti debere dumtaxat de peculio, non etiam de in rem verso: nam priore iudicio de in rem verso recte actum est, quia annua exceptio ad peculium, non ad in rem versum pertinet.

Dig. 15.2.2pr.

Paulus 30 ad ed.

Cum post mortem filii familias annua adversus patrem actio est, quemadmodum adversus eum esset perpetua vivo filio, ideo si ex causa redhibitionis erat de peculio actio, sex mensum erit post mortem filii: idemque dicendum in omnibus temporalibus actionibus.

Dig. 15.2.2.1

Paulus 30 ad ed.

Si servus cui creditum est apud hostes sit, de peculio actio in dominum non anno finienda est, quamdiu postliminio reverti potest.

Dig. 15.2.3

Pomponius 4 ad q. muc.

Definitione peculii interdum utendum est etiam, si servus in rerum natura esse desiit et actionem praetor de peculio intra annum dat: nam et tunc et accessionem et decessionem quasi peculii recipiendam (quamquam iam desiit morte servi vel manumissione esse peculium), ut possit ei accedere ut peculio fructibus vel pecorum fetu ancillarumque partubus et decedere, veluti si mortuum sit animal vel alio quolibet modo perierit.

Dig. 15.3.0. De in rem verso.

Dig. 15.3.1pr.

Ulpianus 29 ad ed.

Si hi qui in potestate aliena sunt nihil in peculio habent, vel habeant, non in solidum tamen, tenentur qui eos habent in potestate, si in rem eorum quod acceptum est conversum sit, quasi cum ipsis potius contractum videatur.

Dig. 15.3.1.1

Ulpianus 29 ad ed.

Nec videtur frustra de in rem verso actio promissa, quasi sufficeret de peculio: rectissime enim labeo dicit fieri posse, ut et in rem versum sit et cesset de peculio actio. quid enim si dominus peculium ademit sine dolo malo? quid si morte servi exstinctum est peculium et annus utilis praeteriit? de in rem verso namque actio perpetua est et locum habet, sive ademit sine dolo malo sive actio de peculio anno finita est.

Dig. 15.3.1.2

Ulpianus 29 ad ed.

Item si plures agant de peculio, proficere hoc ei, cuius pecunia in rem versa est, debet, ut ipse uberiorem actionem habeat. certe si praeventum sit ab aliquo et actum de peculio, de in rem verso actio an cesset, videndum. et refert pomponius iulianum existimare de peculio actione peremi de in rem verso actionem (quia in peculium conversum est quod in domini rem erat versum et pro servo solutum est, quemadmodum si ipsi servo a domino fuisset solutum), sed ita demum, si praestiterit ex actione de peculio dominus quod servus in rem eius verterat: ceterum si non praestiterit, manet actio de in rem verso.

Dig. 15.3.2

Iavolenus 12 ex cass.

Qui nummis acceptis servum manumisit, agi cum eo de in rem verso non potest, quia dando libertatem locupletior ex nummis non fit.

Dig. 15.3.3pr.

Ulpianus 29 ad ed.

Quod si servus domino quantitatem dederit, ut manumittatur, quam a me mutuam accepit, in peculium quidem hanc quantitatem non computari, in rem autem videri versum, si quid plus sit in eo quod servus dedit quam est in servi pretio.

Dig. 15.3.3.1

Ulpianus 29 ad ed.

In rem autem versum videtur, sive id ipsum quod servus accepit in rem domini convertit (veluti si triticum acceperit et id ipsum in familiam domini cibariorum nomine consumpserit) aut si pecuniam a creditore acceptam dominico creditori solverit (sed et si erravit in solvendo et putavit creditorem eum qui non erat, aeque in rem versum esse pomponius libro sexagensimo primo ait, quatenus indebiti repetitionem dominus haberet) sive cum servus domini negotii gerendi administrandive causa quid gessit (veluti si mutuatus sit pecuniam, ut frumentum compararet ad familiam alendam vel si ad vestiendam) sive peculiariter mutuatus postea in rem domini vertit: hoc enim iure utimur, ut, etiamsi prius in peculium vertit pecuniam, mox in rem domini esse de in rem verso actio possit.

Dig. 15.3.3.2

Ulpianus 29 ad ed.

Et regulariter dicimus totiens de in rem verso esse actionem, quibus casibus procurator mandati vel qui negotia gessit negotiorum gestorum haberet actionem quotiensque aliquid consumpsit servus, ut aut meliorem rem dominus habuerit aut non deteriorem.

Dig. 15.3.3.3

Ulpianus 29 ad ed.

Proinde si servus sumpsit pecuniam, ut se aleret et vestiret secundum consuetudinem domini, id est usque ad eum modum, quem dominus ei praestare consueverat, in rem videri domini vertisse labeo scribit. ergo idem erit et in filio.

Dig. 15.3.3.4

Ulpianus 29 ad ed.

Sed si mutua pecunia accepta domum dominicam exornavit tectoriis et quibusdam aliis, quae magis ad voluptatem pertinent quam ad utilitatem, non videtur versum, quia nec procurator haec imputaret, nisi forte mandatum domini aut voluntatem habuit: nec debere ex eo onerari dominum, quod ipse facturus non esset. quid ergo est? pati debet dominus creditorem haec auferre, sine domus videlicet iniuria, ne cogendus sit dominus vendere domum, ut quanti pretiosior facta est, id praestet.

Dig. 15.3.3.5

Ulpianus 29 ad ed.

Idem labeo ait, si servus mutuatus nummos a me alii eos crediderit, de in rem verso dominum teneri, quod nomen ei adquisitum est: quam sententiam pomponius ita probat, si non peculiare nomen fecit, sed quasi dominicae rationis. ex qua causa hactenus erit dominus obligatus, ut, si non putat sibi expedire nomen debitoris habere, cedat creditori actionibus procuratoremque eum faciat.

Dig. 15.3.3.6

Ulpianus 29 ad ed.

Nec non illud quoque in rem domini versum labeo ait, quod mutuatus servus domino emit volenti ad luxuriae materiam unguenta forte, vel si quid ad delicias vel si quid ad turpes sumptus sumministravit: neque enim spectamus, an bono domini cesserit quod consumptum est, sed an in negotium domini.

Dig. 15.3.3.7

Ulpianus 29 ad ed.

Unde recte dicitur et si frumentum comparavit servus ad alendam domini familiam et in horreo dominico reposuit et hoc periit vel corruptum est vel arsit, videri versum.

Dig. 15.3.3.8

Ulpianus 29 ad ed.

Sed et si servum domino necessarium emisset isque decessisset vel insulam fulsisset eaque ruisset, dicerem esse actionem de in rem verso.

Dig. 15.3.3.9

Ulpianus 29 ad ed.

Sed si sic accepit quasi in rem domini verteret nec vertit et decepit creditorem, non videtur versum nec tenetur dominus, ne credulitas creditoris domino obesse vel calliditas servi noceret. quid tamen, si is fuit servus, qui solitus erat accipiens vertere? adhuc non puto nocere domino, si alia mente servus accepit aut si, cum hac mente accepisset, postea alio vertit: curiosus igitur debet esse creditor, quo versatur.

Dig. 15.3.3.10

Ulpianus 29 ad ed.

Si mutuatus sit pecuniam servus ad vestem comparandam et nummi perierint, quis de in rem verso agere possit, utrum creditor an venditor? puto autem, si quidem pretium numeratum sit, creditorem de in rem verso acturum et si vestis perierit: si autem non fuit pretium solutum, ad hoc tamen data pecunia, ut vestis emeretur et pecunia perierit, vestis tamen familiae divisa est, utique creditorem de in rem verso habere actionem. an et venditor habeat, quia res eius pervenerunt in rem domini? ratio hoc facit, ut teneatur: unde incipit dominus teneri ex una causa duobus. proinde et si tam pecunia quam vestis periit, dicendum erit utrique dominum teneri, quoniam ambo in rem domini vertere voluerunt.

Dig. 15.3.4

Gaius 9 ad ed. provinc.

Sed dicendum est occupantis meliorem condicionem esse debere: nam utrisque condemnari dominum de in rem verso iniquum est.

Dig. 15.3.5pr.

Ulpianus 29 ad ed.

Si res domino non necessarias emerit servus quasi domino necessarias, veluti servos, hactenus videri in rem eius versum pomponius scribit, quatenus servorum verum pretium facit, cum, si necessarias emisset, in solidum quanto venissent teneretur.

Dig. 15.3.5.1

Ulpianus 29 ad ed.

Idem ait, sive ratum habeat servi contractum dominus sive non, de in rem verso esse actionem.

Dig. 15.3.5.2

Ulpianus 29 ad ed.

Quod servus domino emit, si quidem voluntate eius emit, potest quod iussu agi: sin vero non ex voluntate, si quidem dominus ratum habuerit vel alioquin rem necessariam vel utilem domino emit, de in rem verso actio erit: si vero nihil eorum est, de peculio erit actio.

Dig. 15.3.5.3

Ulpianus 29 ad ed.

Placet non solum eam pecuniam in rem verti, quae statim a creditore ad dominum pervenerit, sed et quae prius fuerit in peculio. hoc autem totiens verum est, quotiens servus rem domini gerens locupletiorem eum facit nummis peculiaribus. alioquin si servo peculium dominus adimat vel si vendat eum cum peculio vel rem eius peculiarem et pretium exigat, non videtur in rem versum.

Dig. 15.3.6

Tryphonus 1 disp.

Nam si hoc verum esset, etiam antequam venderet rem peculiarem, de in rem verso teneretur, quia hoc ipso, quod servus rem in peculio haberet, locupletior fieret, quod aperte falsum est.

Dig. 15.3.7pr.

Ulpianus 29 ad ed.

Et ideo et si donaverit servus domino rem peculiarem, actio de in rem verso cessabit, et sunt ista vera.

Dig. 15.3.7.1

Ulpianus 29 ad ed.

Plane si mutuum servus accepit ^ acceperit^ et donandi animo solvit, dum non vult eum debitorem facere peculiarem, de in rem verso actio est.

Dig. 15.3.7.2

Ulpianus 29 ad ed.

Illud verum non est, quod mela scribit, si servo meo argentum dederis, ut pocula tibi faceret ex quolibet argento, mox factis poculis servus decesserit, esse tibi adversus me de in rem verso actionem, quoniam possum pocula vindicare.

Dig. 15.3.7.3

Ulpianus 29 ad ed.

Illud plane verum est, quod labeo scribit, si odores et unguenta servus emerit et ad funus erogaverit quod ad dominum suum pertinebat, videri in rem domini versum.

Dig. 15.3.7.4

Ulpianus 29 ad ed.

Idem ait et si hereditatem a servo tuo emero quae ad te pertinebat et creditoribus pecuniam solvero, deinde hanc hereditatem abstuleris mihi, ex empto actione me id ipsum consecuturum: videri enim in rem tuam versum: nam et si hereditatem a servo emero, ut quod mihi ab ipso servo debebatur compensarem, licet nihil solvi, tamen consequi me ex empto quod ad dominum pervenit. ego autem non puto de in rem verso esse actionem emptori, nisi hoc animo gesserit servus, ut in rem domini verteret.

Dig. 15.3.7.5

Ulpianus 29 ad ed.

Si filius familias pecuniam mutuatus pro filia sua dotem dederit, in rem versum patris videtur, quatenus avus pro nepte daturus fuit. quae sententia ita demum mihi vera videtur, si hoc animo dedit ut patris negotium gerens.

Dig. 15.3.8

Paulus 30 ad ed.

Et nihil interesse pomponius ait, filiae suae nomine an sororis vel neptis ex altero filio natae dederit. idem ergo dicemus et si servus mutuatus fuerit et domini sui filiae nomine in dotem dederit.

Dig. 15.3.9

Iavolenus 12 ex cass.

Si vero pater dotem daturus non fuit, in rem patris versum esse non videtur.

Dig. 15.3.10pr.

Ulpianus 29 ad ed.

Si pro patre filius fideiusserit et creditori solverit, in rem patris videtur versum, quia patrem liberavit.

Dig. 15.3.10.1

Ulpianus 29 ad ed.

Cui simile est, quod papinianus libro nono quaestionum scribit, si filius quasi defensor patris iudicium susceperit et sit condemnatus, de in rem verso teneri patrem: namque filius eum iudicio suscepto liberavit.

Dig. 15.3.10.2

Ulpianus 29 ad ed.

Idem tractat papinianus et si, quod patrem dare oporteret, a filio sim stipulatus et ita convenerim filium, nam et hic de in rem verso fore actionem: nisi si donare patri filius voluit, dum se obligat.

Dig. 15.3.10.3

Ulpianus 29 ad ed.

Quare potest dici et si de peculio actionem quasi defensor patris susceperit, teneri patrem de in rem verso usque ad peculii quantitatem: cuius sententiae id erit emolumentum, ut, si finita sit actio de peculio, de in rem verso conveniatur. ego et ante condemnationem post iudicium patris nomine acceptum de in rem verso patrem teneri puto.

Dig. 15.3.10.4

Ulpianus 29 ad ed.

In rem autem versum videtur, prout aliquid versum est: proinde si pars versa est, de parte erit actio.

Dig. 15.3.10.5

Ulpianus 29 ad ed.

Sed utrum in sortem dumtaxat tenebitur dominus an et in usuras? et si quidem promisit usuras, Marcellus libro quinto digestorum scribit dominum praestaturum: sed si non sint promissae, utique non debebuntur, quia in stipulatum deductae non sunt. plane si contemplatione domini pecuniam dedi non gerenti servo negotia domini, sed ipse gerens, negotiorum gestorum actione potero etiam de usuris experiri.

Dig. 15.3.10.6

Ulpianus 29 ad ed.

Versum autem sic accipimus, ut duret versum: et ita demum de in rem verso competit actio, si non sit a domino servo solutum vel filio. si tamen in necem creditoris, id est perdituro servo vel filio solutum sit, quamvis solutum sit, desinit quidem versum, aequissimum autem est de dolo malo adversus patrem vel dominum competere actionem: nam et peculiaris debitor, si fraudulenter servo solverit quod ei debebat, non liberatur.

Dig. 15.3.10.7

Ulpianus 29 ad ed.

Si domini debitor sit servus et ab alio mutuatus ei solverit, hactenus non vertit, quatenus domino debet: quod excedit, vertit. proinde si, cum domino deberet triginta, mutuatus quadraginta creditori eius solverit vel familiam exhibuerit, dicendum erit de in rem verso in decem competere actionem: aut si tantundem debeat, nihil videtur versum. nam, ut pomponius scribit, adversus lucrum domini videtur subventum: et ideo, sive debitor fuit domino, cum in rem verteret, nihil videri versum, sive postea debitor esse domino coeperit, desinere versum: idemque et si solverit ei. plus dicit et si tantundem ei donavit dominus, quantum creditori solvit pro se, si quidem remunerandi animo, non videri versum, si vero alias donavit, durare versum.

Dig. 15.3.10.8

Ulpianus 29 ad ed.

Idem quaerit, si decem in rem domini vertit et postea tantandem summam a domino mutuatus sit, habeat praeterea et peculium decem, videndum ait, utrum desiit esse versum? an vero, quoniam est peculium, unde trahatur ^ detrahatur^ debitum, de in rem verso non tollimus actionem? an potius ex utroque pro rata detrahimus? ego autem puto sublatam de in rem verso actionem, cum debitor domini sit constitutus.

Dig. 15.3.10.9

Ulpianus 29 ad ed.

Idem quaerit, si in rem tuam verterit et debitor tuus factus sit, mox creditor eiusdem summae quam tibi debuit, an renascatur de in rem verso actio an vero ex postfacto non convalescat? quod verum est.

Dig. 15.3.10.10

Ulpianus 29 ad ed.

Idem tractat, an ex eventu possit in rem patris filius vertere, veluti si duo rei pater et filius fuerint et filius mutuatus suo nomine solvat, vel si filio iussu patris credidisti et filius creditum tibi solvisset. mihi videtur, si quidem pecunia ad patrem pervenerat, videri in rem versum: quod si non fuit et suum negotium gerens filius solvit, non esse de in rem verso actionem.

Dig. 15.3.11

Paulus 30 ad ed.

Quod servus in hoc mutuatus fuerit, ut creditori suo solveret, non erit in rem versum, quamvis actione de peculio liberatus sit dominus.

Dig. 15.3.12

Gaius 9 ad ed. provinc.

Si fundum patri dominove emit servus vel filius familias, versum quidem esse videtur, ita tamen, ut, sive minoris sit, quam est emptus, tantum videatur in rem versum quanti dignus sit, sive pluris sit, non plus videatur in rem versum quam emptus est.

Dig. 15.3.13

Ulpianus 29 ad ed.

Si in rem alterius ex dominis versum sit, utrum is solus in cuius rem versum est, an et socius possit conveniri, quaeritur. et iulianus scribit eum solum conveniri in cuius rem versum est, sicuti cum solus iussit: quam sententiam puto veram.

Dig. 15.3.14

Iulianus 11 Dig.

Marcellus notat: interdum et propter hoc quod in rem alterius socii versum est de in rem verso cum altero agi potest, qui conventus a socio petere potest id in quo damnatus fuerit. quid enim dicemus, si peculium servo ab altero ademptum fuerit? paulus: ergo haec quaestio ita procedit, si de peculio agi non potest.

Dig. 15.3.15

Ulpianus 2 disp.

Si filius familias constituerit quod pater debuit, videndum est, an de in rem verso actio dari debeat. atquin non liberavit patrem: nam qui constituit, se quidem obligat, patrem vero non liberat. plane si solvat post constitutum, licet pro se videatur solvisse, hoc est ob id quod constituit, in rem tamen vertisse patris merito dicetur.

Dig. 15.3.16

Alfenus 2 Dig.

Quidam fundum colendum servo suo locavit et boves ei dederat: cum hi boves non essent idonei, iusserat eos venire et his nummis qui recepti essent alios reparari: servus boves vendiderat, alios redemerat, nummos venditori non solverat, postea conturbaverat: qui boves vendiderat nummos a domino petebat actione de peculio aut quod in rem domini versum esset, cum boves pro quibus pecunia peteretur penes dominum essent. respondit non videri peculii quicquam esse, nisi si quid deducto eo, quod servus domino debuisset, reliquum fieret: illud sibi videri boves quidem in rem domini versos esse, sed pro ea re solvisse tantum, quanti priores boves venissent: si quo amplioris pecuniae posteriores boves essent, eius oportere dominum condemnari.

Dig. 15.3.17pr.

Africanus 8 quaest.

Servus in rem domini pecuniam mutuatus sine culpa eam perdidit: nihilo minus posse cum domino de in rem verso agi existimavit. nam et si procurator meus in negotia mea impensurus pecuniam mutuatus sine culpa eam perdiderit, recte eum hoc nomine mandati vel negotiorum gestorum acturum.

Dig. 15.3.17.1

Africanus 8 quaest.

Cum sticho vicario servi tui pamphili contraxi: actio de peculio et in rem verso ita dari debet, ut, quod vel in tuam ipsius rem vel in peculium pamphili versum sit, comprehendatur, scilicet etiamsi mortuo vel alienato sticho agatur. quod si pamphilo mortuo agam, magis est, ut, quamvis stichus vivat, tamen de eo, quod in peculio pamphili versum est, non nisi intra annum quam is decessit actio dari debeat: etenim quodammodo de peculio pamphili tum experiri videbor, sicuti si, quod iussu eius credidissem, experirer: nec nos movere debet, quod stichus de cuius peculio agitur vivat, quando non aliter ea res in peculio eius esse potest, quam si pamphili peculium maneat. eadem ratio efficiet, ut id, quod in peculio pamphili versum sit, ita praestari debere dicamus, ut prius eius, quod tibi pamphilus debuerit, deductio fiat, quod vero in tuam rem versum fuerit, praestetur etiam non deducto eo quod pamphilus tibi debet.

Dig. 15.3.18

Nerva 7 membr.

Quamvis in eam rem pro servo meo fideiusseris, quae ita contracta est, ut in rem meam versaretur (veluti si, cum servus frumentum emisset quo familia aleretur, venditori frumenti fideiusseris), propius est tamen, ut de peculio eo nomine, non de in rem verso agere possis, ut unius dumtaxat in quoquo contractu de in rem verso sit actio, qui id ipsum credidit quod in rem domini versum est.

Dig. 15.3.19

Paulus 4 quaest.

Filius familias togam emit: mortuo deinde eo pater ignorans et putans suam esse dedicavit eam in funus eius. neratius libro responsorum ait in rem patris versum videri: in actione autem de peculio quod in rerum natura non esset uno modo aestimari debere, si dolo malo eius quocum agatur factum esset. atquin si filio pater togam emere debuit, in rem patris res versa est non nunc quo funerabitur, sed quo tempore emit (funus enim filii aes alienum patris est: et hoc neratius quoque, qui de in rem verso patrem teneri putavit, ostendit negotium hoc, id est sepulturam et funus filii patris esse aes alienum, non filii): factus est ergo debitor peculii, quamvis res non exstet, ut etiam de peculio possit conveniri, in quam actionem venit et quod in rem versum est: quae tamen adiectio tunc necessaria est, cum annus post mortem filii excessit.

Dig. 15.3.20pr.

Scaevola 1 resp.

Pater pro filia dotem promisit et convenit, ut ipse filiam aleret: non praestante patre filia a viro mutuam pecuniam accepit et mortua est in matrimonio. respondi, si ad ea id quod creditum est erogatum esset, sine quibus aut se tueri aut servos paternos exhibere non posset, dandam de in rem verso utilem actionem.

Dig. 15.3.20.1

Scaevola 1 resp.

Servus absentis rei publicae causa pupilli servis pecuniam credidit subscribente tutore stipulatione in personam tutoris translata: quaesitum est, an adversus pupillum competat actio. respondi, si, cum in rem pupilli daretur, id in rem eius versum est et, quo magis actus servorum confirmaretur, tutor spopondit, posse nihilo minus dici de in rem verso cum pupillo actionem fore.

Dig. 15.3.21

Scaevola 5 Dig.

Filiam familias duxit uxorem patre dotem promittente et convenit inter omnes personas, uti eam pater aut ipsa se tueretur: maritus ei mutuos nummos dedit, cum iuste putaret patrem eius ministraturum tantum salarium, quantum dare filiae suae instituerat: eos nummos illa in usus necessarios sibi et in servos quos secum habebat consumpsit, aliquantum et (cum ei res familiares creditae essent) ex pecunia mariti in easdem causas convertit: deinde priusquam pater salarium expleret, moritur filia: pater impensam recusat: maritus res mulieris retinet: quaero, an de in rem verso adversus patrem actio competat. respondit, si ad ea id quod creditum est erogatum esset, sine quibus aut se tueri aut servos paternos exhibere non posset, dandam de in rem verso utilem actionem.

Dig. 15.4.0. Quod iussu.

Dig. 15.4.1pr.

Ulpianus 29 ad ed.

Merito ex iussu domini in solidum adversus eum iudicium datur, nam quodammodo cum eo contrahitur qui iubet.

Dig. 15.4.1.1

Ulpianus 29 ad ed.

Iussum autem accipiendum est, sive testato quis sive per epistulam sive verbis aut per nuntium sive specialiter in uno contractu iusserit sive generaliter: et ideo et si sic contestatus sit: " quod voles cum sticho servo meo negotium gere periculo meo", videtur ad omnia iussisse, nisi certa lex aliquid prohibet.

Dig. 15.4.1.2

Ulpianus 29 ad ed.

Sed ego quaero, an revocare hoc iussum antequam credatur possit: et puto posse, quemadmodum si mandasset et postea ante contractum contraria voluntate mandatum revocasset et me certiorasset.

Dig. 15.4.1.3

Ulpianus 29 ad ed.

Sed et si mandaverit pater dominusve, videtur iussisse.

Dig. 15.4.1.4

Ulpianus 29 ad ed.

Sed et si servi chirographo subscripserit dominus, tenetur quod iussu.

Dig. 15.4.1.5

Ulpianus 29 ad ed.

Quid ergo si fideiusserit pro servo? ait Marcellus non teneri quod iussu: quasi extraneus enim intervenit: neque hoc dicit ideo, quod tenetur ex causa fideiussionis, sed quia aliud est iubere, aliud fideiubere: denique idem scribit, etsi inutiliter fideiusserit, tamen eum non obligari quasi iusserit, quae sententia verior est.

Dig. 15.4.1.6

Ulpianus 29 ad ed.

Si ratum habuerit quis quod servus eius gesserit vel filius, quod iussu actio in eos datur.

Dig. 15.4.1.7

Ulpianus 29 ad ed.

Si pupillus dominus iusserit, utique non tenetur, nisi tutore auctore iussit.

Dig. 15.4.1.8

Ulpianus 29 ad ed.

Si iussu fructuarii erit cum servo contractum, item eius cui bona fide servit, Marcellus putat quod iussu dandam in eos actionem: quam sententiam et ego probo.

Dig. 15.4.1.9

Ulpianus 29 ad ed.

Si curatore adulescentis vel furiosi vel prodigi iubente cum servo contractum sit, putat labeo dandam quod iussu actionem in eos quorum servus fuerit: idem et in vero procuratore. sed si procurator verus non sit, in ipsum potius dandam actionem idem labeo ait.

Dig. 15.4.2pr.

Paulus 30 ad ed.

Si tutoris iussu servo pupilli creditum sit, puto, si ex utilitate pupilli fuerit creditum, in pupillum esse dandam actionem " quod iussit tutor".

Dig. 15.4.2.1

Paulus 30 ad ed.

Si iussu domini ancillae vel iussu patris filiae creditum sit, danda est in eos quod iussu actio.

Dig. 15.4.2.2

Paulus 30 ad ed.

Si iussu meo cum alieno servo contractum fuerit eumque postea redemero, quod iussu non tenebor, ne actio, quae ab initio inutilis fuerit, eventu confirmetur.

Dig. 15.4.3

Ulpianus 2 resp.

Dominum, qui iussit semissibus usuris servo suo pecuniam mutuam credi, hactenus teneri quatenus iussit: nec pignoris obligationem locum habere in his praediis, quae servus non ex voluntate domini obligavit.

Dig. 15.4.4

Ulpianus 10 ad ed.

Si iussu eius, qui administrationi rerum civitatis praepositus est, cum servo civitatis negotium contractum sit, pomponius scribit quod iussu cum eo agi posse.

Dig. 15.4.5pr.

Paulus 4 ad plaut.

Si dominus vel pater pecuniam mutuam accepturus iusserit servo filiove numerari, nulla quaestio est, quin ipsi condici possit: immo hoc casu de iussu actio non competit.

Dig. 15.4.5.1

Paulus 4 ad plaut.

Si unus ex servi dominis iussit contrahi cum eo, is solus tenebitur: sed si duo iusserunt, cum quovis in solidum agi potest, quia similes sunt duobus mandantibus.

Ius Romanum Justinian The Latin Library The Classics Page

OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER SEXTUS DECIMUS

Dig. 16.1.0. Ad senatus consultum velleianum.
Dig. 16.2.0. De compensationibus.
Dig. 16.3.0. Depositi vel contra.

Dig. 16.1.0. Ad senatus consultum velleianum.

Dig. 16.1.1pr.

Paulus 30 ad ed.

Velleiano senatus consulto plenissime comprehensum est, ne pro ullo feminae intercederent.

Dig. 16.1.1.1

Paulus 30 ad ed.

Nam sicut moribus civilia officia adempta sunt feminis et pleraque ipso iure non valent, ita multo magis adimendum eis fuit id officium, in quo non sola opera nudumque ministerium earum versaretur, sed etiam periculum rei familiaris.

Dig. 16.1.1.2

Paulus 30 ad ed.

Aequum autem visum est ita mulieri succurri, ut in veterem debitorem aut in eum, qui pro se constituisset mulierem ream, actio daretur: magis enim ille quam creditor mulierem decepit.

Dig. 16.1.2pr.

Ulpianus 29 ad ed.

Et primo quidem temporibus divi augusti, mox deinde claudii edictis eorum erat interdictum, ne feminae pro viris suis intercederent.

Dig. 16.1.2.1

Ulpianus 29 ad ed.

Postea factum est senatus consultum, quo plenissime feminis omnibus subventum est. cuius senatus consulti verba haec sunt: " quod marcus silanus et velleus tutor consules verba fecerunt de obligationibus feminarum, quae pro aliis reae fierent, quid de ea re fieri oportet, de ea re ita censuere: quod ad fideiussores et mutui dationes pro aliis, quibus intercesserint feminae, pertinet, tametsi ante videtur ita ius dictum esse, ne eo nomine ab his petitio neve in eas actio detur, cum eas virilibus officiis fungi et eius generis obligationibus obstringi non sit aequum, arbitrari senatum recte atque ordine facturos ad quos de ea re in iure aditum erit, si dederint operam, ut in ea re senatus voluntas servetur".

Dig. 16.1.2.2

Ulpianus 29 ad ed.

Verba itaque senatus consulti excutiamus prius providentia amplissimi ordinis laudata, quia opem tulit mulieribus propter sexus inbecillitatem multis huiuscemodi casibus suppositis atque obiectis.

Dig. 16.1.2.3

Ulpianus 29 ad ed.

Sed ita demum eis subvenit, si non callide sint versatae: hoc enim divus pius et severus rescripserunt. nam deceptis, non decipientibus opitulatur et est et graecum severi tale rescriptum: tais apatwsais gunaicin to dogma tys sugklytou boulys ou boyvei. infirmitas enim feminarum, non calliditas auxilium demeruit.

Dig. 16.1.2.4

Ulpianus 29 ad ed.

Omnis omnino obligatio senatus consulto velleiano comprehenditur, sive verbis sive re sive quocumque alio contractu intercesserint.

Dig. 16.1.2.5

Ulpianus 29 ad ed.

Sed et si mulier defensor alicuius exstiterit, procul dubio intercedit: suscipit enim in se alienam obligationem, quippe cum ex hac re subeat condemnationem. proinde neque maritum neque filium neque patrem permittitur mulieri defendere.

Dig. 16.1.3

Paulus 30 ad ed.

Sed si eum defendat, qui damnatus regressum ad eam habeat, veluti cum venditorem hereditatis sibi venditae vel fideiussorem suum defendat, intercedere non videtur.

Dig. 16.1.4pr.

Ulpianus 29 ad ed.

Sed si ego cum muliere ab initio contraxerim, cum ignorarem cui haec factum vellet, non dubio senatus consultum cessare: et ita divus pius et imperator noster rescripserunt.

Dig. 16.1.4.1

Ulpianus 29 ad ed.

Proinde si, dum vult titio donatum, accepit a me mutuam pecuniam et eam titio donavit, cessabit senatus consultum. sed et si tibi donatura creditori tuo nummos numeraverit, non intercedit: senatus enim obligatae mulieri succurrere voluit, non donanti: hoc ideo, quia facilius se mulier obligat quam alicui donat.

Dig. 16.1.5

Gaius 9 ad ed. provinc.

Nec interest, pecuniam solvendi causa numeret an quamlibet suam rem in solutum det: nam et si vendiderit rem suam, sive pretium acceptum pro alio solvit sive emptorem delegavit creditori alieno, non puto senatus consulto locum esse.

Dig. 16.1.6

Ulpianus 29 ad ed.

Si fideiussores pro defensore absentis filii ex mandato matris eius intercesserint, quaeritur, an etiam his senatus consulto subveniatur. et ait papinianus libro nono quaestionum exceptione eos usuros: nec multum facere, quod pro defensore fideiusserunt, cum contemplatione mandati matris intervenerunt. plane, inquit, si qui accepit eos fideiussores, matrem eis mandasse ignoravit, exceptionem senatus consulti replicatione doli repellendam.

Dig. 16.1.7

Papinianus 9 quaest.

Quamquam igitur fideiussor doli replicatione posita defensionem exceptionis amittit ^ amittat^, nullam tamen replicationem adversus mulierem habebit, quia facti non potest ignorationem praetendere. sed non erit iniquum dari negotiorum gestorum actionem in defensorem, quia mandati causa per senatus consultum constituitur irrita et pecunia fideiussoris liberatur.

Dig. 16.1.8pr.

Ulpianus 29 ad ed.

Quamvis pignoris datio intercessionem faciat, tamen iulianus libro duodecimo digestorum scribit redditionem pignoris, si creditrix mulier rem, quam pignori acceperat, debitori liberaverit, non esse intercessionem.

Dig. 16.1.8.1

Ulpianus 29 ad ed.

Si mulier intervenerit apud tutores filii sui, ne hi praedia eius distraherent, et indemnitatem eis repromiserit, papinianus libro nono quaestionum non putat eam intercessisse: nullam enim obligationem alienam recepisse neque veterem neque novam, sed ipsam fecisse hanc obligationem.

Dig. 16.1.8.2

Ulpianus 29 ad ed.

Si mulier apud primum pro secundo intervenerit, mox pro primo apud creditorem eius, duas intercessiones factas iulianus libro duodecimo digestorum scribit, unam pro secundo apud primum, aliam pro primo apud creditorem eius, et ideo et primo restitui obligationem et adversus eum. Marcellus autem notat esse aliquam differentiam, utrum hoc agatur, ut ab initio mulier in alterius locum subdatur et onus debitoris, a quo obligationem transferre creditor voluit, suscipiat, an vero quasi debitrix delegetur, scilicet ut, si quasi debitrix delegata est, una sit intercessio. proinde secundum hanc suam distinctionem in prima visione, ubi quasi debitrix delegata est, exceptionem ei senatus consulti Marcellus non daret: sed condemnata vel ante condemnationem condicere utique ei a quo delegata est poterit vel quod ei abest vel, si nondum abest, liberationem.

Dig. 16.1.8.3

Ulpianus 29 ad ed.

Interdum intercedenti mulieri et condictio competit, ut puta si contra senatus consultum obligata debitorem suum delegaverit: nam hic ipsi competit condictio, quemadmodum, si pecuniam solvisset, condiceret: solvit enim et qui reum delegat.

Dig. 16.1.8.4

Ulpianus 29 ad ed.

Sed si is, qui a muliere delegatus est, debitor eius non fuit, exceptione senatus consulti poterit uti, quemadmodum mulieris fideiussor.

Dig. 16.1.8.5

Ulpianus 29 ad ed.

Plane si mulier intercessura debitorem suum delegaverit, senatus consultum cessat, quia et si pecuniam numerasset, cessaret senatus consultum: mulier enim per senatus consultum relevatur, non quae deminuit, restituitur.

Dig. 16.1.8.6

Ulpianus 29 ad ed.

Sed si eum delegaverit qui debitor eius non fuit, fraus senatus consulto facta videbitur et ideo exceptio datur.

Dig. 16.1.8.7

Ulpianus 29 ad ed.

Quotiens pro debitore intercesserit mulier, datur in eum pristina actio, etsi ille prius acceptilatione liberatus sit quam mulier intercesserit.

Dig. 16.1.8.8

Ulpianus 29 ad ed.

Si convenerit cum debitore, ut expromissorem daret, et acceptum ei latum sit, deinde is dederit mulierem quae auxilio senatus consulti munita est, potest ei condici, quasi non dedisset: quid enim interest, non det an talem det? non erit igitur actio utilis necessaria, cum condictio competat.

Dig. 16.1.8.9

Ulpianus 29 ad ed.

Marcellus quoque scribit, si mulieri post intercessionem accepto tulerit creditor, nihilo minus restitutoriam actionem ei dari debere: inanem enim obligationem dimisit.

Dig. 16.1.8.10

Ulpianus 29 ad ed.

Si mulier post intercessionem sic solverit, ne repetere possit, iuste prior debitor actionem recusat. sed cum relevatur reus, si mulier sic solvit, ut repetere non possit, et cum ei mulieri, quae repetere non poterat, si solvisset, accepto tulit creditor, similiter relevatur reus.

Dig. 16.1.8.11

Ulpianus 29 ad ed.

Quamquam in omnes qui liberati sunt restituitur actio, non tamen omnibus restituitur. ut puta duo rei stipulandi fuerunt: apud alterum mulier intercessit: ei soli restituitur obligatio, apud quem intercessit.

Dig. 16.1.8.12

Ulpianus 29 ad ed.

Si mulieri heres extiterit creditor, videndum, an restitutoria uti non possit. et ait iulianus libro duodecimo restitutoria eum nihilo minus usurum, non immerito, cum non obligatae cum effectu successerit: denique in falcidia hoc aes alienum non imputabitur.

Dig. 16.1.8.13

Ulpianus 29 ad ed.

Plane si mihi proponas mulierem veteri debitori successisse, dicendum erit restitutoria eam conveniri posse, sed et directa actione: nihil enim eius interest, qua actione conveniatur.

Dig. 16.1.8.14

Ulpianus 29 ad ed.

Si, cum essem tibi contracturus, mulier intervenerit, ut cum ipsa potius contraham, videtur intercessisse: quo casu datur in te actio, quae instituit magis quam restituit obligationem, ut perinde obligeris eodem genere obligationis, quo mulier est obligata: verbi gratia si per stipulationem mulier, et tu quasi ex stipulatu convenieris.

Dig. 16.1.8.15

Ulpianus 29 ad ed.

Illud videndum est, si mulier pro eo intervenit, qui, si cum ipso contractum esset, non obligaretur, an hac actione ille debeat teneri? ut puta si pro pupillo intercessit, qui sine tutoris auctoritate non obligatur. et puto non obligari pupillum, nisi locupletior factus est ex hoc contractu. item si minor viginti quinque annis sit, pro quo mulier intercessit, in integrum restitutionem poterit implorare: vel filius contra senatus consultum contracturus est.

Dig. 16.1.9

Paulus 6 reg.

Sed si pro alieno servo intercedat, quemadmodum in patrem familias priorem reum restituitur actio, ita in dominum quoque restituenda erit.

Dig. 16.1.10

Ulpianus 29 ad ed.

Hae actiones, quae in eos pro quibus mulier intercessit dantur, et heredibus et in heredes et perpetuo competunt: habent enim rei persecutionem: ceteris quoque honorariis successoribus dabuntur et adversus eos.

Dig. 16.1.11

Paulus 30 ad ed.

Si mulier tamquam in usus suos pecuniam acceperit alii creditura, non est locus senatus consulto: alioquin nemo cum feminis contrahet, quia ignorari potest, quid acturae sint.

Dig. 16.1.12

Paulus 6 brev.

Immo tunc locus est senatus consulto, cum scit creditor eam intercedere.

Dig. 16.1.13pr.

Gaius 9 ad ed. provinc.

Aliquando, licet alienam obligationem suscipiat mulier, non adiuvatur hoc senatus consulto: quod tum accidit, cum prima facie quidem alienam, re vera autem suam obligationem suscipiat. ut ecce si ancilla ob pactionem libertatis expromissore dato post manumissionem id ipsum suscipiat quod expromissor debeat, aut si hereditatem emerit et aes alienum hereditarium in se transcribat, aut si pro fideiussore suo intercedat.

Dig. 16.1.13.1

Gaius 9 ad ed. provinc.

De pignoribus prioris debitoris non est creditori nova actione opus, cum quasi serviana (quae et hypothecaria vocatur) in his utilis sit: quia verum est convenisse de pignoribus nec solutam esse pecuniam.

Dig. 16.1.13.2

Gaius 9 ad ed. provinc.

Si sub condicione vel in diem mulier pro alio intercesserit, etiam pendente condicione volenti creditori cum priore debitore experiri actio danda est restitutoria: quo enim bonum est exspectare condicionem vel diem, cum in ea causa sit prior iste debitor, ut omnimodo ipse debeat suscipere actionem?

Dig. 16.1.14

Iulianus 12 Dig.

Si mulier contra senatus consultum intercesserit, aequum est non solum in veterem debitorem, sed et in fideiussores eius actionem restitui: nam cum mulieris persona subtrahatur creditori propter senatus consultum, integra causa pristina restituenda est.

Dig. 16.1.15

Iulianus 51 Dig.

Si mulieri solvero id quod tibi debebam et ab ea ratam rem te habiturum stipulatus fuero et forte te ratum non habente agere ex stipulatu instituero, exceptio senatus consulti, quod de intercessionibus feminarum factum est, non proderit mulieri: non enim videri potest alienam obligationem recusare, cum maneam debito obligatus, et ipsa de lucro agat ac potius reddere cogatur quod non debitum acceperat, quam pro alio solvere.

Dig. 16.1.16pr.

Iulianus 4 ad urs. ferocem.

Si mulier contra senatus consultum velleianum pro me intercessisset titio egoque mulieri id solvissem et ab ea titius eam pecuniam peteret, exceptio huius senatus consulti non est profutura mulieri: neque enim eam periclitari, ne eam pecuniam perdat, cum iam eam habeat.

Dig. 16.1.16.1

Iulianus 4 ad urs. ferocem.

Si ab ea muliere, quae contra senatus consultum intercessisset, fideiussorem accepissem, gaius cassius respondit ita demum fideiussori exceptionem dandam, si a muliere rogatus fuisset. iulianus autem recte putat fideiussori exceptionem dandam, etiamsi mandati actionem adversus mulierem non habet, quia totam obligationem senatus improbat et a praetore restituitur prior debitor creditori.

Dig. 16.1.17pr.

Africanus 4 quaest.

Vir uxori donationis causa rem viliori pretio addixerat et in id pretium creditori suo delegaverat. respondit venditionem nullius momenti esse et, si creditor pecuniam a muliere peteret, exceptionem utilem fore, quamvis creditor existimaverit mulierem debitricem mariti fuisse: nec id contrarium videri debere ei, quod placeat, si quando in hoc mulier mutuata est, ut marito crederet, non obstaturam exceptionem, si creditor ignoraverit in quam causam mulier mutuaretur, quoniam quidem plurimum intersit, utrum cum muliere quis ab initio contrahat an alienam obligationem in eam transferat: tunc enim diligentiorem esse debere.

Dig. 16.1.17.1

Africanus 4 quaest.

Si mulier dixisset sibi rem dotis nomine obligatam et creditor curasset ei pecuniam dotis solvi, qui idem pignus acciperet, mulieri etiam pecunia credita deberetur: si possessor creditor adversus eam serviana agentem exciperet " si non voluntate eius pignus datum esset", replicationem mulieri senatus consulti non profuturam, nisi creditor scisset etiam aliam pecuniam ei deberi.

Dig. 16.1.17.2

Africanus 4 quaest.

Mulier et titius, cum in rem communem mutuarentur, eiusdem pecuniae rei facti sunt: non omnimodo mulierem pro parte socii videri intercessisse dicebat. nam si ob eam causam mutuati fuerint, ex qua, si creditor pecuniam non dedisset, maius damnum mulier passura fuerat, veluti quod communis insula fulta non esset vel quod fundus communis in publicum committeretur, potius esse, ut senatus consulto locus non sit. at si in aliquam emptionem mutua pecunia sit accepta, tunc pro parte intercessionem factam videri et ideo creditorem partem dumtaxat pecuniae a muliere petere posse: quod si totum petierit, exceptione pro parte summovetur.

Dig. 16.1.18

Paulus 8 ad plaut.

Idem et si pro debitore meo titius et mulier duo rei intercesserint.

Dig. 16.1.19pr.

Africanus 4 quaest.

Tutor pupilli decesserat herede instituto titio: cum de adeunda hereditate dubitaret, quoniam male gesta tutela existimaretur, persuadente matre pupilli, ut suo periculo adiret, adiit stipulatusque de ea est indemnem se eo nomine praestari. si ex ea causa titius pupillo aliquid praestitisset isque matrem conveniret, negavit exceptioni senatus consulti locum esse, quando vix sit, ut aliqua apud eundem pro eo ipso intercessisse intellegi possit.

Dig. 16.1.19.1

Africanus 4 quaest.

Nec dissimilem huic propositioni ex facto agitatam. cum quidam vir praetorius decessisset duobus filiis superstitibus, quorum alter impubes esset et alter legitimus tutor fratri esset et eum paterna hereditate abstinere vellet, mandatu uxoris defuncti, quae mater pupillo esset, abstento pupillo solum se hereditati miscuisse: ubi similiter se respondisse iulianus ait, si ex ea causa agente pupillo damnum eo nomine passus esset, non impediri eum senatus consulto, quo minus a muliere rem servaret.

Dig. 16.1.19.2

Africanus 4 quaest.

In proposita specie et illud tractandum est, an is, qui mandato mulieris adierit, si damnum ob id patiatur, quod debitores hereditarii solvendo non fuerint, senatus consulto locus sit, quasi quodammodo eorum obligationes mulier susceperit. magis autem est, ut ne ob hanc quidem causam senatus consultum locum habeat, quando non ea mente fuerit, ut pro his intercederet, sed tutoris adversus pupillum et ceteros forte creditores indemnem heredem praestaret.

Dig. 16.1.19.3

Africanus 4 quaest.

Denique si ponamus mulierem in emptionem hereditatis eo nomine damnum pati, quod debitores hereditarii solvendo non sint, nulla puto dubitatio erit, quin senatus consulto locus non sit, etiamsi maxime creditoribus aliquantum praestiterit.

Dig. 16.1.19.4

Africanus 4 quaest.

Quid ergo si, cum propterea de adeunda hereditate dubitaret titius, quod parum idonea nomina debitorum viderentur, mulier hoc ipsum repromisit, ut, quanto minus a quoquo eorum servari posset, ipsa praestaret? prope est, ut sit intercessio.

Dig. 16.1.19.5

Africanus 4 quaest.

Cum haberes titium debitorem et pro eo mulier intercedere vellet nec tu mulieris nomen propter senatus consultum sequereris, petit a me mulier mutuam pecuniam solutura tibi et stipulanti mihi promisit ignoranti, in quam rem mutuaretur atque ita numerare me tibi iussit: deinde ego, quia ad manum nummos non habebam, stipulanti tibi promisi: quaesitum est, si eam pecuniam a muliere petam, an exceptio senatus consulti ei prosit. respondit videndum, ne non sine ratione dicatur eius loco, qui pro muliere fideiusserit, haberi me debere, ut quemadmodum illi, quamvis ignoraverit mulierem intercedere, exceptio adversus creditorem detur, ne in mulierem mandati actio competat, ita mihi quoque adversus te utilis exceptio detur mihique in mulierem actio denegetur, quando haec actio periculo mulieris futura sit. et haec paulo expeditius dicenda, si prius, quam ego tibi pecuniam solverim, compererim eam intercessisse: ceterum si ante solverim, videndum, utrumne nihilo minus mulieri quidem exceptio adversus me dari debeat et ego tibi condicere pecuniam possim, an vero perinde habendum sit, ac si initio ego pecuniam mulieri credidissem ac rursus tu mihi in creditum isses. quod quidem magis dicendum existimavit, ut sic senatus consulto locus non sit: sicuti et cum debitorem suum mulier deleget, intercessioni locus non sit. quae postea non recte comparari ait, quando delegatione debitoris facta mulier non obligetur, at in proposito alienam obligationem in se transtulerit, quod certe senatus fieri noluerit.

Dig. 16.1.20

Africanus 8 quaest.

Si pro uno reo intercessit mulier, adversus utrumque restituitur actio creditori.

Dig. 16.1.21pr.

Callistratus 3 inst.

Si pro aliquo mulier intercesserit, sed in rem eius quod acceptum est versaretur, exceptio senatus consulti locum non habet, quia non fit pauperior.

Dig. 16.1.21.1

Callistratus 3 inst.

Item si quid liberaliter fecerit, veluti ne iudicatus pater eius propter solutionem vexetur, non erit tuta senatus consulto: oneribus enim earum senatus succurrit.

Dig. 16.1.22

Paulus 6 reg.

Si mulieri dederim pecuniam, ut eam creditori meo solvat vel expromittat, si ea expromiserit, locum non esse senatus consulto pomponius scribit, quia mandati actione obligata in rem suam videtur obligari.

Dig. 16.1.23

Paulus l.S. ad sc velle.

Si mulier in iure interrogata responderit se heredem esse, si sciens se heredem non esse responderit, minime intercessisse videri, quia decepit: quod si existimavit se heredem et eo nomine decepta responderit in eam actionem quidem dari plerique existimaverunt, sed exceptione senatus adiuvari.

Dig. 16.1.24pr.

Paulus l.S. de intercess. femina

Debitrix mulier a creditore delegata pro eo cui delegata est promisit: non utetur exceptione.

Dig. 16.1.24.1

Paulus l.S. de intercess. femina

Sed si pecuniam promisit, ne delegetur, intercessisse videtur.

Dig. 16.1.24.2

Paulus l.S. de intercess. femina

Si senatus consulti beneficium intervenit, utrum statim cum mulier intercesserit actio in priorem debitorem competit, an si mulier solutum condicat? puto statim, et non exspectandam solutionem.

Dig. 16.1.24.3

Paulus l.S. de intercess. femina

Si pro eo, qui temporali actione teneretur, mulier intercesserit, temporalis actio restituetur, sic tamen, ut ex praecedenti causa continua tempora numerarentur post restitutionem, quamvis statim atque intercessit mulier competierat.

Dig. 16.1.25pr.

Modestinus l.S. de heuremat.

Si domina servo suo credi iusserit, actione honoraria tenebitur.

Dig. 16.1.25.1

Modestinus l.S. de heuremat.

Quod si pro eo fideiusserit, exceptione senatus consulti velleiani iudicio conventa adversus creditorem tueri se poterit, nisi pro suo negotio hoc fecerit.

Dig. 16.1.26

Ulpianus 37 ad ed.

Si mulier intercedendi animo servum alienum suum esse responderit, quasi intercesserit auxilio senatus consulti utetur. plane si pro bona fide serviente sibi responderit, non videtur intercessisse.

Dig. 16.1.27pr.

Papinianus 3 resp.

Bona fide personam mulieris in contrahendo secutus ob ea, quae inter virum et uxorem accepta pecunia gesta sunt, exceptione senatus consulti non summovetur.

Dig. 16.1.27.1

Papinianus 3 resp.

Cum servi ad negotiationem praepositi cum alio contrahentes personam mulieris ut idoneae sequuntur, exceptione senatus consulti dominum summovet: nec videtur deterior causa domini per servum fieri, sed nihil esse domino quaesitum, non magis, quam si litigiosum praedium servus aut liberum hominem emerit.

Dig. 16.1.27.2

Papinianus 3 resp.

Uxor debitricem suam viro delegavit, ut vir creditori eius pecuniam solveret: si fidem suam pro ea quam delegavit apud virum obligaverit, locum exceptio senatus consulti non habebit, quia mulier suum negotium gessit.

Dig. 16.1.28pr.

Scaevola 1 resp.

Seia mancipia emit et mutuam pecuniam accepit sub fideiussore marito eamque solvit venditori: postea maritus decedens non solvendo in fraudem creditoris cavit testamento se eam pecuniam universam debere: quaeritur, an intercessisse mulier videretur. respondi secundum ea quae proponerentur non intercessisse.

Dig. 16.1.28.1

Scaevola 1 resp.

Fundum uxoris suae maritus obligavit sempronio ob conductionem: mox mulier a numerio sua fide mutuam pecuniam acceptam sub obligatione eiusdem fundi solvit statim sempronio pro marito suo: quaesitum est, an adversus senatus consultum obligata sit. respondi, si numerius scisset eam intercedere, fore senatus consulto de quo quaereretur locum.

Dig. 16.1.29pr.

Paulus 16 resp.

Quidam voluit heredibus lucii titii mutuam pecuniam dare et cum eis contrahere: sed quoniam facultates eorum suspectas habuit, magis voluit uxori testatoris dare pecuniam et ab ea pignus accipere: mulier eandem pecuniam dedit heredibus et ab his pignus accepit: quaero an intercessisse videatur et an pignora, quae ipsa accepit, teneantur creditori. paulus respondit, si creditor, cum contrahere vellet cum heredibus lucii titii, evitatis his magis mulierem ream elegit, et in ipsius persona senatus consulto, quod de intercessionibus factum est, locum esse et pignora ab ea data non teneri. eas autem res, quas mulier ab his, pro quibus intercedebat, pignori accepit, creditori mulieris obligatas non esse. sed non sine ratione praetorem facturum, si non tantum in persona subducta muliere in principales debitores dederit actionem, sed etiam in res, quae mulieri obligatae sunt.

Dig. 16.1.29.1

Paulus 16 resp.

Paulus respondit ea, quae in fraudem senatus consulti, quod de intercessione feminarum factum est, excogitata probari possunt, rata haberi non oportere.

Dig. 16.1.30pr.

Paulus 2 sent.

Si decipiendi animo vel cum sciret se non teneri mulier pro aliquo intercesserit, exceptio ei senatus consulti non datur: actionem enim, quae in dolum mulieris competit, amplissimus ordo non excludit.

Dig. 16.1.30.1

Paulus 2 sent.

Procurator si mandatu mulieris pro alio intercesserit, exceptione senatus consulti velleiani adiuvatur, ne alias actio intercidat.

Dig. 16.1.31

Paulus 1 ad ner.

Paulus: si mulier quod ex intercessione solvit nolit repetere, sed mandati agere et cavere velit de indemnitate reo, audienda est.

Dig. 16.1.32pr.

Pomponius 1 sen. consult.

Si mulier hereditatem alicuius adeat, ut aes alienum eius suscipiat, vix est, ut succurri ei debeat, nisi si fraude creditorum id conceptum sit: nec enim loco minoris viginti quinque annis circumscripti per omnia habenda est mulier.

Dig. 16.1.32.1

Pomponius 1 sen. consult.

Si mulier rem a se pignori datam per intercessionem recipere velit, fructus etiam liberos recipit et, si res deterior facta fuerit, eo nomine magis aestimetur. sed si creditor, qui pignus per intercessionem acceperit, hoc alii vendidit, vera est eorum opinio, qui petitionem dandam ei putant et adversus bonae fidei emptorem, ne melioris condicionis emptor sit, quam fuerit venditor.

Dig. 16.1.32.2

Pomponius 1 sen. consult.

Item si mulier creditori viri fundum vendidit et tradidit ea condicione, ut emptor acceptam pecuniam viro referret, et hunc fundum vindicat, exceptio quidem opponitur ei de re empta et tradita, sed replicabitur a muliere: " aut si ea venditio contra senatus consultum facta sit", et hoc procedit, sive ipse creditor emerit sive interposuerit alium, quo mulier ea ratione careat re sua. idem est et si non pro viro, sed pro alio debitore rem suam tradidit.

Dig. 16.1.32.3

Pomponius 1 sen. consult.

Si mulier, ne ipsa intercederet, alii mandaret ut id faceret, an in huius persona locus huic senatus consulto sit, qui rogatu mulieris id faceret? totus enim sermo senatus consulti ad petitionem non dandam adversus ipsam mulierem spectat. et puto rem ita esse distinguendam, ut, si quidem creditor, cui me obligavi mandante muliere, hoc in fraudem senatus consulti egisset, ne ipsa interveniret contra senatus consultum, daret autem alium, excludendum eum exceptione fraudis senatus consulti factae: si vero is ignorasset, ego autem scissem, tunc mandati me agentem cum muliere excludendum esse, me autem creditori teneri.

Dig. 16.1.32.4

Pomponius 1 sen. consult.

Si mulier pro eo, pro quo intercesserit, iudicium parata sit accipere, ut non in veterem debitorem actio detur: quoniam senatus consulti exceptionem opponere potest, cavere debebit exceptione se non usuram et sic ad iudicem ire.

Dig. 16.1.32.5

Pomponius 1 sen. consult.

Intercedere mulierem intellegendum est etiam pro eo, qui obligari non possit, veluti si pro servo alieno intercedit: sed rescissa intercessione in dominum restituenda est actio.

Dig. 16.2.0. De compensationibus.

Dig. 16.2.1

Modestinus 6 pand.

Compensatio est debiti et crediti inter se contributio.

Dig. 16.2.2

Iulianus 90 Dig.

Unusquisque creditorem suum eundemque debitorem petentem summovet, si paratus est compensare.

Dig. 16.2.3

Pomponius 25 ad sab.

Ideo compensatio necessaria est, quia interest nostra potius non solvere quam solutum repetere.

Dig. 16.2.4

Paulus 3 ad sab.

Verum est, quod et neratio placebat et pomponius ait, ipso iure eo minus fideiussorem ex omni contractu debere, quod ex compensatione reus retinere potest: sicut enim, cum totum peto a reo, male peto, ita et fideiussor non tenetur ipso iure in maiorem quantitatem quam reus condemnari potest.

Dig. 16.2.5

Gaius 9 ad ed. provinc.

Si quid a fideiussore petetur, aequissimum est eligere fideiussorem, quod ipsi an quod reo debetur, compensare malit: sed et si utrumque velit compensare, audiendus est.

Dig. 16.2.6

Ulpianus 30 ad sab.

Etiam quod natura debetur, venit in compensationem.

Dig. 16.2.7pr.

Ulpianus 28 ad ed.

Quod in diem debetur, non compensabitur, antequam dies venit, quamquam dari oporteat.

Dig. 16.2.7.1

Ulpianus 28 ad ed.

Si rationem compensationis iudex non habuerit, salva manet petitio: nec enim rei iudicatae exceptio obici potest. aliud dicam, si reprobavit pensationem quasi non existente debito: tunc enim rei iudicatae mihi nocebit exceptio.

Dig. 16.2.8

Gaius 9 ad ed. provinc.

In compensationem etiam id deducitur, quo nomine cum actore lis contestata est, ne diligentior quisque deterioris condicionis habeatur, si compensatio ei denegetur.

Dig. 16.2.9pr.

Paulus 32 ad ed.

Si cum filio familias aut servo contracta sit societas et agat dominus vel pater, solidum per compensationem servamus, quamvis, si ageremus, dumtaxat de peculio praestaretur.

Dig. 16.2.9.1

Paulus 32 ad ed.

Sed si cum filio familias agatur, an quae patri debeantur filius compensare possit, quaeritur: et magis est admittendum, quia unus contractus est, sed cum condicione, ut caveat patrem suum ratum habiturum, id est non exacturum quod is compensaverit.

Dig. 16.2.10pr.

Ulpianus 63 ad ed.

Si ambo socii parem neglegentiam societati adhibuimus, dicendum est desinere nos invicem esse obligatos ipso iure compensatione neglegentiae facta. simili modo probatur, si alter ex re communi aliquid perceperit, alter tantam neglegentiam exhibuerit, quae eadem quantitate aestimatur, compensationem factam videri et ipso iure invicem liberationem.

Dig. 16.2.10.1

Ulpianus 63 ad ed.

Si quis igitur compensare potens solverit, condicere poterit quasi indebito soluto.

Dig. 16.2.10.2

Ulpianus 63 ad ed.

Quotiens ex maleficio oritur actio, ut puta ex causa furtiva ceterorumque maleficiorum, si de ea pecuniarie agitur, compensatio locum habet: idem est et si condicatur ex causa furtiva. sed et qui noxali iudicio convenitur, compensationem opponere potest.

Dig. 16.2.10.3

Ulpianus 63 ad ed.

In stipulationibus quoque quae instar actionum habent, id est praetoriis, compensatio locum habet, et secundum iulianum tam in ipsa stipulatione quam in ex stipulatu actione poterit obici compensatio.

Dig. 16.2.11

Ulpianus 32 ad ed.

Cum alter alteri pecuniam sine usuris, alter usurariam debet, constitutum est a divo severo concurrentis apud utrumque quantitatis usuras non esse praestandas.

Dig. 16.2.12

Ulpianus 64 ad ed.

Idem iuris est non solum in privatis, verum etiam in causa fisci constitutum. sed et si invicem sit usuraria pecunia, diversae tamen sint usurae, compensatio nihilo minus locum habet eius quod invicem debetur.

Dig. 16.2.13

Ulpianus 66 ad ed.

Quod labeo ait, non est sine ratione, ut, si cui petitioni specialiter destinata est compensatio, in ceteris non obiciatur.

Dig. 16.2.14

Iavolenus 15 ex cass.

Quaecumque per exceptionem peremi possunt, in compensationem non veniunt.

Dig. 16.2.15

Iavolenus 2 epist.

Pecuniam certo loco titio dari stipulatus sum: is petit a me quam ei debeo pecuniam: quaero, an hoc quoque pensandum sit, quanti mea interfuit certo loco dari. respondit: si titius petit, eam quoque pecuniam, quam certo loco promisit, in compensationem deduci oportet, sed cum sua causa, id est ut ratio habeatur, quanti titii interfuerit eo loco quo convenerit pecuniam dari.

Dig. 16.2.16pr.

Papinianus 3 quaest.

Cum militi castrensium bonorum alius, ceterorum alius heres exstitit et debitor alteri heredum obligatus vult compensare quod ab alio debetur, non audietur.

Dig. 16.2.16.1

Papinianus 3 quaest.

Cum intra diem ad iudicati exsecutionem datum iudicatus titio agit cum eodem titio, qui et ipse pridem illi iudicatus est, compensatio admittetur: aliud est enim diem obligationis non venisse, aliud humanitatis gratia tempus indulgeri solutionis.

Dig. 16.2.17

Papinianus 1 resp.

Ideo condemnatus, quod artiorem annonam aedilitatis tempore praebuit, frumentariae pecuniae debitor non videbitur, et ideo compensationem habebit.

Dig. 16.2.18pr.

Papinianus 3 resp.

In rem suam procurator datus post litis contestationem, si vice mutua conveniatur, aequitate compensationis utetur.

Dig. 16.2.18.1

Papinianus 3 resp.

Creditor compensare non cogitur quod alii quam debitori suo debet, quamvis creditor eius pro eo, qui convenitur ob debitum proprium, velit compensare.

Dig. 16.2.19

Papinianus 11 resp.

Debitor pecuniam publicam servo publico citra voluntatem eorum solvit, quibus debitum recte solvi potuit: obligatio pristina manebit, sed dabitur ei compensatio peculii fini, quod servus publicus habebit.

Dig. 16.2.20

Papinianus 13 resp.

Ob negotium copiarum expeditionis tempore mandatum curatorem condemnatum pecuniam iure compensationis retinere non placuit, quoniam ea non compensantur.

Dig. 16.2.21

Paulus 1 quaest.

Posteaquam placuit inter omnes id quod invicem debetur ipso iure compensari, si procurator absentis conveniatur, non debebit de rato cavere, quia nihil compensat, sed ab initio minus ab eo petitur.

Dig. 16.2.22

Scaevola 2 quaest.

Si debeas decem aut hominem, utrum adversarius volet, ita compensatio huius debiti admittitur, si adversarius palam dixisset, utrum voluisset.

Dig. 16.2.23

Paulus 9 resp.

Id quod pupillorum nomine debetur si tutor petat, non posse compensationem obici eius pecuniae, quam ipse tutor suo nomine adversario debet.

Dig. 16.2.24

Paulus 3 decr.

Iussit imperator audiri adprobantem sibi a fisco deberi, quod ipse convenitur.

Dig. 16.3.0. Depositi vel contra.

Dig. 16.3.1pr.

Ulpianus 30 ad ed.

Depositum est, quod custodiendum alicui datum est, dictum ex eo quod ponitur: praepositio enim de auget depositum, ut ostendat totum fidei eius commissum, quod ad custodiam rei pertinet.

Dig. 16.3.1.1

Ulpianus 30 ad ed.

Praetor ait: " quod neque tumultus neque incendii neque ruinae neque naufragii causa depositum sit, in simplum, earum autem rerum, quae supra comprehensae sunt, in ipsum in duplum, in heredem eius, quod dolo malo eius factum esse dicetur qui mortuus sit, in simplum, quod ipsius, in duplum iudicium dabo. "

Dig. 16.3.1.2

Ulpianus 30 ad ed.

Merito has causas deponendi separavit praetor, quae continent fortuitam causam depositionis ex necessitate descendentem, non ex voluntate proficiscentem.

Dig. 16.3.1.3

Ulpianus 30 ad ed.

Eum tamen deponere tumultus vel incendii vel ceterarum causarum gratia intellegendum est, qui nullam aliam causam deponendi habet quam imminens ex causis supra scriptis periculum.

Dig. 16.3.1.4

Ulpianus 30 ad ed.

Haec autem separatio causarum iustam rationem habet: quippe cum quis fidem elegit nec depositum redditur, contentus esse debet simplo, cum vero extante necessitate deponat, crescit perfidiae crimen et publica utilitas coercenda est vindicandae rei publicae causa: est enim inutile in causis huiusmodi fidem frangere.

Dig. 16.3.1.5

Ulpianus 30 ad ed.

Quae depositis rebus accedunt, non sunt deposita, ut puta si homo vestitus deponatur, vestis enim non est deposita: nec si equus cum capistro, nam solus equus depositus est.

Dig. 16.3.1.6

Ulpianus 30 ad ed.

Si convenit, ut in deposito et culpa praestetur, rata est conventio: contractus enim legem ex conventione accipiunt.

Dig. 16.3.1.7

Ulpianus 30 ad ed.

Illud non probabis, dolum non esse praestandum si convenerit: nam haec conventio contra bonam fidem contraque bonos mores est et ideo nec sequenda est.

Dig. 16.3.1.8

Ulpianus 30 ad ed.

Si vestimenta servanda balneatori data perierunt, si quidem nullam mercedem servandorum vestimentorum accepit, depositi eum teneri et dolum dumtaxat praestare debere puto: quod si accepit, ex conducto.

Dig. 16.3.1.9

Ulpianus 30 ad ed.

Si quis servum custodiendum coniecerit forte in pistrinum, si quidem merces intervenit custodiae, puto esse actionem adversus pistrinarium ex conducto: si vero mercedem accipiebam ego pro hoc servo, quem in pistrinum accipiebat, ex locato me agere posse: quod si operae eius servi cum custodia pensabantur, quasi genus locati et conducti intervenit, sed quia pecunia non datur, praescriptis verbis datur actio: si vero nihil aliud quam cibaria praestabat nec de operis quicquam convenit, depositi actio est.

Dig. 16.3.1.10

Ulpianus 30 ad ed.

In conducto et locato et in negotio, ex quo diximus praescriptis verbis dandam actionem, et dolum et culpam praestabunt qui servum receperunt: at si cibaria tantum, dolum dumtaxat. sequemur tamen, ut pomponius ait, et quid habuerunt proscriptum aut quid convenerit, dummodo sciamus et si quid fuit proscriptum, dolum tamen eos praestaturos qui receperunt, qui solus in depositum venit.

Dig. 16.3.1.11

Ulpianus 30 ad ed.

Si te rogavero, ut rem meam perferas ad titium, ut is eam servet, qua actione tecum experiri possum, apud pomponium quaeritur. et putat tecum mandati, cum eo vero, qui eas res receperit, depositi: si vero tuo nomine receperit, tu quidem mihi mandati teneris, ille tibi depositi, quam actionem mihi praestabis mandati iudicio conventus.

Dig. 16.3.1.12

Ulpianus 30 ad ed.

Quod si rem tibi dedi, ut, si titius rem non recepisset, tu custodires, nec eam recepit, videndum est, utrum depositi tantum an et mandati actio sit. et pomponius dubitat: puto tamen mandati esse actionem, quia plenius fuit mandatum habens et custodiae legem.

Dig. 16.3.1.13

Ulpianus 30 ad ed.

Idem pomponius quaerit, si tibi mandavero, ut rem ab aliquo meo nomine receptam custodias, idque feceris, mandati an depositi tenearis. et magis probat mandati esse actionem, quia hic est primus contractus.

Dig. 16.3.1.14

Ulpianus 30 ad ed.

Idem pomponius quaerit, si apud te volentem me deponere iusseris apud libertum tuum deponere, an possim tecum depositi experiri. et ait, si tuo nomine, hoc est quasi te custodituro, deposuissem, mihi tecum depositi esse actionem: si vero suaseris mihi, ut magis apud eum deponam, tecum nullam esse actionem, cum illo depositi actio est: nec mandati teneris, quia rem meam gessi. sed si mandasti mihi, ut periculo tuo apud eum deponam, cur non sit mandati actio, non video. plane si fideiussisti pro eo, labeo omnimodo fideiussorem teneri ait, non tantum si dolo fecit is qui depositum suscepit, sed et si non fecit, est tamen res apud eum. quid enim si fureret is, apud quem depositum sit, vel pupillus sit, vel neque heres neque bonorum possessor neque successor eius exstaret? tenebitur ergo, ut id praestet, quod depositi actione praestari solet.

Dig. 16.3.1.15

Ulpianus 30 ad ed.

An in pupillum, apud quem sine tutoris auctoritate depositum est, depositi actio detur, quaeritur. sed probari oportet, si apud doli mali iam capacem deposueris, agi posse, si dolum commisit: nam et in quantum locupletior factus est, datur actio in eum et si dolus non intervenit.

Dig. 16.3.1.16

Ulpianus 30 ad ed.

Si res deposita deterior reddatur, quasi non reddita agi depositi potest: cum enim deterior redditur, potest dici dolo malo redditam non esse.

Dig. 16.3.1.17

Ulpianus 30 ad ed.

Si servus meus deposuerit, nihilo minus depositi habebo actionem.

Dig. 16.3.1.18

Ulpianus 30 ad ed.

Si apud servum deposuero et cum manumisso agam, Marcellus ait nec tenere actionem, quamvis solemus dicere doli etiam in servitute commissi teneri quem debere, quia et delicta et noxae caput sequuntur: erit igitur ad alias actiones competentes decurrendum.

Dig. 16.3.1.19

Ulpianus 30 ad ed.

Haec actio bonorum possessoribus ceterisque ^ ^ successoribus ^ ^ et ei, cui ex trebelliano senatus consulto restituta est hereditas, competit.

Dig. 16.3.1.20

Ulpianus 30 ad ed.

Non tantum praeteritus dolus in depositi actione veniet, sed etiam futurus, id est post litem contestatam.

Dig. 16.3.1.21

Ulpianus 30 ad ed.

Inde scribit neratius, si res deposita sine dolo malo amissa sit et post iudicium acceptum reciperaretur, nihilo minus recte ad restitutionem reum compelli nec debere absolvi, nisi restituat. idem neratius ait, quamvis tunc tecum depositi actum sit, cum restituendi facultatem non habeas horreis forte clusis, tamen si ante condemnationem restituendi facultatem habeas, condemnandum te nisi restituas, quia res apud te est: tunc enim quaerendum, an dolo malo feceris, cum rem non habes.

Dig. 16.3.1.22

Ulpianus 30 ad ed.

Est autem et apud iulianum libro tertio decimo digestorum scriptum eum qui rem deposuit statim posse depositi actione agere: hoc enim ipso dolo facere eum qui suscepit, quod reposcenti rem non reddat. Marcellus autem ait non semper videri posse dolo facere eum, qui reposcenti non reddat: quid enim si in provincia res sit vel in horreis, quorum aperiendorum condemnationis tempore non sit facultas ? vel condicio depositionis non exstitit ?

Dig. 16.3.1.23

Ulpianus 30 ad ed.

Hanc actionem bonae fidei esse dubitari non oportet.

Dig. 16.3.1.24

Ulpianus 30 ad ed.

Et ideo et fructus in hanc actionem venire et omnem causam et partum, dicendum est, ne nuda res veniat.

Dig. 16.3.1.25

Ulpianus 30 ad ed.

Si rem depositam vendidisti eamque postea redemisti in causam depositi, etiamsi sine dolo malo postea perierit, teneri te depositi, quia semel dolo fecisti, cum venderes.

Dig. 16.3.1.26

Ulpianus 30 ad ed.

In depositi quoque actione in litem iuratur.

Dig. 16.3.1.27

Ulpianus 30 ad ed.

Non solum si servus meus, sed et si is qui bona fide mihi serviat rem deposuerit, aequissimum erit dari mihi actionem, si rem ad me pertinentem deposuit.

Dig. 16.3.1.28

Ulpianus 30 ad ed.

Simili modo et si usum fructum in servo habeam, si id quod deposuit ex eo peculio fuit quod ad me pertinebat vel res mea fuit, eadem actione agere potero.

Dig. 16.3.1.29

Ulpianus 30 ad ed.

Item si servus hereditarius deposuerit, heredi postea adeunti competit actio.

Dig. 16.3.1.30

Ulpianus 30 ad ed.

Si servus deposuit, sive vivat sive decesserit, utiliter dominus hac actione experietur. ipse autem servus manumissus non poterit agere: sed et si fuerit alienatus, adhuc ei competit actio cuius fuit servus cum deponeret: initium enim contractus spectandum est.

Dig. 16.3.1.31

Ulpianus 30 ad ed.

Si duorum servus sit qui deposuit, unicuique dominorum in partem competit depositi.

Dig. 16.3.1.32

Ulpianus 30 ad ed.

Si rem a servo depositam titio, quem dominum eius putasti cum non esset, restituisses, depositi actione te non teneri celsus ait, quia nullus dolus intercessit: cum titio autem, cui res restituta est, dominus servi aget: sed si exhibuerit, vindicabitur, si vero, cum sciret esse alienum, consumpserit, condemnabitur, quia dolo fecit quo minus possideret.

Dig. 16.3.1.33

Ulpianus 30 ad ed.

Eleganter apud iulianum quaeritur, si pecuniam servus apud me deposuit ita, ut domino pro libertate eius dem, egoque dedero, an tenear depositi. et libro tertio decimo digestorum scribit, si quidem sic dedero quasi ad hoc penes me depositam teque certioravero, non competere tibi depositi actionem, quia sciens recepisti, careo igitur dolo: si vero quasi meam pro libertate eius numeravero, tenebor. quae sententia vera mihi videtur: hic enim non tantum sine dolo malo non reddidit, sed nec reddidit: aliud est enim reddere, aliud quasi de suo dare.

Dig. 16.3.1.34

Ulpianus 30 ad ed.

Si pecunia apud te ab initio hac lege deposita sit, ut si voluisses uteris, prius quam utaris depositi teneberis.

Dig. 16.3.1.35

Ulpianus 30 ad ed.

Saepe evenit, ut res deposita vel nummi periculo sint eius, apud quem deponuntur: ut puta si hoc nominatim convenit. sed et si se quis deposito obtulit, idem iulianus scribit periculo se depositi illigasse, ita tamen, ut non solum dolum, sed etiam culpam et custodiam praestet, non tamen casus fortuitos.

Dig. 16.3.1.36

Ulpianus 30 ad ed.

Si pecunia in sacculo signato deposita sit et unus ex heredibus eius qui deposuit veniat repetens, quemadmodum ei satisfiat, videndum est. promenda pecunia est vel coram praetore vel intervenientibus honestis personis et exsolvenda pro parte hereditaria: sed et si resignetur, non contra legem depositi fiet, cum vel praetore auctore vel honestis personis intervenientibus hoc eveniet: residuo vel apud eum remanente, si hoc voluerit (sigillis videlicet prius ei impressis vel a praetore vel ab his, quibus coram signacula remota sunt) vel, si hoc recusaverit, in aede deponendo. sed si res sunt, quae dividi non possunt, omnes debebit tradere satisdatione idonea a petitore ei praestanda in hoc, quod supra eius partem est: satisdatione autem non interveniente rem in aedem deponi et omni actione depositarium liberari.

Dig. 16.3.1.37

Ulpianus 30 ad ed.

Apud iulianum libro tertio decimo digestorum talis species relata est: ait enim, si depositor decesserit et duo existant, qui inter se contendant unusquisque solum se heredem dicens, ei tradendam rem, qui paratus est adversus alterum reum defendere, hoc est eum qui depositum suscepit: quod si neuter hoc onus suscipiat, commodissime dici ait non esse cogendum a praetore iudicium suscipere: oportere igitur rem deponi in aede aliqua, donec de hereditate iudicetur.

Dig. 16.3.1.38

Ulpianus 30 ad ed.

Si quis tabulas testamenti apud se depositas pluribus praesentibus legit, ait labeo depositi actione recte de tabulis agi posse. ego arbitror et iniuriarum agi posse, si hoc animo recitatum testamentum est quibusdam praesentibus, ut iudicia secreta eius qui testatus est divulgarentur.

Dig. 16.3.1.39

Ulpianus 30 ad ed.

Si praedo vel fur deposuerint, et hos Marcellus libro sexto digestorum putat recte depositi acturos: nam interest eorum eo, quod teneantur.

Dig. 16.3.1.40

Ulpianus 30 ad ed.

Si quis argentum vel aurum depositum petat, utrum speciem an et pondus complecti debeat? et magis est, ut utrumque complectatur, scyphum forte vel lancem vel pateram dicendo et materiam et pondus addendo. sed et si purpura sit infecta vel lana, pondus similiter adiciendum salvo eo, ut, si de quantitate ponderis incertum est, iuranti succurratur.

Dig. 16.3.1.41

Ulpianus 30 ad ed.

Si cista signata deposita sit, utrum cista tantum petatur an et species comprehendendae sint? et ait trebatius cistam repetendam, non singularum rerum depositi agendum: quod et si res ostensae sunt et sic depositae, adiciendae sunt et species vestis. labeo autem ait eum qui cistam deponit singulas quoque res videri deponere: ergo et de rebus agere eum oportet. quid ergo si ignoraverit is, qui depositum suscipiebat, res ibi esse? non multum facere, cum suscepit depositum. ergo et rerum depositi agi posse existimo, quamvis signata cista deposita sit.

Dig. 16.3.1.42

Ulpianus 30 ad ed.

Filium familias teneri depositi constat, quia et ceteris actionibus tenetur: sed et cum patre eius agi potest dumtaxat de peculio. idem et in servo: nam cum domino agetur. plane et iulianus scripsit et nobis videtur, si eorum nomine qui sunt in potestate agatur, veniat in iudicium et si quid per eum in cuius iure sunt captus fraudatusve est, ut et dolus eorum veniat, non tantum ipsorum cum quibus contractum est.

Dig. 16.3.1.43

Ulpianus 30 ad ed.

Si apud duos sit deposita res, adversus unumquemque eorum agi poterit nec liberabitur alter, si cum altero agatur: non enim electione, sed solutione liberantur. proinde si ambo dolo fecerunt et alter quod interest praestiterit, alter non convenietur exemplo duorum tutorum: quod si alter vel nihil vel minus facere possit, ad alium pervenietur: idemque et si alter dolo non fecerit et idcirco sit absolutus, nam ad alium pervenietur.

Dig. 16.3.1.44

Ulpianus 30 ad ed.

Sed si duo deposuerint et ambo agant, si quidem sic deposuerunt, ut vel unus tollat totum, poterit in solidum agere: sin vero pro parte, pro qua eorum interest, tunc dicendum est in partem condemnationem faciendam.

Dig. 16.3.1.45

Ulpianus 30 ad ed.

Si deposuero apud te, ut post mortem tuam reddas, et tecum et cum herede tuo possum depositi agere: possum enim mutare voluntatem et ante mortem tuam depositum repetere.

Dig. 16.3.1.46

Ulpianus 30 ad ed.

Proinde et si sic deposuero, ut post mortem meam reddatur, potero et ego et heres meus agere depositi, ego mutata voluntate.

Dig. 16.3.1.47

Ulpianus 30 ad ed.

Quia autem dolus dumtaxat in hanc actionem venit, quaesitum est, si heres rem apud testatorem depositam vel commodatam distraxit ignarus depositam vel commodatam, an teneatur. et quia dolo non fecit, non tenebitur de re: an tamen vel de pretio teneatur, quod ad eum pervenit? et verius est teneri eum: hoc enim ipso dolo facit, quod id quod ad se pervenit non reddit.

Dig. 16.3.2

Paulus 31 ad ed.

Quid ergo, si pretium nondum exegit aut minoris quam debuit vendidit? actiones suas tantummodo praestabit.

Dig. 16.3.3

Ulpianus 31 ad ed.

Plane si possit rem redimere et praestare nec velit, non caret culpa, quemadmodum si redemptam vel alia ratione suam factam noluit praestare causatus, quod semel ignarus vendiderit.

Dig. 16.3.4

Paulus 5 ad plaut.

Sed et si non sit heres, sed putavit se heredem et vendidit, simili modo lucrum ei extorquebitur.

Dig. 16.3.5pr.

Ulpianus 30 ad ed.

Ei, apud quem depositum esse dicetur, contrarium iudicium depositi datur, in quo iudicio merito in litem non iuratur: non enim de fide rupta agitur, sed de indemnitate eius qui depositum suscepit.

Dig. 16.3.5.1

Ulpianus 30 ad ed.

In sequestrem depositi actio competit. si tamen cum sequestre convenit, ut certo loco rem depositam exhiberet, nec ibi exhibeat, teneri eum palam est: quod si de pluribus locis convenit, in arbitrio eius est, quo loci exhibeat: sed si nihil convenit, denuntiandum est ei, ut apud praetorem exhibeat.

Dig. 16.3.5.2

Ulpianus 30 ad ed.

Si velit sequester officium deponere, quid ei faciendum sit? et ait pomponius adire eum praetorem oportere et ex eius auctoritate denuntiatione facta his qui eum elegerant, ei rem restituendam qui praesens fuerit. sed hoc non semper verum puto: nam plerumque non est permittendum officium, quod semel suscepit, contra legem depositionis deponere, nisi iustissima causa interveniente: et cum permittitur, raro ei res restituenda est qui venit, sed oportet eam arbitratu iudicis apud aedem aliquam deponi.

Dig. 16.3.6

Paulus 2 ad ed.

Proprie autem in sequestre est depositum, quod a pluribus in solidum certa condicione custodiendum reddendumque traditur.

Dig. 16.3.7pr.

Ulpianus 30 ad ed.

Si hominem apud se depositum ut quaestio de eo haberetur, ac propterea vinctum vel ad malam mansionem extensum sequester solverit misericordia ductus, dolo proximum esse quod factum est arbitror, quia cum sciret, cui rei pararetur, intempestive misericordiam exercuit, cum posset non suscipere talem causam quam decipere.

Dig. 16.3.7.1

Ulpianus 30 ad ed.

Datur actio depositi in heredem ex dolo defuncti in solidum: quamquam enim alias ex dolo defuncti non solemus teneri nisi pro ea parte quae ad nos pervenit, tamen hic dolus ex contractu reique persecutione descendit ideoque in solidum unus heres tenetur, plures vero pro ea parte qua quisque heres est.

Dig. 16.3.7.2

Ulpianus 30 ad ed.

Quotiens foro cedunt nummularii, solet primo loco ratio haberi depositariorum, hoc est eorum qui depositas pecunias habuerunt, non quas faenore apud nummularios vel cum nummulariis vel per ipsos exercebant. et ante privilegia igitur, si bona venierint, depositariorum ratio habetur, dummodo eorum qui vel postea usuras acceperunt ratio non habeatur, quasi renuntiaverint deposito.

Dig. 16.3.7.3

Ulpianus 30 ad ed.

Item quaeritur, utrum ordo spectetur eorum qui deposuerunt an vero simul omnium depositariorum ratio habeatur. et constat simul admittendos: hoc enim rescripto principali significatur.

Dig. 16.3.8

Papinianus 9 quaest.

Quod privilegium exercetur non in ea tantum quantitate, quae in bonis argentarii ex pecunia deposita reperta est, sed in omnibus fraudatoris facultatibus: idque propter necessarium usum argentariorum ex utilitate publica receptum est. plane sumptus causa, qui necessarie factus est, semper praecedit: nam deducto eo bonorum calculus subduci solet.

Dig. 16.3.9

Paulus 17 ad ed.

In depositi actione si ex facto defuncti agatur adversus unum ex pluribus heredibus, pro parte hereditaria agere debeo: si vero ex suo delicto, pro parte non ago: merito, quia aestimatio refertur ad dolum, quem in solidum ipse heres admisit.

Dig. 16.3.10

Iulianus 2 ex minic.

Nec adversus coheredes eius, qui dolo carent, depositi actio competit.

Dig. 16.3.11

Ulpianus 41 ad sab.

Quod servus deposuit, is apud quem depositum est servo rectissime reddet ex bona fide: nec enim convenit bonae fidei abnegare id quod quis accepit, sed debebit reddere ei a quo accepit, sic tamen, si sine dolo omni reddat, hoc est, ut nec culpae quidem suspicio sit. denique sabinus hoc explicuit addendo: " nec ulla causa intervenit, quare putare possit dominum reddi nolle". hoc ita est, si potuit suspicari, iusta scilicet ratione motus: ceterum sufficit bonam fidem adesse. sed et si ante eius rei furtum fecerat servus, si tamen ignoravit is apud quem deposuit vel credidit dominum non invitum fore huius solutionis, liberari potest: bona enim fides exigitur. non tantum autem si remanenti in servitute fuerit solutum, sed etiam si manumisso vel alienato, ex iustis causis liberatio contingit, scilicet si quis ignorans manumissum vel alienatum solvit. idemque et in omnibus debitoribus servandum pomponius scribit.

Dig. 16.3.12pr.

Pomponius 22 ad sab.

Si in asia depositum fuerit, ut romae reddatur, videtur id actum, ut non impensa eius id fiat apud quem depositum sit, sed eius qui deposuit.

Dig. 16.3.12.1

Pomponius 22 ad sab.

Depositum eo loco restitui debet, in quo sine dolo malo eius est, apud quem depositum est: ubi vero depositum est, nihil interest. eadem dicenda sunt communiter et in omnibus bonae fidei iudiciis. sed dicendum est, si velit actor suis impensis suoque periculo perferri rem romam, ut audiendus sit, quoniam et in ad exhibendum actione id servatur.

Dig. 16.3.12.2

Pomponius 22 ad sab.

Cum sequestre recte agetur depositi sequestraria actione, quam et in heredem eius reddi oportet.

Dig. 16.3.12.3

Pomponius 22 ad sab.

Quemadmodum quod ex stipulatu vel ex testamento dari oporteat, post iudicium acceptum cum detrimento rei periret, sic depositum quoque eo die, quo depositi actum sit, periculo eius apud quem depositum fuerit est, si iudicii accipiendi tempore potuit id reddere reus nec reddidit.

Dig. 16.3.13pr.

Paulus 31 ad ed.

Si quis infitiatus sit non adversus dominum, sed quod eum qui rem depositam petebat verum procuratorem non putaret aut eius qui deposuisset heredem, nihil dolo malo fecit: postea autem si cognoverit, cum eo agi poterit, quoniam nunc incipit dolo malo facere, si reddere eam non vult.

Dig. 16.3.13.1

Paulus 31 ad ed.

Competit etiam condictio depositae rei nomine, sed non antequam id dolo admissum sit: non enim quemquam hoc ipso, quod depositum accipiat, condictione obligari, verum quod dolum malum admiserit.

Dig. 16.3.14pr.

Gaius 9 ad ed. provinc.

Si plures heredes exstiterint ei qui deposuerit, dicitur, si maior pars adierit, restituendam rem praesentibus: maiorem autem partem non ex numero utique personarum, sed ex magnitudine portionum hereditariarum intellegendam: cautela idonea reddenda.

Dig. 16.3.14.1

Gaius 9 ad ed. provinc.

Sive autem cum ipso apud quem deposita est actum fuerit sive cum herede eius et sua natura res ante rem iudicatam interciderit, veluti si homo mortuus fuerit, sabinus et cassius absolvi debere eum cum quo actum est dixerunt, quia aequum esset naturalem interitum ad actorem pertinere, utique cum interitura esset ea res et si restituta esset actori.

Dig. 16.3.15

Iulianus 13 Dig.

Qui rem suam deponi apud se patitur vel utendam rogat, nec depositi nec commodati actione tenetur: sicuti qui rem suam conducit aut precario rogat, nec precario tenetur nec ex locato.

Dig. 16.3.16

Africanus 7 quaest.

Si is, apud quem rem deposueris, apud alium eam deponat et ille dolo quid admiserit, ob dolum eius, apud quem postea sit depositum, eatenus eum teneri apud quem tu deposueris, ut actiones suas tibi praestet.

Dig. 16.3.17pr.

Florus 7 inst.

Licet deponere tam plures quam unus possunt, attamen apud sequestrem non nisi plures deponere possunt: nam tum id fit, cum aliqua res in controversiam deducitur. itaque hoc casu in solidum unusquisque videtur deposuisse: quod aliter est, cum rem communem plures deponunt.

Dig. 16.3.17.1

Florus 7 inst.

Rei depositae proprietas apud deponentem manet: sed et possessio, nisi apud sequestrem deposita est: nam tum demum sequester possidet: id enim agitur ea depositione, ut neutrius possessioni id tempus procedat.

Dig. 16.3.18

Nerva 2 membr.

De eo, quod tumultus incendii ruinae naufragii causa depositum est, in heredem de dolo mortui actio est pro hereditaria portione et in simplum et intra annum quoque: in ipsum et in solidum et in duplum et in perpetuum datur.

Dig. 16.3.19

Ulpianus 17 ad ed.

Iulianus et Marcellus putant filium familias depositi recte agere posse.

Dig. 16.3.20

Paulus 18 ad ed.

Si sine dolo malo rem depositam tibi amiseris, nec depositi teneris nec cavere debes, si deprehenderis eam reddi: si tamen ad te iterum pervenerit, depositi teneris.

Dig. 16.3.21pr.

Paulus 60 ad ed.

Si apud filium familias res deposita sit et emancipatus rem teneat, pater nec intra annum de peculio debet conveniri, sed ipse filius.

Dig. 16.3.21.1

Paulus 60 ad ed.

Plus trebatius existimat, etiamsi apud servum depositum sit et manumissus rem teneat, in ipsum dandam actionem, non in dominum, licet ex ceteris causis in manumissum actio non datur.

Dig. 16.3.22

Marcellus 5 Dig.

Si duo heredes rem apud defunctum depositam dolo interverterint, quodam utique casu in partes tenebuntur: nam si diviserint decem milia, quae apud defunctum deposita fuerant, et quina milia abstulerint et uterque solvendo est, in partes obstricti erunt: nec enim amplius actoris interest. quod si lancem conflaverint aut conflari ab aliquo passi fuerint aliave quae species dolo eorum interversa fuerit, in solidum conveniri poterunt, ac si ipsi servandam suscepissent: nam certe verum est in solidum quemque dolo fecisse et nisi pro solido res non potest restitui. nec tamen absurde sentiet, qui hoc putaverit plane nisi integrae rei restitutione eum, cum quo actum fuerit, liberari non posse, condemnandum tamen, si res non restituetur, pro qua parte heres exstitit.

Dig. 16.3.23

Modestinus 2 diff.

Actione depositi conventus servo constituto cibariorum nomine apud eundem iudicem utiliter experitur.

Dig. 16.3.24

Papinianus 9 quaest.

" lucius titius sempronio salutem. centum nummos, quos hac die commendasti mihi adnumerante servo sticho actore, esse apud me ut notum haberes, hac epistula manu mea scripta tibi notum facio: quae quando voles et ubi voles confestim tibi numerabo. " quaeritur propter usurarum incrementum. respondi depositi actionem locum habere: quid est enim aliud commendare quam deponere? quod ita verum est, si id actum est, ut corpora nummorum eadem redderentur: nam si ut tantundem solveretur convenit, egreditur ea res depositi notissimos terminos. in qua quaestione si depositi actio non teneat, cum convenit tantundem, non idem reddi, rationem usurarum haberi non facile dicendum est. et est quidem constitutum in bonae fidei iudiciis, quod ad usuras attinet ut tantundem possit officium arbitri quantum stipulatio: sed contra bonam fidem et depositi naturam est usuras ab eo desiderare temporis ante moram, qui beneficium in suscipienda pecunia dedit. si tamen ab initio de usuris praestandis convenit, lex contractus servabitur.

Dig. 16.3.25pr.

Papinianus 3 resp.

Die sponsaliorum aut postea res oblatas puellae, quae sui iuris fuit, pater suscepit: heres eius ut exhibeat recte convenietur etiam actione depositi.

Dig. 16.3.25.1

Papinianus 3 resp.

Qui pecuniam apud se non obsignatam, ut tantundem redderet, depositam ad usus proprios convertit, post moram in usuras quoque iudicio depositi condemnandus est.

Dig. 16.3.26pr.

Paulus 4 resp.

Publia maevia cum proficisceretur ad maritum suum, arcam clusam cum veste et instrumentis commendavit gaiae seiae et dixit ei: " cum sana salvave venero, restitues mihi: certe, si aliquid mihi humanum contigerit, filio meo, quem ex alio marito suscepi. " defuncta ea intestata desidero res commendatae cui restitui debeant, filio an marito. paulus respondit filio.

Dig. 16.3.26.1

Paulus 4 resp.

Lucius titius ita cavit: " elabon kai exw eis logon parakatavykys ta progegrammena tou arguriou dynaria muria, kai panta poiysw kai sumfwnw kai hwmologysa, hws progegraptai: kai sunevemyn xorygysai soi tokon hekastys mnas hekastou mynos obolous tessaras mexri tys apodosews pantos tou arguriou. " quaero, an usurae peti possunt. paulus respondit eum contractum de quo quaeritur depositae pecuniae modum excedere, et ideo secundum conventionem usurae quoque actione depositi peti possunt.

Dig. 16.3.26.2

Paulus 4 resp.

" titius semproniis salutem. habere me a vobis auri pondo plus minus decem et discos duos saccum signatum: ex quibus debetis mihi decem, quos apud titium deposuistis: item quos trophimati decem: item ex ratione patris vestri decem et quod excurrit. " quaero, an ex huiuscemodi scriptura aliqua obligatio nata sit, scilicet quod ad solam pecuniae causam attinet. respondit ex epistula, de qua quaeritur, obligationem quidem nullam natam videri, sed probationem depositarum rerum impleri posse: an autem is quoque, qui deberi sibi cavit in eadem epistula decem, probare possit hoc quod scripsit, iudicem aestimaturum.

Dig. 16.3.27

Paulus 7 resp.

Lucius titius cum haberet filiam in potestate seiam, pamphilo servo alieno in matrimonium collocavit, cui etiam dotem dedit, quam sub titulo depositi in cautionem contulit, et postea nulla denuntiatione a domino facta pater decessit, mox et pamphilus servus: quaero, qua actione seia pecuniam petere possit, cum ipsa patri heres extiterit. paulus respondit, quoniam dos constitui non potuit, ex causa depositi actione de peculio pecuniam repetendam.

Dig. 16.3.28

Scaevola 1 resp.

Quintus caecilius candidus ad paccium rogatianum epistulam scripsit in verba infra scripta: " caecilius candidus paccio rogatiano suo salutem. viginti quinque nummorum quos apud me esse voluisti, notum tibi ista hac epistula facio ad ratiunculam meam ea pervenisse: quibus ut primum prospiciam, ne vacua tibi sint: id est ut usuras eorum accipias, curae habebo". quaesitum est, an ex ea epistula etiam usurae peti possint. respondi deberi ex bonae fidei iudicio usuras, sive percepit sive pecunia in re sua usus est.

Dig. 16.3.29pr.

Paulus 2 sent.

Si sacculum vel argentum signatum deposuero et is penes quem depositum fuit me invito contrectaverit, et depositi et furti actio mihi in eum competit.

Dig. 16.3.29.1

Paulus 2 sent.

Si ex permissu meo deposita pecunia is penes quem deposita est utatur, ut in ceteris bonae fidei iudiciis usuras eius nomine praestare mihi cogitur.

Dig. 16.3.30

Nerva 1 resp.

Si fideiussor pro te apud quem depositum est litis aestimatione damnatus sit, rem tuam fieri.

Dig. 16.3.31pr.

Tryphonus 9 disp.

Bona fides quae in contractibus exigitur aequitatem summam desiderat: sed eam utrum aestimamus ad merum ius gentium an vero cum praeceptis civilibus et praetoriis? veluti reus capitalis iudicii deposuit apud te centum: is deportatus est, bona eius publicata sunt: utrumne ipsi haec reddenda an in publicum deferenda sint? si tantum naturale et gentium ius intuemur, ei qui dedit restituenda sunt: si civile ius et legum ordinem, magis in publicum deferenda sunt: nam male meritus publice, ut exemplo aliis ad deterrenda maleficia sit, etiam egestate laborare debet.

Dig. 16.3.31.1

Tryphonus 9 disp.

Incurrit hic et alia inspectio. bonam fidem inter eos tantum, quos contractum est, nullo extrinsecus adsumpto aestimare debemus an respectu etiam aliarum personarum, ad quas id quod geritur pertinet? exempli loco latro spolia quae mihi abstulit posuit apud seium inscium de malitia deponentis: utrum latroni an mihi restituere seius debeat? si per se dantem accipientemque intuemur, haec est bona fides, ut commissam rem recipiat is qui dedit: si totius rei aequitatem, quae ex omnibus personis quae negotio isto continguntur impletur, mihi reddenda sunt, quo facto scelestissimo adempta sunt. et probo hanc esse iustitiam, quae suum cuique ita tribuit, ut non distrahatur ab ullius personae iustiore repetitione. quod si ego ad petenda ea non veniam, nihilo minus ei restituenda sunt qui deposuit, quamvis male quaesita deposuit. quod et Marcellus in praedone et fure scribit. si tamen ignorans latro cuius filio vel servo rem abstulisset apud patrem dominumve eius deposuit ignorantem, nec ex iure gentium consistet depositum, cuius haec est potestas, ut alii, non domino sua ipsius res quasi aliena, servanda detur. et si rem meam fur, quam me ignorante subripuit, apud me etiamnunc delictum eius ignorantem deposuerit, recte dicetur non contrahi depositum, quia non est ex fide bona rem suam dominum praedoni restituere compelli. sed et si etiamnunc ab ignorante domino tradita sit quasi ex causa depositi, tamen indebiti dati condictio competet.

Dig. 16.3.32

Celsus 11 Dig.

Quod nerva diceret latiorem culpam dolum esse, proculo displicebat, mihi verissimum videtur. nam et si quis non ad eum modum quem hominum natura desiderat diligens est, nisi tamen ad suum modum curam in deposito praestat, fraude non caret: nec enim salva fide minorem is quam suis rebus diligentiam praestabit.

Dig. 16.3.33

Labeo 6 post. a iav. epit.

Servus tuus pecuniam cum attio in sequestre deposuit apud maevium ea condicione, ut ea tibi redderetur, si tuam esse probasses, si minus, ut attio redderetur. posse dixi cum eo, apud quem deposita esset, incerti agere, id est ad exhibendum, et exhibitam vindicare, quia servus in deponendo tuum ius deterius facere non potuisset.

Dig. 16.3.34

Labeo 2 pith.

Potes agere depositi cum eo, qui tibi non aliter quam nummis a te acceptis depositum reddere voluerit, quamvis sine mora et incorruptum reddiderit.

Dig. 16.1.0. Ad senatus consultum velleianum.

Dig. 16.1.1pr.

Paulus 30 ad ed.

Velleiano senatus consulto plenissime comprehensum est, ne pro ullo feminae intercederent.

Dig. 16.1.1.1

Paulus 30 ad ed.

Nam sicut moribus civilia officia adempta sunt feminis et pleraque ipso iure non valent, ita multo magis adimendum eis fuit id officium, in quo non sola opera nudumque ministerium earum versaretur, sed etiam periculum rei familiaris.

Dig. 16.1.1.2

Paulus 30 ad ed.

Aequum autem visum est ita mulieri succurri, ut in veterem debitorem aut in eum, qui pro se constituisset mulierem ream, actio daretur: magis enim ille quam creditor mulierem decepit.

Dig. 16.1.2pr.

Ulpianus 29 ad ed.

Et primo quidem temporibus divi augusti, mox deinde claudii edictis eorum erat interdictum, ne feminae pro viris suis intercederent.

Dig. 16.1.2.1

Ulpianus 29 ad ed.

Postea factum est senatus consultum, quo plenissime feminis omnibus subventum est. cuius senatus consulti verba haec sunt: " quod marcus silanus et velleus tutor consules verba fecerunt de obligationibus feminarum, quae pro aliis reae fierent, quid de ea re fieri oportet, de ea re ita censuere: quod ad fideiussores et mutui dationes pro aliis, quibus intercesserint feminae, pertinet, tametsi ante videtur ita ius dictum esse, ne eo nomine ab his petitio neve in eas actio detur, cum eas virilibus officiis fungi et eius generis obligationibus obstringi non sit aequum, arbitrari senatum recte atque ordine facturos ad quos de ea re in iure aditum erit, si dederint operam, ut in ea re senatus voluntas servetur".

Dig. 16.1.2.2

Ulpianus 29 ad ed.

Verba itaque senatus consulti excutiamus prius providentia amplissimi ordinis laudata, quia opem tulit mulieribus propter sexus inbecillitatem multis huiuscemodi casibus suppositis atque obiectis.

Dig. 16.1.2.3

Ulpianus 29 ad ed.

Sed ita demum eis subvenit, si non callide sint versatae: hoc enim divus pius et severus rescripserunt. nam deceptis, non decipientibus opitulatur et est et graecum severi tale rescriptum: tais apatwsais gunaicin to dogma tys sugklytou boulys ou boyvei. infirmitas enim feminarum, non calliditas auxilium demeruit.

Dig. 16.1.2.4

Ulpianus 29 ad ed.

Omnis omnino obligatio senatus consulto velleiano comprehenditur, sive verbis sive re sive quocumque alio contractu intercesserint.

Dig. 16.1.2.5

Ulpianus 29 ad ed.

Sed et si mulier defensor alicuius exstiterit, procul dubio intercedit: suscipit enim in se alienam obligationem, quippe cum ex hac re subeat condemnationem. proinde neque maritum neque filium neque patrem permittitur mulieri defendere.

Dig. 16.1.3

Paulus 30 ad ed.

Sed si eum defendat, qui damnatus regressum ad eam habeat, veluti cum venditorem hereditatis sibi venditae vel fideiussorem suum defendat, intercedere non videtur.

Dig. 16.1.4pr.

Ulpianus 29 ad ed.

Sed si ego cum muliere ab initio contraxerim, cum ignorarem cui haec factum vellet, non dubio senatus consultum cessare: et ita divus pius et imperator noster rescripserunt.

Dig. 16.1.4.1

Ulpianus 29 ad ed.

Proinde si, dum vult titio donatum, accepit a me mutuam pecuniam et eam titio donavit, cessabit senatus consultum. sed et si tibi donatura creditori tuo nummos numeraverit, non intercedit: senatus enim obligatae mulieri succurrere voluit, non donanti: hoc ideo, quia facilius se mulier obligat quam alicui donat.

Dig. 16.1.5

Gaius 9 ad ed. provinc.

Nec interest, pecuniam solvendi causa numeret an quamlibet suam rem in solutum det: nam et si vendiderit rem suam, sive pretium acceptum pro alio solvit sive emptorem delegavit creditori alieno, non puto senatus consulto locum esse.

Dig. 16.1.6

Ulpianus 29 ad ed.

Si fideiussores pro defensore absentis filii ex mandato matris eius intercesserint, quaeritur, an etiam his senatus consulto subveniatur. et ait papinianus libro nono quaestionum exceptione eos usuros: nec multum facere, quod pro defensore fideiusserunt, cum contemplatione mandati matris intervenerunt. plane, inquit, si qui accepit eos fideiussores, matrem eis mandasse ignoravit, exceptionem senatus consulti replicatione doli repellendam.

Dig. 16.1.7

Papinianus 9 quaest.

Quamquam igitur fideiussor doli replicatione posita defensionem exceptionis amittit ^ amittat^, nullam tamen replicationem adversus mulierem habebit, quia facti non potest ignorationem praetendere. sed non erit iniquum dari negotiorum gestorum actionem in defensorem, quia mandati causa per senatus consultum constituitur irrita et pecunia fideiussoris liberatur.

Dig. 16.1.8pr.

Ulpianus 29 ad ed.

Quamvis pignoris datio intercessionem faciat, tamen iulianus libro duodecimo digestorum scribit redditionem pignoris, si creditrix mulier rem, quam pignori acceperat, debitori liberaverit, non esse intercessionem.

Dig. 16.1.8.1

Ulpianus 29 ad ed.

Si mulier intervenerit apud tutores filii sui, ne hi praedia eius distraherent, et indemnitatem eis repromiserit, papinianus libro nono quaestionum non putat eam intercessisse: nullam enim obligationem alienam recepisse neque veterem neque novam, sed ipsam fecisse hanc obligationem.

Dig. 16.1.8.2

Ulpianus 29 ad ed.

Si mulier apud primum pro secundo intervenerit, mox pro primo apud creditorem eius, duas intercessiones factas iulianus libro duodecimo digestorum scribit, unam pro secundo apud primum, aliam pro primo apud creditorem eius, et ideo et primo restitui obligationem et adversus eum. Marcellus autem notat esse aliquam differentiam, utrum hoc agatur, ut ab initio mulier in alterius locum subdatur et onus debitoris, a quo obligationem transferre creditor voluit, suscipiat, an vero quasi debitrix delegetur, scilicet ut, si quasi debitrix delegata est, una sit intercessio. proinde secundum hanc suam distinctionem in prima visione, ubi quasi debitrix delegata est, exceptionem ei senatus consulti Marcellus non daret: sed condemnata vel ante condemnationem condicere utique ei a quo delegata est poterit vel quod ei abest vel, si nondum abest, liberationem.

Dig. 16.1.8.3

Ulpianus 29 ad ed.

Interdum intercedenti mulieri et condictio competit, ut puta si contra senatus consultum obligata debitorem suum delegaverit: nam hic ipsi competit condictio, quemadmodum, si pecuniam solvisset, condiceret: solvit enim et qui reum delegat.

Dig. 16.1.8.4

Ulpianus 29 ad ed.

Sed si is, qui a muliere delegatus est, debitor eius non fuit, exceptione senatus consulti poterit uti, quemadmodum mulieris fideiussor.

Dig. 16.1.8.5

Ulpianus 29 ad ed.

Plane si mulier intercessura debitorem suum delegaverit, senatus consultum cessat, quia et si pecuniam numerasset, cessaret senatus consultum: mulier enim per senatus consultum relevatur, non quae deminuit, restituitur.

Dig. 16.1.8.6

Ulpianus 29 ad ed.

Sed si eum delegaverit qui debitor eius non fuit, fraus senatus consulto facta videbitur et ideo exceptio datur.

Dig. 16.1.8.7

Ulpianus 29 ad ed.

Quotiens pro debitore intercesserit mulier, datur in eum pristina actio, etsi ille prius acceptilatione liberatus sit quam mulier intercesserit.

Dig. 16.1.8.8

Ulpianus 29 ad ed.

Si convenerit cum debitore, ut expromissorem daret, et acceptum ei latum sit, deinde is dederit mulierem quae auxilio senatus consulti munita est, potest ei condici, quasi non dedisset: quid enim interest, non det an talem det? non erit igitur actio utilis necessaria, cum condictio competat.

Dig. 16.1.8.9

Ulpianus 29 ad ed.

Marcellus quoque scribit, si mulieri post intercessionem accepto tulerit creditor, nihilo minus restitutoriam actionem ei dari debere: inanem enim obligationem dimisit.

Dig. 16.1.8.10

Ulpianus 29 ad ed.

Si mulier post intercessionem sic solverit, ne repetere possit, iuste prior debitor actionem recusat. sed cum relevatur reus, si mulier sic solvit, ut repetere non possit, et cum ei mulieri, quae repetere non poterat, si solvisset, accepto tulit creditor, similiter relevatur reus.

Dig. 16.1.8.11

Ulpianus 29 ad ed.

Quamquam in omnes qui liberati sunt restituitur actio, non tamen omnibus restituitur. ut puta duo rei stipulandi fuerunt: apud alterum mulier intercessit: ei soli restituitur obligatio, apud quem intercessit.

Dig. 16.1.8.12

Ulpianus 29 ad ed.

Si mulieri heres extiterit creditor, videndum, an restitutoria uti non possit. et ait iulianus libro duodecimo restitutoria eum nihilo minus usurum, non immerito, cum non obligatae cum effectu successerit: denique in falcidia hoc aes alienum non imputabitur.

Dig. 16.1.8.13

Ulpianus 29 ad ed.

Plane si mihi proponas mulierem veteri debitori successisse, dicendum erit restitutoria eam conveniri posse, sed et directa actione: nihil enim eius interest, qua actione conveniatur.

Dig. 16.1.8.14

Ulpianus 29 ad ed.

Si, cum essem tibi contracturus, mulier intervenerit, ut cum ipsa potius contraham, videtur intercessisse: quo casu datur in te actio, quae instituit magis quam restituit obligationem, ut perinde obligeris eodem genere obligationis, quo mulier est obligata: verbi gratia si per stipulationem mulier, et tu quasi ex stipulatu convenieris.

Dig. 16.1.8.15

Ulpianus 29 ad ed.

Illud videndum est, si mulier pro eo intervenit, qui, si cum ipso contractum esset, non obligaretur, an hac actione ille debeat teneri? ut puta si pro pupillo intercessit, qui sine tutoris auctoritate non obligatur. et puto non obligari pupillum, nisi locupletior factus est ex hoc contractu. item si minor viginti quinque annis sit, pro quo mulier intercessit, in integrum restitutionem poterit implorare: vel filius contra senatus consultum contracturus est.

Dig. 16.1.9

Paulus 6 reg.

Sed si pro alieno servo intercedat, quemadmodum in patrem familias priorem reum restituitur actio, ita in dominum quoque restituenda erit.

Dig. 16.1.10

Ulpianus 29 ad ed.

Hae actiones, quae in eos pro quibus mulier intercessit dantur, et heredibus et in heredes et perpetuo competunt: habent enim rei persecutionem: ceteris quoque honorariis successoribus dabuntur et adversus eos.

Dig. 16.1.11

Paulus 30 ad ed.

Si mulier tamquam in usus suos pecuniam acceperit alii creditura, non est locus senatus consulto: alioquin nemo cum feminis contrahet, quia ignorari potest, quid acturae sint.

Dig. 16.1.12

Paulus 6 brev.

Immo tunc locus est senatus consulto, cum scit creditor eam intercedere.

Dig. 16.1.13pr.

Gaius 9 ad ed. provinc.

Aliquando, licet alienam obligationem suscipiat mulier, non adiuvatur hoc senatus consulto: quod tum accidit, cum prima facie quidem alienam, re vera autem suam obligationem suscipiat. ut ecce si ancilla ob pactionem libertatis expromissore dato post manumissionem id ipsum suscipiat quod expromissor debeat, aut si hereditatem emerit et aes alienum hereditarium in se transcribat, aut si pro fideiussore suo intercedat.

Dig. 16.1.13.1

Gaius 9 ad ed. provinc.

De pignoribus prioris debitoris non est creditori nova actione opus, cum quasi serviana (quae et hypothecaria vocatur) in his utilis sit: quia verum est convenisse de pignoribus nec solutam esse pecuniam.

Dig. 16.1.13.2

Gaius 9 ad ed. provinc.

Si sub condicione vel in diem mulier pro alio intercesserit, etiam pendente condicione volenti creditori cum priore debitore experiri actio danda est restitutoria: quo enim bonum est exspectare condicionem vel diem, cum in ea causa sit prior iste debitor, ut omnimodo ipse debeat suscipere actionem?

Dig. 16.1.14

Iulianus 12 Dig.

Si mulier contra senatus consultum intercesserit, aequum est non solum in veterem debitorem, sed et in fideiussores eius actionem restitui: nam cum mulieris persona subtrahatur creditori propter senatus consultum, integra causa pristina restituenda est.

Dig. 16.1.15

Iulianus 51 Dig.

Si mulieri solvero id quod tibi debebam et ab ea ratam rem te habiturum stipulatus fuero et forte te ratum non habente agere ex stipulatu instituero, exceptio senatus consulti, quod de intercessionibus feminarum factum est, non proderit mulieri: non enim videri potest alienam obligationem recusare, cum maneam debito obligatus, et ipsa de lucro agat ac potius reddere cogatur quod non debitum acceperat, quam pro alio solvere.

Dig. 16.1.16pr.

Iulianus 4 ad urs. ferocem.

Si mulier contra senatus consultum velleianum pro me intercessisset titio egoque mulieri id solvissem et ab ea titius eam pecuniam peteret, exceptio huius senatus consulti non est profutura mulieri: neque enim eam periclitari, ne eam pecuniam perdat, cum iam eam habeat.

Dig. 16.1.16.1

Iulianus 4 ad urs. ferocem.

Si ab ea muliere, quae contra senatus consultum intercessisset, fideiussorem accepissem, gaius cassius respondit ita demum fideiussori exceptionem dandam, si a muliere rogatus fuisset. iulianus autem recte putat fideiussori exceptionem dandam, etiamsi mandati actionem adversus mulierem non habet, quia totam obligationem senatus improbat et a praetore restituitur prior debitor creditori.

Dig. 16.1.17pr.

Africanus 4 quaest.

Vir uxori donationis causa rem viliori pretio addixerat et in id pretium creditori suo delegaverat. respondit venditionem nullius momenti esse et, si creditor pecuniam a muliere peteret, exceptionem utilem fore, quamvis creditor existimaverit mulierem debitricem mariti fuisse: nec id contrarium videri debere ei, quod placeat, si quando in hoc mulier mutuata est, ut marito crederet, non obstaturam exceptionem, si creditor ignoraverit in quam causam mulier mutuaretur, quoniam quidem plurimum intersit, utrum cum muliere quis ab initio contrahat an alienam obligationem in eam transferat: tunc enim diligentiorem esse debere.

Dig. 16.1.17.1

Africanus 4 quaest.

Si mulier dixisset sibi rem dotis nomine obligatam et creditor curasset ei pecuniam dotis solvi, qui idem pignus acciperet, mulieri etiam pecunia credita deberetur: si possessor creditor adversus eam serviana agentem exciperet " si non voluntate eius pignus datum esset", replicationem mulieri senatus consulti non profuturam, nisi creditor scisset etiam aliam pecuniam ei deberi.

Dig. 16.1.17.2

Africanus 4 quaest.

Mulier et titius, cum in rem communem mutuarentur, eiusdem pecuniae rei facti sunt: non omnimodo mulierem pro parte socii videri intercessisse dicebat. nam si ob eam causam mutuati fuerint, ex qua, si creditor pecuniam non dedisset, maius damnum mulier passura fuerat, veluti quod communis insula fulta non esset vel quod fundus communis in publicum committeretur, potius esse, ut senatus consulto locus non sit. at si in aliquam emptionem mutua pecunia sit accepta, tunc pro parte intercessionem factam videri et ideo creditorem partem dumtaxat pecuniae a muliere petere posse: quod si totum petierit, exceptione pro parte summovetur.

Dig. 16.1.18

Paulus 8 ad plaut.

Idem et si pro debitore meo titius et mulier duo rei intercesserint.

Dig. 16.1.19pr.

Africanus 4 quaest.

Tutor pupilli decesserat herede instituto titio: cum de adeunda hereditate dubitaret, quoniam male gesta tutela existimaretur, persuadente matre pupilli, ut suo periculo adiret, adiit stipulatusque de ea est indemnem se eo nomine praestari. si ex ea causa titius pupillo aliquid praestitisset isque matrem conveniret, negavit exceptioni senatus consulti locum esse, quando vix sit, ut aliqua apud eundem pro eo ipso intercessisse intellegi possit.

Dig. 16.1.19.1

Africanus 4 quaest.

Nec dissimilem huic propositioni ex facto agitatam. cum quidam vir praetorius decessisset duobus filiis superstitibus, quorum alter impubes esset et alter legitimus tutor fratri esset et eum paterna hereditate abstinere vellet, mandatu uxoris defuncti, quae mater pupillo esset, abstento pupillo solum se hereditati miscuisse: ubi similiter se respondisse iulianus ait, si ex ea causa agente pupillo damnum eo nomine passus esset, non impediri eum senatus consulto, quo minus a muliere rem servaret.

Dig. 16.1.19.2

Africanus 4 quaest.

In proposita specie et illud tractandum est, an is, qui mandato mulieris adierit, si damnum ob id patiatur, quod debitores hereditarii solvendo non fuerint, senatus consulto locus sit, quasi quodammodo eorum obligationes mulier susceperit. magis autem est, ut ne ob hanc quidem causam senatus consultum locum habeat, quando non ea mente fuerit, ut pro his intercederet, sed tutoris adversus pupillum et ceteros forte creditores indemnem heredem praestaret.

Dig. 16.1.19.3

Africanus 4 quaest.

Denique si ponamus mulierem in emptionem hereditatis eo nomine damnum pati, quod debitores hereditarii solvendo non sint, nulla puto dubitatio erit, quin senatus consulto locus non sit, etiamsi maxime creditoribus aliquantum praestiterit.

Dig. 16.1.19.4

Africanus 4 quaest.

Quid ergo si, cum propterea de adeunda hereditate dubitaret titius, quod parum idonea nomina debitorum viderentur, mulier hoc ipsum repromisit, ut, quanto minus a quoquo eorum servari posset, ipsa praestaret? prope est, ut sit intercessio.

Dig. 16.1.19.5

Africanus 4 quaest.

Cum haberes titium debitorem et pro eo mulier intercedere vellet nec tu mulieris nomen propter senatus consultum sequereris, petit a me mulier mutuam pecuniam solutura tibi et stipulanti mihi promisit ignoranti, in quam rem mutuaretur atque ita numerare me tibi iussit: deinde ego, quia ad manum nummos non habebam, stipulanti tibi promisi: quaesitum est, si eam pecuniam a muliere petam, an exceptio senatus consulti ei prosit. respondit videndum, ne non sine ratione dicatur eius loco, qui pro muliere fideiusserit, haberi me debere, ut quemadmodum illi, quamvis ignoraverit mulierem intercedere, exceptio adversus creditorem detur, ne in mulierem mandati actio competat, ita mihi quoque adversus te utilis exceptio detur mihique in mulierem actio denegetur, quando haec actio periculo mulieris futura sit. et haec paulo expeditius dicenda, si prius, quam ego tibi pecuniam solverim, compererim eam intercessisse: ceterum si ante solverim, videndum, utrumne nihilo minus mulieri quidem exceptio adversus me dari debeat et ego tibi condicere pecuniam possim, an vero perinde habendum sit, ac si initio ego pecuniam mulieri credidissem ac rursus tu mihi in creditum isses. quod quidem magis dicendum existimavit, ut sic senatus consulto locus non sit: sicuti et cum debitorem suum mulier deleget, intercessioni locus non sit. quae postea non recte comparari ait, quando delegatione debitoris facta mulier non obligetur, at in proposito alienam obligationem in se transtulerit, quod certe senatus fieri noluerit.

Dig. 16.1.20

Africanus 8 quaest.

Si pro uno reo intercessit mulier, adversus utrumque restituitur actio creditori.

Dig. 16.1.21pr.

Callistratus 3 inst.

Si pro aliquo mulier intercesserit, sed in rem eius quod acceptum est versaretur, exceptio senatus consulti locum non habet, quia non fit pauperior.

Dig. 16.1.21.1

Callistratus 3 inst.

Item si quid liberaliter fecerit, veluti ne iudicatus pater eius propter solutionem vexetur, non erit tuta senatus consulto: oneribus enim earum senatus succurrit.

Dig. 16.1.22

Paulus 6 reg.

Si mulieri dederim pecuniam, ut eam creditori meo solvat vel expromittat, si ea expromiserit, locum non esse senatus consulto pomponius scribit, quia mandati actione obligata in rem suam videtur obligari.

Dig. 16.1.23

Paulus l.S. ad sc velle.

Si mulier in iure interrogata responderit se heredem esse, si sciens se heredem non esse responderit, minime intercessisse videri, quia decepit: quod si existimavit se heredem et eo nomine decepta responderit in eam actionem quidem dari plerique existimaverunt, sed exceptione senatus adiuvari.

Dig. 16.1.24pr.

Paulus l.S. de intercess. femina

Debitrix mulier a creditore delegata pro eo cui delegata est promisit: non utetur exceptione.

Dig. 16.1.24.1

Paulus l.S. de intercess. femina

Sed si pecuniam promisit, ne delegetur, intercessisse videtur.

Dig. 16.1.24.2

Paulus l.S. de intercess. femina

Si senatus consulti beneficium intervenit, utrum statim cum mulier intercesserit actio in priorem debitorem competit, an si mulier solutum condicat? puto statim, et non exspectandam solutionem.

Dig. 16.1.24.3

Paulus l.S. de intercess. femina

Si pro eo, qui temporali actione teneretur, mulier intercesserit, temporalis actio restituetur, sic tamen, ut ex praecedenti causa continua tempora numerarentur post restitutionem, quamvis statim atque intercessit mulier competierat.

Dig. 16.1.25pr.

Modestinus l.S. de heuremat.

Si domina servo suo credi iusserit, actione honoraria tenebitur.

Dig. 16.1.25.1

Modestinus l.S. de heuremat.

Quod si pro eo fideiusserit, exceptione senatus consulti velleiani iudicio conventa adversus creditorem tueri se poterit, nisi pro suo negotio hoc fecerit.

Dig. 16.1.26

Ulpianus 37 ad ed.

Si mulier intercedendi animo servum alienum suum esse responderit, quasi intercesserit auxilio senatus consulti utetur. plane si pro bona fide serviente sibi responderit, non videtur intercessisse.

Dig. 16.1.27pr.

Papinianus 3 resp.

Bona fide personam mulieris in contrahendo secutus ob ea, quae inter virum et uxorem accepta pecunia gesta sunt, exceptione senatus consulti non summovetur.

Dig. 16.1.27.1

Papinianus 3 resp.

Cum servi ad negotiationem praepositi cum alio contrahentes personam mulieris ut idoneae sequuntur, exceptione senatus consulti dominum summovet: nec videtur deterior causa domini per servum fieri, sed nihil esse domino quaesitum, non magis, quam si litigiosum praedium servus aut liberum hominem emerit.

Dig. 16.1.27.2

Papinianus 3 resp.

Uxor debitricem suam viro delegavit, ut vir creditori eius pecuniam solveret: si fidem suam pro ea quam delegavit apud virum obligaverit, locum exceptio senatus consulti non habebit, quia mulier suum negotium gessit.

Dig. 16.1.28pr.

Scaevola 1 resp.

Seia mancipia emit et mutuam pecuniam accepit sub fideiussore marito eamque solvit venditori: postea maritus decedens non solvendo in fraudem creditoris cavit testamento se eam pecuniam universam debere: quaeritur, an intercessisse mulier videretur. respondi secundum ea quae proponerentur non intercessisse.

Dig. 16.1.28.1

Scaevola 1 resp.

Fundum uxoris suae maritus obligavit sempronio ob conductionem: mox mulier a numerio sua fide mutuam pecuniam acceptam sub obligatione eiusdem fundi solvit statim sempronio pro marito suo: quaesitum est, an adversus senatus consultum obligata sit. respondi, si numerius scisset eam intercedere, fore senatus consulto de quo quaereretur locum.

Dig. 16.1.29pr.

Paulus 16 resp.

Quidam voluit heredibus lucii titii mutuam pecuniam dare et cum eis contrahere: sed quoniam facultates eorum suspectas habuit, magis voluit uxori testatoris dare pecuniam et ab ea pignus accipere: mulier eandem pecuniam dedit heredibus et ab his pignus accepit: quaero an intercessisse videatur et an pignora, quae ipsa accepit, teneantur creditori. paulus respondit, si creditor, cum contrahere vellet cum heredibus lucii titii, evitatis his magis mulierem ream elegit, et in ipsius persona senatus consulto, quod de intercessionibus factum est, locum esse et pignora ab ea data non teneri. eas autem res, quas mulier ab his, pro quibus intercedebat, pignori accepit, creditori mulieris obligatas non esse. sed non sine ratione praetorem facturum, si non tantum in persona subducta muliere in principales debitores dederit actionem, sed etiam in res, quae mulieri obligatae sunt.

Dig. 16.1.29.1

Paulus 16 resp.

Paulus respondit ea, quae in fraudem senatus consulti, quod de intercessione feminarum factum est, excogitata probari possunt, rata haberi non oportere.

Dig. 16.1.30pr.

Paulus 2 sent.

Si decipiendi animo vel cum sciret se non teneri mulier pro aliquo intercesserit, exceptio ei senatus consulti non datur: actionem enim, quae in dolum mulieris competit, amplissimus ordo non excludit.

Dig. 16.1.30.1

Paulus 2 sent.

Procurator si mandatu mulieris pro alio intercesserit, exceptione senatus consulti velleiani adiuvatur, ne alias actio intercidat.

Dig. 16.1.31

Paulus 1 ad ner.

Paulus: si mulier quod ex intercessione solvit nolit repetere, sed mandati agere et cavere velit de indemnitate reo, audienda est.

Dig. 16.1.32pr.

Pomponius 1 sen. consult.

Si mulier hereditatem alicuius adeat, ut aes alienum eius suscipiat, vix est, ut succurri ei debeat, nisi si fraude creditorum id conceptum sit: nec enim loco minoris viginti quinque annis circumscripti per omnia habenda est mulier.

Dig. 16.1.32.1

Pomponius 1 sen. consult.

Si mulier rem a se pignori datam per intercessionem recipere velit, fructus etiam liberos recipit et, si res deterior facta fuerit, eo nomine magis aestimetur. sed si creditor, qui pignus per intercessionem acceperit, hoc alii vendidit, vera est eorum opinio, qui petitionem dandam ei putant et adversus bonae fidei emptorem, ne melioris condicionis emptor sit, quam fuerit venditor.

Dig. 16.1.32.2

Pomponius 1 sen. consult.

Item si mulier creditori viri fundum vendidit et tradidit ea condicione, ut emptor acceptam pecuniam viro referret, et hunc fundum vindicat, exceptio quidem opponitur ei de re empta et tradita, sed replicabitur a muliere: " aut si ea venditio contra senatus consultum facta sit", et hoc procedit, sive ipse creditor emerit sive interposuerit alium, quo mulier ea ratione careat re sua. idem est et si non pro viro, sed pro alio debitore rem suam tradidit.

Dig. 16.1.32.3

Pomponius 1 sen. consult.

Si mulier, ne ipsa intercederet, alii mandaret ut id faceret, an in huius persona locus huic senatus consulto sit, qui rogatu mulieris id faceret? totus enim sermo senatus consulti ad petitionem non dandam adversus ipsam mulierem spectat. et puto rem ita esse distinguendam, ut, si quidem creditor, cui me obligavi mandante muliere, hoc in fraudem senatus consulti egisset, ne ipsa interveniret contra senatus consultum, daret autem alium, excludendum eum exceptione fraudis senatus consulti factae: si vero is ignorasset, ego autem scissem, tunc mandati me agentem cum muliere excludendum esse, me autem creditori teneri.

Dig. 16.1.32.4

Pomponius 1 sen. consult.

Si mulier pro eo, pro quo intercesserit, iudicium parata sit accipere, ut non in veterem debitorem actio detur: quoniam senatus consulti exceptionem opponere potest, cavere debebit exceptione se non usuram et sic ad iudicem ire.

Dig. 16.1.32.5

Pomponius 1 sen. consult.

Intercedere mulierem intellegendum est etiam pro eo, qui obligari non possit, veluti si pro servo alieno intercedit: sed rescissa intercessione in dominum restituenda est actio.

Dig. 16.2.0. De compensationibus.

Dig. 16.2.1

Modestinus 6 pand.

Compensatio est debiti et crediti inter se contributio.

Dig. 16.2.2

Iulianus 90 Dig.

Unusquisque creditorem suum eundemque debitorem petentem summovet, si paratus est compensare.

Dig. 16.2.3

Pomponius 25 ad sab.

Ideo compensatio necessaria est, quia interest nostra potius non solvere quam solutum repetere.

Dig. 16.2.4

Paulus 3 ad sab.

Verum est, quod et neratio placebat et pomponius ait, ipso iure eo minus fideiussorem ex omni contractu debere, quod ex compensatione reus retinere potest: sicut enim, cum totum peto a reo, male peto, ita et fideiussor non tenetur ipso iure in maiorem quantitatem quam reus condemnari potest.

Dig. 16.2.5

Gaius 9 ad ed. provinc.

Si quid a fideiussore petetur, aequissimum est eligere fideiussorem, quod ipsi an quod reo debetur, compensare malit: sed et si utrumque velit compensare, audiendus est.

Dig. 16.2.6

Ulpianus 30 ad sab.

Etiam quod natura debetur, venit in compensationem.

Dig. 16.2.7pr.

Ulpianus 28 ad ed.

Quod in diem debetur, non compensabitur, antequam dies venit, quamquam dari oporteat.

Dig. 16.2.7.1

Ulpianus 28 ad ed.

Si rationem compensationis iudex non habuerit, salva manet petitio: nec enim rei iudicatae exceptio obici potest. aliud dicam, si reprobavit pensationem quasi non existente debito: tunc enim rei iudicatae mihi nocebit exceptio.

Dig. 16.2.8

Gaius 9 ad ed. provinc.

In compensationem etiam id deducitur, quo nomine cum actore lis contestata est, ne diligentior quisque deterioris condicionis habeatur, si compensatio ei denegetur.

Dig. 16.2.9pr.

Paulus 32 ad ed.

Si cum filio familias aut servo contracta sit societas et agat dominus vel pater, solidum per compensationem servamus, quamvis, si ageremus, dumtaxat de peculio praestaretur.

Dig. 16.2.9.1

Paulus 32 ad ed.

Sed si cum filio familias agatur, an quae patri debeantur filius compensare possit, quaeritur: et magis est admittendum, quia unus contractus est, sed cum condicione, ut caveat patrem suum ratum habiturum, id est non exacturum quod is compensaverit.

Dig. 16.2.10pr.

Ulpianus 63 ad ed.

Si ambo socii parem neglegentiam societati adhibuimus, dicendum est desinere nos invicem esse obligatos ipso iure compensatione neglegentiae facta. simili modo probatur, si alter ex re communi aliquid perceperit, alter tantam neglegentiam exhibuerit, quae eadem quantitate aestimatur, compensationem factam videri et ipso iure invicem liberationem.

Dig. 16.2.10.1

Ulpianus 63 ad ed.

Si quis igitur compensare potens solverit, condicere poterit quasi indebito soluto.

Dig. 16.2.10.2

Ulpianus 63 ad ed.

Quotiens ex maleficio oritur actio, ut puta ex causa furtiva ceterorumque maleficiorum, si de ea pecuniarie agitur, compensatio locum habet: idem est et si condicatur ex causa furtiva. sed et qui noxali iudicio convenitur, compensationem opponere potest.

Dig. 16.2.10.3

Ulpianus 63 ad ed.

In stipulationibus quoque quae instar actionum habent, id est praetoriis, compensatio locum habet, et secundum iulianum tam in ipsa stipulatione quam in ex stipulatu actione poterit obici compensatio.

Dig. 16.2.11

Ulpianus 32 ad ed.

Cum alter alteri pecuniam sine usuris, alter usurariam debet, constitutum est a divo severo concurrentis apud utrumque quantitatis usuras non esse praestandas.

Dig. 16.2.12

Ulpianus 64 ad ed.

Idem iuris est non solum in privatis, verum etiam in causa fisci constitutum. sed et si invicem sit usuraria pecunia, diversae tamen sint usurae, compensatio nihilo minus locum habet eius quod invicem debetur.

Dig. 16.2.13

Ulpianus 66 ad ed.

Quod labeo ait, non est sine ratione, ut, si cui petitioni specialiter destinata est compensatio, in ceteris non obiciatur.

Dig. 16.2.14

Iavolenus 15 ex cass.

Quaecumque per exceptionem peremi possunt, in compensationem non veniunt.

Dig. 16.2.15

Iavolenus 2 epist.

Pecuniam certo loco titio dari stipulatus sum: is petit a me quam ei debeo pecuniam: quaero, an hoc quoque pensandum sit, quanti mea interfuit certo loco dari. respondit: si titius petit, eam quoque pecuniam, quam certo loco promisit, in compensationem deduci oportet, sed cum sua causa, id est ut ratio habeatur, quanti titii interfuerit eo loco quo convenerit pecuniam dari.

Dig. 16.2.16pr.

Papinianus 3 quaest.

Cum militi castrensium bonorum alius, ceterorum alius heres exstitit et debitor alteri heredum obligatus vult compensare quod ab alio debetur, non audietur.

Dig. 16.2.16.1

Papinianus 3 quaest.

Cum intra diem ad iudicati exsecutionem datum iudicatus titio agit cum eodem titio, qui et ipse pridem illi iudicatus est, compensatio admittetur: aliud est enim diem obligationis non venisse, aliud humanitatis gratia tempus indulgeri solutionis.

Dig. 16.2.17

Papinianus 1 resp.

Ideo condemnatus, quod artiorem annonam aedilitatis tempore praebuit, frumentariae pecuniae debitor non videbitur, et ideo compensationem habebit.

Dig. 16.2.18pr.

Papinianus 3 resp.

In rem suam procurator datus post litis contestationem, si vice mutua conveniatur, aequitate compensationis utetur.

Dig. 16.2.18.1

Papinianus 3 resp.

Creditor compensare non cogitur quod alii quam debitori suo debet, quamvis creditor eius pro eo, qui convenitur ob debitum proprium, velit compensare.

Dig. 16.2.19

Papinianus 11 resp.

Debitor pecuniam publicam servo publico citra voluntatem eorum solvit, quibus debitum recte solvi potuit: obligatio pristina manebit, sed dabitur ei compensatio peculii fini, quod servus publicus habebit.

Dig. 16.2.20

Papinianus 13 resp.

Ob negotium copiarum expeditionis tempore mandatum curatorem condemnatum pecuniam iure compensationis retinere non placuit, quoniam ea non compensantur.

Dig. 16.2.21

Paulus 1 quaest.

Posteaquam placuit inter omnes id quod invicem debetur ipso iure compensari, si procurator absentis conveniatur, non debebit de rato cavere, quia nihil compensat, sed ab initio minus ab eo petitur.

Dig. 16.2.22

Scaevola 2 quaest.

Si debeas decem aut hominem, utrum adversarius volet, ita compensatio huius debiti admittitur, si adversarius palam dixisset, utrum voluisset.

Dig. 16.2.23

Paulus 9 resp.

Id quod pupillorum nomine debetur si tutor petat, non posse compensationem obici eius pecuniae, quam ipse tutor suo nomine adversario debet.

Dig. 16.2.24

Paulus 3 decr.

Iussit imperator audiri adprobantem sibi a fisco deberi, quod ipse convenitur.

Dig. 16.3.0. Depositi vel contra.

Dig. 16.3.1pr.

Ulpianus 30 ad ed.

Depositum est, quod custodiendum alicui datum est, dictum ex eo quod ponitur: praepositio enim de auget depositum, ut ostendat totum fidei eius commissum, quod ad custodiam rei pertinet.

Dig. 16.3.1.1

Ulpianus 30 ad ed.

Praetor ait: " quod neque tumultus neque incendii neque ruinae neque naufragii causa depositum sit, in simplum, earum autem rerum, quae supra comprehensae sunt, in ipsum in duplum, in heredem eius, quod dolo malo eius factum esse dicetur qui mortuus sit, in simplum, quod ipsius, in duplum iudicium dabo. "

Dig. 16.3.1.2

Ulpianus 30 ad ed.

Merito has causas deponendi separavit praetor, quae continent fortuitam causam depositionis ex necessitate descendentem, non ex voluntate proficiscentem.

Dig. 16.3.1.3

Ulpianus 30 ad ed.

Eum tamen deponere tumultus vel incendii vel ceterarum causarum gratia intellegendum est, qui nullam aliam causam deponendi habet quam imminens ex causis supra scriptis periculum.

Dig. 16.3.1.4

Ulpianus 30 ad ed.

Haec autem separatio causarum iustam rationem habet: quippe cum quis fidem elegit nec depositum redditur, contentus esse debet simplo, cum vero extante necessitate deponat, crescit perfidiae crimen et publica utilitas coercenda est vindicandae rei publicae causa: est enim inutile in causis huiusmodi fidem frangere.

Dig. 16.3.1.5

Ulpianus 30 ad ed.

Quae depositis rebus accedunt, non sunt deposita, ut puta si homo vestitus deponatur, vestis enim non est deposita: nec si equus cum capistro, nam solus equus depositus est.

Dig. 16.3.1.6

Ulpianus 30 ad ed.

Si convenit, ut in deposito et culpa praestetur, rata est conventio: contractus enim legem ex conventione accipiunt.

Dig. 16.3.1.7

Ulpianus 30 ad ed.

Illud non probabis, dolum non esse praestandum si convenerit: nam haec conventio contra bonam fidem contraque bonos mores est et ideo nec sequenda est.

Dig. 16.3.1.8

Ulpianus 30 ad ed.

Si vestimenta servanda balneatori data perierunt, si quidem nullam mercedem servandorum vestimentorum accepit, depositi eum teneri et dolum dumtaxat praestare debere puto: quod si accepit, ex conducto.

Dig. 16.3.1.9

Ulpianus 30 ad ed.

Si quis servum custodiendum coniecerit forte in pistrinum, si quidem merces intervenit custodiae, puto esse actionem adversus pistrinarium ex conducto: si vero mercedem accipiebam ego pro hoc servo, quem in pistrinum accipiebat, ex locato me agere posse: quod si operae eius servi cum custodia pensabantur, quasi genus locati et conducti intervenit, sed quia pecunia non datur, praescriptis verbis datur actio: si vero nihil aliud quam cibaria praestabat nec de operis quicquam convenit, depositi actio est.

Dig. 16.3.1.10

Ulpianus 30 ad ed.

In conducto et locato et in negotio, ex quo diximus praescriptis verbis dandam actionem, et dolum et culpam praestabunt qui servum receperunt: at si cibaria tantum, dolum dumtaxat. sequemur tamen, ut pomponius ait, et quid habuerunt proscriptum aut quid convenerit, dummodo sciamus et si quid fuit proscriptum, dolum tamen eos praestaturos qui receperunt, qui solus in depositum venit.

Dig. 16.3.1.11

Ulpianus 30 ad ed.

Si te rogavero, ut rem meam perferas ad titium, ut is eam servet, qua actione tecum experiri possum, apud pomponium quaeritur. et putat tecum mandati, cum eo vero, qui eas res receperit, depositi: si vero tuo nomine receperit, tu quidem mihi mandati teneris, ille tibi depositi, quam actionem mihi praestabis mandati iudicio conventus.

Dig. 16.3.1.12

Ulpianus 30 ad ed.

Quod si rem tibi dedi, ut, si titius rem non recepisset, tu custodires, nec eam recepit, videndum est, utrum depositi tantum an et mandati actio sit. et pomponius dubitat: puto tamen mandati esse actionem, quia plenius fuit mandatum habens et custodiae legem.

Dig. 16.3.1.13

Ulpianus 30 ad ed.

Idem pomponius quaerit, si tibi mandavero, ut rem ab aliquo meo nomine receptam custodias, idque feceris, mandati an depositi tenearis. et magis probat mandati esse actionem, quia hic est primus contractus.

Dig. 16.3.1.14

Ulpianus 30 ad ed.

Idem pomponius quaerit, si apud te volentem me deponere iusseris apud libertum tuum deponere, an possim tecum depositi experiri. et ait, si tuo nomine, hoc est quasi te custodituro, deposuissem, mihi tecum depositi esse actionem: si vero suaseris mihi, ut magis apud eum deponam, tecum nullam esse actionem, cum illo depositi actio est: nec mandati teneris, quia rem meam gessi. sed si mandasti mihi, ut periculo tuo apud eum deponam, cur non sit mandati actio, non video. plane si fideiussisti pro eo, labeo omnimodo fideiussorem teneri ait, non tantum si dolo fecit is qui depositum suscepit, sed et si non fecit, est tamen res apud eum. quid enim si fureret is, apud quem depositum sit, vel pupillus sit, vel neque heres neque bonorum possessor neque successor eius exstaret? tenebitur ergo, ut id praestet, quod depositi actione praestari solet.

Dig. 16.3.1.15

Ulpianus 30 ad ed.

An in pupillum, apud quem sine tutoris auctoritate depositum est, depositi actio detur, quaeritur. sed probari oportet, si apud doli mali iam capacem deposueris, agi posse, si dolum commisit: nam et in quantum locupletior factus est, datur actio in eum et si dolus non intervenit.

Dig. 16.3.1.16

Ulpianus 30 ad ed.

Si res deposita deterior reddatur, quasi non reddita agi depositi potest: cum enim deterior redditur, potest dici dolo malo redditam non esse.

Dig. 16.3.1.17

Ulpianus 30 ad ed.

Si servus meus deposuerit, nihilo minus depositi habebo actionem.

Dig. 16.3.1.18

Ulpianus 30 ad ed.

Si apud servum deposuero et cum manumisso agam, Marcellus ait nec tenere actionem, quamvis solemus dicere doli etiam in servitute commissi teneri quem debere, quia et delicta et noxae caput sequuntur: erit igitur ad alias actiones competentes decurrendum.

Dig. 16.3.1.19

Ulpianus 30 ad ed.

Haec actio bonorum possessoribus ceterisque ^ ^ successoribus ^ ^ et ei, cui ex trebelliano senatus consulto restituta est hereditas, competit.

Dig. 16.3.1.20

Ulpianus 30 ad ed.

Non tantum praeteritus dolus in depositi actione veniet, sed etiam futurus, id est post litem contestatam.

Dig. 16.3.1.21

Ulpianus 30 ad ed.

Inde scribit neratius, si res deposita sine dolo malo amissa sit et post iudicium acceptum reciperaretur, nihilo minus recte ad restitutionem reum compelli nec debere absolvi, nisi restituat. idem neratius ait, quamvis tunc tecum depositi actum sit, cum restituendi facultatem non habeas horreis forte clusis, tamen si ante condemnationem restituendi facultatem habeas, condemnandum te nisi restituas, quia res apud te est: tunc enim quaerendum, an dolo malo feceris, cum rem non habes.

Dig. 16.3.1.22

Ulpianus 30 ad ed.

Est autem et apud iulianum libro tertio decimo digestorum scriptum eum qui rem deposuit statim posse depositi actione agere: hoc enim ipso dolo facere eum qui suscepit, quod reposcenti rem non reddat. Marcellus autem ait non semper videri posse dolo facere eum, qui reposcenti non reddat: quid enim si in provincia res sit vel in horreis, quorum aperiendorum condemnationis tempore non sit facultas ? vel condicio depositionis non exstitit ?

Dig. 16.3.1.23

Ulpianus 30 ad ed.

Hanc actionem bonae fidei esse dubitari non oportet.

Dig. 16.3.1.24

Ulpianus 30 ad ed.

Et ideo et fructus in hanc actionem venire et omnem causam et partum, dicendum est, ne nuda res veniat.

Dig. 16.3.1.25

Ulpianus 30 ad ed.

Si rem depositam vendidisti eamque postea redemisti in causam depositi, etiamsi sine dolo malo postea perierit, teneri te depositi, quia semel dolo fecisti, cum venderes.

Dig. 16.3.1.26

Ulpianus 30 ad ed.

In depositi quoque actione in litem iuratur.

Dig. 16.3.1.27

Ulpianus 30 ad ed.

Non solum si servus meus, sed et si is qui bona fide mihi serviat rem deposuerit, aequissimum erit dari mihi actionem, si rem ad me pertinentem deposuit.

Dig. 16.3.1.28

Ulpianus 30 ad ed.

Simili modo et si usum fructum in servo habeam, si id quod deposuit ex eo peculio fuit quod ad me pertinebat vel res mea fuit, eadem actione agere potero.

Dig. 16.3.1.29

Ulpianus 30 ad ed.

Item si servus hereditarius deposuerit, heredi postea adeunti competit actio.

Dig. 16.3.1.30

Ulpianus 30 ad ed.

Si servus deposuit, sive vivat sive decesserit, utiliter dominus hac actione experietur. ipse autem servus manumissus non poterit agere: sed et si fuerit alienatus, adhuc ei competit actio cuius fuit servus cum deponeret: initium enim contractus spectandum est.

Dig. 16.3.1.31

Ulpianus 30 ad ed.

Si duorum servus sit qui deposuit, unicuique dominorum in partem competit depositi.

Dig. 16.3.1.32

Ulpianus 30 ad ed.

Si rem a servo depositam titio, quem dominum eius putasti cum non esset, restituisses, depositi actione te non teneri celsus ait, quia nullus dolus intercessit: cum titio autem, cui res restituta est, dominus servi aget: sed si exhibuerit, vindicabitur, si vero, cum sciret esse alienum, consumpserit, condemnabitur, quia dolo fecit quo minus possideret.

Dig. 16.3.1.33

Ulpianus 30 ad ed.

Eleganter apud iulianum quaeritur, si pecuniam servus apud me deposuit ita, ut domino pro libertate eius dem, egoque dedero, an tenear depositi. et libro tertio decimo digestorum scribit, si quidem sic dedero quasi ad hoc penes me depositam teque certioravero, non competere tibi depositi actionem, quia sciens recepisti, careo igitur dolo: si vero quasi meam pro libertate eius numeravero, tenebor. quae sententia vera mihi videtur: hic enim non tantum sine dolo malo non reddidit, sed nec reddidit: aliud est enim reddere, aliud quasi de suo dare.

Dig. 16.3.1.34

Ulpianus 30 ad ed.

Si pecunia apud te ab initio hac lege deposita sit, ut si voluisses votereris, prius quam utaris depositi teneberis.

Dig. 16.3.1.35

Ulpianus 30 ad ed.

Saepe evenit, ut res deposita vel nummi periculo sint eius, apud quem deponuntur: ut puta si hoc nominatim convenit. sed et si se quis deposito obtulit, idem iulianus scribit periculo se depositi illigasse, ita tamen, ut non solum dolum, sed etiam culpam et custodiam praestet, non tamen casus fortuitos.

Dig. 16.3.1.36

Ulpianus 30 ad ed.

Si pecunia in sacculo signato deposita sit et unus ex heredibus eius qui deposuit veniat repetens, quemadmodum ei satisfiat, videndum est. promenda pecunia est vel coram praetore vel intervenientibus honestis personis et exsolvenda pro parte hereditaria: sed et si resignetur, non contra legem depositi fiet, cum vel praetore auctore vel honestis personis intervenientibus hoc eveniet: residuo vel apud eum remanente, si hoc voluerit (sigillis videlicet prius ei impressis vel a praetore vel ab his, quibus coram signacula remota sunt) vel, si hoc recusaverit, in aede deponendo. sed si res sunt, quae dividi non possunt, omnes debebit tradere satisdatione idonea a petitore ei praestanda in hoc, quod supra eius partem est: satisdatione autem non interveniente rem in aedem deponi et omni actione depositarium liberari.

Dig. 16.3.1.37

Ulpianus 30 ad ed.

Apud iulianum libro tertio decimo digestorum talis species relata est: ait enim, si depositor decesserit et duo existant, qui inter se contendant unusquisque solum se heredem dicens, ei tradendam rem, qui paratus est adversus alterum reum defendere, hoc est eum qui depositum suscepit: quod si neuter hoc onus suscipiat, commodissime dici ait non esse cogendum a praetore iudicium suscipere: oportere igitur rem deponi in aede aliqua, donec de hereditate iudicetur.

Dig. 16.3.1.38

Ulpianus 30 ad ed.

Si quis tabulas testamenti apud se depositas pluribus praesentibus legit, ait labeo depositi actione recte de tabulis agi posse. ego arbitror et iniuriarum agi posse, si hoc animo recitatum testamentum est quibusdam praesentibus, ut iudicia secreta eius qui testatus est divulgarentur.

Dig. 16.3.1.39

Ulpianus 30 ad ed.

Si praedo vel fur deposuerint, et hos Marcellus libro sexto digestorum putat recte depositi acturos: nam interest eorum eo, quod teneantur.

Dig. 16.3.1.40

Ulpianus 30 ad ed.

Si quis argentum vel aurum depositum petat, utrum speciem an et pondus complecti debeat? et magis est, ut utrumque complectatur, scyphum forte vel lancem vel pateram dicendo et materiam et pondus addendo. sed et si purpura sit infecta vel lana, pondus similiter adiciendum salvo eo, ut, si de quantitate ponderis incertum est, iuranti succurratur.

Dig. 16.3.1.41

Ulpianus 30 ad ed.

Si cista signata deposita sit, utrum cista tantum petatur an et species comprehendendae sint? et ait trebatius cistam repetendam, non singularum rerum depositi agendum: quod et si res ostensae sunt et sic depositae, adiciendae sunt et species vestis. labeo autem ait eum qui cistam deponit singulas quoque res videri deponere: ergo et de rebus agere eum oportet. quid ergo si ignoraverit is, qui depositum suscipiebat, res ibi esse? non multum facere, cum suscepit depositum. ergo et rerum depositi agi posse existimo, quamvis signata cista deposita sit.

Dig. 16.3.1.42

Ulpianus 30 ad ed.

Filium familias teneri depositi constat, quia et ceteris actionibus tenetur: sed et cum patre eius agi potest dumtaxat de peculio. idem et in servo: nam cum domino agetur. plane et iulianus scripsit et nobis videtur, si eorum nomine qui sunt in potestate agatur, veniat in iudicium et si quid per eum in cuius iure sunt captus fraudatusve est, ut et dolus eorum veniat, non tantum ipsorum cum quibus contractum est.

Dig. 16.3.1.43

Ulpianus 30 ad ed.

Si apud duos sit deposita res, adversus unumquemque eorum agi poterit nec liberabitur alter, si cum altero agatur: non enim electione, sed solutione liberantur. proinde si ambo dolo fecerunt et alter quod interest praestiterit, alter non convenietur exemplo duorum tutorum: quod si alter vel nihil vel minus facere possit, ad alium pervenietur: idemque et si alter dolo non fecerit et idcirco sit absolutus, nam ad alium pervenietur.

Dig. 16.3.1.44

Ulpianus 30 ad ed.

Sed si duo deposuerint et ambo agant, si quidem sic deposuerunt, ut vel unus tollat totum, poterit in solidum agere: sin vero pro parte, pro qua eorum interest, tunc dicendum est in partem condemnationem faciendam.

Dig. 16.3.1.45

Ulpianus 30 ad ed.

Si deposuero apud te, ut post mortem tuam reddas, et tecum et cum herede tuo possum depositi agere: possum enim mutare voluntatem et ante mortem tuam depositum repetere.

Dig. 16.3.1.46

Ulpianus 30 ad ed.

Proinde et si sic deposuero, ut post mortem meam reddatur, potero et ego et heres meus agere depositi, ego mutata voluntate.

Dig. 16.3.1.47

Ulpianus 30 ad ed.

Quia autem dolus dumtaxat in hanc actionem venit, quaesitum est, si heres rem apud testatorem depositam vel commodatam distraxit ignarus depositam vel commodatam, an teneatur. et quia dolo non fecit, non tenebitur de re: an tamen vel de pretio teneatur, quod ad eum pervenit? et verius est teneri eum: hoc enim ipso dolo facit, quod id quod ad se pervenit non reddit.

Dig. 16.3.2

Paulus 31 ad ed.

Quid ergo, si pretium nondum exegit aut minoris quam debuit vendidit? actiones suas tantummodo praestabit.

Dig. 16.3.3

Ulpianus 31 ad ed.

Plane si possit rem redimere et praestare nec velit, non caret culpa, quemadmodum si redemptam vel alia ratione suam factam noluit praestare causatus, quod semel ignarus vendiderit.

Dig. 16.3.4

Paulus 5 ad plaut.

Sed et si non sit heres, sed putavit se heredem et vendidit, simili modo lucrum ei extorquebitur.

Dig. 16.3.5pr.

Ulpianus 30 ad ed.

Ei, apud quem depositum esse dicetur, contrarium iudicium depositi datur, in quo iudicio merito in litem non iuratur: non enim de fide rupta agitur, sed de indemnitate eius qui depositum suscepit.

Dig. 16.3.5.1

Ulpianus 30 ad ed.

In sequestrem depositi actio competit. si tamen cum sequestre convenit, ut certo loco rem depositam exhiberet, nec ibi exhibeat, teneri eum palam est: quod si de pluribus locis convenit, in arbitrio eius est, quo loci exhibeat: sed si nihil convenit, denuntiandum est ei, ut apud praetorem exhibeat.

Dig. 16.3.5.2

Ulpianus 30 ad ed.

Si velit sequester officium deponere, quid ei faciendum sit? et ait pomponius adire eum praetorem oportere et ex eius auctoritate denuntiatione facta his qui eum elegerant, ei rem restituendam qui praesens fuerit. sed hoc non semper verum puto: nam plerumque non est permittendum officium, quod semel suscepit, contra legem depositionis deponere, nisi iustissima causa interveniente: et cum permittitur, raro ei res restituenda est qui venit, sed oportet eam arbitratu iudicis apud aedem aliquam deponi.

Dig. 16.3.6

Paulus 2 ad ed.

Proprie autem in sequestre est depositum, quod a pluribus in solidum certa condicione custodiendum reddendumque traditur.

Dig. 16.3.7pr.

Ulpianus 30 ad ed.

Si hominem apud se depositum ut quaestio de eo haberetur, ac propterea vinctum vel ad malam mansionem extensum sequester solverit misericordia ductus, dolo proximum esse quod factum est arbitror, quia cum sciret, cui rei pararetur, intempestive misericordiam exercuit, cum posset non suscipere talem causam quam decipere.

Dig. 16.3.7.1

Ulpianus 30 ad ed.

Datur actio depositi in heredem ex dolo defuncti in solidum: quamquam enim alias ex dolo defuncti non solemus teneri nisi pro ea parte quae ad nos pervenit, tamen hic dolus ex contractu reique persecutione descendit ideoque in solidum unus heres tenetur, plures vero pro ea parte qua quisque heres est.

Dig. 16.3.7.2

Ulpianus 30 ad ed.

Quotiens foro cedunt nummularii, solet primo loco ratio haberi depositariorum, hoc est eorum qui depositas pecunias habuerunt, non quas faenore apud nummularios vel cum nummulariis vel per ipsos exercebant. et ante privilegia igitur, si bona venierint, depositariorum ratio habetur, dummodo eorum qui vel postea usuras acceperunt ratio non habeatur, quasi renuntiaverint deposito.

Dig. 16.3.7.3

Ulpianus 30 ad ed.

Item quaeritur, utrum ordo spectetur eorum qui deposuerunt an vero simul omnium depositariorum ratio habeatur. et constat simul admittendos: hoc enim rescripto principali significatur.

Dig. 16.3.8

Papinianus 9 quaest.

Quod privilegium exercetur non in ea tantum quantitate, quae in bonis argentarii ex pecunia deposita reperta est, sed in omnibus fraudatoris facultatibus: idque propter necessarium usum argentariorum ex utilitate publica receptum est. plane sumptus causa, qui necessarie factus est, semper praecedit: nam deducto eo bonorum calculus subduci solet.

Dig. 16.3.9

Paulus 17 ad ed.

In depositi actione si ex facto defuncti agatur adversus unum ex pluribus heredibus, pro parte hereditaria agere debeo: si vero ex suo delicto, pro parte non ago: merito, quia aestimatio refertur ad dolum, quem in solidum ipse heres admisit.

Dig. 16.3.10

Iulianus 2 ex minic.

Nec adversus coheredes eius, qui dolo carent, depositi actio competit.

Dig. 16.3.11

Ulpianus 41 ad sab.

Quod servus deposuit, is apud quem depositum est servo rectissime reddet ex bona fide: nec enim convenit bonae fidei abnegare id quod quis accepit, sed debebit reddere ei a quo accepit, sic tamen, si sine dolo omni reddat, hoc est, ut nec culpae quidem suspicio sit. denique sabinus hoc explicuit addendo: " nec ulla causa intervenit, quare putare possit dominum reddi nolle". hoc ita est, si potuit suspicari, iusta scilicet ratione motus: ceterum sufficit bonam fidem adesse. sed et si ante eius rei furtum fecerat servus, si tamen ignoravit is apud quem deposuit vel credidit dominum non invitum fore huius solutionis, liberari potest: bona enim fides exigitur. non tantum autem si remanenti in servitute fuerit solutum, sed etiam si manumisso vel alienato, ex iustis causis liberatio contingit, scilicet si quis ignorans manumissum vel alienatum solvit. idemque et in omnibus debitoribus servandum pomponius scribit.

Dig. 16.3.12pr.

Pomponius 22 ad sab.

Si in asia depositum fuerit, ut romae reddatur, videtur id actum, ut non impensa eius id fiat apud quem depositum sit, sed eius qui deposuit.

Dig. 16.3.12.1

Pomponius 22 ad sab.

Depositum eo loco restitui debet, in quo sine dolo malo eius est, apud quem depositum est: ubi vero depositum est, nihil interest. eadem dicenda sunt communiter et in omnibus bonae fidei iudiciis. sed dicendum est, si velit actor suis impensis suoque periculo perferri rem romam, ut audiendus sit, quoniam et in ad exhibendum actione id servatur.

Dig. 16.3.12.2

Pomponius 22 ad sab.

Cum sequestre recte agetur depositi sequestraria actione, quam et in heredem eius reddi oportet.

Dig. 16.3.12.3

Pomponius 22 ad sab.

Quemadmodum quod ex stipulatu vel ex testamento dari oporteat, post iudicium acceptum cum detrimento rei periret, sic depositum quoque eo die, quo depositi actum sit, periculo eius apud quem depositum fuerit est, si iudicii accipiendi tempore potuit id reddere reus nec reddidit.

Dig. 16.3.13pr.

Paulus 31 ad ed.

Si quis infitiatus sit non adversus dominum, sed quod eum qui rem depositam petebat verum procuratorem non putaret aut eius qui deposuisset heredem, nihil dolo malo fecit: postea autem si cognoverit, cum eo agi poterit, quoniam nunc incipit dolo malo facere, si reddere eam non vult.

Dig. 16.3.13.1

Paulus 31 ad ed.

Competit etiam condictio depositae rei nomine, sed non antequam id dolo admissum sit: non enim quemquam hoc ipso, quod depositum accipiat, condictione obligari, verum quod dolum malum admiserit.

Dig. 16.3.14pr.

Gaius 9 ad ed. provinc.

Si plures heredes exstiterint ei qui deposuerit, dicitur, si maior pars adierit, restituendam rem praesentibus: maiorem autem partem non ex numero utique personarum, sed ex magnitudine portionum hereditariarum intellegendam: cautela idonea reddenda.

Dig. 16.3.14.1

Gaius 9 ad ed. provinc.

Sive autem cum ipso apud quem deposita est actum fuerit sive cum herede eius et sua natura res ante rem iudicatam interciderit, veluti si homo mortuus fuerit, sabinus et cassius absolvi debere eum cum quo actum est dixerunt, quia aequum esset naturalem interitum ad actorem pertinere, utique cum interitura esset ea res et si restituta esset actori.

Dig. 16.3.15

Iulianus 13 Dig.

Qui rem suam deponi apud se patitur vel utendam rogat, nec depositi nec commodati actione tenetur: sicuti qui rem suam conducit aut precario rogat, nec precario tenetur nec ex locato.

Dig. 16.3.16

Africanus 7 quaest.

Si is, apud quem rem deposueris, apud alium eam deponat et ille dolo quid admiserit, ob dolum eius, apud quem postea sit depositum, eatenus eum teneri apud quem tu deposueris, ut actiones suas tibi praestet.

Dig. 16.3.17pr.

Florus 7 inst.

Licet deponere tam plures quam unus possunt, attamen apud sequestrem non nisi plures deponere possunt: nam tum id fit, cum aliqua res in controversiam deducitur. itaque hoc casu in solidum unusquisque videtur deposuisse: quod aliter est, cum rem communem plures deponunt.

Dig. 16.3.17.1

Florus 7 inst.

Rei depositae proprietas apud deponentem manet: sed et possessio, nisi apud sequestrem deposita est: nam tum demum sequester possidet: id enim agitur ea depositione, ut neutrius possessioni id tempus procedat.

Dig. 16.3.18

Nerva 2 membr.

De eo, quod tumultus incendii ruinae naufragii causa depositum est, in heredem de dolo mortui actio est pro hereditaria portione et in simplum et intra annum quoque: in ipsum et in solidum et in duplum et in perpetuum datur.

Dig. 16.3.19

Ulpianus 17 ad ed.

Iulianus et Marcellus putant filium familias depositi recte agere posse.

Dig. 16.3.20

Paulus 18 ad ed.

Si sine dolo malo rem depositam tibi amiseris, nec depositi teneris nec cavere debes, si deprehenderis eam reddi: si tamen ad te iterum pervenerit, depositi teneris.

Dig. 16.3.21pr.

Paulus 60 ad ed.

Si apud filium familias res deposita sit et emancipatus rem teneat, pater nec intra annum de peculio debet conveniri, sed ipse filius.

Dig. 16.3.21.1

Paulus 60 ad ed.

Plus trebatius existimat, etiamsi apud servum depositum sit et manumissus rem teneat, in ipsum dandam actionem, non in dominum, licet ex ceteris causis in manumissum actio non datur.

Dig. 16.3.22

Marcellus 5 Dig.

Si duo heredes rem apud defunctum depositam dolo interverterint, quodam utique casu in partes tenebuntur: nam si diviserint decem milia, quae apud defunctum deposita fuerant, et quina milia abstulerint et uterque solvendo est, in partes obstricti erunt: nec enim amplius actoris interest. quod si lancem conflaverint aut conflari ab aliquo passi fuerint aliave quae species dolo eorum interversa fuerit, in solidum conveniri poterunt, ac si ipsi servandam suscepissent: nam certe verum est in solidum quemque dolo fecisse et nisi pro solido res non potest restitui. nec tamen absurde sentiet, qui hoc putaverit plane nisi integrae rei restitutione eum, cum quo actum fuerit, liberari non posse, condemnandum tamen, si res non restituetur, pro qua parte heres exstitit.

Dig. 16.3.23

Modestinus 2 diff.

Actione depositi conventus servo constituto cibariorum nomine apud eundem iudicem utiliter experitur.

Dig. 16.3.24

Papinianus 9 quaest.

" lucius titius sempronio salutem. centum nummos, quos hac die commendasti mihi adnumerante servo sticho actore, esse apud me ut notum haberes, hac epistula manu mea scripta tibi notum facio: quae quando voles et ubi voles confestim tibi numerabo. " quaeritur propter usurarum incrementum. respondi depositi actionem locum habere: quid est enim aliud commendare quam deponere? quod ita verum est, si id actum est, ut corpora nummorum eadem redderentur: nam si ut tantundem solveretur convenit, egreditur ea res depositi notissimos terminos. in qua quaestione si depositi actio non teneat, cum convenit tantundem, non idem reddi, rationem usurarum haberi non facile dicendum est. et est quidem constitutum in bonae fidei iudiciis, quod ad usuras attinet ut tantundem possit officium arbitri quantum stipulatio: sed contra bonam fidem et depositi naturam est usuras ab eo desiderare temporis ante moram, qui beneficium in suscipienda pecunia dedit. si tamen ab initio de usuris praestandis convenit, lex contractus servabitur.

Dig. 16.3.25pr.

Papinianus 3 resp.

Die sponsaliorum aut postea res oblatas puellae, quae sui iuris fuit, pater suscepit: heres eius ut exhibeat recte convenietur etiam actione depositi.

Dig. 16.3.25.1

Papinianus 3 resp.

Qui pecuniam apud se non obsignatam, ut tantundem redderet, depositam ad usus proprios convertit, post moram in usuras quoque iudicio depositi condemnandus est.

Dig. 16.3.26pr.

Paulus 4 resp.

Publia maevia cum proficisceretur ad maritum suum, arcam clusam cum veste et instrumentis commendavit gaiae seiae et dixit ei: " cum sana salvave venero, restitues mihi: certe, si aliquid mihi humanum contigerit, filio meo, quem ex alio marito suscepi. " defuncta ea intestata desidero res commendatae cui restitui debeant, filio an marito. paulus respondit filio.

Dig. 16.3.26.1

Paulus 4 resp.

Lucius titius ita cavit: " elabon kai exw eis logon parakatavykys ta progegrammena tou arguriou dynaria muria, kai panta poiysw kai sumfwnw kai hwmologysa, hws progegraptai: kai sunevemyn xorygysai soi tokon hekastys mnas hekastou mynos obolous tessaras mexri tys apodosews pantos tou arguriou. " quaero, an usurae peti possunt. paulus respondit eum contractum de quo quaeritur depositae pecuniae modum excedere, et ideo secundum conventionem usurae quoque actione depositi peti possunt.

Dig. 16.3.26.2

Paulus 4 resp.

" titius semproniis salutem. habere me a vobis auri pondo plus minus decem et discos duos saccum signatum: ex quibus debetis mihi decem, quos apud titium deposuistis: item quos trophimati decem: item ex ratione patris vestri decem et quod excurrit. " quaero, an ex huiuscemodi scriptura aliqua obligatio nata sit, scilicet quod ad solam pecuniae causam attinet. respondit ex epistula, de qua quaeritur, obligationem quidem nullam natam videri, sed probationem depositarum rerum impleri posse: an autem is quoque, qui deberi sibi cavit in eadem epistula decem, probare possit hoc quod scripsit, iudicem aestimaturum.

Dig. 16.3.27

Paulus 7 resp.

Lucius titius cum haberet filiam in potestate seiam, pamphilo servo alieno in matrimonium collocavit, cui etiam dotem dedit, quam sub titulo depositi in cautionem contulit, et postea nulla denuntiatione a domino facta pater decessit, mox et pamphilus servus: quaero, qua actione seia pecuniam petere possit, cum ipsa patri heres extiterit. paulus respondit, quoniam dos constitui non potuit, ex causa depositi actione de peculio pecuniam repetendam.

Dig. 16.3.28

Scaevola 1 resp.

Quintus caecilius candidus ad paccium rogatianum epistulam scripsit in verba infra scripta: " caecilius candidus paccio rogatiano suo salutem. viginti quinque nummorum quos apud me esse voluisti, notum tibi ista hac epistula facio ad ratiunculam meam ea pervenisse: quibus ut primum prospiciam, ne vacua tibi sint: id est ut usuras eorum accipias, curae habebo". quaesitum est, an ex ea epistula etiam usurae peti possint. respondi deberi ex bonae fidei iudicio usuras, sive percepit sive pecunia in re sua usus est.

Dig. 16.3.29pr.

Paulus 2 sent.

Si sacculum vel argentum signatum deposuero et is penes quem depositum fuit me invito contrectaverit, et depositi et furti actio mihi in eum competit.

Dig. 16.3.29.1

Paulus 2 sent.

Si ex permissu meo deposita pecunia is penes quem deposita est utatur, ut in ceteris bonae fidei iudiciis usuras eius nomine praestare mihi cogitur.

Dig. 16.3.30

Nerva 1 resp.

Si fideiussor pro te apud quem depositum est litis aestimatione damnatus sit, rem tuam fieri.

Dig. 16.3.31pr.

Tryphonus 9 disp.

Bona fides quae in contractibus exigitur aequitatem summam desiderat: sed eam utrum aestimamus ad merum ius gentium an vero cum praeceptis civilibus et praetoriis? veluti reus capitalis iudicii deposuit apud te centum: is deportatus est, bona eius publicata sunt: utrumne ipsi haec reddenda an in publicum deferenda sint? si tantum naturale et gentium ius intuemur, ei qui dedit restituenda sunt: si civile ius et legum ordinem, magis in publicum deferenda sunt: nam male meritus publice, ut exemplo aliis ad deterrenda maleficia sit, etiam egestate laborare debet.

Dig. 16.3.31.1

Tryphonus 9 disp.

Incurrit hic et alia inspectio. bonam fidem inter eos tantum, quos contractum est, nullo extrinsecus adsumpto aestimare debemus an respectu etiam aliarum personarum, ad quas id quod geritur pertinet? exempli loco latro spolia quae mihi abstulit posuit apud seium inscium de malitia deponentis: utrum latroni an mihi restituere seius debeat? si per se dantem accipientemque intuemur, haec est bona fides, ut commissam rem recipiat is qui dedit: si totius rei aequitatem, quae ex omnibus personis quae negotio isto continguntur impletur, mihi reddenda sunt, quo facto scelestissimo adempta sunt. et probo hanc esse iustitiam, quae suum cuique ita tribuit, ut non distrahatur ab ullius personae iustiore repetitione. quod si ego ad petenda ea non veniam, nihilo minus ei restituenda sunt qui deposuit, quamvis male quaesita deposuit. quod et Marcellus in praedone et fure scribit. si tamen ignorans latro cuius filio vel servo rem abstulisset apud patrem dominumve eius deposuit ignorantem, nec ex iure gentium consistet depositum, cuius haec est potestas, ut alii, non domino sua ipsius res quasi aliena, servanda detur. et si rem meam fur, quam me ignorante subripuit, apud me etiamnunc delictum eius ignorantem deposuerit, recte dicetur non contrahi depositum, quia non est ex fide bona rem suam dominum praedoni restituere compelli. sed et si etiamnunc ab ignorante domino tradita sit quasi ex causa depositi, tamen indebiti dati condictio competet.

Dig. 16.3.32

Celsus 11 Dig.

Quod nerva diceret latiorem culpam dolum esse, proculo displicebat, mihi verissimum videtur. nam et si quis non ad eum modum quem hominum natura desiderat diligens est, nisi tamen ad suum modum curam in deposito praestat, fraude non caret: nec enim salva fide minorem is quam suis rebus diligentiam praestabit.

Dig. 16.3.33

Labeo 6 post. a iav. epit.

Servus tuus pecuniam cum attio in sequestre deposuit apud maevium ea condicione, ut ea tibi redderetur, si tuam esse probasses, si minus, ut attio redderetur. posse dixi cum eo, apud quem deposita esset, incerti agere, id est ad exhibendum, et exhibitam vindicare, quia servus in deponendo tuum ius deterius facere non potuisset.

Dig. 16.3.34

Labeo 2 pith.

Potes agere depositi cum eo, qui tibi non aliter quam nummis a te acceptis depositum reddere voluerit, quamvis sine mora et incorruptum reddiderit.

Ius Romanum Justinian The Latin Library The Classics Page

OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER SEPTIMUS DECIMUS

Dig. 17.1.0. Mandati vel contra.
Dig. 17.2.0. Pro socio.

Dig. 17.1.0. Mandati vel contra.

Dig. 17.1.1pr.

Paulus 32 ad ed.

Obligatio mandati consensu contrahentium consistit.

Dig. 17.1.1.1

Paulus 32 ad ed.

Ideo per nuntium quoque vel per epistulam mandatum suscipi potest.

Dig. 17.1.1.2

Paulus 32 ad ed.

Item sive " rogo" sive " volo" sive " mando" sive alio quocumque verbo scripserit, mandati actio est.

Dig. 17.1.1.3

Paulus 32 ad ed.

Item mandatum et in diem differri et sub condicione contrahi potest.

Dig. 17.1.1.4

Paulus 32 ad ed.

Mandatum nisi gratuitum nullum est: nam originem ex officio atque amicitia trahit, contrarium ergo est officio merces: interveniente enim pecunia res ad locationem et conductionem potius respicit.

Dig. 17.1.2pr.

Gaius 2 cott.

Mandatum inter nos contrahitur, sive mea tantum gratia tibi mandem sive aliena tantum sive mea et aliena sive mea et tua sive tua et aliena. quod si tua tantum gratia tibi mandem. supervacuum est mandatum et ob id nulla ex eo obligatio nascitur.

Dig. 17.1.2.1

Gaius 2 cott.

Mea tantum gratia intervenit mandatum, veluti si tibi mandem, ut negotia mea geras vel ut fundum mihi emeres vel ut pro me fideiubeas.

Dig. 17.1.2.2

Gaius 2 cott.

Aliena tantum, veluti si tibi mandem, ut titii negotia gereres vel ut fundum ei emeres vel ut pro eo fideiubeas.

Dig. 17.1.2.3

Gaius 2 cott.

Mea et aliena, veluti si tibi mandem, ut mea et titii negotia gereres vel ut mihi et titio fundum emeres vel ut pro me et titio fideiubeas.

Dig. 17.1.2.4

Gaius 2 cott.

Tua et mea, veluti si mandem tibi, ut sub usuris crederes ei, qui in rem meam mutuaretur.

Dig. 17.1.2.5

Gaius 2 cott.

Tua et aliena, veluti si tibi mandem, ut titio sub usuris crederes: quod si, ut sine usuris crederes, aliena tantum gratia intervenit mandatum.

Dig. 17.1.2.6

Gaius 2 cott.

Tua autem gratia intervenit mandatum, veluti si mandem tibi, ut pecunias tuas potius in emptiones praediorum colloces quam faeneres, vel ex diverso ut faeneres potius quam in emptiones praediorum colloces: cuius generis mandatum magis consilium est quam mandatum et ob id non est obligatorium, quia nemo ex consilio obligatur, etiamsi non expediat ei cui dabatur, quia liberum est cuique apud se explorare, an expediat sibi consilium.

Dig. 17.1.3pr.

Paulus 32 ad ed.

Praeterea in causa mandati etiam illud vertitur, ut interim nec melior causa mandantis fieri possit, interdum melior, deterior vero numquam.

Dig. 17.1.3.1

Paulus 32 ad ed.

Et quidem si mandavi tibi, ut aliquam rem mihi emeres, nec de pretio quicquam statui tuque emisti, utrimque actio nascitur.

Dig. 17.1.3.2

Paulus 32 ad ed.

Quod si pretium statui tuque pluris emisti, quidam negaverunt te mandati habere actionem, etiamsi paratus esses id quod excedit remittere: namque iniquum est non esse mihi cum illo actionem, si nolit, illi vero, si velit, mecum esse.

Dig. 17.1.4

Gaius 2 rer. cott.

Sed proculus recte eum usque ad pretium statutum acturum existimat, quae sententia sane benignior est.

Dig. 17.1.5pr.

Paulus 32 ad ed.

Diligenter igitur fines mandati custodiendi sunt:

Dig. 17.1.5.1

Paulus 32 ad ed.

Nam qui excessit, aliud quid facere videtur et, si susceptum non impleverit, tenetur.

Dig. 17.1.5.2

Paulus 32 ad ed.

Itaque si mandavero tibi, ut domum seianam centum emeres tuque titianam emeris longe maioris pretii, centum tamen aut etiam minoris, non videris implesse mandatum.

Dig. 17.1.5.3

Paulus 32 ad ed.

Item si mandavero tibi, ut fundum meum centum venderes tuque eum nonaginta vendideris et petam fundum, non obstabit mihi exceptio, nisi et reliquum mihi, quod deest mandatu meo, praestes et indemnem me per omnia conserves.

Dig. 17.1.5.4

Paulus 32 ad ed.

Servo quoque dominus si praeceperit certa summa rem vendere, ille minoris vendiderit, similiter vindicare eam dominus potest nec ulla exceptione summoveri, nisi indemnitas ei praestetur.

Dig. 17.1.5.5

Paulus 32 ad ed.

Melior autem causa mandantis fieri potest, si, cum tibi mandassem, ut stichum decem emeres, tu eum minoris emeris vel tantidem, ut aliud quicquam servo accederet: utroque enim casu aut non ultra pretium aut intra pretium fecisti.

Dig. 17.1.6pr.

Ulpianus 31 ad ed.

Si remunerandi gratia honor intervenit, erit mandati actio.

Dig. 17.1.6.1

Ulpianus 31 ad ed.

Si cui fuerit mandatum, ut negotia administraret, hac actione erit conveniendus nec recte negotiorum gestorum cum eo agetur: nec enim ideo est obligatus, quod negotia gessit, verum idcirco quod mandatum susceperit: denique tenetur et si non gessisset.

Dig. 17.1.6.2

Ulpianus 31 ad ed.

Si passus sim aliquem pro me fideiubere vel alias intervenire, mandati teneor et, nisi pro invito quis intercesserit aut donandi animo aut negotium gerens, erit mandati actio.

Dig. 17.1.6.3

Ulpianus 31 ad ed.

Rei turpis nullum mandatum est et ideo hac actione non agetur.

Dig. 17.1.6.4

Ulpianus 31 ad ed.

Si tibi mandavero quod mea non intererat, veluti ut pro seio intervenias vel ut titio credas, erit mihi tecum mandati actio, ut celsus libro septimo digestorum scribit, et ego tibi sum obligatus.

Dig. 17.1.6.5

Ulpianus 31 ad ed.

Plane si tibi mandavero quod tua intererat, nulla erit mandati actio, nisi mea quoque interfuit: aut, si non esses facturus, nisi ego mandassem, nisi mea non interfuit, tamen erit mandati actio.

Dig. 17.1.6.6

Ulpianus 31 ad ed.

Apud iulianum libro tertio decimo digestorum quaeritur: si dominus iusserit procuratorem suum certam pecuniam sumere et faenerare periculo suo ita, ut certas usuras domino penderet dumtaxat, si pluris faenerare potuisset, ipse lucraretur, in creditam pecuniam videtur, inquit, accepisse. plane si omnium negotiorum erat ei administratio mandata, mandati quoque eum teneri, quemadmodum solet mandati teneri debitor, qui creditoris sui negotia gessit.

Dig. 17.1.6.7

Ulpianus 31 ad ed.

Marius paulus quidam fideiusserat pro daphnide mercedem pactus ob suam fideiussionem et sub nomine alterius ex eventu litis caverat sibi certam quantitatem dari: hic a claudio saturnino praetore maiores fructus inferre iussus erat et advocationibus ei idem saturninus interdixerat. videbatur autem mihi iudicatum solvi fideiussisse et quasi redemptor litis extitisse et velle a daphnide mandati iudicio consequi, quod erat condemnatus. sed rectissime divi fratres rescripserunt nullam actionem eum propter suam calliditatem habere, quia mercede pacta accesserat ad talem redemptionem. Marcellus autem sic loquitur de eo qui pecunia accepta spopondit, ut, si quidem hoc actum est, ut suo periculo sponderet, nulla actione agat, sin vero non hoc actum est, utilis ei potius actio competat: quae sententia utilitati rerum consentanea est.

Dig. 17.1.7

Papinianus 3 resp.

Salarium procuratori constitutum si extra ordinem peti coeperit, considerandum erit, laborem dominus remunerare voluerit atque ideo fidem adhiberi placitis oporteat an eventum litium maioris pecuniae praemio contra bonos mores procurator redemerit.

Dig. 17.1.8pr.

Ulpianus 31 ad ed.

Si procuratorem dedero nec instrumenta mihi causae reddat, qua actione mihi teneatur? et labeo putat mandati eum teneri nec esse probabilem sententiam existimantium ex hac causa agi posse depositi: uniuscuiusque enim contractus initium spectandum et causam.

Dig. 17.1.8.1

Ulpianus 31 ad ed.

Sed et si per collusionem procuratoris absolutus sit adversarius, mandati eum teneri: sed si solvendo non sit, tunc de dolo actionem adversus reum, qui per collusionem absolutus sit, dandam ait.

Dig. 17.1.8.2

Ulpianus 31 ad ed.

Sed et de lite quam suscepit exsequenda mandati eum teneri constat.

Dig. 17.1.8.3

Ulpianus 31 ad ed.

Si quis mandaverit alicui gerenda negotia eius, qui ipse sibi mandaverat, habebit mandati actionem, quia et ipse tenetur (tenetur autem, quia agere potest): quamquam enim volgo dicatur procuratorem ante litem contestatam facere procuratorem non posse, tamen mandati actio est: ad agendum enim dumtaxat hoc facere non potest.

Dig. 17.1.8.4

Ulpianus 31 ad ed.

Si tutores mandaverint contutori suo mancipium emendum pupillo et ille non emerit, an sit mandati actio, et utrum tantum mandati an vero et tutelae? et iulianus distinguit: referre enim ait, cuius generis servum tutores uni tutorum mandaverint ut emeret. nam si supervacuum servum vel etiam onerosum, mandati actione tantum eum teneri, tutelae non teneri: si vero necessarium servum, tunc et tutelae eum teneri non solum, sed et ceteros: nam et si mandassent, tenerentur tutelae, cur servum pupillo necessarium non comparaverunt: non sunt igitur excusati, quod contutori mandaverunt, quia emere debuerunt. plane habebunt nihilo minus mandati actionem, quia mandato non est obtemperatum. contra quoque iulianus ait tutorem qui emit mandati actionem habere adversus contutores suos.

Dig. 17.1.8.5

Ulpianus 31 ad ed.

Si liber homo, cum bona fide serviret, mandaverit titio ut redimeretur et nummos ex eo peculio dederit, quod ipsum sequi, non apud bonae fidei emptorem relinqui debuit, titiusque pretio soluto liberum illum manumiserit, mox ingenuus pronuntiatus est, habere eum mandati actionem iulianus ait adversus eum cui se redimendum mandavit, sed hoc tantum inesse mandati iudicio, ut sibi actiones mandet, quas habet adversus eum a quo comparavit. plane si eam pecuniam dederit, quae erat ex peculio ad bonae fidei emptorem pertinente, nullae ei, inquit iulianus, mandari actiones possunt, quia nullas habet, cum ei suos nummos emptor dederit: quinimmo, inquit, ex vendito manebit obligatus, sed et haec actio inutilis est, quia quantum fuerit consecutus, tantum empti iudicio necesse habebit praestare.

Dig. 17.1.8.6

Ulpianus 31 ad ed.

Mandati actio tunc competit, cum coepit interesse eius qui mandavit: ceterum si nihil interest, cessat mandati actio, et eatenus competit, quatenus interest. ut puta mandavi tibi, ut fundum emeres: si intererat mea emi, teneberis: ceterum si eundem hunc fundum ego ipse emi vel alius mihi neque interest aliquid, cessat mandati actio. mandavi, ut negotia gereres: si nihil deperierit, quamvis nemo gesserit, nulla actio est, aut si alius idonee gesserit, cessat mandati actio. et in similibus hoc idem erit probandum.

Dig. 17.1.8.7

Ulpianus 31 ad ed.

Si ignorantes fideiussores debitorem solvisse vel etiam acceptilatione sive pacto liberatum ex substantia debitoris solverunt, non tenebuntur mandati.

Dig. 17.1.8.8

Ulpianus 31 ad ed.

Quod et ad actionem fideiussoris pertinet. et hoc ex rescripto divorum fratrum intellegere licet, cuius verba haec sunt: " catullo iuliano. si hi, qui pro te fideiusserant, in maiorem quantitatem damnati, quam debiti ratio exigebat, scientes et prudentes auxilium appellationis omiserunt, poteris mandati agentibus his aequitate iudicis tueri te". igitur si ignoraverunt, excusata ignorantia est: si scierunt, incumbebat eis necessitas provocandi, ceterorum dolo versati sunt, si non provocaverunt. quid tamen, si paupertas eis non permisit? excusata est eorum inopia. sed et si testato convenerunt debitorem, ut si ipse putaret appellaret, puto rationem eis constare.

Dig. 17.1.8.9

Ulpianus 31 ad ed.

Dolo autem facere videtur, qui id quod potest restituere non restituit:

Dig. 17.1.8.10

Ulpianus 31 ad ed.

Proinde si tibi mandavi, ut hominem emeres, tuque emisti, teneberis mihi, ut restituas. sed et si dolo emere neglexisti (forte enim pecunia accepta alii cessisti ut emeret) aut si lata culpa (forte si gratia ductus passus es alium emere), teneberis. sed et si servus quem emisti fugit, si quidem dolo tuo, teneberis, si dolus non intervenit nec culpa, non teneberis nisi ad hoc, ut caveas, si in potestatem tuam pervenerit, te restituturum. sed et si restituas, et tradere debes. et si cautum est de evictione vel potes desiderare, ut tibi caveatur, puto sufficere, si mihi hac actione cedas, ut procuratorem me in rem meam facias, nec amplius praestes quam consecuturus sis.

Dig. 17.1.9

Paulus 32 ad ed.

De tuo etiam facto cavere debes.

Dig. 17.1.10pr.

Ulpianus 31 ad ed.

Idemque et in fundo, si fundum emit procurator: nihil enim amplius quam bonam fidem praestare eum oportet qui procurat.

Dig. 17.1.10.1

Ulpianus 31 ad ed.

Sed et si de sanitate servi procuratori cautum est aut caveri potest aut de ceteris vitiis, idem erit dicendum. aut si culpa caveri non curaverit, condemnabitur.

Dig. 17.1.10.2

Ulpianus 31 ad ed.

Si ex fundo quem mihi emit procurator fructus consecutus est, hos quoque officio iudicis praestare eum oportet.

Dig. 17.1.10.3

Ulpianus 31 ad ed.

Si procurator meus pecuniam meam habeat, ex mora utique usuras mihi pendet. sed et si pecuniam meam faenori dedit usurasque consecutus est, consequenter dicemus debere eum praestare quantumcumque emolumentum sensit, sive ei mandavi sive non, quia bonae fidei hoc congruit, ne de alieno lucrum sentiat: quod si non exercuit pecuniam, sed ad usus suos convertit, in usuras convenietur, quae legitimo modo in regionibus frequentantur. denique papinianus ait etiam si usuras exegerit procurator et in usus suos convertit, usuras eum praestare debere.

Dig. 17.1.10.4

Ulpianus 31 ad ed.

Si quis titio mandaverit, ut ab actoribus suis mutuam pecuniam acciperet, mandati eum non acturum papinianus libro tertio responsorum scribit, quia de mutua pecunia eum habet obligatum: et ideo usuras eum petere non posse quasi ex causa mandati, si in stipulationem deductae non sunt.

Dig. 17.1.10.5

Ulpianus 31 ad ed.

Idem papinianus libro eodem refert fideiussori condemnato, qui ideo fideiussit, quia dominus procuratori mandaverat ut pecuniam mutuam acciperet, utilem actionem dandam quasi institoriam, quia et hic quasi praeposuisse eum mutuae pecuniae accipiendae videatur.

Dig. 17.1.10.6

Ulpianus 31 ad ed.

Si cui mandavero, ut a titio stipuletur, potero cum eo cui mandavi agere mandati, ut eum accepto liberet, si hoc velim: vel, si malim, in hoc agam, ut eum deleget mihi vel si cui alii voluero. et papinianus libro eodem scribit, si mater pro filia dotem dederit eamque mandante filia vel ilico stipulata sit vel etiam postea, mandati eam teneri, quamvis ipsa sit, quae dotem dederit.

Dig. 17.1.10.7

Ulpianus 31 ad ed.

Si quis ea, quae procurator suus et servi gerebant, ita demum rata esse mandavit, si interventu sempronii gesta essent, et male pecunia credita sit, sempronium, qui nihil dolo fecit, non teneri. et est verum eum, qui non animo procuratoris intervenit, sed affectionem amicalem promisit in monendis procuratoribus et actoribus et in regendis consilio, mandati non teneri, sed si quid dolo fecerit, non mandati, sed magis de dolo teneri.

Dig. 17.1.10.8

Ulpianus 31 ad ed.

Si mandavero procuratori meo, ut titio pecuniam meam credat sine usuris, isque non sine usuris crediderit, an etiam usuras mihi restituere debeat, videamus. et labeo scribit restituere eum oportere, etiamsi hoc mandaverim, ut gratuitam pecuniam daret, quamvis, si periculo suo credidisset, cessaret, inquit labeo, in usuris actio mandati.

Dig. 17.1.10.9

Ulpianus 31 ad ed.

Idem labeo ait et verum est reputationes quoque hoc iudicium admittere et, sicuti fructus cogitur restituere is qui procurat, ita sumptum, quem in fructus percipiendos fecit, deducere eum oportet: sed et si ad vecturas suas, dum excurrit in praedia, sumptum fecit, puto hos quoque sumptus reputare eum oportere, nisi si salariarius fuit et hoc convenit, ut sumptus de suo faceret ad haec itinera, hoc est de salario.

Dig. 17.1.10.10

Ulpianus 31 ad ed.

Idem ait, si quid procurator citra mandatum in voluptatem fecit, permittendum ei auferre, quod sine damno domini fiat, nisi rationem sumptus istius dominus admittit.

Dig. 17.1.10.11

Ulpianus 31 ad ed.

Fideiussores et mandatores et si sine iudicio solverint, habent actionem mandati.

Dig. 17.1.10.12

Ulpianus 31 ad ed.

Generaliter iulianus ait, si fideiussor ex sua persona omiserit exceptionem, qua reus uti non potuit, si quidem minus honestam, habere eum mandati actionem: quod si eam, qua reus uti potuit, si sciens id fecit, non habiturum mandati actionem, si modo habuit facultatem rei conveniendi desiderandique, ut ipse susciperet potius iudicium vel suo vel procuratorio nomine.

Dig. 17.1.10.13

Ulpianus 31 ad ed.

Si fideiussori donationis causa acceptum factum sit a creditore, puto, si fideiussorem remunerari voluit creditor, habere eum mandati actionem: multo magis, si mortis causa accepto tulisset creditor vel si eam liberationem legavit.

Dig. 17.1.11

Pomponius 3 ex plaut.

Si ei, cui damnatus ex causa fideiussoria fueram, heres postea extitero, habebo mandati actionem.

Dig. 17.1.12pr.

Ulpianus 31 ad ed.

Si vero non remunerandi causa, sed principaliter donando fideiussori remisit actionem, mandati eum non acturum.

Dig. 17.1.12.1

Ulpianus 31 ad ed.

Marcellus autem fatetur, si quis donaturus fideiussori pro eo solverit creditori, habere fideiussorem mandati actionem.

Dig. 17.1.12.2

Ulpianus 31 ad ed.

Plane, inquit, si filius familias vel servus fuit fideiussor et pro his solvero donaturus eis, mandati patrem vel dominum non acturos, hoc ideo, quia non patri donatum voluit.

Dig. 17.1.12.3

Ulpianus 31 ad ed.

Plane si servus fideiussor solverit, dominum mandati acturum idem Marcellus ibidem ait.

Dig. 17.1.12.4

Ulpianus 31 ad ed.

Si filius familias non iussu patris fideiusserit, cessat mandati actio, si nihil sit in peculio: quod si iussu, vel ex peculio solutum est, multo magis habet pater mandati.

Dig. 17.1.12.5

Ulpianus 31 ad ed.

Si filio familias mandavi, ut pro me solveret, patrem, sive ipse solverit sive filius ex peculio, mandati acturum neratius ait, quod habet rationem: nihil enim mea interest, quis solvat.

Dig. 17.1.12.6

Ulpianus 31 ad ed.

Si filio familias mandavero, ut pro me solveret, et emancipatus solvat, verum est in factum actionem filio dandam, patrem autem post emancipationem solventem negotiorum gestorum actionem habere.

Dig. 17.1.12.7

Ulpianus 31 ad ed.

Contrario iudicio experiuntur qui mandatum susceperunt, ut puta qui rerum vel rei unius procurationem susceperunt.

Dig. 17.1.12.8

Ulpianus 31 ad ed.

Inde papinianus quaerit, si patronus praedium quod emerat, pro quo pretii bessem exsolverat, iusserit liberto suo tradi, ut ille residuum pretii redderet, deinde reddito pretio vendenti fundum patrono libertus consenserit, trientis pretium an libertus possit repetere. et ait, si mandatum suscepit initio libertus, non donatum accepit, contrario iudicio posse eum pretium repetere, quod deductis mercedibus, quas medio tempore percepit, superest: quod si donationem patronus in libertum contulit, videri et postea libertum patrono donasse.

Dig. 17.1.12.9

Ulpianus 31 ad ed.

Si mihi mandaveris, ut rem tibi aliquam emam, egoque emero meo pretio, habebo mandati actionem de pretio reciperando: sed et si tuo pretio, impendero tamen aliquid bona fide ad emptionem rei, erit contraria mandati actio: aut si rem emptam nolis recipere: simili modo et si quid aliud mandaveris et in id sumptum fecero. nec tantum id quod impendi, verum usuras quoque consequar. usuras autem non tantum ex mora esse admittendas, verum iudicem aestimare debere, si exegit a debitore suo quis et solvit, cum uberrimas usuras consequeretur, aequissimum enim erit rationem eius rei haberi: aut si ipse mutuatus gravibus usuris solvit. sed et si reum usuris non relevavit, ipsi autem et usurae absunt, vel si minoribus relevavit, ipse autem maioribus faenus accepit, ut fidem suam liberaret, non dubito debere eum mandati iudicio et usuras consequi. et (ut est constitutum) totum hoc ex aequo et bono iudex arbitrabitur.

Dig. 17.1.12.10

Ulpianus 31 ad ed.

Dedi tibi pecuniam, ut creditori meo exsolvas: non fecisti: praestabis mihi usuras, quo casu et a me creditor pecuniam debitam cum usuris recepturus sit: et ita imperator severus hadriano demonstrati rescripsit.

Dig. 17.1.12.11

Ulpianus 31 ad ed.

Si adulescens luxuriosus mandet tibi, ut pro meretrice fideiubeas, idque tu sciens mandatum susceperis, non habebis mandati actionem, quia simile est, quasi perdituro pecuniam sciens credideris. sed et si ulterius directo mandaverit tibi, ut meretrici pecuniam credas, non obligabitur mandati, quasi adversus bonam fidem mandatum sit.

Dig. 17.1.12.12

Ulpianus 31 ad ed.

Cum quidam talem epistulam scripsisset amico suo: " rogo te, commendatum habeas sextilium crescentem amicum meum", non obligabitur mandati, quia commendandi magis hominis quam mandandi causa scripta est.

Dig. 17.1.12.13

Ulpianus 31 ad ed.

Si quis mandaverit filio familias credendam pecuniam non contra senatus consultum accipienti, sed ex ea causa, ex qua de peculio vel de in rem verso vel quod iussu pater teneretur, erit licitum mandatum. hoc amplius dico, si, cum dubitarem, utrum contra senatus consultum acciperet an non, nec essem daturus contra senatus consultum accipienti, intercesserit qui diceret non accipere contra senatus consultum, et " periculo meo crede", dicat, " bene credis": arbitror locum esse mandato et mandati eum teneri.

Dig. 17.1.12.14

Ulpianus 31 ad ed.

Si post creditam pecuniam mandavero creditori credendam, nullum esse mandatum rectissime papinianus ait. plane si, ut exspectares nec urgueres debitorem ad solutionem, mandavero tibi, ut ei des intervallum, periculoque meo pecuniam fore dicam, verum puto omne nominis periculum debere ad mandatorem pertinere.

Dig. 17.1.12.15

Ulpianus 31 ad ed.

Idem ait, si tutor mandet suscipi vel probari nomen quod fecerat, teneri eum mandati, scilicet quondam pupillo suo vel curatori eius.

Dig. 17.1.12.16

Ulpianus 31 ad ed.

Si mandavero exigendam pecuniam, deinde voluntatem mutavero, an sit mandati actio vel mihi vel heredi meo? et ait Marcellus cessare mandati actionem, quia extinctum est mandatum finita voluntate. quod si mandaveris exigendam, deinde prohibuisti, exactamque recepisti, debitor liberabitur.

Dig. 17.1.12.17

Ulpianus 31 ad ed.

Idem Marcellus scribit, si, ut post mortem sibi monumentum fieret, quis mandavit, heres eius poterit mandati agere. illum vero qui mandatum suscepit, si sua pecunia fecit, puto agere mandati, si non ita ei mandatum est, ut sua pecunia faceret monumentum. potuit enim agere etiam cum eo qui mandavit, ut sibi pecuniam daret, ad faciendum, maxime si iam quaedam ad faciendum paravit.

Dig. 17.1.13

Gaius 10 ad ed. provinc.

Idem est et si mandavi tibi, ut post mortem meam heredibus meis emeres fundum.

Dig. 17.1.14pr.

Ulpianus 31 ad ed.

Heredem fideiussoris, si solverit, habere mandati actionem dubium non est. sed si vendiderit hereditatem et emptor solverit, an habeat mandati actionem, quaeritur. et iulianus libro tertio decimo scribit idcirco heredem habere mandati actionem, quia tenetur iudicio ex empto, ut praestet actiones suas, idcircoque competere ex empto actionem, quia potest praestare.

Dig. 17.1.14.1

Ulpianus 31 ad ed.

Si fideiussori duo heredes extiterint et alter eorum a coherede emerit hereditatem, deinde omne quod defunctus fideiusserat stipulatori solverit, habebit aut ex stipulatu aut ex empto obligatum coheredem suum: idcirco is mandati actionem habebit.

Dig. 17.1.15

Paulus 2 ad sab.

Si mandassem tibi, ut fundum emeres, postea scripsissem, ne emeres, tu, antequam scias me vetuisse, emisses, mandati tibi obligatus ero, ne damno adficiatur is qui suscipit mandatum.

Dig. 17.1.16

Ulpianus 31 ad ed.

Si quis mihi mandaverit in meo aliquid facere et fecero, quaesitum est, an sit mandati actio. et ait celsus libro septimo digestorum hoc respondisse se, cum aurelius quietus hospiti suo medico mandasse diceretur, ut in hortis eius quos ravennae habebat, in quos omnibus annis secedere solebat, sphaeristerium et hypocausta et quaedam ipsius valetudini apta sua impensa faceret: deducto igitur, quanto sua aedificia pretiosiora fecisset, quod amplius impendisset posse eum mandati iudicio persequi.

Dig. 17.1.17

Paulus 7 ad sab.

Si mandavero tibi, ut a titio decem exigeres, et ante exacta ea mandati tecum egero, si ante rem iudicatam exegeris, condemnandum te esse constat.

Dig. 17.1.18

Ulpianus 40 ad sab.

Qui patitur ab alio mandari, ut sibi credatur, mandare intellegitur.

Dig. 17.1.19

Ulpianus 43 ad sab.

Si servus meus de semet emendo mandaret, ut redimatur, pomponius eleganter tractat, an is, qui servum redemerit, ultro convenire possit venditorem, ut servum recipiat, quoniam mandati actio ultro citroque est. sed esse iniquissimum pomponius ait ex facto servi mei cogi me servum recipere, quem in perpetuum alienari volueram, nec magis in hunc casum debeo mandati teneri, quam ut eum tibi venderem.

Dig. 17.1.20pr.

Paulus 11 ad sab.

Ex mandato apud eum qui mandatum suscepit nihil remanere oportet, sicuti nec damnum pati debet, si exigere faeneratam pecuniam non potuit.

Dig. 17.1.20.1

Paulus 11 ad sab.

Fideiussori negotiorum gestorum est actio, si pro absente fideiusserit: nam mandati actio non potest competere, cum non antecesserit mandatum.

Dig. 17.1.21

Ulpianus 47 ad sab.

Cum mandatu alieno pro te fideiusserim, non possum adversus te habere actionem mandati, quemadmodum qui alienum mandatum intuitus spopondit. sed si non utique unius, sed utriusque mandatum intuitus id fecerim, habebo mandati actionem etiam adversus te, quemadmodum, si duo mihi mandassent ut tibi crederem, utrumque haberem obligatum.

Dig. 17.1.22pr.

Paulus 32 ad ed.

Si mandavero tibi, ut pro me in diem fideiubeas tuque pure fideiusseris et solveris, utilius respondebitur interim non esse tibi mandati actionem, sed cum dies venerit.

Dig. 17.1.22.1

Paulus 32 ad ed.

Item tractatum est, si, cum in diem deberem, mandatu meo in diem fideiusseris et ante diem solveris, an statim habeas mandati actionem. et quidam putant praesentem quidem esse mandati actionem, sed tanti minorem, quanti mea intersit superveniente die solutum fuisse. sed melius est dici interim nec huius summae mandati agi posse, quando nonnullum adhuc commodum meum sit, ut nec hoc ante diem solvam.

Dig. 17.1.22.2

Paulus 32 ad ed.

Interdum evenit, ut meum negotium geram et tamen utilem habeam mandati actionem: veluti cum debitor meus periculo suo debitorem suum mihi delegat aut cum rogatu fideiussoris cum reo experior: nam quamvis debitum meum persequar, nihilo minus et illius negotium gero: igitur quod minus servavero, consequar mandati actione.

Dig. 17.1.22.3

Paulus 32 ad ed.

Si hi, quorum res veneunt quas pignori dederunt, supposuerunt emptores et eis emendas res mandent, mandatum intellegitur, licet quantum ad meram rationem mandatum non constitit: nam cum rem tuam emas, nulla emptio est in tua persona rei tuae.

Dig. 17.1.22.4

Paulus 32 ad ed.

Iulianus scripsit mandati obligationem consistere etiam in rem eius qui mandatum suscipit ex eo maxime probari, quod, si pluribus heredibus vendentibus uni mandavero, ut rem hereditariam emeret, etiam pro ea parte, qua heres sit, obligatur mandati actione et obligat: et sane si ille propter hoc extraneo rem non addixerit, quod mandatum susceperat, ex bona fide esse praestare ei pretium, quanti vendere poterat: et contra si emptor ad emptionem rei sibi necessariae idcirco non accesserat, quod heredi praecepisset se ei empturum, aequissimum esse mandati iudicio praestare quanti eius interfuit emptam rem habere.

Dig. 17.1.22.5

Paulus 32 ad ed.

Is cuius bona publicata sunt mandare alicui potest, ut ea emat, et, si emerit, utilis erit mandati actio, si non praestet fidem: quod ideo receptum est, quia publicatis bonis quidquid postea adquiritur, non sequitur fiscum.

Dig. 17.1.22.6

Paulus 32 ad ed.

Qui aedem sacram spoliandam, hominem vulnerandum, occidendum mandatum suscipiat, nihil mandati iudicio consequi potest propter turpitudinem mandati.

Dig. 17.1.22.7

Paulus 32 ad ed.

Si tibi centum dedero, ut ea titio dares, tuque non dederis, sed consumpseris, et mandati et furti teneri te proculus ait: aut, si ita dederim, ut quae velles dares, mandati tantummodo.

Dig. 17.1.22.8

Paulus 32 ad ed.

Si mandaverim servo tuo, ut quod tibi debeam solveret meo nomine, neratius scribit, quamvis mutuatus servus pecuniam rationibus tuis quasi a me receptam intulerit, tamen, si nummos a creditore non ita acceperit, ut meo nomine daret, nec liberari me nec te mandati mecum acturum: quod si sic mutuatus sit, ut pecuniam meo nomine daret, utrumque contra esse: nec referre, alius quis an idem ipse servus nomine tuo quod pro me solvebatur acceperit. et hoc verius est, quoniam quotiens suos nummos accipit creditor, non contingit liberatio debitori.

Dig. 17.1.22.9

Paulus 32 ad ed.

Fugitivus meus cum apud furem esset, pecuniam adquisiit et ex ea servos paravit eosque titius per traditionem a venditore accepit. mela ait mandati actione me consecuturum, ut restituat mihi titius, quia servus meus mandasse titio videbatur, ut per traditionem acciperet, si modo rogatu servi hoc fecerit: quod si sine voluntate eius venditor titio tradiderit, tunc posse me ex empto agere, ut mihi eos venditor traderet, venditoremque per condictionem a titio repetiturum, si servos tradiderit titio quos non debuerit, cum debere se existimaret.

Dig. 17.1.22.10

Paulus 32 ad ed.

Si curator bonorum venditionem quidem fecerit, pecuniam autem creditoribus non solverit, trebatius ofilius labeo responderunt his qui praesentes fuerunt competere adversus eum mandati actionem, his autem qui absentes fuerunt negotiorum gestorum actionem esse. atquin si praesentium mandatum exsecutus id egit, negotiorum gestorum actio absentibus non est nisi forte adversus eos qui mandaverunt curatori, tamquam si negotia absentium gesserint: quod si, cum soli creditores se esse existimarent, id mandaverint, in factum actio absentibus danda est in eos qui mandaverint.

Dig. 17.1.22.11

Paulus 32 ad ed.

Sicut autem liberum est mandatum non suscipere, ita susceptum consummari oportet, nisi renuntiatum sit (renuntiari autem ita potest, ut integrum ius mandatori reservetur vel per se vel per alium eandem rem commode explicandi) aut si redundet in eum captio qui suscepit mandatum. et quidem si is cui mandatum est ut aliquid mercaretur mercatus non sit neque renuntiaverit se non empturum idque sua, non alterius culpa fecerit, mandati actione teneri eum convenit: nec amplius tenebitur, sicuti mela quoque scripsit, si eo tempore per fraudem renuntiaverit, cum iam recte emere non posset.

Dig. 17.1.23

Hermogenianus 2 iuris epit.

Sane si valetudinis adversae vel capitalium inimicitiarium.

Dig. 17.1.24

Paulus 2 sent.

Seu ob inanes rei actiones.

Dig. 17.1.25

Hermogenianus 2 iuris epit.

Seu ob aliam iustam causam excusationes alleget, audiendus est.

Dig. 17.1.26pr.

Paulus 32 ad ed.

Inter causas omittendi mandati etiam mors mandatoris est: nam mandatum solvitur morte. si tamen per ignorantiam impletum est, competere actionem utilitatis causa dicitur. iulianus quoque scripsit mandatoris morte solvi mandatum, sed obligationem aliquando durare.

Dig. 17.1.26.1

Paulus 32 ad ed.

Si quis debitori suo mandaverit, ut titio solveret, et debitor mortuo eo, cum id ignoraret, solverit, liberari eum oportet.

Dig. 17.1.26.2

Paulus 32 ad ed.

Abesse intellegitur pecunia fideiussori etiam si debitor ab eo delegatus sit creditori, licet is solvendo non fuerit, quia bonum nomen facit creditor, qui admittit debitorem delegatum.

Dig. 17.1.26.3

Paulus 32 ad ed.

Si is, qui fideiussori donare vult, creditorem eius habeat debitorem suum eumque liberaverit, continuo aget fideiussor mandati, quatenus nihil intersit, utrum nummos solverit creditori an eum liberaverit.

Dig. 17.1.26.4

Paulus 32 ad ed.

Praeterea sciendum est non plus fideiussorem consequi debere mandati iudicio, quam quod solverit.

Dig. 17.1.26.5

Paulus 32 ad ed.

Mandatu tuo fideiussi decem et procuratori creditoris solvi: si verus procurator fuit, statim mandati agam: quod si procurator non est, repetam ab eo.

Dig. 17.1.26.6

Paulus 32 ad ed.

Non omnia, quae impensurus non fuit mandator imputabit, veluti quod spoliatus sit a latronibus aut naufragio res amiserit vel languore suo suorumque adpraehensus quaedam erogaverit: nam haec magis casibus quam mandato imputari oportet.

Dig. 17.1.26.7

Paulus 32 ad ed.

Sed cum servus, quem mandatu meo emeras, furtum tibi fecisset, neratius ait mandati actione te consecuturum, ut servus tibi noxae dedatur, si tamen sine culpa tua id acciderit: quod si ego scissem talem esse servum nec praedixissem, ut possis praecavere, tunc quanti tua intersit, tantum tibi praestari oportet.

Dig. 17.1.26.8

Paulus 32 ad ed.

Faber mandatu amici sui emit servum decem et fabricam docuit, deinde vendidit eum viginti, quos mandati iudicio coactus est solvere: mox quasi homo non erat sanus, emptori damnatus est: mela ait non praestaturum id ei mandatorem, nisi posteaquam emisset sine dolo malo eius hoc vitium habere coeperit servus. sed si iussu mandatoris eum docuerit, contra fore: tunc enim et mercedem et cibaria consecuturum, nisi si ut gratis doceret rogatus sit.

Dig. 17.1.27pr.

Gaius 9 ad ed. provinc.

Si quis alicui scripserit, ut debitorem suum liberet, seque eam pecuniam, quam is debuerit, soluturum, mandati actione tenetur.

Dig. 17.1.27.1

Gaius 9 ad ed. provinc.

Si servum ea lege tibi tradidero, ut eum post mortem meam manumitteres, constitit obligatio: potest autem et in mea quoque persona agendi causa intervenire, veluti si paenitentia acta servum reciperare velim.

Dig. 17.1.27.2

Gaius 9 ad ed. provinc.

Qui mandatum suscepit, si potest id explere, deserere promissum officium non debet, alioquin quanti mandatoris intersit damnabitur: si vero intellegit explere se id officium non posse, id ipsum cum primum poterit debet mandatori nuntiare, ut is si velit alterius opera utatur: quod si, cum possit nuntiare, cessaverit, quanti mandatoris intersit tenebitur: si aliqua ex causa non poterit nuntiare, securus erit.

Dig. 17.1.27.3

Gaius 9 ad ed. provinc.

Morte quoque eius cui mandatum est, si is integro adhuc mandato decesserit, solvitur mandatum et ob id heres eius, licet exsecutus fuerit mandatum, non habet mandati actionem.

Dig. 17.1.27.4

Gaius 9 ad ed. provinc.

Impendia mandati exsequendi gratia facta si bona fide facta sunt, restitui omnimodo debent, nec ad rem pertinet, quod is qui mandasset potuisset, si ipse negotium gereret, minus impendere.

Dig. 17.1.27.5

Gaius 9 ad ed. provinc.

Si mandatu meo titio credideris et mecum mandati egeris, non aliter condemnari debeo, quam si actiones tuas, quas adversus titium habes, mihi praestiteris. sed si cum titio egeris, ego quidem non liberabor, sed in id dumtaxat tibi obligatus ero, quod a titio servare non potueris.

Dig. 17.1.28

Ulpianus 14 ad ed.

Papinianus libro tertio quaestionum ait mandatorem debitoris solventem ipso iure reum non liberare (propter mandatum enim suum solvit et suo nomine) ideoque mandatori actiones putat adversus reum cedi debere.

Dig. 17.1.29pr.

Ulpianus 7 disp.

Si fideiussor conventus, cum ignoraret non fuisse debitori numeratam pecuniam, solverit ex causa fideiussionis, an mandati iudicio persequi possit id quod solverit, quaeritur. et si quidem sciens praetermiserit exceptionem vel doli vel non numeratae pecuniae, videtur dolo versari (dissoluta enim neglegentia prope dolum est): ubi vero ignoravit, nihil est quod ei imputetur. pari ratione et si aliqua exceptio debitori competebat, pacti forte conventi vel cuius alterius rei, et ignarus hanc exceptionem non exercebit, dici oportet mandati ei actionem competere: potuit enim atque debuit reus promittendi certiorare fideiussorem suum, ne forte ignarus solvat indebitum.

Dig. 17.1.29.1

Ulpianus 7 disp.

Non male tractabitur, si, cum ignoraret fideiussor inutiliter se obligatum, solverit, an mandati actionem habeat. et si quidem factum ignoravit, recipi ignorantia eius potest, si vero ius, aliud dici debet.

Dig. 17.1.29.2

Ulpianus 7 disp.

Si, cum debitor solvisset, ignarus fideiussor solverit, puto eum mandati habere actionem: ignoscendum est enim ei, si non divinavit debitorem solvisse: debitor enim debuit notum facere fideiussori iam se solvisse, ne forte creditor obrepat et ignorantiam eius circumveniat et excutiat ei summam, in quam fideiussit.

Dig. 17.1.29.3

Ulpianus 7 disp.

Hoc idem tractari et in fideiussore potest, si, cum solvisset, non certioravit reum, sic deinde reus solvit quod solvere eum non oportebat. et credo, si, cum posset eum certiorare, non fecit, oportere mandati agentem fideiussorem repelli: dolo enim proximum est, si post solutionem non nuntiaverit debitori: cedere autem reus indebiti actione fideiussori debet, ne duplum creditor consequatur.

Dig. 17.1.29.4

Ulpianus 7 disp.

Quaedam tamen etsi sciens omittat fideiussor, caret fraude, ut puta si exceptionem procuratoriam omisit sive sciens sive ignarus: de bona fide enim agitur, cui non congruit de apicibus iuris disputare, sed de hoc tantum, debitor fuerit nec ne.

Dig. 17.1.29.5

Ulpianus 7 disp.

In omnibus autem visionibus, quae praepositae sunt, ubi creditor vel non numeratam pecuniam accipit vel numeratam iterum accepit, repetitio contra eum competit, nisi ex condemnatione fuerit ei pecunia soluta: tunc enim propter auctoritatem rei iudicatae repetitio quidem cessat, ipse autem stellionatus crimine propter suam calliditatem plectetur.

Dig. 17.1.29.6

Ulpianus 7 disp.

Fideiussor, si solus tempore liberatus tamen solverit creditori, recte mandati habebit actionem adversus reum: quamquam enim iam liberatus solvit, tamen fidem implevit et debitorem liberavit: si igitur paratus sit defendere reum adversus creditorem, aequissimum est mandati iudicio eum quod solvit reciperare. et ita iuliano videtur.

Dig. 17.1.30

Iulianus 13 Dig.

Si hominem tibi dedero, ut eum manumitteres, et postea procurator meus prohibuerit, ne manumitteres, an mandati agere possim, si tu eum manumiseris? respondi, si procurator iustam causam habuit interpellandi manumissionem servi, quem in hoc solum acceperam, ut manumitterem, veluti si compererit eum postea falsas rationes confecisse, insidias vitae prioris domini struxisse, tenebor, nisi denuntiationi procuratoris paruero: si vero nulla iusta causa procuratori fuit denuntiandi, ne servus manumitteretur, non poterit mecum agi, quamvis ad libertatem eum perduxerim.

Dig. 17.1.31

Iulianus 14 Dig.

Si negotia mea mandavero gerenda ei, qui mihi actione in quadruplum tenebatur, post annum vero in simplum, etsi post annum cum eo mandati agam, praestare mihi quadruplum debebit: nam qui alterius negotia administranda suscipit, id praestare debet in sua persona, quod in aliorum.

Dig. 17.1.32

Iulianus 3 ad urs. ferocem.

Si hereditatem aliter aditurus non essem quam cautum fuisset damnum praestari et hoc mandatum intercessisset, fore mandati actionem existimo. si quis autem mandaverit alicui, ne legatum a se repellat, longe ei dissimile esse: nam legatum adquisitum numquam illi damno esse potuit: hereditas interdum damnosa est. et in summa quicumque contractus tales sunt, ut quicumque eorum nomine fideiussor obligari posset, et mandati obligationem consistere puto: neque enim multo referre, praesens quis interrogatus fideiubeat an absens vel praesens mandet. praeterea volgo animadvertere licet mandatu creditorum hereditates suspectas adiri, quos mandati iudicio teneri procul dubio est.

Dig. 17.1.33

Iulianus 4 ex minic.

Rogatus ut fideiuberet si in minorem summam se obligavit, recte tenetur: si in maiorem, iulianus verius putat quod a plerisque responsum est eum, qui maiorem summam quam rogatus erat fideiussisset, hactenus mandati actionem habere, quatenus rogatus esset, quia id fecisset, quod mandatum ei est: nam usque ad eam summam, in quam rogatus erat, fidem eius spectasse videtur qui rogavit.

Dig. 17.1.34pr.

Africanus 8 quaest.

Qui negotia lucii titii procurabat, is, cum a debitoribus eius pecuniam exegisset, epistulam ad eum emisit, qua significaret certam summam ex administratione apud se esse eamque creditam sibi se debiturum cum usuris semissibus: quaesitum est, an ex ea causa credita pecunia peti possit et an usurae peti possint. respondit non esse creditam: alioquin dicendum ex omni contractu nuda pactione pecuniam creditam fieri posse. nec huic simile esse, quod, si pecuniam apud te depositam convenerit ut creditam habeas, credita fiat, quia tunc nummi, qui mei erant, tui fiunt: item quod, si a debitore meo iussero te accipere pecuniam, credita fiat, id enim benigne receptum est. his argumentum esse eum, qui, cum mutuam pecuniam dare vellet, argentum vendendum dedisset, nihilo magis pecuniam creditam recte petiturum: et tamen pecuniam ex argento redactam periculo eius fore, qui accepisset argentum. et in proposito igitur dicendum actione mandati obligatum fore procuratorem, ut, quamvis ipsius periculo nummi fierent tamen usuras, de quibus convenerit, praestare debeat.

Dig. 17.1.34.1

Africanus 8 quaest.

Cum heres ex parte esses, mandavi tibi, ut praedium hereditarium mihi emeres certo pretio: emisti. pro coheredum quidem partibus non dubie mandati actio est inter nos. pro tua autem parte posse dubitari ait, utrumne ex empto an mandati agi oporteat: neque enim sine ratione quem existimaturum pro hac parte sub condicione contractam emptionem. quod quidem maxime quaeri pertinere ait, ut, si forte prius quam emptio fieret decesserim et tu, cum scires me decessisse, propter mandatum meum alii vendere nolueris, an heres meus eo nomine tibi sit obligatus, et retro, si alii vendideris, an heredi meo tenearis. nam si quidem sub condicione emptio facta videtur, potest agi, quemadmodum si quaevis alia condicio post mortem exstitisset: sin ^ si^ vero perinde mandati agendum sit, ac si alienum fundum emi mandassem, morte insecuta, cum id scieris, resoluto mandato nullam tibi actionem cum herede meo fore. sed et si mandati agendum esset, eadem praestanda, quae praestarentur, si ex empto ageretur.

Dig. 17.1.35

Nerva 5 membr.

Si fundum, qui ex parte tuus est, mandavi tibi ut emeres mihi, verum est mandatum posse ita consistere, ut mihi ceteris partibus redemptis etiam tuam partem praestare debeas. sed si quidem certo pretio emendas eas mandaverim, quanticumque aliorum partes redemeris, sic et tua pars coartabitur, ut non abundet mandati quantitatem, in quam tibi emendum totum mandavi: sin autem nullo certo pretio constituto emere tibi mandaverim tuque ex diversis pretiis partes ceterorum redemeris, et tuam partem viri boni arbitratu aestimato pretio dari oportet,

Dig. 17.1.36pr.

Iavolenus 7 ex cass.

Ita tu omnes summas maiores et minores coacervet et ita portionem ei qui mandatum suscepit praestet. quod et plerique probant.

Dig. 17.1.36.1

Iavolenus 7 ex cass.

Simili modo et in illa specie, ubi certo pretio tibi emere mandavi et aliarum partium nomine commode negotium gessisti et vilius emeris, pro tua parte tantum tibi praestatur, quanti interest tua, dummodo intra id pretium, quod mandato continetur. quid enim fiet, si exiguo pretio hi, cum quibus tibi communis fundus erat, rem abicere vel necessitate rei familiaris vel alia causa cogerentur? non etiam tu ad idem dispendium deduceris. sed nec lucrum tibi ex hac causa adquirere debes, cum mandatum gratuitum esse debet: neque enim tibi concedendum est propter hoc venditionem impedire, quod animosiorem eius rei emptorem esse quam tibi mandatum est cognoveris.

Dig. 17.1.36.2

Iavolenus 7 ex cass.

Quod si fundum, qui per partes venit, emendum tibi mandassem, sed ita, ut non aliter mandato tenear, quam si totum fundum emeres: si totum emere non potueris, in partibus emendis tibi negotium gesseris (sive habueris in eo fundo partem sive non) et eveniet, ut is cui tale mandatum datum est periculo suo interim partes emat et, nisi totum emerit, ingratis eas retineat. nam propius est, ut cum huiusmodi incommodis mandatum suscipi possit praestarique officium et in partibus emendis perinde atque in toto debeat ab eo, qui tale mandatum sua sponte suscepit.

Dig. 17.1.36.3

Iavolenus 7 ex cass.

Quod si mandassem tibi, ut fundum mihi emeres, non addito eo, ut non aliter mandato tenear, quam si totum emeres, et tu partem vel quasdam partes eius emeris, tum habebimus sine dubio invicem mandati actionem, quamvis reliquas partes emere non potuisses.

Dig. 17.1.37

Africanus 8 quaest.

Hominem certum pro te dari fideiussi et solvi: cum mandati agatur, aestimatio eius ad id potius tempus, quo solutus sit, non quo agatur, referri debet, et ideo etiamsi mortuus fuerit, nihilo minus utilis ea actio est. aliter in stipulatione servatur: nam tunc id tempus spectatur quo agitur, nisi forte aut per promissorem steterit, quo minus sua die solveret, aut per creditorem, quo minus acciperet: etenim neutri eorum frustratio sua prodesse debet.

Dig. 17.1.38pr.

Marcellus l.S. resp.

Lucius titius publio maevio filio naturali domum communem permisit non donationis causa creditori filii obligare: postea maevio defuncto relicta pupilla tutores eius iudicem adversus titium acceperunt et titius de mutuis petitionibus: quaero, an domus pars, quam titius obligandam filio suo accommodavit, arbitratu iudicis liberari debeat. Marcellus respondit, an et quando debeat liberari, ex persona debitoris itemque ex eo, quod inter contrahentes actum esset, ac tempore, quo res de qua quaereretur obligata fuisset, iudicem aestimaturum:

Dig. 17.1.38.1

Marcellus l.S. resp.

Est enim earum specierum iudicialis quaestio, per quam res expediatur, non absimilis illa, quae frequentissime agitari solet, fideiussor an et prius quam solvat agere possit, ut liberetur. nec tamen semper exspectandum est, ut solvat aut iudicio accepto condemnetur, si diu in solutione reus cessabit aut certe bona sua dissipabit, praesertim si domi pecuniam fideiussor non habebit, qua numerata creditori mandati actione reum conveniat.

Dig. 17.1.39

Nerva 7 membr.

Et aristoni et celso patri placuit posse rem hac condicione deponi mandatumque suscipi, ut res periculo eius sit qui depositum vel mandatum suscepit: quod et mihi verum esse videtur.

Dig. 17.1.40

Paulus 9 ad ed.

Si pro te praesente et vetante fideiusserim, nec mandati actio nec negotiorum gestorum est: sed quidam utilem putant dari oportere: quibus non consentio, secundum quod et pomponio videtur.

Dig. 17.1.41

Gaius 3 ad ed. provinc.

Potest ab una dumtaxat parte mandati iudicium dari: nam si is qui mandatum suscepit egressus fuerit mandatum, ipsi quidem mandati iudicium non competit, at ei qui mandaverit adversus eum competit.

Dig. 17.1.42

Ulpianus 11 ad ed.

Si mandavero tibi, ut excuteres vires hereditatis, et tu, quasi minor sit, eam a me emeris, et mandati mihi teneberis. tantundem et si tibi mandavi, ut vires excuteres eius cui eram crediturus et renuntiaveris eum idoneum esse.

Dig. 17.1.43

Ulpianus 23 ad ed.

Qui mandatum suscepit, ut pecunias in diem collocaret, isque hoc fecerit, mandati conveniendus est, ut cum dilatione temporis actionibus cedat.

Dig. 17.1.44

Ulpianus 62 ad ed.

Dolus est, si quis nolit persequi quod persequi potest, aut si quis nolit quod exegerit solvere.

Dig. 17.1.45pr.

Paulus 5 ad plaut.

Si mandatu meo fundum emeris, utrum cum dederis pretium ageres mecum mandati, an et antequam des, ne necesse habeas res tuas vendere? et recte dicitur in hoc esse mandati actionem, ut suscipiam obligationem, quae adversus te venditori competit: nam et ego tecum agere possum, ut praestes mihi adversus venditorem empti actiones.

Dig. 17.1.45.1

Paulus 5 ad plaut.

Sed si mandatu meo iudicium suscepisti, manente iudicio sine iusta causa non debes mecum agere, ut transferatur iudicium in me: nondum enim perfecisti mandatum.

Dig. 17.1.45.2

Paulus 5 ad plaut.

Item si, dum negotia mea geris, alicui de creditoribus meis promiseris, et antequam solvas dicendum est te agere posse, ut obligationem suscipiam: aut si nolit creditor obligationem mutare, cavere tibi debeo defensurum te.

Dig. 17.1.45.3

Paulus 5 ad plaut.

Si iudicio te sisti promisero nec exhibuero, et antequam praestem, mandati agere possum, ut me liberes: vel si pro te reus promittendi factus sim.

Dig. 17.1.45.4

Paulus 5 ad plaut.

Sed si mandavero tibi, ut creditori meo solvas, tuque expromiseris et ex ea causa damnatus sis, humanius est et in hoc casu mandati actionem tibi competere.

Dig. 17.1.45.5

Paulus 5 ad plaut.

Quotiens autem ante soltuam pecuniam mandati agi posse diximus, faciendi causa, non dandi tenebitur reus: et est aequum, sicut mandante aliquo actionem nacti cogimur eam praestare iudicio mandati, ita ex eadem causa obligatos habere mandati actionem, ut liberemur.

Dig. 17.1.45.6

Paulus 5 ad plaut.

Si fideiussor multiplicaverit summam, in quam fideiussit, sumptibus ex iusta ratione factis, totam eam praestabit is pro quo fideiussit.

Dig. 17.1.45.7

Paulus 5 ad plaut.

Quod mihi debebas a debitore tuo stipulatus sum periculo tuo: posse me agere tecum mandati in id, quod minus ab illo servare potero, nerva atilicinus aiunt, quamvis id mandatum ad tuam rem pertineat, et merito: tunc enim liberatur is qui debitorem delegat, si nomen eius creditor secutus est, non cum periculo debitoris ab eo stipulatur.

Dig. 17.1.45.8

Paulus 5 ad plaut.

Idem iuris est, si mandatu fideiussoris cum reo egissem, quia sequenti mandato liberaretur ex priore causa.

Dig. 17.1.46

Paulus 74 ad ed.

Si quis pro eo spoponderit, qui ita promisit: " si stichum non dederis, centum milia dabis?" et stichum redemerit vilius et solverit, ne centum milium stipulatio committatur, constat posse eum mandati agere. igitur commodissime illa forma in mandatis servanda est, ut, quotiens certum mandatum sit, recedi a forma non debeat: at quotiens incertum vel plurium causarum, tunc, licet aliis praestationibus exsoluta sit causa mandati quam quae ipso mandato inerant, si tamen hoc mandatori expedierit, mandati erit actio.

Dig. 17.1.47pr.

Pomponius 3 ex plaut.

Iulianus ait, si fideiussori uxor doti promiserit, quod ei ex causa fideiussoria debeat, nuptiis secutis confestim mandati adversus debitorem agere eum posse, quia intellegitur abesse ei pecunia eo, quod onera matrimonii sustineret.

Dig. 17.1.47.1

Pomponius 3 ex plaut.

Si is, qui pro te hominem dare fideiussit, alienum hominem stipulatori dederit, nec ipse liberatur nec te liberat et ideo mandati actionem tecum non habet. sed si stipulator eum hominem usuceperit, dicendum esse iulianus ait liberationem contingere: eo ergo casu mandati actio post usucapionem demum tecum erit.

Dig. 17.1.48pr.

Celsus 7 Dig.

Quintus mucius scaevola ait, si quis sub usuris creditam pecuniam fideiussisset et reus in iudicio conventus cum recusare vellet sub usuris creditam esse pecuniam et fideiussor solvendo usuras potestatem recusandi eas reo sustulisset, eam pecuniam a reo non petiturum. sed si reus fideiussori denuntiasset, ut recusaret sub usuris debitam esse nec is propter suam existimationem recusare voluisset, quod ita solverit, a reo petiturum. hoc bene censuit scaevola: parum enim fideliter facit fideiussor in superiore casu, quod potestatem eximere reo videtur suo iure uti: ceterum in posteriore casu non oportet esse noxiae fideiussori, si pepercisset pudori suo.

Dig. 17.1.48.1

Celsus 7 Dig.

Cum mando tibi, ut credendo pecuniam negotium mihi geras mihique id nomen praestes, meum in eo periculum, meum emolumentum sit, puto mandatum posse consistere.

Dig. 17.1.48.2

Celsus 7 Dig.

Ceterum ut tibi negotium geras, tui arbitrii sit nomen, id est ut cuivis credas, tu recipias usuras, periculum dumtaxat ad me pertineat, iam extra mandati formam est, quemadmodum si mandem, ut mihi quemvis fundum emas.

Dig. 17.1.49

Marcellus 6 Dig.

Servum titii emi ab alio bona fide et possideo: mandatu meo eum titius vendidit, cum ignoraret suum esse, vel contra ego vendidi illius mandatu, cum forte is, cui heres exstiterit, eum emisset: de iure evicitonis et de mandatu quaesitum est. et puto titium, quamvis quasi procurator vendidisset, obstrictum emptori neque, si rem tradidisset, vindicationem ei concedendam, et idcirco mandati eum non teneri, sed contra mandati agere posse, si quid eius interfuisset, quia forte venditurus non fuerit. contra mandator, si rem ab eo vindicare velit, exceptione doli summovetur et adversus venditorem testatoris sui habet ex empto iure hereditario actionem.

Dig. 17.1.50pr.

Celsus 38 Dig.

Si is qui negotia fideiussoris gerebat ita solvit stipulatori, ut reum fideiussoremque liberaret, idque utiliter fecit, negotiorum gestorum actione fideiussorem habet obligatum, nec refert, ratum habuit nec ne fideiussor. sed fideiussor etiam antequam solveret procuratori pecuniam, simul ac ratum habuisset, haberet tamen mandati actionem.

Dig. 17.1.50.1

Celsus 38 Dig.

Sive, cum frumentum deberetur, fideiussor africum dedit, sive quid ex necessitate solvendi plus impendit quam est pretium solutae rei, sive stichum solvit isque decessit aut debilitate flagitiove ad nullum pretium sui redactus est, id mandati iudicio consequeretur.

Dig. 17.1.51

Iavolenus 9 ex cass.

Fideiussor quamvis per errorem ante diem pecuniam solverit, repetere tamen ab eo non potest ac ne mandati quidem actionem, antequam dies solvendi veniat, cum reo habebit.

Dig. 17.1.52

Iavolenus 1 epist.

Fideiussorem, si sine adiectione bonitatis tritici pro altero triticum spopondit, quodlibet triticum dando reum liberare posse existimo: a reo autem non aliud triticum repetere poterit, quam quo pessimo tritico liberare se a stipulatore licuit. itaque si paratus fuerit reus, quod dando ipse creditori liberari potuit, fideiussori dare et fideiussor id quod dederit, id est melius triticum condicet, exceptione eum doli mali summoveri existimo.

Dig. 17.1.53

Papinianus 9 quaest.

Qui fide alterius pro alio fideiussit praesente et non recusante, utrosque obligatos habet iure mandati: quod si pro invito vel ignorante alterutrius mandatum secutus fideiussit, eum solum convenire potest qui mandavit, non etiam reum promittendi: nec me movet, quod pecunia fideiussoris reus liberetur: id enim contingit et si meo mandato pro alio solvas.

Dig. 17.1.54pr.

Papinianus 27 quaest.

Cum servus extero se mandat emendum, nullum mandatum est. sed si in hoc mandatum intercessit ut servus manumitteretur nec manumiserit, et pretium consequetur dominus ut venditor et affectus ratione mandati agetur: finge filium naturalem vel fratrem esse (placuit enim prudentioribus affectus rationem in bonae fidei iudiciis habendam). quod si de suis nummis emptor pretium dederit (neque enim aliter iudicio venditi liberari potest), quaeri solet, an utiliter de peculio agere possit. et verius et utilius videtur praetorem de huiusmodi contractibus servorum non cogitasse, quo se ipsi mala ratione dominis auferrent.

Dig. 17.1.54.1

Papinianus 27 quaest.

Si liber homo bona fide serviens redimi se mandaverit idque nummis emptoris factum sit, contraria mandati actione agi posse constat, ut tamen actiones praestentur, quas habet emptor adversus venditorem: finge non manumisisse liberam personam emptorem.

Dig. 17.1.55

Papinianus 1 resp.

Procurator, qui non res inclusas subtraxit, sed traditas non reddidit, iudicio mandati, non furti tenetur.

Dig. 17.1.56pr.

Papinianus 3 resp.

Qui mutuam pecuniam dari mandavit, omisso reo promittendi et pignoribus non distractis eligi potest: quod uti liceat si litteris exprimatur, distractis quoque pignoribus ad eum creditor redire poterit: etenim quae dubitationis tollendae causa contractibus inseruntur, ius commune non laedunt.

Dig. 17.1.56.1

Papinianus 3 resp.

Fideiussor qui pecuniam in iure optulit et propter aetatem eius qui petebat obsignavit ac publice deposuit, confestim agere mandati potest.

Dig. 17.1.56.2

Papinianus 3 resp.

Non ideo minus omnis temporis bonam fidem explorari oportet, quod dominus post annos quinque de provincia reversus, mox rei publicae causa profecturus non acceptis rationibus mandatum instauraverit. cum igitur ad officium procuratoris pertinuerit quidquid ex prima negotiorum gestorum administratione debuit ad secundam rationem transferre, secundi temporis causa priorem litem suscipiet.

Dig. 17.1.56.3

Papinianus 3 resp.

Salarium incertae pollicitationis neque extra ordinem recte petitur neque iudicio mandati, ut salarium tibi constituat.

Dig. 17.1.56.4

Papinianus 3 resp.

Sumptus bona fide necessario factos, etsi negotio finem adhibere procurator non potuit, iudicio mandati restitui necesse est.

Dig. 17.1.57

Papinianus 10 resp.

Mandatum distrahendorum servorum defuncto qui mandatum suscepit intercidisse constitit. quoniam tamen heredes eius errore lapsi non animo furandi, sed exsequendi, quod defunctus suae curae fecerat, servos vendiderant, eos ab emptoribus usucaptos videri placuit. sed venaliciarium ex provincia reversum publiciana actione non inutiliter acturum, cum exceptio iusti dominii causa cognita detur neque oporteat eum, qui certi hominis fidem elegit, ob errorem aut imperitiam heredum adfici damno.

Dig. 17.1.58pr.

Paulus 4 quaest.

Si praecedente mandato titium defenderas quamvis mortuo eo, cum hoc ignorares, ego puto mandati actionem adversus heredem titii competere, quia mandatum morte mandatoris, non etiam mandati actio solvitur. quod si sine mandatu defensionem suscepisti, negotium quodammodo defuncti gerere institueras, et quemadmodum, si illum liberasses, competeret tibi negotiorum gestorum actio, ita potest dici et heredem eius eadem actione teneri.

Dig. 17.1.58.1

Paulus 4 quaest.

Lucius titius creditori suo mandatorem dedit: deinde defuncto debitore maiore parte creditorum consentiente a praetore decretum est, ut portionem creditores ab heredibus ferant, absente eo creditore apud quem mandator exstiterat: quaero, si mandator conveniatur, an eandem habeat exceptionem quam heres debitoris. respondi: si praesens apud praetorem ipse quoque consensisset, pactus videtur iusta ex causa eaque exceptio et fideiussori danda esset et mandatori. sed cum proponas eum afuisse, iniquum est auferri ei electionem (sicut pignus aut privilegium), qui potuit praesens id ipsum proclamare nec desiderare decretum praetoris. nec enim si quis dixerit summovendum creditorem, heredi consulitur, sed mandatori vel fideiussori, quibus mandati iudicio eandem partem praestaturus est. plane si ab herede partem accepisset, an in reliquum permittendum esset creditori fideiussorem convenire, dubitatum est: sed videbitur consentire decreto conveniendo heredem.

Dig. 17.1.59pr.

Paulus 4 resp.

Si mandatu titii calpurnius pecuniam quam titius credebat stipulatus esset non donandi animo, mandati iudicio eum ab herede titii posse conveniri, ut actiones suas praestet: idem est et si exacta est a calpurnio pecunia.

Dig. 17.1.59.1

Paulus 4 resp.

Paulus respondit fideiussorem, qui rem pignoris iure obligatam a creditore emit, mandati iudicio conventum ab herede debitoris oblato omni debito restituere cum fructibus cogendum neque habendum similem extraneo emptori, cum in omni contractu bonam fidem praestare debeat.

Dig. 17.1.59.2

Paulus 4 resp.

Paulus respondit die adiecto in mandato, intra quem praestaturum se lucius titius scripsit, non esse impedimento, quo minus etiam post eum diem conveniri mandati iudicio possit.

Dig. 17.1.59.3

Paulus 4 resp.

Paulus respondit unum ex mandatoribus in solidum eligi posse, etiamsi non sit concessum in mandato: post condemnationem autem in duorum personam collatam necessario ex causa iudicati singulos pro parte dimidia conveniri posse et debere.

Dig. 17.1.59.4

Paulus 4 resp.

Creditor pignus vendidit: quaero, an, si evicta sit possessio emptori, regressum creditor ad mandatorem habere possit et an intersit, creditoris iure vendiderit an communi iure promiserit. paulus respondit, si creditor ex pretio pignorum debitum consecutus non sit, mandatorem liberum non videri. ex hoc responso apparet, si evictionis nomine non teneatur, proficere eam rem ad liberationem.

Dig. 17.1.59.5

Paulus 4 resp.

" ille illi salutem. mando tibi, ut blaesio severo adfini meo octoginta credas sub pignore illo et illo: in quam pecuniam et quidquid usurarum nomine accesserit indemnem rationem tuam me esse ex causa mandati in eum diem, quoad vixerit blaesius severus, praestaturum. " postea saepe conventus mandator non respondit: quaero, an morte debitoris liberatus sit. paulus respondit mandati obligationem perpetuam esse, licet in mandato adiectum videatur indemnem rationem tuam me esse ex causa mandati in eum diem, quoad vixerit blaesius severus, praestaturum.

Dig. 17.1.59.6

Paulus 4 resp.

Paulus respondit non videri mandati condicioni paritum, cum in mandato adiectum sit, ut idonea cautio a debitore exigeretur, si neque fideiussor neque pignora accepta sint.

Dig. 17.1.60pr.

Scaevola 1 resp.

Creditor mandatorem convenit: is condemnatus provocavit: quaerendum est, an manente appellatione debitor a creditore conveniri potest. respondi posse.

Dig. 17.1.60.1

Scaevola 1 resp.

Ad eum qui uxorem ducturus erat litteras fecit tales: " titius seio salutem. semproniam pertinere ad animum meum cognovisti: ideoque cum ex voto meo nuptura tibi sit, velim certus sis secundum dignitatem tuam contrahere te matrimonium. et quamvis idonee repromissuram tibi titiam matrem puellae dotem sciam, tamen et ipse quo magis conciliem animum tuum domui meae, fidem meam interponere non dubito: quare scias, quodcumque ab ea ex hac causa stipulatus fueris, id me mea fide esse iussisse salvum te habiturum. " atque ita titia, quae neque titio mandaverat neque ratum habuerat quod scripserat, dotem seio promisit. quaero, si heres titii ex causa mandati praestiterit, an actione mandati heredem titiae convenire potest. respondi secundum ea, quae proponuntur, non posse. item quaesitum est, an nec negotiorum gestorum. respondi nec hoc nomine iure agere posse: palam enim facere titium non tam titiae nomine, quam quod consultum vellet, mandasse. item si maritus adversus mandatorem ageret, an aliqua exceptione summoveatur? respondi nihil proponi, cur summovendus sit.

Dig. 17.1.60.2

Scaevola 1 resp.

Duobus quis mandavit negotiorum administrationem: quaesitum est, an unusquisque mandati iudicio in solidum teneatur. respondi unumquemque pro solido conveniri debere, dummodo ab utroque non amplius debito exigatur.

Dig. 17.1.60.3

Scaevola 1 resp.

Si inter maritum et socerum id actum esset vel tacito intellectu, ut onus exhibendae uxoris ad maritum rediret praestante patre dotis usuras, nullam actionem superfore ad recipiendum quod negetur consumptum: quod si pater puellae exhibitionem mandasse se doceat, actionem mandati competere.

Dig. 17.1.60.4

Scaevola 1 resp.

Lucius titius fratris filio commisit rerum suarum administrationem ita: seiw teknw xairein. egw men kata fusin einai nomizw to huper patros kai twn tou patros uhiwn pragmateuesvai dixa tou tina epitropikon aitein. ei de dei kai toioutou tinos, epitrepw soi peri pantwn twn emwn hws veleis pragmateuesvai, eite pwlein veleis eite hupotivesvai eite agorazein eite hotioun prattein, hws kuriw onti twn emwn: emou panta kuria ta hupo sou ginomena hygoumenou kai myden antilegontos soi pros mydemian pracin. quaesitum est, si quid non administrandi animo, sed fraudulenter alienasset vel mandasset, an valeret. respondi eum, de quo quaereretur, plene quidem, sed quatenus res ex fide agenda esset, mandasse. item quaero, an, cum seius magistratu functus debitor exstitisset, lucius titius eo nomine conveniri possit vel res eius obligatae essent propter verba epistulae supra scripta. respondi neque conveniri posse neque res obligatas esse.

Dig. 17.1.61

Paulus 2 ad ner.

Quod filio familias ut peteret mandavi, emancipatus exegit: de peculio intra annum utiliter agam. paulus: sed et cum filio agendum est.

Dig. 17.1.62pr.

Scaevola 6 Dig.

Cum controversia esset de hereditate defunctae inter scriptum heredem et patruum maevium et amitas, maevius litteris ad sorores suas factis declaravit commune futurum, quidquid ad eum ex eventu litis hereditariae pervenisset, neque stipulatio litteras secuta est: quaesitum est, cum transegerit idem maevius cum scripto herede ita, ut praedia et aliae quaedam res ex ea transactione ad eum pervenirent, an ex litteris suis possit a sororibus conveniri. respondit posse.

Dig. 17.1.62.1

Scaevola 6 Dig.

Mandavi in haec verba: " lucius titius gaio suo salutem. peto et mando tibi, ut fidem dicas pro publio maevio apud sempronium: quaeque a publio soluta tibi non fuerint, me repraesentaturum hac epistula manu mea scripta notum tibi facio. " quaero, si non fideiussisset, sed mandasset creditori et alias egisset quam quod ei mandatum esset, an actione mandati teneretur. respondit teneri.

Dig. 17.2.0. Pro socio.

Dig. 17.2.1pr.

Paulus 32 ad ed.

Societas coiri potest vel in perpetuum, id est dum vivunt, vel ad tempus vel ex tempore vel sub condicione.

Dig. 17.2.1.1

Paulus 32 ad ed.

In societate omnium bonorum omnes res quae coeuntium sunt continuo communicantur,

Dig. 17.2.2

Gaius 10 ad ed. provinc.

Quia, licet specialiter traditio non interveniat, tacita tamen creditur intervenire.

Dig. 17.2.3pr.

Paulus 32 ad ed.

Ea vero, quae in nominibus erunt, manent in suo statu: sed actiones invicem praestare debent.

Dig. 17.2.3.1

Paulus 32 ad ed.

Cum specialiter omnium bonorum societas coita est, tunc et hereditas et legatum et quod donatum est aut quaqua ratione adquisitum communioni adquiretur.

Dig. 17.2.3.2

Paulus 32 ad ed.

De illo quaeritur, si ita sit coita societas, ut, si qua iusta hereditas alterutri obvenerit, communis sit, quae sit iusta hereditas, utrum quae iure legitimo obvenit an etiam ea quae testamento? et probabilius est ad legitimam hereditatem tantum hoc pertinere.

Dig. 17.2.3.3

Paulus 32 ad ed.

Societas si dolo malo aut fraudandi causa coita sit, ipso iure nullius momenti est, quia fides bona contraria est fraudi et dolo.

Dig. 17.2.4pr.

Modestinus 3 reg.

Societatem coire et re et verbis et per nuntium posse nos dubium non est.

Dig. 17.2.4.1

Modestinus 3 reg.

Dissociamur renuntiatione morte capitis minutione et egestate.

Dig. 17.2.5pr.

Ulpianus 31 ad ed.

Societates contrahuntur sive universorum bonorum sive negotiationis alicuius sive vectigalis sive etiam rei unius.

Dig. 17.2.5.1

Ulpianus 31 ad ed.

Societas autem coiri potest et valet etiam inter eos, qui non sunt aequis facultatibus, cum plerumque pauperior opera suppleat, quantum ei per comparationem patrimonii deest. donationis causa societas recte non contrahitur.

Dig. 17.2.6

Pomponius 9 ad sab.

Si societatem mecum coieris ea condicione, ut partes societatis constitueres, ad boni viri arbitrium ea res redigenda est: et conveniens est viri boni arbitrio, ut non utique ex aequis partibus socii simus, veluti si alter plus operae industriae pecuniae in societatem collaturus sit.

Dig. 17.2.7

Ulpianus 30 ad sab.

Coiri societatem et simpliciter licet: et si non fuerit distinctum, videtur coita esse universorum quae ex quaestu veniunt, hoc est si quod lucrum ex emptione venditione, locatione conductione descendit.

Dig. 17.2.8

Paulus 6 ad sab.

Quaestus enim intellegitur, qui ex opera cuius descendit.

Dig. 17.2.9

Ulpianus 30 ad sab.

Nec adiecit sabinus hereditatem vel legatum vel donationes mortis causa sive non mortis causa, fortassis haec ideo, quia non sine causa obveniunt, sed ob meritum aliquod accedunt.

Dig. 17.2.10

Paulus 6 ad sab.

Et quia plerumque vel a parente vel a liberto quasi debitum nobis hereditas obvenit:

Dig. 17.2.11

Ulpianus 30 ad sab.

Et ita de hereditate legato donatione quintus mucius scribit.

Dig. 17.2.12

Paulus 6 ad sab.

Sed nec aes alienum, nisi quod ex quaestu pendebit, veniet in rationem societatis.

Dig. 17.2.13

Paulus 32 ad ed.

Sed et si adiciatur, ut et quaestus et lucri socii sint, verum est non ad aliud lucrum, quam quod ex quaestu venit, hanc quoque adiectionem pertinere.

Dig. 17.2.14

Ulpianus 30 ad sab.

Si convenerit inter socios, ne intra certum tempus communis res dividatur, non videtur convenisse, ne societate abeatur. quid tamen si hoc convenit, ne abeatur, an valeat? eleganter pomponius scripsit frustra hoc convenire: nam et si non convenit, si tamen intempestive renuntietur societati, esse pro socio actionem. sed et si convenit, ne intra certum tempus societate abeatur, et ante tempus renuntietur, potest rationem habere renuntiatio. nec tenebitur pro socio qui ideo renuntiavit, quia condicio quaedam, qua societas erat coita, ei non praestatur: aut quid si ita iniuriosus et damnosus socius sit, ut non expediat eum pati?

Dig. 17.2.15

Pomponius 13 ad sab.

Vel quod ea re frui non liceat, cuius gratia negotiatio suscepta sit?

Dig. 17.2.16pr.

Ulpianus 30 ad sab.

Idemque erit dicendum, si socius renuntiaverit societati, qui rei publicae causa diu et invitus sit afuturus: quamvis nonnumquam ei obici possit, quia potuit et per alium societatem administrare vel socio committere: sed hoc non alias, nisi valde sit idoneus socius aut facilis afuturo etiam per alium societatis administratio.

Dig. 17.2.16.1

Ulpianus 30 ad sab.

Qui igitur paciscitur ne dividat, nisi aliqua iusta ratio intercedat, nec vendere poterit, ne alia ratione efficiat, ut dividatur. sed sane potest dici venditionem quidem non impediri, sed exceptionem adversus emptorem locum habere, si ante dividat, quam divideret is qui vendidit.

Dig. 17.2.17pr.

Paulus 6 ad sab.

Sed et socius qui alienaverit contra pactionem accipit committit et tenetur societatis aut communi dividundo iudicio.

Dig. 17.2.17.1

Paulus 6 ad sab.

Si absenti renuntiata societas sit, quoad is scierit, quod is adquisivit qui renuntiavit in commune redigi, detrimentum autem solius eius esse qui renuntiaverit: sed quod absens adquisiit, ad solum eum pertinere, detrimentum ab eo factum commune esse.

Dig. 17.2.17.2

Paulus 6 ad sab.

In societate autem coeunda nihil attinet de renuntiatione cavere, quia ipso iure societatis intempestiva renuntiatio in aestimationem venit.

Dig. 17.2.18

Pomponius 13 ad sab.

Si servus societatem coierit, non sufficiet, si iubeatur a domino servus abire a societate, sed socio renuntiandum est.

Dig. 17.2.19

Ulpianus 30 ad sab.

Qui admittitur socius, ei tantum socius est qui admisit, et recte: cum enim societas consensu contrahatur, socius mihi esse non potest quem ego socium esse nolui. quid ergo si socius meus eum admisit? ei soli socius est.

Dig. 17.2.20

Ulpianus 31 ad ed.

(nam socii mei socius meus socius non est)

Dig. 17.2.21

Ulpianus 30 ad sab.

Et quidquid fuerit de societate nostra consecutus, cum illo qui eum adsumpsit communicabit, nos cum eo non communicabimus. sed factum eius praestabitur societati, id est aget socius et societati praestabit quod fuerit consecutus.

Dig. 17.2.22

Gaius 10 ad ed. provinc.

Ex contrario factum quoque sociorum debet ei praestare sicuti suum, quia ipse adversus eos habet actionem. item certum est nihil vetare prius inter eum qui admiserit et eum qui admissus fuerit societatis iudicio agi, quam agi incipiat inter ceteros et eum qui admiserit.

Dig. 17.2.23pr.

Ulpianus 30 ad sab.

De illo pomponius dubitat, utrum actionem eum mandare sociis sufficit, ut, si facere ille non possit, nihil ultra sociis praestet, an vero indemnes eos praestare debeat. et puto omnimodo eum teneri eius nomine, quem ipse solus admisit, quia difficile est negare culpa ipsius admissum.

Dig. 17.2.23.1

Ulpianus 30 ad sab.

Idem quaerit, an commodum, quod propter admissum socium accessit, compensari cum damno, quod culpa praebuit, debeat, et ait compensandum. quod non est verum, nam et Marcellus libro sexto digestorum scribit, si servus unius ex sociis societati a domino praepositus neglegenter versatus sit, dominum societati qui praeposuerit praestaturum nec compensandum commodum, quod per servum societati accessit, cum damno: et ita divum marcum pronuntiasse, nec posse dici socio: " abstine commodo, quod per servum accessit, si damnum petis. "

Dig. 17.2.24

Ulpianus 31 ad ed.

Plane si ambo socii servum alterius praeposuerint, non tenebitur dominus eius nomine, nisi dumtaxat de peculio: commune enim periculum esse oportet, cum ambo eum praeponamus.

Dig. 17.2.25

Paulus 6 ad sab.

Non ob eam rem minus ad periculum socii pertinet quod neglegentia eius perisset, quod in plerisque aliis industria eius societas aucta fuisset: et hoc ex appellatione imperator pronuntiavit.

Dig. 17.2.26

Ulpianus 31 ad ed.

Et ideo si socius quaedam neglegenter in societate egisset, in plerisque autem societatem auxisset, non compensatur compendium cum neglegentia, ut Marcellus libro sexto digestorum scripsit.

Dig. 17.2.27

Paulus 6 ad sab.

Omne aes alienum, quod manente societate contractum est, de communi solvendum est, licet posteaquam societas distracta est solutum sit. igitur et si sub condicione promiserat et distracta societate condicio exstitit, ex communi solvendum est: ideoque si interim societas dirimatur, cautiones interponendae sunt.

Dig. 17.2.28

Paulus 60 ad ed.

Si socii sumus et unus ex die pecuniam debeat et dividatur societas, non debet hoc deducere socius quemadmodum praesens pure debet, sed omnes dividere et cavere, cum dies venerit, defensu iri socium.

Dig. 17.2.29pr.

Ulpianus 30 ad sab.

Si non fuerint partes societati adiectae, aequas eas esse constat. si vero placuerit, ut quis duas partes vel tres habeat, alius unam, an valeat? placet valere, si modo aliquid plus contulit societati vel pecuniae vel operae vel cuiuscumque alterius rei causa.

Dig. 17.2.29.1

Ulpianus 30 ad sab.

Ita coiri societatem posse, ut nullam partem damni alter sentiat, lucrum vero commune sit, cassius putat: quod ita demum valebit, ut et sabinus scribit, si tanti sit opera, quanti damnum est: plerumque enim tanta est industria socii, ut plus societati conferat quam pecunia, item si solus naviget, si solus peregrinetur, pericula subeat solus.

Dig. 17.2.29.2

Ulpianus 30 ad sab.

Aristo refert cassium respondisse societatem talem coiri non posse, ut alter lucrum tantum, alter damnum sentiret, et hanc societatem leoninam solitum appellare: et nos consentimus talem societatem nullam esse, ut alter lucrum sentiret, alter vero nullum lucrum, sed damnum sentiret: iniquissimum enim genus societatis est, ex qua quis damnum, non etiam lucrum spectet.

Dig. 17.2.30

Paulus 6 ad sab.

Mucius libro quarto decimo scribit non posse societatem coiri, ut aliam damni, aliam lucri partem socius ferat: servius in notatis mucii ait nec posse societatem ita contrahi, neque enim lucrum intellegitur nisi omni damno deducto neque damnum nisi omni lucro deducto: sed potest coiri societas ita, ut eius lucri, quod reliquum in societate sit omni damno deducto, pars alia feratur, et eius damni, quod similiter relinquatur, pars alia capiatur.

Dig. 17.2.31

Ulpianus 30 ad sab.

Ut sit pro socio actio, societatem intercedere oportet: nec enim sufficit rem esse communem, nisi societas intercedit. communiter autem res agi potest etiam citra societatem, ut puta cum non affectione societatis incidimus in communionem, ut evenit in re duobus legata, item si a duobus simul empta res sit, aut si hereditas vel donatio communiter nobis obvenit, aut si a duobus separatim emimus partes eorum non socii futuri.

Dig. 17.2.32

Ulpianus 2 ad ed.

Nam cum tractatu habito societas coita est, pro socio actio est, cum sine tractatu in re ipsa et negotio, communiter gestum videtur,

Dig. 17.2.33

Ulpianus 31 ad ed.

Ut in conductionibus publicorum, item in emptionibus: nam qui nolunt inter se contendere, solent per nuntium rem emere in commune, quod a societate longe remotum est. et ideo societate sine tutoris auctoritate coita pupillus non tenetur, attamen communiter gesto tenetur.

Dig. 17.2.34

Gaius 10 ad ed. provinc.

Quibus casibus si quid forte unus in eam rem impenderit sive fructus mercedesve unus perceperit vel deteriorem fecerit rem, non societatis iudicio locus est, sed inter coheredes quidem familiae herciscendae iudicio agitur, inter ceteros communi dividundo. inter eos quoque, quibus hereditario iure communis res est, posse et communi dividundo agi.

Dig. 17.2.35

Ulpianus 30 ad sab.

Nemo potest societatem herede suo sic parere, ut ipse heres socius sit: in heredem autem socii proponitur actio, ut bonam fidem praestet.

Dig. 17.2.36

Paulus 6 ad sab.

Et acti etiam culpam, quam is praestaret in cuius locum successit, licet socius non sit.

Dig. 17.2.37

Pomponius 13 ad sab.

Plane si hi, qui sociis heredes exstiterint, animum inierint societatis in ea hereditate, novo consensu quod postea gesserint efficitur ut in pro socio actionem deducatur.

Dig. 17.2.38pr.

Paulus 6 ad sab.

Pro socio arbiter prospicere debet cautionibus in futuro damno vel lucro pendente ex ea societate. quod sabinus in omnibus bonae fidei iudiciis existimavit, sive generalia sunt (veluti pro socio, negotiorum gestorum, tutelae) sive specialia (veluti mandati, commodati, depositi).

Dig. 17.2.38.1

Paulus 6 ad sab.

Si tecum societas mihi sit et res ex societate communes, quam impensam in eas fecero quosve fructus ex his rebus ceperis, vel pro socio vel communi dividundo me consecuturum et altera actione alteram tolli proculus ait.

Dig. 17.2.39

Pomponius 13 ad sab.

Si fundus mihi tecum communis sit et in eum mortuum intuleris, agam tecum pro socio.

Dig. 17.2.40

Pomponius 17 ad sab.

Heres socii quamvis socius non est, tamen ea, quae per defunctum inchoata sunt per heredem explicari debent: in quibus dolus eius admitti potest.

Dig. 17.2.41

Ulpianus 20 ad ed.

Si quis a socio poenam stipulatus sit, pro socio non aget, si tantundem in poenam sit, quantum eius interfuit.

Dig. 17.2.42

Ulpianus 45 ad sab.

Quod si ex stipulatu eam consecutus sit, postea pro socio agendo hoc minus accipiet poena ei in sortem imputata.

Dig. 17.2.43

Ulpianus 28 ad ed.

Si actum sit communi dividundo, non tollitur pro socio actio, quoniam pro socio et nominum rationem habet et adiudicationem non admittit. sed si postea pro socio agatur, hoc minus ex ea actione consequitur, quam ex prima actione consecutus est.

Dig. 17.2.44

Ulpianus 31 ad ed.

Si margarita tibi vendenda dedero, ut, si ea decem vendidisses, redderes mihi decem, si pluris, quod excedit tu haberes, mihi videtur, si animo contrahendae societatis id actum sit, pro socio esse actionem, si minus, praescriptis verbis.

Dig. 17.2.45

Ulpianus 30 ad sab.

Rei communis nomine cum socio furti agi potest, si per fallaciam dolove malo amovit vel rem communem celandi animo contrectet: sed et pro socio actione obstrictus est, nec altera actio alteram tollet. idemque in omnibus bonae fidei iudiciis dicendum est.

Dig. 17.2.46

Paulus 6 ad sab.

Idem est et in colono et in eo qui negotia gerit et qui mandatum nostrum exsequitur et in tutore.

Dig. 17.2.47pr.

Ulpianus 30 ad sab.

Sed si ex causa furtiva condixero, cessabit pro socio actio, nisi si pluris mea intersit.

Dig. 17.2.47.1

Ulpianus 30 ad sab.

Si damnum in re communi socius dedit, aquilia teneri eum et celsus et iulianus et pomponius scribunt:

Dig. 17.2.48

Paulus 6 ad sab.

Sed nihilo minus et pro socio tenetur,

Dig. 17.2.49

Ulpianus 31 ad ed.

Si hoc facto societatem laesit, si verbi gratia negotiatorem servum vulneraverit vel occidit.

Dig. 17.2.50

Paulus 6 ad sab.

Sed actione pro socio consequitur, ut altera actione contentus esse debeat, quia utraque actio ad rei persecutionem respicit, non ut furti ad poenam dumtaxat.

Dig. 17.2.51pr.

Ulpianus 30 ad sab.

Merito autem adiectum est ita demum furti actionem esse, si per fallaciam et dolo malo amovit, quia cum sine dolo malo fecit, furti non tenetur: et sane plerumque credendum est eum, qui partis dominus est, iure potius suo re uti quam furti consilium inire.

Dig. 17.2.51.1

Ulpianus 30 ad sab.

Et ideo videbimus, an fabia teneatur. et ratio quidem facit, ne teneatur, verum si plagium fecit vel suppressit, fabia teneri.

Dig. 17.2.52pr.

Ulpianus 31 ad ed.

Cum duobus vicinis fundus coniunctus venalis esset, alter ex his petit ab altero, ut eum fundum emeret, ita ut ea pars, quae suo fundo iuncta esset, sibi cederetur: mox ipse eum fundum ignorante vicino emit: quaeritur, an aliquam actionem cum eo vicinus habeat. iulianus scripsit implicitam esse facti quaestionem: nam si hoc solum actum est, ut fundum lucii titii vicinus emeret et mecum communicaret, adversus me qui emi nullam actionem vicino competere: si vero id actum est, ut quasi commune negotium gereretur. societatis iudicio tenebor, ut tibi deducta parte quam mandaveram reliquas partes praestem.

Dig. 17.2.52.1

Ulpianus 31 ad ed.

Venit autem in hoc iudicium pro socio bona fides.

Dig. 17.2.52.2

Ulpianus 31 ad ed.

Utrum ergo tantum dolum an etiam culpam praestare socium oporteat, quaeritur. et celsus libro septimo digestorum ita scripsit: socios inter se dolum et culpam praestare oportet. si in coeunda societate, inquit, artem operamve pollicitus est alter, veluti cum pecus in commune pascendum aut agrum politori damus in commune quaerendis fructibus, nimirum ibi etiam culpa praestanda est: pretium enim operae artis est velamentum. quod si rei communi socius nocuit, magis admittit culpam quoque venire.

Dig. 17.2.52.3

Ulpianus 31 ad ed.

Damna quae imprudentibus accidunt, hoc est damna fatalia, socii non cogentur praestare: ideoque si pecus aestimatum datum sit et id latrocinio aut incendio perierit, commune damnum est, si nihil dolo aut culpa acciderit eius, qui aestimatum pecus acceperit: quod si a furibus subreptum sit, proprium eius detrimentum est, quia custodiam praestare debuit, qui aestimatum accepit. haec vera sunt, et pro socio erit actio, si modo societatis contrahendae causa pascenda data sunt quamvis aestimata.

Dig. 17.2.52.4

Ulpianus 31 ad ed.

Quidam sagariam negotiationem coierunt: alter ex his ad merces comparandas profectus in latrones incidit suamque pecuniam perdidit, servi eius vulnerati sunt resque proprias perdidit. dicit iulianus damnum esse commune ideoque actione pro socio damni partem dimidiam adgnoscere debere tam pecuniae quam rerum ceterarum, quas secum non tulisset socius nisi ad merces communi nomine comparandas proficisceretur. sed et si quid in medicos impensum est, pro parte socium agnoscere debere rectissime iulianus probat. proinde et si naufragio quid periit, cum non alias merces quam navi solerent advehi, damnum ambo sentient: nam sicuti lucrum, ita damnum quoque commune esse oportet, quod non culpa socii contingit.

Dig. 17.2.52.5

Ulpianus 31 ad ed.

Cum duo erant argentarii socii, alter eorum aliquid separatim quaesierat et lucri senserat: quaerebatur, an commune esse lucrum oporteret. et imperator severus flavio felici in haec verba rescripsit: " etiamsi maxime argentariae societas inita est, quod quisque tamen socius non ex argentaria causa quaesiit, id ad communionem non pertinere explorati iuris est".

Dig. 17.2.52.6

Ulpianus 31 ad ed.

Papinianus quoque libro tertio responsorum ait: si fratres parentium indivisas hereditates ideo retinuerunt, ut emolumentum ac damnum in his commune sentirent, quod aliunde quaesierint in commune non redigetur.

Dig. 17.2.52.7

Ulpianus 31 ad ed.

Item ex facto consultum respondisse se ait libro tertio responsorum: inter flavium victorem et bellicum asianum placuerat, ut locis emptis pecunia victoris monumenta fierent opera et peritia asiani, quibus distractis pecuniam victor cum certa quantitate reciperet, superfluum asianus acciperet, qui operam in societatem contulit: erit pro socio actio.

Dig. 17.2.52.8

Ulpianus 31 ad ed.

Idem papinianus eodem libro ait, si inter fratres voluntarium consortium initum fuerit, et stipendia ceteraque salaria in commune redigi iudicio societatis, quamvis filius emancipatus haec non cogatur conferre fratri, inquit, in potestate manenti, quia et si in potestate maneret, praecipua ea haberet.

Dig. 17.2.52.9

Ulpianus 31 ad ed.

Idem respondit societatem non posse ultra mortem porrigi, et ideo nec libertatem de supremis iudiciis constringere quis poterit vel cognatum ulteriorem proximioribus praeferre.

Dig. 17.2.52.10

Ulpianus 31 ad ed.

Idem respondit: socius, qui cessantis cessantiumve portiones insulae restituerit, quamvis aut sortem cum certis usuris intra quattuor menses, postquam opus refectum erit, recipere potest exigendoque privilegio utetur aut deinceps propriam rem habebit, potest tamen pro socio agere ad hoc, ut consequatur quod sua intererat. finge enim malle eum magis suum consequi quam dominium insulae. oratio enim divi marci idcirco quattuor mensibus finit certas usuras, quia post quattuor dominium dedit.

Dig. 17.2.52.11

Ulpianus 31 ad ed.

Si qui societatem ad emendum coierint, deinde res alterius dolo vel culpa empta non sit, pro socio esse actionem constat. plane si condicio sit adiecta " si intra illum diem veniret", et dies sine culpa socii praeterierit, cessabit actio pro socio.

Dig. 17.2.52.12

Ulpianus 31 ad ed.

Item si in communem rivum reficiendum impensa facta sit, pro socio esse actionem ad reciperandum sumptum cassius scripsit.

Dig. 17.2.52.13

Ulpianus 31 ad ed.

Item mela scribit, si vicini semipedes inter se contulerunt, ut ibi craticium parietem inter se aedificarent ad onera utriusque sustinenda, deinde aedificato pariete alter in eum immitti non patiatur, pro socio agendum. idemque et si aream in commune emerint, ne luminibus suis officeretur, et alteri tradita sit nec praestet alteri quod convenit, pro socio actionem esse.

Dig. 17.2.52.14

Ulpianus 31 ad ed.

Si plures sint inter eosdem societates coitae, ad omnes societates sufficere hoc unum iudicium constat.

Dig. 17.2.52.15

Ulpianus 31 ad ed.

Si quis ex sociis propter societatem profectus sit, veluti ad merces emendas, eos dumtaxat sumptuum societati imputabit qui in eam rem impensi sunt: viatica igitur et meritoriorum et stabulorum, iumentorum carrulorum vecturas vel sui vel sarcinarum suarum gratia vel mercium recte imputabit.

Dig. 17.2.52.16

Ulpianus 31 ad ed.

Socium universa in societatem conferre debet neratius ait, si omnium bonorum socius sit: et ideo sive ob iniuriam sibi factam vel ex lege aquilia, sive ipsius sive filii corpori nocitum sit, conferre debere respondit.

Dig. 17.2.52.17

Ulpianus 31 ad ed.

Ibidem ait socium omnium bonorum non cogi conferre, quae ex prohibitis causis adquisierit.

Dig. 17.2.52.18

Ulpianus 31 ad ed.

Per contrarium quoque apud veteres tractatur, an socius omnium bonorum, si quid ob iniuriarum actionem damnatus praestiterit, ex communi consequatur ut praestet. et atilicinus sabinus cassius responderunt, si iniuria iudicis damnatus sit, consecuturum, si ob maleficium suum, ipsum tantum damnum sentire debere. cui congruit, quod servium respondisse aufidius refert, si socii bonorum fuerint, deinde unus, cum ad iudicium non adesset, damnatus sit, non debere eum de communi id consequi, si vero praesens iniuriam iudicis passus sit, de communi sarciendum.

Dig. 17.2.53

Ulpianus 30 ad sab.

Quod autem ex furto vel ex alio maleficio quaesitum est, in societatem non oportere conferri palam est, quia delictorum turpis atque foeda communio est. plane si in medium collata sit, commune erit lucrum.

Dig. 17.2.54

Pomponius 13 ad sab.

Quod enim ex maleficio contulerit socius, non aliter recipere debet, quam si damnatus sit.

Dig. 17.2.55

Ulpianus 30 ad sab.

Si igitur ex hoc conventus fuerit qui maleficium admisit, id quod contulit aut solum aut cum poena auferet: solum auferet, si mihi proponas insciente socio eum in societatis rationem hoc contulisse: quod si sciente, etiam poenam socium agnoscere oportet: aequum est enim, ut cuius participavit lucrum participet et damnum.

Dig. 17.2.56

Paulus 6 ad sab.

Nec quicquam interest, utrum manente societate praestiterit ob furtum an dissoluta ea. idemque est in omnibus turpibus actionibus, veluti iniuriarum, vi bonorum raptorum, servi corrupti et similibus, et in omnibus poenis pecuniariis quae ex publicis iudiciis accidunt.

Dig. 17.2.57

Ulpianus 30 ad sab.

Nec praetermittendum esse pomponius ait ita demum hoc esse verum, si honestae et licitae rei societas coita sit: ceterum si maleficii societas coita sit, constat nullam esse societatem. generaliter enim traditur rerum inhonestarum nullam esse societatem.

Dig. 17.2.58pr.

Ulpianus 31 ad ed.

Si id quod quis in societatem contulit exstinctum sit, videndum, an pro socio agere possit. tractatum ita est apud celsum libro septimo digestorum ad epistulam cornelii felicis: cum tres equos haberes et ego unum, societatem coimus, ut accepto equo meo quadrigam venderes et ex pretio quartam mihi redderes. si igitur ante venditionem equus meus mortuus sit, non putare se celsus ait societatem manere nec ex pretio equorum tuorum partem deberi: non enim habendae quadrigae, sed vendendae coitam societatem. ceterum si id actum dicatur, ut quadriga fieret eaque communicaretur tuque in ea tres partes haberes, ego quartam, non dubie adhuc socii sumus.

Dig. 17.2.58.1

Ulpianus 31 ad ed.

Item celsus tractat, si pecuniam contulissemus ad mercem emendam et mea pecunia perisset, cui perierit ea. et ait, si post collationem evenit, ut pecunia periret, quod non fieret, nisi societas coita esset, utrique perire, ut puta si pecunia, cum peregre portaretur ad mercem emendam, periit: si vero ante collationem, posteaquam eam destinasses, tunc perierit, nihil eo nomine consequeris, inquit, quia non societati periit.

Dig. 17.2.58.2

Ulpianus 31 ad ed.

Si filius familias societatem coierit, deinde emancipatus a patre fuerit, apud iulianum quaeritur, an eadem societas duret an vero alia sit, si forte post emancipationem in societatem duratum est. iulianus scripsit libro quarto decimo digestorum eandem societatem durare, initium enim in his contractibus inspiciendum: duabus autem actionibus agendum esse, una adversus patrem, altera adversus filium: cum patre de eo, cuius dies ante emancipationem cessit, nam eius temporis, quo post emancipationem societas duravit, nihil praestare patrem oportet: cum filio autem de utroque tempore, id est de tota societate, nam et si quid, inquit, socius filii post emancipationem filii dolo fecerit, eius non patri, sed filio actio danda est.

Dig. 17.2.58.3

Ulpianus 31 ad ed.

Si servus meus societatem cum titio coierit et alienatus in eadem permanserit, potest dici alienatione servi et priorem societatem finitam et ex integro alteram inchoatam, atque ideo et mihi et emptori actionem pro socio competere, item tam adversus me quam adversus emptorem ex his causis quae ante alienationem inciderunt dandam actionem, ex reliquis adversus emptorem solum.

Dig. 17.2.59pr.

Pomponius 12 ad sab.

Adeo morte socii solvitur societas, ut nec ab initio pacisci possimus, ut heres etiam succedat societati. haec ita in privatis societatibus ait: in societate vectigalium nihilo minus manet societas et post mortem alicuius, sed ita demum, si pars defuncti ad personam heredis eius adscripta sit, ut heredi quoque conferri oporteat: quod ipsum ex causa aestimandum est. quid enim, si is mortuus sit, propter cuius operam maxime societas coita sit aut sine quo societas administrari non possit?

Dig. 17.2.59.1

Pomponius 12 ad sab.

Quod in alea aut adulterio perdiderit socius, ex medio non est laturus: si quid vero dolo nostro socius damni ceperit, a nobis repetet.

Dig. 17.2.60pr.

Pomponius 13 ad sab.

Socium, qui in eo, quod ex societate lucri faceret, reddendo moram adhibuit, cum ea pecunia ipse usus sit, usuras quoque eum praestare debere labeo ait, sed non quasi usuras, sed quod socii intersit moram eum non adhibuisse: sed si aut usus ea pecunia non sit aut moram non fecerit, contra esse: item post mortem socii nullam talem aestimationem ex facto heredis faciendam, quia morte socii dirimatur societas.

Dig. 17.2.60.1

Pomponius 13 ad sab.

Socius cum resisteret communibus servis venalibus ad fugam erumpentibus, vulneratus est: impensam, quam in curando se fecerit, non consecuturum pro socio actione labeo ait, quia id non in societatem, quamvis propter societatem impensum sit, sicuti si propter societatem eum heredem quis instituere desisset aut legatum praetermisisset aut patrimonium suum neglegentius administrasset: nam nec compendium, quod propter societatem ei contigisset, veniret in medium, veluti si propter societatem heres fuisset institutus aut quid ei donatum esset.

Dig. 17.2.61

Ulpianus 31 ad ed.

Secundum iulianum tamen et quod medicis pro se datum est recipere potest, quod verum est.

Dig. 17.2.62

Pomponius 13 ad sab.

Si titius cum quo mihi societas erat decesserit egoque cum putarem titii hereditatem ad seium pertinere, communiter cum eo res vendiderim et partem pecuniae ex venditione redactae ego, partem seius abstulerit, te, qui re vera titio heres es, partem ad me redactae pecuniae societatis iudicio non consecuturum neratio et aristoni placebat, quia meae dumtaxat partis pretia percepissem, neque interesse, utrum per se partes meas vendidissem an communiter cum eo, qui reliquas partes ad se pertinere diceret. alioquin eventurum, ut etiam, si duo socii rem vendiderint, unusquisque quod ad se pervenerit partem alteri societatis iudicio praestare debeat. sed nec te ex parte, quam hereditatis petitione forte a seio consecuturus sis, quicquam mihi praestare debere, quia quod ad seium pervenerit, tuarum partium pretium sit nec ad me habentem meum quicquam ex eo redire debeat.

Dig. 17.2.63pr.

Ulpianus 31 ad ed.

Verum est quod sabino videtur, etiamsi non universorum bonorum socii sunt, sed unius rei, attamen in id quod facere possunt quodve dolo malo fecerint quo minus possint, condemnari oportere. hoc enim summam rationem habet, cum societas ius quodammodo fraternitatis in se habeat.

Dig. 17.2.63.1

Ulpianus 31 ad ed.

Videndum est, an et fideiussori socii id praestari debeat an vero personale beneficium sit, quod magis verum est. sed si hic fideiussor quasi defensor socii iudicium susceperit, proderit sibi: namque iulianus libro quarto decimo digestorum scripsit defensorem socii in id quod socius facere potest condemnari oportere. idemque et in patroni defensore accipere debere ait: et utique idem erit in universis, qui in id quod facere possunt conveniuntur.

Dig. 17.2.63.2

Ulpianus 31 ad ed.

Patri autem vel domino socii, si iussu eorum societas contracta sit, non esse hanc exceptionem dandam, quia nec heredi socii ceterisque successoribus hoc praestabitur: quia nec ceterorum heredibus successoribusve, quos in id quod facere possunt convenimus, idem praestatur.

Dig. 17.2.63.3

Ulpianus 31 ad ed.

Id quod facere socius potest quemadmodum aestimandum sit? et placuit non debere deduci aes alienum quod debetur a socio: ita et Marcellus libro septimo digestorum scripsit, nisi forte, inquit, ex ipsa societate debeatur.

Dig. 17.2.63.4

Ulpianus 31 ad ed.

Item videndum, an cautio veniat in hoc iudicium eius quod facere socius non possit, scilicet nuda promissio: quod magis dicendum arbitror.

Dig. 17.2.63.5

Ulpianus 31 ad ed.

Si, cum tres socii essent, egerit cum uno ex sociis socius et partem suam integram sit consecutus, deinde alius socius cum eodem agat et partem consequi integram non poterit, quia facere solidum non potest, an hic qui minus consecutus est cum eo agere possit qui solidum accepit ad communicandas partes inter eos, id est exaequandas, quasi iniquum sit ex eadem societate alium plus, alium minus consequi? sed magis est, ut pro socio actione consequi possit, ut utriusque portio exaequetur: quae sententia habet aequitatem.

Dig. 17.2.63.6

Ulpianus 31 ad ed.

Tempus autem spectamus quantum facere socius possit rei iudicandae.

Dig. 17.2.63.7

Ulpianus 31 ad ed.

Hoc quoque facere quis posse videtur quod dolo fecit quo minus possit: nec enim aequum est dolum suum quemquam relevare. quod et in ceteris, qui in id quod facere possunt conveniuntur, accipiendum est. si tamen non dolo, sed culpa sua facere posse desiit, dicendum est condemnari eum non debere.

Dig. 17.2.63.8

Ulpianus 31 ad ed.

In heredem quoque socii pro socio actio competit, quamvis heres socius non sit: licet enim socius non sit, attamen emolumenti successor est. et circa societates vectigalium ceterorumque idem observamus, ut heres socius non sit nisi fuerit adscitus, verumtamen omne emolumentum societatis ad eum pertineat, simili modo et damnum adgnoscat quod contingit, sive adhuc vivo socio vectigalis sive postea: quod non similiter in voluntaria societate observatur.

Dig. 17.2.63.9

Ulpianus 31 ad ed.

Si servo communi legatum sine libertate unus ex dominis reliquit, hoc ad solum socium pertinet: an tamen pro socio iudicio communicari debeat cum herede socii, quaeritur. et ait iulianus sextum pomponium referre sabinum respondentem non communicari, et posse hanc sententiam defendi iulianus ait: non enim propter communionem hoc adquisitum est, sed ob suam partem, nec oportet id communicari, quod quis non propter societatem, sed propter suam partem adquisierit.

Dig. 17.2.63.10

Ulpianus 31 ad ed.

Societas solvitur ex personis, ex rebus, ex voluntate, ex actione. ideoque sive homines sive res sive voluntas sive actio interierit, distrahi videtur societas. intereunt autem homines quidem maxima aut media capitis deminutione aut morte: res vero, cum aut nullae relinquantur aut condicionem mutaverint, neque enim eius rei quae iam nulla sit quisquam socius est neque eius quae consecrata publicatave sit. voluntate distrahitur societas renuntiatione.

Dig. 17.2.64

Callistratus 1 quaest.

Itaque cum separatim socii agere coeperint et unusquisque eorum sibi negotietur, sine dubio ius societatis dissolvitur.

Dig. 17.2.65pr.

Paulus 32 ad ed.

Actione distrahitur, cum aut stipulatione aut iudicio mutata sit causa societatis. proculus enim ait hoc ipso quod iudicium ideo dictatum est, ut societas distrahatur, renuntiatam societatem, sive totorum bonorum sive unius rei societas coita sit.

Dig. 17.2.65.1

Paulus 32 ad ed.

Item bonis a creditoribus venditis unius socii distrahi societatem labeo ait.

Dig. 17.2.65.2

Paulus 32 ad ed.

Si in rem certam emendam conducendamve coita sit societas, tunc etiam post alicuius mortem quidquid lucri detrimentive factum sit, commune esse labeo ait.

Dig. 17.2.65.3

Paulus 32 ad ed.

Diximus dissensu solvi societatem: hoc ita est, si omnes dissentiunt. quid ergo, si unus renuntiet? cassius scripsit eum qui renuntiaverit societati a se quidem liberare socios suos, se autem ab illis non liberare. quod utique observandum est, si dolo malo renuntiatio facta sit, veluti si, cum omnium bonorum societatem inissemus, deinde cum obvenisset uni hereditas, propter hoc renuntiavit: ideoque si quidem damnum attulerit hereditas, hoc ad eum qui renuntiavit pertinebit, commodum autem communicare cogetur actione pro socio. quod si quid post renuntiationem adquisierit, non erit communicandum, quia nec dolus admissus est in eo.

Dig. 17.2.65.4

Paulus 32 ad ed.

Item si societatem ineamus ad aliquam rem emendam, deinde solus volueris eam emere ideoque renuntiaveris societati, ut solus emeres, teneberis quanti interest mea: sed si ideo renuntiaveris, quia emptio tibi displicebat, non teneberis, quamvis ego emero, quia hic nulla fraus est: eaque et iuliano placent.

Dig. 17.2.65.5

Paulus 32 ad ed.

Labeo autem posteriorum libris scripsit, si renuntiaverit societati unus ex sociis eo tempore, quo interfuit socii non dirimi societatem, committere eum in pro socio actione: nam si emimus mancipia inita societate, deinde renunties mihi eo tempore, quo vendere mancipia non expedit, hoc casu, quia deteriorem causam meam facis, teneri te pro socio iudicio. proculus hoc ita verum esse ait, si societatis non intersit dirimi societatem: semper enim non id, quod privatim interest unius ex sociis, servari solet, sed quod societati expedit. haec ita accipienda sunt, si nihil de hoc in coeunda societate convenit.

Dig. 17.2.65.6

Paulus 32 ad ed.

Item qui societatem in tempus coit, eam ante tempus renuntiando socium a se, non se a socio liberat: itaque si quid compendii postea factum erit, eius partem non fert, at si dispendium, aeque praestabit portionem: nisi renuntiatio ex necessitate quadam facta sit. quod si tempus finitum est, liberum est recedere, quia sine dolo malo id fiat.

Dig. 17.2.65.7

Paulus 32 ad ed.

Renuntiare societati etiam per alios possumus: et ideo dictum est procuratorem quoque posse renuntiare societati. sed utrum de eo dictum sit, cui omnium bonorum administratio concessa est, an de eo, cui hoc ipsum nominatim mandatum est, videamus, an vero per utrumque recte renuntietur? quod est verius, nisi si prohibuerit eum dominus specialiter renuntiare.

Dig. 17.2.65.8

Paulus 32 ad ed.

Item scriptum est posse procuratori quoque meo socium meum renuntiare. quod servius apud alfenum ita notat: esse in potestate domini, cum procuratori eius renuntiatum est, an velit ratam habere renuntiationem. igitur is cuius procuratori renuntiatum est liberatus esse videbitur: an autem ipse quoque qui renuntiavit procuratori liberetur, in potestate eius erit, quemadmodum diximus in eo, qui socio renuntiat.

Dig. 17.2.65.9

Paulus 32 ad ed.

Morte unius societas dissolvitur, etsi consensu omnium coita sit, plures vero supersint, nisi in coeunda societate aliter convenerit. nec heres socii succedit: sed quod ex re communi postea quaesitum est, item dolus et culpa in eo quod ex ante gesto pendet tam ab herede quam heredi praestandum est.

Dig. 17.2.65.10

Paulus 32 ad ed.

Item si alicuius rei societas sit et finis negotio impositus, finitur societas: quod si integris omnibus manentibus alter decesserit, deinde tunc sequatur res, de qua societatem coierunt, tunc eadem distinctione utemur, qua in mandato, ut si quidem ignota fuerit mors alterius, valeat societas, si nota, non valeat.

Dig. 17.2.65.11

Paulus 32 ad ed.

Societas quemadmodum ad heredes socii non transit, ita nec ad adrogatorem, ne alioquin invitus quis socius efficiatur cui non vult. ipse autem adrogatus socius permanet: nam et si filius familias emancipatus fuerit, permanebit socius.

Dig. 17.2.65.12

Paulus 32 ad ed.

Publicatione quoque distrahi societatem diximus. quod videtur spectare ad universorum bonorum publicationem, si socii bona publicentur: nam cum in eius locum alius succedat, pro mortuo habetur.

Dig. 17.2.65.13

Paulus 32 ad ed.

Si post distractam societatem aliquid in rem communem impenderit socius, actione pro socio id non consequitur, quia non est verum pro socio communiterve id gestum esse. sed communi dividundo iudicio huius quoque rei ratio habebitur: nam etsi distracta esset societas, nihilo minus divisio rerum superest.

Dig. 17.2.65.14

Paulus 32 ad ed.

Si communis pecunia penes aliquem sociorum sit et alicuius sociorum quid absit, cum eo solo agendum, penes quem ea pecunia sit: qua deducta de reliquo, quod cuique debeatur, omnes agere possunt.

Dig. 17.2.65.15

Paulus 32 ad ed.

Nonnumquam necessarium est et manente societate agi pro socio, veluti cum societas vectigalium causa coita est propterque varios contractus neutri expediat recedere a societate nec refertur in medium quod ad alterum pervenerit.

Dig. 17.2.65.16

Paulus 32 ad ed.

Si unus ex sociis maritus sit et distrahatur societas manente matrimonio, dotem maritus praecipere debet, quia apud eum esse debet qui onera sustinet: quod si iam dissoluto matrimonio societas distrahatur, eadem die recipienda est dos, qua et solvi debet.

Dig. 17.2.66

Gaius 10 ad ed. provinc.

Quod si eo tempore quo dividitur societas in ea causa dos sit, ut certum sit eam vel partem eius reddi non oportere, dividere eam inter socios iudex debet.

Dig. 17.2.67pr.

Paulus 32 ad ed.

Si unus ex sociis rem communem vendiderit consensu sociorum, pretium dividi debet ita, ut ei caveatur indemnem eum futurum. quod si iam damnum passus est, hoc ei praestabitur. sed si pretium communicatum sit sine cautione et aliquid praestiterit is qui vendidit, an, si non omnes socii solvendo sint, quod a quibusdam servari non potest a ceteris debeat ferre? sed proculus putat hoc ad ceterorum onus pertinere quod ab aliquibus servari non potest, rationeque defendi posse, quoniam, societas cum contrahitur, tam lucri quam damni communio initur.

Dig. 17.2.67.1

Paulus 32 ad ed.

Si unus ex sociis, qui non totorum bonorum socii erant, communem pecuniam faeneraverit usurasque perceperit, ita demum usuras partiri debet, si societatis nomine faeneraverit: nam si suo nomine, quoniam sortis periculum ad eum pertinuerit, usuras ipsum retinere oportet.

Dig. 17.2.67.2

Paulus 32 ad ed.

Si quid unus ex sociis necessario de suo impendit in communi negotio: iudicio societatis servabit et usuras, si forte mutuatus sub usuris dedit: sed et si suam pecuniam dedit, non sine causa dicetur, quod usuras quoque percipere debeat, quas possit habere, si alii mutuum dedisset.

Dig. 17.2.67.3

Paulus 32 ad ed.

Non alias socius in id quod facere potest condemnatur, quam si confitetur se socium fuisse.

Dig. 17.2.68pr.

Gaius 10 ad ed. provinc.

Nemo ex sociis ^ socis^ plus parte sua potest alienare, etsi totorum bonorum socii sint.

Dig. 17.2.68.1

Gaius 10 ad ed. provinc.

Illud quaeritur, utrum is demum facere videtur quo minus facere possit, qui erogat bona sua in fraudem futurae actionis, an et qui occasione adquirendi non utitur. sed verius est de eo sentire proconsulem, qui erogat bona sua, idque ex interdictis colligere possumus, in quibus ita est: " quod dolo fecisti, ut desineres possidere. "

Dig. 17.2.69

Ulpianus 32 ad ed.

Cum societas ad emendum coiretur et conveniret, ut unus reliquis nundinas id est epulas praestaret eosque a negotio dimitteret, si eas eis non solverit, et pro socio et ex vendito cum eo agendum est.

Dig. 17.2.70

Paulus 33 ad ed.

Nulla societatis in aeternum coitio est.

Dig. 17.2.71pr.

Paulus 3 epit. alf. Dig.

Duo societatem coierunt, ut grammaticam docerent et quod ex eo artificio quaestus fecissent, commune eorum esset: de ea re quae voluerunt fieri in pacto convento societatis proscripserunt, deinde inter se his verbis stipulati sunt: " haec, quae supra scripta sunt, ea ita dari fieri neque adversus ea fieri? si ea ita data facta non erunt, tum viginti milia dari?" quaesitum est, an, si quid contra factum esset, societatis actione agi posset. respondet, si quidem pacto convento inter eos de societate facto ita stipulati essent, " haec ita dari fieri spondes?", futurum fuisse, ut, si novationis causa id fecissent, pro socio agi non possit, sed tota res in stipulationem translata videretur. sed quoniam non ita essent stipulati " ea ita dari fieri spondes?" sed " si ea ita facta non essent, decem dari?" non videri sibi rem in stipulationem pervenisse, sed dumtaxat poenam (non enim utriusque rei promissorem obligari, ut ea daret faceret et, si non fecisset, poenam sufferret) et ideo societatis iudicio agi posse.

Dig. 17.2.71.1

Paulus 3 epit. alf. Dig.

Duo colliberti societatem coierunt lucri quaestus compendii, postea unus ex his a patrono heres institutus est, alteri legatum datum est. neutrum horum in medium referre debere respondit.

Dig. 17.2.72

Gaius 2 cott. rer.

Socius socio etiam culpae nomine tenetur, id est desidiae atque neglegentiae. culpa autem non ad exactissimam diligentiam dirigenda est: sufficit etenim talem diligentiam communibus rebus adhibere, qualem suis rebus adhibere solet, quia qui parum diligentem sibi socium adquirit, de se queri debet.

Dig. 17.2.73

Ulpianus 1 resp.

Maximino respondit, si societatem universarum fortunarum coierint, id est earum quoque rerum, quae postea cuique adquirentur, hereditatem cuivis eorum delatam in commune redigendam. idem maximae respondit, si societatem universarum fortunarum ita coierint, ut quidquid erogetur vel quaereretur communis lucri atque impendii esset, ea quoque, quae in honorem alterius liberorum erogata sunt, utrisque imputanda.

Dig. 17.2.74

Paulus 62 ad ed.

Si quis societatem contraxerit, quod emit ipsius fit, non commune: sed societatis iudicio cogitur rem communicare.

Dig. 17.2.75

Celsus 15 Dig.

Si coita sit societas ex his partibus, quas titius arbitratus fuerit, si titius antequam arbitraretur decesserit, nihil agitur: nam id ipsum actum est, ne aliter societas sit, quam ut titius arbitratus sit.

Dig. 17.2.76

Proculus 5 epist.

Societatem mecum coisti ea condicione, ut nerva amicus communis partes societatis constitueret: nerva constituit, ut tu ex triente socius esses, ego ex besse: quaeris, utrum ratum id iure societatis sit an nihilo minus ex aequis partibus socii simus. existimo autem melius te quaesiturum fuisse, utrum ex his partibus socii essemus quas is constituisset, an ex his quas virum bonum constituere oportuisset. arbitrorum enim genera sunt duo, unum eiusmodi, ut sive aequum sit sive iniquum, parere debeamus (quod observatur, cum ex compromisso ad arbitrum itum est), alterum eiusmodi, ut ad boni viri arbitrium redigi debeat, etsi nominatim persona sit comprehensa, cuius arbitratu fiat.

Dig. 17.2.77

Paulus 4 quaest.

(veluti cum lege locationis comprehensum est, ut opus arbitrio locatoris fiat):

Dig. 17.2.78

Proculus 5 epist.

In proposita autem quaestione arbitrium viri boni existimo sequendum esse, eo magis quod iudicium pro socio bonae fidei est.

Dig. 17.2.79

Paulus 4 quaest.

Unde si nervae arbitrium ita pravum est, ut manifesta iniquitas eius appareat, corrigi potest per iudicium bonae fidei.

Dig. 17.2.80

Proculus 5 epist.

Quid enim si nerva constituisset, ut alter ex millesima parte, alter ex duo millesimis partibus socius esset? illud potest conveniens esse viri boni arbitrio, ut non utique ex aequis partibus socii simus, veluti si alter plus operae industriae gratiae pecuniae in societatem collaturus erat.

Dig. 17.2.81

Papinianus 9 quaest.

Si socius pro filia dotem promisit et prius quam solveret herede ea relicta decessit: quae postea cum marito de exigenda dote egit, accepto liberata est.

quaesitum est, an, si pro socio ageret, dotis quantitatem praecipere deberet, si forte convenisset inter socios, ut de communi dos constitueretur. dixi pactum non esse iniquum, utique si non de alterius tantum filia convenit: nam si commune hoc pactum fuit, non interesse, quod alter solus filiam habuit. ceterum si numeratam dotem pater defuncta in matrimonio filia reciperasset, reddi pecuniam societati debuisse, pactum ex aequitate sic nobis interpretantibus. quod si salva societate divortio matrimonium solutum foret, cum sua causa dotem reciperari, scilicet ut ea vel alii marito dari possit. nec, si prior maritus facere non posset, denuo de societate constituendam dotem, nisi si nominatim ita convenisset. verum in proposito largiter interesse videbatur, dos numerata esset an vero promissa: nam si filia datam dotem, posteaquam patri heres exstitit, iure suo recepisset, non esse referendam pecuniam societati, quam mulier habitura fuit, etsi alius heres exstitisset: quod si accepto a marito liberata esset, nequaquam imputari posse societati non solutam pecuniam.

Dig. 17.2.82

Papinianus 3 resp.

Iure societatis per socium aere alieno socius non obligatur, nisi in communem arcam pecuniae versae sunt.

Dig. 17.2.83

Paulus 1 manual.

Illud quaerendum est, arbor quae in confinio nata est, item lapis qui per utrumque fundum extenditur an, cum succisa arbor vel lapis exemptus eius sit cuius fundus, pro ea quoque parte singulorum esse debeat, pro qua parte in fundo fuerat? an qua ratione duabus massis duorum dominorum flatis tota massa communis est, ita arbor hoc ipso, quo separatur a solo propriamque substantiam in unum corpus redactam accipit, multo magis pro indiviso communis fit, quam massa? sed naturali convenit rationi et postea tantam partem utrumque habere tam in lapide quam in arbore, quantam et in terra habebat.

Dig. 17.2.84

Labeo 6 post. a iav. epit.

Quotiens iussu alicuius vel cum filio eius vel cum extraneo societas coitur, directo cum illius persona agi posse, cuius persona in contrahenda societate spectata sit.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER DUODEVICESIMUS

Dig. 18.1.0. De contrahenda emptione et de pactis inter emptorem et venditorem compositis et quae res venire non possunt.
Dig. 18.2.0. De in diem addictione.
Dig. 18.3.0. De lege commissoria.
Dig. 18.4.0. De hereditate vel actione vendita.
Dig. 18.5.0. De rescindenda venditione et quando licet ab emptione discedere.
Dig. 18.6.0. De periculo et commodo rei venditae.
Dig. 18.7.0. De servis exportandis: vel si ita mancipium venierit ut manumittatur vel contra.
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Dig. 18.1.1pr.

Paulus 33 ad ed.

Origo emendi vendendique a permutationibus coepit. olim enim non ita erat nummus neque aliud merx, aliud pretium vocabatur, sed unusquisque secundum necessitatem temporum ac rerum utilibus inutilia permutabat, quando plerumque evenit, ut quod alteri superest alteri desit. sed quia non semper nec facile concurrebat, ut, cum tu haberes quod ego desiderarem, invicem haberem quod tu accipere velles, electa materia est, cuius publica ac perpetua aestimatio difficultatibus permutationum aequalitate quantitatis subveniret. eaque materia forma publica percussa usum dominiumque non tam ex substantia praebet quam ex quantitate nec ultra merx utrumque, sed alterum pretium vocatur.

Dig. 18.1.1.1

Paulus 33 ad ed.

Sed an sine nummis venditio dici hodieque possit, dubitatur, veluti si ego togam dedi, ut tunicam acciperem. sabinus et cassius esse emptionem et venditionem putant: nerva et proculus permutationem, non emptionem hoc esse. sabinus homero teste utitur, qui exercitum graecorum aere ferro hominibusque vinum emere refert, illis versibus: enven ar' oinizonto karykomowntes axaioi alloi men xalkw, alloi d' aivwni sidyrw, alloi de hrinois, alloi d' autysi boessi, alloi d' andrapodessin. sed hi versus permutationem significare videntur, non emptionem, sicuti illi: env' aute glaukw kronidys frenas eceleto zeus, hos pros tudeidyn diomydea teuxe ameiben. magis autem pro hac sententia illud diceretur, quod alias idem poeta dicit: priato kteatessin heoisin. sed verior est nervae et proculi sententia: nam ut aliud est vendere, aliud emere, alius emptor, alius venditor, sic aliud est pretium, aliud merx: quod in permutatione discerni non potest, uter emptor, uter venditor sit.

Dig. 18.1.1.2

Paulus 33 ad ed.

Est autem emptio iuris gentium, et ideo consensu peragitur et inter absentes contrahi potest et per nuntium et per litteras.

Dig. 18.1.2pr.

Ulpianus 1 ad sab.

Inter patrem et filium contrahi emptio non potest, sed de rebus castrensibus potest.

Dig. 18.1.2.1

Ulpianus 1 ad sab.

Sine pretio nulla venditio est: non autem pretii numeratio, sed conventio perficit sine scriptis habitam emptionem.

Dig. 18.1.3

Ulpianus 28 ad sab.

Si res ita distracta sit, ut si displicuisset inempta esset, constat non esse sub condicione distractam, sed resolvi emptionem sub condicione.

Dig. 18.1.4

Pomponius 9 ad sab.

Et liberi hominis et loci sacri et religiosi, qui haberi non potest, emptio intellegitur, si ab ignorante emitur,

Dig. 18.1.5

Paulus 5 ad sab.

Quia difficile dinosci potest liber homo a servo.

Dig. 18.1.6pr.

Pomponius 9 ad sab.

Sed celsus filius ait hominem liberum scientem te emere non posse nec cuiuscumque rei si scias alienationem esse: ut sacra et religiosa loca aut quorum commercium non sit, ut publica, quae non in pecunia populi, sed in publico usu habeatur, ut est campus martius.

Dig. 18.1.6.1

Pomponius 9 ad sab.

Si fundus annua bima trima die ea lege venisset, ut, si in diem statutum pecunia soluta non esset, fundus inemptus foret et ut, si interim emptor fundum coluerit fructusque ex eo perceperit, inempto eo facto restituerentur et ut, quanti minoris postea alii venisset, ut id emptor venditori praestaret: ad diem pecunia non soluta placet venditori ex vendito eo nomine actionem esse. nec conturbari debemus, quod inempto fundo facto dicatur actionem ex vendito futuram esse: in emptis enim et venditis potius id quod actum, quam id quod dictum sit sequendum est, et cum lege id dictum sit, apparet hoc dumtaxat actum esse, ne venditor emptori pecunia ad diem non soluta obligatus esset, non ut omnis obligatio empti et venditi utrique solveretur.

Dig. 18.1.6.2

Pomponius 9 ad sab.

Condicio, quae initio contractus dicta est, postea alia pactione immutari potest, sicuti etiam abiri a tota emptione potest, si nondum impleta sunt, quae utrimque praestari debuerunt.

Dig. 18.1.7pr.

Ulpianus 28 ad sab.

Haec venditio servi " si rationes domini computasset arbitrio" condicionalis est: condicionales autem venditiones tunc perficiuntur, cum impleta fuerit condicio. sed utrum haec est venditionis condicio, si ipse dominus putasset suo arbitrio, an vero si arbitrio viri boni? nam si arbitrium domini accipiamus, venditio nulla est, quemadmodum si quis ita vendiderit, si voluerit, vel stipulanti sic spondeat " si voluero, decem dabo": neque enim debet in arbitrium rei conferri, an sit obstrictus. placuit itaque veteribus magis in viri boni arbitrium id collatum videri quam in domini. si igitur rationes potuit accipere nec accepit, vel accepit, fingit autem se non accepisse, impleta condicio emptionis est et ex empto venditor conveniri potest.

Dig. 18.1.7.1

Ulpianus 28 ad sab.

Huiusmodi emptio " quanti tu eum emisti", " quantum pretii in arca habeo", valet: nec enim incertum est pretium tam evidenti venditione: magis enim ignoratur, quanti emptus sit, quam in rei veritate incertum est.

Dig. 18.1.7.2

Ulpianus 28 ad sab.

Si quis ita emerit: " est mihi fundus emptus centum et quanto pluris eum vendidero", valet venditio et statim impletur: habet enim certum pretium centum, augebitur autem pretium, si pluris emptor fundum vendiderit.

Dig. 18.1.8pr.

Pomponius 9 ad sab.

Nec emptio nec venditio sine re quae veneat potest intellegi. et tamen fructus et partus futuri recte ementur, ut, cum editus esset partus, iam tunc, cum contractum esset negotium, venditio facta intellegatur: sed si id egerit venditor, ne nascatur aut fiant, ex empto agi posse.

Dig. 18.1.8.1

Pomponius 9 ad sab.

Aliquando tamen et sine re venditio intellegitur, veluti cum quasi alea emitur. quod fit, cum captum piscium vel avium vel missilium emitur: emptio enim contrahitur etiam si nihil inciderit, quia spei emptio est: et quod missilium nomine eo casu captum est si evictum fuerit, nulla eo nomine ex empto obligatio contrahitur, quia id actum intellegitur.

Dig. 18.1.9pr.

Ulpianus 28 ad sab.

In venditionibus et emptionibus consensum debere intercedere palam est: ceterum sive in ipsa emptione dissentient sive in pretio sive in quo alio, emptio imperfecta est. si igitur ego me fundum emere putarem cornelianum, tu mihi te vendere sempronianum putasti, quia in corpore dissensimus, emptio nulla est. idem est, si ego me stichum, tu pamphilum absentem vendere putasti: nam cum in corpore dissentiatur, apparet nullam esse emptionem.

Dig. 18.1.9.1

Ulpianus 28 ad sab.

Plane si in nomine dissentiamus, verum de corpore constet, nulla dubitatio est, quin valeat emptio et venditio: nihil enim facit error nominis, cum de corpore constat.

Dig. 18.1.9.2

Ulpianus 28 ad sab.

Inde quaeritur, si in ipso corpore non erratur, sed in substantia error sit, ut puta si acetum pro vino veneat, aes pro auro vel plumbum pro argento vel quid aliud argento simile, an emptio et venditio sit. Marcellus scripsit libro sexto digestorum emptionem esse et venditionem, quia in corpus consensum est, etsi in materia sit erratum. ego in vino quidem consentio, quia eadem prope ousia est, si modo vinum acuit: ceterum si vinum non acuit, sed ab initio acetum fuit, ut embamma, aliud pro alio venisse videtur. in ceteris autem nullam esse venditionem puto, quotiens in materia erratur.

Dig. 18.1.10

Paulus 5 ad sab.

Aliter atque si aurum quidem fuerit, deterius autem quam emptor existimaret: tunc enim emptio valet.

Dig. 18.1.11pr.

Ulpianus 28 ad sab.

Alioquin quid dicemus, si caecus emptor fuit vel si in materia erratur vel in minus perito discernendarum materiarum? in corpus eos consensisse dicemus? et quemadmodum consensit, qui non vidit?

Dig. 18.1.11.1

Ulpianus 28 ad sab.

Quod si ego me virginem emere putarem, cum esset iam mulier, emptio valebit: in sexu enim non est erratum. ceterum si ego mulierem venderem, tu puerum emere existimasti, quia in sexu error est, nulla emptio, nulla venditio est.

Dig. 18.1.12

Pomponius 31 ad q. muc.

In huiusmodi autem quaestionibus personae ementium et vendentium spectari debent, non eorum, quibus adquiritur ex eo contractu actio: nam si servus meus vel filius qui in mea potestate est me praesente suo nomine emat, non est quaerendum, quid ego existimem, sed quid ille qui contrahit.

Dig. 18.1.13

Pomponius 9 ad sab.

Sed si servo meo vel ei cui mandavero vendas sciens fugitivum illo ignorante, me sciente, non teneri te ex empto verum est.

Dig. 18.1.14

Ulpianus 28 ad sab.

Quid tamen dicemus, si in materia et qualitate ambo errarent? ut puta si et ego me vendere aurum putarem et tu emere, cum aes esset? ut puta coheredes viriolam, quae aurea dicebatur, pretio exquisito uni heredi vendidissent eaque inventa esset magna ex parte aenea? venditionem esse constat ideo, quia auri aliquid habuit. nam si inauratum aliquid sit, licet ego aureum putem, valet venditio: si autem aes pro auro veneat, non valet.

Dig. 18.1.15pr.

Paulus 5 ad sab.

Et si consensum fuerit in corpus, id tamen in rerum natura ante venditionem esse desierit, nulla emptio est.

Dig. 18.1.15.1

Paulus 5 ad sab.

Ignorantia emptori prodest, quae non in supinum hominem cadit.

Dig. 18.1.15.2

Paulus 5 ad sab.

Si rem meam mihi ignoranti vendideris et iussu meo alii tradideris, non putat pomponius dominium meum transire, quoniam non hoc mihi propositum fuit, sed quasi tuum dominium ad eum transire: et ideo etiam si donaturus mihi rem meam iussu meo alii tradas, idem dicendum erit.

Dig. 18.1.16pr.

Pomponius 9 ad sab.

Suae rei emptio non valet, sive sciens sive ignorans emi: sed si ignorans emi, quod solvero repetere potero, quia nulla obligatio fuit.

Dig. 18.1.16.1

Pomponius 9 ad sab.

Nec tamen emptioni obstat, si in ea re usus fructus dumtaxat ementis sit:

Dig. 18.1.17

Paulus 33 ad ed.

Officio tamen iudicis pretium minuetur.

Dig. 18.1.18pr.

Pomponius 9 ad sab.

Sed si communis ea res emptori cum alio sit, dici debet scisso pretio pro portione pro parte emptionem valere, pro parte non valere.

Dig. 18.1.18.1

Pomponius 9 ad sab.

Si servus domini iussu in demonstrandis finibus agri venditi vel errore vel dolo plus demonstaverit, id tamen demonstratum accipi oportet, quod dominus senserit: et idem alfenus scripsit de vacua possessione per servum tradita.

Dig. 18.1.19

Pomponius 31 ad q. muc.

Quod vendidi non aliter fit accipientis, quam si aut pretium nobis solutum sit aut satis eo nomine factum vel etiam fidem habuerimus emptori sine ulla satisfactione.

Dig. 18.1.20

Pomponius 9 ad sab.

Sabinus respondit, si quam rem nobis fieri velimus etiam, veluti statuam vel vas aliquod seu vestem, ut nihil aliud quam pecuniam daremus, emptionem videri, nec posse ullam locationem esse, ubi corpus ipsum non detur ab eo cui id fieret: aliter atque si aream darem, ubi insulam aedificares, quoniam tunc a me substantia proficiscitur.

Dig. 18.1.21

Paulus 5 ad sab.

Labeo scripsit obscuritatem pacti nocere potius debere venditori qui id dixerit quam emptori, quia potuit re integra apertius dicere.

Dig. 18.1.22

Ulpianus 28 ad sab.

Hanc legem venditionis " si quid sacri vel religiosi est, eius venit nihil" supervacuam non esse, sed ad modica loca pertinere. ceterum si omne religiosum vel sacrum vel publicum venierit, nullam esse emptionem,

Dig. 18.1.23

Paulus 5 ad sab.

(et quod solverit eo nomine, emptor condicere potest)

Dig. 18.1.24

Ulpianus 28 ad sab.

In modicis autem ex empto esse actionem, quia non specialiter locus sacer vel religiosus venit, sed emptioni maioris partis accessit.

Dig. 18.1.25pr.

Ulpianus 34 ad sab.

Si ita distrahatur " illa aut illa res", utram eliget venditor, haec erit empta.

Dig. 18.1.25.1

Ulpianus 34 ad sab.

Qui vendidit necesse non habet fundum emptoris facere, ut cogitur qui fundum stipulanti spopondit.

Dig. 18.1.26

Pomponius 17 ad sab.

Si sciens emam ab eo cui bonis interdictum sit vel cui tempus ad deliberandum de hereditate ita datum sit, ut ei deminuendi potestas non sit, dominus non ero: dissimiliter atque si a debitore sciens creditorem fraudari emero.

Dig. 18.1.27

Paulus 8 ad sab.

Qui a quolibet rem emit, quam putat ipsius esse, bona fide emit: at qui sine tutoris auctoritate a pupillo emit, vel falso tutore auctore, quem scit tutorem non esse, non videtur bona fide emere, ut et sabinus scripsit.

Dig. 18.1.28

Ulpianus 41 ad sab.

Rem alienam distrahere quem posse nulla dubitatio est: nam emptio est et venditio: sed res emptori auferri potest.

Dig. 18.1.29

Ulpianus 43 ad sab.

Quotiens servus venit, non cum peculio distrahitur: et ideo sive non sit exceptum, sive exceptum sit, ne cum peculio veneat, non cum peculio distractus videtur. unde si qua res fuerit peculiaris a servo subrepta, condici potest videlicet quasi furtiva: hoc ita, si res ad emptorem pervenit.

Dig. 18.1.30

Ulpianus 32 ad ed.

Sed ad exhibendum agi posse nihilo minus et ex vendito puto.

Dig. 18.1.31

Pomponius 22 ad sab.

Sed et si quid postea accessit peculio, reddendum est venditori, veluti partus et quod ex operis vicarii perceptum est.

Dig. 18.1.32

Ulpianus 44 ad sab.

Qui tabernas argentarias vel ceteras quae in solo publico sunt vendit, non solum, sed ius vendit, cum istae tabernae publicae sunt, quarum usus ad privatos pertinet.

Dig. 18.1.33

Pomponius 33 ad sab.

Cum in lege venditionis ita sit scriptum: " flumina stillicidia uti nunc sunt, ut ita sint", nec additur, quae flumina vel stillicidia, primum spectari oportet, quid acti sit: si non id appareat, tunc id accipitur quod venditori nocet: ambigua enim oratio est.

Dig. 18.1.34pr.

Paulus 33 ad ed.

Si in emptione fundi dictum sit accedere stichum servum neque intellegatur, quis ex pluribus accesserit, cum de alio emptor, de alio venditor senserit, nihilo minus fundi venditionem valere constat: sed labeo ait eum stichum deberi quem venditor intellexerit. nec refert, quanti sit accessio, sive plus in ea sit quam in ipsa re cui accedat an minus: plerasque enim res aliquando propter accessiones emimus, sicuti cum domus propter marmora et statuas et tabulas pictas ematur.

Dig. 18.1.34.1

Paulus 33 ad ed.

Omnium rerum, quas quis habere vel possidere vel persequi potest, venditio recte fit: quas vero natura vel gentium ius vel mores civitatis commercio exuerunt, earum nulla venditio est.

Dig. 18.1.34.2

Paulus 33 ad ed.

Liberum hominem scientes emere non possumus. sed nec talis emptio aut stipulatio admittenda est: " cum servus erit", quamvis dixerimus futuras res emi posse: nec enim fas est eiusmodi casus exspectare.

Dig. 18.1.34.3

Paulus 33 ad ed.

Item si et emptor et venditor scit furtivum esse quod venit, a neutra parte obligatio contrahitur: si emptor solus scit, non obligabitur venditor nec tamen ex vendito quicquam consequitur, nisi ultro quod convenerit praestet: quod si venditor scit, emptor ignoravit, utrinque obligatio contrahitur, et ita pomponius quoque scribit.

Dig. 18.1.34.4

Paulus 33 ad ed.

Rei suae emptio tunc valet, cum ab initio id agatur, ut possessionem emat, quam forte venditor habuit, et in iudicio possessionis potior esset.

Dig. 18.1.34.5

Paulus 33 ad ed.

Alia causa est degustandi, alia metiendi: gustus enim ad hoc proficit, ut improbare liceat, mensura vero non eo proficit, ut aut plus aut minus veneat, sed ut appareat, quantum ematur.

Dig. 18.1.34.6

Paulus 33 ad ed.

Si emptio ita facta fuerit: " est mihi emptus stichus aut pamphilus", in potestate est venditoris, quem velit dare, sicut in stipulationibus, sed uno mortuo qui superest dandus est: et ideo prioris periculum ad venditorem, posterioris ad emptorem respicit. sed et si pariter decesserunt, pretium debebitur: unus enim utique periculo emptoris vixit. idem dicendum est etiam, si emptoris fuit arbitrium quem vellet habere, si modo hoc solum arbitrio eius commissum sit, ut quem voluisset emptum haberet, non et illud, an emptum haberet.

Dig. 18.1.34.7

Paulus 33 ad ed.

Tutor rem pupilli emere non potest: idemque porrigendum est ad similia, id est ad curatores procuratores et qui negotia aliena gerunt.

Dig. 18.1.35pr.

Gaius 10 ad ed. provinc.

Quod saepe arrae nomine pro emptione datur, non eo pertinet, quasi sine arra conventio nihil proficiat, sed ut evidentius probari possit convenisse de pretio.

Dig. 18.1.35.1

Gaius 10 ad ed. provinc.

Illud constat imperfectum esse negotium, cum emere volenti sic venditor dicit: " quanti velis, quanti aequum putaveris, quanti aestimaveris, habebis emptum".

Dig. 18.1.35.2

Gaius 10 ad ed. provinc.

Veneni mali quidam putant non contrahi emptionem, quia nec societas aut mandatum flagitiosae rei ullas vires habet: quae sententia potest sane vera videri de his quae nullo modo adiectione alterius materiae usu nobis esse possunt: de his vero quae mixta aliis materiis adeo nocendi naturam deponunt, ut ex his antidoti et alia quaedam salubria medicamenta conficiantur, aliud dici potest.

Dig. 18.1.35.3

Gaius 10 ad ed. provinc.

Si quis amico peregre eunti mandaverit, ut fugitivum suum quaerat et si invenerit vendat, nec ipse contra senatus consultum committit, quia non vendidit, neque amicus eius, quia praesentem vendit: emptor quoque, qui praesentem emit, recte negotium gerere intellegitur.

Dig. 18.1.35.4

Gaius 10 ad ed. provinc.

Si res vendita per furtum perierit, prius animadvertendum erit, quid inter eos de custodia rei convenerat: si nihil appareat convenisse, talis custodia desideranda est a venditore, qualem bonus pater familias suis rebus adhibet: quam si praestiterit et tamen rem perdidit, securus esse debet, ut tamen scilicet vindicationem rei et condictionem exhibeat emptori. unde videbimus in personam eius, qui alienam rem vendiderit: cum is nullam vindicationem aut condictionem habere possit, ob id ipsum damnandus est, quia, si suam rem vendidisset, potuisset eas actiones ad emptorem transferre.

Dig. 18.1.35.5

Gaius 10 ad ed. provinc.

In his quae pondere numero mensurave constant, veluti frumento vino oleo argento, modo ea servantur quae in ceteris, ut simul atque de pretio convenerit, videatur perfecta venditio, modo ut, etiamsi de pretio convenerit, non tamen aliter videatur perfecta venditio, quam si admensa adpensa adnumeratave sint. nam si omne vinum vel oleum vel frumentum vel argentum quantumcumque esset uno pretio venierit, idem iuris est quod in ceteris rebus. quod si vinum ita venierit, ut in singulas amphoras, item oleum, ut in singulos metretas, item frumentum, ut in singulos modios, item argentum, ut in singulas libras certum pretium diceretur, quaeritur, quando videatur emptio perfici. quod similiter scilicet quaeritur et de his quae numero constant, si pro numero corporum pretium fuerit statutum. sabinus et cassius tunc perfici emptionem existimant, cum adnumerata admensa adpensave sint, quia venditio quasi sub hac condicione videtur fieri, ut in singulos metretas aut in singulos modios quos quasve admensus eris, aut in singulas libras quas adpenderis, aut in singula corpora quae adnumeraveris.

Dig. 18.1.35.6

Gaius 10 ad ed. provinc.

Ergo et si grex venierit, si quidem universaliter uno pretio, perfecta videtur, postquam de pretio convenerit: si vero in singula corpora certo pretio, eadem erunt, quae proxime tractavimus.

Dig. 18.1.35.7

Gaius 10 ad ed. provinc.

Sed et si ex doleario pars vini venierit, veluti metretae centum, verissimum est (quod et constare videtur) antequam admetiatur, omne periculum ad venditorem pertinere: nec interest, unum pretium omnium centum metretarum in semel dictum sit an in singulos eos.

Dig. 18.1.35.8

Gaius 10 ad ed. provinc.

Si quis in vendendo praedio confinem celaverit, quem emptor si audisset, empturus non esset, teneri venditorem.

Dig. 18.1.36

Ulpianus 43 ad ed.

Cum in venditione quis pretium rei ponit donationis causa non exacturus, non videtur vendere.

Dig. 18.1.37

Ulpianus 3 disp.

Si quis fundum iure hereditario sibi delatum ita vendidisset: " erit tibi emptus tanti, quanti a testatore emptus est", mox inveniatur non emptus, sed donatus testatori, videtur quasi sine pretio facta venditio, ideoque similis erit sub condicione factae venditioni, quae nulla est, si condicio defecerit.

Dig. 18.1.38

Ulpianus 7 disp.

Si quis donationis causa minoris vendat, venditio valet: totiens enim dicimus in totum venditionem non valere, quotiens universa venditio donationis causa facta est: quotiens vero viliore pretio res donationis causa distrahitur, dubium non est venditionem valere. hoc inter ceteros: inter virum vero et uxorem donationis causa venditio facta pretio viliore nullius momenti est.

Dig. 18.1.39pr.

Iulianus 15 Dig.

Si debitor rem pigneratam a creditore redemerit, quasi suae rei emptor actione ex vendito non tenetur et omnia in integro sunt creditori.

Dig. 18.1.39.1

Iulianus 15 Dig.

Verisimile est eum, qui fructum olivae pendentis vendidisset et stipulatus est decem pondo olei quod natum esset, pretium constituisse ex eo quod natum esset usque ad decem pondo olei: idcirco solis quinque collectis non amplius emptor petere potest quam quinque pondo olei, quae collecta essent, a plerisque responsum est.

Dig. 18.1.40pr.

Paulus 4 epit. alf. Dig.

Qui fundum vendebat, in lege ita dixerat, ut emptor in diebus triginta proximis fundum metiretur et de modo renuntiaret, et si ante eam diem non renuntiasset, ut venditoris fides soluta esset: emptor intra diem mensurae quo minorem modum esse credidit renuntiavit et pecuniam pro eo accepit: postea eum fundum vendidit et cum ipse emptori suo admetiretur, multo minorem modum agri quam putaverat invenit: quaerebat, an id quod minor is esset consequi a suo venditore posset. respondit interesse, quemadmodum lex diceretur: nam si ita dictum esset, ut emptor diebus triginta proximis fundum metiatur et domino renuntiet, quanto modus agri minor sit, quo post diem trigensimum renuntiasset, nihil ei profuturum: sed si ita pactum esset, ut emptor in diebus proximis fundum metiatur et de modo agri renuntiet, etsi in diebus triginta renuntiasset minorem modum agri esse, quamvis multis post annis posse eum quo minor is modus agri fuisset repetere.

Dig. 18.1.40.1

Paulus 4 epit. alf. Dig.

In lege fundi aquam accessuram dixit: quaerebatur, an etiam iter aquae accessisset. respondit sibi videri id actum esse, et ideo iter quoque venditorem tradere oportere.

Dig. 18.1.40.2

Paulus 4 epit. alf. Dig.

Qui agrum vendebat, dixit fundi iugera decem et octo esse, et quod eius admensum erit, ad singula iugera certum pretium stipulatus erat: viginti inventa sunt. pro viginti deberi pecuniam respondit.

Dig. 18.1.40.3

Paulus 4 epit. alf. Dig.

Fundi venditor frumenta manu sata receperat: in eo fundo ex stipula seges erat enata: quaesitum est, an pacto contineretur. respondit maxime referre, quid est actum: ceterum secundum verba non esse actum, quod ex stipula nasceretur, non magis quam si quid ex sacco saccarii cecidisset aut ex eo quod avibus ex aere cecidisset natum esset.

Dig. 18.1.40.4

Paulus 4 epit. alf. Dig.

Cum fundum quis vendiderat et omnem fructum receperat, et arundinem caeduam et silvam in fructu esse respondit.

Dig. 18.1.40.5

Paulus 4 epit. alf. Dig.

Dolia, quae in fundo domini essent, accessura dixit: etiam ea, quae servus qui fundum coluerat emisset peculiaria, emptori cessura respondit.

Dig. 18.1.40.6

Paulus 4 epit. alf. Dig.

Rota quoque, per quam aqua traheretur, nihilo minus aedificii est quam situla.

Dig. 18.1.41pr.

Iulianus 3 ad urs. ferocem.

Cum ab eo, qui fundum alii obligatum habebat, quidam sic emptum rogasset, ut esset is sibi emptus, si eum liberasset, dummodo ante kalendas iulias liberaret, quaesitum est, an utiliter agere possit ex empto in hoc, ut venditor eum liberaret. respondit: videamus, quid inter ementem et vendentem actum sit. nam si id actum est, ut omni modo intra kalendas iulias venditor fundum liberaret, ex empto erit actio, ut liberet, nec sub condicione emptio facta intellegetur, veluti si hoc modo emptor interrogaverit: " erit mihi fundus emptus ita, ut eum intra kalendas iulias liberes", vel " ita ut eum intra kalendas a titio redimas". si vero sub condicione facta emptio est, non poterit agi, ut condicio impleatur.

Dig. 18.1.41.1

Iulianus 3 ad urs. ferocem.

Mensam argento coopertam mihi ignoranti pro solida vendidisti imprudens: nulla est emptio pecuniaque eo nomine data condicetur.

Dig. 18.1.42

Marcianus 1 inst.

Domini neque per se neque per procuratores suos possunt saltem criminosos servos vendere, ut cum bestiis pugnarent. et ita divi fratres rescripserunt.

Dig. 18.1.43pr.

Florus 8 inst.

Ea quae commendandi causa in venditionibus dicuntur, si palam appareant, venditorem non obligant, veluti si dicat servum speciosum, domum bene aedificatam: at si dixerit hominem litteratum vel artificem, praestare debet: nam hoc ipso pluris vendit.

Dig. 18.1.43.1

Florus 8 inst.

Quaedam etiam pollicitationes venditorem non obligant, si ita in promptu res sit, ut eam emptor non ignoraverit, veluti si quis hominem luminibus effossis emat et de sanitate stipuletur: nam de cetera parte corporis potius stipulatus videtur, quam de eo, in quo se ipse decipiebat.

Dig. 18.1.43.2

Florus 8 inst.

Dolum malum a se abesse praestare venditor debet, qui non tantum in eo est, qui fallendi causa obscure loquitur, sed etiam qui insidiose obscure dissimulat.

Dig. 18.1.44

Marcianus 3 reg.

Si duos quis servos emerit pariter uno pretio, quorum alter ante venditionem mortuus est, neque in vivo constat emptio.

Dig. 18.1.45

Marcianus 4 reg.

Labeo libro posteriorum scribit, si vestimenta interpola quis pro novis emerit, trebatio placere ita emptori praestandum quod interest, si ignorans interpola emerit. quam sententiam et pomponius probat, in qua et iulianus est, qui ait, si quidem ignorabat venditor, ipsius rei nomine teneri, si sciebat, etiam damni quod ex eo contingit: quemadmodum si vas aurichalcum pro auro vendidisset ignorans, tenetur, ut aurum quod vendidit praestet.

Dig. 18.1.46

Marcianus l.S. de delator.

Non licet ex officio, quod administrat quis, emere quid vel per se vel per aliam personam: alioquin non tantum rem amittit, sed et in quadruplum convenitur secundum constitutionem severi et antonini: et hoc ad procuratorem quoque caesaris pertinet. sed hoc ita se habet, nisi specialiter quibusdam hoc concessum est.

Dig. 18.1.47

Ulpianus 29 ad sab.

Si aquae ductus debeatur praedio, et ius aquae transit ad emptorem, etiamsi nihil dictum sit, sicut et ipsae fistulae, per quas aqua ducitur,

Dig. 18.1.48

Paulus 5 ad sab.

Licet extra aedes sint:

Dig. 18.1.49

Ulpianus 29 ad sab.

Et quamquam ius aquae non sequatur, quod amissum est, attamen fistulae et canales dum sibi sequuntur, quasi pars aedium ad emptorem perveniunt. et ita pomponius libro decimo putat.

Dig. 18.1.50

Ulpianus 11 ad ed.

Labeo scribit, si mihi bibliothecam ita vendideris, si decuriones campani locum mihi vendidissent, in quo eam ponerem, et per me stet, quo minus id a campanis impetrem, non esse dubitandum, quin praescriptis verbis agi possit.

ego etiam ex vendito agi posse puto quasi impleta condicione, cum per emptorem stet, quo minus impleatur.

Dig. 18.1.51

Paulus 21 ad ed.

Litora, quae fundo vendito coniuncta sunt, in modum non computantur, quia nullius sunt, sed iure gentium omnibus vacant: nec viae publicae aut loca religiosa vel sacra. itaque ut proficiant venditori, caveri solet, ut viae, item litora et loca publica in modum cedant.

Dig. 18.1.52

Paulus 54 ad ed.

Senatus censuit, ne quis domum villamve dirueret, quo plus sibi adquireretur neve quis negotiandi causa eorum quid emeret venderetve: poena in eum, qui adversus senatus consultum fecisset, constituta est, ut duplum eius quanti emisset in aerarium inferre cogeretur, in eum vero, qui vendidisset, ut irrita fieret venditio. plane si mihi pretium solveris, cum tu duplum aerario debeas, repetes a me: quod a mea parte irrita facta est venditio. nec solum huic senatus consulto locus erit, si quis suam villam vel domum, sed et si alienam vendiderit.

Dig. 18.1.53

Gaius 28 ad ed. provinc.

Ut res emptoris fiat, nihil interest, utrum solutum sit pretium an eo nomine fideiussor datus sit. quod autem de fideiussore diximus, plenius acceptum est, qualibet ratione si venditori de pretio satisfactum est, veluti expromissore aut pignore dato, proinde sit, ac si pretium solutum esset.

Dig. 18.1.54

Paulus 1 ad ed. aedil. curul.

Res bona fide vendita propter minimam causam inempta fieri non debet.

Dig. 18.1.55

Paulus 2 ad ed. aedil. curul.

Nuda et imaginaria venditio pro non facta est et ideo nec alienatio eius rei intellegitur.

Dig. 18.1.56

Paulus 50 ad ed.

Si quis sub hoc pacto vendiderit ancillam, ne prostituatur et, si contra factum esset, uti liceret ei abducere, etsi per plures emptores mancipium cucurrerit, ei qui primo vendit abducendi potestas fit.

Dig. 18.1.57pr.

Paulus 5 ad plaut.

Domum emi, cum eam et ego et venditor combustam ignoraremus. nerva sabinus cassius nihil venisse, quamvis area maneat, pecuniamque solutam condici posse aiunt. sed si pars domus maneret, neratius ait hac quaestione multum interesse, quanta pars domus incendio consumpta permaneat, ut, si quidem amplior domus pars exusta est, non compellatur emptor perficere emptionem, sed etiam quod forte solutum ab eo est repetet: sin vero vel dimidia pars vel minor quam dimidia exusta fuerit, tunc coartandus est emptor venditionem adimplere aestimatione viri boni arbitratu habita, ut, quod ex pretio propter incendium decrescere fuerit inventum, ab huius praestatione liberetur.

Dig. 18.1.57.1

Paulus 5 ad plaut.

Sin autem venditor quidem sciebat domum esse exustam, emptor autem ignorabat, nullam venditionem stare, si tota domus ante venditionem exusta sit: si vero quantacumque pars aedificii remaneat, et stare venditionem et venditorem emptori quod interest restituere.

Dig. 18.1.57.2

Paulus 5 ad plaut.

Simili quoque modo ex diverso tractari oportet, ubi emptor quidem sciebat, venditor autem ignorabat: et hic enim oportet et venditorem stare et omne pretium ab emptore venditori, si non depensum est, solvi vel si solutum sit, non repeti.

Dig. 18.1.57.3

Paulus 5 ad plaut.

Quod si uterque sciebat et emptor et venditor domum esse exustam totam vel ex parte, nihil actum fuisse dolo inter utramque partem compensando et iudicio, quod ex bona fide descendit, dolo ex utraque parte veniente stare non concedente.

Dig. 18.1.58

Papinianus 10 quaest.

Arboribus quoque vento deiectis vel absumptis igne dictum est emptionem fundi non videri esse contractam, si contemplatione illarum arborum, veluti oliveti, fundus comparabatur, sive sciente sive ignorante venditore: sive autem emptor sciebat vel ignorabat vel uterque eorum, haec optinent, quae in superioribus casibus pro aedibus dicta sunt.

Dig. 18.1.59

Celsus 8 Dig.

Cum venderes fundum, non dixisti " ita ut optimus maximusque": verum est, quod quinto mucio placebat, non liberum, sed qualis esset, fundum praestari oportere. idem et in urbanis praediis dicendum est.

Dig. 18.1.60

Marcellus 6 Dig.

Comprehensum erat lege venditionis dolia sexaginta emptori accessura: cum essent centum, in venditoris fore potestate responsum est quae vellet dare.

Dig. 18.1.61

Marcellus 20 Dig.

Existimo posse me id quod meum est sub condicione emere, quia forte speratur meum esse desinere.

Dig. 18.1.62pr.

Modestinus 5 reg.

Qui officii causa in provincia agit vel militat, praedia comparare in eadem provincia non potest, praeterquam si paterna eius a fisco distrahantur.

Dig. 18.1.62.1

Modestinus 5 reg.

Qui nesciens loca sacra vel religiosa vel publica pro privatis comparavit, licet emptio non teneat, ex empto tamen adversus venditorem experietur, ut consequatur quod interfuit eius, ne deciperetur.

Dig. 18.1.62.2

Modestinus 5 reg.

Res in aversione empta, si non dolo venditoris factum sit, ad periculum emptoris pertinebit, etiamsi res adsignata non sit.

Dig. 18.1.63pr.

Iavolenus 7 ex cass.

Cum servo dominus rem vendere certae personae iusserit, si alii vendidisset, quam cui iussus erat, venditio non valet: idem iuris in libera persona est: cum perfici venditio non potuit in eius persona, cui dominus venire eam noluit.

Dig. 18.1.63.1

Iavolenus 7 ex cass.

Demonstratione fundi facta fines nominari supervacuum est: si nominentur, etiam ipsum venditorem nominare oportet, si forte alium agrum confinem possidet.

Dig. 18.1.64

Iavolenus 2 epist.

Fundus ille est mihi et titio emptus: quaero, utrum in partem an in totum venditio consistat an nihil actum sit. respondi personam titii supervacuo accipiendam puto ideoque totius fundi emptionem ad me pertinere.

Dig. 18.1.65

Iavolenus 11 epist.

Convenit mihi tecum, ut certum numerum tegularum mihi dares certo pretio quod ut faceres: utrum emptio sit an locatio? respondit, si ex meo fundo tegulas tibi factas ut darem convenit, emptionem puto esse, non conductionem: totiens enim conductio alicuius rei est, quotiens materia, in qua aliquid praestatur, in eodem statu eiusdem manet: quotiens vero et immutatur et alienatur, emptio magis quam locatio intellegi debet.

Dig. 18.1.66pr.

Pomponius 31 ad q. muc.

In vendendo fundo quaedam etiam si non dicantur, praestanda sunt, veluti ne fundus evincatur aut usus fructus eius, quaedam ita demum, si dicta sint, veluti viam iter actum aquae ductum praestatu iri: idem et in servitutibus urbanorum praediorum.

Dig. 18.1.66.1

Pomponius 31 ad q. muc.

Si cum servitus venditis praediis deberetur nec commemoraverit venditor, sed sciens esse reticuerit et ob id per ignorantiam rei emptor non utendo per statutum tempus eam servitutem amiserit, quidam recte putant venditorem teneri ex empto ob dolum.

Dig. 18.1.66.2

Pomponius 31 ad q. muc.

Quintus mucius scribit, qui scripsit " ruta caesa quaeque aedium fundive non sunt", bis idem scriptum: nam ruta caesa ea sunt quae neque aedium neque fundi sunt.

Dig. 18.1.67

Pomponius 39 ad q. muc.

Alienatio cum fit, cum sua causa dominium ad alium transferimus, quae esset futura, si apud nos ea res mansisset, idque toto iure civili ita se habet, praeterquam si aliquid nominatim sit constitutum.

Dig. 18.1.68pr.

Proculus 6 epist.

Si, cum fundum venderes, in lege dixisses, quod mercedis nomine a conductore exegisses, id emptori accessurum esse, existimo te in exigendo non solum bonam fidem, sed etiam diligentiam praestare debere, id est non solum ut a te dolus malus absit, sed etiam ut culpa.

Dig. 18.1.68.1

Proculus 6 epist.

Fere aliqui solent haec verba adicere: " dolus malus a venditore aberit", qui etiam si adiectum non est, abesse debet.

Dig. 18.1.68.2

Proculus 6 epist.

Nec videtur abesse, si per eum factum est aut fiet, quo minus fundum emptor possideat. erit ergo ex empto actio, non ut venditor vacuam possessionem tradat, cum multis modis accidere poterit, ne tradere possit, sed ut, si quid dolo malo fecit aut facit, dolus malus eius aestimaretur.

Dig. 18.1.69

Proculus 11 epist.

Rutilia polla emit lacum sabatenem angularium et circa eum lacum pedes decem: quaero, numquid et decem pedes, qui tunc accesserunt, sub aqua sint, quia lacus crevit, an proximi pedes decem ab aqua rutiliae pollae iuris sint. proculus respondit: ego existimo eatenus lacum, quem emit rutilia polla, venisse quatenus tunc fuit, et circa eum decem pedes qui tunc fuerunt, nec ob eam rem, quod lacus postea crevit, latius eum possidere debet quam emit.

Dig. 18.1.70

Licinius 8 reg.

Liberi hominis emptionem contrahi posse plerique existimaverunt, si modo inter ignorantes id fiat. quod idem placet etiam, si venditor sciat, emptor autem ignoret. quod si emptor sciens liberum esse emerit, nulla emptio contrahitur.

Dig. 18.1.71

Papirius 1 const.

Imperatores antoninus et verus augusti sextio vero in haec verba rescripserunt: " quibus mensuris aut pretiis negotiatores vina compararent, in contrahentium potestate esse: neque enim quisquam cogitur vendere, si aut pretium aut mensura displiceat, praesertim si nihil contra consuetudinem regionis fiat. "

Dig. 18.1.72pr.

Papinianus 10 quaest.

Pacta conventa, quae postea facta detrahunt aliquid emptioni, contineri contractui videntur: quae vero adiciunt, credimus non inesse. quod locum habet in his, quae adminicula sunt emptionis, veluti ne cautio duplae praestetur aut ut cum fideiussore cautio duplae praestetur. sed quo casu agente emptore non valet pactum, idem vires habebit iure exceptionis agente venditore. an idem dici possit aucto postea vel deminuto pretio, non immerito quaesitum est, quoniam emptionis substantia constitit ex pretio. paulus notat: si omnibus integris manentibus de augendo vel deminuendo pretio rursum convenit, recessum a priore contractu et nova emptio intercessisse videtur.

Dig. 18.1.72.1

Papinianus 10 quaest.

Papinianus: lege venditionis illa facta " si quid sacri aut religiosi aut publici est, eius nihil venit", si res non in usu publico, sed in patrimonio fisci erit, venditio eius valebit, nec venditori proderit exceptio, quae non habuit locum.

Dig. 18.1.73pr.

Papinianus 3 resp.

Aede sacra terrae motu diruta locus aedificii non est profanus et ideo venire non potest.

Dig. 18.1.73.1

Papinianus 3 resp.

Intra maceriam sepulchrorum hortis vel ceteris culturis loca pura servata, si nihil venditor nominatim excepit, ad emptorem pertinent.

Dig. 18.1.74

Papinianus 1 def.

Clavibus traditis ita mercium in horreis conditarum possessio tradita videtur, si claves apud horrea traditae sint: quo facto confestim emptor dominium et possessionem adipiscitur, etsi non aperuerit horrea: quod si venditoris merces non fuerunt, usucapio confestim inchoabitur.

Dig. 18.1.75

Hermogenianus 2 iuris epit.

Qui fundum vendidit, ut eum certa mercede conductum ipse habeat vel, si vendat, non alii, sed sibi distrahat vel simile aliquid paciscatur: ad complendum id, quod pepigerunt, ex vendito agere poterit.

Dig. 18.1.76pr.

Paulus 6 resp.

Dolia in horreis defossa si non sint nominatim in venditione excepta, horreorum venditioni cessisse videri.

Dig. 18.1.76.1

Paulus 6 resp.

Eum, qui in locum emptoris successit, isdem defensionibus uti posse, quibus venditor eius uti potuisset, sed et longae possessionis praescriptione, si utriusque possessio impleat tempora constitutionibus statuta.

Dig. 18.1.77

Iavolenus 4 ex post. lab.

In lege fundi vendundi lapidicinae in eo fundo ubique essent exceptae erant, et post multum temporis in eo fundo repertae erant lapidicinae. eas quoque venditoris esse tubero respondit: labeo referre quid actum sit: si non appareat, non videri eas lapidicinas esse exceptas: neminem enim nec vendere nec excipere quod non sit, et lapidicinas nullas esse, nisi quae apparent et caedantur: aliter interpretantibus totum fundum lapidicinarum fore, si forte toto eo sub terra esset lapis. hoc probo.

Dig. 18.1.78pr.

Labeo 4 post. a iav. epit.

Fistulas emptori accessuras in lege dictum erat: quaerebatur, an castellum, ex quo fistulis aqua duceretur, accederet. respondi apparere id actum esse, ut id quoque accederet, licet scriptura non continetur.

Dig. 18.1.78.1

Labeo 4 post. a iav. epit.

Fundum ab eo emisti, cuius filii postea tutelam administras, nec vacuam accepisti possessionem. dixi tradere te tibi possessionem hoc modo posse, ut pupillus et familia eius decedat de fundo, tunc demum tu ingrediaris possessionem.

Dig. 18.1.78.2

Labeo 4 post. a iav. epit.

Qui fundum ea lege emerat, ut soluta pecunia traderetur ei possessio, duobus heredibus relictis decessit: si unus omnem pecuniam solverit, partem familiae herciscundae iudicio servabit: nec, si partem solvat, ex empto cum venditore aget, quoniam ita contractum aes alienum dividi non potuit.

Dig. 18.1.78.3

Labeo 4 post. a iav. epit.

Frumenta quae in herbis erant cum vendidisses, dixisti te, si quid vi aut tempestate factum esset, praestaturum: ea frumenta nives corruperunt: si immoderatae fuerunt et contra consuetudinem tempestatis, agi tecum ex empto poterit.

Dig. 18.1.79

Iavolenus 5 ex post. lab.

Fundi partem dimidiam ea lege vendidisti, ut emptor alteram partem, quam retinebas, annis decem certa pecunia in annos singulos conductam habeat. labeo et trebatius negant posse ex vendito agi, ut id quod convenerit fiat. ego contra puto, si modo ideo vilius fundum vendidisti, ut haec tibi conductio praestaretur: nam hoc ipsum pretium fundi videretur, quod eo pacto venditus fuerat: eoque iure utimur.

Dig. 18.1.80pr.

Labeo 5 post. a iav. epit.

Cum manu sata in venditione fundi excipiuntur, non quae in perpetuo sata sunt excipi viderentur, sed quae singulis annis seri solent, ita ut fructus eorum tollatur: nam aliter interpretantibus vites et arbores omnes exceptae videbuntur.

Dig. 18.1.80.1

Labeo 5 post. a iav. epit.

Huius rei emptionem posse fieri dixi: " quae ex meis aedibus in tuas aedes proiecta sunt, ut ea mihi ita habere liceat", deque ea re ex empto agi.

Dig. 18.1.80.2

Labeo 5 post. a iav. epit.

Silva caedua in quinquennium venierat: quaerebatur, cum glans decidisset, utrius esset. scio servium respondisse, primum sequendum esse quod appareret actum esse: quod si in obscuro esset, quaecumque glans ex his arboribus quae caesae non essent cecidisset, venditoris esse, eam autem, quae in arboribus fuisset eo tempore cum haec caederentur, emptoris.

Dig. 18.1.80.3

Labeo 5 post. a iav. epit.

Nemo potest videri eam rem vendidisse, de cuius dominio id agitur, ne ad emptorem transeat, sed hoc aut locatio est aut aliud genus contractus.

Dig. 18.1.81pr.

Scaevola 7 Dig.

Titius cum mutuos acciperet tot aureos sub usuris, dedit pignori sive hypothecae praedia et fideiussorem lucium, cui promisit intra triennium proximum se eum liberaturum: quod si id non fecerit die supra scripta et solverit debitum fideiussor creditori, iussit praedia empta esse, quae creditoribus obligaverat. quaero, cum non sit liberatus lucius fideiussor a titio, an, si solverit creditori, empta haberet supra scripta praedia. respondit, si non ut in causam obligationis, sed ut empta habeat, sub condicione emptio facta est et contractam esse obligationem.

Dig. 18.1.81.1

Scaevola 7 Dig.

Lucius titius promisit de fundo suo centum milia modiorum frumenti annua praestare praediis gaii seii: postea lucius titius vendidit fundum additis verbis his: " quo iure quaque condicione ea praedia lucii titii hodie sunt, ita veneunt itaque habebuntur": quaero, an emptor gaio seio ad praestationem frumenti sit obnoxius. respondit emptorem gaio seio secundum ea quae proponerentur obligatum non esse.

Dig. 18.2.0. De in diem addictione.

Dig. 18.2.1

Paulus 5 ad sab.

In diem addictio ita fit: " ille fundus centum esto tibi emptus, nisi si quis intra kalendas ianuarias proximas meliorem condicionem fecerit, quo res a domino abeat. "

Dig. 18.2.2pr.

Ulpianus 28 ad sab.

Quotiens fundus in diem addicitur, utrum pura emptio est, sed sub condicione resolvitur, an vero condicionalis sit magis emptio, quaestionis est. et mihi videtur verius interesse, quid actum sit: nam si quidem hoc actum est, ut meliore allata condicione discedatur, erit pura emptio, quae sub condicione resolvitur: sin autem hoc actum est, ut perficiatur emptio, nisi melior condicio offeratur, erit emptio condicionalis.

Dig. 18.2.2.1

Ulpianus 28 ad sab.

Ubi igitur secundum quod distinximus pura venditio est, iulianus scribit hunc, cui res in diem addicta est, et usucapere posse et fructus et accessiones lucrari et periculum ad eum pertinere, si res interierit,

Dig. 18.2.3

Paulus 5 ad sab.

Quoniam post interitum rei iam nec adferri possit melior condicio.

Dig. 18.2.4pr.

Ulpianus 28 ad sab.

Ubi autem condicionalis venditio est, negat pomponius usucapere eum posse nec fructus ad eum pertinere.

Dig. 18.2.4.1

Ulpianus 28 ad sab.

Idem iulianus libro quinto decimo quaerit, si res in diem addicta interciderit vel ancilla decesserit, an partus vel fructus eius nomine adiectio admitti possit.

et negat admittendam adiectionem, quia alterius rei quam eius quae distracta est non solet adiectio admitti.

Dig. 18.2.4.2

Ulpianus 28 ad sab.

Idem iulianus eodem libro scribit, si ex duobus servis viginti venditis et in diem addictis alter decesserit, deinde unius nomine qui superest emptor extiterit, qui supra viginti promitteret, an discedatur a priore contractu? et ait dissimilem esse hanc speciem partus specie et ideo hic discedi a priore emptione et ad secundam perveniri.

Dig. 18.2.4.3

Ulpianus 28 ad sab.

Sed et Marcellus libro quinto digestorum scribit pure vendito et in diem addicto fundo si melior condicio allata sit, rem pignori esse desinere, si emptor eum fundum pignori dedisset: ex quo colligitur, quod emptor medio tempore dominus est: alioquin nec pignus teneret.

Dig. 18.2.4.4

Ulpianus 28 ad sab.

Idem iulianus libro octagensimo octavo digestorum scripsit eum, qui emit fundum in diem, interdicto quod vi aut clam uti posse: nam hoc interdictum ei competit, cuius interest opus non esse factum. fundo autem, inquit, in diem addicto et commodum et incommodum omne ad emptorem pertinet, antequam venditio transferatur, et ideo, si quid tunc vi aut clam factum est, quamvis melior condicio allata fuerit, ipse utile interdictum habebit: sed eam actionem sicut fructus, inquit, quos percepit venditi iudicio praestaturum.

Dig. 18.2.4.5

Ulpianus 28 ad sab.

Cum igitur tunc recedatur ab emptione (ubi pure contrahitur) vel tunc non impleatur (ubi sub condicione fit) cum melior condicio sit allata: si falsus emptor subiectus sit, eleganter scribit sabinus priori rem esse emptam, quia non videtur melior condicio allata esse non existente vero emptore. sed et si existat alius emptor, meliorem tamen condicionem non adferat, aeque dicendum erit perinde haberi, ac si non existeret.

Dig. 18.2.4.6

Ulpianus 28 ad sab.

Melior autem condicio adferri videtur, si pretio sit additum. sed et si nihil pretio addatur, solutio tamen offeratur facilior pretii vel maturior, melior condicio adferri videtur. praeterea si locus oportunior solvendo pretio dicatur, aeque melior condicio allata videtur: et ita pomponius libro nono ex sabino scribit. idem ait, et si persona idoneor accedat ad emptionem, aeque videri meliorem condicionem allatam. proinde si quis accedat eiusdem pretii emptor, sed qui levioribus emat condicionibus vel qui satisdationem nullam exigat, melior condicio allata videbitur. ergo idem erit probandum et si viliore pretio emere sit paratus, ea tamen remittat, quae venditori gravia erant in priore emptione.

Dig. 18.2.5

Pomponius 9 ad sab.

Quidquid enim ad utilitatem venditoris pertinet, pro meliore condicione haberi debet.

Dig. 18.2.6pr.

Ulpianus 28 ad sab.

Item quod dictum est fructus interea captos emptorem priorem sequi, totiens verum est, quotiens nullus emptor existit, qui meliorem condicionem adferat, vel falsus exsistit: sin vero exstitit emptor posterior fructus refundere priorem debere constat, sed venditori. et ita iulianus libro quadragensimo octavo digestorum scripsit.

Dig. 18.2.6.1

Ulpianus 28 ad sab.

Si quis extiterit, qui meliorem condicionem adferat, deinde prior emptor adversus eum licitatus sit et penes eum emptum remanserit, dubitari poterit, utrum fructus ipse habeat, quasi nulla meliore condicione allata, an vero venditoris sint, licet eadem sit persona, quae meliorem condicionem attulit. quod ratio facere videtur: intererit tamen quid acti sit: et ita pomponius scribit.

Dig. 18.2.7

Paulus 5 ad sab.

Licet autem venditori meliore allata condicione addicere posteriori, nisi prior paratus sit plus adicere.

Dig. 18.2.8

Paulus 33 ad ed.

Necesse autem habebit venditor meliore condicione allata priorem emptorem certiorem facere, ut, si quid alius adicit, ipse quoque adicere possit.

Dig. 18.2.9

Ulpianus 28 ad sab.

Sabinus scribit licere venditori meliorem condicionem oblatam abicere sequique primam quasi meliorem, et ita utimur. quid tamen, si hoc erat nominatim actum, ut liceret resilire emptori meliore condicione allata? dicendum erit dissolutam priorem emptionem, etiamsi venditor sequentem non admittat.

Dig. 18.2.10

Iulianus 13 Dig.

Sed si proponatur a creditore pignus in diem addictum, non potest videri bona fide negotium agi, nisi adiectio recipiatur. quid ergo est, si inops emptor et impediendae tantummodo venditionis causa intervenit? potest creditor sine periculo priori emptori addicere.

Dig. 18.2.11pr.

Ulpianus 28 ad sab.

Quod autem sabinus scribit fundum in diem addici non posse rursus, qui semel fuerat in diem addictus, ratione eiusmodi defendit, quia prioris, inquit, emptoris statim fit, scilicet quasi non videatur melior condicio allata, si non secure secundo emptori fundus addicitur, sed alia licitatio prospicitur. sed iulianus libro quinto decimo digestorum scripsit interesse multum, quid inter contrahentes actum sit, nec impedire quicquam vel hoc agi, ut saepius fundus collocetur, dum vel prima vel secunda vel tertia adiectione res a venditore discedat.

Dig. 18.2.11.1

Ulpianus 28 ad sab.

Item quod sabinus ait, si tribus vendentibus duo posteriori addixerint, unus non admiserit adiectionem, huius partem priori, duorum posteriori emptam, ita demum verum est, si variis pretiis partes suas distraxerunt,

Dig. 18.2.12

Pomponius 9 ad sab.

Etsi dispares partes vendentium fuerint.

Dig. 18.2.13pr.

Ulpianus 28 ad sab.

Quod si uno pretio vendiderint, dicendum est totam priori emptam manere, quemadmodum si quis mihi totum fundum ad diem addixisset, postea vero pretio adiecto dimidium alii addixerit. celsus quoque libro octavo digestorum refert mucium brutum labeonem quod sabinum existimare: ipse quoque celsus idem probat et adicit mirari se a nemine animadversum, quod si prior emptor ita contraxit, ut nisi totum, fundum emptum nollet habere, non habere eum eam partem emptam, quam unus ex sociis posteriori emptori addicere noluit.

Dig. 18.2.13.1

Ulpianus 28 ad sab.

Verum est autem vel unum ex venditoribus posse meliorem adferre condicionem: emere enim cum tota re etiam nostram partem possumus.

Dig. 18.2.14pr.

Paulus 5 ad sab.

Si venditor simulaverit meliorem allatam condicionem, cum minoris vel etiam tantidem alii venderet, utrique emptori in solidum erit obligatus.

Dig. 18.2.14.1

Paulus 5 ad sab.

Sed si emptor alium non idoneum subiecit eique fundus addictus est, non video, inquit, quemadmodum priori sit emptus, cum alia venditio et vera postea subsecuta sit. sed verum est venditorem deceptum ex vendito actionem habere cum priore emptore, quanti sua intersit id non esse factum, per quam actionem et fructus, quos prior emptor perceperit et quo deterior res culpa vel dolo malo eius facta sit, recipiet venditor. et ita labeoni et nervae placet.

Dig. 18.2.14.2

Paulus 5 ad sab.

Sed si neuter subiecit emptorem, maiore autem pretio addictum est praedium ei qui solvendo non est, abitum est a priore emptione, quia ea melior intellegitur quam venditor comprobavit, cui licuit non addicere.

Dig. 18.2.14.3

Paulus 5 ad sab.

Sed et si pupillus postea sine tutoris auctoritate emerit, consentiente venditore abibitur a priore emptione. idem et de servo alieno: aliter atque si servo suo vel filio, quem in potestate habet, vel domino rei per errorem id addixerit, quia non est emptio his casibus. quod si alieno servo, quem putaverit liberum esse, addixerit, contra se habebit et erit hic similis egenti.

Dig. 18.2.14.4

Paulus 5 ad sab.

Emptorem, qui meliorem condicionem attulerit, praeter corpus nihil sequitur quod venierit.

Dig. 18.2.14.5

Paulus 5 ad sab.

Non tamen ideo, si tantundem pretium alius det, hoc ipso, quod fructus eum non sequantur, qui secuturi essent priorem emptorem, melior condicio videtur allata, quia non id agitur inter emptorem et venditorem.

Dig. 18.2.15pr.

Pomponius 9 ad sab.

Si praedio in diem addicto ante diem venditor mortuus sit, sive post diem heres ei exsistat sive omnino non exsistat, priori praedium emptum est, quia melior condicio allata, quae domino placeat, intellegi non potest, cum is qui vendat non exsistat: quod si intra diem adiectionis heres existat, melior condicio ei adferri potest.

Dig. 18.2.15.1

Pomponius 9 ad sab.

Si fundus in diem addictus fuerit pluris, ut quaedam ei accedant, non quae accesserint priori emptori, si non minoris sint hae res, quam quo pluris postea fundus venierit, prior venditio valet, quasi melior condicio allata non sit: si minoris sint. idemque aestimandum est, si dies longior pretii solvendi data fuerit, ut quaeratur, quantum ex usura eius temporis capi potuerit.

Dig. 18.2.16

Ulpianus 32 ad ed.

Imperator severus rescripsit: " sicut fructus in diem addictae domus, cum melior condicio fuerit allata, venditori restitui necesse est, ita rursus quae prior emptor medio tempore necessario probaverit erogata, de reditu retineri vel, si non sufficiat, solvi aequum est". et credo sensisse principem de empti venditi actione.

Dig. 18.2.17

Iulianus 15 Dig.

Cum duo servi duobus separatim denis in diem addicti sint et exstiterit qui pro utroque triginta det, refert, unius pretio decem an singulorum quina adiciat: secundum superiorem adiectionem is servus inemptus erit, cuius pretio adiectio facta fuerit, secundum posteriorem adiectionem uterque ad posteriorem emptorem pertinebit: quod si incertum sit, ad utrius pretium addiderit, a priore emptione non videtur esse discessum.

Dig. 18.2.18

Africanus 3 quaest.

Cum in diem duobus sociis fundus sit addictus, uno ex his pretium adiciente etiam pro ipsius parte a priore venditione discedi rectius existimatur.

Dig. 18.2.19

Iavolenus 2 ex plaut.

Fundo in diem addicto si postea pretium adiectum est et venditor alio fundo applicito eum ipsum fundi posteriori emptori addixit et id sine dolo malo fecit, priori emptori obligatus non erit: nam quamvis non id tantum, quod in diem addictum erat, sed aliud quoque cum eo venierit, tamen, si venditor dolo caret, prioris emptoris causa absoluta est: id enim solum intuendum est, an priori venditori bona fide facta sit adiectio.

Dig. 18.2.20

Papinianus 3 resp.

Prior emptor post meliorem condicionem oblatam ob pecuniam in exordio venditori de pretio solutam contra secundum emptorem citra delegationem iure stipulationis interpositam agere non potest.

Dig. 18.3.0. De lege commissoria.

Dig. 18.3.1

Ulpianus 28 ad sab.

Si fundus commissoria lege venierit, magis est, ut sub condicione resolvi emptio quam sub condicione contrahi videatur.

Dig. 18.3.2

Pomponius 35 ad sab.

Cum venditor fundi in lege ita caverit: " si ad diem pecunia soluta non sit, ut fundus inemptus sit", ita accipitur inemptus esse fundus, si venditor inemptum eum esse velit, quia id venditoris causa caveretur: nam si aliter acciperetur, exusta villa in potestate emptoris futurum, ut non dando pecuniam inemptum faceret fundum, qui eius periculo fuisset.

Dig. 18.3.3

Ulpianus 30 ad ed.

Nam legem commissoriam, quae in venditionibus adicitur, si volet venditor exercebit, non etiam invitus.

Dig. 18.3.4pr.

Ulpianus 32 ad ed.

Si fundus lege commissoria venierit, hoc est ut, nisi intra certum diem pretium sit exsolutum, inemptus fieret, videamus, quemadmodum venditor agat tam de fundo quam de his, quae ex fundo percepta sint, itemque si deterior fundus effectus sit facto emptoris. et quidem finita est emptio: sed iam decisa quaestio est ex vendito actionem competere, ut rescriptis imperatoris antonini et divi severi declaratur.

Dig. 18.3.4.1

Ulpianus 32 ad ed.

Sed quod ait neratius habet rationem, ut interdum fructus emptor lucretur, cum pretium quod numeravit perdidit: igitur sententia neratii tunc habet locum, quae est humana, quando emptor aliquam partem pretii dedit.

Dig. 18.3.4.2

Ulpianus 32 ad ed.

Eleganter papinianus libro tertio responsorum scribit, statim atque commissa lex est statuere venditorem debere, utrum commissoriam velit exercere an potius pretium petere, nec posse, si commissoriam elegit, postea variare.

Dig. 18.3.4.3

Ulpianus 32 ad ed.

In commissoriam etiam hoc solet convenire, ut, si venditor eundem fundum venderet, quanto minoris vendiderit, id a priore emptore exigat: erit itaque adversus eum ex vendito actio.

Dig. 18.3.4.4

Ulpianus 32 ad ed.

Marcellus libro vicensimo dubitat, commissoria utrum tunc locum habet, si interpellatus non solvat, an vero si non optulerit. et magis arbitror offerre eum debere, si vult se legis commissoriae potestate solvere: quod si non habet cui offerat, posse esse securum.

Dig. 18.3.5

Nerva 5 membr.

Lege fundo vendito dicta, ut, si intra certum tempus pretium solutum non sit, res inempta sit, de fructibus, quos interim emptor percepisset, hoc agi intellegendum est, ut emptor interim eos sibi suo quoque iure perciperet: sed si fundus revenisset, aristo existimabat venditori de his iudicium in emptorem dandum esse, quia nihil penes eum residere oporteret ex re, in qua fidem fefellisset.

Dig. 18.3.6pr.

Scaevola 2 resp.

De lege commissoria interrogatus ita respondit, si per emptorem factum sit, quo minus legi pareretur, et ea lege uti venditor velit, fundos inemptos fore et id, quod arrae vel alio nomine datum esset, apud venditorem remansurum.

Dig. 18.3.6.1

Scaevola 2 resp.

Idem respondit, si ex lege inempti sint fundi, nec id, quod accessurum dictum est, emptori deberi.

Dig. 18.3.6.2

Scaevola 2 resp.

Post diem lege commissoria comprehensum venditor partem reliquae pecuniae accepit. respondit, si post statutum diem reliquae pecuniae venditor legem dictam non exercuisset et partem reliqui debiti accepisset, videri recessum a commissoria.

Dig. 18.3.7

Hermogenianus 2 iuris epit.

Post diem commissoriae legi praestitutum si venditor pretium petat, legi commissoriae renuntiatum videtur, nec variare et ad hanc redire potest.

Dig. 18.3.8

Scaevola 7 Dig.

Mulier fundos gaio seio vendidit et acceptis arrae nomine certis pecuniis statuta sunt tempora solutioni reliquae pecuniae: quibus si non paruisset emptor, pactus est, ut arram perderet et inemptae villae essent. die statuto emptor testatus est se pecuniam omnem reliquam paratum fuisse exsolvere (et sacculum cum pecunia signatorum signis obsignavit), defuisse autem venditricem, posteriore autem die nomine fisci testato conventum emptorem, ne ante mulieri pecuniam exsolveret, quam fisco satisfaceret. quaesitum est, an fundi non sint in ea causa, ut a venditrice vindicari debeant ex conventione venditoris. respondit secundum ea quae proponerentur non commisisse in legem venditionis emptorem.

Dig. 18.4.0. De hereditate vel actione vendita.

Dig. 18.4.1

Pomponius 9 ad sab.

Si hereditas venierit eius, qui vivit aut nullus sit, nihil esse acti, quia in rerum natura non sit quod venierit.

Dig. 18.4.2pr.

Ulpianus 49 ad sab.

Venditor hereditatis satisdare de evictione non debet, cum id inter ementem et vendentem agatur, ut neque amplius neque minus iuris emptor habeat quam apud heredem futurum esset: plane de facto suo venditor satisdare cogendus est.

Dig. 18.4.2.1

Ulpianus 49 ad sab.

In hereditate vendita utrum ea quantitas spectatur, quae fuit mortis tempore, an ea, quae fuit cum aditur hereditas, an ea quae fuit cum hereditas venumdatur, videndum erit. et verius est hoc esse servandum quod actum est: plerumque autem hoc agi videtur, ut quod ex hereditate pervenit in id tempus quo venditio fit, id videatur venisse.

Dig. 18.4.2.2

Ulpianus 49 ad sab.

Illud potest quaeri, si etiam impuberi sit substitutus is qui vendidit hereditatem testatoris, an etiam id, quod ex impuberis hereditate ad eum qui vendidit hereditatem pervenit, ex empto actioni locum faciat. et magis est, ne veniat, quia alia hereditas est: licet enim unum testamentum sit, alia tamen atque alia hereditas est. plane si hoc actum sit, dicendum erit etiam impuberis hereditatem in venditionem venire, maxime si iam delata impuberis hereditate venierit hereditas.

Dig. 18.4.2.3

Ulpianus 49 ad sab.

Pervenisse ad venditorem hereditatis quomodo videatur, quaeritur. et ego puto, antequam quidem corpora rerum hereditariarum nactus venditor fuerit, hactenus videri ad eum pervenisse, quatenus mandare potest earum rerum persecutionem actionesque tribuere: enimvero ubi corpora nactus est vel debita exegit, plenius ad eum videri pervenisse. sed et si rerum venditarum ante hereditatem venditam pretia fuerit consecutus, palam est ad eum pretia rerum pervenisse. illud tenendum est cum effectu videri pervenisse, non prima ratione: idcirco quod legatorum nomine quis praestitit, non videtur ad eum pervenisse: sed et si quid aeris alieni est vel cuius alterius oneris hereditarii, pervenisse merito negabitur. sed et rerum ante venditionem donatarum pretia praestari aequitatis ratio exigit.

Dig. 18.4.2.4

Ulpianus 49 ad sab.

Non tantum autem quod ad venditorem hereditatis pervenit, sed et quod ad heredem eius ex hereditate pervenit, emptori restituendum est: et non solum quod iam pervenit, sed et quod quandoque pervenerit, restituendum est.

Dig. 18.4.2.5

Ulpianus 49 ad sab.

Sed et si quid dolo malo eorum factum est, quo minus ad eos perveniat, et hoc emptori praestandum est: fecisse autem dolo malo quo minus perveniat videtur, sive alienavit aliquid, vel etiam accepto quem liberavit vel id egit dolo malo, ne de hereditate adquireretur vel ne possessionem adipisceretur quam posset adipisci. sed et si non dolo malo, sed lata culpa admiserit aliquid, utique tenebitur: deperdita autem et deminuta sine dolo malo venditoris non praestabuntur.

Dig. 18.4.2.6

Ulpianus 49 ad sab.

Illud quaesitum est, an venditor hereditatis ob debitum a filio suo qui in potestate eius esset servove ei, cuius hereditatem vendidisset, praestare debeat emptori. et visum est, quidquid dumtaxat de peculio filii servive aut in suam rem versum inveniatur, praestare eum debere.

Dig. 18.4.2.7

Ulpianus 49 ad sab.

Solet quaeri, an et, si quid lucri occasione hereditatis venditor senserit, emptori restituere id debeat. et est apud iulianum haec quaestio tractata libro sexto digestorum et ait, quod non debitum ^ debitur^ exegerit, retinere heredem et quod non debitum solverit, non reputare: nam hoc servari, ut heres emptori non praestet quod non debitum exegerit, neque ab eo consequatur quod non debitum praestiterit. si autem condemnatus praestiterit, hoc solum heredi sufficit esse eum condemnatum sine dolo malo suo, etiamsi maxime creditor non fuerit is cui condemnatus est heres: quae sententia mihi placet.

Dig. 18.4.2.8

Ulpianus 49 ad sab.

Non solum autem hereditarias actiones, sed etiam eas obligationes quas ipse heres constituit dicendum erit praestari emptori debere: itaque et si fideiussorem acceperit ab hereditario debitore, ipsam actionem quam habet heres praestare emptori debebit: sed et si novaverit vel in iudicium deduxerit actionem, praestare debebit hanc ipsam actionem quam nactus est.

Dig. 18.4.2.9

Ulpianus 49 ad sab.

Sicuti lucrum omne ad emptorem hereditatis respicit, ita damnum quoque debet ad eundem respicere.

Dig. 18.4.2.10

Ulpianus 49 ad sab.

Denique si rem hereditariam heres vendiderit ac per hoc fuerit condemnatus, non habet contra emptorem actionem, quia non ideo condemnatur quod heres esset, sed quod vendiderit. sed si pretium rei distractae emptori hereditatis dedit, videamus, an locus sit ex vendito actioni: et putem esse.

Dig. 18.4.2.11

Ulpianus 49 ad sab.

Sive ipse venditor dederit aliquid pro hereditate sive procurator eius sive alius quis pro eo, dum negotium eius gerit, locus erit ex vendito actioni, dummodo aliquid absit venditori hereditatis: ceterum si nihil absit venditori, consequens erit dicere non competere ei actionem.

Dig. 18.4.2.12

Ulpianus 49 ad sab.

Apud iulianum scriptum est, si venditor hereditatis exceperit servum sine peculio et eius nomine cum eo fuerit actum de peculio et in rem verso, id dumtaxat eum consequi, quod praestiterit eius peculii nomine quod emptorem sequi debeat, aut quod in rem defuncti versum est: his enim casibus aes alienum emptoris solvit, ex ceteris causis suo nomine condemnetur.

Dig. 18.4.2.13

Ulpianus 49 ad sab.

Quid ergo si servum cum peculio exceperit venditor hereditatis conventusque de peculio praestitit? Marcellus libro sexto digestorum non repetere eum scripsit, si modo hoc actum est, ut, quod superfuisset ex peculio, hoc haberet: at si contra actum est, recte repetere eum posse ait: si vero nihil expressim inter eos convenit, sed tantummodo peculii mentio facta est, cessare ex vendito actionem constat.

Dig. 18.4.2.14

Ulpianus 49 ad sab.

Si venditor hereditatis aedes sibi exceperit, quarum nomine damni infecti promissum fuerat, interest quid acti sit: nam si ita excepit, ut damni quoque infecti stipulationis onus sustineret, nihil ab emptore consequeretur: si vero id actum erit, ut emptor hoc aes alienum exsolveret, ad illum onus stipulationis pertinebit: si non apparebit quid acti sit, verisimile erit id actum, ut eius quidem damni nomine, quod ante venditionem datum fuerit, onus ad emptorem, alterius temporis ad heredem pertineat.

Dig. 18.4.2.15

Ulpianus 49 ad sab.

Si titius maevi hereditatem seio vendiderit et a seio heres institutus eam hereditatem attio vendiderit, an ex priore venditione hereditatis cum attio agi possit? et ait iulianus: quod venditor hereditatis petere a quolibet extraneo herede potuisset, id ab hereditatis emptore consequatur: et certe si seio alius heres exstitisset, quidquid venditor maevianae hereditatis nomine praestitisset, id ex vendito actione consequi ab eo potuisset: nam et si duplam hominis a seio stipulatus fuissem et ei heres exstitissem eamque hereditatem titio vendidissem, evicto homine rem a titio servarem.

Dig. 18.4.2.16

Ulpianus 49 ad sab.

Si quid publici vectigalis nomine praestiterit venditor hereditatis, consequens erit dicere agnoscere emptorem et hoc debere: namque hereditaria onera etiam haec sunt. et si forte tributorum nomine aliquid dependat, idem erit dicendum.

Dig. 18.4.2.17

Ulpianus 49 ad sab.

Quod si funere facto heres vendidisset hereditatem, an impensam funeris ab emptore consequatur? et ait labeo emptorem impensam funeris praestare debere, quia et ea, inquit, impensa hereditaria esset: cuius sententiam et iavolenus putat veram et ego arbitror.

Dig. 18.4.2.18

Ulpianus 49 ad sab.

Cum quis debitori suo heres exstitit, confusione creditor esse desinit: sed si vendidit hereditatem, aequissimum videtur emptorem hereditatis vicem heredis optinere et idcirco teneri venditori hereditatis, sive cum moritur testator debuit (quamvis post mortem debere desiit adita a venditore hereditate) sive quid in diem debeatur sive sub condicione et postea condicio exstitisset, ita tamen, si eius debiti adversus heredem actio esse poterat, ne forte etiam ex his causis, ex quibus cum herede actio non est, cum emptore agatur.

Dig. 18.4.2.19

Ulpianus 49 ad sab.

Et si servitutes amisit heres institutus adita hereditate, ex vendito poterit experiri adversus emptorem, ut servitutes ei restituantur.

Dig. 18.4.2.20

Ulpianus 49 ad sab.

Sed et si quid venditor nondum praestiterit, sed quoquo nomine obligatus sit propter hereditatem, nihilo minus agere potest cum emptore.

Dig. 18.4.3

Pomponius 27 ad sab.

Si venditor hereditatis exactam pecuniam sine dolo malo et culpa perdidisset, non placet eum emptori teneri.

Dig. 18.4.4

Ulpianus 32 ad ed.

Si nomen sit distractum, celsus libro nono digestorum scribit locupletem esse debitorem non debere praestare, debitorem autem esse praestare, nisi aliud convenit,

Dig. 18.4.5

Paulus 33 ad ed.

Et quidem sine exceptione quoque, nisi in contrarium actum sit. sed si certae summae debitor dictus sit, in eam summam tenetur venditor: si incertae et nihil debeat, quanti intersit emptoris.

Dig. 18.4.6

Paulus 5 quaest.

Emptori nominis etiam pignoris persecutio praestari debet eius quoque, quod postea venditor accepit: nam beneficium venditoris prodest emptori.

Dig. 18.4.7

Paulus 14 ad plaut.

Cum hereditatem aliquis vendidit, esse debet hereditas, ut sit emptio: nec enim alea emitur, ut in venatione et similibus, sed res: quae si non est, non contrahitur emptio et ideo pretium condicetur.

Dig. 18.4.8

Iavolenus 2 ex plaut.

Quod si nulla hereditas ad venditorem pertinuit, quantum emptori praestare debuit, ita distingui oportebit, ut, si est quidem aliqua hereditas, sed ad venditorem non pertinet, ipsa aestimetur, si nulla est, de qua actum videatur, pretium dumtaxat et si quid in eam rem impensum est emptor a venditore consequatur.

Dig. 18.4.9

Paulus 33 ad ed.

Et si quid emptoris interest.

Dig. 18.4.10

Iavolenus 2 ex plaut.

Quod si in venditione hereditatis id actum est, si quid iuris esset venditoris, venire nec postea quicquam praestitu iri: quamvis ad venditorem hereditas non pertinuerit, nihil tamen eo praestabitur, quia id actum esse manifestum est, ut quemadmodum emolumentum negotiationis, ita periculum ad emptorem pertineret.

Dig. 18.4.11

Ulpianus 32 ad ed.

Nam hoc modo admittitur esse venditionem " si qua sit hereditas, est tibi empta", et quasi spes hereditatis: ipsum enim incertum rei veneat, ut in retibus.

Dig. 18.4.12

Gaius 10 ad ed. provinc.

Hoc autem sic intellegendum est, nisi sciens ad se non pertinere ita vendiderit: nam tunc ex dolo tenebitur.

Dig. 18.4.13

Paulus 14 ad plaut.

Quod si sit hereditas et si non ita convenit, ut quidquid iuris haberet venditor emptor haberet, tunc heredem se esse praestare debet: illo vero adiecto liberatur venditor, si ad eum hereditas non pertineat.

Dig. 18.4.14pr.

Paulus 33 ad ed.

Qui filii familias nomina vendidit, actiones quoque quas cum patre habet praestare debet.

Dig. 18.4.14.1

Paulus 33 ad ed.

Si hereditas venierit, venditor res hereditarias tradere debet: quanta autem hereditas est, nihil interest,

Dig. 18.4.15

Gaius 10 ad ed. provinc.

Nisi de substantia eius adfirmaverit.

Dig. 18.4.16

Paulus 33 ad ed.

Si quasi heres vendideris hereditatem, cum tibi ex senatus consulto trebelliano restituta esset hereditas, quanti emptoris intersit teneberis.

Dig. 18.4.17

Ulpianus 43 ad ed.

Nomina eorum, qui sub condicione vel in diem debent, et emere et vendere solemus: ea enim res est, quae emi et venire potest.

Dig. 18.4.18

Iulianus 15 Dig.

Si ex pluribus heredibus unus, antequam ceteri adirent hereditatem, pecuniam, quae sub poena debebatur a testatore, omnem solverit et hereditatem vendiderit nec a coheredibus suis propter egestatem eorum quicquam servare poterit, cum emptore hereditatis vel ex stipulatu vel ex vendito recte experietur: omnem enim pecuniam hereditario nomine datam eo manifestius est, quod in iudicio familiae herciscundae deducitur, per quod nihil amplius unusquisque a coheredibus suis consequi potest, quam quod tamquam heres impenderit.

Dig. 18.4.19

Iulianus 25 Dig.

Multum interest, sub condicione aliqua obligatio veneat an, cum ipsa obligatio sub condicione sit, pure veneat. priore casu deficiente condicione nullam esse venditionem, posteriore statim venditionem consistere: nam si titius tibi decem sub condicione debeat et ego abs te nomen eius emam, confestim ex empto vendito agere potero, ut acceptum ei facias.

Dig. 18.4.20pr.

Africanus 7 quaest.

Si hereditatem mihi lucii titii vendideris ac post debitori eiusdem heres existas, actione ex empto teneberis.

Dig. 18.4.20.1

Africanus 7 quaest.

Quod simplicius etiam in illa propositione procedit, cum quis ipse creditori suo heres exstitit et hereditatem vendidit.

Dig. 18.4.21

Paulus 16 quaest.

Venditor ex hereditate interposita stipulatione rem hereditariam persecutus alii vendidit: quaeritur, quid ex stipulatione praestare debeat: nam bis utique non committitur stipulatio, ut et rem et pretium debeat. et quidem si, posteaquam rem vendidit heres, intercessit stipulatio, credimus pretium in stipulationem venisse: quod si antecessit stipulatio, deinde rem nactus est, tunc rem debebit. si ergo hominem vendiderit et is decesserit, an pretium eiusdem debeat? non enim deberet stichi promissor, si eum vendidisset, mortuo eo, si nulla mora processisset. sed ubi hereditatem vendidi et postea rem ex ea vendidi, potest videri, ut negotium eius agam quam hereditatis. sed hoc in re singulari non potest credi: nam si eundem hominem tibi vendidero et necdum tradito eo alii quoque vendidero pretiumque accepero, mortuo eo videamus ne nihil tibi debeam ex empto, quoniam moram in tradendo non feci (pretium enim hominis venditi non ex re, sed propter negotiationem percipitur) et sic sit, quasi alii non vendidissem: tibi enim rem debebam, non actionem. at cum hereditas venit, tacite hoc agi videtur, ut, si quid tamquam heres feci, id praestem emptori, quasi illius negotium agam: quemadmodum fundi venditor fructus praestet bonae fidei ratione, quamvis, si neglexisset ut alienum, nihil ei imputare possit, nisi si culpa eius argueretur. quid si rem quam vendidi alio possidente petii et litis aestimationem accepi, utrum pretium illi debeo an rem? utique rem, non enim actiones ei, sed rem praestare debeo: et si vi deiectus vel propter furti actionem duplum abstulero, nihil hoc ad emptorem pertinebit. nam si sine culpa desiit detinere venditor, actiones suas praestare debebit, non rem, et sic aestimationem quoque: nam et aream tradere debet exusto aedificio.

Dig. 18.4.22

Scaevola 2 resp.

Hereditatis venditae pretium pro parte accepit reliquum emptore non solvente: quaesitum est, an corpora hereditaria pignoris nomine teneantur. respondi nihil proponi cur non teneantur.

Dig. 18.4.23pr.

Hermogenianus 2 iuris epit.

Venditor actionis, quam adversus principalem reum habet, omne ius, quod ex ea causa ei competit tam adversus ipsum reum quam adversus intercessores huius debiti, cedere debet, nisi aliud actum est.

Dig. 18.4.23.1

Hermogenianus 2 iuris epit.

Nominis venditor quidquid vel compensatione vel exactione fuerit consecutus, integrum emptori restituere compellatur.

Dig. 18.4.24

Labeo 4 post. a iav. epit.

Hereditatem cornelii vendidisti: deinde attius, cui a te herede cornelius legaverat, priusquam legatum ab emptore perciperet, te fecit heredem: recte puto ex vendito te acturum ut tibi praestetur, quia ideo eo minus hereditas venierit, ut id legatum praestaret emptor, nec quicquam intersit, utrum attio, qui te heredem fecerit, pecunia debita sit, an legatario.

Dig. 18.4.25

Labeo 2 pith.

Si excepto fundo hereditario veniit hereditas, deinde eius fundi nomine venditor aliquid adquisit ^ adquisiit^, debet id praestare emptori hereditatis. paulus: immo semper quaeritur in ea re, quid actum fuerit: si autem id non apparebit, praestare eam rem debebit emptori venditor, nam id ipsum ex ea hereditate ad eum pervenisse videbitur non secus ac si eum fundum in hereditate vendenda non excepisset.

Dig. 18.5.0. De rescindenda venditione et quando licet ab emptione discedere.

Dig. 18.5.1

Pomponius 15 ad sab.

Celsus filius putabat, si vendidisset mihi filius familias rem peculiarem, etiam, si conveniat ut abeatur ab ea venditione, inter patrem et filium et me convenire debere, ne, si cum patre solo pactus sim, filius non possit liberari et quaeratur, utrumne nihil agatur ex ea pactione an vero ego quidem liberer, filius maneat obligatus, sicuti, si pupillus sine tutoris auctoritate paciscatur, ipse quidem liberatur, non etiam qui cum eo pactus est. nam quod aristo dixit posse ita pacisci, ut unus maneat obligatus, non est verum, quia pro una parte contrahentium abiri pacto ab emptione non possit: et ideo si ab una parte renovatus sit contractus, dicitur non valere eiusmodi pactionem. sed dicendum est patre paciscente et liberato adversario filium quoque obiter liberari.

Dig. 18.5.2

Pomponius 24 ad sab.

Si quam rem a te emi, eandem rursus a te pluris minorisve emero, discessimus a priore emptione (potest enim, dum res integra est, conventione nostra infecta fieri emptio) atque ita consistit posterior emptio, quasi nulla praecesserit. sed non poterimus eadem ratione uti post pretium solutum emptione repetita, cum post pretium solutum infectam emptionem facere non possumus.

Dig. 18.5.3

Paulus 33 ad ed.

Emptio et venditio sicut consensu contrahitur, ita contrario consensu resolvitur, antequam fuerit res secuta: ideoque quaesitum est, si emptor fideiussorem acceperit, vel venditor stipulatus fuerit, an nuda voluntate resolvatur obligatio. iulianus scripsit ex empto quidem agi non posse, quia bonae fidei iudicio exceptiones pacti insunt: an autem fideiussori utilis sit exceptio, videndum: et puto liberato reo et fideiussorem liberari. item venditorem ex stipulatu agentem exceptione summoveri oportet, idemque iuris esse, si emptor quoque rem in stipulationem deduxerit.

Dig. 18.5.4

Paulus not. ad iul. 8 Dig.

Si emptio contracta sit togae puta aut lancis, et pactus sit venditor, ne alterutrius emptio maneat, puto resolvi obligationem huius rei nomine dumtaxat.

Dig. 18.5.5pr.

Iulianus 15 Dig.

Cum emptor venditori vel emptori venditor acceptum faciat, voluntas utriusque ostenditur id agentis, ut a negotio discedatur et perinde habeatur, ac si convenisset inter eos, ut neuter ab altero quicquam peteret, sed ut evidentius appareat, acceptilatio in hac causa non sua natura, sed potestate conventionis valet.

Dig. 18.5.5.1

Iulianus 15 Dig.

Emptio nuda conventione dissolvitur, si res secuta non fuerit.

Dig. 18.5.5.2

Iulianus 15 Dig.

Mortuo autem homine perinde habenda est vendito ac si traditus fuisset, utpote cum venditor liberetur et emptori homo pereat: quare nisi iusta conventio intervenerit, actiones ex empto et vendito manebunt.

Dig. 18.5.6

Paulus 2 ad ed.

Si convenit, ut res quae venit, si intra certum tempus displicuisset, redderetur, ex empto actio est, ut sabinus putat, aut proxima empti in factum datur.

Dig. 18.5.7pr.

Paulus 5 quaest.

Si id quod pure emi sub condicione rursus emam, nihil agitur posteriore emptione.

Dig. 18.5.7.1

Paulus 5 quaest.

Si pupilli persona intervenit, qui ante sine tutoris auctoritate, deinde tutore auctore emit, quamvis venditor iam ei obligatus fuit, tamen quia pupillus non tenebatur, renovata venditio efficit, ut invicem obligati sint: quod si ante tutoris auctoritas intervenerit, deinde sine tutore auctore emit, nihil actum est posteriore emptione. idem potest quaeri, si sine tutoris auctoritate pactus fuerit, ut discedatur ab emptione: an proinde sit, atque si ab initio sine tutoris auctoritate emisset, ut scilicet ipse non teneatur, sed agente eo retentiones competant. sed nec illud sine ratione dicetur, quoniam initio recte emptio sit contracta, vix bonae fidei convenire eo pacto stari, quod alteri captiosum sit, et maxime, si iusto errore sit deceptus.

Dig. 18.5.8

Scaevola 2 resp.

Titius seii procurator defuncto seio ab eo scriptus heres, cum ignoraret, fundum vendente servo hereditario, quasi procurator subscripsit: quaesitum est, an cognito eo, priusquam emptio perficeretur, a venditione discedere possit. respondit titium, si non ipse vendidit, non idcirco actionibus civilibus teneri, quod servo vendente subscripserat, sed servi nomine praetoria actione teneri.

Dig. 18.5.9

Scaevola 4 Dig.

Fundus qui lucii titii erat ob vectigale rei publicae veniit: sed cum lucius titius debitor professus esset paratum se esse vectigal exsolvere solidum, cum minore venisset fundus, quam debita summa esset, praeses provinciae rescindit ^ rescidit^ venditionem eumque restitui iussit lucio titio: quaesitum est, an post sententiam praesidis, antequam restitueretur, in bonis lucii titii fundus emptus esset. respondit non prius, quam emptori pretium esset illatum vel, si pretium nondum esset ab emptore solutum, in vectigal satisfactum esset.

Dig. 18.5.10pr.

Scaevola 7 Dig.

Seius a lucio titio emit fundum lege dicta, ut, si ad diem pecuniam non solvisset, res inempta fieret. seius parte pretii praesenti die soluta, defuncto venditore, filiis eius pupillaris aetatis et ipse tutor cum aliis datus, neque contutoribus pretium secundum legem numeravit nec rationibus tutelae rettulit: quaesitum est, an irrita emptio facta esset. respondit secundum ea quae proponerentur inemptam videri.

Dig. 18.5.10.1

Scaevola 7 Dig.

Emptor praediorum cum suspicaretur numeriam et semproniam controversiam moturas, pactus est cum venditore, ut ex pretio aliqua summa apud se maneret, donec emptori fideiussor daretur a venditore: postea venditor eam legem inseruit, ut, si ex die pecunia omnis soluta non esset et venditor ea praedia venisse nollet, invendita essent: interea de adversariis alteram mulierem venditor superavit, cum altera transegit, ita ut sine ulla quaestione emptor praedia possideret: quaesitum est, cum neque fideiussor datus est nec omnis pecunia secundum legem suis diebus soluta sit, an praedia invendita sint. respondit, si convenisset, ut non prius pecunia solveretur quam fideiussor venditi causa daretur, nec id factum esset, cum per emptorem non staret quo minus fieret, non posse posteriorem legis partem exerceri.

Dig. 18.6.0. De periculo et commodo rei venditae.

Dig. 18.6.1pr.

Ulpianus 28 ad sab.

Si vinum venditum acuerit vel quid aliud vitii sustinuerit, emptoris erit damnum, quemadmodum si vinum esset effusum vel vasis contusis vel qua alia ex causa. sed si venditor se periculo subiecit, in id tempus periculum sustinebit, quoad se subiecit: quod si non designavit tempus, eatenus periculum sustinere debet, quoad degustetur vinum, videlicet quasi tunc plenissime veneat, cum fuerit degustatum. aut igitur convenit, quoad periculum vini sustineat, et eatenus sustinebit, aut non convenit et usque ad degustationem sustinebit. sed si nondum sunt degustata, signata tamen ab emptore vasa vel dolia, consequenter dicemus adhuc periculum esse venditoris, nisi si aliud convenit.

Dig. 18.6.1.1

Ulpianus 28 ad sab.

Sed et custodiam ad diem mensurae venditor praestare debet: priusquam enim admetiatur vinum, prope quasi nondum venit. post mensuram factam venditoris desinit esse periculum: et ante mensuram periculo liberatur, si non ad mensuram vendidit, sed forte amphoras vel etiam singula dolia.

Dig. 18.6.1.2

Ulpianus 28 ad sab.

Si dolium signatum sit ab emptore, trebatius ait traditum id videri: labeo contra, quod et verum est: magis enim ne summutetur, signari solere, quam ut traditum videatur.

Dig. 18.6.1.3

Ulpianus 28 ad sab.

Licet autem venditori vel effundere vinum, si diem ad metiendum praestituit nec intra diem admensum est: effundere autem non statim poterit, priusquam testando denuntiet emptori, ut aut tollat vinum aut sciat futurum, ut vinum effunderetur. si tamen, cum posset effundere, non effudit, laudandus est potius: ea propter mercedem quoque doliorum potest exigere, sed ita demum, si interfuit eius inania esse vasa in quibus vinum fuit (veluti si locaturus ea fuisset) vel si necesse habuit alia conducere dolia. commodius est autem conduci vasa nec reddi vinum, nisi quanti conduxerit ab emptore reddatur, aut vendere vinum bona fide: id est quantum sine ipsius incommodo fieri potest operam dare, ut quam minime detrimento sit ea res emptori.

Dig. 18.6.1.4

Ulpianus 28 ad sab.

Si doliare vinum emeris nec de tradendo eo quicquam convenerit, id videri actum, ut ante evacuarentur quam ad vindemiam opera eorum futura sit necessaria: quod si non sint evacuata, faciendum, quod veteres putaverunt, per corbem venditorem mensuram facere et effundere: veteres enim hoc propter mensuram suaserunt, si, quanta mensura esset, non appareat, videlicet ut appareret, quantum emptori perierit.

Dig. 18.6.2pr.

Gaius 2 cott. rer.

Hoc ita verum est, si is est venditor, cui sine nova vindemia non sint ista vasa necessaria: si vero mercator est, qui emere vina et vendere solet, is dies spectandus est, quo ex commodo venditoris tolli possint.

Dig. 18.6.2.1

Gaius 2 cott. rer.

Custodiam autem ante admetiendi diem qualem praestare venditorem oporteat, utrum plenam, ut et diligentiam praestet, an vero dolum dumtaxat, videamus. et puto eam diligentiam venditorem exhibere debere, ut fatale damnum vel vis magna sit excusatum.

Dig. 18.6.3

Paulus 5 ad sab.

Custodiam autem venditor talem praestare debet, quam praestant hi quibus res commodata est, ut diligentiam praestet exactiorem, quam in suis rebus adhiberet.

Dig. 18.6.4pr.

Ulpianus 28 ad sab.

Si quis vina vendiderit et intra diem certum degustanda dixerit, deinde per venditorem steterit, quo minus degustarentur, utrum praeteritum dumtaxat periculum acoris et mucoris venditor praestare debet, an vero etiam die praeterito (ut, si forte corrupta sint posteaquam dies degustandi praeteriit, periculum ad venditorem pertineat), an vero magis emptio sit soluta (quasi sub condicione venierint, hoc est si ante diem illum fuissent degustata)? et intererit, quid actum sit: ego autem arbitror, si hoc in occulto sit, debere dici emptionem manere, periculum autem ad venditorem respicere etiam ultra diem degustando praefinitum, quia per ipsum factum est.

Dig. 18.6.4.1

Ulpianus 28 ad sab.

Si aversione vinum venit, custodia tantum praestanda est. ex hoc apparet, si non ita vinum venit, ut degustaretur, neque acorem neque mucorem venditorem praestare debere, sed omne periculum ad emptorem pertinere: difficile autem est, ut quisquam sic emat, ut ne degustet. quare si dies degustationi adiectus non erit, quandoque degustare emptor poterit et quoad degustaverit, periculum acoris et mucoris ad venditorem pertinebit: dies enim degustationi praestitutus meliorem condicionem emptoris facit.

Dig. 18.6.4.2

Ulpianus 28 ad sab.

Vino autem per aversionem vendito finis custodiae est avehendi tempus. quod ita erit accipiendum, si adiectum tempus est: ceterum si non sit adiectum, videndum, ne infinitam custodiam non debeat venditor. et est verius secundum ea quae supra ostendimus, aut interesse, quid de tempore actum sit, aut denuntiare ei, ut tollat vinum: certe antequam ad vindemiam fuerint dolia necessaria, debet avehi vinum.

Dig. 18.6.5

Paulus 5 ad sab.

Si per emptorem steterit, quo minus ad diem vinum tolleret, postea, nisi quod dolo malo venditoris interceptum esset, non debet ab eo praestari. si verbi gratia amphorae centum ex eo vino, quod in cella esset, venierint, si admensum est, donec admetiatur, omne periculum venditoris est, nisi id per emptorem fiat.

Dig. 18.6.6

Pomponius 9 ad sab.

Si vina emerim exceptis acidis et mucidis et mihi expediat acida quoque accipere, proculus ait, quamvis id emptoris causa exceptum sit, tamen acida et mucida non venisse: nam quae invitus emptor accipere non cogeretur, iniquum esse non permitti venditori vel alii ea vendere.

Dig. 18.6.7pr.

Paulus 5 ad sab.

Id, quod post emptionem fundo accessit per alluvionem vel perit, ad emptoris commodum incommodumque pertinet: nam et si totus ager post emptionem flumine occupatus esset, periculum esset emptoris: sic igitur et commodum eius esse debet.

Dig. 18.6.7.1

Paulus 5 ad sab.

Quod venditur, in modum agri cedere debet, nisi si id actum est, ne cederet. at quod non venit, in modum cedendum, si id ipsum actum est, ut cederet, veluti viae publicae, limites, luci qui fundum tangunt: cum vero neutrum dictum est, cedere non debet, et ideo nominatim caveri solet, ut luci, viae publicae, quae in fundo sint, totae in modum cedant.

Dig. 18.6.8pr.

Paulus 33 ad ed.

Necessario sciendum est, quando perfecta sit emptio: tunc enim sciemus, cuius periculum sit: nam perfecta emptione periculum ad emptorem respiciet. et si id quod venierit appareat quid quale quantum sit, sit et pretium, et pure venit, perfecta est emptio: quod si sub condicione res venierit, si quidem defecerit condicio, nulla est emptio, sicuti nec stipulatio: quod si exstiterit, proculus et octavenus emptoris esse periculum aiunt: idem pomponius libro nono probat. quod si pendente condicione emptor vel venditor decesserit, constat, si exstiterit condicio, heredes quoque obligatos esse quasi iam contracta emptione in praeteritum. quod si pendente condicione res tradita sit, emptor non poterit eam usucapere pro emptore. et quod pretii solutum est repetetur et fructus medii temporis venditoris sunt (sicuti stipulationes et legata condicionalia peremuntur), si pendente condicione res exstincta fuerit: sane si exstet res, licet deterior effecta, potest dici esse damnum emptoris.

Dig. 18.6.8.1

Paulus 33 ad ed.

Si ita venierit: " est ille servus emptus, sive navis ex asia venerit sive non venerit", iulianus putat statim perfectam esse venditionem, quoniam certum sit eam contractam.

Dig. 18.6.8.2

Paulus 33 ad ed.

Cum usum fructum mihi vendis, interest, utrum ius utendi fruendi, quod solum tuum sit, vendas, an vero in ipsum corpus, quod tuum sit, usum fructum mihi vendas: nam priore casu etiamsi statim morieris, nihil mihi heres tuus debebit, heredi autem meo debebitur, si tu vivis: posteriore casu heredi meo nihil debebitur, heres tuus debebit.

Dig. 18.6.9

Gaius 10 ad ed. provinc.

Si post inspectum praedium, antequam emptio contraheretur, arbores vento deiectae sunt, an hae quoque emptori tradi debeant, quaeritur: et responsum est non deberi, quia eas non emerit, cum ante, quam fundum emerit, desierint fundi esse. sed si ignoravit emptor deiectas esse arbores, venditor autem scit nec admonuit, quanti emptoris interfuerit rem aestimandam esse, si modo venit.

Dig. 18.6.10

Ulpianus 8 disp.

Si in venditione condicionali hoc ipsum convenisset, ut res periculo emptoris servaretur, puto pactum valere.

Dig. 18.6.11

Scaevola not. in iul. 7 Dig.

Fundi nomine emptor agere non potest, cum, priusquam mensura fieret, inundatione aquarum aut chasmate aliove quo casu pars fundi interierit.

Dig. 18.6.12

Alfenus 2 Dig.

Si vendita insula combusta esset, cum incendium sine culpa fieri non possit, quid iuris sit? respondit, quia sine patris familias culpa fieri potest neque, si servorum neglegentia factum esset, continuo dominus in culpa erit, quam ob rem si venditor eam diligentiam adhibuisset in insula custodienda, quam debent homines frugi et diligentes praestare, si quid accidisset, nihil ad eum pertinebit.

Dig. 18.6.13

Paulus 3 epit. alf.

Lectos emptos aedilis, cum in via publica positi essent, concidit: si traditi essent emptori aut per eum stetisset quo minus traderentur, emptoris periculum esse placet.

Dig. 18.6.14

Iulianus 3 ad urs. ferocem.

Eumque cum aedili, si id non iure fecisset, habiturum actionem legis aquiliae: aut certe cum venditore ex empto agendum esse, ut is actiones suas, quas cum aedile habuisset, ei praestaret.

Dig. 18.6.15pr.

Paulus 3 epit. alf.

Quod si neque traditi essent neque emptor in mora fuisset quo minus traderentur, venditoris periculum erit.

Dig. 18.6.15.1

Paulus 3 epit. alf.

Materia empta si furto perisset, postquam tradita esset, emptoris esse periculo respondit, si minus, venditoris: videri autem trabes traditas, quas emptor signasset.

Dig. 18.6.16

Gaius 2 cott. rer.

Si vina quae in doliis erunt venierint eaque, antequam ab emptore tollerentur, sua natura corrupta fuerint, si quidem de bonitate eorum adfirmavit venditor, tenebitur emptori: quod si nihil adfirmavit, emptoris erit periculum, quia sive non degustavit sive degustando male probavit, de se queri debet. plane si, cum intellegeret venditor non duraturam bonitatem eorum usque ad in eum diem quo tolli deberent, non admonuit emptorem, tenebitur ei, quanti eius interesset admonitum fuisse.

Dig. 18.6.17

Iavolenus 7 ex cass.

Servi emptor si eum conductum rogavit, donec pretium solveret, nihil per eum servum adquirere poterit, quoniam non videtur traditus is, cuius possessio per locationem retinetur a venditore. periculum eius servi ad emptorem pertinet, quod tamen sine dolo venditoris intervenerit.

Dig. 18.6.18

Pomponius 31 ad q. muc.

Illud sciendum est, cum moram emptor adhibere coepit, iam non culpam, sed dolum malum tantum praestandum a venditore. quod si per venditorem et emptorem mora fuerit, labeo quidem scribit emptori potius nocere quam venditori moram adhibitam, sed videndum est, ne posterior mora damnosa ei sit. quid enim si interpellavero venditorem et non dederit id quod emeram, deinde postea offerente illo ego non acceperim? sane hoc casu nocere mihi deberet. sed si per emptorem mora fuisset, deinde, cum omnia in integro essent, venditor moram adhibuerit, cum posset se exsolvere, aequum est posteriorem moram venditori nocere.

Dig. 18.6.19pr.

Papinianus 3 resp.

Habitationum oneribus morte libertorum finitis emptor domus ob eam causam venditori non tenebitur, si nihil aliud convenit, quam ut habitationes secundum defuncti voluntatem super pretium libertis praestarentur.

Dig. 18.6.19.1

Papinianus 3 resp.

Ante pretium solutum dominii quaestione mota pretium emptor solvere non cogetur, nisi fideiussores idonei a venditore eius evictionis offerantur.

Dig. 18.6.20

Hermogenianus 2 iuris epit.

Venditori si emptor in pretio solvendo moram fecerit, usuras dumtaxat praestabit, non omne omnino, quod venditor mora non facta consequi potuit, veluti si negotiator fuit et pretio soluto ex mercibus plus quam ex usuris quaerere potuit.

Dig. 18.7.0. De servis exportandis: vel si ita mancipium venierit ut manumittatur vel contra.

Dig. 18.7.1

Ulpianus 32 ad ed.

Si fuerit distractus servus, ne aliquo loci moretur, qui vendidit in ea condicione est, ut possit legem remittere, ipse romae retinere. quod et papinianus libro tertio respondit: propter domini enim, inquit, securitatem custoditur lex, ne periculum subeat.

Dig. 18.7.2

Marcianus 2 publ.

Exportandus si venierit ab italia, in provincia morari potest, nisi specialiter prohibitum fuerit.

Dig. 18.7.3

Paulus 50 ad ed.

Si quis hac lege veniit, ut intra certum tempus manumittatur: si non sit manumissus, liber fit, si tamen is qui vendidit in eadem voluntate perseveret: heredis voluntatem non esse exquirendam.

Dig. 18.7.4

Marcellus 24 Dig.

Si minor viginti annis servum tibi in hoc vendiderit et tradiderit, ut eum manumitteres, nullius momenti est traditio, quamquam ea mente tradiderit, ut, cum viginti annos ipse explesset, manumitteres: non enim multum facit, quod distulit libertatis praestationem: lex quippe consilio eius quasi parum firmo restitit.

Dig. 18.7.5

Papinianus 10 quaest.

Cui pacto venditoris pomerio cuiuslibet civitatis interdictum est, urbe etiam interdictum esse videtur. quod quidem alias cum principum mandatis praeciperetur, etiam naturalem habet intellectum, ne scilicet qui careret minoribus, fruatur maioribus.

Dig. 18.7.6pr.

Papinianus 27 quaest.

Si venditor ab emptore caverit, ne serva manumitteretur neve prostituatur, et aliquo facto contra quam fuerat exceptum evincatur aut libera iudicetur, et ex stipulatu poena petatur, doli exceptionem quidam obstaturam putant, sabinus non obstaturam. sed ratio faciet, ut iure non teneat stipulatio, si ne manumitteretur exceptum est: nam incredibile est de actu manumittentis ac non potius de effectu beneficii cogitatum. ceterum si ne prostituatur exceptum est, nulla ratio occurrit, cur poena peti et exigi non debeat, cum et ancillam contumelia adfecerit et venditoris affectionem, forte simul et verecundiam laeserit: etenim alias remota quoque stipulatione placuit ex vendito esse actionem, si quid emptor contra quam lege venditionis cautum est fecisset aut non fecisset.

Dig. 18.7.6.1

Papinianus 27 quaest.

Nobis aliquando placebat non alias ex vendito propter poenam homini irrogatam agi posse, quam si pecuniae ratione venditoris interesset, veluti quod poenam promisisset: ceterum viro bono non convenire credere venditoris interesse, quod animo saevientis satisfactum non fuisset. sed in contrarium me vocat sabini sententia, qui utiliter agi ideo arbitratus est, quoniam hoc minoris homo venisse videatur.

Dig. 18.7.7

Papinianus 10 quaest.

Servus ea lege veniit, ne in italia esset: quod si aliter factum esset, convenit citra stipulationem, ut poenam praestaret emptor. vix est, ut eo nomine vindictae ratione venditor agere possit, acturus utiliter, si non servata lege in poenam quam alii promisit inciderit. huic consequens erit, ut hactenus agere possit, quatenus alii praestare cogitur: quidquid enim excedit, poena, non rei persecutio est. quod si, ne poenae causa exportaretur, convenit, etiam affectionis ratione recte agetur. nec videntur haec inter se contraria esse, cum beneficio adfici hominem intersit hominis: enimvero poenae non irrogatae indignatio solam duritiam continet.

Dig. 18.7.8

Papinianus 27 quaest.

Quaesitum est, si quis proprium servum vendidisset et ut manumitteretur intra certum tempus, praecepisset ac postea mutasset voluntatem et emptor nihilo minus manumisisset, an aliquam eo nomine actionem haberet. dixi ex vendito actionem manumisso servo vel mutata venditoris voluntate evanuisse.

Dig. 18.7.9

Paulus 5 quaest.

Titius servum vendidit ea lege, ut, si romae moratus esset, manus inicere liceret: emptor alii eadem lege vendidit: servus fugit a secundo emptore et romae moratur: quaero, an sit manus iniectio et cui. respondi: in fugitivo non est dubitandum nihil contra legem factum videri, quia nec domino auferre se potest nec qui in fuga est ibi moratur. quod si ex voluntate secundo emptoris contra legem moratus sit, potior habendus est qui auctor fuit legis, et posterior magis admonendi emptoris et liberandi se eandem legem repetierit nec poterit aliquo modo auferre legem sui venditoris cuius condicio exstitit: nam et si poenam promisisset, tenetur, licet ipse quoque stipulatus esset: sed in poena promissa duae actiones sunt, manus autem iniectio in servum competit. quod si prior ita vendidit, ut prostituta libera esset, posterior, ut manus inicere liceret, potior est libertas quam manus iniectio. plane si prior lex manus habeat iniectionem, posterior libertatem, favorabilius dicetur liberam fore, quoniam utraque condicio pro mancipio additur et sicut manus iniectio, ita libertas eximit eam iniuriam.

Dig. 18.7.10

Scaevola 7 Dig.

Cum venderet pamphilam et stichum, venditioni inseruit pactum conventum, uti ne eadem mancipia pamphila et stichus, quos minorato pretio vendidit, alterius servitutem quam seii paterentur post mortemque eius in libertate morarentur: quaesitum est, an haec mancipia, de quibus inter emptorem et venditorem convenit, post mortem emptoris iure ipso liberata sint. respondit secundum constitutionem divi hadriani super hoc prolatam pamphilam et stichum, de quibus quaereretur, si manumissi non sint, liberos non esse. claudius: divus marcus ex lege dicta libertatis in vendendo quamvis non manumissos fore liberos in semenstribus constituit, licet in mortis tempus emptoris distulit venditor libertatem.

Dig. 18.1.0. De contrahenda emptione et de pactis inter emptorem et venditorem compositis et quae res venire non possunt.

Dig. 18.1.1pr.

Paulus 33 ad ed.

Origo emendi vendendique a permutationibus coepit. olim enim non ita erat nummus neque aliud merx, aliud pretium vocabatur, sed unusquisque secundum necessitatem temporum ac rerum utilibus inutilia permutabat, quando plerumque evenit, ut quod alteri superest alteri desit. sed quia non semper nec facile concurrebat, ut, cum tu haberes quod ego desiderarem, invicem haberem quod tu accipere velles, electa materia est, cuius publica ac perpetua aestimatio difficultatibus permutationum aequalitate quantitatis subveniret. eaque materia forma publica percussa usum dominiumque non tam ex substantia praebet quam ex quantitate nec ultra merx utrumque, sed alterum pretium vocatur.

Dig. 18.1.1.1

Paulus 33 ad ed.

Sed an sine nummis venditio dici hodieque possit, dubitatur, veluti si ego togam dedi, ut tunicam acciperem. sabinus et cassius esse emptionem et venditionem putant: nerva et proculus permutationem, non emptionem hoc esse. sabinus homero teste utitur, qui exercitum graecorum aere ferro hominibusque vinum emere refert, illis versibus: enven ar' oinizonto karykomowntes axaioi alloi men xalkw, alloi d' aivwni sidyrw, alloi de hrinois, alloi d' autysi boessi, alloi d' andrapodessin. sed hi versus permutationem significare videntur, non emptionem, sicuti illi: env' aute glaukw kronidys frenas eceleto zeus, hos pros tudeidyn diomydea teuxe ameiben. magis autem pro hac sententia illud diceretur, quod alias idem poeta dicit: priato kteatessin heoisin. sed verior est nervae et proculi sententia: nam ut aliud est vendere, aliud emere, alius emptor, alius venditor, sic aliud est pretium, aliud merx: quod in permutatione discerni non potest, uter emptor, uter venditor sit.

Dig. 18.1.1.2

Paulus 33 ad ed.

Est autem emptio iuris gentium, et ideo consensu peragitur et inter absentes contrahi potest et per nuntium et per litteras.

Dig. 18.1.2pr.

Ulpianus 1 ad sab.

Inter patrem et filium contrahi emptio non potest, sed de rebus castrensibus potest.

Dig. 18.1.2.1

Ulpianus 1 ad sab.

Sine pretio nulla venditio est: non autem pretii numeratio, sed conventio perficit sine scriptis habitam emptionem.

Dig. 18.1.3

Ulpianus 28 ad sab.

Si res ita distracta sit, ut si displicuisset inempta esset, constat non esse sub condicione distractam, sed resolvi emptionem sub condicione.

Dig. 18.1.4

Pomponius 9 ad sab.

Et liberi hominis et loci sacri et religiosi, qui haberi non potest, emptio intellegitur, si ab ignorante emitur,

Dig. 18.1.5

Paulus 5 ad sab.

Quia difficile dinosci potest liber homo a servo.

Dig. 18.1.6pr.

Pomponius 9 ad sab.

Sed celsus filius ait hominem liberum scientem te emere non posse nec cuiuscumque rei si scias alienationem esse: ut sacra et religiosa loca aut quorum commercium non sit, ut publica, quae non in pecunia populi, sed in publico usu habeatur, ut est campus martius.

Dig. 18.1.6.1

Pomponius 9 ad sab.

Si fundus annua bima trima die ea lege venisset, ut, si in diem statutum pecunia soluta non esset, fundus inemptus foret et ut, si interim emptor fundum coluerit fructusque ex eo perceperit, inempto eo facto restituerentur et ut, quanti minoris postea alii venisset, ut id emptor venditori praestaret: ad diem pecunia non soluta placet venditori ex vendito eo nomine actionem esse. nec conturbari debemus, quod inempto fundo facto dicatur actionem ex vendito futuram esse: in emptis enim et venditis potius id quod actum, quam id quod dictum sit sequendum est, et cum lege id dictum sit, apparet hoc dumtaxat actum esse, ne venditor emptori pecunia ad diem non soluta obligatus esset, non ut omnis obligatio empti et venditi utrique solveretur.

Dig. 18.1.6.2

Pomponius 9 ad sab.

Condicio, quae initio contractus dicta est, postea alia pactione immutari potest, sicuti etiam abiri a tota emptione potest, si nondum impleta sunt, quae utrimque praestari debuerunt.

Dig. 18.1.7pr.

Ulpianus 28 ad sab.

Haec venditio servi " si rationes domini computasset arbitrio" condicionalis est: condicionales autem venditiones tunc perficiuntur, cum impleta fuerit condicio. sed utrum haec est venditionis condicio, si ipse dominus putasset suo arbitrio, an vero si arbitrio viri boni? nam si arbitrium domini accipiamus, venditio nulla est, quemadmodum si quis ita vendiderit, si voluerit, vel stipulanti sic spondeat " si voluero, decem dabo": neque enim debet in arbitrium rei conferri, an sit obstrictus. placuit itaque veteribus magis in viri boni arbitrium id collatum videri quam in domini. si igitur rationes potuit accipere nec accepit, vel accepit, fingit autem se non accepisse, impleta condicio emptionis est et ex empto venditor conveniri potest.

Dig. 18.1.7.1

Ulpianus 28 ad sab.

Huiusmodi emptio " quanti tu eum emisti", " quantum pretii in arca habeo", valet: nec enim incertum est pretium tam evidenti venditione: magis enim ignoratur, quanti emptus sit, quam in rei veritate incertum est.

Dig. 18.1.7.2

Ulpianus 28 ad sab.

Si quis ita emerit: " est mihi fundus emptus centum et quanto pluris eum vendidero", valet venditio et statim impletur: habet enim certum pretium centum, augebitur autem pretium, si pluris emptor fundum vendiderit.

Dig. 18.1.8pr.

Pomponius 9 ad sab.

Nec emptio nec venditio sine re quae veneat potest intellegi. et tamen fructus et partus futuri recte ementur, ut, cum editus esset partus, iam tunc, cum contractum esset negotium, venditio facta intellegatur: sed si id egerit venditor, ne nascatur aut fiant, ex empto agi posse.

Dig. 18.1.8.1

Pomponius 9 ad sab.

Aliquando tamen et sine re venditio intellegitur, veluti cum quasi alea emitur. quod fit, cum captum piscium vel avium vel missilium emitur: emptio enim contrahitur etiam si nihil inciderit, quia spei emptio est: et quod missilium nomine eo casu captum est si evictum fuerit, nulla eo nomine ex empto obligatio contrahitur, quia id actum intellegitur.

Dig. 18.1.9pr.

Ulpianus 28 ad sab.

In venditionibus et emptionibus consensum debere intercedere palam est: ceterum sive in ipsa emptione dissentient sive in pretio sive in quo alio, emptio imperfecta est. si igitur ego me fundum emere putarem cornelianum, tu mihi te vendere sempronianum putasti, quia in corpore dissensimus, emptio nulla est. idem est, si ego me stichum, tu pamphilum absentem vendere putasti: nam cum in corpore dissentiatur, apparet nullam esse emptionem.

Dig. 18.1.9.1

Ulpianus 28 ad sab.

Plane si in nomine dissentiamus, verum de corpore constet, nulla dubitatio est, quin valeat emptio et venditio: nihil enim facit error nominis, cum de corpore constat.

Dig. 18.1.9.2

Ulpianus 28 ad sab.

Inde quaeritur, si in ipso corpore non erratur, sed in substantia error sit, ut puta si acetum pro vino veneat, aes pro auro vel plumbum pro argento vel quid aliud argento simile, an emptio et venditio sit. Marcellus scripsit libro sexto digestorum emptionem esse et venditionem, quia in corpus consensum est, etsi in materia sit erratum. ego in vino quidem consentio, quia eadem prope ousia est, si modo vinum acuit: ceterum si vinum non acuit, sed ab initio acetum fuit, ut embamma, aliud pro alio venisse videtur. in ceteris autem nullam esse venditionem puto, quotiens in materia erratur.

Dig. 18.1.10

Paulus 5 ad sab.

Aliter atque si aurum quidem fuerit, deterius autem quam emptor existimaret: tunc enim emptio valet.

Dig. 18.1.11pr.

Ulpianus 28 ad sab.

Alioquin quid dicemus, si caecus emptor fuit vel si in materia erratur vel in minus perito discernendarum materiarum? in corpus eos consensisse dicemus? et quemadmodum consensit, qui non vidit?

Dig. 18.1.11.1

Ulpianus 28 ad sab.

Quod si ego me virginem emere putarem, cum esset iam mulier, emptio valebit: in sexu enim non est erratum. ceterum si ego mulierem venderem, tu puerum emere existimasti, quia in sexu error est, nulla emptio, nulla venditio est.

Dig. 18.1.12

Pomponius 31 ad q. muc.

In huiusmodi autem quaestionibus personae ementium et vendentium spectari debent, non eorum, quibus adquiritur ex eo contractu actio: nam si servus meus vel filius qui in mea potestate est me praesente suo nomine emat, non est quaerendum, quid ego existimem, sed quid ille qui contrahit.

Dig. 18.1.13

Pomponius 9 ad sab.

Sed si servo meo vel ei cui mandavero vendas sciens fugitivum illo ignorante, me sciente, non teneri te ex empto verum est.

Dig. 18.1.14

Ulpianus 28 ad sab.

Quid tamen dicemus, si in materia et qualitate ambo errarent? ut puta si et ego me vendere aurum putarem et tu emere, cum aes esset? ut puta coheredes viriolam, quae aurea dicebatur, pretio exquisito uni heredi vendidissent eaque inventa esset magna ex parte aenea? venditionem esse constat ideo, quia auri aliquid habuit. nam si inauratum aliquid sit, licet ego aureum putem, valet venditio: si autem aes pro auro veneat, non valet.

Dig. 18.1.15pr.

Paulus 5 ad sab.

Et si consensum fuerit in corpus, id tamen in rerum natura ante venditionem esse desierit, nulla emptio est.

Dig. 18.1.15.1

Paulus 5 ad sab.

Ignorantia emptori prodest, quae non in supinum hominem cadit.

Dig. 18.1.15.2

Paulus 5 ad sab.

Si rem meam mihi ignoranti vendideris et iussu meo alii tradideris, non putat pomponius dominium meum transire, quoniam non hoc mihi propositum fuit, sed quasi tuum dominium ad eum transire: et ideo etiam si donaturus mihi rem meam iussu meo alii tradas, idem dicendum erit.

Dig. 18.1.16pr.

Pomponius 9 ad sab.

Suae rei emptio non valet, sive sciens sive ignorans emi: sed si ignorans emi, quod solvero repetere potero, quia nulla obligatio fuit.

Dig. 18.1.16.1

Pomponius 9 ad sab.

Nec tamen emptioni obstat, si in ea re usus fructus dumtaxat ementis sit:

Dig. 18.1.17

Paulus 33 ad ed.

Officio tamen iudicis pretium minuetur.

Dig. 18.1.18pr.

Pomponius 9 ad sab.

Sed si communis ea res emptori cum alio sit, dici debet scisso pretio pro portione pro parte emptionem valere, pro parte non valere.

Dig. 18.1.18.1

Pomponius 9 ad sab.

Si servus domini iussu in demonstrandis finibus agri venditi vel errore vel dolo plus demonstaverit, id tamen demonstratum accipi oportet, quod dominus senserit: et idem alfenus scripsit de vacua possessione per servum tradita.

Dig. 18.1.19

Pomponius 31 ad q. muc.

Quod vendidi non aliter fit accipientis, quam si aut pretium nobis solutum sit aut satis eo nomine factum vel etiam fidem habuerimus emptori sine ulla satisfactione.

Dig. 18.1.20

Pomponius 9 ad sab.

Sabinus respondit, si quam rem nobis fieri velimus etiam, veluti statuam vel vas aliquod seu vestem, ut nihil aliud quam pecuniam daremus, emptionem videri, nec posse ullam locationem esse, ubi corpus ipsum non detur ab eo cui id fieret: aliter atque si aream darem, ubi insulam aedificares, quoniam tunc a me substantia proficiscitur.

Dig. 18.1.21

Paulus 5 ad sab.

Labeo scripsit obscuritatem pacti nocere potius debere venditori qui id dixerit quam emptori, quia potuit re integra apertius dicere.

Dig. 18.1.22

Ulpianus 28 ad sab.

Hanc legem venditionis " si quid sacri vel religiosi est, eius venit nihil" supervacuam non esse, sed ad modica loca pertinere. ceterum si omne religiosum vel sacrum vel publicum venierit, nullam esse emptionem,

Dig. 18.1.23

Paulus 5 ad sab.

(et quod solverit eo nomine, emptor condicere potest)

Dig. 18.1.24

Ulpianus 28 ad sab.

In modicis autem ex empto esse actionem, quia non specialiter locus sacer vel religiosus venit, sed emptioni maioris partis accessit.

Dig. 18.1.25pr.

Ulpianus 34 ad sab.

Si ita distrahatur " illa aut illa res", utram eliget venditor, haec erit empta.

Dig. 18.1.25.1

Ulpianus 34 ad sab.

Qui vendidit necesse non habet fundum emptoris facere, ut cogitur qui fundum stipulanti spopondit.

Dig. 18.1.26

Pomponius 17 ad sab.

Si sciens emam ab eo cui bonis interdictum sit vel cui tempus ad deliberandum de hereditate ita datum sit, ut ei deminuendi potestas non sit, dominus non ero: dissimiliter atque si a debitore sciens creditorem fraudari emero.

Dig. 18.1.27

Paulus 8 ad sab.

Qui a quolibet rem emit, quam putat ipsius esse, bona fide emit: at qui sine tutoris auctoritate a pupillo emit, vel falso tutore auctore, quem scit tutorem non esse, non videtur bona fide emere, ut et sabinus scripsit.

Dig. 18.1.28

Ulpianus 41 ad sab.

Rem alienam distrahere quem posse nulla dubitatio est: nam emptio est et venditio: sed res emptori auferri potest.

Dig. 18.1.29

Ulpianus 43 ad sab.

Quotiens servus venit, non cum peculio distrahitur: et ideo sive non sit exceptum, sive exceptum sit, ne cum peculio veneat, non cum peculio distractus videtur. unde si qua res fuerit peculiaris a servo subrepta, condici potest videlicet quasi furtiva: hoc ita, si res ad emptorem pervenit.

Dig. 18.1.30

Ulpianus 32 ad ed.

Sed ad exhibendum agi posse nihilo minus et ex vendito puto.

Dig. 18.1.31

Pomponius 22 ad sab.

Sed et si quid postea accessit peculio, reddendum est venditori, veluti partus et quod ex operis vicarii perceptum est.

Dig. 18.1.32

Ulpianus 44 ad sab.

Qui tabernas argentarias vel ceteras quae in solo publico sunt vendit, non solum, sed ius vendit, cum istae tabernae publicae sunt, quarum usus ad privatos pertinet.

Dig. 18.1.33

Pomponius 33 ad sab.

Cum in lege venditionis ita sit scriptum: " flumina stillicidia uti nunc sunt, ut ita sint", nec additur, quae flumina vel stillicidia, primum spectari oportet, quid acti sit: si non id appareat, tunc id accipitur quod venditori nocet: ambigua enim oratio est.

Dig. 18.1.34pr.

Paulus 33 ad ed.

Si in emptione fundi dictum sit accedere stichum servum neque intellegatur, quis ex pluribus accesserit, cum de alio emptor, de alio venditor senserit, nihilo minus fundi venditionem valere constat: sed labeo ait eum stichum deberi quem venditor intellexerit. nec refert, quanti sit accessio, sive plus in ea sit quam in ipsa re cui accedat an minus: plerasque enim res aliquando propter accessiones emimus, sicuti cum domus propter marmora et statuas et tabulas pictas ematur.

Dig. 18.1.34.1

Paulus 33 ad ed.

Omnium rerum, quas quis habere vel possidere vel persequi potest, venditio recte fit: quas vero natura vel gentium ius vel mores civitatis commercio exuerunt, earum nulla venditio est.

Dig. 18.1.34.2

Paulus 33 ad ed.

Liberum hominem scientes emere non possumus. sed nec talis emptio aut stipulatio admittenda est: " cum servus erit", quamvis dixerimus futuras res emi posse: nec enim fas est eiusmodi casus exspectare.

Dig. 18.1.34.3

Paulus 33 ad ed.

Item si et emptor et venditor scit furtivum esse quod venit, a neutra parte obligatio contrahitur: si emptor solus scit, non obligabitur venditor nec tamen ex vendito quicquam consequitur, nisi ultro quod convenerit praestet: quod si venditor scit, emptor ignoravit, utrinque obligatio contrahitur, et ita pomponius quoque scribit.

Dig. 18.1.34.4

Paulus 33 ad ed.

Rei suae emptio tunc valet, cum ab initio id agatur, ut possessionem emat, quam forte venditor habuit, et in iudicio possessionis potior esset.

Dig. 18.1.34.5

Paulus 33 ad ed.

Alia causa est degustandi, alia metiendi: gustus enim ad hoc proficit, ut improbare liceat, mensura vero non eo proficit, ut aut plus aut minus veneat, sed ut appareat, quantum ematur.

Dig. 18.1.34.6

Paulus 33 ad ed.

Si emptio ita facta fuerit: " est mihi emptus stichus aut pamphilus", in potestate est venditoris, quem velit dare, sicut in stipulationibus, sed uno mortuo qui superest dandus est: et ideo prioris periculum ad venditorem, posterioris ad emptorem respicit. sed et si pariter decesserunt, pretium debebitur: unus enim utique periculo emptoris vixit. idem dicendum est etiam, si emptoris fuit arbitrium quem vellet habere, si modo hoc solum arbitrio eius commissum sit, ut quem voluisset emptum haberet, non et illud, an emptum haberet.

Dig. 18.1.34.7

Paulus 33 ad ed.

Tutor rem pupilli emere non potest: idemque porrigendum est ad similia, id est ad curatores procuratores et qui negotia aliena gerunt.

Dig. 18.1.35pr.

Gaius 10 ad ed. provinc.

Quod saepe arrae nomine pro emptione datur, non eo pertinet, quasi sine arra conventio nihil proficiat, sed ut evidentius probari possit convenisse de pretio.

Dig. 18.1.35.1

Gaius 10 ad ed. provinc.

Illud constat imperfectum esse negotium, cum emere volenti sic venditor dicit: " quanti velis, quanti aequum putaveris, quanti aestimaveris, habebis emptum".

Dig. 18.1.35.2

Gaius 10 ad ed. provinc.

Veneni mali quidam putant non contrahi emptionem, quia nec societas aut mandatum flagitiosae rei ullas vires habet: quae sententia potest sane vera videri de his quae nullo modo adiectione alterius materiae usu nobis esse possunt: de his vero quae mixta aliis materiis adeo nocendi naturam deponunt, ut ex his antidoti et alia quaedam salubria medicamenta conficiantur, aliud dici potest.

Dig. 18.1.35.3

Gaius 10 ad ed. provinc.

Si quis amico peregre eunti mandaverit, ut fugitivum suum quaerat et si invenerit vendat, nec ipse contra senatus consultum committit, quia non vendidit, neque amicus eius, quia praesentem vendit: emptor quoque, qui praesentem emit, recte negotium gerere intellegitur.

Dig. 18.1.35.4

Gaius 10 ad ed. provinc.

Si res vendita per furtum perierit, prius animadvertendum erit, quid inter eos de custodia rei convenerat: si nihil appareat convenisse, talis custodia desideranda est a venditore, qualem bonus pater familias suis rebus adhibet: quam si praestiterit et tamen rem perdidit, securus esse debet, ut tamen scilicet vindicationem rei et condictionem exhibeat emptori. unde videbimus in personam eius, qui alienam rem vendiderit: cum is nullam vindicationem aut condictionem habere possit, ob id ipsum damnandus est, quia, si suam rem vendidisset, potuisset eas actiones ad emptorem transferre.

Dig. 18.1.35.5

Gaius 10 ad ed. provinc.

In his quae pondere numero mensurave constant, veluti frumento vino oleo argento, modo ea servantur quae in ceteris, ut simul atque de pretio convenerit, videatur perfecta venditio, modo ut, etiamsi de pretio convenerit, non tamen aliter videatur perfecta venditio, quam si admensa adpensa adnumeratave sint. nam si omne vinum vel oleum vel frumentum vel argentum quantumcumque esset uno pretio venierit, idem iuris est quod in ceteris rebus. quod si vinum ita venierit, ut in singulas amphoras, item oleum, ut in singulos metretas, item frumentum, ut in singulos modios, item argentum, ut in singulas libras certum pretium diceretur, quaeritur, quando videatur emptio perfici. quod similiter scilicet quaeritur et de his quae numero constant, si pro numero corporum pretium fuerit statutum. sabinus et cassius tunc perfici emptionem existimant, cum adnumerata admensa adpensave sint, quia venditio quasi sub hac condicione videtur fieri, ut in singulos metretas aut in singulos modios quos quasve admensus eris, aut in singulas libras quas adpenderis, aut in singula corpora quae adnumeraveris.

Dig. 18.1.35.6

Gaius 10 ad ed. provinc.

Ergo et si grex venierit, si quidem universaliter uno pretio, perfecta videtur, postquam de pretio convenerit: si vero in singula corpora certo pretio, eadem erunt, quae proxime tractavimus.

Dig. 18.1.35.7

Gaius 10 ad ed. provinc.

Sed et si ex doleario pars vini venierit, veluti metretae centum, verissimum est (quod et constare videtur) antequam admetiatur, omne periculum ad venditorem pertinere: nec interest, unum pretium omnium centum metretarum in semel dictum sit an in singulos eos.

Dig. 18.1.35.8

Gaius 10 ad ed. provinc.

Si quis in vendendo praedio confinem celaverit, quem emptor si audisset, empturus non esset, teneri venditorem.

Dig. 18.1.36

Ulpianus 43 ad ed.

Cum in venditione quis pretium rei ponit donationis causa non exacturus, non videtur vendere.

Dig. 18.1.37

Ulpianus 3 disp.

Si quis fundum iure hereditario sibi delatum ita vendidisset: " erit tibi emptus tanti, quanti a testatore emptus est", mox inveniatur non emptus, sed donatus testatori, videtur quasi sine pretio facta venditio, ideoque similis erit sub condicione factae venditioni, quae nulla est, si condicio defecerit.

Dig. 18.1.38

Ulpianus 7 disp.

Si quis donationis causa minoris vendat, venditio valet: totiens enim dicimus in totum venditionem non valere, quotiens universa venditio donationis causa facta est: quotiens vero viliore pretio res donationis causa distrahitur, dubium non est venditionem valere. hoc inter ceteros: inter virum vero et uxorem donationis causa venditio facta pretio viliore nullius momenti est.

Dig. 18.1.39pr.

Iulianus 15 Dig.

Si debitor rem pigneratam a creditore redemerit, quasi suae rei emptor actione ex vendito non tenetur et omnia in integro sunt creditori.

Dig. 18.1.39.1

Iulianus 15 Dig.

Verisimile est eum, qui fructum olivae pendentis vendidisset et stipulatus est decem pondo olei quod natum esset, pretium constituisse ex eo quod natum esset usque ad decem pondo olei: idcirco solis quinque collectis non amplius emptor petere potest quam quinque pondo olei, quae collecta essent, a plerisque responsum est.

Dig. 18.1.40pr.

Paulus 4 epit. alf. Dig.

Qui fundum vendebat, in lege ita dixerat, ut emptor in diebus triginta proximis fundum metiretur et de modo renuntiaret, et si ante eam diem non renuntiasset, ut venditoris fides soluta esset: emptor intra diem mensurae quo minorem modum esse credidit renuntiavit et pecuniam pro eo accepit: postea eum fundum vendidit et cum ipse emptori suo admetiretur, multo minorem modum agri quam putaverat invenit: quaerebat, an id quod minor is esset consequi a suo venditore posset. respondit interesse, quemadmodum lex diceretur: nam si ita dictum esset, ut emptor diebus triginta proximis fundum metiatur et domino renuntiet, quanto modus agri minor sit, quo post diem trigensimum renuntiasset, nihil ei profuturum: sed si ita pactum esset, ut emptor in diebus proximis fundum metiatur et de modo agri renuntiet, etsi in diebus triginta renuntiasset minorem modum agri esse, quamvis multis post annis posse eum quo minor is modus agri fuisset repetere.

Dig. 18.1.40.1

Paulus 4 epit. alf. Dig.

In lege fundi aquam accessuram dixit: quaerebatur, an etiam iter aquae accessisset. respondit sibi videri id actum esse, et ideo iter quoque venditorem tradere oportere.

Dig. 18.1.40.2

Paulus 4 epit. alf. Dig.

Qui agrum vendebat, dixit fundi iugera decem et octo esse, et quod eius admensum erit, ad singula iugera certum pretium stipulatus erat: viginti inventa sunt. pro viginti deberi pecuniam respondit.

Dig. 18.1.40.3

Paulus 4 epit. alf. Dig.

Fundi venditor frumenta manu sata receperat: in eo fundo ex stipula seges erat enata: quaesitum est, an pacto contineretur. respondit maxime referre, quid est actum: ceterum secundum verba non esse actum, quod ex stipula nasceretur, non magis quam si quid ex sacco saccarii cecidisset aut ex eo quod avibus ex aere cecidisset natum esset.

Dig. 18.1.40.4

Paulus 4 epit. alf. Dig.

Cum fundum quis vendiderat et omnem fructum receperat, et arundinem caeduam et silvam in fructu esse respondit.

Dig. 18.1.40.5

Paulus 4 epit. alf. Dig.

Dolia, quae in fundo domini essent, accessura dixit: etiam ea, quae servus qui fundum coluerat emisset peculiaria, emptori cessura respondit.

Dig. 18.1.40.6

Paulus 4 epit. alf. Dig.

Rota quoque, per quam aqua traheretur, nihilo minus aedificii est quam situla.

Dig. 18.1.41pr.

Iulianus 3 ad urs. ferocem.

Cum ab eo, qui fundum alii obligatum habebat, quidam sic emptum rogasset, ut esset is sibi emptus, si eum liberasset, dummodo ante kalendas iulias liberaret, quaesitum est, an utiliter agere possit ex empto in hoc, ut venditor eum liberaret. respondit: videamus, quid inter ementem et vendentem actum sit. nam si id actum est, ut omni modo intra kalendas iulias venditor fundum liberaret, ex empto erit actio, ut liberet, nec sub condicione emptio facta intellegetur, veluti si hoc modo emptor interrogaverit: " erit mihi fundus emptus ita, ut eum intra kalendas iulias liberes", vel " ita ut eum intra kalendas a titio redimas". si vero sub condicione facta emptio est, non poterit agi, ut condicio impleatur.

Dig. 18.1.41.1

Iulianus 3 ad urs. ferocem.

Mensam argento coopertam mihi ignoranti pro solida vendidisti imprudens: nulla est emptio pecuniaque eo nomine data condicetur.

Dig. 18.1.42

Marcianus 1 inst.

Domini neque per se neque per procuratores suos possunt saltem criminosos servos vendere, ut cum bestiis pugnarent. et ita divi fratres rescripserunt.

Dig. 18.1.43pr.

Florus 8 inst.

Ea quae commendandi causa in venditionibus dicuntur, si palam appareant, venditorem non obligant, veluti si dicat servum speciosum, domum bene aedificatam: at si dixerit hominem litteratum vel artificem, praestare debet: nam hoc ipso pluris vendit.

Dig. 18.1.43.1

Florus 8 inst.

Quaedam etiam pollicitationes venditorem non obligant, si ita in promptu res sit, ut eam emptor non ignoraverit, veluti si quis hominem luminibus effossis emat et de sanitate stipuletur: nam de cetera parte corporis potius stipulatus videtur, quam de eo, in quo se ipse decipiebat.

Dig. 18.1.43.2

Florus 8 inst.

Dolum malum a se abesse praestare venditor debet, qui non tantum in eo est, qui fallendi causa obscure loquitur, sed etiam qui insidiose obscure dissimulat.

Dig. 18.1.44

Marcianus 3 reg.

Si duos quis servos emerit pariter uno pretio, quorum alter ante venditionem mortuus est, neque in vivo constat emptio.

Dig. 18.1.45

Marcianus 4 reg.

Labeo libro posteriorum scribit, si vestimenta interpola quis pro novis emerit, trebatio placere ita emptori praestandum quod interest, si ignorans interpola emerit. quam sententiam et pomponius probat, in qua et iulianus est, qui ait, si quidem ignorabat venditor, ipsius rei nomine teneri, si sciebat, etiam damni quod ex eo contingit: quemadmodum si vas aurichalcum pro auro vendidisset ignorans, tenetur, ut aurum quod vendidit praestet.

Dig. 18.1.46

Marcianus l.S. de delator.

Non licet ex officio, quod administrat quis, emere quid vel per se vel per aliam personam: alioquin non tantum rem amittit, sed et in quadruplum convenitur secundum constitutionem severi et antonini: et hoc ad procuratorem quoque caesaris pertinet. sed hoc ita se habet, nisi specialiter quibusdam hoc concessum est.

Dig. 18.1.47

Ulpianus 29 ad sab.

Si aquae ductus debeatur praedio, et ius aquae transit ad emptorem, etiamsi nihil dictum sit, sicut et ipsae fistulae, per quas aqua ducitur,

Dig. 18.1.48

Paulus 5 ad sab.

Licet extra aedes sint:

Dig. 18.1.49

Ulpianus 29 ad sab.

Et quamquam ius aquae non sequatur, quod amissum est, attamen fistulae et canales dum sibi sequuntur, quasi pars aedium ad emptorem perveniunt. et ita pomponius libro decimo putat.

Dig. 18.1.50

Ulpianus 11 ad ed.

Labeo scribit, si mihi bibliothecam ita vendideris, si decuriones campani locum mihi vendidissent, in quo eam ponerem, et per me stet, quo minus id a campanis impetrem, non esse dubitandum, quin praescriptis verbis agi possit. ego etiam ex vendito agi posse puto quasi impleta condicione, cum per emptorem stet, quo minus impleatur.

Dig. 18.1.51

Paulus 21 ad ed.

Litora, quae fundo vendito coniuncta sunt, in modum non computantur, quia nullius sunt, sed iure gentium omnibus vacant: nec viae publicae aut loca religiosa vel sacra. itaque ut proficiant venditori, caveri solet, ut viae, item litora et loca publica in modum cedant.

Dig. 18.1.52

Paulus 54 ad ed.

Senatus censuit, ne quis domum villamve dirueret, quo plus sibi adquireretur neve quis negotiandi causa eorum quid emeret venderetve: poena in eum, qui adversus senatus consultum fecisset, constituta est, ut duplum eius quanti emisset in aerarium inferre cogeretur, in eum vero, qui vendidisset, ut irrita fieret venditio. plane si mihi pretium solveris, cum tu duplum aerario debeas, repetes a me: quod a mea parte irrita facta est venditio. nec solum huic senatus consulto locus erit, si quis suam villam vel domum, sed et si alienam vendiderit.

Dig. 18.1.53

Gaius 28 ad ed. provinc.

Ut res emptoris fiat, nihil interest, utrum solutum sit pretium an eo nomine fideiussor datus sit. quod autem de fideiussore diximus, plenius acceptum est, qualibet ratione si venditori de pretio satisfactum est, veluti expromissore aut pignore dato, proinde sit, ac si pretium solutum esset.

Dig. 18.1.54

Paulus 1 ad ed. aedil. curul.

Res bona fide vendita propter minimam causam inempta fieri non debet.

Dig. 18.1.55

Paulus 2 ad ed. aedil. curul.

Nuda et imaginaria venditio pro non facta est et ideo nec alienatio eius rei intellegitur.

Dig. 18.1.56

Paulus 50 ad ed.

Si quis sub hoc pacto vendiderit ancillam, ne prostituatur et, si contra factum esset, uti liceret ei abducere, etsi per plures emptores mancipium cucurrerit, ei qui primo vendit abducendi potestas fit.

Dig. 18.1.57pr.

Paulus 5 ad plaut.

Domum emi, cum eam et ego et venditor combustam ignoraremus. nerva sabinus cassius nihil venisse, quamvis area maneat, pecuniamque solutam condici posse aiunt. sed si pars domus maneret, neratius ait hac quaestione multum interesse, quanta pars domus incendio consumpta permaneat, ut, si quidem amplior domus pars exusta est, non compellatur emptor perficere emptionem, sed etiam quod forte solutum ab eo est repetet: sin vero vel dimidia pars vel minor quam dimidia exusta fuerit, tunc coartandus est emptor venditionem adimplere aestimatione viri boni arbitratu habita, ut, quod ex pretio propter incendium decrescere fuerit inventum, ab huius praestatione liberetur.

Dig. 18.1.57.1

Paulus 5 ad plaut.

Sin autem venditor quidem sciebat domum esse exustam, emptor autem ignorabat, nullam venditionem stare, si tota domus ante venditionem exusta sit: si vero quantacumque pars aedificii remaneat, et stare venditionem et venditorem emptori quod interest restituere.

Dig. 18.1.57.2

Paulus 5 ad plaut.

Simili quoque modo ex diverso tractari oportet, ubi emptor quidem sciebat, venditor autem ignorabat: et hic enim oportet et venditorem stare et omne pretium ab emptore venditori, si non depensum est, solvi vel si solutum sit, non repeti.

Dig. 18.1.57.3

Paulus 5 ad plaut.

Quod si uterque sciebat et emptor et venditor domum esse exustam totam vel ex parte, nihil actum fuisse dolo inter utramque partem compensando et iudicio, quod ex bona fide descendit, dolo ex utraque parte veniente stare non concedente.

Dig. 18.1.58

Papinianus 10 quaest.

Arboribus quoque vento deiectis vel absumptis igne dictum est emptionem fundi non videri esse contractam, si contemplatione illarum arborum, veluti oliveti, fundus comparabatur, sive sciente sive ignorante venditore: sive autem emptor sciebat vel ignorabat vel uterque eorum, haec optinent, quae in superioribus casibus pro aedibus dicta sunt.

Dig. 18.1.59

Celsus 8 Dig.

Cum venderes fundum, non dixisti " ita ut optimus maximusque": verum est, quod quinto mucio placebat, non liberum, sed qualis esset, fundum praestari oportere. idem et in urbanis praediis dicendum est.

Dig. 18.1.60

Marcellus 6 Dig.

Comprehensum erat lege venditionis dolia sexaginta emptori accessura: cum essent centum, in venditoris fore potestate responsum est quae vellet dare.

Dig. 18.1.61

Marcellus 20 Dig.

Existimo posse me id quod meum est sub condicione emere, quia forte speratur meum esse desinere.

Dig. 18.1.62pr.

Modestinus 5 reg.

Qui officii causa in provincia agit vel militat, praedia comparare in eadem provincia non potest, praeterquam si paterna eius a fisco distrahantur.

Dig. 18.1.62.1

Modestinus 5 reg.

Qui nesciens loca sacra vel religiosa vel publica pro privatis comparavit, licet emptio non teneat, ex empto tamen adversus venditorem experietur, ut consequatur quod interfuit eius, ne deciperetur.

Dig. 18.1.62.2

Modestinus 5 reg.

Res in aversione empta, si non dolo venditoris factum sit, ad periculum emptoris pertinebit, etiamsi res adsignata non sit.

Dig. 18.1.63pr.

Iavolenus 7 ex cass.

Cum servo dominus rem vendere certae personae iusserit, si alii vendidisset, quam cui iussus erat, venditio non valet: idem iuris in libera persona est: cum perfici venditio non potuit in eius persona, cui dominus venire eam noluit.

Dig. 18.1.63.1

Iavolenus 7 ex cass.

Demonstratione fundi facta fines nominari supervacuum est: si nominentur, etiam ipsum venditorem nominare oportet, si forte alium agrum confinem possidet.

Dig. 18.1.64

Iavolenus 2 epist.

Fundus ille est mihi et titio emptus: quaero, utrum in partem an in totum venditio consistat an nihil actum sit. respondi personam titii supervacuo accipiendam puto ideoque totius fundi emptionem ad me pertinere.

Dig. 18.1.65

Iavolenus 11 epist.

Convenit mihi tecum, ut certum numerum tegularum mihi dares certo pretio quod ut faceres: utrum emptio sit an locatio? respondit, si ex meo fundo tegulas tibi factas ut darem convenit, emptionem puto esse, non conductionem: totiens enim conductio alicuius rei est, quotiens materia, in qua aliquid praestatur, in eodem statu eiusdem manet: quotiens vero et immutatur et alienatur, emptio magis quam locatio intellegi debet.

Dig. 18.1.66pr.

Pomponius 31 ad q. muc.

In vendendo fundo quaedam etiam si non dicantur, praestanda sunt, veluti ne fundus evincatur aut usus fructus eius, quaedam ita demum, si dicta sint, veluti viam iter actum aquae ductum praestatu iri: idem et in servitutibus urbanorum praediorum.

Dig. 18.1.66.1

Pomponius 31 ad q. muc.

Si cum servitus venditis praediis deberetur nec commemoraverit venditor, sed sciens esse reticuerit et ob id per ignorantiam rei emptor non utendo per statutum tempus eam servitutem amiserit, quidam recte putant venditorem teneri ex empto ob dolum.

Dig. 18.1.66.2

Pomponius 31 ad q. muc.

Quintus mucius scribit, qui scripsit " ruta caesa quaeque aedium fundive non sunt", bis idem scriptum: nam ruta caesa ea sunt quae neque aedium neque fundi sunt.

Dig. 18.1.67

Pomponius 39 ad q. muc.

Alienatio cum fit, cum sua causa dominium ad alium transferimus, quae esset futura, si apud nos ea res mansisset, idque toto iure civili ita se habet, praeterquam si aliquid nominatim sit constitutum.

Dig. 18.1.68pr.

Proculus 6 epist.

Si, cum fundum venderes, in lege dixisses, quod mercedis nomine a conductore exegisses, id emptori accessurum esse, existimo te in exigendo non solum bonam fidem, sed etiam diligentiam praestare debere, id est non solum ut a te dolus malus absit, sed etiam ut culpa.

Dig. 18.1.68.1

Proculus 6 epist.

Fere aliqui solent haec verba adicere: " dolus malus a venditore aberit", qui etiam si adiectum non est, abesse debet.

Dig. 18.1.68.2

Proculus 6 epist.

Nec videtur abesse, si per eum factum est aut fiet, quo minus fundum emptor possideat. erit ergo ex empto actio, non ut venditor vacuam possessionem tradat, cum multis modis accidere poterit, ne tradere possit, sed ut, si quid dolo malo fecit aut facit, dolus malus eius aestimaretur.

Dig. 18.1.69

Proculus 11 epist.

Rutilia polla emit lacum sabatenem angularium et circa eum lacum pedes decem: quaero, numquid et decem pedes, qui tunc accesserunt, sub aqua sint, quia lacus crevit, an proximi pedes decem ab aqua rutiliae pollae iuris sint. proculus respondit: ego existimo eatenus lacum, quem emit rutilia polla, venisse quatenus tunc fuit, et circa eum decem pedes qui tunc fuerunt, nec ob eam rem, quod lacus postea crevit, latius eum possidere debet quam emit.

Dig. 18.1.70

Licinius 8 reg.

Liberi hominis emptionem contrahi posse plerique existimaverunt, si modo inter ignorantes id fiat. quod idem placet etiam, si venditor sciat, emptor autem ignoret. quod si emptor sciens liberum esse emerit, nulla emptio contrahitur.

Dig. 18.1.71

Papirius 1 const.

Imperatores antoninus et verus augusti sextio vero in haec verba rescripserunt: " quibus mensuris aut pretiis negotiatores vina compararent, in contrahentium potestate esse: neque enim quisquam cogitur vendere, si aut pretium aut mensura displiceat, praesertim si nihil contra consuetudinem regionis fiat. "

Dig. 18.1.72pr.

Papinianus 10 quaest.

Pacta conventa, quae postea facta detrahunt aliquid emptioni, contineri contractui videntur: quae vero adiciunt, credimus non inesse. quod locum habet in his, quae adminicula sunt emptionis, veluti ne cautio duplae praestetur aut ut cum fideiussore cautio duplae praestetur. sed quo casu agente emptore non valet pactum, idem vires habebit iure exceptionis agente venditore. an idem dici possit aucto postea vel deminuto pretio, non immerito quaesitum est, quoniam emptionis substantia constitit ex pretio. paulus notat: si omnibus integris manentibus de augendo vel deminuendo pretio rursum convenit, recessum a priore contractu et nova emptio intercessisse videtur.

Dig. 18.1.72.1

Papinianus 10 quaest.

Papinianus: lege venditionis illa facta " si quid sacri aut religiosi aut publici est, eius nihil venit", si res non in usu publico, sed in patrimonio fisci erit, venditio eius valebit, nec venditori proderit exceptio, quae non habuit locum.

Dig. 18.1.73pr.

Papinianus 3 resp.

Aede sacra terrae motu diruta locus aedificii non est profanus et ideo venire non potest.

Dig. 18.1.73.1

Papinianus 3 resp.

Intra maceriam sepulchrorum hortis vel ceteris culturis loca pura servata, si nihil venditor nominatim excepit, ad emptorem pertinent.

Dig. 18.1.74

Papinianus 1 def.

Clavibus traditis ita mercium in horreis conditarum possessio tradita videtur, si claves apud horrea traditae sint: quo facto confestim emptor dominium et possessionem adipiscitur, etsi non aperuerit horrea: quod si venditoris merces non fuerunt, usucapio confestim inchoabitur.

Dig. 18.1.75

Hermogenianus 2 iuris epit.

Qui fundum vendidit, ut eum certa mercede conductum ipse habeat vel, si vendat, non alii, sed sibi distrahat vel simile aliquid paciscatur: ad complendum id, quod pepigerunt, ex vendito agere poterit.

Dig. 18.1.76pr.

Paulus 6 resp.

Dolia in horreis defossa si non sint nominatim in venditione excepta, horreorum venditioni cessisse videri.

Dig. 18.1.76.1

Paulus 6 resp.

Eum, qui in locum emptoris successit, isdem defensionibus uti posse, quibus venditor eius uti potuisset, sed et longae possessionis praescriptione, si utriusque possessio impleat tempora constitutionibus statuta.

Dig. 18.1.77

Iavolenus 4 ex post. lab.

In lege fundi vendundi lapidicinae in eo fundo ubique essent exceptae erant, et post multum temporis in eo fundo repertae erant lapidicinae. eas quoque venditoris esse tubero respondit: labeo referre quid actum sit: si non appareat, non videri eas lapidicinas esse exceptas: neminem enim nec vendere nec excipere quod non sit, et lapidicinas nullas esse, nisi quae apparent et caedantur: aliter interpretantibus totum fundum lapidicinarum fore, si forte toto eo sub terra esset lapis. hoc probo.

Dig. 18.1.78pr.

Labeo 4 post. a iav. epit.

Fistulas emptori accessuras in lege dictum erat: quaerebatur, an castellum, ex quo fistulis aqua duceretur, accederet. respondi apparere id actum esse, ut id quoque accederet, licet scriptura non continetur.

Dig. 18.1.78.1

Labeo 4 post. a iav. epit.

Fundum ab eo emisti, cuius filii postea tutelam administras, nec vacuam accepisti possessionem. dixi tradere te tibi possessionem hoc modo posse, ut pupillus et familia eius decedat de fundo, tunc demum tu ingrediaris possessionem.

Dig. 18.1.78.2

Labeo 4 post. a iav. epit.

Qui fundum ea lege emerat, ut soluta pecunia traderetur ei possessio, duobus heredibus relictis decessit: si unus omnem pecuniam solverit, partem familiae herciscundae iudicio servabit: nec, si partem solvat, ex empto cum venditore aget, quoniam ita contractum aes alienum dividi non potuit.

Dig. 18.1.78.3

Labeo 4 post. a iav. epit.

Frumenta quae in herbis erant cum vendidisses, dixisti te, si quid vi aut tempestate factum esset, praestaturum: ea frumenta nives corruperunt: si immoderatae fuerunt et contra consuetudinem tempestatis, agi tecum ex empto poterit.

Dig. 18.1.79

Iavolenus 5 ex post. lab.

Fundi partem dimidiam ea lege vendidisti, ut emptor alteram partem, quam retinebas, annis decem certa pecunia in annos singulos conductam habeat. labeo et trebatius negant posse ex vendito agi, ut id quod convenerit fiat. ego contra puto, si modo ideo vilius fundum vendidisti, ut haec tibi conductio praestaretur: nam hoc ipsum pretium fundi videretur, quod eo pacto venditus fuerat: eoque iure utimur.

Dig. 18.1.80pr.

Labeo 5 post. a iav. epit.

Cum manu sata in venditione fundi excipiuntur, non quae in perpetuo sata sunt excipi viderentur, sed quae singulis annis seri solent, ita ut fructus eorum tollatur: nam aliter interpretantibus vites et arbores omnes exceptae videbuntur.

Dig. 18.1.80.1

Labeo 5 post. a iav. epit.

Huius rei emptionem posse fieri dixi: " quae ex meis aedibus in tuas aedes proiecta sunt, ut ea mihi ita habere liceat", deque ea re ex empto agi.

Dig. 18.1.80.2

Labeo 5 post. a iav. epit.

Silva caedua in quinquennium venierat: quaerebatur, cum glans decidisset, utrius esset. scio servium respondisse, primum sequendum esse quod appareret actum esse: quod si in obscuro esset, quaecumque glans ex his arboribus quae caesae non essent cecidisset, venditoris esse, eam autem, quae in arboribus fuisset eo tempore cum haec caederentur, emptoris.

Dig. 18.1.80.3

Labeo 5 post. a iav. epit.

Nemo potest videri eam rem vendidisse, de cuius dominio id agitur, ne ad emptorem transeat, sed hoc aut locatio est aut aliud genus contractus.

Dig. 18.1.81pr.

Scaevola 7 Dig.

Titius cum mutuos acciperet tot aureos sub usuris, dedit pignori sive hypothecae praedia et fideiussorem lucium, cui promisit intra triennium proximum se eum liberaturum: quod si id non fecerit die supra scripta et solverit debitum fideiussor creditori, iussit praedia empta esse, quae creditoribus obligaverat. quaero, cum non sit liberatus lucius fideiussor a titio, an, si solverit creditori, empta haberet supra scripta praedia. respondit, si non ut in causam obligationis, sed ut empta habeat, sub condicione emptio facta est et contractam esse obligationem.

Dig. 18.1.81.1

Scaevola 7 Dig.

Lucius titius promisit de fundo suo centum milia modiorum frumenti annua praestare praediis gaii seii: postea lucius titius vendidit fundum additis verbis his: " quo iure quaque condicione ea praedia lucii titii hodie sunt, ita veneunt itaque habebuntur": quaero, an emptor gaio seio ad praestationem frumenti sit obnoxius. respondit emptorem gaio seio secundum ea quae proponerentur obligatum non esse.

Dig. 18.2.0. De in diem addictione.

Dig. 18.2.1

Paulus 5 ad sab.

In diem addictio ita fit: " ille fundus centum esto tibi emptus, nisi si quis intra kalendas ianuarias proximas meliorem condicionem fecerit, quo res a domino abeat. "

Dig. 18.2.2pr.

Ulpianus 28 ad sab.

Quotiens fundus in diem addicitur, utrum pura emptio est, sed sub condicione resolvitur, an vero condicionalis sit magis emptio, quaestionis est. et mihi videtur verius interesse, quid actum sit: nam si quidem hoc actum est, ut meliore allata condicione discedatur, erit pura emptio, quae sub condicione resolvitur: sin autem hoc actum est, ut perficiatur emptio, nisi melior condicio offeratur, erit emptio condicionalis.

Dig. 18.2.2.1

Ulpianus 28 ad sab.

Ubi igitur secundum quod distinximus pura venditio est, iulianus scribit hunc, cui res in diem addicta est, et usucapere posse et fructus et accessiones lucrari et periculum ad eum pertinere, si res interierit,

Dig. 18.2.3

Paulus 5 ad sab.

Quoniam post interitum rei iam nec adferri possit melior condicio.

Dig. 18.2.4pr.

Ulpianus 28 ad sab.

Ubi autem condicionalis venditio est, negat pomponius usucapere eum posse nec fructus ad eum pertinere.

Dig. 18.2.4.1

Ulpianus 28 ad sab.

Idem iulianus libro quinto decimo quaerit, si res in diem addicta interciderit vel ancilla decesserit, an partus vel fructus eius nomine adiectio admitti possit. et negat admittendam adiectionem, quia alterius rei quam eius quae distracta est non solet adiectio admitti.

Dig. 18.2.4.2

Ulpianus 28 ad sab.

Idem iulianus eodem libro scribit, si ex duobus servis viginti venditis et in diem addictis alter decesserit, deinde unius nomine qui superest emptor extiterit, qui supra viginti promitteret, an discedatur a priore contractu? et ait dissimilem esse hanc speciem partus specie et ideo hic discedi a priore emptione et ad secundam perveniri.

Dig. 18.2.4.3

Ulpianus 28 ad sab.

Sed et Marcellus libro quinto digestorum scribit pure vendito et in diem addicto fundo si melior condicio allata sit, rem pignori esse desinere, si emptor eum fundum pignori dedisset: ex quo colligitur, quod emptor medio tempore dominus est: alioquin nec pignus teneret.

Dig. 18.2.4.4

Ulpianus 28 ad sab.

Idem iulianus libro octagensimo octavo digestorum scripsit eum, qui emit fundum in diem, interdicto quod vi aut clam uti posse: nam hoc interdictum ei competit, cuius interest opus non esse factum. fundo autem, inquit, in diem addicto et commodum et incommodum omne ad emptorem pertinet, antequam venditio transferatur, et ideo, si quid tunc vi aut clam factum est, quamvis melior condicio allata fuerit, ipse utile interdictum habebit: sed eam actionem sicut fructus, inquit, quos percepit venditi iudicio praestaturum.

Dig. 18.2.4.5

Ulpianus 28 ad sab.

Cum igitur tunc recedatur ab emptione (ubi pure contrahitur) vel tunc non impleatur (ubi sub condicione fit) cum melior condicio sit allata: si falsus emptor subiectus sit, eleganter scribit sabinus priori rem esse emptam, quia non videtur melior condicio allata esse non existente vero emptore. sed et si existat alius emptor, meliorem tamen condicionem non adferat, aeque dicendum erit perinde haberi, ac si non existeret.

Dig. 18.2.4.6

Ulpianus 28 ad sab.

Melior autem condicio adferri videtur, si pretio sit additum. sed et si nihil pretio addatur, solutio tamen offeratur facilior pretii vel maturior, melior condicio adferri videtur. praeterea si locus oportunior solvendo pretio dicatur, aeque melior condicio allata videtur: et ita pomponius libro nono ex sabino scribit. idem ait, et si persona idoneor accedat ad emptionem, aeque videri meliorem condicionem allatam. proinde si quis accedat eiusdem pretii emptor, sed qui levioribus emat condicionibus vel qui satisdationem nullam exigat, melior condicio allata videbitur. ergo idem erit probandum et si viliore pretio emere sit paratus, ea tamen remittat, quae venditori gravia erant in priore emptione.

Dig. 18.2.5

Pomponius 9 ad sab.

Quidquid enim ad utilitatem venditoris pertinet, pro meliore condicione haberi debet.

Dig. 18.2.6pr.

Ulpianus 28 ad sab.

Item quod dictum est fructus interea captos emptorem priorem sequi, totiens verum est, quotiens nullus emptor existit, qui meliorem condicionem adferat, vel falsus exsistit: sin vero exstitit emptor posterior fructus refundere priorem debere constat, sed venditori. et ita iulianus libro quadragensimo octavo digestorum scripsit.

Dig. 18.2.6.1

Ulpianus 28 ad sab.

Si quis extiterit, qui meliorem condicionem adferat, deinde prior emptor adversus eum licitatus sit et penes eum emptum remanserit, dubitari poterit, utrum fructus ipse habeat, quasi nulla meliore condicione allata, an vero venditoris sint, licet eadem sit persona, quae meliorem condicionem attulit. quod ratio facere videtur: intererit tamen quid acti sit: et ita pomponius scribit.

Dig. 18.2.7

Paulus 5 ad sab.

Licet autem venditori meliore allata condicione addicere posteriori, nisi prior paratus sit plus adicere.

Dig. 18.2.8

Paulus 33 ad ed.

Necesse autem habebit venditor meliore condicione allata priorem emptorem certiorem facere, ut, si quid alius adicit, ipse quoque adicere possit.

Dig. 18.2.9

Ulpianus 28 ad sab.

Sabinus scribit licere venditori meliorem condicionem oblatam abicere sequique primam quasi meliorem, et ita utimur. quid tamen, si hoc erat nominatim actum, ut liceret resilire emptori meliore condicione allata? dicendum erit dissolutam priorem emptionem, etiamsi venditor sequentem non admittat.

Dig. 18.2.10

Iulianus 13 Dig.

Sed si proponatur a creditore pignus in diem addictum, non potest videri bona fide negotium agi, nisi adiectio recipiatur. quid ergo est, si inops emptor et impediendae tantummodo venditionis causa intervenit? potest creditor sine periculo priori emptori addicere.

Dig. 18.2.11pr.

Ulpianus 28 ad sab.

Quod autem sabinus scribit fundum in diem addici non posse rursus, qui semel fuerat in diem addictus, ratione eiusmodi defendit, quia prioris, inquit, emptoris statim fit, scilicet quasi non videatur melior condicio allata, si non secure secundo emptori fundus addicitur, sed alia licitatio prospicitur. sed iulianus libro quinto decimo digestorum scripsit interesse multum, quid inter contrahentes actum sit, nec impedire quicquam vel hoc agi, ut saepius fundus collocetur, dum vel prima vel secunda vel tertia adiectione res a venditore discedat.

Dig. 18.2.11.1

Ulpianus 28 ad sab.

Item quod sabinus ait, si tribus vendentibus duo posteriori addixerint, unus non admiserit adiectionem, huius partem priori, duorum posteriori emptam, ita demum verum est, si variis pretiis partes suas distraxerunt,

Dig. 18.2.12

Pomponius 9 ad sab.

Etsi dispares partes vendentium fuerint.

Dig. 18.2.13pr.

Ulpianus 28 ad sab.

Quod si uno pretio vendiderint, dicendum est totam priori emptam manere, quemadmodum si quis mihi totum fundum ad diem addixisset, postea vero pretio adiecto dimidium alii addixerit. celsus quoque libro octavo digestorum refert mucium brutum labeonem quod sabinum existimare: ipse quoque celsus idem probat et adicit mirari se a nemine animadversum, quod si prior emptor ita contraxit, ut nisi totum, fundum emptum nollet habere, non habere eum eam partem emptam, quam unus ex sociis posteriori emptori addicere noluit.

Dig. 18.2.13.1

Ulpianus 28 ad sab.

Verum est autem vel unum ex venditoribus posse meliorem adferre condicionem: emere enim cum tota re etiam nostram partem possumus.

Dig. 18.2.14pr.

Paulus 5 ad sab.

Si venditor simulaverit meliorem allatam condicionem, cum minoris vel etiam tantidem alii venderet, utrique emptori in solidum erit obligatus.

Dig. 18.2.14.1

Paulus 5 ad sab.

Sed si emptor alium non idoneum subiecit eique fundus addictus est, non video, inquit, quemadmodum priori sit emptus, cum alia venditio et vera postea subsecuta sit. sed verum est venditorem deceptum ex vendito actionem habere cum priore emptore, quanti sua intersit id non esse factum, per quam actionem et fructus, quos prior emptor perceperit et quo deterior res culpa vel dolo malo eius facta sit, recipiet venditor. et ita labeoni et nervae placet.

Dig. 18.2.14.2

Paulus 5 ad sab.

Sed si neuter subiecit emptorem, maiore autem pretio addictum est praedium ei qui solvendo non est, abitum est a priore emptione, quia ea melior intellegitur quam venditor comprobavit, cui licuit non addicere.

Dig. 18.2.14.3

Paulus 5 ad sab.

Sed et si pupillus postea sine tutoris auctoritate emerit, consentiente venditore abibitur a priore emptione. idem et de servo alieno: aliter atque si servo suo vel filio, quem in potestate habet, vel domino rei per errorem id addixerit, quia non est emptio his casibus. quod si alieno servo, quem putaverit liberum esse, addixerit, contra se habebit et erit hic similis egenti.

Dig. 18.2.14.4

Paulus 5 ad sab.

Emptorem, qui meliorem condicionem attulerit, praeter corpus nihil sequitur quod venierit.

Dig. 18.2.14.5

Paulus 5 ad sab.

Non tamen ideo, si tantundem pretium alius det, hoc ipso, quod fructus eum non sequantur, qui secuturi essent priorem emptorem, melior condicio videtur allata, quia non id agitur inter emptorem et venditorem.

Dig. 18.2.15pr.

Pomponius 9 ad sab.

Si praedio in diem addicto ante diem venditor mortuus sit, sive post diem heres ei exsistat sive omnino non exsistat, priori praedium emptum est, quia melior condicio allata, quae domino placeat, intellegi non potest, cum is qui vendat non exsistat: quod si intra diem adiectionis heres existat, melior condicio ei adferri potest.

Dig. 18.2.15.1

Pomponius 9 ad sab.

Si fundus in diem addictus fuerit pluris, ut quaedam ei accedant, non quae accesserint priori emptori, si non minoris sint hae res, quam quo pluris postea fundus venierit, prior venditio valet, quasi melior condicio allata non sit: si minoris sint. idemque aestimandum est, si dies longior pretii solvendi data fuerit, ut quaeratur, quantum ex usura eius temporis capi potuerit.

Dig. 18.2.16

Ulpianus 32 ad ed.

Imperator severus rescripsit: " sicut fructus in diem addictae domus, cum melior condicio fuerit allata, venditori restitui necesse est, ita rursus quae prior emptor medio tempore necessario probaverit erogata, de reditu retineri vel, si non sufficiat, solvi aequum est". et credo sensisse principem de empti venditi actione.

Dig. 18.2.17

Iulianus 15 Dig.

Cum duo servi duobus separatim denis in diem addicti sint et exstiterit qui pro utroque triginta det, refert, unius pretio decem an singulorum quina adiciat: secundum superiorem adiectionem is servus inemptus erit, cuius pretio adiectio facta fuerit, secundum posteriorem adiectionem uterque ad posteriorem emptorem pertinebit: quod si incertum sit, ad utrius pretium addiderit, a priore emptione non videtur esse discessum.

Dig. 18.2.18

Africanus 3 quaest.

Cum in diem duobus sociis fundus sit addictus, uno ex his pretium adiciente etiam pro ipsius parte a priore venditione discedi rectius existimatur.

Dig. 18.2.19

Iavolenus 2 ex plaut.

Fundo in diem addicto si postea pretium adiectum est et venditor alio fundo applicito eum ipsum fundi posteriori emptori addixit et id sine dolo malo fecit, priori emptori obligatus non erit: nam quamvis non id tantum, quod in diem addictum erat, sed aliud quoque cum eo venierit, tamen, si venditor dolo caret, prioris emptoris causa absoluta est: id enim solum intuendum est, an priori venditori bona fide facta sit adiectio.

Dig. 18.2.20

Papinianus 3 resp.

Prior emptor post meliorem condicionem oblatam ob pecuniam in exordio venditori de pretio solutam contra secundum emptorem citra delegationem iure stipulationis interpositam agere non potest.

Dig. 18.3.0. De lege commissoria.

Dig. 18.3.1

Ulpianus 28 ad sab.

Si fundus commissoria lege venierit, magis est, ut sub condicione resolvi emptio quam sub condicione contrahi videatur.

Dig. 18.3.2

Pomponius 35 ad sab.

Cum venditor fundi in lege ita caverit: " si ad diem pecunia soluta non sit, ut fundus inemptus sit", ita accipitur inemptus esse fundus, si venditor inemptum eum esse velit, quia id venditoris causa caveretur: nam si aliter acciperetur, exusta villa in potestate emptoris futurum, ut non dando pecuniam inemptum faceret fundum, qui eius periculo fuisset.

Dig. 18.3.3

Ulpianus 30 ad ed.

Nam legem commissoriam, quae in venditionibus adicitur, si volet venditor exercebit, non etiam invitus.

Dig. 18.3.4pr.

Ulpianus 32 ad ed.

Si fundus lege commissoria venierit, hoc est ut, nisi intra certum diem pretium sit exsolutum, inemptus fieret, videamus, quemadmodum venditor agat tam de fundo quam de his, quae ex fundo percepta sint, itemque si deterior fundus effectus sit facto emptoris. et quidem finita est emptio: sed iam decisa quaestio est ex vendito actionem competere, ut rescriptis imperatoris antonini et divi severi declaratur.

Dig. 18.3.4.1

Ulpianus 32 ad ed.

Sed quod ait neratius habet rationem, ut interdum fructus emptor lucretur, cum pretium quod numeravit perdidit: igitur sententia neratii tunc habet locum, quae est humana, quando emptor aliquam partem pretii dedit.

Dig. 18.3.4.2

Ulpianus 32 ad ed.

Eleganter papinianus libro tertio responsorum scribit, statim atque commissa lex est statuere venditorem debere, utrum commissoriam velit exercere an potius pretium petere, nec posse, si commissoriam elegit, postea variare.

Dig. 18.3.4.3

Ulpianus 32 ad ed.

In commissoriam etiam hoc solet convenire, ut, si venditor eundem fundum venderet, quanto minoris vendiderit, id a priore emptore exigat: erit itaque adversus eum ex vendito actio.

Dig. 18.3.4.4

Ulpianus 32 ad ed.

Marcellus libro vicensimo dubitat, commissoria utrum tunc locum habet, si interpellatus non solvat, an vero si non optulerit. et magis arbitror offerre eum debere, si vult se legis commissoriae potestate solvere: quod si non habet cui offerat, posse esse securum.

Dig. 18.3.5

Nerva 5 membr.

Lege fundo vendito dicta, ut, si intra certum tempus pretium solutum non sit, res inempta sit, de fructibus, quos interim emptor percepisset, hoc agi intellegendum est, ut emptor interim eos sibi suo quoque iure perciperet: sed si fundus revenisset, aristo existimabat venditori de his iudicium in emptorem dandum esse, quia nihil penes eum residere oporteret ex re, in qua fidem fefellisset.

Dig. 18.3.6pr.

Scaevola 2 resp.

De lege commissoria interrogatus ita respondit, si per emptorem factum sit, quo minus legi pareretur, et ea lege uti venditor velit, fundos inemptos fore et id, quod arrae vel alio nomine datum esset, apud venditorem remansurum.

Dig. 18.3.6.1

Scaevola 2 resp.

Idem respondit, si ex lege inempti sint fundi, nec id, quod accessurum dictum est, emptori deberi.

Dig. 18.3.6.2

Scaevola 2 resp.

Post diem lege commissoria comprehensum venditor partem reliquae pecuniae accepit. respondit, si post statutum diem reliquae pecuniae venditor legem dictam non exercuisset et partem reliqui debiti accepisset, videri recessum a commissoria.

Dig. 18.3.7

Hermogenianus 2 iuris epit.

Post diem commissoriae legi praestitutum si venditor pretium petat, legi commissoriae renuntiatum videtur, nec variare et ad hanc redire potest.

Dig. 18.3.8

Scaevola 7 Dig.

Mulier fundos gaio seio vendidit et acceptis arrae nomine certis pecuniis statuta sunt tempora solutioni reliquae pecuniae: quibus si non paruisset emptor, pactus est, ut arram perderet et inemptae villae essent. die statuto emptor testatus est se pecuniam omnem reliquam paratum fuisse exsolvere (et sacculum cum pecunia signatorum signis obsignavit), defuisse autem venditricem, posteriore autem die nomine fisci testato conventum emptorem, ne ante mulieri pecuniam exsolveret, quam fisco satisfaceret. quaesitum est, an fundi non sint in ea causa, ut a venditrice vindicari debeant ex conventione venditoris. respondit secundum ea quae proponerentur non commisisse in legem venditionis emptorem.

Dig. 18.4.0. De hereditate vel actione vendita.

Dig. 18.4.1

Pomponius 9 ad sab.

Si hereditas venierit eius, qui vivit aut nullus sit, nihil esse acti, quia in rerum natura non sit quod venierit.

Dig. 18.4.2pr.

Ulpianus 49 ad sab.

Venditor hereditatis satisdare de evictione non debet, cum id inter ementem et vendentem agatur, ut neque amplius neque minus iuris emptor habeat quam apud heredem futurum esset: plane de facto suo venditor satisdare cogendus est.

Dig. 18.4.2.1

Ulpianus 49 ad sab.

In hereditate vendita utrum ea quantitas spectatur, quae fuit mortis tempore, an ea, quae fuit cum aditur hereditas, an ea quae fuit cum hereditas venumdatur, videndum erit. et verius est hoc esse servandum quod actum est: plerumque autem hoc agi videtur, ut quod ex hereditate pervenit in id tempus quo venditio fit, id videatur venisse.

Dig. 18.4.2.2

Ulpianus 49 ad sab.

Illud potest quaeri, si etiam impuberi sit substitutus is qui vendidit hereditatem testatoris, an etiam id, quod ex impuberis hereditate ad eum qui vendidit hereditatem pervenit, ex empto actioni locum faciat. et magis est, ne veniat, quia alia hereditas est: licet enim unum testamentum sit, alia tamen atque alia hereditas est. plane si hoc actum sit, dicendum erit etiam impuberis hereditatem in venditionem venire, maxime si iam delata impuberis hereditate venierit hereditas.

Dig. 18.4.2.3

Ulpianus 49 ad sab.

Pervenisse ad venditorem hereditatis quomodo videatur, quaeritur. et ego puto, antequam quidem corpora rerum hereditariarum nactus venditor fuerit, hactenus videri ad eum pervenisse, quatenus mandare potest earum rerum persecutionem actionesque tribuere: enimvero ubi corpora nactus est vel debita exegit, plenius ad eum videri pervenisse. sed et si rerum venditarum ante hereditatem venditam pretia fuerit consecutus, palam est ad eum pretia rerum pervenisse. illud tenendum est cum effectu videri pervenisse, non prima ratione: idcirco quod legatorum nomine quis praestitit, non videtur ad eum pervenisse: sed et si quid aeris alieni est vel cuius alterius oneris hereditarii, pervenisse merito negabitur. sed et rerum ante venditionem donatarum pretia praestari aequitatis ratio exigit.

Dig. 18.4.2.4

Ulpianus 49 ad sab.

Non tantum autem quod ad venditorem hereditatis pervenit, sed et quod ad heredem eius ex hereditate pervenit, emptori restituendum est: et non solum quod iam pervenit, sed et quod quandoque pervenerit, restituendum est.

Dig. 18.4.2.5

Ulpianus 49 ad sab.

Sed et si quid dolo malo eorum factum est, quo minus ad eos perveniat, et hoc emptori praestandum est: fecisse autem dolo malo quo minus perveniat videtur, sive alienavit aliquid, vel etiam accepto quem liberavit vel id egit dolo malo, ne de hereditate adquireretur vel ne possessionem adipisceretur quam posset adipisci. sed et si non dolo malo, sed lata culpa admiserit aliquid, utique tenebitur: deperdita autem et deminuta sine dolo malo venditoris non praestabuntur.

Dig. 18.4.2.6

Ulpianus 49 ad sab.

Illud quaesitum est, an venditor hereditatis ob debitum a filio suo qui in potestate eius esset servove ei, cuius hereditatem vendidisset, praestare debeat emptori. et visum est, quidquid dumtaxat de peculio filii servive aut in suam rem versum inveniatur, praestare eum debere.

Dig. 18.4.2.7

Ulpianus 49 ad sab.

Solet quaeri, an et, si quid lucri occasione hereditatis venditor senserit, emptori restituere id debeat. et est apud iulianum haec quaestio tractata libro sexto digestorum et ait, quod non debitum ^ debitur^ exegerit, retinere heredem et quod non debitum solverit, non reputare: nam hoc servari, ut heres emptori non praestet quod non debitum exegerit, neque ab eo consequatur quod non debitum praestiterit. si autem condemnatus praestiterit, hoc solum heredi sufficit esse eum condemnatum sine dolo malo suo, etiamsi maxime creditor non fuerit is cui condemnatus est heres: quae sententia mihi placet.

Dig. 18.4.2.8

Ulpianus 49 ad sab.

Non solum autem hereditarias actiones, sed etiam eas obligationes quas ipse heres constituit dicendum erit praestari emptori debere: itaque et si fideiussorem acceperit ab hereditario debitore, ipsam actionem quam habet heres praestare emptori debebit: sed et si novaverit vel in iudicium deduxerit actionem, praestare debebit hanc ipsam actionem quam nactus est.

Dig. 18.4.2.9

Ulpianus 49 ad sab.

Sicuti lucrum omne ad emptorem hereditatis respicit, ita damnum quoque debet ad eundem respicere.

Dig. 18.4.2.10

Ulpianus 49 ad sab.

Denique si rem hereditariam heres vendiderit ac per hoc fuerit condemnatus, non habet contra emptorem actionem, quia non ideo condemnatur quod heres esset, sed quod vendiderit. sed si pretium rei distractae emptori hereditatis dedit, videamus, an locus sit ex vendito actioni: et putem esse.

Dig. 18.4.2.11

Ulpianus 49 ad sab.

Sive ipse venditor dederit aliquid pro hereditate sive procurator eius sive alius quis pro eo, dum negotium eius gerit, locus erit ex vendito actioni, dummodo aliquid absit venditori hereditatis: ceterum si nihil absit venditori, consequens erit dicere non competere ei actionem.

Dig. 18.4.2.12

Ulpianus 49 ad sab.

Apud iulianum scriptum est, si venditor hereditatis exceperit servum sine peculio et eius nomine cum eo fuerit actum de peculio et in rem verso, id dumtaxat eum consequi, quod praestiterit eius peculii nomine quod emptorem sequi debeat, aut quod in rem defuncti versum est: his enim casibus aes alienum emptoris solvit, ex ceteris causis suo nomine condemnetur.

Dig. 18.4.2.13

Ulpianus 49 ad sab.

Quid ergo si servum cum peculio exceperit venditor hereditatis conventusque de peculio praestitit? Marcellus libro sexto digestorum non repetere eum scripsit, si modo hoc actum est, ut, quod superfuisset ex peculio, hoc haberet: at si contra actum est, recte repetere eum posse ait: si vero nihil expressim inter eos convenit, sed tantummodo peculii mentio facta est, cessare ex vendito actionem constat.

Dig. 18.4.2.14

Ulpianus 49 ad sab.

Si venditor hereditatis aedes sibi exceperit, quarum nomine damni infecti promissum fuerat, interest quid acti sit: nam si ita excepit, ut damni quoque infecti stipulationis onus sustineret, nihil ab emptore consequeretur: si vero id actum erit, ut emptor hoc aes alienum exsolveret, ad illum onus stipulationis pertinebit: si non apparebit quid acti sit, verisimile erit id actum, ut eius quidem damni nomine, quod ante venditionem datum fuerit, onus ad emptorem, alterius temporis ad heredem pertineat.

Dig. 18.4.2.15

Ulpianus 49 ad sab.

Si titius maevi hereditatem seio vendiderit et a seio heres institutus eam hereditatem attio vendiderit, an ex priore venditione hereditatis cum attio agi possit? et ait iulianus: quod venditor hereditatis petere a quolibet extraneo herede potuisset, id ab hereditatis emptore consequatur: et certe si seio alius heres exstitisset, quidquid venditor maevianae hereditatis nomine praestitisset, id ex vendito actione consequi ab eo potuisset: nam et si duplam hominis a seio stipulatus fuissem et ei heres exstitissem eamque hereditatem titio vendidissem, evicto homine rem a titio servarem.

Dig. 18.4.2.16

Ulpianus 49 ad sab.

Si quid publici vectigalis nomine praestiterit venditor hereditatis, consequens erit dicere agnoscere emptorem et hoc debere: namque hereditaria onera etiam haec sunt. et si forte tributorum nomine aliquid dependat, idem erit dicendum.

Dig. 18.4.2.17

Ulpianus 49 ad sab.

Quod si funere facto heres vendidisset hereditatem, an impensam funeris ab emptore consequatur? et ait labeo emptorem impensam funeris praestare debere, quia et ea, inquit, impensa hereditaria esset: cuius sententiam et iavolenus putat veram et ego arbitror.

Dig. 18.4.2.18

Ulpianus 49 ad sab.

Cum quis debitori suo heres exstitit, confusione creditor esse desinit: sed si vendidit hereditatem, aequissimum videtur emptorem hereditatis vicem heredis optinere et idcirco teneri venditori hereditatis, sive cum moritur testator debuit (quamvis post mortem debere desiit adita a venditore hereditate) sive quid in diem debeatur sive sub condicione et postea condicio exstitisset, ita tamen, si eius debiti adversus heredem actio esse poterat, ne forte etiam ex his causis, ex quibus cum herede actio non est, cum emptore agatur.

Dig. 18.4.2.19

Ulpianus 49 ad sab.

Et si servitutes amisit heres institutus adita hereditate, ex vendito poterit experiri adversus emptorem, ut servitutes ei restituantur.

Dig. 18.4.2.20

Ulpianus 49 ad sab.

Sed et si quid venditor nondum praestiterit, sed quoquo nomine obligatus sit propter hereditatem, nihilo minus agere potest cum emptore.

Dig. 18.4.3

Pomponius 27 ad sab.

Si venditor hereditatis exactam pecuniam sine dolo malo et culpa perdidisset, non placet eum emptori teneri.

Dig. 18.4.4

Ulpianus 32 ad ed.

Si nomen sit distractum, celsus libro nono digestorum scribit locupletem esse debitorem non debere praestare, debitorem autem esse praestare, nisi aliud convenit,

Dig. 18.4.5

Paulus 33 ad ed.

Et quidem sine exceptione quoque, nisi in contrarium actum sit. sed si certae summae debitor dictus sit, in eam summam tenetur venditor: si incertae et nihil debeat, quanti intersit emptoris.

Dig. 18.4.6

Paulus 5 quaest.

Emptori nominis etiam pignoris persecutio praestari debet eius quoque, quod postea venditor accepit: nam beneficium venditoris prodest emptori.

Dig. 18.4.7

Paulus 14 ad plaut.

Cum hereditatem aliquis vendidit, esse debet hereditas, ut sit emptio: nec enim alea emitur, ut in venatione et similibus, sed res: quae si non est, non contrahitur emptio et ideo pretium condicetur.

Dig. 18.4.8

Iavolenus 2 ex plaut.

Quod si nulla hereditas ad venditorem pertinuit, quantum emptori praestare debuit, ita distingui oportebit, ut, si est quidem aliqua hereditas, sed ad venditorem non pertinet, ipsa aestimetur, si nulla est, de qua actum videatur, pretium dumtaxat et si quid in eam rem impensum est emptor a venditore consequatur.

Dig. 18.4.9

Paulus 33 ad ed.

Et si quid emptoris interest.

Dig. 18.4.10

Iavolenus 2 ex plaut.

Quod si in venditione hereditatis id actum est, si quid iuris esset venditoris, venire nec postea quicquam praestitu iri: quamvis ad venditorem hereditas non pertinuerit, nihil tamen eo praestabitur, quia id actum esse manifestum est, ut quemadmodum emolumentum negotiationis, ita periculum ad emptorem pertineret.

Dig. 18.4.11

Ulpianus 32 ad ed.

Nam hoc modo admittitur esse venditionem " si qua sit hereditas, est tibi empta", et quasi spes hereditatis: ipsum enim incertum rei veneat, ut in retibus.

Dig. 18.4.12

Gaius 10 ad ed. provinc.

Hoc autem sic intellegendum est, nisi sciens ad se non pertinere ita vendiderit: nam tunc ex dolo tenebitur.

Dig. 18.4.13

Paulus 14 ad plaut.

Quod si sit hereditas et si non ita convenit, ut quidquid iuris haberet venditor emptor haberet, tunc heredem se esse praestare debet: illo vero adiecto liberatur venditor, si ad eum hereditas non pertineat.

Dig. 18.4.14pr.

Paulus 33 ad ed.

Qui filii familias nomina vendidit, actiones quoque quas cum patre habet praestare debet.

Dig. 18.4.14.1

Paulus 33 ad ed.

Si hereditas venierit, venditor res hereditarias tradere debet: quanta autem hereditas est, nihil interest,

Dig. 18.4.15

Gaius 10 ad ed. provinc.

Nisi de substantia eius adfirmaverit.

Dig. 18.4.16

Paulus 33 ad ed.

Si quasi heres vendideris hereditatem, cum tibi ex senatus consulto trebelliano restituta esset hereditas, quanti emptoris intersit teneberis.

Dig. 18.4.17

Ulpianus 43 ad ed.

Nomina eorum, qui sub condicione vel in diem debent, et emere et vendere solemus: ea enim res est, quae emi et venire potest.

Dig. 18.4.18

Iulianus 15 Dig.

Si ex pluribus heredibus unus, antequam ceteri adirent hereditatem, pecuniam, quae sub poena debebatur a testatore, omnem solverit et hereditatem vendiderit nec a coheredibus suis propter egestatem eorum quicquam servare poterit, cum emptore hereditatis vel ex stipulatu vel ex vendito recte experietur: omnem enim pecuniam hereditario nomine datam eo manifestius est, quod in iudicio familiae herciscundae deducitur, per quod nihil amplius unusquisque a coheredibus suis consequi potest, quam quod tamquam heres impenderit.

Dig. 18.4.19

Iulianus 25 Dig.

Multum interest, sub condicione aliqua obligatio veneat an, cum ipsa obligatio sub condicione sit, pure veneat. priore casu deficiente condicione nullam esse venditionem, posteriore statim venditionem consistere: nam si titius tibi decem sub condicione debeat et ego abs te nomen eius emam, confestim ex empto vendito agere potero, ut acceptum ei facias.

Dig. 18.4.20pr.

Africanus 7 quaest.

Si hereditatem mihi lucii titii vendideris ac post debitori eiusdem heres existas, actione ex empto teneberis.

Dig. 18.4.20.1

Africanus 7 quaest.

Quod simplicius etiam in illa propositione procedit, cum quis ipse creditori suo heres exstitit et hereditatem vendidit.

Dig. 18.4.21

Paulus 16 quaest.

Venditor ex hereditate interposita stipulatione rem hereditariam persecutus alii vendidit: quaeritur, quid ex stipulatione praestare debeat: nam bis utique non committitur stipulatio, ut et rem et pretium debeat. et quidem si, posteaquam rem vendidit heres, intercessit stipulatio, credimus pretium in stipulationem venisse: quod si antecessit stipulatio, deinde rem nactus est, tunc rem debebit. si ergo hominem vendiderit et is decesserit, an pretium eiusdem debeat? non enim deberet stichi promissor, si eum vendidisset, mortuo eo, si nulla mora processisset. sed ubi hereditatem vendidi et postea rem ex ea vendidi, potest videri, ut negotium eius agam quam hereditatis. sed hoc in re singulari non potest credi: nam si eundem hominem tibi vendidero et necdum tradito eo alii quoque vendidero pretiumque accepero, mortuo eo videamus ne nihil tibi debeam ex empto, quoniam moram in tradendo non feci (pretium enim hominis venditi non ex re, sed propter negotiationem percipitur) et sic sit, quasi alii non vendidissem: tibi enim rem debebam, non actionem. at cum hereditas venit, tacite hoc agi videtur, ut, si quid tamquam heres feci, id praestem emptori, quasi illius negotium agam: quemadmodum fundi venditor fructus praestet bonae fidei ratione, quamvis, si neglexisset ut alienum, nihil ei imputare possit, nisi si culpa eius argueretur. quid si rem quam vendidi alio possidente petii et litis aestimationem accepi, utrum pretium illi debeo an rem? utique rem, non enim actiones ei, sed rem praestare debeo: et si vi deiectus vel propter furti actionem duplum abstulero, nihil hoc ad emptorem pertinebit. nam si sine culpa desiit detinere venditor, actiones suas praestare debebit, non rem, et sic aestimationem quoque: nam et aream tradere debet exusto aedificio.

Dig. 18.4.22

Scaevola 2 resp.

Hereditatis venditae pretium pro parte accepit reliquum emptore non solvente: quaesitum est, an corpora hereditaria pignoris nomine teneantur. respondi nihil proponi cur non teneantur.

Dig. 18.4.23pr.

Hermogenianus 2 iuris epit.

Venditor actionis, quam adversus principalem reum habet, omne ius, quod ex ea causa ei competit tam adversus ipsum reum quam adversus intercessores huius debiti, cedere debet, nisi aliud actum est.

Dig. 18.4.23.1

Hermogenianus 2 iuris epit.

Nominis venditor quidquid vel compensatione vel exactione fuerit consecutus, integrum emptori restituere compellatur.

Dig. 18.4.24

Labeo 4 post. a iav. epit.

Hereditatem cornelii vendidisti: deinde attius, cui a te herede cornelius legaverat, priusquam legatum ab emptore perciperet, te fecit heredem: recte puto ex vendito te acturum ut tibi praestetur, quia ideo eo minus hereditas venierit, ut id legatum praestaret emptor, nec quicquam intersit, utrum attio, qui te heredem fecerit, pecunia debita sit, an legatario.

Dig. 18.4.25

Labeo 2 pith.

Si excepto fundo hereditario veniit hereditas, deinde eius fundi nomine venditor aliquid adquisit ^ adquisiit^, debet id praestare emptori hereditatis. paulus: immo semper quaeritur in ea re, quid actum fuerit: si autem id non apparebit, praestare eam rem debebit emptori venditor, nam id ipsum ex ea hereditate ad eum pervenisse videbitur non secus ac si eum fundum in hereditate vendenda non excepisset.

Dig. 18.5.0. De rescindenda venditione et quando licet ab emptione discedere.

Dig. 18.5.1

Pomponius 15 ad sab.

Celsus filius putabat, si vendidisset mihi filius familias rem peculiarem, etiam, si conveniat ut abeatur ab ea venditione, inter patrem et filium et me convenire debere, ne, si cum patre solo pactus sim, filius non possit liberari et quaeratur, utrumne nihil agatur ex ea pactione an vero ego quidem liberer, filius maneat obligatus, sicuti, si pupillus sine tutoris auctoritate paciscatur, ipse quidem liberatur, non etiam qui cum eo pactus est. nam quod aristo dixit posse ita pacisci, ut unus maneat obligatus, non est verum, quia pro una parte contrahentium abiri pacto ab emptione non possit: et ideo si ab una parte renovatus sit contractus, dicitur non valere eiusmodi pactionem. sed dicendum est patre paciscente et liberato adversario filium quoque obiter liberari.

Dig. 18.5.2

Pomponius 24 ad sab.

Si quam rem a te emi, eandem rursus a te pluris minorisve emero, discessimus a priore emptione (potest enim, dum res integra est, conventione nostra infecta fieri emptio) atque ita consistit posterior emptio, quasi nulla praecesserit. sed non poterimus eadem ratione uti post pretium solutum emptione repetita, cum post pretium solutum infectam emptionem facere non possumus.

Dig. 18.5.3

Paulus 33 ad ed.

Emptio et venditio sicut consensu contrahitur, ita contrario consensu resolvitur, antequam fuerit res secuta: ideoque quaesitum est, si emptor fideiussorem acceperit, vel venditor stipulatus fuerit, an nuda voluntate resolvatur obligatio. iulianus scripsit ex empto quidem agi non posse, quia bonae fidei iudicio exceptiones pacti insunt: an autem fideiussori utilis sit exceptio, videndum: et puto liberato reo et fideiussorem liberari. item venditorem ex stipulatu agentem exceptione summoveri oportet, idemque iuris esse, si emptor quoque rem in stipulationem deduxerit.

Dig. 18.5.4

Paulus not. ad iul. 8 Dig.

Si emptio contracta sit togae puta aut lancis, et pactus sit venditor, ne alterutrius emptio maneat, puto resolvi obligationem huius rei nomine dumtaxat.

Dig. 18.5.5pr.

Iulianus 15 Dig.

Cum emptor venditori vel emptori venditor acceptum faciat, voluntas utriusque ostenditur id agentis, ut a negotio discedatur et perinde habeatur, ac si convenisset inter eos, ut neuter ab altero quicquam peteret, sed ut evidentius appareat, acceptilatio in hac causa non sua natura, sed potestate conventionis valet.

Dig. 18.5.5.1

Iulianus 15 Dig.

Emptio nuda conventione dissolvitur, si res secuta non fuerit.

Dig. 18.5.5.2

Iulianus 15 Dig.

Mortuo autem homine perinde habenda est vendito ac si traditus fuisset, utpote cum venditor liberetur et emptori homo pereat: quare nisi iusta conventio intervenerit, actiones ex empto et vendito manebunt.

Dig. 18.5.6

Paulus 2 ad ed.

Si convenit, ut res quae venit, si intra certum tempus displicuisset, redderetur, ex empto actio est, ut sabinus putat, aut proxima empti in factum datur.

Dig. 18.5.7pr.

Paulus 5 quaest.

Si id quod pure emi sub condicione rursus emam, nihil agitur posteriore emptione.

Dig. 18.5.7.1

Paulus 5 quaest.

Si pupilli persona intervenit, qui ante sine tutoris auctoritate, deinde tutore auctore emit, quamvis venditor iam ei obligatus fuit, tamen quia pupillus non tenebatur, renovata venditio efficit, ut invicem obligati sint: quod si ante tutoris auctoritas intervenerit, deinde sine tutore auctore emit, nihil actum est posteriore emptione. idem potest quaeri, si sine tutoris auctoritate pactus fuerit, ut discedatur ab emptione: an proinde sit, atque si ab initio sine tutoris auctoritate emisset, ut scilicet ipse non teneatur, sed agente eo retentiones competant. sed nec illud sine ratione dicetur, quoniam initio recte emptio sit contracta, vix bonae fidei convenire eo pacto stari, quod alteri captiosum sit, et maxime, si iusto errore sit deceptus.

Dig. 18.5.8

Scaevola 2 resp.

Titius seii procurator defuncto seio ab eo scriptus heres, cum ignoraret, fundum vendente servo hereditario, quasi procurator subscripsit: quaesitum est, an cognito eo, priusquam emptio perficeretur, a venditione discedere possit. respondit titium, si non ipse vendidit, non idcirco actionibus civilibus teneri, quod servo vendente subscripserat, sed servi nomine praetoria actione teneri.

Dig. 18.5.9

Scaevola 4 Dig.

Fundus qui lucii titii erat ob vectigale rei publicae veniit: sed cum lucius titius debitor professus esset paratum se esse vectigal exsolvere solidum, cum minore venisset fundus, quam debita summa esset, praeses provinciae rescindit ^ rescidit^ venditionem eumque restitui iussit lucio titio: quaesitum est, an post sententiam praesidis, antequam restitueretur, in bonis lucii titii fundus emptus esset. respondit non prius, quam emptori pretium esset illatum vel, si pretium nondum esset ab emptore solutum, in vectigal satisfactum esset.

Dig. 18.5.10pr.

Scaevola 7 Dig.

Seius a lucio titio emit fundum lege dicta, ut, si ad diem pecuniam non solvisset, res inempta fieret. seius parte pretii praesenti die soluta, defuncto venditore, filiis eius pupillaris aetatis et ipse tutor cum aliis datus, neque contutoribus pretium secundum legem numeravit nec rationibus tutelae rettulit: quaesitum est, an irrita emptio facta esset. respondit secundum ea quae proponerentur inemptam videri.

Dig. 18.5.10.1

Scaevola 7 Dig.

Emptor praediorum cum suspicaretur numeriam et semproniam controversiam moturas, pactus est cum venditore, ut ex pretio aliqua summa apud se maneret, donec emptori fideiussor daretur a venditore: postea venditor eam legem inseruit, ut, si ex die pecunia omnis soluta non esset et venditor ea praedia venisse nollet, invendita essent: interea de adversariis alteram mulierem venditor superavit, cum altera transegit, ita ut sine ulla quaestione emptor praedia possideret: quaesitum est, cum neque fideiussor datus est nec omnis pecunia secundum legem suis diebus soluta sit, an praedia invendita sint. respondit, si convenisset, ut non prius pecunia solveretur quam fideiussor venditi causa daretur, nec id factum esset, cum per emptorem non staret quo minus fieret, non posse posteriorem legis partem exerceri.

Dig. 18.6.0. De periculo et commodo rei venditae.

Dig. 18.6.1pr.

Ulpianus 28 ad sab.

Si vinum venditum acuerit vel quid aliud vitii sustinuerit, emptoris erit damnum, quemadmodum si vinum esset effusum vel vasis contusis vel qua alia ex causa. sed si venditor se periculo subiecit, in id tempus periculum sustinebit, quoad se subiecit: quod si non designavit tempus, eatenus periculum sustinere debet, quoad degustetur vinum, videlicet quasi tunc plenissime veneat, cum fuerit degustatum. aut igitur convenit, quoad periculum vini sustineat, et eatenus sustinebit, aut non convenit et usque ad degustationem sustinebit. sed si nondum sunt degustata, signata tamen ab emptore vasa vel dolia, consequenter dicemus adhuc periculum esse venditoris, nisi si aliud convenit.

Dig. 18.6.1.1

Ulpianus 28 ad sab.

Sed et custodiam ad diem mensurae venditor praestare debet: priusquam enim admetiatur vinum, prope quasi nondum venit. post mensuram factam venditoris desinit esse periculum: et ante mensuram periculo liberatur, si non ad mensuram vendidit, sed forte amphoras vel etiam singula dolia.

Dig. 18.6.1.2

Ulpianus 28 ad sab.

Si dolium signatum sit ab emptore, trebatius ait traditum id videri: labeo contra, quod et verum est: magis enim ne summutetur, signari solere, quam ut traditum videatur.

Dig. 18.6.1.3

Ulpianus 28 ad sab.

Licet autem venditori vel effundere vinum, si diem ad metiendum praestituit nec intra diem admensum est: effundere autem non statim poterit, priusquam testando denuntiet emptori, ut aut tollat vinum aut sciat futurum, ut vinum effunderetur. si tamen, cum posset effundere, non effudit, laudandus est potius: ea propter mercedem quoque doliorum potest exigere, sed ita demum, si interfuit eius inania esse vasa in quibus vinum fuit (veluti si locaturus ea fuisset) vel si necesse habuit alia conducere dolia. commodius est autem conduci vasa nec reddi vinum, nisi quanti conduxerit ab emptore reddatur, aut vendere vinum bona fide: id est quantum sine ipsius incommodo fieri potest operam dare, ut quam minime detrimento sit ea res emptori.

Dig. 18.6.1.4

Ulpianus 28 ad sab.

Si doliare vinum emeris nec de tradendo eo quicquam convenerit, id videri actum, ut ante evacuarentur quam ad vindemiam opera eorum futura sit necessaria: quod si non sint evacuata, faciendum, quod veteres putaverunt, per corbem venditorem mensuram facere et effundere: veteres enim hoc propter mensuram suaserunt, si, quanta mensura esset, non appareat, videlicet ut appareret, quantum emptori perierit.

Dig. 18.6.2pr.

Gaius 2 cott. rer.

Hoc ita verum est, si is est venditor, cui sine nova vindemia non sint ista vasa necessaria: si vero mercator est, qui emere vina et vendere solet, is dies spectandus est, quo ex commodo venditoris tolli possint.

Dig. 18.6.2.1

Gaius 2 cott. rer.

Custodiam autem ante admetiendi diem qualem praestare venditorem oporteat, utrum plenam, ut et diligentiam praestet, an vero dolum dumtaxat, videamus. et puto eam diligentiam venditorem exhibere debere, ut fatale damnum vel vis magna sit excusatum.

Dig. 18.6.3

Paulus 5 ad sab.

Custodiam autem venditor talem praestare debet, quam praestant hi quibus res commodata est, ut diligentiam praestet exactiorem, quam in suis rebus adhiberet.

Dig. 18.6.4pr.

Ulpianus 28 ad sab.

Si quis vina vendiderit et intra diem certum degustanda dixerit, deinde per venditorem steterit, quo minus degustarentur, utrum praeteritum dumtaxat periculum acoris et mucoris venditor praestare debet, an vero etiam die praeterito (ut, si forte corrupta sint posteaquam dies degustandi praeteriit, periculum ad venditorem pertineat), an vero magis emptio sit soluta (quasi sub condicione venierint, hoc est si ante diem illum fuissent degustata)? et intererit, quid actum sit: ego autem arbitror, si hoc in occulto sit, debere dici emptionem manere, periculum autem ad venditorem respicere etiam ultra diem degustando praefinitum, quia per ipsum factum est.

Dig. 18.6.4.1

Ulpianus 28 ad sab.

Si aversione vinum venit, custodia tantum praestanda est. ex hoc apparet, si non ita vinum venit, ut degustaretur, neque acorem neque mucorem venditorem praestare debere, sed omne periculum ad emptorem pertinere: difficile autem est, ut quisquam sic emat, ut ne degustet. quare si dies degustationi adiectus non erit, quandoque degustare emptor poterit et quoad degustaverit, periculum acoris et mucoris ad venditorem pertinebit: dies enim degustationi praestitutus meliorem condicionem emptoris facit.

Dig. 18.6.4.2

Ulpianus 28 ad sab.

Vino autem per aversionem vendito finis custodiae est avehendi tempus. quod ita erit accipiendum, si adiectum tempus est: ceterum si non sit adiectum, videndum, ne infinitam custodiam non debeat venditor. et est verius secundum ea quae supra ostendimus, aut interesse, quid de tempore actum sit, aut denuntiare ei, ut tollat vinum: certe antequam ad vindemiam fuerint dolia necessaria, debet avehi vinum.

Dig. 18.6.5

Paulus 5 ad sab.

Si per emptorem steterit, quo minus ad diem vinum tolleret, postea, nisi quod dolo malo venditoris interceptum esset, non debet ab eo praestari. si verbi gratia amphorae centum ex eo vino, quod in cella esset, venierint, si admensum est, donec admetiatur, omne periculum venditoris est, nisi id per emptorem fiat.

Dig. 18.6.6

Pomponius 9 ad sab.

Si vina emerim exceptis acidis et mucidis et mihi expediat acida quoque accipere, proculus ait, quamvis id emptoris causa exceptum sit, tamen acida et mucida non venisse: nam quae invitus emptor accipere non cogeretur, iniquum esse non permitti venditori vel alii ea vendere.

Dig. 18.6.7pr.

Paulus 5 ad sab.

Id, quod post emptionem fundo accessit per alluvionem vel perit, ad emptoris commodum incommodumque pertinet: nam et si totus ager post emptionem flumine occupatus esset, periculum esset emptoris: sic igitur et commodum eius esse debet.

Dig. 18.6.7.1

Paulus 5 ad sab.

Quod venditur, in modum agri cedere debet, nisi si id actum est, ne cederet. at quod non venit, in modum cedendum, si id ipsum actum est, ut cederet, veluti viae publicae, limites, luci qui fundum tangunt: cum vero neutrum dictum est, cedere non debet, et ideo nominatim caveri solet, ut luci, viae publicae, quae in fundo sint, totae in modum cedant.

Dig. 18.6.8pr.

Paulus 33 ad ed.

Necessario sciendum est, quando perfecta sit emptio: tunc enim sciemus, cuius periculum sit: nam perfecta emptione periculum ad emptorem respiciet. et si id quod venierit appareat quid quale quantum sit, sit et pretium, et pure venit, perfecta est emptio: quod si sub condicione res venierit, si quidem defecerit condicio, nulla est emptio, sicuti nec stipulatio: quod si exstiterit, proculus et octavenus emptoris esse periculum aiunt: idem pomponius libro nono probat. quod si pendente condicione emptor vel venditor decesserit, constat, si exstiterit condicio, heredes quoque obligatos esse quasi iam contracta emptione in praeteritum. quod si pendente condicione res tradita sit, emptor non poterit eam usucapere pro emptore. et quod pretii solutum est repetetur et fructus medii temporis venditoris sunt (sicuti stipulationes et legata condicionalia peremuntur), si pendente condicione res exstincta fuerit: sane si exstet res, licet deterior effecta, potest dici esse damnum emptoris.

Dig. 18.6.8.1

Paulus 33 ad ed.

Si ita venierit: " est ille servus emptus, sive navis ex asia venerit sive non venerit", iulianus putat statim perfectam esse venditionem, quoniam certum sit eam contractam.

Dig. 18.6.8.2

Paulus 33 ad ed.

Cum usum fructum mihi vendis, interest, utrum ius utendi fruendi, quod solum tuum sit, vendas, an vero in ipsum corpus, quod tuum sit, usum fructum mihi vendas: nam priore casu etiamsi statim morieris, nihil mihi heres tuus debebit, heredi autem meo debebitur, si tu vivis: posteriore casu heredi meo nihil debebitur, heres tuus debebit.

Dig. 18.6.9

Gaius 10 ad ed. provinc.

Si post inspectum praedium, antequam emptio contraheretur, arbores vento deiectae sunt, an hae quoque emptori tradi debeant, quaeritur: et responsum est non deberi, quia eas non emerit, cum ante, quam fundum emerit, desierint fundi esse. sed si ignoravit emptor deiectas esse arbores, venditor autem scit nec admonuit, quanti emptoris interfuerit rem aestimandam esse, si modo venit.

Dig. 18.6.10

Ulpianus 8 disp.

Si in venditione condicionali hoc ipsum convenisset, ut res periculo emptoris servaretur, puto pactum valere.

Dig. 18.6.11

Scaevola not. in iul. 7 Dig.

Fundi nomine emptor agere non potest, cum, priusquam mensura fieret, inundatione aquarum aut chasmate aliove quo casu pars fundi interierit.

Dig. 18.6.12

Alfenus 2 Dig.

Si vendita insula combusta esset, cum incendium sine culpa fieri non possit, quid iuris sit? respondit, quia sine patris familias culpa fieri potest neque, si servorum neglegentia factum esset, continuo dominus in culpa erit, quam ob rem si venditor eam diligentiam adhibuisset in insula custodienda, quam debent homines frugi et diligentes praestare, si quid accidisset, nihil ad eum pertinebit.

Dig. 18.6.13

Paulus 3 epit. alf.

Lectos emptos aedilis, cum in via publica positi essent, concidit: si traditi essent emptori aut per eum stetisset quo minus traderentur, emptoris periculum esse placet.

Dig. 18.6.14

Iulianus 3 ad urs. ferocem.

Eumque cum aedili, si id non iure fecisset, habiturum actionem legis aquiliae: aut certe cum venditore ex empto agendum esse, ut is actiones suas, quas cum aedile habuisset, ei praestaret.

Dig. 18.6.15pr.

Paulus 3 epit. alf.

Quod si neque traditi essent neque emptor in mora fuisset quo minus traderentur, venditoris periculum erit.

Dig. 18.6.15.1

Paulus 3 epit. alf.

Materia empta si furto perisset, postquam tradita esset, emptoris esse periculo respondit, si minus, venditoris: videri autem trabes traditas, quas emptor signasset.

Dig. 18.6.16

Gaius 2 cott. rer.

Si vina quae in doliis erunt venierint eaque, antequam ab emptore tollerentur, sua natura corrupta fuerint, si quidem de bonitate eorum adfirmavit venditor, tenebitur emptori: quod si nihil adfirmavit, emptoris erit periculum, quia sive non degustavit sive degustando male probavit, de se queri debet. plane si, cum intellegeret venditor non duraturam bonitatem eorum usque ad in eum diem quo tolli deberent, non admonuit emptorem, tenebitur ei, quanti eius interesset admonitum fuisse.

Dig. 18.6.17

Iavolenus 7 ex cass.

Servi emptor si eum conductum rogavit, donec pretium solveret, nihil per eum servum adquirere poterit, quoniam non videtur traditus is, cuius possessio per locationem retinetur a venditore. periculum eius servi ad emptorem pertinet, quod tamen sine dolo venditoris intervenerit.

Dig. 18.6.18

Pomponius 31 ad q. muc.

Illud sciendum est, cum moram emptor adhibere coepit, iam non culpam, sed dolum malum tantum praestandum a venditore. quod si per venditorem et emptorem mora fuerit, labeo quidem scribit emptori potius nocere quam venditori moram adhibitam, sed videndum est, ne posterior mora damnosa ei sit. quid enim si interpellavero venditorem et non dederit id quod emeram, deinde postea offerente illo ego non acceperim? sane hoc casu nocere mihi deberet. sed si per emptorem mora fuisset, deinde, cum omnia in integro essent, venditor moram adhibuerit, cum posset se exsolvere, aequum est posteriorem moram venditori nocere.

Dig. 18.6.19pr.

Papinianus 3 resp.

Habitationum oneribus morte libertorum finitis emptor domus ob eam causam venditori non tenebitur, si nihil aliud convenit, quam ut habitationes secundum defuncti voluntatem super pretium libertis praestarentur.

Dig. 18.6.19.1

Papinianus 3 resp.

Ante pretium solutum dominii quaestione mota pretium emptor solvere non cogetur, nisi fideiussores idonei a venditore eius evictionis offerantur.

Dig. 18.6.20

Hermogenianus 2 iuris epit.

Venditori si emptor in pretio solvendo moram fecerit, usuras dumtaxat praestabit, non omne omnino, quod venditor mora non facta consequi potuit, veluti si negotiator fuit et pretio soluto ex mercibus plus quam ex usuris quaerere potuit.

Dig. 18.7.0. De servis exportandis: vel si ita mancipium venierit ut manumittatur vel contra.

Dig. 18.7.1

Ulpianus 32 ad ed.

Si fuerit distractus servus, ne aliquo loci moretur, qui vendidit in ea condicione est, ut possit legem remittere, ipse romae retinere. quod et papinianus libro tertio respondit: propter domini enim, inquit, securitatem custoditur lex, ne periculum subeat.

Dig. 18.7.2

Marcianus 2 publ.

Exportandus si venierit ab italia, in provincia morari potest, nisi specialiter prohibitum fuerit.

Dig. 18.7.3

Paulus 50 ad ed.

Si quis hac lege veniit, ut intra certum tempus manumittatur: si non sit manumissus, liber fit, si tamen is qui vendidit in eadem voluntate perseveret: heredis voluntatem non esse exquirendam.

Dig. 18.7.4

Marcellus 24 Dig.

Si minor viginti annis servum tibi in hoc vendiderit et tradiderit, ut eum manumitteres, nullius momenti est traditio, quamquam ea mente tradiderit, ut, cum viginti annos ipse explesset, manumitteres: non enim multum facit, quod distulit libertatis praestationem: lex quippe consilio eius quasi parum firmo restitit.

Dig. 18.7.5

Papinianus 10 quaest.

Cui pacto venditoris pomerio cuiuslibet civitatis interdictum est, urbe etiam interdictum esse videtur. quod quidem alias cum principum mandatis praeciperetur, etiam naturalem habet intellectum, ne scilicet qui careret minoribus, fruatur maioribus.

Dig. 18.7.6pr.

Papinianus 27 quaest.

Si venditor ab emptore caverit, ne serva manumitteretur neve prostituatur, et aliquo facto contra quam fuerat exceptum evincatur aut libera iudicetur, et ex stipulatu poena petatur, doli exceptionem quidam obstaturam putant, sabinus non obstaturam. sed ratio faciet, ut iure non teneat stipulatio, si ne manumitteretur exceptum est: nam incredibile est de actu manumittentis ac non potius de effectu beneficii cogitatum. ceterum si ne prostituatur exceptum est, nulla ratio occurrit, cur poena peti et exigi non debeat, cum et ancillam contumelia adfecerit et venditoris affectionem, forte simul et verecundiam laeserit: etenim alias remota quoque stipulatione placuit ex vendito esse actionem, si quid emptor contra quam lege venditionis cautum est fecisset aut non fecisset.

Dig. 18.7.6.1

Papinianus 27 quaest.

Nobis aliquando placebat non alias ex vendito propter poenam homini irrogatam agi posse, quam si pecuniae ratione venditoris interesset, veluti quod poenam promisisset: ceterum viro bono non convenire credere venditoris interesse, quod animo saevientis satisfactum non fuisset. sed in contrarium me vocat sabini sententia, qui utiliter agi ideo arbitratus est, quoniam hoc minoris homo venisse videatur.

Dig. 18.7.7

Papinianus 10 quaest.

Servus ea lege veniit, ne in italia esset: quod si aliter factum esset, convenit citra stipulationem, ut poenam praestaret emptor. vix est, ut eo nomine vindictae ratione venditor agere possit, acturus utiliter, si non servata lege in poenam quam alii promisit inciderit. huic consequens erit, ut hactenus agere possit, quatenus alii praestare cogitur: quidquid enim excedit, poena, non rei persecutio est. quod si, ne poenae causa exportaretur, convenit, etiam affectionis ratione recte agetur. nec videntur haec inter se contraria esse, cum beneficio adfici hominem intersit hominis: enimvero poenae non irrogatae indignatio solam duritiam continet.

Dig. 18.7.8

Papinianus 27 quaest.

Quaesitum est, si quis proprium servum vendidisset et ut manumitteretur intra certum tempus, praecepisset ac postea mutasset voluntatem et emptor nihilo minus manumisisset, an aliquam eo nomine actionem haberet. dixi ex vendito actionem manumisso servo vel mutata venditoris voluntate evanuisse.

Dig. 18.7.9

Paulus 5 quaest.

Titius servum vendidit ea lege, ut, si romae moratus esset, manus inicere liceret: emptor alii eadem lege vendidit: servus fugit a secundo emptore et romae moratur: quaero, an sit manus iniectio et cui. respondi: in fugitivo non est dubitandum nihil contra legem factum videri, quia nec domino auferre se potest nec qui in fuga est ibi moratur. quod si ex voluntate secundo emptoris contra legem moratus sit, potior habendus est qui auctor fuit legis, et posterior magis admonendi emptoris et liberandi se eandem legem repetierit nec poterit aliquo modo auferre legem sui venditoris cuius condicio exstitit: nam et si poenam promisisset, tenetur, licet ipse quoque stipulatus esset: sed in poena promissa duae actiones sunt, manus autem iniectio in servum competit. quod si prior ita vendidit, ut prostituta libera esset, posterior, ut manus inicere liceret, potior est libertas quam manus iniectio. plane si prior lex manus habeat iniectionem, posterior libertatem, favorabilius dicetur liberam fore, quoniam utraque condicio pro mancipio additur et sicut manus iniectio, ita libertas eximit eam iniuriam.

Dig. 18.7.10

Scaevola 7 Dig.

Cum venderet pamphilam et stichum, venditioni inseruit pactum conventum, uti ne eadem mancipia pamphila et stichus, quos minorato pretio vendidit, alterius servitutem quam seii paterentur post mortemque eius in libertate morarentur: quaesitum est, an haec mancipia, de quibus inter emptorem et venditorem convenit, post mortem emptoris iure ipso liberata sint. respondit secundum constitutionem divi hadriani super hoc prolatam pamphilam et stichum, de quibus quaereretur, si manumissi non sint, liberos non esse. claudius: divus marcus ex lege dicta libertatis in vendendo quamvis non manumissos fore liberos in semenstribus constituit, licet in mortis tempus emptoris distulit venditor libertatem.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER UNDEVICESIMUS

Dig. 19.1.0. De actionibus empti venditi.
Dig. 19.2.0. Locati conducti.
Dig. 19.3.0. De aestimatoria.
Dig. 19.4.0. De rerum permutatione.
Dig. 19.5.0. De praescriptis verbis et in factum actionibus.

Dig. 19.1.0. De actionibus empti venditi.

Dig. 19.1.1pr.

Ulpianus 28 ad sab.

Si res vendita non tradatur, in id quod interest agitur, hoc est quod rem habere interest emptoris: hoc autem interdum pretium egreditur, si pluris interest, quam res valet vel empta est.

Dig. 19.1.1.1

Ulpianus 28 ad sab.

Venditor si, cum sciret deberi, servitutem celavit, non evadet ex empto actionem, si modo eam rem emptor ignoravit: omnia enim quae contra bonam fidem fiunt veniunt in empti actionem. sed scire venditorem et celare sic accipimus, non solum si non admonuit, sed et si negavit servitutem istam deberi, cum esset ab eo quaesitum. sed et si proponas eum ita dixisse: " nulla quidem servitus debetur, verum ne emergat inopinata servitus, non teneor", puto eum ex empto teneri, quia servitus debebatur et scisset. sed si id egit, ne cognosceret emptor aliquam servitutem deberi, opinor eum ex empto teneri. et generaliter dixerim, si improbato more versatus sit in celanda servitute, debere eum teneri, non si securitati suae prospectum voluit. haec ita vera sunt, si emptor ignoravit servitutes, quia non videtur esse celatus qui scit neque certiorari debuit qui non ignoravit.

Dig. 19.1.2pr.

Paulus 5 ad sab.

Si in emptione modus dictus est et non praestatur, ex empto est actio.

Dig. 19.1.2.1

Paulus 5 ad sab.

Vacua possessio emptori tradita non intellegitur, si alius in ea legatorum fideive commissorum servandorum causa in possessione est aut creditores bona possideant. idem dicendum est, si venter in possessione sit: nam et ad hoc pertinet vacui appellatio.

Dig. 19.1.3pr.

Pomponius 9 ad sab.

Ratio possessionis, quae a venditore fieri debeat, talis est, ut, si quis eam possessionem iure avocaverit, tradita possessio non intellegatur.

Dig. 19.1.3.1

Pomponius 9 ad sab.

Si emptor vacuam possessionem tradi stipulatus sit et ex stipulatu agat, fructus non venient in eam actionem, quia et qui fundum dari stipularetur, vacuam quoque possessionem tradi oportere stipulari intellegitur nec tamen fructuum praestatio ea stipulatione continetur, neque rursus plus debet esse in stipulatione. sed ex empto superesse ad fructuum praestationem.

Dig. 19.1.3.2

Pomponius 9 ad sab.

Si iter actum viam aquae ductum per tuum fundum emero, vacuae possessionis traditio nulla est: itaque cavere debes per te non fieri quo minus utar.

Dig. 19.1.3.3

Pomponius 9 ad sab.

Si per venditorem vini mora fuerit, quo minus traderet, condemnari eum oportet, utro tempore pluris vinum fuit, vel quo venit vel quo lis in condemnationem deducitur, item quo loco pluris fuit, vel quo venit vel ubi agatur.

Dig. 19.1.3.4

Pomponius 9 ad sab.

Quod si per emptorem mora fuisset, aestimari oportet pretium quod sit cum agatur, et quo loco minoris sit. mora autem videtur esse, si nulla difficultas venditorem impediat, quo minus traderet, praesertim si omni tempore paratus fuit tradere. item non oportet eius loci pretia spectari, in quo agatur, sed eius, ubi vina tradi oportet: nam quod a brundisio vinum venit, etsi venditio alibi facta sit, brundisi tradi oportet.

Dig. 19.1.4pr.

Paulus 5 ad sab.

Si servum mihi ignoranti, sciens furem vel noxium esse, vendideris, quamvis duplam promiseris, teneris mihi ex empto, quanti mea intererit scisse, quia ex stipulatu eo nomine agere tecum non possum antequam mihi quid abesset.

Dig. 19.1.4.1

Paulus 5 ad sab.

Si modus agri minor inveniatur, pro numero iugerum auctor obligatus est, quia, ubi modus minor invenitur, non potest aestimari bonitas loci qui non exstat. sed non solum si modus agri totius minor est, agi cum venditore potest, sed etiam de partibus eius, ut puta si dictum est vineae iugera tot esse vel oliveti et minus inveniatur: ideoque his casibus pro bonitate loci fiet aestimatio.

Dig. 19.1.5pr.

Paulus 3 ad sab.

Si heres testamento quid vendere damnatus sit et vendiderit, de reliquis, quae per consequentias emptionis propria sunt, vel ex empto vel ex testamento agi cum eo poterit.

Dig. 19.1.5.1

Paulus 3 ad sab.

Sed si falso existimans se damnatum vendere vendiderit, dicendum est agi cum eo ex empto non posse, quoniam doli mali exceptione actor summoveri potest, quemadmodum, si falso existimans se damnatum dare promisisset, agentem doli mali exceptione summoveret. pomponius etiam incerti condicere eum posse ait, ut liberetur.

Dig. 19.1.6pr.

Pomponius 9 ad sab.

Tenetur ex empto venditor, etiamsi ignoraverit minorem fundi modum esse.

Dig. 19.1.6.1

Pomponius 9 ad sab.

Si vendidi tibi insulam certa pecunia et ut aliam insulam meam reficeres, agam ex vendito, ut reficias: si autem hoc solum, ut reficeres eam convenisset, non intelllegitur emptio et venditio facta, ut et neratius scripsit.

Dig. 19.1.6.2

Pomponius 9 ad sab.

Sed si aream tibi vendidi certo pretio et tradidi, ita ut insula aedificata partem dimidiam mihi retradas, verum est et ut aedifices agere me posse ex vendito et ut aedificatam mihi retradas: quamdiu enim aliquid ex re vendita apud te superesset, ex vendito me habere actionem constat.

Dig. 19.1.6.3

Pomponius 9 ad sab.

Si locum sepulchri emeris et propius eum locum, antequam mortuus ibi inferatur, aedificatum a venditore fuerit, poteris ad eum reverti.

Dig. 19.1.6.4

Pomponius 9 ad sab.

Si vas aliquod mihi vendideris et dixeris certam mensuram capere vel certum pondus habere, ex empto tecum agam, si minus praestes. sed si vas mihi vendidieris ita, ut adfirmares integrum, si id integrum non sit, etiam id, quod eo nomine perdiderim, praestabis mihi: si vero non id actum sit, ut integrum praestes, dolum malum dumtaxat praestare te debere. labeo contra putat et illud solum observandum, ut, nisi in contrarium id actum sit, omnimodo integrum praestari debeat: et est verum. quod et in locatis doliis praestandum sabinum respondisse minicius refert.

Dig. 19.1.6.5

Pomponius 9 ad sab.

Si tibi iter vendidero, ita demum auctorem me laudare poteris, si tuus fuerit fundus, cui adquirere servitutem volueris: iniquum est enim me teneri, si propter hoc adquirere servitutem non potueris, quia dominus vicini fundi non fueris.

Dig. 19.1.6.6

Pomponius 9 ad sab.

Sed si fundum tibi vendidero et ei fundo iter accessurum dixero, omnimodo tenebor itineris nomine, quia utriusque rei quasi unus venditor obligatus sum.

Dig. 19.1.6.7

Pomponius 9 ad sab.

Si filius familias rem vendiderit mihi et tradiderit, sic ut pater familias tenebitur.

Dig. 19.1.6.8

Pomponius 9 ad sab.

Si dolo malo aliquid fecit venditor in re vendita, ex empto eo nomine actio emptori competit: nam et dolum malum eo iudicio aestimari oportet, ut id, quod praestaturum se esse pollicitus sit venditor emptori, praestari oporteat.

Dig. 19.1.6.9

Pomponius 9 ad sab.

Si venditor sciens obligatum aut alienum vendidisset et adiectum sit " neve eo nomine quid praestaret", aestimari oportet dolum malum eius, quem semper abesse oportet in iudicio empti, quod bonae fidei sit.

Dig. 19.1.7

Pomponius 10 ad sab.

Fundum mihi cum venderes deducto usu fructu, dixisti eum usum fructum titii esse, cum is apud te remansurus esset. si coeperis eum usum fructum vindicare, reverti adversus te non potero, donec titius vivat nec in ea causa esse coeperit, ut, etiamsi eius usus fructus esset, amissurus eum fuerit: nam tunc, id est si capite deminutus vel mortuus fuerit titius, reverti potero ad te venditorem. idemque iuris est, si dicas eum usum fructum titii esse, cum sit sei.

Dig. 19.1.8pr.

Paulus 5 ad sab.

Si tibi liberum praedium tradidero, cum serviens tradere deberem, etiam condictio incerti competit mihi, ut patiaris eam servitutem, quam debuit, imponi.

Dig. 19.1.8.1

Paulus 5 ad sab.

Quod si servum praedium in traditione fecero, quod liberum tibi tradere debui, tu ex empto habebis actionem remittendae eius servitutis gratia, quam pati non debeas.

Dig. 19.1.9

Pomponius 20 ad sab.

Si is, qui lapides ex fundo emerit, tollere eos nolit, ex vendito agi cum eo potest, ut eos tollat.

Dig. 19.1.10

Ulpianus 46 ad sab.

Non est novum, ut duae obligationes in eiusdem persona de eadem re concurrant: cum enim is qui venditorem obligatum habebat ei qui eundem venditorem obligatum habebat heres exstiterit, constat duas esse actiones in eiusdem persona concurrentes, propriam et hereditariam, et debere heredem institutum, si velit separatim duarum actionum commodo uti, ante aditam hereditatem proprium venditorem convenire, deinde adita hereditate hereditarium: quod si prius adierit hereditatem, unam quidem actionem movere potest, sed ita, ut per eam utriusque contractus sentiat commodum. ex contrario quoque si venditor venditori heres exstiterit, palam est duas evictiones eum praestare debere.

Dig. 19.1.11pr.

Ulpianus 32 ad ed.

Ex empto actione is qui emit utitur.

Dig. 19.1.11.1

Ulpianus 32 ad ed.

Et in primis sciendum est in hoc iudicio id demum deduci, quod praestari convenit: cum enim sit bonae fidei iudicium, nihil magis bonae fidei congruit quam id praestari, quod inter contrahentes actum est. quod si nihil convenit, tunc ea praestabuntur, quae naturaliter insunt huius iudicii potestate.

Dig. 19.1.11.2

Ulpianus 32 ad ed.

Et in primis ipsam rem praestare venditorem oportet, id est tradere: quae res, si quidem dominus fuit venditor, facit et emptorem dominum, si non fuit, tantum evictionis nomine venditorem obligat, si modo pretium est numeratum aut eo nomine satisfactum. emptor autem nummos venditoris facere cogitur.

Dig. 19.1.11.3

Ulpianus 32 ad ed.

Redhibitionem quoque contineri empti iudicio et labeo et sabinus putant et nos probamus.

Dig. 19.1.11.4

Ulpianus 32 ad ed.

Animalium quoque venditor cavere debet ea sana praestari, et qui iumenta vendidit solet ita promittere " esse bibere, ut oportet".

Dig. 19.1.11.5

Ulpianus 32 ad ed.

Si quis virginem se emere putasset, cum mulier venisset, et sciens errare eum venditor passus sit, redhibitionem quidem ex hac causa non esse, verum tamen ex empto competere actionem ad resolvendam emptionem, et pretio restituto mulier reddatur.

Dig. 19.1.11.6

Ulpianus 32 ad ed.

Is qui vina emit arrae nomine certam summam dedit: postea convenerat, ut emptio irrita fieret. iulianus ex empto agi posse ait, ut arra restituatur, utilemque esse actionem ex empto etiam ad distrahendam, inquit, emptionem. ego illud quaero: si anulus datus sit arrae nomine et secuta emptione pretioque numerato et tradita re anulus non reddatur, qua actione agendum est, utrum condicatur, quasi ob causam datus sit et causa finita sit, an vero ex empto agendum sit. et iulianus diceret ex empto agi posse: certe etiam condici poterit, quia iam sine causa apud venditorem est anulus.

Dig. 19.1.11.7

Ulpianus 32 ad ed.

Venditorem, etiamsi ignorans vendiderit, fugitivum non esse praestare emptori oportere neratius ait.

Dig. 19.1.11.8

Ulpianus 32 ad ed.

Idem neratius, etiamsi alienum servum vendideris, furtis noxisque solutum praestare te debere ab omnibus receptum ait et ex empto actionem esse, ut habere licere emptori caveatur, sed et ut tradatur ei possessio.

Dig. 19.1.11.9

Ulpianus 32 ad ed.

Idem ait non tradentem quanti intersit condemnari: satis autem non dantem, quanti plurimum auctorem periclitari oportet.

Dig. 19.1.11.10

Ulpianus 32 ad ed.

Idem neratius ait propter omnia haec satis esse quod plurimum est praestari, id est ut sequentibus actionibus deducto eo quod praestitum est lis aestimetur.

Dig. 19.1.11.11

Ulpianus 32 ad ed.

Idem recte ait, si quid horum non praestetur, cum cetera facta sint, nullo deducto condemnationem faciendam.

Dig. 19.1.11.12

Ulpianus 32 ad ed.

Idem libro secundo responsorum ait emptorem noxali iudicio condemnatum ex empto actione id tantum consequi, quanti minimo defungi potuit: idemque putat et si ex stipulatu aget: et sive defendat noxali iudicio, sive non, quia manifestum fuit noxium servum fuisse, nihilo minus vel ex stipulatu vel ex empto agere posse.

Dig. 19.1.11.13

Ulpianus 32 ad ed.

Idem neratius ait venditorem in re tradenda debere praestare emptori, ut in lite de possessione potior sit: sed iulianus libro quinto decimo digestorum probat nec videri traditum, si superior in possessione emptor futurus non sit: erit igitur ex empto actio, nisi hoc praestetur.

Dig. 19.1.11.14

Ulpianus 32 ad ed.

Cassius ait eum, qui ex duplae stipulatione litis aestimationem consecutus est, aliarum rerum nomine, de quibus in venditionibus caveri solet, nihil consequi posse. iulianus deficiente dupla ex empto agendum putavit.

Dig. 19.1.11.15

Ulpianus 32 ad ed.

Denique libro decimo apud minicium ait, si quis servum ea condicione vendiderit, ut intra triginta dies duplam promitteret, postea ne quid praestaretur, et emptor hoc fieri intra diem non desideraverit, ita demum non teneri venditorem, si ignorans alienum vendidit: tunc enim in hoc fieri, ut per ipsum et per heredem eius emptorem habere liceret: qui autem alienum sciens vendidit, dolo, inquit, non caret et ideo empti iudicio tenebitur.

Dig. 19.1.11.16

Ulpianus 32 ad ed.

Sententiam iuliani verissimam esse arbitror in pignoribus quoque: nam si iure creditoris vendiderit, deinde haec fuerint evicta, non tenetur nec ad pretium restituendum ex empto actione creditor: hoc enim multis constitutionibus effectum est. dolum plane venditor praestabit, denique etiam repromittit de dolo: sed et si non repromiserit, sciens tamen sibi non obligatam vel non esse eius qui sibi obligavit vendiderit, tenebitur ex empto, quia dolum eum praestare debere ostendimus.

Dig. 19.1.11.17

Ulpianus 32 ad ed.

Si quis rem vendiderit et ei accessurum quid dixerit, omnia quidem, quae diximus in re distracta, in hoc quoque sequenda sint, ut tamen evictionis nomine non in duplum teneatur, sed in hoc tantum obligetur, ut emptori habere liceat, et non solum per se, sed per omnes.

Dig. 19.1.11.18

Ulpianus 32 ad ed.

Qui autem habere licere vendidit, videamus quid debeat praestare. et multum interesse arbitror, utrum hoc polliceatur per se venientesque a se personas non fieri, quo minus habere liceat, an vero per omnes. nam si per se, non videtur id praestare, ne alius evincat: proinde si evicta res erit, sive stipulatio interposita est, ex stipulatu non tenebitur, sive non est interposita, ex empto non tenebitur. sed iulianus libro quinto decimo digestorum scribit, etiamsi aperte venditor pronuntiet per se heredemque suum non fieri, quo minus habere liceat, posse defendi ex empto eum in hoc quidem non teneri, quod emptoris interest, verum tamen ut pretium reddat teneri. ibidem ait idem esse dicendum et si aperte in venditione comprehendatur nihil evictionis nomine praestatum iri:

pretium quidem deberi re evicta, utilitatem non deberi: neque enim bonae fidei contractus hac patitur convenitone, ut emptor rem amitteret et pretium venditor retineret. nisi forte, inquit, sic quis omnes istas supra scriptas conventiones recipiet, quemadmodum recipitur, ut venditor nummos accipiat, quamvis merx ad emptorem non pertineat, veluti cum futurum iactum retis a piscatore emimus aut indaginem plagis positis a venatore, vel pantheram ab aucupe: nam etiamsi nihil capit, nihilo minus emptor pretium praestare necesse habebit: sed in supra scriptis conventionibus contra erit dicendum. nisi forte sciens alienum vendit: tunc enim secundum supra a nobis relatam iuliani sententiam dicendum est ex empto eum teneri, quia dolo facit.

Dig. 19.1.12

Celsus 27 Dig.

Si iactum retis emero et iactare retem piscator noluit, incertum eius rei aestimandum est: si quod extraxit piscium reddere mihi noluit, id aestimari debet quod extraxit.

Dig. 19.1.13pr.

Ulpianus 32 ad ed.

Iulianus libro quinto decimo inter eum, qui sciens quid aut ignorans vendidit, differentiam facit in condemnatione ex empto: ait enim, qui pecus morbosum aut tignum vitiosum vendidit, si quidem ignorans fecit, id tantum ex empto actione praestaturum, quanto minoris essem empturus, si id ita esse scissem: si vero sciens reticuit et emptorem decepit, omnia detrimenta, quae ex ea emptione emptor traxerit, praestaturum ei: sive igitur aedes vitio tigni corruerunt, aedium aestimationem, sive pecora contagione morbosi pecoris perierunt, quod interfuit idonea venisse erit praestandum.

Dig. 19.1.13.1

Ulpianus 32 ad ed.

Item qui furem vendidit aut fugitivum, si quidem sciens, praestare debebit, quanti emptoris interfuit non decipi: si vero ignorans vendiderit, circa fugitivum quidem tenetur, quanti minoris empturus esset, si eum esse fugitivum scisset, circa furem non tenetur: differentiae ratio est, quod fugitivum quidem habere non licet et quasi evictionis nomine tenetur venditor, furem autem habere possumus.

Dig. 19.1.13.2

Ulpianus 32 ad ed.

Quod autem diximus " quanti emptoris interfuit non decipi", multa continet, et si alios secum sollicitavit ut fugerent, vel res quasdam abstulit.

Dig. 19.1.13.3

Ulpianus 32 ad ed.

Quid tamen si ignoravit quidem furem esse, adseveravit autem bonae frugi et fidum et caro vendidit? videamus, an ex empto teneatur. et putem teneri. atqui ignoravit: sed non debuit facile quae ignorabat adseverare. inter hunc igitur et qui scit praemonere debuit furem esse, hic non debuit facilis esse ad temerariam indicationem.

Dig. 19.1.13.4

Ulpianus 32 ad ed.

Si venditor dolo fecerit, ut rem pluris venderet, puta de artificio mentitus est aut de peculio, empti eum iudicio teneri, ut praestaret emptori, quanto pluris servum emisset, si ita peculiatus esset vel eo artificio instructus.

Dig. 19.1.13.5

Ulpianus 32 ad ed.

Per contrarium quoque idem iulianus scribit, cum terentius victor decessisset relicto herede fratre suo et res quasdam ex hereditate et instrumenta et mancipia bellicus quidam subtraxisset, quibus subtractis facile, quasi minimo valeret hereditas, ut sibi ea venderetur persuasit: an venditi iudicio teneri possit? et ait iulianus competere actionem ex vendito in tantum, quanto pluris hereditas valeret, si hae res subtractae non fuissent.

Dig. 19.1.13.6

Ulpianus 32 ad ed.

Idem iulianus dolum solere a venditore praestari etiam in huiusmodi specie ostendit: si, cum venditor sciret fundum pluribus municipiis legata debere, in tabula quidem conscripserit uni municipio deberi, verum postea legem consignaverit, si qua tributorum aut vectigalis indictionisve quid nomine aut ad viae collationem praestare oportet, id emptorem dare facere praestareque oportere, ex empto eum teneri, quasi decepisset emptorem: quae sententia vera est.

Dig. 19.1.13.7

Ulpianus 32 ad ed.

Sed cum in facto proponeretur tutores hoc idem fecisse, qui rem pupillarem vendebant, quaestionis esse ait, an tutorum dolum pupillus praestare debeat. et si quidem ipsi tutores vendiderunt, ex empto eos teneri nequaquam dubium est: sed si pupillus auctoribus eis vendidit, in tantum tenetur, in quantum locupletior ex eo factus est, tutoribus in residuum perpetuo condemnandis, quia nec transfertur in pupillum post pubertatem hoc, quod dolo tutorum factum est.

Dig. 19.1.13.8

Ulpianus 32 ad ed.

Offerri pretium ab emptore debet, cum ex empto agitur, et ideo etsi pretii partem offerat, nondum est ex empto actio: venditor enim quasi pignus retinere potest eam rem quam vendidit.

Dig. 19.1.13.9

Ulpianus 32 ad ed.

Unde quaeritur, si pars sit pretii soluta et res tradita postea evicta sit, utrum eius rei consequetur pretium integrum ex empto agens an vero quod numeravit? et puto magis id quod numeravit propter doli exceptionem.

Dig. 19.1.13.10

Ulpianus 32 ad ed.

Si fructibus iam maturis ager distractus sit, etiam fructus emptori cedere, nisi aliud convenit, exploratum est.

Dig. 19.1.13.11

Ulpianus 32 ad ed.

Si in locatis ager fuit, pensiones utique ei cedent qui locaverat: idem et in praediis urbanis, nisi si quid nominatim convenisse proponatur.

Dig. 19.1.13.12

Ulpianus 32 ad ed.

Sed et si quid praeterea rei venditae nocitum est, actio emptori praestanda est, damni forte infecti vel aquae pluviae arcendae vel aquiliae vel interdicti quod vi aut clam.

Dig. 19.1.13.13

Ulpianus 32 ad ed.

Item si quid ex operis servorum vel vecturis iumentorum vel navium quaesitum est, emptori praestabitur, et si quid peculio eorum accessit, non tamen si quid ex re venditoris.

Dig. 19.1.13.14

Ulpianus 32 ad ed.

Si titius fundum, in quo nonaginta iugera erant, vendiderit et in lege emptionis dictum est in fundo centum esse iugera et antequam modus manifestetur, decem iugera alluvione adcreverint, placet mihi neratii sententia existimantis, ut, si quidem sciens vendidit, ex empto actio competat adversus eum, quamvis decem iugera adcreverint, quia dolo fecit nec dolus purgatur: si vero ignorans vendidit, ex empto actionem non competere.

Dig. 19.1.13.15

Ulpianus 32 ad ed.

Si fundum mihi alienum vendideris et hic ex causa lucrativa meus factus sit, nihilo minus ex empto mihi adversus te actio competit.

Dig. 19.1.13.16

Ulpianus 32 ad ed.

In his autem, quae cum re empta praestari solent, non solum dolum, sed et culpam praestandam arbitror: nam et celsus libro octavo digestorum scripsit, cum convenit, ut venditor praeteritam mercedem exigat et emptori praestet, non solum dolum, sed et culpam eum praestare debere.

Dig. 19.1.13.17

Ulpianus 32 ad ed.

Idem celsus libro eodem scribit: fundi, quem cum titio communem habebas, partem tuam vendidisti et antequam traderes, coactus es communi dividundo iudicium accipere. si socio fundus sit adiudicatus, quantum ob eam rem a titio consecutus es, id tantum emptori praestabis. quod si tibi fundus totus adiudicatus est, totum, inquit, eum emptori trades, sed ita, ut ille solvat, quod ob eam rem titio condemnatus es. sed ob eam quidem partem, quam vendidisti, pro evictione cavere debes, ob alteram autem tantum de dolo malo repromittere: aequum est enim eandem esse condicionem emptoris, quae futura esset, si cum ipso actum esset communi dividundo. sed si certis regionibus fundum inter te et titium iudex divisit, sine dubio partem, quae adiudicata est, emptori tradere debes.

Dig. 19.1.13.18

Ulpianus 32 ad ed.

Si quid servo distracto venditor donavit ante traditionem, hoc quoque restitui debet: hereditates quoque per servum adquisitae et legata omnia, nec distinguendum, cuius respectu ista sint relicta. item quod ex operis servus praestitit venditori, emptori restituendum est, nisi ideo dies traditionis ex pacto prorogatus est, ut ad venditorem operae pertinerent.

Dig. 19.1.13.19

Ulpianus 32 ad ed.

Ex vendito actio venditori competit ad ea consequenda, quae ei ab emptore praestari oportet.

Dig. 19.1.13.20

Ulpianus 32 ad ed.

Veniunt autem in hoc iudicium infra scripta. in primis pretium, quanti res venit. item usurae pretii post diem traditionis: nam cum re emptor fruatur, aequissimum est eum usuras pretii pendere.

Dig. 19.1.13.21

Ulpianus 32 ad ed.

Possessionem autem traditam accipere debemus et si precaria sit possessio: hoc enim solum spectare debemus, an habeat facultatem fructus percipiendi.

Dig. 19.1.13.22

Ulpianus 32 ad ed.

Praeterea ex vendito agendo consequetur etiam sumptus, qui facti sunt in re distracta, ut puta si quid in aedificia distracta erogatum est: scribit enim labeo et trebatius esse ex vendito hoc nomine actionem. idem et si in aegri servi curationem impensum est ante traditionem aut si quid in disciplinas, quas verisimile erat etiam emptorem velle impendi. hoc amplius labeo ait et si quid in funus mortui servi impensum sit, ex vendito consequi oportere, si modo sine culpa venditoris mortem obierit.

Dig. 19.1.13.23

Ulpianus 32 ad ed.

Item si convenerit, cum res veniret, ut locuples ab emptore reus detur, ex vendito agi posse, ut id fiat.

Dig. 19.1.13.24

Ulpianus 32 ad ed.

Si inter emptorem praediorum et venditorem convenisset, ut, si ea praedia emptor heresve eius pluris vendidisset, eius partem dimidiam venditori praestaret et heres emptoris pluris ea praedia vendidisset, venditorem ex vendito agendo partem eius, quo pluris vendidisset, consecuturum.

Dig. 19.1.13.25

Ulpianus 32 ad ed.

Si procurator vendiderit et caverit emptori, quaeritur, an domino vel adversus dominum actio dari debeat. et papinianus libro tertio responsorum putat cum domino ex empto agi posse utili actione ad exemplum institoriae actionis, si modo rem vendendam mandavit: ergo et per contrarium dicendum est utilem ex empto actionem domino competere.

Dig. 19.1.13.26

Ulpianus 32 ad ed.

Ibidem papinianus respondisse se refert, si convenerit, ut ad diem pretio non soluto venditori duplum praestaretur, in fraudem constitutionum videri adiectum, quod usuram legitimam excedit: diversamque causam commissoriae esse ait, cum ea specie, inquit, non faenus illicitum contrahatur, sed lex contractui non improbata dicatur.

Dig. 19.1.13.27

Ulpianus 32 ad ed.

Si quis colludente procuratore meo ab eo emerit, an possit agere ex empto? et puto hactenus, ut aut stetur emptioni aut discedatur.

Dig. 19.1.13.28

Ulpianus 32 ad ed.

Sed et si quis minorem viginti quinque annis circumvenerit, et huic hactenus dabimus actionem ex empto, ut diximus in superiore casu.

Dig. 19.1.13.29

Ulpianus 32 ad ed.

Si quis a pupillo sine tutoris auctoritate emerit, ex uno latere constat contractus: nam qui emit, obligatus est pupillo, pupillum sibi non obligat.

Dig. 19.1.13.30

Ulpianus 32 ad ed.

Si venditor habitationem exceperit, ut inquilino liceat habitare, vel colono ut perfrui liceat ad certum tempus, magis esse servius putabat ex vendito esse actionem: denique tubero ait, si iste colonus damnum dederit, emptorem ex empto agentem cogere posse venditorem, ut ex locato cum colono experiatur, ut quidquid fuerit consecutus, emptori reddat.

Dig. 19.1.13.31

Ulpianus 32 ad ed.

Aedibus distractis vel legatis ea esse aedium solemus dicere, quae quasi pars aedium vel propter aedes habentur, ut puta putealia.

Dig. 19.1.14

Pomponius 31 ad q. muc.

(id est quo puteum operitur),

Dig. 19.1.15

Ulpianus 32 ad ed.

Lines et labra, salientes. fistulae quoque, quae salientibus iunguntur, quamvis longe excurrant extra aedificium, aedium sunt: item canales: pisces autem qui sunt in piscina non sunt aedium nec fundi,

Dig. 19.1.16

Pomponius 31 ad q. muc.

Non magis quam pulli aut cetera animalia, quae in fundo sunt.

Dig. 19.1.17pr.

Ulpianus 32 ad ed.

Fundi nihil est, nisi quod terra se tenet: aedium autem multa esse, quae aedibus adfixa non sunt, ignorari non oportet, ut puta seras claves claustra: multa etiam defossa esse neque tamen fundi aut villae haberi, ut puta vasa vinaria torcularia, quoniam haec instrumenti magis sunt, etiamsi aedificio cohaerent.

Dig. 19.1.17.1

Ulpianus 32 ad ed.

Sed et vinum et fructus perceptos villae non esse constat.

Dig. 19.1.17.2

Ulpianus 32 ad ed.

Fundo vendito vel legato sterculinum et stramenta emptoris et legatarii sunt, ligna autem venditoris vel heredis, quia non sunt fundi, tametsi ad eam rem comparata sunt. in sterculino autem distinctio trebatii probanda est, ut, si quidem stercorandi agri causa comparatum sit, emptorem sequatur. si vendendi, venditorem, nisi si aliud actum est: nec interest, in stabulo iaceat an acervus sit.

Dig. 19.1.17.3

Ulpianus 32 ad ed.

Quae tabulae pictae pro tectorio includuntur itemque crustae marmoreae aedium sunt.

Dig. 19.1.17.4

Ulpianus 32 ad ed.

Reticuli circa columnas, plutei circa parietes, item cilicia vela aedium non sunt.

Dig. 19.1.17.5

Ulpianus 32 ad ed.

Item quod insulae causa paratum est, si nondum perfectum est, quamvis positum in aedificio sit, non tamen videtur aedium esse.

Dig. 19.1.17.6

Ulpianus 32 ad ed.

Si ruta et caesa excipiantur in venditione, ea placuit esse ruta, quae eruta sunt, ut harena creta et similia: caesa ea esse, ut arbores caesas et carbones et his similia. gallus autem aquilius, cuius mela refert opinionem, recte ait frustra in lege venditionis de rutis et caesis contineri, quia, si non specialiter venierunt, ad exhibendum de his agi potest neque enim magis de materia caesa aut de caementis aut de harena cavendum est venditori quam de ceteris quae sunt pretiosiora.

Dig. 19.1.17.7

Ulpianus 32 ad ed.

Labeo generaliter scribit ea, quae perpetui usus causa in aedificiis sunt, aedificii esse, quae vero ad praesens, non esse aedificii, ut puta fistulae temporis quidem causa positae non sunt aedium, verum tamen si perpetuo fuerint positae, aedium sunt.

Dig. 19.1.17.8

Ulpianus 32 ad ed.

Castella plumbea, putea, opercula puteorum, epitonia fistulis adplumbata (aut quae terra continentur, quamvis non sint adfixa) aedium esse constat.

Dig. 19.1.17.9

Ulpianus 32 ad ed.

Item constat sigilla, columnas quoque et personas, ex quorum rostris aqua salire solet, villae esse.

Dig. 19.1.17.10

Ulpianus 32 ad ed.

Ea, quae ex aedificio detracta sunt ut reponantur, aedificii sunt: at quae parata sunt ut imponantur, non sunt aedificii.

Dig. 19.1.17.11

Ulpianus 32 ad ed.

Pali, qui vineae causa parati sunt, antequam collocentur, fundi non sunt, sed qui exempti sunt hac mente ut collocentur, fundi sunt.

Dig. 19.1.18pr.

Iavolenus 7 ex cass.

Granaria, quae ex tabulis fieri solent, ita aedium sunt, si stipites eorum in terra defossi sunt: quod si supra terram sunt, rutis et caesis cedunt.

Dig. 19.1.18.1

Iavolenus 7 ex cass.

Tegulae, quae nondum aedificiis impositae sunt, quamvis tegendi gratia allatae sunt, in rutis et caesis habentur: aliud iuris est in his, quae detractae sunt ut reponerentur: aedibus enim accedunt.

Dig. 19.1.19

Gaius ad ed. pu. de publicanis.

Veteres in emptione venditioneque appellationibus promiscue utebantur.

Dig. 19.1.20

Gaius 21 ad ed. provinc.

Idem est et in locatione et conductione.

Dig. 19.1.21pr.

Paulus 33 ad ed.

Si sterilis ancilla sit, cuius partus venit, vel maior annis quinquaginta, cum id emptor ignoraverit, ex empto tenetur venditor.

Dig. 19.1.21.1

Paulus 33 ad ed.

Si praedii venditor non dicat de tributo sciens, tenetur ex empto: quod si ignorans non praedixerit, quod forte hereditarium praedium erat, non tenetur.

Dig. 19.1.21.2

Paulus 33 ad ed.

Quamvis supra diximus, cum in corpore consentiamus, de qualitate autem dissentiamus, emptionem esse, tamen venditor teneri debet, quanti interest non esse deceptum, etsi venditor quoque nesciet: veluti si mensas quasi citreas emat, quae non sunt.

Dig. 19.1.21.3

Paulus 33 ad ed.

Cum per venditorem steterit, quo minus rem tradat, omnis utilitas emptoris in aestimationem venit, quae modo circa ipsam rem consistit: neque enim si potuit ex vino puta negotiari et lucrum facere, id aestimandum est, non magis quam si triticum emerit et ob eam rem, quod non sit traditum, familia eius fame laboraverit: nam pretium tritici, non servorum fame necatorum consequitur. nec maior fit obligatio, quod tardius agitur, quamvis crescat, si vinum hodie pluris sit, merito, quia sive datum esset, haberem emptor, sive non, quoniam saltem hodie dandum est quod iam olim dari oportuit.

Dig. 19.1.21.4

Paulus 33 ad ed.

Si tibi fundum vendidero, ut eum conductum certa summa haberem, ex vendito eo nomine mihi actio est, quasi in partem pretii ea res sit.

Dig. 19.1.21.5

Paulus 33 ad ed.

Sed et si ita fundum tibi vendidero, ut nulli alii eum quam mihi venderes, actio eo nomine ex vendito est, si alii vendideris.

Dig. 19.1.21.6

Paulus 33 ad ed.

Qui domum vendebat, excepit sibi habitationem, donec viveret, aut in singulos annos decem: emptor primo anno maluit decem praestare, secundo anno habitationem praestare. trebatius ait mutandae voluntatis potestatem eum habere singulisque annis alterutrum praestare posse et quamdiu paratus sit alterutrum praestare, petitionem non esse.

Dig. 19.1.22

Iulianus 7 Dig.

Si in qualitate fundi venditor mentitus sit, non in modo eius, tamen tenetur emptori: pone enim dixisse eum quinquaginta iugera esse vineae et quinquaginta prati et in prato plus inveniri, esse tamen omnia centum iugera.

Dig. 19.1.23

Iulianus 13 Dig.

Si quis servum, quem cum peculio vendiderat, manumiserit, non solum peculii nomine, quod servus habuit tempore quo manumittebatur, sed et eorum, quae postea adquirit, tenetur et praeterea cavere debet, quidquid ex hereditate liberti ad eum pervenerit, restitutu iri. Marcellus notat: illa praestare venditor ex empto debet, quae haberet emptor, si homo manumissus non esset: non continebuntur igitur, quae, si manumissus non fuit, adquisiturus non esset.

Dig. 19.1.24pr.

Iulianus 15 Dig.

Si servus, in quo usus fructus tuus erat, fundum emerit et antequam pecunia numeraretur, capite minutus fueris, quamvis pretium solveris, actionem ex empto non habebis propter talem capitis deminutionem, sed indebiti actionem adversus venditorem habebis. ante capitis autem minutionem nihil interest, tu solvas an servus ex eo peculio quod ad te pertinet: nam utroque casu actionem ex empto habebis.

Dig. 19.1.24.1

Iulianus 15 Dig.

Servum tuum imprudens a fure bona fide emi: is ex peculio quod ad te pertinebat hominem paravit, qui mihi traditus est. posse te eum hominem mihi condicere sabinus dixit, sed si quid mihi abesset ex negotio quod is gessisset, invicem me tecum acturum de peculio. cassius veram opinionem sabini rettulit, in qua ego quoque sum.

Dig. 19.1.24.2

Iulianus 15 Dig.

Servo vendente hominem fideiussor venditionis omnia praestare debet, in quae obligaretur, si pro libero fideiussisset: nam et in dominum actio sic datur, ut emptor eadem consequatur, quae libero vendente consequi debuisset, sed ultra peculii taxationem dominus non condemnatur.

Dig. 19.1.25

Iulianus 54 Dig.

Qui pendentem vindemiam emit, si uvam legere prohibeatur a venditore, adversus eum petentem pretium exceptione uti poterit " si ea pecunia, qua de agitur, non pro ea re petitur, quae venit neque tradita est. " ceterum post traditionem sive lectam uvam calcare sive mustum evehere prohibeatur, ad exhibendum vel iniuriarum agere poterit, quemadmodum si aliam quamlibet rem suam tollere prohibeatur.

Dig. 19.1.26

Alfenus 2 Dig.

Si quis, cum fundum venderet, dolia centum, quae in fundo esse adfirmabat, accessura dixisset, quamvis ibi nullum dolium fuisset, tamen dolia emptori debebit.

Dig. 19.1.27

Paulus 3 epit. alf.

Quidquid venditor accessurum dixerit, id integrum ac sanum tradi oportet: veluti si fundo dolia accessura dixisset, non quassa, sed integra dare debet.

Dig. 19.1.28

Iulianus 3 ad urs. ferocem.

Praedia mihi vendidisti et convenit, ut aliquid facerem: quod si non fecissem, poenam promisi. respondit: venditor antequam poenam ex stipulatu petat, ex vendito agere potest: si consecutus fuerit, quantum poenae nomine stipulatus esset, agentem ex stipulatu doli mali exceptio summovebit: si ex stipulatu poenam consecutus fueris, ipso iure ex vendito agere non poteris nisi in id, quod pluris eius interfuerit id fieri.

Dig. 19.1.29

Iulianus 4 ex minic.

Cui res sub condicione legata erat, is eam imprudens ab herede emit: actione ex empto poterit consequi emptor pretium, quia non ex causa legati rem habet.

Dig. 19.1.30pr.

Africanus 8 quaest.

Servus, quem de me cum peculio emisti, priusquam tibi traderetur, furtum mihi fecit. quamvis ea res quam subripuit interierit, nihilo minus retentionem eo nomine ex peculio me habiturum ait, id est ipso iure ob id factum minutum esse peculium, eo scilicet, quod debitor meus ex causa condictionis sit factus. nam licet, si iam traditus furtum mihi fecisset, aut omnino condictionem eo nomine de peculio non haberem aut eatenus haberem, quatenus ex re furtiva auctum peculium fuisset, tamen in proposito et retentionem me habiturum et, si omne peculium penes te sit, vel quasi plus debito solverim posse me condicere. secundum quae dicendum: si nummos, quos servus iste mihi subripuerat, tu ignorans furtivos esse quasi peculiares ademeris et consumpseris, condictio eo nomine mihi adversus te competet, quasi res mea ad te sine causa pervenerit.

Dig. 19.1.30.1

Africanus 8 quaest.

Si sciens alienam rem ignoranti mihi vendideris, etiam priusquam evincatur utiliter me ex empto acturum putavit in id, quanti mea intersit meam esse factam: quamvis enim alioquin verum sit venditorem hactenus teneri, ut rem emptori habere liceat, non etiam ut eius faciat, quia tamen dolum malum abesse praestare debeat, teneri eum, qui sciens alienam, non suam ignoranti vendidit: id est maxime, si manumissuro vel pignori daturo vendiderit.

Dig. 19.1.31pr.

Nerva 3 membr.

Si ea res, quam ex empto praestare debebam, vi mihi adempta fuerit: quamvis eam custodire debuerim, tamen propius est, ut nihil amplius quam actiones persequendae eius praestari a me emptori oporteat, quia custodia adversus vim parum proficit. actiones autem eas non solum arbitrio, sed etiam periculo tuo tibi praestare debebo, ut omne lucrum ac dispendium te sequatur.

Dig. 19.1.31.1

Nerva 3 membr.

Et non solum quod ipse per eum adquisii praestare debeo, sed et id, quod emptor iam tunc sibi tradito servo adquisiturus fuisset.

Dig. 19.1.31.2

Nerva 3 membr.

Uterque nostrum eandem rem emit a non domino, cum emptio venditioque sine dolo malo fieret, traditaque est: sive ab eodem emimus sive ab alio atque alio, is ex nobis tuendus est, qui prior ius eius adprehendit, hoc est, cui primum tradita est. si alter ex nobis a domino emisset, is omnimodo tuendus est.

Dig. 19.1.32

Ulpianus 11 ad ed.

Si quis a me oleum quod emisset adhibitis iniquis ponderibus accepisset, ut in modo me falleret, vel emptor circumscriptus sit a venditore ponderibus minoribus, pomponius ait posse dici venditorem sibi dare oportere quod plus est petere: quod habet rationem: ergo et emptor ex empto habebit actionem, qua contentus esse possit.

Dig. 19.1.33

Ulpianus 23 ad ed.

Et si uno pretio plures res emptae sint, de singulis ex empto et vendito agi potest.

Dig. 19.1.34

Ulpianus 18 ad ed.

Si fundo vendito in qualitate iugerum captio est, ex empto erit actio.

Dig. 19.1.35

Ulpianus 70 ad ed.

Si quis fundum emerit, quasi per eum fundum eundi agendi ius non esset, et interdicto de itinere actuque victus sit, ex empto habebit actionem: licet enim stipulatio de evictione non committatur, quia non est de iure servitutis in rem actione pronuntiatum, tamen dicendum est ex empto actionem competere.

Dig. 19.1.36

Paulus 7 ad plaut.

Venditor domus antequam eam tradat, damni infecti stipulationem interponere debet, quia, antequam vacuam possessionem tradat, custodiam et diligentiam praestare debet et pars est custodiae diligentiaeque hanc interponere stipulationem: et ideo si id neglexerit, tenebitur emptori.

Dig. 19.1.37

Paulus 14 ad plaut.

Sicut aequum est bonae fidei emptori alterius dolum non nocere, ita non est aequum eidem personae venditoris sui dolum prodesse.

Dig. 19.1.38pr.

Celsus 8 Dig.

Si venditor hominis dixit peculium eum habere decem nec quemquam ademptурum, et si plus habet, totum praestet, nisi hoc actum est, ut dumtaxat decem praestaret, si minus est, praestet esse decem et talem servum esse, ut tantum peculii habeat.

Dig. 19.1.38.1

Celsus 8 Dig.

Si per emptorem steterit, quo minus ei mancipium traderetur, pro cibariis per arbitrium indemnitatem posse servari sextus aelius, drusus dixerunt, quorum et mihi iustissima videtur esse sententia.

Dig. 19.1.38.2

Celsus 8 Dig.

Firmus a proculo quaesiit, si de plumbeo castello fistulae sub terram missae aquam ducerent in aenum lateribus circumstructum, an hae aedium essent, an ut ruta caesa vincta fixaque quae aedium non essent. ille rescripsit referre, quid acti esset. quid ergo si nihil de ea re neque emptor neque venditor cogitaverunt, ut plerumque in eiusmodi rebus evenisse solet, nonne propius est, ut inserta et inclusa aedificio partem eius esse existimemus?

Dig. 19.1.39

Modestinus 5 resp.

Quaero, si quis ita fundum vendiderit, ut id venum datum esse videatur, quod intra terminos ipse possedit, sciens tamen aliquam partem certam se non possidere non certioraverit emptorem, an ex empto iudicio teneatur, cum haec generalis adiectio ad ea, quae specialiter novit qui vendidit nec excepit, pertinere non debeat, ne alioquin emptor capiatur, qui fortasse, si hoc cognovisset, vel empturus non esset vel minoris empturus esset, si certioratus de loco certo fuisset: cum hoc et apud veteres sit relatum in eius persona, qui sic exceperat: " servitutes si quae debentur, debebuntur": etenim iuris auctores responderunt, si certus venditor quibusdam personis certas servitutes debere non admonuisset emptorem, ex empto eum teneri debere, quando haec generalis exceptio non ad ea pertinere debeat, quae venditor novit quaeque specialiter excipere et potuit et debuit, sed ad ea, quae ignoravit et de quibus emptorem certiorare nequivit. herennius modestinus respondit, si quid circumveniendi emptoris causa venditor in specie de qua quaeritur fecit, ex empto actione conveniri posse.

Dig. 19.1.40

Pomponius 31 ad q. muc.

Quintus mucius scribit: dominus fundi de praedio arbores stantes vendiderat et pro his rebus pecuniam accepit et tradere nolebat: emptor quaerebat, quid se facere oporteret, et verebatur, ne hae arbores eius non viderentur factae. pomponius: arborum, quae in fundo continentur, non est separatum corpus a fundo et ideo ut dominus suas specialiter arbores vindicare emptor non poterit: sed ex empto habet actionem.

Dig. 19.1.41

Papinianus 3 resp.

In venditione super annua pensitatione pro aquae ductu infra domum romae constitutum nihil commemoratum est. deceptus ob eam rem ex empto actionem habebit: itaque, si conveniatur ob pretium ex vendito, ratio improvisi oneris habetur.

Dig. 19.1.42

Paulus 2 quaest.

Si duorum fundorum venditor separatim de modo cuiusque pronuntiaverit et ita utrumque uno pretio tradiderit, et alteri aliquid desit, quamvis in altero exsuperet, forte si dixit unum centum iugera, alterum ducenta habere, non proderit ei, quod in altero ducenta decem inveniuntur, si in altero decem desint. et de his ita apud labeonem relatum est. sed an exceptio doli mali venditori profutura sit, potest dubitari, utique si exiguus modus silvae desit et plus in vineis habeat, quam repromissum est. an non facit dolo, qui iure perpetuo utitur? nec enim hic quod amplius in modo invenitur, quam alioquin dictum est, ad compendium venditoris, sed ad emptoris pertinet: et tunc tenetur venditor, cum minor modus invenitur. videamus tamen, ne nulla querella sit emptoris in eodem fundo, si plus inveniat in vinea quam in prato, cum universus modus constat. similis quaestio esse potest ei, quae in duobus fundis agitata est, et si quis duobus statuliberos uno pretio vendat et dicat unum decem dare iussum, qui quindecim dare debebat: nam et hic tenebitur ex empto actione, quamvis emptor a duobus viginti accepturus sit. sed rectius est in omnibus supra scriptis casibus lucrum cum damno compensari et si quid deest emptori sive pro modo sive pro qualitate loci, hoc ei resarciri.

Dig. 19.1.43

Paulus 5 quaest.

Titius cum decederet, seiae stichum pamphilum arescusam per fideicommissum reliquit eiusque fidei commisit, ut omnes ad libertatem post annum perduceret. cum legataria fideicommissum ad se pertinere noluisset nec tamen heredem a sua petitione liberasset, heres eadem mancipia sempronio vendidit nulla commemoratione fideicommissae libertatis facta: emptor cum pluribus annis mancipia supra scripta sibi servissent, arescusam manumisit, et cum ceteri quoque servi cognita voluntate defuncti fideicommissam libertatem petissent et heredem ad praetorem perduxissent, iussu praetoris ab herede sunt manumissi. arescusa quoque nolle se emptorem patronum habere responderat. cum emptor pretium a venditore empti iudicio arescusae quoque nomine repeteret, lectum est responsum domitii ulpiani, quo continebatur arescusam pertinere ad rescriptum sacrarum constitutionum, si nollet emptorem patronum habere: emptorem tamen nihil posse post manumissionem a venditore consequi. ego cum meminissem et iulianum in ea sententia esse, ut existimaret post manumissionem quoque empti actionem durare, quaero, quae sententia vera est. illud etiam in eadem cognitione nomine emptoris desiderabatur, ut sumptus, quos in unum ex his quem erudierat fecerat, ei restituerentur. idem quaero, arescusa, quae recusavit emptorem patronum habere, cuius sit liberta constituta? an possit vel legatariam quae non liberavit vel heredem patronum habere? nam ceteri duo ab herede manumissi sunt. respondi: semper probavi iuliani sententiam putantis manumissione non amittitur eo modo. de sumptibus vero, quos in erudiendum hominem emptor fecit, videndum est: nam empti iudicium ad eam quoque speciem sufficere existimo: non enim pretium continet tantum, sed omne quod interest emptoris servum non evinci. plane si in tantum pretium excedisse proponas, ut non sit cogitatum a venditore de tanta summa (veluti si ponas agitatorem postea factum vel pantomimum evictum esse eum, qui minimo veniit pretio), iniquum videtur in magnam quantitatem obligari venditorem,

Dig. 19.1.44

Africanus 8 quaest.

(cum et forte idem mediocrium facultatium sit: et non ultra duplum periculum subire eum oportet)

Dig. 19.1.45pr.

Paulus 5 quaest.

Idque et iulianum agitasse africanus refert: quod iustum est: sicut minuitur praestatio, si servus deterior apud emptorem effectus sit, cum evincitur.

Dig. 19.1.45.1

Paulus 5 quaest.

Illud expeditius videbatur, si mihi alienam aream vendideris et in eam ego aedificavero atque ita eam dominus evincit: nam quia possim petentem dominum, nisi impensam aedificiorum solvat, doli mali exceptione summovere, magis est, ut ea res ad periculum venditoris non pertineat. quod et in servo dicendum est, si in servitutem, non in libertatem evinceretur, ut dominus mercedes et impensas praestare debeat. quod si emptor non possideat aedificium vel servum, ex empto habebit actionem. in omnibus tamen his casibus, si sciens quis alienum vendiderit, omnimodo teneri debet.

Dig. 19.1.45.2

Paulus 5 quaest.

Superest tertia deliberatio, cuius debet esse liberta arescusa, quae recusat emptorem. et non sine ratione dicetur eius debere effici libertam, a quo vendita est, id est heredis, quia et ipse ex empto actione tenetur: sed hoc ita, si non arescusa elegerit emptoris patronatum: tunc etenim et illius remanet liberta et ille ex empto actionem non habet, quia nihil eius interest, cum eam libertam habet.

Dig. 19.1.46

Paulus 24 quaest.

Si quis alienam rem vendiderit et medio tempore heres domino rei exstiterit, cogetur implere venditionem.

Dig. 19.1.47

Paulus 6 resp.

Lucius titius accepta pecunia ad materias vendendas sub poena certa, ita ut, si non integras repraestaverit intra statuta tempora, poena conveniatur, partim datis materiis decessit: cum igitur testator in poenam commiserit neque heres eius reliquam materiam exhibuerit, an et in poenam et in usuras conveniri possit, praesertim cum emptor mutuatus pecuniam usuras gravissimas expendit? paulus respondit ex contractu, de quo quaeritur, etiam heredem venditoris in poenam conveniri posse. in actione quoque ex empto officio iudicis post moram intercedentem usurarum pretii rationem haberi oportere.

Dig. 19.1.48

Scaevola 2 resp.

Titius heres sempronii fundum septicio vendidit ita: " fundus sempronianus, quidquid sempronii iuris fuit, erit tibi emptus tot nummis" vacuamque possessionem tradidit neque fines eius demonstravit: quaeritur, an empti iudicio cogendus sit ostendere ex instrumentis hereditariis, quid iuris defunctus habuerit et fines ostendere. respondi id ex ea scriptura praestandum, quod sensisse intelleguntur: quod si non appareat, debere venditorem et instrumenta fundi et fines ostendere: hoc etenim contractui bonae fidei consonat.

Dig. 19.1.49pr.

Hermogenianus 2 iuris epit.

Qui per collusionem imaginarium colonum circumveniendi emptoris causa subposuit, ex empto tenetur nec defenditur, si, quo facilius excogitata fraus occultetur, colonum et quinquennii pensiones in fidem suam recipiat.

Dig. 19.1.49.1

Hermogenianus 2 iuris epit.

Pretii, sorte licet post moram soluta, usurae peti non possunt, cum hae non sint in obligatione, sed officio iudicis praestentur.

Dig. 19.1.50

Labeo 4 post. a iav. epit.

Bona fides non patitur, ut, cum emptor alicuius legis beneficio pecuniam rei venditae debere desisset antequam res ei tradatur, venditor tradere compelletur et re sua careret. possessione autem tradita futurum est, ut rem venditor aeque amitteret, utpote cum petenti eam rem petitor ei neque vendidisset neque tradidisset.

Dig. 19.1.51pr.

Labeo 5 post. a iav. epit.

Si et per emptorem et venditorem mora fuisset, quo minus vinum praeberetur et traderetur, perinde esse ait, quasi si per emptorem solum stetisset: non enim potest videri mora per venditorem emptori facta esse ipso moram faciente emptore.

Dig. 19.1.51.1

Labeo 5 post. a iav. epit.

Quod si fundum emisti ea lege, uti des pecuniam kalendis iuliis, et si ipsis calendis per venditorem esset factum, quo minus pecunia ei solveretur, deinde per te staret quo minus solveres, uti posse adversus te lege sua venditorem dixi, quia in vendendo hoc ageretur, ut, quandoque per emptorem factum sit, quo minus pecuniam solvat, legis poenam patiatur. hoc ita verum puto, nisi si quid in ea re venditor dolo fecit.

Dig. 19.1.52pr.

Scaevola 7 Dig.

Creditor fundum sibi obligatum, cuius chirographa tributorum a debitore retro solutorum apud se deposita habebat, vendidit maevio ea lege, ut, si quid tributorum nomine debitum esset, emptor solveret: idem fundus ob causam eorum tributorum, quae iam soluta erant, a conductore saltus, in quo idem fundus est, venit eumque idem maevius emit et pretium solvit: quaesitum est, an empti iudicio vel aliqua actione emptor a venditore consequi possit, ut solutionum supra scriptarum chirographa ei dentur. respondit posse emptorem empti iudicio consequi, ut instrumenta de quibus quaereretur exhibeantur.

Dig. 19.1.52.1

Scaevola 7 Dig.

Praedium aestimatum in dotem a patre filiae suae nomine datum obligatum creditori deprehenditur: quaesitum est, an filius, qui hereditatem patris retinet, cum ab ea se filia abstinuisset dote contenta, actione ex empto teneatur, ut a creditore lueret et marito liberum praestaret. respondit teneri.

Dig. 19.1.52.2

Scaevola 7 Dig.

Inter venditorem et emptorem militiae ita convenit, ut salarium, quod debeatur ab illa persona, emptori cederet: quaesitum est, emptor militiae quam quantitatem a quo exigere debet et quid ex eiusmodi pacto venditor emptori praestare debeat. respondit venditorem actiones extraordinarias eo nomine quas haberet praestare debere.

Dig. 19.1.52.3

Scaevola 7 Dig.

Ante domum mari iunctam molibus iactis ripam constituit et uti ab eo possessa domus fuit, gaio seio vendidit: quaero, an ripa, quae ab auctore domui coniuncta erat, ad emptorem quoque iure emptionis pertineat. respondit eodem iure fore venditam domum, quo fuisset priusquam veniret.

Dig. 19.1.53pr.

Labeo 1 pith.

Si mercedem insulae accessuram esse emptori dictum est, quanti insula locata est, tantum emptori praestetur. paulus: immo si insulam totam uno nomine locaveris et amplioris conductor locaverit et in vendenda insula mercedem emptori cessuram esse dixeris, id accedet, quod tibi totius insulae conductor debebit.

Dig. 19.1.53.1

Labeo 1 pith.

Si eum fundum vendidisti, in quo sepulcrum habuisti, nec nominatim tibi sepulchrum excepisti, parum habes eo nomine cautum. paulus: minime, si modo in sepulchrum iter publicum transit.

Dig. 19.1.53.2

Labeo 1 pith.

Si habitatoribus habitatio lege venditionis recepta est, omnibus in ea habitantibus praeter dominum recte recepta habitatio est. paulus: immo si cui in ea insula, quam vendideris, gratis habitationem dederis et sic receperis: " habitatoribus aut quam quisque diem conductum habet", parum caveris (nominatim enim de his recipi oportuit) itaque eos habitatores emptor insulae habitatione impune prohibebit.

Dig. 19.1.54pr.

Labeo 2 pith.

Si servus quem vendideras iussu tuo aliquid fecit et ex eo crus fregit, ita demum ea res tuo periculo non est, si id imperasti, quod solebat ante venditionem facere, et si id imperasti, quod etiam non vendito servo imperaturus eras. paulus: minime: nam si periculosam rem ante venditionem facere solitus est, culpa tua id factum esse videbitur: puta enim eum fuisse servum, qui per catadromum descendere aut in cloacam demitti solitus esset. idem iuris erit, si eam rem imperare solitus fueris, quam prudens et diligens pater familias imperaturus ei servo non fuerit. quid si hoc exceptum fuerit? tamen potest ei servo novam rem imperare, quam imperaturus non fuisset, si non venisset: veluti si ei imperasti, ut ad emptorem iret, qui peregre esset: nam certe ea res tuo periculo esse non debet. itaque tota ea res ad dolum malum dumtaxat et culpam venditoris dirigenda est.

Dig. 19.1.54.1

Labeo 2 pith.

Si dolia octoginta accedere fundo, quae infossa essent, dictum erit, et plura erunt quam ad eum numerum, dabit emptori ex omnibus quae vult, dum integra det: si sola octoginta sunt, qualiacumque emptorem sequentur nec pro non integris quicquam ei venditor praestabit.

Dig. 19.1.55

Pomponius 10 epist.

Si servus, qui emeretur vel promitteretur, in hostium potestate sit, octavenus magis putabat valere emptionem et stipulationem, quia inter ementem et vendentem esset commercium: potius enim difficultatem in praestando eo inesse, quam in natura, etiamsi officio iudicis sustinenda esset eius praestatio, donec praestari possit.

Dig. 19.2.0. Locati conducti.

Dig. 19.2.1

Paulus 34 ad ed.

Locatio et conductio cum naturalis sit et omnium gentium, non verbis, sed consensu contrahitur, sicut emptio et venditio.

Dig. 19.2.2pr.

Gaius 2 rer. cott.

Locatio et conductio proxima est emptioni et venditioni isdemque iuris regulis constitit: nam ut emptio et venditio ita contrahitur, si de pretio convenerit, sic et locatio et conductio contrahi intellegitur, si de mercede convenerit.

Dig. 19.2.2.1

Gaius 2 rer. cott.

Adeo autem familiaritatem aliquam habere videntur emptio et venditio, item locatio et conductio, ut in quibusdam quaeri soleat, utrum emptio et venditio sit an locatio et conductio. ut ecce si cum aurifice mihi convenerit, ut is ex auro suo anulos mihi faceret certi ponderis certaeque formae et acceperit verbi gratia trecenta, utrum emptio et venditio sit an locatio et conductio? sed placet unum esse negotium et magis emptionem et venditionem esse. quod si ego aurum dedero mercede pro opera constituta, dubium non est, quin locatio et conductio sit.

Dig. 19.2.3

Pomponius 9 ad sab.

Cum fundus locetur, et aestimatum insturumentum colonus accipiat, proculus ait id agi, ut instrumentum emptum habeat colonus, sicuti fieret, cum quid aestimatum in dotem daretur.

Dig. 19.2.4

Pomponius 16 ad sab.

Locatio precariive rogatio ita facta, quoad is, qui eam locasset dedissetve, vellet, morte eius qui locavit tollitur.

Dig. 19.2.5

Ulpianus 28 ad ed.

Si tibi habitationem locavero, mox pensionem remittam, ex locato et conducto agendum erit.

Dig. 19.2.6

Gaius 10 ad ed. provinc.

Is qui rem conduxerit non cogitur restituere id quod rei nomine furti actione consecutus est.

Dig. 19.2.7

Paulus 32 ad ed.

Si tibi alienam insulam locavero quinquaginta tuque eandem sexaginta titio locaveris et titius a domino prohibitus fuerit habitare, agentem te ex conducto sexaginta consequi debere placet, quia ipse titio tenearis in sexaginta.

Dig. 19.2.8

Tryphonus 9 disp.

Nos videamus, ne non sexaginta praestanda nec quinquaginta sint, sed quanti interest perfrui conductione, tantundemque consequatur medius, quantum praestare debeat ei, qui a se conduxit, quoniam emolumentum conductionis ad comparationem uberioris mercedis computatum maiorem efficit condemnationem. et tamen primus locator reputationem habebit quinquaginta, quae ab illo perciperet, si dominus insulae habitare novissimum conductorem non vetuisset: quo iure utimur.

Dig. 19.2.9pr.

Ulpianus 32 ad ed.

Si quis domum bona fide emptam vel fundum locaverit mihi isque sit evictus sine dolo malo culpaque eius, pomponius ait nihilo minus eum teneri ex conducto ei qui conduxit, ut ei praestetur frui quod conduxit licere. plane si dominus non patitur et locator paratus sit aliam habitationem non minus commodam praestare, aequissimum esse ait absolvi locatorem.

Dig. 19.2.9.1

Ulpianus 32 ad ed.

Hic subiungi potest, quod Marcellus libro sexto digestorum scripsit: si fructuarius locaverit fundum in quinquennium et decesserit, heredem eius non teneri, ut frui praestet, non magis quam insula exusta teneretur locator conductori. sed an ex locato teneatur conductor, ut pro rata temporis quo fruitus est pensionem praestet, Marcellus quaerit, quemadmodum praestaret, si fructuarii servi operas conduxisset vel habitationem? et magis admittit teneri eum: et est aequissimum. idem quaerit, si sumptus fecit in fundum quasi quinquennio fruiturus, an recipiat? et ait non recepturum, quia hoc evenire posse prospicere debuit. quid tamen si non quasi fructuarius ei locavit, sed si quasi fundi dominus? videlicet tenebitur: decepit enim conductorem: et ita imperator antoninus cum divo severo rescripsit. in exustis quoque aedibus eius temporis, quo aedificium stetit, mercedem praestandam rescripserunt.

Dig. 19.2.9.2

Ulpianus 32 ad ed.

Iulianus libro quinto decimo digestorum dicit, si quis fundum locaverit, ut etiam si quid vi maiori accidisset, hoc ei praestaretur, pacto standum esse.

Dig. 19.2.9.3

Ulpianus 32 ad ed.

Si colonis praediorum lege locationis, ut innocentem ignem habeant, denuntiatum sit, si quidem fortuitus casus incendii causam intulerit, non praestabit periculum locator: si vero culpa locatoris, quam praestare necesse est, damnum fecerit, tenebitur.

Dig. 19.2.9.4

Ulpianus 32 ad ed.

Imperator antoninus cum patre, cum grex esset abactus quem quis conduxerat, ita rescripsit: " si capras latrones citra tuam fraudem abegisse probari potest iudicio locati, casum praestare non cogeris atque temporis quod insecutum est mercedes ut indebitas reciperabis. "

Dig. 19.2.9.5

Ulpianus 32 ad ed.

Celsus etiam imperitiam culpae adnumerandam libro octavo digestorum scripsit: si quis vitulos pascendos vel sarciendum quid poliendumve conduxit, culpam eum praestare debere et quod imperitia peccavit, culpam esse: quippe ut artifex, inquit, conduxit.

Dig. 19.2.9.6

Ulpianus 32 ad ed.

Si alienam domum mihi locaveris eaque mihi legata vel donata sit, non teneri me tibi ex locato ob pensionem: sed de tempore praeterito videamus, si quid ante legati diem pensionis debetur: et puto solvendum:

Dig. 19.2.10

Iulianus libro ad ferocem.

Et ego ex conducto recte agam vel in hoc, ut me liberes.

Dig. 19.2.11pr.

Ulpianus 32 ad ed.

Videamus, an et servorum culpam et quoscumque induxerit praestare conductor debeat? et quatenus praestat, utrum ut servos noxae dedat an vero suo nomine teneatur? et adversus eos quos induxerit utrum praestabit tantum actiones an quasi ob propriam culpam tenebitur? mihi ita placet, ut culpam etiam eorum quos induxit praestet suo nomine, etsi nihil convenit, si tamen culpam in inducendis admittit, quod tales habuerit vel suos vel hospites: et ita pomponius libro sexagesimo tertio ad edictum probat.

Dig. 19.2.11.1

Ulpianus 32 ad ed.

Si hoc in locatione convenit " ignem ne habeto" et habuit, tenebitur etiam si fortuitus casus admisit incendium, quia non debuit ignem habere. aliud est enim ignem innocentem habere: permittit enim habere, sed innoxium, ignem.

Dig. 19.2.11.2

Ulpianus 32 ad ed.

Item prospicere debet conductor, ne aliquo vel ius rei vel corpus deterius faciat vel fieri patiatur.

Dig. 19.2.11.3

Ulpianus 32 ad ed.

Qui vinum de campania transportandum conduxisset, deinde mota a quodam controversia signatum suo et alterius sigillo in apothecam deposuisset, ex locato tenetur, ut locatori possessionem vini sine controversia reddat, nisi culpa conductor careret.

Dig. 19.2.11.4

Ulpianus 32 ad ed.

Inter conductorem et locatorem convenerat, ne in villa urbana faenum componeretur: composuit: deinde servus igne illato succendit. ait labeo teneri conductorem ex locato, quia ipse causam praebuit inferendo contra conductionem.

Dig. 19.2.12

Hermogenianus 2 iuris epit.

Sed etsi quilibet extraneus ignem iniecerit, damni locati iudicio habebitur ratio.

Dig. 19.2.13pr.

Ulpianus 32 ad ed.

Item quaeritur, si cisiarius, id est carucharius, dum ceteros transire contendit, cisium evertit et servum quassavit vel occidit. puto ex locato esse in eum actionem: temperare enim debuit: sed et utilis aquiliae dabitur.

Dig. 19.2.13.1

Ulpianus 32 ad ed.

Si navicularius onus minturnas vehendum conduxerit et, cum flumen minturnense navis ea subire non posset, in aliam navem merces transtulerit eaque navis in ostio fluminis perierit, tenetur primus navicularius? labeo, si culpa caret, non teneri ait: ceterum si vel invito domino fecit vel quo non debuit tempore aut si minus idoneae navi, tunc ex locato agendum.

Dig. 19.2.13.2

Ulpianus 32 ad ed.

Si magister navis sine gubernatore in flumen navem immiserit et tempestate orta temperare non potuerit et navem perdiderit, vectores habebunt adversus eum ex locato actionem.

Dig. 19.2.13.3

Ulpianus 32 ad ed.

Si quis servum docendum conduxerit eumque duxerit peregre et aut ab hostibus captus sit aut perierit, ex locato esse actionem placuit, si modo non sic conduxit, ut et peregre duceret.

Dig. 19.2.13.4

Ulpianus 32 ad ed.

Item iulianus libro octagensimo sexto digestorum scripsit, si sutor puero parum bene facienti forma calcei tam vehementer cervicem percusserit, ut ei oculus effunderetur, ex locato esse actionem patri eius: quamvis enim magistris levis castigatio concessa sit, tamen hunc modum non tenuisse: sed et de aquilia supra diximus. iniuriarum autem actionem competere iulianus negat, quia non iniuriae faciendae causa hoc fecerit, sed praecipiendi.

Dig. 19.2.13.5

Ulpianus 32 ad ed.

Si gemma includenda aut insculpenda data sit eaque fracta sit, si quidem vitio materiae fractum sit, non erit ex locato actio, si imperitia facientis, erit. huic sententiae addendum est, nisi periculum quoque in se artifex receperat: tunc enim etsi vitio materiae id evenit, erit ex locato actio.

Dig. 19.2.13.6

Ulpianus 32 ad ed.

Si fullo vestimenta polienda acceperit eaque mures roserint, ex locato tenetur, quia debuit ab hac re cavere. et si pallium fullo permutaverit et alii alterius dederit, ex locato actione tenebitur, etiamsi ignarus fecerit.

Dig. 19.2.13.7

Ulpianus 32 ad ed.

Exercitu veniente migravit conductor, dein de hospitio milites fenestras et cetera sustulerunt. si domino non denuntiavit et migravit, ex locato tenebitur: labeo autem, si resistere potuit et non resistit, teneri ait, quae sententia vera est. sed et si denuntiare non potuit, non puto eum teneri.

Dig. 19.2.13.8

Ulpianus 32 ad ed.

Si quis mensuras conduxerit easque magistratus frangi iusserit, si quidem iniquae fuerunt, sabinus distinguit, utrum scit conductor an non: si scit, esse ex locato actionem, si minus, non. quod si aeque sunt, ita demum eum teneri, si culpa eius id fecit aedilis. et ita labeo et mela scribunt.

Dig. 19.2.13.9

Ulpianus 32 ad ed.

Duo rei locationis in solidum esse possunt.

Dig. 19.2.13.10

Ulpianus 32 ad ed.

Si lege operis locandi comprehensum esset, ut, si ad diem effectum non esset, relocare id liceret, non alias prior conductor ex locato tenebitur, quam si eadem lege relocatum esset: nec ante relocari id potest, quam dies efficiendi praeterisset.

Dig. 19.2.13.11

Ulpianus 32 ad ed.

Qui impleto tempore conductionis remansit in conductione, non solum reconduxisse videbitur, sed etiam pignora videntur durare obligata. sed hoc ita verum est, si non alius pro eo in priore conductione res obligaverat: huius enim novus consensus erit necessarius. eadem causa erit et si rei publicae praedia locata fuerint. quod autem diximus taciturnitate utriusque partis colonum reconduxisse videri, ita accipiendum est, ut in ipso anno, quo tacuerunt, videantur eandem locationem renovasse, non etiam in sequentibus annis, etsi lustrum forte ab initio fuerat conductioni praestitutum. sed et si secundo quoque anno post finitum lustrum nihil fuerit contrarium actum, eandem videri locationem in illo anno permansisse: hoc enim ipso, quo tacuerunt, consensisse videntur. et hoc deinceps in unoquoque anno observandum est. in urbanis autem praediis alio iure utimur, ut, prout quisque habitaverit, ita et obligetur, nisi in scriptis certum tempus conductioni comprehensum est.

Dig. 19.2.14

Ulpianus 71 ad ed.

Qui ad certum tempus conducit, finito quoque tempore colonus est: intellegitur enim dominus, cum patitur colonum in fundo esse, ex integro locare, et huiusmodi contractus neque verba neque scripturam utique desiderant, sed nudo consensu convalescunt: et ideo si interim dominus furere coeperit vel decesserit, fieri non posse Marcellus ait, ut locatio redintegretur, et est hoc verum.

Dig. 19.2.15pr.

Ulpianus 32 ad ed.

Ex conducto actio conductori datur.

Dig. 19.2.15.1

Ulpianus 32 ad ed.

Competit autem ex his causis fere: ut puta si re quam conduxit frui ei non liceat (forte quia possessio ei aut totius agri aut partis non praestatur, aut villa non reficitur vel stabulum vel ubi greges eius stare oporteat) vel si quid in lege conductionis convenit, si hoc non praestatur, ex conducto agetur.

Dig. 19.2.15.2

Ulpianus 32 ad ed.

Si vis tempestatis calamitosae contigerit, an locator conductori aliquid praestare debeat, videamus. servius omnem vim, cui resisti non potest, dominum colono praestare debere ait, ut puta fluminum graculorum sturnorum et si quid simile acciderit, aut si incursus hostium fiat: si qua tamen vitia ex ipsa re oriantur, haec damno coloni esse, veluti si vinum coacuerit, si raucis aut herbis segetes corruptae sint. sed et si labes facta sit omnemque fructum tulerit, damnum coloni non esse, ne supra damnum seminis amissi mercedes agri praestare cogatur. sed et si uredo fructum oleae corruperit aut solis fervore non adsueto id acciderit, damnum domini futurum: si vero nihil extra consuetudinem acciderit, damnum coloni esse. idemque dicendum, si exercitus praeteriens per lasciviam aliquid abstulit. sed et si ager terrae motu ita corruerit, ut nusquam sit, damno domini esse: oportere enim agrum praestari conductori, ut frui possit.

Dig. 19.2.15.3

Ulpianus 32 ad ed.

Cum quidam incendium fundi allegaret et remissionem desideraret, ita ei rescriptum est: " si praedium coluisti, propter casum incendii repentini non immerito subveniendum tibi est. "

Dig. 19.2.15.4

Ulpianus 32 ad ed.

Papinianus libro quarto responsorum ait, si uno anno remissionem quis colono dederit ob sterilitatem, deinde sequentibus annis contigit uberitas, nihil obesse domino remissionem, sed integram pensionem etiam eius anni quo remisit exigendam. hoc idem et in vectigalis damno respondit. sed et si verbo donationis dominus ob sterilitatem anni remiserit, idem erit dicendum, quasi non sit donatio, sed transactio. quid tamen, si novissimus erat annus sterilis, in quo ei remiserit? verius dicetur et si superiores uberes fuerunt et scit locator, non debere eum ad computationem vocari.

Dig. 19.2.15.5

Ulpianus 32 ad ed.

Cum quidam de fructuum exiguitate quereretur, non esse rationem eius habendam rescripto divi antonini continetur. item alio rescripto ita continetur: " novam rem desideras, ut propter vetustatem vinearum remissio tibi detur. "

Dig. 19.2.15.6

Ulpianus 32 ad ed.

Item cum quidam nave amissa vecturam, quam pro mutua acceperat, repeteretur, rescriptum est ab antonino augusto non immerito procuratorem caesaris ab eo vecturam repetere, cum munere vehendi functus non sit: quod in omnibus personis similiter observandum est.

Dig. 19.2.15.7

Ulpianus 32 ad ed.

Ubicumque tamen remissionis ratio habetur ex causis supra relatis, non id quod sua interest conductor consequitur, sed mercedis exonerationem pro rata: supra denique damnum seminis ad colonum pertinere declaratur.

Dig. 19.2.15.8

Ulpianus 32 ad ed.

Plane si forte dominus frui non patiatur, vel cum ipse locasset vel cum alius alienum vel quasi procurator vel quasi suum, quod interest praestabitur: et ita proculus in procuratore respondit.

Dig. 19.2.15.9

Ulpianus 32 ad ed.

Interdum ad hoc ex locato agetur, ut quis locatione liberetur, iulianus libro quinto decimo digestorum scripsit. ut puta titio fundum locavi isque pupillo herede instituto decessit et, cum tutor constituisset abstinere pupillum hereditate, ego fundum pluris locavi: deinde pupillus restitutus est in bona paterna. ex conducto nihil amplius eum consecuturum, quam ut locatione liberetur: mihi enim iusta causa fuit locandi,

Dig. 19.2.16

Iulianus 15 Dig.

Cum eo tempore in pupillum actiones nullae darentur.

Dig. 19.2.17

Ulpianus 32 ad ed.

Tutelae tamen cum tutore iudicio, inquit, aget, si abstinere non debuit:

Dig. 19.2.18

Iulianus 15 Dig.

In quo inerit etiam hoc, quod ex conductione fundi lucrum facere potuit.

Dig. 19.2.19pr.

Ulpianus 32 ad ed.

Sed addes hoc iuliani sententiae, ut, si collusi ego cum tutore, ex conducto tenear in id quod pupilli interfuit.

Dig. 19.2.19.1

Ulpianus 32 ad ed.

Si quis dolia vitiosa ignarus locaverit, deinde vinum effluxerit, tenebitur in id quod interest nec ignorantia eius erit excusata: et ita cassius scripsit. aliter atque si saltum pascuum locasti, in quo herba mala nascebatur: hic enim si pecora vel demortua sunt vel etiam deteriora facta, quod interest praestabitur, si scisti, si ignorasti, pensionem non petes, et ita servio labeoni sabino placuit.

Dig. 19.2.19.2

Ulpianus 32 ad ed.

Illud nobis videndum est, si quis fundum locaverit, quae soleat instrumenti nomine conductori praestare, quaeque si non praestet, ex locato tenetur. et est epistula neratii ad aristonem dolia utique colono esse praestanda et praelum et trapetum instructa funibus, si minus, dominum instruere ea debere: sed et praelum vitiatum dominum reficere debere. quod si culpa coloni quid eorum corruptum sit, ex locato eum teneri. fiscos autem, quibus ad premendam oleam utimur, colonum sibi parare debere neratius scripsit: quod si regulis olea prematur, et praelum et suculam et regulas et tympanum et cocleas quibus relevatur praelum dominum parare oportere. item aenum, in quo olea calda aqua lavatur, ut cetera vasa olearia dominum praestare oportere, sicuti dolia vinaria, quae ad praesentem usum colonum picare oportebit. haec omnia sic sunt accipienda, nisi si quid aliud specialiter actum sit.

Dig. 19.2.19.3

Ulpianus 32 ad ed.

Si dominus exceperit in locatione, ut frumenti certum modum certo pretio acciperet, et dominus nolit frumentum accipere neque pecuniam ex mercede deducere, potest quidem totam summam ex locato petere, sed utique consequens est existimare officio iudicis hoc convenire, haberi rationem, quanto conductoris intererat in frumento potius quam in pecunia solvere pensionis exceptam portionem. simili modo et si ex conducto agatur, idem erit dicendum.

Dig. 19.2.19.4

Ulpianus 32 ad ed.

Si inquilinus ostium vel quaedam alia aedificio adiecerit, quae actio locum habeat? et est verius labeo scripsit competere ex conducto actionem, ut ei tollere liceat, sic tamen, ut damni infecti caveat, ne in aliquo dum aufert deteriorem causam aedium faciat, sed ut pristinam faciem aedibus reddat.

Dig. 19.2.19.5

Ulpianus 32 ad ed.

Si inquilinus arcam aeratam in aedes contulerit et aedium aditum coangustaverit dominus, verius est ex conducto eum teneri et ad exhibendum actione, sive scit sive ignoraverit: officio enim iudicis continetur, ut cogat eum aditum et facultatem inquilino praestare ad arcam tollendam sumptibus scilicet locatoris.

Dig. 19.2.19.6

Ulpianus 32 ad ed.

Si quis, cum in annum habitationem conduxisset, pensionem totius anni dederit, deinde insula post sex menses ruerit vel incendio consumpta sit, pensionem residui temporis rectissime mela scripsit ex conducto actione repetiturum, non quasi indebitum condicturum: non enim per errorem dedit plus, sed ut sibi in causam conductionis proficeret. aliter atque si quis, cum decem conduxisset, quindecim solverit: hic enim si per errorem solvit, dum putat se quindecim conduxisse, actionem ex conducto non habebit, sed solam condictionem. nam inter eum, qui per errorem solvit, et eum, qui pensionem integram prorogavit, multum interest.

Dig. 19.2.19.7

Ulpianus 32 ad ed.

Si quis mulierem vehendam navi conduxisset, deinde in nave infans natus fuisset, probandum est pro infante nihil deberi, cum neque vectura eius magna sit neque his omnibus utatur, quae ad navigantium usum parantur.

Dig. 19.2.19.8

Ulpianus 32 ad ed.

Ex conducto actionem etiam ad heredem transire palam est.

Dig. 19.2.19.9

Ulpianus 32 ad ed.

Cum quidam exceptor operas suas locasset, deinde is qui eas conduxerat decessisset, imperator antoninus cum divo severo rescripsit ad libellum exceptoris in haec verba: " cum per te non stetisse proponas, quo minus locatas operas antonio aquilae solveres, si eodem anno mercedes ab alio non accepisti, fidem contractus impleri aequum est. "

Dig. 19.2.19.10

Ulpianus 32 ad ed.

Papinianus quoque libro quarto responsorum scripsit diem functo legato caesaris salarium comitibus residui temporis praestandum, modo si non postea comites cum aliis eodem tempore fuerunt.

Dig. 19.2.20pr.

Paulus 34 ad ed.

Sicut emptio ita et locatio sub condicione fieri potest:

Dig. 19.2.20.1

Paulus 34 ad ed.

Sed donationis causa contrahi non potest.

Dig. 19.2.20.2

Paulus 34 ad ed.

Interdum locator non obligatur, conductor obligatur, veluti cum emptor fundum conducit, donec pretium ei solvat.

Dig. 19.2.21

Iavolenus 11 epist.

Cum venderem fundum, convenit, ut, donec pecunia omnis persolveretur, certa mercede emptor fundum conductum haberet: an soluta pecunia merces accepta fieri debeat? respondit: bona fides exigit, ut quod convenit fiat: sed non amplius praestat is venditori, quam pro portione eius temporis, quo pecunia numerata non esset.

Dig. 19.2.22pr.

Paulus 34 ad ed.

Item si pretio non soluto inempta res facta sit, tunc ex locato erit actio.

Dig. 19.2.22.1

Paulus 34 ad ed.

Quotiens autem faciendum aliquid datur, locatio est.

Dig. 19.2.22.2

Paulus 34 ad ed.

Cum insulam aedificandam loco, ut sua impensa conductor omnia faciat, proprietatem quidem eorum ad me transfert et tamen locatio est: locat enim artifex operam suam, id est faciendi necessitatem.

Dig. 19.2.22.3

Paulus 34 ad ed.

Quemadmodum in emendo et vendendo naturaliter concessum est quod pluris sit minoris emere, quod minoris sit pluris vendere et ita invicem se circumscribere, ita in locationibus quoque et conductionibus iuris est:

Dig. 19.2.23

Hermogenianus 2 iuris epit.

Et ideo praetextu minoris pensionis, locatione facta, si nullus dolus adversarii probari possit, rescindi locatio non potest.

Dig. 19.2.24pr.

Paulus 34 ad ed.

Si in lege locationis comprehensum sit, ut arbitratu domini opus adprobetur, perinde habetur, ac si viri boni arbitrium comprehensum fuisset, idemque servatur, si alterius cuiuslibet arbitrium comprehensum sit: nam fides bona exigit, ut arbitrium tale praestetur, quale viro bono convenit. idque arbitrium ad qualitatem operis, non ad prorogandum tempus, quod lege finitum sit, pertinet, nisi id ipsum lege comprehensum sit. quibus consequens est, ut irrita sit adprobatio dolo conductoris facta, ut ex locato agi possit.

Dig. 19.2.24.1

Paulus 34 ad ed.

Si colonus locaverit fundum, res posterioris conductoris domino non obligantur: sed fructus in causa pignoris manent, quemadmodum essent, si primus colonus eos percepisset.

Dig. 19.2.24.2

Paulus 34 ad ed.

Si domus vel fundus in quinquennium pensionibus locatus sit, potest dominus, si deseruerit habitationem vel fundi culturam colonus vel inquilinus, cum eis statim agere.

Dig. 19.2.24.3

Paulus 34 ad ed.

Sed et de his, quae praesenti die praestare debuerunt, velut opus aliquod efficerent, propagationes facerent, agere similiter potest.

Dig. 19.2.24.4

Paulus 34 ad ed.

Colonus, si ei frui non liceat, totius quinquennii nomine statim recte aget, etsi reliquis annis dominus fundi frui patiatur: nec enim semper liberabitur dominus eo quod secundo vel tertio anno patietur fundo frui. nam et qui expulsus a conductione in aliam se coloniam contulit, non suffecturus duabus neque ipse pensionum nomine obligatus erit et quantum per singulos annos compendii facturus erat, consequetur: sera est enim patientia fruendi, quae offertur eo tempore, quo frui colonus aliis rebus illigatus non potest. quod si paucis diebus prohibuit, deinde paenitentiam agit omniaque colono in integro sunt, nihil ex obligatione paucorum dierum mora minuet. item utiliter ex conducto agit is, cui secundum conventionem non praestantur quae convenerant, sive prohibeatur frui a domino vel ab extraneo quem dominus prohibere potest.

Dig. 19.2.24.5

Paulus 34 ad ed.

Qui in plures annos fundum locaverat, testamento suo damnavit heredem, ut conductorem liberaret. si non patiatur heres eum reliquo tempore frui, est ex conducto actio: quod si patiatur nec mercedes remittat, ex testamento tenetur.

Dig. 19.2.25pr.

Gaius 10 ad ed. provinc.

Si merces promissa sit generaliter alieno arbitrio, locatio et conductio contrahi non videtur: sin autem quanti titius aestimaverit, sub hac condicione stare locationem, ut, si quidem ipse qui nominatus est mercedem definierit, omnimodo secundum eius aestimationem et mercedem persolvi oporteat et conductionem ad effectum pervenire: sin autem ille vel noluerit vel non potuerit mercedem definire, tunc pro nihilo esse conductionem quasi nulla mercede statuta.

Dig. 19.2.25.1

Gaius 10 ad ed. provinc.

Qui fundum fruendum vel habitationem alicui locavit, si aliqua ex causa fundum vel aedes vendat, curare debet, ut apud emptorem quoque eadem pactione et colono frui et inquilino habitare liceat: alioquin prohibitus is aget cum eo ex conducto.

Dig. 19.2.25.2

Gaius 10 ad ed. provinc.

Si vicino aedificante obscurentur lumina cenaculi, teneri locatorem inquilino: certe quin liceat colono vel inquilino relinquere conductionem, nulla dubitatio est. de mercedibus quoque si cum eo agatur, repudiationis ratio habenda est. eadem intellegemus, si ostia fenestrasve nimium corruptas locator non restituat.

Dig. 19.2.25.3

Gaius 10 ad ed. provinc.

Conductor omnia secundum legem conductionis facere debet. et ante omnia colonus curare debet, ut opera rustica suo quoque tempore faciat, ne intempestiva cultura deteriorem fundum faceret. praeterea villarum curam agere debet, ut eas incorruptas habeat.

Dig. 19.2.25.4

Gaius 10 ad ed. provinc.

Culpae autem ipsius et illud adnumeratur, si propter inimicitias eius vicinus arbores exciderit.

Dig. 19.2.25.5

Gaius 10 ad ed. provinc.

Ipse quoque si exciderit, non solum ex locato tenetur, sed etiam lege aquilia et ex lege duodecim tabularum arborum furtim caesarum et interdicto quod vi aut clam: sed utique iudicis, qui ex locato iudicat, officio continetur, ut ceteras actiones locator omittat.

Dig. 19.2.25.6

Gaius 10 ad ed. provinc.

Vis maior, quam graeci veou bian appellant, non debet conductori damnosa esse, si plus, quam tolerabile est, laesi fuerint fructus: alioquin modicum damnum aequo animo ferre debet colonus, cui immodicum lucrum non aufertur. apparet autem de eo nos colono dicere, qui ad pecuniam numeratam conduxit: alioquin partiarius colonus quasi societatis iure et damnum et lucrum cum domino fundi partitur.

Dig. 19.2.25.7

Gaius 10 ad ed. provinc.

Qui columnam transportandam conduxit, si ea, dum tollitur aut portatur aut reponitur, fracta sit, ita id periculum praestat, si qua ipsius eorumque, quorum opera uteretur, culpa acciderit: culpa autem abest, si omnia facta sunt, quae diligentissimus quisque observaturus fuisset. idem scilicet intellegemus et si dolia vel tignum transportandum aliquis conduxerit: idemque etiam ad ceteras res transferri potest.

Dig. 19.2.25.8

Gaius 10 ad ed. provinc.

Si fullo aut sarcinator vestimenta perdiderit eoque nomine domino satisfecerit, necesse est domino vindicationem eorum et condictionem cedere.

Dig. 19.2.26

Ulpianus 2 disp.

In operis duobus simul locatis convenit priori conductori ante satisfieri.

Dig. 19.2.27pr.

Alfenus 2 Dig.

Habitatores non, si paulo minus commode aliqua parte caenaculi uterentur, statim deductionem ex mercede facere oportet: ea enim condicione habitatorem esse, ut, si quid transversarium incidisset, quamobrem dominum aliquid demoliri oporteret, aliquam partem parvulam incommodi sustineret: non ita tamen, ut eam partem caenaculi dominus aperuisset, in quam magnam partem usus habitator haberet.

Dig. 19.2.27.1

Alfenus 2 Dig.

Iterum interrogatus est, si quis timoris causa emigrasset, deberet mercedem necne. respondit, si causa fuisset, cur periculum timeret, quamvis periculum vere non fuisset, tamen non debere mercedem: sed si causa timoris iusta non fuisset, nihilo minus debere.

Dig. 19.2.28pr.

Labeo 4 post. epit. a iav.

Quod si domi habitatione conductor aeque usus fuisset,

Dig. 19.2.28.1

Labeo 4 post. epit. a iav.

Praestaturum etiam eius domus mercedem, quae vitium fecisset, deberi putat.

Dig. 19.2.28.2

Labeo 4 post. epit. a iav.

Idem iuris esse, si potestatem conducendi habebat, uti pretium conductionis praestaret. sed si locator conductori potestatem conducendae domus non fecisset et is in qua habitaret conduxisset, tantum ei praestandum putat, quantum sine dolo malo praestitisset. ceterum si gratuitam habitationem habuisset, pro portione temporis ex locatione domus deducendum esse.

Dig. 19.2.29

Alfenus 7 Dig.

In lege locationis scriptum erat: " redemptor silvam ne caedito neve cingito neve deurito neve quem cingere caedere urere sinito". quaerebatur, utrum redemptor, si quem quid earum rerum facere vidisset, prohibere deberet an etiam ita silvam custodire, ne quis id facere possit. respondi verbum sinere utramque habere significationem, sed locatorem potius id videri voluisse, ut redemptor non solum, si quem casu vidisset silvam caedere, prohiberet, sed uti curaret et daret operam, ne quis caederet.

Dig. 19.2.30pr.

Alfenus 3 Dig. a paulo epit.

Qui insulam triginta conduxerat, singula caenacula ita conduxit, ut quadraginta ex omnibus colligerentur: dominus insulae, quia aedificia vitium facere diceret, demolierat eam: quaesitum est, quanti lis aestimari deberet, si is qui totam conduxerat ex conducto ageret. respondit, si vitiatum aedificium necessario demolitus esset, pro portione, quanti dominus praediorum locasset, quod eius temporis habitatores habitare non potuissent, rationem duci et tanti litem aestimari: sin autem non fuisset necesse demoliri, sed quia melius aedificare vellet, id fecisset, quanti conductoris interesset, habitatores ne migrarent, tanti condemnari oportere.

Dig. 19.2.30.1

Alfenus 3 Dig. a paulo epit.

Aedilis in municipio balneas conduxerat, ut eo anno municipes gratis lavarentur: post tres menses incendio facto respondit posse agi cum balneatore ex conducto, ut pro portione temporis, quo lavationem non praestitisset, pecuniae contributio fieret.

Dig. 19.2.30.2

Alfenus 3 Dig. a paulo epit.

Qui mulas ad certum pondus oneris locaret, cum maiore onere conductor eas rupisset, consulebat de actione. respondit vel lege aquilia vel ex locato recte eum agere, sed lege aquilia tantum cum eo agi posse, qui tum mulas agitasset, ex locato etiam si alius eas rupisset, cum conductore recte agi.

Dig. 19.2.30.3

Alfenus 3 Dig. a paulo epit.

Qui aedem faciendam locaverat, in lege dixerat: " quoad in opus lapidis opus erit, pro lapide et manupretio dominus redemptori in pedes singulos septem dabit": quaesitum est, utrum factum opus an etiam imperfectum metiri oporteret. respondit etiam imperfectum.

Dig. 19.2.30.4

Alfenus 3 Dig. a paulo epit.

Colonus villam hac lege acceperat, ut in incorruptam redderet praeter vim et vetustatem: coloni servus villam incendit non fortuito casu. non videri eam vim exceptam respondit nec id pactum esse, ut, si aliquis domesticus eam incendisset, ne praestaret, sed extrariam vim utrosque excipere voluisse.

Dig. 19.2.31

Alfenus 5 Dig. a paulo epit.

In navem saufeii cum complures frumentum confuderant, saufeius uni ex his frumentum reddiderat de communi et navis perierat: quaesitum est, an ceteri pro sua parte frumenti cum nauta agere possunt oneris aversi actione. respondit rerum locatarum duo genera esse, ut aut idem redderetur (sicuti cum vestimenta fulloni curanda locarentur) aut eiusdem generis redderetur (veluti cum argentum pusulatum fabro daretur, ut vasa fierent, aut aurum, ut anuli): ex superiore causa rem domini manere, ex posteriore in creditum iri. idem iuris esse in deposito: nam si quis pecuniam numeratam ita deposuisset, ut neque clusam neque obsignatam traderet, sed adnumeraret, nihil alius eum debere apud quem deposita esset, nisi tantundem pecuniae solveret. secundum quae videri triticum factum saufeii et recte datum. quod si separatim tabulis aut heronibus aut in alia cupa clusum uniuscuiusque triticum fuisset, ita ut internosci posset quid cuiusque esset, non potuisse nos permutationem facere, sed tum posse eum cuius fuisset triticum quod nauta solvisset vindicare. et ideo se improbare actiones oneris aversi: quia sive eius generis essent merces, quae nautae traderentur, ut continuo eius fierent et mercator in creditum iret, non videretur onus esse aversum, quippe quod nautae fuisset: sive eadem res, quae tradita esset, reddi deberet, furti esse actionem locatori et ideo supervacuum esse iudicium oneris aversi. sed si ita datum esset, ut in simili re solvi possit, conductorem culpam dumtaxat debere (nam in re, quae utriusque causa contraheretur, culpam deberi) neque omnimodo culpam esse, quod uni reddidisset ex frumento, quoniam alicui primum reddere eum necesse fuisset, tametsi meliorem eius condicionem faceret quam ceterorum.

Dig. 19.2.32

Iulianus 4 ex minic.

Qui fundum colendum in plures annos locaverat, decessit et eum fundum legavit. cassius negavit posse cogi colonum, ut eum fundum coleret, quia nihil heredis interesset. quod si colonus vellet colere et ab eo, cui legatus esset fundus, prohiberetur, cum herede actionem colonum habere: et hoc detrimentum ad heredem pertinere: sicuti si quis rem, quam vendidisset nec dum tradidisset, alii legasset, heres eius emptori et legatario esset obligatus.

Dig. 19.2.33

Africanus 8 quaest.

Si fundus quem mihi locaveris publicatus sit, teneri te actione ex conducto, ut mihi frui liceat, quamvis per te non stet, quominus id praestes: quemadmodum, inquit, si insulam aedificandam locasses et solum corruisset, nihilo minus teneberis. nam et si vendideris mihi fundum isque priusquam vacuus traderetur publicatus fuerit, tenearis ex empto: quod hactenus verum erit, ut pretium restituas, non ut etiam id praestes, si quid pluris mea intersit eum vacuum mihi tradi. similiter igitur et circa conductionem servandum puto, ut mercedem quam praestiterim restituas, eius scilicet temporis, quo fruitus non fuerim, nec ultra actione ex conducto praestare cogeris. nam et si colonus tuus fundo frui a te aut ab eo prohibetur, quem tu prohibere ne id faciat possis, tantum ei praestabis, quanti eius interfuerit frui, in quo etiam lucrum eius continebitur: sin vero ab eo interpellabitur, quem tu prohibere propter vim maiorem aut potentiam eius non poteris, nihil amplius ei quam mercedem remittere aut reddere debebis,

Dig. 19.2.34

Gaius 10 ad ed. provinc.

Perinde ac latronum incursu id acciderit.

Dig. 19.2.35pr.

Africanus 8 quaest.

Et haec distinctio convenit illi, quae a servio introducta et ab omnibus fere probata est, ut, si aversione insulam locatam dominus reficiendo, ne ea conductor frui possit, effecerit, animadvertatur, necessario necne id opus demolitus est: quid enim interest, utrum locator insulae propter vetustatem cogatur eam reficere an locator fundi cogatur ferre iniuriam eius, quem prohibere non possit? intellegendum est autem nos hac distinctione uti de eo, qui et suum praedium fruendum locaverit et bona fide negotium contraxerit, non de eo, qui alienum praedium per fraudem locaverit nec resistere domino possit, quominus is colonum frui prohibeat.

Dig. 19.2.35.1

Africanus 8 quaest.

Cum fundum communem habuimus et inter nos convenit, ut alternis annis certo pretio eum conductum haberemus, tu, cum tuus annus exiturus esset, consulto fructum insequentis anni corrupisti. agam tecum duabus actionibus, una ex conducto, altera ex locato: locati enim iudicio mea pars propria, conducti autem actione tua dumtaxat propria in iudicium venient. deinde ita notat: nonne quod ad meam partem attinebit, communi dividundo praestabitur a te mihi damnum? recte quidem notat, sed tamen etiam servi sententiam veram esse puto, cum eo scilicet, ut, cum alterutra actione rem servaverim, altera perematur. quod ipsum simplicius ita quaeremus, si proponatur inter duos, qui singulos proprios fundos haberent, convenisse, ut alter alterius ita conductum haberent, ut fructus mercedis nomine pensaretur.

Dig. 19.2.36

Florus 7 inst.

Opus quod aversione locatum est donec adprobetur, conductoris periculum est: quod vero ita conductum sit, ut in pedes mensurasve praestetur, eatenus conductoris periculo est, quatenus admensum non sit: et in utraque causa nociturum locatori, si per eum steterit, quo minus opus adprobetur vel admetiatur. si tamen vi maiore opus prius interciderit quam adprobaretur, locatoris periculo est, nisi si aliud actum sit: non enim amplius praestari locatori oporteat, quam quod sua cura atque opera consecutus esset.

Dig. 19.2.37

Iavolenus 8 ex cass.

Si, priusquam locatori opus probaretur, vi aliqua consumptum est, detrimentum ad locatorem ita pertinet, si tale opus fuit, ut probari deberet.

Dig. 19.2.38pr.

Paulus l.S. reg.

Qui operas suas locavit, totius temporis mercedem accipere debet, si per eum non stetit, quo minus operas praestet.

Dig. 19.2.38.1

Paulus l.S. reg.

Advocati quoque, si per eos non steterit, quo minus causam agant, honoraria reddere non debent.

Dig. 19.2.39

Ulpianus 2 ad ed.

Non solet locatio dominium mutare.

Dig. 19.2.40

Gaius 5 ad ed. provinc.

Qui mercedem accipit pro custodia alicuius rei, is huius periculum custodiae praestat.

Dig. 19.2.41

Ulpianus 5 ad ed.

Sed de damno ab alio dato agi cum eo non posse iulianus ait: qua enim custodia consequi potuit, ne damnum iniuria ab alio dari possit? sed Marcellus interdum esse posse ait, sive custodiri potuit, ne damnum daretur, sive ipse custos damnum dedit: quae sententia Marcelli probanda est.

Dig. 19.2.42

Paulus 13 ad ed.

Si locatum tibi servum subripias, utrumque iudicium adversus te est exercendum, locati actionis et furti.

Dig. 19.2.43

Paulus 21 ad ed.

Si vulneraveris servum tibi locatum, eiusdem vulneris nomine legis aquiliae et ex locato actio est, sed alterutra contentus actor esse debet, idque officio iudicis continetur, apud quem ex locato agetur.

Dig. 19.2.44

Ulpianus 7 ad ed.

Locare servitutem nemo potest.

Dig. 19.2.45pr.

Paulus 22 ad ed.

Si domum tibi locavero et servi mei tibi damnum dederint vel furtum fecerint, non teneor tibi ex conducto, sed noxali actione.

Dig. 19.2.45.1

Paulus 22 ad ed.

Si hominem tibi locavero, ut habeas in taberna, et is furtum fecerit, dubitari potest, utrum ex conducto actio sufficiat, quasi longe sit a bona fide actum, ut quid patiaris detrimenti per eam rem quam conduxisti, an adhuc dicendum sit extra causam conductionis esse furti crimen et in propriam persecutionem cadere hoc delictum: quod magis est.

Dig. 19.2.46

Ulpianus 69 ad ed.

Si quis conduxerit nummo uno, conductio nulla est, quia et hoc donationis instar inducit.

Dig. 19.2.47

Marcellus 6 Dig.

Cum apparebit emptorem conductoremve pluribus vendentem vel locantem singulorum in solidum intuitum personam, ita demum ad praestationem partis singuli sunt compellendi, si constabit esse omnes solvendo: quamquam fortasse iustius sit etiam, si solvendo omnes erunt, electionem conveniendi quem velit non auferendam actori, si actiones suas adversus ceteros praestare non recuset.

Dig. 19.2.48pr.

Marcellus 8 Dig.

Si cui locaverim faciendum quod ego conduxeram, constabit habere me ex locato actionem.

Dig. 19.2.48.1

Marcellus 8 Dig.

Qui servum conductum vel aliam rem non immobilem non restituit, quanti in litem iuratum fuerit damnabitur.

Dig. 19.2.49pr.

Modestinus 6 excus.

Ohi epitropoi genomenoi y kouratores prin ektisai ta tys kydemonias misvwtai kaisaros genesvai kwluontai: kan tis apokruqamenos touto proselvy ty misvwsei twn tou kaisaros xwriwn, hws parapoiysas kolazetai: touto ekeleusen ho autokratwr sebyros.

Dig. 19.2.49.1

Modestinus 6 excus.

Kata tauta de kai ohi xeirizontes epitropas y kouratorias eisin kekwlumenoi misvousvai kai para tou tamieiou xwria.

Dig. 19.2.50

Modestinus 10 pand.

Si ignorans quis militi quasi pagano locaverit, exigere illum posse probandum est: non enim contemnit disciplinam, qui ignoravit militem.

Dig. 19.2.51pr.

Iavolenus 11 epist.

Ea lege fundum locavi, ut, si non ex lege coleretur, relocare eum mihi liceret et quo minoris locassem, hoc mihi praestaretur, nec convenit, ut, si pluris locassem, hoc tibi praestaretur, et cum nemo fundum colebat, pluris tamen locavi: quaero, an hoc ipsum praestare debeam. respondit: in huiusmodi obligationibus id maxime spectare debemus, quod inter utramque partem convenit: videtur autem in hac specie id silentio convenisse, ne quid praestaretur, si ampliore pecunia fundus esset locatus, id est ut haec conventio pro locatore tantummodo interponeretur.

Dig. 19.2.51.1

Iavolenus 11 epist.

Locavi opus faciendum ita, ut pro opere redemptori certam mercedem in dies singulos darem: opus vitiosum factum est: an ex locato agere possim? respondit: si ita opus locasti, ut bonitas eius tibi a conductore adprobaretur, tametsi convenit, ut in singulas operas certa pecunia daretur, praestari tamen tibi a conductore debet, si id opus vitiosum factum est: non enim quicquam interest, utrum uno pretio opus an in singulas operas collocatur, si modo universitas consummationis ad conductorem pertinuit. poterit itaque ex locato cum eo agi, qui vitiosum opus fecerit. nisi si ideo in operas singulas merces constituta erit, ut arbitrio domini opus efficeretur: tum enim nihil conductor praestare domino de bonitate operis videtur.

Dig. 19.2.52

Pomponius 31 ad q. muc.

Si decem tibi locem fundum, tu autem existimes quinque te conducere, nihil agitur: sed et si ego minoris me locare sensero, tu pluris te conducere, utique non pluris erit conductio, quam quanti ego putavi.

Dig. 19.2.53

Papinianus 11 resp.

Qui fideiussor exstitit apud mancipem pro colono publicorum praediorum, quae manceps ei colono locavit, rei publicae non tenetur: sed fructus in eadem causa pignoris manent.

Dig. 19.2.54pr.

Paulus 5 resp.

Quaero, an fideiussor conductionis etiam in usuras non illatarum pensionem nomine teneatur nec prosint ei constitutiones, quibus cavetur eos, qui pro aliis pecuniam exsolvunt, sortis solummodo damnum agnoscere oportere. paulus respondit, si in omnem causam conductionis etiam fideiussor se obligavit, eum quoque exemplo coloni tardius illatarum per moram coloni pensionum praestare debere usuras: usurae enim in bonae fidei iudiciis etsi non tam ex obligatione proficiscantur quam ex officio iudicis applicentur, tamen, cum fideiussor in omnem causam se applicuit, aequum videtur ipsum quoque agnoscere onus usurarum, ac si ita fideiussisset: " in quantum illum condemnari ex bona fide oportebit, tantum fide tua esse iubes?" vel ita: " indemnem me praestabis?"

Dig. 19.2.54.1

Paulus 5 resp.

Inter locatorem fundi et conductorem convenit, ne intra tempora locationis seius conductor de fundo invitus repelleretur et, si pulsatus esset, poenam decem praestet titius locator seio conductori: vel seius conductor titio, si intra tempora locationis discedere vellet, aeque decem titio locatori praestare vellet: quod invicem de se stipulati sunt. quaero, cum seius conductor biennii continui pensionem non solveret, an sine metu poenae expelli possit. paulus respondit, quamvis nihil expressum sit in stipulatione poenali de solutione pensionum, tamen verisimile esse ita convenisse de non expellendo colono intra tempora praefinita, si pensionibus paruerit et ut oportet coleret: et ideo, si poenam petere coeperit is qui pensionibus satis non fecit, profuturam locatori doli exceptionem.

Dig. 19.2.54.2

Paulus 5 resp.

Paulus respondit servum, qui aestimatus colonae adscriptus est, ad periculum colonae pertinebit et ideo aestimationem huius defuncti ab herede colonae praestari oportere.

Dig. 19.2.55pr.

Paulus 2 sent.

Dominus horreorum effractis et compilatis horreis non tenetur, nisi custodiam eorum recepit: servi tamen eius cum quo contractum est propter aedificiorum notitiam in quaestionem peti possunt.

Dig. 19.2.55.1

Paulus 2 sent.

In conducto fundo si conductor sua opera aliquid necessario vel utiliter auxerit vel aedificaverit vel instituerit, cum id non convenisset, ad recipienda ea quae impendit ex conducto cum domino fundi experiri potest.

Dig. 19.2.55.2

Paulus 2 sent.

Qui contra legem conductionis fundum ante tempus sine iusta ac probabili causa deseruerit, ad solvendas totius temporis pensiones ex conducto conveniri potest, quatenus locatori in id quod eius interest indemnitas servetur.

Dig. 19.2.56

Paulus l.S. de off. praef. vig.

Cum domini horreorum insularumque desiderant diu non apparentibus nec eius temporis pensiones exsolventibus conductoribus aperire et ea quae ibi sunt describere, a publicis personis quorum interest audiendi sunt. tempus autem in huiusmodi re biennii debet observari.

Dig. 19.2.57

Iavolenus 9 ex post. lab.

Qui domum habebat, aream iniunctam ei domui vicino proximo locaverat: is vicinus cum aedificaret in suo, terram in eam aream amplius quam fundamenta caementicia locatoris erant congessit, et ea terra adsiduis pluviis inundata, ita parieti eius qui locaverat umore praestituto madefacto, aedificia corruerunt. labeo ex locato tantummodo actionem esse ait, quia non ipsa congestio, sed umor ex ea congestione postea damno fuerit, damni autem iniuriae actio ob ea ipsa sit, per quae, non extrinsecus alia causa oblata, damno quis adfectus est: hoc probo.

Dig. 19.2.58pr.

Labeo 4 post. a iav. epit.

Insulam uno pretio totam locasti et eam vendidisti ita, ut emptori mercedes inquilinorum accederent. quamvis eam conductor maiore pretio locaret, tamen id emptori accedit, quod tibi conductor debeat.

Dig. 19.2.58.1

Labeo 4 post. a iav. epit.

In operis locatione non erat dictum, ante quam diem effici deberet: deinde, si ita factum non esset, quanti locatoris interfuisset, tantam pecuniam conductor promiserat. eatenus eam obligationem contrahi puto, quatenus vir bonus de spatio temporis aestimasset, quia id actum apparet esse, ut eo spatio absolveretur, sine quo fieri non possit.

Dig. 19.2.58.2

Labeo 4 post. a iav. epit.

Quidam in municipio balineum praestandum annuis viginti nummis conduxerat et ad refectionem fornacis fistularum similiumque rerum centum nummi ut praestarentur ei, convenerat: conductor centum nummos petebat. ita ei deberi dico, si in earum rerum refectionem eam pecuniam impendi satisdaret.

Dig. 19.2.59

Iavolenus 5 lab. post.

Marcius domum faciendam a flacco conduxerat: deinde operis parte effecta terrae motu concussum erat aedificium. massurius sabinus, si vi naturali, veluti terrae motu hoc acciderit, flacci esse periculum.

Dig. 19.2.60pr.

Labeo 5 post. a iav. epit.

Cum in plures annos domus locata est, praestare locator debet, ut non solum habitare conductor ex calendis illis cuiusque anni, sed etiam locare habitatori si velit suo tempore possit. itaque si ea domus ex kalendis ianuariis fulta in kalendis iuniis permansisset, ita ut nec habitare quisquam nec ostendere alicui posset, nihil locatori conductorem praestaturum, adeo ut nec cogi quidem posset ex kalendis iuliis refecta domu habitare, nisi si paratus fuisset locator commodam domum ei ad habitandum dare.

Dig. 19.2.60.1

Labeo 5 post. a iav. epit.

Heredem coloni, quamvis colonus non est, nihilo minus domino possidere existimo.

Dig. 19.2.60.2

Labeo 5 post. a iav. epit.

Vestimenta tua fullo perdidit et habes unde petas nec repetere vis: agis nihilo minus ex locato cum fullone, sed iudicem aestimaturum, an possis adversus furem magis agere et ab eo tuas res consequi fullonis videlicet sumptibus: sed si hoc tibi impossibile esse perspexerit, tunc fullonem quidem tibi condemnabit, tuas autem actiones te ei praestare compellet.

Dig. 19.2.60.3

Labeo 5 post. a iav. epit.

Lege dicta domus facienda locata erat ita, ut probatio aut improbatio locatoris aut heredis eius esset: redemptor ex voluntate locatoris quaedam in opere permutaverat. respondi opus quidem ex lege dicta non videri factum, sed quoniam ex voluntate locatoris permutatum esset, redemptorem absolvi debere.

Dig. 19.2.60.4

Labeo 5 post. a iav. epit.

Mandavi tibi ut excuteres, quanti villam aedificare velles: renuntiasti mihi ducentorum impensam excutere: certa mercede opus tibi locavi, postea comperi non posse minoris trecentorum eam villam constare: data autem tibi erant centum, ex quibus cum partem impendisses, vetui te opus facere. dixi, si opus facere perseveraveris, ex locato tecum agere, ut pecuniae mihi reliquum restituas.

Dig. 19.2.60.5

Labeo 5 post. a iav. epit.

Messem inspiciente colono, cum alienam esse non ignorares, sustulisti. condicere tibi frumentum dominum posse labeo ait, et ut id faciat, colonum ex conducto cum domino acturum.

Dig. 19.2.60.6

Labeo 5 post. a iav. epit.

Locator horrei propositum habuit se aurum argentum margaritam non recipere suo periculo: deinde cum sciret has res inferri, passus est. proinde eum futurum tibi obligatum dixi, ac si propositum fuit, remissum videtur.

Dig. 19.2.60.7

Labeo 5 post. a iav. epit.

Servum meum mulionem conduxisti: neglegentia eius mulus tuus perit. si ipse se locasset, ex peculio dumtaxat et in rem versum damnum tibi praestaturum dico: sin autem ipse eum locassem, non ultra me tibi praestaturum, quam dolum malum et culpam meam abesse: quod si sine definitione personae mulionem a me conduxisti et ego eum tibi dedissem, cuius neglegentia iumentum perierit, illam quoque culpam me tibi praestaturum aio, quod eum elegissem, qui eiusmodi damno te adficeret.

Dig. 19.2.60.8

Labeo 5 post. a iav. epit.

Vehiculum conduxisti, ut onus tuum portaret et secum iter faceret: id cum pontem transiret, redemptor eius pontis portorium ab eo exigebat: quaerebatur, an etiam pro ipsa sola reda portorium daturus fuerit. puto, si mulio non ignoravit ea se transiturum, cum vehiculum locaret, mulionem praestare debere.

Dig. 19.2.60.9

Labeo 5 post. a iav. epit.

Rerum custodiam, quam horrearius conductoribus praestare deberet, locatorem totorum horreorum horreario praestare non debere puto, nisi si in locando aliter convenerit.

Dig. 19.2.61pr.

Scaevola 7 Dig.

Colonus, cum lege locationis non esset comprehensum, ut vineas poneret, nihilo minus in fundo vineas instituit et propter earum fructum denis amplius aureis annuis ager locari coeperat. quaesitum est, si dominus istum colonum fundi eiectum pensionum debitarum nomine conveniat, an sumptus utiliter factos in vineis instituendis reputare possit opposita doli mali exceptione. respondit vel expensas consecuturum vel nihil amplius praestaturum.

Dig. 19.2.61.1

Scaevola 7 Dig.

Navem conduxit, ut de provincia cyrenensi aquileiam navigaret olei metretis tribus milibus impositis et frumenti modiis octo milibus certa mercede: sed evenit, ut onerata navis in ipsa provincia novem mensibus retineretur et onus impositum commisso tolleretur. quaesitum est, an vecturas quas convenit a conductore secundum locationem exigere navis possit. respondit secundum ea quae proponerentur posse.

Dig. 19.2.62

Labeo 1 pith.

Si rivum, quem faciendum conduxeras et feceras, antequam eum probares, labes corrumpit, tuum periculum est. paulus: immo si soli vitio id accidit, locatoris erit periculum, si operis vitio accidit, tuum erit detrimentum.

Dig. 19.3.0. De aestimatoria.

Dig. 19.3.1pr.

Ulpianus 32 ad ed.

Actio de aestimato proponitur tollendae dubitationis gratia: fuit enim magis dubitatum, cum res aestimata vendenda datur, utrum ex vendito sit actio propter aestimationem, an ex locato, quasi rem vendendam locasse videor, an ex conducto, quasi operas conduxissem, an mandati. melius itaque visum est hanc actionem proponi: quotiens enim de nomine contractus alicuius ambigeretur, conveniret tamen aliquam actionem dari, dandam aestimatoriam praescriptis verbis actionem: est enim negotium civile gestum et quidem bona fide. quare omnia et hic locum habent, quae in bonae fidei iudiciis diximus.

Dig. 19.3.1.1

Ulpianus 32 ad ed.

Aestimatio autem periculum facit eius qui suscepit: aut igitur ipsam rem debebit incorruptam reddere aut aestimationem de qua convenit.

Dig. 19.3.2

Paulus 30 ad ed.

Haec actio utilis est et si merces intervenit.

Dig. 19.4.0. De rerum permutatione.

Dig. 19.4.1pr.

Paulus 32 ad ed.

Sicut aliud est vendere, aliud emere, alius emptor, alius venditor, ita pretium aliud, aliud merx. at in permutatione discerni non potest, uter emptor vel uter venditor sit, multumque differunt praestationes. emptor enim, nisi nummos accipientis fecerit, tenetur ex vendito, venditori sufficit ob evictionem se obligare possessionem tradere et purgari dolo malo, itaque, si evicta res non sit, nihil debet: in permutatione vero si utrumque pretium est, utriusque rem fieri oportet, si merx, neutrius. sed cum debeat et res et pretium esse, non potest permutatio emptio venditio esse, quoniam non potest inveniri, quid eorum merx et quid pretium sit, nec ratio patitur, ut una eademque res et veneat et pretium sit emptionis.

Dig. 19.4.1.1

Paulus 32 ad ed.

Unde si ea res, quam acceperim vel dederim, postea evincatur, in factum dandam actionem respondetur.

Dig. 19.4.1.2

Paulus 32 ad ed.

Item emptio ac venditio nuda consentientium voluntate contrahitur, permutatio autem ex re tradita initium obligationi praebet: alioquin si res nondum tradita sit, nudo consensu constitui obligationem dicemus, quod in his dumtaxat receptum est, quae nomen suum habent, ut in emptione venditione, conductione, mandato.

Dig. 19.4.1.3

Paulus 32 ad ed.

Ideoque pedius ait alienam rem dantem nullam contrahere permutationem.

Dig. 19.4.1.4

Paulus 32 ad ed.

Igitur ex altera parte traditione facta si alter rem nolit tradere, non in hoc agemus ut res tradita nobis reddatur, sed in id quod interest nostra illam rem accepisse, de qua convenit: sed ut res contra nobis reddatur, condictioni locus est quasi re non secuta.

Dig. 19.4.2

Paulus 5 ad plaut.

Aristo ait, quoniam permutatio vicina esset emptioni, sanum quoque furtis noxisque solutum et non esse fugitivum servum praestandum, qui ex causa daretur.

Dig. 19.5.0. De praescriptis verbis et in factum actionibus.

Dig. 19.5.1pr.

Papinianus 8 quaest.

Nonnumquam evenit, ut cessantibus iudiciis proditis et vulgaribus actionibus, cum proprium nomen invenire non possumus, facile descendemus ad eas, quae in factum appellantur. sed ne res exemplis egeat, paucis agam.

Dig. 19.5.1.1

Papinianus 8 quaest.

Domino mercium in magistrum navis, si sit incertum, utrum navem conduxerit an merces vehendas locaverit, civilem actionem in factum esse dandam labeo scribit.

Dig. 19.5.1.2

Papinianus 8 quaest.

Item si quis pretii explorandi gratia rem tradat, neque depositum neque commodatum erit, sed non exhibita fide in factum civilis subicitur actio.

Dig. 19.5.2

Celsus 8 Dig.

(nam cum deficiant vulgaria atque usitata actionum nomina, praescriptis verbis agendum est)

Dig. 19.5.3

Iulianus 14 Dig.

In quam necesse est confugere, quotiens contractus existunt, quorum appellationes nullae iure civili proditae sunt.

Dig. 19.5.4

Ulpianus 30 ad sab.

Natura enim rerum conditum est, ut plura sint negotia quam vocabula.

Dig. 19.5.5pr.

Paulus 5 quaest.

Naturalis meus filius servit tibi et tuus filius mihi: convenit inter nos, ut et tu meum manumitteres et ego tuum: ego manumisi, tu non manumisisti: qua actione mihi teneris, quaesitum est. in hac quaestione totius ob rem dati tractatus inspici potest. qui in his competit speciebus: aut enim do tibi ut des, aut do ut facias, aut facio ut des, aut facio ut facias: in quibus quaeritur, quae obligatio nascatur.

Dig. 19.5.5.1

Paulus 5 quaest.

Et si quidem pecuniam dem, ut rem accipiam, emptio et venditio est: sin autem rem do, ut rem accipiam, quia non placet permutationem rerum emptionem esse, dubium non est nasci civilem obligationem, in qua actione id veniet, non ut reddas quod acceperis, sed ut damneris mihi, quanti interest mea illud de quo convenit accipere: vel si meum recipere velim, repetatur quod datum est, quasi ob rem datum re non secuta. sed si scyphos tibi dedi, ut stichum mihi dares, periculo meo stichus erit ac tu dumtaxat culpam praestare debes. explicitus est articulus ille do ut des.

Dig. 19.5.5.2

Paulus 5 quaest.

At cum do ut facias, si tale sit factum, quod locari solet, puta ut tabulam pingas, pecunia data locatio erit, sicut superiore casu emptio: si rem do, non erit locatio, sed nascetur vel civilis actio in hoc quod mea interest vel ad repetendum condictio. quod si tale est factum, quod locari non possit, puta ut servum manumittas, sive certum tempus adiectum est, intra quod manumittatur idque, cum potuisset manumitti, vivo servo transierit, sive finitum non fuit et tantum temporis consumptum sit, ut potuerit debueritque manumitti, condici ei potest vel praescriptis verbis agi: quod his quae diximus convenit. sed si dedi tibi servum, ut servum tuum manumitteres, et manumissisti et is quem dedi evictus est, si sciens dedi, de dolo in me dandam actionem iulianus scribit, si ignorans, in factum civilem.

Dig. 19.5.5.3

Paulus 5 quaest.

Quod si faciam ut des et posteaquam feci, cessas dare, nulla erit civilis actio, et ideo de dolo dabitur.

Dig. 19.5.5.4

Paulus 5 quaest.

Sed si facio ut facias, haec species tractatus plures recipit. nam si pacti sumus, ut tu a meo debitore carthagine exigas, ego a tuo romae, vel ut tu in meo, ego in tuo solo aedificem, et ego aedificavi et tu cessas, in priorem speciem mandatum quodammodo intervenisse videtur, sine quo exigi pecunia alieno nomine non potest: quamvis enim et impendia sequantur, tamen mutuum officium praestamus et potest mandatum ex pacto etiam naturam suam excedere (possum enim tibi mandare, ut et custodiam mihi praestes et non plus impendas in exigendo quam decem): et si eandem quantitatem impenderemus, nulla dubitatio est. sin autem alter fecit, ut et hic mandatum intervenisse videatur, quasi refundamus invicem impensas: neque enim de re tua tibi mando. sed tutius erit et in insulis fabricandis et in debitoribus exigendis praescriptis verbis dari actionem, quae actio similis erit mandati actioni, quemadmodum in superioribus casibus locationi et emptioni.

Dig. 19.5.5.5

Paulus 5 quaest.

Si ergo haec sunt, ubi de faciendo ab utroque convenit, et in proposita quaestione idem dici potest et necessario sequitur, ut eius fiat condemnatio, quanti interest mea servum habere quem manumisi. an deducendum erit, quod libertum habeo? sed hoc non potest aestimari.

Dig. 19.5.6

Nerva 1 resp.

Insulam hoc modo, ut aliam insulam reficeres, vendidi. respondit nullam esse venditionem, sed civili intentione incerti agendum est.

Dig. 19.5.7

Papinianus 2 quaest.

Si tibi decem dedero, ut stichum manumittas, et cessaveris, confestim agam praescriptis verbis, ut solvas quanti mea interest: aut, si nihil interest, condicam tibi, ut decem reddas.

Dig. 19.5.8

Papinianus 27 quaest.

Si dominus servum, cum furto argueretur, quaestionis habendae causa aestimatum dedisset neque de eo compertum fuisset et is non redderetur, eo nomine civiliter agi posse, licet aliquo casu servum retenturus esset, qui traditum accepisset. potest enim retinere servum, sive dominus pro eo pecuniam elegisset sive in admisso deprehensus fuisset: tunc enim et datam aestimationem reddi a domino oportere. sed quaesitum est, qua actione pecunia, si eam dominus elegisset, peti posset. dixi, tametsi quod inter eos ageretur verbis quoque stipulationis conclusum non fuisset, si tamen lex contractus non lateret, praescriptis verbis incerti et hic agi posse, nec videri nudum pactum intervenisse, quotiens certa lege dari probaretur.

Dig. 19.5.9

Papinianus 11 resp.

Ob eam causam accepto liberatus, ut nomen titii debitoris delegaret, si fidem contractus non impleat, incerti actione tenebitur. itaque iudicis officio non vetus obligatio restaurabitur, sed promissa praestabitur aut condemnatio sequetur.

Dig. 19.5.10

Iavolenus 13 epist.

Partis tertiae usum fructum legavit: heredis bona ab eius creditoribus distracta sunt et pecuniam, quae ex aestimatione partis tertiae fiebat, mulier accepit fruendi causa et per ignorantiam stipulatio praetermissa est. quaero, an ab herede mulieris pecunia, quae fruendi causa data est, repeti possit, et qua actione. respondi in factum actionem dari debere.

Dig. 19.5.11

Pomponius 39 ad q. muc.

Quia actionum non plenus numerus esset, ideo plerumque actiones in factum desiderantur. sed et eas actiones, quae legibus proditae sunt, si lex iusta ac necessaria sit, supplet praetor in eo quod legi deest: quod facit in lege aquilia reddendo actiones in factum accommodatas legi aquiliae, idque utilitas eius legis exigit.

Dig. 19.5.12

Proculus 11 epist.

Si vir uxori suae fundos vendidit et in venditione comprehensum est convenisse inter eos, si ea nupta ei esse desisset, ut eos fundos si ipse vellet, eodem pretio mulier transcriberet viro: in factum existimo iudicium esse reddendum idque et in aliis personis observandum.

Dig. 19.5.13pr.

Ulpianus 30 ad sab.

Si tibi rem vendendam certo pretio dedissem, ut, quo pluris vendidisses, tibi haberes, placet neque mandati neque pro socio esse actionem, sed in factum quasi alio negotio gesto, quia et mandata gratuita esse debent, et societas non videtur contracta in eo, qui te non admisit socium distractionis, sed sibi certum pretium excepit.

Dig. 19.5.13.1

Ulpianus 30 ad sab.

Iulianus libro undecimo digestorum scribit, si tibi areae meae dominium dedero, ut insula aedificata partem mihi reddas, neque emptionem esse, quia pretii loco partem rei meae recipio, neque mandatum, quia non est gratuitum, neque societatem, quia nemo societatem contrahendo rei suae dominus esse desinit. sed si puerum docendum vel pecus pascendum tibi dedero vel puerum nutriendum ita, ut, si post certos annos venisset, pretium inter nos communicaretur, abhorrere haec ab area eo, quod hic dominus esse non desinit qui prius fuit: competit igitur pro socio actio. sed si forte puerum dominii tui fecero, idem se quod in area dicturum, quia dominium desinit ad primum dominum pertinere. quid ergo est? in factum putat actionem iulianus dandam, id est praescriptis verbis. ergo si quis areae dominium non transtulerit, sed passus sit te sic aedificare, ut communicaretur vel ipsa vel pretium, erit societas. idemque et si partis areae dominium transtulerit, partis non, et eadem lege aedificare passus sit.

Dig. 19.5.14pr.

Ulpianus 41 ad sab.

Qui servandarum mercium suarum causa alienas merces in mare proiecit, nulla tenetur actione: sed si sine causa id fecisset, in factum, si dolo, de dolo tenetur.

Dig. 19.5.14.1

Ulpianus 41 ad sab.

Sed et si servum quis alienum spoliaverit isque frigore mortuus sit, de vestimentis quidem furti agi poterit, de servo vero in factum agendum criminali poena adversus eum servata.

Dig. 19.5.14.2

Ulpianus 41 ad sab.

Sed et si calicem argenteum quis alienum in profundum abiecerit damni dandi causa, non lucri faciendi, pomponius libro septimo decimo ad sabinum scripsit neque furti neque damni iniuriae actionem esse, in factum tamen agendum.

Dig. 19.5.14.3

Ulpianus 41 ad sab.

Si glans ex arbore tua in meum fundum cadat eamque ego immisso pecore depascam: aristo scribit non sibi occurrere legitimam actionem, qua experiri possim: nam neque ex lege duodecim tabularum de pastu pecoris (quia non in tuo pascitur) neque de pauperie neque de damni iniuriae agi posse: in factum itaque erit agendum.

Dig. 19.5.15

Ulpianus 42 ad sab.

Solent, qui noverunt servos fugitivos alicubi celari, indicare eos dominis ubi celentur: quae res non facit eos fures. solent etiam mercedem huius rei accipere et sic indicare, nec videtur illicitum esse hoc quod datur. quare qui accepit, quia ob causam accepit nec improbam causam, non timet condictionem. quod si solutum quidem nihil est, sed pactio intercessit ob indicium, hoc est ut, si indicasset adprehensusque esset fugitivus, certum aliquid daretur, videamus, an possit agere. et quidem conventio ista non est nuda, ut quis dicat ex pacto actionem non oriri, sed habet in se negotium aliquod: ergo civilis actio oriri potest, id est praescriptis verbis. nisi si quis et in hac specie de dolo actionem competere dicat, ubi dolus aliquis arguatur.

Dig. 19.5.16pr.

Pomponius 22 ad sab.

Permisisti mihi cretam eximere de agro tuo ita, ut eum locum, unde exemissem, replerem: exemi nec repleo: quaesitum est, quam habeas actionem. sed certum est civilem actionem incerti competere: si autem vendidisti cretam, ex vendito ages. quod si post exemptionem cretae replevero nec patieris me cretam tollere tu, agam ad exhibendum, quia mea facta est, cum voluntate tua exempta sit.

Dig. 19.5.16.1

Pomponius 22 ad sab.

Permisisti mihi, ut sererem in fundo tuo et fructus tollerem: sevi nec pateris me fructus tollere. nullam iuris civilis actionem esse aristo ait: an in factum dari debeat, deliberari posse: sed erit de dolo.

Dig. 19.5.17pr.

Ulpianus 28 ad ed.

Si gratuitam tibi habitationem dedero, an commodati agere possim? et vivianus ait posse: sed est tutius praescriptis verbis agere.

Dig. 19.5.17.1

Ulpianus 28 ad ed.

Si margarita tibi aestimata dedero, ut aut eadem mihi adferres aut pretium eorum, deinde haec perierint ante venditionem, cuius periculum sit? et ait labeo, quod et pomponius scripsit, si quidem ego te venditor rogavi, meum esse periculum: si tu me, tuum: si neuter nostrum, sed dumtaxat consensimus, teneri te hactenus, ut dolum et culpam mihi praestes. actio autem ex hac causa utique erit praescriptis verbis.

Dig. 19.5.17.2

Ulpianus 28 ad ed.

Papinianus libro octavo quaestionum scripsit, si rem tibi inspiciendam dedi et dicas te perdidisse, ita demum mihi praescriptis verbis actio competit, si ignorem ubi sit: nam si mihi liqueat apud te esse, furti agere possum vel condicere vel ad exhibendum agere. secundum haec, si cui inspiciendum dedi sive ipsius causa sive utriusque, et dolum et culpam mihi praestandam esse dico propter utilitatem, periculum non: si vero mei dumtaxat causa datum est, dolum solum, quia prope depositum hoc accedit.

Dig. 19.5.17.3

Ulpianus 28 ad ed.

Si, cum unum bovem haberem et vicinus unum, placuerit inter nos, ut per denos dies ego ei et ille mihi bovem commodaremus, ut opus faceret, et apud alterum bos periit, commodati non competit actio, quia non fuit gratuitum commodatum, verum praescriptis verbis agendum est.

Dig. 19.5.17.4

Ulpianus 28 ad ed.

Si, cum mihi vestimenta venderes, rogavero, ut ea apud me relinquas, ut peritioribus ostenderem, mox haec perierint vi ignis aut alia maiore, periculum me minime praestaturum: ex quo apparet utique custodiam ad me pertinere.

Dig. 19.5.17.5

Ulpianus 28 ad ed.

Si quis sponsionis causa anulos acceperit nec reddit victori, praescriptis verbis actio in eum competit: nec enim recipienda est sabini opinio, qui condici et furti agi ex hac causa putat: quemadmodum enim rei nomine, cuius neque possessionem neque dominium victor habuit, aget furti? plane si inhonesta causa sponsionis fuit, si anuli dumtaxat repetitio erit.

Dig. 19.5.18

Ulpianus 30 ad ed.

Si apud te pecuniam deposuerim, ut dares titio, si fugitivum meum reduxisset, nec dederis, quia non reduxit: si pecuniam mihi non reddas, melius est praescriptis verbis agere: non enim ambo pecuniam ego et fugitivarius deposuimus, ut quasi apud sequestrem sit depositum.

Dig. 19.5.19pr.

Ulpianus 31 ad ed.

Rogasti me, ut tibi nummos mutuos darem: ego cum non haberem, dedi tibi rem vendendam, ut pretio utereris. si non vendidisti aut vendidisti quidem, pecuniam autem non accepisti mutuam, tutius est ita agere, ut labeo ait, praescriptis verbis, quasi negotio quodam inter nos gesto proprii contractus.

Dig. 19.5.19.1

Ulpianus 31 ad ed.

Si praedium pro te obligavero, deinde placuerit inter nos, ut mihi fideiussorem praestares, nec facias, melius esse dico praescriptis verbis agi, nisi merces intervenit: nam si intervenit, ex locato esse actionem.

Dig. 19.5.20pr.

Ulpianus 32 ad ed.

Apud labeonem quaeritur, si tibi equos venales experiendos dedero, ut, si in triduo displicuissent, redderes, tuque desultor in his cucurreris et viceris, deinde emere nolueris, an sit adversus te ex vendito actio. et puto verius esse praescriptis verbis agendum: nam inter nos hoc actum, ut experimentum gratuitum acciperes, non ut etiam certares.

Dig. 19.5.20.1

Ulpianus 32 ad ed.

Item apud melam quaeritur, si mulas tibi dedero ut experiaris et, si placuissent, emeres, si displicuissent, ut in dies singulos aliquid praestares, deinde mulae a grassatoribus fuerint ablatae intra dies experimenti, quid esset praestandum, utrum pretium et merces an merces tantum. et ait mela interesse, utrum emptio iam erat contracta an futura, ut, si facta, pretium petatur, si futura, merces petatur: sed non exprimit de actionibus. puto autem, si quidem perfecta fuit emptio, competere ex vendito actionem, si vero nondum perfecta esset, actionem talem qualem adversus desultorem dari.

Dig. 19.5.20.2

Ulpianus 32 ad ed.

Si, cum emere argentum velles, vascularius ad te detulerit et reliquerit et, cum displicuisset tibi, servo tuo referendum dedisti et sine dolo malo et culpa tua perierit, vascularii esse detrimentum, quia eius quoque causa sit missum. certe culpam eorum, quibus custodiendum perferendumve dederis, praestare te oportere labeo ait, et puto praescriptis verbis actionem in hoc competere.

Dig. 19.5.21

Ulpianus 2 disp.

Quotiens deficit actio vel exceptio, utilis actio vel exceptio est.

Dig. 19.5.22

Gaius 10 ad ed. provinc.

Si tibi polienda sarciendave vestimenta dederim, si quidem gratis hanc operam te suscipiente, mandati est obligatio, si vero mercede data aut constituta, locationis conductionisque negotium geritur. quod si neque gratis hanc operam susceperis neque protinus aut data aut constituta sit merces, sed eo animo negotium gestum fuerit, ut postea tantum mercedis nomine daretur, quantum inter nos statutum sit, placet quasi de novo negotio in factum dandum esse iudicium, id est praescriptis verbis.

Dig. 19.5.23

Alfenus 3 Dig. a paulo epit.

Duo secundum tiberim cum ambularent, alter eorum ei, qui secum ambulabat, rogatus anulum ostendit, ut respiceret ^ respicerit^: illi excidit anulus et in tiberim devolutus est. respondit posse agi cum eo in factum actione.

Dig. 19.5.24

Africanus 8 quaest.

Titius sempronio triginta dedit pactique sunt, ut ex reditu eius pecuniae tributum, quod titius pendere deberet, sempronius praestaret computatis usuris semissibus, quantoque minus tributorum nomine praestitum foret, quam earum usurarum quantitas esset, ut id titio restitueret, quod amplius praestitum esset, id ex sorte decederet, aut, si et sortem et usuras summa tributorum excessisset, id quod amplius esset titius sempronio praestaret: neque de ea re ulla stipulatio interposita est. titius consulebat, id quod amplius ex usuris sempronius redegisset, quam tributorum nomine praestitisset, qua actione ab eo consequi possit. respondit pecuniae quidem creditae usuras nisi in stipulationem deductas non deberi: verum in proposito videndum, ne non tam faenerata pecunia intellegi debeat, quam quasi mandatum inter eos contractum, nisi quod ultra semissem consecuturus esset: sed ne ipsius quidem sortis petitionem pecuniae creditae fuisse, quando, si sempronius eam pecuniam sine dolo malo vel amisisset vel vacuam habuisset, dicendum nihil eum eo nomine praestare debuisse. quare tutius esse praescriptis verbis in factum actionem dari, praesertim cum illud quoque convenisset, ut quod amplius praestitum esset, quam ex usuris redigeretur, sorti decederet: quod ipsum ius et causam pecuniae creditae excedat.

Dig. 19.5.25

Marcianus 3 reg.

Si operas fabriles quis servi vice mutua dedisset, ut totidem reciperet, posse eum praescriptis verbis agere, sicuti si paenulas dedisset, ut tunicas acciperet: nec esse hoc contrarium, quod, si per errorem operae indebitae datae sunt, ipsae repeti non possunt. nam aliud dando, ut aliud reddatur, obligari iure gentium possumus: quod autem indebitum datur, aut ipsum repeti debet aut tantundem ex eodem genere, quorum neutro modo operae repeti possunt.

Dig. 19.5.26pr.

Pomponius 21 ad sab.

Si tibi scyphos dedi, ut eosdem mihi redderes, commodati actio est: si, ut pondus argenti redderes quantum in illis esset, tantidem ponderis petitio est per actionem praescriptis verbis, tam boni tamen argenti, quam illi scyphi fuerunt: sed si ut vel hos scyphos vel ut eiusdem ponderis argentum dares, convenit, dicendum est, si quidem tua est electio, scyphos statim tuos fieri et te mihi dare aut scyphos aut argentum utrum malis: quod si mihi permissum est eligere, scyphi ^ scyphos^ tui ^ tuos^ non fient ^ fieri,^ antequam dixero me eos habere nolle.

Dig. 19.5.26.1

Pomponius 21 ad sab.

Quod kalendis <ianuariis?> dari solet medicis et scaenicis, non est merces: itaque si quid in hisce ministeriis aliter fiat quam convenit, non ex locato, sed in factum actio dabitur.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER VICESIMUS

Dig. 20.1.0. De pignoribus et hypothecis et qualiter ea contrahantur et de pactis eorum.

Dig. 20.2.0. In quibus causis pignus vel hypotheca tacite contrahitur.
Dig. 20.3.0. Quae res pignori vel hypothecae datae olbigari non possunt.
Dig. 20.4.0. Qui potiores in pignore vel hypotheca habeantur et de his qui in priorum creditorum locum succedunt.
Dig. 20.5.0. De distractione pignorum et hypothecarum.
Dig. 20.6.0. Quibus modis pignus vel hypotheca solvitur.

Dig. 20.1.0. De pignoribus et hypothecis et qualiter ea contrahantur et de pactis eorum.

Dig. 20.1.1pr.

Papinianus 11 resp.

Conventio generalis in pignore dando bonorum vel postea quaesitorum recepta est: in speciem autem alienae rei collata conventione, si non fuit ei qui pignus dabat debita, postea debitori dominio quaesito difficilius creditori, qui non ignoravit alienum, utilis actio dabitur, sed facilior erit possidenti retentio.

Dig. 20.1.1.1

Papinianus 11 resp.

Servo pignori dato peculium eius creditor citra conventionem specialiter super eo conceptam frustra distrahit, nec interest, quando servus domino peculium adquisierat.

Dig. 20.1.1.2

Papinianus 11 resp.

Cum praedium pignori daretur, nominatim, ut fructus quoque pignori essent, convenit. eos consumptos bona fide emptor utili serviana restituere non cogetur: pignoris etenim causam nec usucapione peremi placuit, quoniam quaestio pignoris ab intentione dominii separatur: quod in fructibus dissimile est, qui numquam debitoris fuerunt.

Dig. 20.1.1.3

Papinianus 11 resp.

Pacto placuit, ut ad diem usuris non solutis fructus hypothecarum usuris compensarentur fini legitimae usurae. quamvis exordio minores in stipulatum venerint, non esse tamen irritam conventionem placuit, cum ad diem minore faenore non soluto legitimae maiores usurae stipulanti recte promitti potuerunt.

Dig. 20.1.1.4

Papinianus 11 resp.

Cum praedium uxor viro donasset idque praedium vir pignori dedisset, post divortium mulier possessionem praedii sui reciperavit et idem praedium ob debitum viri pignori dedit. in ea dumtaxat pecunia recte pignus a muliere contractum apparuit, quam offerre viro debuit meliore praedio facto, scilicet si maiores sumptus quam fructus fuissent, quos vir ex praedio percepit: etenim in ea quantitate proprium mulier negotium gessisse, non alienum suscepisse videtur.

Dig. 20.1.2

Papinianus 3 resp.

Fideiussor, qui pignora vel hypothecas suscepit atque ita pecunias solvit, si mandati agat vel cum eo agatur, exemplo creditoris etiam culpam aestimari oportet. ceterum iudicio, quod de pignore dato proponitur, conveniri non potest.

Dig. 20.1.3pr.

Papinianus 20 quaest.

Si superatus sit debitor, qui rem suam vindicabat, quod suam non probaret, aeque servanda erit creditori actio serviana probanti res in bonis eo tempore, quo pignus contrahebatur, illius fuisse. sed et si victus sit debitor vindicans hereditatem, iudex actionis servianae neglecta de hereditate dicta sententia pignoris causam inspicere debebit. atquin aliud in legatis et libertatibus dictum est, cum secundum eum, qui legitimam hereditatem vindicabat, sententia dicta est. sed creditor non bene legatariis per omnia comparatur, cum legata quidem aliter valere non possunt, quam si testamentum ratum esse constaret: enimvero fieri potest, ut et pignus recte sit acceptum nec tamen ab eo lis bene instituta.

Dig. 20.1.3.1

Papinianus 20 quaest.

Per iniuriam victus apud iudicium rem quam petierat postea pignori obligavit: non plus habere creditor potest, quam habet qui pignus dedit. ergo summovebitur rei iudicatae exceptione, tametsi maxime nullam propriam qui vicit actionem exercere possit: non enim quid ille non habuit, sed quid in ea re quae pignori data est debitor habuerit, considerandum est.

Dig. 20.1.4

Gaius l.S. de form. hypoth.

Contrahitur hypotheca per pactum conventum, cum quis paciscatur, ut res eius propter aliquam obligationem sint hypothecae nomine obligatae: nec ad rem pertinet, quibus fit verbis, sicuti est et in his obligationibus quae consensu contrahuntur. et ideo et sine scriptura si convenit ut hypotheca sit et probari poterit, res obligata erit de qua conveniunt. fiunt enim de his scripturae, ut quod actum est per eas facilius probari poterit: et sine his autem valet quod actum est, si habeat probationem: sicut et nuptiae sunt, licet testationes in scriptis habitae non sunt.

Dig. 20.1.5pr.

Marcianus l.S. ad form. hypoth.

Res hypothecae dari posse sciendum est pro quacumque obligatione, sive mutua pecunia datur sive dos, sive emptio vel venditio contrahatur vel etiam locatio conductio vel mandatum, et sive pura est obligatio vel in diem vel sub condicione, et sive in praesenti contractu sive etiam praecedat: sed et futurae obligationis nomine dari possunt: sed et non solvendae omnis pecuniae causa, verum etiam de parte eius: et vel pro civili obligatione vel honoraria vel tantum naturali. sed et in condicionali obligatione non alias obligantur, nisi condicio exstiterit.

Dig. 20.1.5.1

Marcianus l.S. ad form. hypoth.

Inter pignus autem et hypothecam tantum nominis sonus differt.

Dig. 20.1.5.2

Marcianus l.S. ad form. hypoth.

Dare autem quis hypothecam potest sive pro sua obligatione sive pro aliena.

Dig. 20.1.6

Ulpianus 73 ad ed.

Obligatione generali rerum, quas quis habuit habiturusve sit, ea non continebuntur, quae verisimile est quemquam specialiter obligaturum non fuisse. ut puta supellex, item vestis relinquenda est debitori, et ex mancipiis quae in eo usu habebit, ut certum sit eum pignori daturum non fuisse. proinde de ministeriis eius perquam ei necessariis vel quae ad affectionem eius pertineant.

Dig. 20.1.7

Paulus 68 ad ed.

Vel quae in usum cottidianum habentur serviana non competit.

Dig. 20.1.8

Ulpianus 73 ad ed.

Denique concubinam filios naturales alumnos constitit generali obligatione non contineri et si qua alia sunt huiusmodi ministeria.

Dig. 20.1.9pr.

Gaius 9 ad ed. provinc.

Sed et quod ad eas res, quas eo tempore quo paciscebatur in bonis habuit, idem observari debet.

Dig. 20.1.9.1

Gaius 9 ad ed. provinc.

Quod emptionem venditionemque recipit, etiam pignerationem recipere potest.

Dig. 20.1.10

Ulpianus 73 ad ed.

Si debitor res suas duobus simul pignori obligaverit ita, ut utrique in solidum obligatae essent, singuli in solidum adversus extraneos serviana utentur: inter ipsos autem si quaestio moveatur, possidentis meliorem esse condicionem: dabitur enim possidenti haec exceptio: " si non convenit, ut eadem res mihi quoque pignori esset. si autem id actum fuerit, ut pro partibus res obligarentur, utilem actionem competere et inter ipsos et adversus extraneos, per quam dimidiam partis possessionem adprehendant singuli.

Dig. 20.1.11pr.

Marcianus l.S. ad form. hypoth.

Si is qui bona rei publicae iure administrat mutuam pecuniam pro ea accipiat, potest rem eius obligare.

Dig. 20.1.11.1

Marcianus l.S. ad form. hypoth.

Si antixrysis facta sit et in fundum aut in aedes aliquis inducatur, eo usque retinet possessionem pignoris loco, donec illi pecunia solvatur, cum in usuras fructus percipiat aut locando aut ipse percipiendo habitandoque: itaque si amiserit possessionem, solet in factum actione uti.

Dig. 20.1.11.2

Marcianus l.S. ad form. hypoth.

Usus fructus an possit pignori hypothecaeve dari, quaesitum est, sive dominus proprietatis convenerit sive ille qui solum usum fructum habet. et scribit papinianus libro undecimo responsorum tuendum creditorem et si velit cum creditore proprietarius agere " non esse ei ius uti frui invito se", tali exceptione eum praetor tuebitur: " si non inter creditorem et eum ad quem usus fructus pertinet convenerit, ut usus fructus pignori sit": nam et cum emptorem usus fructus tuetur praetor, cur non et creditorem tuebitur? eadem ratione et debitori obicietur exceptio.

Dig. 20.1.11.3

Marcianus l.S. ad form. hypoth.

Iura praediorum urbanorum pignori dari non possunt: igitur nec convenire possunt, ut hypothecae sint.

Dig. 20.1.12

Paulus 68 ad ed.

Sed an viae itineris actus aquae ductus pignoris conventio locum habeat videndum esse pomponius ait, ut talis pactio fiat, ut, quamdiu pecunia soluta non sit, eis servitutibus creditor utatur (scilicet si vicinum fundum habeat) et, si intra diem certum pecunia soluta non sit, vendere eas vicino liceat: quae sententia propter utilitatem contrahentium admittenda est.

Dig. 20.1.13pr.

Marcianus l.S. ad form. hypoth.

Grege pignori obligato quae postea nascuntur tenentur: sed et si prioribus capitibus decedentibus totus grex fuerit renovatus, pignori tenebitur.

Dig. 20.1.13.1

Marcianus l.S. ad form. hypoth.

Statuliber quoque dari hypothecae poterit, licet condicione exsistente evanescat pignus.

Dig. 20.1.13.2

Marcianus l.S. ad form. hypoth.

Cum pignori rem pigneratam accipi posse placuerit, quatenus utraque pecunia debetur, pignus secundo creditori tenetur et tam exceptio quam actio utilis ei danda est: quod si dominus solverit pecuniam, pignus quoque peremitur. sed potest dubitari, numquid creditori nummorum solutorum nomine utilis actio danda sit an non: quid enim, si res soluta fuerit? et verum est, quod pomponius libro septimo ad edictum scribit, si quidem pecuniam debet is, cuius nomen pignori datum est, exacta ea creditorem secum pensaturum: si vero corpus is debuerit et solverit, pignoris loco futurum apud secundum creditorem.

Dig. 20.1.13.3

Marcianus l.S. ad form. hypoth.

Et in superficiariis legitime consistere creditor potest adversus quemlibet possessorem, sive tantum pactum conventum de hypotheca intervenerit, sive etiam possessio tradita fuerit, deinde amissa sit.

Dig. 20.1.13.4

Marcianus l.S. ad form. hypoth.

Etiamsi creditor iudicatum debitorem fecerit, hypotheca manet obligata, quia suas condiciones habet hypothecaria actio, id est si soluta est pecunia aut satisfactum est, quibus cessantibus tenet. et si cum defensore in personam egero, licet is mihi satisdederit et damnatus sit, aeque hypotheca manet obligata. multo magis ergo si in personam actum sit sive cum reo sive cum fideiussore sive cum utrisque pro parte, licet damnati sint, hypotheca manet obligata nec per hoc videtur satisfactum creditori, quod habet iudicati actionem.

Dig. 20.1.13.5

Marcianus l.S. ad form. hypoth.

Si sub condicione debiti nomine obligata sit hypotheca, dicendum est ante condicionem non recte agi, cum nihil interim debeatur: sed si sub condicione debiti condicio venerit, rursus agere poterit. sed si praesens sit debitum, hypotheca vero sub condicione, et agatur ante condicionem hypothecaria, verum quidem est pecuniam solutam non esse, sed auferri hypothecam iniquum est: ideoque arbitrio iudicis cautiones interponendae sunt " si condicio exstiterit nec pecunia solvatur, restitui hypothecam, si in rerum natura sit. "

Dig. 20.1.13.6

Marcianus l.S. ad form. hypoth.

Propter usuras quoque si obligata sit hypotheca, usurae solvi debent: idem et in poena dicemus.

Dig. 20.1.14pr.

Ulpianus 73 ad ed.

Quaesitum est, si nondum dies pensionis venit, an et medio tempore persequi pignora permittendum sit. et puto dandam pignoris persecutionem, quia interest mea: et ita celsus scribit.

Dig. 20.1.14.1

Ulpianus 73 ad ed.

Ex quibus casibus naturalis obligatio consistit, pignus perseverare constitit.

Dig. 20.1.15pr.

Gaius l.S. de form. hypoth.

Et quae nondum sunt, futura tamen sunt, hypothecae dari possunt, ut fructus pendentes, partus ancillae, fetus pecorum et ea quae nascuntur sint hypothecae obligata: idque servandum est, sive dominus fundi convenerit aut de usu fructu aut de his quae nascuntur sive is, qui usum fructum habet, sicut iulianus scribit.

Dig. 20.1.15.1

Gaius l.S. de form. hypoth.

Quod dicitur creditorem probare debere, cum conveniebat, rem in bonis debitoris fuisse, ad eam conventionem pertinet, quae specialiter facta est, non ad illam, quae cottidie inseri solet cautionibus, ut specialiter rebus hypothecae nomine datis cetera etiam bona teneantur debitoris, quae nunc habet et quae postea adquisierit, perinde atque si specialiter hae res fuissent obligatae.

Dig. 20.1.15.2

Gaius l.S. de form. hypoth.

Qui res suas iam obligaverint et alii secundo obligant creditori, ut effugiant periculum, quod solent pati qui saepius easdem res obligant, praedicere solent alii nulli rem obligatam esse quam forte lucio titio, ut in id quod excedit priorem obligationem res sit obligata, ut sit pignori hypothecaeve id quod pluris est: aut solidum, cum primo debito liberata res fuerit? de quo videndum est, utrum hoc ita se habeat, si et conveniat, an et si simpliciter convenerit de eo quod excedit ut sit hypothecae? et solida res inesse conventioni videtur, cum a primo creditore fuerit liberata, an adhuc pars? sed illud magis est, quod prius diximus.

Dig. 20.1.16pr.

Marcianus l.S. ad form. hypoth.

Si fundus hypothecae datus sit, deinde alluvione maior factus est, totus obligabitur.

Dig. 20.1.16.1

Marcianus l.S. ad form. hypoth.

Si nesciente domino res eius hypothecae data sit, deinde postea dominus ratum habuerit, dicendum est hoc ipsum, quod ratum habet, voluisse eum retro recurrere ratihabitionem ad illud tempus, quo convenit. voluntas autem fere eorum demum servabitur, qui et pignori dare possunt.

Dig. 20.1.16.2

Marcianus l.S. ad form. hypoth.

Si res hypothecae data postea mutata fuerit, aeque hypothecaria actio competit, veluti de domo data hypothecae et horto facta: item si de loco convenit et domus facta sit: item de loco dato, deinde vineis in eo positis.

Dig. 20.1.16.3

Marcianus l.S. ad form. hypoth.

In vindicatione pignoris quaeritur, an rem, de qua actum est, possideat is cum quo actum est. nam si non possideat nec dolo fecerit quo minus possideat, absolvi debet: si vero possideat et aut pecuniam solvat aut rem restituat, aeque absolvendus est: si vero neutrum horum faciat, condemnatio sequetur. sed si velit restituere nec possit (forte quod res abest et longe est vel in provinciis), solet cautionibus res explicari: nam si caveret se restituturum, absolvitur. sin vero dolo quidem desiit possidere, summa autem ope nisus non possit rem ipsam restituere, tanti condemnabitur, quanti actor in litem iuraverit, sicut in ceteris in rem actionibus: nam si tanti condemnatus esset, quantum deberetur, quid proderat in rem actio, cum et in personam agendo idem consequeretur?

Dig. 20.1.16.4

Marcianus l.S. ad form. hypoth.

Interdum etiam de fructibus arbitrari debet iudex, ut, ex quo lis inchoata sit, ex eo tempore etiam fructibus condemnet. quid enim si minoris sit praedium, quam debetur? nam de antecedentibus fructibus nihil potest pronuntiare, nisi exstent et res non sufficit.

Dig. 20.1.16.5

Marcianus l.S. ad form. hypoth.

Creditor hypothecam sibi per sententiam adiudicatam quemadmodum habiturus sit, quaeritur: nam dominium eius vidcicare non potest. sed hypothecaria agere potest, et si exceptio obicietur a possessore rei iudicatae, replicet: " si secundum me iudicatum non est".

Dig. 20.1.16.6

Marcianus l.S. ad form. hypoth.

Si pluris condemnatus sit debitor non restituendo pignus, quam computatio sortis et usurarum faciebat, an, si tantum solverit, quantum debebat, exoneretur hypotheca? quod ego quantum quidem ad suptilitatem legis et auctoritatem sententiae non probo: semel enim causa transire videtur ad condemnationem et inde pecunia deberi: sed humanius est non amplius eum, quam quod re vera debet, dando hypothecam liberare.

Dig. 20.1.16.7

Marcianus l.S. ad form. hypoth.

Aliena res utiliter potest obligari sub condicione, si debitoris facta fuerit.

Dig. 20.1.16.8

Marcianus l.S. ad form. hypoth.

Si duo pariter de hypotheca paciscantur, in quantum quisque obligatam hypothecam habeat, utrum pro quantitate debiti an pro partibus dimidiis, quaeritur. et magis est, ut pro quantitate debiti pignus habeant obligatum. sed uterque, si cum possessore agat, quemadmodum? utrum de parte quisque an de toto, quasi utrique in solidum res obligata sit? quod erit dicendum, si eodem die pignus utrique datum est separatim: sed si simul illi et illi, si hoc actum est, uterque recte in solidum aget, si minus, unusquisque pro parte.

Dig. 20.1.16.9

Marcianus l.S. ad form. hypoth.

Potest ita fieri pignoris datio hypothecaeve, ut, si intra certum tempus non sit soluta pecunia, iure emptoris possideat rem iusto pretio tunc aestimandam: hoc enim casu videtur quodammodo condicionalis esse venditio. et ita divus severus et antoninus rescripserunt.

Dig. 20.1.17

Ulpianus 15 ad ed.

Pignoris persecutio in rem parit actionem creditori.

Dig. 20.1.18

Paulus 19 ad ed.

Si ab eo, qui publiciana uti potuit quia dominium non habuit, pignori accepi, sic tuetur me per servianam praetor, quemadmodum debitorem per publicianam.

Dig. 20.1.19

Ulpianus 21 ad ed.

Qui pignori plures res accepit, non cogitur unam liberare nisi accepto universo quantum debetur.

Dig. 20.1.20

Ulpianus 63 ad ed.

Cum convenit, ut is, qui ad refectionem aedificii credidit, de pensionibus iure pignoris ipse creditum recipiat, etiam actiones utiles adversus inquilinos accipiet cautionis exemplo, quam debitor creditori pignori dedit.

Dig. 20.1.21pr.

Ulpianus 73 ad ed.

Si inter colonum et procuratorem meum convenerit de pignore vel ratam habente me conventionem vel mandante, quasi inter me et colonum meum convenisse videatur.

Dig. 20.1.21.1

Ulpianus 73 ad ed.

Si debitor servum, quem a non domino bona fide emerat et pigneravit, teneat, servianae locus est et, si adversus eum agat creditor, doli replicatione exceptionem elidet: et ita iulianus ait, et habet rationem.

Dig. 20.1.21.2

Ulpianus 73 ad ed.

Quidquid pignori commodi sive incommodi fortuito accessit, id ad debitorem pertinet.

Dig. 20.1.21.3

Ulpianus 73 ad ed.

Si res pignerata non restituatur, lis adversus possessorem erit aestimanda, sed utique aliter adversus ipsum debitorem, aliter adversus quemvis possessorem: nam adversus debitorem non pluris quam quanti debet, quia non pluris interest, adversus ceteros possessores etiam pluris, et quod amplius debito consecutus creditor fuerit, restituere debet debitori pigneraticia actione.

Dig. 20.1.22

Modestinus 7 diff.

Si titio, qui rem meam ignorante me creditori suo pignori obligaverit, heres exstitero, ex postfacto pignus directo quidem non convalescit, sed utilis pigneraticia dabitur creditori.

Dig. 20.1.23pr.

Modestinus 3 reg.

Creditor praedia sibi obligata ex causa pignoris locare recte poterit.

Dig. 20.1.23.1

Modestinus 3 reg.

Pignoris obligatio etiam inter absentes recte ex contractu obligatur.

Dig. 20.1.24

Modestinus 5 reg.

In quorum finibus emere quis prohibetur, pignus accipere non prohibetur.

Dig. 20.1.25

Modestinus 8 reg.

Cum vitiose vel inutiliter contractus pignoris intercedat, retentioni locus non est, nec si bona creditoris ad fiscum pertineant.

Dig. 20.1.26pr.

Modestinus 4 resp.

Fideiussor impetravit a potestate, ut et ante quam solveret pignora ipse possideat quasi satisfacturus creditoribus, nec satisfecit: modo heres debitoris paratus est solvere creditoribus: quaero, an pignora fideiussor restituere cogendus sit. modestinus respondit cogendum esse.

Dig. 20.1.26.1

Modestinus 4 resp.

Pater seio emancipato filio facile persuasit, ut, quia mutuam quantitatem acciperet a septicio creditore, chirographum perscriberet sua manu filius eius, quod ipse impeditus esset scribere, sub commemoratione domus ad filium pertinentis pignori dandae: quaerebatur, an seius inter cetera bona etiam hanc domum iure optimo possidere possit, cum patris se hereditate abstinuerit, nec metuiri ex hoc solo, quod mandante patre manu sua perscripsit instrumentum chirographi, cum neque consensum suum accomodaverat patri aut signo suo aut alia scriptura. modestinus respondit: cum sua manu pignori domum suam futuram seius scripserat, consensum ei obligationi dedisse manifestum est.

Dig. 20.1.26.2

Modestinus 4 resp.

Lucius titius praedia et mancipia quae in praediis erant obligavit: heres eius praediis inter se divisis illis mancipiis defunctis alia substituerunt: creditor postea praedia cum mancipiis distraxit. quaeritur, an ipsa mancipia, quae sunt modo in praediis constituta, hoc est in hypothecis, emptor vindicare recte possit. modestinus respondit, si neque pignerata sunt ipsa mancipia neque ex pigneratis ancillis nata, minime creditoribus obligata esse.

Dig. 20.1.27

Marcellus 5 Dig.

Servum, quem quis pignori dederat, ex levissima offensa vinxit, mox solvit, et quia debito non satisfaciebat, creditor minoris servum vendidit: an aliqua actio creditori in debitorem constituenda sit, quia crediti ipsius actio non sufficit ad id quod deest persequendum? quid si eum interfecisset aut eluscasset? ubi quidem interfecisset, ad exhibendum tenetur: ubi autem eluscasset, quasi damni iniuriae dabimus actionem ad quantum interest, quod debilitando aut vinciendo persecutionem pignoris exinanierit. fingamus nullam crediti nomine actionem esse, quia forte causa ceciderat: non existimo indignam rem animadversione et auxilio praetoris. ulpianus notat: si, ut creditori noceret, vinxit, tenebitur, si merentem, non tenebitur.

Dig. 20.1.28

Paulus 3 quaest.

Si legati condicionalis relicti filio familias pater ab herede rem propriam eius pignori accepit et mortuo patre vel emancipato filio condicio legati exstiterit, incipit filio legatum deberi et neque pater potest pignus vindicare neque filius, qui nunc habere coepisset actionem nec ex praecedente tempore potest quicquam iuris habere in pignore, sicut in fideiussore dicitur.

Dig. 20.1.29pr.

Paulus 5 resp.

Paulus respondit generalem quidem conventionem sufficere ad obligationem pignorum: sed ea, quae ex bonis defuncti non fuerunt, sed postea ab herede eius ex alia causa adquisita sunt, vindicari non posse a creditore testatoris.

Dig. 20.1.29.1

Paulus 5 resp.

Si mancipia in causam pignoris ceciderunt, ea quoque, quae ex his nata sunt, eodem iure habenda sunt. quod tamen diximus etiam adgnata teneri, sive specialiter de his convenerit sive non, ita procedit, si dominium eorum ad eum pervenit qui obligavit vel heredem eius: ceterum si apud alium dominum pepererint, non erunt obligata.

Dig. 20.1.29.2

Paulus 5 resp.

Domus pignori data exusta est eamque aream emit lucius titius et exstruxit: quaesitum est de iure pignoris. paulus respondit pignoris persecutionem perseverare et ideo ius soli superficiem secutam videri, id est cum iure pignoris: sed bona fide possessores non aliter cogendos creditoribus aedificium restituere, quam sumptus in exstructione erogatos, quatenus pretiosior res facta est, reciperent.

Dig. 20.1.29.3

Paulus 5 resp.

Si sciente et consentiente domino servus, ut omnia bona domini pignori obligata essent, convenit, ipsum quoque qui cavit obligatum esse pignoris iure.

Dig. 20.1.30

Paulus 6 resp.

Periculum pignorum nominis venditi ad emptorem pertinere, si tamen probetur eas res obligatas fuisse.

Dig. 20.1.31pr.

Scaevola 1 resp.

Lex vectigali fundo dicta erat, ut, si post certum temporis vectigal solutum non esset, is fundus ad dominum redeat: postea is fundus a possessore pignori datus est: quaesitum est, an recte pignori datus est. respondit, si pecunia intercessit, pignus esse.

Dig. 20.1.31.1

Scaevola 1 resp.

Item quaesiit, si, cum in exsolutione vectigalis tam debitor quam creditor cessassent et propterea pronuntiatum esset fundum secundum legem domini esse, cuius potior causa esset. respondit, si ut proponeretur vectigali non soluto iure suo dominus usus esset, etiam pignoris ius evanuisse.

Dig. 20.1.32

Scaevola 5 resp.

Debitor pactus est, ut quaecumque in praedia pignori data inducta invecta importata ibi nata paratave essent, pignori essent: eorum praediorum pars sine colonis fuit eaque actori suo colenda debitor ita tradidit adsignatis et servis culturae necessariis: quaeritur, an et stichus vilicus et ceteri servi ad culturam missi et stichi vicarii obligati essent. respondit eos dumtaxat, qui hoc animo a domino inducti essent, ut ibi perpetuo essent, non temporis causa accomodarentur, obligatos.

Dig. 20.1.33

Tryphonus 8 disp.

Is qui promisit tibi aut titio solutum quidem titio repetere non potest, sed pignus ei datum et ante solutionem recipit.

Dig. 20.1.34pr.

Scaevola 27 Dig.

Cum tabernam debitor creditori pignori dederit, quaesitum est, utrum eo facto nihil egerit an tabernae appellatione merces, quae in ea erant, obligasse videatur? et si eas merces per tempora distraxerit et alias comparaverit easque in eam tabernam intulerit et decesserit, an omnia quae ibi deprehenduntur creditor hypothecaria actione petere possit, cum et mercium species mutatae sint et res aliae illatae? respondit: ea, quae mortis tempore debitoris in taberna inventa sunt, pignori obligata esse videntur.

Dig. 20.1.34.1

Scaevola 27 Dig.

Idem quaesiit, cum epistula talis emissa sit: " daneisamenos para sou dynaria pentakosia parekalesa se my bebaiwtyn all' hupovykyn par' emou labein: oidas gar akribws, hoti kai hy taberna kai ohi douloi mou oudeni katexontai y soi kai hws eusxymoni anvrwpw episteusas": an pignus contractum sit an vero ea epistula nullius momenti sit, cum sine die et consule sit. respondit, cum convenisse de pignoribus videtur, non idcirco obligationem pignorum cessare, quod dies et consules additi vel tabulae signatae non sint.

Dig. 20.1.34.2

Scaevola 27 Dig.

Creditor pignori accepit a debitore quidquid in bonis habet habiturusve esset: quaesitum est, an corpora pecuniae, quam idem debitor ab alio mutuam accepit, cum in bonis eius facta sint, obligata creditori pignoris esse coeperint. respondit coepisse.

Dig. 20.1.35

Labeo 1 pith. a paulo epit.

Si insula, quam tibi ex pacto convento licuit vendere, combusta est, deinde a debitore suo restituta, idem in nova insula iuris habes.

Dig. 20.2.0. In quibus causis pignus vel hypotheca tacite contrahitur.

Dig. 20.2.1

Papinianus 10 resp.

Senatus consulto quod sub marco imperatore factum est pignus insulae creditori datum, qui pecuniam ob restitutionem aedificii exstruendi mutuam dedit, ad eum quoque pertinebit, qui redemptori domino mandante nummos ministravit.

Dig. 20.2.2

Marcianus l.S. ad form. hypoth.

Pomponius libro quadragesimo variarum lectionum scribit: non solum pro pensionibus, sed et si deteriorem habitationem fecerit culpa sua inquilinus, quo nomine ex locato cum eo erit actio, invecta et illata pignori erunt obligata.

Dig. 20.2.3

Ulpianus 73 ad ed.

Si horreum fuit conductum vel devorsorium vel area, tacitam conventionem de invectis illatis etiam in his locum habere putat neratius: quod verius est.

Dig. 20.2.4pr.

Nerva 1 membr.

Eo iure utimur, ut quae in praedia urbana inducta illata sunt pignori esse credantur, quasi id tacite convenerit: in rusticis praediis contra observatur.

Dig. 20.2.4.1

Nerva 1 membr.

Stabula quae non sunt in continentibus aedificiis quorum praediorum ea numero habenda sint, dubitari potest. et quidem urbanorum sine dubio non sunt, cum a ceteris aedificiis separata sint: quod ad causam tamen talis taciti pignoris pertinet, non multum ab urbanis praediis differunt.

Dig. 20.2.5pr.

Marcianus l.S. ad form. hypoth.

Pomponius libro tertio decimo variarum lectionum scribit, si gratuitam habitationem conductor mihi praestiterit, invecta a me domino insulae pignori non esse.

Dig. 20.2.5.1

Marcianus l.S. ad form. hypoth.

Item: illud, inquit, videndum est voluntate domini induci pignus ita posse, ut in partem debiti sit obligatum.

Dig. 20.2.5.2

Marcianus l.S. ad form. hypoth.

Si quis fideiubeat, cum res illius a debitore pro quo fideiussit pignori data sit, bellissime intellegitur hoc ipso, quod fideiubeat, quodammodo mandare res suas esse obligatas. sane si postea sint eius res hypothecae datae, non erunt obligatae.

Dig. 20.2.6

Ulpianus 73 ad ed.

Licet in praediis urbanis tacite solet conventum accipi, ut perinde teneantur invecta et illata, ac si specialiter convenisset, certe libertati huiusmodi pignus non officit idque et pomponius probat: ait enim manumissioni non officere ob habitationem obligatum.

Dig. 20.2.7pr.

Pomponius 13 ex var. lect.

In praediis rusticis fructus qui ibi nascuntur tacite intelleguntur pignori esse domino fundi locati, etiamsi nominatim id non convenerit.

Dig. 20.2.7.1

Pomponius 13 ex var. lect.

Videndum est, ne non omnia illata vel inducta, sed ea sola, quae, ut ibi sint, illata fuerint, pignori sint: quod magis est.

Dig. 20.2.8

Paulus 2 sent.

Cum debitor gratuita pecunia utatur, potest creditor de fructibus rei sibi pigneratae ad modum legitimum usuras retinere.

Dig. 20.2.9

Paulus l.S. de off. praef. vig.

Est differentia obligatorum propter pensionem et eorum, quae ex conventione manifestari pignoris nomine tenentur, quod manumittere mancipia obligata pignori non possumus, inhabitantes autem manumittimus, scilicet antequam pensionis nomine percludamur: tunc enim pignoris nomine retenta mancipia non liberabimus: et derisus nerva iuris consultus, qui per fenestram monstraverat servos detentos ob pensionem liberari posse.

Dig. 20.2.10

Scaevola 6 Dig.

Tutoris heres cum herede pupilli transactione facta, cum ex ea maiorem partem solvisset, in residuam quantitatem pignus obligavit: quaesitum est, an in veterem contractum iure res obligata esset. respondit secundum ea quae proponerentur obligatam esse.

Dig. 20.3.0. Quae res pignori vel hypothecae datae olbigari non possunt.

Dig. 20.3.1pr.

Marcianus l.S. ad form. hypoth.

Pupillus sine tutoris auctoritate hypothecam dare non potest.

Dig. 20.3.1.1

Marcianus l.S. ad form. hypoth.

Si filius familias pro alio rem peculiarem obligaverit vel servus, dicendum est eam non teneri, licet liberam peculii sui administrationem habeant: sicut nec donare eis conceditur: non enim usquequaque habent liberam administrationem. facti tamen est quaestio, si quaeratur, quousque eis permissum videatur peculium administrare.

Dig. 20.3.1.2

Marcianus l.S. ad form. hypoth.

Eam rem, quam quis emere non potest, quia commercium eius non est, iure pignoris accipere non potest, ut divus pius claudio saturnino rescripsit. quid ergo, si praedium quis litigiosum pignori acceperit, an exceptione summovendus sit? et octavenus putabat etiam in pignoribus locum habere exceptionem: quod ait scaevola libro tertio variarum quaestionum procedere, ut in rebus mobilibus exceptio locum habeat.

Dig. 20.3.2

Gaius l.S. de form. hypoth.

Si alius pro muliere quae intercessit dederit hypothecam, aut pro filio familias cui contra senatus consultum creditum est, an his succurritur, quaeritur. et in eo quidem, qui pro muliere obligavit rem suam, facilius dicetur succurri ei, sicuti fideiussori huius mulieris eadem datur exceptio. sed et in eo, qui pro filio familias rem obligavit, eadem dicenda erunt, quae tractantur et in fideiussore eius.

Dig. 20.3.3

Paulus 3 quaest.

Aristo neratio prisco scripsit: etiamsi ita contractum sit, ut antecedens dimitteretur, non aliter in ius pignoris succedet, nisi convenerit, ut sibi eadem res esset obligata: neque enim in ius primi succedere debet, qui ipse nihil convenit de pignore: quo casu emptoris causa melior efficietur. denique si antiquior creditor de pignore vendendo cum debitore pactum interposuit, posterior autem creditor de distrahendo omisit non per oblivionem, sed cum hoc ageretur, ne posset vendere, videamus, an dici possit huc usque transire ad eum ius prioris, ut distrahere pignus huic liceat. quod admittendum existimo:

saepe enim quod quis ex sua persona non habet, hoc per extraneum habere potest.

Dig. 20.3.4

Paulus 5 resp.

Titius cum mutuam pecuniam accipere vellet a maevio, cavit ei et quasdam res hypothecae nomine dare destinavit: deinde postquam quasdam ex his rebus vendidisset, accepit pecuniam: quaesitum est, an et prius res venditae creditori tenerentur. respondit, cum in potestate fuerit debitoris post cautionem interpositam pecuniam non accipere, eo tempore pignoris obligationem contractam videri, quo pecunia numerata est, et ideo inspiciendum, quas res in bonis debitor numeratae pecuniae tempore habuerit.

Dig. 20.3.5

Paulus 5 sent.

Creditor, qui sciens filium familias a parente pignori accepit, relegatur.

Dig. 20.4.0. Qui potiores in pignore vel hypotheca habeantur et de his qui in priorum creditorum locum succedunt.

Dig. 20.4.1pr.

Papinianus 8 quaest.

Qui dotem pro muliere promisit, pignus sive hypothecam de restituenda sibi dote accepit: subsecuta deinde pro parte numeratione maritus eandem rem pignori alii dedit: mox residuae quantitatis numeratio impleta est: quaerebatur de pignore. cum ex causa promissionis ad universae quantitatis exsolutionem qui dotem promisit compellitur, non utique solutionem observanda sunt tempora, sed dies contractae obligationis. nec probe dici in potestate eius esse, ne pecuniam residuam redderet, ut minus dotata mulier esse videatur.

Dig. 20.4.1.1

Papinianus 8 quaest.

Alia causa est eius, qui pignus accepit ad eam summam, quam intra diem certum numerasset, ac forte prius, quam numeraret, alii res pignori data est.

Dig. 20.4.2

Papinianus 3 resp.

Qui generaliter bona debitoris pignori accepit eo potior est, cui postea praedium ex his bonis datur, quamvis ex ceteris pecuniam suam redigere possit. quod si ea conventio prioris fuit, ut ita demum cetera bona pignori haberentur, si pecunia de his, quae generaliter accepit, servari non potuisset, deficiente secunda conventione secundus creditor in pignore postea dato non tam potior quam solus invenietur.

Dig. 20.4.3pr.

Papinianus 11 resp.

Creditor acceptis pignoribus (quae secunda conventione secundus creditor accepit) novatione postea facta pignora prioribus addidit. superioris temporis ordinem manere primo creditori placuit tamquam in suum locum succedenti.

Dig. 20.4.3.1

Papinianus 11 resp.

Cum ex causa mandati praedium titio, cui negotium fuerat gestum, deberetur, priusquam ei possessio traderetur, id pignori dedit: post traditam possessionem idem praedium alii denuo pignori dedit. prioris causam esse potiorem apparuit, si non creditor secundus pretium ei qui negotium gesserat solvisset: verum in ea quantitate, quam solvisset eiusque usuris potiorem fore constaret, nisi forte prior ei pecuniam offerat: quod si debitor aliunde pecuniam solvisset, priorem praeferendum.

Dig. 20.4.3.2

Papinianus 11 resp.

Post divisionem regionibus factam inter fratres convenit, ut, si frater agri portionem pro indiviso pignori datam a creditore suo non liberasset, ex divisione quaesitae partis partem dimidiam alter distraheret. pignus intellegi contractum existimavi, sed priorem secundo non esse potiorem, quoniam secundum pignus ad eam partem directum videbatur, quam ultra partem suam frater non consentiente socio non potuit obligare.

Dig. 20.4.4

Pomponius 35 ad sab.

Si debitor, antequam a priore creditore pignus liberaret, idem illud ob pecuniam creditam alii pignori dedisset et, antequam utrique creditori solveret debitum, rem aliam priori creditori vendiderat creditumque pensaverit cum pretio rei venditae, dicendum est perinde haberi debere, ac si priori creditori pecunia soluta esset: nec enim interesse, solverit an pensaverit: et ideo posterioris creditoris causa est potior.

Dig. 20.4.5

Ulpianus 3 disp.

Interdum posterior potior est priori, ut puta si in rem istam conservandam impensum est quod sequens credidit: veluti si navis fuit obligata et ad armandam eam vel reficiendam ego credidero:

Dig. 20.4.6pr.

Ulpianus 73 ad ed.

Huius enim pecunia salvam fecit totius pignoris causam. quod poterit quis admittere et si in cibaria nautarum fuerit creditum, sine quibus navis salva pervenire non poterat.

Dig. 20.4.6.1

Ulpianus 73 ad ed.

Item si quis in merces sibi obligatas crediderit, vel ut salvae fiant vel ut naulum exsolvatur, potentior erit, licet posterior sit: nam et ipsum naulum potentius est.

Dig. 20.4.6.2

Ulpianus 73 ad ed.

Tantundem dicetur, et si merces horreorum vel areae vel vecturae iumentorum debetur: nam et hic potentior erit.

Dig. 20.4.7pr.

Ulpianus 3 disp.

Idemque est, si ex nummis pupilli fuerit res comparata. quare si duorum pupillorum nummis fuerit res comparata, ambo in pignus concurrent pro his portionibus, quae in pretium rei fuerint expensae. quod si res non in totum ex nummis cuiusdam comparata est, erit concursus utriusque creditoris, id est et antiquioris et eius cuius nummis comparata est.

Dig. 20.4.7.1

Ulpianus 3 disp.

Si tibi quae habiturus sum obligaverim et titio specialiter fundum, si in dominium meum pervenerit, mox dominium eius adquisiero, putat Marcellus concurrere utrumque creditorem et in pignore: non enim multum facit, quod de suo nummos debitor dederit, quippe cum res ex nummis pigneratis empta non sit pignerata ob hoc solum, quod pecunia pignerata erat.

Dig. 20.4.8

Ulpianus 7 disp.

Si pignus specialiter res publica acceperit, dicendum est praeferri eam fisco debere, si postea fisco debitor obligatus est, quia et privati praeferuntur.

Dig. 20.4.9pr.

Africanus 8 quaest.

Qui balneum ex calendis proximis conduxerat, pactus erat, ut homo eros pignori locatori esset, donec mercedes solverentur: idem ante calendas iulias eundem erotem alii ob pecuniam creditam pignori dedit. consultus, an adversus hunc creditorem petentem erotem locatorem praetor tueri deberet, respondit debere: licet enim eo tempore homo pignori datus esset, quo nondum quicquam pro conductione deberetur, quoniam tamen iam tunc in ea causa eros esse coepisset, ut invito locatore ius pignoris in eo solvi non posset, potiorem eius causam habendam.

Dig. 20.4.9.1

Africanus 8 quaest.

Amplius etiam sub condicione creditorem tuendum putabat adversus eum, cui postea quicquam deberi coeperit, si modo non ea condicio sit, quae invito debitore impleri non possit.

Dig. 20.4.9.2

Africanus 8 quaest.

Sed et si heres ob ea legata, quae sub condicione data erant, de pignore rei suae convenisset et postea eadem ipsa pignora ob pecuniam creditam pignori dedit ac post condicio legatorum exstitit, hic quoque tuendum eum, cui prius pignus datum esset, existimavit.

Dig. 20.4.9.3

Africanus 8 quaest.

Titia praedium alienum titio pignori dedit, post maevio: deinde domina eius pignoris facta marito suo in dotem aestimatum dedit. si titio soluta sit pecunia, non ideo magis maevii pignus convalescere placebat. tunc enim priore dimisso sequentis confirmatur pignus, cum res in bonis debitoris inveniatur: in proposito autem maritus emptoris loco est: atque ideo, quia neque tunc cum maevio obligaretur neque cum titio solveretur in bonis mulieris fuerit, nullum tempus inveniri quo pignus maevii convalescere possit. haec tamen ita, si bona fide in dotem aestimatum praedium maritus accepit, id est si ignoravit maevio obligatum esse.

Dig. 20.4.10

Ulpianus 1 resp.

Si et iure iudicatum et pignus in causa iudicati ex auctoritate eius qui iubere potuit captum est, privilegiis temporis fore potiorem heredem eius, in cuius persona pignus constitutum est.

Dig. 20.4.11pr.

Gaius l.S. de form. hypoth.

Potior est in pignore, qui prius credidit pecuniam et accepit hypothecam, quamvis cum alio ante convenerat, ut, si ab eo pecuniam acceperit, sit res obligata, licet ab hoc postea accepit: poterat enim, licet ante convenit, non accipere ab eo pecuniam.

Dig. 20.4.11.1

Gaius l.S. de form. hypoth.

Videamus, an idem dicendum sit, si sub condicione stipulatione facta hypotheca data sit, qua pendente alius credidit pure et accepit eandem hypothecam, tunc deinde prioris stipulationis exsistat condicio, ut potior sit qui postea credidisset. sed vereor, num hic aliud sit dicendum: cum enim semel condicio exstitit, perinde habetur, ac si illo tempore, quo stipulatio interposita est, sine condicione facta esset. quod et melius est.

Dig. 20.4.11.2

Gaius l.S. de form. hypoth.

Si colonus convenit, ut inducta in fundum illata ibi nata pignori essent, et antequam inducat, alii rem hypothecae nomine obligaverit, tunc deinde eam in fundum induxerit, potior erit, qui specialiter pure accepit, quia non ex conventione priori obligatur, sed ex eo quod inducta res est, quod posterius factum est.

Dig. 20.4.11.3

Gaius l.S. de form. hypoth.

Si de futura re convenerit, ut hypothecae sit, sicuti est de partu, hoc quaeritur, an ancilla conventionis tempore in bonis fuit debitoris: et in fructibus, si convenit ut sint pignori, aeque quaeritur, an fundus vel ius utendi fruendi conventionis tempore fuerit debitoris.

Dig. 20.4.11.4

Gaius l.S. de form. hypoth.

Si paratus est posterior creditor priori creditori solvere quod ei debetur, videndum est, an competat ei hypothecaria actio nolente priore creditore pecuniam accipere. et dicimus priori creditori inutilem esse actionem, cum per eum fiat, ne ei pecunia solvatur.

Dig. 20.4.12pr.

Marcianus l.S. ad form. hypoth.

Creditor qui prior hypothecam accepit sive possideat eam et alius vindicet hypothecaria actione, exceptio priori utilis est " si non mihi ante pignori hypothecaeve nomine sit res obligata": sive alio possidente prior creditor vindicet hypothecaria actione et ille excipiat " si non convenit, ut sibi res sit obligata", hic in modum supra relatum replicabit. sed si cum alio possessore creditor secundus agat, recte aget et adiudicari ei poterit hypotheca, ut tamen prior cum eo agendo auferat ei rem.

Dig. 20.4.12.1

Marcianus l.S. ad form. hypoth.

Si quoniam non restituebat rem pigneratam possessor condemnatus ex praefatis modis litis aestimationem exsolverit, an perinde secundo creditori teneatur, ac si soluta sit pecunia priori creditori, quaeritur. et recte puto hoc admittendum esse.

Dig. 20.4.12.2

Marcianus l.S. ad form. hypoth.

Si primus, qui sine hypotheca credidit, post secundum, qui utrumque fecit, ipse hypothecam accepit, sine dubio posterior in hypotheca est: unde si in diem de hypotheca convenit, dubium non est, quin potior sit, licet ante diem cum alio creditore pure de eadem re convenit.

Dig. 20.4.12.3

Marcianus l.S. ad form. hypoth.

Si idem bis, id est ante secundum et post eum crediderit, in priore pecunia potior est secundo, in posteriore tertius est.

Dig. 20.4.12.4

Marcianus l.S. ad form. hypoth.

Si tecum de hypotheca paciscatur debitor, deinde idem cum alio tua voluntate, secundus potior erit: pecunia autem soluta secundo an rursus teneatur tibi, recte quaeritur. erit autem facti quaestio agitanda, quid inter eos actum sit, utrum, ut discedatur ab hypotheca in totum, prior concessit creditor alii obligari hypothecam, an ut ordo servetur et prior creditor secundo loco constituatur.

Dig. 20.4.12.5

Marcianus l.S. ad form. hypoth.

Papinianus libro undecimo respondit, si prior creditor postea novatione facta eadem pignora cum aliis accepit, in suum locum eum succedere: sed si secundus non offerat pecuniam, posse priorem vendere, ut primam tantum pecuniam expensam ferat, non etiam quam postea credidit, et quod superfluum ex anteriore credito accepit, hoc secundo restituat.

Dig. 20.4.12.6

Marcianus l.S. ad form. hypoth.

Sciendum est secundo creditori rem teneri etiam invito debitore tam in suum debitum quam in primi creditoris et in usuras suas et quas primo creditori solvit: sed tamen usurarum, quas creditori primo solvit, usuras non consequetur: non enim negotium alterius gessit, sed magis suum. et ita papinianus libro tertio responsorum scripsit, et verum est.

Dig. 20.4.12.7

Marcianus l.S. ad form. hypoth.

Si simpliciter convenisset secundus creditor de hypotheca, ab omni possessore eam auferre poterit praeter priorem creditorem et qui ab eo emit.

Dig. 20.4.12.8

Marcianus l.S. ad form. hypoth.

A titio mutuatus pactus est cum illo, ut ei praedium suum pignori hypothecaeve esset: deinde mutuatus est pecuniam a maevio et pactus est cum eo, ut, si titio desierit praedium teneri, ei teneatur: tertius deinde aliquis dat mutuam pecuniam tibi, ut titio solveres, et paciscitur tecum, ut idem praedium ei pignori hypothecaeve sit et locum eius subeat: num hic medius tertio potior est, qui pactus est, ut titio soluta pecunia impleatur condicio, et tertius de sua neglegentia queri debeat? sed tamen et hic tertius creditor secundo praeferendus est.

Dig. 20.4.12.9

Marcianus l.S. ad form. hypoth.

Si tertius creditor pignora sua distrahi permittit ad hoc, ut priori pecunia soluta in aliud pignus priori succedat, successurum eum papinianus libro undecimo responsorum scripsit. et omnino secundus creditor nihil aliud iuris habet, nisi ut solvat priori et loco eius succedat.

Dig. 20.4.12.10

Marcianus l.S. ad form. hypoth.

Si priori hypotheca obligata sit, nihil vero de venditione convenerit, posterior vero de hypotheca vendenda convenerit, verius est priorem potiorem esse: nam et in pignore placet, si prior convenerit de pignore, licet posteriori res tradatur, adhuc potiorem esse priorem.

Dig. 20.4.13

Paulus 5 ad plaut.

Insulam tibi vendidi et dixi prioris anni pensionem mihi, sequentium tibi accessuram pignorumque ab inquilino datorum ius utrumque secuturum. nerva proculus, nisi ad utramque pensionem pignora sufficerent, ius omnium pignorum primum ad me pertinere, quia nihil aperte dictum esset, an communiter ex omnibus pignoribus summa pro rata servetur: si quid superesset, ad te. paulus: facti quaestio est, sed verisimile est id actum, ut primam quamque pensionem pignorum causa sequatur.

Dig. 20.4.14

Paulus 14 ad plaut.

Si non dominus duobus eandem rem diversis temporibus pigneraverit, prior potior est, quamvis, si a diversis non dominis pignus accipiamus, possessor melior sit.

Dig. 20.4.15

Paulus 68 ad ed.

Etiam superficies in alieno solo posita pignori dari potest, ita tamen, ut prior causa sit domini soli, si non solvatur ei solarium.

Dig. 20.4.16

Paulus 3 quaest.

Claudius felix eundem fundum tribus obligaverat, eutychianae primum, deinde turboni, tertio loco alii creditori: cum eutychiana de iure suo doceret, superata apud iudicem a tertio creditore non provocaverat: turbo apud alium iudicem victus appellaverat: quaerebatur, utrum tertius creditor etiam turbonem superare deberet, qui primam creditricem, an ea remota turbo tertium excluderet. plane cum tertius creditor primum de sua pecunia dimisit, in locum eius substituitur in ea quantitate, quam superiori exsolvit: fuerunt igitur qui dicerent hic quoque tertium creditorem potiorem esse debere. mihi nequaquam hoc iustum esse videbatur. pone primam creditricem iudicio convenisse tertium creditorem et exceptione aliove quo modo a tertio superatam: numquid adversus turbonem, qui secundo loco crediderat, tertius creditor, qui primam vicit, exceptione rei iudicatae uti potest? aut contra si post primum iudicium, in quo prima creditrix superata est a tertio creditore, secundus creditor tertium optinuerit, poterit uti exceptione rei iudicatae adversus primam creditricem? nullo modo, ut opinor. igitur nec tertius creditor successit in eius locum quem exclusit, nec inter alios res iudicata alii prodesse aut nocere solet, sed sine praeiudicio prioris sententiae totum ius alii creditori integrum relinquitur.

Dig. 20.4.17

Paulus 6 resp.

Eum qui a debitore suo praedium obligatum comparavit, eatenus tuendum, quatenus ad priorem creditorem ex pretio pecunia pervenit.

Dig. 20.4.18

Scaevola 1 resp.

Lucius titius pecuniam mutuam dedit sub usuris acceptis pignoribus, eidemque debitori maevius sub isdem pignoribus pecuniam dedit: quaero, an titius non tantum sortis et earum usurarum nomine, quae accesserunt antequam maevius crederet, sed etiam earum, quae postea accesserunt, potior esset. respondit lucium titium in omne quod ei debetur potiorem esse.

Dig. 20.4.19

Scaevola 5 resp.

Mulier in dotem dedit marito praedium pignori obligatum et testamento maritum et liberos ex eo natos, item ex alio heredes instituit: creditor cum posset heredes convenire idoneos, ad fundum venit: quaero, an, si ei iustus possessor offerat, compellendus sit ius nominis cedere. respondi posse videri non iniustum postulare.

Dig. 20.4.20

Tryphonus 8 disp.

Quaerebatur, si post primum contractum tuum, antequam aliam pecuniam tu crederes, eidem debitori seius credidisset quinquaginta et hyperocham huius rei, quae tibi pignori data esset, debitor obligasset, dehinc tu eidem debitori crederes forte quadraginta: quod plus est in pretio rei quam primo credidisti utrum seio ob quinquaginta an tibi in quadraginta cederet pignoris hyperocha. finge seium paratum esse offerre tibi summam primo ordine creditam. dixi consequens esse, ut seius, potior sit in eo quod amplius est in pignore, et oblata ab eo summa primo ordine credita usurarumque eius postponatur primus creditor in summam, quam postea eidem debitori credidit.

Dig. 20.4.21pr.

Scaevola 27 Dig.

Titius seiae ob summam, qua ex tutela ei condemnatus erat, obligavit pignori omnia bona sua quae habebat quaeque habiturus esset: postea mutuatus a fisco pecuniam pignori ei res suas omnes obligavit: et intulit seiae partem debiti et reliquam summam novatione facta eidem promisit, in qua obligatione similiter ut supra de pignore convenit. quaesitum est, an seia praeferenda sit fisco et in illis rebus, quas titius tempore prioris obligationis habuit, item in his rebus, quas post priorem obligationem adquisiit, donec universum debitum suum consequatur. respondit nihil proponi. cur non sit praeferenda.

Dig. 20.4.21.1

Scaevola 27 Dig.

Negotiatori marmorum creditur sub pignore lapidum, quorum pretia venditores ex pecunia creditoris acceperant: idem debitor conductor horreorum caesaris fuit, ob quorum pensiones aliquot annis non solutas procurator exactioni praepositus ad lapidum venditionem officium suum extendit: quaesitum est, an iure pignoris eos creditor retinere possit. respondit secundum ea quae proponerentur posse.

Dig. 20.5.0. De distractione pignorum et hypothecarum.

Dig. 20.5.1

Papinianus 26 quaest.

Creditor qui praedia pignori accepit et post alium creditorem, qui pignorum conventionem ad bona debitoris contulit, ipse quoque simile pactum bonorum ob alium aut eundem contractum interposuit, ante secundum creditorem dimissum nullo iure cetera bona titulo pignoris vendidit. sed ob eam rem in personam actio contra eum creditori, qui pignora sua requirit, non competit nec utilis danda est: nec furti rerum mobilium gratia recte convenietur, quia propriam causam ordinis errore ductus persecutus videtur, praesertim cum alter creditor furto possessionem, quae non fuit apud eum, non amiserit. ad exhibendum quoque frustra litem excipiet, quia neque possidet neque dolo fecit, ut desineret possidere. sequitur ut secundus creditor possessores interpellare debeat.

Dig. 20.5.2

Papinianus 2 resp.

Fideiussor conventus officio iudicis adsecutus est, ut emptionis titulo praedium creditori pignori datum susciperet: nihilo minus alteri creditori, qui postea sub eodem pignore contraxit, offerendae pecuniae, quam fideiussor dependit, cum usuris medii temporis facultas erit: nam huiusmodi venditio transferendi pignoris causa necessiatate iuris fieri solet.

Dig. 20.5.3pr.

Papinianus 3 resp.

Cum prior creditor pignus iure conventionis vendidit, secundo creditori non superesse ius offerendae pecuniae convenit.

Dig. 20.5.3.1

Papinianus 3 resp.

Si tamen debitor non interveniente creditore pignus vendiderit eiusque pretium priori creditori solverit, emptori poterit offerri quod ad alium creditorem de nummis eius pervenit et usurae medii temporis: nihil enim interest, debitor pignus datum vendidit an denuo pignori obliget.

Dig. 20.5.4

Papinianus 11 resp.

Cum solvendae pecuniae dies pacto profertur, convenisse videtur, ne prius vendendi pignoris potestas exerceatur.

Dig. 20.5.5pr.

Marcianus l.S. ad form. hypoth.

Cum secundus creditor oblata priori pecunia in locum eius successerit, venditionem ob pecuniam solutam et creditam recte facit.

Dig. 20.5.5.1

Marcianus l.S. ad form. hypoth.

Si secundus creditor vel fideiussor soluta pecunia pignora susceperint, recte eis offertur, quamvis emptionis titulo ea tenuerunt.

Dig. 20.5.6

Modestinus 8 reg.

Cum posterior creditor a priore pignus emit, non tam adquirendi dominii quam servandi pignoris sui causa intellegitur pecuniam dedisse et ideo offerri ei a debitore potest.

Dig. 20.5.7pr.

Marcianus l.S. ad form. hypoth.

Si creditor pignus vel hypothecam vendiderit hoc pacto, ut liceat sibi reddere pecuniam et pignus reciperare: an, si paratus sit debitor reddere pecuniam, consequi id possit? et iulianus libro undecimo digestorum scribit recte quidem distractum esse pignus, ceterum agi posse cum creditore, ut, si quas actiones habeat, eas cedat debitori. sed quod iulianus scribit in pignore, idem et circa hypothecam est.

Dig. 20.5.7.1

Marcianus l.S. ad form. hypoth.

Illud inspiciendum est, an liceat debitori, si hypotheca venierit, pecunia soluta eam reciperare. et si quidem ita venierit, ut, si intra certum tempus a debitore pecunia soluta fuerit, emptio rescindatur, intra illud tempus pecunia soluta recipit hypothecam: si vero tempus praeteriit aut si non eo pacto res venierit, non potest rescindi venditio, nisi minor sit annis viginti quinque debitor aut pupillus aut rei publicae causa absens vel in aliqua earum causarum erit, ex quibus edicto succurritur.

Dig. 20.5.7.2

Marcianus l.S. ad form. hypoth.

Quaeritur, si pactum sit a creditore, ne liceat debitori hypothecam vendere vel pignus, quid iuris sit, et an pactio nulla sit talis, quasi contra ius sit posita, ideoque veniri possit. et certum est nullam esse venditionem, ut pactioni stetur.

Dig. 20.5.8

Modestinus 4 reg.

Creditoris arbitrio permittitur ex pignoribus sibi obligatis quibus velit distractis ad suum commodum pervenire.

Dig. 20.5.9pr.

Paulus 3 quaest.

Quaesitum est, si creditor ab emptore pignoris pretium servare non potuisset, an debitor liberatus esset. putavi, si nulla culpa imputari creditori possit, manere debitorem obligatum, quia ex necessitate facta venditio non liberat debitorem nisi pecunia percepta.

Dig. 20.5.9.1

Paulus 3 quaest.

Pomponius autem lectionum libro secundo ita scripsit: quod in pignoribus dandis adici solet, ut, quo minus pignus venisset, reliquum debitor redderet, supervacuum est, quia ipso iure ita se res habet etiam non adiecto eo.

Dig. 20.5.10

Paulus 6 resp.

Etsi is, qui lege pignoris emit, ob evictionem rei redire ad venditorem non potest, tamen non esse audiendum creditorem qui fundum vendidit, si velit eiusdem rei ex alia causa quaestionem movere.

Dig. 20.5.11

Scaevola 1 resp.

Arbiter dividendae hereditatis cum corpora hereditaria divisisset, nomina quoque communium debitorum separatim singulis in solidum adsignavit: quaesitum est, an debitoris cessantibus pro solido pignus vendere quisque potest. respondi posse.

Dig. 20.5.12pr.

Tryphonus 8 disp.

Rescriptum est ab imperatore libellos agente papiniano creditorem a debitore pignus emere posse, quia in dominio manet debitoris.

Dig. 20.5.12.1

Tryphonus 8 disp.

Si aliena res pignori data fuerit et creditor eam vendiderit, videamus, an pretium quod percepit creditor liberet debitorem personali actione pecuniae creditae. quod vere responderetur, si ea lege vendidit, ne evictionis nomine obligaretur, quia ex contractu et qualiquali obligatione a debitore interposita certe ex occasione eius redactum id pretium aequius proficeret debitori, quam creditoris lucro cederet. sed quantum ad creditorem debitor liberatur: quantum vero ad dominum rei, si necdum pignus evictum est, vel ad emptorem post evictionem ipsi debitor utili actione tenetur, ne ex aliena iactura sibi lucrum adquirat. nam et si maiores fructus forte petens a possessore creditor abstulit, universos in quantitatem debitam accepto ferre debebit: et cum per iniuriam iudicis domino rem, quae debitoris non fuisset, abstulisset creditor quasi obligatam sibi, et quaereretur, an soluto debito restitui eam oporteret debitori, scaevola noster restituendam probavit. quod si non ita vendidit, ut certum sit omnimodo apud eum pretium remansurum, verum obligatus est ad id restituendum, arbitror interim quidem nihil a debitore peti posse, sed in suspenso haberi liberationem: verum si actione ex empto conventus praestitisset creditor emptori, debitum persequi eum a debitore posse, quia apparuit non esse liberatum.

Dig. 20.5.13

Paulus 1 decr.

Creditor, qui iure suo pignus distrahit, ius suum cedere debet et, si pignus possidet, tradere utique debet possessionem.

Dig. 20.5.14

Scaevola 6 Dig.

Arbitri dividundae hereditatis inter heredes cum corpora hereditaria divisissent, nomina quoque communium debitorum separatim diversa singulis in solidum adsignaverunt. quaesitum est an unusquisque eorum, debitore sibi addicto cessante in solutione, pro solido pignus sub eo nomine obligatum vendere possit. respondit potuisse.

Dig. 20.6.0. Quibus modis pignus vel hypotheca solvitur.

Dig. 20.6.1pr.

Papinianus 11 resp.

Debitoris absentis amicus negotia gessit et pignora citra emptionem pecunia sua liberavit: ius pristinum domino restitutum videtur. igitur qui negotium gessit, utilem servianam dari sibi non recte desiderabit: si tamen possideat, exceptione doli defenditur.

Dig. 20.6.1.1

Papinianus 11 resp.

Cum venditor numerata sibi parte pretii praedium quod venierat pignori accepisset ac postea residuum pretium emptori litteris ad eum missis donasset, eoque defuncto donationem quibusdam modis inutilem esse constabat. iure pignoris fiscum frustra petere praedium, qui successerat in locum venditoris, apparuit, cuius pignoris solutum esse pactum prima voluntate donationis constabat, quoniam inutilem pecuniae donationem lex facit, cui non est locus in pignore liberando.

Dig. 20.6.1.2

Papinianus 11 resp.

Defensor absentis cautionem iudicatum solvi praestitit: in dominum iudicio postea translato fideiussores ob rem iudicatam quos defensor dedit non tenebuntur nec pignora quae dederunt.

Dig. 20.6.2

Gaius 9 ad ed. provinc.

Si creditor serviana actione pignus a possessore petierit et possessor litis aestimationem obtulerit et ab eo debitor rem vindicet, non aliter hoc facere concedetur, nisi prius ei debitum offerat.

Dig. 20.6.3

Ulpianus 8 disp.

Si res distracta fuerit sic, nisi intra certum diem meliorem condicionem invenisset, fueritque tradita et forte emptor, antequam melior condicio offeretur, hanc rem pignori dedisset, Marcellus libro quinto digestorum ait finiri pignus, si melior condicio fuerit allata, quamquam, ubi sic res distracta est, nisi emptori displicuisset, pignus finiri non putet.

Dig. 20.6.4pr.

Ulpianus 73 ad ed.

Si debitor, cuius res pignori obligatae erant, servum quem emerat redhibuerit, an desinat servianae locus esse? et magis est, ne desinat, nisi ex voluntate creditoris hoc factum est.

Dig. 20.6.4.1

Ulpianus 73 ad ed.

Si in venditione pignoris consenserit creditor vel ut debitor hanc rem permutet vel donet vel in dotem det, dicendum erit pignus liberari, nisi salva causa pignoris sui consensit vel venditioni vel ceteris: nam solent multi salva causa pignoris sui consentire. sed si ipse vendiderit creditor, sic tamen venditionem fecit, ne discederet a pignore, nisi ei satisfiat, dicendum erit exceptionem ei non nocere. sed et si non concesserat pignus venumdari, sed ratam habuit venditionem, idem erit probandum.

Dig. 20.6.4.2

Ulpianus 73 ad ed.

Belle quaeritur, si forte venditio rei specialiter obligatae non valeat, an nocere haec res creditori debeat quod consensit, ut puta si qua ratio iuris venditionem impediat? dicendum est pignus valere.

Dig. 20.6.5pr.

Marcianus l.S. ad form. hypoth.

Solvitur hypotheca et si ab ea discedatur aut paciscatur creditor, ne pecuniam petat: nisi si quis dicat pactum interpositum esse, ut a persona non petatur. et quid si hoc actum sit, cum forte alius hypothecam possidebit? sed cum pactum conventum exceptionem perpetuam pariat, eadem et in hoc casu possunt dici, ut et ab hypotheca discedatur.

Dig. 20.6.5.1

Marcianus l.S. ad form. hypoth.

Si paciscatur creditor, ne intra annum pecuniam petat, intellegitur de hypotheca quoque idem pactus esse.

Dig. 20.6.5.2

Marcianus l.S. ad form. hypoth.

Si convenerit, ut pro hypotheca fideiussor daretur, et datus sit, satisfactum videbitur, ut hypotheca liberetur. aliud est, si ius obligationis vendiderit creditor et pecuniam acceperit: tunc enim manent omnes obligationes integrae, quia pretii loco id accipitur, non solutionis nomine.

Dig. 20.6.5.3

Marcianus l.S. ad form. hypoth.

Satisfactum esse creditori intellegitur et si iusiurandum delatum datum est hypothecae non esse rem obligatam.

Dig. 20.6.6pr.

Ulpianus 73 ad ed.

Item liberatur pignus, sive solutum est debitum sive eo nomine satisfactum est. sed et si tempore finitum pignus est, idem dicere debemus, vel si qua ratione obligatio eius finita est.

Dig. 20.6.6.1

Ulpianus 73 ad ed.

Qui paratus est solvere, merito pignus videtur liberasse: qui vero non solvere, sed satisfacere paratus est, in diversa causa est. ergo satisfecisse prodest, quia sibi imputare debet creditor, qui satisfactionem admisit vice solutionis: at qui non admittit satisfactionem, sed solutionem desiderat, culpandus non est.

Dig. 20.6.6.2

Ulpianus 73 ad ed.

In satisdatione autem non utimur atilicini sententia, qui putabat, si satisdetur alicui certae pecuniae, recedere eum a pignoribus debere.

Dig. 20.6.7pr.

Gaius l.S. ad form. hypoth.

Si consensit venditioni creditor, liberatur hypotheca: sed in his pupilli consensus non debet aliter ratus haberi, quam si praesente tutore auctore consenserit aut etiam ipse tutor, scilicet si commodum aliquid vel satis ei fieri ex eo iudex aestimaverit.

Dig. 20.6.7.1

Gaius l.S. ad form. hypoth.

Videbimus, si procurator omnium bonorum consensit vel servus actor, cui et solvi potest et in id praepositus est, an teneat consensus eorum. et dicendum est non posse, nisi specialiter hoc eis mandatum est.

Dig. 20.6.7.2

Gaius l.S. ad form. hypoth.

Sed si cum debitoris procuratore convenit, ne sit res obligata, dicendum est id debitori per doli exceptionem prodesse: cum autem cum servo eius convenerit, per ipsam pacti exceptionem conventi debet.

Dig. 20.6.7.3

Gaius l.S. ad form. hypoth.

Si convenit de parte pro indiviso alienanda, si certa res est quae venit, potest dici de reliqua parte ab initio agi oportere nec obstat exceptio.

Dig. 20.6.7.4

Gaius l.S. ad form. hypoth.

Illud tenendum est, si quis communis rei partem pro indiviso dederit hypothecae, divisione facta cum socio non utique eam partem creditori obligatam esse, quae ei obtingit qui pignori dedit, sed utriusque pars pro indiviso pro parte dimidia manebit obligata.

Dig. 20.6.8pr.

Marcianus l.S. ad form. hypoth.

Sicut de re corporali extincta, ita et usu fructu exstincto pignus hypothecave perit.

Dig. 20.6.8.1

Marcianus l.S. ad form. hypoth.

Creditor, ne pignori hypothecaeve sit res, pacisci potest: et ideo si heredi pactus fuerit, ei quoque proderit pactum, cui restituit hereditatem ex senatus consulto trebelliano.

Dig. 20.6.8.2

Marcianus l.S. ad form. hypoth.

Si procurator debitoris in rem suam sit, non puto dubitari debere, quin pactum noceat creditori. itemque si a parte creditoris procurator in rem suam exstiterit, paciscendo inutilem sibi faciet hypothecariam actionem, in tantum, ut putem recte dici et dominis litis hoc casu nocere hanc exceptionem.

Dig. 20.6.8.3

Marcianus l.S. ad form. hypoth.

Si convenerit, ne pars dimidia pro indiviso pignori sit, quaecumque fundi eius pars a quolibet possessore petatur, dimidia non recte petetur.

Dig. 20.6.8.4

Marcianus l.S. ad form. hypoth.

Si plures dederint pro indiviso et cum uno creditor paciscatur, ne hypothecae sit, deinde ab eo petat, etiamsi hic cum quo pactus est solidum fundum possideat, pro indiviso quia de parte convenisset, non repellit eum a toto.

Dig. 20.6.8.5

Marcianus l.S. ad form. hypoth.

An pacisci possint filius familias et servus, ne res pignori sit, quam peculiariter hypothecam acceperint et habent liberam administrationem, videamus, an quemadmodum donare non possunt, ita nec pacisci ne pignori sit possint. sed dicendum est, ut concedere possint, scilicet si pretium pro pactione accipiant, quasi vendant.

Dig. 20.6.8.6

Marcianus l.S. ad form. hypoth.

Si voluntate creditoris fundus alienatus est, inverecunde applicari sibi eum creditor desiderat, si tamen effectus sit secutus venditionis: nam si non venierit, non est satis ad repellendum creditorem, quod voluit venire.

Dig. 20.6.8.7

Marcianus l.S. ad form. hypoth.

Supervacuum est quaerere agrum specialiter hypothecae datum permissu creditoris venisse, si ipse debitor rem possideat: nisi quod potest fieri, ut debitor permissu creditoris vendiderit, deinde postea bona fide redemerit ab eodem vel ab alio, ad quem per successionem ea res pertinere coepisset, aut si ipse debitor emptori heres exstiterit: verumtamen cum pecunia soluta non sit, doli mali suspicio inerit translata ad praesens tempus, ut possit creditor replicationem doli mali obicere.

Dig. 20.6.8.8

Marcianus l.S. ad form. hypoth.

Illud videamus, si titius debitor voluntate creditoris sui vendiderit maevio vel ei, a quo maevius emerit, et postea maevius titio heres exstiterit et creditor ab eo petat, quid iuris sit. sed iniquum est auferri ei rem a creditore, qui non successionis iure, sed alio modo rem nactus est. potest tamen dici, cum titii dolus in re versaretur, ne creditor a possessore pecuniam recipiat, iniquissimum esse ludificari eum.

Dig. 20.6.8.9

Marcianus l.S. ad form. hypoth.

Quod si is fundus a maevio alicui obligatus possideatur, cui nondum satisfactum erit, tunc rursus aequum erit excipi " si non voluntate creditoris veniit": licet enim dolus malus debitoris interveniat qui non solvit, tamen secundus creditor qui pignori accepit potior est.

Dig. 20.6.8.10

Marcianus l.S. ad form. hypoth.

Tutius tamen est, si debitor a creditore petat, ut ei permittat pignus vendere, quo magis satisfaciat, ante cautionem accipere ab eo, qui rem empturus erit, ut pretium rei venditae usque ad summam debiti creditori solvatur.

Dig. 20.6.8.11

Marcianus l.S. ad form. hypoth.

Venditionis autem appellationem generaliter accipere debemus, ut et si legare permisit, valeat quod concessit: quod ita intellegemus, ut, si legatum repudiatum fuerit, convalescat pignus.

Dig. 20.6.8.12

Marcianus l.S. ad form. hypoth.

Si debitor vendiderit rem nec tradiderit, an non repellatur creditor, quasi adhuc res in bonis sit debitoris, an vero, cum teneatur ex empto, pignus exstinguatur? quod et magis est. sed quid si pretium venditor consecutus non sit nec paratus sit emptor dare? tantundem potest dici.

Dig. 20.6.8.13

Marcianus l.S. ad form. hypoth.

Sed si permiserit creditor vendere, debitor vero donaverit, an exceptione illum summoveat? an facti sit magis quaestio, numquid ideo veniri voluit, ut pretio accepto ipsi quoque res expediat? quo casu non nocebit consensus. quodsi in dotem dederit, vendidisse in hoc casu recte videtur propter onera matrimonii. in contrarium, si concessit donare et vendiderit debitor, repelletur creditor, nisi si quis dicat ideo concessisse donari, quod amicus erat creditori is cui donabatur.

Dig. 20.6.8.14

Marcianus l.S. ad form. hypoth.

Quod si concesserit decem vendere, ille quinque vendiderit, dicendum est non esse repellendum creditorem: in contrarium non erit quaerendum, quin recte vendit, si pluris vendiderit, quam concessit creditor.

Dig. 20.6.8.15

Marcianus l.S. ad form. hypoth.

Non videtur autem consensisse creditor, si sciente eo debitor rem vendiderit, cum ideo passus est veniri, quod sciebat ubique pignus sibi durare. sed si subscripserit forte in tabulis emptionis, consensisse videtur, nisi manifeste appareat deceptum esse. quod observari oportet et si sine scriptis consenserit.

Dig. 20.6.8.16

Marcianus l.S. ad form. hypoth.

Si debitori concessum sit et heres eius vendiderit, potest facti quaestio esse, quid intellexit creditor. sed recte venisse dicendum est: hae enim suptilitates ab iudicibus non admittuntur.

Dig. 20.6.8.17

Marcianus l.S. ad form. hypoth.

Si debitor forte concessa venditione desierit possidere et novus possessor vendiderit, an duret pignus, quasi personae permiserit creditor? quod et magis est: nam si novo possessori, non debitori a quo hypothecam accepit, concessit creditor vendere, dicendum est nocere ei exceptionem.

Dig. 20.6.8.18

Marcianus l.S. ad form. hypoth.

Sed si intra annum aut biennium consenserit creditor vendere, post hoc tempus vendendo non aufert pignus creditori.

Dig. 20.6.8.19

Marcianus l.S. ad form. hypoth.

Si creditor hypothecaria usus a possessore litis aestimationem consecutus fuerit et a debitore petat debitum, puto doli mali exceptionem ei obstaturam.

Dig. 20.6.9pr.

Modestinus 4 resp.

Titius sempronio fundum pignori dedit et eundem fundum postea gaio seio pignori dedit, atque ita idem titius sempronio et gaio seio fundum eundem in assem vendidit, quibus pignori ante dederat in solidum singulis. quaero, an venditione interposita ius pignoris exstinctum sit ac per hoc ius solum emptionis apud ambos permanserit. modestinus respondit dominium ad eos de quibus quaeritur emptionis iure pertinere: cum consensum mutuo venditioni dedisse proponantur, invicem pigneraticiam actionem eos non habere.

Dig. 20.6.9.1

Modestinus 4 resp.

Titius seio pecuniam sub pignore fundi dederat: qui fundus cum esset rei publicae ante obligatus, secundus creditor pecuniam rei publicae eam solvit: sed maevius exstitit, qui dicebat ante rem publicam sibi fundum obligatum fuisse: inveniebatur autem maevius instrumento cautionis cum re publica facto a seio interfuisse et subscripsisse, quo caverat seius fundum nulli alii esse obligatum: quaero, an actio aliqua in rem maevio competere potest. modestinus respondit pignus, cui is de quo quaeritur consensit, minime eum retinere posse.

Dig. 20.6.10pr.

Paulus 3 quaest.

Voluntate creditoris pignus debitor vendidit et postea placuit inter eum et emptorem, ut a venditione discederent. ius pignorum salvum erit creditori: nam sicut debitori, ita et creditori pristinum ius restituitur, neque omni modo creditor pignus remittit, sed ita demum, si emptor rem retineat nec reddat venditori. et ideo si iudicio quoque accepto venditor absolutus sit vel quia non tradebat in id quod interest condemnatus, salvum fore pignus creditori dicendum est: haec enim accidere potuissent, etiamsi non voluntate creditoris vendidisset.

Dig. 20.6.10.1

Paulus 3 quaest.

Creditor quoque si pignus distraxit et ex venditione recessum fuerit vel homo redhibitus, dominium ad debitorem revertitur. idemque est in omnibus, quibus concessum est rem alienam vendere: non enim quia dominium transferunt, ideo ab emptore ius recipiunt: sed in pristinam causam res redit resoluta venditione.

Dig. 20.6.11pr.

Paulus 4 resp.

Lucius titius cum esset uxori suae gaiae seiae debitor sub pignore sive hypotheca praediorum, eadem praedia cum uxore sua seiae septiciae communis filiae nomine sempronio marito eius futuro in dotem dedit:

Dig. 20.6.11.1

Paulus 4 resp.

Postea defuncto lucio titio septicia filia abstinuit se hereditate paterna: quaero, an mater eius hypothecam persequi possit. paulus respondit pignoris quidem obligationem praediorum gaiam seiam, quae viro pro filia communi in dotem eadem danti consensit, cum communis filiae nomine darentur, remisisse videri, obligationem autem personalem perseverasse: sed adversus eam, quae patris hereditate se abstinuit, actionem non esse dandam.

Dig. 20.6.12pr.

Paulus 5 resp.

Paulus respondit sempronium antiquiorem creditorem consentientem, cum debitor eandem rem tertio creditori obligaret, ius suum pignoris remisisse videri, non etiam tertium in locum eius successisse, et ideo medii creditoris meliorem causam effectam. idem observandum est et si res publica tertio loco crediderit.

Dig. 20.6.12.1

Paulus 5 resp.

Qui pignoris iure rem persequuntur, a vindicatione rei eos removeri solere, si qualiscumque possessor offerre vellet: neque enim debet quaeri de iure possessoris, cum ius petitoris removeatur soluto pignore.

Dig. 20.6.13

Tryphonus 8 disp.

Si deferente creditore iuravit debitor se dare non oportere, pignus liberatur, quia perinde habetur, atque si iudicio absolutus esset: nam et si a iudice quamvis per iniuriam absolutus sit debitor, tamen pignus liberatur.

Dig. 20.6.14

Labeo 5 post. a iav. epit.

Cum colono tibi convenit, ut invecta importata pignori essent, donec merces tibi soluta aut satisfactum esset: deinde mercedis nomine fideiussorem a colono accepisti. satisfactum tibi videri existimo et ideo illata pignori esse desisse.

Dig. 20.6.15

Scaevola 6 Dig.

Primi creditoris, qui pignori praedia acceperat, et posterioris, cui quidam ex isdem fundis dati erant, ad eandem personam hereditas devenerat: debitor offerebat, quantum a posteriore creditore mutuatus fuerat. respondit cogendum accipere salvo iure pignoris prioris contractus.

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Dig. 21.1.0. De aedilicio edicto et redhibitione et quanti minoris.
Dig. 21.2.0. De evictionibus et duplae stipulatione.
Dig. 21.3.0. De exceptione rei venditae et traditae.

Dig. 21.1.0. De aedilicio edicto et redhibitione et quanti minoris.

Dig. 21.1.1pr.

Ulpianus 1 ad ed. aedil. curul.

Labeo scribit edictum aedilium curulium de venditionibus rerum esse tam earum quae soli sint quam earum quae mobiles aut se moventes.

Dig. 21.1.1.1

Ulpianus 1 ad ed. aedil. curul.

Aiunt aediles: " qui mancipia vendunt certiores faciant emptores, quid morbi vitiive cuique sit, quis fugitivus errove sit noxave solutus non sit: eademque omnia, cum ea mancipia venibunt, palam recte pronuntianto. quodsi mancipium adversus ea venisset, sive adversus quod dictum promissumve fuerit cum veniret, fuisset, quod eius praestari oportere dicetur: emptori omnibusque ad quos ea res pertinet iudicium dabimus, ut id mancipium redhibeatur. si quid autem post venditionem traditionemque deterius emptoris opera familiae procuratorisve eius factum erit, sive quid ex eo post venditionem natum adquisitum fuerit, et si quid aliud in venditione ei accesserit, sive quid ex ea re fructus pervenerit ad emptorem, ut ea omnia restituat. item si quas accessiones ipse praestiterit, ut recipiat. item si quod mancipium capitalem fraudem admiserit, mortis consciendae sibi causa quid fecerit, inve harenam depugnandi causa ad bestias intromissus fuerit, ea omnia in venditione pronuntianto: ex his enim causis iudicium dabimus. hoc amplius si quis adversus ea sciens dolo malo vendidisse dicetur, iudicium dabimus".

Dig. 21.1.1.2

Ulpianus 1 ad ed. aedil. curul.

Causa huius edicti proponendi est, ut occurratur fallaciis vendentium et emptoribus succurratur, quicumque decepti a venditoribus fuerint: dummodo sciamus venditorem, etiamsi ignoravit ea quae aediles praestari iubent, tamen teneri debere. nec est hoc iniquum: potuit enim ea nota habere venditor: neque enim interest emptoris, cur fallatur, ignorantia venditoris an calliditate.

Dig. 21.1.1.3

Ulpianus 1 ad ed. aedil. curul.

Illud sciendum est edictum hoc non pertinere ad venditiones fiscales.

Dig. 21.1.1.4

Ulpianus 1 ad ed. aedil. curul.

Si tamen res publica aliqua faciat venditionem, edictum hoc locum habebit.

Dig. 21.1.1.5

Ulpianus 1 ad ed. aedil. curul.

In pupillaribus quoque venditionibus erit edicto locus.

Dig. 21.1.1.6

Ulpianus 1 ad ed. aedil. curul.

Si intellegatur vitium morbusve mancipii (ut plerumque signis quibusdam solent demonstrare vitia), potest dici edictum cessare: hoc enim tantum intuendum est, ne emptor decipiatur.

Dig. 21.1.1.7

Ulpianus 1 ad ed. aedil. curul.

Sed sciendum est morbum apud sabinum sic definitum esse habitum cuiusque corporis contra naturam, qui usum eius ad id facit deteriorem, cuius causa natura nobis eius corporis sanitatem dedit: id autem alias in toto corpore, alias in parte accidere (namque totius corporis morbus est puta fvisis febris, partis veluti caecitas, licet homo itaque natus sit): vitiumque a morbo multum differre, ut puta si quis balbus sit, nam hunc vitiosum magis esse quam morbosum. ego puto aediles tollendae dubitationis gratia bis kata tou autou idem dixisse, ne qua dubitatio superesset.

Dig. 21.1.1.8

Ulpianus 1 ad ed. aedil. curul.

Proinde si quid tale fuerit vitii sive morbi, quod usum ministeriumque hominis impediat, id dabit redhibitioni locum, dummodo meminerimus non utique quodlibet quam levissimum efficere, ut morbosus vitiosusve habeatur. proinde levis febricula aut vetus quartana quae tamen iam sperni potest vel vulnusculum modicum nullum habet in se delictum, quasi pronuntiatum non sit: contemni enim haec potuerunt. exempli itaque gratia referamus, qui morbosi vitiosique sunt.

Dig. 21.1.1.9

Ulpianus 1 ad ed. aedil. curul.

Apud vivianum quaeritur, si servus inter fanaticos non semper caput iactaret et aliqua profatus esset, an nihilo minus sanus videretur. et ait vivianus nihilo minus hunc sanum esse: neque enim nos, inquit, minus animi vitiis aliquos sanos esse intellegere debere: alioquin, inquit, futurum, ut in infinito hac ratione multos sanos esse negaremus ut puta levem superstitiosum iracundum contumacem et si qua similia sunt animi vitia: magis enim de corporis sanitate, quam de animi vitiis promitti. interdum tamen, inquit, vitium corporale usque ad animum pervenire et eum vitiare: veluti contingeret frenytikw, quia id ei ex febribus acciderit. quid ergo est? si quid sit animi vitium tale, ut id a venditore excipi oporteret neque id venditor cum sciret pronuntiasset, ex empto eum teneri.

Dig. 21.1.1.10

Ulpianus 1 ad ed. aedil. curul.

Idem vivianus ait, quamvis aliquando quis circa fana bacchatus sit et responsa reddiderit, tamen, si nunc hoc non faciat, nullum vitium esse: neque eo nomine, quod aliquando id fecit, actio est, sicuti si aliquando febrem habuit: ceterum si nihilo minus permaneret in eo vitio, ut circa fana bacchari soleret et quasi demens responsa daret, etiamsi per luxuriam id factum est, vitium tamen esse, sed vitium animi, non corporis, ideoque redhiberi non posse, quoniam aediles de corporalibus vitiis loquuntur: attamen ex empto actionem admittit.

Dig. 21.1.1.11

Ulpianus 1 ad ed. aedil. curul.

Idem dicit etiam in his, qui praeter modum timidi cupidi avarique sunt aut iracundi.

Dig. 21.1.2

Paulus 1 ad ed. aedil. curul.

Vel melancholici.

Dig. 21.1.3

Gaius 1 ad ed. aedil. curul.

Vel protervi vel gibberosi vel curvi vel pruriginosi vel scabiosi, item muti et surdi:

Dig. 21.1.4pr.

Ulpianus 1 ad ed. aedil. curul.

Ob quae vitia negat redhibitionem esse, ex empto dat actionem.

Dig. 21.1.4.1

Ulpianus 1 ad ed. aedil. curul.

Sed si vitium corporis usque ad animum penetrat, forte si propter febrem loquantur aliena vel qui per vicos more insanorum deridenda loquantur, in quos id animi vitium ex corporis vitio accidit, redhiberi posse.

Dig. 21.1.4.2

Ulpianus 1 ad ed. aedil. curul.

Item aleatores et vinarios non contineri edicto quosdam respondisse pomponius ait, quemadmodum nec gulosos nec impostores aut mendaces aut litigiosos.

Dig. 21.1.4.3

Ulpianus 1 ad ed. aedil. curul.

Idem pomponius ait, quamvis non valide sapientem servum venditor praestare debeat, tamen, si ita fatuum vel morionem vendiderit, ut in eo usus nullus sit, videri vitium. et videmur hoc iure uti, ut vitii morbique appellatio non videatur pertinere nisi ad corpora: animi autem vitium ita demum praestabit venditor, si promisit, si minus, non. et ideo nominatim de errone et fugitivo excipitur: hoc enim animi vitium est, non corporis. unde quidam iumenta pavida et calcitrosa morbosis non esse adnumeranda dixerunt: animi enim, non corporis hoc vitium esse.

Dig. 21.1.4.4

Ulpianus 1 ad ed. aedil. curul.

In summa si quidem animi tantum vitium est, redhiberi non potest, nisi si dictum est hoc abesse et non abest: ex empto tamen agi potest, si sciens id vitium animi reticuit: si autem corporis solius vitium est aut et corporis et animi mixtum vitium, redhibitio locum habebit.

Dig. 21.1.4.5

Ulpianus 1 ad ed. aedil. curul.

Illud erit adnotandum, quod de morbo generaliter scriptum est, non de sontico morbo, nec mirum hoc videri pomponius ait: nihil enim ibi agitur de ea re, cui hic ipse morbus obstet.

Dig. 21.1.4.6

Ulpianus 1 ad ed. aedil. curul.

Idem ait non omnem morbum dare locum redhibitioni, ut puta levis lippitudo aut levis dentis auriculaeve dolor aut mediocre ulcus: non denique febriculam quantulamlibet ad causam huius edicti pertinere.

Dig. 21.1.5

Paulus 11 ad sab.

Et quantum interest inter haec vitia quae graeci kakoyveian dicunt, interque pavos aut noson aut arrwstian, tantum inter talia vitia et eum morbum, ex quo quis minus aptus usui sit, differt.

Dig. 21.1.6pr.

Ulpianus 1 ad ed. aedil. curul.

Pomponius recte ait non tantum ad perpetuos morbos, verum ad temporarios quoque hoc edictum pertinere.

Dig. 21.1.6.1

Ulpianus 1 ad ed. aedil. curul.

Trebatius ait impetiginosum morbosum non esse, si eo membro, ubi impetigo esset, aeque recte utatur: et mihi videtur vera trebatii sententia.

Dig. 21.1.6.2

Ulpianus 1 ad ed. aedil. curul.

Spadonem morbosum non esse neque vitiosum verius mihi videtur, sed sanum esse, sicuti illum, qui unum testiculum habet, qui etiam generare potest.

Dig. 21.1.7

Paulus 11 ad sab.

Sin autem quis ita spado est, ut tam necessaria pars corporis et penitus absit, morbosus est.

Dig. 21.1.8

Ulpianus 1 ad ed. aedil. curul.

Si cui lingua abscisa sit, an sanus esse videatur, quaeritur. et exstat haec quaestio apud ofilium relata apud eum in equo: ait enim hunc videri non esse sanum.

Dig. 21.1.9

Ulpianus 44 ad sab.

Mutum morbosum esse sabinus ait: morbum enim esse sine voce esse apparet. sed qui graviter loquitur, morbosus non est, nec qui asafws: plane qui asymws loquitur, hic utique morbosus est.

Dig. 21.1.10pr.

Ulpianus 1 ad ed. aedil. curul.

Idem ofilius ait, si homini digitus sit abscisus membrive quid laceratum, quamvis consanaverit, si tamen ob eam rem eo minus uti possit, non videri sanum esse.

Dig. 21.1.10.1

Ulpianus 1 ad ed. aedil. curul.

Catonem quoque scribere lego, cui digitus de manu aut de pede praecisus sit, eum morbosum esse: quod verum est secundum supra scriptam distinctionem.

Dig. 21.1.10.2

Ulpianus 1 ad ed. aedil. curul.

Sed si quis plures digitos habeat sive in manibus sive in pedibus, si nihil impeditur numero eorum, non est in causa redhibitionis: propter quod non illud spectandum est, quis numerus sit digitorum, sed an sine impedimento vel pluribus vel paucioribus uti possit.

Dig. 21.1.10.3

Ulpianus 1 ad ed. aedil. curul.

De myope quaesitum est, an sanus esset: et puto eum redhiberi posse.

Dig. 21.1.10.4

Ulpianus 1 ad ed. aedil. curul.

Sed et nuktalwpa morbosum esse constat, id est ubi homo neque matutino tempore videt neque vespertino, quod genus morbi graeci vocant nuktalwpa. luscitionem eam esse quidam putant, ubi homo lumine adhibito nihil videt.

Dig. 21.1.10.5

Ulpianus 1 ad ed. aedil. curul.

Quaesitum est, an balbus et blaesus et atypus isque qui tardius loquitur et varus et vatius sanus sit: et opinor eos sanos esse.

Dig. 21.1.11

Paulus 11 ad sab.

Cui dens abest, non est morbosus: magna enim pars hominum aliquo dente caret neque ideo morbosi sunt: praesertim cum sine dentibus nascimur nec ideo minus sani sumus donec dentes habeamus: alioquin nullus senex sanus esset.

Dig. 21.1.12pr.

Ulpianus 1 ad ed. aedil. curul.

Qui clavum habet, morbosus est: sed et polyposus.

Dig. 21.1.12.1

Ulpianus 1 ad ed. aedil. curul.

Eum, qui alterum oculum aut alteram maxillam maiorem habet, si recte iis utatur, sanum videri pedius scribit: ait enim inaequalitatem maxillarum oculorum brachiorum, si nihil ex ministerio praestando subtrahit, extra redhibitionem esse. sed et latus vel crus brevius potest adferre impedimentum: ergo et hic erit redhibendus.

Dig. 21.1.12.2

Ulpianus 1 ad ed. aedil. curul.

Si quis natura gutturosus sit aut oculos eminentes habeat, sanus videtur.

Dig. 21.1.12.3

Ulpianus 1 ad ed. aedil. curul.

Item sciendum est scaevam non esse morbosum vel vitiosum, praeterquam si inbecillitate dextrae validius sinistra utitur: sed hunc non scaevam, sed mancum esse.

Dig. 21.1.12.4

Ulpianus 1 ad ed. aedil. curul.

Is cui os oleat an sanus sit quaesitum est: trebatius ait non esse morbosum os alicui olere, veluti hircosum, strabonem: hoc enim ex illuvie oris accidere solere. si tamen ex corporis vitio id accidit, veluti quod iecur, quod pulmo aut aliud quid similiter dolet, morbosus est.

Dig. 21.1.13

Gaius 1 ad ed. aedil. curul.

Item clodus morbosus est.

Dig. 21.1.14pr.

Ulpianus 1 ad ed. aedil. curul.

Quaeritur de ea muliere, quae semper mortuos parit, an morbosa sit: et ait sabinus, si vulvae vitio hoc contingit, morbosam esse.

Dig. 21.1.14.1

Ulpianus 1 ad ed. aedil. curul.

Si mulier praegnas venierit, inter omnes convenit sanam eam esse: maximum enim ac praecipuum munus feminarum est accipere ac tueri conceptum:

Dig. 21.1.14.2

Ulpianus 1 ad ed. aedil. curul.

Puerperam quoque sanam esse, si modo nihil extrinsecus accidit, quod corpus eius in aliquam valetudinem immitteret.

Dig. 21.1.14.3

Ulpianus 1 ad ed. aedil. curul.

De sterili caelius distinguere trebatium dicit, ut, si natura sterilis sit, sana sit, si vitio corporis, contra.

Dig. 21.1.14.4

Ulpianus 1 ad ed. aedil. curul.

Item de eo qui urinam facit quaeritur. et pedius ait non ob eam rem sanum non esse, quod in lecto somno vinoque pressus aut etiam pigritia surgendi urinam faciat: sin autem vitio vesicae collectum umorem continere non potest, non quia urinam in lecto facit, sed quia vitiosam vesicam habet, redhiberi posse: et verius est quod pedius.

Dig. 21.1.14.5

Ulpianus 1 ad ed. aedil. curul.

Idem ait, si uva alicuius praecisa sit, tollere magis quam praestare redhibitionem, quod morbus minuitur: ego puto, si morbus desinit, non esse redhibitioni locum, sin autem vitium perseveret, redhibitionem locum habere.

Dig. 21.1.14.6

Ulpianus 1 ad ed. aedil. curul.

Si quis digitis coniunctis nascatur, non videtur sanus esse, sed ita demum, si incommodatur ad usum manus.

Dig. 21.1.14.7

Ulpianus 1 ad ed. aedil. curul.

Mulierem ita artam, ut mulier fieri non possit, sanam non videri constat.

Dig. 21.1.14.8

Ulpianus 1 ad ed. aedil. curul.

Si quis antiadas habeat, an redhiberi quasi vitiosus possit, quaeritur. et si antiades hae sunt quas existimo, id est inveteratas, et qui iam discuti non possint faucium tumores, qui antiadas habet vitiosus est.

Dig. 21.1.14.9

Ulpianus 1 ad ed. aedil. curul.

Si venditor nominatim exceperit de aliquo morbo et de cetero sanum esse dixerit aut promiserit, standum est eo quod convenit (remittentibus enim actiones suas non est regressus dandus), nisi sciens venditor morbum consulto reticuit: tunc enim dandam esse de dolo malo replicationem.

Dig. 21.1.14.10

Ulpianus 1 ad ed. aedil. curul.

Si nominatim morbus exceptus non sit, talis tamen morbus sit, qui omnibus potuit apparere (ut puta caecus homo venibat, aut qui cicatricem evidentem et periculosam habebat vel in capite vel in alia parte corporis), eius nomine non teneri caecilius ait, perinde ac si nominatim morbus exceptus fuisset: ad eos enim morbos vitiaque pertinere edictum aedilium probandum est, quae quis ignoravit vel ignorare potuit.

Dig. 21.1.15

Paulus 11 ad sab.

Quae bis in mense purgatur, sana non est, item quae non purgatur, nisi per aetatem accidit.

Dig. 21.1.16

Pomponius 23 ad sab.

Quod ita sanatum est, ut in pristinum statum restitueretur, perinde habendum est, quasi numquam morbosum esset.

Dig. 21.1.17pr.

Ulpianus 1 ad ed. aedil. curul.

Quid sit fugitivus, definit ofilius: fugitivus est, qui extra domini domum fugae causa, quo se a domino celaret, mansit.

Dig. 21.1.17.1

Ulpianus 1 ad ed. aedil. curul.

Caelius autem fugitivum esse ait eum, qui ea mente discedat, ne ad dominum redeat, tametsi mutato consilio ad eum revertatur: nemo enim tali peccato, inquit, paenitentia sua nocens esse desinit.

Dig. 21.1.17.2

Ulpianus 1 ad ed. aedil. curul.

Cassius quoque scribit fugitivum esse, qui certo proposito dominum relinquat.

Dig. 21.1.17.3

Ulpianus 1 ad ed. aedil. curul.

Item apud vivianum relatum est fugitivum fere ab affectu animi intellegendum esse, non utique a fuga: nam eum qui hostem aut latronem, incendium ruinamve fugeret, quamvis fugisse verum est, non tamen fugitivum esse. item ne eum quidem, qui a praeceptore cui in disciplinam traditus erat aufugit, esse fugitivum, si forte ideo fugit, quia immoderate eo utebatur. idemque probat et si ab eo fugerit cui erat commodatus, si propter eandem causam fugerit. idem probat vivianus et si saevius cum eo agebat. haec ita, si eos fugisset et ad dominum venisset: ceterum si ad dominum non venisset, sine ulla dubitatione fugitivum videri ait.

Dig. 21.1.17.4

Ulpianus 1 ad ed. aedil. curul.

Idem ait: interrogatus proculus de eo, qui domi latuisset in hoc scilicet, ut fugae nactus occasionem se subtraheret, ait, tametsi fugere non posset videri, qui domi mansisset, tamen eum fugitivum fuisse: sin autem in hoc tantum latuisset, quoad iracundia domini effervesceret, fugitivum non esse, sicuti ne eum quidem, qui cum dominum animadverteret verberibus se adficere velle, praeripuisset se ad amicum, quem ad precandum perduceret. ne eum quidem fugitivum esse, qui in hoc progressus est, ut se praecipitaret (ceterum etiam eum quis fugitivum diceret, qui domi in altum locum ad praecipitandum se ascendisset), magisque hunc mortem sibi consciscere voluisse. illud enim, quod plerumque ab imprudentibus, inquit, dici solet, eum esse fugitivum, qui nocte aliqua sine voluntate domini emansisset, non esse verum, sed ab affectu animi cuiusque aestimandum

Dig. 21.1.17.5

Ulpianus 1 ad ed. aedil. curul.

Idem vivianus ait, si a magistro puer recessit et rursus ad matrem pervenit, cum quaereretur, num fugitivus esset: si celandi causa quo, ne ad dominum reverteretur, fugisset, fugitivum esse: sin vero ut per matrem faciliorem deprecationem haberet delicti alicuius, non esse fugitivum.

Dig. 21.1.17.6

Ulpianus 1 ad ed. aedil. curul.

Caelius quoque scribit, si servum emeris, qui se in tiberim deiecit, si moriendi dumtaxat consilio suscepto a domino discessisset, non esse fugitivum, sed si fugae prius consilium habuit, deinde mutata voluntate in tiberim se deiecit, manere fugitivum. eadem probat et de eo, qui de ponte se praecipitavit. haec omnia vera sunt, quae caelius scribit.

Dig. 21.1.17.7

Ulpianus 1 ad ed. aedil. curul.

Idem ait, si servus tuus fugiens vicarium suum secum abduxit: si vicarius invitus aut imprudens secutus est neque occasionem ad te redeundi nactus praetermisit, non videri fugitivum fuisse: sed si aut olim cum fugeret intellexit quid ageretur aut postea cognovit quid acti esset et redire ad te cum posset noluit, contra esse. idem putat dicendum de eo, quem plagiarius abduxit.

Dig. 21.1.17.8

Ulpianus 1 ad ed. aedil. curul.

Idem caelius ait, si servus, cum in fundo esset, exisset de villa ea mente, ut profugeret et quis eum, priusquam ex fundo tuo exisset comprehendisset, fugitivum videri: animum enim fugitivum facere.

Dig. 21.1.17.9

Ulpianus 1 ad ed. aedil. curul.

Idem ait nec eum, qui ad fugam gradum unum alterumve promovit vel etiam currere coepit, si dominum sequentem non potest evadere, non esse fugitivum.

Dig. 21.1.17.10

Ulpianus 1 ad ed. aedil. curul.

Idem recte ait libertatis cuiusdam speciem esse fugisse, hoc est potestate dominica in praesenti liberatum esse.

Dig. 21.1.17.11

Ulpianus 1 ad ed. aedil. curul.

Pignori datus servus debitorem quidem dominum habet, sed si, posteaquam ius suum exercuit creditor, ei se subtraxit, potest fugitivus videri.

Dig. 21.1.17.12

Ulpianus 1 ad ed. aedil. curul.

Apud labeonem et caelium quaeritur, si quis in asylum confugerit aut eo se conferat, quo solent venire qui se venales postulant, an fugitivus sit: ego puto non esse eum fugitivum, qui id facit quod publice facere licere arbitratur. ne eum quidem, qui ad statuam caesaris confugit, fugitivum arbitror: non enim fugiendi animo hoc facit. idem puto et in eum, qui in asylum vel quod aliud confugit, quia non fugiendi animo hoc facit: si tamen ante fugit et postea se contulit, non ideo magis fugitivus esse desinit.

Dig. 21.1.17.13

Ulpianus 1 ad ed. aedil. curul.

Item caelius scribit placere eum quoque fugitivum esse ^ ^ , qui eo se conferat, unde eum dominus reciperare non possit, multoque magis illum fugitivum esse, qui eo se conferat, unde abduci non possit.

Dig. 21.1.17.14

Ulpianus 1 ad ed. aedil. curul.

Erronem ita definit labeo pusillum fugitivum esse, et ex diverso fugitivum magnum erronem esse. sed proprie erronem sic definimus: qui non quidem fugit, sed frequenter sine causa vagatur et temporibus in res nugatorias consumptis serius domum redit.

Dig. 21.1.17.15

Ulpianus 1 ad ed. aedil. curul.

Apud caelium scriptum est: liberti apud patronum habitantis sic, ut sub una clave tota eius habitatio esset, servus ea mente, ne rediret ad eum, extra habitationem liberti fuit, sed intra aedes patroni, et tota nocte obtulit: videri esse fugitivum caelius ait. plane si talem custodiam ea habitatio non habuit et in ea cella libertus habitavit, cui commune et promiscuum plurium cellarum iter est, contra placere debere caelius ait et labeo probat.

Dig. 21.1.17.16

Ulpianus 1 ad ed. aedil. curul.

Idem caelius ait servum in provinciam missum a domino, cum eum mortuum esse et testamento se liberum relictum audisset et in eodem officio permansisset tantumque pro libero se gerere coepisset, hunc non esse fugitivum: nec enim mentiendo se liberum, inquit, fugitivus esse coepit, quia sine fugae consilio id fecit.

Dig. 21.1.17.17

Ulpianus 1 ad ed. aedil. curul.

Quod aiunt aediles " noxa solutus non sit", sic intellegendum est, ut non hoc debeat pronuntiari nullam eum noxam commisisse, sed illud noxa solutum esse, hoc est noxali iudicio subiectum non esse: ergo si noxam commisit nec permanet, noxa solutus videtur.

Dig. 21.1.17.18

Ulpianus 1 ad ed. aedil. curul.

Noxas accipere debemus privatas, hoc est eas, quaecumque committuntur ex delictis, non publicis criminibus, ex quibus agitur iudiciis noxalibus: denique specialiter cavetur infra de capitalibus fraudibus. ex privatis autem noxiis oritur damnum pecuniarium, si quis forte noxae dedere noluerit, sed litis aestimationem sufferre.

Dig. 21.1.17.19

Ulpianus 1 ad ed. aedil. curul.

Si quis talis sit servus, qui omnino manumitti non possit ex constitutionibus, vel si sub poena vinculorum distractus sit a domino (vel ab aliqua potestate damnatus) vel si exportandus: aequissimum erit etiam hoc praedici.

Dig. 21.1.17.20

Ulpianus 1 ad ed. aedil. curul.

Si quis adfirmaverit aliquid adesse servo nec adsit, vel abesse et adsit, ut puta si dixerit furem non esse et fur sit, si dixerit artificem esse et non sit: hi enim, quia quod adseveraverunt non praestant, adversus dictum promissumve facere videntur.

Dig. 21.1.18pr.

Gaius 1 ad ed. aedil. curul.

Si quid venditor de mancipio adfirmaverit idque non ita esse emptor queratur, aut redhibitorio aut aestimatorio (id est quanti minoris) iudicio agere potest: verbi gratia si constantem aut laboriosum aut curracem vigilacem esse, aut ex frugalitate sua peculium adquirentem adfirmaverit, et is ex diverso levis protervus desidiosus somniculosus piger tardus comesor inveniatur. haec omnia videntur eo pertinere, ne id quod adfirmaverit venditor amare ab eo exigatur, sed cum quodam temperamento, ut si forte constantem esse adfirmaverit, non exacta gravitas et constantia quasi a philosopho desideretur, et si laboriosum et vigilacem adfirmaverit esse, non continuus labor per dies noctesque ab eo exigatur, sed haec omnia ex bono et aequo modice desiderentur. idem et in ceteris quae venditor adfirmaverit intellegemus.

Dig. 21.1.18.1

Gaius 1 ad ed. aedil. curul.

Venditor, qui optimum cocum esse dixerit, optimum in eo artificio praestare debet: qui vero simpliciter cocum esse dixerit, satis facere videtur, etiamsi mediocrem cocum praestet. idem et in ceteris generibus artificiorum.

Dig. 21.1.18.2

Gaius 1 ad ed. aedil. curul.

Aeque si quis simpliciter dixerit peculiatum esse servum, sufficit, si is vel minimum habeat peculium.

Dig. 21.1.19pr.

Ulpianus 1 ad ed. aedil. curul.

Sciendum tamen est quaedam et si dixerit praestare eum non debere, scilicet ea, quae ad nudam laudem servi pertinent: veluti si dixerit frugi probum dicto audientem. ut enim pedius scribit, multum interest, commendandi servi causa quid dixerit, an vero praestaturum se promiserit quod dixit.

Dig. 21.1.19.1

Ulpianus 1 ad ed. aedil. curul.

Plane si dixerit aleatorem non esse, furem non esse, ad statuam numquam confugisse, oportet eum id praestare.

Dig. 21.1.19.2

Ulpianus 1 ad ed. aedil. curul.

Dictum a promisso sic discernitur: dictum accipimus, quod verbo tenus pronuntiatum est nudoque sermone finitur: promissum autem potest referri et ad nudam promissionem sive pollicitationem vel ad sponsum. secundum quod incipiet is, qui de huiusmodi causa stipulanti spopondit, et ex stipulatu posse conveniri et redhibitoriis actionibus: non novum, nam et qui ex empto potest conveniri, idem etiam redhibitoriis actionibus conveniri potest.

Dig. 21.1.19.3

Ulpianus 1 ad ed. aedil. curul.

Ea autem sola dicta sive promissa admittenda sunt, quaecumque sic dicuntur, ut praestentur, non ut iactentur.

Dig. 21.1.19.4

Ulpianus 1 ad ed. aedil. curul.

Illud sciendum est: si quis artificem promiserit vel dixerit, non utique perfectum eum praestare debet, sed ad aliquem modum peritum, ut neque consummatae scientiae accipias, neque rursum indoctum esse in artificium: sufficiet igitur talem esse, quales volgo artifices dicuntur.

Dig. 21.1.19.5

Ulpianus 1 ad ed. aedil. curul.

Deinde aiunt aediles: " emptori omnibusque ad quos ea res pertinet iudicium dabimus". pollicentur emptori actionem et successoribus eius qui in universum ius succedunt. emptorem accipere debemus eum qui pretio emit. sed si quis permutaverit, dicendum est utrumque emptoris et venditoris loco haberi et utrumque posse ex hoc edicto experiri.

Dig. 21.1.19.6

Ulpianus 1 ad ed. aedil. curul.

Tempus autem redhibitionis sex menses utiles habet: si autem mancipium non redhibeatur, sed quanto minoris agitur, annus utilis est. sed tempus redhibitionis ex die venditionis currit aut, si dictum promissumve quid est, ex eo ex quo dictum promissumve quid est.

Dig. 21.1.20

Gaius 1 ad ed. aedil. curul.

Si vero ante venditionis tempus dictum intercesserit, deinde post aliquot dies interposita fuerit stipulatio, caelius sabinus scribit ex priore causa, quae statim, inquit, ut veniit id mancipium, eo nomine posse agere coepit.

Dig. 21.1.21pr.

Ulpianus 1 ad ed. aedil. curul.

Redhibere est facere, ut rursus habeat venditor quod habuerit, et quia reddendo id fiebat, idcirco redhibitio est appellata quasi redditio.

Dig. 21.1.21.1

Ulpianus 1 ad ed. aedil. curul.

Cum redditur ab emptore mancipium venditori, de dolo malo promitti oportere ei pomponius ait et ideo cautiones necessarias esse, ne forte aut pignori datus sit servus ab emptore aut iussu eius furtum sive damnum cui datum sit.

Dig. 21.1.21.2

Ulpianus 1 ad ed. aedil. curul.

Idem pomponius ait interdum etiam dupliciter cautiones interponi debere, alias in praeteritum, alias in futurum, ut puta si eius servi nomine qui redhibetur emptor procuratorve eius iudicium accepit, vel quod cum eo ageretur vel quod ipse eius nomine ageret. cavendum autem esse ait, si quid sine dolo malo emptor condemnatus fuerit aut dederit, his rebus recte praestari, vel si quid ex eo quod egerit ad eum pervenerit dolove malo vel culpa eius factum sit, quo minus perveniret isdem diebus, reddi.

Dig. 21.1.21.3

Ulpianus 1 ad ed. aedil. curul.

Idem ait futuri temporis nomine cautionem ei, qui sciens vendidit, fieri solere, si in fuga est homo sine culpa emptoris et nihilo minus condemnatur venditor: tum enim cavere oportere, ut emptor hominem persequatur et in sua potestate redactum venditori reddat,

Dig. 21.1.22

Gaius 1 ad ed. aedil. curul.

Et neque per se neque per heredem suum futurum, quo minus eum hominem venditor habeat.

Dig. 21.1.23pr.

Ulpianus 1 ad ed. aedil. curul.

Cum autem redhibitio fit, si deterius mancipium sive animo sive corpore ab emptore factum est, praestabit emptor venditori, ut puta si stupratum sit aut saevitia emptoris fugitivum esse coeperit: et ideo, inquit pomponius, ut ex quacumque causa deterius factum sit, id arbitrio iudicis aestimetur et venditori praestetur. quod si sine iudice homo redhibitus sit, reliqua autem quae diximus nolit emptor reddere, sufficiat venditori ex vendito actio.

Dig. 21.1.23.1

Ulpianus 1 ad ed. aedil. curul.

Iubent aediles restitui et quod venditioni accessit et si quas accessiones ipse praestiterit, ut uterque resoluta emptione nihil amplius consequatur, quam non haberet, si venditio facta non esset.

Dig. 21.1.23.2

Ulpianus 1 ad ed. aedil. curul.

Excipitur etiam ille, qui capitalem fraudem admisit. capitalem fraudem admittere est tale aliquid delinquere, propter quod capite puniendus sit: veteres enim fraudem pro poena ponere solebant. capitalem fraudem admisisse accipiemus dolo malo et per nequitiam: ceterum si quis errore, si quis casu fecerit, cessabit edictum. unde pomponius ait neque impuberem neque furiosum capitalem fraudem videri admisisse.

Dig. 21.1.23.3

Ulpianus 1 ad ed. aedil. curul.

Excipitur et ille, qui mortis consciscendae causa quid fecerit. malus servus creditus est, qui aliquid facit, quo magis se rebus humanis extrahat, ut puta laqueum torsit sive medicamentum pro veneno bibit praecipitemve se ex alto miserit aliudve quid fecerit, quo facto speravit mortem perventuram, tamquam non nihil in alium ausurus, qui hoc adversus se ausus est.

Dig. 21.1.23.4

Ulpianus 1 ad ed. aedil. curul.

Si servus sit qui vendidit vel filius familias in dominum vel patrem de peculio aedilicia actio competit: quamvis enim poenales videantur actiones, tamen quoniam ex contractu veniunt, dicendum est eorum quoque nomine qui in aliena potestate sunt competere. proinde et si filia familias vel ancilla distraxit, aeque dicendum est actiones aedilicias locum habere.

Dig. 21.1.23.5

Ulpianus 1 ad ed. aedil. curul.

Hae actiones quae ex hoc edicto oriuntur etiam adversus heredes omnes competunt.

Dig. 21.1.23.6

Ulpianus 1 ad ed. aedil. curul.

Et si bona fide nobis servient liberi forte homines vel servi alieni qui vendiderunt, potest dici etiam hos hoc edicto contineri.

Dig. 21.1.23.7

Ulpianus 1 ad ed. aedil. curul.

Iulianus ait iudicium redhibitoriae actionis utrumque, id est venditorem et emptorem quodammodo in integrum restituere debere.

Dig. 21.1.23.8

Ulpianus 1 ad ed. aedil. curul.

Quare sive emptori servus furtum fecerit sive alii cuilibet, ob quod furtum emptor aliquid praestiterit, non aliter hominem venditori restituere iubetur, quam si indemnem eum praestiterit. quid ergo, inquit iulianus, si noluerit venditor hominem recipere? non esse cogendum ait quicquam praestare, nec amplius quam pretio condemnabitur: et hoc detrimentum sua culpa emptorem passurum, qui cum posset hominem noxae dedere, maluerit litis aestimationem sufferre: et videtur mihi iuliani sententia humanior esse.

Dig. 21.1.23.9

Ulpianus 1 ad ed. aedil. curul.

Cum redhibetur mancipium, si quid ad emptorem pervenit vel culpa eius non pervenit, restitui oportet, non solum si ipse fructus percepit mercedesve a servo vel conductore servi accepit, sed etiam si a venditore fuerit idcirco consecutus, quod tardius ei hominem restituit: sed et si a quovis alio possessore fructus accepit emptor, restituere eos debebit: sed et si quid fructuum nomine consecutus est, id praestet: item si legatum vel hereditas servo obvenerit. neque refert, potuerit haec consequi venditor an non potuerit, si servum non vendidisset: ponamus enim talem esse, qui capere aliquid ex testamento non potuerat: nihil haec res nocebit. pedius quidem etiam illud non putat esse spectandum, cuius contemplatione testator servum heredem scripserit vel ei legaverit, quia et si venditio remansisset, nihil haec res emptori proderat: et per contrarium, inquit, si contemplatione venditoris institutus proponeretur, tamen diceremus restituere emptorem non debere venditori, si nollet eum redhibere.

Dig. 21.1.24

Gaius 1 ad ed. aedil. curul.

Et generaliter dicendum est, quidquid extra rem emptoris per eum servum adquisitum est, id iustum videri reddi oportere.

Dig. 21.1.25pr.

Ulpianus 1 ad ed. aedil. curul.

Aediles etiam hoc praestare emptorem volunt, si in aliquo deterior factus sit servus, sed ita demum, si post venditionem traditionemque factus sit: ceterum si ante fuit, non pertinet ad hoc iudicium quod ante factum est.

Dig. 21.1.25.1

Ulpianus 1 ad ed. aedil. curul.

Sive ergo ipse deteriorem eum fecit sive familia eius sive procurator, tenebit actio.

Dig. 21.1.25.2

Ulpianus 1 ad ed. aedil. curul.

Familiae appellatione omnes qui in servitio sunt continentur, etiam liberi homines, qui ei bona fide serviunt, vel alieni: accipe eos quoque qui in potestate eius sunt.

Dig. 21.1.25.3

Ulpianus 1 ad ed. aedil. curul.

Procuratoris fit mentio in hac actione: sed neratius procuratorem hic eum accipiendum ait, non quemlibet, sed cui universa negotia aut id ipsum, propter quod deterius factum sit, mandatum est.

Dig. 21.1.25.4

Ulpianus 1 ad ed. aedil. curul.

Pedius ait aequum fuisse id dumtaxat imputari emptori ex facto procuratoris et familiae, quod non fuit passurus servus nisi venisset: quod autem passurus erat etiam, si non venisset, in eo concedi emptori servi sui noxae deditionem et ex eo, inquit, quod procurator commisit, solum actionum praestandarum necessitatem ei iniungi.

Dig. 21.1.25.5

Ulpianus 1 ad ed. aedil. curul.

Quid ergo, si culpa, non etiam dolo emptoris servus deterior factus sit? aeque condemnabitur.

Dig. 21.1.25.6

Ulpianus 1 ad ed. aedil. curul.

Hoc autem, quod deterior factus est servus, non solum ad corpus, sed etiam ad animi vitia referendum est, ut puta si imitatione conservorum apud emptorem talis factus est, aleator forte vel vinarius vel erro evasit.

Dig. 21.1.25.7

Ulpianus 1 ad ed. aedil. curul.

Sed notandum est, quod non permittitur emptori ex huiusmodi causis noxae dedere servum suum: nec enim factum servorum suorum itemque procuratoris praestat.

Dig. 21.1.25.8

Ulpianus 1 ad ed. aedil. curul.

Item sciendum est haec omnia, quae exprimuntur edicto aedilium, praestare eum debere, si ante iudicium acceptum facta sint: idcirco enim necesse habuisse ea enumerari, ut, si quid eorum ante litem contestatam contigisset, praestaretur. ceterum post iudicium acceptum tota causa ad hominem restituendum in iudicio versatur, et tam fructus veniunt quam id quo deterior factus est ceteraque veniunt: iudici enim statim atque iudex factus est omnium rerum officium incumbit, quaecumque in iudicio versantur: ea autem quae ante iudicium contingunt non valde ad eum pertinent, nisi fuerint ei nominatim iniuncta.

Dig. 21.1.25.9

Ulpianus 1 ad ed. aedil. curul.

Praeterea in edicto adicitur sic: " et quanta pecunia pro eo homine soluta accessionisve nomine data erit, non reddetur: cuiusve pecuniae quis eo nomine obligatus erit, non liberabitur " .

Dig. 21.1.25.10

Ulpianus 1 ad ed. aedil. curul.

Ordine fecerunt aediles, ut ante venditori emptor ea omnia, quae supra scripta sunt, praestet, sic deinde pretium consequatur.

Dig. 21.1.26

Gaius 1 ad ed. aedil. curul.

Videamus tamen, ne iniquum sit emptorem compelli dimittere corpus et ad actionem iudicati mitti, si interdum nihil praestatur propter inopiam venditoris, potiusque res ita ordinanda sit, ut emptor caveat, si intra certum tempus pecunia sibi soluta sit, se mancipium restituturum.

Dig. 21.1.27

Ulpianus 1 ad ed. aedil. curul.

Debet autem recipere pecuniam, quam dedit pro eo homine, vel si quid accessionis nomine. dari autem non id solum accipiemus, quod numeratur venditori, ut puta pretium et usuras eius, sed et si quid emptionis causa erogatum est. hoc autem ita demum deducitur, si ex voluntate venditoris datur: ceterum si quid sua sponte datum esse proponatur, non imputabitur: neque enim debet quod quis suo arbitrio dedit a venditore exigere. quid ergo, si forte vectigalis nomine datum est, quod emptorem forte sequeretur? dicemus hoc quoque restituendum: indemnis enim emptor debet discedere.

Dig. 21.1.28

Gaius 1 ad ed. aedil. curul.

Si venditor de his quae edicto aedilium continentur non caveat, pollicentur adversus eum redhibendi iudicium intra duos menses vel quanti emptoris intersit intra sex menses.

Dig. 21.1.29pr.

Ulpianus 1 ad ed. aedil. curul.

Illud sciendum est, si emptor venditori haec non praestat, quae desiderantur in hac actione, non posse ei venditorem condemnari: si autem emptori venditor ista non praestat, condemnabitur ei.

Dig. 21.1.29.1

Ulpianus 1 ad ed. aedil. curul.

Item emptori praestandum est, ut pecuniae, cuius nomine obligatus erit, liberetur, sive ipsi venditori obligatus sit sive etiam alii.

Dig. 21.1.29.2

Ulpianus 1 ad ed. aedil. curul.

Condemnatio autem fit, quanti ea res erit: ergo excedet pretium an non, videamus. et quidem continet condemnatio pretium accessionesque. an et usuras pretii consequatur, quasi quod sua intersit debeat accipere, maxime cum fructus quoque ipse restituat? et placet consecuturum.

Dig. 21.1.29.3

Ulpianus 1 ad ed. aedil. curul.

Si quid tamen damni sensit vel si quid pro servo impendit, consequetur arbitrio iudicis, sic tamen, non ut ei horum nomine venditor condemnetur, ut ait iulianus, sed ne alias compellatur hominem venditori restituere, quam si eum indemnem praestet.

Dig. 21.1.30pr.

Paulus 1 ad ed. aedil. curul.

Item si servi redhibendi nomine emptor iudicium accepit vel ipse eius nomine dictavit, cavendum ex utraque parte erit, ut, si quid sine dolo malo condemnatus sit vel si quid ex eo quod egerit ad eum pervenerit dolove malo eius factum sit quo minus perveniret, id reddat.

Dig. 21.1.30.1

Paulus 1 ad ed. aedil. curul.

Quas impensas necessario in curandum servum post litem contestatam emptor fecerit, imputabit: praecedentes impensas nominatim comprehendendas pedius: sed cibaria servo data non esse imputanda aristo, nam nec ab ipso exigi, quod in ministerio eius fuit.

Dig. 21.1.31pr.

Ulpianus 1 ad ed. aedil. curul.

Quodsi nolit venditor hominem recipere, non in maiorem summam, inquit, quam in pretium ei condemnandum. ob haec ergo, quae propter servum damna sensit, solam dabimus ei corporis retentionem: ceterum poterit evitare praestationem venditor, si nolit hominem recipere, quo facto pretii praestationem eorumque quae pretium sequuntur solam non evitabit.

Dig. 21.1.31.1

Ulpianus 1 ad ed. aedil. curul.

Si venditor pronuntiaverit vel promiserit furem non esse, tenetur ex sua promissione, si furtum servus fecit: esse enim hoc casu furem non tantum eum, qui extraneo, sed et eum, qui domino suo res subtraxit, intellegendum est.

Dig. 21.1.31.2

Ulpianus 1 ad ed. aedil. curul.

Si ancilla redhibeatur, et quod ex ea post venditionem natum erit reddetur, sive unus partus sit sive plures.

Dig. 21.1.31.3

Ulpianus 1 ad ed. aedil. curul.

Sed et si forte usus fructus proprietati adcreverit, indubitate hic quoque restituetur.

Dig. 21.1.31.4

Ulpianus 1 ad ed. aedil. curul.

Si peculium quaesiit apud emptorem, quid de hoc dicemus? et si quidem ex re emptoris accessit, dicendum est apud ipsum relinquendum, si aliunde crevit, venditori restituendum est.

Dig. 21.1.31.5

Ulpianus 1 ad ed. aedil. curul.

Si plures heredes sint emptoris, an omnes ad redhibendum consentire debeant, videamus. et ait pomponius omnes consentire debere ad redhibendum dareque unum procuratorem, ne forte venditor iniuriam patiatur, dum ab alio partem recipit hominis, alii in partem pretii condemnatur, quanti minoris is homo sit.

Dig. 21.1.31.6

Ulpianus 1 ad ed. aedil. curul.

Idem ait homine mortuo vel etiam redhibito singulos pro suis portionibus recte agere. pretium autem et accessiones pro parte recipient: sed et fructus accessionis et si quo deterior homo factus est pro parte praestabitur ab ipsis, nisi forte tale sit, quod divisionem non recipiat, ut puta ancillae partus: in hoc enim idem servandum est, quod in ipsa matre vendita, quam pro parte redhiberi posse negavimus.

Dig. 21.1.31.7

Ulpianus 1 ad ed. aedil. curul.

Marcellus quoque scribit, si servus communis servum emerit et sit in causa redhibitionis, unum ex dominis pro parte sua redhibere servum non posse: non magis, inquit, quam cum emptori plures heredes exstiterunt nec omnes ad redhibendum consentiunt.

Dig. 21.1.31.8

Ulpianus 1 ad ed. aedil. curul.

Idem Marcellus ait non posse alterum ex dominis consequi actione ex empto, ut sibi pro parte venditor tradat, si pro portione pretium dabit: et hoc in emptoribus servari oportere ait: nam venditor pignoris loco quod vendidit retinet, quoad emptor satisfaciat.

Dig. 21.1.31.9

Ulpianus 1 ad ed. aedil. curul.

Pomponius ait, si unus ex heredibus vel familia eius vel procurator culpa vel dolo fecerit rem deteriorem, aequum esse in solidum eum teneri arbitrio iudicis: hoc autem expeditius esse, si omnes heredes unum procuratorem ad agendum dederunt. tunc et si quo deterior servus culpa unius heredum factus est et hoc solutum est, ceteri familiae herciscundae iudicium adversus eum habent, quia propter ipsum damnum sentiunt impediunturque redhibere.

Dig. 21.1.31.10

Ulpianus 1 ad ed. aedil. curul.

Si venditori plures heredes exstiterint, singulis pro portione hereditaria poterit servus redhiberi. et si servus plurium venierit, idem erit dicendum: nam si unus a pluribus vel plures ab uno vel plura mancipia ab uno emantur, verius est dicere, si quasi plures rei fuerunt venditores, singulis in solidum redhibendum: si tamen partes emptae sint a singulis, recte dicetur alteri quidem posse redhiberi, cum altero autem agi quanto minoris. item si plures singuli partes ab uno emant, tunc pro parte quisque eorum experietur: sed si in solidum emant, unusquisque in solidum redhibebit.

Dig. 21.1.31.11

Ulpianus 1 ad ed. aedil. curul.

Si mancipium quod redhiberi oportet mortuum erit, hoc quaeretur, numquid culpa emptoris vel familiae eius vel procuratoris homo demortuus sit: nam si culpa eius decessit, pro vivo habendus est, et praestentur ea omnia, quae praestarentur, si viveret.

Dig. 21.1.31.12

Ulpianus 1 ad ed. aedil. curul.

Culpam omnem accipiemus, non utique latam: propter quod dicendum est, quamcumque occasionem morti emptor praestitit, debere eum: etiam si non adhibuit medicum, ut sanari possit, vel malum adhibuit, sed culpa sua.

Dig. 21.1.31.13

Ulpianus 1 ad ed. aedil. curul.

Sed hoc dicemus, si ante iudicium acceptum decessit: ceterum si post iudicium acceptum decessisse proponatur, tunc in arbitrium iudicis veniet, qualiter mortuus sit: ut enim et pedio videtur, ea, quaecumque post litis contestationem contingunt, arbitrium iudicis desiderant.

Dig. 21.1.31.14

Ulpianus 1 ad ed. aedil. curul.

Quod in procuratore diximus, idem et in tutore et curatore dicendum erit ceterisque, qui ex officio pro aliis interveniunt: et ita pedius ait, et adicit, quibus administratio rerum, culpam abesse praestare non inique dominum cogi.

Dig. 21.1.31.15

Ulpianus 1 ad ed. aedil. curul.

Idem pedius ait familiae appellatione et filios familias demonstrari: facta enim domesticorum redhibitoria agentem praestare voluit.

Dig. 21.1.31.16

Ulpianus 1 ad ed. aedil. curul.

Si quis egerit quanto minoris propter servi fugam, deinde agat propter morbum, quanti fieri condemnatio debeat? et quidem saepius agi posse quanto minoris dubium non est, sed ait iulianus id agendum esse, ne lucrum emptor faciat et bis eiusdem rei aestimationem consequatur.

Dig. 21.1.31.17

Ulpianus 1 ad ed. aedil. curul.

In factum actio competit ad pretium reciperandum, si mancipium redhibitum fuerit: in qua non hoc quaeritur, an mancipium in causa redhibitionis fuerit, sed hoc tantum, an sit redhibitum, nec immerito: iniquum est enim, posteaquam venditor agnovit recipiendo mancipium esse id in causa redhibitionis, tunc quaeri, utrum debuerit redhiberi an non debuerit: nec de tempore quaeretur, an intra tempora redhibitus esse videatur.

Dig. 21.1.31.18

Ulpianus 1 ad ed. aedil. curul.

Illud plane haec actio exigit, ut sit redhibitus: ceterum nisi fuerit redhibitus, deficit ista actio, etiamsi nudo consensu placuerit, ut redhibeatur. conventio ergo de redhibendo non facit locum huic actioni, sed ipsa redhibitio.

Dig. 21.1.31.19

Ulpianus 1 ad ed. aedil. curul.

Restitui autem debet per hanc actionem etiam quod ei servo in venditione accessit.

Dig. 21.1.31.20

Ulpianus 1 ad ed. aedil. curul.

Quia adsidua est duplae stipulatio, idcirco placuit etiam ex empto agi posse, si duplam venditor mancipii non caveat: ea enim, quae sunt moris et consuetudinis, in bonae fidei iudiciis debent venire.

Dig. 21.1.31.21

Ulpianus 1 ad ed. aedil. curul.

Qui mancipia vendunt, nationem cuiusque in venditione pronuntiare debent: plerumque enim natio servi aut provocat aut deterret emptorem: idcirco interest nostra scire nationem: praesumptum etenim est quosdam servos bonos esse, quia natione sunt non infamata, quosdam malos videri, quia ea natione sunt, quae magis infamis est. quod si de natione ita pronuntiatum non erit, iudicium emptori omnibusque ad quos ea res pertinebit dabitur, per quod emptor redhibet mancipium.

Dig. 21.1.31.22

Ulpianus 1 ad ed. aedil. curul.

Si quid ita venierit, ut, nisi placuerit, intra praefinitum tempus redhibeatur, ea conventio rata habetur: si autem de tempore nihil convenerit, in factum actio intra sexaginta dies utiles accommodatur emptori ad redhibendum, ultra non. si vero convenerit, ut in perpetuum redhibitio fiat, puto hanc conventionem valere.

Dig. 21.1.31.23

Ulpianus 1 ad ed. aedil. curul.

Item si tempus sexaginta dierum praefinitum redhibitioni praeteriit, causa cognita iudicium dabitur: in causae autem cognitione hoc versabitur, si aut mora fuit per venditorem, aut non fuit praesens cui redderetur, aut aliqua iusta causa intercessit, cur intra diem redhibitum mancipium non est, quod ei magis displicuerat.

Dig. 21.1.31.24

Ulpianus 1 ad ed. aedil. curul.

In his autem actionibus eadem erunt observanda, quae de partu fructibus accessionibus quaeque de mortuo redhibendo dicta sunt.

Dig. 21.1.31.25

Ulpianus 1 ad ed. aedil. curul.

Quod emptioni accedit, partem esse venditionis prudentibus visum est.

Dig. 21.1.32

Gaius 2 ad ed. aedil. curul.

Itaque sicut superius venditor de morbo vitiove et ceteris quae ibi comprehensa sunt praedicere iubetur, et praeterea in his causis non esse mancipium ut promittat praecipitur: ita et cum accedat alii rei homo, eadem et praedicere et promittere compellitur. quod non solum hoc casu intellegendum est, quo nominatim adicitur accessurum fundo hominem stichum, sed etiam si generaliter omnia mancipia quae in fundo sint accedant venditioni.

Dig. 21.1.33pr.

Ulpianus 1 ad ed. aedil. curul.

Proinde pomponius ait iustam causam esse, ut quod in venditione accessurum esse dictum est tam integrum praestetur, quam illud praestari debuit quod principaliter veniit: nam iure civili, ut integra sint quae accessura dictum fuerit, ex empto actio est, veluti si dolia accessura fundo dicta fuerint. sed hoc ita, si certum corpus accessurum fuerit dictum: nam si servus cum peculio venierit, ea mancipia quae in peculio fuerint sana esse praestare venditor non debet, quia non dixit certum corpus accessurum, sed peculium tale praestare oportere, et quemadmodum certam quantitatem peculii praestare non debet, ita nec hoc. eandem rationem facere pomponius ait, ut etiam, si hereditas aut peculium servi venierit, locus edicto aedilium non sit circa ea corpora, quae sunt in hereditate aut in peculio. idem probat et si fundus cum instrumento venierit et in instrumento mancipia sint. puto hanc sententiam veram, nisi si aliud specialiter actum esse proponatur.

Dig. 21.1.33.1

Ulpianus 1 ad ed. aedil. curul.

Si vendita res redhibeatur, servus quoque qui rei accessit, licet nullum in eo vitium sit, redhibetur.

Dig. 21.1.34pr.

Africanus 6 quaest.

Cum eiusdem generis plures res simul veneant, veluti comoedi vel chorus, referre ait, in universos an in singulos pretium constituatur, ut scilicet interdum una, interdum plures venditiones contractae intellegantur: quod vel eo quaeri pertinere, ut, si quis eorum forte morbosus vel vitiosus sit, vel omnes simul redhibeantur.

Dig. 21.1.34.1

Africanus 6 quaest.

Interdum etsi in singula capita pretium constitutum sit, tamen una emptio est, ut propter unius vitium omnes redhiberi possint vel debeant, scilicet cum manifestum erit non nisi omnes quem empturum vel venditurum fuisse, ut plerumque circa comoedos vel quadrigas vel mulas pares accidere solet, ut neutri non nisi omnes habere expediat.

Dig. 21.1.35

Ulpianus 1 ad ed. aedil. curul.

Plerumque propter morbosa mancipia etiam non morbosa redhibentur, si separari non possint sine magno incommodo vel ad pietatis rationem offensam. quid enim, si filio retento parentes redhibere maluerint vel contra? quod et in fratribus et in personas contubernio sibi coniunctas observari oportet.

Dig. 21.1.36

Pomponius 23 ad sab.

Si plura mancipia uno pretio venierint et de uno eorum aedilicia actione utamur, ita demum pro bonitate eius aestimatio fiet, si confuse universis mancipiis constitutum pretium fuerit: quod si singulorum mancipiorum constituto pretio universa tanti venierunt, quantum ex consummatione singulorum fiebat, tunc cuiusque mancipii pretium, seu pluris seu minoris id esset, sequi debemus.

Dig. 21.1.37

Ulpianus 1 ad ed. aedil. curul.

Praecipiunt aediles, ne veterator pro novicio veneat. et hoc edictum fallaciis venditorum occurrit: ubique enim curant aediles, ne emptores a venditoribus circumveniantur. ut ecce plerique solent mancipia, quae novicia non sunt, quasi novicia distrahere ad hoc, ut pluris vendant: praesumptum est enim ea mancipia, quae rudia sunt, simpliciora esse et ad ministeria aptiora et dociliora et ad omne ministerium habilia: trita vero mancipia et veterana difficile est reformare et ad suos mores formare. quia igitur venaliciarii sciunt facile decurri ad noviciorum emptionem, idcirco interpolant veteratores et pro noviciis vendunt. quod ne fiat, hoc edicto aediles denuntiant: et ideo si quid ignorante emptore ita venierit, redhibebitur.

Dig. 21.1.38pr.

Ulpianus 2 ad ed. aedil. curul.

Aediles aiunt: " qui iumenta vendunt, palam recte dicunto, quid in quoque eorum morbi vitiique sit, utique optime ornata vendendi causa fuerint, ita emptoribus tradentur. si quid ita factum non erit, de ornamentis restituendis iumentisve ornamentorum nomine redhibendis in diebus sexaginta, morbi autem vitiive causa inemptis faciendis in sex mensibus, vel quo minoris cum venirent fuerint, in anno iudicium dabimus. si iumenta paria simul venierint et alterum in ea causa fuerit, ut redhiberi debeat, iudicium dabimus, quo utrumque redhibeatur".

Dig. 21.1.38.1

Ulpianus 2 ad ed. aedil. curul.

Loquuntur aediles in hoc edicto de iumentis redhibendis.

Dig. 21.1.38.2

Ulpianus 2 ad ed. aedil. curul.

Causa autem huius edicti eadem est, quae mancipiorum redhibendorum.

Dig. 21.1.38.3

Ulpianus 2 ad ed. aedil. curul.

Et fere eadem sunt in his, quae in mancipiis, quod ad morbum vitiumve attinet: quidquid igitur hic diximus, huc erit transferendum. et si mortuum fuerit iumentum, pari modo redhiberi poterit, quemadmodum mancipium potest.

Dig. 21.1.38.4

Ulpianus 2 ad ed. aedil. curul.

Iumentorum autem appellatione an omne pecus contineatur, videamus. et difficile est, ut contineatur: nam aliud significant iumenta, aliud significatur pecoris appellatione.

Dig. 21.1.38.5

Ulpianus 2 ad ed. aedil. curul.

Idcirco elogium huic edicto subiectum est, cuius verba haec sunt: " quae de iumentorum sanitate diximus, de cetero quoque pecore omni venditores faciunto".

Dig. 21.1.38.6

Ulpianus 2 ad ed. aedil. curul.

Unde dubitari desiit, an hoc edicto boves quoque contineantur: etenim iumentorum appellatione non contineri eos verius est, sed pecoris appellatione continebuntur.

Dig. 21.1.38.7

Ulpianus 2 ad ed. aedil. curul.

Sed enim sunt quaedam, quae in hominibus quidem morbum faciunt, in iumentis non adeo: ut puta si mulus castratus est, neque morbi neque vitii quid habere videtur, quia neque de fortitudine quid eius detrahitur neque de utilitate, cum ad generandum numquam sit habilis. caelius quoque scribit non omnia animalia castrata ob id ipsum vitiosa esse, nisi propter ipsam castrationem facta sunt inbecilliora: et ideo mulum non esse vitiosum. idem refert ofilium existimasse equum castratum sanum esse, sicuti spado quoque sanus est, sed si emptor ignoravit, venditor scit, ex empto esse actionem: et verum est quod ofilius.

Dig. 21.1.38.8

Ulpianus 2 ad ed. aedil. curul.

Quaesitum est, si mula talis sit, ut transiungi non possit, an sana sit. et ait pomponius sanam esse: plerasque denique carrucharias ^ carrucarias^ tales esse, ut non possint transiungi.

Dig. 21.1.38.9

Ulpianus 2 ad ed. aedil. curul.

Idem ait, si nata sit eo ingenio aut corpore, ut alterum iugum non patiatur, sanam non esse.

Dig. 21.1.38.10

Ulpianus 2 ad ed. aedil. curul.

Non tantum autem ob morbum vitiumve redhibitio locum habebit in iumentis, verum etiam si contra dictum promissumve, erit locus redhibitioni exemplo mancipiorum.

Dig. 21.1.38.11

Ulpianus 2 ad ed. aedil. curul.

Vendendi autem causa ornatum iumentum videri caelius ait non, si sub tempus venditionis, hoc est biduo ante venditionem ornatum sit, sed si in ipsa venditione ornatum sit, aut ideo, inquit, venale cum esset sic ornatum inspiceretur: semperque cum de ornamentis agitur, et in actione et in edicto adiectum est: " vendendi causa ornata ducta esse": poterit enim iumentum ornatum itineris causa duci, deinde venire.

Dig. 21.1.38.12

Ulpianus 2 ad ed. aedil. curul.

Si plura iumenta venierint, non omnia erunt redhibenda propter unius ornamentum: nam et si vitiosum sit unum iugum, non tamen propter hoc cetera iuga redhibebuntur.

Dig. 21.1.38.13

Ulpianus 2 ad ed. aedil. curul.

Si forte iugum mularum sit, quarum altera vitiosa est, non ex pretio tantum vitiosae, sed ex utriusque erit componendum, quanti minoris sit: cum enim uno pretio utraeque venierint, non est separandum pretium, sed quanto minoris cum veniret utrumque fuit, non alterum quod erat vitiosum.

Dig. 21.1.38.14

Ulpianus 2 ad ed. aedil. curul.

Cum autem iumenta paria veneunt, edicto expressum est, ut, cum alterum in ea causa sit, ut redhiberi debeat, utrumque redhibeatur: in qua re tam emptori quam venditori consulitur, dum iumenta non separantur. simili modo et si triga venierit, redhibenda erit tota, et si quadriga, redhibeatur. sed si duo paria mularum sint et una mula vitiosa sit vel par, solum par redhibebitur, alterum non: si tamen nondum sint paria constituta, sed simpliciter quattuor mulae uno pretio venierint, unius erit mulae redhibitio, non omnium: nam et si polia venierit, dicemus unum equum qui vitiosus est, non omnem poliam redhiberi oportere. haec et in hominibus dicemus pluribus uno pretio distractis, nisi si separari non possint, ut puta si tragoedi vel mimi.

Dig. 21.1.39

Paulus 1 ad ed. aedil. curul.

Vel fratres:

Dig. 21.1.40pr.

Ulpianus 2 ad ed. aedil. curul.

Hi enim non erunt separandi.

Dig. 21.1.40.1

Ulpianus 2 ad ed. aedil. curul.

Deinde aiunt aediles: " ne quis canem, verrem vel minorem aprum, lupum, ursum, pantheram, leonem",

Dig. 21.1.41

Paulus 2 ad ed. aedil. curul.

Et generaliter " aliudve quod noceret animal, sive soluta sint, sive alligata, ut contineri vinculis, quo minus damnum inferant, non possint,

Dig. 21.1.42

Ulpianus 2 ad ed. aedil. curul.

" qua vulgo iter fiet, ita habuisse velit, ut cuiquam nocere damnumve dare possit. si adversus ea factum erit et homo liber ex ea re perierit, solidi ducenti, si nocitum homini libero esse dicetur, quanti bonum aequum iudici videbitur, condemnetur, ceterarum rerum, quanti damnum datum factumve sit, dupli".

Dig. 21.1.43pr.

Paulus 1 ad ed. aedil. curul.

Bovem qui cornu petit vitiosum esse plerique dicunt, item mulas quae cessum dant: ea quoque iumenta, quae sine causa turbantur et semet ipsa eripiunt, vitiosa esse dicuntur.

Dig. 21.1.43.1

Paulus 1 ad ed. aedil. curul.

Qui ad amicum domini deprecaturus confugit, non est fugitivus: immo etiamsi ea mente sit, ut non impetrato auxilio domum non revertatur, nondum fugitivus est, quia non solum consilii, sed et facti fugae nomen est.

Dig. 21.1.43.2

Paulus 1 ad ed. aedil. curul.

Qui persuasu alterius a domino recessit, fugitivus est, licet id non fuerit facturus citra consilium eius qui persuasit.

Dig. 21.1.43.3

Paulus 1 ad ed. aedil. curul.

Si servus meus bona fide serviens fugerit vel sciens se meum esse vel ignorans, fugitivus est, nisi animo ad me revertendi id fecit.

Dig. 21.1.43.4

Paulus 1 ad ed. aedil. curul.

Mortis consciscendae causa sibi facit, qui propter nequitiam malosque mores flagitiumve aliquod admissum mortem sibi consciscere voluit, non si dolorem corporis non sustinendo id fecerit.

Dig. 21.1.43.5

Paulus 1 ad ed. aedil. curul.

Si quis servum emerit et rapto eo vi bonorum raptorum actione quadruplum consecutus est, deinde servum redhibeat, reddere debebit quod accepit: sed si per eum servum iniuriam passus iniuriae nomine egerit, non reddet venditori: aliter forsitan atque si loris ab aliquo caeso aut quaestione de eo habita emptor egerit.

Dig. 21.1.43.6

Paulus 1 ad ed. aedil. curul.

Aliquando etiam redhiberi mancipium debebit, licet aestimatoria, id est quanto minoris, agamus: nam si adeo nullius sit pretii, ut ne expediat quidem tale mancipium domini habere, veluti si furiosum aut lunaticum sit, licet aestimatoria actum fuerit, officio tamen iudicis continebitur, ut reddito mancipio pretium recipiatur.

Dig. 21.1.43.7

Paulus 1 ad ed. aedil. curul.

Si quis, cum consilium inisset fraudandorum creditorum, redhibuerit non redhibiturus alias, nisi vellet eos fraudare, tenetur creditoribus propter mancipium venditor.

Dig. 21.1.43.8

Paulus 1 ad ed. aedil. curul.

Pignus manebit obligatum, etiamsi redhibitus fuerit servus: quemadmodum, si eum alienasset aut usum fructum eius, non recte redhibetur nisi redemptum, sic et pignore liberatum redhibetur.

Dig. 21.1.43.9

Paulus 1 ad ed. aedil. curul.

Si sub condicione homo emptus sit, redhibitoria actio ante condicionem exsistentem inutiliter agitur, quia nondum perfecta emptio arbitrio iudicis imperfecta fieri non potest: et ideo etsi ex empto vel vendito vel redhibitoria ante actum fuerit, expleta condicione iterum agi poterit.

Dig. 21.1.43.10

Paulus 1 ad ed. aedil. curul.

Interdum etiamsi pura sit venditio, propter iuris condicionem in suspenso est, veluti si servus, in quo alterius usus fructus, alterius proprietas est, aliquid emerit: nam dum incertum est, ex cuius re pretium solvat, pendet, cui sit adquisitum, et ideo neutri eorum redhibitoria competit.

Dig. 21.1.44pr.

Paulus 2 ad ed. aedil. curul.

Iustissime aediles noluerunt hominem ei rei quae minoris esset accedere, ne qua fraus aut edicto aut iure civili fieret: ut ait pedius, propter dignitatem hominum: alioquin eandem rationem fuisse et in ceteris rebus: ridiculum namque esse tunicae fundum accedere. ceterum hominis venditioni quidvis adicere licet: nam et plerumque plus in peculio est quam in servo, et nonnumquam vicarius qui accedit pluris est quam is servus qui venit.

Dig. 21.1.44.1

Paulus 2 ad ed. aedil. curul.

Proponitur actio ex hoc edicto in eum cuius maxima pars in venditione fuerit, quia plerumque venaliciarii ita societatem coeunt, ut quidquid agunt in commune videantur agere: aequum enim aedilibus visum est vel in unum ex his, cuius maior pars aut nulla parte minor esset, aedilicias actiones competere, ne cogeretur emptor cum multis litigare, quamvis actio ex empto cum singulis sit pro portione, qua socii fuerunt: nam id genus hominum ad lucrum potius vel turpiter faciendum pronius est.

Dig. 21.1.44.2

Paulus 2 ad ed. aedil. curul.

In redhibitoria vel aestimatoria potest dubitari, an, quia alienum servum vendidit, et ob evictionem et propter morbum forte vel fugam simul teneri potest: nam potest dici nihil interesse emptoris sanum esse, fugitivum non esse eum, qui evictus sit. sed interfuit emptoris sanum possedisse propter operas, neque ex postfacto decrescat obligatio: statim enim ut servus traditus est committitur stipulatio quanti interest emptoris.

Dig. 21.1.45

Gaius 1 ad ed. aedil. curul.

Redhibitoria actio duplicem habet condemnationem: modo enim in duplum, modo in simplum condemnatur venditor. nam si neque pretium neque accessionem solvat neque eum qui eo nomine obligatus erit liberet, dupli pretii et accessionis condemnari iubetur: si vero reddat pretium et accessionem vel eum qui eo nomine obligatus est liberet, simpli videtur condemnari.

Dig. 21.1.46

Pomponius 18 ad sab.

Cum mihi redhibeas, furtis noxisque solutum esse promittere non debes, praeterquam quod iussu tuo fecerat aut eius cui tu eum alienaveris.

Dig. 21.1.47pr.

Paulus 11 ad sab.

Si hominem emptum manumisisti, et redhibitoriam et quanti minoris denegandam tibi labeo ait, sicut duplae actio periret: ergo et quod adversus dictum promissumve sit, actio peribit.

Dig. 21.1.47.1

Paulus 11 ad sab.

Post mortem autem hominis aediliciae actiones manent,

Dig. 21.1.48pr.

Pomponius 23 ad sab.

Si tamen sine culpa actoris familiaeve eius vel procuratoris mortuus sit.

Dig. 21.1.48.1

Pomponius 23 ad sab.

Audiendus est is, qui de vitio vel morbo servi querens retinere eum velit.

Dig. 21.1.48.2

Pomponius 23 ad sab.

Non nocebit emptori, si sex mensum exceptione redhibitoria exclusus velit intra annum aestimatoria agere.

Dig. 21.1.48.3

Pomponius 23 ad sab.

Ei, qui servum vinctum vendiderit, aedilicium edictum remitti aequum est: multo enim amplius est id facere, quam pronuntiare in vinculis fuisse:

Dig. 21.1.48.4

Pomponius 23 ad sab.

In aediliciis actionibus exceptionem opponi aequum est, si emptor sciret de fuga aut vinculis aut ceteris rebus similibus, ut venditor absolvatur.

Dig. 21.1.48.5

Pomponius 23 ad sab.

Aediliciae actiones et heredi et in heredem competunt, ut tamen et facta heredum quae postea accesserint et quod experiri potuerint, quaerantur.

Dig. 21.1.48.6

Pomponius 23 ad sab.

Non solum de mancipiis, sed de omni animali hae actiones competunt, ita ut etiam, si usum fructum in homine emerim, competere debeant.

Dig. 21.1.48.7

Pomponius 23 ad sab.

Cum redhibitoria actione de sanitate agitur, permittendum est de uno vitio agere et praedicere, ut, si quid aliud postea apparuisset, de eo iterum ageretur.

Dig. 21.1.48.8

Pomponius 23 ad sab.

Simplariarum venditionum causa ne sit redhibitio, in usu est.

Dig. 21.1.49

Ulpianus 8 disp.

Etiam in fundo vendito redhibitionem procedere nequaquam incertum est, veluti si pestilens fundus distractus sit: nam redhibendus erit. et benignum est dicere vectigalis exactionem futuri temporis post redhibitionem adversus emptorem cessare.

Dig. 21.1.50

Iulianus 4 ex minic.

Varicosus sanus non est.

Dig. 21.1.51pr.

Africanus 8 quaest.

Cum mancipium morbosum vel vitiosum servus emat et redhibitoria vel ex empto dominus experiatur, omnimodo scientiam servi, non domini spectandam esse ait, ut nihil intersit, peculiari an domini nomine emerit et certum incertumve mandante eo emerit, quia tunc et illud ex bona fide est servum, cum quo negotium sit gestum, deceptum non esse, et rursus delictum eiusdem, quod in contrahendo admiserit, domino nocere debet. sed si servus mandatu domini hominem emerit, quem dominus vitiosum esse sciret, non tenetur venditor.

Dig. 21.1.51.1

Africanus 8 quaest.

Circa procuratoris personam, cum quidem ipse scierit morbosum vitiosum esse, non dubitandum, quin, quamvis ipse domino mandati vel negotiorum gestorum actione sit obstrictus, nihilo magis eo nomine agere possit: at cum ipse ignorans esse vitiosum mandatu domini qui id sciret emerit et redhibitoria agat, ex persona domini utilem exceptionem ei non putabat opponendam.

Dig. 21.1.52

Marcianus 4 reg.

Si furtum domino servus fecerit, non est necesse hoc in venditione servi praedicere nec ex hac causa redhibitio est: sed si dixerit hunc furem non esse, ex illa parte tenebitur, quod dixit promisitve.

Dig. 21.1.53

Iavolenus 1 ex post. lab.

Qui tertiana aut quartana febri aut podagra vexarentur quive comitialem morbum haberent, ne quidem his diebus, quibus morbus vacaret, recte sani dicentur.

Dig. 21.1.54

Papinianus 4 resp.

Actioni redhibitoriae non est locus, si mancipium bonis condicionibus emptum fugerit, quod ante non fugerat.

Dig. 21.1.55

Papinianus 12 resp.

Cum sex menses utiles, quibus experiundi potestas fuit, redhibitoriae actioni praestantur, non videbitur potestatem experiundi habuisse, qui vitium fugitivi latens ignoravit: non idcirco tamen dissolutam ignorationem emptoris excusari oportebit.

Dig. 21.1.56

Paulus 1 quaest.

Latinus largus: quaero, an fideiussori emptionis redhiberi mancipium possit. respondi, si in universam causam fideiussor sit acceptus, putat Marcellus posse ei fideiussori redhiberi.

Dig. 21.1.57pr.

Paulus 5 quaest.

Si servus mancipium emit et dominus redhibitoria agat, non aliter ei venditor daturus est, quam si omnia praestiterit quae huic actioni continentur et quidem solida, non peculio tenus: nam et si ex empto dominus agat, nisi pretium totum solverit, nihil consequitur.

Dig. 21.1.57.1

Paulus 5 quaest.

Quod si servus vel filius vendiderit, redhibitoria in peculium competit. in peculio autem et causa redhibitionis continebitur: nec nos moveat, quod antequam reddatur servus non est in peculio (non enim potest esse in peculio servus, qui adhuc emptoris est): sed causa ipsius redhibitionis in peculio computatur: igitur si servus decem milibus emptus quinque milibus sit, haec quoque in peculio esse dicemus. hoc ita, si nihil domino debeat aut ademptum peculium non est: quod si plus domino debeat, eveniet, ut hominem praestet et nihil consequatur.

Dig. 21.1.58pr.

Paulus 5 resp.

Quaero, an, si servus apud emptorem fugit et in causa redhibitionis esse pronuntiatus fuerit, non prius venditori restitui debeat, quam rerum ablatarum a servo aestimationem praestiterit. paulus respondit venditorem cogendum non tantum pretium servi restituere, sed etiam rerum ablatarum aestimationem, nisi si pro his paratus sit servum noxae nomine relinquere.

Dig. 21.1.58.1

Paulus 5 resp.

Item quaero, si nolit aestimationem et pretia rerum restituere, an servus retinendus sit et danda sit actio de peculio vel de pretio redhibiti servi ex duplae stipulatione. paulus respondit de pretio servi repetendo competere actionem etiam ex duplae stipulatione: de rebus per furtum ablatis iam responsum est.

Dig. 21.1.58.2

Paulus 5 resp.

Servum dupla emi, qui rebus ablatis fugit: mox inventus praesentibus honestis viris interrogatus, an et in domo venditoris fugisset, respondit fugisse: quaero, an standum sit responso servi. paulus respondit: si et ^ ei^ alia indicia prioris fugae non deficiunt, tunc etiam servi responso credendum est ^ ^ .

Dig. 21.1.59pr.

Ulpianus 74 ad ed.

Cum in ea causa est venditum mancipium, ut redhiberi debeat, iniquum est venditorem pretium redhibendae rei consequi.

Dig. 21.1.59.1

Ulpianus 74 ad ed.

Si quis duos homines uno pretio emerit et alter in ea causa est, ut redhibeatur, deinde petatur pretium totum, exceptio erit obicienda: si tamen pars pretii petatur, magis dicetur non nocere exceptionem, nisi forte ea sit causa, in qua propter alterius vitium utrumque mancipium redhibendum sit.

Dig. 21.1.60

Paulus 69 ad ed.

Facta redhibitione omnia in integrum restituuntur, perinde ac si neque emptio neque venditio intercessit.

Dig. 21.1.61

Ulpianus 80 ad ed.

Quotiens de servitute agitur, victus tantum debet praestare, quanti minoris emisset emptor, si scisset hanc servitutem impositam.

Dig. 21.1.62

Modestinus 8 diff.

Ad res donatas edictum aedilium curulium non pertinere dicendum est: etenim quid se restituturum donator repromittit, quando nullum pretium interveniat? quid ergo si res ab eo cui donata est melior facta sit, numquid quanti eius qui meliorem fecit interest donator conveniatur? quod minime dicendum est, ne eo casu liberalitatis suae donator poenam patiatur. itaque si qua res donetur, necesse non erit ea repromittere, quae in rebus venalibus aediles repromitti iubent. sane de dolo donator obligare se et debet et solet, ne quod benigne contulerit fraudis consilio revocet.

Dig. 21.1.63

Ulpianus 1 ad ed. aedil. curul.

Sciendum est ad venditiones solas hoc edictum pertinere non tantum mancipiorum, verum ceterarum quoque rerum. cur autem de locationibus nihil edicatur, mirum videbatur: haec tamen ratio redditur vel quia numquam istorum de hac re fuerat iurisdictio vel quia non similiter locationes ut venditiones fiunt.

Dig. 21.1.64pr.

Pomponius 17 epist.

Labeo scribit, si uno pretio plures servos emisti et de uno agere velis, interaestimationem servorum proinde fieri debere, atque ut fieret in aestimationem bonitatis agri, cum ob evictam partem fundi agatur.

Dig. 21.1.64.1

Pomponius 17 epist.

Idem ait, si uno pretio plures servos vendidisti sanosque esse promisisti et pars dumtaxat eorum minus sana sit, de omnibus " adversus dictum promissum " recte agi.

Dig. 21.1.64.2

Pomponius 17 epist.

Ibidem ait errare et fugere iumentum posse, nec tamen erronem aut fugitivum esse agi posse.

Dig. 21.1.65pr.

Venonius 5 act.

Animi potius quam corporis vitium est, veluti si ludos adsidue velit spectare aut tabulas pictas studiose intueatur, sive etiam mendax aut similibus vitiis teneatur.

Dig. 21.1.65.1

Venonius 5 act.

Quotiens morbus sonticus nominatur, eum significari cassius ait, qui noceat: nocere autem intellegi, qui perpetuus est, non qui tempore finiatur: sed morbum sonticum eum videri, qui inciderit in hominem postquam is natus sit: sontes enim nocentes dici.

Dig. 21.1.65.2

Venonius 5 act.

Servus tam veterator quam novicius dici potest. sed veteratorem non spatio serviendi, sed genere et causa aestimandum caelius ait: nam quicumque ex venalicio noviciorum emptus alicui ministerio praepositus sit, statim eum veteratorum numero esse: novicium autem non tirocinio animi, sed condicione servitutis intellegi. nec ad rem pertinere, latine sciat nec ne: nam ob id veteratorem esse, si liberalibus studiis eruditus sit.

Dig. 21.2.0. De evictionibus et duplae stipulatione.

Dig. 21.2.1

Ulpianus 28 ad sab.

Sive tota res evincatur sive pars, habet regressum emptor in venditorem. sed cum pars evincatur, si quidem pro indiviso evincatur, regressum habet pro quantitate evictae partis: quod si certus locus sit evictus, non pro indiviso portio fundi, pro bonitate loci erit regressus. quid enim, si quod fuit in agro pretiosissimum, hoc evictum est, aut quod fuit in agro vilissimum? aestimabitur loci qualitas, et sic erit regressus.

Dig. 21.2.2

Paulus 5 ad sab.

Si dupla non promitteretur et eo nomine agetur, dupli condemnandus est reus.

Dig. 21.2.3

Paulus 10 ad sab.

Cum in venditione servi peculium semper exceptum esse intellegitur, is homo ex peculio summam quandam secum abstulerat. si propter hanc causam furti cum emptore actum sit, non reverteretur emptor ad venditorem ex stipulatione duplae, quia furtis noxisque solutum esse praestari debet venditionis tempore, haec autem actio postea esse coeperit.

Dig. 21.2.4pr.

Ulpianus 32 ad ed.

Illud quaeritur, an is qui mancipium vendidit debeat fideiussorem ob evictionem dare, quem volgo auctorem secundum vocant. et est relatum non debere, nisi hoc nominatim actum est.

Dig. 21.2.4.1

Ulpianus 32 ad ed.

Si impuberis nomine tutor vendiderit, evictione secuta papinianus libro tertio responsorum ait dari in eum cuius tutela gesta sit utilem actionem, sed adicit in id demum, quod rationibus eius accepto latum est. sed an in totum, si tutor solvendo non sit, videamus: quod magis puto: neque enim male contrahitur cum tutoribus.

Dig. 21.2.5

Paulus 33 ad ed.

Servi venditor peculium accessurum dixit. si vicarius evictus sit, nihil praestaturum venditorem labeo ait, quia sive non fuit in peculio, non accesserit, sive fuerit, iniuriam a iudice emptor passus est: aliter atque si nominatim servum accedere dixisset: tunc enim praestare deberet in peculio eum esse.

Dig. 21.2.6

Gaius 10 ad ed. provinc.

Si fundus venierit, ex consuetudine eius regionis in qua negotium gestum est pro evictione caveri oportet.

Dig. 21.2.7

Iulianus 13 Dig.

Qui a pupillo substitutum ei servum emerit, agere cum substituto ex empto potest et ex stipulatu de evictione, cum neutram earum actionum adversus pupillum habere potuerit.

Dig. 21.2.8

Iulianus 15 Dig.

Venditor hominis emptori praestare debet, quanti eius interest hominem venditoris fuisse. quare sive partus ancillae sive hereditas, quam servus iussu emptoris adierit, evicta fuerit, agi ex empto potest: et sicut obligatus est venditor, ut praestet licere habere hominem quem vendidit, ita ea quoque quae per eum adquiri potuerunt praestare debet emptori, ut habeat.

Dig. 21.2.9

Paulus 76 ad ed.

Si vendideris servum mihi titii, deinde titius heredem me reliquerit, sabinus ait amissam actionem pro evictione, quoniam servus non potest evinci: sed in ex empto actione decurrendum est.

Dig. 21.2.10

Celsus 27 Dig.

Si quis per fundum quem cum alio communem haberet, quasi solus dominus eius esset, ius eundi agendi mihi vendiderit et cesserit, tenebitur mihi evictionis nomine ceteris non cedentibus.

Dig. 21.2.11pr.

Paulus 6 resp.

Lucius titius praedia in germania trans renum emit et partem pretii intulit: cum in residuam quantitatem heres emptoris conveniretur, quaestionem rettulit dicens has possessiones ex praecepto principali partim distractas, partim veteranis in praemia adsignatas: quaero, an huius rei periculum ad venditorem pertinere possit. paulus respondit futuros casus evictionis post contractam emptionem ad venditorem non pertinere et ideo secundum ea quae proponuntur pretium praediorum peti posse.

Dig. 21.2.11.1

Paulus 6 resp.

Ex his verbis stipulationis duplae vel simplae " eum hominem quo de agitur noxa esse solutum" venditorem conveniri non posse propter eas noxas, quae publice coerceri solent.

Dig. 21.2.12

Scaevola 2 resp.

Quidam ex parte dimidia heres institutus universa praedia vendidit et coheredes pretium acceperunt: evictis his quaero, an coheredes ex empto actione teneantur. respondi, si coheredes praesentes adfuerunt nec dissenserunt, videri unumquemque partem suam vendidisse.

Dig. 21.2.13

Paulus 5 ad sab.

Bonitatis aestimationem faciendam, cum pars evincitur, proculus recte putabat, quae fuisset venditionis tempore, non cum evinceretur:

Dig. 21.2.14

Ulpianus 18 ad ed.

Non in dimidiam quantitatem pretii:

Dig. 21.2.15pr.

Paulus 5 ad sab.

Sed si quid postea alluvione accessit, tempus quo accedit inspiciendum.

Dig. 21.2.15.1

Paulus 5 ad sab.

Si usus fructus evincatur, pro bonitate fructuum aestimatio facienda est. sed et si servitus evincatur, quanti minoris ob id praedium est, lis aestimanda est.

Dig. 21.2.16pr.

Pomponius 9 ad sab.

Evicta re vendita ex empto erit agendum de eo quod accessit, quemadmodum ea quae empto fundo nominatim accesserunt si evicta sint, simplum praestatur.

Dig. 21.2.16.1

Pomponius 9 ad sab.

Duplae stipulatio committi dicitur tunc, cum res restituta est petitori, vel damnatus est litis aestimatione, vel possessor ab emptore conventus absolutus est.

Dig. 21.2.16.2

Pomponius 9 ad sab.

Si servus, cuius nomine duplam stipulati sumus, evictus fuerit a nobis: ob id quod fugitivus vel sanus non fuerit an agere nihilo minus possimus, quaeritur. proculus videndum ait, ne hoc quoque intersit, utrum tum evictus sit, cum meus factus non esset, an tum cum meus factus esset: in eo enim casu quo meus factus est statim mea interest, quanto ob id deterior est, et quam actionem semel ex stipulatu habere coepi, eam nec evictione nec morte nec manumissione nec fuga servi nec ulla simili causa amitti: at si in bonis meis factus non sit, nihil ob ea quod fugitivus sit pauperior sim, utpote cum in bonis meis non sit. quod si sanum esse, erronem non esse stipulatus essem, tantum mea interesse, quantum ad praesentem usum pertineret, tametsi in obscuro esset (utpote ignorantibus nobis, quamdiu eum habiturus essem et an futurum esset, ut eum quisquam aut a me aut ab eo cui vendidissem cuive similiter promisissem evinceret). summam autem opinionis suae hanc esse, ut tantum ex ea stipulatione consequar, quanti mea intersit aut post stipulationem interfuerit eum servum fugitivum non esse.

Dig. 21.2.17

Ulpianus 29 ad sab.

Vindicantem venditorem rem, quam ipse vendidit, exceptione doli posse summoveri nemini dubium est, quamvis alio iure dominium quaesierit: improbe enim rem a se distractam evincere conatur. eligere autem emptor potest, utrum rem velit retinere intentione per exceptionem elisa, an potius re ablata ex causa stipulationis duplum consequi.

Dig. 21.2.18

Paulus 5 ad sab.

Sed et si exceptio omissa sit aut opposita ea nihilo minus evictus sit, ex duplae quoque stipulatione vel ex empto potest conveniri.

Dig. 21.2.19pr.

Ulpianus 29 ad sab.

Sed et si stipulatio nulla fuisset interposita, de ex empto actione idem dicemus.

Dig. 21.2.19.1

Ulpianus 29 ad sab.

Si homo liber qui bona fide serviebat venierit mihi a titio titiusque eum heredem scripserit quasi liberum et ipse mihi sui faciat controversiam, ipsum de se obligatum habebo.

Dig. 21.2.20

Pomponius 10 ad sab.

Fundum meum obligavi, deinde alienavi tibi: ut eo nomine non obligeris, si eum postea abs te emam et satis pro evictione mihi des, excipiendum cautione, quod pro me obligatus sit, quia etiam non excepto eo agendo eo nomine contra te doli mali exceptione possim summoveri.

Dig. 21.2.21pr.

Ulpianus 29 ad sab.

Si servus venditus decesserit antequam evincatur, stipulatio non committitur, quia nemo eum evincat, sed factum humanae sortis: de dolo tamen poterit agi, si dolus intercesserit.

Dig. 21.2.21.1

Ulpianus 29 ad sab.

Inde iulianus libro quadragesimo tertio eleganter definit duplae stipulationem tunc committi, quotiens res ita amittitur, ut eam emptori habere non liceat propter ipsam evictionem.

Dig. 21.2.21.2

Ulpianus 29 ad sab.

Et ideo ait, si emptor hominis mota sibi controversia venditorem dederit procuratorem isque victus litis aestimationem sustulerit, stipulationem duplae non committi, quia nec mandati actionem procurator hic idemque venditor habet, ut ab emptore litis aestimationem consequatur: cum igitur neque corpus neque pecunia emptori absit, non oportet committi stipulationem: quamvis, si ipse iudicio accepto victus esset et litis aestimationem sustulisset, placeat committi stipulationem, ut et ipse iulianus eodem libro scripsit. neque enim habere licet eum, cuius si pretium quis non dedisset, ab adversario auferretur: prope enim hunc ex secunda emptione, id est ex litis aestimatione emptori habere licet, non ex pristina.

Dig. 21.2.21.3

Ulpianus 29 ad sab.

Idem iulianus eodem libro scribit, si lite contestata fugerit homo culpa possessoris, damnatus quidem erit possessor, sed non statim eum ad venditorem regressurum et ex duplae stipulatione acturum, quia interim non propter evictionem, sed propter fugam ei hominem habere non licet: plane, inquit, cum adprehenderit possessionem fugitivi, tunc committi stipulationem iulianus ait. nam et si sine culpa possessoris fugisset, deinde cautionibus interpositis absolutus esset, non alias committeretur stipulatio, quam si adprehensum hominem restituisset. ubi igitur litis aestimationem optulit, sufficit adprehendere: ubi cavit, non prius, nisi restituerit.

Dig. 21.2.22pr.

Pomponius 1 ex plaut.

Si pro re pupilli quam emit litis aestimationem tutor non ex pecunia pupilli, sed ex suo praestiterit, stipulatio de evictione pupillo adversus venditorem committitur.

Dig. 21.2.22.1

Pomponius 1 ex plaut.

Si pro evictione fundi quem emit mulier satis accepisset et eundem fundum in dotem dedisset, deinde aliquis eum a marito per iudicium abstulisset, potest mulier statim agere adversus fideiussores emptionis nomine, quasi minorem dotem habere coepisset vel etiam nullam, si tantum maritus optulisset, quanti fundus esset.

Dig. 21.2.23

Ulpianus 29 ad sab.

Sed et si post mortem mulieris evincatur, regressus erit ad duplae stipulationem, quia ex promissione maritus adversus heredes mulieris agere potest et ipsi ex stipulatu agere possunt.

Dig. 21.2.24

Africanus 6 quaest.

Non tamen ei consequens esse, ut et, si ipsi domino nuptura in dotem eum dederit, committi stipulationem dicamus, quamvis aeque indotata mulier futura sit, quoniam quidem, etiamsi verum sit habere ei non licere servum, illud tamen verum non sit iudicio eum evictum esse. ex empto tamen contra venditorem mulier habet actionem.

Dig. 21.2.25

Ulpianus 29 ad sab.

Si servum, cuius nomine duplam stipulatus sis, manumiseris, nihil ex stipulatione consequi possis, quia non evincitur, quo minus habere tibi liceat, quem ipse ante voluntate tua perdideris.

Dig. 21.2.26

Paulus 5 ad sab.

Sed hoc nomine, quod libertum quis non habeat, ex vendito actionem habet, si scierit venditor alienum se vendere. sed et si ex causa fideicommissi emptor coactus fuerit eum manumittere, ex empto actionem habebit.

Dig. 21.2.27

Pomponius 11 ad sab.

Hoc iure utimur, ut exceptiones ex persona emptoris obiectae si obstant, venditor ei non teneatur, si vero ad personam venditoris respicient, contra: certe nec ex empto nec ex stipulatione duplae nec simplae actio competit emptori, si exceptio ei ex facto ipsius opposita obstiterit.

Dig. 21.2.28

Ulpianus 80 ad ed.

Sed si ex utriusque persona et auctoris et emptoris exceptiones obicientur, intererit, propter quam exceptionem iudex contra iudicaverit, et sic aut committetur aut non committetur stipulatio.

Dig. 21.2.29pr.

Pomponius 11 ad sab.

Si rem, quam mihi alienam vendideras, a domino redemerim, falsum esse quod nerva respondisset posse te a me pretium consequi ex vendito agentem, quasi habere mihi rem liceret, celsus filius aiebat, quia nec bonae fidei conveniret et ego ex alia causa rem haberem.

Dig. 21.2.29.1

Pomponius 11 ad sab.

Si duplae stipulator ex possessore petitor factus et victus sit, quam rem si possideret retinere potuerit, peti ita ^ ^ autem utiliter non poterit, vel ipso iure promissor duplae tutus erit vel certe doli mali exceptione se tueri poterit, sed ita, si culpa vel sponte duplae stipulatoris possessio amissa fuerit.

Dig. 21.2.29.2

Pomponius 11 ad sab.

Quolibet tempore venditori renuntiari potest, ut de ea re agenda adsit, quia non praefinitur certum tempus in ea stipulatione, dum tamen ne prope ipsam condemnationem id fiat.

Dig. 21.2.30

Pomponius 19 ad sab.

Si emptori, qui stipulatus sit furtis noxisque solutum esse, heres exstiterit is, cui servus furtum fecerit, incipit is ex stipulatu actionem habere, quemadmodum si ipse alii praestitisset.

Dig. 21.2.31

Ulpianus 42 ad sab.

Si ita quis stipulanti spondeat " sanum esse, furem non esse, vispellionem non esse" et cetera, inutilis stipulatio quibusdam videtur, quia si quis est in hac causa, impossibile est quod promittitur, si non est, frustra est. sed ego puto verius hanc stipulationem " furem non esse, vispellionem non esse, sanum esse" utilem esse: hoc enim continere, quod interest horum quid esse vel horum quid non esse. sed et si cui horum fuerit adiectum " praestari", multo magis valere stipulationem: alioquin stipulatio quae ab aedilibus proponitur inutilis erit, quod utique nemo sanus probabit.

Dig. 21.2.32pr.

Ulpianus 46 ad sab.

Quia dicitur, quotiens plures res in stipulationem deducuntur, plures esse stipulationes, an et in duplae stipulatione hoc idem sit, videamus. cum quis stipulatur " fugitivum non esse, erronem non esse" et cetera quae ex edicto aedilium curulium promittuntur, utrum una stipulatio est an plures? et ratio facit, ut plures sint.

Dig. 21.2.32.1

Ulpianus 46 ad sab.

Ergo et illud procedit, quod iulianus libro quinto decimo digestorum scribit. egit, inquit, quanti minoris propter fugam servi, deinde agit propter morbum: id agendum est, inquit, ne lucrum faciat emptor et bis eiusdem vitii aestimationem consequatur. fingamus emptum decem, minoris autem empturum fuisse duobus, si tantum fugitivum esse scisset emptor: haec consecutum propter fugam mox comperisse, quod non esset sanus: similiter duobus minoris empturum fuisse, si de morbo non ignorasset: rursus consequi debebit duo: nam et si de utroque simul egisset, quattuor esset consecuturus, quia eum forte, qui neque sanus et fugitivus esset, sex tantum esset empturus. secundum haec saepius ex stipulatu agi poterit: neque enim ex una stipulatione, sed ex pluribus agitur.

Dig. 21.2.33

Ulpianus 51 ad sab.

Si servum emero et eundem vendidero, deinde emptori ob hoc fuero condemnatus, quia tradere non potui evictum, committitur stipulatio.

Dig. 21.2.34pr.

Pomponius 27 ad sab.

Si mancipium ita emeris, ne prostituatur et, cum prostitutum fuisset, ut liberum esset: si contra legem venditionis faciente te ad libertatem pervenerit, tu videris quasi manumisisse et ideo nullum adversus venditorem habebis regressum.

Dig. 21.2.34.1

Pomponius 27 ad sab.

Si communi dividundo mecum actum esset et adversario servus adiudicatus sit, quia probavit eum communem esse, habebo ex duplae stipulatione actionem, quia non interest, quo genere iudicii evincatur, ut mihi habere non liceat.

Dig. 21.2.34.2

Pomponius 27 ad sab.

Duplae stipulatio evictionem non unam continet, si quis dominium rei petierit et evicerit, sed et si serviana actione experiatur.

Dig. 21.2.35

Paulus 2 ad ed. aedil. curul.

Evictus autem a creditore tunc videtur, cum fere spes habendi abscisa est: itaque si serviana actione evictus sit, committitur quidem stipulatio: sed quoniam soluta a debitore pecunia potest servum habere, si soluto pignore venditor conveniatur, poterit uti doli exceptione.

Dig. 21.2.36

Paulus 29 ad ed.

Nave aut domu empta singula caementa vel tabulae emptae non intelleguntur ideoque nec evictionis nomine obligatur venditor quasi evicta parte.

Dig. 21.2.37pr.

Ulpianus 32 ad ed.

Emptori duplam promitti a venditore oportet, nisi aliud convenit: non tamen ut satisdetur, nisi si specialiter id actum proponatur, sed ut repromittatur.

Dig. 21.2.37.1

Ulpianus 32 ad ed.

Quod autem diximus duplam promitti oportere, sic erit accipiendum, ut non ex omni re id accipiamus, sed de his rebus, quae pretiosiores essent, si margarita forte aut ornamenta pretiosa vel vestis serica vel quid aliud non contemptibile veneat. per edictum autem curulium etiam de servo cavere venditor iubetur.

Dig. 21.2.37.2

Ulpianus 32 ad ed.

Si simplam pro dupla per errorem stipulatus sit emptor, re evicta consecuturum eum ex empto neratius ait, quanto minus stipulatus sit, si modo omnia facit emptor, quae in stipulatione continentur: quod si non fecit, ex empto id tantum consecuturum, ut ei promittatur quod minus in stipulationem superiorem deductum est.

Dig. 21.2.38

Ulpianus 2 disp.

In creditore qui pignus vendidit tractari potest, an re evicta vel ad hoc teneatur ex empto, ut quam habet adversus debitorem actionem, eam praestet: habet autem contrariam pigneraticiam actionem. et magis est ut praestet: cui enim non aequum videbitur vel hoc saltem consequi emptorem, quod sine dispendio creditoris futurum est?

Dig. 21.2.39pr.

Iulianus 57 Dig.

Minor viginti quinque annis fundum vendidit titio, eum titius seio: minor se in ea venditione circumscriptum dicit et impetrat cognitionem non tantum adversus titium, sed etiam adversus seium: seius postulabat apud praetorem utilem sibi de evictione stipulationem in titium dari: ego dandam putabam. respondi: iustam rem seius postulat: nam si ei fundus praetoria cognitione ablatus fuerit, aequum erit per eundem praetorem et evictionem restitui.

Dig. 21.2.39.1

Iulianus 57 Dig.

Si servus tuus emerit hominem et eundem vendiderit titio eiusque nomine duplam promiserit et tu a venditore servi stipulatus fueris: si titius servum petierit et ideo victus sit, quod servus tuus in tradendo sine voluntate tua proprietatem hominis transferre non potuisset, supererit publiciana actio et propter hoc duplae stipulatio ei non committetur: quare venditor quoque tuus agentem te ex stipulatu poterit doli mali exceptione summovere. alias autem si servus hominem emerit et duplam stipuletur, deinde eum vendiderit et ab emptore evictus fuerit: domino quidem adversus venditorem in solidum competit actio, emptori vero adversus dominum dumtaxat de peculio. denuntiare vero de evictione emptor servo, non domino debet: ita enim evicto homine utiliter de peculio agere poterit: sin autem servus decesserit, tunc domino denuntiandum est.

Dig. 21.2.39.2

Iulianus 57 Dig.

Si a me bessem fundi emeris, a titio trientem, deinde partem dimidiam fundi a te quis petierit: si quidem ex besse quem a me acceperas semis petitus fuerit, titius non tenebitur, si vero triens quem titius tibi tradiderat et sextans ex besse quem a me acceperas petitus fuerit, titius quidem pro triente, ego pro sextante evictionem tibi praestabimus.

Dig. 21.2.39.3

Iulianus 57 Dig.

Pater sciens filium suum quem in potestate habebat ignoranti emptori vendidit: quaesitum est, an evictionis nomine teneatur. respondit: qui liberum hominem sciens vel ignorans tamquam servum vendat, evictionis nomine tenetur: quare etiam pater, si filium suum tamquam servum vendiderit, evictionis nomine obligatur.

Dig. 21.2.39.4

Iulianus 57 Dig.

Qui statuliberum tradit, nisi dixerit eum statuliberum esse, evictionis nomine perpetuo obligatur.

Dig. 21.2.39.5

Iulianus 57 Dig.

Qui servum venditum tradit et dicit usum fructum in eo seii esse, cum ad sempronium pertineat, sempronio usum fructum petente perinde tenetur, ac si in tradendo dixisset usus fructus nomine adversus seium non teneri. et si re vera seii usus fructus fuerit, legatus autem ita, ut, cum ad seium pertinere desisset, sempronii esset, sempronio usum fructum petente tenebitur, seio agente recte defugiet.

Dig. 21.2.40

Iulianus 58 Dig.

Si is qui satis a me de evicitone accepit fundum a me herede legaverit, confestim fideiussores liberabuntur, quia, etiamsi evictus fuerit ab eo cui legatus fuerat, nulla adversus fideiussores actio est.

Dig. 21.2.41pr.

Paulus 2 ad ed. aedil. curul.

Si ei cui vendidi et duplam promissi, cum ipse eadem stipulatione mihi cavisset, heres exstiterim, evicto homine nulla parte stipulatio committitur: neque enim mihi evinci videtur, cum vendiderim eum, neque ei cui me promissorem praestarem, quoniam parum commode dicar ipse mihi duplam praestare debere.

Dig. 21.2.41.1

Paulus 2 ad ed. aedil. curul.

Item si domino servi heres exstiterit emptor, quoniam evinci ei non potest nec ipse sibi videtur evincere, non committitur duplae stipulatio. his igitur casibus ex empto agendum erit.

Dig. 21.2.41.2

Paulus 2 ad ed. aedil. curul.

Si is, qui fundum emerit et satis de evictione acceperit et eundem fundum vendiderit, emptori suo heres exstiterit, vel ex contrario emptor venditori heres exstiterit: an evicto fundo cum fideiussoribus agere possit, quaeritur. existimo autem utroque casu fideiussores teneri, quoniam et cum debitor creditori suo heres exstiterit, ratio quaedam inter heredem et hereditatem ponitur et intellegitur maior hereditas ad debitorem pervenire, quasi soluta pecunia quae debebatur hereditati, et per hoc minus in bonis heredis esse: et ex contrario cum creditor debitori suo exstitit heres, minus in hereditate habere videtur, tamquam ipsa hereditas heredi solverit. sive ergo is qui de evictione satis acceperat emptori cui ipse vendiderat, sive emptor venditori suo heres exstiterit, fideiussores tenebuntur. et si ad eundem venditoris et emptoris hereditas recciderit, agi cum fideiussoribus poterit.

Dig. 21.2.42

Paulus 53 ad ed.

Si praegnas ancilla vendita et tradita sit, evicto partu venditor non potest de evictione conveniri, quia partus venditus non est.

Dig. 21.2.43

Iulianus 58 Dig.

Vaccae emptor, si vitulus qui post emptionem natus est evincatur, agere ex duplae stipulatione non potest, quia nec ipsa nec usus fructus evincitur. nam quod dicimus vitulum fructum esse vaccae, non ius, sed corpus demonstramus, sicuti praediorum frumenta et vinum fructum recte dicimus, cum constet eadem haec non recte usum fructum appellari.

Dig. 21.2.44

Alfenus 2 Dig. a paulo epit.

Scapham non videri navis esse respondit nec quicquam coniunctum habere, nam scapham ipsam per se parvam naviculam esse: omnia autem, quae coniuncta navi essent (veluti gubernacula malus antemnae velum), quasi membra navis esse.

Dig. 21.2.45

Alfenus 4 Dig. a paulo epit.

Qui fundum tradiderat iugerum centum, fines multo amplius emptori demonstraverat. si quid ex his finibus evinceretur, pro bonitate eius emptori praestandum ait, quamvis id quod relinqueretur centum iugera haberet.

Dig. 21.2.46pr.

Africanus 6 quaest.

Fundum cuius usus fructus attii erat, mihi vendidisti nec dixisti usum fructum attii esse: hunc ego maevio detracto usu fructu tradidi. attio capite minuto non ad me, sed ad proprietatem usum fructum redire ait, neque enim potuisse constitui usum fructum eo tempore, quo alienatus esset: sed posse me venditorem te de evictione convenire, quia aequum sit eandem causam meam esse, quae futura esset, si tunc usus fructus alienus non fuisset.

Dig. 21.2.46.1

Africanus 6 quaest.

Si per alienum fundum mihi viam constitueris, evictionis nomine te obligari ait: etenim quo casu, si per proprium constituentis fundum concessa esset via, recte constitueretur, eo casu, si per alienum concederetur, evictionis obligationem contrahit.

Dig. 21.2.46.2

Africanus 6 quaest.

Cum tibi stichum venderem, dixi eum statuliberum esse sub hac condicione manumissum " si navis ex asia venerit", is autem " si titius consul factus fuerit" manumissus erat: quaerebatur, si prius navis ex asia venerit ac post titius consul fiat atque ita in libertatem evictus sit, an evictionis nomine teneatur. respondit non teneri eum: etenim dolo malo emptorem facere, cum prius exstiterit ea condicio, quam evictionis nomine exsolverit.

Dig. 21.2.46.3

Africanus 6 quaest.

Item si post biennium liberum fore dixi, qui post annum libertatem acceperit, et post biennium in libertate evincatur, vel decem dare iussum dixerim quinque et is decem datis ad libertatem pervenerit, magis esse, ut his quoque casibus non tenear.

Dig. 21.2.47

Africanus 8 quaest.

Si duos servos quinis a te emam et eorum alter evincatur, nihil dubii fore, quin recte eo nomine ex empto acturus sim, quamvis alter decem dignus sit, nec referre, separatim singulos an simul utrumque emerim.

Dig. 21.2.48

Nerva 6 membr.

Cum fundus " uti optimus maximusque est" emptus est et alicuius servitutis evictae nomine aliquid emptor a venditore consecutus est, deinde totus fundus evincitur, ob eam evictionem id praestari debet quod ex duplo reliquum est: nam si aliud observabimus, servitutibus aliquibus et mox proprietate evicta amplius duplo emptor quam quanti emit consequeretur.

Dig. 21.2.49

Gaius 7 ad ed. provinc.

Si ab emptore usus fructus petatur, proinde is venditori denuntiare debet atque is a quo pars petitur.

Dig. 21.2.50

Ulpianus 25 ad ed.

Si pignora veneant per apparitores praetoris extra ordinem sententias sequentes, nemo umquam dixit dandam in eos actionem re evicta: sed si dolo rem viliori pretio proiecerunt, tunc de dolo actio datur adversus eos domino rei.

Dig. 21.2.51pr.

Ulpianus 80 ad ed.

Si per imprudentiam iudicis aut errorem emptor rei victus est, negamus auctoris damnum esse debere: aut quid refert, sordibus iudicis an stultitia res perierit? iniuria enim, quae fit emptori, auctorem non debet contingere.

Dig. 21.2.51.1

Ulpianus 80 ad ed.

Si titius stichum post mortem suam liberum esse iussum vendiderit, mortuo deinde eo stichus ad libertatem pervenerit, an stipulatio de evictione interposita teneat? et ait iulianus committi stipulationem: quamvis enim titius hoc casu denuntiari pro evictione non potuisset, heredi tamen eius denuntiari potuisset.

Dig. 21.2.51.2

Ulpianus 80 ad ed.

Si quis locum vendiderit et idem venditor ab herede suo voluntate emptoris in eo sepultus fuerit, actio de evictione intercidit: hoc casu enim emptor proprietatem amittet.

Dig. 21.2.51.3

Ulpianus 80 ad ed.

Non mirum autem est, ut evicto homine de evictione teneatur heres, quamvis defunctus non similiter fuerit obstrictus, cum et aliis quibusdam casibus plenior adversus heredem vel heredi competat obligatio, quam competierat defuncto: ut cum servus post mortem emptoris heres institutus est iussuque heredis emptoris adiit hereditatem: nam actione ex empto praestare debet hereditatem, quamvis defuncto in hoc tantum fuit utilis ex empto actio, ut servus traderetur.

Dig. 21.2.51.4

Ulpianus 80 ad ed.

Si plures mihi in solidum pro evictione teneantur, deinde post evictionem cum uno fuero expertus, si agam cum ceteris, exceptione me esse repellendum labeo ait.

Dig. 21.2.52

Ulpianus 81 ad ed.

Sciendum est nihil interesse, ex qua causa duplae stipulatio fuerit interposita, utrum ex causa emptionis an ex alia, ut committi possit.

Dig. 21.2.53pr.

Paulus 77 ad ed.

Si fundo tradito pars evincatur, si singula iugera venierint certo pretio, tunc non pro bonitate, sed quanti singula venierint quae evicta fuerint, praestandum, etiamsi ea quae meliora fuerint evicta sint.

Dig. 21.2.53.1

Paulus 77 ad ed.

Si cum possit emptor auctori denuntiare, non denuntiasset idemque victus fuisset, quoniam parum instructus esset, hoc ipso videtur dolo fecisse et ex stipulatu agere non potest.

Dig. 21.2.54pr.

Gaius 28 ad ed. provinc.

Qui alienam rem vendidit, post longi temporis praescriptionem vel usucapionem desinit emptori teneri de evictione.

Dig. 21.2.54.1

Gaius 28 ad ed. provinc.

Si heres statuliberum, qui sub condicione pecuniae dandae liber esse iussus est, vendiderit et maiorem pecuniam in condicione esse dixerit quam dare ei iussus est, ex empto tenetur, si modo talis est condicio, ut ad emptorem transiret, id est si heredi dare iussus est servus: nam si alii dare iussus, quamvis veram pecuniae quantitatem dixerit, tamen, si non admonuerit alii dare iussum, evictionis nomine tenebitur.

Dig. 21.2.55pr.

Ulpianus 2 ad ed. aedil. curul.

Si ideo contra emptorem iudicatum est, quod defuit, non committitur stipulatio: magis enim propter absentiam victus videtur quam quod malam causam habuit. quid ergo, si ille quidem contra quem iudicatum est ad iudicium non adfuit, alius autem adfuit et causam egit: quid dicemus? ut puta acceptum quidem cum pupillo tutore auctore fuit iudicium, sed absente pupillo tutor causam egit et iudicatum est contra tutorem: quare non dicemus committi stipulationem? etenim actam esse causam palam est. et satis est ab eo cui ius agendi fuit causam esse actam.

Dig. 21.2.55.1

Ulpianus 2 ad ed. aedil. curul.

Praesenti autem venditori denuntiandum est: sive autem absit, sive praesens sit et per eum fiat quo minus denuntietur, committetur stipulatio.

Dig. 21.2.56pr.

Paulus 2 ad ed. aedil. curul.

Si dictum fuerit vendendo, ut simpla promittatur, vel triplum aut quadruplum promitteretur, ex empto perpetua actione agi poterit. non tamen, ut vulgus opinatur, etiam satisdare debet qui duplam promittit, sed sufficit nuda repromissio, nisi aliud convenerit.

Dig. 21.2.56.1

Paulus 2 ad ed. aedil. curul.

Si compromisero et contra me data fuerit sententia, nulla mihi actio de evictione danda est adversus venditorem: nulla enim necessitate cogente id feci.

Dig. 21.2.56.2

Paulus 2 ad ed. aedil. curul.

In stipulatione duplae cum homo venditur partis adiectio necessaria est, quia non potest videri homo evictus, cum pars eius evicta est.

Dig. 21.2.56.3

Paulus 2 ad ed. aedil. curul.

Si, cum possit usu capere emptor, non cepit, culpa sua hoc fecisse videtur: unde si evictus est servus, non tenetur venditor.

Dig. 21.2.56.4

Paulus 2 ad ed. aedil. curul.

Si praesente promissore qui de evictione promisit et non ignorante procuratori denuntiatum sit, promissor nihilo minus tenetur.

Dig. 21.2.56.5

Paulus 2 ad ed. aedil. curul.

Simili modo tenetur et qui curavit, ne sibi denuntiari possit.

Dig. 21.2.56.6

Paulus 2 ad ed. aedil. curul.

Sed et si nihil venditore faciente emptor cognoscere ubi esset non potuit, nihilo minus committitur stipulatio.

Dig. 21.2.56.7

Paulus 2 ad ed. aedil. curul.

Pupillo etiam sine tutoris auctoritate posse denuntiari, si tutor non apparet, ex duplae stipulatione benignius receptum esse trebatius ait.

Dig. 21.2.57pr.

Gaius 2 ad ed. aedil. curul.

Habere licere rem videtur emptor et si is, qui emptorem in evictione rei vicerit, ante ablatam vel abductam rem sine successore decesserit, ita ut neque ad fiscum bona pervenire possint neque privatim a creditoribus distrahi: tunc enim nulla competit emptori ex stipulatu actio, quia rem habere ei licet.

Dig. 21.2.57.1

Gaius 2 ad ed. aedil. curul.

Quod cum ita est, videamus, num et si ab eo qui vicerit donata legatave res fuerit emptori, aeque dicendum sit ex stipulatu actionem non nasci, scilicet si antequam abduceret vel auferret donaverit aut legaverit: alioquin semel commissa stipulatio resolvi non potest.

Dig. 21.2.58

Iavolenus 1 ex plaut.

Heres servum non nominatim legatum tradidit et de dolo repromisit: postea servus evictus est. agere cum herede legatarius ex testamento poterit, quamvis heres alienum esse servum ignoraverit.

Dig. 21.2.59

Pomponius 2 ex plaut.

Si res quam a titio emi legata sit a me, non potest legatarius conventus a domino rei venditori meo denuntiare, nisi cessae ei fuerint actiones. vel quodam casu hypothecas habet.

Dig. 21.2.60

Iavolenus 2 ex plaut.

Si in venditione dictum non sit, quantum venditorem pro evictione praestare oporteat, nihil venditor praestabit praeter simplam evictionis nomine et ex natura ex empto actionis hoc quod interest.

Dig. 21.2.61

Marcellus 8 Dig.

Si quod a te emi et titio vendidi, voluntate mea titio tradideris, de evictione te mihi teneri, sicuti si acceptam rem tradidissem, placet.

Dig. 21.2.62pr.

Celsus 27 Dig.

Si rem quae apud te esset vendidissem tibi: quia pro tradita habetur, evictionis nomine me obligari placet.

Dig. 21.2.62.1

Celsus 27 Dig.

Si ei qui mihi vendidit plures heredes exstiterunt, una de evictione obligatio est omnibusque denuntiari et omnes defendere debent: si de industria non venerint in iudicium, unus tamen ex is liti substitit, propter denuntiationis vigorem et praedictam absentiam omnibus vincit aut vincitur, recteque cum ceteris agam, quod evictionis nomine victi sint.

Dig. 21.2.62.2

Celsus 27 Dig.

Si fundum, in quo usus fructus titii erat, qui ei relictus est quoad vivet, detracto usu fructu ignoranti mihi vendideris et titius capite deminutus fuerit et aget titius ius sibi esse utendi fruendi, competit mihi adversus te ex stipulatione de evictione actio: quippe si verum erat, quod mihi dixisses in venditione, recte negarem titio ius esse utendi fruendi.

Dig. 21.2.63pr.

Modestinus 5 resp.

Herennius modestinus respondit non obesse ex empto agenti, quod denuntiatio pro evictione interposita non esset, si pacto ei remissa esset denuntiandi necessitas.

Dig. 21.2.63.1

Modestinus 5 resp.

Gaia seia ^ sei^ fundum a lucio titio emerat et quaestione mota fisci nomine auctorem laudaverat et evictione secuta fundus ablatus et fisco adiudicatus est venditore praesente: quaeritur, cum emptrix non provocaverat, an venditorem poterit convenire. herennius modestinus respondit, sive quod alienus fuit cum veniret sive quod tunc obligatus, evictus est, nihil proponi, cur emptrici adversus venditorem actio non competat.

Dig. 21.2.63.2

Modestinus 5 resp.

Herennius modestinus respondit: si emptor appellavit et bonam causam vitio suo ex praescriptione perdidit, ad auctorem reverti non potest.

Dig. 21.2.64pr.

Papinianus 7 quaest.

Ex mille iugeribus traditis ducenta flumen abstulit. si postea pro indiviso ducenta evincantur, duplae stipulatio pro parte quinta, non quarta praestabitur: nam quod perit, damnum emptori, non venditori attulit. si totus fundus quem flumen deminuerat evictus sit, iure non deminuetur evictionis obligatio, non magis quam si incuria fundus aut servus traditus deterior factus sit: nam et e contrario non augetur quantitas evictionis, si res melior fuerit effecta.

Dig. 21.2.64.1

Papinianus 7 quaest.

Quod si modo terrae integro qui fuerat traditus ducenta iugera per alluvionem accesserunt ac postea pro indiviso pars quinta totius evicta sit, perinde pars quinta praestabitur, ac si sola ducenta de illis mille iugeribus quae tradita sunt fuissent evicta, quia alluvionis periculum non praestat venditor.

Dig. 21.2.64.2

Papinianus 7 quaest.

Quaesitum est, si mille iugeribus traditis perissent ducenta, mox alluvio per aliam partem fundi ducenta attulisset ac postea pro indiviso quinta pars evicta esset: pro qua parte auctor teneretur. dixi consequens esse superioribus, ut neque pars quinta mille iugerum neque quarta debeatur evictionis nomine, sed perinde teneatur auctor, ac si de octingentis illis residuis sola centum sexaginta fuissent evicta: nam reliqua quadraginta, quae universo fundo decesserunt, pro rata novae regionis esse intellegi.

Dig. 21.2.64.3

Papinianus 7 quaest.

Ceterum cum pro diviso pars aliqua fundi evincitur, tametsi certus numerus iugerum traditus sit, tamen non pro modo, sed pro bonitate regionis praestatur evictio.

Dig. 21.2.64.4

Papinianus 7 quaest.

Qui unum iugerum pro indiviso solum habuit, tradidit, secundum omnium sententias non totum dominium transtulit, sed partem dimidiam iugeri, quemadmodum si locum certum aut fundum similiter tradidisset.

Dig. 21.2.65

Papinianus 8 quaest.

Rem hereditariam pignori obligatam heredes vendiderunt et evictionis nomine pro partibus hereditariis spoponderunt: cum alter pignus pro parte sua liberasset, rem creditor evicit: quaerebatur an uterque heredum conveniri possit? idque placebat propter indivisam pignoris causam. nec remedio locus esse videbatur, ut per doli exceptionem actiones ei qui pecuniam creditori dedit praestarentur, quia non duo rei facti proponerentur. sed familiae herciscundae iudicium eo nomine utile est: nam quid interest, unus ex heredibus in totum liberaverit pignus an vero pro sua dumtaxat portione? cum coheredis neglegentia damnosa non debet esse alteri.

Dig. 21.2.66pr.

Papinianus 28 quaest.

Si, cum venditor admonuisset emptorem, ut publiciana potius vel ea actione quae de fundo vectigali proposita est experiretur, emptor id facere supersedit, omnimodo nocebit ei dolus suus nec committitur stipulatio. non idem in serviana quoque actione probari potest: haec enim etsi in rem actio est, nudam tamen possessionem avocat et soluta pecunia venditori dissolvitur: unde fit, ut emptori suo nomine non competat.

Dig. 21.2.66.1

Papinianus 28 quaest.

Si is qui rei publicae causa afuit fundum petat, utilis possessori pro evictione competit actio. item si privatus a milite petat, eadem aequitas est emptori restituendae pro evictione actionis.

Dig. 21.2.66.2

Papinianus 28 quaest.

Si secundus emptor venditorem eundemque emptorem ad litem hominis dederit procuratorem et non restituto eo damnatio fuerit secuta, quodcumque ex causa iudicati praestiterit procurator ut in rem suam datus, ex stipulatu consequi non poterit: sed quia damnum evictionis ad personam pertinuit emptoris, qui mandati iudicio nihil percepturus est, non inutiliter ad percipiendam litis aestimationem agetur ex vendito.

Dig. 21.2.66.3

Papinianus 28 quaest.

Divisione inter coheredes facta si procurator absentis interfuit et dominus ratam habuit, evictis praediis in dominum actio dabitur, quae daretur in eum qui negotium absentis gessit, ut quanti sua interest actor consequatur, scilicet ut melioris aut deterioris agri facti causa finem pretii, quo fuerat tempore divisionis aestimatus, deminuat vel excedat.

Dig. 21.2.67

Papinianus 10 resp.

Emptori post evictionem servi quem dominus abduxit venditor eundem servum post tempus offerendo, quo minus praestet quod emptoris interest, non recte defenditur.

Dig. 21.2.68pr.

Papinianus 11 resp.

Cum ea condicione pignus distrahitur, ne quid evictione secuta creditor praestet: quamvis pretium emptor non solverit, sed venditori caverit, evictione secuta nullam emptor exceptionem habebit, quo minus pretium solvat.

Dig. 21.2.68.1

Papinianus 11 resp.

Creditor, qui pro pecunia nomen debitoris per delegationem sequi maluit, evictis pignoribus quae prior creditor accepit nullam actionem cum eo qui liberatus est habebit.

Dig. 21.2.69pr.

Scaevola 2 quaest.

Qui libertatis causam excepit in venditione, sive iam tunc cum traderetur liber homo fuerit, sive condicione quae testamento proposita fuerit impleta ad libertatem pervenerit, non tenebitur evictionis nomine.

Dig. 21.2.69.1

Scaevola 2 quaest.

Qui autem in tradendo statuliberum dicit, intellegetur hanc speciem dumtaxat libertatis excipere, quae ex testamento impleta condicione ex praeterito possit optingere: et ideo si praesens testamento libertas data fuerit et venditor statuliberum pronuntiavit, evictionis nomine tenetur.

Dig. 21.2.69.2

Scaevola 2 quaest.

Rursus qui statuliberum tradit, si certam condicionem pronuntiaverit, sub qua dicit ei libertatem datam, deteriorem condicionem suam fecisse existimabitur, quia non omnem causam statutae libertatis, sed eam dumtaxat quam pronuntiaverit excepisse videbitur: veluti si quis hominem dixerit decem dare iussum isque post annum ad libertatem pervenerit, quia hoc modo libertas data fuerit: " stichus post annum liber esto", evictionis oblgiatione tenebitur.

Dig. 21.2.69.3

Scaevola 2 quaest.

Quid ergo, qui iussum decem dare pronuntiat viginti dare debere, nonne in condicionem mentitur? verum est hunc quoque in condicionem mentiri et ideo quidam existimaverunt hoc quoque casu evictionis stipulationem contrahi: sed auctoritas servii praevaluit existimantis hoc casu ex empto actionem esse, videlicet quia putabat eum, qui pronuntiasset servum viginti dare iussum, condicionem excepisse, quae esset in dando.

Dig. 21.2.69.4

Scaevola 2 quaest.

Servus rationibus redditis liber esse iussus est: hunc heres tradidit et dixit centum dare iussum. si nulla reliqua sunt quae servus dare debeat et per hoc adita hereditate liber factus est, obligatio evictionis contrahitur, eo quod liber homo tamquam statuliber traditur. si centum in reliquis habet, potest videri heres non esse mentitus, quoniam rationes reddere iussus intellegitur summam pecuniae quae ex reliquis colligitur iussus dare: cui consequens est, ut, si minus quam centum in reliquis habuerit, veluti sola quinquaginta, ut, cum eam pecuniam dederit, ad libertatem pervenerit, de reliquis quinquaginta actio ex empto competat.

Dig. 21.2.69.5

Scaevola 2 quaest.

Sed et si quis in venditione statuliberum perfusorie dixerit, condicionem autem libertatis celaverit, empti iudicio tenebitur, si id nescierit emptor: hic enim exprimitur eum, qui dixerit statuliberum et nullam condicionem pronuntiaverit, evictionis quidem nomine non teneri, si condicione impleta servus ad libertatem pervenerit, sed empti iudicio teneri, si modo condicionem, quam sciebat praepositam esse, celavit: sicuti qui fundum tradidit et, cum sciat certam servitutem deberi, perfusorie dixerit: " itinera actus quibus sunt utique sunt, recte recipitur", evictionis quidem nomine se liberat, sed quia decepit emptorem, empti iudicio tenetur.

Dig. 21.2.69.6

Scaevola 2 quaest.

In fundo vendito cum modus pronuntiatus deest, sumitur portio ex pretio, quod totum colligendum est ex omnibus iugeribus dictis.

Dig. 21.2.70

Paulus 5 quaest.

Evicta re ex empto actio non ad pretium dumtaxat recipiendum, sed ad id quod interest competit: ergo et, si minor esse coepit, damnum emptoris erit.

Dig. 21.2.71

Paulus 16 quaest.

Pater filiae nomine fundum in dotem dedit: evicto eo an ex empto vel duplae stipulatio committatur, quasi pater damnum patiatur, non immerito dubitatur: non enim sicut mulieris dos est, ita patris esse dici potest nec conferre fratribus cogitur dotem a se profectam manente matrimonio. sed videamus, ne probabilius dicatur committi hoc quoque casu stipulationem: interest enim patris filiam dotatam habere et spem quandoque recipiendae dotis, utique si in potestate sit. quod si emancipata est, vix poterit defendi statim committi stipulationem, cum uno casu ad eum dos regredi possit. numquid ergo tunc demum agere possit, cum mortua in matrimonio filia potuit dotem repetere, si evictus fundus non esset? an et hoc casu interest patris dotatam filiam habere, ut statim convenire promissorem possit? quod magis paterna affectio inducit.

Dig. 21.2.72

Callistratus 2 quaest.

Cum plures fundi specialiter nominatim uno instrumento emptionis interposito venierint, non utique alter alterius fundus pars videtur esse, sed multi fundi una emptione continentur. et quemadmodum, si quis complura mancipia uno instrumento emptionis interposito vendiderit, evictionis actio in singula capita mancipiorum spectatur, et sicut aliarum quoque rerum complurium una emptio facta sit, instrumentum quidem emptionis interpositum unum est, evictionem autem tot actiones sunt, quot et species rerum sunt quae emptione comprehensae sunt: ita et in proposito non utique prohibebitur emptor evicto ex his uno fundo venditorem convenire, quod una cautione emptionis complures fundos mercatus comprehenderit.

Dig. 21.2.73

Paulus 7 resp.

Seia fundos maevianum et seianum et ceteros doti dedit: eos fundos vir titius viva seia sine controversia possedit: post mortem deinde seiae sempronia heres seiae quaestionem pro praedii proprietate facere instituit: quaero, cum sempronia ipsa sit heres seiae, an iure controversiam facere possit. paulus respondit iure quidem proprio, non hereditario semproniam, quae seiae de qua quaeritur heres exstitit, controversiam fundorum facere posse, sed evictis praediis eandem semproniam heredem seiae conveniri posse: vel exceptione doli mali summoveri posse.

Dig. 21.2.74pr.

Hermogenianus 2 iuris epit.

Si plus vel minus, quam pretii nomine datum est, evictione secuta dari convenerit, placitum custodiendum est.

Dig. 21.2.74.1

Hermogenianus 2 iuris epit.

Si iussu iudicis rei iudicatae pignus captum per officium distrahatur, post evincatur, ex empto contra eum qui pretio liberatus est, non quanti interest, sed de pretio dumtaxat eiusque usuris habita ratione fructuum dabitur, scilicet si hos ei qui evicit restituere non habebat necesse.

Dig. 21.2.74.2

Hermogenianus 2 iuris epit.

Mota quaestione interim non ad pretium restituendum, sed ad rem defendendam venditor conveniri potest.

Dig. 21.2.74.3

Hermogenianus 2 iuris epit.

Qui nomen quale fuit vendidit, dumtaxat ut sit, non ut exigi etiam aliquid possit, et dolum praestare cogitur.

Dig. 21.2.75

Venonius 16 stipul.

Quod ad servitutes praediorum attinet, si tacite secutae sunt et vindicentur ab alio, quintus mucius et sabinus existimant venditorem ob evictionem teneri non posse: nec enim evictionis nomine quemquam teneri in eo iure, quod tacite soleat accedere: nisi ut optimus maximusque esset traditus fuerit fundus: tunc enim liberum ab omni servitute praestandum. si vero emptor petat viam vel actum, venditorem teneri non posse, nisi nominatim dixerit accessurum iter vel actum: tunc enim teneri eum, qui ita dixerit. et vera est quinti muci sententia, ut qui optimum maximumque fundum tradidit, liberum praestet, non etiam deberi alias servitutes, nisi hoc specialiter ab eo accessum sit.

Dig. 21.2.76

Venonius 17 stipul.

Si alienam rem mihi tradideris et eandem pro derelicto habuero, amitti auctoritatem, id est actionem pro evictione, placet.

Dig. 21.3.0. De exceptione rei venditae et traditae.

Dig. 21.3.1pr.

Ulpianus 76 ad ed.

Marcellus scribit, si alienum fundum vendideris et tuum postea factum petas, hac exceptione recte repellendum.

Dig. 21.3.1.1

Ulpianus 76 ad ed.

Sed et si dominus fundi heres venditori existat, idem erit dicendum.

Dig. 21.3.1.2

Ulpianus 76 ad ed.

Si quis rem meam mandatu meo vendiderit, vindicanti mihi rem venditam nocebit haec exceptio, nisi probetur me mandasse, ne traderetur, antequam pretium solvatur.

Dig. 21.3.1.3

Ulpianus 76 ad ed.

Celsus ait: si quis rem meam vendidit minoris quam ei mandavi, non videtur alienata et, si petam eam, non obstabit mihi haec exceptio: quod verum est.

Dig. 21.3.1.4

Ulpianus 76 ad ed.

Si servus merces peculiariter emerit, deinde dominus eum, priusquam proprietatem rerum nancisceretur, testamento liberum esse iusserit eique peculium praelegaverit et venditor a servo merces petere coeperit: exceptio in factum locum habebit, quia is tunc servus fuisset cum contraxisset.

Dig. 21.3.1.5

Ulpianus 76 ad ed.

Si quis rem emerit, non autem fuerit ei tradita, sed possessionem sine vitio fuerit nactus, habet exceptionem contra venditorem, nisi forte venditor iustam causam habeat, cur rem vindicet: nam et si tradiderit possessionem, fuerit autem iusta causa vindicanti, replicatione adversus exceptionem utetur.

Dig. 21.3.2

Pomponius 2 ex plaut.

Si a titio fundum emeris qui sempronii erat isque tibi traditus fuerit, pretio autem soluto titius sempronio heres exstiterit et eundem fundum maevio vendiderit et tradiderit: iulianus ait aequius esse priorem te tueri, quia et si ipse titius fundum a te peteret, exceptione summoveretur et si ipse titius eum possideret, publiciana peteres.

Dig. 21.3.3pr.

Hermogenianus 6 iuris epit.

Exceptio rei venditae et traditae non tantum ei cui res tradita est, sed successoribus etiam eius et emptori secundo, etsi res ei non fuerit tradita, proderit: interest enim emptoris primi secundo rem non evinci.

Dig. 21.3.3.1

Hermogenianus 6 iuris epit.

Pari ratione venditoris etiam successoribus nocebit, sive in universum ius sive in eam dumtaxat rem successerint.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER DUO-ET-VICESIMUS

Dig. 22.1.0. De usuris et fructibus et causis et omnibus accessionibus et mora.
Dig. 22.2.0. De nautico faenore.
Dig. 22.3.0. De probationibus et praesumptionibus.
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Dig. 22.6.0. De iuris et facti ignorantia.

Dig. 22.1.0. De usuris et fructibus et causis et omnibus accessionibus et mora.

Dig. 22.1.1pr.

Papinianus 2 quaest.

Cum iudicio bonae fidei disceptatur, arbitrio iudicis usurarum modus ex more regionis ubi contractum est constituitur, ita tamen, ut legi non offendat.

Dig. 22.1.1.1

Papinianus 2 quaest.

Socius si ideo condemnandus erit, quod pecuniam communem invaserit vel in suos usus converterit, omnimodo etiam mora non interveniente praestabuntur usurae.

Dig. 22.1.1.2

Papinianus 2 quaest.

Nec tamen iudex iudicii bonae fidei recte iubebit interponi cautiones, ut, si tardius sententiae condemnatus paruerit, futuri temporis pendantur usurae, cum in potestate sit actoris iudicatum exigere. paulus notat: quid enim pertinet ad officium iudicis post condemnationem futuri temporis tractatus?

Dig. 22.1.1.3

Papinianus 2 quaest.

Papinianus: circa tutelae restitutionem pro favore pupillorum latior interpretatio facta est: nemo enim ambigit hodie, sive iudex accipiatur, in diem sententiae, sive sine iudice tutela restituatur, in eum diem quo restituit usuras praestari. plane si tutelae iudicio nolentem experiri tutor ultro convenerit et pecuniam optulerit eamque obsignatam deposuerit, ex eo tempore non praestabit usuras.

Dig. 22.1.2

Papinianus 6 quaest.

Volgo receptum est, ut, quamvis in personam actum sit, post litem tamen contestatam causa praestetur: cuius opinionis ratio redditur, quoniam quale est, cum petitur, tale dari debet ac propterea postea captos fructus partumque editum restitui oportet.

Dig. 22.1.3pr.

Papinianus 20 quaest.

In fideicommissi persecutione, cum post iudicis sententiam moram fecisset heres, iussit imperator marcus antoninus, intermisso legitimo tempore quod condemnatis praestatur ut usque ad sententiam commoda fideicommissarius accipiat. quod decretum ita accipi oportet, si ante iudicis sententiam mora non intervenit: tametsi non facile evenire possit, ut mora non praecedente perveniatur ad iudicem: sed puta legis falcidiae rationem intervenisse. ceterum si ante, quam ad iudicem perveniretur, in mora heres fuit, exinde fructuum praestandorum necessitate adstrictus qua tandem ratione, quoniam et sententia victus est, legitimi temporis spatio fructibus liberabitur, cum ea temporis intercapedo iudicato dilationem dare, non lucrum adferre debeat?

Dig. 22.1.3.1

Papinianus 20 quaest.

In his quoque iudiciis, quae non sunt arbitraria nec bonae fidei, post litem contestatam actori causa praestanda est in eum diem, quo sententia dicitur: certe post rem iudicatam tempus a fructibus dependendis immune est.

Dig. 22.1.3.2

Papinianus 20 quaest.

Nonnumquam evenit, ut, quamquam fructus hereditatis aut pecuniae usura nominatim relicta non sit, nihilo minus debeatur. ut puta si quis rogetur post mortem suam quidquid ex bonis supererit titio restituere: ut enim ea quae fide bona deminuta sunt in causa fideicommissi non deprehenduntur, si pro modo ceterorum quoque bonorum deminuantur, ita quod ex fructibus supererit iure voluntatis restitui oportebit.

Dig. 22.1.3.3

Papinianus 20 quaest.

Cum pollidius a propinqua sua heres institutus rogatus fuisset filiae mulieris quidquid ex bonis eius ad se pervenisset, cum certam aetatem puella complesset, restituere, idque sibi mater ideo placuisse testamento comprehendisset, ne filiae tutoribus, sed potius necessitudini res committerentur, eundemque pollidium fundum retinere iussisset: praefectis praetorii suasi fructus, qui bona fide a pollidio ex bonis defunctae percepti essent, restitui debere, sive quod fundum ei tantum praelegaverat sive quod lubrico tutelae fideicommissi remedium mater praetulerat.

Dig. 22.1.3.4

Papinianus 20 quaest.

Si auro vel argento facto per fideicommissum relicto mora intervenerit, an usurarum aestimatio facienda sit, tractari solet. plane si materiam istam ideo relinquit, ut ea distracta pecuniaque refecta fideicommissa solverentur aut alimenta praestarentur, non oportere frustrationem impunitam esse responderi oportet: quod si forte ideo relinquit, ut his vasis uteretur, non sine rubore desiderabuntur usurae ideoque non exigentur.

Dig. 22.1.4pr.

Papinianus 27 quaest.

Si stipulatus sis rem dari vacuamque possessionem tradi, fructus postea captos actione incerti ex stipulatu propter inferiora verba consecuturum te ratio suadet. an idem de partu ancillae responderi possit, considerandum est. nam quod ad verba superiora pertinet, sive factum rei promittendi sive effectum per traditionem dominii transferendi continent, partus non continetur: verum si emptor a venditore novandi animo ita stipulatus est, factum tradendi stipulatus intellegitur, quia non est verisimile plus venditorem promisisse, quam iudicio empti praestare compelleretur. sed tamen propter illa verba " vacuamque possessionem tradi" potest dici partus quoque rationem committi incerti stipulatione: etenim ancilla tradita partum postea editum in bonis suis reus stipulandi habere potuisset.

Dig. 22.1.4.1

Papinianus 27 quaest.

Si post contractam emptionem ante interpositam stipulationem partus editus aut aliquid per servum venditori adquisitum est, quod ex stipulatu consequi non poterit, iudicio empti consequitur: id enim quod non transfertur in causam novationis iure pristino peti potest.

Dig. 22.1.5

Papinianus 28 quaest.

Generaliter observari convenit bonae fidei iudicium non recipere praestationem, quae contra bonos mores desideretur.

Dig. 22.1.6pr.

Papinianus 29 quaest.

Cum de in rem verso cum herede patris vel domini ageretur et usurarum quaestio moveretur, imperator antoninus ideo solvendas usuras iudicavit, quod eas ipse dominus vel pater longo tempore praestitisset.

Dig. 22.1.6.1

Papinianus 29 quaest.

Imperator quoque noster severus filiae flavii athenagorae, cuius bona fuerant publicata, de fisco ideo numerari decies centena dotis nomine iussit, quod ea patrem praestitisse dotis usuras allegasset.

Dig. 22.1.7

Papinianus 2 resp.

Debitor usurarius creditori pecuniam optulit et eam, cum accipere noluisset, obsignavit ac deposuit: ex eo die ratio non habebitur usurarum. quod si postea conventus ut solveret moram fecerit, nummi steriles ex eo tempore non erunt.

Dig. 22.1.8

Papinianus 7 resp.

Equis per fideicommissum relictis post moram fetus quoque praestabitur ut fructus, sed fetus secundus ut causa, sicut partus mulieris.

Dig. 22.1.9pr.

Papinianus 11 resp.

Pecuniae faenebris, intra diem certum debito non soluto, dupli stipulatum in altero tanto supra modum legitimae usurae respondi non tenere: quare pro modo cuiuscumque temporis superfluo detracto stipulatio vires habebit.

Dig. 22.1.9.1

Papinianus 11 resp.

Usurarum stipulatio, quamvis debitor non conveniatur, committitur. nec inutilis legitimae usurae stipulatio videtur sub ea condicione concepta " si minores ad diem solutae non fuerint": non enim poena, sed faenus uberius iusta ratione sortis promittitur. si tamen post mortem creditoris nemo fuit cui pecunia solveretur, eius temporis inculpatam esse moram constitit: ideo si maiores usurae prioribus petantur, exceptio doli non inutiliter opponetur.

Dig. 22.1.10

Paulus 2 quaest.

Partum post litem contestatam editum restituere possessor debet: quem non deberet restituere, si, cum mater peteretur, iam natus fuisset, nisi specialiter et pro hoc egisset.

Dig. 22.1.11pr.

Paulus 25 quaest.

Gaius seius qui rem publicam gerebat faeneravit pecuniam publicam sub usuris solitis: fuit autem consuetudo, ut intra certa tempora non illatis usuris graviores infligerentur: quidam debitores cessaverunt in solvendis usuris, quidam plus intulerunt et sic effectum est, ut omne quod usurarum nomine competebat etiam pro his, qui cessaverant in usuris, suppleatur. quaesitum est, an illud, quod amplius ex consuetudine poenae nomine a quibusdam exactum est, ipsi seio proficere deberet an rei publicae lucro cederet. respondi, si gaius seius a debitoribus usuras stipulatus esset, eas solas rei publicae praestari oportere, quae secundum formam ab is exigi solent, etiamsi non omnia nomina idonea sint.

Dig. 22.1.11.1

Paulus 25 quaest.

Quid si servus publicus obligationem usurarum rei publicae adquisiit? aequum est, quamvis ipso iure usurae rei publicae debeantur, tamen pro defectis nominibus compensationem maiorum usurarum fieri, si non sit parata res publica universorum debitorum fortunam suscipere. eadem fere in tutoribus Marcellus refert.

Dig. 22.1.12

Paulus 4 resp.

Seia mutuam pecuniam accepit a septicio: de usuris ita convenit: nisi sua quaque die usurae supra scriptae exsolverentur vel post tertium mensem, tunc in maiores usuras seia teneretur, et deinceps per singulas pensiones, si condicione data usurae non solverentur, ea condicio observaretur, donec omnis summa debita hoc nomine exsolveretur. quaero, an haec verba " et deinceps per singulas pensiones condicione data usurae non solvantur, ea condicio observaretur" eo pertineant, ut, quamvis commissa sit forte prima stipulatio, non tamen in ampliorem quantitatem usurarum conveniri possit quam eius pensionis nomine, quae egressa est diem praestitutum. paulus respondit plures condiciones continere eam stipulationem, quae de gravioribus usuris praestandis subiecta est, id est ut per singulas pensiones condicio inspectaretur non illatarum suis temporibus leviorum usurarum: et ideo posse evitari poenam sequentium pensionum.

Dig. 22.1.13pr.

Scaevola 1 resp.

Qui semissis usuras promisit, per multos annos minores praestitit: heres creditoris semisses petit. cum per debitorem non steterit, quo minus minores solvat, quaero an exceptio doli vel pacti obstet. respondi, si exsolvendis ex more usuris per tanta tempora mora per debitorem non fuit, posse secundum ea, quae proponerentur obstare exceptionem.

Dig. 22.1.13.1

Scaevola 1 resp.

Quaesitum est, an iudicio negotiorum gestorum vel mandati pro pecunia otiosa usuras praestare debeat, cum dominus nullam pecuniam faeneravit. respondit, si eam pecuniam positam habuisset idque ex consuetudine mandantis fecisset, non debere quicquam usurarum nomine praestare.

Dig. 22.1.14pr.

Paulus 14 resp.

Respondit paulus moram in solvendo fideicommisso factam partus quoque ancillarum restituendos.

Dig. 22.1.14.1

Paulus 14 resp.

Heres rogatus erat post mortem suam sine reditu hereditatem restituere: quaesitum est, an partus ancillarum etiam vivo herede nati restituendi essent propter verba testamenti, quibus de reditu solo deducendo testator sensit. paulus respondit ante diem fideicommissi cedentem partus ancillarum editos fideicommisso non contineri. neratius libro primo ita refert eum, qui similiter rogatus esset, ut mulierem restitueret, partum eius restituere cogendum non esse, nisi tunc editus esset, cum in fideicommisso restituendo moram fecisset. neque interesse existimo, an ancilla specialiter an hereditas in fideicommisso sit.

Dig. 22.1.15

Paulus 16 resp.

Respondit neque eorum fructuum, qui post litem contestatam officio iudicis restituendi sunt, usuras praestari oportere, neque eorum, qui prius percepti quasi malae fidei possessori condicuntur.

Dig. 22.1.16pr.

Paulus 1 decr.

Liberalitatis in rem publicam factae usurae non exiguntur.

Dig. 22.1.16.1

Paulus 1 decr.

Cum usurae pretii fundi ab eo qui a fisco emerat peterentur et emptor negaret traditam sibi possessionem, imperator decrevit iniquum esse usuras ab eo exigi, qui fructus non percepisset.

Dig. 22.1.17pr.

Paulus l.S. de usur.

Cum quidam cavisset se quotannis quincunces usuras praestaturum et, si quo anno non solvisset, tunc totius pecuniae ex die qua mutuatus est semisses soluturum, et redditis per aliquot annos usuris mox stipulatio commissa esset, divus marcus fortunato ita rescripsit: " praesidem provinciae adi, qui stipulationem, de cuius iniquitate questus est, ad modum iustae exactionis rediget". haec constitutio ad finitum modum excedit: quid ergo? sic temperanda res est, ut in futurum dumtaxat ex die cessationis crescat usura.

Dig. 22.1.17.1

Paulus l.S. de usur.

Divus pius ita rescripsit: parum iuste praeteritas usuras petis, quas omisisse te longi temporis intervallum indicat, qui eas a debitore tuo, ut gratior apud eum videlicet esses, petendas non putasti".

Dig. 22.1.17.2

Paulus l.S. de usur.

In tacito fideicommisso omne emolumentum heredi auferendum et fisco praestandum divus pius rescripsit: ergo et usurarum emolumentum aufertur heredi.

Dig. 22.1.17.3

Paulus l.S. de usur.

Si pupillo non habenti tutorem fideicommissum solvi non potuit, non videri moram per heredem factam divus pius rescripsit. ergo nec ei debetur, qui quod rei publicae causa afuit vel ex alia causa iusta impeditus, ex qua restitutio indulgetur, petere non potuit: quid enim potest imputari ei, qui solvere, etiamsi vellet, non potuit? nec simile videri posse, quod placuit minoribus etiam in his succurri quae non adquisierunt: usurae enim non propter lucrum petentium, sed propter moram solventium infliguntur.

Dig. 22.1.17.4

Paulus l.S. de usur.

Ex locato qui convenitur, nisi convenerit ut tardius pecuniae illatae usuras deberet, non nisi ex mora usuras praestare debet.

Dig. 22.1.17.5

Paulus l.S. de usur.

Fiscus ex suis contractibus usuras non dat, sed ipse accipit: ut solet a foricariis, qui tardius pecuniam inferunt, item ex vectigalibus. cum autem in loco privati successit, etiam dare solet.

Dig. 22.1.17.6

Paulus l.S. de usur.

Si debitores, qui minores semissibus praestabant usuras, fisci esse coeperunt, postquam ad fiscum transierunt, semisses cogendi sunt praestare.

Dig. 22.1.17.7

Paulus l.S. de usur.

Eos qui ex administratione rerum civitatium conveniuntur usuris obnoxios esse satis notum est. idem observatur in operum curatoribus, si pecunia apud eos remansit. sed in ea quam redemptoribus commiserunt, etiamsi neglegenter dederint, usura eis remittitur: haec autem ita sunt, si nulla fraus arguitur: alioquin etiam usurae applicabuntur.

Dig. 22.1.17.8

Paulus l.S. de usur.

Si dies non sit ab his, qui statuas vel imagines ponendas legaverunt, praefinitus, a praeside tempus statuendum est et nisi posuerint heredes, usuras rei publicae usque ad tertiam centesimae pendent.

Dig. 22.1.18pr.

Paulus 3 resp.

Evictis agris, si initio convenit, ut venditor pretium restitueret, usurae quoque post evictionem praestabuntur, quamvis emptor post dominii litem inchoatam fructus adversario restituit: nam incommodum medii temporis emptoris damnum est.

Dig. 22.1.18.1

Paulus 3 resp.

Post traditam possessionem defuncto venditore, cui successor incertus fuit, medii quoque temporis usurae pretii, quod in causa depositi non fuit, praestabuntur.

Dig. 22.1.19pr.

Gaius 6 ad l. xii tab.

Videamus, an in omnibus rebus petitis in fructus quoque condemnatur possessor. quid enim si argentum aut vestimentum aliamve similem rem, quid praeterea si usum fructum aut nudam proprietatem, cum alienus usus fructus sit, petierit? neque enim nudae proprietatis, quod ad proprietatis nomen attinet, fructus ullus intellegi potest, neque usus fructus rursus fructus eleganter computabitur. quid igitur, si nuda proprietas petita sit? ex quo perdiderit fructuarius usum fructum, aestimabuntur in petitione fructus. item si usus fructus petitus sit, proculus ait in fructus perceptos condemnari. praeterea gallus aelius putat, si vestimenta aut scyphus petita sint, in fructu haec numeranda esse, quod locata ea re mercedis nomine capi potuerit.

Dig. 22.1.19.1

Gaius 6 ad l. xii tab.

Iter quoque et actus si petitus sit, vix est ut fructus ulli possint aestimari, nisi si quis commodum in fructibus numeraret, quod habiturus esset petitor, si statim eo tempore quo petisset ire agere non prohiberetur: quod admittendum est.

Dig. 22.1.20

Paulus 12 ad sab.

Usuras illicitas sorti mixtas ipsas tantum non deberi constat, ceterum sortem non vitiare.

Dig. 22.1.21

Ulpianus 34 ad ed.

Sciendum est non omne, quod differendi causa optima ratione fiat, morae adnumerandum: quid enim si amicos adhibendos debitor requirat vel expediendi debiti vel fideiussoribus rogandis? vel exceptio aliqua allegetur? mora facta non videtur,

Dig. 22.1.22

Paulus 37 ad ed.

Si modo id ipsum non fraudandi causa simuletur.

Dig. 22.1.23pr.

Ulpianus 34 ad ed.

Sed et si rei publicae causa abesse subito coactus sit, ut defensionem sui mandare non possit, moram facere non videbitur: sive in vinculis hostiumve potestate esse coeperit.

Dig. 22.1.23.1

Ulpianus 34 ad ed.

Aliquando etiam in re moram esse decerni solet, si forte non exstat qui conveniatur.

Dig. 22.1.24pr.

Paulus 37 ad ed.

Si quis solutioni quidem moram fecit, iudicium autem accipere paratus fuit, non videtur fecisse moram: utique si iuste ad iudicium provocavit.

Dig. 22.1.24.1

Paulus 37 ad ed.

Cum reus moram facit, et fideiussor tenetur.

Dig. 22.1.24.2

Paulus 37 ad ed.

Mora videtur creditori fieri, sive ipsi sive ei cui mandaverat sive ei qui negotia eius gerebat mora facta sit: nec hoc casu per liberam personam adquiri videtur, sed officium impleri, sicuti, cum quis furtum mihi facientem deprehendit, negotium meum agens manifesti furti actionem mihi parat: item cum procurator interpellaverit promissorem hominis, perpetuam facit stipulationem.

Dig. 22.1.25pr.

Iulianus 7 Dig.

Qui scit fundum sibi cum alio communem esse, fructus, quos ex eo perceperit invito vel ignorante socio, non maiore ex parte suos facit quam ex qua dominus praedii est: nec refert, ipse an socius an uterque eos severit, quia omnis fructus non iure seminis, sed iure soli percipitur: et quemadmodum, si totum fundum alienum quis sciens possideat, nulla ex parte fructus suos faciet, quoquo modo sati fuerint, ita qui communem fundum possidet, non faciet suos fructus pro ea parte, qua fundus ad socium eius pertinebit.

Dig. 22.1.25.1

Iulianus 7 Dig.

In alieno fundo, quem titius bona fide mercatus fuerat, frumentum sevi: an titius bonae fidei emptor perceptos fructus suos faciat? respondi, quod fructus qui ex fundo percipiuntur intellegi debet propius ea accedere, quae servi operis suis adquirunt, quoniam in percipiendis fructibus magis corporis ius ex quo percipiuntur quam seminis, ex quo oriuntur aspicitur: et ideo nemo umquam dubitavit, quin, si in meo fundo frumentum tuum severim, segetes et quod ex messibus collectum fuerit meum fieret. porro bonae fidei possessor in percipiendis fructibus id iuris habet, quod dominis praediorum tributum est. praeterea cum ad fructuarium pertineant fructus a quolibet sati, quanto magis hoc in bonae fidei possessoribus recipiendum est, qui plus iuris in percipiendis fructibus habent? cum fructuarii quidem non fiant, antequam ab eo percipiantur, ad bonae fidei autem possessorem pertineant, quoquo modo a solo separati fuerint, sicut eius qui vectigalem fundum habet fructus fiunt, simul atque solo separati sunt.

Dig. 22.1.25.2

Iulianus 7 Dig.

Bonae fidei emptor sevit et antequam fructus perciperet, cognovit fundum alienum esse: an perceptione fructus suos faciat, quaeritur. respondi, bonae fidei emptor quod ad percipiendos fructus intellegi debet, quamdiu evictus fundus non fuerit: nam et servus alienus quem bona fide emero tamdiu mihi ex re mea vel ex operis suis adquiret, quamdiu a me evictus non fuerit.

Dig. 22.1.26

Iulianus 6 ex minic.

Venationem fructus fundi negavit esse, nisi fructus fundi ex venatione constet.

Dig. 22.1.27

Africanus 8 quaest.

Cum patri familias mora facta sit, iam in herede eius non quaeritur mora: nam tunc heredi proximo hereditario iure ea competet ideoque ad ceteros quoque deinceps transmittitur.

Dig. 22.1.28pr.

Gaius 2 rer. cott.

In pecudum fructu etiam fetus est sicut lac et pilus et lana: itaque agni et haedi et vituli statim pleno iure sunt bonae fidei possessoris et fructuarii.

Dig. 22.1.28.1

Gaius 2 rer. cott.

Partus vero ancillae in fructu non est itaque ad dominum proprietatis pertinet: absurdum enim videbatur hominem in fructu esse, cum omnes fructus rerum natura hominum gratia comparaverit.

Dig. 22.1.29

Marcianus 14 inst.

Placuit, sive supra statutum modum quis usuras stipulatus fuerit sive usurarum usuras, quod illicite adiectum est pro non adiecto haberi et licitas peti posse.

Dig. 22.1.30

Paulus l.S. reg.

Etiam ex nudo pacto debentur civitatibus usurae creditarum ab eis pecuniarum.

Dig. 22.1.31

Ulpianus 1 resp.

Quod in stipulatione sic adiectum est: " et usuras, si quae competierint", nullius esse momenti, si modus certus non adiciatur.

Dig. 22.1.32pr.

Marcianus 4 reg.

Mora fieri intellegitur non ex re, sed ex persona, id est, si interpellatus oportuno loco non solverit: quod apud iudicem examinabitur: nam, ut et pomponius libro duodecimo epistularum scripsit, difficilis est huius rei definitio. divus quoque pius tullio balbo rescripsit, an mora facta intellegatur, neque constitutione ulla neque iuris auctorum quaestione decidi posse, cum sit magis facti quam iuris.

Dig. 22.1.32.1

Marcianus 4 reg.

Et non sufficit ad probationem morae, si servo debitoris absentis denuntiatum est a creditore procuratoreve eius, cum etiam si ipsi, inquit, domino denuntiatum est, ceterum postea cum is sui potestatem faceret, omissa esset repetendi debiti instantia, non protinus per debitorem mora facta intellegitur.

Dig. 22.1.32.2

Marcianus 4 reg.

In bonae fidei contractibus ex mora usurae debentur.

Dig. 22.1.32.3

Marcianus 4 reg.

Quid ergo: si et filius familias et pater ex persona eius teneatur (sive iussu eius contractum est sive in rem versum est patris vel in peculium), cuius persona circa moram spectabitur? et si quidem pater dumtaxat convenietur, ex mora sua non tenetur: in filium tamen dabitur actio in hoc, ut quod minus a patre actor consecutus est, filius praestet: quod si filius moram fecerit, tunc actor vel cum ipso in solidum vel cum patre dumtaxat de peculio habebit.

Dig. 22.1.32.4

Marcianus 4 reg.

Sed si duo rei promittendi sint, alterius mora alteri non nocet.

Dig. 22.1.32.5

Marcianus 4 reg.

Item si fideiussor solus moram fecerit, non tenetur, sicuti si stichum promissum occiderit: sed utilis actio in hunc dabitur.

Dig. 22.1.33pr.

Ulpianus l.S. de off. curat. rei p.

Si bene collocatae sunt pecuniae publicae, in sortem inquietari debitores non debent et maxime, si parient usuras: si non parient, prospicere rei publicae securitati debet praeses provinciae, dummodo non acerbum se exactorem nec contumeliosum praebeat, sed moderatum et cum efficacia benignum et cum instantia humanum: nam inter insolentiam incuriosam et diligentiam non ambitiosam multum interest.

Dig. 22.1.33.1

Ulpianus l.S. de off. curat. rei p.

Praeterea prospicere debet, ne pecuniae publicae credantur sive pignoribus idoneis vel hypothecis.

Dig. 22.1.34

Ulpianus 15 ad ed.

Usurae vicem fructuum optinent et merito non debent a fructibus separari: et ita in legatis et fideicommissis et in tutelae actione et in ceteris iudiciis bonae fidei servatur. hoc idem igitur in ceteris obventionibus dicemus.

Dig. 22.1.35

Paulus 57 ad ed.

Lite contestata usurae currunt.

Dig. 22.1.36

Ulpianus 61 ad ed.

Praediorum urbanorum pensiones pro fructibus accipiuntur.

Dig. 22.1.37

Ulpianus 10 ad ed.

Et in contraria negotiorum gestorum actione usurae veniunt, si mutuatus sum pecuniam, ut creditorem tuum absolvam, quia aut in possessionem mittendus erat bonorum tuorum aut pignora venditurus. quid si domi habens propter eandem causam solvi? puto verum, si liberavi ex magno incommodo, debere dici usuras venire, eas autem, quae in regione frequentantur, ut est in bonae fidei iudiciis constitutum: sed si mutuatus dedi, hae venient usurae quas ipse pendo, utique si plus tibi praestarim commodi, quam usurae istae colligunt.

Dig. 22.1.38pr.

Paulus 6 ad plaut.

Videamus generali, quando in actione quae est in personam etiam fructus veniant.

Dig. 22.1.38.1

Paulus 6 ad plaut.

Et quidem si fundus ob rem datus sit, veluti dotis causa, et renuntiata adfinitas, fructus quoque restituendi sunt, utique hi qui percepti sunt eo tempore quo sperabatur adfinitas, sed et posteriores, si in re mora fuit, ut ab illo, qui reddere debeat, omnimodo restituendi sunt. sed et si per mulierem stetit, quo minus nuptiae contrahantur, magis est, ut debeat fructus recipere: ratio autem haec est, quod, si sponsus non conveniebatur restituere fructus, licuerat ei neglegere fundum.

Dig. 22.1.38.2

Paulus 6 ad plaut.

Item si indebitum fundum solvi et repeto, fructus quoque repetere debeo.

Dig. 22.1.38.3

Paulus 6 ad plaut.

Idemque est, si mortis causa fundus sit donatus et revaluerit qui donavit atque ita condictio nascatur.

Dig. 22.1.38.4

Paulus 6 ad plaut.

In fabiana quoque actione et pauliana, per quam quae in fraudem creditorum alienata sunt revocantur, fructus quoque restituuntur: nam praetor id agit, ut perinde sint omnia, atque si nihil alienatum esset: quod non est iniquum (nam et verbum " restituas", quod in hac re praetor dixit, plenam habet significationem), ut fructus quoque restituantur.

Dig. 22.1.38.5

Paulus 6 ad plaut.

Et ideo cum restitui praetor vult, veluti in interdicto unde vi, etiam fructus sunt restituendi.

Dig. 22.1.38.6

Paulus 6 ad plaut.

Item si vi metusve causa rem tradam, non aliter mihi restituisse videtur, quam si fructus mihi restituat: nec mora mea mihi aliquid aufert.

Dig. 22.1.38.7

Paulus 6 ad plaut.

Si actionem habeam ad id consequendum quod meum non fuit, veluti ex stipulatu, fructus non consequar, etiamsi mora facta sit: quod si acceptum est iudicium, tunc sabinus et cassius ex aequitate fructus quoque post acceptum iudicium praestandos putant, ut causa restituatur, quod puto recte dici.

Dig. 22.1.38.8

Paulus 6 ad plaut.

Ex causa etiam emptionis fructus restituendi sunt.

Dig. 22.1.38.9

Paulus 6 ad plaut.

Sed in societatibus fructus communicandi sunt.

Dig. 22.1.38.10

Paulus 6 ad plaut.

Si possessionem naturalem revocem, proprietas mea manet, videamus de fructibus. et quidem in deposito et commodato fructus quoque praestandi sunt, sicut diximus.

Dig. 22.1.38.11

Paulus 6 ad plaut.

In interdicto quoque quod vi aut clam magis est, ut omnis causa et fructus restituantur.

Dig. 22.1.38.12

Paulus 6 ad plaut.

Ante matrimonium quoque fructus percepti dotis fiunt et cum ea restituuntur.

Dig. 22.1.38.13

Paulus 6 ad plaut.

Eadem ratio est in fructibus praediorum urbanorum.

Dig. 22.1.38.14

Paulus 6 ad plaut.

Item si dividere fundum tecum velim, tu nolis et colam, an fructus dividi debeant post deductionem impensarum? et puto dividendos.

Dig. 22.1.38.15

Paulus 6 ad plaut.

In ceteris quoque bonae fidei iudiciis fructus omnimodo praestantur.

Dig. 22.1.38.16

Paulus 6 ad plaut.

Si dos praelegata fuerit, ante nuptias percepti fructus in causa legati veniunt.

Dig. 22.1.39

Modestinus 9 diff.

Equis per fideicommissum legatis post moram heredis fetus quoque debentur. equitio autem legato etiamsi mora non intercedat, incremento gregis fetus accedunt.

Dig. 22.1.40

Modestinus 4 reg.

In eum diem, quo creditor pignora distraxit, recte usurae fiet reputatio.

Dig. 22.1.41pr.

Modestinus 3 resp.

Tutor condemnatus per appellationem traxerat exsecutionem sententiae. herennius modestinus respondit eum qui de appellatione cognovit potuisse, si frustratoriam morandi causa appellationem interpositam animadverteret, etiam de usuris medii temporis eum condemnare.

Dig. 22.1.41.1

Modestinus 3 resp.

Lucius titius cum centum et usuras aliquanti temporis deberet, minorem pecuniam quam debebat obsignavit: quaero, an titius pecuniae quam obsignavit usuras praestare non debeat. modestinus respondit, si non hac lege mutua pecunia data est, uti liceret et particulatim quod acceptum est exsolvere, non retardari totius debiti usurarum praestationem, si, cum creditor paratus esset totum suscipere, debitor, qui in exsolutione totius cessabat, solam partem deposuit.

Dig. 22.1.41.2

Modestinus 3 resp.

Ab aulo agerio gaius seius mutuam quandam quantitatem accepit hoc chirographo: " ille scripsi me accepisse et accepi ab illo mutuos et numeratos decem, quos ei reddam kalendis illis proximis cum suis usuris placitis inter nos": quaero, an ex eo instrumento usurae peti possint et quae. modestinus respondit, si non appareat de quibus usuris conventio facta sit, peti eas non posse.

Dig. 22.1.42

Modestinus 11 resp.

Herennius modestinus respondit fructus, qui post adquisitum ex causa fideicommissi dominium ex terra percipiuntur, ad fideicommissarium pertinere, licet maior pars anni ante diem fideicommissi cedentem praeterisse dicatur.

Dig. 22.1.43

Modestinus 18 resp.

Herennius modestinus respondit eius temporis quod cessit, postquam fiscus debitum percepit, eum, qui mandatis a fisco actionibus experitur, usuras quae in stipulatum deductae non sunt petere non posse.

Dig. 22.1.44

Modestinus 10 pand.

Poenam pro usuris stipulari nemo supra modum usurarum licitum potest.

Dig. 22.1.45

Pomponius 22 ad q. muc.

Fructus percipiendo uxor vel vir ex re donata suos facit, illos tamen, quos suis operis adquisierit, veluti serendo: nam si pomum decerpserit vel ex silva caedit, non fit eius, sicuti nec cuiuslibet bonae fidei possessoris, quia non ex facto eius is fructus nascitur.

Dig. 22.1.46

Ulpianus 62 ad ed.

Quod in fructus redigendos impensum est, non ambigitur ipsos fructus deminuere debere.

Dig. 22.1.47

Scaevola 9 Dig.

Respondit paratum iudicium accipere, si ab adversario cessatum est, moram facere non videri.

Dig. 22.1.48

Scaevola 22 Dig.

Maritus uxori suae usum fructum tertiae partis et, cum liberos habuisset, proprietatem legavit: eam uxorem heredes falsi testamenti et aliorum criminum accusaverunt, qua re impedita est legatorum petitio: interea et filius ei mulieri natus est eoque condicio legati exstitit. quaesitum est, cum testamentum falsum non esse apparuerit, an fructus etiam mulieri praestari debeant. respondit praestandos.

Dig. 22.1.49

Iavolenus 3 ex post. lab.

Fructus rei est vel pignori dare licere.

Dig. 22.2.0. De nautico faenore.

Dig. 22.2.1

Modestinus 10 pand.

Traiecticia ea pecunia est quae trans mare vehitur: ceterum si eodem loci consumatur, non erit traiecticia. sed videndum, an merces ex ea pecunia comparatae in ea causa habentur? et interest, utrum etiam ipsae periculo creditoris navigent: tunc enim traiecticia pecunia fit.

Dig. 22.2.2

Pomponius 3 ex plaut.

Labeo ait, si nemo sit, qui a parte promissoris interpellari traiecticiae pecuniae possit, id ipsum testatione complecti debere, ut pro petitione id cederet.

Dig. 22.2.3

Modestinus 4 reg.

In nautica pecunia ex eo die periculum spectat creditorem, ex quo navem navigare conveniat.

Dig. 22.2.4pr.

Papinianus 3 resp.

Nihil interest, traiecticia pecunia sine periculo creditoris accepta sit an post diem praestitutum et condicionem impletam periculum esse creditoris desierit. utrubique igitur maius legitima usura faenus non debebitur, sed in priore quidem specie semper, in altera vero discusso periculo: nec pignora vel hypothecae titulo maioris usurae tenebuntur.

Dig. 22.2.4.1

Papinianus 3 resp.

Pro operis servi traiecticiae pecuniae gratia secuti quod in singulos dies in stipulatum deductum est, ad finem centesimae non ultra duplum debetur. in stipulatione faenoris post diem periculi separatim interposita quod in ea legitimae usurae deerit, per alteram stipulationem operarum supplebitur.

Dig. 22.2.5pr.

Scaevola 6 resp.

Periculi pretium est et si condicione quamvis poenali non existente recepturus sis quod dederis et insuper aliquid praeter pecuniam, si modo in aleae speciem non cadat: veluti ea, ex quibus condictiones nasci solent, ut " si non manumittas", " si non illud facias", " si non convaluero" et cetera. nec dubitabis, si piscatori erogaturo in apparatum plurimum pecuniae dederim, ut, si cepisset, redderet, et athletae, unde se exhiberet exerceretque, ut, si vicisset, redderet.

Dig. 22.2.5.1

Scaevola 6 resp.

In his autem omnibus et pactum sine stipulatione ad augendam obligationem prodest.

Dig. 22.2.6

Paulus 25 quaest.

Faenerator pecuniam usuris maritimis mutuam dando quasdam merces in nave pignori accepit, ex quibus si non potuisset totum debitum exsolvi, aliarum mercium aliis navibus impositarum propriisque faeneratoribus obligatarum si quid superfuisset, pignori accepit. quaesitum est nave propria perempta, ex qua totum solvi potuit, an id damnum ad creditorem pertineat, intra praestitutos dies amissa nave, an ad ceterarum navium superfluum admitti possit. respondi: alias quidem pignoris deminutio ad damnum debitoris, non etiam ad creditoris pertinet: sed cum traiecticia pecunia ita datur, ut non alias petitio eius creditori competat, quam si salva navis intra statuta tempora pervenerit, ipsius crediti obligatio non exsistente condicione defecisse videtur, et ideo pignorum quoque persecutio perempta est etiam eorum, quae non sunt amissa. si navis intra praestitutos dies perisset, et condicionem stipulationis defecisse videri, ideoque sine causa de pignorum persecutione, quae in aliis navibus fuerunt, quaeri. quando ergo ad illorum pignorum persecutionem creditor admitti potuerit? scilicet tunc cum condicio exstiterit obligationis et alio casu pignus amissum fuerit vel vilius distractum vel si navis postea perierit, quam dies praefinitus periculo exactus fuerit.

Dig. 22.2.7

Paulus 3 ad ed.

In quibusdam contractibus etiam usurae debentur quemadmodum per stipulationem. nam si dedero decem traiecticia, ut salva nave sortem cum certis usuris recipiam, dicendum est posse me sortem cum usuris recipere.

Dig. 22.2.8

Ulpianus 77 ad ed.

Servius ait pecuniae traiecticiae poenam peti non posse, si per creditorem stetisset, quo minus eam intra certum tempus praestitutum accipiat.

Dig. 22.2.9

Labeo 5 pith. a paulo epit.

Si traiecticiae pecuniae poena (uti solet) promissa est, quamvis eo die, qui primus solvendae pecuniae fuerit, nemo vixerit, qui eam pecuniam deberet, tamen perinde committi poena potest, ac si fuisset heres debitoris.

Dig. 22.3.0. De probationibus et praesumptionibus.

Dig. 22.3.1

Papinianus 3 quaest.

Quotiens quaereretur, genus vel gentem quis haberet nec ne, eum probare oportet.

Dig. 22.3.2

Paulus 69 ad ed.

Ei incumbit probatio qui dicit, non qui negat.

Dig. 22.3.3

Papinianus 9 resp.

Cum tacitum fideicommissum ab eo datur, qui tam in primo quam in secundo testamento pro eadem parte vel postea pro maiore heres scribitur, probatio mutatae voluntatis ei debet incumbere qui convenitur, cum secreti suscepti ratio plerumque dominis rerum persuadeat eos ita heredes scribere, quorum fidem elegerunt.

Dig. 22.3.4

Paulus 6 resp.

Respondit emptorem probare debere, eum servum de quo quaeritur antequam emeret fugisse.

Dig. 22.3.5pr.

Paulus 9 resp.

Ab ea parte, quae dicit adversarium suum ab aliquo iure prohibitum esse specialiter lege vel constitutione, id probari oportere.

Dig. 22.3.5.1

Paulus 9 resp.

Idem respondit, si quis negat emancipationem recte factam, probationem ipsum praestare debere.

Dig. 22.3.6

Scaevola 2 resp.

Patronum manifeste docere debere libertum in fraudem suam aliquid dedisse, ut partem eius quod in fraudem datum esset, posset avocare.

Dig. 22.3.7

Paulus 2 sent.

Cum probatio prioris fugae deficit, servi quaestioni credendum est: in se enim interrogari, non pro domino aut in dominum videtur.

Dig. 22.3.8

Paulus 18 ad plaut.

Si filius in potestate patris esse neget, praetor cognoscit, ut prior doceat filius, quia et pro pietate quam patri debet praestare hoc statuendum est et quia se liberum esse quodammodo contendit: ideo enim et qui ad libertatem proclamat, prior docere iubetur.

Dig. 22.3.9

Celsus 1 Dig.

Si pactum factum sit, in quo heredis mentio non fiat, quaeritur, an id actum sit, ut ipsius dumtaxat persona eo statueretur. sed quamvis verum est, quod qui excipit probare debeat quod excipitur, attamen de ipso dumtaxat ac non de herede eius quoque convenisse petitor, non qui excipit probare debet, quia plerumque tam heredibus nostris quam nobismet ipsis cavemus.

Dig. 22.3.10

Marcellus 3 Dig.

Census et monumenta publica potiora testibus esse senatus censuit.

Dig. 22.3.11

Celsus 11 Dig.

Non est necesse pupillo probare fideiussores pro tutore datos, cum accipiebantur, idoneos non fuisse: nam probatio exigenda est ab his, quorum officii fuit providere, ut pupillo caveretur.

Dig. 22.3.12

Celsus 17 Dig.

Quingenta testamento tibi legata sunt: idem scriptum est in codicillis postea scriptis: refert, duplicare legatum voluerit an repetere et oblitus se in testamento legasse id fecerit: ab utro ergo probatio eius rei exigenda est? prima fronte aequius videtur, ut petitor probet quod intendit: sed nimirum probationes quaedam a reo exiguntur: nam si creditum petam, ille respondeat solutam esse pecuniam, ipse hoc probare cogendus est. et hic igitur cum petitor duas scripturas ostendit, heres posteriorem inanem esse, ipse heres id adprobare iudici debet.

Dig. 22.3.13

Celsus 30 Dig.

Cum de aetate hominis quaereretur, caesar noster in haec verba rescripsit: " et durum et iniquum est, cum de statu aetatis alicuius quaereretur et diversae professiones proferuntur, ea potissimum stare, quae nocet: sed causa cognita veritatem excuti oportet et ex eo potissimum annos computari, ex quo praecipuam fidem in ea re constare credibilius videtur".

Dig. 22.3.14

Ulpianus 2 de off. cons.

Circa eum, qui se ex libertinitate ingenuum dicat, referendum est, quis actoris partibus fungatur. et si quidem in possessionem libertinitatis fuit, sine dubio ipsum oportebit ingenuitatis causam agere docereque se ingenuum esse: sin vero in possessione ingenuitatis sit et libertinus esse dicatur, scilicet eius qui ei controversiam movet, hoc probare debet qui eum dicit libertum suum: quid enim interest, servum suum quis an libertum contendat? si quis autem fiducia ingenuitatis suae ultro in se suscipiat probationes ad hoc, ut sententiam ferat pro ingenuitate facientem, hoc est, ingenuum se esse ut pronuntietur, an obtemperare ei debeat, tractari potest. et non ab re esse opinor morem ei geri probandi se ingenuum et sententiam secundum se dandam, cum nulla captio intercedat iuris.

Dig. 22.3.15

Modestinus 12 resp.

Quidam quasi ex seia susceptus a gaio seio, cum gaius fratres haberet, hereditatem gaii invasit et fratribus eiusdem quasi ex mandatu defuncti fideicommissa solvit, cautionem accepit: qui postea cognito, quod filius fratris eorum non fuisset, quaerebant, an cum eo de hereditate fratris possint, propter emissam manum ab eis quasi filio, agere. modestinus respondit cautione exsoluti fideicommissi statum eius, qui probari potest a fratribus defuncti filius mortui non esse, minime confirmatum esse: sed hoc ipsum a fratribus probari debet.

Dig. 22.3.16

Clementius 3 ad l. iul. et pap.

Etiam matris professio filiorum recipitur: sed et avi recipienda est.

Dig. 22.3.17

Celsus 6 Dig.

Cum de lege falcidia quaeritur, heredis probatio est locum habere legem falcidiam: quod dum probare non potest, merito condemnabitur.

Dig. 22.3.18pr.

Ulpianus 6 disp.

Quotiens operae quasi a liberto petuntur, probationes ab eo qui se patronum dicit exiguntur: et ideo iulianus scripsit, licet in praeiudicio possessor patronus esse videtur, verum partibus actoris non libertum fungi debere, sed eum qui se patronum esse contendit.

Dig. 22.3.18.1

Ulpianus 6 disp.

Qui dolo dicit factum aliquid, licet in exceptione, docere dolum admissum debet.

Dig. 22.3.18.2

Ulpianus 6 disp.

Interrogationis factae probationem actori imponi debere, id est ei, qui in iure interrogatum dixit respondisse se solum heredem esse. vel si tacuisse dicatur interrogatus, aeque tantundem erit dicendum impositam improbationem non ei qui excepit se non respondisse, sed actori.

Dig. 22.3.19pr.

Ulpianus 7 disp.

In exceptionibus dicendum est reum partibus actoris fungi oportere ipsumque exceptionem velut intentionem implere: ut puta si pacti conventi exceptione utatur, docere debet pactum conventum factum esse.

Dig. 22.3.19.1

Ulpianus 7 disp.

Cum quis promisisset iudicio se sisti et rei publicae causa afuisse dicat et ob id non stetisse, vel dolo malo adversarii factum quo minus sisteretur, vel valetudinem sibi impedimento fuisse vel tempestatem, probare eum id oportet.

Dig. 22.3.19.2

Ulpianus 7 disp.

Sed et si procuratoria quis exceptione utatur, eo quod non licuisset adversario dare vel fieri procuratorem, probare id oportet obicientem exceptionem.

Dig. 22.3.19.3

Ulpianus 7 disp.

Idem erit dicendum et si ea pecunia petatur, quae pensata dicitur.

Dig. 22.3.19.4

Ulpianus 7 disp.

Hoc amplius, si iudicatae rei vel iurisiurandi condicio delata dicatur de eo quod nunc petitur, sive in alea gestum esse contendatur, eum implere probationes oportet.

Dig. 22.3.20

Iulianus 43 Dig.

Si quis liberum hominem vi rapuerit, in vinculis habuerit, is indignissime commodum possessoris consequeretur, quia probari non poterit hominem eo tempore quo primum lis ordinaretur in libertate fuisse.

Dig. 22.3.21

Marcianus 6 inst.

Verius esse existimo ipsum qui agit, id est legatarium, probare oportere scisse alienam rem vel obligatam legare defunctum, non heredem probare oportere ignorasse alienam vel obligatam, quia semper necessitas probandi incumbit illi qui agit.

Dig. 22.3.22

Ulpianus 1 resp.

Eum, qui voluntatem mutatam dicit, probare hoc debere.

Dig. 22.3.23

Marcianus l.S. ad form. hypoth.

Ante omnia probandum est, quod inter agentem et debitorem convenit, ut pignori hypothecaeve sit: sed et si hoc probet actor, illud quoque implere debet rem pertinere ad debitorem eo tempore quo convenit de pignore, aut cuius voluntate hypotheca data sit.

Dig. 22.3.24

Modestinus 4 reg.

Si chirographum cancellatum fuerit, licet praesumptione debitor liberatus esse videtur, in eam tamen quantitatem, quam manifestis probationibus creditor sibi adhuc deberi ostenderit, recte debitor convenitur.

Dig. 22.3.25pr.

Paulus 3 quaest.

Cum de indebito quaeritur, quis probare debet non fuisse debitum? res ita temperanda est, ut, si quidem is, qui accepisse dicitur rem vel pecuniam indebitam, hoc negaverit et ipse qui dedit legitimis probationibus solutionem adprobaverit, sine ulla distinctione ipsum, qui negavit sese pecuniam accepisse, si vult audiri, compellendum esse ad probationes praestandas, quod pecuniam debitam accepit: per etenim absurdum est eum, qui ab initio negavit pecuniam suscepisse, postquam fuerit convictus eam accepisse, probationem non debiti ab adversario exigere. sin vero ab initio confiteatur quidem suscepisse pecunias, dicat autem non indebitas ei fuisse solutas, praesumptionem videlicet pro eo esse qui accepit nemo dubitat: qui enim solvit numquam ita resupinus est, ut facile suas pecunias iactet et indebitas effundat, et maxime si ipse qui indebitas dedisse dicit homo diligens est et studiosus pater familias, cuius personam incredibile est in aliquo facile errasse. et ideo eum, qui dicit indebitas solvisse, compelli ad probationes, quod per dolum accipientis vel aliquam iustam ignorantiae causam indebitum ab eo solutum, et nisi hoc ostenderit, nullam eum repetitionem habere.

Dig. 22.3.25.1

Paulus 3 quaest.

Sin autem is qui indebitum queritur vel pupillus vel minor sit vel mulier vel forte vir quidem perfectae aetatis, sed miles vel agri cultor et forensium rerum expers vel alias simplicitate gaudens et desidia deditus: tunc eum qui accepit pecunias ostendere bene eas accepisse et debitas ei fuisse soltuas et, si non ostenderit, eas redhibere.

Dig. 22.3.25.2

Paulus 3 quaest.

Sed haec ita, si totam summam indebitam fuisse solutam is qui dedit contendat. sin autem pro parte queritur, quod pars pecuniae solutae debita non est, vel quod ab initio quidem debitum fuit, sed vel dissoluto debito postea ignarus iterum solvit vel exceptione tutus errore eius pecunias dependit: ipsum omnimodo hoc ostendere, quod vel plus debito persolvit vel iam solutam pecuniam per errorem repetita solutione dependit vel tutus exceptione suam nesciens proiecit pecuniam, secundum generalem regulam, quae eos, qui opponendas esse exceptiones adfirmant vel solvisse debita contendunt, haec ostendere exigit.

Dig. 22.3.25.3

Paulus 3 quaest.

In omnibus autem visionibus quas praeposuimus licentia concedenda est ei, cui onus probationis incumbit, adversario suo rei veritate iusiurandum ferre, prius ipso pro calumnia iurante, ut iudex iuramenti fidem secutus ita suam sententiam possit formare, iure referendae religionis ei servando.

Dig. 22.3.25.4

Paulus 3 quaest.

Sed haec, ubi de solutione indebiti quaestio est. sin autem cautio indebite exposita esse dicatur et indiscrete loquitur, tunc eum, in quem cautio exposita est, compelli debitum esse ostendere, quod in cautionem deduxit, nisi ipse specialiter qui cautionem exposuit causas explanavit, pro quibus eandem conscripsit: tunc enim stare eum oportet suae confessioni, nisi evidentissimis probationibus in scriptis habitis ostendere paratus sit sese haec indebite promisisse.

Dig. 22.3.26

Papinianus 20 quaest.

Procula magnae quantitatis fideicommissum a fratre sibi debitum post mortem eius in ratione cum heredibus compensare vellet, ex diverso autem allegaretur numquam id a fratre quamdiu vixit desideratum, cum variis ex causis saepe rationi fratris pecunias ratio proculae solvisset: divus commodus cum super eo negotio cognosceret, non admisit compensationem, quasi tacite fratri fideicommissum fuisset remissum.

Dig. 22.3.27

Scaevola 33 Dig.

Qui testamentum faciebat ei qui usque ad certum modum capere potuerat legavit licitam quantitatem, deinde ita locutus est: " titio centum do lego, quae mihi pertulit: quae ideo ei non cavi, quod omnem fortunam et substantiam, si quam a matre susceperat in sinu meo habui sine ulla cautione. item eidem titio reddi et solvi volo de substantia mea centum quinquaginta, quae ego ex reditibus praediorum eius (quorum ipse fructum percepi et distraxi), item de calendario (si qua a matre receperat titius) in rem meam converti". quaero, an titius ea exigere potest. respondit, si titius supra scripta ex ratione sua ad testatorem pervenisse probare potuerit, exigi: videtur enim eo, quod ille plus capere non poterat, in fraudem legis haec in testamento adiecisse.

Dig. 22.3.28

Labeo 7 pith. a paulo epit.

Si arbiter animadvertere debeat, an operis facti memoria exstet, hoc ei quaerendum est, an aliquis meminerit id opus factum esse. paulus: immo cum in arbitrio quaeritur, memoria facti operis exstet nec ne, non hoc quaeritur, num aliquis meminerit, quo die aut quo consule factum sit, sed num hoc aliquo modo probari possit, quando id opus factum sit: et hoc ita, quod graece dici solet en platei. enim potest hoc memoria non teneri: intra annum puta factum, cum interim nemo sit eorum, qui meminerit, quibus consulibus id viderit, sed cum omnium haec est opinio nec audisse nec vidisse, cum id opus fieret, neque ex eis audisse, qui vidissent aut audissent: et hoc infinite similiter susum versum accidet, cum memoria operis facti non exstaret.

Dig. 22.3.29pr.

Scaevola 9 Dig.

Imperatores antoninus et verus augusti claudio apolinari ^ apollinari^ rescripserunt in haec verba: " probationes quae de filiis dantur, non in sola adfirmatione testium consistunt, sed et epistulas, quae uxoribus missae allegarentur, si de fide earum constet, nonnullam vicem instrumentorum optinere decretum est".

Dig. 22.3.29.1

Scaevola 9 Dig.

Mulier gravida repudiata, filium enixa, absente marito ut spurium in actis professa est. quaesitum est an is in potestate patris sit et matre intestata mortua iussu eius hereditatem matris adire possit nec obsit professio a matre irata facta. respondit veritati locum superfore.

Dig. 22.4.0. De fide instrumentorum et amissione eorum.

Dig. 22.4.1

Paulus 2 sent.

Instrumentorum nomine ea omnia accipienda sunt, quibus causa instrui potest: et ideo tam testimonia quam personae instrumentorum loco habentur.

Dig. 22.4.2

Paulus 5 sent.

Quicumque a fisco convenitur, non ex indice et exemplo alicuius scripturae, sed ex authentico conveniendus est et ita, si contractus fides possit ostendi: ceterum calumniosam scripturam vim in iudicio optinere non convenit.

Dig. 22.4.3

Paulus 3 resp.

Respondit repetita quidem die cautionem interponi non debuisse, sed falsi crimen quantum ad eos, qui in hoc consenserunt, contractum non videri, cum inter praesentes et convenientes res actitata sit magisque debitor quam creditor deliquerit.

Dig. 22.4.4

Gaius l.S. de form. hypoth.

In re hypothecae nomine obligata ad rem non pertinet, quibus fit verbis, sicuti est et in his obligationibus, quae consensu contrahuntur: et ideo et sine scriptura si convenit, ut hypothecae sit, et probari poterit, res obligata erit de qua conveniunt. fiunt enim de his scripturae, ut quod actum est per eas facilius probari possit: et sine his autem valet quod actum est, si habeat probationem, sicut et nuptiae sunt, licet testatio sine scriptis habita est.

Dig. 22.4.5

Callistratus 2 quaest.

Si res gesta sine litterarum quoque consignatione veritate factum suum praebeat, non ideo minus valebit, quod instrumentum nullum de ea intercessit.

Dig. 22.4.6

Ulpianus 50 ad ed.

Si de tabulis testamenti deponendis agatur et dubitetur, cui eas deponi oportet, semper seniorem iuniori et amplioris honoris inferiori et marem feminae et ingenuum libertino praeferemus.

Dig. 22.5.0. De testibus.

Dig. 22.5.1pr.

Arcadius l.S. de test.

Testimoniorum usus frequens ac necessarius est et ab his praecipue exigendus, quorum fides non vacillat.

Dig. 22.5.1.1

Arcadius l.S. de test.

Adhiberi quoque testes possunt non solum in criminalibus causis, sed etiam in pecuniariis litibus sicubi res postulat, ex his quibus non interdicitur testimonium nec ulla lege a dicendo testimonio excusantur.

Dig. 22.5.1.2

Arcadius l.S. de test.

Quamquam quibusdam legibus amplissimus numerus testium definitus sit, tamen ex constitutionibus principum haec licentia ad sufficientem numerum testium coartatur, ut iudices moderentur et eum solum numerum testium, quem necessarium esse putaverint, evocari patiantur, ne effrenata potestate ad vexandos homines superflua multitudo testium protrahatur.

Dig. 22.5.2

Modestinus 8 reg.

In testimoniis autem dignitas fides mores gravitas examinanda est: et ideo testes, qui adversus fidem suae testationis vacillant, audiendi non sunt.

Dig. 22.5.3pr.

Callistratus 4 de cogn.

Testium fides diligenter examinanda est. ideoque in persona eorum exploranda erunt in primis condicio cuiusque, utrum quis decurio an plebeius sit: et an honestae et inculpatae vitae an vero notatus quis et reprehensibilis: an locuples vel egens sit, ut lucri causa quid facile admittat: vel an inimicus ei sit, adversus quem testimonium fert, vel amicus ei sit, pro quo testimonium dat. nam si careat suspicione testimonium vel propter personam a qua fertur (quod honesta sit) vel propter causam (quod neque lucri neque gratiae neque inimicitiae causa fit), admittendus est.

Dig. 22.5.3.1

Callistratus 4 de cogn.

Ideoque divus hadrianus vibio varo legato provinciae ciliciae rescripsit eum qui iudicat magis posse scire, quanta fides habenda sit testibus. verba epistulae haec sunt: " tu magis scire potes, quanta fides habenda sit testibus, qui et cuius dignitatis et cuius existimationis sint, et qui simpliciter visi sint dicere, utrum unum eundemque meditatum sermonem attulerint an ad ea quae interrogaveras ex tempore verisimilia responderint".

Dig. 22.5.3.2

Callistratus 4 de cogn.

Eiusdem quoque principis exstat rescriptum ad valerium verum de excutienda fide testium in haec verba: " quae argumenta ad quem modum probandae cuique rei sufficiant, nullo certo modo satis definiri potest. sicut non semper, ita saepe sine publicis monumentis cuiusque rei veritas deprehenditur. alias numerus testium, alias dignitas et auctoritas, alias veluti consentiens fama confirmat rei de qua quaeritur fidem. hoc ergo solum tibi rescribere possum summatim non utique ad unam probationis speciem cognitionem statim alligari debere, sed ex sententia animi tui te aestimare oportere, quid aut credas aut parum probatum tibi opinaris".

Dig. 22.5.3.3

Callistratus 4 de cogn.

Idem divus hadrianus iunio rufino proconsuli macedoniae rescripsit testibus se, non testimoniis crediturum. verba epistulae ad hanc partem pertinentia haec sunt: " quod crimina obiecerit apud me alexander apro et quia non probabat nec testes producebat, sed testimoniis uti volebat, quibus apud me locus non est (nam ipsos interrogare soleo), quem remisi ad provinciae praesidem, ut is de fide testium quaereret et nisi implesset quod intenderat, relegaretur".

Dig. 22.5.3.4

Callistratus 4 de cogn.

Gabinio quoque maximo idem princeps in haec verba rescripsit: " alia est auctoritas praesentium testium, alia testimoniorum quae recitari solent: tecum ergo delibera, ut, si retinere eos velis, des eis impendia".

Dig. 22.5.3.5

Callistratus 4 de cogn.

Lege iulia de vi cavetur, ne hac lege in reum testimonium dicere liceret, qui se ab eo parenteve eius liberaverit, quive impuberes erunt, quique iudicio publico damnatus erit qui eorum in integrum restitutus non erit, quive in vinculis custodiave publica erit, quive ad bestias ut depugnaret se locaverit, quaeve palam quaestum faciet feceritve, quive ob testimonium dicendum vel non dicendum pecuniam accepisse iudicatus vel convictus erit. nam quidam propter reverentiam personarum, quidam propter lubricum consilii sui, alii vero propter notam et infamiam vitae suae admittendi non sunt ad testimonii fidem.

Dig. 22.5.3.6

Callistratus 4 de cogn.

Testes non temere evocandi sunt per longum iter et multo minus milites avocandi sunt a signis vel muneribus perhibendi testimonii causa, idque divus hadrianus rescripsit. sed et divi fratres rescripserunt: " quod ad testes evocandos pertinet, diligentiae iudicantis est explorare, quae consuetudo in ea provincia, in quam iudicat, fuerit". nam si probabitur saepe in aliam civitatem testimonii gratia plerosque evocatos, non esse dubitandum, quin evocandi sint, quos necessarios in ipsa cognitione deprehenderit qui iudicat.

Dig. 22.5.4

Paulus 2 ad l. iul. et pap.

Lege iulia iudiciorum publicorum cavetur, ne invito denuntietur, ut testimonium litis dicat adversus socerum generum, vitricum privignum, sobrinum sobrinam, sobrino sobrina natum, eosve qui priore gradu sint, item ne liberto ipsius, liberorum eius, parentium, viri uxoris, item patroni patronae: et ut ne patroni patronae adversus libertos neque liberti adversus patronum cogantur testimonium dicere.

Dig. 22.5.5

Gaius 4 ad l. iul. et pap.

In legibus, quibus excipitur, ne gener aut socer invitus testimonium dicere cogeretur, generi appellatione sponsum quoque filiae contineri placet: item soceri sponsae patrem.

Dig. 22.5.6

Licinius 2 reg.

Idonei non videntur esse testes, quibus imperari potest ut testes fiant.

Dig. 22.5.7

Modestinus 3 reg.

Servi responso tunc credendum est, cum alia probatio ad eruendam veritatem non est.

Dig. 22.5.8

Scaevola 4 reg.

Inviti testimonium dicere non coguntur senes valetudinarii vel milites vel qui cum magistratu rei publicae causa absunt vel quibus venire non licet.

Dig. 22.5.9

Paulus 1 ad sab.

Testis idoneus pater filio aut filius patri non est.

Dig. 22.5.10

Pomponius 1 ad sab.

Nullus idoneus testis in re sua intellegitur.

Dig. 22.5.11

Pomponius 33 ad sab.

Ad fidem rei gestae faciendam etiam non rogatus testis intellegitur.

Dig. 22.5.12

Ulpianus 37 ad ed.

Ubi numerus testium non adicitur, etiam duo sufficient: pluralis enim elocutio duorum numero contenta est.

Dig. 22.5.13

Papinianus 1 de adult.

Quaesitum scio, an in publicis iudiciis calumniae damnati testimonium iudicio publico perhibere possunt. sed neque lege remmia prohibentur et iulia lex de vi et repetendarum et peculatus eos homines testimonium dicere non vetuerunt. verumtamen quod legibus omissum est, non omittetur religione iudicantium ad quorum officium pertinet eius quoque testimonii fidem, quod integrae frontis homo dixerit, perpendere.

Dig. 22.5.14

Papinianus l.S. de adult.

Scio quidem tractatum esse, an ad testamentum faciendum adhiberi possit adulterii damnatus: et sane iuste testimonii officio ei interdicetur. existimo ergo neque iure civili testamentum valere, ad quod huiusmodi testis processit, neque iure praetorio, quod ius civile subsequitur, ut neque hereditas adiri neque bonorum possessio dari possit.

Dig. 22.5.15pr.

Paulus 3 sent.

Repetundarum damnatus nec ad testamentum nec ad testimonium adhiberi potest.

Dig. 22.5.15.1

Paulus 3 sent.

Hermaphroditus an ad testamentum adhiberi possit, qualitas sexus incalescentis ostendit.

Dig. 22.5.16

Paulus 5 sent.

Qui falso vel varie testimonia dixerunt vel utrique parti prodiderunt, a iudicibus competenter puniuntur.

Dig. 22.5.17

Ulpianus l.S. reg.

Pater et filius qui in potestate eius est, item duo fratres qui in eiusdem patris potestate sunt testes utrique in eodem testamento vel eodem negotio fieri possunt, quoniam nihil nocet ex una domo plures testes alieno negotio adhiberi.

Dig. 22.5.18

Paulus 2 de adult.

Ex eo, quod prohibet lex iulia de adulteriis testimonium dicere condemnatam mulierem, colligitur etiam mulieres testimonii in iudicio dicendi ius habere.

Dig. 22.5.19pr.

Ulpianus 8 de off. procons.

Inviti testimonium non dicunt publicani, item is qui non detractandi testimonii causa aberit, item is qui quid exercitui praebendum conduxerit.

Dig. 22.5.19.1

Ulpianus 8 de off. procons.

Sed nec pupillis testimonium denuntiari potest.

Dig. 22.5.20

Venonius 2 de iudic. publ.

In testimonium accusator citare non debet eum, qui iudicio publico reus erit aut qui minor viginti annis erit.

Dig. 22.5.21pr.

Arcadius l.S. de test.

Ob carmen famosum damnatus intestabilis fit.

Dig. 22.5.21.1

Arcadius l.S. de test.

Illud quoque incunctabile est, ut, si res exigat, non tantum privati, sed etiam magistratus, si in praesenti sint, testimonium dicant. item senatus censuit praetorem testimonium dare debere in iudicio adulterii causa.

Dig. 22.5.21.2

Arcadius l.S. de test.

Si ea rei condicio sit, ubi harenarium testem vel similem personam admittere cogimur, sine tormentis testimonio eius credendum non est.

Dig. 22.5.21.3

Arcadius l.S. de test.

Si testes omnes eiusdem honestatis et existimationis sint et negotii qualitas ac iudicis motus cum his concurrit, sequenda sunt omnia testimonia: si vero ex his quidam eorum aliud dixerint, licet inpari numero, credendum est id quod naturae negotii convenit et quod inimicitiae aut gratiae suspicione caret, confirmabitque iudex motum animi sui ex argumentis et testimoniis et quae rei aptiora et vero proximiora esse compererit: non enim ad multitudinem respici oportet, sed ad sinceram testimoniorum fidem et testimonia, quibus potius lux veritatis adsistit.

Dig. 22.5.22

Venonius 2 de off. procons.

Curent magistratus cuiusque loci testari volentibus et se ipsos et alios testes vel signatores praebere, quo facilius negotia explicentur et probatio rerum salva sit.

Dig. 22.5.23

Venonius 1 de iudic. publ.

Produci testis is non potest, qui ante in eum reum testimonium dixit.

Dig. 22.5.24

Paulus 5 sent.

Testes eos, quos accusator de domo produxerit, interrogari non placuit.

Dig. 22.5.25

Arcadius l.S. de test.

Mandatis cavetur, ut praesides attendant, ne patroni in causa cui patrocinium praestiterunt testimonium dicant. quod et in exsecutoribus negotiorum observandum est.

Dig. 22.6.0. De iuris et facti ignorantia.

Dig. 22.6.1pr.

Paulus 44 ad ed.

Ignorantia vel facti vel iuris est.

Dig. 22.6.1.1

Paulus 44 ad ed.

Nam si quis nesciat decessisse eum, cuius bonorum possessio defertur, non cedit ei tempus: sed si sciat quidem defunctum esse cognatum, nesciat autem proximitatis nomine bonorum possessionem sibi deferri, aut se sciat scriptum heredem, nesciat autem quod scriptis heredibus bonorum possessionem praetor promittit, cedit ei tempus, quia in iure errat. idem est, si frater consanguineus defuncti credat matrem potiorem esse.

Dig. 22.6.1.2

Paulus 44 ad ed.

Si quis nesciat se cognatum esse, interdum in iure, interdum in facto errat. nam si et liberum se esse et ex quibus natus sit sciat, iura autem cognationis habere se nesciat, in iure errat: at si quis (forte expositus) quorum parentium esset ignoret, fortasse et serviat alicui putans se servum esse, in facto magis quam in iure errat.

Dig. 22.6.1.3

Paulus 44 ad ed.

Item si quis sciat quidem alii delatam esse bonorum possessionem, nesciat autem ei tempus praeterisse bonorum possessionis, in facto errat. idem est, si putet eum bonorum possessionem accepisse. sed si sciat eum non petisse tempusque ei praeterisse, ignoret autem sibi ex successorio capite competere bonorum possessionem, cedet ei tempus, quia in iure errat.

Dig. 22.6.1.4

Paulus 44 ad ed.

Idem dicemus, si ex asse heres institutus non putet se bonorum possessionem petere posse ante apertas tabulas: quod si nesciat esse tabulas, in facto errat.

Dig. 22.6.2

Nerva 5 membr.

In omni parte error in iure non eodem loco quo facti ignorantia haberi debebit, cum ius finitum et possit esse et debeat, facti interpretatio plerumque etiam prudentissimos fallat.

Dig. 22.6.3pr.

Pomponius 3 ad sab.

Plurimum interest, utrum quis de alterius causa et facto non sciret an de iure suo ignorat.

Dig. 22.6.3.1

Pomponius 3 ad sab.

Sed cassius ignorantiam sabinum ita accipiendam existimasse refert non deperditi et nimium securi hominis.

Dig. 22.6.4

Pomponius 13 ad sab.

Iuris ignorantiam in usucapione negatur prodesse: facti vero ignorantiam prodesse constat.

Dig. 22.6.5

Clementius 2 ad l. iul. et pap.

Iniquissimum videtur cuiquam scientiam alterius quam suam nocere vel ignorantiam alterius alii profuturam.

Dig. 22.6.6

Ulpianus 18 ad l. iul. et pap.

Nec supina ignorantia ferenda est factum ignorantis, ut nec scrupulosa inquisitio exigenda: scientia enim hoc modo aestimanda est, ut neque neglegentia crassa aut nimia securitas satis expedita sit neque delatoria curiositas exigatur.

Dig. 22.6.7

Papinianus 19 quaest.

Iuris ignorantia non prodest adquirere volentibus, suum vero petentibus non nocet.

Dig. 22.6.8

Papinianus 1 def.

Error facti ne maribus quidem in damnis vel compendiis obest, iuris autem error nec feminis in compendiis prodest: ceterum omnibus iuris error in damnis amittendae rei suae non nocet.

Dig. 22.6.9pr.

Paulus l.S. de iuris et facti ign.

Regula est iuris quidem ignorantiam cuique nocere, facti vero ignorantiam non nocere. videamus igitur, in quibus speciebus locum habere possit, ante praemisso quod minoribus viginti quinque annis ius ignorare permissum est. quod et in feminis in quibusdam causis propter sexus infirmitatem dicitur: et ideo sicubi non est delictum, sed iuris ignorantia, non laeduntur. hac ratione si minor viginti quinque annis filio familias crediderit, subvenitur ei, ut non videatur filio familias credidisse.

Dig. 22.6.9.1

Paulus l.S. de iuris et facti ign.

Si filius familias miles a commilitone heres institutus nesciat sibi etiam sine patre licere adire per constitutiones principales, ius ignorare potest et ideo ei dies aditionis cedit.

Dig. 22.6.9.2

Paulus l.S. de iuris et facti ign.

Sed facti ignorantia ita demum cuique non nocet, si non ei summa neglegentia obiciatur: quid enim si omnes in civitate sciant, quod ille solus ignorat? et recte labeo definit scientiam neque curiosissimi neque neglegentissimi hominis accipiendam, verum eius, qui cum eam rem ut, diligenter inquirendo notam habere possit.

Dig. 22.6.9.3

Paulus l.S. de iuris et facti ign.

Sed iuris ignorantiam non prodesse labeo ita accipiendum existimat, si iuris consulti copiam haberet vel sua prudentia instructus sit, ut, cui facile sit scire, ei detrimento sit iuris ignorantia: quod raro accipiendum est.

Dig. 22.6.9.4

Paulus l.S. de iuris et facti ign.

Qui ignoravit dominum esse rei venditorem, plus in re est, quam in existimatione mentis: et ideo, tametsi existimet se non a domino emere, tamen, si a domino ei tradatur, dominus efficitur.

Dig. 22.6.9.5

Paulus l.S. de iuris et facti ign.

Si quis ius ignorans lege falcidia usus non sit, nocere ei dicit epistula divi pii. sed et imperatores severus et antoninus in haec verba rescripserunt: " quod ex causa fideicommissi indebitum datum est, si non per errorem solutum est, repeti non potest. quamobrem gargiliani heredes, qui, cum ex testamento eius pecuniam ad opus aquae ductus rei publicae cirtensium relictam solverint, non solum cautiones non exegerunt, quae interponi solent, ut quod amplius cepissent municipes quam per legem falcidiam licuisset redderent, verum etiam stipulati sunt, ne ea summa in alios usus converteretur et scientes prudentesque passi sunt eam pecuniam in opus aquae ductus impendi, frustra postulant reddi sibi a re publica cirtensium, quasi plus debito dederint, cum sit utrumque iniquum pecuniam, quae ad opus aquae ductus data est, repeti et rem publicam ex corpore patrimonii sui impendere in id opus, quod totum alienae liberalitatis gloriam repraesentet. quod si ideo repetitionem eius pecuniae habere credunt, quod imperitia lapsi legis falcidiae beneficio usi non sunt, sciant ignorantiam facti, non iuris prodesse nec stultis solere succurri, sed errantibus".

Dig. 22.6.9.6

Paulus l.S. de iuris et facti ign.

Et licet municipum mentio in hac epistula fiat, tamen et in qualibet persona idem observabitur. sed nec quod in opere aquae ductus relicta esse pecunia proponitur, in hunc solum casum cessare repetitionem dicendum est. nam initium constitutionis generale est: demonstrat enim, si non per errorem solutum sit fideicommissum, quod indebitum fuit, non posse repeti: item et illa pars aeque generalis est, ut qui iuris ignorantia legis falcidiae beneficio usi non sunt, non possint repetere: ut secundum hoc possit dici etiam, si pecunia, quae per fideicommissum relicta est quaeque soluta est, non ad aliquid faciendum relicta sit, et licet consumpta non sit, sed exstet apud eum cui soluta est, cessare repetitionem.

Dig. 22.6.10

Papinianus 6 resp.

Impuberes sine tutore agentes nihil posse vel scire intelleguntur.

Ius Romanum Justinian The Latin Library The Classics Page

OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER TERTIUS-VICESIMUS

Dig. 23.1.0. De sponsalibus.
Dig. 23.2.0. De ritu nuptiarum.
Dig. 23.3.0. De iure dotium.
Dig. 23.4.0. De pactis dotalibus.
Dig. 23.5.0. De fundo dotali.

Dig. 23.1.0. De sponsalibus.

Dig. 23.1.1

Florus 3 inst.

Sponsalia sunt mentio et repromissio nuptiarum futurarum.

Dig. 23.1.2

Ulpianus l.S. de sponsal.

Sponsalia autem dicta sunt a spondendo: nam moris fuit veteribus stipulari et spondere sibi uxores futuras.

Dig. 23.1.3

Florus 3 inst.

Unde et sponsi sponsaeque appellatio nata est.

Dig. 23.1.4pr.

Ulpianus 35 ad sab.

Sufficit nudus consensus ad constituenda sponsalia.

Dig. 23.1.4.1

Ulpianus 35 ad sab.

Denique constat et absenti absentem desponderi posse, et hoc cottidie fieri:

Dig. 23.1.5

Pomponius 16 ad sab.

Haec ita, si scientibus his qui absint sponsalia fiant aut si postea ratum habuerint.

Dig. 23.1.6

Ulpianus 36 ad sab.

Si puellae tutores ad finienda sponsalia nuntium miserunt, non putarem suffecturum ad dissolvendam nuptiarum spem hunc nuntium, non magis quam sponsalia posse eos solos constituere, nisi forte omnia ista ex voluntate puellae facta sint.

Dig. 23.1.7pr.

Paulus 35 ad ed.

In sponsalibus nihil interest, utrum testatio interponatur an aliquis sine scriptura spondeat.

Dig. 23.1.7.1

Paulus 35 ad ed.

In sponsalibus etiam consensus eorum exigendus est, quorum in nuptiis desideratur. intellegi tamen semper filiae patrem consentire, nisi evidenter dissentiat, iulianus scribit.

Dig. 23.1.8

Gaius 11 ad ed. provinc.

Furor quin sponsalibus impedimento sit, plus quam manifestum est: sed postea interveniens sponsalia non infirmat.

Dig. 23.1.9

Ulpianus 35 ad ed.

Quaesitum est apud iulianum, an sponsalia sint, ante duodecimum annum si fuerint nuptiae collatae. et semper labeonis sententiam probavi existimantis, si quidem praecesserint sponsalia, durare ea, quamvis in domo loco nuptae esse coeperit: si vero non praecesserint, hoc ipso quod in domum deducta est non videri sponsalia facta. quam sententiam papinianus quoque probat.

Dig. 23.1.10

Ulpianus 3 disp.

In potestate manente filia pater sponso nuntium remittere potest et sponsalia dissolvere. enimvero si emancipata est, non potest neque nuntium remittere neque quae dotis causa data sunt condicere: ipsa enim filia nubendo efficiet dotem esse condictionemque extinguet, quae causa non secuta nasci poterit. nisi forte quis proponat ita dotem patrem pro emancipata filia dedisse, ut, si nuptiis non consentiret, vel contractis vel non contractis repeteret quae dederat: tunc enim habebit repetitionem.

Dig. 23.1.11

Iulianus 16 Dig.

Sponsalia sicut nuptiae consensu contrahentium fiunt: et ideo sicut nuptiis, ita sponsalibus filiam familias consentire oportet:

Dig. 23.1.12pr.

Ulpianus l.S. de sponsal.

Sed quae patris voluntati non repugnat, consentire intellegitur.

Dig. 23.1.12.1

Ulpianus l.S. de sponsal.

Tunc autem solum dissentiendi a patre licentia filiae conceditur, si indignum moribus vel turpem sponsum ei pater eligat.

Dig. 23.1.13

Paulus 5 ad ed.

Filio familias dissentiente sponsalia nomine eius fieri non possunt.

Dig. 23.1.14

Modestinus 4 diff.

In sponsalibus contrahendis aetas contrahentium definita non est ut in matrimoniis. quapropter et a primordio aetatis sponsalia effici possunt, si modo id fieri ab utraque persona intellegatur, id est, si non sint minores quam septem annis.

Dig. 23.1.15

Modestinus l.S. de enucl. cas.

Tutor factam pupillam suam nec ipse uxorem ducere nec filio suo in matrimonio adiungere potest. scias tamen, quod de nuptiis tractamus, et ad sponsalia pertinere.

Dig. 23.1.16

Ulpianus 3 ad l. iul. et pap.

Oratio imperatorum antonini et commodi, quae quasdam nuptias in personam senatorum inhibuit, de sponsalibus nihil locuta est. recte tamen dicitur etiam sponsalia in his casibus ipso iure nullius esse momenti, ut suppleatur quod orationi deest.

Dig. 23.1.17

Gaius 1 ad l. iul. et pap.

Saepe iustae ac necessariae causae non solum annum vel biennium, sed etiam triennium et quadriennium et ulterius trahunt sponsalia, veluti valetudo sponsi sponsaeve vel mortes parentium aut capitalia crimina aut longiores peregrinationes quae ex necessitate fiunt.

Dig. 23.1.18

Ulpianus 6 ad ed.

In sponsalibus constituendis parvi refert, per se (et coram an per internuntium vel per epistulam) an per alium hoc factum est: et fere plerumque condiciones interpositis personis expediuntur.

Dig. 23.2.0. De ritu nuptiarum.

Dig. 23.2.1

Modestinus 1 reg.

Nuptiae sunt coniunctio maris et feminae et consortium omnis vitae, divini et humani iuris communicatio.

Dig. 23.2.2

Paulus 35 ad ed.

Nuptiae consistere non possunt nisi consentiant omnes, id est qui coeunt quorumque in potestate sunt.

Dig. 23.2.3

Paulus 1 ad sab.

Si nepotem ex filio et neptem ex altero filio in potestate habeam, nuptias inter eos me solo auctore contrahi posse pomponius scribit et verum est.

Dig. 23.2.4

Pomponius 3 ad sab.

Minorem annis duodecim nuptam tunc legitimam uxorem fore, cum apud virum explesset duodecim annos.

Dig. 23.2.5

Pomponius 4 ad sab.

Mulierem absenti per litteras eius vel per nuntium posse nubere placet, si in domum eius deduceretur: eam vero quae abesset ex litteris vel nuntio suo duci a marito non posse: deductione enim opus esse in mariti, non in uxoris domum, quasi in domicilium matrimonii.

Dig. 23.2.6

Ulpianus 35 ad sab.

Denique cinna scribit: eum, qui absentem accepit uxorem, deinde rediens a cena iuxta tiberim perisset, ab uxore lugendum responsum est.

Dig. 23.2.7

Paulus l.S. ad l. falcid.

Ideoque potest fieri, ut in hoc casu aliqua virgo et dotem et de dote habeat actionem.

Dig. 23.2.8

Pomponius 5 ad sab.

Libertinus libertinam matrem aut sororem uxorem ducere non potest, quia hoc ius moribus, non legibus introductum est.

Dig. 23.2.9pr.

Ulpianus 26 ad sab.

Si nepos uxorem velit ducere avo furente, omnimodo patris auctoritas erit necessaria: sed si pater furit, avus sapiat, sufficit avi voluntas.

Dig. 23.2.9.1

Ulpianus 26 ad sab.

Is cuius pater ab hostibus captus est, si non intra triennium revertatur, uxorem ducere potest.

Dig. 23.2.10

Paulus 35 ad ed.

Si ita pater absit, ut ignoretur ubi sit et an sit, quid faciendum est, merito dubitatur. et si triennium effluxerit, postquam apertissime fuerit pater ignotus, ubi degit et an superstes sit, non prohibentur liberi eius utriusque sexus matrimonium vel nuptias legitimas contrahere.

Dig. 23.2.11

Iulianus 62 Dig.

Si filius eius qui apud hostes est vel absit ante triennium captivitatis vel absentiae patris uxorem duxit vel si filia nupserit, puto recte matrimonium vel nuptias contrahi, dummodo eam filius ducat uxorem vel filia tali nubat, cuius condicionem certum sit patrem non repudiaturum.

Dig. 23.2.12pr.

Ulpianus 26 ad sab.

Si qua mihi uxor fuit, deinde a me repudiata nupsit seio, quem ego postea adrogavi, non sunt nuptiae incestae.

Dig. 23.2.12.1

Ulpianus 26 ad sab.

Inter me et sponsam patris mei nuptiae contrahi non possunt: quamquam noverca mea non proprie dicatur.

Dig. 23.2.12.2

Ulpianus 26 ad sab.

Sed et per contrarium sponsa mea patri meo nubere non poterit, quamvis nurus non proprie dicatur.

Dig. 23.2.12.3

Ulpianus 26 ad sab.

Si uxor mea post divortium alii nupserit et filiam susceperit, putat iulianus hanc quidem privignam non esse, verum nuptiis eius abstinendum.

Dig. 23.2.12.4

Ulpianus 26 ad sab.

Adoptivae sororis filiam possum uxorem ducere: cognata enim mea non est filia eius, quia avunculus nemo fit per adoptionem et eae demum cognationes contrahuntur in adoptionibus, quae legitimae essent, id est quae adgnatorum ius haberent. pari ratione et sororem patris mei adoptivi possum ducere, si non fuit eodem patre nata.

Dig. 23.2.13

Ulpianus 34 ad sab.

Si patrona tam ignobilis sit, ut ei honestae sint vel saltem liberti sui nuptiae, officio iudicis super hoc cognoscentis hae prohiberi non debent.

Dig. 23.2.14pr.

Paulus 35 ad ed.

Adoptivus filius si emancipetur, eam quae patris adoptivi uxor fuit ducere non potest, quia novercae locum habet.

Dig. 23.2.14.1

Paulus 35 ad ed.

Item si quis filium adoptaverit, uxorem eiusdem quae nurus loco est ne quidem post emancipationem filii ducere poterit, quoniam aliquando nurus ei fuit.

Dig. 23.2.14.2

Paulus 35 ad ed.

Serviles quoque cognationes in hoc iure observandae sunt. igitur suam matrem manumissus non ducet uxorem: tantundem iuris est et in sorore et sororis filia. idem e contrario dicendum est, ut pater filiam non possit ducere, si ex servitute manumissi sint, etsi dubitetur patrem eum esse. unde nec volgo quaesitam filiam pater naturalis potest uxorem ducere, quoniam in contrahendis matrimoniis naturale ius et pudor inspiciendus est: contra pudorem est autem filiam uxorem suam ducere.

Dig. 23.2.14.3

Paulus 35 ad ed.

Idem tamen, quod in servilibus cognationibus constitutum est, etiam in servilibus adfinitatibus servandum est, veluti ut eam, quae in contubernio patris fuerit, quasi novercam non possim ducere, et contra eam, quae in contubernio filii fuerit, patrem quasi nurum non ducere: aeque nec matrem eius, quam quis in servitute uxorem habuit, quasi socrum. cum enim cognatio servilis intellegitur, quare non et adfinitas intellegatur? sed in re dubia certius et modestius est huiusmodi nuptiis abstinere.

Dig. 23.2.14.4

Paulus 35 ad ed.

Nunc videamus, quomodo noverca et privigna et socrus et nurus intellegantur, ut sciamus, quas non liceat ducere. quidam novercam per se patris uxorem et nurum filii uxorem et privignam uxoris ex alio marito filiam intellegunt: sed quod ad hanc causam verius est nec avi uxorem nec proavi duci posse. duas ergo vel plures novercas ducere non poterit: non mirum, nam et is qui adoptivus est nec naturalis patris nec adoptivi uxorem ducere potest: sed et si plures uxores pater habuerit, nullam earum ducere possum. itaque socrus appellatione non tantum uxoris meae mater, sed et avia et proavia intellegitur, ut nullam earum ducere possim. nurus quoque appellatione non tantum filii uxor, sed et nepotis et pronepotis continetur, licet quidam has pronurus appellant. privigna quoque non solum ea mihi intellegitur quae uxoris meae filia est, sed et neptis et proneptis, ut nullam earum ducere possim. item eius matrem, quam sponsam habui, non posse me uxorem ducere augustus interpretatus est: fuisse enim eam socrum.

Dig. 23.2.15

Papinianus 4 resp.

Uxorem quondam privigni coniungi matrimonio vitrici non oportet nec in matrimonium convenire novercam eius qui privignae maritus fuit.

Dig. 23.2.16pr.

Paulus 35 ad ed.

Oratione divi marci cavetur, ut, si senatoris filia libertino nupsisset, nec nuptiae essent: quam et senatus consultum secutum est.

Dig. 23.2.16.1

Paulus 35 ad ed.

Nepote uxorem ducente et filius consentire debet: neptis vero si nubat, voluntas et auctoritas avi sufficiet.

Dig. 23.2.16.2

Paulus 35 ad ed.

Furor contrahi matrimonium non sinit, quia consensu opus est, sed recte contractum non impedit.

Dig. 23.2.17pr.

Gaius 11 ad ed. provinc.

Per adoptionem quaesita fraternitas eousque impedit nuptias, donec manet adoptio: ideoque eam, quam pater meus adoptavit et emancipavit, potero uxorem ducere. aeque et si me emancipato illam in potestate retinuerit, poterimus iungi matrimonio.

Dig. 23.2.17.1

Gaius 11 ad ed. provinc.

Itaque volenti generum adoptare suadetur, ut filiam emanciparet ^ emancipet^: similiter suadetur ei, qui nurum velit adoptare, ut emancipet filium.

Dig. 23.2.17.2

Gaius 11 ad ed. provinc.

Amitam quoque et materteram, item magnam quoque amitam et materteram magnam prohibemur uxorem ducere, quamvis magna amita et matertera quarto gradu sint. utique autem amitam et amitam magnam prohibemur uxorem ducere, etsi per adoptionem nobis coniunctae sint.

Dig. 23.2.18

Iulianus 16 Dig.

Nuptiae inter easdem personas nisi volentibus parentibus renovatae iustae non habentur.

Dig. 23.2.19

Marcianus 16 inst.

Capite trigesimo quinto legis iuliae qui liberos quos habent in potestate iniuria prohibuerint ducere uxores vel nubere, vel qui dotem dare non volunt ex constitutione divorum severi et antonini, per proconsules praesidesque provinciarum coguntur in matrimonium collocare et dotare. prohibere autem videtur et qui condicionem non quaerit.

Dig. 23.2.20

Paulus l.S. ad or. severi et comm.

Sciendum est ad officium curatoris non pertinere, nubat pupilla an non, quia officium eius in administratione negotiorum constat: et ita severus et antoninus rescripserunt in haec verba: " ad officium curatoris administratio pupillae pertinet: nubere autem pupilla suo arbitrio potest".

Dig. 23.2.21

Clementius 3 ad l. iul. et pap.

Non cogitur filius familias uxorem ducere.

Dig. 23.2.22

Celsus 15 Dig.

Si patre cogente ducit uxorem, quam non duceret, si sui arbitrii esset, contraxit tamen matrimonium, quod inter invitos non contrahitur: maluisse hoc videtur.

Dig. 23.2.23

Celsus 30 Dig.

Lege papia cavetur omnibus ingenuis praeter senatores eorumque liberos libertinam uxorem habere licere.

Dig. 23.2.24

Modestinus 1 reg.

In liberae mulieris consuetudine non concubinatus, sed nuptiae intellegendae sunt, si non corpore quaestum fecerit.

Dig. 23.2.25

Modestinus 2 reg.

Filius emancipatus etiam sine consensu patris uxorem ducere potest et susceptus filius ei heres erit.

Dig. 23.2.26

Modestinus 5 resp.

Respondit reas adulterii factas nec ante damnationem vidente marito uxores duci posse.

Dig. 23.2.27

Ulpianus 3 ad l. iul. et pap.

Si quis in senatorio ordine agens libertinam habuerit uxorem, quamvis interim uxor non sit, attamen in ea condicione est, ut, si amiserit dignitatem, uxor esse incipiat.

Dig. 23.2.28

Marcianus 10 inst.

Invitam libertam uxorem ducere patronus non potest:

Dig. 23.2.29

Ulpianus 3 ad l. iul. et pap.

Quod et ateius capito consulatu suo fertur decrevisse. hoc tamen ita observandum est, nisi patronus ideo eam manumisit, ut uxorem eam ducat.

Dig. 23.2.30

Gaius 2 ad l. iul. et pap.

Simulatae nuptiae nullius momenti sunt.

Dig. 23.2.31

Ulpianus 6 ad l. iul. et pap.

Si senatori indulgentia principis fuerit permissum libertinam iustam uxorem habere, potest iusta uxor esse.

Dig. 23.2.32

Marcellus 1 ad l. iul. et pap.

Sciendum est libertinum, qui se ingenuo dedit adrogandum, quamvis in eius familia ingenui iura sit consecutus, ut libertinum tamen a senatoriis nuptiis repellendum esse.

Dig. 23.2.33

Marcellus 3 ad l. iul. et pap.

Plerique opinantur, cum eadem mulier ad eundem virum revertatur, id matrimonium idem esse: quibus adsentior, si non multo tempore interposito reconciliati fuerint nec inter moras aut illa alii nupserit aut hic aliam duxerit, maxime si nec dotem vir reddiderit.

Dig. 23.2.34pr.

Papinianus 4 resp.

Generali mandato quaerendi mariti filiae familias non fieri nuptias rationis est: itaque personam eius patri demonstrari, qui matrimonio consenserit, ut nuptiae contrahantur, necesse est.

Dig. 23.2.34.1

Papinianus 4 resp.

Ream adulterii, quam vir iure mariti postulavit, non prohibetur post abolitionem uxorem denuo ducere: sed et si non iure mariti ream postulavit, iure contractum matrimonium videbitur.

Dig. 23.2.34.2

Papinianus 4 resp.

Inter privignos contrahi nuptiae possunt, etsi fratrem communem ex novo parentium matrimonio susceptum habeant.

Dig. 23.2.34.3

Papinianus 4 resp.

Filiam senatoris nuptias libertini secutam patris casus non faciat uxorem: nam quaesita dignitas liberis propter crimen patris auferenda non est.

Dig. 23.2.35

Papinianus 6 resp.

Filius familias miles matrimonium sine patris voluntate non contrahit.

Dig. 23.2.36

Paulus 5 quaest.

Tutor vel curator adultam uxorem ducere non potest, nisi a patre desponsa destinatave testamentove nominata condicione nuptiis secuta fuerit.

Dig. 23.2.37

Paulus 7 resp.

Libertum curatoris puellae prohiberi oportet uxorem eandem ducere.

Dig. 23.2.38pr.

Paulus 2 sent.

Si quis officium in aliqua provincia administrat, inde oriundam vel ibi domicilium habentem uxorem ducere non potest, quamvis sponsare non prohibeatur, ita scilicet, ut, si post officium depositum noluerit mulier nuptias contrahere, liceat ^ libeat^ ei hoc facere arris tantummodo redditis quas acceperat.

Dig. 23.2.38.1

Paulus 2 sent.

Veterem sponsam in provincia, qua quis administrat, uxorem ducere potest et dos data non fit caduca.

Dig. 23.2.38.2

Paulus 2 sent.

Qui in provincia aliquid administrat, in ea provincia filias suas in matrimonium collocare et dotem constituere non prohibetur.

Dig. 23.2.39pr.

Paulus 6 ad plaut.

Sororis proneptem non possum ducere uxorem, quoniam parentis loco ei sum.

Dig. 23.2.39.1

Paulus 6 ad plaut.

Si quis ex his, quas moribus prohibemur uxores ducere, duxerit, incestum dicitur committere.

Dig. 23.2.40

Pomponius 4 ex plaut.

Aristo respondit privignae filiam non magis uxorem duci posse quam ipsam privignam.

Dig. 23.2.41pr.

Marcellus 26 Dig.

Probrum intellegitur etiam in his mulieribus esse, quae turpiter viverent volgoque quaestum facerent, etiamsi non palam.

Dig. 23.2.41.1

Marcellus 26 Dig.

Et si qua se in concubinatu alterius quam patroni tradidisset, matris familias honestatem non habuisse dico.

Dig. 23.2.42pr.

Modestinus l.S. de ritu nupt.

Semper in coniunctionibus non solum quid liceat considerandum est, sed et quid honestum sit.

Dig. 23.2.42.1

Modestinus l.S. de ritu nupt.

Si senatoris filia neptis proneptis libertino vel qui artem ludicram exercuit cuiusve pater materve id fecerit, nupserit, nuptiae non erunt.

Dig. 23.2.43pr.

Ulpianus 1 ad l. iul. et pap.

Palam quaestum facere dicemus non tantum eam, quae in lupanario se prostituit, verum etiam si qua (ut adsolet) in taberna cauponia vel qua alia pudori suo non parcit.

Dig. 23.2.43.1

Ulpianus 1 ad l. iul. et pap.

Palam autem sic accipimus passim, hoc est sine dilectu: non si qua adulteris vel stupratoribus se committit, sed quae vicem prostitutae sustinet.

Dig. 23.2.43.2

Ulpianus 1 ad l. iul. et pap.

Item quod cum uno et altero pecunia accepta commiscuit, non videtur palam corpore quaestum facere.

Dig. 23.2.43.3

Ulpianus 1 ad l. iul. et pap.

Octavenus tamen rectissime ait etiam eam, quae sine quaestu palam se prostituerit, debuisse his connumerari.

Dig. 23.2.43.4

Ulpianus 1 ad l. iul. et pap.

Non solum autem ea quae facit, verum ea quoque quae fecit, etsi facere desiit, lege notatur: neque enim aboletur turpitudo, quae postea intermissa est.

Dig. 23.2.43.5

Ulpianus 1 ad l. iul. et pap.

Non est ignoscendum ei, quae obtentu paupertatis turpissimam vitam egit.

Dig. 23.2.43.6

Ulpianus 1 ad l. iul. et pap.

Lenocinium facere non minus est quam corpore quaestum exercere.

Dig. 23.2.43.7

Ulpianus 1 ad l. iul. et pap.

Lenas autem eas dicimus, quae mulieres quaestuarias prostituunt.

Dig. 23.2.43.8

Ulpianus 1 ad l. iul. et pap.

Lenam accipiemus et eam, quae alterius nomine hoc vitae genus exercet.

Dig. 23.2.43.9

Ulpianus 1 ad l. iul. et pap.

Si qua cauponam exercens in ea corpora quaestuaria habeat (ut multae adsolent sub praetextu instrumenti cauponii prostitutas mulieres habere), dicendum hanc quoque lenae appellatione contineri.

Dig. 23.2.43.10

Ulpianus 1 ad l. iul. et pap.

Senatus censuit non conveniens esse ulli senatori uxorem ducere aut retinere damnatam publico iudicio, quo iudicio cuilibet ex populo experiri licet, nisi si cui lege aliqua accusandi publico iudicio non est potestas.

Dig. 23.2.43.11

Ulpianus 1 ad l. iul. et pap.

Si qua calumniae iudicio damnata sit ex causa publici iudicii et quae praevaricationis damnata est, publico iudicio damnata esse non videtur.

Dig. 23.2.43.12

Ulpianus 1 ad l. iul. et pap.

Quae in adulterio deprehensa est, quasi publico iudicio damnata est. proinde si adulterii condemnata esse proponatur, non tantum quia deprehensa est erit notata, sed quia et publico iudicio damnata est. quod si non sit deprehensa, damnata autem, idcirco notetur, quia publico iudicio damnata est, at si deprehensa quidem sit, damnata autem non sit, notata erit? ego puto, etsi absoluta sit post deprehensionem, adhuc tamen notam illi obesse debere, quia verum est eam in adulterio deprehensam, quia factum lex, non sententiam notaverit.

Dig. 23.2.43.13

Ulpianus 1 ad l. iul. et pap.

Non adicitur hic ut in lege iulia de adulteriis a quo vel ubi deprehensam: proinde sive maritus sive quis alius deprehendisse proponatur, videtur notata: sed et si non in domo mariti vel patris sui deprehensa sit, erit notata secundum verba legis.

Dig. 23.2.44pr.

Paulus 1 ad l. iul. et pap.

Lege iulia ita cavetur: " qui senator est quive filius neposve ex filio proneposve ex filio nato cuius eorum est erit, ne quis eorum sponsam uxoremve sciens dolo malo habeto libertinam aut eam, quae ipsa cuiusve pater materve artem ludicram facit fecerit. neve senatoris filia neptisve ex filio proneptisve ex nepote filio nato nata libertino eive qui ipse cuiusve pater materve artem ludicram facit fecerit, sponsa nuptave sciens dolo malo esto neve quis eorum dolo malo sciens sponsam uxoremve eam habeto".

Dig. 23.2.44.1

Paulus 1 ad l. iul. et pap.

Hoc capite prohibetur senator libertinam ducere eamve, cuius pater materve artem ludicram fecerit: item libertinus senatoris filiam ducere.

Dig. 23.2.44.2

Paulus 1 ad l. iul. et pap.

Non obest avum et aviam artem ludicram fecisse.

Dig. 23.2.44.3

Paulus 1 ad l. iul. et pap.

Nec distinguitur, pater in potestate habeat filiam nec ne: tamen iustam patrem intellegendum octavenus ait, matrem etiam si volgo conceperit.

Dig. 23.2.44.4

Paulus 1 ad l. iul. et pap.

Item nihil refert, naturalis sit pater an adoptivus.

Dig. 23.2.44.5

Paulus 1 ad l. iul. et pap.

An et is noceat, qui antequam adoptaret artem ludicram fecerit? atque si naturalis pater antequam filia nasceretur fecerit? et si huius notae homo adoptaverit, deinde emancipaverit, an non possit duci? ac si talis pater naturalis decessisset? sed de hoc casu contrariam legis sententiam esse pomponius recte putat, ut eis non connumerentur.

Dig. 23.2.44.6

Paulus 1 ad l. iul. et pap.

Si postea ingenuae uxoris pater materve artem ludicram facere coeperit, iniquissimum est dimittere eam debere, cum nuptiae honeste contractae sint et fortasse iam liberi procreati sint.

Dig. 23.2.44.7

Paulus 1 ad l. iul. et pap.

Plane si ipsa artem ludicram facere coeperit, utique dimittenda erit.

Dig. 23.2.44.8

Paulus 1 ad l. iul. et pap.

Eas, quas ingenui ceteri prohibentur ducere uxores, senatores non ducent.

Dig. 23.2.45pr.

Ulpianus 3 ad l. iul. et pap.

In eo iure, quod dicit invito patrono libertam, quae ei nupta est, alii nubere non posse, patronum accipimus (ut rescripto imperatoris nostri et divi patris eius continetur) et eum qui hac lege emit, ut manumittat, quia manumissa liberta emptoris habetur.

Dig. 23.2.45.1

Ulpianus 3 ad l. iul. et pap.

Qui autem iuravit se patronum, hoc idem non habebit.

Dig. 23.2.45.2

Ulpianus 3 ad l. iul. et pap.

Ne is quidem debet habere, qui non suis nummis comparavit.

Dig. 23.2.45.3

Ulpianus 3 ad l. iul. et pap.

Plane si filius familias miles esse proponatur, non dubitamus, si castrensis peculii ancillam manumiserit, competere ei hoc ius: est enim patronus secundum constitutiones nec patri eius hoc ius competit.

Dig. 23.2.45.4

Ulpianus 3 ad l. iul. et pap.

Hoc caput ad nuptam tantum libertam pertinet, ad sponsam non pertinet: et ideo invito patrono nuntium sponsa liberta si miserit, cum alio conubium habet.

Dig. 23.2.45.5

Ulpianus 3 ad l. iul. et pap.

Deinde ait lex " invito patrono": invitum accipere debemus eum, qui non consentit ad divortium: idcirco nec a furioso divertendo solvit se huius legis necessitate nec si ab ignorante divorterit: rectius enim hic invitus dicitur quam qui dissensit.

Dig. 23.2.45.6

Ulpianus 3 ad l. iul. et pap.

Si ab hostibus patronus captus esse proponatur, vereor ne possit ista conubium habere nubendo, quemadmodum haberet, si mortuus esset. et qui iuliani sententiam probant, dicerent non habituram conubium: putat enim iulianus durare eius libertae matrimonium etiam in captivitate propter patroni reverentiam. certe si in aliam servitutem patronus sit deductus, procul dubio dissolutum esset matrimonium.

Dig. 23.2.46

Gaius 8 ad l. iul. et pap.

Illud dubitationis est, an et qui communem libertam uxorem duxerit ad hoc ius admittatur. iavolenus negavit, quia non proprie videtur eius liberta, quae etiam alterius sit: aliis contra visum est, quia libertam eius esse negari non potest, licet alterius quoque sit liberta: quam sententiam plerique recte probaverunt.

Dig. 23.2.47

Paulus 2 ad l. iul. et pap.

Senatoris filia, quae corpore quaestum vel artem ludicram fecerit aut iudicio publico damnata fuerit, impune libertino nubit: nec enim honos ei servatur, quae se in tantum foedus deduxit.

Dig. 23.2.48pr.

Clementius 8 ad l. iul. et pap.

Filio patroni in libertam paternam eandemque uxorem idem iuris, quod ipsi patrono daretur, ex sententia legis accommodatur. idemque dicendum erit et si alterius patroni filius vivo altero libertam eorum uxorem duxerit.

Dig. 23.2.48.1

Clementius 8 ad l. iul. et pap.

Si ignominiosam libertam suam patronus uxorem duxerit, placet, quia contra legem maritus sit, non habere eum hoc legis beneficium.

Dig. 23.2.48.2

Clementius 8 ad l. iul. et pap.

Si uni ex filiis adsignatam alter uxorem duxerit, non idem ius quod in patrono tribuendum: nihil enim iuris habebit, quia senatus omne ius libertorum adsignatorum ad eum transtulit, cui id pater tribuit.

Dig. 23.2.49

Marcellus 1 ad l. iul. et pap.

Observandum est, ut inferioris gradus homines ducant uxores eas, quas hi qui altioris dignitatis sunt ducere legibus propter dignitatem prohibentur: at contra antecedentis gradus homines non possunt eas ducere, quas his qui inferioris dignitatis sunt ducere non licet.

Dig. 23.2.50

Marcellus 3 ad l. iul. et pap.

Proxime constitutum dicitur, ut, cum quis libertam suam duxerit uxorem, quam ex fideicommissi causa manumiserit, liceat libertae invito eo nuptias contrahere: puto, quia non erat ferendus is qui ex necessitate manumisit, non suo arbitrio: magis enim debitam libertatem praestitit quam ullum beneficium in mulierem contulit.

Dig. 23.2.51pr.

Licinius 1 reg.

Matrimonii causa ancilla manumissa a nullo alio uxor duci potest quam a quo manumissa est, nisi patronus matrimonio eius renuntiaverit.

Dig. 23.2.51.1

Licinius 1 reg.

Si autem filius familias matrimonii causa iussu patris ancillam manumiserit, iulianus putat perinde eam haberi atque si a patre eius manumissa esset: et ideo potest eam uxorem ducere.

Dig. 23.2.52

Paulus 6 ad sab.

Incestae nuptiae neque dotem habent et ideo omne quod perceptum est licet fructuum nomine auferetur.

Dig. 23.2.53

Gaius 11 ad ed. provinc.

Nuptiae consistere non possunt inter eas personas quae in numero parentium liberorumve sunt, sive proximi sive ulterioris gradus sint usque ad infinitum.

Dig. 23.2.54

Scaevola 1 reg.

Et nihil interest, ex iustis nuptiis cognatio descendat an vero non: nam et volgo quaesitam sororem quis vetatur uxorem ducere.

Dig. 23.2.55pr.

Gaius 11 ad ed. provinc.

Quin etiam nefas existimatur eam quoque uxorem ducere, quae per adoptionem filia neptisve esse coeperit, in tantum, ut et, si per emancipationem adoptio dissoluta sit, idem iuris maneat.

Dig. 23.2.55.1

Gaius 11 ad ed. provinc.

Patris adoptivi mei matrem aut materteram aut neptem ex filio uxorem ducere non possum, scilicet si in familia eius sim: alioquin si emancipatus fuero ab eo, sine dubio nihil impedit nuptias, scilicet quia post emancipationem extraneus intellegor.

Dig. 23.2.56

Ulpianus 3 disp.

Etiam si concubinam quis habuerit sororis filiam, licet libertinam, incestum committitur.

Dig. 23.2.57

Marcianus 2 inst.

Qui in provincia officium aliquid gerit, prohibetur etiam consentire filio suo uxorem ducenti.

Dig. 23.2.57a

Marcianus not. ad pap. 2 adult.

Divus marcus et lucius imperatores flaviae tertullae per mensorem libertum ita rescripserunt: " movemur et temporis diuturnitate, quo ignara iuris in matrimonio avunculi tui fuisti, et quod ab avia tua collocata es, et numero liberorum vestrorum: idcircoque cum haec omnia in unum concurrunt, confirmamus statum liberorum vestrorum in eo matrimonio quaesitorum, quod ante annos quadraginta contractum est, perinde atque si legitime concepti fuissent".

Dig. 23.2.58

Marcianus 4 reg.

A divo pio rescriptum est, si libertina senatorem deceperit quasi ingenua et ei nupta est, ad exemplum praetoris edicti dandam in eam actionem, quia ex dote nullum lucrum habet quae nulla est.

Dig. 23.2.59

Paulus l.S. de adsign. libert.

Senatus consulto, quo cautum est, ne tutor pupillam vel filio suo vel sibi nuptum collocet, etiam nepos significatur.

Dig. 23.2.60pr.

Paulus l.S. ad or. ant. et comm.

Si quis tutor quidem non sit, periculum tamen tutelae ad eum pertineat, an sententia orationis contineatur? veluti si pupilla ab hostibus capta fuerit aut falsis allegationibus a tutela se excusaverit, ut ex sacris constitutionibus periculum ad eum pertineat? et dicendum est hos quoque ad senatus consultum pertinere: nam et huiusmodi periculum in numerum trium tutelarum computari comprobatum est.

Dig. 23.2.60.1

Paulus l.S. ad or. ant. et comm.

Sed si propter alterius personam periculum ad eum pervenit, videamus ne extra sententiam senatus consulti sit: veluti si magistratus in in tutelae periculum incidit vel fideiusserit quis pro tutore vel curatore, quia nec in numerum trium tutelarum haec imputantur: et consequens est hoc probare.

Dig. 23.2.60.2

Paulus l.S. ad or. ant. et comm.

Quid ergo si honoris causa tutor datus sit? quatenus nec huiusmodi tutela in numerum computatur, numquid idem sit? sed ratio in contrarium ducit, quod dictum est et honorarium tutorem periculum solere pati, si male passus sit administrari tutelam.

Dig. 23.2.60.3

Paulus l.S. ad or. ant. et comm.

Quin autem ille, qui, cum datus est tutor, cessat in administratione, pertineat ad orationem, non est dubitandum, quia perinde tenetur ex sacris constitutionibus atque si gessisset.

Dig. 23.2.60.4

Paulus l.S. ad or. ant. et comm.

Quid ergo si, cum se vellet excusare aliquo titulo nec in promptu probationes haberet, excusationis negotium fuerit dilatum et inter moras pupilla adoleverit, an ad senatus consultum pertineat? quaestio in eo est, an et post pubertatem officio finito excusationem eius recipi oporteat: nam si recipitur et excusaverit, impune potest ducere: si vero non debeat recipi post officium finitum, non recte ducit. et ait papinianus libro quinto responsorum officio finito excusationem recipi non oportere et ideo exacti temporis periculum ad eum pertinere. sed mihi hoc nequaquam placet: iniquum enim est propter dilationem, quae forte non dolo, sed quae ex necessitate contingit, non excusari vel nuptias impediri excusatione recepta.

Dig. 23.2.60.5

Paulus l.S. ad or. ant. et comm.

Quamvis verbis orationis cautum sit, ne uxorem tutor pupillam suam ducat, tamen intellegendum est ne desponderi quidem posse: nam cum qua nuptiae contrahi non possunt, haec plerumque ne quidem desponderi potest: nam quae duci potest, iure despondetur.

Dig. 23.2.60.6

Paulus l.S. ad or. ant. et comm.

Quid ergo si adoptivus filius tutoris duxerit pupillam illicite posteaque emancipatus fuerit? credendum est de adoptivis emancipatis senatum non sensisse, quia post emancipationem in totum adoptivae familiae obliviscuntur.

Dig. 23.2.60.7

Paulus l.S. ad or. ant. et comm.

Naturales liberi licet in adoptionem dati fuerint, senatus consulto continentur.

Dig. 23.2.60.8

Paulus l.S. ad or. ant. et comm.

Quid ergo si tutor datus provocavit et postea heres eius victus est? praeteriti temporis periculum praestare debet. an vero si filius heres fuerit et victus est, ad orationem pertineat? et consequens est hoc probare, quoniam rationem debet reddere.

Dig. 23.2.61

Papinianus 32 quaest.

Dote propter illicitum matrimonium caduca facta exceptis impensis necessariis, quae dotem ipso iure minuere solent, quod iudicio de dote redditurus esset maritus solvere debet.

Dig. 23.2.62pr.

Papinianus 4 resp.

Quamquam in arbitrio matris pater esse voluerit, cui nuptum filia communis collocaretur, frustra tamen ab ea tutor datus eligetur: neque enim intellegitur pater de persona tutoris cogitasse, cum ideo maxime matrem praetulit, ne filiae nuptias tutori committeret.

Dig. 23.2.62.1

Papinianus 4 resp.

Mulier liberto viri ac patroni sui mala ratione coniungitur.

Dig. 23.2.62.2

Papinianus 4 resp.

Tutor, qui rationes curatori reddidit, puellam suam ante constitutum tempus aetatis eius uxorem ducere nec matrem ex alio matrimonio factam potest.

Dig. 23.2.63

Papinianus 1 def.

Praefectus cohortis vel equitum aut tribunus contra interdictum eius provinciae duxit uxorem, in qua officium gerebat: matrimonium non erit: quae species pupillae comparanda est, cum ratio potentatus nuptias prohibuerit. sed an huic quoque si virgo nupsit, non sit auferendum quod testamento relictum est, deliberari potest: exemplo tamen pupillae nuptae tutori, quod relictum est potest mulier consequi. pecuniam tamen in dotem datam mulieris heredi restitui necesse est.

Dig. 23.2.64pr.

Callistratus 2 quaest.

Libertum eundemque tutorem pupillae eo, quod in matrimonium collocata ipsi tutori suo vel filio eius est, senatus relegandum censuit.

Dig. 23.2.64.1

Callistratus 2 quaest.

Senatus consulti, quo prohibentur tutores et filii eorum pupillas suas ducere, puto heredem quoque tutoris extraneum sententia adprehendi, cum ideo prohibuerit huiusmodi nuptias, ne pupillae in re familiari circumscribantur ab his, qui rationes eis gestae tutelae reddere compelluntur.

Dig. 23.2.64.2

Callistratus 2 quaest.

Tutor autem pupilli non prohibetur filiam suam collocare pupillo suo in matrimonium.

Dig. 23.2.65pr.

Paulus 7 resp.

Eos, qui in patria sua militant, non videri contra mandata ex eadem provincia uxorem ducere idque etiam quibusdam mandatis contineri.

Dig. 23.2.65.1

Paulus 7 resp.

Idem eodem. respondit mihi placere, etsi contra mandata contractum sit matrimonium in provincia, tamen post depositum officium, si in eadem voluntate perseverat, iustas nuptias effici: et ideo postea liberos natos ex iusto matrimonio legitimos esse

Dig. 23.2.66pr.

Paulus 2 sent.

Non est matrimonium, si tutor vel curator pupillam suam intra vicesimum et sextum annum non desponsam a patre nec testamento destinatam ducat uxorem vel eam filio suo iungat: quo facto uterque infamatur et pro dignitate pupillae extra ordinem coercetur. nec interest, filius sui iuris an in patris potestate sit.

Dig. 23.2.66.1

Paulus 2 sent.

Curatoris libertum eam pupillam, cuius patronus res administrat, uxorem ducere satis incivile est.

Dig. 23.2.67pr.

Tryphonus 9 disp.

Non solum vivo tutore, sed et post mortem eius filius tutoris ducere uxorem prohibetur eam, cuius tutelae rationi obstrictus pater fuit: nec puto interesse, exstiterit ei heres filius an abstinuerit paterna hereditate an nec heres fuit (forte exheredatus aut praeteritus emancipatus): nam et fieri potest, ut per fraudem in eum collocata bona patris propter tutelam revocari oporteat.

Dig. 23.2.67.1

Tryphonus 9 disp.

De uno dubitari potest, si avus tutelam gessit neptis ex filio emancipato natae, an nepoti ex altero filio eam collocare possit sive emancipato sive manenti in potestate, quia par affectionis causa suspicionem fraudis amovet. sed etsi senatus consultum stricto iure contra omnes tutores nititur, attamen summae affectionis avitae intuitu huiusmodi nuptiae concedendae sunt.

Dig. 23.2.67.2

Tryphonus 9 disp.

Sed et si filius familias tutor puellae vel curator fuit, puto vel magis patri eius non oportere eam nubere: numquid nec fratri, qui est in eiusdem potestate?

Dig. 23.2.67.3

Tryphonus 9 disp.

Sed videamus, si titii filius duxerit uxorem eam, quae tua pupilla fuit, deinde titium vel filium eius adoptaveris, an peremuntur nuptiae (ut in genero adoptato dictum est) an adoptio impeditur? quod magis dicendum est et si curator, dum gerit curam, adoptaverit maritum eius puellae, cuius curator est. nam finita iam tutela et nupta puella alii vereor, ne longum sit adoptionem mariti eius impedire, quasi propter hoc interponatur, ut ratio tutelae reddendae cohibeatur, quam causam prohibitionis nuptiarum contrahendarum oratio divi marci continet.

Dig. 23.2.67.4

Tryphonus 9 disp.

Et si quis curator ventri bonisque datus sit, prohibitionem eiusdem senatus consulti inducit: nam et hic debet rationem reddere. nec spatium administrationis movere nos debet, quia nec in tutore nec curatore discrimen maioris aut minoris temporis, quo in huiusmodi munere quis fuerit, habitum esse.

Dig. 23.2.67.5

Tryphonus 9 disp.

Si puellae tutelam titius administravit vel curator negotia gessit eaque nondum recepta ratione decessit filia herede relicta, quaerenti, an eam filio suo posset titius collocare in matrimonium, dixi posse, quia ratio hereditaria esset et sit simplex debitum: alioquin omnis debitor eam, cui obligatus esset ex aliqua ratione, prohibetur sibi filioque suo coniungere.

Dig. 23.2.67.6

Tryphonus 9 disp.

Sed et is, qui pupillam abstinet bonis patris sui, rationem eius rei praestare debet et fieri potest, ut etsi inconsultius hoc fecerit, et hoc nomine condemnari debeat. sed et si optimo consilio usus sit auxilio praetoriae iurisdictionis, quia non solvendo pater eius decesserat, nihilo minus tamen, quia iudicio hoc probari oportet, impediuntur nuptiae: nam qui bene tutelam et ex fide administravit, nihilo minus prohibetur.

Dig. 23.2.68

Paulus l.S. ad sc turpill.

Iure gentium incestum committit, qui ex gradu ascendentium vel descendentium uxorem duxerit. qui vero ex latere eam duxerit quam vetatur, vel adfinem quam impeditur, si quidem palam fecerit, levius, si vero clam hoc commiserit, gravius punitur. cuius diversitatis illa ratio est: circa matrimonium quod ex latere non bene contrahitur palam delinquentes ut errantes maiore poena excusantur, clam committentes ut contumaces plectuntur.

Dig. 23.3.0. De iure dotium.

Dig. 23.3.1

Paulus 14 ad sab.

Dotis causa perpetua est, et cum voto eius qui dat ita contrahitur, ut semper apud maritum sit.

Dig. 23.3.2

Paulus 60 ad ed.

Rei publicae interest mulieres dotes salvas habere, propter quas nubere possunt.

Dig. 23.3.3

Ulpianus 63 ad ed.

Dotis appellatio non refertur ad ea matrimonia, quae consistere non possunt: neque enim dos sine matrimonio esse potest. ubicumque igitur matrimonii nomen non est, nec dos est.

Dig. 23.3.4

Paulus 6 ad sab.

Si proprietati nudae in dotem datae usus fructus accesserit, incrementum videtur dotis, non alia dos, quemadmodum si quid alluvione accessisset.

Dig. 23.3.5pr.

Ulpianus 31 ad sab.

Profecticia dos est, quae a patre vel parente profecta est de bonis vel facto eius.

Dig. 23.3.5.1

Ulpianus 31 ad sab.

Sive igitur parens dedit dotem sive procurator eius sive iussit alium dare sive, cum quis dedisset negotium eius gerens, parens ratum habuerit, profecticia dos est.

Dig. 23.3.5.2

Ulpianus 31 ad sab.

Quod si quis patri donaturus dedit, Marcellus libro sexto digestorum scripsit hanc quoque a patre profectam esse: et est verum.

Dig. 23.3.5.3

Ulpianus 31 ad sab.

Sed et si curator furiosi vel prodigi vel cuiusvis alterius dotem dederit, similiter dicemus dotem profecticiam esse.

Dig. 23.3.5.4

Ulpianus 31 ad sab.

Sed et si proponas praetorem vel praesidem decrevisse, quantum ex bonis patris vel ab hostibus capti aut a latronibus oppressi filiae in dotem detur, haec quoque profecticia videtur.

Dig. 23.3.5.5

Ulpianus 31 ad sab.

Si pater repudiaverit hereditatem dotis constituendae causa (forte quod maritus erat substitutus aut qui potuit ab intestato hereditatem vindicare), dotem profecticiam non esse iulianus ait. sed et si legatum in hoc repudiaverit pater, ut apud generum heredem remaneat dotis constituendae causa, iulianus probat non esse profectum id de bonis, quia nihil erogavit de suo pater, sed non adquisivit.

Dig. 23.3.5.6

Ulpianus 31 ad sab.

Si pater non quasi pater, sed alio dotem promittente fideiussit et quasi fideiussor solverit, neratius ait non esse profecticiam dotem, quamvis pater servare a reo id quod solvit non possit.

Dig. 23.3.5.7

Ulpianus 31 ad sab.

Sed si pater dotem promisit et fideiussorem vel reum pro se dedit, ego puto profecticiam esse dotem: sufficit enim, quod pater sit obligatus sive reo sive fideiussori.

Dig. 23.3.5.8

Ulpianus 31 ad sab.

Si filius familias mutuatus creditorem delegavit, ut daret pro filia dotem, vel etiam ipse accepit et dedit, videri dotem ab avo profectam neratius ait hactenus, quatenus avus esset dotaturus neptem suam: id enim in rem avi videri versum.

Dig. 23.3.5.9

Ulpianus 31 ad sab.

Si quis certam quantitatem patri donaverit ita, ut hanc pro filia daret, non esse dotem profecticiam iulianus libro septimo decimo digestorum scripsit: obstrictus est enim ut det aut, si non dederit, condictione tenetur. hoc et in matre iuris esse ait, si forte sub ea condicione uxor marito det, ut pro filia genero in dotem daret, nec videri uxorem marito donasse rectissime ergo ait, ut non sit interdicta donatio iure civili: non enim ad hoc dedit, ut ipse habeat, sed ut genero pro filia expendat: denique si non dederit, condictione tenetur. esse igitur dotem istam adventiciam iulianus ait: et ita utimur.

Dig. 23.3.5.10

Ulpianus 31 ad sab.

Si filius familias dotem promiserit et sui iuris factus dederit, profecticiam esse dotem: non enim pro hereditate patris aes alienum solvit, sed suum aes alienum susceptum, dum filius familias esset, pater familias factus exoneravit.

Dig. 23.3.5.11

Ulpianus 31 ad sab.

Si pater pro filia emancipata dotem dederit, profecticiam nihilo minus dotem esse nemini dubium est, quia non ius potestatis, sed parentis nomen dotem profecticiam facit: sed ita demum, si ut parens dederit: ceterum si, cum deberet filiae, voluntate eius dedit, adventicia dos est.

Dig. 23.3.5.12

Ulpianus 31 ad sab.

Papinianus libro decimo quaestionum ait, cum pater curator suae filiae iuris sui effectae dotem pro ea constituisset, magis eum quasi patrem id quam quasi curatorem fecisse videri.

Dig. 23.3.5.13

Ulpianus 31 ad sab.

Iulianus libro nono decimo digestorum adoptivum quoque patrem, si ipse dotem dedit, habere eius repetitionem ait.

Dig. 23.3.5.14

Ulpianus 31 ad sab.

Si quis pro aliena filia dotem promiserit et promissori pater heres exstiterit, iulianus distinguit interesse, ante nuptias pater heres exstiterit et dotem dederit an postea: si ante, videri dotem ab eo profectam (potuit enim nuntium remittendo resolvere dotem), quod si post nuptias, non esse profecticiam.

Dig. 23.3.6pr.

Pomponius 14 ad sab.

Iure succursum est patri, ut filia amissa solacii loco cederet, si redderetur ei dos ab ipso profecta, ne et filiae amissae et pecuniae damnum sentiret.

Dig. 23.3.6.1

Pomponius 14 ad sab.

Si pater alienum fundum bona fide emptum in dotem dedit, ab ipso profectus intellegitur.

Dig. 23.3.6.2

Pomponius 14 ad sab.

Si in dote danda circumventus sit alteruter, etiam maiori annis viginti quinque succurrendum est, quia bono et aequo non conveniat aut lucrari aliquem cum damno alterius aut damnum sentire per alterius lucrum.

Dig. 23.3.7pr.

Ulpianus 31 ad sab.

Dotis fructum ad maritum pertinere debere aequitas suggerit: cum enim ipse onera matrimonii subeat, aequum est eum etiam fructus percipere.

Dig. 23.3.7.1

Ulpianus 31 ad sab.

Si fructus constante matrimonio percepti sint, dotis non erunt: si vero ante nuptias percepti fuerint, in dotem convertuntur, nisi forte aliquid inter maritum futurum et destinatam uxorem convenit: tunc enim quasi donatione facta fructus non redduntur.

Dig. 23.3.7.2

Ulpianus 31 ad sab.

Si usus fructus in dotem datus sit, videamus, utrum fructus reddendi sunt nec ne. et celsus libro decimo digestorum ait interesse, quid acti sit, et nisi appareat aliud actum, putare se ius ipsum in dote esse, non etiam fructus qui percipiuntur.

Dig. 23.3.7.3

Ulpianus 31 ad sab.

Si res in dote dentur, puto in bonis mariti fieri accessionemque temporis marito ex persona mulieris concedendam. fiunt autem res mariti, si constante matrimonio in dotem dentur. quid ergo, si ante matrimonium? si quidem sic dedit mulier, ut statim eius fiant, efficiuntur: enimvero si hac condicione dedit, ut tunc efficiantur, cum nupserit, sine dubio dicemus tunc eius fieri, cum nuptiae fuerint secutae. proinde si forte nuptiae non sequantur nuntio remisso, si quidem sic dedit mulier, ut statim viri res fiant, condicere eas debebit misso nuntio: enimvero si sic dedit, ut secutis nuptiis incipiant esse, nuntio remisso statim eas vindicabit. sed ante nuntium remissum si vindicabit, exceptio poterit nocere vindicanti aut doli aut in factum: doti enim destinata non debebunt vindicari.

Dig. 23.3.8

Callistratus 2 quaest.

Sed nisi hoc evidenter actum fuerit, credendum est hoc agi, ut statim res sponsi fiant et, nisi nuptiae secutae fuerint, reddantur.

Dig. 23.3.9pr.

Ulpianus 31 ad sab.

Si ego seiae res dedero, ut ipsa suo nomine in dotem det, efficientur eius, licet non in dotem sint datae: sed condictione tenebitur. quod si pro ea res ego dem, si quidem ante nuptias, interest qua condicione dedi, utrum ut statim fiant accipientis an secutis nuptiis: si statim, nuntio misso condicam: sin vero non statim, potero vindicare, quia meae res sunt. quare et si sequi nuptiae non possunt propter matrimonii interdictionem, ex posteriore casu res meae remanebunt.

Dig. 23.3.9.1

Ulpianus 31 ad sab.

Si res alicui tradidero, ut nuptiis secutis dotis efficiantur, et ante nuptias decessero, an secutis nuptiis dotis esse incipiant? et vereor, ne non possint in dominio eius effici cui datae sunt, quia post mortem incipiat dominium discedere ab eo qui dedit, quia pendet donatio in diem nuptiarum et cum sequitur condicio nuptiarum, iam heredis dominium est, a quo discedere rerum non posse dominium invito eo fatendum est. sed benignius est favore dotium necessitatem imponi heredi consentire ei quod defunctus fecit aut, si distulerit vel absit, etiam nolente vel absente eo dominium ad maritum ipso iure transferri, ne mulier maneat indotata.

Dig. 23.3.9.2

Ulpianus 31 ad sab.

Dotis autem causa data accipere debemus ea, quae in dotem dantur.

Dig. 23.3.9.3

Ulpianus 31 ad sab.

Ceterum si res dentur in ea, quae graeci paraferna dicunt quaeque galli peculium appellant, videamus, an statim efficiuntur mariti. et putem, si sic dentur ut fiant, effici mariti, et cum distractum fuerit matrimonium, non vindicari oportet, sed condici, nec dotis actione peti, ut divus marcus et imperator noster cum patre rescripserunt. plane si rerum libellus marito detur, ut romae volgo fieri videmus (nam mulier res, quas solet in usu habere in domo mariti neque in dotem dat, in libellum solet conferre eumque libellum marito offerre, ut is subscribat, quasi res acceperit, et velut chirographum eius uxor retinet res quae libello continentur in domum eius se intulisse): hae igitur res an mariti fiant, videamus. et non puto, non quod non ei traduntur (quid enim interest, inferantur volente eo in domum eius an ei tradantur?), sed quia non puto hoc agi inter virum et uxorem, ut dominium ad eum transferatur, sed magis ut certum sit in domum eius illata, ne, si quandoque separatio fiat, negetur: et plerumque custodiam earum maritus repromittit, nisi mulieri commissae sint. videbimus harum rerum nomine, si non reddantur, utrum rerum amotarum an depositi an mandati mulier agere possit. et si custodia marito committitur, depositi vel mandati agi poterit: si minus, agetur rerum amotarum, si animo amoventis maritus eas retineat, aut ad exhibendum, si non amovere eas connisus est.

Dig. 23.3.10pr.

Ulpianus 34 ad sab.

Plerumque interest viri res non esse aestimatas idcirco, ne periculum rerum ad eum pertineat, maxime si animalia in dotem acceperit vel vestem, qua mulier utitur: eveniet enim, si aestimata sit et eam mulier adtrivit, ut nihilo minus maritus aestimationem eorum praestet. quotiens igitur non aestimatae res in dotem dantur, et meliores et deteriores mulieri fiunt.

Dig. 23.3.10.1

Ulpianus 34 ad sab.

Si praediis inaestimatis aliquid accessit, hoc ad compendium mulieris pertinet: si aliquid decessit, mulieris damnum est.

Dig. 23.3.10.2

Ulpianus 34 ad sab.

Si servi subolem ediderunt, mariti lucrum non est.

Dig. 23.3.10.3

Ulpianus 34 ad sab.

Sed fetus dotalium pecorum ad maritum pertinent, quia fructibus computantur, sic tamen, ut suppleri proprietatem prius oporteat et summissis in locum mortuorum capitum ex adgnatis residuum in fructum maritus habeat, quia fructus dotis ad eum pertineat.

Dig. 23.3.10.4

Ulpianus 34 ad sab.

Si ante matrimonium aestimatae res dotales sunt, haec aestimatio quasi sub condicione est: namque hanc habet condicionem " si matrimonium fuerit secutum". secutis igitur nuptiis aestimatio rerum perficitur et fit vera venditio.

Dig. 23.3.10.5

Ulpianus 34 ad sab.

Inde quaeri potest, si ante nuptias mancipia aestimata deperierint, an mulieris damnum sit, et hoc consequens est dicere: nam cum sit condicionalis venditio, pendente autem condicione mors contingens exstinguat venditionem, consequens est dicere mulieri perisse, quia nondum erat impleta venditio, quia aestimatio venditio est.

Dig. 23.3.10.6

Ulpianus 34 ad sab.

Si res in dotem datae fuerint quamvis aestimatae, verum convenerit, ut aut aestimatio aut res praestentur, si quidem fuerit adiectum " utrum mulier velit", ipsa eliget, utrum malit petere rem aestimationem: verum si ita fuerit adiectum " utrum maritus velit", ipsius erit electio. aut si nihil de electione adiciatur, electionem habebit maritus, utrum malit res offerre an pretium earum: nam et cum illa aut illa res promittitur, rei electio est, utram praestet. sed si res non exstet, aestimationem omnimodo maritus praestabit.

Dig. 23.3.11

Paulus 7 ad sab.

Sane et deteriorem factam reddere poterit.

Dig. 23.3.12pr.

Ulpianus 34 ad sab.

Si res aestimata post contractum matrimonium donationis causa adprobetur, nulla est aestimatio, quia nec res distrahi donationis causa potest, cum effectum inter virum et uxorem non habeat: res igitur in dote remanebit. sed si ante matrimonium, magis est, ut in matrimonii tempus collata donatio videatur: atque ideo non valet.

Dig. 23.3.12.1

Ulpianus 34 ad sab.

Si mulier se dicat circumventam minoris rem aestimasse, ut puta servum, si quidem in hoc circumventa est, quod servum dedit, non tantum in hoc, quod minoris aestimavit: in eo acturam, ut servus sibi restituatur. enimvero si in aestimationis modo circumventa est, erit arbitrium mariti, utrum iustam aestimationem an potius servum praestet. et haec, si servus vivit. quod si decessit, Marcellus ait magis aestimationem praestandam, sed non iustam, sed eam quae facta est: quia boni consulere mulier debet, quod fuit aestimatus: ceterum, si simpliciter dedisset, procul dubio periculo eius moreretur, non mariti. idemque et in minore circumventa Marcellus probat. plane si emptorem habuit mulier iusti pretii, tunc dicendum iustam aestimationem praestandam idque dumtaxat uxori minori annis praestandum Marcellus scribit: scaevola autem in marito notat, si dolus eius adfuit, iustam aestimationem praestandam: et puto verius, quod scaevola ait.

Dig. 23.3.12.2

Ulpianus 34 ad sab.

Si cum marito debitore mulier pacta sit, ut id quod debeat in dotem habeat, dotis actione scilicet eam agere posse existimo: licet enim ipso iure priore debito liberatus non sit, sed tamen exceptionem habere potest.

Dig. 23.3.13

Modestinus l.S. de diff. dotis.

Si mulier post divortium, antequam ex stipulatu de dote agat, ad eundem virum fuerit reversa, constantius dicetur per doli exceptionem inefficacem fieri ex stipulatu actionem, usque quo matrimonium durat.

Dig. 23.3.14

Ulpianus 34 ad ed.

Si rem aestimatam mulier in dotem dederit, deinde ea moram faciente in traditione in rerum natura esse desierit, actionem eam habere non puto.

Dig. 23.3.15

Pomponius 14 ad sab.

Quod si per eam non stetisset, perinde pretium aufert ac si tradidisset, quia quod evenit emptoris periculo est.

Dig. 23.3.16

Ulpianus 34 ad sab.

Quotiens res aestimata in dotem datur, evicta ea virum ex empto contra uxorem agere et quidquid eo nomine fuerit consecutus, dotis actione soluto matrimonio ei praestare oportet. quare et si duplum forte ad virum pervenerit, id quoque ad mulierem redigetur. quae sententia habet aequitatem, quia non simplex venditio sit, sed dotis causa, nec debeat maritus lucrari ex damno mulieris: sufficit enim maritum indemnem praestari, non etiam lucrum sentire.

Dig. 23.3.17pr.

Paulus 7 ad sab.

In rebus dotalibus virum praestare oportet tam dolum quam culpam, quia causa sua dotem accipit: sed etiam diligentiam praestabit, quam in suis rebus exhibet.

Dig. 23.3.17.1

Paulus 7 ad sab.

Si re aestimata data nuptiae secutae non sint, videndum est, quid repeti debeat, utrum res an aestimatio. sed id agi videtur, ut ita demum aestimatio rata sit, si nuptiae sequantur, quia nec alia causa contrahendi fuerit, res igitur repeti debeat, non pretium.

Dig. 23.3.18

Pomponius 14 ad sab.

Si mancipia in dotem aestimata accepisti et pactum conventum factum est, ut tantidem aestimata divortio facto redderes, manere partum eorum apud te labeo ait, quia et mancipia tuo periculo fuerint.

Dig. 23.3.19

Ulpianus 34 ad sab.

Etiamsi alii iussu mariti dos detur, nihilo minus maritus de dote obligatur.

Dig. 23.3.20

Paulus 7 ad sab.

Iulianus scribit valere talem stipulationem: " cum morieris, dotis nomine tot dari?" quia et pacisci soleant, ne a viva exhibeatur. quod non esse simile accepi: aliud est enim differre exactionem, aliud ab initio in id tempus stipulari, quo matrimonium futurum non sit. idque et aristoni et neratio et pomponio placet.

Dig. 23.3.21

Ulpianus 35 ad sab.

Stipulationem, quae propter causam dotis fiat, constat habere in se condicionem hanc " si nuptiae fuerint secutae", et ita demum ex ea agi posse (quamvis non sit expressa condicio), si nuptiae, constat: quare si nuntius remittatur, defecisse condicio stipulationis videtur.

Dig. 23.3.22

Paulus 7 ad sab.

Et licet postea eidem nupserit, non convalescit stipulatio.

Dig. 23.3.23

Ulpianus 35 ad sab.

Quia autem in stipulatione non est necessaria dotis adiectio, etiam in datione tantundem ducimus.

Dig. 23.3.24

Pomponius 15 ad sab.

Si filia familias nuptura ex peculio, cuius administrationem habet, dotem viro dedit, deinde, cum in eadem causa peculium eius esset, divortium fecerit, dos ei recte solvitur quasi a quolibet peculiari debitore.

Dig. 23.3.25

Paulus 7 ad sab.

Si ei nuptura mulier, qui stichum debebat, ita cum eo pacta est: " pro sticho, quem mihi debes, decem tibi doti erunt", secundum id quod placuit rem pro re solvi posse et liberatio contingit et decem in dotem erunt, quia et permutatio dotium conventione fieri potest.

Dig. 23.3.26

Modestinus 1 reg.

Ita constante matrimonio permutari dotem posse dicimus, si hoc mulieri utile sit, si ex pecunia in rem aut ex re in pecuniam: idque probatum est.

Dig. 23.3.27

Ulpianus 36 ad sab.

Quod si fuerit factum, fundus vel res dotalis efficitur.

Dig. 23.3.28

Paulus 7 ad sab.

Post nuptias pater non potest deteriorem causam filiae facere, quia nec reddi ei dos invita filia potest.

Dig. 23.3.29

Ulpianus 36 ad sab.

Cum pater dotem pro filia promittit et dotem legat, si quidem marito legavit, videndum est, an legatum valeat, et non puto valere: nam cum creditori debitor legat id quod debet, nullum legatum est. quod si filiae legavit, valet legatum: dos enim ex promissione marito debetur, legatum filiae. et si quidem hoc animo testatorem esse filia ostenderit, ut duplicaret ei legatum, habebit utrumque, dotem quam maritus persecutus fuerit et legatum ex causa legati. quod si alterutrum voluit habere: si mulier legatum petat, opposita doli exceptione non alias cogetur ei heres legatum solvere, quam si caverit indemnem hoc nomine heredem futurum adversus maritum ex promissione agentem. sed si maritus agat, nihil de indemnitate eum cavere oportebit, verum mulier post eum agens exceptione repelletur, quia semel dos praestita est.

Dig. 23.3.30

Paulus 7 ad sab.

Dotem, quae in prius matrimonium data est, non aliter converti in posterius matrimonium dicendum est, quam cum hoc agitur: dum hoc agi semper interpretemur, nisi probetur aliud convenisse.

Dig. 23.3.31

Papinianus 4 resp.

Quod si non divortium, sed iurgium fuit, dos eiusdem matrimonii manebit.

Dig. 23.3.32

Pomponius 16 ad sab.

Si ex lapidicinis dotalis fundi lapidem vel arbores, quae fructus non essent, sive superficium aedificii dotalis voluntate mulieris vendiderit, nummi ex ea venditione recepti sunt dotis.

Dig. 23.3.33

Ulpianus 6 ad sab.

Si extraneus sit qui dotem promisit isque defectus sit facultatibus, imputabitur marito, cur eum non convenerit, maxime si ex necessitate, non ex voluntate dotem promiserat: nam si donavit, utcumque parcendum marito, qui eum non praecipitavit ad solutionem qui donaverat quemque in id quod facere posset, si convenisset, condemnaverat. hoc enim divus pius rescripsit eos, qui ex liberalitate conveniuntur, in id quod facere possunt condemnandos. sed si vel pater vel ipsa promiserunt, iulianus quidem libro sexto decimo digestorum scribit etiam si pater promisit, periculum respicere ad maritum: quod ferendum non est. debebit igitur mulieris esse periculum: nec enim quicquam iudex propriis auribus audiet mulierem dicentem, cur patrem, qui de suo dotem promisit, non urserit ad exsolutionem, multo minus, cur ipsam non convenerit. recte itaque sabinus disposuit, ut diceret quod pater vel ipsa mulier promisit viri periculo non esse, quod debitor, id viri esse, quod alius, scilicet donaturus, eius periculo ait, cui adquiritur: adquiri autem mulieri accipiemus, ad quam rei commodum respicit.

Dig. 23.3.34

Ulpianus 33 ad sab.

Mater cum filiae aurum dedisset utendum, pater puellae id aurum in dotem viro adpendit: dein mortua est mater. si inscia invitave uxore vir id aurum in dotem dedisset, manet id aurum heredis matris vindicarique potest et eo minorem dotem viro datam esse placuit: quia res evicta est, marito competit adversus socerum actio.

Dig. 23.3.35

Ulpianus 47 ad sab.

Dotem a patre vel a quovis alio promissam si vir novandi causa stipuletur, coepit viri esse periculum, cum ante mulieris fuisset.

Dig. 23.3.36

Ulpianus 48 ad sab.

Debitor mulieris iussu eius pecuniam viro expromisit, deinde vir acceptam eam iussu mulieris fecit. res mulieri perit. hoc quomodo accipimus? utrum dotis nomine an et si alia ex causa? et videtur de eo debitore dictum, qui dotis nomine promisit. illud adhuc subest, utrum ante nuptias an post nuptias id factum sit: multum enim interesse videtur. nam si secutis nuptiis id factum est, dote iam constituta maritus accepto ferendo perdit, si autem antequam nuptiae sequerentur, nihil videtur doti constitutum esse.

Dig. 23.3.37

Paulus 12 ad sab.

Non enim alias perit mulieri actio, quam si nuptiae secutae fuerint: nam si secutae non sunt, manet debitor mulieri obligatus.

Dig. 23.3.38

Ulpianus 48 ad sab.

Sane videndum est, an marito mulier, quae iussit accepto ferri, obligetur. et putem obligari mandati actione et hoc ipsum in dotem converti, quod mulier mandati iudicio obligata est. et quod dicitur rem mulieri perire, consequens est: nam si coeperit velle de dote agere, ipsa secum debebit compensare iussum suum.

Dig. 23.3.39pr.

Ulpianus 33 ad ed.

Si serva servo quasi dotem dederit, deinde constante coniunctione ad libertatem ambo pervenerint peculio eis non adempto et in eadem coniunctione permanserint, ita res moderetur, ut, si quae ex rebus corporalibus velut in dotem tempore servitutis datis exstiterint, videantur ea tacite in dotem conversa, ut earum aestimatio mulieri debeatur.

Dig. 23.3.39.1

Ulpianus 33 ad ed.

Si spadoni mulier nupserit, distinguendum arbitror, castratus fuerit necne, ut in castrato dicas dotem non esse: in eo qui castratus non est, quia est matrimonium, et dos et dotis actio est.

Dig. 23.3.40

Ulpianus 34 ad ed.

Divus severus rescripsit pontio lucriano in haec verba: " si mulier, quae dotem dederat, post divortium rursus in matrimonium redit non revocatis instrumentis, non dubitabit is, apud quem res agetur, secundum voluntatem mulieris, quae utique non indotata redire in matrimonium voluit, partibus suis fungi quasi renovata dote".

Dig. 23.3.41pr.

Paulus 35 ad ed.

Promittendo dotem omnes obligantur, cuiuscumque sexus condicionisque sint.

Dig. 23.3.41.1

Paulus 35 ad ed.

Sed si nuptiae secutae non fuerint, ex stipulatu agi non potest: magis enim res quam verba intuenda sunt.

Dig. 23.3.41.2

Paulus 35 ad ed.

Accepti quoque latione dos constituitur, cum debitori marito acceptum feratur dotis constituendae causa.

Dig. 23.3.41.3

Paulus 35 ad ed.

Si a debitore mulieris sub condicione dos promittatur et postea, sed antequam maritus petere posset, debitor solvendo esse desierit, magis periculum ad mulierem pertinere placet: nec enim videri maritum nomen secutum eo tempore, quo exigere non poterit. quod si iam tunc debitor, cum sub condicione promitteret, solvendo non fuerit, periculum viri esse, quod sciens tale nomen secutus videretur, quale initio obligationis fuerit.

Dig. 23.3.41.4

Paulus 35 ad ed.

Si debitor mulieris dotem promiserit et mulierem heredem reliquerit, labeo perinde habendum ait, ac si mulier ipsa dotem promisisset. cuius sententiam iulianus quoque probat: nec enim aequum esse ait, ut ei damnetur eius pecuniae nomine, quam ipsa debeat, et satis esse acceptilatione eam liberari.

Dig. 23.3.42

Gaius 11 ad ed. provinc.

Res in dotem datae, quae pondere numero mensura constant, mariti periculo sunt, quia in hoc dantur, ut eas maritus ad arbitrium suum distrahat et quandoque soluto matrimonio eiusdem generis et qualitatis alias restituat vel ipse vel heres eius.

Dig. 23.3.43pr.

Ulpianus 3 disp.

Licet soleat dos per acceptilationem constitui, tamen, si ante matrimonium acceptilatio fuerit interposita nec nuptiae secutae, scaevola ait matrimonii causa acceptilationem interpositam non secutis nuptiis nullam esse atque ideo suo loco manere obligationem: quae sententia vera est.

Dig. 23.3.43.1

Ulpianus 3 disp.

Quotiens autem extraneus accepto fert debitori dotis constituendae causa, si quidem nuptiae insecutae non fuerint, liberatio non sequetur: nisi forte sic accepto tulit, ut velit mulieri in totum donatum: tunc enim credendum est brevi manu acceptum a muliere et marito datum: ceterum mulieri per liberam personam condictio adquiri non potest.

Dig. 23.3.43.2

Ulpianus 3 disp.

Plane secutis nuptiis mulier soluto matrimonio dotis exactionem habebit, nisi forte sic accepto tulit extraneus, ut ipse, quoquo modo solutum fuerit matrimonium, condictionem habeat: tunc enim non habebit mulier actionem. secundum quae constituta dote per acceptilationem et secutis nuptiis is effectus erit dotis exactioni, ut, si quidem pura sit obligatio quae accepto lata est, non ipsa iam restituenda sit, sed solvenda dos secundum sua tempora. sin vero obligatio in diem fuit nec ante solutum matrimonium dies obligationis praeteriit, restauranda est in diem pristinum obligatio et, si debitum cum satisdatione fuerit, satisdatio renovanda est. similique modo et si condicionalis fuerit obligatio quae in dotem conversa est et pendente obligatione divortium fuerit secutum, verius obligationem sub eadem condicione restitui debere: sed si condicio exstiterit constante matrimonio, ex die divortii tempora exactionis numerantur.

Dig. 23.3.44pr.

Iulianus 16 Dig.

Si pater filiae nomine dotem promisisset et eam ante nuptias emancipasset, non resolvitur promissio: nam et cum ante nuptias pater moreretur, nihilo minus heredes eius ex promissione obligati manebunt.

Dig. 23.3.44.1

Iulianus 16 Dig.

Quae debitorem filium familias habet, si patri eius ita dotem promiserit: " quod mihi debes vel quod mihi filius tuus debet, doti tibi erunt", non obligatur, sed efficit, ut id, quod actione de peculio servari a patre poterat, in dote sit. Marcellus. sive igitur cum filio post hac sive cum patre agere instituerit, exceptione pacti conventi summovebitur: actione autem de dote si experietur, consequetur quod in peculio fuisse apparuerit eo tempore quo dos promittebatur: utique si post nuptias promissa dos est. nam dote ante nuptias promissa eius temporis peculium aestimari debet, quo nuptiae fierent.

Dig. 23.3.45pr.

Tryphonus 8 disp.

Quod si nuptura debitori filio familias actionem dumtaxat de peculio promisit, id, quod ex ea causa sibi deberetur nuptiarum tempore, inspicitur.

Dig. 23.3.45.1

Tryphonus 8 disp.

Si vero alii nuptura iussit filium familias debitorem de peculio dotem promittere, tempus inspicitur, quo dos promissa est, ut tantum in peculio esse aestimaretur.

Dig. 23.3.46pr.

Iulianus 16 Dig.

Quemadmodum invito domino servus stipulatus adquirit, ita, si dotem domini nomine sibi promitti patiatur, obligatio domino adquiritur. sed neque periculum dominus praestare debebit (si forte debitor mulieris dotem promiserit) neque culpam. traditione quoque rei dotalis in persona servi vel filii familias facta dos constituitur ita, ut neque periculum nec culpam dominus aut pater praestet. igitur hanc dotem periculo mulieris esse dico, quamdiu dominus vel pater ratam promissionem vel donationem habuerit: ideoque etiam manente matrimonio res quas tradiderit condictione repetituram, item incerti condictione consecuturam, ut promissione liberetur.

Dig. 23.3.46.1

Iulianus 16 Dig.

Si debitori suo mulier nuptura ita dotem promisisset: " quod mihi debes aut fundus sempronianus doti tibi erit", utrum mulier vellet, id in dote erit: et si quidem debitum maluisset dotis nomine apud virum remanere, potest ea exceptione se tueri adversus petentem fundum: quod si fundum dedisset, pecuniam marito condicet.

Dig. 23.3.46.2

Iulianus 16 Dig.

Pater etiamsi falso existimans se filiae debitorem esse dotem promisisset, obligabitur.

Dig. 23.3.47

Iulianus 18 Dig.

Si servo in dotem ante nuptias dato donatum aliquid vel legatum ante nuptias fuisset, ampliatur dos, sicut ex fructibus fundi, qui ante nuptias traditus est.

Dig. 23.3.48pr.

Iulianus 2 ad urs. ferocem.

Tali facta stipulatione: " decem in anno proximo dotis nomine dare spondes?" quaesitum est, annus ex quo tempore esset numerandus, utrum ex die stipulationis factae an ex eo die, quo dos esse potuisset, id est nuptiarum. et responsum est ex die nuptiarum annum esse numerandum, ne, si aliter observaremus, si intra annum nuptiae factae non sint, videri possit dos ex ea obligatione deberi.

Dig. 23.3.48.1

Iulianus 2 ad urs. ferocem.

Socer genero suo sic legaverat: " lucio titio filiae meae nomine centum heres meus damnas esto dare". hanc pecuniam generum petere debere, exactam acceptam legatis referri, sed divortio facto de dote actione mulieri reddendam proculus respondit et nihilo minus dotis esse factam. iulianus notat: immo nec filiae, si voluerit, deneganda est huiusmodi actio.

Dig. 23.3.49

Iulianus 5 ex minic.

Vir ab eo, qui uxori eius dotem facere volebat, certam pecuniam eo nomine stipulatus est, deinde acceptam eam fecit: quaerebatur, essetne ea pecunia in dotem. respondit, si acceptam non fecisset et promissor solvendo esse desisset, quaereremus, an culpa mariti ea pecunia exacta non esset: cum vero acceptam fecit, omnimodo periculum ad eum pertinebit: perinde enim est, ac si acceperit pecuniam et eandem promissori donaverit.

Dig. 23.3.50pr.

Africanus 8 quaest.

Quae fundum in dote habebat, divortio facto cum in matrimonium rediret, pacta est cum viro, uti decem in dotem acciperet et fundum sibi restitueret, ac datis decem, priusquam fundus ei restitueretur, in matrimonio decessit. illud ex bona fide est et negotio contracto convenit, ut fundus, quasi sine causa penes maritum esse coeperit, condicatur.

Dig. 23.3.50.1

Africanus 8 quaest.

Et hoc evidentius circa actionem pigneraticiam apparebit. etenim si, cum fundum cornelianum pignoris causa tibi tradidissem, postea ex conventione fundum titianum in hoc tibi tradiderim, ut cornelianum mihi restitueres: minime puto dubitandum erit, quin statim recte pigneraticia ad recipiendum cornelianum agere possim.

Dig. 23.3.51

Ulpianus 2 resp.

Si res, quas filiae emancipatae pater donavit, ex voluntate eius postea in dotem pro ea datae sunt, a filia dotem, non a patre videri datam.

Dig. 23.3.52

Marcianus 3 reg.

Non solum si aestimatus fundus, sed etiam si non aestimatus in dotem datus est et alias, cum necesse non habeat mulier duplum promittere, promisit: quia ipse fundus est in dote, quodcumque propter eum consecutus fuerit a muliere maritus, quandoque restituet mulieri de dote agenti.

Dig. 23.3.53

Nerva 3 membr.

Cum vir uxori donare vellet, debitor mulieris qui solvendo non erat dotem ei promisit. ad id dumtaxat, ad quod solvendo fuit, viri periculo ea res est: et si quid debitori ad solvendum facultatis accesserit, periculum ad eam summam quae accesserit crescet permanebitque etiam, si rursus pauperior factus erit: quia neque tum, cum dos promitteretur, donatio facta est nisi eius pecuniae quae a debitore servari non poterat, neque cum solvendo is esse coepit, donationis causa permaneat, cum eo loco res sit, quo esset, si tum quoque, cum promitteretur dos, locuples fuisset.

Dig. 23.3.54

Gaius ad ed. de praediator.

Res, quae ex dotali pecunia comparatae sunt, dotales esse videntur.

Dig. 23.3.55

Paulus 1 ad plaut.

Cum dotis causa aliquid expromittitur, fideiussor eo nomine datus tenetur.

Dig. 23.3.56pr.

Paulus 6 ad plaut.

Si is qui stichum mulieri debet in dotem delegatus sit et antequam solveret debitor, stichus decesserit, cum neque per debitorem stetisset quo minus solveret, neque maritus in agendo moram fecisset: periculo mulieris stichus morietur: quamquam etiamsi moram maritus fecerit in exigendo, si tamen etiam apud maritum moriturus stichus fuerit, actione dotis maritus non teneatur.

Dig. 23.3.56.1

Paulus 6 ad plaut.

Ibi dos esse debet, ubi onera matrimonii sunt.

Dig. 23.3.56.2

Paulus 6 ad plaut.

Post mortem patris statim onera matrimonii filium sequuntur, sicut liberi, sicut uxor.

Dig. 23.3.56.3

Paulus 6 ad plaut.

Quod dicitur necessarias impensas ipso iure dotem minuere, non eo pertinet, ut, si forte fundus in dote sit, desinat aliqua ex parte dotalis esse, sed, nisi impensa reddatur, aut pars fundi aut totus retineatur. sed si tantum in fundum dotalem impensum sit per partes, quanti fundus est, desinere eum dotalem esse scaevola noster dicebat, nisi mulier sponte marito intra annum impensas obtulerit. si pecunia et fundus in dote sint et necessariae impensae in fundum factae, nerva ait dotem pecuniariam minui. quid ergo si mulier impensas marito solverit, utrum crescet dos an ex integro data videbitur? cuius rei manifestior iniquitas in fundo est secundum scaevolae nostri sententiam: nam si desinit dotalis esse, poterit alienari: rursus quemadmodum poterit fieri dotalis data pecunia? an iam pecunia in dote esse videbitur? et magis est, ut ager in causam dotis revertatur, sed interim alienatio fundi inhibeatur.

Dig. 23.3.57

Iavolenus 1 ex plaut.

Nuptura filio familias si socero dotem ita promiserit: " quod filius tuus mihi debet, id doti tibi erit", interesse puto, utrum filii obligatio an patris persecutio et in rem versum promissioni contineatur. nam si id quod filium dare oportet significatum est, tota pecunia, in quam filius obligatus est, promissioni dotis continebitur: sin autem id, quod patrem de peculio vel in rem verso praestare oportebit, aestimare debebit quantum sit eo tempore id quod promittitur, ut ea summa dotis esse videatur, qua patrem eo tempore filii nomine condemnari oportebit. quod si non evidenter apparuit, de cuius mulier obligatione sensit, praesumptionem ad filii debitum spectare verisimile est, nisi evidentissime contrarium adprobetur.

Dig. 23.3.58pr.

Celsus 19 Dig.

Si sponsalibus nondum factis titio dotem seiae nomine promiseris, cum ea nubere ei nollet, tamen, si postea nupserit, dotem debebis, nisi aliae nuptiae mediae intervenissent.

Dig. 23.3.58.1

Celsus 19 Dig.

Si mulier ancillam pamphilam a titio stipulata, deinde ei nuptura quod is sibi debebat doti habere permisit, etiamsi non erit viri pamphila, an ipsa tamen pamphila in dote et mulieris periculo erit? an et quod ea pepererit, reddi mulieri debebit? quia si in sua causa prior stipulatio mansisset, non redderetur. nisi forte refert, habuerit rem quam debebat vir, quo tempore dos constituebatur: nam ita poterit videri res ipsa ad eum pervenisse: an non habuerit: nam si non habuerit, magis est, ut liberatio obligationis potius quam res ipsa ad eum ita pervenisse videatur ideoque partus eius non debetur.

Dig. 23.3.59pr.

Marcellus 7 Dig.

Si mulier ita dotem promiserit: " decem tibi aut titio doti erunt", hoc casu dici potest vel titio dari posse, sed de dote virum teneri, quemadmodum si titio iussisset dari. nec mirum, cum etiam promissura viro dotem possit delegante eo alteri promittere, etsi dici solet alii quam marito dotis nomine mulierem non posse obligari. his enim casibus viro dos quaeritur. non enim existimabimus illam ita promisisse, cum vel de titii nuptiis cogitaret.

Dig. 23.3.59.1

Marcellus 7 Dig.

Ex asse heres institutus rogatusque mulieri dodrantem hereditatis restituere iussu eius quod debet doti promisit marito. vereor, non sit obligatus: nam mulieri in hoc tenetur, ut hereditatem restituendo transferat actiones et quas habet et quibus est obstrictus, quas transferre ad alium, quam cui debet fideicommissum, non potest. aliquis dixerit incerti cum eo agi posse, fideicommissi praestet aestimationem. huic ego consentire non possum: nam obligari mulieris debitorem ita aequum est, si accipere id ipsum quod ei debetur vir potest. sed ne indotata mulier esse videatur, dicendum est ipsi mulieri ex trebelliano restituendam esse partem hereditatis quae ei relicta est, ut ea suo marito pro dote eam solveret, quia et ad eam fideicommissum et onera eius pertinent delegatione propter nimiam suptilitatem et casus necessitatem minime optinente.

Dig. 23.3.59.2

Marcellus 7 Dig.

Eius nomine quae libera videbatur decem in dote dedisti: eo casu habebis condictionem, quo habere potuisses, si mulieris liberae nomine dedisses nec nuptiae secutae essent. si manumissa nupserit, ita demum dos erit, si ea mente dedisti, ut quandoque secutis nuptiis dos esset. igitur si mulieri donaturus dedisti, dominus condicet, quemadmodum si eum qui sibi donaturus esset mulier ipsam donare iussisset.

Dig. 23.3.60

Celsus 11 Dig.

Quaero, quantae pecuniae dotem promittenti adultae mulieri curator consensum accommodare debeat. respondit: modus ex facultatibus et dignitate mulieris maritique statuendus est, quousque ratio patitur.

Dig. 23.3.61pr.

Clementius 3 ad l. iul. et pap.

Sive generalis curator sive dotis dandae causa constitutus sit et amplius doti promissum est quam facultates mulieris valent, ipso iure promissio non valet, quia lege rata non habetur auctoritas dolo malo facta. quaerendum tamen est, utrum tota obligatio an quod amplius promissum est, quam promitti oportuit, infirmetur? et utilius est dicere id quod superfluum est tantummodo infirmare.

Dig. 23.3.61.1

Clementius 3 ad l. iul. et pap.

Iste autem curator res dotis nomine tradere debet, non etiam ut vendat cuilibet et pretium eius in dotem det. dubitari autem potest, an hoc verum sit: quid enim si aliter honeste nubere non possit, quam ut pecuniam in dotem det idque ei magis expediat? atquin possunt res in dotem datae plerumque alienari et pecunia in dotem converti. sed ut expediatur quaestio, si quidem res in dotem maritus accipere maluerit, nihil amplius quaerendum est: sin autem non aliter contrahere matrimonium vir patitur nisi pecuniis in dotem datis, tunc officium est curatoris apud eundem intrare iudicem, qui eum constituit, ut iterum ei causa cognita etiam viro absente permittat rerum venditione celebrata dotem constituere.

Dig. 23.3.62

Modestinus 5 resp.

Titia cum esset minor viginti quinque annis, quartam hereditatis matris suae communem sibi cum fratribus mutavit et accepit pro ea parte fundum quasi emptione inter se facta: hunc fundum cum aliis rebus doti dedit. quaero, si in integrum restituatur et partem suam accipiat quartam et reddat fundum, quid debeat maritus facere? an contentus esse debeat aliis rebus in dotem datis? item quaero, si haec decesserit et heredes eius in integrum restitutionem ex persona eius petierint et ipsi petant quartam partem et illi fundum, an maritus cogatur restituere fundum contentus in retentione lucri dotis ceteris rebus? modestinus respondit nihil proponi, cur marito dos auferenda sit: sed in veram aestimationem praedii mulier vel eius heredes condemnandi sunt in hoc tempus referendam, quo in dotem datus est.

Dig. 23.3.63

Modestinus l.S. de heuremat.

Stipulatio de dote reddenda ab extraneo interposita facto divortio statim committitur nec redintegrato matrimonio actio stipulatori quaesita intercidit: denuo igitur consentiente stipulatore dos constituenda est, ne sequenti matrimonio mulier indotata sit: si modo ea dos non ab ipsa profecta sit, quam alius permissu eius stipulatus est, tunc enim consensus eius non est necessarius.

Dig. 23.3.64

Iavolenus 4 ex cass.

Post divortium mulier si de dote maritus nihil cavit et, cum alii nupsisset, postea ad priorem virum rediit, tacite dos ei redintegratur.

Dig. 23.3.65

Pomponius 5 ad q. muc.

Si legato aut hereditate aliquid servo dotali obvenit, quod testator noluit ad maritum pertinere, id soluto matrimonio reddendum est mulieri.

Dig. 23.3.66

Pomponius 8 ad q. muc.

Si usus fructus fundi, cuius proprietatem mulier non habebat, dotis nomine mihi a domino proprietatis detur, difficultas erit post divortium circa reddendum ius mulieri, quoniam diximus usum fructum a fructuario cedi non posse nisi domino proprietatis et, si extraneo cedatur, id est ei qui proprietatem non habeat, nihil ad eum transire, sed ad dominum proprietatis reversurum usum fructum. quidam ergo remedii loco recte putaverunt introducendum, ut vel locet hunc usum fructum mulieri maritus vel vendat nummo uno, ut ipsum quidem ius remaneat penes maritum, perceptio vero fructuum ad mulierem pertineat.

Dig. 23.3.67

Proculus 7 epist.

Proculus nepoti suo salutem. ancilla quae nupsit dotisque nomine pecuniam viro tradidit, sive sciat se ancillam esse sive ignoret, non poterit eam pecuniam viri facere eaque nihilo minus mansit eius cuius fuerat antequam eo nomine viro traderetur, nisi forte usucapta est. nec postea quam apud eundem virum libera facta est, eius pecuniae causam mutare potuit. itaque nec facto quidem divortio aut dotis iure aut per condictionem repetere recte potest, sed is cuius pecunia est recte vindicat eam. quod si vir eam pecuniam pro suo possidendo usucepit, scilicet quia existimavit mulierem liberam esse, propius est, ut existimem eum lucrifecisse, utique si, antequam matrimonium esse inciperet, usucepit. et in eadem opinione sum, si quid ex ea pecunia paravit, antequam ea dos fieret, ita, ut nec possideat eam nec dolo fecerit, quo minus eam possideret.

Dig. 23.3.68

Papinianus 10 quaest.

Dotis promissio non ideo minus valebit, quod ignorante initio patre nuptiae non fuerint, si postea consenserit, cum omnis dotis promissio futuri matrimonii tacitam condicionem accipiat. nam et si minor annis duodecim ut maior deducta sit, tunc primum petetur, cum maior annis apud eundem esse coeperit: quod enim volgatum est dotis promissionem in primis dumtaxat nuptiis destinare neque durare obligationem, si post alterius matrimonium ei nubat cui dotem promiserat, tunc locum habet, cum intercesserunt aliae nuptiae.

Dig. 23.3.69pr.

Papinianus 4 resp.

Cum post divortium viro sciente mulier in possessionem praediorum quae in dotem promisit longo tempore fuerit, convenisse tacite videtur, ne dos quae promissa fuerat petatur, et, si petere ea coeperit, pacti exceptione a muliere repellitur.

Dig. 23.3.69.1

Papinianus 4 resp.

Mulier pecuniam sibi debitam a seio cum usuris futuri temporis in dote promittenda demonstravit: eas quoque dotis portionem esse, quarum dies post nuptias cessit, rationis est.

Dig. 23.3.69.2

Papinianus 4 resp.

Usuras dotis in stipulatum cum dote post divortium deductas ex die secundi matrimonii non esse praestandas placuit, quia nec sortis exactio locum habere coepit: medii autem temporis debebuntur.

Dig. 23.3.69.3

Papinianus 4 resp.

In domum absentis uxore deducta, nullis in eam interea ex bonis viri sumptibus factis, ad exhibitionem uxoris promissas usuras reversus vir improbe petit.

Dig. 23.3.69.4

Papinianus 4 resp.

Gener a socero dotem arbitratu soceri certo die dari non demonstrata re vel quantitate stipulatus fuerat: arbitrio quoque detracto stipulationem valere placuit, nec videri simile, quod fundo non demonstrato nullum esse legatum vel stipulationem fundi constaret, cum inter modum constituendae dotis et corpus ignotum differentia magna sit: dotis etenim quantitas pro modo facultatium patris et dignitate mariti constitui potest.

Dig. 23.3.69.5

Papinianus 4 resp.

Nuptiis ex voluntate patris puellae cum filio tutoris iure contractis dos pro modo facultatium et dignitate natalium recte per tutorem constitui potest.

Dig. 23.3.69.6

Papinianus 4 resp.

Patrona dotem pro liberta iure promissam, quod exstiterit ingrata, non retinebit.

Dig. 23.3.69.7

Papinianus 4 resp.

Cum res in dotem aestimatas soluto matrimonio reddi placuit, summa declaratur, non venditio contrahitur: ideoque rebus evictis, si mulier bona fide eas dederit, nulla est actio viro: alioquin de dolo tenetur.

Dig. 23.3.69.8

Papinianus 4 resp.

In dotem rebus aestimatis et traditis, quamvis eas mulier in usu habeat, viri dominium factum videretur.

Dig. 23.3.69.9

Papinianus 4 resp.

Partum dotalium ancillarum dotis esse portionem convenit ideoque frustra pacisci virum, ut inter uxorem et se partus communis sit.

Dig. 23.3.70

Paulus 6 quaest.

In ambiguis pro dotibus respondere melius est.

Dig. 23.3.71

Paulus 13 quaest.

Cum dotem mulieris nomine extraneus promisit, mulieris periculum est: sed si maritus nomen secutus usuras exegerit, periculum eius futurum respondetur.

Dig. 23.3.72pr.

Paulus 8 resp.

Mulier bona sua omnia in dotem dedit: quaero, an maritus quasi heres oneribus respondere cogatur. paulus respondit eum quidem, qui tota ex repromissione dotis bona mulieris retinuit, a creditoribus conveniri eius non posse, sed non plus esse in promissione bonorum quam quod superest deducto aere alieno.

Dig. 23.3.72.1

Paulus 8 resp.

Paulus respondit in rebus dotalibus etiam patrem mariti dolum et culpam praestare debere.

Dig. 23.3.72.2

Paulus 8 resp.

Paulus respondit, si mulier de suo dotem dedit et adhibuit matrem quae stipularetur, potuisse eam postea instrumentum dotale mutare.

Dig. 23.3.73pr.

Paulus 2 sent.

Mutus surdus caecus dotis nomine obligantur, quia et nuptias contrahere possunt.

Dig. 23.3.73.1

Paulus 2 sent.

Manente matrimonio non perditurae uxori ob has causas dos reddi potest: ut sese suosque alat, ut fundum idoneum emat, ut in exilium vel in insulam relegato parenti praestet alimonia, aut ut egentem virum fratrem sororemve sustineat.

Dig. 23.3.74

Hermogenianus 5 epit.

Si sponsa dotem dederit nec nupserit vel minor duodecim annis ut uxor habeatur, exemplo dotis condictioni favoris ratione privilegium, quod inter personales actiones vertitur, tribui placuit.

Dig. 23.3.75

Tryphonus 6 disp.

Quamvis in bonis mariti dos sit, mulieris tamen est, et merito placuit, ut, si in dotem fundum inaestimatum dedit, cuius nomine duplae stipulatione cautum habuit, isque marito evictus sit, statim eam ex stipulatione agere posse. porro cuius interest non esse evictum quod in dote fuit quodque ipsa evictionem pati creditur ob id, quod eum in dotem habere desiit, huius etiam constante matrimonio, quamvis apud maritum dominium sit, emolumenti potestatem esse creditur, cuius etiam matrimonii onera maritus sustinet.

Dig. 23.3.76

Tryphonus 9 disp.

Si pater mulieris mortis suae causa dotem promiserit, valet promissio: nam et si in tempus, quo ipse moreretur, promisisset, obligaretur. sed si convaluerit, cur ei non remittatur obligatio per condictionem, atque si stipulanti quivis alius promisisset aut dotem alicuius nomine? nam ut corporis vel pecuniae translatae, ita obligationis constitutae mortis causa condictio est. non idem dicendum est in persona mulieris, si mulier mortis suae causa dotem promiserit, quia nisi matrimonii oneribus serviat, dos nulla est.

Dig. 23.3.77

Tryphonus 10 disp.

Si mulier debitori suo, qui sub usuris debebat, nuptura dotem promisisset quod is sibi deberet, post contractas nuptias secuti temporis usuras non esse dotales, quia illa obligatio tota tolleretur, perinde ac si solutum debitum mulieri in dotem ab ea datum esse.

Dig. 23.3.78pr.

Tryphonus 11 disp.

Cum in fundo mariti habens mulier usum fructum dotis causa eum marito dedit, quamvis ab ea usus fructus decesserit, maritus tamen non usum fructum habet, sed suo fundo quasi dominus utitur, consecutus per dotem plenam fundi proprietatem, non separatam usu fructu, nec est, quod non utendo maritus amittat. divortio autem facto constituet in eodem fundo usum fructum mulieri. quod si in matrimonio decesserit uxor, nihil emolumenti ob dotem habere videtur maritus, quia et si uxorem eam non duxisset, fructuariae morte finitus usus fructus ad proprietatem rediret: ideoque nec in funus confert mulieris.

Dig. 23.3.78.1

Tryphonus 11 disp.

Plane si pater filiae nomine, qui in fundo generi usum fructum habebit, dotis constituendae gratia eum dederit, et in matrimonio mortua fuerit, habebit ex sua persona usus fructus petitionem.

Dig. 23.3.78.2

Tryphonus 11 disp.

Quod si mulier in fundo suo marito usum fructum dotis causa constituerit, tunc ex mariti persona erit usus fructus proprie, qui et non utendo ipsius pereat: quod si acciderit, videamus, an etiamnunc dotata sit mulier. et si quidem dominium apud mulierem est fundi, ad quem reversus est usus fructus, nihil iam in dote habet, quod actione dotis consequatur ab eo, cui quod non utendo amisit usum fructum imputari non potest, ex quo ipsa lucrum habet: ideoque indotata erit. quod si alienaverit uxor proprietatem, quae sine ullo mulieris emolumento plenior facta est: adhuc dotata est, quia dotis actione teneri debet maritus, qui quando licuit usu fructu uti amisit eum non utendo. nam si habere perseverasset usum fructum ad divortium, commodo mulieris cederet eius restitutio, quia etsi non protinus ad ipsam transiret, tamen vel si pretio vel beneficio sine incommodo mulieris ad proprietatem revertetur. si autem usum fructum maritus non amiserit, morte mulieris non finitur usus fructus apud maritum. divortio autem facto primo videamus et in hac et in superiore specie, an pro rata temporis eius anni dividantur fructus: quod probandum est. ipsius autem restitutio ita fiet, ut habenti mulieri fundum usus fructus cedatur et ita cum proprietate consolidetur. sed et si non sit fundi domina, nihilo minus competit dotis actio, ut dimittat a se maritus usum fructum: nam vel ex empto actione adhuc, ut usum fructum praestet, mulier tenetur, aut pretium eius consequi sperat, aut cuivis magis gratiam praestare quam relinquere apud inimicum ius ad se translatum licere ei civile est.

Dig. 23.3.78.3

Tryphonus 11 disp.

Uxor viro usum fructum dotis nomine dedit, manente matrimonio eidem fundum vendidit: quaesitum est, divortio facto quid dotis iudicio reciperare debeat. dixi referre, quanti fundus venisset: nam si nudae proprietatis aestimatio facta fuisset, mulier dotis iudicio pretium usus fructus reciperare debet. quid ergo est, si vir ante litem contestatam mortuus fuisset? heredes eius nihil praestituros: nam etsi quilibet alius emptor proprietatis exstitisset, heres viri nihil mulieri praestaret scilicet usu fructu reverso ad proprietatem. ceterum si fundus totus vensisset, quanti debet venire non detracto usu fructu, intellegi mulierem dotem manente matrimonio recepisse.

Dig. 23.3.78.4

Tryphonus 11 disp.

Si fundus communis in dotem datus erit et socius egerit cum marito communi dividundo adiudicatusque fundus socio fuerit, in dote erit quantitas, qua socius marito damnatus fuerit aut, si omissa licitatione extraneo addictus is ^ si^

fundus fuerit, pretii portio, quae distracta est, sed ita, ut non vice corporis habeatur nec divortio secuto praesenti die quod in numero est restituatur, sed statuto tempore solvi debeat. quod si marito fundus fuerit adiudicatus, pars utique data in dotem dotalis manebit: divortio autem facto sequetur restitutionem, propter quam ad maritum pervenit, etiam altera portio, scilicet ut recipiat tantum pretii nomine a muliere, quantum dedit ex condemnatione socio: nec audiri debebit alteruter eam aequitatem recusans, aut mulier in suscipienda parte altera quoque aut vir in restituenda. sed an constante matrimonio non sola pars dotalis sit, quae data fuit in dotem, sed etiam altera portio, videamus. iulianus de parte tantum dotali loquitur, et ego dixi in auditorio illam solam dotalem esse.

Dig. 23.3.78.5

Tryphonus 11 disp.

Si marito dotis nomine stipulanti promisit per errorem is qui exceptione tutus erat ne solvat, cogetur ei solvere et habebit condictionem adversus mulierem aut patrem, uter eorum delegavit, ob id quod indebitum marito promisit aut solvit.

Dig. 23.3.79pr.

Labeo 6 post. a iav. epit.

Avus neptis nomine filio natae genero dotem dedit et moritur. negat servius dotem ad patrem reverti et ego cum servio sentio, quia non potest videri ab eo profecta, quia nihil ex his sui habuisset.

Dig. 23.3.79.1

Labeo 6 post. a iav. epit.

Pater filiae nomine centum doti ita promisit " cum commodissimum esset". ateius scripsit servium respondisse, cum primum sine turpitudine et infamia dari possit, deberi.

Dig. 23.3.80

Iavolenus 6 ex post. lab.

Si debitor mulieris dotem sponso promiserit, posse mulierem ante nuptias a debitore eam pecuniam petere neque eo nomine postea debitorem viro obligatum futurum ait labeo. falsum est, quia ea promissio in pendenti esset, donec obligatio in ea causa est.

Dig. 23.3.81

Papinianus 8 quaest.

Pater filiae nomine nummos alienos, quos mutuos acceperat aut in causam crediti receperat, in dotem dedit. consumptis his dos profecticia efficitur.

Dig. 23.3.82

Proculus 5 epist.

Cum uxor virum suum quam pecuniam sibi deberet in dotem filiae communis dare iusserit et id fecisse dicatur, puto animadvertendum esse, utrum eam dotem suo an uxoris nomine dedit: si suo, nihilo minus uxori eum debere pecuniam: si uxoris nomine dederit, ipsum ab uxore liberatum esse.

Dig. 23.3.83

Iavolenus 6 post. lab.

Si debitor mulieris dotem sponso promiserit, non posse mulierem ante nuptias a debitore eam pecuniam petere, quia ea promissio in pendenti esset, donec obligatio in ea causa est.

Dig. 23.3.84

Labeo 6 pith. a paulo epit.

Si de dote promissa agitur, non oportet in quantum facere potest condemnari eum qui promisit. paulus: immo quod ad extraneum attinet, semper hoc verum est. ceterum si manente adfinitate dotem promissam gener a socero petit, utique in quantum facere potest socer condemnabitur. si dirempto matrimonio petitur, ex causa et persona id tribuendum puto: quid enim si socer specie futurae dotis induxerit generum et cum sciret se praestare dotem non posse, id egerit, ut genero insidiaretur?

Dig. 23.3.85

Scaevola 8 Dig.

Fundum filiae nomine pater in dotem dederat: huius heredi filiae ex asse creditoribus urguentibus patris utilius videtur potius fundum qui dotalis est distrahere, quod minus fructuosus sit, et alios hereditarios uberiore reditu retinere: maritus consentit, si nulla in ea re captio sit futura. quaero, an ea pars dotis, quae in hoc fundo est, mulieri manente matrimonio recte solvatur. respondit, si pretium creditori solvatur, recte solutum.

Dig. 23.4.0. De pactis dotalibus.

Dig. 23.4.1pr.

Iavolenus 4 ex cass.

Pacisci post nuptias, etiamsi nihil ante convenerit, licet.

Dig. 23.4.1.1

Iavolenus 4 ex cass.

Pacta quae de reddenda dote fiunt, inter omnes fieri oportet, qui repetere dotem et a quibus repeti potest, ne ei, qui non interfuit, apud arbitrum cognoscentem pactum non prosit.

Dig. 23.4.2

Ulpianus 19 ad sab.

Si convenerit, ut, quoquo modo dissolutum sit matrimonium, liberis intervenientibus dos apud virum remaneret, papinianus iuniano praetori respondit morte mariti finito matrimonio neque convenisse videri dotem remanere, et, si convenisset, non esse servandum pactum contra dotem, cum mariti mortalitas intervenit.

Dig. 23.4.3

Paulus 3 ad sab.

Pacta conventa, quae in divortii tempus collocata sunt, non facto divortio locum non habent.

Dig. 23.4.4

Ulpianus 31 ad sab.

Si convenerit, ut fructus in dotem converteretur, an valeat conventio? et Marcellus ait libro octavo digestorum conventionem non valere: prope enim indotatam mulierem hoc pacto fieri. sed ita distinguit, ut, si quidem fundum in dotem dederit mulier ita, ut maritus fructus redderet, non esse ratum pactum: idemque esse et si usum fructum in dotem hoc pacto dedit. quod si convenisset de fructibus reddendis, hoc est ut in dote essent fructus quosquos percepisset, et fundus vel usus fructus in hoc traditus est, non ut fundus vel fructus fieret dotalis, sed ut fructus perciperet dotis futuros, cogendum de dote actione fructus reddere. erunt igitur in dote fructus et fruetur iste usuris, quae ex fructibus collectis et in sortem redactis percipi possunt. ego utrubique arbitror interesse, qua contemplatione dos sit data, ut, si ob hoc ei maiorem dotem mulier dedit, quia fructus volebat esse dotis contento marito ea pecunia quae ex usuris redituum colligitur, posse dici conventionem valere: nec enim videtur sterilis esse dos. finge quadragena annua esse reditus apud eum, qui non acciperet in dotem, nisi hoc convenisset, plus trecentum: uti boni consuleret tam uberem dotem consecutus. et quid dicimus, si pactum tale intervenit, ut maritus fructus in dotem converteret et mulier se suosque aleret tuereturve et universa onera sua expediret? quare non dicas conventionem valere?

Dig. 23.4.5pr.

Paulus 7 ad sab.

Illud convenire non potest, ne de moribus agatur vel plus vel minus exigatur, ne publica coercitio privata pactione tollatur.

Dig. 23.4.5.1

Paulus 7 ad sab.

Ac ne illa quidem pacta servanda sunt, ne ob res donatas vel amotas ageretur, quia altero pacto ad furandum mulieres invitantur, altero ius civile impugnatur.

Dig. 23.4.5.2

Paulus 7 ad sab.

Et si convenerit, ne ob impensas necessarias ageretur, pactum non est servandum, quia tales impensae dotem ipso iure minuunt.

Dig. 23.4.6

Ulpianus 4 ad ed.

Pomponius ait maritum non posse pacisci, ut dolum solummodo in dotem praestet, videlicet propter utilitatem nubentium: quamvis pacisci possit, ne sit periculo eius nomen debitoris qui ei dotem promisit: nam et ut sit dos periculo mulieris, pacisci eum posse probat, et per contrarium, ut ea dos quae periculo mulieris est sit periculo mariti.

Dig. 23.4.7

Pomponius 15 ad sab.

Cum dos filiae nomine datur, optimum est pactum conventum cum utroque generum facere, quamquam initio dotis dandae legem quam velit etiam citra personam mulieris is qui dat dicere possit. si vero post datam pacisci velit, utriusque persona in paciscendo necessaria est, quoniam iam adquisita mulieri dos tum esset. quo casu si solus pater pactus esset sine filia, sive solus agat sive adiuncta filiae persona, ei soli nocebit et proderit pactum conventum nec, si sola filia aget, neque proderit neque nocebit ei. si vero filia sola pacta fuerit, quo pacto melior condicio patris fiet, proderit et patri, quoniam per filiam patri adquiri potest, per patrem filiae non potest. si vero sic pacta sit filia, ut noceat, ipsi quandoque filiae agenti nocebit pactum, patri vero nullo modo nocebit, nisi adiecta quoque filiae persona experiatur. dicendum est paciscendo filiam patris condicionem deteriorem facere non posse eo casu, quo mortua ea in matrimonio dos ad patrem reversura est.

Dig. 23.4.8

Paulus 7 ad sab.

Quotiens patre furente vel ab hostibus capto filius familias ducit uxorem filiaque familias nubit, necessario etiam pacto cum ipsis dumtaxat dotis nomine fieri poterit.

Dig. 23.4.9

Pomponius 16 ad sab.

Si ita conveniat, ut, si vivo socero mortua sit filia, ipsi socero, si mortuo, filio eius, si filio quoque defuncto totum suo heredi reddatur, benigna interpretatione potest defendi utilem stipulationem esse.

Dig. 23.4.10

Pomponius 26 ad sab.

Avus pactus est, cum dotem pro nepote suscepisset, ne a se neve a filio dos peteretur, ab alio vero quam filio herede ut dos peteretur. exceptione conventionis filius tuendus erit, quippe heredi nostro cavere concessum est, nec quicquam obstat quo minus certae personae, si heres erit sibi, caveri possit, quod non idem et in ceteris heredibus cavetur: et ita celsus scribit.

Dig. 23.4.11

Ulpianus 34 ad ed.

Cum pater dotem pollicitus fuerit et paciscatur, ne se vivo petatur neve constante matrimonio dos petatur, ita pactum interpretandum divus severus constituit, quasi adiectum esset se vivo: hoc enim ita accipiendum esse contemplatione paternae pietatis et contrahentium voluntatis, ut posterior quoque pars conventionis ad vitam patris relata videatur, ne diversa sententia fructum dotis ab oneribus matrimonii separet quodque indignissimum est, inducat ut non habuisse dotem existimetur. quo rescripto hoc effectum est, ut, si quidem vivo patre decesserit filia aut sine culpa sua divorterit, omnimodo dos peti non possit, constante autem matrimonio mortuo patre peti possit.

Dig. 23.4.12pr.

Paulus 35 ad ed.

Si pater dotem dederit et pactus sit, ut mortua in matrimonio filia dos apud virum remaneret, puto pactum servandum, etiamsi liberi non interveniant.

Dig. 23.4.12.1

Paulus 35 ad ed.

Ex pactis conventis, quae ante nuptias vel post nuptias interponi solent, alia ad voluntatem pertinent, ut mulier dote promissa se alat et donec nupta sit, dos ab ea non petatur, aut certam summam viro praestet et ab eo alatur, et his similia: alia ad ius pertinent, veluti quando dos petatur, quemadmodum reddatur, in quibus non semper voluntas contrahentium servatur. ceterum si convenerit, ne omnino dos petatur, indotata erit mulier.

Dig. 23.4.12.2

Paulus 35 ad ed.

Si mulier pacta sit, ne amplius quam pars dimidia dotis a se petatur et poenam stipulata sit, mela ait alterutro eam contentam esse oportere: vel exceptione pacti et acceptam facere poenae obligationem, vel, si ex stipulatu agat, denegandam ei exceptionem.

Dig. 23.4.12.3

Paulus 35 ad ed.

Si fundo aestimato in dotem dato pacta sit mulier, ut, quanto pluris venierit, id in dote sit, mela ait servandum, cum et ex contrario convenire possit, ut, si minoris venierit, ipsa debeat.

Dig. 23.4.12.4

Paulus 35 ad ed.

Si pacta sit mulier, ut sive pluris sive minoris fundus aestimatus venierit, pretium quanto res venierit in dote sit, stari eo pacto oportet: sed si culpa mariti minoris venierit, et id ipsum mulierem consequi.

Dig. 23.4.13

Iulianus 17 Dig.

Item si non venierit, aestimatio praestari debebit.

Dig. 23.4.14

Paulus 35 ad ed.

De die reddendae dotis hoc iuris est, ut liceat pacisci, qua die reddatur, dum ne mulieris deterior condicio fiet,

Dig. 23.4.15

Gaius 11 ad ed. provinc.

Id est, ut citeriore die reddatur:

Dig. 23.4.16

Paulus 35 ad ed.

Ut autem longiore die solvatur dos, convenire non potest, non magis quam ne omnino reddatur.

Dig. 23.4.17

Proculus 11 epist.

Atilicinus proculo suo salutem. cum inter virum et uxorem pactum conventum ante nuptias factum sit, ut quibus diebus dos data esset, isdem divortio facto redderetur, post quinquennium quam nuptiae factae sunt uxor viro dotem dedit: divortio facto quaero, utrum quinquennii die vir uxori dotem redderet an statuto legibus tempore. proculus respondit: quod ad diem reddendae dotis attinet, pacto existimo meliorem condicionem mulieris fieri posse, deteriorem non posse: itaque si cautum est, ut propiore tempore, quam legibus constitutum est, reddatur, stari eo debere, si ut longiore, nec valere id pactum conventum. cuius sententiae conveniens est dicere, si pacto convento cautum est, ut quanto serius quaeque et post nuptias data fuerit, tanto post divortium reddatur, si propiore, quam in reddenda dote constitutum est, data sit, valere pactum conventum, si longiore, non valere.

Dig. 23.4.18

Iulianus 18 Dig.

Licet manente matrimonio non possit inter virum et uxorem conveniri, ut longiore dos reddatur, post divortium tamen si iusta causa conventionis fuerit, custodiri id pactum debet.

Dig. 23.4.19

Alfenus 3 Dig. a paulo epit.

Aliud est, si pater pro filia dotem promisit, ut annua bima trima quadrima quinto anno dos a se redderetur, et convenit, ut isdem diebus dos soluto matrimonio redderetur: hoc enim pactum ita valet, si patri filia heres exstitisset et interveniente ea pactum conventum fuerit.

Dig. 23.4.20pr.

Paulus 35 ad ed.

Ob res quoque donatas vel amotas vel impensas factas tunc facta pactio valebit, id est post divortium.

Dig. 23.4.20.1

Paulus 35 ad ed.

Si extraneus de suo daturus sit dotem, quidquid vult pacisci et ignorante muliere, sicut et stipulari potest: legem enim suae rei dicit: postquam vero dederit, pacisci consentiente muliere debet.

Dig. 23.4.20.2

Paulus 35 ad ed.

Si convenerit, ne a muliere neve a patre dos petatur, heres non habebit exceptionem. sed si convenerit, ne manente matrimonio vivo patre petatur, mortuo patre statim exigitur, et, si non petierit maritus, tenebitur huius culpae nomine, si dos exigi potuerit: nisi forte ante diremptum sit matrimonium, quam facultatem petendi haberet.

Dig. 23.4.21

Iulianus 17 Dig.

Si mulier dotis causa promiserit certam summam et pro ea mancipia in dotem dederit ea condicione, ut periculo eius essent et si quid ex his natum esset ad eam pertineat, stari pacto convento oportebit: nam constat posse inter uxorem et virum conveniri, ut dos, quae in pecunia numerata esset, permutaretur et transferatur in corpora, cum mulieri prodest.

Dig. 23.4.22

Iulianus 2 ad urs. ferocem.

Quidam fundum dotis causa ab uxore sua acceperat interque eos convenerat, ut mercedes eius fundi vir uxori annui nomine daret: deinde eum fundum vir matri ^ marti^ mulieris certa pensione colendum locaverat eaque, cum mercedes eius fundi deberet, decesserat et filiam suam solam heredem reliquerat et divortium factum erat: vir deinde petebat a muliere mercedes, quas mater debuerat. placuit exceptionem mulieri dari non debere " ac si inter se et virum non convenisset, ut hae mercedes sibi alimentorum nomine darentur", cum futurum sit, ut quodammodo donationes inter virum et uxorem confirmentur: nam quod annui nomine datur, species est donationis.

Dig. 23.4.23

Africanus 7 quaest.

Pater cum filiae suae nomine dotem daret, pactus est, ut mortua filia uno pluribusve liberis superstitibus deducta parte tertia reliqua dos sibi aut post mortem suam illi aut illi filiis quos in potestate habebat reddatur: deinde haec ita fieri stipulatus est: post mortem eius mulier in matrimonio decesserat relictis filiis: quaesitum est, an ex stipulatione duas partes illi petere possint. respondi posse: etenim vim eius stipulationis hanc esse, ut, si in matrimonio mortua esset, dos patri redderetur, et perinde habendum, ac si talis stipulatio interposita fuisset: " si navis ex asia venerit, mihi aut post mortem meam lucio titio dari spondes?" nam et si post mortem stipulatoris navis venisset, heredi deberi.

Dig. 23.4.24

Florus 3 inst.

Si inter virum et uxorem pactum est, ut certa pars dotis vel tota ob unum vel plures liberos intervenientes retineatur, etiam eorum liberorum nomine, qui ante nati sunt, quam dos daretur aut amplietur, conventio rata est: nam sufficit eos ex eo matrimonio nasci, in quo dos data est.

Dig. 23.4.25

Ulpianus 1 resp.

Quod de reddenda dote, si data fuisset, mortua in matrimonio filia convenit, idem de non petenda quoque videri convenisse ac patrem pacti conventi exceptionem nanctum ad heredem suum transmisisse.

Dig. 23.4.26pr.

Papinianus 4 resp.

Inter socerum et generum convenit, ut, si filia mortua superstitem anniculum filium habuisset, dos ad virum pertineret: quod si vivente matre filius obisset, vir dotis portionem uxore in matrimonio defuncta retineret. mulier naufragio cum anniculo filio periit. quia verisimile videbatur ante matrem infantem perisse, virum partem dotis retinere placuit.

Dig. 23.4.26.1

Papinianus 4 resp.

Vir dotem, quam ex pacto filiae nomine retinere potuit, si lapsus errore non retinuit, filiam, quae patris sola, matri pro parte heres exstiterit, apud arbitrum divisionis non improbe dotis perperam a patre solutae praeceptionem desiderare constitit.

Dig. 23.4.26.2

Papinianus 4 resp.

Cum inter patrem et generum convenit, ut in matrimonio sine liberis defuncta filia dos patri restituatur, id actum inter contrahentes intellegi debet, ut liberis superstitibus filia defuncta dos retineatur, nec separabitur portio dotis additamenti causa data, si postea nihil aliud conveniat.

Dig. 23.4.26.3

Papinianus 4 resp.

Convenit, ut mulier viri sumptibus quoquo iret veheretur, atque ideo mulier pactum ad litteras viri secuta provinciam, in qua centurio merebat, petit. non servata fide conventionis licet directa actio nulla competit, utilis tamen in factum danda est.

Dig. 23.4.26.4

Papinianus 4 resp.

Filia cum pro se dotem promitteret, pepigit, ut, si in matrimonio sine liberis decessisset, matri suae dos solvatur. pacto filiae nulla matri quaeritur actio: si tamen heres puellae matri pecuniam dotis solverit, viro contra placita petenti dotem obstabit exceptio.

Dig. 23.4.26.5

Papinianus 4 resp.

Pater, si filia nupta mortem obisset, dotem dari stipulatus est: constante matrimonio capitali crimine damnatus est. divortio secuto vel morte viri soluto matrimonio stipulationis condicio deficit: quod si mulier in matrimonio decesserit, ex stipulato fisco dotis actio quaereretur: post verum autem divortium renovatis nuptiis non committitur fisco stipulatio, licet defuncta sit in matrimonio filia, quoniam ad primas nuptias pertinet.

Dig. 23.4.27

Papinianus 1 def.

Si liberis sublatis reversa post iurgium per dissimulationem mulier veluti venali concordio ne dotata sit conveniat, conventio secundum ordinem rei gestae moribus improbanda est.

Dig. 23.4.28

Paulus 5 quaest.

Quaeris, si pacta sit mulier vel ante nuptias vel post nuptias, ut ex fundi fructibus quem dedit in dotem creditor mulieris dimittatur, an valeat pactum? dico, si ante nuptias id convenerit, valere pactum eoque modo minorem dotem constitutam: post nuptias vero cum onera matrimonii fructus relevaturi sunt, iam de suo maritus paciscitur ut dimittat creditorem, et erit mera donatio.

Dig. 23.4.29pr.

Scaevola 2 resp.

Cum maritus, qui aestimata praedia in dotem acceperat, manente matrimonio pactus est circumscribendae mulieris gratia, ut praedia inaestimata essent, ut sine periculo suo ea deteriora faceret: quaesitum est, an secundum priores dotales tabulas praedia aestimata remanerent et periculum eorum ad maritum pertineret. respondi non idcirco pactum de quo quaereretur impediri, quod in matrimonio factum esset, si deteriore loco dos non esset: nihilo minus eo pacto admisso, si deteriora praedia faceret, eo etiam nomine dotis eum actione teneri.

Dig. 23.4.29.1

Scaevola 2 resp.

Titius mulieris nomine dotem dedit et stipulatus est in casum mortis et divortii: divortio secuto non repetita dote titius decessit: mulier ex voluntate heredis eius redintegravit matrimonium: quaesitum est, an ex stipulatu dotem petere possit. respondi heredem titii, si consensisset, ut ea quantitas, quam ex stipulatu consequi potuerat, dotis reconciliato matrimonio fieret, posse pacti exceptione summoveri.

Dig. 23.4.29.2

Scaevola 2 resp.

Mulier de dote quam dedit pacta est, ut, si in matrimonio decessisset, fratri eius redderetur isque in eum casum stipulatus est: mulier decedens quasdam res dotales marito legavit et aliis, quosdam ex servis dotalibus manumisit. quaesitum est, an maritus earum nomine, quas legavit mulier, et servorum, quos manumisit, fratri tenetur. respondi nihil proponi, cur non teneretur, cum et iam heredes defunctae tam legatariis quam libertatibus obnoxii sint.

Dig. 23.4.30

Tryphonus 10 disp.

Baebius Marcellus baebio marullo dotis filiae suae nomine centena promiserat et convenerat inter eos, ne ea dos constante matrimonio peteretur, vel si post mortem patris in matrimonio sine liberis filia decessisset, ut dimidia dos apud marullum remaneret, dimidia fratri mulieris restitueretur: eaque etiam in stipulationem deducta erant. mortuo Marcello, filio et filia superstitibus, dote universa filiae praelegata marullus nata filia diverterat et mulier decesserat fratre suo et filia ex partibus aequis heredibus relictis. apud petronium magnum praetorem marullus ab herede filio Marcelli ex dotis promissione universam dotem petebat illa coniectura, quasi inter duos placuisset nullo filiorum exstante mortua muliere partem dotis remanere apud maritum, magis convenisset utique totam eius esse dotem, si filium filiamve habuisset. ex diverso respondebatur pacti quidem vulgaris exceptionem etiam heredi proficere: sed in specie, quae proponitur, non quasi heres mulieris ex persona defunctae se exceptione pacti tuebitur, sed ipse erat ille, qui etiam viva muliere, si ab eo dos peteretur, potuisset ea exceptione marullum, quia divortium factum erat, summovere, eandemque defensionem etiam post mortem sororis suae retinebat. itaque placuit eum ab ea petitione absolvi nulla ex hac sententia facta derogatione fideicommissi petitioni, quam iure hereditario per filiam heres uxoris marullus in parte dimidia habebat.

Dig. 23.4.31

Scaevola 3 quaest.

Si inter virum et uxorem convenit, ut extremi anni matrimonii fructus nondum percepti mulieris lucro fiant, huiusmodi pactum valet.

Dig. 23.4.32pr.

Iavolenus 6 ex post. lab.

Uxor viro fundum aestimatum centum in dotem dederat, deinde cum viro pactum conventum fecerat, ut divortio facto eodem pretio uxori vir fundum restitueret: postea volente uxore vir eum fundum ducentorum vendiderat, et divortium erat factum. labeo putat viro potestatem fieri debere, utrum velit ducenta vel fundum reddere, neque ei pactum conventum remitti oportere. idcirco puto hoc labeonem respondisse, quoniam voluntate mulieris fundus veniit: alioquin omnimodo fundus erat restituendus.

Dig. 23.4.32.1

Iavolenus 6 ex post. lab.

Si pater filiae nomine certam pecuniam in dotem promiserat et pactus est, ne invitus eam solveret: nihil ab eo exigendum puto, quia id, quod pacto convento ne invitus exigeretur convenerit, in dotis causam esse non videretur.

Dig. 23.5.0. De fundo dotali.

Dig. 23.5.1pr.

Paulus 36 ad ed.

Interdum lex iulia de fundo dotali cessat: si ob id, quod maritus damni infecti non cavebat, missus sit vicinus in possessionem dotalis praedii, deinde iussus sit possidere: hic enim dominus vicinus fit, quia haec alienatio non est voluntaria.

Dig. 23.5.1.1

Paulus 36 ad ed.

Sed et per universitatem transit praedium, secundum quod possibile est, ad alterum, veluti ad heredem mariti, cum suo tamen iure, ut alienari non possit.

Dig. 23.5.2

Ulpianus 5 de adult.

Si maritus fuerit in servitutem redactus, an dominus alienare hunc fundum non possit? quod puto esse verius. quare et si ad fiscum pervenerit, nihilo minus venditio fundi impeditur, quamvis fiscus semper idoneus successor sit et solvendo.

Dig. 23.5.3pr.

Paulus 36 ad ed.

Fundus dotali servo legatus ad legem iuliam pertinet quasi dotalis.

Dig. 23.5.3.1

Paulus 36 ad ed.

Totiens autem non potest alienari fundus, quotiens mulieri actio de dote competit aut omnimodo competitura est.

Dig. 23.5.4

Gaius 11 ad ed. provinc.

Lex iulia, quae de dotali praedio prospexit ne id marito liceat obligare aut alienare, plenius interpretanda est, ut etiam de sponso idem iuris sit quod de marito.

Dig. 23.5.5

Ulpianus 2 de omn. trib.

Iulianus libro sexto decimo digestorum scripsit neque servitutes fundo debitas posse maritum remittere neque ei alias imponere.

Dig. 23.5.6

Ulpianus 5 de adult.

Sed nec libertas servitutis urbano praedio dotali debitae competit, ne per hoc deterior condicio praedii fiat.

Dig. 23.5.7pr.

Iulianus 16 Dig.

Si maritus fundum titii servientem dotali praedio adquisierit, servitus confunditur et hoc casu maritus litis aestimationem praestabit: quod si maritus solvendo non erit, utiles actiones adversus titium mulieri ad restaurandam servitutem dantur.

Dig. 23.5.7.1

Iulianus 16 Dig.

Sed cum uxor fundum cui praedia viri servitutem debebant in dotem dat, fundus ad maritum pervenit amissa servitute et ideo non potest videri per maritum ius fundi deterius factum. quid ergo est? officio de dote iudicantis continebitur, ut redintegrata servitute iubeat fundum mulieri vel heredi eius reddi.

Dig. 23.5.8

Alfenus 3 Dig. a paulo epit.

Vir in fundo dotali uxoris rogatu olivetum succiderat ad hoc, ut novellum reponeret: postea vir mortuus erat et uxori dotem relegaverat. ligna, quae ex oliveto excisa essent, oportere mulieri reddi respondit.

Dig. 23.5.9pr.

Africanus 8 quaest.

Si marito debitori fundi id quod debet doti mulier promiserit, dotalem fundum effici.

Dig. 23.5.9.1

Africanus 8 quaest.

Quod si ei promittat, qui fundum aut decem debuit, in arbitrio esse mariti, quid in dote sit.

Dig. 23.5.9.2

Africanus 8 quaest.

Quod si stichum aut fundum debuit maritus et quod debet, doti ei promissum sit, sticho mortuo fundum in dotem esse.

Dig. 23.5.9.3

Africanus 8 quaest.

His consequens esse ait, ut, si cornelianum aut sempronianum fundum debenti id quod debet doti promissum sit, utrum eorum dotalem esse malit. plane utrum velit, alienaturum: alterum alienari non posse. si tamen alienum rursus redimat, adhuc in eius potestate est, an eum, quem retinuisset, alienari velit.

Dig. 23.5.10

Paulus 5 quaest.

Erit ergo potestas legis ambulatoria, quia dotalis fuit obligatio. numquid ergo etiam illo nondum redempto alterum quoque alienare possit, quia potest alterum redimere? an hoc non debet recipi, ut nullus in dote sit? certe ex post facto videbitur recte alienatus illo postea redempto.

Dig. 23.5.11

Africanus 8 quaest.

Quod si fundus in dotem aestimatus datus sit, ut electio esset mulieris, negavit alienari fundum posse: quod si arbitrio mariti sit, contra esse.

Dig. 23.5.12pr.

Papinianus 1 de adult.

Etiam si dirempto matrimonio dotale praedium esse intellegitur.

Dig. 23.5.12.1

Papinianus 1 de adult.

Soceri voluntas in distrahendo dotali praedio nulla est.

Dig. 23.5.13pr.

Ulpianus 5 de adult.

Dotale praedium accipere debemus tam urbanum quam rusticum: ad omne enim aedificium lex iulia pertinebit.

Dig. 23.5.13.1

Ulpianus 5 de adult.

Praedii appellatione etiam pars continetur. proinde sive totum praedium in dotem sit datum sive pars praedii, alienari non poterit: et hoc iure utimur.

Dig. 23.5.13.2

Ulpianus 5 de adult.

Dotale praedium sic accipimus, cum dominium marito quaesitum est, ut tunc demum alienatio prohibeatur.

Dig. 23.5.13.3

Ulpianus 5 de adult.

Heredi quoque mulieris idem auxilium praestabitur, quod mulieri praestabatur.

Dig. 23.5.13.4

Ulpianus 5 de adult.

Si uxore herede instituta fundus dotalis fuerit legatus, si quidem deductis legatis mulier quantitatem dotis in hereditatem habitura est, valet legatum, si minus, an non valeat, quaeritur. scaevola, et si non totus, sed vel aliqua pars ex eo vindicari possit, si modo aliqua pars ad dotem supplendam desit, id dumtaxat ex eo remanere apud mulierem ait, quod quantitati dotis deest.

Dig. 23.5.14pr.

Paulus 3 de adult.

Si nuptura titio voluntate eius fundum dotis nomine maevio tradit, dos eius condicionis erit, cuius esset, si ipsi titio fundum tradidisset.

Dig. 23.5.14.1

Paulus 3 de adult.

Si mulieris nomine quis fundum in dotem dederit, dotalis fundus erit: propter uxorem enim videtur is fundus ad maritum pervenisse.

Dig. 23.5.14.2

Paulus 3 de adult.

Si fundum alienum mulieri debeat maritus eumque mulier ei dotis nomine promiserit, in pendenti erit et tunc fiet dotalis, cum ad eum pervenerit.

Dig. 23.5.14.3

Paulus 3 de adult.

Si fundum legatum sibi dotis causa mulier repudiaverit vel etiam substituto viro omiserit hereditatem vel legatum, erit fundus dotalis.

Dig. 23.5.15

Papinianus 3 resp.

Dotale praedium, cuius vir possessionem retinuit post litteras ad uxorem emissas, quibus dotis non fore praedium declaravit, in matrimonio defuncta muliere virum retinere placuit, quia mulier actionem ex pacto non habuit.

Dig. 23.5.16

Tryphonus 11 disp.

Si fundum, quem titius possidebat bona fide longi temporis possessione poterat sibi quaerere, mulier ut suum marito dedit in dotem eumque petere neglexerit vir, cum id facere posset, rem periculi sui fecit: nam licet lex iulia, quae vetat fundum dotalem alienari, pertineat etiam ad huiusmodi adquisitionem, non tamen interpellat eam possessionem, quae per longum tempus fit, si ante, quam constitueretur dotalis fundus, iam coeperat. plane si paucissimi dies ad perficiendam longi temporis possessionem superfuerunt, nihil erit, quod imputabitur marito.

Dig. 23.5.17

Marcianus 7 Dig.

Fundum dotalem maritus vendidit et tradidit: si in matrimonio mulier decesserit et dos lucro mariti cessit, fundus emptori avelli non potest.

Dig. 23.5.18pr.

Iavolenus 6 ex post. lab.

Vir in fundo dotali lapidicinas marmoreas aperuerat: divortio facto quaeritur, marmor quod caesum neque exportatum esset cuius esset et impensam in lapidicinas factam mulier an vir praestare deberet. labeo marmor viri esse ait: ceterum viro negat quidquam praestandum esse a muliere, quia nec necessaria ea impensa esset et fundus deterior esset factus. ego non tantum necessarias, sed etiam utiles impensas praestandas a muliere existimo nec puto fundum deteriorem esse, si tales sunt lapidicinae, in quibus lapis crescere possit.

Dig. 23.5.18.1

Iavolenus 6 ex post. lab.

Si per mulierem mora fieret, quo minus aestimationem partis fundi viro solveret et fundum reciperet, cum hoc pactum erat: fructus interim perceptos ad virum pertinere ait labeo. puto potius pro portione fructus virum habiturum, reliquos mulieri restituturum: quo iure utimur.

Ius Romanum Justinian The Latin Library The Classics Page

OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER QUARTUS-VICESIMUS

Dig. 24.1.0. De donationibus inter virum et uxorem.
Dig. 24.2.0. De divortiis et repudiis.
Dig. 24.3.0. Soluto matrimonio dos quemadmodum petatur.

Dig. 24.1.0. de donationibus inter virum et uxorem.

Dig. 24.1.1

Ulpianus 32 ad sab.

Moribus apud nos receptum est, ne inter virum et uxorem donationes valerent. hoc autem receptum est, ne mutuo amore invicem spoliarentur donationibus non temperantes, sed profusa erga se facilitate:

Dig. 24.1.2

Paulus 7 ad sab.

Ne cesset eis studium liberos potius educendi. sextus caecilius et illam causam adiciebat, quia saepe futurum esset, ut discuterentur matrimonia, si non donaret is qui posset, atque ea ratione eventurum, ut venalicia essent matrimonia.

Dig. 24.1.3pr.

Ulpianus 32 ad sab.

Haec ratio et oratione imperatoris nostri antonini augusti electa est: nam ita ait: " maiores nostri inter virum et uxorem donationes prohibuerunt, amorem honestum solis animis aestimantes, famae etiam coniunctorum consulentes, ne concordia pretio conciliari viderentur neve melior in paupertatem incideret, deterior ditior fieret".

Dig. 24.1.3.1

Ulpianus 32 ad sab.

Videamus, inter quos sunt prohibitae donationes. et quidem si matrimonium moribus legibusque nostris constat, donatio non valebit. sed si aliquod impedimentum interveniat, ne sit omnino matrimonium, donatio valebit: ergo si senatoris filia libertino contra senatus consultum nupserit, vel provincialis mulier ei, qui provinciam regit vel qui ibi meret, contra mandata, valebit donatio, quia nuptiae non sunt. sed fas non est eas donationes ratas esse, ne melior sit condicio eorum, qui delinquerunt. divus tamen severus in liberta pontii paulini senatoris contra statuit, quia non erat affectione uxoris habita, sed magis concubinae.

Dig. 24.1.3.2

Ulpianus 32 ad sab.

Qui in eiusdem potestate sunt, prohibentur sibi donare, ut puta frater mariti, qui est in soceri potestate.

Dig. 24.1.3.3

Ulpianus 32 ad sab.

Verbum potestatis non solum ad liberos trahimus, verum etiam ad servos: nam magis est, ut hi quoque, qui aliquo iure subiecti sunt marito, donare non possint.

Dig. 24.1.3.4

Ulpianus 32 ad sab.

Secundum haec si mater filio, qui in patris potestate esset, donet, nullius momenti erit donatio, quia patri quaeritur: sed si in castra eunti filio dedit, videtur valere, quia filio quaeritur et est castrensis peculii. quare et si filius vel privignus vel quivis alius potestati mariti subiectus de castrensi suo peculio donavit, non erit irrita donatio.

Dig. 24.1.3.5

Ulpianus 32 ad sab.

Prohibetur igitur et uxori et nurui donare etiam is, qui est in soceri potestate, si modo maritus sit in patris potestate.

Dig. 24.1.3.6

Ulpianus 32 ad sab.

Ab uxoris nurusve parte prohibitum est donari viro vel genero. sed et his, qui sunt in eorum potestate si fuerit donatum, vel in quorum sunt potestate, non valebit donatio, si modo vir et socer in eiusdem sunt potestate vel vir in soceri: ceterum si in alia familia est maritus, neque socero neque ei qui est in eius potestate neque ei in cuius est donatione interdictum est.

Dig. 24.1.3.7

Ulpianus 32 ad sab.

Socrui a nuru vel contra donari non est prohibitum, quia hic ius potestatis non vertitur.

Dig. 24.1.3.8

Ulpianus 32 ad sab.

Si servus meus, cuius usus fructus alienus est, donet uxori meae ex eo peculio, quod ad me non pertinebat, vel homo liber bona fide mihi serviens, an valeat donatio, quaeritur. et in libera quidem persona utcumque admitti potest donatio: ceterae enim personae alienationem peculii ut donent non habent.

Dig. 24.1.3.9

Ulpianus 32 ad sab.

Non tantum autem per se maritus et uxor ceteraeque personae dare non possunt sed nec per interpositam personam.

Dig. 24.1.3.10

Ulpianus 32 ad sab.

Sciendum autem est ita interdictam inter virum et uxorem donationem, ut ipso iure nihil valeat quod actum est: proinde si corpus sit quod donatur, nec traditio quicquam valet, et si stipulanti promissum sit vel accepto latum, nihil valet: ipso enim iure quae inter virum et uxorem donationis causa geruntur, nullius momenti sunt.

Dig. 24.1.3.11

Ulpianus 32 ad sab.

Si quis igitur nummos uxori dederit, non fieri eius apparet, quia nihil corporis eius fieri palam est.

Dig. 24.1.3.12

Ulpianus 32 ad sab.

Sed si debitorem suum ei solvere iusserit, hic quaeritur, an nummi fiant eius debitorque liberetur. et celsus libro quinto decimo digestorum scribit videndum esse, ne dici possit et debitorem liberatum et nummos factos mariti, non uxoris: nam et si donatio iure civili non impediretur, eum rei gestae ordinem futurum, ut pecunia ad te a debitore tuo, deinde a te ad mulierem perveniret: nam celeritate coniungendarum inter se actionum unam actionem occultari, ceterum debitorem creditori dare, creditorem uxori. nec novum aut mirum esse, quod per alium accipias, te accipere: nam et si is, qui creditoris tui se procuratorem esse simulaverit, a debitore tuo iubente te pecuniam acceperit, et furti actionem te habere constat et ipsam pecuniam tuam esse.

Dig. 24.1.3.13

Ulpianus 32 ad sab.

Huic sententiae consequens est, quod iulianus libro septimo decimo digestorum scripsit, si donaturum mihi iussero uxori meae dare: ait enim iulianus nullius esse momenti, perinde enim habendum, atque si ego acceptam et rem meam factam uxori meae dedissem: quae sententia vera est. ^ quod iulianus. . . . . . perinde ^ .

Dig. 24.1.4

Iulianus 17 Dig.

Idemque est et si mortis causa traditurum mihi iusserim uxori tradere, nec referre, convaluerit donator an mortuus sit. neque existimandum est, si dixerimus valere donationem, non fieri me pauperiorem, quia sive convaluerit donator, condictione tenebor, sive mortuus fuerit, rem, quam habiturus eram, in bonis meis desinam propter donationem habere.

Dig. 24.1.5pr.

Ulpianus 32 ad sab.

Si sponsus sponsae donaturus tradiderit titio, ut is sponsae daret, deinde titius tradiderit post nuptias secutas: si quidem eum interposuerit maritus, donationem non valere, quae post contractas nuptias perficiatur: si vero mulier eum interposuerit, iamdudum ^ iamdum^ perfectam donationem, hoc est ante nuptias, atque ideo quamvis contractis nuptiis titius tradiderit, donationem valere.

Dig. 24.1.5.1

Ulpianus 32 ad sab.

Si maritus duos reos habeat titium et mulierem et mulieri accepto tulerit donationis causa, neuter liberatur, quia acceptilatio non valet: et haec iulianus libro septimo decimo digestorum scribit. plane si mihi proponas titio accepto latum, ipse quidem liberabitur, mulier vero manebit obligata.

Dig. 24.1.5.2

Ulpianus 32 ad sab.

Generaliter tenendum est, quod inter ipsos aut qui ad eos pertinent aut per interpositas personas donationis causa agatur, non valere: quod si aliarum extrinsecus rerum personarumve causa commixta sit, si separari non potest, nec donationem impediri, si separari possit, cetera valere, id quod donatum sit non valere.

Dig. 24.1.5.3

Ulpianus 32 ad sab.

Si debitor viri pecuniam iussu mariti uxori promiserit, nihil agitur.

Dig. 24.1.5.4

Ulpianus 32 ad sab.

Si uxor viri creditori donationis causa promiserit et fideiussorem dederit, neque virum liberari neque mulierem obligari vel fideiussorem eius iulianus ait, perindeque haberi ac si nihil promisisset.

Dig. 24.1.5.5

Ulpianus 32 ad sab.

Circa venditionem quoque iulianus quidem minoris factam venditionem nullius esse momenti ait: neratius autem (cuius opinionem pomponius non improbat) venditionem donationis causa inter virum et uxorem factam nullius esse momenti, si modo, cum animum maritus vendendi non haberet, idcirco venditionem commentus sit, ut donaret: enimvero si, cum animum vendendi haberet, ex pretio ei remisit, venditionem quidem valere, remissionem autem hactenus non valere, quatenus facta est locupletior: itaque si res quindecim venit quinque, nunc autem sit decem, quinque tantum praestanda sunt, quia in hoc locupletior videtur facta.

Dig. 24.1.5.6

Ulpianus 32 ad sab.

Si donationis causa vir vel uxor servitute non utatur, puto amitti servitutem, verum post divortium condici posse.

Dig. 24.1.5.7

Ulpianus 32 ad sab.

Si uxor vel maritus exceptione quadam donationis causa summoveri voluerint, facta a iudice absolutione valebit quidem sententia, sed condicetur ei, cui donatum est.

Dig. 24.1.5.8

Ulpianus 32 ad sab.

Concessa donatio est sepulturae causa: nam sepulturae causa locum marito ab uxore vel contra posse donari constat et si quidem intulerit, faciet locum religiosum. hoc autem ex eo venit, quod definiri solet eam demum donationem impediri solere, quae et donantem pauperiorem et accipientem faciet locupletiorem: porro hic non videtur fieri locupletior in ea re quam religioni dicavit. nec movit quemquam, quod emeret, nisi a marito accepisset: nam etsi pauperior ea fieret, nisi maritus dedisset, non tamen idcirco fit locupletior, quod non expendit.

Dig. 24.1.5.9

Ulpianus 32 ad sab.

Haec res et illud suadet, si uxori maritus sepulturae causa donaverit, ita demum locum fieri intellegi mulieris, cum corpus humatur: ceterum antequam fiet religiosus, donantis manet. proinde si distraxerit mulier, manet locus donatoris.

Dig. 24.1.5.10

Ulpianus 32 ad sab.

Secundum haec si uxori suae monumentum purum maritus magni pretii donaverit, valebit donatio, sic tamen, ut, cum fit religiosus, valeat.

Dig. 24.1.5.11

Ulpianus 32 ad sab.

Sed et si ipsa fuerit illo illata, licet morte eius finitum est matrimonium, favorabiliter tamen dicetur locum religiosum fieri.

Dig. 24.1.5.12

Ulpianus 32 ad sab.

Proinde et si maritus ad oblationem dei uxori donavit, vel locum, in quo opus publicum quod promiserat facere, velut aedem publicam, dedicaret, fiet locus sacer. sed et si quid ei det, ut donum deo detur vel consecretur, dubium non est, quin debeat valere: quare et si oleum pro ea in aede sacra posuerit, valet donatio.

Dig. 24.1.5.13

Ulpianus 32 ad sab.

Si maritus heres institutus repudiet hereditatem donationis causa, iulianus scripsit libro septimo decimo digestorum donationem valere: neque enim pauperior fit, qui non adquirat, sed qui de patrimonio suo deposuit. repudiatio autem mariti mulieri prodest, si vel substituta sit mulier vel etiam ab intestato heres futura.

Dig. 24.1.5.14

Ulpianus 32 ad sab.

Simili modo et si legatum repudiet, placet nobis valere donationem, si mulier substituta sit in legato vel etiam si proponas eam heredem institutam.

Dig. 24.1.5.15

Ulpianus 32 ad sab.

Si quis rogatus sit praecepta certa quantitate uxori suae hereditatem restituere et is sine deductione restituerit, celsus libro decimo digestorum scripsit magis pleniore officio fidei praestandae functum maritum quam donasse videri: et rectam rationem huic sententiae celsus adiecit, quod plerique magis fidem exsolvunt in hunc casum quam donant nec de suo putant proficisci, quod de alieno plenius restituunt voluntatem defuncti secuti: nec immerito saepe credimus aliquid defunctum voluisse et tamen non rogasse. quae sententia habet rationem magis in eo, qui non erat deducta quarta rogatus restituere et tamen integram fidem praestitit omisso senatus consulti commodo: hic enim vere fidem exsolvit voluntatem testatoris obsecutus. hoc ita, si non per errorem calculi fecit: ceterum indebiti fideicommissi esse repetitionem nulla dubitatio est.

Dig. 24.1.5.16

Ulpianus 32 ad sab.

Cum igitur nihil de bonis erogatur, recte dicitur valere donationem. ubicumque igitur non deminuit de facultatibus suis qui donavit, valet, vel, etiamsi deminuat, locupletior tamen non fit qui accepit, donatio valet.

Dig. 24.1.5.17

Ulpianus 32 ad sab.

Marcellus libro septimo digestorum quaerit, si mulier acceptam a marito pecuniam in sportulas pro cognato suo ordini erogaverit, an donatio valeat? et ait valere nec videri locupletiorem mulierem factam, quamvis mutuam pecuniam esset acceptura et pro adfine erogatura.

Dig. 24.1.5.18

Ulpianus 32 ad sab.

In donationibus autem iure civili impeditis hactenus revocatur donum ab eo ab eave cui donatum est, ut, si quidem exstet res, vindicetur, si consumpta sit, condicatur hactenus, quatenus locupletior quis eorum factus est:

Dig. 24.1.6

Gaius 11 ad ed. provinc.

Quia quod ex non concessa donatione retinetur, id aut sine causa aut ex iniusta causa retineri intellegitur: ex quibus causis condictio nasci solet.

Dig. 24.1.7pr.

Ulpianus 31 ad sab.

Quod autem spectetur tempus, an locupletiores sint facti, utrum tempus litis contestatae an rei iudicatae? et verum est litis contestatae tempus spectari oportere idque imperator noster cum patre rescripsit.

Dig. 24.1.7.1

Ulpianus 31 ad sab.

Si maritus pecuniam uxori in unguenta dederit eaque eam pecuniam creditori suo solverit, mox ea de sua pecunia unguenta emerit, non videri locupletiorem factam Marcellus libro septimo digestorum scribit. idemque et si lancem ob eandem causam ei dederit eaque lancem retinuerit, de sua autem pecunia unguenta emerit, vindicationem cassare, quia non est locupletior, quae tantundem in re mortua impendit.

Dig. 24.1.7.2

Ulpianus 31 ad sab.

Si vir et uxor quina invicem sibi donaverint et maritus servaverit, uxor consumpserit, recte placuit compensationem fieri donationum et hoc divus hadrianus constituit. aestimari oportere, in quantum locupletior facta sit mulier. proinde et si praedia hodie vilissimo sunt, consequenter dicemus litis contestatae tempore aestimationem eorum spectandam. plane si magni pretii praedia sunt, summa tantum numerata erit restituenda, non etiam usurae pretii.

Dig. 24.1.7.4

Ulpianus 31 ad sab.

Eleganter tractabitur, si mulier quindecim praedia emerit et maritus non totum pretium numeraverit, sed duas partes pretii, hoc est decem, uxor de suo quinque, deinde haec praedia valeant nunc decem, maritus quantum consequatur. et magis est, ut consequi debeat duas partes decem, ut quod periit ex pretio, utrique perierit et marito et uxori.

Dig. 24.1.7.5

Ulpianus 31 ad sab.

Si maritus aestimationem rerum quas in dotem accepit dicat se donationis causa auxisse, remedium monstravit imperator noster cum divo patre suo rescripto, cuius verba haec sunt: " cum donationis causa pretium auctum adfirmes, qui super ea re cogniturus erit, si pecuniae modum recusabis, ipsa praedia restitui debere sumptuum deductis rationibus arbitrabitur". in arbitrio igitur mariti erit, quid praestitum malit. idem iuris est et si e contrario mulier de minore aestimatione queratur. nec aliud in commodato aestimato dato observari solet, ut pomponius libro quarto variarum lectionum scribit.

Dig. 24.1.7.6

Ulpianus 31 ad sab.

Si uxor a marito suo praedia, quae ob dotem pignori acceperat, emerit eaque emptio donationis causa facta dicatur, nullius esse momenti, pignoris tamen obligationem durare imperator noster cum patre suo rescripsit, cuius rescripti verba ideo rettuli, ut appareat venditionem inter virum et uxorem bona fide gestam non retractari. " si tibi maritus pignora propter dotem et pecuniam creditam data non donationis causa vendidit, quod bona fide gestum est, manebit ratum. at si titulus donationis quaesitus ostenditur atque ideo venditionem irritam esse constabit, iure publico causam pignorum integram obtinebis".

Dig. 24.1.7.7

Ulpianus 31 ad sab.

Si uxor rem emit et maritus pretium pro ea numeravit, interdum dicendum est totum a muliere repetendum, quasi locupletior ex ea in solidum facta sit: ut puta si emit quidem rem mulier et debebat pecuniam, maritus autem a venditore eam liberavit: quid enim interest, creditori solvat an venditori?

Dig. 24.1.7.8

Ulpianus 31 ad sab.

Uxori quis donavit servum ita, ut eum intra annum manumitteret: an, si mulier non obtemperet voluntati, constitutio divi marci imponat ei libertatem, si vir vel vivit vel etiam diem suum obierit? et ait papinianus, cum sabini sit sententia recepta, qui putat tunc fieri servum eius cui donatur, cum coeperit libertas imponi ideoque nec si velit mulier post exactum tempus possit manumittere, recte dici non esse constitutioni locum nec voluntatem mariti posse constitutioni locum facere, cum proprium servum possit manumittere: quae sententia mihi quoque probatur, quia venditor sive donatur non sibi vult legem imponi nec potest, sed ei qui accepit: dominio igitur penes se remanente nequaquam effectum habebit constitutio.

Dig. 24.1.7.9

Ulpianus 31 ad sab.

Manumissionis causa donatio facta valet, licet non hoc agatur, ut statim ad libertatem, sed quandoque perducatur. proinde si, ut post certum tempus manumittat, uxori suae tradidit, tunc demum eius fiet, cum tempore impleto manumittere coeperit: quare antea manumittendo nihil agit. nam et illud sciendum est: si uxori quis suae donaverit, ut intra annum manumittat, deinde non manumiserit ea intra annum, postea manumittendo nihil agit.

Dig. 24.1.8

Gaius 11 ad ed. provinc.

Si, antequam servus manumittatur, morte aut divortio solutum fuerit matrimonium, resolvitur donatio: inesse enim condicio donationi videtur, ut manente matrimonio manumittatur.

Dig. 24.1.9pr.

Ulpianus 32 ad sab.

Si eum uxori donet maritus, qui eius erat condicionis, ne umquam ad libertatem perduci possit, dicendum est omnino nihil agi hac donatione.

Dig. 24.1.9.1

Ulpianus 32 ad sab.

Si pecunia accepta mulier manumiserit vel operas ei imposuerit, ait iulianus operas quidem eam licito iure imposituram et tenere obligationem nec videri mulierem ex re viri locupletiorem fieri, cum eas libertus promittat: quod si pretium ob manumissionem acceperit mulier et sic manumiserit, si quidem ex peculio suo dedit, nummos mariti manere, si vero alius pro eo dedit, fient nummi mulieris: quae sententia recte se habet.

Dig. 24.1.9.2

Ulpianus 32 ad sab.

Inter virum et uxorem mortis causa donationes receptae sunt,

Dig. 24.1.10

Gaius 11 ad ed. provinc.

Quia in hoc tempus excurrit donationis eventus, quo vir et uxor esse desinunt.

Dig. 24.1.11pr.

Ulpianus 32 ad sab.

Sed interim res non statim fiunt eius cui donatae sunt, sed tunc demum, cum mors insecuta est: medio igitur tempore dominium remanet apud eum qui donavit.

Dig. 24.1.11.1

Ulpianus 32 ad sab.

Sed quod dicitur mortis causa donationem inter virum et uxorem valere, ita verum est, ut non solum ea donatio valeat secundum iulianum, quae hoc animo fit, ut tunc res fiat uxoris vel mariti, cum mors insequetur, sed omnis mortis causa donatio.

Dig. 24.1.11.2

Ulpianus 32 ad sab.

Quando itaque non retro agatur donatio, emergunt vitia, ut Marcellus animadvertit in specie huiusmodi. maritus uxori mortis causa donatum voluit: interposuit mulier filium familias, qui a marito acciperet eique traderet: deinde, cum moritur maritus, pater familias invenitur: an valeat traditio? et ait consequens esse dici traditionem valere, quia sui iuris effectus est eo tempore, ad quod traditio redigitur, id est cum maritus moriebatur.

Dig. 24.1.11.3

Ulpianus 32 ad sab.

Idem ait: placuisse scio sabinianis, si filiae familias uxori maritus tradet, donationem eius cum omni suo emolumento fieri, si vivo adhuc marito sui iuris fuerit effecta. quod et iulianus libro septimo decimo digestorum probat.

Dig. 24.1.11.4

Ulpianus 32 ad sab.

Proinde et si uxor marito filio familias mortis causa tradat et is sui iuris effectus sit, sine dubio dicemus ipsius fieri ^ fierit^.

Dig. 24.1.11.5

Ulpianus 32 ad sab.

Per contrarium quoque si uxor donaverit mortis causa patri familias marito et mortis eius tempore filius familias inveniatur, patri erit nunc emolumentum quaesitum.

Dig. 24.1.11.6

Ulpianus 32 ad sab.

Consequenter scaevola apud Marcellum notat, si servum interposuit mulier, ut ei tradatur mortis causa, isque adhuc servus dederit mulieri, deinde mortis tempore liber inveniatur, tantundem esse dicendum.

Dig. 24.1.11.7

Ulpianus 32 ad sab.

Idem Marcellus tractat, si is qui interpositus est, posteaquam dederit mulieri, decesserit vivo adhuc donatore, donationem evanescere, quia debeat aliquo momento interposito fieri et sic ad mulierem transire: quod ita procedit, si ea cui donabatur eum interposuit, non is qui donabat. porro si a marito interpositus est, et res ipsius statim facta est et, si ante mortem mariti tradiderit et decesserit, traditio eius egit aliquid, ut tamen haec traditio pendeat, donec mors sequatur.

Dig. 24.1.11.8

Ulpianus 32 ad sab.

Si uxor rem titio dederit, ut is marito mortis causa traderet eaque defuncta invitis heredibus eius titius marito dederit, interest, utrum a muliere sit interpositus titius an vero a marito cui donabatur: si a muliere interpositus est, obligabit se condictione, si marito tradiderit, si autem a marito sit interpositus, mortua muliere confestim fundus efficietur eius quem maritus interposuit et actionem ipse maritus cum eo habebit.

Dig. 24.1.11.9

Ulpianus 32 ad sab.

Si uxor rem, quam a marito suo mortis causa acceperat, vivo eo alii tradiderit, nihil agitur ea traditione, quia non ante ultimum vitae tempus mulieris fuit. plane in quibus casibus placeat retro agi donationem, etiam sequens traditio a muliere facta in pendenti habebitur.

Dig. 24.1.11.10

Ulpianus 32 ad sab.

Si maritus uxori donaverit mortis causa eaque diverterit, an dissolvatur donatio? iulianus scripsit infirmari donationem nec impendere.

Dig. 24.1.11.11

Ulpianus 32 ad sab.

Idem ait, si divortii causa facta sit donatio, valere:

Dig. 24.1.12

Paulus 7 ad sab.

Quae tamen sub ipso divortii tempore, non quae ex cogitatione quandoque futuri divortii fiant:

Dig. 24.1.13pr.

Ulpianus 32 ad sab.

Sed si mors sit insecuta, non videri factas res mulieris, quia donatio in alium casum facta est.

Dig. 24.1.13.1

Ulpianus 32 ad sab.

Proinde et si mortis causa uxori donaverit et deportationem passus est, an donatio valeat, videamus. et alias placet in casum deportationis donationem factam valere, quemadmodum in causam divortii. cum igitur deportatione matrimonium minime dissolvatur et nihil vitium mulieris incurrit, humanum est donationem, quae mortis causa ab initio facta est, tali exilio subsecuto confirmari, tamquam si mortuo marito rata habebatur, ita tamen, ut non adimatur licentia marito eam revocare, quia et mors eius exspectanda est, ut tunc plenissimam habeat firmitatem, quando ab hac luce fuerit subtractus, sive reversus sive adhuc in poena constitutus.

Dig. 24.1.13.2

Ulpianus 32 ad sab.

Cum quis acceperit, ut in suo aedificet, condici ei id non potest, quia magis donari ei videtur: quae sententia neratii quoque fuit: ait enim datum ad villam extruendam vel agrum serendum, quod alioquin facturus non erat is qui accepit, in speciem donationis cadere. ergo inter virum et uxorem hae erunt interdictae.

Dig. 24.1.14

Paulus 71 ad ed.

Quod si vir uxori, cuius aedes incendio consumptae sunt, ad refectionem earum pecuniam donaverit, valet donatio in tantum, in quantum aedificii extructio postulat.

Dig. 24.1.15pr.

Ulpianus 32 ad sab.

Ex annuo vel menstruo, quod uxori maritus praestat, tunc quod superest revocabitur, si satis immodicum est, id est supra vires dotis.

Dig. 24.1.15.1

Ulpianus 32 ad sab.

Si maritus uxori pecuniam donaverit eaque usuras ex donata pecunia perceperit, lucrabitur. haec ita iulianus in marito libro octavo decimo digestorum scribit.

Dig. 24.1.16

Tryphonus 10 disp.

Quid ergo si ex centum, quae vir uxori donavit, quinquaginta apud debitorem ex his perierint, et alia quinquaginta duplicata usuris uxor habet? non plus quinquaginta eius donationis nomine maritus ab ea consequetur.

Dig. 24.1.17pr.

Ulpianus 32 ad sab.

De fructibus quoque videamus, si ex fructibus praediorum quae donata sunt locupletata sit, an in causam donationis cadant. et iulianus significat fructus quoque ut usuras licitam habere donationem.

Dig. 24.1.17.1

Ulpianus 32 ad sab.

Sed si quid servus donatus adquisiit, ad eum qui donavit pertinebit.

Dig. 24.1.18

Pomponius 4 ex var. lect.

Si vir uxoris aut uxor viri servis aut vestimentis usus vel usa fuerit vel in aedibus eius gratis habitaverit, valet donatio.

Dig. 24.1.19pr.

Ulpianus 32 ad sab.

Si uxor filio donaverit servum, qui in patris mariti sit potestate, deinde is servus ancillam acceperit, dominium mulieri quaeretur: nec interesse iulianus ait, ex cuius pecunia haec ancilla empta sit, quia nec ex re sua quicquam adquiri potest per eum qui donatur ei cui donatur: hoc enim bonae fidei possessoribus concessum est, virum autem scientem alienum possidere.

Dig. 24.1.19.1

Ulpianus 32 ad sab.

Idem quaerit, si ex re mariti ea ancilla comparata fuerit, an adversus agentem mulierem de dote maritus pretium possit per exceptionem retinere. et dicendum est posse maritum et exceptionem habere, si dos ab eo petetur, secundum Marcelli sententiam et, si solverit, secundum iulianum condicere posse.

Dig. 24.1.20

Iavolenus 11 epist.

Si is servus, qui uxori mortis causa donatus est, prius quam vir decederet stipulatus est, in pendenti puto esse causam obligationis, donec vir aut moriatur aut suspicione mortis, propter quam donavit, liberetur: quidquid autem eorum inciderit, quod donationem aut peremat aut confirmet, id quoque causam stipulationis aut confirmabit aut resolvet.

Dig. 24.1.21pr.

Ulpianus 32 ad sab.

Si quis pro uxore sua vectigal, quod in itinere praestari solet, solvisset, an quasi locupletiore ea facta exactio fiat, an vero nulla sit donatio? et magis puto non interdictum hoc, maxime si ipsius causa profecta est. nam et papinianus libro quarto responsorum scripsit vecturas uxoris et ministeriorum eius virum itineris sui causa datas repetere non posse: iter autem fuisse videtur viri causa et cum uxor ad virum pervenit. nec interesse, an aliquid de vecturis in contrahendo matrimonio convenerit: non enim donat, qui necessariis oneribus succurrit. ergo et si consensu mariti profecta est mulier propter suas necessarias causas et aliquid maritus expensarum nomine ei praestiterit, hoc revocandum non est.

Dig. 24.1.21.1

Ulpianus 32 ad sab.

Si uxor viro dotem promiserit et dotis usuras, sine dubio dicendum est peti usuras posse, quia non est ista donatio, cum pro oneribus matrimonii petantur. quid tamen, si maritus uxori petitionem earum remiserit? eadem erit quaestio, an donatio sit illicita: et iulianus hoc diceret: quod verum est. plane si convenerat, uti se mulier pasceret suosque homines idcirco passus est eam dote sua frui, ut se suosque aleret, expeditum erit: puto enim non posse ab ea peti quasi donatum, quod compensatum est.

Dig. 24.1.22

Ulpianus 3 ad sab.

Uxori suae quis mortis causa servum donavit eumque cum libertate heredem scripsit: an valeat institutio, quaeritur. et puto, si hoc animo eum scripsit heredem, quod donationis se dixit paenituisse, valere institutionem et necessarium heredem domino servum fieri: ceterum si, posteaquam heredem instituit, donavit, donatio praevalebit, vel si ante donavit, non tamen adimendi animo libertatem adscripsit.

Dig. 24.1.23

Ulpianus 6 ad sab.

Papinianus recte putabat orationem divi severi ad rerum donationem pertinere: denique si stipulanti spopondisset uxori suae, non putabat conveniri posse heredem mariti, licet durante voluntate maritus decesserit.

Dig. 24.1.24

Paulus 7 ad sab.

Si inter extraneos facta sit donatio et antequam per tempus legitimum dominium fuerit adquisitum, coierint, vel contra si inter virum et uxorem facta sit donatio et ante impletum tempus supradictum solutum sit matrimonium, nihilo minus procedere temporis suffragium constat, quia altero modo sine vitio tradita est possessio, altero quod fuerit vitium, amotum sit.

Dig. 24.1.25

Clementius 5 ad l. iul. et pap.

Sed et si constante matrimonio res aliena uxori a marito donata fuerit, dicendum est confestim ad usucapionem eius uxorem admitti, quia et si non mortis causa donaverat ei, non impediretur usucapio. nam ius constitutum ad eas donationes pertinet, ex quibus et locupletior mulier et pauperior maritus in suis rebus fit: itaque licet mortis causa donatio interveniat, quasi inter extraneas personas fieri intellegenda est in ea re, quae quia aliena est usucapi potest.

Dig. 24.1.26pr.

Paulus 7 ad sab.

Si eum, qui mihi vendiderit, iusserim eam rem uxori meae donationis causa dare et is possessionem iussu meo tradiderit, liberatus erit, quia, licet illa iure civili possidere non intellegatur, certe tamen venditor nihil habet quod tradat.

Dig. 24.1.26.1

Paulus 7 ad sab.

Ex quibus causis inter virum et uxorem concessae sunt donationes, ex isdem et inter socerum et generum nurumve concessas neratius ait. ergo socer genero mortis vel divortii causa donabit, sed et gener socero mortis suae vel divortii causa.

Dig. 24.1.27

Modestinus 7 reg.

Inter eos, qui matrimonio coituri sunt, ante nuptias donatio facta iure consistit, etiamsi eodem die nuptiae fuerint consecutae.

Dig. 24.1.28pr.

Paulus 7 ad sab.

Si id quod donatum sit perierit vel consumptum sit, eius qui dedit est detrimentum, merito, quia manet res eius qui dedit suamque rem perdit.

Dig. 24.1.28.1

Paulus 7 ad sab.

Si quid in pueros ex ancillis dotalibus natos maritus impenderit aut in doctrinam aut alimenta, non servatur marito, quia ipse ministeriis eorum utitur: sed illud servatur quod nutrici datum est ad educendum, quia pro capite quid dedisset, quemadmodum si a praedonibus redemisset servos dotales.

Dig. 24.1.28.2

Paulus 7 ad sab.

Si quas servi operas viri uxori praestiterint vel contra, magis placuit, nullam habendam earum rationem: et sane non amare nec tamquam inter infestos ius prohibitae donationis tractandum est, sed ut inter coniunctos maximo affectu et solam inopiam timentes.

Dig. 24.1.28.3

Paulus 7 ad sab.

Si ex decem donatis sibi mulier servum emerit et is quinque sit quinque petenda esse apud plautium placuit, quemadmodum, si mortuus est, nihil peteretur: si vero quindecim dignus sit, non plus quam decem potest peti, quoniam eatenus donator pauperior factus esset.

Dig. 24.1.28.4

Paulus 7 ad sab.

Quod si ex decem duos servos emerit et eorum alter mortuus sit, alter decem dignus sit, solet quaeri. et plerique et pomponius interesse putant, utrum uno pretio venierint an diversis: si uno, tota decem petenda, quemadmodum si una res empta deterior facta est, vel grex vel carrucha et aliqua pars inde perisset: si diversis, hoc solum petendum, quanti sit emptus qui superest.

Dig. 24.1.28.5

Paulus 7 ad sab.

Iulianum putasse pomponius refert, si quid per eum servum, quem ex nummis a marito donatis mulier adquisisset (forte legatum, hereditatem) aut partus editus esset, eo quoque nomine petitionem faciendam esse.

Dig. 24.1.28.6

Paulus 7 ad sab.

Illud constat, si antequam a viro annuum acciperet, mulier ipsa de suo aut etiam mutuata impenderit, videri tantum iam ex annuo consumptum.

Dig. 24.1.28.7

Paulus 7 ad sab.

Illud recte dictum celsus ait: si dotis usuras annuas uxor stipulata sit, licet ei non debeantur, quia tamen quasi de annuo convenerit, peti quidem dotis iudicio non possunt, compensari autem possunt: idem ergo dicemus in qualibet pactione annui nomine facta.

Dig. 24.1.29pr.

Pomponius 14 ad sab.

Si mulier ex pecunia donata emptum servum vendidisset et alium emisset, posteriorem periculo mulieris esse fulcinius scripsit: quod non est verum, licet non ex re mariti emptus sit.

Dig. 24.1.29.1

Pomponius 14 ad sab.

Si vir uxori lanam donavit et ex ea lana vestimenta sibi confecit, uxoris esse vestimenta labeo ait:

Dig. 24.1.30

Gaius 11 ad ed. provinc.

Utilem tamen viro competere.

Dig. 24.1.31pr.

Pomponius 14 ad sab.

Sed si vir lana sua vestimentum mulieri confecerit, quamvis id uxori confectum fuerit et uxoris cura, tamen viri esse neque impedire, quod in ea re uxor tamquam lanipendia fuerit et viri negotium procurarit.

Dig. 24.1.31.1

Pomponius 14 ad sab.

Si uxor lana sua, operis ancillarum viri, vestimenta sui nomine confecit muliebria, et vestimenta mulieris esse et pro operis ancillarum viro praestare nihil debere: sed viri nomine vestimenta confecta virilia viri esse, ut is lanae uxori praestet pretium: sed si non virilia vestimenta suo nomine mulier confecit, sed ea viro donavit, non valere donationem, cum illa valeat, cum viri nomine confecit: nec umquam operas viri ancillarum aestimari convenit.

Dig. 24.1.31.2

Pomponius 14 ad sab.

Si vir uxori aream donaverit et uxor in ea insulam aedificaverit, ea insula sine dubio mariti est, sed eam impensam mulierem servaturam placet: nam si maritus vindicet insulam, retentionem impensae mulierem facturam.

Dig. 24.1.31.3

Pomponius 14 ad sab.

Si duo mancipia fuerint singula quinis digna, sed utrumque unis quinque donationis causa a viro mulieri vel contra venierint, melius dicetur communia ea esse pro portione pretii nec tandem spectandum esse, quanti mancipia sint, sed quantum ex pretio donationis causa sit remissum: sine dubio licet a viro vel uxore minoris emere, si non sit animus donandi.

Dig. 24.1.31.4

Pomponius 14 ad sab.

Si vir uxori vel contra quid vendiderit vero pretio et donationis causa paciscantur, ne quid venditor ob eam rem praestet, videndum est, quid de ea venditione agatur, utrum res venierit et totum negotium valeat, an vero ut ea sola pactio irrita sit, quemadmodum irrita esset, si post contractam emptionem novo consilio inito id pacti fuisset actum. et verius est pactum dumtaxat irritum esse.

Dig. 24.1.31.5

Pomponius 14 ad sab.

Idem dicemus, si donationis causa pacti sint, ne fugitivum aut erronem praestent, id est integras esse actiones aedilicias et ex empto.

Dig. 24.1.31.6

Pomponius 14 ad sab.

Quod vir uxori in diem debet, sine metu donationis praesens solvere potest, quamvis commodum temporis retenta pecunia sentire potuerit.

Dig. 24.1.31.7

Pomponius 14 ad sab.

Quod legaturus mihi aut hereditatis nomine relicturus es, potes rogatus a me uxori meae relinquere et non videtur ea esse donatio, quia nihil ex bonis meis deminuitur: in quo maxime maiores donanti succurrisse proculus ait, ne amore alterius alter despoliaretur, non quasi malivolos, ne alter locupletior fieret.

Dig. 24.1.31.8

Pomponius 14 ad sab.

Si vir uxori munus immodicum calendis martiis aut natali die dedisset, donatio est: sed si impensas, quas faceret mulier, quo honestius se tueretur, contra est.

Dig. 24.1.31.9

Pomponius 14 ad sab.

Non videtur locupletior facta esse mulier, si aut in opsonio aut in unguentis aut in cibariis familiae donatam sibi pecuniam impenderit.

Dig. 24.1.31.10

Pomponius 14 ad sab.

Quae vir cibaria uxoris familiae iumentisve praestiterit, quae in usu communi erant, non condicentur: quod si familiam domesticam uxoris aut venaliciam pavit, contra puto observari debere.

Dig. 24.1.32pr.

Ulpianus 33 ad sab.

Cum hic status esset donationum inter virum et uxorem, quem antea rettulimus, imperator noster antoninus augustus ante excessum divi severi patris sui oratione in senatu habita auctor fuit senatui censendi fulvio aemiliano et nummio albino consulibus, ut aliquid laxaret ex iuris rigore.

Dig. 24.1.32.1

Ulpianus 33 ad sab.

Oratio autem imperatoris nostri de confirmandis donationibus non solum ad ea pertinet, quae nomine uxoris a viro comparata sunt, sed ad omnes donationes inter virum et uxorem factas, ut et ipso iure res fiant eius cui donatae sunt et obligatio sit civilis et de falcidia ubi possit locum habere tractandum sit: cui locum ita fore opinor, quasi testamento sit confirmatum quod donatum est.

Dig. 24.1.32.2

Ulpianus 33 ad sab.

Ait oratio " fas esse eum quidem qui donavit paenitere: heredem vero eripere forsitan adversus voluntatem supremam eius qui donaverit durum et avarum esse".

Dig. 24.1.32.3

Ulpianus 33 ad sab.

Paenitentiam accipere debemus supremam. proinde si uxori donavit, deinde eum paenituit, mox desiit paenitere, dicendum est donationem valere, ut supremum eius spectemus iudicium, quemadmodum circa fideicommissa solemus, vel in legatis cum de doli exceptione opposita tractamus, ut sit ambulatoria voluntas eius usque ad vitae supremum exitum.

Dig. 24.1.32.4

Ulpianus 33 ad sab.

Sed ubi semel donatorem paenituit, etiam heredi revocandi potestatem tribuimus, si appareat defunctum evidenter revocasse voluntatem: quod si in obscuro sit, proclivior esse debet iudex ad comprobandam donationem.

Dig. 24.1.32.5

Ulpianus 33 ad sab.

Si maritus ea quae donaverit pignori dederit, utique eum paenituisse dicemus, licet dominium retinuit. quid tamen, si hoc animo fuit, ut vellet adhuc donatum? finge in possessionem precariam mulierem remansisse paratamque esse satisfacere creditori. dicendum est donationem valere: nam si ab initio ei rem obligatam hoc animo donasset, dicerem vim habere donationem, ut parata satisfacere mulier haberet doli exceptionem: quin immo et si satisfecisset, potuisse eam per doli exceptionem consequi, ut sibi mandentur actiones.

Dig. 24.1.32.6

Ulpianus 33 ad sab.

Si donator servus fuerit effectus privati, dicendum est non impletam, sed peremptam donationem, quamvis morti servitus comparetur: proinde et si ipsa in servitutem redigatur cui donatum est, extincta erit donatio.

Dig. 24.1.32.7

Ulpianus 33 ad sab.

Si maritus uxori donaverit et mortem sibi ob sceleris conscientiam consciverit vel etiam post mortem memoria eius damnata sit, revocabitur donatio: quamvis ea quae aliis donaverit valeant, si non mortis causa donavit.

Dig. 24.1.32.8

Ulpianus 33 ad sab.

Si miles uxori donaverit de castrensibus bonis et fuerit damnatus, quia permissum est ei de his testari (si modo impetravit ut testetur cum damnaretur), donatio valebit: nam et mortis causa donare poterit, cui testari permissum est.

Dig. 24.1.32.9

Ulpianus 33 ad sab.

Quod ait oratio " consumpsisse", sic accipere debemus, ne is, qui donationem accepit, locupletior factus sit: ceterum si factus est, orationis beneficium locum habebit. sed et si non sit factus locupletior, dederit tamen tantam quantitatem eaque exstet, dicendum est, si is decessit, qui factus est locupletior, posse repetere id quod dedit nec compensare id quod consumpsit, quamvis divortio secuto haec compensatio locum habeat.

Dig. 24.1.32.10

Ulpianus 33 ad sab.

Si divortium post donationem intercessit aut prior decesserit qui donum accepit, veteri iuri statur, hoc est, si maritus uxori: onatum vult, valeat donatio, quod si non vult, exstinguitur: plerique enim cum bona gratia discedunt, plerique cum ira sui animi et offensa.

Dig. 24.1.32.11

Ulpianus 33 ad sab.

Quid ergo, si divortium factum est, deinde matrimonium restauratur, et in divortio vel mutata est voluntas vel eadem duravit, restaurato tamen matrimonio et voluntate donatoris reconciliata an donatio duret, si constante matrimonio donator decesserit? et potest defendi valere.

Dig. 24.1.32.12

Ulpianus 33 ad sab.

Quod si divortium non intercesserit, sed frivusculum, profecto valebit donatio, si frivusculum quievit.

Dig. 24.1.32.13

Ulpianus 33 ad sab.

Si mulier et maritus diu seorsum quidem habitaverint, sed honorem invicem matrimonii habebant (quod scimus interdum et inter consulares personas subsecutum), puto donationes non valere, quasi duraverint nuptiae: non enim coitus matrimonium facit, sed maritalis affectio: si tamen donator prior decesserit, tunc donatio valebit.

Dig. 24.1.32.14

Ulpianus 33 ad sab.

Si ambo ab hostibus capti sint et qui donavit et cui donatum est, quid dicimus? et prius illud volo tractare. oratio, si ante mors contigerit ei cui donatum est, nullius momenti donationem esse voluit: ergo si ambo decesserint quid dicemus, naufragio forte vel ruina vel incendio? et si quidem possit apparere, quis ante spiritum posuit, expedita est quaestio: sin vero non appareat, difficilis quaestio est. et magis puto donationem valuisse et his ex verbis orationis defendimus: ait enim oratio " si prior vita decesserit qui donatum accepit": non videtur autem prior vita decessisse qui donatum accepit, cum simul decesserint. proinde rectissime dicetur utrasque donationes valere, si forte invicem donationibus factis simul decesserint, quia neuter alteri supervixerit, licet de commorientibus oratio non senserit: sed cum neuter alteri supervixerit, donationes mutuae valebunt: nam et circa mortis causa donationes mutuas id erat consequens dicere neutri datam condictionem: locupletes igitur heredes donationibus relinquent. secundum haec si ambo ab hostibus simul capti sint amboque ibi decesserint non simul, utrum captivitatis spectamus tempus, ut dicamus donationes valere, quasi simul decesserint? an neutram, quia vivis eis finitum est matrimonium? an spectamus, uter prius decesserit, ut in eius persona non valeat donatio? an uter rediit, ut eius valeat? mea tamen fert opinio, ubi non reverterunt, ut tempus spectandum sit captivitatis, quasi tunc defecerint: quod si alter redierit, eum videri supervixisse, quia redit.

Dig. 24.1.32.15

Ulpianus 33 ad sab.

Qui quasdam res ex his quas donaverat legasset, quasdam non, non videbitur ceteras noluisse ad uxorem pertinere: plerumque enim antea legat, postea donat: vel alia causa fuit legandi.

Dig. 24.1.32.16

Ulpianus 33 ad sab.

Oratio non solum virum et uxorem complectitur, sed etiam ceteros, qui propter matrimonium donare prohibentur: ut puta donat socer nurui vel contra, vel socer genero vel contra, vel consocer consocero qui copulatos matrimonio in potestate habent: nam ex mente orationis his quoque omnibus permissum est in eundem casum donare: et ita et papinianus libro quarto responsorum sensit: sic enim scribit: socer nurui vel genero donavit: postea filius eius vel filia constante matrimonio vita decessit: quamquam vitium donationis perseveret, tamen, si socer nullam quaestionem donationibus intulit, post mortem eius contra heredes orationis sententia videtur intervenire: nam quae ratio donationem prohibuit, eadem beneficium datum implorabit. ut igitur valeat donatio ista, papinianus exigit, ut et filius eius qui donavit ante decesserit, et socer postea durante voluntate.

Dig. 24.1.32.17

Ulpianus 33 ad sab.

Si filius familias, qui castrense peculium habet vel quasi castrense, uxori donet, filii personam et mortem spectabimus.

Dig. 24.1.32.18

Ulpianus 33 ad sab.

Si nurus socero donaverit, mortem nurus et perseverantem in supremam diem voluntatem spectare nos oportet. quod si socer ante decesserit, dicemus exstinctam donationem an, quia maritus vivit, si uxori suae supervixit, admittimus vim habere donationem? et si quidem maritus solus socero heres exstitit, quasi nova donatio potest servari in maritum collata, ut illa finita sit, alia coeperit: sin vero filius heres patri non est, finita erit donatio ratione nova.

Dig. 24.1.32.19

Ulpianus 33 ad sab.

Si socer nurui nuntium miserit, donatio erit irrita, quamvis matrimonium concordantibus viro et uxore secundum rescriptum imperatoris nostri cum patre comprobatum est: sed quod ad ipsos, inter quos donatio facta est, finitum est matrimonium.

Dig. 24.1.32.20

Ulpianus 33 ad sab.

Proinde et si duo consoceri invicem donaverint, idem erit dicendum, si invitis filiis nuntium remiserint, inter ipsos irritam esse donationem. in hac autem donatione inter soceros facta mors desideranda est eius qui donavit constante matrimonio et iure potestatis durante: idemque et in his qui sunt in eorum potestate.

Dig. 24.1.32.21

Ulpianus 33 ad sab.

Si consocer consocero donaverit et alter eorum vel uterque copulatos emancipaverit, debet dici donationem ad orationem non pertinere et ideo infirmari donationem.

Dig. 24.1.32.22

Ulpianus 33 ad sab.

Si sponsus sponsae donaverit in tempus matrimonii collata donatione, quamvis inter virum et uxorem donatio non videatur facta et verba orationis minus sufficiant, tamen donationem dicendum est ad sententiam orationis pertinere, ut, si duraverit voluntas usque ad mortem, valeat donatio.

Dig. 24.1.32.23

Ulpianus 33 ad sab.

Sive autem res fuit quae donata est sive obligatio remissa, potest dici donationem effectum habituram: ut puta uxori acceptum tulit donationis causa quod debeat: potest dici pendere acceptilationem non ipsam, sed effectum eius. et generaliter universae donationes, quas impediri diximus, ex oratione valebunt.

Dig. 24.1.32.24

Ulpianus 33 ad sab.

Si inter virum et uxorem societas donationis causa contracta sit, iure vulgato nulla est, nec post decretum senatus emolumentum ea liberalitas, ut actio pro socio constituatur, habere poterit: quae tamen in commune tenuerunt fine praestituto, revocanda non sunt. idcirco igitur pro socio actio non erit, quia nulla societas est, quae donationis causa interponitur, nec inter ceteros et propter hoc nec inter virum et uxorem.

Dig. 24.1.32.25

Ulpianus 33 ad sab.

Idem erit dicendum et si emptio contracta sit donationis causa: nam nulla erit.

Dig. 24.1.32.26

Ulpianus 33 ad sab.

Plane si minoris res venierit donationis causa vel postea pretium sit remissum, admittemus donationem valere ad senatus consultum.

Dig. 24.1.32.27

Ulpianus 33 ad sab.

Si quis sponsam habuerit, deinde eandem uxorem duxerit cum non liceret, an donationes quasi in sponsalibus factae valeant, videamus. et iulianus tractat hanc quaestionem in minore duodecim annis, si in domum quasi mariti immatura sit deducta: ait enim hanc sponsam esse, etsi uxor non sit. sed est verius, quod labeoni videtur et a nobis et a papiniano libro decimo quaestionum probatum est, ut, si quidem praecesserint sponsalia, durent, quamvis iam uxorem esse putet qui duxit, si vero non praecesserint, neque sponsalia esse, quoniam non fuerunt, neque nuptias, quod nuptiae esse non potuerunt. ideoque si sponsalia antecesserint, valet donatio: si minus, nulla est, quia non quasi ad extraneam, sed quasi ad uxorem fecit et ideo nec oratio locum habebit.

Dig. 24.1.32.28

Ulpianus 33 ad sab.

Sed si senator libertinam desponderit vel tutor pupillam vel quis alius ex his, qui matrimonium copulare prohibentur, et duxerit, an donatio quasi in sponsalibus facta valeat? et putem etiam sponsalia improbanda et quasi ab indignis ea quae donata sunt ablata fisco vindicari.

Dig. 24.1.33pr.

Ulpianus 36 ad sab.

Si stipulata fuerit mulier annuum, id ex stipulatu petere constante matrimonio non potest. sed si manente matrimonio decessisse maritus proponatur, puto, quia in annuo quoque donatio vertitur, posse dici stipulationem confirmari ex senatus consulto.

Dig. 24.1.33.1

Ulpianus 36 ad sab.

Si uxor marito annuum versa vice praestiterit, restituetur ei hoc et poterit vindicare id quod exstat: credo poterit et condicere, in quantum locupletior factus est, quia non tam sollemne est annuum, quod maritus uxori pendit et quod uxor marito praestat, immo incongruens est et contra sexus naturam.

Dig. 24.1.33.2

Ulpianus 36 ad sab.

Et si forte maritus ab uxore stipulatus sit id annuum decesseritque mulier constante matrimonio, dicendum erit ex oratione donationem convalescere.

Dig. 24.1.34

Ulpianus 43 ad sab.

Sive uxor marito res donasset isque eas in dotem pro communi filia dedisset, sive post donationem, quam in maritum contulit, uxor passa est eum pro filia in dotem dare, benigne dici potest, etsi prima donatio nullius momenti est, attamen ex sequenti consensu valere dotis dationem.

Dig. 24.1.35

Ulpianus 34 ad ed.

Si non secundum legitimam observationem divortium factum sit, donationes post tale divortium factae nullius momenti sunt, cum non videatur solutum matrimonium.

Dig. 24.1.36pr.

Paulus 36 ad ed.

Si donatae res exstant, etiam vindicari poterunt: sed quia causam possidendi donatio praestitit, nisi reddatur res, aestimatio facienda est iusto pretio caverique possidenti debebit de evictione simpli, quanti ea res sit: idque etiam pedio videtur.

Dig. 24.1.36.1

Paulus 36 ad ed.

Sponsus alienum anulum sponsae muneri misit et post nuptias pro eo suum dedit: quidam et nerva putant fieri eum mulieris, quia tunc factam donationem confirmare videtur, non novam inchoare, quam sententiam veram esse accepi.

Dig. 24.1.37

Iulianus 17 Dig.

Si mulier dolo fecerit, ne res exstaret sibi a marito donata, vel ad exhibendum vel damni iniuriae cum ea agi poterit, maxime si post divortium id commiserit.

Dig. 24.1.38pr.

Alfenus 3 Dig. a paulo epit.

Servus communis viri et fratris eius puerum donavit uxori fratris: pro qua parte is servus qui donasset viri esset, pro ea parte munus non esse factum mulieris respondit.

Dig. 24.1.38.1

Alfenus 3 Dig. a paulo epit.

Idem iuris erit, si ex tribus fratribus unus uxorem haberet et rem communem uxori donasset: nam ex tertia parte mulieris res facta non est, ex duabus autem partibus reliquis, si id scissent fratres aut posteaquam donata esset ratum habuissent, non debere mulierem reddere.

Dig. 24.1.39

Iulianus 5 ex minic.

Vir uxori pecuniam cum donare vellet, permisit ei, ut a debitore suo stipuletur: illa cum id fecisset, priusquam pecuniam auferret, divortium fecit: quaero, utrum vir eam summam petere debeat an ea promissione propter donationis causam actio nulla esset. respondi inanem fuisse eam stipulationem. sed si promissor mulieri ignorans solvisset, si quidem pecunia exstat, vindicare eam debitor potest: sed si actiones suas marito praestare paratus est, doli mali exceptione se tuebitur ideoque maritus hanc pecuniam debitoris nomine vindicando consequetur. sed si pecunia non exstat et mulier locupletior facta est, maritus eam petet: intellegitur enim ex re mariti locupletior facta esse mulier, quoniam debitor doli mali exceptione se tueri potest.

Dig. 24.1.40

Ulpianus 2 resp.

Quod apiscendae dignitatis gratia ab uxore in maritum collatum est, eatenus ratum est, quatenus dignitati supplendae opus est:

Dig. 24.1.41

Licinius 6 reg.

Nam et imperator antoninus constituit, ut ad processus viri uxor ei donare possit.

Dig. 24.1.42

Gaius 11 ad ed. provinc.

Nuper ex indulgentia principis antonini recepta est alia causa donationis, quam dicimus honoris causa: ut ecce si uxor viro lati clavii ^ clavi^ petenti gratia donet vel ut equestris ordinis fiat vel ludorum gratia.

Dig. 24.1.43

Paulus l.S. reg.

Inter virum et uxorem exilii causa donatio fieri potest.

Dig. 24.1.44

Nerva 5 membr.

Si extraneus rem viri ignorans eius esse ignoranti uxori, ac ne viro quidem sciente eam suam esse, donaverit, mulier recte eam usucapiet. idemque iuris erit, si is, qui in potestate viri erat, credens se patrem familias esse uxori patris donaverit. sed si vir rescierit suam rem esse, priusquam usucapiatur, vindicareque eam poterit nec volet et hoc et mulier noverit, interrumpetur possessio, quia transiit in causam ab eo factae donationis. ipsius mulieris scientia propius est, ut nullum adquisitioni dominii eius adferat impedimentum: non enim omnimodo uxores ex bonis virorum, sed ex causa donationis ab ipsis factae adquirere prohibitae sunt.

Dig. 24.1.45

Ulpianus 17 ad ed.

Marcellus libro septimo digestorum scribit etiam eum detrahere sine mulieris damno et citra metum senatus consulti, quod detrahentibus negotiationis causa occurrit.

Dig. 24.1.46

Ulpianus 72 ad ed.

Inter virum et uxorem nec possessionis ulla donatio est.

Dig. 24.1.47

Celsus 1 Dig.

Utrum negotium uxoris gerens an officio mariti ductus in rem eius impenderit vir, facti, non iuris est quaestio: coniectura eius rei ex modo et ex genere impensae non difficilis est.

Dig. 24.1.48

Celsus 9 Dig.

Quae iam nuptae maritus donavit, viri manent et potest ea vindicare: nec quicquam refert, quod ampla legata ab uxore ei relicta sunt.

Dig. 24.1.49

Marcellus 7 Dig.

Sulpicius Marcello. mulier, quae ad communem filium volebat, qui in potestate patris erat, post mortem patris fundum pervenire, eum patri tradidit, uti post mortem restituatur filio. quaero, an donatio tibi videatur, ut nihil agatur, an valeat quidem, sed mulieri potestas datur, si noluerit, eum repetere respondit: si color vel titulus, ut sic dixerim, donationi quaesitus est, nihil valebit traditio, idem si hoc exigit uxor, ut aliquid ex ea re interim commodi sentiret maritus: alioquin si solo eius ministerio usa est et id egit, ut vel revocare sibi liceret vel ut res cum omni emolumento per patrem postea ad filium transiret, cur non idem perinde sit ratum ac si cum extraneo tale negotium contraxisset, hoc est extraneo in hanc causam tradidisset?

Dig. 24.1.50pr.

Iavolenus 13 epist.

Si, cum mulier viginti servum emisset, in eam emptionem vir quinque venditori dedit, divortio facto omnimodo vir eam summam exiget neque ad rem pertinet, an is servus deterior factus sit: nam et si mortuus esset, quinque exactio ei competeret. quaeritur enim, an mulier ex viri patrimonio locupletior sit eo tempore, quo de dote agebatur: facta autem intellegitur, quae aere alieno suo interventu viri liberata est, quod potuisset adhuc debere, si vir pecuniam non solvisset: neque enim interest, ex qua causa mulier pecuniam debuit, utrum creditam an eam quam ex emptione praestare debeat.

Dig. 24.1.50.1

Iavolenus 13 epist.

Quod si mulier non emerat servum, sed ut emeret, a viro pecuniam accepit, tum vel mortuo vel deteriore facto servo damnum ad virum pertinebit: quia quod aliter emptura non fuit, nisi pecuniam a viro accepisset, hoc consumptum ei perit qui donavit, si modo in rerum natura esse desiit: nec videtur mulier locupletior esse, quae neque a creditore suo liberata est neque id possidet quod ex pecunia viri emerat.

Dig. 24.1.51

Pomponius 5 ad q. muc.

Quintus mucius ait, cum in controversiam venit, unde ad mulierem quid pervenerit, et verius et honestius est quod non demonstratur unde habeat existimari a viro aut qui in potestate eius esset ad eam pervenisse. evitandi autem turpis quaestus gratia circa uxorem hoc videtur quintus mucius probasse.

Dig. 24.1.52pr.

Papinianus 10 quaest.

Si vir uxori donationis causa rem vilius locaverit, locatio nulla est: cum autem depositum inter eas personas minoris donationis causa aestimatur, depositum est. haec ideo tam varie, quia locatio quidem sine mercede certa contrahi non potest, depositum autem et citra aestimationem quoque dari potest.

Dig. 24.1.52.1

Papinianus 10 quaest.

Uxor viro fructum fundi ab herede suo dari, quod si datus non fuisset, certam pecuniam mortis causa promitti curavit: defuncto viro viva muliere stipulatio solvitur, ut traditio, quae mandante uxore mortis causa facta est: nam quo casu inter exteros condictio nascitur, inter maritos nihil agitur.

Dig. 24.1.53pr.

Papinianus 4 resp.

Mortis suae causa genero vel nurui socerum frustra donare convenit, quia mortuo socero nuptiae non solvuntur: nec interest, an pater filium vel filiam exheredaverit. divortii species eadem ratione diversa est.

Dig. 24.1.53.1

Papinianus 4 resp.

Res in dotem aestimatas consentiente viro mulier in usu habuit: usu deteriores si fiant, damni compensatio non admittitur. easdem res non potest mulier sibi quasi donatas defendere ex illis verbis, quibus donationes ei a viro legatae sunt, cum eiusmodi species neque donari neque auferri videntur.

Dig. 24.1.54

Papinianus 8 resp.

Vir usuras promissae dotis in stipulatum deduxerat easque non petierat: cum per omne tempus matrimonii sumptibus suis uxorem et eius familiam vir exhiberet, dote praelegata, sed et donationibus verbis fideicommissi confirmatis legato quidem dotis usuras non contineri videbatur, sed titulo donationis remissas.

Dig. 24.1.55

Paulus 6 quaest.

Uxor marito suo pecuniam donavit: maritus ex pecunia sibi donata aut mobilem aut soli rem comparavit: solvendo non est et res extant: quaero, si mulier revocet donationem, an utiliter condicticia experiatur? videtur enim maritus, quamvis solvendo non sit, ex donatione locupletior effectus, cum pecunia mulieris comparata exstet. respondi: locupletiorem esse ex donatione negari non potest: non enim quaerimus, quid deducto aere alieno liberum habeat, sed quid ex re mulieris possideat. solo enim separatur hic ab eo, cui res donata est, quod ibi res mulieris permanet et vindicare ^ vindicari^ directo potest: et erit deterior causa viri, si ei pecunia quatenus res valet, non ultra id tamen quod donatum est, condicatur, quam si dotis iudicio conveniatur. sed nihil prohibet etiam in rem utilem mulieri in ipsas res accommodare.

Dig. 24.1.56

Scaevola 3 quaest.

Si quod mihi mortis causa donare vellet, ego pure uxori donare vellem, non valet quod uxori iubeo dari, quia illo convalescente condictione teneor, mortuo autem nihilo minus pauperior sum: non enim habeo quod habiturus essem.

Dig. 24.1.57

Paulus 7 resp.

Ea, quae a marito suo pecuniam ex causa donationis acceperat, litteras ad eum misit huiusmodi: " cum petenti mihi a te, domine carissime, adnuerit indulgentia tua viginti ad expediendas quasdam res meas, quae summa mihi numerata est sub ea condicione, ut, si per me meosque mores quid steterit, quo minus in diem vitae nostrae matrimonium permaneat, sive invito te discessero de domo tua vel repudium tibi sine ulla querella misero divortiumque factum per me probabitur, tunc viginti, quae mihi hac die donationis causa dare voluisti, daturam restituturam me sine ulla dilatione: spondeo". quaero, an, si eadem titio marito suo repudium miserit, pecuniam restituere debeat. paulus respondit pecuniam, quam vir uxori donavit, ex stipulatione proposita, si condicio eius exstitit, peti posse, quoniam ex donatione in pecuniam creditam conversa est: quod si stipulatio commissa non probetur, tunc tantum peti posse, quanto locupletior ex ea donatione facta probetur.

Dig. 24.1.58pr.

Scaevola 2 resp.

Si praedia et mancipia seiae data effecta sint eius tempore concubinatus ac postea tempore matrimonii aliis acceptis reddita sunt, quid iuris est? respondit secundum ea quae proponerentur negotium potius gestum videri, quam donationem intervenisse.

Dig. 24.1.58.1

Scaevola 2 resp.

Item cum quaereretur de cibariis mancipiorum, respondit: tempore quidem concubinatus data cibaria repeti non possunt, sed nec tempore matrimonii, si ea mancipia uxoris in communi usu fuerint.

Dig. 24.1.58.2

Scaevola 2 resp.

Filius rebus matris intervenire solitus pecunia matris consentiente ipsa mancipia et res mercatus emptionum instrumenta suo nomine confecit: decessit in patris potestate. quaesitum est, an mater cum marito suo experiri et qua actione uti possit. respondit, si mater obligatum filium in ea pecunia voluit esse, intra annum, quam filius decessit, de peculio cum patre, in cuius potestate fuisse proponatur, actionem habere: si donavit, repeti posse, quanto locupletior ex ea donatione pater factus est.

Dig. 24.1.59

Paulus 2 sent.

Si quis uxori ea condicione donavit, ut quod donavit in dotem accipiat, defuncto eo donatio convalescit.

Dig. 24.1.60pr.

Hermogenianus 2 iuris epit.

Vitricus et privignus invicem sibi donare praetexto matrimonii non prohibentur.

Dig. 24.1.60.1

Hermogenianus 2 iuris epit.

Divortii causa donationes inter virum et uxorem concessae sunt: saepe enim evenit, uti propter sacerdotium vel etiam sterilitatem.

Dig. 24.1.61

Gaius 11 ad ed. provinc.

Vel senectutem aut valetudinem aut militiam satis commode retineri matrimonium non possit:

Dig. 24.1.62pr.

Hermogenianus 2 iuris epit.

Et ideo bona gratia matrimonium dissolvitur.

Dig. 24.1.62.1

Hermogenianus 2 iuris epit.

Divortio facto nec instaurato matrimonio non confirmabitur inter virum et uxorem facta donatio: nec inter patronum et libertam, si ab eo invito divertere non licet, facta donatio speratur, cum inter hos divortium intercedat. perinde enim id quod donatum est habetur divortio intercedente ac si donatum non fuisset.

Dig. 24.1.63

Paulus 3 ad ner.

De eo, quod uxoris in aedificium viri ita coniunctum est, ut detractum alicuius usus esse possit, dicendum est agi posse, quia nulla actio est, ex lege duodecim tabularum, quamvis decemviros non sit credibile de his sensisse, quorum voluntate res eorum in alienum aedificium coniunctae essent. paulus notat: sed in hoc solum agi potest, ut sola vindicatio soluta re competat mulieri, non in duplum ex lege duodecim tabularum: neque enim furtivum est, quod sciente domino inclusum est.

Dig. 24.1.64

Iavolenus 6 ex post. lab.

Vir mulieri divortio facto quaedam idcirco dederat, ut ad se reverteretur: mulier reversa erat, deinde divortium fecerat. labeo: trebatius inter terentiam et maecenatem respondit si verum divortium fuisset, ratam esse donationem, si simulatum, contra. sed verum est, quod proculus et caecilius putant, tunc verum esse divortium et valere donationem divortii causa factam, si aliae nuptiae insecutae sunt aut tam longo tempore vidua fuisset, ut dubium non foret alterum esse matrimonium: alias nec donationem ullius esse momenti futuram.

Dig. 24.1.65

Labeo 6 post. a iav. epit.

Quod vir ei, quae nondum viripotens nupserit, donaverit, ratum futurum existimo.

Dig. 24.1.66pr.

Scaevola 9 Dig.

Seia sempronio cum certa die nuptura esset, antequam domum deduceretur tabulaeque dotis signarentur, donavit tot aureos: quaero, an ea donatio rata sit. non attinuisse tempus, an antequam domum deduceretur, donatio facta esset, aut tabularum consignatarum, quae plerumque et post contractum matrimonium fierent, in quaerendo exprimi: itaque nisi ante matrimonium contractum, quod consensu intellegitur, donatio facta esset, non valere.

Dig. 24.1.66.1

Scaevola 9 Dig.

Virgini in hortos deductae ante diem tertium quam ibi nuptiae fierent, cum in separata diaeta ab eo esset, die nuptiarum, priusquam ad eum transiret et priusquam aqua et igni acciperetur, id est nuptiae celebrentur, optulit decem aureos dono: quaesitum est, post nuptias contractas divortio facto an summa donata repeti possit. respondit id, quod ante nuptias donatum proponeretur, non posse de dote deduci.

Dig. 24.1.67

Labeo 2 pith. a paulo epit.

Si uxor nummis a viro aut ab eo qui in eius potestate esset sibi donatis servum emerit, deinde, cum eius factus fuerit, eum ipsum donationis causa viro tradiderit, rata erit traditio, quamvis ea mente facta fuerit qua ceterae donationes, neque ulla actio eius nomine dari potest.

Dig. 24.2.0. De divortiis et repudiis.

Dig. 24.2.1

Paulus 35 ad ed.

Dirimitur matrimonium divortio morte captivitate vel alia contingente servitute utrius eorum.

Dig. 24.2.2pr.

Gaius 11 ad ed. provinc.

Divortium autem vel a diversitate mentium dictum est vel quia in diversas partes eunt, qui distrahunt matrimonium.

Dig. 24.2.2.1

Gaius 11 ad ed. provinc.

In repudiis autem, id est renuntiatione comprobata sunt haec verba: " tuas res tibi habeto", item haec: " tuas res tibi agito"

Dig. 24.2.2.2

Gaius 11 ad ed. provinc.

In sponsalibus quoque discutiendis placuit renuntiationem intervenire oportere: in qua re haec verba probata sunt: " condicione tua non utor".

Dig. 24.2.2.3

Gaius 11 ad ed. provinc.

Sive autem ipsi praesenti renuntietur sive absenti per eum, qui in potestate eius sit cuiusve is eave in potestate sit, nihil interest.

Dig. 24.2.3

Paulus 35 ad ed.

Divortium non est nisi verum, quod animo perpetuam constituendi dissensionem fit. itaque quidquid in calore iracundiae vel fit vel dicitur, non prius ratum est, quam si perseverantia apparuit iudicium animi fuisse: ideoque per calorem misso repudio si brevi reversa uxor est, nec divortisse videtur.

Dig. 24.2.4

Ulpianus 26 ad sab.

Iulianus libro octavo decimo digestorum quaerit, an furiosa repudium mittere vel repudiari possit. et scribit furiosam repudiari posse, quia ignorantis loco habetur: repudiare autem non posse neque ipsam propter dementiam neque curatorem eius, patrem tamen eius nuntium mittere posse. quod non tractaret de repudio, nisi constaret retineri matrimonium: quae sententia mihi videtur vera.

Dig. 24.2.5

Ulpianus 34 ad ed.

Si filia emancipata idcirco diverterat, ut maritum lucro dotis adficiat, patrem fraudet, qui profecticiam dotem potuit petere, si constante matrimonio decessisset, ideo patri succurrendum est, ne dotem perdat: non enim minus patri quam marito succurrere praetorem oportet. danda igitur est ei dotis exactio, atque si constante matrimonio decessisset filia.

Dig. 24.2.6

Iulianus 62 Dig.

Uxores eorum, qui in hostium potestate pervenerunt, possunt videri nuptarum locum retinere eo solo, quod alii temere nubere non possunt. et generaliter definiendum est, donec certum est maritum vivere in captivitate constitutum, nullam habere licentiam uxores eorum migrare ad aliud matrimonium, nisi mallent ipsae mulieres causam repudii praestare. sin autem in incerto est, an vivus apud hostes teneatur vel morte praeventus, tunc, si quinquennium a tempore captivitatis excesserit, licentiam habet mulier ad alias migrare nuptias, ita tamen, ut bona gratia dissolutum videatur pristinum matrimonium et unusquisque suum ius habeat imminutum: eodem iure et in marito in civitate degente et uxore captiva observando.

Dig. 24.2.7

Papinianus 1 de adult.

Si paenituit eum, qui libellum tradendum divortii dedit, isque per ignorantiam mutatae voluntatis oblatus est, durare matrimonium dicendum, nisi paenitentia cognita is qui accepit ipse voluit matrimonium dissolvere: tunc enim per eum qui accepit solvitur matrimonium.

Dig. 24.2.8

Papinianus 2 de adult.

Divus hadrianus eum, qui alienam uxorem ex itinere domum suam duxisset et inde marito eius repudium misisset, in triennium relegavit.

Dig. 24.2.9

Paulus 2 de adult.

Nullum divortium ratum est nisi septem civibus romanis puberibus adhibitis praeter libertum eius qui divortium faciet. libertum accipiemus etiam eum, qui a patre avo proavo et ceteris susum versum manumissus sit.

Dig. 24.2.10

Modestinus 1 reg.

Patrono invito liberta, quam in matrimonio habuit, ab eo discedere non potest, nisi ex causa fideicommissi manumissa sit: tunc enim potest, licet eius fit liberta.

Dig. 24.2.11pr.

Ulpianus 3 ad l. iul. et pap.

Quod ait lex: " divortii faciendi potestas libertae, quae nupta est patrono, ne esto", non infectum videtur effecisse divortium, quod iure civili dissolvere solet matrimonium. quare constare matrimonium dicere non possumus, cum sit separatum. denique scribit iulianus de dote hanc actionem non habere. merito igitur, quamdiu patronus eius eam uxorem suam esse vult, cum nullo alio conubium ei est nam quia intellexit legis lator facto libertae quasi diremptum matrimonium, detraxit ei cum alio conubium. quare cuicumque nupserit, pro non nupta habebitur. iulianus quidem amplius putat nec in concubinatu eam alterius patroni esse posse.

Dig. 24.2.11.1

Ulpianus 3 ad l. iul. et pap.

Ait lex: " quamdiu patronus eam uxorem esse volet". et velle debet uxorem esse et patronus durare: si igitur aut patronus esse aut velle desierit, finita est legis auctoritas.

Dig. 24.2.11.2

Ulpianus 3 ad l. iul. et pap.

Illud rectissime placuit, qualiquali voluntate intellegi possit patronus animum habere desisse quasi in uxorem, finiri legis huius beneficium. proinde cum patronus rerum amotarum cum liberta, quae ab invito eo divorterat, vellet experiri, imperator noster cum divo patre suo rescripsit intellegi eum hoc ipso nolle nuptam sibi, qui eam actionem vel aliam importet, quae non solet nisi ex divortio oriri. quare si accusare eam adulterii coeperit vel alio crimine postulare, quod uxori nemo obicit, magis est, ut diremptum sit matrimonium: etenim meminisse oportet ideo adimi cum alio conubium, quia patronus sibi nuptam cupit. ubicumque igitur vel tenuis intellectus videri potest nolentis nuptam, dicendum est iam incipere libertae cum alio esse conubium. proinde si patronus sibi desponderit aliam vel destinaverit vel matrimonium alterius appetierit, credendus est nolle hanc nuptam: et si concubinam sibi adhibuerit, idem erit probandum.

Dig. 24.3.0. Soluto matrimonio dos quemadmodum petatur.

Dig. 24.3.1

Pomponius 15 ad sab.

Dotium causa semper et ubique praecipua est: nam et publice interest dotes mulieribus conservari, cum dotatas esse feminas ad subolem procreandam replendamque liberis civitatem maxime sit necessarium.

Dig. 24.3.2pr.

Ulpianus 35 ad sab.

Soluto matrimonio solvi mulieri dos debet. nec cogitur maritus alii eam ab initio stipulanti promittere, nisi hoc ei nihil nocet: nam si incommodum aliquod maritus suspectum habet, non debere eum cogi alii quam uxori promittere dicendum est. haec si sui iuris mulier est.

Dig. 24.3.2.1

Ulpianus 35 ad sab.

Quod si in patris potestate est et dos ab eo profecta sit, ipsius et filiae dos est: denique pater non aliter quam ex voluntate filiae petere dotem nec per se nec per procuratorem potest. sic ergo et promittendum sabinus ait. ei ergo promittendum erit, cui uterque iusserit. ceterum si pater solus iussit, dotis actio filiae non erit adempta, quandoque sui iuris filia fuerit facta. item si voluntate solius filiae promittatur, remanebit dotis actio integra patri: sed utrum ut et agat solus an et ut adiuncta quoque filiae persona experiri possit? et puto nec eam actionem amissam, quam adiuncta filiae persona potest habere. quod si sui iuris fuerit facta filia, nocebit ei ista stipulatio.

Dig. 24.3.2.2

Ulpianus 35 ad sab.

Voluntatem autem filiae, cum pater agit de dote, utrum sic accipimus, ut consentiat an vero ne contradicat filia? et est ab imperatore antonino rescriptum filiam, nisi evidenter contradicat, videri consentire patri. et iulianus libro quadragesimo octavo digestorum scripsit quasi ex voluntate filiae videri experiri patrem, si furiosam filiam habeat: nam ubi non potest per dementiam contradicere, consentire quis eam merito credet. sed si absens filia sit, dicendum erit non ex voluntate eius id factum cavendumque ratam rem filiam habituram a patre: ubi enim sapit, scire eam exigimus, ut videatur non contradicere.

Dig. 24.3.3

Paulus 7 ad sab.

Non solum autem in exigenda, sed etiam in solvenda dote, quae communis est patris et filiae, utriusque voluntas exquiritur nec alter alterius deteriorem condicionem facere potest. sed si pecunia ad patrem pervenit, quam filia accepit, actio de dote utrisque tolletur.

Dig. 24.3.4

Pomponius 15 ad sab.

Si pater sine consensu filiae dotem a viro exegisset et eandem alii viro eius filiae nomine dedisset et mortuo patre filia cum priore viro ageret, doli mali exceptione repellitur.

Dig. 24.3.5

Ulpianus 30 ad sab.

De divisione anni eius, quo divortium factum est, quaeritur, ex die matrimonii an ex die traditi marito fundi maritus sibi computet tempus. et utique in fructibus a viro retinendis neque dies dotis constitutae neque nuptiarum observabitur, sed quo primum dotale praedium constitutum est id est tradita possessione.

Dig. 24.3.6

Paulus 7 ad sab.

Si ante nuptias fundus traditus est, ex die nuptiarum ad eundem diem sequentis anni computandus annus est: idem in ceteris annis servatur, donec divortium fiat. nam si ante nuptias traditus sit et fructus inde percepti, hi restituendi sunt quandoque divortio facto quasi dotis facti.

Dig. 24.3.7pr.

Ulpianus 31 ad sab.

Fructus eos esse constat, qui deducta impensa supererunt: quod scaevola et ad mariti et ad mulieris impensas refert. nam si mulier pridie vindemias doti dedit, mox sublatis a marito vindemiis divortit, non putat ei undecim dumtaxat mensum fructus restitui, sed et impensas, quae, antequam portiones fructuum fiant, deducendae sunt: igitur, si et maritus aliquid impendit in eundem annum, utriusque impensae concurrent. ita et, si impensarum a muliere factarum ratio habeatur, cum plurimis annis in matrimonio fuit, necesse est primi anni computari temporis quod sit ante datum praedium.

Dig. 24.3.7.1

Ulpianus 31 ad sab.

Papinianus autem libro undecimo quaestionum divortio facto fructus dividi ait non ex die locationis, sed habita ratione praecedentis temporis, quo mulier in matrimonio fuit: neque enim, si vindemiae tempore fundus in dotem datus sit eumque vir ex calendis novembribus primis fruendum locaverit, mensis ianuarii suprema die facto divortio, retinere virum et vindemiae fructus et eius anni, quo divortium factum est, quartam partem mercedis aequum est: alioquin si coactis vindemiis altera die divortium intercedat, fructus integros retinebit. itaque si fine mensis ianuarii divortium fiat et quattuor mensibus matrimonium steterit, vindemiae fructus et quarta portio mercedis instantis anni confundi debebunt, ut ex ea pecunia tertia portio viro relinquatur.

Dig. 24.3.7.2

Ulpianus 31 ad sab.

E contrario quoque idem observandum est: nam si mulier percepta vindemia statim fundum viro in dotem dederit et vir ex calendis martiis eundem locaverit et calendis aprilibus primis divortium fuerit secutum, non solum partem duodecimam mercedis, sed pro modo temporis omnium mensum, quo dotale praedium fuit, ex mercede quae debebitur portionem retinebit.

Dig. 24.3.7.3

Ulpianus 31 ad sab.

Item si messes eius anni, quo divortium factum est, colonum ex forma locationis sequantur, ante vindemiam soluto matrimonio nihilo minus pecunia messium in computationem cum spe futurae vindemiae veniet.

Dig. 24.3.7.4

Ulpianus 31 ad sab.

Apparet igitur ex his illos fructus, quos mulier percepit antequam nuberet, non debere in contributionem venire.

Dig. 24.3.7.5

Ulpianus 31 ad sab.

Ob donationes, item ob res amotas ex his fructibus, qui post divortium percepti sunt, compensationes fieri possunt.

Dig. 24.3.7.6

Ulpianus 31 ad sab.

Quod in anno dicitur, potest dici et in sex mensibus, si bis in anno fructus capientur, ut est in locis inriguis.

Dig. 24.3.7.7

Ulpianus 31 ad sab.

Et in pluribus annis idem dici potest, ut in silva caedua.

Dig. 24.3.7.8

Ulpianus 31 ad sab.

Item si locatio agri talis sit, ut super annuam mercedem quinquennio quoque aliquid amplius praestaretur: in eo enim quod amplius est tempus ad quinquennium computamus.

Dig. 24.3.7.9

Ulpianus 31 ad sab.

Non solum autem de fundo, sed etiam de pecore idem dicemus, ut lana ovium fetusque pecorum praestaretur. quare enim, si maritus prope partum oves doti acceperit, item proximas tonsurae, post partum et tonsas oves protinus divortio facto nihil reddat? nam et hic fructus toto tempore quo curantur, non quo percipiuntur, rationem accipere debemus.

Dig. 24.3.7.10

Ulpianus 31 ad sab.

In servo quoque anni ratio habetur, si in annum forte operae eius locatae sunt, ut praeteriti temporis ad maritum, post divortium autem ad mulierem operae pertineant.

Dig. 24.3.7.11

Ulpianus 31 ad sab.

De pensionibus quoque praediorum urbanorum idem est quod in fructibus rusticorum.

Dig. 24.3.7.12

Ulpianus 31 ad sab.

Si fundum viro uxor in dotem dederit isque inde arbores deciderit, si hae fructus intelleguntur, pro portione anni debent restitui (puto autem, si arbores caeduae fuerunt vel gremiales, dici oportet in fructu cedere), si minus, quasi deteriorem fundum fecerit, maritus tenebitur. sed et si vi tempestatis ceciderunt, dici oportet pretium earum restituendum mulieri nec in fructum cedere non magis, quam si thensaurus fuerit inventus: in fructum enim non computabitur, sed pars eius dimidia restituetur quasi in alieno inventi.

Dig. 24.3.7.13

Ulpianus 31 ad sab.

Si vir in fundo mulieris dotali lapidicinas marmoreas invenerit et fundum fructuosiorem fecerit, marmor, quod caesum neque exportatum est, mariti et impensa non est ei praestanda, quia nec in fructu est marmor: nisi tale sit, ut lapis ibi renascatur, quales sunt in gallia, sunt et in asia.

Dig. 24.3.7.14

Ulpianus 31 ad sab.

Sed si cretifodinae, argentifodinae vel auri vel cuius alterius materiae sint vel harenae, utique in fructu habebuntur.

Dig. 24.3.7.15

Ulpianus 31 ad sab.

Interdum marito de fructibus a muliere cavetur et nihil retinet, si fructibus stantibus fundum mulier recipiet: interdum retinebit tantum maritus et nihil restituet, id est si non plus erit, quam pro portione eum retinere oportet: interdum vero et reddet, si plus percepit quam eum retinere oportet. eadem condicio erit etiam, si cum socero vel cum herede alterutrius de dote agatur.

Dig. 24.3.7.16

Ulpianus 31 ad sab.

Impendi autem fructuum percipiendorum pomponius ait, quod in arando serendoque agro impensum est, quodque in tutelam aedificiorum aegrumve servum curandum, scilicet si ex aedificio vel servo fructus aliqui percipiebantur. sed hae impensae non petentur, cum maritus fructum totum anni retinet, quia ex fructibus prius impensis satisfaciendum est. plane si novam villam necessario exstruxit vel veterem totam sine culpa sua collapsam restituerit, erit eius impensae petitio: simili modo et si pastina instituit. hae enim impensae aut in res necessarias aut utiles cedunt pariuntque marito actionem.

Dig. 24.3.8pr.

Paulus 7 ad sab.

Si fundus in dotem datus sit, in quo lapis caeditur, lapidicinarum commodum ad maritum pertinere constat, quia palam sit eo animo dedisse mulierem fundum, ut iste fructus ad maritum pertineat, nisi si contrariam voluntatem in dote danda declaraverit mulier.

Dig. 24.3.8.1

Paulus 7 ad sab.

Quod in sementem erogatur, si non responderint messes, ex vindemia deducetur, quia totius anni unus fructus est.

Dig. 24.3.9

Pomponius 10 ad sab.

Si mora per mulierem fuit, quo minus dotem reciperet, dolum malum dumtaxat in ea re, non etiam culpam maritus praestare debet, ne facto mulieris in perpetuum agrum eius colere cogatur: fructus tamen, qui pervenissent ad virum, redduntur.

Dig. 24.3.10pr.

Pomponius 15 ad sab.

Si ab hostibus capta filia, quae nupta erat et dotem a patre profectam habebat, ibi decesserit, puto dicendum perinde observanda omnia ac si nupta decessisset, ut, etiamsi in potestate non fuerit patris, dos ab eo profecta reverti ad eum debeat.

Dig. 24.3.10.1

Pomponius 15 ad sab.

Si vir uxorem suam occiderit, dotis actionem heredibus uxoris dandam esse proculus ait, et recte: non enim aequum est virum ob facinus suum dotem sperare lucrifacere. idemque et e contrario statuendum est.

Dig. 24.3.11

Pomponius 16 ad sab.

Si alienam rem sciens mulier in dotem dederit, reddenda ei est, quasi suam dedisset, et fructus pro portione anni, quo divortium factum est.

Dig. 24.3.12

Ulpianus 36 ad sab.

Maritum in id quod facere potest condemnari exploratum est: sed hoc heredi non esse praestandum,

Dig. 24.3.13

Paulus 7 ad sab.

Quia tale beneficium personale est et cum persona exstinguitur.

Dig. 24.3.14pr.

Ulpianus 36 ad sab.

Alia causa est defensoris, quem placet sufficienter videri defendisse, si tantum uxori praestet, quantum consequeretur, si ipsum maritum convenisset.

Dig. 24.3.14.1

Ulpianus 36 ad sab.

Eleganter quaerit pomponius libro quinto decimo ex sabino, si paciscatur maritus, ne in id quod facere possit condemnetur, sed in solidum, an hoc pactum servandum sit? et negat servari oportere, quod quidem et mihi videtur verum: namque contra bonos mores id pactum esse melius est dicere, quippe cum contra receptam reverentiam, quae maritis exhibenda est, id esse apparet.

Dig. 24.3.15pr.

Paulus 7 ad sab.

Rei iudicatae tempus spectatur, quatenus maritus facere potest.

Dig. 24.3.15.1

Paulus 7 ad sab.

Heredi mariti, licet in solidum condemnetur, compensationes tamen, quae ad pecuniariam causam respiciunt, proderunt, ut hoc minus sit obligatus, veluti ob res donatas et amotas et impensas: morum vero coercitionem non habet.

Dig. 24.3.15.2

Paulus 7 ad sab.

Socero quoque, cum quo nurus de dote agit, idem honor habetur, ut in id damnetur quod facere potest,

Dig. 24.3.16

Pomponius 16 ad sab.

Quia parentis locum socer optinet.

Dig. 24.3.17pr.

Paulus 7 ad sab.

Ex diverso si socer ex promissione a marito conveniatur, solet quaeri, an idem ei honor habendus sit: neratius libris membranarum et proculus scribunt hoc iustum esse.

Dig. 24.3.17.1

Paulus 7 ad sab.

Item si mulier ex promissione conveniatur, magis placuit defendendam eam per exceptionem: idem et proculus ait: sicuti cum socia fuit, dabitur ei exceptio, quamvis iure civili sit obligata.

Dig. 24.3.17.2

Paulus 7 ad sab.

Si in iudicio dotis iudex ignorantia iuris lapsus condemnaverit maritum in solidum, neratius sabinus doli exceptione eum uti oportere aiunt eaque tutum fore.

Dig. 24.3.18pr.

Pomponius 16 ad sab.

Etiam filios mulieris, qui patri heredes exstiterunt, in id quod facere possunt condemnandos labeo ait.

Dig. 24.3.18.1

Pomponius 16 ad sab.

Licet in dotalibus rebus non solum dolum, sed et culpam maritus praestet, cum tamen quaeritur in iudicio de dote an facere possit, dolus dumtaxat comprehenditur, quia in rerum ipsius administratione non erat ab eo culpa exigenda. quamquam eum dumtaxat dolum ei nocere putem, si facere non possit, quem propter uxorem adhibuit, ne ei solidum solveret, non propter quemlibet alium. ofilius autem aiebat, si dolo mariti res dotalis interisset et alioquin solvendo non esset, quamvis nihil dolo fecisset, quo minus solvendo esset, perinde tamen eum damnandum eius rei dotalis nomine in qua dolum fecisset, atque si dolo eius factum esset, quo minus facere possit. ceterum si circa interitum rei dotalis dolus malus et culpa mariti absit, actiones solas, quas eo nomine quasi maritus habet, praestandas mulieri, veluti furti vel damni iniuriae.

Dig. 24.3.19

Ulpianus 36 ad sab.

Si mulier diverterit et iudicio de dote contestato reversa fuerit in matrimonium, redintegrato matrimonio exspirat iudicium et omnia in statu pristino manent.

Dig. 24.3.20

Paulus 7 ad sab.

Quamvis mulier non in hoc accipiat constante matrimonio dotem, ut aes alienum solvat aut praedia idonea emat, sed ut liberis ex alio viro egentibus aut fratribus aut parentibus consuleret vel ut eos ex hostibus redimeret, quia iusta et honesta causa est, non videtur male accipere et ideo recte ei solvitur: idque et in filia familias observatur.

Dig. 24.3.21

Ulpianus 3 disp.

Sed et si ideo maritus ex dote expendit, ut a latronibus redimeret necessarias mulieri personas vel ut mulier vinculis vindicet de necessariis suis aliquem, reputatur ei id quod expensum est sive pars dotis sit, pro ea parte, sive tota dos sit, actio dotis evanescit. et multo magis idem dicendum est, si socer agat de dote, debere rationem haberi eius quod in ipsum impensum est, sive ipse maritus hoc fecit sive filiae ut faciat dedit: sed et si non pater experiretur, sed post mortem eius filia sola de dote ageret, idem erit dicendum: cum enim doli exceptio insit de dote actioni ut in ceteris bonae fidei iudiciis, potest dici, ut et celso videtur, inesse hunc sumptum actioni de dote, maxime si ex voluntate filiae factus sit.

Dig. 24.3.22pr.

Ulpianus 33 ad ed.

Si, cum dotem daret pater vel extraneus pro muliere, in unum casum pepigit, vel in divortium vel in mortem, dicendum est eum in casum, in quem non pepigit, esse mulieri actionem.

Dig. 24.3.22.1

Ulpianus 33 ad ed.

Si post solutum matrimonium filia familias citra patris voluntatem exactam communem dotem consumat, patri et viva ea et mortua actio superest, ut dos ipsi solvatur. quod ita verum est, si perditurae solvatur: ceterum si non perditurae et ex iustis causis soluta sit, non supererit actio. sed mortuo patre nec etiam heredes agent nec mulier.

Dig. 24.3.22.2

Ulpianus 33 ad ed.

Si mulier soluto matrimonio egentem reum dotis per novationem decepta accipiat, nihilo minus actio dotis ei manebit.

Dig. 24.3.22.3

Ulpianus 33 ad ed.

Si pater filia absente de dote egerit, etsi omissa sit de rato satisdatio, filiae denegari debet actio, sive patri heres exstiterit, sive in legato tantum acceperit, quantum dotis satis esset. et ita iulianus pluribus locis scribit compensandum ei in dotem quod a patre datur lucroque eius cedit, si tantum ab eo consecuta sit, quantum ei dotis nomine debeatur a marito qui patri solvit.

Dig. 24.3.22.4

Ulpianus 33 ad ed.

Si patri propter condemnationem romae, ubi dos petatur, esse non liceat, filiae satis dotis fieri oportet, ita tamen, ut caveat ratam rem patrem habiturum.

Dig. 24.3.22.5

Ulpianus 33 ad ed.

Eo autem tempore consentire filiam patri oportet, quo lis contestatur. secundum haec si filia dicat se patri consentire et ante litis contestationem mutaverit voluntatem vel etiam emancipata sit, frustra pater aget.

Dig. 24.3.22.6

Ulpianus 33 ad ed.

Nec non illud quoque probamus, quod labeo probat, nonnumquam patri denegandam actionem, si tam turpis persona patris sit, ut verendum sit, ne acceptam dotem consumat: ideoque officium iudicis interponendum est, quatenus et filiae et patri competenter consuletur. sed si latitet filia, ne tali patri consentire cogatur, puto dari quidem patri actionem, sed causa cognita. quid enim, si filia verecunde per absentiam patri contradicat? cur non dicamus patri non esse dandam actionem? quod si is pater sit, cui omnimodo consentire filiam decet, hoc est vitae probatae, filia levis mulier vel admodum iuvenis vel nimia circa maritum non merentem, dicendum est patri potius adquiescere praetorem oportere dareque ei actionem.

Dig. 24.3.22.7

Ulpianus 33 ad ed.

Si maritus vel uxor constante matrimonio furere coeperint, quid faciendum sit, tractamus. et illud quidem dubio procul observatur eam personam, quae furore detenta est, quia sensum non habet, nuntium mittere non posse. an autem illa repudianda est, considerandum est. et si quidem intervallum furor habeat vel perpetuus quidem morbus est, tamen ferendus his qui circa eam sunt, tunc nullo modo oportet dirimi matrimonium, sciente ea persona, quae, cum compos mentis esset, ita furenti quemadmodum diximus nuntium miserit, culpa sua nuptias esse diremptas: quid enim tam humanum est, quam ut fortuitis casibus mulieris maritum vel uxorem viri participem esse? sin autem tantus furor est, ita ferox, ita perniciosus, ut sanitatis nulla spes supersit, circa ministros terribilis, et forsitan altera persona vel propter saevitiam furoris vel, quia liberos non habet, procreandae subolis cupidine tenta est: licentia erit compoti mentis personae furenti nuntium mittere, ut nullius culpa videatur esse matrimonium dissolutum neque in damnum alterutra pars incidat.

Dig. 24.3.22.8

Ulpianus 33 ad ed.

Sin autem in saevissimo furore muliere constituta maritus dirimere quidem matrimonium calliditate non vult, spernit autem infelicitatem uxoris et non ad eam flectitur nullamque ei competentem curam inferre manifestissimus est, sed abutitur dotem: tunc licentiam habeat vel curator furiosae vel cognati adire iudicem competentem, quatenus necessitas imponatur marito omnem talem mulieris sustentationem sufferre et alimenta praestare et medicinae eius succurrere et nihil praetermittere eorum, quae maritum uxori adferre decet secundum dotis quantitatem. sin vero dotem ita dissipaturus ita manifestus est, ut non hominem frugi oportet, tunc dotem sequestrari, quatenus ex ea mulier competens habeat solacium una cum sua familia, pactis videlicet dotalibus, quae inter eos ab initio nuptiarum inita fuerint, in suo statu durantibus et alterius exspectantibus sanitatem et mortis eventum.

Dig. 24.3.22.9

Ulpianus 33 ad ed.

Item pater furiosae utiliter intendere sibi filiaeve suae reddi dotem potest: quamvis enim furiosa nuntium mittere non possit, patrem tamen eius posse certum est.

Dig. 24.3.22.10

Ulpianus 33 ad ed.

Si soluto matrimonio pater furiosus sit, curator eius voluntate filiae dotem petere poterit: aut si curatoris copia non sit, agere filiae permittendum erit caverique oportebit de rato.

Dig. 24.3.22.11

Ulpianus 33 ad ed.

Idem decernendum est et si ab hostibus captus sit pater, puellae dandam actionem de dote repetenda.

Dig. 24.3.22.12

Ulpianus 33 ad ed.

Transgrediamur nunc ad hunc articulum, ut quaeramus, adversus quos competit de dote actio. et adversus ipsum maritum competere palam est, sive ipsi dos data sit sive alii ex voluntate mariti vel subiecto iuri eius vel non subiecto. sed si filius familias sit maritus et dos socero data sit, adversus socerum agetur. plane si filio data sit, si quidem iussu soceri, adhuc absolute socer tenebitur: quod si filio data sit non iussu patris, sabinus et cassius responderunt nihilo minus cum patre agi oportere: videri enim ad eum pervenisse dotem, penes quem est peculium: sufficit autem ad id damnandum quod est in peculio vel si quid in rem patris versum est. sin autem socero dotem dederit, cum marito non poterit experiri, nisi patri heres exstiterit.

Dig. 24.3.22.13

Ulpianus 33 ad ed.

Si mulier in condicione mariti erraverit putaveritque esse liberum, cum servus esset, concedi oportet quasi privilegium in bonis viri mulieri, videlicet ut, si sint et alii creditores, haec praeferatur circa de peculio actionem et, si forte domino aliquid debeat servus, non praeferatur mulier nisi in his tantum rebus, quae vel in dote datae sunt vel ex dote comparatae, quasi et hae dotales sint.

Dig. 24.3.23

Paulus 36 ad ed.

Et si quid in eam dotem impensum est nec a muliere reddetur, per doli mali exceptionem servabitur.

Dig. 24.3.24pr.

Ulpianus 33 ad ed.

Si constante matrimonio propter inopiam mariti mulier agere volet, unde exactionem dotis initium accipere ponamus? et constat exinde dotis exactionem competere, ex quo evidentissime apparuerit mariti facultates ad dotis exactionem non sufficere.

Dig. 24.3.24.1

Ulpianus 33 ad ed.

Si exheredato marito mulier agat, magis est, ut ex die aditae patris hereditatis incipiat ei dotis exactio.

Dig. 24.3.24.2

Ulpianus 33 ad ed.

Quotiens mulieri satisdandum est de solutione dotis post certum tempus, si maritus satisdare non possit, tunc deducto commodo temporis condemnatio residui repraesentatur: sed si, cum maritus satisdare posset, nollet, in solidum eum condemnandum mela ait non habita ratione commodi temporis. iudicis igitur officio convenit, ut aut satisdatione interposita absolvat maritum aut habita ratione compensationis eum condemnet, quod quidem hodie magis usurpatur: nec ferenda est mulier, si dicat magis se velle dilationem pati quam in repraesentatione deductionem.

Dig. 24.3.24.3

Ulpianus 33 ad ed.

Sive autem mariti sive uxoris periculo dos fuit, nihilo minus legitimo tempore debet solvere maritus.

Dig. 24.3.24.4

Ulpianus 33 ad ed.

Si vir voluntate mulieris servos dotales manumiserit, si quidem donare ei mulier voluit, nec de libertatis causa impositis ei praestandis tenebitur: quod si negotium inter eos gestum est, utique tenebitur, ut officio iudicis caveat restituturum se mulieri, quidquid ad eum ex bonis liberti vel ex obligatione pervenisset.

Dig. 24.3.24.5

Ulpianus 33 ad ed.

Si maritus saevus in servos dotales fuit, videndum, an de hoc possit conveniri. et si quidem tantum in servos uxoris saevus fuit, constat eum teneri hoc nomine: si vero et in suos est natura talis, adhuc dicendum est immoderatam eius saevitiam hoc iudicio coercendam: quamvis enim diligentiam uxor eam demum ab eo exigat, quam rebus suis exiget, nec plus possit, attamen saevitia, quae in propriis culpanda est, in alienis coercenda est, hoc est in dotalibus.

Dig. 24.3.24.6

Ulpianus 33 ad ed.

Si uxor viri rem commodaverit eaque perierit, videndum, an compensationem hoc nomine pati possit. et puto, si quidem prohibuit eam maritus commodare, statim deductionem fieri: si vero non prohibuit eam commodare arbitrio iudicis modicum tempus ei indulgeri cautionem praebenti.

Dig. 24.3.24.7

Ulpianus 33 ad ed.

Si bona mulieris pro parte sint publicata, superest mulieri reliquae partis dotis exactio: plus puto: et si post litem contestatam publicata sit pro parte dos, sufficiet arbitrium iudicis ad partis condemnationem faciendam. quod si tota dos publicata sit, exspirabit iudicium.

Dig. 24.3.25pr.

Paulus 36 ad ed.

Si filio familias dos data sit iniussu patris, de peculio quidem agetur: sed sive propter impensas a filio familias factas sive propter res donatas a filio vel amotas ab uxore res peculiares hoc ipso, quod habet actionem pater ex persona filii, maius peculium fit, et sic totum est praestandum mulieri quod est in peculio, quia adhuc sit quod uxori debeatur.

Dig. 24.3.25.1

Paulus 36 ad ed.

Maritum in reddenda dote de dolo malo et culpa cavere oportet. quod si dolo malo fecerit, quo minus restituere possit, damnandum eum, quanti mulier in litem iuraverit, quia invitis nobis res nostras alius retinere non debeat.

Dig. 24.3.25.2

Paulus 36 ad ed.

Si post divortium res dotales deteriores factae sint et vir in reddenda dote moram fecerit, omnimodo detrimentum ipse praestabit.

Dig. 24.3.25.3

Paulus 36 ad ed.

Si qui dotalium servorum in fuga erunt, cavere debebit maritus se eos viri boni arbitratu persecuturum et restituturum.

Dig. 24.3.25.4

Paulus 36 ad ed.

Si vir in quinquennio locaverit fundum et post primum forte annum divortium intervenerit, sabinus ait non alias fundum mulieri reddi oportere, quam si caverit, si quid praeter unius anni locationem maritus damnatus sit, id se praestatum iri: sed et mulieri cavendum, quidquid praeter primum annum ex locatione vir consecutus fuerit, se ei restituturum.

Dig. 24.3.26

Paulus 37 ad ed.

Semel mora facta si servum dotalem postea offerente marito mulier accipere noluerit et ita is decesserit, non debebit pretium eius maritus vel heres eius, ne damnum sentiat, quod postea offerente eo mulier accipere noluit.

Dig. 24.3.27

Gaius 11 ad ed. provinc.

Si post divortium mortua muliere heres eius cum viro parenteve eius agat, eadem videntur de restituenda dote intervenire, quae ipsa muliere agente observari solent.

Dig. 24.3.28

Ulpianus 1 inst.

Facere posse maritus etiam id videtur, quod a muliere consequi potest: scilicet si iam ei aliquid absit, quod pro muliere aliquid expendit vel mandato eius praestitit: ceterum si nondum ei abest, ut puta sub condicione est obligatus, nondum videtur facere posse.

Dig. 24.3.29pr.

Ulpianus 3 disp.

Quotiens pater dotem dat et stipulatur, ita demum in suam personam de dote actionem transfert, si ex continenti stipuletur: ceterum si interposito tempore stipulari velit, non nisi consentiente filia poterit, quamvis in potestate sit, quia deteriorem condicionem in dote filiae facere non potest nisi consentiat. plane si ante nuptias dotem dederit, poterit ex intervallo, ante nuptias tamen, et citra voluntatem quoque filiae stipulari.

Dig. 24.3.29.1

Ulpianus 3 disp.

Si quis pro muliere dotem dederit conveneritque, ut quoquo modo dirempto matrimonio ipsi solveretur, postea maritus uxori dotem solverit, rectissime dicetur exactionem nihilo minus ei qui dedit contra maritum competere.

Dig. 24.3.30pr.

Iulianus 16 Dig.

Nupta non impeditur, quo minus cum priore marito de dote experiatur.

Dig. 24.3.30.1

Iulianus 16 Dig.

Quotiens culpa viri accidit, ne dos a socero aut a quolibet alio, qui mulieris nomine promiserat, exigeretur: si aut in matrimonio filia decesserit aut mater familias facta eum qui dotem repromiserat heredem instituerit, satis constat nihil amplius virum praestare debere, quam ut eos obligatione liberet.

Dig. 24.3.31pr.

Iulianus 18 Dig.

Si marito publico iudicio damnato pars aliqua bonorum eius publicetur, fiscus creditoribus eius satisfacere necesse habet: inter quos uxor quoque est.

Dig. 24.3.31.1

Iulianus 18 Dig.

Si pater, cum ducenta filiae suae nomine dotis gratia promisisset, pactus fuerit, ne amplius quam centum a se peterentur, et soluto matrimonio egerit, centum, de quibus convenit ne peterentur, nec intelleguntur dotis esse. quod si mortuo patre cum herede eius maritus agere coeperit, ista quoque pecunia in dote erit.

Dig. 24.3.31.2

Iulianus 18 Dig.

Si voluntate filiae procurator a patre datus litem de dote contestatus fuerit et re secundum eum iudicata pater decesserit, iudicati actionem filiae potius quam heredibus patris dari oportebit.

Dig. 24.3.31.3

Iulianus 18 Dig.

Cum patri dos data esset et ei filius ex aliqua parte heres sub condicione institutus fuerit et pendente condicione coheredes eius dotem pro sua portione mulieri solverint: hoc minus filius ex dote praestare debebit, quoniam nullam actionem eius pecuniae reciperandae gratia adversus coheredes habet.

Dig. 24.3.31.4

Iulianus 18 Dig.

Si fundum dotalem recepisset mulier non habita ratione fructuum pro portione anni, quo nupta non fuisset, nihilo minus de dote agere potest, quia minorem dotem recepisset: hoc enim ad dotis augmentum pertinet, quemadmodum si partum ancillarum non recepisset, aut legata vel hereditates, quae post divortium per servos dotales adquisitae marito fuissent.

Dig. 24.3.32

Iulianus 2 ad urs. ferocem.

Si prior maritus posteriori dotis nomine tamquam debitor mulieris dotem promiserit, non plus quam id quod facere possit dotis futurum esse.

Dig. 24.3.33

Africanus 7 quaest.

Quae dotis nomine certam pecuniam promiserat, quosdam adhibuerat, qui stipularentur partem dotis distracto matrimonio sibi solvi: ea nulla data dote obierat eodem marito suo herede relicto: is damnosam hereditatem eius adierat. nihilo minus stipulatoribus tenebitur, quoniam adeundo hereditatem debitricis intellegeretur secum pensasse: nec ad rem pertinere, quod solvendo non esset hereditas, quando ceteris etiam creditoribus teneatur.

Dig. 24.3.34

Africanus 8 quaest.

Titia divortium a seio fecit: hanc titius in sua potestate esse dicit et dotem sibi reddi postulat: ipsa se matrem familias dicit et de dote agere vult: quaesitum est, quae partes iudicis sint. respondi patri, nisi probet filiam non solum in sua potestate esse, sed etiam consentire sibi, denegandam actionem, sicuti denegaretur, etiamsi constaret eam in potestate esse.

Dig. 24.3.35

Marcianus 10 inst.

Liberta, quae voluntate patroni discessit, de dote cum eo agere potest quam ei dedit.

Dig. 24.3.36

Paulus 2 de adult.

Si maritus minus facere potest et dos publicata sit, in id quod facere potest fisco maritus condemnandus est, ne in perniciem mariti mulier punita sit.

Dig. 24.3.37

Ulpianus 2 resp.

Dotem voluntate filiae videri patrem recepisse, cum causas contradicendi ei filia non haberet, maxime cum ab eo postea ampliore summa dotata sit.

Dig. 24.3.38

Marcellus l.S. resp.

Lucius titius cum esset filius familias, voluntate patris uxorem maeviam duxit et dotem pater accepit: maevia titio repudium misit: postea pater repudiati absente filio sponsalia cum ea de nomine filii sui fecit: maevia deinde repudium sponsalibus misit atque ita alii nupsit. quaero, si maevia aget cum lucio titio quondam marito et a patre herede relicto de dote et probetur culpa mulieris matrimonium dissolutum, an possit maritus propter culpam mulieris dotem retinere. Marcellus respondit, etiamsi ut heres institutus a patre titius conveniretur, tamen, si sponsalibus non consensisset, culpam mulieris multandam esse.

Dig. 24.3.39

Papinianus 11 quaest.

Viro atque uxore mores invicem accusantibus causam repudii dedisse utrumque pronuntiatum est. id ita accipi debet, ut ea lege quam ambo contempserunt, neuter vindicetur: paria enim delicta mutua pensatione dissolvuntur.

Dig. 24.3.40

Papinianus 28 quaest.

Post dotem datam et nuptias contractas stipulatus est pater non ex filiae voluntate divortio facto dotem dari. si condicio stipulationis impleatur et postea filia sine liberis decesserit, non erit impediendus pater, quo minus ex stipulatu agat: viva autem filia si agere vult, exceptione summovendus erit.

Dig. 24.3.41

Papinianus 37 quaest.

Si pater ignorans filiam divortisse dotem ex causa promissionis numeravit, non per indebiti condictionem, sed de dote actione pecunia petetur.

Dig. 24.3.42pr.

Papinianus 4 resp.

In insulam patre deportato, qui dotem pro filia dedit, actio dotis ad filiam pertinet. post divortium quoque patre damnato, cui quidem consentiente filia competierat, aeque dotis actio mulieris est.

Dig. 24.3.42.1

Papinianus 4 resp.

Fructus ex praediis, quae in dotem data videbantur, bona fide perceptos et mulieris oneribus ante causam liberalem absumptos, quamvis servam fuisse postea constiterit, peti non posse placuit. sumptus vero necessarios et utiles in praedia quae dotalia videbantur factos, compensatis fructibus perceptis, ad finem superflui servari convenit.

Dig. 24.3.42.2

Papinianus 4 resp.

Usuras numeratae dotis ex stipulatu pater in matrimonio defuncta filia si petat, gener, qui residuae dotis promissae faenus stipulatus est, ita demum ad finem vice mutua debitae quantitatis compensationem opponere iuste ^ iste^ videtur, si propriis sumptibus uxorem suam exhibuit: alioquin si patris sumptibus exhibita sit, inanis usurarum stipulatio compensationi non proderit.

Dig. 24.3.42.3

Papinianus 4 resp.

Ad virum uxore post divortium reversa iudicium acceptum ex stipulatione, quam extraneus qui dotem dederit stipulatus fuerit, non dissolvitur nec officio iudicis absolutio continetur.

Dig. 24.3.43

Scaevola 2 quaest.

Si maritus in id quod facere potest condemnatus sit et nomina sint ad dotis quantitatem neque amplius, necesse habebit mandare actiones.

Dig. 24.3.44pr.

Paulus 5 quaest.

Si socer a genero heres institutus adierit hereditatem, quandoque mortuo patre cum herede eius filiam de dote acturam nerva et cato responderunt, ut est relatum apud sextum pomponium digestorum ab aristone libro quinto: ibidem aristoni consensit: ergo dicerem et si emancipasset pater filiam, ipsum quoque conveniri posse.

Dig. 24.3.44.1

Paulus 5 quaest.

Lucius titius filiae suae nomine centum doti promisit gaio seio: inter gaium seium et lucium titium patrem mulieris convenit, ne dos a viro vivo lucio titio id est patre mulieris, peteretur: postea culpa mariti divortio facto solutum est matrimonium et pater mulieris decedens alios heredes instituit filia exheredata: quaero, an ab heredibus soceri maritus exigere dotem potest, cum eam mulieri redditurus est. respondi: cum filia aliis a patre heredibus institutis actionem de dote sua reciperanda habere coeperit, necesse habebit maritus aut exactam dotem aut actiones ei praestare: nec ullam exceptionem habebunt soceri heredes adversus eum, cum absurde dicitur dolo videri eum facere, qui non ipsi quem convenit sed alii restituturus petit: alioquin et si post mortem patris divortisset nondum exacta dote, excluderetur exactione dotis maritus, quod non est admittendum. sed et si ex parte filia heres patri suo exstiterit, debebit maritus coheredes eius pro parte virili exigere et mulieri reddere aut actiones ei praestare.

Dig. 24.3.45

Paulus 6 quaest.

Gaius seius avus maternus seiae nepti, quae erat in patris potestate, certam pecuniae quantitatem dotis nomine lucio titio marito dedit et instrumento dotali huiusmodi pactum et stipulationem complexus est: " si inter lucium titium maritum et seiam divortium sine culpa mulieris factum esset, dos omnis seiae uxori vel gaio seio avo materno redderetur restituereturque". quaero, cum seius avus maternus statim vita defunctus sit et seia postea sine culpa sua divorterit vivo patre suo, in cuius potestate est, an et cui actio ex hoc pacto et stipulatione competat et utrum heredi avi materni ex stipulatu an nepti. respondi in persona quidem neptis videri inutiliter stipulationem esse conceptam, quoniam avus maternus ei stipulatus proponitur: quod cum ita est, heredi stipulatoris, quandoque divorterit mulier, actio competere videtur. sed dicendum est seiae posse dotem solvi (quamvis actio ei directo non competat), ac si sibi aut illi dari avus stipulatus esset. sed permittendum est nepti ex hac avita conventione, ne commodo dotis defrudetur, utilem actionem: favore enim nuptiarum et maxime propter affectionem personarum ad hoc decurrendum est.

Dig. 24.3.46

Paulus 19 quaest.

Qui dotem stipulanti uxori promiserat, eidem testamento quaedam legaverat, ita tamen, ne dotem ab heredibus peteret: ea quae legata erant, uxor capere non potuerat. respondi dotis actionem mulieri adversus heredes non esse denegandam.

Dig. 24.3.47

Scaevola 19 quaest.

Cum mulier viri lenocinio adulterata fuerit, nihil ex dote retinetur: cur enim improbet maritus mores, quos ipse aut ante corrupit aut postea probavit? si tamen ex mente legis sumet quis, ut nec accusare possit, qui lenocinium uxori praebuerit, audiendus est.

Dig. 24.3.48

Callistratus 2 quaest.

Si dotali instrumento ita stipulatio interposita sit, ut liberorum nomine dos apud maritum resideat, nepotum quoque nomine dos dos retinebitur.

Dig. 24.3.49pr.

Paulus 7 resp.

Maevia marito suo inter alias res dotis etiam instrumentum solidorum decem tradidit, quo otacilius eidem maeviae caverat daturum se, cum nuptum ire coepisset, decem milia: ex eo instrumento maritus nihil exegit, quia nec potuit: quaesitum est, si dos a marito petatur, an compellendus sit etiam illam summam, quae instrumento continetur, refundere? respondi potuisse quidem eum, cui actiones mandatae sunt, debitorem convenire: sed si sine dolo malo vel culpa exigere pecuniam non potuit, neque dotis nomine eum conveniri posse neque mandati iudicio.

Dig. 24.3.49.1

Paulus 7 resp.

Fundus aestimatus in dotem datus a creditore antecedente ex causa pignoris ablatus est: quaesitum est, an mulier, si aestimationem dotis repetat, exceptione summovenda sit: ait enim se propterea non teneri, quod pater eius dotem pro se dedit, cui heres non exstiterit. paulus respondit praedio evicto sine dolo et culpa viri pretium petenti mulieri doli mali exceptionem obesse: consequi enim eam pretium fundi evicti evidens iniquitas est, cum dolus patris ipsi nocere debeat.

Dig. 24.3.50

Scaevola 2 resp.

Aestimatis rebus in dotem datis pactum intercessit, ut, ex quacumque causa dos reddi deberet, ipsae res restituerentur habita ratione augmenti et deminutionis viri boni arbitratu, quae vero non exstarent, ab initio aestimatio earum: quaesitum est, cum res quaedam quas maritus vendiderat exstarent, an secundum pactum et haec ad mulierem pertinerent. respondi res quae exstant, si neque volente neque ratum habente muliere venissent, perinde reddendas, atque si nulla aestimatio intervenisset.

Dig. 24.3.51

Hermogenianus 2 iuris epit.

Aestimatae res usu etiam mulieris periculo mariti deteriores efficiuntur.

Dig. 24.3.52

Tryphonus 7 disp.

Maritus dotem, quam non accepit, post divortium per errorem solvit: repetet, quia non numeratam caverat: exigi enim ab eo non potuit.

Dig. 24.3.53

Tryphonus 12 disp.

Si filio familias dos data est, ipse quidem dotis actione tenetur, pater autem eius de peculio: nec interest, in peculio rem vel pecuniam dotalem habeat nec ne. sed quatenus facere potest, hic quoque condemnandus est: intellegitur autem peculio tenus facere posse, quod habet rei iudicandae tempore. atquin si cum patre agatur, deduceretur ex peculio, quod patri vel subiectis ei personis filius debet: at si cum ipso filio agatur, alterius debiti non fiet detractio in computatione quantum facere possit filius.

Dig. 24.3.54

Paulus l.S. de iure singulari.

Maritus facere posse creditur nullo aere alieno, item socius, item patronus parensve: at is, qui ex donatione convenietur, omni aere alieno deducto facere posse intellegitur.

Dig. 24.3.55

Paulus 5 ad plaut.

Cum mulier de dotis repetitione post solutum matrimonium agit, cavere debet marito, qui aedium nomine damni infecti cavit, si velit eam recipere, ut periculum mariti amoveat.

Dig. 24.3.56

Paulus 6 ad plaut.

Si quis sic stipuletur a marito: " si quo casu titia tibi nupta esse desierit, dotem dabis?" hac generali commemoratione et ab hostibus capta ea committetur stipulatio vel etiam si deportata fuerit vel ancilla effecta: hac enim conceptione omnes hi casus continentur. plane quantum veniat in stipulatione, utrum quasi mortua sit an quasi divortium fecerit? humanius quis id competere dixerit, quod propter mortem convenit.

Dig. 24.3.57

Marcellus 7 Dig.

Usu fructu in dotem dato si divortium intervenerit nec proprietas rei apud maritum vel mulierem sit, eam dotis esse restitutionem, ut maritus caveat, quamdiu vixerit, passurum se uti frui mulierem heredemque eius. quod an verum sit circa adiectionem heredis, dubito. interest, quemadmodum sit usus fructus in dotem datus. si, cum haberet mulier fructum, viro, cuius erat proprietas fundi, usum fructum cessit, nihil mulier heredi suo relinquet: debebatur enim ei usus fructus, qui ad heredem non solet transire. quod si fundi sui fructum mulier viro cessit, restitui is a viro debet: cum proprietate enim ad heredem eius transisset, si vir in reddendo eo non fecisset moram. si vero alienata sit proprietas aut aliquis fundi sui usum fructum mulieris iussu viro eius dederit in dotem, inspiciendum est primum, quemadmodum mulieri possit restitui: potest autem vel cautionibus interpositis, ut sic ut potest vir iure suo cedat mulieri fruique eam patiatur, vel, si se accommodavit dominus proprietatis, volente eo mulieri constituatur usus fructus: nam aut fructum fundi ille mulieri poterit cedere aut aliquid videlicet pro eo, ut inter eos actum fuerit, dare. nam et finge hoc ipsum mulierem posse proprietatis domino vendere. quo casu non inique etiam mulieris herede agente vir facere cogetur: quippe si moram non fecisset, pretium fructus mulier heredi suo reliquisset. quod si facultatem usus fructus vendendi proprietatis domino mulier non habuerit, patientiam, quam percipiendi fructus praestare ipsi debuit, etiam heredi eius praestat.

Dig. 24.3.58

Modestinus l.S. de heuremat.

Servus dotalis heres ab aliquo institutus mariti iussu vel adire vel repudiare debet hereditatem. sed ne maritus aut facile repudiando vel temere suscipiendo incognitam successionem dotis iudicio uxori suae obligetur, consulendum est mulierem coram testibus interrogari, utrum velit omittere an adquirere hereditatem. et si repudiare se dixerit, facile mariti iussu repudiabit. quod si hereditatem agnoscere maluerit, reddendus est a marito servus uxori ea condicione, ut, cum iussu eius adierit, rursum marito retradatur. ita et mariti sollicitudini consuletur et uxoris desiderio parebitur.

Dig. 24.3.59

Iulianus 2 ad urs. ferocem.

Filiae meae emancipatae et aegrae vir in hoc repudium misit, ut mortua ea dotem potius heredibus eius quam mihi redderet. sabinus dicebat utile mihi eius dotis reciperandae iudicium dandum esse: gaius idem.

Dig. 24.3.60

Proculus 5 epist.

Si filia familias nupta decesserit et pater funus ei fecerit, tametsi ei dotem post aliquod tempus gener reddere deberet, tamen continuo socer agendo consequetur, ut impensam funeris praesentem recipiat, cetera dotis statuto tempore solvantur.

Dig. 24.3.61

Papinianus 11 quaest.

Dotalem servum vir invita uxore manumisit. heres solus vir a liberto institutus portionem hereditatis, quam ut patronus consequi potuit ac debuit, restituere debet, alteram vero portionem dotis iudicio, si modo uxor manumittenti refragatur.

Dig. 24.3.62

Ulpianus 33 ad ed.

Quod si vir voluntate mulieris servos dotales manumiserit, cum donare ei mulier voluit, nec de libertatis causa impositis ei praestandis tenebitur.

Dig. 24.3.63

Paulus 2 ad l. iul. et pap.

Et desinit servus in dote esse, quia, cui manumittendi causa donare liceret, ei quodammodo donaret, quod permitteret manumittere.

Dig. 24.3.64pr.

Ulpianus 7 ad l. iul. et pap.

Si vero negotium gerens mulieris non invitae maritus dotalem servum voluntate eius manumiserit, debet uxori restituere quidquid ad eum pervenit.

Dig. 24.3.64.1

Ulpianus 7 ad l. iul. et pap.

Sed et si quid libertatis causa maritus ei imposuit, id uxori praestabit.

Dig. 24.3.64.2

Ulpianus 7 ad l. iul. et pap.

Plane si operae fuerint marito exhibitae, non aestimatio earum, non erit aequum hoc nomine uxori maritum quippiam praestare.

Dig. 24.3.64.3

Ulpianus 7 ad l. iul. et pap.

Sed si post manumissionem aliquid ei fuerit liberto impositum, id uxori praestandum est.

Dig. 24.3.64.4

Ulpianus 7 ad l. iul. et pap.

Sed et si reum maritus acceperit adpromissoremve, aeque adversus ipsum obligationem debet praestare.

Dig. 24.3.64.5

Ulpianus 7 ad l. iul. et pap.

Item quidquid ad eum ex bonis liberti pervenerit, aeque praestare cogetur, si modo ad eum quasi ad patronum pervenerit: ceterum si alio iure, non cogetur praestare: nec enim beneficium quod in eum libertus contulit, hoc uxori debet, sed id tantum, quod iure patronatus adsequitur vel adsequi potuit. plane si ex maiore parte quam debet heres scriptus fuerit, quod amplius est non praestabit: et si forte, cum ei nihil deberet libertus, heredem eum scripsit, nihil uxori restituet.

Dig. 24.3.64.6

Ulpianus 7 ad l. iul. et pap.

Dabit autem, ut ait lex, quod ad eum pervenit. pervenisse accipimus, sive iam exegit sive exigere potest, quia actio ei delata est.

Dig. 24.3.64.7

Ulpianus 7 ad l. iul. et pap.

Adicitur in lege, ut et, si dolo malo aliquid factum sit, quo minus ad eum perveniat, teneatur.

Dig. 24.3.64.8

Ulpianus 7 ad l. iul. et pap.

Si filium exheredaverit patronus et ad eum bona liberti pertineant, videndum est, an heres hoc nomine teneatur. et cum nihil neque ad ipsum patronum neque ad heredem eius perveniat, quomodo fieri potest, ut hoc nomine teneatur?

Dig. 24.3.64.9

Ulpianus 7 ad l. iul. et pap.

De viro heredeque eius lex tantum loquitur: de socero successoribusque soceri nihil in lege scriptum est: et hoc labeo quasi omissum adnotat. in quibus igitur casibus lex deficit, non erit nec utilis actio danda.

Dig. 24.3.64.10

Ulpianus 7 ad l. iul. et pap.

Quod ait lex: " quanta pecunia erit tantam pecuniam dato", ostendit aestimationem hereditatis vel bonorum liberti, non ipsam hereditatem voluisse legem praestare, nisi maritus ipsas res tradere maluerit: et hoc enim benignius admitti debet.

Dig. 24.3.65

Scaevola l.S. quaest. publ. tract.

Haec actio etiam constante matrimonio mulieri competit.

Dig. 24.3.66pr.

Iavolenus 6 ex post. lab.

In his rebus, quas praeter numeratam pecuniam doti vir habet, dolum malum et culpam eum praestare oportere servius ait. ea sententia publii mucii est: nam is in licinnia gracchi uxore statuit, quod res dotales in ea seditione qua gracchus occisus erat, perissent, ait, quia gracchi culpa ea seditio facta esset, licinniae praestari oportere.

Dig. 24.3.66.1

Iavolenus 6 ex post. lab.

Servis uxoris vir nummos in vestiarium dederat, quo parato deinde intra annum divortium intercesserat. placuit labeoni trebatio, qualia vestimenta post divortium essent, talia viro reddi: idem iuris futurum fuisset, si ipsa vestimenta vir emisset et servis dedisset: quod si vestimenta non redderentur, tum virum pretium in dote compensaturum.

Dig. 24.3.66.2

Iavolenus 6 ex post. lab.

Filia familias divortio facto dotem patri reddi iusserat: deinde parte dotis persoluta pater decesserat. reliquam partem, si nec delegata nec promissa novandi animo patri fuisset, mulieri solvi debere labeo trebatius putant, idque verum est.

Dig. 24.3.66.3

Iavolenus 6 ex post. lab.

Mancipia in dotem aestimata accepisti: pactum conventum deinde factum est, ut divortio facto tantidem aestimata redderes nec de partu dotalium ancillarum mentio facta est. manebit, inquit labeo, partus tuus, quia is pro periculo mancipiorum penes te esse deberet.

Dig. 24.3.66.4

Iavolenus 6 ex post. lab.

Mulier, quae centum dotis apud virum habebat, divortio facto ducenta a viro errante stipulata erat. labeo putat, quanta dos fuisset, tantam deberi, sive prudens mulier plus esset stipulata sive imprudens: labeonis sententiam probo.

Dig. 24.3.66.5

Iavolenus 6 ex post. lab.

Uxor divortio facto partem dotis receperat, partem apud virum reliquerat, deinde alii nupserat et iterum vidua facta ad priorem virum redierat, cui centum decem doti dederat neque eius pecuniae, quae reliqua ex priore dote erat, mentionem fecerat. divortio facto reliquum ex priore dote iisdem diebus virum redditurum ait labeo, quibus reddidisset, si superius divortium inter eos factum non esset, quoniam prioris dotis causa in sequentem dotis obligationem esset translata: et hoc verum puto.

Dig. 24.3.66.6

Iavolenus 6 ex post. lab.

Si vir socero iniussu uxoris manente matrimonio dotem acceptam fecisset, etiamsi id propter egestatem soceri factum esset, viri tamen periculum futurum ait labeo, et hoc verum est.

Dig. 24.3.66.7

Iavolenus 6 ex post. lab.

Si quis pro muliere dotem viro promisit, deinde herede muliere relicta decesserit, qua ex parte mulier ei heres esset, pro ea parte dotis periculum, quod viri fuisset, ad mulierem pertinere ait labeo, quia nec melius aequius esset, quod exigere vir ab uxore non potuisset, ob id ex detrimento viri mulierem locupletari: et hoc verum puto.

Dig. 24.3.67

Pomponius 20 epist.

In partem dotis reddendae erit id, quod mulieri ex periculo servi restitui debebit: et ideo et dolum et culpam in eo peculio vel adquirendo vel conservando maritus praestare debet et fructus ex eo percepti quomodo cuiuslibet rei dotalis ad maritum pertinebunt.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER QUINTUS-VICESIMUS

Dig. 25.1.0. De impensis in res dotales factis.
Dig. 25.2.0. De actione rerum amotarum.
Dig. 25.3.0. De agnoscendis et alendis liberis vel parentibus vel patronis vel libertis.
Dig. 25.4.0. De inspiciendo ventre custodiendoque partu.
Dig. 25.5.0. Si ventris nomine muliere in possessionem missa eadem possessio dolo malo ad alium translata esse dicatur.
Dig. 25.6.0. Si mulier ventris nomine in possessione calumniae causa esse dicetur.
Dig. 25.7.0. De concubinis.

Dig. 25.1.0. De impensis in res dotales factis.

Dig. 25.1.1pr.

Ulpianus 36 ad sab.

Impensarum quaedam sunt necessariae, quaedam utiles, quaedam vero voluptariae.

Dig. 25.1.1.1

Ulpianus 36 ad sab.

Necessariae hae dicuntur, quae habent in se necessitatem impendendi: ceterum si nulla fuit necessitas, alio iure habentur.

Dig. 25.1.1.2

Ulpianus 36 ad sab.

In necessariis impensis hoc sciendum est eas demum impensas dotem minuere, quae in dotem factae sunt: ceterum si in dotem factae non sint, non habent in se reputationem.

Dig. 25.1.1.3

Ulpianus 36 ad sab.

Inter necessarias impensas esse labeo ait moles in mare vel flumen proiectas. sed et si pistrinum vel horreum necessario factum sit, in necessariis impensis habendum ait. proinde fulcinius inquit, si aedificium ruens quod habere mulieri utile erat refecerit, aut si oliveta reiecta restauraverit, vel ex stipulatione damni infecti ne committatur praestiterit,

Dig. 25.1.2

Paulus 7 ad sab.

Vel in valetudinem servorum impenderit,

Dig. 25.1.3pr.

Ulpianus 36 ad sab.

Vel si vites propagaverit vel arbores curaverit vel seminaria pro utilitate agri fecerit, necessarias impensas fecisse videbitur.

Dig. 25.1.3.1

Ulpianus 36 ad sab.

Nos generaliter definiemus multum interesse, ad perpetuam utilitatem agri vel ad eam quae non ad praesentis temporis pertineat, an vero ad praesentis anni fructum: si in praesentis, cum fructibus hoc compensandum: si vero non fuit ad praesens tantum apta erogatio, necessariis impensis computandum.

Dig. 25.1.4

Paulus 36 ad ed.

Et in totum id videtur necessariis impensis contineri, quod si a marito omissum sit, iudex tanti eum damnabit, quanti mulieris interfuerit eas impensas fieri. sed hoc differt, quod factarum ratio habetur, etsi res male gesta est, non factarum ita, si ob id res male gesta est: itaque si fulserit insulam ruentem eaque exusta sit, impensas consequitur, si non fecerit, deusta ea nihil praestabit.

Dig. 25.1.5pr.

Ulpianus 36 ad sab.

Quod dicitur necessarias impensas dotem minuere, sic erit accipiendum, ut et pomponius ait, non ut ipsae res corporaliter deminuantur, ut puta fundus vel quodcumque aliud corpus: etenim absurdum est deminutionem corporis fieri propter pecuniam. ceterum haec res ^ ^ faciet ^ efficiet^ desinere esse fundum dotalem vel partem eius. manebit igitur maritus in rerum detentationem, donec ei satisfiat: non enim ipso iure corporum, sed dotis fit deminutio. ubi ergo admittimus deminutionem dotis ipso iure fieri? ubi non sunt corpora, sed pecunia: nam in pecunia ratio admittit deminutionem fieri. proinde si aestimata corpora in dotem data sint, ipso iure dos deminuetur per impensas necessarias. hoc de his impensis dictum est, quae in dotem ipsam factae sint: ceterum si extrinsecus, non imminuent dotem.

Dig. 25.1.5.1

Ulpianus 36 ad sab.

Sed si impensis necessariis mulier satisfecerit, utrum dos crescat an vero dicimus ex integro videri dotem? et ego, ubi pecunia est, non dubito dotem videri crevisse.

Dig. 25.1.5.2

Ulpianus 36 ad sab.

Si dos tota soluta sit non habita ratione impensarum, videndum est, an condici possit id, quod pro impensis necessariis compensari solet. et Marcellus admittit condictioni esse locum: sed etsi plerique negent, tamen propter aequitatem Marcelli sententia admittenda est.

Dig. 25.1.5.3

Ulpianus 36 ad sab.

Utiles autem impensae sunt, quas maritus utiliter fecit, remque meliorem uxoris fecerit, hoc est dotem,

Dig. 25.1.6

Paulus 7 ad sab.

Veluti si novelletum in fundo factum sit, aut si in domo pistrinum aut tabernam adiecerit, si servos artes docuerit.

Dig. 25.1.7

Ulpianus 36 ad sab.

Voluptariae autem impensae sunt, quas maritus ad voluptatem fecit et quae species exornant. quarum utiles non quidem minuunt ipso iure dotem, verumtamen habent exactionem.

Dig. 25.1.8

Paulus 7 ad sab.

Utilium nomine ita faciendam deductionem quidam dicunt, si voluntate mulieris factae sint: iniquum enim esse compelli mulierem rem vendere, ut impensas in eam factas solveret, si aliunde solvere non potest: quod summam habet aequitatis rationem.

Dig. 25.1.9

Ulpianus 36 ad sab.

Pro voluptariis impensis, nisi parata sit mulier pati maritum tollentem, exactionem patitur. nam si vult habere mulier, reddere ea quae impensa sunt debet marito: aut si non vult, pati debet tollentem, si modo recipiant separationem: ceterum si non recipiant, relinquendae sunt: ita enim permittendum est marito auferre ornatum quem posuit, si futurum est eius quod abstulit.

Dig. 25.1.10

Paulus 36 ad ed.

Quod si hae res, in quibus impensae factae sunt, promercales fuerint, tales impensae non voluptariae, sed utiles sunt.

Dig. 25.1.11pr.

Ulpianus 36 ad sab.

In voluptariis autem aristo scribit nec si voluntate mulieris factae sunt, exactionem parere.

Dig. 25.1.11.1

Ulpianus 36 ad sab.

Donationem inter virum et uxorem circa impensas quoque inhibitam vere sabinus scribit.

Dig. 25.1.12

Paulus 7 ad sab.

Omnino et in aedificandis aedibus et in reponendis propagandisque vineis et in valetudine mancipiorum modicas impensas non debet arbiter curare: alioquin negotiorum gestorum potius quam de dote iudicium videbitur.

Dig. 25.1.13

Paulus 7 brev.

Neque stipendium neque tributum ob dotalem fundum praestita exigere vir a muliere potest: onus enim fructuum haec impendia sunt.

Dig. 25.1.14pr.

Ulpianus 5 reg.

Impensae necessariae sunt, quibus non factis dos imminuitur, veluti aggeres facere, flumina avertere, aedificia vetera fulcire itemque reficere, arbores in locum mortuarum reponere.

Dig. 25.1.14.1

Ulpianus 5 reg.

Utiles sunt veluti pecora praediis imponere, id est stercorare.

Dig. 25.1.14.2

Ulpianus 5 reg.

Voluptuosae sunt balinea exstruere.

Dig. 25.1.15

Nerva 2 membr.

Quod dicitur impensas, quae in res dotales necessario factae sunt, dotem deminuere, ita interpretandum est, ut, si quid extra tutelam necessariam in res dotales impensum est, id in ea causa sit: nam tueri res dotales vir suo sumptu debet. alioquin tam cibaria dotalibus mancipiis data et quaevis modica aedificiorum dotalium refectio et agrorum quoque cultura dotem minuent: omnia enim haec in specie necessariarum impensarum sunt. sed ipsae res ita praestare intelleguntur, ut non tam impendas in eas, quam deducto eo minus ex his percepisse videaris. quae autem impendia secundum eam distinctionem ex dote deduci debeant, non tam facile in universum definiri, quam per singula ex genere et magnitudine impendiorum aestimari possunt.

Dig. 25.1.16

Nerva 6 membr.

Et ante omnia quaecumque impensae quaerendorum fructuum causa factae erunt, quamquam eaedem etiam colendi causa fiant ideoque non solum ad percipiendos fructus, sed etiam ad conservandam ipsam rem speciemque eius necessariae sint, eas vir ex suo facit nec ullam habet eo nomine ex dote deductionem.

Dig. 25.2.0. De actione rerum amotarum.

Dig. 25.2.1

Paulus 7 ad sab.

Rerum amotarum iudicium singulare introductum est adversus eam quae uxor fuit, quia non placuit cum ea furti agere posse: quibusdam existimantibus ne quidem furtum eam facere, ut nerva cassio, quia societas vitae quodammodo dominam eam faceret: aliis, ut sabino et proculo, furto quidem eam facere, sicut filia patri faciat, sed furti non esse actionem constituto iure, in qua sententia et iulianus rectissime est:

Dig. 25.2.2

Gaius ad ed. pu. de re iud.

Nam in honorem matrimonii turpis actio adversus uxorem negatur:

Dig. 25.2.3pr.

Paulus 7 ad sab.

Et ideo, si post divortium easdem res contrectat, etiam furti tenebitur.

Dig. 25.2.3.1

Paulus 7 ad sab.

Item si servus eius furtum fecerit, furti cum ea agere possumus.

Dig. 25.2.3.2

Paulus 7 ad sab.

Sed et cum uxore furti agere possibile est, si ei cui heredes simus furtum fecit, vel nobis antequam nuberet: tamen propter reverentiam personarum in utroque casu furtivam tantum condictionem competere, non etiam furti actionem dicimus.

Dig. 25.2.3.3

Paulus 7 ad sab.

Item verum est quod ofilius ait etiam eas res, quas divortii tempore mulier comederit vendiderit donaverit qualibet ratione consumpserit, rerum amotarum iudicio contineri.

Dig. 25.2.3.4

Paulus 7 ad sab.

Si filia familias res amoverit, mela fulcinius aiunt de peculio dandam actionem, quia displicuit eam furti obligari: vel in ipsam ob res amotas dari actionem. sed si pater adiuncta filia de dote agat, non aliter ei dandam actionem, quam si filiam rerum amotarum iudicio in solidum et cum satisdatione defendat. sed mortua filia in patrem rerum amotarum actionem dari non oportere proculus ait, nisi quatenus ex ea re pater locupletior sit.

Dig. 25.2.4

Pomponius 16 ad sab.

Dolove malo fecerit, quo minus ad eum perveniret.

Dig. 25.2.5

Papinianus 11 quaest.

Viva quoque filia, quod ad patrem ex rebus amotis pervenit, utili iudicio petendum est.

Dig. 25.2.6pr.

Paulus 7 ad sab.

Contra nurum quoque socero hoc iudicium dandum atilicinus et fulcinius aiunt, quotiens filio familias dos data est:

Dig. 25.2.6.1

Paulus 7 ad sab.

Socerum ob res divortii causa amotas furti agere non posse.

Dig. 25.2.6.2

Paulus 7 ad sab.

Item cum rerum amotarum etiam in virum datur iudicium: si filius familias maritus sit, utrum de peculio an in ipsum actio dari debeat? eadem repetemus, quae de filia familias diximus.

Dig. 25.2.6.3

Paulus 7 ad sab.

Si post divortium maritus decesserit, heres eius rerum amotarum iudicio uti potest.

Dig. 25.2.6.4

Paulus 7 ad sab.

Item heres mulieris ex hac causa tenebitur, sicut condictionis nomine ex causa furtiva.

Dig. 25.2.6.5

Paulus 7 ad sab.

Sed si morte mariti solutum sit matrimonium, heres mariti hereditatis petitione vel ad exhibendum actione eas consequi poterit. aristo et condici ei posse recte putat, quia ex iniusta causa apud eam essent.

Dig. 25.2.6.6

Paulus 7 ad sab.

Quod si mortuo viro amoverit, non facit furtum, quia rei hereditariae nondum possessae non fit furtum: ideoque aut vindicari poterunt aut in hereditatis petitionem venient.

Dig. 25.2.7

Ulpianus 36 ad sab.

Mulier habebit rerum amotarum actionem adversus virum et compensare potest mulier cum actione, qua maritus agere vult ob res amotas.

Dig. 25.2.8pr.

Pomponius 16 ad sab.

Si, cum dos solveretur mulieri aut satis doti fieret, dictum non esset actum iri rerum amotarum, nihilo minus agi potest: nam et cum dos nulla sit, eadem actio datur.

Dig. 25.2.8.1

Pomponius 16 ad sab.

Sabinus ait, si mulier res quas amoverit non reddat, aestimari debere quanti in litem vir iurasset.

Dig. 25.2.9

Paulus 37 ad ed.

(non enim aequum est invitum suo pretio res suas vendere)

Dig. 25.2.10

Pomponius 16 ad sab.

Ideoque nec debere eum pro evictione promittere, quod ex contumacia mulieris id ita acciderit.

Dig. 25.2.11pr.

Ulpianus 33 ad ed.

Marcellus libro octavo digestorum scribit, sive vir uxorem sive uxor virum domo expulit et res amoverunt, rerum amotarum teneri.

Dig. 25.2.11.1

Ulpianus 33 ad ed.

Qui rerum amotarum instituit actionem si velit magis iusiurandum deferre, cogitur adversarius iurare nihil divortii causa amotum esse, dum prius de calumnia iuret qui iusiurandum defert.

Dig. 25.2.11.2

Ulpianus 33 ad ed.

Iurare autem tam vir quam uxor cogetur. pater autem amoventis iurare non cogitur, cum iniquum sit de alieno facto alium iurare: is ergo cogitur iurare, qui amovisse dicitur. et idcirco nec heres eius, qui quaeve amovisse dicetur, iurare cogetur.

Dig. 25.2.11.3

Ulpianus 33 ad ed.

Si quis delatum sibi iusiurandum referre velit, non videtur praetor permisisse,

Dig. 25.2.12

Paulus 7 brev.

Non magis quam si quis ei qui furti agat iusiurandum deferat, an ipse fur sit.

Dig. 25.2.13

Ulpianus 33 ad ed.

Ideo labeo scribit mulieri non esse permittendum referre iusiurandum, et ita edictum ordinatum videtur.

Dig. 25.2.14

Paulus 18 ad ed.

De rebus amotis permittendum marito vel uxori de quibusdam rebus iusiurandum deferre, de quibusdam probare.

Dig. 25.2.15pr.

Ulpianus 34 ad ed.

Nihil interest, utrum simul an separatim habitaverunt, cum actio rerum amotarum competat etiam adversus eam, quae ex ea domo subtraxit, in qua non simul cum viro habitavit.

Dig. 25.2.15.1

Ulpianus 34 ad ed.

Uxor et nurus et pronurus viro et socero et prosocero furtum facere possunt, furti autem non tenentur, nisi forte emancipatus sit filius: tunc enim nurus patri eius et furtum facit et furti tenetur.

Dig. 25.2.16

Hermogenianus 2 iuris epit.

Ad fiscum mariti bonis devolutis uxor rerum amotarum nomine in simplum convenitur, quamvis alii in quadruplum condemnentur.

Dig. 25.2.17pr.

Ulpianus 30 ad ed.

Si concubina res amoverit, hoc iure utimur, ut furti teneatur: consequenter dicemus, ubicumque cessat matrimonium, ut puta in ea, quae tutori suo nupsit vel contra mandata convenit vel sicubi alibi cessat matrimonium, cessare rerum amotarum actionem, quia competit furti.

Dig. 25.2.17.1

Ulpianus 30 ad ed.

Divortii causa res amotas dicimus non solum eas, quas mulier amovit, cum divortii consilium inisset, sed etiam eas quas nupta amoverit, si, cum discederet, eas celaverit.

Dig. 25.2.17.2

Ulpianus 30 ad ed.

Non solum eas res, quae exstant, in rerum amotarum iudicium venire iulianus ait, verum etiam eas, quae in rerum natura esse desierunt: simili modo etiam certi condici eas posse ait.

Dig. 25.2.17.3

Ulpianus 30 ad ed.

Quae viro suo res pignori datas amoverit, hoc iudicio tenebitur:

Dig. 25.2.18

Paulus 6 quaest.

Sed et domino condictio competet. sed alterutri agere permittendum est.

Dig. 25.2.19

Ulpianus 34 ad ed.

Sed et si divortii tempore fures in domum mariti induxerit et per eos res amoverit, ita ut ipsa non contrectaverit, rerum amotarum iudicio tenebitur. verum est itaque quod labeo scripsit uxorem rerum amotarum teneri, etiamsi ad eam res non pervenerit.

Dig. 25.2.20

Marcellus 7 Dig.

Si rem, quam maritus bona fide emerat, uxor amovit vel opem furi tulit idque fecit divortii causa, rerum amotarum iudicio damnabitur.

Dig. 25.2.21pr.

Paulus 37 ad ed.

Si mulier, cum de viri vita desperasset, subreptis quibusdam rebus divortisset, si convaluerit vir, utilis rerum amotarum actio ei danda est.

Dig. 25.2.21.1

Paulus 37 ad ed.

Si servus mulieris iussu dominae divortii causa res amoverit, pedius putat nec furtum eum facere, quoniam nihil lucri sui causa contrectet nec videri furtum facienti opem ferre, cum mulier furtum non faciat, quamvis servus in facinoribus domino dicto audiens esse non debeat: sed rerum amotarum actio erit.

Dig. 25.2.21.2

Paulus 37 ad ed.

At si in dotem servus datus furtum viro fecerit, si quidem mulier talem esse eum scierit, totum damnum viro sarcietur: quod si ignoraverit, tunc non ultra condemnationem noxae multanda erit.

Dig. 25.2.21.3

Paulus 37 ad ed.

Rerum amotarum actio damnum repraesentat etiam si postea dotis exactio competat.

Dig. 25.2.21.4

Paulus 37 ad ed.

Commodi quoque, si quod amotis rebus amiserit vir, ratio habenda est.

Dig. 25.2.21.5

Paulus 37 ad ed.

Haec actio licet ex delicto nascatur, tamen rei persecutionem continet et ideo non anno finitur, sicut et condictio furtiva: praeterea et heredibus competit.

Dig. 25.2.21.6

Paulus 37 ad ed.

Nec viro nec mulieri prodest in hoc iudicio, si facere non possunt: pendet enim id ex furto.

Dig. 25.2.22pr.

Iulianus 19 Dig.

Si propter res amotas egero cum muliere et lis aestimata sit, an actio ei danda sit, si amiserit possessionem? movet me, quia dolo adquisiit possessionem. respondi: qui litis aestimationem suffert, emptoris loco habendus est. ideo si mulier, cum qua rerum amotarum actum est, aestimationem litis praestiterit, adversus vindicantem maritum vel heredem mariti exceptionem habet et, si amiserit possessionem, in rem actio ei danda est.

Dig. 25.2.22.1

Iulianus 19 Dig.

Si mulier mortis causa res amoverit, deinde mortuus esset maritus, hereditatis petitione vel actione ad exhibendum consequi poterit heres id quod amotum est.

Dig. 25.2.23

Africanus 8 quaest.

Redintegrato matrimonio si iterum divortium factum erit, ob res amotas prioris divortii causa, item ob impensas donationesque priore matrimonio factas manere actionem existimavit.

Dig. 25.2.24

Ulpianus 5 reg.

Ob res amotas vel proprias viri vel etiam dotales tam vindicatio quam condictio viro adversus mulierem competit, et in potestate est, qua velit actione uti.

Dig. 25.2.25

Marcianus 3 reg.

Rerum quidem amotarum iudicium sic habet locum, si divortii consilio res amotae fuerint et secutum divortium fuerit. sed si in matrimonio uxor marito res subtraxerit, licet cessat rerum amotarum actio, tamen ipsas res maritus condicere potest: nam iure gentium condici puto posse res ab his, qui non ex iusta causa possident.

Dig. 25.2.26

Gaius 4 ad ed. provinc.

Rerum amotarum actio condictio est.

Dig. 25.2.27

Papinianus 4 resp.

Rerum amotarum actio ob adulterii crimen, quo mulier postulata est, non differtur.

Dig. 25.2.28

Paulus 6 quaest.

Si uxor rem viri ei, cui eam vir commodaverit, subripuerit isque conventus sit, habebit furti actionem, quamvis vir habere non possit.

Dig. 25.2.29

Tryphonus 11 disp.

Rerum amotarum aestimatio ad tempus quo amotae sunt referri debet: nam veritate furtum fit, et si lenius coercetur mulier. quare nec a bonae fidei possessore ita res amotae usucapiuntur: sed si pluris factae non restituuntur quae amotae sunt, crescit aestimatio, ut in condictione furtivae rei.

Dig. 25.2.30

Papinianus 11 quaest.

Cum soluto matrimonio rerum amotarum iudicium contra mulierem instituitur, redintegrato rursus matrimonio solvitur iudicium.

Dig. 25.3.0. De agnoscendis et alendis liberis vel parentibus vel patronis vel libertis.

Dig. 25.3.1pr.

Ulpianus 34 ad ed.

Senatus consultum, quod factum est de liberis agnoscendis, duas species complectitur, unam eorum qui agnoscunt, aliam earum quae falsum partum subiciunt.

Dig. 25.3.1.1

Ulpianus 34 ad ed.

Permittit igitur mulieri parentive in cuius potestate est vel ei cui mandatum ab eis est, si se putet praegnatem, denuntiare intra dies triginta post divortium connumerandos ipsi marito vel parenti in cuius potestate est, aut domum denuntiare, si nullius eorum copiam habeat.

Dig. 25.3.1.2

Ulpianus 34 ad ed.

Domum accipere debemus hospitium, si in civitate maneat: quod si non sit, sed in villa vel in municipio, illic ubi larem matrimonio collocarent:

Dig. 25.3.1.3

Ulpianus 34 ad ed.

Denuntiare autem hoc tantum esse mulierem ex eo praegnantem. non ergo hoc denuntiat, ut mittat custodes maritus: sufficit enim mulieri hoc notum facere, quod sit praegnas. mariti est iam aut mittere custodes aut ei denuntiare, quod non sit ex se praegnas: hoc autem vel ipsi marito vel alii nomine eius facere permittitur.

Dig. 25.3.1.4

Ulpianus 34 ad ed.

Poena autem mariti ea est, ut, nisi aut custodes praemiserit aut contra denuntiaverit non esse ex se praegnatem, cogatur maritus partum agnoscere: et, si non agnoverit, extra ordinem coercetur. debebit igitur respondere non esse ex se praegnatem aut nomine eius responderi: quod si factum fuerit, non alias necesse habebit agnoscere, nisi vere filius fuerit.

Dig. 25.3.1.5

Ulpianus 34 ad ed.

Illud notandum est, quod denuntiatio a marito non incipit, sed a muliere:

Dig. 25.3.1.6

Ulpianus 34 ad ed.

Sed si maritus ultro custodes offerat et ea non admittat, vel si non denuntiaverit mulier, aut si denuntiaverit quidem, custodes autem arbitrio iudicis non admiserit, liberum est marito parentive eius partum non agnoscere.

Dig. 25.3.1.7

Ulpianus 34 ad ed.

Si mulier esse se praegnatem intra triginta dies non denuntiaverit, postea denuntians causa cognita audiri debebit.

Dig. 25.3.1.8

Ulpianus 34 ad ed.

Quin immo et si in totum omiserit denuntiationem, iulianus ait nihil hoc nocere ei quod editur.

Dig. 25.3.1.9

Ulpianus 34 ad ed.

Dies autem triginta continuos accipere debemus ex die divortii, non utiles.

Dig. 25.3.1.10

Ulpianus 34 ad ed.

Eleganter autem apud iulianum libro nono decimo digestorum quaeritur, si intra dies triginta mulier marito non denuntiaverit et intra triginta partum ediderit, an senatus consulto locus sit. et ait plancianum senatus consultum cessare, quia de eo partu non videtur sentire, qui intra diem trigesimum nascatur: quippe dies triginta ad denuntiandum praestituit senatus. sed hanc rem non facere praeiudicium partui arbitror.

Dig. 25.3.1.11

Ulpianus 34 ad ed.

Quemadmodum per contrarium si maritus uxore denuntiante custodes miserit, nullum praeiudicium sibi facit. licebit igitur ei partum editum ex se negare nec ei nocebit, quod ventrem custodierit: et ita Marcellus libro septimo digestorum scripsit: ait enim, sive quis neget uxorem sive ex se praegnatem, sine praeiudicio recte mittet custodes, maxime si missurus id ipsum protestetur.

Dig. 25.3.1.12

Ulpianus 34 ad ed.

Iulianus libro nono decimo digestorum scripsit: quod senatus consulto comprehensum est, si mulier viro denuntiaverit se ex eo concepisse et is cui denuntiatum erit custodes ad ventrem custodiendum inspiciendumque non miserit neque contestato dixerit eam ex se praegnatem non esse, ut ei id quod editum sit agnoscere sit necesse, non eo pertinet, ut, si quis agnoscere se filium diceret, suum heredem haberet, quamvis ex alio conceptus sit: quandoque enim, inquit, coepit causa agi, grande praeiudicium adfert pro filio confessio patris.

Dig. 25.3.1.13

Ulpianus 34 ad ed.

Idem per contrarium quoque ait, si mulier divortio facto non fecerit ea, quae senatus consulto praecipiuntur, ut liceat patri non agnoscere, non eo pertinere, ut filius natus suum se dicere non possit, sed ad id tantum, ut ita pater alere eum cogatur, si constiterit eum filium esse.

Dig. 25.3.1.14

Ulpianus 34 ad ed.

Idem iulianus scribit, si uxore denuntiante se praegnatem maritus non negaverit, non utique suum illi partum effici, cogendum tamen alere: ceterum esse satis iniuriosum ait, si quis longo tempore afuerit et reversus uxorem praegnatem invenerit et idcirco reiecerit, si quid ex his, quae senatus consulto continentur, omiserit, suum heredem ei nasci.

Dig. 25.3.1.15

Ulpianus 34 ad ed.

Ex his apparet, sive uxor omiserit, quae eam ex senatus consulto observare oportuit, nihil praeiudicare filio, si filius est, non tantum in iure sui, verum ne in alimentis quidem secundum divi pii rescriptum: sive maritus neglexerit facere, quae ex senatus consulto debet, natum cogitur omnimodo alere, ceterum recusare poterit filium.

Dig. 25.3.1.16

Ulpianus 34 ad ed.

Plane si denuntiante muliere negaverit ex se esse praegnatem, tametsi custodes non miserit, non evitabit, quo minus quaeratur, an ex eo mulier praegnas sit. quae causa si fuerit acta apud iudicem et pronuntiaverit, cum de hoc agetur quod ex eo praegnas fuerit nec ne, in ea causa esse, ut agnosci debeat: sive filius non fuit sive fuit, esse suum.

Dig. 25.3.2

Iulianus 19 Dig.

In omnibus causis (quare et fratribus consanguineus erit):

Dig. 25.3.3pr.

Ulpianus 34 ad ed.

Sive contra pronuntiaverit, non fore suum, quamvis suus fuerit: placet enim eius rei iudicem ius facere. et ita Marcellus libro septimo digestorum probat, eoque iure utimur.

Dig. 25.3.3.1

Ulpianus 34 ad ed.

Quia plancianum senatus consultum ad eos partus pertinet qui post divortium eduntur, aliud senatus consultum temporibus divi hadriani factum est, ut, etiamsi constante matrimonio partus sit editus, de agnoscendo eo agatur.

Dig. 25.3.3.2

Ulpianus 34 ad ed.

Quid ergo, si quis post mortem patris nascatur avo superstite, in cuius potestate recasurus est, ut si ex filio eius susceptus probetur? videndum quid dici debeat. et certe probandum est cum avo praeiudicium de partu agnoscendo similiter agendum.

Dig. 25.3.3.3

Ulpianus 34 ad ed.

Quid si hoc ipsum in quaestionem veniat, utrum in matrimonio an postea editus sit? dicendum est et super hoc ex senatus consultis agendum.

Dig. 25.3.3.4

Ulpianus 34 ad ed.

Et quid sit, si an uxor fuerit disceptetur? et iulianus sexto caecilio africano respondit locum esse praeiudicio.

Dig. 25.3.3.5

Ulpianus 34 ad ed.

Illud tenendum haec senatus consulta post mortem parentis cessare, si is supersit, in cuius potestate recasuri non sunt. quid ergo est? in petitione hereditatis, quam filius intendit, quaeretur, utrum ex eo natus sit cuius hereditatem petit an non. adeo hoc verum est, ut iulianus libro nono decimo digestorum scribat, si vivo patre redditum sit praeiudicium et antequam sententia feratur, pater decesserit, transeundum ad carbonianum edictum.

Dig. 25.3.3.6

Ulpianus 34 ad ed.

Item haec senatus consulta pertinent ad eos, qui sui heredes adgnascantur: ceterum si forte non sint in potestatem recasuri, verius est senatus consulta cessare.

Dig. 25.3.4

Paulus 2 sent.

Necare videtur non tantum is qui partum praefocat, sed et is qui abicit et qui alimonia denegat et is qui publicis locis misericordiae causa exponit, quam ipse non habet.

Dig. 25.3.5pr.

Ulpianus 2 de off. cons.

Si quis a liberis ali desideret vel si liberi, ut a parente exhibeantur, iudex de ea re cognoscet.

Dig. 25.3.5.1

Ulpianus 2 de off. cons.

Sed utrum eos tantum liberos qui sunt in potestate cogatur quis exhibere, an vero etiam emancipatos vel ex alia causa sui iuris constitutos, videndum est. et magis puto, etiamsi non sunt liberi in potestate, alendos a parentibus et vice mutua alere parentes debere.

Dig. 25.3.5.2

Ulpianus 2 de off. cons.

Utrum autem tantum patrem avumve paternum proavumve paterni avi patrem ceterosque virilis sexus parentes alere cogamur, an vero etiam matrem ceterosque parentes et per illum sexum contingentes cogamur alere, videndum. et magis est, ut utrubique se iudex interponat, quorundam necessitatibus facilius succursurus, quorundam aegritudini: et cum ex aequitate haec res descendat caritateque sanguinis, singulorum desideria perpendere iudicem oportet.

Dig. 25.3.5.3

Ulpianus 2 de off. cons.

Idem in liberis quoque exhibendis a parentibus dicendum est.

Dig. 25.3.5.4

Ulpianus 2 de off. cons.

Ergo et matrem cogemus praesertim volgo quaesitos liberos alere nec non ipsos eam.

Dig. 25.3.5.5

Ulpianus 2 de off. cons.

Item divus pius significat, quasi avus quoque maternus alere compellatur.

Dig. 25.3.5.6

Ulpianus 2 de off. cons.

Idem rescripsit, ut filiam suam pater exhibeat, si constiterit apud iudicium iuste eam procreatam.

Dig. 25.3.5.7

Ulpianus 2 de off. cons.

Sed si filius possit se exhibere, aestimare iudices debent, ne non debeant ei alimenta decernere. denique idem pius ita rescripsit: " aditi a te competentes iudices ali te a patre tuo iubebunt pro modo facultatium eius, si modo, cum opificem te esse dicas, in ea valetudine es, ut operis sufficere non possis".

Dig. 25.3.5.8

Ulpianus 2 de off. cons.

Si vel parens neget filium idcircoque alere se non debere contendat, vel filius neget parentem, summatim iudices oportet super ea re cognoscere. si constiterit filium vel parentem esse, tunc ali iubebunt: ceterum si non constiterit, nec decernent alimenta.

Dig. 25.3.5.9

Ulpianus 2 de off. cons.

Meminisse autem oportet, etsi pronuntiaverint ali oportere, attamen eam rem praeiudicium non facere veritati: nec enim hoc pronuntiatur filium esse, sed ali debere: et ita divus marcus rescripsit.

Dig. 25.3.5.10

Ulpianus 2 de off. cons.

Si quis ex his alere detrectet, pro modo facultatium alimenta constituentur: quod si non praestentur, pignoribus captis et distractis cogetur sententiae satisfacere.

Dig. 25.3.5.11

Ulpianus 2 de off. cons.

Idem iudex aestimare debet, num habeat aliquid parens vel an pater quod merito filios suos nolit alere: trebatio denique marino rescriptum est merito patrem eum nolle alere, quod eum detulerat.

Dig. 25.3.5.12

Ulpianus 2 de off. cons.

Non tantum alimenta, verum etiam cetera quoque onera liberorum patrem ab iudice cogi praebere rescriptis continetur.

Dig. 25.3.5.13

Ulpianus 2 de off. cons.

Si impubes sit filius emancipatus, patrem inopem alere cogetur: iniquissimum enim quis merito dixerit patrem egere, cum filius sit in facultatibus.

Dig. 25.3.5.14

Ulpianus 2 de off. cons.

Si mater alimenta, quae fecit in filium, a patre repetat, cum modo eam audiendam. ita divus marcus rescripsit antoniae montanae in haec verba: " sed et quantum tibi alimentorum nomine, quibus necessario filiam tuam exhibuisti, a patre eius praestari oporteat, iudices aestimabunt, nec impetrare debes ea, quae exigente materno affectu in filiam tuam erogatura esses, etiamsi a patre suo educaretur".

Dig. 25.3.5.15

Ulpianus 2 de off. cons.

A milite quoque filio, qui in facultatibus sit, exhibendos parentes esse pietatis exigit ratio.

Dig. 25.3.5.16

Ulpianus 2 de off. cons.

Parens quamvis ali a filio ratione naturali debeat, tamen aes alienum eius non esse cogendum exsolvere filium rescriptum est.

Dig. 25.3.5.17

Ulpianus 2 de off. cons.

Item rescriptum est heredes filii ad ea praestanda, quae vivus filius ex officio pietatis suae dabit, invitos cogi non oportere, nisi in summam egestatem pater deductus est.

Dig. 25.3.5.18

Ulpianus 2 de off. cons.

Solent iudices cognoscere et inter patronos et libertos, si alendis his agatur: itaque si negent se esse libertos, cognoscere eos oportebit: quod si libertos constiterit, tunc demum decernere, ut alant: nec tamen alimentorum decretum tollet liberto facultatem, quo minus praeiudicio certare possit, si libertum se neget.

Dig. 25.3.5.19

Ulpianus 2 de off. cons.

Alimenta autem pro modo facultatium erunt praebenda, egentibus scilicet patronis: ceterum si sit unde se exhibeant, cessabunt partes iudicis.

Dig. 25.3.5.20

Ulpianus 2 de off. cons.

Utrum autem tantum patroni alendi sint an etiam patronorum liberi, tractari potest. et puto causa cognita iudices et liberos quoque patronorum alendos decernere, non quidem tam facile ut patronos, sed nonnumquam et ipsos: nam et obsequium non solum patronis, verum etiam liberis eorum debere praestari.

Dig. 25.3.5.21

Ulpianus 2 de off. cons.

Sed et libertus maternus alere cogitur.

Dig. 25.3.5.22

Ulpianus 2 de off. cons.

Si quis a liberti liberto ali se desideret vel ab eo, quem ex causa fideicommissi manumisit quemque suis nummis redemit, non debet audiri, ut et Marcellus scribit, exaequatque eum, qui mercedes exigendo ius libertorum amisit.

Dig. 25.3.5.23

Ulpianus 2 de off. cons.

Sed et patroni filium, qui capitis accusavit libertum paternum, negat exhibendum.

Dig. 25.3.5.24

Ulpianus 2 de off. cons.

Sed et liberta cogitur patronum alere.

Dig. 25.3.5.25

Ulpianus 2 de off. cons.

De alimentis patroni arbiter solet dari arbitraturus, quantum sit in facultatibus, ut perinde possint alimenta moderari, quae tamdiu praestabuntur, quamdiu liberto supersit, patrono desit.

Dig. 25.3.5.26

Ulpianus 2 de off. cons.

Patrem et matrem patroni, cum patronus et filii eius minime supersint, alere egentes, ipsi si idonei facultatibus sunt, coguntur.

Dig. 25.3.6pr.

Modestinus l.S. de manumiss.

Alimenta liberto petente non praestando patronus amissione libertatis causa impositorum et hereditatis liberti punietur: non autem necesse habebit praestare, etiamsi potest.

Dig. 25.3.6.1

Modestinus l.S. de manumiss.

Imperatoris commodi constitutio talis profertur: " cum probatum sit contumeliis patronos a libertis esse violatos vel illata manu atroci esse pulsatos aut etiam paupertate vel corporis valetudine laborantes relictos, primum eos in potestate patronorum redigi et ministerium dominis praebere cogi: sin autem nec hoc modo admoneantur, vel a praeside emptori addicentur et pretium patronis tribuetur".

Dig. 25.3.7

Modestinus 5 resp.

Si neget qui maritus fuisse dicitur matrimonium esse contractum eo, quod eam quae se uxorem fuisse dicit ancillam esse probare paratus sit, alimenta quidem liberis praestare interim compellendum, sin autem constiterit eam servam fuisse, nihil ei, qui pascendos curavit, ex hoc praeiudicium generare respondi.

Dig. 25.3.8

Marcellus 1 ad l. iul. et pap.

Non quemadmodum masculorum liberorum nostrorum liberi ad onus nostrum pertinent, ita et in feminis est: nam manifestum est id quod filia parit non avo, sed patri suo esse oneri, nisi pater aut non sit superstes aut egens est.

Dig. 25.3.9

Paulus l.S. de iure patronatus.

In bonis superstitum libertorum nullum omnino ius patroni liberive patronorum habent, nisi si tam esse infirmos tamque pauperes praesidibus probaverint, ut merito menstruis alimentis a libertis suis adiuvari debeant. idque ius ita plurimis principum constitutionibus manifestatur.

Dig. 25.4.0. De inspiciendo ventre custodiendoque partu.

Dig. 25.4.1pr.

Ulpianus 24 ad ed.

Temporibus divorum fratrum cum hoc incidisset, ut maritus quidem praegnatem mulierem diceret, uxor negaret, consulti valerio prisciano praetori urbano rescripserunt in haec verba: " novam rem desiderare rutilius severus videtur, ut uxori, quae ab eo diverterat et se non esse praegnatem profiteatur, custodem apponat, et ideo nemo mirabitur, si nos quoque novum consilium et remedium suggeramus. igitur si perstat in eadem postulatione, commodissimum est eligi honestissimae feminae domum, in qua domitia veniat, et ibi tres obstetrices probatae et artis et fidei, quae a te adsumptae fuerint, eam inspiciant. et si quidem vel omnes vel duae renuntiaverint praegnatem videri, tunc persuadendum mulieri erit, ut perinde custodem admittat atque si ipsa hoc desiderasset: quod si enixa non fuerit, sciat maritus ad invidiam existimationemque suam pertinere, ut non immerito possit videri captasse hoc ad aliquam mulieris iniuriam. si autem vel omnes vel plures non esse gravidam renuntiaverint, nulla causa custodiendi erit".

Dig. 25.4.1.1

Ulpianus 24 ad ed.

Ex hoc rescripto evidentissime apparet senatus consulta de liberis agnoscendis locum non habuisse, si mulier dissimularet se praegnatem vel etiam negaret, nec immerito: partus enim antequam edatur, mulieris portio est vel viscerum. post editum plane partum a muliere iam potest maritus iure suo filium per interdictum desiderare aut exhiberi sibi aut ducere permitti. extra ordinem igitur princeps in causa necessaria subvenit.

Dig. 25.4.1.2

Ulpianus 24 ad ed.

Secundum quod rescriptum evocari mulier ad praetorem poterit et apud eum interrogari, an se putet praegnatem, cogendaque erit respondere.

Dig. 25.4.1.3

Ulpianus 24 ad ed.

Quid ergo, si non responderit aut non veniat ad praetorem? numquid senatus consulti poenam adhibemus, scilicet ut liceat marito non agnoscere? sed finge non esse eo contentum maritum, qui se patrem potius optet quam carere filio velit. cogenda igitur erit remediis praetoris et in ius venire, si venit, respondere: pignoraque eius capienda et distrahenda, si contemnat, vel multis coercenda.

Dig. 25.4.1.4

Ulpianus 24 ad ed.

Quid ergo, si interrogata dixerit se praegnatem? ordo senatus consultis expositus sequetur. quod si negaverit, tunc secundum hoc rescriptum praetor debebit obstetrices adhibere.

Dig. 25.4.1.5

Ulpianus 24 ad ed.

Et notandum, quod non permittitur marito vel mulieri obstetricem adhibere, sed omnes a praetore adhibendae sunt.

Dig. 25.4.1.6

Ulpianus 24 ad ed.

Item praetor domum honestae matronae eligere debet, in qua mulier veniat, ut possit inspici.

Dig. 25.4.1.7

Ulpianus 24 ad ed.

Quid ergo, si inspici se non patiatur vel ad domum non veniat? aeque praetoris auctoritas interveniet.

Dig. 25.4.1.8

Ulpianus 24 ad ed.

Si omnes vel plures renuntiaverint praegnatem non esse, an mulier possit iniuriarum experiri ex hac causa? et magis puto agere eam iniuriarum posse, sic tamen, si iniuriae faciendae causa id maritus desideravit: ceterum si non iniuriae faciendae animo, sed quia iuste credidit vel nimio voto liberorum suscipiendorum ductus est vel ipsa eum illexerat ut crederet, quod constante matrimonio hoc fingebat, aequissimum erit ignosci marito.

Dig. 25.4.1.9

Ulpianus 24 ad ed.

Meminisse autem oportet tempus non esse praestitutum rescripto, quamvis in senatus consultis de liberis agnoscendis triginta dies praestituantur mulieri. quid ergo? semper dicemus marito licere uxorem ad praetorem evocare, an vero et ipsi triginta dies praestituimus? et putem praetorem causa cognita debere maritum et post triginta dies audire.

Dig. 25.4.1.10

Ulpianus 24 ad ed.

De inspiciendo ventre custodiendoque partu sic praetor ait: " si mulier mortuo marito praegnatem se esse dicet, his ad quos ea res pertinebit procuratorive eorum bis in mense denuntiandum curet, ut mittant, si velint, quae ventrem inspicient. mittantur autem mulieres liberae dumtaxat quinque haeque simul omnes inspiciant, dum ne qua earum dum inspicit invita muliere ventrem tangat. mulier in domu honestissimae feminae pariat, quam ego constituam. mulier ante dies triginta, quam parituram se putat, denuntiet his ad quos ea res pertinet procuratoribusve eorum, ut mittant, si velint, qui ventrem custodiant. in quo conclavi mulier paritura erit, ibi ne plures aditus sint quam unus: si erunt, ex utraque parte tabulis praefigantur. ante ostium eius conclavis liberi tres et tres liberae cum binis comitibus custodiant. quotienscumque ea mulier in id conclave aliudve quod sive in balineum ibit, custodes, si volent, id ante prospiciant et eos qui introierint excutiant. custodes, qui ante conclave positi erunt, si volunt, omnes qui conclave aut domum introierint excutiant. mulier cum parturire incipiat, his ad quos ea res pertinet procuratoribusve eorum denuntiet, ut mittant, quibus praesentibus pariat. mittantur mulieres liberae dumtaxat quinque, ita ut praeter obstetrices duas in eo conclavi ne plures mulieres liberae sint quam decem, ancillae quam sex. hae quae intus futurae erunt excutiantur omnes in eo conclavi, ne qua praegnas sit. " tria lumina ne minus ibi sint", scilicet quia tenebrae ad subiciendum aptiores sunt. " quod natum erit, his ad quos ea res pertinet procuratoribusve eorum, si inspicere volent, ostendatur. apud eum educatur, apud quem parens iusserit. si autem nihil parens iusserit aut is, apud quem voluerit educari, curam non recipiet: apud quem educetur, causa cognita constituam. is apud quem educabitur quod natum erit, quoad trium mensum sit, bis in mense, ex eo tempore quoad sex mensum sit, semel in mense, a sex mensibus quoad anniculus fiat, alternis mensibus, ab anniculo quoad fari possit, semel in sex mensibus ubi volet ostendat. si cui ventrem inspici custodirive adesse partui licitum non erit factumve quid erit, quo minus ea ita fiant, uti supra compprehensum est: ei quod natum erit possessionem causa cognita non dabo. sive quod natum erit, ut supra cautum est, inspici non licuerit, quas utique actiones me daturum polliceor his quibus ex edicto meo bonorum possessio data sit, eas, si mihi iusta causa videbitur esse, ei non dabo"

Dig. 25.4.1.11

Ulpianus 24 ad ed.

Quamvis sit manifestissimum edictum praetoris, attamen non est neglegenda interpretatio eius.

Dig. 25.4.1.12

Ulpianus 24 ad ed.

Denuntiare igitur mulierem oportet his scilicet, quorum interest partum non edi, vel totam habituris hereditatem vel partem eius sive ab intestato sive ex testamento.

Dig. 25.4.1.13

Ulpianus 24 ad ed.

Sed et si servus heres institutus fuerit, si nemo natus sit, aristo scribit, huic quoque servo quamvis non omnia, quaedam tamen circa partum custodiendum arbitrio praetoris esse concedenda. quam sententiam puto veram: publice enim interest partus non subici, ut ordinum dignitas familiarumque salva sit: ideoque etiam servus iste, cum sit in spe constitutus successionis, qualisqualis sit, debet audiri rem et publicam et suam gerens.

Dig. 25.4.1.14

Ulpianus 24 ad ed.

Denuntiari autem oportet his, quos proxima spes successionis contingit, ut puta primo gradu heredi instituto (non etiam substituto) et, si intestatus pater familias sit, ei qui primum locum ab intestato tenet: si vero plures sint simul successuri, omnibus denuntiandum est.

Dig. 25.4.1.15

Ulpianus 24 ad ed.

Quod autem praetor ait causa cognita se possessionem non daturum vel actiones denegaturum, eo pertinet, ut, si per rusticitatem aliquid fuerit omissum ex his quae praetor servari voluit, non obsit partui. quale est enim, si quid ex his, quae leviter observanda praetor edixit, non sit factum, partui denegari bonorum possessionem: sed mos regionis inspiciendus est, et secundum eum et observari ventrem et partum et infantem oportet.

Dig. 25.4.2pr.

Iulianus 24 Dig.

Edictum de custodiendo partu derogatorium est eius, quod ad carboniani decreti exemplum comparatum est.

Dig. 25.4.2.1

Iulianus 24 Dig.

Sed hoc aliquando remittere praetor debet, si non malitia, sed imperitia mulieris factum fuerit, ne venter inspiceretur aut partus custodiretur.

Dig. 25.4.3

Paulus 14 ad plaut.

Qui ventri substitutus est vel institutus, si ventrem servare velit, audiendus est.

Dig. 25.4.4

Scaevola 20 Dig.

Is a quo, si sine liberis decessisset, quidquid ad eum ex bonis pervenisset, sorori fideicommissum relictum erat, decessit postuma herede instituta et substitutis aliis: quaesitum est, cum uxor defuncti praegnatem se dicat, an sorori procuratorive eius secundum formam edicti ventrem inspicere et partum custodire permittendum sit. respondi in eiusmodi specie, de qua quaereretur, posse videri ad eius, cui fideicommissum datum esset, sollicitudinem perspiciendum idque causa cognita statuendum.

Dig. 25.5.0. Si ventris nomine muliere in possessionem missa eadem possessio dolo malo ad alium translata esse dicatur.

Dig. 25.5.1pr.

Ulpianus 34 ad ed.

Hoc edicto rectissime praetor prospexit, ne, dum in favorem partus possessionem polliceatur, aliis praedae occasionem praebeat:

Dig. 25.5.1.1

Ulpianus 34 ad ed.

Idcirco constituit actionem in mulierem, quae in alium hanc possessionem dolo malo transtulit. non solum mulierem praetor coercet, verum eum quoque in cuius potestate ea fuerit, scilicet si dolo ipsorum alius in possessionem fuerit admissus, actionemque in tantum pollicetur in eos, quanti interfuit eius qui experitur.

Dig. 25.5.1.2

Ulpianus 34 ad ed.

Necessario praetor adiecit, ut, qui per dolum venit in possessionem, cogatur decedere: coget autem eum decedere non praetoria potestate vel manu ministrorum, sed melius et civilius faciet, si eum per interdictum ad ius ordinarium remiserit.

Dig. 25.5.1.3

Ulpianus 34 ad ed.

Interest autem eius qui experitur admissum alium in possessionem non fuisse, cum forte bona fide fructus perceptos consumpserit, aut si praedo venerit in possessionem, a quo fructus consequi non possit, quia solvendo non est.

Dig. 25.5.1.4

Ulpianus 34 ad ed.

Haec actio etiam post annum dabitur, quia rei habet persecutionem.

Dig. 25.5.1.5

Ulpianus 34 ad ed.

Et si filia familias sit quae dolo fecit, in patrem dabitur actio, si quid ad eum pervenerit.

Dig. 25.5.2pr.

Paulus 37 ad ed.

Dolo facit mulier, non quae in possessionem venientem non prohibet, sed quae circumscribendi alicuius causa clam et per quandam machinationem in possessionem introducat.

Dig. 25.5.2.1

Paulus 37 ad ed.

Si et patris et filiae factum arguetur, in alterum quem actor velit reddenda est actio. quia in id quod agentis interest datur, ideo, si id quod ei abest ab eo qui in potestate est servari possit, praeter sumptus litis causa factos inutilis erit ei haec actio.

Dig. 25.6.0. Si mulier ventris nomine in possessione calumniae causa esse dicetur.

Dig. 25.6.1pr.

Ulpianus 34 ad ed.

Si de possessione ventris nomine quaeratur et deferente herede mulier iuraverit praegnatem se esse, servandum est iusiurandum nec tenebitur mulier, quasi calumniae causa fuerit in possessionem missa, nec vis ei facienda est post iusiurandum. si tamen peperit, quaeretur veritas, an ex eo praegnas fuerit: alteri enim nec prodest nec nocet iusiurandum inter alios factum, nec partui igitur nocebit.

Dig. 25.6.1.1

Ulpianus 34 ad ed.

Et hoc edictum ex eadem causa proficiscitur, qua superius: debet enim praetor, quemadmodum facilis est circa bonorum possessionem dandam mulieri ventris nomine, ita calumniam eius impunitam non relinquere.

Dig. 25.6.1.2

Ulpianus 34 ad ed.

Per calumniam autem in possessione fuisse videtur, quae sciens prudensque se praegnatem non esse voluit in possessionem venire.

Dig. 25.6.1.3

Ulpianus 34 ad ed.

Hanc autem actionem praetor intra annum utilem pollicetur, ultra non, videlicet quasi poenalem.

Dig. 25.6.1.4

Ulpianus 34 ad ed.

Simili autem modo et hic quanti agentis interfuit praetor actionem pollicetur.

Dig. 25.6.1.5

Ulpianus 34 ad ed.

In parentem etiam praetor actionem pollicetur, si modo per eum factum sit, ut in possessionem per calumniam veniret.

Dig. 25.6.1.6

Ulpianus 34 ad ed.

Competit autem haec actio ei, cuius interfuit in possessionem missam non esse: ut puta vel coheredi speranti partum, vel si qui substitutus fuit, vel qui ab intestato, si partus non fuisset, succedere potuit.

Dig. 25.6.1.7

Ulpianus 34 ad ed.

Interesse autem videtur primum de alimentis, quae in ventrem sunt erogata: nec enim alias haec repetuntur, nisi per calumniam in possessionem venit: ceterum si res calumnia caret, nihil praestabit mulier, quae sine causa alta est sub praetextu ventris.

Dig. 25.6.1.8

Ulpianus 34 ad ed.

Nonnumquam augebitur quod interest, si quis forte dubitans, an praegnas sit, exclusus sit hereditate: nam heredi eius qui exclusus est dandam hanc actionem iulianus ait, siquidem eius quoque interfuit non fuisse calumniae causa in possessione mulierem, quia hoc si non fuisset, adeundo hereditatem institutus heredi suo locupletiorem hereditatem suam relinqueret. sed et hoc imputatur mulieri, quod deminuta sunt multa in hereditate, dum hic contemplatione ventris non attigit hereditatem.

Dig. 25.6.1.9

Ulpianus 34 ad ed.

Idem iulianus libro decimo nono digestorum sic ait: si substitutus manente muliere in possessione decesserit, heres eius eadem actione pretium hereditatis a muliere exiget.

Dig. 25.6.1.10

Ulpianus 34 ad ed.

Sed an decedant legata ceteraque onera hereditatis, videndum. et mihi videtur posse dici legatarios potius cum muliere usuros hac actione, quia et ipsorum interfuit adiri hereditatem.

Dig. 25.6.1.11

Ulpianus 34 ad ed.

Libertati plane subveniendum erit adversus eum, qui propter hereditatem hac actione egit, scilicet ut fideicommissarias cogatur is praestare, qui pretium utique etiam eorum consequitur: sed et directis credo praetorem succurrere oportere, ut interventu suo tueatur eorum libertatem.

Dig. 25.6.1.12

Ulpianus 34 ad ed.

Si dolus filiae familias intervenerit et particeps doli fuerit pater, suo nomine tenebitur.

Dig. 25.7.0. De concubinis.

Dig. 25.7.1pr.

Ulpianus 2 ad l. iul. et pap.

Quae in concubinatu est, ab invito patrono poterit discedere et alteri se aut in matrimonium aut in concubinatum dare? ego quidem probo in concubina adimendum ei conubium, si patronum invitum deserat, quippe cum honestius sit patrono libertam concubinam quam matrem familias habere.

Dig. 25.7.1.1

Ulpianus 2 ad l. iul. et pap.

Cum atilicino sentio et puto solas eas in concubinatu habere posse sine metu criminis, in quas stuprum non committitur.

Dig. 25.7.1.2

Ulpianus 2 ad l. iul. et pap.

Qui autem damnatam adulterii in concubinatu habuit, non puto lege iulia de adulteriis teneri, quamvis, si uxorem eam duxisset, teneretur.

Dig. 25.7.1.3

Ulpianus 2 ad l. iul. et pap.

Si qua in patroni fuit concubinatu, deinde filii esse coepit vel in nepotis, vel contra, non puto eam recte facere, quia prope nefaria est huiusmodi coniunctio, et ideo huiusmodi facinus prohibendum est.

Dig. 25.7.1.4

Ulpianus 2 ad l. iul. et pap.

Cuiuscumque aetatis concubinam habere posse palam est, nisi minor annis duodecim sit.

Dig. 25.7.2

Paulus 12 ad l. iul. et pap.

Si patronus libertam concubinam habens furere coeperit, in concubinatu eam esse humanius dicitur.

Dig. 25.7.3pr.

Marcianus 12 inst.

In concubinatu potest esse et aliena liberta et ingenua et maxime ea quae obscuro loco nata est vel quaestum corpore fecit. alioquin si honestae vitae et ingenuam mulierem in concubinatum habere maluerit, sine testatione hoc manifestum faciente non conceditur. sed necesse est ei vel uxorem eam habere vel hoc recusantem stuprum cum ea committere:

Dig. 25.7.3.1

Marcianus 12 inst.

Nec adulterium per concubinatum ab ipso committitur. nam quia concubinatus per leges nomen assumpsit, extra legis poenam est, ut et Marcellus libro septimo digestorum scripsit.

Dig. 25.7.4

Paulus 19 resp.

Concubinam ex sola animi destinatione aestimari oportet.

Dig. 25.7.5

Paulus 2 sent.

Concubinam ex ea provincia, in qua quis aliquid administrat, habere potest.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER SEXTUS-VICESIMUS

Dig. 26.1.0. De tutelis.
Dig. 26.2.0. De testamentaria tutela.
Dig. 26.3.0. De confirmando tutore vel curatore.
Dig. 26.4.0. De legitimis tutoribus.
Dig. 26.5.0. De tutoribus et curatoribus datis ab his qui ius dandi habent, et qui et in quibus causis specialiter dari possunt.
Dig. 26.6.0. Qui petant tutores vel curatores et ubi petantur.
Dig. 26.7.0. De administratione et periculo tutorum et curatorum qui gesserint vel non et de agentibus vel conveniendis uno vel pluribus.
Dig. 26.8.0. De auctoritate et consensu tutorum et curatorum.
Dig. 26.9.0. Quando ex facto tutoris vel curatoris minores agere vel conveniri possunt.
Dig. 26.10.0. De suspectis tutoribus et curatoribus.

Dig. 26.1.0. De tutelis.

Dig. 26.1.1pr.

Paulus 38 ad ed.

Tutela est, ut servius definit, vis ac potestas in capite libero ad tuendum eum, qui propter aetatem sua sponte se defendere nequit, iure civili data ac permissa.

Dig. 26.1.1.1

Paulus 38 ad ed.

Tutores autem sunt qui eam vim ac potestatem habent, exque re ipsa nomen ceperunt: itaque appellantur tutores quasi tuitores atque defensores, sicut aeditui dicuntur qui aedes tuentur.

Dig. 26.1.1.2

Paulus 38 ad ed.

Mutus tutor dari non potest, quoniam auctoritatem praebere non potest.

Dig. 26.1.1.3

Paulus 38 ad ed.

Surdum non posse dari tutorem plerique et pomponius libro sexagesimo nono ad edictum probant, quia non tantum loqui, sed et audire tutor debet.

Dig. 26.1.2

Pomponius 3 ad sab.

Non est exigendum a pupillo, ut sibi tutorem petat aut ut ad tutorem suum proficiscatur.

Dig. 26.1.3pr.

Ulpianus 37 ad sab.

Qui habet tutorem pupillus vel pupilla si furere coeperint, in ea causa sunt, ut in tutela nihilo minus durent: quae sententia quinti quoque mucii fuit et a iuliano probatur eoque iure utimur, ut cesset cura, si tutelae aetas indigeat. quare si tutores habent, per furorem in curam non rediguntur, sive non habent et furor eis accesserit, nihilo minus tutores accipere poterunt: quia lex duodecim tabularum ita accepta est, ut ad pupillos vel pupillas non pertineat.

Dig. 26.1.3.1

Ulpianus 37 ad sab.

Quia autem in pupillorum persona adgnatos curatores non admittimus, idcirco putavi et si minor viginti quinque annis furiosus sit, curatorem ei non ut furioso, sed ut adulescenti dari, quasi aetatis esset impedimentum. et ita definiemus ei, quem aetas curae vel tutelae subicit, non esse necesse quasi dementi quaeri curatorem, et ita imperator antoninus augustus rescripsit, cum magis aetati quam dementiae tantisper sit consulendum.

Dig. 26.1.3.2

Ulpianus 37 ad sab.

Si pupillus pupillave cum iusto tutore tutorve cum eorum quo litem agere vult et curator in eam rem petitur, utrum ipsis poscentibus datur an vero et adversario? et sciendum est, sive agant sive conveniantur, dari hunc curatorem posse, sed non alias, quam si ipse petat, cui dari eum oportet. denique cassius libro sexto scripsit talem curatorem neminem dari posse nisi praesentem neque cuique nisi praesenti et postulanti, itaque infanti non potest dari. idem cassius ait, si pupillus curatorem poscere non vult, quo minus cum eo agatur, cogi eum a praetore debuisse.

Dig. 26.1.3.3

Ulpianus 37 ad sab.

Quolibet loco et tempore hunc curatorem dari posse pomponius libro sexto decimo ad sabinum scripsit.

Dig. 26.1.3.4

Ulpianus 37 ad sab.

Si pupillus petat talem curatorem nec addat in quam rem, an in omnes controversias datus sit? et ait celsus servium constituisse in omnes res datum videri.

Dig. 26.1.4pr.

Paulus 8 ad sab.

Quod dicitur, si indistincte datus sit curator, in totam litem datum videri, fortasse eo spectet, si familiae herciscundae aut communi dividundo aut finium regundorum actio esset cum tutore, et si indistincte datus esset, non solum eo nomine curator esset, quod ageret pupillus pupillave, sed invicem quoque quod cum his ageretur.

Dig. 26.1.4.1

Paulus 8 ad sab.

Possunt autem vel plures in plurium locum vel unus in plurium vel unus unius loco vel in unam litem vel in plures curator peti.

Dig. 26.1.5pr.

Pomponius 17 ad sab.

Cum semel petitus sit talis curator, quamdiu is curator maneat, alius in eandem litem curator peti non potest.

Dig. 26.1.5.1

Pomponius 17 ad sab.

Etsi titius verbi gratia adversus seium curator petitus sit, idem titius adversus alium tutorem dari poterit, ut ex diversis causis unus duorum curatorum locum optineat. quod quidem et adversus eundem accidet, si in diversas lites in diversis temporibus idem petatur.

Dig. 26.1.6pr.

Ulpianus 38 ad sab.

Muto itemque mutae impuberibus tutorem dari posse verum est: sed an auctoritas eis accommodari possit, dubitatur. et si potest tacenti, et muto potest. est autem verius, ut iulianus libro vicesimo primo digestorum scripsit, etiam tacentibus auctoritatem posse accommodare.

Dig. 26.1.6.1

Ulpianus 38 ad sab.

Sub condicione a praesidibus provinciarum non posse dari tutorem placet et, si datus sit, nullius esse momenti dationem: et ita pomponius ait: hanc autem adiectionem, quam praesides provinciarum faciunt " tutorem do, si satisdederit" non condicionem in se habere, sed admonitionem, non aliter ei tutelam committi, quam si satisdederit, hoc est non aliter ei gerere permittendum, quam si rem salvam fore caverit.

Dig. 26.1.6.2

Ulpianus 38 ad sab.

Tutoris datio neque imperii est neque iurisdictionis, sed ei soli competit, cui nominatim hoc dedit vel lex vel senatus consultum vel princeps.

Dig. 26.1.6.3

Ulpianus 38 ad sab.

Surdo impuberi poterit tutor dari.

Dig. 26.1.6.4

Ulpianus 38 ad sab.

Ei cuius pater in hostium potestate est tutorem dari non posse palam est: sed si datus sit, an in pendenti sit datio, quaeri potest. et non puto dationem valere: sic enim post patris regressum reccidit in potestatem, atque si numquam pater ab hostibus captus fuisset. immo curator substantiae dari debet, ne in medio pereat.

Dig. 26.1.7

Ulpianus 2 disp.

Si filius familias tutor a praetore datus sit, si quidem pater tutelam agnovit, in solidum debet teneri, si non adgnovit, dumtaxat de peculio. adgnovisse autem videtur, sive gessit sive gerenti filio consensit sive omnino attigit tutelam. unde cum quidam filio scripsisset, ut diligenter tutelam gereret, " cum scias", inquit, " periculum ad nos pertinere", dixi hunc quoque videri adgnovisse: plane si solum monuit filium, non videtur agnita.

Dig. 26.1.8

Ulpianus 1 opin.

Patronus quoque tutor liberti sui fidem exhibere debet, et si qua in fraudem debitorum quamvis pupilli liberti gesta sunt, revocari ius publicum permittit.

Dig. 26.1.9

Marcianus 3 inst.

In eos extra ordinem animadvertitur, qui probentur nummis datis tutelam occupasse vel pretio accepto operam dedisse, ut non idoneus tutor daretur, vel consulto in edendo patrimonio quantitatem minuerit, vel evidenti fraude pupillorum bona alienasset.

Dig. 26.1.10

Ulpianus 2 ad ed.

Etiam non municeps tutor dari potest, dummodo municipi detur.

Dig. 26.1.11

Paulus 3 ad vitell.

Furiosus si tutor datus fuerit, potest intellegi ita dari, cum suae mentis esse coeperit.

Dig. 26.1.12

Paulus 10 resp.

Quaesitum est, an hi, qui in locum absentis rei publicae causa tutores dati sunt, mortuo illo tutores perseverent, an alii petendi essent. paulus respondit eos, qui in locum absentis dati sunt, non reverso eo in eadem causa perseverare usque ad tempus pubertatis.

Dig. 26.1.13pr.

Pomponius 2 enchir.

Solet etiam curator dari aliquando tutorem habenti propter adversam tutoris valetudinem vel senium aetatis: qui magis administrator rerum, quam curator esse intellegitur.

Dig. 26.1.13.1

Pomponius 2 enchir.

Est etiam adiutor tutelae, quem solet praetor permittere tutoribus constituere, qui non possunt sufficere administrationi tutelae, ita tamen ut suo periculo eum constituant.

Dig. 26.1.14pr.

Ulpianus 37 ad sab.

Si adrogati sunt adhuc impuberes vel deportati sint pupilli, tutores habere desinunt.

Dig. 26.1.14.1

Ulpianus 37 ad sab.

Item si in servitutem pupillus redigatur, utique finitur tutela.

Dig. 26.1.14.2

Ulpianus 37 ad sab.

Aliis quoque modis desinunt esse tutores, si forte quis ab hostibus fuerit captus vel pupillus vel tutor.

Dig. 26.1.14.3

Ulpianus 37 ad sab.

Sed et si ad tempus fuerit quis datus, tempore finito tutor esse desinit.

Dig. 26.1.14.4

Ulpianus 37 ad sab.

Praeterea si suspectus quis fuerit remotus, desinit esse tutor.

Dig. 26.1.14.5

Ulpianus 37 ad sab.

Sed et si ad certam condicionem datus sit, aeque evenit, ut desinat esse tutor exsistente condicione.

Dig. 26.1.15

Ulpianus 38 ad sab.

Si quis tutor non sit captus ab hostibus, sed missus ad eos quasi legatus, aut etiam receptus ab eis, aut transfugerit, quia servus non efficitur, tutor manet, sed interim a praesidibus alius tutor dabitur.

Dig. 26.1.16pr.

Gaius 12 ad ed. provinc.

Tutela plerumque virile officium est.

Dig. 26.1.16.1

Gaius 12 ad ed. provinc.

Et sciendum est nullam tutelam hereditario iure ad alium transire: sed ad liberos virilis sexus perfectae aetatis descendunt legitimae, ceterae non descendunt.

Dig. 26.1.17

Paulus 8 ad sab.

Complura senatus consulta facta sunt, ut in locum furiosi et muti et surdi tutoris alii tutores dentur.

Dig. 26.1.18

Nerva 3 reg.

Feminae tututores dari non possunt, quia id munus masculorum est, nisi a principe filiorum tutelam specialiter postulent.

Dig. 26.2.0. De testamentaria tutela.

Dig. 26.2.1pr.

Gaius 12 ad ed. provinc.

Lege duodecim tabularum permissum est parentibus liberis suis sive feminini sive masculini sexus, si modo in potestate sint, tutores testamento dare.

Dig. 26.2.1.1

Gaius 12 ad ed. provinc.

Item scire debemus etiam postumis filiis vel nepotibus vel ceteris liberis licere parentibus testamento tutores dare, qui modo in ea causa sint, ut, si vivo eo nati fuerint, in potestate eius futuri sint neque testamentum rupturi.

Dig. 26.2.1.2

Gaius 12 ad ed. provinc.

Item ignorandum non est eum, qui filium in potestate et nepotem ex eo aeque in potestate habebit, si nepoti tutorem dederit, ita recte dedisse videri, si nepos post mortem eius in patris sui potestatem recasurus non sit: quod evenit, si vivo testatore filius in potestate eius esse desierit.

Dig. 26.2.2

Ulpianus 2 ad sab.

Nec militem liberis recasuris in potestatem tutorem dare posse a divis fratribus rescriptum est.

Dig. 26.2.3pr.

Ulpianus 35 ad ed.

Testamento datos tutores accipere debemus etiam eos, qui codicillis testamento confirmatis scripti sunt.

Dig. 26.2.3.1

Ulpianus 35 ad ed.

Sed eos demum testamento datos accipere nos oportet, qui iure dati sunt.

Dig. 26.2.4

Modestinus 7 diff.

Pater heredi instituto filio vel exheredato tutorem dare potest, mater autem non nisi instituto, quasi in rem potius quam in personam tutorem dare videatur. sed et inquiri in eum, qui matris testamento datus est tutor, oportebit, cum a patre datus, quamvis minus iure datus sit, tamen sine inquisitione confirmatur, nisi si causa, propter quam datus videbatur, in eo mutata sit, veluti si ex amico inimicus vel ex divite pauperior effectus sit.

Dig. 26.2.5

Ulpianus 15 ad sab.

Si quis filiabus suis vel filiis tutores dederit, etiam postumae videtur dedisse, quia filiae appellatione etiam postuma continetur.

Dig. 26.2.6

Ulpianus 39 ad sab.

Quid si nepotes sint? an appellatione filiorum et ipsis tutores dati sint, videndum. et magis est, ut ipsis quoque dati videantur, si modo liberos dixit: ceterum si filios, non continebuntur: aliter enim filii, aliter nepotes appellantur. plane si postumis dederit, tam filii postumi quam ceteri liberi continebuntur.

Dig. 26.2.7

Paulus 3 ad sab.

Tutores non ab herede, sed a testatore protinus proficiscuntur, simul atque aliquis heres exstitisset: nam et ipse heres tutor dari potest et post mortem heredis tutor recte dari potest.

Dig. 26.2.8pr.

Ulpianus 24 ad sab.

Tutor datus vetari tutor esse potest vel testamento vel codicillis.

Dig. 26.2.8.1

Ulpianus 24 ad sab.

Sed si sub condicione fuerit tutor datus, deficiente condicione tutor non erit.

Dig. 26.2.8.2

Ulpianus 24 ad sab.

Tutorem autem et a certo tempore dare et usque ad certum tempus licet et sub condicione et usque ad condicionem.

Dig. 26.2.8.3

Ulpianus 24 ad sab.

In tutoris dationem utrum levissima condicio an novissima, ut in legato, spectanda est? ut puta " titius cum poterit tutor esto": " titius si navis ex asia venerit tutor esto". et iulianus libro vicesimo digestorum recte scripsit novissimam scripturam esse spectandam.

Dig. 26.2.9

Pomponius 3 ad q. muc.

Si nemo hereditatem adierit, nihil valet ex his, quae testamento scripta sunt: si vero unus ex pluribus adierit, tutelae statim valent nec exspectandum erit, ut omnes hereditatem adeant.

Dig. 26.2.10pr.

Ulpianus 36 ad sab.

Si hereditas nondum adita sit, ex qua tutor speratur, verius est alium tutorem posse dari, quasi nondum sit, nec speretur.

Dig. 26.2.10.1

Ulpianus 36 ad sab.

In tutelis testamentariis id sequimur quod novissimum est, et si saepius tutor datus sit, novissimam scripturam intuemur.

Dig. 26.2.10.2

Ulpianus 36 ad sab.

Qui filium et ex eo nepotem habebat, si nepoti tutorem dederit, habet disceptationem, an aliquo casu non sit utilis datio: ut puta si proponas filium vivo patre decessisse et nepotem ex eo successisse vivo avo. et fortius dicendum est tutelam quoque e lege iunia vellea confirmatum: nam et pomponius libro sexto decimo ex sabino scripsit valere tutoris dationem. cum enim confirmatum sit testamentum, consequenter tutoris quoque datio valebit in eo testamento scripta quod valet, id est ubi nepos vel heres institutus sit vel nominatim exheredatus sit.

Dig. 26.2.10.3

Ulpianus 36 ad sab.

Si furiosus testamento tutor detur, si quidem, cum furere desierit, tutorem esse recte datum proculus existimat: quod si datus sit pure, negat proculus valere dationem. sed est verius, quod et pomponius ait, recte videri datum et tunc fore tutorem, cum sapere coeperit.

Dig. 26.2.10.4

Ulpianus 36 ad sab.

Servus alienus ita dari tutor potest"si liber erit, tutor esto". quin immo et si pure datus sit, videtur inesse haec condicio " cum liber erit". potest autem quis et extraneo servo defendere ex hac causa fideicommissariam libertatem: quid enim interest, suum servum an alienum tutorem scripserit, cum pupilli favore et publicae utilitatis adsumpta libertas sit in persona eius, qui tutor scriptus est? potest igitur et huic fideicommissaria libertas defendi, si voluntas apertissime non refragetur.

Dig. 26.2.11pr.

Ulpianus 37 ad sab.

Si quis sub condicione vel ex die tutorem dederit, medio tempore alius tutor dandus est, quamvis legitimum tutorem pupillus habeat: sciendum est enim, quamdiu testamentaria tutela speratur, legitimam cessare.

Dig. 26.2.11.1

Ulpianus 37 ad sab.

Et si semel ad testamentarium devoluta fuerit tutela, deinde excusatus sit tutor testamentarius, adhuc dicimus in locum excusati dandum, non ad legitimum tutorem redire tutelam.

Dig. 26.2.11.2

Ulpianus 37 ad sab.

Idem dicimus et si fuerit remotus: nam et hic idcirco abit, ut alius detur.

Dig. 26.2.11.3

Ulpianus 37 ad sab.

Quod si tutor testamento datus decesserit, ad legitimum tutela redit, quia hic senatus consultum cessat.

Dig. 26.2.11.4

Ulpianus 37 ad sab.

Plane si duo pluresve fuerint tutores testamentarii, in locum eius, qui decessit vel in civitate esse desiit, poterit dari alius: ceterum si nullus supersit vel in civitate sit, legitima tutela succedit.

Dig. 26.2.12

Ulpianus 38 ad sab.

Ceterarum rerum vel causarum testamento tutor dari non potest nec deductis rebus.

Dig. 26.2.13

Pomponius 17 ad sab.

Et si datus fuerit, tota datio nihil valebit,

Dig. 26.2.14

Marcianus 2 inst.

Quia personae, non rei vel causae datur.

Dig. 26.2.15

Ulpianus 38 ad sab.

Si tamen tutor detur rei africanae vel rei syriaticae, utilis datio est: hoc enim iure utimur.

Dig. 26.2.16pr.

Ulpianus 39 ad sab.

Si quis ita dederit " filiis meis tutorem do", in ea condicione est, ut tam filiis quam filiabus dedisse videatur: filiorum enim appellatione et filiae continentur.

Dig. 26.2.16.1

Ulpianus 39 ad sab.

Si quis filio tutorem dederit et plures filios habeat, an omnibus filiis dedisse videatur? et de hoc pomponius dubitat: magis autem est, ut omnibus dedisse videatur.

Dig. 26.2.16.2

Ulpianus 39 ad sab.

Si quis liberis tutores dederit vel filiis et habeat quosdam apud hostes, etiam ipsis dedisse videbitur, si non aliud aperte probetur testatorem sensisse.

Dig. 26.2.16.3

Ulpianus 39 ad sab.

Si quis cum ignoraret se filium titium habere, filiis tutores dederit, utrum his solis dedisse videatur, quos in potestate scit an ei quoque, quem ignoravit se habere? et magis est, ut huic dedisse non videatur, licet nomen filiorum admittit et ipsum: sed quia de ipso non sensisset, dicendum est cessare in personam eius dationem.

Dig. 26.2.16.4

Ulpianus 39 ad sab.

Proinde et si certus fuit filium decessisse, qui supererat, idem erit dicendum: nec enim videtur ei dedisse, quem obisse credebat.

Dig. 26.2.16.5

Ulpianus 39 ad sab.

Si postumis dederit tutores hique vivo nascantur, an datio valeat? et magis est, ut utilis datio fiat etiam si vivo eo nascantur.

Dig. 26.2.17pr.

Ulpianus 35 ad ed.

Testamento datos tutores non esse cogendos satisdare rem salvam fore certo certius est: sed nihilo minus cum quis offert satisdationem, ut solus administret, audiendus est, ut edicto cavetur. sed recte praetor etiam ceteris detulit hanc condicionem, si et ipsi velint satisdare: nam et si ipsi parati sunt satisdare, non debent excludi alterius oblatione, sed impleta videlicet ab omnibus satisdatione omnes gerent, ut qui contentus est magis satis accipere quam gerere, securus esset.

Dig. 26.2.17.1

Ulpianus 35 ad ed.

Non omnimodo autem is qui satisdet praeferendus est: quid enim si suspecta persona sit vel turpis, cui tutela committi nec cum satisdatione debeat? vel quid si iam multa flagitia in tutela admisit? nonne magis repelli et reici a tutela, quam solus administrare debeat? nec satis non dantes temere repelluntur, quia plerumque bene probati et idonei atque honesti tutores, etiamsi satis non dent, non debent reici: quin immo nec iubendi sunt satisdare.

Dig. 26.2.17.2

Ulpianus 35 ad ed.

Duplex igitur causae cognitio est, una ex persona eius qui optulerit satisdationem, quis et qualis est, alia contutorum, quales sunt, num forte eius existimationis vel eius honestatis sunt, ut non debeant hanc contumeliam satisdationis subire.

Dig. 26.2.18

Callistratus 3 ed. monit.

Quod si plures satisdare parati sint, tunc idonior praeferendus erit, ut et tutorum personae inter se et fideiussorum comparentur.

Dig. 26.2.19pr.

Ulpianus 35 ad ed.

Si nemo tutorum provocet ad satisdationem, sed exsistat quidam qui tutor non est desideraretque, ut aut satisdent tutores, aut, si non dent, parato sibi satisdare committant tutelam, non est audiendus: neque enim aut extero committenda tutela est, aut testamento dati tutores contra ius satisdationi subiciendi sunt.

Dig. 26.2.19.1

Ulpianus 35 ad ed.

Hoc edictum de satisdatione ad tutores testamentarios pertinet: sed et si ex inquisitione dati sint tutores, Marcellus ait et ad hos pertinere hoc edictum et id oratione etiam divorum fratrum significari. ideoque et illi clausulae sunt subiecti, ut, si cui maior pars tutorum decernat, is gerat quem maior pars eligat, quamvis verba edicti ad testamentarios pertineant.

Dig. 26.2.19.2

Ulpianus 35 ad ed.

Testamento datus postumo tutor nondum est tutor, nisi postumus edatur: datur tamen adversus eum substituto pupilli negotiorum gestorum actio. sed si partus editus fuerit, deinde hic tutor, priusquam quicquam gereret, remotus a tutela fuerit, et hic eadem actione tenebitur. si quid plane gessit post editum partum, de eo quoque, quod ante gessit, tutelae iudicio tenebitur et omnis administratio in hac actione veniet.

Dig. 26.2.20pr.

Paulus 38 ad ed.

Tutor incertus dari non potest.

Dig. 26.2.20.1

Paulus 38 ad ed.

Testamento quemlibet possumus tutorem dare, sive is praetor sive consul sit, quia lex duodecim tabularum id confirmat.

Dig. 26.2.21

Paulus 8 brev.

Testamento tutores hi dari possunt, cum quibus testamenti factio est.

Dig. 26.2.22

Ulpianus 45 ad ed.

Si quis tutorem dederit filio suo servum, quem putabat liberum esse, cum esset servus, is neque liber neque tutor erit.

Dig. 26.2.23pr.

Africanus 8 quaest.

Tutor ita recte non datur: " illi aut illi filiis meis, utri eorum volet, titius tutor esto"; quid enim dicemus, si titius constituere nolit, utri ex filiis tutor esse velit?

Dig. 26.2.23.1

Africanus 8 quaest.

Ita autem recte tutor dabitur: " titius si volet illi filio meo tutor esto".

Dig. 26.2.24

Iavolenus 5 ex cass.

Si plures tutores sint, a praetore curatorem posci litis causa supervacuum est, quia altero auctore cum altero agi potest.

Dig. 26.2.25

Modestinus 4 pand.

Duobus pupillis tutor datus etsi alterius tutela se excusare potest, cum res separatae sint, attamen alterius tutor manet.

Dig. 26.2.26pr.

Papinianus 4 resp.

Iure nostro tutela communium liberorum matri testamento patris frustra mandatur, nec, si provinciae praeses imperitia lapsus patris voluntatem sequendam decreverit, successor eius sententiam, quam leges nostrae non admittunt, recte sequetur.

Dig. 26.2.26.1

Papinianus 4 resp.

Honoris causa tutor datus non videtur, quem pater a ceteris tutoribus, quibus negotia gerenda mandavit, rationes accipere voluit.

Dig. 26.2.26.2

Papinianus 4 resp.

Propter litem inofficiosi testamenti ordinandam exheredato filio, cui tutorem pater dedit, eundem a praetore confirmari oportet: eventus iudicatae rei declarabit, utrum ex testamento patris an ex decreto praetoris auctoritatem acceperit.

Dig. 26.2.27pr.

Tryphonus 14 disp.

Idem fiet, si intestatum decessisse patrem pupilli nomine defendatur falsumve testamentum nomine pupilli dicatur et si patruus exstet legitimus tutor futurus ab intestato, quia tutorem habenti tutor dari non potest. nam commodius ipse, qui scriptura continetur, a praetore dabitur, ut sine ullo litis praeiudicio iustus tutor auctor pupillo ad eam litem fiat.

Dig. 26.2.27.1

Tryphonus 14 disp.

Cum autem ipse patruus, quem tutorem legitimum sibi dicebat pupillus esse, subiectum filium criminaretur et ad se legitimam hereditatem pertinere contenderet, alium tutorem petendum iulianus respondit.

Dig. 26.2.28pr.

Papinianus 4 resp.

Qui tutelam testamento mandatam excusationis iure suscipere noluit, ab his quoque legatis summovendus erit, quae filiis eius relicta sunt, modo si legata filii non affectione propria, sed in honorem patris meruerunt.

Dig. 26.2.28.1

Papinianus 4 resp.

Verbis fidecommissi manumissus non iure tutor testamento datur: post libertatem itaque redditam ex voluntate testatoris ad tutelam vocatur.

Dig. 26.2.28.2

Papinianus 4 resp.

Impuberi liberto patronus frustra tutorem dabit, sed voluntatem eius, si fides inquisitionis congruat, praetor sequetur.

Dig. 26.2.29

Papinianus 15 resp.

Ex sententia senatus consulti liboniani tutor non erit, qui se testamento pupillo tutorem scripsit: cum autem patris voluntas hoc ipsum manu sua declarantis ambigua non esset, eum, quamvis alii tutores essent, curatorem dandum respondi, nec admittendam excusationem, quam iure publico habebat, quoniam promisisse videbatur, nec ut suspectum removeri.

Dig. 26.2.30

Paulus 6 quaest.

Duo sunt titii, pater et filius: datus est tutor titius nec apparet, de quo sensit testator: quaero, quid sit iuris. respondit: is datus est, quem dare se testator sensit: si id non apparet, non ius deficit, sed probatio, igitur neuter est tutor.

Dig. 26.2.31

Scaevola 4 quaest.

Si pater exheredatae filiae tutores dederit et testamentum eius ruptum dicatur nato postumo, commodissimum est eosdem tutores pupillae dari ad petendam intestati hereditatem.

Dig. 26.2.32pr.

Paulus 9 resp.

Quaero, an non eiusdem civitatis cives testamento quis tutores dare possit? paulus respondit posse.

Dig. 26.2.32.1

Paulus 9 resp.

Idem paulus respondit eum quoque, qui propter rerum notitiam tutor datus est, perinde in omnibus et administrationis et accessionis iure conveniri posse atque ceteros tutores, qui eodem testamento dati sunt.

Dig. 26.2.32.2

Paulus 9 resp.

Lucius titius heredes instituit filios suos pupillaris aetatis eisque tutores his verbis dedit: " filiis meis tutores sunto gaius maevius et lucius eros", cui eroti libertatem non dedit: fuit autem eros intra viginti quinque annos aetatis: quaero an possit libertatem sibi vindicare. paulus respondit, quoniam placet eum, qui a domino tutor datus est, libertatem quoque meruisse videri, eum quoque de quo quaeritur in eadem causa habendum et liberum quidem ab adita hereditate esse, tutela autem post legitimam aetatem onerari.

Dig. 26.2.33

Iavolenus 8 ex post. lab.

Tutoribus ita datis: " lucium titium tutorem do. si is non vivit, tum gaium plautium tutorem do" titius vixerat et tutelam gesserat, deinde mortuus erat. trebatius negat ad plautium pertinere tutelam, labeo contra, proculus quod labeo. ego trebatii sententiam probo, quia illa verba ad mortis tempus referuntur.

Dig. 26.2.34

Scaevola 10 Dig.

Cum codicillis ideo alios tutores dare significasset, quoniam testamento datos quosdam defunctos aut excusationem habere posse comperisset, an nihilo minus qui eorum viverent nec excusati essent, tutores permanerent? respondit nihil proponi, cur non permanerent.

Dig. 26.3.0. De confirmando tutore vel curatore.

Dig. 26.3.1pr.

Modestinus 6 excus.

Hina myde peri twn bebaiwvynai dunamenwn epitropwn paraleiqwmen, braxea kai peri toutwn skeqwmeva.

Dig. 26.3.1.1

Modestinus 6 excus.

Eisi tines ohi didomenoi orvws kata diavykas epitropoi, tout' esti kai huf' hwn exryn kai ohis exryn kai hon tropon exryn kai hopou exryn. patyr gar uhiois y ekgonois, ohus exei en ecousiai, orvws didwsin epitropon all' en diavyky. ean de y proswpon toiouton ho my dunatai dounai, ohion mytyr y patrwn y allotrios tis, y proswpon hw my dunatai dounai, ohion patyr uhiw tw my onti en ecousiai y vugatri, y ean eipy " parakalw epimelesvai twn pragmatwn", y en kwdikillois my bebaiwveisi dw epitropon y kouratora, tote to endeon anaplyrousvai ek tys tou hupatikou ecousias ahi diataceis sunexwrysan kai kata tyn gnwmyn bebaiousvai tous epitropous.

Dig. 26.3.1.2

Modestinus 6 excus.

Kai ean men patyr y ho dedwkws, peraiterw ouden hws epi to pleiston polupragmonei ho hygoumenos, alla haplws auton bebaioi: ean de allos tis, tote polupragmonei, to proswpon ei estin epitydeion.

Dig. 26.3.1.3

Modestinus 6 excus.

Eti eidenai dei hoti kouratwr kata diavykas oude hupo patros orvws didotai, alla doveis eiwve bebaiousvai hupo tou hygoumenou.

Dig. 26.3.2pr.

Nerva 3 reg.

Mulier liberis non recte testamento tutorem dat: sed si dederit, decreto praetoris vel proconsulis ex inquisitione confirmabitur nec satisdabit pupillo rem salvam fore.

Dig. 26.3.2.1

Nerva 3 reg.

Sed et si curator a matre testamento datus sit filiis eius, decreto confirmatur ex inquisitione.

Dig. 26.3.3

Iulianus 21 Dig.

Qui a patre tutor scriptus est aut non iusto testamento aut non ut lege praecipiebatur, confirmandus est ad tutelam gerendam perinde ac si ex testamento tutor esset, id est ut satisdatio ei remittatur.

Dig. 26.3.4

Paulus l.S. de excus. tutelarum.

Si patronus vel quivis extraneus impuberi, quem heredem instituerit, tutorem dederit et extra ea nihil in bonis habeat pupillus, non male dicetur iudicium eius sequendum esse, qui et personam eius, quem tutorem esse voluerit, noverit et impuberem ita dilexit, ut eum heredem institueret.

Dig. 26.3.5

Papinianus 11 quaest.

Tutores a patruo testamento datos iussit praetor magistratus confirmare: hi cautionem quoque accipere debuerunt nec voluntas eius, qui tutorem dare non potuit, neglegentiam magistratuum excusat. denique praetor non ante decretum interponere potest quam per inquisitionem idoneis pronuntiatis. unde sequitur, ut, si tutelae tempore solvendo non fuerunt, in id, quod de bonis eorum servari non possit, contra magistratus actio decernatur.

Dig. 26.3.6

Papinianus 5 resp.

Si filio puberi pater tutorem aut impuberi curatorem dederit, citra inquisitionem praetor eos confirmare debebit.

Dig. 26.3.7pr.

Hermogenianus 2 iuris epit.

Naturali filio, cui nihil relictum est, tutor frustra datur a patre nec sine inquisitione confirmatur.

Dig. 26.3.7.1

Hermogenianus 2 iuris epit.

Si quaeratur, an ex inquisitione recte datus sit tutor, quattuor haec consideranda sunt: an hic dederit qui dare potuit, et ille acceperit cui fuerat dandus, et is datur cuius dandi facultas erat, et pro tribunali decretum interpositum.

Dig. 26.3.8

Tryphonus 14 disp.

In confirmando tutore hoc praetor inquirere debet, an duraverit patris voluntas: quod in facili est, si proximo mortis tempore tutores non iure vel curatores scripserit pater. nam si ante annos, ut spatio medio potuerit facultatium dati non iure tutoris a patre fieri deminutio, vel morum ante celata vel ignorata emersit improbitas, aut inimicitiae cum patre exarserunt,

Dig. 26.3.9

Paulus l.S. de cogn.

Vel cum fisco aliquem contractum damnosum miscuissent,

Dig. 26.3.10

Tryphonus 14 disp.

Utilitatem pupillorum praetor sequitur, non scripturam testamenti vel codicillorum. nam patris voluntatem praetor ita accipere debet, si non fuit ignarus scilicet eorum, quae ipsa praetor de tutore comperta habet. quid denique si postea de eo, quem pater testamento codicillisve non iure dedit, scripsit tutorem esse nolle? nempe non sequitur primam voluntatem praetor, a qua pater discessit.

Dig. 26.3.11pr.

Scaevola 20 Dig.

Avia nepotibus curatorem dedit fideicommisso ei relicto: quaesitum est, an administrare curator compelli debeat. respondit curatorem quidem non esse, sed cum aliquid ei testamento datum esset, teneri eum ex fideicommisso, si non curam susciperet, nisi id quod ei datum esset nollet petere aut reddere esset paratus.

Dig. 26.3.11.1

Scaevola 20 Dig.

Item quaesitum est, an iste curator satisdare nepotibus debeat. respondit quasi curatorem non debere, sed cum fideicommissum ab eo peti posset, fideicommissi nomine satisdare debere.

Dig. 26.4.0. De legitimis tutoribus.

Dig. 26.4.1pr.

Ulpianus 14 ad sab.

Legitimae tutelae lege duodecim tabularum adgnatis delatae sunt et consanguineis, item patronis, id est his qui ad legitimam hereditatem admitti possint: hoc summa providentia, ut qui sperarent hanc successionem, idem tuerentur bona, ne dilapidarentur.

Dig. 26.4.1.1

Ulpianus 14 ad sab.

Interdum alibi est hereditas, alibi tutela, ut puta si sit consanguinea pupillo: nam hereditas quidem ad adgnatam pertinet, tutela autem ad adgnatum. item in libertinis, si sit patrona et patroni filius: nam tutelam patroni filius, hereditatem patrona optinebit: tantundemque erit et si sit patroni filia et nepos.

Dig. 26.4.1.2

Ulpianus 14 ad sab.

Si apud hostes sit frater, inferioris gradus adgnato tutela non defertur: nam et si patronus apud hostes sit, patroni filio tutela non defertur: sed interim a praetore datur.

Dig. 26.4.1.3

Ulpianus 14 ad sab.

Interdum autem etiam sine hereditate tutela defertur, interdum hereditas sine tutela, ut puta in eo qui latitavit, cum servum suum rogatus esset manumittere: nam generaliter divus pius rescripsit aurelio basso ius patroni eum non habere, his verbis: " plane tergiversatio eorum, qui subvertere fideicommissam libertatem velint, eo modo puniatur, ne ius patroni adquirant in eo, quem liberum esse nolunt". idem erit, si filiae adsignatus libertus sit: tutela quidem apud fratres remanebit, ut Marcellus notat, legitima autem hereditas ad sororem pertinebit.

Dig. 26.4.2

Ulpianus 37 ad sab.

Legitimam tutelam capitis deminutione pupilli etiam ea, quae salva civitate contingit, amitti nulla dubitatio est.

Dig. 26.4.3pr.

Ulpianus 38 ad sab.

Tutela legitima, quae patronis defertur e lege duodecim tabularum, non quidem specialiter vel nominatim delata est, sed per consequentias hereditatium, quae ex ipsa lege patronis datae sunt.

Dig. 26.4.3.1

Ulpianus 38 ad sab.

Ergo manumissor ex lege duodecim tabularum tutor est, sive sponte manumisit sive etiam compulsus ex causa fideicommissi manumisit.

Dig. 26.4.3.2

Ulpianus 38 ad sab.

Sed et si hac lege emit, ut manumitteret, et ex constitutione divi marci ad aufidium victorinum pervenit ad libertatem, dicendum est tutorem esse.

Dig. 26.4.3.3

Ulpianus 38 ad sab.

Plane si forte rubriano senatus consulto pervenerit ad libertatem, non habebit tutorem eum qui rogatus est, sed orcinus libertus effectus ad familiam testatoris pertinebit. in qua specie incipit tutela ad liberos patroni primos pertinere, quae ad patronos non pertinuit: quod quidem in omnibus orcinis libertis locum habet testamento manumissis.

Dig. 26.4.3.4

Ulpianus 38 ad sab.

Si duo pluresve manumittant, omnes tutores sunt: sed si mulier sit inter manumissores, dicendum est solos masculos fore tutores.

Dig. 26.4.3.5

Ulpianus 38 ad sab.

Sed si aliquis ex patronis decesserit, tutela penes ceteros patronos est, quamvis ille filium reliquerit. sed et si ab hostibus fuerit captus, interim soli compatroni tutores sunt. simili modo et si in servitutem redactus sit, apparet ceteros esse tutores.

Dig. 26.4.3.6

Ulpianus 38 ad sab.

Sed si omnes patroni decesserint, tunc tutela ad liberos eorum incipit pertinere.

Dig. 26.4.3.7

Ulpianus 38 ad sab.

Proinde si alter ex patronis filium, alter nepotem reliquerit, utrum ad solum filium an vero et ad nepotem tutela pertineat, quia et nepos in familia patris sui proximus est? hoc apparebit ex legitimis hereditatibus: legitima autem hereditas ad solum filium pertinet. ergo et tutela ad solum filium descendit, post filium tunc ad nepotem.

Dig. 26.4.3.8

Ulpianus 38 ad sab.

Quaeri potest, si patroni filius sit remotus vel excusatus, an nepoti tutela deferatur. et Marcellus in ea sententia est, ut succedi non posse scribat: idcirco enim abierunt tutela, ut alii in locum eorum dentur, non ut successio admittatur.

Dig. 26.4.3.9

Ulpianus 38 ad sab.

Non tantum autem morte, verum etiam capitis deminutione successio debet in legitima tutela admitti: quare si proximior capite deminutus est, qui post eum est succedit in tutelae administratione.

Dig. 26.4.3.10

Ulpianus 38 ad sab.

Si parens filium vel filiam vel nepotem vel neptem vel deinceps impuberes, quos in potestate habeat, emancipet, vicem legitimi tutoris sustinet:

Dig. 26.4.4

Modestinus 4 diff.

Quo defuncto si liberi perfectae aetatis exsistant, fiduciarii tutores fratris vel sororis efficiuntur.

Dig. 26.4.5pr.

Ulpianus 35 ad ed.

Legitimos tutores nemo dat, sed lex duodecim tabularum fecit tutores.

Dig. 26.4.5.1

Ulpianus 35 ad ed.

Sed etiam hos cogi satisdare certum est, in tantum ut etiam patronum et patroni filium ceterosque liberos eius cogi rem salvam fore satisdare plerisque videatur. sed hoc causa cognita praetorem statuere debere melius est, utrum debeat satisdare patronus liberique eius an non, ut, si persona honesta sit, remittatur ei satisdatio et maxime, si substantia modica sit: si autem patroni persona vulgaris vel minus honesta sit, ibi dicendum est satisdationem locum habere: ut aut modus tutelae aut persona aut causa admittat satisdationem.

Dig. 26.4.5.2

Ulpianus 35 ad ed.

In legitimis et in his, qui a magistratibus dantur, quaesitum est, an uni decerni tutela possit. et ait labeo et uni recte tutelam decerni: posse enim aliquos vel absentes vel furiosos esse: quae sententia utilitatis gratia admittenda est, ut uni decernatur administratio.

Dig. 26.4.5.3

Ulpianus 35 ad ed.

An ergo et provocare se invicem secundum superiorem clausulam possint? et magis est, ut, si omnes satis non dederint vel si finita est satisdatio (nonnumquam enim satisdatio ab eis non petitur, aut satis desinit esse cautum, aut magistratus municipales ab his quos dederint aut non potuerunt aut noluerunt satis exigere), posse dici etiam in his, quo casu cautum non est, admittendam provocationem.

Dig. 26.4.5.4

Ulpianus 35 ad ed.

An ergo et in patronis idem sit dicendum, maxime ubi cessat satisdatio? et puto in patronis non oportere admitti provocationem nisi ex magna causa, ne quis spem successionis deminuat: nam si patrono tutela non fuerit commissa, poterit per compatronum damno adfici, qui solus rem pupilli male administrat.

Dig. 26.4.5.5

Ulpianus 35 ad ed.

Si legitimus tutor capite minutus sit, dicendum est desinere eum esse tutorem et locum esse iudicio tutelae finita tutela.

Dig. 26.4.6

Paulus 38 ad ed.

Intestato parente mortuo adgnatis defertur tutela. intestatus autem videtur non tantum is qui testamentum non fecit, sed et is qui testamento liberis suis tutores non dedit: quantum enim ad tutelam pertinet, intestatus est. idem dicemus, si tutor testamento datus adhuc filio impubere manente decesserit: nam tutela eius ad adgnatum revertitur.

Dig. 26.4.7

Gaius 1 inst.

Sunt autem adgnati, qui per virilis sexus personas cognatione iuncti sunt, quasi a patre cognati, veluti frater eodem patre natus, fratris filius neposve ex eo, item patruus et patrui filius neposve ex eo.

Dig. 26.4.8

Paulus 38 ad ed.

Si reliquero filium impuberem et fratrem et nepotem ex alio filio, constat utrosque esse tutores, si perfectae aetatis sunt, quia eodem gradu sunt.

Dig. 26.4.9

Gaius 12 ad ed. provinc.

Si plures sunt adgnati, proximus tutelam nanciscitur et, si eodem gradu plures sint, omnes tutelam nanciscuntur.

Dig. 26.4.10pr.

Hermogenianus 2 iuris epit.

Adgnato propior femina, quo minus sit impuberis adgnati tutor, non obicitur, ideoque patruus sororem consanguineam habentis fratris filii legitimus erit tutor, nec amita patruo magno vel matertera fratris filiis ne sint tutores obstat.

Dig. 26.4.10.1

Hermogenianus 2 iuris epit.

Surdus et mutus nec legitimi tutores esse possunt, cum nec testamento nec alio modo utiliter dari possint.

Dig. 26.4.11

Paulus 16 ad plaut.

Minus autem audiens potest.

Dig. 26.5.0. De tutoribus et curatoribus datis ab his qui ius dandi habent, et qui et in quibus causis specialiter dari possunt.

Dig. 26.5.1pr.

Ulpianus 39 ad sab.

Sive proconsul sive praeses sive etiam praefectus aegypti sive proconsulatum optineat provinciae vel temporis causa praeside defuncto vel quia ipsi provincia regenda commissa est, tutorem dare poterit.

Dig. 26.5.1.1

Ulpianus 39 ad sab.

Legatus quoque proconsulis ex oratione divi marci tutorem dare potest.

Dig. 26.5.1.2

Ulpianus 39 ad sab.

Quod autem permittitur tutorem dare provinciae praesidi, eis tantum permittitur, qui ^ cui^ sunt eiusdem provinciae vel ibidem domicilium habent.

Dig. 26.5.2

Ulpianus 35 ad ed.

Cum quidam tutores dati appellassent, quidam autem non adessent, divus pius rescripsit dandum temporarium tutorem, qui tutela fungatur.

Dig. 26.5.3

Ulpianus 36 ad ed.

Ius dandi tutores datum est omnibus magistratibus municipalibus eoque iure utimur, sed illum, qui ab eodem municipio vel agro eiusdem municipii est.

Dig. 26.5.4

Ulpianus 9 ad l. iul. et pap.

Praetor ipse se tutorem dare non potest, sicut nec pedaneus iudex nec compromissarius ex sua sententia fieri potest.

Dig. 26.5.5

Gaius 12 ad ed. provinc.

Illud semper constitit praesidem posse tutorem dare tam absentem quam praesentem et tam praesenti quam absenti.

Dig. 26.5.6

Ulpianus 8 de omn. trib.

Nec non ignoranti et invito.

Dig. 26.5.7

Ulpianus 1 de omn. trib.

Non tantum ad dotem dandam nupturae curatorem dari oportet, verum etiam ei quoque, quae iam nupta est. sed et ad dotem augendam datur et mutandae quoque dotis gratia curator dari potest.

Dig. 26.5.8pr.

Ulpianus 8 de omn. trib.

Nec mandante praeside alius tutorem dare poterit.

Dig. 26.5.8.1

Ulpianus 8 de omn. trib.

Si praetor vel praeses provinciae in furore aut dementia constitutus dederit tutorem, non puto valere: quamvis enim praetor vel praeses sit nec furor ei magistratum abroget, attamen datio nullius erit momenti.

Dig. 26.5.8.2

Ulpianus 8 de omn. trib.

Dari tutor omni die poterit.

Dig. 26.5.8.3

Ulpianus 8 de omn. trib.

Furioso et furiosae et muto et surdo tutor vel curator a praetore vel praeside dari poterit.

Dig. 26.5.9

Marcianus 9 inst.

Impuberi ad hereditatem adeundam ut tutor detur, ex causa permissum est.

Dig. 26.5.10

Marcianus 5 reg.

Tutor si petitus fuerit habenti, sed absente eo quasi non habenti datus sit, datio nulla est: nam et quoquo modo in petitione tutoris si erratum fuerit in facti causa, maxime post constitutionem divorum fratrum non valet tutoris datio.

Dig. 26.5.11

Celsus 11 Dig.

Curator pupillo vel pupillae non datur, si tutor eorum afuerit.

Dig. 26.5.12pr.

Ulpianus 3 de off. procons.

His qui in ea causa sunt, ut superesse rebus suis non possint, dare curatorem proconsulem oportebit.

Dig. 26.5.12.1

Ulpianus 3 de off. procons.

Nec dubitabit filium quoque patri curatorem dare: quamvis enim contra sit apud celsum et apud alios plerosque relatum, quasi indecorum sit patrem a filio regi, attamen divus pius instio celeri, item divi fratres rescripserunt filium, si sobrie vivat, patri curatorem dandum magis quam extraneum.

Dig. 26.5.12.2

Ulpianus 3 de off. procons.

Divus pius matris querellam de filiis prodigis admisit, ut curatorem accipiant, in haec verba: " non est novum quosdam, etsi mentis suae videbuntur ex sermonibus compotes esse, tamen sic tractare bona ad se pertinentia, ut, nisi subveniatur is, deducantur in egestatem. eligendus itaque erit, qui eos consilio regat: nam aequum est prospicere nos etiam eis, qui quod ad bona ipsorum pertinet, furiosum faciunt exitum".

Dig. 26.5.13pr.

Papinianus 11 quaest.

Si impuberi libertas et hereditas per fideicommissum data sit et institutus adire nolit, senatus censuit eum, si impuberis nomine desideretur, adire cogendum, ut tamen pupillo pupillae tutor ab eo, cui ius dandi erit, detur, qui tutelam retineat, quoad restituatur hereditas et rem salvam fore ab herede caveatur. postea divus hadrianus, ut idem in eo servetur, cui directa libertas data fuerit, rescripsit.

Dig. 26.5.13.1

Papinianus 11 quaest.

Quamvis autem a patrono rem salvam pupillo fore non facile cautio exigatur, tamen senatus pro extraneo haberi voluit eum, qui, quod in ipso fuit, etiam libertate privavit impuberem: et ius quidem liberti, quod habet, quia ex causa fideicommissi manumittit, non est ei ablatum, tutela vero sine vinculo cautionis non committitur. quid ergo si non caveat? non dubie tutela non erit apud patronum.

Dig. 26.5.13.2

Papinianus 11 quaest.

Sed si puella duodecimum annum impleverit, tutor desinit esse: quoniam tamen minoribus annorum desiderantibus curatores dari solent, si curator patronus petatur, fides inquisitionis pro vinculo cedet cautionis.

Dig. 26.5.14

Papinianus 12 quaest.

Libertus non aliis patroni patronaeve liberis tutor esse cogitur, quam qui iura patronatus sperare possunt.

Dig. 26.5.15

Paulus 2 ad ed.

In omnem rem curator dandus est in eius tutoris locum, qui rei publicae causa afuit:

Dig. 26.5.16

Paulus 73 ad ed.

Nec ille desinit tutor esse. quod et in omnibus, qui ad tempus excusantur, iuris est.

Dig. 26.5.17

Ulpianus 9 ad ed.

Ei, qui de statu suo litigat, tutorem dari posse pomponius scribit et verum est, ut ita demum teneat datio, si liber est.

Dig. 26.5.18

Ulpianus 61 ad ed.

In dando tutore ex inquisitione et in eum inquiritur, qui senator est: et ita severus rescripsit.

Dig. 26.5.19pr.

Paulus 16 ad plaut.

Ubi absunt hi, qui tutores dare possunt, decuriones iubentur dare tutores, dummodo maior pars conveniat: ubi non est dubium, quin unum ex se dare possint.

Dig. 26.5.19.1

Paulus 16 ad plaut.

Magistratus municipalis collegam suum quin dare tutorem possit, non est dubium.

Dig. 26.5.20pr.

Modestinus 7 diff.

Ventri tutor a magistratibus populi romani dari non potest, curator potest: nam de curatore constituendo edicto comprehensum est.

Dig. 26.5.20.1

Modestinus 7 diff.

Curatorem habenti quo minus alius curator detur, regula iuris non est impedimento.

Dig. 26.5.21pr.

Modestinus 1 excus.

Eidenai dei tous arxontas, hoti kouratoras afylici gunaikas ou xeirotonysousin.

Dig. 26.5.21.1

Modestinus 1 excus.

Ean mytyr epi tauty ty ahiresei graqy uhious klyronomous ean apoluvwsi tys tou patros ecousias, apoluventwn toutwn kai dia touto klyronomysantwn autos

ho patyr kouratwr xeirotonyvvynai ou dunatai, kan boulytai, hina my ally hodw touto hoper ouk yboulyvy hy diavemeny genytai. kai touto ohutws hupo tou veiou sebyrou nenomovetytai.

Dig. 26.5.21.2

Modestinus 1 excus.

Alla kan tis apo gonewn kwluvy epitropeuein, touton oute xheirotoneisvai prosykei: kan xeirotonyveis my paraitysytai, kwluesvai auton epitropeuein menousys tys epitimias.

Dig. 26.5.21.3

Modestinus 1 excus.

Tous en presbeiai ontas my xeirotoneitwsan epitropous y kouratoras ohi arxontes, epeidyper par' hon xronon presbeuousin, ho kindunos autois ou diaferei.

Dig. 26.5.21.4

Modestinus 1 excus.

Ean eparxiakon anvrwpon presbeuonta ho en hrwmy arxwn dw epitropon, afevysetai.

Dig. 26.5.21.5

Modestinus 1 excus.

Pros tois loipois dikaiois dei ton arxonta kai tous tropous twn mellontwn xeirotonyvvysesvai skopein: oute gar ousia oute aciwma ohutws hikanon pros pistin, hws agavy proairesis kai xrystoi tropoi.

Dig. 26.5.21.6

Modestinus 1 excus.

Dia pantos de malista touto paratyreitwsan ohi arxontes my xeirotonein tous boulomenous epirriptein ehautous, hina xeirotonyvwsi, kai argurion didontas: toutous gar kai kolasei hupeuvunous einai nenomovetytai.

Dig. 26.5.22

Modestinus 5 excus.

Kai ohi my bouleutai bouleutwn paisi xeirotonountai epitropoi, hwsper kai bouleutai tois my ek bouleutwn.

Dig. 26.5.23

Modestinus 4 pand.

Simul plures tutores dari possunt.

Dig. 26.5.24

Paulus 9 resp.

" divi marcus et verus cornelio proculo. si quando desint in civitate, ex qua pupilli oriundi sunt, qui idonei videantur esse tutores, officium sit magistratuum inquirere ex vicinis civitatibus honestissimum quemque et nomina praesidi provinciae mittere, non ipsos arbitrium dandi sibi vindicare".

Dig. 26.5.25

Paulus 10 resp.

Curatorem impuberi datum quacumque ex causa perseverare in diem pubertatis in eadem cura respondi: ergo post pubertatem alium curatorem sibi petere debebit.

Dig. 26.5.26

Scaevola 2 resp.

Seiae egressae annos duodecim decreto praetoris ex inquisitione datus est tutor quasi minori: quaero an excusare se deberet. respondi secundum ea quae proponerentur neque excusationem necessariam esse neque obligari quod non gereret.

Dig. 26.5.27pr.

Hermogenianus 2 iuris epit.

Pupillo, qui tam romae quam in provincia facultates habet, rerum quae sunt romae praetor, provincialium praeses tutorem dare potest.

Dig. 26.5.27.1

Hermogenianus 2 iuris epit.

Libertino tutores liberti dandi sunt: sed et si ingenuus detur nec se excusaverit, tutor perseverabit.

Dig. 26.5.28

Paulus 2 decr.

Romanius appulus ab iudice appellaverat dicens se non debuisse dari in tutela collegam ei, quem ipse, cum magistratus esset, nominasset suo periculo, ne in una tutela duplex periculum sustineret. decrevit imperator posse quem et fideiussorem pro tutore esse et nihilo minus tutorem dari: itaque detentus est in tutela.

Dig. 26.5.29

Paulus l.S. de cogn.

Si peregre agant qui tutores vel curatores dati sunt, ut intra diem trigesimum notum his a magistratibus fiat, divus marcus rescripsit.

Dig. 26.6.0. Qui petant tutores vel curatores et ubi petantur.

Dig. 26.6.1

Modestinus 7 diff.

Matris sollicitudo in petendis filio tutoribus, non etiam curatoribus observatur, nisi quo casu impuberi curator petendus est.

Dig. 26.6.2pr.

Modestinus 1 excus.

Ean ohi afylikes my exwsi tous ek twn nomwn kydemonas, ean men epitropwn dewntai dia tyn hylikian, dunantai aitysai autois epitropous katastavynai ohi te suggeneis kai ohi kat' epigamian ^ epigamin^ oikeioi gonewn arrenwn te kai vyleiwn: dunantai kai filoi twn gonewn kai trofeis autwn twn paidwn touto aitysai.

Dig. 26.6.2.1

Modestinus 1 excus.

Hoi men oun alloi ek proairesews aitousin epitropous: eisi de tines ohis epanagkes estin aitein epitropous, ohion mytyr kai apeleuveroi: ek toutwn gar ahi men zymiountai, ohi de kai kolazontai, ean my aityswsi tous ek twn nomwn kydemonas. hy men gar mytyr ecelaunetai tys tou paidos nomimou klyronomias, hws ousa anacia labein klyron nomimon, my frontisasa autw katastavynai epitropon. kai ou monon ean my aitysy, alla kai, hon an aitysy, hosias xarin aitysy ton afevynai dunamenon, eita afeventos autou y kai apoblyventos allon my aitysy palin, y ecepitydes kakous aitysy. apeleuveroi de ek toutwn twn aitiwn katygoryventes epi tou hygoumenou kolazontai epistrefws, ean fainwntai y di' ameleian y dia kakian my ytykotes.

Dig. 26.6.2.2

Modestinus 1 excus.

Ta de peri tys mytros proeirymena dyloutai en epistoly sebyrou, hys ta hrymata hupotetaktai. " divus severus cuspio rufino. omnem me rationem adhibere subveniendis pupillis, cum ad curam publicam pertineat, liquere omnibus volo. et ideo quae mater vel non petierit tutores idoneos filiis suis vel prioribus excusatis reiectisve non confestim aliorum nomina dederit, ius non habeat vindicandorum sibi bonorum intestatorum filiorum".

Dig. 26.6.2.3

Modestinus 1 excus.

Ean mentoi tis y daneistys y legatarios y allyn anagkaian exy pros ton orfanon sustasin, autos men ouk aitysei epitropon tw orfanw, alla tous aitein dunamenous aciwsei aitysai, y ean ohutoi apoknyswsi, tote proselvwn tw hygoumenw auto touto erei, hina katastaventos epitropou nomimou he pros ton orfanon genytai sustasis.

Dig. 26.6.2.4

Modestinus 1 excus.

Tauta men peri epitropwn: kouratoras de heautois aitysousin ohi afylikes, ean men parwsi, di' heautwn: ean de apodymy tis autwn, aitysei dia frontistou.

Dig. 26.6.2.5

Modestinus 1 excus.

Ei de allos aitysai kouratora dunatai tw afyliki, ezytyvy. kai oulpianos ho kratistos ohutws grafei, hws deon allon autw my aitein, alla auton heautw, et apud paulum libro nono responsorum ita relatum est curatorem ignorante nec mandante pupilla non recte ei a tutore petitum videri periculumque eorum, quae curator non iure datus gessit, non sine ratione eum qui petit cogendum agnoscere. et alia parte eiusdem libri ita respondit, si matris iudicium princeps secutus curatores filiae eius dedit, periculum administrationis eorum eam respicere debere.

Dig. 26.6.2.6

Modestinus 1 excus.

Ohi hopwsoun afeventes di' excusationos tys epitropys anagkyn ouk exousin aitein tois orfanois epitropon, hws fysi sebyrou kai antwninou diatacis.

Dig. 26.6.3

Paulus 10 resp.

Decreto decurionum et ipsum magistratum curatorem dari potuisse respondi.

Dig. 26.6.4pr.

Tryphonus 13 disp.

Credendum est et eam matrem constitutione contineri, quae a patre non legitime tutores testamento vel codicillis datos filiis impuberibus non postulavit decreto confirmari.

Dig. 26.6.4.1

Tryphonus 13 disp.

Sin autem idoneis datis tutoribus pluribus unus eorum vel decessit vel temporalem excusationem accepit, mater, quae propterea in loco illius alium non petit, quia numerus reliquorum administrationi tutelae sufficiebat, incidit quidem in verba constitutionis, sed sententia excusatur.

Dig. 26.6.4.2

Tryphonus 13 disp.

Sed si suspecto tutore pupilli accusato decretum erit ei adiungi alios, mater eos quoque petere debet et, si non petit, incidet in sententiam constitutionis.

Dig. 26.6.4.3

Tryphonus 13 disp.

Haec autem mater ab omni quidem bonorum vindicatione intestatorum filiorum repellitur. si vero maritus ei fideicommissum a filio reliquerit, cui mulier non petit tutorem, " si sine liberis decesserit", vel sub hac ipsa condicione " si intestatus mortuus erit", fideicommissi petitio, quae ex alieno iudicio descendit, non est perempta.

Dig. 26.6.4.4

Tryphonus 13 disp.

Quae autem suspectum tutorem non fecit, nec verbis nec sententia constitutionis in poenam incidit, quod eiusmodi facta diiudicare et aestimare virilis animi est et potest etiam delicta ignorare mater, satisque est eam petisse talem, qui inquisitione per praetorem habita idoneus apparuit. et ideo nec iudicium eius sufficit ad eligendos tutores, sed inquisitio fit, etiamsi maxime in bona propria liberis suis testamento tutores dederit.

Dig. 26.7.0. De administratione et periculo tutorum et curatorum qui gesserint vel non et de agentibus vel conveniendis uno vel pluribus.

Dig. 26.7.1pr.

Ulpianus 35 ad ed.

Gerere atque administrare tutelam extra ordinem tutor cogi solet.

Dig. 26.7.1.1

Ulpianus 35 ad ed.

Ex quo scit se tutorem datum si cesset tutor, suo periculo cessat: id enim a divo marco constitutum est, ut, qui scit se tutorem datum nec excusationem si quam habet allegat intra tempora praestituta, suo periculo cesset.

Dig. 26.7.1.2

Ulpianus 35 ad ed.

Sufficit tutoribus ad plenam defensionem, sive ipsi iudicium suscipiant sive pupillus ipsis auctoribus, nec cogendi sunt tutores cavere, ut defensores solent. licentia igitur erit, utrum malint ipsi suscipere iudicium an pupillum exhibere, ut ipsis auctoribus iudicium suscipiatur: ita tamen, ut pro his, qui fari non possunt vel absint, ipsi tutores iudicium suscipiant, pro his autem, qui supra septimum annum aetatis sunt et praesto fuerint, auctoritatem praestent.

Dig. 26.7.1.3

Ulpianus 35 ad ed.

In causis autem adultorum licentia erit agentibus vel ipsum adultum praesentem in iudicium vocare, ut consensu curatoris conveniatur, vel contra curatorem agere, ut ipse litem suscipiat. in absentibus autem adultis omnimodo contra curatorem agendum.

Dig. 26.7.1.4

Ulpianus 35 ad ed.

Non denegari autem neque tutoribus neque curatoribus etiam debitores pupillorum vel adultorum ex persona sua prospectu officii in iudicium vocare vel eis hoc facientibus suum accommodare consensum.

Dig. 26.7.2pr.

Ulpianus 9 ad ed.

Si tutor condemnavit sive ipse condemnatus est, pupillo et in pupillum potius actio iudicati datur et maxime, si non se liti optulit, sed cum non posset vel propter absentiam pupilli vel propter infantiam auctor ei esse ad accipiendum iudicium. et hoc etiam divus pius rescripsit et exinde multis rescriptis declaratum est in pupillum dandam actionem iudicati semper tutore condemnato, nisi abstineatur: tunc enim nec in tutorem nec in pupillum. nec pignora tutoris capienda esse saepe rescriptum est.

Dig. 26.7.2.1

Ulpianus 9 ad ed.

Amplius Marcellus libro vicesimo primo digestorum scribit et si satisdedit tutor, mox abstinuit pupillus, fideiussoribus quoque eius debere subveniri: sed et si pupillus non abstinuit, quemadmodum ipsi, ita et fideiussoribus eius subveniri, maxime si pro absente pupillo vel pro infante satisdedit.

Dig. 26.7.3pr.

Ulpianus 35 ad ed.

Si plures curatores dati sunt, pomponius libro sexagesimo octavo ad edictum scripsit ratum haberi debere etiam quod per unum gestum est: nam et in furiosi curatoribus, ne utilitates furiosi impediantur, praetor uni eorum curationem decernet ratumque habebit, quod per eum sine dolo malo gestum est.

Dig. 26.7.3.1

Ulpianus 35 ad ed.

Si parens vel pater qui in potestate habet destinaverit testamento, quis tutorum tutelam gerat, illum debere gerere praetor putavit, meritoque parentis statur voluntati, qui utique recte filio prospexit. tantundem praetor facit et de his, quos parens destinavit testamento, ipse autem confirmavit, ut, si parens declaravit, quem velit tutelam administrare, ille solus administret.

Dig. 26.7.3.2

Ulpianus 35 ad ed.

Ceteri igitur tutores non administrabunt, sed erunt hi, quos vulgo honorarios appellamus. nec quisquam putet ad hos periculum nullum redundare: constat enim hos quoque, excussis prius facultatibus eius qui gesserit, conveniri oportere: dati sunt enim quasi observatores actus eius et custodes, imputabiturque eis quandoque, cur, si male eum conversari videbant, suspectum eum non fecerunt. adsidue igitur et rationem ab eo exigere eos oportet et sollicite curare, qualiter conversetur, et si pecunia sit, quae deponi possit, curare, ut deponatur ad praediorum comparationem: blandiuntur enim sibi, qui putant honorarios tutores omnino non teneri: tenentur enim secundum ea quae supra ostendimus.

Dig. 26.7.3.3

Ulpianus 35 ad ed.

Quamvis autem ei potissimum se tutelam commissurum praetor dicat, cui testator delegavit, attamen nonnumquam ab hoc recedet, ut puta si pater minus penso consilio hoc fecit, forte minor viginti quinque annis, vel eo tempore fecit, quo iste tutor bonae vitae vel frugi videbatur, deinde postea idem coepit male conversari ignorante testatore, vel si contemplatione facultatium eius res ei commissa est, quibus postea exutus est.

Dig. 26.7.3.4

Ulpianus 35 ad ed.

Nam et si unum pater dederit tutorem, nonnumquam ei adiunguntur curatores: nam imperator noster cum patre rescripsit, cum duos quis libertos suos tutores dedisset, unum rerum italicarum, alium rerum africanarum, curatores eis adiungendos, nec patris secuti sunt voluntatem.

Dig. 26.7.3.5

Ulpianus 35 ad ed.

Quod in tutoribus scriptum est, et in curatoribus erit observandum, quos pater testamento destinavit a praetore confirmandos.

Dig. 26.7.3.6

Ulpianus 35 ad ed.

Apparet igitur praetori curae fuisse, ne tutela per plures administretur, quippe etsi pater non destinaverit quis gerere debeat, attamen id agit, ut per unum administretur: sane enim facilius unus tutor et actiones exercet et excipit.

Dig. 26.7.3.7

Ulpianus 35 ad ed.

Ne per multos tutela spargatur, si non erit a testatore electus tutor aut gerere nolet, tum is gerat, cui maior pars tutorum tutelam decreverit: praetor igitur iubebit eos convocari aut, si non coibunt aut coacti non decernent, causa cognita ipse statuet, quis tutelam geret.

Dig. 26.7.3.8

Ulpianus 35 ad ed.

Plane si non consentiant tutores praetori, sed velint omnes gerere, quia fidem non habeant electo nec patiuntur succedanei esse alieni periculi, dicendum est praetorem permittere eis omnibus gerere.

Dig. 26.7.3.9

Ulpianus 35 ad ed.

Item si dividi inter se tutelam velint tutores, audiendi sunt, ut distribuatur inter eos administratio.

Dig. 26.7.4

Ulpianus 9 ad ed.

Vel in partes vel in regiones, et si ita fuerit divisa, unusquisque exceptione summovebitur pro ea parte vel regione, quam non administrat.

Dig. 26.7.5pr.

Ulpianus 35 ad ed.

Ita autem depositioni pecuniarum locus est, si ea summa corradi, id est colligi possit, ut comparari ager possit: si enim tam exiguam esse tutelam facile probatur, ut ex nummo refecto praedium puero comparari non possit, depositio cessat. quae ergo tutelae quantitas depositionem inducat, videamus. et cum causa depositionis exprimatur, ut praedia pupillis comparentur, manifestum est, ut ad minimas summas non videatur pertinere: quibus modus praefiniri generaliter non potest, cum facilius causa cognita per singulos possit examinari. nec tamen auferenda facultas est etiam minores summas interdum deponi postulare, si suspecti tutores esse videantur.

Dig. 26.7.5.1

Ulpianus 35 ad ed.

Gessisse autem videtur tutor, qui quid omnino pupillare attigit etiamsi modicum, cessantque partes eorum, qui solent cessantes cogere administrare.

Dig. 26.7.5.2

Ulpianus 35 ad ed.

Quod si posteaquam gessit, tunc se gestu abstinuit, etiam suspecti postulatio succedit.

Dig. 26.7.5.3

Ulpianus 35 ad ed.

Quod si quis tutelam mandaverit gerendam gestaque fuerit ab eo cui mandatum est, locus erit tutelae actioni: videtur enim gessisse qui per alium gessit. quod si non accessit is cui mandatum est, utili actioni convenitur.

Dig. 26.7.5.4

Ulpianus 35 ad ed.

Debitor patris, qui tutelam administravit filii, tutealae iudicio tenebitur etiam ob id quod patri debuit.

Dig. 26.7.5.5

Ulpianus 35 ad ed.

Si tutor pupillum suum puberem factum non admonuerit, ut sibi curatores peteret (sacris enim constitutionibus hoc facere iubetur qui tutelam administravit), an tutelae iudicio teneatur? et magis puto sufficere tutelae iudicium, quasi conexum sit hoc tutelae officio, quamvis post pubertatem admittatur.

Dig. 26.7.5.6

Ulpianus 35 ad ed.

Post completum vicesimum quintum annum aetatis si nondum rationes redditae sunt nec ad causam instrumenta pertinentia, fidei ac verecundiae curatorum convenit, ut consilio suo coeptam litem perficiant. si igitur cessent in his quae constituta sunt faciendis, magis puto sufficere negotiorum gestorum iudicium etiam si iam actum est, si tamen huius rei ratio reddita non est.

Dig. 26.7.5.7

Ulpianus 35 ad ed.

Iulianus libro vicesimo primo digestorum huiusmodi speciem proponit: quidam decedens filiis suis dederat tutores et adiecerat: " eosque aneclogistos esse volo". et ait iulianus tutores, nisi bonam fidem in administratione praestiterint, damnari debere, quamvis testamento comprehensum sit, ut aneclogisti essent: nec eo nomine ex causa fideicommissi quicquam consequi debebunt, ut ait iulianus, et est vera ista sententia: nemo enim ius publicum remittere potest huiusmodi cautionibus nec mutare formam antiquitus constitutam. damnum vero, quodcumque ex tutela quis senserit, et legari et per fideicommissum ei relinqui potest.

Dig. 26.7.5.8

Ulpianus 35 ad ed.

Papinianus libro quinto responsorum ita scribit: pater tutelam filiorum consilio matris geri mandavit et eo nomine tutores liberavit. non idcirco minus officium tutorum integrum erit, sed viris bonis conveniet salubre consilium matris admittere, tametsi neque liberatio tutoris neque voluntas patris aut intercessio matris tutoris officium infringat.

Dig. 26.7.5.9

Ulpianus 35 ad ed.

Usque adeo autem licet tutoribus patris praeceptum neglegere, ut, si pater caverit, ne quid rei suae distraheretur vel ne mancipia distrahantur vel ne vestis vel ne domus vel ne aliae res periculo subiectae, liceat eis contemnere hanc patris voluntatem.

Dig. 26.7.5.10

Ulpianus 35 ad ed.

Ex quo innotuit tutori se tutorem esse, scire debet periculum tutelae ad eum pertinere. innotescere autem qualiterqualiter sufficit, non utique testato eum conveniri: nam etsi citra testationem, scilicet undecumque cognovit, nulla dubitatio est, quin debeat periculum ad ipsum respicere.

Dig. 26.7.6

Ulpianus 36 ad ed.

Hoc autem, quod cognovit tutor, pupillus probare debebit.

Dig. 26.7.7pr.

Ulpianus 35 ad ed.

Tutor, qui repertorium non fecit, quod vulgo inventarium appellatur, dolo fecisse videtur, nisi forte aliqua necessaria et iustissima causa allegari possit, cur id factum non sit. si quis igitur dolo inventarium non fecerit, in ea condicione est, ut teneatur in id quod pupilli interest, quod ex iureiurando in litem aestimatur. nihil itaque gerere ante inventarium factum eum oportet, nisi id quod dilationem nec modicam exspectare possit.

Dig. 26.7.7.1

Ulpianus 35 ad ed.

Si tutor cessaverit in distractione earum rerum quae tempore depereunt, suum periculum facit: debuit enim confestim officio suo fungi. quid si contutores exspectabat vel differentes vel etiam volententes se excusare, an ei ignoscatur? et non facile ignoscetur: debuit enim partibus suis fungi non quidem praecipiti festinatione, sed nec moratoria cunctatione.

Dig. 26.7.7.2

Ulpianus 35 ad ed.

Competet adversus tutores tutelae actio, si male contraxerint, hoc est si praedia comparaverint non idonea per sordes aut gratiam. quid ergo si neque sordide neque gratiose, sed non bonam condicionem elegerint? recte quis dixerit solam latam neclegentiam eos praestare in hac parte debere.

Dig. 26.7.7.3

Ulpianus 35 ad ed.

Si post depositionem pecuniae comparare praedia tutores neglexerunt, incipient in usuras conveniri: quamquam enim a praetore cogi eos oportet ad comparandum, tamen, si cessent, etiam usuris plectendi sunt tarditatis gratia, nisi si per eos factum non est quo minus compararent.

Dig. 26.7.7.4

Ulpianus 35 ad ed.

Pecuniae, quam in usus suos converterunt tutores, legitimas usuras praestant, sed hoc ita demum, si evidenter doceantur pecuniam in usus suos convertisse: ceterum non utique qui non faeneravit vel non deposuit, in suos usus vertit, et ita divus severus decrevit. doceri igitur debet in usus suos pecuniam vertisse.

Dig. 26.7.7.5

Ulpianus 35 ad ed.

Vertisse in suos usus non accipimus eum, qui debitor patris pupilli fuit, deinde ipse sibi non solvit: hic enim eas usuras praestabit, quas patri promiserat.

Dig. 26.7.7.6

Ulpianus 35 ad ed.

Si tutor pecuniam pupillarem suo nomine faeneravit, ita demum cogetur usuras quas percepit praestare, si suscipiat pupillus ceterorum nominum periculum.

Dig. 26.7.7.7

Ulpianus 35 ad ed.

Si deponi oporteat pecunias ad praediorum comparationem, si quidem factum est, usurae non current: sin vero factum non est, si quidem nec praeceptum est, ut deponantur, pupillares praestabuntur, si praeceptum est et neglectum, de modo usurarum videndum est. et solent praetores comminari, ut, si non fiat depositio vel quanto tardius fiat, legitimae usurae praestentur: si igitur comminatio intercessit, iudex qui quandoque cognoscet decretum praetoris sequetur.

Dig. 26.7.7.8

Ulpianus 35 ad ed.

Idem solent facere praetores etiam circa eos tutores, qui negant habere ad alendos pupillos penes se aliquid, ut quidquid constiterit penes eos esse, eius gravissima usura pendatur: et hoc persequi oportere iudicem palam est cum et alia poenae adiectione.

Dig. 26.7.7.9

Ulpianus 35 ad ed.

Residuarum autem summarum pupillares usuras pendi oportet.

Dig. 26.7.7.10

Ulpianus 35 ad ed.

Quae autem sunt pupillares usurae, videndum est. et apparet hanc esse formam usurarum, ut eius quidem pecuniae, quam quis in usus suos convertit, legitimam usuram praestet. sed et si negavit apud se esse pecuniam et praetor pronuntiavit contra eum, legitimas solvere debebit, vel si moram depositioni fecit et praetor irrogavit ei legitimas. sed et si, dum negat aliquam quantitatem penes se esse, pupillis ad onera sua expedienda imposuit necessitatem mutuam pecuniam legitimis usuris accipiendi, tenebitur in legitimis. item si a debitoribus legitimas exegit. ex ceteris causis secundum morem provinciae praestabit usuras aut quincunces aut trientes aut si quae aliae leviores in provincia frequentantur.

Dig. 26.7.7.11

Ulpianus 35 ad ed.

Usurae a tutoribus non statim exiguntur, sed interiecto tempore ad exigendum et ad collocandum duum mensum, idque in iudicio tutelae servari solet: quod spatium seu laxamentum temporis tribui non oportet his, qui nummos impuberum vel adulescentium in suos usus converterunt.

Dig. 26.7.7.12

Ulpianus 35 ad ed.

Si usuras exactas tutor vel curator usibus suis retinuerint, earum usuras agnoscere eos oportet: sane enim parvi refert, utrum sortem pupillarem an usuras in usus suos converterint.

Dig. 26.7.7.13

Ulpianus 35 ad ed.

Pecuniae, quae in arca fuit, etiam heredes curatoris tamdiu usuras praestabunt, quamdiu non interpellaverint, ut loco defuncti curator constituatur.

Dig. 26.7.7.14

Ulpianus 35 ad ed.

Si tutor pro contutore condemnetur, an etiam in usuras condemnandus sit, quaeritur. et placet, ut multis rescriptis continetur et papinianus libro duodecimo quaestionum ait, etiam in usuras eum condemnandum, si suspectum facere supersedit, et quidem eas demum usuras cogendum praestare, quas etiam suae administrationis cogitur.

Dig. 26.7.7.15

Ulpianus 35 ad ed.

Sciendum est tutorem et post officium finitum usuras debere in diem, quo tutelam restituit.

Dig. 26.7.8

Ulpianus 23 ad ed.

Si tutelae agat is, cuius tutela administrata est, dicendum est nonnumquam diem creditae pecuniae exspectandam, si forte tutor pecunias crediderit pupilli nomine, quarum exigendarum dies nondum venit. sane quod ad pecunias attinet, ita demum verum est, si potuit et debuit credere: ceterum si non debet credere, non exspectabitur.

Dig. 26.7.9pr.

Ulpianus 36 ad ed.

Quotiens tutor pecuniam pupillarem faenori dat, stipulatio hoc ordine facienda est. stipulari enim debet aut pupillus aut servus pupilli: quod si neque pupillus eius aetatis erit, ut stipulari possit, neque servum habebit, tunc ipse tutor quive in eius potestate erit, quo casu iulianus saepissime scripsit utilem actionem pupillo dandam. sed et si absens sit pupillus, oportere tutorem suo nomine stipulari nequaquam ambigendum est.

Dig. 26.7.9.1

Ulpianus 36 ad ed.

Si pater familias eum, pro quo fideiussit, tutorem dederit filio suo, officio tutoris convenit, ut, cum dies pecuniae praeterierit, creditori debitum solvat: et ideo cessante eo si pupillus suae tutelae factus solverit ex causa fideiussoria, non solum mandati, sed etiam tutelae agere poterit: hoc enim ei imputatur, cur pro se non solverit. quod si in diem debitor fuit iste tutor, quibusdam videtur non venire in tutelae iudicium, si modo is dies post tutelam finitam supervenit: quod si dies adhuc durante tutela venit, putant omnimodo devolvi in tutelae iudicium. ego et hoc et superius ita verum puto, si facultatibus labi tutor coepit: ceterum si idoneus tutor fuit, nihil venire in tutelae iudicio. nec quisquam putet nullum effectum hoc habere: namque si quis dixerit in tutelae iudicium devolvi, et privilegio locus est et fideiussores tenebuntur, si rem salvam fore cautum est.

Dig. 26.7.9.2

Ulpianus 36 ad ed.

Item si temporali actione fuit obligatus tutor, dicendum est locum esse tutelae iudicio, ut perpetua actio sit.

Dig. 26.7.9.3

Ulpianus 36 ad ed.

Et generaliter quod adversus alium praestare debuit pupillo suo, id adversus se quoque praestare debet, fortassis et plus: adversus alios enim experiri sine actione non potuit, adversus se potuit.

Dig. 26.7.9.4

Ulpianus 36 ad ed.

Sed si sub usuris gravioribus patri pupilli pecuniam debuit quam sint pupillares, videndum est, an ei aliquid imputetur. et si quidem solvit, nihil est quod ei imputetur: potuit enim solvere nec onerare se usuris: si vero non solvit, usuras cogendus est agnoscere, quas a se exigere debuit.

Dig. 26.7.9.5

Ulpianus 36 ad ed.

Sicut autem solvere tutor quod debet, ita et exigere quod sibi debetur potest, si creditor fuit patris pupilli: nam et sibi solvere potest, si modo fuit pecunia unde solvat, et si usurae fuerunt graviores quae ei debebantur, relevabitur eis pupillus, quia tutor se potuit liberare, sicut aliis quoque solvere et potuit et debuit.

Dig. 26.7.9.6

Ulpianus 36 ad ed.

Nec utique necesse habet, si conveniatur, per iudicem solvere, idcircoque si mala causa pupillaris est, denuntiare sibi verum debet. denique imperator antoninus cum patre etiam honoraria eos imputare pupillo prohibuit, si supervacaneam litem instituissent, cum convenirentur a vero creditore: nec enim prohibentur tutores bonam fidem agnoscere.

Dig. 26.7.9.7

Ulpianus 36 ad ed.

Non tantum autem sibi solvere tutor, verum etiam sibi creditam pecuniam scribere potest, ut Marcellus libro octavo digestorum scripsit, seque mutua pecunia poterit obligare sibi mutuam proscribendo.

Dig. 26.7.9.8

Ulpianus 36 ad ed.

Constat eum, qui ad augmentum datur, ut puta ad bona materna quae postea accesserunt vel ad quid aliud augmentum, administrare bona pristina non solere. si autem suspectum facere priorem tutorem supersedit vel satis ab eo exigere, plectetur.

Dig. 26.7.9.9

Ulpianus 36 ad ed.

Per contrarium autem qui datus est simpliciter tutor pupillo vel curator, si quid postea augmenti accesserit, periculo tenetur, quamvis soleat ad augmentum dari curator: quae res non facit, ut ipsa augmenta non pertineant ad curam priorum, ad quos omnis utilitas pupillorum debet pertinere. sive igitur datus est, communicatur periculum cum prioribus, sive datus non est, tenetur administrationis necessitate is qui antea erat datus.

Dig. 26.7.10

Ulpianus 49 ad ed.

Generaliter quotienscumque non fit nomine pupilli quod quivis pater familias idoneus facit, non videtur defendi: sive igitur solutionem sive iudicium sive stipulationem detrectat, defendi non videtur.

Dig. 26.7.11

Ulpianus 33 ad ed.

Circa pupillum, cuius tutor servus erat pronuntiatus, divus pius rescripsit in rebus, quas ex pecunia pupilli servus comparaverat, dominum non posse uti praerogativa deductionis. quod et in curatore observandum est.

Dig. 26.7.12pr.

Paulus 38 ad ed.

Cum plures tutelam gerunt, nulli eorum in contutorem actio pupilli nomine datur.

Dig. 26.7.12.1

Paulus 38 ad ed.

Quae bona fide a tutore gesta sunt, rata habentur etiam ex rescriptis traiani et hadriani: et ideo pupillus rem a tutore legitime distractam vindicare non potest: nam et inutile est pupillis, si administratio eorum non servatur, nemine scilicet emente. nec interest, tutor solvendo fuerit nec ne, cum, si bona fide res gesta sit, servanda sit, si mala fide, alienatio non valet.

Dig. 26.7.12.2

Paulus 38 ad ed.

Nimium est licere tutori respectu existimationis pupilli erogare ex bonis eius, quod ex suis non honestissime fuisset erogaturus.

Dig. 26.7.12.3

Paulus 38 ad ed.

Cum tutor non rebus dumtaxat, sed etiam moribus pupilli praeponatur, imprimis mercedes praeceptoribus, non quas minimas poterit, sed pro facultate patrimonii, pro dignitate natalium constituet, alimenta servis libertisque, nonnumquam etiam exteris, si hoc pupillo expediet, praestabit, sollemnia munera parentibus cognatisque mittet. sed non dabit dotem sorori alio patre natae, etiamsi aliter ea nubere non potuit: nam etsi honeste, ex liberalitate tamen fit, quae servanda arbitrio pupilli est.

Dig. 26.7.12.4

Paulus 38 ad ed.

Si tutor pecuniam pupillarem credere non potuit, quod non erat cui crederet, pupillo vacabit.

Dig. 26.7.13pr.

Gaius 12 ad ed. provinc.

Tutor secundum dignitatem facultatesque pupilli modum servorum aestimare debet, qui circa eum futuri sunt.

Dig. 26.7.13.1

Gaius 12 ad ed. provinc.

Non est audiendus tutor, cum dicat ideo cessasse pupillarem pecuniam, quod idonea nomina non inveniret, si arguatur eo tempore suam pecuniam bene collocasse.

Dig. 26.7.13.2

Gaius 12 ad ed. provinc.

In solvendis legatis et fideicommissis attendere debet tutor, ne cui non debitum solvat, nec nuptiale munus matri pupilli vel sorori mittere. aliud est, si matri forte aut sorori pupilli tutor ea quae ad victum necessaria sunt praestiterit, cum semet ipsa sustinere non possit: nam ratum id habendum est: nec enim eadem causa est eius, quod in eam rem impenditur et quod muneris legatorumve nomine erogatur.

Dig. 26.7.14

Paulus 8 brev.

Etiam contutoris factum imputatur collegae, si potuit et debuit suspectum facere: interdum et si debuit satis petere: nam si idoneus subito lapsus est, nihil collegae imputari potest.

Dig. 26.7.15

Paulus 2 sent.

Si tutor constitutus quos invenerit debitores non convenerit ac per hoc minus idonei efficiantur, vel intra sex primos menses pupillares pecunias non collocaverit, ipse in debitam pecuniam et in usuras eius pecuniae quam non faeneravit convenitur.

Dig. 26.7.16

Paulus 6 ad sab.

Cum quaeritur iudicio tutelae, quae nomina a tutore facta agnoscere pupillus debeat, Marcellus putabat, si tutor pecuniam pupilli mutuam dedisset et suo nomine stipulatus esset, posse dici nomina integra pupillo salva esse, deperdita et male contracta ad tutorem pertinere. sed verius se putare posse tutorem eam condicionem adulescenti deferre, ut id quod gessisset tutor in contrahendis nominibus aut in totum agnoscere aut a toto recedere, ita ut perinde esset ac si tutor sibi negotium gessisset. idem est et si pupilli nomine credidisset.

Dig. 26.7.17

Pomponius 17 ad sab.

Qui iussus est ab eo, qui ius iubendi habet, tutelam gerere, si cessasset, ex quo iussus est indemnem pupillum praestare debebit, non ex quo tutor esse coepit.

Dig. 26.7.18pr.

Iulianus 21 Dig.

Qui tutor negotia pupilli gessit, quamvis in nulla re auctor pupillo fuerit, quin tutelae iudicio teneatur, dubitari non oportet: quid enim prohibet ita patrimonium pupilli compositum esse, ut nihil gerere necesse sit, in quo tutoris auctoritas interponi debeat?

Dig. 26.7.18.1

Iulianus 21 Dig.

Ex duobus tutoribus si cum altero actum fuerit, alter non liberabitur.

Dig. 26.7.19

Ulpianus 1 resp.

Actus sui rationem concuratori reddere non esse compellendum: sed nisi cum eo administrationem communicet aut si non ex fide curam gerat, suspectum postulari posse.

Dig. 26.7.20

Ulpianus 5 de off. procons.

Tutor vel curator, cuius iniusta appellatio pronuntiata erit cuiusve excusatio recepta non sit, ex quo accedere ad administrationem debuit erit obligatus.

Dig. 26.7.21

Marcellus l.S. resp.

Lucius titius gaium seium filium familias testamento filio suo tutorem dedit: gaius seius sciente et consentiente patre tutelam administravit: quaero, an defuncto gaio seio actio tutelae adversus patrem eius et in quantum competat. Marcellus respondit secundum ea quae proposita essent actione de peculio et de in rem verso patrem teneri: nec multum videri in hoc casu facere patris scientiam et consensum ad obligandum eum in solidum, nisi forte contutore vel alio quo volente eum facere suspectum intercessit et quasi in se periculum recepit.

Dig. 26.7.22

Paulus 3 ad ed.

Tutor ad utilitatem pupilli et novare et rem in iudicium deducere potest: donationes autem ab eo factae pupillo non nocent.

Dig. 26.7.23

Ulpianus 9 ad ed.

Vulgo observatur, ne tutor caveat ratam rem pupillum habiturum, quia rem in iudicium deducit. quid tamen si dubitetur, an tutor sit vel an duret tutor vel an gestus illi commissus sit? aequum est adversarium non decipi. idem et in curatore est, ut iulianus scripsit.

Dig. 26.7.24pr.

Paulus 9 ad ed.

Decreto praetoris actor constitui periculo tutoris solet, quotiensque aut diffusa negotia sint aut dignitas vel aetas aut valetudo tutoris id postulet: si tamen nondum fari pupillus potest, ut procuratorem facere possit, aut absens sit, tunc actor necessario constituendus est.

Dig. 26.7.24.1

Paulus 9 ad ed.

Si duobus simul tutela gerenda permissa est vel a parente vel a contutoribus vel a magistratibus, benigne accipiendum est etiam uni agere permissum, quia duo simul agere non possunt.

Dig. 26.7.25

Ulpianus 13 ad ed.

Si minoris actum fuerit cum tutoribus adsistentibus curatoribus et pupillus ob hoc egerit cum curatoribus et ei sint condemnati in id quod sua intererat minoris tutores culpa eorum condemnatos non esse: an restitutio adversus tutores cesset? et papinianus responsorum libro secundo ait nihilo minus posse restitui et idcirco curatores, si nondum iudicatum fecerunt, posse provocantes per exceptionem doli consequi, ut eis mandentur adversus tutores actiones. quid tamen si iam fecerunt iudicatum curatores? proderit hoc tutoribus, quoniam nihil minori abest, qui de praeda magis quam de damno sollicitus est, nisi forte mandare actiones paratus sit curatoribus.

Dig. 26.7.26

Paulus 24 ad ed.

Cum curatore et pro tutore etiam manente administratione agi potest.

Dig. 26.7.27

Paulus 7 ad plaut.

Tutor, qui tutelam gerit, quantum ad providentiam pupillarem domini loco haberi debet.

Dig. 26.7.28pr.

Marcellus 8 Dig.

Tutor pro pupillo in iudicium vocatus sollemniter cavit: si inter moras puer ad pubertatem pervenit, non est cogendus accipere iudicium.

Dig. 26.7.28.1

Marcellus 8 Dig.

Tutor, qui post pubertatem pupilli negotiorum eius administratione abstinuit, usuras praestare non debet ex quo optulit pecuniam: quin etiam iustius mihi videtur eum per quem non stetit, quo minus conventus restitueret tutelam, ad praestationem usurarum non compelli. ulpianus notat: non sufficit optulisse, nisi et deposuit obsignatam tuto in loco,

Dig. 26.7.29

Marcellus 8 Dig.

Maximeque heredem tutoris: nam periniquum est eum, cui forte post viginti annos vel amplius in mentem venit tutelam reposcere, etiam usuras postulare.

Dig. 26.7.30

Marcellus 21 Dig.

Tutoris praecipuum est officium, ne indefensum pupillum relinquat.

Dig. 26.7.31

Modestinus 1 excus.

Divi severus et antoninus augusti sergio iuliano. " forma, qua singuli tutores, prout quisque gessit tutelam, nonnunquam in solidum tenentur, dumtaxat intra pubertatis tempora locum habet, non etiam si post pubertatem administraverint".

Dig. 26.7.32pr.

Modestinus 6 resp.

Sine herede tutor decessit: quaero, an curator pupillo datus, cum neque inventaria neque alia instrumenta a fideiussore tutoris exhibeantur, possit eundem fideiussorem convenire ex stipulatione, quanti pupilli interest. modestinus respondit in id quod tutor conveniri potuit, fideiussorem quoque conveniri posse.

Dig. 26.7.32.1

Modestinus 6 resp.

Modestinus respondit damnum si quod accidit eo, quia cautiones soluti vectigalis inventae non sunt, ad tutorem, cuius nulla culpa admissa proponitur, minime pertinere.

Dig. 26.7.32.2

Modestinus 6 resp.

Modestinus respondit tutorem eorum redituum nomine rationem pupillae reddere debere, qui ex fundo bona fide percipi potuerunt.

Dig. 26.7.32.3

Modestinus 6 resp.

Item respondit, si minus a servo tutor percepit, quam bona fide ex fundo percipi potuit, ex eo, de quo pupillae sit obstrictus, quantum ex peculio servi servari possit, eidem tutori proficere debere, scilicet si non perdituro servo administrationem credidit.

Dig. 26.7.32.4

Modestinus 6 resp.

Interposito curatore adulescens fundum titio vendidit: postea ^ posteo^ adgnita fraude in integrum restitutus in possessionem induci iussus est: quaero, an, cum ex hac venditione melior factus non est neque in rem suam quicquam versum probetur, pretium emptori restituere non debeat. modestinus respondit pretium fundi ab adulescente venumdati, si rationibus eius non profuit nec quicquam de eo a iudicante de in integrum restitutione statutum est, emptorem frustra postulare.

Dig. 26.7.32.5

Modestinus 6 resp.

Item respondit sumptibus voluptatis causa ab emptore factis adulescentem onerandum non esse: qui tamen ab eodem aedificio ita auferri possunt, ut in facie pristina, id est quae fuit ante venditionem, aedificium esse possit, emptori auferre permitti oportere.

Dig. 26.7.32.6

Modestinus 6 resp.

Lucius titius coheres et curator sororis suae, cum esset ex civitate, in qua usitatum erat ipsos dominos praediorum, non conductores onera annonarum et contributionum temporariarum sustinere, morem hunc et consuetudinem semper observatam secutus et ipse pro communi et individua hereditate annonas praestitit: quaero, an in rationibus dandis opponi curatori possit, quia non recte pro parte sororis tales impensas fecerat. modestinus respondit in id demum curatorem adultae reputare ex causa de qua quaeritur posse, quod ipsa, si rem suam administraret, erogare compelleretur.

Dig. 26.7.32.7

Modestinus 6 resp.

Tutores duo post venditionem pupillarium rerum factam pecuniam inter se diviserant, post quam divisionem alter eorum in exilium datus est durante tutela: quaerebatur, an actore constituto contutor eius partem pupillaris pecuniae petere ab eo poterit. modestinus respondit: si hoc quaeritur, an contutore relegato contutor eius tutelae actionem exercere possit, non posse respondi.

Dig. 26.7.33pr.

Callistratus 4 de cogn.

A tutoribus et curatoribus pupillorum eadem diligentia exigenda est circa administrationem rerum pupillarium, quam pater familias rebus suis ex bona fide praebere debet.

Dig. 26.7.33.1

Callistratus 4 de cogn.

Officium tutorum curatoribus constitutis finem accipit ideoque omnia negotia, quae inita sunt, ad fidem curatorum pertinent: idque etiam divus marcus cum filio suo commodo rescripsit.

Dig. 26.7.33.2

Callistratus 4 de cogn.

Heredibus quoque pupillorum electio eadem adversus tutores, in quo potissimum consistere velint, competit, quae ipsis quorum tutela administrata sit, principalibus constitutionibus declaratur.

Dig. 26.7.33.3

Callistratus 4 de cogn.

Sumptuum, qui bona fide in tutelam, non qui in ipsos tutores fiunt, ratio haberi solet, nisi ab eo qui eum dat certum solacium ei constitutum est.

Dig. 26.7.34

aquila libro resp.

Respondit ad instruendam diligentiam iudicantis et pupillorum utilitatem admittendam servos quoque eorum interrogari posse.

Dig. 26.7.35

Papinianus 2 quaest.

Tutor sive curator nomina, quae iuste putat non esse idonea, a priore tutore vel curatore suscipere quidem cogitur, non tamen exactionem periculo suo facere.

Dig. 26.7.36

Papinianus 3 quaest.

Inter tutores divisa tutela est: aequitas, quae merum ius compensationis inducit, propter officium et personam agentis tutoris non differtur: nam divisio tutelae, quae non iuris, sed iurisdictionis est, modum administrationi facit et inter ipsos locum habet nec experiri cum pupillo volentibus obstare debet.

Dig. 26.7.37pr.

Papinianus 11 quaest.

Tutorem, qui tutelam gerit, sabinus et cassius, prout gerit, in singulas res per tempora velut ex pluribus causis obligari putaverunt.

Dig. 26.7.37.1

Papinianus 11 quaest.

Secundum quam sententiam servus institor dominicae mercis vel praepositus debitis exigendis si liber factus in eodem actu perseveret, quamvis tempore servitutis obligari non potuerit, praeteriti temporis nomine actione negotiorum gestorum non inutiliter convenietur, earum scilicet rerum, quae conexam rationem cum his, quae postea gesta sunt, habuerunt: sic enim et tutelae iudicium earum quoque rerum causa tenere placuit, quae post pubertatem administrantur, si posterior actus priori cohaereat neque divisus propriam rationem habet.

Dig. 26.7.37.2

Papinianus 11 quaest.

Inde descendit quaestio, quae volgo circa filium familias tractata est, qui tutor testamento datus post tutelam gestam emancipatus in eodem officio perseveravit. et secundum sabini et cassii sententiam eveniet, ut de eo quidem, quod post emancipationem gestum est, in solidum conveniri possit, de praeterito autem, sive peculium non sit ademptum sive ademptum sit, in id quod facere possit. quod si superioris temporis nomine patrem de peculio pupillus convenire maluerit (annus enim utilis ex quo tutela agi posse coepit computabitur): ne capiatur pater inducta totius temporis causa, tempus, quo filius familias tutelam gessit, comprehendendum erit.

Dig. 26.7.38pr.

Papinianus 12 quaest.

Si plures tutelam non administraverint et omnes solvendo sint, utrum, quia nullae partes administrationis inveniuntur, electioni locus erit an ut eiusdem pecuniae debitores excipere debebunt periculi societatem? quod magis ratio suadet.

Dig. 26.7.38.1

Papinianus 12 quaest.

Si quidam ex his idonei non sint, onerabuntur sine dubio ceteri, nec inique, cum singulorum contumacia pupillo damnum in solidum dederit.

Dig. 26.7.38.2

Papinianus 12 quaest.

Unde quaerendum est, an actiones pupillus ei, qui solus convenitur, in alterum pro parte scilicet praestare debeat. sed cum propria cuiusque contumacia puniatur, qua fronte poterit hoc desiderari ?

Dig. 26.7.39pr.

Papinianus 5 resp.

Tutores, qui post finem tutelae per errorem officii durantes rerum administrationem retinuerunt, nominum paternorum periculum, quae post pubertatem adulescentis idonea fuerunt, praestare cogendi non erunt, cum actionem inferre non potuerunt.

Dig. 26.7.39.1

Papinianus 5 resp.

Curator a patre testamento datus impuberis negotiis se per errorem immiscuit: postea a praetore tutoribus aliis datis periculum futuri temporis ille, qui postea nihil gessit, non praestabit.

Dig. 26.7.39.2

Papinianus 5 resp.

Qui se negotiis impuberis non iure tutor datus secundum patris voluntatem immiscuit, errore comperto tutorem a praetore constitui consultius petet, ne forte, si rem coeptam deseruerit, fraudis vel culpae causa condemnetur. non idem servatur, si quis ultro negotium alienum gesserit, cum satis abundeque sufficiat vel in una specie per amici laborem domino consuli.

Dig. 26.7.39.3

Papinianus 5 resp.

Heres institutus, qui non habuit substitutum, priusquam hereditatem adiret, quam impuberi restituere debuit, vita decessit: cum hereditas in italia esset, scriptus autem heres in provincia vita decessisset, tutores provincialium rerum culpae nomine condemnandos existimavi, si causam testamenti non ignorantes utilitatem impuberis deseruerunt: nam hereditatis in provincia fideicommisso restituto causam quidem iuris expediri potuisse, rerum autem administrationem ad eos recidere debuisse, qui tutelam in italia suscepissent.

Dig. 26.7.39.4

Papinianus 5 resp.

Adversus tutorem, qui pupillum hereditate patris abstinuit, actionem denegari non oportet creditori, qui cum ipso tutore contraxit, quamvis tutor pecuniam in rem impuberis verteret.

Dig. 26.7.39.5

Papinianus 5 resp.

Curatores adulescentis mutui periculi gratia cautionem invicem sibi praebuerunt et in eam rem pignora dederunt: cum officio deposito solvendo fuissent, irritam cautionem esse factam et pignoris vinculum solutum apparuit.

Dig. 26.7.39.6

Papinianus 5 resp.

Tutor datus adversus ipsam creationem provocavit: heres eius postea victus praeteriti temporis periculum praestabit, quia non videtur levis culpa contra iuris auctoritatem mandatum tutelae officium detrectare.

Dig. 26.7.39.7

Papinianus 5 resp.

Rerum provincialium tutores in urbe causas appellationis impuberum agentes, rerum italicarum curatores ut impuberibus constituantur, ad officium suum revocare debent: alioquin si prius in provinciam redierint, dolum aut culpam eorum in ea quoque parte recte iudex conveniet.

Dig. 26.7.39.8

Papinianus 5 resp.

Patruus testamento fratris filio tutor datus cum in italia domicilium haberet, tam italicarum rerum quam provincialium administrationem suscepit atque ita pecuniam ex venditionibus romae refectam in provinciam traiecit et in calendarium pupilli convertit: tutor in locum eius romae substitutus administrationem pecuniae, quae non pertinet ad tutelam suam, suscipere non cogitur.

Dig. 26.7.39.9

Papinianus 5 resp.

Curatores testamento vel tutores inutiliter dati neque decreto praetoris confirmati negotia gesserunt. vice mutua periculum praestare coguntur, cum officium sponte citra iuris adminiculum iniverint et qui fuit idoneus, decretum praetoris curatores vel tutores constituentis implorare debuerit.

Dig. 26.7.39.10

Papinianus 5 resp.

Tutoribus idoneis diem functis vice mutua periculum ad heredes eorum non redundat, quod non habuit locum officio tutelae manente.

Dig. 26.7.39.11

Papinianus 5 resp.

In eum, qui tutelam gerere noluit, post ceteros qui gesserunt actionem utilem tutelae dari placuit. quod tamen ex tutela non pervenit ad eos, qui se negotiis miscuerunt, sed communi neglegentia perit, citra substitutionis ordinem aequaliter omnium periculum spectat.

Dig. 26.7.39.12

Papinianus 5 resp.

Tutores pubere pupillo constituto litem appellationis inchoatam iussu consulum ob notitiam rei perfecerunt: cum iudicatum persequi non potuerunt, periculo culpae non subiciuntur.

Dig. 26.7.39.13

Papinianus 5 resp.

Ab eo, qui restitutionis auxilio non iuvatur, quaestio culpae tutorum conventione remitti potest, nec donatum, sed transactum videtur.

Dig. 26.7.39.14

Papinianus 5 resp.

Neglegentiae tutorum periculo nominum, quae pater usuris maioribus fecit, adscripto pupilla quidem actionem calendarii praestare cogitur, exactas autem usuras tutelae tempore citra ullam compensationem retinet.

Dig. 26.7.39.15

Papinianus 5 resp.

Adulescens tutoribus conventis, a quibus totum servari non potuit, adversus curatores, qui tutelam ad se neglegentia non transtulerunt, integram actionem retinet: neque enim tutelae iudicio consumptum videtur, quod alterius officii querellam habuit.

Dig. 26.7.39.16

Papinianus 5 resp.

Tutor, qui tutoris idoneum heredem convenire pupilli nomine noluit, damni vicarius substituitur, ut is, qui non idoneum tutelae tempore suspectum facere supersedit.

Dig. 26.7.39.17

Papinianus 5 resp.

Tutelae iudicium ideo differri non oportet, quod fratris et coheredis impuberis idem tutelam sustineat.

Dig. 26.7.39.18

Papinianus 5 resp.

Quod de peculio servi actoris, quem adulescens postquam res suas administrare coepit manumisit, retinuit aut retinere potuit, in ratione reddenda curatori per iudicem accepto feretur.

Dig. 26.7.40

Papinianus 6 resp.

Impuberi filio centurio curatorem dedit. decreto praetoris non secuto si nihil curator datus administret, periculo contumaciae vel neglegentiae non adstringetur: nam privilegium militum ad alienam iniuriam porrigi non oportet nec in aliis circa supremam voluntatem imperitiae venia datur quam in bonis militum, filii vero tutela iure patriae potestatis, non militiae praemio mandatur.

Dig. 26.7.41

Papinianus 7 resp.

Qui plures tutores habuit, unum, qui solvendo non fuit, rationem actus sui vetuit reddere. quoniam eius liberatio, quod ex tutela percepit aut dolo contraxit, non est relicta, contutores, qui suspectum facere neglexerunt, ex culpa recte conveniuntur: tutor enim legatarius ex culpa, quae testamento remissa est, non tenetur.

Dig. 26.7.42

Papinianus 1 def.

Ex pluribus tutoribus in solidum unum tutorem iudex condemnavit. in rem suam iudicatus procurator datus privilegium pupilli non habebit, quod nec heredi pupilli datur: non enim causae, sed personae succurritur, quae meruit praecipuum favorem.

Dig. 26.7.43pr.

Paulus 7 quaest.

Cum post mortem pupilli desinit esse nomen idoneum, tutor periculo eximitur.

Dig. 26.7.43.1

Paulus 7 quaest.

Qui, cum esset fratris sui filiae curator, quadringenta dotis nomine marito eius se daturum promisit: quaero, an succurrendum sit ei, cum postea aere alieno emergente supra vires patrimonii eius dos promissa sit, quoniam in instrumento ita scriptum sit " ille patruus et curator stipulanti spopondit". movet quaestionem, quod non ut de suo dotem daret, sed cum crederet rationem pupillarem sufficere, promisit. praeterea et illud hic potest tractari, ut, si sciens curator non sufficere promiserit, vel donasse videatur vel, quoniam dolo fecit, non illi succurratur. respondi: curator cum officium suum egressus sponte se obligaverit, non puto ei a praetore subveniri debere, non magis quam si creditori puellae pecuniam se daturum spopondisset: sed is de quo tractamus si non donandi animo, sed negotii gerendi causa dotem promisit, habet mulierem obligatam et poterit dici etiam manente matrimonio eam teneri (quia habet dotem sic ut in collatione bonorum dicitur) vel certe post divortium (sive exacta sit dos sive maneat nomen), quia potest efficere, ut ei accepto feratur. quod si mulier suum curatorem adimplere id, quod supra vires patrimonii eius in dotem dare promisit, non queat, curatorem quidem in hoc, quod superfluum est, per exceptionem relevari: mulier vero cautionem in maritum exponere debet, quod, si quandoque locupletior constante matrimonio facta fuerit, dotis reliquum marito servat.

Dig. 26.7.44pr.

Paulus 13 quaest.

Qui nominibus a curatoribus prioribus susceptis sive tutoribus nomina adgnoverunt, periculum in se transferunt.

Dig. 26.7.44.1

Paulus 13 quaest.

Sed si pupillus post pubertatem rationibus a tutore acceptis reliquationem eius secutus usuras acceptaverit, privilegium suum non amittit in bonis tutoris venditis: praetor enim privilegium ei servare debet.

Dig. 26.7.45

Paulus 14 quaest.

Si pupillus alterum ex tutoribus post pubertatem liberasset, improbe alterum illius nomine conabitur interpellare. idemque dicemus in duobus magistratibus collegis, quorum alterum res publica convenit. sed haec in magistratibus tractavi, quasi duo rei eiusdem debiti essent omnimodo: quod non ita est. nam si uterque idoneus est, electio locum non habet: is autem, qui tempore liberatus est, non ei similis est qui nihil habet, sed ei qui satisfecit: habet enim quod obiciat petitori.

Dig. 26.7.46pr.

Paulus 9 resp.

Lucius titius curator gaii seii tempore curae fundum cornelianum locavit sempronio, qui sempronius reliqua traxit: pupillus aetate probata eundem quondam colonum sempronium fecit procuratorem: quaero, an ex eo, quod ille ut procurator egit, omne debitum adulescens agnovisse videatur eoque nomine curatorem suum liberasset. paulus respondit non ex eo, quod adultus eum, qui praedia eius coluit, procuratorem habere voluit, debitum, quod ex conductione reliquatus est, adgnovisse eum videri.

Dig. 26.7.46.1

Paulus 9 resp.

Sempronii, qui ex pollicitatione debitor patriae suae exstiterat, bona res publica iussu praesidis possedit: quorum bonorum magistratus rei publicae tres curatores constituerunt, qui apud graecos epimelytai vocantur, qui postea inter se sine consensu rei publicae administrationem bonorum sempronii diviserunt: ex quibus quidam, cum reliqua traherent, idonei in ipso tempore administrationis esse desierunt: postea pupillus heres sempronii, qui abstentus erat, ab imperatore impetravit, ut bona paterna ei restituerentur: quaero, an ex bonis eorum, qui idonei sunt, indemnitati pupilli prospici debeat, cum individuum his officium curae a magistratibus iniunctum sit. paulus respondit, si pupillo in curatores bonorum actiones decerni placuerit, pro eius portione, qui idoneus non sit, magistratus conveniri oportere: alia enim causa est tutorum, alia eorum, qui rei publicae negotia administrant.

Dig. 26.7.46.2

Paulus 9 resp.

Tutorem, qui pecuniam pupillarem quamvis suo nomine faeneravit, non videri contra constitutiones fecisse, quae prohibent pecuniam pupillarem in usus suos convertere.

Dig. 26.7.46.3

Paulus 9 resp.

Quaesitum est, an eius pecuniae, qua tutor usus est, post finitam quoque tutelam in diem iudicii accepti easdem usuras praestare debeat. paulus respondit finita administratione eas usuras debere computari, quae in tutelae iudicio computantur.

Dig. 26.7.46.4

Paulus 9 resp.

Paulus respondit propter ea, quae post pubertatem nulla necessitate cogente, sed ex voluntate sua tutor administravit, fideiussorem, qui salvam rem fore cavit, non teneri.

Dig. 26.7.46.5

Paulus 9 resp.

Tutelae iudicio tutor conventus edidit librum rationum et secundum eum condemnatus solvit: postea cum a debitoribus paternis, quorum nomina libro rationum non inerant, exigere vellet pupillus, prolatae sunt ab his apochae tutoris: quaesitum est, utrum adversus tutorem an adversus debitores actio ei competat. paulus respondit, si tempore administrandae tutelae tutori tutelam gerenti debitores solvissent, liberatos eos ipso iure a pupillo: sed si cum tutore actum esset, posse eundem adulescentem propter eam causam tutelae experiri et adversus exceptionem rei iudicatae doli mali uti replicatione.

Dig. 26.7.46.6

Paulus 9 resp.

Cum testamento duo tutores dati essent pupillo et alter ex his vita defunctus fuisset, in locum eius petente matre ex praesidis provinciae praecepto a magistratibus alius tutor datus est, a quo magistratus satis exegerunt rem salvam fore: tutor testamento datus postea datum suspectum fecit: quaesitum est, in quantum teneatur. paulus respondit tutorem testamento datum pro ea parte conveniri oportere, pro qua parte administravit: pro contutoris autem portione prius eos conveniri debere, qui pro eo se obligaverunt vel magistratus qui eum dederunt: tunc si solidum pupillus consequi non potuerit, de officio contutoris quaerendum, an suspectum facere debuerit, praesertim cum suspectum quoque eum postulasse dicatur. alias quidem cum magistratus plures tutores dant, non prius ad eos reverti pupillus potest, quam omnes tutores excussi fuerint: in proposito cum unus a magistratibus datus proponeretur, non est visum prius collegam conveniendum, qui et suspectum fecit et testamento datus est, perindeque habendos singulos, ac si in partes dimidias tutores dati essent.

Dig. 26.7.46.7

Paulus 9 resp.

Tutoribus concessum est a debitoribus pupilli pecuniam exigere, ut ipso iure liberentur, non etiam donare vel etiam deminuendi causa cum iis transigere: et ideo eum, qui minus tutori solvit, a pupillo in reliquum conveniri posse.

Dig. 26.7.47pr.

Scaevola 2 resp.

Titium et maevium tutores quis dedit et cavit: boulomai kai parakalw pantas ginesvai meta tys maibiou tou adelfou mou gnwmys, kai dixa autou to ginomenon akuron estw. titius solus a debitoribus exegit: an liberati essent? respondi, si et administrationem maevio dedisset, non recte solutum.

Dig. 26.7.47.1

Scaevola 2 resp.

" quantum autem filio meo diurnum sufficiat, marina et ianuaria aestimabunt": quaero, an contenti esse debeant tutores arbitrio mulierum. respondi sumptum boni viri arbitrio faciendum.

Dig. 26.7.47.2

Scaevola 2 resp.

Tutores dati ad res italicas instrumenta romae reppererunt debitorum provincialium, ut pecunia romae aut ubicumque petitum fuerit solvatur: quaero, cum neque debitores in italia essent neque eorum praedia, an haec exactio ad italicae rei tutores pertineat. respondi, si provincialis contractus esset, non pertinere, respicere tamen ad officium eorum, ne instrumentorum ignorantia contractus eos, ad quos administratio pertineret, lateret.

Dig. 26.7.47.3

Scaevola 2 resp.

A matre datus testamento tutor cum putaret se tutorem esse, distraxit bona materna et paterna pupillorum et decessit non solvendo: quaeritur, an pupillus res possit vindicare. respondi, si manent res pupilli, vindicari ab eo posse.

Dig. 26.7.47.4

Scaevola 2 resp.

Praefectus legionis ita testamento cavit: " volo, ut sit in arbitrio tutorum filii mei, si voluerint, huius summae uncias inferre usurarum nomine ita, ne nummi dispargantur"; quaero, si apparuerit pecunia faenerata a tutoribus, iudicio tutelae uncias usuras an vero eas quas stipulati sunt praestare debeant. respondi, si secundum voluntatem defuncti elegissent usurarum praestationem neque pupilli nomine in faenus dedissent, id praestatur, quod testator voluisset.

Dig. 26.7.47.5

Scaevola 2 resp.

Lucius titius mutuam pecuniam a tutore accepit et rem hereditariam pignori ei dedit: post triennium iam puberibus his, quorum tutela administrata est, fisco bona defuncti adiudicata sunt, quia mortem eius heres non est ultus: quaeritur, an id nomen pupillus recusare possit. respondi secundum ea quae proponuntur id nomen ad onus tutorum non pertinere.

Dig. 26.7.47.6

Scaevola 2 resp.

Altero ex duobus fratribus sociis bonorum et negotiationis defuncto, herede filio, patruus tutor venditis omnibus communis negotiationis mercibus et sibi redemptis negotium suo nomine exercuit: quaesitum est, utrum compendium negotii an usuras pecuniae praestare debeat. respondi secundum ea quae proponuntur pupillo usuram, non compendium praestandum.

Dig. 26.7.47.7

Scaevola 2 resp.

Tutor rerum italicarum conventus a creditore provinciali, ubi rem pupillus habuit, solvit: quaesitum est, an id tutelae iudicio reputari potest. respondi nihil proponi, cur non possit.

Dig. 26.7.48

Hermogenianus 1 iuris epit.

Inter bonorum ventrisque curatorem et inter curatorem furiosi itemque prodigi pupillive magna est differentia, quippe cum illis quidem plane rerum administratio, duobus autem superioribus sola custodia et rerum, quae deteriores futurae sunt, venditio committitur.

Dig. 26.7.49

Paulus 2 sent.

Ob faenus pupillaris pecuniae per contumaciam non exercitum aut fundorum omissam comparationem tutor, si non ad damnum resarciendum idoneus est, extra ordinem coercebitur.

Dig. 26.7.50

Hermogenianus 2 iuris epit.

Si res pupillaris incursu latronum pereat vel argentarius, cui tutor pecuniam dedit, cum fuisset celeberrimus, solidum reddere non possit, nihil eo nomine tutor praestare cogitur.

Dig. 26.7.51

Venonius 6 stipul.

Si duo pluresve tutores tutelam administrent, in fideiussorem quidem in solidum per quemlibet eorum committitur stipulatio: at si inter eos divisa sit tutela regionibus, quod plerumque fit, et alius urbica negotia, alius peregrina administraret, tunc ex substantia cuiusque rei aut committi contra fideiussorem stipulationem aut non committi dicemus: nam licet omnes tutores sint et tutelam gerant, tamen cum quis de ea re, quae extra suam regionem erit, experiri vel ad iudicium vocari coeperit, perinde non committitur stipulatio, atque si ei administratio tutelae permissa non esset: quantum enim facit in totum denegata, tantundem valet, si in ea re de qua agitur denegata sit.

Dig. 26.7.52

Nerva 1 resp.

Curator pro minore non tantum dotem dare debet, sed etiam impendia, quae ad nuptias facienda sunt.

Dig. 26.7.53

Paulus 2 decr.

Aemilius dexter magistratus sui tempore datis tutoribus cessaverat in exigenda satisdatione, deinde quibusdam excusatis a sequentibus magistratibus dexter tutor adsumptus fuerat: creatus conveniebatur in solidum duplici ratione, quod cum magistratus esset et tutores dedisset satisdationem non exegisset. ex diverso dictum est, licet satis exactum non esset, tamen in diem tutelae finitae idoneos fuisse tutores neque cessationem curatorum obesse tutoribus debere. pronuntiavit, si in diem finitae tutelae idonei permansissent tutores, licet et satis non esset exactum, curatorum esse periculum, si minus, tutorum et magistratuum: hoc est tunc esse periculum eius, qui suspectum non fecisset aut satis non exegisset, cum finita tutela non inveniretur idoneus fuisse.

Dig. 26.7.54

Tryphonus 2 disp.

Non existimo maximis usuris subiciendum eum, qui a contutoribus suis mutuam pecuniam pupilli accepit et cavit certasque usuras promisit, quas et alii debitores pupillo dependunt, quia hic sibi non consumpsit nec clam nec quasi sua pecunia licenter abutitur et, nisi his usuris a contutore mutuum ei daretur, aliunde accepisset: et multum refert, palam aperteque debitorem se ut extraneum et quemlibet faceret pupillo an sub administratione tutelae pupillique utilitate latente sua commoda pupilli pecunia iuvaret.

Dig. 26.7.55pr.

Tryphonus 14 disp.

Tres tutores pupillo dati sunt, unus tutelam gessit et solvendo non est, secundus titio gerendam mandavit et titius quaedam administravit, tertius nihil omnino gessit: quaesitum est, quatenus quisque eorum teneatur. et tutorum quidem periculum commune est in administratione tutelae et in solidum universi tenentur. plane si pecunia numerata pupilli inter eos distributa est, non in maiorem summam quisque eorum quam accepit tenetur.

Dig. 26.7.55.1

Tryphonus 14 disp.

Sed si ipsi tutores rem pupilli furati sunt, videamus, an ea actione, quae proponitur ex lege duodecim tabularum adversus tutorem in duplum, singuli in solidum teneantur et, quamvis unus duplum praestiterit, nihilo minus etiam alii teneantur: nam in aliis furibus eiusdem rei pluribus non est propterea ceteris poenae deprecatio, quod ab uno iam exacta est. sed tutores propter admissam administrationem non tam invito domino contrectare eam videntur quam perfide agere: nemo denique dicet unum tutorem et duplum hac actione praestare et quasi specie condictionis aut ipsam rem aut eius aestimationem.

Dig. 26.7.55.2

Tryphonus 14 disp.

Non solum ergo gessisse tutelam is creditur, qui alii gerendam mandavit, sed et qui satis a contutore accepit rem salvam pupillo futuram eique permisit administrationem totius tutelae, nec potest se defendere constitutionibus, quae iubent ante conveniri eum qui gessit.

Dig. 26.7.55.3

Tryphonus 14 disp.

Item in eo quod nemo gessit non utique eius periculum est, qui quaedam gessit, sed communiter omnium: exigi autem ab eo solo periculum ob alia quae non gessit non oportet, nisi si qua talia sunt, quae vel consummationem coeptorum ab eo desiderabant vel ita coniuncta fuerunt, ut separari non debuerunt.

Dig. 26.7.55.4

Tryphonus 14 disp.

Quod autem dicitur desisse solvendo esse vel non esse contutores praestare debere, videamus, qualem intellectum habet, id est utrum sufficit nihil deminutum esse de facultatibus contutoris, ex quo tempore datus est, sed eandem faciem patrimonii permansisse, an, etsi nihil post accidit, quod palam faciat deminutionem patrimonii, debet tamen contutor inquirere fortunas contutoris. sed hoc et ex personae qualitate et ex temporis intercapedine, quo testamentum factum est, usque ad mortem patris aliam aestimationem accipere debet: nam aperte prodigo vel cuius bona venierunt (licet obreptum fuerit praetori, qui decreto eum dedit) permittere contutori administrationem non debet, et potuit aliquid pater eorum post testamentum factum accidens ignorasse aut, cum destinatum haberet mutare testamentum, id non fecisse.

Dig. 26.7.56

Scaevola 4 Dig.

Tutor rerum et animalium pupilli venditionem fecit, sed quaedam animalia emptoribus pretium non solventibus retinuit et apud se habuit, pretium idem rationibus pupilli accepto tulit: ex his aliquot nata sunt: defuncto tutore heres eius eandem tutelam administravit et animalia annis plurimis possedit: quaesitum est, an, cum is cuius tutela administrata est annis viginti quattuor esset, iure animalia vindicaret. respondit secundum ea quae proponerentur pupillum ea vindicare non posse.

Dig. 26.7.57pr.

Scaevola 10 Dig.

Chirographis debitorum incendio exustis cum ex inventario tutores convenire eos possent ad solvendam pecuniam aut novationem faciendam cogere, cum idem circa priores debitores propter eundem casum fecissent, id omisissent circa debitores pupillorum, an, si quid propter hanc cessationem eorum pupilli damnum contraxerunt, iudicio tutelae consequantur? respondit, si adprobatum fuerit eos tutores hoc per dolum vel culpam praetermisisse, praestari ab his hoc debere.

Dig. 26.7.57.1

Scaevola 10 Dig.

Ab eo, qui sententia praesidis bonis ademptis relegatus erat, cum ex permissu principis appellatio eius recepta sit, quam is qui pronuntiaverat non receperat, fundum emerat pupillus intervenientibus tutoribus et appellatione iniusta pronuntiata fundus ei ablatus est: quaesitum est, an tutelae iudicio pretium fundi pupillus consequi a tutoribus possit. respondit, si scientes emerunt ab eo, qui in ea causa esset, ut obnoxius sententiae priori esset, tutelae iudicio eos teneri.

Dig. 26.7.58pr.

Scaevola 11 Dig.

Qui negotiationem per pamphilum et diphilum prius servos, postea libertos exercebat, suo testamento eos tutores reliquit et cavit, ut negotium eodem more exerceretur, quo se vivo exercebatur: hique tutelam administraverunt non tantum, cum impubes patroni filius fuisset, sed etiam post pubertatem eius. sed diphilus quidem cum incremento negotiationis rationes optulit, pamphilus autem putavit reddere oportere non ad incrementum negotiationis, sed ad computationem usurarum, ut in tutelae iudicio solet. quaesitum est, an secundum voluntatem defuncti exemplo diphili pamphilus quoque rationem reddere debeat. respondit debere. claudius tryphoninus: quia lucrum facere ex tutela non debet.

Dig. 26.7.58.1

Scaevola 11 Dig.

Ex duobus tutoribus pupilli altero defuncto adhuc impubere pupillo, qui supererat ex persona pupilli sui iudice accepto consecutus est cum usuris, quantum ex tutela ad tutorem defunctum pervenerat: quaesitum est, iudicio tutelae, quo experitur pubes factus, utrum eius tantum portionis, quae ab initio quod ex tutelae ratione pervenerat ad defunctum contutorem, usurae veniant, an etiam eius summae, quae ex sortis usuris pupillo aucta post mortem eius ad superstitem aeque cum sorte translata sit aut transferri debuit. respondit, si eam pecuniam in se vertisset, omnium pecuniarum usuras praestandas: quod si pecunia mansisset in rationibus pupilli, praestandum, quod bona fide percepisset aut percipere potuisset, sed, faenori dare cum potuisset, neglexisset, cum id, quod ab alio debitore nomine usurarum cum sorte datur, ei qui accipit totum sortis vice fungitur vel fungi debet.

Dig. 26.7.58.2

Scaevola 11 Dig.

Testamento dati tutores, quod ruptum videbatur, cessaverunt in administratione tutelae et a praeside tutor datus est pupillo, iussi autem sunt etiam hi, qui dati erant testamento tutores, tutelam administrare coniuncto eo, qui a praeside datus coeperat administrare: quaesitum est, ex testamento datos periculum antecedentis temporis administrationis utrum ex apertis tabulis, an ex quo iussi sunt, pertineat ad eos. respondit ad eos de quibus quaereretur nullum antecedentis temporis periculum pertinere.

Dig. 26.7.58.3

Scaevola 11 Dig.

Pupillo herede instituto filiae exheredatae duo milia nummorum aureorum legavit eosdemque tutores utrisque dedit: quaesitum est, an ex eo die, quo duo milia potuerunt a substantia hereditatis et in nomina collocare neglexerint, usurarum nomine pupillae tutelae iudicio teneantur. respondit teneri.

Dig. 26.7.58.4

Scaevola 11 Dig.

Quaesitum est, an usurae pupillaris pecuniae, quas tutores debuerunt, cum ad curatorem transferuntur, in sortem computantur et universae summae usuras debere curatores incipiant. respondit omnis pecuniae, quae ad curatores transit, parem causam esse, quia omnis sors efficitur.

Dig. 26.7.59

Scaevola 26 Dig.

Cum hereditas patris aere alieno gravaretur et res in eo statu videretur, ut pupilla ab hereditate paterna abstineretur, unus ex tutoribus cum plerisque creditoribus ita decidit, ut certa crediti portione contenti essent acciperentque: idem curatores iam viripotenti accepti cum plerisque creditoribus deciderunt: quaesitum est, an, si aliquis tutorum creditor patris pupillae solidam pecuniam expensam sibi ex re pupillae cum usuris fecerit, revocari a curatoribus pupillae ad portiones eas possit, quas ceteri quoque creditores acceperunt. respondit eum tutorem, qui ceteros ad portionem vocaret, eadem parte contentum esse debere.

Dig. 26.7.60

Pomponius 8 epist.

Si tutoris heres exsecutus est quae tutor inchoavit, tutelae etiam eo nomine tenetur.

Dig. 26.7.61

Pomponius 20 epist.

Apud aristonem ita scriptum est: quod culpa tutoris pupillus ex hereditate desiit possidere, eius aestimatio in petitione hereditatis sine ulla dubitatione fieri debebit ita, si pupillo de hereditate cautum sit: cautum autem esse videtur etiam si tutor erit idoneus, a quo servari possit id, quod pupillus ex litis aestimatione subierit. sed si tutor solvendo non est, videndum erit, utrum calamitas pupilli an detrimentum petitoris esse debeat perindeque haberi debet, ac si res fortuito casu interisset, similiter atque ipse pupillus expers culpae quid ex hereditate deminuisset corrupisset perdidisset. de possessore quoque furioso quaeri potest, si quid ne in rerum natura esset, per furorem eius accidisset. tu quid putas? pomponius: puto eum vere dicere. sed quare cunctatus es, si solvendo non sit tutor, cuius damnum esse debeat? cum alioquin elegantius dicere poterit actiones dumtaxat, quas haberet cum tutore pupillus, venditori hereditatis praestandas esse, sicuti heres vel bonorum possessor si nihil culpa eius factum sit (veluti si fundo hereditario vi deiectus sit aut servus hereditarius vulneratus ab aliquo sit sine culpa possessoris), nihil plus quam actiones, quas eo nomine habet, praestare debeat. idem dicendum est et si per curatorem furiosi culpa vel dolo quid amissum fuerit, quemadmodum si quid stipulatus tutor vel curator fuisset aut vendidisset rem hereditariam. impune autem puto admittendum, quod per furorem alicuius accidit, quo modo si casu aliquo sine facto personae id accidisset.

Dig. 26.8.0. De auctoritate et consensu tutorum et curatorum.

Dig. 26.8.1pr.

Ulpianus 1 ad sab.

Quamquam regula sit iuris civilis in rem suam auctorem tutorem fieri non posse, tamen potest tutor proprii sui debitoris hereditatem adeunti pupillo auctoritatem accommodare, quamvis per hoc debitor eius efficiatur: prima enim ratio auctoritatis ea est, ut heres fiat, per consequentias contingit, ut debitum subeat. se tamen auctore ab eo stipulari non potest. et cum quidam auctoritatem accommodaret pupillae suae, ut servo suo stipulanti sponderet, divus pius antoninus rescripsit iure pupillam non teneri, sed in quantum locupletior facta est, dandam actionem. sed si auctor fiat, ut filio suo quid tradatur, nulla erit auctoritas: evidenter enim sua auctoritate rem adquirit.

Dig. 26.8.1.1

Ulpianus 1 ad sab.

Tutor si invitus retentus sit per vim, non valet quod agitur: neque enim praesentia corporis sufficit ad auctoritatem, ut si somno aut morbo comitiali occupatus tacuisset.

Dig. 26.8.2

Ulpianus 24 ad sab.

Nulla differentia est, non interveniat auctoritas tutoris an perperam adhibeatur.

Dig. 26.8.3

Paulus 8 ad sab.

Etiamsi non interrogatus tutor auctor fiat, valet auctoritas eius, cum se probare dicit id quod agitur: hoc est enim auctorem fieri.

Dig. 26.8.4

Pomponius 17 ad sab.

Etsi pluribus datis tutoribus unius auctoritas sufficiat, tamen si tutor auctoretur, cui administratio tutelae concessa non est, id ratum a praetore haberi non debet. et ideo puto verius esse, quod ofilio placebat, si eo tutore auctore, qui tutelam non gerat, emam a pupillo sciens alium eius tutelam gerere, dominum me non posse fieri: item si eo auctore emam, qui a tutela fuerit remotus: nec enim id ratum haberi.

Dig. 26.8.5pr.

Ulpianus 40 ad sab.

Pupillus obligari tutori eo auctore non potest. plane si plures sint tutores, quorum unius auctoritas sufficit, dicendum est altero auctore pupillum ei posse obligari, sive mutuam pecuniam ei det sive stipuletur ab eo. sed et cum solus sit tutor mutuam pecuniam pupillo dederit vel ab eo stipuletur, non erit obligatus tutori: naturaliter tamen obligabitur in quantum locupletior factus est: nam in pupillum non tantum tutori, verum cuivis actionem in quantum locupletior factus est dandam divus pius rescripsit.

Dig. 26.8.5.1

Ulpianus 40 ad sab.

Pupillus vendendo sine tutoris auctoritate non obligetur sed nec in emendo, nisi in quantum locupletior factus est.

Dig. 26.8.5.2

Ulpianus 40 ad sab.

Item ipse tutor et emptoris et venditoris officio fungi non potest: sed enim si contutorem habeat, cuius auctoritas sufficit, procul dubio emere potest. sed si mala fide emptio intercesserit, nullius erit momenti ideoque nec usucapere potest. sane si suae aetatis factus comprobaverit emptionem, contractus valet.

Dig. 26.8.5.3

Ulpianus 40 ad sab.

Sed si per interpositam personam rem pupilli emerit, in ea causa est, ut emptio nullius momenti sit, quia non bona fide videtur rem gessisse: et ita est rescriptum a divo severo et antonino.

Dig. 26.8.5.4

Ulpianus 40 ad sab.

Sane si ipse quidem emit palam, dedit autem nomen non mala fide sed simpliciter, ut solent honestiores non pati nomina sua instrumentis inscribi, valet emptio: quod si callide, idem erit ac si per interpositam personam emisset.

Dig. 26.8.5.5

Ulpianus 40 ad sab.

Sed et si creditor pupilli distrahat, aeque emere bona fide poterit.

Dig. 26.8.5.6

Ulpianus 40 ad sab.

Si filius tutoris vel quae alia persona iuri eius subiecta emerit, idem erit atque si ipse emisset.

Dig. 26.8.6

Pomponius 17 ad sab.

Tutores, quibus administratio decreta non esset, tamquam extraneos recte a pupillo emere placet.

Dig. 26.8.7pr.

Ulpianus 40 ad sab.

Quod dicimus in rem suam auctoritatem accommodare tutorem non posse, totiens verum est, quotiens per semet vel subiectas sibi personas adquiritur ei stipulatio: ceterum negotium ei geri per consequentias, ut dictum est, nihil prohibet auctoritas.

Dig. 26.8.7.1

Ulpianus 40 ad sab.

Si duo rei sint stipulandi et alter me auctore a pupillo stipuletur, alter altero tutore auctore, dicendum est stipulationem valere, sic tamen, si auctoritas tutoris unius sufficiat: ceterum si non sufficiat, dicendum erit inutilem esse stipulationem.

Dig. 26.8.7.2

Ulpianus 40 ad sab.

Si et pater et filius qui in potestate eius fuit tutores fuerunt et pater sit stipulatus filio auctore, nullius momenti erit stipulatio idcirco, quia in rem patris auctor esse filius non potest.

Dig. 26.8.8

Ulpianus 48 ad sab.

Etsi condicionalis contractus cum pupillo fiat, tutor debet pure auctor fieri: nam auctoritas non condicionaliter, sed pure interponenda est, ut condicionalis contractus confirmetur.

Dig. 26.8.9pr.

Gaius 12 ad ed. provinc.

Obligari ex omni contractu pupillus sine tutoris auctoritate non potest: adquirere autem sibi stipulando et per traditionem accipiendo etiam sine tutoris auctoritate potest: sed credendo obligare sibi non potest, quia sine tutoris auctoritate nihil alienare potest.

Dig. 26.8.9.1

Gaius 12 ad ed. provinc.

Ex hoc autem, quod pupillus nullam rem sine tutoris auctoritate alienare potest, apparet nec manumittere eum sine tutoris auctoritate posse. hoc amplius licet tutoris auctoritate manumittat, debet e lege aelia sentia apud consilium causam probare.

Dig. 26.8.9.2

Gaius 12 ad ed. provinc.

Pupillus ex omnibus causis solvendo sine tutoris auctoritate nihil agit, quia nullum dominium transferre potest: si tamen creditor bona fide pecuniam pupilli consumpserit, liberabitur pupillus.

Dig. 26.8.9.3

Gaius 12 ad ed. provinc.

Hereditatem adire pupillus sine tutoris auctoritate non potest, quamvis lucrosa sit nec ullum habeat damnum.

Dig. 26.8.9.4

Gaius 12 ad ed. provinc.

Nec ex senatus consulto trebelliano hereditatem recipere pupillus sine tutoris auctoritate potest.

Dig. 26.8.9.5

Gaius 12 ad ed. provinc.

Tutor statim in ipso negotio praesens debet auctor fieri, post tempus vero aut per epistulam interposita eius auctoritas nihil agit.

Dig. 26.8.9.6

Gaius 12 ad ed. provinc.

Etiamsi non exaudiat tutoris auctoritatem is qui cum pupillo contrahit, scriptis tamen hoc adprobetur, recte negotium geritur, veluti si absenti pupillo per epistulam vendam aliquid aut locem et is tutoris auctoritate consentiat.

Dig. 26.8.10

Paulus 24 ad ed.

Tutor, qui per valetudinem vel absentiam vel aliam iustam causam auctor fieri non potuit, non tenetur.

Dig. 26.8.11

Gaius 15 ad ed. provinc.

Si ad pupillum aut furiosum bonorum possessio pertineat, expediendarum rerum gratia et in agnoscenda et in repudianda bonorum possessione voluntatem tutoris curatorisque spectari debere placuit: qui scilicet si quid eorum contra commodum pupilli furiosive fecerint, tutelae curationisve iudicio tenebuntur.

Dig. 26.8.12

Iulianus 21 Dig.

Si servus communis tuus et titii a pupilla tua te auctore aliquam rem per traditionem acceperit, tota ad titium pertinebit. Marcellus notat: nam quodcumque ad omnes dominos non potest pertinere, id pro solido ad eum, cui adquiri potest, pertinere veteres comprobaverunt.

Dig. 26.8.13

Iulianus 21 Dig.

Impuberes tutore auctore obligantur, etiamsi taceant: nam cum pecuniam mutuam acceperint, quamvis nihil dicant, auctoritate tutoris interposita tenentur. quare et si non debita pecunia his personis soluta fuerit, quamvis tacuerint, interposita tutoris auctoritas sufficit, ut condictione teneantur.

Dig. 26.8.14

Iulianus 31 Dig.

Non multum interest, afuerit tutor, cum negotium contraheretur, an praesens ignoraverit, quale esset quod contrahebatur.

Dig. 26.8.15

Marcianus 2 reg.

Accipientis et edentis iudicium idem tutor auctor utrique fit. sed hoc utrum ita est, si bis auctor factus est, an et una auctoritas sufficiat eo animo, ut ad utrumque pertineat ? dubitat quidem pomponius, sed fortiter defenditur sufficere unam auctoritatem.

Dig. 26.8.16

Paulus 1 ad l. ael. sent.

Etiamsi tutor caecus factus sit, auctor fieri potest.

Dig. 26.8.17

Paulus 6 ad ed.

Si tutor pupillo nolit auctor fieri, non debet eum praetor cogere, primum quia iniquum est, etiamsi non expedit pupillo, auctoritatem eum praestare, deinde etsi expedit, tutelae iudicio pupillus hanc iacturam consequitur.

Dig. 26.8.18

Paulus 1 ad plaut.

Potest pupillus tutore auctore debitorem suum titio delegare: sed cum tutor debet pupillo, dicendum est neque delegari eum neque procuratorem adversus tutorem dari ipso tutore auctore posse, quia futurum sit, ut auctoritate sua liberetur.

Dig. 26.8.19

Paulus 9 resp.

Curatorem etiam impuberi dari posse, sed ad ea, quae sollemnitatem iuris desiderant, explicanda tutore auctore opus esse.

Dig. 26.8.20

Scaevola 10 Dig.

Inter pupillos paternae hereditatis divisio facta est praesente tutore, sed non adsignante instrumento divisionis: quaesitum est, an ei stari oporteret. respondit, si tutor auctor fuisset, non idcirco minus standum esse divisioni, quod non adsignasset.

Dig. 26.8.21

Scaevola 26 Dig.

Defendente tutore pupillus condemnatus ex contractu patris accepit curatorem, inter quem et creditorem acta facta sunt apud procuratorem caesaris infra scripta. priscus procurator caesaris dixit: " faciat iudicata". novellius curator dixit: " abstineo pupillum". priscus procurator caesaris dixit: " responsum habes: scis, quid agere debeas". quaesitum est, an secundum haec acta adulescens a bonis patris abstentus sit. respondit proponi abstentum.

Dig. 26.8.22

Labeo 5 pith.

Si quid est, quod pupillus agendo tutorem suum liberaturus est, id ipso tutore auctore agi recte non potest.

Dig. 26.9.0. Quando ex facto tutoris vel curatoris minores agere vel conveniri possunt.

Dig. 26.9.1

Pomponius 29 ad sab.

Ob dolum malum vel culpam tutoris aristo ait pupillum possessorem condemnandum, sed non puto, quanti actor in litem iuraret: et tamen illud ita est, si rem a tutore pupillus servare possit.

Dig. 26.9.2

Ulpianus 1 opin.

Si tutor vel curator pecunia eius, cuius negotia administrat, mutua data ipse stipulatus fuerit vel praedia in nomen suum emerit, utilis actio ei, cuius pecunia fuit, datur ad rem vindicandam vel mutuam pecuniam exigendam.

Dig. 26.9.3

Papinianus 20 quaest.

Dolus tutorum puero neque nocere neque prodesse debet: quod autem vulgo dicitur tutoris dolum pupillo non nocere, tunc verum est, cum ex illius fraude locupletior pupillus factus non est. quare merito sabinus tributoria actione pupillum conveniendum ex dolo tutoris existimavit, scilicet si per iniquam distributionem pupilli rationibus favit. quod in depositi quoque actione dicendum est, item hereditatis petitione, si modo, quod tutoris dolo desiit, pupilli rationibus illatum probetur.

Dig. 26.9.4

Ulpianus 64 ad ed.

At si extrinsecus aliquid tutor dolo admiserit, pupillo nihil nocere oportet.

Dig. 26.9.5pr.

Papinianus 5 resp.

Post mortem furiosi non dabitur in curatorem qui negotia gessit iudicati actio, non magis quam in tutores, si modo nullam ex consensu post depositum officium novationem factam et in curatorem vel tutorem obligationem esse translatam constabit.

Dig. 26.9.5.1

Papinianus 5 resp.

Tutor, qui pecuniam se soluturum cavit, quam pater pupilli condemnatus fuerat, actionem post tutelam finitam recte recusat. non idem in eo placuit, qui suo nomine mutuam pecuniam accepit et iudicatum pro pupillo fecit, nisi forte creditor ideo contraxit, ut in causam iudicati pecunia transiret.

Dig. 26.9.6

Papinianus 2 def.

Tutor interposito decreto praetoris actorem reliquit. secundum eum sententia dicta iudicati transfertur ad pupillum actio non minus, quam si tutor optinuisset.

Dig. 26.9.7

Scaevola 13 quaest.

Tutori, qui infantem defendit, succurritur, ut in pupillum iudicati actio detur.

Dig. 26.9.8

Scaevola 5 resp.

Tutor, qui et coheres pupillo erat, cum conveniretur fideicommissi nomine, in solidum ipse cavit: quaesitum est, an in adultum pupillum pro parte danda sit utilis actio. respondit danda ^ dandam^.

Dig. 26.10.0. De suspectis tutoribus et curatoribus.

Dig. 26.10.1pr.

Ulpianus 35 ad ed.

Haec clausula et frequens et pernecessaria est: cottidie enim suspecti tutores postulantur.

Dig. 26.10.1.1

Ulpianus 35 ad ed.

Primum igitur tractemus, unde descendat suspecti crimen et apud quos postulari quis possit suspectus tutor vel curator, deinde quis et a quo et ex quibus causis removetur, deque poena suspecti.

Dig. 26.10.1.2

Ulpianus 35 ad ed.

Sciendum est suspecti crimen e lege duodecim tabularum descendere.

Dig. 26.10.1.3

Ulpianus 35 ad ed.

Damus autem ius removendi suspectos tutores romae praetoribus, in provinciis praesidibus earum.

Dig. 26.10.1.4

Ulpianus 35 ad ed.

An autem apud legatum proconsulis suspectus postulari possit, dubium fuit: sed imperator antoninus cum divo severo braduae maurico proconsuli africae rescripsit posse, quia mandata iurisdictione officium ad eum totum iuris dicundi transit. ergo et si praetor mandet iurisdictionem, simili modo dicendum est suspectum posse apud eum postulari cui mandata est: cum enim sit in provincia hoc rescriptum, consequens erit dicere et eum, cui a praetore mandata est iurisdictio, posse de suspecto cognoscere.

Dig. 26.10.1.5

Ulpianus 35 ad ed.

Ostendimus, qui possunt de suspecto cognoscere: nunc videamus, qui suspecti fieri possunt. et quidem omnes tutores possunt, sive testamentarii sint, sive non sint, sed alterius generis tutores. quare et si legitimus sit tutor, accusari poterit. quid si patronus? adhuc idem erit dicendum, modo ut meminerimus patrono parcendum.

Dig. 26.10.1.6

Ulpianus 35 ad ed.

Consequens est, ut videamus, qui possunt suspectos postulare: et sciendum est quasi publicam esse hanc actionem, hoc est omnibus patere.

Dig. 26.10.1.7

Ulpianus 35 ad ed.

Quin immo et mulieres admittuntur, sed hae solae, quae pietate necessitudinis ductae ad hoc procedunt, ut puta mater. nutrix quoque et avia possunt. potest et soror, nam in sorore et rescriptum exstat divi severi: et si qua alia mulier fuerit, cuius praetor perpensam pietatem intellexerit non sexus verecundiam egredientis, sed pietate productam non continere iniuriam pupillorum, admittet eam ad accusationem.

Dig. 26.10.1.8

Ulpianus 35 ad ed.

Si quis de plebeis ob facta atrociora in tutela admissa fuerit apud praetorem accusatus, remittitur ad praefectum urbis graviter puniendus.

Dig. 26.10.2

Ulpianus 1 de omn. trib.

Libertus quoque si fraudulenter gessisse tutelam filiorum patroni probetur, ad praefectum urbis remittetur puniendus.

Dig. 26.10.3pr.

Ulpianus 35 ad ed.

Tutor quoque contutorem potest suspectum facere, sive duret adhuc tutor, sive iam desierit ipse, contutor autem maneat tutor: et ita divus severus rescripsit. plus divus pius caecilio paetino rescripsit posse tutorem suspectum remotum contutores suos suspectos facere.

Dig. 26.10.3.1

Ulpianus 35 ad ed.

Liberti quoque pupillorum grate facient, si tutores vel curatores eorum male gerentes rem patronorum vel liberorum patronorum suspectos fecerint: sed si patronum suum ut suspectum in tutela facere velint, melius est libertos ab accusatione repelli, ne in ipsa cognitione gravius aliquid emergat, cum hoc aliis omnibus pateat.

Dig. 26.10.3.2

Ulpianus 35 ad ed.

Non tantum autem adulescentis curator, sed etiam furiosi vel prodigi ut suspectus removeri potest.

Dig. 26.10.3.3

Ulpianus 35 ad ed.

Sed et si quis curam ventris bonorumve administrat, non carebit huius criminis metu.

Dig. 26.10.3.4

Ulpianus 35 ad ed.

Praeterea videndum, an et sine accusatione possit suspectus repelli. et magis est, ut repelli debeat, si praetori liqueat ex apertissimis rerum argumentis suspectum eum esse: quod favore pupillorum accipiendum est.

Dig. 26.10.3.5

Ulpianus 35 ad ed.

Nunc videamus, ex quibus causis suspecti removeantur. et sciendum est aut ob dolum in tutela admissum suspectum licere postulare, si forte grassatus in tutela est aut sordide egit vel perniciose pupillo vel aliquid intercepit ex rebus pupillaribus iam tutor. quod si quid admisit, ante tamen admisit, quam tutor esset, quamvis in bonis pupilli vel in tutela, non potest suspectus tutor postulari, quia delictum tutelam praecessit. proinde si pupilli substantiam expilavit, sed antequam tutor esset, accusari debet expilatae hereditatis crimine, si minus, furti.

Dig. 26.10.3.6

Ulpianus 35 ad ed.

Quaeri potest, si tutor fuerit pupilli idemque sit curator confirmatus adulescenti, an possit ex delictis tutelae suspectus postulari. et cum possit tutelae a concuratoribus conveniri, consequens erit dicere cessare suspecti accusationem, quia tutelae agi possit deposito officio et alio sumpto.

Dig. 26.10.3.7

Ulpianus 35 ad ed.

Idem erit quaerendum et si proponas aliquem desisse esse tutorem et rursum coepisse (ut puta usque ad tempus vel ad condicionem erat datus, deinde iterum vel superveniente condicione testamentaria vel etiam a praetore postea datus est), an suspectus postulari possit. et quia duae tutelae sunt, si est, qui eum tutelae iudicio conveniat, aequissimum erit dicere cessare crimen suspecti.

Dig. 26.10.3.8

Ulpianus 35 ad ed.

Si autem ipse tutor est solus, numquid, quia tutelae cessat, removendus sit ab hac administratione, quasi in hac suspectus ex eo, quod in alia male versatus sit? ergo et in eo, qui curator solus post finitam tutelam confirmatus est, idem dici potest.

Dig. 26.10.3.9

Ulpianus 35 ad ed.

Quod si quis ita tutor datus sit: " quoad in italia erit, tutor esto" vel " quoad trans mare non ierit", an possit suspectus postulari ex eo gestu, quem administravit, antequam trans mare abesset? et magis est, ut postulari possit, quasi una tutela sit habens intervalla.

Dig. 26.10.3.10

Ulpianus 35 ad ed.

Si quis afuturus rei publicae causa desideravit in locum suum constitui alium tutorem, an reversus ex ante gesto suspectus postulari possit? et quia potest ex priore gestu utili actione conveniri, cessabit postulatio.

Dig. 26.10.3.11

Ulpianus 35 ad ed.

Si curator ventri bonisque datus fraudulenter versatus sit, deinde tutor datus, an postulari suspectus propter fraudes in cura admissas possit, dubitari potest. et si quidem habet contutores, non poterit postulari, quia conveniri potest, si non habet, amoveri potest.

Dig. 26.10.3.12

Ulpianus 35 ad ed.

Si tutor inimicus pupillo parentibusve eius sit et generaliter si qua iusta causa praetorem moverit, cur non debeat in ea tutela versari, reicere eum debebit.

Dig. 26.10.3.13

Ulpianus 35 ad ed.

Severus et antoninus rescripserunt epicurio tutores, qui res vetitas sine decreto distraxerunt, nihil quidem egisse, verum si per fraudem id fecerunt, removeri eos oportere.

Dig. 26.10.3.14

Ulpianus 35 ad ed.

Tutor, qui ad alimenta pupillo praestanda copiam sui non faciat, suspectus est poteritque removeri.

Dig. 26.10.3.15

Ulpianus 35 ad ed.

Sed si non latitet, sed praesens nihil posse decerni contendit quasi inopibus, si datis pupillo advocatis in mendacio revincatur, ad praefectum urbis remittendus est: neque enim interest id agere quemquam, ut corrupta fide inquisitionis tutor constituatur, an bona fide constitutum velut praedonem bonis alienis incumbere: hic ergo non quasi suspectus removebitur, sed remittetur puniendus ea poena, qua solent adfici, qui tutelam corruptis ministeriis praetoris redemerunt.

Dig. 26.10.3.16

Ulpianus 35 ad ed.

Qui pecuniam ad praediorum emptionem conferre neque pecuniam deponere pervicaciter perstant, quoad emptionis occasio inveniatur, vinculis publicis iubentur contineri, et insuper pro suspectis habentur. sed sciendum est non omnes hac severitate debere tractari, sed utique humiliores: ceterum eos, qui sunt in aliqua dignitate positi, non opinor vinculis publicis contineri oportere.

Dig. 26.10.3.17

Ulpianus 35 ad ed.

Is tutor, qui inconsideranter pupillum vel dolo abstinuit hereditate, potest suspectus postulari.

Dig. 26.10.3.18

Ulpianus 35 ad ed.

Qui ob segnitiam vel rusticitatem inertiam simplicitatem vel ineptiam remotus sit, in hac causa est, ut integra existimatione tutela vel cura abeat. sed et si quis ob fraudem non removebit aliquem, sed ei adiunxerit, non erit famosus, quia non est abire tutela iussus.

Dig. 26.10.4pr.

Ulpianus 1 de omn. trib.

Hae enim causae faciunt, ut integra existimatione tutela vel cura quis abeat.

Dig. 26.10.4.1

Ulpianus 1 de omn. trib.

Decreto igitur debebit causa removendi significari, ut appareat de existimatione.

Dig. 26.10.4.2

Ulpianus 1 de omn. trib.

Quid ergo si non significaverit causam remotionis decreto suo? papinianus ait debuisse dici hunc integrae esse famae, et est verum.

Dig. 26.10.4.3

Ulpianus 1 de omn. trib.

Si praetor sententia sua non removerit tutela, sed gerere prohibuit, dicendum est magis esse, ut et hic desinat tutor esse.

Dig. 26.10.4.4

Ulpianus 1 de omn. trib.

Qui nihil gesserunt, non possunt suspecti postulari, verum ob ignaviam vel neglegentiam vel dolum, si dolo fecerunt, possunt removeri.

Dig. 26.10.5

Ulpianus 3 disp.

Suspectus fieri is quoque, qui satis dederit vel nunc offerat, potest: expedit enim pupillo rem suam salvam fore, quam tabulas rem salvam fore cautionis habere: nec ferendus est contutor, qui ideo collegam suum suspectum non fecit, quoniam cautum erat pupillo,

Dig. 26.10.6

Callistratus 4 de cogn.

Quia satisdatio propositum tutoris malevolum non mutat, sed diutius grassandi in re familiari facultatem praestat.

Dig. 26.10.7pr.

Ulpianus 1 de omn. trib.

Impuberibus quidem non permittitur suspectos facere: adulescentibus plane volentibus suspectos facere curatores suos permittitur, dummodo ex consilio necessariorum id faciant.

Dig. 26.10.7.1

Ulpianus 1 de omn. trib.

Si fraus non sit admissa, sed lata neglegentia, quia ista prope fraudem accedit, removeri hunc quasi suspectum oportet.

Dig. 26.10.7.2

Ulpianus 1 de omn. trib.

Praeterea accesserunt quaedam species ex epistula imperatoris nostri et divi severi ad atrium clonium: nam adversus eos, qui, ne alimenta decernantur, sui copiam perseverant non facere, ut suis rebus careant praecipitur reique servandae causa pupillus in possessionem mittatur eius, qui suspectus sententia sua factus est quaeque mora deteriora futura sunt curatore dato distrahi iubentur.

Dig. 26.10.7.3

Ulpianus 1 de omn. trib.

Item si quis tutor datus non compareat, solet edictis evocari, novissimeque si copiam sui non fecerit, ut suspectus removeri ob hoc ipsum, quod copiam sui non fecit. quod et perraro et diligenti habita inquisitione faciendum est.

Dig. 26.10.8

Ulpianus 61 ad ed.

Suspectum tutorem eum putamus, qui moribus talis est, ut suspectus sit: enimvero tutor quamvis pauper est, fidelis tamen et diligens, removendus non est quasi suspectus.

Dig. 26.10.9

Modestinus l.S. de heuremat.

Si tutor aliquo vinculo necessitudinis vel adfinitatis pupillo coniunctus sit vel si patronus pupilli liberti tutelam gerit et quis eorum a tutela removendus videatur, optimum factum est curatorem ei potius adiungi quam eundem cum notata fide et existimatione removeri.

Dig. 26.10.10

Papinianus 12 quaest.

Decreto praetoris ut suspectus remotus periculum futuri temporis non timet: iniquum enim videtur removeri quidem a tutela vel cura, in futurum autem non esse securum.

Dig. 26.10.11

Papinianus 5 resp.

Post finitam tutelam cognitio suspecti tutoris quamvis pridem recepta solvitur.

Dig. 26.10.12

aquila libro resp.

Nihil proponi, cur praescribere curator possit in cognitione suspecti, quo minus religio praetoris a pupillari servo detegente fraudes instruatur.

Ius Romanum Justinian The Latin Library The Classics Page

OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER SEPTIMUS-VICESIMUS

Dig. 27.1.0. De excusationibus.
Dig. 27.2.0. Ubi pupillus educari vel morari debeat et de alimentis ei praestandis.
Dig. 27.3.0. De tutelae et rationibus distrahendis et utili curationis causa actione.
Dig. 27.4.0. De contraria tutelae et utili actione.
Dig. 27.5.0. De eo qui pro tutore prove curatore negotia gessit.
Dig. 27.6.0. Quod falso tutore auctore gestum esse dicatur.
Dig. 27.7.0. De fideiussoribus et nominatoribus et heredibus tutorum et curatorum.
Dig. 27.8.0. De magistratibus conveniendis.
Dig. 27.9.0. De rebus eorum, qui sub tutela vel cura sunt, sine decreto non alienandis vel supponendis.
Dig. 27.10.0. De curatoribus furioso et aliis extra minores dandis.

Dig. 27.1.0. De excusationibus.

Dig. 27.1.1pr.

Modestinus 1 excus.

Herennios modestinos egnatiw dectrw. suggraqas suggramma, hws emoi dokei, xrysimwtaton, hoper paraitysin epitropys kai kouratorias wnomasa, touto soi pepomfa.

Dig. 27.1.1.1

Modestinus 1 excus.

Poiysomai de hws an ohios te w tyn peri toutwn didaskalian safy, afygoumenos ta nomima ty twn hellynwn fwny, ei kai oida dusfrasta einai auta nomizomena pros tas toiautas metabolas.

Dig. 27.1.1.2

Modestinus 1 excus.

Prosvysw de ty twn legomenwn diygysei auta ta twn nomwn hrymata, ei pou kai toutou deyveiyn, hina tyn te twn lektewn kai tyn twn anagnwstewn xrysin exontes to holoklyron tois deomenois kai tyn wfeleian parasxwmeva.

Dig. 27.1.1.3

Modestinus 1 excus.

Lekteon toinun prwton, tinas ou dei xeirotoneisvai.

Dig. 27.1.1.4

Modestinus 1 excus.

Apeleuverikois orfanois eugeneis ou dwsousin ohi arxontes epitropous y kouratoras, plyn ei my pantelys aporia kata ton topon apeleuverwn estin: apeleuverikois gar apeleuverous monous dein didosvai tous ek tou autou topou ontas veiou markou oratiwn keleuei. ean de dovy, ho veiotatos sebyros twn afylikwn pronooumenos hupeuvunon auton einai ty epitropy, ean my emprovesmws dikaiologysytai, antegraqen.

Dig. 27.1.1.5

Modestinus 1 excus.

Ouk ecestin kouratoreuein mnystyra mnystys, hws hy sugklytos legei: xeirotonyveis de ho toioutos apoluvysetai.

Dig. 27.1.2pr.

Modestinus 2 excus.

Afientai epitropys kai kouratorias kai ohi hebdomykonta ety peplyrwkotes. huperbebykenai de dei ta hebdomykonta ety en ekeinw tw xronw en hw

xeirotoneitai, y en hw ty klyronomia proserxetai tis, y en hw hy ahiresis hy ty diavyky prosgrafeisa peplyrwtai, ouk entos twn xronwn tys paraitysews.

Dig. 27.1.2.1

Modestinus 2 excus.

Hy de hylikia deiknutai y ek paidografiwn y ec heterwn apodeicewn nomimwn.

Dig. 27.1.2.2

Modestinus 2 excus.

Afiysin epitropys kai kouratorias kai polupaidia.

Dig. 27.1.2.3

Modestinus 2 excus.

Nomimous de paidas einai dei pantas, kan my wsin en ecousia.

Dig. 27.1.2.4

Modestinus 2 excus.

Dei de einai tous paidas hote ohi pateres didontai epitropoi: ohi gar prin teleutysantes ou sunarivmountai, oute palin blaptousin ohi meta touto apovanontes: kai tauta fysi diatacis tou veiotatou sebyrou.

Dig. 27.1.2.5

Modestinus 2 excus.

Touto de dokei men eirysvai peri tou kata diavykas doventos epitropou: harmozoi de an kai epi pantos heterou.

Dig. 27.1.2.6

Modestinus 2 excus.

Ho de en ty gastri wn ei kai en pollois meresin tou nomou sunkrinetai tois ydy gegenymenois, homws oute en ty parousy zytysei oute en tais loipais politikais leitourgiais sunairetai tw patri: kai touto eirytai diatacei tou veiotatou sebyrou.

Dig. 27.1.2.7

Modestinus 2 excus.

Ou monon de uhioi afesin epitropys didoasin kai vugateres, alla kai eggonoi ec uhiwn arrenwn texventes arrenes te kai vyleiai. boyvousin de tote, hopotan tou patros autwn apovanontos ton ekeinou topon plyrwswsin tw pappw. hosoi d' an wsin eggonoi ec henos uhiou, anti henos teknou arivmountai. tauta de kai ek diatacewn, ahi peri twn teknwn dialegontai, estin sunagagein: oudamou gar estin hradiws ehurein, hoti peri uhiwn dialegetai diatacis, alla peri teknwn: hy de prosygoria ahute kai epi tous eggonous ekteinetai.

Dig. 27.1.2.8

Modestinus 2 excus.

Ton de arivmon twn teknwn ton hwrismenon tais diatacesin einai dei hekastw tote, hote xeirotoneitai, ouxi kan meta to xeirotonyvynai genyvy pro tou ta dikaia tys afesews parasxesvai: ohi gar meta touto gegenymenoi ou boyvousin, hws diatacis fysin sebyrou kai antwninou.

Dig. 27.1.2.9

Modestinus 2 excus.

Eti myn kai ohi treis exontes epitropas y treis kourationas y anamemigmenas treis kouratorias te kai epitropas kai eti menousas, tout' estin mypw ekbantwn tyn hylikian twn afylikwn, ohutoi afientai eis tetartyn epitropyn y kouratorian kaloumenoi. alla myn kan kouratwr tis y my afylikos, alla mainomenou, eis ton arivmon twn kouratoriwn kai auty hupologisvysetai hy kouratoria: hoper ohutws exein didaskei diatacis sebyrou kai antwninou. legei kai ho kratistos oulpianos peri twn triwn epitropwn tauta.

Dig. 27.1.3

Ulpianus l.S. de off. praet. tutelaris.

Tria onera tutelarum dant excusationem. tria autem onera sic sunt accipienda, ut non numerus pupillorum plures tutelas faciat, sed patrimoniorum separatio: et ideo qui tribus fratribus tutor datus est, qui indivisum patrimonium haberent, vel quibusdam tutor, quibusdam curator, unam tutelam suscepisse creditur.

Dig. 27.1.4pr.

Modestinus 2 excus.

Efamen treis exontas epitropas eis tetartyn my kaleisvai. ezytyvy toinun, ean tis en duo wn epitropais eita eis epitropyn trityn problyveis ekkalesytai kai eti metewrou ousys tys dikys tys epi ty ekklytw eis tetartyn epitropyn problyvy, poteron eis tyn tetartyn dikaiologoumenos mnysvysetai kai tys tritys y pantapasin paraleiqei ekeinyn. kai ehuriskw hupo twn veiotatwn sebyrou kai antwninou diatetagmenon my dein eis tetartyn proxeirizesvai ton apo tys tritys ekklyton pepoiymenon, alla metewrou ousys tys epi ty trity xeirotonia dikaiologias to ekeinys telos perimenein horon esomenon ty tetarty xeirotonia, orvw tw logw: ei gar tyn ty tacei tetartyn hupodecetai tis hws ty dunamei trityn, adikou tys epi ty trity ekklytou apofanveisys tessarsi xreiais enkatasxevysetai para tous nomous.

Dig. 27.1.4.1

Modestinus 2 excus.

Ean patyr en trisin y frontisin y epitropwn y kouratoriwn, ho uhios autou ouk enoxlyvysetai, kai touto ohutw diatetaktai hupo twn veiotatwn sebyrou kai antwninou. touto de kai ek tou enantiou estin, hws dein tas tou uhiou epitropas anesin tw patri didonai kai palin amfoterois tas koinas, tout' estin mian tou uhiou kai duo tou patros ye eis to empalin. tote de tauta ohutws exei, epeidan to baros heni oikw, ouxi diakexwrismenois diafery. grafei de kai oulpianos ho kratistos tauta.

Dig. 27.1.5

Ulpianus l.S. de off. praet. tutelaris.

Tria onera in domo una esse sufficit: proinde si pater alicuius vel filius vel frater qui est in eiusdem potestate tria onera sustineat, quae ad periculum patris sui spectent, quia voluntate eius administrant, omnibus excusatio a tutela competit. sed si non patris voluntate administrent, non prodesse saepe rescriptum est.

Dig. 27.1.6pr.

Modestinus 2 excus.

Ean duo exonti epitropas allai duo homou epaxvwsin, hy ty tacei trity boyvysei autw eis tyn afesin tys tetartys, kan autokratwr y ho tyn tetartyn egxeirisas, y tyn trityn, prin mentoi gnwnai ta tou autokratoros fvasy problyveis eis allyn. ean de hy tacis my fainytai, alla en mia hymera ahi duo xeirotoniai protevwsin en diaforois xartais, oux' ho xeirotonyveis, alla ho xeirotonysas epilecetai, hopoian dei auton hupodecasvai.

Dig. 27.1.6.1

Modestinus 2 excus.

Grammatikoi, sofistai hrytores, iatroi ohi periodeutai kaloumenoi hwsper twn loipwn leitourgiwn ohutwsi de kai apo epitropys kai kouratorias anapausin exousin.

Dig. 27.1.6.2

Modestinus 2 excus.

Estin de kai ho arivmos hrytorwn en hekasty polei twn tyn aleitourgysian exontwn, kai ahireseis tines proskeimenai tw nomw, hoper dyloutai ec epistolys antwninou tou eusebous grafeisys men tw koinw tys asias, panti de tw kosmw diaferousys, hys estin to kefalaion touto hupotetagmenon: " ahi men elattous poleis dunantai pente iatrous ateleis exein kai treis sofistas kai grammatikous tous isous: ahi de meizous poleis hepta tous verapeuontas, tessaras tous paideuontas hekateran paideian: ahi de megistai poleis deka iatrous kai hrytoras pente kai grammatikous tous isous. huper de touton ton arivmon oude hy megisty polis tyn ateleian parexei". eikos de tw men megistw arivmw xrysasvai tas mytropoleis twn evnwn, tw de deuterw tas exousas agoras dikwn, tw de tritw tas loipas.

Dig. 27.1.6.3

Modestinus 2 excus.

Touton ton arivmon huperbainein men ouk ecestin oute qyfismati boulys oute ally tini pareuresei, elattoun de ecestin, epeidyper huper twn politikwn leitourgiwn fainetai to toiouto ginomenon.

Dig. 27.1.6.4

Modestinus 2 excus.

Kai mentoi ouk allws tyn aleitourgysian tautyn karpwsontai, ean my dogmati boulys enkatalegwsin tw arivmw tw sugkexwrymenw kai peri to ergon oligwrws my exwsin.

Dig. 27.1.6.5

Modestinus 2 excus.

Kai filosofous de apoluesvai epitropwn paulos grafei ohutws: philosophi oratores grammatici, qui publice iuvenibus prosunt, excusantur a tutelis.

Dig. 27.1.6.6

Modestinus 2 excus.

Nam et ulpianus libro quarto de officio proconsulis ita scribit: sed et reprobari medicum posse a republica, quamvis semel probatus sit, imperator noster cum patre laelio basso rescripsit.

Dig. 27.1.6.7

Modestinus 2 excus.

Peri de twn filosofwn hy auty diatacis tou piou ohutw legei: " filosofwn de ouk etaxvy arivmos dia to spanious einai tous filosofountas: oimai de hoti ohi ploutw huperballontes evelontai parecousin tas apo twn hrymatwn wfeleias tais patrisin: ei de akribologointo peri tas ousias, autoven ydy faneroi genysontai my filosofountes".

Dig. 27.1.6.8

Modestinus 2 excus.

Estin de kai en tais tou basilews kommodou diatacesin engegrammenon kefalaion ec epistolys antwninou tou eusebous, en hw dyloutai kai filosofous aleitourgysian exein apo epitropwn. estin de ta hrymata tauta: " homoiws de toutois hapasin ho veiotatos patyr mou parelvwn euvus epi tyn arxyn diatagmati tas huparxousas timas kai ateleias ebebaiwsen, graqas filosofous hrytoras grammatikous iatrous ateleis einai gumnasiarxiwn agoranomiwn hierwsunwn epistavmiwn sitwnias elaiwnias kai myte krinein myte presbeuein myte eis strateian katalegesvai akontas myte eis allyn autous hupyresian evnikyn y tina allyn anagkazesvai".

Dig. 27.1.6.9

Modestinus 2 excus.

Eti kakeino eidenai xry, hoti ho en ty idia patridi didaskwn y verapeuwn tyn aleitourgysian tautyn exei: ean gar komaneus wn en neokaisareia sofisteuy y verapeuy y didasky, para komaneusin aleitourgysian ouk exei. kai touto ohutw nenomovetytai hupo twn veiotatwn sebyrou kai antwninou.

Dig. 27.1.6.10

Modestinus 2 excus.

Tous mentoi agan epistymonas kai huper ton arivmon kai en allotria patridi tas diatribas poioumenous einai aleitourgytous paulos grafei, legwn ton veiotaton antwninon ton euseby ohutw kekeleukenai.

Dig. 27.1.6.11

Modestinus 2 excus.

Ton en hromy sofisteuonta y salariw y kai xwris salariou afesin exein nenomovetytai hupo twn veiotatwn sebyrou kai antwninou, ohutws hws an ei etuxen en idia patridi didaskwn. ahis nomovesiais dunatai tis ekeinon prosagagein ton logon, hoti koinys ousys te kai nomizomenys patridos tys basileuousys eikotws an hws en idia patridi xrysimon heauton parasxwn aleitourgysian karpwsetai.

Dig. 27.1.6.12

Modestinus 2 excus.

Nomwn de didaskaloi en eparxia didaskontes afesin ouk hecousin, en hrwmy de didaskontes afientai.

Dig. 27.1.6.13

Modestinus 2 excus.

Ulpianus libro singulari de officio praetoris tutelaris ita scribit: athletae habent a tutela excusationem, sed qui sacris certaminibus coronati sunt.

Dig. 27.1.6.14

Modestinus 2 excus.

Evnous hierarxia, ohion asiarxia, bivunarxia, kappadokarxia, parexei aleitourgysian apo epitropwn, tout' estin hews an arxy.

Dig. 27.1.6.15

Modestinus 2 excus.

Tutela non est rei publicae munus nec quod ad impensam pertinet, sed civile: nec provinciale videtur tutelam administrare.

Dig. 27.1.6.16

Modestinus 2 excus.

Afientai epitropys kai kouratorias stratygoi twn polewn.

Dig. 27.1.6.17

Modestinus 2 excus.

Didwsin afesin epitropys kai kefaliky exvra tw xeirotonyventi genomeny pros ton patera twn orfanwn, ektos ei my kata diavykas faneiy doveis ho epitropos, plyn ei my meta to grafynai tyn diavykyn kefalikos agwn autois pros allylous sunesty, y ei my presbutera men estin tys diavykys hy exvra, dia touto de dokei didosvai epitropos, hina hupoblyvy enoxy kai pragmasin: kai touto ec epistolys sebyrou basilews deiknutai.

Dig. 27.1.6.18

Modestinus 2 excus.

Eti apoluetai epitropys, hopotan amfisbytysin tis tw orfanw peri tys katastasews kiny, fainytai de touto my sukofantia poiwn, all` ek kalys pistews: kai touto ohi veiotatoi markos kai byros enomovetysan.

Dig. 27.1.6.19

Modestinus 2 excus.

Peri twn agroikwn kai twn tapeinwn kai twn agrammatwn grafei paulos ohutwsi: mediocritas et rusticitas interdum excusationem praebent secundum epistulas divorum hadriani et antonini. eius qui se neget litteras scire, excusatio accipi non debet, si modo non sit expers negotiorum.

Dig. 27.1.7

Ulpianus l.S. excus.

Paupertas sane dat excusationem, si quis inparem se oneri iniuncto possit probare, idque divorum fratrum rescripto continetur.

Dig. 27.1.8pr.

Modestinus 3 excus.

Ohi palai stratiwtai ohi epitimws plyrwsantes ton tys strateias xronon afesin exousin epitropwn pros pantas tous idiwtas. pros de tous paidas twn tys autys tacews kekoinwnykotwn y pantwn palai stratiwtwn entos men eniautou tou apostrateusasvai afesin exousin, meta de eniauton ouketi. to gar isotimon tys strateias isxuroteron enomisvy tys twn palai stratiwtwn pronomias, ean my ara alla exwsin dikaia pros paraitysin epitropys, ohion arivmon etwn y ti toiouto, hopoion kai tois idiwtais pros hapantas sunairesvai eiwven. tauta de peri uhiwn, ouxi peri ekgonwn twn palai stratiwtwn: ohi gar ekgonoi twn palai stratiwtwn en ty auty xwra twn loipwn idiwtwn einai pisteuvysontai.

Dig. 27.1.8.1

Modestinus 3 excus.

Ohi mentoi atimws apostrateusamenoi homoioi tois myde strateusamenois nomizontai, kai dia touto oute autoi exousin pronomian oute tois toutwn paisin palai stratiwtai epitropoi doventes katasxevysontai.

Dig. 27.1.8.2

Modestinus 3 excus.

Esv' hote de ou plyrousi tines ton tys strateias xronon kai homws exousin afesin epitropwn kata ta auta tois plyrwsasin: ho gar eikoston etos tys strateias huperbas homoios einai pisteuetai tw plyrwsanti ton tys strateias xronon.

Dig. 27.1.8.3

Modestinus 3 excus.

Ho de entos toutwn twn etwn afeveis ouk exei diyneky tyn epi tais epitropais aleitourgysian, alla pros xronon, hwsper kai twn loipwn politikwn leitourgiwn afesin exei. ho men gar entos pente etwn tys strateias apoluveis oudemian heautw ekdikysei aleitourgysian, ho de meta pente henos eniautou exei aleitourgysian, ho de meta oktw dieteias, ho de meta dwdeka trieteias, ho de meta dekaec tetraeteias, ho de meta eikosin, hws proeipomen, diynekws apoluvysetai.

Dig. 27.1.8.4

Modestinus 3 excus.

Ho de en tois nuktofulacin tois en hrwmy strateusamenos eniautou monou exei afesin.

Dig. 27.1.8.5

Modestinus 3 excus.

Ohutoi de dylady ean entimws apoluvwsin, hwsper proeirytai, y dia noson kaloumenyn kausarian afesin labwsin (estin gar kai auty entimos): ho gar atimou tuxwn afesews ouk exei anapausin.

Dig. 27.1.8.6

Modestinus 3 excus.

Sunbeteranos de einai pisteuetai ou monon ho legewnarios, alla kai pas pantos tou hopououn strateusamenou, epitimws de kai autou apoluventos: kai gar legewnarios tou en tois nuktofulacin strateusamenou paidwn epitropos ginetai.

Dig. 27.1.8.7

Modestinus 3 excus.

Ydy de kai stratiwtou afylikos kouratwr dovysetai ho palai stratiwtys, dylady ean ho patyr autou apovany: ean de kai ohutoi apo xeiros apoluvwsin, homoiws.

Dig. 27.1.8.8

Modestinus 3 excus.

Kai toutois hapasin diataceis marturousin.

Dig. 27.1.8.9

Modestinus 3 excus.

Grafei de kai oulpianos ohutws: sed ignominia missi ab urbicis plane tutelis excusabuntur, quia ingredi eis urbem non licet. plane si quis in cohortibus urbanis permilitavit, licet ante viginti annos mittitur, tamen perpetuam habet a tutelis excusationem.

Dig. 27.1.8.10

Modestinus 3 excus.

Ezytyvy de poteron mian hapac epitropyn anadexontai ohi palai stratiwtai, y heni kairw ou pleon tou hapac, pauomenys de tys prwtys epitropys palin analyqontai. all' hwsper epi twn idiwtwn ahi pausamenai ou boyvysousin tois esxykosi oude eis tas treis qyfizontai, ohutws kai epi twn palai stratiwtwn ouk wfelei to gegenysvai. touto de kai epi twn kouratoriwn estin nenomovetymenon, hws dyloi veia diatacis sebyrou kai antwninou.

Dig. 27.1.8.11

Modestinus 3 excus.

Kai ouden diaferei, pws deysontai ohi paides tou sunstratiwtou epitropou y kouratoros, poteron apo xeiros apoluventes y tou patros apovanontos.

Dig. 27.1.8.12

Modestinus 3 excus.

Primipilarioi ek diatacewn basilikwn paraitysin exousin twn loipwn epitropwn, primipilariou de uhiwn epitropeusousin. primipilarioi de ohutoi nomizontai ohi dianusantes to primipilon: ean de my dianusas apovany, toutou twn paidwn primipilarios ouk epitropeusei.

Dig. 27.1.9

Ulpianus l.S. de off. praet. tutelaris.

Si tribunus in cohortibus praetoriis permilitaverit, etiam collegarum filiorum tutela excusabitur beneficio divi severi et imperatoris nostri.

Dig. 27.1.10pr.

Modestinus 3 excus.

Ou monon de ohi tas apo kaligos strateias kai tas loipas primipilarioi strateusamenoi, alla kai ohi hopwsoun xreias dymosias dymou hrwmaiwn heneka apodymysantes eniautou exousin anapausin meta to epanelvein.

Dig. 27.1.10.1

Modestinus 3 excus.

Ho mentoi eniautos ohutos ou monon tois plyrwsasin ton sunyvy tys strateias kairon en tais loipais dymosiais xreiais didotai, alla kai tois hopwsoun pausamenois tys dymosias xreias kai epanelvousin, kan elattona xronon diatriqwsin tou diatetagmenou.

Dig. 27.1.10.2

Modestinus 3 excus.

Has mentoi proteron eixon epitropas, dia de touto apevento hoti dymosiou heneka pragmatos apedymoun, tautas epanelvontes parauta epanalyqontai ouden autois boyvountos tou eniautou: ho gar eniautos pros tas mellousas kainas didontai, ouxi pros tas analyfvynai ofeilousas.

Dig. 27.1.10.3

Modestinus 3 excus.

Eniautos de sunymmenwn hymerwn ecetasvysetai, ec hotou tis epanylven euveian hodon euvunwn y dieuvunein ge ofeilwn, ouxi tyn ek periodwn.

Dig. 27.1.10.4

Modestinus 3 excus.

Kai ohi kata diavykas doventes epitropoi paraitysontai kata nomous ton xeirismon twn en ally eparxia ontwn ktymatwn, hws dyloi hy hupotetagmeny tou veiotatou sebyrou diatacis: " divi severus et antoninus augusti valerio. testamento tutor datus ante praefinitum diem adire debuisti et postulare, ut ab administratione rerum, quae in alia provincia erant, liberareris".

Dig. 27.1.10.5

Modestinus 3 excus.

Ho primipilon dianusas ean epitropyn decamenos henos paidiou palin eis tas stratiwtikas xreias analyfvy, apovysetai tyn frontida tys epitropys.

Dig. 27.1.10.6

Modestinus 3 excus.

Homoiws kai eis ton topon ekeinou tou epitropou, hon meta tauta sunkavedron heautw tis apygagen, dovysetai kouratwr, hws fysin diatacis tou veiotatou sebyrou: hyn orvws efarmozwn pasin tois homoiois kefalaiois kouratora didosvai erei eis ton topon twn xronou anapausin lambanontwn.

Dig. 27.1.10.7

Modestinus 3 excus.

Ean apeleuveros dovy afylic hupo patrwnos epitropos tois teknois autou, y kai heteros hoiosdypote elattwn twn eikosi pente eniautwn, hews men afylic y, ouk enoxlyvysetai. en tosoutw de heteros eis topon autou xeirotonyvysetai kydemwn. homoios estin toutw kai ho nomimos epitropos, ean afylic wn tuxy: kai gar kai eis ton topon toutou kydemwn en tw tews dovysetai.

Dig. 27.1.10.8

Modestinus 3 excus.

Ean tis ohutws nosysy, hws dein auton my pantapasin afevynai epitropys, eis ton topon autou kouratwr didotai. hraisas de palin ohutos analyqetai tyn epitropyn. ei de kai tis eis manian empesy, homoios estin toutw. ohutw kai oulpianos grafei: adversa quoque valetudo excusat, sed ea, quae impedimento est, quo minus quis suis rebus superesse possit, ut imperator noster cum patre rescripsit:

Dig. 27.1.11

Paulus l.S. de excus. tutorum.

Et non tantum ne incipiant, sed et a coepta excusari debent.

Dig. 27.1.12pr.

Modestinus 3 excus.

Idem ulpianus scribit: sed in hoc rescripto adiectum est solere vel ad tempus vel in perpetuum excusari, prout valetudo, qua adficitur. furor autem non in totum excusat, sed efficit, ut curator interim detur.

Dig. 27.1.12.1

Modestinus 3 excus.

Eisin kai alloi, ohi, kan ydy wsin epitropoi y kouratores, diynekws loipon apoluontai tys frontidos, ohion ohi tyn hestian allaxou metaveinai tuxontes ec antigrafys basilews, eidotos men auton epitropeuein, to de metoikysai hrytws autw filotimoumenou, kai toutwn hekateron dylountos tois grammasin.

Dig. 27.1.13pr.

Modestinus 4 excus.

Eidenai xry hoti oute ohi xeirotonyventes epitropoi oute ohi kata diavykyn doventes ekkaleisvai anagkyn exousin, hws dyloi diatacis twn veiotatwn sebyrou kai antwninou. touto de parafulattein dei kai epi twn xeirotonyventwn kouratorwn: en oligois gar panu diallattousin ohi kouratores apo twn epitropwn. kata mentoi twn qyfwn twn ekballouswn autois tas eckousationas adeian hecousin ekkaleisvai.

Dig. 27.1.13.1

Modestinus 4 excus.

Polla de parafulattein prosykei, hina epitrapwsin epitropoi y kouratores ta dikaia parasxesvai tys afesews. dei gar autous emprovesmws proselvein tw dikasty. eisin de ahi provesmiai ahutai: ho men gar en auty ty polei wn, hopou kexeirotonytai, y entos hekatostou miliou tys polews entos pentykonta hymerwn paraitysetai, y meta touto ou sugxwryvysetai, all' hecetai tys frontidos. kan toutwn ti my poiysy, estai en ty auty aitia, en hy yn an ei apefanvy tw idiw kindunw auton oligwrein pros to myde kataleipesvai autw tina hodon pros paraitysin. ho de huper hekaton milia tys polews apodymwn

eikosi milia hecei arivmoumena autw kav' hekastyn hymeran, af' hys an gnw (dei de autw mynuvynai hupo twn arxontwn y kata proswpon y epi tys oikias) kai ecwven toutwn allas triakonta hymeras exei pros dikaiologian. touto de diaferei kai tois kata diavykas doveisin, ean te epitropoi wsin ean te kouratores, ohus kouratoras bebaiousvai evos hupo tou hygoumenou.

Dig. 27.1.13.2

Modestinus 4 excus.

Heteron de ekeino ehuriskomen ek tys markou nomovesias zytysews acion: tw gar en auty ty polei onti, en hy kexeirotonytai y entos hekaton miliwn pentykonta hymerwn edwken ho nomovetys provesmian. tw de huper hekaton milia diatribonti kav' hekastyn hymeran dein arivmeisvai eikosi milia ekeleusen kai ecwven toutwn allas triakonta hymeras prosevyken eis dikaiologian. hoven sumbainei, ean y tis apo hekaton hecykonta miliwn tas diatribas poioumenos, toutw einai provesmian oktw kai triakonta hymeron, oktw men twn hekaton hecykonta miliwn, hws kav' hekastyn hymeran eikosi miliwn arivmoumenwn, triakonta de tas pros tyn dikaiologian. estai oun en xeironi tacei ho porrhwven diatribwn tou entos hekaton miliwn ontos y en auty ty polei, eige toutois men aei pentykonta hymerai provesmias eisin, ekeinois de elattous. all' ei kai ta malista to hryton tou nomou tautyn apotelei tyn dianoian, homws hy gnwmy tou nomovetou allo bouletai. ohutws gar kai kerbidios skaibolas kai paulos kai domitios oulpianos ohi korufaioi twn nomikwn grafousin, faskontes ohutws dein tauta parafulattein, hws mydepote tini elattw didosvai twn pentykonta hymerwn provesmian, tote de makroteran, hopotan hy diarivmysis twn epi ty hodw hymerwn prostivememy tais triakonta hymerais, has pros dikaiologian ho nomos didwsin, huperbainei tas pentykonta hymeras, ohion ean tina fwmen apo tetrakosiwn tessarakonta miliwn diatribein: ohutos gar tys men hodou hecei hymeras eikosi duo, pros dikaiologian de allas triakonta.

Dig. 27.1.13.3

Modestinus 4 excus.

Parafulacousin de tautyn tyn provesmian pantes ohi hopwsoun paraitoumenoi epitropyn y kouratorian y meros ge tautys.

Dig. 27.1.13.4

Modestinus 4 excus.

Akolouvon de estin pisteuein, hoti ei kai tini eidei paraitysews y tis xrwmenos, ouk allws akousvysetai, ean my fulacy tyn provesmian, ei my ara tys heteras polews politys estin.

Dig. 27.1.13.5

Modestinus 4 excus.

Ohutws de epanagkes estin fulattein tyn provesmian, hoti kan dikaiologysamenos afevy, my eleuverousvai auton ohi veiotatoi sebyros kai antwninos dylousin en diatacei keleusantes my krateisvai ton eis topon autou xeirotonyventa, hws ouk econ dedomenon eis topon ontos epitropou.

Dig. 27.1.13.6

Modestinus 4 excus.

Apoxry de entos tys provesmias entuxein monon: ean gar meta tauta my hekwn apoleifvy, ouk estai paragraqimos. dioper ean afosiwsews xarin monon entuxy, my epimeiny de meta tauta ty dikaiologia, meta tyn provesmian hupopeseitai ty paragrafy. kai legei touto diatacis twn autokratorwn sebyrou kai antwninou.

Dig. 27.1.13.7

Modestinus 4 excus.

Ean gar tis dia noson y di' allyn anagkyn, ohion valassys y xeimwnos y efodou lystwn y tina heteran paraplysian, emprovesmws my dunytai entuxein, sungnwmys tugxanein. ohu tyn pistin yrkei sustysai kai ec autou tou fusei dikaiou, plyn alla kai diatacis estin twn autokratorwn sebyrou kai antwninou tauta legousa.

Dig. 27.1.13.8

Modestinus 4 excus.

Eidenai de dei, hoti ouk apoxry to proselvein tw dikazonti, alla dei auton kai peri tou eidous tys afesews marturasvai, kai ei polla exei pros afesin dikaia, panta onomasai: ei de my, homoios estin tw myde tyn arxyn proselyluvoti ho proselvwn men, dikaion de afesews my onomasas.

Dig. 27.1.13.9

Modestinus 4 excus.

Ahi de pentykonta hymerai sunymmenai qyfizontai arxomenai apo tou kairou tys gnwsews, en hw tis egnw heauton dedosvai.

Dig. 27.1.13.10

Modestinus 4 excus.

Xry de mia marturasvai pro bymatos y allws epi hupomnymatwn: dunatai de kai biblidia epidounai xamaven, hws ohi autoi fasin autokratores.

Dig. 27.1.13.11

Modestinus 4 excus.

Tauta peri twn fulassein tyn provesmian ofeilontwn: peri de twn my hupokeimenwn tais provesmiais fere skeqwmeva.

Dig. 27.1.13.12

Modestinus 4 excus.

Ohi gar paranomws doventes epitropoi, tout' estin y huf' hwn my exryn, y ohutoi ohus my exryn, y ohis my exryn, y hon my exryn tropon, ean myte bebaiwvwsin myte efaqwntai tou xeirismou, eisin aneuvunoi, oude prooisei tis autois hoti tas provesmias ouk etyrysan twn paraitysewn: oude gar exousin paraitysews anagkyn, hws deiknutai ek twn hupotetagmenwn diatacewn, has paradeigmatos xarin hupetaca, efarmozointo de an pasin. divi severus et antoninus augusti narcisso. ab avo materno tutor datus necesse non habuisti excusari, cum ipso iure non teneris: si igitur administrationi te non miscuisti, potes esse securus " . homoiws de kai ean ton my hupokeimenon ty dikaiodosia xeirotonyswsin ohi arxontes epitropon y kouratora, oude ohutos anagkyn exei parafulassein tas provesmias, ohion ton myte polityn myte inkolan.

Dig. 27.1.14pr.

Modestinus 5 excus.

Apeleuveron en tw logw tw peri afesews epitropwn kai kouratorwn eidenai dei hoti ou monon tou patros tou orfanou, alla kai mytros noeisvai xry.

Dig. 27.1.14.1

Modestinus 5 excus.

Kai hopotan de zytwmen peri paidwn patrwnos, eidenai xry hoti tyn prosygorian tautyn ouk en tw prwtw bavmw stysomen, tout' estin uhion kai vugatera, alla kai eggonous ec hekaterou kai tous efecys.

Dig. 27.1.14.2

Modestinus 5 excus.

Alla kai ean dikaion xruswn daktuliwn laby, eti diaswzei tyn twn apeleuverwn tacin en toutw, haper antegraqen ho veiotatos antwninos ho megas.

Dig. 27.1.14.3

Modestinus 5 excus.

Ho idiw arguriw wnyveis kai apeleuverwveis oudamws sugkrinetai tois loipois apeleuverois.

Dig. 27.1.14.4

Modestinus 5 excus.

Ean polloi apeleuverwswsin hena, pantwn tois teknois epitropos dovysetai kai apo triwn epitropwn ouk apoluvysetai.

Dig. 27.1.15pr.

Modestinus 6 excus.

Spadonta xeirotonysousin epitropon: oudemian gar exei paraitysin, hws deiknusin diatacis twn autokratorwn sebyrou kai antwninou.

Dig. 27.1.15.1

Modestinus 6 excus.

Ho tw patri epaggeilamenos epitropeuein twn paidwn afiesvai tautys tys epitropys ou dunatai, kan allws exy dikaia aphesews.

Dig. 27.1.15.2

Modestinus 6 excus.

Eidenai dei hoti aciwma oudeni parecei paraitysin. hoven ean tis sugklytikos y, ohutos epitropeusei kai twn katadeesteras tacews ontwn sugklytikwn, hoper antegraqan ohi veiotatoi markos kai kommodos.

Dig. 27.1.15.3

Modestinus 6 excus.

Ei de tis epitropos y kouratwr wn my sugklytikou y allws aciwmatikou, eita husteron genytai sugklytikos, diynekws apoluetai tys frontidos. ei de ohi epitropeuomenoi y kouratoreuomenoi par' autou paides ysan sugklytikou, ouk apoluetai tys epitropys.

Dig. 27.1.15.4

Modestinus 6 excus.

Homoiws de ho katadeesteras tacews wn ou paraitysetai epitropeuein y kouratoreuein twn meizonwn.

Dig. 27.1.15.5

Modestinus 6 excus.

Myde librarious myde kalkoulatoras, ohus diaqyfistas legomen, exein aleitourgysian legousin ahi veiai diataceis.

Dig. 27.1.15.6

Modestinus 6 excus.

Ydy de kai ohi ioudaioi twn my ioudaiwn epitropeusousin, hwsper kai ta loipa leitourgysousin: ahi gar diataceis ekeinois monois anenoxlytous autous einai keleuousin, di' hwn hy vryskeia xrainesvai dokei.

Dig. 27.1.15.7

Modestinus 6 excus.

Logisteia polews oude eis arivmon mias epitropys proxwrei.

Dig. 27.1.15.8

Modestinus 6 excus.

Apeleuveroi gunaikwn sugklytikwn, kan dioikwsin ta autwn pragmata, ouk apoluontai epitropwn: touto gar tois twn arrenwn sugklytikwn apeleuverois monois sugkexwrytai.

Dig. 27.1.15.9

Modestinus 6 excus.

Ean ho tys polews arxwn, tout' estin ho stratygos diapiptouses autw tys xeirotonias hupeuvunos genytai kindunw epitropys, tautyn ou sunarivmysei allais epitropais, hwsper oude ho egguysamenos epitropyn, all' oude ohi kata timyn epitropoi grafentes.

Dig. 27.1.15.10

Modestinus 6 excus.

Ho tely memisvwmenos para polewn ouk afietai epitropys.

Dig. 27.1.15.11

Modestinus 6 excus.

Ho polla dikaia exwn eipein, hwn hekaston kav' heauto ouk estin isxuron, ei dunysetai afevynai ezytyvy. ohion hebdomykonta men etwn ouk estin oude treis exei epitropas oude pente tekna y allo ti dikaion afesews, exei mentoi duo epitropas kai duo paidas kai hecykonta estin etwn, y alla tina toiauta legei kav' heauta men entely tyn boyveian my parexonta, ty de pros allyla koinwnia onta dikaiofany. all' edocen touton my afiesvai.

Dig. 27.1.15.12

Modestinus 6 excus.

Ho labwn y exwn aleitourgysian politikwn y dymosiwn leitourgiwn ohutos epitropys ouk afevysetai.

Dig. 27.1.15.13

Modestinus 6 excus.

Ho apoluveis epitropys y kouratorias ou pantws tois hupomnymasin pros afesin heteras xeirotonias xrysetai, ean my huparxy autw dikaia afesews.

Dig. 27.1.15.14

Modestinus 6 excus.

Ho faskwn heauton agnwston einai tw patri y ty mytri tou orfanou ou dia touto afevysetai.

Dig. 27.1.15.15

Modestinus 6 excus.

Esv' hote kai ho treis exwn epitropas y kouratorias ouk exei dikaion afesews, ohion ean tis epitydeusy anadecasvai. ydy de kai ho metriou genomenos epitropos epitydeusai dokei.

Dig. 27.1.15.16

Modestinus 6 excus.

Ulpianus libro singulari de excusationibus ita scribit: si quis inter tres tutelas emancipati filii sui tutelam administret, an ei haec in numerum procedit, scio dubitatum: invenio tamen rescriptum emancipatae filiae tutelam numerari inter onera oportere.

Dig. 27.1.15.17

Modestinus 6 excus.

Ean tis xeirotonyvy epitropos wn en ty tou patros ecousia, eita ho patyr my bouloito huper autou asfalizesvai, ekeleusan ohi nomoi kai auton ton patera xeirotoneisvai epitropon, hws mydeni tropw diakrousvy to epi ty epitropy asfales: hws dyloi tou veiou hadrianou diatacis: " imperator hadrianus vitrasio pollioni legato lygdonensi. si clodius macer, quamvis filius familias sit, idoneus tutor esse videbitur, pater autem eius idcirco cavere non vult, ut filium suum tutela eximat, et in hoc artificio perseveraverit, existimo te huic fraudi recte occursurum, ut et filius et ipse ad tutelam liberorum clementis gerendam compellantur".

Dig. 27.1.16

Modestinus 2 resp.

Gaius testamento nigidium filio suo tutorem dedit eundemque usque ad vicensimum quintum annum curatorem constituit: quaero, cum liceat nigidio a curatione etiam citra appellationem se excusare, ex qua die tempora, quae in excusationibus observanda divus marcus statuit, computanda sunt, utrum ex die aperti testamenti, an ex quo ad negotia gerenda vocatur, id est post quartum decimum annum impletum. modestinus respondit excusationem a cura tunc necessariam esse, cum decreto praetoris seu praesidis confirmatus curator fuerit.

Dig. 27.1.17pr.

Callistratus 4 de cogn.

Non tantum magnitudo patrimoniorum ineunda est susceptarum trium tutelarum quaeque suscipienda est, sed etiam aetas pupillorum consideranda est: nam si priorum pupillorum aetas prope pubertatem sit, ita ut tantummodo semenstre tempus reliquum fuerit, aut eorum quorum suscipere tutelam cogitur, non dabitur excusatio: idque principalibus constitutionibus cavetur.

Dig. 27.1.17.1

Callistratus 4 de cogn.

Iliensibus et propter inclutam nobilitatem civitatis et propter coniunctionem originis romanae iam antiquitus et senatus consultis et constitutionibus principum plenissima immunitas tributa est, ut etiam tutelae excusationem habeant, scilicet eorum pupillorum, qui ilienses non sint: idque divus pius rescripsit.

Dig. 27.1.17.2

Callistratus 4 de cogn.

Eos, qui in corporibus sunt veluti fabrorum, immunitatem habere dicimus etiam circa tutelarum exterorum hominum administrationem habebunt excusationem, nisi si facultates eorum adauctae fuerint, ut ad cetera quoque munera publica suscipienda compellantur: idque principalibus constitutionibus cavetur.

Dig. 27.1.17.3

Callistratus 4 de cogn.

Non omnia tamen corpora vel collegia vacationem tutelarum habent, quamvis muneribus municipalibus obstricta non sint, nisi nominatim id privilegium eis indultum sit.

Dig. 27.1.17.4

Callistratus 4 de cogn.

Is qui aedilitate fungitur potest tutor dari: nam aedilitas inter eos magistratus habetur qui privatis muneribus excusati sunt secundum divi marci rescriptum.

Dig. 27.1.17.5

Callistratus 4 de cogn.

Sane notum est, quod gerentibus honorem vacationem tutelarum concedi placuit, vacare autem eos, qui tunc primum vocentur ad suscipiendum officium tutelae: ceterum eos, qui iam se miscuerint administrationi, ne tempore quidem magistratus vacare aeque notum est.

Dig. 27.1.17.6

Callistratus 4 de cogn.

Domini navium non videntur haberi inter privilegia, ut a tutelis vacent, idque divus traianus rescripsit.

Dig. 27.1.17.7

Callistratus 4 de cogn.

Inquilini castrorum a tutelis excusari solenti nisi eorum, qui et ipsi inquilini sunt et in eodem castro eademque condicione sunt.

Dig. 27.1.18

Ulpianus 20 ad l. iul. et pap.

Bello amissi ad tutelae excusationem prosunt: quaesitum est autem, qui sunt isti, utrum hi, qui in acie sunt interempti an vero omnes omnino, qui per causam belli parentibus sunt abrepti, in obsidione forte. melius igitur probabitur eos solos, qui in acie amittuntur, prodesse debere, cuiuscumque sexus vel aetatis sint: hi enim pro re publica ceciderunt.

Dig. 27.1.19

Ulpianus 35 ad ed.

Illud usitatissimum est, ut his, qui in italia domicilium habeant, administratio rerum provincialium remittatur.

Dig. 27.1.20

Iulianus 20 Dig.

Si pupillum patruus contendat exheredtatum esse et se heredem scriptum, aequum est tutorem pupillo dari recepta patrui excusatione vel, si nolit excusationem petere, remoto eo a tutela ita litem de hereditate expedire.

Dig. 27.1.21pr.

Marcianus 2 inst.

Propter litem, quam quis cum pupillo habet, excusare se a tutela non potest, nisi forte de omnibus bonis aut plurima parte eorum controversia sit.

Dig. 27.1.21.1

Marcianus 2 inst.

Qui se vult excusare, si plures habet excusationes et de quibusdam non probaverit, aliis uti intra tempora non prohibetur.

Dig. 27.1.21.2

Marcianus 2 inst.

Licet datus tutor ad universum patrimonium datus est, tamen excusare se potest, ne ultra centensimum lapidem tutelam gerat, nisi in eadem provincia pupilli patrimonium sit: et ideo illarum rerum dabunt tutores in provincia praesides eius.

Dig. 27.1.21.3

Marcianus 2 inst.

Nec senatores ultra centensimum lapidem urbis tutelam gerere coguntur.

Dig. 27.1.21.4

Marcianus 2 inst.

Habenti ergo tutorem tutor datur: sed aliarum rerum, non earundem datur.

Dig. 27.1.22pr.

Scaevola 1 reg.

Geometrae a tutelis non vacant.

Dig. 27.1.22.1

Scaevola 1 reg.

Hi vero, quibus princeps curam alicuius rei iunxit, excusantur a tutela, donec curam gerunt.

Dig. 27.1.23pr.

Ulpianus 2 resp.

Propter magistratum, quem in municipio quis erat administraturus, tutelae excusationem non habere respondi.

Dig. 27.1.23.1

Ulpianus 2 resp.

Si in castris merentes non ab eo tutores dentur, qui in castris merebat, excusationem habere respondi.

Dig. 27.1.24

Papinianus 11 quaest.

Nequaquam credendum est ei privilegium excusationis ablatum, cui fideicommissaria libertas soluta est: nam in toto fere iure manumissor eiusmodi nihil iuris ut patronus adversus liberti personam consequitur, excepto quod in ius vocare patronum iniussu praetoris non debet.

Dig. 27.1.25

Ulpianus 2 de off. procons.

Excusare se tutor per libellos non poterit.

Dig. 27.1.26

Paulus l.S. de excus.

Mensores frumentarios habere ius excusationis apparet ex rescripto divorum marci et commodi, quod rescripserunt praefecto annonae.

Dig. 27.1.27

Marcianus 5 reg.

Legatarius, qui rogatus est alii omne legatum restituere, si maluit se excusare a tutela, legatum propter fideicommissarium consequitur: cui similis est, qui de falso egit nec optinuit.

Dig. 27.1.28pr.

Papinianus 5 resp.

Tutor petitus ante decreti diem si aliquod privilegium quaerit, recte petitionem institutam excludere non poterit.

Dig. 27.1.28.1

Papinianus 5 resp.

Quae tutoribus remunerandae fidei causa testamento parentis relinquuntur, post excusationem ab heredibus extrariis quoque retineri placuit. quod non habebit locum in persona filii, quem pater impuberi fratri coheredem et tutorem dedit, cum iudicium patris ut filius, non ut tutor promeruit.

Dig. 27.1.28.2

Papinianus 5 resp.

Tutorem ad tempus exulare iussum excusari non oportet, sed per tempus exilii curator in locum ipsius debet dari.

Dig. 27.1.29pr.

Marcianus 2 inst.

Plane si in exilium datus sit tutor, potest se excusare, si in perpetuum datus est.

Dig. 27.1.29.1

Marcianus 2 inst.

Facilius autem exulis ignorantia, qui contutorem suspectum facere non potuerit, veniam habebit.

Dig. 27.1.30pr.

Papinianus 5 resp.

Iuris peritos, qui tutelam gerere coeperunt, in consilium principum adsumptos optimi maximique principes nostri constituerunt excusandos, quoniam circa latus eorum agerent et honor delatus finem certi temporis ac loci non haberet.

Dig. 27.1.30.1

Papinianus 5 resp.

Cum oriundus ex provincia romae domicilium haberet, eiusdem curator decreto praesidis ac praetoris constitutus rerum administrationem utrubique suscepit. placuit eum duas curationes administrare non videri, quod videlicet unius duo patrimonia non viderentur.

Dig. 27.1.30.2

Papinianus 5 resp.

Qui privilegio subnixus est, fratris curationem suscipere non cogitur.

Dig. 27.1.30.3

Papinianus 5 resp.

Patronus impuberi liberto quosdam ex libertis tutores aut curatores testamento dedit. quamvis eos idoneos esse constet, nihilo minus iure publico poterunt excusari, ne decreto confirmentur.

Dig. 27.1.31pr.

Paulus 6 quaest.

Si is, qui tres tutelas administrabat, duobus pupillis diversis decretis datus est qui potuit excusari, et priusquam causas excusationis allegaret, unus ex pupillis, quorum iam tutelam administrabat, decessit, ubi desiit ei competere excusatio, statim tenuit eum prius decretum, quasi in loco tertiae tutelae quarta subroganda: nam ipso iure tutor est et antequam excusetur. potuit ergo tutela eius, qui nunc quarto loco invenitur, excusari: sed cum non sit excusatus, necessario subeundum est onus illius quoque tutelae. nec me movet, quod dicat aliquis hoc ne exigi, an administretur tutela: hoc enim eo pertinet, ne sit finita administratio: ceterum si periculum sustineat cessationis, puto ei imputandam eam quoque tutelam.

Dig. 27.1.31.1

Paulus 6 quaest.

Idem evenire potest, si duobus testamentis, cum haberet tres tutelas, tutor datus est: ubi non apertarum tabularum tempus inspici debebit, si quaeratur, quae prior delata sit tutela, sed aditae hereditatis vel condicionis existentis.

Dig. 27.1.31.2

Paulus 6 quaest.

Illa quoque erit differentia tutelarum, de quibus diximus, si tertia et quarta sit delata, licet in quartam prius detentus sit, quod huius, id est quartae, ex quo iussus est administrare, illius ex quo datus est periculum sustinet.

Dig. 27.1.31.3

Paulus 6 quaest.

Eum, qui pupillum bonis paternis abstinuerat, detinendum in quarta tutela existimavi quasi deposita illa.

Dig. 27.1.31.4

Paulus 6 quaest.

Ceterum putarem recte facturum praetorem, si etiam unam tutelam sufficere crediderit, si tam diffusa et negotiosa sit, ut pro pluribus cedat. neque igitur fratres consortes plurium loco habendi sunt, neque non fratres, si idem patrimonium habent et ratio administrationis pariter reddenda sit. et ex diverso fratres diviso patrimonio duae tutelae sunt: non enim, ut dixi, numerus pupillorum, sed difficultas rationum conficiendarum et reddendarum consideranda est.

Dig. 27.1.32

Paulus 7 quaest.

Nesennius apollinaris iulio paulo. mater filium suum pupillum vel quivis alius extraneus extraneum aeque pupillum scripsit heredem et titio legatum dedit eumque eidem pupillo tutorem adscripsit: titius confirmatus excusavit se a tutela: quaero, an legatum amittat. et quid, si testamento quidem tutor non sit scriptus, legatum tamen acceperit datusque a praetore tutor excuset se, an aeque repellendus sit a legato? et an aliquid intersit, si a patre vel emancipato pupillo tutor datus sit vel puberi curator? respondi: qui non iure datus tutor vel curator a patre, confirmatus a praetore excusationis beneficio uti maluit, repellendus est a legato: idque et scaevolae nostro placuit: nam praetor, qui eum confirmat tutorem, defuncti sequitur iudicium. idem in matris testamento dicendum est. similis est matri quivis extraneus, qui pupillum heredem instituit eique et in tutore dando prospicere voluit, quales sunt alumni nostri. recte ergo placuit eum, qui recusat id quod testator relinquit ab eo quod petit quod idem dedit repelli debere. non semper tamen existimo eum, qui onus tutelae recusavit, repellendum a legato, sed ita demum, si legatum ei ideo adscriptum appareat, quod eidem tutelam filiorum iniunxit, non quod alioquin daturus esset etiam sine tutela. id apparere potuit, si posueris testamento legatum adscriptum, codicillis vero postea factis tutorem datum: in hoc enim legato potest dici non ideo ei relictum, quia et tutorem esse voluerit testator.

Dig. 27.1.33

Paulus 23 quaest.

Sed haec nimium scrupulosa sunt nec admittenda, nisi evidenter pater expresserit velle se dare etiam, si tutelam non administravit: semper enim legatum aut antecedit aut sequitur tutelam.

Dig. 27.1.34

Paulus 7 quaest.

Ex his apparet non esse his similem eum, quem praetor tutorem dedit, cum posset uti immunitate: hic enim nihil contra iudicium fecit testatoris. nam quem ille non dedit tutorem, eum voluisse tutelam administrare filii dicere non possumus.

Dig. 27.1.35

Paulus 23 quaest.

Quid autem, si se non excusaverit, sed administrare noluerit contentus, quod ceteri idonei essent? hic poterit conveniri, si ab illis res servari non potuisset. sed hoc non quaerendum est, sed contumacia punienda est eius, qui quodammodo se excusavit. multo magis quis dicere debebit indignum iudicio patris, qui ut suspectus remotus est a tutela.

Dig. 27.1.36pr.

Paulus 9 resp.

Amicissimos quidem et fidelissimos parentes liberis tutores eligere solere et ideo ad suscipiendum onus tutelae etiam honore legati eos persequi. sed cum proponatur is de quo quaeritur in testamento legatum meruisse et idem pupillo substitutus, non est verisimile hunc demum eum testatorem substituere voluisse, si et tutelam suscepisset: et ideo eum de quo quaeritur a legato quidem, si adhuc viveret pupillus, repellendum fuisse, a substitutione autem non esse summovendum, cum eo casu etiam suscepta tutela finiretur.

Dig. 27.1.36.1

Paulus 9 resp.

Lucius titius ex tribus filiis incolumibus unum habet emancipatum eius aetatis, ut curatores accipere debeat: quaero, si idem titius pater petente eodem filio emancipato curator a praetore detur, an iure publico uti possit et nihilo minus trium filiorum nomine vacationem postulare. respondi praemium quidem patri, quod propter numerum liberorum ei competit, denegari non oportere. sed cum filio suo curator petatur, contra naturales stimulos facit, si tali excusatione utendum esse temptaverit.

Dig. 27.1.37pr.

Scaevola 2 resp.

Qui testamento tutor datus fuerat, adito praetore dixit se tres liberos habere, adiecit praeterea habenti patruum legitimum tutorem se vitiose tutorem datum. praetor ita decrevit: " si legitimum tutorem habenti tutor datus es, non est tibi necessaria excusatio". quaero, cum nemo patruus impuberi tutor esset, an nihilo minus tutor remansit. respondi secundum ea quae proponerentur, quamvis iustas excusationis causas haberet, non tamen esse excusatum propter vitium pronuntiationis.

Dig. 27.1.37.1

Scaevola 2 resp.

Item quaero, si adquievisset sententiae, an ob id, quod non gessit tutelam, utilis actio in hunc dari debeat. respondi, si errore potius (quod se pro iure trium liberorum, quod allegabat, excusatum crederet) quam malitia ab administratione cessasset, utilem actionem non dandam.

Dig. 27.1.38

Paulus 2 sent.

Quinquaginta dierum spatium tantummodo ad contestandas excusationum causas pertinet: peragendo enim negotio ex die nominationis continui quattuor menses constituti sunt.

Dig. 27.1.39

Tryphonus 13 disp.

Si cum ipse institueret, ut proferret excusationem, mora contradictionis impeditus est, quo minus decreto liberaretur, excusationem recte probari.

Dig. 27.1.40pr.

Paulus 2 sent.

Post susceptam tutelam caecus aut surdus aut mutus aut furiosus aut valetudinarius deponere tutelam potest.

Dig. 27.1.40.1

Paulus 2 sent.

Paupertas, quae operi et oneri tutelae inpar est, solet tribuere vacationem.

Dig. 27.1.41pr.

Hermogenianus 2 iuris epit.

Administrantes rem principum ex indulgentia eorum, licet citra codicillos, a tutela itemque cura tempore administrationis delata excusantur.

Dig. 27.1.41.1

Hermogenianus 2 iuris epit.

Idemque custoditur in his, qui praefecturam annonae vel vigilum gerunt.

Dig. 27.1.41.2

Hermogenianus 2 iuris epit.

Eorum, qui rei publicae causa absunt, comites, qui sunt intra statutum numerum, de tutela, quae absentibus vel profecturis delata est, excusantur: nam susceptam antea non deponunt.

Dig. 27.1.41.3

Hermogenianus 2 iuris epit.

Qui corporis, item collegii iure excusantur, a collegarum filiorumque eorum tutela non excusantur, exceptis his, quibus hoc specialiter tributum est.

Dig. 27.1.42

Paulus l.S. de cogn.

Plane ultra centesimum miliarum ab urbe filiorum collegarum suorum tutelam suscipere non coguntur.

Dig. 27.1.43

Hermogenianus 2 iuris epit.

Libertus senatoris filiorum eius tutelam administrans ab aliis tutelis non excusatur.

Dig. 27.1.44pr.

Tryphonus 2 disp.

Cum ex oratione divi marci ingenuus libertino tutor datus excusari debeat, eandem excusationem competere etiam ei, qui ius anulorum impetrasset, imperator noster cum divo severo patre suo rescripsit.

Dig. 27.1.44.1

Tryphonus 2 disp.

Ergo si pupillo libertino habenti ius anulorum datus sit ingenuus tutor vel curator, consequens est, ut excusatio eius ob hanc condicionum diversitatem non debeat accipi.

Dig. 27.1.44.2

Tryphonus 2 disp.

At si antequam pupillus vel pubes minor annorum viginti quinque ius anulorum acciperet, lucius titius ei datus ut ingenuus excusatus fuit, post impetratum beneficium denuo eidem tutor curatorve dari poterit exemplo eo, quo placuit et rescriptum est eum, qui tempore, quod intra annum erat ex quo rei publicae causa abesse desierat, excusatus fuit, praeterito eo ipsum suo loco dari posse.

Dig. 27.1.44.3

Tryphonus 2 disp.

Et quamvis libertinus, qui senatori patrono procurat, excusationem ab aliorum tutela habeat, iste tamen, qui ius anulorum impetravit, qui in ordinem ingenuorum transit, tali excusatione uti non posset.

Dig. 27.1.45pr.

Tryphonus 13 disp.

" titius filiis meis, quoad rei publicae causa non abierit, tutor esto". gessit tutelam ex testamento delatam, deinde rei publicae causa abesse coepit et desiit. an quasi nova tutela nunc delata excusari debeat etiam ob absentiam rei publicae causa, an, quia praecessit testamentum absentiam ob publicam causam et est ab eo iam administrata tutela, non oporteat eum excusari? quid si liberos interea susceperit aut aliam excusationem paravit? magis est, ut haec una tutela sit: ideo nec excusationem ei competere nec agi tutelae ob prius tempus posse.

Dig. 27.1.45.1

Tryphonus 13 disp.

Sed si ita scriptum in testamento fuit: " titius tutor esto: cum rei publicae causa aberit, tutor ne esto: cum redierit, tutor esto", quid de excusatione aut ob absentiam rei publicae causa aut aliam quae post obvenit dici oporteat, videamus. praecedit autem alia quaestio, testamento ex die vel sub condicione tutores dati an se excusare ante diem condicionemve necesse habeant et in primis an iam dies quinquaginta eis cedant, intra quos necesse est causas excusationis exercere. sed verum est non ante esse tutorem, quam dies venerit: nam nec antequam adita sit hereditas. quia igitur ex eodem testamento iam gesta fuit tutela et qui excusatus est alias afuturus rei publicae causa, reversus continuo haeret tutelis ante suspectis etiam intra annum, sed hic ex ipso testamento desierit esse tutor et ideo ex secunda tutela excusare se potest.

Dig. 27.1.45.2

Tryphonus 13 disp.

Si a praetore detur curator mente capto aut muto sive ventri, excusatur iure liberorum.

Dig. 27.1.45.3

Tryphonus 13 disp.

Romae datos tutores eos tantum accipere debemus, qui vel a praefecto urbis vel a praetore vel in testamento romae confecto vel in continentibus dati sunt.

Dig. 27.1.45.4

Tryphonus 13 disp.

Si tanta corporis aut mentis valetudine ab agendis rebus libertus prohibeatur, ut ne suis quidem negotiis sufficiat, necessitati erit subcumbendum, ne impossibile iniungatur tutelae munus, quod obiri a liberto non potest cum incommodo pupilli et adversus utilitatem eius.

Dig. 27.1.46pr.

Paulus l.S. de cogn.

Qui in collegio pistorum sunt, a tutelis excusantur, si modo per semet pistrinum exerceant: sed non alios puto excusandos quam qui intra numerum sunt.

Dig. 27.1.46.1

Paulus l.S. de cogn.

Urb ci autem pistores a collegarum quoque filiorum tutelis excusantur.

Dig. 27.1.46.2

Paulus l.S. de cogn.

Sed et hoc genus excusationis est, si quis se dicit ibi domicilium non habere, ubi ad tutelam datus est: idque imperator antoninus cum divo patre significavit.

Dig. 27.2.0. Ubi pupillus educari vel morari debeat et de alimentis ei praestandis.

Dig. 27.2.1pr.

Ulpianus 34 ad ed.

Solet praetor frequentissime adiri, ut constituat, ubi filii vel alantur vel morentur, non tantum in postumis, verum omnino in pueris.

Dig. 27.2.1.1

Ulpianus 34 ad ed.

Et solet ex persona, ex condicione et ex tempore statuere, ubi potius alendus sit: et nonnumquam a voluntate patris recedit praetor. denique cum quidam testamento suo cavisset, ut filius apud substitutum educetur, imperator severus rescripsit praetorem aestimare debere praesentibus ceteris propinquis liberorum: id enim agere praetorem oportet, ut sine ulla maligna suspicione alatur partus et educetur.

Dig. 27.2.1.2

Ulpianus 34 ad ed.

Quamvis autem praetor recusantem apud se educari non polliceatur se coacturum, attamen quaestionis est, an debeat etiam invitum cogere, ut puta libertum, parentem vel quem alium de adfinibus cognatisve. et magis est, ut interdum debeat id facere.

Dig. 27.2.1.3

Ulpianus 34 ad ed.

Certe non male dicetur, si legatarius vel heres educationem recuset testamento sibi iniunctam, denegari ei actiones debere exemplo tutoris testamento dati: quod ita demum placuit, si idcirco sit relictum: ceterum si esset relicturus, etiamsi educationem recusaturum sciret, non denegabitur ei actio, et ita divus severus saepissime statuit.

Dig. 27.2.2pr.

Ulpianus 36 ad ed.

Officio iudicis, qui tutelae cognoscit, congruit reputationes tutoris non improbas admittere, ut puta si dicat impendisse in alimenta pupilli vel disciplinas.

Dig. 27.2.2.1

Ulpianus 36 ad ed.

Modus autem, si quidem praetor arbitratus est, is servari debet, quem praetor statuit: si vero praetor non est aditus, pro modo facultatium pupilli debet arbitrio iudicis aestimari: nec enim permittendum est tutori tantum reputare quantum dedit, si plus aequo dedit.

Dig. 27.2.2.2

Ulpianus 36 ad ed.

Hoc amplius et si praetor modum alimentis statuit, verumtamen ultra vires facultatium est quod decretum est nec suggessit praetori de statu facultatium, non debet ratio haberi alimentorum omnium, quia, si suggessisset, aut minuerentur iam decreta aut non tanta decernerentur.

Dig. 27.2.2.3

Ulpianus 36 ad ed.

Sed si pater statuit alimenta liberis quos heredes scripserit, ea praestando tutor reputare poterit, nisi forte ultra vires facultatium statuerit: tunc enim imputabitur ei, cur non adito praetore desideravit alimenta minui.

Dig. 27.2.3pr.

Ulpianus 1 de omn. trib.

Ius alimentorum decernendorum pupillis praetori competit, ut ipse moderetur, quam summam tutores vel curatores ad alimenta pupillis vel adulescentibus praestare debeant.

Dig. 27.2.3.1

Ulpianus 1 de omn. trib.

Modum autem patrimonii spectare debet, cum alimenta decernit: et debet statuere tam moderate, ut non universum reditum patrimonii in alimenta decernat, sed semper sit, ut aliquid ex reditu supersit.

Dig. 27.2.3.2

Ulpianus 1 de omn. trib.

Ante oculos habere debet in decernendo et mancipia, quae pupillis deserviunt, et mercedes pupillorum et vestem et tectum pupilli: aetatem etiam contemplari, in qua constitutus est cui alimenta decernuntur.

Dig. 27.2.3.3

Ulpianus 1 de omn. trib.

In amplis tamen patrimoniis positis non cumulus patrimonii, sed quod exhibitioni frugaliter sufficit modum alimentis dabit.

Dig. 27.2.3.4

Ulpianus 1 de omn. trib.

Sed si non constat, quis modus facultatium sit, inter tutorem et eum, qui alimenta decerni desiderat, suscipere debet cognitionem nec temere alimenta decernere, ne in alterutram partem delinquat: prius tamen exigere debet, ut profiteatur tutor, quae sit penes se summa, et comminari graviores ei usuras infligi eius, quod supra professionem apud eum fuerit comprehensum.

Dig. 27.2.3.5

Ulpianus 1 de omn. trib.

Idem ad instructionem quoque pupillorum vel adulescentium pupillarum vel earum, quae intra vicensimum annum constitutae sunt, solet decernere respectu facultatium et aetatis eorum qui instruuntur.

Dig. 27.2.3.6

Ulpianus 1 de omn. trib.

Sed si egeni sint pupilli, de suo eos alere tutor non compellitur. et si forte post decreta alimenta ad egestatem fuerit pupillus perductus, deminui debent quae decreta sunt, quemadmodum solent augeri, si quid patrimonio accesserit.

Dig. 27.2.4

Iulianus 21 Dig.

Qui filium heredem instituerat, filiae dotis nomine, cum in familia nupsisset, ducenta legaverat nec quicquam praeterea et tutorem eis sempronium dedit: is a cognatis et a propinquis pupillae perductus ad magistratum iussus est alimenta pupillae et mercedes, ut liberalibus artibus institueretur, pupillae nomine praeceptoribus dare: pubes factus pupillus puberi iam factae sorori suae ducenta legati causa solvit. quaesitum est, an tutelae iudicio consequi possit, quod in alimenta pupillae et mercedes a tutore ex tutela praestitum sit. respondi: existimo, etsi citra magistratuum decretum tutor sororem pupilli sui aluerit et liberalibus artibus instituerit, cum haec aliter ei contingere non possent, nihil eo nomine tutelae iudicio pupillo aut substitutis pupilli praestare debere.

Dig. 27.2.5

Ulpianus 3 de off. procons.

Si disceptetur, ubi morari vel ubi educari pupillum oporteat, causa cognita id praesidem statuere oportebit. in causae cognitione evitandi sunt, qui pudicitiae impuberi possunt insidiari.

Dig. 27.2.6

Tryphonus 14 disp.

Si absens sit tutor et alimenta pupillus desideret, si quidem neglegentia et nimia cessatio in administratione tutoris obiciatur, quae etiam ex hoc arguatur, quod per absentiam eius deserta derelictaque sunt pupilli negotia, evocatis adfinibus atque amicis tutoris praetor edicto proposito causa cognita etiam absente tutore vel removendum eum, qui dignus tali nota videbitur, decernet vel adiungendum curatorem: et ita qui datus erit, expediet alimenta pupillo. si vero necessaria absentia tutoris et improvisa acciderit, forte quod subito ad cognitionem principalem profectus nec rei suae providere nec consulere pupillo potuerit et speratur redire et idoneus sit tutor nec expediat alium adiungi et pupillus alimenta de re sua postulet: recte constituetur ad hoc solum, ut ex re pupilli alimenta expediat.

Dig. 27.3.0. De tutelae et rationibus distrahendis et utili curationis causa actione.

Dig. 27.3.1pr.

Ulpianus 36 ad ed.

In omnibus quae fecit tutor, cum facere non deberet, item in his quae non fecit, rationem reddet hoc iudicio, praestando dolum, culpam et quantam in suis rebus diligentiam.

Dig. 27.3.1.1

Ulpianus 36 ad ed.

Unde quaeritur apud iulianum libro vicensimo primo digestorum, si tutor pupillo auctoritatem ad mortis causa donationem accommodaverit, an tutelae iudicio teneatur. et ait teneri eum: nam sicuti testamenti factio, inquit, pupillis concessa non est, ita nec mortis quidem causa donationes permittendae sunt.

Dig. 27.3.1.2

Ulpianus 36 ad ed.

Sed et si non mortis causa donaverit tutore auctore, idem iulianus scripsit plerosque quidem putare non valere donationem, et plerumque ita est: sed nonnullos casus posse existere, quibus sine reprehensione tutor auctor fit pupillo ad deminuendum, decreto scilicet interveniente: veluti si matri aut sorori, quae aliter se tueri non possunt, tutor alimenta praestiterit: nam cum bonae fidei iudicium sit, nemo feret, inquit, aut pupillum aut substitutum eius querentes, quod tam coniunctae personae alitae sint: quin immo per contrarium putat posse cum tutore agi tutelae, si tale officium praetermiserit.

Dig. 27.3.1.3

Ulpianus 36 ad ed.

Officio tutoris incumbit etiam rationes actus sui conficere et pupillo reddere: ceterum si non fecit aut si factas non exhibet, hoc nomine iudicio tutelae tenebitur. de servis quoque interrogationes, sed et quaestiones habendas et hoc officio iudicis convenire placuit. nam divus severus decrevit, cum neque inventaria neque auctionalia proferentur, remedio eo uti debere, ut rationes a servis qui rem gesserant proferantur: has rationes si esse mala fide conscriptas a servis dicunt tutores, etiam in quaestionem servi interrogari poterunt.

Dig. 27.3.1.4

Ulpianus 36 ad ed.

Praeterea si matrem aluit pupilli tutor, putat labeo imputare eum posse: sed est verius non nisi perquam egenti dedit, imputare eum oportere de largis facultatibus pupilli: utrumque igitur concurrere oportet, ut et mater egena sit et filius in facultatibus positus.

Dig. 27.3.1.5

Ulpianus 36 ad ed.

Sed si munus nuptiale matri pupilli miserit, non eum pupillo imputaturum labeo scripsit: nec perquam necessaria est ista muneratio.

Dig. 27.3.1.6

Ulpianus 36 ad ed.

Si pupillis tutores pater dedit, inter quos et libertum suum, perque eum voluerit tutelam administrari, et tutores certam summam ei statuerunt, quia aliter se exhibere non poterat, habendam eius rationem quod statutum est mela existimat.

Dig. 27.3.1.7

Ulpianus 36 ad ed.

Ergo et si ex inquisitione propter rei notitiam fuerit datus tutor eique alimenta statuerint contutores, debebit eorum ratio haberi, quia iusta causa est praestandi.

Dig. 27.3.1.8

Ulpianus 36 ad ed.

Sed et si servis cibaria praestiterit vel libertis, scilicet rei pupilli necessariis, dicendum est reputaturum: idemque et si liberis hominibus, si tamen ratio praestandi iusta intercedat.

Dig. 27.3.1.9

Ulpianus 36 ad ed.

Item sumptus litis tutor reputabit et viatica, si ex officio necesse habuit aliquo excurrere vel proficisci.

Dig. 27.3.1.10

Ulpianus 36 ad ed.

Nunc tractemus, si plures tutelam pupilli administraverint, pro qua quisque eorum parte conveniendus sit.

Dig. 27.3.1.11

Ulpianus 36 ad ed.

Et si quidem omnes simul gesserunt tutelam et omnes solvendo sunt, aequissimum erit dividi actionem inter eos pro portionibus virilibus exemplo fideiussorum.

Dig. 27.3.1.12

Ulpianus 36 ad ed.

Sed et si non omnes solvendo sint, inter eos qui solvendo sunt dividitur actio. sed prout quisque solvendo est, poterunt conveniri.

Dig. 27.3.1.13

Ulpianus 36 ad ed.

Et si forte quis ex facto alterius tutoris condemnatus praestiterit vel ex communi gestu nec ei mandatae sunt actiones, constitutum est a divo pio et ab imperatore nostro et divo patre eius utilem actionem tutori adversus contutorem dandam.

Dig. 27.3.1.14

Ulpianus 36 ad ed.

Plane si ex dolo communi conventus praestiterit tutor, neque mandandae sunt actiones neque utilis competit, quia proprii delicti poenam subit: quae res indignum eum fecit, ut a ceteris quid consequatur doli participibus: nec enim ulla societas maleficiorum vel communicatio iusta damni ex maleficio est.

Dig. 27.3.1.15

Ulpianus 36 ad ed.

Usque adeo autem ad contutores non venitur, si sint solvendo contutores, ut prius ad magistratus qui eos dederunt vel ad fideiussores veniatur: et ita imperator noster ulpio proculo rescripsit. quod enim Marcellus libro octavo digestorum scripsit, quodque saepissime rescriptum est, quamdiu vel unus ex tutoribus idoneus est, non posse ad magistratus qui dederunt veniri, sic erit accipiendum, si non contutor ob hoc conveniatur, quod suspectum facere vel satis exigere noluit.

Dig. 27.3.1.16

Ulpianus 36 ad ed.

Hanc actionem etiam in heredem tutoris competere constat.

Dig. 27.3.1.17

Ulpianus 36 ad ed.

Sed et heredi pupilli aeque competit similibusque personis.

Dig. 27.3.1.18

Ulpianus 36 ad ed.

Non tantum ante condemnationem, sed etiam post condemnationem desiderare tutor potest mandari sibi actiones adversus contutorem, pro quo condemnatus est.

Dig. 27.3.1.19

Ulpianus 36 ad ed.

Rationibus distrahendis actione non solum hi tenentur tutores, qui legitimi fuerunt, sed omnes, qui iure tutores sunt et gerunt tutelam.

Dig. 27.3.1.20

Ulpianus 36 ad ed.

Considerandum est in hac actione, utrum pretium rei tantum duplicetur an etiam quod pupilli intersit. et magis esse arbitror in hac actione quod interest non venire, sed rei tantum aestimationem.

Dig. 27.3.1.21

Ulpianus 36 ad ed.

In tutela ex una obligatione duas esse actiones constat: et ideo, sive tutela fuerit actum, de rationibus distrahendis agi non potest, sive contra, tutelae actio quod ad speciem istam perempta est.

Dig. 27.3.1.22

Ulpianus 36 ad ed.

Hunc tamen tutorem, qui intercepit pecuniam pupillarem, et furti teneri papinianus ait: qui etsi furti teneatur, hac actione conventus furti actione non liberatur: nec enim eadem est obligatio furti ac tutelae, ut quis dicat plures esse actiones eiusdem facti, sed plures obligationes: nam et tutelae et furti obligatur.

Dig. 27.3.1.23

Ulpianus 36 ad ed.

Hanc actionem sciendum est perpetuam esse et heredi similibusque personis dari ex eo quod vivo pupillo captum est: sed in heredem ceterosque successores non dabitur, quia poenalis est.

Dig. 27.3.1.24

Ulpianus 36 ad ed.

Haec actio tunc competit, cum et tutelae actio est, hoc est finita demum tutela.

Dig. 27.3.2pr.

Paulus 8 ad sab.

Actione de rationibus distrahendis nemo tenetur, nisi qui in tutela gerenda rem ex bonis pupilli abstulerit.

Dig. 27.3.2.1

Paulus 8 ad sab.

Quod si furandi animo fecit, etiam furti tenetur. utraque autem actione obligatur et altera alteram non tollet. sed et condictio ex furtiva causa competit, per quam si consecutus fuerit pupillus quod fuerit ablatum, tollitur hoc iudicium, quia nihil absit pupillo.

Dig. 27.3.2.2

Paulus 8 ad sab.

Haec actio licet in duplum sit, in simplo rei persecutionem continet, non tota dupli poena est.

Dig. 27.3.3

Pomponius 5 ad sab.

Si tutelae aut negotiorum gestorum agatur incerto hoc, quantum ab adversariis debetur tutori procuratorive, arbitratu iudicis cavendum est, quod eo nomine eis absit.

Dig. 27.3.4pr.

Paulus 8 ad sab.

Nisi finita tutela sit, tutelae agi non potest: finitur autem non solum pubertate, sed etiam morte tutoris vel pupilli.

Dig. 27.3.4.1

Paulus 8 ad sab.

Filium familias emancipatum, si tutelam administret, etiam directo teneri iulianus putat.

Dig. 27.3.4.2

Paulus 8 ad sab.

Si adhuc impubes tutelae agat, nihil consumitur.

Dig. 27.3.4.3

Paulus 8 ad sab.

Cum furiosi curatore non tutelae, sed negotiorum gestorum actio est: quae competit etiam dum negotia gerit, quia non idem in hac actione, quod in tutelae actione, dum impubes est is cuius tutela geritur, constitutum est.

Dig. 27.3.5

Ulpianus 43 ad sab.

Si tutor rem sibi depositam a patre pupilli vel commodatam non reddat, non tantum commodati vel depositi, verum tutelae quoque tenetur. et si acceperit pecuniam, ut reddat, plerisque placuit eam pecuniam vel depositi vel commodati actione repeti vel condici posse: quod habet rationem, quia turpiter accepta sit.

Dig. 27.3.6

Ulpianus 31 ad ed.

Si filius familias tutelam administraverit et liberatus patria potestate dolo aliquid fecerit, an actio tutelae patrem quoque hoc nomine teneat, quaeritur. et aequum est, ut eum dumtaxat dolum pater praestet, qui commissus est ante emancipationem filii.

Dig. 27.3.7pr.

Ulpianus 35 ad ed.

Si pupillus heres exstiterit ei, cuius tutelam tutor suus gesserat, ex hereditaria causa cum tutore suo habebit actionem.

Dig. 27.3.7.1

Ulpianus 35 ad ed.

Si tutor in hostium potestatem pervenerit, quia finita tutela intellegitur, fideiussores, qui pro eo rem salvam fore spoponderint, et si quis existat defensor eius, qui paratus est suscipere iudicium tutelae, vel si quis sit curator bonis eius constitutus, recte convenientur:

Dig. 27.3.8

Papinianus 28 quaest.

Quamvis iure postliminii tutelam pristinam possit integrare.

Dig. 27.3.9pr.

Ulpianus 25 ad ed.

Si tutor rei publicae causa abesse coeperit ac per hoc fuerit excusatus, quod rei publicae causa aberit, tutelae iudicio locus est. sed si desierit rei publicae causa abesse, consequenter desinit qui in locum eius datus est et tutelae conveniri poterit.

Dig. 27.3.9.1

Ulpianus 25 ad ed.

Si duobus impuberibus fratribus tutor datus sit et alter eorum in legitimam tutelam fratris sui perfectae aetatis constituti reccidit, eum qui datus esset tutorem esse desisse neratius ait. quia igitur desinit, erit tutelae actio etiam ex persona impuberis, quamvis, si testamento datus fuisset, non desineret esse tutor eius, qui adhuc erat impubes, quia semper legitima tutela testamentariae cedit.

Dig. 27.3.9.2

Ulpianus 25 ad ed.

Si testamento sub condicione tutor datus sit, deinde alius medio tempore ex inquisitione, dicendum est locum esse tutelae iudicio existente condicione, quia tutor esse desinit.

Dig. 27.3.9.3

Ulpianus 25 ad ed.

Sed et si quis testamento usque ad tempus fuerit datus, idem erit dicendum.

Dig. 27.3.9.4

Ulpianus 25 ad ed.

Et generaliter quod traditum est pupillum cum tutore suo agere tutelae non posse hactenus verum est, si eadem tutela sit: absurdum enim erat a tutore rationem administrationis negotiorum pupilli reposci, in qua adhuc perseveraret. in qua autem desinit tutor et iterum coepit esse, sic ex pristina administratione tutelae debitor est pupillo, quomodo si pecuniam creditam a patre eius accepisset. quem igitur effectum haec sententia habeat, videamus: nam si solus tutor est, utique ipse secum non aget. sed vel per specialem curatorem conveniendus est vel pone eum contutorem habere, qui possit adversus eum iudicem accipere, ex qua causa cum eo tutelae agi potest. quin immo si medio tempore solvendo esse desierit, imputabitur contutoribus, cur non egerunt cum eo.

Dig. 27.3.9.5

Ulpianus 25 ad ed.

Si tutori curator sit adiunctus quamvis suspecto postulato, non cogetur tutelae iudicium tutor suscipere, quia tutor maneret.

Dig. 27.3.9.6

Ulpianus 25 ad ed.

Sed et si fuerit tutor confiscatus, adversus fiscum dandam esse actionem constat ei qui loco eius curator datus sit vel contutoribus eius.

Dig. 27.3.9.7

Ulpianus 25 ad ed.

Ceterae actiones praeter tutelae adversus tutorem competunt, etsi adhuc tutelam administrant, veluti furti, damni iniuriae, condictio.

Dig. 27.3.10

Paulus 8 brev. edicti.

Sed non dantur pupillo, dum tutor tutelam gerit: quamvis enim morte tutoris intereant, tamen pupillus cum herede eius actionem habet, quia sibi solvere debuit.

Dig. 27.3.11

Ulpianus 35 ad ed.

Si filius familias tutelam administraverit, deinde fuerit emancipatus, remanere eum tutorem iulianus ait et cum pupillus adoleverit, agendum cum eo eius quidem temporis, quod est ante emancipationem, in quantum facere potest, eius vero, quod est post emancipationem, in solidum, cum patre vero dumtaxat de peculio: manere enim adversus eum etiam post pubertatem de peculio actionem: neque enim ante annus cedit, intra quem de peculio actio datur, quam tutela fuerit finita.

Dig. 27.3.12

Paulus 8 brev. edicti.

Filius autem tutor propter hoc suum factum cum patre agere non potest ante pubertatem, quia nec finita tutela hoc ab eo exigi potest.

Dig. 27.3.13

Ulpianus 35 ad ed.

Si tutor post pubertatem pupilli negotia administraverit, in iudicium tutelae veniet id tantum, sine quo administratio tutelae expediri non potest: si vero post pubertatem pupilli is qui tutor eius fuerat fundos eius vendiderit, mancipia et praedia comparaverit, neque venditionis huius neque emptionis ratio iudicio tutelae continebitur. et est verum ea quae conexa sunt venire in tutelae actionem: sed et illud est verum, si coeperit negotia administrare post tutelam finitam, devolvi iudicium tutelae in negotiorum gestorum actionem: oportuit enim eum a semet ipso tutelam exigere. sed et si quis, cum tutelam administrasset, idem curator adulescenti fuerit datus, dicendum est negotiorum gestorum eum conveniri posse.

Dig. 27.3.14

Gaius 12 ad ed. provinc.

Si post pubertatem tempore aliquo licet brevissimo intermiserit administrationem tutor, deinde coeperit gerere, sine ulla dubitatione tam tutelae quam negotiorum gestorum iudicio cum eo agendum est.

Dig. 27.3.15

Ulpianus 1 disp.

Si ex duobus tutoribus cum altero quis transegisset, quamvis ob dolum communem, transactio nihil proderit alteri, nec immerito, cum unusquisque doli sui poenam sufferat. quod si conventus alter praestitisset, proficiet id quod praestitit ei qui conventus non est: licet enim doli ambo rei sint, tamen sufficit unum satisfacere, ut in duobus, quibus res commodata est vel deposita quibusque mandatum est.

Dig. 27.3.16pr.

Ulpianus 74 ad ed.

Si cum tutore ex stipulatu agatur vel cum his qui pro eo intervenerunt, erit dubitatio, an, quia tutelae agi non potest, nec ex stipulatu agi possit. et plerique putant etiam hanc actionem propter eandem utilitatem differendam.

Dig. 27.3.16.1

Ulpianus 74 ad ed.

Cum curatore pupilli sive adulescentis agi poterit, etsi usque adhuc cura perseveret.

Dig. 27.3.17

Ulpianus 3 de off. cons.

Imperatores severus et antoninus rescripserunt in haec verba: " cum hoc ipsum quaeratur, an aliquid tibi a tutoribus vel curatoribus debeatur, non habet rationem postulatio tua volentis in sumptum litis ab his tibi pecuniam subministrari".

Dig. 27.3.18

Papinianus 25 quaest.

Cum tutor negotiis impuberis administratis pupillum paterna hereditate abstinet, bonis patris venditis tractari solet, utilis actio pupillo relinqui an creditoribus concedi debeat. et probatur actionem inter pupillum et creditores patris esse dividendam, scilicet ut quod rationi bonorum per tutorem deerit creditoribus reddatur, quod autem dolo vel culpa tutoris in officio pupilli perperam abstenti contractum est, puero relinquatur. quae actio sine dubio non prius competet, quam pupillus ad pubertatem pervenerit: sed illa confestim creditoribus datur.

Dig. 27.3.19

Ulpianus 1 resp.

Si probatum est nomen debitoris a novissimo curatore, frustra tutorem de eo conveniri.

Dig. 27.3.20pr.

Papinianus 2 resp.

Alterius curatoris heredem minorem ut maiore pecunia condemnatum in integrum restitui placuit. ea res materiam litis adversus alterum curatorem instaurandae non dabit quasi minore pecunia condemnatum, si non sit eius aetatis actor, cui subveniri debeat: sed aequitatis ratione suadente per utilem actionem ei subveniri, in quantum alter relevatus est, oportet.

Dig. 27.3.20.1

Papinianus 2 resp.

Non idcirco actio, quae post viginti quinque annos aetatis intra restitutionis tempus adversus tutorem minore pecunia tutelae iudicio condemnatum redditur, inutilis erit, quod adulescenti curatores ob eam culpam condemnati sunt: itaque si non iudicatum a curatoribus factum est, per doli exceptionem curatores consequi poterunt eam actionem praestari sibi.

Dig. 27.3.21

Papinianus 1 def.

Cum pupillus tutelae actione contra tutorem alterum tutori, quem iudex in solidum condemnavit, cessit, quamvis postea iudicatum fiat, tamen actio data non intercidit, quia pro parte condemnati tutoris non tutela reddita, sed nominis pretium solutum videtur.

Dig. 27.3.22

Paulus 13 quaest.

Defensor tutoris condemnatus non auferet privilegium pupilli: neque enim sponte cum eo pupillus contraxit.

Dig. 27.3.23

Paulus 9 resp.

Convento herede tutoris iudicio tutelae curatorem eiusdem neque ipso iure liberatum videri neque exceptionem rei iudicatae ei dandam: idemque in heredibus magistratuum observandum.

Dig. 27.3.24

Paulus 2 sent.

Postumo tutor datus non nato postumo neque tutelae, quia nullus pupillus est, neque negotiorum gestorum iudicio tenetur, quia administrasse negotia eius quia natus non esset non videtur: et ideo utilis in eum actio dabitur.

Dig. 27.3.25

Hermogenianus 5 iuris epit.

Non solum tutelae privilegium datur in bonis tutoris, sed etiam eius, qui pro tutela negotium gessit: vel ex curatione pupilli pupillaeve furiosi furiosaeve debebitur, si eo nomine cautum non sit.

Dig. 27.4.0. De contraria tutelae et utili actione.

Dig. 27.4.1pr.

Ulpianus 36 ad ed.

Contrariam tutelae actionem praetor proposuit induxitque in usum, ut facilius tutores ad administrationem accederent scientes pupillum quoque sibi obligatum fore ex sua administratione. quamquam enim sine tutoris auctoritate pupilli non obligentur nec in rem suam tutor obligare pupillum possit, attamen receptum est, ut tutori suo pupillus sine tutoris auctoritate civiliter obligetur ex administratione scilicet. etenim provocandi fuerant tutores, ut promptius de suo aliquid pro pupillis impendant, dum sciunt se recepturos id quod impenderint.

Dig. 27.4.1.1

Ulpianus 36 ad ed.

Haec actio non solum tutori, verum etiam ei, qui pro tutore negotia gessit, competere debet.

Dig. 27.4.1.2

Ulpianus 36 ad ed.

Sed et si curator sit vel pupilli vel adulescentis vel furiosi vel prodigi, dicendum est etiam his contrarium dandum. idem in curatore quoque ventris probandum est. quae sententia sabini fuit existimantis ceteris quoque curatoribus ex isdem causis dandum contrarium iudicium.

Dig. 27.4.1.3

Ulpianus 36 ad ed.

Finito autem officio hanc actionem competere dicemus tutori: ceterum quamdiu durat, nondum competit. sed si pro tutore negotia gessit vel etiam curam administravit, locus erit iudicio etiam statim, quia hoc casu in ipsum quoque statim actio competit.

Dig. 27.4.1.4

Ulpianus 36 ad ed.

Praeterea si tutelae iudicio quis convenietur, reputare potest id quod in rem pupilli impendit: sic erit arbitrii eius, utrum compensare an petere velit ^ veli^ sumptus. quid ergo, si iudex compensationis eius rationem non habuit, an contrario iudicio experiri possit? et utique potest: sed si reprobata est haec reputatio et adquievit, non debet iudex contrario iudicio id sarcire.

Dig. 27.4.1.5

Ulpianus 36 ad ed.

An in hoc iudicio non tantum quae pro pupillo vel in rem eius impensa sunt veniant, verum etiam ea quoque, quae debebantur alias tutori, ut puta a patre pupilli si quid debitum fuit, quaeritur. et magis puto, cum integra sit actio tutori, non esse in contrarium iudicium deducendum.

Dig. 27.4.1.6

Ulpianus 36 ad ed.

Quid tamen si ideo exspectavit, quia tutor erat et ideo non exegit? videamus, an contrario iudicio tutelae indemnitatem consequatur. quod magis probandum est: nam sicuti quodcumque aliud gessit pro utilitate pupilli, id contrario iudicio consequetur, ita etiam id quod sibi debetur consequi debet vel eius securitatem.

Dig. 27.4.1.7

Ulpianus 36 ad ed.

Ego et si ex causa, quae tempore finitur, obligatio aliqua fuit, tutelae contrarium iudicium esse ei opinor.

Dig. 27.4.1.8

Ulpianus 36 ad ed.

Hanc actionem dandam placet et si tutelae iudicio non agatur: etenim nonnumquam pupillus idcirco agere tutelae non vult, quia nihil ei debetur, immo plus in eum impensum est, quam quod ei abest, nec impediendus est tutor contrario agere.

Dig. 27.4.2

Iulianus 21 Dig.

Longe magis dandum est et si rationibus distrahendis actio intendatur.

Dig. 27.4.3pr.

Ulpianus 36 ad ed.

Quid ergo si plus in eum impendit, quam est in facultatibus? videamus an possit hoc consequi. et labeo scripsit posse. sic tamen accipiendum est, si expedit pupillo ita tutelam administrari: ceterum si non expedit, dicendum est absolvi pupillum oportere: neque enim in hoc administrantur tutelae, ut mergantur pupilli. iudex igitur, qui contrario iudicio cognoscit, utilitatem pupilli spectabit et an tutor ex officio sumptus fecerit.

Dig. 27.4.3.1

Ulpianus 36 ad ed.

Contrarium iudicium an ad hoc quoque competat, ut quis a pupillo exigat liberationem, videndum est. et nemo dixit in hoc agere quem contrario posse, ut tutelae iudicio liberetur, sed tantum de his, quae ei propter tutelam absunt. consequitur autem pecuniam, si quam de suo consumpsit, etiam cum usuris, sed vel trientibus, vel his quae in regione observantur, vel his quibus mutuatus est, si necesse habuit mutuari, ut pupillo ex iusta causa prorogaret, vel his a quibus pupillum liberavit, vel quibus caruit tutor, si nimium profuit pupillo pecuniam esse exsolutam.

Dig. 27.4.3.2

Ulpianus 36 ad ed.

Plane si forte tutor aliquid pecuniae debuit faenerare, aliquid ipse pro pupillo solvit, nec ipse usuras consequitur nec pupillo praestabit.

Dig. 27.4.3.3

Ulpianus 36 ad ed.

Quare et si in usus suos convertit, deinde aliquid impendit in rem pupillarem, quam impendit desinit vertisse et exinde usuras non praestabit. et si ante impendit in rem pupillarem, mox in usus suos vertit, non videbitur vertisse quantitatem, quae concurrit cum quantitate sibi debita, ut eius summae non praestet usuras.

Dig. 27.4.3.4

Ulpianus 36 ad ed.

Usuras utrum tamdiu consequetur tutor quamdiu tutor est, an etiam post finitam tutelam, videamus, an ex mora tantum. et magis est, ut, quoad ei reddatur pecunia, consequatur: nec enim debet ei sterilis esse pecunia.

Dig. 27.4.3.5

Ulpianus 36 ad ed.

Si tamen fuit in substantia pupilli unde consequetur, dicendum est non oportere eum usuras a pupillo exigere.

Dig. 27.4.3.6

Ulpianus 36 ad ed.

Quid ergo, si de re pupillari non potuit sibi solvere, quia erat deposita ad praediorum comparationem? si quidem non postulavit a praetore, ut promatur pecunia vel hoc minus deponatur, sibi imputet: si vero hoc desideravit nec impetravit, dicendum est non deperire ei usuras.

Dig. 27.4.3.7

Ulpianus 36 ad ed.

In contrario iudicio sufficit tutori bene et diligenter negotia gessisse, etsi eventum adversum habuit quod gestum est.

Dig. 27.4.3.8

Ulpianus 36 ad ed.

Iudicio contrario tutelae praestatur et id, quod in rem pupilli versum ante tutelam vel post tutelam, si negotiis tutelae tempore gestis nexum probatur, et quod ante impensum est, sive pro tutore negotia gessit et postea tutor constitutus est, vel ventri erat curator: sed et si non pro tutore negotia gerebat, debet venire quod ante impensum est: deducuntur enim in tutelae iudicium sumptus, quoscumque fecerit in rem pupilli, sic tamen, si ex bona fide fecit.

Dig. 27.4.3.9

Ulpianus 36 ad ed.

Hanc actionem perpetuam esse palam est, et heredi et in heredem dari ceterosque successores et ad quos ea res pertinet et in eos.

Dig. 27.4.4

Iulianus 21 Dig.

A tutela remotus eo loco haberi debet, quo esset finita tutela, et sicut actiones patitur perinde ac si pupillus pubes factus esset, ita contrario iudicio, si quid ei aberit, persequi debebit: nihil enim prohibet suspectum tutorem esse, quamvis complura in rem pupilli impenderit, quae eum amittere non oportet.

Dig. 27.4.5

Ulpianus 1 resp.

Heredem tutoris, si eam summam solverit, in quam obligati pupilli fuerunt, actionem contrariam adversus eos habere posse respondi.

Dig. 27.4.6

Paulus 5 ad plaut.

Si tutor pro pupillo se obligavit, habet contrariam actionem et antequam solvat.

Dig. 27.5.0. De eo qui pro tutore prove curatore negotia gessit.

Dig. 27.5.1pr.

Ulpianus 36 ad ed.

Protutelae actionem necessario praetor proposuit: nam quia plerumque incertum est, utrum quis tutor an vero quasi tutor pro tutore administraverit tutelam, idcirco in utrumque casum actionem scripsit, ut sive tutor est sive non sit qui gessit, actione tamen teneretur. solent enim magni errores intercedere, ut discerni facile non possit, utrum quis tutor fuerit et sic gesserit, an vero non fuerit, pro tutore tamen munere functus sit.

Dig. 27.5.1.1

Ulpianus 36 ad ed.

Pro tutore autem negotia gerit, qui munere tutoris fungitur in re impuberis, sive se putet tutorem, sive scit non esse, finget tamen esse.

Dig. 27.5.1.2

Ulpianus 36 ad ed.

Proinde et si servus quasi tutor egerit, divus severus rescripsit dandum in dominum iudicium utile.

Dig. 27.5.1.3

Ulpianus 36 ad ed.

Cum eo, qui pro tutore negotia gessit, etiam ante pubertatem agi posse nulla dubitatio est, quia tutor non est.

Dig. 27.5.1.4

Ulpianus 36 ad ed.

Quare si quis finita tutela pro tutore negotia impuberis gessit, tenebitur.

Dig. 27.5.1.5

Ulpianus 36 ad ed.

Sed et si prius pro tutore administraverit, deinde quasi tutor, aeque tenebitur ex eo quod pro tutore administravit, quamvis devolvatur hic gestus in tutelae actionem.

Dig. 27.5.1.6

Ulpianus 36 ad ed.

Si quis quasi tutor negotia gesserit eius qui iam pubes est neque tutorem habere potest, protutelae actio cessat: simili modo et si eius, qui nondum natus est. nam ut pro tutore quis gerat, eam esse personam oportet, cuius aetas recipiat tutorem, id est impuberem esse oportet. sed erit negotiorum gestorum actio.

Dig. 27.5.1.7

Ulpianus 36 ad ed.

Si curator impuberi a praetore datus negotia gesserit, an, quasi pro tutore gesserit, teneatur, quaeritur. et est verius cessare hanc actionem, quia officio curatoris functus est. si quis tamen, cum tutor non esset, compulsus a praetore vel a praeside, dum se putat tutorem, gesserit tutelam, videndum, an pro tutore teneatur. et magis est, ut, quamvis compulsus gesserit, teneri tamen debeat, quia animo tutoris gessit, cum tutor non esset. at iste curator non quasi tutor, sed quasi curator gessit.

Dig. 27.5.1.8

Ulpianus 36 ad ed.

In protutelae iudicio usurae quoque veniunt.

Dig. 27.5.1.9

Ulpianus 36 ad ed.

Sed utrum solummodo in id quod gessit tenebitur an vero in id etiam quod gerere debuit? et si quidem omnino non attigit tutelam, non tenebitur: neque enim attingere debuit qui tutor non fuit. quod si quaedam gessit, videndum, an etiam eorum quae non gessit teneatur: et hactenus tenebitur, si alius gesturus fuit. sed et si cognito, quod tutor non fuit, abstinuit se administratione, videamus, an teneatur, si necessarios pupilli non certioravit, ut ei tutorem peterent: quod verius est.

Dig. 27.5.2

Celsus 25 Dig.

Si is, qui pro tutore negotia gerebat, cum tutor non esset, rem pupilli vendidit nec ea usucapta est, petet eam pupillus, quamquam ei cautum est: non enim eadem huius quae tutoris est rerum pupilli administratio.

Dig. 27.5.3

Iavolenus 5 epist.

Quaero, an is qui, cum tutor testamento datus esset et id ipsum ignoraret, pro tutore negotia pupilli gesserit, quasi tutor an quasi pro tutore negotia gesserit, teneatur. respondit: non puto teneri quasi tutorem, quia scire quoque se tutorem esse debet, ut eo affectu negotia gerat, quo tutor gerere debeat.

Dig. 27.5.4

Pomponius 16 ad q. muc.

Qui pro tutore negotia gerit, eandem fidem et diligentiam praestat, quam tutor praestaret.

Dig. 27.5.5

Ulpianus 10 ad ed.

Ei qui pro tutore negotia gessit contrarium iudicium competit.

Dig. 27.6.0. Quod falso tutore auctore gestum esse dicatur.

Dig. 27.6.1pr.

Ulpianus 12 ad ed.

Huius edicti aequitas non est ambigua, ne contrahentes decipiantur, dum falsus tutor adhibetur.

Dig. 27.6.1.1

Ulpianus 12 ad ed.

Verba autem edicti haec sunt.

Dig. 27.6.1.2

Ulpianus 12 ad ed.

" quod eo auctore" inquit " qui tutor non fuerit". verbis edicti multa desunt: quid enim si fuit tutor, is tamen fuit qui auctoritatem accommodare non potuit? puta furiosus vel ad aliam regionem datus.

Dig. 27.6.1.3

Ulpianus 12 ad ed.

Sed pomponius libro trigensimo scribit interdum quamvis a non tutore gestum est, non pertinere ad hanc partem edicti: quid enim si duo tutores, alter falsus, alter verus auctoritatem accommodaverint, nonne valebit quod gestum est?

Dig. 27.6.1.4

Ulpianus 12 ad ed.

Item hoc edictum licet singulariter scriptum sit, si tamen plures intervenerint, qui tutores non erant, tamen locum habere debere pomponius libro trigesimo scribit.

Dig. 27.6.1.5

Ulpianus 12 ad ed.

Idem pomponius scribit, etiamsi pro tutore negotia gerens auctoritatem accommodaverit, nihilo minus hoc edictum locum habere, nisi forte praetor decrevit ratum se habiturum id, quod his auctoribus gestum est: tunc enim valebit per praetoris tuitionem, non ipso iure.

Dig. 27.6.1.6

Ulpianus 12 ad ed.

Ait praetor: " si id actor ignoravit, dabo in integrum restitutionem". scienti non subvenit, merito, quoniam ipse se decepit.

Dig. 27.6.2

Paulus 12 ad ed.

" si id", inquit, " actor ignoraverit". labeo: et si dictum sit ei et bona fide non crediderit.

Dig. 27.6.3

Ulpianus 12 ad ed.

Plane si is sit qui auxilio non indiget, scientia ei non nocet, ut puta si pupillus cum pupillo egit: nam cum nihil actum sit, scientia non nocet.

Dig. 27.6.4

Paulus 12 ad ed.

Minori viginti quinque annis succurretur, etiamsi scierit.

Dig. 27.6.5

Ulpianus 12 ad ed.

Interdum tamen etsi scientia noceat, tamen restitutio facienda erit, si a praetore compulsus est ad iudicium accipiendum.

Dig. 27.6.6

Paulus 12 ad ed.

Pupilli scientia computanda non est, tutoris eius computanda est: utique etsi pupillo cautum sit, melius dicitur rem suam restitui pupillo quam incertum cautionis eventum eum spectare: quod et iulianus, si alias circumventus sit pupillus, respondit.

Dig. 27.6.7pr.

Ulpianus 12 ad ed.

Novissime praetor ait: " in eum qui, cum tutor non esset, dolo malo auctor factus esse dicetur, iudicium dabo, ut quanti ea res erit, tantam pecuniam condemnetur".

Dig. 27.6.7.1

Ulpianus 12 ad ed.

Non semper tutor convenitur nec sufficit, si sciens aucto fuit, verum ita demum, si dolo malo auctor fuit. quid si compulsus aut metu, ne compelleretur, auctoritatem accommodaverit, nonne debebit esse excusatus?

Dig. 27.6.7.2

Ulpianus 12 ad ed.

Quod ait praetor " quanti ea res erit", magis puto non poenam, sed veritatem his verbis contineri.

Dig. 27.6.7.3

Ulpianus 12 ad ed.

Pomponius libro trigesimo recte scribit etiam sumptuum in hoc iudicio rationem haberi, quos facturus est actor restitutorio agendo.

Dig. 27.6.7.4

Ulpianus 12 ad ed.

Si plures sint qui auctores fuerunt, perceptione ab uno facta et ceteri liberantur, non electione:

Dig. 27.6.8

Paulus 12 ad ed.

Et ideo si nihil aut non totum servatum sit, in reliquos non denegandam in id quod deest sabinus scribit.

Dig. 27.6.9pr.

Ulpianus 12 ad ed.

Huius actionis exemplo pomponius libro trigesimo primo scribit dandam actionem adversus eum, qui dolo malo adhibuit, ut alius auctoraretur inscius.

Dig. 27.6.9.1

Ulpianus 12 ad ed.

Has in factum actiones heredibus quidem competere ceterisque successoribus, in eos vero non reddi labeo scribit nec in ipsum post annum, quoniam et factum puniunt et in dolum concipiuntur: et adversus eas personas, quae alieno iuri subiectae sunt, noxales erunt.

Dig. 27.6.10

Gaius 4 ad ed. provinc.

Si falso tutore auctore actum sit et interea dies actionis exierit aut res usucapta sit, omnia incommoda perinde sustinere debet, ac si illo tempore vero tutore auctore egisset.

Dig. 27.6.11pr.

Ulpianus 35 ad ed.

Falsus tutor, qui in contrahendo auctor minori duodecim vel quattuordecim annis fuerit, tenebitur in factum actione propter dolum malum.

Dig. 27.6.11.1

Ulpianus 35 ad ed.

Cuiuscumque condicionis fuerit vel sui iuris vel alieni, qui dolo malo auctoritatem accommodavit, tenebittur hoc edicto.

Dig. 27.6.11.2

Ulpianus 35 ad ed.

Sed et si quis filiae familias auctor factus sit ad contrahendum, tenetur. idemque iuris est, si ancillae quis tutore auctore credidisset: nam omnibus istis modis propter tutorem decipitur is qui contraxit, quia aliter cum impubere contracturus non fuit, quam si tutoris auctoritas intercessisset.

Dig. 27.6.11.3

Ulpianus 35 ad ed.

Iulianus libro vicesimo primo digestorum tractat, in patrem debeat dari haec actio, qui filiam minorem duodecim annis nuptum dedit. et magis probat patri ignoscendum esse, qui filiam suam maturius in familiam sponsi perducere voluit: affectu enim propensiore magis quam dolo malo id videri fecisse.

Dig. 27.6.11.4

Ulpianus 35 ad ed.

Quod si intra duodecim annos haec decesserit, cum haberet dotem, putat iulianus, si dolo malo conversatus sit is ad quem dos pertinet, posse maritum doli mali exceptione condicentem summovere in casibus, in quibus dotem vel in totum vel in partem, si constabat matrimonium, fuerat lucraturus.

Dig. 27.6.12

Ulpianus 1 resp.

Ex eo, quod interrogatus tutorem se esse respondit, nulla eum actione teneri: si tamen, cum tutor non esset, responso suo in aliquam captionem adulescentem induxit, utilem actionem adversus eum dandam.

Dig. 27.7.0. De fideiussoribus et nominatoribus et heredibus tutorum et curatorum.

Dig. 27.7.1pr.

Pomponius 17 ad sab.

Quamvis heres tutoris tutor non est, tamen ea quae per defunctum inchoata sunt per heredem, si legitimae aetatis et masculus sit, explicari debent: in quibus dolus eius admitti potest.

Dig. 27.7.1.1

Pomponius 17 ad sab.

Quod penes tutorem fuit, heres quoque eius reddere debet: quod apud pupillum is reliquerit si heres capit, non quidem crimine caret, sed extra tutelam est et utili actione hoc reddere compellitur.

Dig. 27.7.2

Ulpianus 39 ad sab.

Postulare tutorem videtur et qui per alium postulat: item nominare et qui per alium hoc idem facit.

Dig. 27.7.3

Ulpianus 35 ad ed.

Etiam fideiussorem et heredes fideiussoris ad rationem eandem usurarum revocandos esse constat, ad quam et tutor revocatur.

Dig. 27.7.4pr.

Ulpianus 36 ad ed.

Cum ostendimus heredem quoque tutelae iudicio posse conveniri, videndum, an etiam proprius eius dolus vel propria administratio veniat in iudicium. et exstat servii sententia existimantis, si post mortem tutoris heres eius negotia pupilli gerere perseveraverit aut in arca tutoris pupilli pecuniam invenerit et consumpserit vel eam pecuniam quam tutor stipulatus fuerat exegerit, tutelae iudicio eum teneri suo nomine: nam cum permittatur adversus heredem ex proprio dolo iurari in litem, apparet eum iudicio tutelae teneri ex dolo proprio.

Dig. 27.7.4.1

Ulpianus 36 ad ed.

Neglegentia plane propria heredi non imputabitur.

Dig. 27.7.4.2

Ulpianus 36 ad ed.

Usuras quoque eius pecuniae, quam pupillarem agitavit, praestare debet heres tutoris: quantas autem et cuius temporis usuras praestare debeat, ex bono et aequo constitui ab iudice oportet.

Dig. 27.7.4.3

Ulpianus 36 ad ed.

Fideiussores a tutoribus nominati si praesentes fuerunt et non contradixerunt et nomina sua referri in acta publica passi sunt, aequum est perinde teneri, atque si iure legitimo stipulatio interposita fuisset. eadem causa videtur adfirmatorum, qui scilicet cum idoneos esse tutores adfirmaverint, fideiussorum vicem sustinent.

Dig. 27.7.5

Paulus 38 ad ed.

Si cum fideiussoribus tutoris ex stipulatione rem salvam fore agetur, easdem reputationes habebunt, quas tutor.

Dig. 27.7.6

Papinianus 2 resp.

Pupillus contra tutores eorumque fideiussores iudicem accepit: iudice defuncto, priusquam ad eum iretur, contra solos fideiussores alter iudex datus est. officio cognoscentis conveniet, si tutores solvendo sint et administratio non dispar, sed communis fuit, portionum virilium admittere rationem ex persona tutorum.

Dig. 27.7.7

Papinianus 3 resp.

Si fideiussores, qui rem salvam fore pupillo caverant, tutorem adulescens ut ante conveniret petierant atque ideo stipulanti promiserunt se reddituros quod ab eo servari non potuisset: placuit inter eos, qui solvendo essent, actionem residui dividi, quod onus fideiussorum susceptum videretur: nam et si mandato plurium pecunia credatur, aeque dividitur actio: si enim quod datum pro alio solvitur, cur species actionis aequitatem divisionis excludit?

Dig. 27.7.8pr.

Paulus 9 resp.

Heredes eius, qui non iure tutor vel curator datus administrationi se non immiscuit, dolum et culpam praestare non debere.

Dig. 27.7.8.1

Paulus 9 resp.

Paulus respondit tale iudicium in heredem tutoris transferri oportere, quale defunctus suscepit. hoc eo pertinet, ut non excusetur heres, si dicat se instrumenta tutelaria non invenisse: nam cum ex omnibus bona fide iudiciis propter dolum defuncti heres teneatur, idem puto observandum et in tutelae actione. sed constitutionibus subventum est ignorantiae heredum. hoc tamen tunc observandum est, cum post mortem tutoris heres conveniatur, non si lite contestata tutor decesserit: nam litis contestatione et poenales actiones transmittuntur ab utraque parte et temporales perpetuantur.

Dig. 27.8.0. De magistratibus conveniendis.

Dig. 27.8.1pr.

Ulpianus 36 ad ed.

In ordinem subsidiaria actio non dabitur, sed in magistratus, nec in fideiussores eorum: hi enim rem publicam salvam fore promittunt, non pupilli. proinde nec nominatores magistratuum ex hac causa tenebuntur, sed soli magistratus. sed si ordo receperit in se periculum, dici debet teneri eos, qui praesentes fuerunt: parvi enim refert, nominaverint vel fideiusserint an in se periculum receperint: utilis ergo in eos actio competit. sed si a magistratibus municipalibus tutor datus sit, non videtur per ordinem electus.

Dig. 27.8.1.1

Ulpianus 36 ad ed.

Neque praetor neque quis alius, cui tutoris dandi ius est, hac actione tenebitur.

Dig. 27.8.1.2

Ulpianus 36 ad ed.

Si praeses provinciae denuntiare magistratus tantum de facultatibus tutorum voluit, ut ipse daret, videamus, an et quatenus teneantur. et extat divi marci rescriptum, quo voluit eos, qui praesidi renuntiant, non perinde teneri atque si ipsi dedissent, sed si deceperunt, gratia forte aut pecunia falsa renuntiantes. plane si praeses provinciae satis eos exigere iussit, non dubitabimus teneri eos, etiamsi praeses dederit.

Dig. 27.8.1.3

Ulpianus 36 ad ed.

Si praeses provinciae nominibus ab alio acceptis ad magistratus municipales remiserit, ut se de nominibus instruant, et perinde instructus dederit tutores: an exemplo eorum qui praetorem instruunt debeant magistratus teneri, quaeritur: utique enim interest, utrum ipsi magistratus nomina electa dederint praesidi an ea, quae ab alio praeses accepit, inquisierint. et puto utroque casu sic teneri, quasi dolo vel lata culpa versati sunt.

Dig. 27.8.1.4

Ulpianus 36 ad ed.

Non tantum pupilli, sed etiam successores eorum subsidiaria agere possunt.

Dig. 27.8.1.5

Ulpianus 36 ad ed.

Si curatores fuerunt minus idonei dati, dicendum est teneri magistratus oportere, si ex suggestu eorum vel nominibus ab eis acceptis praeses dederit. sed et si ad eos remiserit, ut ipsi dent vel post dationem ut exigerent satisdationem, periculum ad eos pertinebit.

Dig. 27.8.1.6

Ulpianus 36 ad ed.

Magistratibus imputatur etiam, si omnino tutor vel curator datus non sit: sed ita demum tenentur, si moniti non dederint. ideo damnum, quod impuberes vel adulescentes medio tempore passi sunt, ad eos magistratus pertinere non ambigitur, qui munere mandato non paruerunt.

Dig. 27.8.1.7

Ulpianus 36 ad ed.

Sciendum autem est, si magistratus municipales data opera tutelam distulerint in successores suos vel si satisdationem data opera traxerint quoad successores accipiant, nihil eis prodesse.

Dig. 27.8.1.8

Ulpianus 36 ad ed.

Divus hadrianus rescripsit etiam in eum, qui electus est ad aestimandas tutorum satisdationes, actionem dandam.

Dig. 27.8.1.9

Ulpianus 36 ad ed.

Si inter magistratus hoc convenerit, ut alterius tantum periculo tutores darentur, conventiones pupillo non praeiudicare divus hadrianus rescripsit: conventione enim duumvirorum ius publicum mutari non potest. prius tamen arbitror conveniendum eum, qui hoc suscepit, deinde excussis facultatibus eius tunc veniendum ad collegam, quemadmodum, si solus dedisset, diceremus prius eum, deinde collegam adgrediendum.

Dig. 27.8.1.10

Ulpianus 36 ad ed.

Si quando desint in civitate, ex qua pupilli oriundi sunt, qui idonei videantur, officium est magistratuum exquirere ex vicinis civitatibus honestissimum quemque et nomina praesidibus provinciae mittere, non ipsos arbitrium dandi sibi vindicare.

Dig. 27.8.1.11

Ulpianus 36 ad ed.

Si magistratus ab initio tutorem idoneum dedit et satis non exegit, non sufficit: quod si satis exegit et idoneum exegit, quamvis postea facultatibus lapsi sint tutores vel fideiussores, nihil est, quod ei qui dedit imputetur: non enim debent magistratus futuros casus et fortunam pupillo praestare.

Dig. 27.8.1.12

Ulpianus 36 ad ed.

Sed et si satis non exegit, idoneus tamen tutor eo tempore fuit, quo tutelae agi potest, sufficit.

Dig. 27.8.1.13

Ulpianus 36 ad ed.

Probatio autem non pupillo incumbit, ut doceat fideiussores solvendo non fuisse cum acciperentur, sed magistratibus, ut doceant eos solvendo fuisse.

Dig. 27.8.1.14

Ulpianus 36 ad ed.

Privilegium in bonis magistratus pupillus non habet, sed cum ceteris creditoribus partem habiturus est.

Dig. 27.8.1.15

Ulpianus 36 ad ed.

Exigere autem cautionem magistratus sic oportet, ut pupilli servus aut ipse pupillus, si fari potest et in praesentiarum est, stipuletur a tutoribus, item fideiussoribus eorum rem salvam fore: aut, si nemo est qui stipuletur, servus publicus stipulari debet rem salvam fore pupillo, aut certe ipse magistratus.

Dig. 27.8.1.16

Ulpianus 36 ad ed.

Plane ubi servus publicus vel ipse magistratus stipulatur, dicendum est utilem actionem pupillo dandam.

Dig. 27.8.1.17

Ulpianus 36 ad ed.

Si filius familias fuit magistratus et caveri pupillo non curaverit aut non idonee cautum sit culpa eius, an et quatenus in patrem eius actio danda sit, quaeritur. et ait iulianus in patrem de peculio dandam, sive voluntate eius filius decurio factus sit sive non: nam et si voluntate patris magistratum administravit, attamen non oportere patrem ultra quam de peculio conveniri, quasi rem publicam salvam solam fore promittat, qui dat voluntatem, ut filius decurio creetur.

Dig. 27.8.2

Ulpianus 3 disp.

Proponebatur duos tutores a magistratibus municipalibus datos cautione non exacta, quorum alterum inopem decessisse, alterum in solidum conventum satis pupillo fecisse, et quaerebatur, an tutor iste adversus magistratum municipalem habere possit aliquam actionem, cum sciret a contutore suo satis non esse exactum. dicebam, cum a tutore satis pupillo factum sit, neque pupillum ad magistratus redire posse neque tutorem, cum numquam tutor adversus magistratus habeat actionem: senatus enim consultum pupillo subvenit: praesertim cum sit, quod tutori imputetur, quod satis a contutore non exegit vel suspectum non fecit, si scit, ut proponitur, magistratibus eum non cavisse.

Dig. 27.8.3

Iulianus 21 Dig.

Quod si tutor ab hac parte culpa vacet, non erit iniquum adversus magistratus actionem ei dari.

Dig. 27.8.4

Ulpianus 3 disp.

Non similiter tenentur heredes magistratuum, ut ipsi tenentur: nam nec heres tutoris neglegentiae nomine tenetur. nam magistratus quidem in omne periculum succedit, heres ipsius dolo proximae culpae succedaneus est.

Dig. 27.8.5

Iulianus 21 Dig.

Duo tutores partiti sunt inter se administrationem tutelae: alter sine herede decessit: quaesitum est, in magistratum, qui non curasset ut caveretur, an in alterum tutorem actio pupillo dari deberet. respondi aequius esse in alterum tutorem dari quam in magistratum: debuisse enim eum, cum sciret pupillo cautum non esse, universa negotia curare, et in ea parte, quam alteri tutori commisisset, similem esse ei, qui ad administrationem quorundam negotiorum pupilli non accessisset: nam etsi aliquam partem negotiorum pupilli administraverit, tenetur etiam ob rem, quam non gessit, cum gerere deberet.

Dig. 27.8.6

Ulpianus 1 ad ed.

Quod ad heredem magistratus pertinet, exstat divi pii rescriptum causa cognita debere dari actionem: nam magistratus si tanta fuit neglegentia, ut omnem cautionem omitteret, aequum est haberi eum loco fideiussoris, ut et heres eius teneatur: si vero cavit et tunc idonei fuerunt et postea desierunt, sicut et ipse magistratus probe recusaret hanc actionem, ita et heres multo iustius. novissime non alias ait in heredem actionem dandam, quam si evidenter magistratus cum minus idoneis fideiussoribus contrahunt.

Dig. 27.8.7

Celsus 11 Dig.

In magistratus qui tutorem dederunt rogo rescribas utrum pro virili portione actio danda sit, an optio sit eius qui pupillus fuit, cum quo potissimum agat. respondit, si dolo fecerunt magistratus, ut minus pupillo caveretur, in quem vult actio ei danda in solidum est: sin culpa dumtaxat eorum neque dolo malo id factum est, aequius esse existimo pro portione in quemque eorum actionem dari, dum pupillo salva res sit.

Dig. 27.8.8

Modestinus 6 resp.

Magistratus a curatoribus adulti cautionem exegerunt rem salvam fore: ex his alter sine herede decessit: quaero, an indemnitatem in solidum collega eius praestare debeat. modestinus respondit nihil proponi, cur non debeat.

Dig. 27.8.9

Modestinus 4 pand.

An in magistratus actione data cum usuris sors exigi debeat, an vero usurae peti non possint, quoniam constitutum est poenarum usuras peti non posse, quaesitum est. et rescriptum est a divis severo et antonino et usuras peti posse, quoniam eadem in magistratibus actio datur, quae competit in tutores.

Dig. 27.9.0. De rebus eorum, qui sub tutela vel cura sunt, sine decreto non alienandis vel supponendis.

Dig. 27.9.1pr.

Ulpianus 35 ad ed.

Imperatoris severi oratione prohibiti sunt tutores et curatores praedia rustica vel suburbana distrahere.

Dig. 27.9.1.1

Ulpianus 35 ad ed.

Quae oratio in senatu recitata est tertullo et clemente consulibus idibus iuniis et sunt verba eius huiusmodi:

Dig. 27.9.1.2

Ulpianus 35 ad ed.

" praeterea, patres conscripti, interdicam tutoribus et curatoribus, ne praedia rustica vel suburbana distrahant, nisi ut id fieret, parentes testamento vel codicilllis caverint. quod si forte aes alienum tantum erit, ut ex rebus ceteris non possit exsolvi, tunc praetor urbanus vir clarissimus adeatur, qui pro sua religione aestimet, quae possunt alienari obligarive debeant, manente pupillo actione, si postea potuerit probari obreptum esse praetori. si communis res erit et socius ad divisionem provocet, aut si creditor, qui pignori agrum a parente pupilli acceperit, ius exsequetur, nihil novandum censeo".

Dig. 27.9.1.3

Ulpianus 35 ad ed.

Si defunctus dum viveret res venales habuerit, testamento tamen non caverit, uti distraherentur, abstinendum erit venditione: non enim utique qui ipse voluerit vendere, idem etiam postea distrahenda putavit.

Dig. 27.9.1.4

Ulpianus 35 ad ed.

Si minor viginti quinque annis emit praedia, ut, quoad pretium solveret, essent pignori obligata venditori, non puto pignus valere: nam ubi dominium quaesitum est minori, coepit non posse obligari.

Dig. 27.9.2

Paulus l.S. ad or. severi.

Sed hic videtur illud movere, quod cum dominio pignus quaesitum est et ab initio obligatio inhaesit. quod si a fisco emerit, nec dubitatio est, quin ius pignoris salvum sit. si igitur talis species in privato venditore inciderit, imperiali beneficio opus est, ut ex rescripto pignus confirmetur.

Dig. 27.9.3pr.

Ulpianus 35 ad ed.

Sed si pecunia alterius pupilli alteri pupillo fundus sit comparatus isque pupillo vel minori traditus, an pignoris obligationem possit habere is, cuius pecunia fundus sit emptus et magis est, ut salvum sit ius pignoris secundum constitutionem imperatoris nostri et divi patris eius ei pupillo, cuius pecunia comparatus est fundus.

Dig. 27.9.3.1

Ulpianus 35 ad ed.

Pignori tamen capi iussu magistratus vel praesidis vel alterius potestatis et distrahi fundus pupillaris potest. sed et in possessionem mitti rerum pupillarum a praetore quis potest et ius pignoris contrahitur, sive legatorum servandorum causa sive damni infecti, ut procedat, iuberi etiam possideri poterit: hae enim obligationes sive alienationes locum habent, quia non ex tutoris vel curatoris voluntate id fit, sed ex magistratuum auctoritate.

Dig. 27.9.3.2

Ulpianus 35 ad ed.

Item quaeri potest, si fundus a tutore petitus sit pupillaris nec restituatur, an litis aestimatio oblata alienationem pariat, et magis est, ut pariat: haec enim alienatio non sponte tutorum fit.

Dig. 27.9.3.3

Ulpianus 35 ad ed.

Idemque erit dicendum et si fundus petitus sit, qui pupilli fuit, et contra pupillum pronuntiatum tutoresque restituerunt: nam et hic valebit alienatio propter rei iudicatae auctoritatem.

Dig. 27.9.3.4

Ulpianus 35 ad ed.

Si ius emfuteutikon vel embateutikon habeat pupillus, videamus, an distrahi hoc a tutoribus possit. et magis est non posse, quamvis ius praedii potius sit.

Dig. 27.9.3.5

Ulpianus 35 ad ed.

Nec usus fructus alienari potest, etsi solus fuit usus fructus pupilli. an ergo hic nec non utendo amittatur, si tutor causam praebuerit huius rei? et manifestum est restaurari debere. sed si proprietatem habeat pupillus, non potest usum fructum vel usum alienare, quamvis oratio nihil de usu fructu loquatur. simili modo dici potest nec servitutem imponi posse fundo pupilli vel adulescentis nec servitutem remitti, quod et in fundo dotali placuit.

Dig. 27.9.3.6

Ulpianus 35 ad ed.

Si lapidicinas vel quae alia metalla pupillus habuit stypteriae vel cuius alterius materiae, vel si cretifodinas argentifodinas vel quid aliud huic simile,

Dig. 27.9.4

Paulus l.S. ad or. severi.

Quod tamen privatis licet possidere:

Dig. 27.9.5pr.

Ulpianus 35 ad ed.

Magis puto ex sententia orationis impediri alienationem.

Dig. 27.9.5.1

Ulpianus 35 ad ed.

Sed et si salinas habeat pupillus, idem erit dicendum.

Dig. 27.9.5.2

Ulpianus 35 ad ed.

Si pupillus alienum fundum bona fide emptum possideat, dicendum puto ne hunc alienare tutores posse: ea enim, quae quasi pupillaris vero distractus est, venditio valet.

Dig. 27.9.5.3

Ulpianus 35 ad ed.

Si fundus pupillo pigneratus sit, an vendere tutores? hunc enim quasi debitoris, hoc est alienum vendunt. si tamen impetraverat pupillus vel pater eius, ut iure dominii possideant, consequens erit dicere non posse distrahi quasi praedium pupillare. idemque et si fuerit ex causa damni infecti iussus possidere.

Dig. 27.9.5.4

Ulpianus 35 ad ed.

Si fundus legatus vel per fideicommissum fuerit relictus seio a pupillo herede instituto, an tutores restituere hunc fundum possint sine auctoritate praetoris? et putem, si quidem rem suam legavit, cessare orationem, sin vero de re pupilli, dicendum erit locum esse orationi nec inconsulto praetore posse alienare.

Dig. 27.9.5.5

Ulpianus 35 ad ed.

Si pupillus stipulanti spoponderit, an solvere possit sine praetoris auctoritate? et magis est, ne possit: alioquin inventa erit alienandi ratio.

Dig. 27.9.5.6

Ulpianus 35 ad ed.

Sed si pater stipulanti fundum spoponderit successeritque pupillus in stipulatum, fortius dicetur sine praetoris auctoritate posse eum reddere. idemque et si iure hereditario alii successerit, qui erat obligatus.

Dig. 27.9.5.7

Ulpianus 35 ad ed.

Eadem ratione et si parens fundum vendidit vel quis alius, cui pupillus successerit, potest dici pupillum cetera venditionis inconsulto praetore posse perficere.

Dig. 27.9.5.8

Ulpianus 35 ad ed.

Fundum autem legatum repudiare pupillus sine praetoris auctoritate non potest: esse enim et hanc alienationem, cum res sit pupilli, nemo dubitat.

Dig. 27.9.5.9

Ulpianus 35 ad ed.

Non passim tutoribus sub optentu aeris alieni permitti debuit venditio: namque non esse viam eis distractionis tributam. et ideo praetori arbitrium huius rei senatus dedit, cuius officio in primis hoc convenit excutere, an aliunde possit pecunia ad extenuandum aes alienum expediri. quaerere ergo debet, an pecuniam pupillus habeat vel in numerato vel in nominibus, quae conveniri possunt, vel in fructibus conditis vel etiam in redituum spe atque obventionum. item requirat, num aliae res sint praeter praedia, quae distrahi possint, ex quarum pretio aeri alieno satisfieri possit. si igitur deprehenderit non posse aliunde exsolvi quam ex praediorum distractione, tunc permittet distrahi, si modo urgueat creditor aut usurarum modus parendum aeri alieno suadeat.

Dig. 27.9.5.10

Ulpianus 35 ad ed.

Idem praetor aestimare debebit, utrum vendere potius an obligare permittat nec non illud vigilanter observare, ne plus accipiatur sub obligatione praediorum faenoris, quam quod opus sit ad solvendum aes alienum: aut distrahendum arbitrabitur, ne propter modicum aes alienum magna possessio distrahatur, sed si sit alia possessio minor vel minus utilior pupillo, magis eam iubere distrahi quam maiorem et utiliorem.

Dig. 27.9.5.11

Ulpianus 35 ad ed.

In primis igitur quotiens desideratur ab eo, ut remittat distrahi, requirere debet eum, qui se instruat de fortunis pupilli, nec nimium tutoribus vel curatoribus credere, qui nonnumquam lucri sui gratia adseverare praetori solent necesse esse distrahi possessiones vel obligari. requirat ergo necessarios pupilli vel parentes vel libertos aliquos fideles vel quem alium, qui notitiam rerum pupillarium habet, aut, si nemo inveniatur aut suspecti sint qui inveniuntur, iubere debet edi rationes itemque synopsin bonorum pupillarium, advocatumque pupillo dare, qui instruere possit praetoris religionem, an adsentire venditioni vel obligationi debeat.

Dig. 27.9.5.12

Ulpianus 35 ad ed.

Illud quaeri potest, si praetor aditus permiserit distrahi possessionem provincialem, an valeat quod fecit. et putem valere: si modo tutela romae agebatur et hi tutores eam quoque administrationem subierant.

Dig. 27.9.5.13

Ulpianus 35 ad ed.

Ne tamen titulo tenus tutores aere alieno allegato pecunia abutantur quam mutuam acceperunt, oportebit praetorem curare, ut pecunia accepta creditoribus solvatur et de hoc decernere dareque viatorem, qui ei renuntiet pecuniam istam ad hoc conversam, propter quod desiderata est alienatio vel obligatio.

Dig. 27.9.5.14

Ulpianus 35 ad ed.

Si aes alienum non interveniat, tutores tamen allegent expedire haec praedia vendere et vel alia comparare vel certe istis carere, videndum est, an praetor eis debeat permittere. et magis est, ne possit: praetori enim non liberum arbitrium datum est distrahendi res pupillares, sed ita demum, si aes alienum immineat. proinde et si permiserit aere alieno non allegato, consequenter dicemus nullam esse venditionem nullumque decretum: non enim passim distrahi iubere praetori tributum est, sed ita demum, si urgueat aes alienum.

Dig. 27.9.5.15

Ulpianus 35 ad ed.

Manet actio pupillo, si postea poterit probari obreptum esse praetori. sed videndum est, utrum in rem an in personam dabimus ei actionem. et magis est, ut in rem detur, non tantum in personam adversus tutores sive curatores.

Dig. 27.9.5.16

Ulpianus 35 ad ed.

Communia praedia accipere debemus, si pro indiviso communia sint: ceterum si pro diviso communia sint, cessante oratione decreto locus erit.

Dig. 27.9.6

Ulpianus 2 de omn. trib.

Sed si forte alius proprietatem fundi habeat, alius usum fructum, magis est, ut cesset haec pars orationis, quae de divisione loquitur: nulla enim communio est.

Dig. 27.9.7pr.

Ulpianus 35 ad ed.

Si pupillorum sint communia praedia qui diversos tutores habent, videamus, an alienatio locum habere possit. et cum provocatio necessaria sit, puto alienationem impediri: neuter enim poterit provocare, sed ambo provocationem exspectare. item si eosdem tutores habeant, multo magis quis impeditam alienationem dicet.

Dig. 27.9.7.1

Ulpianus 35 ad ed.

Si pupillus dedit pignori ex permissu praetoris, nonnulla erit dubitatio, an alienatio possit impediri. sed dicendum est posse creditorem ius suum exsequi: tutius tamen fecerit, si prius praetorem adierit.

Dig. 27.9.7.2

Ulpianus 35 ad ed.

Si pater vel parens tutor sit alicui ex liberis, an praetor adeundus sit, si obligare velit ? et magis est ut debeat: pronior tamen esse debet praetor ad consentiendum patri.

Dig. 27.9.7.3

Ulpianus 35 ad ed.

Si praetor tutoribus permiserit vendere, illi obligaverint vel contra, an valeat quod actum est ? et mea fert opinio eum, qui aliud fecit, quam quod a praetore decretum est, nihil egisse.

Dig. 27.9.7.4

Ulpianus 35 ad ed.

Quid ergo si praetor ita decreverit " vendere obligareve permitto " , an possit liberum arbitrium habere, qui faciat? et magis est ut possit, dummodo sciamus praetorem non recte partibus suis functum: debuit enim ipse statuere et eligere, utrum magis obligare an vendere permittat.

Dig. 27.9.7.5

Ulpianus 35 ad ed.

Si obligavit rem tutor sine decreto, quamvis obligatio non valeat, est tamen exceptioni doli locus, sed tunc, cum tutor acceptam mutuam pecuniam ei solverit, qui sub pignore erat creditor.

Dig. 27.9.7.6

Ulpianus 35 ad ed.

Item videndum est, an et obligare ei rem possit: et dicendum est, si eandem sortem acceperit nec gravioribus usuris, valere obligationem, ut ius prioris creditoris ad sequentem transeat.

Dig. 27.9.8pr.

Ulpianus 2 de omn. trib.

Qui neque tutores sunt ipso iure neque curatores, sed pro tutore negotia gerunt vel pro curatore, eos non posse distrahere res pupillorum vel adulescentium nulla dubitatio est.

Dig. 27.9.8.1

Ulpianus 2 de omn. trib.

Sed si curator sit furiosi vel cuius alterius non adulescentis, videndum est, utrum iure veteri valebit venditio an hanc orationem admittemus. et puto, quia de pupillis princeps loquitur et coniuncti tutoribus curatores accipiunt, pertinere: et de ceteris puto ex sententia orationis idem esse dicendum.

Dig. 27.9.8.2

Ulpianus 2 de omn. trib.

An obligari communia possint, quaeritur, sed non puto sine decreto obliganda: nam quod excepit oratio, ad hoc tantum pertinet, ut perematur communio, non ut augeatur difficultas communionis.

Dig. 27.9.9

Ulpianus 5 opin.

Quamvis antecessor praesidis decrevisset ea praedia venumdari, quae tutor pupilli, subiecto nomine alterius emptoris, ipse sibi comparabat, tamen, si fraudem et dolum contra senatus consulti auctoritatem et fidem tutori commissam deprehendisset successor eius, aestimabit, quatenus tam callidum commentum etiam in exemplum coercere debeat.

Dig. 27.9.10

Ulpianus 6 opin.

Illicite post senatus consultum pupilli vel adulescentis praedio vendumdato, si eo nomine apud iudicem tutelae vel utilis actionis aestimatio facta est eaque soluta, vindicatio praedii ex aequitate inhibetur.

Dig. 27.9.11

Ulpianus 3 de off. procons.

Si praedia minoris viginti quinque annis distrahi desiderentur, causa cognita praeses provinciae debet id permittere. idem servari oportet et si furiosi vel prodigi vel cuiuscumque alterius praedia curatores velint distrahere.

Dig. 27.9.12

Marcianus l.S. ad form. hypoth.

Non fit contra senatus consultum, si cuius tutor creditori patris pupilli exsolvit, ut eius loco succedat.

Dig. 27.9.13pr.

Paulus l.S. ad or. severi.

Si fundus sit sterilis vel saxosus vel pestilens, videndum est, an alienare eum non possit. et imperator antoninus et divus pater eius in haec verba rescripserunt: " quod allegastis infructuosum esse fundum, quem vendere vultis, movere nos non potest, cum utique pro fructuum modo pretium inventurus sit".

Dig. 27.9.13.1

Paulus l.S. ad or. severi.

Quamquam autem neque distrahere neque obligare tutor pupillare praedium possit, attamen papinianus libro quinto responsorum ait tutorem pupilli sine decreto praetoris non iure distrahere: si tamen, inquit, errore lapsus vendiderit et pretium acceptum creditoribus paternis pueri solverit, quandoque domino praedium cum fructibus vindicanti doli non inutiliter opponitur, exceptio pretium ac medii temporis usuras, quae creditoribus debentur, non offerenti, si ex ceteris eius facultatibus aes alienum solvi non poterit. ego autem notavi: etsi solvi potuerit, si tamen illae res salvae erunt, ex quarum pretio aeri alieno satisfieri potuit, dicendum est adhuc doli exceptionem obstare, si lucrum captet pupillus ex damno alieno.

Dig. 27.9.14

Paulus 9 resp.

Paulus respondit, etsi testamentum patris postea irritum esse apparuit, tamen tutores pupilli sive curatores filii nihil contra orationem divorum principum fecisse videri, si secundum voluntatem defuncti testamento scriptam praedium rusticum pupillare vendiderunt.

Dig. 27.10.0. De curatoribus furioso et aliis extra minores dandis.

Dig. 27.10.1pr.

Ulpianus 1 ad sab.

Lege duodecim tabularum prodigo interdicitur bonorum suorum administratio, quod moribus quidem ab initio introductum est. sed solent hodie praetores vel praesides, si talem hominem invenerint, qui neque tempus neque finem expensarum habet, sed bona sua dilacerando et dissipando profudit, curatorem ei dare exemplo furiosi: et tamdiu erunt ambo in curatione, quamdiu vel furiosus sanitatem vel ille sanos mores receperit: quod si evenerit, ipso iure desinunt esse in potestate curatorum.

Dig. 27.10.1.1

Ulpianus 1 ad sab.

Curatio autem eius, cui bonis interdicitur, filio negabatur permittenda: sed extat divi pii rescriptum filio potius curationem permittendam in patre furioso, si tam probus sit.

Dig. 27.10.2

Paulus 1 de off. procons.

Sed et aliis dabit proconsul curatores, qui rebus suis superesse non possunt, vel dari iubebit, nec dubitabit filium quoque patri curatorem dari.

Dig. 27.10.3

Ulpianus 31 ad sab.

Dum deliberant heredes instituti adire, bonis a praetore curator datur.

Dig. 27.10.4

Ulpianus 38 ad sab.

Furiosae matris curatio ad filium pertinet: pietas enim parentibus, etsi inaequalis est eorum potestas, aequa debebitur.

Dig. 27.10.5

Gaius 9 ad ed. provinc.

Curator ex senatus consulto constituitur, cum clara persona, veluti senatoris vel uxoris eius, in ea causa sit, ut eius bona venire debeant: nam ut honestius ex bonis eius quantum potest creditoribus solveretur, curator constituitur distrahendorum bonorum gratia vel a praetore vel in provinciis a praeside.

Dig. 27.10.6

Ulpianus 1 de omn. trib.

Observare praetorem oportebit, ne cui temere citra causae cognitionem plenissimum curatorem det, quoniam plerique vel furorem vel dementiam fingunt, quo magis curatore accepto onera civilia detrectent.

Dig. 27.10.7pr.

Iulianus 21 Dig.

Consilio et opera curatoris tueri debet non solum patrimonium, sed et corpus ac salus furiosi.

Dig. 27.10.7.1

Iulianus 21 Dig.

Curator dementi datus decreto interposito, uti satisdaret, non cavit et tamen quasdam res de bonis eius legitimo modo alienavit. si heredes dementis easdem res vindicent, quas curator alienavit, et exceptio opponetur " si non curator vendiderit", replicatio dari debet " aut si satisdatione interposita secundum decretum vendiderit". quod si pretio accepto curator creditores furiosi dimisit, triplicatio doli tutos possessores praestabit.

Dig. 27.10.7.2

Iulianus 21 Dig.

Cum dementis curatorem, quia satis non dederat et res male administraret, proconsul removerit a bonis aliumque loco eius substituerit curatorem, et hic posterior, cum nec ipse satisdedisset, egerit cum remoto negotiorum gestorum, posteaque heredes dementis cum eodem negotiorum gestorum agant et is exceptione rei iudicatae inter se et curatorem utatur: heredibus replicatio danda erit: " aut si is qui egit satisdederat". sed an replicatio curatori profutura esset, iudex aestimabit: nam si curator sequens pecuniam, quam ex condemnatione consecutus fuerat, in rem furiosi vertisset, doli triplicatio obstabit.

Dig. 27.10.7.3

Iulianus 21 Dig.

Quaesitum est, an alteri ex curatoribus furiosi recte solvetur vel an unus rem furiosi alienare possit. respondi recte solvi. eum quoque, qui ab altero ex curatoribus fundum furiosi legitime mercaretur, usucapturum, quia solutio venditio traditio facti magis quam iuris sunt ideoque sufficit unius ex curatoribus persona, quia intellegitur alter consentire: denique si praesens sit et vetet solvi, vetet venire vel tradi, neque debitor liberabitur neque emptor usucapiet.

Dig. 27.10.8

Ulpianus 6 de off. procons.

Bonorum ventris nomine curatorem dari oportet eumque rem salvam fore viri boni arbitratu satisdare proconsul iubet: sed hoc, si non ex inquisitione detur: nam si ex inquisitione, cessat satisdatio.

Dig. 27.10.9

Nerva 1 membr.

Cuius bonis distrahendis curatores facere senatus permisit, eius bona creditoribus vendere non permisit, quamvis creditores post id beneficium bona vendere mallent: sicut enim integra re potestas ipsorum est utrum velint eligendi, ita cum alterum elegerint, altero abstinere debent. multoque magis id servari aequum est, si etiam factus est curator, per quem bona distraherentur, quamvis nondum explicato eo negotio decesserit. nam et tunc ex integro alius curator faciendus est neque heres prioris curatoris onerandus, cum accidere possit, ut negotio vel propter sexus vel propter aetatis infirmitatem vel propter dignitatem maiorem minoremve, quam in priore curatore spectata erat, habilis non sit, possint etiam plures heredes ei existere neque aut per omnes id negotium administrari expediat aut quicquam dici possit, cur unus aliquis ex his potissimum onerandus sit.

Dig. 27.10.10pr.

Ulpianus 16 ad ed.

Iulianus scribit eos, quibus per praetorem bonis interdictum est, nihil transferre posse ad aliquem, quia in bonis non habeant, cum eis deminutio sit interdicta.

Dig. 27.10.10.1

Ulpianus 16 ad ed.

Curator furiosi rem quidem suam quasi furiosi tradere poterit et dominium transferre: rem vero furiosi si quasi suam tradat, dicendum, ut non transferat dominium, quia non furiosi negotium gerens tradidit.

Dig. 27.10.11

Paulus 7 ad plaut.

Pignus a curatore furiosi datum valet, si utilitate furiosi exigente id fecit.

Dig. 27.10.12

Marcellus 1 Dig.

Ab adgnato vel alio curatore furiosi rem furiosi dedicari non posse constat: adgnato enim furiosi non usquequaque competit rerum eius alienatio, sed quatenus negotiorum exigit administratio.

Dig. 27.10.13

Gaius 3 ad ed. provinc.

Saepe ad alium e lege duodecim tabularum curatio furiosi aut prodigi pertinet, alii praetor administrationem dat, scilicet cum ille legitimus inhabilis ad eam rem videatur.

Dig. 27.10.14

Papinianus 5 resp.

Virum uxori mente captae curatorem dari non oportet.

Dig. 27.10.15pr.

Paulus 3 sent.

Et mulieri, quae luxuriose vivit, bonis interdici potest.

Dig. 27.10.15.1

Paulus 3 sent.

In bonis curatoris privilegium furiosi furiosaeve servatur: prodigus et omnes omnino, etiamsi in edicto non fit eorum mentio, in bonis curatoris decreto privilegium consequuntur.

Dig. 27.10.16pr.

Tryphonus 13 disp.

Si furioso puberi quamquam maiori annorum viginti quinque curatorem pater testamento dederit, eum praetor dare debet secutus patris voluntatem: manet enim ea datio curatoris apud praetorem, ut rescripto divi marci continetur.

Dig. 27.10.16.1

Tryphonus 13 disp.

His consequens est, ut et si prodigo curatorem dederit pater, voluntatem eius sequi debeat praetor eumque dare curatorem. sed utrum omnimodo, an ita, si futurum esset, ut, nisi pater aliquid testamento cavisset, praetor ei bonis interdicturus esset? et maxime si filios habeat iste prodigus?

Dig. 27.10.16.2

Tryphonus 13 disp.

Potuit tamen pater et alias providere nepotibus suis, si eos iussisset heredes esse et exheredasset filium eique quod sufficeret alimentorum nomine ab eis certum legasset addita causa necessitateque iudicii sui: aut si non habuit in potestate nepotes, quoniam emancipato iam filio nati fuissent, sub condicione eos heredes instituere, ut emanciparentur a patre prodigo.

Dig. 27.10.16.3

Tryphonus 13 disp.

Sed quid si nec ad hoc consensurus esset prodigus? sed per omnia iudicium testatoris sequendum est, ne, quem pater vero consilio prodigum credidit, eum magistratus propter aliquid forte suum vitium idoneum putaverit.

Dig. 27.10.17

Gaius 1 de manumiss.

Curator furiosi nullo modo libertatem praestare potest, quod ea res ex administratione non est: nam in tradendo ita res furiosi alienat, si id ad administrationem negotiorum pertineat: et ideo si donandi causa alienet, neque traditio quicquam valebit, nisi ex magna utilitate furiosi hoc cognitione iudicis faciat.

OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER DUODETRICESIMUS

Dig. 28.1.0. Qui testamenta facere possunt et quemadmodum tesamenta fiant.
Dig. 28.2.0. De liberis et postumis heredibus instituendis vel exheredandis.
Dig. 28.3.0. De iniusto rupto irrito facto testamento.
Dig. 28.4.0. De his quae in testamento delentur inducuntur vel inscribuntur.
Dig. 28.5.0. De heredibus instituendis.
Dig. 28.6.0. De vulgari et pupillari substitutione.
Dig. 28.7.0. De condicionibus institutionum.
Dig. 28.8.0. De iure deliberandi.

Dig. 28.1.0. Qui testamenta facere possunt et quemadmodum tesamenta fiant.

Dig. 28.1.1

Modestinus 2 pand.

Testamentum est voluntatis nostrae iusta sententia de eo, quod quis post mortem suam fieri velit.

Dig. 28.1.2

Labeo 1 post. a iav. epit.

In eo qui testatur eius temporis, quo testamentum facit, integritas mentis, non corporis sanitas exigenda est.

Dig. 28.1.3

Papinianus 14 quaest.

Testamenti factio non privati, sed publici iuris est.

Dig. 28.1.4

Gaius 2 inst.

Si quaeramus, an valeat testamentum, in primis animadvertere debemus, an is qui fecerit testamentum habuerit testamenti factionem, deinde, si habuerit, requiremus, an secundum regulas iuris civilis testatus sit.

Dig. 28.1.5

Ulpianus 6 ad sab.

A qua aetate testamentum vel masculi vel feminae facere possunt, videamus. verius est in masculis quidem quartum decimum annum spectandum, in feminis vero duodecimum completum. utrum autem excessisse debeat quis quartum decimum annum, ut testamentum facere possit, an sufficit complesse? propone aliquem kalendis ianuariis natum testamentum ipso natali suo fecisse quarto decimo anno: an valeat testamentum? dico valere. plus arbitror, etiamsi pridie kalendarum fecerit post sextam horam noctis, valere testamentum: iam enim complesse videtur annum quartum decimum, ut marciano videtur.

Dig. 28.1.6pr.

Gaius 17 ad ed. provinc.

Qui in potestate parentis est, testamenti faciendi ius non habet, adeo ut, quamvis pater ei permittat, nihilo magis tamen iure testari possit.

Dig. 28.1.6.1

Gaius 17 ad ed. provinc.

Surdus mutus testamentum facere non possunt: sed si quis post testamentum factum valetudine aut quolibet alio casu mutus aut surdus esse coeperit, ratum nihilo minus permanet testamentum.

Dig. 28.1.7

Macer 1 ad l. vices. hered.

Si mutus aut surdus, ut liceret sibi testamentum facere, a principe impetraverit, valet testamentum.

Dig. 28.1.8pr.

Gaius 17 ad ed. provinc.

Eius qui apud hostes est testamentum quod ibi fecit non valet, quamvis redierit.

Dig. 28.1.8.1

Gaius 17 ad ed. provinc.

Si cui aqua et igni interdictum sit, eius nec illud testamentum valet quod ante fecit nec id quod postea fecerit: bona quoque, quae tunc habuit cum damnaretur, publicabuntur aut, si non videantur lucrosa, creditoribus concedentur.

Dig. 28.1.8.2

Gaius 17 ad ed. provinc.

In insulam deportati in eadem causa sunt:

Dig. 28.1.8.3

Gaius 17 ad ed. provinc.

Sed relegati in insulam et quibus terra italica et sua provincia interdicitur testamenti faciendi ius retinent.

Dig. 28.1.8.4

Gaius 17 ad ed. provinc.

Hi vero, qui ad ferrum aut ad bestias aut in metallum damnantur, libertatem perdunt bonaque eorum publicantur: unde apparet amittere eos testamenti factionem.

Dig. 28.1.9

Ulpianus 45 ad ed.

Si quis post accusationem in custodia fuerit defunctus indemnatus, testamentum eius valebit.

Dig. 28.1.10

Paulus 3 sent.

Qui manus amisit testamentum facere potest, quamvis scribere non possit.

Dig. 28.1.11

Ulpianus 10 ad sab.

Obsides testari non possunt, nisi eis permittitur.

Dig. 28.1.12

Iulianus 42 Dig.

Lege cornelia testamenta eorum, qui in hostium potestate decesserint, perinde confirmantur, ac si hi qui ea fecissent in hostium potestatem non pervenissent, et hereditas ex his eodem modo ad unumquemque pertinet. quare servus heres scriptus ab eo, qui in hostium potestate decesserit, liber et heres erit seu velit seu nolit, licet minus proprie necessarius heres dicatur: nam et filius eius, qui in hostium potestate decessit, invitus hereditati obligatur, quamvis suus heres dici non possit, qui in potestate morientis non fuit.

Dig. 28.1.13pr.

Marcianus 4 inst.

Qui a latronibus capti sunt, cum liberi manent, possunt facere testamentum.

Dig. 28.1.13.1

Marcianus 4 inst.

Item qui apud externos legatione funguntur, possunt facere testamentum.

Dig. 28.1.13.2

Marcianus 4 inst.

Si quis in capitali crimine damnatus appellaverit et medio tempore pendente appellatione fecerit testamentum et ita decesserit, valet eius testamentum.

Dig. 28.1.14

Paulus 2 reg.

Qui in testamento domini manumissus est, si ignorat dominum decessisse aditamque eius esse hereditatem, testamentum facere non potest, licet iam pater familias et sui iuris est: nam qui incertus de statu suo est, certam legem testamento dicere non potest.

Dig. 28.1.15

Ulpianus 12 ad ed.

De statu suo dubitantes vel errantes testamentum facere non possunt, ut divus pius rescripsit.

Dig. 28.1.16pr.

Pomponius l.S. reg.

Filius familias et servus alienus et postumus et surdus testamenti factionem habere dicuntur: licet enim testamentum facere non possunt, attamen ex testamento vel sibi vel aliis adquirere possunt.

Dig. 28.1.16.1

Pomponius l.S. reg.

Marcellus notat: furiosus quoque testamenti factionem habet, licet testamentum facere non potest: ideo autem habet testamenti factionem, quia potest sibi adquirere legatum vel fideicommissum: nam etiam compotibus mentis personales actiones etiam ignorantibus adquiruntur.

Dig. 28.1.17

Paulus 3 sent.

In adversa corporis valetudine mente captus eo tempore testamentum facere non potest.

Dig. 28.1.18pr.

Ulpianus 1 ad sab.

Is cui lege bonis interdictum est testamentum facere non potest et, si fecerit, ipso iure non valet: quod tamen interdictione vetustius habuerit testamentum, hoc valebit. merito ergo nec testis ad testamentum adhiberi poterit, cum neque testamenti factionem habeat.

Dig. 28.1.18.1

Ulpianus 1 ad sab.

Si quis ob carmen famosum damnetur, senatus consulto expressum est, ut intestabilis sit: ergo nec testamentum facere poterit nec ad testamentum adhiberi.

Dig. 28.1.19

Modestinus 5 pand.

Si filius familias aut pupillus aut servus tabulas testamenti fecerit signaverit, secundum eas bonorum possessio dari non potest, licet filius familias sui iuris aut pupillus pubes aut servus liber factus decesserit, quia nullae sunt tabulae testamenti, quas is fecit, qui testamenti faciendi facultatem non habuerit.

Dig. 28.1.20pr.

Ulpianus 1 ad sab.

Qui testamento heres instituitur, in eodem testamento testis esse non potest. quod in legatario et in eo qui tutor scriptus est contra habetur: hi enim testes possunt adhiberi, si aliud eos nihil impediat, ut puta si impubes, si in potestate sit testatoris.

Dig. 28.1.20.1

Ulpianus 1 ad sab.

Potestatis autem verbum non solum ad liberos qui sunt in potestate referendum est, verum etiam ad eum quem redemit ab hostibus, quamvis placeat hunc servum non esse, sed vinculo quodam retineri, donec pretium solvat.

Dig. 28.1.20.2

Ulpianus 1 ad sab.

Per contrarium quaeri potest, an pater eius, qui de castrensi peculio potest testari, adhiberi ab eo ad testamentum testis possit. et Marcellus libro decimo digestorum scribit posse: et frater ergo poterit.

Dig. 28.1.20.3

Ulpianus 1 ad sab.

Quae autem in testamento diximus super prohibendis testimoniis eorum qui in potestate sunt, in omnibus testimoniis accipias, ubi aliquid negotii geritur, per quod adquiratur.

Dig. 28.1.20.4

Ulpianus 1 ad sab.

Ne furiosus quidem testis adhiberi potest, cum compos mentis non sit: sed si habet intermissionem, eo tempore adhiberi potest: testamentum quoque, quod ante furorem consummavit valebit et bonorum possessio ex eo testamento competit.

Dig. 28.1.20.5

Ulpianus 1 ad sab.

Eum qui lege repetundarum damnatus est ad testamentum adhiberi posse existimo, quoniam in iudicium testis esse vetatur.

Dig. 28.1.20.6

Ulpianus 1 ad sab.

Mulier testimonium dicere in testamento quidem non poterit, alias autem posse testem esse mulierem argumento est lex iulia de adulteriis, quae adulterii damnatam testem produci vel dicere testimonium vetat.

Dig. 28.1.20.7

Ulpianus 1 ad sab.

Servus quoque merito ad sollemnia adhiberi non potest, cum iuris civilis communionem non habeat in totum, ne praetoris quidem edicti.

Dig. 28.1.20.8

Ulpianus 1 ad sab.

Et veteres putaverunt eos, qui propter sollemnia testamenti adhibentur, durare debere, donec suprema contestatio peragatur.

Dig. 28.1.20.9

Ulpianus 1 ad sab.

Non tamen intellegentiam sermonis exigimus: hoc enim divus marcus didio iuliano in teste, qui latine non noverat, rescripsit: nam si vel sensu percipiat quis, cui rei adhibitus sit, sufficere.

Dig. 28.1.20.10

Ulpianus 1 ad sab.

Sed si detenti sint inviti ibi testes, putant non valere testamentum.

Dig. 28.1.21pr.

Ulpianus 2 ad sab.

Heredes palam ita, ut exaudiri possunt, nuncupandi sint: licebit ergo testanti vel nuncupare heredes vel scribere: sed si nuncupat, palam debet. quid est palam? non utique in publicum, sed ut exaudiri possit: exaudiri autem non ab omnibus, sed a testibus: et si plures fuerint testes adhibiti, sufficit sollemnem numerum exaudire.

Dig. 28.1.21.1

Ulpianus 2 ad sab.

Si quid post factum testamentum mutari placuit, omnia ex integro facienda sunt. quod vero quis obscurius in testamento vel nuncupat vel scribit, an post sollemnia explanare possit, quaeritur: ut puta stichum legaverat, cum plures haberet, nec declaravit de quo sentiret: titio legavit, cum multos titios amicos haberet: erraverat in nomine vel praenomine vel cognomine, cum in corpore non errasset: poteritne postea declarare, de quo senserit? et puto posse: nihil enim nunc dat, sed datum significat. sed et si notam postea adiecerit legato vel sua voce vel litteris vel summam vel nomen legatarii quod non scripserat vel nummorum qualitatem, an recte fecerit? et puto etiam qualitatem nummorum posse postea addi: nam etsi adiecta non fuisset, utique placeret coniectionem fieri eius quod reliquit vel ex vicinis scripturis vel ex consuetudine patris familias vel regionis.

Dig. 28.1.21.2

Ulpianus 2 ad sab.

In testamentis, in quibus testes rogati adesse debent, ut testamentum fiat, alterius rei causa forte rogatos ad testandum non esse idoneos placet. quod sic accipiendum est, ut, licet ad aliam rem sint rogati vel collecti, si tamen ante testimonium certiorentur ad testamentum se adhibitos, posse eos testimonium suum recte perhibere.

Dig. 28.1.21.3

Ulpianus 2 ad sab.

Uno contextu actus testari oportet. est autem uno contextu nullum actum alienum testamento intermiscere: quod si aliquid pertinens ad testamentum faciat, testamentum non vitiatur.

Dig. 28.1.22pr.

Ulpianus 39 ad ed.

Ad testium numerum simul adhiberi possumus ut ego et pater et plures, qui fuimus in eiusdem potestate.

Dig. 28.1.22.1

Ulpianus 39 ad ed.

Condicionem testium tunc inspicere debemus, cum signarent, non mortis tempore: si igitur cum signarent, tales fuerint, ut adhiberi possint, nihil nocet, si quid postea eis contigerit.

Dig. 28.1.22.2

Ulpianus 39 ad ed.

Si ab ipso testatore anulum accepero et signavero, testamentum valet, quasi alieno signaverim.

Dig. 28.1.22.3

Ulpianus 39 ad ed.

Si signa turbata sint ab ipso testatore, non videtur signatum.

Dig. 28.1.22.4

Ulpianus 39 ad ed.

Si quis ex testibus nomen suum non adscripserit, verumtamen signaverit, pro eo est atque si adhibitus non esset: et si, ut multi faciunt, adscripserit se, non tamen signaverit, adhuc idem dicemus.

Dig. 28.1.22.5

Ulpianus 39 ad ed.

Signum autem utrum anulo tantum impressum adhibemus, an vero et si non anulo, verum alio quodam impresso? varie enim homines signant. et magis est, ut tantum anulo quis possit signare, dum tamen habeat xaraktyra.

Dig. 28.1.22.6

Ulpianus 39 ad ed.

Posse et nocte signari testamentum nulla dubitatio est.

Dig. 28.1.22.7

Ulpianus 39 ad ed.

Signatas tabulas accipi oportet et si linteo, quo tabulae involutae sunt, signa impressa fuerint.

Dig. 28.1.23

Ulpianus 4 disp.

Si testamentum, quod resignaverit testator, iterum signatum fuerit septem testium signis, non erit imperfectum, sed utroque iure valebit tam civili quam praetorio.

Dig. 28.1.24

Florus 10 inst.

Unum testamentum pluribus exemplis consignare quis potest idque interdum necessarium est, forte si navigaturus et secum ferre et relinquere iudiciorum suorum testationem velit.

Dig. 28.1.25

Iavolenus 5 post. lab.

Si is, qui testamentum faceret, heredibus primis nuncupatis, priusquam secundos exprimeret heredes, obmutuisset, magis coepisse eum testamentum facere quam fecisse varus digestorum libro primo servium respondisse scripsit: itaque primos heredes ex eo testamento non futuros. labeo tum hoc verum esse existimat, si constaret voluisse plures eum, qui testamentum fecisset, heredes pronuntiare: ego nec servium puto aliud sensisse.

Dig. 28.1.26

Gaius 22 ad ed. provinc.

Cum lege quis intestabilis iubetur esse, eo pertinet, ne eius testimonium recipiatur et eo amplius, ut quidam putant, neve ipsi dicatur testimonium.

Dig. 28.1.27

Celsus 15 Dig.

Domitius labeo celso suo salutem. quaero, an testimonium numero habendus sit is, qui, cum rogatus est ad testamentum scribendum, idem quoque cum tabulas scripsisset, signaverit. iuventius celsus labeoni suo salutem. non intellego quid sit, de quo me consuleris, aut valide stulta est consultatio tua: plus enim quam ridiculum est dubitare, an aliquis iure testis adhibitus sit, quoniam idem et tabulas testamenti scripserit.

Dig. 28.1.28

Modestinus 9 reg.

Servus licet alienus iussu testatoris ^ testoris^ testamentum scribere non prohibetur.

Dig. 28.1.29pr.

Paulus 14 resp.

Ex ea scriptura, quae ad testamentum faciendum parabatur, si nullo iure testamentum perfectum esset, nec ea, quae fideicommissorum verba habent peti posse.

Dig. 28.1.29.1

Paulus 14 resp.

Ex his verbis, quae scriptura pater familias addidit: tautyn tyn diavykyn boulomai einai kurian epi pasys ecousias, videri eum voluisse omnimodo valere ea quae reliquit, etiamsi intestatus decessisset.

Dig. 28.1.30

Paulus 3 sent.

Singulos testes, qui in testamento adhibentur, proprio chirographo adnotare convenit, quis et cuius testamentum signaverit.

Dig. 28.1.31

Paulus 5 sent.

Eius bona, qui se imperatorem facturum heredem esse iactaverat, a fisco occupari non possunt.

Dig. 28.2.0. De liberis et postumis heredibus instituendis vel exheredandis.

Dig. 28.2.1

Ulpianus 1 ad sab.

Quid sit nominatim exheredari, videamus. nomen et praenomen et cognomen eius dicendum est an sufficit vel unum ex his? et constat sufficere.

Dig. 28.2.2

Ulpianus 6 reg.

Nominatim exheredatus filius et ita videtur " filius meus exheres esto", si nec nomen eius expressum sit, si modo unicus sit: nam si plures sunt filii, benigna interpretatione potius a plerisque respondetur nullum exheredatum esse.

Dig. 28.2.3pr.

Ulpianus 1 ad sab.

Et si pepercerit filium dicere, ex seia autem natum dixit, recte exheredat: et si cum convicio dixerit " non nominandus" vel " non filius meus", " latro", " gladiator", magis est, ut recte exheredatus sit, et si ex adultero natum dixerit.

Dig. 28.2.3.1

Ulpianus 1 ad sab.

Pure autem filium exheredari iulianus putat, qua sententia utimur.

Dig. 28.2.3.2

Ulpianus 1 ad sab.

Filius inter medias quoque heredum institutiones recte exheredatur et erit a toto gradu summotus, nisi forte ab unius persona eum testator exheredaverit: nam si hoc fecit, vitiosa erit exheredatio. quemadmodum si ita eum exheredaverit " quisquis heres mihi erit, filius exheres esto": nam, ut iulianus scribit, huiusmodi exheredatio vitiosa est, quoniam post aditam hereditatem voluit eum summotum, quod est impossibile.

Dig. 28.2.3.3

Ulpianus 1 ad sab.

Ante heredis institutionem exheredatus ab omnibus gradibus summotus est.

Dig. 28.2.3.4

Ulpianus 1 ad sab.

Inter duos autem gradus exheredatus ab utroque remotus est secundum scaevolae sententiam, quam puto veram.

Dig. 28.2.3.5

Ulpianus 1 ad sab.

In eo, qui miscuit duos gradus, exheredationem valere mauricianus recte putat, veluti: " primus heres esto ex semisse. si primus heres non erit, secundus ex semisse heres esto. tertius ex alio semisse heres esto. filius exheres esto. si tertius heres non erit, quartus heres esto": nam ab utroque gradu summotus est.

Dig. 28.2.3.6

Ulpianus 1 ad sab.

Si ita testatus sit pater familias, ut a primo quidem gradu filium praeteriret, a secundo solo exheredaret, sabinus et cassius et iulianus putant perempto primo gradu testamentum ab eo gradu exordium capere, unde filius exheredatus est: quae sententia comprobata est.

Dig. 28.2.4

Ulpianus 3 ad sab.

Placet omnem masculum posse postumum heredem scribere, sive iam maritus sit sive nondum uxorem duxerit: nam et maritus repudiare uxorem potest et qui non duxit uxorem, postea maritus effici. nam et cum maritus postumum heredem scribit, non utique is solus postumus scriptus videtur, qui ex ea quam habet uxorem ei natus est, vel is qui tunc in utero est, verum is quoque, qui ex quacumque uxore nascatur:

Dig. 28.2.5

Iavolenus 1 ex cass.

Ideoque qui postumum heredem instituit si post testamentum factum mutavit matrimonium, is institutus videtur, qui ex posteriore matrimonio natus est.

Dig. 28.2.6pr.

Ulpianus 3 ad sab.

Sed est quaesitum, an is, qui generare facile non possit, postumum heredem facere possit, et scribit cassius et iavolenus posse: nam et uxorem ducere et adoptare potest: spadonem quoque posse postumum heredem scribere et labeo et cassius scribunt: quoniam nec aetas nec sterilitas ei rei impedimento est.

Dig. 28.2.6.1

Ulpianus 3 ad sab.

Sed si castratus sit, iulianus proculi opinionem secutus non putat postumum heredem posse instituere, quo iure utimur.

Dig. 28.2.6.2

Ulpianus 3 ad sab.

Hermaphroditus plane, si in eo virilia praevalebunt, postumum heredem instituere poterit.

Dig. 28.2.7

Paulus 1 ad sab.

Si filius qui in potestate est praeteritus sit et vivo patre decedat, testamentum non valet nec superius rumpetur, et eo iure utimur.

Dig. 28.2.8

Pomponius 1 ad sab.

Si primo herede instituto filium exheredavero, a secundo autem substituto non exheredavero et, dum pendet, an prior aditurus sit, filius decesserit, secundum sententiam qua utimur non erit secundus heres, quasi ab initio inutiliter institutus, cum ab eo filius exheredatus non sit. quod si in postumo filio idem acciderit, ut natus vivo patre a quo exheredatus sit moriatur, eadem dicenda erunt de substituto, quoniam cum est natus filius, loco eius est, qui superstes est.

Dig. 28.2.9pr.

Paulus 1 ad sab.

Si quis postumos, quos per aetatem aut valetudinem habere forte non potest, heredes instituit, superius testamentum rumpitur, quod natura magis in homine generandi et consuetudo spectanda est quam temporale vitium aut valetudo, propter quam abducatur homo a generandi facultate.

Dig. 28.2.9.1

Paulus 1 ad sab.

Sed si ex ea, quae alii nupta sit, postumum quis heredem instituerit, ipso iure non valet, quod turpis sit institutio.

Dig. 28.2.9.2

Paulus 1 ad sab.

Si filium exheredavero nepotemque ex eo praeteriero et alium heredem instituero et supervixerit filius post mortem meam, licet ante aditam hereditatem decesserit, non tamen nepotem rupturum testamentum iulianus et pomponius et Marcellus aiunt. diversumque est, si in hostium potestate filius sit et decesserit in eodem statu: rumpit enim his casibus nepos testamentum, quod moriente avo fili ius pependerit, non abscisum ut superiore casu fuerit. sed et si heres institutus omiserit hereditatem, erit legitimus heres, quoniam haec verba " si intestato moritur" ad id tempus referuntur, quo testamentum destituitur, non quo moritur.

Dig. 28.2.9.3

Paulus 1 ad sab.

Sed si ex ea, quam nefas sit ducere, postumum heredem instituero, non putat rumpi testamentum pomponius.

Dig. 28.2.9.4

Paulus 1 ad sab.

Sed si per adoptionem sororem factam habeam, potero postumum ex ea heredem instituere, quia adoptione soluta possum eam ducere uxorem.

Dig. 28.2.10

Pomponius 1 ad sab.

Commodissime is qui nondum natus est ita heres instituitur: " sive vivo me sive mortuo natus fuerit, heres esto", aut etiam pure neutrius temporis habita mentione. si alteruter casus omissus fuerit, eo casu qui omissus sit natus rumpit testamentum, quia hic filius nec sub condicione quidem scriptus heres intellegitur, qui in hunc casum nascitur, qui non est testamento adprehensus.

Dig. 28.2.11

Paulus 2 ad sab.

In suis heredibus evidentius apparet continuationem dominii eo rem perducere, ut nulla videatur hereditas fuisse, quasi olim hi domini essent, qui etiam vivo patre quodammodo domini existimantur. unde etiam filius familias appellatur sicut pater familias, sola nota hac adiecta, per quam distinguitur genitor ab eo qui genitus sit. itaque post mortem patris non hereditatem percipere videntur, sed magis liberam bonorum administrationem consequuntur. hac ex causa licet non sint heredes instituti, domini sunt: nec obstat, quod licet eos exheredare, quod et occidere licebat.

Dig. 28.2.12pr.

Ulpianus 9 ad sab.

Quod dicitur filium natum rumpere testamentum, natum accipe et si exsecto ventre editus sit: nam et hic rumpit testamentum, scilicet si nascatur in potestate.

Dig. 28.2.12.1

Ulpianus 9 ad sab.

Quid tamen, si non integrum animal editum sit, cum spiritu tamen, an adhuc testamentum rumpat? et tamen rumpit.

Dig. 28.2.13pr.

Iulianus 29 Dig.

Si ita scriptum sit: " si filius mihi natus fuerit, ex besse heres esto: ex reliqua parte uxor mea heres esto. si vero filia mihi nata fuerit, ex triente heres esto: ex reliqua parte uxor heres esto", et filius et filia nati essent, dicendum est assem distribuendum esse in septem partes, ut ex his filius quattuor, uxor duas, filia unam partem habeat: ita enim secundum voluntatem testantis filius altero tanto amplius habebit quam uxor, item uxor altero tanto amplius quam filia: licet enim suptili iuris regulae conveniebat ruptum fieri testamentum, attamen cum ex utroque nato testator voluerit uxorem aliquid habere, ideo ad huiusmodi sententiam humanitate suggerente decursum est, quod etiam iuventio celso apertissime placuit.

Dig. 28.2.13.1

Iulianus 29 Dig.

Regula est iuris civilis, qua constitutum est hereditatem adimi non posse: propter quam liber et heres esse iussus, quamvis dominus ademerit eodem testamento libertatem, nihilo minus et libertatem et hereditatem habebit.

Dig. 28.2.13.2

Iulianus 29 Dig.

Testamentum, quod hoc modo scribitur: " titius post mortem filii mei heres esto: filius exheres esto" nullius momenti est, quia filius post mortem suam exheredatus est: quare et contra tabulas paternorum libertorum huiusmodi filius bonorum possessionem accipere poterit.

Dig. 28.2.14pr.

Africanus 4 quaest.

Si postumus a primo gradu exheredatus, a secundo praeteritus sit, quamvis eo tempore nascatur, quo ad heredes primo gradu scriptos pertineat hereditas, secundum tamen gradum vitiari placet ad hoc, ut praetermittentibus institutis ipse heres existat. immo et si defuncto eo heredes instituti omiserint hereditatem, non posse substitutos adire. itaque et si a primo gradu exheredatus, a secundo praeteritus, a tertio exheredatus sit et viventibus primis et deliberantibus decedat, quaeri solet omittentibus primis aditionem utrum ad eos, qui tertio gradu scripti sint, an potius ad legitimos heredes pertineat hereditas. quo et ipso casu rectius existimari putavit ad legitimos eam pertinere: nam et cum duobus heredibus institutis et in singulorum locum facta substitutione a primis exheredatus postumus, a secundis praeteritus fuerit, si alter ex institutis omiserit, quamvis postumus excludatur, non tamen magis substitutum admitti.

Dig. 28.2.14.1

Africanus 4 quaest.

Quod vulgo dicitur eum gradum, a quo filius praeteritus sit, non valere, non usquequaque verum esse ait: nam si primo gradu heres institutus sit filius, non debere eum a substitutis exheredari: ideoque si filio et titio heredibus institutis titio maevius substitutus sit, omittente titio hereditatem maevium eam adire posse, quamvis filius secundo gradu exheredatus non sit.

Dig. 28.2.14.2

Africanus 4 quaest.

Si quis ita scripserit: " ille, quem scio ex me natum non esse, exheres esto", hanc exheredationem ita nullius momenti esse ait, si probetur ex eo natus: non enim videri quasi filium exheredatum esse. cum elogium pater, cum filium exheredaret, proposuisset et adiecisset propter eam causam exheredare, probaturque patrem circa causam exheredationis errasse.

Dig. 28.2.15

Ulpianus 1 ad sab.

Idem est et si ita dixerit: " ille illius filius exheres esto", patrem ei adulterum per errorem adsignans.

Dig. 28.2.16

Africanus 4 quaest.

Si filius heres institutus sit omisso postumo filioque substitutus nepos ex eo sit, si interim moriatur filius, postumo non nato nepotem tam patri quam avo suum heredem futurum. quod si nemo filio substitutus sit et solus ipse institutus sit, tunc quia eo tempore, quo is moriatur, certum esse incipit neminem ex eo testamento heredem fore, ipse filius intestato patri heres existet: sicut evenire solet, cum sub ea condicione quae in ipsius potestate erit, filius heres institutus, prius quam ei pareret, moriatur.

Dig. 28.2.17

Florus 10 inst.

Filii etiam hoc modo exheredantur " filius exheres sit": " filius exheres erit".

Dig. 28.2.18

Ulpianus 57 ad ed.

Multi non notae causa exheredant filios nec ut eis obsint, sed ut eis consulant, ut puta impuberibus, eisque fideicommissam hereditatem dant.

Dig. 28.2.19

Paulus 1 ad vitell.

Cum quidam filiam ex asse heredem scripsisset filioque, quem in potestate habebat, decem legasset, adiecit " et in cetera parte exheres mihi erit", et quaereretur, an recte exheredatus videretur, scaevola respondit non videri, et in disputando adiciebat ideo non valere, quoniam nec fundi exheres esse iussus recte exheredaretur, aliamque causam esse institutionis, quae benigne acciperetur: exheredationes autem non essent adiuvandae.

Dig. 28.2.20

Modestinus 2 pand.

Sub condicione filius heres institutus si pendente condicione adrogandum se dedit, necessarius heres non erit.

Dig. 28.2.21

Pomponius 2 ad q. muc.

Si filium nominatim exheredavero et eum postea heredem instituero, heres erit.

Dig. 28.2.22

Clementius 17 ad l. iul. et pap.

Cum postumus sub condicione instituitur, si prius quam nascatur condicio exstiterit, non rumpitur testamentum postumi adgnatione.

Dig. 28.2.23pr.

Papinianus 12 quaest.

Filio, quem pater post emancipationem a se factam iterum adrogavit, exheredationem antea scriptam nocere dixi: nam in omni fere iure sic observari convenit, ut veri patris adoptivus filius numquam intellegatur, ne imagine naturae veritas adumbretur, videlicet quod non translatus, sed redditus videretur: nec multum puto referre, quod ad propositum attinet, quod loco nepotis filium exheredatum pater adrogavit.

Dig. 28.2.23.1

Papinianus 12 quaest.

Si titius heres institutus loco nepotis adoptetur, defuncto postea filio qui pater videbatur, nepotis successione non rumpitur testamentum ab eo, qui heres invenitur.

Dig. 28.2.24

Paulus 9 quaest.

Postuma sub condicione heres instituta si pendente condicione vivo patre nascatur, rumpit testamentum.

Dig. 28.2.25pr.

Paulus 12 resp.

Titius testamento heredem instituit et filium habens sic exheredationem posuit: " ceteri omnes filii filiaeque meae exheredes sunto". paulus respondit filium recte exheredatum videri. postea consultus, an videatur exheredatus, quem pater putavit decessisse, respondit filios et filias nominatim exheredatos proponi: de errore autem patris, qui intercessisse proponitur, apud iudicem agi oportere.

Dig. 28.2.25.1

Paulus 12 resp.

Lucius titius cum suprema sua ordinaret in civitate et haberet neptem ex filia praegnatem rure agentem, scripsit id quod in utero haberet ex parte heredem: quaero, cum ipsa die, qua titius ordinaret testamentum in civitate hora diei sexta, eodem die albescente caelo rure sit enixa maevia masculum, an institutio heredis valeat, cum, quo tempore scriberetur testamentum, iam editus esset partus. paulus respondit verba quidem testamenti ad eum pronepotem directa videri, qui post testamentum factum nasceretur: sed si, ut proponitur, eadem die qua testamentum factum est neptis testatoris antequam testamentum scriberetur enixa esset, licet ignorante testatore, tamen institutionem iure factum videri recte responderi.

Dig. 28.2.26

Paulus 3 sent.

Filius familias si militet, ut paganus nominatim a patre aut heres scribi aut exheredari debet, iam sublato edicto divi augusti, quo cautum fuerat, ne pater filium militem exheredet.

Dig. 28.2.27

Paulus 3 ad ner.

Postumum ex qualibet vidua natum sibi filium heredem instituere potest.

Dig. 28.2.28pr.

Tryphonus 20 disp.

Filius a patre, cuius in potestate est, sub condicione, quae non est in ipsius potestate, heres institutus et in defectum condicionis exheredatus decessit pendente etiam tunc condicione tam institutionis quam exheredationis. dixi heredem eum ab intestato mortuum esse, quia dum vivit, neque ex testamento heres neque exheredatus fuit. herede autem scripto ex parte filio coheres post mortem filii institui potest.

Dig. 28.2.28.1

Tryphonus 20 disp.

Filius familias miles de castrensi peculio fecit testamentum habens filium in eiusdem potestate. cum militare desisset, patre eodemque avo defuncto quaesitum est, an rumpetur eius testamentum. non quidem adoptavit nec hodie ei natus est filius nec priore subducto de potestate suo herede ulterior successit in proximum locum: sed tamen in potestate sua habere coepit, quem non habebat simulque pater familias factus est et filius sub eius reccidit potestate: rumpetur ergo testamentum. sed si heres sit institutus vel exheredatus iste eius filius, non rumpitur, quia nullo circa eum novo facto, sed ordine quodam naturali nactus est potestatem.

Dig. 28.2.28.2

Tryphonus 20 disp.

Si quis ex certa uxore natum scribit heredem, in periculum rumpendi testamentum deducit ex alia susceptis liberis.

Dig. 28.2.28.3

Tryphonus 20 disp.

Si quis eo tempore, quo nondum eius uxor esse posset, testator natum ex ea scripsit heredem, an postea contracto licito matrimonio natus heres ex testamento esse possit, quaeritur: veluti si scribas hodie heredem, qui tibi ex titia natus erit, quando titia ancilla vel minor annis viginti quinque ea, cuius pater tuus tutelam administravit aut tutor tu ipse fuisti, postea titia uxor iusta tibi fuerit vel libertatem adepta aut tempore annorum viginti quinque et utilis anni et rationum allegatione, an natus heres esse possit? nemo certo dubitabit ex titia, quae tunc propter tenorem aetatis uxor duci non potuit, quando testamentum fiebat, natum postea ea uxore ducta heredem esse posse. et generaliter nato post testamentum heredi scripto aditus est ad hereditatem, in qualicumque statu testamenti faciendi tempore fuit quae postea testatori civiliter nupta est.

Dig. 28.2.28.4

Tryphonus 20 disp.

Quid autem, si filium post testamentum natum ex besse, filiam autem post testamentum natam ex triente scripsit heredem nec ullum coheredem dedit nec substituit invicem alium? unus natus solus ex testamento fit heres.

Dig. 28.2.29pr.

Scaevola 6 quaest.

Gallus sic posse institui postumos nepotes induxit: " si filius meus vivo me morietur, tunc si quis mihi ex eo nepos sive quae neptis post mortem meam in decem mensibus proximis, quibus filius meus moreretur, natus nata erit, heredes sunto".

Dig. 28.2.29.1

Scaevola 6 quaest.

Quidam recte admittendum credunt, etiamsi non exprimat de morte filii, sed simpliciter instituat, ut eo casu valeat, qui ex verbis concipi possit.

Dig. 28.2.29.2

Scaevola 6 quaest.

Idem credendum est gallum existimasse et de pronepote, ut dicat testator: " si me vivo nepos decedat, tunc qui ex eo pronepos" et cetera.

Dig. 28.2.29.3

Scaevola 6 quaest.

Sed et si vivo filio iam mortuo pronepote cuius uxor praegnas esset, testamentum faceret, potest dicere: " si me vivo filius decedat, tunc qui pronepos".

Dig. 28.2.29.4

Scaevola 6 quaest.

Num si et filius et nepos vivat, concipere " utrisque mortuis vivo se, tunc qui pronepos nasceretur?" quod similiter admittendum est, ita sane, si prius nepos, deinde filius decederet, ne successione testamentum rumperetur.

Dig. 28.2.29.5

Scaevola 6 quaest.

Et quid si tantum in mortis filii casum conciperet? quid enim si aquae et ignis interdictionem pateretur? quid si nepos, ex quo pronepos institueretur, ut ostendimus, emancipatus esset? hi enim casus et omnes, ex quibus suus heres post mortem scilicet avi nasceretur, non pertinent ad legem velleam ^ vellaeam^: sed ex sententia legis velleae ^ vellaeae^ et haec omnia admittenda sunt, ut ad similitudinem mortis ceteri casus admittendi sint.

Dig. 28.2.29.6

Scaevola 6 quaest.

Quid si qui filium apud hostes habebat testaretur? quare non induxere, ut, si antea quam filius ab hostibus rediret quamvis post mortem patris decederet, tunc deinde nepos vel etiam adhuc illis vivis post mortem scilicet avi nasceretur, non rumperet? nam hic casus ad legem velleam ^ vellaeam^ non pertinet. melius ergo est, ut in eiusmodi utilitate praesertim post legem velleam ^ vellaeam^, quae et multos casus rumpendi abstulit, interpretatio admittatur, ut instituens nepotem, qui sibi post mortem suus nasceretur, recte instituisse videatur, quibuscumque casibus nepos post mortem natus suus esset rumperetque praeteritus: atque etiam si generaliter, " quidquid sibi liberorum natum erit post mortem" aut " quicumque natus fuerit" sit institutus, si suus nasceretur.

Dig. 28.2.29.7

Scaevola 6 quaest.

Si eius, qui filium habeat et nepotem ex eo instituat, nurus praegnas ab hostibus capta sit ibique vivo pariat, mox ille post mortem patris atque avi redeat, utrum hic casus ad legem velleam ^ vellaeam^ respiciat an ad ius antiquum aptandus sit, possitque vel ex iure antiquo vel ex vellea ^ vellaea^ institutus non rumpere? quod quaerendum est, si iam mortuo filio pronepotem instituat redeatque mortuo. sed cum testamentum ab eo non rumpitur, nihil refert, utrum ex iure antiquo an ex lege vellea ^ vellaea^ excludatur.

Dig. 28.2.29.8

Scaevola 6 quaest.

Forsitan addubitet quis, an istis casibus si nepos post testamentum nascatur vivo patre suo, deinde ex eo concipiatur, isque vivo patre deinde avo nascatur, an non potuerit heres institui, quia pater ipsius non recte institutus esset. quod minime est expavescendum: hic enim suus heres nascitur et post mortem nascitur.

Dig. 28.2.29.9

Scaevola 6 quaest.

Ergo et si pronepos admittetur, qui natus erit ex nepote postea vivo filio, atque si ex eo natus esset, adoptatur.

Dig. 28.2.29.10

Scaevola 6 quaest.

In omnibus his speciebus illud servandum est, ut filius dumtaxat, qui est in potestate, ex aliqua parte sit heres institutus: nam frustra exheredabitur post mortem suam: quod non esse necessario in eo filio, qui apud hostes est, si ibi decedat et in nepote certe et pronepote, quorum si liberi heredes instituantur, institutionem numquam exigemus, quia possunt praeteriri.

Dig. 28.2.29.11

Scaevola 6 quaest.

Nunc de lege vellea ^ vellaea^ videamus. voluit vivis nobis natos similiter non rumpere testamentum.

Dig. 28.2.29.12

Scaevola 6 quaest.

Et videtur primum caput eos spectare, qui, cum nascerentur, sui heredes futuri essent. et rogo, si filium habeas et nepotem nondum natum tantum ex eo heredem instituas, filius decedat, mox vivo te nepos nascatur? ex verbis dicendum est non rumpi testamentum, ut non solum illud primo capite notaverit, si nepos, qui eo tempore instituatur, quo filius non sit, verum et si vivo patre nascatur: quid enim necesse est tempus testamenti faciendi respici, cum satis sit observari id tempus quo nascitur? nam etsi ita verba sunt: " qui testamentum faciet, is omnis virilis sexus, qui ei suus heres futurus erit" et cetera.

Dig. 28.2.29.13

Scaevola 6 quaest.

Etiam si vovente parente vivo nascantur, sequenti parte succedentes in locum liberorum non vult rumpere testamentum: et ita interpretandum est, ut, si et filium et nepotem et pronepotem habeas, mortuis utrisque pronepos institutus succedens in sui heredis locum non rumpat. et bene verba se habent " si quis ex suis heredibus suus heres esse desierit" ad omnes casus pertinentia, quos supplendos in galli aquili ^ aquilii^ sententia diximus: nec solum, si nepos vivo patre decedat, nec succedens pronepos avo mortuo rumpat, sed et si supervixit patri ac decedat, dummodo heres institutus sit aut exheredatus.

Dig. 28.2.29.14

Scaevola 6 quaest.

Videndum, num hac posteriore parte " si quis ex suis heredibus suus heres esse desierit, liberi eius" et cetera " in locum suorum sui heredes succedunt", possit interpretatione induci, ut, si filium apud hostes habens nepotem ex eo heredem instituas, non tantum si vivo te filius decedat, sed etiam post mortem, antequam ab hostibus reversus fuerit, succedendo non rumpet: nihil enim addidit, quo significaret tempus: nisi quod, licet audenter, possis dicere vivo patre hunc suum heredem esse desisse, licet post mortem decedat, quia nec redit nec potest redire.

Dig. 28.2.29.15

Scaevola 6 quaest.

Ille casus in difficili est, si filium habeas et nepotem nondum natum instituas isque nascatur vivo patre suo ac mox pater decedat: non enim suus heres est tempore quo nascatur nec posteriori alii succedendo prohiberi videtur rumpere quam qui iam natus erit. denique et superiore capite ut liceat institui nondum natos, qui cum nascentur sui erunt, permitti, posteriore capite non permittit institui, sed vetat rumpi neve ob eam rem minus ratum esset, quod succedit. porro procedere debet, ut utiliter sit institutus: quod nullo iure potuit qui nondum natus erat. iuliano tamen videretur duobus quasi capitibus legis commixtis in hoc quoque inducere legem, ne rumpantur testamenta.

Dig. 28.2.29.16

Scaevola 6 quaest.

Quaeremus tamen, cum recepta est iuliani sententia, an, si nascatur nepos vivo patre suo, deinde emancipetur, sponte adire possit hereditatem. quod magis probandum est: nam emancipatione suus heres fieri non potuit.

Dig. 28.2.30

Gaius 17 ad ed. provinc.

Inter cetera, quae ad ordinanda testamenta necessario desiderantur, principale ius est de liberis heredibus instituendis vel exheredandis, ne praeteritis istis rumpatur testamentum: namque filio qui in potestate est praeterito inutile est testamentum.

Dig. 28.2.31

Paulus 2 ad sab.

Dum apud hostes est filius, pater iure fecit testamentum et recte eum praeterit, cum, si in potestate esset filius, nihil valiturum esset testamentum.

Dig. 28.2.32

Marcianus 2 reg.

Si filio emancipato exheredato is qui in potestate est praeteritus sit, ipse quidem emancipatus si contra tabulas petat, nihil agit, ab intestato autem et suus et emancipatus venient.

Dig. 28.3.0. De iniusto rupto irrito facto testamento.

Dig. 28.3.1

Papinianus 1 def.

Testamentum aut non iure factum dicitur, ubi sollemnia iuris defuerunt: aut nullius esse momenti, cum filius qui fuit in patris potestate praeteritus est: aut rumpitur alio testamento, ex quo heres existere poterit, vel adgnatione sui heredis: aut in irritum constituitur non adita hereditate.

Dig. 28.3.2

Ulpianus 2 ad sab.

Tunc autem prius testamentum rumpitur, cum posterius rite perfectum est, nisi forte posterius vel iure militari sit factum vel in eo scriptus est qui ab intestato venire potest: tunc enim et posteriore non perfecto superius rumpitur.

Dig. 28.3.3pr.

Ulpianus 3 ad sab.

Postumi per virilem sexum descendentes ad similitudinem filiorum nominatim exheredandi sunt, ne testamentum adgnascendo rumpant.

Dig. 28.3.3.1

Ulpianus 3 ad sab.

Postumos autem dicimus eos dumtaxat, qui post mortem parentis nascuntur, sed et hi, qui post testamentum factum in vita nascuntur, ita demum per legem velleam ^ vellaeam^ rumpere testamentum prohibentur, si nominatim sint exheredati.

Dig. 28.3.3.2

Ulpianus 3 ad sab.

Unde etiam ante heredis institutionem vel inter medias heredum institutiones vel inter gradus exheredari possunt: nam divus marcus decrevit idem in postumo quod in filio servandum, nec ratio diversitatis reddi potest.

Dig. 28.3.3.3

Ulpianus 3 ad sab.

Ex his apparet aliam causam esse filiorum superstitum, aliam posteriorum: illi iniustum faciunt, hi rumpunt, illi semper, hi, si nascantur nec inveniant se exheredatos.

Dig. 28.3.3.4

Ulpianus 3 ad sab.

Sed et si sit ante hoc aliud testamentum, a quo postumus exheredatus sit, placet, sive post mortem testatoris nascatur sive vivo testatore, utrumque ruptum esse et superius per inferius et inferius per postumum.

Dig. 28.3.3.5

Ulpianus 3 ad sab.

Nominatim autem exheredatus postumus videtur, sive ita dixerit: " quicumque mihi nasceretur", sive ita: " ex seia", sive ita: " venter exheres esto". sed et si dixerit: " postumus exheres esto", natus vel post mortem vel vivo testatore non rumpet.

Dig. 28.3.3.6

Ulpianus 3 ad sab.

Licet autem postumus praeteritus adgnascendo rumpat, tamen interdum evenit, ut pars testamenti rumpatur: ut puta si proponas a primo gradu postumum exheredatum, a secundo praeteritum: nam hic primus gradus valet, secundus ruptus est.

Dig. 28.3.4

Ulpianus 4 disp.

Denique et deliberantibus primo gradu scriptis heredibus qui secundo gradu scripti sunt heredes optinere hereditatem non possunt: gradu enim rupto et infirmato amplius hereditas inde optineri non potest.

Dig. 28.3.5

Ulpianus 3 ad sab.

Nam et si sub condicione sit heres institutus quis, a quo postumus non est exheredatus, tamen pendente condicione rumpitur gradus, ut et iulianus scripsit: sed et si sit ei substitutus quis, etiam deficiente condicione primi gradus non admittetur substitutus, a quo scilicet postumus exheredatus non est. puto igitur existente quidem condicione primi gradus postumo potius locum fore: post defectum autem condicionis natus postumus gradum non rumpit, quia nullus est. rumpendo autem testamentum sibi locum facere postumus solet, quamvis filius sequentem gradum, a quo exheredatus est, patiatur valere. sed si a primo gradu praeteritus, a secundo exheredatus sit, si eo tempore nascatur postumus, quo aliquis ex institutis vixit, totum testamentum ruptum est: nam tollendo primum gradum, sibi locum faciet.

Dig. 28.3.6pr.

Ulpianus 10 ad sab.

Si quis filio exheredato nuru praegnate relicta decesserit et extraneum sub condicione instituerit et pendente condicione post mortem patris vel deliberante herede instituto de adeunda hereditate exheredatus filius decesserit et nepos fuerit natus, an rumpat testamentum? et dicemus testamentum non rumpi, cum nec exheredari huiusmodi nepos deberet ab avo, quem pater praecedebat. plane si forte institutus omiserit hereditatem, hunc avo suum futurum heredem ab intestato non dubitatur. utrumque propriis rationibus: nam adgnascendo quidem is rumpit quem nemo praecedebat mortis tempore: ab intestato vero is succedit cui ante eum alii non est delata hereditas, non fuisse autem filio delatam hereditatem apparet, cum deliberante instituto decesserit. sed haec ita, si mortis avi tempore in utero nepos fuit. ceterum si postea conceptus est, Marcellus scribit neque ut suum neque ut nepotem aut cognatum ad hereditatem vel ad bonorum possessionem posse admitti.

Dig. 28.3.6.1

Ulpianus 10 ad sab.

Sed si pater eius, qui mortis avi tempore in utero fuit, apud hostes erat, nepos iste patre in eadem causa decedente post mortem avi succedendo testamentum rumpet, quia supra scripta persona ei non obstat: nec enim creditur in rebus humanis fuisse, cum in ea causa decedat, quamquam captivus reversus patris sui iniustum faceret testamentum in eo praeteritus.

Dig. 28.3.6.2

Ulpianus 10 ad sab.

Sive autem in civitate nepos fuit conceptus sive apud hostes, quoniam datur et partui postliminium, succedendo testamentum rumpit.

Dig. 28.3.6.3

Ulpianus 10 ad sab.

Succedendo itaque sui non rumpunt, sive fuerint instituti vel exheredati ab eo gradu ad quem hereditas defertur, scilicet si gradus ille valeat.

Dig. 28.3.6.4

Ulpianus 10 ad sab.

Quocumque autem modo parentes praecedentes in potestate esse desierint, succedentes liberi, si fuerint instituti vel exheredati, non rumpent testamentum, sive per captivitatem sive per mortem vel poenam.

Dig. 28.3.6.5

Ulpianus 10 ad sab.

Irritum fit testamentum, quotiens ipsi testatori aliquid contigit, puta si civitatem amittat per subitam servitutem, ab hostibus verbi gratia captus, vel si maior annis viginti venum se dari passus sit ad actum gerendum pretiumve participandum.

Dig. 28.3.6.6

Ulpianus 10 ad sab.

Sed et si quis fuerit capite damnatus vel ad bestias vel ad gladium vel alia poena quae vitam adimit, testamentum eius irritum fiet, et non tunc cum consumptus est, sed cum sententiam passus est: nam poenae servus efficitur: nisi forte miles fuit ex militari delicto damnatus, nam huic permitti solet testari, ut divus hadrianus rescripsit, et credo iure militari testabitur. qua ratione igitur damnato ei testari permittitur, numquid et, si quod ante habuit factum testamentum, si ei permissum sit testari, valeat? an vero poena irritum factum reficiendum est? et si militari iure ei testandum sit, dubitari non oportet, quin, si voluit id valere, fecisse id credatur.

Dig. 28.3.6.7

Ulpianus 10 ad sab.

Eius qui deportatur non statim irritum fiet testamentum, sed cum princeps factum comprobaverit: tunc enim et capite minuitur. sed et si de decurione puniendo vel filio nepoteve praeses scribendum principi interlocutus est, non puto statim servum poenae factum, licet in carcere soleant diligentioris custodiae causa recipi. nec huius igitur testamentum irritum fiet, priusquam princeps de eo supplicium sumendum rescripserit: proinde si ante decesserit, utique testamentum eius valebit, nisi mortem sibi conscivit. nam eorum, qui mori magis quam damnari maluerint ob conscientiam criminis, testamenta irrita constitutiones faciunt, licet in civitate decedant: quod si quis taedio vitae vel valetudinis adversae impatientia vel iactationis, ut quidam philosophi, in ea causa sunt, ut testamenta eorum valeant. quam distinctionem in militis quoque testamento divus hadrianus dedit epistula ad pomponium falconem, ut, si quidem ob conscientiam delicti militaris mori maluit, irritum sit eius testamentum: quod si taedio vel dolore, valere testamentum aut, si intestato decessit, cognatis aut, si non sint, legioni ista sint vindicanda.

Dig. 28.3.6.8

Ulpianus 10 ad sab.

Hi autem omnes, quorum testamenta irrita damnatione fieri diximus, si provocaverint, capite non minuuntur atque ideo neque testamenta quae antea fecerunt irrita fient et tunc testari poterunt: hoc enim saepissime est constitutum nec videbuntur quasi de statu suo dubitantes non habere testamenti factionem: sunt enim certi status nec ipsi de se interim incerti.

Dig. 28.3.6.9

Ulpianus 10 ad sab.

Quid tamen si appellationem eius praeses non recepit, sed imperatori scribendo poenam remoratus est? puto hunc quoque suum statum interim retinere nec testamentum irritum fieri: nam, ut est oratione divi marci expressum, tametsi provocantis vel eius pro quo provocatur appellatio non fuerit recepta, poena tamen sustinenda est, quoad princeps rescripserit ad litteras praesidis et libellum rei cum litteris missum, nisi forte latro manifestus vel seditio praerupta factioque cruenta vel alia iusta causa, quam mox praeses litteris excusabit, moram non recipiant, non poenae festinatione, sed praeveniendi periculi causa: tunc enim punire permittitur, deinde scribere.

Dig. 28.3.6.10

Ulpianus 10 ad sab.

Quid si quis fuerit damnatus illicite poena non sumpta, an testamentum eius irritum fiat, videamus: ut puta decurio ad bestias an capite minuatur testamentumque eius irritum fiat? et non puto cum sententia eum non tenuerit. ergo et si quis eum, qui non erat iurisdictionis suae, damnaverit, testamentum eius non erit irritum, quemadmodum est constitutum.

Dig. 28.3.6.11

Ulpianus 10 ad sab.

Sed ne eorum quidem testamenta rata sunt, sed irrita fient, quorum memoria post mortem damnata est, ut puta ex causa maiestatis, vel ex alia tali causa.

Dig. 28.3.6.12

Ulpianus 10 ad sab.

Quatenus tamen diximus ab hostibus capti testamentum irritum fieri, adiciendum est postliminio reversi vires suas recipere iure postliminii aut, si ibi decedat, lege cornelia confirmari. ergo et si quis damnatus capite in integrum indulgentia principis sit restitutus, testamentum eius convalescet.

Dig. 28.3.6.13

Ulpianus 10 ad sab.

Filii familias veterani sui iuris morte patris facti testamentum irritum non fieri constat: nam quantum ad testandum de castrensi peculio pro patre familias habendus est, et ideo nec emancipatione irritum fieri militis vel veterani testamentum verum est.

Dig. 28.3.7

Ulpianus 10 ad sab.

Si miles iure civili testamentum fecerit et primo gradu heredem eum scripserit quem iure militari poterat, secundo eum quem communi iure potest, et post annum missionis decesserit, primus gradus irritus fiet et a secundo incipiet testamentum.

Dig. 28.3.8pr.

Ulpianus 11 ad sab.

Verum est adoptione vel adrogatione filii filiaeve testamentum rumpi, quoniam sui heredis adgnatione solet rumpi.

Dig. 28.3.8.1

Ulpianus 11 ad sab.

Filia cum emancipatur vel nepos, quia una mancipatione exeunt de potestate, testamentum non rumpunt.

Dig. 28.3.9

Paulus 2 ad sab.

Si pater ab hostibus capiatur filio manente in civitate, reverso eo non rumpitur testamentum:

Dig. 28.3.10

Paulus 1 ad vitell.

Sed nec filius postliminio rediens rumpit patris testamentum, ut sabinus existimavit.

Dig. 28.3.11

Ulpianus 46 ad ed.

Si binae tabulae proferantur diversis temporibus factae, unae prius, aliae ^ alia^ postea, utraeque tamen septem testium signis signatae, et apertae posteriores vacuae inventae sint, id est nihil scriptum habentes omnino, superius testamentum non est ruptum, quia sequens nullum est.

Dig. 28.3.12pr.

Ulpianus 4 disp.

Postumus praeteritus vivo testatore natus decessit: licet iuris scrupulositate nimiaque suptilitate testamentum ruptum videatur, attamen, si signatum fuerit testamentum, bonorum possessionem secundum tabulas accipere heres scriptus potest remque optinebit, ut et divus hadrianus et imperator noster rescripserunt, idcircoque legatarii et fideicommissarii habebunt ea, quae sibi relicta sint, securi. idem et circa iniustum et irritum testamentum erit dicendum, si bonorum possessio data fuerit ei, qui rem ab intestato auferre possit.

Dig. 28.3.12.1

Ulpianus 4 disp.

Si paganus, qui habebat iam factum testamentum, aliud fecisset et in eo comprehendisset fidei heredis committere, ut priores tabulae valerent, omnimodo prius testamentum ruptum est: quo rupto potest quaeri, an vice codicillorum id valere deberet. et cum haec verba sint fideicommissi, et sine dubio universa, quae illic scripta sunt, in causa fideicommissi erunt, non solum legata et fideicommissa, sed et libertates et heredis institutio.

Dig. 28.3.13

Gaius 2 inst.

Postumorum loco sunt et hi, qui in sui heredis loco succedendo quasi adgnascendo fiunt parentibus sui heredes. ut ecce si filium et ex eo nepotem neptemve in potestate habeam, quia filius gradu praecedit, is solus iura sui heredis habet, quamvis nepos quoque et neptis ex eo in eadem potestate sint: sed si filius meus me vivo morietur aut qualibet ratione exeat de potestate mea, incipit nepos neptisve in eius loco succedere et eo modo iura suorum heredum quasi adgnatione nanciscuntur. ne ergo eo modo rumpat mihi testamentum, sicut ipsum filium vel heredem instituere vel exheredare nominatim debeo, ne non iure faciam testamentum, ita et nepotem neptemve ex eo necesse est mihi vel heredem instituere vel exheredare, ne forte me vivo filio mortuo succedendo in locum eius nepos neptisve quasi adgnatione rumpat testamentum: idque lege iunia vellea provisum est.

Dig. 28.3.14

Paulus l.S. de adsign. libert.

Si ita facta sit exheredatio: " si filius natus natave sit, exheres esto", utrisque natis non rumpitur testamentum.

Dig. 28.3.15

Iavolenus 4 epist.

Qui uxorem praegnatem habebat, in hostium potestatem pervenit: quaero, filio nato quo tempore testamentum in civitate factum rumpatur? et si filius ante moriatur quam pater, an scripti heredes hereditatem habituri sint? respondi: non puto dubium esse, quin per legem corneliam, quae de confirmandis eorum testamentis, qui in hostium potestate decessissent, lata est, nato filio continuo eius testamentum, qui in hostium potestate sit, rumpatur: sequitur ergo, ut ex eo testamento hereditas ad neminem perveniat.

Dig. 28.3.16

Pomponius 2 ad q. muc.

Cum in secundo testamento heredem eum qui vivit instituimus sive pure sive sub condicione (si tamen condicio existere potuit, licet non exstiterit), superius testamentum erit ruptum. multum autem interest, qualis condicio posita fuerit: nam aut in praeteritum concepta ponitur aut in praesens aut in futurum: in praeteritum concepta ponitur veluti " si titius consul fuit": quae condicio si vera est, id est si titius consul fuit, ita est institutus heres, ut superius testamentum rumpatur ^ rumpatar^: tum enim ex hoc heres esset. si vero titius consul non fuit, superius testamentum non est ruptum. quod si ad praesens tempus condicio adscripta est herede instituto, veluti " si titius consul est", eundem exitum habet, ut, si sit, possit heres esse et superius testamentum rumpatur, si non sit, nec possit heres esse nec superius testamentum rumpatur. in futurum autem collatae condiciones si possibiles sunt, existere potuerunt, licet non exstiterint, efficiunt, ut superius testamentum rumpatur, etiamsi non extiterint: si vero impossibiles sunt, veluti " titius si digito caelum tetigerit, heres esto", placet perinde esse, quasi condicio adscripta non sit, quae est impossibilis.

Dig. 28.3.17

Papinianus 5 resp.

Filio praeterito qui fuit in patris potestate neque libertates competunt neque legata praestantur, si praeteritus fratribus partem hereditatis avocavit: quod si bonis se patris abstinuit, licet suptilitas iuris refragari videtur, attamen voluntas testatoris ex bono et aequo tuebitur.

Dig. 28.3.18

Scaevola 5 quaest.

Si qui heres institutus est a testatore adrogetur, potest dici satis ei factum, quia et antequam adoptetur, institutio in extraneo locum habebat.

Dig. 28.3.19pr.

Scaevola 6 quaest.

Si ego et titius instituti simus et a nobis postumus exheredatus sit, a substitutis nostris non sit exheredatus, titio defuncto ne ego quidem adire potero: iam enim propter instituti personam, a quo postumus exheredatus est, in cuius locum substitutus vocatur, a quo postumus exheredatus non est, ruptum est testamentum.

Dig. 28.3.19.1

Scaevola 6 quaest.

Sed si ego et titius invicem substituti simus, quamvis in partem substitutionis exheredatus non sit, mortuo vel repudiante titio me posse adire puto et ex asse heredem esse.

Dig. 28.3.19.2

Scaevola 6 quaest.

In prima tamen specie et si vivat titius, neque ego sine illo neque ipse sine me adire poterit, quia incertum est, an adhuc altero omittente rumpatur testamentum: itaque simul adire possumus.

Dig. 28.3.20

Scaevola 13 Dig.

Lucius titius integra mente et valetudine testamentum fecit uti oportet, postea cum in valetudinem adversam incidisset, mente captus tabulas easdem incidit: quaero, an heredes his tabulis instituti adire possint hereditatem. respondit secundum ea quae proponerentur non ideo minus adiri posse.

Dig. 28.4.0. De his quae in testamento delentur inducuntur vel inscribuntur.

Dig. 28.4.1pr.

Ulpianus 15 ad sab.

Quae in testamento legi possunt, ea inconsulta deleta et inducta nihilo minus valent, consulto non valent: id vero quod non iussu domini scriptum inductum deletumve est, pro nihilo est. " legi" autem sic accipiendum non intellegi, sed oculis perspici quae sunt scripta: ceterum si extrinsecus intelleguntur, non videbuntur legi posse. sufficit autem, si legibilia sint inconsulto deleta sive ab ipso sive ab alio, sed nolentibus. " inducta" accipiendum est et si perducta sint.

Dig. 28.4.1.1

Ulpianus 15 ad sab.

Quod igitur incaute factum est, pro non facto est, si legi potuit: et ideo, etsi novissime, ut solet, testamento fuerit adscriptum: " lituras inductiones superductiones ipse feci", non videbitur referri ad ea quae inconsulto contigerunt. proinde et si inconsulto superscripsit induxisse se, manebunt et si ademit, non erunt adempta.

Dig. 28.4.1.2

Ulpianus 15 ad sab.

Sed si legi non possunt quae inconsulto delata sunt, dicendum est non deberi, sed hoc ita demum, si ante consummationem testamenti factum est.

Dig. 28.4.1.3

Ulpianus 15 ad sab.

Sed consulto quidem deleta exceptione petentes repelluntur, inconsulto vero non repelluntur, sive legi possunt sive non possunt, quoniam, si totum testamentum non exstet, constat valere omnia quae in eo scripta sunt. et si quidem illud concidit testator, denegabuntur actiones, si vero alius invito testatore, non denegabuntur.

Dig. 28.4.1.4

Ulpianus 15 ad sab.

Et hereditatis portio adempta vel tota hereditas, si forte sit substitutus, iure facta videbitur, non quasi adempta, quoniam hereditas semel data adimi facile non potest, sed quasi nec data.

Dig. 28.4.1.5

Ulpianus 15 ad sab.

Si quis codicillos in testamento confirmavit et codicillis aliquid adscripsit, mox delevit ita ut appareat, an debeatur? et pomponius scribit codicillos deletos non valere.

Dig. 28.4.2

Ulpianus 4 disp.

Cancellaverat quis testamentum vel induxerat et si propter unum heredem facere dixerat: id postea testamentum signatum est. quaerebatur de viribus testamenti deque portione eius, propter quem se cancellasse dixerat. dicebam, si quidem unius ex heredibus nomen induxerit, sine dubio ceteram partem testamenti valere et ipsi soli denegari actiones: sed legata ab eo nominatim relicta debebuntur, si voluntas ea fuit testantis, ut tantum heredis institutio improbetur. sed si instituti nomen induxit et substituti reliquit, institutus emolumentum hereditatis non habebit. sed si omnia nomina induxerit, ut proponitur, adscripserit autem idcirco se id fecisse, quia unum heredem offensum habuit, multum interesse arbitror, utrum illum tantum fraudare voluit hereditate an vero causa illius totum testamentum infirmare, ut licet unus inductionis causam praebuerit, verum omnibus offuerit. et si quidem soli ei ademptam voluit portionem, ceteris nihil nocebit inductio, non magis quam si volens unum heredem inducere invitus et alium induxerit. quod si putavit totum testamentum delendum ob unius malum meritum, omnibus denegantur actiones: sed an legatariis denegari actio debeat, quaestio est. in ambiguo tamen interpretandum erit et legata deberi et coheredum institutionem non esse infirmandam.

Dig. 28.4.3

Marcellus 29 Dig.

Proxime in cognitione principis cum quidam heredum nomina induxisset et bona eius ut caduca a fisco vindicarentur, diu de legatis dubitatum est et maxime de his legatis, quae adscripta erant his, quorum institutio fuerat inducta. plerique etiam legatarios excludendos existimabant. quod sane sequendum aiebam, si omnem scripturam testamenti cancellasset: nonullos opinari id iure ipso peremi quod inductum sit, cetera omnia valitura. quid ergo? non et illud interdum credi potest eum, qui heredum nomina induxerat, satis se consecuturum putasse, ut intestati exitum faceret? sed in re dubia benigniorem interpretationem sequi non minus iustius est quam tutius. sententia imperatoris antonini augusti pudente et pollione consulibus. " cum valerius nepos mutata voluntate et inciderit testamentum suum et heredum nomina induxerit, hereditas eius secundum divi patris mei constitutionem ad eos qui scripti fuerint pertinere non videtur". et advocatis fisci dixit: " vos habetis iudices vestros". vibius zeno dixit: " rogo, domine imperator, audias me patienter: de legatis quid statues?" antoninus caesar dixit: " videtur tibi voluisse testamentum valere, qui nomina heredum induxit?" cornelius priscianus advocatus leonis dixit: " nomina heredum tantum induxit". calpurnius longinus advocatus fisci dixit: " non potest ullum testamentum valere, quod heredem non habet". priscianus dixit: " manumisit quosdam et legata dedit". antoninus caesar remotis omnibus cum deliberasset et admitti rursus eodem iussisset, dixit: " causa praesens admittere videtur humaniorem interpretationem, ut ea dumtaxat existimemus nepotem irrita esse voluisse, quae induxit". nomen servi, quem liberum esse iusserat, induxit. antoninus rescripsit liberum eum nihilo minus fore: quod videlicet favore constituit libertatis.

Dig. 28.4.4

Papinianus 6 resp.

Pluribus tabulis eodem exemplo scriptis unius testamenti voluntatem eodem tempore dominus sollemniter complevit. si quasdam tabulas in publico depositas abstulit atque delevit, quae iure gesta sunt, praesertim cum ex ceteris tabulis quas non abstulit res gesta declaretur, non constituentur irrita. paulus notat: sed si, ut intestatus moreretur, incidit tabulas et hoc adprobaverint hi qui ab intestato venire desiderant, scriptis avocabitur hereditas.

Dig. 28.5.0. De heredibus instituendis.

Dig. 28.5.1pr.

Ulpianus 1 ad sab.

Qui testatur ab heredis institutione plerumque debet initium facere testamenti. licet etiam ab exheredatione, quam nominatim facit: nam divus traianus rescripsit posse nominatim etiam ante heredis institutionem filium exheredare.

Dig. 28.5.1.1

Ulpianus 1 ad sab.

Institutum autem heredem eum quoque dicimus, qui scriptus non est, sed solummodo nuncupatus.

Dig. 28.5.1.2

Ulpianus 1 ad sab.

Mutus et surdus recte heres institui potest.

Dig. 28.5.1.3

Ulpianus 1 ad sab.

Qui neque legaturus quid est neque quemquam exheredaturus, quinque verbis potest facere testamentum, ut dicat: " lucius titius mihi heres esto": haec autem scriptura pertinet ad eum qui non per scripturam testatur. qui poterit etiam tribus verbis testari, ut dicat: " lucius heres esto": nam et " mihi" et " titius" abundat.

Dig. 28.5.1.4

Ulpianus 1 ad sab.

Si ex fundo fuisset aliquis solus institutus, valet institutio detracta fundi mentione.

Dig. 28.5.1.5

Ulpianus 1 ad sab.

Si autem sic scribat: " lucius heres", licet non adiecerit " esto", credimus plus nuncupatum, minus scriptum: et si ita: " lucius esto", tantundem dicimus: ergo et si ita: " lucius" solummodo. Marcellus non insuptiliter non putat hodie hoc procedere. divus autem pius, cum quidam portiones inter heredes distribuisset ita: " ille ex parte tota, ille ex tota" nec adiecisset " heres esto", rescripsit valere institutionem: quod et iulianus scripsit.

Dig. 28.5.1.6

Ulpianus 1 ad sab.

Item divus pius rescripsit " illa uxor mea esto" institutionem valere, licet deesset " heres".

Dig. 28.5.1.7

Ulpianus 1 ad sab.

Idem iulianus " illum heredem esse", non putavit valere, quoniam deest aliquid: sed et ipsa valebit subaudito " iubeo".

Dig. 28.5.2pr.

Ulpianus 2 ad sab.

Circa eos, qui ita heredes instituti sint: " ex partibus quas adscripsero", non putat Marcellus eos heredes nullis adscriptis partibus, quemadmodum si ita essent heredes instituti: " si eis partes adscripsero". sed magis est, ut sic utraque institutio accipiatur, si voluntas defuncti non refragatur: " ex quibus partibus adscripsero, si minus, ex aequis", quasi duplici facta institutione: quam sententiam celsus libro sexto decimo digestorum probat. aliter atque probat in illa institutione: " ex qua parte me titius heredem scripsit, seius heres esto": tunc enim si non est a titio scriptus, nec seius ab eo, nec immerito: hic enim creditur inesse condicio. sed Marcellus haec similia putat.

Dig. 28.5.2.1

Ulpianus 2 ad sab.

Potest autem interesse, utrum ita quis scribat: " ex his partibus quas adscripsi" an " adscripsero", ut superiori modo dicas nullis adscriptis partibus nullam esse institutionem: quomodo in illo Marcellus: " ex his partibus, ex quibus testamento matris scripti fuissent, heredes sunto", si intestata mater decesserit, hos non esse institutos.

Dig. 28.5.3pr.

Ulpianus 3 ad sab.

Servus alienus vel totus vel pro parte sine libertate heres institui potest.

Dig. 28.5.3.1

Ulpianus 3 ad sab.

Si servum meum pure heredem scripsero, sub condicione liberum, differtur institutio in id tempus, quo libertas data est.

Dig. 28.5.3.2

Ulpianus 3 ad sab.

Si quis ita scripserit: " si titius heres erit, seius heres esto: titius heres esto", quasi quaevis condicio exspectatur titii aditio, ut seius heres fiat: et sane et iuliano et tertulliano hoc videtur.

Dig. 28.5.3.3

Ulpianus 3 ad sab.

Qui fideicommissam libertatem sub condicione accepit, potest ab herede pure cum libertate heres institui et non exspectata condicione libertatem et hereditatem consequitur et erit interim necessarius: et existente condicione voluntarius heres efficietur, ut non desinat heres esse, sed ut ius in eo mutetur successionis.

Dig. 28.5.3.4

Ulpianus 3 ad sab.

Aperturae tabularum dilatio necessarii heredis ius non mutat, ut solemus in substituto impuberis dicere: nam est relatum, si se adrogandum dederit substitutus impuberi defuncti filius, necessarium eum fore.

Dig. 28.5.4pr.

Ulpianus 4 ad sab.

Suus quoque heres sub condicione heres potest institui: sed excipiendus est filius, quia non sub omni condicione institui potest. et quidem sub ea condicione, quae est in potestate ipsius, potest: de hoc enim inter omnes constat. sed utrum ita demum institutio effectum habeat, si paruerit condicioni, an et si non paruerit et decessit? iulianus putat filium sub eiusmodi condicione institutum etiam, si condicioni non paruerit, summotum esse, et ideo si coheredem habeat ita institutus, non debere eum exspectare, donec condicioni pareat filius, cum et si patrem intestatum faceret non parendo condicioni, procul dubio exspectare deberet. quae sententia probabilis mihi videtur, ut sub ea condicione institutus, quae in arbitrio eius sit, patrem intestatum non faciat.

Dig. 28.5.4.1

Ulpianus 4 ad sab.

Puto recte generaliter definiri: utrum in potestate fuerit condicio an non fuerit, facti potestas est: potest enim et haec " si alexandriam pervenerit" non esse in arbitrio per hiemis condicionem: potest et esse, si ei, qui a primo miliario alexandriae agit, fuit imposita: potest et haec " si decem titio dederit" esse in difficili, si titius peregrinetur longinquo itinere: propter quae ad generalem definitionem recurrendum est.

Dig. 28.5.4.2

Ulpianus 4 ad sab.

Sed et si filio sub condicione, quae in eius potestate est, herede instituto nepos sit substitutus sive extraneus, puto vivo filio non exstaturum heredem substitutum, post mortem vero exstaturum, nec necessariam a substituto filii exheredationem, cum et, si fuerit facta, frustra est: post mortem enim filii facta est, quam inutilem esse alias ostendimus: opinamur igitur filium, si sit institutus sub ea condicione et sit in eius potestate, non indigere exheredatione a sequentibus gradibus: alioquin et a coherede indigebit.

Dig. 28.5.5

Marcellus not. ad iul. 29 Dig.

Si eiusmodi sit condicio, sub qua filius heres institutus sit, ut ultimo vitae eius tempore certum sit eam existere non posse et pendente ea decedat, intestato patri heres erit, veluti " si alexandriam pervenerit, heres esto": quod si etiam novissimo tempore impleri potest, veluti " si decem titio dederit, heres esto", contra puto.

Dig. 28.5.6pr.

Ulpianus 4 ad sab.

Sed si condicioni dies sit adiectus, ut puta: " si capitolium intra dies triginta ascenderit", tantundem potest dici: ut, si non paruerit condicioni, substitutus possit admitti filio repulso, consequens est sententiae iuliani et nostrae.

Dig. 28.5.6.1

Ulpianus 4 ad sab.

Nepotes autem et deinceps ceteri, qui ex lege vellea ^ vellaea^ instituti non rumpunt testamenta, sub omni condicione institui possunt, etsi redigantur ad filii condicionem.

Dig. 28.5.6.2

Ulpianus 4 ad sab.

Solemus dicere media tempora non nocere, ut puta civis romanus heres scriptus vivo testatore factus peregrinus mox civitatem romanam pervenit: media tempora non nocent. servus alienus sub condicione heres scriptus traditus est servus hereditario, mox usucaptus ab extraneo: non est vitiata institutio.

Dig. 28.5.6.3

Ulpianus 4 ad sab.

Si servum communem cum libertate dominus heredem scripserit et eum redemerit, necessarius efficietur. sed si substitutus sit impuberi et partem redemerit impubes, necessarius non efficietur, ut iulianus scribit.

Dig. 28.5.6.4

Ulpianus 4 ad sab.

Sed si sit cum libertate institutus, an ei libertatis datio codicillis adimi possit, apud iulianum quaeritur. et putat in eum casum, quo necessarius fieret, ademptionem non valere, ne a semet ipso ei adimatur libertas: servus enim heres institutus a semet ipso libertatem accipit. quae sententia habet rationem: nam sicuti legari sibi non potest, ita nec a se adimi.

Dig. 28.5.7pr.

Iulianus 30 Dig.

Si servus communis sub condicione heres institutus vivo testatore libertatem consecutus sit, etiam pendente condicione testamentariae libertatis adire hereditatem potest.

Dig. 28.5.7.1

Iulianus 30 Dig.

Item sive testator eum alienaverit sive heres post mortem testatoris, iussu domini hereditatem adibit.

Dig. 28.5.8pr.

Iulianus 2 ad urs. ferocem.

Duo socii quendam servum communem testamento facto heredem et liberum esse iusserant: ruina simul oppressi perierant. plerique responderunt hoc casu duobus orcinum heredem existere, et id est verius.

Dig. 28.5.8.1

Iulianus 2 ad urs. ferocem.

Sed et si sub eadem condicione servum communem uterque socius liberum heredemque esse iussisset eaque exstitisset, idem iuris erit.

Dig. 28.5.9pr.

Ulpianus 5 ad sab.

Quotiens volens alium heredem scribere alium scripserit in corpore hominis errans, veluti " frater meus" " patronus meus", placet neque eum heredem esse qui scriptus est, quoniam voluntate deficitur, neque eum quem voluit, quoniam scriptus non est.

Dig. 28.5.9.1

Ulpianus 5 ad sab.

Et si in re quis erraverit, ut puta dum vult lancem relinquere, vestem leget, neutrum debebit hoc, sive ipse scripsit sive scribendum dictaverit.

Dig. 28.5.9.2

Ulpianus 5 ad sab.

Sed si non in corpore erravit, sed in parte, puta si, cum dictasset ex semisse aliquem scribi, ex quadrante sit scriptus, celsus libro duodecimo quaestionum, digestorum undecimo posse defendi ait ex semisse heredem fore, quasi plus nuncupatum sit, minus scriptum: quae sententia rescriptis adiuvatur generalibus. idemque est et si ipse testator minus scribat, cum plus vellet adscribere.

Dig. 28.5.9.3

Ulpianus 5 ad sab.

Sed si maiorem adscripserit testamentarius vel (quod difficilius est probatione) ipse testator, ut pro quadrante semissem, proculus putat ex quadrante fore heredem, quoniam inest quadrans in semisse: quam sententiam et celsus probat.

Dig. 28.5.9.4

Ulpianus 5 ad sab.

Sed et si quis pro centum ducenta per notam scripsisset, idem iuris est: nam et ibi utrumque scriptum est et quod voluit et quod adiectum est: quae sententia non est sine ratione.

Dig. 28.5.9.5

Ulpianus 5 ad sab.

Tantundem Marcellus tractat et in eo, qui condicionem destinans inserere non addidit: nam et hunc pro non instituto putat: sed si condicionem addidit dum nollet, detracta ea heredem futurum nec nuncupatum videri quod contra voluntatem scriptum est: quam sententiam et ipse et nos probamus.

Dig. 28.5.9.6

Ulpianus 5 ad sab.

Idem tractat et si testamentarius contra voluntatem testatoris condicionem detraxit vel mutavit, heredem non futurum, sed pro non instituto habendum.

Dig. 28.5.9.7

Ulpianus 5 ad sab.

Sed si, cum primum heredem ex parte dimidia scribere destinasset, primum et secundum scripsit, solus primus scriptus heres videbitur et solus heres existet quasi ex parte dimidia institutus.

Dig. 28.5.9.8

Ulpianus 5 ad sab.

Si quis nomen heredis quidem non dixerit, sed indubitabili signo eum demonstraverit, quod paene nihil a nomine distat, non tamen eo, quod contumeliae causa solet addi, valet institutio.

Dig. 28.5.9.9

Ulpianus 5 ad sab.

Heres institui, nisi ut certe demonstretur, nemo potest.

Dig. 28.5.9.10

Ulpianus 5 ad sab.

Si quis ita dixerit: " uter ex fratribus meis titio et maevio seiam uxorem duxerit, ex dodrante, uter non duxerit, ex quadrante heres esto", hic recte factam institutionem esse certum est: sed quis ex qua parte, incertum.

Dig. 28.5.9.11

Ulpianus 5 ad sab.

Plane erit similis, si ita institutio facta fuerit: " uter ex supra scriptis fratribus meis seiam uxorem duxerit, heres esto": sed et hanc puto valere institutionem quasi sub condicione factam.

Dig. 28.5.9.12

Ulpianus 5 ad sab.

Heredes iuris successores sunt et, si plures instituantur, dividi inter eos a testatore ius oportet: quod si non fiat, omnes aequaliter heredes sunt.

Dig. 28.5.9.13

Ulpianus 5 ad sab.

Si duo sint heredes instituti, unus ex parte tertia fundi corneliani, alter ex besse eiusdem fundi, celsus expeditissimam sabini sententiam sequitur, ut detracta fundi mentione quasi sine partibus heredes scripti hereditate potirentur, si modo voluntas patris familias manifestissime non refragatur.

Dig. 28.5.9.14

Ulpianus 5 ad sab.

Si quis ita scripserit: " stichus liber esto et, posteaquam liber erit, heres esto", labeo, neratius et aristo opinantur detracto verbo medio " postea" simul ei et libertatem et hereditatem competere: quae sententia mihi quoque vera videtur.

Dig. 28.5.9.15

Ulpianus 5 ad sab.

Si quis primum ex triente, secundum ex triente heredem instituerit et, si secundus heres non erit, tertium ex besse heredem scribat, hic secundo repudiante bessem habebit non solum iure substitutionis, sed et institutionis, id est trientem iure substitutionis, trientem iure institutionis.

Dig. 28.5.9.16

Ulpianus 5 ad sab.

Servus cum libertate institutus si sit alienatus, iuberi adire ab eo potest, cui alienatus est: sed si redemptus sit a testatore, institutio valet et necessarius heres erit.

Dig. 28.5.9.17

Ulpianus 5 ad sab.

Si servus ex die libertatem acceperit et hereditatem pure, mox sit alienatus vel manumissus, videamus, an institutio valeat. et quidem si alienatus non esset, potest defendi institutionem valere, ut die veniente libertatis, quae hereditatem moratur, competente libertate et heres necessarius existat.

Dig. 28.5.9.18

Ulpianus 5 ad sab.

Sed si in diem libertas, hereditas autem sub condicione data sit, si condicio post diem advenientem exstiterit, liber et heres erit.

Dig. 28.5.9.19

Ulpianus 5 ad sab.

Sed et si pure fuerit heres institutus libertate in diem data, si sit alienatus vel manumissus, dici debet heredem eum posse existere.

Dig. 28.5.9.20

Ulpianus 5 ad sab.

Sed et si non ipse servus sit alienatus, sed usus fructus in eo, aeque institutio valet, sed differtur in id tempus quo extinguitur usus fructus.

Dig. 28.5.10

Paulus 1 ad sab.

Si alterius atque alterius fundi pro partibus quis heredes instituerit, perinde habebitur, quasi non adiectis partibus heredes scripti essent: nec enim facile ex diversitate pretium portiones inveniuntur: ergo expeditius est quod sabinus scribit, perinde habendum, ac si nec fundum nec partes nominasset.

Dig. 28.5.11

Iavolenus 7 epist.

" attius fundi corneliani heres esto mihi, duo titii illius insulae heredes sunto". habebunt duo titii semissem, attius semissem idque proculo placet: quid tibi videtur? respondit: vera est proculi opinio.

Dig. 28.5.12

Paulus 2 ad sab.

Si inaequalibus partibus datis ita adiciatur: " quos ex disparibus partibus heredes institui, aeque heredes sunto", existimandum est exaequari eos, scilicet si hoc ante peractum testamentum scriptum sit.

Dig. 28.5.13pr.

Ulpianus 7 ad sab.

Interdum haec adiectio " aeque heredes sunto" testatoris voluntatem exprimit, ut puta " primus et fratris mei filii aeque heredes sunto": nam haec adiectio declarat omnes ex virilibus partibus institutos, ut et labeo scripsit, qua detracta semissem fratris filii, semissem primus haberet.

Dig. 28.5.13.1

Ulpianus 7 ad sab.

Pater familias distribuere hereditatem in tot partes potest quot voluerit: sed sollemnis assis distributio in duodecim uncias fit.

Dig. 28.5.13.2

Ulpianus 7 ad sab.

Denique si minus distribuit, potestate iuris in hoc revolvitur: ut puta si duos heredes ex quadrante scripserit: nam hereditas eius residua accedit, ut ex semissibus videantur scripti.

Dig. 28.5.13.3

Ulpianus 7 ad sab.

Sed si alter ex quadrante, alter ex semisse heredes scripti sunt, qui accedit quadrans pro partibus hereditariis eis adcrescit.

Dig. 28.5.13.4

Ulpianus 7 ad sab.

Sed si excesserit in divisione duodecim uncias, aeque pro rata decrescet: ut puta me ex duodecim unciis heredem, te ex sex scripsit: ego hereditatis habeo bessem, tu trientem.

Dig. 28.5.13.5

Ulpianus 7 ad sab.

Sed si duos ex asse heredes scripserit, alios ex duodecim unciis, an aeque distributio fiat, apud labeonem libro quarto posteriorum quaeritur. et putat labeo et illos ex semisse et hos, qui ex duodecim unciis scripti sunt, ex semisse heredes fore, cui sententiae adsentiendum puto.

Dig. 28.5.13.6

Ulpianus 7 ad sab.

Sed si duos ex asse heredes instituerit, tertium autem ex dimidia et sexta, eodem libro labeo ait in viginti uncias assem dividendum, octo laturum ex dimidia et sexta scriptum, illos duos duodecim.

Dig. 28.5.13.7

Ulpianus 7 ad sab.

Apud eundem refertur: " titius ex parte tertia " , deinde asse expleto " idem ex parte sexta": in quattuordecim uncias hereditatem dividendam trebatius ait.

Dig. 28.5.14

Iavolenus 1 ex cass.

Si quis heredes ita instituit: " titius ex parte prima, seius ex parte secunda, maevius ex parte tertia, sulpicius ex parte quarta heredes sunto": aequae partes hereditatis ad institutos pertinebunt, quia testator appellatione numeris scripturae magis ordinem, quam modum partibus imposuisse videtur.

Dig. 28.5.15pr.

Ulpianus 7 ad sab.

Iulianus quoque libro trigesimo refert, si quis ita heredem scripserit: " titius ex parte dimidia heres esto: seius ex parte dimidia: ex qua parte seium institui, ex eadem parte sempronius heres esto", dubitari posse, utrum in tres semisses dividere voluit hereditatem an vero in unum semissem seium et sempronium coniungere: quod est verius, et ideo coniunctim eos videri institutos: sic fiet, ut titius semissem, hi duo quadrantes ferant.

Dig. 28.5.15.1

Ulpianus 7 ad sab.

Idem eodem libro scripsit, si primus ex semisse, secundus ex semisse, si primus heres non erit, tertius ex dodrante substitutus sit, facti quidem quaestionem esse: verum recte dicitur, si quidem primus adierit, aequales partes habituros, si repudiaverit, quindecim partes futuras, ex quibus novem quidem laturum tertium, sex secundum:

Dig. 28.5.16

Iulianus 30 Dig.

Nam tertium et instituti et substituti personam sustinere, in tres partes institutum videri, in sex substitutum.

Dig. 28.5.17pr.

Ulpianus 7 ad sab.

Item quod sabinus ait, si cui pars adposita non est, excutiamus. duos ex quadrantibus heredes scripsit, tertium sine parte: quod assi deest, feret: hoc et labeo.

Dig. 28.5.17.1

Ulpianus 7 ad sab.

Unde idem tractat, si duos ex undecim, duos sine parte scripsit, mox unus ex his, qui sine parte fuerunt, repudiaverit, utrum omnibus semuncia an ad solum sine parte scriptum pertineat: et variat. sed servius omnibus adcrescere ait, quam sententiam veriorem puto: nam quantum ad ius adcrescendi non sunt coniuncti, qui sine parte instituuntur: quod et celsus libro sexto decimo digestorum probat.

Dig. 28.5.17.2

Ulpianus 7 ad sab.

Idemque putat et si expleto asse duos sine parte heredes scripserit, neque hos neque illos coniunctos.

Dig. 28.5.17.3

Ulpianus 7 ad sab.

Sed si asse expleto alium sine parte heredem scripserit, in alium assem veniet. aliter atque si ita scripsisset expleto asse: " ex reliqua parte heres esto", quoniam, cum nihil reliquum est, ex nulla parte heres institutus est.

Dig. 28.5.17.4

Ulpianus 7 ad sab.

Sed si expleto asse duo sine partibus scribantur, utrum in singulos asses isti duo an in unum assem coniungantur, quaeritur. et putat labeo, et verius est, in unum assem venire: nam et si unus sine parte, duo coniunctim sine parte instituantur, non tres trientes fieri celsus libro sexto decimo scripsit, sed duos semisses.

Dig. 28.5.17.5

Ulpianus 7 ad sab.

Quod si quis dupundium distribuit et tertium sine parte instituit, hic non in alium assem, sed in trientem venit, ut labeo quarto posteriorum scripsit, nec aristo vel aulus (utpote probabile) notant.

Dig. 28.5.18

Paulus 1 ad vitell.

Sabinus: quaesitum est, si plus asse pater familias distribuisset et aliquem sine parte fecisset heredem, utrumne is assem habiturus foret an id dumtaxat, quod ex dupundio deesset. et hanc esse tolerabilissimam sententiam puto, ut eadem ratio in dupondio omnique re deinceps quae in asse servetur. paulus: eadem ratio est in secundo asse quae in primo.

Dig. 28.5.19

Ulpianus 7 ad sab.

Ex facto etiam agitatum pomponius et arrianus referunt ^ deferunt^, si quis vacua parte relicta ita instituerit: " si mihi seius heres non erit", quem non instituerat, " sempronius heres esto", an hic occupare possit vacantem portionem. et pegasus quidem existimat ad eam partem admitti: aristo contra putat, quia huic pars esset data, quae nulla esset: quam sententiam et iavolenus probat et pomponius et arrianus et hoc iure utimur.

Dig. 28.5.20pr.

Paulus 2 ad sab.

Quo loco scribatur heres sine parte, utrum primo an medio vel novissimo, nihil interest.

Dig. 28.5.20.1

Paulus 2 ad sab.

Si iam mortuo quadrans, alii dodrans datus sit et alius sine parte scriptus sit, labeo eum, qui sine parte heres institutus sit, alterum assem habiturum et hanc mentem esse testantis: quod et iulianus probat et verum est.

Dig. 28.5.20.2

Paulus 2 ad sab.

Quod si vivus et mortuus ex parte dimidia coniunctim heredes instituti sunt, ex altera alius, aequas partes eos habituros ait, quia mortui pars pro non scripto habetur.

Dig. 28.5.21pr.

Pomponius 1 ad sab.

Trebatius ait sic non recte scribi: " quisquis mihi heres erit, stichus liber et heres esto", liberum tamen futurum. labeo et heredem eum futurum recte putat.

Dig. 28.5.21.1

Pomponius 1 ad sab.

Servo libertatem pure, hereditatem sub condicione dari posse verissimum puto, ut tamen utrumque ex condicione pendeat:

Dig. 28.5.22

Iulianus 30 Dig.

Et expleta quidem condicione liber heresque erit, quocumque loco libertas data fuerit: deficiente autem condicione perinde habetur, ac si libertas sine hereditate data fuerit.

Dig. 28.5.23pr.

Pomponius 1 ad sab.

Si quis instituatur heres in diem certum vel incertum, is bonorum possessionem agnoscere potest et tamquam heres distrahere hereditatem.

Dig. 28.5.23.1

Pomponius 1 ad sab.

Sed si bonorum possessionem non admittat, sed condicionem trahat, cui facile parere possit, veluti " si servum quem in potestate habeat manumiserit" nec manumittat, hic praetoris erunt partes, ut imitetur edictum suum illud, quo praefinit tempus, intra quod adeatur hereditas.

Dig. 28.5.23.2

Pomponius 1 ad sab.

Item si condicioni heres parere non poterit, quam in sua potestate non habebit, veluti institutione collata in alterius factum aut quendam casum, " si ille" puta " consul factus fuerit", tunc postulantibus creditoribus constituet praetor, nisi intra certum tempus hereditas optigerit aditaque fuerit, se bona defuncti creditoribus possidere iussurum et interim quae urguebunt per procuratores distrahi iussurum.

Dig. 28.5.23.3

Pomponius 1 ad sab.

Sed si sub condicione quis heres institutus sit et grave aes alienum sit, quod ex poena crescit, et maxime si publicum debitum imminet: per procuratorem solvendum aes alienum, sicuti cum venter in possessione sit aut pupillus heres tutorem non habeat.

Dig. 28.5.23.4

Pomponius 1 ad sab.

Et ideo ait causae cognitionem adiectam propter eos, qui sine dilatione peregre essent vel aegritudine vel valetudine ita impedirentur, ut in ius produci non possint, nec tamen defenderentur.

Dig. 28.5.24

Celsus 16 Dig.

" titius et seius uterve eorum vivet heres mihi esto". existimo, si uterque vivat, ambo heredes esse, altero mortuo eum qui supererit ex asse heredem fore,

Dig. 28.5.25

Ulpianus 6 reg.

Quia tacita substitutio inesse videtur institutioni:

Dig. 28.5.26

Celsus 16 Dig.

Idque et in legato eodem modo relicto senatus censuit.

Dig. 28.5.27pr.

Pomponius 3 ad sab.

Si te solum ex parte dimidia pure, ex altera sub condicione heredem instituero et substituero tibi, non existente condicione substitutum ex ea parte heredem fore celsus ait:

Dig. 28.5.27.1

Pomponius 3 ad sab.

Sed si te heredem instituero et deinde eundem te sub condicione instituam, nihil valere sequentem institutionem, quia satis plena prior fuisset.

Dig. 28.5.27.2

Pomponius 3 ad sab.

Sed si plures institutiones ex eadem parte sub diversis condicionibus fuerint factae, utra prior condicio exstiterit, id faciet quod supra diximus, si pure et sub condicione idem instituatur.

Dig. 28.5.28

Ulpianus 5 ad sab.

Si ita quis institutus sit: " titius heres esto, si secundus heres non erit", deinde: " secundus heres esto": placet primo gradu secundum esse institutum.

Dig. 28.5.29

Pomponius 5 ad sab.

Hoc articulo " quisque" omnes significantur: et ideo labeo scribit, si ita scriptum sit: " titius et seius quanta quisque eorum ex parte heredem me habuerit scriptum, heres mihi esto", nisi omnes habeant scriptum heredem testatorem, neutrum heredem esse posse, quoniam ad omnium factum sermo refertur: in quo puto testatoris mentem respiciendam. sed humanius est eum quidem, qui testatorem suum heredem scripserit, in tantam partem ei heredem fore, qui autem eum non scripserit, nec ad hereditatem eius admitti.

Dig. 28.5.30

Ulpianus 21 ad ed.

Pignori obligatum servum necessarium domino posse fieri imperator severus rescripsit, ita tamen, si paratus sit prius creditori satisfacere.

Dig. 28.5.31pr.

Gaius 17 ad ed. provinc.

Non minus servos quam liberos heredes instituere possumus, si modo eorum scilicet servi sint, quos ipsos heredes instituere possumus, cum testamenti factio cum servis ex persona dominorum introducta est.

Dig. 28.5.31.1

Gaius 17 ad ed. provinc.

Hereditarium servum ante aditam hereditatem ideo placuit heredem institui posse, quia creditum est hereditatem dominam esse defuncti locum optinere.

Dig. 28.5.32pr.

Gaius 1 de testam. ad ed. pu.

Illa institutio " quos titius voluerit" ideo vitiosa est, quod alieno arbitrio permissa est: nam satis constanter veteres decreverunt testamentorum iura ipsa per se firma esse oportere, non ex alieno arbitrio pendere.

Dig. 28.5.32.1

Gaius 1 de testam. ad ed. pu.

Is qui apud hostes est recte heres instituitur, quia iure postliminii omnia iura civitatis in personam eius in suspenso retinentur, non abrumpuntur: itaque si reversus fuerit ab hostibus, adire hereditatem poterit. servus quoque eius recte heres instituitur et, si reversus sit ab hostibus, potest eum iubere adire hereditatem: si vero ibi decesserit, qui ei heres existet potest per servum heres fieri.

Dig. 28.5.33

Gaius 2 de testam. ad ed. pu.

Si quis ita scripserit: " titius ex parte dimidia heres esto: idem titius ex altera parte dimidia, si navis ex asia venerit, heres esto", cum ex pura institutione adierit heres, quamvis condicio alterius institutionis pendeat, ex asse fit heres, scilicet etiam condicione deficiente, cum non prosit ei condicio quicquam existens: quippe cum non dubitetur, quin, si quis ex parte dimidia heres institutus sit nec praeterea quisquam alius, ipse ex asse heres institui videatur.

Dig. 28.5.34

Papinianus 1 def.

Hereditas ex die vel ad diem non recte datur, sed vitio temporis sublato manet institutio.

Dig. 28.5.35pr.

Ulpianus 4 disp.

Ex facto proponebatur: quidam duos heredes scripsisset, unum rerum provincialium, alterum rerum italicarum, et, cum merces in italiam devehere soleret, pecuniam misisset in provinciam ad merces comparandas, quae comparatae sunt vel vivo eo vel post mortem, nondum tamen in italiam devectae, quaerebatur, merces utrum ad eum pertineant, qui rerum italicarum heres scriptus erat an vero ad eum, qui provincialium. dicebam receptum esse rerum heredem institui posse nec esse inutilem institutionem, sed ita, ut officio iudicis familiae herciscundae cognoscentis contineatur nihil amplius eum, qui ex re institutus est, quam rem, ex qua heres scriptus est, consequi. ita igitur res accipietur. verbi gratia pone duos esse heredes insititos, unum ex fundo corneliano, alterum ex fundo liviano, et fundorum alterum quidem facere dodrantem bonorum, alterum quadrantem: erunt quidem heredes ex aequis paritbus, quasi sine partibus instituti, verumtamen officio iudicis tenebuntur, ut unicuique eorum fundus qui relictus est adiudicetur vel adtribuatur.

Dig. 28.5.35.1

Ulpianus 4 disp.

Unde scio quaesitum, aeris alieni onus pro qua parte adgnosci debeat. et refert papinianus, cuius sententiam ipse quoque probavi, pro hereditariis partibus eos adgnoscere aes alienum debere, hoc est pro semisse: fundos etenim vice praeceptionis accipiendos. quare si forte tantum sit aes alienum, ut nihil detracto eo superesse possit, consequenter dicemus institutiones istas ex re factas nullius esse momenti: et si forte falcidia interveniens recisionem esset legatorum factura, sic officio iudicis recidit praeceptiones istas, ut non plus quisque eorum habeat quam esset habiturus, si legatum accepisset vel aliud vel etiam praeceptiones. quod si fuerit incertum, an falcidia interventura sit, rectissime probatur officio iudicis cautiones esse interponendas.

Dig. 28.5.35.2

Ulpianus 4 disp.

Cum haec ita sint, haec etiam institutio, de qua quaeritur, non est repellenda, si alius rerum provincialium, alius rerum italicarum heres fuerit scriptus, officioque iudicis adtribuentur singulis res quae adscriptae sint, erunt tamen heredes ex aequis partibus, quia nulla pars adscripta est. quae res facit, ut, si forte in aliis facultatibus plus sit (in italicis forte quam in provincialibus), in aliis minus et aeris alieni ratio urguet, debeat dici imminutionem eandem fieri quam supra ostendimus: proinde et si aliis fuerint legata relicta, contributio admittenda erit.

Dig. 28.5.35.3

Ulpianus 4 disp.

Rerum autem italicarum vel provincialium significatione quae res accipiendae sint, videndum est. et facit quidem totum voluntas defuncti: nam quid senserit, spectandum est. verumtamen hoc intellegendum erit rerum italicarum significatione eas contineri, quas perpetuo quis ibi habuerit atque ita disposuit, ut perpetuo haberet: ceteroquin si tempore in quo transtulit in alium locum, non ut ibi haberet, sed ut denuo ad pristinum locum revocaret, neque augebit quo transtulit neque minuet unde transtulit: ut puta de italico patrimonio quosdam servos miserat in provinciam, forte galliam, ad exigendum debitum vel ad merces comparandas, recursuros, si comparassent: dubium non est, quin debeat dici ad italicum patrimonium eos pertinere debere. ut est apud mucium relatum, cum fundus erat legatus vel cum instrumento vel cum his quae ibi sunt: agasonem enim missum in villam a patre familias non pertinere ad fundi legatum mucius ait, quia non idcirco illo erat missus, ut ibi esset. proinde si servus fuerit missus in villam interim illic futurus, quia dominum offenderat, quasi ad tempus relegatus, responsum est eum ad villae legatum non pertinere. quare ne servi quidem, qui operari in agro consuerunt, qui in alios agros revertebantur, et quasi ab alio commodati in ea sunt condicione, ut ad legatum pertineant, quia non ita in agro fuerant, ut ei agro viderentur destinati. quae res in proposito quoque suggerit, ut italicarum rerum esse credantur hae res, quas in italia esse testator voluit.

Dig. 28.5.35.4

Ulpianus 4 disp.

Proinde et si pecuniam misit in provinciam ad merces comparandas et necdum comparatae sint, dico pecuniam, quae idcirco missa est, ut per eam merces in italiam adveherentur, in italico patrimonio adiungendam: nam et si dedisset in provincia de pecuniis, quas in italia exercebat, ituras et redituras, dicendum est hanc quoque italici patrimonii esse.

Dig. 28.5.35.5

Ulpianus 4 disp.

Rationem igitur efficere dici, ut merces quoque istae, quae comparatae sunt ut romam veherentur, sive provectae sunt eo vivo sive nondum, et sive scit sive ignoravit, ad eum heredem pertinere, cui italicae res sunt adscriptae.

Dig. 28.5.36

Ulpianus 8 disp.

Si quis ita scripserit heredem: " ex qua parte codicillis titium heredem scripsero, heres esto", etiamsi pars in codicillis non fuerit adscripta, erit tamen heres quasi sine parte institutus.

Dig. 28.5.37pr.

Iulianus 29 Dig.

Cum in testamento ita scribitur: " si filius meus me vivo morietur, nepos ex eo post mortem meam natus heres esto", duo gradus heredum sunt: nullo enim casu uterque ad hereditatem admittitur. ex quo apparet, si nepoti titius substitutus fuerit et filius patri heres exstiterit, non posse titium una cum filio heredem esse, quia non in primum, sed in secundum gradum substituitur.

Dig. 28.5.37.1

Iulianus 29 Dig.

Haec verba: " publius marcus gaius invicem substituti heredes mihi sunto" sic interpretanda sunt, ut breviter videretur testator tres instituisse heredes et invicem eos substituisse, perinde ac si ita scripsisset: " ille et ille et ille instituti heredes et substituti sunto".

Dig. 28.5.37.2

Iulianus 29 Dig.

Qui tres filios habebat et ita scripserit: " filii mei heredes sunto: publius filius meus exheres esto", videri potest prima parte duos dumtaxat filios heredes instituisse.

Dig. 28.5.38pr.

Iulianus 30 Dig.

Qui filio impuberi exheredato pamphilum legat, eundem post mortem filii ex parte heredem instituere eodem modo potest, quo is, qui servum sempronio legatum, eundem post mortem sempronii ex parte heredem instituit.

Dig. 28.5.38.1

Iulianus 30 Dig.

Servus testamento heres pure scriptus, liber autem iussus esse, si intra kalendas decembres decem dedisset, si codicillis pure libertatem acceperit, intra kalendas quidem neque liber neque heres erit, nisi decem dederit: si intra kalendas non dederit, liber ex codicillis erit.

Dig. 28.5.38.2

Iulianus 30 Dig.

Si quis servum suum liberum sub condicione, heredem pure scripsisset eumque vendidisset pendente condicione, iussu emptoris servus adire hereditatem potest, quia et constitit institutio et est qui ius imperandi habet.

Dig. 28.5.38.3

Iulianus 30 Dig.

Quod si post defectam condicionem alienatus fuisset, non potest iussu emptoris hereditatem adire, quia eo tempore ad eum pervenisset, quo iam extincta institutio inutilis fuerat.

Dig. 28.5.38.4

Iulianus 30 Dig.

Igitur cum servus sub condicione liber esse iubetur et legatum pure accepit, si pendente condicione manumissus vel alienatus fuerat, legatum habebit aut domino adquiret, quamvis mortis tempore condicio libertatis extincta fuerit: si vero post defectum condicionis manumissus aut alienatus fuerit, legatum ad irritum recidit.

Dig. 28.5.38.5

Iulianus 30 Dig.

Cum venditor servum ante traditionem ab emptore pro parte heredem scriptum adire iubet, restituere coheredi servi necesse habet, quia lucrum facere eius servi iure quem vendidit non debet. plane non totum quod adquisierit restituet, sed pro ea dumtaxat parte, qua servus coheredem habuerit,

Dig. 28.5.39

Marcianus 2 reg.

Id est partem dimidiam servi et quartam hereditatis.

Dig. 28.5.40

Marcellus not. ad iul. 30 Dig.

Immo et id debet praestari, quod consequi venditor non potuisset, si prius, quam adiret servus partem hereditatis, is traditus esset: quod est verum.

Dig. 28.5.41

Iulianus 30 Dig.

Si pater familias titium, quem ingenuum esse credebat, heredem scripserit eique, si heres non esset, sempronium substituerit, deinde titius, quia servus fuerat, iussu domini adierit hereditatem: potest dici sempronium in partem hereditatis admitti. nam qui scit aliquem servum esse et eum heredem scribit et ita substituit: " si stichus heres non erit, semprionius heres esto", intellegitur tale quod dicere: " si stichus neque ipse heres erit neque alium fecerit". at qui eum, quem liberum putat esse, heredem scripserit, hoc sermone " si heres non erit" nihil aliud intellegitur significare, quam si hereditatem vel sibi non adquisierit vel mutata condicione alium heredem non fecerit, quae adiectio ad eos pertinet, qui patres familias heredes scripti postea in servitutem deducti fuerint. igitur in hoc casu semisses fient ita, ut alter semis inter eum, qui dominus instituti heredis fuerit, et substitutum aequis portionibus dividatur:

Dig. 28.5.42

Pomponius 12 ex var. lect.

Et hoc tiberius caesar constituit in persona parthenii, qui tamquam ingenuus heres scriptus adierat hereditatem, cum esset caesaris servus: nam divisa hereditas est inter tiberium et eum qui parthenio substitutus erat, ut refert sextus pomponius.

Dig. 28.5.43

Iulianus 64 Dig.

Qui solvendo non erat, duos apollonios liberos heredesque esse iusserat. altero ante apertas tabulas testamenti mortuo non ineleganter defendi poterit eum qui supererit liberum et solum necessarium heredem fore. quod si uterque vivit, institutionem nullius esse momenti propter legem aeliam sentiam, quae amplius quam unum necessarium heredem fieri vetat:

Dig. 28.5.44

Paulus 1 ad l. ael. sent.

Invicem enim eos sibi obstare.

Dig. 28.5.45

Alfenus 5 Dig.

Pater familias testamento duos heredes instituerat: eos monumentum facere iusserat in diebus certis: deinde ita scripserat: " qui eorum non ita fecerit, omnes exheredes sunto": alter heres hereditatem praetermiserat, reliquus heres consulebat, cum ipse monumentum exstruxisset, numquid minus heres esset ob eam rem, quod coheres eius hereditatem non adisset. respondit neminem ex alterius facto hereditati neque alligari neque exheredari posse, sed uti quisque condicionem implesset, quamvis nemo adisset praeterea, tamen eum heredem esse.

Dig. 28.5.46

Alfenus 2 Dig. a paulo epit.

" si maevia mater mea et fulvia filia mea vivent, tum mihi lucius titius heres esto". servius respondit, si testator filiam numquam habuerit, mater autem supervixisset, tamen titium heredem fore, quia id, quod impossibile in testamento scriptum esset, nullam vim haberet.

Dig. 28.5.47

Africanus 2 quaest.

Quidam cum filium familias heredem instituere vellet, ne ad patrem eius ex ea hereditate quicquam perveniret, voluntatem suam exposuit filio: filius cum patris offensam vereretur, petit a testatore, ne sub condicione " si a patre emancipatus esset" heredem eum institueret et impetravit ab eo, ut amicum suum heredem institueret: atque ita testamento amicus filii ignotus testatori heres institutus est nec quicquam ab eo petitum est. quaerebatur, si ille amicus aut adire nollet aut aditam nollet restituere hereditatem, an fideicommissum ab eo peti possit aut aliqua actio adversus eum esset et utrum patri an filio competeret. respondit, etiamsi manifestum sit scriptum heredem fidem suam interposuisse, non tamen aliter ab eo fideicommissum peti posse quam si et ipsum testatorem fidem eius secutum esse probaretur. si tamen, cum a filio familias rogaretur, amicus et aditurum se hereditatem recepisset et restituturum patri familias facto, non absurde dici possit mandati actionem futuram: et eam actionem patri inutilem fore, quia non sit ex bona fide id ei restitui, quod testator ad eum pervenire noluerit: sed nec filio vulgarem competituram, verum utilem, sicuti dare placeret ei, qui, cum filius familias esset, pro aliquo fideiussisset ac pater familias factus solvisset.

Dig. 28.5.48pr.

Africanus 4 quaest.

Si ita scriptum fuerit: " titius, immo seius heres esto", seium solum heredem fore respondit. sed et si ita: " titius heres esto: immo seius heres esto", idem erit dicendum.

Dig. 28.5.48.1

Africanus 4 quaest.

Quidam testamento ita heredes instituit: " titia filia mea heres esto: si quid mihi liberorum me vivo mortuove nascetur, tunc qui virilis sexus unus pluresve nascentur, ex parte dimidia et quarta, qui feminini sexus una pluresve natae erunt, ex parte quarta mihi heres sit": postumus ei natus est: consulebatur, quota ex parte postumus heres esset. respondit eam hereditatem in septem partes distribuendam, ex his filiam quattuor, postumum tres habituros, quia filiae totus as, postumo dodrans datus est, ut quarta portione amplius filia quam postumus ferre debeat. ideo si postuma quoque nata esset, tantundem sola filia, quantum uterque postumorum habituri essent. itaque in proposito cum as filiae, dodrans postumo sit datus, viginti unam partes fieri, ut filia duodecim, novem filius habeat.

Dig. 28.5.48.2

Africanus 4 quaest.

In testamento ita scriptum est: " lucius titius ex duabus unciis, gaius attius ex parte una, maevius ex parte una, seius ex partibus duabus heredes mihi sunto": consulebatur quid iuris esset. respondit hanc scripturam illam interpretationem accipere posse, ut lucius titius duas uncias habeat, ceteri autem quasi sine partibus instituti ex reliquo dextante heredes sint: quem dextantem ita dividi oportet, ut seius quincuncem, attius et maevius alterum quincuncem habeant.

Dig. 28.5.49pr.

Marcianus 4 inst.

His verbis: " titius hereditatis meae dominus esto", recte institutio fit.

Dig. 28.5.49.1

Marcianus 4 inst.

Illa institutio valet: " filius meus impiissimus male de me meritus heres esto": pure enim heres instituitur cum maledicto et omnes huiusmodi institutiones receptae sunt.

Dig. 28.5.49.2

Marcianus 4 inst.

Interdum nec cum libertate utiliter servus a domina heres instituitur, ut constitutione divorum severi et antonini significatur, cuius verba haec sunt: " servum adulterii accusatum non iure testamento manumissum ante sententiam ab ea muliere videri, quae rea fuerit eiusdem criminis postulata, rationis est". quare sequitur, ut in eundem a domina collata institutio nihil momenti habeat.

Dig. 28.5.49.3

Marcianus 4 inst.

Si in patre vel patria vel alia simili adsumptione falsum scriptum est, dum de eo qui demonstratus sit constet, institutio valet.

Dig. 28.5.50pr.

Florus 10 inst.

Si alienum servum liberum et heredem esse iussi et is postea meus effectus est, neutrum valet, quia libertas alieno servo inutiliter data est.

Dig. 28.5.50.1

Florus 10 inst.

In extraneis heredibus illa observantur: ut sit cum eis testamenti factio, sive ipsi heredes instituantur sive hi qui in potestate eorum sunt, et id duobus temporibus inspicitur, testamenti facti, ut constiterit institutio, et mortis testatoris, ut effectum habeat. hoc amplius et cum adibit hereditatem esse debet cum eo testamenti factio, sive pure sive sub condicione heres institutus sit: nam ius heredis eo vel maxime tempore inspiciendum est, quo adquirit hereditatem. medio autem tempore inter factum testamentum et mortem testatoris vel condicionem institutionis exsistentem mutatio iuris heredi non nocet, quia, ut dixi, tria tempora inspicimus.

Dig. 28.5.51pr.

Ulpianus 6 reg.

Servum meum heredem institutum cum libertate si vivus vendidero ei, cum quo testamenti factio non est, posteaque eum redemero, ex testamento mihi heres esse poterit nec medium tempus, quo apud eum fuit, vitiavit institutionem, quia verum est utroque tempore tam testamenti faciendi quam mortis tempore meum fuisse. unde si apud eum remanserit, vitiatur institutio: vel si cum eo testamenti factio est, iussu eius adeundo adquiret ei hereditatem.

Dig. 28.5.51.1

Ulpianus 6 reg.

Si in non faciendo impossibilis condicio institutione heredis sit expressa, secundum omnium sententiam heres erit, perinde ac si pure institutus esset.

Dig. 28.5.51.2

Ulpianus 6 reg.

Hereditas plerumque dividitur in duodecim uncias, quae assis appellatione continentur. habent autem et hae partes propria nomina ab uncia usque ad assem, puta haec: sextans quadrans triens quincunx semis septunx bes dodrans dextans deunx as.

Dig. 28.5.52pr.

Marcianus 3 reg.

Talem institutionem quidam valere non putabant: " stichus liber esto et, si liber erit, heres esto". sed divus marcus rescripsit hanc institutionem valere perinde atque si non erat adiectum " si liber erit".

Dig. 28.5.52.1

Marcianus 3 reg.

Si quis ita scripserit: " stichus, si meus erit cum morior, liber et heres esto", alienatus non poterit iussu emptoris adire hereditatem, quamvis, etsi non erat hoc expressum, non alias liber et heres fieri poterat, quam si mansisset eius. sed si vivus eum manumiserit, celsus libro quinto decimo digestorum scribit fieri hunc heredem: non enim hunc casum testatorem voluisse excludere palam est neque verba omnino repugnant: nam quamvis servus eius non est, at certe libertus est.

Dig. 28.5.53

Paulus 2 reg.

Servus hereditarius heres institui potest, si modo testamenti factio fuit cum defuncto, licet cum herede instituto non sit.

Dig. 28.5.54

Marcellus l.S. resp.

Lucius titius seio et sempronio ex semissibus heredibus institutis et ceteris exheredatis invicem heredem substituit, deinde legata et libertates dedit, postea ita subiecit: " cornelius et sallustius et varro aequis partibus heredes sunto, quos invicem substituo": quaero, quantum vel priores duo ex semissibus instituti vel posteriores habere debeant. Marcellus respondit in obscuro esse, cornelium et sallustium et varronem primo an secundo vel tertio gradu heredes instituere voluerit: sed secundum scripturam testamenti quae proponeretur, alterum assem datum eis videri.

Dig. 28.5.55

Nerva 1 membr.

Pater filio impuberi servum heredem substituit liberumque esse iussit: eum pupillus vendidit titio: titius eum iam primo testamento facto in secundo testamento liberum heredemque esse iussit. superius testamentum titii ruptum est, quia is servus et heres potest esse et, ut superius testamentum rumpatur, sufficit ita posterius factum esse, ut aliquo casu potuerit ex eo heres existere. quod ad vim autem eius institutionis pertinet, ita se res habet, ut, quamdiu pupillo ex ea substitutione heres potest esse, ex titii testamento libertatem hereditatemque consequi non possit: si pupillus in suam tutelam pervenerit, perinde ex titii testamento liber heresque sit ac si pupillo substitutus non fuisset: si pupillo heres exstitit, propius est, ut titio quoque, si velit, heres esse possit.

Dig. 28.5.56

Paulus 1 ad l. ael. sent.

Si is qui solvendo non est primo loco stichum, secundo eum cui ex fideicommissi causa libertatem debet liberum et heredem instituerit, neratius secundo loco scriptum heredem fore ait, quia non videtur creditorum fraudandorum causa manumissus.

Dig. 28.5.57

Paulus l.S. de secundis tabulis.

Potest quis ita heredem instituere: " si intra annum septuagesimum decessero, ille mihi heres esto": non enim pro parte testatus intellegi debet, sed sub condicione instituisse.

Dig. 28.5.58

Paulus 57 ad ed.

Si is qui solvendo non est servum cum libertate heredem instituerit et liberum substituerit, ante incipiendum erit a substituto: lex enim aelia sentia ita demum ei, qui in fraudem creditorum heres institutus est conservat libertatem, si nemo alius ex eo testamento heres esse potest.

Dig. 28.5.59pr.

Paulus 4 ad vitell.

Nemo dubitat recte ita heredem nuncupari posse " hic mihi heres esto", cum sit coram, qui ostenditur.

Dig. 28.5.59.1

Paulus 4 ad vitell.

Qui frater non est, si fraterna caritate diligitur, recte cum nomine suo sub appellatione fratris heres instituitur.

Dig. 28.5.60pr.

Celsus 16 Dig.

Liber homo cum tibi serviret, heres institutus iussu tuo adiit. trebatius esse eum heredem: labeo tunc non esse heredem, si necessitate id fecerit, non quod alioquin vellet obligari.

Dig. 28.5.60.1

Celsus 16 Dig.

Si quis ita heredem instituerit: " titius qua ex parte mihi socius est in vectigali salinarum, pro ea parte mihi heres esto", quidam putant, si asse descripto id adiectum sit, ut maxime socius fuerit titius, non esse heredem, sed si qua pars vacua relicta fuerit, ex ea heredem esse. quod totum et ineptum et vitiosum est: quid enim vetat asse descripto utiliter titium ex parte fore quarta, ex qua socius erat, heredem institutum esse?

Dig. 28.5.60.2

Celsus 16 Dig.

" titius heres esto: seius et maevius heredes sunto". verum est quod proculo placet duos semisses esse, quorum alter coniunctim duobus datur.

Dig. 28.5.60.3

Celsus 16 Dig.

Cum quis ex institutis, qui non cum aliquo coniunctim institutus sit, heres non est, pars eius omnibus pro portionibus hereditariis adcrescit, neque refert, primo loco quis institutus an alicui substitutus heres sit.

Dig. 28.5.60.4

Celsus 16 Dig.

Si heres institutus scribendi testamenti tempore civis romanus fuit, deinde ei aqua et igni interdictum est, heres fit, si intra illud tempus quo testator decessit redierit aut, si sub condicione heres institutus est, quo tempore condicio exsistit. idem et in legatis et in bonorum possessionibus.

Dig. 28.5.60.5

Celsus 16 Dig.

" titius ex semisse heres esto: seius ex quadrante heres esto: titius si in capitolium ascenderit, ex alio quadrante heres esto". antequam capitolium ascendat si pro herede gerat, ex semisse heres erit, si capitolium ascenderit, et ex quadrante heres erit nec erit ei necesse pro herede gerere quippe iam heredi.

Dig. 28.5.60.6

Celsus 16 Dig.

Si ita scriptum fuerit: " titius ex parte tertia, maevius ex parte tertia heredes sunto: titius, si intra tertias kalendas navis ex asia venerit, ex reliqua parte heres esto": videamus, ne titius statim ex semisse heres sit: nam duo heredes instituti sunt, sed titius aut ex semisse aut ex besse: ita sextans utique erit in pendenti et, si condicio exstiterit, ex besse heres erit, si non exstiterit, ille sextans maevio adcrescet. sed si decesserit titius, antequam condicio exsistat, deinde condicio exstiterit, tamen ille sextans non titii heredi, sed maevio adcrescet: nam cum adhuc dubium esset, titio an maevio is sextans datus esset, titius decessit nec potest intellegi datus ei qui tempore dandi in rerum natura non fuit.

Dig. 28.5.60.7

Celsus 16 Dig.

Si attius titium et maevium et seium aequis partibus heredes instituit, titius interim solus adiit hereditatem et seium heredem instituit, poterit seius titii adire hereditatem, attii vel adire vel omittere: sed attio, antequam adeat vel omittat eius hereditatem, ex semisse heres erit. si adierit seius attii hereditatem, titius ex triente dumtaxat heres erit et per hereditatem titii triens dumtaxat ad seium perveniet, alterum trientem ex sua institutione habebit. quid ergo si ab attio titius et seius heredes instituti sunt, titius adierit hereditatem, titio seius heres exstiterit? potestne attii hereditatem omittere an necessario ei ex asse heres est? quippe cum alius nemo heres institutus est, quam is ipse qui ex aliqua parte iam heres est, perinde est, quasi unus heres per titium institutus sit.

Dig. 28.5.61

Celsus 29 Dig.

Qui solvendo non erat, servum primo loco et alterum servum secundo loco heredes scripsit. solus is qui primo loco scriptus est hereditatem capit: nam lege aelia sentia ita cavetur, ut, si duo pluresve ex eadem causa heredes scripti sint, uti quisque primus scriptus sit, heres sit.

Dig. 28.5.62

Modestinus 8 resp.

Qui volebat filiam exheredare, sic testamento comprehendit: " te autem, filia, ideo exheredavi, quoniam contentam te esse dote volui": quaero an efficaciter exheredata sit. modestinus respondit nihil proponi, cur non esset voluntate testatoris exheredata.

Dig. 28.5.63pr.

Modestinus 2 pand.

In tempus capiendae hereditatis institui heredem posse benevolentiae est, veluti " lucius titius cum capere potuerit, heres esto": idem et in legato.

Dig. 28.5.63.1

Modestinus 2 pand.

Quotiens non apparet, quis heres institutus sit, institutio non valet (quippe evenire potest, si testator complures amicos eodem nomine habeat et ad designationem singulari nomine utatur): nisi ex aliis apertissimis probationibus fuerit revelatum, pro qua persona testator senserit.

Dig. 28.5.64

Iavolenus 1 ex cass.

Heredes sine partibus utrum coniunctim an separatim scribantur, hoc interest, quod, si quis ex coniunctis decessit, non ad omnes, sed ad reliquos qui coniuncti erant pertinet, sin autem ex separatis, ad omnes, qui testamento eodem scripti sunt heredes, portio eius pertinet.

Dig. 28.5.65

Iavolenus 7 epist.

Eius servum, qui post mortem meam natus erit, heredem institui posse labeo frequenter scribit idque verum esse manifesto argumento comprobat: quia servus hereditarius, priusquam adeatur hereditas, institui heres potest, quamvis is testamenti facti tempore nullius sit.

Dig. 28.5.66

Iavolenus 12 epist.

Hereditas ad statium primum nullo iure pertinet, cum institutus heres non sit: nec quicquam ei prodest, quod ab eo aliquid legatum est aut libertus ei defuncti testamento commendatus est. ex quo si manumissus non est, servus est.

Dig. 28.5.67

Pomponius 1 ad q. muc.

Si ita quis heredes instituerit: " titius heres esto: gaius et maevius aequis ex partibus heredes sunto", quamvis et syllaba coniunctionem faciat, si quis tamen ex his decedat, non alteri soli pars adcrescit, sed et omnibus coheredibus pro hereditariis portionibus, quia non tam coniunxisse quam celerius dixisse videatur.

Dig. 28.5.68

Pomponius 2 ad q. muc.

Si ita scriptum fuerit: " tithasus si in capitolium ascenderit, heres esto: tithasus heres esto", secunda scriptura potior erit: plenior est enim quam prior.

Dig. 28.5.69

Pomponius 7 ad q. muc.

Si quis sempronium heredem instituerit sub hac condicione " si titius in capitolium ascenderit", quamvis non alias heres esse possit sempronius, nisi titius ascendisset in capitolium, et hoc ipsum in potestate sit repositum titii: quia tamen scriptura non est expressa voluntas titii, erit utilis ea institutio. atquin si quis ita scripserit: " si titius voluerit, sempronius heres esto", non valet institutio: quaedam enim in testamentis si exprimantur, effectum nullum habent, quando, si verbis tegantur, eandem significationem habeant quam haberent expressa, et momentum aliquod habebunt. sic enim filii exheredatio cum eo valet, si quis heres existat: et tamen nemo dubitat, quin, si ita aliquis filium exheredaverit: " titius heres esto: cum heres erit titius, filius exheres esto", nullius momenti esse exheredationem.

Dig. 28.5.70

Proculus 2 epist.

" cornelius et maevius, uter eorum volet, heres esto": uterque vult: trebatius neutrum fore heredem, cartilius utrumque: tu cui adsentiaris? proculus: cartilio adsentio et illam adiectionem " uter eorum volet"supervacuam puto: id enim etiam ea non adiecta futurum fuit, ut, uter vellet, heres esset, uter nollet, heres non esset. quod si hi ex numero necessariorum heredum essent, tum id non frustra adiectum esse et non solum figuram, sed vim quoque condicionis continere: dicerem tamen, si uterque heres esse vellet, utrumque heredem esse.

Dig. 28.5.71

Papinianus 6 resp.

Captatorias institutiones non eas senatus improbavit, quae mutuis affectionibus iudicia provocaverunt, sed quarum condicio confertur ad secretum alienae voluntatis.

Dig. 28.5.72pr.

Paulus 5 ad l. iul. et pap.

Illae autem institutiones captatoriae non sunt, veluti si ita heredem quis instituat: " qua ex parte titius me heredem instituit, ex ea parte maevius heres esto", quia in praeteritum, non in futurum institutio collata est.

Dig. 28.5.72.1

Paulus 5 ad l. iul. et pap.

Sed illud quaeri potest, an idem servandum sit quod senatus censuit, etiamsi in aliam personam captionem direxerit, veluti si ita scripserit: " titius, si maevium tabulis testamenti sui heredem a se scriptum ostenderit probaveritque, heres esto", quod in sententiam senatus consulti incidere non est dubium.

Dig. 28.5.73

Clementius 4 ad l. iul. et pap.

Si quis solidum a lege capere non possit et ex asse sit institutus ab eo qui solvendo non est, iulianus ex asse eum heredem esse respondit: legi enim locum non esse in ea hereditate quae solvendo non est.

Dig. 28.5.74

Gaius 12 ad l. iul. et pap.

Sub condicione herede instituto si substituamus, nisi eandem condicionem repetemus, pure eum heredem substituere intellegimur.

Dig. 28.5.75

Licinius 2 reg.

Si ita quis heres institutus fuerit: " excepto fundo, excepto usu fructu heres esto", perinde erit iure civili atque si sine ea re heres institutus esset, idque auctoritate galli aquilii factum est.

Dig. 28.5.76

Papinianus 12 quaest.

Si filius substituatur ei, a quo praeteritus est, non ut intestati patris, sed ex testamento habebit hereditatem, quoniam et quolibet alio substituto, si fuisset ab eo exheredatus, inde testamentum inciperet, ubi filius esset exheredatus.

Dig. 28.5.77

Papinianus 15 quaest.

Servus uxori a marito mortis causa donatus mariti manet, ut et iuliano quoque videtur. idem si accipiat libertatem simul et hereditatem, viro necessarius heres erit: nec sine libertate aliquid ei legari potest.

Dig. 28.5.78

Papinianus 17 quaest.

Asse toto non distributo ita scriptum est: " quem heredem codicillis fecero, heres esto": titium codicillis heredem instituit. eius quidem institutio valet ideo, quod, licet codicillis dari hereditas non possit, tamen haec ex testamento data videtur: sed hoc tantum ex hereditate habebit, quantum ex asse residuum mansit.

Dig. 28.5.79pr.

Papinianus 6 resp.

Qui non militabat, bonorum maternorum, quae in pannonia possidebat, libertum heredem instituit, paternorum, quae habebat in syria, titium. iure semisses ambos habere constitit, sed arbitrum dividendae hereditatis supremam voluntatem factis adiudicationibus et interpositis propter actiones cautionibus sequi salva falcidia, scilicet ut, quod vice mutua praestarent, doli ratione quadranti retinendo compensetur.

Dig. 28.5.79.1

Papinianus 6 resp.

Lucio titio ex duabus partibus, publio maevio ex quadrante scriptis heredibus assem in dodrantem esse divisum respondi: modum enim duarum partium ex quadrante declarari: quod veteres nummis titio legatis nummorum specie non demonstrata ceterorum legatorum contemplatione receperunt.

Dig. 28.5.79.2

Papinianus 6 resp.

Filiis heredibus aequis partibus institutis ac postea fratris filio pro duabus unciis unum assem inter omnes videri factum placuit et ex eo decem uncias filios accepisse: tunc enim ex altero asse portionem intellegi relictam, cum asse nominatim dato vel duodecim unciis distributis residua portio non invenitur: nihil autem interest, quo loco sine portione quis heres instituatur, quo magis assis residuum accepisse videatur.

Dig. 28.5.79.3

Papinianus 6 resp.

Seius maevium ex parte, quam per leges capere possit, heredem instituit, ex reliqua titium. si maevius solidum capere poterit, titius adiectus aut substitutus heres non erit.

Dig. 28.5.80

Papinianus 1 def.

Quod si non sit reliqui facta mentio, tantundem in altero asse habebit maevius quantum titius in primo.

Dig. 28.5.81

Papinianus 6 resp.

Quod si maevius nullius capax sit, in totum substitutus admittitur.

Dig. 28.5.82pr.

Paulus 9 quaest.

Clemens patronus testamento caverat, ut, si sibi filius natus fuisset, heres esset, si duo filii, ex aequis partibus heredes ^ heres^ essent, si duae filiae, similiter: si filius et filia, filio duas partes, filiae tertiam dederat. duobus filiis et filia natis quaerebatur, quemadmodum in proposita specie partes faciemus, cum filii debeant pares esse vel etiam singuli duplo plus quam soror accipere? quinque igitur partes fieri oportet, ut ex his binas masculi, unam femina accipiat.

Dig. 28.5.82.1

Paulus 9 quaest.

Si ita scripserit testator: " quanta ex parte me a titio heredem institutum recitassem, ex ea parte sempronius mihi heres esto", non est captatoria institutio: plane nullo recitato testamento ab ipso testatore inanis videbitur institutio remota suspicione captatoriae institutionis.

Dig. 28.5.83

Scaevola 15 quaest.

Si quis ita heres instituatur: " si legitimus heres vindicare nolit hereditatem meam", puto deficere condicionem testamenti illo vindicante.

Dig. 28.5.84pr.

Scaevola 18 quaest.

Si non lex aelia sentia, sed alia lex vel senatus consultum aut etiam constitutio servi libertatem impediat, is necessarius fieri non potest, etiamsi non sit solvendo testator.

Dig. 28.5.84.1

Scaevola 18 quaest.

Temporibus divi hadriani senatus censuit, si testator, qui cum moritur solvendo non fuit, duobus pluribusve libertatem dederit eisque hereditatem restitui iusserit et institutus heres suspectam sibi hereditatem dixerit, ut adire eam cogatur et ad libertatem perveniat qui priore loco scriptus fuerit, eique hereditas restituatur. idem servandum in his, quibus per fideicommissum libertas data fuerit. igitur si primo loco scriptus desideraret adire hereditatem, nulla difficultas erit. nam si posteriores quoque liberos se esse dicent et restitui hereditatem desiderent, an solvendo sit hereditas et omnibus liberis factis restitui deberet, apud praetorem quaereretur. absente autem primo sequens desiderans adiri hereditatem non est audiendus, quia, si primus velit sibi restitui hereditatem, praeferendus est et hic servus futurus est.

Dig. 28.5.85pr.

Paulus 23 quaest.

Si servo fideicommissa data sit libertas, heres hunc eundem servum cum libertate heredem reliquisset, quaesitum est, an necessarius fiat heres. et humanius est et magis aequitatis ratione subnixum non fieri necessarium: qui enim etiam invito defuncto poterat libertatem extorquere, is liber esse iussus non magnum videtur beneficium a defuncto consequi, immo nihil commodi sensisse, sed magis debitam sibi accepisse libertatem.

Dig. 28.5.85.1

Paulus 23 quaest.

Idem probandum erit et in illo servo, quem testator ea lege emerat, ut manumitteret, si heres fuerit institutus: nam et hic seposito beneficio testatoris proprio iure poterit ad libertatem pervenire ex constitutione divi marci.

Dig. 28.5.85.2

Paulus 23 quaest.

Idem et in eo, qui propria sua data pecunia emptus est ab aliquo: nam et hic poterit ab ipso testatore libertatem extorquere.

Dig. 28.5.86

Scaevola 2 resp.

Lucius titius, qui fratrem habebat, testamento ita cavit: " titius frater meus ex asse mihi heres esto: si mihi titius heres esse noluerit aut (quod abominor) prius morietur quam meam hereditatem adierit aut filium filiamve ex se natum natamve non habebit, tunc stichus et pamphilus servi mei liberi et heredes mihi aequis partibus sunto". quaero, cum titius hereditatem adierit et liberos aditae hereditatis tempore non habuerit, an stichus et pamphilus ex substitutione liberi et heredes esse possint. item quaero, si ex substitutione neque liberi neque heredes esse possint, an in partem hereditatis videantur adiecti. respondit: apparet quidem non eam mentem testatoris fuisse, ut quemquam heredem adhiberet fratri, quem aperte ex asse heredem instituisset: igitur si frater adiit, stichus et pamphilus heredes non erunt: quos eo amplius noluit heredes esse, si frater prius quam hereditatem adiret decessisset liberis relictis. nam prudens consilium testantis animadvertitur: non enim fratrem solum heredem praetulit substitutis, sed et eius liberos.

Dig. 28.5.87pr.

Maecenatus 7 fideic.

Iam dubitari non potest suos quoque heredes sub hac condicione institui posse, ut, si voluissent, heredes essent, si heredes non essent, alium quem visum erit eis substituere: negatumque hoc casu necesse esse sub contraria condicione filium exheredare, primum quia tunc tantum id exigeretur, cum in potestate eius non esset, an heres patri existeret, exspectantis extrinsecus positae condicionis eventum, deinde quod, etsi quacumque posita condicione deberet filius sub contraria condicione exheredari, in proposito ne possibilis quidem repperiri posset, certe, si verbis exprimeretur, inepta fieret: huic enim condicioni " si volet, heres esto" quae alia verba contraria concipi possunt quam haec " si nolet heres esse, exheres esto?" quod quam sit ridiculum, nulli non patet.

Dig. 28.5.87.1

Maecenatus 7 fideic.

Non ab re autem hoc loco velut excessus hic subiungetur suis ita heredibus institutis " si voluerint heredes esse" non permittendum amplius abstinere se hereditate, cum ea condicione instituti iam non ut necessarii, sed sua sponte heredes exstiterunt. sed et ceteris condicionibus, quae in ipsorum sunt potestate, si sui pareant, ius abstinendi adsequi non debent.

Dig. 28.5.88

Hermogenianus 3 iuris epit.

Ex unciis sex primo herede instituto, secundo ex octo, si tertius ex residua parte vel nulla portionis facta mentione heres instituatur, quinque uncias hereditatis tertius habebit: in viginti quattuor etenim partes hereditate distributa tertio ratio calculi veluti ex decem partibus instituto quinque uncias adsignabit.

Dig. 28.5.89

Gaius l.S. de cas.

Ei qui solvendo non est aliquo casu evenit, ut et servus cum libertate heres exsistat et praeterea alius heres adiciatur: veluti si servo cum libertate herede instituto ita adiectum sit: " si mihi stichus heres erit, tunc titius quoque heres esto": nam titius, antequam stichus ex testamento heres exstiterit, heres esse non potest, cum autem semel heres exstiterit servus, non potest adiectus efficere, ut qui semel heres exstitit desinat heres esse.

Dig. 28.5.90

Paulus 2 manual.

Si socius heres institutus sit ex asse et servo communi legetur pure sine libertate, hoc legatum non constitit. plane sub condicione ei utiliter et sine libertate legabitur, quoniam et proprio servo ab herede recte sub condicione legatur. quare etiam heres institui sine libertate ut alienus socio herede scripto poterit, quia et proprius cum domino heres institui poterit.

Dig. 28.5.91

Tryphonus 21 disp.

Testamento domini servus sub condicione cum libertate heres institutus pendente adhuc condicione necem domini detexit eumque praetor mereri libertatem decrevit. etsi postea condicio testamenti exstiterit, aliunde liber est, id est ex praemio, non ex testamento: igitur non est necessarius domino heres: licet autem ei volenti adire.

Dig. 28.5.92

Paulus 5 sent.

Imperatorem litis causa heredem institui invidiosum est nec calumnia facultatem ex principali maiestate capi oportet.

Dig. 28.5.93pr.

Paulus 1 imp. sent. i.C.P.

Dig. 28.5.93.1

Paulus 1 imp. sent. i.C.P.

Pactumeius androsthenes pactumeiam magnam filiam pactumeii magni ex asse heredem instituerat, eique patrem eius substituerat. pactumeio magno occiso et rumore perlato, quasi filia quoque eius mortua, mutavit testamentum noviumque rufum heredem instituit hac praefatione: " quia heredes, quos volui habere mihi contingere non potui, novius rufus heres esto". pactumeia magna supplicavit imperatores nostros et cognitione suscepta, licet modus institutioni contineretur, quia falsus non solet obesse, tamen ex voluntate testantis putavit imperator ei subveniendum. igitur pronuntiavit hereditatem ad magnam pertinere, sed legata ex posteriore testamento eam praestare debere, proinde atque si in posterioribus tabulis ipsa fuisset heres scripta.

Dig. 28.6.0. De vulgari et pupillari substitutione.

Dig. 28.6.1pr.

Modestinus 2 pand.

Heredes aut instituti dicuntur aut substituti: instituti primo gradu, substituti secundo vel tertio.

Dig. 28.6.1.1

Modestinus 2 pand.

Heredis substitutio duplex est aut simplex, veluti: " lucius titius heres esto: si mihi lucius titius heres non erit, tunc seius heres mihi esto": " si heres non erit, sive erit et intra pubertatem decesserit, tunc gaius seius heres mihi esto".

Dig. 28.6.1.2

Modestinus 2 pand.

Substituere liberis tam heredibus institutis quam exheredatis possumus et tam eum, quem heredem nobis instituimus, quam alterum.

Dig. 28.6.1.3

Modestinus 2 pand.

Substituere liberis pater non potest nisi si heredem sibi instituerit: nam sine heredis institutione nihil in testamento scriptum valet.

Dig. 28.6.2pr.

Ulpianus 6 ad sab.

Moribus introductum est, ut quis liberis impuberibus testamentum facere possit, donec masculi ad quattuordecim annos perveniant, feminae ad duodecim. quod sic erit accipiendum, si sint in potestate: ceterum emancipatis non possumus. postumis plane possumus. nepotibus etiam possumus et deinceps, si qui non recasuri sunt in patris potestate. sed si eos patres praecedant, ita demum substitui eis potest, si heredes instituti sint vel exheredati: ita enim post legem velleam ^ vellaeam^ succedendo non rumpunt testamentum: nam si principale ruptum sit testamentum, et pupillare evanuit. sed si extraneum quis impuberem heredem scripserit, poterit ei substituere, si modo eum in locum nepotis adoptaverit vel adrogaverit filio praecedente.

Dig. 28.6.2.1

Ulpianus 6 ad sab.

Quisquis autem impuberi testamentum facit, sibi quoque debet facere: ceterum soli filio non poterit, nisi forte miles sit. adeo autem, nisi sibi quoque fecerit, non valet, ut, nisi adita quoque patris hereditas sit, pupillare testamentum evanescat. plane si omissa causa principalis testamenti ab intestato possideatur hereditas, dicendum est et pupillo substitutum servandum:

Dig. 28.6.2.2

Ulpianus 6 ad sab.

Interdum etiam pupillaris testamenti causa compellendum heredem institutum adire hereditatem, ut ex secundis tabulis fideicommissum convalescat: ut puta si iam pupillus decessit: ceterum si adhuc vivat, improbum esse iulianus existimat eum, qui sollicitus est de vivi hereditate.

Dig. 28.6.2.3

Ulpianus 6 ad sab.

Ego etiam, si minor viginti quinque annis adeundae hereditatis causa fuerit restitutus, puto proficere secundis tabulis, ut praetor utiles actiones decernat substituto.

Dig. 28.6.2.4

Ulpianus 6 ad sab.

Prius autem sibi quis debet heredem scribere, deinde filio substituere et non convertere ordinem scripturae: et hoc iulianus putat prius sibi debere, deinde filio heredem scribere: ceterum si ante filio, deinde sibi testamentum faciat, non valere. quae sententia rescripto imperatoris nostri ad virium lupum brittanniae praesidem comprobata est, et merito: constat enim unum esse testamentum, licet duae sint hereditates, usque adeo, ut quos quis sibi facit necessarios, eosdem etiam filio faciat et postumum suum filio impuberi possit quis substituere.

Dig. 28.6.2.5

Ulpianus 6 ad sab.

Sed si quis ita fuerit testatus: " si filius meus intra quartum decimum annum decesserit, seius heres esto", deinde: " filius heres esto", valet substitutio, licet conversa scriptura filii testamentum fecerit.

Dig. 28.6.2.6

Ulpianus 6 ad sab.

Sed et si ita scripserit: " si filius mihi heres non erit, seius heres esto: filius heres esto", secundo quidem gradu seius scriptus est heres et, si filius heres non exstiterit, procul dubio seius ei heres erit: sed et si exstiterit filius heres et intra pubertatem defunctus est, seius admittendus recte videtur, ut non ordo scripturae, sed ordo successionis spectetur.

Dig. 28.6.2.7

Ulpianus 6 ad sab.

Quod igitur dictum est singulis liberorum substituere licere, ideo adiectum est, ut declaretur non esse a filii testamento incipiendum impuberis.

Dig. 28.6.3

Modestinus 1 diff.

Cum filio impuberi pater ita substituerit: " quisquis mihi heres erit, idem filio impuberi heres esto", placuit ad hanc substitutionem scriptos tantummodo ad hereditatem admitti: itaque dominus, cui per servum hereditatis portio quaesita sit, ex substitutione impuberi heres effici non poterit, si servus ab eius exierit potestate.

Dig. 28.6.4pr.

Modestinus l.S. de heuremat.

Iam hoc iure utimur ex divi marci et veri constitutione, ut, cum pater impuberi filio in alterum casum substituisset, in utrumque casum substituisse intellegatur, sive filius heres non exstiterit sive exstiterit et impubes decesserit.

Dig. 28.6.4.1

Modestinus l.S. de heuremat.

Quod ius ad tetrium quoque genus substitutionis tractum esse videtur: nam si pater duos filios impuberes heredes instituat eosque invicem substituat, in utrumque casum reciprocam substitutionem factam videri divus pius constituit.

Dig. 28.6.4.2

Modestinus l.S. de heuremat.

Sed si alter pubes, alter impubes hoc communi verbo " eosque invicem substituo" sibi fuerint substituti, in vulgarem tantummodo casum factam videri substitutionem severus et antoninus constituit: incongruens enim videbatur, ut in altero duplex esset substitutio, in altero sola vulgaris. hoc itaque casu singulis separatim pater substituere debebit, ut, si pubes heres non exstiterit, impubes ei substituatur, si autem impubes heres exstiterit et intra pubertatem decesserit, pubes frater in portionem coheredis substituatur: quo casu in utrumque eventum substitutus videbitur, ne, si vulgari modo impuberi quoque substituat, voluntatis quaestionem relinquat, utrum de una vulgari tantummodo substitutione in utriusque persona sensisse intellegatur: ita enim in altero utraque substitutio intellegitur, si voluntas parentis non refragetur. vel certe evitandae quaestionis gratia specialiter in utrumque casum impuberi substituat fratrem: " sive heres non erit sive erit et intra pubertatis annos " decesserit".

Dig. 28.6.5

Gaius 3 ad l. iul. et pap.

Si in testamento heredes scripti ita alicui substituti fuerint, ut, si is heres non esset, quisquis sibi heres esset is in parte quoque deficientis esset heres: pro qua parte quisque heres exstitisset, pro ea parte eum in portione quoque deficientis vocari placet neque interesse, iure institutionis quisque ex maiore parte heres factus esset an quod per legem alteram partem alicuius vindicasset.

Dig. 28.6.6

Clementius 4 ad l. iul. et pap.

Si is, qui ex bonis testatoris solidum capere non possit, substitutus sit ab eo impuberi filio eius, solidum ex ea causa capiet, quasi a pupillo capiat. sed hoc ita interpretari iulianus noster videtur, ut ex bonis, quae testatoris fuerant, amplius capere non possit: quod si pupillo aliquid praeterea adquisitum esset aut si exheredato esset substitutus, non impediri eum capere, quasi a pupillo capiat.

Dig. 28.6.7

Papinianus 6 resp.

Verbis civilibus substitutionem post quartum decimum annum aetatis frustra fieri convenit: sed qui non admittitur ut substitutus, ut adiectus heres quandoque non erit, ne fiat contra voluntatem, si filius non habeat totum interim, quod ei testamento pater dedit.

Dig. 28.6.8pr.

Ulpianus 4 ad sab.

Qui liberis impuberibus substituit, aut pure aut sub condicione solet substituere. pure sic: " si filius meus intra pubertatem decesserit, seius heres esto": sive seius iste heres institutus sit et impuberi substitutus, nullam habet condicionem, sive solum substitutus. sub condicione autem institutum si substituat, id est " si mihi heres erit", non alias existet heres ex substitutione, nisi et ex institutione heres fuerit. cui similis est et haec substitutio: " quisquis mihi ex supra scriptis heres erit": habet enim in se eandem condicionem similem superiori.

Dig. 28.6.8.1

Ulpianus 4 ad sab.

Haec verba: " quisquis mihi heres erit, idem impuberi filio heres esto" hunc habent sensum, ut non omnis qui patri heres exstitit, sed is qui ex testamento heres exstitit substitutus videatur: et ideo neque pater, qui per filium, neque dominus, qui per servum exstitit, ad substitutionem admittetur, neque heredis heres, quia non ex iudicio veniunt. partes quoque eaedem ad substitutos pertinent, quas in ipsius patris familias habuerunt hereditate.

Dig. 28.6.9

Labeo 1 post. a iav. epit.

Si pater filio impuberi eosdem quos sibi et te unum praeterea heredem instituit, bonorum filii te dimidium, ceteros patris heredes communiter dimidium ita habere, ut unus semis apud te maneat, alterius semissis pro his partibus inter heredes paternos divisio fiat, quibus ex partibus hereditatem paternam haberent.

Dig. 28.6.10pr.

Ulpianus 4 ad sab.

Sed si plures sint ita substituti: " quisquis mihi ex supra scriptis heres erit", deinde quidam ex illis, posteaquam heredes exstiterint patri, obierunt, soli superstites ex substitutione heredes existent pro rata partium, ex quibus instituti sint, nec quicquam valebit ex persona defunctorum.

Dig. 28.6.10.1

Ulpianus 4 ad sab.

Quos possum heredes mihi facere necessarios, possum et filio, ut servum meum et fratrem suum, quamvis in rebus humanis nondum sit: postumus igitur erit fratri heres necessarius.

Dig. 28.6.10.2

Ulpianus 4 ad sab.

Filio impuberi heredi ex asse instituto substitutus quis est: exstitit patri filius heres: an possit substitutus separare hereditates, ut filii habeat, patris non habeat? non potest, sed aut utriusque debet hereditatem habere aut neutrius: iuncta enim hereditas coepit esse.

Dig. 28.6.10.3

Ulpianus 4 ad sab.

Idemque est, si pater me heredem scripserit ex parte et filium ex parte et ego patris hereditatem repudiavero: nam neque filii hereditatem habere possum.

Dig. 28.6.10.4

Ulpianus 4 ad sab.

Si ex asse heres institutus, filio exheredato substitutus repudiaverit patris hereditatem, cum non haberet substitutum, non poterit filii adire nec enim valet filii testamentum, nisi patris fuerit adita hereditas: nec enim sufficit ad secundarum tabularum vim sic esse factum testamentum, ut ex eo adiri hereditas possit.

Dig. 28.6.10.5

Ulpianus 4 ad sab.

Ad substitutos pupillares pertinent et si quae postea pupillis obvenerint: neque enim suis bonis testator substituit, sed impuberis, cum et exheredato substituere quis possit: nisi mihi proponas militem esse, qui substituit heredem hac mente, ut ea sola velit ad substitutum pertinere, quae a se ad institutum pervenerunt.

Dig. 28.6.10.6

Ulpianus 4 ad sab.

In adrogato quoque impubere dicimus ad substitutum eius ab adrogatore datum non debere pertinere ea, quae haberet, si adrogatus non esset, sed ea sola, quae ipse ei dedit adrogator: nisi forte distinguimus, ut quartam quidem, quam omnimodo ex rescripto divi pii debuit ei relinquere, substitutus habere non possit, superfluum habeat. scaevola tamen libro decimo quaestionum putat vel hoc adrogatori permittendum, quae sententia habet rationem. ego etiam amplius puto et si quid beneficio adrogatoris adquisiit, et haec substitutum posse habere, ut puta adrogatoris amicus vel cognatus ei aliquid reliquit.

Dig. 28.6.10.7

Ulpianus 4 ad sab.

Nemo institutus et sibi substitutus sine causae mutatione quicquam proficit, sed hoc in uno gradu: ceterum si duo sint gradus, potest dici valere substitutionem, ut iulianus libro trigesimo digestorum putat: si quidem sic sit substitutus sibi, cum haberet coheredem titium: " si stichus heres non erit, liber et heres esto", non valere substitutionem: quod si ita: " si titius heres non erit, tunc stichus liber et heres et in eius partem esto", duos gradus esse atque ideo repudiante titio stichum liberum et heredem fore.

Dig. 28.6.11

Paulus 1 ad sab.

Si is qui heres institutus est filio substitutus sit, nihil oberit ei in substitutione, si tunc capere possit, cum filius decessit. contra quoque potest poenas in testamento pupilli pati, licet in patris passus non sit.

Dig. 28.6.12

Papinianus 3 quaest.

Si filius, qui patri ac postea fratri ex secundis tabulis heres exstitit, hereditatem patris recuset, fraternam autem retinere malit, audiri debet: iustius enim praetorem facturum existimo, si fratri separationem bonorum patris concesserit. etenim ius dicenti propositum est liberos oneribus hereditariis non sponte susceptis liberare, non invitos ab hereditate removere, praesertim quod remotis tabulis secundis legitimam haberet fratris hereditatem. itaque legata dumtaxat ex secundis tabulis praestari debent habita ratione facultatium in falcidia non patris, ut alias solet, sed impuberis.

Dig. 28.6.13

Pomponius 1 ad sab.

Quo gradu heres liberis substituatur, nihil interest.

Dig. 28.6.14

Pomponius 2 ad sab.

In pupillari substitutione licet longius tempus comprehensum fuerit, tamen finietur substitutio pubertate.

Dig. 28.6.15

Papinianus 6 resp.

Centurio filiis, si intra quintum et vicesimum annum aetatis sine liberis vita decesserint, directo substituit. intra quattuordecim annos etiam propria bona filio substitutus iure communi capiet, post eam autem aetatem ex privilegio militum patris dumtaxat cum fructibus inventis in hereditate.

Dig. 28.6.16pr.

Pomponius 3 ad sab.

Si quis eum, quem testamento suo legavit, rursus a substituto filii liberum esse iusserit, liber erit quasi legato adempto: nam et in legato in his testamentis novissima scriptura erit spectanda, sicut in eodem testamento (vel testamento et codicillis confirmatis) observaretur.

Dig. 28.6.16.1

Pomponius 3 ad sab.

Si suo testamento perfecto alia rursus hora pater filio testamentum fecerit adhibitis legitimis testibus, nihilo minus id valebit et tamen patris testamentum ratum manebit. nam et si sibi et filio pater testamentum fecisset, deinde sibi tantum, utrumque superius rumpetur. sed si secundum testamentum ita fecerit pater, ut sibi heredem instituat, si vivo se filius decedat, potest dici non rumpi superius testamentum, quia secundum non valet, in quo filius praeteritus sit.

Dig. 28.6.17

Pomponius 4 ad sab.

Substitui liberis is etiam potest, qui post mortem eius natus fuerit, cui substitutus heres fuerit.

Dig. 28.6.18pr.

Ulpianus 16 ad sab.

Si servus communis substitutus sit impuberi cum libertate, si quidem a patre familias fuisset redemptus, erit impuberi necessarius: si vero ab impubere redemptus, non necessarius, sed voluntarius fit heres, ut iulianus libro trigesimo digestorum scribit: quod si neque a patre neque a pupillo fuerit redemptus, aequitatis ratio suggerit, ut ipse pretium partis suae domino offerens possit et libertatem et hereditatem consequi.

Dig. 28.6.18.1

Ulpianus 16 ad sab.

Si titio fuerit legatus servus, posse eum impuberi substitui cum libertate, quemadmodum institui potuit, et evanescit legatum existente condicione substitutionis.

Dig. 28.6.19

Iulianus 30 Dig.

Idem est et si post mortem legatarii servus substitutus sit.

Dig. 28.6.20pr.

Ulpianus 16 ad sab.

Patris et filii testamentum pro uno habetur etiam in iure praetorio: nam, ut Marcellus libro digestorum nono scribit, sufficit tabulas esse patris signatas, etsi resignatae sint filii, et septem signa patris sufficiunt.

Dig. 28.6.20.1

Ulpianus 16 ad sab.

Si pater sibi per scripturam, filio per nuncupationem vel contra fecerit testamentum, valebit.

Dig. 28.6.21

Ulpianus 41 ad ed.

Si ita quis substituerit: " si filius meus intra decimum annum decesserit, seius heres esto", deinde hic ante quartum decimum post decimum decesserit, magis est, ut non possit bonorum possessionem substitutus petere: non enim videtur in hunc casum substitutus.

Dig. 28.6.22

Gaius 15 ad ed. provinc.

Is qui contra tabulas testamenti patris bonorum possessionem petierit, si fratri impuberi substitutus sit, repellitur a substitutione.

Dig. 28.6.23

Papinianus 6 resp.

Qui plures heredes instituit, ita scripsit: " eosque omnes invicem substituo". post aditam a quibusdam ex his hereditatem uno eorum defuncto, si condicio substitutionis exstitit alio herede partem suam repudiante, ad superstites tota portio pertinebit, quoniam invicem in omnem causam singuli substitui videbuntur: ubi enim quis heredes instituit et ita scribit: " eosque invicem substituo", hi substitui videbuntur, qui heredes exstiterunt.

Dig. 28.6.24

Ulpianus 4 disp.

Si plures sint instituti ex diversis partibus et omnes invicem substituti, plerumque credendum et ex isdem partibus substitutos, ex quibus instituti sint, ut, si forte unus ex uncia, secundus ex octo, tertius ex quadrante sit institutus, repudiante tertio in novem partes dividatur quadrans feratque octo partes qui ex besse institutus fuerat, unam partem qui ex uncia scriptus est: nisi forte alia mens fuerit testatoris: quod vix credendum est, nisi evidenter fuerit expressum.

Dig. 28.6.25

Iulianus 24 Dig.

Si pater impuberes ^ impuberes^ filios invicem substituerit et ei, qui novissimus mortuus fuerit, titium, respondendum est solos fratres bonorum possessionem accepturos et quodammodo duos gradus huius institutionis factos, ut primo fratres invicem substituerentur, si illi non essent, tunc titius vocaretur.

Dig. 28.6.26

Iulianus 29 Dig.

Si pater filium impuberem heredem scripserit et ei substituerit, si quis sibi post mortem natus erit, deinde vivo fratre postumus natus fuerit, testamentum rumpetur: post mortem autem fratris vivo patre natus solus heres patri suo existet.

Dig. 28.6.27

Iulianus 30 Dig.

Si titius coheredi suo substitutus fuerit, deinde ei sempronius, verius puto in utramque partem sempronium substitutum esse.

Dig. 28.6.28

Iulianus 62 Dig.

Lex cornelia, quae testamenta eorum qui in hostium potestate decesserunt confirmat, non solum ad hereditatem ipsorum qui testamenta fecerunt pertinet, sed ad omnes hereditates, quae ad quemque ex eorum testamento pertinere potuissent, si in hostium potestatem non pervenissent. quapropter cum pater in hostium potestate decessit filio impubere relicto in civitate et is intra tempus pubertatis decesserit, hereditas ad substitutum pertinet, perinde ac si pater in hostium potestatem non pervenisset. sed si pater in civitate decessit, filius impubes apud hostes, si quidem mortuo patre filius in hostium potestatem pervenerit, non incommode dicitur hereditatem eius ex ea lege ad substitutos pertinere: si vero vivo patre filius in hostium potestatem pervenerit, non existimo legi corneliae locum esse, quia non efficitur per eam, ut is, qui nulla bona in civitate reliquit, heredes habeat. quare etiam si pubes filius vivo patre captus fuerit, deinde mortuo in civitate patre in hostium potestate decesserit, patris hereditas ex lege duodecim tabularum, non filii ex lege cornelia ad adgnatum proximum pertinet.

Dig. 28.6.29

Scaevola 15 quaest.

Si pater captus sit ab hostibus, mox filius et ibi ambo decedant, quamvis prior pater decedat, lex cornelia ad pupilli substitutionem non pertinebit, nisi reversus in civitate impubes decedat, quoniam et si ambo in civitate decessissent, veniret substitutus.

Dig. 28.6.30

Iulianus 78 Dig.

Quidam testamento proculum ex parte quarta et quietum ex parte dimidia et quarta heredem instituit, deinde quieto florum, proculo sosiam heredes substituit, deinde, si neque florus neque sosia heredes essent, tertio gradu ex parte dimidia et quarta coloniam leptitanorum et ex quarta complures heredes substituit in plures quam tres uncias: quietus hereditatem adiit, proculus et sosia vivo testatore decesserunt: quaeritur, quadrans proculo datus ad quietum an ad substitutos tertio gradu pertineat. respondi eam videri voluntatem patris familias fuisse, ut tertio gradu scriptos heredes ita demum substituerit, si tota hereditas vacasset, idque apparere evidenter ex eo, quod plures quam duodecim uncias inter eos distribuisset, et idcirco partem quartam hereditatis de qua quaeritur ad quietum pertinere:

Dig. 28.6.31pr.

Iulianus l.S. de ambig.

In substitutione filio ita facta: " quisquis mihi ex supra scriptis heres erit, idem filio heres esto", quaeritur, quisquis heres quandoque fuerit intellegatur an quisquis heres tum erit, cum filius moriatur. placuit prudentibus, si quandoque heres fuisset: quamvis enim vivo pupillo heres esse desisset, forte ex causa de inofficioso, quae pro parte mota est, futurum tamen eum heredem ex substitutione creditum est.

Dig. 28.6.31.1

Iulianus l.S. de ambig.

Non simili modo in hac specie dicendum est, si quis, cum filios duos haberet, gaium puberem, lucium impuberem, ita filio substituisset: " si lucius filius meus impubes decesserit neque mihi gaius filius heres erit, tunc seius heres esto": nam ita prudentes hoc interpretati sunt, ut ad impuberis mortem condicio substitutionis esset referenda.

Dig. 28.6.32

Iulianus 1 ad urs. ferocem.

Qui complures heredes ex disparibus partibus instituerat et in his attium, si attius non adierit, ceteros ex isdem partibus quibus instituerat heredes ei substituerat: deinde, si attius non adisset, titium coheredem eis qui substituti sunt adiecit. quaesitum est, quam partem is et quam ceteri habituri essent. respondi titium virilem, ceteros hereditarias: veluti si tres fuissent, titium partem quartam attianae partis habiturum, reliquarum partium hereditarias partes, ex quibus instituti erant, reliquos habituros esse. quod si non solum titium, sed etiam alios adiecisset heredes, hos quidem viriles partes habituros: veluti si tres puta coheredes fuissent substituti, extranei duo adiecti, hos quintas partes attianae partis, reliquos autem coheredes herditarias partes habituros esse dixit.

Dig. 28.6.33pr.

Africanus 2 quaest.

Si mater ita testetur, ut filium impuberem, cum erit annorum quattuordecim, heredem instituat eique pupillaribus tabulis, si sibi heres non erit, alium substituat, valet substitutio.

Dig. 28.6.33.1

Africanus 2 quaest.

Si filius et ex eo nepos postumus ita heredes instituantur, ut gallo aquilio placuit, et nepoti, si is heres non erit, titius substituatur, filio herede existente titium omnimodo, id est etiam si nepos natus non fuerit, excludi respondit.

Dig. 28.6.34pr.

Africanus 4 quaest.

Ex duobus impuberibus ei, qui supremus moreretur, heredem substituit. si simul morerentur, utrique heredem esse respondit, quia supremus non is demum qui post aliquem, sed etiam post quem nemo sit, intellegatur, sicut et e contrario proximus non solum is qui ante aliquem, sed etiam is ante quem nemo sit intellegitur.

Dig. 28.6.34.1

Africanus 4 quaest.

Filium impuberem et titium heredes instituit: titio maevium substituit, filio, quisquis sibi heres esset ex supra scriptis, substituit: titius omisit hereditatem, maevius adiit. mortuo deinde filio putat magis ei soli ex substitutione deferri pupilli hereditatem, qui patris quoque hereditatem adierit.

Dig. 28.6.34.2

Africanus 4 quaest.

Etiamsi contra patris tabulas bonorum possessio petita sit, substitutio tamen pupillaris valet, et legata omnibus praestanda sunt, quae a substitutione data sunt.

Dig. 28.6.35

Africanus 5 quaest.

Etsi contra tabulas patris petita sit a pupillo bonorum possessio, in substitutum tamen eius actionem legati dandam esse ita, ut augeantur praeter ea quod filius extraneis non debuerit. sic et crescere a substituto data legata, si per bonorum possessionem plus ad filium pervenisset, quemadmodum et ipse filius plus exceptis deberet. his consequens esse existimo, ut, si impubes ex asse scriptus sit et per bonorum possessionem semis ei ablatus sit, substitutus in partem legati nomine exoneretur, ut, quemadmodum portio, quae per bonorum possessionem accesserit, auget legata, ita et hic quae abscesserit minuat.

Dig. 28.6.36pr.

Marcianus 4 inst.

Potest quis in testamento plures gradus heredum facere, puta: " si ille heres non erit, ille heres esto", et deinceps plures, ut novissimo loco in subsidium vel servum necessarium heredem instituat.

Dig. 28.6.36.1

Marcianus 4 inst.

Et vel plures in unius locum possunt substitui vel unus in plurium vel singulis singuli vel invicem ipsi qui heredes instituti sunt.

Dig. 28.6.37

Florus 10 inst.

Vel singulis liberis vel qui eorum novissimus morietur heres substitui potest, singulis, si neminem eorum intestato decedere velit, novissimo, si ius legitimarum hereditatium integrum inter eos custodiri velit.

Dig. 28.6.38pr.

Paulus l.S. de secundis tabulis.

Qui plures liberos habet, potest quibusdam substituere neque utique necesse habet omnibus, sicuti potest nulli substituere.

Dig. 28.6.38.1

Paulus l.S. de secundis tabulis.

Ergo et ad breve tempus aetatis substituere potest, ut puta " si filius meus intra annum decimum decesserit, titius ei heres esto".

Dig. 28.6.38.2

Paulus l.S. de secundis tabulis.

Itaque et si diversos substituat post finem aetatis, admittendum erit, veluti " si intra decimum annum decesserit, titius heres esto: si post decimum intra quartum decimum, maevius heres esto".

Dig. 28.6.38.3

Paulus l.S. de secundis tabulis.

Si a patre institutus rogatusque hereditatem restituere coactus ex fidecommissario adierit, quamvis cetera, quae in eodem testamento relicta sunt, per eam aditionem confirmentur, ut legata et libertates, secundas tamen tabulas non oportere resuscitari destituto iam iure civili testamento quintus cervidius scaevola noster dicebat. sed plerique in diversa sunt opinione, quia et pupillares tabulae pars sunt prioris testamenti, quo iure utimur.

Dig. 28.6.39pr.

Iavolenus 1 ex post. lab.

Cum ex filio quis duos nepotes impuberes habebat, sed alterum eorum in potestate, alterum non, et vellet utrumque ex aequis partibus heredem habere et, si quis ex his impubes decessisset, ad alterum partem eius transferre: ex consilio labeonis ofilii cascellii trebatii eum quem in potestate habebat solum heredem fecit et ab eo alteri dimidiam partem hereditatis, cum in suam tutelam venisset, legavit: quod si is, qui in potestate sua esset, impubes decessisset, alterum heredem ei substituit.

Dig. 28.6.39.1

Iavolenus 1 ex post. lab.

Filio impuberi in singulas causas alium et alium heredem substituere possumus, veluti ut alius, si sibi nullus filius fuerit, et alius, si filius fuerit et impubes mortuus fuerit, heres sit.

Dig. 28.6.39.2

Iavolenus 1 ex post. lab.

Quidam quattuor heredes fecerat et omnibus heredibus praeter unum substituerat: unus ille, cui non erat quisquam substitutus, et ex ceteris alter vivo patre familias decesserant. patrem, cui nemo erat substitutus, ad substitutum quoque pertinere ofilius cascellius responderunt, quorum sententia vera est.

Dig. 28.6.40

Papinianus 29 quaest.

Causa cognita impubes adrogatus decesserat. quemadmodum legitimis heredibus auctoritate principali prospicitur vinculo cautionis, ita, si forte substituit naturalis pater impuberi, succurrendum erit substituto: nam et legitimis heredibus futuris non aliae quam utiles actiones praestari possunt.

Dig. 28.6.41pr.

Papinianus 6 resp.

Coheredi substitutus priusquam hereditatem adiret aut condicio substitutionis existeret, vita decessit. ad substitutum eius, sive ante substitutionem sive postea substitutus sit, utraque portio pertinebit nec intererit, prior substitutus post institutum an ante decedat.

Dig. 28.6.41.1

Papinianus 6 resp.

Ex verbis " eosque invicem substituo" non adeuntis portio scriptis heredibus pro modo sibi vel alii quaesitae portionis defertur.

Dig. 28.6.41.2

Papinianus 6 resp.

Cum filiae vel nepoti, qui locum filii tenuit aut post testamentum coepit tenere, parens substituit, si quis ex his mortis quoque tempore non fuit in familia, substitutio pupillaris fit irrita.

Dig. 28.6.41.3

Papinianus 6 resp.

Quod si heredem filium pater rogaverit, si impubes diem suum obierit, titio hereditatem suam restituere, legitimum heredem filii salva falcidia cogendum patris hereditatem ut ab impubere fideicommisso post mortem eius dato restituere placuit, nec aliud servandum, cum substitutionis condicio puberem aetatem verbis precariis egreditur. quae ita locum habebunt, si patris testamentum iure valuit: alioquin si non valuit, ea scriptura, quam testamentum esse voluit, codicillos non faciet, nisi hoc expressum est. nec fideicommisso propriae facultates filii tenebuntur, et ideo, si pater filium exheredaverit et ei nihil reliquerit, nullum fideicommissum erit: alioquin, si legata vel fideicommissa filius acceperit, intra modum eorum fideicommissum hereditatis a filio datum citra falcidiae rationem debebitur.

Dig. 28.6.41.4

Papinianus 6 resp.

Qui discretas portiones coniunctis pluribus separatim dedit ac post omnem institutionis ordinem ita scripsit: " quos heredes meos invicem substituo", coniunctos primo loco vice mutua substituere videtur: quibus institutionum partes non agnoscentibus ceteros omnes coheredes admitti.

Dig. 28.6.41.5

Papinianus 6 resp.

Qui patrem et filium pro parte heredes instituerat et invicem substituerat, reliquis coheredibus datis post completum assem ita scripsit: " hos omnes invicem substituo". voluntatis fit quaestio, commemoratione omnium patrem et filium substitutioni coheredum miscuisset an eam scripturam ad ceteros omnes transtulisset: quod magis verisimile videtur propter specialem inter patrem et filium substitutionem.

Dig. 28.6.41.6

Papinianus 6 resp.

Coheres impuberi filio datus eidemque substitutus legata e secundis tabulis relicta perinde praestabit, ac si pure partem et sub condicione partem alteram accepisset. non idem servabitur alio substituto: nam ille falcidiae rationem induceret quasi plane sub condicione primis tabulis heres institutus, tametsi maxime coheres filio datus quadrantem integrum optineret. nam et cum legatum primis tabulis titio datur, secundis autem tabulis eadem res sempronio, sempronius quandoque titio concurrit.

Dig. 28.6.41.7

Papinianus 6 resp.

Cum pater impuberi filiae, quae novissima diem suum obisset, tabulas secundas fecisset et impubes filia superstite sorore pubere vita decessisset, irritam esse factam substitutionem placuit, in persona quidem prioris, quia non novissima decessit, in alterius vero, quia puberem aetatem complevit.

Dig. 28.6.41.8

Papinianus 6 resp.

Non videri cum vitio factam substitutionem his verbis placuit: " ille filius meus si (quod abominor) intra pubertatis annos decesserit, tunc in locum partemve eius titius heres esto", non magis quam si post demonstratam condicionem sibi heredem esse substitutum iussisset: nam et qui certae rei heres instituitur coherede non dato, bonorum omnium hereditatem optinet.

Dig. 28.6.42

Papinianus 1 def.

Qui duos impuberes filios heredes reliquerat, ita substituit, si ambo mortui essent: deinde pueri post mortem patris simul perierunt: duae hereditates substituo deferuntur. sed si diversis temporibus vita decedant, in hereditate novissimi pueri eius fratris, qui ante mortuus est, hereditatem substitutus inveniet: sed in ratione falcidiae pueri prioris hereditas non veniet nec substitutus amplius quam sescunciam iure testamenti desiderabit: legata quoque, quae a substituto eius filii data sunt, qui prior intestato decessit, ad irritum reccidunt.

Dig. 28.6.43pr.

Paulus 9 quaest.

Ex facto quaeritur: " qui filium habebat mutum puberem, impetravit a principe, ut muto substituere ei liceret, et substituit titium: mutus duxit uxorem post mortem patris et nascitur ei filius: quaero, an rumpatur testamentum. respondi: beneficia quidem principalia ipsi principes solent interpretari: verum voluntatem principis inspicientibus potest dici eatenus id eum tribuere voluisse, quatenus filius eius in eadem valetudine perseverasset, ut, quemadmodum iure civili pubertate finitur pupillare testamentum, ita princeps imitatus sit ius in eo, qui propter infirmitatem non potest testari. nam et si furioso filio substituisset, diceremus desinere valere testamentum, cum resipuisset, quia iam posset sibi testamentum facere: etenim iniquum incipit fieri beneficium principis, si adhuc id valere dicamus: auferret enim testamenti factionem homini sanae mentis. igitur etiam adgnatione sui heredis dicendum est rumpi substitutionem, quia nihil interest, alium heredem institueret ipse filius postea an iure habere coepit suum heredem: nec enim aut patrem aut principem de hoc casu cogitasse verisimile est, ut eum, qui postea nasceretur, exheredaret. nec interest, quemadmodum beneficium principale intercedat circa testamenti factionem, utrum in personam unius an complurium.

Dig. 28.6.43.1

Paulus 9 quaest.

Item quaero, si ita facta proponatur substitutio: " filius meus si intra decem annos decesserit, titius heres esto, si intra quattuordecim, maevius" filiusque octo annorum decesserit, utrum titius solus ex substitutione ei heres erit an et maevius, quia certum est et intra decem et intra quattuordecim annos filium decessisse. respondi omne quidem spatium, quod est intra pubertatem, liberum esse patri ad substituendum filio, sed finis huius pubertas est: magis autem est in utroque eorum tempus suum separatim servari, nisi contraria voluntas testatoris aperte ostendatur.

Dig. 28.6.43.2

Paulus 9 quaest.

Lucius titius cum haberet filios in potestate, uxorem heredem scripsit et ei substituit filios: quaesitum est, an institutio uxoris nullius momenti sit eo, quod ab eo gradu filii non essent exheredati. respondi eum gradum, a quo filii praeteriti sint, nullius esse momenti et ideo, cum idem substituti proponantur, ex testamento eos heredes exstitisse videri, scilicet quia non totum testamentum infirmant filii, sed tantum eum gradum, qui ab initio non valuit, sicut responsum est, si a primo sit filius praeteritus, a secundo exheredatus: nihil autem interest, qua ratione secundi heredis institutio valeat, utrum quia ab eo filius exheredatus est an quia ipse filius substitutus est.

Dig. 28.6.43.3

Paulus 9 quaest.

Iulius longinus pater eos, quos sibi heredes instituerat, filio ita substituit " quisquis sibi heres esset": unus ex heredibus institutis, qui tacitam fidem accommodaverat, ut non capienti partem ex eo quod acceperat daret, ad substitutionem impuberis admissus utrum pro ea parte, pro qua scriptus fuit, veniat, an vero pro ea quam cepit, ita ut augeatur eius pars in substitutione? respondi: qui in fraudem legum fidem accommodat, adeundo heres efficitur nec desinet heres esse, licet res quae relictae sunt auferuntur. unde et ex secundis tabulis in tantum heres esse potest, in quantum scriptus esset: satis enim punitus est in eo, in quo fecit contra leges. quin immo etsi desineret heres esse, idem dicerem: quemadmodum intellegendum est in eo qui, cum scriptus esset heres, postquam adisset hereditatem in servitutem redactus est et postea libertate donatus. cui permissum est ad substitutionem venire, quae ei in testamento fuerat relicta: licet enim hereditatem ex institutione amisit, tamen ex substitutione istam portionem, quantum amisit, percepturum.

Dig. 28.6.44

Paulus 10 quaest.

Ex pupillari testamento superius principali neque ex parte neque in totum confirmari posse maecianus scripsit.

Dig. 28.6.45pr.

Paulus 12 resp.

Lucius titius legitimum filium et alterum naturalem heredes instituit eosque invicem substituit: titianus legitimus filius, quem pater anniculum reliquit, post patris mortem impubes decessit superstite matre et fratre naturali, quem etiam coheredem habebat: quaero an hereditas eius ad titium naturalem fratrem ex causa substitutionis pertineat an vero ad matrem. respondi ad primum casum non existentium heredum substitutionem de qua quaeritur pertinere, non ad sequentem, si quis eorum postea decessisset intra pubertatem, cum in naturalis filii persona duplex substitutio locum habere non poterit: et ideo ad matrem legitimi filii hereditas ab intestato pertinet.

Dig. 28.6.45.1

Paulus 12 resp.

Paulus respondit, si omnes instituti heredes omnibus invicem substituti essent, eius portionem, qui quibusdam defunctis postea portionem suam repudiavit, ad eum solum, qui eo tempore supervixit, ex substitutione pertinere.

Dig. 28.6.46

Paulus 13 resp.

Pater familias primis tabulis postumo herede instituto secundis sibi vel filio, si intra pubertatem decessisset, gaium seium fratrem suum substituit, deinde titium gaio seio, et postea sic dixit: " quod si gaius seius frater meus primo loco substitutus heres mihi esset, tunc titio fideicommissum relinquo". quaero, cum filius patri heres exstiterit eoque intra pubertatem mortuo frater testatoris ex substitutione heres sit, an fideicommissum debeatur, cum ita relictum sit, si gaius seius frater suus sibi heres extitisset. respondi fratrem defuncti, qui in utrumque casum institutus vel substitutus est, filio impubere defuncto ea quae testator reliquit praestare debere: nec adversari haec verba " quod si gaius seius mihi heres erit, tunc dari volo", cum verum sit eum et testatori heredem exstitisse.

Dig. 28.6.47

Scaevola 2 resp.

Qui habebat filium et filiam impuberes, instituto filio herede filiam exheredavit et, si filius intra pubertatem decessisset, filiam eidem substituit: sed filiae, si antequam nuberet decessisset, uxorem suam, item sororem suam substituit. quaero, cum filia impubes prior decesserit, deinde frater eius impubes, an filii hereditas ad uxorem et sororem testatoris iure substitutionis pertineat. respondi secundum ea quae proponerentur non pertinere.

Dig. 28.6.48pr.

Scaevola l.S. quaest. publ. tract.

Servum communem habemus: hic heres scriptus est et, si heres non sit, maevius illi substitutus est: alterius iussu dominorum adiit hereditatem, alterius non: quaeritur, an substituto locus sit an non. et verius est substituto locum esse.

Dig. 28.6.48.1

Scaevola l.S. quaest. publ. tract.

" titius heres esto. stichum maevio do lego: stichus heres esto. si stichus heres non erit, stichus liber heresque esto". in hac quaestione in primis quaerendum est, utrum unus gradus sit an duo, et an causa mutata sit substitutionis an eadem permaneat. et quidem in plerisque quaeritur, an ipse sibi substitui possit, et respondetur causa institutionis mutata substitui posse. igitur si titius heres scriptus sit et, si heres non sit, idem heres iussus sit, substitutio nullius momenti erit. sed si sub condicione quis heres scriptus sit, pure autem substitutus est, causa immutatur, quoniam potest ex institutione defici condicio et substitutio aliquid adferre: sed si exstiterit condicio, duae purae sunt et ideo nullius momenti erit substitutio. contra si pure quis instituatur, deinde sub condicione sibi substituatur, nihil facit substitutio condicionalis nec mutata intellegatur, quippe cum et si exstiterit condicio, duae purae sunt institutiones. secundum haec proposita quaestio manifestetur: " titius heres esto. stichum maevio do lego: stichus heres esto. si stichus heres non erit, stichus liber heresque esto". nos didicimus, quoniam eodem testamento et legatus sit stichus et libertatem accepit, praevalere libertatem et, si praevalet libertas, non deberi legatum et ideo iussu legatarii non posse adire hereditatem, ac per hoc verum esse stichum heredem non esse et ex sequentibus verbis libertatem illi competere: cum unus gradus videtur. quid ergo, si non adierit titius? incipiet substitutione stichus liber et heres esse. porro quamdiu non adit iussu legatarii, nec ex causa legati intellegitur legatarii esse effectus, et ideo certum est illum heredem non esse, ac per hoc ex his verbis: " si heres non erit, stichus liber heresque esto", liber et heres existet. hoc autem, quod sentimus, iulianus quoque in libris suis probat.

Dig. 28.6.48.2

Scaevola l.S. quaest. publ. tract.

Si pupillus substitutum sibi servum alienaverit eumque emptor liberum heredemque instituerit, numquid iste in substitutione habeat substitutum universum? ut, si quidem pupillus ad pubertatem pervenerit, necessarius ex testamento emptoris heres exstitit, sin vero intra pubertatem decesserit, ex substitutione quidem liber et heres sit et necessarius patri pupilli, emptori autem voluntarius heres exstitit.

Dig. 28.7.0. De condicionibus institutionum.

Dig. 28.7.1

Ulpianus 5 ad sab.

Sub impossibili condicione vel alio mendo factam institutionem placet non vitiari.

Dig. 28.7.2pr.

Ulpianus 6 ad sab.

Si testamento comprehensum sit: " ille servus, si meus erit" (aut " qui meus erit") " cum moriar, heres esto", quatenus accipiatur " meus", quaeritur. et si quidem alienavit in eo usum fructum, nihilo minus ipsius est: si vero partem in eo alienavit, an deficiat condicio institutionis, quaeritur. et verius est non defecisse condicionem, nisi evidentissimis probationibus testatorem voluisse apparuerit pro hac condicione haec verba inseruisse " si totus servus in dominio eius remanserit": tunc enim parte alienata condicio deficit.

Dig. 28.7.2.1

Ulpianus 6 ad sab.

Sed si duo servi ita sint heredes instituti: " primus et secundus, si mei erunt cum moriar, liberi et heredes sunto" et alter ex his sit alienatus, celsus recte putat sic accipiendum, atque si singulos separatim sub eadem condicione heredes instituisset.

Dig. 28.7.3

Paulus 1 ad sab.

Si ita heres institutus sim, si decem dedero, et accipere nolit cui dare iussus sum, pro impleta condicione habetur.

Dig. 28.7.4pr.

Ulpianus 8 ad sab.

Si qui ita sint instituti: " si socii una bonorum meorum permanserint usque ad annos sedecim, heredes sunto", inutilem esse institutionem secundum verborum significationem Marcellus ait: iulianus autem, quoniam et ante aditam hereditatem iniri societas potest quasi rei futurae, valere institutionem, quod est verum.

Dig. 28.7.4.1

Ulpianus 8 ad sab.

Idem iulianus scribit eum, qui ita heres institutus est, si servum hereditarium non alienaverit, caventem coheredi implere condicionem: ceterum si solus heres scriptus sit, sub impossibili condicione heredem institutum videri: quae sententia vera est.

Dig. 28.7.5

Paulus 2 ad sab.

Si heredi plures condiciones coniunctim datae sint, omnibus parendum est, quia unius loco habentur, si disiunctim sint, cuilibet.

Dig. 28.7.6

Ulpianus 9 ad sab.

Si quis ita institutus sit, si monumentum post mortem testatoris in triduo proximo mortis eius fecisset: cum monumentum in triduo perfici non possit, dicendum erit condicionem evanescere quasi impossibilem.

Dig. 28.7.7

Pomponius 5 ad sab.

Si quis sub condicione heredes instituisset, si invicem cavissent se legata eo testamento relicta reddituros, placet remitti eis condicionem, quia ad fraudem legum respiceret, quae vetarent quosdam legata capere: quamquam et si cautum esset, in ipsa actione exceptione tuendus esset promissor.

Dig. 28.7.8pr.

Ulpianus 50 ad ed.

Quae sub condicione iurisiurandi relinquuntur, a praetore reprobantur: providit enim, ne is, qui sub iurisiurandi condicione quid accepit, aut omittendo condicionem perderet hereditatem legatumve aut cogeretur turpiter accipiendi condicionem iurare. voluit ergo eum, cui sub iurisiurandi condicione quid relictum est, ita capere, ut capiunt hi, quibus nulla talis iurisiurandi condicio inseritur, et recte: cum enim faciles sint nonnulli hominum ad iurandum contemptu religionis, alii perquam timidi metu divini numinis usque ad superstitionem, ne vel hi vel illi aut consequerentur aut perderent quod relictum est, praetor consultissime intervenit. etenim potuit is, qui voluit factum, quod religionis condicione adstringit sub condicione faciendi relinquere: ita enim homines aut facientes admitterentur aut non facientes deficerentur condicione.

Dig. 28.7.8.1

Ulpianus 50 ad ed.

Hoc edictum etiam ad legata pertinet, non tantum ad heredum institutionem.

Dig. 28.7.8.2

Ulpianus 50 ad ed.

In fideicommissis quoque oportebit eos, qui de fideicommisso cognoscunt, subsequi praetoris edictum eapropter, quia vice legatorum funguntur.

Dig. 28.7.8.3

Ulpianus 50 ad ed.

Et in mortis causa donationibus dicendum est edicto locum esse, si forte quis caverit, nisi iurasset se aliquid facturum, restituturum quod accepit: oportebit itaque remitti cautionem.

Dig. 28.7.8.4

Ulpianus 50 ad ed.

Si quis sub iurisiurandi condicione et praeterea sub alia sit institutus, huic videndum est an remittatur condicio: et magis est, ut remitti iurisiurandi condicio debeat, licet alii condicioni parendum habeat.

Dig. 28.7.8.5

Ulpianus 50 ad ed.

Sed si sub iurisiurandi condicione sit institutus aut si decem milia dederit, hoc est alternata condicione, ut aut pareat condicioni aut iuret aliud quid, videndum, numquid remitti ei condicio non debet, quia potest alteri condicioni parendo esse securus. sed est verius remittendam condicionem, ne alia ratione condicio alia eum urgueat ad iusiurandum.

Dig. 28.7.8.6

Ulpianus 50 ad ed.

Quotiens heres iurare iubetur daturum se aliquid vel facturum: quod non improbum est, actiones hereditarias non alias habebit, quam si dederit vel fecerit id, quod erat iussus iurare.

Dig. 28.7.8.7

Ulpianus 50 ad ed.

Mortuo autem vel manumisso sticho vivo testatore qui ita heres institutus est, si iurasset se stichum manumissurum, non videbitur defectus condicione heres, quamvis verum sit compellendum eum manumittere, si viveret. idem est et si ita heres institutus esset quis: " titius heres esto ita, ut stichum manumittat" aut " titio centum ita lego, ut stichum manumittat". nam mortuo sticho nemo dicet summovendum eum: non videtur enim defectus condicione, si parere condicioni non possit: implenda est enim voluntas, si potest.

Dig. 28.7.8.8

Ulpianus 50 ad ed.

De hoc iureiurando remittendo non est necesse adire praetorem: semel enim in perpetuum a praetore remissum est nec per singulos remittendum. et idcirco ex quo dies legati cesserit, remissum videtur etiam ignorante scripto herede. ideoque in herede legatarii recte probatur, ut post diem legati cedentem si decesserit legatarius, debeat heres eius actione de legato uti, quasi pure legato relicto ei cui heres exstiterat.

Dig. 28.7.9

Paulus 45 ad ed.

Condiciones, quae contra bonos mores inseruntur, remittendae sunt, veluti " si ab hostibus patrem suum non redemerit", " si parentibus suis patronove alimenta non praestiterit".

Dig. 28.7.10pr.

Ulpianus 8 disp.

Institutio talis: " si codicillis seium heredem scripsero, heres esto" non est inutilis in quovis herede instituto praeter filium: est enim condicionalis institutio. nec videtur hereditas codicillis data, quod interdictum est, verum condicionalis est haec institutio, quae testamento data esset. proinde et si ita scripserit: " cuius nomen codicillis scripsero, ille mihi heres esto", pari ratione dicendum erit institutionem valere nullo iure impediente.

Dig. 28.7.10.1

Ulpianus 8 disp.

Si quem ita institutum ponamus: " ille, si eum codicillis heredem scripsi, heres esto", valet institutio etiam in filio qui in potestate est, cum nulla sit condicio, quae in praeteritum confertur vel quae in praesens, veluti " si rex parthorum vivit", " si navis in portu stat".

Dig. 28.7.11

Iulianus 29 Dig.

Si quis testamento hoc modo scripserit: " filius meus si titium adoptaverit, heres esto: si non adoptaverit, exheres esto" et filio parato adoptare titius nolit se adrogandum dare, erit filius heres quasi expleta condicione.

Dig. 28.7.12

Hermogenianus 3 iuris epit.

Verba haec: " publius maevius, si volet, heres esto", in necessario condicionem faciunt, ut, si nolit, heres non existat: nam in voluntaria heredis persona frustra adduntur, cum, etsi non fuerint addita, invitus non efficitur heres.

Dig. 28.7.13

Iulianus 30 Dig.

Ei qui ita hereditatem vel legatum accepit " si decem dederit" neque hereditas neque legatum aliter adquiri potest, quam si post impletam condicionem id egerit scriptus heres vel legatarius, per quod hereditas aut legatum adquiri solet.

Dig. 28.7.14

Marcianus 4 inst.

Condiciones contra edicta imperatorum aut contra leges aut quae legis vicem optinent scriptae vel quae contra bonos ^ bones^ mores vel derisoriae sunt aut huiusmodi quas praetores improbaverunt pro non scriptis habentur et perinde, ac si condicio hereditati sive legato adiecta non esset, capitur hereditas legatumve.

Dig. 28.7.15

Papinianus 16 quaest.

Filius, qui fuit in potestate, sub condicione scriptus heres, quam senatus aut princeps improbant, testamentum infirmet patris, ac si condicio non esset in eius potestate: nam quae facta laedunt pietatem existimationem verecundiam nostram et, ut generaliter dixerim, contra bonos mores fiunt, nec facere nos posse credendum est.

Dig. 28.7.16

Marcianus 4 inst.

" si titius heres erit, seius heres esto: si seius heres erit, titius heres esto". iulianus inutilem esse institutionem scribit, cum condicio existere non possit.

Dig. 28.7.17

Florus 10 inst.

Si plures institutiones ex eadem parte sub diversis condicionibus fuerint, condicio, quae prior exstiterit, occupabit institutionem.

Dig. 28.7.18pr.

Marcianus 7 inst.

Cum servus pure liber et heres scriptus sub condicione sit et, si heres non exstiterit, legatum acceperit, in legato repetitam videri condicionem divus pius rescripsit.

Dig. 28.7.18.1

Marcianus 7 inst.

Hac ratione et papinianus scribit, cum avia nepotem sub condicione emancipationis pro parte heredem instituit et postea codicillis scriptis hoc amplius ei legavit quam quod heredem eum instituit, repetitam videri condicionem emancipationis etiam in legato, quamvis in legato nullam, ut in hereditate, substitutionem fecisset.

Dig. 28.7.19

Marcianus 8 inst.

Si ita scriptum fuerit " titius heres esto: si titius heres erit, maevius heres esto": si titius suspectam adierit hereditatem, potest maevius suo arbitrio adire et quartam retinere.

Dig. 28.7.20pr.

Labeo 2 post. a iav. epit.

Mulier, quae viro suo ex dote promissam pecuniam debebat, virum heredem ita instituerat, si eam pecuniam, quam doti promisisset, neque petisset neque exegisset. puto, si vir denuntiasset ceteris heredibus per se non stare, quo minus acceptum faceret id quod ex dote sibi deberetur, statim eum heredem futurum. quod si solus heres institutus esset in tali condicione, nihilo minus puto statim eum heredem futurum, quia adunatos condicio pro non scripta accipienda est.

Dig. 28.7.20.1

Labeo 2 post. a iav. epit.

Si quis hereditarium servum iussus est manumittere et heres esse, quamvis, si manumiserit, nihil agat, tamen heres erit: verum est enim eum manumisisse: sed post aditionem libertas servo data secundum voluntatem testatoris convalescit.

Dig. 28.7.20.2

Labeo 2 post. a iav. epit.

Si quis te heredem ita instituit, si se heredem instituisses aut quid sibi legasses, nihil interest, quo gradu is a te heres institutus vel quid ei legatum sit, dummodo aliquo gradu id te fecisse probes.

Dig. 28.7.21

Celsus 16 Dig.

Servus alienus ita heres institui potest " cum liber erit": proprius autem ita institui non potest,

Dig. 28.7.22

Gaius 18 ad ed. provinc.

Quia ratio suadet eum qui libertatem dare potest, ipsum debere aut praesenti die aut in diem aut sub condicione dare libertatem nec habere facultatem in casum a quolibet obvenientis libertatis heredem instituere.

Dig. 28.7.23

Marcellus 12 Dig.

" uter ex fratribus meis consobrinam nostram duxerit uxorem, ex dodrante, qui non duxit, ex quadrante heres esto". aut nubit alteri aut non vult nubere. consobrinam qui ex his duxit uxorem, habebit dodrantem, erit alterius quadrans. si neuter eam duxerit uxorem, non quia ipsi ducere noluerunt, sed quia illa nubere noluerit, ambo in partes aequales admittuntur: plerumque enim haec condicio: " si uxorem duxerit", " si dederit", " si fecerit" ita accipi oportet, quod per eum non stet, quo minus ducat aut det aut faciat.

Dig. 28.7.24

Papinianus 6 resp.

" qui ex fratribus meis titiam consobrinam uxorem duxerit, ex besse heres esto: qui non duxerit, ex triente heres esto". vivo testatore consobrina defuncta ambo ad hereditatem venientes semisses habebunt, quia verum est eos heredes institutos, sed emolumento portionum eventu nuptiarum discretos.

Dig. 28.7.25

Modestinus 9 reg.

Sub condicione heres institutus servus sine iussu domini condicioni parere non potest.

Dig. 28.7.26

Pomponius 2 ad q. muc.

Si pupillus sub condicione heres institutus fuerit, condicioni etiam sine tutoris auctoritate parere potest. idemque est et si legatum ei sub condicione relictum fuerit, quia condicione expleta pro eo est, quasi pure ei hereditas vel legatum relictum sit.

Dig. 28.7.27pr.

Modestinus 8 resp.

Quidam in suo testamento heredem scripsit sub tali condicione " si reliquias eius in mare abiciat": quaerebatur, cum heres institutus condicioni non paruisset, an expellendus est ab hereditate. modestinus respondit: laudandus est magis quam accusandus heres, qui reliquias testatoris non in mare secundum ipsius voluntatem abiecit, sed memoria humanae condicionis sepulturae tradidit. sed hoc prius inspiciendum est, ne homo, qui talem condicionem posuit, neque compos mentis esset. igitur si perspicuis rationibus haec suspicio amoveri potest, nullo modo legitimus heres de hereditate controversiam facit scripto heredi.

Dig. 28.7.27.1

Modestinus 8 resp.

Heredi, quem testamento pure instituit, codicillis adscripsit condicionem: quaero, an ei parere necesse habeat. modestinus respondit: hereditas codicillis neque adimi potest: porro in defectu condicionis de ademptione hereditatis cogitasse intellegitur.

Dig. 28.7.28

Papinianus 13 quaest.

Si filius sub condicione heres erit et nepotes ex eo substituantur, cum non sufficit sub qualibet condicione filium heredem institui, sed ita demum testamentum ratum est, si condicio fuit in filii potestate, consideremus, numquid intersit, quae condicio fuerit adscripta, utrum quae moriente filio impleri non potuit, veluti " si alexandriam ierit, filius heres esto" isque romae decessit, an vero quae potuit etiam extremo vitae momento impleri, veluti " si titio decem dederit, filius heres esto", quae condicio nomine filii per alium impleri potest. nam superior quidem species condicionis admittit vivo filio nepotes ad hereditatem, qui si neminem substitutum haberet, dum moritur, legitimus patri heres exstiterit, argumentoque est, quod apud servium quoque relatum est: quendam enim refert ita heredem institutum, si in capitolium ascenderit, quod si non ascendisset, legatum ei datum, eumque antequam ascenderet mortem obisse: de quo respondit servius condicionem morte defecisse ideoque moriente eo legati diem cessisse. altera vero species condicionis vivo filio non admittit nepotes ad hereditatem, qui substituti si non essent, intestato avo heredes existerent: neque enim filius videretur obstitisse, post cuius mortem patris testamentum destituitur, quemadmodum si exheredato eodem filio nepotes, cum filius moreretur, heredes fuissent instituti.

Dig. 28.8.0. De iure deliberandi.

Dig. 28.8.1pr.

Ulpianus 60 ad ed.

Si servus fuerit heres institutus, utique non ipsi praestituimus tempus ad deliberandum, sed ei cuius servus est, quia pro nullo isti habentur apud praetorem. itemque si plurium servus sit, utique omnibus dominis praestituemus.

Dig. 28.8.1.1

Ulpianus 60 ad ed.

Ait praetor: " si tempus ad deliberandum petet, dabo " .

Dig. 28.8.1.2

Ulpianus 60 ad ed.

Cum dicit tempus nec adicit diem, sine dubio ostendit esse in ius dicentis potestate, quem diem praestituat:

Dig. 28.8.2

Paulus 57 ad ed.

Itaque pauciores centum dierum non sunt dandi.

Dig. 28.8.3

Ulpianus 60 ad ed.

Nec non illud sciendum nonnumquam semel, nonnumquam saepius diem ad deliberandum datum esse, dum praetori suadetur tempus, quod primum aditus praestituerat, non suffecisse:

Dig. 28.8.4

Ulpianus 61 ad ed.

Sed hoc impetrari non debet nisi ex magna causa.

Dig. 28.8.5pr.

Ulpianus 70 ad ed.

Aristo scribit non solum creditoribus, sed et heredi instituto praetorem subvenire debere hisque copiam instrumentorum inspiciendorum facere, ut perinde instruere se possint, expediet nec ne agnoscere hereditatem.

Dig. 28.8.5.1

Ulpianus 70 ad ed.

Si maior sit hereditas et deliberat heres et res sunt in hereditate, quae ex tractu temporis deteriores fiunt, adito praetore potest is qui deliberat sine praeiudicio eas iustis pretiis vendere: qui possit etiam ea, quae nimium sumptuosa sint, veluti iumenta aut venalicia, item ea quae mora deteriora fiant, vendere, quique praeterea curaturus sit, ut aes alienum quod sub poena vel sub pretiosis pignoribus debeatur, solvatur.

Dig. 28.8.6

Gaius 23 ad ed. provinc.

Igitur si quidem in hereditate sit vinum oleum frumentum numerata pecunia, inde fieri debebunt impendia: si minus, a debitoribus hereditariis exigenda pecunia. quod si nulli sunt debitores aut iudicem provocent, venire debent res supervacuae.

Dig. 28.8.7pr.

Ulpianus 60 ad ed.

Ait praetor: " si pupilli pupillae nomine postulabitur tempus ad deliberandum, an expediat eum hereditatem retinere, et hoc datum sit: si iusta causa esse videbitur, bona interea deminui nisi si causa cognita boni viri arbitratu vetabo".

Dig. 28.8.7.1

Ulpianus 60 ad ed.

Merito praetor impedit interim deminutionem, quamdiu nomine pupilli petitur tempus ad deliberandum.

Dig. 28.8.7.2

Ulpianus 60 ad ed.

Quid sit autem " deminui vetabo" videamus. his verbis praetor non tantum alienationem impedit, verum etiam actiones exerceri non patitur: est enim absurdum ei, cui alienatio interdicitur, permitti actiones exercere, et ita labeo scribit.

Dig. 28.8.7.3

Ulpianus 60 ad ed.

In causae autem cognitione hoc vertetur, an iusta causa sit, ut deminuere praetor permittat. ergo et funeris causa deminui permittet, item eorum quae sine piaculo non possunt praeteriri. vescendi gratia aeque deminui permittet. sed et ubi urguet, ex aliis quoque causis permittere eum oportet, ut aedificia sarciantur, ne agri inculti sint, si qua pecunia sub poena debetur ut restituatur, ne pignora distrahantur. ex aliis quoque iustis causis praetor aditus deminutionem permittet: neque enim sine permissu eius debet deminutio fieri.

Dig. 28.8.8

Ulpianus 61 ad ed.

Si quis suus heres, posteaquam se abstinuerit, tunc petat tempus ad deliberandum, videamus, an impetrare debeat: magisque est, ut ex causa debeat impetrare, cum nondum bona venierint.

Dig. 28.8.9

Paulus 58 ad ed.

Filius dum deliberat, alimenta habere debet ex hereditate.

Dig. 28.8.10

Marcellus 28 Dig.

Si plures gradus sint heredum institutorum, per singulos observaturum se ait praetor id quod praefiniendo tempore deliberationis edicit, videlicet ut a primo quoque ad sequentem translata hereditate quam primum inveniat successorem, qui possit defuncti creditoribus respondere.

Dig. 28.8.11

Iavolenus 4 ex post. lab.

Qui filium libertinum habebat, heredem eum instituerat, deinde ita scripserat: " si mihi filius nullus erit, qui in suam tutelam veniat, tum dama servus liber esto": is filius pupillus libertinus erat: quaerebatur, si dama liber esset. trebatius negat, quia filii appellatione libertinus quoque contineretur: labeo contra, quia eo loco verum filium accipi oportet. trebatii sententiam probo, si tamen testatorem de hoc filio locutum esse apparet.

Ius Romanum   Justinian   The Latin Library   The Classics Page

OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER UNDETRICESIMUS

Dig. 29.2.0. De adquirenda vel omittenda hereditate.
Dig. 29.3.0. Testamenta quemadmodum aperiuntur inspiciantur et describantur.
Dig. 29.4.0. Si quis omissa causa testamenti ab intestato vel alio modo possideat hereditatem.
Dig. 29.5.0. De senatus consulto silaniano et claudiano: quorum testamenta ne aperiantur.
Dig. 29.6.0. Si quis aliquem testari prohibuerit vel coegerit.
Dig. 29.7.0. De iure codicillorum.

Dig. 29.1.0.R rubrica: de testamento militis.

Dig. 29.1.1pr.

Ulpianus 45 ad ed.

Militibus liberam testamenti factionem primus quidem divus iulius caesar concessit: sed ea concessio temporalis erat. postea vero primus divus titus dedit: post hoc domitianus: postea divus nerva plenissimam indulgentiam in milites contulit: eamque traianus secutus est et exinde mandatis inseri coepit caput tale. caput ex mandatis: " cum in notitiam meam prolatum sit subinde testamenta a commilitonibus relicta proferri, quae possint in controversiam deduci, si ad diligentiam legum revocentur et observantiam: secutus animi mei integritudinem erga optimos fidelissimosque commilitones simplicitati eorum consulendum existimavi, ut quoquomodo testati fuissent, rata esset eorum voluntas. faciant igitur testamenta quo modo volent, faciant quo modo poterint sufficiatque ad bonorum suorum divisionem faciendam nuda voluntas testatoris".

Dig. 29.1.1.1

Ulpianus 45 ad ed.

Miles autem appellatur vel a militia, id est duritia, quam pro nobis sustinent, aut a multitudine, aut a malo, quod arcere milites solent, aut a numero mille hominum, ductum a graeco verbo, tractum a tagmate: nam graeci mille hominum multitudinem tagma appellant, quasi millensimum quemque dictum: unde ipsum ducem xiliarxon appellant. exercitus autem nomen ab exercitatione traxit.

Dig. 29.1.2

Gaius 19 ad ed. provinc.

De militis testamento ideo separatim proconsul edicit, quod optime novit ex constitutionibus principalibus propria atque singularia iura in testamenta eorum observari.

Dig. 29.1.3

Ulpianus 2 ad sab.

Si miles, qui destinaverat communi iure testari, ante defecerit quam testaretur? pomponius dubitat. sed cur non in milite diversum probet? neque enim qui voluit iure communi testari, statim beneficio militari renuntiavit, nec credendus est quisquam genus testandi eligere ad impugnanda sua iudicia, sed magis utroque genere voluisse propter fortuitos casus: quemadmodum plerique pagani solent, cum testamenti faciunt perscripturam, adicere velle hoc etiam vice codicillorum valere. quicquam dixerit, si imperfectum sit testamentum, codicillos non esse, nam secundum nostram sententiam etiam divus marcus rescripsit.

Dig. 29.1.4

Ulpianus 1 ad sab.

Iure militari surdum et mutum testamentum facere posse ante causariam missionem in numeris manentem placet.

Dig. 29.1.5

Ulpianus 4 ad sab.

Milites etiam his, qui heredes exstiterunt, possunt substituere in his dumtaxat, quae sunt ex testamento eorum consecuti.

Dig. 29.1.6

Ulpianus 5 ad sab.

Si miles unum ex fundo heredem scripserit, creditum quantum ad residuum patrimonium intestatus decessisset: miles enim pro parte testatus potest decedere, pro parte intestatus.

Dig. 29.1.7

Ulpianus 9 ad sab.

Qui iure militari testatur etsi ignoraverit praegnatem uxorem vel non fuit praegnas, hoc tamen animo fuit, ut vellet quisquis sibi nascetur exheredem esse, testamentum non rumpitur.

Dig. 29.1.8

Marcellus 10 Dig.

Idem est et si adrogaverit filium neposve successerit in locum filii.

Dig. 29.1.9pr.

Ulpianus 9 ad sab.

Idemque erit dicendum et si nato filio vivo se maluit eodem testamento durante decedere: nam videtur iure militari refecisse testamentum:

Dig. 29.1.9.1

Ulpianus 9 ad sab.

Ut est rescriptum a divo pio in eo qui cum esset paganus, fecit testamentum, mox militare coepit: nam hoc quoque iure militari incipiet valere, si hoc maluit miles.

Dig. 29.1.10

Ulpianus 11 ad sab.

Facere testamentum hostium potitus nec iure militari potest.

Dig. 29.1.11pr.

Ulpianus 45 ad ed.

Ex militari delicto capite damnatis testamentum facere licet super bonis dumtaxat castrensibus: sed utrum iure militari an iure communi, quaeritur. magis autem est, ut iure militari eis testandum sit: nam cum ei quasi militi tribuatur ius testandi, consequens erit dicere iure militari ei testandum. quod ita intellegi oportet, si non sacramenti fides rupta sit.

Dig. 29.1.11.1

Ulpianus 45 ad ed.

Si miles incertus, an sui iuris sit, testamentum fecerit, in ea condicione est testamentum eius, ut valeat: nam et si incertus, an pater suus vivat, testamentum fecerit, testamentum eius valebit.

Dig. 29.1.11.2

Ulpianus 45 ad ed.

Si filius familias ignorans patrem suum decessisse de castrensi peculio in militia testatus sit, non pertinebunt ad heredem eius patris bona, sed sola castrensia:

Dig. 29.1.12

Papinianus 6 resp.

Milites enim ea dumtaxat, quae haberent scriptis, relinquunt.

Dig. 29.1.13pr.

Ulpianus 45 ad ed.

Idem est, etsi de testamento mutando cogitavit, non quia adimere volebat castrensia bona heredi scripto, sed quia de paternis testari volebat et alium heredem scribere.

Dig. 29.1.13.1

Ulpianus 45 ad ed.

Sed si iam veteranus decessit, universa bona etiam paterna ad heredem pertinere castrensium Marcellus libro decimo digestorum scribit: neque enim iam potuit de parte bonorum testari.

Dig. 29.1.13.2

Ulpianus 45 ad ed.

Et deportati et fere omnes, qui testamenti factionem non habent, a milite heredes institui possunt. sed si servum poenae heredem scribat, institutio non valebit: sed si mortis tempore in civitate inveniatur, institutio incipit convalescere quasi nunc data hereditate. et generaliter in omnibus id poterit dici quos miles scribit heredes, ut institutio incipiat vires habere, si mortis tempore talis inveniatur, ut a milite institui potuerit.

Dig. 29.1.13.3

Ulpianus 45 ad ed.

Si servum proprium, quem liberum esse credidisset, miles heredem sine libertate instituit, in ea condicione est, ut institutio non valeat.

Dig. 29.1.13.4

Ulpianus 45 ad ed.

Cum miles in testamento suo servo libertatem dederit eidemque et a primo et a secundo herede per fideicommissum hereditatem reliquerit, quamvis et primus heres et substitutus, priusquam adierint hereditatem, mortem obierunt, non debere intestati exitum facere imperator noster cum divo severo rescripsit: sed perinde habendum est, ac si eidem servo libertas simul et hereditas directo data esset, quae utraque ad eum pervenire testatorem voluisse negari non potest.

Dig. 29.1.14

Maecenatus 4 fideic.

Tractabatur, an tale aliquid et in paganorum testamentis indulgendum esset: et placet non sine distinctione hoc fieri, sed, si quidem vivo testatore et sciente decessissent, nihil novi statuendum, si autem ignorante aut post mortem eius, omnimodo subveniendum.

Dig. 29.1.15pr.

Ulpianus 45 ad ed.

In fraudem plane creditorum nec miles amplius quam unum necessarium facere poterit.

Dig. 29.1.15.1

Ulpianus 45 ad ed.

Sicut autem hereditatem miles nuda voluntate dare potest, ita et adimere potest. denique si cancellaverit testamentum suum vel inciderit, nullius erit momenti: si tamen testamentum cancellaverit et mox valere voluerit, valebit ex suprema voluntate. et ideo cum miles induxisset testamentum suum, mox anulo suo signasset, qui super ea re cogniturus erit considerabit, quo proposito id fecerit: nam si mutatae voluntatis eum paenituisse probabitur, renovatum testamentum intellegitur: quod si ideo, ne ea quae scripta fuerant legi possint, causa irriti facti iudicii potior existimabitur.

Dig. 29.1.15.2

Ulpianus 45 ad ed.

Testamentum ante militiam factum a milite, si in militia decesserit, iure militari valere, si militis voluntas contraria non sit, divus pius rescripsit.

Dig. 29.1.15.3

Ulpianus 45 ad ed.

Si quis se scribat heredem in testamento militis, non remittitur ei senatus consulti poena.

Dig. 29.1.15.4

Ulpianus 45 ad ed.

Miles ad tempus heredem facere potest et alium post tempus vel ex condicione vel in condicionem.

Dig. 29.1.15.5

Ulpianus 45 ad ed.

Item tam sibi quam filio iure militari testamentum facere potest: et soli filio, tametsi sibi non fecerit: quod testamentum valebit, si forte pater vel in militia vel intra annum militiae decessit.

Dig. 29.1.15.6

Ulpianus 45 ad ed.

Bonorum possessionem ultra tempora edicto determinata nec militis posse adgnosci papinianus libro quarto decimo quaestionum scribit, quia generalis est ista determinatio.

Dig. 29.1.16

Paulus 43 ad ed.

Dotalem fundum si legaverit miles, non erit ratum legatum propter legem iuliam.

Dig. 29.1.17pr.

Gaius 15 ad ed. provinc.

Si certarum rerum heredes instituerit miles, veluti alium urbanorum praediorum, alium rusticorum, alium ceterarum rerum, valebit institutio perindeque habebitur, atque si sine partibus heredes eos instituisset resque omnes suas per praeceptionem cuique legando distribuisset.

Dig. 29.1.17.1

Gaius 15 ad ed. provinc.

Iulianus etiam ait, si quis alium castrensium rerum, alium ceterarum scripsisset, quasi duorum hominum duas hereditates intellegi, ut etiam in aes alienum, quod in castris contractum esset, solus is teneatur, qui castrensium rerum heres institutus esset, extra castra contracto aere alieno is solus obligetur, qui ceterarum rerum heres scriptus esset. cui scilicet conveniens videtur respondisse, ut ex quaqua causa debeatur militi, vel huic heredi vel illi ipso iure debeatur. quod si alterutra pars bonorum aeri alieno, quod ex ea causa pendebit, non sufficiat et propter hoc is qui ex parte heres institutus est non adierit, alterum qui adisset compellendum esse aut defendere totam hereditatem aut totam creditoribus solvere.

Dig. 29.1.17.2

Gaius 15 ad ed. provinc.

Si eodem testamento miles eundem heredem, deinde exheredem scripserit, adempta videtur hereditas, cum in paganorum testamento sola hereditas exheredatione adimi non possit.

Dig. 29.1.17.3

Gaius 15 ad ed. provinc.

Si pater a filio familias milite ex castrensi peculio heres institutus omissa causa testamenti aliquid ex peculio possidebit dolove malo fecerit, quo minus possideret, datur in eum legatorum actio.

Dig. 29.1.17.4

Gaius 15 ad ed. provinc.

Si miles testamentum in militia fecerit, codicillos post militiam et intra annum missionis moriatur, plerisque placet in codicillis iuris civilis regulam spectari debere, quia non sunt a milite facti, nec ad rem pertinere, quod testamento confirmati sunt. ideoque in his legatis, quae testamento data sunt, legi falcidiae locum non esse, at in his, quae codicillis scripta sunt, locum esse.

Dig. 29.1.18pr.

Tryphonus 18 disp.

Si vero composita utraque legata, tam quae testamento quam quae codicillis data sunt, ultra dodrantem sint, quaeritur, quatenus minuantur ea, in quibus falcidia locum habet. commodissime autem id statuetur, ut ex universitate bonorum in solidum solutis legatis quae testamento miles dederat id quod supererit pro dodrante et quadrante dividatur inter heredes et eos, quibus codicillis legata data sunt.

Dig. 29.1.18.1

Tryphonus 18 disp.

Quid ergo si consumant universorum bonorum quantitatem legata quae testamento data sunt, utrum nihil ferent hi, quibus codicillis legatum est, an aliquid? et quoniam, si adhuc miles haec quoque legasset, contribuebantur omnia et pro rata ex omnibus decedebat ea portio, quam amplius legaverat quam in bonis habuerat, nunc quoque idem fiet: deinde constituta quantitate legatorum quae codicillis data sunt ex summa, quae efficiebatur debita, si aequo iure omnia deberentur, quartam deducet his solis, quibus codicillis legata sunt.

Dig. 29.1.18.2

Tryphonus 18 disp.

Quod si post utraque legata solida computata deprehenderetur, quod remaneat apud heredem, non tamen sufficiens quartae eorundem legatorum: quod ei deest, detrahatur his solis, quibus codicillis legata data sunt.

Dig. 29.1.19pr.

Ulpianus 4 disp.

Quaerebatur, si miles, qui habebat iam factum testamentum, aliud fecisset et in eo comprehendisset se fidei heredis committere, ut priores tabulae valerent, quid iuris esset. dicebam: militi licet plura testamenta facere, sed sive simul fecerit sive separatim, utique valebunt, si hoc specialiter expresserit, nec superius per inferius rumpetur, cum et ex parte heredem instituere possit, hoc est ex parte testato, ex parte intestato decedere. quin immo et si codicillos ante fecerat, poterit eos per testamentum sequens cavendo in potestatem institutionis redigere et efficere directam institutionem, quae erat precaria. secundum haec in proposito referebam, si hoc animo fuerit miles, ut valeret prius factum testamentum, id quod cavit valere oportere ac per hoc effici, ut duo testamenta sint. sed in proposito cum fidei heredis committatur, ut valeat prius testamentum, apparet eum non ipso iure valere voluisse, sed magis per fideicommissum, id est in causam fideicommissi et codicillorum vim prioris testamenti convertisse.

Dig. 29.1.19.1

Ulpianus 4 disp.

Utrum autem totum testamentum in eam causam conversum sit, hoc est et heredis institutio, an vero legata tantum et fideicommissa et libertates, quaeritur. sed mihi videtur non solum cetera praeter institutionem heredis, sed et ^ es^ ipsam institutionem in causam fideicommissi vertisse, nisi aliud testatorem scripsisse probetur.

Dig. 29.1.19.2

Ulpianus 4 disp.

Si quis a milite heres ad tempus scriptus esset et alius ex tempore, quaeritur, an posterior heres a priore relicta legata debet. et arbitror hunc non debere, nisi alia voluntas militis probetur.

Dig. 29.1.20pr.

Iulianus 27 Dig.

Tribunus militum si intra dies certos, quam successor eius in castra venerat, manens in castris codicillos fecerit et ibi decesserit, quoniam desinit militis loco haberi, postquam successor eius in castra venit, ideo communi iure civium romanorum codicilli eius aestimandi sunt.

Dig. 29.1.20.1

Iulianus 27 Dig.

Cum aliquis facto testamento militare coeperit, id quoque testamentum, quod ante quam militare coeperit fecerat, aliquo casu intellegitur militiae tempore factum, veluti si tabulas inciderit et legerit testamentum ac rursus suo signo signaverit, amplius si et aliquid interleverit perduxerit adiecerit emendaverit: quod si nihil bonorum inciderit, testamentum eius ad privilegia militum non pertinebit.

Dig. 29.1.21

Africanus 4 quaest.

Quod constitutum est, ut testamentum militiae tempore factum etiam intra annum post missionem valeret, quantum ad verba eius ad eos dumtaxat qui mitti solent id beneficium pertinere existimavit: secundum quod neque praefectos neque tribunos aut ceteros, qui successoribus acceptis militare desinunt, hoc privilegium habituros.

Dig. 29.1.22

Marcianus 4 inst.

Miles filius familias si capite minutus fuerit vel emancipatus vel in adoptionem datus a patre suo, testamentum eius valet quasi ex nova voluntate.

Dig. 29.1.23

Tertullianus l.S. de castr. pecul.

Idem et si pater familias miles de castrensibus rebus dumtaxat testatus adrogandum se dederit: si vero missus iam hoc fecerat, non valet testamentum.

Dig. 29.1.24

Florus 10 inst.

Divus traianus statilio severo ita rescripsit: " id privilegium, quod militantibus datum est, ut quoquo modo facta ab his testamenta rata sint, sic intellegi debet, ut utique prius constare debeat testamentum factum esse, quod et sine scriptura et a non militantibus fieri potest. si ergo miles, de cuius bonis apud te quaeritur, convocatis ad hoc hominibus, ut voluntatem suam testaretur, ita locutus est, ut declararet, quem vellet sibi esse heredem et cui libertatem tribuere: potest videri sine scripto hoc modo esse testatus et voluntas eius rata habenda est. ceterum si, ut plerumque sermonibus fieri solet, dixit alicui: " ego te heredem facio", aut " tibi bona mea relinquo", non oportet hoc pro testamento observari. nec ullorum magis interest, quam ipsorum, quibus id privilegium datum est, eiusmodi exemplum non admitti: alioquin non difficulter post mortem alicuius militis testes existerent, qui adfirmarent se audisse dicentem aliquem relinquere se bona cui visum sit, et per hoc iudicia vera subvertuntur".

Dig. 29.1.25

Marcellus l.S. resp.

Titius priusquam tribunus legionis factus esset, testamentum fecit et postea cinctus manente eodem defunctus est: quaero, an militis testamentum videatur esse. Marcellus respondit: testamentum quod ante tribunatum fecisset, nisi postea ab eo factum dictum esse probaretur quod valere vellet, ad commune ius pertinet: constitutionibus enim principum non militum testamenta, sed quae a militibus facta sunt confirmantur: sed plane fecisse testamentum eum interpretandum est, qui se velle testamentum quod ante fecerat valere aliquo modo declaravit.

Dig. 29.1.26

Macer 2 militarium.

Testamenta eorum, qui ignominiae causa missi sunt, statim desinunt militari iure valere, quod anni spatium testamentis eorum, qui honestam vel causariam missionem meruerunt, tribuitur. ius testandi de castrensi, quod filiis familias militantibus concessum est, ad eos, qui ignominiae causa missi sunt, non pertinet, quod hoc praemii loco merentibus tributum est.

Dig. 29.1.27

Papinianus 6 resp.

Centurio secundo testamento postumos heredes instituit neque substitutos dedit: quibus non editis ad superius testamentum se redire testatus est. cetera, quae secundo testamento scripsit, esse irrita placuit, nisi nominatim ea confirmasset ad priorem voluntatem reversus.

Dig. 29.1.28

Ulpianus 36 ad sab.

Cum filius familias miles decessisset filio impubere herede instituto eique substituisset in avi potestate manenti tutoresque dedisset, divi fratres rescripserunt substitutionem quidem valere, tutoris autem dationem non valere, quia hereditati quidem suae miles qualem vellet substitutionem facere potest, verum tamen alienum ius minuere non potest.

Dig. 29.1.29pr.

Marcellus 10 Dig.

Si a milite scriptus heres sua sponte adierit hereditatem et rogatus totam hereditatem restituerit, ex trebelliano transeunt actiones.

Dig. 29.1.29.1

Marcellus 10 Dig.

Miles testamento suo manumittendo nihil efficit in eo, cuius libertas lege aelia sentia vel alia qua impeditur.

Dig. 29.1.29.2

Marcellus 10 Dig.

Edictum praetoris, quo iusiurandum heredibus institutis legatariisque remittitur, locum habet etiam in militum testamentis, sicut etiam in fideicommissis: idemque si turpis esset condicio.

Dig. 29.1.29.3

Marcellus 10 Dig.

Patri eius, qui in emancipatione ipse manumissor exstitisset, contra tabulas testamenti dandam bonorum possessionem partis debitae placet exceptis his rebus, quas in castris adquisisset, quarum liberam testamenti factionem habet:

Dig. 29.1.30

Paulus 7 quaest.

Nam in bona castrensia non esse dandam contra tabulas filii militis bonorum possessionem divus pius antoninus rescripsit.

Dig. 29.1.31

Marcellus 13 Dig.

Si miles titio et seio servum legaverit et eum titius manumisisset deliberante seio moxque is legatum omisisset, liberandum fore dico, quia et si heres servum alicui legatum interim manumisisset, deinde legatarius repudiasset, liber esset.

Dig. 29.1.32

Modestinus 9 reg.

Si secundum probabilem voluntatem militis hereditas eius non adeatur, nec res castrenses heredibus competunt.

Dig. 29.1.33pr.

Tertullianus l.S. de castr. pecul.

Si filius familias miles fecisset testamentum more militiae, deinde post mortem patris postumus ei nasceretur, utique rumpitur eius testamentum. verum si perseverasset in ea voluntate, ut vellet adhuc illud testamentum valere, valiturum illud, quasi rursum aliud factum, si modo militaret adhuc eo tempore quo nasceretur illi postumus.

Dig. 29.1.33.1

Tertullianus l.S. de castr. pecul.

Sed si filius familias miles fecisset testamentum, deinde postea vivo eo et adhuc avo quoque superstite nasceretur ei postumus, non rumpitur eius testamentum, quia cum id quod nasceretur in potestate eius non perveniret, non videtur suus heres adgnasci: ac ne avo quidem suo hunc nepotem postumum, cum vivo filio nasceretur, suum heredem protinus adgnasci et ideo nec avi testamentum rumpi, quoniam, licet in potestate avi protinus esse inciperet, tamen antecederet eum filius.

Dig. 29.1.33.2

Tertullianus l.S. de castr. pecul.

Secundum quae si filius familias miles testamentum fecerit et omiserit postumum per errorem, non quod volebat exheredatum, deinde postumus post mortem avi vivo adhuc filio, id est patre suo natus fuerit, omnimodo rumpet illius testamentum. sed si quidem pagano iam illo facto natus sit, nec convalescet ruptum: si vero militante adhuc natus fuerit, rumpetur, deinde, si voluerit ratum illud esse pater, convalescet sic quasi denuo factum.

Dig. 29.1.33.3

Tertullianus l.S. de castr. pecul.

Sed et si vivo avo nascatur postumus, hic non rumpet continuo patris testamentum: si supervixerit post mortem avi vivo adhuc patre, rumpet, quod novus illi nunc primum heres adgnascitur: ita tamen, ut numquam possit duorum simul testamenta rumpere et avi et patris.

Dig. 29.1.34pr.

Papinianus 14 quaest.

Eius militis, qui doloris impatientia vel taedio vitae mori maluit, testamentum valere vel intestati bona ab his qui lege vocantur vindicari divus hadrianus rescripsit.

Dig. 29.1.34.1

Papinianus 14 quaest.

Militia missus intra annum testamentum facere coepit neque perficere potuit: potest dici solutum ita esse testamentum quod in militia fecit, si iure militiae fuit scriptum: alioquin si valuit iure communi, non esse iure rescissum.

Dig. 29.1.34.2

Papinianus 14 quaest.

Nec tamen circa militem eadem adhibebitur distinctio: nam quocumque modo testamentum fecerit, novissima voluntate rescindetur, quoniam voluntas quoque militis testamentum est.

Dig. 29.1.35

Papinianus 19 quaest.

Miles si testamentum imperfectum relinquat, scriptura quae profertur perfecti testamenti potestatem optinet: nam militis testamentum sola perficitur voluntate: quique plura per dies varios scribit, saepe facere testamentum videtur.

Dig. 29.1.36pr.

Papinianus 6 resp.

Militis codicillis ad testamentum factis etiam hereditas iure videtur dari. quare si partem dimidiam hereditatis codicillis dederit, testamento scriptus ex asse heres partem dimidiam habebit, legata autem testamento data communiter debentur.

Dig. 29.1.36.1

Papinianus 6 resp.

Miles castrensium bonorum et non castrensium diversis heredibus institutis postea castrensium bonorum alios heredes instituit. prioribus tabulis tantum abstulisse videtur, quantum in posteriores contulerit: nec videtur mutare, etsi prioribus tabulis unus heres scriptus fuisset.

Dig. 29.1.36.2

Papinianus 6 resp.

Miles in supremis ordinandis ignarus uxorem esse praegnatem ventris non habuit mentionem. post mortem patris filia nata ruptum esse testamentum apparuit neque legata deberi. si qua vero medio tempore scriptus heres legata solvisset, utilibus actionibus filiae datis ob improvisum casum esse revocanda nec institutum, cum bonae fidei possessor fuerit, quod inde servari non potuisset, praestare.

Dig. 29.1.36.3

Papinianus 6 resp.

Veteranus moriens testamentum iure communi tempore militiae factum irritum esse voluit et intestatus esse maluit. heredum institutiones ac substitutiones in eodem statu mansisse placuit, legata vero petens exceptione doli mali secundum ius commune summoveri, cuius exceptionis vires ex persona petentis aestimantur: et alioquin potior est in re pari causa possessoris.

Dig. 29.1.36.4

Papinianus 6 resp.

Miles iure communi testatus postea testamento iure militiae super bonis omnibus facto post annum militiae vita decesserat: prioris testamenti, quod ruptum esse constabat, non redintegrari vires constitit.

Dig. 29.1.37

Paulus 7 quaest.

Si duobus a milite liberto scriptis heredibus alter omiserit hereditatem, pro ea parte intestatus videbitur defunctus decessisse, quia miles et pro parte testari potest, et competit patrono ab intestato bonorum possessio, nisi si haec voluntas defuncti probata fuerit, ut omittente altero ab alterum vellet totam redire hereditatem.

Dig. 29.1.38pr.

Paulus 8 quaest.

Quod dicitur, si miles intra annum quam missus est decesserit, valere eius testamentum quod iure militari fecerat, verum est, etiamsi post annum condicio institutionis exstiterit, mortuo eo intra annum. et ideo si heredi filio substituerit, nihil interest, quando filius moriatur: sufficit enim patrem intra annum obisse.

Dig. 29.1.38.1

Paulus 8 quaest.

Miles testamentum fecerat, deinde non ignominiae causa missus rursum cinctus est in alia militia: quaerebatur, an testamentum eius, quod in militia fecerat, valeret. quaesivi, utrum iure militari an communi iure testatus est. et si quidem communi iure testatus est, nulla dubitatio est, quin valeat. sed si ut miles fecisset testamentum, agitare coepi, quando adsumptus fuisset, postquam desiit in numeris esse, utrum intra annum an post annum: cognovi intra annum eum adsumptum. ergo si, cum adhuc iure militari valeret, rursus eodem iure posset testari, numquid etiam post annum eo mortuo valeat testamentum? me movebat, quod alia militia est posterior: sed humanius est dicere valere testamentum, quasi coniuncto munere militiae. non loquor de eo, qui voluit valere testamentum etiam adsumptus: hic enim quasi in militia sequenti fecit testamentum exemplo eius, qui paganus fecit, deinde militare coepit.

Dig. 29.1.39

Paulus 9 quaest.

Si filius familias miles captus apud hostes decesserit, dicemus legem corneliam etiam ad eius testamentum pertinere. sed quaeramus, si pater eius prius in civitate decesserit relicto nepote ex filio, an similiter testamentum patris rumpatur. et dicendum est non rumpi testamentum, quia ex eo tempore, quo captus est, videtur decessisse.

Dig. 29.1.40pr.

Paulus 11 resp.

Lucius titius miles notario suo testamentum scribendum notis dictavit et antequam litteris praescriberetur, vita defunctus est: quaero, an haec dictatio valere possit. respondi militibus, quoquo modo velint et quo modo possunt, testamentum facere concessum esse, ita tamen, ut hoc ita subsecutum esse legitimis probationibus ostendatur.

Dig. 29.1.40.1

Paulus 11 resp.

Idem respondit ex testamento eius, qui iure militari testatus esset, servum, qui licet sub condicione legatum meruit, etiam libertatem posse sibi vindicare.

Dig. 29.1.40.2

Paulus 11 resp.

Idem respondit: lucius titius miles testamentum ita fecit: " pamphila serva mea ex asse mihi heres esto": alio deinde capite sempronio commilitoni suo eandem pamphilam reliquit, cuius fidei commisit, ut eam manumitteret: quaero, an heres esset pamphila atque si directo accepisset libertatem. respondi intellegendum militem, qui ancillam suam heredem instituerat, ignorasse posse ex ea institutione etiam libertatem ei competere et ideo sine causa postea a commilitone petisse, ut eandem manumitteret: cum ex priore scriptura libera et heres effecta est, postea nullo praeiudicio voluntati facto frustra legata est.

Dig. 29.1.41pr.

Tryphonus 18 disp.

Miles ita heredem scribere potest: " quoad vivit, titius heres esto, post mortem eius septicius". sed si ita scripserit: " titius usque ad annos decem heres esto" nemine substituto, intestati causa post decem annos locum habebit. et quia diximus ex certo tempore et usque ad certum tempus milites posse instituere heredem, his consequens est, ut, antequam dies veniat, quo admittatur institutus, intestati hereditas deferatur et quod in bonorum portione ei licet, hoc etiam in temporis spatio, licet non modicum sit, ex eodem privilegio competat.

Dig. 29.1.41.1

Tryphonus 18 disp.

Mulier, in qua turpis suspicio cadere potest, nec ex testamento militis aliquid capere potest, ut divus hadrianus rescripsit.

Dig. 29.1.41.2

Tryphonus 18 disp.

Nec tutorem ei, qui in aliena est potestate, miles dare potest.

Dig. 29.1.41.3

Tryphonus 18 disp.

Si miles exheredaverit filium vel sciens eum filium suum esse silentio praeterierit, an legatum a substituto eius dare possit, quaesitum est. dixi non posse, licet ampla legata reliquerit exheredato.

Dig. 29.1.41.4

Tryphonus 18 disp.

Miles et emancipato filio substituere potest: verum hoc ius in his exercebitur, quae ab ipso ad eum cui substituit pervenerint, non etiam in his, si quae habuerit vel postea adquisierit. nam et si filio suo vivo adhuc substituit, post adquisitam ei avi hereditatem nemo diceret ad substitutum pertinere.

Dig. 29.1.41.5

Tryphonus 18 disp.

Si militis adita non fuerit hereditas, an substitutio quam pupillo fecit valeat, quaeritur. et consequens erit hoc dicere, quia permittitur militem filio facere testamentum, quamvis sibi non fecerit.

Dig. 29.1.42

Ulpianus 45 ad ed.

Ex eo tempore quis iure militari incipit posse testari, ex quo in numeros relatus est, ante non: proinde qui nondum in numeris sunt, licet etiam lecti tirones sint et publicis expensis iter faciunt, nondum milites sunt: debent enim in numeros referri.

Dig. 29.1.43

Papinianus 6 resp.

Filius familias equestri militia exornatus et in comitatu principum retentus cingi confestim iussus testamentum de castrensi facere potest.

Dig. 29.1.44

Ulpianus 45 ad ed.

Rescripta principum ostendunt omnes omnino, qui eius sunt gradus, ut iure militari testari non possint, si in hostico deprehendantur et illic decedant, quomodo velint et quomodo possint, testari, sive praeses sit provinciae sive quis alius, qui iure militari testari non potest.

Dig. 29.2.0. De adquirenda vel omittenda hereditate.

Dig. 29.2.1

Paulus 2 ad sab.

Qui totam hereditatem adquirere potest, is pro parte eam scindendo adire non potest:

Dig. 29.2.2

Ulpianus 4 ad sab.

Sed et si quis ex pluribus partibus in eiusdem hereditate institutus sit, non potest quasdam partes repudiare, quasdam adgnoscere.

Dig. 29.2.3

Ulpianus 6 ad sab.

Quamdiu prior heres institutus hereditatem adire potest, substitutus non potest.

Dig. 29.2.4

Ulpianus 3 ad sab.

Nolle adire hereditatem non videtur, qui non potest adire.

Dig. 29.2.5pr.

Ulpianus 1 ad sab.

Mutum nec non surdum, etiam ita natos pro herede gerere et obligari hereditati posse constat.

Dig. 29.2.5.1

Ulpianus 1 ad sab.

Eum, cui lege bonis interdicitur, institutum posse adire hereditatem constat.

Dig. 29.2.6pr.

Ulpianus 6 ad sab.

Qui in aliena est potestate, non potest invitum hereditati obligare eum in cuius est potestate, ne aeri alieno pater obligaretur.

Dig. 29.2.6.1

Ulpianus 6 ad sab.

Sed in bonorum possessione placuit ratam haberi posse eam, quam citra voluntatem adgnovit is qui potestati subiectus est.

Dig. 29.2.6.2

Ulpianus 6 ad sab.

Sed et si legitima hereditas filio delata sit ex senatus consulto orfitiano matris, idem erit probandum.

Dig. 29.2.6.3

Ulpianus 6 ad sab.

Sed et si non adierit filius, diu tamen possedit pater hereditatem, credendus est admisisse hereditatem, ut divus pius et imperator noster rescripserunt.

Dig. 29.2.6.4

Ulpianus 6 ad sab.

Si is, qui putabat se filium familias, patris iussu adierit, eum neque sibi neque ei qui iussit quaesisse hereditatem constat: quamquam is, quem pater iussit adire et decessit, si adierit iam mortuo patre, obliget se hereditati, ut iulianus libro trigesimo primo digestorum scripsit: nam eum, qui dubitat, utrum filius familias an pater familias morte patris factus sit, posse adire hereditatem magis admittit.

Dig. 29.2.6.5

Ulpianus 6 ad sab.

Interdum filii familias et sine aditione adquirent hereditatem his in quorum sunt potestate, ut puta si nepos ex filio exheredato heres sit institutus: patrem enim suum sine aditione faciet heredem et quidem necessarium.

Dig. 29.2.6.6

Ulpianus 6 ad sab.

Sed si quis heres institutus adoptetur a filio exheredato, necessarium eum non facit, sed iuberi debet, ut adeat, quoniam mortis tempore in potestate non fuerit: nam per eum quis existere necessarius non potest qui ipse non esset exstaturus.

Dig. 29.2.6.7

Ulpianus 6 ad sab.

Celsus libro quinto decimo digestorum scripsit eum, qui metu verborum vel aliquo timore coactus fallens adierit hereditatem, sive liber sit, heredem non fieri placet, sive servus sit, dominum heredem non facere.

Dig. 29.2.7pr.

Paulus 1 ad sab.

Si quis filium familias heredem instituerit et ita scripserit: " si mihi titius iste filius familias heres non erit, sempronius heres esto" filio adeunte iussu patris substitutus excluditur.

Dig. 29.2.7.1

Paulus 1 ad sab.

Si filius prius quam sciret se necessarium exstitisse patri heredem decesserit relicto filio necessario, permittendum est nepoti abstinere se avi hereditate, quia et patri eius idem tribueretur.

Dig. 29.2.7.2

Paulus 1 ad sab.

In omni successione qui ei heres exstitit, qui titio heres fuit, titio quoque heres videtur esse nec potest titii omittere hereditatem.

Dig. 29.2.8pr.

Ulpianus 7 ad sab.

More nostrae civitatis neque pupillus neque pupilla sine tutoris auctoritate obligari possunt: hereditas autem quin obliget nos aeri alieno, etiam si non sit solvendo, plus quam manifestum est. de ea autem hereditate loquimur, in qua non succedunt huiusmodi personae quasi necessariae.

Dig. 29.2.8.1

Ulpianus 7 ad sab.

Impubes qui in alterius potestate est si iussu eius adierit hereditatem, licet consilii capax non fuerit, ei adquirit hereditatem.

Dig. 29.2.9

Paulus 2 ad sab.

Pupillus si fari possit, licet huius aetatis sit, ut causam adquirendae hereditatis non intellegat, quamvis non videatur scire huiusmodi aetatis puer (neque enim scire neque decernere talis aetas potest, non magis quam furiosus), tamen cum tutoris auctoritate hereditatem adquirere potest: hoc enim favorabiliter eis praestatur.

Dig. 29.2.10

Ulpianus 7 ad sab.

Si ex asse heres destinaverit partem habere hereditatis, videtur in assem pro herede gessisse.

Dig. 29.2.11

Pomponius 3 ad sab.

Impuberibus liberis omnimodo abstinendi potestas fit, puberibus autem ita, si se non immiscuerint.

Dig. 29.2.12

Ulpianus 11 ad ed.

Ei, qui se non miscuit hereditati paternae, sive maior sit sive minor, non esse necesse praetorem adire, sed sufficit se non miscuisse hereditati. et est in semenstribus vibiis soteri et victorino rescriptum, non esse necesse pupillis in integrum restitui ex avito contractu, quorum pater constituerat non adgnoscere hereditatem neque quicquam amoverat vel pro herede gesserat.

Dig. 29.2.13pr.

Ulpianus 7 ad sab.

Is qui heres institutus est vel is cui legitima hereditas delata est repudiatione hereditatem amittit. hoc ita verum est, si in ea causa erat hereditas, ut et adiri posset: ceterum heres institutus sub condicione si ante condicionem existentem repudiavit, nihil egit, qualisqualis fuit condicio, etsi in arbitrium collata est.

Dig. 29.2.13.1

Ulpianus 7 ad sab.

Si quis dubitet, vivat testator nec ne, repudiando nihil agit.

Dig. 29.2.13.2

Ulpianus 7 ad sab.

Substitutus quoque similiter si ante repudiat, quam heres institutus decernat de hereditate, nihil valebit repudiatio.

Dig. 29.2.13.3

Ulpianus 7 ad sab.

Neque filius familias repudiando sine patre neque pater sine filio alteri nocet: utrique autem possunt repudiare.

Dig. 29.2.14

Paulus 2 ad sab.

Idem est etiam si legitima hereditas filiis obvenit.

Dig. 29.2.15

Ulpianus 7 ad sab.

Is qui putat se necessarium, cum sit voluntarius, non poterit repudiare: nam plus est in opinione, quam in veritate.

Dig. 29.2.16

Ulpianus 24 ad ed.

Et e contrario qui se putat necessarium, voluntarius existere non potest.

Dig. 29.2.17pr.

Ulpianus 7 ad sab.

Nec is, qui non valere testamentum aut falsum esse putat, repudiare potest. sed si certum sit falsum non esse, quod falsum dicitur, sicut adeundo adquirit, ita et repudiando amittit hereditatem.

Dig. 29.2.17.1

Ulpianus 7 ad sab.

Heres institutus idemque legitimus si quasi institutus repudiaverit, quasi legitimus non amittit hereditatem: sed si quasi legitimus repudiavit, si quidem scit se heredem institutum, credendus est utrumque repudiasse: si ignorat, ad neutrum ei repudiatio nocebit neque ad testamentariam, quoniam hanc non repudiavit, neque ad legitimam, quoniam nondum ei fuerat delata.

Dig. 29.2.18

Paulus 2 ad sab.

Is potest repudiare, qui et adquirere potest.

Dig. 29.2.19

Paulus 59 ad ed.

Qui hereditatem adire vel bonorum possessionem petere volet, certus esse debet defunctum esse testatorem.

Dig. 29.2.20pr.

Ulpianus 61 ad ed.

Pro herede gerere videtur is, qui aliquid facit quasi heres. et generaliter iulianus scribit eum demum pro herede gerere, qui aliquid quasi heres gerit: pro herede autem gerere non esse facti quam animi: nam hoc animo esse debet, ut velit esse heres. ceterum si quid pietatis causa fecit, si quid custodiae causa fecit, si quid quasi non heres egit, sed quasi alio iure dominus, apparet non videri pro herede gessisse.

Dig. 29.2.20.1

Ulpianus 61 ad ed.

Et ideo solent testari liberi, qui necessarii existunt, non animo heredis se gerere quae gerunt, sed aut pietatis aut custodiae causa aut pro suo. ut puta patrem sepelivit vel iusta ei fecit: si animo heredis, pro herede gessit: enimvero si pietatis causa hoc fecit, non videtur pro herede gessisse. servos hereditarios pavit iumenta aut pavit aut distraxit: si hoc ut heres, gessit pro herede: aut si non ut heres, sed ut custodiat, aut putavit sua, aut dum deliberat, quid fecit consulens ut salvae sint res hereditariae, si forte ei non placuerit pro herede gerere, apparet non videri pro herede gessisse. proinde et si fundos aut aedes locavit vel fulsit vel si quid aliud fecit non hoc animo, quasi pro herede gereret, sed dum ei, qui substitutus est vel ab intestato heres exstaturus, prospicit, aut res tempore perituras distraxit: in ea causa est, ut pro herede non gesserit, quia non hoc animo fuerit.

Dig. 29.2.20.2

Ulpianus 61 ad ed.

Si quid tamen quasi heres petit, sed ex his, quae ad heredem extraneum non transeunt, videamus, an oneribus se immerserit hereditariis. ut puta a liberto parentis operas petit: has heres extraneus petere non potuit, hic tamen petendo consequi potest. et constat pro herede eum non gessisse, cum petitio earum etiam creditoribus competat et maxime futurarum.

Dig. 29.2.20.3

Ulpianus 61 ad ed.

Sed et qui in sepulchrum hereditarium mortuum intulit, obligari paternis creditoribus non est existimandus, ut papinianus ait: quae sententia humanior est, licet iulianus contra scripserit.

Dig. 29.2.20.4

Ulpianus 61 ad ed.

Papinianus scribit filium heredem institutum qui se bonis paternis abstinuit volgo putare quosdam, si a statulibero pecuniam accepit, a creditoribus conveniendum, sive nummi peculiares fuerint sive non fuerint, quia ex defuncti voluntate accipitur, quod condicionis implendae causa datur. iulianus autem et si non abstinuit, idem existimavit. ita demum autem pro herede gessisse ait papinianus, si solus heres sit: ceterum si coheredem habeat et coheres adiit, non est cogendus, inquit, is qui accepit a statulibero actiones creditorum suscipere: nam cum se filius abstinet, idem debebit consequi iure praetorio, quod emancipatus consequitur qui hereditatem repudiavit, quo facto statuliber filio nominatim pecuniam dare iussus potuisset non heredi dando ad libertatem pervenire. itaque tunc pro herede geri dicendum esse ait, quotiens accipit quod citra nomen et ius heredis accipere non poterat.

Dig. 29.2.20.5

Ulpianus 61 ad ed.

Si sepulchri violati filius aget quamvis hereditarii, quia nihil ex bonis patris capit, non videtur bonis immiscere: haec enim actio poenam et vindictam quam rei persecutionem continet.

Dig. 29.2.21pr.

Ulpianus 7 ad sab.

Si quis extraneus rem hereditariam quasi subripiens vel expilans tenet, non pro herede gerit: nam admissum contrariam voluntatem declarat.

Dig. 29.2.21.1

Ulpianus 7 ad sab.

Interdum autem animus solus eum obstringet hereditati, ut puta si re non hereditaria quasi heres usus sit.

Dig. 29.2.21.2

Ulpianus 7 ad sab.

Sed ita demum pro herede gerendo adquiret hereditatem, si iam sit ei delata: ceterum ex quibus causis repudiantem nihil agere diximus, ex isdem causis nec pro herede gerendo quicquam agere sciendum est.

Dig. 29.2.21.3

Ulpianus 7 ad sab.

Si quis partem ex qua institutus est ignoravit, iulianus scribit nihil ei nocere, quominus pro herede gereret. quod et cassius probat, si condicionem, sub qua heres institutus est, non ignorat, si tamen exstitit condicio, sub qua substitutus est. quid tamen si ignorat condicionem exstitisse ? puto posse adire hereditatem, quemadmodum si ignoret, an coheredis, cui substitutus est, repudiatione portio ei delata sit.

Dig. 29.2.22

Paulus 2 ad sab.

Si is, ad quem legitima hereditas pertinet, putaverit defunctum servum suum esse et quasi peculium eius nactus sit, placet non obligari eum hereditati. idem ergo dicemus, ut ait pomponius, si quasi libertini sui, cum ingenuus esset, bona eius occupavit. nam ut quis pro herede gerendo obstringat se hereditati, scire debet, qua ex causa hereditas ad eum pertinet: veluti adgnatus proximus iusto testamento scriptus heres, antequam tabulae proferantur, cum existimaret intestato patrem familias mortuum, quamvis omnia pro domino fecerit, heres tamen non erit. et idem iuris erit, si non iusto testamento scriptus heres prolatis tabulis, cum putaret iustum esse, quamvis omnia pro domino administraverit, hereditatem tamen non adquiret.

Dig. 29.2.23

Pomponius 3 ad sab.

In repudianda hereditate vel legato certus esse debet de suo iure is qui repudiat.

Dig. 29.2.24

Ulpianus 7 ad sab.

Fuit quaestionis, an pro herede gerere videatur, qui pretium hereditatis omittendae causa capit, et optinuit hunc pro herede quidem non gerere, qui ideo accepit, ne heres sit, in edictum tamen praetoris incidere. sive igitur a substituto non heres accepit sive a legitimo, mortis causa accepisse videtur. idemque erit et si non accepit, sed promissa sit ei pecunia: nam et stipulando mortis causa capit.

Dig. 29.2.25pr.

Ulpianus 8 ad sab.

Si quis mihi bona fide serviat servus alienus, iussu meo hereditatem adeundo nihil promovebit nec adquiret mihi, nec fructuarius quidem servus.

Dig. 29.2.25.1

Ulpianus 8 ad sab.

Servus municipum vel collegii vel decuriae heres institutus manumissus vel alienatus adibit hereditatem.

Dig. 29.2.25.2

Ulpianus 8 ad sab.

Si fisci servus sit, iussu procuratoris caesaris adibit hereditatem, ut est saepe rescriptum.

Dig. 29.2.25.3

Ulpianus 8 ad sab.

Si quis plane servus poenae fuerit effectus ad gladium vel ad bestias vel in metallum damnatus, si fuerit heres institutus, pro non scripto hoc habebitur: idque divus pius rescripsit.

Dig. 29.2.25.4

Ulpianus 8 ad sab.

Iussum eius qui in potestate habet non est simile tutoris auctoritati, quae interponitur perfecto negotio, sed praecedere debet, ut gaius cassius libro secundo iuris civilis scribit: et putat vel per internuntium fieri posse vel per epistulam.

Dig. 29.2.25.5

Ulpianus 8 ad sab.

Sed utrum generaliter " quaecumque tibi hereditas fuerit delata", an specialiter? et magis placet, ut gaius cassius scribit, specialiter debere mandare.

Dig. 29.2.25.6

Ulpianus 8 ad sab.

An nominatim de vivi hereditate mandari possit, quaeritur: sed ego non puto recipiendum, ut de vivi hereditate mandetur. plane si rumor fuit lucium titium decessisse, poterit ei mandare, ut, si scripsit eum, adeat: aut si clusae adhuc tabulae sunt et sit incertum, an filius scriptus sit heres.

Dig. 29.2.25.7

Ulpianus 8 ad sab.

Sed quid si mandavit, ut hereditatem colligat, an videtur mandasse, ut adeat? quid si ut petat bonorum possessionem? aut ut rem hereditariam distrahat? aut quid si petitam bonorum possessionem ratam habuit, mox filius adeat hereditatem? vel quid si pro herede gerere mandavit, filius adiit hereditatem? an iussu videatur adisse, dubitari potest. immo verius est ex his omnibus aditionem esse introducendam.

Dig. 29.2.25.8

Ulpianus 8 ad sab.

Pater filio ita scripsit: " scio, fili, quod pro tua prudentia invigilabis hereditati delatae tibi lucii titii". puto iussu patris adisse.

Dig. 29.2.25.9

Ulpianus 8 ad sab.

Quid si mandavit: " si expedit adire, adito?" " si putas expedire adire, adito?" erit iussu aditum.

Dig. 29.2.25.10

Ulpianus 8 ad sab.

Si " coram titio" iussit adire, si " arbitrio lucii titii", recte puto iussisse.

Dig. 29.2.25.11

Ulpianus 8 ad sab.

Sed si mandavit quasi ex asse instituto et inveniatur ex parte, non puto ex iussu adisse. quod si ex parte iussit, potest ex asse adire. aliter atque si mandavit quasi ab intestato et ex testamento adiit: nam non puto quicquam egisse. at si ex testamento mandavit, poterit et ab intestato, quoniam non fecit deteriorem condicionem patris. idemque et si quasi instituto praecepit et inveniatur substitutus, vel contra.

Dig. 29.2.25.12

Ulpianus 8 ad sab.

Sed si mandavit, ut patris adiret, sit autem et impuberi substitutus, non sufficit iussum.

Dig. 29.2.25.13

Ulpianus 8 ad sab.

Plane si sic mandavit " si qua ex testamento lucii titii deferatur hereditas", potest defendi iussu adisse.

Dig. 29.2.25.14

Ulpianus 8 ad sab.

Sed si posteaquam iussit, paenitentiam egit prius quam adiret, nihil agit adeundo.

Dig. 29.2.25.15

Ulpianus 8 ad sab.

Item si se adrogandum dederit prius quam filius adiret, non est adquisita hereditas.

Dig. 29.2.26

Paulus 2 ad sab.

Si ego et servus meus vel filius heres institutus sit, si iussero filio vel servo adire, statim et ex mea institutione me heredem esse pomponius scribit: idem et Marcellus probat et iulianus.

Dig. 29.2.27

Pomponius 3 ad sab.

Neminem pro herede gerere posse vivo eo, cuius in bonis gerendum sit, labeo ait.

Dig. 29.2.28

Ulpianus 8 ad sab.

Aristo existimat praetorem aditum facultatem facere debere heredi rationes defuncti ab eo petere, penes quem depositae sunt, deliberanti de adeunda hereditate.

Dig. 29.2.29

Pomponius 3 ad sab.

Qui heres institutus prohibeatur ab eo, qui una institutus iam hereditatem adiit, tabulas litteras rationes inspicere mortui, unde scire posset an sibi adeunda esset hereditas, non videtur pro herede gerere.

Dig. 29.2.30pr.

Ulpianus 8 ad sab.

Cum quidam legationis causa absens filium heredem institutum non potuisset iubere adire in provincia agentem, divus pius rescripsit consulibus subvenire ei oportere mortuo filio, eo quod rei publicae causa aberat.

Dig. 29.2.30.1

Ulpianus 8 ad sab.

Quod dicitur: " proximus a filio postumo heres, dum mulier praegnas est aut putatur esse, adire hereditatem non potest: sed si scit non esse praegnatem, potest" accipe proximus a ventre, qui suum heredem pariturus est. et non solum ad testatos haec verba, verum ad intestatos quoque pertinent. et in eo ventre idem accipias, qui legitimum vel consanguineum pariturus est, quoniam mortis tempore qui in utero est, quantum ad moram faciendam inferioribus et sibi locum faciendum si fuerit editus, pro iam nato habetur. idemque et per bonorum possessionem edictalem denique praetor ventrem mittit in possessionem.

Dig. 29.2.30.2

Ulpianus 8 ad sab.

Sive igitur putem praegnatem sive sit re vera praegnas, quae eum paritura est qui suus futurus est, adire hereditatem non possum, quoniam in eo est, ut rumpatur testamentum, nisi si proponas ventrem institutum vel exheredatum.

Dig. 29.2.30.3

Ulpianus 8 ad sab.

Quod dicitur " si putetur esse praegnas", sic accipiendum est, si dicat se praegnatem. quid ergo, si ipsa non dicat, sed neget, alii dicant praegnatem esse? adhuc adiri hereditas non potest: finge obstetrices dicere. quid si ipse putat solus? si iusta ratione ductus, non potest adire: si secundum multorum opinionem potest.

Dig. 29.2.30.4

Ulpianus 8 ad sab.

Quid ergo si praegnas fuit, cum putaret heres non esse praegnatem et adiit, mox abortum factum est? procul dubio nihil egerit. totiens igitur ei sua praesumptio proficit, quotiens concurrit cum veritate.

Dig. 29.2.30.5

Ulpianus 8 ad sab.

Sed et si ipsa mulier heres instituta sit, quae se praegnatem fingit, adeundo adquiret hereditatem: per contrarium non adquiret, si se putet praegnatem, cum non sit.

Dig. 29.2.30.6

Ulpianus 8 ad sab.

Suum heredem certum est ex asse heredem esse, etsi putat esse praegnatem mulierem, quae non est praegnas. quid si unum in utero habeat, an ex parte dimidia sit heres, sive institutum postumum proponas sive intestatum patrem decessisse? quod et sextum pomponium opinatum tertullianus libro quarto quaestionum refert: putasse enim, sicuti cum vacuo utero suus ex asse heres est, ita et cum unum gerit nec per naturam humanae condicionis alium partum formare potest (quod quidem post certum tempus conceptionis eveniet), ex parte dimidia et ignorantem fore heredem, non ex quarta, ut iulianus putat.

Dig. 29.2.30.7

Ulpianus 8 ad sab.

Scientia autem vel opinio, si filius familias vel servus instituti sunt, utrum ipsorum an domini vel patris accipienda sit? finge patrem putasse praegnatem, filium certum esse fingere et sic adire, an adquirat hereditatem? puto adquirere: sed contra non adquirere.

Dig. 29.2.30.8

Ulpianus 8 ad sab.

Si certus sum non esse falsum testamentum vel irritum vel ruptum, licet dicatur esse, possum adire hereditatem.

Dig. 29.2.31

Paulus 2 ad sab.

Heredi cum postumo instituto reliquae partes adcrescunt, quae postumo datae sunt, si certum sit non esse praegnatem, licet heres ignoret.

Dig. 29.2.32pr.

Ulpianus 8 ad sab.

Heres institutus si putet testatorem vivere, quamvis iam defunctus sit, adire hereditatem non potest.

Dig. 29.2.32.1

Ulpianus 8 ad sab.

Sed et si scit se heredem institutum, sed utrum pure an sub condicione ignoret, non poterit adire hereditatem, licet pure heres institutus sit, et sub condicione licet paruerit condicioni.

Dig. 29.2.32.2

Ulpianus 8 ad sab.

Sed et si de condicione testatoris incertus sit, pater familias an filius familias sit, non poterit adire hereditatem, etsi eius condicionis sit in veritate, ut testari potuerit.

Dig. 29.2.33

Paulus 12 ad plaut.

Quod si dubitet, apud hostes decessit an civis romanus, quoniam utroque casu est ius adeundi et in re est, ut possit adire, dicendum est posse adire.

Dig. 29.2.34pr.

Ulpianus 8 ad sab.

Sed et si de sua condicione quis dubitet, an filius familias sit, posse eum adquirere hereditatem iam dictum est. cur autem, si suam ignoret condicionem, adire potest, si testatoris, non potest? illa ratio est, quod qui condicionem testatoris ignorat, an valeat testamentum dubitat, qui de sua, de testamento certus est.

Dig. 29.2.34.1

Ulpianus 8 ad sab.

Sed et si cum esset pure institutus, putavit sub condicione et impleta condicione, quam iniectam putavit, adiit, an possit adquirere hereditatem? consequens est dicere posse eum adire, maxime cum haec suspicio nihil ei offuerit nec periculum adtulerit. facilius quis admittet, si quis pure institutus putavit se sub condicione institutum condicionemque impletam quam in eventum putabat: nam in nullo haec suspicio offuit.

Dig. 29.2.35pr.

Ulpianus 9 ad sab.

Si quis heres institutus ex parte, mox titio substitutus, antequam ex causa substitutionis ei deferatur hereditas, pro herede gesserit, erit heres ex causa quoque substitutionis, quoniam invito quoque ei adcrescit portio. idem dico et si filius familias vel servus iussu domini vel patris adierint hereditatem, mox emancipatus vel manumissus ex causa substitutionis adeant: erunt namque heredes: sunt enim appendices praecedentis institutionis.

Dig. 29.2.35.1

Ulpianus 9 ad sab.

Si exclusus per condicionem sibi datam pater filium iussit adire, dicendum erit eum non quaesisse suam portionem.

Dig. 29.2.35.2

Ulpianus 9 ad sab.

Sed si ex duobus filiis unum iusserit, debebit et alium filium iubere adire.

Dig. 29.2.36

Pomponius 3 ad sab.

Si ex sua parte dominus vel pater adierit, necessarium est iussum, ut filius vel servus coheredes adeant.

Dig. 29.2.37

Pomponius 5 ad sab.

Heres in omne ius mortui, non tantum singularum rerum dominium succedit, cum et ea, quae in nominibus sint, ad heredem transeant.

Dig. 29.2.38

Ulpianus 43 ad ed.

Si duo sint necessarii heredes, quorum alter se abstinuit, alter posteaquam prior abstinuit immiscuit se, dicendum est hunc non posse recusare, quo minus tota onera hereditaria subeat: qui enim scit aut scire potuit illo abstinente se oneribus fore implicitum, ea condicione adire videtur.

Dig. 29.2.39

Ulpianus 46 ad ed.

Quam diu potest ex testamento adiri hereditas, ab intestato non defertur.

Dig. 29.2.40

Ulpianus 4 disp.

Quaesitum est, an, licet quis paternae hereditatis nihil attingat, aliquid tamen propter patris voluntatem habeat vel faciat, an creditoribus paternis cogatur respondere: ut puta si impuberi fuerit substitutus. in qua specie iulianus libro vicesimo sexto digestorum scripsit incidere eum in edictum, si se immiscuerit impuberis hereditati: nam qui iudicium parentis oppugnaverit, non debet ex eadem hereditate quicquam consequi. sed Marcellus eleganter distinguit multum interesse, utrum ex asse fuerit institutus in patris testamento an ex parte, ut, si ex parte, potuerit sine metu remota patris successione impuberis hereditatem amplecti.

Dig. 29.2.41

Iulianus 26 Dig.

Filius, qui se paterna hereditate abstinuit, si exheredati fratris hereditati se immiscuerit et pro herede gesserit, poterit ex substitutione hereditatem optinere.

Dig. 29.2.42pr.

Ulpianus 4 disp.

Iulianus libro vicesimo sexto digestorum scripsit, si pupillus paterna hereditate se abstinuisset, deinde ei aliquis heres exstitisset, non esse eum compellendum creditoribus paternis respondere, nisi substitutus ei fuit: inclinat enim in hoc, ut putet substitutum etiam patris onera subiturum. quae sententia a Marcello recte notata est: impugnat enim utilitatem pupilli, qui ipse saltem potest habere successorem: metu enim onerum patris timidius quis etiam impuberis hereditatem adibit. alioquin, inquit, et si frater fuit, omissa causa testamenti ab intestato possidebit hereditatem et quidem impune: nec enim videtur voluisse fraudare edictum, qui sibi prospicit, ne oneribus patris pupilli hereditas implicaretur. sed quod in fratre scripsit, credo ita intellegendum, si non impuberis frater fuit, sed testatoris: ceterum utique si frater a patre fratri substitutus impuberi sit, sine dubio necessarius heres existet.

Dig. 29.2.42.1

Ulpianus 4 disp.

Si in societate, quam vivo patre inchoaverat, filius post mortem patris perseveraverit, iulianus recte distinguit interesse, utrum rem coeptam sub patre perficit an novam inchoavit: nam si quid novum in societate inchoavit, non videri miscuisse hereditati patris scripsit.

Dig. 29.2.42.2

Ulpianus 4 disp.

Si servum paternum filius manumiserit, sine dubio miscuisse se paternae hereditati videbitur.

Dig. 29.2.42.3

Ulpianus 4 disp.

Proponebatur filius a patre de castrensi peculio servos comparasse eosque a patre manumittere rogatus, cum heres esset ab eo institutus: quaerebatur, si se abstinuisset paterna hereditate eosque manumisisset, an miscuisse se paternae hereditati videatur. dicebamus, nisi evidenter quasi heres manumiserit, non debere eum calumniam pati, quasi se miscuerit hereditati.

Dig. 29.2.43

Iulianus 30 Dig.

Heres per servum hereditarium eiusdem hereditatis partem vel id, quod eiusdem hereditatis sit, adquirere non potest.

Dig. 29.2.44

Iulianus 47 Dig.

Quotiens pupillus patri heres exstitit et abstinet se hereditate, quamvis patris bona sub creditoribus fiant, tamen rata haberi debent, quaecumque pupillus bona fide gesserit: et ideo ei, qui fundum tutore auctore a pupillo emerit, succurrendum erit: nec interest, pupillus solvendo sit nec ne.

Dig. 29.2.45pr.

Iulianus 1 ad urs. ferocem.

Aditio hereditatis non est in opera servili.

Dig. 29.2.45.1

Iulianus 1 ad urs. ferocem.

Idcirco si servus dotalis adierit, actione de dote eam hereditatem mulier reciperabit, quamvis ea, quae ex operis dotalium adquiruntur, ad virum pertineant.

Dig. 29.2.45.2

Iulianus 1 ad urs. ferocem.

Et cum quaestus et compendii societas initur, quidquid ex operis suis socius adquisierit, in medium conferet: sibi autem quisque hereditatem adquirit.

Dig. 29.2.45.3

Iulianus 1 ad urs. ferocem.

Praeterea nec fructuarius quidem servus iussu eius, qui usum fructum in eo habet, adire hereditatem poterit.

Dig. 29.2.45.4

Iulianus 1 ad urs. ferocem.

Et quod a quibusdam respondetur, si liber homo, qui bona fide mihi serviebat, propter me heres institutus erit, posse eum iussu meo adire hereditatem, potest verum esse, ut intellegatur non opera sua mihi adquirere, sed ex re mea, sicut in stipulando et per traditionem accipiendo ex re mea mihi adquirat.

Dig. 29.2.46

Africanus 1 quaest.

Cum falsum testamentum diceretur, si quidem ipse heres accusaretur, quoniam certus esse debeat se falsum non fecisse, recte adibit hereditatem: sin autem alius argueretur citra conscientiam eius, non potest adire, quasi dubitet verum esse testamentum.

Dig. 29.2.47

Africanus 4 quaest.

Qui servum suum heredem institutum adire iusserat, priusquam ille adiret, furiosus est factus. negavit recte servum aditurum, quoniam non nisi voluntate domini adquiri hereditas potest, furiosi autem voluntas nulla est.

Dig. 29.2.48

Paulus 1 manual.

Si quis alicui mandaverit, ut, si aestimaverit, peteret sibi bonorum possessionem, et postquam ille petit, furere coeperit, nihilo minus adquisita est ei bonorum possessio. quod si antequam ille petat, is qui mandavit petendum furere coeperit, dicendum est non statim ei adquisitam bonorum possessionem: igitur bonorum possessionis petitio ratihabitione debet confirmari.

Dig. 29.2.49

Africanus 4 quaest.

Pupillum etiam eo tutore auctore, qui tutelam non gerat, hereditatem adeundo obligari ait.

Dig. 29.2.50

Modestinus l.S. de heuremat.

Si per epistulam servo pupilli tutor hereditatem adire iusserit, si post subscriptam epistulam tutor moriatur, antequam ex epistula servus adiret, nemo dicturus est obligari postea pupillum hereditati.

Dig. 29.2.51pr.

Africanus 4 quaest.

Eum, qui duobus testamentis eiusdem testatoris heres scribitur, cum dubitet, num posterius falsum sit, ex neutro eorum posse adire hereditatem placet.

Dig. 29.2.51.1

Africanus 4 quaest.

Filius familias heres scriptus patrem suum certiorem fecerat videri sibi solvendo esse hereditatem: pater rescripserat sibi parum idoneam renuntiari itaque debere eum diligentius explorare et ita adire, si idoneam comperisset: filius acceptis litteris patris adiit hereditatem: dubitatum est, an recte adisset. probabilius diceretur, quamdiu persuasum ei non sit solvendo esse hereditatem, patrem non obligasse.

Dig. 29.2.51.2

Africanus 4 quaest.

Sed et si quis ita dixerit: " si solvendo hereditas est, adeo hereditatem " , nulla aditio est.

Dig. 29.2.52pr.

Marcianus 4 inst.

Cum heres institutus erat filius et habebat patrem furiosum, in cuius erat potestate, interponere se suam benivolentiam divus pius rescripsit, ut, si filius familias adierit, perinde habeatur atque si pater familias adisset, permisitque ei et servos hereditatis manumittere.

Dig. 29.2.52.1

Marcianus 4 inst.

Qui ex parte heres institutus est pure, ex parte sub condicione solus, etiam pendente condicione, si adierit hereditatem, ex asse heres erit, quia solus heres futurus est omnimodo, nisi habeat in condicionalem partem substitutum.

Dig. 29.2.53pr.

Gaius 14 ad l. iul. et pap.

Qui ex duabus partibus heres institutus fuerit, ex alia pure, ex alia sub condicione, et ex pura institutione adierit et decesserit posteaque condicio exstiterit, ea quoque pars ad heredem eius pertinet.

Dig. 29.2.53.1

Gaius 14 ad l. iul. et pap.

Qui semel aliqua ex parte heres exstitit, deficientium partes etiam invitus excipit, id est tacite ei deficientium partes etiam invito adcrescunt.

Dig. 29.2.54

Florus 8 inst.

Heres quandoque adeundo hereditatem iam tunc a morte successisse defuncto intellegitur.

Dig. 29.2.55

Marcianus 2 reg.

Cum hereditate patris necessarius heres se abstineat, condicio coheredi sive suo sive extraneo defertur, ut aut totam adgnoscat aut a toto recedat, et ita se abstinere potest propter alium, qui per suam personam non poterat. si tamen creditores dicant se contentos esse eius portione, quia non potest exonerari, nisi deferatur condicio, et alterius parte abstinere se creditores debent, ut eius actiones ei qui convenitur dentur.

Dig. 29.2.56

Ulpianus 57 ad ed.

Si is qui immiscuit se hereditati decessisset, deinde alter se abstinet, eadem condicio deferenda est heredi eius quae et ipsi, quod Marcellus ait.

Dig. 29.2.57pr.

Gaius 23 ad ed. provinc.

Necessariis heredibus non solum impuberibus, sed etiam puberibus abstinendi se ab hereditate proconsul potestatem facit, ut, quamvis creditoribus hereditariis iure civili teneantur, tamen in eos actio non detur, si velint derelinquere hereditatem. sed impuberibus quidem, etiamsi se immiscuerint hereditati, praestat abstinendi facultatem, puberibus autem ita, si se non immiscuerint.

Dig. 29.2.57.1

Gaius 23 ad ed. provinc.

Sed tamen et puberibus minoribus viginti quinque annis, si temere damnosam hereditatem parentis appetierint, ex generali edicto quod est de minoribus viginti quinque annis succurrit, cum et si extranei damnosam hereditatem adierint, ex ea parte edicti in integrum eos restituit.

Dig. 29.2.57.2

Gaius 23 ad ed. provinc.

Servis autem necessariis heredibus, sive puberes sive impuberes sint, hoc non permittitur.

Dig. 29.2.58

Paulus 2 reg.

Ex parte heres institutus servus et nondum adita hereditate a coherede eius liber et heres fit necessarius, quia non a coherede, sed a semet ipso accipit libertatem: nisi ita institutus fuerit: " cum mihi quis heres erit, stichus liber et heres esto".

Dig. 29.2.59

Nerva 2 membr.

Qui patri heres exstitit si idem filio impuberi substitutus est, non potest hereditatem eius praetermittere: quod sic recipiendum est etiam si vivo pupillo mortuus erit, deinde pupillus impubes decesserit. nam is qui heres exstiterit pupillo quoque heres necessario erit: nam si ipsum invitum obligat, coniungi eam paternae hereditati et adcrescendi iure adquiri cuicumque patris heredi existimandum est.

Dig. 29.2.60

Iavolenus 1 ex post. lab.

Filium emancipatum pater solum heredem instituit et, si is heres non esset, servum liberum et heredem esse iusserat: filius, tamquam pater demens fuisset, bonorum possessionem ab intestato petit et ita hereditatem possedit. labeo ait, si probaretur sana mente pater testamentum fecisse, filium ex testamento patri heredem esse. hoc falsum puto: nam filius emancipatus cum hereditatem testamento datam ad se pertinere noluit, continuo ea ad substitutum heredem transit nec potest videri pro herede gessisse, qui, ut hereditatem omitteret, ex alia parte edicti possessionem bonorum petat. paulus: et proculus labeonis sententiam improbat et in iavoleni sententia est.

Dig. 29.2.61

Macer 1 de off. praesid.

Si minor annis, posteaquam ex parte heres exstitit, in integrum restitutus est, divus severus constituit, ut eius partis onus coheres suscipere non cogatur, sed bonorum possessio creditoribus detur.

Dig. 29.2.62pr.

Iavolenus 1 ex post. lab.

Antistius labeo ait, si ita institutus sit " si iuraverit, heres esto", quamvis iuraverit, non tamen eum statim heredem futurum, antequam pro herede aliquid gesserit, quia iurando voluntatem magis suam declarasse videatur. ego puto satis eum pro herede gessisse, si ut heres iuraverit: proculus idem, eoque iure utimur.

Dig. 29.2.62.1

Iavolenus 1 ex post. lab.

Si servus heres institutus post iussum domini, antequam adiret, alienatus esset, novum iussum posterioris domini, non iussum prioris exigitur.

Dig. 29.2.63

Marcellus not. ad pomp. l.S. reg.

Furiosus adquirere sibi commodum hereditatis ex testamento non potest, nisi si necessarius patri aut domino heres existat: per alium autem adquiri ei potest, veluti per servum vel eum quem in potestate habet.

Dig. 29.2.64

Iavolenus 2 ex post. lab.

Servus duorum heres institutus et adire iussus si alterius domini iussu adierit, deinde manumissus fuerit, poterit ipse adeundo ex parte dimidia heres esse,

Dig. 29.2.65

Paulus 2 ad sab.

Et si substitutum haberet idem servus ita " si heres non erit, ille heres esto", substitutus locum non habet.

Dig. 29.2.66

Ulpianus 61 ad ed.

Si servus communis vel uni ex dominis vel pluribus vel omnibus heres exstiterit necessarius, nullius eorum hereditate se poterit abstinere.

Dig. 29.2.67

Ulpianus 1 reg.

Servus communis ab extero heres institutus si iussu unius adierit hereditatem, non pro maiore parte interim heredem eum facit, quam pro dominica, deinde ceteris sociis non iubentibus tacito iure partes ei adcrescunt.

Dig. 29.2.68

Paulus 5 ad l. iul. et pap.

Cum solus servus heres institutus sit, sicut licet uno tempore omnium dominorum iussu adire hereditatem, ita et separatis temporibus singulorum iussu recte adit: nam quia saepius adit, non ex testamento, sed ex iure dominorum venire utilitatis causa videtur, ne alterius festinatione alterius ius laedatur.

Dig. 29.2.69

Ulpianus 60 ad ed.

Quamdiu institutus admitti potest, substituto locus non est nec ante succedere potest quam excluso herede instituto. eveniet igitur, ut necessarium sit remedium praetoris et circa denegandas primo actiones et circa praestituendum tempus substituto, quia intra diem primo praestitutum neque adire hereditatem potest neque pro herede gerere. is autem, qui tertio gradu scriptus est, si primo deliberante secundus decedat, ipse potest succedere. ergo exspectamus in singulis, ut prius eis deferatur hereditas: tunc deinde, posteaquam delata est, exspectamus diem praestitutum, intra quem diem nisi aut adeat aut pro herede gerat, denegamus ei actiones.

Dig. 29.2.70pr.

Paulus 57 ad ed.

In plurium heredum gradibus hoc servandum est, ut, si testamentum proferatur, prius a scriptis incipiatur, deinde transitus fiat ad eos ad quos legitima hereditas pertinet, etiamsi idem sit, ad quem utroque modo pertineat: nam hoc gradatim consequitur, ut prius ex testamento delatam, deinde legitimam repudiet. idem iuris est in bonorum possessione, ut prius scriptus repellat bonorum possessionem, deinde is qui ab intestato petere potest.

Dig. 29.2.70.1

Paulus 57 ad ed.

Si vero ei, ad quem legitima hereditas potest pertinere, condicio data sit, nihil constituere potest de legitima, antequam dies condicionis transeat, et ideo dicendum est et in eo casu.

Dig. 29.2.70.2

Paulus 57 ad ed.

Si respondit neutram hereditatem ad se velle pertinere, bona defuncti a creditoribus possidenda sunt.

Dig. 29.2.71pr.

Ulpianus 61 ad ed.

Si servum quis alienum ab hostibus redemerit et heredem eum cum libertate instituerit, magis puto fore eum liberum et necessarium heredem: nam cum scribit ei libertatem, vinculo suo resolvit. et in hoc solum redit iure postliminii, ut non iterum servus eius fiat, cuius erat antequam caperetur (hoc enim satis impium est), sed ut pristino domino suam aestimationem omnimodo offerat vel maneat ei obligatus, donec pretium solvat: quod libertatis favore introductum est.

Dig. 29.2.71.1

Ulpianus 61 ad ed.

Si quis hac lege emptus sit, ut intra certum diem manumittatur, et cum libertate heres institutus sit, an ei succurrendum sit, ut se abstineat, videamus. magisque est, ut, donec dies non exstiterit, possit ei necessarius heres effici et non possit sese abstinere: sin autem dies praeteritus fuerit, tunc non necessarius, sed voluntarius heres efficitur et potest se abstinere secundum exemplum eius, cui fideicommissaria libertas sub condicione debebatur.

Dig. 29.2.71.2

Ulpianus 61 ad ed.

Si quis dederit nummos domino, ut manumittatur, puto huic omnimodo esse succurrendum.

Dig. 29.2.71.3

Ulpianus 61 ad ed.

Praetor ait: " si per eum eamve factum erit, quo quid ex ea hereditate amoveretur".

Dig. 29.2.71.4

Ulpianus 61 ad ed.

Si quis suus se dicit retinere hereditatem nolle, aliquid autem ex hereditate amoverit, abstinendi beneficium non habebit.

Dig. 29.2.71.5

Ulpianus 61 ad ed.

Non dixit praetor " si quid amoverit", sed " si per eum eamve factum erit, quo quid ex ea amoveretur": sive ergo ipse amoverit sive amovendum curaverit, edictum locum habebit.

Dig. 29.2.71.6

Ulpianus 61 ad ed.

Amovisse eum accipimus, qui quid celaverit aut interverterit aut consumpserit.

Dig. 29.2.71.7

Ulpianus 61 ad ed.

Ait praetor quo quid ex ea amoveretur": sive autem una res sive plures fuerint amotae, edicto locus est, sive ex ea hereditate sint sive ad eam hereditatem pertineant.

Dig. 29.2.71.8

Ulpianus 61 ad ed.

Amovere non videtur, qui non callido animo nec maligno rem reposuit: ne is quidem, qui in re erravit, dum putat non esse hereditariam. si igitur non animo amovendi, nec ut hereditati damnum det, rem abstulit, sed dum putat non esse hereditariam, dicendum est eum amovisse non videri.

Dig. 29.2.71.9

Ulpianus 61 ad ed.

Haec verba edicti ad eum pertinent, qui ante quid amovit, deinde se abstinet: ceterum si ante se abstinuit, deinde tunc amovit, hic videamus an edicto locus sit. magisque est, ut putem istic sabini sententiam admittendam, scilicet ut furti potius actione creditoribus teneatur: etenim qui semel se abstinuit, quemadmodum ex post delicto obligatur?

Dig. 29.2.72

Paulus 1 ad plaut.

Si quis heres ita scriptus fuerit, ut intra certum tempus adeat hereditatem et, si non ita adierit, alius ei substituatur, prior autem heres antequam adiret decesserit: nemo dubitat, quin substitutus ultimum diem aditionis exspectare non solet.

Dig. 29.2.73

Paulus 7 ad plaut.

Si quis non quasi heres, sed quasi patroni filius egens a liberto paterno ali velit, procul dubio hoc extra causam est immiscendi se bonis paternis, et ita recte labeo scribit.

Dig. 29.2.74pr.

Paulus 12 ad plaut.

Qui putat se decem dare iussum, cum quinque iussus sit, si decem dederit, fiet heres adeundo.

Dig. 29.2.74.1

Paulus 12 ad plaut.

At si quinque putet se iussum dare, cum decem dare iussus est, et dat quinque, non implet condicionem, sed ad aliquid proficit, ut, si adimpleverit reliquum, aliorum quinque datione videatur condicio esse impleta.

Dig. 29.2.74.2

Paulus 12 ad plaut.

Qui bona fide servit si quasi iussu domini adierit, non obligabitur.

Dig. 29.2.74.3

Paulus 12 ad plaut.

Similis est huic statuliber, qui iussus ab herede adire hereditatem post condicionem libertatis existentem, cum hoc ignoraret, adiit.

Dig. 29.2.74.4

Paulus 12 ad plaut.

De eo, qui heres institutus ab aliquo dubitat, an libertas ei ex testamento domini optigerit, cum nesciat condicionem libertatis exstitisse vel hereditatem aditam, an adeundo heres fiat, videndum. iulianus hunc diceret fieri heredem.

Dig. 29.2.75

Marcellus 9 Dig.

Ex semisse titius heres scriptus est: quadrantis bonorum possessionem per errorem petit. quaero, an nihil actum sit an vero perinde omnia servanda sint, ac si quadrans nominatus non sit. respondit magis nihil actum esse, quemadmodum cum ex semisse scriptus heres ex quadrante per errorem adiit hereditatem.

Dig. 29.2.76pr.

Iavolenus 4 epist.

Si tu ex parte sexta sub condicione institutus fuisses heres et omittente partem suam titio, cui substitutus eras, ex substitutione adisses, deinde condicio iure sextantis exstitisset, quaero, an adire necesse habueris, ne sextans tuus intereat. respondit: nihil interest, utrum ex substitutione prius adierim an ex prima institutione, cum ab utraque causa una aditio sufficiat: sextans itaque, qui sub condicione datus mihi est, ad me solum pertinet.

Dig. 29.2.76.1

Iavolenus 4 epist.

Item si tu sextantis, ex quo institutus esses heres, omiseris actionem, numquid dubitas, quin ex substitutione adeundo titianae partis habiturus partem esses? respondit: non dubito, quin, si prima institutione adeundo heres esse possim, in potestate mea sit, quam partem hereditatis aut amittere velim aut vindicare.

Dig. 29.2.77

Pomponius 8 ad q. muc.

Illud dubitari potest, an, si, cum testamento heres institutus essem ab eo, qui etiamsi intestatus decessisset, legitima hereditas eius ad me pertineret, an simul utramque hereditatem repudiare possim, quoniam antequam ex testamento hereditatem repudiarim, legitima nondum ad me pertinet. verum eodem momento intellegor et ex testamento et legitimam repudiare, sicuti, si legitimam velim ad me pertinere, cum sciam testamento mihi relictam, videbor ante repudiare testamentum et ita legitimam adquisisse.

Dig. 29.2.78

Pomponius 35 ad q. muc.

Duo fratres fuerant, bona communia habuerant: eorum alter intestato mortuus suum heredem non reliquerat: frater qui supererat nolebat ei heres esse: consulebat, num ob eam rem, quod communibus, cum sciret eum mortuum esse, usus esset, hereditati se alligasset. respondit, nisi eo consilio usus esset, quod vellet se heredem esse, non adstringi. itaque cavere debet, ne qua in re plus sua parte dominationem interponeret.

Dig. 29.2.79

Ulpianus 2 ad l. iul. et pap.

Placet, quotiens adquiritur per aliquem hereditas vel quid aliud ei cuius quis in potestate est, confestim adquiri ei cuius est in potestate, neque momento aliquo subsistere in persona eius per quem adquiritur et sic adquiri ei cui adquiritur.

Dig. 29.2.80pr.

Paulus 5 ad l. iul.

Si solus heres ex pluribus partibus fuero institutus, unam partem omittere non possum nec interest, in quibusdam habeam substitutum nec ne.

Dig. 29.2.80.1

Paulus 5 ad l. iul.

Idem puto etiam, si aliis mixtus heredibus ex pluribus partibus heres institutus sim, quod et hic adeundo unam portionem omnes adquiro, si tamen delatae sint.

Dig. 29.2.80.2

Paulus 5 ad l. iul.

Item si servus meus ex parte heres institutus sit pure, ex parte sub condicione, dato scilicet coherede, et iussu meo adierit, deinde eo manumisso condicio alterius portionis exstiterit, verius est non mihi esse adquisitam illam portionem, sed ipsum comitari: omnia enim paria permanere debent in id tempus, quo alterius portionis condicio exstet, ut adquiratur ei, cui prior portio adquisita est.

Dig. 29.2.80.3

Paulus 5 ad l. iul.

Ego quidem puto et si adhuc in potestate sit, iterum adeundum esse, si condicio exstiterit, et illud quod dicimus semel adeundum, in eiusdem persona locum habet, non cum per alium adquirenda est hereditas.

Dig. 29.2.81

Ulpianus 13 ad l. iul. et pap.

Totiens videtur heres institutus etiam in causa substitutionis adisse, quotiens adquirere sibi possit: nam si mortuus esset, ad heredem non transferret substitutionem.

Dig. 29.2.82

Clementius 16 ad l. iul. et pap.

Si servus eius qui capere non potest heres instituatur et antequam iussu domini adeat hereditatem, manumissus alienatusve sit et nihil in fraudem legis factum esset, ipse admittitur ad hereditatem. sed et si partem capere possit dominus eius, eandem dicenda sunt de parte, quam ille capere non potest: nihil enim interest, de universo quaeratur quod capere non possit an de portione.

Dig. 29.2.83

Ulpianus 18 ad l. iul. et pap.

Si totam an partem, ex qua quis heres institutus est, tacite rogatus sit restituere, apparet nihil ei debere adcrescere, quia rem non videtur habere.

Dig. 29.2.84

Papinianus 16 quaest.

Ventre praeterito si filius qui fuit emancipatus aut exter heres institutus sit, quamdiu rumpi testamentum potest, non defertur ex testamento hereditas. sed si vacuo ventre mulier fuit et incerto eo filius in familia retentus vita decessit, heres fuisse intellegitur: emancipatus aut exter non aliter possunt hereditatem quaerere, quam si non esse praegnatem sciant. ergo si ventre pleno sit mulier, nonne iniquum erit interea defunctum filium heredi suo relinquere nihil? et ideo decreto filio succurrendum est, quia, sive frater ei nascatur sive non nascatur, patri heres futurus est. eademque ratio facit, ut emancipato quoque subveniri debeat, qui alterutro casu rem omnimodo habiturus est.

Dig. 29.2.85

Papinianus 30 quaest.

Si metus causa adeat aliquis hereditatem, fiet ut, quia invitus heres existat, detur abstinendi facultas.

Dig. 29.2.86pr.

Papinianus 6 resp.

Pannonius avitus cum in cilicia procuraret heres institutus ante vita decesserat, quam heredem se institutum cognosceret. quia bonorum possessionem, quam procurator eius petierat, heredes aviti ratam habere non potuerant, ex persona defuncti restitutionem in integrum implorabant, quae stricto iure non competit, quia intra diem aditionis avitus obisset. divum tamen pium contra constituisse maecianus libro quaestionum refert in eo, qui legationis causa romae erat et filium, qui matris delatam possessionem absens amiserat, sine respectu eius distinctionis restitutionem locum habere. quod et hic humanitatis gratia optinendum est.

Dig. 29.2.86.1

Papinianus 6 resp.

Rei perduellionis hereditatem suspensa cognitione filius emancipatus, cui de patris innocentia liquet, potest quaerere.

Dig. 29.2.86.2

Papinianus 6 resp.

Pro herede gessisse filium placuit, qui moriens comperto matrem suam intestato vita decessisse codicillis petit ab herede suo, ut maternorum bonorum servum manumitteret ac sibi parentibusque suis in possessione matris monumentum exstrueret.

Dig. 29.2.87pr.

Papinianus 10 resp.

Eum bonis patris se miscere convenit, qui remoto familiae vinculo pro herede gerere videtur. et ideo filius, qui tamquam ex bonis matris, cuius hereditatem suscepit, agrum ad hereditatem patris pertinentem ut maternum ignorans possedit, abstinendi consilium, quod in bonis patris tenuit, amisisse non videtur.

Dig. 29.2.87.1

Papinianus 10 resp.

Pupillis, quos placuit oneribus hereditariis esse liberandos, confusas actiones restitui oportet.

Dig. 29.2.88

Paulus 1 quaest.

Gerit pro herede, qui animo adgnoscit successionem, licet nihil attingat hereditarium. unde et si domum pignori datam sicut hereditariam retinuit, cuius possessio qualisqualis fuit in hereditate, pro herede gerere videtur: idemque est et si alienam rem ut hereditariam possedisset.

Dig. 29.2.89

Scaevola 13 quaest.

Si pupillus se hereditate abstineat, succurrendum est et fideiussoribus ab eo datis, si ex hereditario contractu convenirentur.

Dig. 29.2.90pr.

Paulus 12 resp.

Respondit per curatorem hereditatem adquiri non posse.

Dig. 29.2.90.1

Paulus 12 resp.

Idem respondit, si iussu avi nepos patris, qui de castrensi peculio testamentum fecit, hereditatem adisset, adquisisse ei ea de quibus pater testari potest, quia castrensia esse mutatione personae desierint.

Dig. 29.2.91

Paulus 15 resp.

Respondit, si is qui bonis paternis se abstinuit per suppositam personam emptoris bona patris mercatus probatur, perinde eum conveniri oportere a creditoribus atque si bonis paternis se immiscuisset.

Dig. 29.2.92

Paulus 17 resp.

Filius familias duxit uxorem: ea filiis sublatis intestata decessit: filii iussu patris, non avi adierunt hereditatem: quaero, an avo adquisita sit hereditas. paulus respondit secundum ea quae proponuntur nihil actum esse.

Dig. 29.2.93pr.

Paulus 3 sent.

Pater quotiens filio mandat adire, certus esse debet, an pro parte an ex asse, et an ex institutione an ex substitutione, et an testamento an ab intestato filius suus heres existat.

Dig. 29.2.93.1

Paulus 3 sent.

Mutus pater vel dominus filio vel servo heredibus institutis magis est, ut, si intellectu non careat, nutu iubere possit adire hereditatem, ut ei iure eius commodum quaeri possit: quod facile explicari possit scientia litterarum.

Dig. 29.2.93.2

Paulus 3 sent.

Mutus servus iussu domini pro herede gerendo obligat dominum hereditati.

Dig. 29.2.94

Hermogenianus 3 iuris epit.

Qui superstitis bona repudiat, post mortem eius adire hereditatem, item bonorum possessionem petere non prohibetur.

Dig. 29.2.95

Paulus 4 sent.

Recusari hereditas non tantum verbis, sed etiam re potest et alio quovis indicio voluntatis.

Dig. 29.2.96

Hermogenianus 3 iuris epit.

Qui se pupillum falso existimans, cum esset pubes, pro herede gessit, quo minus heres existat, nihil error talis ei nocebit.

Dig. 29.2.97

Paulus 3 decr.

Clodius clodianus facto prius testamento postea eundem heredem in alio testamento inutiliter facto instituerat: scriptus heres cum posterius putaret valere, ex eo hereditatem adire voluit, sed postea hoc inutile repertum est. papinianus putabat repudiasse eum ex priore hereditatem, ex posteriore autem non posse adire. dicebam non repudiare eum, qui putaret posterius valere. pronuntiavit clodianum intestatum decessisse.

Dig. 29.2.98

Scaevola 26 Dig.

Quae neptis suae nomine, quam ex seia habebat, sempronio tot dotis nomine spoponderat et pro usuris in exhibitionem certam summam praestabat, decessit relicta seia filia et aliis heredibus: cum quibus sempronius iudicio egit condemnatique pro portionibus hereditariis singuli heredes, inter quos et seia, sempronio caverunt summam, qua quisque condemnatus erat usuris isdem, quae ad exhibitionem a testatrice praestabantur: postea excepta seia filia ceteri heredes abstinuerunt hereditate beneficio principis et tota hereditas ad seiam pertinere coepit. quaero, an in seiam, quae sola heres remansit et omnia ut sola heres erat, pro eorum quoque portionibus, qui beneficio principali hereditate abstinuerint, utilis actio dari debeat. respondit pro parte eorum, qui se abstinuissent, actiones solere decerni in eam, quae adisset et maluisset integra hereditaria onera subire.

Dig. 29.2.99

Pomponius 1 sen. consult.

Aristo in decretis frontianis ita refert: cum duae filiae patri necessariae heredes exstitissent, altera se paterna abstinuerat hereditate, altera bona paterna vindicare totumque onus suscipere parata erat. sanctum cassium praetorem causa cognita actiones hereditarias utiles daturum recte pollicitum ei, quae ad hereditatem patris accesserat denegaturumque ei quae se abstinuerat.

Dig. 29.3.0. Testamenta quemadmodum aperiuntur inspiciantur et describantur.

Dig. 29.3.1pr.

Gaius 17 ad ed. provinc.

Omnibus, quicumque desiderant tabulas testamenti inspicere vel etiam describere, inspiciendi describendique potestatem facturum se praetor pollicetur: quod vel suo vel alieno nomine desideranti tribuere eum manifestum est.

Dig. 29.3.1.1

Gaius 17 ad ed. provinc.

Ratio autem huius edicti manifesta est: neque enim sine iudice transigi neque apud iudicem exquiri veritas de his controversiis, quae ex testamento proficiscerentur, aliter potest quam inspectis cognitisque verbis testamenti.

Dig. 29.3.1.2

Gaius 17 ad ed. provinc.

Si quis neget sigillum suum agnoscere, non ideo quidem minus aperiuntur tabulae, sed alias suspectae fiunt.

Dig. 29.3.2pr.

Ulpianus 50 ad ed.

Tabularum testamenti instrumentum non est unius hominis, hoc est heredis, sed universorum, quibus quid illic adscriptum est: quin potius publicum est instrumentum.

Dig. 29.3.2.1

Ulpianus 50 ad ed.

Testamentum autem proprie illud dicitur, quod iure perfectum est: sed abusive testamenta ea quoque appellamus, quae falsa sunt vel iniusta vel irrita vel rupta: itemque imperfecta solemus testamenta dicere.

Dig. 29.3.2.2

Ulpianus 50 ad ed.

Ad causam autem testamenti pertinere videtur id quodcumque quasi ad testamentum factum sit, in quacumque materia fuerit scriptum, quod contineat supremam voluntatem: et tam principales quam secundae tabulae edicto continentur.

Dig. 29.3.2.3

Ulpianus 50 ad ed.

Si plura sint testamenta, quae quis exhiberi desideret, universorum ei facultas facienda est.

Dig. 29.3.2.4

Ulpianus 50 ad ed.

Si dubitetur, utrum vivat an decesserit is, cuius quis quod ad causam testamenti pertinet inspici describique postulat, dicendum est praetorem causa cognita statuere id debere, ut, si liquerit eum vivere, non permittat.

Dig. 29.3.2.4a

Ulpianus 50 ad ed.

Inspici tabulas est, ut ipsam scripturam quis inspiciat et sigilla et quid aliud ex tabulis velit spectare.

Dig. 29.3.2.5

Ulpianus 50 ad ed.

Inspectio tabularum etiam lectionem earum indicat.

Dig. 29.3.2.6

Ulpianus 50 ad ed.

Diem autem et consulem tabularum non patitur praetor describi vel inspici idcirco, ne quid falsi fiat: namque etiam inspectio materiam falso fabricando instruere potest.

Dig. 29.3.2.7

Ulpianus 50 ad ed.

Utrum autem in continenti potestatem inspiciendi vel describendi iubet an desideranti tempus dabit ad exhibitionem? et magis est, ut dari debeat secundum locorum angustias seu prolixitates.

Dig. 29.3.2.8

Ulpianus 50 ad ed.

Si quis non negans apud se tabulas esse non patiatur inspici et describi, omnimodo ad hoc compelletur: si tamen neget penes se tabulas esse, dicendum est ad interdictum rem mitti quod est de tabulis exhibendis.

Dig. 29.3.3

Gaius 17 ad ed. provinc.

Ipsi tamen heredi vindicatio tabularum sicut ceterarum hereditariarum rerum competit et ob id ad exhibendum quoque agere potest.

Dig. 29.3.4

Ulpianus 50 ad ed.

Cum ab initio aperiendae sint tabulae, praetoris id officium est, ut cogat signatores convenire et sigilla sua recognoscere.

Dig. 29.3.5

Paulus 8 ad plaut.

Vel negare se signasse: publice enim expedit suprema hominum iudicia exitum habere.

Dig. 29.3.6

Ulpianus 50 ad ed.

Sed si maior pars signatorum fuerit inventa, poterit ipsis intervenientibus resignari testamentum et recitari.

Dig. 29.3.7

Gaius 7 ad ed. provinc.

Sed si quis ex signatoribus aberit, mitti debent tabulae testamenti ubi ipse sit, uti agnoscat: nam revocari eum adgnoscendi causa onerosum est. quippe saepe cum magna captione a rebus nostris revocamur et sit iniquum damnosum cuique esse officium suum. nec ad rem pertinet, unus absit an omnes. et si forte omnibus absentibus causa aliqua aperire tabulas urgueat, debet proconsul curare, ut intervenientibus optimae opinionis viris aperiantur et post descriptum et recognitum factum ab isdem, quibus intervenientibus apertae sunt, obsignentur, tunc deinde eo mittantur, ubi ipsi signatores sint, ad inspicienda sigilla sua.

Dig. 29.3.8

Ulpianus 50 ad ed.

Pupillares tabulas, etiamsi non fuerit superscriptum ne aperirentur, attamen, si seorsum eas signatas testator reliquerit, praetor eas aperiri nisi causa cognita non patietur.

Dig. 29.3.9

Paulus 45 ad ed.

Si mulier ventris nomine in possessione sit, aperiendae sunt secundae tabulae, ut sciatur, cui demandata sit curatio.

Dig. 29.3.10pr.

Ulpianus 13 ad l. iul. et pap.

Si in duobus exemplariis scriptum sit testamentum, alterutro patefacto apertae tabulae sunt.

Dig. 29.3.10.1

Ulpianus 13 ad l. iul. et pap.

Si sui natura tabulae patefactae sunt, apertum videri testamentum non dubitatur: non enim quaeremus, a quo aperiantur.

Dig. 29.3.10.2

Ulpianus 13 ad l. iul. et pap.

Si tabulae non compareant vel exustae sint, futurum est, ut subvenire legatariis debeat. idem est, si subpressae vel occultae sint.

Dig. 29.3.11

Gaius 11 ad l. iul. et pap.

Sicut codicilli pars intelleguntur testamenti, ita secundae tabulae principalium tabularum partem optinere videntur.

Dig. 29.3.12

Ulpianus 13 ad l. iul. et pap.

Si quis fecerit testamentum et exemplum eius, exemplo quidem aperto nondum apertum est testamentum: quod si authenticum patefactum est totum, apertum.

Dig. 29.4.0. Si quis omissa causa testamenti ab intestato vel alio modo possideat hereditatem.

Dig. 29.4.1pr.

Ulpianus 50 ad ed.

Praetor voluntates defunctorum tuetur et eorum calliditati occurrit, qui omissa causa testamenti ab intestato hereditatem partemve eius possident ad hoc, ut eos circumveniant, quibus quid ex iudicio defuncti deberi potuit, si non ab intestato possideretur hereditas, et in eos actionem pollicetur.

Dig. 29.4.1.1

Ulpianus 50 ad ed.

Et parvi refert, utrum quis per semet ipsum an per alium adquirere potuit hereditatem: nam quomodocumque potuit, si non adquisiit hereditatem, in ea causa est, ut incidat in edictum praetoris:

Dig. 29.4.1.2

Ulpianus 50 ad ed.

Praetermittere autem causam testamenti videtur, qui, cum posset iubere, noluit id facere.

Dig. 29.4.1.3

Ulpianus 50 ad ed.

Quid ergo si servus eius cum iuberetur adire hereditatem, dicto audiens non fuit? sed compellendus est servus hoc facere ideoque dominus ab intestato veniens incidit in edictum.

Dig. 29.4.1.4

Ulpianus 50 ad ed.

Sin autem nec certioratus est dominus a servo et postea ipse ab intestato possedit hereditatem, non debet incidere in edictum, nisi si fingit ignorantiam.

Dig. 29.4.1.5

Ulpianus 50 ad ed.

Si proponatur idem et institutus et substitutus et praetermiserit institutionem, an incidat in edictum, quaeritur. et non puto incidere, quasi testator hanc ei dederit facultatem, qui eum substituit.

Dig. 29.4.1.6

Ulpianus 50 ad ed.

Praetermittere est causam testamenti, si quis repudiaverit hereditatem.

Dig. 29.4.1.7

Ulpianus 50 ad ed.

Qui sunt in potestate statim heredes sunt ex testamento nec quod se abstinere possunt, quicquam facit. quod si postea miscuerunt, ex testamento videntur heredes: nisi si abstinuerint quidem se testamento, verum ab intestato petierint bonorum possessionem: hic enim incident in edictum.

Dig. 29.4.1.8

Ulpianus 50 ad ed.

Qui sub condicione institutus heres potuit parere condicioni nec paruit, cum condicio talis sit, ut in arbitrio sit heredis instituti, deinde ab intestato possideat hereditatem, debebit edicto teneri, quia eiusmodi condicio pro pura debet haberi.

Dig. 29.4.1.9

Ulpianus 50 ad ed.

Non quaerimus, qui praetermissa causa testamenti ab intestato hereditatem possideant, utrum iure legitimo possideant an non: nam quoquo iure possideant hereditatem vel partem eius, conveniri ex edicto poterunt, utique si non ex alia causa possideant: ut puta si quis omisit quidem hereditatem, sed ex causa fideicommissi possidet missus in possessionem fideicommissorum servandorum causa: vel si proponas eum crediti servandi causa venisse in possessionem: nam nec ex hac causa legatariis respondere cogetur. totiens igitur edictum praetoris locum habebit, quotiens aut quasi heres legitimus possidet aut quia bonorum possessionem accipit ab intestato aut si forte quasi praedo possideat hereditatem fingens sibi aliquem titulum ab intestato possessionis: quocumque enim modo hereditatem lucrifacturus quis sit, legata praestabit, sane interveniente cautione " evicta hereditate legata reddi".

Dig. 29.4.1.10

Ulpianus 50 ad ed.

Et si non possideat quis hereditatem, dolo autem malo fecerit quo minus possideat, eveniet, ut perinde teneatur atque si hereditatem adisset.

Dig. 29.4.1.11

Ulpianus 50 ad ed.

Dolo autem malo fecisse videtur quo minus possideat, qui ad alium transtulit possessionem per fraudem, ut legatarii ceterique qui quid in testamento acceperunt careant his quae sibi relicta sunt.

Dig. 29.4.1.12

Ulpianus 50 ad ed.

Sane quaestionis fuit, utrum is demum dolo malo facere videatur quo minus possideat, qui per dolum eam possessionem dimittat, quam aliquando habuit, an vero is quoque, qui hoc ipsum malitiose fecit, ne ab initio possidere inciperet. labeo sibi videri ait non minus delinquere eum, qui non incipiat possidere, quam eum qui desinat: quae sententia optinet.

Dig. 29.4.1.13

Ulpianus 50 ad ed.

Si quis per fraudem omiserit hereditatem, ut ad legitimum perveniat, legatorum petitione tenebitur.

Dig. 29.4.2pr.

Ulpianus 7 ad sab.

Licet pro herede gerere non videatur, qui pretio accepto praetermisit hereditatem, tamen dandam in eum actionem exemplo eius, qui omissa causa testamenti ab intestato possidet hereditatem, divus hadrianus rescripsit: proinde legatariis et fideicommissariis tenebitur.

Dig. 29.4.2.1

Ulpianus 7 ad sab.

Sed utrum ab eo erit incipiendum et sic ad heredem veniendum an convertemus ordinem? mihi videtur humanior esse haec sententia, ut possessor hereditatis prior excutiatur, maxime si lucrativam habet possessionem.

Dig. 29.4.3

Pomponius 3 ad sab.

Si pecuniam a substituto acceperis, ut praetermitteres, isque adierit, an danda sit legatariis actio, dubitari potest. et puto, si ipse quoque praetermiserit et, quod lege ad se rediret, possidebit hereditatem, in utrumque vestrum dandam, ut ei tamen, cui ab utroque legatum sit, in alterutrum detur actio.

Dig. 29.4.4pr.

Ulpianus 50 ad ed.

Si quis pecuniam non accepit, simpliciter autem omisit causam testamenti, dum vult praestitum ei qui substitutus est vel legitimo, numquid locus non sit edicto? plane indignandum est circumventam voluntatem defuncti: et ideo si liquido constiterit in necem legatariorum hoc factum, quamvis non pecunia accepta, sed nimia gratia collata, dicendum erit locum esse utili actioni adversus eum qui possidet hereditatem.

Dig. 29.4.4.1

Ulpianus 50 ad ed.

Et recte dicetur, ubicumque quis, dum vult praestitum ei, qui se repudiante venturus est, non repudiaturus, nisi praestitum vellet, et maxime si ob evertenda iudicia id fecit, ibi dicendum est adversus possessorem competere actionem, sic tamen, ut, ubi quidem pecunia accepta repudiavit, ibi dicamus eum qui omisit conveniendum, ubi vero gratis, in fraudem tamen eorum quibus quid relictum est, possessorem debere conveniri utili actione.

Dig. 29.4.4.2

Ulpianus 50 ad ed.

Quamquam de heredibus institutis videatur praetor loqui, attamen etiam ad alios haec res serpit: ut, si sit legatarius, a quo fideicommissum relictum est, et hic id egisset, ut omittatur hereditas, doloque id fecit, conveniri debet.

Dig. 29.4.4.3

Ulpianus 50 ad ed.

Si quis vendiderit hereditatem, utique possidere videtur, non dolo fecisse, quo minus possideat.

Dig. 29.4.5

Marcellus 12 Dig.

Excusatus videtur patronus, qui institutionem praetermisit, cum aliter esset a liberto scriptus heres quam eum institui oportet: nam et si servus eius ex asse institutus fuerit et per quemcumque casum non potuerit iussu domini adire hereditatem, impune praetermittet ex testamento hereditatem.

Dig. 29.4.6pr.

Ulpianus 50 ad ed.

Quia autem is qui ab intestato possidet hereditatem conveniri potest, si omittit causam testamenti, quaesitum est, si quasi ex voluntate testatoris videatur omisisse, an cogatur praestare. ut puta fratrem suum scripsit heredem et codicillos fecit ab intestato petitque a fratre, ut, si legitima hereditas ad eum pertinuerit, fideicommissa praestaret quibusdam: si igitur omissa causa testamenti ab intestato possideat hereditatem, videndum est, an legatariis cogatur respondere. et iulianus libro trigesimo primo digestorum scribit cogendum primum legata praestare, mox dimissis legatis si quid superfuerit ex dodrante, tunc fideicommissa cogi praestare: ceterum si legata absumant dodrantem, tunc nihil fideicommissariis praestandum: habere enim integrum quadrantem legitimum heredem oportet. ordo igitur a iuliano adhibetur, ut prius legata praestentur, deinde ex superfluo fideicommissa, dummodo quadrans non tangatur. ego puto iuliani sententiam ita accipiendam, ut, si omissa causa testamenti ab intestato possideat hereditatem, cogatur omnimodo legata praestare: nec enim utique omittere ei hereditatem permisit, qui fideicommissa ab eo relinquit ab intestato.

Dig. 29.4.6.1

Ulpianus 50 ad ed.

Plane si nominatim id ei permisit, dicemus non eum incidere in edictum, quia usus est facultate ea, quam ei testator concessit: quod si non ei concessit specialiter testator omittere, is ordo erit sequendus, quem iulianus ostendit.

Dig. 29.4.6.2

Ulpianus 50 ad ed.

Quid deinde dicemus, is isdem et ex testamento legata et fideicommissa ab intestato fuerint relicta et praeterea aliis fideicommissa? an ordinem illum debeamus facere, quem iulianus monstrat, an vero contribuemus omnes fideicommissarios quasi aequales? et magis est, ut ita distinguamus multum interesse, utrum incidit in edictum heres an non. nam si incidit, praeferendi erunt hi quibus testamento relicta fuerunt quaedam: sin vero non incidit, quia haec fuit testatoris voluntas, ut daret ei facultatem et ab intestato succedendi, vel quia alia causa intercessit, quae secundum ea quae supra scripta sunt non offendit edictum, dicendum est contribui fideicommissa debere quasi exaequata.

Dig. 29.4.6.3

Ulpianus 50 ad ed.

Non simpliciter autem praetor pollicitus est se daturum actionem, sed causa cognita: nam sive invenerit testatorem huius rei auctorem esse ipsumque permisisse ab intestato succedere aut si qua alia iusta causa omittendi intervenerit, utique non dabit actionem in eum legatorum.

Dig. 29.4.6.4

Ulpianus 50 ad ed.

Item si invenerit bona ad alium pertinere, non dabit actionem, si vero nulla suspicio collusionis religionem praetoris instruxerit.

Dig. 29.4.6.5

Ulpianus 50 ad ed.

Si autem is, cui auferri hereditas potest, aliquid possideat de hereditate et possidere desierit sine dolo malo, magis est, ut desinat conveniri.

Dig. 29.4.6.6

Ulpianus 50 ad ed.

Quod ergo tempus spectabimus, possideat nec ne? litis contestatae tempus spectari debet.

Dig. 29.4.6.7

Ulpianus 50 ad ed.

Certe si vacantia bona quis possederit et quadriennium praeterierit, indubitate conveniri poterit ex hac parte edicti, quia et omisit causam testamenti et quia ab intestato possedit et quidem sic, ut praescriptione quadriennii tutus sit.

Dig. 29.4.6.8

Ulpianus 50 ad ed.

Si patronus ex debita sibi portione heres scriptus dato sibi coherede ex alia parte omiserit institutionem, quia debita pars eius erat exhausta, omiserit et coheres, deinde possideat patronus ab intestato legitimam hereditatem totam, dandam in eum legatorum actionem celsus libro sexto decimo digestorum ait, quae in titium competeret, sufficeretque patrono, quod integram debitam sibi portionem habeat. haec autem ita sunt, si coheres collusit cum patrono: aliter enim non esse patronum cogendum legata praestare: neque enim interdictum est, ut quis omittat hereditatem, si sine fraude id fiat.

Dig. 29.4.6.9

Ulpianus 50 ad ed.

Hoc edictum etiam ad contra tabulas bonorum possessionem pertinere magis dicendum est, scilicet ut qui accipiendo contra tabulas bonorum possessionem liberis parentibusque legata praestaret si omiserit eam bonorum possessionem et ab intestato possideat hereditatem, cogatur ea praestare, quae praestaret, si contra tabulas possessionem accepit.

Dig. 29.4.6.10

Ulpianus 50 ad ed.

Si libertas sub condicione fuerit data " si decem dederit" et omissa causa testamenti fuerit, non aliter libertas competet, quam si condicioni paritum sit.

Dig. 29.4.7

Marcellus 12 Dig.

Quidam titium et maevium instituit heredes et centum titio legavit: uterque omissa testamento legitimam adiit hereditatem. non probe legatorum actionem titius postulabit. idem, si utrique legasset.

Dig. 29.4.8

Ulpianus 50 ad ed.

Si quis sub condicione dandorum decem vel qua alia, quae in dando vel in faciendo fuit, heres institutus omissa causa testamenti ab intestato possideat hereditatem, videndum est, an huic, in cuius personam condicio collata est, subveniri debeat. et magis est, ne subveniatur: neque enim legatarius est.

Dig. 29.4.9

Paulus 45 ad ed.

Sed et si adhuc parendi condicioni tempus habeat, hac parte edicti non tenetur.

Dig. 29.4.10pr.

Ulpianus 50 ad ed.

Si non solus, sed cum alio possidet hereditatem is qui omisit causam testamenti, rectissime iulianus ait, quod et Marcellus probat, dandam in ipsum quoque legatorum actionem utilem: nec enim aspernari debet obesse sibi factum heredis scripti, cui etiam profuerit. hoc autem ita est, nisi si pecuniam accepit is qui omisit causam testamenti: tunc enim in solidum tenebitur.

Dig. 29.4.10.1

Ulpianus 50 ad ed.

Cum substitutis ab institutis legata fuissent relicta et tam instituti quam substituti omissa causa testamenti possideant ab intestato hereditatem, divus pius rescripsit neque improbe neque imprudenter institutos legata recusare substitutis data: recte enim recusant in se dari legatorum fideive commissorum petitionem substitutio, cui liberum fuit adeunti hereditatem non fideicommissum petere, sed universa bona optinere.

Dig. 29.4.10.2

Ulpianus 50 ad ed.

Si duo sint heredes institutus et substitutus et ambo omissa causa testamenti ab intestato possideant hereditatem, quaestionis est, an ambo cogantur legata praestare et utrum unusquisque ea legata quae a se relicta sunt an vero ambo utraque legata cogantur praestare. ego puto in solidum adversus singulos legatorum petitionem dandam: sed utrum eorum quae a se legata sunt an vero etiam eorum quae ab altero herede, videamus. et alias proponamus institutum solum possidere hereditatem: eorum legatorum, quae sunt a se relicta, an etiam eorum, quae sunt a substituto relicta, actionem patietur? dicendum est ita demum etiam eorum, si dolo substituti perveniat ad institutos hereditas sine pecunia: nam si pecuniam accepit substitutus, ipse erit conveniendus. item si solus substitutus possideret, si quidem pecunia accepta institutus omisisset, dicemus institutum suis legatariis respondere debere, substitutum suis: si autem sine pecunia, adversus substitutum dabimus actionem. nunc cum ambo possideant, melius dicetur singulos suis legatariis respondere debere.

Dig. 29.4.11

Iavolenus 7 epist.

Si ab instituto et substituto eadem res mihi legata sit et omissa causa testamenti hereditatem possideant lege, etiamsi ab utroque solidum mihi debetur, tamen ab uno legatum consecutus ab altero petere non potero: eligere itaque reum potero.

Dig. 29.4.12pr.

Ulpianus 50 ad ed.

De libertatibus quoque in hoc casu quaesitum est, an competant tam hae quae ab instituto quam hae quae a substituto datae sunt. et magis est, ut competant, tam directae quam fideicommissariae.

Dig. 29.4.12.1

Ulpianus 50 ad ed.

Heredem eius, qui omissa causa testamenti ab intestato possidet hereditatem, in solidum legatorum actione teneri constat: magis est enim rei persecutionem quam poenam continere et ideo et perpetuam esse. hoc autem ita est, nisi propter dolum defuncti conveniatur heres: tunc enim in id quod ad eum pervenit conveniretur.

Dig. 29.4.13

Gaius 17 ad ed. provinc.

Etsi non totam aliquis hereditatem partemve eius, ex qua heres institutus est, ab intestato possideat, sed vel minimam portiunculam vel etiam unam aliquam rem, tenetur hoc edicto,

Dig. 29.4.14

Gaius 2 de testam. ad ed. pu.

Quamvis non proprie pars hereditatis in una re intellegatur.

Dig. 29.4.15

Gaius 17 ad ed. provinc.

Nec id iniquum est, cum ex suo quisque vitio hoc incommodo adficiatur.

Dig. 29.4.16

Gaius 2 de testam. ad ed. pu.

Cum enim hereditas ab eo quoque peti possit, qui unam aliquam rem hereditario nomine possideat, dubitari non oportet, quin verum sit quod diximus.

Dig. 29.4.17

Gaius 17 ad ed. provinc.

Si quis omissa causa testamenti omnino eam hereditatem non possideat, excluduntur legatarii: nam liberum cuique esse debet etiam lucrosam hereditatem omittere, licet eo modo legata libertatesque intercidunt. sed in fideicommissariis hereditatibus id provisum est, ut, si scriptus heres nollet adire hereditatem, iussu praetoris adeat et restituat: quod beneficium his, quibus singulae res per fideicommissum relictae sint, non magis tributum est quam legatariis.

Dig. 29.4.18pr.

Gaius 2 de testam. ad ed. pu.

Si duo heredes instituti ambo omissa causa testamenti ab intestato possideant hereditatem, tunc, quia uterque praetorio iure perinde habetur atque si ex testamento hereditatem adisset, pro partibus in singulos competit actio.

Dig. 29.4.18.1

Gaius 2 de testam. ad ed. pu.

Admonendi sumus huic, in quem ex hac parte edicti legatorum actio datur, beneficium legis falcidiae concedendum.

Dig. 29.4.19

Gaius 17 ad ed. provinc.

Praeterea patrono quoque qui ex asse heres institutus est si ab intestato possederit hereditatem, commodum partis debitae, quod habiturus foret, si ex testamento adisset hereditatem, salvum ei debet esse.

Dig. 29.4.20

Ulpianus 4 disp.

Si eadem res diversis personis ab instituto et substituto fuerit relicta, non uterque, sed qui ab instituto accepit solus vindicabit.

Dig. 29.4.21

Iulianus 27 Dig.

Si filius meus a matre sua heres scriptus fuerit et ego testamenti causa omissa bonorum possessionem eiusdem filii nomine petiero, actio legatorum in me dari debebit non secus ac si ipse heres scriptus omissa causa testamenti bonorum possessionem ab intestato accepissem.

Dig. 29.4.22pr.

Iulianus 31 Dig.

Si in testamento ita scriptum fuerit: " titius heres esto: si titius heres erit, maevius heres esto" et titius omissa causa testamenti hereditatem legitimam possederit, maevio adversus eum petitio hereditatis dari non debet pro parte, quam habiturus esset, si testamenti causa omissa non fuisset. cum enim omisso testamento hereditas possidetur, legatorum quidem et libertatium ratio habenda est, quia aliter quam ab herede dari non potuerunt: hereditatis vero quae ita data est rationem habere praetor non debet: sua enim culpa testator sub hac condicione hereditatis partem dedit, quam potuit pure dare.

Dig. 29.4.22.1

Iulianus 31 Dig.

Quare et si ita scriptum fuisset: " titius heres esto: quisquis mihi ex supra scriptis heres erit, stichus liber heresque esto" et titius omisso testamento hereditatem possideat, libertatem praetor stichi tueri non debet nec hereditatis petitionem ei dare.

Dig. 29.4.22.2

Iulianus 31 Dig.

Si quis hoc modo testamentum scripserit: " titius heres esto: si titius heres non erit, maevius heres esto: quisquis mihi ex supra scriptis heres erit, maevio, si mihi heres non erit, centum dato", deinde titius omisso testamento legitimam hereditatem possideat, an maevio, cuius in potestate fuit, ut ex substitutione adeundo totam hereditatem haberet, legatorum actio dari debeat, quaeritur. et placet dari, quia nihil prohibet maevium iustam causam habuisse, propter quam nollet negotiis hereditariis implicari.

Dig. 29.4.23

Ulpianus 46 ad ed.

Si filius qui mansit in patris potestate, item filia heredes instituti praeterito fratre emancipato, qui contra tabulas accipere possessionem potuit, ut intestati patris possessionem acceperint, legata omnibus praestabunt nec filia dotem suam fratri conferet, cum ut scripta videatur hereditatem habere.

Dig. 29.4.24pr.

Paulus 60 ad ed.

Si dolo tutoris omiserit pupillus causam testamenti et legitimam hereditatem possideat, danda est legatorum actio in pupillum, sed eatenus, quatenus hereditas ei adquisita est. quid enim, si cum alio possideat hereditatem?

Dig. 29.4.24.1

Paulus 60 ad ed.

Sed hoc et in eo qui pubes est plerique putant observandum, ut pro qua parte possideat, teneatur, quamvis praetor perinde in eum det actionem, atque si adisset hereditatem.

Dig. 29.4.25

Celsus 16 Dig.

Cui servus ipsius substitutus est, servum suum adire iussit. si idcirco fecit, ne legata praestaret, utraque praestabit, et qua heres est et qua omissa causa testamenti possidet ex substitutione hereditatem, salva falcidia ei servata.

Dig. 29.4.26pr.

Papinianus 16 quaest.

Iulianus scribit patrem, qui filiam sibi substitutam iussit adire hereditatem, legata quae ab ipso data sunt ex sententia edicti praestaturum, quoniam filia patri substituitur in casu, non ut arbitrium eligendi relinquatur: sed si varia legata supra dodrantem data sint, eorum prius rationem habendam, quae a filia relicta sunt. non enim caret dolo pater, qui honore proprio omisso propter compendium alienam institutionem maluit.

Dig. 29.4.26.1

Papinianus 16 quaest.

Denique si filiae pater substitutus adiit hereditatem, nihil eum dolo facere iulianus existimat, quia nemo filiae patrem contra votum parentium substituere videtur, sed ut arbitrium eligendi relinquat.

Dig. 29.4.27pr.

Papinianus 6 resp.

Mater secundis tabulis impuberi filio substituta locum edicto facit, si omisso testamento legitimam hereditatem filii possideat. idem iuris erit et si filio heres data sit et substituta.

Dig. 29.4.27.1

Papinianus 6 resp.

In sententiam edicti propter legatorum causam frater incidisse non videbatur, qui filium suum substitutum impuberi testamento fratris non emancipavit, sed ab intestato per eum possidere coepit.

Dig. 29.4.27.2

Papinianus 6 resp.

In eum, qui testamento scriptus heres non fuit, si fraudis consilio cum heredibus scriptis participato legitimam hereditatem solus possideat, actio legatorum ex sententia praetoris dabitur.

Dig. 29.4.28pr.

Maecenatus 4 fideic.

Si servum heredem institutum dominus, qui ipse rogatus fuerat fideicommissum praestare, priusquam adire iuberet, vendiderit, praestare id debet, cum per pretium servi hereditatis quoque aestimationem consequatur.

Dig. 29.4.28.1

Maecenatus 4 fideic.

Institutus heres et rogatus restituere hereditatem si omissa causa testamenti legitimam hereditatem possideat, non dubie ut legata ceteraque fideicommissa, ita hereditatem quoque restituere compellendus est, libertates quoque tam directas quam fideicommissarias. sed si alienos servos rogatus sit manumittere, utique redimere eos debebit. eam autem decessionem patietur is cui restituta fuerit hereditas, quam is qui ei restituit passurus fuit.

Dig. 29.4.29

Ulpianus 5 fideic.

Qui omissa causa testamenti ab intestato possidet hereditatem, servos ad libertatem perducere debet, ne eis factum noceat eius qui ex testamento adire noluit: sic tamen, ut habeat libertos.

Dig. 29.4.30

Hermogenianus 3 iuris epit.

Qui omissa causa testamenti pro emptore vel pro dote vel pro donato sive alio quolibet titulo, exceptis pro herede et pro possessore, possideat hereditatem, a legatariis et fideicommissariis non convenitur.

Dig. 29.5.0. De senatus consulto silaniano et claudiano: quorum testamenta ne aperiantur.

Dig. 29.5.1pr.

Ulpianus 50 ad ed.

Cum aliter nulla domus tuta esse possit, nisi periculo capitis sui custodiam dominis tam ab domesticis quam ab extraneis praestare servi cogantur, ideo senatus consulta introducta sunt de publica quaestione a familia necatorum habenda.

Dig. 29.5.1.1

Ulpianus 50 ad ed.

Domini appellatione continetur qui habet proprietatem, etsi usus fructus alienus sit.

Dig. 29.5.1.2

Ulpianus 50 ad ed.

Qui servum bona fide possedit, domini appellatione non continebitur, nec qui usum fructum solum habuit.

Dig. 29.5.1.3

Ulpianus 50 ad ed.

Servus pignori datus, quod attinet ad debitoris necem, per omnia perinde habetur atque si pignori datus non esset.

Dig. 29.5.1.4

Ulpianus 50 ad ed.

Servi appellatione etiam hi continentur, qui sub condicione legati sunt: nam medio tempore heredis sunt, nec quod condicio existens efficit, ut desinant esse heredis, facit ne videantur interim eius. idemque erit dicendum in statulibero.

Dig. 29.5.1.5

Ulpianus 50 ad ed.

Sed in eo, cui fideicommissa libertas pure debetur, exstat rescriptum divi pii ad iuventium sabinum, quo ostenditur non esse festinandum ad tormenta eius, cui fideicommissa libertas debetur: et magis est, ne puniatur ob hoc quod sub eodem tecto fuit, nisi particeps sceleris fuerit.

Dig. 29.5.1.6

Ulpianus 50 ad ed.

Domini appellatione etiam pro parte dominum contineri dicendum est.

Dig. 29.5.1.7

Ulpianus 50 ad ed.

Domini appellatione et filius familias ceterique liberi, qui in potestate sunt, continentur: senatus consultum enim silanianum non solum ad patres familias, verum ad liberos quoque pertinet.

Dig. 29.5.1.8

Ulpianus 50 ad ed.

Quid deinde dicemus, si liberi non sint in potestate? Marcellus libro duodecimo digestorum dubitat: ego puto plenius accipiendum, ut etiam ad eos liberos pertineat, qui in potestate non sunt.

Dig. 29.5.1.9

Ulpianus 50 ad ed.

In eo, qui est in adoptionem datus, non putamus locum habere senatus consultum, quamvis in adoptato locum habet.

Dig. 29.5.1.10

Ulpianus 50 ad ed.

Sed nec in alumno occiso locus est senatus consulto.

Dig. 29.5.1.11

Ulpianus 50 ad ed.

De matris servis filio filiave occisis quaestio non habebitur.

Dig. 29.5.1.12

Ulpianus 50 ad ed.

Si pater ab hostibus captus sit, quaestionem de servis habendam et supplicium filio occiso eleganter scaevola ait: quod etiam post mortem patris probat, si ante, quam suus ei heres existat, occisus fuerit.

Dig. 29.5.1.13

Ulpianus 50 ad ed.

Idem scaevola ait constantius defendendum herede instituto filio de his quaestionem habendam et supplicium, qui pure legati vel manumissi sunt, ante aditam hereditatem filio occiso: quamvis enim, si viveret, herede eo existente ipsius non essent futuri, attamen ubi decessit, qua extinctum legatum et libertas est, senatus consulto fore locum dicit.

Dig. 29.5.1.14

Ulpianus 50 ad ed.

Si pater necatus sit, an de servis filii quaestio habeatur, si forte castrensi peculio servos habuit? et magis est quaestionem de servis filii habendam suppliciumque sumendum, licet non sit in potestate filius.

Dig. 29.5.1.15

Ulpianus 50 ad ed.

Si vir aut uxor occisi esse proponantur, de servis eorum quaestio habetur, quamquam neque viri servi proprie uxoris dicantur neque uxoris proprie viri: sed quia commixta familia est et una domus est, ita vindicandum atque in propriis servis senatus censuit.

Dig. 29.5.1.16

Ulpianus 50 ad ed.

Sed neque uxore occisa neque marito de servis soceri quaestionem habendam senatus censuit: Marcellus autem libro duodecimo digestorum etiam in soceri servis idem quod in mariti recte dixit.

Dig. 29.5.1.17

Ulpianus 50 ad ed.

Occisorum appellatione eos contineri labeo scribit, qui per vim aut caedem sunt interfecti, ut puta iugulatum strangulatum praecipitatum vel saxo vel fuste vel lapide percussum vel quo alio telo necatum.

Dig. 29.5.1.18

Ulpianus 50 ad ed.

Quod si quis puta veneno vel etiam quo alio quod clam necare soleat interemptus sit, ad hoc senatus consultum vindicta mortis eius non pertinebit: hoc idcirco, quia totiens puniendi sunt servi, quia auxilium domino non tulerunt, quotiens potuerunt ei adversus vim opem ferre et non tulerunt: ceterum quid potuerunt facere adversus eos, qui veneno vel quo alio more insidiantur?

Dig. 29.5.1.19

Ulpianus 50 ad ed.

Plane si venenum per vim infusum sit, senatus consultum locum habet.

Dig. 29.5.1.20

Ulpianus 50 ad ed.

Ubicumque igitur vis adhibita est quae interemere solet, ibi dicendum est locum senatus consulto fore.

Dig. 29.5.1.21

Ulpianus 50 ad ed.

Quid ergo, si dominus veneno non per vim necatus esse proponatur? impunitum erit factum? nullo modo: licet enim cessat senatus consultum silanianum nec quaestio suppliciumque de his qui sub eodem tecto fuerunt habeatur, tamen si qui conscii vel factores sceleris fuerunt, hi demum supplicio adficiuntur: et adiri hereditas aperirique tabulae etiam ante quaestionem habitam possunt.

Dig. 29.5.1.22

Ulpianus 50 ad ed.

Si sibi manus quis intulit, senatus consulto quidem silaniano locus non est, sed mors eius vindicatur, scilicet ut, si in conspectu servorum hoc fecit potueruntque eum in se saevientem prohibere, poena adficiantur, si vero non potuerunt, liberentur.

Dig. 29.5.1.23

Ulpianus 50 ad ed.

Si quis non metu criminis imminentis, sed taedio vitae vel impatientia doloris sibi manus intulit, eius testamentum aperiri et recitari mortis casus non impedit.

Dig. 29.5.1.24

Ulpianus 50 ad ed.

Item illud sciendum est, nisi constet aliquem esse occisum, non haberi de familia quaestionem: liquere igitur debet scelere interemptum, ut senatus consulto locus sit.

Dig. 29.5.1.25

Ulpianus 50 ad ed.

Quaestionem autem sic accipimus non tormenta tantum, sed omnem inquisitionem et defensionem mortis.

Dig. 29.5.1.26

Ulpianus 50 ad ed.

Hoc autem senatus consultum eos quidem, qui sub eodem tecto fuerunt, omnimodo punit, eos vero, qui non sub eodem tecto, sed in eadem regione, non aliter, nisi conscii fuissent.

Dig. 29.5.1.27

Ulpianus 50 ad ed.

" eodem" autem " tecto" qualiter accipiatur, videamus, utrum intra eosdem parietes an et ultra intra eandem diaetam vel cubiculum vel eandem domum vel eosdem hortos vel totam villam. et ait sextus sic esse saepe iudicatum, ut quicumque eo loci fuerunt, unde vocem exaudire potuerunt, hi puniantur, quasi sub eodem tecto fuerunt, licet alii validioris vocis, alii exiguioris sunt nec omnes undique exaudiri possunt.

Dig. 29.5.1.28

Ulpianus 50 ad ed.

Iuxta hoc tamen videtur et divus hadrianus rescripsisse in haec verba: " servi quotiens dominis suis auxilium ferre possunt, non debent saluti eorum suam anteponere: potuisse autem ancillam, quae in eodem conclavi cum domina sua fuerat, auxilium rei ferre, si non corpore suo, at certe voce plorantem, ut hi, qui in domo fuerant aut vicini audirent, hoc ipso manifestum est, quod dixit percussorem sibi mortem minatum, si proclamasset. ultimum itaque supplicium pati debet vel hoc, ne ceteri servi credant in periculo dominorum sibi quemque consulere debere " .

Dig. 29.5.1.29

Ulpianus 50 ad ed.

Hoc rescriptum multa continet: nam ei non parcit, qui eodem conclavi fuit: et ei, qui timuit mori, non ignoscit: et quod vel voce oporteat servos dominis auxilium ferre, ostendit.

Dig. 29.5.1.30

Ulpianus 50 ad ed.

Si quis in villa agens occisus sit, plus quam iniquum est, si forte diffusa late praedia habeat, de omnibus qui in ea regione fuerint servis et quaestionem haberi et supplicium sumi: sufficit ergo eos, qui cum ipso qui occisus dicitur fuerunt et qui suspicione caedis aut conscientia attingi videbuntur, de his quaestionem haberi.

Dig. 29.5.1.31

Ulpianus 50 ad ed.

Cum dominus in itinere esset occisus, de his, qui una cum eo fuerunt cum occiditur vel, cum una fuissent, profugerunt, supplicium sumendum est. quod si cum domino nemo fuit cum occideretur, cessant ista senatus consulta.

Dig. 29.5.1.32

Ulpianus 50 ad ed.

Impubes servus vel ancilla nondum viripotens non in eadem causa erunt: aetas enim excusationem meretur.

Dig. 29.5.1.33

Ulpianus 50 ad ed.

Impuberi autem utrum in supplicio tantum parcimus an vero etiam in quaestione? et magis est, ut de impubere nec quaestio habeatur: et alias solet hoc in usu observari, ut impuberes non torqueantur: terreri tantum solent et habena et ferula vel caedi.

Dig. 29.5.1.34

Ulpianus 50 ad ed.

Excusantur autem servi, qui auxilium tulerunt sine dolo malo: nam si finxit se quis auxilium ferre vel dicis gratia tulit, nihil hoc commentum ei proderit.

Dig. 29.5.1.35

Ulpianus 50 ad ed.

Tulisse autem auxilium non tantum is videtur qui servavit dominum, hoc est qui potuit ita opem ferre, ut salvus esset dominus, verum is quoque, qui quidquid potuit fecit, tametsi dominus interfectus est: veluti si quis clamavit, ut ad auxilium conveniretur, aut terruit adgressores atque si quis turbam convocavit aut si corpus suum obiecit vel alias corpore suo auxilium tulit.

Dig. 29.5.1.36

Ulpianus 50 ad ed.

Non tamen semper qui clamore usus est, auxilium tulisse videtur: quid enim, si, cum posset manu depellere a domino periculum, ille clamorem inanem elegit? plectendus utique erit.

Dig. 29.5.1.37

Ulpianus 50 ad ed.

Quid si vulnerati sint servi, cum protegerent dominum? dicendum est parci eis debere, nisi si aut ipsi sibi vulnera ista fecerunt data opera, ne punirentur, aut talia vulnera isti acceperunt, ut possent nihilo minus opem ferre, si voluissent.

Dig. 29.5.1.38

Ulpianus 50 ad ed.

Si dominus mortifere vulneratus supervixerit nec de quoquam servorum suorum conquestus sit, etiamsi sub eodem tecto fuerunt, tamen parcendum illis erit.

Dig. 29.5.2

Callistratus 5 de cogn.

Divus marcus commodus pisoni rescripsit in haec verba: " cum constiterit apud te, piso carissime, iulium donatum, posteaquam conterritus adventu latronum profugerat villam suam, vulneratum esse, mox testamento facto purgasse officium servorum suorum, nec pietas pro servis nec sollicitudo heredis optinere debet, ut ad poenam vocentur, quos absolvit dominus ipse".

Dig. 29.5.3pr.

Ulpianus 50 ad ed.

Si quis in gravi valetudine adfectus opem domino ferre non potuerit, subveniendum est ei.

Dig. 29.5.3.1

Ulpianus 50 ad ed.

Si quis moriens dixisset a servo vim mortis allatam esse sibi, dicendum est non esse credendum domino, si moriens hoc dixit, nisi potuerit et probari.

Dig. 29.5.3.2

Ulpianus 50 ad ed.

Si maritus uxorem noctu intra cubiculum secum cubantem necaverit vel uxor maritum, servi poena senatus consulti liberabuntur. sed si exaudissent et opem non tulissent, plectendi erunt, non tantum si proprii essent mulieris, sed etiam si mariti.

Dig. 29.5.3.3

Ulpianus 50 ad ed.

Si tamen maritus in adulterio deprehensam occidat, quia ignoscitur ei, dicendum est non tantum mariti, sed etiam uxoris servos liberandos, si iustum dolorem exsequenti domino non restiterunt.

Dig. 29.5.3.4

Ulpianus 50 ad ed.

Si cum omnes domini adgressuram paterentur, uni servus opem tulit, an sit excusandus, an vero quia omnibus non tulit plectendus? et magis est, ut, si quidem omnibus ferre potuit, quamvis quibusdam tulit, supplicio adficiendum: si vero simul omnibus non potuit, excusandum, quia quibusdam opem tulerit. nam illud durum est dicere, si, cum duobus auxilium ferre non possit, elegit alteri esse auxilio, electione crimen eum contraxisse.

Dig. 29.5.3.5

Ulpianus 50 ad ed.

Quare et si servus mulieris marito dominae magis auxilio fuit quam dominae vel contra, dicendum est ignosci ei debere.

Dig. 29.5.3.6

Ulpianus 50 ad ed.

Subvenitur eis, qui eo tempore quo dominus dominave occisa est clausi ita fuerunt sine dolo malo, ut erumpere succurrendi causa aut comprehendendi eos, qui caedem fecerint, non potuerint: nec interest, a quo clausi continebuntur: sic tamen, si non data opera voluerint se ita includi, ne opem ferre possint. clusos accipere debemus et si sunt vincti, si tamen ita vincti, ut omnino rumpere vincula et auxilio esse non potuerint.

Dig. 29.5.3.7

Ulpianus 50 ad ed.

Ignoscitur etiam his qui aetate defecti sunt.

Dig. 29.5.3.8

Ulpianus 50 ad ed.

Surdus quoque inter inbecillos numerandus est aut inter eos qui sub eodem tecto non sunt, quia ut illi per spatium, ita hic per morbum nihil audit.

Dig. 29.5.3.9

Ulpianus 50 ad ed.

Caecus quoque veniam mereri debet.

Dig. 29.5.3.10

Ulpianus 50 ad ed.

Mutum simili modo excipimus, sed ibi, ubi vocis tantum auxilium superfuit.

Dig. 29.5.3.11

Ulpianus 50 ad ed.

Furiosos excipi nequaquam dubium est.

Dig. 29.5.3.12

Ulpianus 50 ad ed.

Si quis quem eorum servum servamve ex ea familia, qui eius facinoris noxius erit, receperit vel celaverit sciens dolo malo, in ea causa est, ac si lege quae de sicariis lata est facinoris noxius fuerit.

Dig. 29.5.3.13

Ulpianus 50 ad ed.

Si ex stipulatu servus debeatur et caedem domini arguerit et pro hoc praemio liber esse iussus sit, ex stipulato actio stipulatori non datur: nam et si supplicio adfectus fuisset, non daretur. quod si sub eodem tecto non fuit, ex stipulatu actio in aestimatione servi utilis erit creditori.

Dig. 29.5.3.14

Ulpianus 50 ad ed.

Utrum autem is solus videatur indicasse vel arguisse, qui ad hoc prosilit ultro, an etiam is, qui, cum accusaretur ipse, detorsit in alium crimen? et magis est, ut ille hoc praemio dignus sit, qui ultro ad accusationem prosilit.

Dig. 29.5.3.15

Ulpianus 50 ad ed.

Hi quoque, qui non potuerunt alias ad libertatem pervenire, ut puta si hac lege distractus erat quis, ne manumitteretur, poterunt propter hoc, quod in commune utile est, ad libertatem pervenire.

Dig. 29.5.3.16

Ulpianus 50 ad ed.

De his quoque servis, qui testamento manumissi sunt, perinde atque servis supplicium sumendum est.

Dig. 29.5.3.17

Ulpianus 50 ad ed.

De his, qui antequam testamentum occisi occisaeve aperiretur profugissent posteaque aperto testamento liberi scripti invenirentur, perinde ac si de servis quaestio habenda suppliciumque sumendum est: nam est aequissimum ultioni dominorum non obstare indulgentiam ipsorum, quam quisque pleniorem esset expertus, eo graviorem sceleri suo poenam merebitur.

Dig. 29.5.3.18

Ulpianus 50 ad ed.

Quod ad causam testamenti pertinens relictum erit ab eo qui occisus esse dicetur, id ne quis sciens dolo malo aperiendum recitandum describendumque curet, edicto cavetur, priusquam de ea familia quaestio ex senatus consulto habita suppliciumque de noxiis sumptum fuerit.

Dig. 29.5.3.19

Ulpianus 50 ad ed.

Aperire autem hic ille videtur qui naturaliter aperit, sive sint signatae sive non sint legatae, sed tantum naturaliter clausae.

Dig. 29.5.3.20

Ulpianus 50 ad ed.

Aperire accipere debemus prohibitos nos vel palam publice vel secreto: omnis enim apertura prohibita est.

Dig. 29.5.3.21

Ulpianus 50 ad ed.

Si quis ignorans occisum aperuerit, non debet hoc edicto teneri.

Dig. 29.5.3.22

Ulpianus 50 ad ed.

Et si sciens, non tamen dolo aperuit, aeque non tenebitur, si forte per imperitiam vel per rusticitatem ignarus edicti praetoris vel senatus consulti aperuit.

Dig. 29.5.3.23

Ulpianus 50 ad ed.

Si quis tabulas quidem non aperuit naturaliter, linum autem inciderit, excusatus erit, quia dolo caret, qui ipsas tabulas non aperuit.

Dig. 29.5.3.24

Ulpianus 50 ad ed.

Si autem non totum testamentum, sed pars eius aperta sit, dicendum est in edictum incidisse eum qui aperuit: parvi enim refert, utrum totum an pars aperiatur.

Dig. 29.5.3.25

Ulpianus 50 ad ed.

Si quis codicillos aperuerit, testamentum non aperuerit, in edictum incidit: nam et codicilli ad causam testamenti pertinent.

Dig. 29.5.3.26

Ulpianus 50 ad ed.

Item sive iure valeat id quod apertum est sive non valeat, attamen edicto locus est.

Dig. 29.5.3.27

Ulpianus 50 ad ed.

Eadem servantur et de his, quae ad causam substitutionis pertinent, si pupillus pupillave occisus occisave esse dicetur.

Dig. 29.5.3.28

Ulpianus 50 ad ed.

Si alius aperuit, alius recitavit, alius descripserit, omnes in edictum incident, qui singula eorum fecerunt.

Dig. 29.5.3.29

Ulpianus 50 ad ed.

Non tantum ex testamento, sed etiam ab intestato hereditas ad hoc edictum pertinet, ut ne quis adeat bonorumve possessionem petat, antequam quaestio de familia habeatur, ne heres propter compendium suum familiae facinus occultaret.

Dig. 29.5.3.30

Ulpianus 50 ad ed.

Eleganter scaevola ait, ut quis ad heredem suum utiles actiones transmittat, si forte ante aditionem decessit, exploratum esse debere idcirco eum non adire, quod senatus consulto edictoque terreatur.

Dig. 29.5.3.31

Ulpianus 50 ad ed.

Si condicioni intra diem ex die mortis praestitutum parere iussi ignorantia non paruerunt, si idcirco ignoratum est, quia metu senatus consulti aperiri tabulae non potuerunt, succurritur eis ad implendam condicionem.

Dig. 29.5.3.32

Ulpianus 50 ad ed.

Si et aliud impedimentum sit de non adeunda hereditate vel aperiendarum tabularum, sit et senatus consulti, nihil prodesse impedimentum senatus consulti, si et aliud fuit: veluti si praegnas uxor occisi fuit vel etiam putabatur et propterea adire hereditatem institutus non potuerit.

Dig. 29.5.4

Papinianus 6 resp.

Qui postumos heredes instituerat, non natis postumis uxorem secundo loco scripsit heredem: cum a familia necatus diceretur, uxor diem suum obierat: heredes mulieris actiones ex constitutione sibi dari postulabant. eos ita demum audiendos esse respondi, si mulier, quam in utero nihil gestare constabat, propter senatus consultum hereditatem adire noluit: alioquin praegnate ea defuncta nullam iniuriae querellam intervenisse.

Dig. 29.5.5pr.

Ulpianus 50 ad ed.

Necessarios heredes puto edicto comprehendi, si se misceant hereditati.

Dig. 29.5.5.1

Ulpianus 50 ad ed.

Nec bonorum possessionem peti praetor permittit: et ego puto ad omnes bonorum possessiones hoc edictum pertinere.

Dig. 29.5.5.2

Ulpianus 50 ad ed.

Non alias bona publicantur, quam si constabit esse occisum patrem familias et heredem ante quaestionem de familia habitam suppliciumque sumptum adisse hereditatem.

Dig. 29.5.5.3

Ulpianus 50 ad ed.

Ubi quis incuria necatus est vel medici insidiis, adiri quidem hereditas potest, sed heredi defensio mortis incumbit.

Dig. 29.5.6pr.

Paulus 46 ad ed.

Etsi percussor certus sit, tamen habenda quaestio est, ut caedis mandator inveniatur: utique autem ipse maxime quaestioni dabitur, quamvis et ceteri puniantur.

Dig. 29.5.6.1

Paulus 46 ad ed.

Quamvis alias in caput domini servi non torqueantur, recte tamen fiet quaestio, etiamsi heredem accusent, sive extraneus heres sive ex suis sit.

Dig. 29.5.6.2

Paulus 46 ad ed.

Si unus ex dominis non compareat, querendum est de casu eius per servos, quos communes habuerunt: magis enim de salute aut ultione domini non comparentis quam in caput praesentis torquebuntur.

Dig. 29.5.6.3

Paulus 46 ad ed.

Si appetitus sit nec occisus dominus, nihil senatus consulto cavetur: ipse enim in familiam suam potest animadvertere.

Dig. 29.5.7

Paulus l.S. ad sc silan.

Et in libertos extraordinarium auxilium habebit.

Dig. 29.5.8pr.

Paulus 46 ad ed.

Senatus consulto pisoniano cavetur, ut, si poenae obnoxius servus venisset, quandoque animadversum in eum esset, ut venditor pretium praestaret, ne emptori iniuriam fecisse videatur senatus.

Dig. 29.5.8.1

Paulus 46 ad ed.

Si filius familias, qui in castrensi peculio testatus est, occisus sit, omnimodo id defendendum est, ut, ex quibus casibus ad fiscum patris familias bona pertinent, his casibus et huius peculium, potius quam ad heredes, qui deliquerunt in adeundo et similibus ultive non sunt.

Dig. 29.5.9

Gaius 17 ad ed. provinc.

Cum fisco caduca bona defuncti addicantur propter inultam mortem, in eum legatorum actio datur: et libertates ratae sunt eorum scilicet, qui senatus consulto excipiuntur.

Dig. 29.5.10pr.

Paulus l.S. ad sc silan.

Si exheredatus filius, antequam adiretur patris hereditas, occisus sit, ex eventu inspicietur, ut, si adita fuerit hereditas, quasi alieni fuisse videantur: si vero irritum testamentum factum sit, quia ipsius essent si viveret, omnia perinde aguntur ac si dominus esset.

Dig. 29.5.10.1

Paulus l.S. ad sc silan.

Sub divo traiano constitutum est de his libertis, quos vivus manumiserat, quaestionem haberi.

Dig. 29.5.11

Tryphonus 2 disp.

Idemque erit et de his, qui ius anulorum petierant.

Dig. 29.5.12

Paulus l.S. ad sc silan.

Si servus a testatore occiso legatus sit et praetor pro praemio statuerit liberum eum esse, dicendum est non impediri libertatem.

Dig. 29.5.13

Venonius 2 de publ. iudic.

In cognitione aperti adversus senatus consultum testamenti eius, qui a familia sua occisus dicatur, quinquennii tempus constitutum est senatus consulto tauro et lepido consulibus: quod tamen ad extraneos pertinet. namque eos, qui parricidii poena teneri possunt, semper accusare permittitur eodem senatus consulto.

Dig. 29.5.14

Maecenatus 11 de publ. iudic.

Excipiuntur senatus consulto silaniano impuberes servi. trebius autem germanus legatus etiam de impubere sumi iussit supplicium et tamen non sine ratione: nam is puer nec multum a puberi aetate aberat et ad pedes domini cubuerat cum occideretur nec postea caedem eius prodiderat. ut enim opem ferre eum non potuisse constabat, ita silentium praestitisse etiam postea certum erat, et his dumtaxat impuberibus senatus consulto parci credebat, qui tantum sub eodem tecto fuissent: qui vero ministri vel participes caedis fuissent et eius aetatis, quamquam nondum puberis, ut rei intellectum capere possent, his non magis in caede domini quam in ulla alia causa parci oportere.

Dig. 29.5.15pr.

Marcianus l.S. de delator.

Si sequens gradus ultus fuerit necem testatoris, an priore hereditas ad illum transferatur? et ait papinianus non esse hoc: nam poena illius huius praemium esse non debet.

Dig. 29.5.15.1

Marcianus l.S. de delator.

Cum ex parte heredi instituto legatum quoque erat et in ulciscenda morte cessaverat, divi severus et antoninus rescripserunt tam hereditatis portionem quam legatum ei auferendum.

Dig. 29.5.15.2

Marcianus l.S. de delator.

Heredibus autem, qui in ulciscenda morte defuncti cessaverant, tam testamento quam ab intestato auferuntur bona: forte et si quasi patronus venit, quamvis hi suo iure admittantur.

Dig. 29.5.16

Marcellus 12 Dig.

Domino a familia occiso servus communis necem eius detexit: favore libertatis liber quidem fieri debet, pretii autem partem sibi contingentem socium consequi oportet.

Dig. 29.5.17

Modestinus 8 reg.

Prius de se familia torquenda est et, si confiteatur, tunc interrogetur, quo mandante flagitium admissum sit.

Dig. 29.5.18

Modestinus 9 reg.

Et inofficioso testamento queri idem et mortem vindicare defuncti non prohibetur, idque paulus respondit.

Dig. 29.5.19

Modestinus 8 pand.

Cum dominus occiditur, auxilium ei familia ferre debet et armis et manu et clamoribus et obiectu corporis: quod si, cum posset, non tulerit, merito de ea supplicium sumitur.

Dig. 29.5.20

Papinianus 2 resp.

Heres, qui veneni causam persequitur, res hereditarias urguentes ordinare salvis probationum indiciis non prohibetur.

Dig. 29.5.21pr.

Papinianus 6 resp.

Propter veneni quaestionem tempus petendae possessionis non profertur, cum eo quoque suspenso crimine recte petatur. aliud senatui placuit, cum a familia dominus necatus dicitur, servorum videlicet causa, quorum libertatem quaestionis habendae gratia neglegi necesse est.

Dig. 29.5.21.1

Papinianus 6 resp.

Neptis, quae possessionem aviae petierat, mortem eius interfectam sciens non defenderat. fideicommissum, quod avia ex alio testamento nepti debuit, in restituendis fisco bonis non esse deducendum placuit: dolus enim heredis punitus est. si autem neglegentia mulier emolumentum bonorum amiserit, fideicommissum esse retinendum integrato iure debiti rationis est.

Dig. 29.5.21.2

Papinianus 6 resp.

Praesidis iniquitate reis illatae caedis absolutis heredibus, qui non defunctorie debitum officium impleverant, quamvis non provocassent, hereditatem auferri non oportere visum est.

Dig. 29.5.22

Paulus 16 resp.

Gaius seius cum languesceret, questus est se veneno occidi a servo suo et sic exspiravit: cui heres exstitit lucia titia soror et mortem eius exsequi neglexit et ipsa post annum decimum decessit: exstitit qui bona nuntiaret gaii seii: quaero, an morte titiae extinctum sit crimen. paulus respondit causam, de qua quaeritur, cum sit pecuniaria, morte ingratae heredis extinctam non videri.

Dig. 29.5.23

Maecenatus 13 fideic.

Si antequam patefieret testatorem occisum, tabulae testamenti apertae essent, deinde innotuisset id admissum esse, causa cognita puto compellendum institutum adire hereditatem, quam suspectam diceret, et ex trebelliano senatus consulto restituere.

Dig. 29.5.24

Ulpianus 50 ad ed.

Si quis quasi suspectam hereditatem coactus adit, non tenetur edicto.

Dig. 29.5.25pr.

Gaius 17 ad ed. provinc.

Lege cornelia cavetur de praemio accusatoris, qui requisivit et renuntiavit eos servos, qui ex ea familia ante quaestionem fugerint, ut in singulos servos quos convicerit quinque aureos ex bonis occisi aut, si inde redigi ea quantitas non possit, ex publico accipiat. quod praemium non in omnes servos, qui sub eodem tecto locove fuerint, sed in eos solos, qui caedem admisissent, accusatori tribuitur.

Dig. 29.5.25.1

Gaius 17 ad ed. provinc.

Praeterea cavetur, ut de his, qui ante quaestionem habitam fugerint, si aperto testamento liberi scripti inveniantur, lege de sicariis iudicium fiat ita, ut ex vinculis causam dicant et convicti perinde ac servi puniantur et ei qui convicerit deni aurei praemii nomine darentur ex bonis damnati.

Dig. 29.5.25.2

Gaius 17 ad ed. provinc.

Ex hoc edicto actio proficiscitur contra eum, qui adversus edictum praetoris tabulas testamenti aperuisse dicetur vel si quid aliud fecisse dicetur: nam ut ex supra dictis apparet, plura sunt, propter quae poena edicti constituta est. palam est autem popularem actionem esse, cuius poena in centum aureos ex bonis damnati extenditur: et inde partem dimidiam ei, cuius opera convictus erit, praemii nomine se daturum praetor pollicetur, partem in publicum redacturum.

Dig. 29.5.26

Scaevola 34 Dig.

Fideicommissum, quod ex testamento fratris patruelis gaius seius titio debebat, ab heredibus seii titius accepit: quaesitum est, cum necem gaii seii heredes eius non vindicaverint, an titius nihilo minus eos heredes ut indignos accusare possit ob id, quod necem eius non vindicaverint, nec obsit ei, quod ab isdem fideicommissum ex testamento fratris patruelis consecutus sit. respondit nihil proponi, cur obstaret.

Dig. 29.5.27

Callistratus 1 d. i. fisci.

Si de pluribus heredibus quibusdam invitis aut ignorantibus apertum erit testamentum, non amittunt portiones suas qui culpa carent.

Dig. 29.6.0. Si quis aliquem testari prohibuerit vel coegerit.

Dig. 29.6.1pr.

Ulpianus 48 ad ed.

Qui dum captat hereditatem legitimam vel ex testamento, prohibuit testamentarium introire volente eo facere testamentum vel mutare, divus hadrianus constituit denegari ei debere actiones denegatisque ei actionibus fisco locum fore.

Dig. 29.6.1.1

Ulpianus 48 ad ed.

Si dominus dolo fecerit, ne testamentum mutaretur, in quo servus eius scriptus erat, quamvis manumissus adierit hereditatem, actiones ei denegantur, cum et liberis eius si quid fuerit datum, denegari debeat, etsi non fuerint in potestate. sed si legatum ei relictum sit idque restituere sit rogatus, consequens erit dicere admitti eum ad legatum, quod non ipse habuisset, sed ad alium sit translaturus.

Dig. 29.6.1.2

Ulpianus 48 ad ed.

Si plures heredes instituti sint et omnes dolo fecerint, quo minus testamentum mutaretur, dicendum est actiones omnibus denegari, quia omnes dolo fecerunt.

Dig. 29.6.2pr.

Paulus 44 ad ed.

Si quis dolo malo fecerit, ut testes non veniant, et per hoc deficiatur facultas testamenti faciendi, denegandae sunt actiones ei qui dolo fecerit, sive legitimus heres sit sive priore testamento scriptus.

Dig. 29.6.2.1

Paulus 44 ad ed.

Fratris autem factum fratri non nocet.

Dig. 29.6.2.2

Paulus 44 ad ed.

Si fidei eius qui dolum admisit commissum est, ut hereditatem restitueret: ea hereditas caduca cum suis oneribus fiet, ut commodum legis falcidiae fiscus sentiat, dodrantis autem fideicommissarius.

Dig. 29.6.3

Papinianus 15 resp.

Virum, qui non per vim nec dolum, quo minus uxor, contra eum mutata voluntate, codicillos faceret, intercesserat, sed ut fieri adsolet, offensam aegrae mulieris maritali sermone placaverat, in crimen non incidisse respondi, nec ei quod testamento fuerat datum auferendum.

Dig. 29.7.0. De iure codicillorum.

Dig. 29.7.1

Ulpianus 4 disp.

Saepissime rescriptum et constitutum est eum, qui testamentum facere opinatus est nec voluit quasi codicillos id valere, videri nec codicillos fecisse: ideoque quod in illo testamento scriptum est, licet quasi in codicillis poterit valere, tamen non debetur.

Dig. 29.7.2pr.

Iulianus 37 Dig.

Si ei, qui post testamentum factum et ante codicillos scriptos natus esset, codicillis per fideicommissum aliquid daretur, utile est.

Dig. 29.7.2.1

Iulianus 37 Dig.

Quod si ei, qui post testamentum factum et antequam codicilli scriberentur mortuus esset, datum esset, pro non scripto habetur.

Dig. 29.7.2.2

Iulianus 37 Dig.

Codicillorum ius singulare est, ut quaecumque in his scribentur perinde haberentur, ac si in testamento scripta essent. ideoque servo, qui testamenti facti tempore testatoris fuisset, codicillorum tempore alienus, non recte libertas directa datur. et contra si, cum testamentum fiebat, alienus esset, codicillorum tempore testatoris, intellegitur alieno servo libertas data. et ideo licet directae libertates deficiunt, attamen ad fideicommissarias eundum est.

Dig. 29.7.2.3

Iulianus 37 Dig.

Furiosus non intellegitur codicillos facere, quia nec aliud quicquam agere intellegitur, cum per omnia et in omnibus absentis vel quiescentis loco habetur.

Dig. 29.7.2.4

Iulianus 37 Dig.

Hereditas testamento inutiliter data non potest codicillis quasi hereditas confirmari, sed ex fideicommisso petitur salva ratione legis falcidiae.

Dig. 29.7.3pr.

Iulianus 39 Dig.

Si quis cum testamentum nullum habebat, codicillis fideicommissa hoc modo dedit: " quisquis mihi heres erit bonorumve possessor, eius fidei committo", fideicommissa praestari debent, quia pater familias, qui testamenti factionem habet et codicillos faceret, perinde haberi debet, ac si omnes heredes eius essent, ad quos legitima eius hereditas vel bonorum possessio perventura esset.

Dig. 29.7.3.1

Iulianus 39 Dig.

Sed et si post codicillos factos natus quis esset proximus adgnatus vel suus heres, fideicommissum praestari debebit: intellegitur enim is quoque heres scriptus et ideo non perinde habendus est ac si rupisset hos codicillos.

Dig. 29.7.3.2

Iulianus 39 Dig.

Testamento facto etiamsi codicilli in eo confirmati non essent, vires tamen ex eo capient. denique si ex testamento hereditas adita non fuisset, fideicommissum ex huiusmodi codicillis nullius momenti erit.

Dig. 29.7.4

Iulianus 63 Dig.

Eum, qui codicillorum tempore solvendo sit, recte libertatem dare placuit, quamvis testamenti facti tempore solvendo non fuerit.

Dig. 29.7.5

Papinianus 7 resp.

Ante tabulas testamenti codicilli facti non aliter valent, quam si testamento quod postea factum est vel codicillis confirmentur aut voluntas eorum quocumque indicio retineatur: sed non servabuntur ea, de quibus aliter defunctus novissime iudicavit.

Dig. 29.7.6pr.

Marcianus 7 inst.

Divi severus et antoninus rescripserunt nihil egisse matrem, quae, cum pure liberos suos heredes instituerit, condicionem emancipationis codicillis adiecit, quia neque condicionem heredi instituto codicillis adicere neque substituere directo potest.

Dig. 29.7.6.1

Marcianus 7 inst.

Codicillos et plures quis facere potest et ipsius manu neque scribi neque signari necesse est.

Dig. 29.7.6.2

Marcianus 7 inst.

Licet in confirmatione codicillorum pater familias adiecerit, ut non alias valere velit quam sua manu signatos et subscriptos, tamen valent facti ab eo codicilli, licet neque ab eo signati neque manu eius scripti fuerint: nam ea quae postea geruntur prioribus derogant.

Dig. 29.7.6.3

Marcianus 7 inst.

Codicillos is demum facere potest, qui et testamentum facere potest.

Dig. 29.7.6.4

Marcianus 7 inst.

Si post testamentum factum mortuo codicillis quis legaverit licet testamento confirmatis, pro non scripto legatum fit.

Dig. 29.7.7pr.

Marcianus 2 reg.

Quaedam non referuntur ad confirmationem codicillorum, veluti si ante captivitatem quis codicillos confirmaverit et in captivitate codicillos scribat: nam non valent. idem est, si aliquo modo ius testamenti faciendi desierit habere.

Dig. 29.7.7.1

Marcianus 2 reg.

Praeterea in illis, quae non iuris, sed facti sunt, non est perinde habendum quod codicillis scribitur, atque si ubi confirmatio scriptum fuisset: veluti si ita in codicillis scriptum erit: " vestem quae mea est", codicillorum tempus spectandum, non quo confirmantur: item " si titius vivus est" vel " si tot annis est", codicillis legavit seio, tempus codicillorum, non quo tempore fit testamentum, spectandum.

Dig. 29.7.8pr.

Paulus l.S. de iure codicill.

Conficiuntur codicilli quattuor modis: aut enim in futurum confirmantur aut in praeteritum aut per fideicommissum testamento facto aut sine testamento.

Dig. 29.7.8.1

Paulus l.S. de iure codicill.

Sed ideo fideicommissa dari possunt ab intestato succedentibus, quoniam creditur pater familias sponte sua his relinquere legitimam hereditatem.

Dig. 29.7.8.2

Paulus l.S. de iure codicill.

Codicilli totiens valent, quotiens quis testamentum quoque facere possit. non tamen hoc ita intellegemus, ut exigamus potuisse eum eo tempore, quo scribit eos codicillos, testamentum facere: quid enim, si sufficientium testium facultatem non habuit? sed si iure testamenti factionem habuit.

Dig. 29.7.8.3

Paulus l.S. de iure codicill.

Si post factum testamentum codicillos quis confirmaverit, deinde adrogandum se praebuerit et ibi codicillos fecerit atque ita emancipatus decesserit, quaeritur, an ex codicillis legata debeantur: nam et testamentum valet, sed eo tempore eos fecit, quo testamenti factionem non habuit. nec similis est muto, qui recte codicillos confirmaverit: licet enim is testamentum facere non possit, tamen testamentum quod ante fecerat in eodem statu est, huius autem testamentum sublatum est et de alienis quodammodo rebus testatur. sed dicemus codicillos valere: nam et si postumus natus ruperit testamentum et decesserit, nihilo minus codicilli valent.

Dig. 29.7.8.4

Paulus l.S. de iure codicill.

Si miles testamentum quidem ante militiam, sed codicillos in militia fecerit, an iure militari valeant codicilli, quaeritur, quoniam testamentum iure communi valet, nisi si militiae tempore signavit vel quaedam adiecerit. certe codicilli militiae tempore facti non debent referri ad testamentum, sed iure militari valent.

Dig. 29.7.8.5

Paulus l.S. de iure codicill.

Si ei servo, qui testamento legatum acceperit, libertas codicillis detur, utile legatum esse dicemus, quasi ab initio constiterit legatum.

Dig. 29.7.8.6

Paulus l.S. de iure codicill.

Si quis certi generis codicillos confirmaverit, puta " quos novissimos fecero", non utique statim quae codicillis dantur consistere videbuntur, quamdiu alii quoque fieri possint, et ideo si alii postea fiant, legata in prioribus data non valebunt.

Dig. 29.7.9

Marcellus 9 Dig.

Aristo negavit valere codicillos ab eo factos, qui pater familias nec ne esset, ignorasset. ulpianus notat: nisi veteranus fuit: tunc enim et testamentum valebit.

Dig. 29.7.10

Papinianus 15 quaest.

Quod per manus traditum est codicillis hereditatem dari non posse rationem illam habet, ne per codicillos, qui ex testamento valerent, ipsum testamentum, quod vires per institutionem heredum accipit, confirmari videretur.

Dig. 29.7.11

Papinianus 19 quaest.

Qui gravi utero uxorem esse ignorabat, codicillis ad filium scriptis libertates dedit. nata post mortem patris filia, cum de ea nihil patrem sensisse constitisset, placuit libertates a solo filio praestari: posse.

Dig. 29.7.12

Papinianus 22 quaest.

Redemptis a sorore partibus.

Dig. 29.7.13pr.

Papinianus 19 quaest.

Illud enim sine dubio dici non potest etiam filiam manumittere cogendam, cum ab ea nihil pater petierit et iure suo heres exstiterit.

Dig. 29.7.13.1

Papinianus 19 quaest.

Tractari solet de eo, qui, cum tabulas testamenti non fecisset, codicillis ita scripsit: " titium heredem esse volo". sed multum interest, utrum fideicommissariam hereditatem a legitimo per hanc scripturam, quam codicillorum instar habere voluit, reliquerit an vero testamentum facere se existimaverit: nam hoc casu nihil a legitimo peti poterit. voluntatis autem quaestio ex eo scripto plerumque declarabitur: nam si forte a titio legata reliquit, substitutum adscripsit, heres si non exstitisset, sine dubio non codicillos, sed testamentum facere voluisse intellegetur.

Dig. 29.7.14pr.

Scaevola 8 quaest.

Quidam referunt, quantum repeto apud vivianum, sabini et cassii et proculi expositam esse in quaestione huiusmodi controversiam: an legata, quae posteaquam instituti mortem obierunt codicillis adscripta vel adempta sunt, a substitutis debeantur, id est an perinde datio et ademptio etiam hoc tempore codicillis facta valeat ac si testamento facta esset. quod sabinum et cassium respondisse aiunt proculo dissentiente. nimirum autem sabini et cassii collectio, quam et ipsi reddunt illa est, quod codicilli pro parte testamenti habentur observationemque et legem iuris inde traditam servent. ego autem ausim sententiam proculi verissimam dicere. nullius enim momenti est legatum, quod datum est ei, qui tempore codicillorum in rebus humanis non est, licet testamenti fuerit: esse enim debet cui detur, deinde sic quaeri, an datum consistat, ut non ante iuris ratio quam persona quaerenda sit. et in proposito igitur quod post obitum heredis codicillis legatum vel ademptum est, nullius momenti est, quia heres, ad quem sermonem conferat, in rebus humanis non est eaque ademptio et datio nunc vana efficietur. haec in eo herede, qui ex asse institutus erit dato substituto, ita ut ab instituto codicilli confirmarentur.

Dig. 29.7.14.1

Scaevola 8 quaest.

Quod si duo instituti sint substitutis datis unusque eorum decesserit, utilia videntur legata: sed circa coheredem erit tractatus, numquid totum legatum debeat, si " quisquis mihi heres erit" legatum erit, an vero non, quia sit substitutus heres, qui partem faciat, licet ipse non debeat. idem etiam potest circa nomina expressa tractari. multoque magis solum coheredem totum debere puto, quia is adiunctus sit, qui etiam tunc cum adiungebatur in rebus humanis non erat.

Dig. 29.7.15

Africanus 2 quaest.

Sed cum ea testatoris voluntas fuerit, ut ex universa hereditate legata erogarentur, dicendum scriptis heredibus profuturam doli exceptionem, si amplius quam hereditaria portio petatur.

Dig. 29.7.16

Paulus 21 quaest.

Ab intestato factis codicillis relicta etiam postea natus intestati successor debebit: quicumque enim ab intestato successerit, locum habent codicilli: nam unus casus est nec interest qui succedit dum intestato succedat. ad testamentum autem quod quoquo tempore fecisset, pertinent codicilli. et ut manifestius dicam, intestato patre familias mortuo nihil desiderant codicilli, sed vicem testamenti exhibent: testamento autem facto ius sequuntur eius.

Dig. 29.7.17

Paulus 3 sent.

Litterae, quibus hereditas promittitur vel animi affectus exprimitur, vim codicillorum non optinent.

Dig. 29.7.18

Celsus 20 Dig.

Plotiana celso suo salutem. lucius titius his verbis ita cavit: " si quid tabulis aliove quo genere ad hoc testamentum pertinens reliquero, ita valere volo". quaero, an codicilli, qui ante hoc testamentum scripti sunt, debeant rati esse. iuventius celsus plotianae salutem. haec verba: " si quid ad hoc testamentum pertinens reliquero, valere volo", etiam ea, quae ante testamentum scripta sunt, comprehendere.

Dig. 29.7.19

Marcellus 14 Dig.

Is qui unum filium habebat, cum codicillos ad eum scripsisset, decessit intestatus herede eo et quem postea procreavit. adgnatione sui heredis nemo dixerit codicillos evanuisse: igitur si nihil tum de postumis speravit, et codicilli non evanescent et quae relicta sunt, pro parte dimidia filius, ad quem codicillus factus est, solvere compellitur, non etiam postumus. sed et si codicillos reliquisset duobus superstitibus filiis decedens, cum putaret alterum ex his prius decessisse, simili modo dici potest omnia perinde debere filium, ad quem scripti sunt codicilli, atque si solus heres exstitisset patri. immo dumtaxat partem debet: eorum tamen, quae pro parte praestari non possunt, nihil eorum praestandum, quoniam illi non fuerit filio ablaturus, nisi solum putaret successorem sibi futurum.

Dig. 29.7.20

Paulus 5 ad l. iul. et pap.

Si palam heres nuncupatus sit, legata autem in tabulis collata fuerint, iulianus ait tabulas testamenti non intellegi, quibus heres scriptus non est, et magis codicilli quam testamentum existimandae sint: et hoc puto rectius dici.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER TRICESIMUS

Dig. 30.0. De legatis et fideicommissis.

Dig. 30.0. De legatis et fideicommissis.

Dig. 30.1

Ulpianus 67 ad ed.

Per omnia exaequata sunt legata fideicommissis.

Dig. 30.2

Ulpianus 1 fideic.

Sciendum est eos demum fideicommissum posse relinquere, qui testandi ius habent.

Dig. 30.3

Ulpianus 4 ad sab.

Haec verba testatoris: "quisquis mihi ex supra scriptis heres erit" aut "si heres erit seius" vel "si hereditatem adierit" subiectum legatum vel fideicommissum non faciunt condicionale.

Dig. 30.4pr.

Ulpianus 5 ad sab.

Si quis in fundi vocabulo erravit et cornelianum pro semproniano nominavit, debebitur sempronianus: sed si in corpore erravit, non debebitur. quod si quis, cum vellet vestem legare, suppellectilem adscripsit, dum putat suppellectilis appellatione vestem contineri, pomponius scripsit vestem non deberi, quemadmodum si quis putet auri appellatione electrum vel aurichalcum contineri vel, quod est stultius, vestis appellatione etiam argentum contineri. rerum enim vocabula immutabilia sunt, hominum mutabilia.

Dig. 30.4.1

Ulpianus 5 ad sab.

Si quis heredes instituerit et ita legaverit: "quisquis mihi gallicanarum rerum heres erit, damnas esto dare", ab omnibus heredibus videri legatum, quoniam ad omnes eos res gallicanae pertinent.

Dig. 30.5pr.

Paulus 1 ad sab.

Servi electione legata semel dumtaxat optare possumus.

Dig. 30.5.1

Paulus 1 ad sab.

Labeo ait, cum certa res aut persona legatur ita: "qui meus erit cum moriar, heres dato" et communis sit, totum deberi. trebatium vero respondisse partem deberi cassius scripsit, quod et verius est.

Dig. 30.5.2

Paulus 1 ad sab.

Cum fundus communis legatus sit non adiecta portione, sed "meum" nominaverit, portionem deberi constat.

Dig. 30.6

Iulianus 33 Dig.

"stichum, qui meus erit cum moriar, heres meus dato": magis condicionem legato iniecisse quam demonstrare voluisse patrem familias apparet eo quod, si demonstrandi causa haec oratio poneretur, ita concepta esset "stichus qui meus est", non "qui meus erit". sed condicio talis accipi debet "quatenus "meus erit", ut, si totum alienaverit, legatum exstinguatur, si partem, pro ea parte debeatur, quae testatoris mortis tempore fuerit

Dig. 30.7

Paulus 2 ad sab.

Legatum servo delatum dominus potest repudiare.

Dig. 30.8pr.

Pomponius 2 ad sab.

Si ex toto fundo legato testator partem alienasset, reliquam dumtaxat partem deberi placet, quia etiam si adiecisset aliquid ei fundo, augmentum legatario cederet.

Dig. 30.8.1

Pomponius 2 ad sab.

Si ita scriptum sit: "lucius titius heres meus aut maevius heres meus decem seio dato", cum utro velit, seius aget, ut, si cum uno actum sit et solitum, alter liberetur, quasi si duo rei promittendi in solidum obligati fuissent. quid ergo si ab altero partem petierit? liberum cui erit ab alterutro reliquum petere. idem erit et si alter partem solvisset.

Dig. 30.8.2

Pomponius 2 ad sab.

Si ita legatum sit: "lecticarios octo aut pro his in homines singulos certam pecuniam, utrum legatarius volet", non potest legatarius partem servorum vindicare, pro parte nummos petere, quia unum in alterutra causa legatum sit, quemadmodum si olei pondo quinquaginta aut in singulas libras certum aes legatum sit: ne aliter observantibus etiam uno homine legato divisio concedatur. nec interest, divisa ea summa an iuncta ponatur: et certe octo servis aut pro omnibus certa pecunia legata non posse invitum heredem partem pecuniae, partem mancipiorum debere.

Dig. 30.9

Pomponius 3 ad sab.

Id quod apud hostes est legari posse octavenus scripsit et postliminii iure consistere.

Dig. 30.10

Paulus 2 ad sab.

Iulianus nec a filio familias sine iussu patris optari posse nec ante aditam hereditatem putat, quod est verum.

Dig. 30.11

Papinianus 9 quaest.

Cum filio familias vel servo alieno legatum vel hereditas datur, fidei committi patris vel domini potest ac tunc demum ex persona ipsorum fideicommissum vires capit, cum ipsis, per quos commodum hereditatis vel legati patri dominove quaeritur, fideicommissum relinquitur. denique iulianus non insuptili ratione motus patrem, cuius filius heres institutus est, extero quidem habita ratione legis falcidiae restituere hereditatem respondit, quoniam ex persona filii teneretur, ipsi vero filio non admissa falcidia, quoniam ex persona sua sibi filius obligare non posset ac pater non ut heres, sed ut pater rogari videtur. et ideo si filio rogatus sit pater post mortem suam, quod ad se pervenit ex legato vel hereditate filio relictis, restituere isque vivo patre decedat, omnimodo patrem id retenturum, quoniam fideicommissum ex persona patris vires acceperit.

Dig. 30.12pr.

Pomponius 3 ad sab.

Si mihi et tibi eadem res legata fuerit, deinde die legati cedente heres tibi exstitero, liberum mihi esse labeo ait, ex meo legato an ex eo, quod tibi heres sim, adquiram legatum: si voluero, eam rem ex meo legato ad me pertinere, ut tota mea sit, ex hereditario legato petere eam posse.

Dig. 30.12.1

Pomponius 3 ad sab.

Proculus ait, si quis servos quos gadibus haberet eo testamento, quod romae moriens fecerit, triduo quo mortuus fuerit heredem dare mihi damnaverit, ratum esse legatum et angustias temporis nihil legato nocere.

Dig. 30.12.2

Pomponius 3 ad sab.

Regula iuris civilis est, quae efficit, ut quibus ipsis legare possumus, eorum quoque servis legare possumus.

Dig. 30.12.3

Pomponius 3 ad sab.

In legatis novissimae scripturae valent, quia mutari causa praecedentis legati vel die vel condicione vel in totum ademptione potest. sed si sub alia et alia condicione legatum ademptum est, novissima ademptio spectanda est. interdum tamen in legatis non posterior, sed praecedens scriptura valet: nam si ita scripsero: "quod titio infra legavero, id neque do neque lego", quod infra legatum erit, non valebit. nam et eum sermonem, quo praesentia legata data in diem proferuntur, ad postea quoque scripta legata pertinere placuit. voluntas ergo facit, quod in testamento scriptum valeat.

Dig. 30.13

Pomponius 4 ad sab.

Cum incertus homo legatus tibi esset, heres stichum servo tuo tradidit. neratius respondit, si voluntate domini tradidit vel ratum hoc dominus habuerit, perinde eum liberatum, atque si stichus legatus esset.

Dig. 30.14pr.

Ulpianus 15 ad sab.

Si ita sit adscriptum: "si cui legavero bis, semel heres ei dato" vel "ut semel debeatur", et eidem duas quantitates adscripserit vel duos fundos, an utrumque debeatur? et ait aristo unum videri legatum: nam quod ademptum est, nec datum videri secundum celsi et Marcelli sententiam, quae vera est.

Dig. 30.14.1

Ulpianus 15 ad sab.

Sed papinianus libro nono decimo quaestionum ait etsi post legata saepius adscripta idem hoc subiecit semel praestari velle et hoc ante impletum testamentum fecerit, ipso iure videri cetera legata adempta. sed quo magis erit ademptum? non enim apparet. et ait posse dici exiguius esse praestandum.

Dig. 30.15pr.

Paulus 3 ad sab.

Qui quartam partem bonorum legare voluit, dimidiam scripsit. proculus recte ait posse defendi quartam legatam, quia inesset dimidiae. idem erit et si quinquaginta voluit legare et centum scripta sint: quinquaginta enim debebuntur. sed et si plus legare voluit et minus scripsit, valebit legatum.

Dig. 30.15.1

Paulus 3 ad sab.

Si quis unam summam filiabus legaverit, ut etiam de postuma sentiret, si ea non est nata, superstiti solidum debebitur.

Dig. 30.16pr.

Pomponius 5 ad sab.

Si duobus res coniunctim legata sit, quamvis alter in rerum natura non fuerit, alteri solam partem deberi puto verum esse.

Dig. 30.16.1

Pomponius 5 ad sab.

Heres adiecto ei nomine cuiusdam, qui heres non sit, dare damnatus totum legatum debet: nam et si duos ex heredibus suis nominatim quis damnasset et alter hereditatem non adisset, qui adisset totum deberet, si pars eius qui non adisset ad eum qui adisset pervenerit.

Dig. 30.16.2

Pomponius 5 ad sab.

Si titio et postumis legatum sit, non nato postumo totum titius vindicabit. sed et si testator titio et postumis viriles partes dari voluisset vel etiam id expressisset, totum legatum titio debetur non nato postumo.

Dig. 30.17pr.

Ulpianus 15 ad sab.

Qui filiabus legavit, si mentionem aliqua parte testamenti postumae fecit, videtur in filiarum legato et de postuma sensisse.

Dig. 30.17.1

Ulpianus 15 ad sab.

Si quis ita legaverit: "si qua filia mihi genitur, ei heres meus centum dato", pluribus natis videtur singulis tantundem legasse: quod ita accipiendum est, nisi evidens sit contraria sententia testatoris.

Dig. 30.17.2

Ulpianus 15 ad sab.

Si uni ex heredibus fuerit legatum, hoc deberi ei officio iudicis familiae herciscundae manifestum est: sed et si abstinuerit se hereditate, consequi eum hoc legatum posse constat.

Dig. 30.18

Iulianus 31 Dig.

Et quidem totum legatum petere potest, quamvis a semet ipso inutiliter ei legatum fuisset.

Dig. 30.19pr.

Ulpianus 15 ad sab.

Legata inutiliter data papinianus putat libro quaestionum confirmari per repetitionem, id est per hanc scripturam postea forte in codicillis factam: "hoc amplius ei heres meus dato", et diversum esse in illa scriptura: "quas pecunias legavi, quibus dies adpositus non est, annua bima trima die heres meus dare damnas esto": non enim hoc egisse testatorem, ut confirmaret quae inutilia sunt, sed ut diem utilibus prorogaret.

Dig. 30.19.1

Ulpianus 15 ad sab.

Idem eodem loco et in substituto impuberis scripsit, ut, si fuerit ab impubere inutiliter legatum, substitutus hoc debeat, si "hoc amplius" legatum ab eo sit relictum aliquid nec ille patri heres exstiterit et decesserit.

Dig. 30.19.2

Ulpianus 15 ad sab.

In legato pluribus relicto si partes adiectae non sunt, aequae servantur.

Dig. 30.20

Pomponius 5 ad sab.

Qui duos servos haberet, unum ex his legasset, ut non intellegeretur quem legasset, legatarii est electio.

Dig. 30.21

Ulpianus 15 ad sab.

Grege legato et quae postea accedunt ad legatarium pertinent.

Dig. 30.22

Pomponius 5 ad sab.

Si grege legato aliqua pecora vivo testatore mortua essent in eorumque locum aliqua essent substituta, eundem gregem videri: et si deminutum ex eo grege pecus esset et vel unus bos superesset, eum vindicari posse, quamvis grex desisset esse: quemadmodum insula legata, si combusta esset, area possit vindicari.

Dig. 30.23

Paulus 3 ad sab.

Si quis bonorum partem legaverit, ut hodie fit, sine fructibus restituitur, nisi mora intercesserit heredis.

Dig. 30.24pr.

Pomponius 5 ad sab.

Quod in rerum natura adhuc non sit, legari posse, veluti "quidquid illa ancilla peperisset", constitit: vel ita "ex vino quod in fundo meo natum est" vel "fetus tantum dato".

Dig. 30.24.1

Pomponius 5 ad sab.

Si usum fructum habeam eumque legaverim, nisi postea proprietatem eius nactus sim, inutile legatum est.

Dig. 30.24.2

Pomponius 5 ad sab.

Si quis post testamentum factum fundo titiano legato partem aliquam adiecerit, quam fundi titiani destinaret, id quod adiectum est exigi a legatario potest (et similis est causa alluvionis) et maxime si ex alio agro, qui fuit eius cum testamentum faceret, eam partem adiecit.

Dig. 30.24.3

Pomponius 5 ad sab.

Quod si post testamentum factum ex fundo titiano aliquid detraxit et alii fundo adiecit, videndum est, utrumne eam quoque partem legatarius petiturus sit an hoc minus, quasi fundi titiani esse desierit, cum nostra destinatione fundorum nomina et domus, non natura constituerentur.

Dig. 30.24.4

Pomponius 5 ad sab.

Et magis est, ut quod alii destinatum est ademptum esse videatur. si navem legavero et specialiter meam adscripsero eamque per partes totam refecero, carina eadem manente nihilo minus recte a legatario vindicaretur.

Dig. 30.25

Paulus 3 ad sab.

A filio herede etiam pure patri legari potest nec interest, an die cedente legati in patris potestate sit: igitur et si iussu patris adita sit hereditas, imputabitur ei in falcidiam.

Dig. 30.26pr.

Pomponius 5 ad sab.

Non amplius legatorum nomine ad quemquam pertinere videtur quam quod deducto eo, quod explendae condicionis causa datum esset, superesset.

Dig. 30.26.1

Pomponius 5 ad sab.

Si certum corpus heres dare damnatus sit nec fecerit, quo minus ibi ubi id esset traderet, si id postea sine dolo et culpa heredis perierit, deterior fit legatarii condicio.

Dig. 30.26.2

Pomponius 5 ad sab.

Cum bonorum parte legata dubium sit, utrum rerum partes an aestimatio debeatur, sabinus quidem et cassius aestimationem, proculus et nerva rerum partes esse legatas existimaverunt. sed oportet heredi succurri, ut ipse eligat, sive rerum partes sive aestimationem dare maluerit. in his tamen rebus partem dare heres conceditur, quae sine damno dividi possunt: sin autem vel naturaliter indivisae sint vel sine damno divisio earum fieri non potest, aestimatio ab herede omnimodo praestanda est.

Dig. 30.27

Paulus 9 ad plaut.

Potest autem heres vel paucioribus vel in una re relictam partem legatario dare, in quam vel legatarius consenserit vel iudex aestimaverit, ne necesse haberet legatarius in omnibus rebus vindicare portionem.

Dig. 30.28pr.

Ulpianus 19 ad sab.

Si creditori meo, tutus adversus eum exceptione, id quod ei debeo legem, utile legatum est, quia remissa exceptio videtur, sicut aristo ait id quod honoraria actione mihi debetur si legetur mihi, legatum valere, quia civilis mihi datur actio pro honoraria.

Dig. 30.28.1

Ulpianus 19 ad sab.

Marcellus libro vicesimo octavo putat rem quam ex stipulatu mihi debes si legaveris, utile esse legatum, ut neque falcidia hoc minuat:

Dig. 30.29

Paulus 6 ad l. iul. et pap.

Sin autem neque modo neque tempore neque condicione neque loco debitum differatur, inutile est legatum.

Dig. 30.30pr.

Ulpianus 19 ad sab.

Talis scriptura: "quas pecunias legavi, quibus dies adpositus non est, eas heres meus annua bima trima die dato", ad corpora legata non pertinet, sed ad ea quae pondere numero mensura continentur.

Dig. 30.30.1

Ulpianus 19 ad sab.

Et ad ea tantum legata pertinet, quibus dies non est adpositus: proinde si forte pure legatum est, ex hac adiectione prorogabitur.

Dig. 30.30.2

Ulpianus 19 ad sab.

Quid si forte centum mihi legata sunt praesentia, utrum annua die dabuntur an vero praesentia? et ait servius et labeo praesens deberi. quamvis igitur supervacua sit haec adiectio, quantum ad vim et effectum legati pertinet, tamen ad hoc proficiet, ut praesenti die legatum debeatur.

Dig. 30.30.3

Ulpianus 19 ad sab.

Sed si in annos singulos aut singulos menses sit legatum relictum, cessabit ea scriptura, quia hoc legatum et initium et finem habet.

Dig. 30.30.4

Ulpianus 19 ad sab.

Sed et si sub condicione sit legatum relictum, potest dici cessare annuam adiectionem, quia dies incertus appellatur condicio.

Dig. 30.30.5

Ulpianus 19 ad sab.

Cui congruit quod trebatius existimat, si cui legetur, quando annorum viginti erit, vulgarem hanc clausulam cessare.

Dig. 30.30.6

Ulpianus 19 ad sab.

Item si legetur pecunia quae in arca est vel vinum quod in apothecis est, dicendum est cessare clausulam, quoniam quotiens species legetur, cessare diximus.

Dig. 30.30.7

Ulpianus 19 ad sab.

Hanc autem scripturam non solum ad praecedentia sola legata, sed ad universa quae testamento adscripta sunt, extendi gallus aquilius, ofilius, trebatius responderunt idque verum est.

Dig. 30.31

Paulus 3 ad sab.

Sed etiam ad ea, quae codicillis confirmatis postea legata fuerint, haec clausula pertinet.

Dig. 30.32pr.

Ulpianus 20 ad sab.

Si quis a filio pupillo herede instituto, cum is in tutelam suam venisset, pecuniam legaverit et a substituto herede legata repetierat, impubere filio mortuo secundus heres legatum non debebit. quod ita verum esse tam sextus quam pomponius putant, si repetitio legatorum ad eum modum concepta sit veluti: "quae a filio meo legavi quaeque eum dare iussi, si mihi heres esset, id heres meus isdem diebus dato": sed si ita repetita fuerint: "quae a filio meo legavi, heres meus dato", pure repetita videbuntur legata et dumtaxat demonstratio eorum facta: igitur et hoc ipsum legatum de quo quaeritur praesens debebitur.

Dig. 30.32.1

Ulpianus 20 ad sab.

Si quis plures stichos habens stichum legaverit, si non apparet, de quo sticho sensit, quem elegerit debet praestare.

Dig. 30.32.2

Ulpianus 20 ad sab.

Si parti civitatis aliquid sit relictum, quod ad ornatum vel compendium rei publicae spectat, sine dubio debebitur.

Dig. 30.33

Paulus 3 reg.

Si pluribus eadem res legata fuerit, si quidem coniunctim, etiamsi alter vindicet, alter ex testamento agat, non plus quam partem habebit is qui ex testamento aget: quod si separatim, si quidem evidentissime apparuerit ademptione a priore legatario facta ad secundum legatum testatorem convolasse, solum posteriorem ad legatum pervenire placet: sin autem hoc minime apparere potest, pro virili portione ad legatum omnes venire: scilicet nisi ipse testator ex scriptura manifestissimus est utrumque eorum solidum accipere voluisse: tunc enim uni pretium, alii ipsa res adsignatur electione rei vel pretii servanda ei, qui prior de legato sive fideicommisso litem contestatus est, ita tamen, ut non habeat licentiam altero electo ad alterum transire.

Dig. 30.34pr.

Ulpianus 21 ad sab.

Plane ubi transferre voluit legatum in novissimum, priori non debebitur, tametsi novissimus talis sit, in cuius persona legatum non constitit. at si coniuncti disiunctive commixti sint, coniuncti unius personae potestate funguntur.

Dig. 30.34.1

Ulpianus 21 ad sab.

Si eadem res saepius legetur in eodem testamento, amplius quam semel peti non potest sufficitque vel rem consequi vel rei aestimationem.

Dig. 30.34.2

Ulpianus 21 ad sab.

Sed si duorum testamentis mihi eadem res legata sit, bis petere potero, ut ex altero testamento rem consequar, ex altero aestimationem.

Dig. 30.34.3

Ulpianus 21 ad sab.

Sed si non corpus sit legatum, sed quantitas eadem in eodem testamento saepius, divus pius rescripsit tunc saepius praestandam summam, si evidentissimis probationibus ostendatur testatorem multiplicasse legatum voluisse: idemque et in fideicommisso constituit. eiusque rei ratio evidens est, quod eadem res saepius praestari non potest, eadem summa volente testatore multiplicari potest.

Dig. 30.34.4

Ulpianus 21 ad sab.

Sed hoc ita erit accipiendum, si non certum corpus nummorum saepius sit relictum, ut puta centum, quae in arca habet, saepius legavit: tunc enim fundo legato esse comparandum credo.

Dig. 30.34.5

Ulpianus 21 ad sab.

Sed si pondus auri vel argenti saepius sit relictum, papinianus respondit magis summae legato comparandum, merito, quoniam non species certa relicta videatur.

Dig. 30.34.6

Ulpianus 21 ad sab.

Proinde et si quid aliud est quod pondere numero mensura continetur saepius relictum, idem erit dicendum, id est saepius deberi, si hoc testator voluerit.

Dig. 30.34.7

Ulpianus 21 ad sab.

Quod si rem emissem mihi legatam, usque ad pretium quod mihi abest competet mihi ex testamento actio.

Dig. 30.34.8

Ulpianus 21 ad sab.

Et multo magis hoc dicendum est, si duobus testamentis mihi eadem res legata sit, sed alter me restituere rogaverit vel ipsam rem vel aliud pro ea, aut si sub condicione legasset dandi quid pro ea: nam hactenus mihi abesse res videtur, quatenus sum praestaturus.

Dig. 30.34.9

Ulpianus 21 ad sab.

Si coniunctim res legetur, constat partes ab initio fieri. nec solum hi partem faciunt, in quorum persona constitit legatum, verum hi quoque, in quorum persona non constitit legatum, ut puta si titio et servo proprio sine libertate.

Dig. 30.34.10

Ulpianus 21 ad sab.

Sed si in pupillari testamento alii eandem legaverit, quam mihi in suo testamento legavit, iulianus scribit concursu partes nos habere: interim igitur partem habebit is, cui in suo testamento legavit.

Dig. 30.34.11

Ulpianus 21 ad sab.

Si duobus sit legata, quorum alter heres institutus sit, a semet ipso ei legatum inutiliter videtur, ideoque quod ei a se legatum est ad collegatarium pertinebit.

Dig. 30.34.12

Ulpianus 21 ad sab.

Inde dicitur, si duo sint heredes, unus ex uncia, alter ex undecim unciis, et eis fundus legatus sit, unciarium heredem undecim partes in fundo habiturum, coheredem unciam.

Dig. 30.34.13

Ulpianus 21 ad sab.

Plane si alter ex legatariis heres extiterit heredi, a quo legatum erat relictum, non ideo minus partem collegatario faciet: retinet enim pro parte legatum.

Dig. 30.34.14

Ulpianus 21 ad sab.

Si ita titio legetur: "fundum seianum vel usum fructum eius sibi habeto", duo esse legata et arbitrio eius esse, an velit usum fructum vindicare.

Dig. 30.34.15

Ulpianus 21 ad sab.

Sed et si quis ita leget titio: "fundum do lego, ut eum pro parte habeat ", mihi videtur posse dici partem habiturum: videri enim fundi appellatione non totum fundum, sed partem appellasse: nam et pars fundi fundus recte appellatur.

Dig. 30.35

Paulus 3 ad sab.

Si heres alienum hominem dare damnatus sit et hic a domino manumissus sit, nihil ex hoc legato debetur.

Dig. 30.36pr.

Pomponius 6 ad sab.

" titiae textores meos omnes, praeterquam quos hoc testamento alii legavi, lego. plotiae vernas meos omnes, praeterquam quos alii legavi, lego". cum essent quidam et vernae idem et textores, labeo ait, quoniam nec quos titiae textores non legaverit, aliter apparere possit, quam si cognitum fuerit, quos eorum plotiae legaverit, nec quos plotiae vernas non legaverit, possit, neutrius legato exceptos esse eos de quibus quaeritur et ideo communes ambobus esse: hoc enim iuris est et si neutrius legati nomine quicquam esset exceptum.

Dig. 30.36.1

Pomponius 6 ad sab.

Quod si hoc modo esset legatum "textores omnes praeter vernas" et rursus "vernas omnes praeter textores", qui et verna et textor esset, neutri fuisse legatum.

Dig. 30.36.2

Pomponius 6 ad sab.

Nihil distat, utrum ita legetur "titio et maevio" an ita "titio cum maevio": utrubique enim coniunctim legatum videtur.

Dig. 30.36.3

Pomponius 6 ad sab.

Si alteri stichum heres dederit, quem duobus dare damnatus fuerat, et antequam interpellaretur ab altero stichus mortuus est, heres non tenetur, quia nihil per eum factum intellegitur.

Dig. 30.37pr.

Ulpianus 21 ad sab.

Legato generaliter relicto, veluti hominis, gaius cassius scribit id esse observandum, ne optimus vel pessimus accipiatur: quae sententia rescripto imperatoris nostri et divi severi iuvatur, qui rescripserunt homine legato actorem non posse eligi.

Dig. 30.37.1

Ulpianus 21 ad sab.

Si de certo fundo sensit testator nec appareat de quo cogitavit, electio heredis erit, quem velit dare: aut si appareat, ipse fundus vindicabitur. sed et si lancem legaverit nec appareat quam, aeque electio est heredis, quam velit dare.

Dig. 30.38pr.

Pomponius 6 ad sab.

Legatarius pro parte adquirere, pro parte repudiare legatum non potest: heredes eius possunt, ut alter eorum partem suam adquirat, alter repudiet.

Dig. 30.38.1

Pomponius 6 ad sab.

Si legatum nobis relictum constituerimus nolle ad nos pertinere, pro eo erit, quasi nec legatum quidem sit: et ideo dicimus nec confusas servitutes, si forte praedium mihi legatum praedio meo debuerit servitutes, et integra furti actio manebit, si servus legatus sit ei, cuius nomine furti agere poterit legatarius.

Dig. 30.39pr.

Ulpianus 21 ad sab.

Cum servus legatus in fuga esset vel longinquo absens exigatur, operam praestare heres debet, ut eam rem requirat et praestet, et ita iulianus scribit. nam et sumptum an in hanc rem facere heres deberet, africanus libro vicesimo epistularum apud iulianum quaerit putatque sumptum praestandum, quod et ego arbitror sequendum.

Dig. 30.39.1

Ulpianus 21 ad sab.

Fructus autem hi deducuntur in petitionem, non quos heres percepit, sed quos legatarius percipere potuit: et id in operis servorum vel vecturis iumentorum vel naulis navium dicendum. quod in fructibus dicitur, hoc et in pensionibus urbanorum aedificiorum intellegendum erit. in usurarum autem quantitate mos regionis erit sequendus: iudex igitur usurarum modum aestimabit et statuet. ipsius quoque rei interitum post moram debet, sicut in stipulatione, si post moram res interieret, aestimatio eius praestatur. item partus ancillarum et, si servus fuerit legatus, et hereditas vel legatum vel quid per eum adquisitum sit heres praestare debet.

Dig. 30.39.2

Ulpianus 21 ad sab.

Si titius a me rem emisset et eandem mihi legasset antequam ei traderem, mox ei tradidero et pretium recepero, videtur quidem is prima facie rem mihi meam legasse et ideo legatum non consistere. sed ex empto actione liberatus utique per legatum rem vindicare potero quam tradidi. sed si nondum erat solutum mihi pretium, iulianus scribit ex vendito quidem me acturum, ut pretium exsequar, ex testamento vero, ut rem quam vendidi et tradidi recipiam. idem subiungit, si pretium quidem mihi erat solutum, rem autem nondum tradideram, ex testamento me agentem liberationem consequi.

Dig. 30.39.3

Ulpianus 21 ad sab.

Idem iulianus scribit, si fundum testator, quem ab alio emerat, mihi legavit, heredem cogendum mihi actionem ex empto praestare, scilicet si nondum res tradita fuerit vel defuncto vel heredi.

Dig. 30.39.4

Ulpianus 21 ad sab.

Si quis alicui legaverit licere lapidem caedere, quaesitum est, an etiam ad heredem hoc legatum transeat. et Marcellus negat ad heredem transmitti, nisi nomen heredis adiectum legato fuerit.

Dig. 30.39.5

Ulpianus 21 ad sab.

Heres cogitur legati praedii solvere vectigal praeteritum vel tributum vel solarium vel cloacarium vel pro aquae forma.

Dig. 30.39.6

Ulpianus 21 ad sab.

Scio ex facto tractatum, cum quidam duos fundos eiusdem nominis habens legasset fundum cornelianum et esset alter pretii maioris, alter minoris et heres diceret minorem legatum, legatarius maiorem: volgo fatebitur utique minorem eum legasse, si maiorem non potuerit docere legatarius.

Dig. 30.39.7

Ulpianus 21 ad sab.

Constat etiam res alienas legari posse, utique si parari possint, etiamsi difficilis earum paratio sit.

Dig. 30.39.8

Ulpianus 21 ad sab.

Si vero sallustianos hortos, qui sunt augusti, vel fundum albanum, qui principalibus usibus deseruit, legaverit quis, furiosi est talia legata testamento adscribere,

Dig. 30.39.9

Ulpianus 21 ad sab.

Item campum martium aut forum romanum vel aedem sacram legari non posse constat.

Dig. 30.39.10

Ulpianus 21 ad sab.

Sed et ea praedia caesaris, quae in formam patrimonii redacta sub procuratore patrimonii sunt, si legentur, nec aestimatio eorum debet praestari, quoniam commercium eorum nisi iussu principis non sit, cum distrahi non soleant.

Dig. 30.40

Ulpianus 2 fideic.

Sed si res aliena, cuius commercium legatarius non habet, ei cui ius possidendi non est per fideicommissum relinquatur, puto aestimationem deberi.

Dig. 30.41pr.

Ulpianus 21 ad sab.

Cetera igitur praeter haec videamus. et quidem corpora legari omnia et iura et servitutes possunt.

Dig. 30.41.1

Ulpianus 21 ad sab.

Sed ea quae aedibus iuncta sunt legari non possunt, quia haec legari non posse senatus censuit aviola et pansa consulibus.

Dig. 30.41.2

Ulpianus 21 ad sab.

Tractari tamen poterit, si quando marmora vel columnae fuerint separatae ab aedibus, an legatum convalescat. et si quidem ab initio non constitit legatum, ex post facto non convalescet, quemadmodum nec res mea legata mihi, si post testamentum factum fuerit alienata, quia vires ab initio legatum non habuit. sed si sub condicione legetur, poterit legatum valere, si exsistentis condicionis tempore mea non sit vel aedibus iuncta non sit, secundum eos, qui et emi rem meam sub condicione et promitti mihi stipulanti et legari aiunt. purum igitur legatum catoniana regula impediet, condicionale non, quia ad condicionalia catoniana non pertinet.

Dig. 30.41.3

Ulpianus 21 ad sab.

Item quaeri potest, si quis binas aedes habens alteras legaverit et ex alteris aliquid iunctum ei cui aedes legavit, an legatum valebit? movet quaestionem, quod ex senatus consulto et constitutionibus licet nobis ab aedibus nostris in alias aedes transferre possessoribus earum futuris, id est non distracturis: et ita imperator noster et divus severus rescripserunt. numquid ergo et legari possit ei, cui aliam domum legem? sed negandum erit, quia cui legatum est non est possessor futurus.

Dig. 30.41.4

Ulpianus 21 ad sab.

Si duobus domum legaverit sempronianam et ex ea alteri eorum marmora ad exstructionem domus seianae quam ei legaverat, non male agitabitur, an valeat, quia dominus est utriusque legatarius. et quid si quis domum deductis marmoribus legaverit, quae voluit heredem habere ad exstruendam domum, quam retinebat in hereditate? sed melius dicetur in utroque detractionem non valere: legatum tamen valebit, ut aestimatio eorum praestetur.

Dig. 30.41.5

Ulpianus 21 ad sab.

Sed si quis ad opus rei publicae faciendum legavit, puto valere legatum: nam et papinianus libro undecimo responsorum refert imperatorem nostrum et divum severum constituisse eos, qui rei publicae ad opus promiserint, posse detrahere ex aedibus suis urbanis atque rusticis et id ad opus uti, quia hi quoque non promercii causa id haberent. sed videamus, utrum ei soli civitati legari possit, in cuius territorio est, an et de alia civitate in aliam transferre possit. et puto non esse permittendum, quamquam constitutum sit, ut de domu, quam aliquis habet, ei permittatur in domum alterius civitatis transferre.

Dig. 30.41.6

Ulpianus 21 ad sab.

Hoc senatus consultum non tantum ad urbem, sed et ad alias civitates pertinet.

Dig. 30.41.7

Ulpianus 21 ad sab.

Sed et divorum fratrum est rescriptum ad libellum procliani et epitynchani ob debitum publicum desiderantium ut sibi distrahere permittatur, quod eis ius distrahendi denegaverunt.

Dig. 30.41.8

Ulpianus 21 ad sab.

Hoc senatus consultum non tantum ad aedes, sed et ad balinea vel aliud quod aedificium vel porticus sine aedibus vel tabernas vel popinas extenditur.

Dig. 30.41.9

Ulpianus 21 ad sab.

Item hoc prohibetur haec legari, quod non alias praestari potest, quam ut aedibus detrahatur subducatur, id est marmora, vel columnae. idem et in tegulis et in tignis et ostiis senatus censuit: sed et in bibliothecis parietibus inhaerentibus.

Dig. 30.41.10

Ulpianus 21 ad sab.

Sed si cancelli sint vel vela, legari poterunt, non tamen fistulae vel castelli.

Dig. 30.41.11

Ulpianus 21 ad sab.

Sed automataria aut siquis canthari, per quos aquae saliunt, poterunt legari, maxime si impositicii sint.

Dig. 30.41.12

Ulpianus 21 ad sab.

Quid ergo in statuis dicendum? si quidem inhaerent parietibus, non licebit, si vero alias exsistant, dubitari potest: verum mens senatus plenius accipienda est, ut si qua ibi fuerunt perpetua, quasi portio aedium distrahi non possint.

Dig. 30.41.13

Ulpianus 21 ad sab.

Proinde dicendum est nec tabulas adfixas et parietibus adiunctas vel singula sigilla adaequata legari posse. sed si paravit quaedam testator quasi translaturus in aliam domum et haec legavit, dubitari poterit, an valeat: et puto valere.

Dig. 30.41.14

Ulpianus 21 ad sab.

Sed si ea quae legavit aedibus iunxit, extinctum erit legatum.

Dig. 30.41.16

Ulpianus 21 ad sab.

Sed si heres ea iunxit, puto non exstingui,

Dig. 30.42

Ulpianus 2 fideic.

Sive scit, sive ignoravit.

Dig. 30.43pr.

Ulpianus 21 ad sab.

Senatus enim ea, quae non sunt aedium, legari permisit, haec autem mortis tempore aedium non fuerunt: heres ergo aestimationem praestabit. sed si detraxerit ut praestiterit, poenis erit locus, quamvis ut non vendat, detraxit, sed ut exsolvat.

Dig. 30.43.1

Ulpianus 21 ad sab.

Marcellus etiam scribit, si maritus diaetam in uxoris hortis, quos in dotem acceperat, fecerit, posse eum haec detrahere, quae usui eius futura sint, sine mulieris tamen damno, nec ad hoc senatus consultum futurum impedimento. ergo si non est ei obfuturum, quo minus detrahat, dici oportebit posse eum haec legare, quae detrahere potest.

Dig. 30.43.2

Ulpianus 21 ad sab.

Legatum in aliena voluntate poni potest, in heredis non potest.

Dig. 30.43.3

Ulpianus 21 ad sab.

Qui ab hostibus redemptus est legari sibi poterit et proficiet legatum ad liberationem vinculi pignoris, quod in eo habuit qui redemit.

Dig. 30.44pr.

Ulpianus 22 ad sab.

Servum filii sui castrensis peculii legare pater potest et, si vivo patre mortuus sit filius et apud patrem peculium remansit, constitit legatum: cum enim filius iure suo non utitur, retro creditur pater dominium in servo peculiari habuisse.

Dig. 30.44.1

Ulpianus 22 ad sab.

Si quis rem, sibi legatam ignorans adhuc, legaverit, postea cognoverit et voluerit ad se pertinere, legatum valebit, quia, ubi legatarius non repudiavit, retro ipsius fuisse videtur, ex quo hereditas adita est: si vero repudiaverit, retro videtur res repudiata fuisse heredis.

Dig. 30.44.2

Ulpianus 22 ad sab.

Si pocula quis legavit et massa facta est vel contra, item si lana legetur et vestimentum ex ea fiat, iulianus libro trigesimo secundo scripsit legatum in omnibus supra scriptis consistere et deberi quod exstat: quam sententiam puto veram, si modo non mutaverit testator voluntatem.

Dig. 30.44.3

Ulpianus 22 ad sab.

Sed et si lancem legavit et massam fecit, mox poculum, debebitur poculum, durante scilicet voluntate.

Dig. 30.44.4

Ulpianus 22 ad sab.

Si areae legatae domus imposita sit, debebitur legatario, nisi testator mutavit voluntatem.

Dig. 30.44.5

Ulpianus 22 ad sab.

Eum, qui chirographum legat, debitum legare, non solum tabulas argumento est venditio: nam cum chirographa veneunt, nomen venisse videtur.

Dig. 30.44.6

Ulpianus 22 ad sab.

Sed et si nomen legetur, benigne id quod debetur accipiendum est, ut actiones adversus debitorem cedantur.

Dig. 30.44.7

Ulpianus 22 ad sab.

Si idem servus et legatus et liber esse iussus sit, interdum procedere solum legatum poterit, ut puta si in fraudem creditoris data erit libertas: vel si is sit servus, qui in perpetuam servitutem venierit, idem erit: vel si servus sit forte pignori datus.

Dig. 30.44.8

Ulpianus 22 ad sab.

Si statuliberum heres legaverit, expediet heredi ipsum statuliberum praestare magis quam aestimationem. etenim aestimationem veram praestabit: ipsum vero si dederit, exsistente condicione nullum sentiet damnum: iam enim aestimatio postea non petitur ab eo hominis liberi.

Dig. 30.44.9

Ulpianus 22 ad sab.

Si duos fundos habens testator alterius mihi usum fructum, alterum titio leget, aditum mihi legatarius non debebit: sed heres cogitur redimere aditum et praestare.

Dig. 30.45pr.

Pomponius 6 ad sab.

Si a substituto pupilli ancillas tibi legassem easque tu a pupillo emisses et antequam scires tibi legatas esse alienaveris, utile legatum esse neratius et aristo et ofilius probant.

Dig. 30.45.1

Pomponius 6 ad sab.

Heres generaliter dare damnatus sanum eum esse promittere non debet, sed furtis et noxiis solutum esse promittere debebit, quia ita dare debet, ut eum habere liceat: sanitas autem servi ad proprietatem eius nihil pertinet: sed ob id, quod furtum fecit servus aut noxam nocuit, evenit, quo minus eum habere domino liceat, sicuti ob id, quod obligatus est fundus, accidere possit, ut eum habere domino non liceat.

Dig. 30.45.2

Pomponius 6 ad sab.

Si vero certus homo legatus est, talis dari debet, qualis est.

Dig. 30.46

Pomponius 9 epist.

Quae de legato dicta sunt, eadem transferre licebit ad eum, qui vel stichum vel hominem dari promiserit.

Dig. 30.47pr.

Ulpianus 22 ad sab.

Cum res legata est, si quidem propria fuit testatoris et copiam eius habet, heres moram facere non debet, sed eam praestare. sed si res alibi sit quam ubi petitur, primum quidem constat ibi esse praestandam, ubi relicta est, nisi alibi testator voluit: nam si alibi voluit, ibi praestanda est, ubi testator voluit vel ubi verisimile est eum voluisse: et ita iulianus scripsit tam in propriis quam in alienis legatis. sed si alibi relicta est, alibi autem ab herede translata est dolo malo eius: nisi ibi praestetur ubi petitur, heres condemnabitur doli sui nomine: ceterum si sine dolo, ibi praestabitur, quo transtulit.

Dig. 30.47.1

Ulpianus 22 ad sab.

Sed si id petatur quod pondere numero mensura continetur, si quidem certum corpus legatum est, veluti frumentum ex illo horreo vel vinum ex apotheca illa, ibi praestabitur ubi relictum est, nisi alia mens fuit testantis: sin vero non fuit certa species, ibi erit praestandum ubi petitur.

Dig. 30.47.2

Ulpianus 22 ad sab.

Itaque si stichus sit legatus et culpa heredis non pareat, debebit aestimationem eius praestare: sed si culpa nulla intervenit, cavere heres debet de restitutione servi, non aestimationem praestare. sed et si alienus servus in fuga sit sine culpa heredis, idem dici potest: nam et in alieno culpa admitti potest: cavebit autem sic, ut, si fuerit adprehensus, aut ipse aut aestimatio praestetur: quod et in servo ab hostibus capto constat.

Dig. 30.47.3

Ulpianus 22 ad sab.

Sed si stichus aut pamphilus legetur et alter ex his vel in fuga sit vel apud hostes, dicendum erit praesentem praestari aut absentis aestimationem: totiens enim electio est heredi committenda, quotiens moram non est facturus legatario. qua ratione placuit et, si alter decesserit, alterum omnimodo praestandum, fortassis vel mortui pretium. sed si ambo sint in fuga, non ita cavendum, ut, "si in potestate ambo redirent", sed "si vel alter", et "vel ipsum vel absentis aestimationem praestandam".

Dig. 30.47.4

Ulpianus 22 ad sab.

Item si res aliena vel hereditaria sine culpa heredis perierit vel non compareat, nihil amplius quam cavere eum oportebit: sed si culpa heredis res perit, statim damnandus est.

Dig. 30.47.5

Ulpianus 22 ad sab.

Culpa autem qualiter sit aestimanda, videamus, an non solum ea quae dolo proxima sit, verum etiam quae levis est? an numquid et diligentia quoque exigenda est ab herede? quod verius est.

Dig. 30.47.6

Ulpianus 22 ad sab.

Item si fundus chasmate perierit, labeo ait utique aestimationem non deberi: quod ita verum est, si non post moram factam id evenerit: potuit enim eum acceptum legatarius vendere.

Dig. 30.48pr.

Pomponius 6 ad sab.

Si heredis servus rem legatam ignorante domino subtraxisset et vendidisset, atilicinus in factum dandam actionem, ut vel noxae servum dederet dominus vel ex peculio praestaret, quod ex venditione eius rei haberet.

Dig. 30.48.1

Pomponius 6 ad sab.

Si unus ex heredibus servum legatum occidisset, omnino mihi non placet coheredem teneri, cuius culpa factum non sit, ne res in rerum natura sit.

Dig. 30.49pr.

Ulpianus 23 ad sab.

Si cui legetur, cum quattuordecim annorum erit, certo iure utimur, ut tunc sit quattuordecim annorum, cum impleverit: et ita imperatorem decrevisse Marcellus scripsit.

Dig. 30.49.1

Ulpianus 23 ad sab.

Ergo cum esset sic relictum: "cum ad quartum decimum annum pervenisset, annua bima trima die", et decem et septem annorum mortis tempore inveniatur, praesens legatum erit. proinde si quindecim annorum, consequetur dicemus post biennium deberi: si sedecim, post annum debebitur: si menses desint ad septimum decimum annum, residuis mensibus debetur. haec ita, si putans minorem esse quattuordecim annorum, cum iam excessisset, sic legavit: si vero scit, triennium ad legati praestationem ex die testamenti facti numerabimus.

Dig. 30.49.2

Ulpianus 23 ad sab.

Hoc autem legatum et condicionale est et in diem, condicionale tamdiu, quamdiu quartus decimus annus sit completus, postea in diem.

Dig. 30.49.3

Ulpianus 23 ad sab.

Et ideo si quidem ante quartum decimum annum decesserit, ad heredem nihil transit: certe postea ad heredem transfert. quod si testamenti facti tempore minor quattuordecim annis filius inveniatur, puto tempus annua bima trima die praestationis ex die completi quarti decimi anni statim cedere, nisi evidens alia mens probaretur testatoris aliud sentientis.

Dig. 30.49.4

Ulpianus 23 ad sab.

Si titio decem quae ego debeo legavero et rogavero eadem creditori praestare, fideicommissum quidem in creditoris persona non valet, quia nihil eius interest, heres vero potest cum legatario agere, quia ipsius interest creditori solvi, ne eum conveniat: ergo propter hoc valebit legatum.

Dig. 30.49.5

Ulpianus 23 ad sab.

Sed si testator decem mihi sub fideiiussore debuit, fideicommissi petitio non solum heredi, sed et fideiussori competit: interest enim eius solvi mihi, quam ipsum conventum mandati actionem intendere: nec interest, solvendo sit nec ne.

Dig. 30.49.6

Ulpianus 23 ad sab.

Iulianus libro trigesimo nono digestorum scribit, si fideiussor creditori legasset quod ei deberet, an legatum valeret. et ait creditoris quidem nihil interesse, verum debitorem habere ex testamento actionem: interest enim ipsius liberari, quippe conveniri a fideiussoris herede non poterit.

Dig. 30.49.7

Ulpianus 23 ad sab.

Quod si idem fideiussor titio leget et fidei eius commiserit, ut creditori solvat, et debitor et fideiussoris heres agere cum titio ex causa fideicommissi poterunt, quia utriusque interest legatarium solvere.

Dig. 30.49.8

Ulpianus 23 ad sab.

Meminisse autem oportet eum, qui damnatur hoc solum "fundum vendere", non gratis damnari hoc facere, sed hoc solum, ut vendat vero pretio.

Dig. 30.49.9

Ulpianus 23 ad sab.

Quod si certo pretio sit damnatus facere, necesse habebit tanti vendere, quanti damnatus est.

Dig. 30.50pr.

Ulpianus 24 ad sab.

Si servus plurium sit, pro dominii portione legatum ei relictum adquiret.

Dig. 30.50.1

Ulpianus 24 ad sab.

Si hereditatis iudex contra heredem pronuntiaverit non agentem causam vel lusorie agentem, nihil hoc nocebit legatariis. quid ergo, si per iniuriam fuerit pronuntiatum, non tamen provocavit? iniuria ei facta non nocebit legatariis, ut et sabinus significat. si tamen secundum substitutum pronuntiet, an ille legatariis teneatur, videamus: et cum ius facit haec pronuntiatio quod attinet ad ipsius personam, numquid legatariis teneatur? nec enim tam improbe causari potest secundum se iudicatum per gratiam. respondebit igitur et legatariis, ut creditoribus.

Dig. 30.50.2

Ulpianus 24 ad sab.

Si quis ante quaestionem de familia habitam adierit hereditatem vel necem testatoris non defenderit, legatorum persecutio adversus fiscum locum habet. quid tamen, si fiscus bona non adgnoscat? ex necessitate redundabit onus legatorum ad heredem. sed si subiecit delatorem sibi, ut ei hereditas abiudicetur et oneribus careret, vel minus plene defendit causam, non se exonerat exemplo eius, qui collusorie de hereditate litigavit.

Dig. 30.50.3

Ulpianus 24 ad sab.

Si numerus nummorum legatus sit neque apparet quales sunt legati, ante omnia ipsius patris familias consuetudo, deinde regionis, in qua versatus est, exquirenda est: sed et mens patris familiae et legatarii dignitas vel caritas et necessitudo, item earum quae praecedunt vel quae sequuntur summarum scripta sunt spectanda.

Dig. 30.51

Papinianus 4 quaest.

Sed si certos nummos (veluti quos in arca habet) aut certam lancem legavit, non numerata pecunia, sed ipsa corpora nummorum vel rei legatae continentur neque permutationem recipiunt et exemplo cuiuslibet corporis aestimanda sunt.

Dig. 30.52pr.

Paulus 4 ad sab.

Si cui servi omnes cum peculio legati sint, etiam hi servi debentur, qui nullum peculium habent.

Dig. 30.52.1

Paulus 4 ad sab.

Si a filio impubere sub condicione legatum sit et filius heres exstitit, deinde mortuus est, potest dici patrem familias, qui a filio sub condicione legavit, a substituto pure repetit, statim voluisse a substituto dari, si filius pendente condicione decessisset.

Dig. 30.53pr.

Ulpianus 25 ad sab.

Quid ergo, si maiorem quantitatem a substituto reliquit? quod excedit, hoc erit, quod a substituto relictum est: quod vero concurrit cum summa superioribus tabulis inscripta, inde debebitur.

Dig. 30.53.1

Ulpianus 25 ad sab.

Sed si repetierit legatum cum alio, forte fundum mihi legaverat ab impubere, repetiit hunc ab impuberis herede mihi et seio, repetitio haec efficiet, ut pars mihi debeatur.

Dig. 30.53.2

Ulpianus 25 ad sab.

Si quis duos heredes scripserit et damnaverit unumquemque solidam rem legatario praestare, idem est atque si duobus testamentis legatum esset: nam et si mihi et filio vel servo meo esset eodem testamento legatum, sine dubio valeret legatum utriusque, ut et Marcellus apud iulianum adicit.

Dig. 30.53.3

Ulpianus 25 ad sab.

Si heres hominem legatum occidit ob facinus, hoc est merentem, sine dubio dicendum erit eum ex testamento non teneri.

Dig. 30.53.4

Ulpianus 25 ad sab.

Sed si noxae dedit, an teneatur, quia potest redimere? et puto teneri.

Dig. 30.53.5

Ulpianus 25 ad sab.

Sed si animal legatum occiderit, puto teneri, non ut carnem praestet vel cetera leiqana, sed ut praestet pretium, quanti esset, si viveret.

Dig. 30.53.6

Ulpianus 25 ad sab.

Item si aedes legatas ob damnum infectum possideri passus est, puto eum teneri: debuit enim repromittere.

Dig. 30.53.7

Ulpianus 25 ad sab.

Sed si mortuum intulit fecitque religiosum locum legatum, si quidem patrem familias intulit, cum alio inferre non posset vel tam oportune non haberet, ex testamento non tenebitur: an vero teneatur, ut pretium loci praestet? et si quidem ipse pater familias illo inferri voluit, ex testamento non tenebitur: quod si heres intulit suo arbitrio, debebit praestare, si sit in hereditate, unde pretium praestetur: testator enim qui legavit vel alio inferri voluit vel pretium loci legatario offerri.

Dig. 30.53.8

Ulpianus 25 ad sab.

Item si servum non ipse occidit, sed compulit ad maleficium, ut ab alio occideretur vel supplicio adficeretur, aequissimum erit pretium eum praestare: quod si sua mala mente ad hoc processit, cessabit aestimatio.

Dig. 30.53.9

Ulpianus 25 ad sab.

Servus legatus si ab hostibus captus sit sine dolo heredis, non praestabitur, si dolo, praestabitur.

Dig. 30.54pr.

Pomponius 8 ad sab.

Turpia legata, quae denotandi magis legatarii gratia scribuntur, odio scribentis pro non scriptis habentur.

Dig. 30.54.1

Pomponius 8 ad sab.

Si titiae legatum relictum est, si arbitratu seii nupsisset, et vivo testatore seius decessisset et ea nupsisset, legatum ei deberi.

Dig. 30.54.2

Pomponius 8 ad sab.

Sed et si servi mors impedisset manumissionem, cum tibi legatum esset, si eum manumisisses, nihilo minus debetur tibi legatum, quia per te non stetit, quo minus perveniat ad libertatem.

Dig. 30.54.3

Pomponius 8 ad sab.

Si pars heredum nominata sit in legando,, viriles partes heredes debent, si vero omnes, hereditarias.

Dig. 30.55

Pomponius 9 ad sab.

Nemo potest in testamento suo cavere, ne leges in suo testamento locum habeant, quia nec tempore aut loco aut condicione finiri obligatio heredis legatorum nomine potest.

Dig. 30.56

Pomponius 14 ad sab.

Si legati servi nomine stipuletur legatarius fugitivum eum non esse praestari, nihil veniet in eam stipulationem, quia qualis sit, talis ex testamento praestari debet nec ullum in legato damnum facere intellegeretur.

Dig. 30.57

Ulpianus 33 ad sab.

Si res obligata per fideicommissum fuerit relicta, si quidem scit eam testator obligatam, ab herede luenda est, nisi si animo alio fuerit: si nesciat, a fideicommissario (nisi si vel hanc vel aliam rem relicturus fuisset, si scisset obligatam), vel potest aliquid esse superfluum exsoluto aere alieno. quod si testator eo animo fuit, ut, quamquam liberandorum praediorum onus ad heredes suos pertinere noluerit, non tamen aperte utique de his liberandis senserit, poterit fideicommissarius per doli exceptionem a creditoribus, qui hypothecaria secum agerent, consequi, ut actiones sibi exhiberentur: quod quamquam suo tempore non fecerit, tamen per iurisdictionem praesidis provinciae id ei praestabitur.

Dig. 30.58

Papinianus 9 resp.

Domus hereditarias exustas et heredis nummis exstructas ex causa fideicommissi post mortem heredis restituendas viri boni arbitratu sumptuum rationibus deductis et aedificiorum aetatibus examinatis respondi,

Dig. 30.59

Ulpianus 33 ad ed.

Si modo nulla culpa eius incendium contigisset.

Dig. 30.60

Iulianus 39 Dig.

Quod si nulla retentione facta domum tradidisset, incerti condictio ei competet, quasi plus debito solverit.

Dig. 30.61

Papinianus 9 resp.

Sumptus autem in reficienda domu necessarios a legatario factos petenti ei legatum, cuius postea condicio exstitit, non esse reputandos existimavi.

Dig. 30.62

Paulus 41 ad ed.

Si ancilla cum liberis legata sit, et ancilla sola, si non sint liberi, et liberi soli, si non sit ancilla, debentur.

Dig. 30.63

Celsus 17 Dig.

Si ancillas omnes et quod ex his natum erit testator legaverit, una mortua servius partum eius negat deberi, quia accessionis loco legatus sit: quod falsum puto et nec verbis nec voluntati defuncti accommodata haec sententia est.

Dig. 30.64

Gaius 15 ad ed. provinc.

Captatoriae scripturae simili modo neque in hereditatibus neque in legatis valent.

Dig. 30.65pr.

Gaius 1 de legatis ad ed. pr

Si ita legatum sit: "seio servos decem do praeter eos decem, quos titio legavi", si quidem decem tantum inveniantur in hereditate, inutile est legatum, si vero ampliores, post eos, quos titius elegit, in ceteris valet legatum, sed non in ampliores quam decem qui legati sunt: quod si minus sunt, in tantos, quanti inveniantur.

Dig. 30.65.1

Gaius 1 de legatis ad ed. pr

" illi, si volet, stichum do": condicionale est legatum et non aliter ad heredem transit, quam si legatarius voluerit, quamvis alias quod sine adiectione "si volet" legatum sit, ad heredem legatarii transmittitur: aliud est enim iuris, si quid tacite contineatur, aliud, si verbis exprimatur.

Dig. 30.65.2

Gaius 1 de legatis ad ed. pr

Si domus fuerit legata, licet particulatim ita refecta sit, ut nihil ex pristina materia supersit, tamen dicemus utile manere legatum: at si ea domu destructa aliam eodem loco testator aedificaverit, dicemus interire legatum, nisi aliud testatorem sensisse fuerit adprobatum.

Dig. 30.66

Gaius 18 ad ed. provinc.

Etsi aequo pretio emere vel vendere iusserit heredem suum testator, adhuc utile legatum est. quid enim si legatarius, a quo emere fundum heres iussus est, cum ex necessitate eum fundum venderet, nullum inveniret emptorem ?

vel ex diverso quid si legatarii magni interesset eum fundum emere nec aliter heres venditurus esset, quam si testator iussisset ?.

Dig. 30.67pr.

Gaius 1 de legatis ad ed. pr

Servus uni ex heredibus legatus si quid in hereditate malitiose fecisse dicatur (forte rationes interlevisse), non aliter adiudicandus est, quam ex eo volentibus coheredibus quaestio habeatur. idem est et si extraneo fuerit legatus.

Dig. 30.67.1

Gaius 1 de legatis ad ed. pr

Si ex pluribus heredibus ex disparibus partibus institutis duobus eadem res legata sit, heredes non pro hereditaria portione, sed pro virili id legatum habere debent.

Dig. 30.68pr.

Gaius 18 ad ed. provinc.

Si post mortem patris filio legetur, dubium non est, quin mortuo patre ad filium pertineat legatum nec intersit, an patri heres exstiterit nec ne,

Dig. 30.68.1

Gaius 18 ad ed. provinc.

Sed si servo post mortem domini relictum legatum est, si quidem in ea causa durabit, ad heredem domini pertineat: usque adeo, ut idem iuris est et si testamento domini liber esse iussus fuerit: ante enim cedit dies legati, quam aliquis heres domino exsistat, quo fit, ut hereditati adquisitum legatum postea herede aliquo exsistente ad eum pertineat: praeterquam si suus heres aliquis aut necessarius domino ex eo testamento factus erit: tunc enim quia in unum concurrit, ut et heres exsistat et dies legati cedat, probabilius dicitur ad ipsum potius cui relictum est pertinere legatum quam ad heredem eius, a quo libertatem consequitur.

Dig. 30.68.2

Gaius 18 ad ed. provinc.

Si pure legatus servus sub condicione liber esse iussus fuerit, sub contraria condicione valet legatum: et ideo exsistente condicione legatum peremitur, deficiente ad legatarium pertinebit. et ideo si pendente condicione libertatis legatarius decesserit posteaque defecerit condicio libertatis, ad heredem legatarii non pertinet legatum.

Dig. 30.68.3

Gaius 18 ad ed. provinc.

Quod si idem pure legatus sit et ex die liber esse iussus erit, omnimodo inutile legatum est, quia diem venturam certum est. ita iulianus quoque sensit, unde ait: si servus titio legatus sit et idem post mortem titii liber esse iussus fuerit, inutile legatum est, quia moriturum titium certum est.

Dig. 30.69pr.

Gaius 2 de legatis ad ed. pr

Servo legato legari posse receptum est, quod adita hereditate statim servus adquiritur legatario, deinde sequetur legatum.

Dig. 30.69.1

Gaius 2 de legatis ad ed. pr

Si servum sub condicione legatum heres alienaverit, deinde condicio exstiterit, potest nihilo minus a legatario vindicari nec extinguitur legatum.

Dig. 30.69.2

Gaius 2 de legatis ad ed. pr

Si testator quosdam ex heredibus iusserit aes alienum solvere, non creditores habebunt adversus eos actionem, sed coheredes, quorum interest hoc fieri. nec solum hoc casu alius habet actionem, quam cui testator dari iussit, sed alio quoque, veluti si filiae nomine genero aut sponso dotem dari iusserit: non enim gener aut sponsus, sed filia habet actionem, cuius maxime interest indotatam non esse.

Dig. 30.69.3

Gaius 2 de legatis ad ed. pr

Si fundus qui legatus est servitutem debeat impositam, qualis est, dari debet: quod si ita legatus sit "uti optimus maximusque", liber praestandus est.

Dig. 30.69.4

Gaius 2 de legatis ad ed. pr

Servus, qui in negotio fuerit, legatus non ante tradi debet quam rationes explicet, et si ad iudicium itum sit, iudicis eaedem partes esse debent.

Dig. 30.69.5

Gaius 2 de legatis ad ed. pr

Si res quae legata est an in rerum natura sit dubitetur, forte si dubium sit, an homo legatus vivat, placuit agi quidem ex testamento posse, sed officio iudicis contineri, ut cautio interponeretur, qua heres caveret eam rem persecuturum et, si nactus sit, legatario restituturum ^ restiturum^.

Dig. 30.70pr.

Gaius 18 ad ed. provinc.

Si servus titii furtum mihi fecerit, deinde titius herede me instituto servum tibi legaverit, non est iniquum talem servum tibi tradi, qualis apud titium fuit, id est ut me indemnem praestes furti nomine, quod is fecerit apud titium.

Dig. 30.70.1

Gaius 18 ad ed. provinc.

Nam et si fundus, qui meo fundo serviebat, tibi legatus fuerit, non aliter a me tibi praestari debeat, quam ut pristinam servitutem recipiam.

Dig. 30.70.2

Gaius 18 ad ed. provinc.

Nec dissimile est ei qui mandato alicuius servum emit vel ei qui servum redhibet, qui omnes non aliter restituere servum coguntur, quam ut ratio habeatur furti, quod ab eo servo factum fuerit vel antequam negotium contraheretur vel postea.

Dig. 30.70.3

Gaius 18 ad ed. provinc.

Quare et si post aditam hereditatem servus legatus heredi furtum fecerit, ita praestari debebit, ut ob hoc delictum quasi litis aestimatio a legatario sufferatur heredi.

Dig. 30.71pr.

Ulpianus 51 ad ed.

Si domus alicui simpliciter sit legata neque adiectum quae domus, cogentur heredes quam vellent domum ex his, quas testator habebat, legatario dare: quod si nullas aedes reliquerit, magis derisorium est quam utile legatum.

Dig. 30.71.1

Ulpianus 51 ad ed.

De evictione an cavere debeat is, qui servum praestat ex causa legati, videamus. et regulariter dicendum est, quotiens sine iudicio praestita res legata evincitur, posse eam ex testamento peti: ceterum si iudicio petita est, officio iudicis cautio necessaria est, ut sit ex stipulatu actio.

Dig. 30.71.2

Ulpianus 51 ad ed.

In pecunia legata confitenti heredi modicum tempus ad solutionem dandum est nec urguendum ad suscipiendum iudicium: quod quidem tempus ex bono et aequo praetorem observare oportebit.

Dig. 30.71.3

Ulpianus 51 ad ed.

Qui confitetur se quidem debere, iustam autem causam adfert, cur utique praestare non possit, audiendus est: ut puta si aliena res legata sit negetque dominum eam vendere vel immensum pretium eius rei petere adfirmet, aut si servum hereditarium neget se debere praestare, forte patrem suum vel matrem vel fratres naturales: aequissimum est enim concedi ei ex hac causa aestimationem officio iudicis praestare.

Dig. 30.71.4

Ulpianus 51 ad ed.

Cum alicui poculum legatum esset velletque heres aestimationem praestare, quia iniquum esse aiebat id separari a se, non impetravit id a praetore: alia enim condicio est hominum, alia ceterarum rerum: in hominibus enim benigna ratione receptum est, quod supra probavimus.

Dig. 30.71.5

Ulpianus 51 ad ed.

Si fundus municipum vectigalis ipsis municipibus sit legatus, an legatum consistat petique possit, videamus. et iulianus libro trigensimo octavo digestorum scribit, quamvis fundus vectigalis municipum sit, attamen quia aliquod ius in eo is qui legavit habet, valere legatum.

Dig. 30.71.6

Ulpianus 51 ad ed.

Sed et si non municipibus, sed alii fundum vectigalem legaverit, non videri proprietatem rei legatam, sed id ius in vectigalibus fundis habemus.

Dig. 30.72

Paulus 48 ad ed.

Si quis legaverit fundum cornelianum exceptis vineis, quae mortis eius tempore erunt, si nullae vineae erunt, legato nihil decedit.

Dig. 30.73pr.

Gaius 3 de legatis ad ed. pr

Si heres iussus sit facere, ut lucius centum habeat, cogendus est heres centum dare, quia nemo facere potest, ut ego habeam centum, nisi mihi dederit.

Dig. 30.73.1

Gaius 3 de legatis ad ed. pr

Vicis legata perinde licere capere atque civitatibus rescripto imperatoris nostri significatur.

Dig. 30.74

Ulpianus 4 disp.

Licet imperator noster cum patre rescripserit videri voluntate testatoris repetita a substituto, quae ab instituto fuerant relicta, tamen hoc ita erit accipiendum, si non fuit evidens diversa voluntas: quae ex multis colligetur, an quis ab herede legatum vel fideicommissum relictum noluerit a substituto deberi. quid enim si aliam rem reliquit a substituto ei fideicommissario vel legatario, quam ab instituto non reliquerat? vel quid si certa causa fuit, cur ab instituto relinqueret, quae in substituto cessaret? vel quid si substituit ex parte fideicommissarium, cui ab instituto reliquerat fideicommissum? in obscura igitur voluntate locum habere rescriptum dicendum est.

Dig. 30.75pr.

Ulpianus 5 disp.

Si sic legatum vel fidei commissum ^ fideicommissum^ sit relictum "si aestimaverit heres" "si comprobaverit" "si iustum putaverit", et legatum et fideicommissum debebitur, quoniam quasi viro potius bono ei commissum est, non in meram voluntatem heredis collatum.

Dig. 30.75.1

Ulpianus 5 disp.

Si mihi quod titius debet fuerit legatum neque titius debeat, sciendum est nullum esse legatum. et quidem si quantitas non sit adiecta, evidenti ratione nihil debebitur, quia non apparet, quantum fuerit legatum: nam et si quid ^ quod^ ego titio debeo ei legavero quantitate non adiecta, constat nullum esse legatum, cum, si decem quae titio debeo legavero nec quicquam titio debeam, falsa demonstratio non peremit legatum, ut in legato dotis iulianus respondit.

Dig. 30.75.2

Ulpianus 5 disp.

Quod si addiderit: "decem quae mihi titius debet lego", sine dubio nihil erit in legato: nam inter falsam demonstrationem et falsam condicionem sive causam multum interest. proinde et si titio decem, quae mihi seius debet, legavero, nullum erit legatum: esse enim debitor debet: nam et si vivus exegissem, exstingueretur legatum et, si debitor maneret, actiones adversus eum heres meus dumtaxat praestare cogeretur.

Dig. 30.75.3

Ulpianus 5 disp.

Si quis ita stipulatus: "stichum aut decem, utrum ego velim" legaverit quod ei debebatur, tenebitur heres eius, ut praestet legatario actionem electionem habituro, utrum stichum an decem persequi malit.

Dig. 30.75.4

Ulpianus 5 disp.

Proinde si stichum legaverit, cum ille ei stichum aut decem deberet, incerti actio legatario adversus heredem competit, ut scripsit iulianus libro trigesimo tertio digestorum, per quam actionem compellat heredem experiri: et, si stichum consecutus fuerit, praestabit ei, si decem, nihil consequetur. secundum quod erit in arbitrio debitoris, an sit legatarius is cui stichus legatus est.

Dig. 30.76

Iulianus 34 Dig.

Quod si quis stichum aut pamphilum stipulatus sempronio stichum legasset, maevio pamphilum, oneratus heres intellegitur, ut necesse habeat alteri actionem suam, alteri aestimationem stichi aut pamphili dare.

Dig. 30.77

Ulpianus 5 disp.

Si pecunia fuit deposita apud aliquem eiusque fidei commissum, ut eam pecuniam praestet, fideicommissum ex rescripto divi pii debebitur, quasi videatur heres rogatus remittere id debitori: nam si conveniatur debitor ab herede, doli exceptione uti potest: quae res utile fideicommissum facit. quod cum ita se habet, ab omni debitore fideicommissum relinqui potest.

Dig. 30.78

Ulpianus 8 disp.

Fideicommissum, quod a legatario relinquitur, ita demum ab eo debetur, si ad legatarium legatum pervenerit.

Dig. 30.79

Iulianus 5 Dig.

Si quis testamento suo titio et seio decem dari iusserit, nullam haec verba recipiunt ambiguitatem, ut dena dixisse videatur, qui decem dixit.

Dig. 30.80

Marcellus not. ad iul. 32 Dig.

Is, qui sola triginta reliquerat, titio triginta legavit, seio viginti, maevio decem. massurius sabinus probat titium quindecim, seium decem, maevium quinque consecuturos, ita tamen, ut ex his pro rata portionis falcidiae satisfiat.

Dig. 30.81pr.

Iulianus 32 Dig.

Si fundum sub condicione legatum heres pendente condicione sub alia condicione alii legasset et post existentem condicionem, quae priore testamento praeposita fuisset, tunc ea condicio, sub qua heres legaverat, exstitisset, dominium a priore legatario non discedit.

Dig. 30.81.1

Iulianus 32 Dig.

Si servo communi res legata fuisset, potest alter dominus agnoscere legatum, alter repellere: nam in hanc causam servus communis quasi duo servi sunt.

Dig. 30.81.2

Iulianus 32 Dig.

" stichum sempronio do lego: si sempronius stichum intra annum non manumiserit, eundem stichum titio do lego". quaesitum est, quid iuris esset. respondi sempronium interim totum habiturum et, si quidem intra annum manumisisset, liberum eum effecturum: sin autem hoc non fecisset, totum ad titium pertinere.

Dig. 30.81.3

Iulianus 32 Dig.

Qui fundum excepto aedificio legat, appellatione aedificii aut superficiem significat aut solum quoque, cui aedificium superpositum est. si de sola superficie exceperit, nihilo minus iure legati totus fundus vindicabitur, sed exceptione doli mali posita consequetur heres id, ut sibi habitare in villa liceat: in quo inerit, ut iter quoque et actum in ea habeat. si vero solum quoque exceptum fuerit, fundus excepta villa vindicari debebit et servitus ipso iure villae debebitur, non secus ac si duorum fundorum dominus alterum legaverit ita, ut alteri serviret. sed inclinandum est testatorem etiam de solo cogitasse, sine quo aedificium stare non potest.

Dig. 30.81.4

Iulianus 32 Dig.

Si libertus patronum ex septunce heredem scripserit, alios ex ceteris et ita legaverit: "quisquis mihi alius ex supra scriptis cum patrono meo heres erit, servos illum et illum titio lego, quos aestimo singulos vicenis aureis", intellegendum erit a coherede patroni dumtaxat legatum datum et ideo titium non amplius quincuncem in servis vindicare posse. adiectio autem illa "quos aestimo singulos vicenis aureis" non mutat legati condicionem, si legis falcidiae rationem habere oporteat: nihilo minus enim verum pretium servorum in aestimationem deducetur.

Dig. 30.81.5

Iulianus 32 Dig.

" titio fundum do lego, si heredi meo decem dederit". si decem heres titio debuisset et ea titius accepta ei fecisset, fundum vindicare potest.

Dig. 30.81.6

Iulianus 32 Dig.

Si titius, cui stichus legatus fuerat, antequam sciret ad se legatum pertinere, decesserit et eundem seio legaverit et heres titii legatum non repudiaverit, stichum seius vindicabit.

Dig. 30.81.7

Iulianus 32 Dig.

Si pater familias ab impubere filio titio fundum legaverit et a substituto eundem eidem titio et pupillus patri heres exstiterit: sive vindicaverit titius legatum sive repudiaverit, quamvis filius impubes decesserit, a substituto vindicare non poterit. hoc enim, quod rursus a substituto legatur, perinde habendum est ac si repetita legata essent. quare et si pure a filio, sub condicione a substituto legatum fuerit, perinde omnia servabuntur ac si tantum a filio legatum fuisset: contra autem si a filio sub condicione, a substituto pure legatum fuerit et pupillus pendente condicione decesserit, ex substitutione sola legatum valebit.

Dig. 30.81.8

Iulianus 32 Dig.

His verbis "lucio et titio eorumve cui fundum do lego" utiliter legatur et, si utrique vixerint, utrique, si alter, alteri debebitur.

Dig. 30.81.9

Iulianus 32 Dig.

Cum statuliber sub condicione legatus est et pendente condicione legati condicio statutae libertatis deficit, legatum utile fit: nam sicut statuta libertas tunc peremit legatum, cum vires accipit, ita legatum quoque non ante peremi potest, quam dies cesserit eius.

Dig. 30.81.10

Iulianus 32 Dig.

A filio impubere legatus et a substituto liber esse iussus, si quidem pupillus ad pubertatem pervenerit, ab eo cui legatus fuerat vindicabitur: mortuo vero pupillo libertas competit. longe magis hoc servari conveniet, si idem servus sub condicione ab impubere legatus fuerit et pendente condicione filius intra pubertatem decesserit.

Dig. 30.82pr.

Iulianus 33 Dig.

Non quocumque modo si legatarii res facta fuerit die cedente, obligatio legati exstinguitur, sed ita, si eo modo fuerit eius, quo avelli non possit. ponamus rem, quae mihi pure legata sit, accipere me per traditionem die legati cedente ab eo herede, a quo eadem sub condicione alii legata fuerit: nempe agam ex testamento, quia is status est eius, ut existente condicione discessurum sit a me dominium. nam et si ex stipulatione mihi stichus debeatur et is, cum sub condicione alii legatus esset, factus fuerit meus ex causa lucrativa, nihilo minus exsistente condicione ex stipulatu agere potero.

Dig. 30.82.1

Iulianus 33 Dig.

Si ex bonis eius, qui rei publicae causa aberat, rem usu adquisierim et ea antequam evinceretur mihi legata sit, deinde postea evincatur, recte ex testamento petam eam mihi dari oportere.

Dig. 30.82.2

Iulianus 33 Dig.

Fundus mihi legatus est: proprietatem eius fundi redemi detracto usu fructu: postea venditor capite minutus est et usus fructus ad me pertinere coepit. si ex testamento egero, iudex tanti litem aestimare debebit, quantum mihi aberit.

Dig. 30.82.3

Iulianus 33 Dig.

Marcellus. idem erit et si partem redemero, pars mihi legata est aut donata: partem enim dumtaxat petere debebo.

Dig. 30.82.4

Iulianus 33 Dig.

Iulianus. quod si legatum mihi est quod ex pamphila natum erit, ego pamphilam mercatus sum et ea apud me peperit, non possum videri partum ex causa lucrativa habere, quia matrem eius mercatus sum: argumentum rei est, quod evicto eo actio ex empto competit.

Dig. 30.82.5

Iulianus 33 Dig.

Qui gaium et lucium eiusdem pecuniae reos habebat si ita legaverit: "quod mihi gaius debet, id heres meus sempronio damnas esto dare: quod mihi lucius debet, id heres meus maevio damnas esto dare", eam condicionem heredis sui constituit, ut is necesse habeat alteri actiones suas, alteri litis aestimationem praestare. si tamen vivus testator gaio acceptum fecit, necesse est, ut sempronii et maevii legatum inutile sit.

Dig. 30.82.6

Iulianus 33 Dig.

Cum mihi stichus aut pamphilus legati fuissent duorum testamentis et stichum ex altero testamento consecutus fuissem, ex altero pamphilum petere possum, quia et si uno testamento stichus aut pamphilus legati fuissent et stichus ex causa lucrativa meus factus fuisset, nihilo minus pamphilum petere possem.

Dig. 30.83

Marcellus 13 Dig.

Titius stichi partem tibi legavit: eiusdem stichi partem seius tibi legavit: ex utriusque testamento consequeris.

Dig. 30.84pr.

Iulianus 33 Dig.

Huiusmodi legatum: "si titius heredi meo caverit centum maevio se daturum, et heres meus titio centum dato", utile legatum est, quemadmodum quod alicui legatum ex causa fideicommissi restituatur.

Dig. 30.84.1

Iulianus 33 Dig.

Eadem ratione hoc quoque legatum utile sit: "si titius heredi meo caverit se in municipio ex centum aureis opus facturum, tum ei centum aureos heres meus dare damnas esto".

Dig. 30.84.2

Iulianus 33 Dig.

Si sempronius titium heredem instituerit et ab eo post biennium fundum dari iusserit maevio, titius deinde ab herede suo eundem fundum maevio praesenti die legaverit et maevius pretium fundi ab herede titii acceperit: si ex testamento sempronii fundum petere velit, exceptione repelli poterit si pretio fundi contentus non erit.

Dig. 30.84.3

Iulianus 33 Dig.

Si cui homo legatus fuisset et per legatarium stetisset, quo minus stichum, cum heres tradere volebat, acciperet, mortuo sticho exceptio doli mali heredi proderit.

Dig. 30.84.4

Iulianus 33 Dig.

Aedes, quibus heredis aedes serviebant, legatae sunt traditae legatario non imposita servitute. dixi posse legatarium ex testamento agere, quia non plenum legatum accepisset: nam et eum, qui debilitatum ab herede servum acceperit, recte ex testamento agere.

Dig. 30.84.5

Iulianus 33 Dig.

Qui servum testamento sibi legatum, ignorans eum sibi legatum, ab herede emit, si cognito legato ex testamento egerit et servum acceperit, actione ex vendito absolvi debet, quia hoc iudicium fidei bonae est et continet in se doli mali exceptionem. quod si pretio soluto ex testamento agere instituerit, hominem consequi debebit, actione ex empto pretium reciperabit, quemadmodum reciperaret, si homo evictus fuisset. quod si iudicio ex empto actum fuerit et tunc actor compererit legatum sibi hominem esse et agat ex testamento, non aliter absolvi heredem oportebit, quam si pretium restituerit et hominem actoris fecerit.

Dig. 30.84.6

Iulianus 33 Dig.

Cum pater pro filia sua dotis nomine centum promisisset, deinde eidem centum eadem legasset, doli mali exceptione heres tutus erit, si et gener ex promissione et puella ex testamento agere instituerit: convenire enim inter eos oportet, ut alterutra actione contenti sint.

Dig. 30.84.7

Iulianus 33 Dig.

Si ita cui legatum esset: "si tabulas chirographi mei heredi meo reddiderit, heres meus ei decem dato", huiusmodi condicio hanc vim habet "si heredem meum debito liberaverit". quare et, si tabulae exstabunt, non intellegetur condicioni satisfecisse creditor, nisi acceptum heredi fecerit, et, si tabulae in rerum natura non fuerint, existimabitur implesse condicionem, si heredem liberaverit, nec ad rem pertinebit, iam tunc cum testamentum fiebat tabulae interciderint an postea vel mortuo testatore.

Dig. 30.84.8

Iulianus 33 Dig.

Si titio et maevio legatus fuerit stichus, qui titii erat, debebitur pars stichi maevio: nam titius, quamvis ad legatum non admittatur, partem faciet.

Dig. 30.84.9

Iulianus 33 Dig.

" stichum aut pamphilum, utrum heres meus volet, titio dato". si dixerit heres stichum se velle dare, sticho mortuo liberabitur. cum autem semel dixerit heres, utrum dare velit, mutare sententiam non poterit.

Dig. 30.84.10

Iulianus 33 Dig.

Legatum est ita: "fundum cornelianum et mancipia, quae in eo fundo cum moriar mea erunt, heres meus titio dato". ancilla, quae in eo fundo esse consueverat, mortis tempore cum in fuga esset, enixa est: quaero, an vel ipsa vel partus eius legato cedat. respondi: ancilla quamvis in fuga sit, legata videtur et, licet fugitiva erat, perinde habetur ac si in eo fundo fuisset moriente patre familias: huic consequens est, ut partus quoque matrem sequatur et perinde legato cedat, ac si in fundo editus fuisset.

Dig. 30.84.11

Iulianus 33 Dig.

Si titio stichus aut pamphilus, utrum eorum malet, legatus est, deinde pamphilum testator titio donavit, stichus in obligatione remanet.

Dig. 30.84.12

Iulianus 33 Dig.

Quibus ita legatum fuerit: "titio et maevio singulos servos do lego", constat eos non concursuros in eundem servum, sicuti non concurrunt, cum ita legatur: "titio servum do lego: maevio alterum servum do lego".

Dig. 30.84.13

Iulianus 33 Dig.

Si is cui legatum fuerat antequam constitueret, qua actione uti vellet, decessit duobus heredibus relictis, legatum accipere simul venientes, nisi consenserint, non possunt: quare quamdiu alter rem vindicare vult, alter in personam agere non potest. sed si consenserint, rem communiter habebunt: consentire autem vel sua sponte debent vel iudice imminente.

Dig. 30.85

Paulus 11 ad plaut.

Duobus coniunctim fundus erat legatus: alter ex his partis aestimationem per actionem personalem abstulit. alter si fundum totum vindicare velit, exceptione doli pro parte dimidia repellitur, quia defunctus semel ad eos legatum pervenire voluit.

Dig. 30.86pr.

Iulianus 34 Dig.

Si tibi homo, quem pignori dederas, legatus ab alio fuerit, actionem ex testamento habebis adversus heredem, ut pignus luatur.

Dig. 30.86.1

Iulianus 34 Dig.

Si testamento stichus ab uno herede legatus fuerit maevio et eidem codicillis idem stichus ab omnibus heredibus et antequam codicilli aperirentur maevius litis aestimationem consecutus fuerit, ipso iure vindicari ex codicillis non potest, quia testator semel legatum ad eum pervenire voluit.

Dig. 30.86.2

Iulianus 34 Dig.

Cum servus legatur, et ipsius servi status et omnium, quae personam eius attingunt, in suspenso est. nam si legatarius reppulerit a se legatum, numquam eius fuisse videbitur: si non reppulerit, ex die aditae hereditatis eius intellegetur. secundum hanc regulam et de iure eorum, quae per traditionem servus acceperit aut stipulatus fuerit, deque his, quae legata ei vel donata fuerunt, statuetur, ut vel heredis vel legatarii servus singula gessisse existimetur.

Dig. 30.86.3

Iulianus 34 Dig.

Si fundus ab omnibus heredibus legatus sit, qui unius heredis esset, is quidem cuius fundus esset non amplius quam partem suam praestabit, ceteri in reliquas partes tenebuntur.

Dig. 30.86.4

Iulianus 34 Dig.

Valet legatum, si superficies legata sit ei, cuius in solo fuerit, licet is dominus soli sit: nam consequetur, ut hac servitute liberetur et superficiem lucrifaciat.

Dig. 30.87

Papinianus 18 quaest.

Filio pater, quem in potestate retinuit, heredi pro parte instituto legatum quoque relinquit. durissima sententia est existimantium denegandam ei legati petitionem, si patris abstinuerit hereditate: non enim impugnatur iudicium ab eo, qui iustis rationibus noluit negotiis hereditariis implicari.

Dig. 30.88

Marcianus 6 inst.

Sed si non alias voluit pater habere eum legatum, nisi hereditatem retineat, tunc neque adversus coheredem dandam ei legati petitionem secundum aristonis sententiam constat, cum ipsi filio non videretur esse solvendo hereditas: et hoc ita est, licet non condicionaliter expressisset, intellexisse tamen manifestissime adprobetur.

Dig. 30.89

Iulianus 36 Dig.

Nam nec emancipatus hereditate omissa legatum ab herede petere prohibetur. praetor enim permittendo his, qui in potestate fuerint, abstinere se hereditate paterna manifestum facit ius se in persona eorum tribuere, quod futurum esset, si liberum arbitrium adeundae hereditatis habuissent.

Dig. 30.90pr.

Papinianus 18 quaest.

Quid ergo si ita legaverit "hoc amplius filio meo?" non dubie voluntatis quidem quaestio erit, sed non absimilis est prioris casus circa filii providentiam, nisi evidens voluntas contraria patris probetur.

Dig. 30.90.1

Papinianus 18 quaest.

Plane si pluribus filiis institutis inter eos verbis legatorum bona diviserit, voluntatis ratione legatorum actio denegabitur ei, qui non agnoverit hereditatem.

Dig. 30.91pr.

Iulianus 36 Dig.

Quaesitum est, si filius familias, qui filium habebat, heres institutus fuisset, cum esset uterque in potestate aliena, an ab eo filio eius legari possit. respondi, cum possit a filio patri legari, consequens est, ut vel fratri ipsius vel filio vel etiam servo patris sui legetur.

Dig. 30.91.1

Iulianus 36 Dig.

Praesenti quidem die data libertate servo legari vel pure vel sub condicione poterit: cum vero libertas sub condicione data fuerit, alias utiliter, alias inutiliter pure legabitur. nam si ea condicio libertatis fuerit, ut patre familias statim mortuo possit ante aditam hereditatem exsistere condicio, veluti: "stichus si decem titio dederit" (vel "capitolium ascenderit"), "liber esto", utile legatum est: huiusmodi autem condiciones: "si heredi decem dederit", "si post aditam hereditatem capitolium ascenderit", inutile legatum efficient. necessario autem ex asse herede scripto etiam hae condiciones, quae ante aditam hereditatem impleri possunt, inutile legatum efficient.

Dig. 30.91.2

Iulianus 36 Dig.

Duobus heredibus institutis alteri stichum legaverat et eidem sticho decem. cum stichus vivo testatore ad libertatem pervenisset, totum legatum ei debebitur: nam in solidum constitisse causam legati in eius persona hoc quoque argumento est, quod, si heres, cui legatus fuerat, hereditatem non adisset, solidum ab altero herede consequi possit.

Dig. 30.91.3

Iulianus 36 Dig.

Servo legato legatum datum est: si alienatus a testatore fuisset, legatum ad emptorem pertinebit.

Dig. 30.91.4

Iulianus 36 Dig.

Cum servus titio et eidem servo aliquid legatur, fideicommitti potest, ut aut servum alicui restituat vel ea quae servo legata sunt: hoc amplius etiam ipsi servo, cum liber erit, fideicommissum a titio dari potest.

Dig. 30.91.5

Iulianus 36 Dig.

Si quis stichum legaverit et eundem alienaverit vel manumiserit, deinde codicillis eidem legatum dederit, legatum vel manumisso vel emptori debebitur.

Dig. 30.91.6

Iulianus 36 Dig.

Si mihi servus a te herede legatus fuerit et eidem servo aliquis legaverit et vivo eo qui mihi servum legaverat dies legati servo dati cesserit, confestim id legatum hereditati adquiritur: et ideo, quamvis postea moritur is qui servum mihi legaverat, ad me id quod servo legatum est non pertinebit.

Dig. 30.91.7

Iulianus 36 Dig.

Cum homo ex testamento petitus est, causa eius temporis, quo lis contestabatur, repraesentari debet actori et, sicut partus ancillarum, sicut fructus fundorum interim percepti in hoc iudicium deducuntur, ita quod servo legatorum vel hereditatis nomine interim obvenerit praestandum est petitori.

Dig. 30.92pr.

Iulianus 39 Dig.

Si fundum per fideicommissum relictum unus ex heredibus, excusso pretio secundum reditum eius fundi, mercatus sit propter aes alienum hereditarium praesente et adsignante eo, cui fideicommissum debebatur, placet non fundum, sed pretium eius restitui deberi. Marcellus notat: si fundum restituere malit heres, audiendum existimo.

Dig. 30.92.1

Iulianus 39 Dig.

Iulianus. si titio pecunia legata fuerit et eius fidei commissum, ut alienum servum manumitteret, nec dominus eum vendere velit, nihilo minus legatum capiet, quia per eum non stat, quominus fideicommissum praestet: nam et si mortuus fuisset servus, a legato non summoveretur.

Dig. 30.92.2

Iulianus 39 Dig.

Sicuti conceditur unicuique ab eo, ad quem legitima eius hereditas vel bonorum possessio perventura est, fideicommissum dare, ita et ab eo, ad quem impuberis filii legitima hereditas vel bonorum possessio perventura est, fideicommissa recte dabuntur.

Dig. 30.93

Ulpianus 1 fideic.

Quod fideicommissum hactenus, quatenus impubes decedat, valebit: ceterum si pubes factus decesserit, evanescit fideicommissum.

Dig. 30.94pr.

Iulianus 39 Dig.

Plane si filium impuberem exheredaverit, fideicommissum legitimus heres praestare cogendus non erit, nisi idem et patri heres fuerit.

Dig. 30.94.1

Iulianus 39 Dig.

Qui rogatus erat hereditatem, ex qua servus eius heres institutus erat, restituere, cum alii servum vendidisset, quaesitum est, an hereditatem restituere cogendus est is, ad quem hereditas ex emptione servi heredis scripti pervenerit. dixi compellendum esse ad fideicommissum restituendum eum, qui servum suum heredem scriptum vendidit, cum pretium hereditatis, quam restituere rogatus est, habeat. is autem, ad quem hereditas ex emptione servi heredis scripti pervenerit, ex causa cogendus erit fideicommissum praestare, id est si dominus servi heredis scripti solvendo non erit.

Dig. 30.94.2

Iulianus 39 Dig.

Si cui stichus aut dama legatus esset electione legatario data et fidei eius commissum esset, ut stichum alteri praestaret: si damam vindicare maluerit, nihilo minus stichum ex causa fideicommissi praestare debebit. sive enim pluris est dama, compellendus est stichum redimere, sive minoris, aeque stichum iuste dare cogetur, cum per eum steterit, quo minus ex testamento haberet quod fideicommissum fuerit.

Dig. 30.94.3

Iulianus 39 Dig.

Qui testamento manumittitur et neque legatum neque hereditatem capit, fideicommissum praestare cogendus non est, ac ne is quidem, qui servum legatum rogatus fuerit manumittere: is enim demum pecuniam ex causa fideicommissi praestare cogendus est, qui aliquid eiusdem generis vel similis ex testamento consequitur.

Dig. 30.95

Ulpianus 1 fideic.

Videndum tamen est, numquid, si vice operarum rogaverit eum aliquid, debeat hoc fideicommissum valere: quod nequaquam dicendum est, quia nec operae imponi huiusmodi liberto possunt nec impositae exiguntur, quamvis testator ita caverit.

Dig. 30.96pr.

Iulianus 39 Dig.

Quidam testamento vel codicillis ita legavit: "aureos quadringentos pamphilae dari volo ita ut infra scriptum est: ab iulio actore aureos tot et in castris quos habeo tot et in numerato quos habeo tot": post multos annos eadem voluntate manente decessit, cum omnes summae in alios usus translatae essent: quaero, an debeatur fideicommissum. respondi: vero similius est patrem familias demonstrare potius heredibus voluisse, unde aureos quadringentos sine incommodo rei familiaris contrahere possint, quam condicionem fideicommisso iniecisse, quod initio pure datum esset, et ideo quadringenti pamphilae debebuntur.

Dig. 30.96.1

Iulianus 39 Dig.

Quotiens lege iulia bona vacantia ad fiscum pertinent, et legata et fideicommissa praestantur, quae praestare cogeretur heres a quo relicta erant.

Dig. 30.96.2

Iulianus 39 Dig.

Si tibi servus legatus fuerit et petitum a te, ut titio aliquid praestares usque ad pretium servi, deinde servus decesserit, nihil fideicommissi nomine praestare cogendus eris.

Dig. 30.96.3

Iulianus 39 Dig.

Si scriptus ex parte heres rogatus sit praecipere pecuniam et eis quibus testamento legatum erat distribuere, id quod sub condicione legatum est tunc praecipere debebit, cum condicio exstiterit: interim aut ei aut his quibus legatum est satisdari oportet.

Dig. 30.96.4

Iulianus 39 Dig.

Cui statuliber pecuniam dare iussus est, is rogari potest, ut eandem pecuniam alicui restituat: nam cum possit testator codicillis pure libertatem dare et hoc modo condicionem exstinguere, cur non etiam per fideicommissum eandem pecuniam adimendi potestatem habeat?

Dig. 30.97

Iulianus 42 Dig.

Si mihi stichus legatus esset fideique meae commissum, ut aut stichum aut pamphilum meum servum redderem, et in sticho aliquid ex legato propter legem falcidiam perdidissem, necesse habebo aut pamphilum servum meum totum titio dare aut eam partem stichi, quam legatorum nomine accepero.

Dig. 30.98

Iulianus 52 Dig.

Servus ab hostibus captus recte legatur: hoc enim iure postliminii fit, ut, quemadmodum heredem instituere possumus servum qui in hostium potestate est, ita legare quoque eum possemus ^ possumus^.

Dig. 30.99

Iulianus 70 Dig.

Si domino stichus legatus esset et servo eius optio data, partem dimidiam stichi dico ad dominum pertinere, quod possit servus manumissus eundem stichum optare.

Dig. 30.100

Ulpianus 77 Dig.

Si mihi sempronius a titio herede legaverit titiusque mihi sub eadem condicione eandem rem legaverit, exsistente condicione capiam legatum ex testamento sempronii.

Dig. 30.101pr.

Iulianus 78 Dig.

Si servo meo stichus legatus fuerit testamento idque legatum repudiavero, deinde prolatis codicillis apparuerit mihi quoque eundem stichum legatum esse, nihilo minus eundem vindicare possum.

Dig. 30.101.1

Iulianus 78 Dig.

Si ei qui in hostium potestate est legatum fuerit et is apud hostes decesserit, nullius momenti legatum erit, quamvis postliminio confirmari potuit.

Dig. 30.102

Iulianus 81 Dig.

Si minor quam viginti annis dominus servum causa non probata manumiserit et postea legatum ei dederit isque alienatus ad libertatem perductus fuisset, legatum non capit: nam perinde nullius est momenti legatum, ac si sine libertate datum fuisset.

Dig. 30.103

Iulianus 83 Dig.

In tacitis fideicommissis fraus legi fieri videtur, quotiens quis neque testamento neque codicillis rogaretur, sed domestica cautione vel chirographo obligaret se ad praestandum fideicommissum ei qui capere non potest.

Dig. 30.104pr.

Iulianus 1 ad urs. ferocem.

Ab omnibus heredibus legatum ita erat: "quisquis mihi heres erit, damnas esto titio dare centum": deinde infra comprehensum erat, ne unus ex heredibus ei daret: quaeritur, reliqui heredes utrum tota centum dare deberent an deducta unius illius hereditaria portione. respondit verius esse reliquos heredes tota centum debere, cum et significatio verborum non repugnet huic sententiae et voluntas testatoris congruat.

Dig. 30.104.1

Iulianus 1 ad urs. ferocem.

In testamento sic erat scriptum: "lucio titio, si is heredi meo tabellas, quibus ei pecuniam expromiseram, dederit, centum dato": titius deinde antequam tabellas heredi redderet, decesserat: quaesitum est, an heredi eius legatum deberetur. cassius respondit, si tabulae fuissent, non deberi, quia non redditis his dies legati non cessit. iulianus notat: si testamenti faciendi tempore tabulae nullae fuerunt, una ratione dici potest legatum titio deberi, quod adunatos condicio pro non scripta habetur.

Dig. 30.104.2

Iulianus 1 ad urs. ferocem.

Etiam rem hostium posse legari sabinus ait, si aliquo casu emi possit.

Dig. 30.104.3

Iulianus 1 ad urs. ferocem.

Si attio ita legatum fuerit: "quisquis mihi heres erit, damnas esto attio heredi decem dare", deducta sua parte attius decem petet.

Dig. 30.104.4

Iulianus 1 ad urs. ferocem.

Item si iussus fuisset heres decem dare et fundum sibi habere, deducta sua parte decem dabit.

Dig. 30.104.5

Iulianus 1 ad urs. ferocem.

Denique constitit, cum ita legatum fuisset: "quisquis mihi heres erit, damnas esto heredi meo decem dare", exaequari omnium heredum partes eo, quod unusquisque et sibi et coheredi suo dari damnatus videtur.

Dig. 30.104.6

Iulianus 1 ad urs. ferocem.

Cum quidam heredem instituit, quandoque mater eius decessisset, deinde secundus heres scriptus fuisset et ab eo legata ei, qui sub condicione heres institutus fuisset, relicta essent isque viva matre decessisset, postquam dies legati cesserit, quaesitum est, an heredi eius legata deberentur. verius est legatum heredi deberi, sive pure a substituto legatum datum est primo heredi sive sub hac condicione "si heres non fuerit", quia moriente eo condicio impletur.

Dig. 30.104.7

Iulianus 1 ad urs. ferocem.

Si socero a genero suo herede instituto pars hereditatis alii legata fuisset, deducta dote eum debiturum esse partem hereditatis legatam sabinus respondit, quemadmodum, si pecunia ex crediti causa socero debita fuisset, ea deducta partem hereditatis daturus fuisset.

Dig. 30.105

Iulianus 1 ex minic.

Legatum ita erat: "quae lucius titius mihi debet, ea heres meus cornelio dare damnas esto". nihil amplius ex hoc legato quam actiones suas heres praestare debet.

Dig. 30.106

Alfenus 2 Dig. a paulo epit.

Si in testamento scriptum esset: "heres meus aureos centum licinio damnas esto "neque adscripsisset "dare ", deberi legatum constat.

Dig. 30.107pr.

Africanus 2 quaest.

Si a pluribus heredibus legata sint eaque unus ex his praecipere iubeatur et praestare, in potestate eorum, quibus sit legatum, debere esse ait, utrumne a singulis heredibus petere velint an ab eo, qui praecipere sit iussus: itaque eum qui praecipere iussus est cavere debere coheredibus indemnes eos praestari.

Dig. 30.107.1

Africanus 2 quaest.

Si quis servum, cui aliquid sine libertate legaverit, cum morietur ipse servus, leget, minime dubitandum, quin utile legatum futurum sit, propterea scilicet, quod moriente servo id quod ipsi legatum erit ad eum cui ipse legatus fuerit perventurum sit.

Dig. 30.108pr.

Africanus 5 quaest.

Si servus legatus vivo testatore fugisse dicatur, et impensa et periculo eius cui legatus sit reddi debet, quoniam rem legatam eo loco praestare heres debeat, in quo a testatore sit relicta.

Dig. 30.108.1

Africanus 5 quaest.

Si id quod ex testamento mihi debes quilibet alius servo meo donaverit, manebit adhuc mihi ex testamento actio et maxime, si ignorem meam factam esse: alioquin consequens erit, ut etiam, si tu ipse servo meo eam donaveris, invito me libereris: quod nullo modo recipiendum est, quando ne solutione quidem invito me facta libereris.

Dig. 30.108.2

Africanus 5 quaest.

Cum homo titio legatus esset, quaesitum est, utrum arbitrium heredis est quem velit dandi an potius legatarii. respondi verius dici electionem eius esse, cui potestas sit qua actione uti velit, id est legatarii.

Dig. 30.108.3

Africanus 5 quaest.

Huiusmodi legatum "illi aut illi, uter eorum prior capitolium ascenderit" utile esse evidenti argumento probari ait, quod constet usum fructum libertis legatum et qui eorum supervixerit proprietatem utiliter legari. idque et de herede instituendo dicendum existimavit.

Dig. 30.108.4

Africanus 5 quaest.

Stichum, quem de te stipulatus eram, titius a te herede mihi legavit: si quidem non ex lucrativa causa stipulatio intercessit, utile legatum esse placebat, sin e duabus, tunc magis placet inutile esse legatum, quia nec absit quicquam nec bis eadem res praestari possit.

Dig. 30.108.5

Africanus 5 quaest.

Sed si, cum mihi ex testamento titii stichum deberes, eundem a te herede sempronius mihi legaverit fideique meae commiserit, ut eum alicui restituam, legatum utile erit, quia non sum habiturus: idem iuris erit et si pecuniam a me legaverit: multo magis, si in priore testamento fideicommissum sit. item si in priore testamento falcidiae locus sit, quod inde abscidit ratione falcidiae, ex sequenti testamento consequar.

Dig. 30.108.6

Africanus 5 quaest.

Item si domino heres exstitero, qui non esset solvendo, cuius fundum tu mihi dare iussus esses, manebit tua obligatio, sicut maneret, si eum fundum emissem.

Dig. 30.108.7

Africanus 5 quaest.

Si ita scriptum erit: "amplius quam titio legavi heres meus seio decem dato", dubitandum non erit, quin et titio suum legatum maneat et seio nihil ultra decem debeatur: nam et usitatum fere est sic legare: "lucio titio tot et hoc amplius uxori et liberis eius tot".

Dig. 30.108.8

Africanus 5 quaest.

Si ei cui nihil legatum est cum hac adiectione "hoc amplius" aliquid legetur, minime dubitandum est, quin id quod ita legaverit debeatur: multoque minus dubitandum, si ab eo qui nihil mihi debet ita stipulatus fuero: "amplius quam mihi debes decem dare spondes?" quin decem debeantur.

Dig. 30.108.9

Africanus 5 quaest.

Si servus alienus liber esse iussus et legatus sit, peti eum ex legato posse ait: nam cum libertas nullius momenti sit, absurdum esse per eam legatum infirmari, quod alioquin valeret, et si solum datum fuisset.

Dig. 30.108.10

Africanus 5 quaest.

Qui quinque in arca habebat ita legavit vel stipulanti promisit "decem quae in arca habeo": et legatum et stipulatio valebit, ita tamen, ut sola quinque vel ex stipulatione vel ex testamento debeantur. ut vero quinque quae deerunt ex testamento peti possint, vix ratio patietur: nam quodammodo certum corpus, quod in rerum natura non sit, legatum videtur. quod si mortis tempore plena summa fuerat et postea aliquod ex ea deperierit, sine dubio soli heredi deperit.

Dig. 30.108.11

Africanus 5 quaest.

Si servus legatus sit et moram heres fecerit, periculo eius et vivit et deterior fit, ut, si debilem forte tradat, nihilo minus teneatur.

Dig. 30.108.12

Africanus 5 quaest.

Cum quid tibi legatum fideive tuae commissum sit, ut mihi restituas, si quidem nihil praeterea ex testamento capias, dolum malum dumtaxat in exigendo eo legato, alioquin etiam culpam te mihi praestare debere existimavit: sicut in contractibus fidei bonae servatur, ut, si quidem utriusque contrahentis commodum versetur, etiam culpa, sin unius solius, dolus malus tantummodo praestetur.

Dig. 30.108.13

Africanus 5 quaest.

Qui margarita titio pignori dederat, filium heredem instituit et filiam exheredavit, deinde ita cavit: "te, titi, rogo fideique tuae committo, uti margarita, quae tibi pignori dedi, vendas et deducto omni debito tuo quod amplius erit id omne filiae meae restituas". ex ea scriptura filiam a fratre fidei commissum petere posse, ut is actiones suas adversus debitorem ei praestaret: hoc enim casu eum, qui creditor fuisset, debitorem intellegendum eius scilicet, quod pretium pignoris summam debiti excedat.

Dig. 30.108.14

Africanus 5 quaest.

Non autem mirandum, si, cum alius rogatus sit, alius fidei commisso obstringatur: nam et cum in testamento ita scribatur: "te, titi, rogo, ut acceptis centum illum servum manumittas" vel "sempronio quid praestes", parum quidem apte scribi, verum aeque intellegendum heredis fidei commissum, ut pecuniam titio praestet: ideoque et ipsum titium cum herede acturum et libertatem servo vel sempronio quod rogatus sit praestare cogendum.

Dig. 30.108.15

Africanus 5 quaest.

Avidius filii sui fidei commisit, ut certam pecuniam quattuor libertis suis mutuam daret et usuras leviores taxaverat: placuit hoc fideicommissum utile totum esse.

Dig. 30.109pr.

Africanus 6 quaest.

Si quando quis uxori suae ea, quae vivus donaverat volgari modo, leget, non de aliis donationibus videri eum sentire ait, quam de his quae iure valiturae non sunt: alioquin et frustra legaturus sit atque si ita exprimat: "quae uxori iure donavero" vel ita: "quae uxori manumissionis causa donavero, ea ei lego": nam inutile legatum futurum est.

Dig. 30.109.1

Africanus 6 quaest.

Heres, cuius fidei commissum erat, ut mihi fundum aut centum daret, fundum titio vendidit: cum electio ei relinquitur utrum malit dandi, ut tamen alterum solidum praestet, praetoris officio convenire existimo, ut, si pecuniam titius offerat, inhibeat fundi persecutionem. ita enim eadem causa constitueretur, quae futura esset si alienatus fundus non fuisset, quando etiam adversus ipsum heredem officium praetoris sive arbitri tale esse deberet, ut, si fundus non praestaretur, neque pluris neque minoris quam centum aestimaretur.

Dig. 30.110

Africanus 8 quaest.

Si heres generaliter servum quem ipse voluerit dare iussus sciens furem dederit isque furtum legatario fecerit, de dolo malo agi posse ait. sed quoniam illud verum est heredem in hoc teneri, ut non pessimum det, ad hoc tenetur, ut et alium hominem praestet et hunc pro noxae dedito relinquat.

Dig. 30.111

Marcianus 2 inst.

Etiam si partis bonorum se excusaverit tutor, puta italicarum vel provincialium rerum, totum quod testamento datum est ei auferetur, et ita divi severus et antonius rescripserunt.

Dig. 30.112pr.

Marcianus 6 inst.

Si quis inquilinos sine praediis quibus adhaerent legaverit, inutile est legatum: sed an aestimatio debeatur, ex voluntate defuncti statuendum esse divi marcus et commodus rescripserunt.

Dig. 30.112.1

Marcianus 6 inst.

Cum servum suum heres damnatus dare eum manumiserit, tenetur in eius aestimationem, nec interest, scierit an ignoraverit legatum. sed et si donaverit servum heres et eum is cui donatus est manumiserit, tenetur heres, quamvis ignoraverit a se eum legatum esse.

Dig. 30.112.2

Marcianus 6 inst.

Si ita legatum fuerit "titio cum seio do lego", utrisque legatum est, sicut utrumque legatum est, cum fundus cum domo formiana legatus est.

Dig. 30.112.3

Marcianus 6 inst.

Si quis scripserit testamento fieri, quod contra ius est vel bonos mores, non valet, veluti si quis scripserit contra legem aliquid vel contra edictum praetoris vel etiam turpe aliquid.

Dig. 30.112.4

Marcianus 6 inst.

Divi severus et antoninus rescripserunt iusiurandum contra vim legum et auctoritatem iuris in testamento scriptum nullius esse.

Dig. 30.113pr.

Marcianus 7 inst.

Servo alieno ita legari potest "quoad serviat" vel "si servus" forte "titii erit", ut et Marcellus ait.

Dig. 30.113.1

Marcianus 7 inst.

Si quis post tempus libertatem servo suo dederit et interea rogaverit heredem, donec ad libertatem perveniat, cibaria ei dare, testatoris voluntati obtemperandum esse divi severus et antoninus rescripserunt.

Dig. 30.113.2

Marcianus 7 inst.

Si quis a primo herede centum legaverit alicui et eidem a secundo ducenta posteaque generaliter repetierit legata, trecenta videtur repetisse.

Dig. 30.113.3

Marcianus 7 inst.

Sed si pater impuberi filio substituerit et a substituto legata repetierit: si pupillus heres exstiterit et intra pubertatem decesserit, repetitio non valet, quia voluntas defuncti haec est, ut semel debeantur.

Dig. 30.113.4

Marcianus 7 inst.

Si ab impubere legatum fuerit sub condicione "si ad pubertatem pervenerit" et a substituto repetitum fuerit, legatum debetur et a substituto nec videtur repetita condicio, quae inutile legatum facit.

Dig. 30.113.5

Marcianus 7 inst.

Ineptas voluntates defunctorum circa sepulturam (veluti vestes aut si qua alia supervacua ut in funus impendantur) non valere papinianus libro tertio responsorum scribit.

Dig. 30.114pr.

Marcianus 8 inst.

Filius familias miles vel veteranus licet sine testamento decedat, potest fideicommittere a patre, quia etiam testamentum facere potest.

Dig. 30.114.1

Marcianus 8 inst.

Si libertus ab intestato decesserit, a patrono potest usque ad partem debitam fideicommissum relinquere, quia, si testamentum faceret, licebat ei partem debitam solam relinquere.

Dig. 30.114.2

Marcianus 8 inst.

Qui intestato decedit et scit bona sua ad fiscum perventura vacantia, fidei fisci committere potest.

Dig. 30.114.3

Marcianus 8 inst.

Apud Marcellum libro duodecimo digestorum talis quaestio agitatur. quidam ab eo cui fundum legaverat fideicommiserat, ut eum fundum post mortem suam restitueret sempronio: eiusdem legatarii fidei commiserat, ut titio daret centum: quaeritur quid iuris sit. et ait Marcellus, si titio testator centum ex fructibus, quos vivus legatarius perceperit, reliquerit et legatarius post tantum temporis decessisset, ut ex fructibus centum fierent, titium centum accepturum: si post acceptum legatum confestim decessisset legatarius, titii fideicommissum extingui, quia placet non plus posse rogari quem restituere quam quantum ei relictum est.

Dig. 30.114.4

Marcianus 8 inst.

Sed si titii fideicommissum non est in tempus mortis legatarii collatum, ait Marcellus confestim fideicommissum titio dandum, sed cautione exacta quanto amplius ceperit reddi: quam cautionem ita committi, si prius legatarius decesserit, quam ex fructibus centum perciperet. sed vix est, ut legatarium ex reditibus voluit ante dare, quam fructus legatarius percepisset: certe erit legatarius audiendus, si velit totum fundum praestare, si de restituendo cavetur: absurdum enim est de suo eum praestare centum, maxime si fundus centum vel non multo pluris est: quo iure utimur.

Dig. 30.114.5

Marcianus 8 inst.

Si quid alicui licite fuerit relictum vel ius aliud, quod ipse quidem propter corporis sui vitium vel propter qualitatem relicti vel aliam quamcumque probabilem causam habere non potuit, alius tamen hoc habere potuit: quanti solet comparari, tantam aestimationem accipiet.

Dig. 30.114.6

Marcianus 8 inst.

Ut quis heredem instituat aliquem, rogari non potest: plane senatus censuit perinde habendum, atque si rogasset hereditatem restitui.

Dig. 30.114.7

Marcianus 8 inst.

Quid ergo, si heres post mortem suam rogatus fuerit hereditatis suae partem quartam restituere? verius esse existimo, quod et scaevola notat et papirius fronto scribit, valere fideicommissum, atque si de hereditate sua restituenda rogatus esset: et eatenus restituenda est, quatenus hereditas testatoris patitur, secundum volgarem formam iuris.

Dig. 30.114.8

Marcianus 8 inst.

Sed si liberos suos emancipare rogatus fuerit, non cogitur hoc facere: potestas enim patria inaestimabilis est.

Dig. 30.114.9

Marcianus 8 inst.

Aedes destruendae neque legari neque per fideicommissum relinqui possunt: et ita senatus censuit.

Dig. 30.114.10

Marcianus 8 inst.

Si fideicommissum relictum fuerit servo alieno sine libertate et ad libertatem pervenerit, dicendum est posse eum admitti ad capiendum.

Dig. 30.114.11

Marcianus 8 inst.

Divi severus et antoninus rescripserunt eum, qui rogatus est sub condicione fratris sui filiis restituere, ante diem fideicommissi cedentem ne quidem ex voluntate eorum posse restituere his in potestate patris agentibus, cum possit die fideicommissi cedente sui iuris constitutis ipsis debere restitui vel, si aliquis ex his ante decesserit, non omnibus.

Dig. 30.114.12

Marcianus 8 inst.

Idem principes rescripserunt filiis ante diem fideicommissi venientem restitui hereditatem maternam necesse non esse, sed praestare heredem posse volgarem cautionem aut, si praestare eam non poterit, mitti liberos in possessionem fideicommissi servandi causa, ut pro pignore, non ut pro dominis possideant vel alienandi ius, sed ut pignus habeant, ut filius per patrem fructus consequatur et servus per dominum.

Dig. 30.114.13

Marcianus 8 inst.

Cum erit rogatus, si sine liberis decesserit, per fideicommissum restituere, condicio defecisse videbitur, si patri supervixerint liberi, nec quaeritur, an heredes exstiterint.

Dig. 30.114.14

Marcianus 8 inst.

Divi severus et antoninus rescripserunt eos, qui testamento vetant quid alienari nec causam exprimunt, propter quam id fieri velint, nisi invenitur persona, cuius respectu hoc a testatore dispositum est, nullius esse momenti scripturam, quasi nudum praeceptum reliquerint, quia talem legem testamento non possunt dicere: quod si liberis aut posteris aut libertis aut heredibus aut aliis quibusdam personis consulentes eiusmodi voluntatem significarent, eam servandam esse, sed haec neque creditoribus neque fisco fraudi esse: nam si heredis propter testatoris creditores bona venierunt, fortunam communem fideicommissarii quoque sequuntur.

Dig. 30.114.15

Marcianus 8 inst.

Cum pater filio herede instituto, ex quo tres habuerat nepotes, fideicommisit, ne fundum alienaret et ut in familia relinqueret, et filius decedens duos heredes instituit, tertium exheredavit, eum fundum extraneo legavit, divi severus et antoninus rescripserunt verum esse non paruisse voluntati defuncti filium.

Dig. 30.114.16

Marcianus 8 inst.

Sed et si, cum duos exheredavit, unum heredem instituit, fundum extraneo legavit, ut putat Marcellus posse exheredatos petere fideicommissum. quod evenit et si vivus filios emancipasset et postea fundum alienasset.

Dig. 30.114.17

Marcianus 8 inst.

Sed si omnes filii heredes instituti sint ex disparibus partibus, non possunt petere fideicommissum ex minore parte scripti, ut viriles, non hereditarias partes in eo habeant: verum est enim in familia reliquisse, licet uni reliquisset.

Dig. 30.114.18

Marcianus 8 inst.

Item si unum heredem instituisset nec quicquam legasset, exheredati nihil interim, quamdiu in familia res est, petere possunt.

Dig. 30.114.19

Marcianus 8 inst.

Interdum etiam cum lucro heredis moritur servus legatus vel per fideicommissum relictus, veluti si alienus vel licet proprius, pluribus tamen separatim ita relictus, ut unusquisque in solidum capiat, scilicet si sine culpa heredis mortuus sit.

Dig. 30.115

Ulpianus 2 inst.

Etiam hoc modo: "cupio des" "opto des" "credo te daturum" fideicommissum est.

Dig. 30.116pr.

Florus 11 inst.

Legatum est delibatio hereditatis, qua testator ex eo, quod universum heredis foret, alicui quid collatum velit.

Dig. 30.116.1

Florus 11 inst.

Heredi a semet ipso legatum dari non potest, a coherede potest. itaque si fundus legatus sit ei qui ex parte dimidia heres institutus est et duobus extraneis, ad heredem cui legatus est sexta pars fundi pertinet, quia a se vindicare non potest, a coherede vero semissario duobus extraneis concurrentibus non amplius tertia parte: extranei autem et ab ipso herede cui legatum est semissem et ab alio herede trientem vindicabunt.

Dig. 30.116.2

Florus 11 inst.

Alienus servus heres institutus legari ipse a se nec totus nec pro parte potest.

Dig. 30.116.3

Florus 11 inst.

Servo hereditario recte legatur, licet ea adita non sit, quia hereditas personae defuncti, qui eam reliquit, vice fungitur.

Dig. 30.116.4

Florus 11 inst.

Fundus legatus talis dari debet, qualis relictus est. itaque sive ipse fundo heredis servitutem debuit sive ei fundus heredis, licet confusione dominii servitus exstincta sit, pristinum ius restituendum est. et nisi legatarius imponi servitutem patiatur, petenti ei legatum exceptio doli mali opponetur: si vero fundo legato servitus non restituetur, actio ex testamento superest.

Dig. 30.117

Marcianus 13 inst.

Si quid relictum sit civitatibus, omne valet, sive in distributionem relinquatur sive in opus sive in alimenta vel in eruditionem puerorum sive quid aliud.

Dig. 30.118

Nerva 10 reg.

Et eo modo relictum: "exigo" "desidero, uti des", fideicommissum valet: sed et ita: "volo hereditatem meam titii esse" "scio hereditatem meam restituturum te titio".

Dig. 30.119

Marcianus 1 reg.

Si servus vetitus est a testatore rationes reddere, non hoc consequitur, ut ne quod apud eum sit reddat et lucri faciat, sed ne scrupulosa inquisitio fiat, hoc est ut neglegentiae ratio non habeatur, sed tantum fraudium. ideo et manumisso non videtur peculium legari per hoc, quod vetitus est rationes reddere.

Dig. 30.120pr.

Ulpianus 2 resp.

Nihil proponi, cur prohibeatur heres aedificia distrahere, quorum reditus sportulae sunt relictae, salva tamen causa legati.

Dig. 30.120.1

Ulpianus 2 resp.

Omnibus quibus fideicommissum relictum est ad distractionem consentientibus nullam fideicommissi petitionem superfuturam.

Dig. 30.120.2

Ulpianus 2 resp.

Fructus ex fundo pure legato post aditam hereditatem a legatario perceptos ad ipsum pertinere, colonum autem cum herede ex conducto habere actionem.

Dig. 30.121

Marcianus 3 reg.

Si quis legaverit titio cum maevio, et sine altero alter ad legatum admittitur. nam et cum dicit praetor: "ventrem cum liberis in possessionem esse iubeo", etsi non sint liberi, venter in possessionem mittetur.

Dig. 30.122pr.

Paulus 3 reg.

Civitatibus legari potest etiam quod ad honorem ornatumque civitatis pertinet: ad ornatum puta quod ad instruendum forum theatrum stadium legatum fuerit: ad honorem puta quod ad munus edendum venationemve ludos scenicos ludos circenses relictum fuerit aut quod ad divisionem singulorum civium vel epulum relictum fuerit. hoc amplius quod in alimenta infirmae aetatis, puta senioribus vel pueris puellisque, relictum fuerit ad honorem civitatis pertinere respondetur.

Dig. 30.122.1

Paulus 3 reg.

"lucius titius et gaius seius publio maevio decem dare damnas sunto": gaius seius heres non exstitit. sabinus ait titium solum legatum debiturum: nam seium pro non scripto habendum esse. haec sententia vera est, hoc est titius tota decem debebit.

Dig. 30.122.2

Paulus 3 reg.

Eum cui sub hac condicione fundus legatus est, si centum heredi dedisset, si tantum sit in pretio fundi, quantum heredi dare iussus est, non est legatarius cogendus fideicommissum a se relictum praestare, quoniam nihil ex testamento videtur capere, qui tantum erogat, quantum accipit.

Dig. 30.123pr.

Marcellus l.S. resp.

Lucius titius cum duos filios heredes relinqueret, testamento ita cavit: "quisquis mihi liberorum meorum heres erit, eius fidei committo, ut si quis ex is sine liberis decedat, hereditatis meae bessem cum morietur fratribus suis restituat": frater decedens fratrem suum ex dodrante fecit heredem: quaero, an fideicommisso satisfecerit. Marcellus respondit id, quod ex testamento lucii titii fratri testator debuisset, pro ea parte, qua alius heres exstitisset, peti posse, nisi diversum sensisse eum probaretur: nam parvum inter hanc speciem interest et cum alias creditor debitori suo exstitit heres. sed plane audiendus erit coheres, si probare possit ea mente testatorem heredem instituisse fratrem suum, ut contentus institutione fideicommisso abstinere deberet.

Dig. 30.123.1

Marcellus l.S. resp.

In testamento ita scriptum est: "gaio seio illud et illud heres meus dato. et te rogo, sei, fideique tuae mando, uti ea omnia quae supra scripta sunt reddas sine ulla mora ei redderes ipse". quaero, an tacitum fideicommissum sit, cum personam testator, cui restitui vellet, testamento non significaverit. Marcellus respondit: si in fraudem legum tacitam fidem seius accommodasset, nihil ei prodesse potest, si his verbis pater familias cum eo locutus esset: non enim ideo circumvenisse minus leges existimandus est, cum perinde incertum sit cui prospectum voluerit.

Dig. 30.124

Nerva 5 membr.

Si heredes nominatim enumerati dare quid damnati sunt, propius est, ut viriles partes debeant, quia personarum enumeratio hunc effectum habet, ut exaequentur in legato praestando, qui, si nominati non essent, hereditarias partes debituri essent.

Dig. 30.125

Rutilius l.S. ad l. falcid.

Si heres centum praecipere iussus sit et restituere hereditatem et patronus bonorum possessionem contra tabulas petierit, sicut legata ita et praeceptio pro parte, quam patronus abstulit, minuetur.

Dig. 30.126pr.

Paulus l.S. de secundis tabulis.

Ab exheredati substituto inutiliter legatum datur. ergo nec a legitimo exheredati fideicommissum dari poterit, quod et legitimi eo iure praestare coguntur, quo si scripti fuissent. sed si committente aliquo ex liberis edictum praetoris, quo contra tabulas bonorum possessionem pollicetur, scriptus quoque filius contra tabulas bonorum possessionem petierit, substitutus eius legata pro modo patrimonii, quod ad filium pervenit, praestabit, perinde ac si id, quod per bonorum possessionem filius habuit, a patre accepisset.

Dig. 30.126.1

Paulus l.S. de secundis tabulis.

Cum a postumo ita legetur "si heres erit" et non nato postumo substituti adeant, legata eos debere existimandum est, quae ille, si viveret, debiturus erat.

Dig. 30.127

Paulus l.S. de iure codicill.

A fratris postumo fideicommissum dari potest: sola enim voluntas servatur in fideicommissis, et optinuit galli sententia alienos quoque postumos legitimos nobis heredes fieri.

Dig. 30.128

Marcianus 2 inst.

Si tutor pupillam suam contra senatus consultum uxorem duxit, illa quidem ex testamento eius capere potest, ipse autem non potest, et merito: delinquunt enim hi, qui prohibitas nuptias contrahunt et merito puniendi sunt: quod imputari non potest mulieri, quae a tutore decepta est.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER UN-ET-TRICESIMUS

Dig. 31.0. De legatis et fideicommissis.

Dig. 31.0. De legatis et fideicommissis.

Dig. 31.1pr.

Ulpianus 9 ad sab.

In arbitrium alterius conferri legatum veluti condicio potest: quid enim interest, " si titius in capitolium ascenderit" mihi legetur an " si voluerit?"

Dig. 31.1.1

Ulpianus 9 ad sab.

Sed cum ita legatum sit pupillo sive pupillae " arbitrio tutorum", neque condicio inest legato neque mora, cum placeat in testamentis legatum in alterius arbitrium collatum pro viri boni arbitrio accipi. quae enim mora est in boni viri arbitrio, quod iniectum legato velut certam quantitatem exprimit, pro viribus videlicet patrimonii?

Dig. 31.2

Paulus 75 ad ed.

Quotiens nominatim plures res in legato exprimuntur, plura legata sunt: si autem supellex aut argentum aut peculium aut instrumentum legatum sit, unum legatum est.

Dig. 31.3

Paulus 4 ad plaut.

Si ita legetur: " heres dare damnas esto, si in capitolium non ascenderit", utile legatum est, quamvis in potestate eius sit ascendere vel non ascendere.

Dig. 31.4

Paulus 8 ad plaut.

Neminem eiusdem rei legatae sibi partem velle, partem nolle verius est.

Dig. 31.5

Paulus 7 quaest.

Sed duobus legatis relictis unum quidem repudiare, alterum vero amplecti posse respondetur.

Dig. 31.5.1

Paulus 7 quaest.

Sed si unum ex legatis onus habet, et hoc repellatur, non idem dicendum est: pone eum, cui decem et stichus legatus est, rogatum servum manumittere: si falcidia locum habet, ex decem utriusque legati quarta deducetur. igitur repudiato servo non evitabitur onus deductionis, sed legatarius ex pecunia duas quartas relinquet.

Dig. 31.6

Paulus l.S. ad l. falcid.

Grege autem legato non potest quaedam sperni, quaedam vindicari, quia non plura, sed unum legatum est. idemque dicemus peculio legato aut veste aut argento et similibus.

Dig. 31.7

Paulus 8 ad plaut.

Si titio et ei qui capere non potest decem legata sint, quia duobus heres dare damnatur et unus capere non potest, quinque sola titio dantur.

Dig. 31.8pr.

Paulus 9 ad plaut.

Si quis servum heredis vel alienum legaverit et is fugisset, cautiones interponendae sunt de reducendo eo: sed si quidem vivo testatore fugerit, expensis legatarii reducitur, si post mortem, sumptibus heredis.

Dig. 31.8.1

Paulus 9 ad plaut.

Si ita legetur: " sempronio decem aut, si noluerit, hominem stichum lego", hoc casu duo legata sunt, sed uni contentus esse debet.

Dig. 31.8.2

Paulus 9 ad plaut.

Si quis legaverit ex illo dolio amphoras decem, etsi non decem, sed pauciores inveniri possint, non exstinguitur legatum, sed hoc tantummodo accipit, quod invenitur.

Dig. 31.8.3

Paulus 9 ad plaut.

Si inter duos dubitetur de eodem legato, cui potius dari oportet, ut puta si titio relictum est et duo eiusdem nominis amici testatoris veniant et legatum petant et heres solvere paratus sit, deinde ambo defendere heredem parati sint, eligere debere heredem, cui solvat, ut ab eo defendatur.

Dig. 31.8.4

Paulus 9 ad plaut.

Certam pecuniam legatam si et legatarius et substituti legatarii peterent et heres solvere paratus sit, si ambo defendere heredem parati sint, eligere debet heres cui solvat, ut ab eo defendatur: et, si neutrius manifesta calumnia videatur, ei potius solvendum, cui primum legatum est.

Dig. 31.8.5

Paulus 9 ad plaut.

Si cui certam partem hereditatis legavero, divus hadrianus rescripsit, ut neque pretia manumissorum neque funeris impensa deduceretur.

Dig. 31.9

Modestinus 9 reg.

Cum autem pars bonorum ita legatur: " bonorum meorum, quae sunt cum moriar", dos et manumissorum pretia e medio deducenda sunt.

Dig. 31.10

Iavolenus 1 ex plaut.

Cum fundus nominatim legatus sit, si quid ei post testamentum factum adiectum est, id quoque legato cedit, etiamsi illa verba adiecta non sint " qui meus erit", si modo testator eam partem non separatim possedit, sed universitati prioris fundi adiunxit.

Dig. 31.11pr.

Pomponius 7 ex plaut.

Statuliberum ab herede ne tunc quidem, cum dubia sit eius ex testamento libertas, legatum sine libertate accipere posse labeo ait, quia servus eius esset: sed si heres eandem condicionem legato inserat, quae libertati a testatore datae praeposita fuerit, valet legatum: nam et si, cum moreretur heres, servus liber esse iussus esset, recte sine libertate ei ab herede legari posse constitit, quia supervacuum sit ei libertatem dare, quam ex testamento heredis capturus non sit, sed ex testatoris habet.

Dig. 31.11.1

Pomponius 7 ex plaut.

"stichum aut pamphilum, utrum heres meus volet, titio dato, dum, utrum velit dare, eo die, quo testamentum meum recitatum erit, dicat". si non dixerit heres, pamphilum an stichum dare malit, perinde obligatum eum esse puto, ac si stichum aut pamphilum dare damnatus esset, utrum legatarius elegerit. si dixerit se stichum dare velle, sticho mortuo liberari eum: si ante diem legati cedentem alter mortuus fuerit, alter qui supererit in obligatione manebit. cum autem semel dixerit heres, utrum dare velit, mutare sententiam non poterit. et ita et iuliano placuit.

Dig. 31.12pr.

Paulus 2 ad vitell.

Si pecunia legata in bonis legantis non sit, solvendo tamen hereditas sit, heres pecuniam legatam dare compellitur sive de suo sive ex venditione rerum hereditariarum sive unde voluerit.

Dig. 31.12.1

Paulus 2 ad vitell.

Quod ita legatum est: " heres cum morietur lucio titio dato decem", cum incerta die legatum est, ad heredes legatarii non pertinet, si vivo herede decesserit.

Dig. 31.13pr.

Pomponius 7 ex plaut.

Qui duos reos eiusdem pecuniae habet titium atque maevium, ita legavit: " quod mihi titius debet, maevio heres meus dato. quod maevius debet, seio dato". his verbis onerat heredem: nam cum actiones suas heres maevio praestiterit adversus titium, videtur maevius facto eius liberatus esse et idcirco seio heres tenebitur.

Dig. 31.13.1

Pomponius 7 ex plaut.

Si is qui unum reum habebat quod is sibi deberet duobus in solidum separatim legasset, oneratur heres duobus satisfacere uni actione cedendo, alteri pecuniam solvendo.

Dig. 31.14pr.

Paulus 4 ad vitell.

Si idem servus et legatus et liber esse iussus sit, favor libertatis praevalet: sin autem et in posteriore scriptura legatus est et evidens ademptio libertatis ostenditur, legatum propter defuncti voluntatem praevalebit.

Dig. 31.14.1

Paulus 4 ad vitell.

Servo alieno herede instituto post mortem domini eius cui adquisita hereditas et libertatem fideicommissariam dari posse constat.

Dig. 31.15

Celsus 6 Dig.

Si quis duobus heredibus institutis ita legaverit: " stichum aut decem heredes danto", non potest alter heredum quinque, alter partem stichi dare, sed necesse est utrumque aut stichum totum aut decem solvere.

Dig. 31.16

Celsus 16 Dig.

Si titio aut seio, utri heres vellet, legatum relictum est, heres alteri dando ab utroque liberatur: si neutri dat, uterque perinde petere potest atque si ipsi soli legatum foret: nam ut stipulando duo rei constitui possunt, ita et testamento potest id fieri.

Dig. 31.17pr.

Marcellus 10 Dig.

Si quis titio decem legaverit et rogaverit, ut ea restituat maevio, maeviusque fuerit mortuus, titii commodo cedit, non heredis, nisi dumtaxat ut ministrum titium elegit. idem est et si ponas usum fructum legatum.

Dig. 31.17.1

Marcellus 10 Dig.

Si heres damnatus esset decem uni ex libertis dare et non constituerit cui daret, heres omnibus eadem decem praestare cogendus est.

Dig. 31.18

Celsus 17 Dig.

Heredem meum ita tibi obligare possum, ut si, quandoque ego moriar, tuus servus stichus non erit, dare eum tibi damnas sit.

Dig. 31.19

Celsus 18 Dig.

Si is, cui legatus sit stichus aut pamphilus, cum stichum sibi legatum putaret, vindicaverit, amplius mutandae vindicationis ius non habet: tamquam si damnatus heres alterutrum dare stichum dederit, cum ignoret sibi permissum vel pamphilum dare, nihil repetere possit.

Dig. 31.20

Celsus 19 Dig.

Et proculo placebat et a patre sic accepi, quod servo communi legatum sit, si alter dominorum omitteret, alteri non adcrescere: non enim coniunctim, sed partes legatas: nam ambo si vindicarent, eam quemque legati partem habiturum, quam in servo haberet.

Dig. 31.21

Celsus 20 Dig.

Cum quidam uxori suae dotem reddidisset, quadraginta ei legare voluisset et quamquam sciret dotem redditam, hoc tamen praetextu usus esset, quasi dotis reddendae nomine eam summam legaret, existimo deberi quadraginta: etenim reddendi verbum quamquam significationem habet retro dandi, recipit tamen et per se dandi significationem.

Dig. 31.22

Celsus 21 Dig.

Lucius titius in testamento suo publio maevio militiam suam reliquit sive pecuniam eius quaecumque redigi ex venditione eius potuerit, cum suis commodis: sed cum supervixit testamento lucius titius, militiam vendidit et pretium exegit et dedit ei, cui illam militiam vel pretium eius testamento dari voluerit: post mortem lucii titii iterum publius maevius vel militiam vel pretium eius ab heredibus lucii titii exigebat. celsus: existimo pretium militiae praestari non oportere, nisi legatarius ostenderit testatorem et post factam solutionem iterum eum pretium militiae accipere voluisse. quod si non totum pretium militiae, sed partem vivus testator legatario dedit, reliqui superesse exactionem, nisi heres et ab hoc decessisse testatorem ostenderit. onus enim probandi mutatam esse defuncti voluntatem ad eum pertinet, qui fideicommissum recusat.

Dig. 31.23

Marcellus 13 Dig.

"lucio titio fundum seianum vel usum fructum fundi seiani lego". potest legatarius vel fundum vindicare vel fructum, quod facere non potest is cui tantum fundus legatus est.

Dig. 31.24

Ulpianus 2 fideic.

Cum quidam ita fideicommissum reliquisset: " rogo restituas libertis meis, quibus voles", Marcellus putavit posse heredem et indignum praeferre. at si ita:: his quos dignos putaveris", petere posse ait eos qui non offenderint. idem ait, si neminem eligat, omnes ad petitionem fideicommissi admitti videri quasi iam praesenti die datum, cum sic relinquitur " quibus voles" nec ulli offerat. plane si ceteri defuncti sunt, superstiti dandum vel heredi eius, si prius quam peteret decessit. scaevola autem notat: si omnes petere potuerunt, cum nulli offertur, cur non et qui decesserunt, ad heredem transmiserunt, utique si uno petente iam eligere non potest, cui det? videtur enim Marcellus, cum fideicommissum ita relinquitur " ex libertis cui volueris", arbitrari, nisi offerat cui heres velit et statim offerat sine aliquo scilicet intervallo, statim competere omnibus petitionem: cum igitur omnibus competat, merito notatus est, cur superstiti soli putet dandum, nisi forte antequam iustum tempus praetereat, quo potuit eligere cui potius offerat, ceteri decesserint.

Dig. 31.25

Marcellus 15 Dig.

Si tamen quibusdam absentibus praesentes petent, cum praesenti die relictum sit fideicommissum, causa cognita statuendum est explorandumque, an et alii sint petituri.

Dig. 31.26

Marcellus 16 Dig.

Is, cuius in servo proprietas erat, fructuario herede instituto alicui eum servum legavit. non potest heres doli mali exceptione uti, si legatarius vindicare servum vellet non relicto heredi usu fructu.

Dig. 31.27

Celsus 34 Dig.

Si illud aut illud legatum sit, unum legatum est. si sub contrariis condicionibus aliud atque aliud legatum est, unum legatum esse arbitramur. neque refert et heredum et eorum quibus legatum est diversas personas esse, veluti si ita legatum est: " si nerva consul factus erit, titius heres attio fundum, si non erit nerva consul factus, seius heres maevio centum dato".

Dig. 31.28

Marcellus 29 Dig.

Cum patronus ex debita parte institutus fideicommissum relictum ab eo praestare non cogitur: si omiserit institutionem, qui eam partem vindicant utrum eodem modo retinere an vero praestare debeant fideicommissum? et magis est deberi fideicommissum, quoniam quod illius personae praestaretur, hoc nequaquam ad alium pertinere deberet.

Dig. 31.29pr.

Celsus 36 Dig.

Pater meus referebat, cum esset in consilio duceni veri consulis, itum in sententiam suam, ut, cum otacilius catulus filia ex asse herede instituta liberto ducenta legasset petissetque ab eo, ut ea concubinae ipsius daret, et libertus vivo testatore decessisset et quod ei relictum erat apud filiam remansisset, cogeretur filia id fideicommissum concubinae reddere.

Dig. 31.29.1

Celsus 36 Dig.

Quod alicuius heredis nominatim fidei committitur, potest videri ita demum dari voluisse, si ille exstitisset heres.

Dig. 31.29.2

Celsus 36 Dig.

Si filio heredi pars eius, a quo nominatim legatum est, adcrescit, non praestabit legatum, quod iure antiquo capit.

Dig. 31.30

Celsus 37 Dig.

Quidam in testamento ita scripsit: " rei publicae graviscanorum lego in tutelam viae reficiendae, quae est in colonia eorum usque ad viam aureliam": quaesitum est, an hoc legatum valeat. iuventius celsus respondit: propemodum quidem imperfecta est haec scriptura in tutelam aureliae viae, quia summa adscripta non est: potest tamen videri tanta summa legata, quanta ei rei sufficeret: si modo non apparet aliam fuisse defuncti voluntatem aut ex magnitudine eius pecuniae aut ex mediocritate facultatium, quam testatrix reliquit: tunc enim officio iudicis secundum aestimationem patrimonii et legati quantitas definiri potest.

Dig. 31.31

Modestinus 1 reg.

Si quis quos non poterit manumittere legavit, ut manumitterentur, nec legatum nec libertas valet.

Dig. 31.32pr.

Modestinus 9 reg.

Omnia, quae testamentis sine die vel condicione adscribuntur, ex die aditae hereditatis praestentur.

Dig. 31.32.1

Modestinus 9 reg.

Fundum ante condicionem completam ab herede non traditum, sed a legatario detentum heres vindicare cum fructibus poterit.

Dig. 31.32.2

Modestinus 9 reg.

Cum ita legatur: " illi hoc amplius fundum illum cum omnibus rebus, quae in eodem fundo erunt", mancipia quoque continentur.

Dig. 31.32.3

Modestinus 9 reg.

Cum ita legatur: " quidquid in horreo meo erit" et is cui legatum est ex rebus non legatis ignorante eo ampliandi legati sui gratia in horreum intulerit, quod illatum est non videtur esse legatum.

Dig. 31.32.4

Modestinus 9 reg.

Quod a legatario petitum erat, ut alii restitueret, si legatarius decedat, heres quoque eius id quod legatum est praestare debebit.

Dig. 31.32.5

Modestinus 9 reg.

Species nominatim legatae si non repperiantur nec dolo heredis deesse probentur, peti ex eodem testamento non possunt.

Dig. 31.32.6

Modestinus 9 reg.

In fideicommisso quod familiae relinquitur hi ad petitionem eius admitti possunt, qui nominati sunt, aut post omnes eos exstinctos qui ex nomine defuncti fuerint eo tempore, quo testator moreretur, et qui ex his primo gradu procreati sint, nisi specialiter defunctus ad ulteriores voluntatem suam extenderit.

Dig. 31.33pr.

Modestinus 9 resp.

Respondit: legatorum petitio adversus heredes pro partibus hereditariis competit nec pro his qui solvendo non sunt onerari coheredes oportet.

Dig. 31.33.1

Modestinus 9 resp.

Qui plures heredes instituit, testamento a quibusdam nominatim reliquit legata, postea codicillos ad omnes heredes scripsit: quaero, quae legata debeant. modestinus respondit: cum manifeste testator testamento expresserit, a quibus heredibus legata praestari vellet, licet codicillos ad omnes scripserit, apparet tamen ea quae codicillis dedit ab his praestanda esse, quos munere fungi debere testamento suo ostendit testator.

Dig. 31.34pr.

Modestinus 10 resp.

Titia cum testamento facto decederet heredibus institutis maevia et sempronio filiis suis ex aequis partibus, petit a maevia, ut stichum servum suum manumitteret, in haec verba: " a te autem, maevia filia carissima, peto, ut stichum servum tuum manumittas, cum in ministerio tuo tot capita servorum tibi his codicillis legavero", nec legavit. quaero, quid his verbis relictum videatur, cum, ut supra cautum est, duobus heredibus institutis defunctam testatricem et mancipia hereditaria duarum personarum fuisse, et codicillis nihil relictum sit de praestandis mancipiis nec possit utile fideicommissum putari, quod datum non sit, cum legasse se dixerit nec adiecerit legati speciem nec ab herede uti praestarentur mancipia petierit. modestinus respondit ex verbis consultationi insertis maeviam neque legati neque fideicommissi petitionem habere neque libertatem servo suo dare compelli.

Dig. 31.34.1

Modestinus 10 resp.

Lucius titius in testamento suo ita cavit: " octabiany stratoniky ty glukutaty mou vugatri xairein. boulomai autyn par' heautys labein xwrion gazan sun tais envykais autou pasais. oktabianw alecandrw tw glukutatw mou uhiw. ecaireton boulomai auton par' heautou labein sugktysin agwnoforon komianyn sun ahis exei envykais pasais". quaero, an huiusmodi scriptura integrum praedium singulis datum esse videatur an vero partem hereditariam dumtaxat contineat, cum inutiliter a semet ipso quemque eorum quam habebat partem accipere voluit. modestinus respondit non sic interpretandam scripturam de qua quaeritur, ut fideicommissum inutile fiat. item quaero, si integrum praedium relictum esse videatur, an pretium portionis fratri et coheredi solvendum sit, ut hoc ipso, quod a semet ipso accipere praecepit, pretio illato integrum habere eum voluerit. item respondit ad solutionem pretii fideicommissarium minime compellendum.

Dig. 31.34.2

Modestinus 10 resp.

Lucia titia intestata moriens a filiis suis per fideicommissum alieno servo domum reliquit: post mortem filii eius idem qui heredes cum diviserunt hereditatem matris, diviserunt etiam domum, in qua divisione dominus servi fideicommissarii quasi testis adfuit: quaero, an fideicommissi persecutionem adquisitam sibi per servum eo, quod interfuit divisioni, amisisse videatur. modestinus respondit fideicommissum ipso iure amissum non esse, quod ne repudiari quidem potest: sed nec per doli exceptionem summovetur, nisi evidenter apparuerit omittendi fideicommissi causa hoc eum fecisse.

Dig. 31.34.3

Modestinus 10 resp.

Gaius seius cum domum suam haberet et in praetorio uxoris suae transtulisset, quasdam res de domo sua in eodem praetorio transtulit ibique post multos dies decedens testamento uxorem suam heredem et alios complures reliquit. quo testamento significavit verba, quae infra scripta sunt: " in primis sciant heredes mei nullam pecuniam esse penes uxorem meam, sed nec aliud quicquam: ideoque hoc nomine eam inquietari nolo". quaero, an ea, quae vivo eo in praetorio uxoris eius translata sunt, communi hereditati vindicari possint et an secundum verba testamenti praescribi coheredibus possit a parte uxoris defuncti. modestinus respondit, si ea, quae in domum seu praetorium uxoris defunctus transtulit, praecipua ad eam pertinere voluit, nihil proponi, cur voluntate ipsius standum non sit. necesse igitur habet mulier talem voluntatem fuisse testatoris ostendere. quod nisi fecerit, in hereditate mariti et haec remanere oportet.

Dig. 31.34.4

Modestinus 10 resp.

Si ea condicione liberto fideicommissum relictum est, ne a filiis eius recederet, et per tutores factum est, quo minus condicionem impleret, iniquum est eum, cum sit inculpatus, emolumento fideicommissi carere.

Dig. 31.34.5

Modestinus 10 resp.

Qui invita filia de dote egerat, decessit eadem illa exheredata, filio herede instituto et ab eo fideicommissum filiae dotis nomine reliquit: quaero, quantum a fratre mulier consequi debeat. modestinus respondit: quod in primis est non esse consumptam de dote actionem mulieri, cum patri suo non consenserit, utique non ignoras. sic enim res explicatur, ut, si quidem maior quantitas in dote fuit, illius petitione sit tantummodo mulier contenta: quod si in summa dotis nomine legata amplius sit quam in dote principali, compensatio fiat usque ad eandem summam quae concurrit et id tantummodo, quod excedit in sequenti summa, ex testamento consequatur: non est enim verisimile patrem duplici praestatione dotis filium eundemque heredem onerare voluisse, praeterea cum putaverit se efficaciter licet non consentiente filia instituisse adversus generum de dote actionem.

Dig. 31.34.6

Modestinus 10 resp.

Lucius titius relictis duobus filiis suis heredibus diversi sexus institutis addidit caput generale, uti legata et libertates ab his heredibus suis praestarentur: quadam tamen parte testamenti a filio petit, ut omne onus legatorum in se sustineret, in hunc modum: " ea quaecumque in legatis reliqui vel dari praecepi, ab attiano filio meo et herede dari praestarique iubebo", deinde subiecit in praeceptione relinquenda filiae suae haec verba: " paulinae filiae meae dulcissimae si quid me vivo dedi comparavi, sibi habere iubeo: cuius rei quaestionem fieri veto. et peto a te, filia carissima, ne velis irasci, quod ampliorem substantiam fratri tuo reliquerim, quem scis magna onera sustentaturum et legata quae supra feci praestaturum". quaero, an ex his extremis verbis, quibus cum filia sua in testamento pater locutus est, effectum videatur, ut hereditariis actionibus id est omnibus filium suum oneraverit, an vero iam solum propter onus legatorum locutus esse videatur, petitiones autem hereditariae in utrumque heredem creditoribus dari debeant. modestinus respondit, ut actiones creditorum filius solus excipiat, iussisse testatorem non proponi.

Dig. 31.34.7

Modestinus 10 resp.

Titia cum nuberet gaio seio, dedit in dotem praedia et quasdam alias res, postea decedens codicillis ita cavit: " gaion seion ton andra mou parakatativemai soi, w vugater. hw boulomai dovynai eis biou xrysin kai epikarpian metoxyn kwmys naklynwn, hyn efvasa dedwkuia eis proika, sun swmasi tois emferomenois ty proiki, kai kata myden enoxlyvynai auton peri tys proikos: estai gar meta tyn teleutyn autou sa kai twn teknwn sou " : praeterea alia multa huic eidem marito legavit, ut quamdiu viveret haberet. quaero, an propter haec, quae codicillis ei extra dotem relicta sunt, possit post mortem gaii seii ex causa fideicommissi petitio filiae et heredi titiae competere et earum rerum nomine, quas in dotem gaius seius accepit. modestinus respondit: licet non ea verba proponuntur, ex quibus filia testatricis fideicommissum a gaio seio, postquam praestiterit quae testamento legata sunt, petere possit, tamen nihil prohibet propter voluntatem testatricis post mortem gaii seii fideicommissum peti.

Dig. 31.35

Modestinus 16 resp.

Respondit legatis uxori quae usus eius causa parata sunt, eos servos ad eam non pertinere, qui non proprii ipsius, sed communis usus causa parati sunt.

Dig. 31.36

Modestinus 3 pand.

Legatum est donatio testamento relicta.

Dig. 31.37

Iavolenus 1 ex cass.

Qui testamento inutiliter manumissus est legari eodem testamento potest, quia totiens efficacior est libertas legato, quotiens utiliter data est.

Dig. 31.38

Iavolenus 2 ex cass.

Quod servus legatus ante aditam hereditatem adquisiit, hereditati adquirit.

Dig. 31.39

Iavolenus 3 ex cass.

Si areae legatae post testamentum factum aedificium impositum est, utrumque debebitur et solum et superficium.

Dig. 31.40

Iavolenus 1 epist.

Si duobus servis meis eadem res legata est et alterius servi nomine ad me eam pertinere nolo, totum ad me pertinebit, quia partem alterius servi per alterum servum adquiro, perinde ac si meo et alterius servo esset legatum.

Dig. 31.41pr.

Iavolenus 7 epist.

"maevio fundi partem dimidiam, seio partem dimidiam lego: eundem fundum titio lego". si seius decesserit, pars eius utrique adcrescit, quia cum separatim et partes fundi et totus legatus sit, necesse est, ut ea pars quae cessat pro portione legati cuique eorum, quibus fundus separatim legatus est, adcrescat.

Dig. 31.41.1

Iavolenus 7 epist.

A me herede uxori meae ita legatum est: " quidquid propter titiam ad seium dotis nomine pervenit, tantam pecuniam seius heres meus titiae det": quaero, an deductiones impensarum fieri possint, quae fierent, si de dote ageretur. respondit: non dubito, quin uxori suae quod ita legatum est: " a te heres peto, quidquid ad te pervenisset, ut tantum ei dares", tota dos sine ratione deductionis impensarum mulieri debeatur. non autem idem ius servari debet ex testamento extranei, quod servatur in testamento viri, qui dotem uxori relegavit. haec enim taxationis loco habenda est " quidquid ad te pervenit": illic autem, ubi vir uxori relegat, id videtur legare, quod in iudicio dotis mulier consecutura fuerit.

Dig. 31.42

Iavolenus 11 epist.

Cum ei, qui partem capiebat, legatum esset, ut alii restitueret, placuit solidum capere posse.

Dig. 31.43pr.

Pomponius 3 ad q. muc.

Si ita relictum fuerit: " quantum heres meus habebit, tantum tithaso dari volo", pro eo est, quasi ita sit scriptum: " quantum omnes heredes habebunt".

Dig. 31.43.1

Pomponius 3 ad q. muc.

Quod si ita fuerit: " quantum unus heres habebit, tantum tithaso heredes meos dare volo", minor pars erit accipienda, quae venit in legato.

Dig. 31.43.2

Pomponius 3 ad q. muc.

Pegasus solitus fuerat distinguere, si in diem fideicommissum relictum sit, veluti post annos decem, interesse, cuius causa tempus dilatum sit, utrumne heredis, quo casu heredem fructum retinere debere, an legatarii, veluti si in tempus pubertatis ei qui impubes sit fideicommissum relictum sit, tunc enim fructus praestandos et antecedentis temporis. et haec ita intellegenda sunt, si non nominatim adiectum est, ut cum incremento heres fideicommissum praestet.

Dig. 31.43.3

Pomponius 3 ad q. muc.

Si ita scriptum sit: " decem aut quindecim heres dato", pro eo est ac si decem sola legata sint: aut si ita sit: " post annum aut post biennium, quam ego decessero, heres dato", post biennium videtur legatum, quia heredis esset potestas in eligendo.

Dig. 31.44pr.

Pomponius 4 ad q. muc.

Si pluribus heredibus institutis ita scriptum sit: " heres meus damnas esto dare aureos quinque", non quilibet heres, sed omnes videbuntur damnati, ut una quinque dent.

Dig. 31.44.1

Pomponius 4 ad q. muc.

Si ita legatum fuerit: " lucius titius heres meus tithaso quinque aureos dare damnas esto", deinde alio loco ita: " publius maevius heres meus tithaso quinque aureos damnas esto dare", nisi titius ostenderit adimendi causa a publio legatum esse relictum, quinos aureos ab utroque accipiet.

Dig. 31.45pr.

Pomponius 8 ad q. muc.

Si ita sit scriptum: " filiabus meis centum aureos do", an et masculini generis et feminini liberis legatum videatur? nam si ita scriptum esset: " filiis meis hosce tutores do", responsum est etiam filiabus tutores datos esse. quod non est ex contrario accipiendum, ut filiarum nomine etiam masculi contineantur: exemplo enim pessimum est feminino vocabulo etiam masculos contineri.

Dig. 31.45.1

Pomponius 8 ad q. muc.

Si sub condicione vel ex die certa nobis legatum sit, ante condicionem vel diem certum repudiare non possumus: nam nec pertinet ad nos, antequam dies veniet vel condicio exsistat ^ existat^.

Dig. 31.45.2

Pomponius 8 ad q. muc.

Si pater filiae suae testamento aureos tot heredem dare iusserit, ubi ea nupsisset, si filia nupta sit, cum testamentum fit, sed absente patre et ignorante, nihilo minus legatum debetur: si enim hoc pater non ignorabat, videtur de aliis nuptiis sensisse.

Dig. 31.46

Proculus 5 epist.

Si scripsisset qui legabat: " quidquid mihi lucium titium dare facere oportet, sempronio lego" nec adiecit " praesens in diemve", non dubitarem, quantum ad verborum significationem attineret, quin ea pecunia comprehensa non esset, cuius dies moriente eo, qui testamentum fecisset, nondum venisset. adiciendo autem haec verba " praesens in diemve" aperte mihi videtur ostendisse eam quoque pecuniam legare voluisse.

Dig. 31.47

Proculus 6 epist.

Sempronius proculus nepoti suo salutem. binae tabulae testamenti eodem tempore exemplarii causa scriptae (ut volgo fieri solet) eiusdem patris familias proferuntur: in alteris centum, in alteris quinquaginta aurei legati sunt titio: quaeris, utrum ^ centum^ et quinquaginta aureos an centum dumtaxat habiturus sit. proculus respondit: in hoc casu magis heredi parcendum est ideoque utrumque legatum nullo modo debetur, sed tantummodo quinquaginta aurei.

Dig. 31.48pr.

Proculus 8 epist.

Licinnius lucusta proculo suo salutem. cum faciat condicionem in releganda dote, ut, si mallet uxor mancipia quae in dotem dederit quam pecuniam numeratam, recipere, si ea mancipia uxor malit, numquid etiam ea mancipia, quae postea ex his mancipiis nata sunt, uxori debeantur, quaero. proculus lucustae suo salutem. si uxor mallet mancipia quam dotem accipere, ipsa mancipia, quae aestimata in dotem dedit, non etiam partus mancipiorum ei debebuntur.

Dig. 31.48.1

Proculus 8 epist.

Bonorum possessione dementis curatori data legata a curatore, qui furiosum defendit, peti poterunt: sed qui petent, cavere debebunt, si hereditas evicta fuerit, quod legatorum nomine datum sit redditu iri.

Dig. 31.49pr.

Paulus 5 ad l. iul. et pap.

Mortuo bove qui legatus est neque corium neque caro debetur.

Dig. 31.49.1

Paulus 5 ad l. iul. et pap.

Si titio frumentaria tessera legata sit et is decesserit, quidam putant exstingui legatum: sed hoc non est verum, nam cui tessera vel militia legatur, aestimatio videtur legata.

Dig. 31.49.2

Paulus 5 ad l. iul. et pap.

Labeo refert agrum, cuius commercium non habes, legari tibi posse trebatium respondisse, quod merito priscus fulcinius falsum esse aiebat.

Dig. 31.49.3

Paulus 5 ad l. iul. et pap.

Sed proculus ait, si quis heredem suum eum fundum, cuius commercium is heres non habeat, dare iusserat ei, qui eius commercium habeat, putat heredem obligatum esse, quod verius est, vel in ipsam rem, si haec in bonis testatoris fuerit, vel si non est, in eius aestimationem.

Dig. 31.49.4

Paulus 5 ad l. iul. et pap.

Si testator dari quid iussisset aut opus fieri aut munus dari, pro portione sua eos praestare, quibus pars hereditatis adcresceret, aeque atque cetera legata, placet.

Dig. 31.50pr.

Marcellus 28 Dig.

Ut heredibus substitui potest, ita etiam legatariis. videamus, an idem fieri possit et cum mortis causa donabitur, ut id promittat ille alteri, si ipse capere non poterit: quod magis est, quia in posterioris quoque persona donatio confertur.

Dig. 31.50.1

Marcellus 28 Dig.

Si titius mihi stichum aut decem debeat et legavero tibi stichum quem mihi debet, placet exstingui legatum decem solutis: et si diversis alii decem, alii stichus legatus fuerit, ex eventu solutionis legatum valet.

Dig. 31.50.2

Marcellus 28 Dig.

Cum ita legatum est: " quantam pecuniam heres meus a titio exegerit, tantam maevio dato", si sub condicione legatum est, antequam exacta pecunia sit, legatarius agere non potest: quod si statim dies legati cedit, ut publicius recte putat, legatarius agere potest, ut actiones praestentur.

Dig. 31.51pr.

Ulpianus 8 ad l. iul. et pap.

Si ita quis testamento suo cavisset: " illi quantum plurimum per legem accipere potest dari volo", utique tunc, cum quando capere potuerit, videtur ei relictum. sed et si dixerit: " quam maximam partem dare possum, damnas esto heres meus ei dare", idem erit dicendum.

Dig. 31.51.1

Ulpianus 8 ad l. iul. et pap.

Is cui in tempus liberorum tertia pars relicta est, utique non poterit adoptando tertiam partem consequi.

Dig. 31.52

Clementius 3 ad l. iul. et pap.

Non oportet prius de condicione cuiusquam quaeri, quam hereditas legatumve ad eum pertineat.

Dig. 31.53pr.

Clementius 4 ad l. iul. et pap.

Cum ab uno herede mulieri pro dote compensandi animo legatum esset eaque dotem suam ferre quam legatum maluit, utrum in omnes heredes, an in eum solum, a quo legatum est, actio ei de dote dari debeat, quaeritur. iulianus in eum primum, a quo legatum sit, actionem dandam putat: nam cum aut suo iure aut iudicio mariti contenta esse debeat, aequum esse eum, a quo ei maritus aliquid pro dote legaverat, usque ad quantitatem legati onus huius aeris alieni sustinere reliqua parte dotis ab heredibus ei praestanda.

Dig. 31.53.1

Clementius 4 ad l. iul. et pap.

Eadem erunt dicenda, si heres instituta pro dote omiserit hereditatem, ut in substitutum actio detur: et hoc verum est.

Dig. 31.53.2

Clementius 4 ad l. iul. et pap.

Sed de legatis et legis falcidiae ratione belle dubitatur, utrum is, in quem solum dotis actio detur, legata integra ex persona sua debeat, perinde ac si omnes heredes dotem praestarent, an dotem totam in aere alieno computare, quia in eum solum actio eius detur: quod sane magis rationem habere videtur.

Dig. 31.54

Clementius 13 ad l. iul. et pap.

Si cui fundus centum dignus legatus fuerit, si centum heredi vel cuilibet alii dederit, uberrimum videtur esse legatum: nam alias interest legatarii fundum potius habere quam centum: saepe enim confines fundos etiam supra iustam aestimationem interest nostra adquirere.

Dig. 31.55pr.

Gaius 12 ad l. iul. et pap.

Si titio et mihi eadem res legata fuerit et is die cedente legati decesserit me herede relicto et vel ex mea propria causa vel ex hereditaria legatum repudiavero, magis placere video partem defecisse.

Dig. 31.55.1

Gaius 12 ad l. iul. et pap.

Si eo herede instituto, qui vel nihil vel non totum capere potest, servo hereditario legatum fuerit, tractantibus nobis de capacitate videndum est, utrum heredis an defuncti persona an neutrius spectari debeat. et post multas varietates placet, ut, quia nullus est dominus, in cuius persona de capacitate quaeri possit, sine ullo impedimento adquiratur legatum hereditati atque ob id omnimodo ad eum pertineat, quicumque postea heres exstiterit, secundum quod accipere potest: reliqua autem pars ad eos, qui iure vocantur, venit.

Dig. 31.56

Gaius 14 ad l. iul. et pap.

Quod principi relictum est, qui ante, quam dies legati cedat, ab hominibus ereptus est, ex constitutione divi antonini successori eius debetur.

Dig. 31.57

Mauricius 2 ad l. iul. et pap.

Si augustae legaveris et ea inter homines esse desierit, deficit quod ei relictum est, sicuti divus hadrianus in plotinae et proxime imperator antoninus in faustinae augustae persona constituit, cum ea ante inter homines esse desiit, quam testator decederet.

Dig. 31.58

Gaius 14 ad l. iul. et pap.

Si cui res legata fuerit et omnino aliqua ex parte voluerit suam esse, totam adquirit.

Dig. 31.59

Clementius 15 ad l. iul. et pap.

Si mihi pure, servo meo vel pure vel sub condicione eadem res legata est egoque legatum quod mihi datum est repudiem, deinde condicione exsistente id, quod servo meo legatum est, vellem ad me pertinere, partem legati deficere responsum est: nisi si quis dubitet, an exsistente condicione, si servus vivat, omnimodo legatum meum fiat, quod semel ad me pertinere voluerim: quod aequius esse videtur. idem est et si duobus servis meis eadem res legetur.

Dig. 31.60

Ulpianus 16 ad l. iul. et pap.

Iulianus ait, si a filio herede legatum sit seio fideique eius commissum fuerit sub condicione ut titio daret, et titius pendente condicione decesserit, fideicommissum deficiens apud seium manet, non ad filium heredem pertinet, quia in fideicommissis potiorem causam habere eum, cuius fides electa sit, senatus voluit.

Dig. 31.61pr.

Ulpianus 18 ad l. iul. et pap.

Si titio et maevio heredibus institutis qui quadringenta relinquebat a titio ducenta legaverit et, quisquis heres esset, centum, neque maevius hereditatem adierit, trecenta titius debebit.

Dig. 31.61.1

Ulpianus 18 ad l. iul. et pap.

Iulianus quidem ait, si alter ex legitimis heredibus repudiasset portionem, cum essent ab eo fideicommissa relicta, coheredem eius non esse cogendum fideicommissa praestare: portionem enim ad coheredem sine onere pertinere. sed post rescriptum severi, quo fideicommissa ab instituto relicta a substitutis debentur, et hic quasi substitutus cum suo onere consequetur adcrescentem portionem.

Dig. 31.62

Licinius 4 reg.

Si alienus servus heres institutus fuerit, a domino eius fideicommissum relinqui potest. sed ita hoc fideicommissum dominus praestare debet, si per servum factus sit heres: quod si ante, quam iussu eius adiretur hereditas, servus manumissus fuerit et suo arbitrio adierit hereditatem, dominus id debiturus non est, quia heres factus non est, nec servus, quia rogatus non est. itaque utilis actio hoc casu competit, ut is, ad quem emolumentum hereditatis pervenerit, et fideicommissum praestare compellatur.

Dig. 31.63

Callistratus 4 ed. monit.

Si heres rem, legatam ignorans, in funus consumpsit, ad exhibendum actione non tenebitur, quia nec possidet nec dolo malo fecit quo minus possideret. sed per in factum actionem legatario consulitur, ut indemnitas ei ab herede praestetur.

Dig. 31.64

Papinianus 15 quaest.

Cum proponebatur in scriptura fideicommissi, quod pluribus sub condicione fuerat relictum, per errorem omissam mutuam substitutionem, quam testator in secundis tabulis, cum eosdem substitueret, expressit: divi marcus et commodus imperatores rescripserunt voluntatem manifestam videri mutuae factae substitutionis. etenim in causa fideicommissi utcumque precaria voluntas quaereretur, coniectura potuit admitti.

Dig. 31.65pr.

Papinianus 16 quaest.

Peculium legatum augeri et minui potest, si res peculii postea esse incipiant aut desinant. idem in familia erit, sive universam familiam suam sive certam (veluti urbanam aut rusticam) legaverit ac postea servorum officia vel ministeria mutaverit. eadem sunt lecticariis aut pedisequis legatis.

Dig. 31.65.1

Papinianus 16 quaest.

Quadrigae legatum equo postea mortuo perire quidam ita credunt, si equus ille decessit qui demonstrabat quadrigam: sed si medio tempore deminuta suppleatur, ad legatarium pertinebit.

Dig. 31.65.2

Papinianus 16 quaest.

Titio stichus legatus post mortem titii libertatem accepit: et legatum adita hereditate et libertas post mortem titii competit. idemque est et si moriente titio liber esse iussus est.

Dig. 31.65.3

Papinianus 16 quaest.

Si tamen titio ex parte herede instituto servus legatus sit et post mortem eius liber esse iussus sit, sive adierit hereditatem titius sive non adierit post cuius mortem libertas ei data est, defuncto eo libertas competit.

Dig. 31.66pr.

Papinianus 17 quaest.

Maevius fundum mihi ac titio sub condicione legavit, heres autem eius eundem sub eadem condicione mihi legavit. verendum esse iulianus ait, ne existente condicione pars eadem ex utroque testamento mihi debeatur. voluntatis tamen quaestio erit: nam incredibile videtur id egisse heredem, ut eadem portio bis eidem debeatur, sed verisimile est de altera parte eum cogitasse. sane constitutio principis, qua placuit eidem saepe legatum corpus non onerare heredem, ad unum testamentum pertinet. debitor autem non semper quod debet iure legat, sed ita, si plus sit in specie legati: si enim idem sub eadem condicione relinquitur, quod emolumentum legati futurum est?

Dig. 31.66.1

Papinianus 17 quaest.

Duorum testamentis pars fundi, quae maevii est, titio legata est: non ineleganter probatum est ab uno herede soluta parte fundi, quae maevii fuit, ex alio testamento liberationem optingere, neque postea parte alienata revocari actionem semel extinctam.

Dig. 31.66.2

Papinianus 17 quaest.

Sed si pars fundi simpliciter, non quae maevii fuit, legetur, solutio prior non peremit alteram actionem, atque etiam hanc eandem partem aliquo modo suam factam poterit alter heres solvere: neque plures in uno fundo dominium iuris intellectu, non divisione corporis optinent.

Dig. 31.66.3

Papinianus 17 quaest.

Non idem respondetur, cum duobus testamentis generatim homo legatur: nam qui solvente altero legatarii factus est quamvis postea sit alienatus, ab altero herede idem solvi non poterit: eademque ratio stipulationis est. hominis enim legatum orationis compendio singulos homines continet utque ab initio non consistit in his qui legatarii fuerunt, ita frustra solvitur cuius dominium postea legatarius adeptus est, tametsi dominus esse desinit.

Dig. 31.66.4

Papinianus 17 quaest.

In fundo legato si heres sepelierit, aestimatio referenda erit ad totum pretium fundi, quo potuit ante sepulturam aestimari: quare si fuerit solutus, actionem adhuc ex testamento propter locum alienatum durare rationis est.

Dig. 31.66.5

Papinianus 17 quaest.

Eum, qui ab uno ex heredibus, qui solus oneratus fuerat, litis aestimationem legatae rei abstulit, postea codicillis apertis ab omnibus heredibus eiusdem rei relictae dixi dominium non quaerere: eum enim, qui pluribus speciebus iuris uteretur, non saepius eandem rem eidem legare, sed loqui saepius.

Dig. 31.66.6

Papinianus 17 quaest.

Fundo legato si usus fructus alienus sit, nihilo minus petendus est ab herede: usus fructus enim etsi in iure, non in parte consistit, emolumentum tamen rei continet: enimvero fundo relicto ob reliquas praestationes, quae legatum sequuntur, agetur, verbi gratia si fundus pignori datus vel aliena possessio sit. non idem placuit de ceteris servitutibus. sin autem res mea legetur mihi, legatum propter istas causas non valebit.

Dig. 31.66.7

Papinianus 17 quaest.

A municipibus heredibus scriptis detracto usu fructu legari proprietas potest, quia non utendo possunt usum fructum amittere.

Dig. 31.67pr.

Papinianus 19 quaest.

Unum ex familia propter fideicommissum a se cum moreretur relictum heres eligere debet: ei quem elegit frustra testamento suo legat quod, posteaquam electus est, ex alio testamento petere potest. utrum ergo non constitit quod datur, quasi creditori relictum, an, quamdiu potest mutari voluntas, non recte creditori comparabitur? sive tamen durat electio, fuisse videtur creditor, sive mutetur, ex neutro testamento petitio competit.

Dig. 31.67.1

Papinianus 19 quaest.

Si de falcidia quaeratur, perinde omnia servabuntur ac si nominatim ei, qui postea electus est, primo testamento fideicommissum relictum fuisset: non enim facultas necessariae electionis propriae liberalitatis beneficium est: quid est enim, quod de suo videatur reliquisse, qui quod relinquit omnimodo reddere debuit?

Dig. 31.67.2

Papinianus 19 quaest.

Itaque si, cum forte tres ex familia essent eius, qui fideicommissum reliquit, eodem vel dispari gradu, satis erit uni reliquisse: nam postquam paritum est voluntati, ceteri condicione deficiunt.

Dig. 31.67.3

Papinianus 19 quaest.

Sed si uno ex familia herede instituto ille fundus extraneo relictus est, perinde fideicommissum ex illo testamento petetur, ac si nemo de familia heredi heres exstitisset. verum is, qui heres scriptus est, ratione doli exceptionis ceteris fideicommissum petentibus facere partem intellegitur: nam quae ratio ceteros admittit, eadem tacitam inducit pensationem.

Dig. 31.67.4

Papinianus 19 quaest.

Si duos de familia non aequis portionibus heredes scripserit et partem forte quartam extero eiusdem fundi legaverit, pro his quidem portionibus, quas iure hereditario retinent, fideicommissum non petetur, non magis quam si alteri fundum praelegasset: pro altera vero parte, quae in exterum collata est, virilem qui sunt de familia petent admissa propter heredes virilium portionum pensatione.

Dig. 31.67.5

Papinianus 19 quaest.

Sed et si fundum heres uni ex familia reliquerit eiusque fidei commiserit, ut eum extero restituat, quaesitum est, an hoc fideicommissum peti possit. dixi ita demum peti posse, si fundi pretium efficiat. sed si quidem ille prior testator ita fideicommissum reliquisset: " rogo fundum cui voles aut quibus voles ex familia relinquas", rem in expedito fore: quod si talia verba fuissent: " peto non fundus de familia exeat", heredis heredem propter sequens fideicommissum, quod in exterum collatum est, oneratum intellegi, petituris deinceps ceteris ex primo testamento fideicommissum post mortem videlicet eius qui primo electus est.

Dig. 31.67.6

Papinianus 19 quaest.

Et ideo si electo uno fideicommissum in exterum non conferatur, non alias ei qui electus est fideicommissum praestandum erit, quam interpositis cautionibus: " fundum, cum morietur, si non in familia cum effectu relinqueretur, restitui".

Dig. 31.67.7

Papinianus 19 quaest.

"rogo, fundum cum morieris restituas ex libertis cui voles". quod ad verba attinet, ipsius erit electio nec petere quisquam poterit, quamdiu praeferri alius potest: defuncto eo prius quam eligat petent omnes. itaque eveniet, ut quod uni datum est vivis pluribus unus petere non possit, sed omnes petant quod non omnibus datum est, et ita demum petere possit unus, si solus moriente eo superfuit.

Dig. 31.67.8

Papinianus 19 quaest.

Si rem tuam, quam existimabam meam, te herede instituto titio legem, non est neratii prisci sententiae nec constitutioni locus, qua cavetur non cogendum praestare legatum heredem: nam succursum est heredibus, ne cogerentur redimere, quod testator suum existimans reliquit: sunt enim magis in legandis suis rebus quam in alienis comparandis et onerandis heredibus faciliores voluntates: quod in hac specie non evenit, cum dominium rei sit apud heredem.

Dig. 31.67.9

Papinianus 19 quaest.

Si omissa fideicommissi verba sint et cetera quae leguntur cum his, quae scribi debuerunt, congruant, recte datum et minus scriptum exemplo institutionis legatorumque intellegetur: quam sententiam optimus quoque imperator noster severus secutus est.

Dig. 31.67.10

Papinianus 19 quaest.

Item marcus imperator rescripsit verba, quibus testator ita caverat " non dubitare se, quodcumque uxor eius cepisset, liberis suis reddituram", pro fideicommisso accipienda. quod rescriptum summam habet utilitatem, ne scilicet honor bene transacti matrimonii, fides etiam communium liberorum decipiat patrem, qui melius de matre praesumpserat: et ideo princeps providentissimus et iuris religiosissimus cum fideicommissi verba cessare animadverteret, eum sermonem pro fideicommisso rescripsit accipiendum.

Dig. 31.68

Paulus 11 quaest.

Sequens quaestio est, an etiam quae vivus per donationem in uxorem contulit in fideicommissi petitionem veniant. respondi ea extra causam bonorum defuncti computari debere et propterea fideicommisso non contineri, quia ea habitura esset etiam alio herede exsistente. plane nominatim maritus uxoris fidei committere potest, ut et ea restituat.

Dig. 31.69pr.

Papinianus 19 quaest.

"peto, luci titi, contentus sis centum aureis". fideicommissum valere placuit idque rescriptum est. quid ergo si, cum heredem ex parte instituisset, ita locutus est: " peto pro parte tua contentus sis, luci titi, centum aureis?" petere poterunt coheredes partem hereditatis, retinente sive praecipiente quo contentum esse voluit defunctus. sine dubio facilius est hoc probare, quam probari potuit illud, cum ibi fideicommissum petatur ab his, cum quibus non est testator locutus. idem dicemus, si, cum ex asse scripsisset heredem, eius gratia, qui legitimus heres futurus esset, ita loquatur: " peto pro hereditate, quam tibi reliqui, quae ad fratrem meum iure legitimo rediret, contentus sis centum aureis".

Dig. 31.69.1

Papinianus 19 quaest.

Praedium, quod nomine familiae relinquitur, si non voluntaria facta sit alienatio, sed bona heredis veneant, tamdiu emptor retinere debet, quamdiu debitor haberet bonis non venditis, post mortem eius non habiturus quod exter heres praestare cogeretur.

Dig. 31.69.2

Papinianus 19 quaest.

Mater filio impubere herede instituto tutorem eidem adscripsit eiusque fidei commisit, ut, si filius suus intra quattuordecim annos decessisset, restitueret hereditatem sempronio. non ideo minus fideicommissum recte datum intellegi debet, quia tutorem dare mater non potuit. nam et si pater non iure facto testamento tutoris fidei commiserit, aeque praestabitur, quemadmodum si iure testamentum factum fuisset: sufficit enim, ut ab impubere datum fideicommissum videatur, ab eo dari, quem is qui dabat tutorem dederat vel etiam tutorem fore arbitrabatur. idem in curatore impuberis vel minoris annis debet probari. nec interest, tutor recte datus vivo patre moriatur vel aliquo privilegio excusetur vel tutor esse non possit propter aetatem, cui tutor fuerat datus: quibus certe casibus fideicommissum non intercidit, quod a pupillo datum videtur. hac denique ratione placuit a tutore, qui nihil accepit, fideicommissum pupillo relinqui non posse, quoniam quod ab eo relinquitur extero, non ipsius proprio, sed pupilli iure debeatur.

Dig. 31.69.3

Papinianus 19 quaest.

Fratre herede instituto petit, ne domus alienaretur, sed ut in familia relinqueretur. si non paruerit heres voluntati, sed domum alienaverit vel extero herede instituto decesserit, omnes fideicommissum petent qui in familia fuerunt. quid ergo si non sint eiusdem gradus? ita res temperari debet, ut proximus quisque primo loco videatur invitatus. nec tamen ideo sequentium causa propter superiores in posterum laedi debet, sed ita proximus quisque admittendus est, si paratus sit cavere se familiae domum restituturum. quod si cautio non fuerit ab eo, qui primo loco admissus est, desiderata, nulla quidem eo nomine nascetur condictio, sed si domus ad exterum quandoque pervenerit, fideicommissi petitio familiae competit. cautionem autem ratione doli mali exceptionis puto iuste desiderari, , quamvis nemo alius ulterior ex familia supersit.

Dig. 31.69.4

Papinianus 19 quaest.

Si quidam sint postea emancipati, tractari potest, an hi quoque recte fideicommissum petant. et puto recte petituros, quoniam familiae appellatione personae quoque hae demonstratae intelleguntur.

Dig. 31.70pr.

Papinianus 20 quaest.

Imperator antoninus rescripsit legatarium, si nihil ex legato accepit, ei cui debet fideicommissum actionibus suis posse cedere nec id cogendum solvere. quid ergo si non totum, sed partem legati relicti restituere rogatus abstineat eo? utrum actionibus suis in totum cogetur cedere, an vero non nisi ad eam quantitatem, quae fideicommisso continetur? quod ratio suadet. sed et si legatum perceperit, non amplius ex causa fideicommissi cogendus erit solvere, quam recepit.

Dig. 31.70.1

Papinianus 20 quaest.

Si centum legatis duplum restituere rogatus sit, ad summam legati videbitur constituisse: si autem post tempus fideicommissum relictum sit, usurarum dumtaxat additamentum admittetur. nec mutanda sententia erit, quod forte legato percepto magnum emolumentum ex aliquo negotio consecutus est aut poenam stipulationis imminentem evasit. haec ita, si quantitas cum quantitate conferatur. enimvero si pecunia accepta rogatus sit rem propriam, quamquam maioris pretii est, restituere, non est audiendus legatarius, legato percepto si velit computare: non enim aequitas hoc probare patitur, si quod legatorum nomine perceperit legatarius offerat.

Dig. 31.70.2

Papinianus 20 quaest.

Cum quidam filio suo ex parte herede instituto patruum eius coheredem ei dedisset et ab eo petisset, ut filium suum pro virili portione filiis suis coheredem faceret: si quidem minus esset in virili portione, quam fratris hereditas habuit, nihil amplius peti posse, quod si plus, etiam fructuum, quos patruus percepit vel, cum percipere potuerit, dolo non cepit, habendam esse rationem responsum est, non secus quam si centum milibus legatis rogetur post tempus maiorem quantitatem restituere.

Dig. 31.70.3

Papinianus 20 quaest.

Cum autem rogatus, quidquid ex hereditate superesset, post mortem suam restituere de pretio rerum venditarum alias comparat, deminuisse quae vendidit non videtur,

Dig. 31.71

Papinianus 8 resp.

Sed quod inde comparatum est, vice permutati dominii restitueretur.

Dig. 31.72

Papinianus 20 quaest.

Idem servandum erit et si proprios creditores ex ea pecunia dimiserit: non enim absumitur, quod in corpore patrimonii retinetur.

Dig. 31.73

Papinianus 23 quaest.

Si quod ex pamphila nascetur legatum mihi fuerit et ego pamphilam emam eaque apud me sit enixa, ratione summa responsum est non ex causa lucrativa partum intellegi meum factum ideoque petendum ex testamento, tamquam istum emissem, ut scilicet pretii contributione facta consequar tantum, quanti puerum deducta matris aestimatione constitisse mihi iudex in causa legati datus aestimaverit.

Dig. 31.74

Papinianus 27 quaest.

"titio centum aureos heres praesens dato": deinde protulit diem legatorum. non est verum, quod alfenus rettulit, centum praesenti deberi, quia diem proprium habuerunt.

Dig. 31.75pr.

Papinianus 6 resp.

Miles ad sororem epistulam, quam post mortem suam aperiri mandavit, talem scripsit: " scire te volo donare me tibi aureos octingentos". fideicommissum deberi sorori constitit nec aliud probandum in cuiuslibet suprema voluntate: placet enim consistere fideicommissum et si defunctus cum eo loquatur, quem precario remuneratur.

Dig. 31.75.1

Papinianus 6 resp.

Pro parte heres institutus, cui praeceptiones erant relictae, post diem legatorum cedentem ante aditam hereditatem vita decessit. partem hereditatis ad coheredes substitutos pertinere placuit, praeceptionum autem portiones, quae pro parte coheredum constiterunt, ad heredes eius transmitti.

Dig. 31.76pr.

Papinianus 7 resp.

Cum filius divisis tribunalibus actionem inofficiosi testamenti matris pertulisset atque ita variae sententiae iudicum exstitissent, heredem, qui filium vicerat, pro partibus, quas aliis coheredibus abstulit filius, non habiturum praeceptiones sibi datas, non magis quam ceteros legatarios actiones, constitit. sed libertates ex testamento competere placuit, cum pro parte filius de testamento matris litigasset. quod non erit trahendum ad servitutes, quae pro parte minui non possunt: plane petetur integra servitus ab eo qui filium vicit, partis autem aestimatio praestabitur: aut si paratus erit filius pretio accepto servitutem praebere, doli summovebitur exceptione legatarius, si non offerat partis aestimationem, exemplo scilicet legis falcidiae.

Dig. 31.76.1

Papinianus 7 resp.

"lucio sempronio lego omnem hereditatem publii maevii". sempronius ea demum onera suscipiet, quae maevianae hereditatis fuerunt et in diem mortis eius, qui heres maevii exstitit, perseveraverunt, sicut vice mutua praestabuntur actiones, quae praestari potuerunt.

Dig. 31.76.2

Papinianus 7 resp.

Dominus herede fructuario scripto fundum sub condicione legavit. voluntatis ratio non patitur, ut heres ex causa fructus emolumentum retineat: diversum in ceteris praediorum servitutibus, quas heres habuit, responsum est: quoniam fructus portionis instar optinet.

Dig. 31.76.3

Papinianus 7 resp.

"heres meus titio dato, quod ex testamento sempronii debetur mihi". cum iure novationis, quam legatarius idemque testator ante fecerat, legatum ex testamento non debeatur, placuit falsam demonstrationem legatario non obesse, nec in totum falsum videri, quod veritatis primordio adiuvaretur.

Dig. 31.76.4

Papinianus 7 resp.

Servus pure manumissus, cui libertas propter impedimentum iuris post aditam hereditatem non competit, quod status eius extrinsecus suspenditur (forte propter adulterii quaestionem), ex eodem testamento neque legata neque fideicommissa pure data sperare potest, quia dies inutiliter cedit.

Dig. 31.76.5

Papinianus 7 resp.

Pater cum filia pro semisse herede instituta sic testamento locutus fuerat: " peto, cum morieris, licet alios quoque filios susceperis, sempronio nepoti meo plus tribuas in honorem nominis mei". necessitas quidem restituendi nepotibus viriles partes praecedere videbatur, sed moderandae portionis, quam maiorem in unius nepotis personam conferri voluit, arbitrium filiae datum.

Dig. 31.76.6

Papinianus 7 resp.

Non iure tutori dato mater legavit: si consentiat, ut decreto praetoris confirmetur, et praetor non idoneum existimet, actio legati non denegabitur.

Dig. 31.76.7

Papinianus 7 resp.

Qui mucianam cautionem alicuius non faciendi causa interposuit, si postea fecerit, fructus quoque legatorum (quos principio promitti necesse est) restituere debet.

Dig. 31.76.8

Papinianus 7 resp.

Variis actionibus legatorum simul legatarius uti non potest, quia legatum datum in partes dividi non potest: non enim ea mente datum est legatariis pluribus actionibus uti, sed ut laxior eis agendi facultas sit, ex una, interim quae fuerat electa, legatum petere.

Dig. 31.76.9

Papinianus 7 resp.

Repetendorum legatorum facultas ex eo testamento solutorum danda est, quod irritum esse post defuncti memoriam damnatam apparuit, modo si iam legatis solutis crimen perduellionis illatum est.

Dig. 31.77pr.

Papinianus 8 resp.

Cum pater filios eorumque matrem heredes instituisset, ita scripsit: " peto a te, filia, ut acceptis ex hereditate mea in portionem tuam centum aureis et praedio tusculano partem hereditatis restituas matri tuae". respondi praedium quidem hereditarium iudicio divisionis de communi filiam habituram, pecuniam autem de parte sua retenturam.

Dig. 31.77.1

Papinianus 8 resp.

Eorum, quibus mortis causa donatum est, fidei committi quoquo tempore potest: quod fideicommissum heredes salva falcidiae ratione, quam in his quoque donationibus exemplo legatorum locum habere placuit, praestabunt. si pars donationis fideicommisso teneatur, fideicommissum quoque munere falcidiae fungetur. si tamen alimenta praestari voluit, collationis totum onus in residuo donationis esse respondendum erit ex defuncti voluntate, qui de maiore pecunia praestari non dubie voluit integra.

Dig. 31.77.2

Papinianus 8 resp.

Mater filiis suis vulgo conceptis dotem suam mortis causa donando stipulari permisit: cum aliis heredibus institutis petisset a filiis viro dotem restitui, totum viro fideicommissum dotis deberi, si falcidiae ratio non intervenerit: ideo retentionem dotis virum habere placuit: alioquin falcidiae partem heredibus a filiis ex stipulatu cum viro agentibus ex dote esse per in factum actionem reddendam.

Dig. 31.77.3

Papinianus 8 resp.

Surdo et muto, qui legatum accipit, ut cum morietur restituat, recte mandatur: nam et ignorantes adstringuntur fideicommisso, quibus ignorantibus emolumentum ex testamento quaeritur.

Dig. 31.77.4

Papinianus 8 resp.

Hereditatem filius cum moreretur filiis suis vel cui ex his voluisset restituere fuerat rogatus: quo interea in insulam deportato eligendi facultatem non esse poena peremptam placuit nec fideicommissi condicionem ante mortem filii heredis exsistere: viriles autem inter eos fieri, qui eo tempore vixerint, cum de aliis eligendi potestas non fuerit.

Dig. 31.77.5

Papinianus 8 resp.

Qui dotale praedium contra legem iuliam vendidit, uxori legatum dedit et emptoris fidei commisit, ut amplius ei pretium restituat. emptorem fideicommissi non teneri constabat: si tamen accepto legato mulier venditionem irritam faceret, eam oblato pretio doli placuit exceptione summoveri.

Dig. 31.77.6

Papinianus 8 resp.

Maevio debitori suo reus stipulandi mandavit, ut titio, cui mortis causa donabat, pecuniam debitam solveret. cum sciens dominum vita decessisse maevius pecuniam dedisset, non esse liberationem secutam constitit nec, si maevius solvendo non esset, in titium actionem solidi vel iure falcidiae dandam esse, quia mortis causa cepisse non videretur. diversum probandum foret, si maevius ignorans dominum vita decessisse pecuniam errore labsus ^ lapsus^ dedisset: tunc enim portio iure falcidiae revocaretur.

Dig. 31.77.7

Papinianus 8 resp.

Cum pater fideicommissum praediorum ex testamento matris filiae deberet, eandem pro parte ita heredem instituit, ut hereditatem fideicommisso compensaret, eademque praedia filio exheredato dari voluit. quamquam filia patris hereditatem suscipere noluisset, fideicommissum tamen ab heredibus esse filio praestandum, ad quos hereditatis portio quam accepit filia redierat, placuit: quod si alium filiae substituisset, eum oportere filio fideicommissum reddere.

Dig. 31.77.8

Papinianus 8 resp.

Evictis praediis, quae pater, qui se dominum esse crediderit, verbis fideicommissi filio reliquit, nulla cum fratribus et coheredibus actio erit: si tamen inter filios divisionem fecit, arbiter coniectura voluntatis non patietur eum partes coheredibus praelegatas restituere, nisi parati fuerint et ipsi patris iudicium fratri conservari.

Dig. 31.77.9

Papinianus 8 resp.

Pater certam pecuniam exheredatae filiae verbis fideicommissi reliquit eamque nupturae dotis nomine dari voluit filio dotem stipulante. cum filius minorem dotem dedisset, superfluum esse filiae reddendum constabat. divortio quoque secuto fideicommissum filiam recte petituram, ut actio stipulationis sibi praestaretur, quoniam verisimile non erat patrem interponi stipulationem voluisse, quo filia post primas nuptias indotata constitueretur: ceterum si postea nuberet, ad secundas nuptias cautionem extendi non oportere.

Dig. 31.77.10

Papinianus 8 resp.

A filia pater petierat, ut cui vellet ex liberis suis praedia cum moreretur restitueret: uni ex liberis praedia fideicommissi viva donavit. non esse electionem propter incertum diem fideicommissi certae donationis videbatur: nam in eum destinatio dirigi potest, qui fideicommissum inter ceteros habiturus est remota matris electione.

Dig. 31.77.11

Papinianus 8 resp.

"fidei heredum meorum committo, ne fundum tusculanum alienent et ne de familia nominis mei exeat". secundum voluntatem eos quoque invitatos intellegendum est, quibus heredes extranei fideicommissam libertatem reddiderunt.

Dig. 31.77.12

Papinianus 8 resp.

"fidei tuae committo, uxor, ut restituas filiae meae, cum morieris, quidquid ad te quoque nomine de bonis meis pervenerit". etiam ea, quae postea codicillis uxori dedit, fideicommisso continebuntur, nam ordo scripturae non impedit causam iuris ac voluntatis: sed dos praelegata retinebitur, quoniam reddi potius videtur quam dari.

Dig. 31.77.13

Papinianus 8 resp.

"volo praedia dari libertis meis: quod si quis eorum sine liberis vita decesserit, partes eorum ad reliquos pertinere volo". collibertum patris eundemque filium ex voluntate substitutionem excludere placuit.

Dig. 31.77.14

Papinianus 8 resp.

Curatoris sui frustra fidei commisisse videbatur, ut heredi fratri negotiorum gestorum rationem redderet: quamquam igitur testamento cautum esset, ut, cum ad statum suum frater pervenisset, ei demum solveretur, tamen sub curatore alio fratrem agentem recte placuit actionem inferre, cum illis verbis fratri potius consultum videretur quam solutio quae iuste fieri potuit dilata.

Dig. 31.77.15

Papinianus 8 resp.

Ab instituto extraneo praedia libertis cum moreretur verbis fideicommissi reliquerat et petierat, ne ex nomine familiae alienarentur. substitutum ea praedia debere ex defuncti voluntate respondi, sed utrum confestim an sub eadem condicione, voluntatis esse quaestionem: sed coniectura ex voluntate testatoris capienda mors instituti exspectanda est.

Dig. 31.77.16

Papinianus 8 resp.

Mensae negotium ex causa fideicommissi cum indemnitate heredum per cautionem susceptum emptioni simile videtur et ideo non erit quaerendum, an plus in aere alieno sit quam in quaestu.

Dig. 31.77.17

Papinianus 8 resp.

Pater filiae mancipia, quae nubenti dedit, verbis fideicommissi praestari voluit: partus susceptos, etsi matres ante testamentum mortuae fuissent, ex causa fideicommissi praestandos respondi. nec aliud in uxore confirmatis donationibus pridem observatum est.

Dig. 31.77.18

Papinianus 8 resp.

Hereditatem post mortem suam rogati restituere nominum periculo, quae per divisionem optigerunt inter coheredes interpositis delegationibus, non adstringuntur, non magis quam praediorum, cum permutatio rerum discernens communionem intervenit.

Dig. 31.77.19

Papinianus 8 resp.

"filia mea praecipiat sibique habeat volo rem matris suae " . fructus, quos medio tempore pater percipiet nec in separato habuit, sed absumpsit vel in suum patrimonium convertit, non videntur filiae relicti.

Dig. 31.77.20

Papinianus 8 resp.

"dulcissimis fratribus meis, avunculis autem tuis quaecumque mihi supersunt in pamphylia lycia vel ubicumque de maternis bonis concedi volo, ne quam cum his controversiam habeas". omnia corpora maternae hereditatis, quae in eadem causa dominii manserunt, ad voluntatem fideicommissi pertinent: ex isdem igitur facultatibus percepta pecunia et in corpus proprii patrimonii versa, item iure divisionis res propriae factae non praestabuntur, cum discordiis propinquorum sedandis prospexerit, quas materia communionis solet excitare.

Dig. 31.77.21

Papinianus 8 resp.

Pater pluribus filiis heredibus institutis moriens claves et anulum custodiae causa maiori natu filiae tradidit et libertum eidem filiae, qui praesens erat, res quas sub cura sua habuit adsignare iussit. commune filiorum negotium gestum intellegebatur nec ob eam rem apud arbitrum divisionis praecipuam causam filiae fore.

Dig. 31.77.22

Papinianus 8 resp.

Cum imperfecta scriptura invenitur, ita demum verbum legati vel fideicommissi, quod praecedit vel sequitur, ad communionem adsumitur, si dicto scriptum congruat.

Dig. 31.77.23

Papinianus 8 resp.

Filius matrem heredem scripserat et fideicommissa tabulis data cum iurisiurandi religione praestari rogaverat. cum testamentum nullo iure factum esset, nihilo minus matrem legitimam heredem cogendam praestare fideicommissa respondi: nam enixae voluntatis preces ad omnem successionis speciem porrectae videbantur.

Dig. 31.77.24

Papinianus 8 resp.

"mando filiae meae pro salute sollicitus ipsius, ut, quoad liberos tollat, testamentum non faciat: ita enim poterit sine periculo vivere". fideicommissariam hereditatem sorori coheredi non videri relictam apparuit, quod non de pecunia sua testari, sed optentu consilii derogare iuri testamentum fieri prohibendo voluit.

Dig. 31.77.25

Papinianus 8 resp.

"rogo, filia, bona tua quandoque distribuas liberis tuis, ut quisque de te meruerit". videtur omnibus liberis, etsi non aequaliter promeruerint, fideicommissum relictum, quibus matris electione cessante sufficiet, si non offenderint: eos autem, quos mater elegerit, fore potiores, si soli promeruissent, existimavi: quod si neminem elegerit, eos solos non admitti, qui offenderunt.

Dig. 31.77.26

Papinianus 8 resp.

Donationis praediorum epistulam ignorante filio mater in aede sacra verbis fideicommissi non subnixam deposuit et litteras tales ad aedituum misit: " instrumentum voluntatis meae post mortem meam filio meo tradi volo". cum pluribus heredibus intestato diem suum obisset, intellegi fideicommissum filio relictum respondi: non enim quaeri oportet, cum quo de supremis quis loquatur, sed in quem voluntatis intentio dirigatur.

Dig. 31.77.27

Papinianus 8 resp.

Libertis praedium reliquit ac petit, ne id alienarent utque in familia libertorum retinerent. si excepto uno ceteri partes suas vendiderint, qui non vendidit ceterorum partes, quibus non dedit alienandi voluntatem, integras petet: eos enim ad fideicommissum videtur invitasse, qui iudicio paruerunt: alioquin perabsurdum erit vice mutua petitionem induci, scilicet ut ab altero partem alienatam quis petat, cum partem suam alienando perdiderit. sed hoc ita procedere potest, si pariter alienaverint: ceterum prout quisque prior alienaverit, partem posterioribus non faciet: qui vero tardius vendidit, ei qui non vendidit in superiorum partibus fecisse partem intellegitur. at si nemo vendiderit et novissimus sine liberis vita decesserit, fideicommissi petitio non supererit.

Dig. 31.77.28

Papinianus 8 resp.

Cum inter libertos ad praedii legatum liberta quoque fuisset admissa, quod patronus petit, ut de nomine familiae non exiret, heredem libertae filium partem praedii, quam mater accepit, retinere visum est.

Dig. 31.77.29

Papinianus 8 resp.

Cum existimaret ad solam consobrinam suam bona perventura, codicillis ab ea factis pluribus fideicommissa reliquerat. iure successionis ad duos eiusdem gradus possessione devoluta rationibus aequitatis et perpetui edicti exemplo pro parte dimidia mulierem relevandam respondi: sed libertates ab ea praestandas, quas intercidere damni causa durum videbatur.

Dig. 31.77.30

Papinianus 8 resp.

Pater, qui filio semissem dederat et sororibus eius impuberibus quadrantes, quibus fratrem tutorem dedit, ita fuerat locutus: " fili, contentus eris pro tuo semisse aureis ducentis et vos, filiae, pro vestris quadrantibus centenis aureis". vice mutua liberis fideicommissum hereditatis reliquisse non videbatur, sed aestimationem (ut a parentibus frugi fieri solet) patrimonii sui fecisse, nec idcirco fratrem iudicio tutelae bonae fidei rationes quandoque praescriptione demonstratae quantitatis exclusurum.

Dig. 31.77.31

Papinianus 8 resp.

Titio fratri suo maevius hereditatem seii, a quo heres institutus erat, post mortem suam restituere rogatus eodem titio herede scripto petit, ut moriens titius tam suam quam seii hereditatem sempronio restitueret. cum ex fructibus medio tempore perceptis fideicommissi debitam quantitatem titius percepisset, aeris alieni loco non esse deducendum fideicommissum respondi, quoniam ratione compensationis percepisse debitum videbatur. plane si ea lege maevius titium heredem instituat, ne fideicommissum ex testamento seii retineat, falcidiam compensationi sufficere, sed iniquitate occurrere. prudentius autem fecerit, si ex testamento fratris hereditatem repudiaverit et intestati possessionem acceperit: nec videbitur dolo fecisse, cum fraudem excluserit.

Dig. 31.77.32

Papinianus 8 resp.

"a te peto, marite, si quid liberorum habueris, illis praedia relinquas vel, si non habueris, tuis sive meis propinquis aut etiam libertis nostris". non esse datam electionem, sed ordinem scripturae factam substitutioni respondi.

Dig. 31.77.33

Papinianus 8 resp.

Vicos civitati relictos, qui proprios fines habebant, ex causa fideicommissi non ideo minus deberi placuit, quod testator fines eorum significaturum et certaminis formam, quam celebrari singulis annis voluit, alia scriptura se declaraturum promisit ac postea morte praeventus non fecit.

Dig. 31.78pr.

Papinianus 9 resp.

Qui solidum fideicommissum frustra petebat herede falcidiam obiciente, si partem interim solvi sibi desideraverit neque acceperit, in eam moram passus intellegitur.

Dig. 31.78.1

Papinianus 9 resp.

Cum post mortem emptoris venditionem rei publicae praediorum optimus maximusque princeps noster severus augustus rescindi heredibus pretio restituto iussisset, de pecunia legatario, cui praedium emptor ex ea possessione legaverat, coniectura voluntatis pro modo aestimationis partem solvendam esse respondi.

Dig. 31.78.2

Papinianus 9 resp.

Etiam res publica fideicommissi post moram usuras praestare cogitur, sed damnum, si quod ex ea re fuerit secutum, ab his sarciendum erit, qui post dictam sententiam iudicatum solvere supersederunt. nec aliud servabitur in litis sumptibus, si ratio litigandi non fuit: ignaviam etenim praetendentes audiri non oportere. quod in tutoribus quoque probatur.

Dig. 31.78.3

Papinianus 9 resp.

Praedium pater de familia liberorum alienari verbis fideicommissi prohibuit. supremus ex liberis, qui fideicommissum petere potuit, non idcirco minus actionem in bonis suis reliquisse visus est, quod heredem extrarium sine liberis decedens habuit.

Dig. 31.78.4

Papinianus 9 resp.

Si creditor ab eo qui testamentum fecit domum acceptam iure pignoris vendidit, contra emptorem fideicommissi causa, tametsi voluntatem defuncti non ignoravit, nihil decernetur.

Dig. 31.79

Papinianus 11 resp.

Quae fideicommissa moriens libertis viri debuit, eorundem praediorum suis quoque libertis fructum reliquit: iuris ignoratione lapsi qui petere praedia ex mariti testamento debuerunt, secundum fideicommissum inter ceteros longo tempore perceperunt. non ideo peremptam videri petitionem prioris fideicommissi constitit.

Dig. 31.80

Papinianus 1 def.

Legatum ita dominium rei legatarii facit, ut hereditas heredis res singulas. quod eo pertinet, ut, si pure res relicta sit et legatarius non repudiavit defuncti voluntatem, recta via dominium, quod hereditatis fuit, ad legatarium transeat numquam factum heredis.

Dig. 31.81

Paulus 9 quaest.

Si quis testamento facto a filiis suis, quos heredes instituisset, fideicommissa reliquisset non ut a legitimis heredibus, sed ut a scriptis, et testamentum aliquo casu irritum factum sit, filii ab intestato venientes fideicommissa ex testamento praestare compelli non possunt.

Dig. 31.82pr.

Paulus 10 quaest.

Debitor decem legavit creditori, quae ei post annum sub pignore debebat. non, ut quidam putant, medii temporis tantum commodum ex testamento debetur, sed tota decem peti possunt: nec tollitur petitio, si interim annus supervenerit: nam sufficit, quod utiliter dies cessit. quod si vivo testatore annus superveniat, dicendum erit inutile effici legatum, quamquam constiterit ab initio. sic et in dote praelegata responsum est totam eam ex testamento peti posse. alioquin secundum illam sententiam si interusurium tantum est in legato, quid dicemus, si fundus legatus sit ex die debitus? nam nec pecunia peti potest, quae non est legata, nec pars fundi facile inveniretur, quae possit pro commodo peti.

Dig. 31.82.1

Paulus 10 quaest.

Si primo et secundo et tertio heredibus institutis sic legata dentur: " si mihi primus heres non erit, secundus titio decem dato: si secundus mihi heres non erit, primus seio fundum tusculanum dato", utrisque omittentibus hereditatem primo et secundo quaerebatur, substituti, quos eis dederat, an et cui legata praestare debent? ab utroque substituto legata debentur.

Dig. 31.82.2

Paulus 10 quaest.

Servo alieno posse rem domini legari valens scribit: item id quod domino eius pure debetur. cum enim servo alieno aliquid in testamento damus, domini persona ad hoc tantum inspicitur, ut sit cum eo testamenti factio, ceterum ex persona servi constitit legatum. et ideo rectissime iulianus definit id demum servo alieno legari posse, quod ipse liber factus capere posset. calumniosa est enim illa adnotatio posse legari servo et quamdiu serviat: nam et hoc legatum ex persona servi vires accipit: alioquin et illud adnotaremus esse quosdam servos, qui, licet libertatem consequi non possunt, attamen legatum et hereditatem possunt adquirere domino. ex illo igitur praecepto, quod dicimus servi inspici personam in testamentis, dictum est servo hereditario legari posse. ita non mirum, si res domini et quod ei debetur servo eius pure legari possit, quamvis domino eius non possent haec utiliter legari.

Dig. 31.83

Paulus 11 quaest.

Latinus largus. proxime ex facto incidit species talis. libertinus patronum ex semisse heredem instituit et filiam suam ex alio semisse: fidei commisit filiae, ut quibusdam ancillis patroni restitueret, cum hae manumissae essent, et, si eadem filia heres non esset, substituit ei easdem ancillas. quoniam filia non voluit heres exsistere, ancillae iussu domini, id est patroni adierunt defuncti hereditatem. post aliquantum temporis ab eo manumissae quaerebant, an fideicommissum petere ab eodem patrono possint. rogo ergo, quid de hoc existimes rescribas. respondi nec repetitum videri in hunc casum fideicommissum, sed alterutrum datum vel fideicommissum vel ipsam hereditatem. melius autem dici in eundem casum substitutas videri, in quem casum fideicommissum meruerunt, et ideo ad substitutionem eas vocari. cum enim servo alieno fideicommissum ab uno ex heredibus sub condicione libertatis fuerit datum idemque servus ei heredi substituatur, licet pure substitutio facta sit, tamen sub eadem condicione substitui videtur, sub qua fideicommissum meruit.

Dig. 31.84

Paulus 21 quaest.

Si quis servo suo fideicommissam libertatem reliquit et aliud quid adscripsit: quidam dicunt, quia placebat ab herede eum manumitti debere, futurum esse, ut non admittatur ad fideicommissum: sed hoc iniquum est. in huiusmodi enim persona utriusque quodammodo dies cessit et libertatis et pecuniae petendae, adeo ut putem, si mora fiat praestandae libertati, etiam fideicommisso moram videri factam et usurarum onus accedere: nam et cetera quae medio tempore adquisiit domino, dum moratur praestare libertatem, eidem restitui oportere rectissime responsum est.

Dig. 31.85

Paulus 4 resp.

Creditorem, cui res pignoris iure obligata a debitore legata esset, non prohiberi pecuniam creditam petere, si voluntas testatoris compensare volentis evidenter non ostenderetur.

Dig. 31.86pr.

Paulus 13 resp.

"gaius seius pronepos meus heres mihi esto ex semisse bonorum meorum excepta domu mea et paterna, in quibus habito, cum omnibus quae ibi sunt: quae omnia scias ad portionem hereditatis, quam tibi dedi, non pertinere". quaero, cum sit in his domibus argentum nomina debitorum supellex mancipia, an haec omnia, quae illic inveniuntur, ad alios heredes institutos debeant pertinere. paulus respondi nomina debitorum non contineri, sed omnium esse communia, in ceteris vero nullum pronepoti locum esse.

Dig. 31.86.1

Paulus 13 resp.

Titius cum fratris filio fundos et urbana praedia legaret, in his et fundum seianum legavit, quem ipse pater familias quoad viveret uno quidem nomine universum habuit, sed quo facilius conductorem inveniret, per duas partes locabat, ita ut ex qualitate loci superiorem partem seianum superiorem, inferiorem autem partem seianum inferiorem appellaret. quaero, an is fundus totus ad fratris filium pertineat. paulus respondit, si testator fundum seianum uno nomine universum possedit, quamvis eundem divisis partibus locaverat, universum eum ex causa fideicommissi praestari oportere, nisi si heres, de qua parte testator senserit, evidenter probaverit.

Dig. 31.87pr.

Paulus 14 resp.

Titia seio tesseram frumentariam comparari voluit post diem trigesimum a morte ipsius. quaero, cum seius viva testatrice tesseram frumentariam ex causa lucrativa habere coepit nec possit id quod habet petere, an ei actio competat. paulus respondit ei, de quo quaeritur, pretium tesserae praestandum, quoniam tale fideicommissum magis in quantitate quam in corpore constitit.

Dig. 31.87.1

Paulus 14 resp.

Usuras fideicommissi post impletos annos viginti quinque puellae, ex quo mora facta est, deberi respondi. quamvis enim constitutum sit, ut minoribus viginti quinque annis usurae omnimodo praestentur, tamen non pro mora hoc habendum est, quam sufficit semel intervenisse, ut perpetuo debeantur.

Dig. 31.87.2

Paulus 14 resp.

Seia libertis suis fundum legavit fideique eorum ita commisit: " fidei autem vestrae, vere et sapide, committo, ne eum fundum vendatis eumque qui ex vobis ultimus decesserit, cum morietur, restituat symphoro liberto meo et successori et beryllo et sapido, quos infra manumisi, quive ex his tunc supervivent". quaero, cum nec in prima parte testamenti, qua fundum praelegavit, eos substitutit, in secunda tamen adiecerit verbum " qui ultimus decesserit", an pars unius defuncti ad alterum pertineret. paulus respondit testatricem videri in eo fideicommisso, de quo quaeritur, duos gradus substitutionis fecisse, unum ut is, qui ex duobus prior morietur, alteri restitueret, alterum ut novissimus his restitueret, quos nominatim postea enumeravit.

Dig. 31.87.3

Paulus 14 resp.

Imperator alexander augustus claudiano iuliano praefecto urbi. " si liquet tibi, iuliane carissime, aviam intervertendae inofficiosi querellae patrimonium suum donationibus in nepotem factis exinanisse, ratio deposcit id, quod donatum est, pro dimidia parte revocari".

Dig. 31.87.4

Paulus 14 resp.

Lucius titius cum haberet quinque liberos, universos emancipavit et in unum filium gaium seium amplissimas facultates donationibus contulit et modicum sibi residuum servavit et universos liberos cum uxore scripsit heredes: in eodem testamento duas possessiones, quas retinuerat, eidem gaio seio praelegavit et ab eo petit, ut ex reditibus praediorum, quae vivus ei donaverat, maeviae filiae tot aureos daret, item alteri fratri alios tot: conventus a maevia sorore sua legem falcidiam implorat. quaero, cum sanctissimus imperator, ut supra scriptum est, contra voluntatem donantis ea quae donata sunt revocari praeceperit, an gaius seius compellendus sit secundum voluntatem patris ex donationibus fideicommissum praestare heredi sororis. paulus respondit post litteras imperatoris nostri dubitari non oportere, quin in hac quoque specie, de qua quaeritur, subveniendum sit liberis, quorum portio in unum filium donationibus collatis imminuta est, praesertim cum imperator noster contra voluntatem patris subvenerit, in proposita autem causa etiam voluntas patris pro his qui fideicommissum petunt intercedit. sed si falcidia lex intercedat, fideicommissa in solidum esse praestanda propter immodicarum donationum rationem.

Dig. 31.88pr.

Scaevola 3 resp.

Lucius titius testamento ita cavit: " si quid cuique liberorum meorum dedi aut donavi aut in usum concessi aut sibi adquisiit aut ei ab aliquo datum aut relictum est, id sibi praecipiat sumat habeat". filii nomine kalendarium fecerat. postea sententia dicta est et placuit id, quod sub nomine ipsius filii in kalendario remanserat, ei deberi, non etiam id, quod exactum in rationes suas pater convertisset. quaero, si id, quod exegisset pater ex nominibus filii ante testamentum factum, iterum post testamentum factum in nomen filii convertisset, an ad filium secundum sententiam pertineret. respondi id, quod ex eadem causa exactum in eandem causam redisset, deberi.

Dig. 31.88.1

Scaevola 3 resp.

"a te peto, titi, fideique tuae committo, uti curam condendi corporis mei suscipias, et pro hoc tot aureos e medio praecipito". quaero, an, si lucius titius minus quam decem aureos erogaverit, reliqua summa heredibus proficiat. respondi secundum ea quae proponerentur heredum commodo proficere.

Dig. 31.88.2

Scaevola 3 resp.

Quae marito heres exstiterat, ita testamento cavit: " maevi et semproni filii dulcissimi, praecipitote omne, quidquid ex hereditate bonisve titii domini mei, patris vestri ad me pervenit mortis eius tempore, ita tamen, ut omne onus eiusdem hereditatis tam in praeteritum quam in futurum, nec non etiam si quid post mortem titii domini mei, adgnoscatis". quaero, an si quid solvisset post mortem mariti, cum ipsa fructus cepisset dedisset, ad onus eorum pertineret. respondi secundum ea quae proponerentur ea dumtaxat onera legatariis imposuisse, quae superessent.

Dig. 31.88.3

Scaevola 3 resp.

"quisquis mihi heres heredesve erunt, hoc amplius lucius eutychus, quam quod eum heredem institui, e media hereditate sumito sibique habeto una cum pamphilo, quem liberum esse iubeo, instrumentum tabernae ferrariae, ita ut negotium exerceatis". lucius eutychus viva testatrice decessit, pars hereditatis eius ad coheredem pertinuit: quaero, an pamphilus eodem testamento manumissus ad petitionem partis instrumenti admitti possit, licet taberna, ut voluit testatrix, exerceri non possit. respondi admitti.

Dig. 31.88.4

Scaevola 3 resp.

Sempronia substituta heredi instituto legata accepit, si heres non esset: movit contra institutum actionem, quod dolo eius factum esse dicebat, quo minus testatrix volens primo loco scribere eam heredem testamentum mutaret, nec optinuit: quaero, an legati persecutionem salvam haberet. respondi secundum ea quae proponerentur salvam habere.

Dig. 31.88.5

Scaevola 3 resp.

Testator legata ante quinquennium vetuit peti praestarique, sed heres quaedam sua sponte ante quinquennium solvit: quaesitum est, an eius, quod ante diem exsistentem solutum est, repraesentationem in reliqua solutione legati reputare possit. respondi non propterea minus relictum deberi, quod aliquid ante diem sit solutum.

Dig. 31.88.6

Scaevola 3 resp.

Lucius titius testamento ita cavit: " praediolum meum dari volo libertis libertabusque meis et quos hoc testamento manumisi et seiae alumnae meae, ita ne de nomine familiae meae exeat, donec ad unum proprietas perveniat". quaero, an seia in communione cum libertis habeat portionem an vero sibi partem dimidiam eius praedioli vindicare possit. respondi perspicuam esse testantis voluntatem omnes ad viriles partes vocantis.

Dig. 31.88.7

Scaevola 3 resp.

Impuberem filium heredem instituit: uxori dotem praelegavit, item ornamenta et servos et aureos decem: et si impubes decessisset, substituit, a quibus ita legavit: " quaecumque primis tabulis dedi, eadem omnia ab heredibus quoque heredis mei in duplum dari volo". quaeritur, an ex substitutione, impubere mortuo, dos quoque iterum debeatur. respondi non videri de dotis legato duplicando testatorem sensisse. item quaero, cum corpora legata etiam nunc ex lucrativa causa possideantur, an a substitutis peti possint. respondi non posse.

Dig. 31.88.8

Scaevola 3 resp.

"civibus meis do lego chirographum gaii seii": postea codicillis vetuit a seio exigi et ab herede petit, ut ex alterius debitoris debito, quem codicillis nominavit, eandem summam rei publicae daret. quaesitum est, si posterior idoneus non esset, an integram quantitatem heredes praestare debeant. respondi heredes rei publicae adversus eum dumtaxat debitorem, qui novissimus codicillis, ut proponitur, designatus est, actionem praestare debere.

Dig. 31.88.9

Scaevola 3 resp.

Filiam ex asse instituit heredem eique substituit nepotem suum et ita cavit: " si, quod abominor, neque filia mea neque nepos meus heredes mei erunt, tunc portionem meam partis dimidiae fundi illius ad libertos meos pertinere volo". quaeritur, cum ante testatorem et filia et nepos decesserunt et intestati bona pertinuerunt ad pronepotem eius, an fideicommissum ad libertos pertineret. respondi secundum ea quae proponerentur, si nullus alius heres institutus substitutusque esset quam filia et nepos, videri legitimorum fidei commissum esse, ut praestaretur.

Dig. 31.88.10

Scaevola 3 resp.

"quisquis mihi heres erit, sciat debere me demetrio patruo meo denaria tria et deposita apud me a seleuco patruo meo denaria tria, quae etiam protinus reddi et solvi eis iubeo": quaesitum est, an, si non deberentur, actio esset. respondi, si non deberentur, nullam quasi ex debito actionem esse, sed ex fideicommisso.

Dig. 31.88.11

Scaevola 3 resp.

Lucius titius damam et pamphilum libertos suos ante biennium mortis suae de domu dimisit et cibaria quae dabat praestare desiit: mox facto testamento ita legavit: " quisquis mihi heres erit, omnibus libertis meis, quos hoc testamento manumisi et quos ante habui quosque ut manumittantur petii, alimentorum nomine in menses singulos certam pecuniam dato". quaesitum est, an damae et pamphilo fideicommissum debeatur. respondi secundum ea quae proponerentur ita deberi, si hi qui petent manifeste docerent eo animo circa se patronum, cum testamentum faceret, esse coepisse, ut his quoque legatum dari vellet: alioquin nihil ipsis praestetur.

Dig. 31.88.12

Scaevola 3 resp.

Damae et pamphilo, quos testamento manumiserat, fundum dedit ita, ut post mortem suam filiis suis restituerent: eodem testamento petiit ab heredibus suis, ut pamphilam manumitterent, quae pamphila filia naturalis erat pamphili: idem pamphilus post diem legati sui cedentem testamento heredem instituit maevium eiusque fidei commisit, ut hereditatem suam, id est fundi supra scripti partem dimidiam, quam solam in bonis ex testamento patronae suae habebat, pamphilae filiae suae, cum primum libera fuisset, restitueret. quaero pamphila manumissa, utrum ex testamento superiore patris sui patronae eam partem petere possit, an vero ex testamento patris naturalis ex causa fideicommissi habita ratione legis falcidiae. respondi ex his quae proponerentur probari pamphilam dumtaxat ex testamento superiore fideicommissum petere posse. claudius. quia creditur appellatione filiorum et naturales liberos, id est in servitute susceptos contineri.

Dig. 31.88.13

Scaevola 3 resp.

Scaevola. codicillis gaio seio centum legavit eiusque fidei commisit, ut ancillae testatoris ea daret: quaero, an utile fideicommissum sit, quod legatarius ancillae testatoris dare iussus est. respondi non esse. item, si utile non est, an legatarius heredi, cuius ancilla est, restituere compellatur. respondi non compelli: sed nec ipsum legatarium legatum petere posse.

Dig. 31.88.14

Scaevola 3 resp.

Insulam libertis utriusque sexus legavit ita, ut ex reditu eius masculi duplum, feminae simplum percipiant, eamque alienari vetuit: ex consensu omnium ab herede venumdata est: quaero, an et ex pretio insulae duplum mares, simplum feminae caperent. respondi ob pretium nullam fideicommissi persecutionem esse, nisi ea mente venditioni consenserunt, ut similiter ex pretio mares quidem duplum, feminae autem simplum consequantur.

Dig. 31.88.15

Scaevola 3 resp.

Instituto filio herede et ex eo nepotibus emancipatis testator ita cavit: " boulomai de tas emas oikias my pwleisvai hupo twn klyronomwn mou myde daneizesvai kat' autwn, alla menein autas akeraias autois kai uhiois kai ekgonois eis ton hapanta xronon. ean de tis boulyvy autwn pwlysai to meros autou y daneisasvai kat' autou, ecousian exetw pwlysai tw sugklyronomw autou kai daneizesvai par'autou. ean de tis para tauta poiysy, estai to xrymatizomenon axryston kai akuron". quaeritur, cum filius defuncti mutuam pecuniam a flavia dionysia acceperit et locatis aedibus pro parte sua pensiones sibi debitas creditrici delegaverit, an condicio testamenti exstitisse videatur, ut filiis suis fideicommissi nomine teneatur. respondi secundum ea quae proponerentur non exstitisse.

Dig. 31.88.16

Scaevola 3 resp.

Matre et uxore heredibus institutis ita cavit: " a te, uxor carissima, peto, ne quid post mortem tuam fratribus tuis relinquas: habes filios sororum tuarum, quibus relinquas. scis unum fratrem tuum filium nostrum occidisse, dum ei rapinam facit: sed et alius mihi deteriora fecit". quaero, cum uxor intestata decessit et legitima eius hereditas ad fratrem pertineat, an sororis filii fideicommissum ab eo petere possunt. respondi posse defendi fideicommissum deberi.

Dig. 31.88.17

Scaevola 3 resp.

"lucius titius hoc meum testamentum scripsi sine ullo iuris perito, rationem animi mei potius secutus quam nimiam et miseram diligentiam: et si minus aliquid legitime minusve perite fecero, pro iure legitimo haberi debet hominis sani voluntas": deinde heredes instituit. quaesitum est intestati eius bonorum possessione petita, an portiones adscriptae ex causa fideicommissi peti possunt. respondi secundum ea quae proponerentur posse.

Dig. 31.89pr.

Scaevola 4 resp.

Testamento filium et uxorem suam heredes instituit: postea epistulam scripsisse dicitur, qua et quidquid in peculio habuit filius, ei donavit et adiecit praecipua haec eum suique iuris et post mortem suam habere velle. quaero, cum testamento significaverit, si quid obsignatum recepisset, id vice codicillorum valeret, epistula autem non sit obsignata, an quae epistula continentur ad filium pertineant. respondi, si fides epistulae relictae constaret, deberi, quae in ea dare se velle significavit.

Dig. 31.89.1

Scaevola 4 resp.

Qui indivisam cum fratre suo rem habebat, filias suas heredes instituit et ita cavit: " propter res universas quae mihi cum illo fratre meo patruo vestro communes sunt, quas aestimationis constiterit esse universas duo milium aureorum, fidei vestrae committo, uti pro portione vestra mille aureos a lucretio pacato patruo vestro accipiatis": huic testamento quinquennio supervixit et abunde patrimonium reliquit: quaesitum est, an heredes lucretii pacati secundum verba supra scripta offerentes mille aureos fideicommissum consequantur. respondi secundum ea quae proponerentur non facere voluntatem, ut universa datis millenis aureis restituerentur, sed aestimationis, quae mortis tempore in rebus fuerat, oblationem debere fieri.

Dig. 31.89.2

Scaevola 4 resp.

Seio, quem heredi substituerat, ita legavit: " seio, si mihi heres non erit, et uxori eius Marcellae argenti libras quindecim dari volo". quaero, cum seius heres exstiterit, an Marcellae legati dimidia portio debeatur. respondi secundum ea quae proponerentur deberi.

Dig. 31.89.3

Scaevola 4 resp.

Lucius titius intestato moriturus, cum haberet uxorem et ex ea filiam emancipatam, codicillis haec verba inseruit: " pertinent autem hi codicilli ad uxorem et filiam. primum autem rogo, sic inter vos agatis, ut me vivo egistis itaque rogo, ut quidquid aut ego reliquero aut quod vos ipsae habetis, commune vobis sit". filia intestati patris bonorum possessionem accepit: quaeritur, an aliqua pars hereditatis lucii titii ex causa fideicommissi a filia matri deberetur et quota. respondi secundum ea quae proponerentur dimidiam partem deberi, si modo uxor parata sit in commune bona sua conferre.

Dig. 31.89.4

Scaevola 4 resp.

Quattuor filios aequis partibus instituit et fundum per praeceptionem singulis legavit: filii, cum universa bona patris obligata essent, mutua accepta pecunia hereditario creditori solverunt et posteriori obligaverunt, qui, cum ei debitum non solveretur, praedia universa lege pignoris uni ex heredibus vendidit: quaeritur, an, cum iste filius ex causa emptionis ea possideat, fratribus et coheredibus fideicommissi petitio esset an vero ea perempta esset, cum communiter universa sequenti creditori obligaverint. respondi actionem quidem fideicommissi in personam competentem omnibus invicem manere: non autem fideicommissum restituendum est, nisi prius debitum ab eis emptori eidemque coheredi persolveretur.

Dig. 31.89.5

Scaevola 4 resp.

Filiae fidei commisit in haec verba: " peto a te, filia mea, ut dotalem cautionem post mortem meam mutes et ita renoves, ut fratres tui dotem stipularentur hoc casu, ut, si sine liberis uno pluribusve in matrimonio morieris, dos ad eos perveniat". post mortem patris decessit maritus, antequam renovaretur cautio dotalis, et postea alii nupta decessit nullo liberorum relicto, vivo adhuc titio uno ex fratribus. quaesitum est, an titius petitionem haberet rerum, quae in dotem fuerant. respondi posse fideicommissum ab heredibus sororis peti, si per eam stetit, quo minus dotem frater stipularetur.

Dig. 31.89.6

Scaevola 4 resp.

Filium et filiam heredes instituit et libertis legata dedit eorumque fidei commisit in haec verba: " a vobis peto, ut quidquid vobis legavi, contenti sitis viventes, ut post vos filiis meis restituatis". defuncta testatricis filia maevia libertus decessit herede instituto patronae filio ex parte debita, ex altera extraneo: quaesitum est, an adita hereditate patronae filius a coherede suo partem eorum, quae ex testamento matris ad maevium libertum pervenerant, petere potest. respondi eius, quod ei deberetur, si hereditatem non adisset, partem a coherede petere posse.

Dig. 31.89.7

Scaevola 4 resp.

Maritus uxorem ex asse heredem instituit, cuius post mortem codicillos aperiri testator praecepit: praedium hereditarium uxor infructuosum rationi suae existimans vendidit: emptor quaerit, an retractari haec venditio possit post mortem mulieris ab his, quibus codicillis per fideicommissum hereditas data deprehenderetur an vero solum quantitas pretii ab herede uxoris fideicommissariis debeatur. respondi propter iustam ignorantiam tam mulieris quam emptoris heredem mulieris, ut fundus apud emptorem remaneat, fideicommissario pretium dare debere

OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER DUO-ET-TRICESIMUS

Dig. 32.0. De legatis et fideicommissis.

Dig. 32.0. De legatis et fideicommissis.

Dig. 32.1pr.

Ulpianus 1 fideic.

Si incertus quis sit, captivus sit an a latrunculis obsessus, testamentum facere non potest. sed et si sui iuris sit ignarus putetque se per errorem, quia a latronibus captus est, servum esse velut hostium, vel legatus qui nihil se a captivo differre putat, non posse fideicommittere certum est, quia nec testari potest, qui, an liceat sibi testari, dubitat.

Dig. 32.1.1

Ulpianus 1 fideic.

Sed si filius familias vel servus fideicommissum reliquerit, non valet: si tamen manumissi decessisse proponantur, constanter dicemus fideicommissum relictum videri, quasi nunc datum, cum mors contingit, videlicet si duraverit voluntas post manumissionem. haec utique nemo credet in testamentis nos esse probaturos, quia nihil in testamento valet, quotiens ipsum testamentum non valet, sed si alias fideicommissum quis reliquerit.

Dig. 32.1.2

Ulpianus 1 fideic.

Hi, quibus aqua et igni interdictum est, item deportati fideicommissum relinquere non possunt, quia nec testamenti faciendi ius habent, cum sint apolides.

Dig. 32.1.3

Ulpianus 1 fideic.

Deportatos autem eos accipere debemus, quibus princeps insulas adnotavit vel de quibus deportandis scripsit: ceterum prius quam factum praesidis comprobet, nondum amisisse quis civitatem videtur. proinde si ante decessisset, civis decessisse videtur et fideicommissum, quod ante reliquerat, quam sententiam pateretur, valebit: sed et si post sententiam, antequam imperator comprobet, valebit quod factum est, quia certum statum usque adhuc habuit.

Dig. 32.1.4

Ulpianus 1 fideic.

A praefectis vero praetorio vel eo, qui vice praefectis ex mandatis principis cognoscet, item a praefecto urbis deportatos (quia ei quoque epistula divi severi et imperatoris nostri ius deportandi datum est) statim amittere civitatem et ideo nec testamenti faciendi ius nec fideicommittendi constat habere.

Dig. 32.1.5

Ulpianus 1 fideic.

Si quis plane in insulam deportatus codicillos ibi fecerit et indulgentia imperatoris restitutus isdem codicillis durantibus decesserit, potest defendi fideicommissum valere, si modo in eadem voluntate duravit.

Dig. 32.1.6

Ulpianus 1 fideic.

Sciendum est autem eorum fidei committi quem posse, ad quos aliquid perventurum est morte eius, vel dum eis datur vel dum eis non adimitur.

Dig. 32.1.7

Ulpianus 1 fideic.

Nec tantum proximi bonorum possessoris, verum inferioris quoque fidei committere possumus.

Dig. 32.1.8

Ulpianus 1 fideic.

Sed et eius, qui nondum natus est, fidei committi posse, si modo natus nobis successurus sit.

Dig. 32.1.9

Ulpianus 1 fideic.

Illud certe indubitate dicitur, si quis intestatus decedens ab eo, qui primo gradu ei succedere potuit, fideicommissum reliquerit, si illo repudiante ad sequentem gradum devoluta sit successio, eum fideicommissum non debere: et ita imperator noster rescripsit.

Dig. 32.1.10

Ulpianus 1 fideic.

Sed et si a patrono sit relictum et aliquis ex liberis eius mortuo eo admissus sit ad bonorum possessionem, idem erit dicendum.

Dig. 32.2

Gaius 1 fideic.

Ex filio praeterito, licet suus heres erit, fideicommissum relinqui non potest.

Dig. 32.3pr.

Ulpianus 1 fideic.

Si mulier dotem stipulata fuerit et accepto tulit marito in hoc dotem, ut fideicommissum det, dicendum est fideicommissum deberi: percepisse enim aliquid a muliere videtur. haec ita, si mortis causa donatura mulier marito fecit acceptum. sed et si mortis causa auxerit marito dotem vel in matrimonium eius mortis causa redierit, potest dici fideicommissum ab eo deberi.

Dig. 32.3.1

Ulpianus 1 fideic.

Iulianus scribit, si servus mihi legatus sit eumque manumittere rogatus sim, fideicommissum a me relinqui non posse, scilicet si pure roget: nam si sub condicione vel in diem, propter fructum medii temporis posse me obligari nec iulianus dubitaret.

Dig. 32.3.2

Ulpianus 1 fideic.

Si rem quis debeat ex stipulatu ei cui rem legaverit, fidei committere eius non poterit, licet ex legato commodum sentire videatur, quod dominium nanciscitur statim nec exspectat ex stipulatu actionem: fortassis quis dicat et sumptum ^ sumptus^ litis, quem sustineret, si ex stipulatione litigaret, eum lucrari. sed nequaquam dicendum est huius fidei committi posse.

Dig. 32.3.3

Ulpianus 1 fideic.

Sed si habenti tibi proprietatem usum fructum mortis causa cessero, potest dici fideicommittere me posse. nec quemquam moveat, quod usus fructus solet morte exstingui: nam medii potius temporis, quo vivat qui donavit, commodum cogitemus.

Dig. 32.3.4

Ulpianus 1 fideic.

Si autem pignus debitoris liberavero mortis causa et eius fidei commisero, non potest valere fideicommissum.

Dig. 32.4

Paulus 4 sent.

A patre vel domino relictum fideicommissum, si hereditas ei non quaeratur, ab emancipato filio vel servo manumisso utilibus actionibus postulatur: penes eos enim quaesitae hereditatis emolumentum remanet.

Dig. 32.5pr.

Ulpianus 1 fideic.

Si fuerit municipio legatum relictum, ab his qui rem publicam gerunt fideicommissum dari potest.

Dig. 32.5.1

Ulpianus 1 fideic.

Si quis non ab herede vel legatario, sed ab heredis vel legatarii herede fideicommissum reliquerit, hoc valere benignum est.

Dig. 32.6pr.

Paulus 1 fideic.

Sed et si sic fideicommissum dedero ab herede meo: " te rogo, luci titi, ut ab herede tuo petas dari maevio decem aureos", utile erit fideicommissum, scilicet ut mortuo titio ab herede eius peti possit: idque et iulianus respondit.

Dig. 32.6.1

Paulus 1 fideic.

Sic autem fideicommissum dari non poterit: " si stichus seii factus iussu eius hereditatem adierit, rogo det", quoniam qui fortuito, non iudicio testatoris consequitur hereditatem vel legatum, non debet onerari, nec recipiendum est, ut, cui nihil dederis, eum rogando obliges.

Dig. 32.7pr.

Ulpianus 1 fideic.

Si deportati servo fideicommissum fuerit adscriptum, ad fiscum pertinere dicendum est, nisi si eum deportatus vivo testatore alienaverit vel fuerit restitutus: tunc enim ad ipsum debebit pertinere.

Dig. 32.7.1

Ulpianus 1 fideic.

Si miles deportato fideicommissum reliquerit, verius est, quod et Marcellus probat, capere eum posse.

Dig. 32.7.2

Ulpianus 1 fideic.

Si quis creditori suo legaverit id quod debet, fidei committi eius non poterit, nisi commodum aliquod ex legato consequatur, forte exceptionis timore vel si quod in diem debitum fuit vel sub condicione.

Dig. 32.8pr.

Paulus 1 fideic.

Si legatarius, a quo fideicommissum datum est, petierit legatum, id tantum, quod per iudicem exegerit, praestare fideicommissario cogetur vel, si non exegerit, actione cedere: ad eum enim litis periculum spectare iniquum est, si non culpa legatarii lis perierit.

Dig. 32.8.1

Paulus 1 fideic.

Servo heredis fideicommissum utiliter non relinquitur, nisi fidei eius commiserit, ut servum manumittat.

Dig. 32.8.2

Paulus 1 fideic.

Cum ita petisset testator, ut, quidquid ex bonis eius ad patrem pervenisset, filiae suae ita restitueret, ut eo amplius haberet, quam ex bonis patris habitura esset, divus pius rescripsit manifestum esse de eo tempore sensisse testatorem, quod post mortem patris futurum esset.

Dig. 32.9

Maecenatus 1 fideic.

Si ita fuerit fideicommissum relictum: " ad quemcumque ex testamento meo vel ab intestato" vel ita: " ad quemcumque quoquo iure bona mea perveniant": hac oratione et eius, qui postea natus erit inve familiam venerit et eius, qui postea cognatus esse coeperit, fidei commissum videtur: eius quoque, quae nondum nupta erit, sed postea eo casu, quo ex edicto ad uxorem bona mariti intestati solent pertinere.

Dig. 32.10

Valens 2 fideic.

Si tibi et ei, qui ex tribus liberis meis in funus meum venerit, centum aureos legavero, non minuitur in tua persona legatum, si nemo venit.

Dig. 32.11pr.

Ulpianus 2 fideic.

Fideicommissa quocumque sermone relinqui possunt, non solum latina vel graeca, sed etiam punica vel gallicana vel alterius cuiuscumque gentis.

Dig. 32.11.1

Ulpianus 2 fideic.

Quotiens quis exemplum testamenti praeparat et prius decedat quam testetur, non valent quasi ex codicillis quae in exemplo scripta sunt, licet verba fideicommissi scriptura habeat: et ita divum pium decrevisse maecianus scribit.

Dig. 32.11.2

Ulpianus 2 fideic.

Si ita quis scripserit: " illum tibi commendo", divus pius rescripsit fideicommissum non deberi: aliud est enim personam commendare, aliud voluntatem suam fideicommittentis heredibus insinuare.

Dig. 32.11.3

Ulpianus 2 fideic.

Cum esset quis rogatus restituere portionem accepta certa quantitate, responsum est ultro petere ipsum fideicommissum ab herede posse. sed utrum, si volet, praecipiet restituetque portionem, an vero et si noluerit, cogatur accepta quantitate portionem restituere, propriae est deliberationis. et sane cum quis rogatur accepta certa quantitate portionem restituere, duplex est fideicommissum, unum, ut possit petere quantitatem paratus portione cedere, aliud, ut et si non petet, tamen cogatur fideicommissario restituere parato praestare quantitatem.

Dig. 32.11.4

Ulpianus 2 fideic.

Si quis ita scripserit: " sufficiunt tibi vineae vel fundus", fideicommissum est, quoniam et illud fideicommissum esse arbitramur: " contentus esto illa re".

Dig. 32.11.5

Ulpianus 2 fideic.

Sic fideicommissum relictum: " nisi heres meus noluerit, illi decem dari volo" quasi condicionale fideicommissum est et primam voluntatem exigit: ideoque post primam voluntatem non erit arbitrium heredis dicendi noluisse.

Dig. 32.11.6

Ulpianus 2 fideic.

Hoc autem " cum voluerit" tractum habet, quamdiu vivat is, a quo fideicommissum relictum est: verum si antequam dederit, decesserit, heres eius praestat. sed et si fideicommissarius, antequam heres constituat, decesserit, ad heredem suum nihil transtulisse videtur: condicionale enim esse legatum nemini dubium est et pendente condicione legati videri decessisse fideicommissarium.

Dig. 32.11.7

Ulpianus 2 fideic.

Quamquam autem fideicommissum ita relictum non debeatur " si volueris", tamen si ita adscriptum fuerit: " si fueris arbitratus" " si putaveris" " si aestimaveris" " si utile tibi fuerit visum" vel " videbitur", debebitur: non enim plenum arbitrium voluntatis heredi dedit, sed quasi viro bono commissum relictum.

Dig. 32.11.8

Ulpianus 2 fideic.

Proinde si ita sit fideicommissum relictum: " illi, si te meruerit", omnimodo fideicommissum debebitur, si modo meritum quasi apud virum bonum collocare fideicommissarius potuit: et si ita sit " si te non offenderit", aeque debebitur: nec poterit heres causari non esse meritum, si alius vir bonus et non infestus meritum potuit admittere.

Dig. 32.11.9

Ulpianus 2 fideic.

Haec verba: " te, fili, rogo, ut praedia, quae ad te pervenerint, pro tua diligentia diligas et curam eorum agas, ut possint ad filios tuos pervenire", licet non satis exprimunt fideicommissum, sed magis consilium quam necessitatem relinquendi, tamen ea praedia in nepotibus post mortem patris eorum vim fideicommissi videntur continere.

Dig. 32.11.10

Ulpianus 2 fideic.

Si filio a patre herede instituto fideicommissum relictum fuerit, etsi verbis non sit ita relictum " cum pater moreretur", sed intellegi hoc possit, puta quia sic relictum est " ut relinquat filio" vel " volo eum habere" vel " volo ad eum pertinere", defendetur in id tempus fideicommissum relictum, quo sui iuris filius efficitur.

Dig. 32.11.11

Ulpianus 2 fideic.

Si cui ita fuerit fideicommissum relictum: " si morte patris sui iuris fuerit " effectus" et emancipatione sui iuris factus sit, non videri defecisse condicionem: sed et cum mors patri contingat quasi exstante condicione ad fideicommissum admittetur.

Dig. 32.11.12

Ulpianus 2 fideic.

Si rem suam testator legaverit eamque necessitate urguente alienaverit, fideicommissum peti posse, nisi probetur adimere ei testatorem voluisse: probationem autem mutatae voluntatis ab heredibus exigendam.

Dig. 32.11.13

Ulpianus 2 fideic.

Ergo et si nomen quis debitoris exegerit, quod per fideicommissum reliquit, non tamen hoc animo, quasi vellet extinguere fideicommissum, poterit dici deberi: nisi forte inter haec interest: hic enim extinguitur ipsa constantia debiti, ibi res durat, tametsi alienata sit. cum tamen quidam nomen debitoris exegisset et pro deposito pecuniam habuisset, putavi fideicommissi petitionem superesse, maxime quia non ipse exegerat, sed debitor ultro pecuniam optulerat, quam offerente ipso non potuit non accipere. paulatim igitur admittemus, etsi ex hac parte pecuniae rem comparaverit, quam non hoc animo exegit, ut fideicommissarium privaret fideicommisso, posse adhuc fideicommissi petitionem superesse.

Dig. 32.11.14

Ulpianus 2 fideic.

Si quis illicite aedificasset, id est hoc quod dirui constitutiones iubent, an fideicommissum relinquere ex eo quid possit, videamus. et puto posse: cum enim dirui necesse sit, nulla dubitatio est, quin senatus consultum impedimento non sit.

Dig. 32.11.15

Ulpianus 2 fideic.

Si heres rogatus sit certam summam usuris certis faenori dare, utile est fideicommissum: sed maecianus putat non alias cogendum credere, quam idonee ei caveatur: sed ego proclivior sum, ut putem cautionem non exigendam.

Dig. 32.11.16

Ulpianus 2 fideic.

Si servo alieno militia relinquatur, an domino quaeratur legatum, quaeritur. et aut scit servum esse, et dico aestimationem deberi: aut ignoravit, et denegari fideicommissi persecutio debet, quia, si scisset servum, non reliquisset.

Dig. 32.11.17

Ulpianus 2 fideic.

Ex his apparet, cum per fideicommissum aliquid relinquitur, ipsum praestandum quod relictum est: cum vero ipsum praestari non potest, aestimationem esse praestandam.

Dig. 32.11.18

Ulpianus 2 fideic.

Si quis decem alicui per fideicommissum reliquerit et, si perdidisset id quod testamento relictum est, rursus ei reliquerit, quaerebatur, an sequens fideicommissum valeat vel an exigere heres debeat cautionem salva fore decem, ne cogatur ad praestationem, et an, si saepius perdidisset, saepius ei sarciretur fideicommissum. divus pius rescripsit neque cautionem exigendam et non amplius quam semel, postquam perdidisset, praestandum: non enim onerandus est heres, ut in infinitum, quotiens perdiderit, restituere ei tantundem debeat, sed ut per fideicommissum posterius duplicata eius legata videantur nec amplius ad periculum heredis pertineat, si quid postea is consumpserit exsoluto et posteriore fideicommisso.

Dig. 32.11.19

Ulpianus 2 fideic.

Item si quis certam quantitatem cui reliquerit et addiderit facilius hanc summam posse compensari, cum debitor sit fideicommissarius ex causa hereditatis gaii seii, nec velit ille hereditatem adire gaii seii, sed petat fideicommissum: imperator noster contra voluntatem eum testantis petere fideicommissum rescripsit, cum in fideicommissis praecipue spectanda servandaque sit testatoris voluntas.

Dig. 32.11.20

Ulpianus 2 fideic.

Plerumque evenit multorum interesse id quod relinquitur, verum testatorem uni voluisse honorem habitum, et est haec sententia Marcelli verissima.

Dig. 32.11.21

Ulpianus 2 fideic.

Sic evenit, ut interdum si pluribus testator honorem habere voluit et de pluribus sensit, quamvis unum legatum sit, tamen ad persecutionem eius plures admittantur. ut puta si decem fuerunt eiusdem rei stipulandi et heres vel fideicommissarius rogatus est, ut eis solveret: hic enim si omnium interest et de omnibus sensit testator, fideicommissum relictum omnes petere potuerunt. sed utrum in partem agent an in solidum, videamus: et credo, prout cuiusque interest, consequentur: unus igitur qui occupat agendo totum consequitur ita, ut caveat defensu iri adversus ceteros fideicommissarios eum qui solvit, sive socii sunt sive non.

Dig. 32.11.22

Ulpianus 2 fideic.

Interdum alterius nomen scribitur in testamento, alteri vero fideicommissi petitio vel legati competit, ut puta si fidei heredis committatur, ut ipse publicum pro titio praestet, fideicommissum hoc vel legatum non publicanus petit, licet ei sit adscriptum, sed ipse petere poterit, pro quo legatum relictum est. multum autem interesse arbitror, cui voluit prospectum cuiusque contemplatione testator fecerit. plerumque autem intellegendum est privati causa hoc fecisse, licet emolumentum publicano quaeratur.

Dig. 32.11.23

Ulpianus 2 fideic.

Si in opere civitatis faciendo aliquid relictum sit, unumquemque heredem in solidum teneri divus marcus et lucius verus proculae rescripserunt: tempus tamen coheredi praestituerunt, intra quod mittat ad opus faciendum, post quod solam proculam voluerunt facere imputaturam coheredi sumptum pro parte eius.

Dig. 32.11.24

Ulpianus 2 fideic.

Ergo et in statua et in servitute ceterisque, quae divisionem non recipiunt, idem divus marcus rescripsit.

Dig. 32.11.25

Ulpianus 2 fideic.

Si quis opus facere iussus paratus sit pecuniam dare rei publicae, ut ipsa faciat, cum testator per ipsum id fieri voluerit, non audietur: et ita divus marcus rescripsit.

Dig. 32.12

Valens 1 fideic.

" stichus liber esto: et ut eum heres artificium doceat, unde se tueri possit, peto". pegasus inutile fideicommissum esse ait, quia genus artificii adiectum non esset: sed praetor aut arbiter ex voluntate defuncti et aetate et condicione et natura ingenioque eius, cui relictum erit, statuet, quod potissimum artificium heres docere eum sumptibus suis debeat.

Dig. 32.13

Maecenatus 2 fideic.

Si sic locutus erit testator: " heres meus illi fundum dato: seio hoc amplius decem", non erit dubitandum, quin seius et fundi partem et decem ex testamento percipere debeat.

Dig. 32.14pr.

Gaius 1 fideic.

Non dubium est, quin, si uxori legatum sit " si non nupserit" idque alii restituere rogata sit, cogenda est, si nupserit, restituere.

Dig. 32.14.1

Gaius 1 fideic.

Heres quoque, cui iurisiurandi condicio remittitur, legatum et fideicommissum debet.

Dig. 32.14.2

Gaius 1 fideic.

Sed si cui legatum relictum est, ut alienam rem redimat vel praestet, si redimere non possit, quod dominus non vendat vel immodico pretio vendat, iustam aestimationem inferat.

Dig. 32.15

Maecenatus 2 fideic.

Hae res testatoris legatae quae in profundo esse dicuntur, quandoque apparuerint, praestantur.

Dig. 32.16

Pomponius 1 fideic.

Saepe legatum plenius restituetur fideicommissario quam esset relictum, veluti si alluvione ager auctus esset vel etiam insulae natae.

Dig. 32.17pr.

Maecenatus 2 fideic.

Etiam ea quae futura sunt legari possunt, ut insula vel in mare vel in fluminibus enata:

Dig. 32.17.1

Maecenatus 2 fideic.

Servitus quoque servo praedium habenti recte legatur.

Dig. 32.18

Pomponius 1 fideic.

Si iure testamento facto fideicommissum tibi reliquero, deinde postea aliud fecero non iure, in quo fideicommissum relictum tibi vel aliud quam quod priore testamento vel omnino non sit relictum, videndum est, mens mea haec fuerit facientis postea testamentum, ut nolim ratum tibi sit priore testamento relictum, quia nuda voluntate fideicommissa infirmarentur. sed vix id optinere potest, fortassis ideo, quod ita demum a priore testamento velim recedi, si posterius valiturum sit et nunc ex posteriore testamento fideicommissum ei non debetur, etiamsi idem heredes utroque testamento instituti ex priore exstiterunt.

Dig. 32.19

Valens 5 fideic.

Si tibi legatum est vel fideicommissum relictum, uti quid facias, etiamsi non interest heredis id fieri, negandam tibi actionem, si non caveas heredi futurum, quod defunctus voluit, nerva et atilicinus recte putaverunt.

Dig. 32.20

Ulpianus 6 fideic.

Si res mihi per fideicommissum relicta eadem tibi legata vel per fideicommissum relicta sit non communicandi animo, sed utrique in solidum, ambigendum non est, si alteri sit soluta, alterum nullum quidem ius in ipsam rem habere, sed actionem de pretio integram eum habere.

Dig. 32.21pr.

Paulus 4 sent.

Nutu etiam relinquitur fideicommissum, dummodo is nutu relinquat, qui et loqui potest, nisi superveniens morbus ei impedimento sit.

Dig. 32.21.1

Paulus 4 sent.

Fideicommissum relictum et apud eum, cui relictum est, ex causa lucrativa inventum extingui placuit, nisi defunctus aestimationem quoque eius praestari voluit.

Dig. 32.21.2

Paulus 4 sent.

Columnis aedium vel tignis per fideicommissum relictis ea tantummodo amplissimus ordo praestari voluit nulla aestimationis facta mentione, quae sine domus iniuria auferri possunt.

Dig. 32.22pr.

Hermogenianus 4 iuris epit.

Si quis in principio testamenti adscripserit: " cui bis legavero, semel deberi volo", postea eodem testamento vel codicillis sciens saepe eidem legaverit, suprema voluntas potior habetur: nemo enim eam sibi potest legem dicere, ut a priore ei recedere non liceat. sed hoc ita locum habebit, si specialiter dixerit prioris voluntatis sibi paenituisse et voluisse, ut legatarius plura legata accipiat.

Dig. 32.22.1

Hermogenianus 4 iuris epit.

Miles in eum ex militari delicto capitali dicta sententia, permittente eo in ipsa sententia qui damnavit, sicut testamenti faciendi ita fideicommissi relinquendi potestatem consequitur.

Dig. 32.22.2

Hermogenianus 4 iuris epit.

Mortis damnum per fideicommissum servi relicti, antequam mora fiat, fideicommissarius solus patitur, licet alienus relinquatur.

Dig. 32.23

Paulus 5 sent.

Ex imperfecto testamento legata vel fideicommissa imperatorem vindicare inverecundum est: decet enim tantae maiestati eas servare leges, quibus ipse solutus esse videtur.

Dig. 32.24

Nerva 2 resp.

Creditori ita potest legari, ne indebitum ab eo repeteretur.

Dig. 32.25pr.

Paulus 1 ad ner.

" ille aut ille heres seio centum dato " : potest seius ab utro velit petere.

Dig. 32.25.1

Paulus 1 ad ner.

Cum in verbis nulla ambiguitas est, non debet admitti voluntatis quaestio.

Dig. 32.26

Paulus 2 ad ner.

Is qui fideicommissum debet post moram non tantum fructus, sed etiam omne damnum, quo adfectus est fideicommissarius, praestare cogitur.

Dig. 32.27pr.

Paulus 2 decr.

Paula callinico ex parte herede instituto filiae eiusdem iuventianae, cum in familia nupsisset, decem testamento legavit: deinde post tempus codicillis factis centum eidem callinico reliquerat non adiecto " hoc amplius". pronuntiavit utramque summam deberi, maxime cum in codicillis filiae callinici nihil legatum fuisset.

Dig. 32.27.1

Paulus 2 decr.

Pompeius hermippus filium hermippum ex dodrante, filiam titianam ex quadrante heredes instituerat et praedia certa singulis praelegaverat: praeterea, si sine liberis hermippus moreretur, aliam possessionem filiae dari iusserat: post testamentum factis codicillis filiae certa praedia dederat eamque his contentam esse voluit pro omni hereditate et his, quae in testamento reliquerat: hermippi bona ad fiscum pervenerant: titiana soror fideicommissum petebat. quaerebatur, utrum pro hereditate tantum an et pro his, quae post mortem frater rogatus erat restituere, pater eam voluisset accipere ea quae codicillis reliquerat. mihi ab omni voluntate recessum videbatur. placuit humanius interpretari ea sola, quae vivente fratre acceptura erat, adempta videri, non etiam quae post mortem eius reliquerat, si sine liberis decederet, et ita pronuntiavit.

Dig. 32.27.2

Paulus 2 decr.

Iulianus severus decedens institutis quibusdam heredibus alumno suo quinquaginta legaverat eaque a iulio mauro colono suo ex pensionibus fundi debitis ab eo praestari voluerat eidemque mauro quaedam legaverat: cum de hereditate fiscus quaestionem movisset, iussu procuratoris maurus pecuniam fisco solverat: postea heres scriptus optinuerat fiscum: alumno autem mortuo heres eius fideicommissum ab herede mauri petebat. placuit imperatori non videri eius fidei commissum, sed demonstratum, unde accipere posset: et ideo heres severi haec praestare debet.

Dig. 32.28

Paulus l.S. ad sc tert.

Si fidei meae committatur, ut, quod mihi relictum fuerit supra quod capere possum, alii restituam, posse me id capere constat.

Dig. 32.29pr.

Labeo 2 post. a iav. epit.

Qui concubinam habebat, ei vestem prioris concubinae utendam dederat, deinde ita legavit: " vestem, quae eius causa empta parata esset". cascellius trebatius negant ei deberi prioris concubinae causa parata, quia alia condicio esset in uxore. labeo id non probat, quia in eiusmodi legato non ius uxorium sequendum, sed verborum interpretatio esset facienda idemque vel in filia vel in qualibet alia persona iuris esset. labeonis sententia vera est.

Dig. 32.29.1

Labeo 2 post. a iav. epit.

Cum ita legatum esset, ut titia uxor mea tantandem partem habeat quantulam unus heres, si non aequales partes essent heredum, quintus mucius et gallus putabant maximam partem legatam esse, quia in maiore minor quoque inesset, servius ofilius minimam, quia cum heres dare damnatus esset, in potestate eius esset, quam partem daret. labeo hoc probat idque verum est.

Dig. 32.29.2

Labeo 2 post. a iav. epit.

Cum ita legatum esset: " quanta pecunia ex hereditate titii ad me pervenit, tantam pecuniam heres meus seiae dato", id legatum putat labeo, quod acceptum in tabulis suis ex ea hereditate testator rettulisset: ceterum negat cavendum heredi a legatario, si quid forte postea eius hereditatis nomine heres damnatus esset. ego contra puto, quia non potest videri pervenisse ad heredem, quod eius hereditatis nomine praestaturus esset: idem alfenus varus servio placuisse scribit, quod et verum est.

Dig. 32.29.3

Labeo 2 post. a iav. epit.

Si heres tibi servo generaliter legato stichum tradiderit isque a te evictus fuisset, posse te ex testamento agere labeo scribit, quia non videtur heres dedisse, quod ita dederat, ut habere non possis: et hoc verum puto. sed hoc amplius ait debere te, priusquam iudicium accipiatur, denuntiare heredi: nam si aliter feceris, agenti ex testamento opponetur tibi doli mali exceptio.

Dig. 32.29.4

Labeo 2 post. a iav. epit.

" si stichus et dama servi mei in potestate mea erunt cum moriar, tum stichus et dama liberi sunto et fundum illum sibi habento". si alterum ex his post testamentum factum dominus alienasset vel manumisisset, neutrum liberum futurum labeo putat: sed tubero eum, qui remansisset in potestate, liberum futurum et legatum habiturum putat. tuberonis sententiam voluntati defuncti magis puto convenire.

Dig. 32.30pr.

Labeo 2 post. a iav. epit.

Qui quattuor pocula oleaginea habebat, ita legavit: pocula oleaginea paria duo. respondi unum par legatum esse, quia non ita esset: bina paria neque ita: poculorum paria duo: idem et trebatius.

Dig. 32.30.1

Labeo 2 post. a iav. epit.

Qui hortos publicos a re publica conductos habebat, eorum hortorum fructus usque ad lustrum, quo conducti essent, aufidio legaverat et heredem eam conductionem eorum hortorum ei dare damnaverat sinereque uti eum et frui. respondi heredem teneri sinere frui: hoc amplius heredem mercedem quoque hortorum rei publicae praestaturum.

Dig. 32.30.2

Labeo 2 post. a iav. epit.

Cum testamento scriptum esset: " sticho servo meo heres quinque dato et, si stichus heredi meo biennium servierit, liber esto", post biennium legatum deberi existimo, quia in id tempus et libertas et legatum referri deberet: quod et trebatius respondit.

Dig. 32.30.3

Labeo 2 post. a iav. epit.

Si fundum mihi vendere certo pretio damnatus es, nullum fructum eius rei ea venditione excipere tibi liberum erit, quia id pretium ad totam causam fundi pertinet.

Dig. 32.30.4

Labeo 2 post. a iav. epit.

Qui fundum mandatu meo in societate mihi et sibi emerat, deinde eum finibus diviserat et priusquam mihi traderet, ita eum tibi legaverat " fundum meum illi do". negavi amplius partem deberi, quia verisimile non esset ita testatum esse patrem familias, ut mandati heres eius damnaretur.

Dig. 32.30.5

Labeo 2 post. a iav. epit.

" uxori meae, dum cum filio meo capuae erit, heres meus ducenta dato": filius a matre migravit. si ambo capuae habitassent, legatum matri debitu iri putavi, quamvis una non habitassent: sin autem in aliud municipium transissent, unius anni tantummodo debitu iri, quo una habitassent quantolibet tempore: trebatius ait. videamus, an his verbis " dum cum filio capuae erit" non condicio significetur, sed ea scriptura pro supervacuo debet haberi: quod non probo. sin autem per mulierem mora non est, quo minus cum filio habitet, legata ei deberi.

Dig. 32.30.6

Labeo 2 post. a iav. epit.

Si aedes alienas ut dares damnatus sis neque eas ulla condicione emere possis, aestimare iudicem oportere ateius scribit, quanti aedes sint, ut pretio soluto heres liberetur. idemque iuris est et si potuisses emere, non emeres.

Dig. 32.31

Labeo 1 pith. a paulo epit.

Si cui aedes legatae sint, is omne habebit id aedificium, quod solum earum aedium erit. paulus: hoc tunc demum falsum est, cum dominus aedium binarum aliquid conclave, quod supra concamarationem alterarum aedium esset, in usum alterarum convertit atque ita his usus fuerit: namque eo modo alteris aedibus id accedet, alteris decedet.

Dig. 32.32

Scaevola 14 Dig.

Sextiam filiam ex quadrante, ex reliquis seium et marcium sororis filios scripsit heredes: sextiam substituit marcio et marcium sextiae, dedit autem per praeceptionem marcio certas species: marcius partem hereditatis, ex qua scriptus erat, omisit et eo intestato defuncto bona eius ad fratrem legitimum seium devoluta sunt. quaesitum est, an sextia ex substitutione etiam haec, quae praelegata marcio erant, iure substitutionis a legitimo herede defuncti sibi vindicare possit. respondit secundum ea quae proponerentur sextiam in legatis, quae marcio data sunt, substitutam non esse.

Dig. 32.33pr.

Scaevola 15 Dig.

Uxori suae inter cetera ita legavit: " et domus eam partem, in qua morari consuevimus". quaesitum est, cum tam testamenti faciundi tempore quam mortis totam domum in usu habuerit nec quicquam ex ea locatum, an ea tantummodo videtur legasse cubicula, in quibus dormire consueverat. respondit eam omnem partem, in qua morari cum familia sua consuevisset.

Dig. 32.33.1

Scaevola 15 Dig.

Uxori suae inter cetera ita legavit: " uxori meae quidquid vivus dedi donavi usibusve eius comparavi, concedi volo": quaero, an quod post testamentum factum ei donatum est, id quoque concessum videatur. respondit verba quae proponerentur nihil pro futuro tempore significare.

Dig. 32.33.2

Scaevola 15 Dig.

Cum seius pro uxore centum aureos creditori solverit et ornamentum pignori positum luerit, postea autem testamento facto uxori suae legavit, quidquid ad eum inve stipulatum eius concessit et hoc amplius vicenos aureos annuos: quaesitum est, an hos centum aureos heredes viri ab uxore vel ab heredibus eius repetant. respondit, si donationis causa creditori solvisset, teneri heredes ex causa fideicommissi, si repetant, atque etiam petentes exceptione summoveri: quod praesumptum esse debet, nisi contrarium ab herede approbetur.

Dig. 32.34pr.

Scaevola 16 Dig.

Nomen debitoris in haec verba legavit: " titio hoc amplius dari volo decem aureos, quos mihi heredes gaii seii debent, adversus quos ei actionem mandari volo eique eorundem pignora tradi". quaero, utrum heredes tantum decem dare debeant an in omne debitum, hoc est in usuras debeant mandare. respondit videri universam eius nominis obligationem legatam. item quaero, cum ignorante matre familias actores in provincia adiectis sorti usuris decem stipulati sint, an ex causa fideicommissi supra scripti etiam incrementum huius debiti ad titium pertineat. respondit pertinere.

Dig. 32.34.1

Scaevola 16 Dig.

Filio ex parte heredi scripto praeceptionem dedit inter cetera his verbis: " titio filio meo nomina ex calendario, quae elegerit filius meus sibi, viginti dare damnas sunto sine dolo malo": eidem filio vivus omnium rerum suarum administrationem permisit: qui post testamentum factum ante mortem patris annis decem, quibus procurabat patri, contra veterem consuetudinem patris, qua calendarium exercebatur, novos debitores amplarum pecuniarum fecit et in priores, quos pater exiguarum fortunarum habebat, maius creditum contulit ad hoc, ut viginti nominibus prope omnis substantia kalendarii esset. quaesitum est, an huic filio eorum nominum, quae ipse fecit, praeceptio permittenda est. respondit ex his electionem habere, quae testamenti tempore testator in kalendario habuit.

Dig. 32.34.2

Scaevola 16 Dig.

Uni ex heredibus per praeceptionem reliquit ea, quae ex patrimonio viri sui arethonis ei supererant, eiusque fidei commisit haec eadem restituere pronepoti, cum erit annis sedecim, in quibus haec verba adiecit: " item rogo, uti reliquum aes alienum, quod ex bonis arethonis debetur, omnibus creditoribus ex reditibus eorum bonorum solvas reddas satisque facias". quaesitum est, an, si probaverit heres non sufficere reditum bonorum ad totius debiti exsolutionem, nihilo minus tamen ipse debet adgnoscere onus aeris alieni. respondit manifeste proponi ex reditibus bonorum eorum iussum aes alienum exsolvere, non de proprio.

Dig. 32.34.3

Scaevola 16 Dig.

Pater filio et filia heredibus institutis cum singulis certa praedia et kalendaria praelegasset, ita cavit: " a te autem, fili carissime, peto, quaecumque legavi, praestari volo, et si quid evenerit aeris alieni, si quod in tempus pro mutuo acceperam et debuero, a te solvi volo, ut quod sorori tuae reliqui, integrum ad eam pertineat". quaesitum est, an quod ex quacumque causa debuit pater, a filio sit praestandum. respondit posse filiam ex fideicommisso consequi ut levaretur, quo magis integrum, quod testator dedisset, ad eam pervenisset.

Dig. 32.35pr.

Scaevola 17 Dig.

Patronus liberto statim tribum emi petierat: libertus diu moram ab herede patroni passus est et decedens heredem reliquit clarissimum virum: quaesitum est, an tribus aestimatio heredi eius debeatur. respondit deberi. idem quaesiit, an et commoda et principales liberalitates, quas libertus ex eadem tribu usque in diem mortis suae consecuturus fuisset, si ei ea tribus secundum voluntatem patroni sui tunc comparata esset, an vero usurae aestimationis heredi eius debeantur. respondi, quidquid ipse consecuturus esset, id ad heredem suum transmittere.

Dig. 32.35.1

Scaevola 17 Dig.

Sempronio ita legavit: " sempronius sumito praedia mea omnia, quae sunt usque ad praedium, quod vocatur gaas, finibus galatiae, sub cura vilici primi, ita ut haec omnia instructa sunt". quaesitum est, cum in eodem confinio praediorum unum sit praedium non galatiae, sed cappadociae finibus, sub cura tamen eiusdem vilici, an etiam id praedium cum ceteris ad sempronium pertineat. respondit et hoc deberi.

Dig. 32.35.2

Scaevola 17 Dig.

Libertis, quos nominaverat, ita legavit: " fundum trebatianum, qui est in regione atellata, item fundum satrianum, qui est in regione niphana, cum taberna dari volo". quaesitum est, cum inter fundos, quos supra legavit, sit quidem fundus vocabulo satrianus, in regione tamen niphana non sit, an ex causa fideicommissi libertis debeatur. respondit, si nullus esset satrianus in regione niphana et de eo sensisse testatorem certum sit, qui alibi esset, non idcirco minus deberi, quia in regione designanda lapsus esset.

Dig. 32.35.3

Scaevola 17 Dig.

Codicillis confirmatis ita cavit: " tiburtibus municipibus meis amantissimisque scitis balineum iulianum iunctum domui meae, ita ut publice sumptu heredum meorum et diligentia decem mensibus totius anni praebeatur gratis". quaesitum est, an et sumptus refectionibus necessarios heredes praestare debeant. respondit secundum ea quae proponerentur videri testatorem super calefactionis et praebitionis onus de his quoque sensisse, qui ad cottidianam tutelam pertineant, quibus balineae aut instruuntur aut denique inter solitas cessationum vices parari purgarique, ut habiles ad lavandum fierent, sint solitae.

Dig. 32.36

claud. not. ad scaev. 18 Dig.

Nec fideicommissa ab intestato data debentur ab eo, cuius de inofficioso testamento constitisset, quia crederetur quasi furiosus testamentum facere non potuisse, ideoque nec aliud quid pertinens ad suprema eius iudicia valet.

Dig. 32.37pr.

Scaevola 18 Dig.

Cum quis decedens seiae matri fundum, qui proprius matris erat, legaverat, ab ea petierat, ut eundem cum moreretur flaviae albinae coniugi suae restitueret. post mortem testatoris mater apud magistratum professa est nihil se adversus voluntatem filii sui facturam paratamque se fundum flaviae albinae tradere, si sibi annua bina praestarentur redituum nomine: sed neque possessionem tradidit neque annua bina accepit. quaesitum est, an iure fundum alii vendere possit. respondit, si de legati iure fideique commissi quaereretur, secundum ea quae proponerentur nec valuisse, quod matri suum legabatur, neque onus fideicommissi processisse, si modo nihil praeterea mater cepisset.

Dig. 32.37.1

Scaevola 18 Dig.

Qui testamento heredem scripserat, maevio ducenta legavit et fidei eius commisit, ut centum daret glauce, tyche elpidi autem quinquaginta: postea maevius volente testatore litteras emisit ad eas secundum voluntatem testatoris restituturum: postea testator fecit codicillos, quibus et hoc praecepit, ut praeter hos codicillos si quid aliud prolatum esset, non valeat. quaesitum est, an maevius, qui ducenta accepit, quia mutavit voluntatem de ea epistula testator, a mulieribus conveniri ex causa fideicommissi possit. respondit secundum ea quae proponuntur frustra maevium conveniri, sive ducenta sive praedium pro his accepit.

Dig. 32.37.2

Scaevola 18 Dig.

Seiam et maevium libertos suos aequis partibus heredes scripsit: maevio substituit sempronium pupillum suum: deinde codicillos per fideicommissum confirmavit, quibus ita cavit: " lucius titius seiae heredi suae, quam pro parte dimidia institui, salutem. maevium libertum meum, quem in testamento pro parte dimidia heredem institui, eam partem hereditatis veto accipere, cuius in locum partemve eius publium sempronium dominum meum heredem esse volo", et maevio, ad quem hereditatis portionem noluit pervenire, cum hoc elogio fideicommissum reliquit: " maevio liberto meo de me nihil merito dari volo lagynos vini vetusti centum quinquaginta". quaesitum est, cum voluntas testatoris haec fuerit, , ut omnimodo perveniat portio hereditatis ad sempronium pupillum, an fideicommissum ex verbis supra scriptis valere intellegatur et a quo sempronius petere possit, cum ad certam personam codicillos scripserit. respondit posse fideicommissum a maevio peti.

Dig. 32.37.3

Scaevola 18 Dig.

Pater emancipato filio bona sua universa exceptis duobus servis non mortis causa donavit et stipulatus est a filio in haec verba: " quae tibi mancipia quaeque praedia donationis causa tradidi cessi, per te non fieri dolove malo neque per eum ad quem ea res pertinebit, quo minus ea mancipia quaeque ex his adgnata erunt eaque praedia cum instrumento, cum ego volam vel cum morieris, quaequae eorum exstabunt neque dolo malo aut fraude factove tuo eiusque ad quem ea res pertinebit in rerum natura aut in potestate esse desissent, si vivam mihi aut cui ego volam reddantur restituantur, stipulatus est lucius titius pater, spopondit lucius titius filius". idem pater decedens epistulam fideicommissariam ad filium suum scripsit in haec verba: " lucio titio filio suo salutem. certus de tua pietate fidei tuae committo, uti des praestes illi et illi certam pecuniam: et lucrionem servum meum liberum esse volo". quaesitum est, cum filius patris nec bonorum possessionem acceperit nec ei heres exstiterit, an ex epistula fideicommissa et libertatem praestare debeat. respondit, etsi neque hereditatem adisset neque bonorum possessionem petisset et nihil ex hereditate possideret, tamen nihilo minus et ex stipulatu ab heredibus patris et fideicommisso ab his quorum interest quasi debitorem conveniri posse, maxime post constitutionem divi pii, quae hoc induxit.

Dig. 32.37.4

Scaevola 18 Dig.

Nuptura duobus filiis suis, quos ex priore marito habebat, mandavit, ut viginti, quae doti dabat, stipularentur in omnem casum, quo solvi posset matrimonium, ut etiam alterutri ex his tota dos solvatur: constante matrimonio uno ex filiis mortuo uxor per epistulam petit a superstite filio, uti quandoque partem dimidiam dumtaxat dotis exigeret et ea contentus erit, alteram autem partem apud maritum eius remanere concedat. quaesitum est postea in matrimonio muliere defuncta, an maritus, si de tota dote conveniatur a filio, doli mali exceptione se tueri possit et an ultro ex causa fideicommissi actio ei competit, ut de parte obligationis accepto ei feratur. respondit et exceptionem utilem fore et ultro ex fideicommisso peti posse. idem quaerit, an de reliqua dimidia parte mandati actio utilis sit heredibus mulieris adversus filium eius.

respondit secundum ea quae proponerentur, maxime post litteras ad filium scriptas non fore utilem. claudius: quoniam in his expressit, ut contentus esset partis dimidiae dotis. quibus verbis satis fideicommissum filio relinqui placuit.

Dig. 32.37.5

Scaevola 18 Dig.

Codicillis ita scripsit: " boulomai panta ta hupotetagmena kuria einai. macimw tw kuriw mou dynaria muria pentakisxilia, hatina elabon parakatavykyn para tou veiou autou iouliou macimou, hina autw andrwventi apodwsw, ha ginontai sun tokw tris muria, apodovynai autw boulomai: houtw gar tw veiw autou wmosa". quaesitum est, an ad depositam pecuniam petendam sufficiant verba codicillorum, cum hanc solam nec aliam ullam probationem habeat. respondi: ex his quae proponerentur, scilicet cum iusiurandum dedisse super hoc testator adfirmavit, credenda est scriptura.

Dig. 32.37.6

Scaevola 18 Dig.

Titia honestissima femina cum negotiis suis opera callimachi semper uteretur, qui ex testamento capere non poterat, testamento facto manu sua ita cavit: " titia dievemyn kai boulomai dovynai kallimaxw misvou xarin dynaria muria": quaero, an haec pecunia ex causa mercedis ab heredibus titiae exigi possit. respondi non idcirco quod scriptum est exigi posse in fraudem legis relictum.

Dig. 32.37.7

Scaevola 18 Dig.

Ex his verbis testamenti: " omnibus, quos quasve manumisi manumiserove sive his tabulis sive quibuscumque aliis, filios filiasve suos omnes concedi volo" quaesitum est, an his, quos vivus manumisisset, debeantur filii. respondit his quoque, quos quasve ante testamentum factum manumisisset, filios filiasve ex causa fideicommissi praestari oportere.

Dig. 32.38pr.

Scaevola 19 Dig.

Pater filium heredem praedia alienare seu pignori ponere prohibuerat, sed conservari liberis ex iustis nuptiis et ceteris cognatis fideicommiserat: filius praedia, quae pater obligata reliquerat, dimisso hereditario creditore nummis novi creditoris, a priore in sequentem creditorem pignoris hypothecaeve nomine transtulit: quaesitum est, an pignus recte contractum esset. respondit secundum ea quae proponerentur recte contractum. idem quaesiit, cum filius praedia hereditaria, ut dimitteret hereditarios creditores, distraxisset, an emptores, qui fideicommissum ignoraverunt, bene emerint. respondi secundum ea quae proponerentur recte contractum, si non erat aliud in hereditate, unde debitum exsolvisset.

Dig. 32.38.1

Scaevola 19 Dig.

Duobus libertis sticho et erote heredibus institutis ita cavit: " fundum cornelianum de nomine meorum exire veto": unus ex heredibus stichus ancillam arescusam testamento liberam esse iussit eique partem suam fundi legavit: quaero, an eros et ceteri colliberti stichi ex causa fideicommissi eius fundi partem ab herede stichi petere possint. respondit non contineri.

Dig. 32.38.2

Scaevola 19 Dig.

Filiam suam heredem scripserat et ita caverat: " veto autem aedificium de nomine meo exire, sed ad vernas meos, quos hoc testamento nominavi, pertinere volo": quaesitum est, defuncta herede et legatariis vernis an ad unum libertum qui remansit totum fideicommissum pertineret. respondit ad eum, qui ex vernis superesset, secundum ea quae proponerentur virilem partem pertinere.

Dig. 32.38.3

Scaevola 19 Dig.

Fundum a filio, quoad vixerit, vetuit venundari donari pignerari et haec verba adiecit: " quod si adversus voluntatem meam facere voluerit, fundum titianum ad fiscum pertinere: ita enim fiet, ut fundus titianus de nomine vestro numquam exeat". quaesitum est, cum vivus filius eum fundum secundum voluntatem patris retinuerit, an defuncto eo non ad heredes scriptos a filio, sed ad eos, qui de familia sunt, pertineat. respondit hoc ex voluntate defuncti colligi posse filium quoad viveret alienare vel pignerare non posse, testamenti autem factionem et in eo fundo in extraneos etiam heredes habiturum.

Dig. 32.38.4

Scaevola 19 Dig.

Iulius agrippa primipilaris testamento suo cavit, ne ullo modo reliquias eius et praedium suburbanum aut domum maiorem heres eius pigneraret aut ullo modo alienaret: filia eius heres scripta heredem reliquit filiam suam neptem primipilaris, quae easdem res diu possedit et decedens extraneos instituit heredes. quaesitum est, an ea praedia extraneus heres haberet an vero ad iuliam domnam, quae habuit patruum maiorem iulium agrippam, pertinerent. respondi, cum hoc nudum praeceptum est, nihil proponi contra voluntatem defuncti factum, quo minus ad heredes pertinerent.

Dig. 32.38.5

Scaevola 19 Dig.

Quindecim libertis, quos nominaverat, praediolum cum taberna legaverat et adiecerat haec verba: " sibique eos habere possidere volo ea lege et condicione, ne quis eorum partem suam vendere donareve aliudve quid facere alii velit: quod si adversus ea quid factum erit, tunc eas portiones praediumve cum taberna ad rem publicam tusculanorum pertinere volo". quidam ex his libertis vendiderunt partes suas duobus collibertis suis ex eodem corpore, emptores autem defuncti gaium seium extraneum heredem reliquerunt: quaesitum est, partes quae venierunt utrum ad gaium seium an ad superstites collibertos suos, qui partes suas non vendiderunt, pertinerent. respondit secundum ea quae proponerentur ad gaium seium pertinere. idem quaesiit, an partes venditae ad rem publicam tusculanorum pertinerent. respondi non pertinere. claudius: quia non possidentis persona, qui nunc extraneus est, respicienda est, sed emptorum, qui secundum voluntatem defunctae ex illis fuerunt, quibus permiserat testatrix venundari, nec condicio exstitit dati fideicommissi tusculanis.

Dig. 32.38.6

Scaevola 19 Dig.

Fidei commisit eius, cui duo milia legavit, in haec verba: " a te, petroni, peto, uti ea duo milia solidorum reddas collegio cuiusdam templi". quaesitum est, cum id collegium postea dissolutum sit, utrum legatum ad petronium pertineat an vero apud heredem remanere debeat. respondit petronium iure petere, utique si per eum non stetit parere defuncti voluntati.

Dig. 32.38.7

Scaevola 19 Dig.

Mater filios heredes scripserat et adiecit: " praedia, quae ad eos ex bonis meis perventura sunt, nulla ex causa abalienent, sed conservent successioni suae deque ea re invicem sibi caverent": ex his verbis quaesitum est, an praedia per fideicommissum relicta videantur. respondit nihil de fideicommisso proponi.

Dig. 32.38.8

Scaevola 19 Dig.

Ex parte dimidia heredi instituto per praeceptionem fundum legavit et ab eo ita petit: " peto, uti velis coheredem tibi recipere in fundo iuliano meo, quem hoc amplius te praecipere iussi, clodium verum nepotem meum, cognatum tuum": quaesitum est, an pars fundi ex causa fideicommissi nepoti debeatur. respondit deberi.

Dig. 32.39pr.

Scaevola 20 Dig.

" pamphilo liberto hoc amplius, quam codicillis reliqui, dari volo centum. scio omnia, quae tibi, pamphile, relinquo, ad filios meos perventura, cum affectionem tuam circa eos bene perspectam habeo". quaero, an verbis supra scriptis pamphili fideicommisit, ut post mortem filiis defuncti centum restituat. respondit secundum ea quae proponerentur non videri quidem, quantum ad verba testatoris pertinet, fidei commissum pamphili, ut centum restitueret: sed cum sententiam defuncti a liberto decipi satis inhumanum est, centum ei relictos filiis testatoris debere restitui, quia in simili specie et imperator noster divus marcus hoc constituit.

Dig. 32.39.1

Scaevola 20 Dig.

Propositum est non habentem liberos nec cognatos in discrimine vitae constitutum per infirmitatem arcessitis amicis gaio seio contubernali dixisse, quod vellet ei relinquere praedia quae nominasset, eaque dicta in testationem gaium seium redegisse etiam ipso testatore interrogato, an ea dixisset, et responso eius tali malista inserto: quaesitum est, an praedia, quae destinata essent, ex causa fideicommissi ad gaium seium pertinerent. respondit super hoc nec dubitandum esse, quin fideicommissum valet.

Dig. 32.39.2

Scaevola 20 Dig.

Duas filias aequis ex partibus heredes fecerat: alteri fundum praelegaverat et ab ea petierat, ut sorori suae viginti daret: ab eadem filia petit, ut partem dimidiam fundi eidem sorori restitueret: quaesitum est, an viginti praestari non deberent. respondi non esse praestanda.

Dig. 32.40pr.

Scaevola 21 Dig.

Post emancipationem patris suscepta a patruo ut legitimo herede petierat, ut partem hereditatis avunculo suo daret et agros duos: ad utrumque autem ut proximum cognatum successio eius pertinuit per bonorum possessionem. quaesitum est, cum in parte hereditatis fideicommissum non constiterit, quam suo iure per bonorum possessionem avunculus habiturus est, an nihilo minus in partem agrorum consistat, ut titius partes agrorum duas, id est unam, quam suo iure per bonorum possessionem habeat, alteram vero partem ex causa fideicommissi petere debeat. respondit posse petere. idem quaesiit, si ab eodem patruo fideicommissum aliis quoque dederit, utrum in solidum, an vero pro parte ab eo praestanda sint. respondit in solidum praestari.

Dig. 32.40.1

Scaevola 21 Dig.

Seiam ex dodrante, maevium ex quadrante instituit heredes, fidei seiae commisit in haec verba: " a te peto tuaeque fidei committo, quidquid ex hereditate mea ad te pervenerit, restituas filio tuo retentis tibi hortis meis". quaesitum est, cum generali capite fideicommisisset " quisquis heres esset" de omnibus, ut praestarent quod cuique legasset praestari fierive iussisset, an, cum dodrantem hereditatis restituerit, hortos in assem vindicare seia debet. respondit etiam coheredis fidei commissum videri, ut quadrantem, quem in his hortis haberet, seiae redderet.

Dig. 32.41pr.

Scaevola 22 Dig.

Uxorem et filium communem heredes instituit et uxoris fidei commisit in haec verba: " peto a te, domina uxor, ne ex fundo titiano partem tibi vindices, cum scias me universam emptionem eius fundi fecisse, sed beneficio affectionis et pietatis, quam tibi debui, eandem emptionem, cum nummis meis comparassem, tecum communicasse": quaesitum est, an eum fundum in solidum filii esse voluerit. respondit eum, de quo quaereretur, perinde rationem in fundo haberi voluisse ac si universus hereditarius esset, ut pro dimidia parte et uxor et filius agrum ut hereditarium habeant.

Dig. 32.41.1

Scaevola 22 Dig.

In testamento ita scriptum fuit: " domum meam cum horto applicito libertis meis concedi volo" et alio capite: " fortunio liberto meo ex domu mea, quam libertis dedi, diaetam, in qua habitabam, item cellarium iunctum eidem diaetae ab herede meo concedi volo". quaesitum est, an heres testatoris oneratus videatur in praestando legato fortunio, quamvis domus universa libertis sit praelegata. respondit non esse oneratum.

Dig. 32.41.2

Scaevola 22 Dig.

Codicillis confirmatis ita cavit: " omnibus autem libertis meis et quos vivus et quos his codicillis manumissi vel postea manumisero, contubernales suas, item filios filias lego, nisi si quos quasve ad uxorem meam testamento pertinere volui vel ei nominatim legavi legavero". idem postea petiit ab heredibus suis, ut regionem umbriae tusciae piceno coheredes uxori suae restituerent cum omnibus, quae ibi erunt, et mancipiis rusticis vel urbanis et actoribus exceptis manumissis. quaesitum est, cum eros et stichus servi in diem vitae testatoris in umbria in piceno actum administraverint, sint autem damae, quem testator vivus manumiserat, filii naturales, utrum eidem damae ex verbis codicilli ab heredibus praestandi sint, an vero ad seiam uxorem ex verbis epistulae pertineant. respondit ex codicillis ad patrem eos naturalem pietatis intuitu pertinere.

Dig. 32.41.3

Scaevola 22 Dig.

Felicissimo et felicissimae, quibus libertatem dederat, fundum gargilianum legavit cum casa, et alio capite titio filio, quem ex parte quarta heredem scripserat, praelegaverat in haec verba: " titi fili, hoc amplius de medio sumito legata mea, quae mihi tam pater tuus praesens quam coelius iustus frater patris reliquerunt". quaesitum est, cum fundus gargilianus testatrici a marito eius, id est a patre titii filii legatus sit, cui fundus ex causa fideicommissi debeatur, utrum titio filio tantum an felicissimo et felicissimae an tribus. respondit non esse verisimile eam, quae nihil aliud felicissimo et felicissimae nisi haec quae specialiter legavit, ad filium, cui et hereditatis suae partem reliquit, legatum generali sermone transferre voluisse.

Dig. 32.41.4

Scaevola 22 Dig.

Testamento pueros ita legaverat: " publio maevio dominulo meo ab heredibus meis dari volo pueros quinque ex meis dumtaxat intra annos septem": post annos complures, quam fecit testamentum, moritur. quaesitum est, cuius aetatis maevio mancipia debeantur, utrumne quae testamenti facti tempore intra septem annos fuerunt an quae mortis tempore intra eam aetatem inveniantur. respondit eam videri aetatem designatam, quae esset, cum a testatore relinquerentur.

Dig. 32.41.5

Scaevola 22 Dig.

Concubinae inter cetera his verbis legaverat: " fundum in appia cum vilico suo et contubernali eius et filiis dari volo": quaesitum est, an nepotes quoque vilici et contubernalis eius testator ad concubinam pertinere voluit. respondit nihil proponi, cur non deberentur.

Dig. 32.41.6

Scaevola 22 Dig.

Legaverat per fideicommissum maeviis ita: " et quidquid in patria gadibus possideo": quaesitum est, an, si quam suburbanam adiacentem possessionem haberet, haec quoque ex causa fideicommissi maeviis debeatur. respondit posse ad hanc quoque verborum significationem extendi. item quaesitum est, an, si calendarii, quod in patria sua vel intra fines eius defunctus exercuit, instrumenta in domo, quam in patria sua habebat, reliquit, an id quoque kalendarium propter verba supra scripta maeviis ex causa fideicommissi deberetur. respondit non deberi. item quaesitum est, an pecunia, quae in arca domi gadibus inventa esset, vel ex diversis nominibus exacta et ibi deposita, ex fideicommisso debeatur. respondit supra responsum.

Dig. 32.41.7

Scaevola 22 Dig.

Testamento, quo filium et uxorem heredes instituerat, filiae per fideicommissum centum, cum in familia nuberet, legavit et adiecit ita: " fidei tuae, filia, committo, ut, cum in familia nubas et quotienscumque nubes, patiaris ex dote tua, quam dabis, partem dimidiam stipulari fratrem tuum et seiam matrem tuam pro partibus dimidiis dari sibi, si in matrimonio eius cui nubes sive divortio facto, priusquam dos tua reddatur eove nomine satisfactum erit, morieris nullo filio filiave ex eo relicto". pater virginem filiam nuptum collocavit eiusque nomine dotem dedit et post divortium eandem recepit et alii in matrimonium cum dote dedit et stipulatus est eam dotem sibi aut filiae suae reddi: manente filia in matrimonio secundo mortuus est eodem testamento relicto eique heredes exstiterunt filius et uxor: postea marito defuncto puella dote recepta nupsit alii praesentibus et consentientibus fratre et matre, quae etiam dotem eius auxit, et neuter eorum stipulati sunt dotem: mox matri filius et filia heredes exstiterunt: deinde in matrimonio filia decessit marito herede relicto. quaesitum est, cum puella non ex causa legati pecuniam in dotem ab heredibus patris acceperat, sed mortuo secundo marito mater familias facta dotem reciperaverat, an heres eius ex causa fideicommissi fratri defunctae teneatur in eam pecuniam, quam percipere posset, si dotem stipulatus esset. respondit secundum ea quae proponerentur non teneri.

Dig. 32.41.8

Scaevola 22 Dig.

Eius heres vel legatarius rogatus est, ut quendam adoptet, his verbis adiectis: " si alias fecerit, exheres esto" vel " perdat legatum". quaesitum est, si non adoptaverit, an ei qui adoptatus non est actio quaedam ex fideicommisso competit. respondit fideicommissum, quo quis rogatur ut adoptet, ratum non esse.

Dig. 32.41.9

Scaevola 22 Dig.

" agri plagam, quae est in regione illa, maeviis publio et gaio transcribi volo, pretio facto viri boni arbitratu et hereditati illato, duplae evictione expromissa reliquis heredibus, ita ut sub poena centum promittant eam agri plagam partemve eius ad seium posterosve eius non perventuram quaqua ratione " . quaesitum est, an legatum valeat, cum publius emere velit, gaius nolit. respondit eum, qui fideicommissum praestari sibi velit, posse partem dimidiam eius agri qui legatus est petere, quamvis alter persequi nolit. item quaesitum est, cautio, quae interponi debeat, secundum voluntatem, pro quota parte cuique heredum praestanda sit. respondit pro ea portione, quae ex fideicommisso praestatur.

Dig. 32.41.10

Scaevola 22 Dig.

Sorori legavit homines quos nominavit testamento eiusque fidei commisit, ut eadem mancipia filiis suis cum obiret restitueret. quaesitum est, adgnata ex his an defuncti filii heredibus restituenda sint post mortem legatariae an remaneant apud heredes eius. respondit ea, quae postea adgnata essent, verbis fideicommissi non contineri.

Dig. 32.41.11

Scaevola 22 Dig.

Pater naturalis filiae suae ex testamento mariti eius fideicommissi debitor, cum ea mulier alii nuberet, non mandatu mulieris dotem marito eius dedit et sibi reddi eam stipulatus est, si sine liberis filia moreretur: mulier filiam suscepit: quaesitum est, an fideicommissum a patre exigere possit. respondit, si nec ratam habuisset dotem datam, superesse fideicommissi petitionem. idem quaesiit, an si pater accepto facere stipulationem velit, mulieri persecutio fideicommissorum deneganda sit. respondit supra responsum, eumque patrem, de quo quaereretur, si ita dedisset, ut mulier ratum haberet, posse condicere.

Dig. 32.41.12

Scaevola 22 Dig.

Seium maritum scripsit heredem eique substituit appiam alumnam fideique heredis commisit, ut post mortem suam hereditatem eidem alumnae restitueret aut, si quid ante contigisset alumnae, tunc valeriano fratris filio restitueret eandem hereditatem. quaesitum est, si seius vivus, quidquid ad eum ex hereditate pervenisset, alumnae restituisset, an secundum voluntatem defunctae id fecisse videretur: praesertim cum haec idem substituta esset. respondit, si vivo seio appia decessisset, non esse liberatum a fideicommisso valeriano relicto.

Dig. 32.41.13

Scaevola 22 Dig.

Scaevola respondit: cum heres scriptus rogatus esset, cum volet, alii restituere hereditatem, interim non est compellendus ad fideicommissum. claudius: post mortem enim utique creditur datum.

Dig. 32.41.14

Scaevola 22 Dig.

Heredis scripti fidei commiserat, ut seiae uxori universam restitueret hereditatem et uxoris fidei commisit in haec verba: " a te, seia, peto, ut quidquid ad te ex hereditate mea pervenerit, exceptis his, si qua tibi supra legavi, reliquum omne reddas restituas maeviae infanti dulcissimae. a qua seia satis exigi veto, cum sciam eam potius rem aucturam quam detrimento futuram". quaesitum est, an statim maevia fideicommissum a seia petere possit. respondit nihil proponi, cur non possit.

Dig. 32.42

Scaevola 33 Dig.

Titius heredes instituit seiam uxorem ex parte duodecima, maeviam ex reliquis partibus et de monumento quod sibi exstrui volebat, ita cavit: " corpus meum uxori meae volo tradi sepeliendum in fundo illo et monumentum exstrui usque ad quadringentos aureos". quaero, cum in duodecima parte non amplius quam centum quinquaginta aurei ex bonis mariti ad uxorem perveniant, an hac scriptura ab ea sola monumentum sibi testator exstrui voluerit. respondi ab utraque herede monumentum pro hereditariis portionibus instruendum.

Dig. 32.43

Celsus 15 Dig.

Si filiae pater dotem arbitratu tutorum dari iussisset, tubero perinde hoc habendum ait ac si viri boni arbitratu legatum sit. labeo quaerit, quemadmodum apparet, quantam dotem cuiusque filiae boni viri arbitratu constitui oportet: ait id non esse difficile ex dignitate, ex facultatibus, ex numero liberorum testamentum facientis aestimare.

Dig. 32.44

Pomponius 2 ad sab.

Si fundus legatus sit cum his quae ibi erunt, quae ad tempus ibi sunt non videntur legata: et ideo pecuniae, quae faenerandi causa ibi fuerunt, non sunt legatae.

Dig. 32.45

Ulpianus 22 ad sab.

Hoc legatum " uxoris causa parata" generale est et continet tam vestem quam argentum aurum ornamenta ceteraque, quae uxoris gratia parantur. sed quae videantur uxoris causa parari? sabinus libris ad vitellium ita scripsit: quod in usu frequentissime versatur, ut in legatis uxoris adiciatur " quod eius causa parata sint", hanc interpretationem optinuit, quod magis uxoris causa quam communis promiscuique usus causa paratum foret. neque interesse visum est, ante ductam uxorem id pater familias paravisset an postea an etiam ex his rebus quibus ipse uti soleret uxori aliquid adsignavisset, dum id mulieris usibus proprie adtributum esset.

Dig. 32.46

Paulus 2 ad vitell.

Ea tamen adiectio legatum alias exiguius, alias plenius efficit. augetur, cum sic scriptum est: " quaeque eius causa parata sunt": id enim significat et si quid praeter ea quae dicta sunt eius causa paratum est: minuitur detracta coniunctione, quia ex omnibus supra comprehensis ea sola definiuntur, quae eius causa parata sunt.

Dig. 32.47pr.

Ulpianus 22 ad sab.

Si quid earum rerum ante comparavit quam uxorem duxit, si id ei ut uteretur tradidit, perinde est, quasi postea paravisset. ex eo autem legato ea pertinent ad uxorem, quae eius causa empta comparata quaeque retenta sunt: in quibus etiam quae prioris uxoris quaeque filiae neptis vel nurus fuerunt continentur.

Dig. 32.47.1

Ulpianus 22 ad sab.

Inter emptum et paratum quid interest, quaeritur: et responsum est in empto paratum inesse, in parato non continuo emptum contineri: veluti si quis quae prioris uxoris causa emisset, posteriori uxori tradidisset, eas res eum posterioris uxoris causa paravisse, non emisse constat. ideoque quamvis maritus posterioris uxoris causa nihil emerit, tamen tradendo quae prior habuerit, eius causa parata sunt. etsi ei adsignata non sunt, legato cedunt: at quae prioris uxoris causa parata sunt, ita posteriori debentur, si ei adsignata sint, quia non est ita de posteriore uxore cogitatum, cum compararentur.

Dig. 32.48

Paulus 4 ad sab.

Nam ne id quidem quod traditum est, si postea ademptum sit, legato cedet.

Dig. 32.49pr.

Ulpianus 22 ad sab.

Item legato continentur mancipia, puta lecticarii, qui solam matrem familias portabant. item iumenta vel lectica vel sella vel burdones. item mancipia alia, puellae fortassis, quas sibi comatas mulieres exornant.

Dig. 32.49.1

Ulpianus 22 ad sab.

Sed et si forte virilia ei quaedam donaverit, quodammodo eius causa parata videbuntur.

Dig. 32.49.2

Ulpianus 22 ad sab.

Proinde et si quaedam promiscui usus sint, solitus tamen fuerit ab ea quasi usum mutuari, dicendum erit ipsius causa videri parata.

Dig. 32.49.3

Ulpianus 22 ad sab.

Item interest, ipsius causa parata sint ei legata an ipsius causa empta: paratis enim omnia continentur, quae ipsius usibus fuerunt destinata, empta vero ea sola, quae propter eam empta fecit maritus. unde non continebuntur emptis solis legatis, quae alia ratione pater familias adquisitia ei destinavit: utroque autem legato continebuntur et quae maritus emi mandaverat vel quae emerat, necdum autem ei adsignaverat, adsignaturus si vixisset.

Dig. 32.49.4

Ulpianus 22 ad sab.

Parvi autem refert, uxori an concubinae quis leget, quae eius causa empta parata sunt: sane enim nisi dignitate nihil interest.

Dig. 32.49.5

Ulpianus 22 ad sab.

Si uxori aurum, quod eius causa paratum est, legatum sit et postea sit conflatum, materia tamen maneat, ea ei debetur.

Dig. 32.49.6

Ulpianus 22 ad sab.

Sed ut legatum valeat, mortis tempore uxorem esse debere proculus scripsit et verum est: separatio enim dissolvit legatum.

Dig. 32.49.7

Ulpianus 22 ad sab.

Hoc legatum et filio et filiae relinqui potest: " quae eius gratia parata sunt", et servo servaeque: et continebuntur quae ipsi sunt adtributa vel destinata.

Dig. 32.50pr.

Ulpianus 23 ad sab.

Cum filio familias ita legatur: " cum is in tutelam suam pervenerit", pubertatis tempus significatur. et sane si impuberi filio familias legatum sit, plerumque sentiendum est, quod sabinus ait, ut non et pater familias fiat, sed ut pubes. ceterum si mater, quae suspectam habuit mariti a quo divorterat vitam, filio suo quamvis impuberi leget, non videtur sensisse de eo tempore, quo pubes est, sed eo, quo et pubes et pater familias est (nam et si pubes fuit, multo magis dicemus de patre familias eam sensisse), ac si dixisset " in suam tutelam et in suam potestatem".

Dig. 32.50.1

Ulpianus 23 ad sab.

Quod si quis patri familias impuberi leget, cum suae tutelae sit, de pubertate sensit, interdum et de viginti quinque annis, si mens testantis appareat. nam si iam puberi, minori tamen viginti quinque annis legavit, procul dubio anni viginti quinque erunt praestituti.

Dig. 32.50.2

Ulpianus 23 ad sab.

Item si furioso vel prodigo vel ei, cui praetor ex causa curatorem dedit, ita sit legatum, puto et de eo sensum casu, quo curae et tutelae liberetur.

Dig. 32.50.3

Ulpianus 23 ad sab.

Ex his et huiusmodi apparet voluntatis quaestionem sabinum interpretatum: et utique non dubitaret, si puberi et multo magis maiori viginti quinque annis ita sit legatum, de sua potestate testatorem sensisse.

Dig. 32.50.4

Ulpianus 23 ad sab.

Sic autem haec scriptura varia est et voluntatis habet quaestionem, ut illa quoque, si quis ita scripserit " cum sui iuris fuerit factus" nam aliter alias accipiatur: et plerumque potestatis liberationem continet, plerumque pubertatem vel vicesimum quintum annum.

Dig. 32.50.5

Ulpianus 23 ad sab.

Ego quidem et si quis iam puberi, minori tamen viginti quinque annis sic legaverit " cum ad pubertatem pervenerit", puto de aetate eum sensisse, quae caret in integrum restitutione.

Dig. 32.50.6

Ulpianus 23 ad sab.

Idem et si quis " cum suae aetatis fuerit factus", utrum de pubertate an de viginti quinque annis sensum sit, disputari de voluntate potest, non minus quam si ita adscripserit " cum iustae aetatis sit factus" vel " cum maturae aetatis" vel " cum adoleverit".

Dig. 32.51

Paulus 4 ad sab.

Si filiae familias ita legatum sit " cum in tutelam suam pervenerit", tunc debebitur, cum viripotens facta fuerit.

Dig. 32.52pr.

Ulpianus 24 ad sab.

Librorum appellatione continentur omnia volumina, sive in charta sive in membrana sint sive in quavis alia materia: sed et si in philyra aut in tilia (ut nonnulli conficiunt) aut in quo alio corio, idem erit dicendum. quod si in codicibus sint membraneis vel chartaceis vel etiam eboreis vel alterius materiae vel in ceratis codicillis, an debeantur, videamus. et gaius cassius scribit deberi et membranas libris legatis: consequenter igitur cetera quoque debebuntur, si non adversetur voluntas testatoris.

Dig. 32.52.1

Ulpianus 24 ad sab.

Si cui centum libri sint legati, centum volumina ei dabimus, non centum, quae quis ingenio suo metitus est, qui ad libri scripturam sufficerent: ut puta cum haberet homerum totum in uno volumine, non quadraginta octo libros computamus, sed unum homeri volumen pro libro accipiendum est.

Dig. 32.52.2

Ulpianus 24 ad sab.

Si homeri corpus sit legatum et non sit plenum, quantaecumque rhapsodiae inveniantur, debentur.

Dig. 32.52.3

Ulpianus 24 ad sab.

Libris autem legatis bibliothecas non contineri sabinus scribit: idem et cassius: ait enim membranas quae scriptae sint contineri, deinde adiecit neque armaria neque scrinia neque cetera, in quibus libri conduntur, deberi.

Dig. 32.52.4

Ulpianus 24 ad sab.

Quod tamen cassius de membranis puris scripsit, verum est: nam nec chartae purae debentur libris legatis nec chartis legatis libri debebuntur, nisi forte et hic nos urserit voluntas: ut puta si quis forte chartas sic reliquerit " chartas meas universas", qui nihil aliud quam libros habebat, studiosus studioso: nemo enim dubitabit libros deberi: nam et in usu plerique libros chartas appellant. quid ergo, si quis chartas legaverit puras? membranae non continebuntur neque ceterae ad scribendum materiae, sed nec coepti scribi libri.

Dig. 32.52.5

Ulpianus 24 ad sab.

Unde non male quaeritur, si libri legati sint, an contineantur nondum perscripti. et non puto contineri, non magis quam vestis appellatione nondum detexta continetur. sed perscripti libri nondum malleati vel ornati continebuntur: proinde et nondum conglutinati vel emendati continebuntur: sed et membranae nondum consutae continebuntur.

Dig. 32.52.6

Ulpianus 24 ad sab.

Chartis legatis neque papyrum ad chartas paratum neque chartae nondum perfectae continebuntur.

Dig. 32.52.7

Ulpianus 24 ad sab.

Sed si bibliothecam legaverit, utrum armarium solum vel armaria continebuntur an vero libri quoque contineantur, quaeritur. et eleganter nerva ait interesse id quod testator senserit: nam et locum significari bibliothecam eo: alias armarium, sicuti dicimus " eboream bibliothecam emit": alias libros, sicuti dicimus " bibliothecam emisse".

Dig. 32.52.7a

Ulpianus 24 ad sab.

Quod igitur scribit sabinus libros bibliothecam non sequi, non per omnia verum est: nam interdum armaria quoque debentur, quae plerique bibliothecas appellant. plane si mihi proponas adhaerentia esse membro armaria vel adfixa, sine dubio non debebuntur, cum aedificii portio sint.

Dig. 32.52.8

Ulpianus 24 ad sab.

Quod in bibliotheca tractavimus, idem pomponius libro sexto ex sabino in dactyliotheca legata tractat: et ait anulos quoque contineri, non solum thecam, quae anulorum causa parata sit: hoc autem ex eo coniectat, quod ita proponitur quis legasse: " dactyliothecam meam et si quos praeterea ^ praeterae^ anulos habeo" et ita labeonem quoque existimasse ait.

Dig. 32.52.9

Ulpianus 24 ad sab.

Sunt tamen quaedam, quae omnimodo legatum sequuntur: ut lectum legatum contineat et fulctra et armariis et loculis claustra et claves cedunt.

Dig. 32.53pr.

Paulus 4 ad sab.

Argento legato constat arculas ad legatarium non pertinere.

Dig. 32.53.1

Paulus 4 ad sab.

Item anulis legatis dactyliothecae non cedunt.

Dig. 32.54

Pomponius 7 ad sab.

Si pure tibi legavero, deinde postea scripsero ita: " hoc amplius si navis ex asia venerit, heres meus ei fundum dato", verius est eo verbo " amplius" superiora repeti, sicuti dicimus " lucius titius plebi quina milia dedit, hoc amplius seius viscerationem", quina quoque milia seium dedisse intellegimus et " titius accepit quinque, seius hoc amplius fundum", seium quinque quoque accepisse intellegimus.

Dig. 32.55pr.

Ulpianus 25 ad sab.

Ligni appellatio nomen generale est, sed sic separatur, ut sit aliquid materia, aliquid lignum. materia est, quae ad aedificandum fulciendum necessaria est, lignum, quidquid conburendi causa paratum est. sed utrum ita demum, si concisum sit an et si non sit? et quintus mucius libro secundo refert, si cui ligna legata essent, quae in fundo erant, arbores quidem materiae causa succisas non deberi: nec adiecit, si non comburendi gratia succisae sunt, ad eum pertinere, sed sic intellegi consequens est.

Dig. 32.55.1

Ulpianus 25 ad sab.

Ofilius quoque libro quinto iuris partiti ita scripsit, cui ligna legata sunt, ad eum omnia ligna pertinere, quae alio nomine non appellantur, veluti virgae carbones nuclei olivarum, quibus ad nullam aliam rem nisi ad comburendum possit uti: sed et balani vel si qui alii nuclei.

Dig. 32.55.2

Ulpianus 25 ad sab.

Idem libro secundo negat arbores nondum concisas, nisi quae minutatim conciduntur, videri ei legatas, cui ligna legata sunt. ego autem arbitror hoc quoque ligni appellatione contineri, quod nondum minutatim fuit concisum, si iam concidendo fuit destinatum. proinde si silvam huic rei habebat destinatam, silva quidem non cedet, deiectae autem arbores lignorum appellatione continebuntur, nisi aliud testator sensit.

Dig. 32.55.3

Ulpianus 25 ad sab.

Lignis autem legatis quod comburendi causa paratum est continetur, sive ad balnei calefactionem sive diaetarum hypocaustarum sive ad calcem vel ad aliam rem coquendam solebat uti.

Dig. 32.55.4

Ulpianus 25 ad sab.

Ofilius libro quinto iuris partiti scripsit nec sarmenta ligni appellatione contineri: sed si voluntas non refragatur, et virgulae et gremia et sarmenta et superamenta materiarum et vitium stirpes atque radices continebuntur.

Dig. 32.55.5

Ulpianus 25 ad sab.

Lignorum appellatione in quibusdam regionibus, ut in aegypto, ubi harundine pro ligno utuntur, et harundines et papyrum comburitur et herbulae quaedam vel spinae vel vepres continebuntur. quid mirum? cum culon hoc et naves culygas appellant, quae haec apo twn helwn deducunt.

Dig. 32.55.6

Ulpianus 25 ad sab.

In quibusdam provinciis et editu bubum ad hanc rem utuntur.

Dig. 32.55.7

Ulpianus 25 ad sab.

Si lignum sit paratum ad carbones coquendas atque conficiendas, ait ofilius libro quinto iuris partiti carbonum appellatione huiusmodi materiam non contineri: sed an lignorum? et fortassis quis dicet nec lignorum: non enim lignorum gratia haec testator habuit. sed et titiones et alia ligna cocta ne fumum faciant utrum ligno an carboni an suo generi adnumerabimus? et magis est, ut proprium genus habeatur.

Dig. 32.55.8

Ulpianus 25 ad sab.

Sulpurata quoque de ligno aeque eandem habebunt definitionem.

Dig. 32.55.9

Ulpianus 25 ad sab.

Ad faces quoque parata non erunt lignorum appellatione comprehensa, nisi haec fuit voluntas.

Dig. 32.55.10

Ulpianus 25 ad sab.

De pinu autem integri strobili ligni appellatione continebuntur.

Dig. 32.56

Paulus 4 ad sab.

Pali et perticae in numero materiae redigendi sunt, et ideo lignorum appellatione non continentur.

Dig. 32.57

Pomponius 30 ad sab.

Servius respondit, cui omnis materia legata sit, ei nec arcam nec armarium legatum esse.

Dig. 32.58

Ulpianus 4 disp.

Cum uxori suae quis ea, quae eius causa parata sunt, legasset, dehinc vivus purpuras comparasset in provincia necdum tamen advexisset, rescriptum est ad mulierem purpuras pertinere.

Dig. 32.59

Iulianus 34 Dig.

Qui chirographum legat, non tantum de tabulis cogitat, sed etiam de actionibus, quarum probatio tabulis continetur: appellatione enim chirographi uti nos pro ipsis actionibus palam est, cum venditis chirographis intellegimus nomen venisse. quin etiam si nomen quis legaverit, id quod in actionibus est legatum intellegitur.

Dig. 32.60pr.

Alfenus 2 Dig. a paulo epit.

Cum quaereretur, agni legati quatenus viderentur, quidam aiebant agnum dumtaxat sex mensum esse: sed verius est eos legatos esse, qui minores anniculis essent.

Dig. 32.60.1

Alfenus 2 Dig. a paulo epit.

Servis et ancillis urbanis legatis agasonem mulionem legato non contineri respondi: eos enim solos in eo numero haberi, quos pater familias circum se ipse sui cultus causa haberet.

Dig. 32.60.2

Alfenus 2 Dig. a paulo epit.

Lana lino purpura uxori legatis, quae eius causa parata essent, cum multam lanam et omnis generis reliquisset, quaerebatur, an omnis deberetur. respondit, si nihil ex ea destinasset ad usum uxoris, sed omnis commixta esset, non dissimilem esse deliberationem, cum penus legata esset et multas res quae penus essent reliquisset, ex quibus pater familias vendere solitus esset. nam si vina diffudisset habiturus usioni ipse et heres eius, tamen omne in penu existimare. sed cum probaretur eum qui testamentum fecisset partem penus vendere solitum esse, constitutum esse, ut ex eo, quod ad annum opus esset, heredes legatario darent. sic mihi placet et in lana fieri, ut ex ea quod ad usum annuum mulieri satis esset, ea sumeret: non enim deducto eo, quod ad viri usum opus esset, reliquum uxori legatum esse, sed quod uxoris causa paratum esset.

Dig. 32.60.3

Alfenus 2 Dig. a paulo epit.

Praediis legatis et quae eorum praediorum colendorum causa empta parataque essent, neque topiarium neque saltuarium legatum videri ait: topiarium enim ornandi, saltuarium autem tuendi et custodiendi fundi magis quam colendi paratum esse: asinum machinarium legatum videri: item oves, quae stercorandi fundi causa pararentur: item opilionem, si eius generis oves curaret.

Dig. 32.61

Alfenus 8 Dig. a paulo epit.

Textoribus omnibus, qui sui essent cum moreretur, legatis quaesitum est, an et is, quem postea ex his ostiarium fecisset, legato contineretur. respondit contineri: non enim ad aliud artificium, sed ad alium usum transductum esse.

Dig. 32.62

Iulianus l.S. de ambig.

Qui duos mulos habebat ita legavit: " mulos duos, qui mei erunt cum moriar, heres dato": idem nullos mulos, sed duas mulas reliquerat. respondit servius deberi legatum, quia mulorum appellatione etiam mulae continentur, quemadmodum appellatione servorum etiam servae plerumque continentur. id autem eo veniet, quod semper sexus masculinus etiam femininum sexum continet.

Dig. 32.63

Iulianus 1 ad urs. ferocem.

In repetendis legatis haec verba quae adici solent " item dare damnas esto" et ad condiciones et ad dies legatorum easdem repetendas referri sabinus respondit.

Dig. 32.64

Africanus 6 quaest.

Qui filium et nepotem heredem instituerat, certa praedia quaeque in his mortis tempore sua essent nepoti per fideicommissum dederat excepto kalendario: mortis tempore in ea arca, in qua instrumenta et cautiones debitorum erant, pecunia numerata inventa est. plerisque videbatur vix verosimile esse, ut testator de pecunia numerata sensisset. ego autem illud dignum animadversione existimabam, cum quis kalendarium praestari alicui voluerit, utrumne nomina dumtaxat debitorum praestari voluisse intellegendus est an vero etiam pecuniam, si qua ab his exacta, eidem tamen kalendario destinata fuerit. et magis puto, quemadmodum, si exactae pecuniae et rursus collocatae essent, permutatio nominum non peremeret vel minueret fideicommissum, ita ipsae quoque pecuniae, si adhuc kalendario, id est nominibus faciendis destinatae essent, eidem fideicommisso cedere debeant. quin etiam illud quoque putem defendi posse, ut non modo a debitoribus exactae pecuniae, sed quacumque de causa redactae, eidem tamen rationi fuerint destinatae fideicommisso cedant.

Dig. 32.65pr.

Marcianus 7 inst.

Legatis servis exceptis negotiatoribus labeo scripsit eos legato exceptos videri, qui praepositi essent negotii exercendi causa, veluti qui ad emendum locandum conducendum praepositi essent: cubicularios autem vel obsonatores vel eos, qui piscatoribus praepositi sunt, non videri negotiationis appellatione contineri: et puto veram esse labeonis sententiam.

Dig. 32.65.1

Marcianus 7 inst.

Si ex officio quis ad artificium transierit, quidam recte putant legatum exstingui, quia officium artificio mutatur: non idem e contrario cum lecticarius cocus postea factus est.

Dig. 32.65.2

Marcianus 7 inst.

Si unus servus plura artificia sciat et alii coci legati fuerunt, alii textores, alii lecticarii, ei cedere servum dicendum est, cui legati sunt in quo artificio plerumque versabatur.

Dig. 32.65.3

Marcianus 7 inst.

Ornatricibus legatis celsus scripsit eas, quae duos tantum menses apud magistrum fuerunt, legato non cedere, alii et has cedere, ne necesse sit nullam cedere, cum omnes adhuc discere possint et omne artificium incrementum recipit: quod magis optinere debet, quia humanae naturae congruum est.

Dig. 32.65.4

Marcianus 7 inst.

Pecoribus legatis cassius scripsit quadrupedes contineri, quae gregatim pascuntur. et sues autem pecorum appellatione continentur, quia et hi gregatim pascuntur: sic denique et homerus in odyssia ait, dyeis ton ge suessi parymenon: ahi de nemontai par korakos petry epi te kryny arevousy.

Dig. 32.65.5

Marcianus 7 inst.

Iumentis legatis boves non continentur nec contra.

Dig. 32.65.6

Marcianus 7 inst.

Equis autem legatis et equae continentur.

Dig. 32.65.7

Marcianus 7 inst.

Ovibus legatis agni non continentur: quamdiu autem agnorum loco sunt, ex usu cuiusque loci sumendum est: nam in quibusdam locis ovium numero esse videntur, cum ad tonsuram venerint.

Dig. 32.66

Paulus 3 sent.

Avibus legatis anseres phasiani et gallinae et aviaria debebuntur: phasianarii autem et pastores anserum non continentur, nisi id testator expressit.

Dig. 32.67

Marcianus 7 inst.

Qui saltum aestivum legavit et hoc amplius etiam eas res legaverit, quae ibi esse solent, non videtur de illis pecoribus sensisse, quae hieme in hibernis aut aestate in aestivis esse solent, sed de illis sensit, quae perpetuo ibi sunt.

Dig. 32.68pr.

Ulpianus 1 resp.

Iunianio respondit testatorem adiciendo " praedium seianum omne" eam quoque partem fundi supra scripti quasi ad se pertinentem videri per fideicommissum reliquisse, quam ex causa pignoris nactus est, salvo scilicet iure debitoris.

Dig. 32.68.1

Ulpianus 1 resp.

Ex his verbis: " curate agros attendere, et ita fiet, ut filius meus filios vestros vobis condonet", fideicommissum peti non posse.

Dig. 32.68.2

Ulpianus 1 resp.

Servos communes a seia ita relictos " si mei erunt cum moriar" non deberi, si modo hoc sensit testatrix, ut ita deberentur, si in solidum eius fuissent.

Dig. 32.68.3

Ulpianus 1 resp.

Praediis cum his enthecis, quae in ea possessione sunt, relictis mancipia quoque praediorum, cum illic testamenti facti tempore fuerunt, cedent: sed et quae postea accesserunt, si modo hoc testator manifeste expressit.

Dig. 32.69pr.

Marcellus l.S. resp.

Non aliter a significatione verborum recedi oportet, quam cum manifestum est aliud sensisse testatorem.

Dig. 32.69.1

Marcellus l.S. resp.

Titius codicillis suis ita cavit: " publio maevio omnes iuvenes, quos in ministerio habeo, dari volo": quaero, a qua aetate iuvenes et in quam intellegi debeant. Marcellus respondit, quos verbis quae proponerentur demonstrare voluerit testator, ad notionem eius, qui de ea re cogniturus esset, pertinere: non enim in causa testamentorum ad definitionem utique descendendum est, cum plerumque abusive loquantur nec propriis nominibus ac vocabulis semper utantur. ceterum existimari posset iuvenis is ^ ^ , qui adulescentis excessit aetatem, quoad incipiat inter seniores numerari.

Dig. 32.70pr.

Ulpianus 22 ad sab.

Si cui lana legetur, id legatum videtur quod tinctum non est, sed autofues:

Dig. 32.70.1

Ulpianus 22 ad sab.

Sive autem facta est sive infecta, lanae appellatione continetur.

Dig. 32.70.2

Ulpianus 22 ad sab.

Quaesitum est, utrum lanae appellatione ea sola contineatur quae neta non est an et ea quae neta est, ut puta stamen ^ statem^ et subtemen: et sabinus et netam contineri putat, cuius sententia utimur.

Dig. 32.70.3

Ulpianus 22 ad sab.

Lanae appellationem eatenus extendi placet, quoad ad telam pervenisset.

Dig. 32.70.4

Ulpianus 22 ad sab.

Et sciendum sucidam quoque contineri et lotam, si modo tincta non sit.

Dig. 32.70.5

Ulpianus 22 ad sab.

Lanae appellatione tomentum non continebitur.

Dig. 32.70.6

Ulpianus 22 ad sab.

Sed nec ea lana, ex qua quis quasi vestimentum fecerit valetudinis vel deliciarum gratia, continebitur.

Dig. 32.70.7

Ulpianus 22 ad sab.

Ne ea quidem, quae fomentationis gratia parata sunt vel medicinae, lanarum appellatione continentur.

Dig. 32.70.8

Ulpianus 22 ad sab.

Sed et pelles lanatae contineantur? et hoc lanae cedere manifestum est.

Dig. 32.70.9

Ulpianus 22 ad sab.

Lana legata etiam leporinam lanam et anserinam et caprinam credo contineri et de ligno, quam eriocylon appellant.

Dig. 32.70.10

Ulpianus 22 ad sab.

Linum autem lana legata utique non continebitur.

Dig. 32.70.11

Ulpianus 22 ad sab.

Lino autem legato tam factum quam infectum continetur quodque netum quodque in tela est, quod est nondum detextum. ergo aliud in lino quam in lana est. et quidem si tinctum linum sit, credo lino continebitur.

Dig. 32.70.12

Ulpianus 22 ad sab.

Versicoloribus videndum est. et constabat apud veteres lanae appellatione versicoloria non contineri, sed ea omnia videri legata, quae tincta sunt, et neta, quae neque detexta neque contexta sunt. proinde quaeritur, an purpura appellatione versicolorum contineatur. et ego arbitror ea, quae tincta non sunt, versicoloribus non adnumerari et ideo neque album neque naturaliter nigrum contineri nec alterius coloris naturalis: purpuram autem et coccum, quoniam nihil nativi coloris sunt, contineri arbitror, nisi aliud sensit testator.

Dig. 32.70.13

Ulpianus 22 ad sab.

Purpurae autem appellatione omnis generis purpuram contineri puto: sed coccum non continebitur, fucinum et ianthinum continebitur. purpurae appellatione etiam subtemen factum contineri nemo dubitat: lana tinguendae purpurae causa destinata non continebitur.

Dig. 32.71

Ulpianus 20 ad sab.

Cum suae ancillae sive servi in testamento scribuntur, hi designari videntur, quos pater familias suorum numero habuit.

Dig. 32.72

Paulus 4 ad sab.

Eadem in omnibus rebus, quas suas quis legaverit, dicenda sunt.

Dig. 32.73pr.

Ulpianus 20 ad sab.

Suos autem servos vel ancillas eos accipimus, qui sunt pleno iure testantis: inter quos fructuarii non continebuntur.

Dig. 32.73.1

Ulpianus 20 ad sab.

Sed qui bona fide testatori serviunt, suorum appellatione magis est ut contineantur, si modo suorum appellatione eos quos suorum numero habuit voluit contineri.

Dig. 32.73.2

Ulpianus 20 ad sab.

Eos vero, quos quis pignori hypothecaeve dedit, sine dubio inter suos legasse videbitur debitor: creditor nequaquam.

Dig. 32.73.3

Ulpianus 20 ad sab.

Proinde si quis servos habuit proprios, sed quorum operas locabat vel pistorias vel histrionicas vel alias similes, an servorum appellatione etiam hos legasse videatur? quod et praesumi oportet, nisi contraria voluntas testatoris appareat.

Dig. 32.73.4

Ulpianus 20 ad sab.

Eum, qui venaliciariam vitam exercebat, puto suorum numero non facile contineri velle eiusmodi mancipia, nisi evidens voluntas fuit etiam de his sentientis: nam quos quis ideo comparavit, ut ilico distraheret, mercis magis loco quam suorum habuisse credendus est.

Dig. 32.73.5

Ulpianus 20 ad sab.

Vicarios autem servorum suorum numero non contineri pomponius libro quinto scribit.

Dig. 32.74

Pomponius 6 ad sab.

Si quis suos servos legavit, communes quoque continentur et in quibus usus fructus alienus fuit.

Dig. 32.75

Ulpianus 20 ad sab.

Nummis indistincte legatis hoc receptum est, ut exiguiores legati videantur, si neque ex consuetudine patris familiae neque ex regionis, unde fuit, neque ex contextu testamenti possit apparere.

Dig. 32.76

Ulpianus 2 ad ed.

Chartis legatis nemo dicet scriptas et libros iam factos legato cedere. hoc idem et in tabulis est.

Dig. 32.77

Iavolenus 1 ex plaut.

Cum in substitutione legata repetuntur, libertates etiam continentur.

Dig. 32.78pr.

Paulus 2 ad vitell.

Quaesitum est stichum servum ex eo fundo ante annum mortis testatoris abductum et disciplinae traditum, postea in eum fundum non reversum an deberetur. responsum est, si studendi causa misisset, non quo de fundo eum aliorsum transferret, deberi.

Dig. 32.78.1

Paulus 2 ad vitell.

" maevi fili, quod iam tibi maximam partem facultatium dederim, contentus esse debes fundo semproniano cum suis inhabitantibus, id est familia, et quae ibi erunt". quaesitum est de nominibus debitorum et nummis. eadem epistulam talem emisit: " argentum omne et supellectilem, quodcumque habeo, tibi dono et quidquid in praedio semproniano habeo". an supellex, quae in aliis praediis vel domibus esset, ad maevium pertineret? et an servi, quos ex eo fundo aliis legavit? responsum est nomina et nummos non videri deberi, nisi manifeste de his quoque legandis voluntas defunctae adprobaretur. servos ex isdem fundis aliis datos deminuisse filii legatum. de argento et suppellectili quae alibi esset eum cuius notio est aestimaturum, ut id optineat, quod testatori placuisse a legatario adprobabitur.

Dig. 32.78.2

Paulus 2 ad vitell.

Praedia quidam reliquit adiectis ^ his^ verbis: " uti a me possessa sunt et quaecumque ibi erunt cum moriar": quaesitum est de mancipiis, quae in his praediis morata fuerunt vel operis rustici causa vel alterius officii, ceterisque rebus, quae ibi fuerunt in diem mortis, an ad legatarium pertinerent. respondit ea omnia, de quibus quaereretur, legata videri.

Dig. 32.78.3

Paulus 2 ad vitell.

" peto, ut fundum meum campanianum genesiae alumnae meae adscribatis ducentorum aureorum ita uti est". quaeritur, an fundo et reliqua colonorum et mancipia, si qua mortis tempore in eo fuerint, debeantur. respondit reliqua quidem colonorum non legata: cetera vero videri illis verbis " ita uti est" data.

Dig. 32.78.4

Paulus 2 ad vitell.

Illud fortasse quaesiturus sit aliquis, cur argenti appellatione etiam factum argentum comprehendetur, cum, si marmor legatum esset, nihil praeter rudem materiam demonstratum videri posset. cuius haec ratio traditur, quippe ea, quae talis naturae sint, ut saepius in sua redigi possint initia, ea materiae potentia victa numquam vires eius effugiant.

Dig. 32.78.5

Paulus 2 ad vitell.

Coccum quod proprio nomine appellatur quin versicoloribus cederet, nemo dubitavit. quin minus porro coracinum aut hysginum aut melinum suo nomine quam coccum purpurave designatur?

Dig. 32.78.6

Paulus 2 ad vitell.

Cum vir ita legasset: " quae uxoris causa parata sunt, ei do lego", ego apud praetorem fideicommissarium petebam etiam res aestimatas, quarum pretium in dotem erat, nec optinui, quasi testator non sensisset de his rebus. atquin si in usum eius datae sint, nihil interest, ab ipsa an ab alio comparatae sunt. postea apud aburnium valentem inveni ita relatum: mulier res aestimatas in dotem dederat ac deinde maritus ei legaverat his verbis: " quae eius causa comparata emptaque essent". dixit emptorum paratorumque appellatione non contineri ea, quae in dotem data essent, nisi si maritus eas res, posteaquam ipsius factae essent, in uxoris usum convertisset.

Dig. 32.78.7

Paulus 2 ad vitell.

Rebus quae in fundo sunt legatis accedunt etiam ea, quae tunc non sunt, si esse solent: nec quae casu ibi fuerunt, legata existimantur.

Dig. 32.79pr.

Celsus 9 Dig.

Si chorus aut familia legetur, perinde est quasi singuli homines legati sint.

Dig. 32.79.1

Celsus 9 Dig.

His verbis: " quae ibi mobilia mea erunt, do lego" nummos ibi repositos, ut mutui darentur, non esse legatos proculus ait: at eos quos praesidii causa repositos habet, ut quidam bellis civilibus factitassent, eos legato contineri. et audisse se rusticos senes ita dicentes pecuniam sine peculio fragilem esse, peculium appellantes, quod praesidii causa seponeretur.

Dig. 32.79.2

Celsus 9 Dig.

Area legata si inaedificata medio tempore fuerit ac rursus area sit, quamquam tunc peti non poterat, nunc tamen debetur.

Dig. 32.79.3

Celsus 9 Dig.

Servus quoque legatus si interim manumittatur et postea servus factus sit, peti potest.

Dig. 32.80

Celsus 35 Dig.

Coniunctim heredes institui aut coniunctim legari hoc est: totam hereditatem et tota legata singulis data esse, partes autem concursu fieri.

Dig. 32.81pr.

Modestinus 9 diff.

Servis legatis etiam ancillas quidam deberi recte putant, quasi commune nomen utrumque sexum contineat: ancillis vero legatis masculos non deberi nemo dubitat. sed pueris legatis etiam puellae debentur: id non aeque in puellis pueros contineri dicendum est.

Dig. 32.81.1

Modestinus 9 diff.

Mulieribus vero legatis etiam virgines debentur, sicuti viris legatis etiam pueros deberi respondetur.

Dig. 32.81.2

Modestinus 9 diff.

Pecudibus autem legatis et boves et cetera iumenta continentur.

Dig. 32.81.3

Modestinus 9 diff.

Armento autem legato etiam boves contineri convenit, non etiam greges ovium et caprarum.

Dig. 32.81.4

Modestinus 9 diff.

Ovibus legatis neque agnos neque arietes contineri quidam recte existimant.

Dig. 32.81.5

Modestinus 9 diff.

Ovium vero grege legato et arietes et agnos deberi nemo dubitat.

Dig. 32.82

Modestinus 9 reg.

Servus, qui in fundo morari solitus erat, si fugerit, licet post mortem testatoris adprehendatur, fundo legato, ut instructus est, etiam ipse legato cedit.

Dig. 32.83pr.

Modestinus 10 resp.

Quod his verbis relictum est: " quidquid ex hereditate bonisve meis ad te pervenerit, cum morieris, restituas", fructus, quos heres vivus percepit, item quae fructuum vice sunt non venire placuisse: nec enim quicquam proponi, ex quo de his quoque restituendis testatricem rogasse probari potest.

Dig. 32.83.1

Modestinus 10 resp.

Idem. testator, qui libertis fideicommissum relinquebat, substitutione inter eos facta expressit, ut post mortem extremi ad posteros eorum pertineret: quaero, cum nemo alius sit nisi libertus eius qui extremo mortuus est, an is ad fideicommissum admitti debeat. respondit: posterorum appellatione liberos tantummodo, non etiam libertos eorum, quibus fideicommissum relictum est, fideicommisso contineri nequaquam incertum est.

Dig. 32.84

Iavolenus 2 ex cass.

Cui quae romae essent legata sunt, ei etiam quae custodiae causa in horreis extra urbem reposita sunt, debentur.

Dig. 32.85

Pomponius 2 ad q. muc.

Nuper constitutum est a principe, ut et non adiecto hoc " meum" si quis corpus alicui leget et ita sentiat, ut ita demum praestetur, si suum sit, ita valere legatum, ut appareat magis sententiam legantis, non hoc verbum " meum" respiciendum esse. et ideo elegans est illa distinctio, ut, quotiens certum corpus legatur, ad praesens tempus adiectum hoc verbum " meum" non faciat condicionem, si vero incertum corpus legetur, veluti ita " vina mea" " vestem meam", videatur pro condicione hoc verbum esse " mea", ut ea demum, quae illius sint, videantur legata. quod non puto fortiter posse defendi, sed potius et hic vestem vel vinum, quod suorum numero habuerit, hoc legatum esse: sic enim responsum est etiam quod coacuerit vinum legato cedere, si id vini numero testator habuisset. plane in mortis tempore collatum hunc sermonem " vestem, quae mea erit" sine dubio pro condicione accipiendum puto: sed et " stichum qui meus erit" puto pro condicione accipiendum nec interesse, utrum ita " qui meus erit" an ita " si meus erit": utrubique condicionem eam esse. labeo tamen scribit etiam in futurum tempus collatum hunc sermonem " qui meus erit" pro demonstratione accipiendum, sed alio iure utimur.

Dig. 32.86

Proculus 5 epist.

Si ita legatum est " domum quaeque mea ibi erunt, cum moriar", nummos ad diem exactos a debitoribus, ut aliis nominibus collocarentur, non puto legatos esse et labeonis distinctionem valde probo, qui scripsit nec quod casu abesset, minus esse legatum nec quod casu ibi sit, magis esse legatum.

Dig. 32.87

Paulus 4 ad l. iul. et pap.

Et fideicommissum et mortis causa donatio appellatione legati continetur.

Dig. 32.88pr.

Paulus 5 ad l. iul. et pap.

Lana legata vestem, quae ex ea facta sit, deberi non placet.

Dig. 32.88.1

Paulus 5 ad l. iul. et pap.

Sed et materia legata navis armariumve ex ea factum non vindicetur.

Dig. 32.88.2

Paulus 5 ad l. iul. et pap.

Nave autem legata dissoluta neque materia neque navis debetur.

Dig. 32.88.3

Paulus 5 ad l. iul. et pap.

Massa autem legata scyphi ex ea facti exigi possunt.

Dig. 32.89

Paulus 6 ad l. iul. et pap.

Re coniuncti videntur, non etiam verbis, cum duobus separatim eadem res legatur. item verbis, non etiam re: " titio et seio fundum aequis partibus do lego", quoniam semper partes habent legatarii. praefertur igitur omnimodo ceteris, qui et re et verbis coniunctus est. quod si re tantum coniunctus sit, constat non esse potiorem. si vero verbis quidem coniunctus sit, re autem non, quaestionis est, an coniunctus potior sit: et magis est, ut et ipse praeferatur.

Dig. 32.90

Paulus 7 ad l. iul. et pap.

Nominatim legatum accipiendum est, quod a quo legatum sit intellegitur, licet nomen pronuntiatum non sit.

Dig. 32.91pr.

Papinianus 7 resp.

Praediis per praeceptionem filiae datis cum reliquis actorum et colonorum ea reliqua videntur legata, quae de reditu praediorum in eadem causa manserunt: alioquin pecuniam a colonis exactam et in kalendarium in eadem regione versam reliquis non contineri neque colonorum neque actorum facile constabit, tametsi nominatim actores ad filiam pertinere voluit.

Dig. 32.91.1

Papinianus 7 resp.

Ex his verbis: " lucio titio praedia mea illa cum praetorio, sicut a me in diem mortis meae possessa sunt, do" instrumentum rusticum et omnia, quae ibi fuerunt, quo dominus fuisset instructior, deberi convenit: colonorum reliqua non debentur.

Dig. 32.91.2

Papinianus 7 resp.

Pater filio tabernam purpurariam cum servis institoribus et purpuris, quae in diem mortis eius ibi fuerunt, legavit. neque pretia purpurae condita neque debita neque reliqua legato contineri placuit.

Dig. 32.91.3

Papinianus 7 resp.

" titio seiana praedia, sicuti comparata sunt, do lego". cum essent gabiniana quoque simul uno pretio comparata, non sufficere solum argumentum emptionis respondi, sed inspiciendum, an litteris et rationibus appellatione seianorum gabiniana quoque continentur et utriusque possessionis confusi reditus titulo seianorum accepto lati essent.

Dig. 32.91.4

Papinianus 7 resp.

Balneas legatae domus esse portionem constabat: quod si eas publice praebuit, ita domus esse portionem balneas, si per domum quoque intrinsecus adirentur et in usu patris familiae vel uxoris nonnumquam fuerunt et mercedes eius inter ceteras meritoriorum domus rationibus accepto ferebantur et uno pretio comparatae vel instructae communi coniunctu fuissent.

Dig. 32.91.5

Papinianus 7 resp.

Qui domum possidebat, hortum vicinum aedibus comparavit ac postea domum legavit. si hortum domus causa comparavit, ut amoeniorem domum ac salubriorem possideret, aditumque in eum per domum habuit et aedium hortus additamentum fuit, domus legato continebitur.

Dig. 32.91.6

Papinianus 7 resp.

Appellatione domus insulam quoque iniunctam domui videri, si uno pretio cum domu fuisset comparata et utriusque pensiones similiter accepto latas rationibus ostenderetur.

Dig. 32.92pr.

Paulus 13 resp.

" si mihi maevia et negidia filiae meae heredes erunt, tunc maevia e medio sumito praecipito sibique habeto fundos meos illum et illum cum casulis et custodibus omnium horum fundorum et cum his omnibus agris, qui ad coniunctionem cuiusque eorum fundorum emptione vel quolibet alio casu optigerint, item cum omnibus mancipiis pecoribus iumentis ceterisque universis speciebus, quae in isdem fundis quove eorum cum moriar erunt, uti optimi maximique sunt utique eos in diem mortis meae possedi et, ut plenius dicam, ita uti cluduntur". in fundo autem uno ex his, qui praelegati sunt, tabularium est, in quo sunt et complurium mancipiorum emptiones, sed et fundorum et variorum contractuum instrumenta, praeterea et nomina debitorum: quaero, an instrumenta communia sint. respondi secundum ea quae proponuntur instrumenta emptionum, item debitorum, quae in fundo praelegato remanserunt, non videri legato contineri.

Dig. 32.92.1

Paulus 13 resp.

His verbis domibus legatis: " fidei heredum meorum committo, uti sinant eum habere domus meas, in quibus habito, nullo omnino excepto cum omni instrumento et repositis omnibus" non videri testatorem de pecunia numerata aut instrumentis debitorum sensisse.

Dig. 32.93pr.

Scaevola 3 resp.

Lucius titius testamento suo cavit, ne ullo modo praedium suburbanum aut domum heres alienaret: filia eius heres scripta heredem reliquit filiam suam, quae easdem res diu possedit et decedens extraneos heredes instituit: quaesitum est, an praedia pertinerent ad iuliam, quae lucium titium testatorem patruum maiorem habuit. respondit nihil proponi contra voluntatem defuncti factum, quo minus ad heredem pertinerent, cum hoc nudum praeceptum est.

Dig. 32.93.1

Scaevola 3 resp.

" semproniae mulieri meae reddi iubeo ab heredibus meis centum aureos, quos mutuos acceperam". quaesitum est, si hanc pecuniam ut debitam sempronia petens victa sit, an fideicommissum peti possit. respondit secundum ea quae proponerentur posse ex causa fideicommissi peti, quod apparuisset non fuisse ex alia causa debitum.

Dig. 32.93.2

Scaevola 3 resp.

Quidam praedia legavit libertis adiectis his verbis: " uti a me possessa sunt et quaecumque ibi erunt, cum moriar": quaesitum est, an mancipia, quae in his praediis morata in diem mortis patris familias fuerunt operis rustici causa vel alterius officii, ceteraeque res, quae ibi fuerunt, ad legatarios pertineant. respondit pertinere.

Dig. 32.93.3

Scaevola 3 resp.

Quaesitum est, an, quod heredes fratribus rogati essent restituere, etiam ad sorores pertineret. respondit pertinere, nisi aliud sensisse testatorem probetur.

Dig. 32.93.4

Scaevola 3 resp.

Collegio fabrorum fundum cum silvis, quae ei cedere solent, uti optimus maximusque esset, legavit. quaero, an ea quoque, quae in diem mortis ibi fuissent, id est faenum pabulum palea, item machina, vasa vinaria, id est cuppae et dolia, quae in cella defixa sunt, item granaria legata essent. respondit non recte peti, quod legatum non esset.

Dig. 32.93.5

Scaevola 3 resp.

Ex parte dimidia heredi instituto per praeceptionem fundum legavit et ab eo ita petit: " peto, uti velis coheredem tibi recipere in fundo iuliano meo, quem amplius te recipere iussi, clodium verum nepotem meum, cognatum tuum". quaero, an pars fundi ex causa fideicommissi nepoti deberetur. respondit deberi.

Dig. 32.94

Valens 2 fideic.

Is, qui complures libertos relinquebat, tribus ex his fundum legaverat et petierat, ut curarent, ne de nomine suo exiret. quaerebatur, ex tribus qui primus moriebatur utrum utrique vel alteri ex his, qui sibi in legato coniuncti essent, relinquere partem suam deberet, an possit vel alii colliberto suo eam relinquere. placuit, etsi voluntatis quaestio esset, satis illum facturum etsi alii reliquisset. quod si nulli dedisset, occupantis an omnium collibertorum et num eorum tantum, quibus pariter legatum esset, petitio fideicommissi esset, dubitabatur. et iulianus recte omnibus debere putavit.

Dig. 32.95

Maecenatus 2 fideic.

" quisquis mihi heres erit, damnas esto dare fideique eius committo, uti det, quantas summas dictavero dedero". aristo res quoque corporales contineri ait, ut praedia mancipia vestem argentum, quia et hoc verbum " quantas" non ad numeratam dumtaxat pecuniam referri ex dotis relegatione et stipulationibus emptae hereditatis apparet et " summae" appellatio similiter accipi deberet, ut in his argumentis quae relata essent ostenditur. voluntatem praeterea defuncti, quae maxime in fideicommissis valeret, ei sententiae suffragari: neque enim post eam praefationem adiecturum testatorem fuisse res corporales, si dumtaxat pecuniam numeratam praestari voluisset.

Dig. 32.96

Gaius 2 fideic.

Si titius ex parte heres rogatus sit maevio hereditatem restituere et rursus titio coheres eius rogatus sit partem suam aut partis partem restituere, an hanc quoque partem, quam a coherede ex fideicommisso recipit, titius restituere maevio debeat, divus antoninus consultus rescripsit non debere restituere, quia hereditatis appellatione neque legata neque fideicommissa continentur.

Dig. 32.97

Paulus 2 decr.

Hosidius quidam instituta filia valeriana herede actori suo antiocho data libertate praedia certa et peculium et reliqua relegaverat tam sua quam colonorum: legatarius proferebat manu patris familiae reliquatum et tam suo quam colonorum nomine: item in eadem scriptura adiectum in hunc modum: " item quorum rationem reddere debeat", scilicet quae in condito habuerat pater familias frumenti vini et ceterarum rerum: quae et ipsa libertus petebat et ex reliquis esse dicebat: et apud praesidem optinuerat. ex diverso cum diceretur reliqua colonorum ab eo non peti nec propria, diversam autem causam esse eorum, quae in condito essent, imperator interrogavit partem legatarii: " quaerendi causa pone", inquit, " in condito centiens aureorum esse, quae in usum sumi solerent: diceres totum, quod esset relictum in arca, deberi?" et placuit recte appellasse. a parte legatarii suggestum est quaedam a colonis post mortem patris familias exacta. respondit hoc, quod post mortem exactum fuisset, reddendum esse legatario.

Dig. 32.98

Paulus l.S. de forma testamenti.

Si plures gradus sint heredum et scriptum sit " heres meus dato", ad omnes gradus hic sermo pertinet, sicuti haec verba " quisquis mihi heres erit". itaque si quis velit non omnes heredes legatorum praestatione onerare, sed aliquos ex his, nominatim damnare debet.

Dig. 32.99pr.

Paulus l.S. de instrumenti sign.

Servis urbanis legatis quidam urbana mancipia non loco, sed opere separant, ut, licet in praediis rusticis sint, tamen si opus rusticum non faciant, urbani videntur. dicendum autem est, quod urbani intellegendi sunt, quos pater familias inter urbanos adnumerare solitus sit: quod maxime ex libellis familiae, item cibariis deprehendi poterit.

Dig. 32.99.1

Paulus l.S. de instrumenti sign.

Venatores et aucupes utrum in urbanis an in rusticis contineantur, potest dubitari: sed dicendum est, ubi pater familias moraretur et hos alebat, ibi eos numerari.

Dig. 32.99.2

Paulus l.S. de instrumenti sign.

Muliones de urbano ministerio sunt, nisi propter opus rurestre testator eos destinatos habebat.

Dig. 32.99.3

Paulus l.S. de instrumenti sign.

Eum, qui natus est ex ancilla urbana et missus in villam nutriendus, interim in neutris esse quidam putant: videamus, ne in urbanis esse intellegatur, quod magis placet.

Dig. 32.99.4

Paulus l.S. de instrumenti sign.

Servis lecticariis legatis si idem lecticarius sit et cocus, accedet legato.

Dig. 32.99.5

Paulus l.S. de instrumenti sign.

Si alii vernae, alii cursores legati sunt, si quidam et vernae et cursores sint, cursoribus cedent: semper enim species generi derogat. si in specie aut in genere utrique sint, plerumque communicabuntur.

Dig. 32.100pr.

Iavolenus 2 ex post. lab.

" heres meus damnas esto lucio titio stichum servum meum reddere" vel ita: " illum servum meum illi reddito". cascellius ait deberi neque id labeo improbat, quia qui reddere iubetur, simul et dare iubetur.

Dig. 32.100.1

Iavolenus 2 ex post. lab.

Duae statuae marmoreae cuidam nominatim, item omne marmor erat legatum: nullam statuam marmoream praeter duas cascellius putat deberi: ofilius trebatius contra. labeo cascellii sententiam probat, quod verum puto, quia duas statuas legando potest videri non putasse in marmore se statuas legare.

Dig. 32.100.2

Iavolenus 2 ex post. lab.

" uxori meae vestem, mundum muliebrem, ornamenta omnia, aurum argentum quod eius causa factum paratumque esset omne do lego". trebatius haec verba " quod eius causa factum paratumque est", ad aurum et argentum dumtaxat referri putat, proculus ad omnia, quod et verum est.

Dig. 32.100.3

Iavolenus 2 ex post. lab.

Cui corinthia vasa legata essent, en baseis quoque eorum vasorum collocandorum causa paratas deberi trebatius respondit. labeo autem id non probat, si eas baseis testator numero vasorum habuit. proculus vero recte ait, si aeneae quidem sint, non autem corinviae, non deberi.

Dig. 32.100.4

Iavolenus 2 ex post. lab.

Cui testudinea legata essent, ei lectos testudineos pedibus inargentatos deberi labeo trebatius responderunt, quod verum est.

Dig. 32.101pr.

Scaevola 16 Dig.

Qui habebat in provincia, ex qua oriundus erat, propria praedia et alia pignori sibi data ob debita, codicillis ita scripsit: " ty glukutaty mou patridi boulomai eis ta mery autys dovynai aforizw auty xwria panta, hosa en suria kektymai, sun pasin tois enousin boskymasin doulois karpois apovetois kataskeuais pasais". quaesitum est, an etiam praedia, quae pignori habuit testator, patriae suae reliquisse videatur. respondit secundum ea quae proponerentur non videri relicta, si modo in proprium patrimonium (quod fere cessante debitore fit) non sint redacta.

Dig. 32.101.1

Scaevola 16 Dig.

" peto fundum meum ita, uti est, alumnae meae dari". quaesitum est, an fundo et reliqua colonorum et mancipia, si qua mortis tempore in eo fundo fuerint, debeantur. respondit reliqua quidem colonorum non esse legata, cetera vero videri illis verbis " ita uti est" data.

Dig. 32.102pr.

Scaevola 17 Dig.

His verbis legavit: " uxori meae lateralia mea viatoria et quidquid in his conditum erit, quae membranulis mea manu scriptis continebuntur nec ea sint exacta cum moriar, licet in rationes meas translata sint et cautiones ad actorem meum transtulerim". hic chirographa debitorum et pecuniam, cum esset profecturus in urbem, in lateralibus condidit et chirographis exactis quam pecunia erogata reversus in patriam post biennium alia chirographa praediorum, quae postea comparaverat, et pecuniam in lateralia condidit. quaesitum est, an ea tantum videatur nomina ei legasse, quae postea reversus in hisdem ^ isdem^ lateralibus condidit. respondit secundum ea quae proponerentur non deberi quae mortis tempore in his lateralibus essent et membranis manu eius scriptis continerentur. idem quaesiit, an, cum emptiones praediorum in hisdem ^ isdem^ lateralibus condiderat, praedia quoque legato cedant. respondit non quidem manifeste apparere, quid de praediis sensisset, verum si ea mente emptiones ibi haberet, ut his legatariae datis proprietas praediorum praestaretur, posse defendi praedia quoque deberi.

Dig. 32.102.1

Scaevola 17 Dig.

Pater familias ita legavit: " lances numero duas leves, quas de sigillaribus emi, dari volo": is de sigillaribus leves quidem non emerat, lances autem emptas habebat, et dictaverat testamentum ante triduum quam moreretur: quaesitum est, an hae lances, quas emptas de sigillaribus habuit, legato cederent, cum nullas alias de sigillaribus emerit nec legaverit. respondit secundum ea quae proponerentur deberi eas, quas de sigillaribus emisset.

Dig. 32.102.2

Scaevola 17 Dig.

Alumno praecepit militiam his verbis: " sempronio alumno meo illud et illud: et, cum per aetatem licebit, militiam illam cum introitu comparari volo: huic quoque omnia integra". quaesitum est, si sempronius eam militiam sibi comparaverit, an pretium eius, sed et id, quod pro introitu erogari solet, ex causa fideicommissi ab heredibus consequi possit. respondit secundum ea quae proponerentur posse.

Dig. 32.102.3

Scaevola 17 Dig.

Idem testator liberto militiam his verbis legavit: " seio liberto meo militiam do lego illam", quam militiam et testator habuit: quaesitum est, an onera omnia et introitus militiae ab herede sint danda. respondit danda.

Dig. 32.103pr.

Scaevola l.S. quaest. publ. tract.

Si pater exheredato filio substituit heredem extraneum, deinde ille extraneus hunc filium heredem instituit et heres factus intra pubertatem decedat, puto a substituto ei filio omnino legata praestari non deberi, quia non directo, sed per successionem ad filium hereditas patris pervenit.

Dig. 32.103.1

Scaevola l.S. quaest. publ. tract.

Plus ego in fratre, qui, cum heres exstitisset patri, exheredatum fratrem heredem instituit, accepi substitutum eius legatum non debere ac ne quidem si intestato fratri successerit, quia non principaliter, sed per successionem bona fratris ad eum pervenerunt.

Dig. 32.103.2

Scaevola l.S. quaest. publ. tract.

Si filius ex uncia heres institutus sit et ab eo legata data sint, habeat et substitutum, deinde commisso edicto per alium filium accepit partis dimidiae bonorum possessionem: substitutus eius utrum ex uncia legata praestat an vero ex semisse? et verius est ex semisse sed ex uncia omnibus ex reliquis liberis et parentibus.

Dig. 32.103.3

Scaevola l.S. quaest. publ. tract.

Contra quoque si ex dodrante institutus commisso edicto semissem acceperit bonorum possessionem, ex semisse tantum legata substitutus debebit: quo modo enim augentur ubi amplius est in bonorum possessione, sic et ubi minus est, deducitur.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER TERTIUS TRICESIMUS

Dig. 33.1.0. De annuis legatis et fideicommissis.
Dig. 33.2.0. De usu et de usu fructu et reditu et habitatione et operis per legatum vel fideicommissum datis.
Dig. 33.3.0. De servitute legata.
Dig. 33.4.0. De dote praelegata.
Dig. 33.5.0. De optione vel electione legata.

Dig. 33.6.0. De tritico vino vel oleo legato.
Dig. 33.7.0. De instructo vel instrumento legato.
Dig. 33.8.0. De peculio legato.
Dig. 33.9.0. De penu legata
Dig. 33.10.0. De suppellectile legata.

Dig. 33.1.0. De annuis legatis et fideicommissis.

Dig. 33.1.1

Pomponius 5 ad sab.

Cum in annos singulos quid legatum sit neque adscriptum, quo loco detur: quocumque loco petetur dari debet, sicuti ex stipulatu aut nomine facto petatur.

Dig. 33.1.2

Pomponius 6 ad sab.

In annos singulos heres damnatus sinere me frui fundo si initio anni, quo colere deberem, moram fecerit, licet postea patiatur, quia cultura sim exclusus, tamen totius anni nomine mihi tenebitur: quemadmodum si diurnas operas stichi dare damnatus non a mane sed a sexta diei hora det, totius diei nomine tenetur.

Dig. 33.1.3pr.

Ulpianus 24 ad sab.

Si legatum sit relictum annua bima trima die, triginta forte, dena per singulos debentur annos, licet non fuerit adiectum " aequis pensionibus".

Dig. 33.1.3.1

Ulpianus 24 ad sab.

Proinde et si adiectum fuerit " pensionibus", licet non sit insertum " aequis", item si scriptum fuerit " aequis", licet non sit adiectum " pensionibus", dicendum erit aequas fieri.

Dig. 33.1.3.2

Ulpianus 24 ad sab.

Sed si adiectum " pensionibus inaequis", inaequales debebuntur: quae ergo debeantur, videamus. et puto eas deberi (nisi specialiter testator electionem heredi dedit), quas vir bonus fuerit arbitratus, ut pro facultatibus defuncti et depositione patrimonii debeantur.

Dig. 33.1.3.3

Ulpianus 24 ad sab.

Sed et si fuerit adiectum " viri boni arbitratu", hoc sequemur, ut pro positione patrimonii sine vexatione et incommodo heredis fiat.

Dig. 33.1.3.4

Ulpianus 24 ad sab.

Quid si ita " pensionibus, quas putaverit legatarius?" an totum ^ tostum^ petere possit, videamus. et puto totum non petendum simul, sicut et in heredis electione. fieri enim pensiones debere testator voluit, quantitates dumtaxat pensionum in arbitrio heredis aut legatarii contulit.

Dig. 33.1.3.5

Ulpianus 24 ad sab.

Sed si ita sit legatum " heres meus titio decem trima die dato", utrum pensionibus an vero post triennium debeatur? et puto sic accipiendum, quasi pater familias de annua bima trima die sensisse proponatur.

Dig. 33.1.3.6

Ulpianus 24 ad sab.

Si cui certa quantitas legetur et, quoad praestetur, in singulos annos certum aliquid velut usuras iusserit testator praestari, legatum valet: sed in usuris hactenus debet valere, quatenus modum probabilem usurarum non excedit.

Dig. 33.1.4

Paulus 62 ad ed.

Si in singulos annos alicui legatum sit, sabinus, cuius sententia vera est, plura legata esse ait et primi anni purum, sequentium condicionale: videri enim hanc inesse condicionem " si vivat" et ideo mortuo eo ad heredem legatum non transire.

Dig. 33.1.5

Modestinus 10 resp.

"a vobis quoque, ceteri heredes, peto, ut uxori meae praestetis, quoad viveret, annuos decem aureos". uxor supervixit marito quinquennio et quattuor mensibus: quaero, an heredibus eius sexti anni legatum integrum debeatur. modestinus respondit integri sexti anni legatum deberi.

Dig. 33.1.6

Modestinus 11 resp.

Annuam pecuniam ad ludos civitati reliquit, quibus praesidere heredes voluit: successores heredum negant se debere, quasi testator tamdiu praestari voluisset, quamdiu praesiderent heredes: quaero igitur, an, cum praesidendi mentionem fecerit, ad tempus fideicommissum an perpetuo praestari voluerit. modestinus respondit fideicommissum quotannis in perpetuum rei publicae praestandum esse.

Dig. 33.1.7

Pomponius 8 ad q. muc.

Quintus mucius ait: si quis in testamento ita scripsit: "filii filiaeque meae ibi sunto, ubi eos mater sua esse volet, eisque heres meus in annos singulos inque pueros puellasque singulas damnas esto dare cibarii nomine aureos decem": si tutores eam pecuniam dare nolunt ei, apud quem pueri atque puellae sunt, nihil est, quod ex testamento agere possit: nam ea res eo pertinet, uti tutores sciant, quae voluntas testatoris fuit, uti possint eam pecuniam sine periculo dare. pomponius. in testamentis quaedam scribuntur, quae ad auctoritatem dumtaxat scribentis referuntur nec obligationem pariunt. haec autem talia sunt. si te heredem solum instituam et scribam, uti monumentum mihi certa pecunia facias: nullam enim obligationem ea scriptura recipit, sed ad auctoritatem meam conservandam poteris, si velis, facere. aliter atque si coherede tibi dato dem scripsero: nam sive te solum damnavero, uti monumentum facias, coheres tuus agere tecum poterit familiae herciscundae, uti facias, quoniam interest illius: quin etiam si utrique iussi estis hoc facere, invicem actionem habebitis. ad auctoritatem scribentis hoc quoque pertinet, cum quis iussit in municipio imagines poni: nam si non honoris municipii gratia id fecisset, sed sua, actio eo nomine nulli competit. itaque haec quinti mucii scriptura: "liberi mei ibi sunto, ubi eos mater sua esse volet" nullam obligationem parit, sed ad auctoritatem defuncti conservandam id pertinebit, ut ubi iusserit ibi sint. nec tamen semper voluntas eius aut iussum conservari debet, veluti si praetor doctus sit non expedire pupillum eo morari, ubi pater iusserit, propter vitium, quod pater forte ignoravit in eis personis esse, apud quas morari iussit. si autem pro cibariis eorum in annos singulos aurei decem relicti sint, sive hoc sermone significantur, apud quos morari mater pupillos voluerit, sive ita acceperimus hunc sermonem, ut ipsis filiis id legatum debeatur, utile erit: et magis enim est, ut providentia filiorum suorum hoc fecisse videatur. et in omnibus, ubi auctoritas sola testatoris est, neque omnimodo spernenda neque omnimodo observanda est. sed interventu iudicis haec omnia debent, si non ad turpem causam feruntur, ad effectum perduci.

Dig. 33.1.8

Gaius 5 ad l. iul. et pap.

In singulos annos relictum legatum simile est usui fructui, cum morte finiatur. sane capitis deminutione non finitur, cum usus fructus finiatur: et usus fructus ita legari potest: "titio usum fructum fundi lego et quotiensque capite minutus erit, eundem usum fructum ei do". illud certe amplius est in hoc legato, quod in ingressu cuiuslibet anni si decesserit legatarius, eius anni legatum heredi suo relinquit: quod in usu fructu non ita est, cum fructuarius, etiamsi maturis fructibus, nondum tamen perceptis decesserit, heredi suo eos fructus non relinquet.

Dig. 33.1.9

Papinianus 7 resp.

Fundus, quem pater familias libertis legatorum nomine, quae in annos singulos relinquit, pignus esse voluit, ex causa fideicommissi rei servandae gratia recte petetur. paulus notat: hoc admittendum est et in aliis rebus hereditariis, ut et in eas legatarius mittatur.

Dig. 33.1.10pr.

Papinianus 8 resp.

"seio amico fidelissimo, si voluerit, sicut meis negotiis interveniebat, eodem modo filiorum meorum intervenire, annuos senos aureos et habitationem qua utitur praestari volo". non ideo minus annua seio pro parte hereditaria viventis filiae deberi placuit, quod ex tribus filiis titiae duo aliis heredibus institutis vita decesserunt, cum tam labor quam pecunia divisionem reciperent.

Dig. 33.1.10.1

Papinianus 8 resp.

"medico sempronio quae viva praestabam, dari volo": ea videntur relicta, quae certam formam erogationis annuae, non incertam liberalitatis voluntatem habuerunt.

Dig. 33.1.10.2

Papinianus 8 resp.

"uxori praeter id, quod a me vivo annui nomine accipiebat, aureos centum dari volo": annum videtur et semel centum aureos reliquisse.

Dig. 33.1.10.3

Papinianus 8 resp.

"libertis dari volo quae viva praestabam": et habitatio praestabitur: sumptus iumentorum non debebitur, quem actori domina praestare solita fuit utilitatis suae causa: ideo nec sumptum medicamentorum medicus libertus recte petet, quem ut patronam eiusque familiam curaret, acceptabat.

Dig. 33.1.11

Paulus 21 quaest.

Cum in annos singulos legatur, plura legata esse placet et per singula legata ius capiendi inspicietur. idem in servo inspiciendum est ex persona dominorum.

Dig. 33.1.12

Paulus 13 resp.

Gaius seius praedia diversis pagis maeviae et seiae legavit et ita cavit: "praestari autem volo ex praediis potitianis praediis lutatianis annua harundinis milia trecena et salicis mundae annua librarum singula milia": quaero, an id legatum defuncta legataria exstinctum sit. paulus respondit servitutem iure constitutam non videri neque in personam neque in rem: sed fideicommissi petitionem competisse ei, cui praedia lutatiana legata sunt, et ideo, cum annua legata fuerint, mortua legataria finitum legatum videri.

Dig. 33.1.13pr.

Scaevola 4 resp.

Maevia nepotem ex maevio puberem heredem instituit et lucio titio ita legavit: "lucio titio viro bono, cuius obsequio gratias ago, dari volo annuos quamdiu vivat aureos decem, si rebus nepotis mei interveniat omnemque administrationem rerum nepotis mei ad sollicitudinem suam revocaverit". quaero, cum lucius titius aliquo tempore maevii negotia gesserit et per eum non stet, quo minus gerat, publius autem maevius nollet eum administrare, an fideicommissum praestari debeat. respondi, si non propter fraudem aliamve quam iustam causam improbandae operae causa remotus esset a negotiis, quae administrare secundum defuncti voluntatem vellet, percepturum legatum.

Dig. 33.1.13.1

Scaevola 4 resp.

Uxore herede scripta ita cavit: "libertis meis omnibus alimentorum nomine singulis annuos denarios duodecim ab herede dari volo, si ab uxore mea non recesserint". quaero, cum pater familias sua voluntate de civitate difficile profectus sit, ea autem adsidue proficiscatur, an liberti cum ea proficisci debeant. respondi non posse absolute responderi, cum multa oriri possint, quae pro bono sint aestimanda: ideoque huiusmodi varietas viri boni arbitrio dirimenda est. item quaeritur, cum proficiscens eis nihil amplius optulerit ac per hoc eam secuti non sint, an legatum debeatur. respondit et hoc ex longinquis brevibusque excursionibus et modo legati aestimandum esse.

Dig. 33.1.14

Ulpianus 2 fideic.

Si cui annuum fuerit relictum sine adiectione summae, nihil videri huic adscriptum mela ait: sed est verior nervae sententia, quod testator praestare solitus fuerat, id videri relictum: si minus, ex dignitate personae statui oportebit.

Dig. 33.1.15

Valens 7 fideic.

Iavolenus eum, qui rogatus post decem annos restituere pecuniam ante diem restituerat, respondit, si propter capientis personam, quod rem familiarem tueri non posset, in diem fideicommissum relictum probetur et perdituro ei id heres ante diem restituisset, nullo modo liberatum esse: quod si tempus heredis causa prorogatum esset, ut commodum medii temporis ipse sentiret, liberatum eum intellegi: nam et plus eum praestitisse quam debuisset.

Dig. 33.1.16

Paulus 3 ad ner.

Servus post decem annos liber esse iussus est legatumque ei ex die mortis domini in annos singulos relictum est. eorum quidem annorum, quibus iam liber erit, legatum debebitur: interim autem heres ei alimenta praestare compellitur.

Dig. 33.1.17pr.

Labeo 2 post. a iav. epit.

Legatum ita est: "attiae, donec nubat, quinquaginta damnas esto heres meus dare" neque adscriptum est " in annos singulos". labeo trebatius praesens legatum deberi putat, sed rectius dicetur id legatum in annos singulos deberi.

Dig. 33.1.17.1

Labeo 2 post. a iav. epit.

"vini falerni, quod domi nasceretur, quotannis in annos singulos binos culeos heres meus attio dato". etiam pro eo anno, quo nihil vini natum est, deberi duos culeos, si modo ex vindemia ceterorum annorum dari possit.

Dig. 33.1.18pr.

Scaevola 14 Dig.

Codicillis testamento confirmatis fundum libertis legavit eumque alienari vetuit, sed pertinere voluit et ad filios libertorum vel ex his natos: deinde haec verba adiecit: "a quibus praestari volo heredi ex reditu eius fundi decem per annos singulos usque ad annos triginta quinque a die mortis meae". quaesitum est, cum heres a titio institutus intra trigesimum quintum annum aetatis decesserit, an residui temporis fideicommissum ex verbis supra scriptis heredis quoque heredi debeatur. respondit deberi, nisi ostendatur a libertis testatorem ad heredis trigesimum quintum annum respexisse.

Dig. 33.1.18.1

Scaevola 14 Dig.

Sticho alumno suo centum et menstruos decem et annuos centum dari voluit et semproniam, quam heredem ex triente instituerat, rogavit in haec verba: "fidei tuae committo, sempronia soror, uti legata, quae alumnis meis reliqui, ex medio recipias et apud te habeas, quoad usque commendatos habeas". quaesitum est, cum sempronia, cuius fidei commissum sit, abstinuerat se hereditate antequam secundum voluntatem defuncti perciperet pecuniam alumnis relictam, an sticho de legatis actio etiam ante vicesimum quintum annum competat. respondit competere.

Dig. 33.1.19pr.

Scaevola 17 Dig.

Titia herede seia scripta usum fructum fundi maevio legavit eiusque fidei commisit in haec verba: "a te, maevi, ex reditu fundi speratiani praestari volo arrio pamphilo et arrio sticho ex die mortis meae annuos sescentos quotannis, quoad vivent". quaesitum est, cum maevius annua alimenta praestiterit, post mortem autem eius fundus ad heredem titiae pleno iure redierit, an alimenta ex fideicommisso pamphilo et sticho debeantur. respondi nihil proponi, cur debeant praestari ab heredibus titiae, cum ab usufructuario alimenta relicta sunt. idem quaesiit, an ab heredibus maevii legatarii praestanda sint. respondit nihil ab herede legatarii, nisi testatorem manifeste probetur voluisse etiam finito usu fructu praestari, si modo id, quod ex usu fructu receptum esset, ei rei parandae sufficeret.

Dig. 33.1.19.1

Scaevola 17 Dig.

Qui marco homini docto certa annua praestabat, testamento cavit: "domina sanctissima, scio te de amicis meis curaturam, ne quid his desit: verum tamen et marco dari octingenta": quaesitum est, an marcus praestitis sibi ex causa legati octingentis annua quoque consequi debeat. respondit nihil proponi, cur non secundum ea, quae in consultatione collata essent, debeantur.

Dig. 33.1.19.2

Scaevola 17 Dig.

"lucio titio auri pondo tria, quae viva praestabam". quaero, cum testatrix quadraginta titio, quoad viveret, salarii nomine certam summam et amplius festorum dierum nomine certum pondus argenti aut pro eo pretium praestiterit, an eadem ex causa legati vel fideicommissi ab heredibus eius titio praestari debeant. respondit nihil proponi, cur praestanda non sunt.

Dig. 33.1.20pr.

Scaevola 18 Dig.

Annua his verbis legavit: "si morarentur cum matre mea, quam heredem ex parte institui": quaesitum est, an mortua matre condicio adposita defecisse videatur ac per hoc neque cibaria neque vestiaria his debeantur. respondit secundum ea quae proponerentur deberi.

Dig. 33.1.20.1

Scaevola 18 Dig.

Attia fideicommissum his verbis reliquit: "quisquis mihi heres erit, fidei eius committo, uti det ex reditu cenaculi mei et horrei post obitum sacerdoti et hierophylaco et libertis, qui in illo templo erunt, denaria decem die nundinarum, quas ibi posui". quaero, utrum his dumtaxat, qui eo tempore quo legabatur in rebus humanis et in eo officio fuerint, debitum sit, an etiam his qui in loco eorum successerunt. respondit secundum ea quae proponerentur ministerium nominatorum designatum, ceterum datum templo. item quaero, utrum uno dumtaxat anno decem fideicommissi nomine debeantur an etiam in perpetuum decem annua praestanda sint. respondit in perpetuum.

Dig. 33.1.21pr.

Scaevola 22 Dig.

Liberto suo ita legavit: "praestari volo philoni, usque dum vivet, quinquagesimam omnis reditus, quae praediis a colonis vel emptoribus fructus ex consuetudine domus meae praestantur". heredes praedia vendiderunt, ex quorum reditu quinquagesima relicta est: quaesitum est, an pretii usurae, quae ex consuetudine in provincia praestarentur, quinquagesima debeatur. respondit reditus dumtaxat quinquagesimas legatas, licet praedia vendita sunt.

Dig. 33.1.21.1

Scaevola 22 Dig.

A liberto, cui fundum legaverat ferentem annua sexaginta, per fideicommissum dederat pamphilae annua dena: quaesitum est, si lex falcidia liberto legatum minuerit, an pamphilae quoque annuum fideicommissum minutum videatur, cum ex reditu legata sint, qui largitur, etiamsi falcidia partem dimidiam fundi abstulerit, annuam pamphilae praestationem. respondit secundum ea quae proponerentur non videri minutum, nisi si alia mens testatoris probaretur.

Dig. 33.1.21.2

Scaevola 22 Dig.

Filium ex dodrante, uxorem ex quadrante instituit heredes et filii fidei commisit, ut novercae restitueret hereditatem: ab ea autem petit, ut infirmitatem filii commendatam haberet eique menstruos aureos denos praestaret, donec ad vicesimum quintum annum aetatis pervenerit, cum autem implesset eam aetatem, partem dimidiam hereditatis ei restitueret. filius deducta dodrantis parte quarta, ex qua institutus erat, novercae hereditatem restituit et postea implevit vicesimum quintum annum aetatis. quaesitum est, cum noverca universae hereditatis haberet dodrantem semunciam et sicilicum, an eius partem dimidiam privigno suo restitueret. respondit secundum ea quae proponerentur tantum restituendum, quantum cum eo, quod falcidiae nomine filius deduxisset, semissem faceret. idem quaesiit, an, quod infirmitati filii pater consulere voluerit, fructus quoque medii temporis noverca ei restituere deberet. respondit secundum ea quae proponerentur debere.

Dig. 33.1.21.3

Scaevola 22 Dig.

Lucius titius testamento patriae suae civitati sebastenorum centum legavit, uti alternis annis ex usuris eiusdem certamina sub nomine ipsius celebrarentur, et adiecit haec verba: "quod si condicione supra scripta recipere legatam sibi pecuniam civitas sebastenorum noluerit, nullo modo heredes meos obligatos ei esse volo, sed habere sibi pecuniam". postea praeses provinciae ex nominibus debitorum hereditariorum elegit idonea nomina et in causam legati rei publicae adiudicavit, post cuius sententiam res publica a plerisque adiudicatis sibi pecunias percepit. quaesitum est, an, si res publica condicionibus testamento adscriptis postea non paruerit, legatum ad filios heredes pertineat. respondit rem publicam voluntati testatoris parere compellendam ac, nisi faciat, in his quidem summis, quae per numerationem vel novationem solutae sunt, utili repetitione heredes adiuvandos: ab his vero nominibus, quae neque solverunt rei publicae neque novatione abscesserunt a pristina obligatione, non prohibendos, quo minus debitum petant.

Dig. 33.1.21.4

Scaevola 22 Dig.

Largius eurippianus consuluit alumno certam pecuniam patronum testamento legasse deque ea re testamento ita cavisse: "pecuniam, quam titio liberto et alumno meo legavi, esse volo penes publium maevium usque ad annum vicesimum quintum aetatis eius proque ea computari cum eo usuras quadrantes: quantum autem in sumptum ei statuendum sit, tu, publi maevi, cum patris affectum ei praestare debeas, aestimabis". quaesitum est, an heredes a publio maevio satis accipere debuerint solventes eam pecuniam. respondit, cum testamento nulla exigendae satisdationis commemoratio fiat, satis habuisse heredes secundum voluntatem defuncti publio maevio pecuniam numerare: et ideo nec titius alumnus vel heredes eius audiri debeant adversus heredes patroni agentes, quod satis non exegerunt: ex ea enim numeratione etiam a titio ac proinde etiam ab heredibus eius liberatos esse supra scriptos heredes, nisi vivente testatore publius maevius solvendo esse desierit: tunc enim cautio ab eo exigenda est.

Dig. 33.1.21.5

Scaevola 22 Dig.

Pater duos filios aequis ex partibus instituit heredes, maiorem et minorem, qui etiam impubes erat, et in partem eius certa praedia reliquit et, cum quattuordecim annos impleverit, certam pecuniam ei legavit idque fratris eius fidei commisit, a quo petit in haec verba: "a te peto, sei, ut ab annis duodecim aetatis ad studia liberalia fratris tui inferas matri eius annua tot usque ad annos quattuordecim: eo amplius tributa fratris tui pro censu eius dependas, donec bona restituas: et ad te reditus praediorum illorum pertineant, quoad perveniat frater tuus ad annos quattuordecim". quaesitum est, defuncto maiore fratre herede alio relicto utrum omnis condicio percipiendi reditus fundorum, anniversaria praestetur alia, quae praestaturus esset, si viveret, seius, ad heredem eius transierint, an vero id omne protinus ad pupillum et tutores transferri debeat. respondit: secundum ea quae proponerentur intellegitur testator quasi cum tutore locutus, ut tempore, quo tutela restituenda est, haec, quae pro annuis praestari iussisset percipiendisque fructibus, finiantur: sed cum maior frater morte praeventus est, omnia, quae relicta sunt, ad pupillum et tutores eius confestim post mortem fratris transisse.

Dig. 33.1.22

Alfenus 2 Dig. a paulo epit.

"filiae meae, quotienscumque vidua erit, in annos singulos centum heres meus dato": quaeritur, si filia minus annui temporis vidua fuisset, numquid minus ei centum deberentur. respondit sibi videri, tametsi totus annus nondum fuisset, tamen deberi.

Dig. 33.1.23

Marcianus 6 inst.

Cum quidam decurionibus divisiones dari voluisset die natalis sui, divi severus et antoninus rescripserunt non esse verisimile testatorem de uno anno sensisse, sed de perpetuo legato.

Dig. 33.1.24

Marcianus 8 inst.

Cum erat certa pecunia, id est centum, rei publicae sardianorum relicta per quadriennium certaminis chrysanthiani, divi severus et antoninus rescripserunt videri perpetuam pensitationem reliquisse testatorem per quadriennium, non in primum quadriennium.

Dig. 33.1.25

Valens 2 fideic.

Filio familias, quoad in potestate patris sit, in annos singulos dena dari possunt.

Dig. 33.2.0. De usu et de usu fructu et reditu et habitatione et operis per legatum vel fideicommissum datis.

Dig. 33.2.1

Paulus 3 ad sab.

Nec usus nec usus fructus itineris actus viae aquaeductus ^ aequaeductus^ legari potest, quia servitus servitutis esse non potest: nec erit utile ex senatus consulto, quo cavetur, ut omnium quae in bonis sint usus fructus legari possit, quia id neque ex bonis neque extra bona sit. sed incerti actio erit cum herede, ut legatario, quamdiu vixerit, eundi agendi ducendi facultatem praestet aut ea servitus constituatur sub hac cautione, ut, si decesserit legatarius vel capite deminutus ex magna causa fuerit, restituatur.

Dig. 33.2.2

Papinianus 17 quaest.

Hominis operae legatae capitis deminutione vel non utendo non amittuntur. et quoniam ex operis mercedem percipere legatarius potest, etiam operas eius ipse locare poterit, quas si prohibeat heres capi, tenebitur. idem est et si servus se locaverit. et quia legatarius fructuarius non est, ad heredem suum operarum legatum transmittit: sed servo usu capto legatum perit.

Dig. 33.2.3

Paulus 3 ad sab.

Hominis quoque liberi operae legari possunt, sicut locari et in stipulationem deduci.

Dig. 33.2.4

Ulpianus 18 ad sab.

Si pure proprietas legata erit, ea ad legatarium perveniet, quamvis fructuarius heres sit institutus.

Dig. 33.2.5

Paulus 3 ad sab.

Usum fructum " cum moriar" inutiliter stipulor: idem est in legato, quia et constitutus usus fructus morte intercidere solet.

Dig. 33.2.6

Pomponius 15 ad sab.

Si usus fructus mihi in biennium continuum a morte testatoris legatus sit et per heredem steterit, quo minus eum mihi daret, praeterito biennio nihilo minus tenetur (quemadmodum teneretur, si res legata in rerum natura esse desisset, quam quis deberet, moratusque esset in ea danda), ut peti quidem iam usus fructus qui legatus sit non possit, quia alius futurus sit quam qui legatus fuerit, sed aestimatio eius bima dumtaxat facienda sit.

Dig. 33.2.7

Ulpianus 26 ad ed.

Operae testamento relictae quando cedere debeant, utrum ex quo petit eas legatarius an ex quo adita hereditas est? et cui pereant dies, quibus aeger servus fuit? et puto ex die petitionis eas cedere: quare si post petitas aeger esse servus coeperit, legatario peribunt.

Dig. 33.2.8

Gaius 3 de legatis ad ed. pr

Si usus fructus municipibus legatus erit, quaeritur, quousque in eo usu fructu tuendi sint: nam si quis eos perpetuo tuetur, nulla utilitas erit nudae proprietatis semper abscedente usu fructu. unde centum annos observandos esse constat, qui finis vitae longissimus esset.

Dig. 33.2.9

Ulpianus 8 disp.

Si ab eo, cui legatus esset usus fructus, fideicommissum fuerit relictum, licet usus fructus ad legatarium non pervenerit, heres tamen, penes quem usus fructus remanet, fideicommissum praestat. quod et in militis testamento erit dicendum, si legatarius, a quo fideicommissum relictum est, repudiaverit legatum vel vivo testatore decesserit.

Dig. 33.2.10

Iulianus 78 Dig.

Si titio fundus et eiusdem fundi usus fructus legatus fuerit, erit in potestate eius, fundum an usum fructum vindicare malit. et si fundum elegerit, necessario plenam proprietatem habebit, licet usum fructum a se reppulerit: si vero usum fructum habere maluerit et proprietatem fundi reppulerit, solum usum fructum habebit.

Dig. 33.2.11

Iulianus 1 ex minic.

Habitationis legatum in singulos annos ab initio anni deberi constat.

Dig. 33.2.12

Alfenus 2 Dig. a paulo epit.

Heres in fundo, cuius usus fructus legatus est, villam posuit: eam invito fructuario demolire non potest, nihilo magis quam si, quam arborem posuisset, ex fundo is evellere vellet: sed si antequam usufructuarius prohibuerit, demolierit, impune facturum.

Dig. 33.2.13

Paulus 13 ad plaut.

Cum usus fructus alternis annis legatur, non unum, sed plura legata sunt. aliud est in servitute aquae et viae: viae enim servitus una est, quia natura sui habet intermissionem.

Dig. 33.2.14

Celsus 18 Dig.

Duos separatim uti frui sinere damnatus heres communiter uti frui passus est: quaerebatur, an utrique ex testamento teneretur. dixi teneri, si testator utrumque solidum habere voluit: nam ipsius onus est, ut solidum singulis legatum praestaret: qua parte igitur alterum uti frui sineret heres, ea parte eum non sinere alterum uti frui, ideoque per aestimationem unicuique quod deest replere debet.

Dig. 33.2.15pr.

Marcellus 13 Dig.

"damnas esto heres titium sinere in illa domo habitare, quoad vivet": unum videtur esse legatum.

Dig. 33.2.15.1

Marcellus 13 Dig.

Qui duos fundos habebat, unum legavit et alterius fundi usum fructum alii legavit: quaero, si fructuarius ad fundum aliunde viam non habeat quam per illum fundum qui legatus est, an fructuario servitus debeatur. respondit, quemadmodum, si in hereditate esset fundus, per quem fructuario potest praestari via, secundum voluntatem defuncti videtur id exigere ab herede, ita et in hac specie non aliter concedendum esse legatario fundum vindicare, nisi prius ius transeundi usufructuario praestet, ut haec forma in agris servetur, quae vivo testatore optinuerit, sive donec usus fructus permanet sive dum ad suam proprietatem redierit.

Dig. 33.2.16

Modestinus 9 resp.

Legatum civitati relictum est, ut ex reditibus quotannis in ea civitate memoriae conservandae defuncti gratia spectaculum celebretur, quod illic celebrari non licet: quaero, quid de legato existimes. respondit, cum testator spectaculum edi voluerit in civitate, sed tale, quod ibi celebrari non licet, iniquum esse hanc quantitatem, quam in spectaculum defunctus destinaverit, lucro heredum cedere: igitur adhibitis heredibus et primoribus civitatis dispiciendum est, in quam rem converti debeat fideicommissum, ut memoria testatoris alio et licito genere celebretur.

Dig. 33.2.17

Scaevola 3 resp.

Quidam praedia rei publicae legavit, de quorum reditu quotannis ludos edi voluit, et adiecit: "quae legata peto, decuriones, et rogo, ne in aliam speciem aut alios usus convertere velitis". res publica per quadriennium continuum ludos non edidit: quaero, an reditus, quos quadriennio res publica percepit, heredibus restituere debeat vel compensare in aliam speciem legati ex eodem testamento. respondit et invitis heredibus possessione adprehensa perceptos fructus restituendos esse et non erogatum secundum defuncti voluntatem in alia quae deberentur compensari.

Dig. 33.2.18

Modestinus 9 resp.

Qui plures habebat libertos, testamento suo dixit se habitationem relinquere iis quos codicillis designasset: cum nullos postea designaverit, quaero, an omnes admitti debeant. respondit, si patronus, qui se designaturum personas libertorum pollicitus est, nullum postea designavit, legatum habitationis perfectum esse non videtur, non existente cui datum intellegi possit.

Dig. 33.2.19

Modestinus l.S. de heuremat.

Si alii fundum, alii usum fructum eiusdem fundi testator legaverit: si eo proposito fecit, ut alter nudam proprietatem haberet, errore labitur. nam detracto usu fructu proprietatem eum legare oportet eo modo: "titio fundum detracto usu fructu lego: vel seio eiusdem fundi usum fructum heres dato". quod nisi fecerit, usus fructus inter eos communicabitur, quod interdum plus valet scriptura quam peractum sit.

Dig. 33.2.20

Pomponius 8 ad q. muc.

Si servum sub condicione liberum esse iubeam et usum fructum eius tibi legavero, valet legatum.

Dig. 33.2.21

Paulus 7 ad l. iul. et pap.

Titio usus fructus stichi aut, si navis ex asia venerit, decem legata sunt. non petet usum fructum, antequam condicio decem existat vel deficiat, ne potestas heredi utrum velit dandi auferatur.

Dig. 33.2.22

Ulpianus 15 ad l. iul. et pap.

"patrimonii mei reditum omnibus annis uxori meae dari volo". aristo respondit ad heredem uxoris non transire, quia aut usui fructui simile esset aut huic legato " in annos singulos".

Dig. 33.2.23

Mauricius 2 ad l. iul. et pap.

Licet testatori repetere legatum usus fructus, ut etiam post capitis deminutionem deberetur et hoc nuper imperator antoninus ad libellum rescripsit. tunc tantum esse huic constitutioni locum, cum in annos singulos relegaretur.

Dig. 33.2.24pr.

Papinianus 7 resp.

Uxori fructu bonorum legato faenus quoque sortium, quas defunctus collocavit, post impletam ex senatus consulto cautionem praestabitur. igitur usuras nominum in hereditate relictorum ante cautionem interpositam debitas velut sortes in cautionem deduci necesse est. non idem servabitur nominibus ab herede factis: tunc enim sortes dumtaxat legatario dabuntur aut, quod propter moram usuras quoque reddi placuit, super his non cavebitur.

Dig. 33.2.24.1

Papinianus 7 resp.

"scorpum servum meum semproniae concubinae meae servire volo". non videtur proprietas servi relicta, sed usus fructus.

Dig. 33.2.25

Papinianus 8 resp.

Qui fructus praediorum uxori reliquit, post mortem eius praedia cum reditibus ad heredes suos redire voluit, imperitia lapsus. nullum fideicommissum dominus neque proprietatis neque fructus ad eos reverti dedit: etenim reditus futuri, non praeteriti temporis demonstrati videbantur.

Dig. 33.2.26pr.

Paulus 10 quaest.

Sempronius attalus ab herede suo fundum in italiam gaio post decennium deducto usu fructu dari iussit: quaero, cum medio hoc decennii spatio heres vita functus sit, an post tempus decennii plenus fundus ad legatarium pertineat. movet enim me, quod dies legati huius sive fideicommissi cesserit ac per hoc et ad heredem legatarii pertinere potuerit, et ideo quasi circa debitum iam legatum mortuo herede usus fructus exstinctus sit nec ad heredem heredis pertinere possit. respondi: dies quidem fideicommissi vel legati cedit statim, cum post tempus certum heres dare rogatur sive iubetur: sed usus fructus nondum est heredis, nisi cum dominium deducto usu fructu praestitit, et ideo capitis deminutione vel morte perire non potest quod nondum habuit. idem evenit, si proprietas deducto usu fructu sub condicione legata sit et pendente condicione heres decesserit: tunc enim ab heredis herede incipit usus fructus, qui ex persona eius finietur. sed his casibus de sententia testatoris quaerendum est, qui utique de eo usu fructu detrahendo sensit, qui coniunctus esset heredis personae: quo extincto solidam proprietatem ad legatarium voluit pertinere nec plus transmitti ad successorem suum, qui nondum habere coepit usum fructum, quam si iam habere coepisset.

Dig. 33.2.26.1

Paulus 10 quaest.

Si fundus duobus, alii usus fructus legatus sit, non trientes in usu fructu, sed semisses constituuntur: idemque est ex contrario, si duo sint fructuarii et alii proprietas legata est. et inter eos tantum adcrescendi ius est.

Dig. 33.2.27

Scaevola 1 resp.

Uxori maritus per fideicommissum usum fructum et alia et dotem praelegavit: heredes usum fructum ei concesserunt: post biennium illicitum matrimonium fuisse pronuntiatum est: quaesitum est, an id, quod praeterito tempore possedit, ab ea repeti possit. respondit id, quod fructus nomine percepisset, repeti posse.

Dig. 33.2.28

Paulus 13 resp.

Quaero, si usus fructus fundi legatus est et eidem fundo indictiones temporariae indictae sint, quid iuris sit. paulus respondit idem iuris esse et in his speciebus quae postea indicuntur, quod in vectigalibus dependendis responsum est: ideoque hoc onus ad fructuarium pertinet.

Dig. 33.2.29

Gaius 1 fideic.

Si quis usum fructum legatum sibi alii restituere rogatus sit eumque in fundum induxerit fruendi causa: licet iure civili morte et capitis deminutione ex persona legatarii pereat usus fructus, quod huic ipso iure adquisitus est, tamen praetor iurisdictione sua id agere debet, ut idem servetur, quod futurum esset, si ei, cui ex fideicommisso restitutus esset, legati iure adquisitus fuisset.

Dig. 33.2.30pr.

Iavolenus 2 ex post. lab.

Cui usus fructus legatus esset, donec ei totius dotis satisfieret, cum ei heres pro sua parte satis dedisset, quamvis reliqui satis non darent, tamen pro ea parte usum fructum desinere habere mulierem ait labeo: idem fieri et si per mulierem mora fieret, quo minus satis acciperet.

Dig. 33.2.30.1

Iavolenus 2 ex post. lab.

Colono suo dominus usum fructum fundi, quem is colebat, legaverat: agat colonus cum herede ita, ut iudex cogat heredem ex locationis actione eum liberare.

Dig. 33.2.31

Labeo 2 post. a iav. epit.

Is qui fundum tecum communem habebat usum fructum fundi uxori legaverat: post mortem eius tecum heres arbitrum communi dividundo petierat. blaesus ait trebatium respondisse, si arbiter certis regionibus fundum divisisset, eius partis, quae tibi optigerit, usum fructum mulieri nulla ex parte deberi, sed eius, quod heredi optigisset, totius usum fructum eam habituram. ego hoc falsum puto: nam cum ante arbitrum communi dividundo coniunctus pro indiviso ex parte dimidia totius fundi usus fructus mulieris fuisset, non potuisse arbitrum inter alios iudicando alterius ius mutare: quod et receptum est.

Dig. 33.2.32pr.

Scaevola 15 Dig.

Generali capite praeposito quidam in testamento suo ita adiecit: "felici, quem liberum esse iussi, usum fructum fundi vestigiani lego: cuius proprietatem puto te consecuturum, si non contenderis cum herede meo, sed potius concordaveris: sed et tu, heres, omnia fac, ut amici sitis: hoc enim vobis expedit": quaesitum est, an vivente herede exigere possit felix fundi proprietatem. respondit nihil proponi, cur felici proprietas fundi legata videretur.

Dig. 33.2.32.1

Scaevola 15 Dig.

Filios ex seio et filiam ex alio marito heredes instituit aequis portionibus et matri ita legaverat: "aeliae dorcadi matri meae dari volo, quoad vivat, usum fructum bonorum meorum, ita ut post obitum eius ad liberos meos aut ad eum, qui ex his vivet, pertineat". filii post aditam hereditatem decesserant: quaesitum est mortua matre superstite filia testatricis usus fructus utrum ad solam filiam an vero pro portione hereditatis pertineret. respondit ad eos redire, apud quos proprietas esset. claudius: non credidit ipsum usum fructum in vicem portionum hereditariarum post mortem aviae inter ipsos datum, eo magis, quod aequis partibus heredes erant scripti.

Dig. 33.2.32.2

Scaevola 15 Dig.

Uxori usum fructum domuum et omnium rerum, quae in his domibus erant, excepto argento legaverat, item usum fructum fundorum et salinarum: quaesitum est, an lanae cuiusque coloris mercis causa paratae, item purpurae, quae in domibus erat, usus fructus ei deberetur. respondit excepto argento et his, quae mercis causa comparata sunt, ceterorum omnium usum fructum legatariam habere.

Dig. 33.2.32.3

Scaevola 15 Dig.

Idem quaesiit, cum in salinis, quarum usus fructus legatus esset, salis inventus sit non minimus modus, an ad uxorem ex causa fideicommissi usus fructus pertineat. respondit de his legandis, quae venalia ibi essent, non sensisse testatorem.

Dig. 33.2.32.4

Scaevola 15 Dig.

Idem quaesiit, cum eodem testamento ita caverit: "a te peto, uxor, uti ex usu fructu, quem tibi praestari volo in annum quintum decimum, contenta sis annuis quadringentis, quod amplius fuerit, rationibus heredis heredumve meorum inferatur", an recessum videatur a superiore capite ideoque uxor non amplius habeat ex usu fructu, quam annuos quadringentos. respondit satis id, quod quaereretur, aperte verba quae proponerentur declarare.

Dig. 33.2.32.5

Scaevola 15 Dig.

Lucius titius testamento suo publio maevio fundum tusculanum reliquit eiusque fidei commisit, uti eiusdem fundi partem dimidiam usus fructus titiae praestaret: publius maevius villam vetustate corruptam cogendis et conservandis fructibus necessariam aedificavit: quaero, an sumptus partem pro portione usus fructus titia adgnoscere debeat. respondit, si prius, quam usum fructum praestaret, necessario aedificavit, non alias cogendum restituere, quam eius sumptus ratio habeatur.

Dig. 33.2.32.6

Scaevola 15 Dig.

Duas filias et filium mente captum heredes scripsit, filii portionis mente capti datae usum fructum legavit in haec verba: "hoc amplius publia clementiana praecipiet sibi quartae partis hereditatis meae, ex qua iulium iustum filium meum heredem institui: petoque a te, publia clementiana, uti fratrem tuum iulium iustum alas tuearis dependas pro eo: pro quo tibi usum fructum portionis eius reliqui, donec mentis compos fiat et convalescat". quaesitum est, cum filius in eodem furore in diem mortis suae perseverans decesserit, an usus fructus interciderit. respondit verbis quae proponerentur perseverare legatum, nisi manifestissime probetur aliud testatorem sensisse.

Dig. 33.2.32.7

Scaevola 15 Dig.

Heredis instituti fidei commisit filio suo annua decem praestare aut ea praedia emere et adsignare, ut usum fructum haberet, reditum efficientia annua decem: filius fundos sibi ab herede secundum matris voluntatem traditos locavit: et quaesitum est, defuncto eo reliqua colonorum utrumne ad heredem filii fructuarii an vero ad heredem seiae testatricis pertineant. respondit nihil proponi, cur ad heredem seiae pertineant.

Dig. 33.2.32.8

Scaevola 15 Dig.

Usum fructum tertiae partis bonorum suorum uni ex heredibus legaverat: quaesitum est, an pecuniae, quae ex rebus divisis secundum aestimationem effecta est, tertia praestanda sit. respondit heredis esse electionem, utrum rerum an aestimationis usum fructum praestare vellet.

Dig. 33.2.32.9

Scaevola 15 Dig.

Item quaesitum est, tributa praeterea, quae vel pro praediis aut moventibus deberi et reddi necesse est, an eximenda sint ex quantitate, ut reliquae dumtaxat pecuniae, si hoc heres elegerit, reddi debeat. respondit reliquae pecuniae tertiam praestandam.

Dig. 33.2.33pr.

Scaevola 17 Dig.

"sempronio ea, quae vivus praestabam, dari volo": is etiam habitabat in testatoris domo, quae uni ex heredibus praelegata erat: quaesitum est, an habitatio quoque debeatur. respondit nihil proponi, cur non debeatur.

Dig. 33.2.33.1

Scaevola 17 Dig.

Ex his verbis testamenti: "libertis meis, quibus nominatim nihil reliqui, quae vivus praestabam dari volo" quaesitum est, an libertis, qui cum patrono suo in diem mortis habitabant, etiam habitatio relicta videatur. respondit videri.

Dig. 33.2.33.2

Scaevola 17 Dig.

Codicillis ita scripsit: "negidium titium dionem libertos meos senes et infirmos peto in locis, in quibus nunc agunt, senescere patiamini": quaero, an ex hoc capite liberti supra scripti ex fideicommisso fructus locorum, quibus morantur, recipere debeant, cum alia, quae eis specialiter legata sunt, sine controversia consecuti sunt. respondit verbis quae proponerentur id petitum, ut ad eum modum paterentur heredes ibi eos esse, ad quem modum ipsa patiebatur.

Dig. 33.2.34pr.

Scaevola 18 Dig.

Codicillis fideicommissa in haec verba dedit: "libertis libertabusque meis et quos in codicillis manumisi fundum, ubi me humari volui, dari volo, ut qui ab his decesserit, portio eius reliquis adcrescat, ita ut ad novissimum pertineat: post cuius novissimi decessum ad rem publicam arelatensium pertinere volo. hoc amplius libertis libertabusque meis habitationes in domo, quamdiu vivent: pactiae et trophimae diaetas omnes, quibus uti consuevit: habitet quam domum post mortem eorum ad rem publicam pertinere volo". quaesitum est, rei publicae fideicommissum utrum ab herede an a libertis datum sit. respondit secundum ea quae proponerentur posse ita verba accipi, ut eius legatarii, qui novissimus decederet, fidei commissum videatur. idem quaesiit defunctis quibusdam ex libertis, quibus habitatio relicta erat, an portiones domus, in quibus hi habitaverant, iam ad rem publicam pertineant. respondit, quoad aliquis eorum vivat, fideicommissum rei publicae non deberi.

Dig. 33.2.34.1

Scaevola 18 Dig.

Qui semproniam ex parte decima et maeviam ex parte decima, alumnum ex reliquis partibus instituerat heredes, curatorem alumno dedit, cum iure facere putaret: et curatoris fidei commisit, ne pateretur fundum venire, sed cum sempronia et maevia nutricibus suis frueretur reditu eius: et ima parte testamenti ita adiecit: "omnem voluntatem meam fidei heredum meorum committo". quaesitum est, an tertias partes usus fructus fundi nutrices ex fideicommisso petere possint, quamvis curator ei receptus sit, quem iure dare non poterit alumno. respondit secundum ea quae proponerentur utiliter fideicommisso voluntatem suam confirmasse: id igitur cuique dedisse, ut et nutrices una cum alumno reditu fundi uterentur.

Dig. 33.2.35

Scaevola 22 Dig.

Uxori usum fructum villae legavit in quinquennium a die mortis suae, deinde haec verba adiecit: "et peracto quinquennio, cum eius usus fructus esse desierit, tunc eum fundum illi et illi libertis dari volo". quaesitum est, cum uxor intra quinquennium decesserit, an libertis proprietatis petitio iam an vero impleto quinquennio competat, quia " peracto quinquennio" testator proprietatem legaverat. respondit post completum quinquennium fundum ad libertos pertinere.

Dig. 33.2.36pr.

Scaevola 25 Dig.

Sticho testamento manumisso fundi usus fructus erat legatus et, cum is uti fruique desisset, fidei heredum testator commisit, uti eum fundum darent lucio titio: sed stichus testamento suo eiusdem fundi proprietatem nepotibus suis legavit et heredes stichi ex testamento eius legatariis nepotibus eum fundum tradiderunt. quaesitum est, cum nepotes legatarii ignoraverint condicionem fundi supra scripti priore testamento datam et plus quam tempore statuto possederint, an eum fundum sibi adquisierint. respondit secundum ea quae proponerentur legatarios sibi adquisisse.

Dig. 33.2.36.1

Scaevola 25 Dig.

Idem quaesiit, si aliquo casu legatariis auferri possit, an repetitionem ab heredibus stichi eius nepotes habere possint. respondit supra quidem de adquisitione responsum: verum si ex alia causa adquisitio cessasset, videri stichum, si post mortem eorum, quibus proprietas legata esset, testamentum fecisset, potius quod habere se crederet, quam quod onerare heredes vellet, legasse.

Dig. 33.2.37

Scaevola 33 Dig.

"uxori meae usum fructum lego bonorum meorum, usque dum filia mea annos impleat octodecim": quaesitum est, an praediorum tam rusticorum quam urbanorum et mancipiorum et supellectilis itemque calendarii usus fructus ad uxorem pertineat. respondit secundum ea quae proponerentur omnium pertinere.

Dig. 33.2.38

Scaevola 3 resp.

"fundi aebutiani reditus uxori meae quoad vivat dari volo": quaero, an possit tutor heredis fundum vendere et legatario offerre quantitatem annuam, quam vivo patre familias ex locatione fundi redigere consueverat. respondit posse. item quaero, an habitare impune prohiberi possit. respondit non esse obstrictum heredem ad habitationem praestandam. item quaero, an compellendus sit heres reficere praedium. respondit, si heredis facto minores reditus facti essent, legatarium recte desiderare, quod ob eam rem deminutum sit. item quaero, quo distat hoc legatum ab usu fructu. respondit ex his, quae supra responsa essent, intellegi differentiam.

Dig. 33.2.39

Scaevola 6 resp.

Filios heredes instituit, uxori vestem mundum muliebrem lanam linum et alias res legavit et adiecit: "proprietatem autem eorum, quae supra scripta sunt, reverti volo ad filias meas quaeve ex his tunc vivent": quaesitum est, utrum usus fructus an proprietas earum rerum data sit. respondit proprietatem legatam videri.

Dig. 33.2.40

Alfenus 8 Dig. a paulo epit.

"illi cum illo habitationem lego": perinde est, ac si ita " illi et illi" legasset.

Dig. 33.2.41

Iavolenus 2 ex post. lab.

Cum ita legatum esset: "fructus annuos fundi corneliani publio maevio do lego", perinde putat accipiendum esse labeo, ac si usus fructus fundi similiter esset legatus, quia haec mens fuisse testatoris videatur.

Dig. 33.2.42

Iavolenus 5 ex post. lab.

In fructu id esse intellegitur, quod ad usum hominis inductum est: neque enim maturitas naturalis hic spectanda est, sed id tempus, quo magis colono dominove eum fructum tollere expedit. itaque cum olea immatura plus habeat reditus, quam si matura legatur, non potest videri, si immatura lecta est, in fructu non esse.

Dig. 33.2.43

Venonius 10 act.

Nihil interest, utrum bonorum quis an rerum tertiae partis usum fructum legaverit: nam si bonorum usus fructus legabitur, etiam aes alienum ex bonis deducetur, et quod in actionibus erit, computabitur. at si certarum rerum usus fructus legatus erit, non idem observabitur.

Dig. 33.3.0. De servitute legata.

Dig. 33.3.1

Iulianus 1 ex minic.

Qui duas tabernas coniunctas habebat, eas singulas duobus legavit: quaesitum est, si quid ex superiore taberna in inferiorem inaedificatum esset, num inferior oneri ferundo in superioris tabernae loco contineretur. respondit servitutem impositam videri. iulianus notat: videamus, ne hoc ita verum sit, si aut nominatim haec servitus imposita est aut ita legatum datum est: "tabernam meam uti nunc est do lego".

Dig. 33.3.2

Marcellus 13 Dig.

Fundum communem habentibus legari potest via, cum et communis servus recte viam stipulatur et, cum duo ei qui ipse viam stipulatus fuerit heredes exstiterint, non corrumpitur stipulatio.

Dig. 33.3.3

Marcellus 29 Dig.

Si fundum maevio et ad eum viam per alium fundum et eundem fundum sine via titio legasset, si uterque fundum vindicasset, sine via legato fundum cessurum, quia neque adquiri per partem servitus possit. et si prius maevius fundum vindicaret altero deliberante, posse dubitari, an, si postea titius omisisset, viae legatum salvum esset, et hoc magis videbatur: quamquam si sub condicione quis fundum legasset, viam pure, aut pro parte fundum pure, pro parte sub condicione et viam sine condicione, si pendente ea legati dies cessisset, interiturum fore viae legatum: ut responsum est, cum alteri ex vicinis, qui fundum communem habebant, viam sub condicione, alteri pure legasset et pendente condicione decessisset, quia alterius legatarii persona impedimento esset, quo minus solidus fundus cum via vindicaretur.

Dig. 33.3.4

Iavolenus 9 epist.

Si is qui duas aedes habebat unas mihi, alteras tibi legavit et medius paries, qui utrasque aedes distinguat, intervenit, eo iure eum communem nobis esse existimo, quo, si paries tantum duobus nobis communiter esset legatus, ideoque neque me neque te agere posse ius non esse alteri ita immissas habere: nam quod communiter socius habet, et in iure eum habere constitit: itaque de ea re arbiter communi dividundo sumendus est.

Dig. 33.3.5

Papinianus 16 quaest.

Etsi maxime testamenti factio cum servis alienis ex persona dominorum est, ea tamen quae servis relinquuntur ita valent, si liberis relicta possent valere: sic ad fundum domini via servo frustra legatur.

Dig. 33.3.6

Papinianus 7 resp.

Pater filiae domum legavit eique per domus hereditarias ius transeundi praestari voluit. si filia domum suam habitet, viro quoque ius transeundi praestabitur: alioquin filiae praestari non videbitur. quod si quis non usum transeundi personae datum, sed legatum servitutis esse plenum intellegat, tantundem iuris ad heredem quoque transmittetur: quod hic nequaquam admittendum est, ne, quod affectu filiae datum est, hoc et ad exteros eius heredes transire videatur.

Dig. 33.3.7

Paulus 21 quaest.

Cum a pluribus heredibus institutis via legata est, quia partem non recipit, singuli heredes in solidum conveniuntur, quia et uno ex heredibus adeunte vindicari potest.

Dig. 33.4.0. De dote praelegata.

Dig. 33.4.1pr.

Ulpianus 19 ad sab.

Cum dos relegatur, verum est id dotis legato inesse, quod actione de dote inerat.

Dig. 33.4.1.1

Ulpianus 19 ad sab.

Et ideo si inter virum et uxorem convenerat, ut morte viri soluto matrimonio filio communi interveniente dos apud mariti heredem remaneret, et maritus decedens dotem relegaverit, stari pacto non debet ob hoc quod dos relegata est. verum et citra relegationem hoc probari debet: nam quod est admissum posse deteriorem condicionem dotis fieri intervenientibus liberis, totiens locum habet, quotiens ipsa in matrimonio decedit vel divortium intervenit.

Dig. 33.4.1.2

Ulpianus 19 ad sab.

Et verum est commodum in dote relegata esse repraesentationis, quamvis annua die dos praestaretur:

Dig. 33.4.1.3

Ulpianus 19 ad sab.

Est et illud, quod ob res donatas hodie post senatus consultum nulla fit exactio, si modo voluntatem non mutavit testator.

Dig. 33.4.1.4

Ulpianus 19 ad sab.

Impensae autem ipso iure dotem minuunt. sed quod diximus ipso iure dotem impensis minui, non ad singula corpora, sed ad universitatem erit referendum.

Dig. 33.4.1.5

Ulpianus 19 ad sab.

Adeo autem dotis actionem continet dotis relegatio, ut, si vivus eam uxori (scilicet quibus licet casibus) solverit, cesset legatum.

Dig. 33.4.1.6

Ulpianus 19 ad sab.

Sed et si mancipia fuerint in dote non aestimata et haec demortua sint, legatum dotis in his evanescit.

Dig. 33.4.1.7

Ulpianus 19 ad sab.

Sed et si dotem promiserit mulier neque dederit et decedens maritus uxori dotem praelegaverit, mulier nihil amplius quam liberationem habebit: nam et si quis ita legaverit " centum quae in arca habeo" aut " quae ille apud me deposuit", si nulla sint, nihil deberi constat, quia nulla corpora sint.

Dig. 33.4.1.8

Ulpianus 19 ad sab.

Si quis uxori fundum titianum his verbis legasset: "is enim fundus propter illam ad me pervenit", omnimodo debetur fundus: nam quidquid demonstratae rei additur satis demonstratae, frustra est.

Dig. 33.4.1.9

Ulpianus 19 ad sab.

Celsus libro vicesimo digestorum scribit, si socer nurui dotem relegavit, si quidem ius actionis de dote voluit relegare, nullius momenti esse legatum, quippe nupta est: sed si voluit eam recipere dotalem pecuniam, inquit, utile erit legatum. si tamen haec dotem receperit, nihilo minus maritus dotis persecutionem habebit, sive heres institutus esset, familiae herciscundae iudicio, sive non, utili actione. ego puto, quoniam non hoc voluit socer, ut bis dotem heres praestet, mulierem agentem ex testamento cavere debere defensu iri heredem adversus maritum. ergo et maritus idem debebit cavere adversus mulierem defensu iri, si prior agat.

Dig. 33.4.1.10

Ulpianus 19 ad sab.

Per contrarium apud iulianum libro trigesimo septimo quaeritur, si socer filio suo exheredato dotem nurus legasset: et ait agi quidem cum marito exheredato de dote non posse, verumtamen ipsum dotem persecuturum ex causa legati: sed non alias eum legatum consecuturum, quam si caverit heredes adversus mulierem defensu iri. et differentiam facit inter eum, cui dos relegata est, et orcinum libertum, cui peculium legatum est: namque eum de peculio posse conveniri ait, heredem non posse, quia peculium desiit penes se habere: at dotis actio nihilo minus competit, etsi dotem desierit habere.

Dig. 33.4.1.11

Ulpianus 19 ad sab.

Idem iulianus quaerit, si dotem marito relegaverit socer, an dote soluta mulieri legatum mariti extinguatur. et dicit extingui, quia nihil esset iam, quod marito posset praestari.

Dig. 33.4.1.12

Ulpianus 19 ad sab.

Idem quaerit, si dos alii legata esset eamque rogatus sit mulieri restituere, an lex falcidia in legato locum haberet. et dicit habere: sed quod minus est in fideicommisso, mulierem dotis actione consecuturam. ego quaero, an commoda repraesentationis in hoc legato sic observentur atque si dos ipsi mulieri fuisset relegata. et puto habere.

Dig. 33.4.1.13

Ulpianus 19 ad sab.

Idem iulianus quaerit, si mulieri dos sit relegata eaque rogata dotem restituere, an falcidia locum habeat. et negat habere, quoniam fideicommissum quoque negat valere. quod si praeterea quid uxori legatum sit, putat ex residuo fideicommissum praestari: quod utique habita ratione falcidiae mulieri praestabitur. sed et marito ex parte heredi instituto a socero dote praelegata legatum dotis falcidiam passurum, videlicet quia adhuc constante matrimonio indebita dos videtur relegata, verum quod falcidia reccidit, in familiae herciscundae iudicio maritum praecepturum, quemadmodum totam dotem praeciperet, si non esset relegata.

Dig. 33.4.1.14

Ulpianus 19 ad sab.

Mela scripsit, si fundus in dote sit et specialiter sit legatus, mox generaliter dos relegata, non bis, sed semel deberi fundum.

Dig. 33.4.1.15

Ulpianus 19 ad sab.

Ibidem mela coniungit, si fundus in dote fuit locatus a marito ad certum tempus, uxorem non alias fundum ex relegatione consequi, quam si caverit se passuram colonum frui, dummodo ipsa pensiones percipiat.

Dig. 33.4.2pr.

Ulpianus 5 disp.

Cum quis uxori suae dotem relegat fideique commissum ab ea relinquit, hoc fideicommissum ex commodo, quod ex relegatione mulier sentit, aestimabitur, et ita celsus quoque libro vicesimo digestorum scripsit. quod si necessariae fuerunt impensae, quae ipso iure dotem minuunt, amplius dici potest, si tanta quantitas dotis, quam maritus accepit, ei relegata est, oportere dici etiam eam quantitatem posse fideicommissum erogare, quae ipso iure dotem minuit: esse enim mulierem legatariam nemo est qui dubitet. sed et si non dos, sed pro dote aliquid uxori fuerit legatum, adhuc quasi dos relegata accipitur. hoc amplius iulianus scripsit, etsi non fuerit adiectum pro dote esse legatum, hoc tamen animo relictum, adhuc eius esse condicionis. uxor igitur si rogetur vel dotem vel quod pro dote legatum est vel quod in vicem dotis ei adscriptum est restituere, non cogetur nisi eatenus, quatenus diximus, restituere: et ideo heres instituta rogataque quantitatem hereditatis restituere id demum restituet, quod quantitatem dotis excedit idque quod ex repraesentationis commodo sentit. nam et si quis, cum a nuru dotem accepisset, filium suum heredem instituerit eumque rogaverit, quidquid ad eum ex hereditate pervenisset, restituere, mox morte uxoris dotem fuerit lucratus, id non restituet quod ex dote percepit, quia matrimonii causa id lucratus est, non ex patris iudicio.

Dig. 33.4.2.1

Ulpianus 5 disp.

Mulier dotem promisit quadringentorum et dedit fundos duos in ducenta, praeterea nomina debitorum in residua ducenta: mox maritus eius decedens pro dote fundos ei duos non eos, quos in dotem acceperat, reliquit et praeterea duos illos dotales, quos aestimatos acceperat, reliquit fideique eius commisit, ut, quidquid ad se ex hereditate eius pervenisset, id restitueret seio cum moreretur: quaerebatur, quantum esset in fideicommisso muliere defuncta. dicebam uxorem hanc, quae rogata est, quidquid ad se pervenerit ex testamento, restituere, in ea esse condicione, ut id demum restituere rogetur, quod deducta dotis quantitate ad eam pervenit: dotem enim recepisse eam magis quam accepisse, salvo eo, quod ex commodo repraesentationis ab ea fideicommitti potuit. proinde id quidem, quod pro dote maritus ei reliquit, non cogetur restituere, nisi plus fuit in eo quam in quantitate dotis: residuum vero, quod praeterea illi relictum est, cum fructibus cogetur restituere. habebit igitur praecipuam dotem cum suis fructibus: id vero, quod extrinsecus ei relictum est, cum fructibus, qui ad eam pervenerint, restituet.

Dig. 33.4.3

Iulianus 34 Dig.

Qui ita legat uxori suae: "titiae amplius quam dotem aureos tot heres meus damnas esto dare", manifestus est dotem quoque relegasse.

Dig. 33.4.4

Africanus 5 quaest.

Cum volgari modo dies legatorum profertur, nihil eam rem ad dotis relegationem pertinere ait, quia suum diem habeat.

Dig. 33.4.5

Marcianus 3 reg.

Dote relegata non est heres audiendus, si velit ob donationes in mulierem factas solutionem differre vel ob impensas alias, quam quae ipso iure dotem minuunt: aliud est enim minorem esse factam dotem, quod per necessarias impensas accidit, aliud pignoris nomine retineri dotem ob ea, quae mulierem invicem praestare aequum est.

Dig. 33.4.6pr.

Labeo 2 post. a iav. epit.

Cum scriptum esset: "quae pecunia propter uxorem meam ad me venit quinquaginta, tantundem pro ea dote heres meus dato", quamvis quadraginta dotis fuissent, tamen quinquaginta debere alfenus varus servium respondisse scribit, quia proposita summa quinquaginta adiecta sit.

Dig. 33.4.6.1

Labeo 2 post. a iav. epit.

Item ei, quae dotem nullam habebat, vir sic legaverat: "quanta pecunia dotis nomine" et reliqua, " pro ea quinquaginta heres dato". deberi ei legatum ofilius cascellius, item et servii auditores rettulerunt: perinde habendum esse ac si servus alicui mortuus aut pro eo centum legata essent. quod verum est, quia his verbis non dos ipsa, sed pro dote pecunia legata videtur.

Dig. 33.4.7pr.

Papinianus 18 quaest.

Pater dotem a nuru acceptam filio exheredato legavit: heres patris opposita doli exceptione non ante solvere legatum cogendus est, quam ei cautum fuerit de indemnitate soluto matrimonio.

Dig. 33.4.7.1

Papinianus 18 quaest.

Sed si, priusquam legatum filio solveretur, mulier dotem suam reciperavit, frustra filius de legato aget.

Dig. 33.4.7.2

Papinianus 18 quaest.

Sed si lex falcidia locum in legato dotis adversus filium exheredatum habuerit et mulier solutionem ratam fecerit, propter eam quantitatem, quam heres retinuerit, utilis actio dotis ei dabitur. quod si ratum non habeat, defendi quidem debebit heres a viro, qui se defensurum promisit: sed si totam litem vir solus subierit, actio iudicati, si cautum non erit, pro ea quantitate, quae iure falcidiae petenda est, adversus heredem dabitur.

Dig. 33.4.7.3

Papinianus 18 quaest.

Sed si, priusquam legatum filio solveretur, mulier divertit, quamquam ipsa nondum praecipere dotem possit, non ideo tamen actio filii differtur: quia tunc isdem diebus filio solvi dotem responsum est, cum patri pro parte heres exstitit et ad praeceptionem dotis soluto matrimonio, postquam heres exstitit, admissus est.

Dig. 33.4.7.4

Papinianus 18 quaest.

Si forte per errorem cautio defensionis omissa sit ex causa fideicommissi filius dotem acceperit, ut indebitum fideicommissum non repeteretur: cautiones enim praestandae necessitas solutionem moratur, non indebitum facit quod fuit debitum: sed non erit iniquum heredi subveniri.

Dig. 33.4.7.5

Papinianus 18 quaest.

Quid ergo si patris heres solvendo non sit? nonne iuste mulieri dabitur adversus virum utilis actio dotis? cui dos perire non debet, quia non interposuit per errorem heres cautionem.

Dig. 33.4.8

Papinianus 7 resp.

Vir uxori, quae dotem in mancipiis habebat, pecuniam pro dote legaverat: vivo viro mancipiis mortuis uxor post virum vita decessit. ad heredem eius actio legati recte transmittitur, quoniam mariti voluntas servanda est.

Dig. 33.4.9

Papinianus 8 resp.

"uxori meae fundum cornelianum et quae nuptura optulit aestimata in speciebus restitui volo". respondi non aestimatum praedium in dotem datum exceptum non videri, sed universa dote praelegata rerum aestimatarum pretium non relictum, verum ipsas res, quales invenirentur.

Dig. 33.4.10

Scaevola 8 quaest.

Si seiae pro dote centum fundus legatus sit idemque maevio: quod maevio falcidia aufert, pro eo quasi concursus non fuerit, mulier plus vindicet, quia amplius sit in dote mulieris.

Dig. 33.4.11

Paulus 7 resp.

Seia cum nuberet lucio titio, dedit dotis nomine centum aureos et adhibuit quintum mucium, qui nihil numeravit, sed dotem stipulatus est, si morte mulieris solutum fuerit matrimonium. seia moriens testamento suo ita cavit: "lucio titio marito meo, cui maximas gratias ago, dari volo super dotem, quam ei dedi, tot aureos". quaero, cum instituit lucium titium convenire quintus mucius ex stipulatu actione, an repellere eum maritus possit ex verbis testamenti. respondit, si quintus mucius mandante seia non donationis causa stipulatus est, heredibus mulieris eum teneri et ideo quintum mucium exceptione repellendum esse. quod si donationis causa seia stipulari permisisset, videri eum in eum casum, qui morte mulieris exstitit mortis causa stipulatum: et ideo fidei eius committi potuisse in eum casum dicendum fore.

Dig. 33.4.12

Scaevola 3 resp.

Qui dotem in pecunia numerata et aestimatis rebus acceperat, uxori ita legavit: "seiae uxori meae, si omnes res, quae tabulis dotalibus contineantur, heredi meo exhibuerit et tradiderit, summam dotis, quam mihi pro ea pater eius intulit, dari volo: hoc amplius denarios decem". quaesitum est, cum res in dotem datae plures ipso usu finitae essent nec moriente marito fuerant, an quasi sub impossibili condicione legatum datum debeatur. respondi videri condicioni paritum, si quod ex rebus in dotem datis supererat, in potestatem heredis pervenit.

Dig. 33.4.13

Labeo 1 pith. a paulo epit.

Paulus: si filius familias, uxorem cum haberet, dotem ab ea acceperat, deinde pater familias factus dotem ei ut solet legavit: quamvis patri heres non erit, tamen id legatum debebitur.

Dig. 33.4.14

Scaevola 15 Dig.

Theopompus testamento facto duas filias et filium aequis partibus instituit heredes et codicillis ita cavit: " tyn vugatera mou krispinan, hyn yuxomyn ekdounai, hw an ohi filoi mou kai ohi suggeneis dokimaswsi, pronoysei ekdovynai pollianos eidws mou tyn gnwmyn epi tois isois, ef' ohis kai tyn adelfyn autys ecedwka". pollianus a marito puellae iuratus scripsit voluisse patrem eandem quantitatem in dotem accipere etiam minorem filiam, quam maior accepisset. quaero, an eandem summam dotis nomine coheredes extra partem hereditatis minori filiae praestare debeant. respondit eum cuius notio est aestimaturum, ut eadem quantitas ex communi praecipua minori filiae dotis nomine detur.

Dig. 33.4.15

Gaius 2 de legatis ad ed. pr

Licet placeat pigneratas res vel in publicum obligatas heredem, qui dare iussus est, liberare debere, tamen si is qui tales res in dotem accepit dotem praelegaverit, non cogetur heres liberare eas, nisi aliud specialiter testator dixerit.

Dig. 33.4.16

Paulus 2 ad vitell.

Qui dotem a matre uxoris acceperat et stipulanti ei promiserat, testamento uxori dotem legavit. cum quaesitum esset, an uxor dotis summam consequi posset, respondit scaevola non videri dari uxori, quod necesse sit matri reddi. alias sic respondit non videri, nisi manifeste uxor docuisset eam testantis voluntatem fuisse, ut onerare heredes duplici praestatione dotis vellet.

Dig. 33.4.17pr.

Scaevola 3 resp.

Uxori ita legavit: "uxor mea quidquid ei comparavi et quod mihi dedit e medio sibi sumat": quaero, an dos praelegata videatur. respondit verbis quae proponerentur videri et de dote legata loqui, nisi aliud testatorem voluisse probaretur.

Dig. 33.4.17.1

Scaevola 3 resp.

"titiae uxori meae, quanta pecunia ad me inve stipulationem dotis eius nomine pervenit, quae dos est dotalibus duobus consignatis instrumentis centum aureorum". quaesitum est, an utramque summam consequi possit. respondit nihil proponi, cur non possit.

Dig. 33.5.0. De optione vel electione legata.

Dig. 33.5.1

Ulpianus 2 ad sab.

Divus pius caecilio proculo rescripsit eum, cui servorum legata sit electio, tres posse eligere.

Dig. 33.5.2pr.

Ulpianus 20 ad sab.

Quotiens servi electio vel optio datur, legatarius optabit quem velit:

Dig. 33.5.2.1

Ulpianus 20 ad sab.

Sed et homine generaliter legato arbitrium eligendi quem acciperet ad legatarium pertinet.

Dig. 33.5.2.2

Ulpianus 20 ad sab.

Data igitur optione si quis optaverit alienum servum vel hominem liberum, videndum est, an consumpserit optionem: et puto non consumi.

Dig. 33.5.2.3

Ulpianus 20 ad sab.

Eum, cui centum amphorarum electio data sit, acetum eligentem non consumere optionem, si id acetum elegerit, quod vini numero pater familias non habuit:

Dig. 33.5.3

Ulpianus 23 ad sab.

Scilicet si ante exhibitionem, hoc est ante degustationem acetum elegerit.

Dig. 33.5.4

Paulus 3 ad sab.

Scyphi electione data si non omnibus scyphis exhibitis legatarius elegisset, integram ei optionem manere placet (nisi ex his dumtaxat eligere voluisset, cum sciret et alios esse):

Dig. 33.5.5

Africanus 5 quaest.

Nec solum si fraude heredis, sed etiam si alia qualibet causa id evenerit.

Dig. 33.5.6

Pomponius 6 ad sab.

Mancipiorum electio legata est. ne venditio, quandoque eligente legatario, interpelletur, decernere debet praetor, nisi intra tempus ab ipso praefinitum elegisset, actionem legatorum ei non competere. quid ergo si die praeterito, sed antequam venderet heres, vindicare legatarius velit? quia non est damnum subiturus heres, propter quod decernere praetor id solet. et quid si die praeterito, quem finierit praetor, heres aliquos ex servis vel omnes manumiserit? nonne praetor eorum tuebitur libertatem? ergo totiens actio deneganda non est, si omnia in integro sint. idem est et si pignori aliquos ex his servis heres dederit post diem vel vendiderit.

Dig. 33.5.7

Paulus 10 quaest.

Immo et si quosdam servos distraxit, quosdam retinuit, non est audiendus legatarius, si velit optare ex retentis ab herede, cum iam disposuerit familiam heres.

Dig. 33.5.8pr.

Pomponius 6 ad sab.

Si tibi electio servi et mihi reliqui legati sunt, decernendum est a praetore, nisi intra certum tempus optaveris, petitionem tibi non datu iri.

Dig. 33.5.8.1

Pomponius 6 ad sab.

Si ex quattuor viriolis duae, quas elegissem, mihi legatae sint, sive duae solae relictae sint sive ab initio duae solae fuerint, valet legatum.

Dig. 33.5.8.2

Pomponius 6 ad sab.

Unius hominis mihi et tibi optio data est: cum ego optassem, si non mutassem voluntatem, deinde tu eundem optaveris, utriusque nostrum servum futurum:

quod si ante decessissem vel furiosus factus essem, non futurum communem, quia non videor consentire, qui sentire non possim: humanius autem erit, ut et in hoc casu quasi semel electione facta fiat communis.

Dig. 33.5.8.3

Pomponius 6 ad sab.

Si rerum depositarum electio mihi relicta sit, et ad exhibendum cum eo, apud quem depositae sint, agere potero et cum herede agere, ut is depositi agendo facultatem mihi eligendi praestet.

Dig. 33.5.9pr.

Iulianus 32 Dig.

Cum ita legatur: "titio stichum do lego, si pamphilum non elegerit: eidem titio pamphilum, si stichum non elegerit", simile est, atque si ita legatum fuisset: "titio stichum aut pamphilum, utrum eorum volet, do lego".

Dig. 33.5.9.1

Iulianus 32 Dig.

Quaesitum est, si stichus sub condicione liber esse iussus sit et mihi optio servi data esset vel servus generaliter legatus esset, quid iuris esset. dixi commodius constitui eum, qui sub condicione libertatem sticho det et optionem servorum, non cogitare de sticho, sicuti constat non cogitare eum de eo, cui praesentem libertatem dederit: secundum quod si stichum optavero vel elegero, nihil agam et ex ceteris nihilo minus optabo.

Dig. 33.5.9.2

Iulianus 32 Dig.

In eodem casu quaesitum est, si optione servorum data, antequam optarem, condicio statutae libertatis defecisset, an stichum optare possim. puto mucianae sententiae adsentiendum, qua placet ipsa libertate legatum peremi, non datione statutae libertatis: quare sive vivo testatore sive post mortem eius et ante aditam hereditatem condicio statutae libertatis defecerit, legatum erit utile: nam sicut pura libertas, ita statuta libertas aditae hereditatis tempore vires accipit. ideoque stichum optare possum.

Dig. 33.5.10

Iulianus 34 Dig.

Si pamphilo servo lucii titii servus generaliter legatus sit, deinde dominus pamphili, postquam dies legati cesserit, eum manumisisset: si quidem titius servum vindicaverit, exstinguitur pamphili legatum, quia non esset in hereditate qui possit optari. si vero titius legatum a se repudiasset, pamphilum optare posse legatum constat: licet enim manumissione pamphili duae personae constituerentur titii et pamphili, unius tamen rei legatum inter eas vertitur et titio vindicante optio exstinguitur, repudiante pamphilus optare potest.

Dig. 33.5.11

Iulianus 36 Dig.

Si eros seio legatus sit et eroti fundus, deinde optio servi maevio data fuerit isque erotem optaverit, fundus ad solum seium pertinebit, quoniam aditae hereditatis tempore is solus erit, ad quem posset legatum pertinere. nam et cum servo communi alter ex sociis legat, idcirco ad solum socium totum legatum pertinet, quoniam die legati cedente solus est, qui per eum servum possit adquirere.

Dig. 33.5.12

Iulianus 1 ex minic.

Servo generaliter legato verius est omnes heredes, si eis electio data est, eundem dare debere: si non consentiant heredes, ex testamento eos teneri.

Dig. 33.5.13pr.

Paulus 8 ad plaut.

Si optio servi data mihi fuerit et sticho aliquid testator sine libertate legasset, tunc sequens legatum consistit, cum tota familia ad unum, id est stichum recciderit, ut quasi pure legato utiliter sit legatum. nec adversatur catoniana, si voluntarius heres institutus sit, quia potest ante aditam hereditatem, etiamsi statim decesserit, familia minui: quod si necessarius heres institutus sit, sequens legatum propter catonianam inutile est.

Dig. 33.5.13.1

Paulus 8 ad plaut.

Pomponius scribit emptore hereditatis postulante, ut is, cui servi optio legata sit, optet, videndum esse, an praetor ut id faciat cogere debeat legatarium, quemadmodum si heres institutus id postularet, quia potest per heredem id emptor consequi: et quare non possit, non video.

Dig. 33.5.14

Iavolenus 2 ex cass.

Si, cum optio servi ex universa familia legata esset, heres aliquem priusquam optaretur manumisit, ad libertatem eum interim non perducit, servum tamen quem ita manumiserit amittit, quia is aut electus legato cedit aut relictus tunc liber ostenditur.

Dig. 33.5.15

Iavolenus 2 epist.

Servo sine libertate legavi, deinde optionem servorum maevio dedi: is eundem servum optavit: quaero, an id quoque quod legatum est ei deberetur. respondit: non puto legatum huius servi nomine ad dominum pertinere.

Dig. 33.5.16

Clementius 15 ad l. iul. et pap.

Optione legata placet non posse ante aditam hereditatem optari et nihil agi, si optaretur.

Dig. 33.5.17

Clementius 17 ad l. iul. et pap.

Cum optio duorum servorum titio data sit, reliqui maevio legati sint, cessante primo in electione " reliquorum" appellatione omnes ad maevium pertinent.

Dig. 33.5.18

Scaevola 13 quaest.

Homine legato neratius ait nihil agi repudiato pamphilo itaque eum ipsum eligi posse.

Dig. 33.5.19

Paulus 3 sent.

"illud aut illud, utrum elegerit legatarius": nullo a legatario electo decedente eo post diem legati cedentem ad heredem transmitti placuit.

Dig. 33.5.20

Labeo 2 post. a iav. epit.

Apud aufidium libro primo rescriptum est, cum ita legatum est: "vestimenta quae volet triclinaria sumito sibique habeto", si is dixisset quae vellet, deinde, antequam ea sumeret, alia se velle dixisset, mutare voluntatem eum non posse, ut alia sumeret, quia omne ius legati prima testatione, qua sumere se dixisset, consumpsit, quoniam res continuo eius fit, simul ac si dixerit eam sumere.

Dig. 33.5.21

Scaevola 22 Dig.

Filium et uxorem heredes scripsit, filiam exheredavit et ei legatum dedit, cum in familia nuberet, centum et, cum in familia nupserit, his verbis: "insuper arbitratu semproniae matris eius mancipia decem, quae confestim post aditam hereditatem meam a sempronia uxore mea eligi volo: quae mancipia, cum in familiam nupserit, dari volo. et si antequam nupserit, aliquod ex mancipiis decesserit, tunc in locum eius arbitratu semproniae matris eius dari volo, dum ad eam plenus numerus perveniat. quod si sempronia mater eius non elegerit, tunc ipsa sibi quae volet eligat". quaesitum est, cum mater elegerit, an ea, quae ex his mancipiis ante nuptias adgnata sunt, ad puellam supra numerum decem mancipiorum pertineant. respondit, cum mancipiorum legatum in tempus nuptiarum testator transtulit, id quod medio tempore ancillae enixae sunt ad filiam non pertinere. idem quaesiit, ante nuptias eorundem mancipiorum fructus et usus an ad semproniam matrem pertineant. respondit nihil proponi, cur ad matrem pro solido pertineant.

Dig. 33.5.22

Scaevola 17 Dig.

Maritus uxori suae codicillis per fideicommissum dedit praedia, item lances quas elegerit quattuor: quaesitum est, an ex his lancibus, quae mortis tempore sint, eligere possit. respondit posse.

Dig. 33.6.0. De tritico vino vel oleo legato.

Dig. 33.6.1

Ulpianus 20 ad sab.

Vino legato acetum quoque continetur, quod pater familias vini numero habuit.

Dig. 33.6.2pr.

Pomponius 6 ad sab.

Cum alii penum, alii vinum legatum esset, excepto vino omne penum ad alium legatarium pertinebit.

Dig. 33.6.2.1

Pomponius 6 ad sab.

Si centum amphorae quas velles tibi legatae sint, ex testamento agendo consequi potes, ut degustare tibi liceat: aut, quanti interfuerit licere tibi degustare, ad exhibendum agere potes.

Dig. 33.6.3pr.

Ulpianus 23 ad sab.

Si cui vinum sit legatum centum amphorarum, cum nullum vinum reliquisset, vinum heredem empturum et praestaturum, non acetum, quod vini numero fuit.

Dig. 33.6.3.1

Ulpianus 23 ad sab.

Si vinum legatum sit, videamus, an cum vasis debeatur. et celsus inquit vino legato, etiamsi non sit legatum cum vasis, vasa quoque legata videri, non quia pars sunt vini vasa, quemadmodum emblemata argenti (scyphorum forte vel speculi), sed quia credibile est mentem testantis eam esse, ut voluerit accessioni esse vino amphoras: et sic, inquit, loquimur habere nos amphoras mille, ad mensuram vini referentes. in doliis non puto verum, ut vino legato et dolia debeantur, maxime si depressa in cella vinaria fuerint aut ea sunt, quae per magnitudinem difficile moventur. in cuppis autem sive cuppulis puto admittendum et ea deberi, nisi pari modo immobiles in agro velut instrumentum agri erant. vino legato utres non debebuntur: nec culleos quidem deberi dico.

Dig. 33.6.4

Paulus 4 ad sab.

Cum certum pondus olei non adiecta qualitate legatur, non solet quaeri, cuius generis oleo uti solitus fuerit testator aut cuius generis oleum istius regionis homines in usu habeant: et ideo liberum est heredi, cuius vellet generis oleum legatario solvere.

Dig. 33.6.5

Iulianus 15 Dig.

Cum certus numerus amphorarum vini legatus esset ex eo, quod in fundo semproniano natum esset, et minus natum esset, non amplius deberi placuit et quasi taxationis vicem optinere haec verba " quod natum erit".

Dig. 33.6.6

Proculus 5 epist.

Cui vinum heres dare damnatus est, quod in amphoris et cadis diffusum est dari debet, etiamsi vasorum mentio facta non est. item quamvis cum vasis cadis legatum est, tamen id quoque, quod in doliis, legatum esse videtur, sicuti, si servos omnes cum peculio cuiusque eorum legasset, etiam eos, quibus peculii nihil esset, legasse videretur.

Dig. 33.6.7pr.

Iavolenus 2 ex post. lab.

Quidam heredem damnaverat dare uxori suae vinum oleum frumentum acetum mella salsamenta. trebatius aiebat ex singulis rebus non amplius deberi, quam quantum heres mulieri dare voluisset, quoniam non adiectum esset, quantum ex quaque re daretur. ofilius cascellius tubero omne, quantum pater familias reliquisset, legatum putant: labeo id probat idque verum est.

Dig. 33.6.7.1

Iavolenus 2 ex post. lab.

"lucio titio tritici modios centum, qui singuli pondo centum pendeant, heres dato". ofilius nihil legatum esse, quod et labeo probat, quoniam eiusmodi triticum in rerum natura non esset: quod verum puto.

Dig. 33.6.8

Pomponius 6 epist.

Si heres damnatus sit dare vinum, quod in doliis esset, et per legatarium stetit, quo minus accipiat, periculose heredem facturum, si id vinum effundet: sed legatarium petentem vinum ab herede doli mali exceptione placuit summoveri, si non praestet id, quod propter moram eius damnum passus sit heres.

Dig. 33.6.9pr.

Ulpianus 23 ad sab.

Si quis vinum legaverit, omne continetur, quod ex vinea natum vinum permansit. sed si mulsum sit factum, vini appellatione non continebitur proprie, nisi forte pater familias etiam de hoc sensit. certe zythum, quod in quibusdam provinciis ex tritico vel ex hordeo vel ex pane conficitur, non continebitur: simili modo nec camum nec cervesia continebitur nec hydromeli. quid conditum? nec hoc puto, nisi alia mens testantis fuit. oenomeli plane id est dulcissimum vinum continebitur: et passum, nisi contraria sit mens, continebitur: defrutum non continebitur, quod potius conditurae loco fuit. acinaticium plane vino continebitur. cydoneum et si qua alia sunt, quae non ex vinea fiunt, vini appellatione non continebuntur. item acetum vini appellatione non continebitur. haec omnia ita demum vini nomine non continentur, si modo vini numero a testatore non sunt habita: alioquin sabinus scribit omnia vini appellatione contineri, quae vini numero pater familias habuit: igitur et acetum, quod vini numero pater familias habuit, et zythum et camum et cetera, quae pro hominum affectione atque usu vini numero habebuntur. quod si totum vinum, quod pater familias habuit, coacuit, non exstinguitur legatum.

Dig. 33.6.9.1

Ulpianus 23 ad sab.

Si acetum quis legaverit, non continebitur legato acetum quod vini numero testator habuit: embamma autem continebitur, quia aceti numero fuit.

Dig. 33.6.9.2

Ulpianus 23 ad sab.

Item si quis vinum quod habuit legavit, deinde hoc coacuit, licet postea in aceti locum translatum sit a patre familias, vino legato continebitur, quia id, quod testamenti facti tempore vinum fuit, demonstratum est: et est hoc verum, nisi voluntas adversetur.

Dig. 33.6.9.3

Ulpianus 23 ad sab.

Vino autem paterno legato id demum legatum videtur, quod testator vini numero habuit, non quod pater. item si peculiare vinum legatum sit, id continebitur, quod servi habuerunt. cur tam diverse? quod paternum vinum iam coepit usus ipsius testatoris esse, at peculiare in usu servorum remansit.

Dig. 33.6.9.4

Ulpianus 23 ad sab.

Item si vinum vetus sit legatum,

Dig. 33.6.10

Hermogenianus 2 iuris epit.

Ex usu testatoris legatum aestimabitur, id est quot annorum vino pro vetere utebatur. quod si non appareat,

Dig. 33.6.11

Ulpianus 23 ad sab.

Vetus accipietur, quod non est novum: id est et anni prioris vinum appellatione veteris continebitur:

Dig. 33.6.12

Paulus 4 ad sab.

Nam aliter observantibus quis finis aut quod initium veteris vini sumeretur?

Dig. 33.6.13

Ulpianus 23 ad sab.

"ex eo vino quod in illo fundo nascetur, heres meus amphoras decem quotannis in annos singulos dato". quo anno natum non fuisset, ex superiore anno eius fundi eum numerum amphorarum heredem daturum sabinus existimat. quae sententia, si voluntas non adversetur, mihi quoque placet.

Dig. 33.6.14

Pomponius 6 ad sab.

Vino legato ea demum vasa sequuntur, quae ita diffusa sunt, ut non ad perpetuum usum vasa reservarentur, veluti amphorae et cadi.

Dig. 33.6.15

Proculus 2 epist.

Vinum cum vasis legavit. negat trebatius quod in doliis sit deberi et sensum testatoris alium putat esse, verborum alium: ceterum dolia in vasis vinariis non essent. ego et si dolia in vasis vinariis non sunt, tamen non concederem trebatio vinum quod in doliis esset, id est quod in vasis non esset, non esse legatum. illud verum esse puto, cui vinum cum vasis legatum erit, ei amphoras cados, in quibus vina diffusa servamus, legatos esse: vinum enim in amphoras et cados hac mente diffundimus, ut in his sit, donec usus causa probetur, et scilicet id vendimus cum his amphoris et cadis: in dolia autem alia mente coicimus, scilicet ut ex his postea vel in amphoras et cados diffundamus vel sine ipsis doliis veneat.

Dig. 33.6.16pr.

Proculus 3 ex post. lab.

Qui vinum surrentinum in urnalibus habebat diffusum, is tibi vinum legaverat in amphoris omne. illud quoque vinum, quod in urnalibus fuisset, legatum esse labeo et trebatius responderunt.

Dig. 33.6.16.1

Proculus 3 ex post. lab.

Cui dulcia legata essent, si nihil aliud testamento significetur, omnia haec esse legata: mulsum passum defrutum et similes potiones, item uvas ficos palmas caricas.

Dig. 33.6.16.2

Proculus 3 ex post. lab.

Quod si ita esset legatum: "vinum amphorarium aminaeum graecum et dulcia omnia", nihil inter dulcia, nisi quod potionis fuisset, legatum putat labeo ex collatione vini amphorarii: quod non improbo.

Dig. 33.7.0. De instructo vel instrumento legato.

Dig. 33.7.1pr.

Paulus 4 ad sab.

Sive cum instrumento fundus legatus est sive instructus, duo legata intelleguntur.

Dig. 33.7.1.1

Paulus 4 ad sab.

Fundo cum instrumento legato et alienato instrumentum non vindicabitur ex sententia defuncti.

Dig. 33.7.2pr.

Papinianus 7 resp.

Cum pater pluribus filiis heredibus scriptis duobus praeceptionem bonorum aviae praeter partes hereditarias dedisset, pro partibus coheredum viriles habituros legatarios placuit.

Dig. 33.7.2.1

Papinianus 7 resp.

Dotes praediorum, quae graeco vocabulo envykai appellantur, cum non instructa legantur, legatario non praestantur.

Dig. 33.7.3pr.

Papinianus 8 resp.

Fundum instructum libertis patronus testamento legavit: postea codicillis petit, ut morientes partes suas fundi superstitibus restituerent, nec instructi mentionem habuit. talem in causam fideicommissi deductum videri placuit, qualis fuerat legatus, sed medii temporis augmenta fetuum et partuum, item detrimenta fatalium fideicommisso contineri.

Dig. 33.7.3.1

Papinianus 8 resp.

Minor viginti annis instructa praedia consobrinae suae dari voluit et quosdam servos praediorum vivus manumisit. non idcirco servi manumissi praestabuntur, quod ad libertatem pervenire non possunt. idem iuris est, cum ex quavis alia causa libertas non competit.

Dig. 33.7.4

Iavolenus 2 ex post. lab.

Cum quidam duos fundos iunctos haberet et ex altero boves, cum opus fecissent, in alterum reverterentur, utrumque fundum cum instrumento legaverat. labeo trebatius boves ei fundo cessuros putant, ubi opus fecissent, non ubi manere consuevissent: cascellius contra. labeonis sententiam probo.

Dig. 33.7.5

Labeo 1 pith.

Si cui fundum et instrumentum eius legare vis, nihil interest, quomodo leges " fundum cum instrumento " an " fundum et instrumentum " an " fundum instructum " . paulus. immo contra: nam inter ea legata hoc interest, quod, si fundo alienato mortuus fuerit qui ita legavit, ex hac scriptura " fundum cum instrumento " nihil erit legatum, ex ceteris poterit instrumentum esse legatum.

Dig. 33.7.6

Scaevola 16 Dig.

Nepoti legaverat quae certa regione praedia habuerat ut instructa sunt, cum vino grano calendario, et adiecerat haec verba: "quidquid erit cum moriar in illa regione, et quidquid in quacumque specie erit in illa regione, vel quod meum erit". viva testatrice unus ex debitoribus condemnatus vivente testatrice satis non fecit: quaesitum est, an quod ex sententia iudicis deberetur ad nepotem pertineret. respondit nihil proponi, cur non deberetur.

Dig. 33.7.7

Scaevola 22 Dig.

Tabernam cum caenaculo pardulae manumisso testamento legaverat cum mercibus et instrumentis et suppellectili quae ibi esset, item horreum vinarium cum vino et vasis et instrumento et institoribus, quos secum habere consueverat. quaesitum est, cum vivo testatore insula, in qua caenaculum fuit quod ei legatum erat, exusta sit, et post biennium eodem loco constituta nova, et horreum, quod eidem legatum erat, a testatore venierit, vini autem venditio dilata sit, ut ex eo commodo venirent, an universa legata pardula consequi possit. respondit ea, in quibus voluntas mutata esset, non deberi.

Dig. 33.7.8pr.

Ulpianus 20 ad sab.

In instrumento fundi ea esse, quae fructus quaerendi cogendi conservandi gratia parata sunt, sabinus libris ad vitellium evidenter enumerat. quaerendi, veluti homines qui agrum colunt, et qui eos exercent praepositive sunt is, quorum in numero sunt vilici et monitores: praeterea boves domiti, et pecora stercorandi causa parata, vasaque utilia culturae, quae sunt aratra ligones sarculi falces putatoriae bidentes et si qua similia dici possunt. cogendi, quemadmodum torcularia corbes falcesque messoriae falces fenariae quali vindemiatorii exceptoriique, in quibus uvae comportantur. conservandi, quasi dolia, licet defossa non sint, et cuppae.

Dig. 33.7.8.1

Ulpianus 20 ad sab.

Quibusdam in regionibus accedunt instrumento, si villa cultior est, veluti atrienses scoparii, si etiam virdiaria sint, topiarii, si fundus saltus pastionesque habet, greges pecorum pastores saltuarii.

Dig. 33.7.9

Paulus 4 ad sab.

De grege ovium ita distinguendum est, ut, si ideo comparatus sit, ut ex eo fructus caperetur, non debeatur: si vero ideo, quia non aliter ex saltu fructus percipi poterit, contra erit, quia per greges fructus ex saltu percipiuntur.

Dig. 33.7.10

Ulpianus 20 ad sab.

Si reditus etiam ex melle constat, alvei apesque continentur.

Dig. 33.7.11

Iavolenus 2 ex cass.

Eadem ratio est in avibus, quae in insulis maritimis aluntur.

Dig. 33.7.12pr.

Ulpianus 20 ad sab.

Quaesitum est, an frumentum, quod cibariis cultorum paratum foret, instrumento cederet. et plurimis non placet, quia consumeretur: quippe instrumentum est apparatus rerum diutius mansurarum, sine quibus exerceri nequiret possessio: accedit eo, quod cibaria victus magis quam colendi causa pararentur. sed ego puto et frumentum et vinum ad cibaria paratum instrumento contineri: et ita servium respondisse auditores eius referunt. item nonnullis visum est frumentum, quod serendi causa sepositum est, instrumento contineri, puto quia et instar culturae esset et ita consumitur, ut semper reponeretur: sed causa seminis nihil a cibariis differt.

Dig. 33.7.12.1

Ulpianus 20 ad sab.

Conservandi fructus causa, veluti granaria, quia in his fructus custodiuntur, urceos capsellas, in quibus fructus componuntur: sed et ea, quae exportandorum fructuum causa parantur, instrumenti esse constat, veluti iumenta et vehicula et naves et cuppae et culei.

Dig. 33.7.12.2

Ulpianus 20 ad sab.

Alfenus autem, si quosdam ex hominibus aliis legaverit, ceteros, qui in fundo fuerunt, non contineri instrumento ait, quia nihil animalis instrumenti esse opinabatur: quod non est verum: constat enim eos, qui agri gratia ibi sunt, instrumento contineri.

Dig. 33.7.12.3

Ulpianus 20 ad sab.

Quaeritur, an servus, qui quasi colonus in agro erat, instrumento legato contineatur. et labeo et pegasus recte negaverunt, quia non pro instrumento in fundo fuerat, etiamsi solitus fuerat et familiae imperare.

Dig. 33.7.12.4

Ulpianus 20 ad sab.

Saltuarium autem labeo quidem putat eum demum contineri, qui fructuum servandorum gratia paratus sit, eum non, qui finium custodiendorum causa: sed neratius etiam hunc, et hoc iure utimur, ut omnes saltuarii contineantur.

Dig. 33.7.12.5

Ulpianus 20 ad sab.

Trebatius amplius etiam pistorem et tonsorem, qui familiae rusticae causa parati sunt, putat contineri, item fabrum, qui villae reficiendae causa paratus sit, et mulieres quae panem coquant quaeque villam servent: item molitores, si ad usum rusticum parati sunt: item focariam et vilicam, si modo aliquo officio virum adiuvet: item lanificas quae familiam rusticam vestiunt, et quae pulmentaria rusticis coquant.

Dig. 33.7.12.6

Ulpianus 20 ad sab.

Sed an instrumenti instrumentum legato instrumento continetur, quaeritur: haec enim, quae rusticorum causa parantur, lanificae et lanae et tonsores et fullones et focariae non agri sunt instrumentum, sed instrumenti. puto igitur etiam focariam ^ focarium^ contineri: sed et lanificas et ceteros, qui supra enumerati sunt: et ita servium respondisse auditores eius referunt.

Dig. 33.7.12.7

Ulpianus 20 ad sab.

Uxores quoque et infantes eorum, qui supra enumerati sunt, credendum est in eadem villa agentes voluisse testatorem legato contineri: neque enim duram separationem iniunxisse credendus est.

Dig. 33.7.12.8

Ulpianus 20 ad sab.

Si aliqua parte anni in fundo pascantur pecora, aliqua parte his pabulum conducitur, vel servi, si aliqua parte anni per eos ager colitur, aliqua parte in mercedem mittuntur, nihilo minus instrumento continentur.

Dig. 33.7.12.9

Ulpianus 20 ad sab.

Cellararium quoque, id est ideo praepositum, ut rationes salvae sint, item ostiarium mulionemque instrumenti esse constat.

Dig. 33.7.12.10

Ulpianus 20 ad sab.

Et molas et machinas, fenum stipulas, asinum machinarium, machinam frumentariam, vas aeneum, in quo sapa coqueretur et defrutum fiat et aqua ad bibendum lavandamque familiam paratur, instrumenti esse, et cribra, et plaustra quibus stercus evehatur.

Dig. 33.7.12.11

Ulpianus 20 ad sab.

Ea vero, quae solo continentur, instrumenti fundi non esse cassius scribit, veluti harundineta et salicta, antequam caesa sint, quia fundus fundi instrumentum esse non potest: sed si caesa sint, puto contineri, quia quaerendo fructui deserviunt. idem et in palis erit dicendum.

Dig. 33.7.12.12

Ulpianus 20 ad sab.

Si in agro venationes sint, puto venatores quoque et vestigatores et canes et cetera quae ad venationem sunt necessaria instrumento contineri, maxime si ager et ex hoc reditum habuit.

Dig. 33.7.12.13

Ulpianus 20 ad sab.

Et si ab aucupio reditus fuit, aucupes et plagae et huius rei instrumentum agri instrumento continebitur: nec mirum, cum et aves instrumento exemplo apium contineri sabinus et cassius putaverunt.

Dig. 33.7.12.14

Ulpianus 20 ad sab.

Si quis eodem instrumento in plurimis agris utatur, cuius agri sit instrumentum, quaeritur. et ego arbitror, si quidem apparet voluntas patris familiae, cui potius agro destinaverat, eius esse instrumentum: ceteri enim agri ab hoc agro veluti mutuantur: si non appareat, nullius instrumento cedet: neque enim pro parte dividemus instrumentum.

Dig. 33.7.12.15

Ulpianus 20 ad sab.

Supellex ceteraque, si qua in agro fuerunt, quo instructior esset pater familias, instrumento fundi non continentur.

Dig. 33.7.12.16

Ulpianus 20 ad sab.

Si domus sit instrumentum legatum, videndum quid contineatur. et pegasus ait instrumentum domus id esse, quod tempestatis arcendae aut incendii causa paratur, non quod voluptatis gratia: itaque neque specularia neque vela quae frigoris causa vel umbrae in domo sunt deberi. quae sententia cassii fuit, qui dicebat inter instrumentum et ornamentum multum interesse: instrumenti enim ea esse, quae ad tutelam domus pertinent, ornamenti, quae ad voluntatem, sicuti tabulas pictas.

Dig. 33.7.12.17

Ulpianus 20 ad sab.

Vela autem cilicia instrumenti esse cassius, quae ideo parantur, ne aedificia vento vel pluvia laborent.

Dig. 33.7.12.18

Ulpianus 20 ad sab.

Acetum quoque, quod exstinguendi incendii causa paratur, item centones sifones, perticae quoque et scalae, et formiones et spongias et amas et scopas contineri plerique et pegasus aiunt.

Dig. 33.7.12.19

Ulpianus 20 ad sab.

Tegulam autem et tignum eius rei causa paratum instrumento contineri, si ad huiusmodi causam habeat tigna parata ad alios usus non deservientia. proinde et fulcimenta si qua habebat huic rei necessaria, etiam ea instrumento domus continebuntur.

Dig. 33.7.12.20

Ulpianus 20 ad sab.

De velis, quae in hypaethris extenduntur, item de his, quae sunt circa columnas, celsus scribit magis suppellectili adnumeranda et ita sabinum et cassium putare.

Dig. 33.7.12.21

Ulpianus 20 ad sab.

Canales autem et harpagones et amas instrumento contineri constat.

Dig. 33.7.12.22

Ulpianus 20 ad sab.

Item perticae, quibus araneae detergantur, item spongiae, quibus columnae pavimenta podia extergantur, scalae, quae ad lacunaria admoveantur, instrumenti sunt, quia mundiorem domum reddunt.

Dig. 33.7.12.23

Ulpianus 20 ad sab.

Papinianus quoque libro septimo responsorum ait: sigilla et statuae adfixae instrumento domus non continentur, sed domus portio sunt: quae vero non sunt adfixa, instrumento non continentur, inquit: suppellectili enim adnumerantur, excepto horologio aereo, quod non est adfixum: nam et hoc instrumento domus putat contineri, sicut prothyrum domus, si velamen est, inquit, instrumento domus continetur.

Dig. 33.7.12.24

Ulpianus 20 ad sab.

Fistulae autem et canales et crateres et si qua sunt alia ad aquas salientes necessaria, item serae et claves magis domus portio quam domus instrumentum sunt.

Dig. 33.7.12.25

Ulpianus 20 ad sab.

Specularia quoque adfixa magis puto domus esse partem: nam et in emptione domus et specularia et pegmata cedere, sive in aedificio sunt posita sive ad tempus detracta. sed si non sint, reposita ad hoc tamen sint, ut suppleantur, si qua desint: instrumento potius continebuntur.

Dig. 33.7.12.26

Ulpianus 20 ad sab.

Cancellos quoque instrumento contineri puto.

Dig. 33.7.12.27

Ulpianus 20 ad sab.

Sed si fundus non sit cum instrumento legatus, sed ita ut instructus sit, quaesitum est, an plus contineatur, quam si cum instrumento legatus esset. et sabinus libris ad vitellium scribit fatendum esse plus esse, cum instructus fundus legetur, quam si cum instrumento: quam sententiam cottidie increscere et invalescere videmus. quanto igitur hoc legatum uberius est, videndum est. et sabinus definit et cassius apud vitellium notat: omnia quae eo collocata sunt, ut instructior esset pater familias, instructo, inquit, continebuntur, id est quae ibi habuit, ut instructior esset. hoc ergo legato non agri instrumentum, sed proprium suum instrumentum reliquisse videtur.

Dig. 33.7.12.28

Ulpianus 20 ad sab.

Proinde si fundus sit instructus legatus, et suppellex continebitur, quae illic fuit usus ipsius gratia, et vestis non solum stragula, sed et qua ibi uti solebat: mensae quoque eboreae vel si quae aliae, item vitrea et aurum et argentum: vina quoque, si qua ibi fuerint usus ipsius causa, continentur, et si quid aliud utensilium.

Dig. 33.7.12.29

Ulpianus 20 ad sab.

Sed si qua eo congesserat non usus ipsius causa, sed custodiae gratia, non continebuntur: vina etiam, quae in apothecis sunt, non cedent: et hoc iure utimur, ut quae ibi pater familias quasi in horreo habuit, haec non contineantur.

Dig. 33.7.12.30

Ulpianus 20 ad sab.

Celsus quoque libro nono decimo digestorum scribit fructus ibi repositos, ut venirent vel in alium usum quam fundi converterentur, instructo fundo non contineri.

Dig. 33.7.12.31

Ulpianus 20 ad sab.

Idem celsus eodem libro ait etiam suppellecticarios et ceteros hoc genus servos contineri, id est ministeria, quibus instructus erat in eo fundo (extra ea quae libertatem acceperunt), et qui rure morari solebant.

Dig. 33.7.12.32

Ulpianus 20 ad sab.

Si instructum fundum legasset, ea paedagogia, quae ibi habebat, ut, cum ibi venisset, praesto essent in triclinio, legato continentur.

Dig. 33.7.12.33

Ulpianus 20 ad sab.

Contubernales quoque servorum, id est uxores, et natos, instructo fundo contineri verum est.

Dig. 33.7.12.34

Ulpianus 20 ad sab.

Instructo autem fundo et bibliothecam et libros, qui illic erant, ut quotiens venisset uteretur, contineri constat. sed si quasi apotheca librorum utebatur, contra erit dicendum.

Dig. 33.7.12.35

Ulpianus 20 ad sab.

Neratius quoque libro quarto epistularum rufino respondit instructo fundo et suppellectilem et vina et mancipia non solum ad cultum custodiamve villae, sed etiam quae ut ipsi patri familias in ministerio ibi essent, legato cedere.

Dig. 33.7.12.36

Ulpianus 20 ad sab.

Imagines quoque hae solae legatae videntur, quae in aliquo ornatu villae fuerunt.

Dig. 33.7.12.37

Ulpianus 20 ad sab.

Papinianus quoque praediis instructis legatis mancipia non contineri, quae temporis causa illic fuerunt ac non eo animo transtulit pater familias, ut aut fundi aut suum instrumentum faceret.

Dig. 33.7.12.38

Ulpianus 20 ad sab.

Idem respondit praediis instructis legatis actorem ex his in provinciam missum, ut ordinatis negotiis ad pristinum actum rediret, legato praediorum cedere, quamvis nondum redierit.

Dig. 33.7.12.39

Ulpianus 20 ad sab.

Idem respondit instructis hortis legatis etiam vina, quae ibi fuerunt, quo dominus esset instructior, contineri: aliud esse, si horrea ibi habuit, unde instruebatur vel in urbe vel in aliis praediis.

Dig. 33.7.12.40

Ulpianus 20 ad sab.

Idem respondit domo per fideicommissum relicta cum supellectili claudio hieronymiano clarissimo viro ab umbrio primo et mensas et ceteram suppellectilem, quam in hortis pater familias in proconsulatum profecturus contulerat, ut tutiore loco essent, contineri.

Dig. 33.7.12.41

Ulpianus 20 ad sab.

Idem respondit theriacam quoque et cetera medicamenta, quae secessus causa dominus ibi habuit, et vestem propter secessum ibi depositam instructo fundo legato inesse.

Dig. 33.7.12.42

Ulpianus 20 ad sab.

Idem respondit domo ita, ut instructa est, cum omni iure suo legata urbanam familiam, item artifices, quorum operae ceteris quoque praediis exhibebantur, legato non contineri: ostiarii autem, inquit, vel topiarii diaetarii aquarii domui tantum deservientes continebuntur. sed quod de artificibus ait, falsum est, si eius domus causa parati sunt, licet aliis quoque praediis commodabantur.

Dig. 33.7.12.43

Ulpianus 20 ad sab.

Idem respondit domo instructa legata mensas eboreas et libros non contineri: sed et hoc falsum est: nam omne, quidquid in domo fuit, quo instructior ibi esset pater familias, continebitur, suppellectilem autem patris familiae instrumentum esse nemo dubitat. denique neratius libro quarto epistularum Marcello fratri suo respondit et vestem domus instructae legato contineri: maxime, inquit, in proposita specie: proponebatur enim, qui legaverat, argentum et rationes excepisse: nam qui haec, inquit, excepit, non potest non videri de ceteris rebus, quae in ea essent, sensisse. sed et ipse papinianus eodem libro responsorum ait patrem mercatorem ac faeneratorem, qui duos filios totidemque filias heredes instituerat, ita legasse: "filiis maribus domum meam instructam do lego darique iubeo", merces et pignora an contineantur, quaeri posse: sed facilem iudici voluntatis coniecturam fore ceteris patris facultatibus examinatis.

Dig. 33.7.12.44

Ulpianus 20 ad sab.

Celsus scribit servis qui in fundo morarentur legatis, vicarios eorum non contineri, nisi appareat et de vicariis eum sensisse.

Dig. 33.7.12.45

Ulpianus 20 ad sab.

Papinianus quoque libro septimo responsorum uxori, cui vir omnia, quae in domo erant, ab herede filia praestari voluit, cautiones debitorum emptionesque servorum non videri legatas respondit, nisi, inquit, ex alia parte et de servis eum cogitasse apparuerit, scilicet ut eorum servorum ei legasse videatur emptiones, quos et ipsos voluit ad eam pertinere.

Dig. 33.7.12.46

Ulpianus 20 ad sab.

Si quis fundum ita ut instructus est legaverit et adiecerit cum supellectili vel mancipiis vel una aliqua re, quae nominatim expressa non erat, utrum minuit legatum adiciendo speciem an vero non, quaeritur. et papinianus respondit non videri minutum, sed potius ex abundanti adiectum.

Dig. 33.7.12.47

Ulpianus 20 ad sab.

Idem papinianus libro septimo responsorum ait: instructis hortis filio legatis mater argentum muliebre filiae legaverat: respondit etiam id argentum muliebre, quod in hortis habuit, ut ibi esset instructior, ad filiam pertinere.

Dig. 33.7.13pr.

Paulus 4 ad sab.

Tabernae cauponiae instrumento legato etiam institores contineri neratius existimat: sed videndum, ne inter instrumentum tabernae cauponiae et instrumentum cauponae sit discrimen, ut tabernae non nisi loci instrumenta sint, ut dolia vasa ancones calices trullae, quae circa cenam solent traici, item urnae aereae et congiaria sextaria et similia: cauponae autem, cum negotiationis nomen sit, etiam institores.

Dig. 33.7.13.1

Paulus 4 ad sab.

Instrumento balneario legato etiam balneatorem contineri neratius respondit:

Dig. 33.7.14

Paulus 2 ad vitell.

Continetur autem et fornicator.

Dig. 33.7.15pr.

Pomponius 6 ad sab.

Si ita testamento scriptum sit: "quae tabernarum exercendarum instruendarum pistrini cauponae causa facta parataque sunt, do lego", his verbis servius respondit et caballos, qui in pistrinis essent, et pistores, et in cauponio institores et focariam, mercesque, quae in his tabernis essent, legatas videri.

Dig. 33.7.15.1

Pomponius 6 ad sab.

Domo instructa responsum est ^ et^ suppellectilem legatam, non etiam vina, quia domus vinis instructa intellegi non potest.

Dig. 33.7.15.2

Pomponius 6 ad sab.

Mulier villae custos perpetua fundo qui cum instrumento legatus esset aut instructo continebitur, sicuti saltuarius: par enim ratio est: nam desiderant tam villae quam agri custodiam, illic, ne quid vicini aut agri aut fructuum occupent, hic, ne quid ceterarum rerum quae in villa continentur: villa autem sine ulla dubitatione pars fundi habetur.

Dig. 33.7.16pr.

Alfenus 2 Dig. a paulo epit.

Villae instrumento legato supellectilem non contineri verius est.

Dig. 33.7.16.1

Alfenus 2 Dig. a paulo epit.

Vinea et instrumento eius legato instrumentum vineae nihil esse servius respondit: qui eum consulebat, cornelium respondisse aiebat palos perticas rastros ligones instrumenti vineae esse: quod verius est.

Dig. 33.7.16.2

Alfenus 2 Dig. a paulo epit.

Quidam uxori fundum, uti instructus esset, in quo ipse habitabat, legavit. consultus de mulieribus lanificis an instrumento continerentur, respondit non quidem esse instrumenti fundi, sed quoniam ipse pater familias, qui legasset, in eo fundo habitasset, dubitari non oportere, quin et ancillae et ceterae res, quibus pater familias in eo fundo esset instructus, omnes legatae viderentur.

Dig. 33.7.17pr.

Marcianus 7 inst.

Item pictoris instrumento legato cerae colores similiaque horum legato cedunt, item peniculi et cauteria et conchae.

Dig. 33.7.17.1

Marcianus 7 inst.

Instrumento piscatorio contineri aristo ait naucellas, quae piscium capiendorum causa comparatae sunt: sed et piscatores contineri verius est.

Dig. 33.7.17.2

Marcianus 7 inst.

Instrumento balneatorio legato dictum est balneatorem sic instrumento contineri balneario, quomodo instrumento fundi saltuarium et topiarios, et instrumento cauponio institorem, cum balneae sine balneatoribus usum suum praebere non possint.

Dig. 33.7.18pr.

Paulus 2 ad vitell.

Cum de lanionis instrumento quaeritur, semota carne mensas pondera ferramentaque laniandae carnis causa praeparata, item trutinas cultros dolabras instrumento relinquimus.

Dig. 33.7.18.1

Paulus 2 ad vitell.

Instrumento legato aliquando etiam personas legantium necesse est inspici. ut ecce pistorio instrumento legato ita ipsi pistores inesse videri possunt, si pater familias pistrinum exercuit: nam plurimum interest, instrumentum pistoribus an pistrino paratum sit.

Dig. 33.7.18.2

Paulus 2 ad vitell.

Asinam molendariam et molam negat neratius instrumento fundi contineri.

Dig. 33.7.18.3

Paulus 2 ad vitell.

Item caccabos et patinas in instrumento fundi esse dicimus, quia sine his pulmentarium coqui non potest. nec multum refert inter caccabos et aenum, quod supra focum pendet: hic aqua ad potandum calefit, in illis pulmentarium coquitur. quod si aenum instrumento continetur, urcei quoque, quibus aqua in aenum infunditur, in idem genus rediguntur, ac deinceps in infinitum primis quibusque proxima copulata procedunt. optimum ergo esse pedius ait non propriam verborum significationem scrutari, sed in primis quid testator demonstrare voluerit, deinde in qua praesumptione sunt qui in quaque regione commorantur.

Dig. 33.7.18.4

Paulus 2 ad vitell.

Cum de vilico quaereretur et an instrumento inesset et dubitaretur, scaevola consultus respondit, si non pensionis certa quantitate, sed fide dominica coleretur, deberi.

Dig. 33.7.18.5

Paulus 2 ad vitell.

Idem consultus de meta molendaria respondit, si rusticis eius fundi operariis moleretur, eam quoque deberi. est autem meta inferior pars molae, catillus superior.

Dig. 33.7.18.6

Paulus 2 ad vitell.

De bubulco quoque ita respondit, sive de eo, qui bubus ibi araret, sive de eo, qui boves eius fundi aratores pasceret, quaereretur, deberi.

Dig. 33.7.18.7

Paulus 2 ad vitell.

De putatoribus quoque ita respondit, si eius fundi causa haberentur, inesse:

Dig. 33.7.18.8

Paulus 2 ad vitell.

Pastores quoque et fossores ad legatarium pertinere.

Dig. 33.7.18.9

Paulus 2 ad vitell.

Item cum fundus ita legatus esset: "maevio fundum seianum, ita ut optimus maximusque est, cum omni instrumento rustico et urbano et mancipiis quae ibi sunt" et quaereretur, an semina deberentur, respondit verius esse deberi, nisi aliud testatorem sensisse heres probaret. idem respondit de frumento reposito ad mancipiorum exhibitionem.

Dig. 33.7.18.10

Paulus 2 ad vitell.

In instrumento medici esse collyria et emplastra et cetera eius generis cassius scribit.

Dig. 33.7.18.11

Paulus 2 ad vitell.

Cui fundum instructum legaverat, nominatim mancipia legavit: quaesitum est, an reliqua mancipia, quae non nominasset, instrumento cederent. cassius ait responsum esse, tametsi mancipia instructi fundi sint, tamen videri eos solos legatos esse, qui nominati essent, quod appareret non intellexisse patrem familias instrumento quoque servos adnumeratos esse.

Dig. 33.7.18.12

Paulus 2 ad vitell.

Sabinus. cui fundus quaeque ibi sint legata sunt, ei fundus et omnia, quae in eo solita sunt esse quaeque ibi maiore parte anni morari et hi, qui in eum manendi causa recipere se consueverunt, legati videntur: at si qua consulto in fundo congesta contractave sunt, quo legatum cumularetur, ea non videntur legata esse.

Dig. 33.7.18.13

Paulus 2 ad vitell.

Quidam cum ita legasset: "villam meam ita ut ipse possedi cum suppellectile mensis mancipiis, quae ibi deputabuntur, urbanis et rusticis, vinis, quae in diem mortis meae ibi erunt, et decem aureis", et quaereretur, cum in diem mortis ibi libros et vitreamina et vesticulam habuerit, an eadem omnia legato cederent, quoniam quaedam enumerasset: scaevola respondit specialiter expressa, quae legato cederent.

Dig. 33.7.18.14

Paulus 2 ad vitell.

Domum instructam legavit cum omnibus adfixis: quaeritur de instrumentis debitorum, an ea legatarius habere potest. respondit secundum ea quae proponerentur non posse.

Dig. 33.7.19pr.

Paulus 13 resp.

Si mancipia quae, post testamentum factum in fundum seiae relictum a testatore inducta, fundi colendi gratia in eodem fundo fuerint, ea quoque instrumento fundi contineri respondi: quamvis enim ea mancipia testator demonstrasset, quae tunc ibi essent cum legaret, tamen non minuendi legati, sed augendi causa mancipiorum quoque fecit mentionem. ceterum instrumento fundi mancipia quoque colendi agri causa inducta contineri non ambigitur.

Dig. 33.7.19.1

Paulus 13 resp.

Paulus respondit villae instrumento neque fructus repositos neque equitium contineri, suppellectile autem legato cedere: servum vero arte fabrica peritum, qui annuam mercedem praestabat, instrumento villae non contineri.

Dig. 33.7.20pr.

Scaevola 3 resp.

Seiae ex parte heredi institutae, si heres erit, fundos per praeceptionem dederat instructos cum suis vilicis et reliquis colonorum et codicillis ita scripsit: "postea mihi venit in mentem: seiae fundos quos reliqui, ita ut sunt instructi rustico instrumento suppellectile pecore et vilicis cum reliquis colonorum et apotheca habere volo". quaesitum est, an etiam ea, quae patris familias usus cottidiani causa in fundis fuerunt, legato continerentur. respondit testamento quidem ut proponeretur seiae, insuper fundum, legatum, verum non amplius deberi, quam in codicillis (quos sane post oblivionem testamentariae scripturae fecisset) instructi appellatione contineri velle se manifeste ostendisset.

Dig. 33.7.20.1

Scaevola 3 resp.

Liberto suo quidam praedia legavit his verbis: "seio liberto meo fundos illum et illum do lego ita ut instructi sunt cum dotibus et reliquis colonorum et saltuariis cum contubernalibus suis et filiis et filiabus". quaesitum est, an stichus servus, qui praedium unum ex his coluit et reliquatus est amplam summam, ex causa fideicommissi seio debeatur. respondit, si non fide dominica, sed mercede, ut extranei coloni solent, fundum coluisset, non deberi.

Dig. 33.7.20.2

Scaevola 3 resp.

"gaio seio alumno meo fundos meos illum et illum, ita ut instructi sunt, et domum superiorem dari volo": quaesitum est, an etiam domum instructam dari voluerit. respondit secundum ea quae proponerentur ita videri dedisse, nisi is, a quo peteretur, aliud testatorem sensisse manifeste doceret: at si habitationis, id est aedificii instrumentum legasset, non cedere servos operae aliive rei paratos.

Dig. 33.7.20.3

Scaevola 3 resp.

Praedia ut instructa sunt cum dotibus et reliquis colonorum et vilicorum et mancipiis et pecore omni legavit et peculiis et cum actore: quaesitum est, an reliqua colonorum, qui finita conductione interposita cautione de colonia discesserant, ex verbis supra scriptis legato cedant. respondit non videri de his reliquis esse cogitatum.

Dig. 33.7.20.4

Scaevola 3 resp.

Idem quaesiit in actore legato, an uxor et filia legato cedant, cum actor non in praediis, sed in civitate moratus sit. respondit nihil proponi, cur cedant.

Dig. 33.7.20.5

Scaevola 3 resp.

Idem quaesiit, cum testator facto testamento in provinciam sit profectus, an ea mancipia, quae post profectionem eius aut mortem sine cuiusquam auctoritate sponte sua ad parentes et notos sibi homines in fundos legatos transiere, legato cedant. respondit non legatos eos, qui forte veluti commeantes transissent.

Dig. 33.7.20.6

Scaevola 3 resp.

"pamphilae libertae meae dari volo fundum titianum cum instrumento et his quae in eodem erunt cum moriar". quaesitum est, si stichus servus, ex eo fundo ante annum mortis testatoris abductus et in disciplinam traditus, postea in eum fundum non reversus sit, an debeatur. respondit, si studendi causa misisset, non quo a fundo eum aliorsum transferat, deberi.

Dig. 33.7.20.7

Scaevola 3 resp.

"tyrannae sorori meae fundum meum graecianum cum stabulo et instrumento rustico omni relinquo". quaeritur, an fundi appellatione etiam pascua, quae ad eum simul cum fundo pervenerint et quae semper in usibus huius possessionis habuerat, legato cederent. respondit, si prata fundo graeciano ita coniunxisset, uti sub una fundi appellatione haberentur, ea quoque deberi.

Dig. 33.7.20.8

Scaevola 3 resp.

Instructis domibus legatis crabattus argento inaurato tectus mortis titiae tempore in domibus non est repertus, sed in horreis tantisper conditus: quaero, an is quoque praestandus sit. respondit, si in domo esse soleret et quo tutiore loco haberetur, interim in horreo allatus esset, nihilo minus praestandum.

Dig. 33.7.20.9

Scaevola 3 resp.

Quod adiecit testator " uti possedi" an hoc significet " sicut instructa in diem mortis habuit", id est cum mancipiis pecoribus instrumento rustico? respondit: non de iure quaeritur.

Dig. 33.7.21

Pomponius 1 fideic.

Cum fundus sine instrumento legatus sit, dolia molae olivariae et praelum et quaecumque infixa inaedificataque sunt fundo legato continentur, nulla autem ex his rebus quae moveri possunt paucis exceptis fundi appellatione continentur. de molis tum quaeri solet, cum ita adfixae itave inaedificatae sint, ut partes aedificiorum esse videantur.

Dig. 33.7.22pr.

Paulus 3 sent.

Fundo legato " ut optimus maximusque est" retia apraria et cetera venationis instrumenta continebuntur: quod etiam ad instrumenta pertinet, si quaestus fundi ex maxima parte in venationibus consistat.

Dig. 33.7.22.1

Paulus 3 sent.

Fundo legato cum mancipiis et pecoribus et omni instrumento rustico et urbano peculium actoris ante testatorem defuncti, si ex eodem fundo fuerit, magis placet ad legatarium pertinere.

Dig. 33.7.23

Nerva 2 resp.

Cum quaeratur, quod sit tabernae instrumentum, interesse, quod genus negotiationis in ea exerceri solitum sit.

Dig. 33.7.24

Paulus 3 ad ner.

Fundus, qui locatus erat, legatus est cum instrumento: instrumentum, quod colonus in eo habuit, legato cedit. paulus: an quod coloni fuit an tantum id quod testatoris fuit? et hoc magis dicendum est, nisi nullum domini fuit.

Dig. 33.7.25pr.

Iavolenus 2 ex post. lab.

Fundi instrumento legato id pecus cedere putabat tubero, quod is fundus sustinere potuisset: labeo contra. quid enim fiet, inquit, si, cum mille oves fundus sustinere potuisset, duo milia ovium in eo fundo fuerint? quas oves potissimum legato cessuras existimabimus? nec quaerendum esse, quid debuisset parari pecoris instrumenti fundi causa, sed quid paratum esset: non enim ex numero aut multitudine legata aestimandum esse. labeonis sententiam probo.

Dig. 33.7.25.1

Iavolenus 2 ex post. lab.

Quidam cum in fundo figlinas haberet, figulorum opera maiore parte anni ad opus rusticum utebatur, deinde eius fundi instrumentum legaverat. labeo trebatius non videri figulos in instrumento fundi esse.

Dig. 33.7.25.2

Iavolenus 2 ex post. lab.

Item cum instrumentum omne legatum esset excepto pecore, pastores oviliones, ovilia quoque legato contineri ofilius non recte putat.

Dig. 33.7.26pr.

Iavolenus 5 ex post. lab.

Dolia fictilia, item plumbea, quibus terra adgesta est, et in his viridiaria posita aedium esse labeo trebatius putant. ita id verum puto, si ita illigata sint aedibus, ut ibi perpetuo posita sint.

Dig. 33.7.26.1

Iavolenus 5 ex post. lab.

Molas manuarias quidem suppellectilis, iumentarias autem instrumenti esse ofilius ait. labeo cascellius trebatius neutras suppellectilis, sed potius instrumenti putant esse, quod verum puto.

Dig. 33.7.27pr.

Scaevola 6 Dig.

Praedia maritima cum servis qui ibi erunt et omni instrumento et fructibus qui ibi erunt et reliquis colonorum nutritori suo legavit. quaesitum est, an servi piscatores, qui solebant in ministerio testatoris esse et ubicumque eum sequi et urbicis rationibus expungebantur nec mortis testatoris tempore in praediis legatis deprehensi fuerant, legati esse videantur. respondit secundum ea quae proponerentur non esse legatos.

Dig. 33.7.27.1

Scaevola 6 Dig.

Adfini suo ita legavit: "fundum cornelianum titio ita ut est instructus cum omnibus rebus et mancipiis et reliquis colonorum dari volo". haec testatrix romae litis causa ex africa veniens mancipia quaedam ex fundo supra scripto, quo citius per hiemem operam elegeret, secum abduxit: quaesitum est, an ea mancipia fideicommisso cedant, cum quaedam ex his rusticis officiis ad tempus peregrinationis abducta sunt relictis conservabus et filiis suis et quaedam matribus et patribus. respondit mancipia, de quibus quaereretur, secundum ea quae proponerentur ex causa fideicommissi deberi.

Dig. 33.7.27.2

Scaevola 6 Dig.

Idem quaesiit, an fructus eiusdem fundi, qui ibi in diem mortis coacti manserint, fideicommisso cedant, cum plenissima testatoris erga adfinem voluntas ab eo quoque manifestetur, quo reliqua colonorum eiusdem possessionis ad eum pertinere voluerit. respondit in huiusmodi scriptura posse responderi hoc solum quaerendum, an manifeste appareat defuncta id, de quo quaereretur, dari noluisse.

Dig. 33.7.27.3

Scaevola 6 Dig.

Liberto, quem heredem in parte rescripsit, fundum per praeceptionem dedit in haec verba: "pamphile liberte, praecipito tibique habeto fundum meum titianum et agellum sempronianum cum instrumento et his, quae in eodem erunt cum moriar, familiaque, quae in eo fundo moratur, exceptis quos manumisero". quaesitum est, cum testator in eo fundo aliquantum vini in doliis habuerit, quod vivus totum vendiderat et partem tertiam pretii pro eo acceperat, an vinum in doliis remanens ad libertum ex causa praeceptionis pertineat. respondit verbis quae proponerentur contineri, nisi manifeste contrariam voluntatem coheredes approbant. in eo fundo instrumenta calendarii et nummos reliquit. responsum est de nummis quoque, ut supra responsum.

Dig. 33.7.27.4

Scaevola 6 Dig.

Ita legatum est: "septiciae sorori meae fundi paterni mei seiani partem dari volo sic ut est, et alteram partem ita, ut in diem mortis fuerit": quaesitum est, an ex verbis supra scriptis aggeres et praela iam posita parataque, ut immittantur aedificio, item instrumentum urbanum et rusticum cum mancipiis, quae fundi causa erant, ad legatarios pertineant. respondit: potest haec verba " sic ut est" ad instructum referri.

Dig. 33.7.27.5

Scaevola 6 Dig.

Fundos legavit in haec verba: "sempronio fratri meo hoc amplius fundos meos ita, ut instructi sunt, cassianum nonianum cum suis salictis et silvis". quaesitum est, cum silvae et salicta non in fundis supra scriptis, sed in adiectis agellis et quos simul testator comparavit nec sine his fundi coli possint, an legato cederent. respondit id tantum cedere legato, quod verbis comprehendisset.

Dig. 33.7.28

Scaevola 23 Dig.

Lucius titius fundum, uti erat instructus, legaverat. quaesitum est, fundus instructus quemadmodum dari debeat, utrum sic ut instructus fuit mortis patris familiae tempore, ut quae medio tempore adgnata aut in fundum illata sunt heredis sint? an vero instructus fundus eo tempore inspici debeat, quo factum est testamentum? an vero eo tempore, quo fundus peti coeperit, ut quidquid eo tempore instrumenti deprehendatur, legatario proficiat? respondit ea quibus instructus sit fundus secundum verba legati quae sint in eadem causa, cum dies legati cedat, instrumento contineri.

Dig. 33.7.29

Labeo 1 pith.

Si navem cum instrumento emisti, praestari tibi debet scapha navis. paulus: immo contra. etenim scapha navis non est instrumentum navis: etenim mediocritate, non genere ab ea differt, instrumentum autem cuiusque rei necesse est alterius generis esse atque ea quaequae sit: quod pomponio libro septimo epistularum placuit.

Dig. 33.8.0. De peculio legato.

Dig. 33.8.1

Paulus 4 ad sab.

Servo legato cum peculio et alienato vel manumisso vel mortuo legatum etiam peculii exstinguitur.

Dig. 33.8.2

Gaius 18 ad ed. provinc.

Nam quae accessionum locum optinent, exstinguuntur, cum principales res peremptae fuerint.

Dig. 33.8.3

Paulus 4 ad sab.

At si ancilla cum suis natis legata sit, etiam mortua ea vel alienata vel manumissa nati ad legatarium pertinebunt, quia duo legata sunt separata.

Dig. 33.8.4

Gaius 18 ad ed. provinc.

Sed et si cum vicariis suis legatus sit servus, durat vicariorum legatum et mortuo eo aut alienato aut manumisso.

Dig. 33.8.5

Paulus 4 ad sab.

Peculio legato constat heredem nomina peculiaria persequi posse, et insuper ipsum si quid debeat servo, reddere legatario debere.

Dig. 33.8.6pr.

Ulpianus 25 ad sab.

Si peculium legetur et sit in corporibus, puta fundi vel aedes, si quidem nihil sit, quod servus domino vel conservis liberisve domini debeat, integra corpora vindicabuntur: sin vero sit, quod domino vel supra scriptis personis debeatur, deminui singula corpora pro rata debebunt. et ita et iulianus et celsus putant.

Dig. 33.8.6.1

Ulpianus 25 ad sab.

Et si fuerit legatum peculium non deducto aere alieno, verendum, ne inutile legatum sit, quia quod adicitur contra naturam legati sit. sed puto verum hanc adiectionem non vitiare legatum, sed nihil ei adicere: nec enim potest crescere vindicatio peculii per hanc adiectionem. plane si proponas legatarium nactum possessionem rerum, exceptione doli adversus heredem vindicantem uti potest: habet enim in solidis rebus voluntatem aeris alieni non deducendi. sed et si dominus remittere se servo quod debet vel nihil sibi servum debere significaverit, valet haec adiectio, quia nuda voluntate potest dominus servo remittere quod ei debet.

Dig. 33.8.6.2

Ulpianus 25 ad sab.

Vicario autem meo mihi legato an et vicarii mei peculium ad me pertineat, quaeritur. et putamus contineri legato vicarii eius peculium, nisi adversa sit voluntas testatoris.

Dig. 33.8.6.3

Ulpianus 25 ad sab.

Si servus et vicarius eius liberi esse iussi sint eisque peculia sua legata sint, verba secundum voluntatem testatoris exaudienda, tamquam de duobus separatisque peculiis testatore locuto: et secundum haec vicarius vicarii non communicabitur, nisi haec mens fuit testantis.

Dig. 33.8.6.4

Ulpianus 25 ad sab.

Sicut autem aes alienum, hoc est quod debetur domino, minuit legatum peculium, ita per contrarium id quod dominus debet servo augere debet. sed huic sententiae adversatur rescriptum imperatoris nostri et patris eius, quod ita est: "cum peculium servo legatur, non etiam id conceditur, ut petitionem habeat pecuniae, quam se in rationem domini impendisse dicit". quid tamen si haec voluntas fuit testatoris? cur non possit consequi? certe compensari debet hoc quod impendit cum eo quod domino debetur. an et quod dominus scripsisset se servo debere, peculio legato cederet? pegasus negat: idem nerva: et cum gnaeus domitius filiae suae peculium quod eius esset legasset, et annuum, quod ei solitus erat dare, biennio non dedisset, sed in rationibus suis rettulisset filiae se debere quinquaginta, atilicinus existimavit legato non cedere, quod verum est, quia consonat rescripto.

Dig. 33.8.6.5

Ulpianus 25 ad sab.

Non solum autem quod domino debetur peculio legato deducitur, sed et si quid heredi debitum fuit.

Dig. 33.8.7

Pomponius 7 ad sab.

Si quis creditori suo adrogandum se dederit et agetur de peculio cum adrogatore, idem puto dicendum, quod de herede dicitur.

Dig. 33.8.8pr.

Ulpianus 25 ad sab.

Denique pegasus respondit, si statulibero, cui peculium legatum sit, heres interim crediderit, id ipso iure detrahi et corpora singula etiam per hoc aes alienum deminui.

Dig. 33.8.8.1

Ulpianus 25 ad sab.

Proinde si pure libertatem accipiet et heres vel vivo domino vel ante aditam hereditatem servo crediderit, legatum peculii minuetur secundum iuliani sententiam, licet dominus servi numquam fuerit.

Dig. 33.8.8.2

Ulpianus 25 ad sab.

Qui stichum et pamphilum servos habebat, testamento eos manumisit et unicuique peculium suum legavit. placet, quod alter alteri debet, de peculio eius decedere et alterius accedere legato.

Dig. 33.8.8.3

Ulpianus 25 ad sab.

Item quaeritur, si servo libertas data sit, si decem dedisset heredi, peculiumque ei legatum sit, an decem, quae dedisset heredi, debeant de peculio decedere. et est verum quod sabino placuit, hoc minus esse in peculio legato.

Dig. 33.8.8.4

Ulpianus 25 ad sab.

Plus ait sabinus, si statuliber servum heredi vendiderit, perinde desinere eum in peculio esse, atque si extraneo vendidisset.

Dig. 33.8.8.5

Ulpianus 25 ad sab.

His consequenter quaeritur, si servus cum domino de libertate pactus fuerit et partem pecuniae dederit et ante quam residuum dederit dominus decesserit liberumque esse testamento iusserit cum peculio legato, an quod domino dederit in peculio sit imputandum. et ait labeo de peculio decedere. plane si nondum dederat, sed, donec totum traderet, pro deposito apud eum fuerit, id in peculio esse placuit.

Dig. 33.8.8.6

Ulpianus 25 ad sab.

Item si servo peculium sit legatum et a debitore eius peculiari heres vetitus sit petere, verum est hoc minus esse in legato peculio, hoc est detrahendum id quod debitori legatum est.

Dig. 33.8.8.7

Ulpianus 25 ad sab.

Interdum etsi non sit legatum peculium, velut legatum sic accipitur, id est in huiusmodi specie: quidam servo libertatem, si rationes reddidisset, dederat, et si heredibus centum intulisset. imperator igitur noster cum patre rescripsit, peculium quidem non nisi legatum deberi: "verum", inquit, " si condicionibus praescriptis paruit servus, testatorem voluisse eum retinere peculium interpretamur": videlicet ex eo, quod ex peculio eum iusserat centum inferre.

Dig. 33.8.8.8

Ulpianus 25 ad sab.

Utrum autem id demum peculium accipimus, quod mortis tempore fuit, an vero et quod postea accessit applicamus vel quod decessit detrahimus? et iulianus alias accipiendum legatum peculii ait, si ipsi servo legetur, alias, si alii: nam si ipsi, id tempus in legato spectandum, quo dies legati cedit: si vero extraneo, mortis tempus, sic tamen, ut incrementa ex rebus peculiaribus ad eum perveniant, ut puta partus ancillarum vel fetus pecorum: quod autem ex operis suis vel ex alia re accedit, id, si alii quam ipsi legetur peculium, non debebitur. hoc utrumque iulianus secundum voluntatem testatoris scribit: cum enim ipsi suum peculium legatur, verisimile est eum omne augmentum ad ipsum pertinere voluisse, cui patrimonium manumisso futurum est, cum alii, non: sic tamen, ut, si in alterius persona hoc eum sensisse appareat, idem dicas.

Dig. 33.8.9pr.

Paulus 4 ad sab.

Id quod servo, qui in ipsius peculio est, debetur, non deducitur ex legato peculio, quamvis conservus eius sit.

Dig. 33.8.9.1

Paulus 4 ad sab.

Si conservum suum vulneraverit servus et viliorem fecerit, Marcellus non esse dubitandum deduci ex peculio, quod domino interesset (nam quid interest, conservum vulneret an scindat aliquid vel frangat an subripiat? quo casu sine dubio minuitur peculium), sed non ultra simplum.

Dig. 33.8.9.2

Paulus 4 ad sab.

Sed si se vulneravit vel etiam occidit, nihil est deducendum hoc nomine: alioquin dicemus et si fugerit, deducendum id, quanto vilior sit factus propter fugam.

Dig. 33.8.10

Pomponius 7 ad sab.

Si peculium servo vel filio praelegare velis, ne deducatur id quod tibi debebitur, specialiter ea quae in peculio erunt leganda sunt.

Dig. 33.8.11

Ulpianus 29 ad ed.

Ei quoque, qui nihil in peculio habet, potest peculium legari: non enim tantum praesens, sed etiam futurum peculium legari potest.

Dig. 33.8.12

Iulianus 37 Dig.

Tunc inutile legatum peculii fit, cum servus vivo testatore decedit: ceterum si mortis tempore servus vixerit, peculium legato cedet:

Dig. 33.8.13

Celsus 19 Dig.

Aliter atque si servus vestitus legatus foret.

Dig. 33.8.14

Alfenus 5 Dig.

Quidam in testamento ita scripserat: "pamphilus servus meus peculium suum cum moriar sibi habeto liberque esto". consulebatur, rectene pamphilo peculium legatum videretur, quod prius quam liber esset peculium sibi habere iussus esset. respondit in coniunctionibus ordinem nullum esse neque quicquam interesse, utrum eorum primum diceretur aut scriberetur: quare recte peculium legatum videri, ac si prius liber esse, deinde peculium sibi habere iussus est.

Dig. 33.8.15

Alfenus 2 Dig. a paulo epit.

Servo manumisso peculium legatum erat: alio capite omnes ancillas suas uxori legaverat: in peculio servi ancilla fuit. servi eam esse respondit neque referre, utri prius legatum esset.

Dig. 33.8.16pr.

Africanus 5 quaest.

Stichus habet in peculio pamphilum: hunc dominus noxali iudicio defendit et damnatus litis aestimationem solvit: deinde stichum testamento manumisit eique peculium legavit: quaesitum est, an quod pamphili nomine praestitum sit, ex peculio vel ipsius pamphili vel stichi deducendum sit. respondit pamphili quidem de peculio utique deducendum, quantacumque ea summa esset, id est etiam si eum noxae dedere expedisset: quidquid enim pro capite servi praestitum sit, in eo debitorem eum domini constitui. quod si pamphili peculium non sufficiat, tunc ex peculio stichi non ultra pretium pamphili deduci debere.

Dig. 33.8.16.1

Africanus 5 quaest.

Quaesitum est, si ex alia qua causa pamphilus pecuniam domino debuisset nec ea ex peculio eius servari posset, an usque ad pretium eius ex peculio stichi possit deducere. negavit: neque enim simile id superiori esse. ibi enim propterea pretium vicarii deducendum, quod eo nomine ipse stichus ob defensionem vicarii sui domino debitor constituatur, at in proposito quia stichus nihil debeat, ex eius peculio nihil esse deducendum, sed ex pamphili dumtaxat, qui certe ipse in suo peculio esse intellegi non potest.

Dig. 33.8.17

Iavolenus 2 ex cass.

Qui peculium servi legaverat, iudicium eo nomine acceperat, deinde decesserat. placuit non aliter peculium ex causa legati praestari, quam si de accepto iudicio heredi caveretur.

Dig. 33.8.18

Marcianus 6 inst.

Si servo manumisso peculium legatum fuerit, in eum sine dubio creditoribus peculiariis actiones non competunt: sed non alias heres peculium praestare debet, nisi ei caveatur defensu iri adversus creditores peculiarios.

Dig. 33.8.19pr.

Papinianus 7 resp.

Cum dominus servum vellet manumittere, professionem edi sibi peculii iussit atque ita servus libertatem accepit. res peculii professioni subtractas non videri manumisso tacite concessas apparuit.

Dig. 33.8.19.1

Papinianus 7 resp.

Testamento data libertate peculium legaverat eundemque postea manumiserat: libertus, ut et nominum peculii actiones ei praestarentur, ex testamento consequetur.

Dig. 33.8.19.2

Papinianus 7 resp.

Filius familias, cui pater peculium legavit, servum peculii vivo patre manumisit: servus communis omnium heredum est exemptus peculio propter filii destinationem, quia id peculium ad legatarium pertinet, quod in ea causa moriente patre inveniatur:

Dig. 33.8.20

Marcianus 7 inst.

Nihilque interest, ante legatus, deinde inutiliter manumissus sit an contra.

Dig. 33.8.21

Scaevola 8 quaest.

Si sticho manumisso peculium legatum sit et titio servus peculiaris, quantum peculio detractum erit ob id quod domino debetur, tantum ei accedere, cui vicarius legatus est, iulianus ait.

Dig. 33.8.22pr.

Labeo 2 post. a iav. epit.

Dominus servum testamento manumiserat et ei peculium legaverat: is servus mille nummos domino debuerat et eos heredi solvit. respondi omnes eas res deberi orcino, si pecuniam orcinus quam debuerat solvisset.

Dig. 33.8.22.1

Labeo 2 post. a iav. epit.

Dominus servum, qui cum eo vicarium communem habebat, testamento manumiserat et peculium ei legaverat, deinde ipsum vicarium, qui communis erat, nominatim et ipsi et libertae suae legaverat. respondi partem quartam libertae, reliquam partem quartam liberti futuram: quod et trebatius.

Dig. 33.8.23pr.

Scaevola 15 Dig.

Dominus sticho servo suo, qui bona liberti eius gessit, cui pro parte dimidia testamento heres exstiterat, in quibus negotiis gestis et kalendaria fuerunt, testamento suo libertatem dederat, si rationem reddidisset, eique peculium suum per fideicommissum dedit: stichus summas, quibus reliquatus erat tam ex kalendario quam ex variis causis, reddidit manentibus debitoribus, pro quibus ipse pecuniam heredibus patroni refuderat, libertatemque adeptus decessit. quaesitum est, an heredibus stichi adversus nomina debitorum, pro quibus stichus pecuniam heredibus patroni intulit, heredes patroni ex causa fideicommissi compellendi sint actiones praestare, cum nihil aliud a sticho patrono debitum fuerit. respondit praestandum.

Dig. 33.8.23.1

Scaevola 15 Dig.

Testamento codicillisve servos manumisit et peculia legavit et de sticho ita cavit: "stichum servum meum liberum esse volo eique volo dari decem aureos et quidquid ex ratione loculorum meorum habet: rationes autem heredibus meis dari volo. his omnibus, quos hoc testamento manumisi, peculia sua concedi volo". quaesitum est, an, quod amplius rationi loculorum in diem mortis erogavit stichus ex peculio suo, ab heredibus recipere debeat, cum ex consuetudine domus esset, ut quidquid amplius ex suo in ratione loculorum erogasset, dominica ratio ei deberet atque exsolveret. respondit secundum ea, quae propter consuetudinem proponerentur, id quoque peculio legato contineri, quod et dominica ratio deberet et solita erat reddere.

Dig. 33.8.23.2

Scaevola 15 Dig.

Servis libertates legataque dederat et condicionem ita scripserat: " hosous katelipon eleuverous kai ta lygata autois, toutous boulomai einai anecetastous". quaesitum est, an peculia quoque legata his videbuntur. respondit secundum ea quae proponerentur non videri legata.

Dig. 33.8.23.3

Scaevola 15 Dig.

Item quaesitum est, an ex isdem verbis reliqua rationum quasi legata retinere possint, aut si res dominicas apud se habuerint, aut, si qui eorum coloni praediorum fuerunt, pensiones. respondit supra responsum.

Dig. 33.8.24

Ulpianus 43 ad sab.

Si legatus fuerit servus, peculium excipere non est necesse, quia non sequitur, nisi legetur.

Dig. 33.8.25

Celsus 19 Dig.

Si servus liber esse iussus sit eique peculium legatum sit, vicariorum eius vicarii legato continentur.

Dig. 33.8.26

Scaevola 3 resp.

"titi fili, e medio praecipito sumito tibique habeto domum illam, item aureos centum": alio deinde capite peculia filiis praelegavit. quaesitum est, an peculio praelegato et centum aurei et usurae eorum debentur, cum rationibus breviariis in aere alieno et sortem et usuras inter ceteros creditores complexus sit. respondit, si id faenus nomine filii exercuisset et usuras ita, ut proponeretur, filio adscripsisset, id quoque peculio legato deberi.

Dig. 33.9.0. De penu legata

Dig. 33.9.1

Ulpianus 24 ad sab.

Uxori suae in annos singulos penoris aliquid heres dare iussus est, si non dedisset, nummos dare damnatus est: quaeritur, an penus legata peti possit an vero solummodo sit in praestatione et, si non praestetur, tunc quantitas petatur. et si quidem semel penus sit legata, non per singulos annos, certo iure utimur, ut et Marcellus libro trigesimo nono digestorum apud iulianum notat, in praestatione esse dumtaxat penum, quantitatem vero et peti posse. habebit igitur heres oblationem tamdiu, quamdiu lis cum eo de pecunia contestetur, nisi forte aliud tempus vel mente vel verbis testator praestituit. quod si in annos singulos penus legata sit, per singulos annos penus adhuc poterit praestari, si minus, summae per singulos annos petentur. quid ergo, si una summa legata sit et primo penus non sit praestita? utrum tota summa debeatur, quasi toto penoris legato transfuso, an vero quantitas primi anni aestimationis sola sit translata, dubitari potest. puto tamen sic voluntatem sequendam testatoris, ut tota summa ilico, postquam cessaverit heres dare penum uxori, praestetur, heredis indevotione coercenda.

Dig. 33.9.2

Marcianus 3 reg.

Penu certa cum vasis certis legata et consumpta ne vasa quidem cedunt legato exemplo peculii.

Dig. 33.9.3pr.

Ulpianus 22 ad sab.

Qui penum legat quid legato complectatur, videamus. et quintus mucius scribit libro secundo iuris civilis penu legata contineri, quae esui potuique sunt. idem sabinus libris ad vitellium scribit: quae harum, inquit, patris familiae uxoris liberorumve eius vel familiae, quae circa eos esse solet, item iumentorum, quae dominici usus causa parata sunt.

Dig. 33.9.3.1

Ulpianus 22 ad sab.

Sed aristo notat etiam quae esui potuique non sunt contineri legato, ut puta ea, in quibus esse solemus, oleum forte, garum muriam mel ceteraque his similia.

Dig. 33.9.3.2

Ulpianus 22 ad sab.

Plane, inquit, si penus esculenta legetur, labeo libro nono posteriorum scribit nihil eorum cedere, quia non haec esse, sed per ea solemus. trebatius in melle contra scribit, merito, quia mel esse solemus. sed proculus omnia haec contineri recte scribit, nisi contraria mens testatoris appareat.

Dig. 33.9.3.3

Ulpianus 22 ad sab.

Esculenta, utrum ea quae esse, an et ea per quae esse solemus, legaverit? et ea quoque legato contineri credendum, nisi contraria mens patris familias doceatur. mella certe semper esculentae penui cedere, lacertas quoque cum muria sua contineri nec labeo negavit.

Dig. 33.9.3.4

Ulpianus 22 ad sab.

Poculenta penu ea, quae vini loco pater familias habuit, continebuntur, supra scripta vero non continebuntur.

Dig. 33.9.3.5

Ulpianus 22 ad sab.

Penori acetum quoque cedere nemo dubitat, nisi exstinguendi ignis causa fuit paratum: tunc enim esui potuique non fuit: et ita ofilius libro sexto decimo actionum scribit.

Dig. 33.9.3.6

Ulpianus 22 ad sab.

Sed quod diximus " usus sui gratia paratum" accipiendum erit et amicorum eius et clientium et universorum, quos circa se habet, non etiam eius familiae, quam neque circa se neque circa suos habet: puta si qui sunt in villis deputati. quos quintus mucius sic definiebat, ut eorum cibaria contineri putet, qui opus non facerent: sed materiam praebuit servio notandi, ut textorum et textricum cibaria diceret contineri: sed mucius eos voluit significare, qui circa patrem familias sunt.

Dig. 33.9.3.7

Ulpianus 22 ad sab.

Simili modo et iumentorum cibaria penui continentur, sed eorum iumentorum, quae usibus ipsius et amicorum deserviunt: ceterum si qua iumenta agris deserviebant vel locabantur, legato non cedere cibaria eorum.

Dig. 33.9.3.8

Ulpianus 22 ad sab.

Sive autem frumentum sive quid leguminis in cella penuaria habuit, penori legato continebitur, sed et hordeum sive familiae sive iumentorum gratia: et ofilius scribit libro sexto decimo actionum.

Dig. 33.9.3.9

Ulpianus 22 ad sab.

Ligna et carbones ceteraque, per quae penus conficeretur, an penori legato contineantur, quaeritur. et quintus mucius et ofilius negaverunt: non magis quam molae, inquiunt, continentur. idem et tus et ceras contineri negaverunt. sed rutilius et ligna et carbones, quae non vendendi causa parata sunt, contineri ait. sextus autem caecilius etiam tus et cereos in domesticum usum paratos contineri legato scribit.

Dig. 33.9.3.10

Ulpianus 22 ad sab.

Servius apud melam et unguentum et chartas epistulares penoris esse scribit et est verius haec omnia, odores quoque contineri: sed et chartas ad ratiunculam vel ad logarium paratas contineri.

Dig. 33.9.3.11

Ulpianus 22 ad sab.

Vasa quoque penuaria quin contineantur, nulla dubitatio est. aristo autem scribit dolia non contineri, et est verum secundum illam distinctionem, quam supra in vino fecimus. nec frumenti nec leguminum thecae (arculae forte vel sportae) vel si qua alia sunt, quae horrei penuarii vel cellae penuariae instruendae gratia habentur, non continebuntur, sed ea sola continentur, sine quibus penus haberi non recte potest.

Dig. 33.9.4pr.

Paulus 4 ad sab.

Nam quod liquidae materiae sit quia per se esse non potest, rapit secum in accessionis locum id sine quo esse non potest: vasa autem accessio legatae penus, non legata sunt: denique penu consumpta vasa non debentur. sed et si penum cum vasis specialiter sit legatum, vasa non debebuntur vel consumpta penu vel adempta.

Dig. 33.9.4.1

Paulus 4 ad sab.

Si cui quae in promptuario sint legata fuerint, non omnis penus legata est.

Dig. 33.9.4.2

Paulus 4 ad sab.

Item si quis solitus fructus suos vendere penum legaverit, non omnia, quae et promercii causa habuit, legasse videtur, sed ea sola, quae in penum sibi separabat. quod si promiscue uti solebat, tunc quantum ad annuum usum ei sufficeret familiaeque eius ceterorumque, qui circa eum sunt, legato cedet: quod fere, inquit sabinus, evenit in personis mercatorum aut quotiens cella est olei et vini, quae venire solebant, in hereditate relicta.

Dig. 33.9.4.3

Paulus 4 ad sab.

Nomen autem penus mihi traditum est omnibus generibus dictum.

Dig. 33.9.4.4

Paulus 4 ad sab.

Si ita legetur " penum, quae romae sit", utrum quae est intra continentia, legata videtur an vero ea sola, quae est intra murum? et quidem urbes fere omnes muro tenus finiri, romam continentibus, et urbem romam aeque continentibus.

Dig. 33.9.4.5

Paulus 4 ad sab.

Quod si urbana penus sit legata, omnem, quae ubique est, legatam videri labeo ait, etiam si in villis agrisve sit, si illa sit urbico usui destinata, sicuti urbica ministeria dicimus et quae extra urbem nobis ministrare consueverunt. si autem extra urbem, romae tamen sit, sed et si in hortis sit urbi iunctis, idem erit dicendum.

Dig. 33.9.4.6

Paulus 4 ad sab.

Si cui penus legata sit praeter vinum, omnis penus legata videtur excepto vino: sed si ita scriptum sit " omnem penum praeter vinum quod romae erit", sola penus quae romae est legata videtur: et ita et pomponius libro sexto ad sabinum scribit.

Dig. 33.9.5pr.

Paulus 4 ad sab.

Non omne quod bibetur in penu habetur: alioqui necesse est, ut omnia medicamenta quae biberentur contineantur. itaque ea demum penoris esse, quae alendi causa biberentur, quo in numero antidotum non est. et sane vere cassius sensit.

Dig. 33.9.5.1

Paulus 4 ad sab.

Sed quod quidam negaverunt piper et ligusticum et careum et laser et cetera huiusmodi in penu non esse, improbatum est.

Dig. 33.9.6

Paulus 10 ad sab.

Instrumentum pistrini, item universa vasa cocitatoria penu non continentur.

Dig. 33.9.7

Scaevola 3 resp.

"penum meam omnem ad matrem liberosque meos, qui cum matre sunt, pertinere volo". quaero, si tutores pupilli eam solummodo penum deberi, quae in caenaculo esset, dicant, sint autem et in horreis anphorae ^ amphorae^, an hae quoque deberentur. respondit, quidquid penoris usus causa ubicumque habuisset, deberi.

Dig. 33.10.0. De suppellectile legata.

Dig. 33.10.1

Pomponius 6 ad sab.

Supellex est domesticum patris familiae instrumentum, quod neque argento aurove facto vel vesti adnumeretur.

Dig. 33.10.2

Florus 11 inst.

Id est res moventes non animales.

Dig. 33.10.3pr.

Paulus 4 ad sab.

Suppellectili legata haec continentur: mensae, trapezophora, delficae, subsellia, scamna, lecti etiam inargentati, culcitae, toralia, imperia, vasa aquaria, pelves, aquiminalia, candelabra, lucernae, trulla,

Dig. 33.10.3.1

Paulus 4 ad sab.

Item vasa aenea vulgaria, id est quae non proprie essent loco adtributa:

Dig. 33.10.3.2

Paulus 4 ad sab.

Praeterea capsae, armaria. sed sunt qui recte putant capsas et armaria, si librorum aut vestium aut armamentorum gratia parata sint, non esse in suppellectili, quia ne hae quidem ipsae res, quibus adtributae essent, suppellectilis instrumento cederent.

Dig. 33.10.3.3

Paulus 4 ad sab.

Vitrea escaria et potoria in supellectili sunt sic ut fictilia, nec solum vulgaria, sed etiam quae in pretio magno sunt: nam et pelves argenteas et aquiminalia argentae et mensas et lectos inargentatos vel inauratos atque gemmatos in supellectili esse non dubitatur, usque adeo, ut idem iuris sit et si tota argentea vel aurea sint.

Dig. 33.10.3.4

Paulus 4 ad sab.

De murrinis et crystallinis dubitari potest an debeant adnumerari supellectili propter eximium usum et pretium: sed et de his idem dicendum est,

Dig. 33.10.3.5

Paulus 4 ad sab.

Nec interest, cuius materiae sunt res, quae sunt in suppellectili. sed craterem argenteum non esse in supellectili nec ullum vas argenteum secundum saeculi severitatem nondum admittentis supellectilem argenteam hodie, propter usum imperitorum si in argento relatum sit candelabrum argenteum, argenti esse videtur, et error ius facit.

Dig. 33.10.4

Paulus l.S. de instrumenti sign.

Redae et sedularia suppellectili adnumerari solent.

Dig. 33.10.5pr.

Paulus 4 ad sab.

De tapetis quaeri potest, subsellia cathedraria quibus insterni solent utrum in veste sint, sicut stragula, an in suppellectili, sicut toralia, quae propria stragulorum non sunt. et hoc magis placuit ea supellectili contineri.

Dig. 33.10.5.1

Paulus 4 ad sab.

De tapetis autem vel linteis, quibus insternuntur vehicula, dubitari potest, an sint in suppellectili. sed dicendum est potius instrumenti viatorii ea esse, sicut pelles, quibus involvuntur vestimenta, lora quoque, quibus hae pelles constringi solent.

Dig. 33.10.6pr.

Alfenus 3 Dig. a paulo epit.

Supellectilis eas esse res puto, quae ad usum communem patris familias paratae essent, quae nomen sui generis separatim non haberent: quare quae ad artificii genus aliquod pertinerent neque ad communem usum patris familias accommodatae essent, supellectilis non esse.

Dig. 33.10.6.1

Alfenus 3 Dig. a paulo epit.

Sed nec pugillares et codices in supellectili sunt.

Dig. 33.10.7pr.

Celsus 19 Dig.

Labeo ait originem fuisse supellectilis, quod olim his, qui in legationem proficiscerentur, locari solerent, quae sub pellibus usui forent.

Dig. 33.10.7.1

Celsus 19 Dig.

Tubero hoc modo demonstrare supellectilem temptat: instrumentum quoddam patris familiae rerum ad cottidianum usum paratarum, quod in aliam speciem non caderet, ut verbi gratia penum argentum vestem ornamenta instrumenta agri aut domus. nec mirum est moribus civitatis et usu rerum appellationem eius mutatam esse: nam fictili aut lignea aut vitrea aut aerea denique supellectili utebantur, nunc ex ebore atque testudine et argento, iam ex auro etiam atque gemmis supellectili utuntur. quare speciem potius rerum, quam materiam intueri oportet, suppellectilis potius an argenti, an vestis sint.

Dig. 33.10.7.2

Celsus 19 Dig.

Servius fatetur sententiam eius qui legaverit aspici oportere, in quam rationem ea solitus sit referre: verum si ea, de quibus non ambigeretur, quin in alieno genere essent, ut puta escarium argentum aut paenulas et togas, supellectili quis adscribere solitus sit, non idcirco existimari oportere supellectili legata ea quoque contineri: non enim ex opinionibus singulorum, sed ex communi usu nomina exaudiri debere. id tubero parum sibi liquere ait: nam quorsum nomina, inquit, nisi ut demonstrarent voluntatem dicentis? equidem non arbitror quemquam dicere, quod non sentiret, ut maxime nomine usus sit, quo id appellari solet: nam vocis ministerio utimur: ceterum nemo existimandus est dixisse, quod non mente agitaverit. sed etsi magnopere me tuberonis et ratio et auctoritas movet, non tamen a servio dissentio non videri quemquam dixisse, cuius non suo nomine usus sit. nam etsi prior atque potentior est quam vox mens dicentis, tamen nemo sine voce dixisse existimatur: nisi forte et eos, qui loqui non possunt, conato ipso et sono quodam kai ty anarvrw fwny dicere existimamus.

Dig. 33.10.8

Modestinus 9 resp.

Cum quidam uxori suae legaverat domum cum iure suo omni et instrumento et supellectili, quaerebatur, an videretur et argentum escale et potorium legato contineri. respondit, si quid in supellectili argentum est, deberi, escale autem vel potorium argentum non deberi, nisi hoc quoque testatorem sensisse legatarius doceat.

Dig. 33.10.9pr.

Papinianus 7 resp.

Legata supellectili cum species ex abundanti per imperitiam enumerentur, generali legato non derogatur: si tamen species certi numeri demonstratae fuerint, modus generi datus in his speciebus intellegitur. idem servabitur instructo praedio legato, si quaedam species numerum certum acceperint.

Dig. 33.10.9.1

Papinianus 7 resp.

Supellectilis mensas esse cuiuscumque materiae, scilicet vel argenteas vel argento inclusas placet: nam et argenteos lectos, item argentea candelabra supellectili cedere posterior aetas recepit: cum et ulixem ex auro et argento lectum viventis arboris truncis aedificatum ornasse, quem penelopa recognoscendi viri signum accepit, ut voluit homerus.

Dig. 33.10.9.2

Papinianus 7 resp.

Supellectili sua omni legata acceptum argentum pignori non continebitur, quia supellectilem suam legavit, utique si non in usu creditoris id argentum voluntate debitoris fuit, sed propositum propter contractus fidem ac restituendae rei vinculum.

Dig. 33.10.10

Iavolenus 3 ex post. lab.

Qui vestem omnem et res plurium generum supellectilis expenso ferre solitus erat, is uxori supellectilem legaverat. recte negabant vestem legato cessuram labeo ofilius cascellius, quia non posset videri vestis appellatione supellectilis contineri.

Dig. 33.10.11

Iavolenus 10 ex post. lab.

Vasa aenea salientis aquae posita, item si quid aliud magis deliciarum quam usus causa paratum esset, non esse supellectilis labeo trebatius putant. murrea autem vasa et vitrea, quae ad usum, edendi et bibendi causa, parata essent, in supellectili dicuntur esse.

Dig. 33.10.12

Labeo 4 pith. a paulo epit.

Quemadmodum urbanus servus et rusticus distinguitur non loco, sed genere usus, ita urbana penus et supellex ad usum urbanum, non ad locum urbanum aut peregrinum dirigenda est, multumque interest, penus et supellex ea quae in urbe sit an urbana legetur vel promittatur.

Dig. 33.10.13

Modestinus 9 resp.

Respondit: numquam ex eo, quod supellectilem legavit maritus testamento, habitationem, in qua supellex fuit, legasse videtur. quare contra defuncti voluntatem habitationem sibi mulierem vindicare procul dubio est.

Dig. 33.10.14

Callistratus 3 de cogn.

Fundo legato instrumentum eius non aliter legato cedit, nisi specialiter id expressum sit: nam et domo legata neque instrumentum eius neque supellex aliter legato cedit, quam si id ipsum nominatim expressum a testatore fuerit.

Ius Romanum   Justinian   The Latin Library   The Classics Page

OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER QUARTUS TRICESIMUS

Dig. 34.1.0. De alimentis vel cibariis legatis.
Dig. 34.2.0. De auro argento mundo ornamentis unguentis veste vel vestimentis et statuis legatis.
Dig. 34.3.0. De liberatione legata.
Dig. 34.4.0. De adimendis vel transferendis legatis vel fideicommissis.
Dig. 34.5.0. De rebus dubiis.
Dig. 34.6.0. De his quae poenae causa relinquuntur.
Dig. 34.7.0. De regula catoniana.
Dig. 34.8.0. De his quae pro non scriptis habentur.
Dig. 34.9.0. De his quae ut indignis auferuntur.

Dig. 34.1.0. De alimentis vel cibariis legatis.

Dig. 34.1.1

Ulpianus 5 de omn. trib.

Si alimenta fuerint legata, dici potest etiam aquam legato inesse, si in ea regione fuerint legata, ubi venumdari aqua solet.

Dig. 34.1.2pr.

Marcianus 8 inst.

Si quis libertis alimenta reliquerit, et si legati fuerint servi et rogati legatarii manumittere, ad fideicommissum admittuntur, ut et divi quoque severus et antoninus rescripserunt.

Dig. 34.1.2.1

Marcianus 8 inst.

Et licet ad fiscum bona fuerint devoluta, ex quibus alimenta debeantur, praestanda sunt, sicuti si ad quemlibet successorem transissent.

Dig. 34.1.3

Ulpianus 2 de off. cons.

Solent iudices ex causa alimentorum libertos dividere, quotiens plures sunt heredes, ne a singulis heredibus minutatim alimenta petentes distringantur: quam divisionem perinde tueri oportet atque si pater familias ipse libertos divisisset. solent et unum eligere, per quem alimenta praestentur, aut ex voluntate defuncti aut arbitrio suo, ut rescripta subiecta ostendunt: " exemplum libelli dati mihi a libertis silii misi vobis, sciens ad exemplum istam rem pertinere, quia multi testamentis suis praestari libertis iubent necessaria, quae quia minimi aeris sunt, ad nihilum perducuntur, cum plures heredes coeperunt per successiones existere. qua de causa puto vos recte facturos, si convocatis favillae heredibus procuratoribusve eorum constitueritis, cui a ceteris dari debeat pecunia, ex cuius usuris alimenta praestentur. debebit autem is qui accipiet cavere eis qui dabunt redditurum se, ut quisque ex libertis decesserit aliove quo modo in civitate esse desierit, tantum ex sorte, quantum efficiet pro portione computatio". divus pius rubrio cuidam telesphoro rescripsit: " consules vocatis his, a quibus vobis alimenta deberi ex causa fideicommissi constiterit, vel omnes ab uno vel facta pro rata distributione quis et a quibus percipiatis, decernent. fiscus enim, si eo nomine quid ab eo vobis deberetur, exemplum sequetur. iam nunc sciatis partes eorum, qui solvendo esse desierint, non pertinere ad onus reliquorum heredum".

Dig. 34.1.4pr.

Modestinus 10 resp.

Tois te apeleuverois tais te apeleuverais mou, ohus zwsa en te ty diavyky en te tw kwdikillw yleuverwsa ye eleuverwsw, dovynai boulomai ta en xiois mou xwria, epi tw kai hosa zwsys mou elambanon stoixeisvai autois kibariou kai bestiariou onomati. quaero, quam habeant significationem, utrum ut ex praediis alimenta ipsi capiant an vero ut praeter praedia et cibaria et vestiaria ab herede percipiant? et utrum proprietas an usus fructus relictus est? et si proprietas relicta sit, aliquid tamen superfluum inveniatur in reditibus, quam est in quantitate cibariorum et vestiariorum, an ad heredem patronae pertinet? et si mortui aliqui ex libertis sint, an pars eorum ad fideicommissarios superstites pertinet? et an die cedente fideicommissi morientium libertorum portiones ad heredes eorum an testatoris decurrant? modestinus respondit: videntur mihi ipsa praedia esse libertis relicta, ut pleno dominio haec habeant et non per solum usum fructum et ideo et si quid superfluum in reditibus quam in cibariis erit, hoc ad libertos pertineat. sed et si decesserit fideicommissarius ante diem fideicommissi cedentem, pars eius ad ceteros fideicommissarios pertinet: post diem autem cedentem si qui mortui sint, ad suos heredes haec transmittent.

Dig. 34.1.4.1

Modestinus 10 resp.

Lucius titius testamento suo libertis libertabusque cibaria et vestiaria a liberis suis eisdemque heredibus praestari iussit nulla condicione addita: quaero, an, si sine patroni liberis idem liberti agant, cibaria et vestiaria accipere possint. modestinus respondit nihil proponi, propter quod petitio eorum, quae testamento pure legata sunt, non competat.

Dig. 34.1.5

Modestinus 11 resp.

Verba testamenti: " omnibus libertis nostris cibaria praestabitis pro arbitrio vestro, non ignorantes, quot ex his caros habuerim". item alio loco: " prothymum polychronium hypatium commendo: ut et vobiscum sint et cibaria praestetis, peto". quaero, an omnibus cibaria debent dari an his quos commendavit et cum heredibus esse iussit? modestinus respondit omnibus libertis cibaria relicta proponi, quorum modum viri boni arbitrio statuendum esse.

Dig. 34.1.6

Iavolenus 2 ex cass.

Legatis alimentis cibaria et vestitus et habitatio debebitur, quia sine his ali corpus non potest: cetera quae ad disciplinam pertinent legato non continentur,

Dig. 34.1.7

Paulus 14 resp.

Nisi aliud testatorem sensisse probetur.

Dig. 34.1.8

Papinianus 7 resp.

Pecuniae sortem alimentis libertorum destinatam unum ex heredibus secundum voluntatem defuncti praecipientem cavere non esse cogendum ex persona deficientium partes coheredibus restitui placuit: ob eam igitur speciem post mortem omnium libertorum indebiti non competit actio nec utilis dabitur. diversa causa est eius, cui legatorum divisio mandatur: nam ea res praesentem ac momentariam curam iniungit, alimentorum vero praebendorum necessitas oneribus menstruis atque annuis verecundiam quoque pulsantibus adstringitur.

Dig. 34.1.9pr.

Papinianus 8 resp.

Alio herede instituto ita scripsit: " a te peto, gai sei, quidquid ex hereditate mea redegeris, illis alumnis meis des singulis denos aureos eandemque summam penes te esse volo, cuius ex incremento eos alere te volo: reliquum restitues numerio colliberto nostro". respondi, quamvis distrahere bona gaius seius alio scripto herede non possit, tamen eum, alumnis relictam pecuniam ut servet ac restituat, intra falcidiam recte petiturum: quod de superfluo probari non potest.

Dig. 34.1.9.1

Papinianus 8 resp.

Eum quoque libertum inter eos, quibus cibaria, item vestiarium patrona, quae viva praestabat, reliquit, recte fideicommissum petiturum existimavi, qui annuos viginti aureos et menstruum frumentum atque vinum acceptavit.

Dig. 34.1.10pr.

Papinianus 9 resp.

Cum unus ex heredibus certam pecuniam praecipere iussus esset, de cuius sorte libertis alimenta praestaret, heredem quoque heredis ad praeceptionem admitti placuit. si tamen plures heredes heres haberet, intentionem quidem defuncti prima facie refragari, sed aliud probari non oportere: quid enim, si ceteros heredes suos evitavit et quietam ac verecundam atque etiam idoneam, libertis consulens, domum sequi maluit? et ideo ab omnibus heredibus heredis alimenta praestabuntur.

Dig. 34.1.10.1

Papinianus 9 resp.

Verbis fideicommissi pure manumisso praeteriti quoque temporis alimenta reddenda sunt, quamvis tardius libertatem reciperaverit nec heres moram libertati fecerit: tunc enim explorari moram oportet, cum de usuris fideicommissi quaeritur, non de ipsis fideicommissis.

Dig. 34.1.10.2

Papinianus 9 resp.

Alimentis viri boni arbitratu filiae relictis ab herede filio pro modo legatae dotis, quam solam pater exheredatae filiae nubenti dari voluit, atque pro incrementis aetatis eam exhibendam esse respondi, non pro viribus hereditatis.

Dig. 34.1.11

Paulus 10 quaest.

Is, cui annua alimenta relicta fuerant, in metallum damnatus indulgentia principis restitutus est. respondi eum et praecedentium annorum recte cepisse alimenta et sequentium deberi ei.

Dig. 34.1.12

Paulus 14 resp.

Lucius titius libertis suis cibaria et vestiaria annua certorum nummorum reliquit et posteriore parte testamenti ita cavit: " obligatos eis ob causam fideicommissi fundos meos illum et illum, ut ex reditu eorum alimenta supra scripta percipiant". quaesitum est, an, si quando minores reditus pervenerint, quam est quantitas cibariorum et vestiariorum, heredes ad supplendam eam onerari non debeant, vel, si alio anno excesserint, an supplendum sit, quod superiore anno minus perceperint. paulus respondit cibaria et vestiaria libertis defuncti integra deberi, neque ex eo, quod postea praedia his pignoris iure testator obligare voluit, ut ex reditu eorum alimenta perciperent, minuisse eum vel auxisse ea quae reliquerat videri.

Dig. 34.1.13pr.

Scaevola 4 resp.

Gaio seio trecentos aureos legavit, ut ex usuris eius summae libertis cibaria et vestiaria praestaret, quae statuerat: codicillis autem eandem summam vetuit dari gaio seio, sed dari publio maevio voluit: quaero, an libertis fideicommissum debeat maevius. respondi maevium, nisi aliud, de quo non deliberaretur, doceat sibi a testatore iniunctum, videri secundum voluntatem testatoris recepisse ea onera, quae adscripta erant ei summae, quae in eum codicillis transferebatur.

Dig. 34.1.13.1

Scaevola 4 resp.

Imperator antoninus pius libertis sextiae basiliae. " quamvis verba testamenti ita se habeant, ut, quoad cum claudio iusto morati essetis, alimenta et vestiarium legata sint, tamen hanc fuisse defunctae cogitationem interpretor, ut et post mortem iusti eadem vobis praestari voluerit". respondit eiusmodi scripturam ita accipi, ut necessitas alimentis praestandis perpetuo maneat.

Dig. 34.1.13.2

Scaevola 4 resp.

Item consultus de tali scriptura " et tecum sint semper volo": quaero, cum manumissi ab herede cum eo morati diu sint, sed ob graviorem servitutem ab eo discesserint, an alimenta his debeantur, quae negat se praestare, nisi vice servitutis is uteretur. respondit secundum ea quae proponerentur deberi.

Dig. 34.1.14pr.

Ulpianus 2 fideic.

Mela ait, si puero vel puellae alimenta relinquantur, usque ad pubertatem deberi. sed hoc verum non est: tamdiu enim debebitur, donec testator voluit, aut, si non paret quid sentiat, per totum tempus vitae debebuntur.

Dig. 34.1.14.1

Ulpianus 2 fideic.

Certe si usque ad pubertatem alimenta relinquantur, si quis exemplum alimentorum, quae dudum pueris et puellis dabantur, velit sequi, sciat hadrianum constituisse, ut pueri usque ad decimum octavum, puellae usque ad quartum decimum annum alantur, et hanc formam ab hadriano datam observandam esse imperator noster rescripsit. sed etsi generaliter pubertas non sic definitur, tamen pietatis intuitu in sola specie alimentorum hoc tempus aetatis esse observandum non est incivile.

Dig. 34.1.14.2

Ulpianus 2 fideic.

Sed si alimenta, quae vivus praestabat, reliquerit, ea demum praestabuntur, quae mortis tempore praestare solitus erat: quare si forte varie praestiterit, eius tamen temporis praestatio spectabitur, quod proximum mortis eius fuit. quid ergo, si, cum testaretur, minus praestabat, plus mortis tempore, vel contra? adhuc erit dicendum eam praestationem sequendam, quae novissima fuit.

Dig. 34.1.14.3

Ulpianus 2 fideic.

Quidam libertis suis ut alimenta, ita aquam quoque per fideicommissum reliquerat: consulebar de fideicommisso. cum in ea regione africae vel forte aegypti res agi proponebatur, ubi aqua venalis est, dicebam igitur esse emolumentum fideicommissi, sive quis habens cisternas id reliquerit sive non, ut sit in fideicommisso, quanto quis aquam sibi esset comparaturus. nec videri inutile esse fideicommissum quasi servitute praedii non possessori vicinae possessionis relicta: nam et haustus aquae ut pecoris ad aquam adpulsus est servitus personae, tamen ei, qui vicinus non est, inutiliter relinquitur: in eadem causa erunt gestandi vel in tuo uvas premendi vel areae tuae ad frumenta ceteraque legumina exprimenda utendi. haec enim aqua personae relinquitur.

Dig. 34.1.15pr.

Scaevola 17 Dig.

A filio herede codicillis seiae decem reliquit et alumno his verbis: " maevio infanti alumno meo quadringenta dari volo, quae peto a te, seia, suscipias et usuras ei quincunces in annum usque vicesimum aetatis praestes eumque suscipias et tuearis". quaesitum est, an seia, postquam legatum suum acceperit, si nolit pecuniam alumno relictam suscipere vel in suscipienda ea cessaverit, onus alimentorum ex die mortis testatoris compellenda sit adgnoscere. respondit secundum ea quae proponerentur compellendam praestare, cum fideicommissum sit. idem quaesiit, an heres quoque seiae in annos viginti alimenta praestare debeat. respondit debere.

Dig. 34.1.15.1

Scaevola 17 Dig.

Testator concubinae mancipia rustica numero octo legavit et his cibaria praestari iussit in haec verba: " eisque mancipiis, quae supra legavi, cibarii nomine ab heredibus meis praestari volo, quae me vivo accipiebant". quaesitum est, cum vivo testatore semper mancipia rustica tempore messium et arearum delegata fuerint et eo tempore cibaria ex ratione domini sui numquam acceperint excepto custode praedii, an heres eius quoque temporis, id est messis et arearum, et cibaria concubinae pro mancipiis rusticis praestare deberet. respondit eum, cuius notio est, aestimaturum. claudius: merito: nam si eodem modo, quo apud testatorem fuerunt, et apud concubinam futura legavit, non debebantur eius temporis, de quo quaesitum est, cibaria: verum si velut in ministerium urbanum ab his transferentur, debebuntur.

Dig. 34.1.15.2

Scaevola 17 Dig.

Titia decedens testamento ita cavit: " omnibus libertis libertabusque meis cibaria et vestiaria, quae viva praestabam, dari praestarique volo": quaesitum est, cum tribus solis eo tempore, quo ea vixit, sicut rationibus continebatur, cibaria et vestiaria praestiterit, an heres eius a ceteris quoque libertis conveniri possit, an vero tribus tantum sit obnoxius, qui rationibus ipsius cibaria et vestiaria accepisse reperiuntur? respondit ab omnibus.

Dig. 34.1.16pr.

Scaevola 18 Dig.

Alimenta et vestiaria libertis suis dedit: quaesitum est, an, quia nominatim a moderato uno ex heredibus dari iussit testator, solus moderatus debeat, non etiam post mortem moderati heredes eius. respondit et heredes teneri.

Dig. 34.1.16.1

Scaevola 18 Dig.

Libertis libertabusque, item quos quasque testamento codicillisve manumiserat, alimenta commoda, quae viva praestabat, dari iusserat: item omnibus libertis libertabusque fundos: quaesitum est, an ad ea legata admitteretur liberti paterni libertus, cui scribere solebat ita: apo hroufinys hymeterw apeleuverw: epistula etiam emissa ad ordinem civitatis, unde oriunda erat, petierat, uti publice (quod medicus erat) salaria ei praestarentur, manifestando litteris suis eum suum esse libertum. respondit eum, cuius notio est, aestimaturum, ut, si quidem viva ea et ei praestabat, nihilo minus ad fideicommissum admitteretur, aliter vero non.

Dig. 34.1.16.2

Scaevola 18 Dig.

Basilice libertae decem dedit, quam apud epictetum et callistum libertos esse voluit, ut, cum fuerit basilice annorum viginti quinque, cum usuris quincuncibus restituerentur ita, ut ex usuris aleretur, prout aetatem ampliaverit: quaesitum est, an ex alio capite, quo generaliter libertis libertabusque cibaria et vestiaria et habitationem reliquit, etiam basilice deberentur. respondit secundum ea quae proponerentur non deberi, nisi hoc quoque ei datum probaretur. claudius: quia destinaverat alimentis eius usuras pecuniae, quas specialiter ei praelegaverat.

Dig. 34.1.16.3

Scaevola 18 Dig.

Qui societatem omnium bonorum suorum cum uxore sua per annos amplius quadraginta habuit, testamento eandem uxorem et nepotem ex filio aequis partibus heredes reliquit et ita cavit: " item libertis meis, quos vivus manumisi, ea quae praestabam". quaesitum est, an et qui eo tempore, quo societas inter eos permansit, manumissi ab utrisque et communes liberti facti sunt, ea quae a vivente percipiebant solida ex fideicommisso petere possint. respondit non amplius, quam quod vir pro sua parte praestabat, deberi.

Dig. 34.1.17

Scaevola 19 Dig.

Servos ad custodiam templi reliquerat et his ab herede legaverat his verbis: " peto fideique tuae committo, ut des praestes in memoriam meam pedisequis meis, quos ad curam templi reliqui, singulis menstrua cibaria et annua vestiaria certa". quaesitum est, cum templum nondum esset extructum, ex die mortis an vero ex eo tempore, quo templum explicitum fuerit, percipere servi debeant legatum. respondit officio iudicis heredem compellendum servis relicta praestare, donec templum exstrueretur.

Dig. 34.1.18pr.

Scaevola 20 Dig.

Libertis, quos testamento manumiserat, alimentorum nomine menstruos decem legaverat, deinde codicillis generaliter omnibus libertis menstruos septem et annuos vestiarii nomine denos legavit: quaesitum est, an et ex testamento et ex codicillis libertis fideicommissum heredes praestare debeant. respondit nihil proponi, cur non ea, quae codicillis data proponerentur, praestari deberent: nam ab his, quae testamento cibariorum nomine legata essent, recessum est propter ea, quae codicillis relicta sunt.

Dig. 34.1.18.1

Scaevola 20 Dig.

Manumissis testamento cibaria annua, si cum matre morabuntur, per fideicommissum dedit: mater filio triennio supervixit neque cibaria neque vestiaria eis praestitit, cum in petitione fideicommissi liberti cessarent: sed et filia posteaquam matri heres exstitit, quoad vixit annis quattuordecim interpellata de isdem solvendis non est. quaesitum est, an post mortem filiae a novissimo herede petere possint et tam praeteriti temporis quam futuri id, quod cibariorum nomine et vestiarii relictum est. respondit, si condicio exstitisset, nihil proponi, cur non possent.

Dig. 34.1.18.2

Scaevola 20 Dig.

Ab heredibus stichum manumitti voluit eique, si cum seio moraretur, cibaria et vestiaria praestari a seio: deinde haec verba adiecit: " te autem, sei, peto, ut, cum ad annum vicesimum quintum perveneris, militiam ei compares, si tamen te ante non reliquerit". quaesitum est, sticho statim libertatem consecuto, prius autem defuncto seio quam ad annum vicesimum quintum perveniret, an ab his, ad quos bona seii pervenerunt, militia sticho comparari debet? et si placet deberi, utrum statim militia comparanda sit an eo tempore, quo seius annum vicesimum quintum expleturus fuisset, si supervixisset? respondit, cum placeat comparandam, non ante deberi, quam id tempus cessisset.

Dig. 34.1.18.3

Scaevola 20 Dig.

Postumis heredibus institutis et patre et matre, et substitutione facta actores manumisit et peculia eis legavit et annua et certis libertis suis legata et aliis exteris plura: deinde post testamentum factum nata filia codicillis ita cavit: " si quid testamento, quod ante hoc tempus feci, legavi cui dari volui, peto ab his, uti tertiam partem petinae ^ paetinae^ filiae meae reddant": secundis autem tabulis facta pupillari substitutione impuberibus libertis, quibus a parentibus libertates dedit, eo amplius alterum tantum, quantum in nummo praeter cibaria et vestiaria dari voluit. quaesitum est, cum supervixisset filia testamento aperto et codicillis, postea autem decesserit et fideicommissum datum ei de restituenda parte tertia ad heredes suos transmiserat, an etiam cibariorum et vestiariorum tertiae partes ei per fideicommissum datae esse videantur. respondit non videri.

Dig. 34.1.18.4

Scaevola 20 Dig.

Idem quaesiit, an eorum, quae codicillis per fideicommissum relicta sunt, tertiae partes ad filiam pertinere deberent. respondit non deberi. idem quaesiit, an alterum tantum a substitutione legatum deducta tertia parte quantitatis legatorum testamento datorum computari debeat, ut duae partes quantitatis debeantur, praeter codicillos, quibus tertiam partem codicillis legatorum ad filiam suam pertinere voluit. respondit integrum ex tabulis substitutionis deberi.

Dig. 34.1.18.5

Scaevola 20 Dig.

Cibaria et vestiaria per fideicommissum dederat et ita adiecerat: " quos libertos meos, ubi corpus meum positum fuerit, ibi eos morari iubeo, ut per absentiam filiarum mearum ad sarcofagum meum memoriam meam quotannis celebrent". quaesitum est, uni ex libertis, qui a die mortis neque ad heredes accesserit neque ad sepulchrum morari voluerit, an alimenta praestanda sint. respondit non praestanda.

Dig. 34.1.19

Scaevola 22 Dig.

Testamento ita cautum fuit: " libertis meis cibaria quaeque alia praestabam ab heredibus meis praestari volo": unus ex libertis ex voluntate patroni negotii sui gratia quadriennio ante diem mortis afuit: ex hac causa cibaria, quae ante acceperat, mortis tempore non accepit: cui tamen liberto eodem testamento patronus, sicut et aliis, quos vivus manumiserat, legatum quinque dederat. quaesitum est, an isti quoque cibaria et reliqua, quae ceteris libertis legata sunt, debeantur. respondit: cur non?

Dig. 34.1.20pr.

Scaevola 3 resp.

" stichus nutricis meae nepos liber esto: cui decem aureos annuos dari volo". qui deinde interpositis nominibus eidem sticho contubernalem eius et liberos legavit hisque, quae vivus praestabat: deinde alio capite libertis omnibus quae vivus praestabat dari iussit. quaero, an stichus praeter suum legatum et alimenta percipere possit. respondit secundum ea quae proponerentur non posse.

Dig. 34.1.20.1

Scaevola 3 resp.

Item cum alimenta libertis utriusque sexus reliquerit a re publica et ex praediis, quae ei legavit, dari voluisset, quaero, stichi contubernali et liberis utrum ab herede instituto an a re publica diaria et vestiaria, quae vivus dabat, praestari deberent. respondit posse benigna voluntatis interpretatione dici his quoque a re publica praestanda.

Dig. 34.1.20.2

Scaevola 3 resp.

Titia usum fructum fundi legavit maevio eiusque fidei commisit, ut ex reditu fundi praestaret pamphilae et sticho annuos centenos nummos quoad vivent: quaero, an mortuo maevio heres alimenta debeat. respondit nihil proponi, cur debeant praestari ab herede titiae: sed nec ab herede legatarii, nisi id testator manifeste probetur voluisse etiam finito usu fructu praestari, si modo id, quod ex usu fructu receptum esset, ei rei praestandae sufficeret.

Dig. 34.1.20.3

Scaevola 3 resp.

Mater filio herede instituto per fideicommissum libertatem pamphilo servo dedit: eidem cibariorum nomine legavit quinos aureos et vestiarii in singulos annos quinquagenos, si cum filio eius moretur: quaero, filio defuncto an alimenta debentur. respondit, si condicioni paruisset, deberi et post mortem.

Dig. 34.1.21

Ulpianus 2 fideic.

Diariis vel cibariis relictis neque habitationem neque vestiarium neque calciarium deberi palam est, quoniam de cibo tantum testator sensit.

Dig. 34.1.22pr.

Valens 1 fideic.

Cum alimenta per fideicommissum relicta sunt non adiecta quantitate, ante omnia inspiciendum est, quae defunctus solitus fuerat ei praestare, deinde quid ceteris eiusdem ordinis reliquerit: si neutrum apparuerit, tum ex facultatibus defuncti et caritate eius, cui fideicommissum datum erit, modus statui debebit.

Dig. 34.1.22.1

Valens 1 fideic.

Qui fratris sui libertis alimenta debebat, his testamento vineas cum hac adiectione reliquerat " ut habeant, unde se pascant". si pro alimentis vineas reliquisset, non aliter eis ex fideicommissi causa eas praestari debere, quam si testamenti obligatione heredes liberassent: aut, si id omissum fuisset et postea ex testamento agerent, doli mali exceptione tutum heredem futurum, scilicet si non minus valent vineae quam alimentorum aestimatio. illam autem adiectionem " ut habeant unde se pascant" magis ad causam praelegandi quam ad usum fructum constituendum pertinere.

Dig. 34.1.23

Paulus 4 ad ner.

Rogatus es, ut quendam educes: ad victum necessaria ei praestare cogendus es. paulus: cur plenius est alimentorum legatum, ubi dictum est et vestiarium et habitationem contineri? immo ambo exaequanda sunt.

Dig. 34.2.0. De auro argento mundo ornamentis unguentis veste vel vestimentis et statuis legatis.

Dig. 34.2.1pr.

Pomponius 6 ad sab.

Si alii vestimenta, alii vestis muliebris separatim legata sit, detractis muliebribus et ei adsignatis, cui specialiter legata sunt, reliquum alteri debetur. idem est, cum alteri mundus muliebris, alteri argentum omne legatum esset, de argento quod in mundo esset. item si duae statuae marmoreae tibi et deinde omne marmor legatum esset, praeter duas nulla statua marmorea legata est tibi. idem urbanis servis tibi legatis, si mihi dispensator legatus sit.

Dig. 34.2.1.1

Pomponius 6 ad sab.

Cui certum pondus argenti dare heres iussus sit, ei pecuniam numeratam dando iure ipso liberatur, si in ea pecunia eadem aestimatio fuerit: quod ita verum est, si non certum genus argenti legatum sit.

Dig. 34.2.2

Africanus 2 quaest.

Qui tibi mandaverat, ut ornamenta in usum uxoris suae emeres, eidem uxori uti adsolet legavit quae eius causa parata erunt: tu deinde post mortem mandatoris ignorans eum decessisse emisti. non debebuntur mulieri, quoniam ea verba ad mortis tempus referuntur. at si vivente testatore, muliere autem mortua emeris, non ineleganter dicetur inefficax hoc legatum esse, quando non possit vere dici eius causa paratum videri, quae prius decessit. eadem dicenda erunt et si vivat quidem mulier, sed diverterit et quaeratur, an post empta ei debeantur, quasi non videantur uxoris causa parata.

Dig. 34.2.3

Celsus 19 Dig.

Uxori legavit quae eius causa parata sunt et ante mortem divortit. non deberi, quia adempta videantur, proculus ait. nimirum facti quaestio est: nam potest nec repudiatae adimere voluisse.

Dig. 34.2.4

Paulus 54 ad ed.

Cum quidam libertum suum in asiam misisset ad purpuras emendas et testamento uxori suae lanam purpuream legasset, pertinere ad eam, si quam purpuram vivo eo libertus emisset, servius respondit.

Dig. 34.2.5

Africanus 2 quaest.

Apud fufidium quaestionum libro secundo ita scriptum est: si mulier mandaverit tibi, ut sibi uniones usus sui causa emeres, si tu post mortem eius, cum putares eam vivere, emeris, atilicinus negat esse legatos ei, cui mulier ita legaverit: " ornamenta, quae mea causa parata sunt eruntve": non enim eius causa videri parata esse, quae iam mortua ea empta fuerint.

Dig. 34.2.6pr.

Marcellus l.S. resp.

Seia ab herede publio maevio ita legavit: " antoniae tertullae lego auri pondo tot et unionem cum hyacinthis": postea unionem solvit neque ullum mortis tempore inter ornamenta sua unionem reliquit. quaero, an heres ex causa fideicommissi aestimationem rei, quae in hereditate non est, praestare debeat. Marcellus respondit non debere.

Dig. 34.2.6.1

Marcellus l.S. resp.

Item quaero, si probari possit seiam uniones et hyacinthos quosdam in aliam speciem ornamenti, quod postea pretiosius fecit additis aliis gemmis et margaritis, convertisse, an hos uniones vel hyacinthos petere possit et heres compellatur ornamento posteriori eximere et praestare. Marcellus respondit petere non posse: nam quid fieri potest, ut legatum vel fideicommissum durare existimetur, cum id, quod testamento dabatur, in sua specie non permanserit, nam quodammodo extinctum sit? ut interim omittam, quod etiam dissolutione ac permutatione tali voluntas quoque videatur mutata.

Dig. 34.2.6.2

Marcellus l.S. resp.

Lucius titius testamento scripsit: " heredem meum volo fideique eius committo, ut in patriam meam faciat porticum publicam, in qua poni volo imagines argenteas, item marmoreas": quaero, an legatum valeat. Marcellus respondit valere et operis ceterorumque, quae ibi testator poni voluerit, legatum ad patriam pertinere intellegi: enim potuit aliquod civitati accedere ornamentum.

Dig. 34.2.7

Paulus 8 ad plaut.

Si ita esset legatum: " vestem meam, argentum meum damnas esto dare", id legatum videtur, quod testamenti tempore fuisset, quia praesens tempus semper intellegeretur, si aliud comprehensum non esset: nam cum dicit " vestem meam", " argentum meum", hac demonstratione " meum" praesens, non futurum tempus ostendit. idem est et si quis ita legaverit " servos meos".

Dig. 34.2.8

Paulus 9 ad plaut.

Plautius: mulier ita legavit: " quisquis mihi heres erit, titiae vestem meam mundum ornamentaque muliebria damnas esto dare". cassius ait, si non appareret quid sensisset, omnem vestem secundum verba testamenti legatam videri. paulus. idem iavolenus scribit, quia verisimile est, inquit, testatricem tantum ornamentorum universitati derogasse, quibus significationem muliebrium accommodasset: accedere eo, quod illa demonstratio " muliebria" neque vesti neque mundo applicari salva ratione recti sermonis potest.

Dig. 34.2.9

Modestinus 9 reg.

Cum certum auri vel argenti pondus legatum est, si non species designata sit, non materia, sed pretium praesentis temporis praestari debet.

Dig. 34.2.10

Pomponius 5 ad q. muc.

Quintus mucius ait: si pater familias uxori vas aut vestimentum aut quippiam aliud ita legavit " quod eius causa emptum paratumve esset", id videtur legasse, quod magis illius quam communis usus causa paratum esset. pomponius: sed hoc verum est non solum, si ipsius viri et uxoris communis usus, sed etiam si liberorum eius aut alterius alicuius communis usus fuerit: id enim videtur demonstrasse, quod proprio usui uxoris comparatum sit. sed quod quintus mucius demonstrat " vas aut vestimentum aut quid aliud", efficit, ut falsa sint quae subiecimus: multum enim interest, generaliter an specialiter legentur haec. nam si generaliter, veluti ita " quae uxoris causa comparata sunt", vera est illius definitio: si vero ita scriptum fuerit " vestem illam purpuram", ut certa demonstraret, licet adiectum sit " quae eius causa empta paratave essent", licet neque empta neque parata neque in usum ei data sint, legatum omnimodo valet, quia certo corpore legato demonstratio falsa posita non peremit legatum. veluti si ita sit scriptum: " stichum, quem ex venditione titii emi": nam si neque emit aut ex alia venditione emit, legatum nihilo minus valet. plane si ita legatum fuerit " vas aut vestimenta, aut quae uxoris causa parata sunt", tunc aeque erit vera quinti muci sententia: quo casu sciendum est, etiam si alienae res hae fuerint, quas putavit testator suas esse, heredem teneri, ut eas det.

Dig. 34.2.11

Proculus 5 epist.

Si quis legaverit aurum gemmas margaritas quae in eo auro essent, etiam id aurum, cui neque gemmae neque margaritae inessent, legasse videtur.

Dig. 34.2.12

Papinianus 17 quaest.

Si imaginem legatam heres derasit et tabulam solvit, potest dici actionem ex testamento durare, quia legatum imaginis, non tabulae fuit.

Dig. 34.2.13

Scaevola 15 Dig.

Uxori quis legavit his verbis: " mundum muliebrem omnem, ornamenta et quidquid vivus dedi donavi eius causa comparavi confeci, id omne dari volo": quaesitum est, an carrucha dormitoria cum mulis, cum semper uxor usa sit, ei debeatur. respondit, si eius usus causa habita esset, deberi. idem quaesiit, an ex eadem clausula vestis, quam ancillis vel lecticariis eiusdem uxoris suae comparaverat vel fecerat, praestanda esset. respondit praestandam.

Dig. 34.2.14

Pomponius 5 ad sab.

Si statuam legavero et postea ex alia statua bracchium ei adiecero, omnimodo statua a legatario vindicari potest.

Dig. 34.2.15

Scaevola 15 Dig.

Species auri et argenti seiae legavit et ab ea petit in haec verba: " a te, seia, peto, ut quidquid tibi specialiter in auro argento legavi, id cum morieris reddas restituas illi et illi vernis meis: quarum rerum usus fructus dum vives tibi sufficiet": quaesitum est, an usus fructus auri et argenti solus legatariae debeatur. respondit verbis quae proponerentur proprietatem legatam addito onere fideicommissi.

Dig. 34.2.16

Scaevola 18 Dig.

Filiam in potestate patris manentem mater scripsit heredem eique patrem maevium substituit et ita scripsit: " quisquis mihi heres erit, fidei eius committo, uti ornamenta mea omnia aurum argentum vestimenta, quibus ego usa sum, ne veneant et filiae meae reserventur": quaesitum est, cum filia recusante pater ex substitutione heres exstitisset et intestato decessisset, filia autem bonis eius abstinuerat, an fideicommissum petere possit. respondit secundum ea quae proponerentur videri patris utiliter fidei commissum.

claudius: quoniam verbo servandi, quod scriptum est, videri in id tempus dilatum fideicommissum, quo sui iuris futurus esset is cui dabatur.

Dig. 34.2.17

Ulpianus 21 ad sab.

Si gemma ex anulo legetur vel aliae materiae iunctae vel emblemata, recte legantur et separantur et praestanda sunt.

Dig. 34.2.18pr.

Scaevola 22 Dig.

Qui uxori suae legaverat bonorum suorum decimam et mancipia et species argenti quas expresserat, eidem anulos et vestem reddi ab heredibus petit, quasi propria uxoris fuissent: quaesitum est, si uxoris non fuerint, an praestari ex causa legati deberent. respondit legandi animo dedisse ea videri, nisi contrarium ab herede approbetur.

Dig. 34.2.18.1

Scaevola 22 Dig.

Idem testator fidei commisit uxoris, ut quidquid ad eam ex testamento eius pervenisset, alumno communi restitueret: quaesitum est, an etiam eas res, quas proprias uxoris suae fuisse testator sciat eique reddi praecepit, alumno praestare debeat. respondit, si propriae fuissent, non debere, si legato adquirerentur, debere.

Dig. 34.2.18.2

Scaevola 22 Dig.

Mulier testamento et postea codicillis multas species vestis argenti, quas vel ipsa se confecisse vel habere significavit, specialiter per fideicommissum reliquit: quaesitum est, an non aliae legatariis cederent, quam quae in hereditate inventae essent. respondit eas cedere, quae inventae essent.

Dig. 34.2.19pr.

Ulpianus 20 ad sab.

Cum aurum vel argentum legatum est, quidquid auri argentique relictum sit, legato continetur sive factum sive infectum: pecuniam autem signatam placet eo legato non contineri.

Dig. 34.2.19.1

Ulpianus 20 ad sab.

Proinde si certum pondus auri sit legatum vel argenti, magis quantitas legata videtur, nec ex vasis tanget.

Dig. 34.2.19.2

Ulpianus 20 ad sab.

Sed si argenti facti pondo centum sint legata, ex facto argento debebitur legatum. unde est quaesitum apud celsum, an et vascula possit separare: et scripsit vascula non separaturum, licet ei optio fuerit relicta.

Dig. 34.2.19.3

Ulpianus 20 ad sab.

Idem celsus libro nono decimo quaestionum quaerit, si centum pondo argenti fuerint relicta, an replumbari debeant, ut sic appendantur. et proculus et celsus aiunt exempto plumbo appendi debere: nam et emptoribus replumbatae adsignantur et in rationes argenti pondus sic defertur: quae sententia habet rationem.

Dig. 34.2.19.4

Ulpianus 20 ad sab.

Plane si cui vascula argentea, ut puta lances quadratae sint legatae, etiam plumbum, quo continentur, eum sequetur.

Dig. 34.2.19.5

Ulpianus 20 ad sab.

Simili modo quaeritur, si cui argentum legetur, an emblemata aurea quae in eo sunt eum sequantur. et pomponius libro quinto ex sabino distinguit multum interesse, certum pondus ei argenti facti legetur an vero argentum factum: si pondus, non contineri, si argentum factum, contineri, quoniam argento cedit, quod ad speciem argenti iunctum est, quemadmodum clavi aurei et purpurae pars sunt vestimentorum. idem pomponius libris epistularum, etsi non sunt clavi vestimentis consuti, tamen veste legata contineri.

Dig. 34.2.19.6

Ulpianus 20 ad sab.

Idem celsus libro nono decimo digestorum, commentariorum septimo scribit auro legato ea, quae inaurata sunt, non deberi, nec aurea emblemata, quae in absidibus argenteis sint.

Dig. 34.2.19.7

Ulpianus 20 ad sab.

An autem auri appellatione anuli aurei contineantur, quaeritur: et quintus saturninus libro decimo ad edictum scribit contineri.

Dig. 34.2.19.8

Ulpianus 20 ad sab.

Lectum plane argenteum vel si qua alia supellex argentea fuit, argenti appellatione non continetur, si numero argenti habita non est, ut in iunctura argentea scio me dixisse, quod non in argentario pater familias reponebat. sed nec candelabra nec lucernae argenteae vel sigilla, quae in domo reposita sunt, vel imagines argenteae argenti appellatione continebuntur, nec speculum vel parieti adfixum vel etiam quod mulier mundi causa habuit, si modo non in argenti numero habita sunt.

Dig. 34.2.19.9

Ulpianus 20 ad sab.

Argento facto legato quintus mucius ait vasa argentea contineri, veluti parapsidas acetabula trullas pelves et his similia, non tamen quae supellectilis sunt.

Dig. 34.2.19.10

Ulpianus 20 ad sab.

Sed cui vasa sint legata, non solum ea continentur, quae aliquid in se recipiant edendi bibendique causa paratum, sed et quae aliquid sustineant: et ideo scutellas vel promulsidaria contineri. repositoria quoque continebuntur: nam vasorum appellatio generalis est, dicimus vasa vinaria et navalia.

Dig. 34.2.19.11

Ulpianus 20 ad sab.

Infecti autem argenti appellatio rudem materiam continet, id est non factam. quid ergo si coeptum sit argentum fabricari? nondum perfectum utrum facti an infecti appellatione contineatur, dubitari potest: sed puto magis facti. certe si iam erat factum, sed caelabatur, facti appellatione continebitur. an et caelati continebitur, quod caelari coepit? et puto contineri, si cui forte caelatum sit argentum legatum.

Dig. 34.2.19.12

Ulpianus 20 ad sab.

Si cui escarium argentum legatum sit, id solum debebitur, quod ad epulandum in ministerio habuit, id est ad esum et potum. unde de aquiminario dubitatum est: et puto contineri, nam et hoc propter escam paratur. certe si caccabos argenteos habebat vel miliarium argenteum vel sartaginem vel aliud vas ad coquendum, dubitari poterit, an escario contineatur. et haec magis cocinatorii instrumenti sunt.

Dig. 34.2.19.13

Ulpianus 20 ad sab.

Perveniamus et ad gemmas inclusas argento auroque. et ait sabinus auro argentove cedere: ei enim cedit, cuius maior est species. quod recte expressit: semper enim cum quaerimus, quid cui cedat, illud spectamus, quid cuius rei ornandae causa adhibetur, ut accessio cedat principali. cedent igitur gemmae, fialis vel lancibus inclusae, auro argentove.

Dig. 34.2.19.14

Ulpianus 20 ad sab.

Sed et in coronis mensarum gemmae coronis cedent et hae mensis.

Dig. 34.2.19.15

Ulpianus 20 ad sab.

In margaritis quoque et auro idem est: nam si margaritae auri ornandi gratia adhibitae sunt, auro cedunt, si contra, aurum margaritis cedet.

Dig. 34.2.19.16

Ulpianus 20 ad sab.

Idem et in gemmis anulis inclusis.

Dig. 34.2.19.17

Ulpianus 20 ad sab.

Gemmae autem sunt perlucidae materiae, quas, ut refert sabinus libris ad vitellium, servius a lapillis eo distinguebat, quod gemmae essent perlucidae materiae, velut smaragdi chrysolithi amethysti, lapilli autem contrariae superioribus naturae, ut obsidiani, veientani.

Dig. 34.2.19.18

Ulpianus 20 ad sab.

Margaritas autem nec gemmis nec lapillis contineri satis constitisse ibidem sabinus ait, quia concha apud rubrum mare et crescit et coalescit.

Dig. 34.2.19.19

Ulpianus 20 ad sab.

Murrina autem vasa in gemmis non esse cassius scribit.

Dig. 34.2.19.20

Ulpianus 20 ad sab.

Auro legato vasa aurea continentur et gemmis gemmea vasa. secundum haec sive gemmae sint in aureis vasis sive in argenteis, auro argentove cedent, quoniam hoc spectamus, quae res cuius rei ornandae causa fuerit adhibita, non quae sit pretiosior.

Dig. 34.2.20

Paulus 3 ad sab.

Si ut habiliter gemmae geri possint, inclusae auro fuerint, tum aurum gemmis dicimus cedere.

Dig. 34.2.21pr.

Pomponius 6 ad sab.

In argento potorio utrum id dumtaxat sit, in quo bibi possit, an etiam id, quod ad praeparationem bibendi comparatum est, veluti colum nivarium et urceoli, dubitari potest. sed propius est, ut haec quoque insint.

Dig. 34.2.21.1

Pomponius 6 ad sab.

Unguentis legatis non tantum ea legata videntur, quibus unguimur voluptatis causa, sed et valetudinis, qualia sunt commagena glaucina crina rosa muracolum nardum purum: hoc quidem etiam quo elegantiores sint et mundiores, unguuntur feminae.

Dig. 34.2.21.2

Pomponius 6 ad sab.

Sed de aquiminario cassius ait consultum se respondisse, cum alteri argentum potorium, alteri escarium legatum esset, escario cedere.

Dig. 34.2.22

Ulpianus 22 ad sab.

Vestimentum id est quod detextum est, etsi desectum non sit, id est si sit consummatum. quod in tela est nondum pertextum vel detextum, contextum appellatur. quisquis igitur vestem legaverit, neque stamen neque subtemen legato continebitur.

Dig. 34.2.23pr.

Ulpianus 44 ad sab.

Vestis an vestimenta legentur, nihil refert.

Dig. 34.2.23.1

Ulpianus 44 ad sab.

Vestimentorum sunt omnia lanea lineaque vel serica vel bombycina, quae induendi praecingendi amiciendi insternendi iniciendi incubandive causa parata sunt et quae his accessionis vice cedunt, quae sunt insitae picturae clavique qui vestibus insuuntur.

Dig. 34.2.23.2

Ulpianus 44 ad sab.

Vestimenta omnia aut virilia sunt aut puerilia aut muliebria aut communia aut familiarica. virilia sunt, quae ipsius patris familiae causa parata sunt, veluti togae tunicae palliola vestimenta stragula amfitapa et saga reliquaque similia. puerilia sunt, quae ad nullum alium usum pertinent nisi puerilem, veluti togae praetextae aliculae chlamydes pallia quae filiis nostris comparamus. muliebria sunt, quae matris familiae causa sunt comparata, quibus vir non facile uti potest sine vituperatione, veluti stolae pallia tunicae capitia zonae mitrae, quae magis capitis tegendi quam ornandi causa sunt comparata, plagulae penulae. communia sunt, quibus promiscui utitur mulier cum viro, veluti si eiusmodi penula palliumve est et reliqua huiusmodi, quibus sine reprehensione vel vir vel uxor utatur. familiarica sunt, quae ad familiam vestiendam parata sunt, sicuti saga tunicae penulae lintea vestimenta stragula et consimilia.

Dig. 34.2.23.3

Ulpianus 44 ad sab.

Vestis etiam ex pellibus constabit,

Dig. 34.2.24

Paulus 11 ad sab.

Cum et tunicas et stragula pellicia nonnulli habeant.

Dig. 34.2.25pr.

Ulpianus 44 ad sab.

Argumento sunt etiam nationes quaedam, veluti sarmatarum, quae pellibus teguntur.

Dig. 34.2.25.1

Ulpianus 44 ad sab.

Aristo etiam coactilia vesti cedere ait et tegimenta supselliorum huic legato cedere.

Dig. 34.2.25.2

Ulpianus 44 ad sab.

Vittae margaritarum, item fibulae ornamentorum magis quam vestis sunt.

Dig. 34.2.25.3

Ulpianus 44 ad sab.

Tapeta vesti cedunt, quae aut sterni aut inici solent: sed stragulas et babylonica, quae equis insterni solent, non puto vestis esse.

Dig. 34.2.25.4

Ulpianus 44 ad sab.

Fasciae crurales pedulesque et inpilia vestis loco sunt, quia partem corporis vestiunt. alia causa est udonum, quia usum calciamentorum praestant.

Dig. 34.2.25.5

Ulpianus 44 ad sab.

Cervicalia quoque vestis nomine continentur.

Dig. 34.2.25.6

Ulpianus 44 ad sab.

Si quis addiderit " vestem suam", apparet de ea eum sensisse, quam ipse in usus suos habuit.

Dig. 34.2.25.7

Ulpianus 44 ad sab.

Culcitae etiam vestis erunt.

Dig. 34.2.25.8

Ulpianus 44 ad sab.

Item pelles caprinae et agninae vestis erunt.

Dig. 34.2.25.9

Ulpianus 44 ad sab.

Muliebri veste legata et infantilem contineri et puellarum et virginum pomponius libro vicesimo secundo ad sabinum recte scribit: mulieres enim omnes dici, quaecumque sexus feminini sunt.

Dig. 34.2.25.10

Ulpianus 44 ad sab.

Ornamenta muliebria sunt, quibus mulier ornatur, veluti inaures armillae viriolae anuli praeter signatorios et omnia, quae ad aliam rem nullam parantur, nisi corporis ornandi causa: quo ex numero etiam haec sunt: aurum gemmae lapilli, quia aliam nullam in se utilitatem habent. mundus mulieris est, quo mulier mundior fit: continentur eo specula matulae unguenta vasa unguentaria et si qua similia dici possunt, veluti lavatio riscus. ornamentorum haec: vittae mitrae semimitrae calautica acus cum margarita, quam mulieres habere solent, reticula crocyfantia. sicut et mulier potest esse munda, non tamen ornata, ut solet contingere in his, quae se emundaverint lotae in balneo neque se ornaverint: et contra est aliqua ex somno statim ornata, non tamen conmundata.

Dig. 34.2.25.11

Ulpianus 44 ad sab.

Margarita si non soluta sunt vel qui alii lapides (si quidem exemptiles sint), dicendum est ornamentorum loco haberi: sed et si in hoc sint resoluti ut componantur, ornamentorum loco sunt. quod si adhuc sint rudes lapilli vel margaritae vel gemmae, ornamentorum loco non erunt, nisi alia mens fuit testantis, qui haec quoque, quae ad ornamenta paraverat, ornamentorum loco et appellatione comprehendi voluit.

Dig. 34.2.25.12

Ulpianus 44 ad sab.

Unguenta, quibus valetudinis causa unguimur, mundo non continentur.

Dig. 34.2.26

Paulus 11 ad sab.

Quamvis quaedam ex veste magis ornatus gratia, quam quo corpus tegant, comparentur, tamen quod eo nomine sint reperta, potius habenda esse vestis numero quam ornamentorum. similiter ornamentorum esse constat, quibus uti mulieres venustatis et ornatus causa coeperunt, neque referre, si quaedam eorum alium quoque usum praebeant, sicuti mitrae et anademata: quamvis enim corpus tegant, tamen ornamentorum, non vestis esse.

Dig. 34.2.27pr.

Ulpianus 44 ad sab.

Quintus mucius libro secundo iuris civilis ita definit argentum factum vas argenteum videri esse.

Dig. 34.2.27.1

Ulpianus 44 ad sab.

An cui argentum omne legatum est, ei nummi quoque legati esse videantur, quaeritur. et ego puto non contineri: non facile enim quisquam argenti numero nummos computat. item argento facto legato puto, nisi evidenter contra sensisse testatorem appareat, nummos non contineri.

Dig. 34.2.27.2

Ulpianus 44 ad sab.

Argento omni legato, quod suum esset, sine dubio non debetur id, quod in credito esset: hoc ideo, quia non videtur suum esse, quod vindicari non possit.

Dig. 34.2.27.3

Ulpianus 44 ad sab.

Cui aurum vel argentum factum legatum est, si fractum aut collisum sit, non continetur: servius enim existimat aurum vel argentum factum id videri, quo commode uti possumus, argentum autem fractum et collisum non incidere in eam definitionem, sed infecto contineri.

Dig. 34.2.27.4

Ulpianus 44 ad sab.

Cui legatum est aurum omne, quod suum esset cum moreretur, eius omne aurum fiet, quod tunc pater familias, cum moreretur, vindicare potuit suum esse. sed si qua distributio eius rei facta est, tunc interest, quomodo sit legatum. si factum aurum legatum est, omne ad eum pertinet cui legatum est ex quo auro aliquid est effectum, sive id suae sive alterius usionis causa paratum esset, veluti vasa aurea emblemata signa aurum muliebre et cetera, quae his rebus sunt similia. sed si infectum legatum est, quod eius ita factum est, ut eo, quod ad rem comparatum est, non possis uti sine refectione, quodque ab eo patre familias infecti numero fuerat, id videtur legatum esse. si autem aurum vel argentum signatum legatum est, id pater familias videtur testamento legasse, quod eius aliqua forma est expressum, veluti quae filippi sunt itemque nomismata et similia.

Dig. 34.2.27.5

Ulpianus 44 ad sab.

Argento legato non puto ventris causa habita scafia contineri, quia argenti numero non habentur.

Dig. 34.2.27.6

Ulpianus 44 ad sab.

Argentum factum recte quis ita definierit quod neque in massa neque in lamna neque in signato neque in supellectili neque in mundo neque in ornamentis insit.

Dig. 34.2.28

Alfenus 7 Dig.

Cum in testamento alicui argentum, quod usus sui causa paratum esset, legaretur, itemque vestis aut supellex, quaesitum est, quid cuiusque usus causa videretur paratum esse, utrumne id argentum, quod victus sui causa paratum pater familias ad cotidianum usum parasset an et si eas mensas argenteas et eius generis argentum haberet, quo ipse non temere uteretur, sed commodare ad ludos et ad ceteras apparationes soleret. et magis placet, quod victus sui causa paratum est, tantum contineri.

Dig. 34.2.29pr.

Florus 11 inst.

Si quando alterius generis materia auro argentove iniecta sit, si factum aurum vel argentum legetur, et id quod iniectum est debetur.

Dig. 34.2.29.1

Florus 11 inst.

Utra autem utrius materiae sit accessio, visu atque usu rei, consuetudinis patris familias aestimandum est.

Dig. 34.2.30

Paulus l.S. de adsign. libert.

Si quis ita legaverit: " uxori meae mundum ornamenta seu quae eius causa paravi, do lego", placet omnia deberi, sicuti cum ita legatur: " titio vina, quae in urbe habeo seu in portu, do lego", omnia deberi: hoc enim verbum " seu" ampliandi legati gratia positum est.

Dig. 34.2.31

Labeo 2 post. a iav. epit.

Qui lancem maximam minorem minimam relinquebat, ita legaverat: " lancem minorem illi lego". mediae magnitudinis videri legatam lancem responsum est, si non appareret, quam lancem ex his pater familias demonstrare voluisset.

Dig. 34.2.32pr.

Paulus 2 ad vitell.

Pediculis argenteis adiuncta sigilla aenea ceteraque omnia, quae ad eandem similitudinem redigi possunt, argento facto cedunt.

Dig. 34.2.32.1

Paulus 2 ad vitell.

Auro facto adnumerantur gemmae anulis inclusae, quippe anulorum sunt, cymbia argentea crustis aureis illigata. margaritae, quae ita ornamentis muliebribus contextae sunt, ut in his aspectus auri potentior sit, auro facto adnumerantur. aurea emblemata, quae in lapidibus apsidibus argenteis essent et replumbari possent, deberi gallus ait: sed labeo improbat. tubero autem, quod testator auri numero habuisset, legatum deberi ait: alioquin aurata et inclusa vasa alterius materiae auri numero non habenda.

Dig. 34.2.32.2

Paulus 2 ad vitell.

Argento potorio vel escario legato in his, quae dubium est cuius generis sint, consuetudinem patris familias spectandam, non etiam in his, quae certum est eius generis non esse.

Dig. 34.2.32.3

Paulus 2 ad vitell.

Quidam primipilaris uxori suae argentum escarium legaverat: quaesitum est, cum pater familias in argento suo vasa habuerat, quibus et potabat et edebat, an legato haec quoque vasa continerentur. scaevola respondit contineri.

Dig. 34.2.32.4

Paulus 2 ad vitell.

Idem, cum quaereretur de tali legato: " hoc amplius filia mea dulcissima e medio sumito tibique habeto ornamentum omne meum muliebre cum auro et si qua alia muliebria apparuerint", cum testatrix negotiatrix fuerit, an non solum argentum, quod in domo vel intra horreum usibus eius fuit, legato cedit, sed etiam quod in basilica fuit muliebre: respondit, si testatrix habuit proprium argentum ad usum suum paratum, non videri id legatum, quod negotiandi causa venale proponi soleret, nisi de eo quoque sensisse is qui petat probet.

Dig. 34.2.32.5

Paulus 2 ad vitell.

Neratius proculum refert ita respondisse vasis electrinis legatis nihil interesse, quantum ea vasa, de quibus quaeritur, argenti aut electri habebant, sed utrum argentum electro an electrum argento cedat? id ex aspectu vasorum facilius intellegi posse: quod si in obscuro sit, inspiciendum est, in utro numero ea vasa is, qui testamentum fecit, habuerit.

Dig. 34.2.32.6

Paulus 2 ad vitell.

Labeo testamento suo neratiae uxori suae nominatim legavit " vestem mundum muliebrem omnem ornamentaque muliebria omnia lanam linum purpuram versicoloria facta infectaque omnia" et cetera. sed non mutat substantiam rerum non necessaria verborum multiplicatio, quia labeo testamento lanam ac deinde versicoloria scripsit, quasi desit lana tincta lana esse, detractoque verbo " versicolorio" nihilo minus etiam versicoloria debebuntur, si non appareat aliam defuncti voluntatem fuisse.

Dig. 34.2.32.7

Paulus 2 ad vitell.

Titia mundum muliebrem septiciae legavit: ea putabat sibi legata et ornamenta et monilia, in quibus gemmae et margaritae insunt, et anulos et vestem tam coloriam: quaesitum est, an haec omnia mundo continentur. scaevola respondit ex his quae proponerentur dumtaxat argentum balneare mundo muliebri contineri.

Dig. 34.2.32.8

Paulus 2 ad vitell.

Item cum inaures, in quibus duae margaritae elenchi et smaragdi duo, legasset et postea elenchos eisdem detraxisset et quaereretur, an nihilo minus detractis elenchis inaures deberentur: respondit deberi, si maneant inaures, quamvis margarita eis detracta sint.

Dig. 34.2.32.9

Paulus 2 ad vitell.

De alio idem respondit, cum quaedam ornamentum mamillatum ex cylindris triginta quattuor et tympanis margaritis triginta quattuor legasset et postea quattuor ex cylindris, etiam sex de margaritis detraxisset.

Dig. 34.2.33

Pomponius 4 ad q. muc.

Inter vestem virilem et vestimenta virilia nihil interest: sed difficultatem facit mens legantis, si et ipse solitus fuerit uti quadam veste, quae etiam mulieribus conveniens est. itaque ante omnia dicendum est eam legatam esse, de qua senserit testator, non quae re vera aut muliebris aut virilis sit. nam et quintus titius ait scire se quendam senatorem muliebribus cenatoriis uti solitum, qui si legaret muliebrem vestem, non videretur de ea sensisse, qua ipse quasi virili utebatur.

Dig. 34.2.34pr.

Pomponius 9 ad q. muc.

Scribit quintus mucius: si aurum suum omne pater familias uxori suae legasset, id aurum, quod aurifici faciundum dedisset aut quod ei deberetur, si ab aurifice ei responsum non esset, mulieri non debetur. pomponius. hoc ex parte verum est, ex parte falsum. nam de eo, quod debetur, sine dubio: ut puta si auri libras stipulatus fuerit, hoc aurum quod ei deberetur ex stipulatu, non pertinet ad uxorem, cum illius factum adhuc non sit: id enim, quod suum esset, non quod in actione haberet, legavit. in aurifice falsum est, si aurum dederit ita, ut ex eo auro aliquid sibi faceret: nam tunc, licet apud aurificem sit aurum, dominium tamen non mutavit manet tamen eius qui dedit et tantum videtur mercedem praestaturus pro opera aurifici: per quod eo perducimur, ut nihilo minus uxori debeatur. quod si aurum dedit aurifici, ut non tamen ex eo auro fieret sibi aliquod corpusculum, sed ex alio, tunc, quatenus dominium transit eius auri ad aurificem (quippe quasi permutationem fecisse videatur), et hoc aurum non transibit ad uxorem.

Dig. 34.2.34.1

Pomponius 9 ad q. muc.

Item scribit quintus mucius, si maritus uxori, cum haberet quinque pondo auri, legasset ita: " aurum quodcumque uxoris causa paratum esset, uti heres uxori daret", etiamsi libra auri inde venisset et mortis tempore amplius quam quattuor librae non deprehendentur, in totis quinque libris heredem esse obligatum, quoniam articulus est praesentis temporis demonstrationem in se continens. quod ipsum quantum ad ipsam iuris obligationem pertineat, recte dicetur, id est ut ipso iure heres sit obligatus. verum sciendum, si in hoc alienaverit testator inde libram, quod deminuere vellet ex legato uxoris suae, tunc mutata voluntas defuncti locum faciet doli mali exceptioni, ut, si perseveraverit mulier in petendis quinque libris, exceptione doli mali submoveatur. sed si ex necessitate aliqua compulsus testator, non quod vellet deminuere ex legato, tunc mulieri ipso iure quinque librae auri debebuntur nec doli mali exceptio nocebit adversus petentem.

Dig. 34.2.34.2

Pomponius 9 ad q. muc.

Quod si ita legasset uxori " aurum quod eius causa paratum erit", tunc rectissime scribit quintus mucius, ut haec scriptura habeat in se et demonstrationem legati et argumentum: ideoque ipso iure alienata libra auri amplius quattuor pondo non remanebunt in obligatione, nec erit utendum distinctione, qua ex causa alienaverit testator.

Dig. 34.2.35pr.

Paulus 14 resp.

" titiae amicae meae, cum qua sine mendacio vixi, auri pondo quinque dari volo": quaero, an heredes ad praestationem integrae materiae auri an ad pretium et quantum praestandum compellendi sint. paulus respondit aut aurum ei, de qua quaeritur, praestari oportere, aut pretium auri, quanti comparari potest.

Dig. 34.2.35.1

Paulus 14 resp.

Item quaero, si lite contestata praetor ita pronuntiavit, ut materia praestetur, an tutores audiendi sint ab hac sententia pupillum, adversus quem pronuntiatum est, apud successorem eius in integrum restituere volentes. paulus respondit praetorem, qui auro legato certi ponderis materiam praestari iussit, recte pronuntiasse videri.

Dig. 34.2.36

Scaevola 3 resp.

" seiae dulcissimae poculum aureum quod elegerit fidei heredum committo ut darent". quaero, cum in hereditate non sint nisi truellae scyphi modioli phialae, an seia de his speciebus eligere possit. respondit, cum omnia potui parata pocula dicuntur, posse eam ex his eligere.

Dig. 34.2.37

Paulus 21 resp.

Ornamentorum appellatione vestem muliebrem non contineri nec errorem heredis ius mutasse respondi.

Dig. 34.2.38pr.

Scaevola 3 resp.

Titia testamento, item codicillis multas species tam argenti quam vestis specialiter per fideicommissum reliquit: quaero an non aliae species legato cedant, quam quae in hereditate inventae essent. respondit eas cedere, quae inventae essent: de ceteris cavendum, ut, si inventae essent, praestentur.

Dig. 34.2.38.1

Scaevola 3 resp.

" semproniae piae hoc amplius coopertoria taviana et tunicas tres cum palliolis quae elegerit dari volo": quaero an ex universa veste, id est an ex synthesi tunicas singulas et palliola sempronia eligere possit. respondit, si essent tunicae singulares cum palliolis relictae, ex his dumtaxat eligi posse: quod si non est, heredem vel tunicas et palliola set ex synthesi praestaturum vel veram aestimationem earum.

Dig. 34.2.38.2

Scaevola 3 resp.

Seia testamento ita cavit: " si mihi per condicionem humanam contigerit, ipsa faciam: sin autem, ab heredibus meis fieri volo: iubeoque signum dei ex libris centum in illa sacra aede et in patria statui subscriptione nominis mei". quaesitum est: cum in eo templo non nisi aut aerea aut argentea tantum sint dona, heredes seiae utrum ex argento an ex auro signum ponere compellendi sunt an aereum? respondit secundum ea quae proponerentur argenteum ponendum.

Dig. 34.2.39pr.

Iavolenus 2 ex post. lab.

Si uxori mundus muliebris legatus esset, ea tantummodo deberi ofilius labeo responderunt, quae ex his tradita utendi causa uxori viro fuissent: aliter enim interpretantibus summam fore captionem, si vascularius aut faber argentarius uxori ita legasset.

Dig. 34.2.39.1

Iavolenus 2 ex post. lab.

Cum ita legatum esset: " argentum, quod domo mea erit cum moriar", ofilius nec quod depositum a se nec quod commodatum reliquisset argentum legatum videri respondit. idem cascellius de commodato. labeo, quod depositum esset, ita deberi, si praesentis custodiae causa, non perpetuae veluti thensauro depositum esset, quia illa verba " quod domo mea erit" sic accipi debere " esse solebat": et hoc probo.

Dig. 34.2.39.2

Iavolenus 2 ex post. lab.

Ateius servium respondisse scribit, cui argentum, quod in tusculano fundo cum moreretur habuisset, legatum esset, et quod antequam moreretur ex urbe in tusculanum iussu testatoris translatum esset, deberi: contra fore, si iniussu translatum esset.

Dig. 34.2.40pr.

Scaevola 17 Dig.

Medico suo contubernali et communium expeditionum comiti inter cetera ita legaverat: " argentum viatorium meum dari volo". quaesitum est, cum pater familias in diversis temporibus rei publicae causa afuerat, quod viatorium argentum hoc legato comprehensum esse videtur. respondit, quod habuisset argentum viatorium eo tempore cum testamentum faciebat, deberi.

Dig. 34.2.40.1

Scaevola 17 Dig.

Uxori suae testamento ita legatum est: " semproniae dominae meae hoc amplius argentum balneare": quaesitum est, an etiam id argentum, quo diebus festis in balineo uti consuevit, legato cedat. respondit omne legatum videri.

Dig. 34.2.40.2

Scaevola 17 Dig.

Mulier decedens ornamenta legaverat ita: " seiae amicae meae ornamenta universa dari volo". eodem testamento ita scripserat: " funerari me arbitrio viri mei volo et inferri mihi quaecumque sepulturae meae causa feram ex ornamentis lineas duas ex margaritis et viriolas ex smaragdis": sed neque heredes neque maritus, cum humi corpus daret, ea ornamenta, quae corpori iussus erat adici, dederunt: quaesitum est, utrum ad eam, cui ornamenta universa reliquerat, pertineant an ad heredes. respondit non ad heredes, sed ad legatariam pertinere.

Dig. 34.3.0. De liberatione legata.

Dig. 34.3.1pr.

Ulpianus 21 ad sab.

Omnibus debitoribus ea quae debent recte legantur, licet domini eorum sint.

Dig. 34.3.1.1

Ulpianus 21 ad sab.

Iulianus scripsit, si res pignori data legetur debitori a creditore, valere legatum habereque eum actionem, ut pignus recipiat, priusquam pecuniam solvat. sic autem loquitur iulianus, quasi debitum non debeat lucrari: sed si alia testantis voluntas fuit, et ad hoc pervenietur exemplo luitionis.

Dig. 34.3.2pr.

Pomponius 6 ad sab.

Heredem, damnatum a fideiussore non petere, a reo petere posse, sed a reo petere vetitum, si a fideiussore petat, reo ex testamento teneri celsus putat.

Dig. 34.3.2.1

Pomponius 6 ad sab.

Idem celsus ait nullam dubitationem habere, quin herede petere a debitore vetito nec heres heredis petere possit.

Dig. 34.3.3pr.

Ulpianus 23 ad sab.

Liberationem debitori posse legari iam certum est.

Dig. 34.3.3.1

Ulpianus 23 ad sab.

Sed et si chirographum quis decedens debitori suo dederit, exceptionem ei competere puto, quasi pro fideicommisso huiusmodi datione valitura.

Dig. 34.3.3.2

Ulpianus 23 ad sab.

Iulianus etiam libro quadragesimo digestorum scripsit: si quis decedens chirographum seii titio dederit, ut post mortem suam seio det aut, si convaluisset, sibi redderet, deinde titius defuncto donatore seio dederit et heres eius petat debitum, seius doli exceptionem habet.

Dig. 34.3.3.3

Ulpianus 23 ad sab.

Nunc de effectu legati videamus. et si quidem mihi liberatio sit relicta, cum solus sim debitor, sive a me petatur, exceptione uti possum, sive non petatur, possum agere, ut liberer per acceptilationem. sed et si cum alio sim debitor, puta duo rei fuimus promittendi, et mihi soli testator consultum voluit, agendo consequar, non ut accepto liberer, ne etiam conreus meus liberetur contra testatoris voluntatem, sed pacto liberabor. sed quid si socii fuimus? videamus, ne per acceptilationem debeam liberari: alioquin, dum a conreo meo petitur, ego inquietor. et ita iulianus libro trigesimo secundo digestorum scripsit, si quidem socii non simus, pacto me debere liberari, si socii, per acceptilationem.

Dig. 34.3.3.4

Ulpianus 23 ad sab.

Consequenter quaeritur, an et ille socius pro legatario habeatur, cuius nomen in testamento scriptum non est, licet commodum ex testamento ad utrumque pertineat, si socii sunt. et est verum non solum eum, cuius nomen in testamento scriptum est, legatarium habendum, verum eum quoque, qui non est scriptus, si et eius contemplatione liberatio relicta esset.

Dig. 34.3.3.5

Ulpianus 23 ad sab.

Utrique autem legatarii habentur et in hoc casu. nam et si quod ego debeo titio sit ei legatum mei gratia, ut ego liberer, nemo me negabit legatarium, ut et iulianus eodem libro scribit. et Marcellus notat utriusque legatum esse tam meum quam creditoris mei, etsi solvendo fuero: interesse enim creditoris duos reos habere.

Dig. 34.3.4

Pomponius 7 ex plaut.

Quid ergo est, cum agere poterit creditor ex testamento? non aliter heres condemnari debebit, quam si caveatur ei adversus debitorem defensu iri. item agente debitore nihil amplius heres praestare debet, quam ut eum adversus creditorem defendat.

Dig. 34.3.5pr.

Ulpianus 23 ad sab.

Si quis reum habeat et fideiussorem et reo liberationem leget, iulianus ibidem scripsit reum per acceptilationem liberandum: alioquin si fideiussorem coeperit convenire, alia ratione reus convenitur. quid tamen, si donationis causa fideiussor intervenit nec habet adversus reum regressum? vel quid si ad fideiussorem pecunia pervenerit et ipse reum dederit vice sua ipseque fideiusserit? pacto est reus liberandus. atquin solemus dicere pacti exceptionem fideiussori dandam, quae reo competit: sed cum alia sit mens legantis, alia paciscentis, nequaquam hoc dicimus.

Dig. 34.3.5.1

Ulpianus 23 ad sab.

Quod si fideiussori sit liberatio legata, sine dubio, ut et iulianus scripsit, pacto erit fideiussor liberandus. sed et hic puto interdum acceptilatione liberandum, si vel reus ipse vere fuit aut in eam rem socius reus.

Dig. 34.3.5.2

Ulpianus 23 ad sab.

Idem iulianus eodem libro scripsit, si filius familias debitor fuerit et patri eius fuerit liberatio relicta, patrem pacto liberandum esse, ne etiam filius liberetur. et parvi, inquit, refert, si sit aliquid in peculio die legati cedente necne: securitatem enim pater per hoc legatum consequitur: maxime, inquit, cum rei iudicandae tempus circa peculium spectetur. huic patri similem facit iulianus maritum, cui uxor post divortium liberationem dotis legavit: nam et hunc, licet die legati cedente solvendo non sit, legatarium esse: et utrumque ait solutum repetere non posse. sed est verius quod Marcellus notat patrem petere posse (nondum enim erat debitor, cum solveret), maritum non posse, quod debitum solvit. patrem enim etsi quis debitorem existimaverit, attamen loco esse condicionalis debitoris, quem solutum repetere posse non ambigitur.

Dig. 34.3.5.3

Ulpianus 23 ad sab.

Sed si damnatus sit heres filium liberare, non adicit iulianus, utrum acceptilatione filius an pacto sit liberandus: sed videtur hoc sentire, quasi acceptilatione debeat liberari, quae res patri quoque proderit. quod optinendum est, nisi evidenter approbetur contrarium sensisse testatorem, id est ne filius inquietetur, non ne pater: tunc enim acceptilatione eum non liberandum, sed pacto.

Dig. 34.3.5.4

Ulpianus 23 ad sab.

Idem iulianus scripsit, si pro filio pater fideiusserit eique liberatio sit legata, eum pacto liberandum quasi fideiussorem, non quasi patrem, et ideo de peculio posse conveniri. hoc ita demum putat, si dumtaxat quasi fideiussorem eum voluit testator liberari: ceterum si et quasi patrem, et de peculio erit liberandus.

Dig. 34.3.6pr.

Iavolenus 6 epist.

Post emancipationem vero filii eatenus pater actionem habebit, quatenus aliquid ex peculio aut in rem verso praestaturus est: id enim legatorum nomine ad patrem pertinebit, quod eius intererit.

Dig. 34.3.6.1

Iavolenus 6 epist.

Illud quaeri potest, an eo quoque nomine pater ex testamento agere possit, ut etiam filius actione liberetur. quibusdam eo usque extendi actionem placebat, quia patris interesse videatur, si peculium filio post emancipationem concessisset, integrum ius eius permanere. ego contra sentio: nihil quicquam amplius patri praestandum ex eiusmodi scriptura testamenti puto, quam ut nihil ex eo, quod praestaturus heredi fuerit, praestet.

Dig. 34.3.7pr.

Ulpianus 23 ad sab.

Non solum autem quod debetur remitti potest, verum etiam pars eius vel pars obligationis, ut est apud iulianum tractatum libro trigesimo tertio digestorum.

Dig. 34.3.7.1

Ulpianus 23 ad sab.

Si is qui stipulatus stichum aut decem damnaverit heredem stichum non petere, legatum valere constat: sed quid contineat, videamus. et iulianus scribit actionem ex testamento in hoc esse videri, ut debitor accepto liberetur: quae res utique debitorem et in decem liberabit, quia acceptilatio solutioni comparatur, et quemadmodum, si stichum solvisset, debitor liberaretur, ita et acceptilatione stichi liberari.

Dig. 34.3.7.2

Ulpianus 23 ad sab.

Sed si debitorem decem damnatus sit heres viginti liberare, idem iulianus scripsit libro trigesimo tertio nihilo minus esse liberandum decem: nam et si ei viginti accepto ferantur, in decem liberabitur.

Dig. 34.3.7.3

Ulpianus 23 ad sab.

Sed si duobus heredibus institutis alterum ex his damnaverit creditori solvere, valet legatum propter coheredem eumque ex testamento acturum, ut creditori solvatur.

Dig. 34.3.7.4

Ulpianus 23 ad sab.

Liberatio autem debitori legata ita demum effectum habet, si non fuerit exactum id a debitore, dum vivat testator: ceterum si exactum est, evanescit legatum.

Dig. 34.3.7.5

Ulpianus 23 ad sab.

Unde quaerit iulianus, si ab impuberis substituto sit liberatio relicta, deinde impubes exegerit quod debetur, an evanescat legatum. et cum constet pupillum in his, quae a substituto relinquuntur, personam sustinere eius a quo sub condicione legatur, consequens est substitutum actione ex testamento teneri, si pupillus a debitore exegerit.

Dig. 34.3.7.6

Ulpianus 23 ad sab.

Idemque est et si pupillus non exegerit, sed solummodo litem sit contestatus, teneri eum, ut remittat actionem.

Dig. 34.3.7.7

Ulpianus 23 ad sab.

Nam et si debitori liberatio sub condicione legata fuisset et vel lis fuisset contestata vel etiam exactum pendente condicione, ex testamento actio maneret liberatione relicta.

Dig. 34.3.8pr.

Pomponius 6 ad sab.

Non solum nostrum debitorem, sed et heredis et cuiuslibet alterius ut liberetur, legare possumus.

Dig. 34.3.8.1

Pomponius 6 ad sab.

Potest heres damnari, ut ad certum tempus non petat a debitore: sed sine dubio nec liberare eum intra id tempus debebit, et, si debitor decesserit, ab herede eius intra id tempus peti non poterit.

Dig. 34.3.8.2

Pomponius 6 ad sab.

Illud videndum est, an eius temporis, intra quod petere heres vetitus sit, vel usuras vel poenas petere possit. et priscus neratius existimabat committere eum adversus testamentum, si petisset: quod verum est.

Dig. 34.3.8.3

Pomponius 6 ad sab.

Tale legatum: " heres meus a solo lucio titio ne petito" ad heredem lucii titii non transit, si nihil vivo lucio titio adversus testamentum ab herede, eo quod ab eo exigere debitum temptavit, sit commissum: quotiens enim cohaeret personae id quod legatur, veluti personalis servitus, ad heredem eius non transit, si non cohaeret, transit.

Dig. 34.3.8.4

Pomponius 6 ad sab.

Si verba liberationis in rem sint collata, pro eo est, quasi heres ab eo debitore heredeque eius petere vetitus sit, ut adiectio heredis perinde nihil valeat, atque non esset valitura ipsius debitoris persona non comprehensa.

Dig. 34.3.8.5

Pomponius 6 ad sab.

Is, qui reddere rationes iussus sit, non videtur satisfacere, si reliquum reddat non editis rationibus.

Dig. 34.3.8.6

Pomponius 6 ad sab.

Si heres vetitus sit agere cum eo, qui negotia defuncti gesserit, non videtur obligatio ei praelegata, quae dolo vel ex fraude eius qui negotia gesserit commissa sit, et testator id videtur sensisse. ideo si heres negotiorum gestorum egisset, agens procurator ex testamento incerti doli mali exceptione excludi potest.

Dig. 34.3.8.7

Pomponius 6 ad sab.

Et ei liberatio recte legatur, apud quem deposuero vel cui commodavero pignorive dedero vel ei quem ex furtiva causa mihi dare oportet.

Dig. 34.3.9

Ulpianus 24 ad sab.

Si quis rationes exigere vetetur, ut est saepissime rescriptum, non impeditur reliquas exigere, quas quis se reliquavit, et si quid dolo fecit qui rationes gessit. quod si quis et haec velit remittere, ita debet legare: " damnas esto heres meus, quidquid ab eo exegerit illa vel illa actione, id ei restituere" vel " actionem ei remittere".

Dig. 34.3.10

Iulianus 33 Dig.

Si damnatus heres fuerit a fideiussore quidem non petere, quod autem reus debet, titio dare, pacisci debet, ne a fideiussore petat, et adversus reum actiones suas praestare legatario: quemadmodum damnatus heres, ne a reo petat, et damnatus dare quod fideiussor debet, et reo acceptum facere et legatario litis aestimationem sufferre cogatur.

Dig. 34.3.11

Iulianus 36 Dig.

Si debitor fideiussorem suum ab herede suo liberari iusserit, an fideiussor liberari debeat? respondit debere. item quaesitum est, an, quia mandati actione heredes tenerentur, inutile legatum esset, quemadmodum inutile legatum est quod debitor creditori suo legat. respondit ^ respondi^, quotiens debitor creditori suo legaret, ita inutile esse legatum, si nihil interesset creditoris ex testamento potius agere quam ex pristina obligatione. nam et si titius mandaverit maevio, ut pecuniam promitteret, deinde liberari eum iusserit a stipulatore, manifestum est, quantum intersit promissoris liberari potius quam praestare ex stipulatu, deinde mandati agere.

Dig. 34.3.12

Iulianus 39 Dig.

Lucius titius cum erotem actorem haberet, codicillis ita cavit: " erotem liberum esse volo: quem rationes reddere volo eius temporis, quod erit post novissimam meam subscriptionem". postea vivus erotem manumisit in eodem actu habuit rationesque subscripsit usque in eum diem, qui fuit ante paucissimos dies quam moreretur. heredes lucii titii dicunt quasdam summas et servum adhuc erotem et postea liberum accepisse neque in eas rationes, quae a lucio titio subscriptae sunt, intulisse: quaero, an heredes ab erote nihil exigere debent eius temporis, quo lucius titius subscripsit. respondi erotem ex ea causa quae proponeretur liberationem petere non posse, nisi et hoc specialiter ei remissum est.

Dig. 34.3.13

Iulianus 81 Dig.

Si creditor debitori, qui se exceptione perpetua tueri poterat, legaverit quod sibi deberet, nullius momenti legatum erit. at si idem debitor creditori legaverit, intellegendum erit exceptionem eum remitti creditori voluisse.

Dig. 34.3.14

Ulpianus 1 fideic.

Idem est et si in diem debitor fuit vel sub condicione.

Dig. 34.3.15

Ulpianus 64 ad ed.

Si quis in testamento damnatus est, ne a titio debitore exigat, neque ipsum neque heredem eius potest convenire: nam neque heredis heres agere neque ab heredis herede potest peti. heredis autem heres potest damnari, ne exigat debitorem.

Dig. 34.3.16

Paulus 9 ad plaut.

Ei cui fundum in quinquennium locaveram legavi quidquid eum mihi dare facere oportet oportebitve ut sineret heres sibi habere. nerva atilicinus, si heres prohiberet eum frui, ex conducto, si iure locationis quid retineret, ex testamento fore obligatum aiunt, quia nihil interesset, peteretur an retineret: totam enim locationem legatam videri,

Dig. 34.3.17

Iavolenus 2 lab. post.

Reliqua quoque: in iudicio locationis venire.

Dig. 34.3.18

Paulus 9 ad plaut.

Cassius. etiam si habitatio eo modo legata esset, gratuitam habitationem heres praestare deberet. et praeterea placuit agere posse colonum cum herede ex testamento, ut liberetur conductione: quod rectissime dicitur.

Dig. 34.3.19

Modestinus 9 reg.

Cum ita testemur: " heres meus damnas esto liberare illum, quod is negotia mea gessit, et si quid eum mihi dare facere oportet, ab eo non exigere", damnatur heres nec creditas ab eo quoque pecunias exiget. in simili autem legato vix est, ut de eo quoque legando pater familias senserit, quod servis eius peculii nomine debetur.

Dig. 34.3.20pr.

Modestinus 10 resp.

" aurelio sempronio fratri meo. neminem molestari volo nomine debiti neque exigere aliquid ab eo, quamdiu viveret, neque de sorte aut usurae nomine debiti: et absolvo ei et libero ex pignoribus eius domum et possessionem caperlatam". modestinus respondit ipsum debitorem, si conveniatur, exceptione tutum esse: diversum in persona heredis eius.

Dig. 34.3.20.1

Modestinus 10 resp.

Gaius seius cum adolevisset, accepit curatores publium maevium et lucium sempronium. sed enim idem gaius seius intra legitimam aetatem constitutus cum in fatum concederet, testamento suo de curatoribus suis ita cavit: " quaestionem curatoribus meis nemo faciat: rem enim ipse tractavi". quaero, an rationem curae heredes adulti a curatoribus petere possint, cum defunctus, ut ex verbis testamenti apparet, confessus sit se omnem rem suam administrasse. modestinus respondit, si quid dolo curatores fecerunt aut si quae res testatoris penes eos sunt, eo nomine conveniri eos posse.

Dig. 34.3.21pr.

Clementius 12 ad l. iul. et pap.

Si id quod mihi deberes vel tibi vel alii legavero idque mihi solveris vel qualibet alia ratione liberatus a me fueris, exstinguitur legatum.

Dig. 34.3.21.1

Clementius 12 ad l. iul. et pap.

Unde iuliano placuit et si debitori heres exstiterit creditor posteaque ipse creditor decesserit, legatum extingui: et hoc verum est, quia confusione perinde exstinguitur obligatio ac solutione.

Dig. 34.3.21.2

Clementius 12 ad l. iul. et pap.

Sed si sub condicione dato legato heres praeoccupaverit et exegerit debitum, aliud dici oportet, quia in arbitrio heredis esse non debet, ut quandoque condicione existente neque ipsi legatario debeatur legatum, si tum vivat et capere possit, neque ei, ad quem hoc commodum pervenit, si legatarius capere non possit.

Dig. 34.3.22

Papinianus 19 quaest.

" quod mihi sempronius debet, peti nolo": non tantum exceptionem habere debitorem, sed et fideicommissum ut liberetur petere posse responsum est.

Dig. 34.3.23

Papinianus 7 resp.

Procurator, a quo rationem heres exigere prohibitus eoque nomine procuratorem liberare damnatus est, pecuniam ab argentario debitam ex contractu, quem ut procurator fecit, iure mandati cogetur restituere vel actiones praestare.

Dig. 34.3.24

Papinianus 8 resp.

Cum heres rogatur debitorem suum liberare, de eo tantum cogitatum videtur, quod in obligatione manserit: itaque si quid ante tabulas apertas fuerit solutum, ad causam fideicommissi non pertinebit. quod autem post tabulas apertas ante aditam hereditatem ab eo, qui voluntatem defuncti non ignoravit, fuerit exactum, dolo proximum erit ideoque repeti potest.

Dig. 34.3.25

Paulus 10 quaest.

Legavi titio quod mihi debetur vel adiecta certa quantitate sive specie vel non adiecta, aut ex contrario aeque cum distinctione, veluti " titio quod ei debeo" vel ita " titio centum quae ei debeo": quaero, an per omnia requirendum putes, an debitum sit. et plenius rogo quae ad haec spectant attingas: cottidiana enim sunt. respondi: si is, cui titius debebat, debitum ei remittere voluit, nihil interest, heredem suum iussit ut eum liberaret an prohibeat eum exigere:

utroque enim modo liberandus est debitor et utroque casu competit ultro ad liberandum debitori actio. quod si etiam centum aureorum vel fundi debiti mentionem fecit, si quidem debitor fuisse probetur, liberandus est: quod si nihil debeat, poterit dici quasi falsa demonstratione adiecta etiam peti quod comprehensum est posse. sed poterit hoc dici si ita legavit: " centum aureos, quos mihi debet" vel " stichum, quem debet, heres meus damnas esto non petere". quod si sic dixit: " heres meus centum aureos, quos mihi titius debet, damnas esto ei dare", etiam illud temptari poterit, ut petere possit quasi falsa demonstratione adiecta: quod mihi nequaquam placet, cum dandi verbum ad debitum referre se testator existimaverit. contra autem si debitor creditori leget, nullam utilitatem video, si sine quantitate leget. sed et si id demonstret, quod debere se confitetur, nulla utilitas est nisi in his speciebus, in quibus emolumentum debiti ampliatur. quod si centum aureos, quos se debere dixit, legavit, si quidem debet, inutile est legatum, quod si non fuit debitor, placuit utile esse legatum: certa enim nummorum quantitas similis est sticho legato cum demonstratione falsa: idque et divus pius rescripsit certa pecunia dotis acceptae nomine legata.

Dig. 34.3.26

Scaevola 4 resp.

Tutor decedens aliis heredibus scriptis pupillo suo, cuius tutelam gessit, tertiam partem bonorum dari voluit, si heredibus suis tutelae causa controversiam non fecerit, sed eo nomine omnes liberaverit: pupillus legatum praetulit et postea nihilo minus petit quidquid ex distractione aliave causa ad tutorem suum ex tutela pervenerit: quaero, an verbis testamenti ab his exactionibus excludatur. respondit, si prius, quam condicioni pareret, fideicommissum percepisset et pergeret petere id, in quo contra condicionem faceret, doli mali exceptionem obstaturam: nisi paratus esset, quod ex causa fideicommissi percepisset, reddere: quod ei aetatis beneficio indulgendum est.

Dig. 34.3.27

Tryphonus 8 disp.

Videamus, si ei, cum quo de peculio actio erit, liberatio testamento legata sit, an, si die, quo legata cedere solent, nihil in peculio sit, legatarii loco habetur? atquin nondum debitor fuit, nec procedit, ut emolumentum aliquid ex legato ad eum perveniat nisi propter spem futuri peculii. numquid ergo in pendenti sit, an legatarius fuerit, perinde atque si qua alia causa spem legati dubiam faceret?

Dig. 34.3.28pr.

Scaevola 16 Dig.

Aurelius symphorus fideiusserat pro tutore quodam et decedens eisdem pupillis legavit in haec verba: " arellio latino et arellio felici singulis quina, cum quis eorum quattuordecim annorum fuerit: ad quod tempus praestari eis volo singulis alimentorum nomine menstruos denarios senos et vestiarii nomine annuos denarios viginti quinque. quo legato contenti esse debetis, quando tutela vestra non minimo damno rationem meam adflixerit. a vobis autem, heredes mei, peto, ne quid ex ratione tutelae ab his exigere vel ab hoc legato eorum retinere velitis". quaesitum est, si heres eius ex causa fideiussionis aliquid praestiterit, an herede filiorum eius, pro quo fideiusserat, repetere possit. respondit verbis quae proponerentur id solum videri heredum fidei commissum, ne exigerent, quod ex ratione tutelae, quam ipse symphorus administraverat, ab arellis sibi deberetur.

Dig. 34.3.28.1

Scaevola 16 Dig.

Testamento facto debitoribus liberationem reliquerat, post inciso lino et recognito testamento aliud testamentum fecit, in quo repetit legatum his verbis: " quibusque legata in eo testamento quod incideram dedi, omnia rata esse et quaequae scripta sunt volo". quaesitum est, adita ex sequenti testamento hereditate an debitores, quibus priori testamento liberatio relicta erat, consequi possint, ut etiam eius quantitatis nomine, quam post prius testamentum debere coeperant, liberarentur, et si ab his heredes petere coeperint, an doli mali exceptione summoverentur. respondit non liberari.

Dig. 34.3.28.2

Scaevola 16 Dig.

Titius seio debitori suo ita legavit: " do lego seio denarios decem: item dono illi, quidquid sortis et usurarum nomine mihi debebat". praeterea generaliter damnavit heredes fideique eorum commisit, uti darent restituerent unicuique, quidquid ei legasset. postea seius aliam praeterea pecuniam a titio mutuatus est. quaero, an haec quoque pecunia, quae post testamentum factum data esset seio, legata intellegitur. respondit, cum in praeteritum tempus verba collata proponerentur, non esse posterius credendum legatum.

Dig. 34.3.28.3

Scaevola 16 Dig.

Titius testamento facto et filiis heredibus institutis de patre tutore suo quondam facto ita locutus est: " seium patrem meum liberatum esse volo ab actione tutelae". quaero, haec verba quatenus accipi debent, id est an pecunias, quas vel ex venditionibus rerum factis aut ex nominibus exactis in suos usus convertit vel nomine suo faeneravit, filiis et heredibus testatoris nepotibus suis debeat reddere. respondit eum, cuius notio est, aestimaturum. praesumptio enim propter naturalem affectum facit omnia patri videri concessa, nisi aliud sensisse testatorem ab heredibus eius approbetur.

Dig. 34.3.28.4

Scaevola 16 Dig.

Maevia testamento suo alterum ex heredibus suis actione tutelae voluit liberari his verbis: " rationem tutelae, quam egit iulius paulus cum antistio cicerone, posci ab eo nolo eoque nomine causa omni liberatum esse volo": quaero, an, si qua pecunia ex tutela apud eum remansit, peti ab eo possit. respondit nihil proponi, cur pecunia, quae pupillae est et apud tutorem posita maneret, legata videretur.

Dig. 34.3.28.5

Scaevola 16 Dig.

Testamento ita scripserat: " titio adfini meo, quidquid mihi quacumque ex causa debebat, remitti volo eoque amplius decem do": codicillis ita scripsit: " titio hoc amplius adfini et debitori meo usuram pecuniae, quam mihi debet, ab herede meo donec advivet: quod si exigere ultra voluntatem meam putaverit, eius sortis usuram eidem titio ab heredibus meis donec vivit praestari volo". quaesitum est, cum augendi potius quam minuendi testator voluntatem habuerit, an heredes ex causa fideicommissi titio teneantur, ut eum omni debito liberent. respondit secundum ea quae proponerentur videri minutum legatum, quod primo dederat.

Dig. 34.3.28.6

Scaevola 16 Dig.

Legatum est testamento hoc modo: " seio concedi volo, quidquid mihi ab eo debitum est vel fidem meam pro eo obligavi": quaero, utrum id solum, quod testamenti facti tempore debebatur, legatum sit, an etiam, si quid ex ea summa usurarum nomine postea accessit, legato cedat. respondit videri omnem obligationem eius debiti per fideicommissum solvi voluisse.

Dig. 34.3.28.7

Scaevola 16 Dig.

Sticho testamento manumisso fundum instructum et alia legavit et haec verba adiecit: " quem rationem reddere veto, quia instrumenta penes se habet": quaesitum est, an stichus reliqua, quae ex administratione actus debuerat, reddere debuerit. respondi stichum eo nomine non teneri. claudius: nemo enim ex servitutis actu post libertatem tenetur et consultatio ad ius debiti relata fuerat: retineri ergo reliqua possunt cum peculio aut ex eo deduci, si legatum est.

Dig. 34.3.28.8

Scaevola 16 Dig.

" centum, quae apud apronianum deposita habeo, apud ipsum esse volo, donec filius meus ad annos viginti pervenerit, eiusque pecuniae usuram exigi veto". quaesitum est, an ex causa fideicommissi apronianus consequi possit, ne ante tempus a testatore praescriptum ea summa ab eo exigatur. respondit secundum ea quae proponerentur consequi posse.

Dig. 34.3.28.9

Scaevola 16 Dig.

Filias heredes scripserat, quarum fidei commisit in haec verba: " ne a gaio seio rationes actus rei meae, quae per mensam eius sive extra mensam in diem mortis meae gesta est, exigatis eoque nomine eum liberetis". quaesitum est, cum universas rationes in diem mortis iste administraverit et per mensam suam et quae extra administrabantur, an ad rationes reddendas heredibus teneatur. respondit liberationem quidem secundum ea quae proponerentur legatam esse, sed quatenus praestanda sit, ex qualitate disceptationis iudicem aestimaturum.

Dig. 34.3.28.10

Scaevola 16 Dig.

Eum, qui tutelam ipsius administraverat, et fratrem suum et alios quosdam scripsit heredes et tutori legavit, quae impenderat in se et fratrem ipsius, decem: quaesitum est, an utile esset in persona eius fideicommissum. respondit, si id dederit per fideicommissum quod debebatur, peti non posse.

Dig. 34.3.28.11

Scaevola 16 Dig.

Idem quaesiit, si in tutoris persona inutile esset, an in persona fratris utile videretur, quoniam illi proficeret, cuius et ipsius tutelam administrasset. respondit fratri utiliter esse legatum, cum suo debito liberetur.

Dig. 34.3.28.12

Scaevola 16 Dig.

Idem quaesiit, si tutor amplecteretur fideicommissum ita, ut quibusdam stari vellet verbis testamenti, in quibusdam autem recedat, quod minorem quantitatem sumptuum dicat fideicommisso contineri quam ipse erogaverat, an audiri deberet. respondit non impediri eum scriptura testamenti, quo minus omne, quod sibi deberi probasset, petere posset.

Dig. 34.3.28.13

Scaevola 16 Dig.

Quidam ita legavit: " semproniae uxori meae reddi iubeo ab heredibus meis quinquaginta ea, quae mutua acceperam chirographo particulatim in negotia mea " : quaesitum est, an, si vere uxoris debitor fuerit, fideicommissum constiterit. respondit, si debita fuissent, nullum esse fideicommissum.

Dig. 34.3.28.14

Scaevola 16 Dig.

Idem quaesiit, an, si hanc pecuniam ut debitam apud iudicem petierit et victa fuerit, an fideicommissum peti possit. respondit secundum ea quae proponuntur posse ex causa fideicommissi peti, quod apparuisset non fuisse ex alia causa debitum.

Dig. 34.3.29

Paulus 6 ad l. iul. et pap.

Si is, qui duos reos promittendi habet, damnaverit heredem, ut utrosque liberet, si alter ex his capere non possit nec socii sint, delegari debebit is qui nihil capit ei cui hoc commodum lege competit: cuius petitione utrumque accidit, ut et hoc commodum ad eum perveniat et is qui capit liberetur. quod si socii sint, propter eum qui capax est et ille capit per consequentias liberato illo per acceptilationem: id enim eveniret, etiamsi solum capacem liberare iussus esset.

Dig. 34.3.30

Paulus 10 quaest.

Petitor vel possessor damnavit heredem suum, ne centumvirale iudicium exerceat: de effectu legati quaeritur. et dictum ita demum utile videri legatum esse, si malam causam adversarius testatoris habuit, ut litigante herede vinci debuerit: tunc enim non tantum litis emolumentum, sed etiam sumptus heres legatario praestare cogitur. nam in bona causa nihil videtur esse in legato nec propter sumptus, quod quidam existimaverunt.

Dig. 34.3.31pr.

Scaevola 3 resp.

Creditor debitori legavit ita: " gaio seio, quidquid mihi sub pignore hortorum suorum debuit, ab heredibus meis dari volo": quaero, cum testator vivus a seio aliquid recepit, an id ex causa legati peti possit. respondit secundum ea quae proponerentur non posse. idem repetiit et ait item testatorem ante factos codicillos, quibus legavit, paene omnem pecuniam sortis et usurarum recepisse, ita ut modicum sortis et usurarum debeatur, et quaesiit, an ei repetitio competeret propter verba ad praeteritum relata " quidquid mihi debuit". respondit: prius quidem secundum ea quae proponerentur recte responsum est, verum posterius propter ea, quae in tempore adderentur, ita ab iudice aestimandum, ut inspiceret, oblivione pecuniae solutae, aut quod eo inscio numerata esset, id fecisset, an consulto, quod quantitatem quondam debitam, non ius liberationis dare voluisset.

Dig. 34.3.31.1

Scaevola 3 resp.

Inter cetera liberto ita legavit: " et si quid me vivo gessit, rationes ab eo exigi veto". quaeritur, an chartas, in quibus rationes conscriptae sunt, item reliquas secundum accepta et expensa heredibus reddere debeat. respondit ea de quibus quaereretur posse heredem vindicare, id autem, quod conservis, qui remanent in hereditate, crediderit et in rem domini versum esset, desisse in reliquis esse.

Dig. 34.3.31.2

Scaevola 3 resp.

Titia, quae duos tutores habuerat, ita cavit: " rationem tutelae meae, quam egit publius maevius cum lucio titio, reposci ab eo nolo": quaeritur, an, si qua pecunia apud eum ex tutela remansit, peti ab eo possit. respondit nihil proponi, cur pecunia, quae pupillae esset et apud tutorem remaneret, legata videretur.

Dig. 34.3.31.3

Scaevola 3 resp.

Item quaeritur, an contutor liberatus videtur. respondit contutorem non liberari.

Dig. 34.3.31.4

Scaevola 3 resp.

" gaio seio optime merito hoc amplius lego concedique volo neque ab eo peti neque ab heredibus eius, quidquid mihi aut chirographis aut rationibus debitor est vel quidquid a me mutuum accepit vel fidem meam pro eo obligavi". quaero, utrum id solum, quod eo tempore, quo testamentum fiebat, debebatur, legatum sit an et si quid ex ea summa usurarum nomine postea accessit legato cedat. respondit secundum ea quae proponerentur videri omnem obligationem seio eius debiti per fideicommissum solvi voluisse.

Dig. 34.3.31.5

Scaevola 3 resp.

Item quaeritur, si postea novatione facta et ampliata summa coeperit debere, an id, quod ex vetere contractu debebatur, nihilo minus in causa legati duret et an vero novatione facta quasi novus debitor ampliatae summae possit conveniri. respondit id dumtaxat legatum videri quod tunc debuisset, si tamen mansit in ea voluntate testator, quae tunc fuisset.

Dig. 34.4.0. De adimendis vel transferendis legatis vel fideicommissis.

Dig. 34.4.1

Paulus 3 ad sab.

Qui actu legato iter adimat, nihil adimit, quia numquam actus sine itinere esse potest.

Dig. 34.4.2pr.

Pomponius 5 ad sab.

Fundo legato adimi ita potest: " fundum illi praeter usum fructum neque do neque lego", ut usus fructus in legato relinquatur.

Dig. 34.4.2.1

Pomponius 5 ad sab.

Sed et fructus adimi potest, ut proprietas relinquatur.

Dig. 34.4.2.2

Pomponius 5 ad sab.

Item pars fundi legati adimi potest.

Dig. 34.4.3pr.

Ulpianus 24 ad sab.

Si quis ita legaverit: " titio fundum do lego: si titius decesserit, seio heres meus dare damnas esto", recte translatum legatum videtur. sed et si iam mortuo eo, cui legatum erat, easdem res transtulerit, sempronio debetur.

Dig. 34.4.3.1

Ulpianus 24 ad sab.

Si quis titio legaverit sic: " titio dato aut, si titius ante decesserit quam accipiat, sempronio dato", secundum meram suptilitatem utrique obligatum videri heredem, id est et sempronio et heredi titii. sed si quidem mora titio ab herede facta est, ad heredes eius legati exactio transmittitur sempronio repellendo: sin autem nulla mora intercesserit, tunc sempronius legatum accipit, et non titii heredes. sed si ante diem legati cedentem decesserit titius, soli sempronio debetur legatum.

Dig. 34.4.3.2

Ulpianus 24 ad sab.

Idem dicendum est et fideicommissa hereditate puero data aut, si ante restitutam decessisset, matri eius relicta: ut, si puer ante diem legati cedentem decessisset, matri debeatur, si postea, ad pupilli heredes fideicommissum transmittatur utpote re ipsa mora subsecuta.

Dig. 34.4.3.3

Ulpianus 24 ad sab.

Sed et cum quis ita legasset: " heres meus titio dato: si non dederit, sempronio dato", ita demum sempronio debetur, si dies eius in persona titii non cessisset.

Dig. 34.4.3.4

Ulpianus 24 ad sab.

Si quis ita legaverit: " heres meus titio fundum dato et si titius eum fundum alienaverit, heres meus eundem fundum seio dato", oneratus est heres: non enim a titio fideicommissum relictum est, si alienasset fundum, sed ab herede ei legatum est. heres igitur debebit doli exceptione posita prospicere sibi cautione a titio de fundo non alienando.

Dig. 34.4.3.5

Ulpianus 24 ad sab.

Si quis plus quam dedit ademerit, ademptio valet, veluti si quis viginti legaverit et quadraginta ademerit.

Dig. 34.4.3.6

Ulpianus 24 ad sab.

Si loci usum fructum leget testator et iter adimat, non valet ademptio nec vitiatur legatum: sicuti qui proprietatem fundi legat, iter adimendo legatum non minuit.

Dig. 34.4.3.7

Ulpianus 24 ad sab.

Si duobus titiis separatim legaverit et uni ademerit nec appareat, cui ademptum sit, utrique legatum debetur, quemadmodum et in dando, si non appareat cui datum sit, dicemus neutri legatum.

Dig. 34.4.3.8

Ulpianus 24 ad sab.

Si titio fundus pure eidemque sub condicione legatus sit, deinde postea ademptum sit sic: " titio fundum, quem sub condicione legavi, heres meus ne dato", ex nulla datione debetur, nisi specialiter dixerit pure eum legatum velle accipere.

Dig. 34.4.3.9

Ulpianus 24 ad sab.

Condicio legati an adimi possit vel hereditatis vel statuliberi, videndum. et iulianus scribit in statulibero detractam condicionem non repraesentare libertatem. papinianus quoque libro septimo decimo quaestionum scribit generaliter condicionem adimi non posse: nec enim datur, inquit, condicio, sed adscribitur: quod autem adscribitur, non potest adimi, sed quod datur. sed melius est sensum magis quam verba amplecti et condiciones sicut adscribi, ita et adimi posse.

Dig. 34.4.3.10

Ulpianus 24 ad sab.

Cum titio centum testamento legasset et eidem codicillis ita legasset: " titio quinquaginta dumtaxat nec amplius heres meus dato", non amplius quinquaginta legatarium petiturum.

Dig. 34.4.3.11

Ulpianus 24 ad sab.

Non solum autem legata, sed et fideicommissa adimi possunt et quidem nuda voluntate. unde quaeritur, an etiam inimicitiis interpositis fideicommissum non debeatur: et si quidem capitales vel gravissimae inimicitiae intercesserint, ademptum videri quod relictum est: sin autem levis offensa, manet fideicommissum. secundum haec et in legato tractamus doli exceptione opposita.

Dig. 34.4.4

Ulpianus 33 ad sab.

Quod si iterum in amicitiam redierunt et paenituit testatorem prioris offensae, legatum vel fideicommissum relictum redintegratur: ambulatoria enim est voluntas defuncti usque ad vitae supremum exitum.

Dig. 34.4.5

Gaius 2 ad ed. urb.

Sicut adimi legatum potest, ita et ad alium transferri, veluti hoc modo: " quod titio legavi, id seio do lego": quae res in personam titii tacitam ademptionem continet.

Dig. 34.4.6pr.

Paulus 5 ad l. iul. et pap.

Translatio legati fit quattuor modis: aut enim a persona in personam transfertur: aut ab eo qui dare iussus est transfertur, ut alius det: aut cum res pro re datur, ut pro fundo decem aurei: aut quod pure datum est, transfertur sub condicione.

Dig. 34.4.6.1

Paulus 5 ad l. iul. et pap.

Sed si id, quod a titio dedi, a maevio dem, quamvis soleant esse duo eiusdem rei debitores, tamen verius est hoc casu ademptum esse legatum: nam cum dico: " quod titium dare damnavi, seius damnas esto dare", videor dicere, ne titius det.

Dig. 34.4.6.2

Paulus 5 ad l. iul. et pap.

Item si pro fundo decem legentur, quidam putant non esse ademptum prius legatum: sed verius est ademptum esse: novissima enim voluntas servatur.

Dig. 34.4.7

Ulpianus 24 ad sab.

Quod si alii legetur sub condicione, quod alii pure datum est, non plene recessum videtur a primo, sed ita demum, si condicio sequentis exstiterit: ceterum si hoc animo fuerit testator, ut omnimodo recessum a primo putaverit, dicendum erit a primo ademptum legatum.

Dig. 34.4.8

Iulianus 32 Dig.

Et ideo si vivo testatore mortuus fuerit is, in quem translatum legatum fuerit, nihilo magis ad eum, a quo translatum fuerit, pertinebit.

Dig. 34.4.9

Ulpianus 5 disp.

Cum centum, quae quis pure reliquit, condicione adiecta iterum eidem legavit, si quidem quasi aliam hanc summam esse voluit, et quod pure relictum est statim debebitur et quod sub condicione adscriptum est, si condicio exstiterit. quod si eandem summam mutata voluntate sub condicione reliquit, pura datio condicionalis effecta videbitur. quare si in eodem testamento, in quo centum adscripserat, postea quinquaginta reliquerit, si quidem alia voluit esse haec quinquaginta, centum quinquaginta debebuntur, sin vero quinquaginta tantum deberi voluit, quinquaginta tantum debebuntur. idem est et si in codicillis id fuerit factum.

Dig. 34.4.10pr.

Iulianus 37 Dig.

Si legatum pure datum titio adimatur sub condicione et pendente condicione titius decesserit, quamvis condicio defecerit, ad heredem titii legatum non pertinebit: nam legatum cum sub condicione adimitur, perinde est, ac si sub contraria condicione datum fuisset.

Dig. 34.4.10.1

Iulianus 37 Dig.

Quod ita legatum est: " titio decem heres meus dato: si titio non dederit, eadem decem sempronio dato " , si moriatur titius ante diem legati, sempronius legatum utiliter petet: translatum enim legatum intellegi debebit.

Dig. 34.4.11

Iulianus 54 Dig.

Qui hominem legat et stichum adimit, non peremit legatum, sed extenuat,

Dig. 34.4.12

Ulpianus 50 ad sab.

Ut stichum legatarius eligere non possit.

Dig. 34.4.13

Marcianus 6 inst.

Divi severus et antoninus rescripserunt, cum testator postrema scriptura quaqua ratione motus pessimum libertum esse adiecisset, ea quae priore scriptura ei relicta fuerant adempta videri.

Dig. 34.4.14pr.

Florus 1 inst.

Legata inutiliter data ademptione non confirmantur, veluti si domino herede instituto, servo pure legatum sub condicione adimatur: nam pure legatum si sub condicione adimatur, sub contraria condicione datum intellegitur et ideo confirmatur. ademptio autem, quo minus, non quo magis legatum debeatur, intervenit.

Dig. 34.4.14.1

Florus 1 inst.

Quibus ex causis datio legati inutilis est, ex isdem causis etiam ademptio inefficax habetur, veluti si viam pro parte adimas aut pro parte liberum esse vetes.

Dig. 34.4.15

Paulus l.S. de adsign. libert.

Cum servus legatus a testatore et alienatus rursus redemptus sit a testatore, non debetur legatario opposita exceptione doli mali. sane si probet legatarius novam voluntatem testatoris, non submovebitur.

Dig. 34.4.16

Paulus ex l.S. de i. codicill.

Nihil interest, inducatur quod scriptum est an adimatur.

Dig. 34.4.17

Celsus 22 Dig.

Nihil prohibet priorem scripturam posteriore corrigere commutare rescindere.

Dig. 34.4.18

Modestinus 8 diff.

Rem legatam si testator vivus alii donaverit, omnimodo exstinguitur legatum. nec distinguimus, utrum propter necessitatem rei familiaris an mera voluntate donaverit, ut, si necessitate donaverit, legatum debeatur, si nuda voluntate, non debeatur: haec enim distinctio in donantis munificentiam non cadit, cum nemo in necessitatibus liberalis exsistat.

Dig. 34.4.19

Modestinus 11 resp.

Modestinus respondit, si adimendo legatum, quod maevio relictum sit, fideicommissum ab eo datum defunctus revocare noluit, heredes ex causa fideicommissi conveniri posse recte probari.

Dig. 34.4.20

Pomponius 1 ad q. muc.

Licet transferam legatum in eum, cum quo nobis testamenti factio non est, sive in servum proprium, cui sine libertate legavero, licet eis non debeatur, nec illi tamen debebitur, cui fuerit ademptum.

Dig. 34.4.21

Licinius 4 reg.

Legatum nulli alii adimi potest quam cui datum est: quapropter si filio aut servo alieno legatum fuerit, domino aut patri legatum adimi non potest.

Dig. 34.4.22

Papinianus 6 resp.

Ex parte heres institutus etiam legatum acceperat: eum testator inimicitiis gravissimis persecutus, cum testamentum aliud facere instituisset neque perficere potuisset, praeteriit. hereditariae quidem actiones ei non denegabuntur, sed legatum si petat, exceptione doli mali submovebitur.

Dig. 34.4.23

Papinianus 7 resp.

Pater inter filios facultatibus divisis filiam ex ratione primipili commodorum trecentos aureos accipere voluit ac postea de pecunia commodorum possessionem paravit. nihilo minus fratres et coheredes sorori fideicommissum praestabunt: non enim absumptum videtur, quod in corpus patrimonii versum est. cum autem inter filios diviso patrimonio res indivisas ad omnes coheredes pertinere voluisset, ita possessionem ex commodis comparatam dividi placuit, ut in eam superflui pretii filia portionem hereditariam accipiat: hoc enim eveniret in bonis pecunia relicta.

Dig. 34.4.24pr.

Papinianus 8 resp.

Legatum sub condicione datum cum transfertur, sub eadem condicione transferri videtur, si non condicio priori personae cohaereat: nam si quis uxori sublatis liberis legaverit, repetita condicio non videbitur, quae fuit in persona mulieris necessaria.

Dig. 34.4.24.1

Papinianus 8 resp.

Pater hortos instructos filiae legavit: postea quaedam ex mancipiis hortorum uxori donavit. sive donationes confirmavit sive non confirmavit, posterior voluntas filiae legato potior erit: sed etsi non valeat donatio, tamen minuisse filiae legatum pater intellegitur.

Dig. 34.4.25

Papinianus 9 resp.

Alteri ex heredibus praeceptionem praedii dedit: mox alteri praestari adversus debitorem actiones ad eum finem mandavit, quo praedium fuerat comparatum. cum postea praedio distracto citra ullam offensam eius, qui praeceptionem acceperat, pretium in corpus patrimonii redisset, non esse praestandas actiones coheredi respondi.

Dig. 34.4.26pr.

Paulus 9 quaest.

Si, servo cum libertate dato legato, et alienato adimatur libertas, quamvis alieno inutiliter adimatur, tamen legatum ad emptorem non perventurum: et merito: constitit enim ademptio, quia possit redimi, sicut datio, cum in eum confertur, qui testamenti faciendi tempore fuit testatoris, deinde alienato codicillis libertas datur.

Dig. 34.4.26.1

Paulus 9 quaest.

Quid ergo, si eum, quem liberum esse quis iusserat, manumiserat vivus, deinde codicillis libertatem ei ademerit? videamus, an perdiderit legatum vana ademptio libertatis. quod quidam putant: sed supervacua scriptura non nocet legato.

Dig. 34.4.27pr.

Paulus 21 quaest.

Servus legatus est et ei aliquid. si alienato eo adimatur quod ei legatum est, valet ademptio, quia et legatum potest procedere, si redimatur.

Dig. 34.4.27.1

Paulus 21 quaest.

Servo legato et inter vivos manumisso si legatum adimatur, nullius momenti ademptio est: igitur legatum, quod ipsi datum est, capiet. nam etsi rursus in servitutem ceciderit, non tamen legatum eius resuscitabitur: novus enim videtur homo esse.

Dig. 34.4.28

Valens 5 fideic.

Si tibi certam rem legavero et rogavero te, ut eam titio restitueres, deinde eandem rem tibi fideicommisero nec rogavero te, ut alii eam praestares, quaeritur, an in tua potestate sit ex causa fideicommissi eligere, ut fideicommissum non praestes. et magis posteriorem scripturam testamenti placuit spectari.

Dig. 34.4.29

Paulus 3 sent.

Libertus, qui in priore parte testamenti legatum acceperat et ingratus postea eadem scriptura a testatore appellatus est, commutata voluntate actionem ex testamento habere non potest.

Dig. 34.4.30pr.

Scaevola 20 Dig.

Alumnae suae plura legaverat: quaedam ex his abstulit, quaedam ut praestarentur, ab herede suo petit, in quibus et viginti dari voluit his verbis: " hoc amplius do lego darique volo viginti auri libras" et adiecit: " fideique tuae, atti, committo, ut in primis semproniam sororem tuam pro tua pietate et regere et tueri velis, et, si putaveris eam ad bonam vitae consuetudinem reversam, ita viginti auri libras ei reddere, cum morieris. interim tamen reditus eius, id est usuras semisses ei praestes". postea codicillis ad maevium legatarium easdem viginti libras auri transtulit et fidei eius commisit in haec verba: " viginti libras auri, quas testamento semproniae alumnae meae reliqui, eas dari volo maevio cautionibus interpositis, ut ex ea summa eidem semproniae, quamdiu advixerit, praestet menstruos denarios quinque et vestiarii nomine denarios centenos vicenos quinos, idque fidei vestrae committo: certa sum autem te, maevi, pro tua pietate petiturum ab herede tuo, ut voluntas mea in persona alumnae meae duret". quaesitum est, an maevius legatarius cogendus sit post mortem suam viginti libras auri semproniae restituere, sicut rogatus fuerat attius heres. respondit secundum ea quae proponerentur viginti quidem auri libras non cogendum praestare, sed alia, quae ab eo alumnae relicta sunt, deberi et a maevio et ab herede eius, donec vivit alumna.

Dig. 34.4.30.1

Scaevola 20 Dig.

Titia testamento seiam libertam eandemque collactaneam ex parte duodecima heredem instituerat, pamphilo liberto suo praedia per fideicommissum dedit, in quibus et sugktysin praediorum quae appellabatur circa colonen: eidem liberto postea per epistulam alias etiam res donavit, in quibus de seia et pamphilo ita est locuta: " titia tois klyronomois mou xairein. boulomai bebaia einai ta hypotetagmena, hosa efvasa eis to onoma to pamfilou pepoiykenai. ean seia hy suntrofos mou klyronomos my genytai, ec ohu gegrafa autyn merous, boulomai auty dovynai tyn sugktysin tyn peri kolwnyn". quaesitum est, cum seia liberta omissa parte hereditatis ei testamento adscripta ex codicillis fideicommissum, id est sugktysin circa colonen, eligat, an, si pamphilus ex causa fideicommissi eadem praedia vindicet, doli mali exceptione summoveri debeat. respondit translatum videri fideicommissum praediorum, id est sugktysin quae est circa colonen, in seiam libertam.

Dig. 34.4.30.2

Scaevola 20 Dig.

Ab heredibus petierat, ut, si in provincia decessisset, sexaginta lucio titio darentur, ut is corpus eius curaret in patriam reportari, et adiecerat haec verba: " cui concedi volo, si quid ex ea pecunia supererit". eadem die codicillos ad heredes suos ita scripserat: " peto a vobis, ut, sive in provincia sive in via aliquid mihi humanitus acciderit, corpus meum curetis et in campania et in monumentum filiorum meorum reportare". quaesitum est, an id, quod superfuerit ex sexaginta, a lucio titio tacite ademerit. respondit ademptum videri.

Dig. 34.4.30.3

Scaevola 20 Dig.

Qui filias ex disparibus portionibus testamento heredes instituerat, paene omnium bonorum suorum eodem testamento divisionem fecit, deinde haec verba adiecit: " ta de loipa panta twn huparxontwn mou, homoiws kai ta tys klyronomias bary estai monwn twn duo mou vugaterwn primys kai sekoundys y tys ec autwn periousys". postea codicillis longe aliam divisionem fecit bonorum inter easdem, inter quas et testamento diviserat, quaedam tamen nulli nominatim dedit. quaesitum est, an prima et secunda filiae ex verbis testamenti consequi possint, ut solae habeant ea, quae nominatim nulli relicta sunt in divisione, quae novissima a patre facta est. respondit non a tota voluntate recessisse videri, sed his tantum rebus quas reformasset.

Dig. 34.4.30.4

Scaevola 20 Dig.

Cum post apertas tabulas testamenti priscillianus vixerit, de cuius legato portioneque hereditatis mater epistula ita caverat: " quoniam cognovi priscillianum filium meum in extremis esse, iustissimum et piissimum duxi portionem eius hereditatis, quam ei testamento dederam, legare mariano fratri meo et ianuario marito meo aequis portionibus: et si quid ei amplius legaveram, ut si quid ei humanitus contigerit, do lego darique eis volo": postea ex eadem infirmitate priscillianus decessit. quaesitum est, an legatum quoque eius ad ianuarium et marianum ex causa fideicommissi pertineat. respondit posse videri, si decessisset ex ea infirmitate, omnimodo et legatum ad eos de quibus quaereretur transtulisse.

Dig. 34.4.31pr.

Scaevola 14 Dig.

Filio ex parte heredi instituto duos fundos cum mancipiis et instrumento omni legavit: idem uxori plura legata et servos stichum et damam legavit: sed cum in altero ex fundis filio praelegatis cognovisset vilicum non esse, stichum misit et tam rei rusticae quam rationibus fundi praefecit: quaesitum est, stichus utrum ad uxorem an ad filium pertineret. respondit, cum memor erat eorum, quae testamento cavisset, stichum his praediis, in quae translatus est, actorem cedere nec uxorem posse stichum ex fideicommissi causa petere.

Dig. 34.4.31.1

Scaevola 14 Dig.

Matri suae heredi ex parte institutae quattuor praedia legavit et fidei eius commisit, ut ex his duo socero restitueret: deinde codicillis socero ademit fideicommissum: quaesitum est, an nihilo minus ex praelegatione ad matrem pertineret. respondi nihil proponi, cur ad matrem pertinerent.

Dig. 34.4.31.2

Scaevola 14 Dig.

Seia testamento suo legavit auri pondo quinque: titius accusavit eam, quod patrem suum mandasset interficiendum: seia post institutam accusationem codicillos confecit nec ademit titio privigno legatum et ante finem accusationis decessit: acta causa pronuntiatum est patrem titii scelere seiae non interceptum. quaero, cum codicillis legatum, quod testamento titio dederat, non ademerit, an ab heredibus seiae titio debeatur. respondit secundum ea quae proponerentur non deberi.

Dig. 34.4.31.3

Scaevola 14 Dig.

Filiae, quam in potestate habebat, inter cetera legavit peculium: idem post factum testamentum pecuniam a debitore filiae exegit et in suam rationem convertit: quaero, an filia eo nomine cum heredibus patris agere possit. respondit, si probaret non adimendi animo factum, agere posse.

Dig. 34.4.32pr.

Venonius 10 act.

Detrahere legatis vel adicere, si nihil praeter pecuniam numeratam legatum sit, promptum est: cum vero res corporales intervenient, et scriptura difficilior fit et obscura portio.

Dig. 34.4.32.1

Venonius 10 act.

Cum libertas adimitur, legata servis relicta nihil attinet adimi.

Dig. 34.5.0. De rebus dubiis.

Dig. 34.5.1

Papinianus 7 resp.

Fundum maevianum aut seianum titio legaverat, cum universa possessio plurium praediorum sub appellatione fundi maeviani rationibus demonstraretur. respondi non videri cetera praedia legato voluisse defunctum cedere, si fundi seiani pretium a fundi maeviani pretio non magna pecunia distingueretur.

Dig. 34.5.2

Papinianus 9 resp.

Civibus civitatis legatum vel fideicommissum datum civitati relictum videtur.

Dig. 34.5.3

Paulus 14 quaest.

In ambiguo sermone non utrumque dicimus, sed id dumtaxat quod volumus: itaque qui aliud dicit quam vult, neque id dicit quod vox significat, quia non vult, neque id quod vult, quia id non loquitur.

Dig. 34.5.4

Paulus 19 resp.

Paulus respondit: cum nomen fideicommissarii testamento adscriptum non sit, nulli personae neque certae neque incertae datum fideicommissum videri indubitatum est.

Dig. 34.5.5pr.

Gaius 1 fideic.

Quidam relegatus facto testamento post heredis institutionem et post legata quibusdam data ita subiecit: " si quis ex heredibus ceterisve amicis, quorum hoc testamento mentionem habui, sive quis alius restitutionem mihi impetraverit ab imperatore et ante decessero, quam ei gratias agerem: volo dari ei qui id egerit a ceteris heredibus aureos tot". unus ex his, quos heredes scripserat, impetravit ei restitutionem et antequam id sciret, decessit. cum de fideicommisso quaereretur, an deberetur, consultus iulianus respondit deberi: sed etiam si non heres vel legatarius, sed alius ex amicis curavit eum restitui, et ei fideicommissum praestari.

Dig. 34.5.5.1

Gaius 1 fideic.

Si tibi et postumo suo vel alieno hereditatem restituere quis rogaverit.

Dig. 34.5.6

Maecenatus 3 fideic.

Vel ex parte te et ex parte postumum heredem instituisset legatumve similiter vel fideicommissum dedisset,

Dig. 34.5.7pr.

Gaius 1 fideic.

Utrum ita postumus partem faciat, si natus sit, an et si natus non sit, quaeritur. ego commodius dici puto, si quidem natus non est, minime eum partem facere, sed totum ad te pertinere, quasi ab initio tibi solido relicto: sin autem natus fuerit, utrosque accipere quantum cuique relictum est, ut uno nato pars tibi dimidia debeatur, duobus natis tertia tibi debeatur, tribus natis, quia trigemini quoque nascuntur, quarta debeatur. et nostra quidem aetate serapias alexandrina mulier ad divum hadrianum perducta est cum quinque liberis, quos uno fetu enixa est. sed tamen quod ultra tres nascitur, fere portentosum videtur.

Dig. 34.5.7.1

Gaius 1 fideic.

Cum quidam pluribus heredibus institutis unius fidei commisisset, ut, cum moreretur, uni ex coheredibus, cui ipse vellet, restitueret eam partem hereditatis, quae ad eum pervenisset: verissimum est utile esse fideicommissum: nec enim in arbitrio eius qui rogatus est positum est, an omnino velit restituere, sed cui potius restituat: plurimum enim interest, utrum in potestate eius, quem testator obligari cogitat, faciat, si velit dare, an post necessitatem dandi solius distribuendi liberum arbitrium concedat.

Dig. 34.5.7.2

Gaius 1 fideic.

Quaesitum est, si coheredes ex disparibus partibus scripti sunt, utrum partem suam in viriles partes restituere singulis debeat an pro portionibus hereditariis, ex quibus heredes scripti sint. et placuit, si testator ita restitui iussisset partem, si aliquam pecuniam dedissent, si quidem aequas partes iussi fuerint dare, conveniens videri esse etiam ex fideicommisso aequas partes eis restitui oportere: si vero dispares in ea pecunia distribuenda significavit testator, ut videantur hereditariis portionibus congruere, consentaneum esse etiam fideicommissum pro hereditariis partibus eis restitui debere.

Dig. 34.5.8

Paulus 2 sent.

Si inter virum et uxorem donatio facta fuerit, priore defuncto cui donatum est ad eum res redit qui donaverat: quod si simul tam is cui donatum est quam is qui donaverit, quaestionis decidendae gratia magis placuit valere donationem, eo maxime, quod donator non supervivat, qui rem condicere possit.

Dig. 34.5.9pr.

Tryphonus 21 disp.

Qui duos impuberes filios habebat, ei qui supremus moritur titium substituit: duo impuberes simul in nave perierunt: quaesitum est, an substituto et cuius hereditas deferatur. dixi, si ordine vita decessissent, priori mortuo frater ab intestato heres erit, posteriori substitutus: in ea tamen hereditate etiam ante defuncti filii habebit hereditatem. in proposita autem quaestione ubi simul perierunt, quia, cum neutri frater superstes fuit, quasi utrique ultimi decessisse sibi videantur? an vero neutri, quia comparatio posterioris decedentis ex facto prioris mortui sumitur? sed superior sententia magis admittenda est, ut utrique heres sit: nam et qui unicum filium habet, si supremum morienti substituit, non videtur inutiliter substituisse: et proximus adgnatus intellegitur etiam qui solus est quique neminem antecedit: et hic utrique, quia neutri eorum alter superstes fuit, ultimi primique obierunt.

Dig. 34.5.9.1

Tryphonus 21 disp.

Cum bello pater cum filio perisset materque filii quasi postea mortui bona vindicaret, adgnati vero patris, quasi filius ante perisset, divus hadrianus credidit patrem prius mortuum.

Dig. 34.5.9.2

Tryphonus 21 disp.

Si cum filio suo libertus simul perierit intestati, patrono legitima defertur hereditas, si non probatur supervixisse patri filius: hoc enim reverentia patronatus suggerente dicimus.

Dig. 34.5.9.3

Tryphonus 21 disp.

Si maritus et uxor simul perierint, stipulatio de dote ex capitulo " si in matrimonio mulier decessisset" habebit locum, si non probatur illa superstes viro fuisse.

Dig. 34.5.9.4

Tryphonus 21 disp.

Si lucius titius cum filio pubere, quem solum testamento scriptum heredem habebat, perierit, intellegitur supervixisse filius patri et ex testamento heres fuisse, et filii hereditas successoribus eius defertur, nisi contrarium approbetur. quod si impubes cum patre filius perierit, creditur pater supervixisse, nisi et hic contrarium approbetur.

Dig. 34.5.10pr.

Ulpianus 6 disp.

Si fuerit legatum relictum ex cognatis meis qui primus capitolium ascenderit, si simul duo venisse dicantur nec apparet, quis prior venerit, an impedietur legatum? vel ei qui monumentum fecerit, et plures fecerint? vel ei qui maximus natu est, et duo pares aetate sint? sed et si legatum sempronio amico fuerit relictum, et duo sint aequa caritate coniuncti? sed et si duobus hominibus eiusdem nominis fuerit legatum, puta semproniis, mox sempronio ademptum sit nec appareat, cui ademptum sit: utrum datio in utriusque persona infringitur an ademptio nulla est, quaeri potest. item si ex pluribus servis eiusdem nominis uni vel quibusdam libertas relicta est. et verius est in his omnibus etiam legata et libertates impediri, ademptionem autem in utrumque valere.

Dig. 34.5.10.1

Ulpianus 6 disp.

Plane si ita libertatem acceperit ancilla: " si primum marem pepererit, libera esto" et haec uno utero marem et feminam peperisset: si quidem certum est, quid prius edidisset, non debet ^ decet^ de ipsius statu ambigi, utrum libera esset nec ne, sed nec filiae: nam si postea edita est, erit ingenua. sin autem hoc incertum est nec potest nec per suptilitatem iudicialem manifestari, in ambiguis rebus humaniorem sententiam sequi oportet, ut tam ipsa libertatem consequatur quam filia eius ingenuitatem, quasi per praesumptionem priore masculo edito.

Dig. 34.5.11

Iulianus 36 Dig.

Quotiens libertis usus fructus legatur et ei, qui novissimus supervixerit, proprietas, utile est legatum: existimo enim omnibus libertis proprietatem sub hac condicione " si novissimus supervixerit" dari.

Dig. 34.5.12

Iulianus 50 Dig.

Quotiens in actionibus aut in exceptionibus ambigua oratio est, commodissimum est id accipi, quo res de qua agitur magis valeat quam pereat.

Dig. 34.5.13pr.

Iulianus l.S. de ambig.

Si is qui ducenta deposuit ita leget: " seio cum ducentis quae apud eum deposui trecenta lego", singulae summae separate quidem certam habent demonstrationem, coniunctione vero tali incidunt in ambiguitatem. sed dicendum est non trecenta, sed quingenta deberi, quia duae summae iunguntur.

Dig. 34.5.13.1

Iulianus l.S. de ambig.

Si quis leget: " fundum seianum heres meus attio cum dione maevii servo dato", dubitatur quidem, dioni quoque fundus legatus sit an dio cum fundo legatus sit. sed magis dicendum est non solum fundum, sed etiam servum dionem esse legatum, maxime si nullas iustas causas habuit dioni legandi.

Dig. 34.5.13.2

Iulianus l.S. de ambig.

Cum ita stipulationem concipimus: " si hominem aut fundum non dederis, centum dari spondes?" utrumque est faciendum, ne stipulatio committatur, id est sive alterum sive neutrum factum sit, tenebit stipulatio. idemque est evidenter, cum propositis specialiter pluribus rebus, quas fieri volumus, ita stipulamur: " si quid eorum factum non erit": veluti " stichum et damam et erotem sisti? si quis eorum non steterit, decem dari?" necesse est enim omnes esse sistendos, ut stipulationi satisfiat. vel ut propius accedamus, fingamus ita stipulationem factam: " si stichum et damam et erotem non sisteris, decem dari?" neque enim dubitabimus, quin aeque omnes sisti oporteat.

Dig. 34.5.13.3

Iulianus l.S. de ambig.

Utrum ita concipias stipulationem " si illud aut illud factum non erit" an hoc modo " si quid eorum factum non erit, quae ut fierent, comprehensa sunt", hoc interest, quod, quamvis altero facto verum sit hoc aut illud vere factum esse, non ideo tamen verum erit hoc aut illud factum non esse. nam simul ea possunt esse vera, quamvis inter se contraria sunt, quia cum significatio non ex universo, sed ex aliquo sumitur, si veri aliquid inde sit, veram efficit totam orationem: sicut e contrario duae orationes pugnantia continentes simul falsae sunt, veluti si qui liberorum partim puberes, partim impuberes decesserint, nam et hoc falsum erit omnes impuberes decessisse et illud omnes puberes decessisse. id accidit, quia significatio sumitur ex universo, in quo si aliquid falsum est, totam orationem falsam efficit. animadvertendum igitur est, quid sit, de quo quaeritur. nam cum ita concipio " si illud aut illud non fuerit", quaeri debet, an aliquid factum non sit: illius effectus hic est, ut neutrum fiat, huius autem, ut utrumque fiat: nec in illo prodest aliquid non fecisse, si aliquid factum sit, neque in hoc aliquid fecisse, si aliquid factum non sit.

Dig. 34.5.13.4

Iulianus l.S. de ambig.

Proinde si quis ita interroget: " eorum quid, quae obiciuntur tibi, fecisti?" ille neget, hoc exprimat: " eorum quid, quae obiciuntur, non feci", id est " nihil horum feci".

Dig. 34.5.13.5

Iulianus l.S. de ambig.

Si quis autem plura in stipulatum deducat, quorum unum fieri velit, ita comprehendere debet: " illud aut illud fieri spondes? si nihil eorum factum erit, tantum dabis?"

Dig. 34.5.13.6

Iulianus l.S. de ambig.

Item si pater familias in testamento ita scripserit: " si quis mihi filius aut filia genitur, heres mihi esto: " si mihi filius aut filia heres non erit, seius heres esto", non satis voluntatem suam declaravit, si non aliter extraneum heredem esse volet, quam si neque filius neque filia heres sit: hoc enim modo concipi oportet: " si mihi neque filius neque filia heres erit". potest autem interdum superior scriptura esse necessaria, si quis, cum filium et filiam habeat, utrumque heredem instituere velit, sed sive alter heres futurus sit, extraneum miscere, sive neuter, extraneum substituere. sed proclivior est sententia testatoris sic esse interpretanda, ut, sive filius sive filia nati ei fuerint, extraneus non admittatur, nisi specialiter hoc testator expresserit.

Dig. 34.5.14

Marcianus 6 inst.

Si quis ita scripserit: " illis, qui testamentum meum signaverint, heres meus decem dato", trebatius utile legatum esse putat: quod pomponius verius esse existimat, quia ipsum testamentum confirmatur testibus adhibitis, quod verum esse existimo.

Dig. 34.5.15

Marcianus 2 reg.

Quaedam sunt, in quibus res dubia est, sed ex post facto retro ducitur et apparet, quid actum est. ut ecce si res legata fuerit et deliberante legatario eam rem heres alii tradiderit: nam si quidem voluerit legatarius habere legatum, traditio nulla est, si vero repudiaverit, valet. tantundem est et si pecuniam hereditariam legatam crediderit heres: nam si quidem non repudiaverit legatarius, alienam pecuniam credidit, si vero repudiaverit, suam pecuniam credidisse videtur. quid ergo, si consumpta fuerit pecunia ? utique idem erit ex eventu dicendum.

Dig. 34.5.16pr.

Marcianus 3 reg.

Quod de pariter mortuis tractamus, et in aliis agitatum est. ut ecce si mater stipulata est dotem a marito mortua filia in matrimonio sibi reddi et simul cum filia perit, an ad heredem matris actio ex stipulatu competere? et divus pius rescripsit non esse commissam stipulationem, quia mater filiae non supervixit.

Dig. 34.5.16.1

Marcianus 3 reg.

Item quaeritur, si extraneus, qui dotem stipulatus est, simul cum marito decesserit vel cum ea, propter quam stipulatus esset, an ad heredem suum actionem transmittat.

Dig. 34.5.17

Paulus 12 ad plaut.

Idem est, si dos uxori praelegata sit et simul cum marito perierit.

Dig. 34.5.18pr.

Marcianus 3 reg.

Sed et in illo quaeritur, si pariter pupillus et qui ei substitutus erat frater necessarius decesserit, an frater fratri exsistat heres an contra: vel si duo invicem necessarii substituti sunt et una perierint, an heredes exstitisse videantur: vel alter alteri (hoc est si invicem) hereditatem rogati fuerint restituere. in quibus casibus si pariter decesserint nec appareat, quis ante spiritum emisit, non videtur alter alteri supervixisse.

Dig. 34.5.18.1

Marcianus 3 reg.

Sed et circa legem falcidiam, si dominus cum servis simul vita functus sit, servi, quasi in bonis eius mortis tempore fuerint, non computantur.

Dig. 34.5.19pr.

Ulpianus 25 ad sab.

Si cognatis legatum sit et hi cognati quidem esse desierunt, in civitate autem maneant, dicendum deberi legatum: cognati enim testamenti facti tempore fuerunt. certe si quis testamenti facti tempore cognatus non fuit, mortis tempore factus est per adrogationem, facilius legatum consequitur.

Dig. 34.5.19.1

Ulpianus 25 ad sab.

Si quis cognationi leget, idem est atque si cognatis legasset.

Dig. 34.5.20

Paulus 12 ad plaut.

Cum senatus temporibus divi marci permiserit collegiis legare, nulla dubitatio est, quod, si corpori cui licet coire legatum sit, debeatur: cui autem non licet si legetur, non valebit, nisi singulis legetur: hi enim non quasi collegium, sed quasi certi homines admittentur ad legatum.

Dig. 34.5.21pr.

Paulus 14 ad plaut.

Ubi est verborum ambiguitas, valet quod acti est, veluti cum stichum stipuler et sint plures stichi, vel hominem, vel carthagini, cum sint duae carthagines.

Dig. 34.5.21.1

Paulus 14 ad plaut.

Semper in dubiis id agendum est, ut quam tutissimo loco res sit bona fide contracta, nisi cum aperte contra leges scriptum est.

Dig. 34.5.22

Iavolenus 5 ex cass.

Cum pubere filio mater naufragio periit: cum explorari non possit, uter prior exstinctus sit, humanius est credere filium diutius vixisse.

Dig. 34.5.23

Gaius 5 ad l. iul. et pap.

Si mulier cum filio impubere naufragio periit, priorem filium necatum esse intellegitur.

Dig. 34.5.24

Marcellus 11 Dig.

Cum in testamento ambigue aut etiam perperam scriptum est, benigne interpretari et secundum id, quod credibile est cogitatum, credendum est.

Dig. 34.5.25

Celsus 22 Dig.

" quem heredi meo dixero velle me liberum esse, liber esto. cui ut dare damnas sit heres meus, dixero, ei heres meus dare damnas esto". testatoris voluntas, si quibusdam argumentis apparebit, de quo dixit, adimplenda est.

Dig. 34.5.26

Celsus 26 Dig.

Cum quaeritur in stipulatione, quid acti sit, ambiguitas contra stipulatorem est.

Dig. 34.5.27

Modestinus 1 reg.

Si quis de pluribus unum manumitti voluerit nec appareat, de quo manumittendo testator sensit, nulli eorum fideicommissa competit libertas.

Dig. 34.5.28

Iavolenus 3 ex post. lab.

Qui habebat flaccum fullonem et philonicum pistorem, uxori flaccum pistorem legaverat: qui eorum et num uterque deberetur? placuit primo eum legatum esse, quem testator legare sensisset. quod si non appareret, primum inspiciendum esse, an nomina servorum dominus nota habuisset: quod si habuisset, eum deberi, qui nominatus esset, tametsi in artificio erratum esset. sin autem ignota nomina servorum essent, pistorem legatum videri perinde ac si nomen ei adiectum non esset.

Dig. 34.5.29

Scaevola 18 Dig.

Plures testamento manumiserat, in quibus sabinam et cyprogeniam, cum quisque eorum ad trigesimum annum aetatis pervenisset et cum liber quisque eorum esset, certam summam dari voluerat. et coniuncta scriptura ita caverat: " sabinae et cyprogeniae dari volo, cum ad statutam aetatem pervenerint, singulis decem et hoc amplius alimentorum nomine in annos singulos quoad vivent singulis decem". quaesitum est, utrum omnibus manumissis alimenta debeantur an vero sabinae et cyprogeniae solis. respondit secundum ea quae proponerentur videri omnibus alimenta legata.

Dig. 34.6.0. De his quae poenae causa relinquuntur.

Dig. 34.6.1

Africanus libro quaest.

Filio familias vel servo herede instituto etiam si in patris dominive poenam illicite vel probrose datum est, nullius momenti legatum esse respondit: non enim id solum, quod in heredes, sed omne, quod in cuiusque lucrum aliquid ex ultima voluntate sentientis talem poenam in testamento scriptum sit, nullius momenti habendum.

Dig. 34.6.2

Marcianus 6 inst.

Poenam a condicione voluntas testatoris separat et an poena, an condicio, an translatio sit, ex voluntate defuncti apparet: idque divi severus et antoninus rescripserunt.

Dig. 34.7.0. De regula catoniana.

Dig. 34.7.1pr.

Celsus 35 Dig.

Catoniana regula sic definit, quod, si testamenti facti tempore decessisset testator, inutile foret, id legatum quandocumque decesserit, non valere. quae definitio in quibusdam falsa est.

Dig. 34.7.1.1

Celsus 35 Dig.

Quid enim, si quis ita legaverit: " si post kalendas mortuus fuero, titio dato?" an cavillamur? nam hoc modo si statim mortuus fuerit, non esse datum legatum verius est quam inutiliter datum.

Dig. 34.7.1.2

Celsus 35 Dig.

Item si tibi legatus est fundus, qui scribendi testamenti tempore tuus est, si eum vivo testatore alienaveris, legatum tibi debetur, quod non deberetur, si testator statim decessisset.

Dig. 34.7.2

Paulus 4 ad plaut.

Sed et si sic legaverit: " si filia mea titio nupta erit " , sufficere visum est, si mortis tempore nupta inveniatur, licet testamenti facti tempore fuerit impubes.

Dig. 34.7.3

Papinianus 15 quaest.

Catoniana regula non pertinet ad hereditates neque ad ea legata, quorum dies non mortis tempore, sed post aditam cedit hereditatem.

Dig. 34.7.4

Ulpianus 10 ad sab.

Placet catonis regulam ad condicionales institutiones non pertinere.

Dig. 34.7.5

Ulpianus 22 ad sab.

Regula catoniana ad novas leges non pertinet.

Dig. 34.8.0. De his quae pro non scriptis habentur.

Dig. 34.8.1

Iulianus 78 Dig.

Si quis hereditatem vel legatum sibi adscripserit, quaeritur, an hereditas vel legatum pro non scripto habeatur. et quid, si substitutum habeat huiusmodi institutio? respondit: pars hereditatis, de qua me consuluisti, ad substitutum pertinet: nam senatus cum poenas legis corneliae constitueret adversus eum, qui sibi hereditatem vel legatum scripsisset, eodem modo improbasse videtur, quo improbatae sunt illae: " qua ex parte me titius heredem scriptum in tabulis suis recitaverit, ex ea parte heres esto", ut perinde haberentur, ac si insertae testamento non fuissent.

Dig. 34.8.2

Alfenus 5 Dig.

Quae in testamento scripta essent neque intellegerentur quid significarent, ea perinde sunt ac si scripta non essent: reliqua autem per se ipsa valent.

Dig. 34.8.3pr.

Marcianus 11 inst.

Si in metallum damnato quid extra causam alimentorum relictum fuerit, pro non scripto est nec ad fiscum pertinet: nam poenae servus est, non caesaris: et ita divus pius rescripsit.

Dig. 34.8.3.1

Marcianus 11 inst.

Sed et si post testamentum factum heres institutus vel legatarius in metallum datus sit, ad fiscum non pertinet.

Dig. 34.8.3.2

Marcianus 11 inst.

Item si servo alieno quid legatum fuerit et postea a testatore redemptus sit, legatum exstinguitur: nam quae in eam causam pervenerunt, a qua incipere non poterant, pro non scriptis habentur.

Dig. 34.8.4pr.

Ulpianus 13 ad l. iul. et pap.

Si eo tempore, quo alicui legatum adscribebatur, in rebus humanis non erat, pro non scripto hoc habebitur.

Dig. 34.8.4.1

Ulpianus 13 ad l. iul. et pap.

Sed et si in hostium potestate erat, quo testamentum fiebat, neque ab hostibus rediit, pro non scripto erit: et ita iulianus scribit.

Dig. 34.8.5

Paulus 12 quaest.

Quod quis sibi adscripserit, si alii restituere a testatore iussus est, cum onere fideicommissum id apud heredem remanet, quamvis pro non scripto esset. idem est et in testamento militis.

Dig. 34.9.0. De his quae ut indignis auferuntur.

Dig. 34.9.1

Marcianus 6 inst.

Divi severus et antoninus rescripserunt quasi indignum carere legato seu fideicommisso libertum, quae ei testamento patroni relicta erant, cum patronum suum post mortem eius quasi illicitae mercis negotiatorem detulerat, quamvis et praemium meruit.

Dig. 34.9.2pr.

Marcianus 11 inst.

Aufertur hereditas ex asse et ad fiscum pertinet, si emancipatus filius contra tabulas bonorum possessionem patris ut praeteritus petierit et ex substitutione impuberis adierit hereditatem.

Dig. 34.9.2.1

Marcianus 11 inst.

Item si quis contra mandata duxerit uxorem ex ea provincia, in qua officium aliquid gerit, quod ei ex testamento uxoris adquisitum est divi severus et antoninus rescripserunt retinere eum non posse, tamquam si tutor pupillam contra decretum amplissimi ordinis in domum suam duxisset. utroque ergo casu etsi ex asse heres institutus adierit hereditatem, fisco locus fit: nam quasi indigno ei aufertur hereditas.

Dig. 34.9.2.2

Marcianus 11 inst.

Per contrarium autem ducta tam ab eo, qui officium in provincia gerebat, quam a tutore illicite magis est, ut dicatur capere illam ex testamento nec quasi indignam esse repellendam.

Dig. 34.9.2.3

Marcianus 11 inst.

Idem erit, si quis vivi ignorantis bona vel partem bonorum alicuius cognati donaverit: nam quasi indigno aufertur.

Dig. 34.9.3

Marcianus 5 reg.

Indignum esse divus pius illum decrevit, ut et Marcellus libro duodecimo digestorum refert, qui manifestissime comprobatus est id egisse, ut per neglegentiam et culpam suam mulier, a qua heres institutus erat, moreretur.

Dig. 34.9.4

Ulpianus 14 ad ed.

Papinianus libro quinto quaestionum ait, si quis unum heredem quasi per falsum adscriptum accusavit, legatum ei non auferri a coherede relictum, quem non inquietavit.

Dig. 34.9.5pr.

Paulus 1 d. i. fisci.

Post legatum acceptum non tantum licebit falsum arguere testamentum, sed et non iure factum contendere: inofficiosum autem dicere non permittitur.

Dig. 34.9.5.1

Paulus 1 d. i. fisci.

Ille, qui non iure factum contendit nec optinuit, non repellitur ab eo quod meruit: ergo qui legatum secutus postea falsum dixit, amittere debebit quod consecutus est. de eo vero qui legatum accepit, si neget iure factum esse testamentum, divus pius ita rescripsit: " cognati sophronis licet ab herede instituto acceperant legata, tamen, si is eius condicionis fuerit visus, ut optinere hereditatem non possit, et iure intestati ad eos cognatos pertinet, petere hereditatem ipso iure poterunt. prohibendi autem sint an non, ex cuiusque persona condicione aetate cognita causa a iudice constituendum erit".

Dig. 34.9.5.2

Paulus 1 d. i. fisci.

Amittere id quod testamento meruit et eum placuit, qui tutor datus excusavit se a tutela: sed si consecutus fuerit, non admittitur ad excusationem. diversum puto in eo, qui legatum tantum meruit et a matre pupilli tutor petitus excusare se maluit: hic enim nihil contra iudicium defuncti fecit. sed hoc legatum, quod tutori denegatur, non ad fiscum transfertur, sed filio relinquitur, cuius utilitates desertae sunt.

Dig. 34.9.5.3

Paulus 1 d. i. fisci.

Si pater accusaverit testamentum vel dominus, denegabitur ei actio etiam eius quod filio eius vel servo legatum est, si ad ipsos emolumentum rei perventurum est: quod si personam illorum spectet, diversum dicendum est.

Dig. 34.9.5.4

Paulus 1 d. i. fisci.

Si servum suum rogatus sit manumittere qui legatum meruit vel etiam ipsi servo utrumque datum sit, dicendum est non debere obesse servo factum domini, sed a fisco redimendum, ut manumittatur, si tamen velit servum vendere (quia non potest cogi) qui iudicium sprevit defuncti.

Dig. 34.9.5.5

Paulus 1 d. i. fisci.

Si filius familias falsum accusaverit testamentum, videndum est, an denegari debeat actio patri: et puto, si invito patre accusavit, non esse denegandam patri actionem.

Dig. 34.9.5.6

Paulus 1 d. i. fisci.

Si is, cui rogatus sum legatum restituere, falsum dixerit, restituere id fisco debebo.

Dig. 34.9.5.7

Paulus 1 d. i. fisci.

Qui accusavit falsum, heres legatario exstitit vel heredi scripto: nihil huic nocere dicendum est.

Dig. 34.9.5.8

Paulus 1 d. i. fisci.

Similis est ei et qui inofficiosum dicit.

Dig. 34.9.5.9

Paulus 1 d. i. fisci.

Aetati eius qui accusavit ignoscitur, et maxime si tutor vel curator dicere falsum vel inofficiosum velit: et ita imperatores severus et antoninus rescripserunt.

Dig. 34.9.5.10

Paulus 1 d. i. fisci.

His vero, qui testimonio suo intentionem accusatoris adiuvaverunt, deneganda est actio: idque divus severus decrevit.

Dig. 34.9.5.11

Paulus 1 d. i. fisci.

Sunt qui putant, et recte, et ei denegandam, qui accusatori adfuit vel fideiussor pro eo exstiterit.

Dig. 34.9.5.12

Paulus 1 d. i. fisci.

Quidam et praesidem indignum putant, qui testamentum falsum pronuntiavit, si appellatione intercedente heres scriptus optinuit.

Dig. 34.9.5.13

Paulus 1 d. i. fisci.

Advocatum fisci, qui intentionem delatoris exsequitur, in omnibus officii necessitas satis excusat.

Dig. 34.9.5.14

Paulus 1 d. i. fisci.

Qui principale testamentum arguit, et a secundis tabulis repellendus est: item a codicillis ad testamentum factis licet non confirmatis. non idem sequendum est, si secundas tabulas vel codicillos coarguit, quia non utrumque hoc casu improbasse videtur.

Dig. 34.9.5.15

Paulus 1 d. i. fisci.

An libertas ei servo data, qui testimonio suo infringere voluerit testamentum, auferri debeat, videndum est. fideicommissum utique non est dignus consequi: et de libertate divus pius iudicavit esse ea privandum.

Dig. 34.9.5.16

Paulus 1 d. i. fisci.

Ei, qui tutor datus est, non prodest ad excusationem, quod falsum dixit: sed a legato removetur.

Dig. 34.9.5.17

Paulus 1 d. i. fisci.

Qui mortis causa donationem accepit a testatore, non est similis in hac causa legatario.

Dig. 34.9.5.18

Paulus 1 d. i. fisci.

Alia causa est eius qui propter testamentum a legatario vel a statulibero accipere iussus est: hic enim ut indignus repelletur.

Dig. 34.9.5.19

Paulus 1 d. i. fisci.

Et falcidiae beneficium heredi scripto auferri debere divus pius et divus marcus putaverunt.

Dig. 34.9.5.20

Paulus 1 d. i. fisci.

Omnes, qui ut indigni repellentur, summovendi sunt a praemio, quod secundum edictum divi traiani datur his qui se deferunt.

Dig. 34.9.6

Marcellus 22 Dig.

Rescriptum est a principe heredem rei quam amovisset quartam non retinere. et ideo si is qui quadringenta habebat universa quadringenta legavit et heres centum subtraxisset, trecentorum quartam retinebit, septuaginta quinque scilicet, et ducenta viginti quinque dabit legatariis: ex centum quae subripuit, legatariis quidem dabit septuaginta quinque, reliqua, id est viginti quinque, ad fiscum venient.

Dig. 34.9.7

Modestinus 6 diff.

Qui titii testamentum falsum dixit nec optinuit, heredi eius heres exsistere prohibendus non est, quia non principaliter in titii hereditatem succedit.

Dig. 34.9.8

Modestinus 9 reg.

Indigno herede pronuntiato adempta hereditate confusas actiones restitui non oportet.

Dig. 34.9.9pr.

Ulpianus 14 ad l. iul. et pap.

Si inimicitiae capitales intervenerunt inter legatarium et testatorem et verisimile esse coeperit testatorem noluisse legatum sive fideicommissum praestari ei, cui adscriptum relictum est, magis est, ut legatum ab eo peti non possit.

Dig. 34.9.9.1

Ulpianus 14 ad l. iul. et pap.

Sed et si palam et aperte testatori maledixerit et infaustas voces adversus eum iactaverit, idem erit dicendum. si autem status eius controversiam movit, denegatur eius quod testamento accepit persecutio: ex qua specie statim fisco deferetur.

Dig. 34.9.10pr.

Gaius 15 ad l. iul. et pap.

In fraudem iuris fidem accommodat, qui vel id quod relinquitur vel aliud tacite promittit restituturum se personae quae legibus ex testamento capere prohibetur, sive chirographum eo nomine dederit sive nuda pollicitatione repromiserit.

Dig. 34.9.10.1

Gaius 15 ad l. iul. et pap.

Si quis ei qui capere possit rogatus fuerit restituere et is mortis tempore prohibetur legibus hoc capere, non dubito quin, etsi deficit fideicommissum, apud eum tamen, qui rogatus est restituere, manere debet, quia nulla fraus eius intervenisse videtur, nisi si in futurum casum fidem accommodavit, id est ut, licet capere legibus prohiberi coeperit, restituat.

Dig. 34.9.10.2

Gaius 15 ad l. iul. et pap.

Recte dictum est, si pater filii, quem in potestate habebat, tacitam fidem interposuerit, non debere id filio nocere, quia parendi necessitatem habuerit.

Dig. 34.9.11

Papinianus 15 quaest.

Heres, qui tacitam fidem contra leges accommodavit, in ea parte, quae fraudem adhibuit, falcidia non utitur: et ita senatus censuit. sed si maior modus institutionis quam fraudis fuerit, quod ad falcidiam attinet, de superfluo quarta retinebitur.

Dig. 34.9.12

Papinianus 16 quaest.

Cum quidam scripsisset heredes quos instituere non potuerat, quamvis institutio non valeret neque superius testamentum ruptum esset, heredibus tamen ut indignis, qui non habuerunt supremam voluntatem, abstulit iam pridem senatus hereditatem. quod divus marcus in eius persona iudicavit, cuius nomen peracto testamento testator induxerat: causam enim ad praefectos aerarii misit: verum ab eo legata relicta salva manserunt. de praeceptionibus eidem datis voluntatis erit quaestio: et legatum ei non denegabitur, nisi hoc evidenter testatorem voluisse appareat.

Dig. 34.9.13

Papinianus 32 quaest.

Claudius seleucus papiniano suo salutem. maevius in adulterio semproniae damnatus eandem semproniam non damnatam duxit uxorem: qui moriens heredem eam reliquit: quaero, an iustum matrimonium fuerit et an mulier ad hereditatem admittatur. respondi neque tale matrimonium stare neque hereditatis lucrum ad mulierem pertinere, sed quod relictum est ad fiscum pervenire. sed et si talis mulier virum heredem instituerit, et ab eo quasi ab indigno hereditatem auferri dicimus.

Dig. 34.9.14

Papinianus 33 quaest.

Mulierem, quae stupro cognita in contubernio militis fuit, etsi sacramento miles solutus intra annum mortem obierit, non admitti ad testamentum iure militiae factum et id quod relictum est ad fiscum pertinere proxime tibi respondi.

Dig. 34.9.15

Papinianus 6 resp.

Heredi, qui falsos codicillos esse dixit neque optinuit, hereditas non aufertur: si tamen aliquid a coherede codicillis acceperit, eius actio denegabitur. itaque si bonorum inter heredes divisionem defunctus codicillis fecerit, partes quidem hereditarias, in quibus legatum consistere non potuit, tenebit, sed falcidiae beneficio non utetur, si tantum in amissis portionibus erit, quod falcidiam aequitate compensationis recusaret.

Dig. 34.9.16pr.

Papinianus 8 resp.

Cum tabulis secundis pater impuberi filio fratris filios coheredibus datis substituisset ac substituti fratris filii post mortem pueri matrem eius partus subiecti ream postulassent, ut hereditatem patrui legitimam optinerent: victis auferendam esse partem hereditatis ex causa substitutionis respondi, quia ex testamento sententiam secundum se dictam non haberent.

Dig. 34.9.16.1

Papinianus 8 resp.

Quoniam stuprum in ea contrahi non placuit, quae se non patroni concubinam esse patitur, eius, qui concubinam habuit, quod testamento relictum est, actio non denegabitur. idque in testamento coccei cassiani clarissimi viri, qui rufinam ingenuam honore pleno dilexerat, optimi maximique principes nostri iudicaverunt: cuius filiam, quam alumnam testamento cassianus nepti coheredem datam appellaverat, vulgo quaesitam apparuit.

Dig. 34.9.16.2

Papinianus 8 resp.

Cum heredis nomen mutata voluntate pater familias incisis tabulis induxisset atque ideo fisco portionis emolumentum adiudicatum fuisset, eam rem legatariis non obesse, qui retinuerant voluntatem, divo marco placuit, et ideo cum suo onere fiscum succedere.

Dig. 34.9.17

Papinianus 13 resp.

Heredem, qui sciens defuncti vindictam insuper habuit, fructus omnes restituere cogendum existimavi nec probe desideraturum actionem confusam restitui: deceptum autem ignoratione facti bonae fidei possessoris defensionem habiturum ante motam scilicet controversiam, si ratio fructuum subducatur, nec improbe confusam actionem reddi postulaturum.

Dig. 34.9.18pr.

Papinianus 15 resp.

Eum, qui tacitum fideicommissum in fraudem legis suscepit, eos quoque fructus, quos ante litem motam percepit, restituere cogendum respondi, quod bonae fidei possessor fuisse non videtur exemplo bonorum fisco vindicatorum. post motam de tacito fideicommisso controversiam ante pretia fructuum percepta cum usuris esse restituenda respondi, sed omnium fructuum quorum pretia percepta fuerant: quod si fructus in usu habuit, eorum pretia tantum restitui satis erit. sed divus severus bonorum tacite relictorum citra distinctionem temporis fructus dumtaxat deberi, non etiam usuras eorum benigne decrevit: quo iure utimur.

Dig. 34.9.18.1

Papinianus 15 resp.

Bonis universis ex causa taciti fideicommissi fisco restitutis heredem onus aeris alieni non spectare convenit: nec aliud servatur morte non defensa. si quid tamen ob aditam hereditatem actionibus aut servitutibus confusis amiserit, auxilio restitutionis non merebitur.

Dig. 34.9.18.2

Papinianus 15 resp.

Pro parte heres institutus praedii legatum acceperat et in hereditate non capienti restituendi tacitum ministerium susceperat. quamquam legatum pro ipsius parte non constitisset ideoque portionem istam pro herede possideret, tamen ei praedium integrum esse relinquendum respondi: neque enim rationem iuris ac possessionis varietatem inducere divisionem voluntatis.

Dig. 34.9.19

Paulus 16 resp.

Respondit, si scriptis heredibus ideo hereditas ablata est, quod testator aliud testamentum mutata voluntate facere voluit et impeditus ab ipsis est, ab universo iudicio priore recessisse eum videri.

Dig. 34.9.20

Hermogenianus 3 iuris epit.

Ei, qui mortem uxoris non defendit, ut indigno dos aufertur.

Dig. 34.9.21

Paulus 5 sent.

Portiones quoque eorum fisco vindicantur, qui mortem libertorum suspecto decedentium non defenderunt: omnes enim heredes vel eos qui loco heredis sunt officiose agere circa defuncti vindictam convenit.

Dig. 34.9.22

Tryphonus 5 disp.

Tutorem, qui pupilli sui nomine falsum vel inofficiosum testamentum dixit, non perdere sua legata, si non optinuerit, optima ratione defenditur et, si libertum patris pupilli sui nomine capitis accusaverit, non repelli a bonorum possessione contra tabulas, quia officii necessitas et tutoris fides excusata esse debet. nec quisquam iudicum calumnia notabit tutorem, qui non suis simultatibus accusationem sub nomine pupilli instituit, sed cogente forte matre pupilli vel libertis patris instantibus. et si tutor reum aliquem postulaverit pupilli nomine et ideo non sit exsecutus, quod interim ad pubertatem pupillus pervenerit, non oportet dici in turpillianum eum senatus consultum incidisse. discreta sunt enim iura, quamvis plura in eandem personam devenerint, aliud tutoris, aliud legatarii: et cum non suae personae iure, sed pupilli accusaverit, propriam poenam mereri non debet. denique pupillo relicta in eo testamento, nisi a principe conservata sint, pereunt: adeo ille est accusator, is defensor et quasi patronus. idem et sabinus libris ad vitellium scripsit.

Dig. 34.9.23

Gaius l.S. de tac. fideic.

Si quilibet heres ex cuiuscumque testamento tacite rogatus fuerit, ut quadrantem, quem legis falcidiae beneficio retinuit, non capienti restituat, aeque locus erit senatus consulto: neque enim multum intererit inter tale fideicommissum et cum quis id, quod ad se ex hereditate pervenerit, restituere rogatus sit.

Dig. 34.9.24

Papinianus 18 quaest.

Si testamentum patris iure factum filius negavit, quoniam de iure disputavit, non iudicium impugnavit aut accusavit, retinet defuncti voluntatem.

Dig. 34.9.25

Papinianus 14 resp.

Si gener socerum heredem reliquerit, taciti fideicommissi suspicionem sola ratio paternae affectionis non admittit.

Dig. 34.9.26

claud. not. ad scaev. 30 Dig.

Si vivo testatore decesserit is, cui illicite legatum relictum erat, non fisco hoc vindicatur, sed apud eum a quo relictum est remanet.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER QUINTUS TRICESIMUS

Dig. 35.1.0. De condicionibus et demonstrationibus et causis et modis eorum, quae in testamento scribuntur.
Dig. 35.2.0. Ad legem falcidiam.
Dig. 35.3.0. Si cui plus, quam per legem falcidiam licuerit, legatum esse dicetur.

Dig. 35.1.0.R rubrica: de condicionibus et demonstrationibus et causis et modis eorum, quae in testamento scribuntur.

Dig. 35.1.1pr.

Pomponius 3 ad q. muc.

Legatis quae relinquuntur aut dies incertus aut condicio adscribitur aut, si nihil horum factum sit, praesentia sunt, nisi si vi ipsa condicio insit.

Dig. 35.1.1.1

Pomponius 3 ad q. muc.

Cum dies certus adscriptus est, quamvis dies nondum venerit, solvi tamen possunt, quia certum est ea debitu iri.

Dig. 35.1.1.2

Pomponius 3 ad q. muc.

Dies autem incertus est, cum ita scribitur " heres meus cum morietur, decem dato": nam diem incertum mors habet eius. et ideo si legatarius ante decesserit, ad heredem eius legatum non transit, quia non cessit dies vivo eo ^ ea^, quamvis certum fuerit moriturum heredem.

Dig. 35.1.1.3

Pomponius 3 ad q. muc.

Inest autem condicio legati, veluti cum ita legamus: " quod ex arescusa natum fuerit, heres dato" aut " fructus, qui ex eo fundo percepti fuerint, heres dato" aut " servum, quem alii non legavero, seio dato".

Dig. 35.1.2

Ulpianus 5 ad sab.

Condicionum quaedam sunt, quae quandoque impleri possunt etiam vivo testatore, ut puta " si navis ex asia venerit", nam quandoque venerit navis, condicioni paritum videtur: quaedam, quae non nisi post mortem testatoris " si decem dederit" " si capitolium ascenderit": nam ut paruisse quis condicioni videatur, etiam scire debet hanc condicionem insertam: nam si fato fecerit, non videtur obtemperasse voluntati.

Dig. 35.1.3

Ulpianus 6 ad sab.

Optinuit impossibiles condiciones testamento adscriptas pro nullis habendas.

Dig. 35.1.4pr.

Pomponius 3 ad sab.

Si his legatum est, quibus patronus legata praestat, temperare debet praetor condicionem, ut et patrono et heredibus scriptis pro portione dentur condicionis explendae gratia.

Dig. 35.1.4.1

Pomponius 3 ad sab.

Si ita scriptum sit: " si in quinquennio proximo titio filius natus non erit, tum decem seiae heres dato", si titius ante mortuus sit, non statim seiae decem deberi, quia hic articulus " tum" extremi quinquennii tempus significat.

Dig. 35.1.5pr.

Paulus 2 ad sab.

Condicionibus pupillus et sine tutoris auctoritate parere potest. nec quem moveri, quod expleta condicione necessarius heres aliquando esse potest: nam hoc iure potestatis fieri, non condicionis expletae.

Dig. 35.1.5.1

Paulus 2 ad sab.

Item servus vel filius familias sine iussu patris vel domini condicionem implere possunt, quia eo facto nemo fraudatur.

Dig. 35.1.6pr.

Pomponius 3 ad sab.

Multa testamento non committitur ab herede vel legatario vel eo qui ex ultima voluntate aliquid lucratur, qui alicuius arbitratu monumentum facere iussus sit, si is cuius arbitrium est non vivat vel adesse non possit aut rei arbitrari nolit.

Dig. 35.1.6.1

Pomponius 3 ad sab.

Si servos certos quis manumisisset, heres esse iussus erat. quibusdam ex his ante mortuis neratius respondit defici eum condicione nec aestimabat, parere posset condicioni nec ne. sed servius respondit, cum ita esset scriptum " si filia et mater mea vivent" altera iam mortua, non defici condicione. idem est et apud labeonem scriptum. sabinus quoque et cassius quasi impossibiles eas condiciones in testamento positas pro non scriptis esse, quae sententia admittenda est.

Dig. 35.1.7pr.

Ulpianus 18 ad sab.

Mucianae cautionis utilitas consistit in condicionibus, quae in non faciendo sunt conceptae, ut puta " si in capitolium non ascenderit" " si stichum non manumiserit" et in similibus: et ita aristoni et neratio et iuliano visum est: quae sententia et constitutione divi pii comprobata est. nec solum in legatis placuit, verum in hereditatibus quoque idem remedium admissum est.

Dig. 35.1.7.1

Ulpianus 18 ad sab.

Unde si uxor maritum suum, cui dotem promiserat, ita heredem scripserit ex parte: " si dotem, quam ei promisi, neque petierit neque exegerit", denuntiare eum posse coheredi paratum se accepto facere dotem vel cavere et ita adire posse hereditatem. sed si ex asse sit institutus maritus sub ea condicione, quoniam non est cui caveat, non impediri eum, quo minus adeat hereditatem: nam iure ipso videtur impleta condicio eo, quod non est, quem possit de dote convenire ipse adeundo hereditatem.

Dig. 35.1.8

Pomponius 5 ad sab.

Si quis ita legaverit: " dum uxor mea cum filio erit, heres meus ei tantum dato", si ea latitans patronum de medio discessit, ut tamen consilium retineret habendi secum liberos, deberi ei legatum trebatius et labeo aiunt, quia non omne momentum exigendum sit ut cum liberis sit, sed si eam mentem et id propositum habeat, ne filium a semet dimittat neve per eam stet, quo minus cum ea filius educetur.

Dig. 35.1.9

Ulpianus 20 ad sab.

Solemus dicere eum, qui in tempus liberorum uxori legat, de his non sensisse, quos iam tunc uxor habuit, cum testaretur maritus.

Dig. 35.1.10pr.

Ulpianus 23 ad sab.

Haec condicio " filiae meae cum nupserit" talis est, ut qui testatus est impleri solummodo condicionem voluerit, non satis egerit quando: et ideo et si vivo testatore nupserit post testamentum factum, inpleta condicio videtur, praesertim cum condicio haec talis est, ut semel impleri debeat. sed enim non omnes coniunctiones implent condicionem: puta enim nondum nubilis aetatis in domum mariti deducta non paruit condicioni. sed et si ei coniuncta sit, cuius nuptiis ei interdictum sit, idem dicemus. an tamen nubendo postea parere condicioni possit, quasi non nupserit, dubitari potest: et si testator de primo nuptiali iugo sensit, puto defectam condicione: benigne tamen dicendum est nondum impletam condicionem defectam.

Dig. 35.1.10.1

Ulpianus 23 ad sab.

Si sic legatum sit " si navis ex asia venerit" et ignorante testatore navis venerit testamenti facti tempore, dicendum pro impleta haberi. et si cui sic legatum est " cum pubes erit", simili modo hoc erit dicendum.

Dig. 35.1.11pr.

Paulus 4 ad sab.

Si iam facta sint quae condicionis loco ponuntur et sciat testator, quae iterum fieri possunt exspectentur ut fiant: si vero nesciat, praesenti debeantur.

Dig. 35.1.11.1

Paulus 4 ad sab.

Item sciendum est promiscuas condiciones post mortem impleri oportere, si in hoc fiant, ut testamento pareatur, veluti " si capitolium ascenderit" et similia, non promiscuas etiam vivo testatore existere posse, veluti " si titius consul factus fuerit".

Dig. 35.1.12

Ulpianus 24 ad sab.

Si ita legatum sit: " quoniam filius maior ex arca mea decem sustulit, heres minor filius decem e medio sumito", debetur legatum, quia idcirco relictum est, ut condicio filiorum exaequaretur. et sane haec causa est: nam causa in praeteritum, poena in futurum confertur.

Dig. 35.1.13

Paulus 5 ad sab.

Si fundus alicui legatus fuerit, si pupillo vel furioso pecuniam dedisset, videtur explesse condicionem curatori vel tutori dando.

Dig. 35.1.14

Pomponius 8 ad sab.

" titius si statuas in municipio posuerit, heres esto". si paratus est ponere, sed locus a municipibus ei non datur, sabinus proculus heredem eum fore et in legato idem iuris esse dicunt.

Dig. 35.1.15

Ulpianus 35 ad sab.

Cui fuerit sub hac condicione legatum " si in familia nupsisset", videtur impleta condicio statim atque ducta est uxor, quamvis nondum in cubiculum mariti venerit. nuptias enim non concubitus, sed consensus facit.

Dig. 35.1.16

Gaius 1 de testam. ad ed. pr

In his, quae extra testamentum incurrerent, possunt res ex bono et aequo interpretationem capere: ea vero, quae ex ipso testamento orerentur, necesse est secundum scripti iuris rationem expediri.

Dig. 35.1.17pr.

Gaius 2 de legatis ad ed. pr

Demonstratio falsa est, veluti si ita scriptum sit: " servum stichum, quem de titio emi" " fundum tusculanum, qui mihi a seio donatus est". nam si constat, de quo homine, de quo fundo senserit testator, ad rem non pertinet, si is, quem emisse significavit, donatus esset, aut quem donatum sibi esse significaverat, emerit.

Dig. 35.1.17.1

Gaius 2 de legatis ad ed. pr

Igitur et si ita servus legatus sit: " stichum cocum", " stichum sutorem titio lego", licet neque cocus neque sutor sit, ad legatarium pertinebit, si de eo sensisse testatorem conveniat: nam et si in persona legatarii designanda aliquid erratum fuerit, constat autem, cui legare voluerit, perinde valet legatum ac si nullus error interveniret.

Dig. 35.1.17.2

Gaius 2 de legatis ad ed. pr

Quod autem iuris est in falsa demonstratione, hoc vel magis est in falsa causa, veluti ita " titio fundum do, quia negotia mea curavit", item " fundum titius filius meus praecipito, quia frater eius ipse ex arca tot aureos sumpsit": licet enim frater huius pecuniam ex arca non sumpsit, utile legatum est.

Dig. 35.1.17.3

Gaius 2 de legatis ad ed. pr

At si condicionaliter concepta sit causa, veluti hoc modo: " titio, si negotia mea curavit, fundum do": " titius filius meus, si frater eius centum ex arca sumpsit, fundum praecipito", ita utile erit legatum, si et ille negotia curavit et huius frater centum ex arca sumpsit.

Dig. 35.1.17.4

Gaius 2 de legatis ad ed. pr

Quod si cui in hoc legatum sit, ut ex eo aliquid faceret, veluti monumentum testatori vel opus aut epulum municipibus faceret, vel ex eo ut partem alii restitueret: sub modo legatum videtur.

Dig. 35.1.18

Gaius 18 ad ed. provinc.

Is, cui sub condicione non faciendi aliquid relictum est, ei scilicet cavere debet muciana cautione, ad quem iure civili, deficiente condicione, hoc legatum eave hereditas pertinere potest.

Dig. 35.1.19pr.

Ulpianus 5 disp.

In condicionibus primum locum voluntas defuncti optinet eaque regit condiciones. denique et in ea condicione " si filia mea cum titio nupta erit" placuit non semper mortis tempus observari, sed voluntate patrocinante tardius produci.

Dig. 35.1.19.1

Ulpianus 5 disp.

Haec scriptura " si primus heres erit, damnas esto dare" pro condicione non est accipienda: magis enim demonstravit testator, quando legatum debeatur, quam condicionem inseruit: nisi forte hoc animo fuerat testator, ut faceret condicionem. proinde nec illud dicendum erit facere condicionem: " quidquid mihi ephesi oportet dari, hoc do lego". sed si sic leget: " si primus mihi heres non erit, damnas esto secundus dare" et primus heres exstitit, legatum non debebitur: si primus adierit cum secundo, non exstitisse condicionem nequaquam ambigendum est.

Dig. 35.1.19.2

Ulpianus 5 disp.

Si patronus contra tabulas bonorum possessione accepta debitam portionem occupet, legata quae sic data sunt " si patronus heres non erit " non debet coheres patroni praestare.

Dig. 35.1.19.3

Ulpianus 5 disp.

Si a primo ita legatum est " si secundus heres non erit, viginti titio dato " , simili modo a secundo eidem titio ita legatum est: " si primus heres non erit " et ambo heredes exstiterint, legati condicio deficiet: si alter heres exstitit, alter heres non exstitit, legatum debebitur.

Dig. 35.1.20

Marcellus not. ad iul. 27 Dig.

Non dubitamus, quin turpes condiciones remittendae sunt: quo in numero plerumque sunt etiam iurisiurandi.

Dig. 35.1.21

Iulianus 31 Dig.

Multum interest, condicio facti an iuris esset: nam huiusmodi condiciones " si navis ex asia venerit" " si titius consul factus erit", quamvis impletae essent, impedient heredem circa adeundam hereditatem, quamdiu ignoraret eas impletas esse: quae vero ex iure venient, in his nihil amplius exigendum, quam ut impletae sint. veluti si quis se filium familias existimat, cum sit pater familias, poterit adquirere hereditatem: quare et ex parte heres scriptus, qui ignorat, an tabulae testamenti apertae sint, adire hereditatem poterit.

Dig. 35.1.22

Iulianus 35 Dig.

Quotiens sub condicione mulieri legatur " si non nupserit" et eiusdem fidei commissum sit, ut titio restituat, si nubat, commode statuitur et si nupserit, legatum eam petere posse et non esse cogendam fideicommissum praestare.

Dig. 35.1.23

Iulianus 43 Dig.

Qui duobus heredibus decem dare iussus est et fundum sibi habere, verius est, ut condicionem scindere non possit, ne etiam legatum scindatur. igitur quamvis alteri quinque dederit, nullam partem fundi vindicabit, nisi alteri quoque adeunti hereditatem reliqua quinque numeraverit aut illo omittente hereditatem ei, qui solus adierit hereditatem, tota decem dederit.

Dig. 35.1.24

Iulianus 55 Dig.

Iure civili receptum est, quotiens per eum, cuius interest condicionem impleri, fit, quo minus impleatur, ut perinde habeatur, ac si impleta condicio fuisset: quod plerique et ad legata et ad heredum institutiones perduxerunt. quibus exemplis stipulationes quoque committi quidam recte putaverunt, cum per promissorem factum esset, quo minus stipulator condicioni pareret.

Dig. 35.1.25

Iulianus 69 Dig.

Cum vir uxori, quandoque liberos habebit, fundum legat, si mulier divortio facto liberos ex alio procreaverit, deinde soluto secundo matrimonio ad priorem maritum redierit, non intellegitur expleta condicio, quod testatorem verisimile non est de his liberis sensisse, qui se vivo ex alio suscepti fuissent.

Dig. 35.1.26pr.

Iulianus 82 Dig.

Haec scriptura " si viginti dederit aut iuraverit se aliquid facturum" unam condicionem exprimit habentem duas partes: quare si quicumque heres scriptus erit sub condicione " si iuraverit se decem daturum" aut " monumentum facturum", quamvis verbis edicti ad hereditatem vel legatum admittatur, tamen compellitur facere id quod facturum se iurare iussus est solo iureiurando remisso.

Dig. 35.1.26.1

Iulianus 82 Dig.

Cum eadem res alteri pure, alteri sub condicione legatur aut cum alter pure, alter sub condicione heres scriptus est, pars legati vel hereditatis deficiente condicione adcrescit etiam heredi eius, cui pure legatum vel hereditas data est, si tamen hereditas eius adita fuerit.

Dig. 35.1.27

Alfenus 5 Dig.

In testamento quidam scripserat, ut sibi monumentum ad exemplum eius, quod in via salaria esset publii septimii demetrii, fieret: nisi factum esset, heredes magna pecunia multare et cum id monumentum publii septimii demetrii nullum repperiebatur, sed publii septimii damae erat, ad quod exemplum suspicabatur eum qui testamentum fecerat monumentum sibi fieri voluisse, quaerebant heredes, cuiusmodi monumentum se facere oporteret et, si ob eam rem nullum monumentum fecissent, quia non repperirent, ad quod exemplum facerent, num poena tenerentur. respondit, si intellegeretur, quod monumentum demonstrare voluisset is qui testamentum fecisset, tametsi in scriptura mendum esset, tamen ad id, quod ille se demonstrare animo sensisset, fieri debere: sin autem voluntas eius ignoraretur, poenam quidem nullam vim habere, quoniam ad quod exemplum fieri iussisset, id nusquam exstaret, monumentum tamen omnimodo secundum substantiam et dignitatem defuncti exstruere debere.

Dig. 35.1.28pr.

Paulus 2 epit. alf. Dig.

Filiae suae ita quis legavit: " si attia filia mea arbitratu lucii titii nupserit, ei tot heres meus dato". titio ante testatorem mortuo attia nupserat: quaerebatur, an legatum ei deberetur. respondit deberi.

Dig. 35.1.28.1

Paulus 2 epit. alf. Dig.

" attia uxor mea optato philargyrum puerum, agatheam ancillam, qui mei erunt cum moriar": is qui testamentum fecit agatheam, quam testamenti tempore habuit, vendidit et postea ancillas emit, ex his uni agatheae nomen imposuit: quaesitum est, an haec legata videretur. respondit legatam videri.

Dig. 35.1.29

Iulianus 1 ad urs. ferocem.

Haec condicio " si in capitolium ascenderit" sic recipienda est " si cum primum potuerit capitolium ascendere".

Dig. 35.1.30

Iulianus 1 ex minic.

Si separatim mihi totus fundus pure, tibi sub condicione legatus fuerit et tu decesseris, antequam condicio exstiterit: non habebo necessitatem implere condicionem, utpote cum, etiamsi condicio defecerit, pars quam vindicaturus eras mihi adcrescat.

Dig. 35.1.31

Africanus 2 quaest.

In testamento ita erat scriptum: " stichus et pamphila liberi sunto et si in matrimonium coierint, heres meus his centum dare damnas esto": stichus ante apertas tabulas decessit. respondit partem stichi defectam esse: sed et pamphilam defectam condicione videri ideoque partem eius apud heredem remansuram. sed et si uterque viveret et stichus nollet eam uxorem ducere, cum mulier parata esset nubere, illi quidem legatum deberetur, stichi autem portio inutilis fiebat. nam cum uni ita legatum sit: " titio, si seiam uxorem duxerit, heres meus centum dato", si quidem seia moriatur, defectus condicione intellegitur: at si ipse decedat, nihil ad heredem suum eum transmittere, quia morte eius condicio defecisse intellegitur: utroque autem vivente si quidem ipse nolit uxorem ducere, quia ipsius facto condicio deficit, nihil ex legato consequitur, muliere autem nolente nubere, cum ipse paratus esset, legatum ei debetur.

Dig. 35.1.32

Africanus 9 quaest.

Quamvis rationes reddere nihil aliud sit quam reliqua solvere, tamen si et statuliberi et heredis culpa, sine fraude tamen servi minus solutum sit et bona fide redditas esse rationes existimatum fuerit, liberum fore: et nisi ita observetur, neminem, qui sub condicione ita manumissus esset, umquam ad libertatem perventurum, si per imprudentiam minus solutum esset. haec ita accipienda ait, si quando is, qui rationes reddere iussus sit, per aliquem errorem sine dolo malo ita rationes ediderit, ut dominus quoque circa computationem erraret.

Dig. 35.1.33pr.

Marcianus 6 inst.

Falsa demonstratio neque legatario neque fideicommissario nocet neque heredi instituto, veluti si fratrem dixerit vel sororem vel nepotem vel quodlibet aliud: et hoc ita iuris civilis ratione et constitutionibus divorum severi et antonini cautum est.

Dig. 35.1.33.1

Marcianus 6 inst.

Sed si controversia sit de nomine inter plures: qui probaverit sensisse de se defunctum, ille admittetur.

Dig. 35.1.33.2

Marcianus 6 inst.

Sed si cui quasi liberto, id est inter libertos legatum fuerit, non idcirco legatum amittit, quia postea anulos ab imperatore acceperit: nam honor eius auctus est, non condicio mutata: et ita divi severus et antoninus rescripserunt.

Dig. 35.1.33.3

Marcianus 6 inst.

Si quis legaverit rem ita, si mortis tempore eius erit, nec tunc eius invenitur, nec aestimatio eius legari videbitur.

Dig. 35.1.33.4

Marcianus 6 inst.

Quid ergo, si quis ita scripserit: " stichum et pamphilum titio do lego, si mei erunt cum moriar" et unum ex his alienaverit, an vel alter possit a legatario vindicari? placet vindicari, nam hunc sermonem, licet pluralis sit, pro eo oportet accipi, atque si separatim dixisset: " stichum, si meus erit cum moriar".

Dig. 35.1.34pr.

Florus 11 inst.

Nominatim alicui legatur ita " lucio titio" an per demonstrationem corporis vel artificii vel officii vel necessitudinis vel adfinitatis, nihil interest: nam demonstratio plerumque vice nominis fungitur. nec interest, falsa an vera sit, si certum sit, quem testator demonstraverit.

Dig. 35.1.34.1

Florus 11 inst.

Inter demonstrationem et condicionem hoc interest, quod demonstratio plerumque factam rem ostendit, condicio futuram.

Dig. 35.1.35

Pomponius l.S. reg.

Levissima libertatis condicio ea intellegenda est, quae ad libertatem perducit, quamvis natura gravior et durior sit.

Dig. 35.1.36pr.

Marcellus l.S. resp.

Publius maevius testamento suo ita cavit: " quisquis mihi heres heredesve erunt, do lego fideique eorum committo, uti dent gaio seio sororis meae filio in honorem consulatus quadringenta": vivo maevio seius consul designatus est et munus edidit: deinde ex calendis ianuariis consulatum ingressus est atque ita maevius decessit: quaero, an quadringenta seio debeantur. Marcellus respondit deberi,

Dig. 35.1.36.1

Marcellus l.S. resp.

Titia codicillis de praediis, quae testamento septiciae reliquerat, ita cavit: " a te peto, septicia, ut filio meo, cum annorum sedecim esset, eadem praedia restitueres: quod si filius meus sedecim annos non impleverit, peto uti reddas ea restituas publio maevio et gaio cornelio". quaero, cum septicia decesserit, deinde filius quintum decimum annum agens defunctus sit, an repraesentetur fideicommissum quinto decimo anno impleto et heredes septiciae restituere id publio maevio et gaio cornelio debeant. Marcellus respondit septiciam ius, quod in his praediis habuisset, heredi suo reliquisse: etenim videri contra voluntatem testatricis repraesentationem fideicommissi desiderari, ut amplius ad substitutos perveniat, quam ad puerum pervenire vel a septicia vel ab heredibus potuisset. et verba quidem videntur repraesentare fideicommissum, sed non est verisimile, ut maturius voluerit testatrix ad substitutos id transferre. nec quicquam mutat, quod septicia ante decessit: nam etsi puer viveret, non prius septiciae heredes quam septicia possent conveniri.

Dig. 35.1.37

Paulus l.S. ad l. fuf. canin.

Si quis eum, quem ipse manumittere non poterat, legaverit ita, ut eum legatarius manumitteret, etsi a legato non repellatur, non est compellendus, ut manumittat, quoniam totiens secundum voluntatem testatoris facere compellitur, quotiens contra legem nihil sit futurum. idque neratius scripsit, et tamen a legato non esse eum repellendum, quoniam magis legatarium aliquid commodum testator in hoc servo quam heredem habere voluisset.

Dig. 35.1.38

Paulus l.S. de iure codicill.

Si ita scripsero: " quantum codicillis titio legavero", licet codicillis legatum explicetur, tamen ex testamento valet solaque quantitas in codicillo delata est. nam et apud veteres legata talia fuere: " quantum ei per epistulam scripsero": " quantum ex illa actione detraxero, heres dato".

Dig. 35.1.39pr.

Iavolenus 1 ex post. lab.

Quae condicio ad genus personarum, non ad certas et notas personas pertineat, cum existimamus totius esse testamenti et ad omnes heredes institutos pertinere: at quae condicio ad certas personas accommodata fuerit, eam referre debemus ad eum dumtaxat gradum, quo hae personae institutae fuerunt.

Dig. 35.1.39.1

Iavolenus 1 ex post. lab.

Cum ita in testamento scriptum erat " ut aliquid in foro fiat" neque adscriptum erat in quo foro, labeo ait, si non appareat, quid mortuus senserit, in eius municipii foro faciendum, in quo is qui testamentum fecerit domicilium habuerit: quam sententiam ego quoque probo.

Dig. 35.1.40pr.

Iavolenus 2 ex post. lab.

Quibus diebus vicinus tuus te via publica, cum ad parendum condicioni ire velles, ire prohibuerit nec per te staret, quo minus agendo ob calumnias eum summoveas, hi dies condicioni non imputabuntur.

Dig. 35.1.40.1

Iavolenus 2 ex post. lab.

Quidam ita legaverat: " si publius cornelius impensam, quam in fundum seianum feci, heredi meo dederit, tum heres meus publio cornelio fundum seianum dato". cascellius aiebat etiam pretium fundi dari debere, ofilius impensae verbo negat pretium significari, sed eos dumtaxat sumptus, quos in eum posteaquam emptus esset fecit. idem cinna scribit adiecto eo, quod non deductis fructibus impensarum ratio haberi debeat: et hoc magis verum puto.

Dig. 35.1.40.2

Iavolenus 2 ex post. lab.

Quidam titio centum legaverat, deinde infra ita iusserat: " quas pecunias cuique legavi, eas heres meus, si mater mea moritur, dato": mortuo patre familias titius vixerat et viva matre familias decesserat. mortua matre heredibus titii legatum deberi ofilius respondit, quoniam non sub condicione esset legatum, sed ante legatum pure, deinde dies solvendi adiecta. videamus, inquit labeo, ne id falsum sit, quia nihil intersit, utrum ita scribatur: " quas pecunias cuique legavi, eas heres meus, si mater mea moritur, dato" an ita: " nisi mater mea moritur, ne dato": utrubique enim sub condicione vel datum vel ademptum esse legatum. labeonis responsum probo.

Dig. 35.1.40.3

Iavolenus 2 ex post. lab.

Dominus servo aureos quinque eius ^ ^ legaverat: " heres meus sticho servo meo, quem testamento liberum esse iussi, aureos quinque, quos in tabulis debeo, dato". nihil servo legatum esse namusa servium respondisse scribit, quia dominus servo nihil debere potuisset: ego puto secundum mentem testatoris naturale magis quam civile debitum spectandum esse, et eo iure utimur.

Dig. 35.1.40.4

Iavolenus 2 ex post. lab.

Qui dotalem fundum nullum habebat, ita legaverat: " fundum cornelianum, quem illa mihi doti dedit, ei heres dato". labeo ofilius trebatius responderunt fundum nihilo minus legatum esse, quia, cum fundus cornelianus in rerum natura sit, demonstratio falsa legatum non peremit.

Dig. 35.1.40.5

Iavolenus 2 ex post. lab.

Thermus minor quorum arbitratu monumentum sibi fieri vellet testamento scripserat, deinde ita legaverat: " luciis publiis corneliis ad monumentum meum aedificandum mille heres meus dato". trebatius respondit pro eo ^ ea^ habendum ac si ita legatum esset, si satisdedissent se ita id monumentum ex ea pecunia facturos. labeo trebatii sententiam probat, quia haec mens testantis fuisset, ut ea pecunia in monumentum consumeretur: idem et ego et proculus probamus.

Dig. 35.1.41

Ulpianus 34 ad ed.

Legata sub condicione relicta non statim, sed cum condicio exstiterit deberi incipiunt, ideoque interim delegari non potuerunt.

Dig. 35.1.42

Africanus 2 quaest.

Filio familias legatum est sub hac condicione " si in potestate patris mansisset": magis patri legatum videri ait et patrem suo nomine legatum petere. idem iuris esse et si servo similiter legetur: argumentum rei est, quod et si cibaria servis titii legentur, procul dubio domini est, non servorum legatum.

Dig. 35.1.43pr.

Paulus 8 ad plaut.

Plautius. rogatus est heres a liberto testatore, ut perceptis sibi decem totam hereditatem revenderet: postea patronus defuncti bonorum possessionem contra tabulas petierat et partem hereditatis, quae debebatur, abstulerat. proculus cassius fideicommissarium pro rata quod solvit repetere debere aiunt. paulus. hoc iure utimur: nam quemadmodum praestatione fideicommissorum et legatorum heres exoneratur per praetorem, ita etiam ipse partem consequi debet.

Dig. 35.1.43.1

Paulus 8 ad plaut.

Diversum est, si falcidia interveniat et minuat legatum: nam his casibus nihil repetetur, quia in solidum condicioni paretur.

Dig. 35.1.43.2

Paulus 8 ad plaut.

Item scinditur ius dandi, si is cui legatum est non potest partem hereditatis sibi relictam totam capere: nam verius est partem eum praestare debere, partem illos, qui auferunt ab eo, quod plus relictum est, quam a lege conceditur.

Dig. 35.1.43.3

Paulus 8 ad plaut.

Neratius libro primo responsorum scribit, ex duobus scriptis heredibus si unus rogatus sit tibi hereditatem restituere, tu titio certam summam dare, et beneficio legis falcidiae in restituendo heres utatur, quanto minus tibi praestiterit, tanto minus te titio praestare non esse iniquum.

Dig. 35.1.44pr.

Paulus 9 ad plaut.

Qui heredi dare iussus est, servo alieno instituto non domino dare debet. nam et si alio herede instituto iussus est servo titii dare, ipsi servo datur, quia quae facti sunt, non transeunt ad dominum, quemadmodum, si mihi aut servo titii stipulatus sim, non titio, sed servo eius dari potest: et haec vera sunt.

Dig. 35.1.44.1

Paulus 9 ad plaut.

Sed cum heredi dare iussus est, videamus, ne domino dandum sit: et consequens est et hic servo dari.

Dig. 35.1.44.2

Paulus 9 ad plaut.

Certe statuliber quin domino dare debeat, non est dubium.

Dig. 35.1.44.3

Paulus 9 ad plaut.

Contra qui domino debet dare, non implet condicionem dando servo eius, nisi si dominus consenserit: nemo enim in tali specie condicionem nesciente me vel nolente implere potest.

Dig. 35.1.44.4

Paulus 9 ad plaut.

Cum hereditas ex trebelliano senatus consulto restituta est, heredi dandum est, ut impleatur condicio: nec hoc restituendum est ex causa fideicommissi.

Dig. 35.1.44.5

Paulus 9 ad plaut.

Sed cum suspectam adiit et restituit, dubitabatur, an ei auferendum sit: et benignus est et in hoc casu nihil ei auferri.

Dig. 35.1.44.6

Paulus 9 ad plaut.

Si autem me herede instituto controversia mihi fiet hereditatis, si cavet legatarius evicta hereditate reddi legatum, et ipsi cavendum est reddi quod dedit.

Dig. 35.1.44.7

Paulus 9 ad plaut.

Sed si iussus sis mihi decem dare et accipere hereditatem ex senatus consulto, decem tibi ex causa fideicommissi non restituam.

Dig. 35.1.44.8

Paulus 9 ad plaut.

Si duorum servo legatum sit sub condicione dandi, non posse per partes condicioni pareri quidam aiunt, sed semel dandam pecuniam: sed ego contra puto.

Dig. 35.1.44.9

Paulus 9 ad plaut.

Si pars rei legatae usucapta sit, an in solidum parendum sit, dubito. et potest dici pro parte parendum ex sententia testatoris.

Dig. 35.1.44.10

Paulus 9 ad plaut.

Plautius. uni ex heredibus fundum legavi, si centum heredibus dedisset: deducet suam partem hereditariam et reliquam summam heredibus pro portione eorum dabit. at si heres ex parte ita institutus esset, si heredibus decem dedisset, non aliter esset heres, quam si tota decem coheredibus dedisset, quia non ante ad hereditatem admitteretur, quam si omnem summam dedisset. nam cum et servus testamento liber et ex parte heres ita scriptus esset, si heredibus decem dedisset, constitit non aliter eum liberum heredemque futurum, quam si tota decem coheredibus dedisset. paulus: hoc iure utimur.

Dig. 35.1.45

Paulus 16 ad plaut.

Iulianus ait, si heredi legatarius, cui sub condicione legatum erat " si heredi decem dederit" id, quod ei deberet heres, accepto tulisset, non quidem videri condicioni paruisse, quasi dederit: sed quasi per heredem stet, quo minus pareat, posse petere legatum, quasi exstiterit condicio.

Dig. 35.1.46

Paulus 3 ad vitell.

Si in diem exempli gratia centensimum imperatum est statulibero, ut pecuniam solveret, neque initium temporis eius quod futurum esset, adscriptum est, adita hereditate cedere dies incipit, quia absurdum visum est ante diem praeterire, quam is existeret, quem oportet accipere. et hoc in omnibus, qui heredi dare iussi sunt, dicendum est: igitur et legatario ex adita hereditate ad parendum condicioni tempus computabitur.

Dig. 35.1.47

Marcellus 14 Dig.

Servo libertatem ita dedit: " ille, si meus erit, liber esto": legatum vel hereditatem sine condicione ei dedit: deinde eum alienavit. debebitur domino eius legatum vel hereditas et iussu eius adiri poterit: nam id expressit " si meus erit" in libertate danda, quo futurum erat ut impediretur libertas, etiamsi expressum non esset. saepenumero tamen mutatur rei effectus, quamquam id expresserit testator, quod et si non fecisset, inesset tamen.

Dig. 35.1.48

Marcellus 15 Dig.

Non putabam diem fideicommissi venisse, cum sextum decimum annum ingressus fuisset, cui erat relictum, cum ad annum sextum decimum pervenisset: et ita etiam aurelius imperator antoninus ad appellationem ex germania iudicavit.

Dig. 35.1.49

Celsus 22 Dig.

Si in annos decem heres dare damnatus aut quis liber esse iussus est, novissimo eius temporis die legatum debebitur et libertas optingit.

Dig. 35.1.50

Ulpianus 1 de off. cons.

Si cui libertas data sit directo sub hac condicione " si rationes reddidisset", arbitrum a consulibus divus pius dari permisit his verbis: " aditi a vobis amplissimi consules arbitrum dabunt, qui excussis rationibus non tantum quae reliqua sunt epaphroditi constituent, verum etiam quas rationes quaeque instrumenta tradere aut exhibere dominis suis debeat: cuius sententiae cum fuerit satisfactum, non impedietur epaphroditi libertas".

Dig. 35.1.51pr.

Modestinus 5 diff.

Sub diversis condicionibus disiunctim positis liber esse iussus eam condicionem eligere potest, quae sibi levior esse videbitur: legato vero eo modo relicto legatarium novissimae condicioni parere oportet.

Dig. 35.1.51.1

Modestinus 5 diff.

Heredi decem dare iussus et liber esse et heredis heredi dando perveniet ad libertatem: quod non similiter in legatarii persona custodiri publicius scribit.

Dig. 35.1.52

Modestinus 7 diff.

Nonnumquam contingit, ut quaedam nominatim expressa officiant, quamvis omissa tacite intellegi potuissent nec essent offutura. quod evenit, si alicui ita legatur: " titio decem do lego, si maevius capitolium ascenderit". nam quamvis in arbitrio maevii sit, an capitolium ascendat et velit efficere, ut titio legatum debeatur, non tamen poterit aliis verbis utiliter legari: " si maevius voluerit, titio decem do": nam in alienam voluntatem conferri legatum non potest. inde dictum est: expressa nocent, non expressa non nocent.

Dig. 35.1.53

Modestinus l.S. de heuremat.

Si quis servum liberum esse iusserit, si heredi rationes reddidisset, posteaque eum rationes reddere vetuerit quasi puram facturus libertatem, competit ex testamento libertas.

Dig. 35.1.54pr.

Iavolenus 2 ex cass.

Si quis legata, quibus dies adposita non esset, annua bima trima die dari iussit et alicui, cum pubes esset, pecuniam legavit, id quoque legatum annua bima trima die post pubertatem praestandum esse in commentariis gaii scriptum est, quia magis condicio quam dies legato adiecta esset. contra ego sentio, quia fere dies ponitur ad proroganda ea, quae ad praesens tempus, non etiam quae in futurum legata sunt, diesque pubertatis habet aliquam temporis demonstrationem.

Dig. 35.1.54.1

Iavolenus 2 ex cass.

Duobus eadem res, si heredi centum dedissent, legata est: si alter ex his quinquaginta dederit, partem legati consequetur et pars eius, qui non dederit, alteri cum sua condicione adcrescit.

Dig. 35.1.55

Iavolenus 13 epist.

Maevius, cui fundus legatus est, si callimacho, cum quo testamenti factionem non habebat, ducenta dedisset: condicioni parere debet et ducenta dare, ut ad eum legatus fundus pertineat, licet nummos non faciat accipientis: quid enim interest, utrum tali personae dare iubeatur an aliquo loco ponere vel in mare deicere? neque enim illud, quod ad talem personam perventurum est, testamenti nomine, sed mortis causa capitur.

Dig. 35.1.56

Iavolenus 14 epist.

Cui fundus legatus est, si decem dederit, partem fundi consequi non potest, nisi totam pecuniam numerasset. dissimilis est causa, cum duobus eadem res sub condicione legata est: in hac enim quaestione statim a testamento, quo pluribus condicio adposita est, divisa quoque in singulas personas videri potest, et ideo singuli pro sua parte et condicioni parere et legatum capere possunt: nam quamvis summa universe condicionis sit adscripta, enumeratione personarum potest videri esse divisa. in eo vero, quod uni sub condicione legatum est, scindi ex accidenti condicio non debet, et omnis numerus eorum, qui in locum eius substituuntur, pro singulari persona est habendus.

Dig. 35.1.57

Pomponius 9 ad q. muc.

Quaesitum est, an, si iussus fuerit servus quinque operas extraneo dare, ut liber sit, condicio talis sit recipienda, ut, quemadmodum circa pecuniae dationem dicitur, ita et circa praestationem operarum dicamus. sed hoc iure utimur, ut, quemadmodum dictum est, si pecuniam ex peculio suo det extraneo, admitti eum ad libertatem, ita et, si operam praestiterit, necesse sit eum admitti ad libertatem. itaque et in proposito sapienter faciet heres, si impedierit eum, quo minus praestet operas: hac enim ratione servus perveniet quidem ad libertatem, sed operis eius extraneus non utetur.

Dig. 35.1.58

Pomponius 10 ex var. lect.

Si ancillae alienae, cum ea nupsisset, legatum sit, proculus ait utile legatum esse, quia possit manumissa nubere.

Dig. 35.1.59pr.

Ulpianus 13 ad l. iul. et pap.

Intercidit legatum, si ea persona decesserit, cui legatum est sub condicione.

Dig. 35.1.59.1

Ulpianus 13 ad l. iul. et pap.

Quid ergo, si non decesserit, sed in civitate esse desierit? puta alicui legatum " si consul fuerit" et is in insulam deportatus est: numquid non interim exstinguitur legatum, quia restitui in civitate potest? quod probabilius esse arbitror.

Dig. 35.1.59.2

Ulpianus 13 ad l. iul. et pap.

Non idem erit dicendum, si ea poena in eum statuta fuerit, quae irrogat servitutem, quia servitus morti adsimulatur.

Dig. 35.1.60pr.

Paulus 7 ad l. iul. et pap.

In facto consistentes condiciones varietatem habent et quasi tripertitam recipiunt divisionem, ut quid detur, ut quid fiat, ut quid optingat, vel retro ne detur, ne fiat, ne optingat. ex his dandi faciendique condiciones in personas collocantur aut ipsorum, quibus quid relinquitur, aut aliorum: tertia species in eventu ponetur.

Dig. 35.1.60.1

Paulus 7 ad l. iul. et pap.

Fiscus iisdem condicionibus parere debet, quibus persona, a qua ad ipsum quod relictum est pervenit, sicut etiam cum suo onere hoc ipsum vindicat.

Dig. 35.1.61

Ulpianus 8 ad l. iul. et pap.

Si vir uxori ad tempus liberorum legaverit, dubitari potest, an de his dumtaxat filiis sensisset testator qui post mortem eius nati fuissent an et de his, qui vivo eo ab eo suscepti fuissent post testamentum factum, cum manente matrimonio decessisset: verum aequum est proficere, sive vivo marito sive post mortem nascatur.

Dig. 35.1.62pr.

Clementius 4 ad l. iul. et pap.

Sed si hoc specialiter expressit testator, etiamsi ex alio post mortem suam liberos procreaverit, nihilo minus eam ad legatum admitti.

Dig. 35.1.62.1

Clementius 4 ad l. iul. et pap.

Cuidam non solidum capienti amplius lege concessae portionis relicta est, si heredi aliquid dedisset: quaeritur, an id, quod condicionis implendae causa dederat, consequi ex causa legati possit (quasi non capiat id quod eroget) an vero id extra sit nec ideo magis ex bonis testatoris amplius capiat, quam capturus esset, si sine condicione legatum esset. et iulianus rectissime scribit tanto amplius eum capturum, quantum condicionis implendae causa dare eum oportet, nec interesse, heredi an extraneo dare iussus sit, quia computatione facta, quae semper in persona eius introduceretur, non amplius lege concessae portionis ad eum subsideret.

Dig. 35.1.62.2

Clementius 4 ad l. iul. et pap.

Cum vir uxori " si a liberis ne nupserit" in annos singulos aliquid legavit, quid iuris sit? iulianus respondit posse mulierem nubere et legatum capere. quod si ita scriptum esset " si a liberis impuberibus ne nupserit", legem locum non habere, quia magis cura liberorum quam viduitas iniungeretur.

Dig. 35.1.63pr.

Gaius 3 ad l. iul. et pap.

Cum ita legatum sit " si titio non nupserit" vel ita " si neque titio neque seio neque maevio nupserit" et denique si plures personae comprehensae fuerint, magis placuit, cuilibet eorum si nupserit, amissuram legatum, nec videri tali condicione viduitatem iniunctam, cum alii cuilibet satis commode possit nubere.

Dig. 35.1.63.1

Gaius 3 ad l. iul. et pap.

Videamus et si ita legatum sit " si titio nupserit". et quidem si honeste titio possit nubere, dubium non erit, quin, nisi paruerit condicioni, excludatur a legato: si vero indignus sit nuptiis eius iste titius, dicendum est posse eam beneficio legis cuilibet nubere. quae enim titio nubere iubetur, ceteris omnibus nubere prohibetur: itaque si titius indignus sit, tale est, quale si generaliter scriptum esset " si non nupserit". immo si verum amamus, durior haec condicio est quam illa " si non nupserit": nam et ceteris omnibus nubere prohibetur et titio, cui inhoneste nuptura sit, nubere iubetur.

Dig. 35.1.64pr.

Clementius 5 ad l. iul. et pap.

Hoc modo legato dato " si lucio titio non nupserit" non esse legi locum iulianus aiebat.

Dig. 35.1.64.1

Clementius 5 ad l. iul. et pap.

Quod si ita scriptum esset " si ariciae non nupserit", interesse, an fraus legi facta esset: nam si ea esset, quae aliubi nuptias non facile possit invenire, interpretandum ipso iure rescindi, quod fraudandae legis gratia esset adscriptum: legem enim utilem rei publicae, subolis scilicet procreandae causa latam, adiuvandam interpretatione.

Dig. 35.1.65

Paulus 62 ad ed.

Legato sub condicione relicto si heres, a quo sub condicione legatum est, pendente condicione moriatur, heredem suum obligatum relinquit.

Dig. 35.1.66

Modestinus 10 resp.

Heres statuliberum, cui in eventum condicionis fideicommissum restituere rogatus erat, manumisit: quaero, an fideicommissum ei praestare debeat. herennius modestinus respondit, quamquam statuliberum heres manumiserit, tamen fideicommissum, quod sub iisdem condicionibus relictum ei debet, ita praestare cogitur, si condiciones impletas esse praestabit aut per eum stetit, quo minus impleantur.

Dig. 35.1.67

Iavolenus 11 epist.

Cum sub hac condicione fundus alicui legatus esset " si servum non manumiserit" et, si manumiserit, legatum fundi ad maevium translatum esset, legatarius de non liberando satisdedit et legatum accepit et postea liberavit: quaero, an aliquid maevio detur. respondit, si cui ita legatum erit " si servum non manumiserit", satisdatione interposita accipere ab herede legatum poterit et, si postea servum manumiserit, commissa stipulatione heredi vel fundum vel quanti ea res est restituet eoque casu heres ei, cui ex sequenti condicione legatum debuerit, restituet.

Dig. 35.1.68

Iavolenus 2 ex cass.

Si ita legatum esset " cum nupserit", si nupta fuerit et hoc testator scisset, alterum matrimonium erit exspectandum nihilque intererit, utrum vivo testatore an post mortem ea iterum nupserit.

Dig. 35.1.69

Gaius 13 ad l. iul. et pap.

Si ita expressum erit: " titio, si voluerit, do lego", apud labeonem proculus notat non aliter ad heredem legatarii pertinere, quam si ipse legatarius voluerit ad se pertinere, quia condicio personae iniuncta videtur.

Dig. 35.1.70

Papinianus 16 quaest.

Duos mater filios sub condicione emancipationis ex partibus heredes instituit eisque plurium rerum praeceptiones pure dedit: hereditatem adierunt. patrem a legatorum commodo illa quoque ratio debet summovere, quod emancipando filios obsecutus voluntati supremum iudicium uxoris suae custodiri voluit.

Dig. 35.1.71pr.

Papinianus 17 quaest.

Titio centum ita, ut fundum emat, legata sunt: non esse cogendum titium cavere sextus caecilius existimat, quoniam ad ipsum dumtaxat emolumentum legati rediret. sed si filio fratri alumno minus industrio prospectum esse voluit, interesse heredis credendum est atque ideo cautionem interponendam, ut et fundus comparetur ac postea non alienaretur.

Dig. 35.1.71.1

Papinianus 17 quaest.

Titio centum relicta sunt ita, ut maeviam uxorem quae vidua est ducat: condicio non remittetur et ideo nec cautio remittenda est. huic sententiae non refragatur, quod, si quis pecuniam promittat, si maeviam uxorem non ducat, praetor actionem denegat: aliud est enim eligendi matrimonii poenae metu libertatem auferri, aliud ad testamentum certa lege invitari.

Dig. 35.1.71.2

Papinianus 17 quaest.

Titio centum relicta sunt ita, ut a monumento meo non recedat vel uti in illa civitate domicilium habeat. potest dici non esse locum cautioni, per quam ius libertatis infringitur. sed in defuncti libertis alio iure utimur.

Dig. 35.1.71.3

Papinianus 17 quaest.

" titio genero meo heres meus dotis seiae filiae meae nomine centum dato". legati quidem emolumentum ad seiam, quae dotem habere incipit, pertinebit, sed quia non tantum mulieri, sed titio quoque, cui pecuniam legavit, consultum videtur, prope est, ut ipse legatarius intellegatur et legatum petere debeat. si post divortium genero pecuniam heres solverit, aeque liberabitur, quoniam in dotem solutio convertitur. constante autem matrimonio etiam prohibente muliere titio recte solvetur: hoc enim et mulieris interest, ut incipiat esse dotata. nam et si quis ipsam quoque petitionem habere responderit eaque pecuniam petat neque dotis fieri velit, non dubie doli summovebitur exceptione. ante nuptias vero titio vel muliere defunctis legatum apud heredem manet. quod si nolit eam uxorem ducere, causa legati, quod ad mulieris personam attinet, satisfactum intellegetur, sed titio legatum petenti nocebit exceptio doli. sabinus autem existimabat nupta muliere titio sine cautione legatum deberi, quoniam pecunia dotis efficeretur: sed cum ante nuptias, quia purum legatum est, peti potest, cautio " mulieri pecuniam reddi" necessaria erit. quod si maritus vitio suo causa ceciderit neque solvendo sit, numquid adversus heredem mulieri, quae nihil deliquit, succurri debeat ob eam pecuniam, quae doti fuerat destinata? sed quoniam ambo legati petitionem habuerunt, salvam habebit, non soluta pecunia viro, mulier actionem.

Dig. 35.1.72pr.

Papinianus 18 quaest.

Cum tale legatum esset relictum titiae " si a liberis non discesserit", negaverunt eam recte cavere, quia vel mortuis liberis legati condicio possit exsistere. sed displicuit sententia: non enim voto matris opponi tam ominosa non interponendae cautionis interpretatio debuit.

Dig. 35.1.72.1

Papinianus 18 quaest.

Et cum patronus liberto certam pecuniam legasset, si a liberis eius non discessisset, permisit imperator velut mucianam cautionem offerri: fuit enim periculosum ac triste libertum coniunctum patroni liberis eorundem mortem exspectare.

Dig. 35.1.72.2

Papinianus 18 quaest.

Titius heredem institutum rogavit post mortem suam hereditatem restituere, si fideicommissi cautio non fuisset petita. mucianae cautionis exemplum ante constitutionem remissae cautionis locum habere non potuit, quoniam vivo eo, cui relictum est, impleri condicio potuit.

Dig. 35.1.72.3

Papinianus 18 quaest.

Quid ergo, si ita scriptum sit: " peto, post mortem tuam restituas hereditatem ita, ne satis fideicommissi petatur neve ratio exigatur". sine dubio per huiusmodi verba non interponendae quidem cautionis condicio videbitur adscripta, rationi vero non exigendae modus adhibitus, scilicet ut culpa, non etiam dolus remissus intellegatur: idque in eius persona, qui negotia gessit cuique rationis reddendae necessitas fuerat testamento remissa, rescriptum est.

Dig. 35.1.72.4

Papinianus 18 quaest.

" si arbitratu titii seia nupserit, heres meus ei fundum dato". vivo titio etiam sine arbitrio titii eam nubentem legatum accipere respondendum est eamque legis sententiam videri, ne quod omnino nuptiis impedimentum inferatur. sed si titius vivo testatore decedat, licet condicio deficit, quia tamen suspensa quoque pro nihilo foret, mulieri succurretur.

Dig. 35.1.72.5

Papinianus 18 quaest.

" maeviae, si non nupserit, fundum cum morietur lego". potest dici et si nupserit, eam confestim ad legatum admitti. non idem probatur, si certus dies incertusve alius legato fuerit adscriptus.

Dig. 35.1.72.6

Papinianus 18 quaest.

Falsam causam legato non obesse verius est, quia ratio legandi legato non cohaeret: sed plerumque doli exceptio locum habebit, si probetur alias legaturus non fuisse.

Dig. 35.1.72.7

Papinianus 18 quaest.

Falsam condicionem cassius et caelius sabinus impossibilem esse dixerunt, veluti: " pamphilus, si quod titio debeo solverit, liber esto", si modo nihil titio fuit debitum: quod si post testamentum factum testator pecuniam exsolvit, defecisse condicionem intellegi.

Dig. 35.1.72.8

Papinianus 18 quaest.

Falsam legati demonstrationem non facere legatum sabinus respondit (veluti si quis, cum titio nihil legasset, ita scriptum reliquerit: " ex centum, quae titio legavi, quinquaginta heres seio dato") idque sumpsit ex defuncti voluntate, quia non animo legandi, sed deminuendi legatum, quod falso datum existimaret, ita scriberet. propter falsam tamen demonstrationem legati non plus seius adsequetur, quam si vere demonstratum fuisset.

Dig. 35.1.73

Papinianus 19 quaest.

Titio fundus, si in asiam non venerit, idem, si pervenerit, sempronio legatus est. cum in omnibus condicionibus, quae morte legatariorum finiuntur, receptum est, ut muciana cautio interponatur, heres cautionem a titio accepit et fundum ei dedit. si postea in asiam pervenerit, sempronio heres, quod ex stipulatu cautionis interpositae consequi potest, utili actione praestare cogitur. sed si cautio medio tempore defecerit, quae sollicite fuerat exacta, non de suo praestabit heres, sed quia nihil ei potest obici, satis erit actiones praestari. si tamen, titius cum in asiam venisset, sempronius, priusquam legatum accipiat, decesserit, heredi eius deberetur, quod defunctus petere potuit.

Dig. 35.1.74

Papinianus 32 quaest.

Mulieri et titio usus fructus, si non nupserit mulier, relictus est. si mulier nupserit, quamdiu titius et vivit et in eodem statu erit, partem usus fructus habebit: tantum enim beneficio legis ex legato concessum esse mulieri intellegendum est, quantum haberet, si condicioni paruisset. nec si titius, qui condicione defectus est, legatum repudiet, ea res mulieri proderit.

Dig. 35.1.75

Papinianus 34 quaest.

Dies incertus condicionem in testamento facit.

Dig. 35.1.76

Papinianus 6 resp.

Fideicommissum a filiis relictum " si quis ex his sine liberis diem suum obierit" adoptionis commento non excluditur.

Dig. 35.1.77pr.

Papinianus 7 resp.

Avia, quae nepotem sub condicione emancipationis pro parte heredem instituerat, ita postea codicillis scripsit: " hoc amplius nepoti meo, quam quod eum heredem institui, lego praedia illa". condicionem emancipationis repetitam videri placet, quamvis avia nullam in legatis, ut in hereditate, substitutionem fecisset. nam et cum servus pure quidem liber, heres autem sub condicione scriptus et, si heres non exstiterit, legatum accipere iussus est, in legato repetitam videri libertatem divus pius rescripsit.

Dig. 35.1.77.1

Papinianus 7 resp.

Muciana cautio locum non habet, si per aliam condicionem actio legati differri possit.

Dig. 35.1.77.2

Papinianus 7 resp.

" titio, si mulier non nupserit, heres centum dato": quam pecuniam eidem mulieri titius restituere rogatus est. si nupserit mulier die legati cedente, fideicommissum petet: remoto autem fideicommisso legatarius exemplum mucianae cautionis non habebit.

Dig. 35.1.77.3

Papinianus 7 resp.

Pater exheredatae filiae tutores dedit eosque, si mater eius, impubere filia constituta, vita decessisset, ad rem gerendam accedere iussit, cum uxori mandatum esset, ut moriens filiae communi decies restitueret. non sub condicione tutores videbuntur dati nec, si quid aliud interea puella quaesisset, eius administratione prohiberi, cautio vero fideicommissi matri remissa. quocumque indicio voluntatis cautio legatorum vel fideicommissorum remitti potest. itaque si cautionis non petendae condicio legato vel fideicommisso praescribatur, condicionem ea res non faciet: non enim deficiet, si quis caveri desideraverit, onere cautionis non secuto, quod adversus invitum hodie iure publico sequi non potest, postquam remitti posse cautionem placuit.

Dig. 35.1.78pr.

Papinianus 9 resp.

Cum pupillus aut tutor eius condicionem in personam pupilli collatam impedit, tam legati quam libertatis iure communi condicio impleta esse videtur.

Dig. 35.1.78.1

Papinianus 9 resp.

Disiunctivo modo condicionibus adscriptis alteram defecisse non oberit altera vel postea impleta, nec interest, in potestate fuerint accipientis condiciones an in eventum collatae.

Dig. 35.1.79pr.

Papinianus 1 def.

" heres meus, cum morietur titius, centum ei dato". purum legatum est, quia non condicione, sed mora suspenditur: non potest enim condicio non exsistere ^ existere^.

Dig. 35.1.79.1

Papinianus 1 def.

" heres meus, cum ipse morietur, centum titio dato". legatum sub condicione relictum est: quamvis enim heredem moriturum certum sit, tamen incertum est, an legatario vivo. dies legati non cedit et non est certum ad eum legatum perventurum.

Dig. 35.1.79.2

Papinianus 1 def.

Qui post mucianam cautionem interpositam legatum accepit, si contra cautionem aliquid fecerit, stipulatione commissa etiam fructus heredi restituet: hoc enim legatarius et in exordio cavere cogitur.

Dig. 35.1.79.3

Papinianus 1 def.

Quamvis usus fructus, cum morietur legatarius, inutiliter legetur, tamen cautionis mucianae remedium usu fructu quoque sub condicionem alicuius non faciendi legato locum habet.

Dig. 35.1.79.4

Papinianus 1 def.

Quod in fraudem legis ad impediendas nuptias scriptum est, nullam vim habet, veluti: " titio patri centum, si filia, quam habet is in potestate, non nupserit, heres dato" vel: " filio familias, si pater eius uxorem non duxerit, heres dato".

Dig. 35.1.80

Scaevola 8 quaest.

Eas causas, quae protinus agentem repellunt, in fideicommissis non pro condicionalibus observari oportet: eas vero, quae habent moram cum sumptu, admittemus cautione oblata: nec enim parem dicemus eum, cui ita datum sit, si monumentum fecerit, et eum, cui datum est, ut monumentum faciat.

Dig. 35.1.81pr.

Paulus 21 quaest.

Iulius paulus nymphidio. quaesisti, si ita in testamento cautum esset: " stichus si rationes reddiderit, cum contubernali sua liber esto eisque decem heres dato", an sticho mortuo antequam rationes redderet, vel pariatore vel reliqua habente, libera esset mulier? et an de legato idem accipiamus. libertate data, si rationes reddiderit, hanc condicionem rationum reddendarum, ut iussus videatur reliqua reddere, si qua habet, cum fide actus sui. quae si nulla sunt, pure accepisse libertatem videbuntur: et si post aditam hereditatem decessit, competente libertate etiam legatum eos secutum est. quod si, cum adhuc reliqua haberet, decessit, sub eadem condicione et contubernalis eius libertatem accepisse videtur et defecta videbitur condicione. sed non ineleganter illud dicetur stichum quidem sub condicione manumissum, contubernalem autem eius pure et illam coniunctionem non ad coniungendam condicionem, sed ad necessitudinem demonstrandam pertinere.

Dig. 35.1.81.1

Paulus 21 quaest.

Tunc demum pro impleta habetur condicio, cum per eum stat, qui, si impleta esset, debiturus erat.

Dig. 35.1.82

Callistratus 2 quaest.

Cum servus ita liber esse iussus sit " si rationes reddiderit" eique fundum heres dare damnas sit, videamus, utrum condicio libertati praeposita sit an vero et legato. et quidem si libertati soli accipiamus praepositam, nullus tractatus amplius superest: nam legatum purum invenitur et ideo inutile fit: quod si condicio etiam legato insita sit, quod quidam recte putant, simul cum libertate dies quoque legati utiliter cedit. quid ergo continetur his verbis " si rationes reddiderit?" quidam hoc aiunt " si reliqua reddiderit", quasi nihil intersit, utrum sub hac condicione " si reliqua" vel hac " si rationes reddiderit". sed nos neque condicionem meram putamus esse, quae in datione exsistit, neque meram condicionem, quae in facto sit, sed eam condicionem, quae ex mixtura quadam consistit. nam non utique si ille in folle reliqua optulerit, liber erit: non enim testator hoc sensit, sed illud, ut rationes reddat, quomodo servus reddere solet, id est legendas offerre rationes primum, deinde computandas, ut explorari possit, imputationes probe an improbe referantur, accepta recte relata an non recte: ita enim incipit quidem res a facto, pervenit autem ad pecuniam. inest his verbis etiam heredes notitia instrui rationum, ut sciant, quid in quaque ratione scriptum sit. nam quod ipse vivus facturus erat, ab heredibus suis fieri iussisse intellegitur: ille autem utique non sic solebat servo suo ostendenti reliqua rationes subscribere, sed ita, ut legeret examinaret exciperet. itaque cum servo sub hac condicione testamento libertas datur " si rationes reddiderit " , non hanc solam habet significationem, si cautiones instrumentaque omnia actus sui exhibuerit heredi, sed et si reliqua solverit.

Dig. 35.1.83

Paulus 12 resp.

Lucius titius ita testamentum fecit: " aurelius claudius natus ex illa muliere, si filium meum se esse iudici probaverit, heres mihi esto". paulus respondit filium de quo quaereretur non sub ea condicione institutum videri, quae in potestate eius est, et ideo testamentum nullius esse momenti.

Dig. 35.1.84

Paulus 14 resp.

" illis libertis alimentorum nomine, si cum filio meo morati fuerint, menstruos denarios centenos et vestiaria dari volo". liberti in obsequio fuerunt, quamdiu adulescens ad militiam promoveretur: qua causa effectum est, ut quibusdam romae relictis proficisceretur, et apud castra defunctus est: quaesitum est, an ab heredibus eius alimenta debeantur. paulus respondit condicionem quidem in persona libertorum, qui cum filio defuncti morati sunt aut per eos non stetit, quo minus morarentur, mortuo filio testatoris defecisse non videri. sed si testator propter filii utilitatem his, qui cum eo morati fuissent, alimenta praestari voluit, contra voluntatem defuncti petentes audiri non oportere.

Dig. 35.1.85

Scaevola 3 resp.

Titia heredis instituti liberos habentis filii fidei commisit, uti rem eius universam restitueret filiis eius liberisve eorum, cum ipsi petissent, sine ulla iuris cavillatione: quaero, an his verbis " cum illi a te petierint" condicio fideicommisso adscripta videatur. respondit non videri.

Dig. 35.1.86pr.

Maecenatus 3 fideic.

Iulianus noster eum, qui decem dare et ita liber esse iussus esset, si a vivente manumissus esset, non aliter legatum, quod ei cum libertate datum esset, habiturum, quam si condicioni libertatis paruisset: item in emptorem, si alienatus esset. sed id tunc locum habet, cum omnimodo simul cum libertate legatum adquiri potuit, licet legato imposito non sit, veluti cum in tempus libertatis legatum collatum esset.

Dig. 35.1.86.1

Maecenatus 3 fideic.

Cum vero libertas sub condicione, legatum autem praesenti die datum est, in hoc quaestio est, an constiterit legatum: etenim nec catonianae sententiae locum in proposito esse, quia etsi statim testator decessisset, non tamen omnimodo inutile esset legatum, cum posset condicio libertatis ante aditam hereditatem impleri et legatum manumisso deberi, nisi forte necessarius heres exstitisset: tunc enim omnimodo inutile erit legatum iure ipso, quia sub condicione acceperit libertatem.

Dig. 35.1.87

Valens 1 fideic.

Quod traditum est in legatis novissimam, in libertatibus levissimam condicionem spectandam esse,

Dig. 35.1.88

Gaius 1 fideic.

Id est quae ipsi servo commodior sit,

Dig. 35.1.89

Valens 1 fideic.

Non ad ea dumtaxat pertinet, quae saepius sub diversis condicionibus, sed etiam quae primo pure, deinde sub condicione dantur. itaque quod heres pure dare iussus est quodve pure legatum est, cum id ex intervallo sub condicione legatum est, posterius valet: si prius sub condicione, deinde pure legatum est, praesens debetur. quod si pure legatum ex continenti heres sub condicione damnatus aut rogatus est dare, perinde est, ac si iuncta subiecta scriptura idem legatum esset, vel ut praesens vindicari, si hoc voluerit legatarius, vel, cum condicio exstiterit, ab herede peti possit, nisi commemoratione superioris legati posterius scriptum fuerit, velut: " stichum, quem illi legavi, heres meus ei, si illud factum erit, dato": tunc enim revocandi animo praesens legatum et sub condicione dandi ita scripsisse videbitur: et si ante condicionem rem vindicet, doli exceptio locum habere poterit.

Dig. 35.1.90

Gaius 1 fideic.

Per fideicommissum varie data libertate non levissima spectanda est, sed novissima, quia posterior voluntas potior haberi debet: cui consonat etiam rescriptum divi antonini.

Dig. 35.1.91

Maecenatus 2 fideic.

Condicionum, quae in futurum conferuntur, triplex natura est, ut quaedam ad id tempus, quo testator vivat, quaedam ad id, quod post mortem eius futurum sit, quaedam ad alterutrum pertineant, tempus autem vel certum vel infinitum comprehendatur: quae omnia non minus in fideicommissis quam in institutionibus ac legatis incidere solent: ut haec condicio " titiae, si mihi nupserit" non dubie nisi vivente testatore, illa autem " si ad exsequias funeris mei venerit" nisi post mortem impleri non possit, illa vero " si filio meo nupserit" vel vivente vel mortuo testatore impleri possit. et prima quidem ac tertia ex relatis condicionibus infinitum tempus habent: quandoque enim nupserit, impletur condicio: secunda ad certum tempus adscripta est.

Dig. 35.1.92

Ulpianus 5 fideic.

Si cui legatum fuerit relictum isque rogatus sit liberos suos emancipare, an cogi debeat manumittere? et retineo me dixisse defici eos a petitione fideicommissi: neque enim praetor fideicommissarius eos ad libertatem tuetur ut servos. papinianum quoque libro nono responsorum scribere referebam non esse cogendum emancipare filios suos. arbitror tamen extra ordinem debere constitui eum qui adgnovit id, quod sibi relictum est hac contemplatione, ut liberos suos emanciparet, cogendum emancipare: neque enim debet circumveniri testantium voluntas: sic deinde hoc accipiendum, quemadmodum si sub condicione liberorum emancipandorum ei fuisset legatum vel ita relictum, ut eos emanciparet. cui rei consequens est, quod divus severus rescripsit. nam cum quaedam mulier nepotes suos heredes instituisset et ipsum filium coheredem filiis suis dedisset eosque invicem substituisset rogassetque filium, ut filios emanciparet, non autem rogasset, ut hereditatem eis restitueret: ex auctoritate divi severi emancipare eos compulsus est hisque restituere hereditatem. et adiectum est, ut, si tardius id faceret, quasi ex mora usuras praestaturum: videri enim eum, qui moram faceret emancipationi, moram restitutioni fideicommissi eam facere.

Dig. 35.1.93

Papinianus 8 resp.

Mater filio suo coheredes sine ulla condicione filias ipsius dedit ac petit, ut filias suas emanciparet, ita ut curatores a praetore acciperent. filii videri fidei commisisse placuit, ut eas sui iuris constitutas ad hereditatem aviae pervenire pateretur, nec ad rem pertinere, si portionem filiarum iure substitutionis quaesisset.

Dig. 35.1.94pr.

Hermogenianus 1 iuris epit.

Cum ita datur libertas: " si titio" (qui non est heres) " decem dederit", certa persona demonstratur ac propterea in personam eius tantum condicio impleri potest. sane si cum cesserit dies pecuniam condicioni comprehensam statuliber habuerit, iure constituto nulli dando consequitur libertatem. diversa causa est legatarii, in cuius persona placuit condicionem deficere, si, antequam dederit legatarius pecuniam, titius moriatur.

Dig. 35.1.94.1

Hermogenianus 1 iuris epit.

Ex his verbis " si heredi" vel " si heredi titio decem dederit, liber esto", non tantum heredi, sed etiam heredis heredi dando pervenit ad libertatem: at si nullus heredi successerit, iure constituto nulli dando ad libertatem perveniet.

Dig. 35.1.95

Hermogenianus 4 iuris epit.

Legatum sub condicione relictum et ad alium translatum, si non condicio personae cohaereat, sub eadem condicione translatum videtur.

Dig. 35.1.96pr.

Paulus 1 ad ner.

Titio usus fructus servi legatus est et, si ad eum pertinere desisset, libertas servo data est. titius vivo testatore decessit. libertas non valet, quia condicio nec initium accepit. paulus. ergo et si viveret titius et capere non potest, idem dicendum est: desisse enim non videtur, quod nec incipit.

Dig. 35.1.96.1

Paulus 1 ad ner.

Servi usus fructus mulieri, quoad vidua esset, legatus, idem servus, si ea nupsisset, liber esse iussus est. si mulier nupserit, liber erit, quia potior est legato libertas.

Dig. 35.1.97

Paulus 2 ad ner.

Municipibus, si iurassent, legatum est. haec condicio non est impossibilis. paulus. quemadmodum ergo pareri potest per eos? itaque iurabunt, per quos municipii res geruntur.

Dig. 35.1.98

Paulus 3 ad ner.

Mea res sub condicione legari mihi potest, quia in huiusmodi legatis non testamenti facti tempus, sed condicionis expletae spectari oportet.

Dig. 35.1.99

Papinianus 18 quaest.

Condiciones extrinsecus, non ex testamento venientes, id est quae tacite inesse videantur, non faciunt legata condicionalia.

Dig. 35.1.100

Papinianus 7 resp.

Titiae, si non nupserit, ducenta, si nupserit, centum legavit: nupsit mulier. ducenta, non etiam centum residua petat: ridiculum est enim eandem et ut viduam et ut nuptam admitti.

Dig. 35.1.101pr.

Papinianus 8 resp.

Pater severianam proculam aelio philippo cognato nuptiis testamento designavit: eidem filiae praedium, si aelio philippo nupsisset, verbis fideicommissi reliquit: quod si non nupsisset, idem praedium philippo dari voluit: nondum viripotens puella diem suum obiit. respondi, cum in condicionibus testamentorum voluntatem potius quam verba considerari oporteat, aelio philippo fideicommissum ita datum videri, si ei procula defuncti filia nubere noluisset: quare cum ea prius, quam viripotens fieret, vita decesserit, condicionem exstitisse non videri.

Dig. 35.1.101.1

Papinianus 8 resp.

Ita fideicommisso dato: " volo restituas, si sine liberis decedas" condicio deficit ex voluntate vel uno filio superstite relicto.

Dig. 35.1.101.2

Papinianus 8 resp.

Condicionum verba, quae testamento praescribuntur, pro voluntate considerantur: et ideo cum tutores testamento dati, quoniam interea puer adoleverat, id egerint, ut curatores ipsi constituerentur, condicio fideicommissi talis praescripta: " si tutelam in annum octavum decimum gesserint" defecisse non videbitur.

Dig. 35.1.101.3

Papinianus 8 resp.

Socrus nurui fideicommissum ita reliquerat: " si cum filio meo in matrimonio perseveraverit": divortio sine culpa viri post mortem socrus facto defecisse condicionem respondi. nec ante diem fideicommissi cedere, quam mori coeperit nupta vel maritus, et ideo nec mucianam cautionem locum habere, quia morte viri condicio possit exsistere.

Dig. 35.1.101.4

Papinianus 8 resp.

Fideicommissa menstrua et annua sub ea condicione liberto relicta " quamdiu res patroni filiae gesserit" etsi praestari necesse est filia prohibente res suas administrari, tamen voluntatem filia mutante condicionem resumunt, quoniam plura sunt.

Dig. 35.1.102

Papinianus 9 resp.

Cum avus filium ac nepotem ex altero filio heredes instituisset, a nepote petit, ut, si intra annum trigesimum moreretur, hereditatem patruo suo restitueret: nepos liberis relictis intra aetatem supra scriptam vita decessit. fideicommissi condicionem coniectura pietatis respondi defecisse, quod minus scriptum, quam dictum fuerat, inveniretur.

Dig. 35.1.103

Paulus 14 quaest.

Si ita legatum sit " titio post decem annos dato, si satis ab herede non exegerit" et titius intra decimum annum decesserit, ad heredem suum transmittat legatum, quia moriente eo condicio exstitit.

Dig. 35.1.104

Paulus 14 resp.

Eum, qui post apertum testamentum deportatus et restitutus est, fideicommissum petere posse, cuius condicio postea exstitit, quam civitatem romanam recipiat.

Dig. 35.1.105

Pomponius 5 epist.

Si fundum a testatore sub condicione legatum heres alii pendente condicione legavit, post exsistentem ^ existentem^ condicionem, quae priori testamento praeposita fuerat, neque proprietas a priore legatario recedit nec locum religiosum in eo fundo heres facere nec servitutem imponere poterit: sed et imposita servitus finietur exsistente condicione.

Dig. 35.1.106

Iulianus 25 Dig.

Hoc genus legati " si titio non nupserit" perinde habendum est, ac si post mortem titii legatum fuisset, et ideo nec muciana satisdatione interposita capere legatum potest. sed et alii nubendo nihilo minus legatum consequitur.

Dig. 35.1.107

Gaius l.S. de cas.

Aliquando accidit, ut sub condicione datum legatum purum intellegatur, veluti quod sub eadem condicione relictum est, sub qua etiam heres alius institutus est, item quod sub hac condicione relictum est " si hereditatem adierit". ex diverso quoque purum datum legatum condicionale videtur, veluti quod sub condicione ademptum est, quia sub contraria condicione datum intellegitur.

Dig. 35.1.108

Scaevola 19 Dig.

Libertis omnibus legavit domum et haec verba adiecit: " ut in ea habitent liberti, ne de nomine exeat et ut ad unum, qui novissimus exstiterit, perveniat: et eo amplius eisdem libertis meis dari volo fundum sosianum " . quaesitum est, an condicio adposita, ne de nomine exiret, ad sequens quoque legatum pertineret. respondit pertinere.

Dig. 35.1.109

Scaevola 20 Dig.

A testatore rogatus, ut acceptis centum nummis restitueret hereditatem titiae coheredi suae, adita hereditate decessit: similiter et titia, antequam daret centum: quaesitum est, an heres titiae offerendo centum fideicommisso partem hereditatis consequi possit. respondit heredem condicioni parere non posse. claudius. magno ingenio de iure aperto respondit, cum potest dubitari, an in proposito condicio esset.

Dig. 35.1.110

Pomponius 9 epist.

Etiamsi invitis heredibus ex peculio statuliber pecuniam titio det, liber quidem fit: sed titius, qui invitis heredibus sciens accepit, pro possessore videtur eam pecuniam possidere, ut avocare eam hi, qui inviti fuerunt, possint.

Dig. 35.1.111

Pomponius 11 epist.

Qui sub condicione rationum reddendarum liber esse iussus est, docere debet constare fidem omnibus, quae ab eo gesta sunt, ut neque subtraxerit quid ex his quae acceperit neque expensum rationibus praescripserit quod non dederat: sed et quod reliquum per contextum scriptum est remanere apud eum, solvere debet: neque enim aliter liber esse potest, quam si hoc modo condicioni, sub quam data est libertas, satisfecerit. ceterum debitores, cum quibus ipse contraxit, non utique in diem mortis domini sui fuisse idoneos praestare cogendus est, sed eo tempore, quo his creditum est, eius condicionis fuisse, ut diligens pater familias his crediturus fuerit.

Dig. 35.1.112pr.

Pomponius 12 epist.

Tales condiciones " si monumentum" puta " fecerint" pluribus propositae non possunt nisi in omnibus simul personis exsistere.

Dig. 35.1.112.1

Pomponius 12 epist.

Item: " si symphoro et ianuario centum titius praestiterit, fundum ei lego". symphoro mortuo an legatum perisset? sed hoc quoque sic puto interpretandum ut si, dum quisque eorum vivet, praestitisset. sed benigna interpretatione dicendum, si non post moram titii symphorus decessit, debere partem dimidiam ianuario dantem partem fundi dimidiam legatarium esse consecuturum.

Dig. 35.1.112.2

Pomponius 12 epist.

De illo quoque quaeritur: fundus quibusdam legatus est, si pecuniam certam in funus impensamque perferendi corporis in aliam regionem dedissent. nam nisi uterque dederit, neutri est legatum, quoniam condicio nisi per utrumque expleri non potest. sed haec humanius interpretari solemus, ut, cum duobus fundus legatus sit, si decem dedissent, et alteri dando partem legatum quoque debeatur.

Dig. 35.1.112.3

Pomponius 12 epist.

Priscus respondit statuliberum non utique ibi ubi pater familias decessit aut ubi ipse relictus sit aut ubi velit, rationes reddere debere, sed interim proficisci ad eum, cui reddere debeat, utique si is rei publicae causa aberit: verissimum est autem, ut alias aliud ex persona locoque sit aestimandum.

Dig. 35.1.113

Paulus 2 imp. sent. i.C.P.

Cum filius rogatus fuisset a patre, si, antequam res suas administrare posset, decessisset, hereditatem titio restituere, et egressus viginti annos decessisset, rescriptum est fideicommissum deberi.

Dig. 35.2.0. Ad legem falcidiam.

Dig. 35.2.1pr.

Paulus l.S. ad l. falcid.

Lex falcidia lata est, quae primo capite liberam legandi facultatem dedit usque ad dodrantem his verbis: " qui cives romani sunt, qui eorum post hanc legem rogatam testamentum facere volet, ut eam pecuniam easque res quibusque dare legare volet, ius potestasque esto, ut hac lege sequenti licebit". secundo capite modum legatorum constituit his verbis: " quicumque civis romanus post hanc legem rogatam testamentum faciet, is quantam cuique civi romano pecuniam iure publico dare legare volet, ius potestasque esto, dum ita detur legatum, ne minus quam partem quartam hereditatis eo testamento heredes capiant, eis, quibus quid ita datum legatumve erit, eam pecuniam sine fraude sua capere liceto isque heres, qui eam pecuniam dare iussus damnatus erit, eam pecuniam debeto dare, quam damnatus est".

Dig. 35.2.1.1

Paulus l.S. ad l. falcid.

Lex falcidia etiam ad eos, qui apud hostes moriuntur, propter legem corneliam pertinere videtur, quod ea lex perinde eorum testamenta confirmat, atque si in civitate decessissent: propter quam fictionem lex falcidia et omnes testamentariae pertinent, quae tamen possint locum habere.

Dig. 35.2.1.2

Paulus l.S. ad l. falcid.

Ad eos, qui omissa causa testamenti possident hereditatem, non pertinet lex falcidia: sed per edictum praetoris inducitur potestas legis.

Dig. 35.2.1.3

Paulus l.S. ad l. falcid.

Idemque est, si iurisiurandi condicio remissa sit.

Dig. 35.2.1.4

Paulus l.S. ad l. falcid.

Sed et si servo suo testator data libertate legaverit, quia differtur in id tempus, quo liber futurus est, item ei qui apud hostes est aut ei qui nondum natus est datum sit aliquid, haec lex locum habebit.

Dig. 35.2.1.5

Paulus l.S. ad l. falcid.

Ad municipum quoque legata vel etiam ea, quae deo relinquuntur, lex falcidia pertinet.

Dig. 35.2.1.6

Paulus l.S. ad l. falcid.

Non solum autem ad res proprias testatoris legatas, sed et alienas lex pertinet.

Dig. 35.2.1.7

Paulus l.S. ad l. falcid.

Et omne quod ex bonis defuncti erogatur refertur ad hanc legem, sive in corpore constet certo incertove sive pondere numero mensura valeat aut etiam si ius legatum sit (ut usus fructus) aut quod in nominibus est.

Dig. 35.2.1.8

Paulus l.S. ad l. falcid.

Item si ita legatum sit: " heres meus seio penum dato: si non dederit, decem dato", quidam putant omnimodo in legato decem esse, penum autem mortis causa capi nec in falcidiam imputare id heredem posse. ego autem didici, si in continenti heres penum solverit, videri hoc legatum esse et in legem falcidiam imputari posse: et quod dixi " in continenti" ita accipiendum cum aliquo spatio. quod si iam mora facta solverit heres penum, tunc nec legatum eum accepisse nec in falcidiam imputari posse: iam enim transfusum legatum esse et decem deberi. idemque erit et si ab initio ita legatum datum sit: " si penum non dederit, decem dato", quia hic penus non est legata et penus si datur, mortis causa capitur, quia deficit legati condicio.

Dig. 35.2.1.9

Paulus l.S. ad l. falcid.

Si usus fructus legatus sit (qui et dividi potest, non sicut ceterae servitutes individuae sunt), veteres quidem aestimandum totum usum fructum putabant et ita constituendum, quantum sit in legato. sed aristo a veterum opinione recessit: ait enim posse quartam partem ex eo sic ut ex corporibus retineri idque iulianus recte probat. sed operis servi legatis cum neque usus neque usus fructus in eo legato esse videtur, necessaria est veterum sententia, ut sciamus quantum est in legato, quia necessario ex omnibus, quae sint facti, pars decedere debet, nec pars operae intellegi potest. immo et in usu fructu si quaeratur, quantum hic capiat, cui usus fructus datus est, quantum ad ceterorum legatorum aestimationem aut etiam huius ipsius, ne dodrantem excedat legatum, necessario ad veterum sententiam revertendum est.

Dig. 35.2.1.10

Paulus l.S. ad l. falcid.

Si quis creditori suo quod debet legaverit, aut inutile legatum erit, si nullum commodum in eo versabitur, aut si (propter repraesentationis puta commodum) utile erit, lex quoque falcidia in eo commodo locum habebit.

Dig. 35.2.1.11

Paulus l.S. ad l. falcid.

Si legatarius possessionem nanctus est et non potest avocari ei res, quia voluntate heredis errantis nactus est possessionem, dabitur actio heredi, ut id quod supra dodrantem est offeratur.

Dig. 35.2.1.12

Paulus l.S. ad l. falcid.

Interdum omnimodo necessarium est solidum solvi legatario interposita stipulatione " quanto amplius, quam per legem falcidiam ceperit, reddi": veluti si quae a pupillo legata sint non excedant modum legis falcidiae, veremur autem, ne impubere eo mortuo alia legata inveniantur, quae contributione facta excedant dodrantem. idem dicitur et si principali testamento quaedam sub condicione legata sunt, quae an debeantur incertum est. et ideo, si heres sine iudice solvere paratus sit, prospiciet sibi per hanc stipulationem.

Dig. 35.2.1.13

Paulus l.S. ad l. falcid.

Id, quod ex substitutione coheredis ad coheredem pervenit, proficit legatariis: is enim similis est heres ex parte pure, ex parte sub condicione heredi instituto. sed ea, quae ab eo legata sunt, si omiserit hereditatem, non augebuntur, scilicet si ab eo nominatim data sunt, non " quisquis mihi heres erit".

Dig. 35.2.1.14

Paulus l.S. ad l. falcid.

Si coheredis mei portio exhausta sit, mea integra et illam vindicavero, cassius confundendas esse partes existimat, proculus contra: in qua specie et iulianus proculo adsensit, quam sententiam probabiliorem esse puto. sed et divus antoninus iudicasse dicitur commiscendas esse utrasque partes in computatione legis falcidiae.

Dig. 35.2.1.15

Paulus l.S. ad l. falcid.

Si coheredem meum post aditam hereditatem adrogavero, non dubitabitur, quin separandae sint portiones, perinde atque si coheredi meo heres exstitissem.

Dig. 35.2.1.16

Paulus l.S. ad l. falcid.

Si in annos singulos legatum sit titio, quia multa legata et condicionalia sunt, cautioni locus est quae in edicto proponitur " quanto amplius accipit reddi".

Dig. 35.2.1.17

Paulus l.S. ad l. falcid.

Id, quod natura hereditati debetur et peti quidem non potest, solutum vero non repetitur, non esse computandum in hereditate quidam putant. sed iulianus et haec ex eventu augere patrimonium aut non augere existimat et hereditario iure id quoque capi ideoque et in restitutionem hereditatis venturum.

Dig. 35.2.1.18

Paulus l.S. ad l. falcid.

Si debitor creditori heres existat, quamvis confusione liberetur, tamen locupletiorem hereditatem percipere videtur, ut computetur ei quod debet, quamvis aditione confusum sit.

Dig. 35.2.1.19

Paulus l.S. ad l. falcid.

De impensa monumenti nomine facta quaeritur, an deduci debeat. et sabinus ita deducendum putat, si necessarium fuerit monumentum extruere. Marcellus consultus, an funeris monumentique impensa, quantum testator fieri iussit, in aere alieno deduci debeat, respondit non amplius eo nomine, quam quod funeris causa consumptum est, deducendum. nam eius, quod in extructionem monumenti erogatum est, diversam esse causam: nec enim ita monumenti aedificationem necessariam esse, ut sit funus ac sepultura. idcirco eum, cui pecunia ad faciendum monumentum legata sit, falcidiam passurum.

Dig. 35.2.2

Marcellus 22 Dig.

Nec amplius concedendum erit, quam quod sufficiat ad speciem modicam monumenti.

Dig. 35.2.3pr.

Paulus l.S. ad l. falcid.

Si heres institutus eam hereditatem quae solvendo non est vendiderit, vix quidem poterit persuaderi non fuisse eam hereditatem solvendo, quae emptorem invenerit: vera autem ratione nihil legatariis debebitur, quia magis ex stultitia emptoris habere videtur heres institutus quam ex bonis defuncti. nam et e contrario si male vendiderit res hereditarias, non erit hoc legatariorum detrimentum: ita ergo commodum debet esse heredis, si bene res administraverit.

Dig. 35.2.3.1

Paulus l.S. ad l. falcid.

Sed et si is qui solvendo non est legaverit et heres cum creditoribus deciderit, ne solidum solveret, et ob eam decisionem factum sit, ut aliquid retineret, nihil tamen legatariis debiturum, quia eam pecuniam non ex hereditate, sed ex decisione habet.

Dig. 35.2.3.2

Paulus l.S. ad l. falcid.

Item si rei publicae in annos singulos legatum sit, cum de lege falcidia quaeratur, Marcellus putat tantum videri legatum, quantum sufficiat sorti ad usuras trientes eius summae, quae legata est, colligendas.

Dig. 35.2.4

Papinianus 16 quaest.

Fundo legato mihi sub condicione pendente legati condicione heres me heredem instituit ac postea legati condicio exstitit. in falcidiae ratione fundus non iure hereditario, sed legati meus esse intellegitur.

Dig. 35.2.5

Papinianus 8 resp.

Verbis legati vel fideicommissi non necessarie civitati relinquitur, quod ex causa pollicitationis praestari necesse est. itaque si debiti modum testamento dominus excessit, superfluum dumtaxat falcidia minuetur. quare nec fidei committi legatarii poterit. quod si dies aut condicio legatum fecerit, non utilitatis aestimatio, sed totum petetur quod datum est. nec si vivo testatore dies venerit aut condicio fuerit impleta, fiet irritum, quod semel competit.

Dig. 35.2.6

Venonius 3 stipul.

Si vir uxori heres exstiterit et in funus eius inpenderit, non videbitur totum quasi heres inpendere, sed deducto eo, quod quasi dotis nomine quam lucri facit conferre debuerit.

Dig. 35.2.7

Papinianus 7 quaest.

Lege falcidia interveniente legata servitus, quoniam dividi non potest, non aliter in solidum restituetur, nisi partis offeratur aestimatio.

Dig. 35.2.8

Papinianus 14 quaest.

In legem falcidiam aeris alieni rationem in hereditate relicti, quod unus ex heredibus solvere damnatus sit, ipse solus habebit.

Dig. 35.2.9pr.

Papinianus 19 quaest.

In falcidia placuit, ut fructus postea percepti, qui maturi mortis tempore fuerunt, augeant hereditatis aestimationem fundi nomine, qui videtur illo in tempore fuisse pretiosior.

Dig. 35.2.9.1

Papinianus 19 quaest.

Circa ventrem ancillae nulla temporis admissa distinctio est nec immerito, quia partus nondum editus homo non recte fuisse dicitur.

Dig. 35.2.10

Papinianus 20 quaest.

Quod supra quadrantem apud heredem potest pervenire, supra dodrantem in pecuniam legatum non onerat heredem, veluti hereditas pupilli, si forte substitutus sit exheredato qui patri pupilli heres exstitit.

Dig. 35.2.11pr.

Papinianus 29 quaest.

In ratione legis falcidiae retentiones omnis temporis heredi in quadrantem imputantur.

Dig. 35.2.11.1

Papinianus 29 quaest.

Si servus sub condicione libertate data vita decessit, si quidem impleta condicio quandoque fuerit, heredi non videbitur perisse: quod si defecerit, in contrarium ratio trahit, sed quanti statuliber moriens fuisse videbitur.

Dig. 35.2.11.2

Papinianus 29 quaest.

Imperator marcus antoninus decrevit heredes, quibus pars bonorum ablata est, non in ampliorem partem quam pro ea parte quae relicta est legatorum nomine teneri.

Dig. 35.2.11.3

Papinianus 29 quaest.

Cum quidam parte dimidia bonorum adempta fuisset relegatus idemque provocatione interposita testamento postea facto obisset atque post mortem eius non iuste appellatum esset pronuntiatum: quaesitum est, utrum aeris alieni loco pars dimidia abscederet, ut residua sola videretur fuisse in bonis, an vero succurri heredi necessarium esse videbitur. sed videtur succurri debere, cum animus litigantis et optinendi votum hanc opinionem admittit.

Dig. 35.2.11.4

Papinianus 29 quaest.

Si servus testamento manumissus ante aditam hereditatem decedat, heredi quidem perisse intellegitur: sed cuius pretii erit, qui, si viveret, non aestimaretur? nam et eos, qui moriente domino ea valetudine affecti fuerant, ut eos non posse vivere certum esset, tamen, si postea moriantur, hereditati perisse responsum est. nec aliud in his, qui sub eodem tecto fuerunt, cum dominus a familia necaretur.

Dig. 35.2.11.5

Papinianus 29 quaest.

Quod vulgo dicitur in tabulis patris et filii unam falcidiam servari quam potestatem habeat, videndum est: quamvis enim substitutus quae a pupillo relicta sunt, cum filius heres exstitit, ut aes alienum quodlibet debeat, tamen propter ea, quae data sunt tabulis secundis, contributioni locus est. secundum quae poterit evenire, ne substitutus quicquam retineat vel ut longe plus habeat quartae paternae hereditatis. quid ergo, si non sufficiat pupilli hereditas legatis, cum patris suffecisset? de suo (quadrante nimirum) dabit substitutus, quoniam pater legavit de suo: nec ad rem pertinet, quod ex nullo testamento praestatur ultra vires patrimonii, cum in hac parte iuris legata, quae tabulis secundis relinquuntur, quasi primis sub condicione relicta intelleguntur.

Dig. 35.2.11.6

Papinianus 29 quaest.

Si filio suo duos substituerit et alterius portionem oneraverit, tractari solet, an ex persona sua falcidiam possit inducere substitutus, quam pupillus non haberet vel unus pupilli substitutus. et facile quis dixerit consequenter prioribus, quae de patrimonii ratione dicta sunt, non esse falcidiae locum et ultra vires portionis conveniendum alterum substitutum. sed verior est diversa sententia perinde huic quartam relinquendam existimantium atque ita si patri heres extitisset: ut enim opes patris et contributio legatorum inde capiunt et formam et originem, ita plures substituti subducta persona pupilli revocandi sunt ad intellectum institutionis. quid tamen dicemus de altero substituto, qui non est oneratus? si forte nondum legata pupillus a se relicta solvit et aliquid ultra dodrantem sit in omnibus, et ipsum falcidiam habiturum? atquin quartam habet neque idem patiatur instituti comparatio. rursus si negemus, aliud aperte, quam quod volgo probatum est, respondetur. itaque varietas exsistet, ut is quidem, qui proprio nomine oneratus est, velut institutus desideret quartam, alter autem, qui non est oneratus, ut substitutus, licet portio largiatur eius, non in solidum conveniatur propter calculi confusionem. huic consequens est, ut, si pupillo de falcidia cautum fuit, duobus committatur stipulatio, videlicet in eam quantitatem, quam unusquisque sibi retinere potuisset.

Dig. 35.2.11.7

Papinianus 29 quaest.

Quaesitum est, si quis pupillo coheredem substituisset, quemadmodum legis falcidiae ratio inquiri debeat? et quale est, quod volgo diceretur, legatorum rationem separandam? dixi, quantum ad legata, quae pater a filio, item a substituto reliquit, nullam fieri posse separationem, cum communi calculo subiciantur et invicem inducant contributionem. sed legata, quae ab instituto extero data sunt, permisceri ceteris non oportere: ideoque quartam pupillo datae portionis habere substitutum, quamvis suam portionem habeat ut institutus: et aliam causam esse eius, qui ex variis portionibus heres scriberetur: ibi enim legatorum confundi rationem non minus, quam si semel fuisset nuncupatus ex ea portione, quae conficeretur ex pluribus, neque referre, pure saepe an sub diversis condicionibus sit heres institutus.

Dig. 35.2.11.8

Papinianus 29 quaest.

Si quis exheredato filio substituit heredem institutum et ab eo tabulis quoque secundis legaverit, necessario ratio confundetur, cum ideo legata valere dixerit iulianus a substituto relicta, quod idem patri heres exstiterit.

Dig. 35.2.12

Papinianus 30 quaest.

Si debitor creditore herede instituto petisset, ne in ratione legis falcidiae ponenda creditum suum legatariis reputaret, sine dubio ratione doli mali exceptionis apud arbitrum falcidiae defuncti voluntas servatur.

Dig. 35.2.13

Papinianus 37 quaest.

Si tacitum fideicommissum servus iniungente domino susceperit, habiturum eum legis falcidiae beneficium, quia parere domino debuit, constitutum est: idemque placuit in filio, qui fuit in patris potestate.

Dig. 35.2.14pr.

Papinianus 9 resp.

Pater filiam, quae a viro diverterat, heredem pro parte instituit et ab ea petit, ut fratri et coheredi suo portionem hereditatis acceptam deducta sexta restitueret, admissa compensatione dotis in falcidiae ratione. si pater dotem consentiente filia non petisset, falcidiam quidem iure hereditario, dotem autem iure proprio filiam habituram respondi, quia dos in hereditate patris non inveniretur.

Dig. 35.2.14.1

Papinianus 9 resp.

Avia nepotibus heredibus institutis fideicommisit, ut omissa retentione, quae per legem falcidiam ex alio testamento competebat, solida legata fratribus et coheredibus solverent. recte datum fideicommissum respondi, sed huius quoque onus in contributionem venire.

Dig. 35.2.14.2

Papinianus 9 resp.

Duobus impuberibus substitutum utrique heredem existentem in alterius hereditate falcidia non uti convenit, si de bonis alterius impuberis quartam partem hereditatis patris, quae ad filios pervenerit, retineat.

Dig. 35.2.14.3

Papinianus 9 resp.

Quod si frater fratri legitimus heres exstitit et impuberi supremo substitutus, portio quidem paternorum bonorum, quam intestatus puer accepit, rationi falcidiae non confundetur, sed quartam eius tantum portionem substitutus retinebit, quam inpubes accepit qui substitutum habuit.

Dig. 35.2.15pr.

Papinianus 13 resp.

Quod bonis iure falcidiae contribuendum est a debitore, cui mortis causa pacto debitum remissum est, in factum concepta replicatione retinebitur.

Dig. 35.2.15.1

Papinianus 13 resp.

Frater cum heredem sororem scriberet, alium ab ea cui donatum volebat stipulari curavit, ne falcidia uteretur et ut certam pecuniam, si contra fecisset, praestaret. privatorum cautione legibus non esse refragandum constitit et ideo sororem iure publico retentionem habituram et actionem ex stipulatu denegandam.

Dig. 35.2.15.2

Papinianus 13 resp.

Non idcirco minus falcidiae rationem in ceteris annuis legatis admitti visum est, quod primo ac secundo anno sine ulla detractione fuissent legatario soluta.

Dig. 35.2.15.3

Papinianus 13 resp.

Quod avus ex causa tutelae nepoti debuit, cum avo nepos solus heres exstitisset, ratio falcidiae si poneretur, in aere alieno bonis deducendum respondi. nec ad rem pertinere, quod heredem avus idemque tutor rogaverat, ut, si sine liberis ante certam aetatem decederet, tam hereditaria quam propria bona restitueret: non enim ex hoc hereditatem debito compensatam videri, cum vel ideo maxime declaretur non esse compensationem factam, quoniam heredem suum habere propria bona defunctus ostendit. plane si condicio fideicommissi fuerit impleta, fructus hereditatis post mortem avi percepti pari pecunia debito tutelae compensabuntur, sed quartam heres nepotis de bonis dumtaxat, quae moriens avus reliquit, retinebit.

Dig. 35.2.15.4

Papinianus 13 resp.

Cum fideicommissum, ex voluntate matris a patre moriente debitum, filio pater hereditate sua, quam in filium conferebat, compensari voluit: quod filio debetur, si ratio falcidiae poni coeperit, fini quadrantis, quem ex bonis patris cum effectu percepit, compensabitur atque ita superfluum aeris alieni dodranti tantum detrahetur.

Dig. 35.2.15.5

Papinianus 13 resp.

Ex donationibus in uxorem collatis quod heres eius reddere viro cogitur, in bonis mulieris non erit. nam ita fit locupletior, ut tanto pauperior esse videatur: quod autem heres inde minuit, viro non perit.

Dig. 35.2.15.6

Papinianus 13 resp.

Fructus praediorum sub condicione verbis fideicommissi relictorum in causam fideicommissi non deductos heres in ratione falcidiae sic accepto facere sibi cogitur, ut quartam, et quartae fructus ex die mortis, bonorum quae mortis tempore fuerunt habeat. nec ad rem pertinet, quando falcidia lex admissa sit: nam etsi maxime post impletam condicionem fideicommissorum locum habere coepit, tamen ex die mortis fructus quadrantis apud heredem relinqui necesse est.

Dig. 35.2.15.7

Papinianus 13 resp.

Fideicommissum portionis supplendae gratia, pro qua matrem filius heredem instituit, eidem matri datum ratione falcidiae minuitur et eam pecuniam mater supra quartam portionis suae percipiet.

Dig. 35.2.15.8

Papinianus 13 resp.

Quarta, quae per legem falcidiam retinetur, aestimatione quam testator fecit non magis minui potest, quam auferri.

Dig. 35.2.16pr.

Scaevola 3 quaest.

Si ex pluribus rebus legatis heres quasdam solverit, ex reliquis falcidiam plenam per doli exceptionem retinere potest etiam pro his, quae iam data sunt.

Dig. 35.2.16.1

Scaevola 3 quaest.

Sed et si una res sit legata, cuius pars soluta sit, ex reliquo potest plena falcidia retineri.

Dig. 35.2.17

Scaevola 6 quaest.

Si post missionem faciat codicillos miles et intra annum decedat, ex testamento, quod in militia iure militari fecit, plena legata, ex codicillis habita falcidiae ratione praestari debere dicitur. sed res ita expedietur: si, cum quadringenta haberet, testamento quadringenta, codicillis centum legaverit, ex quinta parte, id est octoginta, quae ad legatarium ex codicillis pervenirent, si falcidiam non pateretur, quartam, id est viginti heres retinebit.

Dig. 35.2.18pr.

Paulus 11 quaest.

Filius familias qui militaverat decedens patris sui fidei commisit codicillis, ut peculium suum castrense titio post mortem restitueret: quaerebatur, an ut heres quartam deducere possit. dixi legem falcidiam inductam esse a divo pio etiam in intestatorum successionibus propter fideicommissa: sed in proposito nec hereditatem esse, quamvis placeret mihi extraneo herede instituto fieri hereditatem aditione eius: nam cum apud patrem remanet, ius pristinum durat et peculium est. nec huic contrarium est, quod in testamento eius qui apud hostes decessit exercetur falcidia: nam fictio legis corneliae et hereditatem et heredem facit. sed me non dubitare, quin debeat id quoque indulgeri legis beneficium, siquidem quasi patris familiae bona restituere cogitur et heres scriptus omissa ex testamento aditione exemplo edicti legatorum nomine convenietur.

Dig. 35.2.18.1

Paulus 11 quaest.

His consequens erit, ut, si ex fructibus medio tempore quartam et quartae fructus habuerit pater, etiam trebellianum senatus consultum inducamus et utiles actiones exerceri possint fiatque hereditas post restitutionem.

Dig. 35.2.19

Scaevola 8 quaest.

Si dignum decem fundum damnetur heres quinque vendere, sine dubio quinque erunt imputanda falcidiae.

Dig. 35.2.20

Scaevola 9 quaest.

Si a servo meo herede instituto mihi legetur et mihi adquiratur hereditas, negat maecianus id legatum in falcidia computari, quia non debeatur.

Dig. 35.2.21pr.

Paulus 12 quaest.

Si pupillus, cui sine tutore auctore decem mutua data sunt, legatum a creditore meruerit sub hac condicione, si decem quae acceperit heredi reddiderit, una numeratione et implet condicionem et liberatur naturali obligatione, ut etiam in falcidia heredi imputentur, quamvis non imputarentur, si tantum condicionis implendae causa data fuissent. adeo autem et solvere videtur, ut repudiato legato vel sticho qui legatus est mortuo nihil repetere possit.

Dig. 35.2.21.1

Paulus 12 quaest.

Si ego et servus meus heredes instituti simus ex diversis partibus nec a servo erogatus dodrans, his quibus a me legatum est contra falcidiam proderit quod ex portione servi ad me pervenit supra falcidiam eius portionis. ex contrario si servo meo servus et mihi decem legata fuerint, servi falcidia ex ^ et^ decem mihi legatis non tenetur exemplo eodem falcidiae: nam quartam retineo ex persona servi, quamvis de mea portione nihil exhaustum sit.

Dig. 35.2.22pr.

Paulus 17 quaest.

Nesennius apollinaris iulio paulo. ex facto, domine, species eiusmodi incidit. titia filias suas tres numero aequis ex partibus scripsit heredes et a singulis legata invicem dedit, ab una tamen ita legavit tam coheredibus eius quam extraneis, ut falcidiae sit locus. quaero, an adversus coheredes suas, a quibus legata et ipsa accepit, uti possit falcidia et, si non possit vel doli exceptione summovenda est, quemadmodum adversus extraneos computatio falcidiae iniri possit. respondi: id quidem, quod a coherede legatorum nomine percipitur, non solet legatariis proficere, quo minus falcidiam patiantur: sed cum is qui legatum praestaturus est ab eodem aliquid ex testamento petit, non est audiendus desiderans uti adversus eum falcidiae beneficio, si id quod percepturus est ex voluntate testatoris suppleat, quod deducere desiderat. plane ceteris legatariis non universum, quod coheredi praestat, imputabit, sed quantum daturus esset, si nihil ab eo perciperet.

Dig. 35.2.22.1

Paulus 17 quaest.

Servo herede instituto si a domino fideicommissa, a servo legata data sunt, prius ratio legatorum habenda est, deinde ex eo quod superest fideicommissorum. dominus enim ideo tenetur, quod ad eum pervenit: pervenit autem, quod deductis legatis superest. plane falcidiam exercet.

Dig. 35.2.22.2

Paulus 17 quaest.

Sed et si dominus omissa hereditatis aditione servum sibi substitutum adire iussit, prius erogantur quae ab ipso domino data sunt, tunc eorum quae a servo relicta sunt ratio initur, si patitur falcidia.

Dig. 35.2.22.3

Paulus 17 quaest.

Si debitori liberatio legata sit, quamvis solvendo non sit, totum legatum computetur, licet nomen hoc non augeat hereditatem nisi ex eventu. igitur si falcidia locum habeat, hoc plus videbitur legatum, quod huic legatum esset: cetera quoque minuentur legata per hoc et ipsum hoc per alia; capere enim videtur eo, quod liberatur.

Dig. 35.2.22.4

Paulus 17 quaest.

Sed si alii hoc nomen legetur, nullum legatum erit nec ceteris contribuetur.

Dig. 35.2.23

Scaevola 15 quaest.

Si fundus mihi legetur et via, in falcidiae ratione, si tantum sit in via, quantum amplius est in falcidia, integer fundus capietur et via perit. sed si via legetur nec solvendo sit hereditas, non debebitur. videndum etiam, si fundo et via legato minus ex utroque desideret quam sit viae pretium. potest coacta ratione dici non tantum fundum solidum capi, sed etiam, ut doli exceptio tantum sarciat, quantum deest, ne plus habeat, quam falcidia desiderat: ut tunc solum via intercidat, quotiens plus falcidia desiderat quam est viae pretium.

Dig. 35.2.24pr.

Paulus 14 resp.

^ respondit^ falcidiae legis rationem si haberi oportet, ita habendum, ac si hae res, quae ab herede subtractae sunt, in hereditate relictae non fuissent.

Dig. 35.2.24.1

Paulus 14 resp.

Idem respondit partus ancillarum ante diem fideicommissi editos ad heredes eius qui rogatus est pertinere eosque in quartam et quartae fructus computandos, si de lege falcidia quaestio intercedat.

Dig. 35.2.24.2

Paulus 14 resp.

Idem respondit fructus ex propria re heredis, quae legata est, post diem fideicommissi cedentem perceptos, etsi non sint restituendi fideicommissario, heredi in quartam imputari non solere.

Dig. 35.2.25pr.

Scaevola 4 resp.

Maritum suum et filium communem aequis partibus heredes instituit: quaesitum est, an in ratione legis falcidiae imputandum sit marito, quod ad eum ex eadem hereditate per filium pervenit. respondit, si ex institutione filii tantum retineat, quantum ad falcidiam satis sit, nihil quartae nomine deducendum.

Dig. 35.2.25.1

Scaevola 4 resp.

A liberto, cui fundum legaverat, per fideicommissum seiae annua decem dedit: quaesitum est, si lex falcidia liberti legatum minuerit, an seiae quoque annuum fideicommissum minutum videatur, cum reditus largiatur annuam praestationem. respondit secundum ea quae proponerentur non videri minutum, nisi alia mens testatoris probetur.

Dig. 35.2.26pr.

Scaevola 5 resp.

Lineam margaritorum triginta quinque legavit, quae linea apud legatarium fuerat mortis tempore: quaero, an ea linea heredi restitui deberet propter legem falcidiam. respondit posse heredem consequi, ut ei restituatur, ac, si malit, posse vindicare partem in ea linea, quae propter legis falcidiae rationem deberet remanere.

Dig. 35.2.26.1

Scaevola 5 resp.

Quaesitum est, an pretium statuarum falcidiam pati debeat. respondit debere.

Dig. 35.2.27

Scaevola 6 resp.

" seius et agerius si intra diem trigesimum mortis meae rei publicae nostrae caverint contentos se futuros tot aureis legis falcidiae beneficio omisso, heredes mihi sunto. quos invicem substituto. quod si voluntati meae non consenserint, exheredes sunto". quaesitum est, an heredes instituti hereditatem adire possint, si condicioni parere nolunt, cum habeant substitutos eadem condicione praescripta. respondit seium et agerium primo loco institutos perinde adire posse, ac si ea condicio, quae fraudis causa adscripta est, adscripta non esset.

Dig. 35.2.28

Maecenatus 1 fideic.

Pater quoque in legatis, quae filius ei dedit alio herede instituto, legis falcidiae rationem patitur.

Dig. 35.2.29

Paulus 2 fideic.

Si a me tibi fideicommissum vel legatum est tuque id post tempus rogatus sis mihi restituere, non puto hoc imputandum esse in falcidiam, quia incipio postea quasi fideicommissarius id recipere.

Dig. 35.2.30pr.

Maecenatus 8 fideic.

In ratione legis falcidiae mortes servorum ceterorumque animalium, furta, rapinae, incendia, ruinae, naufragia, vis hostium praedonum latronum, debitorum facta peiora nomina, in summa quodcumque damnum, si modo culpa legatarii careant, heredi pereunt: quemadmodum ad heredis lucrum pertinent fructus, partus ancillarum et quae per servos adquisita sunt, ut stipulationes, rerum traditiones, legata hereditatesve his datae, ceterae donationes, item servitutes, quibus liberata praedia pretiosiora fierent, actionesque adquisitae, ut furti damni iniuriae similesque, quorum nihil in rationem legis falcidiae cadit.

Dig. 35.2.30.1

Maecenatus 8 fideic.

Vendere autem vel emere iussus certo pretio fundum aliamve quampiam rem in legis falcidiae ratione, cum quantum sit legatum requiratur, tantum eo nomine inducetur, quanto pluris minorisve sit res ea quantitate, quam quo pretio testator accipi darive iussit, sed ut ei quidem portioni, quae legatis deductis facienda erit, amplius deducetur: quippe non nostri causa capi id pretium, sed eo deducto pretium reliquum legatum esse intellectum est.

Dig. 35.2.30.2

Maecenatus 8 fideic.

Prorsus diligenter animadvertendum est, ne quod dicitur damna post mortem testatoris illata ad solum heredem respicere usque quaque et sine ulla distinctione recipiatur. quod enim remota lege falcidia in totum iuris foret, hoc idem fore in ea parte, quae lege falcidia constitueretur: hoc enim attinet damna postea facta non deduci, ne amota portio legatis fideive commissis detrahatur.

Dig. 35.2.30.3

Maecenatus 8 fideic.

Verum est autem his solis, quae pondere numero mensura constant, nec damno postea incidente ex portione, quae fieri ad aestimationem eorum bonorum, quae mortis tempore fuerunt, quicquam detrahi.

Dig. 35.2.30.4

Maecenatus 8 fideic.

Certis vero corporibus et his ipsis ita relictis: " pecuniam, quam in illa arca", " vinum, quod in illis doleis", " pondus argenti, quod in illis horreis habeo", si sine culpa heredis deperierunt vel deteriora sunt facta, procul dubio aut nihil debebitur aut eorum quae exstabunt qualia erunt ea portio debebitur, quae per legem falcidiam efficiatur ex aestimatione bonorum, quae mortis testatoris tempore fuerint.

Dig. 35.2.30.5

Maecenatus 8 fideic.

Incertae autem res relictae distinctionem recipiunt: nam si ex suis rebus incertam rem testator reliquisset, veluti " argentum quod elegerit", et omne argentum testatoris interisset sine culpa heredis, nihil deberetur: sin vero argenti pondus pure relictum esset, quamvis omne argentum testatoris deperisset, admissa lege falcidia portio eius quantitatis sumetur, quae fuit in bonis eo tempore quo testator decessit, nec ad imminuendam eam quicquam damna postea incidentia proficient.

Dig. 35.2.30.6

Maecenatus 8 fideic.

Res tamen, quae interierint, pro nulla parte ac ne aestimatio quidem debeatur, non magis quam si omnes res per speciem enumeratae relictae essent.

Dig. 35.2.30.7

Maecenatus 8 fideic.

Tametsi autem legis falcidiae ratione, quae condicionis implendae causa heredi sunt data, in quartam non computantur, tamen id, quod non figura condicionis accipere iussus est ab eo, cui hereditatem restituere rogatus est, celso et iuliano nostro placuit computari, quemadmodum si ea summa heres vendere eas res iussus esset, quia non condicionis implendae causa, sed quodammodo pro pretio inferre sunt iussi. quo loco amplius quaesitum est, an fideicommissarius quoque invitus cogatur dare eam summam et recipere hereditatem, quasi et ipsius fidei commissum esset: sed et verisimile non est, cum talis oratio magis ipsius causa, quam contra ipsum posita videatur.

Dig. 35.2.30.8

Maecenatus 8 fideic.

Cum lex falcidia intervenit, non veniunt in contributionem, quae ipsi heredi a semetipso vel servo eius legata fideive commissa sunt. alia causa est eorum, quae in die certa dantur: nam si libertatis dies coepit cedere, ei debebuntur et in contributionem veniunt. ac ne ea quidem, quae quis servis suis inutiliter sine libertate legavit fideive commisit, in computationem eius legis cedunt.

Dig. 35.2.30.9

Maecenatus 8 fideic.

Res, quas neque per fideicommissum relinqui posse certum est, in legis falcidiae computationem non veniunt.

Dig. 35.2.31

Pomponius 2 fideic.

Is cui fideicommissum solvitur sicut is cui legatum est satisdare debet, quod amplius ceperit, quam per legem falcidiam ei licuerit, reddi: veluti cum propter condicionem aliorum fideicommissorum vel legatorum legis falcidiae causa pendebit. sed et secundum cassii et veterum opinionem, si a pupillo fideicommissa capiuntur, propter ea, quae a substituto erunt relicta, cavere debebit is cui solvatur. nam quamvis repetitio sit eorum, quae fideicommissi nomine non debita solventur, tamen satisdato cautum debet esse ei, a quo pecunia proficisceretur, ne damnum sentiat deficiente eo, cui solutum erit.

Dig. 35.2.32pr.

Maecenatus 9 fideic.

Poenales actiones sive legitimae sive honorariae exceptis popularibus in bonis actoris non ideo minus computandae sunt, quia morte reorum intercidere possunt. e contrario autem eaedem actiones nihil bonis rei defuncto eo detrahunt. sed ne in actoris quidem bonis defuncto eo iniuriarum actio poterit computari, quia et ipsa simul cum eo intercidit, ut usus fructus et id quod in dies menses annosve singulos alicui quoad vivat debeatur. etenim ea demum obligatio rei bonis deminutionem praestat, quae in heredem transit. nec contrarium est, quod vivente reo eo minus in bonis eius intellegebatur: nam et si ita stipulatus esset, ut cum moreretur debere ei inciperet, tamen augerentur bona eius, quemadmodum, si ipse sub eadem condicione promisisset, defuncto eo minuerentur.

Dig. 35.2.32.1

Maecenatus 9 fideic.

Honorariae quoque actiones, quae intra certum tempus a praetore promittuntur, cum bonis actoris defuncto eo augmentum rei decessionemve, si tales erunt, ut in heredem quoque transeant, praestabunt.

Dig. 35.2.32.2

Maecenatus 9 fideic.

Iulianus scribit, si utriusque heredis pars exhausta est legatis et alter ex heredibus cautionem praetoriam accepit a legatariis, non aequaliter, sed pro suo modo legis falcidiae rationem et actionem ex stipulatu habiturum. omnes enim praetorias stipulationes eiusdem interpretationis esse: nam constare ex iudicatum solvi stipulatione, sive a parte actoris sive a rei plures heredes exstitissent, non omnibus nec adversus omnes actionem contingere, sed dumtaxat his qui vicissent et adversus victos, hisque, adversus quos res defensa non esset, adversus eos, qui rem non defendissent.

Dig. 35.2.32.3

Maecenatus 9 fideic.

Annua bima trima die aureis centenis legatis ex omnibus summis, non tantum ex posterioribus portionem legis falcidiae detrahi placuit.

Dig. 35.2.32.4

Maecenatus 9 fideic.

Si titio viginti legatis portio per legem falcidiam detracta esset, cum ipse quoque quinque seio rogatus esset restituere, vindius noster tantum seio pro portione ex quinque detrahendum ait, quantum titio ex viginti detractum esset. quae sententia et aequitatem et rationem magis habet, quia exemplo heredis legatarius ad fideicommissa praestanda obligabitur: nec quia ex sua persona legatarius inducere legem falcidiam non possit, idcirco quod passus esset non imputaturum: nisi forte testator ita fidei eius commisisset ^ commisisset^, ut totum, quidquid ex testamento cepisset, restitueret.

Dig. 35.2.32.5

Maecenatus 9 fideic.

Si autem manumittere servum vel suum vel alienum rogatus sit, omnimodo praestare debebit libertatem, nec hoc contrarium est superiori, quia favor libertatis saepe et alias benigniores sententias exprimit.

Dig. 35.2.33

Paulus 3 fideic.

Si servus tibi legatus sit eumque rogatus sis manumittere nec praeterea capias, unde quartam, quae per falcidiam retinetur, recipere possis, senatus censuit cessare falcidiam.

Dig. 35.2.34

Marcellus not. ad iul. 42 Dig.

In testatoris servo non erit falcidiae locus: si vero pecuniam aliudve quid legaverit fideique legatarii commiserit, ut alienum servum vel legatarii manumitteret, locus erit.

Dig. 35.2.35

Ulpianus 6 disp.

Plane si quid sit praeterea legatum ipsi servo, falcidiae locum fore senatus declaravit. unde scaevola ait in eo, quod praeterea servo legatum est, ita falcidiam admittendam, ut inde et quod pro servo praestandum est sumatur.

Dig. 35.2.36pr.

Paulus 3 fideic.

Sed si non servus ipse legatus sit, sed pecunia rogatusque sit legatarius servum suum manumittere, falcidiam patietur et nihilo minus cogetur manumittere, quia tanti aestimasse videbitur servum suum.

Dig. 35.2.36.1

Paulus 3 fideic.

Quid si alienus servus fuerit? in eo non plus quam accepit ad redimendum cogitur impendere.

Dig. 35.2.36.2

Paulus 3 fideic.

Sin vero heres servum rogatus sit manumittere, placet pretium eius, ut aes alienum, deducendum esse.

Dig. 35.2.36.3

Paulus 3 fideic.

Si solus servus legatus et fideicommissa libertate donatus fuerit, licet falcidia interveniente totus vindicari petive potest. sed et si aliud praeterea capiat legatarius, adhuc servus totus peti potest: quartam autem utriusque ex legato retinendam, ne impediatur libertas.

Dig. 35.2.36.4

Paulus 3 fideic.

Si incertum sit, an libertas praestari debeat, veluti quod sub condicione vel post tempus data sit, numquid incerto eo an praestetur, cum possit aut servus mori aut condicio deficere, interim falcidia admittenda est, deinde cum libertas competere vel deberi coeperit, tum legatarius illam partem recipiat, quam falcidia detraxit? caecilio placebat, si quid ex operis eius medio tempore consecutus fuerit heres, id in pretium eius erogare eum debere propter legis falcidiae rationem.

Dig. 35.2.37pr.

Valens 6 de fideic.

Eius servi aestimatio perinde ac statuliberi fieri debet.

Dig. 35.2.37.1

Valens 6 de fideic.

Sed et si heres servum alienum rogatus est manumittere, placuit ut etiam huius pretium ex aestimatione hereditatis deduci debeat.

Dig. 35.2.38pr.

Hermogenianus 1 iuris epit.

Statuliber heredis non auget familiam.

Dig. 35.2.38.1

Hermogenianus 1 iuris epit.

Communes servi in utriusque patrimonio connumerantur.

Dig. 35.2.38.2

Hermogenianus 1 iuris epit.

Cuius usus fructus alienus est, in dominio domini proprietatis connumeratur, pignori dati in debitoris, sub lege commissoria distracti, item ad diem addicti in venditoris.

Dig. 35.2.39

Paulus 3 sent.

Aeris alieni loco deducuntur non solum pretia eorum, quibus libertas data est, et eorum, qui supplicio sunt adfecti, sed et eius, quem praetor propter indicium proditae mortis vel detectae eorum coniurationis libertate donavit.

Dig. 35.2.40pr.

Hermogenianus 4 iuris epit.

Ad veterani testamentum, sive pater familias sive filius familias sit, licet intra annum missionis decedat, lex falcidia pertinet.

Dig. 35.2.40.1

Hermogenianus 4 iuris epit.

Si cui, si decem dedisset, viginti fundus fuisset legatus, is in toto fundo legatarius habebitur.

Dig. 35.2.41

Paulus 9 ad ed.

Dolo carere non videtur, si iam mota quis controversia hereditatis legata sine cautionibus det.

Dig. 35.2.42

Ulpianus 14 ad ed.

In falcidia aestimatio pretii rerum ex veritate facienda est.

Dig. 35.2.43

Ulpianus 19 ad ed.

Servi qui apud hostes sunt post mortem testatoris reversi, quod ad falcidiam pertinet, locupletiorem faciunt hereditatem.

Dig. 35.2.44

Ulpianus 21 ad ed.

Falcidia intervenire non potest, si statuliber de alieno dedit, non de bonis defuncti, vel alias est homo liber, qui condicionem implevit.

Dig. 35.2.45pr.

Paulus 60 ad ed.

In lege falcidia non habetur pro puro, quod in diem relictum est: medii enim temporis commodum computatur.

Dig. 35.2.45.1

Paulus 60 ad ed.

In his legatis, quae sub condicione relicta sunt, proculus putabat, cum quaeritur de lege falcidia, tantum esse in legato, quanti venire possunt: quod si est, et deductio sic potest fieri, ut tantum videatur vi deberi, quanti nomen venire potest. sed haec sententia non probatur: cautionibus ergo melius res temperabitur.

Dig. 35.2.46

Ulpianus 76 ad ed.

Qui quod per falcidiam retinere poterat, voluntatem testatoris secutus spopondit se daturum, cogendus est solvere.

Dig. 35.2.47pr.

Ulpianus 79 ad ed.

Lex falcidia si interveniat, in omnibus pensionibus locum habet: sed hoc ex post facto apparebit. ut puta in annos singulos legatum relictum est: quamdiu falcidia nondum locum habet, integrae pensiones annuae dabuntur: sed enim si annus venerit, quo fit, ut contra legem falcidiam ultra dodrantem aliquid debeatur, eveniet, ut retro omnia legata singulorum annorum imminuantur.

Dig. 35.2.47.1

Ulpianus 79 ad ed.

Numquam legatarius vel fideicommissarius, licet ex trebelliano senatus consulto restituitur ei hereditas, utitur legis falcidiae beneficio.

Dig. 35.2.48

Paulus 2 ad ed. aedil. curul.

Cum emptor venditori vel contra heres exstitit, evicto homine utrum duplum in aes alienum deducere vel computare debeat an simplum? duplum enim esset, si alius heres exstitisset. et benignius est eodem herede existente simplum ei imputari.

Dig. 35.2.49pr.

Paulus 12 ad plaut.

Plautius. servo, quem tibi legaveram, fundum legavi. atilicinus nerva sabinus primum in servo rationem legis falcidiae habendam et quota pars ex eo decederet, eam partem in fundo legato inutilem futuram, deinde ex reliquis partibus fundi legis falcidiae portionem decessuram, sicut ex omnibus legatis. cassius, quod servo pars lege falcidia decedat, incipere servum fieri communem heredis et legatarii, communi autem servo cum legatum sit, totum pertinere ad socium, quia in eam personam legatum consistere possit: qua ratione semel ex fundo partem legis falcidiae decessuram. paulus. cassii sententia utimur: nam et divus pius rescripsit servo communi fideicommissum datum totum ad socium pertinere.

Dig. 35.2.49.1

Paulus 12 ad plaut.

Interdum evenit, ut propter rationem legis falcidiae sequens legatum exstinguatur, veluti si fundus et ad eum via legata sit per alium fundum: nam si pars fundi remanserit in hereditate, non potest procedere viae legatum, quia per partem servitus adquiri non potest.

Dig. 35.2.50

Celsus 14 Dig.

Non est dubium, quin ea legata, a quibus heres summovere exceptione petitorem potest, in quartam ei imputentur nec ceterorum legata minuant.

Dig. 35.2.51

Iulianus 61 Dig.

Nec interest, utrum ab initio quasi inutile fuerit an ex accidenti postea in eum casum pervenisset legatum, ut actio eius denegaretur.

Dig. 35.2.52pr.

Marcellus 9 Dig.

Ex asse patronum heredem instituit libertus, cum ducentos aureos in bonis haberet, et legavit filio centum viginti, extraneo reliqua: deminutio legati, quod extraneo praestat legatum, proficit filio ad consequenda solida, quae ei legata sunt.

Dig. 35.2.52.1

Marcellus 9 Dig.

Quacumque ex causa legata non praestantur, imputantur heredi in quartam partem quae propter legem falcidiam remanere apud eum debet.

Dig. 35.2.53

Celsus 17 Dig.

Si propter ea, quae sub condicione legata sunt, pendet legis falcidiae ratio, praesenti die data non tota vindicabuntur.

Dig. 35.2.54

Marcellus 15 Dig.

Pater filium, ex quo tres habebat nepotes, heredem instituit fideique eius commisit, ne fundum alienaret et ut in familia eum relinqueret: filius decedens tres filios scripsit heredes. quaerendum est, an omnino quasi creditores unusquisque in ratione legis falcidiae aliquid possit deducere, quia in potestate sua habuit pater, cui ex his potius relinqueret. sed hac ratione nemo in falcidiae ratione quicquam deducet. quod videndum, ne dure constituatur: utique enim in alieno aere habuit fundum, necessitate quippe obstrictus fuisset filiis eum relinquendi.

Dig. 35.2.55

Marcellus 20 Dig.

Cum titio in annos singulos dena legata sunt et iudex legis falcidiae rationem inter heredem et alios legatarios habeat, vivo quidem titio tanti litem aestimare debeat, quanti venire id legatum potest, in incerto posito, quamdiu victurus sit titius: mortuo autem titio non aliud spectari debet, quam quid heres ex ea causa debuerit.

Dig. 35.2.56pr.

Marcellus 22 Dig.

Cum quo de peculio agi poterat, heres creditori exstitit: quaeris, cuius temporis peculium computari oporteat in falcidia lege. plerique putant, quod tunc in peculio fuerit, cum adiretur hereditas, inspiciendum. ego dubito, quoniam mortis tempus in ratione legis falcidiae ineunda placuit observari: quid enim interest, peculium servi post mortem creditoris deminutum sit an debitor pauperior factus sit?

Dig. 35.2.56.1

Marcellus 22 Dig.

Aliquis dicet: quid ex contrario, si ante aditam hereditatem adquisierit servus? et ego quaeram, si debitoris, qui tunc non erat solvendo, ampliatae facultates fuerunt? et cum in isto placuerit ex post facto uberiorem videri fuisse hereditatem, sicuti cum condicio crediti exstitit post mortem, ita etiam peculii incrementum pleniorem faciet hereditatem.

Dig. 35.2.56.2

Marcellus 22 Dig.

Scaevola notat: quid ergo, si idem servus defuncto et alii dena debuit et una decem habuit? augetur scilicet et his hereditas, decem, quae defuncto naturaliter debebantur, in hereditate manentibus.

Dig. 35.2.56.3

Marcellus 22 Dig.

Is, qui in bonis unum dumtaxat servum habebat, legavit eum titio et fidei eius commisit, ut post triennium manumitteret: debet ex eo, quod interim ex operis servi ad titium pervenire potest, quarta apud heredem remanere, quemadmodum si directo post triennium servo libertatem dedisset eiusque usum fructum ei legasset, aut ei proprietatem per fideicommissum relinquit.

Dig. 35.2.56.4

Marcellus 22 Dig.

Stichum tibi, servo tuo decem legavit vel contra tibi decem, servo tuo stichum, libertatemque stichi fidei eius commisit. lex falcidia minuit legata: redimere ab herede partem debes, quemadmodum si tibi utrumque legasset.

Dig. 35.2.56.5

Marcellus 22 Dig.

Saepius evenit, ne emolumentum eius legis heres consequatur: nam si centum aureorum dominus viginti quinque alicui dedisset et eum instituerit heredem et dodrantem legaverit, nihil aliud sub occasione legis falcidiae intervenire potest, quia vivus videtur heredi futuro providere.

Dig. 35.2.57

Marcellus 26 Dig.

Cum dotem maritus alicui legaverit, ut uxori restituatur, non habere legem falcidiam locum dicendum est. et sane in plerisque ita observatur, ut omissa interpositi capientis persona spectetur.

Dig. 35.2.58

Modestinus 9 reg.

Legis falcidiae beneficium heres etiam post longum tempus mortis testatoris implorare non prohibetur.

Dig. 35.2.59pr.

Modestinus 9 pand.

Beneficio legis falcidiae indignus esse videtur, qui id egerit, ut fideicommissum intercidat.

Dig. 35.2.59.1

Modestinus 9 pand.

Praeterea qui non capienti rogatus est restituere hereditatem, senatus consulto planciano non conceditur quartam retinere: sed ea quarta, quam non retinuit, ad fiscum pertinet ex rescripto divi pii.

Dig. 35.2.60pr.

Iavolenus 14 ex cass.

Cum pater impuberi filiae heredem substituit, id quod ei legatorum nomine a patre obvenit, cum hereditas ad substitutos pertinet, in computationem legis falcidiae non venit.

Dig. 35.2.60.1

Iavolenus 14 ex cass.

Legato petito cum in litem iuratum est, ratio legis falcidiae non eius summae, in quam legatarius iuravit, haberi debet, sed eius, quanti re vera id fuit quod petitum est: nam id quod poenae causa adcrevit in legem falcidiam non incidit.

Dig. 35.2.61

Iavolenus 4 epist.

Alienus fundus tibi legatus est: hunc heres cum emere nisi infinito pretio non posset, emit multo pluris, quam quanti erat, qua emptione effectum est, ut legatarii ad legem falcidiam revocarentur. quaero, cum, si fundus tanti, quanti re vera, emptus esset, legata non fuerant excessura ius legis falcidiae, an hoc ipso heres institutus partem revocandi a legatariis ius habeat, quod ex voluntate defuncti pluris emerit fundum, quam quanti erat. respondit: quod amplius heres quam pretium fundi legatario solvit, id lege falcidia imputari non potest, quia neglegentia eius nocere legatariis non debet, utpote cum is confitendo veram aestimationem praestare poterat.

Dig. 35.2.62pr.

Ulpianus 1 ad l. iul. et pap.

In lege falcidia hoc esse servandum iulianus ait, ut, si duo rei promittendi fuerint vel duo rei stipulandi, si quidem socii sint in ea re, dividi inter eos debere obligationem, atque si singuli partem pecuniae stipulati essent vel promisissent: quod si societas inter eos nulla fuisset, in pendenti esse, in utrius bonis computari oporteat id quod debetur vel ex cuius bonis detrahi.

Dig. 35.2.62.1

Ulpianus 1 ad l. iul. et pap.

Corpora si qua sunt in bonis defuncti, secundum rei veritatem aestimanda erunt, hoc est secundum praesens pretium: nec quicquam eorum formali pretio aestimandum esse sciendum est.

Dig. 35.2.63pr.

Paulus 2 ad l. iul. et pap.

Pretia rerum non ex affectu nec utilitate singulorum, sed communiter funguntur. nec enim qui filium naturalem possidet tanto locupletior est, quod eum, si alius possideret, plurimo redempturus fuisset. sed nec ille, qui filium alienum possidet, tantum habet, quanti eum patri vendere potest, nec exspectandum est, dum vendat, sed in praesentia, non qua filius alicuius, sed qua homo aestimatur. eadem causa est eius servi, qui noxam nocuit: nec enim delinquendo quisque pretiosior fit. sed nec heredem post mortem testatoris institutum servum tanto pluris esse, quo pluris venire potest, pedius scribit: est enim absurdum ipsum me heredem institutum non esse locupletiorem, antequam adeam, si autem servus heres institutus sit, statim me locupletiorem effectum, cum multis causis accidere possit, ne iussu nostro adeat: adquirit nobis certe cum adierit, esse autem praeposterum ante nos locupletes dici, quam adquisierimus.

Dig. 35.2.63.1

Paulus 2 ad l. iul. et pap.

Cuius debitor solvendo non est, tantum habet in bonis, quantum exigere potest.

Dig. 35.2.63.2

Paulus 2 ad l. iul. et pap.

Nonnullam tamen pretio varietatem loca temporaque adferunt: nec enim tantidem romae et in hispania oleum aestimabitur nec continuis sterilitatibus tantidem, quanti secundis fructibus, dum hic quoque non ex momentis temporum nec ex ea quae raro accidat caritate pretia constituantur.

Dig. 35.2.64

Ulpianus 13 ad l. iul. et pap.

Si in testamento ita scriptum sit: " heres meus lucio titio decem dare damnas esto et quanto quidem minus per legem falcidiam capere poterit, tanto amplius ei dare damnas esto", sententiae testatoris standum est.

Dig. 35.2.65

Paulus 6 ad l. iul. et pap.

Si fundus legatus sit quinquaginta dignus sub hac condicione, si quinquaginta heredi dedisset, plerique putant utile esse legatum, quia condicionis implendae causa datur: nam constat etiam falcidiam eum pati posse. sed si quinquaginta aurei legati sint, si quinquaginta dedisset, dicendum inutile esse legatum et magis ridiculum esse.

Dig. 35.2.66pr.

Ulpianus 18 ad l. iul. et pap.

Circa legem falcidiam in eo, quod sub condicione vel in diem alicui relictum est, hoc observandum est: si decem sub condicione alicui fuerint relicta eaque condicio post decennium forte exstiterit, non videntur decem huic legata, sed minus decem, quia intervallum temporis et interusurium huius spatii minorem facit quantitatem decem.

Dig. 35.2.66.1

Ulpianus 18 ad l. iul. et pap.

Sicuti legata non debentur, nisi deducto aere alieno aliquid supersit, nec mortis causa donationes debebuntur, sed infirmantur per aes alienum. quare si immodicum aes alienum interveniat, ex re mortis causa sibi donata nihil aliquis consequitur.

Dig. 35.2.67

Clementius 4 ad l. iul. et pap.

Quotiens cuidam amplius legatum sit, quam ei capere liceret, et lex falcidia locum haberet, prius falcidiae ratio habenda est, scilicet ut subducto eo, quod lex falcidia exceperit, reliquum, si non excedat statutam lege portionem, debeatur.

Dig. 35.2.68pr.

Macer 2 ad l. vices. hered.

Computationi in alimentis faciendae hanc formam esse ulpianus scribit, ut a prima aetate usque ad annum vicesimum quantitas alimentorum triginta annorum computetur eiusque quantitatis falcidia praestetur, ab annis vero viginti usque ad annum vicesimum quintum annorum viginti octo, ab annis viginti quinque usque ad annos triginta annorum viginti quinque, ab annis triginta usque ad annos triginta quinque annorum viginti duo, ab annis triginta quinque usque ad annos quadraginta annorum viginti. ab annis quadraginta usque ad annos quinquaginta tot annorum computatio fit, quot aetati eius ad annum sexagesimum deerit remisso uno anno: ab anno vero quinquagesimo usque ad annum quinquagesimum quintum annorum novem, ab annis quinquaginta quinque usque ad annum sexagesimum annorum septem, ab annis sexaginta, cuiuscumque aetatis sit, annorum quinque. eoque nos iure uti ulpianus ait et circa computationem usus fructus faciendam. solitum est tamen a prima aetate usque ad annum trigesimum computationem annorum triginta fieri, ab annis vero triginta tot annorum computationem inire, quot ad annum sexagesimum deesse videntur. numquam ergo amplius quam triginta annorum computatio initur. sic denique et si rei publicae usus fructus legetur, sive simpliciter sive ad ludos, triginta annorum computatio fit.

Dig. 35.2.68.1

Macer 2 ad l. vices. hered.

Si quis ex heredibus rem propriam esse contendat, deinde hereditariam esse convincatur, quidam putant eius quoque falcidiam non posse retineri, quia nihil intersit, subtraxerit an hereditariam esse negaverit: quod ulpianus recte improbat.

Dig. 35.2.69

Pomponius 5 ad sab.

Usu fructu bonorum legato aes alienum ex omnibus rebus deducendum est, quoniam post senatus consultum nulla res est, quae non cadit in usus fructus legatum.

Dig. 35.2.70

Ulpianus 16 ad sab.

Falcidiae stipulatio statim committitur, ubi condicio legati vel debiti exstitit.

Dig. 35.2.71

Paulus 32 ad ed.

Potest heres in vendenda hereditate cavere, ut et lege falcidia interveniente solida legata praestentur, quia ea lex heredis causa lata est nec fraus ei fit, si ius suum deminuat heres.

Dig. 35.2.72

Gaius 3 de legatis ad ed. pr

Quantitas patrimonii deducto etiam eo, quidquid explicandarum venditionum causa impenditur, aestimatur.

Dig. 35.2.73pr.

Gaius 18 ad ed. provinc.

In quantitate patrimonii exquirenda visum est mortis tempus spectari. qua de causa si quis centum in bonis habuerit et tota ea legaverit, nihil legatariis prodest, si ante aditam hereditatem per servos hereditarios aut ex partu ancillarum hereditariarum aut ex fetu pecorum tantum accesserit hereditati, ut centum legatorum nomine erogatis habiturus sit heres quartam partem, sed necesse est, ut nihilo minus quarta pars legatis detrahatur. et ex diverso, si ex centum septuaginta quinque legaverit et ante aditam hereditatem in tantum decreverint bona, incendiis forte aut naufragiis aut morte servorum, ut non plus quam septuaginta quinque vel etiam minus relinquatur, solida legata debentur. nec ea res damnosa est heredi, cui liberum est non adire hereditatem: quae res efficit, ut necesse sit legatariis, ne destituto testamento nihil consequantur, cum herede in portionem legatorum pacisci.

Dig. 35.2.73.1

Gaius 18 ad ed. provinc.

Magna dubitatio fuit de his, quorum condicio mortis tempore pendet, id est an quod sub condicione debetur in stipulatoris bonis adnumeretur et promissoris bonis detrahatur. sed hoc iure utimur, ut, quanti ea spes obligationis venire possit, tantum stipulatoris quidem bonis accedere videatur, promissoris vero decedere. aut cautionibus res explicari potest, ut duorum alterum fiat, aut ita ratio habeatur, tamquam pure debeatur, aut ita, tamquam nihil debeatur, deinde heredes et legatarii inter se caveant, ut exsistente condicione aut heres reddat, quanto minus solverit, aut legatarii restituant, quanto plus consecuti sint.

Dig. 35.2.73.2

Gaius 18 ad ed. provinc.

Sed et si legata quaedam pure, quaedam sub condicione relicta efficiant, ut exsistente condicione lex falcidia locum habeat, pure legata cum cautione redduntur. quo casu magis in usu est solvi quidem pure legata perinde ac si nulla alia sub condicione legata fuissent, cavere autem legatarios debere ex eventu condicionis quod amplius accepissent redditu iri.

Dig. 35.2.73.3

Gaius 18 ad ed. provinc.

Cuius generis cautio necessaria videtur et si quibusdam servis eodem testamento sub condicione libertas data sit, quorum pretia condicione exsistente bonis detrahuntur.

Dig. 35.2.73.4

Gaius 18 ad ed. provinc.

In diem relicta legata alterius esse iuris palam est, cum ea omnimodo tam ipsi legatario quam heredibus eius deberi certum est: sed tanto minus erogari ex bonis intellegendum est, quantum interea donec dies optingit, heres lucraturus est ex fructibus vel usuris.

Dig. 35.2.73.5

Gaius 18 ad ed. provinc.

Ergo optimum quidem est statim ab initio ita testatorem distribuere legata, ne ultra dodrantem relinquantur. quod si excesserit quis dodrantem, pro rata portione per legem ipso iure minuuntur: verbi gratia si is, qui quadringenta in bonis habuit, tota ea quadringenta erogaverit, quarta pars legatariis detrahitur: si trecenta quinquaginta legaverit, octava. quod si quingenta legaverit habens quadringenta, initio quinta, deinde quarta pars detrahi debet: ante enim detrahendum est, quod extra bonorum quantitatem est, deinde quod ex bonis apud heredem remanere oportet.

Dig. 35.2.74

Gaius 3 de legatis ad ed. pr

Quod autem dicitur, si ex iudicio defuncti quartam habeat heres, solida praestanda esse legata, ita accipere debemus, si hereditario iure habeat: itaque quod quis legatorum nomine a coherede accepit, in quadrantem ei non imputatur.

Dig. 35.2.75

Marcellus ex 40 Dig. iul.

Sed si ideo legatum ei datum est, ut integra legata vel fideicommissa praestet, deneganda erit actio legati, si lege falcidia uti mallet.

Dig. 35.2.76pr.

Gaius 3 de legatis ad ed. pr

Id autem, quod condicionis implendae causa vel a coherede vel a legatario vel a statulibero datur, in falcidia non imputatur, quia mortis causa capitur. sane si a statulibero peculiares nummos accipiat, pro sua parte quadranti eos imputare debet, quia pro ea parte non mortis causa capere, sed hereditario iure eos habere intellegitur.

Dig. 35.2.76.1

Gaius 3 de legatis ad ed. pr

Qua ratione placuit legata, quae legatarii non capiunt, cum apud heredes subsederint, hereditario iure apud eos remanere intellegi et ideo quadranti imputanda, nec quicquam interesse, utrum statim ab initio legatum non sit an quod legatum est remanserit.

Dig. 35.2.77

Gaius 18 ad ed. provinc.

In singulis heredibus rationem legis falcidiae componendam esse non dubitatur. et ideo si titio et seio heredibus institutis semis hereditatis titii exhaustus est, seio autem quadrans totorum bonorum relictus sit, competit titio beneficium legis falcidiae.

Dig. 35.2.78

Gaius 3 de legatis ad ed. pu.

Quod si alterutro eorum deficiente alter heres solus exstiterit, utrum perinde ratio legis falcidiae habenda sit, ac si statim ab initio is solus heres institutus esset, an singularum portionum separatim causae spectandae sunt? et placet, si eius pars legatis exhausta sit, qui heres exstiterit, adiuvari legatarios per deficientem partem, quia ea non est legatis onerata, quia et legata quae apud heredem remanent efficiunt, ut ceteris legatariis aut nihil aut minus detrahatur: si vero defecta pars fuerit exhausta, perinde in ea ponendam rationem legis falcidiae, atque si ad eum ipsum pertineret, a quo defecta fieret.

Dig. 35.2.79

Gaius 18 ad ed. provinc.

In duplicibus testamentis sive de patrimonio quaeramus, ea sola substantia spectatur, quam pater cum moreretur habuerit, nec ad rem pertinet, si post mortem patris filius vel adquisierit aliquid vel deminuerit: sive de legatis quaeramus, tam ea quae in primis quam ea quae in secundis tabulis relicta sunt in unum contribuuntur, tamquam si et ea, quae a filii herede reliquisset testator, a suo herede sub alia condicione legasset.

Dig. 35.2.80pr.

Gaius 3 de legatis ad ed. pr

Si is, qui quadringenta in patrimonio habebit, filio impubere herede instituto ducenta legaverit eique titium et seium heredes substituerit et a titio centum legaverit, videamus, quid iuris sit. si nondum solutis legatis pupillus decesserit et ob id ea legata utrique debent, solus heres titius utetur lege falcidia: cum enim ducenta ex hereditate pupilli ad eum pertineant, ducenta legatorum nomine debet, centum ex ducentis quae pupillus debebat, centum quae ipse dare iussus est: itaque ex utraque quantitate quarta deducta habebit quinquaginta. in persona vero seii lex falcidia non intervenit, cum ad eum ex hereditate pupilli ducenta pertineant et debeat legatorum nomine centum ex ducentis, quae a pupillo relicta sunt. quod si pupillus solvat legata, debent curare tutores pupilli, ut caveant legatarii.

Dig. 35.2.80.1

Gaius 3 de legatis ad ed. pr

Quaedam legata divisionem non recipiunt, ut ecce legatum viae itineris actusve: ad nullum enim ea res pro parte potest pertinere. sed et si opus municipibus heres facere iussus est, individuum videtur legatum: neque enim ullum balineum aut ullum theatrum aut stadium fecisse intellegitur, qui ei propriam formam, quae ex consummatione contingit, non dederit: quorum omnium legatorum nomine, etsi plures heredes sint, singuli in solidum tenentur. haec itaque legata, quae dividuitatem non recipiunt, tota ad legatarium pertinent. sed potest heredi hoc remedio succurri, ut aestimatione facta legati denuntiet legatario, ut partem aestimationis inferat, si non inferat, utatur adversus eum exceptione doli mali.

Dig. 35.2.81pr.

Gaius 18 ad ed. provinc.

Sed usus fructus legatus venit in computationem legis falcidiae, nam divisionem recipit adeo, ut, si duobus legatus fuerit, ipso iure ad singulos partes pertineant.

Dig. 35.2.81.1

Gaius 18 ad ed. provinc.

Dos relegata extra rationem legis falcidiae est, scilicet quia suam rem mulier recipere videtur.

Dig. 35.2.81.2

Gaius 18 ad ed. provinc.

Sed et de his quoque rebus, quae mulieris causa emptae paratae essent, ut hae quoque extra modum legis essent, nominatim ipsa falcidia lege expressum est.

Dig. 35.2.82

Ulpianus 8 disp.

Quaerebatur, cum is qui solum in nomine quadringenta in bonis habebat ipsi debitori liberationem, seio autem quadringenta legaverit, si debitor vel solvendo non sit vel centum facere possit, quantum quisque habeat interventu legis falcidiae. dicebam legem falcidiam ex eo quod refici ex hereditate potest quartam heredi tribuere, residuum dodrantem inter legatarios distribuere. quare cum nomen minus solvendo est in hereditate, eius quod exigi potest pro rata fit distributio, residui venditio facienda est, ut id demum in hereditate computetur, quanti nomen distrahi potest. sed cum debitori liberatio relinquitur, ipse sibi solvendo videtur et quod ad se attinet, dives est: quippe si ei mortis causa accepto feratur id quod debet, quadringenta cepisse videbitur, licet nihil facere possit: sensisse enim liberationem plenam videtur, quamvis nihil facere possit. si soli ei liberatio relicta est, et ideo falcidia interveniente trecenta accepto illi ferri debent, residua centum durabunt in obligationem et si quidem facere posse coeperit, exigentur ab eo dumtaxat usque ad centum. idemque erit dicendum, et si mortis causa accepto ei quadringenta ferantur. unde eleganter dicitur acceptilationem in pendenti fore, ut, si quidem mortis tempore quadringenta tota inveniantur, in trecenta valeat acceptilatio: si vero praeterea aliquid inveniatur, quod quadrantem suppleat heredi, in quadringenta acceptilatio proficiet. quod si debitor iste quadringentorum dumtaxat centum facere potest, quia sibi solvendo est, necesse habebit centum refundere. cum igitur debitor sibi solvendo sit, eveniet, ut, si herede aliquo instituto ipsi debitori liberatio et alii quadringenta legata sint, si quidem solvendo sit debitor, centum quinquaginta ex trecentis retineat, alia centum quinquaginta legatario praestentur, heres centum habeat: sin vero centum tantum facere possit, heredi ex refecto quarta servanda est: sic fiet, ut centum, quae praestari possunt, in quattuor partes dividantur, tres partes ferant legatarii, heres viginti quinque habeat, debitor, qui solvendo non est, secum centum quinquaginta compenset. de residuis centum quinquaginta, quae exigi non possunt, venditio fiet nominis idque, quasi solum in bonis fuerit, repraesentatur. quod si nihil facere debitor potest, aeque in centum quinquaginta accepto liberandus est: de residuo venditionem nominis faciendam neratius ait, quod et nos probamus.

Dig. 35.2.83

Iulianus 12 Dig.

Si creditor filii tui heredem te instituerit et legis falcidiae rationem ponas, peculii quantitas, quod aditae hereditatis tempore fuisset, in quadrantem tibi imputabitur.

Dig. 35.2.84

Iulianus 13 Dig.

Repperitur casus, quo heres agere potest, quamvis testator agere non potuerit: veluti si tutor, cum solveret legata, non interposuerit stipulationem, quanto plus quam per legem falcidiam capi licuerit solutum fuerit, reddi: pupillus quidem eo nomine tutelae non agit, sed heredi eius hoc quoque nomine tutor obligatus erit.

Dig. 35.2.85

Iulianus 18 Dig.

Si dos socero data est et solus filius heres patri exstitisset, dotem confestim in computatione hereditatis et falcidiae ratione in aere alieno deducet: aliter enim videbitur indotatam uxorem habere. quod si filius extraneum coheredem habeat, ipse quidem semper pro qua parte patri heres erit dotem in aere alieno deducet, et coheres eius, antequam dos a filio praecipiatur.

Dig. 35.2.86

Iulianus 40 Dig.

Titia testamento suo titium fratrem suum ex parte tertia heredem instituit fideique eius commisit, ut hereditatem retenta quarta parte secundae et proculae restituat: eadem fratri quaedam praedia praelegavit: quaero, an titius ea quae praelegata sunt etiam pro ea parte hereditatis, quam rogatus est ut ^ ^

restitueret ^ ^ , restituere an integra retinere debeat. respondi titium legata integra retinere debere, sed in partem quartam imputari oportere duodecimam partem praediorum. sed si non esset adiectum, ut pars quarta deduceretur, totum trientem praediorum legi falcidiae imputari oportere, quoniam contra sententiam matris familiae lex falcidia induceretur.

Dig. 35.2.87pr.

Iulianus 61 Dig.

Qui fundum solum in bonis centum relinquebat, si heredem suum damnaverit, ut eum quinquaginta titio venderet, non est existimandus amplius quam quinquaginta legasse, ideoque lex falcidia locum non habet.

Dig. 35.2.87.1

Iulianus 61 Dig.

Item is, qui duos fundos in bonis centum haberet, si me et titium heredes instituisset et damnasset me, ut titio fundum cornelianum quinquaginta venderem et contra titium damnasset, ut mihi fundum seianum quinquaginta venderet: non animadverto, quemadmodum lex falcidia locum habere possit, cum uterque heredum unius fundi partem dimidiam hereditario iure habiturus sit, in qua pars dimidia hereditatis est: nam certe qui damnatus est fundum cornelianum vendere, seiani fundi partem hereditario iure habet, item qui damnatus est seianum fundum vendere, partem corneliani fundi hereditario iure retinet.

Dig. 35.2.87.2

Iulianus 61 Dig.

Si quis heredem instituerit eum, cui rogatus fuerat post mortem suam centum restituere, in ratione legis falcidiae centum deducere debet, quia, si alius quilibet heres exstitisset, haec centum in aere alieno ponerentur.

Dig. 35.2.87.3

Iulianus 61 Dig.

Si tu ex parte quarta, titius ex parte quarta heredes scripti fueritis, deinde tu ex parte dimidia heres institutus fueris sub condicione, et legata, item libertates datae fuerint: pendente condicione libertates competent, legata tota praestabuntur, quia sive condicio exstiterit, te herede exsistente utraque valent, sive condicio defecerit, tu et titius heredes eritis. de lege falcidia, si hoc quaeris, an exsistente condicione miscetur quadrans tuus et semis atque ita pro dodrante ratio ponenda est cum his, quibus a te pure herede legatum est, respondebimus misceri duas partes.

Dig. 35.2.87.4

Iulianus 61 Dig.

Qui filium suum impuberem et titium aequis partibus heredes instituerat, a filio totum semissem legaverat, a titio nihil et titium filio substituerat. quaesitum est, cum titius ex institutione adisset et impubere filio mortuo ex substitutione heres exstitisset, quantum legatorum nomine praestare deberet. et placuit solida legata eum praestare debere: nam confusi duo semisses efficerent, ut circa legem falcidiam totius assis ratio haberetur et solida legata praestarentur. sed hoc ita verum est, si filius antequam patri heres exsisteret decessisset. si vero patri heres fuit, non ampliora legata debet substitutus, quam quibus pupillus obligatus fuerat, quia non suo nomine obligatur, sed defuncti pupilli, qui nihil amplius quam semissis dodrantem praestare necesse habuit.

Dig. 35.2.87.5

Iulianus 61 Dig.

Quod si extranei heredis semis totus legatus fuerit isque pupillo, a quo nihil legatum erat, ex substitutione heres exstiterit, poterit dici augeri legata et perinde agendum, ac si cuilibet coheredi substitutus fuisset eoque omittente hereditatem ex asse heres exstitisset, quia semper substitutus rationem legis falcidiae ex quantitate bonorum, quae pater reliquerit, ponet.

Dig. 35.2.87.6

Iulianus 61 Dig.

Eadem dicenda sunt et si pater duos impuberes heredes instituerit et eosdem invicem substituerit, deinde iure substitutionis ad alterum hereditas recciderit et legis falcidiae ratio habenda sit.

Dig. 35.2.87.7

Iulianus 61 Dig.

Qui filios impuberes duos habebat, alterum heredem instituit, alterum exheredavit, deinde exheredatum instituto substituit ac postea exheredato maevium et ab eo legavit: et exheredatus fratri impuberi exstitit heres, deinde impubes decessit. cum iudicio patris facultates paternae per causam hereditariam ex substitutione ad eum perveniant, potest dici legata ab eo relicta praestanda esse habita ratione legis falcidiae in his bonis, quae pater mortis tempore reliquerit. nec huic contrarium est, quod, cum exheredato pater legatum dederit, nihilo magis substitutus legatis obligabitur, quia eo casu non hereditatis paternae portio, sed legatum ad eum pervenit. dicet aliquis: quid ergo, si exheredatus filius non ex substitutione fratri suo heres exstiterit, sed aut lege aut per interpositam personam atque ita impubes decesserit? sic quoque existimandus erit substitutus legata debere? minime: nam quantum intersit, exheredatus filius ex substitutione fratri suo heres exsistat an alio modo, vel ex eo apparet, quod alias ab eo legare pater potuit, alias non potuit. est igitur rationi congruens, ne plus iuris circa personam substituti testator habeat, quam habuerat in eo, cui eum substituebat.

Dig. 35.2.87.8

Iulianus 61 Dig.

Coheres pupillo datus si pro parte sua legata, habita legis falcidiae ratione, praestiterit, deinde impubere mortuo ex substitutione heres exstiterit et semis pupilli legatis exhaustus esset, ex integro legis falcidiae ratio ponenda erit, ut contributis legatis, quae ab ipso et quae a pupillo data fuerant, pars quarta bonorum apud eum remaneat. licet enim pupillo heres exsistat, tamen circa legem falcidiam perinde ratio habetur ac si patri heres exstitisset. nec aliter augebuntur legata, quae ab ipso ultra dodrantem data fuerant, quam augentur, cum ex parte heres institutus et coheredi suo substitutus deliberante coherede legata, habita ratione legis falcidiae, solvit, deinde ex substitutione alteram quoque partem hereditatis adquirat.

Dig. 35.2.88pr.

Africanus 5 quaest.

Qui quadringenta habebat, trecenta legavit: deinde fundum tibi dignum centum aureis sub hac condicione legavit, si legi falcidiae in testamento suo locus non esset: quaeritur, quid iuris est. dixi twn aporwn hanc quaestionem esse, qui tractatus apud dialecticos tou qeudomenou dicitur. etenim quidquid constituerimus verum esse, falsum repperietur. namque si legatum tibi datum valere dicamus, legi falcidiae locus erit ideoque deficiente condicione non debebitur. rursus si, quia condicio deficiat, legatum valiturum non sit, legi falcidiae locus non erit: porro si legi locus non sit, exsistente condicione legatum tibi debebitur. cum autem voluntatem testatoris eam fuisse appareat, ut propter tuum legatum ceterorum legata minui nollet, magis est, ut statuere debeamus tui legati condicionem defecisse.

Dig. 35.2.88.1

Africanus 5 quaest.

Quid ergo dicemus, si ducenta legavit et tibi similiter sub eadem condicione ducenta legata esse proponantur? nam aut exstitisse aut defecisse legati tui condicionem, ut aut totum aut nihil tibi debeatur, et iniquum et contra voluntatem testatoris existimabitur: rursus partem deberi rationi non congruit, quando necesse est totius legati condicionem vel exstitisse vel defecisse. ergo per exceptionem doli mali tota ea res temperanda erit.

Dig. 35.2.88.2

Africanus 5 quaest.

Quare cum quis tale quid consequi velit, sic consequetur: " si quo amplius legavi vel legavero, quam per legem falcidiam licebit, tum quantum ad supplendum quadrantem deduci oportet, ex eo legato quod titio dedi heres meus damnas esto dare".

Dig. 35.2.88.3

Africanus 5 quaest.

Qui ducenta in bonis relinquebat, legavit mihi centum praesenti die, tibi aeque centum sub condicione: post aliquantum temporis exstitit condicio, ita tamen, ut ex reditu eius summae, quae tibi relicta est, non amplius quam viginti quinque reciperet. legis falcidiae ratio ita habenda erit heredi, ut viginti quinque conferre ei debeamus et amplius fructus quinquaginta medii temporis, qui verbi gratia efficient quinque. cum igitur triginta sint conferenda, quidam putant quina dena ab utroque nostrum conferenda esse, quod minime verum est: licet enim eandem quantitatem acceperimus, manifestum tamen est aliquanto uberius esse meum legatum. quare statuendum erit tanto minus in tuo legato esse, quantum ex fructibus eius heres perceperit. secundum quod in proposita specie computationem ita iniri oportet, ut ex septem partibus ego quattuor, tu tres conferamus, quoniam quidem quarta pars amplius in meo quam in tuo legato est.

Dig. 35.2.89pr.

Marcianus 7 inst.

Divi severus et antoninus rescripserunt pecuniam relictam ad alimenta puerorum falcidiae subiectam esse et ut idoneis nominibus collocetur pecunia, ad curam suam revocaturum praesidem provinciae.

Dig. 35.2.89.1

Marcianus 7 inst.

Divi severus et antoninus generaliter rescripserunt bononio maximo usuras praestaturum eum, qui frustrationis causa beneficium legis falcidiae imploravit.

Dig. 35.2.90

Florus 11 inst.

Si heres, cuius fidei commissum est, ut accepta certa pecunia hereditatem restituat, a voluntate eius qui testamentum fecit discedat et postea legis falcidiae beneficio uti volet: etsi non detur ei, quo accepto hereditatem restituere rogatus est, tamen fideicommissum restituere cogi debet, quoniam quod ei pater familiae dari voluit legis falcidiae commodum praestat.

Dig. 35.2.91

Marcianus 13 inst.

In quartam hereditatis, quam per legem falcidiam heres habere debet, imputantur res, quas iure hereditario capit, non quas iure legati vel fideicommissi vel implendae condicionis causa accipit: nam haec in quartam non imputantur. sed in fideicommissaria hereditate restituenda sive legatum vel fideicommissum datum sit heredi sive praecipere vel deducere vel retinere iussus est, in quartam id ei imputatur: pro ea vero parte, quam accepit a coherede extra quartam id est, quod a coherede accipitur. sed et si accepta pecunia hereditatem restituere rogatus sit, id quod accipit in quartam ei imputatur, ut divus pius constituit. si quid vero implendae condicionis causa heres accipiat a legatariis, in falcidiae computationem non prodesse: et ideo si centum praedium legaverit defunctus, si quinquaginta heredi legatarius dederit, centum legatis computationem fieri et quinquaginta extra hereditatem haberi, ne in quartam ei imputentur.

Dig. 35.2.92

Macer 2 de re milit.

Si miles testamento facto partem dimidiam hereditatis suae tibi restitui iusserit, deinde post missionem factis codicillis alteram partem titio restitui rogaverit: si quidem post annum missionis suae decesserit, et tibi et titio heres partem quartam retinebit, quia eo tempore testator decessit, quo testamentum eius ad beneficium principale pertinere desierat: si vero intra annum missionis decesserit, solus titius deductionem partis quartae patietur, quia eo tempore fideicommissum ei relictum est, quo testator iure militari testari non potuit.

Dig. 35.2.93

Papinianus 20 quaest.

Acceptis a maevio centum hereditatem maevio restituere pecuniamque post mortem suam titio dare rogatus est. quamquam haec centum quartam bonorum efficiant, tamen propter fideicommissum sequens quartae retentioni locus erit: tunc enim ex constitutione divi hadriani falcidiae satisfacit ea quantitas, cum apud heredem remanet. sed falcidiam patietur solus cui hereditas relicta est: nam in centum, quae mortis causa capiuntur, admitti falcidia non potest. plane si quis ita scripsit: " acceptis centum peto restituas hereditatem" neque personam dantis demonstraverit, quasi retentam et praeceptam pecuniam, si quartae sufficiat, inducere trebellianum.

Dig. 35.2.94

Scaevola 21 Dig.

Filio et filia scriptis heredibus singulis certa praelegavit, sed longe minus filiae, cui etiam domum obligatam praelegavit cum instrumentis et quicquid ibi fuerit et adiecit haec verba: " sed ea condicione lego, ut quidquid aeris alieni in ea domo erit, titius libertus filii mei exsolvat et sit eis utrisque domus communis". quaesitum est, si filia legis falcidiae beneficio uti volet ad quartam retinendam, an ex hereditate, quae ei relicta est, deducto aere alieno eius quod superfuerit quartam consequi debeat. respondit iure quidem id postulaturam, verum non alias ea, quae ei data sunt, accepturam, si modo ea quartam suppleant, quam voluntati defuncti solvendum praestando pareret.

Dig. 35.2.95pr.

Scaevola 21 Dig.

Maritus uxoris res extra dotem constitutas administravit eaque decedens ante rationem sibi redditam administrationis ex asse eundem maritum heredem reliquit eiusque fidei commisit, ut decem uncias filio communi cum moreretur restitueret, duas autem uncias nepoti. quaesitum est, an id quoque, quod ex administratione rerum apud maritum resedisse constiterit, cum ceteris bonis pro rata decem unciarum filio restitui debeat. respondit id, quod debuisset hereditati, in rationem venire debere.

Dig. 35.2.95.1

Scaevola 21 Dig.

Filiae, quam mater rogaverat, si impubes decessisset, restituere hereditatem titio, patruus legitimus heres exstitit: in ratione legis falcidiae ponenda desiderat deduci sortes, ex quarum usuris alimenta impubes defuncta ex persona testatricis suae pluribus debita praestitit: quaesitum est, an, si eas deduxerit, cavere debeat defunctorum alimentariorum portiones pro modo sortium se restituturum. respondit debere cavere.

Dig. 35.2.95.2

Scaevola 21 Dig.

Post aditam hereditatem triennio exacto legatariis heres legem falcidiam opponit idcirco, quod administravit tutelas testator, quarum ratio nondum reddita sit et quod neget tantum redigi ex nominibus posse, quantum in cautione deductum est. quaesitum est, an rationes defuncti et omnium instrumentorum hereditatiorum et pupillarium rationum legatariis desiderantibus heres describendi potestatem facere debeat, ne in potestate eius sit proferre quod velit et per hoc in fraudem legatarii inducantur. respondit ad iudicis officium pertinere explorare ea, per quae probetur, quanti sit in bonis.

Dig. 35.2.96

Scaevola l.S. quaest. publ. tract.

Miles si, dum paganus erat, fecerit testamentum, militiae tempore codicillos, lex falcidia in codicillis locum non habet, in testamento locum habebit.

Dig. 35.3.0. Si cui plus, quam per legem falcidiam licuerit, legatum esse dicetur.

Dig. 35.3.1pr.

Ulpianus 79 ad ed.

Si cui plus quam licuerit legetur et dubitari iuste possit, utrum lex falcidia locum habitura est nec ne, subvenit praetor heredi, ut ei legatarius satisdet, ut, si apparuerit eum amplius legatorum nomine cepisse quam e lege falcidia capere licebit, quanti ea res erit, tantam pecuniam det dolusque malus ab eo afuturus sit.

Dig. 35.3.1.1

Ulpianus 79 ad ed.

Neque interest, utrum in primis tabulis hoc fiat an in pupillaribus an in utrisque: etenim legem falcidiam semel esse admittendam, etiamsi duplex sit testamentum, iam convenit, contributis legatis tam his, quae ab ipso pupillo quam his, quae a substituto impuberi relicta sunt.

Dig. 35.3.1.2

Ulpianus 79 ad ed.

Si non fuisset interposita stipulatio ex persona pupilli, tutelae actio heredi pupilli adversus tutorem competit. sed ut pomponius ait, et ipsi pupillo et heredi eius poterit committi stipulatio, ipsi quo casu vivo eo falcidia incipit locum habere. de tutelae quoque actione idem scribit.

Dig. 35.3.1.3

Ulpianus 79 ad ed.

Marcellus ait: qui quadringenta in bonis habebat, inpuberem filium heredem instituit eique substituit titium et seium: nihil a pupillo testator legavit, sed a titio trecenta: utrum ducenta, inquit, praestabuntur an centum quinquaginta? nam trecenta nullo modo eum praestare. mihi videtur verius non amplius eum parte sua erogare compelli, certe nec minus: secundum quod eveniret, ut non soli committatur stipulatio, sed omnibus heredibus interponenda est, sed causa cognita.

Dig. 35.3.1.4

Ulpianus 79 ad ed.

Falcidiam locum habere et legatorum modus facit et aeris alieni onus. et si quidem evidens aes alienum est vel certum, facilis est computatio: si autem adhuc incertum est, quia forte vel condicio eius pendet vel creditor litem contestatus est et necdum lis finita est, dubitabitur, quantum legatariis debeatur propter incertum.

Dig. 35.3.1.5

Ulpianus 79 ad ed.

Hodie tamen subsimile aliquid fit in fideicommissis.

Dig. 35.3.1.6

Ulpianus 79 ad ed.

Cum dicitur lex falcidia locum habere, arbiter dari solet ad ineundam quantitatem bonorum, tametsi unus aliquid modicum fideicommissum persequatur: quae computatio praeiudicare non debet ceteris, qui ad arbitrum missi non sunt. solet tamen ab herede etiam ceteris denuntiari fideicommissariis, ut veniant ad arbitrum ibique causam suam agant, plerumque et creditoribus, ut de aere alieno probent. habet tamen rationem in legatariis, item in fideicommissariis, ut, si offerat integrum quod relictum est heres desiderans cavere sibi hac stipulatione, audiatur.

Dig. 35.3.1.7

Ulpianus 79 ad ed.

Si legata quaedam praesenti die relicta sint, quaedam sub condicione, interponenda erit ista stipulatio propter legata condicionalia, dummodo ea legata, quae praesenti sint, integra solvantur. iulianus denique scribit, si pure et sub condicione legata fuerint ne exsistente condicione lex falcidia locum habeat, non aliter legatorum, quae pure data sunt, actionem dari debere, quam si cautum fuerit heredi " quanto amplius, quam per legem falcidiam licuerit, ceperit".

Dig. 35.3.1.8

Ulpianus 79 ad ed.

Idem iulianus scribit eum, cui quadrans sub condicione et dodrans pure legatus est, cavere debere " quanto amplius, quam per legem falcidiam liceat, ceperit, reddi".

Dig. 35.3.1.9

Ulpianus 79 ad ed.

Haec stipulatio ideo locum habet, quia, etsi repeti potest id quod solutum est, tamen fieri potest, ut non sit solvendo is cui solutum est ac per hoc pereat quod datum est.

Dig. 35.3.1.10

Ulpianus 79 ad ed.

In mortis causa quoque donationibus potest dici hanc stipulationem esse interponendam.

Dig. 35.3.1.11

Ulpianus 79 ad ed.

Haec verba stipulationis " quod amplius legatorum nomine ceperis, quam e lege falcidia capere licebit" non tantum eum comprehendunt, qui amplius accepit, quam ei falcidia permisit, ut reddat partem, habeat partem, verum etiam eum qui totum debet restituere. etenim sciendum est legem falcidiam interdum partem eius quod datum est, interdum totum revocare. cum enim habita ratione aeris alieni falcidia ineatur, plerumque evenit, ut emergente debito vel condicione aeris alieni exsistente totum quod legatum est exhauriatur. sed et libertatium condicio interdum exsistens efficiet legatum omnino non deberi, quippe cum habita ratione libertatium et deductis pretiis eorum tunc demum legatorum ineatur ratio.

Dig. 35.3.1.12

Ulpianus 79 ad ed.

In quibusdam autem testamentis falcidia quidem locum non habet, verumtamen ita observatur, ut, licet quadrantem heres non retineat, tamen hactenus legata debeantur, quatenus patrimonii vires sufficiunt, utique deducto aere alieno, item deductis pretiis eorum, qui libertatem in testamento vel directam vel fideicommissariam acceperunt.

Dig. 35.3.1.13

Ulpianus 79 ad ed.

Sed et legatario cavendum est, a quo fideicommissum relinquitur.

Dig. 35.3.1.14

Ulpianus 79 ad ed.

Interdum non legis falcidiae, sed etiam alterius legis in hac stipulatione ratio facienda est, ut puta si patronus ex asse heres institutus sit et pure quincunx legatus sit et sub condicione aliquid supra debitam patrono partem: nam in hunc casum ratio facienda est illius legis, quae patronos vocat, non legis falcidiae.

Dig. 35.3.1.15

Ulpianus 79 ad ed.

Si res, quae legata sit, apud legatarium interierit, probandum est exceptione succurri ei qui promisit,

Dig. 35.3.2

Paulus 75 ad ed.

Etiamsi quanti ea res sit promisit,

Dig. 35.3.3pr.

Ulpianus 79 ad ed.

Nisi si dolo ipsius aliquid factum sit: tunc enim etiam ex doli clausula, quae in ista stipulatione continetur, tenebitur et replicatione repelli poterit.

Dig. 35.3.3.1

Ulpianus 79 ad ed.

Haec cautio, quae propter legem falcidiam interponitur, fideiussorum habet praestationem.

Dig. 35.3.3.2

Ulpianus 79 ad ed.

Si in plures dies pecunia legata est, cum certum sit legem falcidiam locum habere, non stipulationi, sed computationi locum esse pedius ait, ut aestimetur, quanti sit quod in diem legatum est et tantum credatur esse legatum, quantum efficit aestimatio, ut pro modo eius ex omnibus legatis statim legis falcidiae ratio habeatur.

Dig. 35.3.3.3

Ulpianus 79 ad ed.

Quotiens futurum est, ut palam sit et ante diem venientem iam falcidiam locum habere, totiens computatio eius fit. nam si condicio in mora est, exspectabimus condicionem, quoad exsistat: si autem dies superest, iam hic intercapedinis temporis habita ratione atque aestimatione sic de falcidia disputabimus et committi stipulationem dicemus.

Dig. 35.3.3.4

Ulpianus 79 ad ed.

Quamvis autem omnes legatarii et fideicommissarii necesse habeant hac stipulatione cavere, tamen quibusdam remitti divi fratres rescripserunt, ut puta his, quibus minuta alimenta sunt relicta. pompeiae enim faustinae rescripserunt sic: " non eandem causam esse decem aureorum, quos annuos tibi testamento pompeiae crispianae patronae tuae relictos proponis, atque fuit alimentorum et vestiarii libertis relictorum, quibus propterea cautionis onus remittendum existimavimus".

Dig. 35.3.3.5

Ulpianus 79 ad ed.

Item sciendum est fiscum hanc cautionem non pati, sed perinde conveniri posse, ac si cavisset. ceteros autem, cuiuscumque dignitatis sint, licet iam legata perceperint, compelli debere ad cavendum divus pius rescripsit: ex quo rescripto etiam illud accipimus, quod etiam post soluta legata voluit stipulationem interponi.

Dig. 35.3.3.6

Ulpianus 79 ad ed.

Si legatarius heredi, qui controversiam hereditatis patitur iam vel sperat, de restituendo legato sibi praestito caverit et evicta hereditas sit, sed neglegentia vel dolo eius qui legatum praestitit, dicemus non committi stipulationem propter viri boni arbitrium, quod inest huic stipulationi.

Dig. 35.3.3.7

Ulpianus 79 ad ed.

Item si ipse, qui praestitit legatum, ex alia causa sibi evicerit, ut puta quia invenitur sequenti testamento heres scriptus, in quo legatum iste legatarius non acceperat, dicemus committi stipulationem propter viri boni arbitrium.

Dig. 35.3.3.8

Ulpianus 79 ad ed.

Et generaliter ubicumque hereditatem vel quantitatem vel emolumentum praestitit is, qui hac stipulatione sibi prospexerat, dicendum est ibi committi eam, si modo culpa abest ab eo, qui stipulatus est.

Dig. 35.3.3.9

Ulpianus 79 ad ed.

Quaesitum est, an saepius committatur. et placet etiam saepius eam committi, si per partes ablata est hereditas.

Dig. 35.3.3.10

Ulpianus 79 ad ed.

Si legatum fuerit praestitum ante interpositam hanc stipulationem, an condici possit, ut cautio ista interponatur? movet quaestionem, quod ea, quae per errorem omissa vel soluta sunt, condici possunt et hic ergo quasi plus solutum videtur ex eo, quod cautio intermissa est. et ait pomponius condictionem interponendae satisdationis gratia competere et puto hoc probandum quod pomponius, utilitatis gratia.

Dig. 35.3.4pr.

Paulus 75 ad ed.

Haec autem satisdatio locum habet, si iusta causa esse videbitur: nam iniquum erat omnimodo caveri nondum illata controversia litis, cum possint ei lusoriae minae fieri: ideoque eam rem praetor ad cognitionem suam revocat.

Dig. 35.3.4.1

Paulus 75 ad ed.

Si duo ex testamento hereditatem in solidum sibi vindicent, forte quod eiusdem nominis sint, tam in possessorem quam in petitorem competunt actiones et creditoribus et legatariis.

Dig. 35.3.4.2

Paulus 75 ad ed.

Haec cautio utique necessaria est, si quis pecuniam suam solvat vel rem tradat: si vero pecuniam hereditariam solvat vel rem tradat, quidam non putant cavendum, quia nec teneri potest eo nomine victus, cum non possideat vel dolo fecerit, quo minus possideat. hoc si ante motam controversiam solvat: quod si postea, tenebitur culpae nomine.

Dig. 35.3.4.3

Paulus 75 ad ed.

Sed cum de nomine inter duos quaestio est, numquid non sit cavendum ei, qui hereditariam rem tradat, quia omnimodo unus liberatur: quemadmodum si aes alienum hereditarium solvatur? sed si petitor suam pecuniam solvet aut rem suam tradat, non habet unde retineat et ideo necessaria est ei cautio.

Dig. 35.3.5

Marcellus 21 Dig.

Videamus, an stipulatio " qua amplius per falcidiam ceperis licuerit dari" adversus eum non sufficiat, qui legatum alii restituere ex fideicommissi causa debet. sufficiet autem dici nihil eius fidei commissum esse: cavebit scilicet legatario et is, qui fideicommissum accipiet, nisi forte malet legatarius circuitu sublato heredi caveri. sed et legatario praeterea cavendum est, si (ut plerumque aequum est) pro rata ex fideicommisso retinere ei concedendum est, quamvis tantum ex legato apud eum erit remansurum, ut sufficere possit ad praestandum fideicommissum.

Dig. 35.3.6

Callistratus 4 de cogn.

Cum non facile satisdationem offerre legatarius vel fideicommissarius possit et futurum sit, ut propter hoc a petitione liberalitatis ex testamento submoveantur, numquid onus satisdationis eis remittendum erit? quod videtur adiuvari rescripto divi commodi in haec verba: " is, cuius de ea re notio est, aditus si compererit ideo cautionem a te exigi, ut a fideicommissi petitione avertaris, onus satisdationis tibi remitti curabit".

Dig. 35.3.7

Paulus 7 ad l. iul. et pap.

Divus pius ab eo, qui annua legata praecipere ad distribuendum iussus erat, vetuit cautionem exigi cessantium partes reddi, nisi aperte cavere iussus esset.

Dig. 35.3.8

Maecenatus 10 fideic.

Si heres partem bonorum vel etiam universa bona delata ad fiscum diceret, constaret autem de fideicommisso, decretum est, ut petitori caventi " evicta hereditate restitutu iri" solveretur.

Dig. 35.3.9

Maecenatus 12 fideic.

Si non in controversia sit proprietas, sed usus fructus (potest enim rei, cuius proprietas titio legata est, usus fructus alii legari), tunc de eo restituendo non heredi, sed titio caveri debeat. interdum et si ab herede legetur usus fructus, titio cavendum est: veluti si detracto usu fructu proprietas ei legetur, usus fructus seio: quid enim attinebit hoc casu heredi caveri, ad quem emolumentum intercidentis usus fructus non sit spectandum? verum si usu fructu seio legato proprietas titio ita legetur, ut, cum ad seium pertinere desierit, habeat proprietatem, tunc heredi caveri oportebit a fructuario, ab herede autem titio, quia non sit certum usu fructu intercepto ad titium proprietatem reversuram.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER SEXTUS TRICESIMUS

Dig. 36.1.0. Ad senatus consultum trebellianum.
Dig. 36.2.0. Quando dies legatorum vel fideicommissorum cedat.
Dig. 36.3.0. Ut legatorum seu fideicommissorum servandorum causa caveatur.
Dig. 36.4.0. Ut in possessionem legatorum vel fideicommissorum servandorum causa esse liceat.

Dig. 36.1.0. Ad senatus consultum trebellianum.

Dig. 36.1.1pr.

Ulpianus 3 fideic.

Explicito tractatu, qui ad fideicommissa singularum rerum pertinet, transeamus nunc ad interpretationem senatus consulti trebelliani.

Dig. 36.1.1.1

Ulpianus 3 fideic.

Factum est enim senatus consultum temporibus neronis octavo calendas septembres annaeo seneca et trebellio maximo consulibus, cuius verba haec sunt:

Dig. 36.1.1.2

Ulpianus 3 fideic.

" cum esset aequissimum in omnibus fideicommissariis hereditatibus, si qua de his bonis iudicia penderent, ex his eos subire, in quos ius fructusque transferretur, potius quam cuique periculosum esse fidem suam: placet, ut actiones, quae in heredem heredibusque dari solent, eas neque in eos neque his dari, qui fidei suae commissum sic, uti rogati essent, restituissent, sed his et in eos, quibus ex testamento fideicommissum restitutum fuisset, quo magis in reliquum confirmentur supremae defunctorum voluntates".

Dig. 36.1.1.3

Ulpianus 3 fideic.

Sublata est hoc senatus consulto dubitatio eorum, qui adire hereditatem recusare seu metu litium seu praetextu metus censuerunt.

Dig. 36.1.1.4

Ulpianus 3 fideic.

Quamquam autem senatus subventum voluit heredibus, subvenit tamen et fideicommissario: nam in eo, quod heredes, si conveniantur, exceptione uti possunt, heredibus subventum est: in eo vero, quod, si agant heredes, repelluntur per exceptionem quodque agendi facultas fideicommissariis competit, procul dubio consultum est fideicommissariis.

Dig. 36.1.1.5

Ulpianus 3 fideic.

Hoc autem senatus consultum locum habet, sive ex testamento quis heres esset sive ab intesto rogatusque sit restituere hereditatem.

Dig. 36.1.1.6

Ulpianus 3 fideic.

In filii quoque familias militis iudicio, qui de castrensi peculio vel quasi castrensi testari potest, senatus consultum locum habet.

Dig. 36.1.1.7

Ulpianus 3 fideic.

Bonorum quoque possessores vel alii successores ex trebelliano restituere potuerunt hereditatem.

Dig. 36.1.1.8

Ulpianus 3 fideic.

De illo quaeritur, an is, cui ex causa fideicommissi restituta est hereditas ex trebelliano senatus consulto, ipse quoque restituendo ex eodem senatus consulto transferat actiones: et iulianus scribit etiam ipsum transferre actiones, quod et maecianus probat et nobis placet.

Dig. 36.1.1.9

Ulpianus 3 fideic.

Sed et quotiens quis rogatus duobus restituere hereditatem, alteri pure vel in diem, alteri sub condicione, suspectam dicit: ei, cui erat rogatus pure vel in diem restituere, interim universam hereditatem restitui senatus censuit, cum autem exstiterit condicio, si velit alius fideicommissarius partem suam suscipere, transire ad eum ipso iure actiones.

Dig. 36.1.1.10

Ulpianus 3 fideic.

Si filio vel servo herede instituto rogatoque restituere hereditatem dominus vel pater restituat, ex trebelliano transferuntur actiones: quod est etiam, si suo nomine rogati sunt restituere.

Dig. 36.1.1.11

Ulpianus 3 fideic.

Idem est et si ipsi filio pater rogatus sit restituere hereditatem.

Dig. 36.1.1.12

Ulpianus 3 fideic.

Sed et si tutor vel curator adulescentis vel furiosi rogatus sit restituere hereditatem, sine dubio trebelliano locus erit.

Dig. 36.1.1.13

Ulpianus 3 fideic.

Fuit quaesitum, si ipsi tutori rogatus sit restituere pupillus, an ipso auctore restitutionem facere possit? et est decretum a divo severo non posse tutori se auctore restituere hereditatem, quia in rem suam auctor esse non potest.

Dig. 36.1.1.14

Ulpianus 3 fideic.

Curatori tamen adulescentis ab adulescente poterit restitui hereditas, quoniam necessaria non est auctoritas ad restitutionem.

Dig. 36.1.1.15

Ulpianus 3 fideic.

Si autem collegium vel corpus sit, quod rogatum est restituere decreto eorum cui, qui sunt in collegio vel corpore, in singulis inspecta eorum persona restitutionem valere: nec enim ipse sibi videtur quis horum restituere.

Dig. 36.1.1.16

Ulpianus 3 fideic.

Si heres praecepto fundo rogatus sit hereditatem restituere, ex trebelliano senatus consulto restituet hereditatem. nec multum facit, si fundus pignori datus est: neque enim aeris alieni personalis actio fundum sequitur, sed eum, cui hereditas ex trebelliano senatus consulto restituta est. sed cavendum est heredi a fideicommissario, ut, si forte fundus fuerit evictus a creditore, habeat heres cautum. iulianus autem cavendum non putat, sed aestimandum fundum, quanti valet sine hac cautione, hoc est quanti vendere potest sine cautione: et si potest tanti vendere non interposita cautione, quantum facit quarta pars bonorum, ex trebelliano transituras actiones: si minoris, retento eo quod deest similiter ex trebelliano restitutionem fieri: quae sententia multas quaestiones dirimit.

Dig. 36.1.1.17

Ulpianus 3 fideic.

Si is, qui quadringenta in bonis habeat, trecenta legaverit et deductis ducentis rogaverit heredem seio restituere hereditatem, an trecentorum onus fideicommissarius subeat an vero hactenus, quatenus ad eum ex hereditate pervenit? iulianus ait competere quidem adversus eum trecentorum petitionem, non autem amplius quam in ducentis actionem adversus fideicommissarium daturum, in heredem autem centum. et mihi videtur vera esse iuliani sententia, ne damnum fideicommissarius sentiat ultra, quam ad eum ex hereditate quid pervenit: neminem enim oportere plus legati nomine praestare, quam ad eum ex hereditate pervenit, quamvis falcidia cesset, ut rescripto divi pii continetur.

Dig. 36.1.1.18

Ulpianus 3 fideic.

Denique nec ex militis testamento plus legatorum nomine praestatur, quam quantitas est hereditatis aere alieno deducto. nec tamen quartam retinere fideicommissario permittitur.

Dig. 36.1.1.19

Ulpianus 3 fideic.

Inde neratius scribit, si heres rogatus restituere totam hereditatem non deducta falcidia rogato et ipsi, ut alii restituat, non utique debere eum detrahere fideicommissario secundo quartam, nisi liberalitatem tantum ad priorem fideicommissarium heres voluit pertinere.

Dig. 36.1.1.20

Ulpianus 3 fideic.

Sed si quadringenta habens ducenta legaverit titio et partem dimidiam hereditatis sempronio restituere rogaverit, ex trebelliano restitutionem faciendam iulianus ait et legatorum petitionem scindi sic, ut centum quidem petantur ab herede, centum vero alia legatarius a fideicommissario petat. quod idcirco dicit iulianus, quoniam secundum hanc rationem integram quartam habet, id est centum integra.

Dig. 36.1.1.21

Ulpianus 3 fideic.

Idem iulianus scribit, si is, qui quadringenta in bonis habeat, trecenta legasset et deductis centum rogasset heredem, ut hereditatem sempronio restituat, debere dici deductis centum restituta hereditate legatorum actionem in fideicommissarium dari.

Dig. 36.1.2

Celsus 21 Dig.

Qui quadringenta reliquit, titio trecenta legavit, heredis fidei commisit, ut tibi hereditatem restitueret, isque suspectam iussu praetoris adiit et restituit: quaerebatur, quid legatario dare deberes. dicendum est, quia praesumptum est voluisse testatorem cum onere legatorum fideicommissum restitui, tota trecenta te dare titio debere: nam heres hoc rogatus intellegi debet, ut te suo loco constituat et quod heres perfunctus omnibus hereditariis muneribus, id est post legatorum dationem, reliquum habiturus foret, si non esset rogatus et tibi restitueret hereditatem, id tibi restituat. quantum ergo haberet? nempe centum: haec ut tibi daret rogatus est. itaque sic ineunda est legis falcidiae ratio, quasi heres trecenta titio dare damnatus tibi centum dare damnatus sit: quo evenit, ut, si hereditatem sua sponte adisset, daret titio ducenta viginti quinque, tibi septuaginta quinque. non ergo plus titio debetur, quam si iniussu praetoris adita hereditas foret.

Dig. 36.1.3pr.

Ulpianus 3 fideic.

Marcellus autem apud iulianum in hac specie ita scribit: si ad heredis onus esse testator legata dixerit et heres sponte adiit hereditatem, ita debere computationem falcidiae iniri, ac si quadringenta per fideicommissum essent relicta, trecenta vero legata, ut in septem partes trecenta dividantur et ferat quattuor partes fideicommissarius, tres partes legatarius. quod si suspecta dicta sit hereditas et non sponte heres adiit et restituit, centum quidem de quadringentis, quae habiturus esset heres, resident apud fideicommissarium, in reliquis autem trecentis eadem distributio fiet, ut ex his quattuor partes habeat fideicommissarius, reliquas tres legatarius: nam iniquissimum est plus ferre legatarium ideo, quia suspecta dicta est hereditas, quam laturus esset, si sponte adita fuisset.

Dig. 36.1.3.1

Ulpianus 3 fideic.

Quod autem in suspecta hereditate dictum est, hoc idem dici potest in his testamentis, in quibus lex falcidia locum non habet, in militis dico et si qui sunt alii.

Dig. 36.1.3.2

Ulpianus 3 fideic.

Item pomponius scribit, si deductis legatis restituere quis hereditatem rogatur, quaesitum est, utrum solida legata praestanda sint et quartam ex solo fideicommisso detrahere possit, an vero et ex legatis et ex fideicommisso quartam detrahere possit? et refert aristonem respondisse ex omnibus detrahendam, hoc est ex legatis et fideicommisso.

Dig. 36.1.3.3

Ulpianus 3 fideic.

Res, quae ab herede alienatae sunt, in quartam imputantur heredi.

Dig. 36.1.3.4

Ulpianus 3 fideic.

Quidam liberis suis, ex disparibus partibus institutis, datis praeceptionibus, ut ipse maximam partem patrimonii inter liberos ita divisisset, rogavit eum, qui sine liberis decederet, portionem suam fratribus restituere. imperator noster rescripsit praeceptiones quoque fideicommisso contineri, quia non portionem hereditariam testator commemoravit, sed simpliciter portionem: in portionem autem et praeceptiones videri cecidisse.

Dig. 36.1.3.5

Ulpianus 3 fideic.

Si is, qui rogatus fuerit hereditatem restituere, ante quaestionem de familia habitam vel tabulas aperuerit vel hereditatem adierit vel quid eorum quae senatus consulto prohibentur fecerit ac per hoc publicata fuerit hereditas, fiscus cum suis oneribus hereditatem adquirit. quare commodum quartae, quod erat habiturus heres institutus, id ad fiscum pertinet et ex trebelliano actiones transeunt. sed et si prohibuerit testamentarium introducere vel testes convenire vel mortem testatoris non defendit vel ex alia causa hereditas fisco vindicata est, aeque quartae quidem commodum ad fiscum pertinebit, dodrans vero fideicommissario restitueretur.

Dig. 36.1.4

Ulpianus 4 fideic.

Quia poterat fieri, ut heres institutus nolit adire hereditatem veritus, ne damno adficeretur, prospectum est, ut, si fideicommissarius diceret suo periculo adire et restitui sibi velle, cogatur heres institutus a praetore adire et restituere hereditatem. quod si fuerit factum, transeunt actiones ex trebelliano nec quartae commodo heres in restitutione utetur: nam cum alieno periculo adierit hereditatem, merito omni commodo arcebitur. nec interest, solvendo sit hereditas nec ne: sufficit enim recusari ab herede instituto. neque illud inquiritur, solvendo sit hereditas an non sit. opinio enim, vel metus vel color, eius, qui noluit adire hereditatem, inspicitur, non substantia hereditatis, nec immerito: non enim praescribi heredi instituto debet, cur metuat hereditatem adire vel cur nolit, cum variae sint hominum voluntates: quorundam negotia timentium, quorundam vexationem, quorundam aeris alieni cumulum, tametsi locuples videatur hereditas, quorundam offensas vel invidiam: quorundam gratificari volentium his, quibus hereditas relicta est, sine onere tamen suo.

Dig. 36.1.5

Maecenatus 6 fideic.

Sed et qui magna praeditus est dignitate vel auctoritate, harenarii vel eius mulieris, quae corpore quaestum fecerit, hereditatem restituere cogetur.

Dig. 36.1.6pr.

Ulpianus 4 fideic.

Recusare autem non tantum praesentes, sed etiam absentes vel per epistulam possunt: nam etiam adversus absentes postulatur decretum, sive certior sit eorum voluntas recusantium adire et restituere hereditatem sive incerta: adeo praesentia eorum non est necessaria.

Dig. 36.1.6.1

Ulpianus 4 fideic.

Meminisse autem oportebit de herede instituto senatum loqui: ideoque tractatum est apud iulianum, ad intestatos locum habeat. sed est verius eoque iure utimur, ut hoc senatus consultum ad intestatos quoque pertineat, sive legitimi sive honorarii sint successores.

Dig. 36.1.6.2

Ulpianus 4 fideic.

Sed et ad filium qui in potestate est hoc senatus consultum locum habet et in ceteris necessariis, ut a praetore compellantur miscere se hereditati, sic deinde restituere: quod si fecerint, transtulisse videbuntur actiones.

Dig. 36.1.6.3

Ulpianus 4 fideic.

Si fisco vacantia bona deferantur nec velit bona adgnoscere et fideicommissario restituere, aequissimum erit, quasi vindicaverit, sic fiscum restitutionem facere.

Dig. 36.1.6.4

Ulpianus 4 fideic.

Item si municipes hereditatem suspectam dicant heredes instituti, dicendum erit cogi eos adgnoscere hereditatem et restituere: idemque erit et in collegio dicendum.

Dig. 36.1.6.5

Ulpianus 4 fideic.

Titius heres institutus sempronio substituto rogatus est ipsi sempronio hereditatem restituere: institutus suspectam dicebat hereditatem: quaeritur, an cogendus est adire et restituere hereditatem. et deliberari potest: sed verius est cogendum eum, quia interesse sempronii potest ex institutione quam ex substitutione hereditatem habere, vel legatis vel libertatibus onerata substitutione: nam et si legitimus heres fuerit is, cui fideicommissaria hereditas relicta est, idem dicitur.

Dig. 36.1.6.6

Ulpianus 4 fideic.

Si quis alio loco restituere hereditatem iussus sit et suspectam eam dicat, iulianus scribit cogendum eum esse similemque ei, qui in diem rogatus est restituere.

Dig. 36.1.7

Maecenatus 4 fideic.

Sed sciendum est inpendiorum quoque, quae ad iter explicandum necessaria essent, rationem haberi debere: nam si ita institutus esset " si titio decem dedisset", non aliter cogeretur, quam si ei pecunia offeratur. sed et salutis ac dignitatis ratio habenda erit: quid enim si morbo applicitus alexandriae iussus fuit adire vel nomen vispellionis testatoris ferre?

Dig. 36.1.8

Paulus 2 fideic.

De aetate quoque et iure, id est liceat ei eo ire nec ne, aestimabitur.

Dig. 36.1.9pr.

Ulpianus 4 fideic.

Sed et si alio loco iussus est adire et rei publicae causa absit, aeque cogendum adire hereditatem et restituere iulianus ait, ubi abest.

Dig. 36.1.9.1

Ulpianus 4 fideic.

Plane si quis petierit ad deliberationem tempus et impetraverit, deinde post tempus deliberationis adierit et restituerit hereditatem, non videtur coactus hoc fecisse: nec enim suspectam coactus adit, sed sponte post deliberationem.

Dig. 36.1.9.2

Ulpianus 4 fideic.

Quod si suspectam dicit, profiteri debet non sibi expedire adire hereditatem, neque hoc dici oportere non esse solvendo, sed profiteri eum oportet, quod non putat sibi expedire hereditatem adire.

Dig. 36.1.9.3

Ulpianus 4 fideic.

Si quis sub condicione fuit heres scriptus, pendente condicione nihil agit, tametsi paratus sit restituere hereditatem.

Dig. 36.1.10

Gaius 2 fideic.

Sed et si ante diem vel ante condicionem restituta sit hereditas, non transferuntur actiones, quia non ita restituitur hereditas, ut testator rogavit. plane posteaquam exstiterit condicio vel dies venerit si ratam habeat restitutionem hereditatis, benignius est intellegi tunc translatas videri actiones.

Dig. 36.1.11pr.

Ulpianus 4 fideic.

Apud iulianum relatum est, si legatum fuit heredi instituto relictum " si heres non erit" et ob hoc suspectam dicat hereditatem ne perdat legatum, offerri ei oportere quantitatem legati a fideicommissario, deinde cogendum. nec illud admittit iulianus, ut, quasi hereditatem non adisset, sic legatum a coherede petat (adiit enim), sed magis arbitratur a fideicommissario ei praestandum. sed et si quid aliud sua interesse dicet, non cogitur adire, nisi ei damnum vel lucrum a fideicommissario sarciatur vel a praetore onus remittatur, quod recusat.

Dig. 36.1.11.1

Ulpianus 4 fideic.

Idem iulianus ait, si duo fuerint a patre instituti cum filio eius impubere et idem substituti filio, sufficere ei, qui fideicommissum in secundis tabulis accepit, unum ex heredibus institutis cogere adire patris hereditatem: hoc enim facto confirmatisque patris tabulis poterunt ex substitutione ambo cogi adire et restituere hereditatem.

Dig. 36.1.11.2

Ulpianus 4 fideic.

Utrum autem praesenti an etiam absenti restitui possit procuratore adeunte praetorem, videndum est. ego puto absenti quoque fideicommissario cogi posse heredem institutum adire et restituere nec vereri heredem oportere, ne forte in damno moretur: potest enim ei per praetorem succurri, sive cautum ei fiat, sive non et ante decesserit fideicommissarius, quam ei restituatur hereditas. est enim huius rei exemplum capere ex rescripto divi pii in specie huiusmodi. antistia decedens titium heredem instituit et libertatem dedit albinae directam eique filiam per fideicommissum reliquit rogavitque, ut filiam manumitteret: sed et titium rogavit, ut manumissae albinae filiae restitueret hereditatem. cum igitur titius suspectam diceret hereditatem, rescriptum est a divo pio compellendum eum adire hereditatem: quo adeunte albinae competituram libertatem eique filiam tradendam et ab ea manumittendam tutoremque filiae manumissae dandum, quo auctore restituatur hereditas filiae statim, quamvis sic fuisset ei rogatus restituere, cum nubilem aetatem complesset. cum autem possit, inquit, evenire, ut ante decedat ea, cui fideicommissaria libertas et hereditas relicta est, nec oporteat damno adfici eum, qui rogatus adit hereditatem, remedium dedit, ut, si quid horum contigerit, perinde permittatur venumdari bona antistiae, ac si heres ei non exstitisset. cum igitur demonstraverit divus pius succurri heredi instituto, qui compulsus adit, dici potest etiam in ceteris causis exemplum hoc sequendum, sicubi evenerit, restituatur fideicommissaria hereditas ei, qui compulit adire et restituere sibi hereditatem.

Dig. 36.1.12

Papinianus 20 quaest.

Sed cum ab herede pro parte instituto fideicommissa hereditas sub condicione relicta esset, imperator titus antoninus rescripsit non esse locum constitutioni suae neque pupillum extra ordinem iuvandum, praesertim si novum beneficium cum alterius iniuria postularetur.

Dig. 36.1.13pr.

Ulpianus 4 fideic.

Ille, a quo sub condicione fideicommissum relictum est, causari quid non poterit, ne condicio deficiat et haereat actionibus, cum nullum damnum sit futurum.

Dig. 36.1.13.1

Ulpianus 4 fideic.

Secundum ea quae ostendimus iam igitur non desideratur heredis praesentia.

Dig. 36.1.13.2

Ulpianus 4 fideic.

Si de testamento aliquid quaeratur, heres non debet audiri, si suspectam sibi hereditatem dicat: nam et si maxime dicatur vel ius testandi non habuisse eum qui testatus est vel de viribus testamenti vel de sua condicione, non erit audiendus.

Dig. 36.1.13.3

Ulpianus 4 fideic.

Quid ergo si de viribus fideicommissi tractetur? haec quaestio praetori praetermittenda non erit. sed quid si qui fideicommissarius dicat: " adeat prius et sic de hoc quaeratur?" credo interdum audiendum fideicommissarium, si cognitio prolixiorem tractatum habeat: finge enim verba fideicommissi de longinquo petenda et iustam deliberationem de quantitate fideicommissi incidere: dicendum erit compellendum eum adire, ne prius heres decedens fideicommissarium decipiat.

Dig. 36.1.13.4

Ulpianus 4 fideic.

Tempestivum est requirere, per quem quis cogatur adire et restituere hereditatem: veluti si praetor aut consul fuerit heres institutus suspectamque hereditatem dicat, an cogi possit adire et restituere ? et dicendum est praetorem quidem in praetorem vel consulem in consulem nullum imperium habere: sed si iurisdictioni se subiciant, solet praetor in eos ius dicere. sed et si ipse praetor heres institutus suspectam dicat, ipse se cogere non poterit, quia triplici officio fungi non potest et suspectam dicentis et coacti et cogentis. sed in his omnibus casibus atque similibus principale auxilium implorandum est.

Dig. 36.1.13.5

Ulpianus 4 fideic.

Si quis filius familias sit et magistratum gerat, patrem suum, in cuius est potestate, cogere poterit suspectam dicentem hereditatem adire et restituere:

Dig. 36.1.14

Hermogenianus 4 iuris epit.

Nam quod ad ius publicum attinet, non sequitur ius potestatis.

Dig. 36.1.15pr.

Ulpianus 4 fideic.

Dig. 36.1.15.1

Ulpianus 4 fideic.

Sed et qui repudiavit hereditatem, cogetur adire et restituere ipsam hereditatem, si iustae causae allegentur.

Dig. 36.1.15.2

Ulpianus 4 fideic.

Plane si bona venierint, non oportet praetorem ne quidem pupillum restituere nisi ex causa, ut divus pius rescripsit.

Dig. 36.1.15.3

Ulpianus 4 fideic.

Si quis compulsus adierit hereditatem ex testamento, quod secundas tabulas habebat, quaesitum est, an per aditionem et tabulae secundae firmarentur, quod videbantur evanuisse non adita patris hereditate. et iulianus libro quinto decimo scribit et sequentes tabulas confirmari: quae sententia verissima est: nemo enim dubitat etiam legata praestari et libertates competere et cetera, quaecumque sint in testamento, perinde valere, ac si sua sponte heres hereditatem adisset.

Dig. 36.1.15.4

Ulpianus 4 fideic.

Qui compulsus adit hereditatem, sicuti ceteris commodis caret, ita hoc quoque casu careat, ne possit paenitendo quartam retinere: et ita invenio ab imperatore nostro et divo patre eius rescriptum.

Dig. 36.1.15.5

Ulpianus 4 fideic.

Non omnis autem suspectam hereditatem repudiatione amissam cogere potest adiri et sibi restitui, sed is demum, ad quem actiones transire possunt: neque enim aequum est ad hoc quem compelli adire hereditatem, ut emolumentum quidem hereditatis refundat, ipse vero oneribus hereditatis obstrictus relinquatur.

Dig. 36.1.15.6

Ulpianus 4 fideic.

Quare si fideicommissum pecuniarium alicui fuerit relictum, cessat compulsio, tametsi indemnitatis cautio offeratur.

Dig. 36.1.15.7

Ulpianus 4 fideic.

Proinde qui " hereditatem" rogatur restituere, is demum compellitur restituere.

Dig. 36.1.15.8

Ulpianus 4 fideic.

Sed et si quis " bona" rogatus sit vel " familiam" vel " pecuniam" rogetur vel " universam rem meam"

Dig. 36.1.16

Paulus 2 fideic.

Vel " omnia sua",

Dig. 36.1.17pr.

Ulpianus 4 fideic.

Cogi poterit: hoc idem et si " patrimonium" fuerit rogatus et si " facultates" et si " quidquid habeo" et si " censum meum" et si " fortunas meas" et si " substantiam meam". et si " peculium meum" testator dixerit, quia plerique hupokoristikws patrimonium suum peculium dicunt, cogendus erit: de successione enim sua et hic rogavit. nec ignoro in quibusdam ex his maecianum dubitare et voluntatis esse dicere quaestionem, utrum de pecunia tantum an et de successione testator sensit. in ambiguo tamen magis de successione sensum dico, ne intercidat fideicommissum.

Dig. 36.1.17.1

Ulpianus 4 fideic.

Sed et si quis ita rogaverit: " quidquid ad te ex hereditate bonisve meis pervenerit, rogo restituas", cogi poterit adire et restituere hereditatem ex trebelliano senatus consulto, quamquam pervenire proprie dicatur quod deductis oneribus ad aliquem pervenit.

Dig. 36.1.17.2

Ulpianus 4 fideic.

Et generaliter autem potest dici ita demum quem non posse cogi adire et restituere hereditatem, si de re vel quantitate fuerit rogatus: ceterum si de universitate sensisse testatorem appareat, nulla quaestio est, quin, sive suspectam dicat, cogi possit, sive sponte adit, ex trebelliano transeant actiones.

Dig. 36.1.17.3

Ulpianus 4 fideic.

Inde quaeritur, si quis hereditatem rogatus sit restituere deducto aere alieno vel deductis legatis, an suspectam dicens cogi possit adire et restituere hereditatem, quia vi ipsa magis id, quod superest ex hereditate, quam ipsam hereditatem restituere sit rogatus. et sunt qui putent, ut maecianus, inutilem esse hanc deductionem: nec enim posse ex iure deduci quantitatem, non magis quam si fundum quis deducto aere alieno vel deductis legatis restituere sit rogatus: neque enim recipit fundus aeris alieni vel legati minutionem. sed iulianum existimare refert trebelliano senatus consulto locum esse et, ne dupliciter fideicommissarius oneretur, et cum heres aes alienum vel legatum deducit et cum convenitur a creditoribus et legatariis, restituta sibi ex trebelliano hereditate debere aut deductionem eum non pati ab herede aut cavere illi heredem defensum iri eum adversus legatarios ceterosque.

Dig. 36.1.17.4

Ulpianus 4 fideic.

Si quis heres institutus rogatus fuerit hereditatem non totam, sed partem restituere, vel si duobus restituere sit rogatus et alter ex his velit sibi restitui hereditatem, alter recuset: senatus censuit utroque casu exonerari eum, qui suspectam hereditatem dicit, totamque hereditatem transire ad eum, qui adire cogit.

Dig. 36.1.17.5

Ulpianus 4 fideic.

Sed et si quis non hereditatis suae partem dimidiam rogavit heredem suum restituere, sed hereditatem seiae, quae ad eum pervenerat, vel totam vel partem eius, heresque institutus suspectam dicat, cum placeat illud quod papinianus ait ex trebelliano transire actiones, dici poterit, si suspecta dicatur hereditas, cogendum heredem institutum adire et restituere hereditatem totamque hereditatem ad eum cui restituitur pertinere.

Dig. 36.1.17.6

Ulpianus 4 fideic.

Sed et si miles rogaverit quem res italicas restituere vel res provinciales, dicendum est suspectam dicentem cogi adire et restituere: nam, ut eleganter maecianus libro sexto fideicommissorum ait, qua ratione ex certa re miles heredem instituere potest actionesque ei dabuntur, pari ratione etiam ex trebelliano transibunt actiones: et quamvis placeat, cum quis hereditatem bonaque, quae sibi ab aliquo obvenerunt vel quae in aliqua regione habet, restituere rogat, ex trebelliano non transeant actiones, tamen contra responderi in militis testamento ait: nam sicuti concessum est, inquit, militibus circa institutionem separare species bonorum, ita et, si per fideicommissum ab institutis heredibus id fecerit, admitteretur trebellianum senatus consultum.

Dig. 36.1.17.7

Ulpianus 4 fideic.

Cum quidam duos heredes instituerit eosque invicem substituerit et ab his petierit, sive uterque sive alter heres esset, ut hereditas sua ex parte dimidia restitueretur alicui post quinquennium, et scripti suspectam sibi hereditatem dicant, fideicommissarius autem desideret suo periculo adiri hereditatem: censuit senatus ambos heredes alterumve cogi adire hereditatem et fideicommissario eam restituere ita, ut fideicommissario et adversus eum actiones competant quasi ex trebelliano restituta hereditate.

Dig. 36.1.17.8

Ulpianus 4 fideic.

Maecianus scribit: cum quis ex fideicommissariis abesset et praesentes desiderent suo periculo adire hereditatem translatisque in solidum actionibus in eum qui coegit absentes, si velint fideicommissum suscipere, a praesente petent: consequenter ait nec quartam eum retenturum adversus fideicommissarios suos, quia nec heres potuit.

Dig. 36.1.17.9

Ulpianus 4 fideic.

Idem maecianus quaerit, an is, qui duobus vel pluribus rogatus est restituere hereditatem, cogente aliquo adire possit et in horum, qui id non desideraverunt, portionibus falcidiae beneficio uti, sive ipsi quoque desiderent sibi restitui sive alius in locum eorum successerit. et cum hodie hoc iure utimur, ut totum transeat ad eum qui coegit, consequens erit dicere quartae retentionem amisisse eum qui coactus est, quia in solidum actiones transierint in eum qui coegit. plane si proponas fideicommissarium non ita coegisse, ut tota hereditas in se transferatur: cum coeperint ceteri desiderare sibi restitui hereditatem, dicendum falcidia eum uti posse. recte igitur maecianus ait multum interesse, utrum totam restitui hereditatem sibi fideicommissarius desideraverit an suam tantummodo partem. nam si sola pars transfertur, in residuo falcidiae erit locus: si tota hereditas translata sit, cessat huius legis beneficium.

Dig. 36.1.17.10

Ulpianus 4 fideic.

Si servo duorum rogatus quis sit restituere hereditatem et alter cogere velit suspectam dicentem, alter restituere sibi recuset, hoc erit dicendum, quod in duobus, quorum alter suscipere voluit hereditatem, alter non.

Dig. 36.1.17.11

Ulpianus 4 fideic.

Si pater filio, quem in potestate habet, rogetur restituere hereditatem, an filius patrem suum, si suspectam dicat hereditatem, cogere possit? et non est dubium patrem a filio per praetorem cogi posse.

Dig. 36.1.17.12

Ulpianus 4 fideic.

Sed et si id fideicommissum ad castrense peculium spectaturum est et filius familias is fuit, qui munus militiae sustinebat aliove quo officio praeerat, multo magis dicendum erit posse eum postulare, ut pater suus cogatur adire et restituere hereditatem, quamvis contra obsequium patri debitum videtur id desideraturus.

Dig. 36.1.17.13

Ulpianus 4 fideic.

Sed si servo suo rogatus sit cum libertate quis hereditatem restituere, sive directa data sit libertas sive fideicommissaria, dici poterit eum a servo suo non posse cogi adire hereditatem, quamvis, si sponte adisset, cogeretur praestare fideicommissariam libertatem et hereditatem: idque maecianus libro septimo de fideicommissis scribit.

Dig. 36.1.17.14

Ulpianus 4 fideic.

Idem quaerit, si quis paratus sit domino cavere de indemnitate, an possit cogi adire hereditatem, maxime et si pretium servi offeratur. et recte ait non oportere sub incerto cautionis committere se aditioni hereditatis.

Dig. 36.1.17.15

Ulpianus 4 fideic.

Hi qui solidum capere non possunt, ex asse heredes instituti et rogati restituere solidum, adire hereditatem et restituere cogentur, cum nihil oneris apud eos remansurum.

Dig. 36.1.17.16

Ulpianus 4 fideic.

Si ego heres institutus et rogatus sim stichum manumittere vel alius legatarius, fidei autem meae commissum sit, ut titio hereditatem restituam, deinde titii fidei commisit, ut sticho eandem redderet: stichus cogere me possit adire et restituere hereditatem.

Dig. 36.1.17.17

Ulpianus 4 fideic.

Talis quoque casus a divo pio terminatus est: nam servo uni ex heredibus legato per fideicommissum erat ab eo libertas data et ab altero hereditas. divus etenim pius rescripsit cassio dextro in haec verba: " hermias si mosco theodoto ex parte heredi instituto a pamphilo testatore legatus est eumque theodotus, postquam adierit hereditatem, prius quam a coherede eiusdem pamphili adiretur hereditas, ad iustam libertatem perduxit et ob hoc in eum casum res perducta est, ut is qui legavit intestatus esse non possit, hermia postulante mihi id euarestus compellendus est periculo eius adire et ex causa fideicommissi hereditatem restituere".

Dig. 36.1.18pr.

Ulpianus 2 fideic.

Ex facto tractatum est, an per fideicommissum rogari quis possit, ut aliquem heredem faciat. et senatus censuit rogari quidem quemquam, ut aliquem heredem faciat, non posse: verum videri per hoc rogasse, ut hereditatem suam ei restituat, id est quidquid ex hereditate sua consecutus est ut ei restitueret.

Dig. 36.1.18.1

Ulpianus 2 fideic.

Iulianus quoque libro quadragensimo digestorum fideicommissum tale valere ait: " fidei tuae committo, ut hereditatem titii restituas", cum esset is qui rogatus est a titio heres institutus.

Dig. 36.1.18.2

Ulpianus 2 fideic.

Non tantum autem si heredem quem scripsero, potero rogare, ut heredem faciat aliquem, verum etiam si legatum illi vel quid aliud reliquero: nam hactenus erunt obligati, quatenus quid ad eos pervenit.

Dig. 36.1.18.3

Ulpianus 2 fideic.

Si quis caverit " peto ut illi des" aut " illi fideicommissum relinquas" aut " illi libertatem adscribas", admittenda sunt: nam cum in heredum institutione senatus censuit utile, de ceteris quoque idem erit accipiendum.

Dig. 36.1.18.4

Ulpianus 2 fideic.

Si quis rogatus fuerit, ut, si sine liberis decesserit, restituat hereditatem, papinianus libro octavo responsorum scribit etiam naturalem filium efficere, ut deficiat condicio: et in libertino eodem colliberto hoc scribit. mihi autem, quod ad naturales liberos attinet, voluntatis quaestio videbitur esse, de qualibus liberis testator senserit: sed hoc ex dignitate et ex voluntate et ex condicione eius qui fideicommisit accipiendum erit.

Dig. 36.1.18.5

Ulpianus 2 fideic.

Ex facto tractatum memini: rogaverat quaedam mulier filium suum, ut, si sine liberis decessisset, restitueret hereditatem fratri suo: is postea deportatus in insula liberos susceperat: quaerebatur igitur, an fideicommissi condicio defecisset. nos igitur hoc dicemus conceptos quidem ante deportationem, licet postea edantur, efficere, ut condicio deficiat, post deportationem vero susceptos quasi ab alio non prodesse, maxime cum etiam bona cum sua quodammodo ^ quodommodo^ causa fisco sint vindicanda.

Dig. 36.1.18.6

Ulpianus 2 fideic.

Si quis rogatus fuerit filiis suis vel cui ex his voluerit restituere hereditatem, papinianus libro octavo responsorum etiam deportato ei tribuit eligendi facultatem, cui liber factus fideicommissum restitui velit. sed si servus poenae fuerit constitutus, nullo ante concepto filio iam parere condicioni non poterit decessisseque sine liberis videtur. sed cum decedit, electionem illam, quam papinianus deportato dedit, huic dari non oportet.

Dig. 36.1.18.7

Ulpianus 2 fideic.

Si quis autem susceperit quidem filium, verum vivus amiserit, videbitur sine liberis decessisse. sed si naufragio vel ruina vel adgressu vel quo alio modo simul cum patre perierit, an condicio defecerit, videamus. et magis non defecisse arbitror, quia non est verum filium eius supervixisse. aut igitur filius supervixit patri et extinxit condicionem fideicommissi, aut non supervixit et extitit condicio: cum autem, quis ante et quis postea decesserit, non apparet, extitisse condicionem fideicommissi magis dicendum est.

Dig. 36.1.18.8

Ulpianus 2 fideic.

Si quis ita fideicommissum reliquerit: " fidei tuae, fili, committo, ut, si alieno herede moriaris, restituas seio hereditatem", videri eum de liberis sensisse divus pius rescripsit: et ideo, cum quidam sine liberis decederet, avunculum ab intestato bonorum possessorem habens, extitisse condicionem fideicommissi rescripsit.

Dig. 36.1.19pr.

Ulpianus 15 ad sab.

In fideicommissaria hereditatis restitutione constat non venire fructus, nisi ex mora facta est aut cum quis specialiter fuerit rogatus et fructus restituere.

Dig. 36.1.19.1

Ulpianus 15 ad sab.

Plane fructus in quartam imputantur, ut est et rescriptum.

Dig. 36.1.19.2

Ulpianus 15 ad sab.

Quotiens quis rogatur hereditatem restituere, id videtur rogatus reddere, quod fuit hereditatis: fructus autem non hereditati, sed ipsis rebus accepto feruntur.

Dig. 36.1.19.3

Ulpianus 15 ad sab.

Si legatum sit heredi relictum et rogatus sit portionem hereditatis restituere, id solum non debere eum restituere, quod a coherede accepit: ceterum quod a semetipso ei relictum est, in fideicommissum cadit: et id divus marcus decrevit.

Dig. 36.1.20pr.

Paulus 3 ad sab.

Ubi pure fideicommissum datum est, si adiectum sit: " rogo des filio tuo faciasque, ut ad eum perveniat", rescriptum est videri in id tempus dari, quo capere potest, id est sui iuris fiat.

Dig. 36.1.20.1

Paulus 3 ad sab.

" te rogo, luci titi, hereditatem meam cum attio partiaris". ex senatus consulto trebelliano in eum, cui restituta est hereditas, actiones competere aristo ait, quia pro hoc accipiendum sit " rogo hereditatem illam restituas": nec verba spectantur senatus consulti, sed sententia quibuscumque verbis, dum testator senserit, ut hereditas sua restituatur.

Dig. 36.1.20.2

Paulus 3 ad sab.

Qui in distrahendis conservandisve rebus hereditariis sumptus factus est, imputari heredi debet.

Dig. 36.1.21

Ulpianus 19 ad sab.

Sed et si ad tempus liberorum fuerit legatum relictum et is uxore praegnate decesserit, ad heredem suum transferat legatum.

Dig. 36.1.22

Pomponius 22 ad sab.

Heres cum debuerat quartam retinere, totam hereditatem restituit nec cavit sibi stipulatione proposita. similem eum esse aristo ait illis, qui retentiones, quas solas habent, omittunt: sed posse eum rerum hereditariarum possessionem vel repetere vel nancisci et adversus agentem doli mali exceptione uti posse eum et debitoribus denuntiare, ne solveretur.

Dig. 36.1.23pr.

Ulpianus 5 disp.

Mulier, quae duobus filiis in potestate patris relictis alii nupserat, posteriorem maritum heredem instituit eumque rogavit liberis suis post mortem patris eorum hereditatem suam restituere vel ei qui eorum superesset: eisdem emancipatis a patre suo vitricus restituisse hereditatem dicebatur, mox alter ex filiis vivo patre decessisse: quaerebatur, an is, qui supererat ex filiis, partem fratri suo restitutam petere possit quasi praemature datam. scaevola divum marcum in auditorio de huiusmodi specie iudicasse refert: brasidas quidam lacedaemonius vir praetorius, cum filiis suis ab uxore divortio separata, si morte patris sui iuris fuissent effecti, fideicommissum relictum esset, eos emancipaverat: post emancipationem fideicommissum petebant. decrevisse igitur divum marcum refert fideicommissum eis repraestandum intellecta matris voluntate, quae quia non crediderat patrem eos emancipaturum, distulerat in mortem eius fideicommissum non dilatura id in mortalitatem, si eum emancipaturum sperasset. secundum haec dicebam et in proposita quaestione decretum divi marci esse trahendum et recte fideicommissum utrisque solutum.

Dig. 36.1.23.1

Ulpianus 5 disp.

Non est dubitatum cogi posse heredem institutum adire et restituere hereditatem servis, sive directa sive fideicommissaria libertas eis data fuisset, cum aspernari heres non deberet personam cogentis: habet enim hic quoque aditum, ut, qui nondum petere fideicommissariam libertatem possit nec directam sibi vindicare, propter spem tamen libertatis et hereditatis aditum ad praetorem et per se habeat.

Dig. 36.1.23.2

Ulpianus 5 disp.

Si heres post multum temporis restituat, cum praesenti die fidei commissum sit, deducta quarta restituet: fructus enim qui percepti sunt neglegentia petentis, non iudicio defuncti percepti videntur. alia causa est, si sub condicione vel in diem rogatus fuerit: tunc enim quod percipitur summovet falcidiam, si tantum fuerit, quantum quarta facit et quartae fructus: nam fructus, qui medio tempore percepti sunt, ex iudicio testantis percepti videntur.

Dig. 36.1.23.3

Ulpianus 5 disp.

Sed enim si quis rogetur restituere hereditatem et vel servi decesserint vel aliae res perierint, placet non cogi eum reddere quod non habet: culpae plane reddere rationem, sed eius quae dolo proxima est. et ita neratius libro primo responsorum scribit. sed et si, cum distrahere deberet, non fecit lata culpa, non levi et rebus suis consueta neglegentia, huiusmodi rei rationem reddet. sed et si aedes ustae sunt culpa eius, reddet rationem. praeterea si qui partus extant et partuum partus, quia in fructibus hi non habentur. sed et ipse si quem sumptum fecit in res hereditarias, detrahet. quod si sine facto eius prolixitate temporis aedes usu adquisitae sint, aequissimum erit nihil eum praestare, cum culpa careat.

Dig. 36.1.23.4

Ulpianus 5 disp.

Cum proponeretur quidam filiam suam heredem instituisse et rogasse eam, ut, si sine liberis decessisset, hereditatem titio restitueret, eaque dotem marito dedisse certae quantitatis, mox decedens sine liberis heredem instituisse maritum suum, et quaereretur, an dos detrahi possit, dixi non posse dici in eversionem fideicommissi factum, quod et mulieris pudicitiae et patris voto congruebat. quare dicendum est dotem decedere, ac si quod superfuisset rogata esset restituere. quod si tantos fructus ex hereditate mulier percepit, ut inde poterit doti satisfieri, dicendum est potius fructibus hoc expensum ferendum quam fideicommisso.

Dig. 36.1.23.5

Ulpianus 5 disp.

Ut trebelliano locus esset, non sufficit de hereditate rogatum esse, sed quasi heredem rogari oportet. denique si cui portio hereditatis fuerit legata (legari enim posse etiam portionem hereditatis placet nobis) rogatusque fuerit hanc partem restituere, dubio procul non fiet restitutio ex senatus consulto ideoque nec quarta retinetur.

Dig. 36.1.24

Iulianus 39 Dig.

Quotiens pater familias unum vel duos heredes coheredibus suis restituere hereditatem iubet, intellegitur easdem partes in fideicommissis facere, quas in hereditate distribuenda fecerit. sed si iubeantur hi, quibus fideicommissum datur, pecuniam numerare atque ita fideicommissa recipere, ex quantitate pecuniae, quam dare iubentur, voluntas colligenda est patris familias. nam si ex disparibus partibus heredes scripti aequas partes dare iubentur, propius est, ut viriles recipere debeant: si vero summa pecuniae dandae congruit portionibus, hereditarias portiones accipere debebunt.

Dig. 36.1.25

Papinianus 15 quaest.

Nonnumquam autem ex voluntate varie rescriptum et iudicatum est, videlicet si non sub appellatione heredum, sed propriis nominibus expressis fideicommissum relinquatur.

Dig. 36.1.26pr.

Iulianus 39 Dig.

Quidam ita testamento scripserat: " a te, heres, peto fideique tuae committo, ut quidquid ex hereditate mea ad te pervenerit, filio meo prima quaque die aut, si prius quid ei acciderit, matri eius des reddas". quaeritur, cum antequam adeatur hereditas puer decesserit, an fideicommissum matri debeatur. respondi, si puer, antequam dies fideicommissi cedat, decessisset, fideicommissum translatum esse ad matrem, postea autem quam dies fideicommissi cedit ^ cessit^ si decesserit, ad heredem pueri fideicommissum pertinere. sed an ea voluntas fuit patris familias, ut, si ante restitutum fideicommissum puer decessisset, matri potius quam heredibus praestaretur, praetor aestimabit ex persona matris et ex persona heredis pueri. Marcellus: sed testatoris voluntati congruum est, quandocumque puer decesserit, sive antequam dies fideicommissi cedit sive postea, ad matrem transferri fideicommissum, si non iam puer hoc acceperit, eoque iure utimur.

Dig. 36.1.26.1

Iulianus 39 Dig.

Si servo herede scripto dominus rogatus est eidem servo restituere hereditatem, cum liber esset, utile fideicommissum est.

Dig. 36.1.26.2

Iulianus 39 Dig.

Si quis filium suum ex asse heredem instituit et codicillis, quos post mortem filii aperiri iussit, fidei eius commisit, ut, si sine liberis decesserit, hereditatem suam sorori suae restitueret, et filius cum sciret, quod in codicillis scriptum esset, stichum servum hereditarium testamento suo liberum esse iussit: heredes filii pretium eius servi sorori defuncti praestare debent libertate favore sui servata. hoc amplius et si ignorasset filius codicillos a patre factos, nihilo minus heredes eius pretium praestare debebunt, ne factum cuiusquam alteri damnum adferat.

Dig. 36.1.26.3

Iulianus 39 Dig.

Sed et si servus iste a sempronio heres institutus sit eamque hereditatem, posteaquam ex testamento fratris ad libertatem pervenerat, adierit, hereditatis quoque aestimationem heredes fratris sorori eius praestare debent, quia, si manumissus non esset, iussu mulieris adire eam potuisset. si vero vivente filio sempronius decesserit, hereditas in causa fideicommissi non deduceretur: quippe ab ipso filio adire iussus hereditatem ei adquireret.

Dig. 36.1.27

Paulus l.S. de senatus consultis

Omnibus civitatibus, quae sub imperio populi romani sunt, restitui debere et posse hereditatem fideicommissam apronianum senatus consultum iubet. sed et actiones in eas placuit ex trebelliano transferri: sed municipes ad eas admittuntur.

Dig. 36.1.28pr.

Iulianus 40 Dig.

Ita tamen, ut hi quibus restituetur hereditas actorem eligant et ad agendum et ad excipiendas actiones.

Dig. 36.1.28.1

Iulianus 40 Dig.

Si servum hereditarium heres, qui coactus adierit, iussisset adire hereditatem ab alio eidem servo relictam et tunc hereditatem, quam suspectam sibi esse dixerat, restituerit, an etiam eam hereditatem, quae per servum adquisita esset, restituere deberet, quaesitum est. dixi non magis hanc hereditatem in restitutionem venire, quam quod servus hereditarius post aditam hereditatem stipulatus fuisset aut per traditionem accepisset aut fructus, qui ex rebus hereditariis percepti fuissent, utique si nulla mora fideicommisso facta fuisset. sed si quid ante aditam hereditatem servus stipulatus fuisset aut per traditionem accepisset, id restitui debebit, sicut fructus ante aditam hereditatem in restitutionem venient.

Dig. 36.1.28.2

Iulianus 40 Dig.

Qui suspectam sibi hereditatem dicit, nullum commodum ex testamento consequetur, quod habiturus non esset, si heres institutus non fuisset aut non adisset. et ideo si pupillo substitutus fuerit itaque: " quisquis mihi heres erit, idem filio meo heres esto", hereditatem, quae ex substitutione ad eum pervenerit, restituere cogendus erit. si vero detracto hoc articulo " quisquis mihi heres erit" substitutus ita fuerit: " titius filio meo heres esto", tum, si solus patri heres extiterit, nihilo minus cogendus erit hereditatem pupilli restituere, si vero coheredem habuerit, retinebit pupilli hereditatem, quia potuit coherede adeunte, quamvis ipse patris omisisset hereditatem, ex substitutione adire.

Dig. 36.1.28.3

Iulianus 40 Dig.

Si pater filium, quem in potestate habebat, heredem scripserit et ab eo petierit, ut hereditatem sempronio restitueret, isque suspectam sibi esse dicet, poterit ex trebelliano senatus consulto hereditas restitui. quare et si non immiscuerit se hereditati, nihilo minus actiones, quae ei et in eum competebant, ad sempronium transferentur.

Dig. 36.1.28.4

Iulianus 40 Dig.

A patre heres scriptus et exheredato filio substitutus si rogatus fuerit hereditatem, quae ad eum ex substitutione pervenerit, titio restituere, cogendus non est vivo pupillo patris hereditatem adire, primum quia sub condicione fideicommissum datum est, deinde quia non probe de hereditate viventis pueri aget: mortuo autem pupillo compelli debet hereditatem patris adire.

Dig. 36.1.28.5

Iulianus 40 Dig.

Quod si duo heredes a patre instituti fuerint et utriusque fidei commissum sit, ut exheredati filii hereditatem restituerent, satis erit vel unum cogi adire: hoc enim facto etiam is, qui patris hereditatem non adit, filii hereditatem adire et restituere cogetur.

Dig. 36.1.28.6

Iulianus 40 Dig.

Quotiens filius emancipatus bonorum possessionem contra tabulas accipit, nulla ratio est compellendi heredis ad restituendam hereditatem et sicut neque legata neque fideicommissa cetera praestare cogitur, ita ne ad restitutionem quidem hereditatis compelli debet. Marcellus: plane non est compellendus adire, si iam filius bonorum possessionem, ne intercidat fideicommissum mortuo herede instituto et omissa a filio bonorum possessione.

Dig. 36.1.28.7

Iulianus 40 Dig.

Qui ex trebelliano senatus consulto hereditatem restituit, sive petat a debitoribus hereditariis sive ab eo petatur, exceptione restitutae hereditatis adiuvari vel summoveri potest. actiones autem fideicommissario competunt, quas habuit heres eo tempore, quo fideicommissum restituebat. Marcellus: sed eas quoque actiones, quae sub condicione erant et quarum dies eo tempore non cesserat, fideicommissario competere placet. sed antequam restitueretur hereditas, exceptione aliqua heres adiuvandus non est: cum hoc minus ex causa fideicommissi sit restituturus.

Dig. 36.1.28.8

Iulianus 40 Dig.

Trebellianum senatus consultum locum habet, quotiens quis suam hereditatem vel totam vel pro parte fidei heredis committit.

Dig. 36.1.28.9

Iulianus 40 Dig.

Quare si maevius te heredem instituerit et rogaverit, ut hereditatem titii restituas, a quo esses heres institutus, et tu hereditatem maevii adieris, perinde a te fideicommissum petetur, ac si fundum, qui tibi a titio legatus esset, restituere rogatus fuisses: ideoque et si suspectam maevii hereditatem dixeris, cogi te non oportet eam adire.

Dig. 36.1.28.10

Iulianus 40 Dig.

Quod si maevius te rogaverit et suam hereditatem et titianam restituere tuque sponte adieris hereditatem, uteris legis falcidiae commodo et partem quartam maevianae hereditatis retinebis, dimidiam et quartam ex fideicommisso restitues, nec intererit, eidem utramque hereditatem an alii maevianam, alii titianam rogatus fueris restituere. sed si suspectam maevianam hereditatem dixeris, cogeris eam adire et restituere ei, cui rogatus fueris: is autem, cui titianam hereditatem restituere rogatus fueris, non poterit te compellere ad adeundum.

Dig. 36.1.28.11

Iulianus 40 Dig.

Si ex trebelliano hereditatem restituit heres et fructus praediorum retinet vel ipsa praedia, sive etiam debitor eius qui testamentum fecit fuerit, necessarium est actionem adversus eum fideicommissario dari. Marcellus: hoc idem necessario faciendum est, cum parte hereditatis restituta familiae erciscundae iudicium inter eum qui restituit hereditatem et qui receperit accipietur.

Dig. 36.1.28.12

Iulianus 40 Dig.

Qui rogatus est emancipato filio restituere hereditatem, cogi debet adire et restituere, quamvis filius contra tabulas bonorum possessionem accipere possit.

Dig. 36.1.28.13

Iulianus 40 Dig.

Si patronus ex parte debita heres institutus et rogatus restituere hereditatem suspectam sibi esse dicat, puto rectius facturum praetorem, si coegerit eum adire hereditatem et restituere, quamvis possit mutata voluntate eam partem hereditatis retinere.

Dig. 36.1.28.14

Iulianus 40 Dig.

Si praeceptis quibusdam rebus heres rogatus sit restituere hereditatem et coactus eam adierit, an praecipere debeat? respondi eum, qui iussu praetoris adit hereditatem, omni commodo prohiberi debere.

Dig. 36.1.28.15

Iulianus 40 Dig.

Sed si eidem legatum esset sub hac condicione " si heres non esset" et suspectam sibi hereditatem dicat, non aliter cogendus est adire, quam ut legata, quae sub condicione " si heres non esset" data erant, restituantur, non quidem a coheredibus, ne onerentur, sed ab eo cui restituta fuerit hereditas. nam sicut explendae fidei gratia cogendus est adire hereditatem, ita ob id ipsum damno adfici non debebit.

Dig. 36.1.28.16

Iulianus 40 Dig.

Heres ex asse erat instituta consobrina mea et eius fidei commissum, ut partem dimidiam hereditatis statim publio maevio restitueret, alteram partem, cum ipsa moreretur, eidem publio maevio: praeterea alia aliis legata data sunt. maevius partem dimidiam hereditatis statim percepit et cavit, quod amplius quam per legem falcidiam liceret cepisset, redditu iri: sed et ceteri legata solida acceperant et similiter de restituendo quod amplius percepissent caverunt. mortua consobrina mea publius maevius desiderat sibi alteram partem hereditatis cum fructibus restitui. quaero itaque, quantum ei restituere debeam? utrum quod supra quadrantem bonorum penes consobrinam meam remanserat nec amplius quicquam? an et ab aliis, quibus legata soluta sunt, repetere quid debeam et quantum? item quaero, si quod ab his ex stipulatione percepero et quod apud consobrinam meam supra quadrantem remanserat, non efficiet partem dimidiam hereditatis, an ex incremento et fructibus eius summae, quae supra quadrantem bonorum penes consobrinam meam remansit, supplere ei debeam, dumtaxat ne partem dimidiam hereditatis quantitas quae restitueretur excedat? an vero, sicut publius maevius desiderat, quidquid seposito quadrante bonorum eiusque quadrantis fructibus perceptum est restitui ei debet? respondi, quod supra quadrantem penes consobrinam tuam remansit, si adiectis fructibus quantitatem partis dimidiae hereditatis, quae mortis tempore fuit, non minuet, totum publio maevio restituendum: nec ex stipulatione ab his, quibus legata soluta sunt, repeti quicquam potest. si vero fructus quantitatem partis dimidiae exuberant, quadranti tuo et fructibus eius accedet. si vero fructus eius partis, quae supra quadrantem apud consobrinam tuam remanserat, non implent quantitatem partis dimidiae bonorum, ex stipulatione agi poterit. in summa ratio ita ponenda est, ut tu omni modo quadrantem et fructus eius, praeterea, si eius quod quadrantem excedit fructus in tantum excreverit, ut quantitatem partis dimidiae bonorum excedat, etiam id quod excesserit retineas.

Dig. 36.1.28.17

Iulianus 40 Dig.

Qui suos servos rogatus est manumittere et hisdem hereditatem restituere, detracto pretio servorum hereditatem restituere debebit.

Dig. 36.1.29pr.

Africanus 6 quaest.

Ex asse heres institutus partem hereditatis mihi pure, tibi sub condicione restituere rogatus cum suspectam diceret, postulante me adit et mihi totam ex senatus consulto restituit: quandoque condicio extiterit, an fructus partis tuae restituere tibi debeam, non immerito dubitabatur. et plerisque placet non esse eos praestandos, quia nec ab herede praestarentur, si sua sponte adisset, sufficiat autem ius tuum tibi integrum conservari, non etiam meliorem condicionem tuam fieri.

Dig. 36.1.29.1

Africanus 6 quaest.

Idem tamen existimabant, si ex asse heres institutus mihi quadrantem pure, tibi aeque quadrantem sub condicione restituere rogatus sit et, cum suspectam hereditatem diceret, cogente me adit, quandoque condicio exstiterit, semissem tibi esse restituendum.

Dig. 36.1.29.2

Africanus 6 quaest.

Sed nec lege falcidia in proposita specie usurum me puto, quamvis scriptus heres, si sponte adisset, uteretur.

Dig. 36.1.30

Marcianus 4 inst.

Si quis priore facto testamento posterius fecerit testamentum, etiamsi ex certis rebus in posteriores tabulas heredes instituit, superius tamen testamentum sublatum est, ut divi quoque severus et antoninus rescripserunt, cuius constitutionis verba rettuli, cum alia quoque praeterea in constitutione expressa sunt. " imperatores severus et antoninus cocceio campano. testamentum secundo loco factum, licet in eo certarum rerum heres scriptus sit, iure valere, perinde ac si rerum mentio facta non esset, sed teneri heredem scriptum, ut contentus rebus sibi datis aut suppleta quarta ex lege falcidia hereditatem restituat his, qui priore testamento scripti fuerant, propter inserta fideicommissaria verba, quibus ut valeret prius testamentum expressum est, dubitari non oportet". et hoc ita intellegendum est, si non aliquid specialiter contrarium in secundo testamento fuerit scriptum.

Dig. 36.1.31pr.

Marcianus 8 inst.

Si legatus suspectam hereditatem dicat, et legationis tempore compellendus est accipere iudicium, quia hic non multum officio occupatur: et licet deliberare se dicat an adeat, cogendus est adire, sed non ut statim restituat, sed ut reversus domum, si putaverit sibi expedire, commodo falcidiae vel testamenti utatur vel, si non putaverit, restituat totam hereditatem, ne onera patiatur.

Dig. 36.1.31.1

Marcianus 8 inst.

Si quis " bona sua" vel " omnia sua" rogaverit restituere, fideicommissariam restitutionem esse intellegendum est: nam meorum et tuorum appellatione etiam actiones contineri dicendum est.

Dig. 36.1.31.2

Marcianus 8 inst.

Si filio familias vel servo restituatur ignorante patre familias vel domino et postea pater vel dominus ratum habuerit, transeunt ex trebelliano senatus consulto actiones.

Dig. 36.1.31.3

Marcianus 8 inst.

Multum interest, utrum quarta pars iure hereditario retineatur an vero in re vel pecunia: nam superiore casu actiones dividuntur inter heredem et fideicommissarium, posteriore vero apud fideicommissarium sunt actiones.

Dig. 36.1.31.4

Marcianus 8 inst.

Et heres institutus rogatusque hereditatem restituere praecepta aliqua summa vel re, etiamsi in praeceptione minus quam quarta pars esset, non amplius principem pati vindicaturum.

Dig. 36.1.31.5

Marcianus 8 inst.

Sed et si sine ulla praeceptione rogatus fuerit hereditatem restituere, plerumque quarta donata est a principibus: et ita divus traianus et hadrianus et antoninus rescripserunt.

Dig. 36.1.32pr.

Marcianus 9 inst.

Si cui pure libertas et per fideicommissum sub condicione hereditas relicta est, cogitur heres adire hereditatem, si suspectam dicat, et restituere: et deficiente condicione libertas ei eripi non potest.

Dig. 36.1.32.1

Marcianus 9 inst.

Si autem ei, qui in diem libertatem accepit, hereditas per fideicommissum relicta fuerit, suspectam eam interim non posse adiri divus pius cassio hadriano rescripsit, cum non potest nondum libero hereditas restitui: nec rursus contra voluntatem defuncti libertatem esse praestandam.

Dig. 36.1.32.2

Marcianus 9 inst.

Si sub condicione heres institutus rogatusque hereditatem restituere non vult condicioni parere et adire hereditatem, si facti est condicio, debet parere et adire et restituere vel, si in dando sit, offerente fideicommissario. recusante autem herede factum adimplere licentia dabitur fideicommissario secundum imitationem dationis factum implere, et tunc necessitas imponitur heredi adire hereditatem. ceterae condiciones, quae non sunt in potestate heredis, ad officium praetoris non pertinent.

Dig. 36.1.33

Celsus 20 Dig.

Ballista filium familias heredem instituit ita: " rebellianus si caverit coloniae philippensium, si sine liberis morietur, quantacumque pecunia ex hereditate deve bonis meis ad eum pervenit, eam pecuniam omnem ad coloniam philippensium perventuram " . respondi: ex his verbis quae proponis, id est " pecuniam", existimo etiam fructus, quos ex hereditate percepit, restituere eum debere, perinde quasi specialiter hoc testator expressisset.

Dig. 36.1.34

Marcianus 8 inst.

Scribit celsus libro vicensimo digestorum, si qui quadringenta in bonis habebat petit ab herede suo, ut, si sine liberis moreretur, quanta pecunia ex hereditate sua ad eum pervenisset, maevio restitueretur: si ex fructibus medio tempore quadringenta perceperit et sine liberis decesserit, heredem eius maevio quadringenta debiturum. et cum diu multumque tractavit, an, cum augmentum heres sensit, et periculum sustineat an per contrarium, novissime ait iniquum esse ad fideicommissarium damnum pertinere, ad quem augmentum non pertinet: et an ad supplendum, inquit, quodcumque ex quadringentis defuerit, etiam augmentum ad eum pertinebit, hoc est ut usque ad summam quadringentorum damni et fructus computentur: quod verius esse arbitror.

Dig. 36.1.35

Marcianus 2 reg.

Si eius, qui novissimus ex filiis mortuus est, partem hereditatis propinquo voluit pater restitui et simul fratres diem suum obissent: propinquum, si non ostenderit quis novissimus obisset, ad partem hereditatis non admitti, sed matrem ex tertulliano senatus consulto ad utriusque hereditatem admitti constat.

Dig. 36.1.36

Ulpianus 6 de off. procons.

Cum heres instituta furiosa hereditatem esset rogata restituere, curatorem eius secundum tabulas bonorum possessione accepta posse transferre actiones divus pius decrevit.

Dig. 36.1.37

Paulus 13 ad ed.

Cum hereditas ex fideicommissi causa restituta est, si ante cum herede compromissum est, puto fideicommissarium cavere debere heredi, sicut cum heres multa antequam restitueret administravit. nam quod dicitur retinere eum oportere, non est perpetuum. quid enim si nihil est, quod retineat? veluti cum omnia in nominibus sunt aut in corporibus quae non possideat? nempe enim is cui restituta est omnia persequitur et tamen heres iudiciis quibus conventus est aut stipulationibus quibus necesse habuit promittere, obstrictus manebit. ergo non alias cogetur restituere quam ei caveatur.

Dig. 36.1.38pr.

Ulpianus 16 ad ed.

Restituta hereditas videtur aut re ipsa, si forte passus est heres possideri res hereditarias vel totas vel aliquas earum hac mente, ut vellet restitueret ille suscipere, non si ex alia causa putavit te possidere. sed et si postea ratum habuit, idem erit dicendum. sed et si verbo dixit se restituere, vel per epistulam vel per nuntium restituat, audietur. sed et si voluntate tua alii restituerit, in te transibunt actiones. item si alius iussu meo restituit vel ratam habui restitutionem, transisse actiones videntur.

Dig. 36.1.38.1

Ulpianus 16 ad ed.

Pupillus autem ipse debet restituere tutore auctore, non tutor sine pupillo, nisi infans est, quia nec mandare actiones tutor pupilli sui potest. ne se quidem auctore pupillum restituere potuisse hereditatem divus severus in persona arri honorati pupilli decrevit, qui arrio antonino patruo et tutori suo restituerat.

Dig. 36.1.38.2

Ulpianus 16 ad ed.

Sed et si pupillo sit restituenda, non posse pupillo sine tutoris auctoritate restitui constat:

Dig. 36.1.39

Paulus 20 ad ed.

Non enim solutio est hereditatis restitutio, sed et ^ ^ successio, cum obligetur.

Dig. 36.1.40

Ulpianus 16 ad ed.

Sed nec ipsi tutori indistincte restitui potest.

Dig. 36.1.41pr.

Paulus 20 ad ed.

Quamvis senatus de his actionibus transferendis loquatur, quae iure civili heredi et in heredem competunt, tamen honorariae actiones transeunt: nulla enim separatio est: immo et causa naturalium obligationum transit.

Dig. 36.1.41.1

Paulus 20 ad ed.

Persona autem heredis instituti trebelliano continetur: verum hoc iure utimur, ut et successor heredis recte ex trebelliano restituat, veluti heres bonorumve possessor, vel pater dominusve, quibus adquisita est hereditas: omnes enim quod iuris habent, ex trebelliano senatus consulto restituere debent, nec interest, is qui institutus est an pater dominusve rogatus est restituere.

Dig. 36.1.41.2

Paulus 20 ad ed.

Nihil interest, cui nostro nomine restituitur pater familias sit an is qui in aliena potestate est?.

Dig. 36.1.42

Paulus 2 fideic.

Mulier an masculus: et ideo servo quoque voluntate nostra vel si ratum habuerimus restitui potest,

Dig. 36.1.43pr.

Paulus 20 ad ed.

Quia perinde est, atque si mihi restituta esset hereditas.

Dig. 36.1.43.1

Paulus 20 ad ed.

Restituta hereditate iura sepulchrorum apud heredem remanent.

Dig. 36.1.44

Ulpianus 22 ad ed.

Papinianus tractat, si quis heres institutus ex semisse rogatus sit restituere hereditatem et eam suspectam dicens compulsus adit, deinde fideicommissarius gnarus sit adcrevisse portionem hereditatis post restitutionem scripto heredi, an opus sit ei alia actione. et ait securum esse eum posse de illo: plane de hoc solo quaerendum ait, an ei opus sit nova restitutione, posteaquam portio adcrevit: sed ne hanc quidem necessariam esse.

Dig. 36.1.45

....

. . . . qui rogatus est restituere quod ex bonis alicuius ad eum pervenit, ea restituit quae ex hereditate habet, non quae habet ex persona sua.

Dig. 36.1.46pr.

Marcellus 15 Dig.

Postulante sticho, qui eodem testamento libertatem et fideicommissam hereditatem acceperat, heres suspectam adiit: mox stichus, antequam moram in recipienda hereditate faceret, decessit relicto herede titio. quaero, an in titium, si nolit recipere fideicommissam hereditatem, actiones ex senatus consulto competant. respondi: quoniam fere is, qui compulsus est adire hereditatem, confestim ei restituet, de manumisso dumtaxat senatus consulto comprehensum est nec heredis facta est mentio. potest tamen evenire, ut restitutionem distulerit heres, veluti si pecuniam ei debuerit defunctus, quam retinere maluit quam petere. ceterum existimo idem in herede eius constituendum, quod in illo constitutum est: cur enim recusaret, quam recusare non potuit is, cuius hereditatem suscepit? quod si forte ante hereditatis restitutionem sine herede decesserit libertus, perinde bona eius creditoribus hereditariis vendere permittendum est, ac si restituta hereditate decessit.

Dig. 36.1.46.1

Marcellus 15 Dig.

Set in huiusmodi quaestione rogo respondeas, an recte senserim. rogata est filia ex asse heres restituere hereditatis partem dimidiam deductis legatis minimis et aere alieno non magno, ut legi falcidiae locus non sit: mora facta non est restitutioni fideicommissi. desidero verbo tenus mihi restitui hereditatem, ut ex trebelliano senatus consulto agenti et ex eo competentibus actionibus etiam usuras debitas ex mortis die in tempus restitutionis persequar: item quaero et de pensionibus, quia locationum obligatio in hereditate fuit. ab herede fructus nullos peto, sed illa desiderat refundere me aut concedere ei actiones usurarum et pensionum: non possum persuadere hereditatis appellatione, quam rogata erat mihi restituere, etiam hanc stipulationem usurarum ad me pertinere. respondi: omnia haec hereditatis appellatione continentur: quantum enim quod ad hoc refert, inter haec ceteraque, quae sub condicione sunt promissa aut in annos singulos vel menses, nihil interest. sane pro fructu rei, quae hereditate continetur, haec cedunt, nec fructus fideicommissarium sequitur, si mora non intercessit. sed quia non ut heres fideicommissum, ut sici dixerim, suppleat postulet, set qualis nunc est hereditas, desideret restitui sibi, nequaquam id debet heres recusare: nam et quodammodo in partem hereditatis senatus recipi voluit fideicommissarium et haberi heredis loco, pro qua parte ei restituta esset hereditas. sed cum hereditarios nummos faeneravit aut ex fundis fructus percepit, nihil eo nomine praestat ei, cui hereditas per fideicommissum relicta est, si non intercessit mora, scilicet quia suo periculo faeneravit colendove fundo vel in cogendis fructibus insumpsit operam: nec aequum erat alterius, ut sic dixerim, procuratorem constitui. nullum autem impendium vel opera intercedit heredis, cum his modis, de quibus est quaesitum, augmentum hereditas recepit.

Dig. 36.1.47

Modestinus l.S. de heuremat.

Qui totam hereditatem restituere rogatus quartam retinere non vult fidumque obsequium defuncti precibus praebere desiderat, sua sponte adire debebit hereditatem, quasi ex trebelliano eam restiturus. suaserim tamen, suspectam potius dicat hereditatem coactusque a praetore restituat: hoc enim casu ex ipso trebelliano restituere videtur expositoque hereditario metu universas actiones in eum transfert, qui recepit hereditatem.

Dig. 36.1.48

Iavolenus 11 epist.

Seius saturninus archigubernus ex classe britannica testamento fiduciarium reliquit heredem valerium maximum trierarchum, a quo petit, ut filio suo seio oceano, cum ad annos sedecim pervenisset, hereditatem restitueret. seius oceanus antequam impleret annos, defunctus est: nunc mallius seneca, qui se avunculum seii oceani dicit, proximitatis nomine haec bona petit, maximus autem trierarchus sibi ea vindicat ideo, quia defunctus est is cui restituere iussus erat. quaero ergo utrum haec bona ad valerium maximum trierarchum heredem fiduciarium pertineant an ad mallium senecam, qui se pueri defuncti avunculum esse dicit. respondi: si seius oceanus, cui fideicommissa hereditas ex testamento seii saturnini, cum annos sedecim haberet, a valerio maximo fiducario herede restitui debeat, priusquam praefinitum tempus aetatis impleret, decessit, fiduciaria hereditas ad eum pertinet, ad quem cetera bona oceani pertinuerint, quoniam dies fideicommissi vivo oceano cessit, scilicet si prorogando tempus solutionis tutelam magis heredi fiducario permisisse, quam incertum diem fideicommissi constituisse videatur.

Dig. 36.1.49

Pomponius 1 var. lect.

Si heredi eius, cui natura debuerit, aliquis solverit, ei, cui fideicommissa hereditas relicta sit, id reddendum.

Dig. 36.1.50

Paulus 14 resp.

Paulus respondit: si certa portio hereditatis alicui relicta proponitur et is res hereditarias quasdam furatus sit, in his rebus, quas subtraxit, denegari ei petitionem oportere recte respondetur.

Dig. 36.1.51pr.

Papinianus 3 quaest.

Cum hereditas ex trebelliano senatus consulto restituitur, si res urgueat et metus erit, ne per absentiam forte fideicommissarii dies actionis exeat, heres iudicium suscipere cogitur.

Dig. 36.1.51.1

Papinianus 3 quaest.

Similique modo filio de possessione contra tabulas deliberante scriptus heres a creditoribus hereditariis convenitur.

Dig. 36.1.52

Papinianus 11 quaest.

Imperator hadrianus, cum vivius cerealis filio suo vivio simonidi, si in potestate sua esse desisset, hereditatem restituere rogatus esset ac multa in fraudem fideicommissi fieri probaretur, restitui hereditatem filio iussit ita, ne quid ea pecunia, quamdiu filius eius viveret, iuris haberet. nam quia cautiones non poterant interponi conservata patria potestate, damnum condicionis propter fraudem inflixit. post decreti autem auctoritatem in ea hereditate filio militi comparari debuit, si res a possessoribus peti vel etiam cum debitoribus agi oporteret. sed paternae reverentiae congruum est egenti forte patri officio iudicis ex accessionibus hereditariis emolumentum praestari.

Dig. 36.1.53

Papinianus 17 quaest.

Cum heres deductis legatis hereditatem per fideicommissum restituere rogatur, non placet ea legata deduci, quae peti non poterant. sed cum uxori pro parte heredi scriptae dos praelegetur eaque deductis legatis hereditatem restituere rogatur: etiamsi quarta, quam per legem falcidiam retinet, tantum efficiat, quantum in dote est, tamen pro sua portione dotis praelegatae partem deducit. cum enim utrumque consequitur, nihil interest inter hanc mulierem et quemvis alium creditorem heredem institutum et hereditatem restituere rogatum. idem probatur et si non deductis legatis fideicommissum ab ea relictum sit.

Dig. 36.1.54pr.

Papinianus 19 quaest.

Si res aliena titio legata fuerit isque domino rei herede instituto petierit, ut hereditatem maevio restituat, maevius legatum inutiliter petet: non enim poterit consequi, quod ad institutum, id est rei dominum pervenire non poterat.

Dig. 36.1.54.1

Papinianus 19 quaest.

Servus ab altero ex heredibus libertatem, ab altero fideicommissum hereditatis accepit. si neuter adire velit, nullae praetoris partes erunt, quia neque propter solam libertatem compellitur adire neque is, a quo libertas data non est, propter eum, qui nondum liber est, ut adeat, compellitur: et senatus consulto locus est, cum ab omnibus directa, vel fideicommissa libertas ab eo datur a quo hereditas quoque relinquitur. sed si forte is, a quo libertas data est, portionem suam repudiavit vel condicione exclusus est, cum portio eius ad alterum pervenerit, defendi poterit adire cogendum: quid enim interest, quo iure debitor libertatis et hereditatis idem esse coeperit?

Dig. 36.1.55

Papinianus 20 quaest.

Non est cogendus heres suspectam adire hereditatem ab eo, cui libertas a legatario, hereditas ab herede relicta est, cum status hominis ex legato pendeat et nemo se cogatur adstringere hereditariis actionibus propter legatum. quid enim, si inter moras non manumittente legatario servus decesserit? si autem vivo testatore legatarius decesserit, benigne respondetur cogendum adire, cum in ipsius sit potestate manumisso restituere hereditatem.

Dig. 36.1.56

Papinianus 19 quaest.

Titius rogatus est, quod ex hereditate superfuisset, maevio restituere. quod medio tempore alienatum vel deminutum est, ita quandoque peti non poterit, si non interveniendi ^ intervertendi^ fideicommissi gratia tale aliquid factum probetur: verbis enim fideicommissi bonam fidem inesse constat. divus autem marcus cum de fideicommissaria hereditate cognosceret, his verbis: " quidquid ex hereditate mea superfuerit, rogo restituas" et viri boni arbitrium inesse credidit: iudicavit enim erogationes, quae ex hereditate factae dicebantur, non ad solam fideicommissi deminutionem pertinere, sed pro rata patrimonii, quod heres proprium habuit, distribui oportere. quod mihi videtur non tantum aequitatis ratione, verum exemplo quoque motus fecisse. cum enim de conferendis bonis fratribus ab emancipato filio quaereretur, praecipuum autem, quod in castris fuerat adquisitum militi, relinqui placeret, consultus imperator sumptus, quos miles fecerat, non ex eo tantummodo patrimonio, quod munus collationis pati debuit, sed pro rata etiam castrensis pecuniae decedere oportere constituit. propter huiusmodi tractatus maevius fideicommissi nomine cautionem exigere debet: quod eo pertinet, non ut ex stipulatione petatur, quod ex fideicommisso peti non poterit, sed ut habeat fideiussores eius quantitatis, quam ex fideicommisso petere potuit.

Dig. 36.1.57pr.

Papinianus 20 quaest.

Si patroni filius extrario restituerit ex trebelliano hereditatem, operarum actio, quae transferri non potuit, apud heredem manebit, nec ei nocebit exceptio, cum eadem prodesse non posset ei qui fideicommissum accepit. et generatim ita respondendum est non summoveri heredem neque liberari ex his causis, quae non pertinent ad restitutionem.

Dig. 36.1.57.1

Papinianus 20 quaest.

Imperator titus antoninus rescripsit in tempus directo data libertate non esse repraesentandam hereditatis restitutionem, quando persona non est, cui restitui potest.

Dig. 36.1.57.2

Papinianus 20 quaest.

Qui fideicommissam hereditatem ex trebelliano, cum suspecta diceretur, totam recepit, si ipse quoque rogatus sit alii restituere, totum restituere cogetur. et erit in hac quoque restitutione trebelliano locus: quartam enim falcidiae iure fideicommissarius retinere non potuit. nec ad rem pertinet, quod, nisi prior, ut adiretur hereditas, desiderasset, fideicommissum secundo loco datum intercidisset: cum enim semel adita est hereditas, omnis defuncti voluntas rata constituitur. non est contrarium, quod legata cetera non ultra dodrantem praestat: aliud est enim ex persona heredis conveniri, aliud proprio nomine defuncti precibus adstringi. secundum quae potest dici non esse priore tantum desiderante cogendum institutum adire, ubi nulla portio remansura sit apud eum, utique si confestim vel post tempus cum fructibus rogatus est reddere: sed et si sine fructibus rogatus est reddere, non erit idonea quantitas ad inferendam adeundi necessitatem. nec ad rem pertinebit, si prior etiam libertatem accepit: ut enim pecuniam, ita nec libertatem ad cogendum institutum accepisse satis est. quod si prior recusaverit, placuit, ut recta via secundus possit postulare, ut heres adeat et sibi restituat.

Dig. 36.1.57.3

Papinianus 20 quaest.

Quid ergo, si non alii, sed ipsi heredi rogatus sit restituere? quia non debet eidem quandoque quarta reddi quam perdidit, propter huius portionis retentionem erit audiendus. sed nec illud translaticie omittendum est instituto, qui coactus est adire, fideicommissi petitionem denegandam esse: cur enim non videatur indignus, ut qui destituit supremas defuncti preces consequatur aliquid ex voluntate? quod fortius probabitur, si post impletam condicionem coactus est adire. nam si pendente condicione, durum erit idem probare, cum et falcidiam paenitendo potuit inducere: nec ignoro posse dici nullo modo fideicommissi petitionem denegandam ei qui, iura sepulchrorum adquiri insequuntur, adeo senatus nihil apud eum ex ea parte, quam derelinquit, voluit relinquere, ut nec falcidiam exercere possit nec praeceptio apud eum relinquatur nec substitutio quoque secundarum tabularum ita facta: " quisquis mihi heres erit, filio meo heres esto" eidem daretur.

Dig. 36.1.57.4

Papinianus 20 quaest.

Cui titiana hereditas ex trebelliano senatus consulto restituta est, maevianam hereditatem, quam titius defunctus ex trebelliano sempronio restituere debuit, et ipse restituere poterit sic ut alius quilibet successor.

Dig. 36.1.57.5

Papinianus 20 quaest.

Actiones temporariae trebelliani solent esse evicta hereditate ab eo, qui, posteaquam fideicommissam restituit hereditatem, victus est, scilicet ante restitutionem lite cum eo contestata: potestas enim evictionis tollit intellectum restitutionis indebito fideicommisso constituto. plane si fideicommissum ab eo quoque qui postea vicit relictum est: quia possessor in ratione reddendae hereditatis partem, quam fideicommissario restituit, heredi reputat, defendi potest actiones trebelliani durare.

Dig. 36.1.58

Papinianus 7 resp.

Filiam fratribus certis rebus acceptis hereditatem restituere pater voluit: ante restitutam hereditatem in possessionem hereditatis filiam quoque mitti placuit. cum autem interea filii res bonorum in solidum distraxissent, item alias pignori dedissent, hereditate postea restituta constitit ex eo facto ceterarum quoque portionum venditiones, item pignora confirmari.

Dig. 36.1.59pr.

Papinianus 8 resp.

" heredes mei quidquid ad eos ex hereditate bonisve meis pervenerit, id omne post mortem suam restituant patriae meae coloniae beneventanorum": nihil de fructibus pendente condicione perceptis petitum videri constitit.

Dig. 36.1.59.1

Papinianus 8 resp.

Cum ita fuerat scriptum: " fidei filiorum meorum committo, ut, si quis eorum sine liberis prior diem suum obierit, partem suam superstiti fratri restituat: quod si uterque sine liberis diem suum obierit, omnem hereditatem ad neptem meam claudiam pervenire volo": defuncto altero superstite filio, novissimo autem sine liberis neptis prima quidem facie propter condicionis verba non admitti videbatur: sed cum in fideicommissis voluntatem spectari conveniat, absurdum esse respondi cessante prima substitutione partis nepti petitionem denegari, quam totum habere voluit avus, si novissimus fratris quoque portionem suscepisset.

Dig. 36.1.59.2

Papinianus 8 resp.

" peto de te, uxor carissima, uti cum morieris hereditatem meam restituas filiis meis vel uni eorum vel nepotibus meis vel cui volueris vel cognatis meis si cui voles ex tota cognatione mea". inter filios respondi substitutionem fideicommissi factam videri, circa nepotes autem et ceteros cognatos facultatem eligendi datam: ex ceteris autem cognatis, si nepotes superessent, non recte mulierem electuram propter gradus fideicommissi praescriptos: deficiente vero gradu nepotem ex cognatis quam velit personam eligi posse.

Dig. 36.1.60pr.

Papinianus 9 resp.

Deducta parte quarta restituere rogatus hereditatem, prius quam restitueret, hereditario debitori heres exstitit. quoniam actio eo confusa per trebellianum redintegrari non potest, pecuniae quoque debitae dodrans ex causa fideicommissi petetur. sed in eum diem, quo actio confusa est, usurae praeteriti temporis, quae in obligatione vel in officio iudicis fuerunt, computabuntur: posterioris ita demum, si mora fideicommisso facta sit.

Dig. 36.1.60.1

Papinianus 9 resp.

Cum hereditas ex causa fideicommissi in tempus restituenda est, non idcirco nominum periculum ad heredem pertinebit, quod heres a quibusdam pecuniam exegerit.

Dig. 36.1.60.2

Papinianus 9 resp.

Qui post tempus hereditatem restituere rogatur, usuras a debitoribus hereditariis perceptas, quarum dies post mortem creditoris cessit, restituere non cogitur: quibus non exactis omnium usurarum actio (nam hereditaria stipulatio fuit) ex trebelliano transferetur, et ideo nec indebiti repetitio erit. ac similiter hereditario creditori si medii temporis non solvantur usurae, fideicommissarium in his quoque trebellianum tenebit nec ideo querellae locus erit, quod de fructibus heres, quos iure suo percipiebat, faenus non solverit. quod si faenus heres medii temporis solverit, eo nomine non erit retentio, cum proprium negotium gessit, quippe sortem reddere creditori coactus fideicommissario nihil usurarum medii temporis imputabit.

Dig. 36.1.60.3

Papinianus 9 resp.

Acceptis centum hereditatem rogatus restituere totam pecuniam iure falcidiae percipere videtur, et ita divi hadriani rescriptum intellectum est, tamquam si ex bonis nummos retenturus fuisset. quod tunc quoque respondendum est, cum pro parte hereditatem coheredi suo restituere rogatur. diversa causa est praediorum pro hereditaria parte retentorum: quippe pecunia omnis de portione retineri potest, praediorum autem alia portio non nisi a coherede, qui dominium habet, accipitur. cum autem praedia maioris pretii quam portio hereditatis essent, in superfluo praediorum petenti fideicommissario falcidiam intervenire visum est: concurrentem enim pecuniam compensari placuit.

Dig. 36.1.60.4

Papinianus 9 resp.

Hereditatem post mortem suam exceptis reditibus restituere rogatus ancillarum partus non retinebit nec fetus pecorum, qui summissi gregem retinent.

Dig. 36.1.60.5

Papinianus 9 resp.

Ante diem fideicommissi cedentem fructus et usurae, quas debitores hereditarii cum postea accesset dies solverunt, item mercedes praediorum ab herede perceptae portioni quadrantis imputabuntur.

Dig. 36.1.60.6

Papinianus 9 resp.

Cum autem post mortem suam rogatus hereditatem restituere res hereditarias distrahere non cogatur heres, sortium, quae de pretiis earum redigi potuerunt, usurae propter usum medii temporis perceptae non videbuntur: denique nec periculum mancipiorum aut urbanorum praediorum praestare cogitur: sed nihilo minus usus et casus eorum quadrantem quoque deminuit.

Dig. 36.1.60.7

Papinianus 9 resp.

Quod ex hereditate superfuisset, cum moreretur, restituere rogatus fructus superfluos restituere non videtur rogatus, cum ea verba deminutionem quidem hereditatis admittant, fructuum autem additamentum non recipiant.

Dig. 36.1.60.8

Papinianus 9 resp.

Heres eius, qui bonorum superfluum post mortem suam restituere fuerat rogatus, pignori res hereditarias datas, si non in fraudem id factum sit, liberare non cogitur.

Dig. 36.1.61pr.

Paulus 4 quaest.

Debitor sub pignore creditorem heredem instituit eumque rogavit restituere hereditatem filiae suae, id est testatoris: cum nollet adire ut suspectam, coactus iussu praetoris adit et restituit: cum emptorem pignoris non inveniret, desiderabat permitti sibi iure dominii id possidere. respondi: aditione quidem hereditatis confusa obligatio est: videamus autem, ne et pignus liberatum sit sublata naturali obligatione. atquin sive possidet creditor actor idemque heres rem sive non possidet, videamus de effectu rei. et si possidet, nulla actione a fideicommissario conveniri potest, neque pigneraticia, quoniam hereditaria est actio, neque fideicommissum, quasi minus restituerit, recte petetur: quod eveniret, si nullum pignus intercessisset: possidet enim eam rem quasi creditor. sed et si fideicommissarius rem teneat, et hic serviana actio tenebit: verum est enim non esse solutam pecuniam, quemadmodum dicimus, cum amissa est actio propter exceptionem. igitur non tantum retentio, sed etiam petitio pignoris nomine competit et solutum non repetetur. remanet ergo propter pignus naturalis obligatio. in re autem integra non putarem compellendum adire, nisi prius de indemnitate esset ei cautum vel soluta pecunia esset: nam et cum de lucro heres scriptus a sit, quod forte legatum accepit, si heres non extitisset, responsum est non esse cogendum adire nisi legato praestito. ubi quidem potuit dici nec cogendum esse heredem adire quodammodo contra voluntatem defuncti, qui legando heredi, si non adisset, in ipsius voluntate posuit aditionem: sed cum testator alterutrum dederit, nos utrumque ei praestamus.

Dig. 36.1.61.1

Paulus 4 quaest.

Ea quae dotem dabat pacta erat cum marito, ut mortua se in matrimonio dotis pars matri eius redderetur, nec eo nomine stipulatio a matre interposita est: moriens deinde matrem et maritum suum heredem fecerat et a matre petierat, ut hereditatem titio restitueret: iudex addictus de hereditate dividenda partem dotis quasi ex utili pacto pro parte matri adiudicaverat: quaerebatur, an et ea portio ex causa fideicommissi praestanda sit. quam non esse restituendam puto, quia non quasi heres, sed quasi mater ex pacto accepit nec occasione hereditatis, sed errore ex pacto eam habuit.

Dig. 36.1.62

Paulus 11 quaest.

Patronus ex debita portione heres institutus sextam partem restituere rogatus restituit: non transeunt ex trebelliano actiones, quoniam non fuit debitum quod restituit, et ideo si per errorem fecit, etiam repetetur.

Dig. 36.1.63

Paulus 14 resp.

Paulus respondit his verbis: " semproni, heredem te non scripsi festinans per infirmitatem: ideoque ei dari volo tantum, quantum pro uncia hereditatis competeret" videri quidem magis quantitatem, quam portionem hereditatis relictam, sed sic accipiendum, uti videatur de uncia etiam restituenda sensisse.

Dig. 36.1.64pr.

Scaevola 4 resp.

A filia petit, ut, si liberis superstitibus moreretur, partem eius quod ad eam ex bonis patris pervenisset, quod si sine liberis, universum fratri restitueret: quaeritur, defuncta ea in matrimonio superstite filia, an heres eius cum parte hereditatis eius quoque quod dotis nomine datum erat partem restituere debeat. respondit id, quod in dotem fuisset, non contineri in partem hereditatis quae restituenda est: sed et si ex promissione dotis aliquid debitum fuit, aeris alieni loco habendum.

Dig. 36.1.64.1

Scaevola 4 resp.

Alumno certam pecuniam legavit et eam recipi a sempronio mandavit et certas usuras alumno praestari, donec ad vicensimum annum pervenerit: deinde alumni fidei commisit, ut, si sine liberis decederet, partem restitueret sempronio, partem septiciae. quaesitum est defuncto alumno intra annum vicensimum, an substituti fideicommissum petere possint an vero in id tempus sustinere, quo, si viveret, alumnus vicensimum annum impleret. respondi secundum ea quae proponerentur posse.

Dig. 36.1.65pr.

Gaius 2 fideic.

Facta in fideicommissarium restitutione statim omnes res in bonis fiunt eius, cui restituta est hereditas, etsi nondum earum nactus fuerit possessionem.

Dig. 36.1.65.1

Gaius 2 fideic.

Si is qui hereditatem sibi reddi ab herede stipulatus sit eique ex stipulatu agenti restituta fuerit hereditas, constat nihilo minus transferri actiones. hoc ita est, si is cum quo actum sit restituat hereditatem: si vero ob id quod non restituerit aestimatione hereditatis condemnatus fuerit, remanent actiones hereditariae apud eum qui condemnatus sit, actor autem quantitatem consequitur.

Dig. 36.1.65.2

Gaius 2 fideic.

Si heres scriptus restituerit hereditatem et postea de hereditate controversiam passus victus sit aut lite cesserit, durare actiones constitit in fideicommissarium semel translatas.

Dig. 36.1.65.3

Gaius 2 fideic.

Si quis maiorem partem restituerit quam rogatus est, in eam partem quae excedit non transferuntur actiones. sed cum praecepta aliqua re aut summa rogatus sit heres restituere et omissa retentione totam hereditatem restituerit, recte dicitur transferri actiones.

Dig. 36.1.65.4

Gaius 2 fideic.

Si heres ante restitutam hereditatem servum hereditarium heredem ab aliquo institutum iusserit adire hereditatem, negat iulianus debere hanc hereditatem restitui, quia de ea rogatus non esset: et hoc est fatendum. requirendum tamen et illud est, num cum incremento restituere heres rogatus sit hereditatem: si enim hoc fuerit subsecutum, etiam eam hereditatem restituere cogitur, nisi evidentissimis probationibus fuerit ab herede adprobatum contemplatione sui servum esse heredem institutum.

Dig. 36.1.65.5

Gaius 2 fideic.

Rescripto divi antonini significatur, ut, si quis accepta a titio pecunia, quae quartam hereditatis continet, rogatus sit ei restituere hereditatem, licet tardius detur pecunia, sine usuris eam dari debere, quia quanto tardius quisque pecuniam dat, tanto tardius ad fideicommissum pervenit et medii temporis fructus perdit. quamobrem si ante datam pecuniam tenuerit hereditatem, fructus quos percepit restituere heredi eum oportere.

Dig. 36.1.65.6

Gaius 2 fideic.

Idem iuris est et si quis ita heredis fidei commiserit: " rogo, si titius tibi centum dederit, restituas ei hereditatem meam".

Dig. 36.1.65.7

Gaius 2 fideic.

Si sub condicione heres institutus sit qui suspectam sibi hereditatem esse dicit, si neque difficultatem neque turpitudinem ullam habet condicio nec impendium aliquid, iubendus est parere condicioni et adire et ita restituere: si vero turpis aut difficilis sit condicio, aperte iniquum est cogi eum explere eam alterius gratia. sed et remitti eam ab initio visum est: plus enim tribui a praetore ei qui fideicommissum petit, quam testator voluit, absurdum est: utique autem testator, nisi expleta sit condicio, neque scriptum heredem ad hereditatem vocavit neque per hunc illi voluit restitui hereditatem.

Dig. 36.1.65.8

Gaius 2 fideic.

Si dandae pecuniae condicio adscripta est heredi, debet ei offerre pecuniam is qui poscit fideicommissum, ut hereditatem impleta condicione possit adire et restituere.

Dig. 36.1.65.9

Gaius 2 fideic.

Quod si condicio adscripta est et ea est, quam praetor remittit, sufficit edictum, ut iulianus ait: hactenus iubendus est, ut constituat praetoris actionibus uti aut petat bonorum possessionem secundum tabulas, ut ita nanctus actiones tunc restituta hereditate transferat eas ex senatus consulto.

Dig. 36.1.65.10

Gaius 2 fideic.

Si vero nominis ferendi condicio est, quam praetor exigit, recte quidem facturus videtur, si eam expleverit: nihil enim male est honesti hominis nomen adsumere, nec enim in famosis et turpibus nominibus hanc condicionem exigit praetor. sed tamen si recuset nomen ferre, remittenda est ei condicio, ut iulianus ait, et permittendae utiles actiones, aut bonorum possessio secundum tabulas danda est, uti nanctus actiones transferat eas ex senatus consulto.

Dig. 36.1.65.11

Gaius 2 fideic.

Si cum suspectam videret, hereditatem postulante me iussu praetoris adieris et restitueris mihi, ita utar legis falcidiae beneficio adversus legatarios, si tu quoque ea lege uti poteras et quatenus uti poteras: nam si quid praeterea a me alicui per fideicommissum relictum sit, id quasi a legatario relictum non venit in computationem eius legis, sed extrinsecus numeratur.

Dig. 36.1.65.12

Gaius 2 fideic.

Si titius rogatus sit hereditatem maevio restituere, maevius seio certam pecuniam, et titius quartae retinendae beneficio adversus maevium usus fuerit: neratius scribit maevium quoque seio eo minus aequum esse praestare, ne ipse de suo damnum sentiat.

Dig. 36.1.65.13

Gaius 2 fideic.

Iulianus ait, si heres institutus titio rogatus sit restituere, substitutus maevio et institutus suspectam sibi hereditatem esse dicat, desiderante titio iubendum eum adire et restituere.

Dig. 36.1.65.14

Gaius 2 fideic.

Si quis bonorum possessoris fidei commiserit de hereditate restituenda et is passus fuerit diem bonorum possessionis adgnoscendae transire aut per hoc tempus, quo is, cui restitui debebit hereditas, aliqua ex causa non potuit adire praetorem et postulare, ut petita bonorum possessione restituatur sibi hereditas, succurri ei debet, id est ut restituatur tempus bonorum possessionis admittendae exhibendi fideicommissi gratia.

Dig. 36.1.65.15

Gaius 2 fideic.

Admonendi autem sumus, si is, qui solvendo non sit, titio herede instituto servum liberum esse iusserit et rogaverit titium hereditatem eidem restituere, vix esse, ut titius recusans adire hereditatem cogatur. nam licet desiderante servo titius adierit hereditatem, non tamen potest libertas servo competere quasi in fraudem creditorum data, licet titius locuples sit: qua de causa nec hereditas ei restitui potest. sed ex sententia legis dicendum est perinde habendum, ac si is servus solus liber et heres scriptus esset nec titius heres esset.

Dig. 36.1.66pr.

Maecenatus 4 fideic.

Si eius pupilli, cui sine tutoris auctoritate pecunia credita erat, restituta ex eo senatus consulto mihi fuerit hereditas, si solvam creditori, non repetam: adquin heres si post restitutionem solvat, repetet: non ob aliud, quam quod ab eo in me naturalis obligatio translata intellegitur. et si eius mihi restituta sit hereditas, qui pupillo sine tutoris auctoritate crediderit, si solverit mihi pupillus, non repetet: at si heredi solverit, repetet, non repetiturus, si ante restitutionem solvisset.

Dig. 36.1.66.1

Maecenatus 4 fideic.

Si necessarii heredes sub condicione quamvis levissima heredes sint instituti, cui parere solent, dicendum est cogi restituere hereditatem desiderantibus his, quibus restituere rogati sunt, quia etiam necessari heredes fideicommissae hereditatis restituendae gratia condicioni parere erunt compellendi.

Dig. 36.1.66.2

Maecenatus 4 fideic.

Si quis rogatus restituere hereditatem decessit, antequam eam restituat, heres eius poterit hereditatem restituere et ex trebelliano senatus consulto transeunt actiones. sed si duo ei heredes extitissent, uti quisque restituisset, pro ea parte transituras actiones: nam et si ipse partem restituisset, pro parte interim transituras verius est. sed et si plures heredes extiterunt ei, qui rogatus est restituere hereditatem, si quidam interim restituerint, vel cum ei, cui restitui debuit, plures heredes extiterint: ut cui restituta erit, is pro ea parte ex hoc senatus consulto habebit actiones.

Dig. 36.1.66.3

Maecenatus 4 fideic.

Si patronus ex parte debita heres institutus rogatus fuerit eam liberis exheredatis defuncti liberti restituere, si sua sponte adierit, erit falcidiae locus, si coactus, in solidum transibunt actiones ex hoc senatus consulto.

Dig. 36.1.67pr.

Maecenatus 5 fideic.

Servo invito domino vel ignorante non recte restituetur hereditas: sed si postea ratum habuerit, confirmabitur restitutio, verum ipsi domino adquirentur actiones. nec quia hereditatis adquisitionis similis est haec restitutio, iussum praecedere oportet, sed ut dictum est, etiam ratihabitio subsequi poterit exemplo bonorum possessionis. neque interest, quod ad propositum attinet, ipsi domino an servo quis rogetur restituere hereditatem, nec in ea re consensu aut opera servi opus est: atquin in bonorum possessione vel in adeunda hereditate consensus eius necessarius est. itaque si qui suspectam dicent hereditatem, postulante domino compellendi erunt adire et restituere hereditatem.

Dig. 36.1.67.1

Maecenatus 5 fideic.

Si testator rogasset heredem, ut restituat hereditatem mulieri, si non nupsisset, dicendum erit compellendum heredem, si suspectam dicat hereditatem, adire et restituere eam mulieri, etiamsi nupsisset. idem in ceteris quoque condicionibus iulianus noster probat, quae similiter nisi fine vitae expleri non possent. secundum quam sententiam cautione praestita his, quorum interest, ab his, quibus restitui sub isdem condicionibus heres rogatus esset, restituet hereditatem.

Dig. 36.1.67.2

Maecenatus 5 fideic.

Cum praetor cognita causa per errorem vel etiam ambitiose iuberet hereditatem ut ex fideicommisso restitui, etiam publice interest restitui propter rerum iudicatarum auctoritatem.

Dig. 36.1.67.3

Maecenatus 5 fideic.

Si pupillo infanti restituere hereditatem quis rogatus sit, si sponte adierit, etiam servo eius et ipsi pupillo tutore auctore restituetur hereditas: si quidem eo, quod fari non potest, non magis ea res impedietur, quam in muto pubere volente sibi restitui hereditatem. si autem heres recuset adire hereditatem, quemadmodum res expediri possit, difficile est, quia neque tutore desiderante periculo pupilli adiri hereditatem trebelliano senatus consulto locus sit futurus neque pupillus ipse id desiderare possit, cum fari non possit. quod aliquatenus circa mutos expediri potest, nam si auditus capaces sunt vel interrogati nutu possint significare velle se periculo suo hereditatem adire, quomodo absentes per nuntium. sed et infanti non dubito omnimodo subveniendum idque ex similitudine iuris civilis vel honorarii constituendum est: sive enim heres institutus esset, non dubie pro herede tutore auctore gerere posse videtur, sive de bonorum possessione agitaretur, peti ei per tutorem posset. ideoque et heres compelli per tutorem potest adire et restituere hereditatem. quo exemplo et mutus, qui nihil intellegere potest, per curatorem adiuvatur.

Dig. 36.1.67.4

Maecenatus 5 fideic.

Si singulae res ab herede traditae sunt iussu meo ei cui eas vendiderim, non dubitabimus mihi intellegi factam restitutionem. idem erit, et si iussu meo tradantur, cui ego ex fideicommisso aliave qua causa eas praestare debuerim vel in creditum ire vel donare voluerim.

Dig. 36.1.68pr.

Paulus 2 fideic.

Qui ita institutus esset " si coheres eius adisset", uti potest lege falcidia, etsi coheres eius coactus adisset, modo si ipse non coactus adierit hereditatem.

Dig. 36.1.68.1

Paulus 2 fideic.

Etiam absentis procuratori, si desideraret, posse restitui hereditatem ex hoc senatus consulto iulianus scripsit, si tamen caveat de rato habendo, si non evidens absentis voluntas esset. sed dicendum est, ut heres, qui suspectam dicat, non sit compellendus adire, si incertum sit, an mandaverit, quamvis ei caveatur, propter fragilitatem cautionis. quod si sponte adierit hereditatem, non magna captio est: sed actiones, si non mandavit, transibunt eo tempore, quo ratum habuerit.

Dig. 36.1.68.2

Paulus 2 fideic.

Si damnum in servo hereditario datum sit, licet per servum hereditarium heredi competere actio coepit, non tamen transit legis aquiliae actio ad fideicommissarium: hae enim actiones transeunt, quae ex bonis defuncti pendent.

Dig. 36.1.68.3

Paulus 2 fideic.

Si legatus romae compulsus adierit hereditatem et restituerit, cogetur romae actiones pati fideicommissarius, quamvis heres non cogetur.

Dig. 36.1.68.4

Paulus 2 fideic.

An ubi defunctus conveniri debuit, et fideicommissarius debeat? videndum, si sua sponte heres adit et restituit hereditatem, an tribus locis fideicommissarius defendi debeat: ubi defunctus et ubi heres et ubi ipse domicilium habeat. oportet itaque ibi fideicommissarium conveniri, ubi vel domicilium habet vel maior pars restitutae hereditatis habetur.

Dig. 36.1.69pr.

Valens 3 fideic.

Si postulante me suspectam hereditatem ex decreto praetoris adieris nec ego postea eam mihi restitui velim nec bonis me immiscere, hoc fieri debet, ut (quod octaveno non ineleganter videbatur) a praetore perinde actiones in me dentur, ac si hereditatem recepissem, quod est iustius.

Dig. 36.1.69.1

Valens 3 fideic.

Etiam eo tempore, quo creditorum fraudandorum consilium inieris, citra periculum interdicti fraudatorii hereditatem suspectam adibis et restitues mihi, quia et remoto fideicommisso liberum tibi fuerat nolenti adire hereditatem creditores tuos tali commodo fraudare, et ego nihil turpiter faciam recipiendo eam hereditatem, quam remota postulatione mea creditores compellere te ut adires non potuerint.

Dig. 36.1.69.2

Valens 3 fideic.

Sed et filius suus heres patri rogatus sit a patre hereditatem mihi restituere, cum suorum creditorum fraudandorum consilium inisset, tamquam suspectam ex decreto praetoris restituerit mihi, vix fraudatorio interdicto locus erit, quia bonis patris eius venditis nihil proprium creditores eius ex ea hereditate ferre potuerint: nisi forte proprii creditores filii audiri debeant, si postulent, ut dimissis patris eius bona vendere sibi permittatur.

Dig. 36.1.69.3

Valens 3 fideic.

Si donationis causa suspectam hereditatem sibi heres dixerit et restituerit ei, qui solidum capere non possit, auferetur ei id quod capere non potest. idem dicendum est et si citra consilium donandi fiduciarius heres id fecerit.

Dig. 36.1.70pr.

Valens 4 fideic.

Si heres, ab eo qui cum moreretur solvendo non fuit rogatus hereditatem restituere, suspectam sibi dicit, dubium non est, quin hodie coactus ex trebelliano senatus consulto restituere possit. sed et si sua sponte adierit, ex eodem senatus consulto restituturus est, quamvis, cum summa aut certum corpus per fideicommissum ab eo qui solvendo non fuit datum est, perinde non debeatur atque si legatum esset: eo enim casu legatarii, superiore heredis vice fungi eum, cui fideicommissum relictum est.

Dig. 36.1.70.1

Valens 4 fideic.

Si totam hereditatem rogatus restituere tu sponte adieris et, sine deductione quartae partis restitueris, difficile quidem crederis per ignorantiam magis, non explendi fideicommissi causa hoc fecisse: sed si probaveris per errorem te quartam non retinuisse, reciperare eam poteris.

Dig. 36.1.71

Maecenatus 8 fideic.

De evictione praediorum vel mancipiorum vel ceterarum rerum hereditariarum cavere heres, cum restituit hereditatem, non debet: quin immo in contrarium caveri heredi oportet, si quid ex his evictum esset, quae ab ipso herede venissent.

Dig. 36.1.72pr.

Pomponius 2 fideic.

Si heres institutus titio rogatus fuerit restituere hereditatem et rursus titius heredi post tempus, sufficiunt directae actiones heredi.

Dig. 36.1.72.1

Pomponius 2 fideic.

Si heres antequam fideicommissam hereditatem restitueret, alienaverit quid ex hereditate aut servum hereditarium manumiserit aut ruperit quid vel fregerit vel usserit, non competit in eum ulla civilis actio restituta postea hereditate ex trebelliano senatus consulto, sed ex fideicommissi causa erit hoc quod deperierit persequendum. sin vero post restitutam hereditatem horum quid admiserit heres, dicendum est lege aquilia cum eo agi posse, si servum forte hereditarium aut vulneraverit aut occiderit.

Dig. 36.1.72.2

Pomponius 2 fideic.

Si temporalis actio in hereditate relicta fuerit, tempus, quo heres experiri ante restitutam hereditatem potuit, imputabitur ei cui restituta fuerit.

Dig. 36.1.73

Maecenatus 10 fideic.

Omnes qui de hereditate deliberant desiderante eo, qui suo periculo velit adiri hereditatem, coguntur adire, sed non statim restituere, sed ut completo tempore deliberationis, si expedire sibi compererint hereditatem, sentiant commodum testamenti eo iure, quo si sponte adissent, sin vero contra onerosam crediderint, restituta ea exonerentur actionibus hereditariis.

Dig. 36.1.74

Pomponius 4 fideic.

Heres praecepto fundo rogatus erat hereditatem restituere: fundus alienus erat. aristo aiebat videndum, utrum omnimodo penes heredem fundum esse voluit testator an ita demum, si ipsius est: sed sibi superius placere: ideoque aestimatio eius retinenda est.

Dig. 36.1.75pr.

Maecenatus 13 fideic.

Si heres pecuniam hereditariam crediderit et in eam causam pignora acceperit, actiones non competunt ei, cui restituta fuerit hereditas, adversus ipsa pignora. sed aliqua dubitatio remanebit, si in eum contractum, qui ex defuncto fuerit, interpositus heres, antequam restitueret hereditatem, pignus acceperit. sed nec sic quidem ipse admitteretur: ex fideicommisso tamen habet adversus heredem actionem, ut ei cedat pro pignoris commodo actionem.

Dig. 36.1.75.1

Maecenatus 13 fideic.

Cum ex trebelliano senatus consulto restituitur hereditas, servitutes, quas mutuo praedia heredis et testatoris habent, nihilo minus valent.

Dig. 36.1.76pr.

Paulus 2 decr.

Qui filium et filiam habebat, testamentum fecit et ita de filia sua caverat: entellomai soi my diativesvai, prin tekna soi genesvai. pronuntiavit imperator fideicommissum ex hac scriptura deberi, quasi per hoc, quod prohibuisset eam testari, petisset, ut fratrem suum heredem faceret: sic enim accipiendam eam scripturam, ac si hereditatem suam rogasset eam restituere.

Dig. 36.1.76.1

Paulus 2 decr.

Fabius antoninus impuberem filium antoninum et filiam honoratam relinquens exheredatis his matrem eorum iuniam valerianam heredem instituit et ab ea trecenta et quasdam res filiae reliquit, reliquam omnem hereditatem filio antonino, cum ad annum vicensimum aetatis pervenisset, voluit restitui: quod si ante annum vicensimum decessisset filius, eam hereditatem honoratae restitui praecepit. mater intestata decessit utrisque liberis legitimis heredibus relictis. postea filius annum agens plenum nonum decimum et ingressus vicensimum necdum tamen eo expleto decessit filia herede fabia valeriana sua relicta, a qua amita fideicommissum et ex testamento patris portionem hereditatis petebat: et apud praesidem optinuerat. tutores valerianae filiae antonini egestatem eius praetendebant et recitabant divi hadriani constitutionem, in qua quantum ad munera municipalia iusserat eum annum, quem quis ingressus esset, pro impleto numerari. imperator autem noster motus et aequitate rei et verbis testamenti " si ad annum vicensimum aetatis " , quamvis scire se diceret a divo marco non excusatum a tutela eum qui septuagensimum annum aetatis ingressus fuisset, nobis et legis aeliae sentiae argumenta proferentibus et alia quaedam, contra petitricem pronuntiavit.

Dig. 36.1.77pr.

Scaevola 18 Dig.

Epistulam ad heredem suum in haec verba scripsit: " titius cornelio heredi suo salutem. a te peto, corneli, quoniam ad te devoluta est pars matris meae, item pars sempronii curatoris quondam mei contraria fortuna usi et per hoc totus as meus apud te esse speratur, uti reddas restituas gaio seio uncias quattuor". quaesitum est, cum sempronius in integrum restitutus sit ab imperatore, a quo fuerat deportatus et adierit hereditatem, an is quoque rogatus sit, ut ex sua portione restituat hereditatem. respondit sempronium quidem non proponi rogatum, cornelium autem heredem debere pro rata portione maternarum defuncti rerum restitutionem seio facere.

Dig. 36.1.77.1

Scaevola 18 Dig.

Mulier heredis instituti fidei commisit, ut retenta parte quarta reliquam partem restitueret nurui quondam suae, cuius fidei commisit in haec verba: " rogo te, ut id, quod ad te ex bonis meis pervenerit, facias pervenire ad filium tuum": quaesitum est, quando hoc fideicommissum restituere debeat, utrumne post mortem suam an iam nunc. respondit ad tempus, quo nurus moreretur, fideicommissum aptandum esse.

Dig. 36.1.78

Scaevola 19 Dig.

Scaevola respondit, si pater filium suum impuberem ex asse scripserit heredem eique codicillis substituerit, deinde filius impubes decesserit, licet substitutio inutilis sit, quia codicillis hereditas neque dari neque adimi potest, tamen benigna interpretatione placet, ut mater, quae ab intestato pupillo successit, substitutis fideicommisso obligetur: quod si invicem fuerunt substituti, et in fideicommisso substitutionem valere: unoque eorum mortuo qui supersunt totum accipiunt.

Dig. 36.1.79pr.

Scaevola 20 Dig.

Heredibus institutis filiis utriusque sexus singulos rogavit, ut qui sine liberis decederet partem suam hereditatis sorori fratrive restitueret aut, si frater sororve non esset, matri suae et haec verba adiecit: " vosque, liberi carissimi, hoc fideicommisso teneri invicem volo, donec binos liberos educaveritis". quaesitum est, si quis ex liberis duos filios procreaverit, quamvis superstites non reliquerit, an heredes eius fideicommissum debeant. respondit secundum ea quae proponerentur videri fideicommissi onere liberatos.

Dig. 36.1.79.1

Scaevola 20 Dig.

Titius nepotes ex filia et furiosam filiam suam heredes instituit et fidei commisit filiae, ut, si sine liberis decessisset, pars ei data perveniret ad coheredes: eam furiosam ipse titius in matrimonio collocavit et enixa est filiam post mortem patris. quaesitum est, defuncta furiosa superstite ex eiusmodi coniunctione parta filia, an fideicommissum ad coheredes pertineret. respondit, cum filiam reliquisse proponeretur, fideicommissum non deberi. claudius: nam etsi matrimonium cum furiosa non fuit, satis tamen factum est eiusmodi condicioni.

Dig. 36.1.80pr.

Scaevola 21 Dig.

Lucius titius intestato moriturus, cum haberet uxorem et ex ea filiam emancipatam, codicillis haec verba inseruit: " pertinent autem hi codicilli ad uxorem et filiam. itaque rogo, quidquid aut ego reliquero aut vos ipsae habeatis, commune vobis sit: quod si non ego rogarem, vos pro vestra pietate faceretis". filia intestati patris bonorum possessionem accepit: quaesitum est, an aliqua pars hereditatis lucii titii ex causa fideicommissi a filia matri debeatur. respondit secundum ea quae proponerentur ^ proponeretur^ dimidiam partem deberi, si etiam uxor parata sit in commune bona sua conferre.

Dig. 36.1.80.1

Scaevola 21 Dig.

Maevia duos filios heredes reliquerat et eodem testamento ita cavit: " fidei autem heredum ^ heredem^ meorum committo, uti omnis substantia mea sit pro deposito sine usuris apud gaium seium et lucium titium, quos etiam, si licuisset, curatores substantiae meae dedissem remotis aliis, ut hi restituant nepotibus meis, prout quis eorum ad annos viginti quinque pervenerit, pro portione, vel si unus, ei omnem". quaesitum est, an fideicommissum praestari a scriptis heredibus lucio titio et gaio seio debeat. respondit secundum ea quae proponerentur lucium titium, item gaium seium fideicommissum petere non posse.

Dig. 36.1.80.2

Scaevola 21 Dig.

Tres heredes scripsit maevium fratrem suum ex dodrante, seium ex sextante, stichum eiusdem seii servum, filium autem naturalem maevii ex uncia et fidei commisit seii, uti stichum manumitteret, in haec verba: " a te peto, sei, uti tu stichum manumitteres: dedi unde faceres". sed et codicillis ita cavit: " unciam, ex qua feci stichum heredem, si quam seius controversiam moveret, ad maevium fratrem meum reverti volo. tu, frater, secundum fidem et pietatem tuam, quidquid ad te pervenerit ex hereditate mea sticho filio tuo restitues: quod ut facias, fidei tuae committo". quaesitum est, cum seius adierit hereditatem et propter hoc compulsus stichum manumiserit, an unciam hereditatis, ex qua stichus heres institutus est, sticho manumisso restituere debeat. respondit non proponi seium rogatum unciam ei restituere.

Dig. 36.1.80.3

Scaevola 21 Dig.

Idem quaesiit, an, si aliquam controversiam seius de uncia hac, ex qua stichus institutus est, facere velit et maevius unciam ex causa fideicommissi a seio fuerit consecutus, utrum hanc solam unciam, ex qua stichus institutus est, an vero et dodrantem, ex quo ipse maevius institutus est, eidem sticho restituere debeat. respondit de omni restituendo, quod ad maevium quoquo modo pervenit, testatricem sensisse.

Dig. 36.1.80.4

Scaevola 21 Dig.

Pater puerum et puellam heredes instituit eosque invicem substituit et, si neuter heres esset, eis plures substituit substitutosque invicem substituit his verbis: " substitutos heredes invicem substituo": eorundem filiorum fidei commisit, ut, qui eorum vita superasset et sine liberis intra annum trigensimum moreretur, hereditatem his, quos heredes substituerat, restituat. filius vita sororem superavit et intra trigensimum annum sine liberis decessit: quaesitum est, ex substitutis uno defuncto ante filium, pars eius, quae ad ceteros substitutos qui superviverent pertinet, utrum pro virilibus an pro hereditariis portionibus, quibus sunt substituti, pertineat. respondit consequens esse pro his partibus, quibus substituti essent, fideicommissum pertinere.

Dig. 36.1.80.5

Scaevola 21 Dig.

Maevia filium heredem instituit ex quincunce, titiam filiam ex quadrante, septicium filium ex triente, cuius fidei commisit in haec verba: " te rogo, fili septici, si intra vicensimum annum sine liberis morieris, quidquid ex hereditate mea ad te pervenerit, hoc fratribus tuis restituas". quaesitum est, an septicio filio defuncto intra vicensimum annum sine liberis hoc fideicommissum utrum pro portionibus hereditariis ad fratrem et sororem eius pertineat an vero aequaliter. respondit pro parte hereditaria.

Dig. 36.1.80.6

Scaevola 21 Dig.

Titia ex asse heres scripta partem dimidiam hereditatis maeviae rogata restituerat: fundum a testatore obligatum luere noluit, sed eum vendente creditore mandavit redimendum seiae: quaesitum est, an titia ex causa fideicommissi maeviae teneatur. respondit, cum rogata hereditatem restituere proponatur, nihil proponi, cur non teneatur. claudius: subest enim praestari oportere id, quanto pluris fundus fuit, quam ad creditorem pervenire oportuit.

Dig. 36.1.80.7

Scaevola 21 Dig.

Gaio seio ex semisse, titia ex quadrante et aliis ex reliquis portionibus heredibus institutis ita cavit: " fidei autem vestrae mando, gai sei et lucia titia, uti post obitum vestrum reddatis restituatis titio et sempronio semissem patrimonii et portionis eius, quam vobis dedi". quaesitum est, cum utrique adierint hereditatem et postea gaius seius defunctus sit lucia titia herede instituta, an haec lucia titia partem dimidiam semissis, quam rogatus erat gaius seius restituere, protinus debeat? an vero post suam demum mortem universum fideicommissum tam ex sua persona quam ex gaii seii datum restituere debeat? respondit luciam titiam statim teneri, ut partem dimidiam semissis ex persona seii restituat.

Dig. 36.1.80.8

Scaevola 21 Dig.

Filiam suam heredem scripsit et nepotem, quem ex ea habebat, ei substituit et ita cavit: " lucio titio fratris mei filio genero meo ducentos aureos relinquo. quo legato scio illum contentum esse, quoniam scripsi universam rem meam, eo quod filiam meam et nepotem meum heredes scripsi, universam substantiam eis communicasse. quos invicem commendo". filia adita patris hereditate divertit a marito: quaesitum est, an titius quondam eius maritus suo vel filii sui nomine ex fideicommisso communionem bonorum consequi possit viva quondam uxore sua vel post mortem eius. respondit nihil fideicommissi datum genero proponi praeter ducentos aureos.

Dig. 36.1.80.9

Scaevola 21 Dig.

Idem quaesiit eandem uxorem marito herede scripto fideicommisisse, ut, cum moreretur, filio communi omne, quod ad eum ex hereditate sua pervenisset, restitueret: an illae quoque res et possessiones, quae in dotem datae et post divortium restitutae mulieri fuerant, fideicommisso contineantur. respondit, quod mulier in bonis suis reliquisset, id fideicommisso contineri. claudius: et alias de eodem facto consultus ita respondit, sive restitutae sint res, secundum id quod supra responsum est in bonis mulieris computari, sive non sint restitutae, quia ex stipulatione de dote reddenda interposita restituendae sint, eo auctiorem hereditatem computari.

Dig. 36.1.80.10

Scaevola 21 Dig.

Quae habebat filium et ex eo nepotem utrosque in mariti potestate, maritum ex asse scripsit heredem eiusque fidei commisit in haec verba: " si titius maritus meus mihi heres erit, peto fideique eius committo, quidquid ex hereditate mea ad eum pervenerit, cum mori coeperit, det restituat gaio filio nostro, ita tamen, ut decem quidem uncias gaius habeat, duas autem uncias seius nepos habeat: quod ut fiat, fidei eius titi heredis mei committo". pater emancipavit filium, nepotem amisit et superstite filio decessit. quaesitum est, an priore parte scripturae universa hereditas patris ex causa fideicommissi filio debeatur et illa sequentia verba " ita tamen, ut decem uncias filius, duas autem nepos habeat" ex voluntate defunctae ita demum locum haberent, si die fideicommissi cedente filius et nepos eorum in natura essent, cum autem non supervixit ad diem fideicommissi nepos, sequens scriptura cesset. respondit ea quae proponerentur ostendere decem dumtaxat uncias filio datas.

Dig. 36.1.80.11

Scaevola 21 Dig.

Heres institutus uxori rogatus totam hereditatem restituere restituit detracta quarta: quaesitum est, cum uxor quartam partem hereditatis praesenti die et reliquam post tempus alii rogata a testatore fuisset restituere, an id, quod heres ei detraxisset quartae nomine, in restituendo fideicommisso imputare possit. respondit, quatenus cepisset, fideicommisso obstrictam.

Dig. 36.1.80.12

Scaevola 21 Dig.

Heredum fidei commisit, ut, quidquid ex parte tertia hereditatis pervenerit ad eos, id redderent gaio maevio alumno testatoris, cum fuerit annis quindecim, et subiunxit haec verba: " interim ex refectu paupertatis, qui ad vos pervenerit, alatis eum ex usuris pro quantitate nummorum redactis. hoc amplius eidem alumno meo hominem caletanum et vernam sutorem, qui eum artificio suo mercede data alere poterit". quaesitum est, cum alimenta multo minora praestiterint heredes scripti, quam usurae summae redactae competebant, an et residuas praestare compelli debeant totius temporis an ex die, quo quintum decimum explesset? et cum servi legati ei specialiter, ut ex mercedibus aleretur, statim venierint, utrum mercedes an usuras petere debeat? respondit secundum ea quae proponerentur testatorem videri de omni reditu et mercede servorum restituenda sensisse.

Dig. 36.1.80.13

Scaevola 21 Dig.

Pluribus heredibus institutis, in quibus et libertis tribus ex dodrante, eisdem fundos per praeceptionem dedit et ab his petit, ne eos alienarent et ut, qui vita superasset, solidos eosdem fundos optineret: deinde unius ex his libertis otacilii fidei commisit, uti quidquid ad eum ex hereditate bonisve pervenisset, deducto pro ea parte aere alieno et legatis et sibi viginti aureis restituat titio: quaesitum est, an etiam partes tertias fundorum, praelegatorum cum collibertis eidem, deducere deberet. respondit secundum ea quae proponerentur non debere restituere praeceptionem, cum ipse testator et legata excipi voluisset.

Dig. 36.1.80.14

Scaevola 21 Dig.

Maritus uxore instituta herede ex parte tertia et pluribus ei fideicommissis datis dotem quoque praelegavit his verbis: " seiae uxori meae dari volo a filiis meis summam dotis eius, quae mihi pro ea illata est" eiusdemque uxoris fidei commisit, ut partem hereditatis et quaecumque ei legasset post mortem suam titio filio communi restitueret. quaesitum est, an summam quoque dotis inter cetera legata ex causa fideicommissi filio suo restituere debeat. respondit non alias, nisi manifestum esset de dote quoque restituenda testatorem sensisse: atque etiamsi sensisset et hoc fuerit adprobatum, ita eius quoque petitionem fore, si non minus in quantitate, quae falcidiae nomine remaneret, foret quam in quantitate dotis.

Dig. 36.1.80.15

Scaevola 21 Dig.

Rogatus hereditatem restituere septicio, cum erit annis viginti, interea fundos, quos defunctus pignori acceperat, vendidit et propterea pigneraticia iudicio a debitore conventus decessit herede relicto sempronio et iudicio nondum finito restituit hereditatem septicio. quaesitum est, an iudicio nihilo minus ipse condemnari debeat, cum potuerit retinere (vel caveri sibi) id, quod ex causa iudicati praestaturus esset. respondit iudicii exsecutionem nihilo minus adversus heredem et post restitutam hereditatem mansisse.

Dig. 36.1.80.16

Scaevola 21 Dig.

Heres eius, qui post mortem suam rogatus erat universam hereditatem restituere, minimam quantitatem, quam solam in bonis fuisse dicebat, his quibus fideicommissum debebatur restituit: postea repertis instrumentis apparuit quadruplo amplius hereditate fuisse: quaesitum est, an in reliquum fideicommissi nomine conveniri possit. respondit secundum ea quae proponerentur, si non transactum esset, posse.

Dig. 36.1.81

Scaevola l.S. quaest. publ. tract.

Si pupillus parenti suo heres extitit et fideicommissam hereditatis partem restituit, mox abstinetur paterna hereditate: optio deferenda est fideicommissario, ut aut portionem quoque pupilli adgnoscat aut toto discedat. aut omnimodo bona vendenda sunt, ut id quod superfluum est pupillo servetur, et, si in solidum bona venire non possunt, omnimodo actiones fideicommissario denegandae erunt: erat enim in potestate illius universum suscipere et si quid plus erit, pupillo servare.

Dig. 36.1.82

Scaevola 5 Dig.

Matrem et avunculum eosdemque creditores suos heredes scripsit lucius titius et eorum fidei commisit, ut post mortem restituerent, quod ex re familiari testatoris superfuerit, septicio. heredes non modicam partem bonorum testatoris consumpserunt et multos heredes reliquerunt, quibus scientibus multa corpora, quae remanserant ex bonis lucii titii, septicius possedit. quaesitum est, an id, quod lucius titius debuit matri et avunculo, heredes eorum a septicio petere possint. respondit non posse. claudius: aditione enim hereditatis confusa obligatio interciderat, sed fideicommissi repetitio erat: cuius aequitas defecit his, qui multa ex hereditate consumpsisse proponuntur.

Dig. 36.1.83

Paulus 1 imp. sent. i.C.P.

Iulius foebus testamento facto, cum tres liberos heredes institueret, foebum et heracliam ex eadem matre, polycraten ex alia aequis portionibus, petit a polycrate minore fratre, ut accepto certo praedio hereditatem fratribus concederet: et invicem eos, qui ex eadem matre erant, si qui eorum heres non fuisset, substituerat. polycrati, si intra pubertatem decessisset, secundas tabulas fecit, quas matri eius commendavit aperiendas, si impubes obisset. deinde petit a prioribus, ut, si quis eorum sine liberis decederet, portionem suam exceptis bonis maternis eorum et avitis ei vel eis qui superessent restitueret. heraclia soror mortua sine liberis fratrem foebum heredem instituit: polycrates fideicommissum petierat et optinuerat apud aurelium proculum proconsulem axaiae: appellatione facta, cum solus foebus egisset monomerws, victus est, quia " ei vel eis" verba utrosque fratres complecterentur. adqui invicem duos illos tantum substituerat: sed et voluntas haec patris videbatur, qui exceperat eorum bona materna, quia polycrates aliam matrem et quidem superstitem habebat, cuius etiam fidei commissum erat, ut legata, quae ei dederat in testamento, moriens polycrati filio suo restitueret. . . . .

Dig. 36.1.84

....

. . . . si quis eum, quem debere sibi dicit eo negante, heredem scripserit eumque rogaverit, ut hereditatem restituat alii, videamus de iure debiti ^ non convenitur propter debitum fideicommissi petitione, si paratus est debiti actionem suscipere^.

Dig. 36.1.85

....

. . . . si filio familias hereditas restituta sit, videamus , quatenus ^ recte^ actiones hereditariae post emancipationem ei et in eum dentur ^ dantur^.

Dig. 36.2.0. Quando dies legatorum vel fideicommissorum cedat.

Dig. 36.2.1

Paulus 2 ad sab.

Mortuo patre, licet vivo pupillo, dies legatorum a substituto datorum cedit.

Dig. 36.2.2

Ulpianus 15 ad sab.

Si pure sit usus fructus legatus vel usus vel habitatio, neque eorum dies ante aditam hereditatem cedit neque petitio ad heredem transit. idem et si ex die sit usus fructus relictus:

Dig. 36.2.3

Ulpianus 5 disp.

Nam cum ad heredem non transferatur, frustra est, si ante quis diem eius cedere dixerit.

Dig. 36.2.4

Ulpianus 19 ad sab.

Si " cum heres morietur" legetur, condicionale legatum est: denique vivo herede defunctus legatarius ad heredem non transfert. si vero " cum ipse legatarius morietur" legetur ei, certum est legatum ad heredem transmitti.

Dig. 36.2.5pr.

Ulpianus 20 ad sab.

Si post diem legati cedentem legatarius decesserit, ad heredem suum transfert legatum.

Dig. 36.2.5.1

Ulpianus 20 ad sab.

Itaque si purum legatum sit, ex die mortis dies eius cedit: si vero post diem sint legata relicta, simili modo atque in puris dies cedit, nisi forte id fuit legatum, quod ad heredem non transit: nam huius dies non ante cedit, ut puta si usus fructus sit post annum relictus: hanc enim sententiam probamus.

Dig. 36.2.5.2

Ulpianus 20 ad sab.

Sed si sub condicione sit legatum relictum, non prius dies legati cedit quam condicio fuerit impleta, ne quidem si ea sit condicio, quae in potestate sit legatarii.

Dig. 36.2.5.3

Ulpianus 20 ad sab.

Sed si ea condicio fuit, quam praetor remittit, statim dies cedit:

Dig. 36.2.5.4

Ulpianus 20 ad sab.

Idemque et in impossibili condicione, quia pro puro hoc legatum habetur.

Dig. 36.2.5.5

Ulpianus 20 ad sab.

Item si qua condicio sit, quae per legatarium non stat quo minus impleatur, sed aut per heredem aut per eius personam, in cuius persona iussus est parere condicioni, dies legati cedit, quoniam pro impleta habetur: ut puta si iussus sim heredi decem dare et ille accipere nolit. sed et si ita mihi legatum sit, si seiam uxorem duxero, nec ea velit nubere, dicendum erit diem legati cedere, quod per me non stat, quo minus paream condicioni, sed per alium stat, quo minus impleatur condicio.

Dig. 36.2.5.6

Ulpianus 20 ad sab.

Isdem autem diebus, id est isdem pensionibus heredi praestabitur legatum, quibus legatario ipsi praestabatur.

Dig. 36.2.5.7

Ulpianus 20 ad sab.

Si, cum dies legati cedere inciperet, alieni quis iuris est, deberi his legatum, quorum iuri fuit subiectus. et ideo si purum legatum fuerit et post diem legati cedentem liber factus est, apud dominum legatum relinquet: sed si usus fructus fuerit legatus, licet post mortem testatoris, ante aditam tamen hereditatem sui iuris efficiatur, sibi legatum adquirit.

Dig. 36.2.6pr.

Paulus 3 ad sab.

Quod pure datum est si sub condicione adimatur, quasi sub condicione legatum habetur.

Dig. 36.2.6.1

Paulus 3 ad sab.

At si extrinsecus suspendatur legatum, non ex ipso testamento: licet ante decedat legatarius, ad heredem transmisisse legatum dicimus: veluti si rem dotalem maritus legaverit extero et uxori aliquam pro dotali re pecuniam, deinde deliberante uxore de electione dotis decesserit legatarius atque legatum elegerit mulier, ad heredem transire legatum dictum est. idque et iulianus respondit: magis enim mora quam condicio legato iniecta videtur.

Dig. 36.2.6.2

Paulus 3 ad sab.

Eorum legatorum, quae in codicillis relicta sunt, perinde dies cedit atque testamento relictorum.

Dig. 36.2.7pr.

Ulpianus 20 ad sab.

Heredis aditio moram legati quidem petitioni facit, cessioni diei non facit.

Dig. 36.2.7.1

Ulpianus 20 ad sab.

Proinde sive pure institutus tardius adeat sive sub condicione per condicionem impediatur, legatarius securus est.

Dig. 36.2.7.2

Ulpianus 20 ad sab.

Sed et si nondum natus sit heres institutus aut apud hostes sit, similiter legatario non nocebit, eo quod dies legati cessit.

Dig. 36.2.7.3

Ulpianus 20 ad sab.

Inde dicimus et si a substituto legatum sit relictum, quamdiu institutus deliberat defuncto legatario non nocebit, si postea heres institutus repudiavit: nam ad heredem suum transtulit petitionem.

Dig. 36.2.7.4

Ulpianus 20 ad sab.

Tantundem et si ab impuberis substituto legetur: nam ad heredem suum legatum transfert.

Dig. 36.2.7.5

Ulpianus 20 ad sab.

Tractari tamen potest, si impuberi substitutus damnatus sit, si intra pubertatem filius decesserit, seio centum dare, an vivo pupillo defunctus seius ad heredem transferat, quasi ea condicio sit expressa, quae inerat. et magis est ad heredem legatarii transire.

Dig. 36.2.7.6

Ulpianus 20 ad sab.

Interdum aditio heredis legatis moram facit, ut puta si forte servo manumisso vel ei cui servus legatus est et ideo servo aliquid legatum sit: nam servo legati relicti ante aditam hereditatem dies non cedit.

Dig. 36.2.8

Ulpianus 24 ad sab.

Nam cum libertas non prius competat quam adita hereditate, aequissimum visum est nec legati diem ante cedere: alioquin inutile fieret legatum, si dies eius cessisset antequam libertas competeret. quod evenit, si servo pure legetur et liber esse sub condicione iubeatur et pendens condicio inveniatur et post aditam hereditatem.

Dig. 36.2.9

Ulpianus 21 ad sab.

Si habitatio filio familias vel servo legata sit, puto non adquiri domino vel patri legatum, si ante aditam hereditatem filius vel servus decesserit: nam cum personae cohaereat, recte dicitur ante aditam hereditatem diem non cedere.

Dig. 36.2.10

Ulpianus 23 ad sab.

Cum in annos singulos legatur, non unum legatum esse, sed plura constat.

Dig. 36.2.11

Iulianus 37 Dig.

(nec refert, singuli aurei in annos singulos legentur an in annum primum mille aurei, in secundum homo, in tertium frumentum)

Dig. 36.2.12pr.

Ulpianus 23 ad sab.

Nec semel diem eius cedere, sed per singulos annos.

Dig. 36.2.12.1

Ulpianus 23 ad sab.

Sed utrum initio cuiusque anni an vero finito anno cedat, quaestionis fuit. et labeo sabinus et celsus et cassius et iulianus in omnibus, quae in annos singulos relinquuntur, hoc probaverunt, ut initio cuiusque anni huius legati dies cederet.

Dig. 36.2.12.2

Ulpianus 23 ad sab.

Inde iulianus ait, hoc legatum si servo relinquatur, deinde post primum vel alterum annum sit liber, sibi eum adquirere.

Dig. 36.2.12.3

Ulpianus 23 ad sab.

Item celsus scribit, quod et iulianus probat, huius legati diem ex die mortis cedere, non ex quo adita est hereditas, et si forte post multos annos adeatur hereditas, omnium annorum legatario deberi.

Dig. 36.2.12.4

Ulpianus 23 ad sab.

Sed et si quotannis sit legatum, mihi videtur etiam in hoc initium cuiusque anni spectandum, nisi forte evidens sit voluntas testatoris in annuas pensiones ideo dividentis, quoniam non legatario consultum, sed heredi prospectum voluit, ne urgueretur ad solutionem.

Dig. 36.2.12.5

Ulpianus 23 ad sab.

Si in habitationem aliquid vel in disciplinam legetur sic " annua" vel " quotannis", quibus diebus pensio debetur habitationis vel merces disciplinarum, isdem intellegitur legatum relictum, coniectura voluntatis facta.

Dig. 36.2.12.6

Ulpianus 23 ad sab.

Novissime pomponius scribit nihil interesse, utrum " in annos singulos" vel " quotannis" an " in singulos menses" vel " quot mensibus" an " in singulos dies" vel " quot diebus" legetur. ipse quoque huic sententiae accedo: proinde et si " annui" legentur tot aurei, idem erit dicendum.

Dig. 36.2.12.7

Ulpianus 23 ad sab.

Si cui homo generaliter sit legatus et antequam vindicet decesserit, ad heredem suum legatum transfert.

Dig. 36.2.12.8

Ulpianus 23 ad sab.

Si titio sit sic legatum " quem seius elegerit" et seius post electionem decesserit, locus est vindicationi semel adquisitae.

Dig. 36.2.13

Pomponius 6 ad sab.

Huiusmodi legatum: " sive illud factum fuerit sive non fuerit, illi do lego", ad heredem non transit, nisi alter casus vivo legatario exstiterit, quoniam causa, ex qua debeatur, praecedere semper debet. nec, quia certum est alterutrum futurum, omnimodo debebitur: nam tale legatum: " cum morietur, heres dato" certum est debitum iri et tamen ad heredem legatarii non transit, si vivo herede decedat.

Dig. 36.2.14pr.

Ulpianus 24 ad sab.

Si usus fructus aut decem, utrum legatarius voluerit, sint legata, utrumque spectandum et mortem testatoris et aditionem hereditatis, mortem propter decem, aditionem propter usum fructum: quamvis enim electio sit legatarii, tamen nondum electioni locus esse potest, cum proponatur aut nondum testatorem decessisse aut eo mortuo hereditas nondum adita.

Dig. 36.2.14.1

Ulpianus 24 ad sab.

Inde quaerit iulianus, si post mortem testatoris legatarius decedat, an ad heredem transferat decem legatum, et libro trigensimo septimo digestorum scribit posse dici decem transtulisse, quia mortuo legatario dies legati cedit. argumentum iulianus pro sententia sua adfert tale: " seiae decem aut, si pepererit, fundum heres meus dato": nam si, antequam pariat, inquit, decesserit, ad heredem suum decem transmittet.

Dig. 36.2.14.2

Ulpianus 24 ad sab.

Si ita quis legaverit filio familias, ut ipsi solvatur, potest procedere legatum nec imputari heredi, cur non patri, sed potius filio solvat: finge enim hoc nominatim expressum " ita ut filio solvat": certe si pater petat, exceptione erit repellendus.

Dig. 36.2.14.3

Ulpianus 24 ad sab.

Si dies legati cesserit, deinde legatarius in ius alienum pervenit, ipsi potius debetur legatum, in cuius ipse ius pervenit: transeunt enim cum eo, quae ei debebantur. sed si sub condicione fuerit legatum, non transit, sed exspectabit condicionem eique adquiretur, cuius iuris erit condicionis existentis tempore: quod si sui iuris fuerit eo tempore, sibi potius adquiret.

Dig. 36.2.15

Ulpianus 5 disp.

Si ita esset liberis fideicommissum relictum, si morte patris sui iuris essent effecti, nec mortalitate patris, sed emancipatione patres familiarum constituti sint, deberi eis fideicommissum nemo dubitaverit diemque eius emancipatione cessisse, qui morte patris cederet.

Dig. 36.2.16pr.

Iulianus 35 Dig.

Cum ita legatum est: " stichum vel quod ex pamphila natum erit heres meus dato", non ante legati eius cedet, quam aliquid ex pamphila natum fuerit aut certum fuerit nasci non posse.

Dig. 36.2.16.1

Iulianus 35 Dig.

Cum servo legato, antequam hereditas eius qui legaverat adiretur, usus fructus ab alio legatus fuerit et prior hereditas eius, qui usum fructum legaverit, adita fuerit: nulla ratio est, cur diem legati cedere existimemus, antequam ea quoque hereditas, ex qua servus legatus erat, adeatur, cum neque in praesentia ullum emolumentum hereditati adquiratur et, si interim servus mortuus fuerit, legatum extinguatur. quare adita hereditate existimandum est usum fructum ad eum, cuius servus legatus esset, pertinere.

Dig. 36.2.16.2

Iulianus 35 Dig.

Quod si servus, cui usus fructus legatus fuerit, ipse legatus non fuerit, dicendum est usum fructum ad hereditatem pertinere, eo quod dies eius ante aditam hereditatem non cesserit.

Dig. 36.2.17

Iulianus 36 Dig.

Cum legato servo aliquid legatur, dies eius legati quod servo datur non mortis tempore, sed aditae hereditatis cedit: et ideo impedimento non est regula iuris, quo minus manumisso legatum debeatur, quia etsi confestim pater familias moreretur, non in eiusdem personam et emolumentum legati et obligatio iuris concurreret. perinde igitur est hoc, de quo quaeritur, ac si filio herede instituto patri legatum esset: quod consistere intellegitur eo, quod, quamvis statim pater familias moriatur, potest emancipatus adire hereditatem, ut patri legatum debeat.

Dig. 36.2.18

Iulianus 37 Dig.

Is cui ita legatum est " quandoque liberos habuerit" si praegnate uxore relicta decesserit, intellegitur expleta condicione decessisse et legatum valere, si tamen postumus natus fuerit.

Dig. 36.2.19pr.

Iulianus 70 Dig.

Cum sine praefinitione temporis legatum ita datum fuerit: " uxori meae penum heres dato: si non dederit, centum dato", unum legatum intellegitur centum et statim peti potest, penoris autem causa eo tantum pertinet, ut ante litem contestatam tradita peno heres liberetur.

Dig. 36.2.19.1

Iulianus 70 Dig.

Quod si ita scriptum sit " si penum intra kalendas non dederit, centum dato", non efficitur, ut duo legata sint, sed ut centum legata sub condicione videantur: idcirco si uxor ante kalendas decesserit, heredi suo neque penum relinquet, quia legata non est, neque centum, quia dies legati cesserit necesse est legataria viva.

Dig. 36.2.19.2

Iulianus 70 Dig.

Statim dies mihi cedit, cum ab eo mihi fideicommissum datum est, cui sub condicione legatum est, quemadmodum si herede instituto sub condicione pure mihi legetur.

Dig. 36.2.19.3

Iulianus 70 Dig.

Si debitori quod sub condicione debet legatum est, praesens legatum est agique ex testamento statim potest, ut liberatio praestetur, et, si post mortem testatoris decesserit, ad heredem transmittit actionem.

Dig. 36.2.19.4

Iulianus 70 Dig.

Haec dicenda erunt et si non ipsi debitori, sed alii cuilibet similiter legatum esse proponatur.

Dig. 36.2.20

Marcianus 6 inst.

Si cum praefinitione annorum legatum fuerit, veluti " titio dena usque ad annos decem", iulianus libro trigensimo digestorum scribit interesse: et si quidem alimentorum nomine legatum fuerit, plura esse legata et futurorum annorum legatum legatarium mortuum ad heredem non transmittere: si vero non pro alimentis legavit, sed in plures pensiones divisit exonerandi heredis gratia, hoc casu ait omnium annorum unum esse legatum et intra decennium decedentem legatarium etiam futurorum annorum legatum ad heredem suum transmittere: quae sententia vera est.

Dig. 36.2.21pr.

Paulus 2 ad vitell.

Si dies adposita legato non est, praesens debetur aut confestim ad eum pertinet cui datum est: adiecta quamvis longa sit, si certa est, veluti kalendis ianuariis centesimis, dies quidem legati statim cedit, sed ante diem peti non potest: at si incerta, quasi " cum pubes erit" " cum in familiam nupserit" " cum magistratum inierit" cum aliquid demum, quod scribenti comprehendere sit commodum, fecerit: nisi tempus condiciove optigit, neque res pertinere neque dies legati cedere potest.

Dig. 36.2.21.1

Paulus 2 ad vitell.

Si sub condicione, qua te heredem institui, sub ea condicione titio legatum sit, pomponius putat perinde huius legati diem cedere atque si pure relictum esset, quoniam certum esset herede existente debitum iri: neque enim per condicionem heredum fieri incerta legata nec multum interesse tale legatum ab hoc " si heres erit, dato".

Dig. 36.2.22pr.

Pomponius 5 ad q. muc.

Si titio, " cum is annorum quattuordecim esset factus", legatum fuerit et is ante quartum decimum annum decesserit, verum est ad heredem eius legatum non transire, quoniam non solum diem, sed et condicionem hoc legatum in se continet " si effectus esset annorum quattuordecim", qui autem in rerum natura non esset, annorum quattuordecim esse non intellegeretur. nec interest, utrum scribatur " si annorum quattuordecim factus erit" an ita cum priore scriptura per condicionem tempus demonstratur, sequenti per tempus condicio, utrubique tamen eadem condicio est.

Dig. 36.2.22.1

Pomponius 5 ad q. muc.

Quaedam autem condiciones etiam supervacuae sunt, veluti si ita scribat: " titius heres esto. si titius hereditatem meam adierit, maevio decem dato": nam pro non scripto ea condicio erit, ut omnimodo ad heredem maevii legatum transeat, etiamsi maevius ante aditam hereditatem decesserit. et idem, si ita fuerit scriptum: " si titius hereditatem meam adierit, intra dies centum maevio decem dato": nam hoc legatum in diem erit, non sub condicione, quia definitio labeonis probanda est dicentis id demum legatum ad heredem legatarii transire, quod certum sit debitum iri, si adeatur hereditas.

Dig. 36.2.22.2

Pomponius 5 ad q. muc.

Si tamen duos heredes instituam et, si alter ex his adeat hereditatem, alicui legem ab omnibus heredibus: non erit pro supervacuo ea condicio, sed in portionem quidem coheredis valebit, in ipsius autem, cuius persona in condicione comprehensa est, supervacua erit, perinde atque si solo eo herede instituto eo modo legatum esset.

Dig. 36.2.23

Ulpianus 4 ad l. iul. et pap.

Cum in annos singulos legatum relinquitur, sine dubio per annos singulos inspecta condicione legatarii aut capere. et si plurium servus sit, singulorum dominorum erunt personae spectandae.

Dig. 36.2.24pr.

Paulus 6 ad l. iul. et pap.

Si penum heres dare damnatus sit vel fundum et, si non dedisset, decem, ego accepi et penum legatam et translatam esse in decem, si noluerit penum heres dare, et tunc pecuniam deberi, cum interpellatus fundum non dedisset, et, si interea decesserit legatarius, tunc heredi eius non nisi fundum deberi. namque cum dictum est: " at publicius fundum dato", perfectum est legatum et cum dicit: " si non dederit, centum dato", sub condicione fundi legatum ademptum videri eo casu, quo centum deberi coeperint. quorum quia condicio vivo legatario non exstiterit, forte quia interpellatus heres non sit, evenit, ut ademptio nihil egerit fundique legatum duraverit.

Dig. 36.2.24.1

Paulus 6 ad l. iul. et pap.

Plane si sic legatum sit: " si penum non dederit, decem dato", dicimus non esse penum legatum.

Dig. 36.2.25pr.

Papinianus 18 quaest.

Cum illud aut illud legetur, enumeratio plurium rerum disiunctivo modo comprehensa plura legata non facit. nec aliud probari poterit, si pure fundum alterum vel alterum sub condicione legaverit: nam pendente condicione non erit electio nec, si moriatur, ad heredem transisse legatum videbitur.

Dig. 36.2.25.1

Papinianus 18 quaest.

" heres meus titio dato quod mihi seius debet". si seius pupillus sine tutoris auctoritate nummos accepit nec locupletior factus est et creditor ad praesens debitum verba rettulit, quia nihil seius debet, nullius momenti legatum erit: quod si verbo debiti naturalem obligationem et futuram solutionem cogitavit, interim nihil titius petet, quasi tacite condicio inserta sit, non secus ac si ita dixisset: " titio dato, quod pupillus solverit" vel si legasset " quod ex arethusa natum erit" vel " fructus, qui in illo fundo nascentur". contrarium non est, quod, si medio tempore legatarius moriatur et postea partus edatur, fructus perveniant, pecuniam pupillus exsolvat, heres legatarii petitionem habet: namque dies legati, cui condicio non adscribitur, quamvis extrinsecus exspectanda sit, cedit.

Dig. 36.2.26pr.

Papinianus 9 resp.

" firmio heliodoro fratri meo dari volo quinquaginta ex reditu praediorum meorum futuri anni postea". non videri condicionem additam, sed tempus solvendae pecuniae prolatum videri respondi: fructibus fini relictae pecuniae non perceptis ubertatem esse necessariam anni secundi.

Dig. 36.2.26.1

Papinianus 9 resp.

Cum ab heredibus alumno centum dari voluisset testator et eam pecuniam ad alium transferri, ut in annum vicensimum quintum trientes usuras eius summae perciperet alumnus ac post eam aetatem sortem ipsam: intra vicensimum quintum annum eo defuncto transmissum ad heredem pueri fideicommissum respondi: nam certam aetatem sorti solvendae praestitutam videri, non pure fideicommisso relicto condicionem insertam. cum autem fideicommissum ab eo peti non posset, penes quem voluit pecuniam collocari, propter haec verba " eamque alumno meo post aetatem supra scriptam curabis reddere" fideicommissum ab heredibus petendum, qui pecuniam dari stipulari debuerunt: sed fideiussores ab eo non petendos, cuius fidem sequi defunctus maluit.

Dig. 36.2.26.2

Papinianus 9 resp.

Pater annua tot ex fructu bonorum, quem uxori legavit, accessura filii patrimonio praeter exhibitionem, quam aeque matri mandavit, ad annum aetatis eius vicensimum quintum ab uxore praestari voluit. non plura, sed unum esse fideicommissum certis pensionibus divisum apparuit et ideo filio intra aetatem supra scriptam diem functo residui temporis ad heredem fideicommissum eius transmitti, sed non initio cuiusque anni peti pecuniam oportere, quod ex fructibus uxori datis pater filio praeberi voluit. ceterum si pecuniam annuam pater alimentis filii destinasset, non dubie persona deficiente causa praestandi videtur extincta.

Dig. 36.2.27pr.

Scaevola 3 resp.

Filium familias ex parte pure instituit heredem eique fideicommissum dedit et eodem testamento ita cavit: " quod ego lucium titium heredem institui, ita eum adire hereditatem volo, si is patria potestate liberatus fuerit": quaesitum est, an a coheredibus eius adita hereditate legati filio familias dati dies cesserit. respondit, si pure sit datum, a coherede filii pro hereditaria parte fideicommissum peti posse.

Dig. 36.2.27.1

Scaevola 3 resp.

Menstruos denarios denos manumissis legavit: quaesitum est, cum absentibus heredibus ex senatus consulto libertatem sunt consecuti, ex quo tempore eis cibaria debeantur. respondit secundum ea quae proponerentur ex eo tempore his cibaria debeantur, quo liberi esse coeperint.

Dig. 36.2.28

Scaevola 4 resp.

Si fundus instructus relictus erit, quaeritur, quemadmodum dari debeat, utrum sicut instructus fuit mortis tempore an eo tempore quo facti sunt codicilli an quo peti coepit. respondit ea quibus instructus sit fundus, cum dies legati cedat, deberi.

Dig. 36.2.29

Valens 1 fideic.

Rogo, quandoque heres meus titio decem det": utique decem heres debebit, sed quando, dubitari potest: utrum cum primum potuerit, et dies cedit et ab ipso petitur.

Dig. 36.2.30

Labeo 3 post. a iav. epit.

Quod pupillae legatum est " quandoque nupserit", si ea minor quam viripotens nupserit, non ante ei legatum debebitur, quam viripotens esse coeperit, quia non potest videri nupta, quae virum pati non potest.

Dig. 36.2.31

Scaevola 14 Dig.

Uxori ex parte sextante heredi institutae substituit et heredem fidei commisit, si uxor heres non erit, dotem ei et alia quaedam dari: post mortem mariti uxor ante condicionem et priusquam adeat hereditatem decessit. quaesitum est, an dies fideicommissi cum moritur cessisse videatur ideoque heredibus eius debeatur. respondi, si uxor prius decessit, quam hereditatem adiret, videri diem fideicommissi cessisse.

Dig. 36.3.0. Ut legatorum seu fideicommissorum servandorum causa caveatur.

Dig. 36.3.1pr.

Ulpianus 79 ad ed.

Legatorum nomine satisdari oportere praetor putavit, ut, quibus testator dari fierive voluit, his diebus detur vel fiat dolumque malum afuturum stipulentur.

Dig. 36.3.1.1

Ulpianus 79 ad ed.

Semper autem satisdare cogitur, cuiuscumque sit dignitatis vel facultatium quarumcumque heres.

Dig. 36.3.1.2

Ulpianus 79 ad ed.

Nec sine ratione hoc praetori visum est, sicuti heres incumbit possessioni bonorum, ita legatarios quoque carere non debere bonis defuncti: sed aut satisdabitur eis aut, si satis non datur, in possessionem bonorum venire praetor voluit.

Dig. 36.3.1.3

Ulpianus 79 ad ed.

Non solum autem omnibus legatariis satisdari oportet, sed et successoribus legatariorum satisdari debere iam constat, quamvis isti non ex iudicio defuncti, sed successionis necessitate quasi ad aes alienum admittantur.

Dig. 36.3.1.4

Ulpianus 79 ad ed.

Sed et procuratoribus legatariorum satisdandum est eoque iure utimur.

Dig. 36.3.1.5

Ulpianus 79 ad ed.

Plane si ei qui in potestate alicuius erit legatum sit, cavebitur ei cuius iuri subiectus est.

Dig. 36.3.1.6

Ulpianus 79 ad ed.

Non solum autem legatorum nomine heredes cavent, sed et successores eorum.

Dig. 36.3.1.7

Ulpianus 79 ad ed.

Is etiam, cui ex senatus consulto restituta est hereditas, nihilo minus ad cautionem compellitur.

Dig. 36.3.1.8

Ulpianus 79 ad ed.

Nec non et qui per alios heredes existunt sive honorarii successores ad satisdationem compelluntur.

Dig. 36.3.1.9

Ulpianus 79 ad ed.

Plane si quis omissa stipulatione litem de legato contestatus est, probandum est cessare debere stipulationem.

Dig. 36.3.1.10

Ulpianus 79 ad ed.

Idemque in fideicommissis quoque probandum est.

Dig. 36.3.1.11

Ulpianus 79 ad ed.

Si cui ita sit legatum vel fideicommissum relictum et si id perdidisset, rursus relictum, videamus, an satis sequentis legati sive fideicommissi petere possit. movet quaestionem, an fideicommissum hoc sive legatum debeatur et quotiens debeatur et an ipse legatarius cavere debeat se non perditurum. de his omnibus extat rescriptum divi pii ad iunium mauricum tale: " clodio fructulo secundum ea, quae epistula continentur, legata sive fideicommissa ex testamento clodii felicis praestari debent citra necessitatem cavendi nihil ex is deminuturum se. nam quod fidei heredis ab eodem testatore commissum est, ut, si fructulus perdidisset quod ei in testamento relictum est, rursus heres ei id restitueret, non eo pertinet, ut aut fructulo priorum legatorum nomine satisdatio iniungenda aut onerandus sit heres in infinito, ut, quotiens is perdiderit, restituere ei tantumdem debeat, sed ut per fideicommissum posterius duplicata legata eius videantur nec amplius ad periculum heredis pertineat, si quid postea is consumpsit exsoluto ei posteriore fideicommisso". rescripto ergo ostensum legatarium heredi non debere cavere se non perditurum. versa vice an heres de sequenti legato sive fideicommisso cavere debeat, quaeritur. et putem non oportere ei caveri, cum in suo arbitrio habeat, ne perdat id quod sibi relictum est, quamvis si quis inspexerit, quod sub condicione relictum est, dicere debeat satisdationem exigendam.

Dig. 36.3.1.12

Ulpianus 79 ad ed.

Certe sive ex asse sive ex parte quis legatum debeat, cavere debet, sive institutus sit heres sive substitutus.

Dig. 36.3.1.13

Ulpianus 79 ad ed.

Bellissime quaeritur, an haec stipulatio incrementum ex fructibus vel usuris sentiat. et recte placuit ex mora incrementum habituram stipulationem, ut id quod oportebit comprehendat.

Dig. 36.3.1.14

Ulpianus 79 ad ed.

Si quis sub condicione legatum stipulatus pendente condicione decesserit, stipulatio evanescit, quia nec legatum transmittitur. huic stipulationi easdem causas et condiciones inesse sciendum est: proinde si qua sit exceptio, quae petenti legatum opponi solet, eandem ex stipulatu quoque agenti opponendam esse placet.

Dig. 36.3.1.15

Ulpianus 79 ad ed.

Procuratori eius, qui absens esse dicitur, si stipulanti legati nomine spondeat heres, ofilius ait ita cavere debere, si is, cuius nomine caveat, vivat, videlicet ne teneatur illo ante defuncto.

Dig. 36.3.1.16

Ulpianus 79 ad ed.

Item quaeritur, in hanc stipulationem utrum ipsae res veniant quae legatae sunt an vero pretia earum. et est verius in hanc stipulationem res vel pretia deduci.

Dig. 36.3.1.17

Ulpianus 79 ad ed.

Si decem quae in arca erant mihi legata sint, tibi eorum usus fructus legatus sit, si pure utrique legatum sit relictum, is cui proprietas legata est ipso iure decem vindicabit, fructuarium autem ex senatus consulto acturum et quinque usum fructum petiturum constat. sed cum decem vindicat proprietarius, per exceptionem doli repelli, qua fructuarius de restituendis quinque heredi cavit. plane si decem aureorum possessionem legatarius habeat, Marcellus ait dandam vel heredi vel fructuario utilem actionem in legatarium, si modo ei caveatur. sed si sub condicione ei decem legata sint, fructuarium interim decem oblata cautione habiturum, legatario vero, cui proprietas relicta est, interim legatorum stipulatio praestanda est. sed si omiserit stipulationem, existente condicione ad exhibendum eum posse agere Marcellus ait. sed si ignorans heres legatum decem fructuario dedit, ad exhibendum eum non teneri palam est: succurrendum tamen legatario adversus fructuarium Marcellus ait.

Dig. 36.3.1.18

Ulpianus 79 ad ed.

Si ad fiscum portio hereditatis pervenerit, cessabit ista stipulatio, quia nec solet fiscus satisdare.

Dig. 36.3.1.19

Ulpianus 79 ad ed.

Qui minorem partem hereditatis possidet, cum ex maiore parte heres sit, si quidem ipso iure minuatur portio hereditatis, securior erit heres: neque enim ex maiore parte ex stipulatu tenetur legatariis, quam ex qua heres est: si vero nomen quidem heredis apud eos integrum maneat, verumtamen effectu minus habeant hereditatis et caverint legatorum nomine, videntur onerari, quia ipso iure pro ea parte legata debent, pro qua heredes sint. sed enim aequissimum est non maiorem partem legatariis solvere, quam cuius habent emolumentum. hoc autem evenit, cum hereditas pro aliqua parte ex trebelliano restituitur: nam pro rata exonerandi sunt heredes eius partis nomine, cuius emolumentum sibi ablatum est.

Dig. 36.3.1.20

Ulpianus 79 ad ed.

Si ei, qui in alterius potestate erit, incerta die legatum fuerit, cavebitur ei, qui habet eum in potestate, non praecise, sed sub condicione " si, cum eius legati dies cedit, in potestate sit". ceterum si sui iuris inveniatur, iniquum esse visum est patri cautum esse, cum alii legatum debeatur, quamquam etsi sine hac adiectione caveretur, verum tamen exceptione patrem vel dominum submoveremus, si existentis condicionis tempore non haberent eos in potestate. evenit tamen secundum hoc, ut in casum non sit de legato cautum: nam si existentis condicionis tempore sui iuris sunt, non erit cautum.

Dig. 36.3.2

Papinianus 28 quaest.

Nec si forte velit pater cavere neminem amplius petiturum, compellendus erit heres legatum, quod iam filius petere potest, alii quam cui debetur exsolvere.

Dig. 36.3.3

Ulpianus 79 ad ed.

Sed et ipsis, qui sunt in potestate, cavendum est, quemadmodum solet caveri, si eadem res duobus sub diversis vel contrariis condicionibus relicta sit: duobus enim satisdatur, sed in utroque casu isdem personis satisdationem subituris.

Dig. 36.3.4

Ulpianus 15 ad ed.

Si ex causa fideicommissi sit apud aliquem hereditas nec legatorum satisdat, in possessionem adversus eum legatarius mittitur.

Dig. 36.3.5pr.

Papinianus 28 quaest.

Postquam heres ab hostibus captus est, condicio legati, cuius nomine proposita stipulatione cautum fuerat, extitit: fideiussores interim teneri negavi, quia neque ius neque persona esset, ad quam verba stipulationis derigi possint.

Dig. 36.3.5.1

Papinianus 28 quaest.

Imperator marcus antoninus ^ antonius^ iulio balbo rescripsit eum, a quo res fideicommissae petebantur, cum appellasset, cavere vel, si caveat adversarius, ad adversarium transferri possessionem debere. recte placuit principi post provocationem quoque fideicommissi cautionem interponi: quod enim ante sententiam, si petitionis dies moraretur, fieri debuit, amitti post victoriam dilata petitione non oportuit. sed quare non caverat de fideicommisso qui provocaverit, si caveret adversarius, ad eum possessionem esse transferendam rescripsit, cum alia sit edicti condicio? non enim exigitur a legatario vice mutua cautum, sed vicaria custodiae gratia possessio datur et qui optinuit in possessionem per praetorem aut praesidem inducitur. sed praetor quidem in omnium rerum possessione, quae in causa hereditaria permanent omnimodo, fideicommissi servandi gratia esse permittit: princeps autem earum rerum nomine, de quibus fuerat iudicatum, mutuas admisit cautiones: sicuti, cum de bonis suis conferendis filius accepta possessione cavere non potest, quia denegamus ei actiones, defertur condicio cavendi fratribus ex forma iurisdictionis, quod ex portione fratris fuerint consecuti, cum bona propria conferre coeperit, se restituturos. sed si nec ipsi cavere possint, utiliter probatum est virum bonum ab utraque parte eligendum, apud quem ut sequestrem fructus deponantur quique utiles actiones a praetore datas exerceat. possessio autem ex rescripto supra relato non aliter ad eum, qui fideicommissum petit, transfertur, quam si caverit, tametsi maxime adversarius non per inopiam, sed per contumaciam cavere noluerit: sed si is qui vicit non possit cavere, vel res deponenda vel iurisdictio restituenda erit.

Dig. 36.3.5.2

Papinianus 28 quaest.

Si dies aut condicio legati fidei commissi petitionem actionemve differre dicatur et ideo satisdatio desideretur, heres autem per calumniam postulari contendat et relictum neget, non aliter audiendus erit qui cavere postulat, quam si scripturam, qua relictum adfirmet, exhibuerit.

Dig. 36.3.5.3

Papinianus 28 quaest.

Cum quaerebatur, ubi fideicommissi servandi causa caveri oporteat, imperator titus antoninus rescripsit, si domicilium romae non haberet heres et omnis hereditas in provincia esset, ad satisdationem fideicommissi nomine in provinciam fideicommissarium remittendum esse. quare si heres in eum locum cavendi gratia remitti desideret, ubi domicilium habet, legatarius autem ibi caveri postulet, ubi est hereditas, non erit heres remittendus. idque imperator titus antoninus rescripsit.

Dig. 36.3.5.4

Papinianus 28 quaest.

Quibus litteris adiectum et si bona iam distracta sunt vel testatoris permissu vel concedente legatario, pretium eorum fideicommissi servandi causa in deposito habendum.

Dig. 36.3.6pr.

Ulpianus 6 fideic.

Si quando incerta summa est fideicommissi, qui cognoscit taxationem quoque fideiussores petuntur.

Dig. 36.3.6.1

Ulpianus 6 fideic.

Admonendi autem sumus rebus publicis remitti solere satisdationem fideicommissorum etiam si quando necessitas dandi intercedat: repromissio plane exigenda est voluntati defuncti statu iri.

Dig. 36.3.7

Paulus 2 manual.

Filio vel servo sub condicione a patre dominove herede instituto legatum est. huius legati satis petere non possunt: sed pendente condicione emancipatus vel manumissus si satis petant, quaeritur, an audiendi sint, ne beneficium patris dominive ipsis onerosum sit, an sibi imputare deberent, qui dederunt eis postulandi adversus se facultatem. sed melius est per mediocritatem causam dirimere, ut cautioni tantum cum hypotheca suarum rerum committantur.

Dig. 36.3.8

Ulpianus 48 ad sab.

Cum legatorum nomine satisdatum est, simul dies legatorum cessit, protinus isdem diebus etiam ex stipulatione debentur,

Dig. 36.3.9

Paulus 12 ad sab.

Non tamen ut statim peti possint: deberi enim dicimus et quod die certa legatario praestari oportet, licet dies nondum venerit.

Dig. 36.3.10

Pomponius 26 ad sab.

Si a te herede legatum mihi sit sub condicione tuque, postquam adieris hereditatem, satisdederis legatorum et post mortem tuam ante aditam tuam hereditatem condicio legati extiterit, sabinus ait fideicommissores mihi teneri, quia omnimodo dari oportet legatum et in rem esset concepta stipulatio.

Dig. 36.3.11

Gaius 13 ad ed. provinc.

Si legatariis, qui adversus me in possessionem legatorum servandorum causa missi sunt, procurator vel quis alius meo nomine caverit, perinde mihi praetor accommodat interdictum, quo iubeantur discedere legatarii possessione, ac si ego cavissem.

Dig. 36.3.12

Marcianus 7 inst.

Licet, ut non petatur cautio, condicio testamento scripta fuerit, non videtur condicio: et ideo licet desideraverit quis caveri sibi, non videtur condicione defectus, quia postquam remitti talem cautionem iure publico placuit, nec onus cautionis sequitur nec quidem condicio intellegitur.

Dig. 36.3.13

Nerva 7 membr.

Ei quoque, cui legatorum actio datur in eum, qui praetermissa institutione ab intestato possidet hereditatem, legatorum satisdatur et, nisi satisdabitur, in possessionem legatorum servandorum causa mittitur: nam haec quoque praetor perinde salva esse vult atque ea quae iure civili debentur. idem aristoni placet.

Dig. 36.3.14pr.

Ulpianus 79 ad ed.

Haec stipulatio et in fideicommissis locum habet, sive pure fideicommissum sit relictum sive ex die certa vel incerta vel sub condicione, sive res aliqua sive hereditas sive ius aliquod relictum est.

Dig. 36.3.14.1

Ulpianus 79 ad ed.

Divus quoque pius rescripsit, quotiens evidens res est, ut certum sit nullo modo fideicommisso locum esse, perquam iniquum esse supervacua cautione onerari heredem.

Dig. 36.3.15pr.

Paulus 75 ad ed.

Etiam de praesenti legato locum habet haec satisdatio, quoniam nonnullas moras exercitio iudicii habet.

Dig. 36.3.15.1

Paulus 75 ad ed.

Si et ab herede instituto legatorum satis acceperit legatarius et a trebelliano fideicommissario, utraque quidem stipulatio committetur, sed exceptione se tuebitur heres, quia cavere non debuerit. sed si pars hereditatis restituta sit, ab utroque cavendum est.

Dig. 36.3.15.2

Paulus 75 ad ed.

Etiam si ab intestato debeatur fideicommissum, locum habet haec stipulatio.

Dig. 36.3.16

Gaius 27 ad ed. provinc.

Si duo eiusdem nominis de legato contendant, utrisque satisdatur: nec onerari heredem, cum possit eosdem fideiussores ad utramque stipulationem adhibere, qui et ipsi non onerantur, cum futurum sit, ut uni tenerentur.

Dig. 36.3.17

Paulus 48 ad ed.

Si ab uno ex heredibus legatorum satis accipimus, cum ab omnibus heredibus nobis legatum esset: si pars coheredis adcrescat promissori, in totum fideiussores tenentur, si solidum legatum is coeperit debere.

Dig. 36.3.18pr.

Scaevola 29 Dig.

Quae filium legitimum relinquebat, patrem eundemque collibertum ex asse scripsit heredem fideique eius commisit, ut, quidquid ad eum ex hereditate eius pervenisset, cum moreretur, restitueret filio testatricis nepoti suo, et haec verba adiecit: " satis a seio patre meo exigi veto". quaesitum est, cum iste seius substantiam suam dissipat et veretur pater fideicommissarii, ne inane fideicommissum constituatur, an ad satisdationem fideicommissi nomine patrem defunctae compellere possit. respondit secundum ea quae proponerentur non compellendum cavere.

Dig. 36.3.18.1

Scaevola 29 Dig.

Idem quaesiit: testatricem apud maritum suum, ex quo filium reliquerat, res deposuisse non exacta cautione depositionis: an ea res patri heredi restitui debeat? an vero quoniam emolumentum totius hereditatis ad filium defunctae reverti deberet, apud maritum remaneret, apud quem dos remansisset? respondit, quod mulieris mansisset nec in dote fuisset, restituendum esse heredi.

Dig. 36.3.18.2

Scaevola 29 Dig.

Tutor, qui et coheres pupilli erat, absente pupillo, cum admonuerunt eum legatarii, fideicommissi nomine in solidum ipse cavit. quaesitum est, an in pupillum adultum factum danda sit utilis actio. respondit dandam.

Dig. 36.4.0. Ut in possessionem legatorum vel fideicommissorum servandorum causa esse liceat.

Dig. 36.4.1pr.

Ulpianus 52 ad ed.

Si quis, cum vetitus esset satis accipere, acceperit, an repeti satisdatio ista possit, ut heres condicat liberationem? et quidem si sciens heres indebitum cavit, repetere non potest. quid deinde, si ignoravit remissam sibi satisdationem? potest condicere. si vero hoc non potuisse remitti crediderit, numquid condicere possit qui ius ignoravit? adhuc tamen benigne quis dixerit satisdationem condici posse. quid deinde, si commissa sit stipulatio, fideiussores putamus exceptione uti posse an non? et magis est, ut utantur exceptione, quia ex ea causa intercessit satisdatio, ex qua non debuit.

Dig. 36.4.1.1

Ulpianus 52 ad ed.

Non exigit praetor, ut per heredem stet, quo minus caveat, sed contentus fuit per legatarium vel fideicommissarium non stare, quo minus ei caveatur. quare si non fuerit, qui interpelletur cautionis nomine, hoc est is a quo legatum fideive commissum relictum est, omnimodo poterit legatarius et fideicommissarius in possessionem ex hoc edicto mitti, quia verum est per eum, cui caveri oportebit, non fieri, quo minus caveatur. non tamen et satisdatio debet offerri legatario, sed sufficit, sive desideravit et non cavetur, sive non habeat, a quo satis desideret.

Dig. 36.4.1.2

Ulpianus 52 ad ed.

Si debitori liberatio sit relicta, non est exigenda cautio, quia habet penes se legatum: quippe, si conveniatur, exceptione doli mali uti possit ei cui legatum solutum est.

Dig. 36.4.1.3

Ulpianus 52 ad ed.

Cum constet legatum non deberi, divus pius ad aemilium equestrem rescripsit non debere praetorem satisdationem admittere.

Dig. 36.4.1.4

Ulpianus 52 ad ed.

Tunc ante aditam hereditatem satisdandum de legatis est, cum adhuc dubium est, an hereditas adeatur. ceterum si certum sit repudiatam vel omissam hereditatem vel abstentos necessarios heredes, frustra hoc edictum imploratur, cum certum sit legatum vel fideicommissum non deberi.

Dig. 36.4.2

Ulpianus 79 ad ed.

Si autem certum sit hereditatem necdum aditam fuisse, nec satisdatio nec possessio locum habet.

Dig. 36.4.3pr.

Ulpianus 52 ad ed.

Si is, a quo satis petitur, offerat cognitionem et dicat: " hodie constet de fideicommisso, hodie agamus", dicendum est cessare satisdationem, cum possit ante de fideicommisso quam de satisdatione constare.

Dig. 36.4.3.1

Ulpianus 52 ad ed.

Nec non illa cognitio imploranda erit ab herede, si forte dicatur per calumniam satis peti: hoc enim commune est omnium satisdationum. divus enim pius rescripsit eum, apud quem satis petitur, debere explorare, num per calumniam satis petatur: de qua re summatim debet cognoscere.

Dig. 36.4.3.2

Ulpianus 52 ad ed.

Si procurator satis legatorum desideret, si quidem mandatum ei sit, non habebit necesse de rato cavere, sed erit ei satisdandum: si vero dubitetur, an mandatum sit vel non sit, de rato cautio erit exigenda.

Dig. 36.4.3.3

Ulpianus 52 ad ed.

Si semel fuerit satisdatum, quaesitum est, an etiam rursus cavendum sit, si forte dicatur egenos fideiussores esse datos. et magis est, ut caveri non debeat: hoc enim divus pius rescripsit pacuviae licinianae: ipsam enim facilitati suae expensum ferre debere, quae minus fideiussores idoneos accepit: neque enim oportet per singula momenta onerari eum, a quo satis petitur.

Dig. 36.4.4

Papinianus 28 quaest.

Plane si nova causa allegetur, veluti quod fideiussor decesserit aut etiam rem familiarem inopinato fortunae impetu amiserit, aequum erit praestari cautionem.

Dig. 36.4.5pr.

Ulpianus 52 ad ed.

Is cui legatorum fideive commissorum nomine non cavetur missus in possessionem nunquam pro domino esse incipit. nec tam possessio rerum ei quam custodia datur: neque enim expellendi heredem ius habet, sed simul cum eo possidere iubetur, ut saltem taedio perpetuae custodiae extorqueat heredi cautionem.

Dig. 36.4.5.1

Ulpianus 52 ad ed.

Si alius damni infecti nomine missus sit in possessionem, alius legatorum servandorum causa, posse eum, qui legatorum servandorum causa in possessionem missus est, etiam damni infecti satisdare: qui si satisdederit, non aliter decedere possessione debebit, quam ei cautum fuerit etiam eo nomine, quod se damni infecti obligavit.

Dig. 36.4.5.2

Ulpianus 52 ad ed.

Si plures legatarii mitti in possessionem desideraverint, omnes venire debent in possessionem: is enim qui ex causa legatorum possidet sibi, non alii possidet. alia est causa, cum creditores rei servandae causa mittuntur in possessionem: nam is qui possidet non sibi, sed omnibus possidet.

Dig. 36.4.5.3

Ulpianus 52 ad ed.

Qui prior missus est legatarius in possessionem, non praefertur ei qui postea mittitur: inter legatarios enim nullum ordinem observamus, sed simul omnes aequaliter tuemur.

Dig. 36.4.5.4

Ulpianus 52 ad ed.

Postquam rei servandae creditores possidere coeperunt, legatorum servandorum gratia missus in possessionem creditoribus potior non habebitur.

Dig. 36.4.5.5

Ulpianus 52 ad ed.

Qui in possessionem legatorum servandorum causa mittitur, in possessionem quidem rerum hereditariarum omnimodo veniet, hoc est earum quae in causa hereditaria manent: earum autem, quae in causa hereditaria non erunt, non alias mittitur, quam si dolo malo in ea causa esse desierint, nec semper, sed causa cognita.

Dig. 36.4.5.6

Ulpianus 52 ad ed.

" bonorum" autem appellatione hae res comprehensae videbuntur, quarum proprietas ad heredem pertinet.

Dig. 36.4.5.7

Ulpianus 52 ad ed.

Sed et si vectigales agri sunt et si qua pignora testatori data, in eorum quoque mittetur possessionem.

Dig. 36.4.5.8

Ulpianus 52 ad ed.

Sed et in partus ancillarum et fetus pecorum, item fructus aeque omni modo legatarius et fideicommissarius mittentur.

Dig. 36.4.5.9

Ulpianus 52 ad ed.

Sed et si rem alienam defunctus bona fide emerit, in possessionem eius mittendum legatarium constat: nam et haec res in causa hereditaria est.

Dig. 36.4.5.10

Ulpianus 52 ad ed.

Si deposita res apud defunctum fuerit vel commodata, locum missio non habet, quia non sunt istae res hereditariae.

Dig. 36.4.5.11

Ulpianus 52 ad ed.

Si ex duobus heredibus alter satisdare sit paratus, alter non, in partem eius missio locum utique habere debet. missi itaque legatarii impedient etiam eum, qui satisdedit, rei administratione: quare suadendum erit heredi, ut in assem satisdet, ne administratio eius impediatur.

Dig. 36.4.5.12

Ulpianus 52 ad ed.

Si ab impuberis substituto legata sint relicta et impubes decesserit, missio non solum in ea bona, quae testatoris fuerunt, verum ad ea quoque, quae impubes adquisiit, locum habebit: nam haec quoque hereditaria sunt: vivo autem impubere neque missio neque satisdatio locum habet.

Dig. 36.4.5.13

Ulpianus 52 ad ed.

Si heres non sit, a quo fideicommissum relictum est, sed alterius nominis successor, dicendum est, ut edicto locus sit et dolus eius sit aestimandus.

Dig. 36.4.5.14

Ulpianus 52 ad ed.

Sed et si heredis heres sit, qui dolo fecit, aeque nocere debebit.

Dig. 36.4.5.15

Ulpianus 52 ad ed.

Dolum accipere debemus et culpam latam, sed non omnem dolum, sed qui in necem legatariorum et fideicommissariorum factus est.

Dig. 36.4.5.16

Ulpianus 52 ad ed.

Imperator antoninus augustus rescripsit certis ex causis etiam in propria bona heredis legatarios et fideicommissarios esse mittendos, si post sex menses, quam aditi pro tribunali fuerint hi quorum de ea re notio est, in satisfactione cessatum est, inde fructus percepturos, quoad voluntati defunctorum satisfiat. quod remedium servaretur et adversus eos, qui ex qua causa fideicommisso moram faciunt.

Dig. 36.4.5.17

Ulpianus 52 ad ed.

Satisfactionis verbum licet latius patet, tamen ad exsolvendum legatum refertur.

Dig. 36.4.5.18

Ulpianus 52 ad ed.

Proinde et si remissa sit satisdatio, rescriptum locum habebit, quia mora fit solutioni.

Dig. 36.4.5.19

Ulpianus 52 ad ed.

Sex autem mensum puto continuum tempus, non possessionum computandum.

Dig. 36.4.5.20

Ulpianus 52 ad ed.

Cessatum non accipimus, si pupillus tutorem non habeat nec curatorem furiosus vel adulescens: nam frustratio non debet huiusmodi personis nocere, quae sunt indefensae. certe si hereditas iacuerit aliquo tempore, hoc tempus de medio detrahendum est.

Dig. 36.4.5.21

Ulpianus 52 ad ed.

Quaeri poterit, an in vicem usurarum hi fructus cedant, quae in fideicommissis debentur. et cum exemplum pignorum sequimur, id quod ex fructibus percipitur primum in usuras, mox, si quid superfluum est, in sortem debet imputari: quin immo et si amplius quam sibi debetur perceperit legatarius, exemplo pigneraticiae actionis etiam utilis actio ad id refundendum dari debebit. sed pignora quidem quis et distrahere potest, hic autem frui tantum ei constitutio permisit, ut festinetur ad sententiam.

Dig. 36.4.5.22

Ulpianus 52 ad ed.

Qui legatorum servandorum causa in possessionem mittitur, et fructus custodire et cetera debebit. et pati quidem heredem colere agros et fructus redigere, sed custodire legatarium fructus oportebit, ne ab herede consumantur: quod si heres fructus nolit cogere, permittendum erit legatario cogere fructus et coactos servare. quin immo si tales sint fructus, quos primo quoque tempore venire expediat, vendere quoque legatario permittendum est et pretium servare. in ceteris quoque rebus hereditariis missi in possessionem hoc erit officium, ut universas res hereditarias colligat et ibi custodiat, ubi domicilium defunctus habuit, et, si nulla domus sit, habitationem conducat vel horreum quoddam, in quo res collectae custodiantur. et puto ita legatarium custodire res hereditarias debere, ut neque heredi auferantur neque depereant deterioresve fiant.

Dig. 36.4.5.23

Ulpianus 52 ad ed.

Quod si ex constitutione quis in possessionem mittatur, curandum est, ne vis fiat utenti et fruenti legatario.

Dig. 36.4.5.24

Ulpianus 52 ad ed.

Satisfieri voluntati defuncti sic accipitur, quoad voluntati defuncti vel ex fructibus vel aliunde satisfiat.

Dig. 36.4.5.25

Ulpianus 52 ad ed.

Constitutio autem divi antonini pertinet ad eos, a quibus utiliter fideicommissum relictum est, quamvis heredes non sint: par enim utilitas est.

Dig. 36.4.5.26

Ulpianus 52 ad ed.

In possessionem missus legatorum servandorum causa si litem eo nomine contestatus sit, non ante decedere possessione debet, quam ei pro lite fuerit cautum.

Dig. 36.4.5.27

Ulpianus 52 ad ed.

Missus in possessionem si non admittatur, habet interdictum propositum: aut per viatorem aut per officialem praefecti aut per magistratus introducendus est in possessionem.

Dig. 36.4.5.28

Ulpianus 52 ad ed.

Missio autem locum habebit non tantum, si quis id ipsum, quod legatum est, rogatus sit, verum etiam si quid vel ex eo vel pro eo restituere fuerit rogatus.

Dig. 36.4.5.29

Ulpianus 52 ad ed.

Si titio pure legatum fuerit et eius fidei commissum sub condicione, ut sempronio restitueret, non inique praetorem statuturum iulianus scripsit, si, antequam legatum consequatur legatarius, fideicommissi condicionalis satis non det, ut magis sempronio det legati persecutionem, ut is legatario satisdet deficiente condicione reddi decem. sed et si acceperit titius ab herede decem, aequum esse iulianus ait cogi eum invicem satisdare aut ipsa decem tradere et sempronium titio cavere: et hoc iure utimur, id enim et Marcellus ait.

Dig. 36.4.5.30

Ulpianus 52 ad ed.

Quid ergo, si et legatum sub condicione sit relictum et fideicommissum, neque fideicommissi satisdetur? aequissimum erit fideicommissarium nomine legati satis accipere ab herede, si ei legatarius non caveat, scilicet ut et ipse legatario caveat. quod si iam accepit legatarius ab herede satis, decernendum erit ex ea satisdatione magis fideicommissario quam legatario dandam actionem, in eum scilicet casum, quod fideicommissi eius condicio extitit: ipsius etiam legati persecutio danda erit fideicommissario, si nondum solutum est et condicio eius extitit, scilicet si fuerit fideicommissarius paratus cavere legatario.

Dig. 36.4.6pr.

Iulianus 38 Dig.

Si pecuniae numeratae usus fructus legatus esset et in testamento cautum, ne eo nomine satis daretur, proprietas non est legata, sed legatario permittendum satisdare et usum fructum pecuniae habere: et propemodum in hac propositione nullae praetoris erunt partes, quia, nisi satisdetur, agi cum herede non poterit.

Dig. 36.4.6.1

Iulianus 38 Dig.

Qui fideicommissi servandi causa in possessionem missus est, non prius de possessione decedere debet, quam ei fideicommissum solutum aut eo nomine satisdatum fuerit: nam quod si integra re fieret, in possessionem non mitteretur, id cum offeretur, discedere a possessione debet.

Dig. 36.4.7

Marcianus 3 reg.

Dum venter in possessionem est, nullus legatorum servandorum causa in possessionem esse potest.

Dig. 36.4.8

Papinianus 6 quaest.

Si legatorum satis non datur, restituta hereditate in earum quoque rerum possessionem legatarius mittendus erit, quae dolo malo eius, cui restituta est hereditas, in hereditaria causa desierunt.

Dig. 36.4.9pr.

Papinianus 19 quaest.

Etiam si condemnatus heres fuerit nec pecuniam solvat, legatarius potest desiderare mitti in possessionem.

Dig. 36.4.9.1

Papinianus 19 quaest.

Cum sub condicionibus contrariis eadem res duobus legetur, si non caveatur, uterque mittitur in possessionem.

Dig. 36.4.10

Paulus 3 sent.

Si nullae sint res hereditariae, in quas legatarii vel fideicommissarii mittantur, in rem quidem heredis mitti non possunt, sed per praetorem denegatas heredi actiones ipsi persequuntur.

Dig. 36.4.11pr.

Hermogenianus 4 iuris epit.

Si fideicommissorum vel legatorum servandorum causa missus in possessionem eam rem teneas, quae mihi per fideicommissum relicta esset, aequius est me eam habere, cui ea ipsa relicta est, quam te, qui alterius fideicommissi nomine ingressus in eam esses. nam et si mihi sub condicione legatum est et tu medio tempore in possessionem eius factus fueris legatorum servandorum causa, deinde condicio impleta esset, non denegabitur mihi eius rei integra persecutio. sic enim et si statuliberum ex eadem causa possidere coepisset, impleta condicione iustam libertatem eius impedire non potest.

Dig. 36.4.11.1

Hermogenianus 4 iuris epit.

Si rei servandae causa in possessionem missus esset proprius creditor heredis et rei per fideicommissum mihi relictae adeptus fuerit, nihil me per eum laedi oportere convenit, non magis quam si ab ipso herede eam rem pignori accepisset.

Dig. 36.4.12

Maecenatus 12 fideic.

Municipiis fideicommissum relinqui posse dubium non est. sed si non caveatur, adversus municipes quidem non dubitavimus ex hoc edicto iri in possessionem posse: ipsos vero municipes, si his non caveatur, non idem adsecuturos: sed extraordinario remedio opus erit, videlicet ut decreto praetoris actor eorum in possessionem mittatur.

Dig. 36.4.13

Callistratus 3 ed. monit.

Quamvis minima res legata sit vel per fideicommissum relicta, tamen, si non solvatur ab herede vel eo nomine caveatur, cum caveri oporteat, in possessionem omnium bonorum, quae ex ea hereditate sunt, legatarium sive fideicommissarium praetor legatorum servandorum causa mittit.

Dig. 36.4.14

Labeo 2 post. a iav. epit.

Quae legatorum servandorum causa in bonis est, in causa vescendi deminuet, si filia neptis proneptis uxorve esset nec nupta sit nec suum quicquam habeat.

Dig. 36.4.15

Valens 7 act.

Interdum licet dolo malo fecerit heres, quo minus res in causa hereditaria maneant, non poterit in possessionem earum legatarius mitti, veluti si locum religiosum fecerit aut quid publice consecraverit permissu scilicet imperatoris aut aliquem non in fraudem creditoris manumiserit.

Dig. 36.4.16

....

. . . . si titius servum maevio legat sub condicione et eidem servo sempronius sub condicione legat, pendente condicione utraque ab herede sempronii tam titii heres quam maevius iure satisdationem postulant.

Dig. 36.4.17

....

. . . . si filio qui in potestate est a patre herede instituto legata data sunt, ad satisdationem pater a filio compelli non potest: sed si male administrat, curator constituendus est rerum filio relictarum ita, ut reditus earum utrique praestet: aut si pecuniae summa legata est, princeps adeundus est.

OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER SEPTIMUS TRICESIMUS

Dig. 37.1.0. De bonorum possessionibus.
Dig. 37.2.0. Si tabulae testamenti extabunt.
Dig. 37.3.0. De bonorum possessione furioso infanti muto surdo caeco competente.
Dig. 37.4.0. De bonorum possessione contra tabulas.
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Dig. 37.6.0. De collatione bonorum.
Dig. 37.7.0. De dotis collatione.
Dig. 37.8.0. De coniungendis cum emancipato liberis eius.
Dig. 37.9.0. De ventre in possessionem mittendo et curatore eius.
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Dig. 37.11.0. De bonorum possessione secundum tabulas.
Dig. 37.12.0. Si a parente quis manumissus sit.
Dig. 37.13.0. De bonorum possessione ex testamento militis.
Dig. 37.14.0. De iure patronatus.
Dig. 37.15.0. De obsequiis parentibus et patronis praestandis.

Dig. 37.1.0. De bonorum possessionibus.

Dig. 37.1.1

Ulpianus 39 ad ed.

Bonorum possessio admissa commoda et incommoda hereditaria itemque dominium rerum, quae in his bonis sunt, tribuit: nam haec omnia bonis sunt coniuncta.

Dig. 37.1.2

Ulpianus 14 ad ed.

In omnibus enim vice heredum bonorum possessores habentur.

Dig. 37.1.3pr.

Ulpianus 39 ad ed.

Bona autem hic, ut plerumque solemus dicere, ita accipienda sunt universitatis cuiusque successionem, qua succeditur in ius demortui suscipiturque eius rei commodum et incommodum: nam sive solvendo sunt bona sive non sunt, sive damnum habent sive lucrum, sive in corporibus sunt sive in actionibus, in hoc loco proprie bona appellabuntur.

Dig. 37.1.3.1

Ulpianus 39 ad ed.

Hereditatis autem bonorumve possessio, ut labeo scribit, non uti rerum possessio accipienda est: est enim iuris magis quam corporis possessio. denique etsi nihil corporale est in hereditate, attamen recte eius bonorum possessionem adgnitam labeo ait.

Dig. 37.1.3.2

Ulpianus 39 ad ed.

Bonorum igitur possessionem ita recte definiemus ius persequendi retinendique patrimonii sive rei, quae cuiusque cum moritur fuit.

Dig. 37.1.3.3

Ulpianus 39 ad ed.

Invito autem nemini bonorum possessio adquiritur.

Dig. 37.1.3.4

Ulpianus 39 ad ed.

A municipibus et societatibus et decuriis et corporibus bonorum possessio adgnosci potest. proinde sive actor eorum nomine admittat sive quis alius, recte competet bonorum possessio: sed et si nemo petat vel adgnoverit bonorum possessionem nomine municipii, habebit municipium bonorum possessionem praetoris edicto.

Dig. 37.1.3.5

Ulpianus 39 ad ed.

Dari autem bonorum possessio potest tam patris familias quam filii familias, si modo ius testandi habuit de peculio castrensi vel quasi castrensi.

Dig. 37.1.3.6

Ulpianus 39 ad ed.

Sed et eius, qui apud hostes decessit, bonorum possessionem admitti posse, quamvis in servitute decedat, nulla dubitatio est.

Dig. 37.1.3.7

Ulpianus 39 ad ed.

Adquirere quis bonorum possessionem potest vel per semetipsum vel per alium. quod si me non mandante bonorum possessio mihi petita sit, tunc competet, cum ratum habuero id quod actum est. denique si ante decessero quam ratum habeam, nulla dubitatio est quin non competet mihi bonorum possessio, quia neque ego ratum habui neque heres meus ratum habere potest, cum ad eum non transeat ius bonorum possessionis.

Dig. 37.1.3.8

Ulpianus 39 ad ed.

Si causa cognita bonorum possessio detur, non alibi dabitur quam pro tribunali, quia neque decretum de plano interponi neque causa cognita bonorum possessio alibi quam pro tribunali dari potest.

Dig. 37.1.3.9

Ulpianus 39 ad ed.

In bonorum possessione sciendum est ius esse adcrescendi: proinde si plures sint, quibus bonorum possessio competit, quorum unus admisit bonorum possessionem, ceteri non admiserunt,

Dig. 37.1.4

Gaius 8 ad l. iul. et pap.

Veluti quod spreverunt ius suum aut tempore bonorum possessionis finito exclusi sunt aut ante mortui sunt quam petierunt bonorum possessionem,

Dig. 37.1.5

Ulpianus 39 ad ed.

Ei, qui admisit, adcrescent etiam hae portiones, quae ceteris competerent, si petissent bonorum possessionem.

Dig. 37.1.6pr.

Paulus 41 ad ed.

Sed cum patrono quidem contra tabulas certae patris bonorum possessionem praetor polliceatur, scripto autem heredi secundum tabulas alterius partis: convenit non esse ius adcrescendi. igitur non petente scripto secundum tabulas alterius quoque partis nominatim patrono possessionem pollicetur, cum ceteri, quibus adcrescendi ius est, semel debent adgnoscere bonorum possessionem.

Dig. 37.1.6.1

Paulus 41 ad ed.

Bonorum possessionis beneficium multiplex est: nam quaedam bonorum possessiones competunt contra voluntatem, quaedam secundum voluntatem defunctorum, nec non ab intestato habentibus ius legitimum vel non habentibus propter capitis deminutionem. quamvis enim iure civili deficiant liberi, qui propter capitis deminutionem desierunt sui heredes esse, propter aequitatem tamen rescindit eorum capitis deminutionem praetor. legum quoque tuendarum causa dat bonorum possessionem.

Dig. 37.1.6.2

Paulus 41 ad ed.

Notis scriptae tabulae non continentur edicto, quia notas litteras non esse pedius libro vicesimo quinto ad edictum scribit.

Dig. 37.1.7pr.

Ulpianus 1 ad sab.

Servus bonorum possessionem recte admittere potest, si praetor de condicione eius certus sit: nam et absenti et non petenti dari bonorum possessio potest, si hoc ipsum praetor non ignoret. ergo et femina poterit alii bonorum possessionem petere.

Dig. 37.1.7.1

Ulpianus 1 ad sab.

Impubes nec bonorum possessionem admittere nec iudicium sine tutoris auctoritate accipere potest.

Dig. 37.1.7.2

Ulpianus 1 ad sab.

Quia tutor pupillo et pater infanti filio bonorum possessionem petere possunt, dies, quibus tutor aut pater scit, cedere placet.

Dig. 37.1.8

Paulus 8 ad plaut.

Tutor autem bonorum possessionem pupillo competentem repudiare non potest, quia tutori petere permissum est, non etiam repudiare.

Dig. 37.1.9

Pomponius 3 ad sab.

Si plures gradus sint possessionis admittendae, quamdiu incertum sit petierit nec ne prior, posteriori diem non procedere constat.

Dig. 37.1.10

Paulus 2 ad sab.

In bonorum possessionibus iuris ignorantia non prodest, quo minus dies cedat, et ideo heredi instituto et ante apertas tabulas dies cedit. satis est enim scire mortuum esse seque proximum cognatum fuisse copiamque eorum quos consuleret habuisse: scientiam enim non hanc accipi, quae iuris prudentibus sit, sed eam, quam quis aut per se habeat aut consulendo prudentiores adsequi potest.

Dig. 37.1.11

Gaius 14 ad ed. provinc.

Si pupillo tutor bonorum possessionem petierit et plus incommodi quam commodi haec bonorum possessio habeat, tutor tutelae iudicio tenetur.

Dig. 37.1.12pr.

Ulpianus 48 ad ed.

Non est ambigendum, quod plerumque et contra fiscum et contra rem publicam admitti debeant quidam, ut puta venter, item furiosus, item is qui captivi bonorum possessionem petit.

Dig. 37.1.12.1

Ulpianus 48 ad ed.

Ubicumque lex vel senatus vel constitutio capere hereditatem prohibet, et bonorum possessio cessat.

Dig. 37.1.13

Africanus 5 quaest.

Edicto praetoris bonorum possessio his denegatur, qui rei capitalis damnati sunt neque in integrum restituti sunt. rei autem capitalis damnatus intellegitur is, cui poena mors aut aquae et ignis interdictio sit. cum autem in relegationem quis erit, ad bonorum possessionem admittitur.

Dig. 37.1.14

Papinianus 13 quaest.

Cum quidam propinquus falsum testamentum accusaret ac post longum spatium temporis probasset, licet dies ei petendae possessionis, quam forte certus accusationis petere debuit, cessisse videtur, attamen quia hoc proposito accusationem instruit, ut suum ius sibi servet, adgnovisse successionem non immerito videbitur.

Dig. 37.1.15

Paulus 11 resp.

Paulus respondit petitionem matris solam non adquisisse filiae impuberi bonorum possessionem, nisi si is qui eam dedit evidenter voluit eam impuberi dare.

Dig. 37.1.16

Paulus 3 sent.

Quotiens is, cui bonorum possessio ab altero postulata est, furere coeperit, magis probatum ratum eum videri habuisse: rati enim habitio ad confirmationem prioris postulati pertinet.

Dig. 37.2.0. Si tabulae testamenti extabunt.

Dig. 37.2.1

Paulus 3 ad sab.

Heredi, cuius nomen inconsulto ita deletum sit, ut penitus legi non possit, dari bonorum possessio minime potest, quia ex coniectura non proprie scriptus videretur, quamvis, si post prolatas tabulas deletum sit testamentum, bonorum possessio competat. nam et si mortis tempore tabulae fuerint, licet postea interierint, competet bonorum possessio, quia verum fuit tabulas exstare.

Dig. 37.3.0. De bonorum possessione furioso infanti muto surdo caeco competente.

Dig. 37.3.1

Papinianus 15 quaest.

Furioso titius substitutus est: bonorum possessionis tempus, quamdiu furiosus in eadem condicione est, neque instituto neque substituto cedit. nec, si curator furiosi nomine possessionem accipere potest, idcirco spatium temporis, quod scientibus praefinitum est, videbitur cedere: nam et pater infanti filio possessionem accipit, quo tamen cessante infans non excluditur. quid ergo, si curator accipere nolit? nonne iustius atque utilius erit ad eundem modum proximo cuique possessionem dari, ne bona iaceant? quo admisso substitutus cautionem praestare cogitur omnibus his, quibus bona restitui debent, si forte institutus in eodem furore decesserit aut compos mentis effectus ante mortem obierit, quam hereditatem agnosceret. nam et fieri potest, ut vivo furioso substitutus decedat nec tamen furiosus obstet ceteris, si prius et ipse decesserit, quam hereditatem adquireret.

Dig. 37.3.2

Ulpianus 39 ad ed.

Mutus surdus caecus bonorum possessionem admittere possunt, si quod agatur intellegant.

Dig. 37.4.0. De bonorum possessione contra tabulas.

Dig. 37.4.1pr.

Ulpianus 39 ad ed.

In contra tabulas bonorum possessione liberos accipere debemus sive naturales sive adoptivos, si neque instituti neque exheredati sunt.

Dig. 37.4.1.1

Ulpianus 39 ad ed.

Vocantur autem ad contra tabulas bonorum possessionem liberi eo iure eoque ordine, quo vocantur ad successionem ex iure civili.

Dig. 37.4.1.2

Ulpianus 39 ad ed.

Haec autem clausula etiam ad postumos videtur pertinere.

Dig. 37.4.1.3

Ulpianus 39 ad ed.

Sed et si ab hostibus postliminio redierint filii, pomponius putat ad contra tabulas bonorum possessionem eos admitti.

Dig. 37.4.1.4

Ulpianus 39 ad ed.

Si ex tribus filiis unus ab hostibus captus sit, duobus, qui sunt in civitate, bessis bonorum possessio competit.

Dig. 37.4.1.5

Ulpianus 39 ad ed.

Idem et in postumo: nam quamdiu postumus speratur, in ea causa est, ut partem faciat.

Dig. 37.4.1.6

Ulpianus 39 ad ed.

Et sui iuris factos liberos inducit in bonorum possessionem praetor (sive igitur emancipati sunt sive alias exierunt de patris potestate, admittuntur ad bonorum possessionem): sed adoptivi patris non potest: ut enim admitti possit, ex liberis esse eum oportet.

Dig. 37.4.1.7

Ulpianus 39 ad ed.

Qui habebat filium, habebat et nepotem ex eo, filium emancipavit et adoptavit in locum nepotis, deinde emancipavit: quaeritur an nepoti obstet. et mihi magis videtur hunc nepotem non excludi, sive pater eius in adoptione mansisset quasi nepos sive emancipatus est: puto enim et emancipato patre nepotem quoque cum patre suo ex edicto admitti.

Dig. 37.4.1.8

Ulpianus 39 ad ed.

Filium habuit et ex eo nepotem: filius emancipatus vel in potestate manens deportatus est: quaeritur, an nepoti noceat. et verius est in utroque casu nepotem admittendum: deportatos enim mortuorum loco habendos.

Dig. 37.4.1.9

Ulpianus 39 ad ed.

Si et pater et filius deportati sint et ambo restituti, dicemus ad bonorum possessionem admitti filium. sed et si filius in metallum damnatus vel alia poena, quae servum efficit, restitutus sit, nihilo minus admittetur: aliter non.

Dig. 37.4.2

Hermogenianus 3 iuris epit.

Idemque est et si pater poenae et servus efficiatur et postea restituatur.

Dig. 37.4.3pr.

Ulpianus 39 ad ed.

Non tantum autem ipsi emancipati admittuntur ad bonorum possessionem, verum etiam hi quoque, qui ex his nati sunt.

Dig. 37.4.3.1

Ulpianus 39 ad ed.

Si duos habens nepotes alterum emancipatum loco filii adoptaverit, videndum, an solus ille quasi filius admittatur: quod ita scilicet procedit, si quasi patrem eius nepotis, quem retinuerat, sic adoptaverit: melius est autem dicere posse eum solum ad bonorum possessionem pervenire.

Dig. 37.4.3.2

Ulpianus 39 ad ed.

Sed si sit hic nepos emancipatus, verum est dicere non admitti eum quasi filium: hic enim quasi filius non est ex liberis, cum iura adoptionis emancipatione finita sint.

Dig. 37.4.3.3

Ulpianus 39 ad ed.

Si filium habens et ex eo nepotem in locum filii nepotem adoptavero, ambo admittentur: plane si fuerit emancipatus nepos, non admittetur, quia pater eum praecedit.

Dig. 37.4.3.4

Ulpianus 39 ad ed.

Si quis post emancipationem quaesitum sibi filium patri suo in adoptionem dederit in locum filii, aequissimum est ei praestari quod cuivis adrogato filio, idcircoque patri suo iungendus est. sed si emancipatus hic nepos post adoptionem proponatur, aequissimum erit eum abstinere (recipit enim locum suum) nec debet patri suo iungi.

Dig. 37.4.3.5

Ulpianus 39 ad ed.

Si emancipatus filius uxore non ex voluntate patris ducta filium fuerit sortitus, dein nepos patre iam mortuo ad bonorum possessionem avi velit venire, admittendus est ad eam: non enim per rescissionem is, qui filius iustus est, efficietur non filius, cum rescissio, quo magis admittantur, non quo minus, adhibeatur. nam etsi tam ignominiosam duxerit uxorem filius, ut dedecori sit tam ipsi quam patri mulierem talem habere, dicemus et ex ea natum ad bonorum possessionem avi admitti, cum possit avus iure suo uti eumque exheredare: nec enim minus in hoc nepote is, qui de inofficioso cogniturus est, quam merita nepotis patris eius delicta perpendet.

Dig. 37.4.3.6

Ulpianus 39 ad ed.

Si emancipatus filius praeteritus ante petitam bonorum possessionem adrogandum se dederit, amittit contra tabulas bonorum possessionem.

Dig. 37.4.3.7

Ulpianus 39 ad ed.

Si quis filio suo emancipato nepotem, quem ex eo retinuerat, dederit in adoptionem, nepos iste ad contra tabulas bonorum possessionem avi sui admittitur patre eius ante defuncto, quia in eius est familia, qui et ipse admitti potuit ad bonorum possessionem contra tabulas.

Dig. 37.4.3.8

Ulpianus 39 ad ed.

Idemque est et si emancipatus filium, quem post emancipationem quaesierat, patri suo in adoptionem dederit et decesserit: nam et hic nepos iste ad bonorum possessionem patris sui admitti debet, quasi non sit in alia familia.

Dig. 37.4.3.9

Ulpianus 39 ad ed.

Si pater alicuius pervenerit in adoptivam familiam, filius non, an patris sui in adoptiva familia mortui bonorum possessionem accipere possit? et arbitror humaniorem esse hanc sententiam, ut filius hic, quamvis non sit in eadem familia, in qua pater, ad bonorum possessionem tamen eius admittatur.

Dig. 37.4.3.10

Ulpianus 39 ad ed.

Liberi, qui institui heredes iure non possunt, nec contra tabulas bonorum possessionem petere possunt. haec autem verba " institui non possunt" ad mortis tempus referuntur.

Dig. 37.4.3.11

Ulpianus 39 ad ed.

Si quis ex liberis heres scriptus sit, ad contra tabulas bonorum possessionem vocari non debet: cum enim possit secundum tabulas habere possessionem, quo bonum est ei contra tabulas dari? plane si alius committat edictum, et ipse ad contra tabulas bonorum possessionem admittetur.

Dig. 37.4.3.12

Ulpianus 39 ad ed.

Sed si sub condicione scriptus sit, bonorum possessionem contra tabulas accipere non potest, et ita iulianus quoque libro vicesimo tertio digestorum scripsit. quid ergo, si defecerit condicio? verum est eum contra tabulas accipere bonorum possessionem.

Dig. 37.4.3.13

Ulpianus 39 ad ed.

Si sub ea condicione filius emancipatus heres sit institutus, quae in ipsius potestate non est, quia scriptus heres est, bonorum possessionem secundum tabulas accipere potest et debet, nec contra tabulas potest: et si forte defecerit condicio, tuendus erit a praetore in tantum, quantum ferret, si contra tabulas bonorum possessionem accepisset.

Dig. 37.4.3.14

Ulpianus 39 ad ed.

Sed et si nepos sub huiusmodi condicione scriptus sit heres, idem erit dicendum.

Dig. 37.4.3.15

Ulpianus 39 ad ed.

Si quis ex liberis non sit scriptus heres, sed servus eius scriptus sit eumque iusserit adire hereditatem, denegari ei debet bonorum possessio contra tabulas.

Dig. 37.4.3.16

Ulpianus 39 ad ed.

Idemque est et si legatum relictum sibi vel servo suo elegerit: nam et hic dicimus bonorum possessionem contra tabulas debere denegari.

Dig. 37.4.4pr.

Paulus 41 ad ed.

Illud notandum est, quod bonorum possessio contra tabulas quae liberis promittitur locum habet, sive quis heres exstiterit sive non: et hoc est quod dicimus contra ipsum testamentum liberis competere bonorum possessionem: quod in patrono contra est.

Dig. 37.4.4.1

Paulus 41 ad ed.

Si quis filium quem in potestate habuit instituerit heredem vel exheredaverit et ex eo nepotem omiserit, bonorum possessioni locus non est, quia non esset nepos suus heres futurus. eadem sunt et in sequentibus gradibus.

Dig. 37.4.4.2

Paulus 41 ad ed.

Ad testamenta feminarum edictum contra tabulas bonorum possessionis non pertinet, quia suos heredes non habent.

Dig. 37.4.4.3

Paulus 41 ad ed.

Si quis eum qui in utero est praetermiserit, etiam nondum nato eo alius qui heres institutus est bonorum possessionem contra tabulas admittere potest, quia iniquum est neque quasi scriptum posse petere bonorum possessionem, quamdiu contra tabulas peti potest, nec contra tabulas, quamdiu non nascitur praeteritus: ut et si ante moriatur, bonorum possessionis beneficium ad heredem transmittat. quod maxime necessarium est in filio emancipato scripto herede, qui nec hereditatem interim adire potest.

Dig. 37.4.5

Iulianus 24 Dig.

Sed et si decesserint, antequam peterent bonorum possessionem, non est iniquum praetorem decernere heredibus eorum salvum fore commodum bonorum possessionis secundum tabulas vel contra tabulas.

Dig. 37.4.6pr.

Paulus 41 ad ed.

Si emancipatus filius nepotem procreaverit et ita decesserit, deinde avus eius, nepos ad avi bonorum possessionem venire potest.

Dig. 37.4.6.1

Paulus 41 ad ed.

Quod si et filium et nepotem emancipaverit, vivente quidem filio nepos non veniet, post mortem autem eius ad bonorum possessionem avi veniet.

Dig. 37.4.6.2

Paulus 41 ad ed.

Nepote quoque solo emancipato et avo mortuo, deinde patre eius, nepos praeteritus accipiet patris bonorum possessionem, quia suus heres esset futurus patri, si potestate avi non exisset.

Dig. 37.4.6.3

Paulus 41 ad ed.

Filio emancipato si nepos retentus sit et utrique praeteriti, utrique accipient bonorum possessionem.

Dig. 37.4.6.4

Paulus 41 ad ed.

Si filius emancipatus in adoptiva familia nepotem sustulerit, ne nepos quidem ad bonorum possessionem avi naturalis veniet. sed et si emancipatus filius procreatis nepotibus in adoptionem se dederit, ut eum filii sequantur, idem erit. plane si is, qui apud adoptivum avum procreatus est, emancipatus sit, veniet ad bonorum possessionem avi naturalis. adoptio tamdiu nocet, quamdiu quis in familia aliena sit. ceterum emancipatus ad bonorum possessionem parentium naturalium venit, sed emancipatus vivis eis, non etiam post mortem eorum: hoc enim verius est post mortem eorum emancipatum non admitti.

Dig. 37.4.7

Gaius 14 ad ed. provinc.

Si retentus fuerit in potestate nepos filio emancipato, admittitur nepos vivo avo ad patris bonorum possessionem.

Dig. 37.4.8pr.

Ulpianus 40 ad ed.

Non putavit praetor exheredatione notatos et remotos ad contra tabulas bonorum possessionem admittendos, sicuti nec iure civili testamenta parentium turbant: sane si velint inofficiosi querellam instituere, est in ipsorum arbitrio.

Dig. 37.4.8.1

Ulpianus 40 ad ed.

Aliqua parte tabularum exheredem scribi non sufficit, sed eo gradu, contra quem petitur bonorum possessio. unde si a primo gradu exheredatus sit filius, a secundo praeteritus et primo gradu scripti non petierint bonorum possessionem, poterit contra tabulas accipere bonorum possessionem.

Dig. 37.4.8.2

Ulpianus 40 ad ed.

Non quaevis exheredatio summovet filium a contra tabulas bonorum possessione, sed quae rite facta est.

Dig. 37.4.8.3

Ulpianus 40 ad ed.

Si ab uno ex heredibus sit filius exheredatus, Marcellus libro nono digestorum scribit filium non videri exheredatum: idcirco contra tabulas bonorum possessionem peti posse contra utrumque heredem.

Dig. 37.4.8.4

Ulpianus 40 ad ed.

Si exheredatus sit filius et institutus, optinente eo gradu, in quo institutus est, puto commisso edicto ab alio filio contra tabulas eum bonorum possessionem petere posse.

Dig. 37.4.8.5

Ulpianus 40 ad ed.

A primo gradu praeteritus est filius, a secundo exheredatus. si in primo gradu scripti non sint in rebus humanis mortis tempore testatoris, dicendum est contra tabulas bonorum possessionem praeteritum petere non posse: hereditas enim in secundo gradu versatur, non in primo, ex quo neque adiri hereditas neque bonorum possessio peti potest. sed si post mortem testatoris decesserint heredes scripti, idem Marcellus putat contra tabulas bonorum possessionem semel natam competere. sed et si defecerit condicio institutionis, adhuc tantundem dicit praeteritum ab eo gradu filium contra tabulas bonorum possessionem petiturum. idem scribit et si postumus, qui institutus fuit, non fuerit natus: nam adhuc contra tabulas bonorum possessionem competere filio Marcellus ait.

Dig. 37.4.8.6

Ulpianus 40 ad ed.

Si quis sua manu se exheredem scripsit, an contra tabulas bonorum possessionem possit accipere, videamus. et Marcellus libro nono digestorum nocere ei hanc exheredationem ait, quia senatus hoc pro non scripto non facit, quod contra eum est.

Dig. 37.4.8.7

Ulpianus 40 ad ed.

Si quis emancipatum filium exheredaverit eumque postea adrogaverit, papinianus libro duodecimo quaestionum ait iura naturalia in eo praevalere: idcirco exheredationem nocere.

Dig. 37.4.8.8

Ulpianus 40 ad ed.

Sed in extraneo Marcelli sententiam probat, ut exheredatio ei adrogato postea non noceat.

Dig. 37.4.8.9

Ulpianus 40 ad ed.

Postliminio autem reverso filio dicendum est exheredationem ante factam nocere.

Dig. 37.4.8.10

Ulpianus 40 ad ed.

Si filium in adoptiva familia constitutum pater naturalis exheredaverit, deinde sit filius emancipatus, nocebit ei exheredatio.

Dig. 37.4.8.11

Ulpianus 40 ad ed.

In adoptionem datos filios non summoveri praetor voluit, modo heredes instituti sint, et hoc iustissime eum fecisse labeo ait: nec enim in totum extranei sunt. ergo si fuerunt heredes scripti, accipient contra tabulas bonorum possessionem, sed ipsi soli non committent edictum, nisi fuerit alius praeteritus ex liberis qui solent committere edictum. sed si ipse scriptus non sit, sed alius, qui ei adquirere hereditatem potest, non est in ea causa, ut eum ad bonorum possessionem contra tabulas admittamus.

Dig. 37.4.8.12

Ulpianus 40 ad ed.

Ut autem admittantur ad bonorum possessionem, ex liberis esse eos oportet. ceterum si adoptivum filium dedi in adoptionem et heredem scripsi, commisso per alios edicto bonorum possessio contra tabulas ei non dabitur.

Dig. 37.4.8.13

Ulpianus 40 ad ed.

Datur autem ei, qui in adoptiva familia est, contra tabulas possessio, si eo gradu heres scriptus sit, contra quem peti potest bonorum possessio.

Dig. 37.4.8.14

Ulpianus 40 ad ed.

Non est novum, ut emancipatus praeteritus plus iuris scriptis heredibus fratribus suis tribuat, quam habituri essent, si soli fuissent: quippe si filius qui in potestate patris est ex duodecima parte heres scribatur emancipato praeterito, dimidiam partem beneficio emancipati occupat, qui, si emancipatum fratrem non haberet, duodecimam partem habiturus esset. sed si ex parte minima sit heres institutus, non pro ea parte, qua institutus est, tuendus est commisso edicto, sed amplius per bonorum possessionem habere potest. praetori enim propositum est, cum contra tabulas bonorum possessionem dat, eas partes unicuique liberorum tribuere, quas intestato patre mortuo in hereditate habiturus esset, si in potestate mansisset: et ideo sive emancipatus sive is qui in potestatem mansit sive in adoptionem datus ex minima parte heres scriptus sit, non redigitur ad eam portionem, ex qua institutus est, sed virilem accipit.

Dig. 37.4.9

Gaius 14 ad ed. provinc.

Utrum autem pater adoptivus vivit an defunctus est, nihil interest: nam hoc solum quaeritur, an in adoptiva familia sit.

Dig. 37.4.10pr.

Ulpianus 40 ad ed.

Si post mortem testatoris heres institutus filius in adoptionem se dederit, bonorum possessionem contra tabulas accipere potest, quia scriptis heredibus instituti non solet nocere adoptio.

Dig. 37.4.10.1

Ulpianus 40 ad ed.

Si filius in adoptionem datus avo materno heres institutus sit a patre naturali, commisso per alium edicto magis est, ut bonorum possessionem accipere possit: nec enim exigimus, ut adeat hereditatem, sed sufficit, ut ei delata sit adquirique possit.

Dig. 37.4.10.2

Ulpianus 40 ad ed.

Si in adoptionem datus, posteaquam iussu patris adoptivi hereditatem adiit, emancipatus fuerit, potest contra tabulas bonorum possessionem accipere hereditatemque ipse potius habebit, quam pater adoptivus.

Dig. 37.4.10.3

Ulpianus 40 ad ed.

Illud notandum est, quod et si adierit hereditatem in adoptionem datus, contra tabulas ei datur: alias autem si quis legatum si quis portionem sibi datam adgnoverit, a contra tabulas bonorum possessione repellendus est.

Dig. 37.4.10.4

Ulpianus 40 ad ed.

Liberi, qui contra tabulas habere non possunt, nec partem faciunt, si per alios committatur edictum: quo enim bonum est eis favere ut partem faciant, nihil habituris?

Dig. 37.4.10.5

Ulpianus 40 ad ed.

Exhereditati liberi quemadmodum edictum non committunt, ita nec commisso per alios edicto cum illis venient ad bonorum possessionem unaque eis querella superest, si de inofficioso dicant.

Dig. 37.4.10.6

Ulpianus 40 ad ed.

Hi, qui propter alios contra tabulas bonorum possessionem petunt, non exspectant ut praeteriti possessionem accipiant, verum ipsi quoque bonorum possessionem petere contra tabulas possunt: cum enim semel beneficio aliorum ad id beneficium fuerint admissi, iam non curant, petant illi nec ne bonorum possessionem.

Dig. 37.4.11pr.

Paulus 41 ad ed.

Si in adoptionem datus sub condicione scriptus sit heres a naturali patre, alio committente contra tabulas edictum et ipse veniet: sed si defecerit condicio, repellitur ab ea possessione. idem puto et in eo, qui pure quidem, sed non iure scriptus sit heres.

Dig. 37.4.11.1

Paulus 41 ad ed.

Exemplo iuris legitimi et bonorum possessio contra tabulas distribuitur: igitur nepotes ex uno filio unam partem habebunt.

Dig. 37.4.12pr.

Gaius 14 ad ed. provinc.

Si duobus filiis et ex altero filio duobus nepotibus bonorum possessio competat et alter ex nepotibus non petat, pars eius fratri adcrescit. si vero ex filiis alter non petat, tam fratri quam nepotibus id prodest: namque tunc duo semisses fiunt, ex quibus alterum filius, alterum nepotes consequuntur.

Dig. 37.4.12.1

Gaius 14 ad ed. provinc.

Si prius testamentum exstet iure factum, quo filius exheredatus est, sequens imperfectum, in quo praeteritus sit filius, posteriore testamento praeteritus recte petet bonorum possessionem, si remoto quoque filio potiores sunt in ea hereditate posteriore testamento scripti heredes: et ita ius habet, ut, cum is, contra quem filius petit bonorum possessionem, amoto filio possit optinere hereditatem, filius quoque recte videatur petere bonorum possessionem, si vero ille non possit optinere hereditatem, filius quoque excludatur.

Dig. 37.4.13pr.

Iulianus 23 Dig.

Cum emancipatus bonorum possessionem contra tabulas accipit, scriptus heres ei hereditatem petenti cogendus est et praedia et servos hereditarios praestare: omne enim ius transferri aequum est, quod per causam hereditariam scriptus heres nanciscitur, ad eum, quem praetor heredis loco constituit.

Dig. 37.4.13.1

Iulianus 23 Dig.

Qui duos filios et ex altero eorum nepotem habebat, eum in adoptionem dedit et heredem instituit praeterito altero filio: quaeritur, quid in his servari debeat, utrum in partem patris sui admittatur an virilem portionem habeat. respondi: in adoptionem datus nepos et heres scriptus, quamdiu pater eius aut in potestate aut emancipatus est, non potest contra tabulas bonorum possessionem accipere: sed et si pater eius, antequam bonorum possessionem acciperet, decesserit, non admittitur nepos ad bonorum possessionem.

Dig. 37.4.13.2

Iulianus 23 Dig.

Si pater emancipato filio praeterito heredes duos scripserit, filium quem in potestate habebat et alterum quem in adoptionem dederat, ex quo duos nepotes in familia reliquerat, qui et ipsi testamento praeteriti sint: bonorum possessionem pro parte tertia emancipatus, pro parte tertia is qui in potestate remansit, pro parte tertia qui in adoptionem datus est et filii eius simul habebunt, ita ut sextans patri, sextans nepotibus cedat.

Dig. 37.4.13.3

Iulianus 23 Dig.

Si pater ex duobus filiis alterum habentem filios emancipaverit et unum ex nepotibus, quem ante emancipaverat, in locum filii adoptaverit, praeterito deinde emancipato decesserit, aequius erit nepoti, qui in locum filii venerit, succurri et in tres partes hereditatem diduci, ut unam habeat qui in potestate remanserit, alteram nepos adoptatus in locum filii, tertiam emancipatus cum filio suo, qui nepotis loco fuerit. sed etsi mortuo filio alter ex nepotibus in locum filii adoptatus fuerit, tres partes in bonis fient, cum sit aequius eum, qui in locum filii adoptatus est, non minus habere, quam si non ex numero nepotum, sed extraneus adoptatus esset.

Dig. 37.4.14pr.

Africanus 4 quaest.

Si duobus filiis emancipatis alter heres institutus sit, alter praeteritus, si institutus adierit, quamvis verbis edicti parum expressum sit, tamen non posse eum petere bonorum possessionem respondit, quia iudicium patris secutus sit: nec enim emancipatum, si legatum acceperit, admitti ad bonorum possessionem, sive ab heredibus institutis sive ab his, qui contra tabulas petierint, acceperit. sed illud observandum, ut praetor eum, qui heres institutus adierit, in eam partem qua scriptus sit tueri debeat, dum tamen non ampliorem, quam habiturus esset, si bonorum possessionem accepisset: ut hactenus deteriorem causam suam fecerit, quod, si ex minore parte sit institutus, eam dumtaxat retinere possit et quod extraneis quoque legata praestare cogatur. quod si is qui in potestate est heres institutus sit, quoniam necessarius heres fit, non aliud dici posse, quam et ipsum petere posse bonorum possessionem, si modo hereditati se non immiscuerit: tunc enim, quia iudicium patris comprobasse videtur, in eodem loco quo emancipatum haberi debere.

Dig. 37.4.14.1

Africanus 4 quaest.

Filius in adoptiva familia uxore ducta filium sustulit eumque post mortem patris adoptivi emancipavit: hunc nepotem contra tabulas avi naturalis decreto posse petere bonorum possessionem respondit. item si filius emancipatus sublato filio et emancipato adrogandum se dederit et mortuo adoptivo patre decesserit, et contra patris et contra avi tabulas ex decreto hunc admitti minime dubitari debere, ne alioquin ab omnium bonis excluderetur.

Dig. 37.4.15

Marcianus 5 reg.

Si praeteritus filius emancipatus exceptionem doli mali agenti heredi patris opposuerit de eo quod patri debuit, non posse eum contra tabulas bonorum possessionem petere existimo: nam hoc ipso quasi repudiavit bonorum possessionem. quod ita intellegendum est, si heredem petentem debitum noluerit filius repellere illa exceptione " si non contra tabulas bonorum possessio filio dari potest", sed magis doli exceptione usus est.

Dig. 37.4.16

Pomponius 4 ad sab.

Si emancipatus filius nepoti in potestate avi relicto ab extraneo herede fideicommissam hereditatem, si liberatus avi potestate fuisset, reliquisset: si suspectus avus sit quasi consumpturus bona nepotis, non esse ei dandam bonorum possessionem.

Dig. 37.4.17

Ulpianus 35 ad sab.

Si pater se dederit in adoptionem nec sequatur eum filius emancipatus ab eo antea factus, quia in alia familia sit pater, in alia filius, bonorum possessionem contra tabulas non potest filius eius habere: et ita iulianus scripsit. Marcellus autem ait iniquum sibi videri excludi eos a bonorum possessione, cum pater se dedit in adoptionem: ubi enim filius non datur in adoptionem, at pater se dat, nullum patrem filio adsignat: quae sententia non est sine ratione.

Dig. 37.4.18pr.

Hermogenianus 3 iuris epit.

Sub condicione exheredatus contra tabulas bonorum possessionem petet, licet sub condicione heres institutus a contra tabulas bonorum possessione excludatur: certo enim iudicio liberi a parentium successione removendi sunt.

Dig. 37.4.18.1

Hermogenianus 3 iuris epit.

Ei, qui contra tabulas bonorum possessionem accepit, tam legati quam fideicommissi exactio, sed et mortis causa donationis retentio denegatur: nec interest, per semet ipsos an per alium quaeratur.

Dig. 37.4.19

Tryphonus 15 disp.

Quod volgo dicitur liberis datam bonorum possessionem contra lignum esse sic intellegendum est, ut sufficiat exstitisse tabulas mortis tempore patris, ex quibus vel adiri hereditas vel secundum eas bonorum possessio peti potuit, quamvis neutrum eorum postea secutum sit vel sequi potuit: nam si vel omnes instituti substitutique ante testatorem decesserint vel is scriptus heres fuit, cum quo testamenti factio non fuit, peti contra tabulas inane est, quae sine effectu forent.

Dig. 37.4.20pr.

Tryphonus 19 disp.

Filium quem in potestate habebat exheredavit, emancipatum praeteriit: quaesitum est, quatenus emancipatus bonorum possessionem habiturus sit. dixi, si scripti heredes extranei adierint hereditatem, repellendum esse filium, qui mansit in potestate. quod si hi repudiaverint hereditatem (quod facile sunt facturi nihil laturi ex hereditate propter eum, qui contra tabulas accepit bonorum possessionem), filius ab intestato patris suus heres deprehendetur: emancipatus autem petens contra tabulas bonorum possessionem solus habebit bonorum possessionem. sed cum exheredatio non adita hereditate ex testamento nullius sit momenti (ideoque non obstare eam nec quo minus contra tabulas libertorum patris accipiat bonorum possessionem, iulianus recte respondit, ne testamentum per omnia irritum ad notam exheredationis solam profecisse videatur), redit res ad intestati exitum, ut adversus filium suum ex asse heredem ab intestato patri emancipatum praetor in parte dimidia tueatur. erit ergo venale beneficium scripti heredis extranei, ut, cum ipse iure hereditatis nihil sit consecuturus, adeundo repellat filium in potestate relictum praestetque assem emancipato filio iure contra tabulas bonorum possessionis: si autem omiserit hereditatem, in portionem bonorum exheredatum effectu admittet, iure factum solum suum heredem. sed quemadmodum praetor emancipatum tueatur, si adita non fuerit hereditas, ita nec filius qui in potestate remansit aditione adhibita in totum expellendus erit, sed ad hereditatis petitionem admittendus est ex causa inofficiosi querellae contra emancipatum movendae.

Dig. 37.4.20.1

Tryphonus 19 disp.

Videamus tamen isto casu, quo utrique ad bona patris veniunt, an ei conferre debeat emancipatus: nam neque ex hac parte edicti verbis id facere cogitur, unde contra tabulas accepit bonorum possessionem, quae inter eos, quibus ita bonorum possessio dabitur, caveri de collatione ab emancipato iubet: iste enim qui mansit in potestate quod exheredatus nominatim fuit, non est vocatus ad bonorum possessionem contra tabulas: neque ex illa parte edicti, qua intestato patre mortuo emancipatus ad bonorum possessionem admissus ad collationem compellitur, quia etsi frater ab intestato heres sit, emancipatus tamen non inde accepit bonorum possessionem. et vereor, ne hactenus filio suo profuerit factum heredis scripti non adeuntis, ut eum ad portionem admitteret bonorum paternorum, non etiam eorum, quae emancipatus propria habuit, et hoc sit consequens illi, quod, cum ex minore parte scriptus a patre heres relictus in potestate, admisso fratre emancipato ad contra tabulas bonorum possessionem, eius beneficio plus consequatur, quamvis edicti verbis collatio inducatur, ex mente praetoris denegandam eam respondetur. multo magis autem huic conferri non oportet, quia ei a patre exheredatus, a praetore ad bonorum possessionem contra tabulas non vocatus occasione omissae hereditatis a scripto herede (nihil habituro propter delatam emancipato a praetore contra tabulas bonorum possessionem) nomen sui heredis adeptus est.

Dig. 37.4.20.2

Tryphonus 19 disp.

Legata tamen ex parte sua iste emancipatus liberis et parentibus praestare cogetur non solida, sed deminuta in dimidium, quod relinquitur manenti in potestate. sed nec adversus eum constituendae actionis legatorum ratio est, qui mero iure intestato heres exstitit.

Dig. 37.4.20.3

Tryphonus 19 disp.

Sed qui accepit contra tabulas bonorum possessionem, etiamsi non fuerit adita hereditas a scripto, praestat legata ea parte testamenti data, contra quam bonorum possessio accepta est. erit ergo melior hoc casu condicio in familia relicti filii, quam foret, si exheredatus non esset.

Dig. 37.4.21pr.

Modestinus 6 pand.

Si is, qui filium et ex eo nepotem in potestatem habebat, filium in adoptionem dedit nepote retento in potestate, postea filius emancipatus a patre adoptivo decessit extraneis heredibus institutis: filius huius, qui in potestate avi remansit, contra tabulas patris sui bonorum possessionem petere poterit, quamvis numquam in potestate huius fuerit. ideo nec debuisse in potestate esse videtur. nam, si aliter observatur, nec si emancipatus filius fuerit, nepos ex eo, qui in potestate avi remansit, bonorum possessionem contra tabulas petere poterit.

Dig. 37.4.21.1

Modestinus 6 pand.

Idemque iuris est, si emancipato filio nepos ex eo in potestate avi remanserit et postea patri suo in adoptionem datus fuerit: id est contra tabulas avi bonorum possessionem petere poterit, quia per adoptionem in aliena familia non fuerit.

Dig. 37.4.21.2

Modestinus 6 pand.

Sed si emancipatus filius meus adoptaverit extraneum filium, is qui adoptatus est filius contra tabulas meas bonorum possessionem petere non poterit, quia numquam nepotis loco apud me fuit.

Dig. 37.5.0. De legatis praestandis contra tabulas bonorum possessione petita.

Dig. 37.5.1pr.

Ulpianus 40 ad ed.

Hic titulus aequitatem quandam habet naturalem et ad aliquid novam, ut, qui iudicia patris rescindunt per contra tabulas bonorum possessionem, ex iudicio eius quibusdam personis legata et fideicommissa praestarent, hoc est liberis et parentibus, uxori nuruique dotis nomine legatum.

Dig. 37.5.1.1

Ulpianus 40 ad ed.

Generaliter parentes et liberos praetor excepit nec gradus liberorum parentiumve enumeravit: in infinitum igitur eis praestabitur. sed nec personas prosecutus est, utrum ex virili sexu an ex feminino descendent. quisquis igitur ex liberis parentibusque fuerit, ad legati petitionem admittetur, sed ita demum, si iura cognationis sunt inter eos.

Dig. 37.5.1.2

Ulpianus 40 ad ed.

Liberos autem etiam eos ad legatorum petitionem admittimus, qui in adoptionem dati sunt vel etiam adoptivi, dummodo maneant liberi.

Dig. 37.5.1.3

Ulpianus 40 ad ed.

Postumis liberis legata relicta utique praestabuntur:

Dig. 37.5.2

Iulianus 23 Dig.

Et ideo si praegnate uxore filius emancipatus fuerit et bonorum possessionem contra tabulas acceperit, legatum nepoti praestare debebit.

Dig. 37.5.3pr.

Ulpianus 40 ad ed.

Sed et si mortis causa donationes sunt in personas exceptas collatae, credo tuendae sunt: si autem excepti non sunt, auferendas eis puto mortis causa donationes.

Dig. 37.5.3.1

Ulpianus 40 ad ed.

Liberis autem tantum et parentibus praetor prospexit, non etiam fratri et sorori conservavit legatum.

Dig. 37.5.3.2

Ulpianus 40 ad ed.

Hoc autem solum debetur, quod ipsis parentibus relictum est et liberis: ceterum si servo eorum fuerit adscriptum vel subiectae iuri eorum personae, non debetur: nec enim quaerimus, cui adquiratur, sed cui honor habitus sit.

Dig. 37.5.3.3

Ulpianus 40 ad ed.

Sed et si coniunctim ei fuerit legatum relictum cum eo, cui non praestatur, sua tantum portio ei conservabitur.

Dig. 37.5.3.4

Ulpianus 40 ad ed.

Item si quis ex his personis rogatus sit restituere extero quod sibi relictum est, dicendum non esse legatum praestandum, quia emolumentum ad eum non respicit.

Dig. 37.5.3.5

Ulpianus 40 ad ed.

Sed si proponas extero legatum rogatumque eum praestare hoc alicui ex liberis parentibusque, consequenter dicemus praestari debere.

Dig. 37.5.3.6

Ulpianus 40 ad ed.

Hoc amplius et si extraneo relictum sit sub hoc modo, ut alicui ex liberis praestet, aequissimum erit dicere non debere ei praetorem denegare actionem.

Dig. 37.5.3.7

Ulpianus 40 ad ed.

Ea autem legata sola praestant qui contra tabulas bonorum possessionem accipiunt, quae utiliter data sunt, verum idcirco non debentur, quod filius contra tabulas bonorum possessionem accipit,

Dig. 37.5.4

Iulianus 23 Dig.

Cum propter hoc plerumque scripti heredes omittant hereditatem, cum scirent emancipatum aut petisse aut petiturum contra tabulas bonorum possessionem.

Dig. 37.5.5pr.

Ulpianus 40 ad ed.

Filium quis impuberem heredem scripsit eique substituit, emancipatum autem filium praeteriit: deinde uterque filius acceperunt bonorum possessionem: legata sunt etiam a substituto impuberis relicta non tantum liberis et parentibus, verum etiam extraneis: quaeritur, an mortuo impubere cogatur substitutus ea praestare. et si quidem ab impubere relicta sunt, solis liberis parentibusque praestanda sunt: sin vero a substituto impuberis, omnibus eum praestare oportet habita ratione legis falcidiae, scilicet ut partis dimidiae, quae ad eum ex bonis patris pervenit, quartam, id est totius assis sescunciam retineat.

Dig. 37.5.5.1

Ulpianus 40 ad ed.

Quod si impubes ex uncia dumtaxat institutus heres fuerit, magis est semissem usque legata praestaturum habita ratione legis falcidiae: licet enim ex uncia fuerit impubes institutus, tamen quod accessit, augebit legata a substituto relicta.

Dig. 37.5.5.2

Ulpianus 40 ad ed.

Omnibus autem liberis praestari legata praetor voluit exceptis his liberis, quibus bonorum possessionem praetor dedit ex causis supra scriptis: nam si dedit bonorum possessionem, non putat legatorum eos persecutionem habere. constituere igitur apud se debet, utrum contra tabulas bonorum possessionem petat an vero legatum persequatur: si elegerit contra tabulas, non habebit legatum: si legatum elegerit, eo iure utimur, ne petat bonorum possessionem contra tabulas.

Dig. 37.5.5.3

Ulpianus 40 ad ed.

Si quis contra tabulas bonorum possessionem acceperit, deinde postea apparuerit eum ex his liberis non fuisse, qui eam bonorum possessionem accipere possunt, ex his tamen esse, quibus legata praestantur: optinuit non esse ei denegandam petitionem legatorum, sive ordinariam bonorum possessionem petierit sive carbonianam.

Dig. 37.5.5.4

Ulpianus 40 ad ed.

Non solum autem legatum denegatur ei, qui bonorum possessionem accepit, verum etiam si quid aliud ex voluntate accepit. cui consequens est, quod iulianus scripsit, si fratri suo impuberi substitutus sit acceperitque contra tabulas bonorum possessionem, denegari ei persecutionem hereditatis fratris impuberis mortui, cui a patre substitutus est.

Dig. 37.5.5.5

Ulpianus 40 ad ed.

Si legata fuerint relicta liberis et extraneis, licet utrorumque praestatio falcidiae locum faceret legataque liberorum reccideret, tamen nunc ob hoc, quod extraneis non praestantur legata, liberorum augentur.

Dig. 37.5.5.6

Ulpianus 40 ad ed.

Sed et si portio hereditatis fuerit adscripta ei, qui ex liberis parentibusve est, an ei conservanda sit, ut solent legata? et iulianus saepissime scripsit in portione quoque hereditatis idem quod in legato probandum, cuius sententia rescripto divi pii comprobata est, cum hereditates non modo honestiore titulo, sed et pleniore onere tribuantur.

Dig. 37.5.5.7

Ulpianus 40 ad ed.

Ad eum autem modum talibus personis succurrendum est, ut ampliore quidem quam virili portione hereditatis data usque ad virilem tueantur, in minorem autem eatenus actiones his tribuantur, quatenus scriptae sint. idem observatur et circa legata fideive commissa, quae his data fuerint, et in mortis causa donationibus.

Dig. 37.5.5.8

Ulpianus 40 ad ed.

Is autem, cui portio hereditatis conservatur, utrum omnibus an tantum exceptis personis legata cogatur praestare? et magis probatur exceptis personis solis praestanda: nec tamen solius commodo id cedit. nam si legatis onerata sit portio tam liberorum parentiumve quam extraneorum, id, quod extraneis non praestatur, liberis parentibusve profuturum non dubitamus. igitur ita demum quod extraneis non praestatur communicatur cum eo, qui contra tabulas petit, si non legatariis liberis parentibusque dandum sit.

Dig. 37.5.6

Iulianus 23 Dig.

Salvius aristo iuliano salutem. qui filium emancipatum habebat, praeterito eo patrem suum et extraneum heredem instituit et patri legatum dedit: filius contra tabulas bonorum possessionem petit: quaero, si aut uterque hereditatem adisset aut alter ex his aut neuter, an et quantum legatorum nomine patri debeatur. respondit: saepe animadverti hanc partem edicti, qua emancipatus accepta contra tabulas bonorum possessione liberis et parentibus legata praestare iubetur, habere nonnullas reprehensiones: nam si dodrans legatus fuerit, plus habiturus est cui legatum erit quam emancipatus. decreto itaque ista temperari debebunt, ut et hereditatis partem emancipatus praestet ita, ne scriptus heres amplius habeat quam emancipatus, et legatorum modus temperaretur, ut nihil plus ex legatis ad aliquem perveniat, quam apud emancipatum bonorum possessionis nomine remansurum est.

Dig. 37.5.7

Tryphonus 16 disp.

Nam secundum constitutionem divi pii ad tuscium fuscianum numidiae legatum placuit parentes et liberos heredes quoque institutos tueri usque ad partem virilem exemplo legatorum, ne plus haberent ex institutione tales personae, quam ad eum perventurum esset, qui contra tabulas bonorum possessionem accepit.

Dig. 37.5.8pr.

Ulpianus 40 ad ed.

Virilis portio quemadmodum accipienda sit, videamus. pone duos esse, qui contra tabulas bonorum possessionem accipiunt, unum esse ex liberis parentibusque: virilis tertia erit portio: sed si tres sunt, qui contra tabulas acceperunt, quarta erit virilis: hoc idem et in legatis observabitur. sed si unus sit ex liberis, qui accepit contra tabulas bonorum possessionem, plures sint, qui ex liberis parentibusque legata acceperunt, sic hoc accipiendum est, ut filius praeteritus semissem habeat, ceteri omnes, qui sunt ex liberis parentibusve, semissem.

Dig. 37.5.8.1

Ulpianus 40 ad ed.

Si quis ex liberis parentibusque et heres institutus sit et legatum acceperit, utrum tantum portionem ei conservamus an vero et legatum an alterutrum quod elegerit? et magis est, ut utrumque conservetur, sed sic, ne amplius in utroque quam virilem habeat.

Dig. 37.5.8.2

Ulpianus 40 ad ed.

Si adierit hereditatem is cui virilis conservatur, libertates competent ex necessitate per aditionem: verumtamen videndum est, an de dolo actione teneatur qui adit. et magis est, ut, si denuntiante eo, qui praeteritus accepit contra tabulas bonorum possessionem, hic adiit hereditatem pollicente eo portionem virilem, sit quod ei imputetur et de dolo actione teneatur: damno enim adficit hereditatem, dum competunt libertates.

Dig. 37.5.8.3

Ulpianus 40 ad ed.

Si quid uxori nuruique fuerit legatum praeter dotem, accepta contra tabulas bonorum possessione non praestabitur.

Dig. 37.5.8.4

Ulpianus 40 ad ed.

Nurus autem appellatione et pronurum ceterasque contineri nulla dubitatio est.

Dig. 37.5.8.5

Ulpianus 40 ad ed.

Cum autem dotis nomine legatur, non puto ad virilem uxorem nurumve redigendam, cum mulier ista ad aes alienum veniat.

Dig. 37.5.8.6

Ulpianus 40 ad ed.

Non solum autem dotem praelegatam praetor complectitur, verum etiam si pro dote aliquid fuerit relictum, ut puta si dos in rebus sit et pro rebus ei quantitas relinquatur vel contra: dum tamen hoc nominetur, quod pro dote relinquitur.

Dig. 37.5.9

Paulus 41 ad ed.

Sed et si plus sit in legato quam in dote, dabitur illis actio.

Dig. 37.5.10pr.

Ulpianus 40 ad ed.

Sed et si pro dote ex parte aliqua eandem heredem scripserit, tuendam esse puto.

Dig. 37.5.10.1

Ulpianus 40 ad ed.

Esse autem uxorem mortis tempore exigemus. si nurui dotem praelegaverit eaque mortis tempore nupta sit, nullum legatum est, quia dos nondum debeatur: sed cum et constante matrimonio adversus heredes soceri dabitur actio, dicendum est etiam praelegatae dotis petitionem dari debere.

Dig. 37.5.10.2

Ulpianus 40 ad ed.

Non omnia, quae ab omnibus gradibus relicta sunt, legata praestare eum oportet qui contra tabulas petit, sed ea sola, quae in eo gradu data sunt, contra quem bonorum possessionem accepit. sed nonnumquam contra alium quidem gradum petita est bonorum possessio, ex alio vero legata praestanda sunt: ut ecce duos gradus heredum fecit, emancipatum praeteriit, ab utroque tamen gradu liberis et parentibus legata adscripsit. ait iulianus: si quidem aliquis ex primo gradu vivit, ea legata praestabit, quae liberis et parentibus a primo gradu data sunt: sin vero nemo vivit eorum, ea quae a sequenti: quod si neque ex primo gradu neque ex secundo quisquam in rebus fuerit humanis, cum testator moritur, tunc ab intestato magis bonorum possessionem praeterito filio competere nec legata cuiquam praestanda: quod si post mortem testatoris ante aditam hereditatem instituti decesserint, contra ipsos quidem videri petitam, verumtamen ab eis relicta legata non esse praestanda, sed quae a substitutis relicta sunt.

Dig. 37.5.11

Paulus 41 ad ed.

At ubi institutus et substitutus vivant, licet nemo adeat hereditatem, ea tamen legata deberi dicimus, quae ab instituto data sunt.

Dig. 37.5.12

Ulpianus 40 ad ed.

Sive autem omiserint instituti sive non omiserint, dicendum est legata, quae ab ipsis relicta sunt, praestanda, quamvis secundo gradu instituti omittentibus eis adierint hereditatem.

Dig. 37.5.13

Tryphonus 2 disp.

Item a substituto legata deberi dicimus, si institutus condicione defectus esset, quae in ipsius potestate non fuit: nam si eam, quae in ipsius potestate fuit, non implevit, pro eo habendus est, qui noluit adire hereditatem, quando nihil habiturus emolumenti condicioni merito non paruerit.

Dig. 37.5.14pr.

Ulpianus 40 ad ed.

Nonnumquam contra tabulas bonorum possessionem quis habet iure secundum tabulas bonorum possessionis: ut puta heres institutus est emancipatus filius, alius emancipatus praeteritus, institutus accepit contra tabulas bonorum possessionem, praeteritus omisit: apertissimum est, ut cogatur omnibus perinde legata praestare, atque si commissum edictum non fuisset: nec enim occasio emancipati praeteriti debet institutum lucro adficere, cum praeteritus iure suo non utatur.

Dig. 37.5.14.1

Ulpianus 40 ad ed.

Si ab uno ex filiis herede instituto nominatim alicui ex liberis parentibusque legatum datum sit et acceperit bonorum possessionem contra tabulas cum aliis, melius est probare omnes, qui contra tabulas bonorum possessionem acceperunt, cogendos id legatum praestare.

Dig. 37.5.15pr.

Paulus 41 ad ed.

Is qui in potestate est praeteritus legata non debebit praestare, etsi contra tabulas bonorum possessionem petierit, quia et non petita bonorum possessione intestati hereditatem optineret: nec enim exceptio doli mali huic nocet et absurdum est eum cogi legata praestare, quia bonorum possessionem petierit, cum et sine hac hereditatem habiturus sit suo iure. unde si duo praeteriti sunt, emancipatus et is qui in potestate est, quidam nec emancipatum praestare debere legata existimant, quia effectu fratris aufert partem dimidiam, cum et si hic non peteret, suus solus rem habiturus esset. quid ergo est? ubi praeteritus sit suus, verius est quod dictum est: ubi vero scriptus est et voluntatem patris habet, debet teneri legatariis, etiamsi omiserit bonorum possessionem.

Dig. 37.5.15.1

Paulus 41 ad ed.

Sed si unus emancipatus heres scriptus sit, alter praeteritus et utrique contra tabulas bonorum possessionem acceperint, et institutus eadem praestat quae praeteritus. sed si solus heres institutus contra tabulas bonorum possessionem acceperit, omnibus debebit legata praestare, perinde atque si adisset hereditatem. sed si scriptus quidem adierit hereditatem, praeteritus autem bonorum possessionem acceperit: hic quidem, qui bonorum possessionem acceperit, certis personis legata debebit, de scripto autem quaeritur. et complures putant certis personis et eum praestare debere, quod puto verius esse: nam et praetor hac ratione eum tuetur, quod ex liberis est qui contra tabulas petere potuerunt.

Dig. 37.5.15.2

Paulus 41 ad ed.

Ita autem tuendus est in partem dimidiam, si aut ex maiore parte quam dimidia heres institutus sit aut ex semisse: quod si ex minore parte quam dimidia institutus sit, dicimus non ex maiore parte, quam institutus sit, tuendum eum esse: qua enim ratione maiorem partem habere potest, cum nec bonorum possessionem accepit nec ex maiore parte institutus sit?

Dig. 37.5.15.3

Paulus 41 ad ed.

Ei, quae dotem non habet, nullum legatum debebitur, licet sub praetextu dotis legetur.

Dig. 37.5.15.4

Paulus 41 ad ed.

Si extraneo herede instituto sub hac condicione exceptae personae legatum sit, si heredi decem dederit, ita ei legatorum actio dabitur, si ei, qui contra tabulas bonorum possessionem accepit, dederit, non si heredi instituto, quia absurdum est illum commoda hereditatis habere, alium onera sustinere in praestando legato. sed et si titio iussus fuerit dare, non illi, sed filio dare debet.

Dig. 37.5.16

Ulpianus 4 disp.

Si duo proponantur esse unus in potestate praeteritus, alius emancipatus institutus, apparet commissum esse edictum per eum, qui in potestate est: et si ambo petissent contra tabulas bonorum possessionem, is quidem, qui in potestate mansit, cum rem ab intestato habeat, non praestabit liberis et parentibus legata. emancipatus vero numquid nec ipse praestat, quia ei rem auferret, qui praestaturus non erat, si solus esset? sed verius est vel hunc saltem debere liberis et parentibus praestare legata. proinde si contra tabulas non accepit, dicendum est tuendum eum in partem et utique liberis parentibusque legata praestaturum. sed an et omnibus, dubito: tamen quia plena fruatur voluntate, plenum et obsequium praestare testatoris iudicio pro sua parte debet.

Dig. 37.5.17

Iulianus 36 Dig.

Si emancipato filio praeterito pater extraneum heredem instituisset et ab eo rem legasset eaque adita hereditate dolo scripti heredis perisset, adversus emancipatum utilis actio dari debebit ei scilicet personae, cui filius legata praestare cogitur, quia praetori propositum est sine iniuria ceterarum personarum bonorum possessionem contra tabulas testamenti dari.

Dig. 37.5.18

Africanus 4 quaest.

Nepos qui in potestate mansit et filius suus heredes instituti sunt: nepoti legatum dedit: pater eius emancipatus petit bonorum possessionem: nepos legato contentus est. quidam in eum solum, qui in potestate esset, legati actionem nepoti dandam responderunt, quia ei nihil auferatur et emancipatus partem filii sui occupet, in qua onus legatorum non consisteret. sed rectius dicetur in emancipatum solum dandam esse actionem nepoti, et quidem non ultra quadrantem,

Dig. 37.5.19

Africanus 5 quaest.

Quia, et si omnes petissent bonorum possessionem, semis nepotis inter eum et patrem eius divideretur.

Dig. 37.5.20pr.

Marcianus 4 reg.

Si filius emancipatus contra tabulas ^ tabulus^ bonorum possessionem petierit, tuendos quidem liberos et parentes constat. sed si varie donatum fuerit exceptis personis a testatore mortis causa, pro rata conferent ad virilem emancipato, sicut accidit in portionibus hereditariis et legatis.

Dig. 37.5.20.1

Marcianus 4 reg.

Intestato autem mortuo patre super donationibus mortis causa factis non poterit filius quaeri, quoniam comparatio nulla legatorum occurrit.

Dig. 37.5.21

Papinianus 13 quaest.

Si portio hereditatis, quam excepta persona beneficio legis habere potuit, repudietur, pro ea quoque parte filius, qui bonorum possessionem accepit, non aliis quam exceptis personis legata praestabit.

Dig. 37.5.22

Papinianus 5 resp.

Bonorum possessione contra tabulas testamenti praeterito emancipato filio data, scriptus heres alter filius, qui possessionem accepit vel iure civili contentus non accepit, legata praecipua non habebit.

Dig. 37.5.23

Hermogenianus 3 iuris epit.

Hi, quibus vel relictum vel virilem divus pius conservari constituit, ex servis, qui libertatem propter bonorum possessionem contra tabulas acceptam consequi non potuerunt, nihil habebunt.

Dig. 37.5.24

Tryphonus 16 disp.

Intervenit illa quaestio, quando numero liberorum esse debeat is cui legatum datum est, ut id ferre possit a filio contra tabulas bonorum possessionem accipiente. et placet sufficere in ea necessitudine tunc esse, quando dies legati cedit.

Dig. 37.5.25pr.

Marcellus 9 Dig.

Qui filium emancipaverat et nepotem ex eo retinuerat in potestate, testamento filium exheredavit, nepotem ex aliqua parte instituit heredem et alium filium emancipatum praeteriit. potest defendi nepotem quoque bonorum possessionem contra tabulas petere posse: nam pro ea parte, qua quisque intestato suus heres esset, si pater suus heres non esset, bonorum possessio defertur.

Dig. 37.5.25.1

Marcellus 9 Dig.

Is, cuius filius in adoptione erat, nepotem, quem filius postea procreaverat, scripsit heredem, emancipatum filium praeteriit: num habet nepos ex edicto bonorum possessionem? tuendus tamen exemplo parentium et liberorum, quibus legata praestare coguntur qui bonorum possessionem contra tabulas acceperunt.

Dig. 37.5.25.2

Marcellus 9 Dig.

Si forte ex eodem filio retinuerat nepotem unum pluresve, indubitate pro ea parte tuendus est, pro qua parte tueretur, si ex filia nepos aut mater defuncti heredes instituti essent: nam his comparatur.

Dig. 37.6.0. De collatione bonorum.

Dig. 37.6.1pr.

Ulpianus 40 ad ed.

Hic titulus manifestam habet aequitatem: cum enim praetor ad bonorum possessionem contra tabulas emancipatos admittat participesque faciat cum his, qui sunt in potestate, bonorum paternorum: consequens esse credit, ut sua quoque bona in medium conferant, qui appetant paterna.

Dig. 37.6.1.1

Ulpianus 40 ad ed.

Inter eos dabitur collatio, quibus possessio data est.

Dig. 37.6.1.2

Ulpianus 40 ad ed.

Plane si minorem vel alium, quem restituere in integrum solet praetor, restituerit ad bonorum possessionem contra tabulas petendam quam omiserat, utique etiam collationis commodum ei restituit.

Dig. 37.6.1.3

Ulpianus 40 ad ed.

Si ex dodrante fuit institutus filius qui erat in potestate, extraneus ex quadrante, emancipatum accipientem contra tabulas pro quadrante tantum bona sua collaturum iulianus ait, quia solum quadrantem fratri abstulit: argumentum pro hac sententia adfert pomponius, quod filius emancipatus nepotibus ex se natis solis conferre cogitur.

Dig. 37.6.1.4

Ulpianus 40 ad ed.

Pater filium quem in potestate habebat et extraneum heredem scripsit, emancipatum praeteriit: bonorum possessionem contra tabulas uterque filius accepit. potest non incommode dici emancipatum ita demum conferre fratri suo debere, si aliquid ei ex causa hereditaria abstulerit: nam si minore ex parte quam dimidia is qui in potestate erat heres scriptus fuerit, inique videbitur collationem postulare ab eo, propter quem amplius hereditate paterna habiturus est.

Dig. 37.6.1.5

Ulpianus 40 ad ed.

Totiens igitur collationi locus est, quotiens aliquo incommodo adfectus est is qui in potestate est interventu emancipati: ceterum si non est, collatio cessabit.

Dig. 37.6.1.6

Ulpianus 40 ad ed.

Vel maxime autem tunc emancipatum conferre non oportet, si etiam iudicium patris meruit nec quicquam amplius nanciscitur, quam ei pater dedit.

Dig. 37.6.1.7

Ulpianus 40 ad ed.

Sed et si legatis meruit semissem vel tantum, quantum contra tabulas bonorum possessione occupat, dicendum est non esse cogendum ad collationem.

Dig. 37.6.1.8

Ulpianus 40 ad ed.

Ibidem iulianus ait, si bonorum possessione accepta decesserit is qui in potestate est, ad collationem bonorum cogendum emancipatum, ut tantum heredi eius conferat, quantum conferret ipsi, si viveret. quod si ante acceptam bonorum possessionem decesserit suus, heredem eius praetor ita tueri debebit, inquit, pro ea parte, qua heres scriptus fuit is qui in potestate erat, non tamen ultra virilem: ad collationem autem non admittit eum in hunc casum, quia bonorum possessio admissa non est.

Dig. 37.6.1.9

Ulpianus 40 ad ed.

Iubet autem praetor ita fieri collationem, ut recte caveatur: caveri autem per satisdationem oportere pomponius ait. an pignoribus caveri possit, videamus: et pomponius libro septuagesimo nono ad edictum scripsit et reis et pignoribus recte caveri de collatione, et ita ego quoque puto.

Dig. 37.6.1.10

Ulpianus 40 ad ed.

Si frater cavere non possit, curator portionis eius constituitur, apud quem refecta pecunia collocetur, ut tunc demum recipiat quod redactum est, cum bona propria contulerit. quod si per contumaciam actiones denegatae sint, oblata postea cautione recipit pristinum ius.

Dig. 37.6.1.11

Ulpianus 40 ad ed.

Quamvis autem edictum praetoris de cautione loquatur, tamen etiam re posse fieri collationem pomponius libro septuagensimo nono ad edictum scripsit. aut enim re, inquit, aut cautione facienda collatio est. igitur dividat, inquit, bona sua cum fratribus et quamvis non caveat, satisfacit edicto. sed et si quaedam dividat, de quibusdam caveat, aeque dicimus eum satisfecisse. sed cum possint esse quaedam in occulto, non satis confert qui non cavit, quamvis dividat. si igitur constet inter partes, quid sit in bonis emancipati, sufficiens collatio est divisio: si non constet, sed dicantur quaedam non esse in commune redacta, tunc propter incertum cautio erit interponenda.

Dig. 37.6.1.12

Ulpianus 40 ad ed.

Sed et si tantum forte in bonis paternis emancipatus remittat, quantum ex collatione suus habere debet, dicendum est emancipatum satis contulisse videri: idem et si nomen paterni debitoris delegaverit vel fundum remve aliam dederit pro portione bonorum, quae conferre debuit.

Dig. 37.6.1.13

Ulpianus 40 ad ed.

Si, cum duobus conferre deberet, alteri contulerit, alteri non, vel cum cavet vel cum dividit: videndum est, utrum sextantis tantum ei auferatur emolumentum an vero trientis totius detrahi debeat. et puto, si quidem per contumaciam non caveat, totius trientis ei denegandas actiones (nec enim videtur cavisse, qui non omnibus cavit): quod si per inopiam, sextantis tantum denegandas, sic tamen, ut possit supplere cautionem vel collatione vel ceteris modis quibus supra diximus, aut curator constituatur rem ei salvam facturus: haberi enim debet ratio eius, qui non per contumaciam collationem non implet.

Dig. 37.6.1.14

Ulpianus 40 ad ed.

Is quoque, qui in adoptiva familia est, conferre cogitur, hoc est non ipse, sed is qui eum habet, si maluerit contra tabulas bonorum possessionem accipere. plane si hic adoptivus pater ante bonorum possessionem petitam emancipaverit eum, non cogetur ad collationem, et ita rescripto divorum fratrum expressum est: sed ita demum adoptivus emancipatus collatione fratres privabit, si sine fraude hoc factum sit.

Dig. 37.6.1.15

Ulpianus 40 ad ed.

Nec castrense nec quasi castrense peculium fratribus confertur: hoc enim praecipuum esse oportere multis constitutionibus continetur.

Dig. 37.6.1.16

Ulpianus 40 ad ed.

Sed an id, quod dignitatis nomine a patre datum est vel debetur, conferre quis in commune cogatur, videamus. et ait papinianus libro tertio decimo quaestionum non esse cogendum: hoc enim propter onera dignitatis praecipuum haberi oportere. sed si adhuc debeatur, hoc sic interpretandum est, ut non solus oneretur is qui dignitatem meruit, sed commune sit omnium heredum onus hoc debitum.

Dig. 37.6.1.17

Ulpianus 40 ad ed.

Qui ab hostibus captus post mortem patris redit, licet moriente patre nihil habuit, cum apud hostes fuerit, tamen et ad bonorum possessionem admittetur et conferet scilicet ea, quae moriente patre haberet, si ab hostibus captus non fuisset. sed et si redemptus ab hostibus mortis tempore patris inveniatur, aeque collatio erit facienda.

Dig. 37.6.1.18

Ulpianus 40 ad ed.

Si emancipato legatum fuerit, cum pater morietur, etiam hoc conferre debet.

Dig. 37.6.1.19

Ulpianus 40 ad ed.

Si ab ipso patre herede instituto filio eius fideicommissum fuerit relictum, cum morietur, an id conferendum est, quoniam utile est hoc fideicommissum? et eveniet, ut pro eo habeatur, atque si post mortem patris relictum fuisset, nec cogetur hic conferre, quia moriente eo non fuisset.

Dig. 37.6.1.20

Ulpianus 40 ad ed.

Emancipatus filius si dotem habeat ab uxore acceptam, hoc minus confert, etsi ante uxor decesserit.

Dig. 37.6.1.21

Ulpianus 40 ad ed.

Si impuberi adrogato secundum divi pii rescriptum quarta debetur, videndum est, an, si patris naturalis bonorum possessionem petat, conferre quartam debeat. quaestio in eo est, an heredi suo relinquat quartae actionem an non. et magis est, ut ad heredem transferat, quia personalis actio est: igitur etiam de quarta conferenda cavere eum oportebit, sed hoc ita demum, si iam nata est quartae petitio. ceterum si adhuc pater adoptivus vivat, qui eum emancipavit, dicendum est cautionem quoque cessare: praematura est enim spes collationis, cum adhuc vivat is, cuius de bonis quarta debetur.

Dig. 37.6.1.22

Ulpianus 40 ad ed.

Si is qui bona collaturus est habeat filium peculium castrense habentem, non cogetur utique peculium eius conferre. sed si iam tunc mortuus erat filius eius et castrense peculium habebit, cum morietur is cuius bonorum possessio petenda est: an conferre cogatur? cum autem vindicari id patri non sit necesse, dici oportebit conferendum: non enim nunc adquiritur, sed non adimitur. amplius dico, et si institutus fuerit a filio heres nec dum adierit habeatque substitutum, quia non magis nunc quaeritur peculium quam nunc non alienatur, conferri debere.

Dig. 37.6.1.23

Ulpianus 40 ad ed.

Confertur autem etiam si quid eius non fuerit, dolo malo autem factum sit, quo minus esset: sed hoc sic accipiendum est, ut hoc demum conferatur, quod eius esse desiit dolo malo: ceterum si id egit, ne adquireret, non venit in collationem: nam hic et sibi insidiatus est.

Dig. 37.6.1.24

Ulpianus 40 ad ed.

Portiones collationum ita erunt faciendae: ut puta duo sunt filii in potestate, unus emancipatus habens trecenta: ducenta fratribus confert, sibi centum: facit enim eis partem, quamvis is sit, cui conferri non solet. quod si duo sint filii emancipati habentes trecena et duo in potestate, aeque dicendum est singulos singulis, qui sunt in potestate, centena conferre, centena retinere, sed ipsos invicem nihil conferre. dotis quoque collatio in eundem modum fiet, ut quicumque confert, etiam suam personam numeret in partibus faciendis.

Dig. 37.6.2pr.

Paulus 41 ad ed.

Cum emancipati filii nomine nepotem postumum post avi mortem editum dicimus bonorum possessionem accipere oportere, necessarium erit dicere bona sua eum conferre, licet non potest dici mortis tempore avi bona habuisse, qui ipse nondum in rerum natura erat. igitur sive hereditatem a patre sive legatum acceperit, hoc conferre debebit.

Dig. 37.6.2.1

Paulus 41 ad ed.

Illud autem intellegendum est filium in bonis habere, quod deducto aere alieno superest. sed si sub condicione debeat, non statim id deducere debebit, sed id quoque conferre: contra autem caveri ei oportebit ab eo qui in potestate est, ut existente condicione defendatur pro ea parte quam contulit.

Dig. 37.6.2.2

Paulus 41 ad ed.

De illis, quae sine culpa filii emancipati post mortem patris perierunt, quaeritur, ad cuius detrimentum ea pertinere debeant. et plerique putant ea, quae sine dolo et culpa perierint, ad collationis onus non pertinere: et hoc ex illis verbis intellegendum est, quibus praetor viri boni arbitratu iubet conferri bona: vir autem bonus non sit arbitraturus conferendum id, quod nec habet nec dolo nec culpa desiit habere.

Dig. 37.6.2.3

Paulus 41 ad ed.

Id quoque, quod sub condicione ex stipulatu debetur emancipato, conferri debet. diversum est in legato condicionali, quia et si in potestate fuisset et post mortem patris condicio extitisset, ipse haberet actionem.

Dig. 37.6.2.4

Paulus 41 ad ed.

Emancipatus filius si iniuriarum habet actionem, nihil conferre debet: magis enim vindictae quam pecuniae habet persecutionem: sed si furti habeat actionem, conferre debebit.

Dig. 37.6.2.5

Paulus 41 ad ed.

Si tres emancipati, duo in potestate sint, gaius cassius libro septimo iuris civilis tertias conferendas putat, ut emancipati, quia invicem non conferunt, unius loco sint: nec indignari eos oportere, si plus conferant et minus accipiant, quia in potestate eorum fuerit bonorum possessionem omittere. iulianus quoque cassii sententiam sequitur.

Dig. 37.6.2.6

Paulus 41 ad ed.

Si ex emancipato filio nepos emancipatus mortuo patre simul et avo bonorum possessionem utriusque acceperit, cum uterque eorum suum heredem reliquerit: eo modo collatio explicari potest, ut, si verbi gratia centum in bonis habuit, et patruo quinquaginta et fratri quinquaginta conferre debet: hoc enim ratio facit, sive personas sive portiones numeremus.

Dig. 37.6.2.7

Paulus 41 ad ed.

Si duo nepotes ex filio mortuo emancipati bonorum possessionem avi petant, utrum dimidias an quartas patruo conferre debeant, quaeritur. et verius est semisses conferre eos oportere, quia et si vivo avo, cum in eius potestate essent, ducenta puta adquisissent, centum filius, centum duo fratres per hereditatem avi haberent.

Dig. 37.6.2.8

Paulus 41 ad ed.

Si duo emancipati bonorum possessionem petierint et unus contulerit, alter non contulerit, huius portio tantum ei qui in potestate est prodesse debet, non etiam emancipato, quoniam eius causa qui in potestate est denegantur ei actiones.

Dig. 37.6.2.9

Paulus 41 ad ed.

Si per inopiam emancipatus cavere non possit, non statim ab eo transferenda est possessio, sed sustinendum, donec possit invenire fideiussores, ut tamen de his, quae mora deteriora futura sunt, his qui in potestate sunt actio detur ipsique caveant in medium collaturos, si cautum eis fuerit.

Dig. 37.6.3pr.

Iulianus 23 Dig.

Praetor non sub condicione collationis bonorum possessionem contra tabulas promittit, sed demonstrat, quid data bonorum possessione fieri oportet. alioquin magna captio erit emancipati, si non aliter bonorum possessionem accipere intellegeretur, nisi cavisset de collatione: nam si interim ipse decessisset, heredi suo nihil relinqueret. item si frater eius decessisset, non admitteretur ad bonorum possessionem. quid ergo est? intellegendum est bonorum possessionem accipere et antequam caveat, sed si non caverit, ita observabitur, ut tota hereditas apud eum, qui in potestate fuerit, remaneat.

Dig. 37.6.3.1

Iulianus 23 Dig.

Emancipatus filius controversiam facit impuberi, qui se filium et in potestate patris fuisse dicit: quaero, si bona sua ei emancipatus conferre debeat. paulus notat: puto conferendum esse exacta cautione, ut victus sicut hereditatem, ita et quae collata sunt praestet.

Dig. 37.6.3.2

Iulianus 23 Dig.

Iulianus. quotiens contra tabulas bonorum possessio datur, emancipati bona sua conferre debent his solis, qui in potestate patris fuerint. hoc quemadmodum expediri oporteat, quaeri solet: nam si bona a patre relicta et emancipatorum in medium conferantur et ita viriles partes sumantur, eveniet, ut et emancipatis quoque collatio ab ipsis facta prosit. videamus ergo, ne commodissimum sit emancipatos quartam partem ex bonis paternis ferre, ex suis tertiam: quod dico, exemplo manifestius fiet. ponamus patrem quadringenta reliquisse et duos in potestate filios, duos emancipatos, ex quibus alterum centum, alterum sexaginta in bonis habere: is qui centum habebit centum triginta tria et trientem feret, is vero qui sexaginta contulerit centum viginti, atque ita eveniet, ut collationis emolumentum ad solos, qui in potestate remanserint, perveniat.

Dig. 37.6.3.3

Iulianus 23 Dig.

Emancipati bona sua conferre cum his, qui in potestate fuerunt, iubentur.

Dig. 37.6.3.4

Iulianus 23 Dig.

Quare sicut is, qui in potestate est, dotem uxoris praecipit, ita emancipatus quoque, quasi praecipiat, retinere debet.

Dig. 37.6.3.5

Iulianus 23 Dig.

Emancipatus praeteritus si, dum deliberat, caverit de bonorum collatione nec bonorum possessionem petierit, agente fratre ex stipulatu ipso iure tutus erit. sed et si pecuniam contulerit, condictione eam repetit: omissa enim bonorum possessione incipit pecunia sine causa esse apud heredem.

Dig. 37.6.3.6

Iulianus 23 Dig.

Qui duos filios in potestate habebat et ex uno eorum nepotem, emancipavit filium, ex quo nepotem habebat: deinde emancipatus factus procreavit filium, quem avus in locum filii adoptavit et vel intestatus, vel testamento facto praeterito emancipato filio, decessit: quaesitum est, quid de bonorum possessione, quid de collatione iuris esset. respondi bonorum, de quibus quaeritur, tres partes fieri debent, ex quibus una pertinet ad filium qui in potestate remansit, altera ad nepotem, qui in locum filii adoptatus est, tertia ad emancipatum filium et nepotem, qui in potestate remanserit, ita ut pater soli ei conferat, cum quo bonorum possessionem accipiat.

Dig. 37.6.4

Africanus 4 quaest.

Filium emancipatum dotem, quam filiae suae nomine dedit, conferre non debere, quia non, sicut in matris familias bonis esse dos intellegatur, ita et in patris, a quo sit profecta.

Dig. 37.6.5pr.

Ulpianus 79 ad ed.

Si quis filium habeat sui iuris et ex eo nepotem in potestate sua, consequenter erit dicendum, si nepos patris sui emancipati accipiat bonorum possessionem, de conferendis suis quoque bonis cavere eum debere et esse similem ei qui adoptavit: hoc enim divi fratres rescripserunt, ut ad collationem avus compellatur. plane eodem rescripto adiectum est sic: " nisi forte avus iste nullum ex his bonis fructum adquirere vult paratusque est de potestate nepotem dimittere, ut ad emancipatum omne emolumentum bonorum possessionis perveniat. nec idcirco ea filia, quae post emancipationem nata patri heres exstitit, iuste queri poterit", inquit, " quod eo facto a collationis commodo excluditur, cum avo quandoque defuncto ad bona eius simul cum fratre possit venire". haec in patre adoptivo ratio reddi non potest et tamen et ibi idem dicemus, si sine dolo malo emancipaverit.

Dig. 37.6.5.1

Ulpianus 79 ad ed.

Stipulatio autem collationis tunc committitur, cum interpellatus cum aliquo spatio, quo conferre potuit, non facit, maxime cum boni viri arbitratu collationem fieri edicto praetoris insertum est.

Dig. 37.6.5.2

Ulpianus 79 ad ed.

Sive ergo in totum collatio facta non est sive in partem facta, locum habebit haec stipulatio:

Dig. 37.6.5.3

Ulpianus 79 ad ed.

Et sive quis non conferat ex hac stipulatione sive dolo fecerit, quo minus conferat, quanti ea res erit, in tantam pecuniam condemnabitur.

Dig. 37.6.6

Celsus 10 Dig.

Dotem, quam dedit avus paternus, an post mortem avi mortua in matrimonio filia patri reddi oporteat, quaeritur. occurrit aequitas rei, ut, quod pater meus propter me filiae meae nomine dedit, perinde sit atque ipse dederim: quippe officium avi circa neptem ex officio patris erga filium pendet et quia pater filiae, ideo avus propter filium nepti dotem dare debet. quid si filius a patre exheredatus est? existimo non absurde etiam in exheredato filio idem posse defendi, nec infavorabilis sententia est, ut hoc saltem habeat ex paternis, quod propter illum datum est.

Dig. 37.6.7

Celsus 13 Dig.

Si nepotes in locum filii successerunt, una portio is conferri debet, uti bonorum possessionis unam partem habent: sed et ipsi ita conferre debent, quasi omnes unus essent.

Dig. 37.6.8

Papinianus 3 quaest.

Nonnumquam praetor variantem non repellit et consilium mutantis non aspernatur. unde quidam filium emancipatum, qui de bonis conferendis cavere fratribus noluit, audiendum postea putaverunt, si vellet oblata cautione beneficium bonorum possessionis exercere. tametsi responderi potest videri eum possessionem repudiasse, qui formam possessionis conservare noluit: sed benignior est diversa sententia, maxime cum de bonis parentis inter fratres disputetur. quem tamen facilius admittendum existimo, si intra tempus delatae possessionis cautionem offerat: nam post annum, quam delata esset bonorum possessio, voluntariam moram cautionis admittere difficilius est.

Dig. 37.6.9

Papinianus 5 resp.

Filius emancipatus intestati patris bonorum possessionem accepit. nepos ex eodem in familia retentus semissem hereditatis cum emolumento collationis habebit. idem nepos si postea possessionem intestati patris accipiat, fratri post emancipationem patris quaesito et in familia retento bona sua conferre cogetur.

Dig. 37.6.10

Scaevola 5 quaest.

Si filius in potestate heres institutus adeat et emancipato petente bonorum possessionem contra tabulas ipse non petat, nec conferendum est ei: et ita edictum se habet. scaevola: sed magis sentio, ut, quemadmodum pro parte hereditatem retinet iure eo, quod bonorum possessionem petere posset, ita et conferri ei debeat, utique cum iniuriam per bonorum possessionem patiatur.

Dig. 37.6.11

Paulus 11 resp.

Paulus respondit ea, quae post mortem patris filio reddi debuerunt, emancipatum filium, quamvis prius consecutus sit quam deberentur, fratri qui in potestate patris relictus est conferre non debere, cum post mortem patris non tam ex donatione, quam ex causa debiti ea possidere videatur.

Dig. 37.6.12

Paulus 41 ad ed.

Si praegnantem quis uxorem reliquerit et ea ventris nomine in possessionem missa fuerit, interim cessat collatio: nam antequam nascatur, non potest dici in potestate morientis fuisse: sed nato conferetur.

Dig. 37.7.0. De dotis collatione.

Dig. 37.7.1pr.

Ulpianus 40 ad ed.

Quamquam ita demum ad collationem dotis praetor cogat filiam, si petat bonorum possessionem, attamen etsi non petat, conferre debebit, si modo se bonis paternis misceat. et hoc divus pius ulpio adriano rescripsit etiam eam, quae non petierit bonorum possessionem, ad collationem dotis per arbitrum familiae herciscundae posse compelli.

Dig. 37.7.1.1

Ulpianus 40 ad ed.

Si in stipulatum deducta sit dos, si quidem ipsa mulier stipulata sit vel ipsi negotium gestum, aeque conferre cogetur: si vero alii quaesita est stipulatio, dicendum est cessare collationem. etsi tantum promissa sit dos, collatio eius fiet.

Dig. 37.7.1.2

Ulpianus 40 ad ed.

Si sit nepos et neptis ex eodem filio et dotata sit neptis, sit et filius non pater eorum: neptis omnem dotem soli fratri collatura est. emancipata autem neptis dotem et bona sua soli nepoti, non etiam patruo conferet.

Dig. 37.7.1.3

Ulpianus 40 ad ed.

Sed si sit neptis sola, non etiam nepos ex eodem, tunc confertur patruo itemque nepoti vel nepti ex alio.

Dig. 37.7.1.4

Ulpianus 40 ad ed.

Sed et si duae neptes sint ex diversis filiis, conferent et invicem et patruo, si ex eodem patre, tantum invicem conferent.

Dig. 37.7.1.5

Ulpianus 40 ad ed.

Cum dos confertur, impensarum necessariarum fit detractio, ceterarum non.

Dig. 37.7.1.6

Ulpianus 40 ad ed.

Quod si iam factum divortium est et maritus non sit solvendo, non debebit integra dos computari mulieri, sed id quod ad mulierem potest pervenire, hoc est quod facere maritus potest.

Dig. 37.7.1.7

Ulpianus 40 ad ed.

Si sub condicione pater vel extraneus dotem promiserit, cautione opus erit, ut tunc conferat mulier dotem, cum dotata esse coeperit.

Dig. 37.7.1.8

Ulpianus 40 ad ed.

Filiam, quae ab intestato patri heres sit, conferre quidem dotem oportet: consequens autem est, ut ex pollicitatione dotis pro parte dimidia fratrem suum liberet: aequius enim est in solidum de suo eam dotatam esse.

Dig. 37.7.1.9

Ulpianus 40 ad ed.

Si emancipatus filius, qui contra tabulas bonorum possessionem accepit, filiam dotatam habeat, non debet dotem eius conferre, quia in bonis eius non est.

Dig. 37.7.2

Gaius 14 ad ed. provinc.

Filia in adoptionem data et heres instituta debet sic ut emancipata non solum bona sua, sed et dotem, quae ad eam pertinere poterit, conferre. si adhuc pater adoptivus vivit, hic necesse habebit conferre.

Dig. 37.7.3

Ulpianus 4 disp.

Si filia fuerit heres instituta, collatione dotis non fungetur. unde si commisso ab altero edicto necesse habuerit contra tabulas bonorum possessionem accipere, dicendum est, quoniam nullam iniuriam fratri facit, non debere eam dotem conferre: nam quod habuit ex iudicio, convertitur ad contra tabulas bonorum possessionem. plane si ex minore parte fuit heres instituta et alia quaedam in eam contulit contra tabulas bonorum possessio aucta portione eius, dicendum erit collationis munere eam fungi, nisi forte contenta fuerit portione, ex qua instituta est: tunc enim dicendum est ex iudicio parentis eam venientem non debere munus collationis sustinere.

Dig. 37.7.4

Pomponius 3 ad q. muc.

Si pater pro filia dotem promiserit, deinde exheredatae vel etiam emancipatae et praeteritae legatum dederit, habebit filia etiam dotem praecipuam et legatum.

Dig. 37.7.5pr.

Papinianus 5 resp.

Filius emancipatus, qui possessionem contra tabulas accipere potuit, intestati patris possessionem accepit: atque ita filia, quae mansit in potestate, cum eiusdem familiae fratre heres instituta, possessionem intestati patris errorem fratris emancipati secuta accepit. dotem scripto fratri conferre non cogetur, cum ea possessio frustra petita sit et filia patris voluntatem fini virilis partis retineat, id est ut omnes trientes habeant et bonorum possessio unde liberi fingatur pro contra tabulas esse petita.

Dig. 37.7.5.1

Papinianus 5 resp.

Filia, quae soluto matrimonio dotem conferre debuit, moram collationi fecit: viri boni arbitratu cogetur usuras quoque dotis conferre, cum emancipatus frater etiam fructus conferat et filia partis suae fructus percipiat.

Dig. 37.7.6

Papinianus 6 resp.

Pater filium emancipatum heredem instituit et filiam exheredavit, quae inofficiosi lite perlata partem dimidiam hereditatis abstulit. non esse fratrem bona propria conferre cogendum respondi: nam et libertates competere placuit:

Dig. 37.7.7

Paulus 11 resp.

Nec ipsa dotem fratribus suis conferet, cum diverso iure fratres sunt heredes.

Dig. 37.7.8

Papinianus 11 resp.

Pater nubenti filiae quasdam res praeter dotem dedit eamque in familia retinuit ac fratribus sub condicione, si dotem et cetera quae nubenti tradidit contulisset, coheredem adscripsit. cum filia se bonis abstinuisset, fratribus res non in dotem datas vindicantibus exceptionem doli placuit obstare, quoniam pater filiam alterutrum habere voluit.

Dig. 37.7.9

Tryphonus 6 disp.

Fuit quaestionis, an, si sua heres filia patri cum fratribus contenta dote abstineat se bonis, compellatur eam conferre. et divus marcus rescripsit non compelli abstinentem se ab hereditate patris. ergo non tantum data apud maritum remanebit, sed et promissa exigetur etiam a fratribus et est aeris alieni loco: abscessit enim a bonis patris.

Dig. 37.8.0. De coniungendis cum emancipato liberis eius.

Dig. 37.8.1pr.

Ulpianus 40 ad ed.

Si quis ex his, quibus bonorum possessionem praetor pollicetur, in potestate parentis, cum is moritur, non fuerit, ei liberisque quos in eiusdem familia habuit, si ad eos hereditas suo nomine pertinebit neque notam exheredationis meruerunt, bonorum possessio eius partis datur, quae ad eum pertineret, si in potestate permansisset, ita ut ex ea parte dimidiam, reliquam liberi eius hisque dumtaxat bona sua conferat.

Dig. 37.8.1.1

Ulpianus 40 ad ed.

Hoc edictum aequissimum est, ut neque emancipatus solus veniat et excludat nepotes in potestate manentes, neque nepotes iure potestatis obiciantur patri suo.

Dig. 37.8.1.2

Ulpianus 40 ad ed.

Et in adoptionem datus filius et heres institutus ad hoc edictum pertinet, ut ei iungatur nepos, qui in avi sui naturalis potestate est. iungitur autem nepos patri suo emancipato, sive pater praeteritus sit sive institutus. et haec erit differentia inter in adoptionem datum et emancipatum, quod in adoptionem quidem dato non alias iungitur nisi instituto et alio committente edictum, emancipato autem, sive sit institutus emancipatus sive sit praeteritus.

Dig. 37.8.1.3

Ulpianus 40 ad ed.

Filio in potestate ex besse, emancipato ex triente herede instituto iulianus ait nepotem praeteritum petita contra tabulas bonorum possessione patruo sextantem, patri unciam ablaturum.

Dig. 37.8.1.4

Ulpianus 40 ad ed.

Si pater emancipatus exheredatus sit nepotibus ex eo praeteritis qui erant in potestate retenti, nepotes admittuntur: absurdum enim est, cum patri praeterito iungantur, instituto eo vel exheredato non admitti.

Dig. 37.8.1.5

Ulpianus 40 ad ed.

Sed et si patruus eorum, qui erat in potestate, sit praeteritus, pater exheredatus, debent nepotes admitti: nam exheredatus pater eorum pro mortuo habetur.

Dig. 37.8.1.6

Ulpianus 40 ad ed.

Si pater in potestate manens exheredatus vel institutus sit, nepotem ex eo sive in potestate manentem sive emancipatum ad bona avi neque vocari neque vocandum esse scaevola ait: totiens enim nepoti consulendum est, quotiens in potestate retentus est patre emancipato. liberos igitur in familia esse oportet, ut huic edicto locus sit, eius scilicet familia, cuius bonorum possessio petitur. sed et si postumus natus sit ex emancipato ante emancipationem conceptus, idem erit dicendum.

Dig. 37.8.1.7

Ulpianus 40 ad ed.

Liberos autem non omnes simul vocat praetor, sed gradatim, hoc est eos, qui sui sunt, scilicet nepotes, si sunt, si minus, eos qui sunt inferioris gradus: nec eos miscebimus. plane si sint ex emancipato nepos et ex nepote eius alio pronepos, dicendum erit utrumque ei iungi: ambo enim in suorum loco successerunt.

Dig. 37.8.1.8

Ulpianus 40 ad ed.

Si postliminio nepos redierit, dicendum est eum patri emancipato coniungi.

Dig. 37.8.1.9

Ulpianus 40 ad ed.

Si pater ex duobus filiis, quos in potestate habuit, alterum emancipaverit et nepotem ex eo in locum filii adoptaverit et praeterito emancipato decesserit: iulianus ait nepoti in locum filii adoptato succurri oportere, ut quasi filius portionem habeat, quam haberet et si extraneus adoptatus esset. sic fiet, inquit, ut filius, qui in potestate fuit, tertiam partem, nepos in locum filii adoptatus aliam tertiam emancipatus filius cum nepote altero retento in potestate partiatur: nec enim minus debet ferre nepos in locum filii adoptatus, quam si ab extraneo esset adoptatus.

Dig. 37.8.1.10

Ulpianus 40 ad ed.

Illud non interest, quota portio hereditatis ad nepotem pertineat, an perquam modicam: nam et si modica sit, attamen dicemus locum esse huic parti edicti.

Dig. 37.8.1.11

Ulpianus 40 ad ed.

Inter ipsum filium et liberos eius dividitur hereditas ita, ut ipse dimidium, liberi dimidium habeant. proinde pone solum esse filium emancipatum, esse et nepotes in potestate duos, neminem praeterea ex liberis: habebit emancipatus dimidiam partem hereditatis et aliam dimidiam duo nepotes, ut quadrantes ferant. sed si sit praeterea alius filius, eveniet, ut filius habeat dimidiam partem hereditatis, ex quo nepotes non sunt, alius filius semissem cum filiis suis ita, ut quadrantem hereditatis ipse ferat, quadrans inter liberos eius dividatur. sed si ambo filii sint emancipati et habeant singuli nepotes, eveniet, ut singuli singulos semisses cum nepotibus suis dividant ita, ut ipsi quidem quadrantes ferant, nepotes autem residuos quadrantes: et si alter duos filios, alter tres habeant, quadrans unus inter duos, alius inter tres dividitur.

Dig. 37.8.1.12

Ulpianus 40 ad ed.

Si quis ex nepotibus portionem suam omiserit, eveniet, ut non ad patrem eius, sed magis ad fratrem pertineat. sed et si omnes nepotes omittant, patruo nihil adcrescet, sed soli patri: quod et si pater omiserit, tunc patruo adcrescet.

Dig. 37.8.1.13

Ulpianus 40 ad ed.

Emancipatus filius si quidem nepotes in avi potestate non habeat, fratribus suis conferet: sed si sint nepotes, voluit eum praetor filiis suis qui sunt in potestate solis conferre, merito, quia veniendo ad bonorum possessionem illis solis iniuriam facit.

Dig. 37.8.1.14

Ulpianus 40 ad ed.

Nunc videamus, quantum eis conferat. et quidem semper, cum fratribus emancipatus confert, virilem sibi detrahit: utrum et in eo casu virilem detrahat, an vero, quia dimidiam partem habeat bonorum possessionis, dimidiam partem etiam bonorum suorum conferat? et puto dimidiam tantum bonorum eis partem conferre: nam et si alius emancipatus sit filius, alius in potestate retentus, filius emancipatus his duobus nepotibus unam partem tantum conferet et patruo eorum qui in potestate mansit unam partem dabit, tertiam ipse habebit: nec quod nepotibus confertur a patruo emancipato, ipsi patri conferent: hoc enim non de bonis avi, sed propter bona postea eis accessit.

Dig. 37.8.1.15

Ulpianus 40 ad ed.

Eveniet igitur, ut pater emancipatus si centum in bonis habeat, quinquaginta sibi detrahat, residua quinquaginta omnibus nepotibus, id est filiis suis conferat, aut si unum nepotem habeat et duos ex alio pronepotes, ita dividat quinquaginta, ut nepos habeat viginti quinque, pronepotes ex alio una viginti quinque: nam et bonorum possessionis ambo unam partem habent.

Dig. 37.8.1.16

Ulpianus 40 ad ed.

Si sit filius in potestate, alius emancipatus, ex defuncto unus nepos in potestate, alius nepos emancipatus, eleganter scaevola tractat, patruus emancipatus quantum nepotibus, quantum fratri suo conferat. et ait posse dici tres eum partes facere, unam sibi, unam fratri, unam istis collaturum: quamvis hi minus quam patruus ex hereditate avi concurrente patre sint habituri: quae sententia vera est.

Dig. 37.8.1.17

Ulpianus 40 ad ed.

Sed et si sint duo nepotes ex eodem filio hique emancipati sunt et ex altero eorum pronepos in potestate defuncti: partem habebit nepos unus, aliam nepos cum filio suo. sed et si nepos et ex alio nepote defuncto duo pronepotes: unus ex pronepotibus emancipatus soli fratri suo conferat vel, si frater non est, soli patruo, non etiam patruo maiori.

Dig. 37.8.2

Paulus 41 ad ed.

Nihil in hac parte edicti cavit praetor, ut legata exceptis personis nepos praestet: sed potest superior sermo et ad hunc casum referri. nam absurdum est patrem quidem eius legata praestare, ipsum vero plus habere, cum eadem condicione in eandem partem vocantur.

Dig. 37.8.3

Marcellus 9 Dig.

Qui duos filios habebat, alterum ex his emancipavit, nepotem ex eo in potestate retinuit: emancipatus filium sustulit et a patre exheredatus est: quaero, cum frater eius et ipse emancipatus praeteritus sit et nepotes ex emancipato filio ab avo heredes instituti, quid de bonorum possessione iuris sit? et quid intersit, si emancipatum quoque, ex quo nepotes erant nati, praeteritum esse ponamus. respondi, si filium retento ex eo nepote emancipaverit et emancipatus procreaverit filium et heres uterque nepos institutus fuerit, pater eorum exheredatus, alius filius praeteritus: solus filius praeteritus bonorum possessionem contra tabulas petere poterit: exheredatus enim obstat filiis suis post emancipationem susceptis. nepoti tamen retento in potestate bonorum possessio dari debet, quoniam, si pater eius emancipatus praeteritus esset, simul cum eo bonorum possessionem accipere posset propter id caput edicti, quod a iuliano introductum est, id est ex nova clausula, nec debet deterioris esse condicionis, quia pater eius exheredatus sit. idque ei praeterito quoque praestari oportebit. sed fratris eius, qui post emancipationem natus est, diversa condicio est: conservanda est tamen et illi ad virilem partem hereditas, sicut etiam imperator antoninus in persona nepotis ex filia rescripsit.

Dig. 37.8.4

Modestinus 6 pand.

Emancipato quis filio retinuit ex eo nepotes in potestate: filius emancipatus susceptis postea liberis decessit. placuit in avi potestate manentes simul cum his, qui post emancipationem nati sunt, decreto bonorum possessionem accipere, manente eo, ut, si velit avus sibi per nepotes adquiri, bona sua conferat aut nepotes emancipet, ut sibi emolumentum paternae hereditatis adquirant: idque ita divus marcus rescripsit.

Dig. 37.8.5

Modestinus 6 diff.

Si nepos exheredatus heres extiterit ei, quem avus heredem fecerat, deinde pater eius emancipatus testamento praeteritus accipiat contra tabulas patris bonorum possessionem, iungi patri suo nepos non poterit, sed ut extraneus excludetur, quia non suo nomine avo heres extiterit.

Dig. 37.8.6

Scaevola 5 quaest.

Si quis filium habens in potestate extraneum in nepotis locum quasi ex eo filio natum adoptet, mox filium emancipet, non iungetur hic nepos filio emancipato, quia desiit esse emancipato ex liberis.

Dig. 37.8.7

Tryphonus 16 disp.

Si post emancipationem filii susceptus ex eo fuerit nepos, conservanda illi erit portio, sed quanta videamus. finge enim patruo scripto heredi coheredem datum hunc nepotem, patrem autem eiusdem praeteritum accepisse contra tabulas bonorum possessionem. quod ad edictum praetoris attinet, semisses bonorum fient: nunc vero post constitutionem divi pii si conservatur pars nepoti, utrum virilis an quarta debeat servari? nam si in avi natus potestate fuisset, coniungebatur in unam partem cum patre suo. et proponamus esse alium ex eodem nepotem in familia avi: duo unam quartam habituri erant patre eorum accipiente contra tabulas bonorum possessionem, si fuissent in avi potestate: an ergo nunc in sescunciam tuendus sit, qui non in familia retentus est? et cui abscedet pars, quae huic cessura est, patri eius tantum an et patruo? et puto et patruo: nam et legatum eidem datum praestaret.

Dig. 37.9.0. De ventre in possessionem mittendo et curatore eius.

Dig. 37.9.1pr.

Ulpianus 41 ad ed.

Sicuti liberorum eorum, qui iam in rebus humanis sunt, curam praetor habuit, ita etiam eos, qui nondum nati sint, propter spem nascendi non neglexit. nam et hac parte edicti eos tuitus est, dum ventrem mittit in possessionem vice contra tabulas bonorum possessionis.

Dig. 37.9.1.1

Ulpianus 41 ad ed.

Praegnatem esse mulierem oportet omnimodo nec dicere se praegnatem sufficit: quare nec tenet datio bonorum possessionis, nisi vere praegnas fuit et mortis tempore et eo, quo mitti in possessionem petit.

Dig. 37.9.1.2

Ulpianus 41 ad ed.

Totiens autem mittitur in possessionem venter, si non est exheredatus et id quod in utero erit inter suos heredes futurum erit. sed et si incertum sit, aliquo tamen casu possit existere, quo qui editur suus futurus sit, ventrem mittemus: aequius enim est vel frustra nonnumquam impendia fieri quam denegari aliquando alimenta ei, qui dominus bonorum aliquo casu futurus est.

Dig. 37.9.1.3

Ulpianus 41 ad ed.

Quare et si ita exheredatio facta sit: " si mihi filius unus nascetur, exheres esto", quia filia nasci potest vel plures filii vel filius et filia, venter in possessionem mittetur: satius est enim sub incerto eius qui edetur ali etiam eum qui exheredatus sit, quam eum qui non sit exheredatus fame necari: ratumque esse debet, quod deminutum est, quamvis is nascatur, qui repellitur.

Dig. 37.9.1.4

Ulpianus 41 ad ed.

Idem erit dicendum et si mulier, quae fuit in possessione, abortum fecisset.

Dig. 37.9.1.5

Ulpianus 41 ad ed.

Sed et si sub condicione postumus sit exheredatus, pendente condicione pedii sententiam admittimus existimantis posse ventrem in possessionem mitti, quia sub incerto utilius est ventrem ali.

Dig. 37.9.1.6

Ulpianus 41 ad ed.

Si venter ab institutis exheredatus sit, a substitutis praeteritus, Marcellus negat in possessionem eum mitti posse viventibus institutis, quia exheredatus est: quod verum est.

Dig. 37.9.1.7

Ulpianus 41 ad ed.

Per contrarium autem si ab institutis praeteritus sit venter, a substitutis exheredatus, vivis institutis mittendus est in possessionem: quod si non vivant, negat mittendum, quia ad eum gradum devoluta hereditas est, a quo exheredatus est.

Dig. 37.9.1.8

Ulpianus 41 ad ed.

Si filius ab hostibus captus sit, uxor eius praegnas in possessionem soceri bonorum mittenda est: nam aliquo casu spes est id quod nascitur inter suos heredes futurum, ut puta si pater eius apud hostes decedat.

Dig. 37.9.1.9

Ulpianus 41 ad ed.

Sed et si quis ventrem exheredasset: " qui mihi intra menses tres mortis meae natus erit, exheres esto" vel " qui post tres menses", venter in possessionem utique mittetur, quia aliquo casu suus heres futurus est: et sane benigniorem esse praetorem in hanc partem oportebit, ne qui speratur ante vitam necetur.

Dig. 37.9.1.10

Ulpianus 41 ad ed.

Rectissime autem praetor nusquam uxoris fecit mentionem, quia fieri potest, ut mortis tempore uxor non fuerit, quae se ex eo praegnatem dicit.

Dig. 37.9.1.11

Ulpianus 41 ad ed.

Etiam ex emancipato venter ad possessionem admittitur. unde apud iulianum libro vicensimo septimo digestorum quaeritur, si emancipatus quis sit uxore iam praegnate, deinde decessisset et pater eius mortuus sit, an venter in possessionem emancipati patris mitti possit. et rectissime scripsit rationem non esse, cur venter, quem edictum admittit, repelli debeat: est enim aequissimum partui consuli, qui natus bonorum possessionem accepturus est. sed et si avus viveret, similiter ventrem admittemus.

Dig. 37.9.1.12

Ulpianus 41 ad ed.

Si filius in adoptionem datus decesserit praegnate uxore, tunc deinde adoptator defunctus fuerit, mittetur venter in possessionem avi adoptivi. sed an etiam in eius, qui in adoptionem dederat filium, mittetur, videamus: et si hic nepos postumus heres ab avo naturali institutus sit, mittetur in possessionem, quia et nato ei, si nemo ex liberis sit alius bonorum possessio secundum tabulas dari potest, aut, si sint liberi praeteriti, etiam contra tabulas cum ipsis potest accipere.

Dig. 37.9.1.13

Ulpianus 41 ad ed.

Si pater nuru praegnate filium emancipaverit, non in totum repelli uterus debet: namque natus solet patri ex novo edicto iungi. et generaliter quibus casibus patri iungitur natus, admittendus est venter in possessionem.

Dig. 37.9.1.14

Ulpianus 41 ad ed.

Si ea, quae in possessionem vult ire, uxor negetur vel nurus vel esse vel fuisse vel ex eo praegnas non esse contendatur: decretum interponit praetor ad exemplum carboniani edicti. et ita divus hadrianus claudio proculo praetori rescripsit, ut summatim de re cognosceret et, si manifesta calumnia videbitur eius, quae ventris nomine in possessione mitti desiderat, nihil novi decerneret: si dubitari de re poterit, operam daret, ne praeiudicium fiat ei, quod in utero est, sed ventrem in possessionem mitti oportet. apparet itaque, nisi manifesta sit calumniatrix mulier, debere eam decretum eligere: et ubi omnino iuste dubitari poterit, an ex eo praegnas sit, decreto tuenda est, ne praeiudicium partui fiat. idemque est et si status mulieri controversia fiat.

Dig. 37.9.1.15

Ulpianus 41 ad ed.

Et generaliter ex quibus causis carbonianam bonorum possessionem puero praetor dare solitus est, ex hisdem causis ventri quoque subvenire praetorem debere non dubitamus, eo facilius, quod favorabilior est causa partus quam pueri: partui enim in hoc favetur, ut in lucem producatur, puero, ut in familiam inducatur: partus enim iste alendus est, qui et si non tantum parenti, cuius esse dicitur, verum etiam rei publicae nascitur.

Dig. 37.9.1.16

Ulpianus 41 ad ed.

Si quis prima uxore praegnate facta mox aliam duxerit eamque praegnatem fecerit diemque suum obierit, edictum ambobus sufficiet, videlicet cum nemo contendit nec calumniatricem dicit.

Dig. 37.9.1.17

Ulpianus 41 ad ed.

Quotiens autem venter in possessionem mittitur, solet mulier curatorem ventri petere, solet et bonis. sed si quidem tantum ventri curator datus sit, creditoribus permittendum in custodia bonorum esse: si vero non tantum ventri, sed etiam bonis curator datus est, possunt esse securi creditores, cum periculum ad curatorem pertineat. idcirco curatorem bonis ex inquisitione dandum, idoneum scilicet, oportet creditores curare vel si quis alius est, qui non edito partu successionem speret.

Dig. 37.9.1.18

Ulpianus 41 ad ed.

Hoc autem iure utimur, ut idem curator et bonis et ventri detur: sed si creditores instant vel qui sperat se successurum, diligentius atque circumspectius id fieri debebit et plures, si desiderentur, dandi sunt.

Dig. 37.9.1.19

Ulpianus 41 ad ed.

Mulier autem in possessionem missa ea sola, sine quibus fetus sustineri et ad partum usque produci non possit, sumere ex bonis debet: et in hanc rem curator constituendus est, qui cibum potum vestitum tectum mulieri praestet pro facultatibus defuncti et pro dignitate eius atque mulieris.

Dig. 37.9.1.20

Ulpianus 41 ad ed.

Deminutio autem ad hos sumptus fieri debet primum ex pecunia numerata: si ea non fuerit, ex his rebus, quae patrimonia onerare magis impendio quam augere fructibus consueverunt.

Dig. 37.9.1.21

Ulpianus 41 ad ed.

Item si periculum est, ne interim res usu capiantur, ne debitores tempore liberentur, idem curare debet.

Dig. 37.9.1.22

Ulpianus 41 ad ed.

Ita igitur curam hoc quoque officio administrabit, quo solent curatores atque tutores pupillorum.

Dig. 37.9.1.23

Ulpianus 41 ad ed.

Eligitur autem curator aut ex his, qui tutores dati sunt postumo, aut ex necessariis adfinibusque aut ex substitutis aut ex amicis defuncti aut ex creditoribus, sed utique is, qui idoneus videbitur: aut si de personis eorum quaestio moveatur, vir bonus eligitur.

Dig. 37.9.1.24

Ulpianus 41 ad ed.

Quod si nondum sit curator constitutus (quia plerumque aut non petitur aut tardius petitur aut serius datur), servius aiebat res hereditarias heredem institutum vel substitutum obsignare non debere, sed tantum pernumerare et mulieri adsignare.

Dig. 37.9.1.25

Ulpianus 41 ad ed.

Idem ait ad custodienda ea, quae sine custodia salva esse non possunt, custodem ab herede ponendum (ut puta pecoris, et si nondum messis vindemiave facta sit): et si fuerit controversia, quantum deminui oporteat, arbitrum dandum.

Dig. 37.9.1.26

Ulpianus 41 ad ed.

Curatore autem constituto haec omnia cessare puto: conscribere tamen curatori debent et vendenti et inventarium rerum facienti.

Dig. 37.9.1.27

Ulpianus 41 ad ed.

Tamdiu autem venter in possessionem esse debet, quamdiu aut pariat aut abortum faciat aut certum sit eam non esse praegnatem.

Dig. 37.9.1.28

Ulpianus 41 ad ed.

Et si sciens prudensque se praegnatem non esse consumpserit, de suo eam id consumpsisse labeo ait.

Dig. 37.9.2

Paulus 41 ad ed.

Sed et si eum ediderit qui repulsus est, discedere debet.

Dig. 37.9.3

Hermogenianus 3 iuris epit.

Sumptus autem ab ea facti bona fide non repetuntur.

Dig. 37.9.4pr.

Paulus 41 ad ed.

Habitatio quoque, si domum defunctus non habuit, conducenda erit mulieri.

Dig. 37.9.4.1

Paulus 41 ad ed.

Servis quoque mulieris, qui necessarii sunt ad ministerium eius secundum dignitatem, cibaria praestanda sunt.

Dig. 37.9.5pr.

Gaius 14 ad ed. provinc.

Curator ventris alimenta mulieri statuere debet. nec ad rem pertinet, an dotem habeat, unde sustentare se possit, quia videntur quae ita praestantur ipsi praestari qui in utero est.

Dig. 37.9.5.1

Gaius 14 ad ed. provinc.

Curator ventri datus solvendi debiti rationem habere debet, utique eius, quod sub poena aut pignoribus pretiosis debetur.

Dig. 37.9.6

Ulpianus 41 ad ed.

Extraneo postumo herede instituto non aliter venter in possessionem mittitur, nisi mater aliunde se alere non possit, ne forte ei, qui natus bonorum possessor futurus est, denegasse alimenta videamur.

Dig. 37.9.7pr.

Ulpianus 47 ad ed.

Ubicumque ab intestato admittitur quis, illic et venter admittitur, scilicet si talis fuerit is qui in utero est, ut, si in rebus humanis esset, bonorum possessionem petere posset: ut in omnibus partibus edicti pro superstite habeatur is qui in utero est.

Dig. 37.9.7.1

Ulpianus 47 ad ed.

Interdum non passim, sed cum causae cognitione mitti venter in possessionem debet, si qui sit, qui controversiam referat. sed hoc tantum ad eum ventrem erit referendum, qui cum liberis admittitur. ceterum si mittatur unde legitimi vel qua alia ex parte, dicendum est non esse causae cognitionem necessariam: nec enim aequum est in tempus pubertatis ventrem vesci de alieno in tempus pubertatis dilata controversia. sed enim placet omnes controversias, quae quasi status controversiam continent, in tempus pubertatis differri, sed non ut in possessione sit status controversia dilata, sed sine possessione.

Dig. 37.9.7.2

Ulpianus 47 ad ed.

Quamvis autem praetor ventrem in possessionem mittat cum his, quibus possessionem dederit, attamen etiam solus venter admittetur ad bonorum possessionem.

Dig. 37.9.8

Paulus 1 de adult.

Si ventris nomine mulier missa sit in possessionem, divus hadrianus calpurnio flacco differendam accusationem adulterii rescripsit, ne quod praeiudicium fieret nato.

Dig. 37.9.9

Ulpianus 15 ad sab.

Cum venter mittitur in possessionem, quod in ventris alimenta deminutum est detrahitur velut aes alienum.

Dig. 37.9.10

Paulus 7 quaest.

Postumus natus quocumque tempore, qui tamen testatoris morte conceptus iam erit, potest agnoscere bonorum possessionem: nam et ventrem praetor ex omnibus partibus edicti mittit in possessionem bonorum, non missurus scilicet, si ei nato daturus non esset bonorum possessionem.

Dig. 37.10.0. De carboniano edicto.

Dig. 37.10.1pr.

Ulpianus 41 ad ed.

Si cui controversia fiet, an inter liberos sit, et impubes sit, causa cognita perinde possessio datur ac si nulla de ea re controversia esset et iudicium in tempus pubertatis causa cognita differtur.

Dig. 37.10.1.1

Ulpianus 41 ad ed.

Eum qui controversiam facit, si pro pupillo satis ei non detur, simul in possessionem eorum bonorum esse praetor iubet.

Dig. 37.10.1.2

Ulpianus 41 ad ed.

Non tantum masculi, sed et feminae ex virili sexu descendentes carboniani commodum habebunt.

Dig. 37.10.1.3

Ulpianus 41 ad ed.

Et generaliter dicimus his demum carbonianum competere, quibus contra tabulas bonorum possessio competit, his vero non competere, qui repelluntur a contra tabulas bonorum possessione.

Dig. 37.10.1.4

Ulpianus 41 ad ed.

Si quis non ab aliquo hanc controversiam patiatur, quod inter liberos non sit, sed ab ipso patre, ut puta nepos, qui se retentum in potestate avi dicit, ab emancipato patre, cui iungi desiderat, an differri debeat? et magis est, ut differatur: parvi enim refert, quis ei controversiam faciat, cum et si testator eum negaverit ex liberis, non tamen exheredem scripserit, carboniano possit esse locus.

Dig. 37.10.1.5

Ulpianus 41 ad ed.

Sed et si quis non tantum ex liberis negetur esse, verum servus etiam esse dicatur forte ex ancilla editus, iulianus scripsit adhuc carboniano locum esse: quod et divus pius rescripsit: nam vel magis consulendum est his quibus maius periculum intenditur. nam si aliter observetur, inventa erit ratio, quemadmodum audacissimus quisque maiore iniuria impuberem adficiat, quod et plura et graviora de eo mentiatur.

Dig. 37.10.1.6

Ulpianus 41 ad ed.

Sed et si ipse defunctus servus esse dicatur, idem erit dicendum.

Dig. 37.10.1.7

Ulpianus 41 ad ed.

Sed et si fiscus facit impuberi controversiam, carbonianum edictum potest locum habere.

Dig. 37.10.1.8

Ulpianus 41 ad ed.

Pomponius libro septuagensimo nono ad edictum scripsit, cum filius heres vel exheres scriptus est, carbonianum edictum cessare, quamvis filius esse negetur, quia vel quasi scriptus habet bonorum possessionem, etiamsi filius non est, vel repellitur quasi exheredatus, etsi filius esse videatur: nisi forte postumus, inquit, est heres institutus et natus negetur esse filius, sed subiectus esse dicetur, quo casu eius partis tantum danda est ei bonorum possessio, ex qua institutus est.

Dig. 37.10.1.9

Ulpianus 41 ad ed.

Idem ait, cum quidam exheredem scripsisset filium, quod diceret eum ex adulterio conceptum, quia fieret ei haec controversia, an inter liberos sit, ex hac parte edicti ei bonorum possessionem competere, cum, si sine elogio exheres scriptus esset, non haberet bonorum possessionem. idemque et si ita sit scriptum: " quisquis est, qui filium meum se esse dicit, exheres esto", quia non est filius exheredatus.

Dig. 37.10.1.10

Ulpianus 41 ad ed.

Si quis filium suum heredem instituerit ex minima parte sic " ille qui ex illa natus est heres esto", non quasi filium suum, deinde hic contendat patrem intestatum decessisse seque ei suum heredem esse, interest, coheredes eius utrum negent eum filium an vero contendunt testamentum valere. si testamentum valere contendunt, controversia non est differenda et carbonianum cessat: quod si filium eum negant et ad ipsos potius quasi ad consanguineos hereditatem pertinere dicunt, data bonorum possessione impuberi controversia in tempus pubertatis differtur.

Dig. 37.10.1.11

Ulpianus 41 ad ed.

Si mater subiecti partus arguatur, an differenda sit quaestio propter statum pueri, quaeritur. et si quidem pupilli status in dubium devocatur, differri quaestio in tempus pubertatis debet, cum metus potest esse, ne minus idonee defendatur: cum vero mater rea postulatur utique integra fide, et maiore constantia causam defensura recenti tempore, dubium non est cognitionem fieri oportere, et post eventum cognitionis, si suppositum apparuerit, actiones hereditariae puero denegandae sunt omniaque perinde habenda, atque si heres scriptus non fuisset.

Dig. 37.10.2

Marcianus 14 inst.

Licet mulier, quae partum subiecisse dicitur, decesserit, tamen, si participes maleficii sint, in praesenti cognoscendum est. si autem nemo sit qui puniri possit, quia omnes participes facinoris forte decesserint, secundum carbonianum edictum in tempus pubertatis differenda cognitio est.

Dig. 37.10.3pr.

Ulpianus 41 ad ed.

Carbonianum edictum aptatum est ad contra tabulas bonorum possessionem et intestati, cum et in secundum tabulas in quibusdam casibus possit videri necessarium edictum, veluti si pater familias ita instituerit: " postumus heres esto" vel " postuma heres esto" et negetur esse verum, quod in testamento scriptum est.

Dig. 37.10.3.1

Ulpianus 41 ad ed.

Et cum de fideicommissis vel de legatis quaeritur, differri potest causa in tempus pubertatis: id enim divus pius claudio hadriano rescripsit.

Dig. 37.10.3.2

Ulpianus 41 ad ed.

Quamvis scripto heredi non promitti bonorum possessionem ex edicto carboniano certum sit, tamen quaestionem status in tempus pubertatis differri procul dubio est. ergo si quidem de parentis bonis simul et de statu controversia fiat, hoc edictum locum habebit: sin vero tantum status, differetur quaestio in tempus pubertatis, sed non ex carboniano, sed ex constitutionibus.

Dig. 37.10.3.3

Ulpianus 41 ad ed.

Puberi quamvis minori viginti quinque annis carbonianum non succurrit. sed et si, cum esset pubes, quasi impubes obrepserit bonorumque possessionem accepit, dicendum erit nihil eum egisse: nam et si impubes esset mox pubes factus, finiretur bonorum possessionis emolumentum.

Dig. 37.10.3.4

Ulpianus 41 ad ed.

Causae cognitio in eo vertitur, ut, si manifesta calumnia appareret eorum, qui infantibus bonorum possessionem peterent, non daretur bonorum possessio. summatim ergo, cum petitur ex carboniano bonorum possessio, debet praetor cognoscere: et si quidem absolutam causam invenerit evidenterque probatur filium non esse, negare debet ei bonorum possessionem carbonianam: si vero ambiguam causam, hoc est vel modicum pro puero facientem, ut non videatur evidenter filius non esse, dabit ei carbonianam bonorum possessionem.

Dig. 37.10.3.5

Ulpianus 41 ad ed.

Duae autem sunt causae cognitiones, una dandae carbonianae possessionis, quae habet commodum illud, ut, perinde atque si nullam controversiam pateretur impubes, possessionem accipiat, alia causae cognitio illa, utrum differri debeat in tempus pubertatis cognitio an repraesentari. hoc autem diligentissime praetori examinandum est, an expediat pupillo repraesentari cognitionem an potius differri in tempus pubertatis, et maxime inquirere hoc a cognatis matre tutoribusque pupilli debet. finge esse testes quosdam, qui dilata controversia aut mutabunt consilium aut decedent aut propter temporis intervallum non eandem fidem habebunt: vel finge esse anum obstetricem vel ancillas, quae veritatem pro partu possunt insinuare, vel instrumenta satis idonea ad victoriam vel quaedam alia argumenta, ut magis damnum patiatur pupillus, quod differtur cognitio, quam compendium, quod non repraesentatur: finge pupillum satisdare non posse et admissos in possessionem, qui de hereditate controversiam faciunt, multa posse subtrahere novare moliri: aut stulti aut iniqui praetoris erit rem in tempus pubertatis differre cum summo eius incommodo, cui consultum velit. divus etiam hadrianus ita rescripsit: " quod in tempus pubertatis res differri solet, pupillorum causa fit, ne de statu periclitentur, antequam se tueri possint. ceterum si idoneos habeant, a quibus defendantur, et tam expeditam causam, ut ipsorum intersit mature de ea iudicari, et tutores eorum iudicio experiri volunt: non debet adversus pupillos observari, quod pro ipsis excogitatum est, et pendere status eorum, cum iam possit indubitatus esse".

Dig. 37.10.3.6

Ulpianus 41 ad ed.

Si mater impuberis subiecti partus rea postulata causam optinuerit, poterit adhuc superesse status quaestio, ut puta si dicatur aut non esse ex ipso defuncto conceptus aut ex ipso quidem, sed non ex matrimonio editus.

Dig. 37.10.3.7

Ulpianus 41 ad ed.

Si is, qui status controversiam filio faciebat et solum se filium dicebat, decesserit et mater ei heres extiterit, si quidem eandem controversiam impuberi mater faciat, qui se ex alia natum adfirmat, quam filius eius faciebat, scilicet ut neget eum filium, idcircoque ad se totam hereditatem ex persona filii sui defuncti pertinere debere: in tempus pubertatis differri iulianus ait, quia nihil interest, suo an hereditario nomine controversiam faciat. plane si mater concedat hunc quoque defuncti filium esse idcircoque partem dimidiam hereditatis solam sibi vindicet ex bonis paternis, non erit iudicium in tempus pubertatis differendum: non enim de paternis, sed de fraternis bonis impuberi fit controversia.

Dig. 37.10.3.8

Ulpianus 41 ad ed.

Ibidem iulianus quaerit: si duo impuberes patiantur status controversiam et alter eorum pubuerit, exspectari alterius quoque pubertas debet, scilicet ut sic de utriusque statu agatur, ne aliquod praeiudicium fiat impuberi per puberis personam.

Dig. 37.10.3.9

Ulpianus 41 ad ed.

Parvi refert, utrum petitor sit impubes an possessor, qui status controversiam patitur: nam sive possideat sive petat, in tempus pubertatis differtur.

Dig. 37.10.3.10

Ulpianus 41 ad ed.

Si duo impuberes invicem faciant status controversiam, interest, utrum quisque se solum filium dicat an et se. nam si se solum dicat filium, dicendum est debere controversiam ad utriusque pubertatem differri, sive petitor sive possessor sit. si vero alter se solum, alter et se dicat, si quidem ille adoleverit qui se solum dicat, adhuc differtur controversia propter pueritiam eius qui et se dicit, sed de parte, non de toto: de parte enim utique nec litigatur. quod si ille adoleverit qui et se dicit, ille impubes sit qui se solum dicit, non differtur controversia: nec enim patitur impubes status controversiam, sed facit, cum hic pubes et se dicat, illum non neget filium.

Dig. 37.10.3.11

Ulpianus 41 ad ed.

Si quis liber et heres esse iussus status controversiam impuberi faciat, qui filius esse et testamentum patris rupisse dicitur, iulianus ait utraque iudicia et hereditatis et libertatis in tempus pubertatis differenda: neutrum enim eorum ita explicari potest, ut non condicioni eius, qui se filium esse contendat, praeiudicetur. ceterae quoque libertatis quaestiones ex testamento pendentes in tempus pubertatis differuntur.

Dig. 37.10.3.12

Ulpianus 41 ad ed.

Cum extaret impubes, qui se filium defuncti diceret, debitoresque negent eum filium esse defuncti et intestati hereditatem ad adgnatum, qui forte trans mare aberit, pertinere: necessarium erit puero carbonianum edictum. sed et absenti erit prospiciendum, ut cautio praestetur.

Dig. 37.10.3.13

Ulpianus 41 ad ed.

Missum autem ex carboniano in possessionem student praetores possessorem constituere. quod si coeperit aut hereditatem petere quasi bonorum possessor carbonianus aut singulas res, rectissime iulianus libro vicensimo quarto digestorum scribit exceptione eum summovendum: contentus enim esse debet hac praerogativa, quod possessorem eum praetor tantisper constituit. si igitur vult hereditatem aut singulas res petere, petat, inquit, directa actione quasi heres, ut ea petitione iudicari possit, an quasi ex liberis heres sit, ne praesumptio carbonianae bonorum possessionis iniuriam adversariis afferat: quae sententia habet rationem et aequitatem.

Dig. 37.10.3.14

Ulpianus 41 ad ed.

Haec autem possessio intra annum datur, sicuti ordinariae quoque, quae liberis dantur, intra annum dantur.

Dig. 37.10.3.15

Ulpianus 41 ad ed.

Sed oportebit hunc, qui se filium dicit, non solum carbonianam bonorum possessionem accipere, verum etiam ordinariam agnoscere.

Dig. 37.10.3.16

Ulpianus 41 ad ed.

Currunt autem tempora ad utramque bonorum possessionem separatim, ordinariae quidem, ex quo patrem suum decessisse scit et facultatem bonorum possessionis petendae habuit, carbonianae vero ex eo tempore, ex quo controversiam sibi fieri cognovit.

Dig. 37.10.4

Iulianus 24 Dig.

Ideo si ex prima parte edicti bonorum possessionem non petierit, alias poterit ex sequenti parte edicti ad exemplum carboniani accipere bonorum possessionem, alias non poterit. nam si confestim post patris mortem controversia ei facta fuerit, an inter liberos bonorum possessionem accipere possit, simul ad utriusque edicti causam annus cessisse videbitur: si vero interposito tempore scierit controversiam sibi moveri, poterit etiam finito tempore, intra quod ex prima parte bonorum possessionem acceperat, ex sequenti bonorum possessionem petere, quam cum acceperit, perpetuo possessoriis actionibus utetur: sed si post pubertatem contra eum iudicatum fuerit, denegabuntur ei actiones.

Dig. 37.10.5pr.

Ulpianus 41 ad ed.

Sed si is, qui controversiam impuberi facit, ex liberis sit, eveniet, ut, sive caveat hic, cui status fit controversia, sive non caveat, attamen simul sit in possessionem.

Dig. 37.10.5.1

Ulpianus 41 ad ed.

Si impubes non defendatur idcircoque missus sit in possessionem etiam adversarius eius, actiones hereditarias quis exercebit? et ait iulianus libro vicensimo quarto digestorum curatorem constitui debere, qui omnia curet actiones exerceat. denique scribit etiam eum, qui cum impubere missus est in possessionem, actiones posse adversus curatorem intendere nec esse prohibendum: nullum enim per hoc praeiudicium hereditati fieri: nam et adversus ipsum pupillum, si satis dedisset, recte experiretur.

Dig. 37.10.5.2

Ulpianus 41 ad ed.

Quotiens impubes satis non dat, mittitur in possessionem adversarius eius, sive satis det sive non det. si velit adversarius committi sibi administrationem, satis dare debet pupillo: ceterum si satis non det, debet curator constitui, per quem bona administrentur. adversarius autem si satis dederit, res, quae tempore periturae aut deteriores futurae sint, distrahere debet: item a debitoribus, qui tempore liberabuntur, exigere debet: cetera cum pupillo possidebit.

Dig. 37.10.5.3

Ulpianus 41 ad ed.

An autem vescendi causa deminuere possit is qui ex carboniano missus est, videamus. et si quidem satis impubes dedit, sive decrevit praeses sive non, deminuet vescendi causa et hoc minus restituet hereditatis petitori. quod si satis dare non potuit et aliter alere se videtur non posse, deminuendi causa usque ad id, quod alimentis eius necessarium est, mittendus est. nec mirum debet videri hereditatem propter alimenta minui eius, quem fortasse iudicabitur filium non esse, cum omnium edictis venter in possessionem mittatur et alimenta mulieri praestentur propter eum, qui potest non nasci, maiorque cura debeat adhiberi, ne fame pereat filius, quam ne minor hereditas ad petitorem perveniat, si apparuit filium non esse.

Dig. 37.10.5.4

Ulpianus 41 ad ed.

Maxime autem puto, si missus fuerit in possessionem adversarius, desiderandum a praetore, ne instrumenta in possessionem suam redigat: ceterum decipietur pupillus, dum vel instruitur adversarius eius vel etiam intercipere ea potest.

Dig. 37.10.5.5

Ulpianus 41 ad ed.

Cum autem in satisdatione et pupillus et adversarius eius cessant, curator constituendus est, qui bona administret et quandoque ei qui iudicio vicerit restituat. quid tamen, si tutores pupilli velint administrare? non erunt audiendi, nisi satis dederint nomine pupilli aut curatores quoque idem ipsi sint constituti.

Dig. 37.10.6pr.

Paulus 41 ad ed.

De bonis matris an decretum interponendum sit, quaeritur. et decretum quidem non est interponendum, dilatio autem longissima danda est, quae in tempus pubertatis extrahet negotium.

Dig. 37.10.6.1

Paulus 41 ad ed.

Plane si simul de paternis et de maternis bonis controversia sit vel etiam de fratris, et has controversias in tempus pubertatis differendas esse iulianus respondit.

Dig. 37.10.6.2

Paulus 41 ad ed.

Huic autem edicto locus est etiam si ab intestato ad bonorum possessionem veniant liberi, tametsi ex inferioribus partibus petant, qua legitimi vocantur, quoniam sui sunt, vel ex illa, qua cognatis datur.

Dig. 37.10.6.3

Paulus 41 ad ed.

Ita demum autem huic edicto locus est, si status et hereditatis controversia sit: nam si tantum status (quod puta servus dicatur esse) nec ulla bonorum controversia sit, hoc casu liberale iudicium statim explicandum erit.

Dig. 37.10.6.4

Paulus 41 ad ed.

Qui pupillo controversiam facit si simul cum eo in possessionem missus est, ali ex bonis defuncti non debebit nec quicquam de bonis deminuere: haec enim possessio pro satisdatione cedit.

Dig. 37.10.6.5

Paulus 41 ad ed.

Non solum alimenta pupillo praestari debent, sed et in studia et in ceteras necessarias impensas debet impendi pro modo facultatium.

Dig. 37.10.6.6

Paulus 41 ad ed.

Post pubertatem quaeritur, an actoris partes sustinere debeat qui ex carboniano missus est in possessionem. et responsum est rei partes eum sustinere debere, maxime si cavit. sed et si non caverat, si nunc paratus sit cavere, quasi possessor conveniendus est: quod si nunc non caveat, possessio transfertur adversario satis offerente: perinde atque si nunc primum ab eo peteretur hereditas.

Dig. 37.10.7pr.

Iulianus 24 Dig.

Si impubes negetur iure adoptatus et ideo paternae hereditatis ei controversia fiat, non erit iniquum simile carboniano decretum interponi.

Dig. 37.10.7.1

Iulianus 24 Dig.

Item si impubes in adoptionem datus esse dicatur et ideo negetur naturalis patris hereditas ad eum pertinere, quia et hoc casu quaeritur, an iure filii hereditatem optinere possit, locus erit carboniano edicto.

Dig. 37.10.7.2

Iulianus 24 Dig.

Cum vero proponitur exheredatus esse, non est necessarium controversiam in tempus pubertatis differri, quia non de ipsius filii, sed de testamenti iure quaeritur.

Dig. 37.10.7.3

Iulianus 24 Dig.

Si mater eius, cui et de libertate et de hereditate paterna controversia fit, in quaestionem libertatis vocatur, iudicium de matre non semper in tempus pubertatis differendum erit: nam et ipsi, qui subiectus esse dicitur, ex causa repraesentari solet.

Dig. 37.10.7.4

Iulianus 24 Dig.

Quotiens carbonianum decretum interponitur, eodem loco rem haberi oportet, quo esset, si nulla controversia fieret ei, qui bonorum possessionem acceperit.

Dig. 37.10.7.5

Iulianus 24 Dig.

Cum autem ex duobus fratribus ex hoc decreto missis alter pro parte sua paternam hereditatem non defendit, compellitur alter totam defendere aut universa creditoribus cedere.

Dig. 37.10.7.6

Iulianus 24 Dig.

Interdum etiam exheredatus filius ex carboniano decreto bonorum possessionem accipiet, si non contra tabulas petit bonorum possessionem, sed ab intestato unde liberi (quia neget tabulas testamenti patris tales esse, ut secundum eas bonorum possessio dari possit) et dicatur non esse filius.

Dig. 37.10.7.7

Iulianus 24 Dig.

Si pupillus liberti paterni bonorum possessionem petet, negaretur autem filius patroni esse, quia de paternis bonis nulla controversia ei fieret, differendum hoc iudicium non est. si vero post interpositum carbonianum decretum haec quoque controversia moveretur, hoc iudicium in id tempus differri debet.

Dig. 37.10.7.8

Iulianus 24 Dig.

Quaesitum est, an simul et pupillus ex carboniano et scripti heredes secundum tabulas bonorum possessionem haberent. respondi, si filius non esset aut non accepisset contra tabulas vel ab intestato bonorum possessionem, simul et ipsum ex carboniano et scriptos heredes secundum tabulas habituros bonorum possessionem.

Dig. 37.10.8pr.

Africanus 4 quaest.

Decessit, quem ego filium meum et in mea potestate esse dico: existit impubes, qui eum patrem familias et ad se hereditatem pertinere dicat: decretum necessarium esse respondit.

Dig. 37.10.8.1

Africanus 4 quaest.

Item emancipatus decessit intestato superstite filio impubere, qui se ei suum esse dicit: ego contendo ante emancipationem conceptum atque ideo in mea potestate esse et bona emancipati ad me pertinere. et quidem hunc filium esse constat: sed hactenus de statu eius quaeritur, quod in potestate patris fuerit nec ne: sententia tamen edicti procul dubio ex carboniano admittitur.

Dig. 37.10.9

Nerva 6 membr.

Quod labeo scribit, quotiens suppositus esse dicitur pupillus, cum quo de patris eius hereditate controversia est, curare praetorem debere, ut is in possessione sit: de eo puto eum velle intellegi, qui post mortem patris familiae, qui se sine liberis decedere credidit, filius eius esse dici coepit: nam eius, qui adgnitus est ab eo, de cuius bonis quaeritur, iustior in ea re causa est quam postumi.

Dig. 37.10.10

Marcellus 7 Dig.

Cum mulier deferente herede iuraverit se praegnatem esse, bonorum possessio ex edicto carboniano dari debet, vel denegari, si illa heredi detulit iusiurandum, cum causa cognita detur possessio, ne aut heredi bonorum possessio data faciat praeiudicium aut denegata ius ordinarium eripiat pupillo.

Dig. 37.10.11

Papinianus 13 quaest.

Cum sine beneficio praetoris qui patitur controversiam filius heres esse potest, forte quia scriptus est, edicto carboniano locus non est: ac similiter cum certum est, quamvis filius sit, eum tamen heredem non fore, veluti si titio herede instituto postumus aut impubes exheredatus negetur filius. nec ad rem pertinet, quod interest illius in quibusdam filium esse, veluti propter fratris ex alia matre nati bona vel iura libertorum et sepulchrorum: istos enim casus ad carbonianum constat non pertinere.

Dig. 37.10.12

Papinianus 14 quaest.

Scriptus heres, contra quem filius impubes, qui subiectus dicitur, ex edicto primo bonorum possessionem petit, exemplo legitimi secundum tabulas interim accipere non potest. quod si medio tempore scriptus vel ille, qui intestati possessionem habere potuerit, moriantur, heredibus eorum succurrendum erit: quid enim, si non potuerunt adire hereditatem iure cessante vel ob litem in dubio constituti?

Dig. 37.10.13

Paulus 11 resp.

Titia post mortem mariti sui postumam enixa est: eidem titiae crimen adulterii sempronius apud praesidem provinciae obiecit: quaero, an in tempus pubertatis quaestio adulterii differri debeat, ne praeiudicium postumae fiat. paulus respondit, si ei pupillae, de qua quaeritur, bonorum paternorum quaestio non moveatur, sine causa tutores desiderare adulterii quoque quaestionem in tempus pubertatis pupillae differri.

Dig. 37.10.14

Scaevola 2 resp.

Quaeritur, an impubes, qui bonorum possessionem ex carboniano accepit, si, antequam possessio ad eum translata fuerit, pubes factus sit, petitoris partibus fungi debeat. respondit in eo, quod a possessore petet, probationem ei incumbere.

Dig. 37.10.15

Hermogenianus 3 iuris epit.

Haec bonorum possessio, si satis datum sit, non tantum ad possessionem apiscendam, sed ad res etiam persequendas et debitum exigendum et collationem bonorum et dotis et omnium quae conferri diximus prodest.

Dig. 37.10.16

Paulus 41 ad ed.

Sed sicuti de bonis paternis emancipato cavetur, ita de istis quae ipsi confert cavendum est.

Dig. 37.11.0. De bonorum possessione secundum tabulas.

Dig. 37.11.1pr.

Ulpianus 39 ad ed.

Tabulas testamenti accipere debemus omnem materiae figuram: sive igitur tabulae sint ligneae sive cuiuscumque alterius materiae, sive chartae sive membranae sint vel si corio alicuius animalis, tabulae recte dicentur.

Dig. 37.11.1.1

Ulpianus 39 ad ed.

Non autem omnes tabulas praetor sequitur hac parte edicti, sed supremas, hoc est eas, quae novissimae ita factae sunt, post quas nullae factae sunt: supremae enim hae sunt non quae sub ipso mortis tempore factae sunt, sed post quas nullae factae sunt, licet hae veteres sint.

Dig. 37.11.1.2

Ulpianus 39 ad ed.

Sufficit autem extare tabulas, etsi non proferantur, si certum sit eas exstare. igitur etsi apud furem sint vel apud eum, apud quem depositae sunt, dubitari non oportet admitti posse bonorum possessionem: nec enim opus est aperire eas, ut bonorum possessio secundum tabulas agnoscatur.

Dig. 37.11.1.3

Ulpianus 39 ad ed.

Semel autem exstitisse tabulas mortuo testatore desideratur, tametsi exstare desierint: quare et si postea interciderunt, bonorum possessio peti poterit.

Dig. 37.11.1.4

Ulpianus 39 ad ed.

Scientiam tamen exigemus, ut sciat heres extare tabulas certusque sit delatam sibi bonorum possessionem.

Dig. 37.11.1.5

Ulpianus 39 ad ed.

Si quis in duobus exemplaribus fecerit testamentum et aliud exstet, aliud non exstet, tabulae extare videntur petique potest bonorum possessio.

Dig. 37.11.1.6

Ulpianus 39 ad ed.

Sed et si in duobus codicibus simul signatis alios atque alios heredes scripserit et utrumque extet, ex utroque quasi ex uno competit bonorum possessio, quia pro unis tabulis habendum est et supremum utrumque accipiemus.

Dig. 37.11.1.7

Ulpianus 39 ad ed.

Sed si unum fecerit testator quasi testamentum, aliud quasi exemplum, si quidem id extat quod voluit esse testamentum, bonorum possessio petetur, si vero id quod exemplum erat, bonorum possessio peti non poterit, ut pomponius scripsit.

Dig. 37.11.1.8

Ulpianus 39 ad ed.

Exigit praetor, ut is, cuius bonorum possessio datur, utroque tempore ius testamenti faciendi habuerit, et cum facit testamentum et cum moritur. proinde si impubes vel furiosus vel quis alius ex his qui testamentum facere non possunt testamentum fecerit, deinde habens testamenti factionem decesserit, peti bonorum possessio non poterit. sed et si filius familias putans se patrem familias testamentum fecerit, deinde mortis tempore pater familias inveniatur, non potest bonorum possessio secundum tabulas peti. sed si filius familias veteranus de castrensi faciat, deinde emancipatus vel alias pater familias factus decedat, potest eius bonorum possessio peti. sed si quis utroque tempore testamenti factionem habuerit, medio tempore non habuerit, bonorum possessio secundum tabulas peti poterit.

Dig. 37.11.1.9

Ulpianus 39 ad ed.

Si quis autem testamentum fecerit, deinde amiserit testamenti factionem vel furore vel quod ei bonis interdictum est, potest eius peti bonorum possessio, quia iure testamentum eius valet: et hoc generaliter de omnibus huiusmodi dicitur, qui amittant mortis tempore testamenti factionem, sed ante factum eorum testamentum valet.

Dig. 37.11.1.10

Ulpianus 39 ad ed.

Si linum, quo ligatae sunt tabulae, incisum sit, si quidem alius contra voluntatem testatoris inciderit, bonorum possessio peti potest: quod si ipse testator id fecerit, non videntur signatae et ideo bonorum possessio peti non potest.

Dig. 37.11.1.11

Ulpianus 39 ad ed.

Si rosae sint a muribus tabulae vel linum aliter ruptum vel vetustate putrefactum vel situ vel casu, et sic videntur tabulae signatae, maxime si proponas vel unum linum tenere. si ter forte vel quater linum esset circumductum, dicendum est signatas tabulas eius extare, quamvis vel incisa vel rosa sit pars uni.

Dig. 37.11.2pr.

Ulpianus 41 ad ed.

Aequissimum ordinem praetor secutus est: voluit enim primo ad liberos bonorum possessionem contra tabulas pertinere, mox, si inde non sit occupata, iudicium defuncti sequendum. exspectandi igitur liberi erunt, quamdiu bonorum possessionem petere possunt: quod si tempus fuerit finitum aut ante decesserint vel repudiaverint vel ius petendae bonorum possessionis amiserint, tunc revertetur bonorum possessio ad scriptos.

Dig. 37.11.2.1

Ulpianus 41 ad ed.

Si sub condicione heres institutus filius sit, iulianus peraeque putavit secundum tabulas competere ei quasi scripto bonorum possessionem, qualisqualis condicio sit, etiam si haec " si navis ex asia venerit": et quamvis defecerit condicio, praetor tamen filium, qui admiserit secundum tabulas, tueri debebit ac si contra tabulas acceperit: quae tuitio ei qui emancipatus est necessaria est.

Dig. 37.11.2.2

Ulpianus 41 ad ed.

Pro qua quisque parte heres scriptus est, pro ea accipiet bonorum possessionem, sic tamen, ut, si non sit qui ei concurrat, habeat solus bonorum possessionem: quamdiu tamen ex heredibus unus deliberat, utrum admittat bonorum possessionem an non, portio bonorum possessionis eius coheredi non defertur.

Dig. 37.11.2.3

Ulpianus 41 ad ed.

Si primus quidem ita substitutus sit, si intra decem, secundus, si post decem intra quattuordecim annos: si quidem intra decem decesserit, primus solus heres erit et accipiet bonorum possessionem, si vero post decem intra quattuordecim, secundus solus heres erit et accipiet bonorum possessionem, nec sibi iunguntur, cum ad suam quisque causam substitutus sit.

Dig. 37.11.2.4

Ulpianus 41 ad ed.

Defertur bonorum possessio secundum tabulas primo gradu scriptis heredibus, mox illis non petentibus sequentibus, non solum substitutis, verum substituti quoque substitutis, et per seriem substitutos admittimus. primo gradu autem scriptos accipere debemus omnes, qui primo loco scripti sunt: nam sicuti ad adeundam hereditatem proximi sunt, ita et ad bonorum possessionem admittendam.

Dig. 37.11.2.5

Ulpianus 41 ad ed.

Si quis ita scripserit: " primus ex parte heres esto: si primus heres non erit, secundus heres esto. tertius ex alia parte dimidia heres esto: si non erit, quartus heres esto", primus et tertius priores ad bonorum possessionem invitantur.

Dig. 37.11.2.6

Ulpianus 41 ad ed.

Siquis ita instituerit heredes: " uter ex fratribus meis seiam uxorem duxerit, ex dodrante mihi heres esto, uter non duxerit, ex quadrante heres esto", si quidem mortua fuerit seia, aequas partes habituros heredes constat: quod si ab altero uxor ducta fuerit, dodrantem et quadrantem eis competere: bonorum autem possessionem, antequam existat condicio, neutrum petere.

Dig. 37.11.2.7

Ulpianus 41 ad ed.

Si consulto sit inductum nomen heredis, indubitanter probatur bonorum possessionem petere eum non posse, quemadmodum non potest, qui heres scriptus est non consulto testatore: nam pro non scripto est, quem scribi noluit.

Dig. 37.11.2.8

Ulpianus 41 ad ed.

Si duo sint heredes instituti primus et secundus, secundo tertius substitutus, omittente secundo bonorum possessionem tertius succedit: quod si tertius noluerit hereditatem adire vel bonorum possessionem accipere, reccidit bonorum possessio ad primum. nec erit ei necesse petere bonorum possessionem, sed ipso iure ei adcrescet: heredi enim scripto sicut portio hereditatis, ita et bonorum possessio adcrescit.

Dig. 37.11.2.9

Ulpianus 41 ad ed.

Si servus heres scriptus sit, ei domino defertur bonorum possessio, ad quem hereditas pertinebit: ambulat enim cum dominio bonorum possessio. quare si mortis tempore stichus heres institutus fuit servus sempronii nec sempronius eum iussit adire, sed vel decessit vel etiam eum alienavit et coepit esse septicii: evenit, ut, si septicius eum iusserit, septicio deferatur bonorum possessio: ad hunc enim hereditas pertinet. unde si per multos dominos transierit servus tres vel plures, novissimo dabimus bonorum possessionem.

Dig. 37.11.3

Paulus 41 ad ed.

Verum est omnem postumum, qui moriente testatore in utero fuerit, si natus sit, bonorum possessionem petere posse.

Dig. 37.11.4

Ulpianus 42 ad ed.

Chartae appellatio et ad novam chartam refertur et ad deleticiam: proinde et si in opisthographo quis testatus sit, hinc peti potest bonorum possessio.

Dig. 37.11.5pr.

Ulpianus 4 disp.

Si sub condicione heres quis institutus sit et accepta bonorum possessione secundum tabulas condicio defecerit, interdum evenit, ut res possessori concedenda sit, ut puta si filius sit emancipatus sub condicione heres institutus: nam si defecerit condicio, attamen secundum tabulas bonorum possessionem eum accipere iulianus scribit. sed et si is fuerit, qui ab intestato bonorum possessor futurus esset, tuendum esse scripsit, et hoc iure utimur.

Dig. 37.11.5.1

Ulpianus 4 disp.

Videndum, an legata ab eis debeantur. et filius quidem quasi contra tabulas bonorum possessione accepta rem habere videtur, ceteri vero quasi ab intestato: et ideo filius liberis parentibusque legata relicta solis praestare cogetur, ceteris non. plane ei, cui ab intestato fideicommissum relictum est, erit praestandum, quasi videatur hoc ipso fraudatus, quod ex testamento petita sit bonorum possessio.

Dig. 37.11.6

Ulpianus 8 disp.

Hi demum sub condicione heredes instituti bonorum possessionem secundum tabulas etiam pendente condicione necdum impleta petere possunt, qui utiliter sunt instituti: quod si inutiliter quis sit institutus, nec ad bonorum possessionem inutilis institutio proficit.

Dig. 37.11.7

Iulianus 23 Dig.

Cum tabulae testamenti plurium signis signatae essent et quaedam ex his non parent, septem tamen signa maneant, sufficit ad bonorum possessionem dandam septem testium signa comparere, licet non omnium qui signaverint maneant signa.

Dig. 37.11.8pr.

Iulianus 24 Dig.

Si ita scriptum sit: " sempronius ex parte dimidia heres esto. titius, si navis ex asia venerit, ex parte tertia heres esto. idem titius, si navis ex asia non venerit, ex parte sexta heres esto": titius non ex duabus partibus heres scriptus, sed ipse sibi substitutus intellegi debet ideoque non ex maiore parte quam tertia scriptus videtur. secundum hanc rationem cum sextans vacuus relinquatur, bonorum possessionem titius accipiet non solum tertiae partis, sed eius quoque, quae ex sextante eidem adcrescit.

Dig. 37.11.8.1

Iulianus 24 Dig.

Qui filio impuberi substituitur ita: " si filius meus moriatur, priusquam in suam tutelam veniat, tunc titius mihi heres esto", sicut hereditatem vindicat, perinde ac si verbum hoc " mihi" adiectum non esset, ita bonorum quoque eius possessionem accipere potest.

Dig. 37.11.8.2

Iulianus 24 Dig.

Sed et cum in praenomine cognomine erratum est, is ad quem hereditas pertinet etiam bonorum possessionem accipit.

Dig. 37.11.8.3

Iulianus 24 Dig.

Is autem, cuius nomen in testamento voluntate testatoris perductum est, sicut ad adeundam hereditatem, ita ad petendam bonorum possessionem scriptus non intellegitur, quamvis nomen eius legatur.

Dig. 37.11.8.4

Iulianus 24 Dig.

Quidam testamentum in tabulis sibi fecit, filio autem impuberi per nuncupationem substituit. respondi sententiam praetoris in danda bonorum possessione eam esse, ut separatim patris, separatim filii heredes aestimari debeant: nam quemadmodum scripto filii heredi separatim ab heredibus patris, ita nuncupato potest videri separatim a scriptis patris heredibus bonorum possessio dari.

Dig. 37.11.9

Pomponius 2 ad sab.

Ut bonorum possessio secundum pupillares tabulas admitti possit, requiritur, an patris testamentum signatum sit, licet secundae tabulae resignatae proferantur.

Dig. 37.11.10

Paulus 8 ad plaut.

Si servus sub condicione heres institutus sit, an bonorum possessionem accipere potest, dubitatur. et scaevola noster probat posse.

Dig. 37.11.11pr.

Papinianus 13 quaest.

" qui ex liberis meis impubes supremus morietur, ei titius heres esto". duobus peregre defunctis si substitutus ignoret, uter novissimus decesserit, admittenda est iuliani sententia, qui propter incertum condicionis etiam prioris posse peti possessionem bonorum respondit.

Dig. 37.11.11.1

Papinianus 13 quaest.

Filius heres institutus post mortem patris ab hostibus rediit: bonorum possessionem accipiet et anni tempus a quo rediit ei computabitur.

Dig. 37.11.11.2

Papinianus 13 quaest.

Testamento facto titius adrogandum se praebuit ac postea sui iuris effectus vita decessit. scriptus heres si possessionem petat, exceptione doli mali summovebitur, quia dando se in adrogandum testator cum capite fortunas quoque suas in familiam et domum alienam transferat. plane si sui iuris effectus codicillis aut aliis litteris eodem testamento se mori velle declaraverit, voluntas, quae defecerat, iudicio recenti redisse intellegetur, non secus ac si quis aliud testamentum fecisset ac supremas tabulas incidisset, ut priores supremas relinqueret. nec putaverit quisquam nuda voluntate constitui testamentum: non enim de iure testamenti maxime quaeritur, sed viribus exceptionis. quae in hoc iudicio quamquam actori opponatur, ex persona tamen eius qui opponit aestimatur.

Dig. 37.11.12

Paulus 7 quaest.

Ut scriptus heres adgnoscere possit bonorum possessionem, exigendum puto, ut et demonstratus sit propria demonstratione et portio adscripta ei inveniri possit, licet sine parte institutus sit: nam qui sine parte heres institutus est, vacantem portionem vel alium assem occupat. quod si ita heres scriptus sit, ut interdum excludatur a testamento, eo quod non invenitur portio, ex qua institutus est, nec bonorum possessionem petere potest. id evenit, si quis ita heredem instituat: " titius quanta ex parte priore testamento eum heredem scriptum habeo, heres esto" vel " quanta ex parte codicillis scriptum eum habeo, heres esto", sic scriptus non inveniatur. quod si ita scripsero: " titius, si eum priore testamento ex semisse scriptum heredem habeo" vel " si eum codicillis ex semisse heredem scripsero, ex semisse heres esto", tunc accipiet bonorum possessionem quasi sub condicione heres scriptus.

Dig. 37.12.0. Si a parente quis manumissus sit.

Dig. 37.12.1pr.

Ulpianus 45 ad ed.

Emancipatus a parente in ea causa est, ut in contra tabulas bonorum possessione liberti patiatur exitum. quod aequissimum praetori visum est, quia a parente beneficium habuit bonorum quaerendorum: quippe si filius familias esset, quodcumque sibi adquireret, eius emolumentum patri quaereret. et ideo itum est in hoc, ut parens exemplo patroni ad contra tabulas bonorum possessionem admittatur.

Dig. 37.12.1.1

Ulpianus 45 ad ed.

Enumerantur igitur edicto personae manumissorum sic: " in eo, qui a patre avove paterno proavove paterni avi patre".

Dig. 37.12.1.2

Ulpianus 45 ad ed.

Nepos ab avo manumissus dedit se adrogandum patri suo: sive manens in potestate patris decesserit sive manumissus diem suum obeat, solus admittetur avus ad eius successionem ex interpretatione edicti, quia perinde defert praetor bonorum possessionem atque si ex servitute manumissus esset: porro si hoc esset, aut non esset adrogatus, quia adrogatio liberti admittenda non est, aut si obrepserit, patroni tamen nihilo minus ius integrum maneret.

Dig. 37.12.1.3

Ulpianus 45 ad ed.

Si parens vel accepit pecuniam, ut emanciparet, vel postea vivus in eum filius quantum satis est contulit, ne iudicia eius inquietet, exceptione doli repelletur.

Dig. 37.12.1.4

Ulpianus 45 ad ed.

Est et alius casus, quo bonorum possessionem contra tabulas parens non accipit, si forte filius militare coeperit: nam divus pius rescripsit patrem ad contra tabulas bonorum possessionem venire non posse.

Dig. 37.12.1.5

Ulpianus 45 ad ed.

Liberos autem manumissoris non venire ad contra tabulas bonorum possessionem filii constat, quamvis patroni veniant.

Dig. 37.12.1.6

Ulpianus 45 ad ed.

Patrem autem accepta contra tabulas bonorum possessione et ius antiquum, quod et sine manumissione habebat, posse sibi defendere iulianus scripsit: nec enim ei nocere debet, quod iura patronatus habebat, cum sit et pater.

Dig. 37.12.2

Gaius 15 ad ed. provinc.

Non usque adeo exaequandus est patrono parens, ut etiam faviana aut calvisiana actio ei detur, quia iniquum est ingenuis hominibus non esse liberam rerum suarum alienationem.

Dig. 37.12.3pr.

Paulus 8 ad plaut.

Paconius ait: si turpes personas, veluti meretricem, a parente emancipatus et manumissus heredes fecisset, totorum bonorum contra tabulas possessio parenti datur: aut constitutae partis, si non turpis heres esset institutus.

Dig. 37.12.3.1

Paulus 8 ad plaut.

Si filius emancipatus testamento suo patrem suum praeterierit sive heredem instituerit, fideicommissa non cogetur pater praestare ex sua parte, quae ei debetur, etiamsi adierit hereditatem. sed et si filia vel neptis manumissa sit et pater vel avus praeteritus petat bonorum possessionem, eadem quae in filio dicenda sunt.

Dig. 37.12.4

Marcellus 9 Dig.

Patri qui filium emancipavit de his, quae libertatis causa imposita fuerint, praetor nihil edicit, et ideo frustra pater operas stipulabitur de filio.

Dig. 37.12.5

Papinianus 11 quaest.

Divus traianus filium, quem pater male contra pietatem adficiebat, coegit emancipare. quo postea defuncto, pater ut manumissor bonorum possessionem sibi competere dicebat: sed consilio neratii prisci et aristonis ei propter necessitatem solvendae pietatis denegata est.

Dig. 37.13.0. De bonorum possessione ex testamento militis.

Dig. 37.13.1pr.

Ulpianus 45 ad ed.

Non dubium est, quin debeant ratae voluntates esse eorum, qui in hosticolo suprema iudicia sua quoquo modo ordinassent ibidemque diem suum obissent. quamquam enim distet condicio militum ab his personis constitutiones principales separent, tamen qui in procinctu versantur cum eadem pericula experiantur, iura quoque eadem merito sibi vindicant. omnes igitur omnino, qui eius sunt condicionis, ut iure militari testari non possint, si in hosticolo deprehendantur et illic decedant, quomodo velint et quomodo possint, testabuntur, sive praeses quis sit provinciae sive legatus sive quis alius, qui iure militari testari non potest.

Dig. 37.13.1.1

Ulpianus 45 ad ed.

Item nauarchos et trierarchos classium iure militari posse testari nulla dubitatio est. in classibus omnes remiges et nautae milites sunt. item vigiles milites sunt et iure militari eos testari posse nulla dubitatio est.

Dig. 37.13.1.2

Ulpianus 45 ad ed.

Si quis militum ex alio numero translatus sit in alium, quamvis et hinc sit exemptus et illo nondum pervenerit, tamen poterit iure militari testari: est enim miles, quamvis in numeris non sit.

Dig. 37.14.0. De iure patronatus.

Dig. 37.14.1

Ulpianus 9 de off. procons.

Patronorum querellas adversus libertos praesides audire et non translaticie exsequi debent, cum, si ingratus libertus sit, non impune ferre eum oporteat. sed si quidem inofficiosus patrono patronae liberisve eorum sit, tantummodo castigari eum sub comminatione aliqua severitatis non defuturae, si rursum causam querellae praebuerit, et dimitti oportet. enimvero si contumeliam fecit aut convicium eis dixit, etiam in exilium temporale dari debebit: quod si manus intulit, in metallum dandus erit: idem et si calumniam aliquam eis instruxit vel delatorem subornavit vel quam causam adversus eos temptavit.

Dig. 37.14.2

Ulpianus 1 opin.

Liberti homines negotiatione licita prohiberi a patronis non debent.

Dig. 37.14.3

Marcianus 2 inst.

Si quis tutor datus, cum sibi legata esset ancilla et rogatus eam manumittere, manumiserit adgnito legato et tutela pupilli se excusaverit, divi severus et antoninus rescripserunt hunc esse quidem patronum, sed omni commodo patronatus carere.

Dig. 37.14.4

Marcianus 5 inst.

Iura libertorum patronorum liberis, cum pater eorum erat perduellionis damnatus, salva esse divi severus et antoninus benignissime rescripserunt, sicut ex alia causa punitorum liberis iura libertorum salva sunt.

Dig. 37.14.5pr.

Marcianus 13 inst.

Divus claudius libertum, qui probatus fuit patrono delatores summisisse, qui de statu eius facerent ei quaestionem, servum patroni esse iussit eum libertum.

Dig. 37.14.5.1

Marcianus 13 inst.

Imperatoris nostri rescripto cavetur, ut, si patronus libertum suum non aluerit, ius patroni perdat.

Dig. 37.14.6pr.

Paulus 2 ad l. ael. sent.

Adigere iureiurando, ne nubat liberta vel liberos tollat, intellegitur etiam is, qui libertum iurare patitur. sed si ignorante eo suus filius adegerit stipulatus fuerit, nihil ei nocebit: certe si iussu patroni is qui in potestate est idem fecerit, dicendum est eum hac lege teneri.

Dig. 37.14.6.1

Paulus 2 ad l. ael. sent.

Stipulatus est centum operas aut in singulas aureos quinos dari: non videtur contra legem stipulatus, quia in potestate liberti est operas dare.

Dig. 37.14.6.2

Paulus 2 ad l. ael. sent.

Quamvis nulla persona lege excipiatur, tamen intellegendum est de his legem sentire, qui liberos tollere possunt. itaque si castratum libertum iureiurando quis adegerit, dicendum est non puniri patronum hac lege.

Dig. 37.14.6.3

Paulus 2 ad l. ael. sent.

Si patronus libertam iureiurando adegerit, ut sibi nuberet, si quidem ducturus eam adegit, nihil contra legem fecisse videbitur: si vero non ducturus propter hoc solum adegit, ne alii nuberet, fraudem legi factam iulianus ait et perinde patronum teneri, ac si coegisset iurare libertam non nupturam.

Dig. 37.14.6.4

Paulus 2 ad l. ael. sent.

Lege iulia de maritandis ordinibus remittitur iusiurandum, quod liberto in hoc impositum est, ne uxorem duceret, libertae, ne nuberet, si modo nuptias contrahere recte velint.

Dig. 37.14.7pr.

Modestinus l.S. de manumiss.

Divus vespasianus decrevit, ut, si qua hac lege venierit, ne prostitueretur et, si prostituta esset, ut esset libera, si postea ab emptore alii sine condicione veniit, ex lege venditionis liberam esse et libertam prioris venditoris.

Dig. 37.14.7.1

Modestinus l.S. de manumiss.

Mandatis imperatorum cavetur, ut etiam in provinciis praesides de querellis patronorum ius dicentes secundum delictum admissum libertis poenas irrogent. interdum illae poenae a liberto ingrato exiguntur: vel pars bonorum eius aufertur et patrono datur: vel fustibus caeditur et ita absolvitur.

Dig. 37.14.8pr.

Modestinus 6 reg.

Servum a filio familias milite manumissum divus hadrianus rescripsit militem libertum suum facere, non patris.

Dig. 37.14.8.1

Modestinus 6 reg.

Servus non manumissus libertatem consequitur is, qui ea lege distractus est, ut manumittatur intra tempus: quod superveniens, licet non manumittatur, faciet tamen libertum emptoris.

Dig. 37.14.9pr.

Modestinus 9 reg.

Filii hereditate paterna se abstinentes ius, quod in libertis habent paternis, non amittunt: idem et in emancipato.

Dig. 37.14.9.1

Modestinus 9 reg.

Ut in bonis liberti locum quidam non haberent, lege excipiuntur: rei capitalis damnatus, si restitutus non est: si index cuius flagitii sit fueritve vel maior annis viginti quinque cum esset, capitis accusaverit libertum paternum.

Dig. 37.14.10

Clementius 9 ad l. iul. et pap.

Eum patronum, qui capitis libertum accusasset, excludi a bonorum possessione contra tabulas placuit. labeo existimabat capitis accusationem eam esse, cuius poena mors aut exilium esset. qui nomen detulit, accusasse intellegendus est, nisi abolitionem petit: idque etiam proculo placuisse servilius refert.

Dig. 37.14.11

Ulpianus 10 ad l. iul. et pap.

Is autem nec ad legitimam hereditatem, quae ex lege duodecim tabularum defertur, admittitur.

Dig. 37.14.12

Modestinus 1 resp.

Gaius seius decedens testamento ordinato inter filios suos iulium libertum suum, quasi et ipsum filium, ex parte heredem nominavit: quaero, an huiusmodi scriptura possit liberto statum condicionis mutare. modestinus respondit statum mutare non posse.

Dig. 37.14.13

Modestinus 1 pand.

Filius familias servum peculiarem manumittere non potest. iussu tamen patris manumittere potest: qui manumissus libertus fit patris.

Dig. 37.14.14

Ulpianus 5 ad l. iul. et pap.

Si iuravero me patronum esse, dicendum est non esse me quantum ad successionem patronum, quia iusiurandum patronum non facit: aliter atque si patronum esse pronuntiatum sit: tunc enim sententia stabitur.

Dig. 37.14.15

Paulus 8 ad l. iul. et pap.

Qui contra legem aeliam sentiam ad iurandum libertum adegit, nihil iuris habet nec ipse nec liberi eius.

Dig. 37.14.16pr.

Ulpianus 10 ad l. iul. et pap.

Si libertus minorem se centenario in fraudem legis fecerit, ipso iure non valebit id quod factum est, et ideo quasi in centenarii liberti bonis locum habebit patronus: quidquid igitur quaqua ratione alienavit, ea alienatio nullius momenti est. plane si qua alienaverit in fraudem patroni, adhuc tamen post alienationem maior centenario remaneat, alienatio quidem vires habebit, verumtamen per favianam et calvisianam actionem revocabuntur ea quae per fraudem sunt alienata: et ita iulianus saepissime scribit eoque iure utimur. diversitatis autem ea ratio est. quotiens in fraudem legis fit alienatio, non valet quod actum est: in fraudem autem fit, cum quis se minorem centenario facit ad hoc, ut legis praeceptum evertat. at cum alienatione facta nihilo minus centenarius est, non videtur in fraudem legis factum, sed tantum in fraudem patroni: idcirco faviano vel calvisiano iudicio revocabitur id quod alienatum est.

Dig. 37.14.16.1

Ulpianus 10 ad l. iul. et pap.

Si quis plures res simul alienando minorem se centenario fecerit, quarum una revocata vel omnium partibus maior centenario efficitur: utrum revocamus omnes an pro rata ex singulis, ut centenarium eum faciamus? magisque est, ut omnium rerum alienato facta nullius momenti sit.

Dig. 37.14.16.2

Ulpianus 10 ad l. iul. et pap.

Si quis plane non semel alienaverit, sed quasdam res ante, quasdam postea, alienatio earum rerum quae postea alienatae sunt ipso iure non revocabitur, sed priorum: in posterioribus favianae locus erit.

Dig. 37.14.17pr.

Ulpianus 11 ad l. iul. et pap.

Divi fratres in haec verba rescripserunt: " comperimus a peritioribus dubitatum aliquando, an nepos contra tabulas aviti liberti bonorum possessionem petere possit, si eum libertum pater patris, cum annorum viginti quinque esset, capitis accusasset, et proculum, sane non levem iuris auctorem, in hac opinione fuisse, ut nepoti in huiusmodi causa non putaret dandam bonorum possessionem. cuius sententiam nos quoque secuti sumus, cum rescriberemus ad libellum caesidiae longinae: sed et volusius maecianus amicus noster ut et iuris civilis praeter veterem et bene fundatam peritiam anxie diligens religione rescripti nostri ductus sit ut coram nobis adfirmavit non arbitratum se aliter respondere debere. sed cum et ipso maeciano et aliis amicis nostris iuris peritis adhibitis plenius tractaremus, magis visum est nepotem neque verbis neque sententia legis aut edicti praetoris ex persona vel nota patris sui excludi a bonis aviti liberti: plurium etiam iuris auctorum, sed et salvi iuliani amici nostri clarissimi viri hanc sententiam fuisse".

Dig. 37.14.17.1

Ulpianus 11 ad l. iul. et pap.

Item quaesitum est, si patroni filius capitis accusaverit libertum, an hoc noceat liberis ipsius. et proculus quidem in hac fuit opinione notam adspersam patroni filio liberis eius nocere, iulianus autem negavit: sed hic idem quod iulianus erit dicendum.

Dig. 37.14.18

Scaevola 4 resp.

Quaero, an libertus prohiberi potest a patrono in eadem colonia, in qua ipse negotiatur, idem genus negotii exercere. scaevola respondit non posse prohiberi.

Dig. 37.14.19

Paulus 1 sent.

Ingratus libertus est, qui patrono obsequium non praestat vel res eius filiorumve tutelam administrare detractat.

Dig. 37.14.20

Paulus 3 sent.

Sicut testamento facto decedente liberto potestas datur patrono vel libertatis causa imposita petere vel partis bonorum possessionem, ita et cum intestato decesserit, earum rerum electio ei manet.

Dig. 37.14.21pr.

Hermogenianus 3 iuris epit.

Sive patronus sive libertus deportetur et post restituatur, amissum patronatus et petendae contra tabulas bonorum possessionis ius recipitur: quod ius servatur et si in metallum patronus vel libertus damnatus restituatur.

Dig. 37.14.21.1

Hermogenianus 3 iuris epit.

Excluditur contra tabulas bonorum possessione patronus et si ex unica heres instituatur et id, quod deest ad supplendam debitam portionem, per servum iudicio liberti sine condicione et dilatione ei, hereditate vel legato sive fideicommisso, quaeri potest.

Dig. 37.14.21.2

Hermogenianus 3 iuris epit.

Ex duobus patronis unus, ex debita parte heres institutus sine condicione et dilatione, contra tabulas bonorum possessionem petere non poterit, licet, si minor ei portio esset relicta et contra tabulas bonorum possessionem petisset, alia etiam portio ei adcrescere potuisset.

Dig. 37.14.21.3

Hermogenianus 3 iuris epit.

Naturales liberi liberti exheredati facti, alio ex parte herede instituto, si per servum ex alia parte parenti successerint, obiciuntur patrono.

Dig. 37.14.21.4

Hermogenianus 3 iuris epit.

Liberti filius heres institutus si bona repudiaverit, patronus non excluditur.

Dig. 37.14.22

Gaius l.S. de cas.

Satis constat, etiamsi in potestate sit parentis filius patronae, nihilo minus legitimo iure ad eum pertinere hereditatem.

Dig. 37.14.23pr.

Tryphonus 15 disp.

Si filius patris necem inultam reliquerit, quam servus detexit et meruit libertatem, dixi non habendum pro patroni filio, quia indignus est.

Dig. 37.14.23.1

Tryphonus 15 disp.

Cum ex falsis codicillis, qui veri aliquo tempore crediti sunt, heres ignorans quasi ex fideicommisso libertatem servis praestitisset, rescriptum est a divo hadriano liberos quidem eos esse, sed aestimationem sui praestare debere: et hos libertos manumissoris esse recte probatur, quia salvum est etiam in his libertis ius patroni.

Dig. 37.14.24

Paulus 1 imp. sent. i.C.P.

Camelia pia ab hermogene appellaverat, quod diceret iudicem de dividenda hereditate inter se et coheredem non tantum res, sed etiam libertos divisisse: nullo enim iure id eum fecisse. placuit nullam esse libertorum divisionem: alimentorum autem divisionem a iudice inter coheredes factam eodem modo ratam esse.

Dig. 37.15.0. De obsequiis parentibus et patronis praestandis.

Dig. 37.15.1pr.

Ulpianus 1 opin.

Etiam militibus pietatis ratio in parentes constare debet: quare si filius miles in patrem aliqua commisit, pro modo delicti puniendus est.

Dig. 37.15.1.1

Ulpianus 1 opin.

Et inter collibertos matrem et filium pietatis ratio secundum naturam salva esse debet.

Dig. 37.15.1.2

Ulpianus 1 opin.

Si filius matrem aut patrem, quos venerari oportet, contumeliis adficit vel impias manus eis infert, praefectus urbis delictum ad publicam pietatem pertinens pro modo eius vindicat.

Dig. 37.15.1.3

Ulpianus 1 opin.

Indignus militia iudicandus est, qui patrem et matrem, a quibus se educatum dixerit, maleficos appellaverit.

Dig. 37.15.2pr.

Iulianus 14 Dig.

Honori parentium ac patronorum tribuendum est, ut, quamvis per procuratorem iudicium accipiant, nec actio de dolo aut iniuriarum in eos detur: licet enim verbis edicti non habeantur infames ita condemnati, re tamen ipsa et opinione hominum non effugiunt infamiae notam.

Dig. 37.15.2.1

Iulianus 14 Dig.

Interdictum quoque unde vi non est adversus eos reddendum.

Dig. 37.15.3

Marcellus l.S. resp.

Titius puerum emit, quem post multos annos venire iussit: postea exoratus accepto ab eo pretio eum manumisit: quaero, an eum filius et heres manumissoris ut ingratum accusare possit. respondit posse, si nihil aliud esset impedimento: nam plurimum interesse, a suo servo quis vel etiam ab amico eius acceptis nummis dederit libertatem, an ab eo servo, qui cum esset alienus in fidem eius devenit. etenim ille etiamsi non gratuitum, beneficium tamen praestitit, iste nihil amplius quam operam suam accommodare videri potest.

Dig. 37.15.4

Marcianus 2 publ. iudic.

Per procuratorem ingratum libertum posse argui divus severus et antoninus rescripserunt.

Dig. 37.15.5pr.

Ulpianus 10 ad ed.

Parens, patronus patrona, liberive aut parentes patroni patronave, neque si ob negotium faciendum vel non faciendum pecuniam accepisse dicerentur, in factum actione tenentur.

Dig. 37.15.5.1

Ulpianus 10 ad ed.

Sed nec famosae actiones adversus eos dantur, nec hae quidem, quae doli vel fraudis habent mentionem,

Dig. 37.15.6

Paulus 11 ad ed.

Nec servi corrupti agetur,

Dig. 37.15.7pr.

Ulpianus 10 ad ed.

Licet famosae non sint.

Dig. 37.15.7.1

Ulpianus 10 ad ed.

Et in quantum facere possunt, damnantur.

Dig. 37.15.7.2

Ulpianus 10 ad ed.

Nec exceptiones doli patiuntur vel vis metusve causa, vel interdictum unde vi vel quod vi patiuntur.

Dig. 37.15.7.3

Ulpianus 10 ad ed.

Nec deferentes iusiurandum de calumnia iurant.

Dig. 37.15.7.4

Ulpianus 10 ad ed.

Nec non et si ventris nomine in possessionem calumniae causa missa dicatur patrona, libertus hoc dicens non audietur, quia de calumnia patroni quaeri non debet. his enim personis etiam in ceteris partibus edicti honor habebitur.

Dig. 37.15.7.5

Ulpianus 10 ad ed.

Honor autem his personis habebitur ipsis, non etiam interventoribus eorum: et si forte ipsi pro aliis interveniant, honor habebitur.

Dig. 37.15.8

Paulus 10 ad ed.

Heres liberti omnia iura integra extranei hominis adversus patronum defuncti habet.

Dig. 37.15.9

Ulpianus 66 ad ed.

Liberto et filio semper honesta et sancta persona patris ac patroni videri debet.

Dig. 37.15.10

Tryphonus 17 disp.

Nullum ius libertatis causa impositorum habet in mancipato filio, quia nihil imponi liberis solet. nec quisquam dixit iureiurando obligari filium patri manumissori ut libertum patrono: nam pietatem liberi parentibus, non operas debent.

Dig. 37.15.11

Papinianus 13 resp.

Liberta ingrata non est, quod arte sua contra patronae voluntatem utitur.

OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER DUODEQUADRAGESIMUS

Dig. 38.1.0. De operis libertorum.
Dig. 38.2.0. De bonis libertorum.
Dig. 38.3.0. De libertis universitatium.
Dig. 38.4.0. De adsignandis libertis.
Dig. 38.5.0. Si quid in fraudem patroni factum sit.
Dig. 38.6.0. Si tabulae testamenti nullae extabunt, unde liberi.
Dig. 38.7.0. Unde legitimi.
Dig. 38.8.0. Unde cognati.
Dig. 38.9.0. De successorio edicto.
Dig. 38.10.0. De gradibus et adfinibus et nominibus eorum.
Dig. 38.11.0. Unde vir et uxor.
Dig. 38.12.0. De veteranorum et militum successione.
Dig. 38.13.0. Quibus non competit bonorum possessio.
Dig. 38.14.0. Ut ex legibus senatusve consultis bonorum possessio detur.
Dig. 38.15.0. Quis ordo in possessionibus servetur.
Dig. 38.16.0. De suis et legitimis heredibus.
Dig. 38.17.0. Ad senatus consultum tertullianum et orphitianum.

Dig. 38.1.0. De operis libertorum.

Dig. 38.1.1

Paulus l.S. de var. lect.

Operae sunt diurnum officium.

Dig. 38.1.2pr.

Ulpianus 38 ad ed.

Hoc edictum praetor proponit coartandae persecutionis libertatis causa impositorum: animadvertit enim rem istam libertatis causa impositorum praestationem ultra excrevisse, ut premeret atque oneraret libertinas personas.

Dig. 38.1.2.1

Ulpianus 38 ad ed.

Initio igitur praetor pollicetur se iudicium operarum daturum in libertos et libertas.

Dig. 38.1.3pr.

Pomponius 6 ad sab.

Operas stipulatus ante peractum diem operam eius diei petere non potest.

Dig. 38.1.3.1

Pomponius 6 ad sab.

Nec pars operae per horas solvi potest, quia id est officii diurni. itaque nec ei liberto, qui sex horis dumtaxat antemeridianis praesto fuisset, liberatio eius diei contingit.

Dig. 38.1.4

Pomponius 4 ad sab.

A duobus manumissus utrique operas promiserat: altero ex his mortuo nihil est, quare non filio eius, quamvis superstite altero, operarum detur petitio. nec hoc quicquam commune habet cum hereditate aut bonorum possessione: perinde enim operae a libertis ac pecunia credita petitur. haec ita aristo scripsit, cuius sententiam puto veram: nam etiam praeteritarum operarum actionem dari heredi extraneo sine metu exceptionis placet. dabitur igitur et vivo altero patrono.

Dig. 38.1.5

Ulpianus 15 ad sab.

Si quis operas sit stipulatus sibi liberisque suis, etiam ad postumos pervenit stipulatio.

Dig. 38.1.6

Ulpianus 26 ad sab.

Fabriles operae ceteraeque, quae quasi in pecuniae praestatione consistunt, ad heredem transeunt, officiales vero non transeunt.

Dig. 38.1.7pr.

Ulpianus 28 ad sab.

Ut iurisiurandi obligatio contrahatur, libertum esse oportet qui iuret et libertatis causa iurare.

Dig. 38.1.7.1

Ulpianus 28 ad sab.

Plane quaeritur, si quis liberto suo legaverit, si filio suo iuraverit se decem operarum nomine praestaturum, an obligetur iurando. et celsus iuventius obligari eum ait parvique referre, quam ob causam de operis libertus iuraverit: et ego celso adquiesco.

Dig. 38.1.7.2

Ulpianus 28 ad sab.

Iurare autem debet post manumissionem, ut obligetur: et sive statim sive post tempus iuraverit, obligatur.

Dig. 38.1.7.3

Ulpianus 28 ad sab.

Iurare autem debet operas donum munus se praestaturum, operas qualescumque, quae modo probe iure licito imponuntur.

Dig. 38.1.7.4

Ulpianus 28 ad sab.

Rescriptum est a divo hadriano et deinceps cessare operarum persecutionem adversus eum, qui ex causa fideicommissi ad libertatem perductus est.

Dig. 38.1.7.5

Ulpianus 28 ad sab.

Dabitur et in impuberem, cum adoleverit, operarum actio: sed interdum et quamdiu impubes est: nam huius quoque est ministerium, si forte vel librarius vel nomenculator vel calculator sit vel histrio vel alterius voluptatis artifex.

Dig. 38.1.7.6

Ulpianus 28 ad sab.

Si liberi patroni ex inaequalibus partibus essent instituti, utrum pro parte dimidia an pro hereditariis habeant operarum actionem? et puto verius liberos pro aequalibus habituros actionem.

Dig. 38.1.7.7

Ulpianus 28 ad sab.

Parvi autem refert, in potestate fuerint liberi an vero emancipati.

Dig. 38.1.7.8

Ulpianus 28 ad sab.

Sed si in adoptionem datum heredem scripserit patronus, magis est, ut operae ei debeantur.

Dig. 38.1.7.9

Ulpianus 28 ad sab.

Nec patronae liberi summoventur ab operarum petitione.

Dig. 38.1.8pr.

Pomponius 8 ad sab.

Si quando duobus patronis iuraverit libertus operas se daturum, labeoni placet et deberi et peti posse partem operae, cum semper praeterita opera, quae iam dari non possit, petatur. quod contingit, si vel ipsis patronis iuretur vel promittatur vel communi eorum servo vel complures heredes uni patrono existant.

Dig. 38.1.8.1

Pomponius 8 ad sab.

Pro liberto iurante fideiubere quemvis posse placet.

Dig. 38.1.9pr.

Ulpianus 34 ad sab.

Operae in rerum natura non sunt.

Dig. 38.1.9.1

Ulpianus 34 ad sab.

Sed officiales quidem futurae nec cuiquam alii deberi possunt quam patrono, cum proprietas earum et in edentis persona et in eius cui eduntur constitit: fabriles autem aliaeve eius generis sunt, ut a quocumque cuicumque solvi possint. sane enim, si in artificio sint, iubente patrono et alii edi possunt.

Dig. 38.1.10pr.

Pomponius 15 ad sab.

Servus patroni a liberto male ita stipulatur: " operas mihi dare spondes?" itaque patrono dari stipulandum est.

Dig. 38.1.10.1

Pomponius 15 ad sab.

Libertus operarum nomine ita iurando " patrono aut lucio titio" solvere lucio titio non potest, ut a patrono liberetur.

Dig. 38.1.11

Iulianus 22 Dig.

(nihil autem interest, extraneus sit lucius titius an filius),

Dig. 38.1.12

Pomponius 15 ad sab.

Quia aliae operae erunt, quae lucio titio dantur. sed si libertatis causa pecuniam promittat libertus egenti patrono aut titio, omnimodo adiectio titii valet.

Dig. 38.1.13pr.

Ulpianus 38 ad ed.

Si quis hac lege emptus sit, ut manumittatur, et ex constitutione divi marci pervenerit ad libertatem, operae ei impositae nullum effectum habebunt.

Dig. 38.1.13.1

Ulpianus 38 ad ed.

Sed nec cui bona addicta sunt ex constitutione divi marci libertatium conservandarum causa, poterit operas petere neque ab his, qui directas, neque ab his, qui fideicommissarias acceperunt, quamvis fideicommissarias libertates qui acceperunt, ipsius liberti efficiantur: non enim sic fiunt liberti, ut sunt proprii, quos nulla necessitate cogente manumisimus.

Dig. 38.1.13.2

Ulpianus 38 ad ed.

Iudicium de operis tunc locum habet, cum operae praeterierint. praeterire autem non possunt, antequam incipiant cedere, et incipiunt, posteaquam fuerint indictae.

Dig. 38.1.13.3

Ulpianus 38 ad ed.

Etiam si uxorem habeat libertus, non prohibetur patronus operas exigere.

Dig. 38.1.13.4

Ulpianus 38 ad ed.

Si impubes sit patronus, voluntate eius non videtur liberta nupta, nisi tutoris auctoritas voluntati accesserit.

Dig. 38.1.13.5

Ulpianus 38 ad ed.

Rati quoque habitio patrono obest in nuptiis libertae.

Dig. 38.1.14

Clementius 8 ad l. iul. et pap.

Plane cum desierit nupta esse, operas peti posse omnes fere consentiunt.

Dig. 38.1.15pr.

Ulpianus 38 ad ed.

Libertus, qui post indictionem operarum valetudine impeditur, quo minus praestet operas, non tenetur: nec enim potest videri per eum stare, quo minus operas praestet.

Dig. 38.1.15.1

Ulpianus 38 ad ed.

Neque promitti neque solvi nec deberi nec peti pro parte poterit opera. ideo papinianus subicit: si non una, sed plures operae sint et plures heredes existant patrono qui operas stipulatus est, verum est obligationem operarum numero dividi. denique celsus libro duodecimo scribit, si communis libertus patronis duobus operas mille daturum se iuraverit aut communi eorum servo promiserit, quingenas potius deberi, quam singularum operarum dimidias.

Dig. 38.1.16pr.

Paulus 40 ad ed.

Eius artificii, quod post manumissionem didicerit libertus, operas debebit praestare, si haec sint, quae quandoque honeste et sine periculo vitae praestantur, nec semper hae, quae manumissionis tempore praestari debuerunt. sed si turpes operas postea exercere coeperit, praestare debebit eas, quas manumissionis tempore praestabat.

Dig. 38.1.16.1

Paulus 40 ad ed.

Tales patrono operae dantur, quales ex aetate dignitate valetudine necessitate proposito ceterisque eius generis in utraque persona aestimari debent:

Dig. 38.1.17

Paulus l.S. de iure patronatus.

Nec audiendus est patronus, si poscit operas, quas vel aetas recusat vel infirmitas corporis non patiatur vel quibus institutum vel propositum vitae minuitur.

Dig. 38.1.18

Paulus 40 ad ed.

Suo victu vestituque operas praestare debere libertum sabinus ad edictum praetoris urbani libro quinto scribit: quod si alere se non possit, praestanda ei a patrono alimenta:

Dig. 38.1.19

Gaius 14 ad ed. provinc.

Aut certe ita exigendae sunt ab eo operae, ut his quoque diebus, quibus operas edat, satis tempus ad quaestum faciendum, unde ali possit, habeat:

Dig. 38.1.20pr.

Paulus 40 ad ed.

Quod nisi fiat, praetorem ipsam patrono denegaturum operarum praestationem: idque est verum, quia unusquisque, quod spopondit, suo impendio dare debet, quamdiu id quod debet in rerum natura est.

Dig. 38.1.20.1

Paulus 40 ad ed.

Ex provincia libertum romam venire debere ad reddendas operas proculus ait: sed qui dies interea cesserint, dum romam venit, patrono perire, dummodo patronus tamquam vir bonus et diligens pater familias romae moraretur vel in provinciam proficiscatur: ceterum si vagari per orbem terrarum velit, non esse iniungendam necessitatem liberto ubique eum sequi.

Dig. 38.1.21

Iavolenus 6 ex cass.

Operae enim loco edi debent ubi patronus moratur, sumptu scilicet et vectura patroni.

Dig. 38.1.22pr.

Gaius 14 ad ed. provinc.

Cum patronus operas stipulatus sit, tunc scilicet committitur stipulatio, cum poposcerit nec libertus praestiterit. nec interest, adiecta sint haec verba " cum poposcero" an non sint adiecta: aliud enim est de operis, aliud de ceteris rebus. cum enim operarum editio nihil aliud sit quam officii praestatio, absurdum est credere alio die deberi officium, quam quo is vellet, cui praestandum est.

Dig. 38.1.22.1

Gaius 14 ad ed. provinc.

Cum libertus promiserit patrono operas se daturum neque adiecerit " liberisque eius", constat liberis eius ita demum deberi, si patri heredes extiterint. heredes tamen extitisse liberos parenti ita demum prodesse ad operarum petitionem iuliano placet, si non per alium heredes extiterunt. itaque si quis exheredato emancipato filio servum eius heredem instituerit et per eum servum heres extiterit filius, repelli eum ab operarum petitione debere, perinde ac repelleretur patronus, qui operas non imposuisset vel quas imposuit revendidisset.

Dig. 38.1.22.2

Gaius 14 ad ed. provinc.

In omnibus operis praecipue observandum est, ut temporis spatia, quae ad curam corporis necessaria sunt, liberto relinquantur.

Dig. 38.1.23pr.

Iulianus 22 Dig.

Hae operae, quas libertus promittit, multum distant a fabrilibus vel pictoriis operis. denique si libertus faber aut pictor fuerit, quamdiu id artificium exercebit, has operas patrono praestare cogitur. quare sicut fabriles operas quis potest sibi aut titio stipulari, ita patronus a liberto operas sibi aut sempronio recte stipulatur: et libertus obligatione solvetur, si tales operas extraneo dederit, quales patrono praestando liberaretur.

Dig. 38.1.23.1

Iulianus 22 Dig.

Si patroni plures consulto in diversas regiones discesserint et liberto simul operas indixerint, potest dici diem operarum cedere, sed libertum non obligari, quia non per eum, sed per patronos staret, quo minus operae dentur, sicut accidit, cum aegrotanti liberto operae indicuntur. quod si diversarum civitatium patroni sint et in sua quisque moretur, consentire debent in operis ab eo accipiendis: durum alioquin est eum, qui se liberare potest decem diebus operando, simul operis indictis, si in accipiendis non consentiant, compelli ad praestandam alteri quinque operarum aestimationem.

Dig. 38.1.24

Iulianus 52 Dig.

Quotiens certa species operarum in stipulationem deducitur, veluti pictoriae fabriles, peti quidem non possunt nisi praeteritae, quia etsi non verbis, at re ipsa inest obligationi tractus temporis, sicuti cum ephesi dari stipulemur, dies continetur. et ideo inutilis est haec stipulatio: " operas tuas pictorias centum hodie dare spondes?" cedunt tamen operae ex die interpositae stipulationis. sed operae, quas patronus a liberto postulat, confestim non cedunt, quia id agi inter eos videtur, ne ante cederent quam indictae fuissent, scilicet quia ex commodo patroni libertus operas edere debet: quod in fabro vel pictore dici non convenit.

Dig. 38.1.25pr.

Iulianus 65 Dig.

Patronus, qui operas liberti sui locat, non statim intellegendus est mercedem ab eo capere: sed hoc ex genere operarum, ex persona patroni atque liberti colligi debet.

Dig. 38.1.25.1

Iulianus 65 Dig.

Nam si quis pantomimum vel archimimum libertum habeat et eius mediocris patrimonii sit, ut non aliter operis eius uti possit quam locaverit eas, exigere magis operas quam mercedem capere existimandus est.

Dig. 38.1.25.2

Iulianus 65 Dig.

Item plerumque medici servos eiusdem artis libertos perducunt, quorum operis perpetuo uti non aliter possunt, quam ut eas locent. ea et in ceteris artificibus dici possunt.

Dig. 38.1.25.3

Iulianus 65 Dig.

Sed qui operis liberti sui uti potest et locando pretium earum consequi mallet, is existimandus est mercedem ex operis liberti sui capere.

Dig. 38.1.25.4

Iulianus 65 Dig.

Nonnumquam autem ipsis libertis postulantibus patroni operas locant: quo facto pretium magis operarum quam mercedem capere existimandi sunt.

Dig. 38.1.26pr.

Alfenus 7 Dig.

Medicus libertus, quod putaret, si liberti sui medicinam non facerent, multo plures imperantes sibi habiturum, postulabat, ut sequerentur se neque opus facerent: id ius est nec ne? respondit ius esse, dummodo liberas operas ab eis exigeret, hoc est ut adquiescere eos meridiano tempore et valetudinis et honestatis suae rationem habere sineret.

Dig. 38.1.26.1

Alfenus 7 Dig.

Item rogavi, si has operas liberti dare nollent, quanti oporteret aestimari. respondit, quantum ex illorum operis fructus, non quantum ex incommodo dando illis, si prohiberet eos medicinam facere, commodi patronus consecuturus esset.

Dig. 38.1.27

Iulianus 1 ex minic.

Si libertus artem pantomimi exerceat, verum est debere eum non solum ipsi patrono, sed etiam amicorum ludis gratuitam operam praebere: sicut eum quoque libertum, qui medicinam exercet, verum est voluntate patroni curaturum gratis amicos eius. neque enim oportet patronum, ut operis liberti sui utatur, aut ludos semper facere aut aegrotare.

Dig. 38.1.28

Paulus l.S. de iure patronatus.

Si duorum pluriumve communis liberta unius patroni voluntate nupserit, alteri patrono ius operarum manet.

Dig. 38.1.29

Ulpianus 64 ad ed.

Si operarum iudicio actum fuerit cum liberto et patronus decesserit, convenit translationem heredi extraneo non esse dandam: filio autem et si heres non extat et si lis contestata non fuerat, tamen omnimodo competit, nisi exheredatus sit.

Dig. 38.1.30pr.

Celsus 12 Dig.

Si libertus ita iuraverit dare se, quot operas patronus arbitratus sit, non aliter ratum fore arbitrium patroni, quam si aequum arbitratus sit. et fere ea mens est personam arbitrio substituentium, ut, quia sperent eum recte arbitraturum, id faciant, non quia vel immodice obligari velint.

Dig. 38.1.30.1

Celsus 12 Dig.

In libertam, quae voluntate patroni nupsit, praeteritarum ante nuptias operarum actio datur.

Dig. 38.1.31

Modestinus 1 reg.

Operis non impositis manumissus, etiamsi ex sua voluntate aliquo tempore praestiterit, compelli ad praestandas, quas non promisit, non potest.

Dig. 38.1.32

Modestinus 6 pand.

Is qui onerandae libertatis causa pecuniam patrono repromiserit, non tenetur: vel patronus, si pecuniam exegerit, bonorum possessionem contra tabulas eius non potest petere.

Dig. 38.1.33

Iavolenus 6 ex cass.

Imponi operae ita, ut ipse libertus se alat, non possunt.

Dig. 38.1.34

Pomponius 22 ad q. muc.

Interdum et deminutionem et augmentum et mutationem recipere obligationes operarum sciendum est. nam dum languet libertus, patrono operae, quae iam cedere coeperunt, pereunt. sed si liberta, quae operas promisit, ad eam dignitatem perveniat, ut inconveniens sit praestare patrono operas, ipso iure hae intercident.

Dig. 38.1.35

Paulus 2 ad l. iul. et pap.

Liberta maior quinquaginta annis operas praestare patrono non cogitur.

Dig. 38.1.36

Ulpianus 11 ad l. iul. et pap.

Labeo ait libertatis causa societatem inter libertum et patronum factam ipso iure nihil valere palam esse.

Dig. 38.1.37pr.

Paulus 2 ad l. iul. et pap.

" qui libertinus duos pluresve a se genitos natasve in sua potestate habebit praeter eum, qui artem ludicram fecerit quive operas suas ut cum bestiis pugnaret locaverit: ne quis eorum operas doni muneris aliudve quicquam libertatis causa patrono patronae liberisve eorum, de quibus iuraverit vel promiserit obligatusve erit, dare facere praestare debeto".

Dig. 38.1.37.1

Paulus 2 ad l. iul. et pap.

Et si non eodem tempore duo in potestate habuerit vel unum quinquennem, liberabitur operarum obligatione.

Dig. 38.1.37.1a

Paulus 2 ad l. iul. et pap.

Amissi antea liberi ad eas operas, quae postea imponuntur, prosunt, ut iulianus ait.

Dig. 38.1.37.2

Paulus 2 ad l. iul. et pap.

Sed et si uno amisso obliget se, deinde alter nascatur, multo magis pomponius ait amissum huic iungi, uti liberetur.

Dig. 38.1.37.3

Paulus 2 ad l. iul. et pap.

Nihil autem interest, utrum ipsi promittat patrono an eis qui in potestate eius sint.

Dig. 38.1.37.4

Paulus 2 ad l. iul. et pap.

Sed si creditori suo libertum patronus delegaverit, non potest idem dici: solutionis enim vicem continet haec delegatio. potest tamen dici, si in id, quod patrono promisit, alii postea delegatus sit, posse eum liberari ex hac lege: nam verum est patrono eum expromisisse, quamvis patrono nunc non debeat: quod si ab initio delegante patrono libertus promiserit, non liberari eum.

Dig. 38.1.37.5

Paulus 2 ad l. iul. et pap.

Non solum futurarum, sed etiam praeteritarum operarum liberatio fit.

Dig. 38.1.37.6

Paulus 2 ad l. iul. et pap.

Iulianus etiam si iam petitae sunt operae, liberis sublatis absolutionem faciendam. sed si iam operarum nomine condemnatus est, non potest liberari, quoniam iam pecuniam debere coepit.

Dig. 38.1.37.7

Paulus 2 ad l. iul. et pap.

Postumus liberti heredes patris sui non liberat, quod proficisci liberatio a liberto debet nec quisquam post mortem liberari intellegi potest. ex lege autem nati liberi prosunt.

Dig. 38.1.37.8

Paulus 2 ad l. iul. et pap.

Etiamsi in personam liberti collata liberatio est, fideiussores quoque liberabuntur ex sententia legis: quod si libertus expromissorem dederit, nihil hoc caput ei proderit.

Dig. 38.1.38pr.

Callistratus 3 ed. monit.

Hae demum impositae operae intelleguntur, quae sine turpitudine praestari possunt et sine periculo vitae. nec enim si meretrix manumissa fuerit, easdem operas patrono praestare debet, quamvis adhuc corpore quaestum faciat: nec harenarius manumissus tales operas, quia istae sine periculo vitae praestari non possunt.

Dig. 38.1.38.1

Callistratus 3 ed. monit.

Si tamen libertus artificium exerceat, eius quoque operas patrono praestare debebit, etsi post manumissionem id didicerit. quod si artificium exercere desierit, tales operas edere debebit, quae non contra dignitatem eius fuerint, veluti ut cum patrono moretur, peregre proficiscatur, negotium eius exerceat.

Dig. 38.1.39pr.

Paulus 7 ad plaut.

Si ita stipulatio a patrono facta sit: " si decem dierum operas non dederis, viginti nummos dare spondes?" videndum est, an nec viginti actio danda sit, quasi onerandae libertatis gratia promissi sint, nec operarum, quae promissae non sint? an vero operae dumtaxat promissae fingi debeant, ne patronus omnimodo excludatur? et hoc praetor quoque sentit operas dumtaxat promissas.

Dig. 38.1.39.1

Paulus 7 ad plaut.

Sequens illa quaestio est, an libertus impetrare debeat, ne maioris summae quam viginti condemnetur, quia videtur quodammodo patronus tanti operas aestimasse ideoque non deberet egredi taxationem viginti. sed iniquum est nec oportet liberto hoc indulgere, quia non debet ex parte obligationem comprobare, ex parte tamquam de iniqua queri.

Dig. 38.1.40

Papinianus 20 quaest.

Si bona patroni venierint, operarum, quae post venditionem praeterierint, actio patrono dabitur, etsi alere se possit: ante venditionem praeteritarum non dabitur, quoniam ex ante gesto agit.

Dig. 38.1.41

Papinianus 5 resp.

Libertus, qui operarum obligatione dimissus est atque ita liberam testamenti factionem adsecutus est, nihilo minus obsequi verecundiae tenetur. alimentorum diversa causa est, cum inopia patroni per invidiam libertum convenit.

Dig. 38.1.42

Papinianus 9 resp.

" cerdonem servum meum manumitti volo ita, ut operas heredi promittat". non cogitur manumissus promittere: sed etsi promiserit, in eum actio non dabitur: nam iuri publico derogare non potuit, qui fideicommissariam libertatem dedit.

Dig. 38.1.43

Papinianus 19 resp.

Operis obligatus militiae nomen non sine iniuria patroni dabit.

Dig. 38.1.44

Scaevola 4 quaest.

Si libertus moram in operis fecerit, fideiussor tenetur: mora fideiussoris nulla est. at in homine debito fideiussor etiam ex sua mora in obligatione retinetur.

Dig. 38.1.45

Scaevola 2 resp.

Libertus negotiatoris vestiarii an eandem negotiationem in eadem civitate et eodem loco invito patrono exercere possit ? respondit nihil proponi, cur non possit, si nullam laesionem ex hoc sentiet patronus.

Dig. 38.1.46

Valens 5 fideic.

Liberta si in concubinatu patroni esset, perinde ac si nupta eidem esset, operarum petitionem in eam dari non oportere constat.

Dig. 38.1.47

Valens 6 fideic.

Campanus scribit non debere praetorem pati donum munus operas imponi ei, qui ex fideicommissi causa manumittatur. sed si, cum sciret posse se id recusare, obligari se passus sit, non inhibendam operarum petitionem, quia donasse videtur.

Dig. 38.1.48pr.

Hermogenianus 2 iuris epit.

Sicut patronus, ita etiam patroni filius et nepos et pronepos, qui libertae nuptiis consensit, operarum exactionem amittit: nam haec, cuius matrimonio consensit, in officio mariti esse debet.

Dig. 38.1.48.1

Hermogenianus 2 iuris epit.

Si autem nuptiae, quibus patronus consensit, nullas habeant vires, operas exigere patronus non prohibetur.

Dig. 38.1.48.2

Hermogenianus 2 iuris epit.

Patronae, item filiae et nepti et pronepti patroni, quae libertae nuptiis consensit, operarum exactio non denegatur, quia his nec ab ea quae nupta est indecore praestantur.

Dig. 38.1.49

Gaius l.S. de cas.

Duorum libertus potest aliquo casu singulis diversas operas uno tempore in solidum edere, veluti si librarius sit et alii patrono librorum scribendorum operas edat, alter vero peregre cum suis proficiscens operas custodiae domus ei indixerit: nihil enim vetat, dum custodit domum, libros scribere. hoc ita neratius libris membranarum scripsit.

Dig. 38.1.50pr.

Nerva 1 resp.

Operarum editionem pendere ex existimatione edentis: nam dignitati facultatibus consuetudini artificio eius convenientes edendas.

Dig. 38.1.50.1

Nerva 1 resp.

Non solum autem libertum, sed etiam alium quemlibet operas edentem alendum aut satis temporis ad quaestum alimentorum relinquendum et in omnibus tempora ad curam corporis necessariam relinquenda.

Dig. 38.1.51

Paulus 2 manual.

Interdum operarum manet petitio, etiamsi ius patroni non sit: ut evenit in fratribus eius, cui adsignatus est libertus, aut nepote alterius patroni extante alterius patroni filio.

Dig. 38.2.0. De bonis libertorum.

Dig. 38.2.1pr.

Ulpianus 42 ad ed.

Hoc edictum a praetore propositum est honoris, quem liberti patronis habere debent, moderandi gratia. namque ut servius scribit, antea soliti fuerunt a libertis durissimas res exigere, scilicet ad remunerandum tam grande beneficium, quod in libertos confertur, cum ex servitute ad civitatem romanam perducuntur.

Dig. 38.2.1.1

Ulpianus 42 ad ed.

Et quidem primus praetor rutilius edixit se amplius non daturum patrono quam operarum et societatis actionem, videlicet si hoc pepigisset, ut, nisi ei obsequium praestaret libertus, in societatem admitteretur patronus.

Dig. 38.2.1.2

Ulpianus 42 ad ed.

Posteriores praetores certae partis bonorum possessionem pollicebantur: videlicet enim imago societatis induxit eiusdem partis praestationem, ut, quod vivus solebat societatis nomine praestare, id post mortem praestaret.

Dig. 38.2.2pr.

Pomponius 4 ad sab.

Si patronus a liberto praeteritus bonorum possessionem petere potuerit contra tabulas et antequam peteret decesserit vel dies ei bonorum possessionis agnoscendae praeterierit, liberi eius vel alterius patroni petere poterunt ex illa parte edicti, qua, primis non petentibus aut etiam nolentibus ad se pertinere, sequentibus datur, atque si priores ex eo numero non essent.

Dig. 38.2.2.1

Pomponius 4 ad sab.

Sed si patronus heres institutus vivo liberto decessisset superstitibus liberis, quaesitum est, an illi contra tabulas testamenti bonorum possessionem petere possint: et eo decursum est, ut mortis tempus, quo defertur bonorum possessio, spectari debeat, an patronus non sit, ut, si sit, ex prima parte edicti liberi eius bonorum possessionem petere non possint.

Dig. 38.2.2.2

Pomponius 4 ad sab.

Si filius emancipatus nepotem in potestate avi reliquisset, bonorum possessionem partis dimidiae dandam ei filio intestati liberti, quamvis iure ipso legitima hereditas ad nepotem pertineat, quia et contra tabulas eius liberti filio potius bonorum possessio partis debitae daretur.

Dig. 38.2.3pr.

Ulpianus 41 ad ed.

Etiamsi ius anulorum consecutus sit libertus a principe, adversus huius tabulas venit patronus, ut multis rescriptis continetur: hic enim vivit quasi ingenuus, moritur quasi libertus.

Dig. 38.2.3.1

Ulpianus 41 ad ed.

Plane si natalibus redditus sit, cessat contra tabulas bonorum possessio:

Dig. 38.2.3.2

Ulpianus 41 ad ed.

Idem et si a principe liberam testamenti factionem impetravit.

Dig. 38.2.3.3

Ulpianus 41 ad ed.

Sed si hac lege emit quis, ut manumittat, ad hanc partem edicti pertinebit.

Dig. 38.2.3.4

Ulpianus 41 ad ed.

Si quis nummos accepit, ut manumitteret, non habet contra tabulas bonorum possessionem.

Dig. 38.2.3.5

Ulpianus 41 ad ed.

Ut patronus contra tabulas bonorum possessionem accipere possit, oportet hereditatem aditam esse aut bonorum possessionem petitam: sufficit autem vel unum ex heredibus adisse hereditatem bonorumve possessionem petisse.

Dig. 38.2.3.6

Ulpianus 41 ad ed.

Patronus contra ea bona liberti omnino non admittitur, quae in castris sunt quaesita.

Dig. 38.2.3.7

Ulpianus 41 ad ed.

Si deportatus patronus restitutus sit, liberti contra tabulas bonorum possessionem accipere potest. idemque et in liberto deportato et restituto dicendum est.

Dig. 38.2.3.8

Ulpianus 41 ad ed.

Si quis filius familias servum de castrensi peculio manumiserit, ex constitutione divi hadriani patronus est admittique poterit ad contra tabulas bonorum possessionem ut patronus.

Dig. 38.2.3.9

Ulpianus 41 ad ed.

Si capitis libertum accusaverit is, cui adsignatus est, non potest is petere contra tabulas bonorum possessionem fratribusque suis non obstabit: sed hi contra tabulas bonorum possessionem petent, quemadmodum peterent, si ex altero filio nepotes essent: libertus enim, qui alteri ex filiis adsignatur, non desinit alterius filii libertus esse. amplius dicendum est: etiamsi omiserit frater bonorum possessionem, alter frater, cui adsignatus non est, potest succedere et contra tabulas bonorum possessionem petere.

Dig. 38.2.3.10

Ulpianus 41 ad ed.

Totiens ad bonorum possessionem contra tabulas invitatur patronus, quotiens non est heres ex debita portione institutus.

Dig. 38.2.3.11

Ulpianus 41 ad ed.

Si patronus sub condicione sit institutus eaque condicio vivo testatore extitit, contra tabulas bonorum possessionem accipere non potest.

Dig. 38.2.3.12

Ulpianus 41 ad ed.

Quid ergo, si mortis tempore pependit, extitit tamen, antequam patrono deferatur bonorum possessio, hoc est ante aditam hereditatem, an invitetur ex hac parte edicti? et magis est, ut aditae hereditatis tempus spectetur: hoc enim iure utimur.

Dig. 38.2.3.13

Ulpianus 41 ad ed.

Si tamen in praeteritum collata sit condicio vel ad praesens, non videtur sub condicione institutus: aut enim impleta est et pure institutus est, aut non est et nec heres institutus est.

Dig. 38.2.3.14

Ulpianus 41 ad ed.

Si libertus patronum suum ita heredem scripserit: " si filius meus me vivo morietur, patronus heres esto", non male videtur testatus: nam si decesserit filius, poterit hic existente condicione accipere bonorum possessionem.

Dig. 38.2.3.15

Ulpianus 41 ad ed.

Si debita patrono portio legata sit, etsi scriptus heres non fuerit, satis ei factum est.

Dig. 38.2.3.16

Ulpianus 41 ad ed.

Sed et si institutus sit ex parte minore quam ei debetur, residua vero pars suppleta est ei legatis sive fideicommissis, et ita satisfactum ei videtur.

Dig. 38.2.3.17

Ulpianus 41 ad ed.

Sed et mortis causa donationibus poterit patrono debita portio suppleri: nam mortis causa donationes vice legatorum funguntur.

Dig. 38.2.3.18

Ulpianus 41 ad ed.

Sed et si non mortis causa donavit libertus patrono, contemplatione tamen debitae portionis donata sunt, idem erit dicendum: tunc enim vel quasi mortis causa imputabuntur vel quasi adgnita repellent patronum a contra tabulas bonorum possessione.

Dig. 38.2.3.19

Ulpianus 41 ad ed.

Si patrono condicionis implendae causa quid datum sit, in portionem debitam imputari debet, si tamen de bonis sit liberti profectum.

Dig. 38.2.3.20

Ulpianus 41 ad ed.

Debitam autem partem eorum, quae cum moritur libertus habuit, patrono damus: mortis enim tempus spectamus. sed et si dolo malo fecit, quo minus haberet, hoc quoque voluit praetor pro eo haberi, atque si in bonis esset.

Dig. 38.2.4pr.

Paulus 42 ad ed.

Si necem domini detexerit servus, praetor statuere solet, ut liber sit: et constat eum quasi ex senatus consulto libertatem consecutum nullius esse libertum.

Dig. 38.2.4.1

Paulus 42 ad ed.

Si libertus captus ab hostibus ibi decesserit, quamvis liberti appellatio eum non tangat, tamen propter legem corneliam, quae testamentum sic confirmat atque si in civitate decesserit, patrono quoque bonorum possessio danda erit.

Dig. 38.2.4.2

Paulus 42 ad ed.

Si deportatus patronus sit, filio eius competit bonorum possessio in bonis liberti nec impedimento est ei talis patronus, qui mortui loco habetur. et dissimile est, si patronus apud hostes sit: nam propter spem postliminii obstat liberis suis.

Dig. 38.2.4.3

Paulus 42 ad ed.

Si extraneus a liberto heres institutus rogatus sit filio hereditatem restituere, cum ex senatus consulto trebelliano restituta hereditate heredis loco filius habetur, patronus summovendus est.

Dig. 38.2.5pr.

Gaius 15 ad ed. provinc.

Libertinus, qui patronum patronique liberos habet, si patronum ex parte debita heredem instituit, liberos eius in eandem portionem substituere debet, ut, licet patronus vivo liberto mortuus fuerit, satisfactum videatur liberis eius.

Dig. 38.2.5.1

Gaius 15 ad ed. provinc.

Si patroni filium emancipatum et nepotem ex eo, qui in avi familia remansit, libertus habeat, filio tantum, non etiam nepoti satisfacere debebit libertus: nec ad rem pertinet, quod ad parentis bona pariter vocantur.

Dig. 38.2.6pr.

Ulpianus 43 ad ed.

Etsi ex modica parte instituti sint liberi liberti, bonorum possessionem contra tabulas patronus petere non potest: nam et Marcellus libro nono digestorum scripsit quantulacumque ex parte heredem institutum liberti filium patronum expellere.

Dig. 38.2.6.1

Ulpianus 43 ad ed.

Cum patroni filia heres instituta esset a liberto falsumque testamentum dictum esset, in quo scripta erat, et appellatione interposita et pendente diem suum obisset: heredibus eius divus marcus subvenit, ut id haberent, quod haberet patroni filia, si viveret.

Dig. 38.2.6.2

Ulpianus 43 ad ed.

Si filius liberti heres ab eo institutus abstinuerit, quamvis nomine sit heres, patronus admittitur.

Dig. 38.2.6.3

Ulpianus 43 ad ed.

Sed et si per in integrum restitutionem is, qui mixtus est paternae hereditati vel qui adit hereditatem, abstinuerit se, poterit quis patronum admittere.

Dig. 38.2.6.4

Ulpianus 43 ad ed.

Patronus patronique liberi si secundum voluntatem mortui liberti hereditatem adierint legatumve aut fideicommissum petere maluerint, ad contra tabulas bonorum possessionem non admittuntur.

Dig. 38.2.7

Gaius 15 ad ed. provinc.

Nam absurdum videtur licere eidem partim comprobare iudicium defuncti, partim evertere.

Dig. 38.2.8pr.

Ulpianus 43 ad ed.

Si vero non habuit effectum petitio eius, dico non impediri, quo minus adiuvetur. quin immo et si sic adit quasi ex debita portione institutus, mox apparuit eum minorem partem quam speravit accepisse, aequissimum est admitti eum ad suum auxilium. sed et si testato convenisset heredem, ut sibi legatum solveretur, mox paenituisset, puto eum posse adiuvari.

Dig. 38.2.8.1

Ulpianus 43 ad ed.

Si patronus legatum sibi relictum adgnoverit idque fuerit evictum, competit ei legitimum auxilium, quia id, quod speravit se habiturum, non habet. sed et si non totum evictum sit, verum aliquo minus habet quam putavit, erit ei subveniendum.

Dig. 38.2.8.2

Ulpianus 43 ad ed.

Si servo vel filio suo aliquid relictum patronus adgnoverit, perinde a contra tabulas bonorum possessione repelletur atque si adgnovisset sibi relictum.

Dig. 38.2.8.3

Ulpianus 43 ad ed.

Sed et si mortis causa donationem adgnoverit, dicendum est repelli eum a contra tabulas bonorum possessione, sic tamen, si post mortem liberti adgnovit. ceterum si ei vivus libertus donavit, ille accepit, non idcirco erit repulsus a contra tabulas bonorum possessione, quia potest dicere sperasse quod in testamento quoque gratus circa eum fieret, remittique ei debet ab eis decedere vel ea compensare in portionem pro rata.

Dig. 38.2.8.4

Ulpianus 43 ad ed.

Quare dicitur et si condicionis implendae causa quid fuerit datum patrono post mortem liberti, repelli eum a contra tabulas bonorum possessione, quasi adgnoverit iudicium.

Dig. 38.2.8.5

Ulpianus 43 ad ed.

Si patronus minor annis viginti quinque liberti iudicium adgnoverit, in integrum restitui eum oportere existimamus, ut possit contra tabulas accipere.

Dig. 38.2.9

Paulus 42 ad ed.

Qui in servitutem libertum paternum petierit, nec nomine liberorum bonorum possessionem accipere potest.

Dig. 38.2.10pr.

Ulpianus 44 ad ed.

Si ex patronis alicui satisfactum non erit ita, ut alii amplius sua portione ex bonis liberti relinquatur: ei, cui satisfactum non erit, ita actio dabitur, ut eius portio suppleatur ex eo, quod extraneo heredi et quod patrono supra suam portionem relictum est. eadem ratio et in pluribus patronis servabitur.

Dig. 38.2.10.1

Ulpianus 44 ad ed.

Iulianus ait eum, qui ab avo suo exheredatus est, a bonis libertorum eius summoveri, a patris vero sui libertorum bonis non excludi: quod si a patre sit exheredatus, ab avo non sit, non solum a libertorum paternorum bonis, verum etiam ab avi quoque excludi debere, quia per patrem avitos libertos consequitur: quod si pater eius sit ab avo exheredatus, ipse non sit, posse nepotem avitorum libertorum contra tabulas bonorum possessionem petere. idem ait, si pater me exheredavit, avus meus patrem meum et prior avus decesserit, ab utriusque libertis me repelli: sed si ante pater decessisset, postea avus, dicendum erit nihil mihi nocere patris exheredationem ad avitorum libertorum bona.

Dig. 38.2.11

Iulianus 26 Dig.

Quod si pater meus a patre suo sit exheredatus, ego neque a patre meo neque ab avo, mortuo quidem patre et adversus avitos et adversus paternos libertos ius habebo, vivente patre, quamdiu in potestate eius ero, non petam contra tabulas avitorum libertorum bonorum possessionem, emancipatus non summovebor.

Dig. 38.2.12pr.

Ulpianus 44 ad ed.

Si patronus testamento iure militari facto filium silentio exheredaverit, debebit nocere ei exheredatio: verum est enim hunc exheredatum esse.

Dig. 38.2.12.1

Ulpianus 44 ad ed.

Si quis libertum filio suo adsignaverit eumque exheredaverit, admitti potest ad bonorum liberti possessionem.

Dig. 38.2.12.2

Ulpianus 44 ad ed.

Si quis non mala mente parentis exheredatus sit, sed alia ex causa, exheredatio ipsi non nocet: ut puta pone furoris causa exheredatum eum vel ideo, quia impubes erat, heredemque institutum rogatum ei restituere hereditatem.

Dig. 38.2.12.3

Ulpianus 44 ad ed.

Si quis, cum esset exheredatus, pronuntiatus vel perperam sit exheredatus non esse, non repellitur: rebus enim iudicatis standum est.

Dig. 38.2.12.4

Ulpianus 44 ad ed.

Si filius patroni exheredatus in partem optinuerit de inofficioso, in partem victus sit, videamus, an noceat ei exheredatio. et nocere arbitror, quia testamentum valet, a quo exheredatus est.

Dig. 38.2.12.5

Ulpianus 44 ad ed.

Ex testamento autem, ex quo neque adita hereditas est neque petita bonorum possessio, liberis exheredatio non nocet: absurdum est enim in hoc tantum valere testamentum, ut exheredatio vigeat, cum alias non valeat.

Dig. 38.2.12.6

Ulpianus 44 ad ed.

Si patroni filius priore gradu sit heres scriptus, secundo exheredatus, huic non nocet exheredatio, cum voluntate patris vel extiterit heres vel existere potuerit: neque enim debet videri pater indignum existimasse filium bonis libertorum, quem ad hereditatem suam primum vocaverit. ac ne eum quidem existimandum est summoveri a bonis liberti, qui a primo gradu exheredatus et idem substitutus est. ergo is, qui institutus sit heres vel primo gradu vel sequenti vel alio quo gradu, licet exheres sit eodem testamento, non est summovendus a liberti bonis.

Dig. 38.2.12.7

Ulpianus 44 ad ed.

Si patroni filius emancipatus noluerit adire hereditatem vel qui in potestate est retinere, nihilo minus liberti bonorum possessionem habebit.

Dig. 38.2.13

Iulianus 26 Dig.

Filius patroni exheredatus, quamvis nepos ex eo heres scriptus fuerit, bonorum possessionem contra tabulas paternorum libertorum accipere non potest: licet enim necessarius existat patri suo, non per semetipsum, sed per alium ad hereditatem admittitur. et certe constat: si emancipatus filius exheredatus fuerit et servus eius heres scriptus, etsi iusserit servo hereditatem adire et ita patri suo heres extiterit, non habebit contra tabulas paternorum libertorum bonorum possessionem.

Dig. 38.2.14pr.

Ulpianus 45 ad ed.

Qui, cum maior natu esset quam viginti quinque annis, libertum capitis accusaverit aut in servitutem petierit, removetur a contra tabulas bonorum possessione.

Dig. 38.2.14.1

Ulpianus 45 ad ed.

Si vero accusaverit minor, dicendum est hunc non excludi, sive ipse sive tutor eius vel curator accusaverit.

Dig. 38.2.14.2

Ulpianus 45 ad ed.

Sed si minor quidem instituerit accusationem, maior autem factus sententiam acceperit, benigne erit dicendum ignosci ei debere, quia minor coepit. neque enim imputare ei possumus, cur non deseruit accusationem vel cur abolitionem non petierit, cum, alterum si fecisset, in turpillianum incideret, alterum non facile impetretur. certe si abolitione publice data repetit iamiam maior, dicendum est hunc esse removendum: maior enim factus potuit sine timore deserere abolitam accusationem.

Dig. 38.2.14.3

Ulpianus 45 ad ed.

Is demum videtur capitis accusasse, qui tali iudicio appetit, cuius poena aut supplicium habuit aut exilium, quod sit vice deportationis, ubi civitas amittitur.

Dig. 38.2.14.4

Ulpianus 45 ad ed.

Si tamen quis libertum eo crimine accusaverit, cuius poena non est capitis, verumtamen iudicanti placuit augere poenam, non obest hoc patroni filio: neque enim imperitia aut severitas iudicantis obesse debet patroni filio, qui crimen levius importavit.

Dig. 38.2.14.5

Ulpianus 45 ad ed.

Sed si non accusaverit, sed testimonium in caput liberti dixit aut subiecit accusatorem, puto eum a contra tabulas removeri.

Dig. 38.2.14.6

Ulpianus 45 ad ed.

Si libertus maiestatis patroni filium accusavit et patroni filius calumniae eum capitis puniri desideravit, non debet repelli hoc edicto. idem puto et si ab eo petitus retorsit in eum crimina: ignoscendum enim est ei, si voluit se ulcisci provocatus.

Dig. 38.2.14.7

Ulpianus 45 ad ed.

Si patris mortem defendere necesse habuerit, an dicendum sit hic quoque ei succurrendum, si libertum paternum propter hoc accusavit, medicum forte patris aut cubicularium aut quem alium, qui circa patrem fuerat? et puto succurrendum, si affectione et periculo paternae substantiae ducente necesse habuit accusationem vel calumniosam instituere.

Dig. 38.2.14.8

Ulpianus 45 ad ed.

Accusasse autem eum dicimus, qui crimina obiecit et causam perorari usque ad sententiam effecit: ceterum si ante quievit, non accusavit: et hoc iure utimur. sed si appellatione interposita desiit, benigne dicetur non pertulisse accusationem. si igitur pendente appellatione decessit libertus, patroni filius admittetur ad bonorum possessionem, quia sententiae libertus morte subtractus est.

Dig. 38.2.14.9

Ulpianus 45 ad ed.

Si patroni filius advocationem accusatori liberti praestitit, non est repellendus: neque enim advocatus accusat.

Dig. 38.2.14.10

Ulpianus 45 ad ed.

Si pater testamento caverit, ut accusaretur libertus, quasi venenum sibi parasset aut quid aliud in se admisisset: magis est, ut ignosci liberis deberet, qui non sponte accusaverunt.

Dig. 38.2.14.11

Ulpianus 45 ad ed.

Sed et si accusaverit libertum et probaverit crimen patroni filius posteaque hic libertus sit restitutus, non erit repellendus: crimen enim quod intendit etiam perfecit.

Dig. 38.2.15

Tryphonus 17 disp.

Idem est et si crimen quidem, quod in liberto probatum est, meruerat capitis poenam, benignius autem punitus est libertus, veluti tantum relegatus: de calumniatore enim sensit praetor.

Dig. 38.2.16pr.

Ulpianus 45 ad ed.

In servitutem petisse non is videtur, qui ei, qui in possessione erat servitutis, petenti se in libertatem contradixit, verum is, qui ex libertate petit in servitutem.

Dig. 38.2.16.1

Ulpianus 45 ad ed.

Sed et si quis non totum suum, sed pro parte vel usum fructum in eo suum dicat vel quid aliud, quod habere non potest in eo, nisi servus sit, an repellatur quasi in servitutem petierit? quod est verius.

Dig. 38.2.16.2

Ulpianus 45 ad ed.

Si petierit in servitutem et optinuerit, mox cognita veritate passus sit in libertate morari, non debet ei obesse, maxime si habuit iustam causam errandi.

Dig. 38.2.16.3

Ulpianus 45 ad ed.

Petisse in servitutem non videtur, qui ante litem contestatam destitit: sed et si post litem contestatam, dicendum est nec id nocere debere, quia non usque ad sententiam duravit.

Dig. 38.2.16.4

Ulpianus 45 ad ed.

Si patroni filius sit vel exheredatus vel si in servitutem libertum paternum petiit vel capitis accusaverit libertum, non nocet hoc liberis eius, qui in potestate non sunt: et hoc divi fratres quintilliis rescripserunt.

Dig. 38.2.16.5

Ulpianus 45 ad ed.

Si quis bonorum possessionem contra tabulas liberti acceperit, ab omni liberti iudicio repellitur, nec tantum si ipsi liberto heres fuerit scriptus, verum etiam si impuberi filio substitutus. nam et iulianus scripsit, si post petitam bonorum possessionem adierit impuberis filii liberti hereditatem patronus, denegari ei debere actiones.

Dig. 38.2.16.6

Ulpianus 45 ad ed.

Sed et si quid codicillis fuerit patrono relictum vel mortis causa donatum, simili modo horum quoque persecutio denegabitur.

Dig. 38.2.16.7

Ulpianus 45 ad ed.

Nonnumquam plane post petitam bonorum possessionem dabitur patrono legati persecutio, si nihil ad emolumentum eius perventurum sit, quia forte rogatus est alii restituere.

Dig. 38.2.16.8

Ulpianus 45 ad ed.

Praeterea non tantum quod ipsis nominatim datum est, id se praetor denegaturum ait, verum etiam si quid proponas ad ipsos per alios perventurum, ut puta per subiectas personas, quod quidem sunt habituri, non restituturi.

Dig. 38.2.16.9

Ulpianus 45 ad ed.

Dabimus legati petitionem patrono, si servo patroni dederit libertatem pretio eius patrono praelegato.

Dig. 38.2.16.10

Ulpianus 45 ad ed.

Ei, qui substitutus erit patrono, qui contra tabulas possessionem petierit, actio eius partis, cuius patrono possessio data erit, non datur.

Dig. 38.2.16.11

Ulpianus 45 ad ed.

Si patronus sit substitutus et patronus vivo testatore decesserit, filium patroni petentem contra tabulas bonorum possessionem non solius substituti partem occupare, verum omnibus heredibus pro parte aliquid auferre constat.

Dig. 38.2.17

Ulpianus 47 ad ed.

Liberto sine liberis mortuo in primis patronus et patrona bonorum possessionem accipere possunt et quidem simul. sed et si patrono et patronae proximi sunt aliqui, simul admittentur.

Dig. 38.2.18

Paulus 43 ad ed.

Patronae quidem liberi etiam volgo quaesiti accipient materni liberti bonorum possessionem, patroni autem non nisi iure quaesiti.

Dig. 38.2.19pr.

Ulpianus 4 disp.

Si patronus ex minore parte quam legitima heres institutus falsum testamentum dixisset nec optinuisset, non est ambiguum contra tabulas ei non deferri bonorum possessionem, eo quod facto suo perdidit hereditatem, cum temere falsum dixit.

Dig. 38.2.19.1

Ulpianus 4 disp.

Quod si ex debita parte fuerit institutus, sive adiit sive non, a contra tabulas bonorum possessione repellitur, quasi debitam sibi portionem acceperit. nec poterit contra tabulas bonorum possessionem petere.

Dig. 38.2.20pr.

Iulianus 25 Dig.

Libertus sub condicione iurisiurandi, quam praetor remittere solet, patronum instituit heredem: non puto dubitandum, quin a bonorum possessione submoveatur: verum est enim eum heredem factum.

Dig. 38.2.20.1

Iulianus 25 Dig.

Si titio legatum fuisset eiusque fidei commissum, ut patrono restitueret, denegatur legatorum actio titio, si patrono pro debita parte a scripto herede fuerit satisfactum.

Dig. 38.2.20.2

Iulianus 25 Dig.

Libertus patronum et extraneum coniunctim ex parte dimidia heredem scripsit: quadrans, ex quo institutus erat patronus, totus ipsi imputari debebit, residuum ex debita sibi parte omnibus heredibus pro portione cuiusque aufert.

Dig. 38.2.20.3

Iulianus 25 Dig.

Idem servari conveniet in legato, quod patrono coniunctim et titio datum fuerit, ut pars legati in portionem debitam patrono imputetur, ex reliqua parte tantum titio detrahatur, quantum ab herede, pro rata portione.

Dig. 38.2.20.4

Iulianus 25 Dig.

Si libertinus filium emancipatum sub condicione heredem instituerit et deficiente condicione substitutus adierit, quaero, utrum patrono adversus substitutum in partem debitam praetor an emancipato filio in totam hereditatem succurrere debeat. respondi, cum pater filium sub condicione primo gradu heredem instituit, si deficiente condicione, sub qua filius heres institutus est, ad secundum gradum hereditas pertinet vel adhuc pendente condicione filius decesserit, patrono partis debitae bonorum possessionem adversus substitutum competere. idemque est et si filius vel non petierit bonorum possessionem tempore exclusus vel repudiaverit. si vero deficiente condicione hereditas ad filium pertineat, emancipatum potius tuebitur praetor adversus substitutum. existimo autem, quotiens sub condicione heres filius scribitur, alias necessariam esse exheredationem a substitutis, alias supervacuam: nam si id genus condicionis fuerit, quae in potestate filii esset, veluti " cum testamentum fecerit", puto etiam omissa condicione filium locum substitutis facere: si vero condicio non fuerit in potestate filii, veluti " si titius consul factus fuerit", tunc substitutus non admittitur, nisi filius ab eo nominatim exheredatus fuerit.

Dig. 38.2.20.5

Iulianus 25 Dig.

Si libertus filium emancipatum heredem instituerit eiusque fidei commiserit, ut totam hereditatem sempronio restitueret, et filius, cum suspectam sibi hereditatem diceret, iussu praetoris adierit eam et sempronio restituerit: non inique patrono bonorum possessio partis debitae dabitur, perinde ac si non filius, sed is cui hereditas restituta est liberto heres exstitisset.

Dig. 38.2.20.6

Iulianus 25 Dig.

Item cum filius hereditatem liberti patris omiserit et coheres eius totius hereditatis onus susceperit, danda erit patrono bonorum possessio. utroque enim casu non filio, sed extraneo pars eripitur.

Dig. 38.2.21

Iulianus 26 Dig.

Ex tribus patronis uno cessante bonorum possessionem petere duo aequas partes habebunt.

Dig. 38.2.22

Marcianus 1 inst.

Si filius familias miles manumittat, secundum iuliani quidem sententiam, quam libro vicensimo septimo digestorum probat, patris libertum faciet: sed quamdiu, inquit, vivit, praefertur filius in bona eius patri. sed divus hadrianus flavio apro rescripsit suum libertum eum facere, non patris.

Dig. 38.2.23pr.

Iulianus 27 Dig.

Si libertus praeterito patrono extraneum instituerit heredem et patronus, antequam contra tabulas bonorum possessionem petierit, in adoptionem se dederit, deinde scriptus omiserit hereditatem: patronus totorum bonorum liberti possessionem ut legitimus petere potest.

Dig. 38.2.23.1

Iulianus 27 Dig.

Si libertus intestato decesserit relictis patroni filio et ex altero filio duobus nepotibus, nepotes non admittentur, quamdiu filius esset, quia proximum quemque ad hereditatem liberti vocari manifestum est.

Dig. 38.2.23.2

Iulianus 27 Dig.

Si autem ex duobus patronis alter unum filium, alter duos reliquisset, dixi viriles inter eos partes fieri.

Dig. 38.2.24

Iulianus 65 Dig.

Communi liberto si ex duobus patronis alter iusiurandum exegerit ne uxorem ducat, vel vivo liberto decesserit: is qui extra hanc culpam fuerit vel supervixerit partis utrique debitae bonorum possessionem solus habebit.

Dig. 38.2.25

Iulianus 1 ad urs. ferocem.

Quamdiu patrono bonorum possessio partis debitae dari potest, exceptio debitoribus datur adversus heredem petentem: " si non in ea causa sit patronus, ut bonorum possessionem pro parte debita contra tabulas petere possit".

Dig. 38.2.26

Africanus 2 quaest.

Liberto octoginta habenti fundus quadraginta legatus est: is die cedente legati decessit extraneo herede instituto. respondit posse patronum partem debitam vindicare: nam videri defunctum mortis tempore ampliorem habuisse rem centum, cum hereditas eius propter computationem legati pluris venire possit. neque referre, heres institutus repudiet legatum liberto relictum nec ne: nam et si de lege falcidia quaeratur, tale legatum quamvis repudiatum in quadrantem hereditatis imputatur legatariis.

Dig. 38.2.27

Africanus 4 quaest.

Vivo filio si nepos exheredatur, nocebit ei exheredatio ad bona libertorum avitorum.

Dig. 38.2.28pr.

Florus 10 inst.

Si in libertinum animadversum erit, patronis eius ius, quod in bonis eius habituri essent, si is in quem animadversum est sua morte decessisset, eripiendum non est. sed reliquam partem bonorum, quae ad manumissorem iure civili non pertineat, fisco esse vindicandam placet.

Dig. 38.2.28.1

Florus 10 inst.

Eadem servantur in bonis eorum qui metu accusationis mortem sibi consciverint aut fugerint, quae in damnatorum bonis constituta sunt.

Dig. 38.2.29pr.

Marcianus 9 inst.

Qui ex causa fideicommissi manumittitur, est quidem libertus manumissoris et tam contra tabulas quam ab intestato ad bona eius venire potest quasi patronus: sed operas ei imponere non potest nec impositas ab eo petere.

Dig. 38.2.29.1

Marcianus 9 inst.

Sed si defunctus filio suo legavit servum et rogavit, ut eum manumittat, ea mente, ut plenum ius patroni habeat, defendendum est posse eum operas iure imponere.

Dig. 38.2.30

Gaius 2 ad ed. pu. de liberali c.

Si quis libertum paternum in servitutem ea voluntate petierit, ut causam evictionis sibi conservet, non amittit beneficium bonorum possessionis.

Dig. 38.2.31

Marcellus 9 Dig.

Patrono libertus fundum, quem ab eo alienum emerat, legavit et constituit patronus ad se pertinere legatum: contra tabulas bonorum possessionem accipere non potest, etsi nihil profecit ei legatum, quia alienam rem legaverit ei libertus, quia patronus ipse eum liberto vendiderat.

Dig. 38.2.32

Marcellus 10 Dig.

Si libertus meus in servitutem redactus postea ab alio liberatus est et eius coeperit esse libertus, praefertur mihi in contra tabulas bonorum possessione qui eum manumisit.

Dig. 38.2.33

Modestinus l.S. de manumiss.

Si patronus non aluerit libertum, lex aelia sentia adimit eius libertatis causa imposita tam ei, quam ipsi ad quem ea res pertinet, item hereditatem ipsi et liberis eius, nisi heres institutus sit, et bonorum possessionem praeterquam secundum tabulas.

Dig. 38.2.34

Iavolenus 3 ex cass.

Si libertus, cum duos patronos haberet, alterum praeteriit, alterum ex semisse fecit heredem et alteri extraneo semissem dereliquit, scriptus quidem patronus debitam sibi partem immunem habet: de cetera autem parte patroni, quae supra debitum ei relicta est, et de semisse extraneo relicto alteri patrono pro rata portione satisfieri oportet.

Dig. 38.2.35

Iavolenus 3 epist.

A liberto suo herede seius usum fructum fundi maevio legavit: is libertus maevio herede relicto decessit: quaero, cum contra tabulas testamenti petierit filius seii adversus maevium, utrum deducto usu fructu pars debita ei fundi restituenda sit an solida, quia eorum bonorum acceperit possessionem, quae liberti cum moreretur fuerunt. respondit: usum fructum in causam pristinam restituendum puto. optimum itaque erit arbitrum postulare, ut arbitrio eius usus fructus in integrum restituatur.

Dig. 38.2.36

Iavolenus 8 epist.

Libertus, qui solvendo non erat, praeterito patrono extrarios relinquit heredes: quaero, an possit patronus petere contra tabulas bonorum possessionem. respondit: cum a scriptis heredibus adita est hereditas, patronus contra tabulas bonorum possessionem petere potest, quia solvendo hereditas est, quae inveniat heredem. et sane absurdum est ius patroni in petenda bonorum possessione contra tabulas aliorum computatione, non iudicio ipsius patroni aestimari auferrique patrono, quod modicum vindicaturus est. multi enim casus intervenire possunt, quibus expediat patrono petere bonorum possessionem, quamvis aeris alieni magnitudo, quam libertus reliquerit, facultates patrimonii eius excedat, veluti si praedia sunt aliqua ex bonis liberti, in quibus maiorum patroni sepulchra sint et magni aestimat patronus bonorum possessione iura pro parte ea ad se pertinere, vel aliquid mancipium, quod non pretio, sed affectu sit aestimandum. non ergo ideo minus habere debet ius petendae bonorum possessionis, qui animo potius quam aliorum computatione bona liberti aestimat, cum eo ipso sufficere patrimonium videri possit, quod et heredem habeat et bonorum possessorem.

Dig. 38.2.37pr.

Ulpianus 11 ad l. iul. et pap.

Iulianus ait, si patronus libertatis causa imposita libertae revendiderit, filium eius a bonorum possessione summoveri, scilicet quia nec contra tabulas testamenti liberti bonorum possessionem accipiat, quotiens pater eius donum munus operas liberto revendiderit. plane si patroni filius libertatis causa imposita revendiderit, nihilo minus familiam bonorum possessionem contra tabulas liberti accipere ait, quia filius revendendo libertatis causa imposita fratrem suum non summovet.

Dig. 38.2.37.1

Ulpianus 11 ad l. iul. et pap.

Si libertus heredem scripserit isque prius, quam de familia quaestionem haberet, adierit hereditatem, patronum ad contra tabulas bonorum possessionem non admitti iulianus ait: debuit enim et patronus liberti necem vindicare. quod et in patrona erit dicendum.

Dig. 38.2.38pr.

Clementius 9 ad l. iul. et pap.

Quaeritur, an filio exheredato etiam nepotes ex eo a bonorum possessione liberti excludantur. quod utique sic dirimendum est, ut vivo filio, donec in potestate eius liberi manent, non admittantur ad bonorum possessionem, ne qui suo nomine a bonorum possessione summoventur per alios eam consequantur, sin autem emancipati a patre fuerint vel alio modo sui iuris effecti, sine aliquo impedimento ad bonorum possessionem admittantur.

Dig. 38.2.38.1

Clementius 9 ad l. iul. et pap.

Si filius liberti omiserit patris sui hereditatem, hoc patrono proficiet.

Dig. 38.2.39

Clementius 10 ad l. iul. et pap.

Patroni filia si in adoptiva familia sit, ad bona libertorum paternorum admittitur.

Dig. 38.2.40

Clementius 12 ad l. iul. et pap.

Si pater exheredato filio ita cavit, ut ius in libertum salvum ei esset, nihil ei ad hanc rem nocet exheredatio.

Dig. 38.2.41

Papinianus 12 quaest.

Si libertus patrono, quod ad debitam portionem attinet, satisfaciat, invito tamen aliquid extorquere conetur, quid statuendum est, quaeritur. quid enim, si ex parte debita instituto decem praeterea legentur et rogetur servum proprium, qui sit decem vel minoris pretii, manumittere? iniquum est et legatum velle percipere et libertatem servo non dare: sed parte debita accepta et legato temperare et libertatem imponere non cogi, ne servum (forte de se male meritum) cogatur manumittere. quid ergo si solo eodem herede instituto idem libertus petierit? si substitutum habebit, aeque decreti remedium poterit procedere, ut accepta debita portione cetera pars ad substitutum perveniat ita, ut, si forte servus redimi potuisset, praestaretur libertas: cessante vero substitutione patronum hereditatem liberti amplectentem praetor, qui de fideicommisso cognoscit, libertatem servo eum imponere cogat.

Dig. 38.2.42pr.

Papinianus 13 quaest.

Filius, qui patri heres exstitit, fratrem exheredatum adrogavit atque ita herede eo relicto defunctus est: bonorum possessionem libertum patris naturalis exheredatus non habebit: nam cui non exheredato talis adoptio noceret, nocere debet exheredato, quoniam poena, quae legibus aut edicto irrogaretur, adoptionis remedio non obliteraretur. paulus notat: ei, qui alio iure venit quam eo, quod amisit, non nocet id quod perdidit, sed prodest quod habet: sic dictum est patrono eodemque patronae filio non obesse, quod quasi patronus deliquit, si ut patronae filius venire possit. papinianus.

Dig. 38.2.42.1

Papinianus 13 quaest.

Castrensium bonorum titium libertus fecit heredem, ceterorum alium: adita est a titio hereditas: magis nobis placebat nondum patronum possessionem contra tabulas petere posse. verum illa quaestio intervenit, an omittente eo qui reliqua bona accepit perinde titio adcrescant, ac si partes eiusdem hereditatis accepissent. verius mihi videtur intestati iure deferri bona cetera. titius igitur heres non poterit invitare manumissorem, cum titio nihil auferatur, nec bonis ceteris, quae nondum ad causam testamenti pertinent.

Dig. 38.2.42.2

Papinianus 13 quaest.

Cum filius liberti impubes, qui subiectus dicitur, ex prima parte bonorum possessionem accipiat, an patronus defuncti possessionem accipere possit, quaesitum est. et sine dubio qui sequentis gradus sunt, non admittuntur interim: cum enim praecedit alia possessio, qui sequitur accipere non potest. plane si contra eum qui subiectus dicitur fuerit iudicatum, data non intellegitur. sed et in patrono pendente controversia idem erit dicendum. plane quod ad patroni quoque personam pertinet, differri controversia debebit.

Dig. 38.2.42.3

Papinianus 13 quaest.

Si falsum liberti testamentum ab aliis in provincia dictum atque ita res per appellationem extracta esset, defuncta medio tempore patroni filia, quam libertus heredem instituerat, filio mulieris servavit divus marcus eam partem bonorum, quam filia patroni vel iure intestati, si vixisset, habere potuit.

Dig. 38.2.43

Papinianus 14 quaest.

Iulianus putat patronum, qui titio pro parte dimidia heredi instituto substitutus eo deliberante bonorum possessionem contra tabulas accepit, si postea titius non adierit hereditatem, nihil ei, qui adit hereditatem, abstulisse, non magis quam si sub condicione fuisset institutus. igitur titio deliberante res in incerto erit, utrumne semis ex substitutione in possessionem convertatur an titio adeunte singulis heredibus partes debitae auferantur.

Dig. 38.2.44pr.

Paulus 5 quaest.

Si patronum ex debita portione heredem instituas et pure roges fundum dare eique sub condicione tantundem leges, in condicionem fideicommissum redigitur. erit tamen et hic quod moveat: onerabitur enim patronus satisdatione fideicommissi. sed dicendum est ab eo fideicommissario cavendum, a quo patrono legatum est, ut undique patronus suum ius habeat imminutum.

Dig. 38.2.44.1

Paulus 5 quaest.

Patronus heres institutus legato ei servo, per quem suppleretur debita ei portio, non petet contra tabulas bonorum possessionem, quamvis servus clusis tabulis decessit.

Dig. 38.2.44.2

Paulus 5 quaest.

Si ex bonis, quae mortis tempore fuerunt, debitam partem dedit libertus in hereditate vel legato, servus tamen post mortem liberti reversus ab hostibus augeat patrimonium: non potest patronus propterea queri, quod minus habeat in servo, quam haberet, si ex debita portione esset institutus. idem est et in alluvione, cum sit satisfactum ex his bonis, quae mortis tempore fuerunt. idem est et si pars legati liberto relicti ab eo, cui simul datum erat, vel hereditatis nunc illis abstinentibus adcrescat.

Dig. 38.2.45

Paulus 9 quaest.

Si patronus ex sexta et servus eius ex reliqua parte sit heres institutus, nec ex servi portione fideicommissum debetur: at si servus dumtaxat heres institutus est, puto nec hic ex debita portione praestandum.

Dig. 38.2.46

Paulus 3 resp.

Paulus respondit: patronus, qui deceptus falsum iudicium testatoris secutus est, bonorum possessionem contra tabulas testamenti liberti petere non prohibetur.

Dig. 38.2.47pr.

Paulus 11 resp.

Paulus respondit exheredationem nepotis, quae non notae gratia, sed alio consilio adiecta est, nocere ei non oportere, quo minus contra tabulas libertorum avi bonorum possessionem petere possit.

Dig. 38.2.47.1

Paulus 11 resp.

Quaero, an, si titia patroni filia iactat titium patrem suum, priusquam moreretur, litteras ad se fecisse, quibus adiceret per libertos suos maleficiis appetitum easque litteras se secutam post mortem patris libertos accusare, an ^ ad^ aliquid ei prodesse possit haec excusatio. paulus respondit eam, quae ex voluntate patris accusavit, non debere repelli a bonorum possessione contra tabulas, quoniam non suum iudicium, sed alienum exsecuta est.

Dig. 38.2.47.2

Paulus 11 resp.

Patroni filius epistulam talem liberto emisit: " sempronius zoilo liberto suo salutem. ob merita tua fidemque tuam, quam mihi semper exhibuisti, concedo tibi liberam testamenti factionem". quaero, an patroni filio nihil relinquere debeat. paulus respondit eum libertum, de quo quaeritur, liberam testamenti factionem consecutum non videri.

Dig. 38.2.47.3

Paulus 11 resp.

Paulus respondit nepotem etiam post mortem avi conceptum superstite liberto bonorum possessionem contra tabulas liberti aviti petere posse et ad hereditatem legitimam eius admitti: responsum enim iuliani tantum ad hereditatem legitimam, item bonorum possessionem avi petendam pertinere.

Dig. 38.2.47.4

Paulus 11 resp.

Paulus respondit, quamvis filii a patre milite praeteriti pro exheredatis habeantur, tamen non eo usque silentium patris eis nocere debere, ut et a bonis libertorum avitorum repelli debeant. idem responsum est etiam de bonis libertorum paternorum.

Dig. 38.2.48

Scaevola 2 resp.

Quaero de eo, qui libertum effracturae crimine accusavit. respondit, si eiusmodi effracturae crimine accusatus sit, ex quo, si probaretur, in metallum datus esset, denegandam bonorum possessionem.

Dig. 38.2.49

Paulus 3 sent.

Liberto per obreptionem adrogato ius suum patronus non amittit.

Dig. 38.2.50pr.

Tryphonus 17 disp.

Nihil interest, ipse patronus scriptus heres ex minore parte adierit hereditatem an servum suum scriptum iusserit adire hereditatem, quam retinet: nihilo minus enim repulsus erit a contra tabulas bonorum possessione.

Dig. 38.2.50.1

Tryphonus 17 disp.

Si tamen antequam iuberet liberti hereditatem adire, servum vendiderit aut manumiserit et ita ipse novus libertus aut emptor heredes extiterint, verbis edicti non prohibetur patronus accipere contra tabulas bonorum possessionem.

Dig. 38.2.50.2

Tryphonus 17 disp.

Sed numquid praetor ei denegare possessorias actiones debeat, si fraudem edicto eius facere voluit, ut pretio uberiore percepto vel tacita pactione etiam hereditatis ex institutione delatae commodum et bonorum possessionis contra tabulas haberet? faciliorque suspicio per filium scriptum heredem quamvis emancipatum adeuntem liberti hereditatem ipsum patronum habere, cum omnia, quae nostra sunt, liberis nostris ex voto paremus.

Dig. 38.2.50.3

Tryphonus 17 disp.

Si tamen clusis adhuc tabulis testamenti liberti, cum ignoraret iudicium eius patronus, eorum quid, quae supra scripta sunt, circa institutum subiectum iuri suo fecit, amota fraudis suspicione suo iure in bonorum possessione contra tabulas utetur.

Dig. 38.2.50.4

Tryphonus 17 disp.

Si patronus ex debita portione a liberto scriptus rogatusque hereditatem restituere suspectam dixit et compulsus adire, cum retinere posset, restituerit, non poterit accipere contra tabulas bonorum possessionem, et quia adgnovit iudicium liberti et quia sprevit et quasi damnavit eam possessionem.

Dig. 38.2.50.5

Tryphonus 17 disp.

Longe distat ab hoc patroni filius, quem libertus adrogavit et ex minore parte heredem scripsit, cum nemo ex familia patroni alius esset: quamquam enim hic ipso iure, quippe suus, heres deprehendatur, si tamen se non immiscuit hereditati ut patris, sed abstinuit, quasi patroni tamen filius admittendus est ad contra tabulas bonorum possessionem.

Dig. 38.2.50.6

Tryphonus 17 disp.

Si debenti patrono certam pecuniam liberationem libertus reliquisset isque usus est adversus heredem petentem debitum doli exceptione aut acceptilatione liberatus est debito propter legatum, dicendum est eum non posse accipere contra tabulas bonorum possessionem.

Dig. 38.2.51

Labeo 1 pith. a paulo epit.

Si eundem libertum et tu capitis accusasti et pater tuus manumisit, non poterit tibi eius liberti bonorum possessio ex edicto praetoris dari. paulus: immo contra accidet, si quem servum accusaveris, deinde is patris tui fuerit factus et is postea eum manumisit.

Dig. 38.3.0. De libertis universitatium.

Dig. 38.3.1pr.

Ulpianus 49 ad ed.

Municipibus plenum ius in bonis libertorum libertarum defertur, hoc est id ius quod etiam patrono.

Dig. 38.3.1.1

Ulpianus 49 ad ed.

Sed an omnino petere bonorum possessionem possint, dubitatur: movet enim, quod consentire non possunt, sed per alium possunt petita bonorum possessione ipsi adquirere. sed qua ratione senatus censuit, ut restitui eis ex trebelliano hereditas possit: qua ratione alio senatus consulto heredibus eis institutis a liberto adquirere hereditatem permissum est: ita bonorum quoque possessionem petere dicendum est.

Dig. 38.3.1.2

Ulpianus 49 ad ed.

Temporaque bonorum possessionis petendae cedere municipibus exinde, ex quo decernere de petenda potuerunt. quod et papinianus respondit.

Dig. 38.4.0. De adsignandis libertis.

Dig. 38.4.1pr.

Ulpianus 14 ad sab.

Senatus consulto quod factum est claudianis temporibus velleo rufo et osterio scapula consulibus de adsignandis libertis in haec verba cavetur: " si, qui duos pluresve liberos iustis nuptiis quaesitos in potestate haberet, de liberto libertave sua significasset, cuius ex liberis suis eum libertum eamve libertam esse vellet, is eave, quandoque is, qui eum eamve manumisit inter vivos vel testamento, in civitate esse desisset, solus ei patronus solave patrona esset, perinde atque si ab eo eave libertatem consecutus consecutave est. utique, si ex liberis quis in civitate esse desisset neque ei liberi ulli essent, ceteris eius liberis qui manumisit perinde omnia iura serventur, ac si nihil de eo liberto eave liberta is parens significasset".

Dig. 38.4.1.1

Ulpianus 14 ad sab.

Quamvis singulari sermone senatus consultum scriptum est, tamen et pluribus liberis et plures libertos libertasve posse adsignari certum est.

Dig. 38.4.1.2

Ulpianus 14 ad sab.

Is quoque libertus, qui apud hostes est, adsignari potest.

Dig. 38.4.1.3

Ulpianus 14 ad sab.

Adsignare autem quis potest quibuscumque verbis vel nutu, vel testamento vel codicillis vel vivus.

Dig. 38.4.1.4

Ulpianus 14 ad sab.

Adimere adsignationem etiam nuda voluntate poterit.

Dig. 38.4.1.5

Ulpianus 14 ad sab.

Sed et si exheredato filio libertum quis adsignaverit, valet adsignatio, nec nocet ei nota exheredationis quantum ad ius patronatus.

Dig. 38.4.1.6

Ulpianus 14 ad sab.

Sed si post adsignationem fuerit exheredatus, non semper exheredatio adimet adsignationem, nisi hoc animo facta sit.

Dig. 38.4.1.7

Ulpianus 14 ad sab.

Sed si is cui adsignatus est repudiaverit, puto verius, quod et Marcellus scripsit, posse admitti fratres eius.

Dig. 38.4.1.8

Ulpianus 14 ad sab.

Si sit ex patrono filius unus, ex altero duo et uni eorum libertus adsignatus est, videndum, quot partes fiant hereditatis liberti, utrum tres, ut duas habeat is cui adsignatus est, id est suam et fratris, an vero aequales partes fiant, quoniam per adsignationem alius excluditur. et iulianus libro septuagensimo quinto scripsit magis esse, ut bessem hic habeat, qui fratrem excludit: quod verum est, quamdiu frater eius vivat vel admitti potuit ad legitimam hereditatem: ceterum si fuerit capite minutus, aequales partes habebunt.

Dig. 38.4.2

Pomponius 4 sen. consult.

Sed si is, cui adsignassem, decessisset relicto filio et fratre et alterius patroni filio, semissem habiturum eum nepotem, quem esset filius meus is qui vivit habiturus, si ego eum libertum non adsignassem.

Dig. 38.4.3pr.

Ulpianus 14 ad sab.

Idem erit dicendum et si is, qui filium et nepotem habebat, nepoti libertum adsignaverit: admittetur nepos ad legitimam hereditatem, licet sit alterius patroni filius, et hoc contingit patrui vita: ceterum si ille non esset, nihil ei prodesset adsignatio ad deminuendum ius alterius patroni filii.

Dig. 38.4.3.1

Ulpianus 14 ad sab.

Posse autem et nepoti adsignari certum est et praeferri filio nepotem adsignatoris constat.

Dig. 38.4.3.2

Ulpianus 14 ad sab.

Unde quaeri poterit, an, si filium habeat et ex eo nepotem, possit, quasi duos habeat in potestate, ius senatus consulti inducere. in qua specie cum placeat etiam ei, qui in potestatem recasurus est, adsignari quare non admittimus, cum utrumque esse in potestate negare non possumus?

Dig. 38.4.3.3

Ulpianus 14 ad sab.

An autem ad legitimam hereditatem admitti possit hic qui est in potestate, tractari poterit. et cum multi sint casus, quibus et libertum habere qui in potestate est possit, cur non hoc quoque admittendum sit, ut per eum pater ad legitimae hereditatis admittatur emolumentum? quod et pomponio recte videtur. habent autem libertos etiam filii familias, ut puta si castrensem servum eorum quis manumiserit.

Dig. 38.4.3.4

Ulpianus 14 ad sab.

Emancipatos quoque filios eius, cui adsignatus est libertus, habere commodum senatus consulti puto, non ut ad legitimam hereditatem admittantur, sed ad ea quae possunt.

Dig. 38.4.3.5

Ulpianus 14 ad sab.

Secundum quod liberto intestato defuncto, quoniam ad legitimam hereditatem admitti non possunt, videndum, ne admittatur filius adsignatoris in familia remanens an non? et putem emancipatos per praetorem praeferendos.

Dig. 38.4.3.6

Ulpianus 14 ad sab.

Liberos autem eius, cui adsignatus est, accipere debemus non solum filios, verum etiam nepotes et neptes et deinceps descendentes.

Dig. 38.4.3.7

Ulpianus 14 ad sab.

Si quis duobus adsignaverit libertum et alter in civitate esse sine liberis desierit, alter non,

Dig. 38.4.4

Pomponius 4 sen. consult.

Vel vivus noluerit ad se hereditatem liberti pertinere,

Dig. 38.4.5pr.

Ulpianus 14 ad sab.

Utrum portio eius, qui in civitate esse desiit vel repudiavit, in familiam redeat? an vero ei potius adcrescat, in cuius persona durat adsignatio? et iulianus libro septuagensimo quinto scripsit adsignationem in huius solius persona locum habere et solum admittendum, quod est verum.

Dig. 38.4.5.1

Ulpianus 14 ad sab.

Quod si non sine liberis decesserit, an cum vivo admittantur? et putat adhuc solum admittendum, defuncto autem eo liberos alterius succedere, non in familiam libertum redire.

Dig. 38.4.5.2

Ulpianus 14 ad sab.

Sed si ex duobus istis alter filios, alter nepotes reliquerit, an simul ad legitimam hereditatem admittantur? et puto ordinem inter eos faciendum.

Dig. 38.4.6

Marcianus 7 inst.

Si servus liber esse iussus fuerit et filio legatus, deinde vivus testator eum manumiserit, ad filium libertus quasi adsignatus pertinet. hoc ita est, sive expressum est vel certe intellexit non quasi servum eum legasse, sed quasi libertum adsignasse.

Dig. 38.4.7

Scaevola 2 reg.

Adsignare et pure et sub condicione, et per epistulam vel testationem vel chirographum possumus, quia adsignatio liberti neque quasi legatum neque quasi fideicommissum percipitur: denique nec fideicommisso onerari potest.

Dig. 38.4.8

Modestinus 7 diff.

Liberi patroni quamquam et ipsi in plerisque causis manumissoris iure censentur, tamen paternum libertum liberis suis adsignare non potuerunt, etiamsi eis a parente fuerit adsignatus: idque et iulianus et Marcellus probant.

Dig. 38.4.9

Modestinus 9 pand.

Utrum ei tantum qui in potestate sit an etiam emancipato filio adsignare libertum patronus possit, si modo non pauciores quam duos praeterea in potestate habeat, dubitari solet: et magis est posse.

Dig. 38.4.10pr.

Clementius 12 ad l. iul. et pap.

Sub condicione vel in diem liberto adsignato interim pendente die vel condicione omnia perinde observabuntur, ac si adsignatus non esset: itaque mortuo eo interim ad omnes liberos hereditas et bonorum possessio pertinebit.

Dig. 38.4.10.1

Clementius 12 ad l. iul. et pap.

Si uni pure, alii sub condicione libertus adsignatus sit, eum, cui pure adsignatus sit, pendente condicione solum patroni ius habere dicendum est.

Dig. 38.4.11

Papinianus 14 resp.

Alimentorum causa libertos filiis adtributos filiis adsignatos non videri respondi, cum ea ratione libertis consuli patronus voluerit, quo facilius voluntatis emolumentum consequantur, salvo iure communi.

Dig. 38.4.12

Pomponius 12 epist.

Si ex duobus patronis alter eorum filio suo libertum adsignaverit, non obstat, quo minus alter patronus ius solidum suum haberet.

Dig. 38.4.13pr.

Pomponius 4 sen. consult.

Testamento potest quis et servum manumittere et eundem ut libertum adsignare.

Dig. 38.4.13.1

Pomponius 4 sen. consult.

De liberis, qui sunt in potestate, senatus locutus est: ergo de postumis nihil hoc senatus consulto provisum est: magis tamen puto etiam postumos contineri.

Dig. 38.4.13.2

Pomponius 4 sen. consult.

Quod inquit senatus " si ex liberis quis in civitate esse desisset", eum significat, qui in perpetuum in civitate esse desierit, non etiam si quis ab hostibus captus reverti possit.

Dig. 38.4.13.3

Pomponius 4 sen. consult.

Ex die quoque certa adsignari potest, sed usque in diem certum vix potest: nam ipse senatus huic negotio finem praeposuit.

Dig. 38.5.0. Si quid in fraudem patroni factum sit.

Dig. 38.5.1pr.

Ulpianus 44 ad ed.

Si quid dolo malo liberti factum esse dicetur, sive testamento facto sive intestato libertus decesserit, quo minus quam pars debita bonorum ad eorum quem perveniat, qui contra tabulas bonorum possessionem accipere possunt: cognoscit praetor et operam dat, ne ea res ei fraudi sit.

Dig. 38.5.1.1

Ulpianus 44 ad ed.

Si alienatio dolo malo facta sit, non quaerimus, utrum mortis causa facta sit an non sit: omni enim modo revocatur. si vero non sit dolo malo facta, sed alias, tunc actori probandum erit mortis causa factam alienationem. si enim proponas mortis causa factam alienationem, non requirimus, utrum dolo malo facta sit an non sit: sufficit enim docere mortis causa factam, nec immerito: mortis causa enim donationes comparantur legatis et sicut in legatis non quaerimus, dolo malo factum sit an non sit, ita nec in mortis causa donationibus.

Dig. 38.5.1.2

Ulpianus 44 ad ed.

Quod autem mortis causa filio donatum est, non revocatur: nam cui liberum fuit legare filio quantumquantum vellet, is donando non videtur fraudasse patronum.

Dig. 38.5.1.3

Ulpianus 44 ad ed.

Omne autem, quodcumque in fraudem patroni gestum est, revocatur.

Dig. 38.5.1.4

Ulpianus 44 ad ed.

Dolum accipere nos oportet eius qui alienavit, non eius cui alienatum est: et ita evenit, ut qui fraudis vel doli conscius non fuit, carere debeat re in fraudem patroni alienata, etsi putavit ingenuum nec credidit libertinum.

Dig. 38.5.1.5

Ulpianus 44 ad ed.

Adversus conpatronum, qui contra tabulas bonorum possessionem omisit, faviana non competit, si non plus sit in eo quod donatum est quam pars debita patrono. quare si mortis causa ei donatum sit, partem faciet conpatrono, quemadmodum legatarius patronus facit.

Dig. 38.5.1.6

Ulpianus 44 ad ed.

Utrum autem ad ea sola revocanda faviana pertinet, quae quis libertus de bonis deminuit, an etiam ad ea, quae non adquisiit, videndum est. et ait iulianus libro vicensimo sexto digestorum, si hereditatem libertus non adierit fraudandi patroni causa vel legatum reppulerit, favianam cessare: quod mihi videtur verum. quamvis enim legatum retro nostrum sit, nisi repudietur, attamen cum repudiatur, retro nostrum non fuisse palam est. in ceteris quoque liberalitatibus, quas non admisit is libertus cui quis donatum voluit, idem erit probandum fabianam cessare: sufficit enim patrono, si nihil de suo in necem eius libertus alienavit, non si non adquisiit: proinde et si, cum sub condicione ei legatum esset, id egit, ne condicio existeret, vel, si sub condicione stipulatus fuerit, maluit deficere condicionem, dicendum est favianam cessare.

Dig. 38.5.1.7

Ulpianus 44 ad ed.

Quid si in lite vinci voluit? si quidem condemnatus est data opera vel in iure confessus, dicendum erit favianam locum habere: quod si noluit optinere, cum peteret, hic videndum. et puto hunc deminuisse de patrimonio: actionem enim de bonis deminuit, quemadmodum si passus esset actionis diem abire.

Dig. 38.5.1.8

Ulpianus 44 ad ed.

Sed si puta querellam inofficiosi, quam potuit, vel quam aliam, forte iniuriarum vel similem instituere noluit, non potest patronus ob eam rem faviana experiri.

Dig. 38.5.1.9

Ulpianus 44 ad ed.

At si transegit in fraudem patroni, poterit patronus faviana uti.

Dig. 38.5.1.10

Ulpianus 44 ad ed.

Sed si libertus filiam dotavit, hoc ipso, quod dotavit, non videtur fraudare patronum, quia pietas patris non est reprehendenda.

Dig. 38.5.1.11

Ulpianus 44 ad ed.

Si pluribus in fraudem libertus donaverit vel pluribus mortis causa, aequaliter patronus adversus omnes in partem sibi debitam sive faviana sive calvisiana experietur.

Dig. 38.5.1.12

Ulpianus 44 ad ed.

Si quis in fraudem patronorum rem vendiderit vel locaverit vel permutaverit, quale sit arbitrium iudicis, videamus. et in re quidem distracta deferri condicio debet emptori, utrum malit rem emptam habere iusto pretio an vero a re discedere pretio recepto: neque omnimodo rescindere debemus venditionem, quasi libertus ius vendendi non habuerit, nec fraudemus pretio emptorem, maxime cum de dolo eius non disputetur, sed de dolo liberti.

Dig. 38.5.1.13

Ulpianus 44 ad ed.

Sed si emerit in fraudem patroni libertus, aeque dicendum, si magno emit, in pretio relevandum patronum, condicione non ipsi delata, an velit ab emptione discedere, sed venditori, utrum malit de pretio remittere an potius rem quam vendidit recipere persoluto pretio. et in permutatione et in locatione et conductione similiter idem observabimus.

Dig. 38.5.1.14

Ulpianus 44 ad ed.

Sed si rem quidem bona fide vendiderit et sine ulla gratia libertus, pretium autem acceptum alii donavit, videndum erit, quis faviana inquietetur, utrum qui rem emit an vero is qui pretium dono accepit? et pomponius libro octagensimo tertio recte scripsit emptorem non esse inquietandum: fraus enim patrono in pretio facta est: eum igitur qui pretium dono accepit faviana conveniendum.

Dig. 38.5.1.15

Ulpianus 44 ad ed.

Et alias videamus, si dicat patronus rem quidem iusto pretio venisse, verumtamen hoc interesse sua non esse venumdatam inque hoc esse fraudem, quod venierit possessio, in quam habet patronus affectionem vel opportunitatis vel vicinitatis vel caeli vel quod illic educatus sit vel parentes sepulti, an debeat audiri volens revocare. sed nullo pacto erit audiendus: fraus enim in damno accipitur pecuniario.

Dig. 38.5.1.16

Ulpianus 44 ad ed.

Sed si forte et res vilius distracta sit et pretium alii donatum, uterque faviano iudicio convenietur et qui vili emit et qui pecuniam accepit muneri. is tamen qui emit si malit rem restituere, non alias restituet, quam si pretium quod numeravit recipiat. quid ergo, si delegatus emptor solvit ei cui donabat libertus, an nihilo minus reciperaret? et magis est, ut reciperare debeat, licet pretium ad alium pervenit, qui solvendo non est: nam et si acceptum pretium libertus prodegisset, diceremus nihilo minus eum qui dedit recipere debere, si velit ab emptione discedere.

Dig. 38.5.1.17

Ulpianus 44 ad ed.

Si mutuam pecuniam libertus in fraudem patroni acceperit, an faviana locum habeat, videamus. et quod remedium in hoc est? accepit mutuam: si quod accepit donavit, convenit eum patronus cui donavit libertus: sed accepit et prodegit: non debet perdere qui mutuum dedit, nec ei imputari, cur dedit.

Dig. 38.5.1.18

Ulpianus 44 ad ed.

Plane si non accepit et spopondit stipulanti, erit favianae locus.

Dig. 38.5.1.19

Ulpianus 44 ad ed.

Si fideiussit apud me libertus vel rem suam pro alio pignori dedit in necem patroni, an faviana locum habeat, videamus, et numquid cum damno meo non debeat patrono subveniri: neque enim donavit aliquid mihi, si pro aliquo intervenit, qui non fuit solvendo: eoque iure utimur. igitur creditor non poterit faviana conveniri: debitor poterit quidem, sed potest et mandati: plane si deficiat mandati actio, quia donationis causa intervenit, erit favianae locus.

Dig. 38.5.1.20

Ulpianus 44 ad ed.

Sed et si mandator extitit pro aliquo libertus, idem erit probandum.

Dig. 38.5.1.21

Ulpianus 44 ad ed.

Quamvis autem in partem faviana competat, attamen in his quae dividi non possunt in solidum competit, ut puta in servitute.

Dig. 38.5.1.22

Ulpianus 44 ad ed.

Si servo meo vel filio familias libertus in fraudem patroni quid dederit, an adversus me iudicium favianum competat, videamus. et mihi videtur sufficere adversus me patremque arbitrioque iudicis contineri tam id, quod in rem versum est, condemnandi, quam id quod in peculio.

Dig. 38.5.1.23

Ulpianus 44 ad ed.

Sed si iussu patris contractum cum filio est, pater utique tenebitur.

Dig. 38.5.1.24

Ulpianus 44 ad ed.

Si cum servo in fraudem patroni libertus contraxerit isque fuerit manumissus, an faviana teneatur, quaeritur. et cum dixerimus dolum tantum liberti spectandum, non etiam eius cum quo contraxit, potest manumissus iste fabiana non teneri.

Dig. 38.5.1.25

Ulpianus 44 ad ed.

Item quaeri potest, manumisso vel mortuo vel alienato servo an intra annum agendum sit. et ait pomponius agendum.

Dig. 38.5.1.26

Ulpianus 44 ad ed.

Haec actio in personam est, non in rem, et in heredem competit et in ceteros successores, et heredi et ceteris successoribus patroni, et non est hereditaria, id est ex bonis liberti, sed propria patroni.

Dig. 38.5.1.27

Ulpianus 44 ad ed.

Si libertus in fraudem patroni aliquid dederit, deinde, defuncto patrono vivo liberto, filius patroni acceperit bonorum possessionem contra tabulas liberti, an fabiana uti possit ad revocanda ea quae sunt alienata? et est verum, quod et pomponius probat libro octagensimo tertio, item papinianus libro quarto decimo quaestionum, competere ei favianam: sufficere enim, quod in fraudem patronatus factum sit: magis enim fraudem rei, non personae accipimus.

Dig. 38.5.1.28

Ulpianus 44 ad ed.

In hanc actionem etiam fructus veniunt, qui sunt post litem contestatam percepti.

Dig. 38.5.2

Marcianus 3 reg.

In faviana et calvisiana actione recte dicetur etiam praeteritos fructus venire, quatenus praetor omnem fraudem libertorum vult rescindere.

Dig. 38.5.3pr.

Ulpianus 44 ad ed.

Si patronus heres institutus ex debita parte adierit hereditatem, dum ignorat aliqua libertum in fraudem suam alienasse, videamus, an succurri ignorantiae eius debeat, ne decipiatur liberti fraudibus. et papinianus libro quarto decimo quaestionum respondit in eadem causa manere ea, quae alienata sunt, idcircoque patronum sibi imputare debere, qui, cum posset bonorum possessionem accipere contra tabulas propter ea quae alienata vel mortis causa donata sunt, non fecit.

Dig. 38.5.3.1

Ulpianus 44 ad ed.

Haec actio in perpetuum datur, quia habet rei persecutionem.

Dig. 38.5.3.2

Ulpianus 44 ad ed.

Patronum ex asse heredem institutum volentem faviana actione uti praetor admittit, quia erat iniquum excludi eum a faviana, qui non sponte adiit hereditatem, sed quia bonorum possessionem contra tabulas petere non potuit.

Dig. 38.5.3.3

Ulpianus 44 ad ed.

Si intestatus libertus decesserit, patronus adeundo hereditatem eius revocat per calvisianam actionem ea, quae alienata sunt dolo malo, quo minus pars ex testamento debita bonorum liberti ad patronum liberosve eius perveniret: idque est, sive petita sit a patrono ab intestato bonorum possessio sive non sit.

Dig. 38.5.3.4

Ulpianus 44 ad ed.

Si plures sint patronae et patroni, singuli virilem tantum revocabunt vel calvisiana.

Dig. 38.5.3.5

Ulpianus 44 ad ed.

Si libertus intestatus decesserit relicta patrono debita portione aut aliquo amplius, aliquid etiam alienaverit, papinianus libro quarto decimo quaestionum scribit nihil esse revocandum: nam qui potuit alicui relinquere quid testamento, si debitam portionem patrono relinquat praeterea, donando nihil videtur in fraudem facere.

Dig. 38.5.4pr.

Ulpianus 43 ad ed.

Quodcumque dolo malo liberti alienatum est, faviana actione revocatur.

Dig. 38.5.4.1

Ulpianus 43 ad ed.

Etsi plures patroni sint, omnes unam partem habebunt: sed si viriles non petent, portio ceteris adcrescet. quod in patronis dixi, et in liberis patronorum est: sed non simul venient, sed patronis deficientibus.

Dig. 38.5.5pr.

Paulus 42 ad ed.

Tenetur fabiana actione tam is qui accepit ipse, quam qui iussit alii dari id quod ipsi donabatur.

Dig. 38.5.5.1

Paulus 42 ad ed.

In actione faviana si res non restituatur, tanti damnabitur reus, quanti actor in litem iuraverit.

Dig. 38.5.6

Iulianus 26 Dig.

Si libertus, cum fraudare patronum vellet, filio familias contra senatus consultum pecuniam crediderit, non erit inhibenda actio faviana, quia libertus donasse magis in hunc casum intellegendus est in fraudem patroni quam contra senatus consultum credidisse.

Dig. 38.5.7

Scaevola 5 quaest.

Ergo si senatus consultum locum non habet, cessat faviana, cum exigi possit.

Dig. 38.5.8

Iulianus 26 Dig.

Sed si minori quam viginti quinque annis natu filio familias crediderit, causa cognita ei succurri debet.

Dig. 38.5.9

Iulianus 64 Dig.

Vivus libertus donare bene merentibus amicis potest: legare vero nec bene merentibus amicis potest, quo patroni partem minuat.

Dig. 38.5.10

Africanus 1 quaest.

Si id, quod a liberto in fraudem alienatum est, non extet, actio patroni cessat, quemadmodum si pecuniam in fraudem abiecisset aut etiam si is, qui mortis causa a liberto accepisset, eam rem vendidisset et bonae fidei emptor eam usu cepisset.

Dig. 38.5.11

Paulus 3 ad l. ael. sent.

Non videtur patronus fraudari eo quod consentit: sic et quod volente patrono libertus donaverit, non poterit faviana revocari.

Dig. 38.5.12

Iavolenus 3 epist.

Libertus cum fraudandi patroni causa fundum seio tradere vellet, seius titio mandavit, ut eum accipiat, ita ut inter seium et titium mandatum contrahatur. quaero, post mortem liberti patronus utrum cum seio dumtaxat qui mandavit actionem habet, an cum titio qui fundum retinet, an cum quo velit agere possit? respondit: in eum, cui donatio quaesita est, ita tamen si ad illum res pervenerit, actio datur, cum omne negotium, quod eius voluntate gestum sit, in condemnationem eius conferatur. nec potest videri id praestaturus quod alius possidet, cum actione mandati consequi rem possit, ita ut aut ipse patrono restituat aut eum cum quo mandatum contraxit restituere cogat. quid enim dicemus, si is, qui in re interpositus est, nihil dolo fecit? non dubitabimus, quin omnimodo cum eo agi non possit. quid enim non potest videri dolo fecisse, qui fidem suam amico commodavit quam alii quam sibi ex liberti fraude adquisiit.

Dig. 38.5.13

Paulus 10 ad l. iul. et pap.

Constitutione divi pii cavetur de impubere adoptando, ut ex bonis, quae mortis tempore illius qui adoptavit fuerunt, pars quarta ad eum pertineat, qui adoptatus est: sed et bona ei, quae adquisiit patri, restitui iussit: si causa cognita emancipatus fuerit, quartam perdit. si quid itaque in fraudem eius alienatum fuerit, quasi per calvisianam vel favianam actionem revocandum est.

Dig. 38.6.0. Si tabulae testamenti nullae extabunt, unde liberi.

Dig. 38.6.1pr.

Ulpianus 44 ad ed.

Posteaquam praetor locutus est de bonorum possessione eius qui testatus est, transitum fecit ad intestatos, eum ordinem secutus, quem et lex duodecim tabularum secuta est: fuit enim ordinarium ante de iudiciis testantium, dein sic de successione ab intestato loqui.

Dig. 38.6.1.1

Ulpianus 44 ad ed.

Sed successionem ab intestato in plures partes divisit: fecit enim gradus varios, primum liberorum, secundum legitimorum, tertium cognatorum, deinde viri et uxoris.

Dig. 38.6.1.2

Ulpianus 44 ad ed.

Ita autem ab intestato potest competere bonorum possessio, si neque secundum tabulas neque contra tabulas bonorum possessio agnita sit.

Dig. 38.6.1.3

Ulpianus 44 ad ed.

Plane si tempora quidem petendae bonorum possessionis ex testamento largiebantur, verumtamen repudiata est bonorum possessio, dicendum erit ab intestato bonorum possessionem iam incipere: cum enim is qui repudiavit petere bonorum possessionem non potest post repudiationem, consequens erit, ut ab intestato posse peti incipiat.

Dig. 38.6.1.4

Ulpianus 44 ad ed.

Sed et si ex carboniano edicto bonorum possessio data sit, magis est, ut dicere debeamus ab intestato nihilo minus posse peti: ut enim suo loco ostendimus, non impedit bonorum possessionem edictalem carboniana bonorum possessio.

Dig. 38.6.1.5

Ulpianus 44 ad ed.

Recte autem praetor a liberis initium fecit ab intestato successionis, ut, sicuti contra tabulas ipsis defert, ita et ab intestato ipsos vocet.

Dig. 38.6.1.6

Ulpianus 44 ad ed.

Liberos autem accipere debemus quos ad contra tabulas bonorum possessionem admittendos diximus, tam naturales quam adoptivos. sed adoptivos hactenus admittimus, si fuerint in potestate: ceterum si sui iuris fuerint, ad bonorum possessionem non invitantur, quia adoptionis iura dissoluta sunt emancipatione.

Dig. 38.6.1.7

Ulpianus 44 ad ed.

Si quis filium suum emancipatum in locum nepotis adoptavit et emancipavit, cum haberet et nepotem ex eo, quaesitum est apud Marcellum, an adoptio rescissa impediat nepotem. sed cum soleat emancipato patri iungi nepos, quis non dicat, etsi adoptatus sit et quasi filius, nihilo minus filio suo eum non obstare, quia quasi filius adoptivus est in potestate, non quasi naturalis?

Dig. 38.6.1.8

Ulpianus 44 ad ed.

Si heres institutus non habeat voluntatem, vel quia incisae sunt tabulae vel quia cancellatae vel quia alia ratione voluntatem testator mutavit voluitque intestato decedere, dicendum est ab intestato rem habituros eos, qui bonorum possessionem acceperunt.

Dig. 38.6.1.9

Ulpianus 44 ad ed.

Si emancipatus filius exheres fuerit, is autem qui in potestate fuerat praeteritus, emancipatum petentem ab intestato bonorum possessionem unde liberi tueri debet praetor usque ad partem dimidiam, perinde atque si nullas tabulas pater reliquisset.

Dig. 38.6.2

Iulianus 27 Dig.

Emancipatus praeteritus si contra tabulas bonorum possessionem non acceperit et scripti heredes adierint hereditatem, sua culpa amittit paternam hereditatem: nam quamvis secundum tabulas bonorum possessio petita non fuerit, non tamen eum praetor tuetur, ut bonorum possessionem accipiat unde liberi. nam et patronum praeteritum, si non petat contra tabulas bonorum possessionem, ex illa parte edicti, unde legitimi vocantur, non solet tueri praetor adversus scriptos heredes.

Dig. 38.6.3

Ulpianus 8 ad sab.

Bonorum possessio potest peti ab intestato, si certum sit tabulas non extare septem testium signis signatas.

Dig. 38.6.4

Paulus 2 ad sab.

Liberi et capite minuti per edictum praetoris ad bonorum possessionem vocantur parentium, nisi si adoptivi fuerint: hi enim et liberorum nomen amittunt post emancipationem. sed si naturales emancipati et adoptati iterum emancipati sint, habent ius naturale liberorum.

Dig. 38.6.5pr.

Pomponius 4 ad sab.

Si quis ex his, quibus bonorum possessionem praetor pollicetur, in potestate parentis, de cuius bonis agitur, cum is moritur, non fuerit, ei liberisque, quos in eiusdem familia habebit, si ad eos hereditas suo nomine pertinebit neque nominatim exheredes scripti erunt, bonorum possessio eius partis datur, quae ad eum pertineret, si in potestate permansisset, ita, ut ex ea parte dimidiam habeat, reliquum liberi eius, hisque dumtaxat bona sua conferat.

Dig. 38.6.5.1

Pomponius 4 ad sab.

Sed et si filium et nepotem ex eo pater emancipaverit, filius solus veniet ad bonorum possessionem, quamvis capitis deminutio per edictum nulli obstet. quin etiam hi quoque, qui in potestate numquam fuerunt nec sui heredis locum optinuerunt, vocantur ad bonorum possessionem parentium. nam si filius emancipatus reliquerit in potestate avi nepotem, dabitur ei, qui in potestate relictus sit, patris emancipati bonorum possessio: et si post emancipationem procreaverit, ita nato dabitur avi bonorum possessio, scilicet non obstante ei patre suo.

Dig. 38.6.5.2

Pomponius 4 ad sab.

Si filius emancipatus non petierit bonorum possessionem, ita integra sunt omnia nepotibus, atque si filius non fuisset, ut quod filius habiturus esset petita bonorum possessione, hoc nepotibus ex eo solis, non etiam reliquis adcrescat.

Dig. 38.6.6

Ulpianus 39 ad ed.

Si pater filium emancipaverit, nepotem retinuerit, deinde filius decesserit: et rei aequitas et causa edicti, quo de bonorum possessione liberis danda cavetur, efficit, ut eius ratio habeatur et bonorum possessio intestato patris detur, ut tamen bona sorori, quae necessaria heres patri extitit, conferre cogatur avus, qui per eum bonorum possessionis emolumentum adquisiturus est: nisi forte avus iste nullum ex his fructum adquirere vult paratusque est de potestate nepotem demittere, ut ad emancipatum emolumentum omne bonorum possessionis perveniat. nec idcirco soror, quae patri heres extitit, iuste queri poterit, quod eo facto a collationis commodo excluditur, cum avo quandoque intestato defuncto ad bona eius simul cum fratre possit venire.

Dig. 38.6.7pr.

Papinianus 29 quaest.

Scripto herede deliberante filius exheredatus mortem obit atque ita scriptus heres omisit hereditatem. nepos ex illo filio susceptus avo suus heres erit neque pater videbitur obstitisse, cuius post mortem legitima defertur hereditas. nec dici potest heredem, sed non suum nepotem fore, quod proximum gradum numquam tenuerit, cum et ipse fuerit in potestate neque pater eum in hac successione praevenerit. et alioquin si non suus heres est, quo iure heres erit, qui sine dubio non est adgnatus? ceterum et si non sit exheredatus nepos, adiri poterit ex testamento hereditas a scripto herede filio mortuo: quare qui non obstat iure intestati, iure testati videbitur obstitisse.

Dig. 38.6.7.1

Papinianus 29 quaest.

Non sic parentibus liberorum, ut liberis parentium debetur hereditas: parentes ad bona liberorum ratio miserationis admittit, liberos naturae, simul et parentium commune votum.

Dig. 38.6.8

Papinianus 6 resp.

Filius familias ut proximus cognatus patre consentiente possessionem adgnovit: quamvis per condicionem testamento datam, quod in patris potestate manserit, ab hereditate sit exclusus, tamen utiliter possessionem adgnovisse videbitur nec in edicti sententiam incidet, quoniam possessionem secundum tabulas non adgnovit, cum inde rem habere non poterit nec in filii potestate condicio fuerit nec facile pater emancipare filium cogi poterit.

Dig. 38.6.9

Paulus 11 resp.

Si postea, quam filius emancipatus bonorum possessionem patris petit, statum suum mutavit, nihil obesse ei, quo minus id quod adquisiit retineat: quod si prius condicionem suam mutavit, bonorum possessionem eum petere non posse.

Dig. 38.7.0. Unde legitimi.

Dig. 38.7.1

Iulianus 27 Dig.

Haec verba edicti " tum quem ei heredem esse oporteret, si intestatus mortuus esset" paratatikws et cum quodam temporis spatio accipiuntur: non ad mortis testatoris tempus referuntur, sed ad id, quo bonorum possessio peteretur. et ideo legitimum heredem, si capite deminutus esset, ab hac bonorum possessione summoveri palam est.

Dig. 38.7.2pr.

Ulpianus 46 ad ed.

Si repudiaverint sui ab intestato bonorum possessionem, adhuc dicemus obstare eos legitimis, hoc est his, quibus legitima potuit deferri hereditas, idcirco, quia repudiando quasi liberi bonorum possessionem hanc incipiunt habere quasi legitimi.

Dig. 38.7.2.1

Ulpianus 46 ad ed.

Haec autem bonorum possessio non tantum masculorum defertur, verum etiam feminarum, nec tantum ingenuorum, verum etiam libertinorum. communis est igitur pluribus. nam et feminae possunt vel consanguineos vel adgnatos habere, item libertini possunt patronos patronasque habere.

Dig. 38.7.2.2

Ulpianus 46 ad ed.

Nec tantum masculi hanc bonorum possessionem accipere possunt, verum etiam feminae.

Dig. 38.7.2.3

Ulpianus 46 ad ed.

Si quis decesserit, de quo incertum est, utrum pater familias an filius familias sit, quia pater eius ab hostibus captus adhuc vivat vel quod alia causa suspendebat eius statum, magis est, ne possit peti bonorum eius possessio, quia nondum intestatum eum esse apparet, cum incertum sit, an testari possit. cum igitur coeperit certi status esse, tunc demum petenda est bonorum possessio: non cum certum esse coeperit intestatum esse, sed cum certum esse coeperit patrem familias esse.

Dig. 38.7.2.4

Ulpianus 46 ad ed.

Haec autem bonorum possessio omnem vocat, qui ab intestato potuit esse heres, sive lex duodecim tabularum eum legitimum heredem faciat sive alia lex senatusve consultum. denique mater, quae ex senatus consulto venit tertulliano, item qui ex orphitiano ad legitimam hereditatem admittuntur, hanc bonorum possessionem petere possunt.

Dig. 38.7.3

Paulus 43 ad ed.

Generaliter igitur sciendum est, quotienscumque vel lex vel senatus defert hereditatem, non etiam bonorum possessionem, ex hac parte eam peti oportere: cum vero etiam bonorum possessionem dari iubet, tum ex illa parte, qua ex legibus, peti debere: sed et ex hac parte poterit.

Dig. 38.7.4

Iulianus 27 Dig.

Si ex duobus fratribus alter decesserit testamento iure facto, dein deliberante herede alter quoque intestato decesserit et scriptus heres omiserit hereditatem, patruus legitimam hereditatem habebit: nam haec bonorum possessio " tum quem heredem esse oportet" ad id tempus refertur, quo primum ab intestato bonorum possessio peti potuisset.

Dig. 38.7.5pr.

Modestinus 3 pand.

Inter adgnatos et cognatos hoc interest, quod in adgnatis et cognati continentur, in cognatis non utique et adgnati. verbi gratia patris frater, id est patruus, et adgnatus est et cognatus, matris autem frater, id est avunculus, cognatus est, adgnatus non est.

Dig. 38.7.5.1

Modestinus 3 pand.

Quamdiu spes est suum heredem aliquem defuncto existere, tamdiu consanguineis locus non est: puta si defuncti uxor praegnas sit aut defuncti filius apud hostes sit.

Dig. 38.7.6

Hermogenianus 3 iuris epit.

Nati post mortem patris vel post captivitatem sive deportationem, sed et hi, qui tempore, quo capiebatur vel deportabatur pater, in potestate fuerunt, ius inter se consanguinitatis habent, etsi heredes patri non extiterint, sicuti exheredati.

Dig. 38.8.0. Unde cognati.

Dig. 38.8.1pr.

Ulpianus 46 ad ed.

Haec bonorum possessio nudam habet praetoris indulgentiam neque ex iure civili orginem habet: nam eos invitat ad bonorum possessionem, qui iure civili ad successionem admitti non possunt, id est cognatos.

Dig. 38.8.1.1

Ulpianus 46 ad ed.

Cognati autem appellati sunt quasi ex uno nati, aut, ut labeo ait, quasi commune nascendi initium habuerint.

Dig. 38.8.1.2

Ulpianus 46 ad ed.

Pertinet autem haec lex ad cognationes non serviles: nec enim facile ulla servilis videtur esse cognatio.

Dig. 38.8.1.3

Ulpianus 46 ad ed.

Haec autem bonorum possessio, quae ex hac parte edicti datur, cognatorum gradus sex complectitur et ex septimo duas personas sobrino et sobrina natum et natam.

Dig. 38.8.1.4

Ulpianus 46 ad ed.

Cognationem facit etiam adoptio: etenim quibus fiet adgnatus hic qui adoptatus est, isdem etiam cognatus fiet: nam ubicumque de cognatis agitur, ibi sic accipiemus, ut etiam adoptione cognati facti contineantur. evenit igitur, ut is qui in adoptionem datus est tam in familia naturalis patris iura cognationis retineat quam in familia adoptiva nanciscatur: sed eorum tantum cognationem in adoptiva familia nanciscetur, quibus fit adgnatus, in naturali autem omnium retinebit.

Dig. 38.8.1.5

Ulpianus 46 ad ed.

Proximus autem accipietur etiam is qui solus est, quamvis proprie proximus ex pluribus dicitur.

Dig. 38.8.1.6

Ulpianus 46 ad ed.

Proximum accipere nos oportet eo tempore, quo bonorum possessio defertur.

Dig. 38.8.1.7

Ulpianus 46 ad ed.

Si quis igitur proximus cognatus, dum heredes scripti deliberant, diem suum obierit, sequens quasi proximus admittetur, hoc est quicumque fuerit tum deprehensus proximum locum optinens.

Dig. 38.8.1.8

Ulpianus 46 ad ed.

Si quis proximior cognatus nasci speretur, in ea condicione est, ut dici debeat obstare eum sequentibus: sed ubi natus non est, admittemus eum, qui post ventrem proximus videbatur. sed hoc ita demum erit accipiendum, si hic qui in utero esse dicitur vivo eo de cuius bonorum possessione agitur fuit conceptus, nam si post mortem, neque obstabit alii neque ipse admittetur, quia non fuit proximus cognatus ei, quo vivo nondum animax fuerit.

Dig. 38.8.1.9

Ulpianus 46 ad ed.

Si qua praegnas decesserit et utero exsecto partus sit editus, in ea condicione est partus iste, ut matris suae accipere bonorum possessionem possit " unde proximi cognati". sed post senatus consultum orphitianum et " unde legitimi" petere poterit, quia mortis tempore in utero fuit.

Dig. 38.8.1.10

Ulpianus 46 ad ed.

Gradatim autem admittuntur cognati ad bonorum possessionem: ut qui sunt primo gradu, omnes simul admittuntur.

Dig. 38.8.1.11

Ulpianus 46 ad ed.

Si quis apud hostes fuerit mortis tempore eius, de cuius bonorum possessione quaeritur, dicendum est bonorum possessionem peti ab eo posse.

Dig. 38.8.2

Gaius 16 ad ed. provinc.

Hac parte proconsul naturali aequitate motus omnibus cognatis promittit bonorum possessionem, quos sanguinis ratio vocat ad hereditatem, licet iure civili deficiant. itaque etiam vulgo quaesiti liberi matris et mater talium liberorum, item ipsi fratres inter se ex hac parte bonorum possessionem petere possunt, quia sunt invicem sibi cognati, usque adeo ut praegnas quoque manumissa si pepererit, et is qui natus est matri et mater ipsi et inter se quoque qui nascuntur cognati sint.

Dig. 38.8.3

Iulianus 27 Dig.

Capitis deminutione peremuntur cognationes, quae per adoptionem adquisitae sunt. igitur si post mortem verbi gratia fratris adoptivi intra centensimum diem adoptivus frater capite deminutus fuerit, bonorum possessionem accipere non poterit, quae proximitatis nomine fratris defertur: praetorem enim non solum mortis tempus, sed etiam id, quo bonorum possessio petitur, intueri palam est.

Dig. 38.8.4

Ulpianus 6 reg.

Si spurius intestato decesserit, iure consanguinitatis aut adgnationis hereditas eius ad nullum pertinet, quia consanguinitatis itemque adgnationis iura a patre oriuntur: proximitatis autem nomine mater eius aut frater eadem matre natus bonorum possessionem eius ex edicto petere potest.

Dig. 38.8.5

Pomponius 4 ad sab.

Legitimis capite deminutis non datur bonorum possessio iure heredis legitimi, quia non eadem causa eorum est, quae liberorum: sed gradu cognatorum rursus vocantur.

Dig. 38.8.6

Ulpianus 45 ad ed.

Cognatis accusatio nihil obest ad successionem, si accusaverint cognatos suos.

Dig. 38.8.7

Modestinus 6 reg.

Is, qui aliqua ratione servus factus est, manumissione nulla ratione recipit cognationem.

Dig. 38.8.8

Modestinus 14 resp.

Modestinus respondit non ideo minus ad aviae maternae bona ab intestato nepotes admitti, quod vulgo quaesiti proponuntur.

Dig. 38.8.9pr.

Papinianus 6 resp.

Octavi gradus adgnato iure legitimi heredis, etsi non extiterit heres, possessio defertur: ut proximo autem cognato, quamvis extiterit heres, non defertur.

Dig. 38.8.9.1

Papinianus 6 resp.

Fratris filius pro parte heres institutus, cum patruum surdum esse contenderet atque ideo testamentum facere non potuisse, possessionem ut proximus cognatus accepit. ex die mortis temporis haberi rationem placuit, quia verisimile non videbatur tam coniunctum sanguine defuncti valetudinem ignorasse.

Dig. 38.8.10

Scaevola 2 resp.

Intestata reliquit sororem septiciam diverso patre natam et praegnatem matrem ex alio marito: quaero, si mater hereditatem repudiaverit, dum adhuc praegnas est, posteaque enixa fuerit semproniam, an etiam sempronia bonorum titiae possessionem accipere possit. respondit, si mater hereditate exclusa est, eam quae, ut proponeretur, postea nata est, accipere posse.

Dig. 38.9.0. De successorio edicto.

Dig. 38.9.1pr.

Ulpianus 49 ad ed.

Successorium edictum idcirco propositum est, ne bona hereditaria vacua sine domino diutius iacerent et creditoribus longior mora fieret. e re igitur praetor putavit praestituere tempus his, quibus bonorum possessionem detulit, et dare inter eos successionem, ut maturius possint creditores scire, utrum habeant, cum quo congrediantur, an vero bona vacantia fisco sint delata, an potius ad possessionem bonorum procedere debeant, quasi sine successore defuncto.

Dig. 38.9.1.1

Ulpianus 49 ad ed.

Unus enim quisque suam bonorum possessionem repudiare potest, alienam non potest.

Dig. 38.9.1.2

Ulpianus 49 ad ed.

Proinde procurator meus sine mea voluntate meam bonorum possessionem repudiare non potest.

Dig. 38.9.1.3

Ulpianus 49 ad ed.

Per servum delatam bonorum possessionem dominus repudiare potest.

Dig. 38.9.1.4

Ulpianus 49 ad ed.

Tutor impuberis an repudiare possit bonorum possessionem, videamus. et magis est, ne possit: sed ille ex auctoritate tutoris repudiare potest.

Dig. 38.9.1.5

Ulpianus 49 ad ed.

Furiosi curator nequaquam poterit repudiare, quia necdum delata est.

Dig. 38.9.1.6

Ulpianus 49 ad ed.

Qui semel noluit bonorum possessionem petere, perdidit ius eius, etsi tempora largiantur: ubi enim noluit, iam coepit ad alios pertinere bonorum possessio aut fiscum invitare.

Dig. 38.9.1.7

Ulpianus 49 ad ed.

Decretalis bonorum possessio an repudiari possit, videamus. et quidem diebus finiri potest: sed repudiari eam non posse verius est, quia nondum delata est, nisi cum fuerit decreta: rursum posteaquam decreta est, sera repudiatio est, quia quod adquisitum est repudiari non potest.

Dig. 38.9.1.8

Ulpianus 49 ad ed.

Si intra centensimum diem mortuus sit prior, statim sequens admitti potest.

Dig. 38.9.1.9

Ulpianus 49 ad ed.

Quod dicimus " intra dies centum bonorum possessionem peti posse", ita intellegendum est, ut et ipso die centensimo bonorum possessio peti possit, quemadmodum intra kalendas etiam ipsae kalendae sunt. idem est et si " in diebus centum" dicatur.

Dig. 38.9.1.10

Ulpianus 49 ad ed.

Quibus ex edicto bonorum possessio dari potest, si quis eorum aut dari sibi noluerit aut in diebus statutis non admiserit, tunc ceteris bonorum possessio perinde competit, ac si prior ex eo numero non fuerit.

Dig. 38.9.1.11

Ulpianus 49 ad ed.

Sed videndum est, an inter ceteros ipse quoque qui exclusus est admittatur. ut puta filius est in potestate: delata est ei bonorum possessio ex prima parte, unde liberis defertur: exclusus est tempore aut repudiatione: ceteris defertur: sed ipse sibi succedat ex hac successoria parte? et magis est, ut succedat, ut unde legitimi possit petere et post hos suo ordine ex illa parte, unde proximi cognati vocantur. et hoc iure utimur, ut admittatur: poterit igitur ex sequenti parte succedere ipse sibi. item hoc dici poterit et in secundum tabulas bonorum possessione, ut, si secundum tabulas non petierit bonorum possessionem is qui potuit et ab intestato succedere, ipse sibi succedat.

Dig. 38.9.1.12

Ulpianus 49 ad ed.

Largius tempus parentibus liberisque petendae bonorum possessionis tribuitur, in honorem sanguinis videlicet, quia artandi non erant, qui paene ad propria bona veniunt. ideoque placuit eis praestitui annum, scilicet ita moderate, ut neque ipsi urguerentur ad bonorum possessionis petitionem neque bona diu iacerent. sane nonnumquam urguentibus creditoribus interrogandi sunt in iure, an sibi bonorum possessionem admittant, ut, si repudiare se dicant, sciant creditores, quid sibi agendum esset: si deliberare se adhuc dicant, praecipitandi non sunt.

Dig. 38.9.1.13

Ulpianus 49 ad ed.

Si quis autem a patre suo impuberi filio sit substitutus, non intra annum, sed intra diem centensimum bonorum possessionem petere poterit.

Dig. 38.9.1.14

Ulpianus 49 ad ed.

Non solum autem cum suo nomine veniunt liberi parentesque, hoc eis tribuitur, verum etiam si servus eius, qui ex liberis patentibusque est, heres institutus est, intra annum competit bonorum possessio: persona enim ea est, quae meruit hoc beneficium, quae petat.

Dig. 38.9.1.15

Ulpianus 49 ad ed.

Sed et si pater emancipati filii bonorum possessionem contra tabulas accipere velit, anni tempus ei competere constat.

Dig. 38.9.1.16

Ulpianus 49 ad ed.

Et generaliter ait iulianus ex omnibus causis liberis parentibusque intra annum bonorum possessionem competere.

Dig. 38.9.2

Papinianus 6 resp.

Inferioris gradus cognatus beneficium edicti successorii non habuit, cum prior ex propria parte possessionem accepisset: nec ad rem pertinuit, quod abstinendi facultatem ob auxilium aetatis prior cognatus acceperat. igitur fisco vacantia bona recte deferri placuit.

Dig. 38.10.0. De gradibus et adfinibus et nominibus eorum.

Dig. 38.10.1pr.

Gaius 8 ad ed. provinc.

Gradus cognationis alii superioris ordinis sunt, alii inferioris, alii ex transverso sive a latere. superioris ordinis sunt parentes. inferioris liberi. ex transverso sive a latere fratres et sorores liberique eorum.

Dig. 38.10.1.1

Gaius 8 ad ed. provinc.

Sed superior quidem et inferior cognatio a primo gradu incipit, ex transverso sive a latere nullus est primus gradus et ideo incipit a secundo. itaque in primo gradu cognationis superioris quidem et inferioris ordinis cognati possunt concurrere, ex transverso vero numquam eo gradu quisquam concurrere potest. at in secundo et tertio et deinceps in ceteris possunt etiam ex transverso quidam concurrere et cum superioris ordinis cognatis.

Dig. 38.10.1.2

Gaius 8 ad ed. provinc.

Sed admonendi sumus, si quando de hereditate vel bonorum possessione quaeramus, non semper eos, qui eiusdem gradus sint, concurrere.

Dig. 38.10.1.3

Gaius 8 ad ed. provinc.

Primo gradu sunt supra pater mater. infra filius filia.

Dig. 38.10.1.4

Gaius 8 ad ed. provinc.

Secundo gradu sunt supra avus avia. infra nepos neptis. ex transverso frater soror.

Dig. 38.10.1.5

Gaius 8 ad ed. provinc.

Tertio gradu sunt supra proavus proavia. infra pronepos proneptis. ex transverso fratris sororisque filius filia: et convenienter patruus amita, avunculus matertera.

Dig. 38.10.1.6

Gaius 8 ad ed. provinc.

Quarto gradu sunt supra abavus abavia. infra abnepos abneptis. ex transverso fratris sororisque nepos neptis: et convenienter patruus magnus amita magna (id est avi frater et soror), avunculus magnus matertera magna (id est aviae frater et soror): item fratres patrueles sorores patrueles (id est qui quaeve ex duobus fratribus progenerantur), item consobrini consobrinaeque (id est qui quaeve ex duabus sororibus nascuntur, quasi consororini), item amitini amitinae (id est qui quaeve ex fratre et sorore propagantur). sed fere vulgus omnes istos communi appellatione consobrinos vocant.

Dig. 38.10.1.7

Gaius 8 ad ed. provinc.

Quinto gradu sunt supra atavus atavia. infra adnepos adneptis. ex transverso fratris et sororis pronepos proneptis: et convenienter propatruus et proamita (id est proavi frater et soror), proavunculus et promatertera (id est proaviae frater et soror): item fratris patruelis sororis patruelis filius filia, et similiter consobrini consobrinae, item amitini amitinae filius filia: propior sobrino propior sobrina (isti sunt patrui magni amitae magnae, avunculi magni materterae magnae filius filia),

Dig. 38.10.2

Ulpianus 46 ad ed.

Hoc est patris eius, de cuius cognatione quaeritur, consobrinus consobrina sive frater patruelis.

Dig. 38.10.3pr.

Gaius 8 ad ed. provinc.

Sexto gradu sunt supra triavus triavia. infra trinepos trineptis. ex transverso fratris et sororis abnepos abneptis: et convenienter abpatruus abamita (id est abavi frater et soror), abavunculus abmatertera (id est abaviae frater et soror): item patrui magni amitae magnae, avunculi magni materterae magnae nepos neptis: item fratris patruelis sororis patruelis, consobrini consobrinae, amitini amitinae nepos neptis: propatrui proamitae, proavunculi promaterterae filius filia. item qui ex fratribus patruelibus aut consobrinis aut amitinis undique propagantur, quae proprie sobrini vocantur.

Dig. 38.10.3.1

Gaius 8 ad ed. provinc.

In septimo gradu quam multae esse possint personae, ex his quae diximus satis apparet.

Dig. 38.10.3.2

Gaius 8 ad ed. provinc.

Admonendi tamen sumus parentium liberorumque personas semper duplari: avum enim et aviam tam maternos quam paternos intellegemus, item nepotes neptesque tam ex filio quam ex filia: quam rationem scilicet in omnibus deinceps gradibus supra infraque sequemur.

Dig. 38.10.4pr.

Modestinus 12 pand.

Non facile autem, quod ad nostrum ius attinet, cum de naturale cognatione quaeritur, septimum gradum quis excedit, quatenus ultra eum fere gradum rerum natura cognatorum vitam consistere non patitur.

Dig. 38.10.4.1

Modestinus 12 pand.

Cognati ab eo dici putantur, quod quasi una communiterve nati vel ab eodem orti progenitive sint.

Dig. 38.10.4.2

Modestinus 12 pand.

Cognationis substantia bifariam apud romanos intellegitur: nam quaedam cognationes iure civili, quaedam naturali conectuntur, nonnumquam utroque iure concurrente et naturali et civili copulatur cognatio. et quidem naturalis cognatio per se sine civili cognatione intellegitur quae per feminas descendit, quae vulgo liberos peperit. civilis autem per se, quae etiam legitima dicitur, sine iure naturali cognatio consistit per adoptionem. utroque iure consistit cognatio, cum iustis nuptiis contractis copulatur. sed naturalis quidem cognatio hoc ipso nomine appellatur: civilis autem cognatio licet ipsa quoque per se plenissime hoc nomine vocetur, proprie tamen adgnatio vocatur, videlicet quae per mares contingit.

Dig. 38.10.4.3

Modestinus 12 pand.

Sed quoniam quaedam iura inter adfines quoque versantur, non alienum est hoc loco de adfinibus quoque breviter disserere. adfines sunt viri et uxoris cognati, dicti ab eo, quod duae cognationes, quae diversae inter se sunt, per nuptias copulantur et altera ad alterius cognationis finem accedit: namque coniugendae adfinitatis causa fit ex nuptiis.

Dig. 38.10.4.4

Modestinus 12 pand.

Nomina vero eorum haec sunt: socer socrus, gener nurus, noverca vitricus, privignus privigna.

Dig. 38.10.4.5

Modestinus 12 pand.

Gradus autem adfinitati nulli sunt.

Dig. 38.10.4.6

Modestinus 12 pand.

Et quidem viri pater uxorisque socer, mater autem eorum socrus appellatur, cum apud graecos proprie viri pater hekuros, mater vero hekura vocitetur, uxoris autem pater penveros et mater penvera vocatur. filii autem uxor nurus, filiae vero vir gener appellatur. uxor liberis ex alia uxore natis noverca dicitur, matris vir ex alio viro natis vitricus appellatur: eorum uterque natos aliunde privignos privignasque vocant. potest etiam sic definiri. socer est uxoris meae pater, ego illius sum gener: socer magnus dicitur uxoris meae avus, ego illius sum progener: et retro pater meus uxoris meae socer est, haec illi nurus: et avus meus uxoris meae socer magnus est, illa illi pronurus. item prosocrus mihi uxoris meae avia est, ego illius sum progener: et retro mater mea uxoris meae socrus est, illa huic nurus: et avia mea uxoris meae socrus magna est et uxor mea illi pronurus est. privignus est uxoris meae filius ex alio viro natus, ego illi sum vitricus: et in contrarium uxor mea liberis, quos ex alia uxore habeo, noverca dicitur, liberi mei illi privigni. viri frater levir. is apud graecos dayr appellatur, ut est apud homerum relatum: sic enim helena ad hectorem dicit: daer emeio kunos kakomyxanou okruoessys. viri soror glos dicitur, apud graecos galws. duorum fratrum uxores ianitrices dicuntur, apud graecos einateres. quod uno versu idem homerus significat: ye tines galown y einaterwn eupeplwn.

Dig. 38.10.4.7

Modestinus 12 pand.

Hos itaque inter se, quod adfinitatis causa parentium liberorumque loco habentur, matrimonio copulari nefas est.

Dig. 38.10.4.8

Modestinus 12 pand.

Sciendum est neque cognationem neque adfinitatem esse posse, nisi nuptiae non interdictae sint, ex quibus adfinitas coniungitur.

Dig. 38.10.4.9

Modestinus 12 pand.

Libertini libertinaeque inter se adfines esse possunt.

Dig. 38.10.4.10

Modestinus 12 pand.

In adoptionem datus aut emancipatus quascumque cognationes adfinitatesque habuit, retinet, adgnationis iura perdit. sed in eam familiam, ad quam per adoptionem venit, nemo est illi cognatus praeter patrem eosve, quibus adgnascitur: adfinis autem ei omnino in ea familia nemo est.

Dig. 38.10.4.11

Modestinus 12 pand.

Is cui aqua et igni interdictum est aut aliquo modo capite deminutus est ita, ut libertatem et civitatem amitteret, et cognationes et adfinitates omnes, quas ante habuit, amittit.

Dig. 38.10.5

Paulus 6 ad plaut.

Si filium naturalem emancipavero et alium adoptavero, non esse eos fratres: si filio meo mortuo titium adoptavero, videri eum defuncti fratrem fuisse arrianus ait.

Dig. 38.10.6pr.

Ulpianus 5 ad l. iul. et pap.

Labeo scribit nepotis ex filia mea nati uxorem nurum mihi esse.

Dig. 38.10.6.1

Ulpianus 5 ad l. iul. et pap.

Generi et nurus appellatione sponsus quoque et sponsa continetur: item socri et socrus appellatione sponsorum parentes contineri videntur.

Dig. 38.10.7

Scaevola 4 reg.

Privignus etiam is est, qui volgo conceptus ex ea natus est quae postea mihi nupsit, aeque et is qui, cum in concubinatu erat mater eius, natus ex ea est eaque postea alii nupta sit.

Dig. 38.10.8

Pomponius 1 enchir.

Servius recte dicebat socri et socrus et generi et nurus appellationem etiam ex sponsalibus adquiri.

Dig. 38.10.9

Paulus 4 sent.

Stemmata cognationum directo limite in duas lineas separantur, quarum altera superior, altera inferior: ex superiore autem et secundo gradu transversae lineae pendent, quas omnes latiore tractatu habito in librum singularem contextimus.

Dig. 38.10.10pr.

Paulus l.S. de grad. et adfin.

Iuris consultus cognatorum gradus et adfinium nosse debet, quia legibus hereditates et tutelae ad proximum quemque adgnatum redire consuerunt: sed et edicto praetor proximo cuique cognato dat bonorum possessionem: praeterea lege iudiciorum publicorum contra adfines et cognatos testimonium inviti dicere non cogimur.

Dig. 38.10.10.1

Paulus l.S. de grad. et adfin.

Nomen cognationis a graeca voce dictum videtur: suggeneis enim illi vocant, quos nos cognatos appellamus.

Dig. 38.10.10.2

Paulus l.S. de grad. et adfin.

Cognati sunt et quos adgnatos lex duodecim tabularum appellat, sed hi sunt per patrem cognati ex eadem familia: qui autem per feminas coniunguntur, cognati tantum nominantur.

Dig. 38.10.10.3

Paulus l.S. de grad. et adfin.

Proximiores ex adgnatis sui dicuntur.

Dig. 38.10.10.4

Paulus l.S. de grad. et adfin.

Inter adgnatos igitur et cognatos hoc interest quod inter genus et speciem: nam qui est adgnatus, et cognatus est, non utique autem qui cognatus est, et adgnatus est: alterum enim civile, alterum naturale nomen est.

Dig. 38.10.10.5

Paulus l.S. de grad. et adfin.

Non parcimus his nominibus, id est cognatorum, etiam in servis: itaque parentes et filios fratresque etiam servorum dicimus: sed ad leges serviles cognationes non pertinent.

Dig. 38.10.10.6

Paulus l.S. de grad. et adfin.

Cognationis origo et per feminas solas contingit: frater enim est et qui ex eadem matre tantum natus est: nam qui eundem patrem habent, licet diversas matres, etiam adgnati sunt.

Dig. 38.10.10.7

Paulus l.S. de grad. et adfin.

Parentes usque ad tritavum apud romanos proprio vocabulo nominantur: ulteriores qui non habent speciale nomen maiores appellantur: item liberi usque ad trinepotem: ultra hos posteriores vocantur.

Dig. 38.10.10.8

Paulus l.S. de grad. et adfin.

Sunt et ex lateribus cognati, ut fratres sororesque et ex his prognati: item patrui amitae et avunculi et materterae.

Dig. 38.10.10.9

Paulus l.S. de grad. et adfin.

Nam quotiens quaeritur, quanto gradu quaeque persona sit, ab eo incipiendum est cuius de cognatione quaerimus: et si ex inferioribus aut superioribus gradibus est, recta linea susum versum vel deorsum tendentium facile inveniemus gradus, si per singulos gradus proximum quemque numeramus: nam qui ei, qui mihi proximo gradu est, proximus est, secundo gradu est mihi: similiter enim accedentibus singulis crescit numerus. idem faciendum in transversis gradibus: sic frater secundo gradu est, quoniam patris vel matris persona, per quos coniungitur, prior numeratur.

Dig. 38.10.10.10

Paulus l.S. de grad. et adfin.

Gradus autem dicti sunt a similitudine scalarum locorumve proclivium, quos ita ingredimur, ut a proximo in proximum, id est in eum, qui quasi ex eo nascitur, transeamus.

Dig. 38.10.10.11

Paulus l.S. de grad. et adfin.

Nunc singulos gradus numeramus.

Dig. 38.10.10.12

Paulus l.S. de grad. et adfin.

Primo gradu cognationis sunt susum versum duo pater et mater. deorsum versum duo filius et filia: qui tamen et plures esse possunt.

Dig. 38.10.10.13

Paulus l.S. de grad. et adfin.

Secundo gradu duodecim personae continentur hae. avus, hoc est patris et matris pater. item avia, similiter tam paterna quam materna. frater quoque per utrumque parentem accipitur, id est aut per matrem tantum aut per patrem aut per utrumque, id est ex utroque parente eodem. sed hic numerum non auget, quod nihil differt hic ab eo, qui eundem patrem habet tantum, nisi quod is eosdem cognatos tam paternos quam maternos habet: et ideo evenire solet in his, qui diversis parentibus nati sunt, ut qui meo fratri frater sit meus cognatus non sit. pone me fratrem habere ex eodem tantum patre, illum habere ex eadem matre: illi inter se fratres sunt, mihi alter cognatus non est. soror similiter numeratur ut frater. nepos quoque dupliciter intellegitur ex filio vel filia natus. idem est et in nepte.

Dig. 38.10.10.14

Paulus l.S. de grad. et adfin.

Tertio gradu personae continentur triginta duo. proavus, qui quadrifariter intellegitur: est enim avi paterni aut materni pater, item aviae paternae aut aviae maternae pater. proavia quoque quattuor personas complectitur: est enim aut avi paterni aut aviae paternae mater, item avi materni et similiter aviae maternae mater. patruus, is autem est patris frater et ipse dupliciter intellegendus est ex patre vel matre. avia paterna mea nupsit patri tuo, peperit te, aut avia paterna tua nupsit patri meo, peperit me: ego tibi patruus sum et tu mihi. id evenit, si mulieres altera alterius filio nupserit: nam qui ex his masculi nati fuerint, invicem patrui sunt, quae feminae, invicem amitae, item masculi feminis similiter patrui, feminae illis amitae. si vir et mulier ille filiam eius duxerit, illa filio eius nupserit: qui ex patre adulescentis nati erunt, ex matre puellae natos fratris filios, illi eos patruos et amitas appellabunt. avunculus est matris frater eadem significatione, qua in patruo diximus contigit. si duo viri alter alterius filiam duxerint, qui ex his masculi nati fuerint, invicem avunculi, quae feminae, invicem materterae erunt, et eadem ratione masculi puellis avunculi et illae illis erunt materterae. amita est patris soror sicut supra accipiendi. matertera est matris soror similiter ut supra. illud notandum est non, quemadmodum patris matrisque fratres et sorores patrui amitae, avunculi materterae dicuntur, ita fratris sororisque filios filias nomen speciale cognationis habere, sed ita demonstrari fratris sororisque filios filias: quod quidem et in aliis accidere ex posterioribus apparebit. pronepos quoque et proneptis quadrifariter intelleguntur: aut enim ex nepote ex filio aut ex nepote ex filia descendunt, aut ex nepte ex filio aut ex nepte ex filia propagantur.

Dig. 38.10.10.15

Paulus l.S. de grad. et adfin.

Quarto gradu personae continentur octoginta. abavus, cuius intellectus in octo personas porrigitur: est enim proavi paterni aut materni pater, quos singulos duplici modo intellegendos diximus, aut proaviae paternae aut maternae pater, quae et ipsae singulae dupliciter accipiuntur. abavia: et haec octies numeratur: est enim proavi paterni aut materni, item proaviae paternae aut maternae mater. patruus magnus est frater avi: qui avus, item frater cum duobus modis intelleguntur, quattuor personas hoc nomen amplectitur, ut sit avi paterni vel materni frater, qui vel eodem patre, id est proavo, vel tantum matre eadem, id est proavia natus est: qui autem mihi patruus magnus est, is patri meo vel matri meae patruus est. amita magna est avi soror: avus autem, item soror, ut supra diximus, dupliciter intelleguntur et ideo hic quoque quattuor personas intellegimus: similiter quae patris mei vel matris meae amita est, mihi erit amita magna. avunculus magnus est aviae frater: quattuor personae huic nomini eadem ratione subiectae sunt mihique is est avunculus magnus, qui patri meo vel matri meae avunculus est. matertera magna est aviae soror: quattuor modis et haec ob eandem causam intellegitur: ea, quae patri meo vel matri meae matertera est, mihi matertera magna vocatur. eodem gradu sunt et illi qui vocantur fratres patrueles, item sorores patrueles, amitini amitinae, consobrini consobrinae: hi autem sunt, qui ex fratribus vel sororibus nascuntur. quos quidam ita distinxerunt, ut eos quidem, qui ex fratribus nati sunt, fratres patrueles, item eas, quae ex fratribus natae sunt, sorores patrueles: ex fratre autem et sorore amitinos amitinas: eos vero et eas, qui quaeve ex sororibus nati nataeve sunt, consobrinos consobrinas quasi consororinos: sed plerique hos omnes consobrinos vocant, sicut trebatius. sub hac appellatione nominum personae cadunt sedecim hae. patrui filius, item filia bifariam sicut supra numerantur (nam patris mei frater esse potest vel ex patre solo vel etiam ex matre sola): amitae filius, item filia: avunculi filius, item filia: materterae filius, item filia, amita avunculo matertera acceptis duplici intellectu secundum eandem rationem. fratris sororisque nepos ac neptis eodem gradu sunt: sed et frater, item soror, neposve et neptis dupliciter accepti continebunt personas sedecim sic. fratris eodem patre nati nepos ex filio nepos ex filia fratris eadem matre, alio patre nati nepos ex filio nepos ex filia fratris eodem patre nati neptis ex filio neptis ex filia fratris alio patre eadem matre nati neptis ex filio neptis ex filia eademque causa octo personae efficient, ut aliae octo accedunt ex sorore natorum nepotes neptesque et similiter numerantur a nobis. fratris autem mei nepos neptisque me patruum magnum appellant: sororum fratrumque meorum nepotes neptesque, item mei inter se consobrini sunt. abnepos, abneptis: hi sunt pronepotis proneptis filius filia, nepotis neptisve nepos neptis, filii filiaeve pronepos proneptis, nepote vel ex filio nato vel ex filia, nepte vel ex filio nata vel ex filia acceptis, ut ad singulas personas gradu descendamus sic. filius nepos pronepos abnepos filius nepos pronepos abneptis filius nepos proneptis abnepos filius nepos proneptis abneptis filius neptis pronepos abnepos filius neptis pronepos abneptis filius neptis proneptis abnepos filius neptis proneptis abneptis similiter hae personae enumerabuntur proposita filia et sic fient sedecim.

Dig. 38.10.10.16

Paulus l.S. de grad. et adfin.

Quinto gradu personae continentur centum octaginta quattuor. atavus scilicet et atavia: atavus est abavi vel abaviae pater, proavi vel proaviae avus, avi aviaeque proavus, patris vel matris abavus: huius appellatio personas complectitur sedecim, enumeratione facta tam per mares quam per feminas, ut sic ad singulas perveniamus. pater avus proavus abavus atavus pater avus proavus abavia atavus pater avus proavia abavus atavus pater avus proavia abavia atavus pater avia proavus abavus atavus pater avia proavus abavia atavus pater avia proavia abavus atavus pater avia proavia abavia atavus similiter matris persona proposita enumeratio fiet. atavia totidem personas continet eadem ratione numeratas, id est sedecim. patruus maior est proavi frater, patris vel matris patruus magnus: sub hoc nomine erunt personae octo et sic enumerabuntur: pater avus proavus abavus frater proavi pater avus proavus abavia frater proavi pater avia proavus abavus frater proavi pater avia proavus abavia frater proavi totidem erunt matris persona et proavo eius propositis. ideo autem fratrem proavi enumerantes ante abavum ponimus, quod, ut supra significavimus, non aliter pervenietur ad eum de quo quaeritur, nisi per eos transitum erit, ex quibus nascitur. avunculus maior: is est proaviae frater, patris vel matris avunculus magnus: eadem denumeratione hic quoque octo personas computabimus, hoc tantum immutato, ut is frater proaviae ponatur. amita maior: ea est proavi soror, patris vel matris amita magna: quod ad numerum et expositionem personarum eadem erunt immutato hoc, ut proavi soror ad extremum ponatur. matertera maior: haec est soror proaviae, patris vel matris matertera magna: numerus personarum idem est, ut in novissimo ponatur proaviae soror. hos omnes a patruo maiore quos rettulimus quidam appellant ita: propatruus proavunculus, proamita promatertera: quos tamen ego ita nomino, illi contra fratris vel sororis pronepotem me demonstrant. patrui magni filius filia: hi sunt avi fratris filius filia, proavi aut proaviae nepos neptis ex filio, patris vel matris consobrinus consobrina: octo personas et hic computabimus, quod avus et frater, ut iam dictum est, dupliciter accipiuntur et ideo patrui magni filius quattuor implet, totidem filia. amitae magnae filius filia: hi sunt avi sororis filius filia, proavi proaviae nepos neptis ex filia, patris vel matris consobrinus consobrina: numerus personarum idem qui supra. avunculi magni filius filia: hi sunt aviae fratris filius filia, proavi aut proaviae nepos neptis ex filio, patris vel matris consobrinus aut consobrina: numerus idem. materterae magnae filius filia: hi sunt aviae sororis filius filia, proavi proaviae nepos neptis ex filia, patris vel matris consobrinus consobrina: computatio eadem. personae quas enumeravimus a patrui magni filio ei, de cuius cognatione quaeritur, propius sobrinis vocantur: nam, ut massurius ait, quem quis appellat propiorem sobrino, qui est patris matrisve consobrinus aut consobrina, ab eo consobrini consobrinaeve filius filia nominatur. patrui nepos neptis: hi sunt avi paterni vel aviae paternae pronepos proneptis ex nepote vel ex nepte filio natis, consobrini consobrinae filius filia: octo personas continebunt, quattuor nepos, quattuor neptis, quia et patruus dupliciter accipitur et nepos vel neptis sub singulis patruorum personis duplicatur. amitae nepos vel neptis: hi sunt avi paterni vel aviae paternae pronepos proneptis ex nepote vel nepte filia natis, consobrini consobrinae filius filia: numerus idem est. avunculi nepos neptis: hi sunt avi materni vel aviae maternae pronepos proneptis: cetera eadem, quae in patrui nepote vel nepte. his omnibus, quos a patrui nepote proposuimus, is, de cuius cognatione quaeritur, propius sobrino est: nam patris vel matris eorum consobrinus est. fratris pronepos proneptis: continebunt hi personas sedecim fratre dupliciter et pronepote et pronepte singulis quadrifariam, ut supra demonstravimus, acceptis. sororis pronepos proneptis similiter sedecim personas continent.

adnepos adneptis: hi sunt abnepotis vel abneptis filius filia, pronepotis vel proneptis nepos neptis, nepotis vel neptis pronepos proneptis, filii vel filiae abnepos abneptis: numerabuntur sub hac appellatione triginta duo personae, quia abnepos sedecim habet et totidem abneptis.

Dig. 38.10.10.17

Paulus l.S. de grad. et adfin.

Sexto gradu continentur personae quadringentae quadraginta octo hae. tritavus: est autem tritavus patris et matris atavus, avi vel aviae abavus, proavi proaviae proavus, abavi vel abaviae avus, atavi vel ataviae pater, dictus quasi tertius avus: personas autem complectitur triginta duo: geminetur enim necesse est numerus, qui in atavo fuit immutatione per singulas personas propter ataviam facta, ut sedecies tritavus intellegatur atavi pater et totiens ataviae. tritavia similiter numerata faciet personas triginta duo. patruus maximus: is est abavi frater, atavi et ataviae filius, patris vel matris patruus maior: personas continebit sedecim sic. pater avus proavus abavus atavus abavi frater pater avus proavus abavus atavia frater abavi pater avus proavia abavus atavus frater abavi pater avus proavia abavus atavia frater abavi pater avia proavus abavus atavus frater abavi pater avia proavus abavus atavia frater abavi pater avia proavia abavus atavus frater abavi pater avia proavia abavus atavia frater abavi totidem erunt matris appellatione proposita. avunculus maximus: is est abaviae frater, patris vel matris avunculus maior: et numerus idem et personarum expositio eadem quae supra hoc dumtaxat immutato, ut pro abavi fratre abaviae fratrem ponas. amita maxima: ea est abavi soror, patris vel matris amita maior: cetera ut in patruo maximo immutato hoc tantum, ut ubi est abavi frater ponatur abavi soror. matertera maxima: ea est abaviae soror, patris vel matris matertera maior: cetera ut supra ad extremum dumtaxat pro abaviae fratre proposita abaviae sorore. hos omnes, quos a patruo maximo posuimus, quidam his nominibus designant: abpatruus abavunculus, abamita abmatertera: itaque et nos indifferenter hos ponemus. quos ego autem appello abpatruos abavunculos, abamitas abmaterteras, illi me demonstrant fratris sororisque abnepotem. patrui maioris filius filia: hi sunt proavi fratris filius filia, abavi abaviae per proavum nepos neptis ex filio: personae sub hoc erunt sedecim, enumeratione sic ducta ut in quinto gradu, cum patruum maiorem demonstraremus, fecimus, adiecto dumtaxat filio filia, quia filius patrui maioris totidem necesse est personas complectatur, quot patruus maior, id est octo. totidem ex filiae persona computatis is numerus efficietur, quem supra posuimus. amitae maioris filius filia: hi sunt proavi sororis filius filia, abavi abaviae per proavum nepos neptis ex filia: et hic eadem ratione personas dinumerabimus totidem. avunculi maioris filius filia: hi sunt proaviae fratris filius filia, abavi abaviae per proaviam nepos neptis ex filio. eadem hic dinumeratio facienda est, quae in patrui maioris filio filia. materterae maioris filius filia: hi sunt proaviae sororis filius filia, abavi abaviaeve per proaviam nepos neptis ex filia: circa numerum personarum et expositionem ut supra. hi omnes, quos proposuimus a patrui maioris filio, avo aviaeve ^ aviae^ eius, de cuius cognatione quaeritur, fratribus et sororibus eorum consobrini consobrinaeve sunt: at patri matrique eiusdem fratribusque et sororibus utrius eorum propius sobrinis. patrui magni nepos vel neptis, amitae magnae nepos vel neptis, avunculi magni nepos vel neptis, materterae magnae nepos vel neptis: haec singula nomina continent personas sexaginta quattuor: nam cum patrui magni verbi gratia persona quadrifariam intellegatur, nepotis bifariam, geminatur is numerus nepote dumtaxat adnumerato et quadruplatur is qui geminatus erat: duplicatur etiam nepte computata. et tantum unius denumerationem proponimus exempli gratia: pater avus proavus frater avi qui est patruus magnus filius eius nepos eiusdem ex filio item neptis pater avus proavia frater avi qui est patruus magnus filius eius nepos eiusdem ex filio item neptis pater avus proavus frater avi qui est patruus magnus filia eius nepos eiusdem ex filia item neptis pater avus proavia frater avi qui est patruus magnus filia eius nepos eiusdem ex filia item neptis totidem et eadem ratione exponuntur matris nomine anteposito, id est ut avi materni fratris nepotes et neptes computemus. item in amita magna, id est avi sororis, nepotes neptesque enumerabimus: idemque in avunculo magno, id est aviae fratris: eadem ratione in materterae magnae, id est aviae sororis: ex quibus universus numerus completur sexaginta quattuor. hi omnes proavi aut proaviae eius, de cuius cognatione quaeritur, pronepotes et proneptes, eiusdem avi aviaeve fratris sororisve nepotes neptesve: et contra horum eiusdem avus avia patruus magnus amita magna, avunculus magnus matertera magna: erunt autem pater materve eiusdem fratresque et sorores utrius eorum propii ^ proprii^ sobrini: ipse his sobrinus est et invicem huic illi sobrini. patrui pronepos patrui proneptis: continent personas octo: nam utriusque sexus fiunt sedecim sic: pater avus patruus filius patrui nepos eiusdem ex filio pronepos eiusdem ex nepote filio nato item proneptis pater avia patruus filius patrui nepos eiusdem ex filio pronepos ex nepote filio nato item proneptis pater avus patruus filia patrui nepos eiusdem ex filia pronepos ex nepote filia nato et proneptis pater avia patruus filia patrui nepos eius ex filia pronepos ex nepote filia nato item proneptis pater avus patruus filius patrui neptis eiusdem ex filio pronepos ex nepte filio nata item proneptis pater avia patruus filius patrui neptis eiusdem ex filio pronepos ex nepte filio nata item proneptis pater avus patruus filia patrui neptis eiusdem ex filia pronepos ex nepte filia nata item proneptis pater avia patruus filia patrui neptis eiusdem ex filia pronepos ex nepte filia nata item proneptis amitae pronepos proneptis: totidem personas eadem ratione et is continet, tantum pro patruo amita sumpta. item avunculi pronepos proneptis, item pro patruo avunculo posito. materterae pronepos proneptis: et hic ubi patruus positus est, matertera enumerata eundem numerum personarum inveniemus. hi omnes eius, de cuius cognatione quaeritur, consobrinorum nepotes neptesve sunt. fratris sororisque abnepos abneptis: efficiunt personas sexaginta quattuor, ut ex supra scriptis apparere potest. trinepos trineptis: hi sunt filii filiaeve adnepos adneptis, nepotis neptis abnepos abneptis, pronepotis proneptisve pronepos proneptis, abnepotis abneptisve nepos neptisve, adnepotis adneptis filius filia. hae appellationes demonstrant personas sexaginta quattuor, nam triginta duo trinepos complet, totidem trineptis. ab nepote enim numerus quadruplatus in se efficit triginta duo, ipso nepote duas significante, pronepote quattuor, abnepote octo, adnepote sedecim: his accedunt trinepos trineptis, una ex adnepote nati, altera ex adnepte. per singulos autem gradus ideo geminatio fit, quia maribus adiciuntur feminae, ex quibus proximus quisque progenitur, et numerabuntur sic: filius nepos pronepos abnepos adnepos trinepos item trineptis filia nepos pronepos abnepos adnepos trinepos item trineptis filius neptis pronepos abnepos adnepos trinepos item trineptis filia neptis pronepos abnepos adnepos trinepos item trineptis filius nepos proneptis abnepos adnepos trinepos item trineptis filia nepos proneptis abnepos adnepos trinepos item trineptis filius neptis proneptis abnepos adnepos trinepos item trineptis filia neptis proneptis abnepos adnepos trinepos item trineptis filius nepos pronepos adneptis adnepos trinepos item trineptis filia nepos pronepos abneptis adnepos trinepos item trineptis filius nepos proneptis abneptis adnepos trinepos item trineptis filia nepos proneptis abneptis adnepos trinepos item trineptis filius neptis pronepos abneptis adnepos trinepos item trineptis filia neptis pronepos abneptis adnepos trinepos item trineptis filius neptis proneptis abneptis adnepos trinepos item trineptis filia neptis proneptis abneptis atnepos trinepos item trineptis filius nepos pronepos abnepos adneptis trinepos item trineptis filia nepos pronepos abnepos adneptis trinepos item trineptis filius neptis pronepos abnepos adneptis trinepos item trineptis filia neptis pronepos abnepos adneptis trinepos item trineptis filius nepos proneptis abnepos adneptis trinepos item trineptis filia nepos proneptis abnepos adneptis trinepos item trineptis filius neptis proneptis abnepos adneptis trinepos item trineptis filia neptis proneptis abnepos adneptis trinepos item trineptis filius nepos pronepos abneptis adneptis trinepos item trineptis filia nepos pronepos abneptis adneptis trinepos item trineptis filius nepos proneptis abneptis adneptis trinepos item trineptis filia nepos proneptis abneptis adneptis trinepos item trineptis filius neptis pronepos abneptis atneptis trinepos item trineptis filia neptis pronepos abneptis atneptis trinepos item trineptis filius neptis proneptis abneptis atneptis trinepos item trineptis filia neptis proneptis abneptis atneptis trinepos item trineptis.

Dig. 38.10.10.18

Paulus l.S. de grad. et adfin.

Septimo gradu personae continentur mille viginti quattuor hae: tritavi itemque tritaviae pater mater: personas efficiunt centum viginti octo: tritavi enim patres tot sunt quot ipsius tritavi, item eiusdem matres totidem, fiunt sexaginta quattuor: idem numerus tritaviae patris matrisque. atavi ataviae frater sororve: hi sunt tritavi filius filia, abavi abaviaeve patruus avunculus amita matertera, proavi proaviae patruus magnus avunculus magnus amita magna matertera magna, avi aviaeve propatruus proavunculus proamita promatertera, patris vel matris abpatruus abavunculus abamita abmatertera: fiunt personae atavi fratris triginta duo: nam sedecim, quas atavus explet, accedunt totidem propter fratris duplicem personam: necesse est nam sedecim fratres atavi ex patre computentur, sedecim ex matre. similiter atavi sorores triginta duo: fiunt sexaginta quattuor: et totidem ataviae fratris, item sororis. patrui maximi filius filia: hi sunt atavi nepos neptis ex filio, abavi fratris filius filia. amitae maximae filius filia: hi sunt atavi nepos neptis ex filia, abavi sororis filius filia. avunculi maximi filius filia: hi sunt atavi nepos neptis ex filio, abaviae fratris filius filia. materterae maximae filius filia: hi sunt atavi nepos neptis ex filia, abaviae sororis filius filia. hae omnes personae, quas a patrui maximi filio enumeravimus, proavi proaviaeque eius, de cuius cognatione quaeritur, consobrinae sunt, avi aviaeque eiusdem propius sobrinis. singulae appellationes continent personas sedecim, quia, cum patruus maximus sedecim efficiat, filius eius eandem habet enumerationem totidemque filia: et fit ex omnibus his, quas a patrui maximi filio comprehendimus, ductis per octo sedecies, centum viginti octo. patrui maioris nepos personas continet sedecim (est enim abavi abaviaeve pronepos) et cum abavus octies numeretur, nepotes bis octies computati supra scriptum numerum efficiunt. patrui maioris neptis item. avunculi maioris nepos neptis eadem ratione personas complebunt triginta duo. amitae maioris nepos neptis eadem ratione item. materterae maioris nepos neptis item. et sic ex omnibus colliguntur centum viginti octo. his personis avus avia eius, de cuius cognatione quaeritur, propius sobrinis sunt, pater mater sobrinus sobrina: is de cuius cognatione quaeritur, sobrino natus est: hic proximo nomine definitur parentis sui sobrinus, ut trebatius ait, rationemque nominis hanc reddit, quod ultimi cognationum gradus sobrinorum fiunt itaque sobrini filium recte proximum nomen. ab eo ipso huius sobrini filius dicetur, et ideo eos, qui ex sobrinis nati sunt, inter se proximum nomen appellare: hos enim nullum proprium habere nomen, quo inter se vocentur. patrui magni pronepos proneptis. avunculi magni pronepos proneptis. amitae magnae pronepos proneptis. materterae magnae pronepos proneptis. ex his omnibus centum viginti octo personae efficiuntur, quia singulae appellationes sedecim complent: nam cum exempli gratia patruus magnus quadrifariam intellegitur, ad singulorum patruorum magnorum personas quadruplicatus pronepos, item proneptis triginta duo personas reddet, totque quater numeratae illam, quae proposita est, summam efficiunt. eorum patres matresque ei, de cuius cognatione quaeritur, sobrini sobrinaeque sunt, ipse autem isdem sobrino sobrinave natus. patrui abnepos abneptis. avunculi abnepos abneptis. amitae abnepos abneptis. materterae abnepos abneptis. haec singula vocabula senas denas continent personas: verbi enim gratia patrui abnepos sic enumerabitur, ut bifariam patruo accepto quater pronepos, totiens proneptis ducatur et sic ad eorum filios veniatur sedecies computatos: eadem ratione ad filiam: item in ceteros: et per hoc ex omnibus efficietur numerus personarum centum viginti octo. hi sunt ei, de cuius cognatione quaeritur, consobrinorum nepotes neptesque, ipsi eorum, de cuius cognatione quaeritur, patrui maximi avunculi maximi amitae maximae materterae maximae filius filia, item proavi proaviae consobrinus. fratris sororisque adnepos adneptis: personas continent centum viginti octo. trinepotis filius, item filia: trineptis filius, item filia. hi centum viginti octo fiunt, quod, cum trinepos trineptisque, ut supra demonstravimus, sexaginta quattuor impleant, filius eorum eadem enumeratione totidemque filia computabitur.

Dig. 38.11.0. Unde vir et uxor.

Dig. 38.11.1pr.

Ulpianus 47 ad ed.

Ut bonorum possessio peti possit unde vir et uxor, iustum esse matrimonium oportet. ceterum si iniustum fuerit matrimonium, nequaquam bonorum possessio peti poterit, quemadmodum nec ex testamento adiri hereditas vel secundum tabulas peti bonorum possessio potest: nihil enim capi propter iniustum matrimonium potest.

Dig. 38.11.1.1

Ulpianus 47 ad ed.

Ut autem haec bonorum possessio locum habeat, uxorem esse oportet mortis tempore. sed si divortium quidem secutum sit, verumtamen iure durat matrimonium, haec successio locum non habet. hoc autem in huiusmodi speciebus procedit. liberta ab invito patrono divortit: lex iulia de maritandis ordinibus retinet istam in matrimonio, dum eam prohiberet alii nubere invito patrono. item iulia de adulteriis, nisi certo modo divortium factum sit, pro infecto habet.

Dig. 38.12.0. De veteranorum et militum successione.

Dig. 38.12.1

Macer 2 de re milit.

Militi, qui capite puniri meruit, testamentum facere concedendum paulus et menander scribunt eiusque bona intestati, si punitus sit, ad cognatos eius pertinere, si tamen ex militari delicto, non ex communi punitus est.

Dig. 38.12.2

Papinianus 16 resp.

Bona militis intestati defuncti castrensia fisco non vindicantur, cum heres legitimus ad finem quinti gradus exstitit aut proximus cognatus eiusdem gradus intra tempus possessionem acceperit.

Dig. 38.13.0. Quibus non competit bonorum possessio.

Dig. 38.13.1

Iulianus 28 Dig.

Servo meo herede instituto dolo feci, ne testamentum mutaretur, eumque postea manumisi: quaesitum est, an actiones ei denegandae essent. respondi: hic casus verbis edicti non continetur. sed aequum est, si dominus dolo fecerit, ne testamentum mutaretur, quo servus eius heres scriptus erat, quamvis manumissus adierit hereditatem, ei denegari, cum etiam emancipato filio denegetur, si pater dolo fecerit, ne testamentum mutaretur.

Dig. 38.14.0. Ut ex legibus senatusve consultis bonorum possessio detur.

Dig. 38.14.1pr.

Ulpianus 49 ad ed.

Praetor ait: " uti me quaque lege senatus consulto bonorum possessionem dare oportebit, ita dabo".

Dig. 38.14.1.1

Ulpianus 49 ad ed.

Numquam bonorum possessio, quae ex alia parte edicti adgnita est, impedit istam bonorum possessionem.

Dig. 38.14.1.2

Ulpianus 49 ad ed.

Cum ex lege duodecim tabularum quis habet hereditatem, hinc non petit, sed inde " tum quem ei heredem esse oportet", quippe cum non alias hinc competat bonorum possessio, quam si lex specialiter deferat bonorum possessionem.

Dig. 38.15.0. Quis ordo in possessionibus servetur.

Dig. 38.15.1pr.

Modestinus 6 pand.

Intestati hi gradus vocantur: primum sui heredes, secundo legitimi, tertio proximi cognati, deinde vir et uxor.

Dig. 38.15.1.1

Modestinus 6 pand.

Sive tabulae testamenti non exstent, sive exstent, si secundum eas vel contra eas bonorum possessionem nemo accepit, intestati detur bonorum possessio.

Dig. 38.15.1.2

Modestinus 6 pand.

Intestati patris liberis bonorum possessio datur non tantum his, qui in potestatem parentis usque in mortis tempus fuerunt, sed emancipatis.

Dig. 38.15.2pr.

Ulpianus 49 ad ed.

Utile tempus est bonorum possessionum admittendarum: ita autem utile tempus est, ut singuli dies in eo utiles sint, scilicet ut per singulos dies et scierit et potuerit admittere: ceterum quacumque die nescierit aut non potuerit, nulla dubitatio est, quin dies ei non cedat. fieri autem potest, ut qui initio scierit vel potuerit bonorum possessionem admittere, hic incipiat nescire vel non posse admittere: scilicet si, cum initio cognovisset eum intestatum decessisse, postea quasi certiore nuntio allato dubitare coeperit, numquid testatus decesserit vel numquid vivat, quia hic rumor postea perrepserat. idem et in contrarium accipi potest, ut qui ignoravit initio, postea scire incipiat.

Dig. 38.15.2.1

Ulpianus 49 ad ed.

Dies bonorum possessionis utiles esse palam est: sed non sessionum numerabuntur, si modo ea sit bonorum possessio, quae de plano peti potuit. quod si ea, quae causae cognitionem pro tribunali desiderat vel quae decretum exposcit, sessiones erunt nobis computandae, quibus sedit is quibusque per ipsum praetorem factum non est, quo minus daret bonorum possessionem.

Dig. 38.15.2.2

Ulpianus 49 ad ed.

In bonorum possessione, quae pro tribunali datur, illud quaeritur, si sedit quidem praetor pro tribunali, sed postulationibus non dedit: potest dici tempus ad bonorum possessionem non cedere, cum praeses aliis rebus aut militaribus aut custodiis aut cognitionibus fuerit occupatus.

Dig. 38.15.2.3

Ulpianus 49 ad ed.

Si praeses provinciae in proxima fuit civitate, accedere debet ad utilitatem temporis ratio itineris, scilicet numeratione viginti milium passuum facta: nec enim exspectare debemus, ut praeses provinciae veniat ad eum, qui bonorum possessionem petiturus est.

Dig. 38.15.2.4

Ulpianus 49 ad ed.

Si venter in possessionem missus sit, bonorum possessionis tempus non cedere sequentibus nequaquam ambigendum est, nec tantum intra centensimum diem, verum etiam quamdiu nasci possit: nam et si natus fuerit, ante ei deferri bonorum possessionem sciendum est.

Dig. 38.15.2.5

Ulpianus 49 ad ed.

Scientiam eam observandam pomponius ait, non quae cadit in iuris prudentes, sed quam quis aut per se aut per alios adsequi potuit, scilicet consulendo prudentiores, ut diligentiorem patrem familias consulere dignum sit.

Dig. 38.15.3

Paulus 44 ad ed.

Circa tempora bonorum possessionis patris scientia ignoranti filio non nocet.

Dig. 38.15.4pr.

Iulianus 28 Dig.

Si coheredi tuo substitutus fuisses et bonorum possessionem acceperis, quandoque coheres tuus constituerit nolle petere bonorum possessionem, tibi data tota intellegitur, coheres tuus amplius petendae bonorum possessionis facultatem non habebit.

Dig. 38.15.4.1

Iulianus 28 Dig.

Filius non solum si tamquam filius, sed et si tamquam adgnatus vel tamquam cognatus ad bonorum possessionem vocatur, annuum spatium habet: sicuti pater, qui filium manumisisset, quamvis ut manumissor bonorum possessionem accipiat, tamen ad bonorum possessionem accipiendam annuum spatium habet.

Dig. 38.15.5pr.

Marcellus 9 Dig.

Cum filio familias bonorum possessio delata est, dies, quibus certiorare patrem non potest, ut vel iubeat adgnosci bonorum possessionem vel ratam habeat agnitionem bonorum possessionis, non cedunt. fingamus statim primo die, quo fuerit delata, adgnovisse eum bonorum possessionem, certiorare patrem, ut comprobet, non posse, non cedent dies centum: incipient autem cedere, cum certior fieri potuit. praeteritis autem centum diebus frustra ratum habebit.

Dig. 38.15.5.1

Marcellus 9 Dig.

Quaeri potest, si, cum posset filius petere bonorum possessionem, patre ita absente, ut certiorare eum non possit, vel etiam furente, petere neglexerit, an peti amplius non possit. sed quid noceat non petitam bonorum possessionem, quae, si petita esset, tamen non ante adquireretur, quam pater comprobasset?

Dig. 38.15.5.2

Marcellus 9 Dig.

Si servus alienus heres institutus venisset, quaeritur, an posteriori domino dies bonorum possessionis petendae imputari oporteret. et placet, quantum priori domino superfuerit, ei imputari.

Dig. 38.16.0. De suis et legitimis heredibus.

Dig. 38.16.1pr.

Ulpianus 12 ad sab.

Intestati proprie appellantur, qui, cum possent testamentum facere, testati non sunt. sed et is, qui testamentum fecit, si eius hereditas adita non est vel ruptum vel irritum est testamentum, intestatus non improprie dicetur decessisse. plane qui testari non potuit proprie non est intestatus, puta impubes furiosus vel cui bonis interdictum est: sed hos quoque pro intestatis accipere debemus: eum quoque, qui ab hostibus captus est, quoniam per legem corneliam successio his defertur, quibus deferretur, si in civitate decessisset: nam et eius hereditas fuisse creditur.

Dig. 38.16.1.1

Ulpianus 12 ad sab.

Quaeri poterit, si ex ea, quae in fideicommissa libertate moram passa est, conceptus et natus sit, an suus patri existat. et cum placeat eum ingenuum nasci, ut est a divis marco et vero et imperatore nostro antonino augusto rescriptum, cur non in totum pro manumissa haec habeatur, ut uxor ducta suum pariat? nec mirum sit, ex serva ingenuum nasci, cum et ex captiva rescriptum sit ingenuum nasci. quare ausim dicere, etsi pater huius pueri eiusdem sortis fuerit, cuius mater moram passa in libertate fideicommissa, ipseque moram passus est, suum eum patri nasci exemplo captivorum parentium, cum quibus rediit. ergo sive postea pater eius post moram manumittatur, recipiet eum in potestate, sive ante decesserit, definiendum erit suum existere.

Dig. 38.16.1.2

Ulpianus 12 ad sab.

Suos heredes accipere debemus filios filias sive naturales sive adoptivos.

Dig. 38.16.1.3

Ulpianus 12 ad sab.

Interdum etiam filius suus heres excluditur fisco praelato, ut puta si perduellionis fuerit damnatus pater post mortem suam, hoc quo, ut nec iura sepulchrorum hic filius habeat.

Dig. 38.16.1.4

Ulpianus 12 ad sab.

Si filius suus heres esse desiit, in eiusdem partem succedunt omnes nepotes neptesque ex eo nati qui in potestate sunt: quod naturali aequitate contingit. filius autem suus heres esse desinit, si capitis deminutione vel magna vel minore exiit de potestate. quod si filius apud hostes sit, quamdiu vivit nepotes non succedunt. proinde etsi fuerit redemptus, nondum succedunt ante luitionem: sed si interim decesserit, cum placeat eum statu recepto decessisse, nepotibus obstabit.

Dig. 38.16.1.5

Ulpianus 12 ad sab.

Sed si quis non desiit esse in potestate, sed numquam coepit, ut puta si filius meus vivo patre meo ab hostibus captus est, mox ibi me patre familias facto decesserit, nepotes in eius locum succedent.

Dig. 38.16.1.6

Ulpianus 12 ad sab.

Non minus autem neptes quam nepotes succedent in locum parentium.

Dig. 38.16.1.7

Ulpianus 12 ad sab.

Interdum licet parens alicuius in potestate esse non desierit, sed nec coeperit, tamen dicimus succedentes ei liberos suos existere: ut puta adrogavi eum, cuius filius ab hostibus erat captus, nepos autem in civitate: mortuo filio adrogato, mortuo et captivo apud hostes pronepos iste suus heres mihi erit.

Dig. 38.16.1.8

Ulpianus 12 ad sab.

Sciendum est autem nepotes et deinceps interdum, etiamsi parentes eos mortis tempore praecesserunt, tamen posse suos heredes existere, quamvis successio in suis heredibus non sit. quod ita procedit. si pater familias testamento facto decesserit exheredato filio, mox deliberante herede instituto filius decessit, postea deinde repudiavit heres institutus: nepos poterit suus heres esse, ut et Marcellus libro decimo scripsit, quoniam nec delata est filio hereditas. idem erit dicendum et si filius ex asse sub condicione, quae fuit in arbitrio ipsius, vel nepos sub omni institutus non impleta condicione decesserint: nam dicendum erit suos posse succedere, si modo mortis testatoris tempore vel in rebus humanis vel saltem concepti fuerint: idque et iuliano et Marcello placet.

Dig. 38.16.1.9

Ulpianus 12 ad sab.

Post suos statim consanguinei vocantur.

Dig. 38.16.1.10

Ulpianus 12 ad sab.

Consanguineos autem cassius definit eos, qui sanguine inter se conexi sunt. et est verum eos esse consanguineos, etiamsi sui heredes non extiterunt patri, ut puta exheredatos: sed et si pater eorum deportatus fuerit, nihilo minus eos inter se esse consanguineos, licet patri sui heredes non extitissent: et qui numquam in potestate fuerunt, erunt sibi consanguinei, ut puta qui post captivitatem patris nascuntur vel qui post mortem.

Dig. 38.16.1.11

Ulpianus 12 ad sab.

Non solum autem naturales, verum etiam adoptivi quoque iura consanguinitatis habebunt cum his qui sunt in familia vel in utero vel post mortem patris nati.

Dig. 38.16.2pr.

Ulpianus 13 ad sab.

Post consanguineos admittuntur adgnati, si consanguinei non sunt, merito. nam si sunt consanguinei, licet non adierint hereditatem, legitimis non defertur. sed hoc sic erit accipiendum, si nec sperantur esse: ceterum si vel nasci consanguineus vel de captivitate reverti potest, adgnati impediuntur.

Dig. 38.16.2.1

Ulpianus 13 ad sab.

Adgnati autem sunt cognati virilis sexus ab eodem orti. nam post suos et consanguineos statim mihi proximus est consanguinei mei filius et ego ei: patris quoque frater, qui patruus appellatur: deincepsque ceteri, si qui sunt hinc orti, in infinitum.

Dig. 38.16.2.2

Ulpianus 13 ad sab.

Haec hereditas proximo adgnato, id est ei, quem nemo antecedit, defertur, et, si plures sint eiusdem gradus, omnibus, in capita scilicet. ut puta duos fratres habui vel duos patruos, unus ex his unum filium, alius duos reliquit: hereditas mea in tres partes dividetur.

Dig. 38.16.2.3

Ulpianus 13 ad sab.

Parvi autem refert, adgnatus hic nativitate an adoptione sit quaesitus: nam qui adoptatur isdem fit adgnatus, quibus pater ipsius fuit, et legitimam eorum hereditatem habebit vel ipsi eius.

Dig. 38.16.2.4

Ulpianus 13 ad sab.

Legitima hereditas tantum proximo defertur. nec interest, unus solus sit an ex duobus prior pluribusve an duo pluresve ab eodem gradu venientes, qui vel ceteros antecedant vel soli sint: quia is est proximus quem nemo antecedit, et is ultimus quem nemo sequitur, et interdum idem primus postremusque, qui solus occurrit.

Dig. 38.16.2.5

Ulpianus 13 ad sab.

Interdum ulteriorem adgnatum admittimus: ut puta fecit quis testamentum, cum haberet patruum et patrui filium, deliberante herede scripto patruus decessit, mox heres institutus repudiavit hereditatem: patrui filius admittetur: ergo et bonorum possessionem petere potest.

Dig. 38.16.2.6

Ulpianus 13 ad sab.

Proximum non eum quaerimus, qui tunc fuit, cum moreretur pater familias, sed eum, qui tunc fuit, cum intestatum decessisse certum est. secundum quae et si suus erat qui praecedebat vel consanguineus, si nemo eorum, cum repudiatur hereditas, vivit, proximum eum accipimus, qui tunc, cum repudiatur hereditas, primus est.

Dig. 38.16.2.7

Ulpianus 13 ad sab.

Unde belle quaeri potest, an etiam post repudiationem adhuc demus successionem. propone heredem scriptum rogatum restituere hereditatem repudiasse eam, cum nihilo minus compelli potuit adire hereditatem et restituere, ut divus pius rescripsit: finge eum supervixisse centum diebus verbi gratia et interim proximum decessisse, mox et eum, qui erat rogatus restituere: dicendum posteriorem admitti cum onere fideicommissi.

Dig. 38.16.3pr.

Ulpianus 14 ad sab.

Intestato liberto mortuo primum suis deferri hereditatem verum est: si hi non fuerint, tunc patrono.

Dig. 38.16.3.1

Ulpianus 14 ad sab.

Libertum accipere debemus eum, quem quis ex servitute ad civitatem romanam perduxit sive sponte sive necessitate, quoniam rogatus fuit eum manumittere: nam et ad huius legitimam hereditatem admittitur.

Dig. 38.16.3.2

Ulpianus 14 ad sab.

Si dotalem quis servum manumisit, ipse patronus habetur et ad legitimam hereditatem admittetur.

Dig. 38.16.3.3

Ulpianus 14 ad sab.

Is plane, quem hac lege emi, ut manumittam, etsi ex constitutione divi marci pervenerit ad libertatem, tamen, ut eadem constitutione expressum est, meus libertus est et legitima eius hereditas mihi deferetur.

Dig. 38.16.3.4

Ulpianus 14 ad sab.

Quid si necem domini detexit et ex senatus consulto libertatem meruerit? si quidem adsignavit praetor, cuius libertus sit, sine dubio eius erit et ei legitima hereditas deferetur: quod si non addidit, efficietur quidem civis romanus, sed eius erit libertus, cuius proxime fuerit servus et ad legitimam hereditatem ipse admittetur, nisi sicubi quasi indigno deneganda fuerit hereditas.

Dig. 38.16.3.5

Ulpianus 14 ad sab.

Si quis libertam sic iureiurando adegit " ne illicite nubat", non debere incidere in legem aeliam sentiam. sed si " intra certum tempus ne ducat" " neve aliam, quam de qua patronus consenserit" vel " non nisi collibertam" aut " patroni cognatam", dicendum est incidere eum in legem aeliam sentiam nec ad legitimam hereditatem admitti.

Dig. 38.16.3.6

Ulpianus 14 ad sab.

Si municipes servum manumiserint, admittentur ad legitimam hereditatem in bonis liberti vel libertae intestatorum.

Dig. 38.16.3.7

Ulpianus 14 ad sab.

Miles manumittendo servum peculiarem suum faciet libertum et ad legitimam hereditatem eius admittitur.

Dig. 38.16.3.8

Ulpianus 14 ad sab.

Principem ad bona libertorum suorum admitti plus quam manifestum est.

Dig. 38.16.3.9

Ulpianus 14 ad sab.

Utique et ex lege duodecim tabularum ad legitimam hereditatem is qui in utero fuit admittitur, si fuerit editus. inde solet remorari insequentes sibi adgnatos, quibus praefertur, si fuerit editus: inde et partem facit his qui pari gradu sunt, ut puta frater unus est et uterus, vel patrui filius unus natus et qui in utero est.

Dig. 38.16.3.10

Ulpianus 14 ad sab.

Est autem tractatum, pro qua partem faciat, quia ex uno utero plures nasci possunt. et placuit, si in rerum natura certum sit hanc, quae se dicit praegnatem, praegnatem non esse, ex asse iam esse heredem hunc, qui iam natus est, quoniam et ignorans heres fit. quare si medio tempore decesserit, integram hereditatem ad heredem suum transmittit.

Dig. 38.16.3.11

Ulpianus 14 ad sab.

Post decem menses mortis natus non admittetur ad legitimam hereditatem.

Dig. 38.16.3.12

Ulpianus 14 ad sab.

De eo autem, qui centensimo octogensimo secundo die natus est, hippocrates scripsit et divus pius pontificibus rescripsit iusto tempore videri natum, nec videri in servitutem conceptum, cum mater ipsius ante centensimum octogensimum secundum diem esset manumissa.

Dig. 38.16.4

Pomponius 4 ad sab.

Hi, quorum parens capite minutus est, legitimae hereditatis ius et in ceteris personis et inter se retinent et alii adversus eos.

Dig. 38.16.5

Ulpianus 46 ad ed.

Si quis, cum haberet fratrem et patruum, decesserit testamento facto, deinde pendente condicione heredum scriptorum frater intestato decesserit, mox condicio defecerit: patruum posse utriusque adire legitimam hereditatem constat.

Dig. 38.16.6

Iulianus 59 Dig.

Titius exheredato filio extraneum heredem sub condicione instituit: quaesitum est, si post mortem patris pendente condicione filius uxorem duxisset et filium procreasset et decessisset, deinde condicio instituti heredis defecisset, an ad hunc postumum nepotem legitima hereditas avi pertineret. respondit: qui post mortem avi sui concipitur, is neque legitimam hereditatem eius tamquam suus heres neque bonorum possessionem tamquam cognatus accipere potest, quia lex duodecim tabularum eum vocat ad hereditatem, qui moriente eo, de cuius bonis quaeritur, in rerum natura fuerit,

Dig. 38.16.7

Celsus 28 Dig.

Vel si vivo eo conceptus est, quia conceptus quodammodo in rerum natura esse existimatur.

Dig. 38.16.8pr.

Iulianus 59 Dig.

Item praetor edicto suo proximitatis nomine bonorum possessionem pollicetur his, qui defuncto mortis tempore cognati fuerint. nam quod in consuetudine nepotes cognati appellantur etiam eorum, post quorum mortem concepti sunt, non proprie, sed per abusionem vel potius anaforikws accidit.

Dig. 38.16.8.1

Iulianus 59 Dig.

Si quis praegnatem uxorem reliquisset et matrem et sororem, si viva uxore mater mortua fuisset, deinde uxor mortuum peperisset, ad sororem solam legitima hereditas pertinet, quia certum esset matrem eo tempore decessisse, quo legitima hereditas ad eam non pertinebat.

Dig. 38.16.9

Marcianus 5 inst.

Si ex pluribus legitimis heredibus quidam omiserint adire hereditatem vel morte vel qua alia ratione impediti fuerint, quo minus adeant, reliquis, qui adierint, adcrescit illorum portio et licet decesserint, antequam adcresceret, hoc ius ad heredes eorum pertinet. alia causa est instituti heredis et coheredi substituti: huic enim vivo defertur ex substitutione hereditas, non etiam, si decesserit, heredem eius sequitur.

Dig. 38.16.10

Modestinus 6 diff.

Si ad patrem manumissorem filii intestati legitima hereditas perveniat vel non manumissori bonorum possessio competat, mater defuncti summovetur.

Dig. 38.16.11

Pomponius 10 ad q. muc.

Capitis deminutione pereunt legitimae hereditates, quae ex lege duodecim tabularum veniunt, sive vivo aliquo sive antequam adeatur hereditas eius capitis minutio intercessit, quoniam desinit suus heres vel adgnatus recte dici: quae autem ex legibus novis aut ex senatus consultis, non utique.

Dig. 38.16.12

Pomponius 30 ad q. muc.

Filius patri adgnatus proximus est.

Dig. 38.16.13

Gaius 10 ad l. iul. et pap.

Nulla femina aut habet suos heredes aut desinere habere potest propter capitis deminutionem.

Dig. 38.16.14

Gaius 13 ad l. iul. et pap.

In suis heredibus aditio non est necessaria, quia statim ipso iure heredes existunt.

Dig. 38.16.15

Papinianus 29 quaest.

Si pater apud hostes moriatur, defunctum iam in civitate filium credimus patrem familias decessisse, quamvis patria potestate, quamdiu vixerit, non fuerit in plenum liberatus: itaque heredem habiturus est iste non reverso patre. sed si postliminio redierit pater iam defuncto filio, quidquid medio tempore per eum quaesitum est, habebit: et non est mirum, si peculium quoque defuncti pridem filii defertur patri, cum ex eo natus potestatis ipsius fiat per suspensi iuris constitutionem.

Dig. 38.16.16

Papinianus 12 resp.

Pater instrumento dotali comprehendit filiam ita dotem accepisse, ne quid aliud ex hereditate patris speraret: eam scripturam ius successionis non mutasse constitit: privatorum enim cautiones legum auctoritate non censeri.

Dig. 38.17.0. Ad senatus consultum tertullianum et orphitianum.

Dig. 38.17.1pr.

Ulpianus 12 ad sab.

Sive ingenua sive libertina mater est, admitti possunt liberi ad hereditatem eius ex senatus consulto orphitiano.

Dig. 38.17.1.1

Ulpianus 12 ad sab.

Si ea sit mater, de cuius statu dubitatur, utrum mater familias sit an filia familias, ut puta quoniam pater eius ab hostibus captus sit: si certum esse coeperit matrem familias esse, liberi admittentur. unde tractari potest, an medio tempore, dum status pendet, succurri eis per praetorem debeat, ne, si medio tempore decesserint, nihil ad heredem transmittant: et magis est, ut subveniatur, ut in multis casibus placuit.

Dig. 38.17.1.2

Ulpianus 12 ad sab.

Sed et vulgo quaesiti admittuntur ad matris legitimam hereditatem.

Dig. 38.17.1.3

Ulpianus 12 ad sab.

Interdum et in servitute quaesito erit concedenda hereditas legitima, veluti si post moram fideicommissariae libertati matris suae factam natus sit. certe si post manumissionem matris fuerit natus, licet in servitute conceptus, ad legitimam eius hereditatem admittetur. sed et si apud hostes conceptus a captiva procreatus cum ea rediit, secundum rescriptum imperatoris nostri et divi patris eius ad ovinium tertullum poterit ex hoc senatus consulto admitti quasi vulgo quaesitus.

Dig. 38.17.1.4

Ulpianus 12 ad sab.

Filio, qui mortis tempore matris civis romanus fuit, si ante aditam hereditatem in servitutem deducatur, legitima hereditas non defertur nec si postea liber factus sit, nisi forte servus poenae effectus beneficio principis sit restitutus.

Dig. 38.17.1.5

Ulpianus 12 ad sab.

Sed si matris exsecto ventre filius editus sit, magis dicendum est hunc quoque ad legitimam hereditatem admitti: nam et institutus secundum tabulas et ab intestato unde cognati et multo magis unde legitimi bonorum possessionem petere potuit: argumento est, quod venter in possessionem ex omni parte edicti mittitur.

Dig. 38.17.1.6

Ulpianus 12 ad sab.

Qui operas suas ut cum bestiis pugnaret locavit quive rei capitalis damnatus neque restitutus est, ex senatus consulto orphitiano ad matris hereditatem non admittebatur: sed humana interpretatione placuit eum admitti. idem erit dicendum et si hic filius in eius sit potestate, qui in causa supra scripta sit, posse eum ex orphitiano admitti.

Dig. 38.17.1.7

Ulpianus 12 ad sab.

Sed si mater testamento facto filium heredem scripserit unum sub condicione, cum plures haberet, si condicione pendente possessionem petierit et postea condicio defecit, aequum est ceteris etiam filiis legitimam hereditatem non auferri: quod et papinianus libro sexto decimo quaestionum scripsit.

Dig. 38.17.1.8

Ulpianus 12 ad sab.

Capitis minutio salvo statu contingens liberis nihil nocet ad legitimam hereditatem: nam vetus sola hereditas, quae lege duodecim tabularum defertur, capitis minutione peremitur, novae vel ex lege vel ex senatus consultis delatae non peremuntur capitis deminutione. proinde sive quis ante delatam capite minuatur, ad legitimam hereditatem admittetur, nisi magna capitis deminutio interveniat, quae vel civitatem adimit, ut puta si deportetur.

Dig. 38.17.1.9

Ulpianus 12 ad sab.

" si nemo filiorum eorumve, quibus simul legitima hereditas defertur, volet ad se eam hereditatem pertinere, ius antiquum esto". hoc ideo dicitur, ut, quamdiu vel unus filius vult legitimam hereditatem ad se pertinere, ius vetus locum non habeat: itaque si ex duobus alter adierit, alter repudiaverit hereditatem, ei portio adcrescet. et si forte sit filius et patronus, repudiante filio patrono defertur.

Dig. 38.17.1.10

Ulpianus 12 ad sab.

Si quis adita matris hereditate per in integrum restitutionem fuerit abstentus, an ius antiquum possit locum habere? verba admittunt, ut possit: " volet ad se", inquit, " eam hereditatem pertinere": nam et hic non vult, etsi aliquando voluit: et dico posse ius antiquum locum habere.

Dig. 38.17.1.11

Ulpianus 12 ad sab.

Utrum autem ei defertur successio, qui tunc legitimus deprehenditur, an vero ei, qui tunc fuit, cum filio defertur? ut puta proponamus fuisse defunctae consanguineum eiusque filium, deliberante filio defunctae consanguineum obisse, mox filium repudiasse matris hereditatem: an consanguinei filius admitti possit? et iulianus recte putat circa tertullianum locum esse succedenti adgnato.

Dig. 38.17.1.12

Ulpianus 12 ad sab.

Quod ait senatus: " quae iudicata transacta finitave sunt, rata maneant", ita intellegendum est, ut " iudicata" accipere debeamus ab eo cui iudicandi ius fuit, " transacta" scilicet bona fide, ut valeat transactio, " finita" vel consensu vel longo silentio sopita.

Dig. 38.17.2pr.

Ulpianus 13 ad sab.

Sive ingenua sit mater sive libertina, habebit tertullianum commodum.

Dig. 38.17.2.1

Ulpianus 13 ad sab.

Filium autem vel filiam accipere debemus, sive iuste sint procreati vel vulgo quaesiti: idque in vulgo quaesitis et iulianus libro quinquagensimo nono digestorum scripsit.

Dig. 38.17.2.2

Ulpianus 13 ad sab.

Sed si filius vel filia libertini sint effecti, mater legitimam hereditatem vindicare non poterit, quoniam mater esse huiusmodi filiorum desiit: idque et iulianus scripsit et constitutum est ab imperatore nostro.

Dig. 38.17.2.3

Ulpianus 13 ad sab.

Sed si in servitute concepit filium et manumissa ediderit, ad legitimam eius hereditatem admittetur: idemque et si serva poenae concepit et restituta edidit: hoc idem et si libera concepit, edidit serva poenae, mox restituta est: sed et si libera concepit et in servitutem redacta edidit, mox manumissa est, ad legitimam hereditatem eius admittetur. item si adhuc praegnas manumissa est, dicendum erit prodesse. et in servitute editi filii ad legitimam hereditatem mater admittetur, ut puta si post moram factam in fideicommissa libertate peperit, vel apud hostes et cum eo rediit, vel si redempta edidit.

Dig. 38.17.2.4

Ulpianus 13 ad sab.

Si mulier sit famosa, ad legitimam hereditatem liberorum admittetur.

Dig. 38.17.2.5

Ulpianus 13 ad sab.

Impuberem, cui pater secundas tabulas fecit, tunc certum est intestatum decessisse, cum omiserint substituti hereditatem eius. quare et si impubes adrogatus sit, dicendum est matrem ad bona eius admitti, quae haberet, si intestatus decessisset.

Dig. 38.17.2.6

Ulpianus 13 ad sab.

Liberi defuncti sui quidem obstabunt matri eius tam virilis sexus quam feminini, tam naturales quam adoptivi matremque excludunt, bonorum possessores vero etiam non sui et quidem soli naturales. adoptivi autem liberi post emancipationem ita admittuntur, si ex liberis naturalibus fuerint, ut puta nepos naturalis ab avo adoptatus: nam licet sit emancipatus, bonorum possessione accepta matri obstabit.

Dig. 38.17.2.7

Ulpianus 13 ad sab.

Si vero apud hostes est filius vel nasci speratur, pendet ius matris, donec redierit vel nascatur.

Dig. 38.17.2.8

Ulpianus 13 ad sab.

Sed si sint sui heredes, verum hereditas ad eos non pertineat, videamus, an mater admittatur, ut puta abstinuit se hereditate. africanus et publicius temptant dicere in casum, quo se abstinent sui, matrem venire, et tunc ei obstent, quotiens rem haberent, ne nudum nomen sui heredis noceat matri: quae sententia aequior est.

Dig. 38.17.2.9

Ulpianus 13 ad sab.

Sed si quis decessisset relicta filia, quam in adoptionem legitime dederat, relicta et matre, divus pius decrevit cessare senatus consultum tertullianum et simul esse admittendas ad bonorum possessionem unde proximi cognati matrem et filiam. sed quod idem iulianus scripsit matrem ex senatus consulto non posse admitti, si filia in bonorum possessione petenda cessaverit, verum non erit: succedit enim filiae. et ideo dicendum erit matrem, donec filia bonorum possessionem petere potest, bonorum possessionem accipere non posse, quoniam succedere quasi legitima speraretur.

Dig. 38.17.2.10

Ulpianus 13 ad sab.

Si bonorum possessione accepta filius emancipatus abstinuerit se hereditate per in integrum restitutionem, verum est senatus consultum posse locum habere: sed si fuerit rursus immixtus, rursus debet mater abstinere.

Dig. 38.17.2.11

Ulpianus 13 ad sab.

Si quis ex liberis, dum est in utero, in possessione missus sit, mox natus sit et ante bonorum possessionem acceptam decesserit, an matri noceat, videndum, quasi bonorum possessor. et puto non nocere, si non suus patri adgnascitur: neque enim sufficit mitti in possessionem, nisi natus quoque acceperit bonorum possessionem. igitur et si furioso decreto petita sit possessio et priusquam ipse mentis compos factus bonorum possessionem petierit, decesserit, matri non obstabit.

Dig. 38.17.2.12

Ulpianus 13 ad sab.

Sed si quis, cum status controversiam pateretur, carbonianam solam acceperit, an noceat matri bonorum possessio, quaesitum quidem est: sed cum haec tempore finiatur, dicendum est matri post tempus non nocere aut, si impubes decesserit, matrem posse admitti.

Dig. 38.17.2.13

Ulpianus 13 ad sab.

Sed si infanti per tutorem petita sit possessio, licet statim decesserit, dicendum erit matri obstitisse: non enim similis est ei, quae furioso datur.

Dig. 38.17.2.14

Ulpianus 13 ad sab.

Ita demum autem mater senatus consulti beneficio excludetur, si filius adiit legitimam hereditatem: ceterum si omiserit legitimam hereditatem, mater ex senatus consulto tertulliano admittetur. sed si non sit solus iste filius legitimus heres, sed sint qui cum eo admittantur, nec in partem eorum mater ex senatus consulto erit vocanda.

Dig. 38.17.2.15

Ulpianus 13 ad sab.

Obicitur matri pater in utriusque bonis tam filii quam filiae, sive heres sive bonorum possessor existat. sed neque avus neque proavus in tertulliano matri nocent, quamvis fiduciam contraxerint. pater autem tantum naturalis, non etiam adoptivus matri nocet: verius est enim, cum pater esse desierit, a matre eum excludi: sed nec ad bonorum possessionem contra tabulas eum admitti, cum pater esse desierit.

Dig. 38.17.2.16

Ulpianus 13 ad sab.

Undecumque autem acceperit bonorum possessionem pater naturalis, sive legitimus sive contra tabulas, ex quavis parte excludit matrem.

Dig. 38.17.2.17

Ulpianus 13 ad sab.

Si sit adgnatus defuncti et naturalis pater sit in adoptiva familia, sit et mater, admittimus matrem, quoniam patrem adgnatus exclusit.

Dig. 38.17.2.18

Ulpianus 13 ad sab.

Si sit consanguinea soror defuncti, sit et mater, sit et pater adoptatus vel emancipatus: si consanguinea velit habere hereditatem, matrem ex senatus consulto una cum ea venire, patrem excludi placet: si consanguinea repudiet, matrem ex senatus consulto propter patrem non venire: et quamvis alias non soleat mater exspectare consanguineam, velit nec ne adire hereditatem, nunc tamen exspectaturam: consanguinea enim est, quae patrem excludit. repudiante igitur consanguinea bonorum possessionem habebit mater cum patre quasi cognata, sed et in hac moram patietur nec ante accipiet bonorum possessionem quam pater petierit, quoniam omittente eo potest ex senatus consulto succedere.

Dig. 38.17.2.19

Ulpianus 13 ad sab.

Sed et si ipsa mater eadem sit et soror consanguinea, ut puta quoniam pater matris nepotem suum ex filia adoptavit, sit praeterea et pater naturalis: haec mater si quidem quasi consanguinea veniat, excludet patrem: si ius consanguineae repudiavit vel capitis deminutione amisit, ex senatus consulto venire propter patrem non potest, repudiante vero patre rursum ex senatus consulto potest venire.

Dig. 38.17.2.20

Ulpianus 13 ad sab.

Si mater hereditatem filii filiaeve non adierit ex senatus consulto tertulliano, in bonorum possessione antiquum ius servandum est: cum enim esset praelatio matre omittente senatus consulti beneficium, ius succedit vetus.

Dig. 38.17.2.21

Ulpianus 13 ad sab.

Sed si mater repudiaverit bonorum possessionem, de adeunda autem hereditate deliberet, dicendum erit adgnatum non succedere, quoniam nondum verum est non adisse matrem.

Dig. 38.17.2.22

Ulpianus 13 ad sab.

Quod autem diximus ius antiquum servari matre non adeunte, cui personae deferatur hereditas, videndum, utrum ei, quae nunc proxima invenitur, cum mater repudiat, an ei quae fuit, cum intestato decessisse certum est? ut puta fuit patruus, cum intestato decederet, et patrui filius: cum mater repudiasset, patruo nondum delatam hereditatem atque ideo defuncto eo matre deliberante patrui filium vocari.

Dig. 38.17.2.23

Ulpianus 13 ad sab.

Si mater non petierit tutores idoneos filiis suis vel prioribus excusatis reiectisve non confestim aliorum nomina ediderit, ius non habet vindicandorum sibi bonorum intestatorum filiorum. et quidem si non petit, incidit: ait enim " vel non petere". sed a quo non petere? loquitur quidem de praetore constitutio: sed puto et in provinciis locum habere, etiamsi a magistratibus municipalibus non petat, quoniam et magistratibus municipalibus dandi necessitas iniungitur.

Dig. 38.17.2.24

Ulpianus 13 ad sab.

Quid ergo, si petiit, sed admonita vel a libertis vel a cognatis, an incidat in senatus consultum? et puto eam incidere, si compulsa fecit, non si, cum petere non cunctaretur, admonita est.

Dig. 38.17.2.25

Ulpianus 13 ad sab.

Quid si pater eis peti prohibuerat tutorem, quoniam per matrem rem eorum administrari voluit? incidet, si nec petat nec legitime tutelam administrat.

Dig. 38.17.2.26

Ulpianus 13 ad sab.

Quod si penitus egenis filiis non petit, ignoscendum est ei.

Dig. 38.17.2.27

Ulpianus 13 ad sab.

Sed si forte absens a libertis praeventa est vel ab aliis, dicendum est eam non excludi, nisi forte cum frustraretur, id contigit.

Dig. 38.17.2.28

Ulpianus 13 ad sab.

Filiis autem non petendo punitur, utique et filiabus. quid si nepotibus? similiter non petendo punitur.

Dig. 38.17.2.29

Ulpianus 13 ad sab.

Quid si curatores non petiit? verba rescripti deficiunt, sed dicendum est, si quidem impuberibus curatores non petiit, eandem esse rationem, si iam puberibus, cessare debere.

Dig. 38.17.2.30

Ulpianus 13 ad sab.

Quid si cum praegnas esset, bonis non petiit curatorem? dico in sententiam incidere: nam et si apud hostes habuit impuberem, idem erit dicendum.

Dig. 38.17.2.31

Ulpianus 13 ad sab.

Quid si furioso tutorem vel curatorem non petiit? magis est, ut incidat.

Dig. 38.17.2.32

Ulpianus 13 ad sab.

Non solum autem quae non petiit coercetur, sed et quae defunctorie petiit, ut rescripto declaratur, vel privilegio munitum vel oneratum tribus puta tutelis, sed ita demum, si data opera hoc fecit.

Dig. 38.17.2.33

Ulpianus 13 ad sab.

Quid ergo, si tales petiit et susceperunt nihilo minus vel detenti sunt? excusata erit mater.

Dig. 38.17.2.34

Ulpianus 13 ad sab.

Quid si indignos, id est minus habiles ad tutelam petierit, quoniam sciebat praetorem eos non daturum? quid tamen si dedit eos praetor matris petitionem secutus? iam quidem praetoris delictum est, sed et matris punimus consilium.

Dig. 38.17.2.35

Ulpianus 13 ad sab.

Igitur si forte excusati sint illi vel improbati, debet mater alios sine mora petere.

Dig. 38.17.2.36

Ulpianus 13 ad sab.

Ergo sive non petierit sive idoneos non petierit, punietur, etiamsi dati fuerint minus idonei praetore errante.

Dig. 38.17.2.37

Ulpianus 13 ad sab.

Idoneos autem utrum facultatibus an et moribus petere debeat, dubitationis esse potest. puto autem facile ei ignosci, si locupletes sint hi, quos petiit.

Dig. 38.17.2.38

Ulpianus 13 ad sab.

Sed et si prioribus excusatis reiectisve non confestim aliorum nomina ediderit, punitur.

Dig. 38.17.2.39

Ulpianus 13 ad sab.

Quid ergo, si non fuerint omnes excusati vel omnes reiecti? videndum, an ei imputetur, cur in locum excusati non petiit: et puto imputandum.

Dig. 38.17.2.40

Ulpianus 13 ad sab.

Quid si decesserint quidam? puto, licet verba deficiant, sententiam constitutionis locum habere.

Dig. 38.17.2.41

Ulpianus 13 ad sab.

Sed quod diximus " reiecti" utrum sic accipimus " a praetore non dati" an et si suspecti fuerint remoti vel ob neglegentiam vel ignaviam repulsi? etiam hos quis reiectos recte dicet. ergo et si latitent? sed longum est: nam nec hoc ei imputetur, cur suspectos non fecit: alioquin et si latitarent, potuit edicto desiderare ut eos praetor adesse iuberet et suspectos eos removet, si deessent.

Dig. 38.17.2.42

Ulpianus 13 ad sab.

Quid si non compulit eos miscere se tutelae? et cum plenum officium a matre desideremus, et haec ei curanda sunt, ne in hereditate ei obstent.

Dig. 38.17.2.43

Ulpianus 13 ad sab.

" confestim" autem sic erit accipiendum " ubi primum potuit", id est praetoris copiam habuit huic rei sedentis, nisi forte infirmitate impedita est vel alia magna causa, quae etiam mandare eam ad petendos tutores impediret: ita tamen, ut nullo modo annale tempus excederet. si enim mortalitate filii praeventa est, nihil matri imputetur.

Dig. 38.17.2.44

Ulpianus 13 ad sab.

Tractari belle potest, si pupillo amplum legatum sub condicione sit relictum " si tutores non habuerit" et propterea ei mater non petierit, ne condicione deficeretur, an constitutio cesset. et puto cessare, si damnum minus sit cumulo legati. quod et in magistratibus municipalibus tractatur apud tertullianum: et putat dandam in eos actionem, quatenus plus esset in damno quam in legato.

nisi forte quis putet condicionem hanc quasi utilitati publicae obpugnantem remittendam ut alias plerasque: aut verba cavillatus imputaverit matri, cur curatores non petierit. finge autem plenius condicionem conscriptam: nonne erit matri ignoscendum? aut hoc imputatur matri, cur non desideravit a principe condicionem remitti? et puto non esse imputandum.

Dig. 38.17.2.45

Ulpianus 13 ad sab.

Ego etiam si mater ei, qui solvendo non erit, non petiit tutorem, puto ignoscendum: consuluit enim ei, ut minus inquietetur quasi indefensus.

Dig. 38.17.2.46

Ulpianus 13 ad sab.

Et si forte quis uxorem communis filii matrem heredem scripsit rogavitque remissa etiam satisdatione, ut filio puberi facto restitueret hereditatem, nec mater ei petiit tutores, debet dici cessare constitutionem, cum patris voluntatem secuta sit et nihil habenti filio tutores non petierit. quod si ei remissa satisdatio non fuerit, contra erit, quoniam vel propter hoc debuit tutores habere. sed si forte impubes post matris cessationem fuerit adrogatus et impubes obierit, dicendum erit matri adversus adrogatorem non competere ex stipulatu actionem.

Dig. 38.17.2.47

Ulpianus 13 ad sab.

Videndum est, matre prohibita ius suum vindicare utrum ceteros admittamus, atque si mater non esset, an ipsam heredem dicimus fieri vel aliud nomen successionis induere, sed denegamus ei actiones? et invenimus rescriptum ab imperatore nostro antonino augusto et divo patre eius mammiae maximinae pridie idus apriles plautiano iterum consule matre remota eos admitti, qui venirent, si mater non fuisset: ergo et adgnati ceterique succedent aut, si nemo sit, bona vacabunt.

Dig. 38.17.3

Modestinus 8 reg.

Patrem adoptivum matri non obesse plerique probant.

Dig. 38.17.4

Modestinus 9 reg.

Matris intestatae defunctae hereditatem ad omnes eius liberos pertinere, etiamsi ex diversis matrimoniis nati fuerint, iuris est.

Dig. 38.17.5pr.

Paulus l.S. ad sc tert.

Aequissimum visum est omnes filios matri praeferri, etiamsi per adoptionem in familiam relicti essent.

Dig. 38.17.5.1

Paulus l.S. ad sc tert.

Sed et nepos ex adoptivo filio natus ex verbis senatus consulti matri obstabit.

Dig. 38.17.5.2

Paulus l.S. ad sc tert.

Si ex filio nepotem avus manumiserit isque patre et avo et matre superstitibus decesserit, potest quaeri, quis potior esse debeat. nam si mater excluserit avum manumissorem, qui patri anteponitur, edicto praetoris inducetur pater defuncti, quo admisso desinit senatus consulto locus esse et rursus avus vocabitur. itaque rectius est avo ius suum conservare, qui et contra scriptos heredes bonorum possessionem accipere solet.

Dig. 38.17.6pr.

Paulus l.S. ad sc orphit.

Filii mater ex hoc senatus consulto, etiamsi in aliena potestate sit, ad hereditatem admittitur.

Dig. 38.17.6.1

Paulus l.S. ad sc orphit.

Filius, qui se nolle adire hereditatem matris dixit, an potest mutata voluntate adire, antequam consanguineus vel adgnatus adierit, videndum propter haec verba " si nemo filiorum volet hereditatem suscipere", quia extensiva sunt. et cum verba extensiva sint, paenitentia eius usque ad annum admittenda est, cum et ipsa filii bonorum possessio annalis est.

Dig. 38.17.7

Paulus l.S. ad sc tert. et orphit.

Si quis intestatus decesserit relicta matre et fratre consanguineo vel sorore quamvis per adrogationem quaesitis, eadem iura in persona matris servantur, quae et naturalibus extantibus liberis.

Dig. 38.17.8

Gaius l.S. ad sc tert.

In suspenso est ius matris, si filius defuncti emancipatus deliberet de bonorum possessione petenda.

Dig. 38.17.9

Gaius l.S. ad sc orphit.

Sacratissimi principis nostri oratione cavetur, ut matris intestatae hereditas ad liberos, tametsi in aliena potestate erunt, pertineat.

Dig. 38.17.10pr.

Pomponius 2 sen. consult.

Si filius familias miles non sit testatus de his, quae in castris adquisierit, an ea ad matrem pertineant, videndum est. sed non puto: magis enim iudicio militum hoc beneficium concessum est, non ut omnimodo quasi patres familiarum in ea re sint.

Dig. 38.17.10.1

Pomponius 2 sen. consult.

Quando in pendenti est, an quaedam personae possint obstare matri, et casus tulerit, ut non inducerentur, matris ius integrum erit, quod medio tempore appenderit: veluti si filio intestato mortuo postumus ei filius potuerit nasci nec natus sit aut mortuus editus, vel quod etiam filius qui in hostium potestate erat postliminio non sit reversus.

Ius Romanum   Justinian   The Latin Library   The Classics Page

OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER UNDEQUADRAGESIMUS

Dig. 39.1.0. De operis novi nuntiatione.
Dig. 39.2.0. De damno infecto et de suggrundis et proiectionibus.
Dig. 39.3.0. De aqua et aquae pluviae arcendae.
Dig. 39.4.0. De publicanis et vectigalibus et commissis.
Dig. 39.5.0. De donationibus.
Dig. 39.6.0. De mortis causa donationibus et capionibus.

Dig. 39.1.0. De operis novi nuntiatione.

Dig. 39.1.1pr.

Ulpianus 52 ad ed.

Hoc edicto promittitur, ut, sive iure sive iniuria opus fieret, per nuntiationem inhiberetur, deinde remitteretur prohibitio hactenus, quatenus prohibendi ius is qui nuntiasset non haberet.

Dig. 39.1.1.1

Ulpianus 52 ad ed.

Hoc autem edictum remediumque operis novi nuntiationis adversus futura opera inductum est, non adversus praeterita, hoc est adversus ea quae nondum facta sunt, ne fiant: nam si quid operis fuerit factum, quod fieri non debuit, cessat edictum de operis novi nuntiatione et erit transeundum ad interdictum " quod vi aut clam factum erit ut restituatur", et " quod in loco sacro religiosove" et " quod in flumine publico ripave publica factum erit": nam his interdictis restituetur, si quid illicite factum est.

Dig. 39.1.1.2

Ulpianus 52 ad ed.

Nuntiatio ex hoc edicto non habet necessariam praetoris aditionem: potest enim nuntiare quis et si eum non adierit.

Dig. 39.1.1.3

Ulpianus 52 ad ed.

Item nuntiationem et nostro et alieno nomine facere possumus.

Dig. 39.1.1.4

Ulpianus 52 ad ed.

Item nuntiatio omnibus diebus fieri potest.

Dig. 39.1.1.5

Ulpianus 52 ad ed.

Et adversus absentes etiam et invitos et ignorantes operis novi nuntiatio procedit.

Dig. 39.1.1.6

Ulpianus 52 ad ed.

In operis autem novi nuntiatione possessorem adversarium facimus.

Dig. 39.1.1.7

Ulpianus 52 ad ed.

Sed si is, cui opus novum nuntiatum est, ante remissionem aedificaverit, deinde coeperit agere ius sibi esse ita aedificatum habere, praetor actionem ei negare debet et interdictum in eum de opere restituendo reddere.

Dig. 39.1.1.8

Ulpianus 52 ad ed.

Potest autem quis nuntiare etiam ignorans, quid opus fieret.

Dig. 39.1.1.9

Ulpianus 52 ad ed.

Et post operis novi nuntiationem committunt se litigatores praetoriae iurisdictioni.

Dig. 39.1.1.10

Ulpianus 52 ad ed.

Inde quaeritur apud celsum libro duodecimo digestorum, si post opus novum nuntiatum conveniat tibi cum adversario, ut opus faceres, an danda sit conventionis exceptio? et ait celsus dandam, nec esse periculum, ne pactio privatorum iussui praetoris anteposita videatur: quid enim aliud agebat praetor quam hoc, ut controversias eorum dirimeret? a quibus si sponte recesserunt, debebit id ratum habere.

Dig. 39.1.1.11

Ulpianus 52 ad ed.

Opus novum facere videtur, qui aut aedificando aut detrahendo aliquid pristinam faciem operis mutat.

Dig. 39.1.1.12

Ulpianus 52 ad ed.

Hoc autem edictum non omnia opera complectitur, sed ea sola, quae solo coniuncta sunt, quorum aedificatio vel demolitio videtur opus novum continere. idcirco placuit, si quis messem faciat, arborem succidat, vineam putet, quamquam opus faciat, tamen ad hoc edictum non pertinere, quia ad ea opera, quae in solo fiunt, pertinet hoc edictum.

Dig. 39.1.1.13

Ulpianus 52 ad ed.

Si quis aedificium vetus fulciat, an opus novum nuntiare ei possumus, videamus. et magis est, ne possimus: hic enim non opus novum facit, sed veteri sustinendo remedium adhibet.

Dig. 39.1.1.14

Ulpianus 52 ad ed.

Sive autem intra oppida sive extra oppida in villis vel agris opus novum fiat, nuntiatio ex hoc edicto locum habet, sive in privato sive in publico opus fiat.

Dig. 39.1.1.15

Ulpianus 52 ad ed.

Nunc videamus, quibus ex causis fiat nuntiatio et quae personae nuntient quibusque nuntietur et in quibus locis fiat nuntiatio et quis effectus sit nuntiationis.

Dig. 39.1.1.16

Ulpianus 52 ad ed.

Nuntiatio fit aut iuris nostri conservandi causa aut damni depellendi aut publici iuris tuendi gratia.

Dig. 39.1.1.17

Ulpianus 52 ad ed.

Nuntiamus autem, quia ius aliquid prohibendi habemus: vel ut damni infecti caveatur nobis ab eo, qui forte in publico vel in privato quid molitur: aut si quid contra leges edictave principum, quae ad modum aedificiorum facta sunt, fiet, vel in sacro vel in loco religioso, vel in publico ripave fluminis, quibus ex causis et interdicta proponuntur.

Dig. 39.1.1.18

Ulpianus 52 ad ed.

Quod si quis in mare vel in litore aedificet, licet in suo non aedificet, iure tamen gentium suum facit: si quis igitur velit ibi aedificantem prohibere, nullo iure prohibet, neque opus novum nuntiare nisi ex una causa potest, si forte damni infecti velit sibi caveri.

Dig. 39.1.1.19

Ulpianus 52 ad ed.

Iuris nostri conservandi aut damni depellendi causa opus novum nuntiare potest is ad quem res pertinet.

Dig. 39.1.1.20

Ulpianus 52 ad ed.

Usufructuarius autem opus novum nuntiare suo nomine non potest, sed procuratorio nomine nuntiare poterit, aut vindicare usum fructum ab eo qui opus novum faciat: quae vindicatio praestabit ei, quod eius interfuit opus novum factum non esse.

Dig. 39.1.2

Iulianus 49 Dig.

Si autem domino praedii nuntiaverit, inutilis erit nuntiatio: neque enim sicut adversus vicinum, ita adversus dominum agere potest ius ei non esse invito se altius aedificare: sed si hoc facto usus fructus deterior fiet, petere usum fructum debebit.

Dig. 39.1.3pr.

Ulpianus 52 ad ed.

In provinciali etiam praedio si quid fiat, operis novi nuntiatio locum habebit.

Dig. 39.1.3.1

Ulpianus 52 ad ed.

Si in loco communi quid fiat, nuntiatio locum habebit adversus vicinum. plane si unus nostrum in communi loco faciat, non possum ego socius opus novum ei nuntiare, sed eum prohibebo communi dividundo iudicio vel per praetorem.

Dig. 39.1.3.2

Ulpianus 52 ad ed.

Quod si socius meus in communi insula opus novum faciat et ego propriam habeam, cui nocetur, an opus novum nuntiare ei possim? et putat labeo non posse nuntiare, quia possum eum alia ratione prohibere aedificare, hoc est vel per praetorem vel per arbitrum communi dividundo: quae sententia vera est.

Dig. 39.1.3.3

Ulpianus 52 ad ed.

Si ego superficiarius sim et opus novum fiat a vicino, an possim nuntiare? movet, quod quasi inquilinus sum: sed praetor mihi utilem in rem actionem dat, et ideo et servitutium causa actio mihi dabitur et operis novi nuntiatio debet mihi concedi.

Dig. 39.1.3.4

Ulpianus 52 ad ed.

Si in publico aliquid fiat, omnes cives opus novum nuntiare possunt:

Dig. 39.1.4

Paulus 48 ad ed.

Nam rei publicae interest quam plurimos ad defendendam suam causam admittere.

Dig. 39.1.5pr.

Ulpianus 52 ad ed.

De pupillo quaesitum est: et iulianus libro duodecimo digestorum scripsit pupillo non esse operis novi nuntiationis executionem dandam, nisi ad ipsius privatum commodum res pertineat, veluti si luminibus eius officiatur aut prospectui obsit. non aliter autem pupilli rata habebitur nuntiatio quam intercedente tutore auctore.

Dig. 39.1.5.1

Ulpianus 52 ad ed.

Servo autem opus novum nuntiari potest, ipse vero nuntiare non potest neque nuntiatio ullum effectum habet.

Dig. 39.1.5.2

Ulpianus 52 ad ed.

Nuntiationem autem in re praesenti faciendam meminisse oportebit, id est eo loci, ubi opus fiat, sive quis aedificet sive inchoet aedificare.

Dig. 39.1.5.3

Ulpianus 52 ad ed.

Nuntiari autem non utique domino oportet: sufficit enim in re praesenti nuntiari ei, qui in re praesenti fuerit, usque adeo, ut etiam fabris vel opificibus, qui eo loci operantur, opus novum nuntiari possit. et generaliter ei nuntiari opus novum potest, qui in re praesenti fuit domini operisve nomine, neque refert, quis sit iste vel cuius condicionis qui in re praesenti fuit: nam et si servo nuntietur vel mulieri vel puero vel puellae, tenet nuntiatio: sufficit enim in re praesenti operis novi nuntiationem factam sic, ut domino possit renuntiari.

Dig. 39.1.5.4

Ulpianus 52 ad ed.

Si quis forte in foro domino opus novum nuntiat, hanc nuntiationem nullius esse momenti exploratissimum est: in re enim praesenti et paene dixerim ipso opere, hoc est in re ipsa, nuntiatio facienda est: quod idcirco receptum est, ut confestim per nuntiationem ab opere discedatur. ceterum si alibi fiat nuntiatio, illud incommodi sequitur, quod, dum venitur ad opus si quid fuerit operis per ignorantiam factum, evenit, ut contra edictum praetoris sit factum.

Dig. 39.1.5.5

Ulpianus 52 ad ed.

Si plurium res sit, in qua opus novum fiat et uni nuntietur, recte facta nuntiatio est omnibusque dominis videtur denuntiatum: sed si unus aedificaverit post operis novi nuntiationem, alii, qui non aedificaverint, non tenebuntur: neque enim debet nocere factum alterius ei qui nihil fecit.

Dig. 39.1.5.6

Ulpianus 52 ad ed.

Si plurium dominorum rei opus noceat, utrum sufficiet unius ex sociis nuntiatio an vero omnes nuntiare debeant? et est verius unius nuntiationem omnibus non sufficere, sed esse singulis nuntiare necesse, quia et fieri potest, ut nuntiatorum alter habeat, alter non habeat ius prohibendi.

Dig. 39.1.5.7

Ulpianus 52 ad ed.

Si quis ipsi praetori velit opus novum nuntiare, debet, ut interim testetur non posse se nuntiare: et si nuntiavit postea, et quod retro aedificatum erit destruendum erit, quasi repetito die nuntiatione facta.

Dig. 39.1.5.8

Ulpianus 52 ad ed.

Sed et si in aedes nostras quis immittit aut in loco nostro aedificet, aequum est nos operis novi nuntiatione ius nostrum nobis conservare.

Dig. 39.1.5.9

Ulpianus 52 ad ed.

Et belle sextus pedius definiit triplicem esse causam operis novi nuntiationis, aut naturalem aut publicam aut impositiciam: naturalem, cum in nostras aedes quid immittitur aut aedificatur in nostro, publicam causam, quotiens leges aut senatus consulta constitutionesque principum per operis novi nuntiationem tuemur, impositiciam, cum quis postea, quam ius suum deminuit, alterius auxit, hoc est postea, quam servitutem aedibus suis imposuit, contra servitutem fecit.

Dig. 39.1.5.10

Ulpianus 52 ad ed.

Meminisse autem oportebit, quotiens quis in nostro aedificare vel in nostrum immittere vel proicere vult, melius esse eum per praetorem vel per manum, id est lapilli ictum prohibere quam operis novi nuntiatione: ceterum operis novi nuntiatione possessorem eum faciemus, cui nuntiaverimus. at si in suo quid faciat, quod nobis noceat, tunc operis novi denuntiatio erit necessaria. et si forte in nostro aliquid facere quis perseverat, aequissimum erit interdicto adversus eum quod vi aut clam aut uti possidetis uti.

Dig. 39.1.5.11

Ulpianus 52 ad ed.

Si quis rivos vel cloacas velit reficere vel purgare, operis novi nuntiatio merito prohibetur, cum publicae salutis et securitatis intersit et cloacas et rivos purgari.

Dig. 39.1.5.12

Ulpianus 52 ad ed.

Praeterea generaliter praetor cetera quoque opera excepit, quorum mora periculum aliquod allatura est: nam in his quoque contemnendam putavit operis novi nuntiationem. quis enim dubitat multo melius esse omitti operis novi nuntiationem, quam impediri operis necessarii urguentem extructionem? totiens autem haec pars locum habet, quotiens dilatio periculum allatura est.

Dig. 39.1.5.13

Ulpianus 52 ad ed.

Proinde si quis, cum opus hoc mora periculum allaturum esset, nuntiaverit opus novum vel si in cloacis vel ripa reficiendis aliquid fieret, dicemus apud iudicem quaeri debere, an talia opera fuerint, ut contemni nuntiatio deberet: nam si apparuerit vel in cloaca rivove eove, cuius mora periculum allatura esset, dicendum est non esse verendum, ne haec nuntiatio noceret.

Dig. 39.1.5.14

Ulpianus 52 ad ed.

Qui opus novum nuntiat, iurare debet non calumniae causa opus novum nuntiare. hoc iusiurandum auctore praetore defertur: idcirco non exigitur, ut iuret is ante, qui iusiurandum exigat.

Dig. 39.1.5.15

Ulpianus 52 ad ed.

Qui nuntiat, necesse habet demonstrare, in quo loco opus novum nuntiet, scituro eo cui nuntiatum est, ubi possit aedificare, ubi interim abstinendum est. totiens autem demonstratio facienda est, quotiens in partem fit nuntiatio: ceterum si in totum opus fiat, non est necesse demonstrare, sed hoc ipsum dicere.

Dig. 39.1.5.16

Ulpianus 52 ad ed.

Si in pluribus locis opus fiat, utrum una nuntiatio sufficiat an vero plures sint necessariae? et ait iulianus libro quadragensimo nono digestorum, quia in re praesenti fit nuntiatio, plures nuntiationes esse necessarias et consequenter plures remissiones.

Dig. 39.1.5.17

Ulpianus 52 ad ed.

Si is, cui nuntiatum erit, ex operis novi nuntiatione satisdederit repromiseritve aut per eum non fiet, quo minus boni viri arbitratu satisdet repromittatve, perinde est, ac si operis novi nuntiatio omissa esset. habet autem hoc remedium utilitatem: nam remittit vexationem ad praetorem veniendi et desiderandi, ut missa fieret nuntiatio.

Dig. 39.1.5.18

Ulpianus 52 ad ed.

Qui procuratorio nomine nuntiaverit, si non satisdabit eam rem dominum ratam habiturum, nuntiatio omni modo remittitur, etiamsi verus sit procurator.

Dig. 39.1.5.19

Ulpianus 52 ad ed.

Qui remissionem absentis nomine desiderat, sive ad privatum sive ad publicum ius ea remissio pertinet, satisdare cogitur: sustinet enim partes defensoris. sed haec satisdatio non pertinet ad ratihabitionem, sed ad operis novi nuntiationem.

Dig. 39.1.5.20

Ulpianus 52 ad ed.

Si procurator autem opus novum mihi nuntiaverit et satis acceperit, deinde interdicto adversus eum utar, ne vim mihi faciat, quo minus aedificem, ex interdicto eum oportet iudicatum solvi satisdare, quia partes sustinet defensoris:

Dig. 39.1.6

Iulianus 41 Dig.

Et ideo neque exceptiones procuratoriae opponi ei debent nec satisdare cogendus est ratam rem dominum habiturum.

Dig. 39.1.7pr.

Ulpianus 52 ad ed.

Et si satisdationem non dabit, summovendus erit ab executione operis novi, et actiones, quas domini nomine intendit, debent ei denegari.

Dig. 39.1.7.1

Ulpianus 52 ad ed.

Et tutor et curator opus novum recte nuntiant.

Dig. 39.1.8pr.

Paulus 48 ad ed.

Non solum proximo vicino, sed etiam superiori opus facienti nuntiare opus novum potero: nam et servitutes quaedam intervenientibus mediis locis vel publicis vel privatis esse possunt.

Dig. 39.1.8.1

Paulus 48 ad ed.

Qui opus novum nuntiat, si quid operis iam factum erit, in testationem referre debet, ut appareat, quid postea factum sit.

Dig. 39.1.8.2

Paulus 48 ad ed.

Si, cum possem te iure prohibere, nuntiavero tibi opus novum, non alias aedificandi ius habebis, quam si satisdederis.

Dig. 39.1.8.3

Paulus 48 ad ed.

Quod si nuntiavero tibi, ne quid contra leges in loco publico facias, promittere debebis, quoniam de eo opere alieno iure contendo, non meo, et tamquam alieni iuris petitor repromissione contentus esse debeo.

Dig. 39.1.8.4

Paulus 48 ad ed.

Sciendum est facta operis novi nuntatione cui nuntiatum est abstinere oportere, donec caveat vel donec remissio nuntiationis fiat: tunc enim, si ius aedificandi habet, recte aedificabit.

Dig. 39.1.8.5

Paulus 48 ad ed.

Sed ut probari possit, quid postea aedificatum sit, modulos sumere debet is qui nuntiat, qui ut sumantur conferanturque, praetor decernere solet.

Dig. 39.1.8.6

Paulus 48 ad ed.

Morte eius qui nuntiavit extinguitur nuntiatio, sicut alienatione, quia his modis finitur ius prohibendi.

Dig. 39.1.8.7

Paulus 48 ad ed.

Quod si is cui opus novum nuntiatum erat decesserit vel aedes alienaverit, non extinguitur operis novi nuntiatio: idque ex eo apparet, quod in stipulatione, quae ex hac causa interponitur, etiam heredis mentio fit.

Dig. 39.1.9

Gaius ad ed. urb. de o. novi nunt.

Creditori, cui pignoris nomine praedium tenetur, permittendum est de iure, id est de servitute, opus novum nuntiare: nam ei vindicatio servitutis datur.

Dig. 39.1.10

Ulpianus 45 ad sab.

Operis novi nuntiatio in rem fit, non in personam: et ideo furioso et infanti fieri potest nec tutoris auctoritas in ea nuntiatione exigitur.

Dig. 39.1.11

Paulus 11 ad sab.

Cuilibet enim intellegenti, veluti fabro, nuntiatum infantem et furiosum tenet.

Dig. 39.1.12

Paulus 13 ad sab.

Ex operis novi nuntiatione si caveatur, tanti stipulatio committitur, quanti iudicatum sit.

Dig. 39.1.13pr.

Iulianus 41 Dig.

Cum procurator opus novum nuntiat et satisdat rem ratam dominum habiturum et remissio in domini personam confertur:

Dig. 39.1.13.1

Iulianus 41 Dig.

Si dominus opus novum nuntiaverit intra diem, quae stipulatione ex operis novi nuntiatione interposita comprehensa esset, committitur stipulatio: si praeterita ea die dominus nuntiaret, non committitur. nam et ipsi domino, cum semel nuntiaverit, non permittitur iterum nuntiare, quamdiu stipulatio ex operis novi nuntiatione teneret.

Dig. 39.1.13.2

Iulianus 41 Dig.

Si in remissione a patre eius, qui opus novum nuntiaverat, procurator interveniat, id agere praetorem oportet, ne falsus procurator absenti noceat, cum sit indignum quolibet interveniente beneficium praetoris amitti.

Dig. 39.1.14

Iulianus 49 Dig.

Qui viam habet, si opus novum nuntiaverit adversus eum, qui in via aedificat, nihil agit: sed servitutem vindicare non prohibetur.

Dig. 39.1.15

Africanus 9 quaest.

Si prius, quam aedificatum esset, ageretur ius vicino non esse aedes altius tollere nec res ab eo defenderetur, partes iudicis non alias futuras fuisse ait, quam ut eum, cum quo ageretur, cavere iuberet non prius se aedificaturum, quam ultro egisset ius sibi esse altius tollere. idemque e contrario, si, cum quis agere vellet ius sibi esse invito adversario altius tollere, eo non defendente similiter, inquit, officio iudicis continebitur, ut cavere adversarium iuberet nec opus novum se nuntiaturum nec aedificanti vim facturum. eaque ratione hactenus is, qui rem non defenderet, punietur, ut de iure suo probare necesse haberet: id enim esse petitoris partes sustinere.

Dig. 39.1.16

Ulpianus 13 ad ed.

Si opus novum praetor iusserit nuntiari, deinde prohibuit, ex priore nuntiatione agi non potest, quasi adversus edictum eius factum sit.

Dig. 39.1.17

Paulus 57 ad ed.

Si procurator opus novum facientem prohibuerit, domino competit quod vi aut clam interdictum.

Dig. 39.1.18pr.

Papinianus 3 quaest.

Aedibus communibus si ob opus novum nuntiatio uni fiat, si quidem ex voluntate omnium opus fiat, omnes nuntiatio tenebit, si vero quidam ignorent, in solidum obligabitur, qui contra edictum praetoris fecerit.

Dig. 39.1.18.1

Papinianus 3 quaest.

Nec ad rem pertinet, cuius solum sit, in quo opus fiat, sed quis eius soli possessor inveniatur, modo si eius nomine opus fiat.

Dig. 39.1.19

Paulus libro quaest.

Sciendum est denegata exsecutione operis novi nihilo minus integras legitimas actiones manere, sicut in his quoque causis manent, in quibus ab initio operis novi denuntiationem praetor denegat.

Dig. 39.1.20pr.

Ulpianus 71 ad ed.

Praetor ait: " quem in locum nuntiatum est, ne quid operis novi fieret, qua de re agitur, quod in eo loco, antequam nuntiatio missa fieret aut in ea causa esset, ut remitti deberet, factum est, id restituas".

Dig. 39.1.20.1

Ulpianus 71 ad ed.

Interdictum hoc proponitur ex huiusmodi causis, edicto expressum est, ne post operis novi nuntiationem quicquam operis fiat, antequam vel nuntiatio missa fiat vel vice nuntiationis missae satisdatio de opere restituendo fuerit interposita. qui igitur facit, etsi ius faciendi habuit, tamen contra interdictum praetoris facere videtur et ideo hoc destruere cogitur.

Dig. 39.1.20.2

Ulpianus 71 ad ed.

Sive autem vacuus locus sit, ubi nuntiatum est, sive aedificatus, aeque hoc interdicto locus erit.

Dig. 39.1.20.3

Ulpianus 71 ad ed.

Ait praetor: " quod factum est, restituas". quod factum est, iubet restitui, neque interest, iure factum sit an non: sive iure factum est sive non iure factum est, interdictum locum habebit.

Dig. 39.1.20.4

Ulpianus 71 ad ed.

Quidquid autem ante remissionem fit vel illud quod loco remissionis habetur, pro eo habendum est, atque si nullo iure factum esset.

Dig. 39.1.20.5

Ulpianus 71 ad ed.

Si quis paratus fuerit satisdare, deinde actor stipulari nolit, in ea causa est, ut remitti debeat: nam cum per actorem fiet, apparet in ea causa esse, ut remitti debeat.

Dig. 39.1.20.6

Ulpianus 71 ad ed.

Hoc interdictum perpetuo datur et heredi ceterisque successoribus competit.

Dig. 39.1.20.7

Ulpianus 71 ad ed.

Adversus ipsum quoque, qui opus fecit vel factum ratum habuit, interdicto locus erit.

Dig. 39.1.20.8

Ulpianus 71 ad ed.

Plane si quaeratur, an in heredem eius, qui opus fecit, interdictum hoc competat, sciendum est labeonem existimasse in id quod ad eum pervenit dumtaxat dari oportere vel si quid dolo malo ipsius factum sit, quo minus perveniret. nonnulli putant in factum esse dandam quam interdictum, quod verum est.

Dig. 39.1.20.9

Ulpianus 71 ad ed.

Deinde ait praetor: " quem in locum nuntiatum est, ne quid operis novi fieret, qua de re agitur, si de ea re satisdatum est, quod eius cautum sit aut per te stat, quo minus satisdetur: quo minus illi in eo loco opus facere liceat, vim fieri veto".

Dig. 39.1.20.10

Ulpianus 71 ad ed.

Hoc interdictum prohibitorium est, ne quis prohibeat facere volentem eum qui satisdedit: etenim pertinet ad decus urbium aedificia non derelinqui.

Dig. 39.1.20.11

Ulpianus 71 ad ed.

Nec quicquam interest, iure quis aedificet an non iure aedificet, cum sit securus is qui opus novum nuntiavit, posteaquam ei cautum est.

Dig. 39.1.20.12

Ulpianus 71 ad ed.

Hoc autem interdictum competit ei qui satisdedit: adicitur et illud " aut per te stat, quo minus satisdetur".

Dig. 39.1.20.13

Ulpianus 71 ad ed.

Proinde si satisdatum non est, sed repromissum, interdicto huic locus non erit: neque enim permittendum fuit in publico aedificare, priusquam appareat, quo iure quis aedificet.

Dig. 39.1.20.14

Ulpianus 71 ad ed.

Et si satisdatum sit, cautum tamen non perseveret, interdictum cessat.

Dig. 39.1.20.15

Ulpianus 71 ad ed.

Si aliquando stetit per nuntiatorem, quo minus satisdetur, nunc non stat, interdictum cessat.

Dig. 39.1.20.16

Ulpianus 71 ad ed.

Hoc interdictum etiam post annum et heredi ceterisque successoribus competit.

Dig. 39.1.21pr.

Ulpianus 80 ad ed.

Stipulatio de operis novi nuntiatione interponi solet, quotiens vicinus dicit ius sibi esse prohibere vicinum opus novum invito se facere.

Dig. 39.1.21.1

Ulpianus 80 ad ed.

Si quis autem vult post opus novum nuntiatum impune aedificare, offerre debet satis nuntiatori: quod si fecerit, utrique consultum est tam ei qui nuntiavit, quoniam cautum habet de opere restituendo, quam ei cui nuntiatum est, quia molitio eius non impeditur: antequam enim caveat quidquid aedificaverit, interdicto restitutorio destruere compellitur.

Dig. 39.1.21.2

Ulpianus 80 ad ed.

Habet autem ista stipulatio condicionem, ut ita demum committatur, si iudicatum fuerit sive ante rem iudicatam causa quae acciderit neque res defendatur: et de dolo malo subicitur clausula.

Dig. 39.1.21.3

Ulpianus 80 ad ed.

Opus autem factum accipimus non, si unum vel alterum cementum fuit impositum, sed si proponatur instar quoddam operis et quasi facies quaedam facta operis.

Dig. 39.1.21.4

Ulpianus 80 ad ed.

Sive autem res iudicetur sive res non defendatur, stipulatio in id committitur, ut res viri boni arbitratu restituatur: quod si ita restitutum non erit, quanti ea res erit, tantam pecuniam dabit, si hoc petitori placuerit.

Dig. 39.1.21.5

Ulpianus 80 ad ed.

Quaesitum est, si plures domini aedificent, an omnes cavere debeant. et ait labeo unum cavere debere, quia restitutio operis fieri pro parte non possit.

Dig. 39.1.21.6

Ulpianus 80 ad ed.

Idem ait et si plures nuntient, curandum esse, ut uni caveatur, si inter eos conveniat: plane si non conveniat, et singulis erit cavendum.

Dig. 39.1.21.7

Ulpianus 80 ad ed.

Idem dicit adiciendum esse in stipulatione, ut tantum praestetur, quanti uniuscuiusque intersit, si hoc maluerint: ceterum si ita fuerit, inquit, cautum " quanti ea res erit", dubitabitur, utrum ad totius corporis aestimationem haec verba referuntur an vero ad quod eius interest qui stipulatur. ego puto et si sic fuerit uni cautum " quanti ea res erit", defendi posse stipulationem sufficere: ad operis enim quantitatem ea refertur.

Dig. 39.1.22

Marcellus 15 Dig.

Cui opus novum nuntiatum est, ante remissam nuntiationem opere facto decessit: debet heres eius patientiam destruendi operis adversario praestare: nam et in restituendo huiusmodi opere eius, qui contra edictum fecit, poena versatur, porro autem in poenam heres non succedit.

Dig. 39.1.23

Iavolenus 7 epist.

Is, cui opus novum nuntiatum erat, vendidit praedium: emptor aedificavit: emptorem an venditorem teneri putas, quod adversus edictum factum sit? respondit: cum operis novi nuntiatio facta est, si quid aedificatum est, emptor, id est dominus praediorum tenetur, quia nuntiatio operis non personae fit et is demum obligatus est, qui eum locum possidet, in quem opus novum nuntiatum est.

Dig. 39.2.0. De damno infecto et de suggrundis et proiectionibus.

Dig. 39.2.1

Ulpianus 1 ad ed.

Cum res damni infecti celeritatem desiderat et periculosa dilatio praetori videtur, si ex hac causa sibi iurisdictionem reservaret, magistratibus municipalibus delegandum hoc recte putavit.

Dig. 39.2.2

Gaius 28 ad ed. provinc.

Damnum infectum est damnum nondum factum, quod futurum veremur.

Dig. 39.2.3

Paulus 47 ad ed.

Damnum et damnatio ab ademptione et quasi deminutione patrimonii dicta sunt.

Dig. 39.2.4pr.

Ulpianus 1 ad ed.

Dies cautioni praestitutus si finietur, praetoris vel praesidis officium erit ex causa vel reum notare vel protelare eum et, si hoc localem exigit inquisitionem, ad magistratus municipales hoc remittere.

Dig. 39.2.4.1

Ulpianus 1 ad ed.

Si intra diem a praetore constituendum non caveatur, in possessionem eius rei mittendus est. " eius rei" sic accipe, sive tota res sit sive pars sit rei.

Dig. 39.2.4.2

Ulpianus 1 ad ed.

An tamen is, qui non admittit, etiam pignoribus a magistratibus coerceatur? non puto, sed in factum actione tenebitur: nam et si a praetore missus non admittatur, eadem actione utendum est.

Dig. 39.2.4.3

Ulpianus 1 ad ed.

Duas ergo res magistratibus municipalibus praetor vel praeses iniunxit, cautionem et possessionem, cetera suae iurisdictioni reservavit.

Dig. 39.2.4.4

Ulpianus 1 ad ed.

Si forte duretur non caveri, ut possidere liceat (quod causa cognita fieri solet) non duumviros, sed praetorem vel praesidem permissuros: item ut ex causa decedatur de possessione.

Dig. 39.2.4.5

Ulpianus 1 ad ed.

Praetor ait: " dum ei, qui aberit, prius domum denuntiari iubeam". abesse autem videtur et qui in iure non est: quod et pomponius probat: verecunde autem praetorem denuntiari iubere, non extrahi de domo sua. sed " domum, in quam degit denuntiari" sic accipere debemus, ut et si in aliena domo habitet, ibi ei denuntietur. quod si nec habitationem habeat, ad ipsum praedium erit denuntiandum vel procuratori eius vel certe inquilinis.

Dig. 39.2.4.6

Ulpianus 1 ad ed.

Totiens autem praetorem exigere denuntiationem intellegendum est, si sit cui denuntietur: ceterum si non sit, veluti quod hereditaria insula est nec dum hereditas adita, vel si heres non exstet nec inhabitetur, cessat haec pars edicti. est tamen tutius libellum ad ipsas aedes proponere: fieri enim potest, ut ita monitus defensor existat.

Dig. 39.2.4.7

Ulpianus 1 ad ed.

In eum, qui quid eorum quae supra scripta sunt non curaverit, quanti ea res est, cuius damni infecti nomine cautum non erit, iudicium datur: quod non ad quantitatem refertur, sed ad id quod interest, et ad utilitatem venit, non ad poenam.

Dig. 39.2.4.8

Ulpianus 1 ad ed.

Hoc autem iudicium certam condicionem habet, si postulatum est: ceterum qui non postulavit, experiri non potest. postulare autem proprie hoc dicimus pro tribunali petere, non alibi.

Dig. 39.2.4.9

Ulpianus 1 ad ed.

Si tam vicinum urbi municipium sit, ut magistratu se non interponente potuerit praetor vel praeses adiri, potest dici cessare hanc actionem adversus magistratus, quasi nihil intersit, cum in tua potestate fuerit a praetore vel praeside desiderare in possessionem mitti.

Dig. 39.2.4.10

Ulpianus 1 ad ed.

Haec autem actio cum rei habeat persecutionem, et heredi et in heredem et perpetuo dabitur.

Dig. 39.2.5pr.

Paulus 1 ad ed.

Praetoris officium est, ut missus in possessionem etiam eam per longi temporis spatium in suum dominium capere possit.

Dig. 39.2.5.1

Paulus 1 ad ed.

Si plures sint domini, qui cavere debent, et aliquis non caveat, in portionem eius mittetur. et contra si aliquot sint, qui caveri sibi desiderant, et alius pretiosiores, alius viliores habeat aedes, sive unius domus plures habeant dispares partes: tamen non magnitudine dominii quisque, sed aequaliter mittentur omnes in possessionem.

Dig. 39.2.5.2

Paulus 1 ad ed.

Si et dominus proprietatis et fructuarius desideret sibi caveri damni infecti, uterque audiendus est: nec enim iniuriam sentiet promissor, non plus cuique praestaturus, quam quod eius intersit.

Dig. 39.2.6

Gaius 1 ad ed. provinc.

Evenit, ut nonnumquam damno dato nulla nobis competat actio non interposita antea cautione, veluti si vicini aedes ruinosae in meas aedes ceciderint: adeo ut plerisque placuerit nec cogi quidem eum posse, ut rudera tollat, si modo omnia quae iaceant pro derelicto habeat.

Dig. 39.2.7pr.

Ulpianus 53 ad ed.

Praetor ait: " damni infecti suo nomine promitti, alieno satisdari iubebo ei, qui iuraverit non calumniae causa id se postulare eumve cuius nomine aget postulaturum fuisse, in eam diem, quam causa cognita statuero. si controversia erit, dominus sit nec ne qui cavebit, sub exceptione satisdari iubebo. de eo opere, quod in flumine publico ripave eius fiet, in annos decem satisdari iubebo. eum, cui ita non cavebitur, in possessionem eius rei, cuius nomine ut caveatur postulabitur, ire et, cum iusta causa esse videbitur, etiam possidere iubebo. in eum, qui neque caverit neque in possessione esse neque possidere passus erit, iudicium dabo, ut tantum praestet, quantum praestare eum oporteret, si de ea re ex decreto meo eiusve, cuius de ea re iurisdictio fuit quae mea est, cautum fuisset. eius rei nomine, in cuius possessionem misero, si ab eo, qui in possessione erit, damni infecti nomine satisdabitur, eum, cui non satisdabitur, simul in possessione esse iubebo".

Dig. 39.2.7.1

Ulpianus 53 ad ed.

Hoc edictum prospicit damno nondum facto, cum ceterae actiones ad damna, quae contigerunt, sarcienda pertineant, ut in legis aquiliae actione et aliis. de damno vero facto nihil edicto cavetur: cum enim animalia, quae noxam commiserunt, non ultra nos solent onerare, quam ut noxae ea dedamus, multo magis ea, quae anima carent, ultra nos non deberent onerare, praesertim cum res quidem animales, quae damnum dederint, ipsae extent, aedes autem, si ruina sua damnum dederunt, desierint extare.

Dig. 39.2.7.2

Ulpianus 53 ad ed.

Unde quaeritur, si ante, quam caveretur, aedes deciderunt neque dominus rudera velit egerere eaque derelinquat, an sit aliqua adversus eum actio. et iulianus consultus, si prius, quam damni infecti stipulatio interponeretur, aedes vitiosae corruissent, quid facere deberet is, in cuius aedes rudera decidissent, ut damnum sarciretur, respondit, si dominus aedium, quae ruerunt, vellet tollere, non aliter permittendum, quam ut omnia, id est et quae inutilia essent, auferret, nec solum de futuro, sed et de praeterito damno cavere eum debere: quod si dominus aedium, quae deciderunt, nihil facit, interdictum reddendum ei, in cuius aedes rudera decidissent, per quod vicinus compelletur aut tollere aut totas aedes pro derelicto habere.

Dig. 39.2.8

Gaius ad ed. pu. de damno inf.

Quod forte tunc recte dicetur, cum non ipsius neglegentia, sed propter aliquod impedimentum sibi non prospexit.

Dig. 39.2.9pr.

Ulpianus 53 ad ed.

Hoc amplius iulianus posse dici compellendum eum, ut etiam de praeterito damno caveret: quod enim re integra custoditur, hoc non inique etiam post ruinam aedium praestabitur. integra autem re unusquisque cogitur aut de damno infecto cavere, aut aedibus carere quas non defendit. denique, inquit, si quis propter angustias temporis aut quia rei publicae causa aberat non potuerit damni infecti stipulari, non inique praetorem curaturum, ut dominus vitiosarum aedium aut damnum sarciat aut aedibus careat. sententiam iuliani utilitas comprobat.

Dig. 39.2.9.1

Ulpianus 53 ad ed.

De his autem, quae vi fluminis importata sunt, an interdictum dari possit, quaeritur. trebatius refert, cum tiberis abundasset et res multas multorum in aliena aedificia detulisset, interdictum a praetore datum, ne vis fieret dominis, quo minus sua tollerent auferrent, si modo damni infecti repromitterent.

Dig. 39.2.9.2

Ulpianus 53 ad ed.

Alfenus quoque scribit, si ex fundo tuo crusta lapsa sit in meum fundum eamque petas, dandum in te iudicium de damno iam facto, idque labeo probat: nam arbitrio iudicis, apud quem res prolapsae petentur, damnum, quod ante sensi, non contineri, nec aliter dandam actionem, quam ut omnia tollantur, quae sunt prolapsa. ita demum autem crustam vindicari posse idem alfenus ait, si non coaluerit nec unitatem cum terra mea fecerit. nec arbor potest vindicari a te, quae translata in agrum meum cum terra mea coaluit. sed nec ego potero tecum agere ius tibi non esse ita crustam habere, si iam cum terra mea coaluit, quia mea facta est.

Dig. 39.2.9.3

Ulpianus 53 ad ed.

Neratius autem scribit, si ratis in agrum meum vi fluminis delata sit, non aliter tibi potestatem tollendi faciendam, quam si de praeterito quoque damno mihi cavisses.

Dig. 39.2.9.4

Ulpianus 53 ad ed.

Quaesitum est, si solum sit alterius, superficies alterius, superficiarius utrum repromittere damni infecti an satisdare debeat. et iulianus scribit, quotiens superficiaria insula vitiosa est, dominum et de soli et de aedificii vitio repromittere aut eum, ad quem superficies pertinet, de utroque satisdare: quod si uterque cesset, vicinum in possessionem mittendum.

Dig. 39.2.9.5

Ulpianus 53 ad ed.

Celsus certe scribit, si aedium tuarum usus fructus titiae est, damni infecti aut dominum repromittere aut titiam satisdare debere. quod si in possessionem missus fuerit is, cui damni infecti cavendum fuit, titiam uti frui prohibebit. idem ait eum quoque fructuarium, qui non reficit, a domino uti frui prohibendum: ergo et si de damno infecto non cavet dominusque compulsus est repromittere, prohiberi debet frui.

Dig. 39.2.10

Paulus 48 ad ed.

Quamvis alienus usus fructus sit, dominum promittere oportere cassius ait. nisi proprietarius in totum repromittat vel fructuarius satisdat, mitti oportet in possessionem eum, cui non caveatur. sed nisi proprietario repromittenti fructuarius caveat, denegandam ei fructus petitionem iulianus scribit. sed si fructuarius de soli vitio quid praestiterit, ius domini ad eum transferri oportet.

Dig. 39.2.11

Ulpianus 53 ad ed.

Quid de creditore dicemus, qui pignus accepit? utrum repromittere, quia suum ius tuetur, an satisdare, quia dominus non est, debebit? quae species est in contrario latere apud Marcellum agitata, an creditori pigneraticio damni infecti caveri debeat. et ait Marcellus inutiliter ei caveri: idemque etiam de eo cavendum qui non a domino emit: nam nec in huius persona committi stipulationem. aequissimum tamen puto huic prospiciendum, id est creditori, per stipulationem.

Dig. 39.2.12

Paulus 48 ad ed.

His qui pignori rem acceperunt potior est is, cui damni infecti non cavetur, si possidere et per longum tempus rem capere ei permissum fuerit.

Dig. 39.2.13pr.

Ulpianus 53 ad ed.

Qui bona fide a non domino emit, videndum est, numquid repromittat, non etiam satisdet. quod quibusdam videtur: habet autem rationem, ut magis repromittat quam satisdet: suo enim nomine id facit.

Dig. 39.2.13.1

Ulpianus 53 ad ed.

Sive corporis dominus sive is qui ius habet (ut puta servitutem) de damno infecto caveat, puto eum repromittere debere, non satisdare, quia suo nomine id facit, non alieno.

Dig. 39.2.13.2

Ulpianus 53 ad ed.

Cum inter aedes meas et tuas sint aliae aedes non vitiosae, videndum est, utrum tu solus mihi cavere debeas an vero et is, cuius aedes vitiosae non sunt, an ille solus, an ambo. et magis est, ut ambo cavere debeant, quia fieri potest, ut aedes vitiosae in aedes non vitiosas incidentes damnum mihi dent. quamvis possit quis dicere non vitio incolumium aedium hoc factum, si aliae in eas incidentes damni causam praebuerunt: sed cum prospicere sibi potuerit damni infecti cautionem, non prospexerit, merito convenietur.

Dig. 39.2.13.3

Ulpianus 53 ad ed.

Qui damni infecti caveri sibi postulat, prius de calumnia iurare debet: quisquis igitur iuraverit de calumnia, admittitur ad stipulationem, et non inquiretur, utrum intersit eius an non, vicinas aedes habeat an non habeat. totum tamen hoc iurisdictioni praetoriae subiciendum, cui cavendum sit, cui non.

Dig. 39.2.13.4

Ulpianus 53 ad ed.

Ceterum neque ei qui in meo deambulet neque ei qui in meo lavet vel in mea taberna devertat, caveri debet.

Dig. 39.2.13.5

Ulpianus 53 ad ed.

Vicinis plane inquilinisque eorum et inquilinorum uxoribus cavendum esse ait labeo, item his qui cum his morentur.

Dig. 39.2.13.6

Ulpianus 53 ad ed.

De illo quaeritur, an inquilinis suis dominus aedium cavere possit. et sabinus ait inquilinis non esse cavendum: aut enim ab initio vitiosas aedes conduxerunt et habent quod sibi imputent, aut in vitium aedes inciderunt et possunt ex conducto experiri: quae sententia verior est.

Dig. 39.2.13.7

Ulpianus 53 ad ed.

Si quis iuxta monumentum aedificaverit vel iuxta aedificium suum monumentum fieri passus sit, de damno infecto ei postea cavendum non erit, quia rem illicitam admisit: alias autem si monumento aedificium noceat, in quo nihil sit, quod imputari possit ei, ad quem ius monumenti pertinet, cavendum est ei, ad quem ius monumenti pertinet.

Dig. 39.2.13.8

Ulpianus 53 ad ed.

Superficiarium et fructuarium damni infecti utiliter stipulari hodie constat.

Dig. 39.2.13.9

Ulpianus 53 ad ed.

Sed ei, qui bona fide a non domino emit, damni infecti stipulationem non competere Marcellus ait.

Dig. 39.2.13.10

Ulpianus 53 ad ed.

Si quis opus novum nuntiaverit, an nihilo minus damni infecti ei caveri debeat, iulianus tractat. et magis probat caveri oportere: nam et ei, qui egerit ius adversario non esse altius tollere aedificium, caveri debere. item eum, adversus quem interdictum quod vi aut clam competit, cavere debere iulianus ait, quia non est cautum neque de vitio aedium neque de damno operis.

Dig. 39.2.13.11

Ulpianus 53 ad ed.

Si quis, quia sibi non cavebatur, in possessionem aedium missus fuerit, deinde is cuius aedes fuerunt, cum praeterea alias aedes haberet, desideret ab eo, qui in possessionem missus est, ut sibi damni infecti harum aedium nomine, quarum in possessionem missus est, caveret, an sit audiendus, videamus. et iulianus scribit: is qui vitiosis aedibus cesserit, si integras retinuerit, numquid improbe ab eo, qui vitiosas aedes coepit possidere, cautionem exigit, cum ideo possessionem amiserit, quia ipse damni infecti satis non dederat? et sane parum probe postulat ab eo caveri sibi earum aedium nomine, quarum ipse cavere supersedit: quae sententia vera est.

Dig. 39.2.13.12

Ulpianus 53 ad ed.

Si quis stipulaturus iuraverit nec fuerit stipulatus, an postea ei stipulari volenti iurandum sit, videamus. et puto iterum iurandum, quia possit fieri, ut aut tunc aut modo calumnietur.

Dig. 39.2.13.13

Ulpianus 53 ad ed.

Si alieno nomine caveri mihi damni infecti postulem iurare debeo non calumniae causa id eum, cuius nomine cautum postulo, fuisse postulaturum.

Dig. 39.2.13.14

Ulpianus 53 ad ed.

Sed si eius nomine postulem, qui, si ipse postularet, iurare non compelleretur, veluti patronus vel parens, dicendum est locum iuriiurando non esse: de quo enim ille non iuraret, nec qui vice eius postulat in hac stipulatione debet iurare.

Dig. 39.2.13.15

Ulpianus 53 ad ed.

Huic stipulationi debet dies esse insertus, intra quem si quid damni contigerit, cautio locum habet: neque enim in infinitum obligatus esse debet stipulatione. ipse igitur praetor diem dabit stipulationi, aestimatione habita ex causa et ex qualitate eius damni, quod contingere speratur.

Dig. 39.2.14

Paulus 48 ad ed.

In causae cognitione etiam longinquitas soli et operis magnitudo spectanda est.

Dig. 39.2.15pr.

Ulpianus 53 ad ed.

Si finita sit dies statuta in cautione, iterum arbitratu praetoris ex integro erit cavendum.

Dig. 39.2.15.1

Ulpianus 53 ad ed.

Si vero sine adiectione diei stipulatio fuerit interposita, si quidem ex conventione, quandoque fuerit commissa, ex stipulatu agitur, si vero per errorem, magis est illud dicendum finito die, in quem alioquin caveri solet, desiderandum esse a praetore, ut liberetur.

Dig. 39.2.15.2

Ulpianus 53 ad ed.

Deinde ait praetor: " de eo opere, quod in flumine publico ripave eius fiet, in annos decem satisdari iubebo". hic exigitur satisdatio et tempus stipulationi praestituit idcirco, quia in publico fit: cum autem in alieno fiat, satisdationem praetor iniungit.

Dig. 39.2.15.3

Ulpianus 53 ad ed.

Notandum, quod non etiam de loci vitio, sed de operis tantum cavetur, quamvis, si in privato fiat, et de loci et de operis vitio caveatur: sed cum locus publicus sit, non erat necesse ibidem opus facienti de alio vitio quam operis satisdare damni infecti.

Dig. 39.2.15.4

Ulpianus 53 ad ed.

Si quid igitur damni intra decem annos acciderit, id stipulatione continetur.

Dig. 39.2.15.5

Ulpianus 53 ad ed.

Et quod ait praetor " de eo opere", sic accipe de eo damno, quod ex opere fiet.

Dig. 39.2.15.6

Ulpianus 53 ad ed.

Si quid in via publica fiat, quia in alieno fit, satisdandum est.

Dig. 39.2.15.7

Ulpianus 53 ad ed.

Sed praetor causa cognita tempus pro condicione operis determinabit.

Dig. 39.2.15.8

Ulpianus 53 ad ed.

Sive autem quis muniat viam sive quid aliud in via publica faciat, debebit cautio locum habere, ne per hoc damno privati contingantur.

Dig. 39.2.15.9

Ulpianus 53 ad ed.

De ceteris locis publicis nihil specialiter cavetur, verum ex generali sermone, quasi in alieno fiat, satisdari debebit damni infecti.

Dig. 39.2.15.10

Ulpianus 53 ad ed.

Si publicus locus publice reficiatur, rectissime labeo scribit, eoque iure utimur, de damno infecto non esse cavendum, si quid vitio loci aut operis fiat: certe legem dandam operis talem, ne quid noceat vicinis damnive detur.

Dig. 39.2.15.11

Ulpianus 53 ad ed.

Ex hoc edicto si non caveatur, mittitur in possessionem a praetore in eam partem, quae ruinosa esse videtur.

Dig. 39.2.15.12

Ulpianus 53 ad ed.

An vero in totas aedes missio locum habeat, videamus. et extat sabini sententia in totas aedes mittendum: alioquin si ex superficie, inquit, damnum timeatur, non habebit res exitum, nec profuturum in possessionem eius rei mitti, quam quis possidere non possit aut ei non expediat: et verior est sabini sententia.

Dig. 39.2.15.13

Ulpianus 53 ad ed.

Sed si in plures partes divisa domus sit, utrum in partem an in totam domum possidendam mitti quis debeat, videamus. si tam ampla domus sit, ut et spatia inter vitiosam partem intercedant et eam quae vitium non facit, dicendum in eam solam partem mitti: si vero unita sit contextu aedificiorum, in totam. itaque et in spatiosis domibus melius dicetur in eam partem domus mittendum, quae vitiosae parti unita est. ceterum si modica portiuncula aedium amplissimarum vitium faceret, quale erat dicere totas aedes iubendum possidere eum, cui damni infecti non caveretur, cum sint amplissimae?

Dig. 39.2.15.14

Ulpianus 53 ad ed.

Item quid dicemus, si insula adiacens domui vitium faciat, utrum in insulae possessionem an vero in totius domus possessionem mittendum sit? et magis est, ut non in domus possessionem, sed in insulae mittatur.

Dig. 39.2.15.15

Ulpianus 53 ad ed.

Si plures sunt, qui postulent ut caveatur, omnes mitti in possessionem solent. idemque labeo probat et si prius quis in possessionem missus sit et alius mitti desideret: nam non spectabimus ordinem, sed habebunt ambo possessionem. quod si iam prior possidere iussus sit et alius damni infecti caveri desideret, tunc nisi cavetur, mittetur in possessionem posterior.

Dig. 39.2.15.16

Ulpianus 53 ad ed.

Iulianus scribit eum, qui in possessionem damni infecti nomine mittitur, non prius incipere per longum tempus dominium capere, quam secundo decreto a praetore dominus constituatur.

Dig. 39.2.15.17

Ulpianus 53 ad ed.

Si ante hoc decretum alius quoque in possessionem missus fuerit, aequaliter ambo aedium fiunt domini, scilicet cum iussi fuerint possidere. si vero iam constituto domino eo, qui primus in possessionem missus est, titius damni infecti sibi caveri desiderabit, cessante primo cavere solus titius erit in possessione.

Dig. 39.2.15.18

Ulpianus 53 ad ed.

Cum autem plures mittuntur in possessionem, aequaliter mittuntur, non pro rata damni, quod unumquemque contingeret, et merito: nam et cum unus mittitur, non pro portione damni mittitur, sed in totum: cum igitur plures mittuntur, aequaliter omnes quasi in totum missi concursu partes habebunt.

Dig. 39.2.15.19

Ulpianus 53 ad ed.

Sed si quis eorum missus in possessionem sumptum fecerit, deinde iubeatur possidere, an sumptum consequi possit is qui fecit et quo iudicio? et placet communi dividundo iudicio consequi eum posse.

Dig. 39.2.15.20

Ulpianus 53 ad ed.

Si quis autem in possessionem missus, nondum possidere iussus sit, an dominus decedere possessione debeat, videamus. et ait labeo non decedere, sicuti nec cum creditores vel legatarii mittuntur: idque est verius.

Dig. 39.2.15.21

Ulpianus 53 ad ed.

Non autem statim ubi misit praetor in possessionem, etiam possidere iubet, sed tunc demum, cum iusta causa videbitur (ergo intervallum aliquod debebit intercedere), quod aut pro derelicto aedes longo silentio dominus videatur habuisse aut emisso in possessionem et aliquamdiu immorato nemo caveat.

Dig. 39.2.15.22

Ulpianus 53 ad ed.

Si forte dominus rei publicae causa abest aut ex alia iusta causa aut in ea sit aetate cui subveniri solet, probandum est non debere praetorem festinare ad decernendum, ut iubeat possidere. sed etsi decreverit, nemo dubitat in integrum restitutionem indulturum.

Dig. 39.2.15.23

Ulpianus 53 ad ed.

Ubi autem quis possidere iussus est, dominus deiciendus erit possessione.

Dig. 39.2.15.24

Ulpianus 53 ad ed.

Si qua sint iura debita his, qui potuerunt de damno infecto satisdare, deneganda erit eorum persecutio adversus eum, qui in possessionem missus est: et ita labeo probat.

Dig. 39.2.15.25

Ulpianus 53 ad ed.

Item quaeritur in pigneraticio creditore, an pignoris persecutio denegetur adversus eum, qui iussus sit possidere. et magis est, ut, si neque debitor repromisit neque creditor satisdedit, pignoris persecutio denegetur. quod et in fructuario recte celsus scribit.

Dig. 39.2.15.26

Ulpianus 53 ad ed.

Si de vectigalibus aedibus non caveatur, mittendum in possessionem dicemus nec iubendum possidere (nec enim dominium capere possidendo potest), sed decernendum, ut eodem iure esset, quo foret is qui non caverat: post quod decretum vectigali actione uti poterit.

Dig. 39.2.15.27

Ulpianus 53 ad ed.

Sed in vectigali praedio si municipes non caverint, dicendum est dominium per longum tempus adquiri.

Dig. 39.2.15.28

Ulpianus 53 ad ed.

Eleganter quaeritur, si, dum praetor de danda stipulatione deliberat, damnum contigerit, an sarciri possit. et missio quidem cessabit: praetor tamen decernere debet, quidquid damni contigerit, ut de eo quoque caveatur, aut, si putat, quod utiliter actionem daturus sit, decernat.

Dig. 39.2.15.29

Ulpianus 53 ad ed.

Si pupillus tutorem non habeat, quo auctore damni infecti promittat, quasi non defendatur, missio in possessionem locum habebit.

Dig. 39.2.15.30

Ulpianus 53 ad ed.

Si quis damni infecti in possessionem missus sit, fulcire eum et reficere insulam debere sunt qui putent eamque culpam praestare exemplo eius, qui pignori accepit. sed alio iure utimur: cum enim ob hoc tantum missus sit, ut vice cautionis in possessione sit, nihil ei imputari, si non refecerit.

Dig. 39.2.15.31

Ulpianus 53 ad ed.

Item videamus, si ei cautio offeratur, posteaquam missus est, an non prius decedere debeat, quam si ei caveatur etiam de eo damno, quod contigit, posteaquam missus est in possessionem? quod quidem magis probatur: repetita igitur die promittendum erit. hoc amplius de impensis quoque, si quas fecerit, erit ei cavendum.

Dig. 39.2.15.32

Ulpianus 53 ad ed.

Illud quaeritur, ex quo tempore damni ratio habeatur, utrum ex quo in possessionem ventum est an vero ex quo praetor decrevit, ut eatur in possessionem. labeo, ex quo decretum est: sabinus, ex quo ventum est in possessionem: ego puto causa cognita modo hanc modo illam sententiam probandam. plerumque enim subvenitur etiam ei, qui missus in possessionem aliqua ex causa aut non venit aut tardius venit in possessionem.

Dig. 39.2.15.33

Ulpianus 53 ad ed.

Posteaquam autem quis possidere iure dominii a praetore iussus est, nequaquam locus erit cautionis oblationi: et ita labeo: ceterum nullus, inquit, finis rei invenietur: et est hoc verissimum seposito eo, quod quibusdam vel aetate vel qua alia iusta causa subvenitur.

Dig. 39.2.15.34

Ulpianus 53 ad ed.

Si iam ruerunt aedes, an in possessionem ruinae vel areae mittendus sit nihilo minus is, cui cautum non est, videamus. et magis est, ut mitti debeat, et ita labeo: sed adicit, si, posteaquam decreverit praetor eum in possessionem mittendum, tunc aedes deciderint: et puto labeonis sententiam veram. proinde et si refecit aliquid, erit probandum non prius eum discessurum, quam si ei sarciatur et de praeterito caveatur. potest autem et in factum actione reciperare hoc quod impendit, sed non amplius, quam quod boni viri arbitratu factum sit: idem est et si alius iussu rogatuve meo eorum quid sine dolo malo fecerit et eo nomine condemnatus sim aut dederim sine dolo malo.

Dig. 39.2.15.35

Ulpianus 53 ad ed.

Si quis metu ruinae decesserit possessione, si quidem, cum adiuvare rem non posset, id fecit, labeo scribit integrum ius eum habere, perinde ac si in possessione perseverasset: quod si, cum posset succurrere, maluit relinquere, amisisse eum praetoris beneficium neque, si postea succurri sibi velit, audiendum eum. cassius autem ait, si metu ruinae recesserit, non hoc animo, ut aedificia derelinqueret, restituendum in possessionem: eum tamen, qui missus in possessionem non accesserit, si aedificia ruerint, beneficium praetoris amisisse scribit. hoc ita accipiendum erit, si venire in possessionem neglexit, non si dum venit ruerunt.

Dig. 39.2.15.36

Ulpianus 53 ad ed.

Si quis ex hoc edicto a praetore in possessionem missus non est admissus, in factum actione uti poterit, ut tantum praestetur ei, quantum praestari ei oporteret, si de ea re cautum fuisset: extenditur enim actio in id tempus, quo damnum committitur.

Dig. 39.2.16

Paulus 48 ad ed.

Antequam damnum detur, impunitum est factum eius, qui neque promisit neque admisit in possessionem, si tamen ante damnum datum vel cavit vel possessione cessit.

Dig. 39.2.17pr.

Ulpianus 53 ad ed.

Si quis missum in possessionem, cum esset in aliena potestate, non admiserit, plerique putant noxalem actionem eo nomine competere.

Dig. 39.2.17.1

Ulpianus 53 ad ed.

Quid deinde, si procurator prohibuerit, utrum in ipsum an in dominum dabimus? sed verius est in ipsum dandam.

Dig. 39.2.17.2

Ulpianus 53 ad ed.

Sed et in actore municipum tutore ceterisque, qui pro aliis interveniunt, idem erit dicendum.

Dig. 39.2.17.3

Ulpianus 53 ad ed.

Actio ista, quae in factum est, perpetuo dabitur, et heredi et in heredem ceterasque itemque ceteris personis.

Dig. 39.2.17.4

Ulpianus 53 ad ed.

Iudex, qui de damno infecto cognoscit, etiam alienato praedio ab eo, cum quo actum fuerit, damnum aestimare solet omne, quodcumque ante iudicium contigit.

Dig. 39.2.18pr.

Paulus 48 ad ed.

Damni infecti stipulatio competit non tantum ei, cuius in bonis res est, sed etiam cuius periculo res est.

Dig. 39.2.18.1

Paulus 48 ad ed.

Quod opere facto consecutus sit dominii capione promissor, non teneri eum eo nomine pomponius ait, quia nec loci nec operis vitio, sed publico iure id consecutus sit.

Dig. 39.2.18.2

Paulus 48 ad ed.

Ei, cuius usus fructus aedium est, de vitio earundem aedium caveri non oportet, etsi alias vicinas habeat, quia reficiendi habet facultatem: nam qui viri boni arbitratu uti deberet, reficiendi quoque potestatem consequitur. ergo nec proprietarius audiri debet, si velit sibi caveri a fructuario aedium nomine, quas vicinas fructuario habeat, quia habet cum fructuario actionem, ut viri boni arbitratu is fruatur.

Dig. 39.2.18.3

Paulus 48 ad ed.

Sed inquilino meo, si vicinas aedes habeat, cavere debebo damni infecti propter eas aedes.

Dig. 39.2.18.4

Paulus 48 ad ed.

Ei, qui in conducto solo superficiem imposuit, dominus soli, quod vitio soli damnum futurum sit, cavere non debebit nec soli domino superficiarius, quia invicem ex conducto et locato habent actiones: in quas tamen actiones ultra culpam nihil venit. plus autem in stipulationem venit damni infecti, quod quidem vitium eius esse dicitur.

Dig. 39.2.18.5

Paulus 48 ad ed.

Si is, qui unas aedes habebat, stipulatus fuerit, deinde vicinas comparaverit, an earum quoque nomine, quas post interpositam stipulationem comparasset, promissorem obligaret, quaesitum est. iulianus scribit videndum, ne earum dumtaxat nomine cautum habeat, de quibus inter eum et promissorem initio actum fuerit. cui consequens videri posse, ut et, cum aedium communium nomine duo socii stipulentur, de eo dumtaxat damno caveri videatur, quod in parte aedium cuique socio datum fuerit. sive ergo redemerit alteram partem quis ex his sive adiudicata fuerit, non augeri promissionis obligationem. pomponius relata iuliani scriptura dicit non se improbare.

Dig. 39.2.18.6

Paulus 48 ad ed.

Si autem res aliquas post stipulationem interpositam in domo habere coeperit stipulator, quae ex ruina vicinarum aedium perierint, agere ex stipulatu potest, licet tunc, cum stipularetur, hae res non fuerint.

Dig. 39.2.18.7

Paulus 48 ad ed.

Emptor praedii si ante traditionem stipulatus sit, cautum habebit de eo damno, quod post traditionem factum erit.

Dig. 39.2.18.8

Paulus 48 ad ed.

Venditorem autem aedium prius, quam possessionem tradat, stipulari oportet, quia huius quoque rei culpam praestat.

Dig. 39.2.18.9

Paulus 48 ad ed.

Sed quid fiet, si venditor sine culpa stipulari non potuerit et ob hoc emptor stipulatus fuerit? nonne damnum patitur? an hoc damnum in aliena re acciderit, revolvitur autem ad emptorem, quia actionem ex empto non habet? sed nihil in hac causa proficit stipulatio, nisi in id, quod post traditionem accidit, quia, dum venditoris custodia est, is stipulari debet omnemque diligentiam emptori praestare: et quod alia actione quaeri potest, id in stipulationem damni infecti omnino non deducitur.

Dig. 39.2.18.10

Paulus 48 ad ed.

Sed si venditor interposuerit stipulationem, etiam id damnum continebit, quod post traditionem emptori contigerit. quod esse inquissimum aristo ait, quoniam, si emptor quoque damni infecti stipulatus esset, duobus promissor eiusdem nomine obligaretur: nisi forte id contra se habeat, quia in hoc fit stipulatio, quanti ea res erit: ut possit videri nihil interesse iam venditoris.

Dig. 39.2.18.11

Paulus 48 ad ed.

Stipulatione damni infecti interposita sabini sententia vera est existimantis, ut, si, dum aedificatur intra diem stipulationi comprehensum, supra parietem meum domus deciderit eumque vitiaverit, licet post diem stipulationis paries decidat, possim agere, quia damnum iam tunc acceperim, cum paries vitiosus factus sit. nec quicquam obstare, quo minus etiam antequam decidat agi possit: et, si ita concussus sit paries, ut nulla ratione recipi possit ideoque deponendus est, non minoris litem aestimandam, quam si decidisset.

Dig. 39.2.18.12

Paulus 48 ad ed.

Si vicinas aedes habeamus et invicem desideremus damni infecti caveri, nihil obstabit, quo minus et ego in tuarum aedium possessionem mittar et tu in mearum.

Dig. 39.2.18.13

Paulus 48 ad ed.

Si pupillus prohibuit iri in possessionem damni infecti, placet in eum non iniuste competere hanc in factum actionem.

Dig. 39.2.18.14

Paulus 48 ad ed.

Si mandatu meo alius prohibuerit, in me haec actio competit.

Dig. 39.2.18.15

Paulus 48 ad ed.

Non solum autem eum punit praetor, qui in possessione esse, sed etiam eum, qui possidere passus non fuerit, cum alioquin, si is, qui iussu praetoris coeperat possidere et possidendo dominium capere, aut non admissus aut eiectus inde fuerit, utile interdictum unde vi vel publicianam actionem habere potest. sed si in factum actione egerit, his actionibus experiri non potest, cum praetor id agat, ne damnum faciat actor, non ut in lucro versetur.

Dig. 39.2.18.16

Paulus 48 ad ed.

Si procurator meus damni infecti stipulatus sit, causa cognita mihi ex ea stipulatione actio competit.

Dig. 39.2.19pr.

Gaius ad ed. pu. de damno inf.

Eorum, qui bona fide absunt, in stipulatione damni infecti ius non corrumpitur, sed reversis cavendi ex bono et aequo potestas datur, sive domini sint sive aliquid in ea re ius habeant, qualis est creditor et fructuarius et superficiarius.

Dig. 39.2.19.1

Gaius ad ed. pu. de damno inf.

Sive aedium vitio sive operis, quod vel in aedibus vel in loco urbano aut rustico, privato publicove fiat, damni aliquid futurum sit, curat praetor, ut timenti damnum caveatur.

Dig. 39.2.20

Gaius 19 ad ed. provinc.

Inter fructuarium et dominum proprietatis ita damni infecti cautio locum habet, si fructuarius quidem de soli vitio caveri sibi desideret, dominus vero proprietatis de operis vitio, si quid fructuarius aedificet: nam de ruina aedium neuter ab altero cautionem desiderare potest, fructuarius ideo, quia refectio aedium ad eius ipsius onus non pertinet, proprietarius ideo, quia usitata stipulatio, qua de re restituenda fructuarius cavet, ad hunc quoque casum porrigitur.

Dig. 39.2.21

Paulus 8 ad plaut.

Si filius familias inquilinus sit, videamus, an damni infecti nomine in possessionem aedium vicinarum mittendus sit (quaeritur enim, an filius familias non videtur damnum pati, si res peculiares sint) et pater possit stipulari, si quid ei damni fiat. et placet utrumque eorum in possessionem mitti, nisi sic filius conduxerat, ut eius periculo aedes essent: tunc enim, quia solus tenetur ex locato, recte dicetur ipsum mittendum in possessionem, nisi ei caveatur.

Dig. 39.2.22pr.

Paulus 10 ad plaut.

Si proprietarius de damno infecto repromisisset vel forte aliquid praestitisset aut contra fructuarius aliquid praestitit, iniquum est alterum sine damno uti aedibus aut aedes habere. et si optulerit proprietarius aliquid, non est fructuario permittendum uti, nisi contulerit: idemque fructuario praestandum est, ut proprietarius cogatur ei conferre. ergo et solum retinebit fructuarius, si aedes ceciderint, donec praestetur ei damnum, ut, quod haberet vicinus missus in possessionem, id fructuarius habeat, qui damnum vicino sarciit. eadem erunt et si minimum damnum detur. plautius.

Dig. 39.2.22.1

Paulus 10 ad plaut.

Plautius. si ab eo, quem dominum esse negarem, vellem sub hac exceptione " si dominus non esset" satisdari, ab eo vero, quem dominum esse dicerem, pure repromitti, constitit non debere me impetrare, sed debere me eligere, a quo velim mihi caveri.

Dig. 39.2.23

Ulpianus 63 ad ed.

In stipulatione damni infecti, quae aedium nomine interponitur, nisi in solidum fuerit cautum, mittetur in possessionem.

Dig. 39.2.24pr.

Ulpianus 81 ad ed.

Fluminum publicorum communis est usus, sicuti viarum publicarum et litorum. in his igitur publice licet cuilibet aedificare et destruere, dum tamen hoc sine incommodo cuiusquam fiat. propter quod operis dumtaxat nomine cum satisdatione cavetur, de vitio loci nihil cavetur, hoc est operis, quod quis facit. ceterum si ex loci vitio damnum timeatur, minime dicendum est damni infecti stipulationem interponi oportere: quis enim dubitat neminem esse, a quo stipuletur, cum nemine nihil faciente locus ipse publicus damnum inferat sui natura?

Dig. 39.2.24.1

Ulpianus 81 ad ed.

Ad ea igitur opera stipulatio pertinet, quaecumque privatim fiant. quid ergo, si publice opus fiat, de vitio eius quid faciemus? et plane vel princeps adeundus est vel, si in provincia fiat, praeses provinciae. sed quod dictum est " operis vitio" sic accipiendum est, etiam si proponas non tantum tempore, quo opus fit, sed etiam si postea contingat: quid enim si ideo, quia male aedificatum erat, corruit?

Dig. 39.2.24.1a

Ulpianus 81 ad ed.

Adicitur in hac stipulatione et heredum nomen vel successorum eorumque, ad quos ea res pertinet. successores autem non solum qui in universa bona succedunt, sed et hi, qui in rei tantum dominium successerint, his verbis continentur.

Dig. 39.2.24.2

Ulpianus 81 ad ed.

Sed ut ne quid aedium loci operisve vitio damnum factum sit, stipulatio interponitur de eo sine satisdatione: quae non solum ad totas aedes, sed etiam ad partem aedium pertinet. vitium autem aedium et loci esse labeo ait, quod accidens extrinsecus infirmiores eas facit: denique nemo dixit palustris loci vel harenosi nomine quasi vitiosi committi stipulationem, quia naturale vitium est: et ideo nec ea stipulatio interponitur neque interposita committetur.

Dig. 39.2.24.3

Ulpianus 81 ad ed.

Haec stipulatio utrum id solum damnum contineat, quod iniuria fit, an vero omne damnum, quod extrinsecus contingat? et labeo quidem scribit de damno dato non posse agi, si quid forte terrae motu aut vi fluminis aliove quo casu fortuito acciderit.

Dig. 39.2.24.4

Ulpianus 81 ad ed.

Servius quoque putat, si ex aedibus promissoris vento tegulae deiectae damnum vicino dederint, ita eum teneri, si aedificii vitio id acciderit, non si violentia ventorum vel qua alia ratione, quae vim habet divinam. labeo et rationem adicit, quo, si hoc non admittatur, iniquum erit: quo enim tam firmum aedificium est, ut fluminis aut maris aut tempestatis aut ruinae incendii aut terrae motus vim sustinere possit?

Dig. 39.2.24.5

Ulpianus 81 ad ed.

Idem servius putat, si controversia aquae insulam subverterit, deinde stipulatoris aedificia ceciderint, nihil eum ex stipulatu consecuturum, quia id nec operis nec loci vitio factum est. si autem aqua vitiet fundamenta et sic aedificium ruisset, committi stipulationem ait: multum enim interesse, quod erat alioquin firmum, vi fluminis lapsum sit protinus, an vero ante sit vitiatum, deinde sic deciderit. et ita labeo probat: etenim multum interesse, quod ad aquiliam pertinet, sanum quis hominem occidat an vero factum inbecilliorem.

Dig. 39.2.24.6

Ulpianus 81 ad ed.

Quamquam autem stipulatio committitur, cum vitio operis damnum factum sit, tamen, si opus factum est ab eo, quem promissor prohibere non potuit, stipulatio non committetur. plane si prohibere potuit, committetur. sed si quis promissoris nomine fecerit vel eius pro quo promissum est aut alius, qui prohiberi potuerit, stipulatio ista committetur.

Dig. 39.2.24.7

Ulpianus 81 ad ed.

Praeterea si furni nomine damni infecti fuerit cautum, deinde furnarii culpa damnum datum fuerit, non venire in hanc stipulationem plerisque videtur.

Dig. 39.2.24.8

Ulpianus 81 ad ed.

Cassius quoque scribit, quod contra ea demum datum est, cui nulla ope occurri poterit, stipulationem non tenere.

Dig. 39.2.24.9

Ulpianus 81 ad ed.

Item apud vivianum relatum est, si ex agro vicini arbores vi tempestatis confractae in meum agrum deciderint eoque facto vitibus meis vel segetibus nocent vel aedificia demoliunt, stipulationem istam, in qua haec comprehenduntur " si quid arborum locive vitio acciderit", non esse utilem, quia non arborum vitio, sed vi ventorum damnum mihi datum est. plane si vetustate arborum hoc fiebat, possumus dicere vitio arborum damnum mihi dari.

Dig. 39.2.24.10

Ulpianus 81 ad ed.

Idem ait, si damni infecti aedium mearum nomine tibi promisero, deinde hae aedes vi tempestatis in tua aedificia ceciderint ^ deciderint^ eaque diruerint, nihil ex ea stipulatione praestari, quia nullum damnum vitio mearum aedium tibi contingit: nisi forte ita vitiosae meae aedes fuerint, ut qualibet vel minima tempestate ruerint. haec omnia vera sunt.

Dig. 39.2.24.11

Ulpianus 81 ad ed.

Sed et quod labeo putat verum est, referre, utrum impulsu fluminis ruit aedificium an deterius ante factum postea ceciderit.

Dig. 39.2.24.12

Ulpianus 81 ad ed.

Item videamus, quando damnum dari videatur: stipulatio enim hoc continet, quod vitio aedium loci operis damnum fit. ut puta in domo mea puteum aperio, quo aperto venae putei praecisae sunt: an tenear? ait trebatius non teneri me damni infecti: neque enim existimari operis mei vitio damnum tibi dari in ea re, in qua iure meo usus sum. si tamen tam alte fodiam in meo, ut paries tuus stare non possit, damni infecti stipulatio committetur.

Dig. 39.2.25

Paulus 78 ad ed.

Trebatius ait etiam eum accipere damnum, cuius aedium luminibus officiatur.

Dig. 39.2.26

Ulpianus 81 ad ed.

Proculus ait, cum quis iure quid in suo faceret, quamvis promisisset damni infecti vicino, non tamen eum teneri ea stipulatione: veluti si iuxta mea aedificia habeas aedificia eaque iure tuo altius tollas, aut si in vicino tuo agro cuniculo vel fossa aquam meam avoces: quamvis enim et hic aquam mihi abducas et illic luminibus officias, tamen ex ea stipulatione actionem mihi non competere, scilicet quia non debeat videri is damnum facere, qui eo veluti lucro, quo adhuc utebatur, prohibetur, multumque interesse, utrum damnum quis faciat, an lucro, quod adhuc faciebat, uti prohibeatur. mihi videtur vera esse proculi sententia.

Dig. 39.2.27

Paulus 78 ad ed.

Plures earundem aedium domini singuli stipulari debent sine adiectione partis, quia de suo quisque damno stipulatur: quin immo pars adiecta partis partem faciet. contra si plures domini sint vitiosarum aedium, pro sua quisque parte promittere debet, ne singuli in solidum obligentur.

Dig. 39.2.28

Ulpianus 81 ad ed.

In hac stipulatione venit, quanti ea res erit. et ideo cassius scribit eum, qui damni infecti stipulatus est, si propter metum ruinae ea aedificia, quorum nomine sibi cavit, fulsit, impensas eius rei ex stipulatu consequi posse: idemque iuris esse, cum propter vitium communis parietis qui cavit sibi damni infecti, onerum eorum relevandorum gratia, quae in parietem incumbunt, aedificia sua fulsit. in eadem causa est detrimentum quoque propter emigrationem inquilinorum, quod ex iusto metu factum est. aristo autem non male adicit, sicuti hic exigit cassius, ut si iustus metus migrandi causam praebuerit, ita in eius personam qui fulsit eadem cassium dicere debuisse, si iusto metu ruinae fulcire coactus est.

Dig. 39.2.29

Gaius 28 ad ed. provinc.

Sed et si conducere hospitium nemo velit propter vitium aedium, idem erit dicendum.

Dig. 39.2.30pr.

Ulpianus 81 ad ed.

Damni infecti stipulatio pertinet etiam, si quid eius operis, quod in fundo meo aquae ducendae causa fit, vitio damnum mihi contigerit: solet enim opus in alieno fieri, cum iure servitutis, quam quis habet alieno agro impositam, opus in alieno faciat.

Dig. 39.2.30.1

Ulpianus 81 ad ed.

Utrum autem de hoc opere promittere an satisdare debeat, videamus. movet, quod in alieno facit: qui autem de alieno cavet, satisdare debet, qui de suo, repromittere. unde labeo putabat eum, qui modulorum aut rivi faciendi causa opus faceret, etiam satisdare debere, quia in alieno solo faceret. sed cum de opere, quod faciet, exigatur stipulatio, consequens erit dicere sufficere repromissionem: quodam modo enim de re sua cavet.

Dig. 39.2.30.2

Ulpianus 81 ad ed.

Quod dictum est " aquae ducendae causa", exempli gratia scriptum est: ceterum ad omnia opera stipulatio accommodabitur.

Dig. 39.2.31pr.

Paulus 78 ad ed.

Qui vias publicas muniunt, sine damno vicinorum id facere debent.

Dig. 39.2.31.1

Paulus 78 ad ed.

Si controversia sit, dominus sit nec ne is, a quo cautio exigitur, sub exceptione satisdare iubetur.

Dig. 39.2.32

Gaius 28 ad ed. provinc.

Si aedibus meis proximae sint aedes meae et tuae, quaeritur, an, si hae vitium mihi faciant, cavere mihi debeas pro damno propriarum mearum aedium, scilicet pro qua parte dominus existes. et hoc plerisque placet: sed movet me, quod ipse meas aedes reficere possim et impensas pro socio aut communi dividundo iudicio pro parte consequi. nam et si unas aedes communes tecum habui eaeque vitium faciant et circa refectionem earum cessare videaris, nostri praeceptores negant cavere te debere, quia ipse reficere possim recepturus pro parte, quod impenderim, iudicio societatis aut communi dividundo: ideo et interpositam cautionem minus utilem futuram, quia alia ratione damnum mihi posset sarciri. et est plane nostrorum praeceptorum haec sententia, ut credamus inutilem esse damni infecti stipulationem, quo casu damnum alia actione sarciri possit: quod et in superiore casu intellegendum est.

Dig. 39.2.33

Ulpianus 42 ad sab.

Inquilino non datur damni infecti actio, quia possit ex conducto agere, si dominus eum migrare prohiberet:

Dig. 39.2.34

Paulus 10 ad sab.

Utique si pro praeterita pensione satisfacere paratus fuit: alioquin iusta retentio pignoris domino fieri videretur. sed et si quasi pignora retinuerit et ea interierint ruina vicinarum aedium, potest dici etiam pigneraticia actione locatorem ^ locatorum^ teneri, si poterat eas res in locum tutiorem transferre.

Dig. 39.2.35

Ulpianus 42 ad sab.

In parietis communis demolitione ea quaeri oportet, satis aptus fuerit oneribus ferendis an non fuerit aptus.

Dig. 39.2.36

Paulus 10 ad sab.

Sed ita idoneum esse plerique dixerunt, ut utrarumque aedium onera, quae modo iure imponantur, communis paries sustinere possit.

Dig. 39.2.37

Ulpianus 42 ad sab.

Nam si non fuit, utique demolire eum oportuit nec debet, si quid damni ex hac causa attigit, is qui demolitus est teneri, nisi sumptuose aut parum bonus novus paries sit restitutus. quod si fuerit idoneus paries, qui demolitus est, in actionem damni infecti venit id, quanti interfuit actoris eum parietem stare: merito, nam si non debuit demoliri, restituere eum debet proprio sumptu. sed et si qui reditus ob demolitionem amissus est, consequenter restitui eum sabinus voluit. si forte habitatores migraverunt aut non tam commode habitare possunt, imputari id aedificatori potest.

Dig. 39.2.38pr.

Paulus 10 ad sab.

Emptor aedium ante traditam sibi possessionem ideo inutiliter stipulatur, quia venditor omnem diligentiam ei praestare debet. tunc certe utiliter stipulatur, cum omnis culpa a venditore aberit, veluti si precario emptori in his aedibus esse permisit custodiamque ei afuturus tradidit.

Dig. 39.2.38.1

Paulus 10 ad sab.

Si agri nomine non caveatur, in eam partem agri mittendum est, ex qua periculum timeatur: eiusque rei ratio haec est, quod in aedificiis partes quoque reliquae a vitiosa parte traherentur, at in agris non idem est. sed dicendum est, ut in domibus quoque maioribus interdum causa cognita praetor statuere debeat, in cuius partis possessionem is, cui non caveatur, mitti debeat.

Dig. 39.2.38.2

Paulus 10 ad sab.

Deducto veteris parietis pretio, si quid amplius sit, aestimari debet, et si quid ex veteri in novum coniectum sit, deduci ex aestimatione oportet.

Dig. 39.2.39pr.

Pomponius 21 ad sab.

Inter quos paries communis est, aedificiorum nomine, quae quisque propria habet, stipulari damni infecti solent: sed tunc ea cautio necessaria est, cum aut alter solus aedificat et vitium ex opere futurum est, aut alter pretiosiora aedificia habet et plus damni sensurus sit decidente pariete: alioquin si aequale periculum est, quantum quis vicino praestat, tantum ab eo consequitur.

Dig. 39.2.39.1

Pomponius 21 ad sab.

Si domus in controversia sit, dicendum est damni infecti onus possessoris esse, cum id quod praestiterit imputare domino praedii possit: quod si non caveat, possessionem ad petitorem, qui caveri damni infecti sibi velit, transferant: nam iniquum est stipulatorem compelli relicto praedio, ex quo damnum vereatur, dominum quaerere.

Dig. 39.2.39.2

Pomponius 21 ad sab.

Damni infecti stipulatio latius patet. et ideo et ei, qui superficiariam insulam habet, utilis est ea stipulatio, si quid in superficie damnum datum fuerit, et nihilo minus et soli domino utilis est, si solo damnum datum fuerit, ut tota superficies tolleretur: fraudabitur enim dominus soli in pensione percipienda.

Dig. 39.2.39.3

Pomponius 21 ad sab.

Alieno nomine stipulari ita licet, ut quod damnum domino datum sit, comprehendatur: cavere autem debebit is qui stipulabitur dominum ratam rem habiturum exceptioque procuratoria stipulationi inserenda erit, sicut in stipulatione legatorum: quod si ei non cavebitur, mittendus est in possessionem procurator omnimodo, ut ei exceptio procuratoria non noceat.

Dig. 39.2.39.4

Pomponius 21 ad sab.

In aestimando novo pariete ratio haberi debet eius impensae, quae modum probabilem non excedet in vetere eius cultus, non qui non adgravet.

Dig. 39.2.40pr.

Ulpianus 43 ad sab.

Ex damni infecti stipulatione non oportet infinitam vel immoderatam aestimationem fieri, ut puta ob tectoria et ob picturas: licet enim in haec magna erogatio facta est, attamen ex damni infecti stipulatione moderatam aestimationem faciendam, quia honestus modus servandus est, non immoderata cuiusque luxuria subsequenda.

Dig. 39.2.40.1

Ulpianus 43 ad sab.

Quotiens communis parietis vitio quid accidit, socius socio nihil praestare debet, cum communis rei vitio contigerit. quod si, quia alter eum presserat vel oneraverat, idcirco damnum contigit, consequens est dicere detrimentum hoc, quod beneficio eius contingit, ipsum sarcire debere. quod si aequaliter utriusque oneribus pressus decidit, rectissime sabinus scripsit, parem utriusque causam esse. sed si alter plures vel pretiosiores res amiserit, melius est dicere, quia ambo onera imposuerunt, neutri adversus alterum competere actionem.

Dig. 39.2.40.2

Ulpianus 43 ad sab.

Quotiens ex damni infecti plures agunt, quia in eadem re damnum passi sunt, id est in aedibus, non debet unusquisque eorum in solidum agere, sed in partem experiri: neque enim damnum, quod pluribus datum est, unicuique in solidum datum est, sed in partem datum esse videtur. et ideo unicuique in partem competere actionem iulianus scripsit.

Dig. 39.2.40.3

Ulpianus 43 ad sab.

Item si plurium sint aedes, quae damnosae imminent, utrum adversus unumquemque dominorum in solidum competit an in partem? et scripsit iulianus, quod et sabinus probat, pro dominicis partibus conveniri eos oportere.

Dig. 39.2.40.4

Ulpianus 43 ad sab.

Si plures domini sint aedium, qui damni infecti sibi prospicere volunt, nec quisquam eis damni infecti caveat, mittendi omnes in possessionem erunt et quidem aequalibus partibus, quamvis diversas portiones dominii habuerint: et ita pomponius scribit.

Dig. 39.2.41

Pomponius 21 ad sab.

In reficiendo communi pariete ei potius facultas aedificandi praestatur, qui magis idonee reficere parietem velit. idemque dicendum est et si de eodem itinere rivove reficiendo inter duos vel plures quaeratur.

Dig. 39.2.42

Iulianus 58 Dig.

Si servus communis damni infecti stipulatus fuisset, perinde habetur, ac si ipsi domini sua voce pro partibus stipularentur.

Dig. 39.2.43pr.

Alfenus 2 Dig.

Damni infecti quidam vicino repromiserat: ex eius aedificio tegulae vento deiectae ceciderant in vicini tegulas easque fregerant: quaesitum est, an aliquid praestari oportet. respondit, si vitio aedificii et infirmitate factum esset, debere praestari: sed si tanta vis venti fuisset, ut quamvis firma aedificia convelleret, non debere. et quod in stipulatione est " sive quid ibi ruet", non videri sibi ruere, quod aut vento aut omnino aliqua vi extrinsecus admota caderet, sed quod ipsum per se concideret.

Dig. 39.2.43.1

Alfenus 2 Dig.

Cum parietem communem aedificare quis cum vicino vellet, priusquam veterem demoliret, damni infecti vicino repromisit adeoque restipulatus est: posteaquam paries sublatus esset et habitatores ex vicinis cenaculis emigrassent, vicinus ab eo mercedem, quam habitatores non redderent, petere vult: quaesitum est, an recte petet. respondit non oportuisse eos, cum communem parietem aedificarent, inter se repromittere neque ullo modo alterum ab altero cogi potuisse: sed si maxime repromitterent, tamen non oportuisse amplius quam partis dimidiae, quo amplius ne extrario quidem quisquam, cum parietem communem aedificaret, repromittere deberet. sed quoniam iam in totum repromisissent, omne, quod detrimenti ex mercede vicinus fecisset, praestaturum.

Dig. 39.2.43.2

Alfenus 2 Dig.

Idem consulebat, possetne, quod ob eam rem dedisset, rursus repetere, quoniam restipulatus esset a vicino, si quid ob eam rem, quod ibi aedificatum esset, sibi damnum datum esset, id reddi, cum et ipsam hanc pecuniam, quam daret, propter illud opus perderet. respondit non posse propterea quia non operis vitio, sed ex stipulatione id amitteret.

Dig. 39.2.44pr.

Africanus 9 quaest.

Cum postulassem, ut mihi damni infecti promitteres, noluisti et priusquam praetor adiretur, aedes tuae corruerunt et damnum mihi dederunt: potius esse ait, ut nihil novi praetor constituere debeat et mea culpa damnum sim passus, qui tardius experiri coeperim. at si cum praetor ut promitteres decrevisset et te non promittente ire me in possessionem iussisset et prius, quam eo venissem, corruerunt, perinde omnia servanda esse existimavit, atque si posteaquam in possessionem venissem damnum datum esset.

Dig. 39.2.44.1

Africanus 9 quaest.

Damni infecti nomine in possessionem missus possidendo dominium cepit, deinde creditor eas aedes pignori sibi obligatas persequi vult. non sine ratione dicetur, nisi impensas, quas in refectionem fecerim, mihi praestare sit paratus, inhibendam adversus me persecutionem. cur ergo non emptori quoque id tribuendum est, si forte quis insulam pigneratam emerit? non recte haec inter se comparabuntur, quando is qui emit sua voluntate negotium gerat ideoque diligentius a venditore sibi cavere et possit et debeat: quod non aeque et de eo, cui damni infecti non promittatur, dici potest.

Dig. 39.2.45

Scaevola 12 quaest. a q. fund. pet.

Aedificatum habes: ago tibi ius non esse habere: non defendis. ad me possessio transferenda est, non quidem ut protinus destruatur opus (iniquum enim est demolitionem protinus fieri), sed ut id fiat, nisi intra certum tempus egeris ius tibi esse aedificatum habere.

Dig. 39.2.46pr.

Paulus 1 sent.

Ad curatoris rei publicae officium spectat, ut dirutae domus a dominis extruantur.

Dig. 39.2.46.1

Paulus 1 sent.

Domum sumptu publico exstructam, si dominus ad tempus pecuniam impensam cum usuris restituere noluerit, iure eam res publica distrahit.

Dig. 39.2.47

Nerva 6 membr.

Quod conclave binarum aedium dominus ex aliis aedibus in aliarum usum convertit, non solum si contignatio, qua id sustinebitur, orietur ex parte earum aedium, in quarum usum conversum erit, earum fiet, sed etiam si transversa contignatio tota in aliarum aedium parietibus sedebit. sed et labeo in libris posteriorum scribit binarum aedium dominum utrisque porticum superposuisse inque eam aditu ex alteris aedibus dato alteras aedes servitute oneris porticus servandae imposita vendidisse: totam porticum earum aedium esse, quas retinuisset, cum per longitudinem utriusque domus extensa esset transversae contignationi, quae ab utraque parte parietibus domus, quae venisset, sustineretur. nec tamen consequens est, ut superior pars aedificii, quae nulli coniuncta sit neque aditum aliunde habeat, alterius sit, quam cuius est id cui superposita est.

Dig. 39.2.48

Marcianus l.S. de delator.

Si quis ad demoliendum negotiandi causa vendidisse domum partemve domus fuerit convictus: ut emptor et venditor singuli pretium, quo domus distracta est, praestent, constitutum est. ad opus autem publicum si transferat marmora vel columnas, licito iure facit.

Dig. 39.3.0. De aqua et aquae pluviae arcendae.

Dig. 39.3.1pr.

Ulpianus 53 ad ed.

Si cui aqua pluvia damnum dabit, actione aquae pluviae arcendae avertetur aqua. aquam pluviam dicimus, quae de caelo cadit atque imbre excrescit, sive per se haec aqua caelestis noceat, ut tubero ait, sive cum alia mixta sit.

Dig. 39.3.1.1

Ulpianus 53 ad ed.

Haec autem actio locum habet in damno nondum facto, opere tamen iam facto, hoc est de eo opere, ex quo damnum timetur: totiensque locum habet, quotiens manu facto opere agro aqua nocitura est, id est cum quis manu fecerit, quo aliter flueret, quam natura soleret, si forte immittendo eam aut maiorem fecerit aut citatiorem aut vehementiorem aut si comprimendo redundare effecit. quod si natura aqua noceret, ea actione non continentur.

Dig. 39.3.1.2

Ulpianus 53 ad ed.

Neratius scribit: opus, quod quis fecit, ut aquam excluderet, quae exundante palude in agrum eius refluere solet, si ea palus aqua pluvia ampliatur eaque aqua repulsa eo opere agris vicini noceat, aquae pluviae actione cogetur tollere.

Dig. 39.3.1.3

Ulpianus 53 ad ed.

De eo opere, quod agri colendi causa aratro factum sit, quintus mucius ait non competere hanc actionem. trebatius autem non quod agri, sed quod frumenti dumtaxat quaerendi causa aratro factum solum excepit.

Dig. 39.3.1.4

Ulpianus 53 ad ed.

Sed et fossas agrorum siccandorum causa factas mucius ait fundi colendi causa fieri, non tamen oportere corrivandae aquae causa fieri: sic enim debere quem meliorem agrum suum facere, ne vicini deteriorem faciat.

Dig. 39.3.1.5

Ulpianus 53 ad ed.

Sed et si quis arare et serere possit etiam sine sulcis aquariis, teneri eum, si quid ex his, licet agri colendi causa videatur fecisse: quod si aliter serere non possit, nisi sulcos aquarios fecerit, non teneri. ofilius autem ait sulcos agri colendi causa directos ita, ut in unam pergant partem, ius esse facere.

Dig. 39.3.1.6

Ulpianus 53 ad ed.

Sed apud servii auditores relatum est, si quis salicta posuerit et ob hoc aqua restagnaret, aquae pluviae arcendae agi posse, si ea aqua vicino noceret.

Dig. 39.3.1.7

Ulpianus 53 ad ed.

Labeo etiam scribit ea, quaecumque frugum fructuumque recipiendorum causa fiunt, extra hanc esse causam neque referre, quorum fructuum percipiendorum causa id opus fiat.

Dig. 39.3.1.8

Ulpianus 53 ad ed.

Item sabinus cassius opus manu factum in hanc actionem venire aiunt, nisi si quid agri colendi causa fiat:

Dig. 39.3.1.9

Ulpianus 53 ad ed.

Sulcos tamen aquarios, qui helikes appellantur, si quis faciat, aquae pluviae actione eum teneri ait.

Dig. 39.3.1.10

Ulpianus 53 ad ed.

Idem aiunt, si aqua naturaliter decurrat, aquae pluviae arcendae actionem cessare: quod si opere facto aqua aut in superiorem partem repellitur aut in inferiorem derivatur, aquae pluviae arcendae actionem competere.

Dig. 39.3.1.11

Ulpianus 53 ad ed.

Idem aiunt aquam pluviam in suo retinere vel superficientem ex vicini in suum derivare, dum opus in alieno non fiat, omnibus ius esse (prodesse enim sibi unusquisque, dum alii non nocet, non prohibetur) nec quemquam hoc nomine teneri.

Dig. 39.3.1.12

Ulpianus 53 ad ed.

Denique Marcellus scribit cum eo, qui in suo fodiens vicini fontem avertit, nihil posse agi, nec de dolo actionem: et sane non debet habere, si non animo vicino nocendi, sed suum agrum meliorem faciendi id fecit.

Dig. 39.3.1.13

Ulpianus 53 ad ed.

Item sciendum est hanc actionem vel superiori adversus inferiorem competere, ne aquam, quae natura fluat, opere facto inhibeat per suum agrum decurrere, et inferiori adversus superiorem, ne aliter aquam mittat, quam fluere natura solet.

Dig. 39.3.1.14

Ulpianus 53 ad ed.

Huic illud etiam applicandum numquam competere hanc actionem, cum ipsius loci natura nocet: nam (ut verius quis dixerit) non aqua, sed loci natura nocet.

Dig. 39.3.1.15

Ulpianus 53 ad ed.

In summa puto ita demum aquae pluviae arcendae locum actionem habere, si aqua pluvia vel quae pluvia crescit noceat non naturaliter, sed opere facto, nisi si agri colendi causa id factum sit:

Dig. 39.3.1.16

Ulpianus 53 ad ed.

Imbre autem crescere eam aquam, quae colorem mutat vel increscit.

Dig. 39.3.1.17

Ulpianus 53 ad ed.

Item sciendum est hanc actionem non alias locum habere, quam si aqua pluvia agro noceat: ceterum si aedificio vel oppido noceat, cessat actio ista, agi autem ita poterit ius non esse stillicidia flumina immittere. et ideo labeo et cascellius aiunt aquae quidem pluviae arcendae actionem specialem esse, de fluminibus et stillicidiis generalem et ubique agi ea licere. itaque aqua, quae agro nocet, per aquae pluviae arcendae actionem coercebitur.

Dig. 39.3.1.18

Ulpianus 53 ad ed.

Nec illud quaeramus, unde oriatur: nam et si publico oriens vel ex loco sacro per fundum vicini descendat isque opere facto in meum fundum eam avertat, aquae pluviae arcendae teneri eum labeo ait.

Dig. 39.3.1.19

Ulpianus 53 ad ed.

Cassius quoque scribit, si aqua ex aedificio urbano noceat vel agro vel aedificio rustico, agendum de fluminibus et stillicidiis.

Dig. 39.3.1.20

Ulpianus 53 ad ed.

Apud labeonem autem invenio relatum, si ex agro meo aqua fluens noceat loco qui est intra continentia, hoc est aedificio, non posse me aquae pluviae arcendae conveniri: quod si ex continentibus profluens in meum agrum defluat eique noceat, aquae pluviae arcendae esse actionem.

Dig. 39.3.1.21

Ulpianus 53 ad ed.

Sicut autem opus factum, ut aqua pluvia mihi noceat, in hanc actionem venit, ita per contrarium quaeritur, an posset aquae pluviae arcendae agi, si vicinus opus fecerit, ne aqua, quae alioquin decurrens agro meo proderat, huic prosit.

ofilius igitur et labeo putant agi non posse, etiamsi intersit mea ad me aquam pervenire: hanc enim actionem locum habere, si aqua pluvia noceat, non si non prosit.

Dig. 39.3.1.22

Ulpianus 53 ad ed.

Sed et si vicinus opus tollat et sublato eo aqua naturaliter ad inferiorem agrum perveniens noceat, labeo existimat aquae pluviae arcendae agi non posse: semper enim hanc esse servitutem inferiorum praediorum, ut natura profluentem aquam excipiant. plane si propter id opus sublatum vehementior aqua profluat vel corrivetur, aquae pluviae arcendae actione agi posse etiam labeo confitetur.

Dig. 39.3.1.23

Ulpianus 53 ad ed.

Denique ait condicionibus agrorum quasdam leges esse dictas, ut, quibus agris magna sint flumina, liceat mihi, scilicet in agro tuo, aggeres vel fossas habere: si tamen lex non sit agro dicta, agri naturam esse servandam et semper inferiorem superiori servire atque hoc incommodum naturaliter pati inferiorem agrum a superiore compensareque debere cum alio commodo: sicut enim omnis pinguitudo terrae ad eum decurrit, ita etiam aquae incommodum ad eum defluere. si tamen lex agri non inveniatur, vetustatem vicem legis tenere. sane enim et in servitutibus hoc idem sequimur, ut, ubi servitus non invenitur imposita, qui diu usus est servitute neque vi neque precario neque clam, habuisse longa consuetudine velut iure impositam servitutem videatur. non ergo cogemus vicinum aggeres munire, sed nos in eius agro muniemus: eritque ista quasi servitus, in quam rem utilem actionem habemus vel interdictum.

Dig. 39.3.2pr.

Paulus 49 ad ed.

In summa tria sunt, per quae inferior locus superiori servit, lex, natura loci, vetustas: quae semper pro lege habetur, minuendarum scilicet litium causa.

Dig. 39.3.2.1

Paulus 49 ad ed.

Apud labeonem proponitur fossa vetus esse agrorum siccandorum causa nec memoriam extare, quando facta est: hanc inferior vicinus non purgabat: sic fiebat, ut ex restagnatione eius aqua fundo nostro noceret. dicit igitur labeo aquae pluviae arcendae cum inferiore agi posse, ut aut ipse purgaret aut te pateretur in pristinum statum eam redigere.

Dig. 39.3.2.2

Paulus 49 ad ed.

Praeterea si in confinio fossa sit neque purgari vicinus patiatur eam partem quae tibi accedat, posse te magis aquae pluviae arcendae labeo ait.

Dig. 39.3.2.3

Paulus 49 ad ed.

Cassius autem scribit, si qua opera aquae mittendae causa publica auctoritate facta sint, in aquae pluviae arcendae actionem non venire in eademque causa esse ea, quorum memoriam vetustas excedit.

Dig. 39.3.2.4

Paulus 49 ad ed.

Apud ateium vero relatum est eam fossam, ex qua ad inferiorem fundum aqua descendit, cogendum esse vicinum purgare, sive extet fossae memoria sive non extet: quod et ipse puto probandum.

Dig. 39.3.2.5

Paulus 49 ad ed.

Item varus ait: aggerem, qui in fundo vicini erat, vis aquae deiecit, per quod effectum est, ut aqua pluvia mihi noceret. varus ait, si naturalis agger fuit, non posse me vicinum cogere aquae pluviae arcendae actione, ut eum reponat vel reponi sinat, idemque putat et si manu factus fuit neque memoria eius exstat: quod si exstet, putat aquae pluviae arcendae actione eum teneri. labeo autem, si manu factus sit agger, etiamsi memoria eius non exstat, agi posse ut reponatur: nam hac actione neminem cogi posse, ut vicino prosit, sed ne noceat aut interpellet facientem, quod iure facere possit. quamquam tamen deficiat aquae pluviae arcendae actio, attamen opinor utilem actionem vel interdictum mihi competere adversus vicinum, si velim aggerem restituere in agro eius, qui factus mihi quidem prodesse potest, ipsi vero nihil nociturus est: haec aequitas suggerit, etsi iure deficiamur.

Dig. 39.3.2.6

Paulus 49 ad ed.

Apud namusam relatum est, si aqua fluens iter suum stercore obstruxerit et ex restagnatione superiori agro noceat, posse cum inferiore agi, ut sinat purgari: hanc enim actionem non tantum de operibus esse utilem manu factis, verum etiam in omnibus, quae non secundum voluntatem sint. labeo contra namusam probat: ait enim naturam agri ipsam a se mutari posse et ideo, cum per se natura agri fuerit mutata, aequo animo unumquemque ferre debere, sive melior sive deterior eius condicio facta sit. idcirco et si terrae motu aut tempestatis magnitudine soli causa mutata sit, neminem cogi posse, ut sinat in pristinam locum condicionem redigi. sed nos etiam in hunc casum aequitatem admisimus.

Dig. 39.3.2.7

Paulus 49 ad ed.

Idem labeo ait, si in agro tuo aquarum concursus locum excavavit, aquae pluviae arcendae actione agi non posse tecum a vicinis: plane si fossam iure factam aut cuius memoria non exstat, agi tecum posse aquae pluviae arcendae, ut reficias.

Dig. 39.3.2.8

Paulus 49 ad ed.

Idem labeo ait, cum quaeritur, an memoria exstet facto opere, non diem et consulem ad liquidum exquirendum, sed sufficere, si quis sciat factum esse, hoc est, si factum esse non ambigatur: nec utique necesse esse superesse qui meminerint, verum etiam si qui audierint eos, qui memoria tenuerint.

Dig. 39.3.2.9

Paulus 49 ad ed.

Idem labeo ait, si vicinus flumen torrentem averterit, ne aqua ad eum perveniat, et hoc modo sit effectum, ut vicino noceatur, agi cum eo aquae pluviae arcendae non posse: aquam enim arcere hoc esse curare, ne influat. quae sententia verior est, si modo non hoc animo fecit, ut tibi noceat, sed ne sibi noceat.

Dig. 39.3.2.10

Paulus 49 ad ed.

Illud etiam verum puto, quod ofilius scribit, si fundus tuus vicino serviat et propterea aquam recipiat, cessare aquae pluviae arcendae actionem, sic tamen, si non ultra modum noceat. cui consequens est, quod labeo putat, si quis vicino cesserit ius ei esse aquam immittere, aquae pluviae arcendae eum agere non posse.

Dig. 39.3.3pr.

Ulpianus 53 ad ed.

Apud trebatium relatum est eum, in cuius fundo aqua oritur, fullonicas circa fontem instituisse et ex his aquam in fundum vicini immittere coepisse: ait ergo non teneri eum aquae pluviae arcendae actione. si tamen aquam conrivat vel si spurcam quis immittat, posse eum impediri plerisque placuit.

Dig. 39.3.3.1

Ulpianus 53 ad ed.

Idem trebatius putat eum, cui aquae fluentes calidae noceant, aquae pluviae arcendae cum vicino agere posse: quod verum non est: neque enim aquae calidae aquae pluviae sunt.

Dig. 39.3.3.2

Ulpianus 53 ad ed.

Si vicinus, qui arvum solebat certo tempore anni rigare, pratum illic fecerit coeperitque adsidua irrigatione vicino nocere, ait ofilius neque damni infecti neque aquae pluviae arcendae actione eum teneri, nisi locum complanavit eoque facto citatior aqua ad vicinum pervenire coepit.

Dig. 39.3.3.3

Ulpianus 53 ad ed.

Aquae pluviae arcendae non nisi eum teneri, qui in suo opus faciat, receptum est eoque iure utimur. quare si quis in publico opus faciat, haec actio cessat, sibique imputare debet is, qui damni infecti cautione sibi non prospexit. si tamen in privato opus factum sit et publicum interveniat, de toto agi posse aquae pluviae arcendae labeo ait.

Dig. 39.3.3.4

Ulpianus 53 ad ed.

Neque fructuarius neque cum eo aquae pluviae arcendae agi potest.

Dig. 39.3.4pr.

Ulpianus 53

Quamquam autem cum domino operis tantum aquae pluviae arcendae actio sit, tamen labeo scribit, si quis sepulchrum aedificaverit, ex quo aqua noceat, etiamsi operis dominus esse desierit loco facto religioso, attamen magis probandum est, inquit, aquae pluviae arcendae eum teneri: fuit enim dominus, cum opus faceret: et si iussu iudicis compulsus opus restituerit, non esse sepulchri violati actionem.

Dig. 39.3.4.1

Ulpianus 53

Iulianus quoque scribit, si post iudicium aquae pluviae arcendae susceptum fundum alienaverit is cum quo actum esset, de praeterito damno et de opere restituendo id statuere iudicem debere, quod iudicaret, si nulla alienatio facta esset: nam et fundo alienato nihilominus iudicium manere et damni rationem venire etiam eius, quod alienationem contingit.

Dig. 39.3.4.2

Ulpianus 53

Idem iulianus scribit aquae pluviae arcendae actionem non nisi cum domino esse idcircoque, si colonus ignorante domino opus fecerit, dominum fundi nihil amplius quam patientiam praestare debere, colonum autem interdicto quod vi aut clam impensam quoque restituendi operis et damnum, si quod ex eo datum fuerit, praestare cogendum. si tamen dominus desideret caveri sibi damni infecti ab eo, ex cuius praedio nocet, aequissimum erit caveri oportere.

Dig. 39.3.4.3

Ulpianus 53

Item si non ego, sed procurator meus tale opus fecerit, ut aqua pluvia noceat vicino, adversus me hactenus erit actio, quatenus adversus colonum: ipse autem procurator interdicto quod vi aut clam conveniri poterit secundum iuliani sententiam, etiam post opus restitutum.

Dig. 39.3.5

Paulus 49 ad ed.

Si colonus insciente domino opus fecerit, ex quo aqua vicino noceat, labeo respondit colonum interdicto quod vi aut clam teneri, dominum vero fundi aquae pluviae arcendae actione, quia is solus restituere opus potest: sed patientiam dumtaxat eum praestare debere, si ei damni infecti stipulatione caveatur, et, si quam impensam in restitutione operis fecerit, consecuturum a colono locati actione: nisi si quis ideo non putet, quoniam non fuerit necesse ipsum restituere. sed si iussu domini fecisset, etiam interdicto dominum teneri.

Dig. 39.3.6pr.

Ulpianus 53 ad ed.

Si tertius vicinus opus fecerit, unde decurrens aqua per fundum primi vicini mei mihi noceat, sabinus ait posse me vel cum primo vel cum tertio omisso primo agere: quae sententia vera est.

Dig. 39.3.6.1

Ulpianus 53 ad ed.

Si ex plurium fundo decurrens aqua noceat vel si plurium fundo noceatur, placuit eoque iure utimur, ut, sive plurium fundus sit, singuli in partem experiantur et condemnatio in partem fiat, sive cum pluribus agatur, singuli in partem conveniantur et in partem fiat condemnatio.

Dig. 39.3.6.2

Ulpianus 53 ad ed.

Inde quaeritur, si communi agro meo et tuo ex proprio agro tuo aqua noceat, an agi possit aquae pluviae arcendae: et putem agendum, sic tamen, ut pars damni praestetur.

Dig. 39.3.6.3

Ulpianus 53 ad ed.

Versa quoque vice si communis ager sit, qui nocet proprio, poterit aquae pluviae arcendae agi, ut quis damnum consequatur, sed in partem.

Dig. 39.3.6.4

Ulpianus 53 ad ed.

Si quis prius, quam aquae pluviae arcendae agat, dominium ad alium transtulerit fundi, desinit habere aquae pluviae arcendae actionem eaque ad eum transibit, cuius ager esse coepit: cum enim damnum futurum contineat, ad eum qui dominus erit incipiet actio pertinere, quamvis, cum alterius dominium esset, opus a vicino factum sit.

Dig. 39.3.6.5

Ulpianus 53 ad ed.

Aquae pluviae arcendae actionem sciendum est non in rem, sed personalem esse.

Dig. 39.3.6.6

Ulpianus 53 ad ed.

Officium autem iudicis hoc erit, ut, si quidem a vicino opus factum sit, eum iubeat restituere damnumque sarcire, si quid post litem contestatam contigit: quod si ante litem contestatam damnum contigit, tantum opus restituere debebit, damnum non sarciet.

Dig. 39.3.6.7

Ulpianus 53 ad ed.

Celsus scribit, si quid ipse feci, quo tibi aqua pluvia noceat, mea impensa tollere me cogendum, si quid alius qui ad me non pertinet, sufficere, ut patiar te tollere. sed si servus meus fecerit, aut is cui heres sum hoc fecit, servum quidem noxae dedere debeo: quod autem is cui heres sum fecit, perinde est, atque si ipse fecissem.

Dig. 39.3.6.8

Ulpianus 53 ad ed.

Aestimationem autem iudex faciet ex rei veritate, hoc est eius damni, quod apparuerit datum.

Dig. 39.3.7pr.

Paulus 18 ad ed.

Is cum quo aquae pluviae arcendae agitur, quod opus fecit, licet cedere loco paratus sit, cogitur accipere iudicium, quoniam et suo nomine convenitur, ut opus tollat.

Dig. 39.3.7.1

Paulus 18 ad ed.

Aliud est in bonae fidei emptore: hic enim tantum patientiam praestat: igitur si et fundo cedat, audiendus est: plus enim praestat.

Dig. 39.3.8

Ulpianus 53 ad ed.

In concedendo iure aquae ducendae non tantum eorum, in quorum loco aqua oritur, verum eorum etiam, ad quos eius aquae usus pertinet, voluntas exquiritur, id est eorum, quibus servitus aquae debebatur, nec immerito: cum enim minuitur ius eorum, consequens fuit exquiri, an consentiant. et generaliter sive in corpore sive in iure loci, ubi aqua oritur, vel in ipsa aqua habeat quis ius, voluntatem eius esse spectandam placet.

Dig. 39.3.9pr.

Paulus 49 ad ed.

In diem addicto praedio et emptoris et venditoris voluntas exquirenda est, ut, sive remanserit penes emptorem sive recesserit, certum sit voluntate domini factam aquae cessionem.

Dig. 39.3.9.1

Paulus 49 ad ed.

Ideo autem voluntas exigitur, ne dominus ignorans iniuriam accipiat: nullam enim potest videri iniuriam accipere, qui semel voluit.

Dig. 39.3.9.2

Paulus 49 ad ed.

Non autem solius eius, ad quem ius aquae pertinebit, voluntas exigitur in aquae cessione, sed etiam domini locorum, etsi dominus uti ea aqua non possit, quia reccidere ius solidum ad eum potest.

Dig. 39.3.10pr.

Ulpianus 53 ad ed.

Si autem plures sint eiusdem loci domini, unde aqua ducitur, omnium voluntatem esse sequendam non ambigitur: iniquum enim visum est voluntatem unius ex modica forte portiuncula domini praeiudicium sociis facere.

Dig. 39.3.10.1

Ulpianus 53 ad ed.

An tamen subsequi voluntas possit, videamus. et placet nihil interesse, utrum praecedat voluntas aquae ductionem an subsequatur, quia et posteriorem voluntatem praetor tueri debet.

Dig. 39.3.10.2

Ulpianus 53 ad ed.

Si flumen navigabile sit, non oportere praetorem concedere ductionem ex eo fieri labeo ait, quae flumen minus navigabile efficiat. idemque est et si per hoc aliud flumen fiat navigabile.

Dig. 39.3.11pr.

Paulus 49 ad ed.

Supra iter alienum arcus aquae ducendae causa non iure fiet: nec is, cui iter actus debetur, pontem, qua possit ire agere, iure extruet. at si specus (non cuniculum) sub rivo aget, aqua corrumpetur, quia suffosso eo aqua manabit et rivus siccatur.

Dig. 39.3.11.1

Paulus 49 ad ed.

Cassius ait, sive ex communi fundo sive communi aqua noceat, vel unum cum uno agere posse vel unum separatim cum singulis vel separatim singulos cum uno vel singulos cum singulis. si unus egerit et restitutio operis litisque aestimatio facta sit, ceterorum actionem evanescere: item si cum uno actum sit et si praestiterit, ceteros liberari idque, quod sociorum nomine datum sit, per arbitrum communi dividundo reciperari posse.

Dig. 39.3.11.2

Paulus 49 ad ed.

Et ex sociis non utique cum eo agendum qui opus fecerit nec minus eum quoque damnum restituere debere, qui auctor operis fuit, apud ferocem proculus ait: si cum uno dominorum actum sit, qui opus non fecerit, debere eum opus restituere sua impensa, quia communi dividundo actionem habet. sed sibi magis placere patientiam dumtaxat eum praestare oportere, quia sua culpa actor id patiatur, qui non agit cum eo, a quo opus factum sit, et est iniquum eum, qui non fecit, id restituere oportere, quoniam communi dividundo agere potest: quid enim fiet, si socius eius solvendo non fuerit?

Dig. 39.3.11.3

Paulus 49 ad ed.

Officium autem iudicis inter duos accepti quale futurum sit, dubitare se iulianus ait, si forte unius fundus fuerit cui aqua noceat, si vero in quo opus factum sit, plurium et cum uno eorum agatur: utrum et eius damni nomine, quod post litem contestatam datum sit, et operis non restituti in solidum condemnatio fieri debeat, quemadmodum, cum servi communis nomine noxali iudicio cum uno agitur, condemnatio in solidum fiet, quoniam quod praestiterit, potest a socio recipere? an vero is cum quo agitur pro parte sua et damni dati et operis non restituti nomine damnandus sit, ut in actione damni infecti fiat, cum eius praedii, ex quo damnum metuatur, plures domini sint et cum uno eorum agatur? licet opus, ex quo damnum futurum sit, individuum sit et ipsae aedes solumque earum non potest pro parte dumtaxat damnum dare, nihilo minus eum cum quo agitur pro sua parte condemnari. magisque existimat id servandum in aquae pluviae arcendae actione, quod in actione damni infecti, quia utrubique non de praeterito, sed de futuro damno agitur.

Dig. 39.3.11.4

Paulus 49 ad ed.

Quod si is fundus, cui aqua pluvia nocet, plurium sit, agere quidem vel singulos posse: sed damni, quod post litem contestatam datum sit, non amplius parte sua consecuturum: item si opus restitutum non fuerit, non amplius, quam quod pro parte eorum interfuerit opus restitui, condemnationem fieri oportere.

Dig. 39.3.11.5

Paulus 49 ad ed.

Si ex privato agro in agrum communem aqua immittatur, ofilius aut socium cum eo agere posse:

Dig. 39.3.11.6

Paulus 49 ad ed.

Trebatius existimat, si de eo opere agatur, quod manu factum sit, omnimodo restituendum id esse ab eo, cum quo agitur: si vero vi fluminis agger deletus sit aut glarea iniecta aut fossa limo repleta, tunc patientiam dumtaxat praestandam.

Dig. 39.3.12

Paulus 16 ad sab.

Emptor (nisi simulata venditio est) ceterique successores vel restituere, si velint, opus factum vel patientiam praestare debent: nam actori moram suam nocere debere manifestum est. in eadem causa est etiam socius eius qui opus fecit, si ipse auctor non fuit: idemque in donato fundo legatove est.

Dig. 39.3.13

Gaius ad ed. pu. de aq. pluv.

Sed venditor aut donator interdicto quod vi aut clam de damno et impensis ab actore factis tenebitur.

Dig. 39.3.14pr.

Paulus 49 ad ed.

Antaeus ait, si is qui opus fecerit potentiori vendiderit praedium, quatenus desierit dominus esse, agendum cum eo quod vi aut clam: quod si annus praeterierit, de dolo iudicium dandum.

Dig. 39.3.14.1

Paulus 49 ad ed.

Cum agitur aquae pluviae arcendae, de facto quod nocet quaeritur: ideoque si vitio loci pars aliqua soli subsedit, quamvis per eam causam aqua pluvia inferiori noceat, nulla competit actio. idem fortasse dicitur, si in agro manu factum aliquid subsederit.

Dig. 39.3.14.2

Paulus 49 ad ed.

In hoc iudicium, sicut in damni infecti, futurum damnum venit, cum reliquis fere omnibus iudiciis praeteritum praestetur.

Dig. 39.3.14.3

Paulus 49 ad ed.

De eo, quod ante datum est, quod vi aut clam agendum est. de eo, quod post sententiam iudicis futurum est, damni infecti caveri oportet vel ita opus restituendum est, ut nullum periculum damni supersit.

Dig. 39.3.14.4

Paulus 49 ad ed.

De eo opere, quod post litem contestatam factum est, novo iudicio agendum est.

Dig. 39.3.15

Paulus 16 ad sab.

Sed interdum opus et quod post litem contestatam factum est tolletur, si id quod antecessit tolli sine eo non potest.

Dig. 39.3.16

Pomponius 20 ad sab.

Post venditionem et traditionem quod nocitum sit ei fundo, de quo ante iudicium acceptum sit aquae pluviae arcendae, nihilo minus eo iudicio venditorem posse consequi, non quia venditori, sed quod rei damnum datum sit, idque eum emptori restituere debere. sed si ante quam noceatur is cum quo actum sit vendat, statim agendum cum emptore, vel intra annum cum eo qui vendiderit, si iudicii evitandi causa id fecerit.

Dig. 39.3.17pr.

Paulus 15 ad plaut.

Si prius nocturnae aquae servitus mihi cessa fuerit, deinde postea alia cessione diurnae quoque ductus aquae concessus mihi fuerit et per constitutum tempus nocturna dumtaxat aqua usus fuerim, amitto servitutem aquae diurnae, quia hoc casu plures sunt servitutes diversarum causarum.

Dig. 39.3.17.1

Paulus 15 ad plaut.

Recto placuit non alias per lapidem aquam duci posse, nisi hoc in servitute constituenda comprehensum sit: non enim consuetudinis est, ut qui aquam habeat per lapidem stratum ducat: illa autem, quae fere in consuetudine esse solent, ut per fistulas aqua ducatur, etiamsi nihil sit comprehensum in servitute constituenda, fieri possunt, ita tamen, ut nullum damnum domino fundi ex his detur.

Dig. 39.3.17.2

Paulus 15 ad plaut.

Via publica intercedente haustus servitutem constitui posse placuit et est verum: sed non solum si via publica interveniat, sed et si flumen publicum, eodem casu, quo interveniente flumine publico viae itineris actus servitus imponi potest, id est si non sit impedimento transeunti magnitudo fluminis.

Dig. 39.3.17.3

Paulus 15 ad plaut.

Sic et si non proximo meo praedio servitutem vicinus debeat, sed ulteriori, agere potero ius esse mihi ire agere ad illum fundum superiorem, quamvis servitutem ipse per fundum meum non habeam, sicut interveniente via publica vel flumine quod vado transiri potest. sed loco sacro vel religioso vel sancto interveniente, quo fas non sit uti, nulla eorum servitus imponi poterit.

Dig. 39.3.17.4

Paulus 15 ad plaut.

Sed si fundus medius alterius inter me et te intercedit, haustus servitutem fundo tuo imponere potero, si mihi medius dominus iter ad transeundum cesserit, quemadmodum, si ex flumine publico perenni haustu velim uti, cui flumini ager tuus proximus sit, iter mihi ad flumen cedi potest.

Dig. 39.3.18pr.

Iavolenus 10 ex cass.

Si in publico opus factum est, quo aqua pluvia noceret, agi non potest: interveniente loco publico agi poterit. causa eius rei haec est, quod ea actione non tenetur nisi dominus solus.

Dig. 39.3.18.1

Iavolenus 10 ex cass.

Sine permissu principis aqua per viam publicam duci non potest.

Dig. 39.3.19

Pomponius 14 ad q. muc.

Labeo ait, si patiente vicino opus faciam, ex quo ei aqua pluvia noceat, non teneri me actione aquae pluviae arcendae:

Dig. 39.3.20

Pomponius 34 ad sab.

Sed hoc ita, si non per errorem aut imperitiam deceptus fuerit: nulla enim voluntas errantis est.

Dig. 39.3.21

Pomponius 32 ad q. muc.

Si in meo aqua erumpat, quae ex tuo fundo venas habeat, si eas venas incideris et ob id desierit ad me aqua pervenire, tu non videris vi fecisse, si nulla servitus mihi eo nomine debita fuerit, nec interdicto quod vi aut clam teneris.

Dig. 39.3.22pr.

Pomponius 10 ex var. lect.

Si usus fructus fundi legatus fuerit, aquae pluviae arcendae actio heredi et cum herede est, cuius praedium fuerit. quod si ex opere incommodum aliquod patitur fructuarius, poterit quidem interdum vel interdicto experiri quod vi aut clam. quod si ei non competet, quaerendum est, an utilis ei quasi domino actio aquae pluviae arcendae dari debeat an vero etiam contendat ius sibi esse uti frui: sed magis est utilem aquae pluviae arcendae ei actionem accommodare.

Dig. 39.3.22.1

Pomponius 10 ex var. lect.

Non aliter restituisse rem videtur is qui opus fecit, quam si aquam coerceat.

Dig. 39.3.22.2

Pomponius 10 ex var. lect.

Sed et si fructuarius opus fecerit, per quod aqua pluvia alicui noceat, erit quidem actio legitima cum domino proprietatis: an vero etiam utilis in fructuarium actio aquae pluviae arcendae danda sit, quaesitum est: et magis est ut detur.

Dig. 39.3.23pr.

Paulus 16 ad sab.

Quod principis aut senatus iussu aut ab his, qui primi agros constituerunt, opus factum fuerit, in hoc iudicium non venit.

Dig. 39.3.23.1

Paulus 16 ad sab.

Haec actio etiam in vectigalibus agris locum habet.

Dig. 39.3.23.2

Paulus 16 ad sab.

Aggeres iuxta flumina in privato facti in arbitrium aquae pluviae arcendae veniunt, etiamsi trans flumen noceant, ita, si memoria eorum exstet et si fieri non debuerunt.

Dig. 39.3.24pr.

Alfenus 4 Dig. a paulo epit.

Vicinus loci superioris pratum ita arabat, ut per sulcos itemque porcas aqua ad inferiorem veniret: quaesitum est, an per arbitrum aquae pluviae arcendae possit cogi, ut in alteram partem araret, ne sulci in eius agrum spectarent. respondit non posse eum facere, quo minus agrum vicinus quemadmodum vellet araret.

Dig. 39.3.24.1

Alfenus 4 Dig. a paulo epit.

Sed si quos sulcos transversos aquarios faceret, per quos in eius agrum aqua deflueret, hosce ut operiret, per arbitrum aquae pluviae arcendae posse cogere.

Dig. 39.3.24.2

Alfenus 4 Dig. a paulo epit.

Sed et si fossas fecisset, ex quibus aqua pluvia posset nocere, arbitrum, si appareat futurum, ut aqua pluvia noceret, cogere oportere fossas eum explere et, nisi faceret, condemnare, tametsi antequam adiudicaret, aqua per fossas nunquam fluxisset.

Dig. 39.3.24.3

Alfenus 4 Dig. a paulo epit.

Lacus cum aut crescerent aut decrescerent, numquam neque accessionem neque decessionem in eos vicinis facere licet.

Dig. 39.3.25

Iulianus 5 ex minic.

Is, cuius fundo via debetur, aquae pluviae arcendae agere potest fundi sui nomine, quoniam deteriore via facta fundo nocetur.

Dig. 39.3.26

Scaevola 4 resp.

Scaevola respondit solere eos, qui iuri dicundo praesunt, tueri ductus aquae, quibus auctoritatem vetustas daret, tametsi ius non probaretur.

Dig. 39.4.0. De publicanis et vectigalibus et commissis.

Dig. 39.4.1pr.

Ulpianus 55 ad ed.

Praetor ait: " quod publicanus eius publici nomine vi ademerit quodve familia publicanorum, si id restitutum non erit, in duplum aut, si post annum agetur, in simplum iudicium dabo. item si damnum iniuria furtumve factum esse dicetur, iudicium dabo. si id ad quos ea res pertinebit non exhibebitur, in dominos sine noxae deditione iudicium dabo".

Dig. 39.4.1.1

Ulpianus 55 ad ed.

Hic titulus ad publicanos pertinet. publicani autem sunt, qui publico fruuntur (nam inde nomen habent), sive fisco vectigal pendant vel tributum consequantur: et omnes, qui quod a fisco conducunt, recte appellantur publicani.

Dig. 39.4.1.2

Ulpianus 55 ad ed.

Dixerit aliquis: quid utique hoc edictum propositum est, quasi non et alibi praetor providerit furtis damnis vi raptis? sed e re putavit et specialiter adversus publicanos edictum proponere.

Dig. 39.4.1.3

Ulpianus 55 ad ed.

Quod quidem edictum in aliqua parte mitius est, quippe cum in duplum datur, cum vi bonorum raptorum in quadruplum sit et furti manifesti aeque in quadruplum,

Dig. 39.4.1.4

Ulpianus 55 ad ed.

Et restituendi facultas publicano vi abreptum datur, quod si fecerit, omni onere exuitur et poenali actione ex hac parte edicti liberatur. unde quaeritur, si quis velit cum publicano non ex hoc edicto, sed ex generali vi bonorum raptorum, damni iniuriae vel furti agere, an possit? et placet posse, idque pomponius quoque scribit: est enim absurdum meliorem esse publicanorum causam quam ceterorum effectam opinari.

Dig. 39.4.1.5

Ulpianus 55 ad ed.

Familiae nomen hic non tantum ad servos publicanorum referemus, verum et qui in numero familiarum sunt publicani, sive igitur liberi sint sive servi alieni, qui publicanis in eo vectigali ministrant, hoc edicto continebuntur. proinde et si servus publicani rapuit, non tamen in ea familia constitutus, quae publico vectigali ministrat, hoc edictum cessabit.

Dig. 39.4.1.6

Ulpianus 55 ad ed.

Quod novissime praetor ait " si hi non exhibebuntur, in dominos sine noxae deditione iudicium dabo", hoc proprium est huius edicti, quod, si non exhibeantur servi, competit iudicium sine noxae deditione, sive habeant eos in potestate sive non, sive possint exhibere sive non possint,

Dig. 39.4.2

Gaius 21 ad ed. provinc.

Nec liceat domino absentem defendere eum,

Dig. 39.4.3pr.

Ulpianus 55 ad ed.

Cum, si exhibuissent, noxali iudicio convenirentur. idcirco autem tam dura condicio eorum effecta est, quia debent bonos servos ad hoc ministerium eligere.

Dig. 39.4.3.1

Ulpianus 55 ad ed.

Quod ait " in dominos", sic accipiendum est " in socios vectigalis", licet domini non sint.

Dig. 39.4.3.2

Ulpianus 55 ad ed.

Ante autem actorem dicere oportet, quem vel quos desideret exhiberi, ut, si non exhibeantur, hinc agatur. sed si dicatur: " exhibe omnes, ut possim dinoscere quis sit", puto audiendum.

Dig. 39.4.3.3

Ulpianus 55 ad ed.

Si plures servi id furtum vel damnum admiserint, hoc debet servari, ut, si tantum praestetur, quantum, si unus liber fecisset, absolutio fiat.

Dig. 39.4.4pr.

Paulus 52 ad ed.

Si publicanus, qui vi ademit, decesserit, labeo ait in heredem eius, quo locupletior factus sit, dandam actionem.

Dig. 39.4.4.1

Paulus 52 ad ed.

De rebus, quas in usus advehendas sibi mandant praesides, divus hadrianus praesidibus scripsit, ut, quotiens quis in usus aut eorum, qui provinciis exercitibusve praesunt, aut procuratorum suorum usus sui causa mittet quendam empturum, significet libello manu sua subscripto eumque ad publicanum mittat, ut, si quid amplius quam mandatum est transferet, id munificum sit.

Dig. 39.4.4.2

Paulus 52 ad ed.

In omnibus vectigalibus fere consuetudo spectari solet idque etiam principalibus constitutionibus cavetur.

Dig. 39.4.5pr.

Gaius ad ed. pu. de publicanis.

Hoc edicto efficitur, ut ante acceptum quidem iudicium restituta re actio evanescat, post acceptum vero iudicium nihilo minus poena duret. sed tamen absolvendus est etiam qui post acceptum iudicium restituere paratus est.

Dig. 39.4.5.1

Gaius ad ed. pu. de publicanis.

Quaerentibus autem nobis, utrum duplum totum poena sit et praeterea rei sit persecutio, an in duplo sit et rei persecutio, ut poena simpli sit, magis placuit, ut res in duplo sit.

Dig. 39.4.6

Modestinus 2 de poen.

Si multi publicani sint, qui illicite quid exegerunt, non multiplicatur dupli actio, sed omnes partes praestabunt et quod ab alio praestari non potest, ab altero exigetur, sicut divus severus et antoninus rescripserunt: nam inter criminis reos et fraudis participes multum esse constituerunt.

Dig. 39.4.7pr.

Papirius 2 de const.

Imperatores antoninus et verus rescripserunt in vectigalibus ipsa praedia, non personas conveniri et ideo possessores etiam praeteriti temporis vectigal solvere debere eoque exemplo actionem, si ignoraverint, habituros.

Dig. 39.4.7.1

Papirius 2 de const.

Item rescripserunt pupillo remittere se poenam commissi, si intra diem trigensimum vectigal intulisset.

Dig. 39.4.8pr.

Papinianus 13 resp.

Fraudati vectigalis crimen ad heredem eius, qui fraudem contraxit, commissi ratione transmittitur.

Dig. 39.4.8.1

Papinianus 13 resp.

Sed si unus ex pluribus heredibus rem communem causa vectigalis subripiat, portiones ceteris non auferuntur.

Dig. 39.4.9pr.

Paulus 5 sent.

Locatio vectigalium, quae calor licitantis ultra modum solitae conductionis inflavit, ita demum admittenda est, si fideiussores idoneos et cautionem is qui licitatione vicerit offerre paratus sit.

Dig. 39.4.9.1

Paulus 5 sent.

Ad conducendum vectigal invitus nemo compellitur et ideo impleto tempore conductionis elocanda sunt.

Dig. 39.4.9.2

Paulus 5 sent.

Reliquatores vectigalium ad iterandam conductionem, antequam superiori conductioni satisfaciant, admittendi non sunt.

Dig. 39.4.9.3

Paulus 5 sent.

Debitores fisci itemque rei publicae vectigalia conducere prohibentur, ne ex alia causa eorum debita onerentur: nisi forte tales fideiussores optulerint, qui debitis eorum satisfacere parati sint.

Dig. 39.4.9.4

Paulus 5 sent.

Soci vectigalium si separatim partes administrent, alter ab altero minus idoneo in se portionem transferri iure desiderat.

Dig. 39.4.9.5

Paulus 5 sent.

Quod illicite publice privatimque exactum est, cum altero tanto passis iniuriam exsolvitur. per vim vero extortum cum poena tripli restituitur: amplius extra ordinem plectuntur: alterum enim utilitas privatorum, alterum vigor publicae disciplinae postulat.

Dig. 39.4.9.6

Paulus 5 sent.

Earum rerum vectigal, quarum numquam praestitum est, praestari non potest: quod si praestari consuetum indiligentia publicani omiserat, alius exercere non prohibetur.

Dig. 39.4.9.7

Paulus 5 sent.

Res exercitui paratas praestationi vectigalium subici non placuit.

Dig. 39.4.9.8

Paulus 5 sent.

Fiscus ab omnium vectigalium praestationibus immunis est. mercatores autem, qui de fundis fiscalibus mercari consuerunt, nullam immunitatem solvendi publici vectigalis usurpare possunt.

Dig. 39.4.10pr.

Hermogenianus 5 epit.

Vectigalia sine imperatorum praecepto neque praesidi neque curatori neque curiae constituere nec praecedentia reformare et his vel addere vel deminuere licet.

Dig. 39.4.10.1

Hermogenianus 5 epit.

Non solutis vectigalium pensionibus pellere conductores necdum etiam tempore conductionis completo vel ab his usuras ex mora exigere permittitur.

Dig. 39.4.11pr.

Paulus 5 sent.

Cotem ferro subigendo necessariam hostibus quoque venundari, ut ferrum et frumentum et sales, non sine periculo capitis licet.

Dig. 39.4.11.1

Paulus 5 sent.

Agri publici, qui in perpetuum locantur, a curatore sine auctoritate principali revocari non possunt.

Dig. 39.4.11.2

Paulus 5 sent.

Dominus navis si illicite aliquid in nave vel ipse vel vectores imposuerint, navis quoque fisco vindicatur: quod si absente domino id a magistro vel gubernatore aut proreta nautave aliquo id factum sit, ipsi quidem capite puniuntur commissis mercibus, navis autem domino restituitur.

Dig. 39.4.11.3

Paulus 5 sent.

Illicitarum mercium persecutio heredem quoque adfligit.

Dig. 39.4.11.4

Paulus 5 sent.

Eam rem, quae commisso vindicata est, dominus emere non prohibetur vel per se vel per alios quibus hoc mandaverit.

Dig. 39.4.11.5

Paulus 5 sent.

Qui maximos fructus ex redemptione vectigalium consequuntur, si postea tanto locari non possunt, ipsi ea prioribus pensionibus suscipere compelluntur.

Dig. 39.4.12pr.

Ulpianus 38 ad ed.

Quantae audaciae, quantae temeritatis sint publicanorum factiones, nemo est qui nesciat. idcirco praetor ad compescendam eorum audaciam hoc edictum proposuit:

Dig. 39.4.12.1

Ulpianus 38 ad ed.

" quod familia publicanorum furtum fecisse dicetur, item si damnum iniuria fecerit et id ad quos ea res pertinet non exhibetur: in dominum sine noxae deditione iudicium dabo".

Dig. 39.4.12.2

Ulpianus 38 ad ed.

Familiae autem appellatione hic servilem familiam contineri sciendum est. sed et si bona fide publicano alienus servus servit, aeque continebitur: fortassis et mala fide, plerumque enim vagi servi et fugitivi in huiusmodi operis etiam a scientibus habentur. ergo et si homo liber serviat, hoc edictum locum habet.

Dig. 39.4.12.3

Ulpianus 38 ad ed.

Publicani autem dicuntur, qui publica vectigalia habent conducta.

Dig. 39.4.13pr.

Gaius 13 ad ed. provinc.

Sed et hi, qui salinas et cretifodinas et metalla habent, publicanorum loco sunt.

Dig. 39.4.13.1

Gaius 13 ad ed. provinc.

Praeterea et si quis vectigal conductum a re publica cuiusdam municipii habet, hoc edictum locum habet.

Dig. 39.4.13.2

Gaius 13 ad ed. provinc.

Sive autem vendidit servum vel manumisit vel etiam fugit servus, tenebitur servi nomine, qui tam factiosam familiam habuit.

Dig. 39.4.13.3

Gaius 13 ad ed. provinc.

Quid tamen, si servus decesserit? videndum, an publicanus teneatur quasi facti sui nomine: sed puto, quia facultatem non habet exhibendi nec dolus eius intercessit, debere eum liberari.

Dig. 39.4.13.4

Gaius 13 ad ed. provinc.

Hanc actionem perpetuam dabimus et heredi ceterisque successoribus.

Dig. 39.4.14

Ulpianus 8 disp.

Commissa vectigalium nomine etiam ad heredem transmittuntur. nam quod commissum est, statim desinit eius esse qui crimen contraxit dominiumque rei vectigali adquiritur: eapropter commissi persecutio sicut adversus quemlibet possessorem, sic et adversus heredem competit.

Dig. 39.4.15

Alfenus 7 Dig.

Caesar cum insulae cretae cotorias locaret, legem ita dixerat: " ne quis praeter redemptorem post idus martias cotem ex insula creta fodito neve eximito neve avellito". cuiusdam navis onusta cotibus ante idus martias ex portu cretae profecta vento relata in portum erat, deinde iterum post idus martias profecta erat. consulebatur, num contra legem post idus martias ex insula creta cotes exisse viderentur. respondit, tametsi portus quoque, qui insulae essent, omnes eius insulae esse viderentur, tamen eum, qui ante idus martias profectus ex portu esset et relatus tempestate in insulam deductus esset, si inde exisset non videri contra legem fecisse, praeterea quod iam initio evectae cotes viderentur, cum et ex portu navis profecta esset.

Dig. 39.4.16pr.

Marcianus l.S. de delator.

Interdum nec vendendus est is servus qui in commissum cecidit, sed pro eo aestimatio a domino danda est. divi enim severus et antoninus rescripserunt, cum is servus, qui actum domini gessisse diceretur, in commissum cecidisset, venire non debuisse, sed pro eo viri boni arbitratu aestimationem oportuisse dari.

Dig. 39.4.16.1

Marcianus l.S. de delator.

Idem autem eadem epistula rescripserunt, si quis inprofessus servus fuerit et probabitur in commissum cecidisse, et aut uxorem corrupisse domini dicatur aut aliud quid gravius admisisse, ut cognoscat procurator et, si in his causis esse compertus sit, aestimetur et ad poenam domino tradatur.

Dig. 39.4.16.2

Marcianus l.S. de delator.

Idem divi severus et antoninus rescripserunt mancipiis commissis res peculiares non esse in eadem causa nisi hoc, quod proprio nomine in causam commissi incidit.

Dig. 39.4.16.3

Marcianus l.S. de delator.

Quotiens quis mancipia invecta professus non fuerit sive venalia sive usualia, poena commissi est, si tamen novicia mancipia fuerint, non etiam veterana. sunt autem veterana, quae anno continuo in urbe servierint: novicia autem mancipia intelleguntur, quae annum nondum servierint.

Dig. 39.4.16.4

Marcianus l.S. de delator.

Servi, qui in fuga sunt, in commissum non cadunt, cum sine voluntate domini fines egressi sunt: et ita principalibus constitutionibus cavetur, sicut divus quoque pius saepissime rescripsit, ne, inquit, in potestate servorum sit invitis vel ignorantibus dominis fugae se tradendo potestati dominorum se subtrahere.

Dig. 39.4.16.5

Marcianus l.S. de delator.

Licet quis se ignorasse dicat, nihilo minus eum in poenam vectigalis incidere divus hadrianus constituit.

Dig. 39.4.16.6

Marcianus l.S. de delator.

Divi quoque marcus et commodus rescripserunt non imputari publicano, quod non instruxit transgredientem: sed illud custodiendum, ne decipiat profiteri volentes.

Dig. 39.4.16.7

Marcianus l.S. de delator.

Species pertinentes ad vectigal: cinnamomum: piper longum: piper album: folium pentasphaerum: folium barbaricum: costum: costamomum: nardi stachys: cassia turiana: xylocassia: smurna: amomum: zingiberi: malabathrum: aroma indicum: chalbane: laser: alche: lucia: sargogalla: onyx arabicus: cardamomum: xylocinnamomum: opus byssicum: pelles babylonicae: pelles parthicae: ebur: ferrum indicum: carpasum: lapis universus: margarita: sardonyx: ceraunium: hyacinthus: smaragdus: adamas: saffirinus: callainus: beryllus: chelyniae: opia indica vel adserta: metaxa: vestis serica vel subserica: vela tincta carbasea: nema sericum: spadones indici: leones, leaenae: pardi: leopardi: pantherae: purpura: item marocorum lana: fucus: capilli indici.

Dig. 39.4.16.8

Marcianus l.S. de delator.

Si propter necessitatem adversae tempestatis expositum onus fuerit, non debere hoc commisso vindicari divi fratres rescripserunt.

Dig. 39.4.16.9

Marcianus l.S. de delator.

Divus quoque pius rescripsit, cum quidam intra legitimam aetatem esse dicebat et usus causa mancipia duxisset et in sola professione errasset, ignoscendum esse ei.

Dig. 39.4.16.10

Marcianus l.S. de delator.

Divi quoque fratres rescripserunt, cum quidam non per fraudem, sed per errorem in causam commissi incidisset, ut duplo vectigali contenti publicani servos restituant.

Dig. 39.4.16.11

Marcianus l.S. de delator.

Magnus antoninus rescripsit, si colonus vel servi domini praedii ferrum illicite in praedio fecerint ignorante domino, nulla poena dominum teneri.

Dig. 39.4.16.12

Marcianus l.S. de delator.

Si quis professus apud publicanum fuerit, non tamen vectigal solverit, hoc concedente publicano, ut solent facere, divi seversus et antoninus rescripserunt res in commissum non cadere: cum enim, inquiunt, professiones recitantur, commissum cessat, cum poterit satisfieri fisco ex bonis publicanorum vel fideiussorum.

Dig. 39.4.16.13

Marcianus l.S. de delator.

Poenae ab heredibus peti non possunt, si non est quaestio mota vivo eo qui deliquit: et hoc sicut in ceteris poenis, ita et in vectigalibus est.

Dig. 39.4.16.14

Marcianus l.S. de delator.

Si quid autem indebitum per errorem solventis publicanus accepit, retro eum restituere oportere divi severus et antoninus rescripserunt.

Dig. 39.5.0. De donationibus.

Dig. 39.5.1pr.

Iulianus 17 Dig.

Donationes complures sunt. dat aliquis ea mente, ut statim velit accipientis fieri nec ullo casu ad se reverti, et propter nullam aliam causam facit, quam ut liberalitatem et munificentiam exerceat: haec proprie donatio appellatur. dat aliquis, ut tunc demum accipientis fiat, cum aliquid secutum fuerit: non proprie donatio appellabitur, sed totum hoc donatio sub condicione est. item cum quis ea mente dat, ut statim quidem faciat accipientis, si tamen aliquid factum fuerit aut non fuerit, velit ad se reverti, non proprie donatio dicitur, sed totum hoc donatio est, quae sub condicione solvatur. qualis est mortis causa donatio.

Dig. 39.5.1.1

Iulianus 17 Dig.

Igitur cum dicimus inter sponsum et sponsam donationem valere, propria appellatione utimur et factum demonstramus, quod ab eo proficiscitur, qui liberalitatis gratia aliquid dat, ut confestim faciat accipientis nec umquam ullo facto ad se reverti velit. cum vero dicimus, si hac mente donat sponsus sponsae, ut nuptiis non secutis res auferatur, posse repeti, non contrarium priori dicimus, sed concedimus inter eas personas fieri donationem eam, quae sub condicione solvatur.

Dig. 39.5.2pr.

Iulianus 60 Dig.

Si, cum filius familias pecuniam donare vellet, patris iussu eam promisit, valet donatio, perinde ac si fideiussorem dedisset.

Dig. 39.5.2.1

Iulianus 60 Dig.

Si vero pater donaturus titio pecuniam iusserit filium suum eam promittere, poterit dici interesse, debitor filius patri suo fuerit nec ne: nam si tantumdem filius patri debuit, quantum promisit, valere donatio intellegitur, perinde ac si quemlibet alium debitorem pater iussisset pecuniam promittere.

Dig. 39.5.2.2

Iulianus 60 Dig.

Cum vero ego titio pecuniam donaturus te, qui mihi tantundem donare volebas, iussero titio promittere, inter omnes personas donatio perfecta est.

Dig. 39.5.2.3

Iulianus 60 Dig.

Aliud iuris erit, si pecuniam, quam me tibi debere existimabam, iussu tuo spoponderim ei cui donare volebas: exceptione enim doli mali tueri me potero et praeterea incerti condictione stipulatorem compellam, ut mihi acceptum faciat stipulationem.

Dig. 39.5.2.4

Iulianus 60 Dig.

Item si ei, quem creditorem tuum putabas, iussu tuo pecuniam, quam me tibi debere existimabam, promisero, petentem doli mali exceptione summovebo et amplius incerti agendo cum stipulatore consequar, ut mihi acceptum faciat stipulationem.

Dig. 39.5.2.5

Iulianus 60 Dig.

Si pecuniam mihi titius dederit absque ulla stipulatione, ea tamen condicione, ut tunc demum mea fieret, cum seius consul factus esset: sive furente eo sive mortuo seius consulatum adeptus fuerit, mea fiet.

Dig. 39.5.2.6

Iulianus 60 Dig.

Sed si quis donaturus mihi pecuniam dederit alicui, ut ad me perferret, et ante mortuus erit quam ad me perferat, non fieri pecuniam dominii mei constat.

Dig. 39.5.2.7

Iulianus 60 Dig.

Titio ^ tertio^ decem donavi ea condicione, ut inde stichum sibi emeret: quaero, cum homo antequam emeretur mortuus sit, an aliqua actione decem recipiam. respondit ^ respondi^: facti magis quam iuris quaestio est: nam si decem titio in hoc dedi, ut stichum emeret, aliter non daturus, mortuo sticho condictione repetam: si vero alias quoque donaturus titio decem, quia interim stichum emere proposuerat, dixerim in hoc me dare, ut stichum emeret, causa magis donationis quam condicio dandae pecuniae existimari debebit et mortuo sticho pecunia apud titium remanebit.

Dig. 39.5.3

Ulpianus 76 ad ed.

Et generaliter hoc in donationibus definiendum est multum interesse, causa donandi fuit an condicio: si causa fuit, cessare repetitionem, si condicio, repetitioni locum fore.

Dig. 39.5.4

Pomponius 17 ad sab.

Etiam per interpositam personam donatio consummari potest.

Dig. 39.5.5

Ulpianus 32 ad sab.

Affectionis gratia neque honestae neque inhonestae donationes sunt prohibitae, honestae erga bene merentes amicos vel necessarios, inhonestae circa meretrices.

Dig. 39.5.6

Ulpianus 42 ad sab.

Qui saxum mihi eximere de suo permisit donationis causa, statim cum lapis exemptus est meus fit, neque prohibendo me evehere efficit, ut meus esse desinat, quia quodammodo traditione meus factus est: plane si mercennarius meus exemit, mihi exemit. sed si is qui a me emerat sive mercede conduxerat, ut paterer eum sibi iure eximere, si antequam eximat, me paenituerit, meus lapis durat, si postea, ipsius factum avocare non possum: quasi traditio enim facta videtur, cum eximitur domini voluntate. quod in saxo est, idem erit etiam, si in arbore caesa vel dempta acciderit.

Dig. 39.5.7pr.

Ulpianus 44 ad sab.

Filius familias donare non potest, neque si liberam peculii administrationem habeat: non enim ad hoc ei conceditur, libera peculii administratio, ut perdat.

Dig. 39.5.7.1

Ulpianus 44 ad sab.

Quid ergo, si iusta ratione motus donet, numquid possit dici locum esse donationi? quod magis probabitur.

Dig. 39.5.7.2

Ulpianus 44 ad sab.

Item videamus, si quis filio familias liberam peculii administrationem concesserit, ut nominatim adiceret sic se ei concedere, ut donare quoque possit, an locum habeat donatio: et non dubito donare quoque eum posse.

Dig. 39.5.7.3

Ulpianus 44 ad sab.

Nonnumquam etiam ex persona poterit hoc colligi: pone enim filium esse senatoriae vel cuius alterius dignitatis: quare non dicas videri patrem, nisi ei specialiter donandi facultatem ademit, hoc quoque concessisse, dum liberam dat peculii administrationem?

Dig. 39.5.7.4

Ulpianus 44 ad sab.

Pari autem ratione, qua donare filius familias prohibetur, etiam mortis causa donare prohibebitur: quamvis enim ex patris voluntate mortis quoque causa donare possit, attamen ubi cessat voluntas, inhibebitur haec quoque donatio.

Dig. 39.5.7.5

Ulpianus 44 ad sab.

Sed enim meminisse oportebit, si cui donare quoque permissum est, nisi specialiter etiam mortis causa donare fuerit permissum, non posse mortis causa donare.

Dig. 39.5.7.6

Ulpianus 44 ad sab.

Haec omnia locum habebunt in paganis: ceterum qui habent castrense peculium vel quasi castrense, in ea condicione sunt, ut donare et mortis causa et non mortis causa possint, cum testamenti factionem habeant.

Dig. 39.5.8

Paulus 15 ad sab.

Quae liberti imposita libertatis causa praestant, ea non donantur: res enim pro his intercessit.

Dig. 39.5.9pr.

Pomponius 33 ad sab.

In aedibus alienis habitare gratis donatio videtur: id enim ipsum capere videtur qui habitat, quod mercedem pro habitatione non solvit. potest enim et citra corporis donationem valere donatio, veluti ^ velut^ si donationis causa cum debitore meo paciscar, ne ante certum tempus ab eo petam.

Dig. 39.5.9.1

Pomponius 33 ad sab.

Ex rebus donatis fructus perceptus in rationem donationis non computatur: si vero non fundum, sed fructus perceptionem tibi donem, fructus percepti venient in computationem donationis.

Dig. 39.5.9.2

Pomponius 33 ad sab.

Quod filius familias patris iussu aut voluntate donavit, perinde est, ac si pater ipse donaverit aut si mea voluntate rem meam tu nomine tuo titio dones.

Dig. 39.5.9.3

Pomponius 33 ad sab.

Donari non potest, nisi quod eius fit, cui donatur.

Dig. 39.5.10

Paulus 15 ad sab.

Absenti, sive mittas qui ferat, sive quod ipse habeat sibi habere eum iubeas, donari recte potest. sed si nescit rem quae apud se est sibi esse donatam, vel missam sibi non acceperit, donatae rei dominus non fit, etiamsi per servum eius cui donabatur missa fuerit, nisi ea mente servo eius data fuerit, ut statim eius fiat.

Dig. 39.5.11

Gaius 3 de legatis ad ed. pu.

Cum de modo donationis quaeritur, neque partus nomine neque fructuum neque pensionum neque mercedum ulla donatio facta esse videtur.

Dig. 39.5.12

Ulpianus 3 disp.

Qui ex donatione se obligavit, ex rescripto divi pii in quantum facere potest convenitur. sed enim id, quod creditoribus debetur, erit detrahendum: haec vero, de quibus ex eadem causa quis obstrictus est, non debebit detrahere.

Dig. 39.5.13

Ulpianus 7 disp.

Qui mihi donatum volebat, servo communi meo et titii rem tradidit: servus vel sic accepit quasi socio adquisiturus vel sic quasi mihi et socio: quaerebatur quid ageret. et placet, quamvis servus hac mente acceperit, ut socio meo vel mihi et socio adquirat, mihi tamen adquiri: nam et si procuratori meo hoc animo rem tradiderit, ut mihi adquirat, ille quasi sibi adquisiturus acceperit, nihil agit in sua persona, sed mihi adquirit.

Dig. 39.5.14

Iulianus 17 Dig.

Qui alienum fundum donationis causa excolit, nullam retentionem propter impensas faciet, quia domini res ab eo iniectas continuo efficit.

Dig. 39.5.15

Marcianus 3 inst.

Post contractum capitale crimen donationes factae non valent ex constitutione divorum severi et antonini, nisi condemnatio secuta sit.

Dig. 39.5.16

Ulpianus 2 resp.

Ex hac scriptura: " sciant heredes mei me vestem universam ac res ceteras, quascumque in diem mortis meae mecum habui, illi et illi libertis meis vivum donasse" dominium ad libertos benigna interpretatione pertinere.

Dig. 39.5.17

Ulpianus 58 ad ed.

Si in stipulatum iudicatum novationis causa deductum sit et stipulatio donationis causa accepto lata, dicendum est locum liberationem habere.

Dig. 39.5.18pr.

Ulpianus 71 ad ed.

Aristo ait, cum mixtum sit negotium cum donatione, obligationem non contrahi eo casu, quo donatio est, et ita et pomponius eum existimare refert.

Dig. 39.5.18.1

Ulpianus 71 ad ed.

Denique refert aristonem putare, si servum tibi tradidero ad hoc, ut eum post quinquennium manumittas, non posse ante quinquennium agi, quia donatio aliqua inesse videtur: aliter atque, inquit, si ob hoc tibi tradidissem, ut continuo manumittas: hic enim nec donationi locum esse et ideo esse obligationem. sed et superiore casu quid acti sit, inspiciendum pomponius ait: potest enim quinquennium non ad hoc esse positum, ut aliquid donetur.

Dig. 39.5.18.2

Ulpianus 71 ad ed.

Idem aristo ait, si donationis causa in hoc tradatur servus, ut post quinquennium manumittatur, sit autem alienus, posse dubitari an usucapiatur, quia aliquid donationis interveniret. et hoc genus quaestionis in mortis causa donationibus versari pomponius ait et magis putat ut, si ita donetur, ut post quinquennium manumittatur, posse dici usucapionem sequi.

Dig. 39.5.18.3

Ulpianus 71 ad ed.

Labeo ait, si quis mihi rem alienam donaverit inque eam sumptus magnos fecero et sic mihi evincatur, nullam mihi actionem contra donatorem competere: plane de dolo posse me adversus eum habere actionem, si dolo fecit.

Dig. 39.5.19pr.

Ulpianus 76 ad ed.

Hoc iure utimur, ut in rebus publicis, cum de donatione quaeritur, illud solum spectetur, utrum ob causam aliquam iustam rei publicae promittat quis vel polliceatur an non, ut, si ob honorem aliquem promittat, teneatur, si minus, non.

Dig. 39.5.19.1

Ulpianus 76 ad ed.

Labeo scribit extra causam donationum esse talium officiorum mercedes ut puta: si tibi adfuero, si satis pro te dedero, si qualibet in re opera vel gratia mea usus fueris.

Dig. 39.5.19.2

Ulpianus 76 ad ed.

Non potest liberalitas nolenti adquiri.

Dig. 39.5.19.3

Ulpianus 76 ad ed.

Si quis dederit pecuniam mutuam titio reddendam seio, cui donatum volebat, deinde titius mortuo donatore seio dedisse proponatur, erit consequens dicere pecuniam seii fieri, sive mortuum scivit sive ignoravit is qui dabat, quia pecunia fuit dantis: sed si quidem ignoravit mortuum, erit liberatus, si sic mutuam pecuniam accepit solvendam seio. si autem mandavero tibi, ut pecuniam titio des, cui donare volebam, et tu ignorans me mortuum hoc feceris, habebis adversus heredes meos mandati actionem: si sciens, non habebis.

Dig. 39.5.19.4

Ulpianus 76 ad ed.

Si quis servo pecuniam crediderit, deinde is liber factus eam expromiserit, non erit donatio, sed debiti solutio. idem in pupillo, qui sine tutoris auctoritate debuerit, dicendum est, si postea tutore auctore promittat.

Dig. 39.5.19.5

Ulpianus 76 ad ed.

Sed et hae stipulationes, quae ob causam fiunt, non habent donationem.

Dig. 39.5.19.6

Ulpianus 76 ad ed.

Denique pegasus putabat, si tibi centum spopondero hac condicione, si iurasses te nomen meum laturum, non esse donationem, quia ob rem facta est, res secuta est.

Dig. 39.5.20pr.

Marcellus 22 Dig.

Si patronus ex debita parte heres instituatur et libertus fidei eius commisit, ut quid daret, et hoc stipulanti fideicommissario promiserit, non erit cogendus solvere, ne pars ex legibus verecundiae patronali debita minuatur.

Dig. 39.5.20.1

Marcellus 22 Dig.

De illo dubitari potest, qui, quod per falcidiam retinere poterat, voluntatem testatoris secutus spopondit se daturum: sed magis est, ut non possit suae confessioni obviare. quemadmodum enim, si solvisset, fidem testatori suo adimplesse videbatur et nulla ei repetitio concessa fuerat, ita et stipulatione procedente contra fidem testatoris, quam adgnovit, venienti ei merito occurretur.

Dig. 39.5.21pr.

Celsus 28 Dig.

Ut mihi donares, creditori meo delegante me promisisti: factum valet, ille enim suum recepit.

Dig. 39.5.21.1

Celsus 28 Dig.

Sed si debitorem meum tibi donationis immodicae causa promittere iussi, an summoveris donationis exceptione necne, tractabitur. et meus quidem debitor exceptione te agentem repellere non potest, quia perinde sum, quasi exactam a debitore meo summam tibi donaverim et tu illam ei credideris. sed ego, si quidem pecuniae a debitore meo nondum solutae sint, habeo adversus debitorem meum rescissoriam in id, quod supra legis modum tibi promisit ita, ut in reliquum tantummodo tibi maneat obligatus: sin autem pecunias a debitore meo exegisti, in hoc, quod modum legis excedit, habeo contra te condictionem.

Dig. 39.5.22

Modestinus 8 diff.

Eum, qui donationis causa pecuniam vel quid aliud promisit, de mora solutionis pecuniae usuras non debere, summae aequitatis est, maxime cum in bonae fidei contractibus donationis species non deputetur.

Dig. 39.5.23pr.

Modestinus 15 resp.

Modestinus respondit creditorem futuri temporis usuras et remittere et minuere pacto posse nec in ea donatione ex summa quantitatis aliquid vitii incurrere.

Dig. 39.5.23.1

Modestinus 15 resp.

Modestinus respondit mente captum donare non posse.

Dig. 39.5.24

Iavolenus 14 ex cass.

Fideiussori eius, qui donationis causa pecuniam supra modum legis promisit, exceptio dari debet etiam invito reo, ne, si forte reus solvendo non fuerit, pecuniam fideiussor amittat.

Dig. 39.5.25

Iavolenus 6 epist.

Si tibi dederim rem, ut titio meo nomine donares, et tu tuo nomine eam ei dederis, an factam eius putes? respondit, si rem tibi dederim, ut titio meo nomine donares eamque tu tuo nomine ei dederis, quantum ad iuris suptilitatem accipientis facta non est et tu furti obligares: sed benignius est, si agam contra eum qui rem accepit, exceptione doli mali me summoveri.

Dig. 39.5.26

Pomponius 4 ad q. muc.

Nuda ratio non facit aliquem debitorem: ut puta quod donare libero homini volumus licet referamus in rationes nostras debere nos, tamen nulla donatio intellegitur.

Dig. 39.5.27

Papinianus 29 quaest.

Aquilius regulus iuvenis ad nicostratum rhetorem ita scripsit: " quoniam et cum patre meo semper fuisti et me eloquentia et diligentia tua meliorem reddidisti, dono et permitto tibi habitare in illo cenaculo eoque uti". defuncto regulo controversiam habitationis patiebatur nicostratus et cum de ea re mecum contulisset, dixi posse defendi non meram donationem esse, verum officium magistri quadam mercede remuneratum regulum ideoque non videri donationem sequentis temporis irritam esse. quod si expulsus nicostratus veniat ad iudicem, ad exemplum interdicti, quod fructuario proponitur, defendendus erit quasi loco possessoris constitutus, qui usum cenaculi accepit.

Dig. 39.5.28

Papinianus 3 resp.

Hereditatem pater sibi relictam filiae sui iuris effectae donavit: creditoribus hereditariis filia satisfacere debet, vel, si hoc minime faciat et creditores contra patrem veniant, cogendam eam per actionem praescriptis verbis patrem adversus eos defendere.

Dig. 39.5.29pr.

Papinianus 10 resp.

Donari videtur, quod nullo iure cogente conceditur.

Dig. 39.5.29.1

Papinianus 10 resp.

Quidam in iure interrogatus nihil sibi debere tutoris heredes respondit. eum actionem iure amisisse respondi: licet enim non transactionem, sed donationis haec verba esse quis accipiat, attamen eum, qui in iure confessus est, suam confessionem infirmare non posse.

Dig. 39.5.29.2

Papinianus 10 resp.

Donationem quidem partis bonorum proximae cognatae viventis nullam fuisse constabat: verum ei, qui donavit ac postea iure praetorio successit, quoniam adversus bonos mores et ius gentium festinasset, actiones hereditarias in totum denegandas respondit:

Dig. 39.5.30

Marcianus l.S. de delator.

Nam ei ut indigno aufertur hereditas.

Dig. 39.5.31pr.

Papinianus 12 resp.

Donationes in concubinam collatas non posse revocari convenit nec, si matrimonium inter eosdem postea fuerit contractum, ad irritum reccidere quod ante iure valuit. an autem maritalis honor et affectio pridem praecesserit, personis comparatis, vitae coniunctione considerata perpendendum esse respondi: neque enim tabulas facere matrimonium.

Dig. 39.5.31.1

Papinianus 12 resp.

Species extra dotem a matre filiae nomine viro traditas filiae quae praesens fuit donatas et ab ea viro traditas videri respondi nec matrem offensam repetitionem habere vel eas recte vindicare, quod vir cavisset extra dotem usibus puellae sibi traditas, cum ea significatione non modus donationis declaretur nec ab usu proprietas separetur, sed peculium a dote puellae distingueretur. iudicem tamen aestimaturum, si mater iure contra filiam offensa eas revocare velit, et verecundiae maternae congruam bonique viri arbitrio competentem ferre sententiam.

Dig. 39.5.31.2

Papinianus 12 resp.

Pater, qui filiae, quam habuit in potestate, mancipia donavit et peculium emancipatae non ademit, ex post facto donationem videbatur perfecisse.

Dig. 39.5.31.3

Papinianus 12 resp.

Eiusmodi lege deposita in aede arca, ut eam ipse solus qui deposuit tolleret aut post mortem domini aelius speratus, non videri celebratam donationem respondi.

Dig. 39.5.31.4

Papinianus 12 resp.

Ratae donationes esse non possunt post crimen perduellionis contractum, cum heredem quoque teneat, etsi nondum postulatus vita decesserit.

Dig. 39.5.32

Scaevola 5 resp.

Lucius titius epistulam talem misit: " ille illi salutem. hospitio illo quamdiu volueris utaris superioribus diaetis omnibus gratuito, idque te ex voluntate mea facere hac epistula notum tibi facio": quaero an heredes eius habitatione eum prohibere possunt. respondit secundum ea quae proponerentur, heredes eius posse mutare voluntatem.

Dig. 39.5.33pr.

Hermogenianus 6 iuris epit.

Qui id, quod ex causa donationis stipulanti spoponderat, solvi constituit, actione constitutae pecuniae non in solidum, sed in quantum facere potest convenitur: causam enim et originem constitutae pecuniae, non iudicii potestatem praevalere placuit. sed et condemnatus ex causa donationis in actione iudicati non frustra desiderat in quantum facere potest conveniri.

Dig. 39.5.33.1

Hermogenianus 6 iuris epit.

Ea lege donationis causa pecunia titio numerata, ut statim donatori mutuo detur, non impeditur dominii translatio: ac propterea isdem nummis donatori creditis novum dominium in his quaeritur.

Dig. 39.5.33.2

Hermogenianus 6 iuris epit.

Mutus et surdus donare non prohibentur.

Dig. 39.5.33.3

Hermogenianus 6 iuris epit.

Si, cum primus tibi donare vellet et tu donandi secundo voluntatem haberes, primus secundo ex voluntate tua stipulanti promiserit, perficitur donatio et, quia nihil primus secundo, a quo convenitur, donavit, et quidem in solidum, non in id quod facere potest condemnatur. idque custoditur et si delegante eo, qui donationem erat accepturus, creditori eius donator promiserit: et hoc enim casu creditor suum negotium gerit.

Dig. 39.5.34pr.

Paulus 5 sent.

Si pater emancipati filii nomine donationis animo pecuniam faeneravit eamque filius stipulatus est, ipso iure perfectam donationem ambigi non potest.

Dig. 39.5.34.1

Paulus 5 sent.

Si quis aliquem a latrunculis vel hostibus eripuit et aliquid pro eo ab ipso accipiat, haec donatio inrevocabilis est: non merces eximii laboris appellanda est, quod contemplatione salutis certo modo aestimari non placuit.

Dig. 39.5.35pr.

Scaevola 31 Dig.

Ad eum, quem manumiserat, epistulam misit in haec verba: " titius sticho liberto suo salutem. cum te manumiserim, peculium quoque tuum omne, quidquid habes tam in nominibus quam in rebus moventibus sive in numerato, me tibi concedere hac epistula manu mea scripta notum tibi facio". eundem libertum testamento ex besse scripsit heredem, sempronium ex triente: nec peculium sticho legavit nec actiones praestari iussit. quaesitum est, utrum in assem sticho actio detur eorundem nominum, quae in peculio habuit, an utrisque heredibus pro portionibus hereditariis. respondit secundum ea quae proponerentur utrisque heredibus pro hereditariis portionibus competere.

Dig. 39.5.35.1

Scaevola 31 Dig.

Lucius titius fundum maeviae donavit et ante traditionem eundem fundum post dies paucos seio pignori obligavit et intra dies triginta maeviam in vacuam possessionem eiusdem fundi induxit: quaero, an donatio perfecta sit.

respondit secundum ea quae proponerentur perfectam: verum creditorem firmam pignoris obligationem habere.

Dig. 39.5.35.2

Scaevola 31 Dig.

Avia sub nomine labeonis nepotis sui mutuam pecuniam dedit, et usuras semper cepit et instrumenta debitorum a labeone recepit, quae in hereditate eius inventa sunt: quaero, an donatio perfecta esse videatur. respondit, cum debitor labeoni obligatus est, perfectam donationem esse.

Dig. 39.6.0. De mortis causa donationibus et capionibus.

Dig. 39.6.1pr.

Marcianus 9 inst.

Mortis causa donatio est, cum quis habere se vult quam eum cui donat magisque eum cui donat quam heredem suum.

Dig. 39.6.1.1

Marcianus 9 inst.

Sic et apud homerum telemachus donat piraeo.

Dig. 39.6.2

Ulpianus 32 ad sab.

Iulianus libro septimo decimo digestorum tres esse species mortis causa donationum ait, unam, cum quis nullo praesentis periculi metu conterritus, sed sola cogitatione mortalitatis donat. aliam esse speciem mortis causa donationum ait, cum quis imminente periculo commotus ita donat, ut statim fiat accipientis. tertium genus esse donationis ait, si quis periculo motus non sic det, ut statim faciat accipientis, sed tunc demum, cum mors fuerit insecuta.

Dig. 39.6.3

Paulus 7 ad sab.

Mortis causa donare licet non tantum infirmae valetudinis causa, sed periculi etiam propinquae mortis vel ab hoste vel a praedonibus vel ab hominis potentis crudelitate aut odio aut navigationis ineundae:

Dig. 39.6.4

Gaius 1 rer. cott. sive aur.

Aut per insidiosa loca iturus.

Dig. 39.6.5

Ulpianus 2 inst.

Aut aetate fessus:

Dig. 39.6.6

Paulus 7 ad sab.

Haec enim omnia instans periculum demonstrant.

Dig. 39.6.7

Ulpianus 32 ad sab.

Si aliquis mortis causa donaverit et poena fuerit capitis affectus, removetur donatio ut imperfecta, quamvis ceterae donationes sine suspicione poenae factae valeant.

Dig. 39.6.8pr.

Ulpianus 7 ad sab.

Qui pretio accepto hereditatem praetermisit, sive ad substitutum perventura sit hereditas, sive ab eo ab intestato successurus, mortis causa capere videtur: nam quidquid propter alicuius mortem obvenit, mortis causa capitur: quam sententiam et iulianus probat et hoc iure utimur. nam et quod a statulibero condicionis implendae causa capitur vel a legatario, mortis causa accipitur: et quod pater dedit propter mortem filii vel cognati, mortis causa capi iulianus scripsit.

Dig. 39.6.8.1

Ulpianus 7 ad sab.

Denique et sic posse donari aut, ut, si convaluerit, recipiatur.

Dig. 39.6.9

Paulus 3 ad sab.

Omnibus mortis causa capere permittitur, qui scilicet et legata accipere possunt.

Dig. 39.6.10

Ulpianus 24 ad sab.

Ei, cui mortis causa donatum est, posse substitui constat in hunc modum, ut promittat alicui, si ipse capere non possit, vel sub alia condicione.

Dig. 39.6.11

Ulpianus 33 ad sab.

Mortis causa filii sui pater recte donare poterit etiam constante matrimonio filii.

Dig. 39.6.12

Ulpianus 44 ad sab.

Si mulier, ventris nomine per calumniam ut in possessionem mitti desideret, pecuniam accepit, forte dum substituto patrocinatur, ut institutum aliqua ratione excludat, mortis causa eam capere iulianus saepius scribit.

Dig. 39.6.13pr.

Iulianus 17 Dig.

Si alienam rem mortis causa donavero eaque usucapta fuerit, verus dominus eam condicere non potest, sed ego, si convaluero.

Dig. 39.6.13.1

Iulianus 17 Dig.

Marcellus notat: in mortis causa donationibus etiam facti quaestiones sunt. nam et sic potest donari, ut omnimodo ex ea valetudine donatore mortuo res non reddatur: et ut reddatur, etiamsi prior ex eadem valetudine donator decesserit, si tamen mutata voluntate restitui sibi voluerit. sed et sic donari potest, ut non aliter reddatur, quam si prior ille qui acceperit decesserit. sic quoque potest donari mortis causa, ut nullo casu sit eius repetitio, id est nec si convaluerit quidem donator.

Dig. 39.6.14

Iulianus 18 Dig.

Si mortis causa donatus fundus est et in eum impensae necessariae atque utiles factae sint, fundum vindicantes doli mali exceptione summoventur, nisi pretium earum restituant.

Dig. 39.6.15

Iulianus 27 Dig.

Marcellus notat: cum testamento relinquendi, cui velint, adepti sint filii familias milites liberam facultatem, credi potest ea etiam remissa, quae donationes mortis causa fieri prohibent. paulus notat: hoc et constitutum est et ad exemplum legatorum mortis causa donationes revocatae sunt.

Dig. 39.6.16

Iulianus 29 Dig.

Mortis causa donatio etiam dum pendet, an convalescere possit donator, revocari potest.

Dig. 39.6.17

Iulianus 47 Dig.

Etsi debitor consilium creditorum fraudandorum non habuisset, avelli res mortis causa ab eo donata debet. nam cum legata ex testamento eius, qui solvendo non fuit, omnimodo inutilia sint, possunt videri etiam donationes mortis causa factae rescindi debere, quia legatorum instar optinent.

Dig. 39.6.18pr.

Iulianus 60 Dig.

Mortis causa capimus non tunc solum, cum quis suae mortis causa nobis donat, sed et si propter alterius mortem id faciat: veluti si quis filio vel fratre suo moriente donet maevio ea condicione, ut, si convaluerit alteruter eorum, reddatur sibi res, si decesserit, maneat apud maevium.

Dig. 39.6.18.1

Iulianus 60 Dig.

Si donaturus mihi mortis causa debitorem tuum creditori meo delegaveris, omnimodo capere videbor tantam pecuniam, quanta a creditore meo liberatus fuero. quod si ab eodem ego stipulatus fuero, eatenus capere existimandus ero, quatenus debitor solvendo fuerit: nam et si convaluisset creditor idemque donator, condictione aut in factum actione debitoris obligationem dumtaxat reciperet.

Dig. 39.6.18.2

Iulianus 60 Dig.

Titia chirographa debitorum suorum septicii et maevii donatura illis ageriae dedit et rogavit eam, ut ea, si decessisset, illis daret, si convaluisset, sibi redderet: morte secuta maevia titiae filia heres extitit: ageria autem, ut rogata erat, chirographa septicio et maevio supra scriptis dedit. quaeritur, si maevia heres summam, quae debebatur ex chirographis supra scriptis, petat vel ipsa chirographa, an exceptione excludi possit? respondit maeviam vel pacti conventi vel doli mali exceptione summoveri posse.

Dig. 39.6.18.3

Iulianus 60 Dig.

Qui hominem noxae nomine vel alias obligatum mortis causa acceperit, tantum cepisse intellegendus est, quanti is homo venire potuisset. idem in fundo qui obligatus est observari poterit, ut pretium excutiatur.

Dig. 39.6.19

Iulianus 80 Dig.

Si filio familias res mortis causa data fuerit et convaluisset, donator actionem de peculio cum patre habet: at si pater familias, cum mortis causa donationem accepisset, in adoptionem se dederit, res ipsa a donatore repetitur. nec huic similis est is, qui rem, quam mortis causa acceperat, alii porro dederit: nam donator huic non rem, sed pretium eius condiceret.

Dig. 39.6.20

Iulianus 1 ad urs. ferocem.

Ei, qui non amplius parte capere poterat, legatus est fundus, si decem dedisset heredi: non totam summam is dare debet, ut partem fundi haberet, sed partem dumtaxat pro rata, qua legatum consequitur.

Dig. 39.6.21

Iulianus 2 ad urs. ferocem.

Eum, qui ut adiret hereditatem pecuniam accepisset, plerique, in quibus priscus quoque, responderunt mortis causa eum capere.

Dig. 39.6.22

Africanus 1 quaest.

In mortis causa donationibus non tempus donationis, sed mortis intuendum est, an quis capere possit.

Dig. 39.6.23

Africanus 2 quaest.

Si filio familias mortis causa donatum sit et vivo donatore moriatur filius, pater vivat, quaesitum est, quid iuris sit. respondit morte filii condictionem competere, si modo ipsi potius filio quam patri donaturus dederit: alioquin, si quasi ministerio eius pater usus sit, ipsius patris mortem spectandam esse. idque iuris fore et si de persona servi quaeratur.

Dig. 39.6.24

Africanus 9 quaest.

Quod debitori acceptum factum esset mortis causa, si convaluerit donator, etiam tempore liberato ei potest condici: namque acceptilatione interveniente abitum ab iure pristinae obligationis eamque in huius condictionis transfusam.

Dig. 39.6.25pr.

Marcianus 9 inst.

Tam is qui testamentum facit quam qui non facit mortis causa donare potest.

Dig. 39.6.25.1

Marcianus 9 inst.

Filius familias, qui non potest facere testamentum nec voluntate patris, tamen mortis causa donare patre permittente potest.

Dig. 39.6.26

Marcianus 2 reg.

Si qui invicem sibi mortis causa donaverunt pariter decesserunt, neutrius heres repetet, quia neuter alteri supervixit. idem iuris est, si pariter maritus et uxor sibi donaverunt.

Dig. 39.6.27

Marcianus 5 reg.

Ubi ita donatur mortis causa, ut nullo casu revocetur, causa donandi magis est quam mortis causa donatio: et ideo perinde haberi debet atque alia quaevis inter vivos donatio. ideoque inter viros et uxores non valet et ideo nec falcidia locum habet quasi in mortis causa donatione.

Dig. 39.6.28

Marcellus l.S. resp.

Avunculo suo debitori mortis causa donaturus quae debebat ita scripsit tabulae vel chirographum tot ubicumque sunt, inanes esse neque eum solvere debere: quaero, an heredes, si pecuniam ab avunculo defuncti petant, exceptione doli mali tueri se possint. Marcellus respondit posse: nimirum enim contra voluntatem defuncti heres petit ab eo.

Dig. 39.6.29

Ulpianus 17 ad ed.

Si mortis causa res donata est et convaluit qui donavit, videndum, an habeat in rem actionem. et si quidem quis sic donavit, ut, si mors contigisset, tunc haberet cui donatum est, sine dubio donator poterit rem vindicare: mortuo eo tunc is cui donatum est. si vero sic, ut iam nunc haberet, redderet, si convaluisset vel de proelio vel peregre redisset, potest defendi in rem competere donatori, si quid horum contigisset, interim autem ei cui donatum est. sed et si morte praeventus sit is cui donatum est, adhuc quis dabit in rem donatori.

Dig. 39.6.30

Ulpianus 21 ad ed.

Qui mortis causa donavit, ipse ex paenitentia condictionem vel utilem actionem habet.

Dig. 39.6.31pr.

Gaius 8 ad ed. provinc.

Mortis causa capitur, cum propter mortem alicuius capiendi occasio obvenit, exceptis his capiendi figuris quae proprio nomine appellantur. certe enim et qui hereditario aut legati aut fideicommissi iure capit, ex morte alterius nanciscitur capiendi occasionem, sed quia proprio nomine hae species capiendi appellantur, ideo ab hac definitione separantur.

Dig. 39.6.31.1

Gaius 8 ad ed. provinc.

Iuliano placet, licet solvendo non sit debitor, cui acceptum latum sit, videri ei mortis causa donatum.

Dig. 39.6.31.2

Gaius 8 ad ed. provinc.

Sine donatione autem capitur veluti pecunia, quam statuliber aut legatarius alicui condicionis implendae gratia numerat, sive extraneus sit qui accepit sive heres. eodem numero est pecunia, quam quis in hoc accipit, ut vel adeat hereditatem vel non adeat, quique in hoc accipit pecuniam, ut legatum omittat. sed et dos, quam quis in mortem mulieris a marito stipulatur, capitur sane mortis causa: cuius generis dotes recepticiae vocantur. rursus id, quod mortis causa donatur, aut in periculum mortis datur aut cogitationem mortalitatis, quod nos quandoque morituros intellegimus.

Dig. 39.6.31.3

Gaius 8 ad ed. provinc.

Si iusseris mortis causa debitorem tuum mihi aut creditori meo expromittere decem, quid iuris esset quaeritur, si iste debitor solvendo non sit. et ait iulianus, si ego stipulatus fuerim, tantam pecuniam videri me cepisse, in quantum debitor solvendo fuisset: nam et si convaluisset, inquit, donator, obligationem dumtaxat debitoris recipere deberet. si vero creditor meus stipulatus fuerit, tantam videri me pecuniam accepisse, in quantum a creditore meo liberatus essem.

Dig. 39.6.31.4

Gaius 8 ad ed. provinc.

Per accepti quoque lationem egens debitor liberatus totam eam pecuniam, qua liberatus est, cepisse videtur.

Dig. 39.6.32

Ulpianus 76 ad ed.

Non videtur perfecta donatio mortis causa facta, antequam mors insequatur.

Dig. 39.6.33

Paulus 4 ad plaut.

Qui alienam rem mortis causa traditam usucepit, non ab eo videretur cepisse, cuius res fuisset, sed ab eo, qui occasionem usucapionis praestitisset.

Dig. 39.6.34

Marcellus 28 Dig.

Mortis causa donatio etiam sic constitui potest, ut quid stipuletur in annos singulos quoad viveret, scilicet ut post mortem promissoris incipiat exactio.

Dig. 39.6.35pr.

Paulus 6 ad l. iul. et pap.

Senatus censuit placere mortis causa donationes factas in eos, quos lex prohibet capere, in eadem causa haberi, in qua essent, quae testamento his legata essent, quibus capere per legem non liceret. ex hoc senatus consulto multae variaeque quaestiones agitantur, de quibus pauca referamus.

Dig. 39.6.35.1

Paulus 6 ad l. iul. et pap.

Donatio dicta est a dono quasi dono datum, rapta a graeco: nam hi dicunt dwron kai dwreisvai.

Dig. 39.6.35.2

Paulus 6 ad l. iul. et pap.

Sed mortis causa donatio longe differt ab illa vera et absoluta donatione, quae ita proficiscitur, ut nullo casu revocetur. et ibi qui donat illum potius quam se habere mavult: at is, qui mortis causa donat, se cogitat atque amore vitae recepisse potius quam dedisse mavult: et hoc est, quare vulgo dicatur: " se potius habere vult, quam eum cui donat, illum deinde potius quam heredem suum".

Dig. 39.6.35.3

Paulus 6 ad l. iul. et pap.

Ergo qui mortis causa donat, qua parte se cogitat, negotium gerit, scilicet ut, cum convaluerit, reddatur sibi: nec dubitaverunt cassiani, quin condictione repeti possit quasi re non secuta propter hanc rationem, quod ea quae dantur aut ita dantur, ut aliquid facias, aut ut ego aliquid faciam, aut ut lucius titius, aut ut aliquid optingat, et in istis condictio sequitur.

Dig. 39.6.35.4

Paulus 6 ad l. iul. et pap.

Mortis causa donatio fit multis modis: alias extra suspicionem ullius periculi a sano et in bona valetudine posito et cui ex humana sorte mortis cogitatio est: alias ex metu mortis aut ex praesenti periculo aut ex futuro, si quidem terra marique, tam in pace quam in bello et tam domi quam militiae multis generibus mortis periculum metui potest. nam et sic potest donari, ut omnimodo ex ea valetudine donatore mortuo res non reddatur, et ut reddatur, etiamsi prior ex eadem valetudine decesserit, si tamen mutata voluntate restitui sibi voluerit. et sic donari potest, ut non aliter reddatur, quam si prior ille qui accepit decesserit. sic quoque potest donari mortis causa, ut nullo casu sit repetitio, id est ne si convaluerit quidem donator.

Dig. 39.6.35.5

Paulus 6 ad l. iul. et pap.

Si quis societatem per donationem mortis causa inierit, dicendum est nullam societatem esse.

Dig. 39.6.35.6

Paulus 6 ad l. iul. et pap.

Si duobus debitoribus mortis causa donaturus creditor uni acceptum tulit et convaluerit, eligere potest, utri eorum condicat.

Dig. 39.6.35.7

Paulus 6 ad l. iul. et pap.

Sed qui mortis causa in annos singulos pecuniam stipulatus est, non est similis ei, cui in annos singulos legatum est: nam licet multa essent legata, stipulatio tamen una est et condicio eius cui expromissum est semel intuenda est.

Dig. 39.6.36

Ulpianus 8 ad l. iul. et pap.

Quod condicionis implendae causa datur, licet non ex bonis mortui proficiscitur, capere tamen supra modum non poterit is, cui certum modum ad capiendum lex concessit. certe quod a statulibero condicionis implendae causa datur, indubitate modo lege concesso imputatur: sic tamen, si mortis tempore in peculio id habuit. ceterum si post mortem, vel etiam si alius pro eo dedit, quia non fuit ex his bonis, quae mortis tempore testator habuit, in eadem erunt causa, in qua sunt, quae a legatariis dantur.

Dig. 39.6.37pr.

Ulpianus 15 ad l. iul. et pap.

Illud generaliter meminisse oportebit donationes mortis causa factas legatis comparatas: quodcumque igitur in legatis iuris est, id in mortis causa donationibus erit accipiendum.

Dig. 39.6.37.1

Ulpianus 15 ad l. iul. et pap.

Iulianus ait: si quis servum mortis causa sibi donatum vendiderit et hoc vivo donatore fecerit, pretii condictionem donator habebit, si convaluisset et hoc donator elegerit. alioquin et ipsum servum restituere compellitur.

Dig. 39.6.38

Marcellus 1 ad l. iul. et pap.

Inter mortis causa donationem et omnia, quae mortis causa quis ceperit, est earum rerum differentia: nam mortis causa donatur quod praesens praesenti dat, mortis causa capi intellegitur et quod non cadit in speciem donationis. etenim cum testamento quis suo pamphilum servum suum liberum esse iussit, si mihi decem dederit, nihil mihi donasse videbitur, et tamen, si accepero a servo decem, mortis causa accepisse me convenit. idem accidit, quod quis sit heres institutus, si mihi decem dederit: nam accipiendo ab eo, qui heres institutus est, condicionis explendae eius causa, mortis causa capio.

Dig. 39.6.39

Paulus 17 ad plaut.

Si is, cui mortis causa servus donatus est, eum manumisit, tenetur condictione in pretium servi, quoniam scit posse sibi condici, si convaluerit donator.

Dig. 39.6.40

Papinianus 29 quaest.

Si mortis causa inter virum et uxorem donatio facta sit, morte secuta reducitur ad id tempus donatio, quo interposita fuisset.

Dig. 39.6.41

Papinianus 2 resp.

Quod statuliber uni ex heredibus de peculio dedit, ei qui accepit in falcidiae rationem venit et in hereditatis petitione, item ex trebelliano restituitur. ex peculio autem videtur dari, quod statuliber donatum accepit et dedit. et quod ab alio nomine ipsius eo praesente datur, prope est, ut ab ipso datum intellegatur.

Dig. 39.6.42pr.

Papinianus 13 resp.

Seia cum bonis suis traditionibus factis titio cognato donationis causa cessisset, usum fructum sibi recepit et convenit, ut, si titius ante ipsam vita decessisset, proprietas ad eam rediret, si postea superstitibus liberis titii mortua fuisset, tunc ad eos bona pertinerent. igitur si res singulas heredes lucii titii vindicent, doli non inutiliter opponetur exceptio. bonae fidei autem iudicio constituto quaerebatur, an mulier promittere debeat se bona, cum moreretur, filiis titii restituturam. incurrebat haesitatio non extorquendae donationis, quae nondum in personam filiorum initium acceperat. sed numquid interposita cautione prior donatio, quae dominio translato pridem perfecta est, propter legem in exordio datam retinetur, non secunda promittitur? utrum ergo certae condicionis donatio fuit an quae mortis consilium ac titulum haberet? sed denegari non potest mortis causa factam videri. sequitur, ut soluta priore donatione, quoniam seia titio superstes fuit, sequens extorqueri videatur. muliere denique postea diem functa liberi titii si cautionem ex consensu mulieris acceperint, contributioni propter falcidiam ex persona sua tenebuntur.

Dig. 39.6.42.1

Papinianus 13 resp.

Cum pater in extremis vitae constitutus emancipato filio quaedam sine ulla condicione redhibendi donasset ac fratres et coheredes eius bonis contribui donationes falcidiae causa vellent, ius antiquum servandum esse respondi: non enim ad alia constitutionem pertinere, quam quae lege certa donarentur et morte insecuta quodammodo bonis auferrentur spe retinendi perempta: eum autem, qui absolute donaret, non tam mortis causa quam morientem donare.

Dig. 39.6.43

Nerva 1 resp.

Fulcinius: inter virum et uxorem mortis causa donationem ita fieri, si donator iustissimum mortis metum habeat. neratius: sufficere existimationem donantis hanc esse, ut moriturum se putet: quam iuste nec ne susceperit, non quaerendum. quod magis tuendum est.

Dig. 39.6.44

Paulus 1 manual.

Si servo mortis causa donatum sit, videamus, cuius mors inspici debeat, ut sit locus condictioni, domini an ipsius servi. sed magis eius inspicienda est, cui donatum esset. sed tamen post mortem ante apertas tabulas testamenti manumissum haec donatio non sequitur.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER QUADRAGESIMUS

Dig. 40.1.0. De manumissionibus.
Dig. 40.2.0. De manumissis vindicta.
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Dig. 40.1.1

Ulpianus 6 ad sab.

Placuit eum, qui calendis ianuariis natus est, post sextam noctis pridie kalendas, quasi annum vicensimum compleverit, posse manumittere: non enim maiori viginti annis permitti manumittere, sed minorem manumittere vetari: iam autem minor non est, qui diem supremum agit anni vicensimi.

Dig. 40.1.2

Ulpianus 17 ad sab.

Si heres deliberante legatario servum legatum manumiserit, mox legatarius repudiaverit, manumissum liberum fore placet.

Dig. 40.1.3

Paulus 39 ad ed.

Servus pignori datus, etiamsi debitor locuples est, manumitti non potest.

Dig. 40.1.4pr.

Ulpianus 6 disp.

Is qui suis nummis emitur epistula divorum fratrum ad urbium maximum in eam condicionem redigitur, ut libertatem adipiscatur.

Dig. 40.1.4.1

Ulpianus 6 disp.

Et primo quidem nummis suis non proprie videtur emptus dici, cum suos nummos servus habere non possit: verum coniventibus oculis credendum est suis nummis eum redemptum, cum non nummis eius, qui eum redemit, comparatur. proinde sive ex peculio, quod ad venditorem pertinet, sive ex adventicio lucro, sive etiam amici beneficio vel liberalitate vel prorogante eo vel repromittente vel se delegante vel in se recipiente debitum redemptus sit, credendum est suis nummis eum redemptum: satis est enim, quod is, qui emptioni suum nomen accommodaverit, nihil de suo impendit.

Dig. 40.1.4.2

Ulpianus 6 disp.

Si ab ignoto emptus sit, postea autem pretium suum optulerit, dicendum erit non esse audiendum: ab initio enim hoc agi debet, ut imaginaria fieret emptio et per fidem contractus inter emptorem et servum agatur.

Dig. 40.1.4.3

Ulpianus 6 disp.

Sive igitur non hoc ab initio esset actum, ut suis nummis redimeretur, sive hoc acto nummos servus non dedit, cessabit libertas.

Dig. 40.1.4.4

Ulpianus 6 disp.

Unde quaeri poterit, si, cum hoc ab initio esset actum, emptor festinavit et pretium numeravit, an postea ei satisfacto servus constitutione uti possit: et puto posse.

Dig. 40.1.4.5

Ulpianus 6 disp.

Proinde et si ei nummos prorogavit emptor, cum ei pariaverit, poterit ad libertatem pervenire.

Dig. 40.1.4.6

Ulpianus 6 disp.

Sive autem exprimetur in contractu (velut in emptione) hoc " ut manumittatur" sive non exprimatur, verius est libertatem competere.

Dig. 40.1.4.7

Ulpianus 6 disp.

Ergo et si forte quis sic comparaverit suis nummis, ne eum manumittat, benigna est opinio dicentium hunc ad libertatem pervenire, cum et nomen emptionis imaginarius iste emptor accommodet et praeterea nihil ei absit.

Dig. 40.1.4.8

Ulpianus 6 disp.

Nihil autem interest, a quo quis suis nummis ematur, a fisco vel civitate vel a privato, cuiusque sit sexus is qui emit. sed et si minor sit viginti annis qui vendidit, interveniet constitutio. nec comparantis quidem aetas spectatur: nam et si pupillus emat, aequum est eum fidem implere, cum sine damno eius hoc sit futurum. idem et si servus est.

Dig. 40.1.4.9

Ulpianus 6 disp.

In illis sane servis non intervenit constitutio, qui in totum perduci ad libertatem non possunt, ut puta si exportandus vel hac lege venierit (vel testamento hanc condicionem acceperat), ne umquam manumitteretur.

Dig. 40.1.4.10

Ulpianus 6 disp.

Suis autem nummis redemptus etsi totum pretium non numeravit, ex operis tamen ipsius accesserit aliquid, ut repleri pretium possit, vel si quid suo merito adquisierit, dicendum est libertatem competere.

Dig. 40.1.4.11

Ulpianus 6 disp.

Quod si partem suis nummis redimeret, cum partem servi haberet, ad constitutionem non pertinebit, non magis quam qui, cum proprietatem haberet, usum fructum redemit.

Dig. 40.1.4.12

Ulpianus 6 disp.

Sed qui, cum fructuarius esset, proprietatem redemit, in ea condicione est, ut ad constitutionem pertineret.

Dig. 40.1.4.13

Ulpianus 6 disp.

Sed et si duo servum redemerint, alter propriis nummis, alter nummis servi, dicendum erit constitutionem cessare: nisi forte is qui propriis nummis redemit manumittere fuerit paratus.

Dig. 40.1.4.14

Ulpianus 6 disp.

Sed et si partem quis redemit, pars altera ex causa lucrativa accesserit, dicendum erit constitutionem locum habere.

Dig. 40.1.5pr.

Marcianus 2 inst.

Si quis dicat se suis nummis emptum, potest consistere cum domino suo, cuius in fidem confugit, et queri, quod ab eo non manumittatur, romae quidem apud praefectum urbis, in provinciis vero apud praesides ex sacris constitutionibus divorum fratrum, sub ea tamen denuntiatione, ut is servus, qui hoc intenderit nec impleverit, in opus metalli detur, nisi forte dominus reddi eum sibi maluerit, utique non maiorem ex ea causa poenam constituturus.

Dig. 40.1.5.1

Marcianus 2 inst.

Sed et si rationibus redditis liber esse iussus fuerit, arbiter inter servum et dominum, id est heredem, datur de rationibus excutiendis.

Dig. 40.1.6

Alfenus 4 Dig.

Servus pecuniam ob libertatem pactus erat et eam domino dederat: dominus prius quam eum manumitteret, mortuus erat testamentoque liberum esse iusserat et ei peculium suum legaverat. consulebat, quam pecuniam domino dedisset ob libertatem, an eam sibi heredes patroni reddere deberent necne. respondit, si eam pecuniam dominus, posteaquam accepisset, in suae pecuniae rationem habuisset, statim desisse eius peculii esse: sed si interea, dum eum manumitteret, acceptum servo rettulisset, videri peculii fuisse et debere heredes eam pecuniam manumisso reddere.

Dig. 40.1.7

Alfenus 7 Dig.

Duo filii familias peculiares servos separatim uterque habebant: ex his alter servulum suum peculiarem vivo patre manumisit: pater utrique testamento peculium praelegaverat. quaerebatur, servus iste utrum amborum, an eius a quo manumissus erat libertus esset. respondit, si prius testamentum pater fecisset, quam filius eum liberum esse iussisset, unius esse libertum, ideo quod eum quoque in peculio legasse videretur: sed si postea testamentum pater fecisset, non videri eam mentem eius fuisse, ut eum, qui manumissus esset, legaret eumque servum, quoniam praelegatus non esset, mortuo patre amborum servum fuisse.

Dig. 40.1.8pr.

Marcianus 13 inst.

Qui poenae servi efficiuntur, indubitate manumittere non possunt, quia et ipsi servi sunt.

Dig. 40.1.8.1

Marcianus 13 inst.

Sed nec rei capitalium criminum manumittere servos suos possunt, ut et senatus censuit.

Dig. 40.1.8.2

Marcianus 13 inst.

Divus quoque pius calpurnio rescripsit libertates ab eo, qui iam lege cornelia damnatus esset vel, cum futurum prospiceret ut damnaretur, servis datas non competere.

Dig. 40.1.8.3

Marcianus 13 inst.

Sed ne quidem illos ad iustam libertatem pervenire divus hadrianus rescripsit, qui ideo manumissi sunt, ut crimini subtraherentur.

Dig. 40.1.9

Paulus l.S. reg.

Servus hac lege venditus, ne manumittatur, vel testamento prohibitus manumitti, vel a praefecto vel a praeside prohibitus ob aliquod delictum manumitti ad libertatem perduci non potest.

Dig. 40.1.10

Paulus 2 imp. sent. i.C.P.

Aelianus debitor fiscalis euemeriam ancillam ante annos multos emerat hac lege, ut manumitteret, eamque manumiserat: procurator cum bona debitoris non sufficientia quaereret, etiam euemeriae status quaestionem faciebat. placuit non esse iuri fiscali locum, quo omnia bona debitorum iure pignoris tenerentur, quia ea lege empta est, et, si non manumitteretur, ex constitutione divi marci ad libertatem perveniret.

Dig. 40.1.11

Paulus 64 ad ed.

Servum, qui sub condicione legatus est, interim heres manumittendo liberum non facit.

Dig. 40.1.12

Paulus 50 ad ed.

Lege fabia prohibetur servus, qui plagium admisit, pro quo dominus poenam intulit, intra decem annos manumitti. in hoc tamen non testamenti facti tempus, sed mortis intuebimur.

Dig. 40.1.13

Pomponius 1 ex plaut.

Servus furiosi ab adgnato curatore manumitti non potest, quia in administratione patrimonii manumissio non est. si autem ex fideicommissi causa deberet libertatem furiosus, dubitationis tollendae causa ab adgnato tradendum servum, ut ab eo cui traditus esset manumittatur, octavenus ait.

Dig. 40.1.14pr.

Paulus 16 ad plaut.

Apud eum, cui par imperium est, manumittere non possumus: sed praetor apud consulem manumittere potest.

Dig. 40.1.14.1

Paulus 16 ad plaut.

Imperator cum servum manumittit, non vindictam imponit, sed cum voluit, fit liber is qui manumittitur ex lege augusti.

Dig. 40.1.15

Marcellus 23 Dig.

Mortis causa servum manumitti posse non est dubitandum. quod non ita tibi intellegendum est, ut ita liber esse iubeatur, ut, si convaluerit dominus, non fiat liber, sed quemadmodum si vindicta eum liberaret absolute, scilicet quia moriturum se putet, mors eius exspectabitur, similiter et in hac specie in extremum tempus manumissoris vitae confertur libertas, durante scilicet propter mortis causae tacitam condicionem) voluntate manumissoris: quemadmodum cum rem ita tradiderit, ut moriente eo fieret accipientis, quae ita demum alienatur, si donator in eadem permanserit voluntate.

Dig. 40.1.16

Modestinus 1 reg.

Si consentiente patre filius minor annis viginti servum eius manumiserit, patris faciet libertum et vacat causae probatio ob patris consensum.

Dig. 40.1.17

Modestinus 6 reg.

Servi, quos filius familias in castris quaesiit, non in patris familia computabuntur: nec enim pater tales filii servos manumittere poterit.

Dig. 40.1.18

Gaius 12 ad l. iul. et pap.

Eum qui venierit venditor et promissor quem promiserit manumittere possunt.

Dig. 40.1.19

Papinianus 30 quaest.

Si quis ab alio nummos acceperit, ut servum suum manumittat, etiam ab invito libertas extorqueri potest, licet plerumque pecunia eius numerata sit, maxime si frater vel pater naturalis pecuniam dedit: videbitur enim similis ei qui suis nummis redemptus est.

Dig. 40.1.20pr.

Papinianus 10 resp.

Causam minor viginti annis, qui servum donatum manumittendi gratia accepit, ex abundanti probat post divi marci litteras ad aufidium victorinum: etenim, si non manumiserit, ad libertatem servus perveniet.

Dig. 40.1.20.1

Papinianus 10 resp.

Non idem in fideicommissaria libertate iuris est, cuius causam minor debet probare: nam libertas nisi ita manumisso non competit.

Dig. 40.1.20.2

Papinianus 10 resp.

Puellam ea lege vendidit, ut post annum ab emptore manumitteretur: quod si non manumisisset, convenit, uti manum iniceret aut decem aureos emptor daret. non servata fide nihilo minus liberam ex sententia constitutionis fieri respondit, quoniam manus iniectio plerumque auxilii ferendi causa intervenit: itaque nec pecunia petetur, cum emolumentum legis voluntatem venditoris secutum sit.

Dig. 40.1.20.3

Papinianus 10 resp.

Tempore alienationis convenit, ut homo libertatis causa traditus post quintum annum impletum manumitteretur et ut certam mercedem interea menstruam praeberet. condicionem libertati mercedes non facere, sed obsequio temporariae servitutis modum praestitutum esse respondi: neque enim in omnibus libertatis causa traditum comparari statulibero.

Dig. 40.1.21

Papinianus 13 resp.

Servum dotalem vir qui solvendo est constante matrimonio manumittere potest: si autem solvendo non est, licet alios creditores non habeat, libertas servi impedietur, ut constante matrimonio deberi dos intellegatur.

Dig. 40.1.22

Papinianus 2 def.

Nepos ex filio voluntate avi ut filius voluntate patris potest manumittere, sed manumissus patris vel avi libertus est.

Dig. 40.1.23

Paulus 15 resp.

Gaius seius pamphilam hac lege emit, ut intra annum manumitteretur: deinde intra annum seius servus pronuntiatus est: quaero, an ex lege venditionis finito anno pamphila libertatem consecuta sit. paulus respondit, cum ea condicione ancillam emptam domino adquisitam, cum qua condicione venisse proponeretur.

Dig. 40.1.24pr.

Hermogenianus 1 iuris epit.

Lege iunia petronia, si dissonantes pares iudicum existant sententiae, pro libertate pronuntiari iussum.

Dig. 40.1.24.1

Hermogenianus 1 iuris epit.

Sed et si testes non dispari numero tam pro libertate quam contra libertatem dixerint, pro libertate pronuntiandum esse saepe constitutum est.

Dig. 40.1.25

Gaius 1 de manumiss.

Iuris ratio efficit, ut infantibus quoque competat libertas.

Dig. 40.1.26

Iavolenus 4 ex post. lab.

Servum furiosum omni genere manumissum ad libertatem perduci putat posse labeo.

Dig. 40.2.0. De manumissis vindicta.

Dig. 40.2.1

Pomponius 1 ad sab.

Apud praetorem eundemque tutorem posse pupillum ipso auctore manumittere constat.

Dig. 40.2.2

Ulpianus 18 ad sab.

Si minor sit annis viginti fructuarius, an consentire libertati possit? et puto consentiendo posse ad libertatem perducere.

Dig. 40.2.3

Ulpianus 4 disp.

Si heres servum legatum manumittat, mox repudiet legatarius, retro competit libertas. idemque est et si duobus pure servus legetur et post alterius manumissionem alter repudiaverit: nam et hic retro libertas competit.

Dig. 40.2.4pr.

Iulianus 42 Dig.

Si pater filio permiserit servum manumittere et interim decesserit intestato, deinde filius ignorans patrem suum mortuum libertatem imposuerit, libertas servo favore libertatis contingit, cum non appareat mutata esse domini voluntas. sin autem ignorante filio vetuisset pater per nuntium et antequam filius certior fieret, servum manumisisset, liber non fit. nam ut filio manumittente servus ad libertatem perveniat, durare oportet patris voluntatem: nam si mutata fuerit, non erit verum volente patre filium manumisisse.

Dig. 40.2.4.1

Iulianus 42 Dig.

Quotiens dominus servum manumittat, quamvis existimet alienum esse eum, nihilo minus verum est voluntate domini servum manumissum et ideo liber erit. et ex contrario si se stichus non putaret manumittentis esse, nihilo minus libertatem contingere. plus enim in re est, quam in existimatione et utroque casu verum est stichum voluntate domini manumissum esse. idemque iuris est et si dominus et servus in eo errore essent, ut neque ille se dominum nec hic se servum eius putaret.

Dig. 40.2.4.2

Iulianus 42 Dig.

Minor viginti annis dominus nec communem quidem servum sine consilio recte manumittit. paulus notat: sed si pignori obligatum sibi minor viginti annis manumitti patiatur, recte manumittitur, quia non tam manumittere is quam non impedire manumittentem intellegitur.

Dig. 40.2.5

Iulianus 42 Dig.

An apud se manumittere possit is qui consilium praebeat, saepe quaesitum est. ego, qui meminissem iavolenum praeceptorem meum et in africa et in syria servos suos manumisisse, cum consilium praeberet, exemplum eius secutus et in praetura et consulatu meo quosdam ex servis meis vindicta liberavi et quibusdam praetoribus consulentibus me idem suasi.

Dig. 40.2.6

Iulianus 2 ad urs. ferocem.

Servus communis quin a minoribus viginti annis dominis possit apud consilium manumitti, quamvis unus ex sociis causam adprobaverit, dubium non est.

Dig. 40.2.7

Gaius 1 rer. cott. sive aur.

Non est omnino necesse pro tribunali manumittere: itaque plerumque in transitu servi manumitti solent, cum aut lavandi aut gestandi aut ludorum gratia prodierit praetor aut proconsul legatusve caesaris.

Dig. 40.2.8

Ulpianus 5 ad ed.

Ego cum in villa cum praetore fuissem, passus sum apud eum manumitti, etsi lictoris praesentia non esset.

Dig. 40.2.9pr.

Marcianus 13 inst.

Iusta causa manumissionis est, si periculo vitae infamiaeve dominum servus liberaverit.

Dig. 40.2.9.1

Marcianus 13 inst.

Sciendum est, qualiscumque causa probata sit et recepta, libertatem tribuere oportere: nam divus pius rescripsit causas probatas revocari non oportere, dum ne alienum servum possit quis manumittere: nam causae probationi contradicendum, non etiam causa iam probata retractanda est.

Dig. 40.2.10

Marcianus 3 reg.

Surdi vel muti patris filius iussu eius manumittere potest: furiosi vero filius non potest manumittere.

Dig. 40.2.11

Ulpianus 6 de off. procons.

Si minor annis viginti manumittit, huiusmodi solent causae manumissionis recipi: si filius filiave frater sororve naturalis sit.

Dig. 40.2.12

Ulpianus 2 ad l. ael. sent.

Vel si sanguine eum contingit (habetur enim ratio cognationis):

Dig. 40.2.13

Ulpianus libro de off. procons.

Si collactaneus, si educator, si paedagogus ipsius, si nutrix, vel filius filiave cuius eorum, vel alumnus, vel capsarius (id est qui portat libros), vel si in hoc manumittatur, ut procurator sit, dummodo non minor annis decem et octo sit, praeterea et illud exigitur, ut non utique unum servum habeat, qui manumittit. item si matrimonii causa virgo vel mulier manumittatur, exacto prius iureiurando, ut intra sex menses uxorem eam duci oporteat: ita enim senatus censuit.

Dig. 40.2.14pr.

Marcianus 4 reg.

Alumnos magis mulieribus conveniens est manumittere: sed et in viris receptum est satisque est permitti eum manumitti, in quo nutriendo propensiorem animum fecerint.

Dig. 40.2.14.1

Marcianus 4 reg.

Sunt qui putant etiam feminas posse matrimonii causa manumittere, sed ita, si forte conservus suus in hoc ei legatus est. et si spado velit matrimonii causa manumittere, potest: non idem est in castrato.

Dig. 40.2.15pr.

Paulus 1 ad l. ael. sent.

Etiam condicionis implendae causa minori viginti annis manumittere permittendum est, veluti si quis ita heres institutus sit, si servum ad libertatem perduxerit.

Dig. 40.2.15.1

Paulus 1 ad l. ael. sent.

Ex praeterito tempore plures causae esse possunt, veluti quod dominum in proelio adiuvaverit, contra latrones tuitus sit, quod aegrum sanaverit, quod insidias detexerit. et longum est, si exequi voluerimus, quia multa merita incidere possunt, quibus honestum sit libertatem cum decreto praestare: quas aestimare debebit is, apud quem de ea re agatur.

Dig. 40.2.15.2

Paulus 1 ad l. ael. sent.

Plures vindicta pariter manumitti possunt et sufficit praesentia servorum, ut vel plures manumitti possint.

Dig. 40.2.15.3

Paulus 1 ad l. ael. sent.

Absens quoque causam probare per procuratorem poterit.

Dig. 40.2.15.4

Paulus 1 ad l. ael. sent.

Si duo matrimonii causa manumittent, recipi causa non debet.

Dig. 40.2.15.5

Paulus 1 ad l. ael. sent.

Hi qui in italia vel alia provincia domicilium habent, apud alterius provinciae praesidem consilio adhibito manumittere possunt.

Dig. 40.2.16pr.

Ulpianus 2 ad l. ael. sent.

Illud in causis probandis meminisse iudices oportet, ut non ex luxuria, sed ex affectu descendentes causas probent: neque enim deliciis, sed iustis affectionibus dedisse iustam libertatem legem aeliam sentiam credendum.

Dig. 40.2.16.1

Ulpianus 2 ad l. ael. sent.

Si quis minori viginti annis hac lege servum dederit aut pretio accepto vel donationis causa, ut eum liberum faciat, potest ille causam manumissionis istius probare, hoc ipsum allegans legem datam, et perducere ad libertatem: ergo hic debet ostendere hoc inter ipsos actum, ut proinde vel ex lege donationis vel ex affectione eius qui dedit res aestimetur.

Dig. 40.2.17

Paulus 50 ad ed.

Apud proconsulem, postquam urbem egressus est, vindicta manumittere possumus: sed et apud legatum eius manumittere possumus.

Dig. 40.2.18pr.

Paulus 16 ad plaut.

Apud filium familias magistratum manumitti potest, etiamsi ipse filius familias manumittere non potest.

Dig. 40.2.18.1

Paulus 16 ad plaut.

Apud collegam suum praetor manumittere non potest.

Dig. 40.2.18.2

Paulus 16 ad plaut.

Filius quoque voluntate patris apud patrem manumittere poterit.

Dig. 40.2.19

Celsus 29 Dig.

Si minor annis apud consilium matrimonii causa praegnatem manumiserit eaque interim pepererit, in pendenti erit, servus an liber sit, quem ea peperit.

Dig. 40.2.20pr.

Ulpianus 2 de off. cons.

Si rogatus sit minor viginti quinque annis manumittere per fideicommissum, incunctanter debet ei permitti, nisi si proprium servum rogatus fuit manumittere: hic enim conferenda erit quantitas emolumenti, quae ad eum pervenit ex iudicio eius qui rogavit, cum pretio eorum quos rogatus est manumittere.

Dig. 40.2.20.1

Ulpianus 2 de off. cons.

Sed et si hac lege ei servus fuerit donatus, ut manumittatur, permittendum erit manumittere, ne constitutio divi marci superveniens cunctationem consulis dirimat.

Dig. 40.2.20.2

Ulpianus 2 de off. cons.

Matrimonii causa manumittere si quis velit et is sit, qui non indigne huiusmodi condicionis uxorem sortiturus sit, erit ei concedendum.

Dig. 40.2.20.3

Ulpianus 2 de off. cons.

Mulieri quoque volenti suum filium naturalem vel quem ex supra scriptis manumittere permittendum esse Marcellus scribit.

Dig. 40.2.20.4

Ulpianus 2 de off. cons.

Consul apud se potest manumittere, etiamsi evenerit, ut minor annis viginti sit.

Dig. 40.2.21

Modestinus 1 pand.

Apud praefectum aegypti possum servum manumittere ex constitutione divi augusti.

Dig. 40.2.22

Paulus 12 quaest.

Pater ex provincia ad filium sciens romae agentem epistulam fecit, quae permisit ei, quem vellet ex servis, quos in ministerio secum hic habebat, vindicta liberare: post quam filius stichum manumisit apud praetorem: quaero, an fecerit liberum. respondi: quare non hoc concessum credamus patri, ut permittere possit filio ex his, quos in ministerio haberet, manumittere? solam enim electionem filio concessit, ceterum ipse manumittit.

Dig. 40.2.23

Hermogenianus 1 iuris epit.

Manumissio per lictores hodie domino tacente expediri solet, et verba sollemnia licet non dicantur, ut dicta accipiuntur.

Dig. 40.2.24

Paulus 2 ad ner.

Pupillus qui infans non est apud consilium recte manumittit. paulus: scilicet tutore auctore, ita tamen, ut peculium eum non sequatur.

Dig. 40.2.25

Gaius 1 de manumiss.

Si tutoris habendi causa pupillus manumittat, probationi esse causam fufidius ait. nerva filius contra sentit, quod verius est: namque perabsurdum est in eligendo tutore firmum videri esse iudicium pupilli, cuius in omnibus rebus ut infirmum iudicium tutore auctore regitur.

Dig. 40.3.0. De manumissionibus quae servis ad universitatem pertinentibus imponuntur.

Dig. 40.3.1

Ulpianus 5 ad sab.

Divus marcus omnibus collegiis, quibus coeundi ius est, manumittendi potestatem dedit:

Dig. 40.3.2

Ulpianus 14 ad sab.

Quare hi quoque legitimam hereditatem liberti vindicabunt.

Dig. 40.3.3

Papinianus 14 resp.

Servus civitatis iure manumissus non ademptum peculium retinet ideoque debitor ei solvendo liberatur.

Dig. 40.4.0. De manumissis testamento.

Dig. 40.4.1

Ulpianus 4 ad sab.

Cum saepius datur servo libertas, placet eam favore valere, ex qua pervenit ad libertatem.

Dig. 40.4.2

Ulpianus 5 ad sab.

Si quis ita heredem instituerit " titius heres esto. si titius heres non erit, stichus heres esto. stichus liber esto " , non esse stichum liberum aristo ait titio herede existente. mihi videtur posse dici liberum fore, quasi non utique alio gradu acceperit libertatem, sed dupliciter: quo iure utimur.

Dig. 40.4.3

Pomponius 1 ad sab.

Nec militi minori annis viginti permittitur posse testamento suo servum manumittere.

Dig. 40.4.4pr.

Pomponius 2 ad sab.

Si quis ita scripserit " stichus liber esto eique heres meus decem dato", nulla dubitatio est, quin debeantur etiam, si eum pater familias vivus manumiserit.

Dig. 40.4.4.1

Pomponius 2 ad sab.

Sed et si sic: " stichus liber esto" sive statim sive post tempus " eique, cum liber erit, heres meus decem dato", idem dicendum est.

Dig. 40.4.4.2

Pomponius 2 ad sab.

Illud constabit, si libertate data sic fuerit legatum " eique, si eum vindicta liberavero, heres meus decem dato", licet ex nimia suptilitate separatum est a testamento, attamen humanitatis intuitu valebit legatum, si vivus eum manumiserit.

Dig. 40.4.5

Pomponius 3 ad sab.

In libertatibus levissima scriptura spectanda est, ut, si plures sint, quae manumisso facilior sit, ea levissima intellegatur: sed in fideicommissariis libertatibus novissima scriptura spectatur.

Dig. 40.4.6

Ulpianus 18 ad sab.

Si fructuarium dominus proprietatis heredem scripserit et servo sub condicione sit libertas data: quoniam interim fit heredis, confusione facta usus fructus, si extiterit condicio, perveniet ad libertatem.

Dig. 40.4.7

Ulpianus 19 ad sab.

Neratius scribit eius, cui libertas sic data est " si mihi nullus filius erit cum moriar, stichus liber esto", impediri libertatem postumo nato. sed dum speratur nasci, utrum in servitute remanere dicimus an vero ex postfacto respondemus retro liberum fuisse nullo filio nato? quod magis arbitror probandum.

Dig. 40.4.8

Pomponius 5 ad sab.

Si ita sit scriptum: " stichus, si rationes diligenter tractasse videbitur, liber esto", diligentiam desiderandam, quae domino, non quae servo erit utilis, coniuncta fidei bonae et in reliquis quoque reddendis.

Dig. 40.4.9pr.

Ulpianus 24 ad sab.

Si quis ita legatus sit, ut manumittatur, si manumissus non fuerit, liber esse iussus est eique legetur: et libertatem competere et legatum deberi saepe responsum est.

Dig. 40.4.9.1

Ulpianus 24 ad sab.

Quod constitutum est vetitum in testamento ad libertatem perduci non posse manumitti, hoc ad eos pertinere puto, qui testatoris fuerunt vel heredis: servo enim alieno id irrogari non poterit.

Dig. 40.4.10pr.

Paulus 4 ad sab.

Si peculium praelegatum est et vicarius liber esse iussus sit, liberum eum esse constat. multum enim interest inter genus et speciem: speciem enim eximi de genere placet: quod est in peculio legato et vicario manumisso.

Dig. 40.4.10.1

Paulus 4 ad sab.

Si servus legatus liber esse iussus est, liber est. sed si prius liber esse iussus, postea legatus sit, si quidem evidens voluntas sit testatoris, quod ademit libertatem, cum placeat hodie etiam libertatem adimi posse, legato eum cedere puto: quod si in obscuro sit, tunc favorabilius respondetur liberum fore.

Dig. 40.4.11pr.

Pomponius 7 ad sab.

Si legato servo fideicommissa libertas relicta est, vel heres vel legatarius eum cogitur manumittere.

Dig. 40.4.11.1

Pomponius 7 ad sab.

" si stichus et pamphilus decem dederint, liberi sunto": potest alter quinque dando liber esse, quamvis alter non dederit.

Dig. 40.4.11.2

Pomponius 7 ad sab.

Cum testamento servus liber esse iussus est, vel uno ex pluribus heredibus institutis adeunte hereditatem statim liber est.

Dig. 40.4.12pr.

Ulpianus 50 ad ed.

Si quis libertatem sub iurisiurandi condicione reliquerit, edicto praetoris locus non erit, ut iurisiurandi condicio remittatur, et merito: nam si quis remiserit condicionem libertatis, ipsam libertatem impedit, dum competere aliter non potest, quam si paritum fuerit condicioni.

Dig. 40.4.12.1

Ulpianus 50 ad ed.

Proinde et si legatum quis cum libertate acceperit, non aliter legatum habebit, nisi condicioni iurisiurandi paruerit.

Dig. 40.4.12.2

Ulpianus 50 ad ed.

Sed si pure libertatem acceperit, legatum sub iurisiurandi condicione, putat iulianus libro trigensimo primo digestorum remitti ei condicionem iurisiurandi.

Dig. 40.4.12.3

Ulpianus 50 ad ed.

Idem puto dicendum et si libertati quoque iniecta condicio sit, sed testator eum vivus manumiserit: nam et hic condicio legati remittetur.

Dig. 40.4.13pr.

Ulpianus 5 disp.

Si ita fuerit servis duobus libertas data, si insulam aedificaverint vel si statuam posuerint, dividi haec condicio non poterit. solummodo illud habebit dubitationem, an altero faciente satisfactum voluntati videatur ideoque ad libertatem perveniat: quod magis est, nisi aliud expressit testator. faciendo tamen sibi condicionem implevit, alteri non: quin immo extinguitur ei condicio: nec enim amplius parere condicioni potest, cum semel expleta sit.

Dig. 40.4.13.1

Ulpianus 5 disp.

Idem quaeri potest et si fabris duobus vel pictoribus, si membrum depinxissent vel si fabricassent navem, quid adscriptum sit: nam voluntatis erit quaestio, num alteri alterius facti condicionem iunxerit: quae res efficit, ut, quod alter cessat, alteri quoque, qui facere paratus est, condicio deficiat. quod si ex his, quae scripsit vel dixit, ostenditur contentus esse testator vel alterum facere, res erit expedita: nam alter faciendo aut et sibi et socio proderit aut sibi tantum, prout voluisse testatorem apparuerit.

Dig. 40.4.13.2

Ulpianus 5 disp.

Haec quaestio et in eo tractatur, si quis libertatem dederit servis duobus, si rationes reddiderint. iulianus enim tractat, si alter reddere sit paratus, alter non sit, an alter per alterum impediatur: et rectissime ait, si quidem separatim rationes gesserunt, sufficere ad libertatem adipiscendam ei qui suas rationes reddit: si vero simul, non alias videri alterum paruisse, nisi utriusque reliqua exsolverit. in reliquis accipere debemus, ut et ipsa volumina rationum reddantur.

Dig. 40.4.13.3

Ulpianus 5 disp.

Sed et si ancilla cum filiis libera esse iussa sit, etsi nullos habeat, erit libera: vel si habeat quidem, filii autem eius ad libertatem pertinere non possint, idem erit dicendum: et si ipsa libera esse non possit, filii tamen eius pervenient ad libertatem. nam haec adiectio " cum filiis" non facit condicionem, nisi mihi proponas aliam sententiam testatoris fuisse: tunc enim pro condicione erunt haec verba accipienda. condicionem autem non facere argumento est et edictum praetoris, quo ita cavetur " ventrem cum liberis in possessionem esse iubebo " : placet enim, etsi nulli liberi sint, ventrem tamen ex edicto in possessionem mittendum.

Dig. 40.4.14

Ulpianus 8 disp.

Cum servus pure liber scribitur et heres sub condicione, placet deficiente condicione habere eum libertatem.

Dig. 40.4.15

Iulianus 32 Dig.

" stichum sempronio do lego. si sempronius stichum intra annum non manumiserit, idem stichus liber esto". quaesitum est, quid iuris sit. respondit hoc modo libertate data " si sempronius non manumiserit, stichus liber esto" sempronium, nisi manumiserit, nihil iuris in stichum habiturum, sed liberum eum futurum.

Dig. 40.4.16

Iulianus 36 Dig.

Si ita scriptum fuerit: " cum titius annorum triginta erit, stichus liber esto eique heres meus fundum dato" et titius, antequam ad annum trigensimum perveniret, decesserit, sticho libertas competet, sed legatum non debebitur. nam favore libertatis receptum est, ut mortuo titio tempus superesse videretur, quo impleto libertas contingeret: circa legatum defecisse condicio visa est.

Dig. 40.4.17pr.

Iulianus 42 Dig.

Libertas, quae in ultimum vitae tempus confertur, veluti " stichus cum morietur, liber esto", nullius momenti existimanda est. haec autem scriptura " stichus si capitolium non ascenderit, liber esto" ita accipienda est " si cum primum potuerit, capitolium non ascenderit": isto enim modo perveniet stichus ad libertatem, si facultate data ascendendi capitolium abstinuerit.

Dig. 40.4.17.1

Iulianus 42 Dig.

Hac scriptura testamenti " pamphilus liber esto, ita ut filiis meis rationem reddat" an sub condicione libertas data videretur, quaesitum est. respondi pure quidem datam libertatem et illam adiectionem " ita ut rationes reddat" condicionem libertati non inicere: tamen quia manifesta voluntas testantis exprimeretur, cogendum eum ad rationes reddendas.

Dig. 40.4.17.2

Iulianus 42 Dig.

Post annos indistincte liber esse iussus post biennium liber erit: idque et favor libertatis exigit, et verba patiuntur: nisi si aliud sensisse patrem familias manifestissimis rationibus is, a quo libertas relicta est, probaverit.

Dig. 40.4.18pr.

Iulianus 2 ad urs. ferocem.

Qui duos heredes instituebat, post alterius mortem servum liberum esse iusserat: is ex cuius morte libertas pendebat, vivo testatore decesserat. sabinus respondit liberum futurum.

Dig. 40.4.18.1

Iulianus 2 ad urs. ferocem.

Haec condicio " cum moriar, liber esto" vitae tempus complectitur et idcirco inutilis esse videtur. sed melius est verba benignius interpretari, ut post mortem suam videatur testator ei libertatem reliquisse.

Dig. 40.4.18.2

Iulianus 2 ad urs. ferocem.

Sed multo magis haec " ad annum liber esto" vel ita accipi potest " post annum, quam moriar, liber esto" et, licet hoc modo accipiatur " post annum, quam hoc testamentum factum erit, liber esto", si evenerit, ut intra annum testator decedat, inutilis non erit.

Dig. 40.4.19

Iulianus 3 ad urs. ferocem.

Quidam heredem suum rogaverat, ut servum manumitteret: deinde, si heres eum non manumiserit, liberum eum esse iusserat eique legaverat: heres eum manumisit. plerique existimant hunc ex testamento libertatem consequi: secundum hoc legatum quoque ei debetur.

Dig. 40.4.20

Africanus 1 quaest.

Servos legavit et cavit ita: " rogo, si te promeruerunt, dignos eos libertate existimes". praetoris hae partes sunt, ut cogat libertatem praestari, nisi si quid tale hi servi admiserint, ut indigni sint, quo libertatem consequantur, non etiam ut talia officia ab his exigantur, pro quibus libertatem mereri debent. arbitrium tamen eius erit qui rogatus sit, quo tempore quemque velit manumittere, ita ut, si vivus non manumisisset, heres eius statim libertatem praestare cogatur.

Dig. 40.4.21

Africanus 4 quaest.

" stichus, immo pamphilus liber esto". pamphilum liberum futurum respondit: quodammodo enim emendasse errorem suum testatorem. idemque iuris fore etiam, si ita scriptum fuerit: " stichus liber esto, immo pamphilus liber esto".

Dig. 40.4.22

Africanus 9 quaest.

Qui filium impuberem heredem instituit, stichum ratione argenti, quod sub cura eius esset, reddita liberum esse iusserat: is servus parte argenti subtracta cum tutore divisit atque ita tutor ei parem rationem adscripsit. consultus, an stichus liber esset, respondit non esse liberum: nam quod alioquin placeat, si statuliber pecuniam dare iussus tutori det vel per tutorem stet, quo minus condicioni pareatur, pervenire eum ad libertatem, ita accipiendum, ut bona fide et citra fraudem statuliberi et tutoris id fiat, sicut et in alienationibus rerum pupillarium servatur. itaque et si offerente statulibero pecuniam tutor in fraudem pupilli accipere nolit, non aliter libertatem contingere, quam si servus fraude careat. eademque et de curatore dicenda. item quaesitum est, rationem argenti reddere iussus in quem modum intellegendus sit condicioni paruisse, id est an, si quaedam vasa sine culpa eius perierint atque ita reliqua vasa heredi bona fide adsignaverit, perveniat ad libertatem. respondit perventurum: nam sufficere, si ex aequo et bono rationem reddat: denique quam rationem bonus pater familias reciperet, ea heredi reddita impletam condicionem videri.

Dig. 40.4.23pr.

Marcianus 1 inst.

Testamento manumissus ita demum fit liber, si testamentum valeat et ex eo adita sit hereditas, vel si quis omissa causa testamenti ab intestato possideat hereditatem.

Dig. 40.4.23.1

Marcianus 1 inst.

Testamento data libertas competit pure quidem data statim, quam adita fuerit hereditas vel ab uno ex heredibus: si in diem autem libertas data est vel sub condicione, tunc competit libertas, cum dies venerit vel condicio extiterit.

Dig. 40.4.24

Gaius 1 rer. cott. sive aur.

Nominatim videntur liberi esse iussi, qui vel ex artificio vel officio vel quolibet alio modo evidenter denotati essent, veluti " dispensator meus" " cellarius meus" " cocus meus" " pamphili servi mei filius".

Dig. 40.4.25

Ulpianus 4 reg.

Testamento liber esse iussus tum fit liber, cum adita fuerit hereditas qualibet ex parte, si modo ab eo gradu, quo liber esse iussus est, adita fuerit et pure quis manumissus sit.

Dig. 40.4.26

Marcianus 1 reg.

Divus pius et divi fratres favorabiliter rescripserunt, cum servo cum libertate substituto legatum erat, si heres non esset, non adscripta libertate, perinde haberi, atque si adscripta esset et libertas.

Dig. 40.4.27

Paulus 1 ad l. ael. sent.

Qui potuerint apud consilium manumittendo ad libertatem perducere, possunt etiam necessarium heredem facere, ut haec ipsa necessitas probabilem faciat manumissionem.

Dig. 40.4.28

Paulus l.S. de iure codicill.

" stichus, si codicillis eum non vetuero liberum esse, liber esto": sic est atque si diceret: " stichus, si in capitolium non ascendero, liber esto": nam et heres sic institui potest.

Dig. 40.4.29

Scaevola 23 Dig.

Uxorem praegnatem repudiaverat et aliam duxerat: prior enixa filium exposuit: hic sublatus ab alio educatus est nomine patris vocitatus usque: ad vitae tempus patris tam ab eo quam a matre, an vivorum numero esset, ignorabatur: mortuo patre testamentoque eius, quo filius neque exheredatus neque heres institutus sit, recitato filius et a matre et ab avia paterna adgnitus hereditatem patris ab intestato quasi legitimus possidet. quaesitum est, hi qui testamento libertatem acceperunt utrum liberi an servi sint. respondit filium quidem nihil praeiudicii passum fuisse, si pater eum ignoravit, et ideo, cum in potestate et ignorantis patris esset, testamentum non valere. servi autem manumissi si per quinquennium in libertate morati sunt, semel datam libertatem infirmari contrarium studium favore libertatis est.

Dig. 40.4.30

Ulpianus 19 ad ed.

Si servi qui apud hostes sunt liberi esse iussi sunt, ad libertatem perveniunt, quamvis neque testamenti neque mortis tempore testantis, sed hostium fuerunt.

Dig. 40.4.31

Paulus 26 ad ed.

Cum ex pluribus eodem nomine servis unus liber iussus non appareat qui sit, nullus liber est.

Dig. 40.4.32

Ulpianus 65 ad ed.

Sciendum est necessario herede existente, quamvis se abstineat, tamen libertates competere, si modo non in fraudem legis aeliae sentiae datae fuerint.

Dig. 40.4.33

Paulus 12 quaest.

Libertas ad tempus dari non potest,

Dig. 40.4.34

Paulus 74 ad ed.

Ideoque si ita scriptum sit " stichus usque ad annos decem liber esto", temporis adiectio supervacua est.

Dig. 40.4.35

Paulus 50 ad ed.

Servius existimabat iis posse servis dari testamento directam libertatem, qui utroque tempore, et quo testamentum fit et quo moritur, testatoris fuerunt: quae sententia vera est.

Dig. 40.4.36

Paulus 7 ad plaut.

Servum testamento ita manumisi: " si iuraverit se cornelio filio meo decem operarum daturum, liber esto": quaeritur, quid iuris sit. et sciendum est iurando servum condicionem implere, sed non teneri operarum nomine, quia nisi post manumissionem iuret, non obligatur.

Dig. 40.4.37

Paulus 9 ad plaut.

Nominatim codicillis manumissus videtur servus, cuius nomen testamento continetur.

Dig. 40.4.38

Paulus 12 ad plaut.

Libertas testamento servo ita dari potest: " cum per leges licebit, liber esto".

Dig. 40.4.39

Paulus 16 ad plaut.

" stichus servus meus, si eum heres alienaverit, liber esto": inutiliter libertas datur, quia in id tempus confertur, quo alienus futurus sit. nec contrarium est, quod statuliber, etiamsi venierit, ex testamento libertatem consequitur: quippe utiliter libertas data facto heredis non peremitur. aut quid in legato eo modo dato dicemus? diversum enim nulla ratione dicetur: nam inter libertatem et legatum, quantum ad hanc causam, nihil distat. igitur nec sic recte dabitur libertas " si heredis mei esse desierit, liber esto", quia nullum casum utilem habet.

Dig. 40.4.40pr.

Pomponius 5 ex plaut.

Iulianus ait, cum idem homo et per fideicommissum detur alicui et liber esse iubeatur, heredem libertatem praestare debere: non enim cogetur, inquit, ex causa fideicommissi aestimationem sufferre, cum debitam libertatem reddiderit.

Dig. 40.4.40.1

Pomponius 5 ex plaut.

Sed et cum sub condicione servo libertas per fideicommissum detur et ipse praesenti die daretur, non aliter tradere eum cogetur, quam ut caveatur existente condicione libertati eum restitutum iri: nam in omnibus fere causis fideicommissas libertates pro directo datis habendas. sed ofilius aiebat, si adimendi legati causa fideicommissam libertatem testator dedisset, ea vera esse: si vero onerari heredem a testatore legatarius ostenderit, aestimationem nihilo minus legatario praestandam.

Dig. 40.4.41pr.

Pomponius 7 ex plaut.

Si ita fuerit libertas relicta: " stichus servus meus anno duodecimo, postquam ego mortuus ero, liber esto", verisimile est principio duodecimi anni eum liberum esse, nam hoc mortuum sensisse. et inter hos sermones " duodecimo anno" et " post duodecim annos" multum interest et ita loqui solemus. duodecimus annus est, cum quantulumlibet ex duodecimo anno venisset aut praeterisset, et qui duodecimo anno liber esse iubetur, omnibus anni diebus liber esse iussus est.

Dig. 40.4.41.1

Pomponius 7 ex plaut.

Sed si ita sit scriptum in testamento: " stichus servus meus heredi meo mille nummos anno biennio triennio, postquam ego mortuus ero, si solverit satisve fecerit, liber esto", non potest is servus nisi triennio praeterito liber esse, nisi praesentem eam pecuniam solvat aut satisfaciat: compensanda etenim est heredi libertatis celeritas praematurae pecuniarum solutioni.

Dig. 40.4.41.2

Pomponius 7 ex plaut.

Labeo scribit, si sic libertas relicta sit: " stichus intra annum, postquam mortuus ero, liber esto", statim eum liberum esse: nam et si ita sit: " si intra annum decimum heredi meo dederit, liber esto", statim solvendo eo liberum esse sine mora futurum.

Dig. 40.4.42

Marcellus 16 Dig.

Si quis ita scripserit " illum illius libertum esse volo", et servus libertatem petere potest et ille, ut habeat libertum.

Dig. 40.4.43

Modestinus l.S. de manumiss.

Libertates directae et testamento et codicillis testamento confirmatis recte dantur, fideicommissae et ab intestato et codicillis non confirmatis relinqui possunt.

Dig. 40.4.44

Modestinus 10 resp.

Maevia decedens servis suis nomine sacco et eutychiae et irenae sub condicione libertatem reliquit his verbis: " saccus servus meus et eutychia et irene ancillae meae omnes sub hac condicione liberi sunto, ut monumento meo alternis mensibus lucernam accendant et sollemnia mortis peragant": quaero, cum adsiduo monumento maeviae saccus et eutychia et irene non adsint, an liberi esse possunt. modestinus respondit neque contextum verborum totius scripturae neque mentem testatricis eam esse, ut libertas sub condicione suspensa sit, cum liberos eos monumento adesse voluit: officio tamen iudicis eos esse compellendos testatricis iussioni parere.

Dig. 40.4.45

Modestinus libro pand.

Quod volgo dicitur sub pluribus condicionibus data libertate levissimam condicionem spectandam esse, ita verum est, si separatim condiciones sint datae: quod si coniunctim datae sunt, nisi omnibus paruerit, liber non erit.

Dig. 40.4.46

Pomponius 7 ex var. lect.

Aristo neratio appiano rescripsit, testamento liber esse iussus, cum annorum triginta esset, antequam ad eam aetatem perveniret si in metallum damnatus sit ac postea revocetur, sine dubitatione cum libertate legatum ad eum pertinere neque metallorum poena ius eius mutari: nec aliud, si heres esset sub condicione institutus: futurum enim eum etiam necessarium.

Dig. 40.4.47pr.

Papinianus 6 quaest.

Cum ex falsis codicillis per errorem libertas, licet non debita, praestita tamen ab herede fuisset, viginti solidos a singulis hominibus inferendos esse heredi princeps constituit.

Dig. 40.4.47.1

Papinianus 6 quaest.

Sed et si condicionis implendae gratia servum institutus manumiserit ac postea filius de inofficioso agendo tenuerit vel testamentum falsum fuerit pronuntiatum, consequens erit idem in hac specie fieri, quod in falsis codicillis constitutum est.

Dig. 40.4.48

Papinianus 10 quaest.

Si socius testamento libertatem ita dederit: " pamphilus, si eum socius manumiserit, liber esto", servius respondit socio manumittente communem fieri libertum familiae atque manumissoris: neque enim novum aut incognitum est vario iure communi mancipio libertatem optingere.

Dig. 40.4.49

Papinianus 6 resp.

Testamento militis ita manumissam " samiam in libertate esse iussi" directam libertatem iure militiae cepisse placuit.

Dig. 40.4.50pr.

Papinianus 9 resp.

Quod divo marco pro libertatibus conservandis placuit, locum habet irrito testamento facto, si bona venitura sint: alioquin vacantibus fisco vindicatis non habere constitutionem locum aperte cavetur.

Dig. 40.4.50.1

Papinianus 9 resp.

Servos autem testamento manumissos, ut bona suscipiant, iure cautionem idoneam offerre, non minus quam ceteros defuncti libertos aut extrarios declaravit: quod beneficium, minoribus annis heredibus scriptis auxilium bonis praestitutum more solito desiderantibus, non aufertur.

Dig. 40.4.51pr.

Papinianus 14 resp.

Testamento centurio servos suos venire prohibuit ac petit, prout quisque meruisset, eos manumitti. libertates utiliter datas respondit, cum, si nemo servorum offenderit, omnes ad libertatem pervenire possunt: quibusdam autem per offensam exclusis residui in libertatem perveniunt.

Dig. 40.4.51.1

Papinianus 14 resp.

Cum ita testamento adscriptum esset: " servi, qui sine offensa fuerunt, liberi sunto", condicionem adscriptam videri placuit, cuius interpretationem talem faciendam, ut de his in libertate danda cogitasse non videatur, quos poena coercuit aut ab honore ministrandi vel administrandae rei negotio removit.

Dig. 40.4.52

Paulus 12 quaest.

Imperatores missenio frontoni: " testamento militis his verbis adscripta libertate: " " stephanum servum meum liberum esse volo"" vel " " iubeo"" adita hereditate libertas competit: et ideo ea, quae postea adiecta sunt: " " sic tamen, ut cum herede meo sit quo usque invenis sit: quod si noluerit aut contempserit, iure servitutis teneatur"" ad revocandam libertatem, quae competit, non sunt efficacia". idem et in paganorum testamentis observatur.

Dig. 40.4.53

Paulus 15 resp.

Lucius titius servo libertatem dedit, si rationem actus sui ex fide dedisset gaio seio filio suo: cum annos pubertatis egressus fuisset gaius seius, a curatoribus eiusdem conventus servus etiam apud iudicem omnibus satisfecit: exacta condicione a curatoribus pronuntiatum est liberum eum esse: nunc gaius seius filius testatoris negat curatoribus suis recte pecuniam illatam: quaero, an iure soluta sit quantitas. paulus respondit curatoribus quidem adulescentis reliquam rationem, ut condicio testamento adscripta impleatur, non iure exsolutam videri: sed si praesente adulescente pecunia illata est vel in rationibus eius relata, impletam condicionem videri, ac si ipsi soluta fuisset.

Dig. 40.4.54pr.

Scaevola 4 resp.

Qui habebat servum cratistum, testamento ita cavit: " servus meus cratinus liber esto": quaero, an servus cratistus ad libertatem pervenire possit, cum testator servum cratinum non habebat, sed hunc solum cratistum. respondit nihil obesse, quod in syllaba errasset.

Dig. 40.4.54.1

Scaevola 4 resp.

Scripti testamento heredes ante aditam hereditatem pacti sunt cum creditoribus, ut parte dimidia contenti essent, et ita decreto a praetore interposito hereditatem adierunt: quaero, an libertates in eo testamento datae competierunt. respondit, si testator fraudandi consilium non habuisset, competere libertates.

Dig. 40.4.55pr.

Maecenatus 2 fideic.

Libertate sub condicione data huc iam decursum est, ut, si per statuliberum non stet, quominus condicioni pareat, quamvis ne per heredem quidem stet, tamen ad libertatem perveniat. quod credo responderi oportere et si per fideicommissum utique hereditariis servis libertas data fuerit.

Dig. 40.4.55.1

Maecenatus 2 fideic.

Non absurde et de heredis servis idem dicetur.

Dig. 40.4.55.2

Maecenatus 2 fideic.

De his autem, quos redimendos habebit, non iuste dubitamus, siquidem eo casu iniquum erit heredem perinde compelli debere redimere eos, atque si condicio impleta esset, quod forte dominus prohiberet condicioni parere, ut et pretium perciperet et in condicionem non rogaret.

Dig. 40.4.56

Paulus 1 fideic.

Si quis servo testamento dederit libertatem et directo et per fideicommissum, in potestate servi est, utrum velit ex directo an ex fideicommisso ad libertatem pervenire: et ita marcus imperator rescripsit.

Dig. 40.4.57

Gaius 3 de manumiss.

Si locuples egenti heres exstiterit, videamus, an ea res testamento datis libertatibus proficiat, ut creditores fraudari non videantur. et sane sunt quidam, qui, cum heres locuples existeret, tale esse crediderunt, quale, si ipse testator adauctis postea facultatibus decessisset. sed mihi traditum est hoc iure nos uti, ut ad rem non pertineat, locuples an egens heres extiterat, sed quarum facultatium testator decesserit. quam sententiam iulianus adeo sequitur, ut existimet ne eum quidem libertatem consecuturum, quem is, qui solvendo non esset, ita liberum esse iussisset: " cum aes alienum solutum erit, stichus liber esto". sed non hoc est consequens sabini et cassii sententiae, quam et ipse sequi videtur, qui existimant consilium quemque manumittentis spectare debere: nam qui sub ea condicione servum suum liberum esse iubet, adeo sine fraudis consilio liberum esse iubet, ut apertissime curare videatur, ne creditores sui fraudarentur.

Dig. 40.4.58

Maecenatus 3 fideic.

Verum est eum, qui liber esse iussus esset, alienatum a testatore, si ante aditam eius hereditatem rursus hereditarius fieret, mox adiretur hereditas, ad libertatem pervenire.

Dig. 40.4.59pr.

Scaevola 23 Dig.

Titia servis quibusdam et ancillis nominatim directas libertates dedit, deinde ita scripsit: " et pedisequas omnes, quarum nomina in rationibus meis scripta sunt, liberas esse volo". quaesitum est, an eutychia, quae testamenti facti tempore inter pedisequas libertatem acceperat, mortis autem tempore inveniatur actori in contubernio tradita, ex generali capite pedisequarum libertatem consequi posset. respondit nihil impediri libertatem pedisequae, quod mortis demum tempore pedisequa esse desiit.

Dig. 40.4.59.1

Scaevola 23 Dig.

Puram et directam domini sui testamento libertatem stichus acceperat et ex hereditate multa per fraudem amovisse dicitur: quaesitum est, an non ante in libertatem proclamare debeat, quam ea, quae ex hereditate amovisse probari poterit, heredibus restitueret. respondit secundum ea, quae proponerentur, eum de quo quaereretur liberum esse. claudius: videtur absolvisse et id de quo quaeritur: nam heredibus satis consultum est edicto de furtis.

Dig. 40.4.59.2

Scaevola 23 Dig.

Lucius titius testamento suo ita cavit: " onesiphore, nisi diligenter rationem excusseris, liber ne esto": quaero, an onesiphorus ex his verbis libertatem sibi vindicare possit. respondit verbis, quae proponerentur, libertatem adimi potius quam dari.

Dig. 40.4.60

Scaevola 24 Dig.

Testamento ita cavit: " eudoni boulomai dovynai nomismata xilia, epei efvasen gennyvynai meta to tyn mytera autou genesvai eleuveran" : quaero, an, si eudo non probet se post manumissionem matris suae natum, possit his verbis testamenti libertatem consequi. respondit non oportere eiusmodi consultationem praeiudicium parare.

Dig. 40.4.61pr.

Pomponius 11 epist.

Scio quosdam efficere volentes, ne servi sui umquam ad libertatem perveniant, hactenus scribere solitos: " stichus cum moreretur, liber esto". sed et iulianus ait libertatem, quae in ultimum vitae tempus conferatur, nullius momenti esse, cum testator impediendae magis quam dandae libertatis gratia ita scripsisse intellegitur. et ideo etiam si ita sit scriptum: " stichus si in capitolium non ascenderit, liber esto", nullius momenti hoc esse, si apparet in ultimum vitae tempus conferri libertatem testatorem voluisse, nec mucianae cautioni locum esse.

Dig. 40.4.61.1

Pomponius 11 epist.

Et si ita in testamento scriptum fuerit " stichus, si capuam ierit, liber esto", aliter liberum non esse, quam si capuam ierit.

Dig. 40.4.61.2

Pomponius 11 epist.

Hoc amplius octavenus aiebat, si quis in testamento sub qualibet condicione libertate servo data ita scripsisset " ante condicionem nolo eum ab herede liberum fieri", nihil valere hanc adiectionem.

Dig. 40.5.0. De fideicommissariis libertatibus.

Dig. 40.5.1

Ulpianus 14 ad ed.

Si quidam ex his, qui fideicommissam libertatem debeant, praesentes sint, alii ex iusta causa absint, alii latitent, perinde is cui fideicommissaria libertas relicta est liber erit, atque si soli, qui adessent et qui ex iusta causa abessent, rogati essent: pars ergo latitantis his proficit.

Dig. 40.5.2

Ulpianus 60 ad ed.

Si quis intestatus decedens codicillis dedit libertates neque adita sit ab intestato hereditas, favor constitutionis divi marci debet locum habere et hoc casu, quae iubet libertatem competere servo et bona ei addici, si idonee creditoribus caverit de solido, quod cuique debetur, solvendo:

Dig. 40.5.3

Ulpianus 65 ad ed.

In quem etiam utiles actiones plerumque creditoribus competunt.

Dig. 40.5.4pr.

Ulpianus 60 ad ed.

Ergo quamdiu incertum sit, utrum existat successor an non, cessabit constitutio: cum certum esse coeperit, tunc erit constitutioni locus.

Dig. 40.5.4.1

Ulpianus 60 ad ed.

Si is qui in integrum restitui potest abstinuerit se hereditate, an, quamdiu potest in integrum restitui, existimamus constitutionem cessare, quia non est certum ab intestato neminem successorem exstare? est tamen verius admittendam constitutionem.

Dig. 40.5.4.2

Ulpianus 60 ad ed.

Quid ergo, si post addictionem libertatium conservandarum causa factam in integrum sit restitutus? utique non erit dicendum revocari libertates, quae semel competierunt.

Dig. 40.5.4.3

Ulpianus 60 ad ed.

Illud videamus, utrum praesentes esse debent qui libertatem acceperunt an vero non: et cum invitis illis possunt bona propter libertatem addici, utique etiam absentibus.

Dig. 40.5.4.4

Ulpianus 60 ad ed.

Quid ergo, si quidam praesentes sint, quidam absentes? videamus, an etiam absentibus competat libertas. et potest dici exemplo aditae hereditatis competere libertatem etiam absentibus.

Dig. 40.5.4.5

Ulpianus 60 ad ed.

Si ex die data sit libertas, an dies exspectandus sit? et puto exspectandum: ante ergo non addicentur. quid deinde, si sub condicione data sit libertas? et si quidem aliquae pure, aliquae sub condicione, utique addici statim possunt: si omnes sub condicione, quid consequens erit dicere? utrum exspectandum, ut condicio existat, an vero statim addicimus, tunc demum competitura libertate, si exstiterit condicio? quod magis erit probandum. addictis itaque bonis directae libertates pure datae statim competunt, ex die, cum dies venerit, condicionales, cum condicio extiterit: nec erit ab re existimare etiam pendente condicione libertatium, licet omnes sub condicione datae sint, constitutionem locum habere: ubi enim libertatis spes est, ibi dicendum est vel modica data occasione, quod sine damno creditorum futurum est, addictionem admittendam.

Dig. 40.5.4.6

Ulpianus 60 ad ed.

Si sub condicione dandorum decem libertas data sit, sive heredi dare iussus sit qui libertatem accepit sive non sit dictum cui, an dando ei cui bona addicenda sunt perveniat ad libertatem, quaeri potest: et magis est, ut ei dare debeat, cui bona addicta sint, quasi translata condicio videatur. certe si alii quam heredi dare iussus sit, ipsi, cui iussus est, dabit.

Dig. 40.5.4.7

Ulpianus 60 ad ed.

Si qui fideicommissam libertatem acceperunt, non statim ubi addicta bona sunt liberi sunt, sed fideicommissam libertatem possunt consequi, hoc est manumittendi sunt ab eo, cui addicta bona sunt.

Dig. 40.5.4.8

Ulpianus 60 ad ed.

Addici ita demum bona voluit, si idonee creditoribus cautum fuerit de solido, quod cuique debetur. ergo cavendum est idonee. quid est idonee? satisdato utique aut pignoribus datis. sed si ei fides habita fuerit promittenti sine satisdatione, idonee cautum videbitur.

Dig. 40.5.4.9

Ulpianus 60 ad ed.

Creditoribus caveri quemadmodum debet, utrum singulis an vero omnium nomine uni ab ipsis creato? et oportet officio iudicis constitui convenire creditores unumque creare, cui caveatur omnium nomine.

Dig. 40.5.4.10

Ulpianus 60 ad ed.

Illud videndum: ante caveri debet creditoribus et sic addici bona, an vero sub condicione haec sunt addicenda, si fuerit cautum? et puto sic comprehendendum decreto " si omnia ex constitutione divi marci facta sint".

Dig. 40.5.4.11

Ulpianus 60 ad ed.

" de solido" utique sic accipiemus " de sorte et usuris debitis".

Dig. 40.5.4.12

Ulpianus 60 ad ed.

Hi, qui ad libertatem pervenerunt, quorum liberti fiant, constitutio ostendit, ut qui directam libertatem, orcini erunt liberti, nisi forte is qui addici sibi bona desiderat ita velit addici, ut etiam hi, qui directam libertatem acceperunt, ipsius liberti fiant.

Dig. 40.5.4.13

Ulpianus 60 ad ed.

Qui autem volunt ipsius liberti fieri, utrum manumittendi sint ab eo an vero ipsa addictione hoc comprehendendum hac condicione sibi addici bona, ut hi etiam, qui directam libertatem acceperunt, ipsius fiant liberti? et puto hoc esse probandum, ut ipsa addictione hoc comprehendatur: idque verba quoque constitutionis admittunt.

Dig. 40.5.4.14

Ulpianus 60 ad ed.

Cum autem servus libertatem nactus est, utique etiam tutelam eius habebit is cui bona addicta sunt.

Dig. 40.5.4.15

Ulpianus 60 ad ed.

Si alienos servos rogaverat heredem manumittere, utrum dicimus constitutionem locum habere an vero cessabit constitutio? magisque est, ut locus sit constitutioni: addictis enim bonis redimere et praestare libertatem cogitur a praetore.

Dig. 40.5.4.16

Ulpianus 60 ad ed.

Si non heres, sed legatarius rogatus fuerit manumittere, numquid cesset constitutio, quod legatis non debitis nec libertates possunt deberi? magisque est, ut idem favor sit: omnibus enim generaliter voluit libertatem praestare, quibus competeret, si hereditas adita fuisset.

Dig. 40.5.4.17

Ulpianus 60 ad ed.

Eadem constitutio prospexit, ut, si fiscus bona admiserit, aeque libertates competant: ergo sive iacent bona fisco spernente sive adgnoverit, constitutio locum habet. ceterum si alia ratione adgnoscat, apparet cessare debere constitutionem: quare et si caducis legionis bona delata sint, idem erit probandum.

Dig. 40.5.4.18

Ulpianus 60 ad ed.

Item si minor viginti annis dedit libertatem, dicemus non competere, nisi si fideicommissam: haec enim competeret, si modo potuit causam probare minor viginti annis, si vivus manumitteret.

Dig. 40.5.4.19

Ulpianus 60 ad ed.

Si in fraudem creditorum libertas data sit ab eo, qui mortis tempore solvendo non est, an competat? et si quidem fiscus bona non adgnoverit, forte competet libertas, quia solidum creditoribus offertur: atquin si adita hereditas fuisset, non competeret. certe si fiscus adgnovit hereditatem, facilius probabitur cessare libertatem, nisi si quis verba constitutionis secutus dixerit ipsum sibi imputare debere, qui addici sibi hac condicione bona voluit, ut libertates competant. si quis autem exemplum aditae hereditatis fuerit secutus, directae libertates non competent, si consilium et eventus fuerit fraudandorum creditorum: nec fideicommissae praestabuntur, si eventu fraudentur creditores.

Dig. 40.5.4.20

Ulpianus 60 ad ed.

Si bona fuerint a fisco non adgnita eaque addicta libertatis conservandae gratia, an possit fiscus postea adgnoscere? et magis est, ne possit. plane si non certioratis praefectis aerario bona fuerunt libertatis conservandae causa addicta, videndum est, an constitutioni locus sit. et si quidem talia fuerunt, ut adgnosci deberent, addictio cessat: si vero non fuerunt, addictioni locus est.

Dig. 40.5.4.21

Ulpianus 60 ad ed.

Is autem cui bona addicta sunt bonorum possessori adsimilari debet et secundum hoc et iura sepulchrorum poterit habere.

Dig. 40.5.4.22

Ulpianus 60 ad ed.

Item videamus, an conveniri a creditoribus possit hereditariis actionibus an vero non nisi ex cautione quam interposuit? magisque est, ut non aliter conveniatur quam ex ea cautione quam interposuit.

Dig. 40.5.4.23

Ulpianus 60 ad ed.

Si duobus pluribusve addicta fuerint bona, et communem rem et communes libertos habebunt et secum familiae herciscundae iudicio experientur.

Dig. 40.5.5

Paulus 57 ad ed.

In fideicommissariis libertatibus si absente herede praetor pronuntiasset libertatem deberi, est et liber et defuncti libertus, si et servus eius fuit, aut heredis, si servus heredis sit. immo et si sine successore heres decesserit, conservandam esse libertatem senatus hadriani temporibus censuit.

Dig. 40.5.6

Paulus 60 ad ed.

Decem legata sunt et rogatus est legatarius stichum emere et manumittere: falcidia intervenit et minoris emi servus non potest: quidam putant dodrantem accipere debere legatarium nec emere compellendum. idem putant etiam si suum servum rogatus sit manumittere et dodrantem ex legato acceperit, non esse compellendum manumittere. videamus, ne utique in hac specie aliud dicendum sit. sed in superiore sunt qui putant cogendum legatarium redimere servum, et se oneri subiecisse, dum accipit vel dodrantem: sed si paratus sit retro restituere quod accepit, an audiendus sit, videndum. sed cogendus heres tota decem praestare, perinde atque si adiecisset testator, ut integra praestentur.

Dig. 40.5.7

Ulpianus 63 ad ed.

Si cui legata sint centum ita, ut servum alienum redimat et manumittat, et bonis heredis venditis partem, non totum persequatur, non alias debet consequi legatum, quam si caverit se manumissurum (sed hoc tunc demum, si largiatur portio quam accepit ad servi pretium paratusque ^ paratuque^ sit dominus tanti eum vendere): alioquin exceptione doli debebit legatarius repelli.

Dig. 40.5.8

Pomponius 7 ex plaut.

Eum cui mille nummi legati fuissent, si rogatus fuisset viginti servum manumittere, non cogi fideicommissam libertatem praestare, si legatum non caperet, constat.

Dig. 40.5.9

Marcellus 15 Dig.

Cum fidei heredis commisit, ne servus alienam servitutem patiatur experiri, potest confestim, ut fuerit alienatus, petere libertatem. sed ubi alienatio non est voluntaria, sed necessitas alienandi ex causa testatoris pendeat, prope est, ut nondum debeat praestari fideicommissum, quod potest videri defunctus nihil sensisse de huiusmodi casu alienationis.

Dig. 40.5.10pr.

Marcellus 16 Dig.

Quidam in testamento scripserat: " illum et illum servos meos venire nolo". si ideo eos noluit venumdari, ut, si veneant, ad libertatem perveniant, praestanda erit libertas: nam et illi videtur libertas relicta, de quo ita scriptum est: " nolo alii quam tibi serviat". secundum haec igitur si quoquo modo vendere temptaverit servum, confestim peti poterit libertas nec, quominus praestet libertatem, proderit heredi, si eum redemerit, quia semel exstitit condicio.

Dig. 40.5.10.1

Marcellus 16 Dig.

Is cui libertas debebatur veniit: si vult ab herede manumitti, non erit interveniendum ei, cum heres praesens erit, emptor latitabit: quoniam poterat uti senatus consulto, ut quasi ex testamento ad libertatem perveniat.

Dig. 40.5.10.2

Marcellus 16 Dig.

Is cui ex fideicommisso libertas debebatur ab eo qui solvendo non erat passus est se bonae fidei emptori tradi: existimas in manumissum constituendam actionem exemplo eius, qui liberi hominis emptorem simulata servitute decepit? ego quoque adducor, ut putem recte adversus venditos actionem competere et magis similem videri statulibero, qui pridie, quam ex testamento ad libertatem perveniret, idem fieri passus est.

Dig. 40.5.11

Modestinus 1 diff.

Ex causa fideicommissi servo libertatem dare sine tutoris auctoritate pupillus non potest.

Dig. 40.5.12pr.

Modestinus l.S. de manumiss.

Imperator antoninus, cum firmus titiano tragoedos tres legasset et adiecisset: " quos tibi commendo, ne cui alii serviant", publicatis bonis titiani rescripsit debere eos publice manumitti.

Dig. 40.5.12.1

Modestinus l.S. de manumiss.

Et legatarius non minus quam heres rogari potest servum manumittere et, si ante manumissionem decesserit, successores eius debent manumittere.

Dig. 40.5.12.2

Modestinus l.S. de manumiss.

Divus antoninus et pertinax rescripserunt hereditate fisco vindicata, quoniam tacite quis rogatus erat ei, qui capere non poterat, restituere hereditatem, et directo et per fideicommissum datas libertates deberi.

Dig. 40.5.13

Modestinus 9 reg.

Si praegnas ancilla moram non studio manumissoris, sed fortuito patiatur, ne manumitteretur, liberum quidem non pariet, sed cogetur qui manumittere debuit natum matri tradere, ut per eam perveniat ad libertatem.

Dig. 40.5.14

Modestinus 10 resp.

Lucius titius testamento facto seiam uxorem suam, item titiam filiam communem aequis portionibus scripsit heredes. item alio capite: " erotem servum meum, qui et psyllus vocatur, liberum esse volo, si uxori meae placeat". cum itaque seia uxor lucii titii abstinuerit ab eadem hereditate et ex substitutione portio eius ad titiam filiam pervenerit, quaero, an eroti, qui et psyllus vocatur, ex his verbis supra scriptis libertas competit. modestinus eroti, quod uxor testatoris hereditate se abstinuit, non obesse respondit. item quaero, an seia uxor, quae se hereditate abstinuit, petenti eroti libertatem iuste contradicere possit. modestinus respondit seiae dissensum nullius esse momenti.

Dig. 40.5.15

Modestinus 3 pand.

Is qui ex causa fideicommissi manumissurus est nullo modo deteriorem eius servi condicionem facere potest: ideoque nec vendere eum interdum alii potest, ut ab eo cui traditus est manumittatur, et, si tradiderit, redimere illum cogitur et manumittere: interest enim nonnumquam a sene potius manumitti quam a iuvene.

Dig. 40.5.16

Licinius 5 reg.

Libertates etiam per fideicommissum dari possunt et quidem largius quam directo: nam non tantum propriis, sed et alienis servis per fideicommissum libertas dari potest: ita tamen, ut vulgaribus verbis et quibus evidenter voluntas testatoris exprimi possit.

Dig. 40.5.17

claud. ex scaev. 21 Dig.

" cum tibi visum fuerit manumittere" utiliter datur fideicommissa libertas.

Dig. 40.5.18

Scaevola 23 Dig.

Testamento ita cavit: " pamphilus, si bene se gesserit rationibus meis, liber esto": quaesitum est, cum manente eodem testamento post aliquot annos decesserit nec ullae querellae locus de pamphilo circa rationes patroni sit, an ex testamento libertatem sit consecutus. respondit nihil proponi, cur non sit consecutus.

Dig. 40.5.19pr.

Scaevola 24 Dig.

Herede instituto marito per fideicommissum libertatem servis dedit, in quibus et sticho actori mariti: quaesitum est, cum absente domino isti praesidem provinciae adierint, ut libertas sibi praestaretur, quasi ex iusta causa heres abesset, et praeses provinciae pronuntiaverit libertatem deberi, an agi cum sticho possit, ut rationem actus a se administrati reddere compellatur. respondit non posse.

Dig. 40.5.19.1

Scaevola 24 Dig.

Uxori dotem et alias res plures legavit et eius fidei commisit, ut aquilinum servum proprium mulieris apud consilium manumitteret: id negat se facere debere, quod ipsius proprius esset: quaero, an libertas ei debeatur. respondit uxorem, si ex testamento non solum dotem, sed etiam cetera legata praestari sibi vellet, compellendam ex causa fideicommissi aquilinum manumittere eumque, cum liber erit, petiturum ea quae sibi legata sunt.

Dig. 40.5.20

Pomponius 7 epist.

Apud iulianum ita scriptum est: " si heres rogatus servum manumittere ex trebelliano senatus consulto hereditatem restituerit, cogi debebit manumittere, et, si latitabit vel si iusta ex causa aberit, praetor causa cognita secundum senatus consulta ad eas causas pertinentia pronuntiare debebit. si vero servum usuceperit is, cui hereditas restituta fuerit, ipsum competit manumittere et eadem in personam eius observari conveniet, quae circa emptores custodiri solent". an haec vera putes? nam ego discendi cupiditate, quam solam vivendi rationem optimam in octavum et septuagesimum annum aetatis duxi, memor sum eius sententiae, qui dixisse fertur: kan ton heteron poda en ty sorw exw, prosmavein ti bouloimyn. bellissime aristo et octavenus putabant hunc servum, de quo quaereretur, fideicommissae hereditatis non esse, quia testator rogando heredem, ut eum manumitteret, non videtur de eo restituendo sensisse: si tamen per errorem ab herede datus fuerit, ea dicenda sunt quae iulianus scribit.

Dig. 40.5.21

Papinianus 19 quaest.

" rogo, ne stichus alterius servitutem experiatur". intellegi datam fideicommissam libertatem placuit principi: quid enim tam contrarium est servituti quam libertas? nec tamen quasi post mortem heredis data videbitur: quod eo pertinet, ut, si vivus eum alienaverit, confestim libertas petatur nec prosit ad impediendam libertatis petitionem, si redemerit eum, cuius semel condicio extitit. idem probandum est et si non voluntaria alienatio ab herede facta est: nec refragabitur, quod non per ipsum alienatio facta est. fuit enim quasi statuliber et quacumque ratione condicio impleta est.

Dig. 40.5.22pr.

Papinianus 22 quaest.

Si legatario fundi decem pretii nomine relicta sint in hoc, ut servum suum manumittat, quamvis fundi legatum adgnoverit, si tamen pecuniae propter interventum falcidiae non adgnoverit, cogendus est et pecuniam accipere habita legis falcidiae ratione et servo fideicommissariam libertatem praestare, cum semel fundi legatum adgnovit.

Dig. 40.5.22.1

Papinianus 22 quaest.

A duobus heredibus qui tres servos habebat petit, ut duos ex his quos voluissent manumittant: altero heredum latitante alter declarat, quos velit manumittere. potest dici fieri liberos, ut perinde libertas competat, ac si praesens solus manumittere potuisset. quod si ex servis unus decesserit, sive iusta ex causa absit heres sive fari non possit a quo petitum est, decernente praetore duos qui supersunt fieri liberos convenit.

Dig. 40.5.22.2

Papinianus 22 quaest.

Cum is qui fideicommissam libertatem praestare debet iusta ex causa abest aut latitat: aut quidam praesentes sunt, alii ex iusta causa absunt, nonnulli frustrandi gratia fideicommissi copiam sui non faciunt: aut ei, qui libertatem debuit, heres non extitit: aut suus heres hereditate se abstinuit: praetor pronuntiare debet ex testamento lucii titii fideicommissam libertatem competere. idque senatus consulto demonstratum est, quo senatus consulto comprehensum est, ne dubium et obscurum esset, cuius libertus fieret, praetorem pronuntiare debere, qui ex iusta causa et qui detractandae libertatis gratia absit.

Dig. 40.5.23pr.

Papinianus 9 resp.

Fideicommissaria libertas praetextu compilatae hereditatis aut rationis gestae non differtur.

Dig. 40.5.23.1

Papinianus 9 resp.

Fideicommissariam libertatem ab herede non praestitam cogendus est heredis heres, qui restituit ex trebelliano senatus consulto hereditatem, praestare, si eius personam eligat qui manumittendus est.

Dig. 40.5.23.2

Papinianus 9 resp.

Servum peculii castrensis, quem pater fideicommissi verbis a legitimis filiis heredibus liberari voluit, filium militem vel qui militavit, si patris heres extitit, manumittere cogendum respondi, quoniam proprium manumisisse defunctus post donationem in filium collatam existimavit: portionem enim a fratre domino fratrem eundemque coheredem citra damnum voluntatis redimere non cogendum. nec ob eundem errorem cetera, quae pater in militiam profecturo filio donavit, fratri, qui mansit in potestate, conferenda, cum peculium castrense filius etiam inter legitimos heredes praecipuum retineat.

Dig. 40.5.23.3

Papinianus 9 resp.

Etiam fideicommissaria libertas a filio post certam aetatem eius data, si ad eam puer non pervenit, ab herede filii praestituta die reddatur: quam sententiam iure singulari receptam ad cetera fideicommissa relicta porrigi non placuit.

Dig. 40.5.23.4

Papinianus 9 resp.

Servum a filio post quinque annos, si eo tempore mercedem diurnam filio praestitisset, manumitti voluit: biennio proximo vagatus non praestiterat: condicione defectus videbatur. si tamen heres filius (aut tutores eius) ministerium servi per biennium elegisset, eam rem, ex praeterito quod per heredem stetisset, impedimento residuae condicioni non esse constitit.

Dig. 40.5.24pr.

Ulpianus 5 fideic.

Generaliter dicemus eos posse fideicommissariam libertatem adscribere, qui fideicommissum pecuniarium possunt relinquere.

Dig. 40.5.24.1

Ulpianus 5 fideic.

Et principis servo vel municipii et cuius alterius fideicommissa libertas adscripta valet.

Dig. 40.5.24.2

Ulpianus 5 fideic.

Hostium servo si fideicommissaria libertas fuerit adscripta, potest tractari, an non sit inefficax. et fortassis quis dixerit indignum esse civem romanum fieri hostium servum: sed si in casum relinquatur, in quem noster esse incipit, quid prohibet dicere libertatem valere?

Dig. 40.5.24.3

Ulpianus 5 fideic.

Si homini libero fuerit libertas per fideicommissum adscripta et is in servitutem redactus proponatur, petere potest libertatem, si modo mortis tempore vel condicionis existentis inveniatur servus.

Dig. 40.5.24.4

Ulpianus 5 fideic.

Servo eius, qui nondum in rebus humanis est, libertas recte per fideicommissum relinquitur.

Dig. 40.5.24.5

Ulpianus 5 fideic.

Si servus in metallum fuerit damnatus, libertatem sperare non poterit. quid ergo, si fideicommissaria libertas ei relicta sit et poena metalli indulgentia principis sit liberatus? et est rescriptum ab imperatore nostro hunc in dominium prioris domini non restitui: cuius tamen sit, non adicitur. certe cum fisci efficiatur, sperare potest fideicommissariam libertatem ^ libertaten^.

Dig. 40.5.24.6

Ulpianus 5 fideic.

Ex damnata in metallum concepto et nato fideicommissaria libertas dari poterit: quid mirum, cum etiam venumdari eum posse quasi servum divus pius rescripsit?

Dig. 40.5.24.7

Ulpianus 5 fideic.

Si petitum a testatore fuerit, ne postea stichus serviret, placuit fideicommissariam libertatem datam videri: nam qui hoc petit, ne postea serviat, videtur petere, ut libertas ei praestetur.

Dig. 40.5.24.8

Ulpianus 5 fideic.

Sed et si ita scripsit: " ne eum alienes" " ne eum vendas", idem erit dicendum, si modo hoc animo fuerit adscriptum, quod voluerit eum testator ad libertatem perduci. ceterum si alia mente id scripsit, ut puta quia consilium dabat heredi retinere talem servum vel quia coercere voluit servum et cruciare, ne meliorem dominum experiatur, vel aliqua mente, non tribuendae libertatis animo, dicendum est cessare libertatis praestationem: et ita celsus libro vicensimo tertio digestorum scribit. non tantum enim verba fideicommissi, sed et mens testatoris tribuere solet libertatem fideicommissariam. sed cum ex praesumptione libertas praestita esse videtur, heredis est contrariam voluntatem testatoris probare.

Dig. 40.5.24.9

Ulpianus 5 fideic.

Si quis tutorem ideo scripserit, quia liberum putavit, certissimum est neque libertatem peti posse neque tutelam libertatis praestationi patrocinari: et ita et Marcellus libro quinto decimo digestorum et imperator noster cum patre rescripsit.

Dig. 40.5.24.10

Ulpianus 5 fideic.

Si quis servo pignerato directam libertatem dederit, licet videtur iure suptili inutiliter reliquisse, attamen quasi et fideicommissaria libertate relicta servus petere potest, ut ex fideicommisso liber fiat: favor enim libertatis suadet, ut interpretemur et ad libertatis petitionem procedere testamenti verba, quasi ex fideicommisso fuerat servus liber esse iussus: nec enim ignotum est, quod multa contra iuris rigorem pro libertate sint constituta.

Dig. 40.5.24.11

Ulpianus 5 fideic.

Ex testamento, quod adgnatione postumae ruptum esse constitit, neque directas libertates competere neque fideicommissarias deberi, quas non a legitimis quoque heredibus pater familias reliquerit, satis constat.

Dig. 40.5.24.12

Ulpianus 5 fideic.

Si quis alienum vel suum servum rogatus sit manumittere et minus sit in eo quod accepit iudicio testatoris, plus sit in pretio servi, an cogatur vel alienum redimere vel suum manumittere, videndum est. et Marcellus scripsit, cum ceperit legatum, cogendum omnimodo suum manumittere: et sane hoc iure utimur, ut multum intersit, suum quisque rogatus sit manumittere an alienum: si suum, cogetur manumittere, etiamsi modicum accepit: quod si alienum, non alias erit cogendus, quam si tanti possit redimere, quantum ex iudicio testatoris consecutus sit.

Dig. 40.5.24.13

Ulpianus 5 fideic.

Proinde consequenter Marcellus ait eum quoque, qui heres institutus est, si quidem aliquid ad eum deducto aere alieno pervenit, cogendum esse suum manumittere: si vero nihil pervenit, non esse cogendum.

Dig. 40.5.24.14

Ulpianus 5 fideic.

Plane si forte minus relictum est alicui, verum crevit legatum ex aliqua causa, aequissimum erit tanti eum cogi redimere, quantum ad eum pervenit, nec causari debere, quod minus illi relictum sit, cum creverit eius legatum per testamenti occasionem: nam et si ex mora fructus usuraeve fideicommisso accessissent, dicendum est libertatem praestandam.

Dig. 40.5.24.15

Ulpianus 5 fideic.

Proinde et si servi pretium decrevit, dicendum est redimere cogendum.

Dig. 40.5.24.16

Ulpianus 5 fideic.

Quod si legatum sit imminutum, videndum, an cogatur servum manumittere qui speravit legatum uberius consecuturum. et putem, si legatum refundere sit paratus, non esse cogendum, idcirco, quia alia contemplatione adgnovit legatum, quod ex inopinato deminutum est: parato igitur ei a legato recedere concedendum erit, nisi forte residuum legatum ad pretium sufficit.

Dig. 40.5.24.17

Ulpianus 5 fideic.

Quid ergo, si plures servos rogatus sit manumittere et ad quorundam pretium sufficiat id quod relictum est, ad omnium non sufficiat, an cogendus sit quosdam manumittere? et putem debere eum cogi vel eos, quorum pretium patitur, manumittere. quis ergo statuet, qui potius manumittitur? utrumne ipse legatarius eligat, quos manumittat, an heres a quo legatum est? et fortassis quis recte dixerit ordinem scripturae sequendum: quod si ordo non pareat, aut sortiri eos oportebit, ne aliquam ambitionis vel gratiae suspicionem praetor subeat, aut meritis cuiusque allegatis arbitrari eos oportet.

Dig. 40.5.24.18

Ulpianus 5 fideic.

Simili modo dicendum est et si redimere iussus sit libertatemque praestare nec pecunia quae legata est sufficiat ad redemptionem omnium, quibus libertas data est: nam et hic idem erit, quod supra probavimus.

Dig. 40.5.24.19

Ulpianus 5 fideic.

Si cui legatum sit relictum isque rogatus sit servum proprium manumittere eique quod legatum est praestare, an fideicommissaria libertas praestanda sit? quosdam movet, quia, si fuerit coactus ad libertatem praestandam, ex necessitate ad fideicommissi quoque praestationem erit cogendus: et sunt qui putant non esse cogendum. nam et si mihi legatum fuisset relictum et id rogatus essem titio restituere confestim et praeterea fideicommissam libertatem servo meo praestare, sine dubio diceremus non esse me cogendum ad libertatis praestationem, quia nihil pretii nomine videor accepisse. plane si forte post tempus fuerit rogatus restituere sibi legatum relictum, dici potest propter medii temporis fructum cogendum eum manumittere,

Dig. 40.5.24.20

Ulpianus 5 fideic.

Si rogatus quis alii fundum, cum morietur, alii centum praestare si tantum ex fructibus fundi perceperit, quantum est in fideicommisso, cogendum eum praestare. sic fit, ut sit in pendenti fideicommissum pecuniarium et fideicommissae libertatis praestatio.

Dig. 40.5.24.21

Ulpianus 5 fideic.

Quotiens autem fideicommissaria libertas relinquitur efficaciter, in ea causa est, ut neque alienatione neque usucapione extingui possit: ad quemcumque enim pervenerit is servus, cui fideicommissa libertas relicta est, cogi eum manumittere: et ita est saepissime constitutum. cogetur igitur is, ad quem servus pervenerit, fideicommissam libertatem praestare si hoc maluit is qui rogatus est: latius enim acceptum est, ut et si sub condicione fuit ei libertas relicta et pendente condicione alienatus sit, attamen cum sua causa alienetur. quod si nolit ab eo manumitti, sed potius ab eo velit ad libertatem perduci, qui erat rogatus eum manumittere, audiri eum oportere divus hadrianus et divus pius rescripserunt. quin immo et si iam manumissus est, velit tamen potius eius libertus fieri, qui erat rogatus eum manumittere, audiendum eum divus pius rescripsit. sed et si ex persona manumissoris vel ex quacumque causa manumissus ostendere potest ius suum laedi manumissione vel etiam laesum, succurri ei ex his constitutionibus oportet, ne contra voluntatem defuncti durior eius condicio constituatur. plane si ea sit defuncti voluntas, ut vel a quocumque manumitti voluerit, dicendum est constitutiones supra scriptas cessare.

Dig. 40.5.25

Paulus 3 fideic.

Si heres qui vendidit servum sine successore decesserit, emptor autem extet et velit servus defuncti libertus esse, non emptoris, non esse eum audiendum valens scripsit, ne emptor et pretium et libertum perdat.

Dig. 40.5.26pr.

Ulpianus 5 fideic.

Cum vero is qui rogatus est non alienum servum manumittere mortalitatis necessitate vel bonorum publicatione ad alium servum perduxit, magis opinor constitutionibus esse locum, ne deterior condicio fideicommissae libertatis fiat. nam et cum quidam rogatus esset, cum moreretur, servum manumittere isque decessisset libertate servo non data, perinde eum habendum constitutum est atque si ad libertatem ab eo perductus esset: potest enim eo testamento dare libertatem utique directam. sic fit, ut, quotiens quis libertatem accepit fideicommissariam, si ab alio quam qui erat rogatus manumittatur, auxilium constitutionum habeat perindeque habeatur atque si ab eo manumissus fuisset, quoniam fideicommissis libertatibus favor exhibetur nec intercidere solet destinata fideicommissa libertas: qui enim ea donatus est, in possessionem libertatis interim esse videtur.

Dig. 40.5.26.1

Ulpianus 5 fideic.

Apparet igitur subventum fideicommissis libertatibus, ut in re mora facta esse his videatur et ex die quidem, quo libertas peti potuit, matri traderentur manumittendi causa, ex die vero, quo petita est, ingenui nascantur. plerumque enim per ignaviam vel per timiditatem eorum, quibus relinquitur libertas fideicommissa, vel ignorantiam iuris sui vel per auctoritatem et dignitatem eorum, a quibus relicta est, vel serius petitur vel in totum non petitur fideicommissa libertas: quae res obesse libertati non debet. quod igitur defendimus, ita determinandum est, ut ingenui quidem exinde nascantur, ex quo mora libertati facta est, manumitti autem partum dici debeat, ex quo peti libertas potuit, quamvis non sit petita. certe minoribus viginti quinque annis et in hoc tribuendum est auxilium, ut videatur in re mora esse: nam qua ratione decretum et a divo severo constitutum est in re moram esse circa pecuniaria fideicommissa, quae minoribus relicta sunt, multo magis debet etiam in libertatibus hoc idem admitti.

Dig. 40.5.26.2

Ulpianus 5 fideic.

Cum quidam caecilius ancillam, quam pignori obligaverat, dimisso creditore per fideicommissum manumitti voluisset et heredibus creditorem non liberantibus infantes, qui postea erant editi, venissent a creditore, imperator noster cum patre rescripsit secundum ea, quae divo pio placuerint, ne pueri ingenuitate destinata fraudarentur, pretio emptori restituto perinde eos ingenuos fore, ac si mater eorum suo tempore manumissa fuisset.

Dig. 40.5.26.3

Ulpianus 5 fideic.

Idem imperator noster cum patre rescripsit, si post quinquennium mortis testatoris tabulae testamenti apertae essent vel codicilli et partus medio tempore editus sit, ne fortuita mora servitutem partui irrogaverit, matri partum tradendum, ut ab ea ad libertatem perducatur.

Dig. 40.5.26.4

Ulpianus 5 fideic.

Apparet igitur ex hoc scripto, item eo quod a divo pio rescriptum diximus, noluisse eos moram libertati fortuitam nocere edito ex ea, cui fideicommissa libertas data est.

Dig. 40.5.26.5

Ulpianus 5 fideic.

Non tamen si a substituto impuberis fideicommissa libertas data sit ancillae eaque vivo impubere partum ediderit, vel si post tempus vel sub condicione libertatem acceperit et ante diem vel condicionem partum ediderit, ad libertatem partus perducetur, quia horum alia condicio est: non enim moram fortuitam, sed ex voluntate testantis passi sunt.

Dig. 40.5.26.6

Ulpianus 5 fideic.

Si pro non scripto habitus sit servus alicui legatus, cui servo per fideicommissum libertas adscripta est, quaestionis est, num fideicommissa libertas debeat intercidere et an, si servus petat fideicommissam libertatem ab eo, penes quem remansisset pro non scripto habito legato quod erat relictum ei qui eum rogatus fuerat manumittere, vel si ipse servus, ut supra dictum est, fuit legatus, an libertas non debeat intercidere. et putem debere dici fideicommissam libertatem salvam esse, licet ad eum nihil pervenerit, qui eum rogatus erat manumittere: cogetur igitur libertatem praestare is ad quem pervenit legatum, quia libertas fideicommissa nullum impedimentum pati debet.

Dig. 40.5.26.7

Ulpianus 5 fideic.

Subventum libertatibus est senatus consulto, quod factum est temporibus divi traiani rubrio gallo et caelio hispone consulibus in haec verba: " si hi, a quibus libertatem praestari oportet, evocati a praetore adesse noluissent, si causa cognita praetor pronuntiasset libertatem his deberi, eodem iure statum servari, ac si directo manumissi essent".

Dig. 40.5.26.8

Ulpianus 5 fideic.

Hoc senatus consultum ad eos pertinet, quibus ex causa fideicommissi libertas debeatur. proinde si libertas non deberetur, obreptum tamen praetori est de libertate pronuntiatumque, ex hoc senatus consulto libertas non competit. et ita imperator noster cum patre suo rescripsit.

Dig. 40.5.26.9

Ulpianus 5 fideic.

Evocari autem a praetore oportet eos, qui fideicommissam libertatem debent: ceterum nisi fuerint evocati, cessat rubrianum senatus consultum. proinde denuntiationibus et edictis litterisque evocandi sunt.

Dig. 40.5.26.10

Ulpianus 5 fideic.

Hoc senatus consultum ad omnes pertinet latitantes, quos fideicommissam libertatem praestare oportet. proinde sive heres rogatus sive quis alius, senatus consulto locus est: omnes enim omnino, qui deberent fideicommissam libertatem praestare, in ea causa sunt, ut ad senatus consultum pertineant.

Dig. 40.5.26.11

Ulpianus 5 fideic.

Quare si heres quidem latitet, legatarius autem vel fideicommissarius, qui rogatus sit libertatem praestare, praesens sit, senatus consultum deficit et nihilo minus impedietur libertas: proponamus enim legatarium nondum dominium servi nactum esse.

Dig. 40.5.27

Paulus 3 fideic.

Itaque hoc casu princeps adeundus est, ut et in hoc casu libertati prospiciatur.

Dig. 40.5.28pr.

Ulpianus 5 fideic.

Si eum servum, cui erat fideicommissa libertas relicta, distraxerit is qui erat rogatus et emptor quidem latitet, is autem qui rogatus erat praesens sit, an rubriano senatus consulto locus sit? et ait Marcellus rubrianum locum habere, quia abest quem manumittere oportet.

Dig. 40.5.28.1

Ulpianus 5 fideic.

Haec autem verba " adesse noluissent" non utique exigunt ut latitet is qui libertatem praestare debebit: nam et si non latitet, contemnat autem venire, senatus consultum locum habebit.

Dig. 40.5.28.2

Ulpianus 5 fideic.

Idem observatur etiam, si plures heredes constituti fideicommissam libertatem praestare rogati non iusta ex causa absentes moram libertati faciant.

Dig. 40.5.28.3

Ulpianus 5 fideic.

Quorum si quosdam iusta ex causa abesse pronuntiatum fuerit, eorum, qui ex iusta causa abessent, et eorum, qui praesentes fideicommissae libertati moram non facient, perinde libertus erit atque si soli rogati ad iustam libertatem perduxissent.

Dig. 40.5.28.4

Ulpianus 5 fideic.

Si quis servum non hereditarium rogatus manumittere latitet, factum est senatus consultum aemilio iunco et iulio severo consulibus in haec verba: " placere, si quis ex his, qui fideicommissam libertatem ex quacumque causa deberent servo, qui mortis tempore eius qui rogavit non fuerit, isque adesse negabitur, praetor cognoscat et, si in ea causa esse videbitur, ut, si praesens esset, manumittere cogi deberet, id ita esse pronuntiet: cumque ita pronuntiasset, idem iuris erit, quod esset, si ita, ut ex fideicommisso manumitti debuisset, manumissus esset".

Dig. 40.5.28.5

Ulpianus 5 fideic.

Ex iusta causa abesse eos demum dicendum est, qui non habent iniustam causam absentiae, cum sufficiat, quod non in fraudem libertatis absint, quo magis videantur ex iusta causa abesse: ceterum non est necesse, ut rei publicae causa absint. proinde si alibi domicilium quis habeat, alibi petatur fideicommissaria libertas, dicendum est non esse necesse evocari eum, qui fideicommissam libertatem debere dicitur, quia etiam absente eo, si constiterit libertatem deberi, pronuntiari potest iusta de causa eum abesse, nec libertum perdit: namque eos, qui apud sedes suas et domicilium suum sunt, nemo dubitabit ex iusta causa abesse.

Dig. 40.5.29

Paulus 3 fideic.

Si quis, posteaquam in ea causa esse coeperit, ut ex fideicommisso manumitti deberet, alienatus sit, is quidem, cuius interim servus erit, manumittere cogetur: sed hic non distinguitur, iusta an non iusta causa absit: omnimodo enim libertus ei servatur.

Dig. 40.5.30pr.

Ulpianus 5 fideic.

Cum quasi absente quodam decretum fuisset interpositum ex iusta causa eum abesse, is autem mortuus iam esset, imperator noster rescripsit in heredis personam transferendum decretum eoque loco ius eius esse, quasi hunc ipsum ex eadem causa abesse pronuntiasset.

Dig. 40.5.30.1

Ulpianus 5 fideic.

Si infans sit inter eos, qui manumittere debent, senatus censuit, cum unius aetas impedierit, ut liberi liberaeque sint hi, quibus libertates ex causa fideicommissi praestari oportet.

Dig. 40.5.30.2

Ulpianus 5 fideic.

Hoc idem erit dicendum et si solus sit heres institutus qui fari non potest.

Dig. 40.5.30.3

Ulpianus 5 fideic.

Si vero pupillus tutorem habet isque nolit ad libertatem praestandam auctor esse, adeo non debet impedimento esse neque pupillo, ut libertos non habeat, neque libertati, ut divi fratres rescripserint ex causa fideicommissi libertatem praestari debere servo, perinde atque si ab ipso pupillo tutore auctore manumissus esset.

Dig. 40.5.30.4

Ulpianus 5 fideic.

Quicumque igitur casus inciderit, quo is qui fari non potest fideicommissae libertati subiectus est, accommodabimus mentem senatus consulti, quae etiam ad heredem infantem rogati trahenda est.

Dig. 40.5.30.5

Ulpianus 5 fideic.

Adeundus est autem etiam ex hac causa praetor, praesertim cum rescripto divi pii effectum est, ut, si quidam ex rogatis praesentes sunt, alii latitent, alii ex causa absint, intercedente infantis persona non omnium libertus efficiatur, sed tantum infantis et eorum qui ex iusta causa absunt vel etiam praesentium.

Dig. 40.5.30.6

Ulpianus 5 fideic.

Si plures heredes sunt instituti et inter eos qui fari non potest, sed non ipse rogatus sit servum manumittere, non oportere intercidere libertatem ob hoc, quod coheredibus suis vendere eum infans non possit: et exstat quidem senatus consultum vitrasianum, sed et divus pius cassio dextro rescripsit ita rem explicari, ut partes servorum, quibus per fideicommissum libertas data est, iusto pretio aestimentur atque ita servus ab his qui rogati sunt manumittatur. hi autem, qui eos manumiserunt, pretii nomine perinde fratribus et coheredibus suis obligati erunt, atque si ob eam rem ex iudicati causa cum his agi possit.

Dig. 40.5.30.7

Ulpianus 5 fideic.

In furiosi persona divus pius rescripsit fideicommissam libertatem non impediri sub condicione scripti heredis, quem compotem mentis non esse adfirmatur. igitur si constiterit ei recte datam per fideicommissum libertatem, decretum interponetur, quo ^ quod^ id ipsum complectatur, ad exemplum infantis.

Dig. 40.5.30.8

Ulpianus 5 fideic.

Ergo et in muto et in surdo subvenietur.

Dig. 40.5.30.9

Ulpianus 5 fideic.

Sed et si quis sine herede vel alio successore decesserit qui fideicommissam libertatem praestare debebat, adito praetore libertatem praestandam esse censuit senatus.

Dig. 40.5.30.10

Ulpianus 5 fideic.

Sed et si suus heres se abstinuerit, libertati fideicommissae per senatus consultum subventum est, tametsi non est sine herede, qui suum heredem habet licet abstinentem se.

Dig. 40.5.30.11

Ulpianus 5 fideic.

Idem dicendum et si minor viginti quinque annis adierit hereditatem eius, qui libertatem fideicommissam debebat, et in integrum sit restitutus abstinendi causa.

Dig. 40.5.30.12

Ulpianus 5 fideic.

Quaerendum est autem, cuius libertus iste fit: ex constitutione enim servo libertas perinde competit, atque si ex testamento libertatem consecutus esset. erit igitur libertus orcinus, non eius qui fideicommissam libertatem debebat.

Dig. 40.5.30.13

Ulpianus 5 fideic.

Si alter sine successore decesserit, alter ex iusta causa absit, extat rescriptum divorum marci et veri perinde dicentium eum ad libertatem perventurum, ac si ab eo qui sine successore decessit et ab eo qui ex iusta causa abesset ad libertatem ut oportuit perductus esset.

Dig. 40.5.30.14

Ulpianus 5 fideic.

Eleganter quaeri potest, cum heres sine successore decedit, utrum exspectari debet, donec certum sit heredem vel bonorum possessorem non extaturum, an vero etiam dum incertum est (forte deliberante herede scripto) possit ad libertatem pervenire: et melius est exspectari oportere, quoad certum esse coeperit successorem non extaturum.

Dig. 40.5.30.15

Ulpianus 5 fideic.

Imperator noster antoninus rescripsit eum cui fideicommissa libertas debetur, sine libertate aliquid ex testamento heredis accipere posse.

Dig. 40.5.30.16

Ulpianus 5 fideic.

Divus etiam marcus rescripsit fideicommissas libertates neque aetate neque condicione neque mora non praestantium tardiusve reddentium corrumpi aut in deteriorem statum perduci.

Dig. 40.5.30.17

Ulpianus 5 fideic.

Quamquam ex irritis codicillis libertates non debeantur, attamen si heres hos codicillos ratos habuit et ex his quaedam praestitit et servos praestandae fideicommissae libertatis gratia in libertate morari voluit, ad iustam libertatem eos pervenisse rescriptum imperatoris nostri et divi patris eius declarat.

Dig. 40.5.31pr.

Paulus 3 fideic.

Alieno servo dari potest per fideicommissum libertas, si tamen eius sit, cum quo testamenti factio est.

Dig. 40.5.31.1

Paulus 3 fideic.

Cum intestato moriturus fidei filii commisisset, ut servum manumitteret, et postumus ei natus fuisset, divi fratres rescripserunt libertatem, quia dividi non potest, ab utroque praestandam.

Dig. 40.5.31.2

Paulus 3 fideic.

Qui fideicommissariam libertatem debet, etiam eo tempore, quo alienare prohibitus erit, manumittere poterit.

Dig. 40.5.31.3

Paulus 3 fideic.

Si patronus contra tabulas bonorum possessionem acceperit, quia eum praeterierit libertus, non cogetur vendere servum proprium, quem rogatus erat a liberto suo manumittere.

Dig. 40.5.31.4

Paulus 3 fideic.

Si is cuius servus est nolit eum vendere, ut manumitteretur, nullae praetoris partes sunt: idem est et si pluris iusto vendere velit. sin autem certo quidem pretio, quod non prima facie videtur esse iniquum, dominus servum vendere paratus est, is vero, qui rogatus est manumittere, immodicum id esse nititur, praetoris partes erunt interponendae, ut iusto pretio volenti domino dato libertas ab emptore praestetur. quod si et dominus vendere paratus sit et servus velit manumitti, cogendus est heres redimere et manumittere, nisi dominus velit servum manumittere, ut actio sibi pretii in heredem detur: idque faciendum est etiam, si heres latitet: et ita imperator antoninus rescripsit.

Dig. 40.5.32pr.

Maecenatus 15 fideic.

Sed si alienare quidem sit paratus, non ante tamen id velit facere, quam sibi in pretium satisfiat, non erit manumittere compellendus, ne et servum manumittat et interdum nihil aut minus consequatur, si forte is, qui rogatus est manumittere, solvendo non sit.

Dig. 40.5.32.1

Maecenatus 15 fideic.

Invito tamen servo neque alii neque domino eam rem persequi concedendum est, quia non tale sit hoc fideicommissum, ex quo domino quid adquiratur: alioquin ipsi datum videretur. quod potest contingere, si testator pluris eum servum, quam quanti est, redimi ac manumitti voluit: nam tunc et domino erit fideicommissi persecutio, cuius interest praeter verum pretium id, quod plus ei iussus est dare, consequi, et servi, ut ad libertatem perveniat.

Dig. 40.5.32.2

Maecenatus 15 fideic.

Quod eveniet et si rem alienam certa pecunia redimere atque alii praestare heres vel legatarius intellegerentur: namque tunc et domino rei et ei, cui eadem praestare deberet, persecutionem esse: utriusque enim interesse et domini, ut praeter pretium accipiat, quo pluris eam testator redimi iussit, et eius cui relicta est, uti eam habeat.

Dig. 40.5.33pr.

Paulus 3 fideic.

Si filius defuncti rogatus fuerit servum sui patris manumittere, dicendum est posse eum etiam contra tabulas habere et operas imponere: hoc enim potuisset, etiamsi directam libertatem accepisset, quasi patroni filius.

Dig. 40.5.33.1

Paulus 3 fideic.

Erit rubriano senatus consulto locus, etiamsi sub condicione libertas data sit, si modo per ipsum servum non fiet, quo minus condicioni pareat: nec refert in dando an in faciendo an in aliquo casu condicio consistat. immo etiam amittit libertum heres, si condicioni impedimentum fecerit, etsi filius defuncti sit, quamvis alio iure habiturus sit libertum. nonnullam enim et hic poenam patitur: nam et si in servitutem petierit aut capitis accusaverit, perdit bonorum possessionem contra tabulas.

Dig. 40.5.33.2

Paulus 3 fideic.

Si is cui servus legatus est rogatus fuerat, ut eum manumitteret, et nolit eum accipere, compellendus est aut actiones suas ei praestare cui servus velit, ne intercidat libertas.

Dig. 40.5.34pr.

Pomponius 3 fideic.

Invitus is, cui fideicommisso libertas relicta est, non est tradendus alii, ut ab eo manumittatur et fiat alterius libertus, quam qui rogatus est manumittere.

Dig. 40.5.34.1

Pomponius 3 fideic.

Campanus ait, si minor annis viginti rogaverit heredem, ut proprium servum manumittat, praestandam ei libertatem, quia hic lex aelia sentia locum non habet.

Dig. 40.5.34.2

Pomponius 3 fideic.

Servus legatus erat calpurnio flacco isque rogatus erat eum manumittere et, si non manumisisset, idem servus titio legatus erat et is aeque rogatus erat, ut eum manumitteret: si non manumisisset, liber esse iussus erat. sabinus dicit inutiliter legatum fore et ex testamento eum continuo liberum futurum.

Dig. 40.5.35

Maecenatus 15 fideic.

Gaii cassii non est recepta sententia existimantis et heredi et legatario remittendam interdum proprii servi manumittendi necessitatem, si vel usus tam necessarius esset, ut eo carere non expediret, veluti dispensatoris paedagogive liberorum, vel tantum delictum est, ut ultio remittenda non esset: visum est enim ipsos in sua potestate habuisse: nam potuissent discedere a causa testamenti: qua non omissa debere voluntati defuncti obsequi.

Dig. 40.5.36pr.

Maecenatus 16 fideic.

Neque infantes neque furiosi neque ab hostibus capti neque hi, quos religio aut honestior causa vel calamitas aliqua vel maior res familiaris aut capitis famaeve periculum aut similis causa moretur, rubriano senatus consulto continentur: ac ne pupilli quidem, qui tutores non habent, aut eos habeant, quos earum quae causa detinet. sed nec, si hi data opera sui potestatem non faciunt, puto pupillis libertos eripi, quia et iniquum est facto tutoris, qui forsitan solvendo non sit, pupillum damno adfici, et senatus consulto non continetur alius quis quam qui ex causa fideicommissi debet praestare libertatem. quid ergo est? dasumiano senatus consulto subvenitur his, quo cautum est de his, qui iusta ex causa abessent, ut nec libertas impediatur nec libertus eripiatur his, qui fraude careant.

Dig. 40.5.36.1

Maecenatus 16 fideic.

Si per procuratorem quis defendatur, semper iusta ex causa abesse dicitur nec libertus ei eripitur.

Dig. 40.5.36.2

Maecenatus 16 fideic.

Nihil facit ad interpellandam iurisdictionem eius, qui de fideicommissa libertate cognoscit, privilegium cuiusque vel civitatis vel corporis vel officii, in quo quisque est, vel condicio personarum.

Dig. 40.5.37

Ulpianus 6 fideic.

Si pure data sit fideicommissa libertas et is servus rationes administrasse dicatur, divus marcus rescripsit moram libertati non esse faciendam, ex continenti tamen arbitrum dandum esse, qui computationem ineat. verba rescripti ita se habent: " aequius videtur trophimo ex causa fideicommissi praestari libertatem, quam sine condicione reddendarum rationum datam esse constat, neque humanum fuerit ob rei pecuniariae quaestionem libertati moram fieri. qua tamen repraesentata confestim arbiter a praetore erit dandus, apud quem rationem, quam administrasse eum apparuit, ex fide reddat". tantum igitur rationes reddere cogetur. sed an et reliqua restituere debeat, nihil adicitur, nec puto cogendum: nam de eo, quod in servitute gessit, post libertatem conveniri non potest. corpora plane rationum et si quas res vel pecunias ex his detinet cogendus est per praetorem restituere: item de singulis instruere.

Dig. 40.5.38

Paulus 3 decr.

In testamento, quod perfectum non erat, alumnae suae libertatem et fideicommissa dedit. cum omnia ut ab intestato egissent, quaesiit imperator, an ut ex causa fideicommissi manumissa fuisset: et interlocutus est, etiamsi nihil ab intestato pater petisset, pios tamen filios debuisse manumittere eam, quam pater dilexisset. pronuntiavit igitur recte eam manumissam et ideo fideicommissa etiam ei praestanda.

Dig. 40.5.39pr.

Paulus 13 resp.

Paulus respondit, etsi alienus inveniatur servus, quem ut suum testator ab uno ex heredibus voluerit manumitti, tamen cogendum eum, qui rogatus est, redimere eum et manumittere, quoniam non putavit similem esse causam libertatis et fideicommissi pecuniarii.

Dig. 40.5.39.1

Paulus 13 resp.

Paulus respondit his verbis " pisteuson de moi, zwile, hoti tas xaritas soi apodwsei ho uhios mou martialios kai soi kai tois sois paisin" plenam voluntatem defuncti contineri circa benefaciendum coniunctis personis zoilum: qui si servi sint, nihil est gratum his praestari posse quam libertatem ideoque praesidem debere sequi voluntatem defuncti.

Dig. 40.5.40pr.

Paulus 15 resp.

Lucius titius septiciae filiae suae naturali concordiam ancillam suam donavit: idem postea testamento filiae suae cum aliis quibusdam ancillam supra scriptam legavit, ut manumitteretur: quaero, an septicia filia naturalis ancillam supra scriptam manumittere cogi possit. paulus respondit, si vivo patre naturali donatio ancillae fuit neque patris naturalis iudicium in ceteris legatis filia adgnovit, non posse eam compelli ancillam propriam ex causa fideicommissi manumittere.

Dig. 40.5.40.1

Paulus 15 resp.

Lucius titius stichum servum maevio legavit et petit, ut neque ab eo neque ab herede eius umquam manumitteretur. paulus respondit testatorem potuisse postea hunc servum ad libertatem perducere, quia non sibi legem dixisset, sed legatario.

Dig. 40.5.41pr.

Scaevola 4 resp.

" thais ancilla mea cum heredi meo servierit annos decem, volo sit mea liberta". quaeritur, cum libertam suam esse voluerit nec id heres facere potuerit nec directa pure data sit libertas, an etiam post decem annos in servitutem remaneret. respondit nihil proponi, cur non thaidi libertas debeatur.

Dig. 40.5.41.1

Scaevola 4 resp.

Lucius titius ita cavit: " maevi fili carissime, te rogo, ut, si stichus et damas et pamphilus te promeruerint, aere alieno liberato ne alterius quam tuam servitutem experiantur": quaero, an, si per heredem steterit, quo minus aes alienum exsolveretur, ex causa fideicommissi libertatem consequi possint. respondit non quidem imputandum heredi, si pro commoditatibus rei suae administrandae aes alienum tardius exsolverit: verum si manifeste studium non solventis ei rei paratum, ut libertatibus mora fieret, probaretur, repraesentandas libertates.

Dig. 40.5.41.2

Scaevola 4 resp.

Tutoris, quem et ipsum testamento liberis dederat, fidei commisit de manumittendis servis ipsius tutoris, sed is a tutela excusatus fuerat: quaero, an eisdem servis libertatem praestare deberent tutores, qui in locum excusati dati tutelam administrarent. respondit secundum ea quae proponerentur libertates et ab heredibus scriptis videri datas.

Dig. 40.5.41.3

Scaevola 4 resp.

" seio auri libras tres et stichum notarium, quem peto manumittas". seius eodem testamento tutor datus a tutela se excusavit: quaeritur, an nihilo minus fideicommissa libertas debeatur. respondit nihil proponi, cur non debeatur.

Dig. 40.5.41.4

Scaevola 4 resp.

Sorore sua herede instituta de servis ita cavit: " boulomai kai parakalw, glukutaty mou adelfy, en parakatavyky se exein stixon kai daman tous pragmateutas mou, ohus egw ouk yleuverwsa, axris an tas qyfous apokatastyswsin: ean de kai soi areswsin, emynusa soi tyn gnwmyn mou". quaero, si paratis actoribus rationes reddere heres libertatem non praestet, dicendo eos non placere sibi, an audienda esset. respondit non spectandum, quod heredibus displiceret, sed id quod viro bono posset placere, ut libertatem consequantur.

Dig. 40.5.41.5

Scaevola 4 resp.

Lucia titia heredum fidei commisit, uti pamphilam ancillam seiae cum filiis eius redimerent et manumitterent, et iuridicus, quanti singuli essent redimendi, aestimavit: medio tempore pamphila, antequam pecunia solveretur, peperit: quaero, id quod natum est ex pamphila utrum ad heredes seiae an ad heredem titiae pertineat. respondit id, quod natum est ex pamphila, eius quidem esse, cuius ea fuerat tunc cum pareret: verum heredem, si moram fideicommissae libertati fecit, compellendum partum quoque ad libertatem perducere.

Dig. 40.5.41.6

Scaevola 4 resp.

Lucius titius ita testamento cavit: " medicos tibi commendo illum et illum: in tuo iudicio erit, ut habeas bonos libertos et medicos. quod si ego libertatem eis dedissem, veritus sum, quod sorori meae carissimae fecerunt medici servi eius manumissi ab ea, qui salario expleto reliquerunt eam": quaero, an fideicommissa libertas supra scriptis competere potest. respondit secundum ea quae proponerentur non necessitatem heredibus impositam, sed arbitrium permissum.

Dig. 40.5.41.7

Scaevola 4 resp.

Titius sticho servo suo libertatem dedit, si rationes sic dederit: quaero, an ratio per eum gesta ita putari debeat, ut damna, quae casu contigerunt, ad onus reliquorum non pertineant. respondit in negotio, quod voluntate domini administrasse proponatur, ea damna, quae casu ita acciderint, ut servo nihil possit imputari, non pertinere ad reliquorum onus.

Dig. 40.5.41.8

Scaevola 4 resp.

Item quaero, cum omne peculium reddere iussus sit, an ita peculium computari debeat, ut id solum peculii esse videatur, quod quaque ex causa domino debeat superesse. respondit in ea specie, de qua quaereretur, non debere deduci ex peculio, quod domino debeatur.

Dig. 40.5.41.9

Scaevola 4 resp.

Item quaero, an, si ex reliquis in peculio aliquid converterit, deduci hoc ex peculio reddendo debeat. respondit, si id, quod ex causa quae proponeretur in peculium versum est, reliquorum nomine desolutum est, fieri satis condicioni, si id, quod reliquum est peculii, solvatur.

Dig. 40.5.41.10

Scaevola 4 resp.

Libertatem ita testamento dedit: " cupitum servum meum, cum marcianus filius meus sedecim annos impleverit, rationibus redditis liberum esse volo": post mortem testatoris tutores cupito exactionem commiserunt isque nummos redactos expensavit eisdem tutoribus: deinde filius impubes decessit, cui mater heres extitit et tutorem tutelae iudicio filii condemnatum habuit: cupitus ad libertatem proclamat eo tempore, quo, si viveret marcianus, annos sedecim aetatis habiturus esset, offerens rationes unius anni in diem mortis testatoris, quod ceterae subscriptae fuerunt. quaesitum est, an eas quoque rationes, quas tutores periculo suo egerunt, cupitus reddere compelli debeat. respondit eum de quo quaeritur condicioni rationis reddendae ita videri paruisse, si omne ex eo, quod gessit, recte desiderari potest, reddiderit: nam alteram condicionem humaniore interpretatione ita accipi posse, ut defuncto pupillo tempus, quo, si viveret, sedecim annos impleret, exspectare satis fuerit.

Dig. 40.5.41.11

Scaevola 4 resp.

" stichus et damas servi mei, si rationes reddideritis, liberi estote": quaesitum est, an non solum rationes, verum si qua alia consilio et fraude eorum amota sunt, praestari ab his debeant, ut ad libertatem perveniant. respondit rationum reddendarum condicioni contineri omne, quod quoquo genere servi actum fidemque respiceret.

Dig. 40.5.41.12

Scaevola 4 resp.

Intra certa tempora condicioni reddendarum rationum non paruerunt, postea parati erant: quaesitum est, an perveniant ad libertatem. respondit, si per ipsos stetisset, quo minus intra tempora praescripta condicioni parerent, non idcirco liberos fore, quod postea rationes velint reddere.

Dig. 40.5.41.13

Scaevola 4 resp.

" ab heredibus meis peto fideique eorum committo, cum filius meus sedecim annos impleverit, stichum rationibus redditis manumittant": quaero, an eundem servum testator in diem usque pubertatis filii sui actum agere voluerit. respondit manifestum esse testatorem huius quoque actus rationem a sticho reddi voluisse.

Dig. 40.5.41.14

Scaevola 4 resp.

" stichus servus meus iubeo ut det praestet filiae et uxori meae heredibus meis sine ulla controversia tot aureos: et ut ipsum manumittant, fidei eorum committo": quaesitum est, cum uxor ab hereditate abstinuerit, utrum duobus an filiae praestare debeat. respondit filiae, quae heres ex asse extitisse proponeretur, pro solido dandum.

Dig. 40.5.41.15

Scaevola 4 resp.

Herede filio suo ex asse instituto libertatem dedit in haec verba: " december dispensator meus, severus vilicus et victorina vilica severi contubernalis in annos octo liberi sunto: quos in ministerio filii mei esse volo: te autem, severe fili carissime, peto, uti decembrem et severum commendatos habeas, quibus praesentem libertatem non dedi, ut idonea ministeria haberes, quos spero te et libertos idoneos habiturum". quaero, cum eo tempore, quo titius testamentum faciebat, filius natus annorum fuerat novem et titius post biennium et sex menses decesserit, anni octo, in quos libertas erat dilata, ex testamenti facti tempore an vero ex mortis numerari debeant. respondit posse videri testatorem eos annos octo dilatae libertatis comprehendisse, qui computandi sunt a die testamenti facti, nisi aliud voluisse testatorem probaretur.

Dig. 40.5.41.16

Scaevola 4 resp.

" spendophorus, cum filia mea in familia nupserit, si rationes idonee filiae meae administratas reddiderit, liber esto": filia cum adhuc pubes esset, vivo patre decessit et ex substitutione seius heres extitit: quaero, cum spendophorus rationes pupillae non administraverit et vivo patre familias desierit ipsius rationes administrare et, si viveret, titia annos haberet amplius duodecim, an ex testamento liber sit. respondit, si nullas rationes administrasset, quas reddere heredi deberet, secundum ea quae proponerentur liberum esse.

Dig. 40.5.41.17

Scaevola 4 resp.

" stichum rationibus redditis manumitti volo". stichus arcarius probante domino nomina fecit et rationes a domino subscriptas exhibet nec postea nomen ullum fecit: quaero, an, si qui minus solvendo fuerint debitores, quibus alii exactores erant applicati, nondum videatur condicioni satisfactum. respondit secundum ea quae proponerentur non pertinere ad onus reddendarum rationum, quod solvendo non esse debitores.

Dig. 40.5.42

Maecenatus 7 fideic.

Antoninus augustus pius noster, quo militum suorum per omnia rata esset voluntas suprema, cum et institutus et substitutus in continenti, priusquam adirent hereditatem, decessissent, eos, quibus ab his et libertas et hereditas a milite per fideicommissum data esset, perinde liberos et heredes esse iussit, ac si utrumque directo accepissent. eorum autem, qui a pagano libertatem et hereditatem per fideicommissum acceperant, cum aeque in continenti et institutus et substitutus decessissent, satis habuit libertatem confirmare.

Dig. 40.5.43

Paulus 4 ad sab.

Fideicommissa libertas non debetur ei, quem postea vinxit dominus.

Dig. 40.5.44

Pomponius 7 ad sab.

De libertate fideicommissaria praestanda servus cum domino recte contendit.

Dig. 40.5.45pr.

Ulpianus 5 disp.

Si debitor rogatus sit a creditore ancillam suam pigneratam manumittere, dicendum est fideicommissariam libertatem utiliter relictam a debitore. quid enim interest, certa quantitas ab eo relinquatur an fideicommissaria libertas? et sive plus sit in pretio sive minus, cogitur libertatem praestare, si modo semel adgnovit voluntatem creditoris. adgnovisse autem sic accipimus, si forte, cum conveniretur ab herede, usus est exceptione vel alias voluntatem suam ostendit: nam si conveniatur debitor ab herede creditoris, doli exceptione uti potest in id, quod intererit debitoris ancillam suam habere.

Dig. 40.5.45.1

Ulpianus 5 disp.

In fideicommissaria libertate, quamvis quis modicum legatum fuerit consecutus, necesse habet servum suum manumittere: pecuniarium enim fideicommissum si divisum fuerit, satis iniuriam facit libertati quam fideicommissario: satius est igitur eum, qui adgnovit legatum, onerari quam libertatem intercidere.

Dig. 40.5.45.2

Ulpianus 5 disp.

Quotiens servo vel ancillae fideicommissaria libertas relinquitur, in ea condicione est, ut, quoad manumittatur, servilis condicionis sit: et quidem si nullam moram praestandae libertati qui praestare debet fecit, nihil de statu eorum mutatur: ideoque eos interim legari posse, sed cum sua causa, constat.

Dig. 40.5.46pr.

Ulpianus 6 disp.

Fideicommissa libertas ita potest dari: " heres, si volueris, fidei tuae committo, ut stichum manumittas", quamvis nihil aliud in testamento potest valere ex nutu heredis.

Dig. 40.5.46.1

Ulpianus 6 disp.

Plane et ita " si stichus voluerit" potest ei libertas adscribi.

Dig. 40.5.46.2

Ulpianus 6 disp.

Sed et si ita adscriptum sit " si seius voluerit, stichum liberum esse volo", mihi videtur posse dici valere libertatem, quia condicio potius est, quemadmodum si mihi legatum esset, si titius capitolium ascenderit.

Dig. 40.5.46.3

Ulpianus 6 disp.

Quod si ita scriptum sit " si heres voluerit", non valebit, sed ita demum, si totum in voluntate fecit heredis, si ei libuerit. ceterum si arbitrium illi quasi viro bono dedit, non dubitabimus, quin libertas debeatur: nam et eam libertatem deberi placuit " si tibi videbitur, peto manumittas": ita enim hoc accipiendum " si tibi quasi viro bono videbitur". nam et ita relictum " si voluntatem meam probaveris" puto deberi: quemadmodum " si te meruerit" quasi virum bonum vel " si te non offenderit" quasi virum bonum vel " si comprobaveris" vel " si non reprobaveris" vel " si dignum putaveris". nam et cum quidam graecis verbis ita fideicommissum dedisset: tw deini, ean dokimasys, eleuverian dovynai boulomai, a divo severo rescriptum est fideicommissum peti posse.

Dig. 40.5.46.4

Ulpianus 6 disp.

Quamquam autem in heredis arbitrium conferri, an debeatur, non possit, quando tamen debeatur, conferri potest.

Dig. 40.5.46.5

Ulpianus 6 disp.

Quidam, cum tres servos legasset, fidei heredis sui commisit, ut ex his duos quos vellet manumitteret: fideicommissa libertas valebit et quos ex his vellet, heres manumittet: quare si eos vindicaret legatarius, quos heres vult manumittere, exceptione doli repelletur.

Dig. 40.5.47pr.

Iulianus 42 Dig.

Si pater duos filios heredes instituerit et adgnatione postumi ruptum testamentum fuerit, quamvis hereditas pro duabus partibus ad eos pertineat, tamen fideicommissae libertates praestari non debent, sicuti ne legata quidem aut fideicommissa praestare coguntur.

Dig. 40.5.47.1

Iulianus 42 Dig.

Si, cum alienum servum heres rogatus sit manumittere, item communem vel eum, in quo usus fructus alienus est, latitet, non inique senatus consulto libertatibus succurretur.

Dig. 40.5.47.2

Iulianus 42 Dig.

Si sticho libertas per fideicommissum data fuerit sub condicione, si rationes reddidisset, et is absente herede paratus sit reliqua solvere, praetoris officio continetur, ut virum bonum eligat, cuius arbitrio rationes computentur, et pecuniam, quae ex computatione colligitur, deponat, atque ita pronuntiet libertatem ex causa fideicommissi deberi. haec autem fieri conveniet, si heres ex iusta causa aberit: nam si latitabit, satis erit liquere praetori per servum non stare, quo minus condicioni pareat atque ita pronuntiare de libertate oportebit.

Dig. 40.5.47.3

Iulianus 42 Dig.

Cum sub condicione legato servo libertas datur non aliter fideicommissario tradi debet, quam ut caveatur existente condicione traditu iri eum.

Dig. 40.5.47.4

Iulianus 42 Dig.

Quaedam cum in extrema esset valetudine, praesentibus honestis viris compluribus et matre sua, ad quam legitima hereditas eius pertinebat, ita locuta est " ancillas meas maeviam et seiam liberas esse volo" et intestata decessit: quaero, si mater ex senatus consulto legitimam hereditatem eius non vindicasset et hereditas ad proximum cognatum pertinuisset, an fideicommissa libertas deberetur. respondi deberi: nam eam, quae in extremis dixisset " ancillas meas illam et illam liberas esse volo", videri ab omnibus, qui legitimi heredes aut bonorum possessores futuri essent, petisse, ut hoc fieri possit.

Dig. 40.5.48

Iulianus 62 Dig.

Cum in testamento scriptum est: " stichum titio lego" vel " heres meus dato ita, ut eum titius manumittat", dixi petenti legatario stichum exceptionem doli mali obstaruram, nisi caverit se libertatem secundum voluntatem defuncti praestaturum.

Dig. 40.5.49

Africanus 9 quaest.

Si is, cui servus legatus est, rogatus manumittere latitet, orcinum fieri libertum respondit: idem fore et si non legatarii, sed heredis fidei commissum esset. sed et si non omnium, sed quorundam heredum fidei commissum sit, aeque dicendum orcinum fieri: in eos autem qui latitaverint coheredibus, a quibus redimendae partes essent, utilem actionem eo nomine dari debere vel etiam familiae erciscundae iudicio recte eos acturos.

Dig. 40.5.50

Marcianus 7 inst.

Si servus legatus et per fideicommissum manumissus sit, cervidius scaevola consultus putabat novissimam scripturam valere, sive libertas sit sive legatum, quia, cum libertatem datam postea placeat adimi, et per legatum constat posse adimi: sed si in obscuro sit, qua mente post libertatem legavit eundem servum, in obscuro libertatem praevalere. quae sententia mihi quoque verior esse videtur.

Dig. 40.5.51pr.

Marcianus 9 inst.

Non tantum ipse, qui rogatus est manumittere, ad libertatem perducere potest, sed et successores eius, sive emptione sive quo alio modo successerint. sed et si nemo successor extiterit, ad fiscum ita transit, ut libertas ab eo praestetur.

Dig. 40.5.51.1

Marcianus 9 inst.

Is autem qui rogatus est manumittere etiam eo tempore quo alienare prohibetur potest manumittere.

Dig. 40.5.51.2

Marcianus 9 inst.

Si alienum servum quis rogatus fuerit manumittere, cum ei pecunia certa legata esset, ut emat eum et manumittat, et dominus nolit eum vendere, legatum retinet ex voluntate defuncti.

Dig. 40.5.51.3

Marcianus 9 inst.

Cui per fideicommissum libertas debetur, liberi quodammodo loco est, et statuliberi locum optinet vel eo magis, quod nec in alium transferendus est, ut aut libertas eius impediatur aut iura patronorum graviora experiatur.

Dig. 40.5.51.4

Marcianus 9 inst.

Senatus consulto dasumiano cautum est, ut, si ex iusta causa absit qui fideicommissam libertatem debet et hoc pronuntiatum fuerit, perinde libertas competat, atque si, ut oportet, ex causa fideicommissi manumissus esset.

Dig. 40.5.51.5

Marcianus 9 inst.

Abesse autem is intellegitur, qui a tribunali abest.

Dig. 40.5.51.6

Marcianus 9 inst.

Et quia de heredibus tantum cautum erat, adiectum est eodem senatus consulto, ut quicumque fideicommissam libertatem ex quacumque causa pronuntiatum fuerit eum eosve abesse, perinde habeatur, atque si, ut oportet, ex causa fideicommissi manumissus esset.

Dig. 40.5.51.7

Marcianus 9 inst.

Sed articuleiano senatus consulto cavetur, ut in provinciis praesides provinciae cognoscant, licet heres non sit eius provinciae.

Dig. 40.5.51.8

Marcianus 9 inst.

Sed si non hereditarium servum quis rogatus fuerit manumittere, sed proprium, ex senatus consulto iunciano post pronuntiationem pervenit ad libertatem.

Dig. 40.5.51.9

Marcianus 9 inst.

Sive iusta ex causa abest sive latitet sive praesens non vult manumittere, pro absente eum haberi divus pius rescripsit.

Dig. 40.5.51.10

Marcianus 9 inst.

Emptor quoque ut manumittat, eodem senatus consulto expressum est.

Dig. 40.5.51.11

Marcianus 9 inst.

Et praesens coheres perinde manumittat, atque si traditum a coherede accepisset. quod et in impuberis persona coheredis, qui non erat rogatus manumittere, eundem principem rescripsisse relatum est.

Dig. 40.5.51.12

Marcianus 9 inst.

Sed si matrimonii causa quis manumittere rogatus est, non est cogendus eam uxorem ducere, sed sufficit fideicommissa libertas.

Dig. 40.5.52

Ulpianus 1 resp.

Posteaquam a creditore alienati sunt servi, quibus fideicommissa libertas adscripta est, non nisi ex iusta causa adversus heredem subveniri eis posse.

Dig. 40.5.53pr.

Marcianus 4 reg.

Si quis rogatus ancillam manumittere moram fecerit, si interea enixa fuerit, constitutum est huiusmodi partum liberum nasci et quidem ingenuum. sed sunt constitutiones, quibus cavetur statim ex quo libertas deberi coeperit ingenuum nasci: et hoc magis est sine dubio sequendum, quatenus libertas non privata, sed publica res est, ut ultro is qui eam debet offerre debeat.

Dig. 40.5.53.1

Marcianus 4 reg.

Sed si nondum debita libertate fideicommissa ancilla peperit, studio tamen heredis fuerit effectum, ut nondum libertas deberetur, veluti quod tardius adit hereditatem, ut qui nati sint ex ancilla servi eius fiant, placet manumittendos, sed tradi matri oportere, ut ab ea manumitterentur et liberti potius matris fiant: nam quos indignus est heres servos habere, ne quidem libertos habebit.

Dig. 40.5.54

Maecenatus 16 fideic.

Si mater, postquam filium accepisset, vel qui in eius locum successit praestare noluit libertatem, compellendi sunt: amplius si mater aut nollet sibi filium tradi aut in rerum natura esse desisset, non ab re est dicere, nihilo minus ita natis ab herede libertatem praestari.

Dig. 40.5.55pr.

Marcianus 4 reg.

Sed et si non data opera tardius adierit, sed dum de adeunda hereditate deliberat, idem dictum est. et si postea cognovit se heredem institutum, quam ancilla peperit, placet hoc quoque casu subveniendum esse: hoc tamen casu ipse manumittere debebit, non matri tradere.

Dig. 40.5.55.1

Marcianus 4 reg.

Sed si directo libertas data fuerit ancillae et horum aliquid evenerit, quemadmodum natis subvenietur? nam ibi quidem petitur fideicommissa libertas et praetor parvulis subvenit: cum vero directo libertas datur, non petitur. sed etiam hoc casu puto nato subveniendum esse, ut aditus praetor in rem matri decernat actionem exemplo fideicommissariae libertatis. sic denique et Marcellus libro sexto decimo digestorum scripsit et ante aditam hereditatem usucaptis, qui testamento manumissi sunt, subveniendum esse, ut eis libertas conservetur utique per praetorem, quamvis his et imputari possit, quare usucapti sunt: in parvulis autem nulla deprehenditur culpa.

Dig. 40.5.56

Marcellus l.S. resp.

Lucius titius testamento ita cavit: " si quos codicillos reliquero, valere volo. si quis mihi ex paula, quae uxor mea fuit, intra decem menses natus natave erit, ex semisse heredes sunto. gaius seius ex semisse heres esto. stichum et pamphilum servos meos et erotem et diphilum peto et fidei heredum committo, ut, cum ad pubertatem liberi mei pervenerint, manumittant". deinde novissima parte ita cavit: " quod si mihi liberi nati non erunt aut intra pubertatem decesserint, tunc heredes ex paribus partibus sunto mucius et maevius. legata, quae priore testamento, quo filios et seium, reliqui, praestari volo, hoc est et a sequentibus heredibus". deinde codicillis ita cavit: " lucius titius heredibus primis et substitutis salutem. peto, ut ea quae testamento cavi legavi et ea quae codicillis cavero legavero, praestetis". quaero, cum liberi lucio titio nati non sint, an sticho et pamphilo et eroti et diphilo servis confestim fideicommissa libertas praestari debeat. Marcellus respondit condicionem, quae libertati eorum, de quibus quaereretur, si filii heredes exstitissent, adposita esset, repetitam non videri ideoque confestim libertatem praestandam esse et a primis et a substitutis heredibus: nam ut supra scriptum est, petit, ut quae testamento cavisset praestarentur, cavit autem de libertate eorum servorum. atquin sub condicione cavit et, si alterius generis condicio esset, exspectanda esset: sed non est verisimile, ut hoc in ista condicione cogitaverit, cum fidei substitutorum committeret, qui admitti ad hereditatem non possent, si impleretur condicio.

Dig. 40.6.0. De ademptione libertatis.

Dig. 40.6.1

Clementius 18 ad l. iul. et pap.

Cum libertas lege adimatur, aut pro non data haberi debet aut certe perinde observari, ac si a testatore adempta esset.

Dig. 40.7.0. De statuliberis.

Dig. 40.7.1pr.

Paulus 5 ad sab.

Statuliber est, qui statutam et destinatam in tempus vel condicionem libertatem habet.

Dig. 40.7.1.1

Paulus 5 ad sab.

Fiunt autem statuliberi vel condicione expressa vel vi ipsa. condicione expressa quid est, manifestum est. vi ipsa, cum creditoris fraudandi causa manumittuntur: nam dum incertum est, an creditor iure suo utatur, interim statuliberi sunt, quoniam fraus cum effectu in lege aelia sentia accipitur.

Dig. 40.7.2pr.

Ulpianus 4 ad sab.

Qui statuliberi causam adprehendit, in ea condicione est, ut, sive tradatur, salva spe libertatis alienetur, sive usucapiatur, cum sua causa usucapiatur, sive manumittatur, non perdat spem orcini liberti. sed statuliberi causam non prius servus nanciscitur nisi adita vel ab uno ex institutis hereditate: ceterum ante aditionem sive tradetur sive usucapietur sive manumittetur, spes statutae libertatis intercidit.

Dig. 40.7.2.1

Ulpianus 4 ad sab.

Sed si impuberis tabulis libertas servo sit adscripta, an vivo pupillo, post aditionem videlicet hereditatis patris, statuliber sit? cassius negat: iulianus contra existimat, quae sententia verior habetur.

Dig. 40.7.2.2

Ulpianus 4 ad sab.

Plus scripsit iulianus et si legatus sit servus ab herede patris, liber esse iussus in pupillaribus tabulis, praevalere libertatis dationem.

Dig. 40.7.2.3

Ulpianus 4 ad sab.

Si primis tabulis sub condicione servus cum libertate ex parte dimidia heres sit institutus, an statuliberi causam optineat, ut adeunte coherede cum sua causa usucapiatur? cum a semetipso acceperit libertatem, non potest statuliberi causam optinere. plane si condicio hereditatis deficiat, quo casu secundum iulianum vel libertatem apiscitur, dicendum est statuliberi causam optinere, eo quod non a semetipso, sed a coherede accepisse libertatem creditur.

Dig. 40.7.2.4

Ulpianus 4 ad sab.

Quocumque gradu pupillo servus cum libertate substitutus sit, necessarii causam optinet: quae sententia utilitatis causa recepta est et a nobis probatur. celsus quoque putat libro quinto decimo cum libertate substitutum statuliberi causam optinere.

Dig. 40.7.3pr.

Ulpianus 27 ad sab.

Statuliberos condicioni parere oportet, si nemo eos impediat et sit condicio possibilis.

Dig. 40.7.3.1

Ulpianus 27 ad sab.

Sed si in heredis persona iussus sit parere condicioni, quid dici debeat? si quidem paruit condicioni, statim liber est etiam invito herede. quod si non patitur heres pareri (puta offert decem, quae dare iussus erat), procul dubio liber est, quia per heredem stare videtur, quo minus condicionem impleat. et parvi refert, de peculio ei offerat an ab alio accepta: receptum est enim, ut servus peculiares quoque nummos dando perveniat ad libertatem, sive ipsi heredi sive alii dare iussus est.

Dig. 40.7.3.2

Ulpianus 27 ad sab.

Inde quaeritur, si forte debeatur pecunia huic servo vel ab herede, quod in domini rationem plus erogaverat, vel ab extraneo, nec velit heres debitorem convenire vel statulibero solvere pecuniam: an debeat ad libertatem pervenire, quasi moram per heredem patiatur. et aut legatum huic statulibero fuit peculium aut non: si legatum peculium fuit, servius scribit moram eum libertatis passum ob hoc ipsum, quod ei aliquid ex ratione dominica deberetur nec ei ab herede praestaretur: quam sententiam et labeo probat. idem servius probat et si in eo moram faciat heres, quod nolit exigere a debitoribus: nam perventurum ad libertatem ait. mihi quoque videtur verum quod servius ait. cum igitur veram putemus sententiam servi, videamus, an et si non fuerit praelegatum peculium servo, idem debeat dici: constat enim statuliberum de peculio posse dare vel ipsi heredi iussum vel alii: et si eum dare impediat, perveniet statuliber ad libertatem. denique etiam remedii loco hoc monstratur domino statuliberi, ut eum extraneo iussum dare prohibeat, ne et nummos perdat cum statulibero. proinde defendi potest et si non vult exigere vel ipse solvere, ut hic habeat, unde condicioni pareat, libertatem competere: et ita cassius quoque scribit.

Dig. 40.7.3.3

Ulpianus 27 ad sab.

Non solum autem si dare iussum dare prohibeat, statuliber ad libertatem pervenit, verum etiam si ascendere capitolium iussum ascendere vetet, item si capuae dare iussum capuam ire prohibeat: nam qui prohibet servum proficisci, intellegendus est impedire magis velle libertatem quam operis servi uti.

Dig. 40.7.3.4

Ulpianus 27 ad sab.

Sed et si iussum coheredi dare non patiatur unus ex heredibus dare, aeque liber erit: sed is, cui iussus erat dare et liber esse, familiae erciscundae iudicio ab eo qui impedit consequetur, quod sua intererat prohibitum statuliberum non esse.

Dig. 40.7.3.5

Ulpianus 27 ad sab.

Si decem iussus dare et liber esse quinque det, non pervenit ad libertatem, nisi totum det: interim igitur vindicare quinque nummos dominus eorum potest. sed si residuum fuerit solutum, tunc etiam id alienatum, cuius ante dominium non erat translatum. ita pendebit praecedentis summae alienatio, sic tamen, ut non retro nummi fiant accipientis, sed tunc, cum residua summa fuerit exsoluta.

Dig. 40.7.3.6

Ulpianus 27 ad sab.

Si plus quam iussus erat dederit statuliber, puta decem iussus dare viginti dedit, sive numeravit sive in sacculo dedit, pervenit ad libertatem et superfluum potest repetere.

Dig. 40.7.3.7

Ulpianus 27 ad sab.

Si quis servum iussum decem dare et liberum esse vendiderit sine peculio, utrum statim liber sit (quasi prohibitus videatur de peculio dare hoc ipso, quod sine peculio distractus est) an vero cum fuerit prohibitus peculium tangere? et puto tunc demum liberum fore, cum volens dare prohibeatur, non statim ubi veniit.

Dig. 40.7.3.8

Ulpianus 27 ad sab.

Si quis servum iussum decem dare et liberum esse operari prohibeat, vel si, quod ex operis suis meret, abstulerit ei heres, vel si, quod ex mercedibus suis coegit, heredi dederit, an ad libertatem perveniat? et puto, si quidem ex operis dederit vel undecumque dederit, ad libertatem perventurum: quod si prohibeatur operari, non fore liberum, quia operari domino debet. plane si ei ablata fuerit pecunia ex operis collecta, liberum fore arbitror, quia de peculio dare prohibetur. sane si testator vel ex operis ut det iussit, prohibitum operari ad libertatem perventurum non dubito.

Dig. 40.7.3.9

Ulpianus 27 ad sab.

Sed et si argento subtracto vel rebus aliis distractis nummos corrasos dederit, perveniet ad libertatem, quamvis, si nummos subtractos dedisset, ad libertatem non perveniret: nec enim videtur dedisse, sed magis reddidisse. sed nec si aliis subripuerit nummos et heredi dederit, ad libertatem perveniet, quia avelli nummi ei qui accepit possunt. plane si sic consumpti fuerint, ut nullo casu avelli possint, competet libertas.

Dig. 40.7.3.10

Ulpianus 27 ad sab.

Non solum autem si heres moram facit libertati, sed et si tutor vel curator vel procurator vel alius quivis, in cuius persona condicioni parendum est, libertatem competere dicemus. et sane hoc iure utimur in statulibero, ut sufficiat per eum non stare, quo minus condicioni pareat.

Dig. 40.7.3.11

Ulpianus 27 ad sab.

Si quis heredi in diebus triginta proximis mortis testatoris dare iussus fuerit, deinde heres tardius adierit, trebatius et labeo, si sine dolo malo tardius adierit, dantem eum intra dies triginta aditae hereditatis ad libertatem pervenire: quae sententia vera est. sed quid si data opera traxit? an ob id statim, ut adita est hereditas, ad libertatem perveniat? quid enim si tunc habuit, post aditam habere desiit? sed et hic expleta videtur condicio, quoniam per eum non steterit, quo minus impleatur.

Dig. 40.7.3.12

Ulpianus 27 ad sab.

Si quis sic acceperit libertatem " cum decem dare poterit, liber esto", trebatius ait, licet habuerit decem vel idoneus fuerit ad adquirendum et conservandum peculium, tamen non alias ad libertatem perventurum, nisi dederit aut per eum non steterit, quo minus det: quae sententia vera est.

Dig. 40.7.3.13

Ulpianus 27 ad sab.

Stichus annua bima trima die denos aureos heredi si dederit, liber esse iussus est. si prima pensione stetit per heredem, quo minus acciperet decem, exspectandam esse trimam pensionem placet, quia et tempus adiectum est et adhuc supersunt duae pensiones. sed si eadem decem sola habeat, quae optulit ad primam pensionem, an etiam ad sequentem quoque prosit, si offerat? et an et ad tertiam, si sequens pensio non sit accepta? et puto sufficere haec eadem et paenitentiae heredi locum non esse: quod et pomponius probat.

Dig. 40.7.3.14

Ulpianus 27 ad sab.

Quid si servus, qui annua bima trima die iussus est dena dare, tota simul offerat heredi non exspectata die ? vel decem primo anno datis secundo anno viginti optulit ? benignius est eum in libertatem pervenire, cum utriusque providentia infertur et servi, quatenus maturius in libertatem perveniat, et heredis, quatenus dilatione interempta ilico accipiat, quod post tempus consequi poterat.

Dig. 40.7.3.15

Ulpianus 27 ad sab.

Si ita sit libertas servo data, si quinquennio heredi servierit, deinde eum heres manumiserit, statim liber fit, quasi per eum sit effectum, quo minus ei serviat: quamvis si non pateretur eum sibi servire, non statim perveniret, quam si quinquennium praeterisset. ratio huius res evidens est: manumissus enim amplius servire non potest: at is quem quis non patitur sibi servire, postea pati potest intra quinquennii tempus. atquin iam quinquennio ei servire non potest: sed vel minus potest.

Dig. 40.7.3.16

Ulpianus 27 ad sab.

Item iulianus libro sexto decimo digestorum scripsit, si arethusae libertas ita sit data, si tres servos pepererit, et per heredem steterit, quo minus pepererit (puta quod ei medicamentum dedisset, ne conciperet), statim liberam futuram esse: quid enim exspectamus? idemque et si egisset heres, ut abortum faceret, quia et uno utero potuit tres edere.

Dig. 40.7.3.17

Ulpianus 27 ad sab.

Item si heredi servire iussum statuliberum heres vendidit et tradidit, credo statim ad libertatem pervenire.

Dig. 40.7.4pr.

Paulus 5 ad sab.

Cum heres rei publicae causa abesset et pecuniam statuliber haberet: vel exspectari eum debere, donec redeat is cui dare debet, vel deponere in aedem pecuniam consignatam oportet, quo subsecuto statim ad libertatem pervenit.

Dig. 40.7.4.1

Paulus 5 ad sab.

Non est statuliber, cui libertas in tam longum tempus collata est, ut eo tempore is qui manumissus est vivere non possit: aut si tam difficilem, immo paene impossibilem condicionem adiecerit, ut aliunde ea libertas optingere non possit, veluti si heredi milies dedisset aut cum moreretur, liberum esse iussisset: sic enim libertas inutiliter datur, et ita iulianus scribit, quia nec animus dandae libertatis est.

Dig. 40.7.4.2

Paulus 5 ad sab.

Servire titio anno et liber esse iussus titio mortuo non statim liber fiet, sed cum annus transierit, quod videtur non tantum sub condicione, sed etiam ex tempore data libertas: etenim absurdum est maturius eum liberum fieri, cum condicionem non implet, quam futurus foret, si eam expleret.

Dig. 40.7.4.3

Paulus 5 ad sab.

Si duobus decem datis liber esse iussus sit et unus quinque accipere noluerit, melius est dicere posse eum eadem quinque alteri offerentem ad libertatem pervenire.

Dig. 40.7.4.4

Paulus 5 ad sab.

" stichus si titio per triennium servierit vel si illi centum operas dederit, liber esto". constat hoc modo libertatem utiliter dari posse: nam et alienus servus servire nobis potest, sicuti liber, et multo magis operas dare: nisi testator servitutis appellatione dominium magis quam operam intellexit. ideoque si prohibet heres titio servire, pervenit ad libertatem.

Dig. 40.7.4.5

Paulus 5 ad sab.

" stichus si heredi meo anno servierit, liber esto": quaerendum est, annus quomodo accipi debeat, an qui ex continuis diebus trecentis sexaginta quinque constet an quibus ^ quibuslibet^ libet ^ ^ . sed superius magis intellegendum pomponius scribit. sed et si quibusdam diebus aut valetudo aut alia iusta causa impedimento fuerit, quo minus serviat, et hi anno imputandi sunt: servire enim nobis intelleguntur etiam hi, quos curamus aegros, qui cupientes servire propter adversam valetudinem impediuntur.

Dig. 40.7.4.6

Paulus 5 ad sab.

Item si decem heredi dare iussus fuerit, heres etiam per partes accipere favore libertatis cogendus est.

Dig. 40.7.4.7

Paulus 5 ad sab.

Ita liber esse iussus " si titius capitolium ascenderit": si titius nolit ascendere, impedietur libertas. idemque iuris est in similibus causis et condicionibus.

Dig. 40.7.4.8

Paulus 5 ad sab.

Item cassius ait ei, qui servire iussus est anno, illud tempus, quo in fuga sit vel in controversia pro libertate, non procedere.

Dig. 40.7.5pr.

Pomponius 8 ad sab.

Statuliber rationem reddere iussus reliquum quod apparet solvit, de eo, quod obscurius est, satisdare paratus est. neratius et aristo recte putant liberum fore, ne multi ad libertatem pervenire non possint incerta causa rationis et genere negotii huiusmodi.

Dig. 40.7.5.1

Pomponius 8 ad sab.

Statuliber, qui non rationes reddere, sed pecuniam iussus est dare, numerare debet, non fideiussorem dare.

Dig. 40.7.6pr.

Ulpianus 27 ad sab.

Si statulibera serva poenae facta sit et post damnationem statutae libertatis condicio exstiterit, quamvis ipsi statuliberae nihil proficiat, partui tamen proficere oportet, ut perinde liber nascatur, atque si mater damnata non esset.

Dig. 40.7.6.1

Ulpianus 27 ad sab.

Quid tamen si qua conceperit in servitute, deinde ab hostibus capta peperit ibi post existentem condicionem, an liberum pariat? et interim quidem quin servus hostium sit, nequaquam dubium est: sed verius est postliminio eum liberum fieri, quia, si mater in civitate esset, liber nasceretur.

Dig. 40.7.6.2

Ulpianus 27 ad sab.

Plane si apud hostes eum concepisset et post existentem condicionem edidisset, benignius dicetur competere ei postliminium et liberum eum esse.

Dig. 40.7.6.3

Ulpianus 27 ad sab.

Statuliber parendo condicioni in persona emptoris pervenit ad libertatem: et sciendum hoc ad statuliberos omnis sexus pertinere. non solum autem si venierit, haec condicio ad eum transit qui emit, verum etiam ad omnes, quicumque quoquo iure dominium in statulibero nacti sunt. sive igitur legatus sit tibi ab herede statuliber sive adiudicatus sive usucaptus a te sive traditus vel aliquo iure tuus factus, sine dubio dicemus parere condicioni in persona tua posse. sed et in herede emptoris idem dicitur.

Dig. 40.7.6.4

Ulpianus 27 ad sab.

Si filius familias heres sit institutus et statuliber filio dare iussus est et liber esse, sive filio sive patri dando pervenit ad libertatem, quia et ad patrem hereditatis emolumentum pervenit. sed et si post mortem filii patri dederit quasi heredis heredi, liber erit: nam et si quis extraneo dare iussus sit et liber esse, deinde hic heredi heres extiterit, non quasi in extranei persona, sed quasi in heredis condicioni parebit.

Dig. 40.7.6.5

Ulpianus 27 ad sab.

Statuliber decem dare iussus et liber esse, si quinque datis distractus sit, residua quinque emptori dabit.

Dig. 40.7.6.6

Ulpianus 27 ad sab.

Si servus tuus statuliberum emerit, tibi datur, quod heredibus dare iussus est. sed et si tuo servo dederit, si modo is eum peculiari nomine emit neque ei tu peculium ademisti, puto liberum fore, scilicet ut eo modo tibi dedisse intellegatur, perinde atque si tua voluntate cuivis alii tuorum servorum dedisset.

Dig. 40.7.6.7

Ulpianus 27 ad sab.

Si quis non dare decem et liber esse, sed rationibus redditis liber esse iussus sit, an ad emptorem haec condicio transeat, videamus. et alias sciendum est eas demum condiciones ad emptorem transire, quae sunt in dando: ceterum hae, quae sunt in faciendo, non transeunt, ut puta si filium eius litteras edocuerit: hae enim personis eorum cohaerent, quibus adscribuntur. rationum autem reddendarum condicio, quod ad reliqua quidem attinet, in danda pecunia consistit, quod autem ad ipsa volumina rationum tradenda percontandasque et examinandas rationes et in dispungendas atque excutiendas, factum habet. num quid ergo reliqua quidem et emptori dando perveniat ad libertatem, cetera in persona heredis consistant? puto igitur et ad emptorem reliquorum solutionem transmitti: sic fiet, ut dividatur condicio: et ita pomponius libro octavo ex sabino scripsit.

Dig. 40.7.7

Paulus 5 ad sab.

Usus fructus alienato condicionem statuliberi secum non trahit.

Dig. 40.7.8pr.

Pomponius 8 ad sab.

Ita liber esse iussus " si decem dederit, liber esto" heredi dare debet: nam qui non habet, cui det, heredi dando ad libertatem pervenit.

Dig. 40.7.8.1

Pomponius 8 ad sab.

Si partes suas quisque heredum diversis ementibus vendiderit, quas portiones heredibus dare statuliber debuit, easdem dabit emptoribus. labeo autem ait, si nomina dumtaxat heredum in testamento posita sint, viriles partes eis dandas: si vero ita " si heredibus dedit", hereditarias.

Dig. 40.7.9pr.

Ulpianus 28 ad sab.

Statuliberum medio tempore servum heredis esse nemo est qui ignorare debeat: eapropter noxae dedi poterit, sed deditus sperare adhuc libertatem poterit: nec enim deditio spem illi adimit libertatis.

Dig. 40.7.9.1

Ulpianus 28 ad sab.

Si statuliberum non eadem condicione heres vendat, causa eius immutabilis est et luere se ab eo potest simili modo ut ab herede. si tamen suppresserit condicionem statuliberi? et ex empto quidem tenetur: graviores autem etiam stellionatus crimen important ei, qui sciens dissimulata condicione statutae libertatis simpliciter eum vendiderit.

Dig. 40.7.9.2

Ulpianus 28 ad sab.

Illud tractatum est, an liberatio contingat ei qui noxae dederit statuliberum. et octavenus putabat liberari: et idem dicebat et si ex stipulatu stichum deberet eumque statuliberum solvisset: nam et si ante solutionem ad libertatem pervenisset, extinguereture obligatio tota: ea enim in obligatione consistere, quae pecunia lui praestarique possunt, libertas autem pecunia lui non potest nec reparari potest. quae sententia mihi videtur vera.

Dig. 40.7.9.3

Ulpianus 28 ad sab.

Statuliberi condicio ita demum immutabilis est, si adita hereditas fuerit: ceterum ante aditam hereditatem in propriam usucapitur servitutem libertatisque spes infringitur: sed adita postea hereditate spes libertatis favore sui redintegrabitur.

Dig. 40.7.10

Paulus 5 ad sab.

Si decem dare iussum heres vendiderit et tradiderit dixeritque adscriptum libertati, si viginti dedisset, ex empto erit actio cum venditore, aut, si dupla promissa est, ob evictionem dumtaxat duplae repetitio erit, ex empto ob mendacium.

Dig. 40.7.11

Pomponius 14 ad sab.

Si heres pecuniam donasset statulibero, ut sibi eam daret et liber esset, non fieri liberum aristo ait: sed si in plenum ei donasset, fieri liberum.

Dig. 40.7.12

Iulianus 7 Dig.

Si quis testamento libertatem acceperit sub condicione, si rationem dederit, debet pro hereditaria parte heredibus reliqua solvere, etiamsi nomina quorundam heredum sint in condicione posita.

Dig. 40.7.13pr.

Iulianus 43 Dig.

Si quis ita libertatem dedisset " stichus, si eum heres meus testamento suo non manumiserit, liber esto", secundum voluntatem defuncti hoc significari videtur " si testamento suo heres non adscripserit ei libertatem". quare si quidem heres libertatem servo testamento suo dederit, defectus condicione videtur: si non dederit, impleta condicione ultimo vitae tempore heredis ad libertatem perveniet.

Dig. 40.7.13.1

Iulianus 43 Dig.

Servus communis liber esse iussus ita " si decem dederit" ex peculio dare potest, quod quocumque modo adquisitum habuerit: nec refert, apud heredem id an apud socium fuerit et heredi an extraneo dare iussus sit. nam per omnia causae statuliberi applicatur: qui condicionis implendae gratia alienare peculiares nummos potest.

Dig. 40.7.13.2

Iulianus 43 Dig.

Si duo servi rationibus redditis liberi esse iussi fuerint et separatim rationes gesserint, non dubie separatim quoque condicioni parere poterunt. sed si actus eorum communiter gestus ita immixtus fuerit, ut separari non possit, necessario alter cessando alterius libertatem impediet. nec videbitur condicio in alterius persona impleta, nisi id, quod computatione rationum habita reliquum fuerit, aut uterque aut alter totum solverit.

Dig. 40.7.13.3

Iulianus 43 Dig.

Qui ita liber iussus est " si iuraverit se capitolium ascensurum", confestim ut iuraverit, quamvis capitolium non ascenderit, liber erit.

Dig. 40.7.13.4

Iulianus 43 Dig.

Servus heredis rem ipsius heredis dare iussus et liber esse ad libertatem perveniet, quia potest testator et sine ulla dandi condicione heredis servum manumitti iubere.

Dig. 40.7.13.5

Iulianus 43 Dig.

Haec scriptura " stichus cum erit annorum triginta, liber esto. stichus si decem non dederit, liber ne esto" hanc vim habet " stichus si decem dederit et ad annos triginta pervenerit, liber esto": namque ademptio libertatis vel legati sub condicione facta incipit contrariam condicionem legato vel libertati, quae prius data erat, iniecisse.

Dig. 40.7.14pr.

Alfenus 4 Dig.

Servus, qui testamento domini, cum decem heredi dedisset, liber esse iussus erat, heredi mercedem referre pro operis suis solebat: cum ex mercede heres amplius decem recepisset, servus liberum esse aiebat: de ea re consulebatur. respondit non videri liberum esse: non enim pro libertate, sed pro operis eam pecuniam dedisse nec magis ob eam rem liberum esse, quam si fundum a domino conduxisset et pro fructu fundi pecuniam dedisset.

Dig. 40.7.14.1

Alfenus 4 Dig.

Servus cum heredi annorum septem operas dedisset, liber esse iussus erat: is servus fugerat et annum in fuga fecerat. cum septem anni praeterissent, respondit non esse liberum: non enim fugitivum operas domino dedisse: quare nisi totidem dies, quot afuisset, servisset, non fore liberum. sed et si ita scriptum esset, ut tum liber esset, cum septem annis servisset, potuisse liberum esse, si tempus fugae reversus servisset.

Dig. 40.7.15pr.

Africanus 9 quaest.

Mortuo herede si statuliber locupletiorem hereditatem tanta pecunia, quantam dare sit iussus, fecerit, veluti creditoribus solvendo, cibaria familiae dando: statim eum ad libertatem esse venturum existimavit.

Dig. 40.7.15.1

Africanus 9 quaest.

Heres cum statuliberum decem dare iussum venderet, condicionem pronuntiavit et traditioni legem dixit, ut sibi potius quam emptori eadem decem darentur: quaerebatur, utri eorum statuliber pecuniam dando libertatem consequeretur. respondit heredi eum dare debere. sed et si talem legem dixisset, ut extraneo alicui statuliber pecuniam daret, respondit et hoc casu conventionem valere, quia heredi videtur solvere, qui voluntate eius alii solvit.

Dig. 40.7.16

Ulpianus 4 reg.

Statulibera quidquid peperit, hoc servum heredis est.

Dig. 40.7.17

Nerva 3 membr.

Si decem heredi dedisset, iussus est liber esse: decem habet et tantundem domino debet: dando haec decem non liberabitur. nam quod statulibero ex peculio suo dare explendae condicionis causa concessum est, ita interpretari debemus, ut non etiam ex eo dare possit, quod extra peculium est. nec me praeterit hos nummos peculiares posse dici, quamvis, si nihil praeterea servus habeat, peculium nullum sit. sed dubitari non oportet, quin haec mens fuerit id constituentium, ut quasi ex patrimonio suo dandi eo nomine servo potestas esset, quia id maxime sine iniuria dominorum concedi videbatur. quod si ultra quis progredietur, non multum aberit, quin etiam eos nummos, quos domino subripuerit, dando statuliberum condicioni satisfacturum existimet.

Dig. 40.7.18

Paulus l.S. de libertat. dandis.

Si triennio dena dare iussus primo anno viginti optulerit, non accipiente herede non statim liber est, quia et si accepisset heres, nondum liber esset.

Dig. 40.7.19

Ulpianus 14 ad ed.

Si servus liber esse iussus sit et legatum ei datum, si filius quartum decimum annum compleverit, et filius ante decesserit: libertas favore competet die veniente, legati autem condicio deficit.

Dig. 40.7.20pr.

Paulus 16 ad plaut.

Si peculium servo legatum sit, qui iussus est alii dare decem et sic liber esse, et heres eum prohibuerit dare, deinde manumissus peculium petat ex causa legati, an per doli exceptionem eam summam, quam daturus esset, deducere heres possit, ut ipsi prosit, non manumisso, quod ea pecunia data non est? an vero indignus sit heres, qui contra voluntatem defuncti fecit, eam pecuniam lucrari? et cum servo nihil absit et libertas ei competit, invidiosum est heredem fraudari.

Dig. 40.7.20.1

Paulus 16 ad plaut.

De illo quaeritur, si invito herede det aut nesciente, an faciat nummos accipientis. et iulianus vere existimat ex hac causa concessam videri statuliberis alienationem nummorum etiam invito herede et ideo facere eos accipientis pecuniam.

Dig. 40.7.20.2

Paulus 16 ad plaut.

Quod si heredi dare iussus est decem et eam summam heres debeat servo: si velit servus eam pecuniam compensare, erit liber.

Dig. 40.7.20.3

Paulus 16 ad plaut.

Is, cui servus pecuniam dare iussus est ut liber esset, decessit. sabinus, si decem habuisset parata, liberum fore, quia non staret per eum, quo minus daret. iulianus autem ait favore libertatis constituto iure hunc ad libertatem perventurum, etiamsi postea habere coeperit decem. adeo autem constituto potius iure quam ex testamento ad libertatem pervenit, ut, si eidem et legatum sit, mortuo eo cui dare iussus est ad libertatem quidem perveniet, non autem et legatum habiturus est: idque et iulianus putat, ut in hoc ceteris legatariis similis sit. diversa causa est eius, quem heres prohibet condicioni parere: hic enim ex testamento ad libertatem pervenit.

Dig. 40.7.20.4

Paulus 16 ad plaut.

Heredi autem iussum dare etiam heredis heredi dare posse divus hadrianus rescripsit: et si hoc sensit testator, etiam in legatario idem dicendum est.

Dig. 40.7.20.5

Paulus 16 ad plaut.

Quaedam condiciones natura sui nec possunt eodem tempore impleri, sed necessariam habent temporis divisionem, velut cum decem operarum iussus est dare, quia operae per singulos dies dantur. igitur et si singulos aureos det statuliber, potest dici eum implesse condicionem. alia causa est operarum, quia hae necessario singulae edendae sunt. sed et si heres accipere noluerit, non statim liber erit, sed cum tempus transierit, per quod operarum quantitas consummatur. idem dicendum est, si iussum capuam ire et liberum esse heres prohibeat ire: tunc enim erit liber, cum pervenire capuam potuisset: inesse enim videtur tempus tam operarum praestationi quam itineri.

Dig. 40.7.20.6

Paulus 16 ad plaut.

Si ita quis acceperit libertatem " stichus, si heres eum non manumiserit, liber esto", poterit ab herede manumitti: non contra voluntatem testatoris adimitur ei libertus. sed non tam continuum tempus exigendum est, ut praecipitari cogatur heres vel ex peregrinatione celerius reverti ad manumittendum vel administrationem rerum necessariarum intermittere, nec rursus tam longum, ut, quamdiu vivat, protrahatur manumissio, sed modicum, quo primum possit sine magno incommodo suo heres manumittere. quod si tempus adiectum fuerit, illud spectabitur.

Dig. 40.7.21pr.

Pomponius 7 ex plaut.

Labeo libro posteriorum ita refert: " calenus dispensator meus, si rationes diligenter tractasse videbitur, liber esto suaque omnia et centum habeto". diligentiam desiderare eam debemus, quae domino, non quae servo fuerit utilis. erit autem ei diligentiae coniuncta fides bona non solum in rationibus ordinandis, sed etiam in reliquo reddendo. et quod ita scriptum est " videbitur", pro hoc accipi debet " videri poterit": sic et verba legis duodecim tabularum veteres interpretati sunt " si aqua pluvia nocet", id est " si nocere poterit". et si quaereretur, cui eam diligentiam probari oporteat, heredum arbitratum viri boni more agentium sequi debebimus, veluti si is, qui certam pecuniam dedisset, liber esse iussus est, non adscripto eo, cui si dedisset, eo modo poterit liber esse, quo posset, si ita fuisset scriptum " si heredi dedisset".

Dig. 40.7.21.1

Pomponius 7 ex plaut.

Pactumeius clemens aiebat, si ita sit fideicommissum relictum " cui eorum voles, rogo restituas", si nullum elegisset cui restitueret, omnibus deberi imperatorem antoninum constituisse.

Dig. 40.7.22pr.

Paulus 3 ad vitell.

Qui pecuniam dare iussus est, nisi adiectum sit, cui det, heredibus dare debet pro partibus hereditariis: pro ea enim parte quisque accipere debet, pro qua dominus est.

Dig. 40.7.22.1

Paulus 3 ad vitell.

Si quidam ex heredibus, quibus dare debeat, nominati sint, dabit his pro hereditariis portionibus.

Dig. 40.7.22.2

Paulus 3 ad vitell.

Si heredibus nominatis etiam extraneus iunctus sit, extraneo virilis, ceteris hereditariae dari debent: et si non solum titium, sed etiam alios adiecisset, hos virilem partem habituros, coheredes autem hereditarias iulianus scribit.

Dig. 40.7.23pr.

Celsus 22 Dig.

" si intra quinquennium stichus centum dederit, liber esto": nec titio vel heredi vel emptori post quinquennium dabit.

Dig. 40.7.23.1

Celsus 22 Dig.

Si rationes reddidisset, liberum esse iussum non patitur heres rebus peculiaribus venditis reliqua solvere: perinde liber est, quasi condicioni paruerit.

Dig. 40.7.24

Marcellus 16 Dig.

" stichus, si heredi meo decem promiserit vel operas daturum se iuraverit, liber esto". potest expleri condicio, si promiserit: nam spopondisse aliqua significatione dici potest, etiamsi non sit secuta obligatio.

Dig. 40.7.25

Modestinus 9 diff.

Statuliberos venumdari posse leges duodecim tabularum putaverunt: duris autem condicionibus in venditione minime onerandi sunt, veluti ne intra loca serviant neve umquam manumittantur.

Dig. 40.7.26pr.

Modestinus 9 reg.

Libertate servo sub condicione rationis redditae testamento data heres non solum scriptam rationem exigit, verum etiam quae sine scriptura ab eo administrata est.

Dig. 40.7.26.1

Modestinus 9 reg.

Servus iussus reddita ratione ad libertatem pervenire, licet nullam administraverit rationem, nihilo minus erit liber.

Dig. 40.7.27

Modestinus 1 pand.

Si is, cui dare iussus est, redemerit statuliberum eumque rursus alii vendiderit, novissimo emptori dabit: iam enim cum apud eum, cui dare iussus est, dominium quoque servi pervenit, si eum alienet, condicionem quoque ab eo ad emptorem transire iuliano placuit.

Dig. 40.7.28pr.

Iavolenus 6 ex cass.

Si hereditas eius, qui servum, intra dies triginta mortis suae si rationes reddidisset, liberum esse iusserat, post dies triginta adita est, iure quidem stricto ita manumissus liber esse non potest, quoniam condicione deficitur: sed favor libertatis eo rem perduxit, ut respondeatur expletam condicionem, si per eum, cui data esset, non staret quo minus expleretur.

Dig. 40.7.28.1

Iavolenus 6 ex cass.

Statuliber, antequam condicio libertatis optigerit, si quid comparasset, peculio legato non cessurum in libris gaii cassii scriptum est, nisi id legatum in tempus libertatis collatum esset. videamus, ne, cum peculium et accessionem et decessionem habeat, augmentum quoque eius peculii, si modo ab herede ei ablatum non sit, legato cessurum sit: et magis hoc iure utimur.

Dig. 40.7.29pr.

Pomponius 18 ad q. muc.

Statuliberi a ceteris servis nostris nihilo paene differunt. et ideo quod ad actiones vel ex delicto venientes vel ex negotio gesto contractu pertinet, eiusdem condicionis sunt statuliberi cuius ceteri. et ideo in publicis quoque iudiciis easdem poenas patiuntur, quas ceteri servi.

Dig. 40.7.29.1

Pomponius 18 ad q. muc.

Quintus mucius scribit: pater familias in testamento scripserat " si andronicus servus meus heredi meo dederit decem, liber esto". deinde de his bonis coeperat controversia esse: qui se lege heredem aiebat esse, is eam hereditatem ad se pertinere dicebat, alter, qui hereditatem possidebat, aiebat testamento se heredem esse. secundum eum sententia dicta erat, qui testamento aiebat se heredem esse. deinde andronicus quaerebat, si ipsi viginti dedisset, quoniam secundum eum sententia dicta est, futurusne esset liber an nihil videatur sententia, qua vicit, ad eam rem valere? quapropter si viginti heredi scripto dedisset et res contra possessorem iudicata esset, illum in servitute fore. labeo hoc, quod quintus mucius scribit, ita putat verum esse, si re vera lege ab intestato heres fuit is qui vicit: nam si iniuria iudicis victus esset scriptus verus heres ex testamento, nihilo minus eum paruisse condicioni ei dando et liberum fore. sed verissimum est, quod et aristo celso rescripsit, posse dari pecuniam heredi ab intestato, secundum quem sententia dicta est, quoniam lex duodecim tabularum emptionis verbo omnem alienationem complexa videretur: non interesse, quo genere quisque dominus eius fieret et ideo hunc quoque ea lege contineri, secundum quem sententia dicta est, et liberum futurum eum, qui ei dedisset pecuniam. hunc autem, id est possessorem hereditatis, cui data esset summa, si victus esset hereditatis petitione, cum ceteris hanc quoque pecuniam victori restituere debere.

Dig. 40.7.30

Pomponius 7 ex var. lect.

Si ita liber esse iussus sit " stichus, si eum heres non alienaverit, liber esto", etiamsi statuliber est, alienari tamen poterit.

Dig. 40.7.31pr.

Gaius 13 ad l. iul. et pap.

Si servo sub condicione rationum editarum legatum sit, per eam condicionem eum iussum esse legatum accipere, ut pecuniam reliquorum reddat, non dubitatur.

Dig. 40.7.31.1

Gaius 13 ad l. iul. et pap.

Et ideo cum quaesitum est " stichus cum rationes dederit, cum contubernali sua liber esto" an mortuo sticho ante condicionem contubernalis eius libera esse possit: iulianus dixit quaestionem esse in hac specie, quae et in legatis agitatur " illi cum illo do", an altero deficiente alter ad legatum admittatur: quod magis sibi placere, perinde ac si ita scriptum esset " illi et illi". aliam etiam esse quaestionem, an contubernali quoque condicio iuncta sit: quod magis esset. itaque si nulla reliqua stichus habuerit, statim eam liberam esse, si habuerit reliqua, debere eam numerare pecuniam: nec tamen liciturum ex suo peculio dare, quia id illis permissum sit, qui principaliter pro sua libertate pecuniam dare iubentur.

Dig. 40.7.32

Licinius 1 reg.

Si duobus heredibus institutis servus liber esse iussus sit, si decem heredibus dederit, ab altero ex heredibus venierit et traditus fuerit, pro parte alteri ex heredibus, a quo non venierit, dando pecuniam liber erit.

Dig. 40.7.33

Papinianus 2 quaest.

Statuliberorum iura per heredem fieri non possunt duriora.

Dig. 40.7.34pr.

Papinianus 21 quaest.

Servus si heredi decem dederit, liber esse iussus est: statuliberum heres eum manumisit ac postea defunctus est. heredis heredi pecunia danda non est: quod enim placuit heredis heredi dari oportere, tunc memineris locum habere, cum prior heres dominus accepturus pecuniam fuit. quae causa facit ambulatoriam, ut ita dixerim, condicionem: duae sunt enim causae, per quas in primi heredis persona condicio impletur, dominii ratio, item personae demonstratio: prior causa transit in omnem successorem, ad quem pervenerit statuliber per dominii translati continuationem, sequens personae dumtaxat eius, qui demonstratus est, adhaeret.

Dig. 40.7.34.1

Papinianus 21 quaest.

Imperator antoninus rescripsit iussum rationes reddere et liberum esse, si heres causabitur accipere rationes, nihilo minus liberum fore. quod rescriptum ita accipi debet, ut, si reliqua non trahat, liber sit: quod si trahat, ita demum, si optulit eam quantitatem, quae refundi debuit ex fide veritatis: non enim libertati sufficit heredem in mora fuisse, si non id fiat per statuliberum, quod remota mora libertati aditum daret. quid enim si ita manumissum " dama si in hispaniam profectus anno proximo fructus coegerit, liber esto" romae retineat heres neque proficisci patiatur? numquid dicturi sumus statim ante fructus coactos liberum fore? nam et cum romae stipulatio concipitur ita " centum in hispania dare spondes?", inesse tempus stipulationi, quo possit in hispaniam pervenire, nec ante iure agi placuit. sed si heres acceptis rationibus et reliquis computatis donare se ea statulibero non habenti quod inferat proscribat aut etiam litteris ad eum missis palam faciat, condicio libertatis impleta videbitur. quid ergo, si neget se reliqua traxisse atque ideo, quia per heredem steterit, ut accipiat rationes, liberum factum, heres autem neque se fecisse moram et reliqua debere statuliberum contendat? apud eum qui de libertate cognoscit, an condicio sit impleta, constabit: cuius officio continebitur de mora considerare nec minus computare rationes et, si reliqua trahi compererit, non esse liberum pronuntiare. sed si numquam negavit reliqua debere, cum autem conveniret heredem et rationes offerret, professus sit refusurum, quidquid in reliquis esse constiterit et eius pecuniae reum numerare paratum idoneum optulit et heres in mora fuit: sententia pro libertate dicetur.

Dig. 40.7.35

Papinianus 9 resp.

Non videbitur per statuliberum non stare, quo minus condicio libertatis existat, si de peculio, quod apud venditorem servus habuit, pecuniam condicionis offerre non possit: ad alienum enim peculium voluntas defuncti porrigi non potuit. idem erit et si peculio servus venierit et venditor fide rupta peculium retinuerit: quamquam enim ex empto sit actio, tamen apud emptorem peculium servus non habuit.

Dig. 40.7.36

Papinianus 2 def.

In tabulis secundis filio servum data libertate substitutum iure statuliberi prudentes munierunt: quod utilitas recipit, scilicet ut cum sua causa alienaretur, ne patris testamentum puer filius rescindat. quae iuris auctoritas citra dilectum ordinis ad secundum quoque vel tertium substitutum porrecta est.

Dig. 40.7.37

Gaius l.S. de cas.

Si ita scriptum sit: " stichum titio do, ut eum manumittat: si non manumiserit, liber esto", statim stichum liberum esse.

Dig. 40.7.38

Paulus 1 ad ner.

Non omne ab heredis persona interveniens impedimentum statulibero pro expleta condicione cedit, sed id dumtaxat, quod impediendae libertatis factum est.

Dig. 40.7.39pr.

Iavolenus 4 ex post. lab.

" stichum attio do lego et, si is ei nummos centum dederit, liber esto". si servus ex testamento nummos attio dedisset, eos repetere heredem non posse labeo existimat, quia attius eos a servo suo acceperit, non ab heredis servo. eum autem statuliberum esse quintus mucius, gallus et ipse labeo putant: servius, ofilius non esse. superiorem sententiam probo, ita tamen, ut is servus heredis, non legatarii sit, utpote cum legatum statulibertate tollatur.

Dig. 40.7.39.1

Iavolenus 4 ex post. lab.

" stichus liber esto, quando aes alienum meum solutum creditoribusve meis satisfactum erit". quamvis heres locuples extitisset, tamen non prius stichum liberum futurum, quam creditores pecuniam aut satis accepissent aliove quo modo sibi cavissent, labeo ofilius responderunt.

Dig. 40.7.39.2

Iavolenus 4 ex post. lab.

Si heres servo pecuniam ad negotiandum dedisset, statuliberum eam ipsam numerando liberari ex testamento non posse labeo trebatius responderunt, quia reddere eam magis quam dare videretur. ego puto, si peculiares nummi fuerunt, ex testamento eum liberum futurum.

Dig. 40.7.39.3

Iavolenus 4 ex post. lab.

" dama servus cum heredi meo annorum septem operas solverit, liber esto" et is servus intra septem annos in iudicio publico esset et septimus annus praeterisset, servius ait eum non liberari debere, labeo, et si postea solvisset annorum septem operas, liberum futurum: quod verum est.

Dig. 40.7.39.4

Iavolenus 4 ex post. lab.

" si stichus attiae mille nummos dederit, liber esto". attia vivo testatore decessit: non posse stichum liberum esse labeo ofilius responderunt: trebatius, si ante testamentum factum attia decessisset, idem: si postea, eum liberum futurum. labeonis et ofilii sententia rationem quidem habet, sed hoc iure utimur, ut is servus ex testamento liber sit.

Dig. 40.7.39.5

Iavolenus 4 ex post. lab.

Si servus operas extraneo dare iussus esset, nullus nomine servi suas operas dando liberare servum potest: quod in pecunia aliter observatur, utpote cum extraneus pro eo servo dando pecuniam servum liberaret.

Dig. 40.7.40pr.

Scaevola 24 Dig.

Sticho libertas data est: " ab heredibus meis peto fideique eorum committo, ut rationibus redditis stichum manumittant". quaesitum est, cum ampla pecunia exacta post mortem testatoris sibi commissa reliquetur et quasdam summas a colonis exactis rationibus non intulerit hereditatemque spoliaverit apertis clam horreis sublatisque supellectili et veste et apothecis exhaustis: an non prius ei fideicommissa libertas debeatur, quam ea, quae mala ratione reliquatus est quae furatus est, reposuerit. respondit non prius ei fideicommissam libertatem praestandam, quam et reliqua et omnia, quae per eum abessent, restituisset.

Dig. 40.7.40.1

Scaevola 24 Dig.

" pamphilus liber esto peculio suo heredibus vere dato". quaesitum est, cum plus domino debeat quam in peculio habeat et omnes res, quas in peculio habebat, bona fide heredibus dederat, an libertas ex testamento competat. respondit nihil proponi, cur non competeret.

Dig. 40.7.40.2

Scaevola 24 Dig.

Pamphilo liberto, quem heredem ex parte instituerat, stichum servum praelegaverat et ei libertatem his verbis dederat: " ita ut, si tibi ex die mortis meae per annos continuos quinque menstruos sexagenos dederit, tunc eum manumittas". pamphilus ante quinquennium moriens heredibus institutis filio et uxore de eodem sticho ita cavit: " stichus servus, qui mihi testamento patroni mei certa condicione relictus est, iubeo det praestet filio et uxori meae sine ulla controversia et eum tempore peracto manumittant". quaesitum est, si stichus sexagenos nummos menstruos non praestiterit, an impleto quinquennio fideicommissa libertas ei debeatur. respondit, nisi praestitisset, fideicommissam libertatem non deberi.

Dig. 40.7.40.3

Scaevola 24 Dig.

Servus testamento ita manumissus est: " stichus servus meus actor si rationem omnem actus sui heredi meo reddiderit eoque nomine satisfecerit, liber esto eique, cum liber erit, dari volo viginti et peculium suum". quaesitum est, an, si rationes, quas egit per multos annos sine subscriptione testatoris, heredi reddere paratus sit, liber ex testamento fiat, cum propter gravem valetudinem testator non potuerit rationibus subscribere, testamento tamen subscripserit. respondit, si ex fide ratio redderetur reliquaque inferantur, liberum fore.

Dig. 40.7.40.4

Scaevola 24 Dig.

Item quaero, an ea, quae exacta sunt per adiutores eius neque kalendario illata sunt aut fraudulenter acta, huic adscribi possint, cum esset is praepositus. respondit, si id esset, quod culpae eius deberet imputari, spectare ad rationis reddendae necessitatem.

Dig. 40.7.40.5

Scaevola 24 Dig.

Item quaero, an eorum quoque nomine ratio haberi debeat, quod neque a conductoribus praediorum neque a vilicis pensiones exegerit et insuper etiam promutuum eis dederit. respondit supra responsum est.

Dig. 40.7.40.6

Scaevola 24 Dig.

Item quaero, an eo nomine teneatur, quod omnem rem suam, id est peculium, exportaverit, antequam rationes redderet. respondit nihil eam rem impedire condicionem, si modo ratio redderetur.

Dig. 40.7.40.7

Scaevola 24 Dig.

Titius testamento servos actores singulos diversis personis legavit cum adiectione " si rationes heredi reddiderint": deinde proprio capite ita scripsit: " omnes actores, quos legavi vel manumisero, intra quartum mensem mortis meae rationes reddere volo et dominis, quibus a me legati sint, reddi". infra deinde alios actores liberos esse iussit aeque cum hac adiectione " si rationes heredi reddiderint". quaero, cum per heredem fiat, quo minus reddantur, utrum statuliberi esse desinant an nihilo minus quandoque possint reddita ratione et reliquis illatis libertatem ex testamento consequi. respondit legata quidem et libertates non alias competere, quam rationes redditae essent aut per heredem staret, quo minus redderentur: verum iudicaturo aestimandum, utrum tempus condicioni legatorum libertatiumque additum videatur an, libero tempore reddere volentibus reliqua, heredibus quattuor menses appositi sint, sollicito testatore cunctationi et moram eorum proscribente. melius autem est praesumptionem pro statuliberis esse.

Dig. 40.7.40.8

Scaevola 24 Dig.

Argentarius coactor cum paene totam fortunam in nominibus haberet, servis actoribus libertatem ita dedit: " quisquis mihi heres erit, si dama servus meus actus sui, qui agitur nomine eius et pamphili conservi sui, heredi meo rationes reddiderit pariaque fecerit a die mortis meae intra mensem sextum, liber esto". quaesitum est, an haec verba " pariaque fecit" ad omnia nomina pertineant exceptis perditis, ut hoc significent " si omnem pecuniam ab omnibus exegerint et heredi solverint vel eo nomine satisfecerint" et, si in exactione nominum cessaverint intra sex menses, libertas illis non competat. respondit manifestam esse condicionem verbis testamenti supra scriptis positam: igitur ita demum liberos fore, si aut ei pareant aut per heredem stet, quo minus pareant.

Dig. 40.7.41pr.

Labeo 1 pith. a paulo epit.

Si quem servum tuum ad certum tempus statuliberum relinquere vis, nihil interest, utro modo caveas, " si servierit" an " si triennio operas dederit, liber esto".

Dig. 40.7.41.1

Labeo 1 pith. a paulo epit.

Paulus. si quis liber esse iussus fuerit, si decem heredi promisisset, quamquam ea promissio nullam rem habitura est, tamen promittendo liberabitur.

Dig. 40.7.42

Labeo 3 pith.

Si quis eundem hominem uxori suae legaverit et, cum ea nupsisset, liberum esse iusserit et ea ex lege nupserit, liber fiet is homo.

Dig. 40.8.0. Qui sine manumissione ad libertatem perveniunt.

Dig. 40.8.1

Paulus 5 ad plaut.

Si servus venditus est, ut intra certum tempus manumitteretur, etiamsi sine herede decessissent et venditor et emptor, servo libertas competit: et hoc divus marcus rescripsit. sed et si mutaverit venditor voluntatem, nihilo minus libertas competit.

Dig. 40.8.2

Modestinus 6 reg.

Servo, quem pro derelicto dominus ob gravem infirmitatem habuit, ex edicto divi claudii competit libertas.

Dig. 40.8.3

Callistratus 3 de cogn.

Eum, qui ita venit, ut intra tempus manumitteretur, cum dies praestandae libertatis venerit vivente venditore et perseverante in eadem voluntate, perinde haberi, ac si ab eo, a quo debuit manumitti, manumissus esset: mortuo autem venditore non esse heredum eius voluntatem explorandam divus marcus cum filio suo rescripsit.

Dig. 40.8.4

Ulpianus 3 ad sab.

Ei, qui hac lege emptus sit, ut a vivo emptore manumittatur, statim mortuo eo competit libertas.

Dig. 40.8.5

Marcianus 5 reg.

Qui ob necem detectam domini praemium libertatis consequitur, fit orcinus libertus.

Dig. 40.8.6

Marcianus l.S. ad form. hypoth.

Si quis obligatum servum hac lege emerit, ut manumittat, competit libertas ex constitutione divi marci, licet bona omnia quis obligaverit, quae habet habiturusve esset. tantundem dicendum est et si hac lege emerit, ne prostituatur, et prostituerit.

Dig. 40.8.7

Paulus l.S. de libertat. dandis.

Imperator noster cum patre suo constituit in eo, qui, cum possit abducere prostitutam ancillam, pecunia accepta manus iniectionem vendidit, ut libera esset: nihil enim interesse, ipse abducas et prostituas an patiaris prostitutam esse pretio accepto, cum possis eximere.

Dig. 40.8.8

Papinianus 9 resp.

Mancipia mater filiae donaverat, ut filia curaret ea post mortem suam esse libera: cum donationis legi non esset obtemperatum, ex sententia constitutionis divi marci libertates optingere matre consentiente respondi: quod si ante filiam mater vita decessit, omnimodo.

Dig. 40.8.9

Paulus 5 quaest.

Latinus largus: vendidit ancillam ita, ut manumitteretur, non addito tempore: quaero, quando ex constitutione incipit ei libertas competere cessante emptore in manumittendo. respondi: inspiciendum est, quid actum sit, utrum, cum primum potuisset, ut manumitteret, an ut in potestate esset emptoris, quando vellet manumittere. priore casu facile tempus deprehendi poterit: posteriore utique moriente emptore competit libertas. si non appareat, quid convenerit, favor priorem inducet opinionem, id est ut intra duos menses, si ambo praesto sunt tam servus quam emptor eius: servo enim absente nisi emptor intra quattuor menses imposuerit libertatem, ex constitutionibus ad libertatem eripitur.

Dig. 40.9.0. Qui et a quibus manumissi liberi non fiunt et ad legem aeliam sentiam.

Dig. 40.9.1

Ulpianus 1 ad sab.

Celsus libro duodecimo digestorum utilitatis gratia motus surdum ita natum manumittere posse ait.

Dig. 40.9.2

Ulpianus 3 ad sab.

Servo competere libertas non potest, si relegatus moratus sit in urbe.

Dig. 40.9.3

Gaius 2 de legatis ad ed. urb.

Si optio hominis data sit vel indistincte homo legatus sit, non potest heres quosdam servos vel omnes manumittendo aut evertere aut minuere ius electionis: nam optione sive electione servi data quodammodo singuli sub condicione legati videntur.

Dig. 40.9.4

Ulpianus 3 disp.

Servum pignori datum manumittere non possumus.

Dig. 40.9.5pr.

Iulianus 64 Dig.

Cum hereditas solvendo non est, quamvis heres locuples existat, libertas ex testamento competit.

Dig. 40.9.5.1

Iulianus 64 Dig.

Si autem is qui solvendo non est hoc modo libertatem dederit " si creditoribus meis solidum solutum fuerit, stichus liber esto", non potest videri fraudandorum creditorum liberos esse iussisse.

Dig. 40.9.5.2

Iulianus 64 Dig.

Si titius nihil amplius in bonis quam stichum et pamphilum habeat eosque stipulanti maevio ita promiserit " stichum aut pamphilum dare spondes?", deinde, cum alium creditorem non haberet, stichum manumiserit: libertas per legem aeliam sentiam rescinditur. quamvis enim fuit in potestate titii, ut pamphilum daret, tamen quamdiu eum non dederit, quia interim mori possit, non sine fraude stipulatoris stichum manumisit. quod si solum pamphilum dari promisisset, non dubitarem, quin stichus ad libertatem perveniret, quamvis similiter pamphilus mori possit: multum enim interest, contineatur ipsa stipulatione is qui manumittitur an extra obligationem sit. nam et qui ob aureos quinque stichum et pamphilum pignori dederit, cum uterque eorum quinum aureorum sit, neuter manumitti potest: at si stichum solum pignori dederit, pamphilum non videtur in fraudem creditoris manumittere.

Dig. 40.9.6

Scaevola 16 quaest.

Iulianus de eo loquitur, qui in substantia nihil aliud habeat: nam si habeat, quare non dicetur unum posse manumitti? quia et uno mortuo solvendo est, et uno manumisso solvendo est, nec adventicii casus computandi sint: alioquin et qui unum incertum ex servis suis promisit, neminem manumittet.

Dig. 40.9.7pr.

Iulianus 2 ad urs. ferocem.

Si quis integris facultatibus codicillos confirmavit, deinde, cum consilium creditorum fraudandorum cepisset, libertates codicillis dederit, optineri non potest, quo minus lege libertates interpellarentur: nam consilium testatoris fraudulentum non eo tempore observatur, quo codicilli confirmantur, sed quo libertas codicillis datur.

Dig. 40.9.7.1

Iulianus 2 ad urs. ferocem.

Minor annis viginti cum servum manumittere vellet nec iustam causam ad consilium manumittendi haberet, tibi eum ut manumitteres dedit: negavit eum proculus liberum esse, quoniam fraus legi facta esset.

Dig. 40.9.8pr.

Africanus 3 quaest.

Cum is, qui sub condicione debet, manumittat fideicommissi causa, lex aelia sentia locum habet.

Dig. 40.9.8.1

Africanus 3 quaest.

Si miles iure militari testamento facto libertates dederit in fraudem creditorum et non solvendo moriatur, impediuntur libertates.

Dig. 40.9.9pr.

Marcianus 1 inst.

Ille servus liber non erit, qui vi coegerit, ut eum dominus manumittat, et ille perterritus scripsit liberum eum esse.

Dig. 40.9.9.1

Marcianus 1 inst.

Item nec ille liber fieri potest, qui a domino non est defensus in capitali crimine posteaque absolutus est.

Dig. 40.9.9.2

Marcianus 1 inst.

Qui hac lege venierint, ne manumittantur, vel qui testamento prohibiti sint manumitti vel iussu praesidis provinciae, licet manumittantur, tamen ad libertatem non perveniunt.

Dig. 40.9.10

Gaius 1 rer. cott. sive aur.

In fraudem creditorum manumittere videtur, qui vel iam eo tempore, quo manumittit, solvendo non est vel datis libertatibus desiturus est solvendo esse. saepe enim de facultatibus suis amplius, quam in his est, sperant homines. quod frequenter accidit his, qui transmarinas negotiationes et aliis regionibus, quam in quibus ipsi morantur, per servos atque libertos exercent: quod saepe, adtritis istis negotiationibus longo tempore, id ignorant et manumittendo sine fraudis consilio indulgent servis suis libertatem.

Dig. 40.9.11pr.

Marcianus 13 inst.

In fraudem civitatium manumissi ad libertatem non veniunt, ut senatus censuit.

Dig. 40.9.11.1

Marcianus 13 inst.

Sed nec in fraudem fisci datas libertates procedere principalibus constitutionibus cavetur. sed divi fratres rescripserunt, non utique, si debitor fisci manumiserit, libertates impediuntur, sed ita, si, cum non erat solvendo, in fraudem manumisit.

Dig. 40.9.12pr.

Ulpianus 4 de adult.

Prospexit legis lator, ne mancipia per manumissionem quaestioni subducantur, idcircoque prohibuit ea manumitti certumque diem praestituit, intra quem manumittere non liceat.

Dig. 40.9.12.1

Ulpianus 4 de adult.

Ipsa igitur quae divertit omnes omnimodo servos suos manumittere vel alienare prohibetur, quia ita verba faciunt, ut ne eum quidem servum, qui extra ministerium eius mulieris fuit vel in agro vel in provincia, possit manumittere vel alienare: quod quidem perquam durum est, sed ita lex scripta est.

Dig. 40.9.12.2

Ulpianus 4 de adult.

Sed et si post divortium servum mulier paravit aut alia ratione adquisiit, aeque, quod ad verba attinet, manumittere non poterit: et ita sextus quoque caecilius adnotat.

Dig. 40.9.12.3

Ulpianus 4 de adult.

Pater vero in cuius potestate filia fuerit, ea tantum mancipia prohibetur manumittere alienareve, quae in usu filiae fuerunt tributa.

Dig. 40.9.12.4

Ulpianus 4 de adult.

Matrem quoque prohibuit manumittere alienareve ea mancipia, quae in ministerium filiae concesserat.

Dig. 40.9.12.5

Ulpianus 4 de adult.

Sed et avum et aviam prohibuit manumittere, cum horum quoque mancipia quaestione postulari posse lex voluerit.

Dig. 40.9.12.6

Ulpianus 4 de adult.

Sextus caecilius recte ait angustissimum tempus legem praestitisse alienandis manumittendisve servis. finge, inquit, ream adulterii intra sexagesimum diem postulatam: quae cognitio tam facile expediri potuit adulterii, ut intra sexagesimum diem finiatur? et tamen licere mulieri quamvis postulatae adulterii servum suspectum in adulterio vel quaestioni necessarium, quod ad verba legis attinet, manumittere. sane in hunc casum subveniendum est, ut destinati servi quasi conscii vel quasi nocentes non debeant manumitti ante finitam cognitionem.

Dig. 40.9.12.7

Ulpianus 4 de adult.

Pater mulieris vel mater, si intra sexagesimum diem decedant, ex his servis, quos in ministerium filiae dederint, neque manumittere neque alienare poterunt.

Dig. 40.9.13

Paulus 3 de adult.

Quod si intra diem sexagesimum manumiserint, erit servus statuliber.

Dig. 40.9.14pr.

Ulpianus 4 de adult.

Sed si maritus intra sexagesimum diem decesserit, an manumittere vel alienare iam possit supra scriptas personas, videamus. et non puto posse, quamvis accusatore mulier deficiatur marito, cum pater accusare possit.

Dig. 40.9.14.1

Ulpianus 4 de adult.

Et simpliciter quidem lex mulierem prohibuit intra sexagesimum diem divortii manumittere:

Dig. 40.9.14.2

Ulpianus 4 de adult.

Sive autem divertit sive repudio dimissa sit, manumissio impedietur.

Dig. 40.9.14.3

Ulpianus 4 de adult.

Sed si morte mariti solutum sit matrimonium vel aliqua poena eius, manumissio non impedietur.

Dig. 40.9.14.4

Ulpianus 4 de adult.

Sed et si bona gratia finierit matrimonium, dicetur manumissionem vel alienationem non impediri.

Dig. 40.9.14.5

Ulpianus 4 de adult.

Sed et si constante matrimonio mulier, dum divortium cogitat, manumittat vel alienet et hoc dilucidis probationibus fuerit adprobatum: quasi in fraudem legis hoc factum sit, non debet alienatio valere vel manumissio.

Dig. 40.9.14.6

Ulpianus 4 de adult.

Alienationem omnem omnino accipere debemus.

Dig. 40.9.15pr.

Paulus 1 ad l. iul.

Quaesitum est, an is, qui maiestatis crimine reus factus sit, manumittere possit, quoniam ante damnationem dominus est. et imperator antoninus calpurnio critoni rescripsit ex eo tempore, quo quis propter facinorum suorum cogitationem iam de poena sua certus esse poterat, multo prius conscientia delictorum, quam damnatione ius dandae libertatis eum amisisse.

Dig. 40.9.15.1

Paulus 1 ad l. iul.

Iulianus ait, si postea, quam filio permisit pater manumittere, filius ignorans patrem decessisse manumisit vindicta, non fieri eum liberum. sed et si vivit pater et voluntas mutata erit, non videri volente patre filium manumisisse.

Dig. 40.9.16pr.

Paulus 3 ad l. ael. sent.

Si, cum fideicommissa libertas debeatur, minor viginti annis servum vendat, ut manumittatur, vel quia hac lege emerat, non impedietur alienatio.

Dig. 40.9.16.1

Paulus 3 ad l. ael. sent.

Si partem, quam in communi servo habet minor viginti annis, manumittendi causa tradat, nihil aget: sed si, cum ipse causam probare posset, tradiderit, nulla fraus intellegetur.

Dig. 40.9.16.2

Paulus 3 ad l. ael. sent.

Ne quis creditorum fraudandorum causa servum manumittat, hac lege cavetur: creditores autem appellantur, quibus quacumque ex causa actio cum fraudatore competat.

Dig. 40.9.16.3

Paulus 3 ad l. ael. sent.

Aristo respondit a debitore fisci, qui solvendo non erat, manumissum ita revocari in servitutem debere, si non diu in libertate fuisset, id est non minus decennio: plane ea, quae in fraudem fisci in sinus eius collata sunt, revocanda.

Dig. 40.9.16.4

Paulus 3 ad l. ael. sent.

Si sub condicione alicui pecunia debeatur, quasi statuliber erit a debitore manumissus, ut pendeat libertas ex condicione.

Dig. 40.9.16.5

Paulus 3 ad l. ael. sent.

Si voluntate patris filius manumiserit, sive pater sive filius sciat solvendo patrem non esse, libertas impedietur.

Dig. 40.9.17pr.

Paulus l.S. de libertat.

Si privatus coactus a populo manumiserit, quamvis voluntatem accommodaverit, tamen non erit liber: nam et divus marcus prohibuit ex adclamatione populi manumittere.

Dig. 40.9.17.1

Paulus l.S. de libertat.

Item non fit liber, si mentitus dominus, ne a magistratibus castigaretur, dixit esse liberum, si non fuit voluntatis manumittendi.

Dig. 40.9.17.2

Paulus l.S. de libertat.

In his, quos intra certa tempora non licet manumittere, si testamento acceperint libertatem, non testamenti facti, sed competentis libertatis tempus inspiciendum est.

Dig. 40.9.18pr.

Paulus 16 ad plaut.

Si mortis tempore solvendo sit hereditas, si tamen cum aditur desierit esse solvendo, libertas a testatore in fraudem creditorum relicta non competet: nam sicut aucta hereditas prodest libertatibus, ita nocet deminuta.

Dig. 40.9.18.1

Paulus 16 ad plaut.

Si is, cui libertas relicta est, iussus sit heredi dare tantum, quanti est, et liber esse, videamus, an adhuc fraus sit creditorum, quia heres mortis causa accepturus est, an vero, si alius pro eo vel ipse non de peculio det, nulla sit fraus. sed si heres locuples non proficit ad libertatem, nec qui dat pecuniam prodesse potest.

Dig. 40.9.19

Modestinus 1 reg.

Nulla competit libertas data ab eo, qui postea servus ipse pronuntiatus est.

Dig. 40.9.20

Modestinus l.S. de enucl. cas.

Si servo alieno libertas non consentiente domino data est, valere ex auctoritate iuris non potest, quamvis postea manumissor domino heres extitit, nam licet eius iure cognationis qui manumisit heres extitit, non ideo aditione hereditatis libertatis datio confirmatur.

Dig. 40.9.21

Modestinus 1 pand.

Matrimonii causa manumitti ancilla a nullo alio potest quam qui eam uxorem ducturus est. quod si alter manumiserit matrimonii causa, alter eam uxorem ducat, non erit libera, adeo ut nec si intra sex quidem menses eam repudiatam postea manumissor uxorem duxerit, liberam eam fieri iulianus respondit, quasi de his nuptiis senatus senserit, quae post manumissionem nullis aliis interpositis secutae fuerunt.

Dig. 40.9.22

Pomponius 25 ad q. muc.

Curator furiosi servum eius manumittere non potest.

Dig. 40.9.23

Pomponius 4 ex var. lect.

Semper in fraudem creditorum libertas datur ab eo, qui sciret se solvendo non esse, quamvis bene dedisset merenti hoc.

Dig. 40.9.24

Clementius 9 ad l. iul. et pap.

Si quis, habens creditores, plures manumiserit, non omnium libertas impedietur, sed qui primi sunt, liberi erunt, donec creditoribus suum solvatur. quam rationem iulianus solet dicere velut duobus manumissis, si unius libertate fraudentur, non utriusque, sed alterutrius impediri libertatem et plerumque postea scripti, nisi si quando maioris pretii sit is qui ante nominatus sit nec sufficiat posteriorem retrahi in servitutem, prior sufficiat: nam hoc casu ^ causa^ sequenti loco scriptum solum ad libertatem perventurum.

Dig. 40.9.25

Papinianus 5 resp.

In fraudem creditorum testamento datae libertates prioribus creditoribus dimissis propter novos creditores irritae sunt.

Dig. 40.9.26

Scaevola 4 resp.

Pignori obligatum servum debitoris heres manumisit: quaesitum est, an liber esset. respondit secundum ea quae proponerentur, si pecunia etiam nunc deberetur, non esse manumissione liberum factum. paulus: soluta ergo pecunia ex illa voluntate liber fit.

Dig. 40.9.27pr.

Hermogenianus 1 iuris epit.

In fraudem creditorum manumittitur liberque esse prohibetur, sive dies solvendae pecuniae iam cessit, sive in diem vel sub condicione sit debitum. diversa causa est legati sub condicione relicti: nam antequam condicio extiterit, inter creditores legatarius iste non habetur. ex omni autem causa creditoribus in hac parte lex aelia sentia prospexit, inter quos fideicommissarium etiam esse placuit.

Dig. 40.9.27.1

Hermogenianus 1 iuris epit.

Pignori datus servus, antequam debiti nomine fiat satis, sine consensu creditorum manumitti non potest. sed pupilli creditoris citra tutoris auctoritatem consensus nihil libertati prodest, sicuti non prodest, si fructuarius pupillus manumissioni similiter consentiat.

Dig. 40.9.28

Paulus 3 sent.

Heres servum proprium, quem testator legaverat, manumittendo nihil agit, quia scientiae vel ignorantiae eius nullam placuit admitti rationem.

Dig. 40.9.29pr.

Gaius 1 de manumiss.

Generaliter pignori datus servus sine dubio pleno iure debitoris est et iustam libertatem ab eo consequi potest, si lex aelia sentia non impediat libertatem, id est si solvendo sit nec ob id creditores videantur fraudari.

Dig. 40.9.29.1

Gaius 1 de manumiss.

Sub condicione servus legatus pendente condicione pleno iure heredis est, sed nullam libertatem ab eo consequi potest, ne legatario iniuria fieret.

Dig. 40.9.30pr.

Ulpianus 4 ad l. ael. sent.

Si quis hac lege servum emerit, ut manumittat, et non manumittente eo servus ad libertatem pervenerit ex constitutione divi marci, an possit ut ingratum accusare, videamus. et dici potest, cum non sit manumissor, hoc ius eum non habere.

Dig. 40.9.30.1

Ulpianus 4 ad l. ael. sent.

Si filius meus ex voluntate mea manumiserit, an ut ingratum eum accusandi ius habeam, dubitari poterit idcirco, quia non manumisi: sed pro eo habendus sum, ac si manumisissem.

Dig. 40.9.30.2

Ulpianus 4 ad l. ael. sent.

Sed si castrensem servum filius meus manumittat, dubio procul hoc ius non habebo, quia non ipse manumisi: ipse plane filius accusare poterit.

Dig. 40.9.30.3

Ulpianus 4 ad l. ael. sent.

Tamdiu autem accusare quis poterit, quamdiu perseverat patronus.

Dig. 40.9.30.4

Ulpianus 4 ad l. ael. sent.

Quotiens autem patroni libertum volunt accusare, utrum omnium consensus necessarius sit an vero et unus possit, videamus. et est verius, si saltem in unum hoc commiserit, eum ut ingratum accusari, sed omnium consensum necessarium, si sint eiusdem gradus.

Dig. 40.9.30.5

Ulpianus 4 ad l. ael. sent.

Si pater libertum uni ex filiis adsignaverit, solum eum accusare posse iulianus scripsit: solum enim patronum esse.

Dig. 40.9.31

Clementius 5 ad l. iul. et pap.

Quaesitum est, si libertam patronus iureiurando adegisset, ne ea liberos impuberes habens nuberet, quid iuris esset. iulianus dicit non videri contra legem aeliam sentiam fecisse eum, qui non perpetuam viduitatem libertae iniunxisset.

Dig. 40.9.32pr.

Clementius 8 ad l. iul. et pap.

Si non voluntate patroni is, qui in eius potestate sit, iusiurandum adegerit vel stipulatus fuerit, ne nubat, nisi id patronus remittat aut liberabit libertam, incidet in legem: videbitur enim id ipsum dolo malo facere.

Dig. 40.9.32.1

Clementius 8 ad l. iul. et pap.

Non prohibentur lege aelia sentia patroni a libertis mercedes capere, sed obligare eos: itaque si sponte sua libertus mercedem patrono praestiterit, nullum huius legis praemium consequetur.

Dig. 40.9.32.2

Clementius 8 ad l. iul. et pap.

Is, qui operas aut in singulas eas certam summam promisit, ad hanc legem non pertinet, quoniam operas praestando potest liberari. idem octavenus probat et adicit: obligare sibi libertum, ut mercedem operarum capiat, is intellegitur, qui hoc solum agit, ut utique mercedem capiat, etiamsi sub titulo operarum eam stipulatus fuerit.

Dig. 40.10.0. De iure aureorum anulorum.

Dig. 40.10.1pr.

Papinianus 1 resp.

Inter ceteros alimenta liberto relicta non idcirco non debentur, quia ius aureorum anulorum ab imperatore libertus acceperit.

Dig. 40.10.1.1

Papinianus 1 resp.

Diversum in eo probatur, qui iudicatus ingenuus collusione per alium patronum detecta condicioni suae redditus alimenta sibi, quae tertius patronus reliquerat, praeberi desiderat. hunc enim etiam beneficium anulorum amittere placuit.

Dig. 40.10.2

Papinianus 15 resp.

Intra quinque annos pro ingenuitate sententia dicta rescissa fuerat: victum anulorum aureorum beneficium, quod ante sententiam pro ingenuitate dictam acceperit ac deposuit, non retinuisse respondi.

Dig. 40.10.3

Marcianus 1 inst.

Divus commodus et ius anulorum datum ademit illis, qui invitis aut ignorantibus patronis acceperant.

Dig. 40.10.4

Ulpianus 3 ad l. iul. et pap.

Etiam feminae ius anulorum aureorum impetrare et natalibus restitui poterunt.

Dig. 40.10.5

Paulus 9 ad l. iul. et pap.

Is, qui ius anulorum impetravit, ut ingenuus habetur, quamvis in hereditate eius patronus non excludatur.

Dig. 40.10.6

Ulpianus 1 ad l. iul. et pap.

Libertinus si ius anulorum impetraverit, quamvis iura ingenuitatis salvo iure patroni nactus sit, tamen ingenuus intellegitur: et hoc divus hadrianus rescripsit.

Dig. 40.11.0. De natalibus restituendis.

Dig. 40.11.1

Ulpianus 2 resp.

A principe natalibus suis restitutum eum, qui se ingenuum natum principi adfirmavit, si ex ancilla natus est, nihil videri impetrasse.

Dig. 40.11.2

Marcianus 1 inst.

Interdum et servi nati ex post facto iuris interventu ingenui fiunt, ut ecce si libertinus a principe natalibus suis restitutus fuerit. illis enim utique natalibus restituitur, in quibus initio omnes homines fuerunt, non in quibus ipse nascitur, cum servus natus esset. hic enim, quantum ad totum ius pertinet, perinde habetur, atque si ingenuus natus esset, nec patronus eius potest ad successionem venire. ideoque imperatores non facile solent quemquam natalibus restituere nisi consentiente patrono.

Dig. 40.11.3

Scaevola 6 resp.

Respondit: quaeris, an ingenuitatis iure utatur is, quem sanctissimus et nobilissimus imperator natalibus suis restituit. sed ea res nec dubitationem habet nec umquam habuit, quin exploratum sit ad omnem ingenuitatis statum restitui eum, qui isto beneficio principis utatur.

Dig. 40.11.4

Paulus 4 sent.

Nec filio patroni invito libertus natalibus suis restitui potest: quid enim interest, ipsi patrono an filiis eius fiat iniuria?

Dig. 40.11.5pr.

Modestinus 7 reg.

Patrono consentiente debet libertus ab imperatore natalibus restitui: ius enim patroni hoc impetrato amittitur.

Dig. 40.11.5.1

Modestinus 7 reg.

Libertinus, qui natalibus restitutus est, perinde habetur, atque si ingenuus factus medio tempore maculam servitutis non sustinuisset.

Dig. 40.12.0. De liberali causa.

Dig. 40.12.1pr.

Ulpianus 54 ad ed.

Si quando is, qui in possessione servitutis constitutus est, litigare de condicione sua non patitur, quod forte sibi suoque generi vellet aliquam iniuriam inferre, in hoc casu aequum est quibusdam personis dari licentiam pro eo litigare: ut puta parenti, qui dicat filium in sua potestate esse: nam etiamsi nolit filius, pro eo litigabit. sed et si in potestate non sit, parenti dabitur hoc ius, quia semper parentis interest filium servitutem non subire.

Dig. 40.12.1.1

Ulpianus 54 ad ed.

Versa etiam vice dicemus liberis parentium etiam invitorum eandem facultatem dari: neque enim modica filii ignominia est, si parentem servum habeat.

Dig. 40.12.1.2

Ulpianus 54 ad ed.

Idcirco visum est cognatis etiam hoc dari debere,

Dig. 40.12.2

Gaius ad ed. pu. de liberali c.

Quoniam servitus eorum ad dolorem nostrum iniuriamque nostram porrigitur.

Dig. 40.12.3pr.

Ulpianus 54 ad ed.

Amplius puto naturalibus quoque hoc idem praestandum, ut parens filium in servitute quaesitum et manumissum possit in libertatem vindicare.

Dig. 40.12.3.1

Ulpianus 54 ad ed.

Militi etiam pro necessariis sibi personis de libertate litigare permittitur.

Dig. 40.12.3.2

Ulpianus 54 ad ed.

Cum vero talis nemo alius est, qui pro eo litiget, tunc necessarium est dari facultatem etiam matri vel filiabus vel sororibus eius ceterisque mulieribus quae de cognatione sunt vel etiam uxori adire praetorem et hoc indicare, ut causa cognita et invito ei succurratur.

Dig. 40.12.3.3

Ulpianus 54 ad ed.

Sed et si libertum meum vel libertam dicam, idem erit dicendum.

Dig. 40.12.4

Gaius ad ed. pu. de liberali c.

Sed tunc patrono conceditur pro libertate liberti litigare, si eo ignorante libertus venire se passus est.

Dig. 40.12.5pr.

Ulpianus 54 ad ed.

Interest enim nostra libertos libertasque habere.

Dig. 40.12.5.1

Ulpianus 54 ad ed.

Quod si plures ex memoratis personis existant, qui velint pro his litigare, praetoris partes interponendae sunt, ut eligat, quem potissimum in hoc esse existimat. quod et in pluribus patronis observari debet.

Dig. 40.12.6

Gaius ad ed. pu.

Benignius autem hoc persequendum est, ut, si furiosus et infans est qui in servitutem trahitur, non solum necessariis personis, sed etiam extraneis hoc permittatur.

Dig. 40.12.7pr.

Ulpianus 54 ad ed.

Liberis etiam hominibus, maxime si maiores viginti annis venum se dari passi sunt vel in servitutem quaqua ratione deduci, nihil obest, quo minus possint in libertatem proclamare, nisi forte se venum dari passi sunt, ut participaverint pretium.

Dig. 40.12.7.1

Ulpianus 54 ad ed.

Si quis minor viginti annis ad partiendum pretium venum se dari passus est, nihil ei hoc post viginti annos nocebit. sed si ante quidem se venum dedit, post vicensimum autem annum pretium partitus est, poterit ei libertas denegari.

Dig. 40.12.7.2

Ulpianus 54 ad ed.

Si quis sciens liberum emerit, non denegatur vendito in libertatem proclamatio adversus eum qui eum comparavit, cuiusque sit aetatis qui emptus est, idcirco quia non est venia dignus qui emit, etiamsi scientem prudentemque se liberum emerit. sed enim si postea alius eum emerit ob hoc, qui scivit, ignorans, deneganda est ei libertas.

Dig. 40.12.7.3

Ulpianus 54 ad ed.

Si duo simul emerint partes, alter sciens, alter ignorans, videndum erit, numquid is qui scit non debeat nocere ignoranti: quod quidem magis est. sed enim illa erit quaestio, partem solam habebit is qui ignoravit an totum? et quid dicemus de alia parte? an ad eum qui scit pertineat? sed ille indignus est quid habere, quia sciens emerit. rursum qui ignoravit, non potest maiorem partem dominii habere quam emit: evenit igitur, ut ei prosit qui eum comparavit sciens, quod alius ignoravit.

Dig. 40.12.7.4

Ulpianus 54 ad ed.

Sunt et aliae causae, ex quibus in libertatem proclamatio denegatur, veluti si quis ex eo testamento liber esse dicatur, quod testamentum aperiri praetor vetat, quia testator a familia necatus esse dicatur: cum enim in eo sit iste, ut supplicio forte sit adficiendus, non debet liberale iudicium ei concedi. sed et si data fuerit, quia dubitatur, utrum nocens sit an innocens, differtur liberale iudicium, donec constet de morte eius, qui necatus est: apparebit enim, utrum supplicio adficiendus sit an non.

Dig. 40.12.7.5

Ulpianus 54 ad ed.

Si quis ex servitute in libertatem proclamat, petitoris partes sustinet: si vero ex libertate in servitutem petatur, is partes actoris sustinet qui servum suum dicit. igitur cum de hoc incertum est, ut possit iudicium ordinem accipere, hoc ante apud eum, qui de libertate cogniturus est, disceptatur, utrum ex libertate in servitutem aut contra agatur. et si forte apparuerit eum, qui de libertate sua litigat, in libertate sine dolo malo fuisse, is qui se dominum dicit actoris partes sustinebit et necesse habebit servum suum probare: quod si pronuntiatum fuerit eo tempore, quo lis praeparabatur, in libertate eum non fuisse aut dolo malo fuisse, ipse qui de sua libertate litigat debet se liberum probare.

Dig. 40.12.8pr.

Ulpianus 55 ad ed.

Cognitio de liberali causa usufructuario datur, etiamsi dominus quoque velit, hoc est qui se dominum dicit, movere status controversiam.

Dig. 40.12.8.1

Ulpianus 55 ad ed.

Si plures sibi dominium servi vindicant dicentes esse communem, ad eundem iudicem mittendi erunt: et ita senatus censuit. ceterum si unusquisque suum esse in solidum, non in partem dicat, cessat senatus consultum: neque enim timor est, ne varie iudicetur, cum unusquisque solidum dominium sibi vindicet.

Dig. 40.12.8.2

Ulpianus 55 ad ed.

Sed et si alter usum fructum totum, alter proprietatem servi vindicet, item si alter dominium, alter pigneratum sibi dicat, idem iudex erit: et parvi refert, ab eodem an ab alio ei pigneri datus sit.

Dig. 40.12.9pr.

Gaius ad ed. pu. de liberali c.

Si pariter adversus eum, qui de libertate litigat, consistant fructuarius et proprietarius, fieri potest, ut alteruter absit: quo casu an praesenti soli permissurus sit praetor adversus eum agere, dubitari potest, quia non debet alterius collusione aut inertia alteri ius corrumpi. sed rectius dicitur etiam alterutri eorum permittendum agere, ut alterius ius incorruptum maneat. quod si adhuc nondum finito iudicio supervenerit, ad eundem iudicem mittetur, nisi si iustam causam adferat, quare ad eum mitti non debeat, forte si eum iudicem inimicum sibi esse adfirmet.

Dig. 40.12.9.1

Gaius ad ed. pu. de liberali c.

Idem dicemus et si duo pluresve domini esse dicantur et quidam praesto sint, quidam aberint.

Dig. 40.12.9.2

Gaius ad ed. pu. de liberali c.

Unde in utroque casu dispiciamus, an, si is qui prior egerit victus sit, prosit ei, quod posterior vicerit, vel contra, id est ut, cum omnino alteruter vicerit, prosit etiam alteri, sicut prodest heredi liberti, quod in fraudem patroni servi manumissi sint. si cui placeat prodesse, consequens est, ut, cum idem petat, exceptioni rei iudicatae obiciatur replicatio: si cui vero placeat non prodesse, is habebit sequentem dubitationem, utrum id, in quo quis victus est, nullius erit an eius esse debeat, cum quo actum sit, an potius eius qui vicerit? scilicet ut utilis actio detur ei qui vicerit, minime autem praetor pati debeat, ut pro parte quis servus sit.

Dig. 40.12.10

Ulpianus 55 ad ed.

Quod autem diximus " in libertate fuisse" sic est accipiendum non ut se liberum doceat is, qui liberale iudicium patitur, sed in possessione libertatis sine dolo malo fuisse. quid sit autem " sine dolo malo fuisse", videamus. nam iulianus ait omnes, qui se liberos putant, sine dolo malo in libertate fuisse, si modo se pro liberis gerant, quamvis servi sint. varus autem scribit eum, qui se liberum sciat, dum in fuga sit, non videri sine dolo malo in libertate esse: sed simul atque desierit quasi fugitivus se celare et pro libero agere, tunc incipere sine dolo malo in libertate esse: etenim ait eum, qui scit se liberum, deinde pro fugitivo agit, hoc ipso, quod in fuga sit, pro servo agere,

Dig. 40.12.11

Gaius ad ed. pu. de liberali c.

Licet fugae tempore pro libero se gesserit: dicemus enim eum in eadem causa esse.

Dig. 40.12.12pr.

Ulpianus 55 ad ed.

Igitur sciendum est et liberum posse dolo malo in libertate esse et servum posse sine dolo malo in libertate esse.

Dig. 40.12.12.1

Ulpianus 55 ad ed.

Infans subreptus bona fide in servitute fuit, cum liber esset, deinde, cum de statu ignarus esset, recessit et clam in libertate morari coepit: hic non sine dolo malo in libertate moratur.

Dig. 40.12.12.2

Ulpianus 55 ad ed.

Potest et servus sine dolo malo in libertate morari, ut puta testamento accepit libertatem, quod nullius momenti esse ignorat, vel vindicta ei imposita est ab eo, quem dominum esse putavit, cum non esset, vel educatus est quasi liber, cum servus esset.

Dig. 40.12.12.3

Ulpianus 55 ad ed.

Et generaliter dicendum est, quotiens quis iustis rationibus ductus vel non iustis, sine calliditate tamen putavit se liberum et in libertate moratus est, dicendum est hunc in ea causa esse, ut sine dolo malo in libertate fuerit atque ideo possessoris commodo fruatur.

Dig. 40.12.12.4

Ulpianus 55 ad ed.

Probatio autem ad id tempus referetur, cum sine dolo malo in libertate fuerit, quo primum in ius aditum est.

Dig. 40.12.12.5

Ulpianus 55 ad ed.

Si operae alicui debeantur, is quoque liberali iudicio experiri potest.

Dig. 40.12.12.6

Ulpianus 55 ad ed.

Si quod damnum mihi dederit, qui ad libertatem proclamat, illo tempore, quo bona fide mihi serviebat, veluti si ego bona fide dominus noxali iudicio conventus et condemnatus litis aestimationem pro eo optuli: in id mihi condemnabitur.

Dig. 40.12.13pr.

Gaius ad ed. pu. de liberali c.

Illud certum est damnum hoc solum in hac in factum actione deduci, quod dolo, non etiam quod culpa factum sit. ideoque licet absolutus hoc iudicio fuerit, adhuc tamen postea cum eo poterit lege aquilia agi, cum ea lege etiam culpa teneatur.

Dig. 40.12.13.1

Gaius ad ed. pu. de liberali c.

Item certum est tam res nostras quam res alienas, quae tamen periculo nostro sunt, in hanc actionem deduci, veluti commodatas et locatas: certe depositae apud nos res, quia nostro periculo non sunt, ad hanc actionem non pertinent.

Dig. 40.12.14pr.

Ulpianus 55 ad ed.

Rectissime praetor calliditati eorum, qui, cum se liberos scirent, dolo malo passi sunt se pro servis venum dari, occurrit.

Dig. 40.12.14.1

Ulpianus 55 ad ed.

Dedit enim in eos actionem, quae actio totiens locum habet, quotiens non est in ea causa is qui se venire passus est, ut ei ad libertatem proclamatio denegetur.

Dig. 40.12.14.2

Ulpianus 55 ad ed.

Dolo autem non eum fecisse accipimus, qui non ultro instruxit emptorem, sed qui decepit:

Dig. 40.12.15

Paulus 51 ad ed.

(id est sive virilis sexus sive feminini sit, dummodo eius aetatis sit, ut dolum capiat):

Dig. 40.12.16pr.

Ulpianus 55 ad ed.

Immo eum, qui finxit se servum et sic veniit decipiendi emptoris causa.

Dig. 40.12.16.1

Ulpianus 55 ad ed.

Si tamen vi metuque compulsus fuit hic qui distractus est, dicemus eum dolo carere.

Dig. 40.12.16.2

Ulpianus 55 ad ed.

Tunc habet emptor hanc actionem, cum liberum esse nesciret: nam si scit liberum et sic emit, ipse se circumvenit.

Dig. 40.12.16.3

Ulpianus 55 ad ed.

Quare si filius familias emit, si quidem ipse scit, pater ignoravit, non adquisiit patri actionem: hoc si peculiari nomine egerit. ceterum si patre mandante, hic quaeritur, an filii scientia noceat: et puto adhuc nocere, quemadmodum procuratoris nocet.

Dig. 40.12.16.4

Ulpianus 55 ad ed.

Plane si filius ignoravit, pater scit, adhuc dico repellendum patrem, etiamsi peculiari nomine filius emit, si modo pater praesens fuit potuitque filium emere prohibere.

Dig. 40.12.17

Paulus 51 ad ed.

In servo et in eo, qui mandato nostro emit, tale est, ut, si certum hominem mandavero emi sciens liberum esse, licet is cui mandatum est, ignoret, idem sit: et non competet ei actio. contra autem, si ego ignoravi, procurator scit, non est mihi deneganda.

Dig. 40.12.18pr.

Ulpianus 55 ad ed.

In tantum ergo tenetur, quantum dedit vel in quantum obligatus est, scilicet in duplum.

Dig. 40.12.18.1

Ulpianus 55 ad ed.

Sed utrum pretium tantum an etiam id quod pretio accessit duplicetur, videamus. et putem omne omnino, quod propter emptionem vel dedit.

Dig. 40.12.19

Paulus 51 ad ed.

Vel permutavit vel compensavit eo nomine (nam et is dedisse intellegendus est)

Dig. 40.12.20pr.

Ulpianus 55 ad ed.

Vel obligatus est, duplari debere.

Dig. 40.12.20.1

Ulpianus 55 ad ed.

Proinde si quid cuidam ob hanc actionem licito iure dedit, dicendum est in hoc edictum cadere duplarive.

Dig. 40.12.20.2

Ulpianus 55 ad ed.

Obligatum vel ipsi venditori accipere debemus vel alii obligatum: nam quod dedit, sive ipsi venditori sive alii ex iussu eius sive ipse sive alius dederit, aeque continebitur.

Dig. 40.12.20.3

Ulpianus 55 ad ed.

Obligatum accipere debemus, si exceptione se tueri non potest: ceterum si potest, dicendum non esse obligatum.

Dig. 40.12.20.4

Ulpianus 55 ad ed.

Interdum evenit, ut is qui comparavit habeat in quadruplum actionem: nam in ipsum quidem, qui sciens pro servo veniit, hinc habet in duplum actionem et praeterea in venditorem vel eum, qui duplam promisit, in duplum actio est,

Dig. 40.12.21pr.

Modestinus 1 de poen.

Utique eius duplum, quod propter emptionem vel dedit vel obligatus est. secundum quae id, quod alter eorum solverit, nihil ad exonerandum alterum pertinebit, quia placuit hanc actionem poenalem esse. et ideo post annum non datur nec cum successoribus, cum sit poenalis, agetur.

Dig. 40.12.21.1

Modestinus 1 de poen.

Actionem, quae ex hoc edicto oritur, manumissione non extingui rectissime dicetur, quia verum est auctorem conveniri non posse, post quem ad eum, qui ad libertatem proclamavit, perveniebatur.

Dig. 40.12.22pr.

Ulpianus 55 ad ed.

Non solus autem emptor, sed et successores eius hac in factum actione agere poterunt.

Dig. 40.12.22.1

Ulpianus 55 ad ed.

Emere sic accipiemus, etiamsi per alium quis emerit, ut puta procuratorem.

Dig. 40.12.22.2

Ulpianus 55 ad ed.

Sed et si plures emerint, omnes habebunt hanc actionem, sic tamen, ut, si quidem pro partibus emerint, pro parte pretii habeant actionem: enimvero si unusquisque in solidum, quisque in solidum habeat actionem. nec alterius scientia alteri nocebit, vel ignorantia proderit.

Dig. 40.12.22.3

Ulpianus 55 ad ed.

Si eum liberum esse emptor nesciit, postea autem scire coepit, hoc ei non nocebit, quia tunc ignoravit. sed si tunc sciit, postea dubitare coepit, nihilum proderit.

Dig. 40.12.22.4

Ulpianus 55 ad ed.

Heredi et ceteris successoribus scientia sua nihil nocet, ignorantia nihil prodest.

Dig. 40.12.22.5

Ulpianus 55 ad ed.

Sed si per procuratorem scientem quis emerit, ei nocet, sicuti tutoris quoque nocere labeo putat.

Dig. 40.12.22.6

Ulpianus 55 ad ed.

Haec actio post annum non datur, cum sit honoraria: est autem et poenalis.

Dig. 40.12.23pr.

Paulus 50 ad ed.

Si usum fructum tibi vendidero liberi hominis et cessero, servum effici eum dicebat quintus mucius ^ meus^, sed dominium ita demum fieri meum, si bona fide vendidissem, alioquin sine domino fore.

Dig. 40.12.23.1

Paulus 50 ad ed.

In summa sciendum est, quae de venditis servis, quibus denegatur ad libertatem proclamatio, dicta sunt, etiam ad donatos et in dotem datos referri posse, item ad eos, qui pignori se dari passi sunt.

Dig. 40.12.23.2

Paulus 50 ad ed.

Si mater et filius de libertate litigant, aut coniungenda sunt utrorumque iudicia aut differenda est causa filii, donec de matre constet, sicut divus quoque hadrianus decrevit. nam cum apud alium iudicem mater litigabat, apud alium autem filius, augustus dixit ante de matre constare oportere, sic dein de filio cognosci.

Dig. 40.12.24pr.

Paulus 51 ad ed.

Ordinata liberali causa liberi loco habetur is, qui de statu suo litigat, ita ut adversus eum quoque, qui se dominum esse dicit, actiones ei non denegentur, quascumque intendere velit: quid enim si quae tales sint, ut tempore aut morte intereant? quare non concedatur ei litem contestando in tutum eas redigere?

Dig. 40.12.24.1

Paulus 51 ad ed.

Quin etiam servius ait in actionibus annuis ex eo tempore annum cedere, ex quo lis ordinata sit.

Dig. 40.12.24.2

Paulus 51 ad ed.

Sed si cum aliis experiri velit, non est quaerendum, an lis ordinata sit, ne inveniatur ratio, quemadmodum subiecto aliquo, qui libertati controversiam moveat, interim actiones excludantur: aeque enim ex eventu iudicii liberalis aut utilis aut inanis actio eius efficietur.

Dig. 40.12.24.3

Paulus 51 ad ed.

Sed si quas actiones inferat dominus, quaeritur, an compellendus sit suscipere iudicium. et plerique existimant, si in personam agat, suscipere ipsum ad litis contestationem, sed sustinendum iudicium, donec de libertate iudicetur: nec videri praeiudicium libertati fieri aut voluntate domini in libertate eum morari: nam ordinato liberali iudicio interim pro libero habetur, et sicut ipse agere, ita cum ipso quoque agi potest. ceterum ex eventu aut utile iudicium erit aut nullum, si contra libertatem pronuntiatum fuerit.

Dig. 40.12.24.4

Paulus 51 ad ed.

Si is, qui in libertatem proclamat, furti aut damni iniuria ab aliquo arguatur, mela ait interim eum cavere debere iudicio se sisti, ne melioris condicionis sit qui dubiae libertatis est, quam qui certae: sed sustinendum iudicium, ne praeiudicium libertati fiat. aeque si cum possessore hominis furti agi coeperit, deinde is, cuius nomine agebatur, in libertatem proclamaverit, sustinendum iudicium, ut, si liber iudicatus sit, in ipsum transferatur iudicium: et, si damnatio facta sit, iudicati actionem potius in eum dandam.

Dig. 40.12.25pr.

Gaius ad ed. pu. de liberali c.

Si cui de libertate sua litiganti optio legata sit, quaecumque hereditate ei relicta dicuntur, eadem et de optione tractari possunt.

Dig. 40.12.25.1

Gaius ad ed. pu. de liberali c.

Interdum ex integro datur ad libertatem proclamatio, veluti eius, qui adfirmat ideo se primo iudicio victum, quod statuta libertas nondum ei optigerat, quam nunc dicit sibi optigisse.

Dig. 40.12.25.2

Gaius ad ed. pu. de liberali c.

Licet vulgo dicatur post ordinatum liberale iudicium hominem, cuius de statu controversia est, liberi loco esse, tamen, si servus sit, certum est nihilo minus eum, quod ei tradatur vel stipuletur, perinde domino adquirere atque si non de libertate eius quaerebatur. tantum de possessione videbimus, cum ipsum post litem ordinatam desinat dominus possidere: sed magis est, ut adquirat, licet ab eo non possideatur. et cum placuit per fugitivum quoque nos possessionem adquirere posse, quid mirum etiam per hunc, de quo quaeramus adquiri?

Dig. 40.12.26

Gaius 20 ad ed. provinc.

Qui ex libertate in servitutem petit, si iudicii de evictione servandi causa contra libertatem agit, iniuriarum actione non convenitur.

Dig. 40.12.27pr.

Ulpianus 2 de off. cons.

Divi fratres proculo et munatio rescripserunt: " cum romulus, de cuius statu quaeritur, pupillaris aetatis sit, an exigente varia hedone matre et consentiente vario hermete tutore ad tempus pubertatis causa differenda sit, vestrae gravitatis est ex fide personarum quod utile est pupillo, constituere".

Dig. 40.12.27.1

Ulpianus 2 de off. cons.

Si ea persona desit cognitioni, quae alicui status controversiam faciebat, in eadem causa est qui de libertate sua litigat, qua fuit, priusquam de libertate controversiam patiatur: sane hoc lucratur, quod is qui eam status controversiam faciebat amittit suam causam. nec ea res ingenuum facit eum qui non fuit: nec enim penuria adversarii ingenuitatem solet tribuere. recte atque ordine iudices puto facturos, si hanc formam fuerint consecuti, ut, ubi deest is qui in servitutem petit, electionem adversario deferant, utrum malit cognitionem circumduci an audita causa sententiam proferri. et si cognoverint, pronuntiare debebunt servum illius non videri: neque haec res captionem ullam habet, cum non ingenuus pronuntietur, sed servus non videri. quod si ex servitute in ingenuitatem se allegat, melius fecerint, si cognitionem circumduxerint, ne sine adversario pronuntient ingenuum videri, nisi magna causa suadeat et evidentes probationes suggerant secundum libertatem pronuntiandum: ut etiam rescripto hadriani continetur.

Dig. 40.12.27.2

Ulpianus 2 de off. cons.

Quod si is, qui pro sua libertate litigat, desit, contradictor vero praesens sit, melius erit inaugeri causam eius sententiamque proferri: si enim liquebit, contra libertatem dabit: evenire autem potest, ut etiam absens vincat: nam potest sententia etiam secundum libertatem ferri.

Dig. 40.12.28

Pomponius 12 ad q. muc.

Non videtur domini voluntate servus in libertate esse, quem dominus ignorasset suum esse: et est hoc verum: is enim demum voluntate domini in libertate est, qui possessionem libertatis ex voluntate domini consequitur.

Dig. 40.12.29pr.

Menenius 1 de re milit.

Qui de libertate sua litigans necdum sententia data militiae se dedit, in pari causa ceteris servis habendus est nec exonerat eum, quod pro libero habeatur in quibusdam. et licet liber apparuerit, exauctoratus, id est militia remotus castris reicietur, utique qui ex servitute in libertatem petitus sit vel qui non sine dolo malo in libertate moratus est: qui vero per calumniam petitus in servitutem est, in militia retinebitur.

Dig. 40.12.29.1

Menenius 1 de re milit.

Qui ingenuus pronuntiatus est, si se militiae dedit, intra quinquennium retractata sententia novo domino reddendus est.

Dig. 40.12.30

Iulianus 5 ex minic.

Duobus petentibus hominem in servitutem pro parte dimidia separatim, si uno iudicio liber, altero servus iudicatus est, commodissimum est eo usque cogi iudices, donec consentiant: si id non continget, sabinum refertur existimasse duci servum debere ab eo qui vicisset: cuius sententiae cassius quoque est et ego sum. et sane ridiculum est arbitrari eum pro parte dimidia duci, pro parte libertatem eius tueri. commodius autem est favore libertatis liberum quidem eum esse, compelli autem pretii sui partem viri boni arbitratu victori suo praestare.

Dig. 40.12.31

Ulpianus 1 resp.

Filium ob hoc, quod patri heres extitit, prohiberi a patre suum servum manumissum in servitutem petere.

Dig. 40.12.32

Paulus 6 reg.

De bonis eorum, qui ex servitute aut libertate in ingenuitatem vindicati sunt, senatus consultum factum est, quo cavetur de his quidem, qui ex servitute defensi essent, ut id dumtaxat ferrent, quod in domo cuiusque intulissent: in eorum autem bonis, qui post manumissionem repetere originem suam voluissent, hoc amplius, ut, quod post manumissionem quoque adquisissent non ex re manumissoris, secum ferant, cetera bona relinquerent illi, ex cuius familia exissent.

Dig. 40.12.33

Paulus l.S. de liberali c.

Qui sciens liberum emit, quamvis et ille se pateretur venire, tamen non potest contradicere ei qui ad libertatem proclamat: sed si alii eum ignoranti vendiderit, denegabitur et proclamatio.

Dig. 40.12.34

Ulpianus l.S. pand.

Imperator antoninus constituit non alias ad libertatem proclamationem cuiquam permittendam, nisi prius administrationum rationes reddiderit, quas cum in servitute esset gessisset.

Dig. 40.12.35

Papinianus 9 resp.

Servos ad templi custodiam, quod aedificari titia voluit, destinatos neque manumissos heredis esse constitit.

Dig. 40.12.36

Papinianus 12 resp.

Dominus qui optinuit, si velit servum suum abducere, litis aestimationem pro eo accipere non cogetur.

Dig. 40.12.37

Callistratus 2 quaest.

Conventio privata neque servum quemquam neque libertum alicuius facere potest.

Dig. 40.12.38pr.

Paulus 15 resp.

Paulus respondit, si, ut proponitur, post perfectam sine ulla condicione emptionem postea emptor ex voluntate sua litteras emisit, quibus profiteretur se post certum tempus manumissurum eum quem emerat, non videri eas litteras ad constitutionem divi marci pertinere.

Dig. 40.12.38.1

Paulus 15 resp.

Idem respondit constitutionem quidem divi marci ad libertatem eorum mancipiorum pertinere, quae hac lege venierint, ut post tempus manumitterentur: sed eundem favorem libertatis consequendae causa etiam eam mereri, pro qua dominus pretium accepit, ut ancillam suam manumitteret, cum idem etiam libertam habiturus sit.

Dig. 40.12.38.2

Paulus 15 resp.

Quaesitum est, an emptor servo recte libertatem dederit nondum pretio soluto. paulus respondit servum, quem venditor emptori tradidit, si ei pro pretio satisfactum est, et nondum pretio soluto in bonis emptoris esse coepisse.

Dig. 40.12.38.3

Paulus 15 resp.

Gaius seius stichum servum lucio titio vendidit ita, ut titius stichum post triennium manumitteret, si continuo triennio servisset: sed nondum exacto tempore trienni stichus fugit et post aliquantum temporis defuncto titio revertit: quaero, an obstet sticho ad consequendam ex venditione libertatem, quod ante triennium discesserit. paulus respondit secundum ea quae proponuntur expleto tempore, post quod stichus manumitti debuit, libertatem ei competisse.

Dig. 40.12.39pr.

Paulus 5 sent.

Cui necessitas probandi de ingenuitate sua non incumbit, ultro si ipse probare desideret, audiendus est.

Dig. 40.12.39.1

Paulus 5 sent.

Qui de ingenuitate cognoscunt, de calumnia eius, qui temere controversiam movit, ad modum exilii possunt ferre sententiam.

Dig. 40.12.39.2

Paulus 5 sent.

Tutores vel curatores pupillorum, quorum tutelam et res administraverunt, postea status quaestionem facere non possunt.

Dig. 40.12.39.3

Paulus 5 sent.

Maritus uxori eidemque libertae status quaestionem inferre non prohibetur.

Dig. 40.12.40

Hermogenianus 5 iuris epit.

Cum pacto partitionis pretii maior viginti annis venalem se praebuit, nec post manumissionem ad libertatem proclamare potest.

Dig. 40.12.41pr.

Paulus l.S. de art. liberalis c.

Si in obscuro sit, in quo fuerit statu is, qui pro libertate sua litigat, prior audiendus est probare volens se ipsum in libertatis esse possessionem.

Dig. 40.12.41.1

Paulus l.S. de art. liberalis c.

Iudex autem, qui de libertate cognoscit, etiam de rebus amotis damnove facto cognoscere debet: fieri enim potest, ut fiducia libertatis et subripere quaedam et corrumpere atque consumere ex bonis, quibus serviebat, ausus sit.

Dig. 40.12.42

Labeo 4 post.

Si servus quem emeras ad libertatem proclamavit et ab iudice perperam pro eo iudicatum est et dominus eius servi post rem contra te iudicatam te heredem fecit aut alio quo nomine is tuus esse coepisset, petere eum tuum esse poteris nec tibi obstabit rei iudicatae praescriptio. iavolenus: haec vera sunt.

Dig. 40.12.43

Pomponius 3 sen. consult.

De his, qui bona eorum quibus serviebant intercepissent, deinde ad libertatem proclamabant, hadrianus imperator rescripsit, cuius rescripti verba haec sunt: " sicut non est aequum fiducia libertatis, quae ex fideicommissi causa praestanda est, intercipere hereditariam pecuniam, ita nec libertati praestandae moram quaeri oportet. quam primum ergo arbitrum dare debeat, apud quem constaret, quid servari potest heredi, antequam ad servum manumittendum compelleretur".

Dig. 40.12.44pr.

Venonius 7 act.

Licet dubitatum antea fuit, utrum servus dumtaxat an libertus iurando patrono obligaretur in his quae libertatis causa imponuntur, tamen verius est non aliter quam liberum obligari. ideo autem solet iusiurandum a servis exigere, ut hi religione adstricti, posteaquam suae potestatis esse coepissent, iurandi necessitatem haberent, dummodo in continenti, cum manumissus est, aut iuret aut promittat.

Dig. 40.12.44.1

Venonius 7 act.

Licet autem circa donum munus operas etiam uxorum personas inserere.

Dig. 40.12.44.2

Venonius 7 act.

In eum, qui impubes iuraverit, scilicet qui et iurare potuerit, danda est utilis actio operarum nomine, cum pubes tamen factus erit. potest tamen et impubes operas dare, veluti si nomenculator sit vel histrio.

Dig. 40.13.0. Quibus ad libertatem proclamare non licet.

Dig. 40.13.1pr.

Ulpianus 2 de off. procons.

Maiores viginti annis ita demum ad libertatem proclamare non possunt, si pretium ad ipsum qui veniit pervenerit: ex ceteris autem causis, quamvis maior viginti annis se venum dari passus sit, ad libertatem ei proclamare licet.

Dig. 40.13.1.1

Ulpianus 2 de off. procons.

Minori autem viginti annis ne quidem ex causa supra scripta debet denegari libertatis proclamatio, nisi maior annis viginti factus duravit in servitute: tunc enim si pretium partitus sit, dicendum erit denegari ei debere libertatis proclamationem.

Dig. 40.13.2

Marcellus 24 Dig.

Servum quis per vim a titio accepit et testamento liberum esse iussit: quamquam solvendo decesserit, non erit ille liber: alioquin fraudabitur titius, qui non procedente quidem libertate cum herede eius agere potest, at si ad libertatem servus pervenerit, nullam actionem habiturus est, quia nihil videbitur heres ex defuncti dolo consecutus.

Dig. 40.13.3

Pomponius 11 epist. et var. lect.

Eis, qui se passi sint venire, ad libertatem proclamandi licentiam denegari. quaero, an et ad eos, qui ex mulieribus, quae se passae sint venire, nascuntur, ita senatus consulta pertinent? dubitari non potest, quin ei quoque, quae maior annis viginti venire se passa est, ad libertatem proclamandi licentia fuerit deneganda. his quoque danda non est, qui ex ea nati tempore servitutis eius erunt.

Dig. 40.13.4

Paulus 12 quaest.

Licinnius rufinus iulio paulo. is cui fideicommissa libertas debebatur post vicensimum annum veniri se passus est: quaero, denegandum sit ei ad libertatem proclamare. movet me exemplum cuiusvis liberi hominis: nam et si consecutus esset libertatem, si ^ ^ se vendidisset, denegaretur ei ad libertatem proclamare, nec debet meliori loco intellegi, quod in servitute constitutus passus est se venum dari, quam si esset libertatem consecutus. sed e contrario movet me, quod in hoc, de quo quaeritur, venditio constitit et est qui veneat, in libero autem homine neque venditio constitit et nihil est quod veneat. peto itaque plenissime instruas. respondit: venditio quidem tam servi quam liberi contrahi potest et stipulatio de evictione contrahitur: non enim de eo loquimur, qui sciens liberum emit: nam adversus hunc nec ad libertatem proclamatio denegatur. sed is, qui adhuc servus est, etiam invitus veniri potest, quamvis et ipse in eo malus sit, quod de condicione sua dissimulat, cum in sua potestate habeat, ut statim ad libertatem perveniat. quod quidem non potest ei imputari, cui nondum libertas debetur. pone statuliberum passum se venum dari: nemo dicturus est superveniente condicione, quae non fuit in eius potestate, libertatis petitionem ei denegandam. idem puto, etiamsi in ipsius potestate fuit condicio. sed in proposito magis probandum est, ut denegetur ei libertatis petitio, qui potuit petere libertatem et maluit se venum dari, quia indignus est auxilio praetoris fideicommissarii.

Dig. 40.13.5

Paulus l.S. ad sc claud.

Si duo liberum hominem maiorem annis viginti emerimus, unus sciens eius condicionem, alter ignorans, non propter eum qui scit ad libertatem ei proclamare permittitur, sed propter eum qui ignorat servus efficietur, sed non etiam eius qui scit, sed tantum alterius.

Dig. 40.14.0. Si ingenuus esse dicetur.

Dig. 40.14.1

Marcellus 7 Dig.

Si libertus alterius alio agente ingenuus pronuntiatus esse dicetur, sine ulla exceptione temporis patronus eius cognitionem solet exercere.

Dig. 40.14.2pr.

saturn. 1 de off. procons.

Qui se venire passus esset maiorem, scilicet ut pretium ad ipsum perveniret, prohibendum de libertate contendere divus hadrianus constituit: sed interdum ita contendendum permisit, si pretium suum reddidisset.

Dig. 40.14.2.1

saturn. 1 de off. procons.

Qui se ex libertinitate ingenuitati adserant, non ultra quinquennium, quam manumissi fuissent, audientur.

Dig. 40.14.2.2

saturn. 1 de off. procons.

Qui post quinquennium repperisse instrumenta ingenuitatis suae adseverant, de ea re ipsos principes adire oportere cognituros.

Dig. 40.14.3pr.

Pomponius 5 sen. consult.

Hoc sermone " adgnitis natalibus" de nullis aliis intellegendum est senatum sensisse quam ingenuis.

Dig. 40.14.3.1

Pomponius 5 sen. consult.

Verbo autem " relinquerent" etiam hoc intellegendum est, ut quaecumque ex re eius, a quo manumissi erant, adquisita habeant, restituant. sed id quemadmodum accipiendum sit, videndum est, utrumne quae ignorantibus dominis abstulissent, item quod ex his adquisitum, reddere debeant, an vero etiam concessa et donata a manumissoribus amplexi sint: quod magis est.

Dig. 40.14.4

Papinianus 22 quaest.

Oratio, quae prohibet apud consules aut praesides provinciarum post quinquennium a die manumissionis in ingenuitatem proclamare, nullam causam aut personam excipit.

Dig. 40.14.5

Papinianus 10 resp.

Patronum post quinquennium sententiae pro ingenuitate dictae, quo ignorante res iudicata est, non esse praescriptione temporis summovendum respondi.

Dig. 40.14.6

Ulpianus 38 ad ed.

Quotiens de hoc contenditur, an quis libertus sit, sive operae petantur sive obsequium desideretur sive etiam famosa actio intendatur sive in ius vocetur qui se patronum dicit sive nulla causa interveniat, redditur praeiudicium. sed et quotiens quis libertinum quidem se confitetur, libertum autem gaii seii se negat, idem praeiudicium datur. redditur autem alterutro desiderante: sed actoris partibus semper qui se patronum dicit fungitur probareque libertum suum necesse habet aut, si non probet, vincitur.

Dig. 40.15.0. Ne de statu defunctorum post quinquennium quaeratur.

Dig. 40.15.1pr.

Marcianus l.S. de delator.

De statu defunctorum post quinquennium quaerere non licet neque privatim neque fisci nomine.

Dig. 40.15.1.1

Marcianus l.S. de delator.

Sed nec eius status retractandus est, qui intra quinquennium decessit, si per huius quaestionem praeiudicium futurum est ante quinquennium mortuo.

Dig. 40.15.1.2

Marcianus l.S. de delator.

Immo nec de vivi statu quaerendum est, si quaestio huius praeiudicium facit ei, qui ante quinquennium decessit: et ita divus hadrianus constituit.

Dig. 40.15.1.3

Marcianus l.S. de delator.

Sed interdum et intra quinquennium non licet de statu defuncti dicere: nam oratione divi marci cavetur, ut, si quis ingenuus pronuntiatus fuerit, liceat ingenuitatis sententiam retractare, sed vivo eo qui ingenuus pronuntiatus est, non etiam post mortem, in tantum, ut etiam, si coepta quaestio fuit retractationis, morte eius extinguatur, ut eadem oratione cavetur.

Dig. 40.15.1.4

Marcianus l.S. de delator.

Si quidem in deteriorem condicionem quis statum retractaret, secundum ea quae dixi praescribendum est. quid ergo si in meliorem? veluti pro servo libertus dicitur: quare non admittatur? quid enim si servus quis dicatur quasi ex ancilla natus, quae ante quinquennium mortua est? quare non liceat probare liberam fuisse? hoc enim et pro mortua est. et Marcellus libro quinto de officio consulis scripsit posse: ego quoque in auditorio publico idem secutus sum.

Dig. 40.15.2pr.

Papinianus 14 resp.

Non esse libertatis quaestionem filiis inferendam propter matris vel patris memoriam ^ memeriam^ post quinquennium a morte non retractatam convenit.

Dig. 40.15.2.1

Papinianus 14 resp.

Nec in ea re, quae publicam tutelam meruit, pupillis agentibus restitutionis auxilium tribuendum est, quod quinque annorum tempus, cum tutores non haberent, excesserit.

Dig. 40.15.2.2

Papinianus 14 resp.

Praescriptio quinque annorum, quae statum defunctorum tuetur, specie litis ante mortem illatae non fit irrita, si veterem causam desistente qui movit longo silentio finitam probetur.

Dig. 40.15.3

Hermogenianus 6 iuris epit.

Ante quinquennium defuncto status honestior, quam mortis tempore fuisse existimabatur, vindicari non prohibetur. idcirco et si quis in servitute moriatur, post quinquennium liber decessisse probari potest.

Dig. 40.15.4

Callistratus 1 d. i. fisci.

Primus omnium divus nerva edicto vetuit post quinquennium mortis cuiusque de statu quaeri, sed et divus claudius claudiano rescripsit, si per quaestionem nummariam praeiudicium statui videbitur fieri, cessare quaestionem.

Dig. 40.16.0. De collusione detegenda.

Dig. 40.16.1

Gaius 2 ad ed. pu. de liberali c.

Ne quorundam dominorum erga servos nimia indulgentia inquinaret amplissimum ordinem eo, quod paterentur servos suos in ingenuitatem proclamare liberosque iudicari, senatus consultum factum est domitiani temporibus, quo cautum est, ut, si quis probasset per collusionem quicquam factum, si iste homo servus sit, fieret eius servus qui detexisset collusionem.

Dig. 40.16.2pr.

Ulpianus 2 de off. cons.

Collusionem detegere ingenuitatis post sententiam intra quinquennium posse divus marcus constitit.

Dig. 40.16.2.1

Ulpianus 2 de off. cons.

Quinquennium autem continuum utique accipiemus.

Dig. 40.16.2.2

Ulpianus 2 de off. cons.

Sicubi plane aetas eius, cuius retractatur collusio, differendam retractationem in tempus pubertatis vel alterius rei suadeat, quinquennium non currere dicendum est.

Dig. 40.16.2.3

Ulpianus 2 de off. cons.

Quinquennium autem non ad perficiendam retractationem, sed ad inchoandam puto praefinitum: aliter atque circa eum, qui ex libertinitate se in ingenuitatem petit.

Dig. 40.16.2.4

Ulpianus 2 de off. cons.

Oratione divi marci cavetur, ut etiam extraneis, qui pro altero postulandi ius haberent, liceret detegere collusionem.

Dig. 40.16.3

Callistratus 4 de cogn.

Cum non iusto contradictore quis ingenuus pronuntiatus est, perinde inefficax est decretum, atque si nulla iudicata res intervenisset: idque principalibus constitutionibus cavetur.

Dig. 40.16.4

Ulpianus 1 ad l. iul. et pap.

Si libertinus per collusionem fuerit pronuntiatus ingenuus, collusione detecta in quibus causis quasi libertinus incipit esse. medio tamen tempore, antequam collusio detegatur et post sententiam de ingenuitate latam, utique quasi ingenuus accipitur.

Dig. 40.16.5pr.

Hermogenianus 5 iuris epit.

Sententiam pro ingenuitate dictam collusionis praetextu semel retractare permittitur.

Dig. 40.16.5.1

Hermogenianus 5 iuris epit.

Si plures ad collusionem detegendam pariter accedant, causa cognita quis debeat admitti, comparatis omnium moribus et aetatibus et cuius magis interest, statui oportet.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER UN-ET-QUADRAGESIMUS

Dig. 41.1.0. De adquirendo rerum dominio.
Dig. 41.2.0. De adquirenda vel amittenda possessione.
Dig. 41.3.0. De usurpationibus et usucapionibus.
Dig. 41.4.0. Pro emptore.
Dig. 41.5.0. Pro herede vel pro possessore.
Dig. 41.6.0. Pro donato.
Dig. 41.7.0. Pro derelicto.
Dig. 41.8.0. Pro legato.
Dig. 41.9.0. Pro dote.
Dig. 41.10.0. Pro suo.

Dig. 41.1.0. De adquirendo rerum dominio.

Dig. 41.1.1pr.

Gaius 2 rer. cott.

Quarundam rerum dominium nanciscimur iure gentium, quod ratione naturali inter omnes homines peraeque servatur, quarundam iure civili, id est iure proprio civitatis nostrae. et quia antiquius ius gentium cum ipso genere humano proditum est, opus est, ut de hoc prius referendum sit.

Dig. 41.1.1.1

Gaius 2 rer. cott.

Omnia igitur animalia, quae terra mari caelo capiuntur, id est ferae bestiae et volucres pisces, capientium fiunt:

Dig. 41.1.2

Florus 6 inst.

Vel quae ex his apud nos sunt edita.

Dig. 41.1.3pr.

Gaius 2 rer. cott.

Quod enim nullius est, id ratione naturali occupanti conceditur.

Dig. 41.1.3.1

Gaius 2 rer. cott.

Nec interest quod ad feras bestias et volucres, utrum in suo fundo quisque capiat an in alieno. plane qui in alienum fundum ingreditur venandi aucupandive gratia, potest a domino, si is providerit, iure prohiberi ne ingrederetur.

Dig. 41.1.3.2

Gaius 2 rer. cott.

Quidquid autem eorum ceperimus, eo usque nostrum esse intellegitur, donec nostra custodia coercetur: cum vero evaserit custodiam nostram et in naturalem libertatem se receperit, nostrum esse desinit et rursus occupantis fit:

Dig. 41.1.4

Florus 6 inst.

Nisi si mansuefacta emitti ac reverti solita sunt.

Dig. 41.1.5pr.

Gaius 2 rer. cott.

Naturalem autem libertatem recipere intellegitur, cum vel oculos nostros effugerit vel ita sit in conspectu nostro, ut difficilis sit eius persecutio.

Dig. 41.1.5.1

Gaius 2 rer. cott.

Illud quaesitum est, an fera bestia, quae ita vulnerata sit, ut capi possit, statim nostra esse intellegatur. trebatio placuit statim nostram esse et eo usque nostram videri, donec eam persequamur, quod si desierimus eam persequi, desinere nostram esse et rursus fieri occupantis: itaque si per hoc tempus, quo eam persequimur, alius eam ceperit eo animo, ut ipse lucrifaceret, furtum videri nobis eum commisisse. plerique non aliter putaverunt eam nostram esse, quam si eam ceperimus, quia multa accidere possunt, ut eam non capiamus: quod verius est.

Dig. 41.1.5.2

Gaius 2 rer. cott.

Apium quoque natura fera est: itaque quae in arbore nostra consederint, antequam a nobis alveo concludantur, non magis nostrae esse intelleguntur quam volucres, quae in nostra arbore nidum fecerint. ideo si alius eas incluserit, earum dominus erit.

Dig. 41.1.5.3

Gaius 2 rer. cott.

Favos quoque si quos hae fecerint, sine furto quilibet possidere potest: sed ut supra quoque diximus, qui in alienum fundum ingreditur, potest a domino, si is providerit, iure prohiberi ne ingrederetur.

Dig. 41.1.5.4

Gaius 2 rer. cott.

Examen, quod ex alveo nostro evolaverit, eo usque nostrum esse intellegitur, donec in conspectu nostro est nec difficilis eius persecutio est: alioquin occupantis fit.

Dig. 41.1.5.5

Gaius 2 rer. cott.

Pavonum et columbarum fera natura est nec ad rem pertinet, quod ex consuetudine avolare et revolare solent: nam et apes idem faciunt, quarum constat feram esse naturam: cervos quoque ita quidam mansuetos habent, ut in silvas eant et redeant, quorum et ipsorum feram esse naturam nemo negat. in his autem animalibus, quae consuetudine abire et redire solent, talis regula comprobata est, ut eo usque nostra esse intellegantur, donec revertendi animum habeant, quod si desierint revertendi animum habere, desinant nostra esse et fiant occupantium. intelleguntur autem desisse revertendi animum habere tunc, cum revertendi consuetudinem deseruerint.

Dig. 41.1.5.6

Gaius 2 rer. cott.

Gallinarum et anserum non est fera natura: palam est enim alias esse feras gallinas et alios feros anseres. itaque si quolibet modo anseres mei et gallinae meae turbati turbataeve adeo longius evolaverint, ut ignoremus ubi sint, tamen nihilo minus in nostro dominio tenentur. qua de causa furti nobis tenebitur, qui quid eorum lucrandi animo adprehenderit.

Dig. 41.1.5.7

Gaius 2 rer. cott.

Item quae ex hostibus capiuntur, iure gentium statim capientium fiunt:

Dig. 41.1.6

Florus 6 inst.

Item quae ex animalibus dominio nostro eodem iure subiectis nata sunt:

Dig. 41.1.7pr.

Gaius 2 rer. cott.

Adeo quidem, ut et liberi homines in servitutem deducantur: qui tamen, si evaserint hostium potestatem, recipiunt pristinam libertatem.

Dig. 41.1.7.1

Gaius 2 rer. cott.

Praeterea quod per alluvionem agro nostro flumen adicit, iure gentium nobis adquiritur. per alluvionem autem id videtur adici, quod ita paulatim adicitur, ut intellegere non possimus, quantum quoquo momento temporis adiciatur.

Dig. 41.1.7.2

Gaius 2 rer. cott.

Quod si vis fluminis partem aliquam ex tuo praedio detraxerit et meo praedio attulerit, palam est eam tuam permanere. plane si longiore tempore fundo meo haeserit arboresque, quas secum traxerit, in meum fundum radices egerint, ex eo tempore videtur meo fundo adquisita esse.

Dig. 41.1.7.3

Gaius 2 rer. cott.

Insula quae in mari nascitur (quod raro accidit) occupantis fit: nullius enim esse creditur. in flumine nata (quod frequenter accidit), si quidem mediam partem fluminis tenet, communis est eorum, qui ab utraque parte fluminis prope ripam praedia possident, pro modo latitudinis cuiusque praedii, quae latitudo prope ripam sit: quod si alteri parti proximior sit, eorum est tantum, qui ab ea parte prope ripam praedia possident.

Dig. 41.1.7.4

Gaius 2 rer. cott.

Quod si uno latere perruperit flumen et alia parte novo rivo fluere coeperit, deinde infra novus iste rivus in veterem se converterit, ager, qui a duobus rivis comprehensus in formam insulae redactus est, eius est scilicet, cuius et fuit.

Dig. 41.1.7.5

Gaius 2 rer. cott.

Quod si toto naturali alveo relicto flumen alias fluere coeperit, prior quidem alveus eorum est, qui prope ripam praedia possident, pro modo scilicet latitudinis cuiusque praedii, quae latitudo prope ripam sit: novus autem alveus eius iuris esse incipit, cuius et ipsum flumen, id est publicus iuris gentium. quod si post aliquod temporis ad priorem alveum reversum fuerit et ^ ^ flumen, rursus novus alveus eorum esse incipit, qui prope ripam eius praedia possident. cuius tamen totum agrum novus alveus occupaverit, licet ad priorem alveum reversum fuerit flumen, non tamen is, cuius is ager fuerat, stricta ratione quicquam in eo alveo habere potest, quia et ille ager qui fuerat desiit esse amissa propria forma et, quia vicinum praedium nullum habet, non potest ratione vicinitatis ullam partem in eo alveo habere: sed vix est, ut id optineat.

Dig. 41.1.7.6

Gaius 2 rer. cott.

Aliud sane est, si cuius ager totus inundatus fuerit: namque inundatio speciem fundi non mutat et ob id, cum recesserit aqua, palam est eiusdem esse, cuius et fuit.

Dig. 41.1.7.7

Gaius 2 rer. cott.

Cum quis ex aliena materia speciem aliquam suo nomine fecerit, nerva et proculus putant hunc dominum esse qui fecerit, quia quod factum est, antea nullius fuerat. sabinus et cassius magis naturalem rationem efficere putant, ut qui materiae dominus fuerit, idem eius quoque, quod ex eadem materia factum sit, dominus esset, quia sine materia nulla species effici possit: veluti si ex auro vel argento vel aere vas aliquod fecero, vel ex tabulis tuis navem aut armarium aut subsellia fecero, vel ex lana tua vestimentum, vel ex vino et melle tuo mulsum, vel ex medicamentis tuis emplastrum aut collyrium, vel ex uvis aut olivis aut spicis tuis vinum vel oleum vel frumentum. est tamen etiam media sententia recte existimantium, si species ad materiam reverti possit, verius esse, quod et sabinus et cassius senserunt, si non possit reverti, verius esse, quod nervae et proculo placuit. ut ecce vas conflatum ad rudem massam auri vel argenti vel aeris reverti potest, vinum vero vel oleum vel frumentum ad uvas et olivas et spicas reverti non potest: ac ne mulsum quidem ad mel et vinum vel emplastrum aut collyria ad medicamenta reverti possunt. videntur tamen mihi recte quidam dixisse non debere dubitari, quin alienis spicis excussum frumentum eius sit, cuius et spicae fuerunt: cum enim grana, quae spicis continentur, perfectam habeant suam speciem, qui excussit spicas, non novam speciem facit, sed eam quae est detegit.

Dig. 41.1.7.8

Gaius 2 rer. cott.

Voluntas duorum dominorum miscentium materias commune totum corpus efficit, sive eiusdem generis sint materiae, veluti vina miscuerunt vel argentum conflaverunt, sive diversae, veluti si alius vinum contulerit alius mel, vel alius aurum alius argentum: quamvis et mulsi et electri novi corporis sit species.

Dig. 41.1.7.9

Gaius 2 rer. cott.

Sed et si sine voluntate dominorum casu confusae sint duorum materiae vel eiusdem generis vel diversae, idem iuris est.

Dig. 41.1.7.10

Gaius 2 rer. cott.

Cum in suo loco aliquis aliena materia aedificaverit, ipse dominus intellegitur aedificii, quia omne quod inaedificatur solo cedit. nec tamen ideo is qui materiae dominus fuit desiit eius dominus esse: sed tantisper neque vindicare eam potest neque ad exhibendum de ea agere propter legem duodecim tabularum, qua cavetur, ne quis tignum alienum aedibus suis iunctum eximere cogatur, sed duplum pro eo praestet. appellatione autem tigni omnes materiae significantur, ex quibus aedificia fiunt. ergo si aliqua ex causa dirutum sit aedificium, poterit materiae dominus nunc eam vindicare et ad exhibendum agere.

Dig. 41.1.7.11

Gaius 2 rer. cott.

Illud recte quaeritur, an, si in aedificium vendiderit is qui aedificaverit et ab emptore longo tempore captum postea dirutum sit, adhuc dominus materiae vindicationem eius habeat. causa dubitationis est, an eo ipso, quo universitas aedificii longo tempore capta est, singulae quoque res, ex quibus constabat, captae essent: quod non placuit.

Dig. 41.1.7.12

Gaius 2 rer. cott.

Ex diverso si quis in alieno solo sua materia aedificaverit, illius fit aedificium, cuius et solum est et, si scit alienum solum esse, sua voluntate amisisse proprietatem materiae intellegitur: itaque neque diruto quidem aedificio vindicatio eius materiae competit. certe si dominus soli petat aedificium nec solvat pretium materiae et mercedes fabrorum, poterit per exceptionem doli mali repelli, utique si nescit qui aedificavit alienum esse solum et tamquam in suo bona fide aedificavit: nam si scit, culpa ei obici potest, quod temere aedificavit in eo solo, quod intellegeret alienum.

Dig. 41.1.7.13

Gaius 2 rer. cott.

Si alienam plantam in meo solo posuero, mea erit: ex diverso si meam plantam in alieno solo posuero, illius erit: si modo utroque casu radices egerit: antequam enim radices ageret, illius permanet, cuius et fuit. his conveniens est, quod, si vicini arborem ita terra presserim, ut in meum fundum radices egerit, meam effici arborem: rationem enim non permittere, ut alterius arbor intellegatur, quam cuius fundo radices egisset. et ideo prope confinium arbor posita, si etiam in vicinum fundum radices egerit, communis est.

Dig. 41.1.8pr.

Marcianus 3 inst.

Pro regione cuiusque praedii.

Dig. 41.1.8.1

Marcianus 3 inst.

Sed et si in confinio lapis nascatur et sunt pro indiviso communia praedia, tunc erit lapis pro indiviso communis, si terra exemptus sit.

Dig. 41.1.9pr.

Gaius 2 rer. cott.

Qua ratione autem plantae quae terra coalescunt solo cedunt, eadem ratione frumenta quoque quae sata sunt solo cedere intelleguntur. ceterum sicut is, qui in alieno solo aedificavit, si ab eo dominus soli petat aedificium, defendi potest per exceptionem doli mali, ita eiusdem exceptionis auxilio tutus esse poterit, qui in alienum fundum sua impensa consevit.

Dig. 41.1.9.1

Gaius 2 rer. cott.

Litterae quoque licet aureae sint, perinde chartis membranisque cedunt, ac solo cedere solent ea quae aedificantur aut seruntur. ideoque si in chartis membranisve tuis carmen vel historiam vel orationem scripsero, huius corporis non ego, sed tu dominus esse intellegeris. sed si a me petas tuos libros tuasve membranas nec impensas scripturae solvere velis, potero me defendere per exceptionem doli mali, utique si bona fide eorum possessionem nanctus sim.

Dig. 41.1.9.2

Gaius 2 rer. cott.

Sed non uti litterae chartis membranisve cedunt, ita solent picturae tabulis cedere, sed ex diverso placuit tabulas picturae cedere. utique tamen conveniens est domino tabularum adversus eum qui pinxerit, si is tabulas possidebat, utilem actionem dari, qua ita efficaciter experiri poterit, si picturae impensam exsolvat: alioquin nocebit ei doli mali exceptio: utique si bona fide possessor fuerit qui solverit. adversus dominum vero tabularum ei qui pinxerit rectam vindicationem competere dicimus, ut tamen pretium tabularum inferat: alioquin nocebit ei doli mali exceptio.

Dig. 41.1.9.3

Gaius 2 rer. cott.

Hae quoque res, quae traditione nostrae fiunt, iure gentium nobis adquiruntur: nihil enim tam conveniens est naturali aequitati quam voluntatem domini volentis rem suam in alium transferre ratam haberi.

Dig. 41.1.9.4

Gaius 2 rer. cott.

Nihil autem interest, utrum ipse dominus per se tradat alicui rem an voluntate eius aliquis. qua ratione si cui libera negotiorum administratio ab eo qui peregre proficiscitur permissa fuerit et is ex negotiis rem vendiderit et tradiderit, facit eam accipientis.

Dig. 41.1.9.5

Gaius 2 rer. cott.

Interdum etiam sine traditione nuda voluntas domini sufficit ad rem transferendam, veluti si rem, quam commodavi aut locavi tibi aut apud te deposui, vendidero tibi: licet enim ex ea causa tibi eam non tradiderim, eo tamen, quod patior eam ex causa emptionis apud te esse, tuam efficio.

Dig. 41.1.9.6

Gaius 2 rer. cott.

Item si quis merces in horreo repositas vendiderit, simul atque claves horrei tradiderit emptori, transfert proprietatem mercium ad emptorem.

Dig. 41.1.9.7

Gaius 2 rer. cott.

Hoc amplius interdum et in incertam personam collocata voluntas domini transfert rei proprietatem: ut ecce qui missilia iactat in vulgus, ignorat enim, quid eorum quisque excepturus sit, et tamen quia vult quod quisque exceperit eius esse, statim eum dominum efficit.

Dig. 41.1.9.8

Gaius 2 rer. cott.

Alia causa est earum rerum, quae in tempestate maris levandae navis causa eiciuntur: hae enim dominorum permanent, quia non eo animo eiciuntur, quod quis eas habere non vult, sed quo magis cum ipsa nave periculum maris effugiat. qua de causa si quis eas fluctibus expulsas vel etiam in ipso mari nanctus lucrandi animo abstulerit, furtum committit.

Dig. 41.1.10pr.

Gaius 2 inst.

Adquiruntur nobis non solum per nosmet ipsos, sed etiam per eos quos in potestate habemus, item per servos, in quibus usum fructum habemus, item per homines liberos et servos alienos, quos bona fide possidemus: de quibus singulis diligentius dispiciamus.

Dig. 41.1.10.1

Gaius 2 inst.

Igitur quod servi nostri ex traditione nanciscuntur sive quid stipulentur vel ex qualibet alia causa adquirunt, id nobis adquiritur: ipse enim, qui in potestate alterius est, nihil suum habere potest. ideoque si heres institutus sit, nisi nostro iussu hereditatem adire non potest, et si iubentibus nobis adierit, hereditas nobis adquiritur, perinde atque si nos ipsi heredes instituti essemus. et his convenienter scilicet legatum nobis per eundem adquiritur.

Dig. 41.1.10.2

Gaius 2 inst.

Non solum autem proprietas per eos, quos in potestate habemus, adquiritur nobis, sed etiam possessio: cuiuscumque enim rei possessionem adepti fuerint, id nos possidere videmur. unde etiam per eorum longam possessionem dominium nobis adquiritur.

Dig. 41.1.10.3

Gaius 2 inst.

De his autem servis, in quibus tantum usum fructum habemus, ita placuit, ut quidquid ex re nostra ex operis suis adquirant, id nobis adquiratur, si quid vero extra eas causas persecuti sint, id ad dominum proprietatis pertinet. itaque si is servus heres institutus sit legatumve quid aut ei donatum fuerit, non mihi, sed domino proprietatis adquiritur.

Dig. 41.1.10.4

Gaius 2 inst.

Idem placet de eo, qui nobis bona fide possidetur, sive liber sit sive alienus servus: quod enim placuit de usufructuario, idem probatur etiam de bonae fidei possessore. itaque quod extra duas causas adquiritur, id vel ad ipsum pertinet, si liber est, vel ad dominum eius, si servus est.

Dig. 41.1.10.5

Gaius 2 inst.

Sed bonae fidei possessor cum usuceperit servum, quia eo modo dominus fit, ex omnibus causis per eum sibi adquirere potest: usufructuarius vero usucapere servum non potest, primum quia non possidet, sed habet ius utendi fruendi, deinde quoniam scit servum alienum esse.

Dig. 41.1.11

Marcianus 3 inst.

Pupillus quantum ad adquirendum non indiget tutoris auctoritate: alienare vero nullam rem potest nisi praesente tutore auctore, et ne quidem possessionem, quae est naturalis, ut sabinianis visum est: quae sententia vera est.

Dig. 41.1.12pr.

Callistratus 2 inst.

Lacus et stagna licet interdum crescant, interdum exarescant, suos tamen terminos retinent ideoque in his ius alluvionis non adgnoscitur.

Dig. 41.1.12.1

Callistratus 2 inst.

Si aere meo et argento tuo conflato aliqua species facta sit, non erit ea nostra communis, quia, cum diversae materiae aes atque argentum sit, ab artificibus separari et in pristinam materiam reduci solet.

Dig. 41.1.13pr.

Nerva 6 reg.

Si procurator rem mihi emerit ex mandato meo eique sit tradita meo nomine, dominium mihi, id est proprietas adquiritur etiam ignoranti.

Dig. 41.1.13.1

Nerva 6 reg.

Et tutor pupilli pupillae similiter ut procurator emendo nomine pupilli pupillae proprietatem illis adquirit etiam ignorantibus.

Dig. 41.1.14pr.

Nerva 5 membr.

Quod in litore quis aedificaverit, eius erit: nam litora publica non ita sunt, ut ea, quae in patrimonio sunt populi, sed ut ea, quae primum a natura prodita sunt et in nullius adhuc dominium pervenerunt: nec dissimilis condicio eorum est atque piscium et ferarum, quae simul atque adprehensae sunt, sine dubio eius, in cuius potestatem pervenerunt, dominii fiunt.

Dig. 41.1.14.1

Nerva 5 membr.

Illud videndum est, sublato aedificio, quod in litore positum erat, cuius condicionis is locus sit, hoc est utrum maneat eius cuius fuit aedificium, an rursus in pristinam causam reccidit perindeque publicus sit, ac si numquam in eo aedificatum fuisset. quod propius est, ut existimari debeat, si modo recipit pristinam litoris speciem.

Dig. 41.1.15

Nerva 5 reg.

Qui autem in ripa fluminis aedificat, non suum facit.

Dig. 41.1.16

Florus 6 inst.

In agris limitatis ius alluvionis locum non habere constat: idque et divus pius constituit et trebatius ait agrum, qui hostibus devictis ea condicione concessus sit, ut in civitatem veniret, habere alluvionem neque esse limitatum: agrum autem manu captum limitatum fuisse, ut sciretur, quid cuique datum esset, quid venisset, quid in publico relictum esset.

Dig. 41.1.17

Ulpianus 1 ad sab.

Si duo domini servo communi rem tradiderit, adquirit alteri ab altero.

Dig. 41.1.18

Ulpianus 4 ad sab.

Per hereditarium servum quod est eiusdem hereditatis heredi adquiri non potest et maxime ipsa hereditas.

Dig. 41.1.19

Pomponius 3 ad sab.

Liber homo, qui bona fide mihi servit, id quod ex operis suis aut ex re mea pararet, ad me pertinere sine dubio aristo ait: quod vero quis ei donaverit aut ex negotio gesto adquisierit, ad ipsum pertinere. sed hereditatem legatumve non adquiri mihi per eum, quia neque ex re mea neque ex operis suis id sit nec ulla eius opera esset in legato, in hereditate aliquatenus, quia per ipsum adiretur (quod et varium lucullum aliquando dubitasse), sed verius esse non adquiri, etiamsi testator ad me voluisset pertinere. sed licet ei minime adquirit, attamen, si voluntas evidens testatoris appareat, restituendam esse ei hereditatem. sed trebatius, si liber homo bona fide serviens iussu eius cui serviet hereditatem adisset, heredem ipsum fieri nec interesse quid senserit, sed quid fecerit. labeo contra, si ex necessitate id fecisset: quod si ita, ut et ipse vellet, ipsum fieri heredem.

Dig. 41.1.20pr.

Ulpianus 29 ad sab.

Traditio nihil amplius transferre debet vel potest ad eum qui accipit, quam est apud eum qui tradit. si igitur quis dominium in fundo habuit, id tradendo transfert, si non habuit, ad eum qui accipit nihil transfert.

Dig. 41.1.20.1

Ulpianus 29 ad sab.

Quotiens autem dominium transfertur, ad eum qui accipit tale transfertur, quale fuit apud eum qui tradit: si servus fuit fundus, cum servitutibus transit, si liber, uti fuit: et si forte servitutes debebantur fundo qui traditus est, cum iure servitutium debitarum transfertur. si quis igitur fundum dixerit liberum, cum traderet, eum qui servus sit, nihil iuri servitutis fundi detrahit, verumtamen obligat se debebitque praestare quod dixit.

Dig. 41.1.20.2

Ulpianus 29 ad sab.

Si ego et titius rem emerimus eaque titio et quasi meo procuratori tradita sit, puto mihi quoque quaesitum dominium, quia placet per liberam personam omnium rerum possessionem quaeri posse et per hanc dominium.

Dig. 41.1.21pr.

Pomponius 11 ad sab.

Si servus meus tibi bona fide serviret et rem emisset traditaque ei esset, proculus nec meam fieri, quia servum non possideam, nec tuam, si non ex re tua sit parata. sed si liber bona fide tibi serviens emerit, ipsius fieri.

Dig. 41.1.21.1

Pomponius 11 ad sab.

Si rem meam possideas et eam velim tuam esse, fiet tua, quamvis possessio apud me non fuerit.

Dig. 41.1.22

Ulpianus 40 ad sab.

Nemo servum vi possidens aut clam aut precario per hunc stipulantem vel rem accipientem potest adquirere.

Dig. 41.1.23pr.

Ulpianus 43 ad sab.

Qui bona fide alicui servit, sive servus alienus est sive homo liber est, quidquid ex re eius cui servit adquirit, ei adquirit, cui bona fide servit. sed et si quid ex operis suis adquisierit, simili modo ei adquirit: nam et operae quodammodo ex re eius cui servit habentur, quia iure operas ei exhibere debet, cui bona fide servit.

Dig. 41.1.23.1

Ulpianus 43 ad sab.

Tamdiu autem adquirit, quamdiu bona fide servit: ceterum si coeperit scire esse eum alienum vel liberum, videamus, an ei adquirit. quaestio in eo est, utrum initium spectamus an singula momenta: et magis est, ut singula momenta spectemus.

Dig. 41.1.23.2

Ulpianus 43 ad sab.

Generaliter dicendum est, quod ex re sua, hoc est eius cui bona fide quis servit, ei adquirere non potest, sibi eum adquisiturum, quod autem non ex re eius sibi adquirere non potest, ei adquisiturum, cui bona fide servit.

Dig. 41.1.23.3

Ulpianus 43 ad sab.

Si quis duobus bona fide serviat, utrique adquiret, sed singulis ex re sua. quod autem ex re alterius est, utrum pro parte ei, cui bona fide servit, pro parte domino, si servus sit, aut, si liber sit, ei cui bona fide servit, an vero ei debeat adquirere totum, ex cuius re est, videamus. quam speciem scaevola quoque tractat libro secundo quaestionum: ait enim, si alienus servus duobus bona fide serviat et ex unius eorum re adquirat, rationem facere, ut ei dumtaxat in solidum adquirat. sed si adiciat eius nomen, ex cuius re stipulatur, nec dubitandum esse ait, quin ei soli adquiratur, quia et si ex re ipsius stipularetur alteri ex dominis, nominatim stipulando solidum ei adquiret. et in inferioribus probat, ut, quamvis non nominatim nec iussu meo, ex re tamen mea stipulatus sit, cum pluribus bona fide serviret, mihi soli adquirat. nam et illud receptum est, ut, quotiens communis servus omnibus adquirere non potest, ei soli eum adquirere, cui potest. et hoc iulianum quoque scribere saepe rettuli eoque iure utimur.

Dig. 41.1.24

Paulus 14 ad sab.

In omnibus, quae ad eandem speciem reverti non possunt, dicendum est, si materia manente species dumtaxat forte mutata sit, veluti si meo aere statuam aut argento scyphum fecisses, me eorum dominum manere,

Dig. 41.1.25

Callistratus 2 inst.

Nisi voluntate domini alterius nomine id factum sit: propter consensum enim domini tota res eius fit, cuius nomine facta est.

Dig. 41.1.26pr.

Paulus 14 ad sab.

Sed si meis tabulis navem fecisses, tuam navem esse, quia cupressus non maneret, sicuti nec lana vestimento facto, sed cupresseum aut laneum corpus fieret. proculus indicat hoc iure nos uti, quod servio et labeoni placuisset: in quibus propria qualitas exspectaretur, si quid additum erit toto cedit, ut statuae pes aut manus, scypho fundus aut ansa, lecto fulcrum, navi tabula, aedificio cementum: tota enim eius sunt, cuius ante fuerant.

Dig. 41.1.26.1

Paulus 14 ad sab.

Arbor radicitus eruta et in alio posita priusquam coaluerit, prioris domini est, ubi coaluit, agro cedit, et si rursus eruta sit non ad priorem dominum revertitur: nam credibile est alio terrae alimento aliam factam.

Dig. 41.1.26.2

Paulus 14 ad sab.

Si meam lanam infeceris, purpuram nihilo minus meam esse labeo ait, quia nihil interest inter purpuram et eam lanam, quae in lutum aut caenum cecidisset atque ita pristinum colorem perdidisset.

Dig. 41.1.27pr.

Pomponius 30 ad sab.

Quidquid infecto argento alieni argenti addideris, non esse tuum totum argentum fatendum est: at contra si tuum scyphum alieno plumbo plumbaveris alienove argento ferruminaveris, non dubitatur scyphum tuum esse et a te recte vindicari.

Dig. 41.1.27.1

Pomponius 30 ad sab.

Ubi simul plura contribuuntur, ex quibus unum medicamentum fit, aut coctis odoribus unguenta facimus, nihil hic suum vere dicere potest prior dominus: quare potissimum existimari, cuius nomine factum sit, eius esse.

Dig. 41.1.27.2

Pomponius 30 ad sab.

Cum partes duorum dominorum ferrumine cohaereant, hae cum quaereretur utri cedant, cassius ait pro portione rei aestimandum vel pro pretio cuiusque partis. sed si neutra alteri accessioni est, videamus, ne aut utriusque esse dicenda sit, sicuti massa confusa, aut eius, cuius nomine ferruminata est. sed proculus et pegasus existimant suam cuiusque rem manere.

Dig. 41.1.28

Pomponius 33 ad sab.

Si supra tuum parietem vicinus aedificaverit, proprium eius id quod aedificaverit fieri labeo et sabinus aiunt: sed proculus tuum proprium, quemadmodum tuum fieret, quod in solo tuo alius aedificasset: quod verius est.

Dig. 41.1.29

Paulus 16 ad sab.

Inter eos, qui secundum unam ripam praedia habent, insula in flumine nata non pro indiviso communis fit, sed regionibus quoque divisis: quantum enim ante cuiusque eorum ripam est, tantum, veluti linea in directum per insulam transducta, quisque eorum in ea habebit certis regionibus.

Dig. 41.1.30pr.

Pomponius 34 ad sab.

Ergo si insula nata adcreverit fundo meo et inferiorem partem fundi vendidero, ad cuius frontem insula non respicit, nihil ex ea insula pertinebit ad emptorem eadem ex causa, qua nec ab initio quidem eius fieret, si iam tunc, cum insula nasceretur, eiusdem partis dominus fuisset.

Dig. 41.1.30.1

Pomponius 34 ad sab.

Celsus filius, si in ripa fluminis, quae secundum agrum meum sit, arbor nata sit, meam esse ait, quia solum ipsum meum privatum est, usus autem eius publicus intellegitur. et ideo cum exsiccatus esset alveus, proximorum fit, quia iam populus eo non utitur.

Dig. 41.1.30.2

Pomponius 34 ad sab.

Tribus modis insula in flumine fit, uno, cum agrum, qui alvei non fuit, amnis circumfluit, altero, cum locum, qui alvei esset, siccum relinquit et circumfluere coepit, tertio, cum paulatim colluendo locum eminentem supra alveum fecit et eum alluendo auxit. duobus posterioribus modis privata insula fit eius, cuius ager propior fuerit, cum primum extitit: nam et natura fluminis haec est, ut cursu suo mutato alvei causam mutet. nec quicquam intersit, utrum de alvei dumtaxat solo mutato an de eo, quod superfusum solo et terrae sit, quaeratur, utrumque enim eiusdem generis est. primo autem illo modo causa proprietatis non mutatur.

Dig. 41.1.30.3

Pomponius 34 ad sab.

Alluvio agrum restituit eum, quem impetus fluminis totum abstulit. itaque si ager, qui inter viam publicam et flumen fuit, inundatione fluminis occupatus esset, sive paulatim occupatus est sive non paulatim, sed eodem impetu recessu fluminis restitutus, ad pristinum dominum pertinet: flumina enim censitorum vice funguntur, ut ex privato in publicum addicant et ex publico in privatum: itaque sicuti hic fundus, cum alveus fluminis factus esset, fuisset publicus, ita nunc privatus eius esse debet, cuius antea fuit.

Dig. 41.1.30.4

Pomponius 34 ad sab.

Si pilas in mare iactaverim et supra eas inaedificaverim, continuo aedificium meum fit. item si insulam in mari aedificaverim, continuo mea fit, quoniam id, quod nullius sit, occupantis fit.

Dig. 41.1.31pr.

Paulus 31 ad ed.

Numquam nuda traditio transfert dominium, sed ita, si venditio aut aliqua iusta causa praecesserit, propter quam traditio sequeretur.

Dig. 41.1.31.1

Paulus 31 ad ed.

Thensaurus est vetus quaedam depositio pecuniae, cuius non exstat memoria, ut iam dominum non habeat: sic enim fit eius qui invenerit, quod non alterius sit. alioquin si quis aliquid vel lucri causa vel metus vel custodiae condiderit sub terra, non est thensaurus: cuius etiam furtum fit.

Dig. 41.1.32

Gaius 11 ad ed. provinc.

Etiam invitis nobis per servos adquiritur paene ex omnibus causis.

Dig. 41.1.33pr.

Ulpianus 4 disp.

In eo quod servo castrensi ante aditam hereditatem filii familias militis legatur, vel eo, quod stipulatur servus, tractatur apud Marcellum libro vicensimo, ex cuius persona vel stipulatio vires habeat vel legatum. et puto verius, quod et scaevolae videtur et ipse Marcellus tractat, si quidem adeatur hereditas, omnia ut in hereditario servo, si adita non sit, ut in proprio patris esse spectanda: et si usus fructus fuerit huic servo relictus, modo patri videri delatum, modo heredi, nec a persona in personam creditur transisse.

Dig. 41.1.33.1

Ulpianus 4 disp.

Eadem distinctione quis utetur etiam, si res fuerit subtracta: aut cessare aut non furti actionem dicet, si ex testamento adierit, quoniam hereditati furtum non fit, aut, si non adierit, patri dabitur furti actio.

Dig. 41.1.33.2

Ulpianus 4 disp.

Nam et condictio, quotiens servus hereditarius stipulatur vel per traditionem accipit, ex persona defuncti vires assumit, ut iuliano placet: cuius et valuit sententia testantis personam spectandam esse opinantis.

Dig. 41.1.34

Ulpianus 4 de cens.

Hereditas enim non heredis personam, sed defuncti sustinet, ut multis argumentis iuris civilis comprobatum est.

Dig. 41.1.35

Ulpianus 7 disp.

Si procurator meus vel tutor pupilli rem suam quasi meam vel pupilli alii tradiderint, non recessit ab eis dominium et nulla est alienatio, quia nemo errans rem suam amittit.

Dig. 41.1.36

Iulianus 13 Dig.

Cum in corpus quidem quod traditur consentiamus, in causis vero dissentiamus, non animadverto, cur inefficax sit traditio, veluti si ego credam me ex testamento tibi obligatum esse, ut fundum tradam, tu existimes ex stipulatu tibi eum deberi. nam et si pecuniam numeratam tibi tradam donandi gratia, tu eam quasi creditam accipias, constat proprietatem ad te transire nec impedimento esse, quod circa causam dandi atque accipiendi dissenserimus.

Dig. 41.1.37pr.

Iulianus 44 Dig.

Per servum, qui pignori datus est, creditori nec possessio adquiritur, quia nec stipulatione nec traditione nec ullo alio modo per eum servum quicquam ei adquiritur, quamvis possessio penes eum sit.

Dig. 41.1.37.1

Iulianus 44 Dig.

Si unus ex dominis servo communi pecuniam donavit, in potestate domini est, quemadmodum servo communi pecuniam donet. nam si hoc solum egerit, ut ea separetur a suis rationibus et in peculio servi sit, manebit eiusdem domini proprietas: si vero eo modo pecuniam servo communi donaverit, quomodo alienis servis donare solemus, fiet sociorum communis pro portione, quam in servo habebunt.

Dig. 41.1.37.2

Iulianus 44 Dig.

Sed ut sequens quaestio locum habeat, constituamus socium ita servo communi pecuniam donasse, ut proprietatem suam manere vellet. si ex hac pecunia servus fundum comparaverit, erit is fundus communis sociorum pro portione dominii: nam et si furtivis nummis servus communis fundum comparaverit, sociorum erit pro portione dominii. neque enim ut fructuarius servus ex re fructuarii non adquirit proprietario, ita et communis servus ex re alterius domini non adquirit alteri domino. sed quemadmodum in his, quae aliunde adquiruntur, diversa condicio est fructuarii et servi communis, veluti cum alter fructuario non adquirat, alter dominis adquirat: ita quod ex re quidem fructuarii adquisitum fuerit, ad eum solum pertinebit, quod ex re alterius domini servus communis adquisierit, ad utrumque dominum pertinebit.

Dig. 41.1.37.3

Iulianus 44 Dig.

Sicut servus communis stipulando nominatim alteri ex dominis, ita per traditionem accipiendo soli ei adquirit.

Dig. 41.1.37.4

Iulianus 44 Dig.

Quod unius servus per traditionem accipiendo se accipere dixerit domino et titio, partem domino adquiret, in parte nihil agit.

Dig. 41.1.37.5

Iulianus 44 Dig.

Fructuarius servus si dixerit se domino proprietatis per traditionem accipere, ex re fructuarii totum domino adquiret: nam et sic stipulando ex re fructuarii domino proprietatis adquireret.

Dig. 41.1.37.6

Iulianus 44 Dig.

Si, cum mihi donare velles, iusserim te servo communi meo et titii rem tradere isque hac mente acciperet, ut rem titii faceret, nihil agetur: nam et si procuratori meo rem tradideris, ut meam faceres, is hac mente acceperit, ut suam faceret, nihil agetur. quod si servus communis hac mente acceperit, ut duorum dominorum faceret, in parte alterius domini nihil agetur.

Dig. 41.1.38

Alfenus 4 Dig. a paulo epit.

Attius fundum habebat secundum viam publicam: ultra viam flumen erat et ager lucii titii: fluit flumen paulatim primum omnium agrum, qui inter viam et flumen esset, ambedit et viam sustulit, postea rursus minutatim recessit et alluvione in antiquum locum rediit. respondit, cum flumen agrum et viam publicam sustulisset, eum agrum eius factum esse, qui trans flumen fundum habuisset: postea cum paulatim retro redisset, ademisse ei, cuius factus esset, et addidisse ei, cuius trans viam esset, quoniam eius fundus proximus flumini esset. id autem, quod publicum fuisset, nemini accessisset. nec tamen impedimento viam esse ait, quo minus ager, qui trans viam alluvione relictus est, attii fieret: nam ipsa quoque via fundi esset.

Dig. 41.1.39

Iulianus 3 ex minic.

Etiam furtivus servus bonae fidei emptori adquirit, quod ex re eius stipulatur aut per traditionem accipit.

Dig. 41.1.40

Africanus 7 quaest.

Quaesitum est, si is, cui liber homo bona fide serviret, decesserit eique is heres extiterit, qui liberum eum esse sciat, an aliquid per eum adquirat. non esse ait, ut hic bona fide possessor videatur, quando sciens liberum possidere coeperit, quia et si fundum suum quis legaverit, heres, qui eum legatum esse sciat, procul dubio fructus ex eo suos non faciet: et multo magis si testator eum alienum bona fide emptum possedit. et circa servorum igitur operam ac ministerium eandem rationem sequendam, ut, sive proprii sive alieni vel legati vel manumissi testamento fuerint, nihil per eos heredibus, qui modo eorum id non ignorarent, adquiratur. etenim simul haec fere cedere, ut, quo casu fructus praediorum consumptos suos faciat bona fide possessor, eodem per servum ex opera et ex re ipsius ei adquiratur.

Dig. 41.1.41

Ulpianus 9 ad ed.

Statuas in civitate positas civium non esse, idque trebatius et pegasus: dare tamen operam praetorem oportere, ut, quod ea mente in publico positum est, ne liceret privato auferre nec ei qui posuerit. tuendi ergo cives erunt et adversus petentem exceptione et actione adversus possidentem iuvandi.

Dig. 41.1.42

Paulus 11 ad ed.

Substitutio, quae nondum competit, extra bona nostra est.

Dig. 41.1.43pr.

Gaius 7 ad ed. provinc.

Servus, qui bona fide possidetur, id quod ex re alterius est possessori non adquirit.

Dig. 41.1.43.1

Gaius 7 ad ed. provinc.

Incorporales res traditionem et usucapionem non recipere manifestum est.

Dig. 41.1.43.2

Gaius 7 ad ed. provinc.

Cum servus, in quo alterius usus fructus est, hominem emit et ei traditus sit, antequam pretium solvat, in pendenti est, cui proprietatem adquisierit: et cum ex peculio, quod ad fructuarium pertinet, solverit, intellegitur fructuarii homo fuisse: cum vero ex eo peculio, quod proprietarium sequitur, solverit, proprietarii ex post facto fuisse videtur.

Dig. 41.1.44

Ulpianus 19 ad ed.

Pomponius tractat: cum pastori meo lupi porcos eriperent, hos vicinae villae colonus cum robustis canibus et fortibus, quos pecoris sui gratia pascebat, consecutus lupis eripuit aut canes extorserunt: et cum pastor meus peteret porcos, quaerebatur, utrum eius facti sint porci, qui eripuit, an nostri maneant: nam genere quodam venandi id erant nancti. cogitabat tamen, quemadmodum terra marique capta, cum in suam naturalem laxitatem pervenerant, desinerent eorum esse qui ceperunt, ita ex bonis quoque nostris capta a bestiis marinis et terrestribus desinant nostra esse, cum effugerunt bestiae nostram persecutionem. quis denique manere nostrum dicit, quod avis transvolans ex area aut ex agro nostro transtulit aut quod nobis eripuit? si igitur desinit, si fuerit ore bestiae liberatum, occupantis erit, quemadmodum piscis vel aper vel avis, qui potestatem nostram evasit, si ab alio capiatur, ipsius fit. sed putat potius nostrum manere tamdiu, quamdiu reciperari possit: licet in avibus et piscibus et feris verum sit quod scribit. idem ait, etsi naufragio quid amissum sit, non statim nostrum esse desinere: denique quadruplo teneri eum qui rapuit. et sane melius est dicere et quod a lupo eripitur, nostrum manere, quamdiu recipi possit id quod ereptum est. si igitur manet, ego arbitror etiam furti competere actionem: licet enim non animo furandi fuerit colonus persecutus, quamvis et hoc animo potuerit esse, sed et si non hoc animo persecutus sit, tamen cum reposcenti non reddit, supprimere et intercipere videtur. quare et furti et ad exhibendum teneri eum arbitror et vindicari exhibitos ab eo porcos posse.

Dig. 41.1.45

Gaius 7 ad ed. provinc.

Communis servus si ex re alterius dominorum adquisierit, nihilo minus communi id erit, sed is, ex cuius re adquisitum fuerit, communi dividundo iudicio eam summam praecipere potest: nam fidei bonae convenit, ut unusquisque praecipuum habeat, quod ex re eius servus adquisierit. sed si aliunde servus communis adquisierit, omnibus sociis pro parte dominii hoc adquiritur.

Dig. 41.1.46

Ulpianus 65 ad ed.

Non est novum, ut qui dominium non habeat, alii dominium praebeat: nam et creditor pignus vendendo causam dominii praestat, quam ipse non habuit.

Dig. 41.1.47

Paulus 50 ad ed.

Fructuario hereditas adquiri non potest, quod in operis servi hereditas non est.

Dig. 41.1.48pr.

Paulus 7 ad plaut.

Bonae fidei emptor non dubie percipiendo fructus etiam ex aliena re suos interim facit non tantum eos, qui diligentia et opera eius pervenerunt, sed omnes, quia quod ad fructus attinet, loco domini paene est. denique etiam priusquam percipiat, statim ubi a solo separati sunt, bonae fidei emptoris fiunt. nec interest, ea res, quam bona fide emi, longo tempore capi possit nec ne, veluti si pupilli sit aut vi possessa aut praesidi contra legem repetundarum donata ab eoque abalienata sit bonae fidei emptori.

Dig. 41.1.48.1

Paulus 7 ad plaut.

In contrarium quaeritur, si eo tempore, quo mihi res traditur, putem vendentis esse, deinde cognovero alienam esse, quia perseverat per longum tempus capio, an fructus meos faciam. pomponius verendum, ne non sit bonae fidei possessor, quamvis capiat: hoc enim ad ius, id est capionem, illud ad factum pertinere, ut quis bona aut mala fide possideat: nec contrarium est, quod longum tempus currit, nam e contrario is, qui non potest capere propter rei vitium, fructus suos facit.

Dig. 41.1.48.2

Paulus 7 ad plaut.

Et ovium fetus in fructu sunt et ideo ad bonae fidei emptorem pertinent, etiamsi praegnates venierint vel subreptae sint. et sane quin lac suum faciat, quamvis plenis uberibus venierint, dubitari non potest: idemque in lana iuris est.

Dig. 41.1.49

Paulus 9 ad plaut.

Quod fructuarius ex re sua donat, ex re eius est: sed si eo animo id fecerit, ut ad proprietatis dominum pertineat, dicendum est illi adquiri. si autem extraneus ei donet indistincte, soli proprietario adquiritur. eadem dicemus in homine libero, qui bona fide mihi servit, ut, si ei aliquid donaverim, meum sit. et ideo pomponius scribit, quamvis donaverim ei operas suas, tamen quidquid ex operis suis adquiret, mihi adquiri.

Dig. 41.1.50

Pomponius 6 ex plaut.

Quamvis quod in litore publico vel in mari exstruxerimus, nostrum fiat, tamen decretum praetoris adhibendum est, ut id facere liceat: immo etiam manu prohibendus est, si cum incommodo ceterorum id faciat: nam civilem eum actionem de faciendo nullam habere non dubito.

Dig. 41.1.51pr.

Celsus 2 Dig.

Transfugam iure belli recipimus.

Dig. 41.1.51.1

Celsus 2 Dig.

Et quae res hostiles apud nos sunt, non publicae, sed occupantium fiunt.

Dig. 41.1.52

Modestinus 7 reg.

Rem in bonis nostris habere intellegimur, quotiens possidentes exceptionem aut amittentes ad reciperandam eam actionem habemus.

Dig. 41.1.53

Modestinus 14 ad q. muc.

Ea quae civiliter adquiruntur per eos, qui in potestate nostra sunt, adquirimus, veluti stipulationem: quod naturaliter adquiritur, sicuti est possessio, per quemlibet volentibus nobis possidere adquirimus.

Dig. 41.1.54pr.

Modestinus 31 ad q. muc.

Homo liber hereditatem nobis adquirere non potest, qui bona fide nobis servit: adquiret, si tamen sponte sua sciens condicionem suam adierit: nam si iussu nostro adierit, neque sibi neque nobis adquiret, si non habuerit animum sibi adquirendi: quod si eam mentem habuit, sibi adquirit.

Dig. 41.1.54.1

Modestinus 31 ad q. muc.

Item promittendo nobis liber homo, qui bona fide nobis servit, ut et emendo vel vendendo, vel locando vel conducendo, obligari ipso iure poterit.

Dig. 41.1.54.2

Modestinus 31 ad q. muc.

Sed damnum dando damni iniuriae tenebitur, ut tamen culpam in damno dando exigere debeamus graviorem nec tamen levem quam ab extraneo.

Dig. 41.1.54.3

Modestinus 31 ad q. muc.

At si iussu nostro quid in re nostra gerant vel absentibus nobis quasi procuratores aliquid agant, danda erit in eos actio.

Dig. 41.1.54.3a

Modestinus 31 ad q. muc.

Non solum si eos emerimus, sed etiam si donati fuerint nobis aut ex dotis nomine aut ex legati pertinere ad nos coeperunt aut ex hereditate, idem praestabunt: nec solum si nostros putaverimus, sed et si communes aut fructuarios, ut tamen, quod adquisituri non essent, si re vera communes aut usuarii essent, id hodieque non adquirant.

Dig. 41.1.54.4

Modestinus 31 ad q. muc.

Quidquid tamen liber homo vel alienus quive bona fide nobis servit non adquirit nobis, id vel sibi liber vel alienus servus domino suo adquiret: excepto eo quod vix est, ut liber homo possidendo usucapere possit, quia nec possidere intellegitur, qui ipse possideretur. sed nec per servum alienum, quem nos bona fide possidemus, dominus peculiari nomine ignorans usucapere poterit, sicuti ne per fugitivum quidem, quem non possidet.

Dig. 41.1.55

Proculus 2 epist.

In laqueum, quem venandi causa posueras, aper incidit: cum eo haereret, exemptum eum abstuli: num tibi videor tuum aprum abstulisse? et si tuum putas fuisse, si solutum eum in silvam dimisissem, eo casu tuus esse desisset an maneret? et quam actionem mecum haberes, si desisset tuus esse, num in factum dari oportet, quaero. respondit: laqueum videamus ne intersit in publico an in privato posuerim et, si in privato posui, utrum in meo an in alieno, et, si in alieno, utrum permissu eius cuius fundus erat an non permissu eius posuerim: praeterea utrum in eo ita haeserit aper, ut expedire se non possit ipse, an diutius luctando expediturus se fuerit. summam tamen hanc puto esse, ut, si in meam potestatem pervenit, meus factus sit. sin autem aprum meum ferum in suam naturalem laxitatem dimisisses et eo facto meus esse desisset, actionem mihi in factum dari oportere, veluti responsum est, cum quidam poculum alterius ex nave eiecisset.

Dig. 41.1.56pr.

Proculus 8 epist.

Insula est enata in flumine contra frontem agri mei, ita ut nihil excederet longitudo regionem praedii mei: postea aucta est paulatim et processit contra frontes et superioris vicini et inferioris: quaero, quod adcrevit utrum meum sit, quoniam meo adiunctum est, an eius iuris sit, cuius esset, si initio ea nata eius longitudinis fuisset. proculus respondit: flumen istud, in quo insulam contra frontem agri tui enatam esse scripsisti ita, ut non excederet longitudinem agri tui, si alluvionis ius habet et insula initio propior fundo tuo fuit quam eius, qui trans flumen habebat, tota tua facta est, et quod postea ei insulae alluvione accessit, id tuum est, etiamsi ita accessit, ut procederet insula contra frontes vicinorum superioris atque inferioris, vel etiam ut propior esset fundo eius, qui trans flumen habet.

Dig. 41.1.56.1

Proculus 8 epist.

Item quaero, si, cum propior ripae meae enata est insula et postea totum flumen fluere inter me et insulam coepit relicto suo alveo, quo maior amnis fluerat, numquid dubites, quin etiam insula mea maneat et nihilo minus eius soli, quod flumen reliquit, pars fiat mea? rogo, quid sentias scribas mihi. proculus respondit: si, cum propior fundo tuo initio fuisset insula, flumen relicto alveo maiore, qui inter eam insulam fuerat et eum fundum vicini, qui trans flumen erat, fluere coepit inter eam insulam et fundum tuum, nihilo minus insula tua manet. set alveus, qui fuit inter eam insulam et fundum vicini, medius dividi debet, ita ut pars propior insulae tuae tua, pars autem propior agro vicini eius esse intellegatur. intellego, ut et cum ex altera parte insulae alveus fluminis exaruerit, desisse insulam esse, sed quo facilius res intellegeretur, agrum, qui insula fuerat, insulam appellant.

Dig. 41.1.57

Paulus 6 ad plaut.

Per servum donatum a marito nec ex re quidem eius, cui donatus est, adquiri quicquam posse iulianus scribit: hoc enim in eorum persona concessum est, qui bona fide serviunt.

Dig. 41.1.58

Iavolenus 11 ex cass.

Quaecumque res ex mari extracta est, non ante eius incipit esse qui extraxit, quam dominus eam pro derelicto habere coepit.

Dig. 41.1.59

Callistratus 2 quaest.

Res ex mandatu meo empta non prius mea fiet, quam si mihi tradiderit qui emit.

Dig. 41.1.60

Scaevola 1 resp.

Titius horreum frumentarium novum ex tabulis ligneis factum mobile in seii praedio posuit: quaeritur, uter horrei dominus sit. respondit secundum quae proponerentur non esse factum seii.

Dig. 41.1.61pr.

Hermogenianus 6 iuris epit.

Hereditas in multis partibus iuris pro domino habetur adeoque hereditati quoque ut domino per servum hereditarium adquiritur. in his sane, in quibus factum personae operaeve substantia desideratur, nihil hereditati quaeri per servum potest. ac propterea quamvis servus hereditarius heres institui possit, tamen quia adire iubentis domini persona desideratur, heres exspectandus est.

Dig. 41.1.61.1

Hermogenianus 6 iuris epit.

Usus fructus, qui sine persona constitui non potest, hereditati per servum non adquiritur.

Dig. 41.1.62

Paulus 2 manual.

Quaedam, quae non possunt sola alienari, per universitatem transeunt, ut fundus dotalis, ad heredem, et res, cuius aliquis commercium non habet: nam etsi legari ei non possit, tamen heres institutus dominus eius efficitur.

Dig. 41.1.63pr.

Tryphonus 7 disp.

Si is qui in aliena potestate est thensaurum invenerit, in persona eius cui adquirit hoc erit dicendum, ut, si in alieno agro invenerit, partem ei adquirat, si vero in parentis dominive loco invenerit, illius totus sit, si autem in alieno, pars.

Dig. 41.1.63.1

Tryphonus 7 disp.

Si communis servus in alieno invenerit, utrum pro dominii partibus an semper aequis adquiret? et simile est atque in hereditate vel legato vel quod ab aliis donatum servo traditur, quia et thensaurus donum fortunae creditur, scilicet ut pars, quae inventori cedit, ad socios, pro qua parte servi quisque dominus est, pertineat.

Dig. 41.1.63.2

Tryphonus 7 disp.

Si communis servus in domini unius fundo proprio invenit, de parte, quae soli domino semper cedit, non est dubium, quin solius domini praedii sit: verum an aliquid ex parte ferat alter socius, videndum est, et numquid simile sit, atque cum stipulatur servus iussu unius domini aut per traditionem aliquid accipit vel nominatim alteri: quod magis dici poterit.

Dig. 41.1.63.3

Tryphonus 7 disp.

Quod si servus, in quo usus fructus alienus est, invenerit in eius locum, qui servum proprium habet, an totum illius sit? et si in alieno, an partem eidem adquirat an vero fructuario? inspectio in illo est, num ex operis servi adquiratur. finge terram fodientem invenisse, ut hoc dicatur fructuarii esse: quod vero subito in abdito loco positum nihil agens, sed aliter ambulans invenit, proprietatis domini sit. ego nec illius ad fructuarium pertinere partem arbitror: nemo enim servorum opera thensaurum quaerit nec ea propter tunc terram fodiebat, sed alii rei operam insumebat et fortuna aliud dedit. itaque si in ipsius fructuarii agro invenerit, puto partem solam ut agri dominum habiturum, alteram ad eum, cuius in servo proprietas est, pertinere.

Dig. 41.1.63.4

Tryphonus 7 disp.

Quod si creditor invenerit, in alieno videbitur invenisse: partem itaque sibi, partem debitori praestabit, nec recepta pecunia restituet, quod iure inventoris, non creditoris ex thensauro apud eum remansit. quae cum ita sint, et cum ex principis auctoritate creditor ut proprium agrum tenere coepit iure dominii, intra constitutum luendi tempus pignoris causa vertitur: post transactum autem tempus thensaurum in eo inventum ante solutam pecuniam totum tenebit. oblato vero intra constitutum tempus debito, quoniam universa praestantur atque in simplici petitore revocantur, restitui debebit, sed pro parte sola, quia dimidium inventori semper placet relinqui.

Dig. 41.1.64

Mucius l.S. horwn

Quae quisque aliena in censum deducit, nihilo magis eius fiunt.

Dig. 41.1.65pr.

Labeo 6 pith. a paulo epit.

Si epistulam tibi misero, non erit ea tua, antequam tibi reddita fuerit. paulus: immo contra: nam si miseris ad me tabellarium tuum et ego rescribendi causa litteras tibi misero, simul atque tabellario tuo tradidero, tuae fient. idem accidet in his litteris, quas tuae dumtaxat rei gratia misero, veluti si petieris a me, uti te alicui commendarem, et eas commendaticias tibi misero litteras.

Dig. 41.1.65.1

Labeo 6 pith. a paulo epit.

Si qua insula in flumine propria tua est, nihil in ea publici est. paulus: immo in eo genere insularum ripae flumini et litora mari proxima publica sunt, non secus atque in continenti agro idem iuris est.

Dig. 41.1.65.2

Labeo 6 pith. a paulo epit.

Si qua insula in flumine publico proxima tuo fundo nata est, ea tua est. paulus: videamus ne hoc falsum sit de ea insula, quae non ipsi alveo fluminis cohaeret, sed virgultis aut alia qualibet levi materia ita sustinetur in flumine, ut solum eius non tangat, atque ipsa movetur: haec enim propemodum publica atque ipsius fluminis est insula.

Dig. 41.1.65.3

Labeo 6 pith. a paulo epit.

Paulus: si insula in flumine nata tua fuerit, deinde inter eam insulam et contrariam ripam alia insula nata fuerit, mensura eo nomine erit instruenda a tua insula, non ab agro tuo, propter quem ea insula tua facta fuerit: nam quid interest, qualis ager sit, cuius propter propinquitatem posterior insula cuius sit quaeratur?

Dig. 41.1.65.4

Labeo 6 pith. a paulo epit.

Labeo libro eodem. si id quod in publico innatum aut aedificatum est, publicum est, insula quoque, quae in flumine publico nata est, publica esse debet.

Dig. 41.1.66

Venonius 6 interd.

Cum praegnas mulier legata aut usucapta aliove quo modo alienata pariat, eius fient partus, cuius est ea, cum eniteretur, non cuius tunc fuisset, cum conciperet.

Dig. 41.2.0. De adquirenda vel amittenda possessione.

Dig. 41.2.1pr.

Paulus 54 ad ed.

Possessio appellata est, ut et labeo ait, a sedibus quasi positio, quia naturaliter tenetur ab eo qui ei insistit, quam graeci katoxyn dicunt.

Dig. 41.2.1.1

Paulus 54 ad ed.

Dominiumque rerum ex naturali possessione coepisse nerva filius ait eiusque rei vestigium remanere in his, quae terra mari caeloque capiuntur: nam haec protinus eorum fiunt, qui primi possessionem eorum adprehenderint. item bello capta et insula in mari enata et gemmae lapilli margaritae in litoribus inventae eius fiunt, qui primus eorum possessionem nanctus est.

Dig. 41.2.1.2

Paulus 54 ad ed.

Apiscimur autem possessionem per nosmet ipsos.

Dig. 41.2.1.3

Paulus 54 ad ed.

Furiosus, et pupillus sine tutoris auctoritate, non potest incipere possidere, quia affectionem tenendi non habent, licet maxime corpore suo rem contingant, sicuti si quis dormienti aliquid in manu ponat. sed pupillus tutore auctore incipiet possidere. ofilius quidem et nerva filius etiam sine tutoris auctoritate possidere incipere posse pupillum aiunt: eam enim rem facti, non iuris esse: quae sententia recipi potest, si eius aetatis sint, ut intellectum capiant.

Dig. 41.2.1.4

Paulus 54 ad ed.

Si vir uxori cedat possessione donationis causa, plerique putant possidere eam, quoniam res facti infirmari iure civili non potest: et quid attinet dicere non possidere mulierem, cum maritus, ubi noluit possidere, protinus amiserit possessionem?

Dig. 41.2.1.5

Paulus 54 ad ed.

Item adquirimus possessionem per servum aut filium, qui in potestate est, et quidem earum rerum, quas peculiariter tenent, etiam ignorantes, sicut sabino et cassio et iuliano placuit, quia nostra voluntate intellegantur possidere, qui eis peculium habere permiserimus. igitur ex causa peculiari et infans et furiosus adquirunt possessionem et usucapiunt, et heres, si hereditarius servus emat.

Dig. 41.2.1.6

Paulus 54 ad ed.

Sed et per eum, quem bona fide possidemus, quamvis alienus sit vel liber, possessionem adquiremus. si mala fide eum possideamus, non puto adquiri nobis possessionem per eum: sed nec vero domino aut sibi adquiret, qui ab alio possidetur.

Dig. 41.2.1.7

Paulus 54 ad ed.

Per communem sicut per proprium adquirimus, etiam singuli in solidum, si hoc agat servus, ut uni adquirat, sicut in dominio adquirendo.

Dig. 41.2.1.8

Paulus 54 ad ed.

Per eum, in quo usum fructum habemus, possidere possumus, sicut ex operis suis adquirere nobis solet: nec ad rem pertinet, quod ipsum non possidemus: nam nec filium.

Dig. 41.2.1.9

Paulus 54 ad ed.

Ceterum et ille, per quem volumus possidere, talis esse debet, ut habeat intellectum possidendi:

Dig. 41.2.1.10

Paulus 54 ad ed.

Et ideo si furiosum servum miseris, ut possideas, nequaquam videris adprehendisse possessionem.

Dig. 41.2.1.11

Paulus 54 ad ed.

Quod si impuberem miseris ad possidendum, incipies possidere, sicut pupillus, maxime tutore auctore, adquirit possessionem.

Dig. 41.2.1.12

Paulus 54 ad ed.

Nam per ancillam quin possis nancisci possessionem, non dubitatur.

Dig. 41.2.1.13

Paulus 54 ad ed.

Pupillus per servum sive puberem sive impuberem adquirit possessionem, si tutore auctore iusserit eum ire in possessionem.

Dig. 41.2.1.14

Paulus 54 ad ed.

Per servum, qui in fuga sit, nihil posse nos possidere nerva filius ait, licet respondeatur, quamdiu ab alio non possideatur, a nobis eum possideri ideoque interim etiam usucapi. sed utilitatis causa receptum est, ut impleatur usucapio, quamdiu nemo nactus sit eius possessionem. possessionem autem per eum adquiri, sicut per eos, quos in provincia habemus, cassii et iuliani sententia est.

Dig. 41.2.1.15

Paulus 54 ad ed.

Per servum corporaliter pignori datum non adquirere nos possessionem iulianus ait (ad unam enim tantum causam videri eum a debitore possideri, ad usucapionem), nec creditori, quia nec stipulatione nec ullo alio modo per eum adquirat, quamvis eum possideat.

Dig. 41.2.1.16

Paulus 54 ad ed.

Veteres putaverunt non posse nos per servum hereditarium adquirere, quod sit eiusdem hereditatis. itaque agitatur, num haec regula longius producenda sit, ut, si plures servi legati sint, per unum an possint ceteri possideri. idem tractatus est, si pariter empti vel donati sunt. sed verius est ex his causis posse me per unum reliquorum adquirere possessionem.

Dig. 41.2.1.17

Paulus 54 ad ed.

Si ex parte heredi instituto servus legatus sit, propter partem, quam ex causa legati habet, adquiret fundi hereditarii possessionem.

Dig. 41.2.1.18

Paulus 54 ad ed.

Idem dicendum est, si servum communem iussero adire hereditatem, quia propter partem meam adquiro.

Dig. 41.2.1.19

Paulus 54 ad ed.

Haec, quae de servis diximus, ita se habent, si et ipsi velint nobis adquirere possessionem: nam si iubeas servum tuum possidere et is eo animo intret in possessionem, ut nolit tibi, sed potius titio adquirere, non est tibi adquisita possessio.

Dig. 41.2.1.20

Paulus 54 ad ed.

Per procuratorem tutorem curatoremve possessio nobis adquiritur. cum autem suo nomine nacti fuerint possessionem, non cum ea mente, ut operam dumtaxat suam accommodarent, nobis non possunt adquirere. alioquin si dicamus per eos non adquiri nobis possessionem, qui nostro nomine accipiunt, futurum, ut neque is possideat cui res tradita sit, quia non habeat animum possidentis, neque is qui tradiderit, quoniam cesserit possessione.

Dig. 41.2.1.21

Paulus 54 ad ed.

Si iusserim venditorem procuratori rem tradere, cum ea in praesentia sit, videri mihi traditam priscus ait, idemque esse, si nummos debitorem iusserim alii dare. non est enim corpore et tactu necesse adprehendere possessionem, sed etiam oculis et affectu argumento esse eas res, quae propter magnitudinem ponderis moveri non possunt, ut columnas, nam pro traditis eas haberi, si in re praesenti consenserint: et vina tradita videri, cum claves cellae vinariae emptori traditae fuerint.

Dig. 41.2.1.22

Paulus 54 ad ed.

Municipes per se nihil possidere possunt, quia universi consentire non possunt. forum autem et basilicam hisque similia non possident, sed promiscue his utuntur. sed nerva filius ait, per servum quae peculiariter adquisierint et possidere et usucapere posse: sed quidam contra putant, quoniam ipsos servos non possideant.

Dig. 41.2.2

Ulpianus 70 ad ed.

Sed hoc iure utimur, ut et possidere et usucapere municipes possint idque eis per servum et per liberam personam adquiratur.

Dig. 41.2.3pr.

Paulus 54 ad ed.

Possideri autem possunt, quae sunt corporalia.

Dig. 41.2.3.1

Paulus 54 ad ed.

Et apiscimur possessionem corpore et animo, neque per se animo aut per se corpore. quod autem diximus et corpore et animo adquirere nos debere possessionem, non utique ita accipiendum est, ut qui fundum possidere velit, omnes glebas circumambulet: sed sufficit quamlibet partem eius fundi introire, dum mente et cogitatione hac sit, uti totum fundum usque ad terminum velit possidere.

Dig. 41.2.3.2

Paulus 54 ad ed.

Incertam partem rei possidere nemo potest, veluti si hac mente sis, ut quidquid titius possidet, tu quoque velis possidere.

Dig. 41.2.3.3

Paulus 54 ad ed.

Neratius et proculus et solo animo non posse nos adquirere possessionem, si non antecedat naturalis possessio. ideoque si thensaurum in fundo meo positum sciam, continuo me possidere, simul atque possidendi affectum habuero, quia quod desit naturali possessioni, id animus implet. ceterum quod brutus et manilius putant eum, qui fundum longa possessione cepit, etiam thensaurum cepisse, quamvis nesciat in fundo esse, non est verum: is enim qui nescit non possidet thensaurum, quamvis fundum possideat. sed et si sciat, non capiet longa possessione, quia scit alienum esse. quidam putant sabini sententiam veriorem esse nec alias eum qui scit possidere, nisi si loco motus sit, quia non sit sub custodia nostra: quibus consentio.

Dig. 41.2.3.4

Paulus 54 ad ed.

Ex plurimis causis possidere eandem rem possumus, ut quidam putant et eum, qui usuceperit et pro emptore, et pro suo possidere: sic enim et si ei, qui pro emptore possidebat, heres sim, eandem rem et pro emptore et pro herede possideo: nec enim sicut dominium non potest nisi ex una causa contingere, ita et possidere ex una dumtaxat causa possumus.

Dig. 41.2.3.5

Paulus 54 ad ed.

Ex contrario plures eandem rem in solidum possidere non possunt: contra naturam quippe est, ut, cum ego aliquid teneam, tu quoque id tenere videaris. sabinus tamen scribit eum qui precario dederit et ipsum possidere et eum qui precario acceperit. idem trebatius probabat existimans posse alium iuste, alium iniuste possidere, duos iniuste vel duos iuste non posse. quem labeo reprehendit, quoniam in summa possessionis non multum interest, iuste quis an iniuste possideat: quod est verius. non magis enim eadem possessio apud duos esse potest, quam ut tu stare videaris in eo loco, in quo ego sto, vel in quo ego sedeo, tu sedere videaris.

Dig. 41.2.3.6

Paulus 54 ad ed.

In amittenda quoque possessione affectio eius qui possidet intuenda est: itaque si in fundo sis et tamen nolis eum possidere, protinus amittes possessionem. igitur amitti et animo solo potest, quamvis adquiri non potest.

Dig. 41.2.3.7

Paulus 54 ad ed.

Sed et si animo solo possideas, licet alius in fundo sit, adhuc tamen possides.

Dig. 41.2.3.8

Paulus 54 ad ed.

Si quis nuntiet domum a latronibus occupatam et dominus timore conterritus noluerit accedere, amisisse eum possessionem placet. quod si servus vel colonus, per quos corpore possidebam, decesserint discesserintve, animo retinebo possessionem.

Dig. 41.2.3.9

Paulus 54 ad ed.

Et si alii tradiderim, amitto possessionem. nam constat possidere nos, donec aut nostra voluntate discesserimus aut vi deiecti fuerimus.

Dig. 41.2.3.10

Paulus 54 ad ed.

Si servus, quem possidebam, pro libero se gerat, ut fecit spartacus, et iudicium liberale pati paratus sit, non videbitur a domino possideri, cui se adversarium praeparat. sed hoc ita verum est, si diu in libertate moratur: alioquin si ex possessione servitutis in libertatem reclamaverit et liberale iudicium imploraverit, nihilo minus in possessione mea est et animo eum possideo, donec liber fuerit pronuntiatus.

Dig. 41.2.3.11

Paulus 54 ad ed.

Saltus hibernos aestivosque animo possidemus, quamvis certis temporibus eos relinquamus.

Dig. 41.2.3.12

Paulus 54 ad ed.

Ceterum animo nostro, corpore etiam alieno possidemus, sicut diximus per colonum et servum, nec movere nos debet, quod quasdam etiam ignorantes possidemus, id est quas servi peculiariter paraverunt: nam videmur eas eorundem et animo et corpore possidere.

Dig. 41.2.3.13

Paulus 54 ad ed.

Nerva filius res mobiles excepto homine, quatenus sub custodia nostra sint, hactenus possideri, id est quatenus, si velimus, naturalem possessionem nancisci possimus. nam pecus simul atque aberraverit aut vas ita exciderit, ut non inveniatur, protinus desinere a nobis possideri, licet a nullo possideatur: dissimiliter atque si sub custodia mea sit nec inveniatur, quia praesentia eius sit et tantum cessat interim diligens inquisitio.

Dig. 41.2.3.14

Paulus 54 ad ed.

Item feras bestias, quas vivariis incluserimus, et pisces, quos in piscinas coiecerimus, a nobis possideri. sed eos pisces, qui in stagno sint, aut feras, quae in silvis circumseptis vagantur, a nobis non possideri, quoniam relictae sint in libertate naturali: alioquin etiam si quis silvam emerit, videri eum omnes feras possidere, quod falsum est.

Dig. 41.2.3.15

Paulus 54 ad ed.

Aves autem possidemus, quas inclusas habemus, aut si quae mansuetae factae custodiae nostrae subiectae sunt.

Dig. 41.2.3.16

Paulus 54 ad ed.

Quidam recte putant columbas quoque, quae ab aedificiis nostris volant, item apes, quae ex alveis nostris evolant et secundum consuetudinem redeunt, a nobis possideri.

Dig. 41.2.3.17

Paulus 54 ad ed.

Labeo et nerva filius responderunt desinere me possidere eum locum, quem flumen aut mare occupaverit.

Dig. 41.2.3.18

Paulus 54 ad ed.

Si rem apud te depositam furti faciendi causa contrectaveris, desino possidere. sed si eam loco non moveris et infitiandi animum habeas, plerique veterum et sabinus et cassius recte responderunt possessorem me manere, quia furtum sine contrectatione fieri non potest nec animo furtum admittatur.

Dig. 41.2.3.19

Paulus 54 ad ed.

Illud quoque a veteribus praeceptum est neminem sibi ipsum causam possessionis mutare posse.

Dig. 41.2.3.20

Paulus 54 ad ed.

Sed si is, qui apud me deposuit vel commodavit, eam rem vendiderit mihi vel donaverit, non videbor causam possessionis mihi mutare, qui ne possidebam quidem.

Dig. 41.2.3.21

Paulus 54 ad ed.

Genera possessionum tot sunt, quot et causae adquirendi eius quod nostrum non sit, velut pro emptore: pro donato: pro legato: pro dote: pro herede: pro noxae dedito: pro suo, sicut in his, quae terra marique vel ex hostibus capimus vel quae ipsi, ut in rerum natura essent, fecimus. et in summa magis unum genus est possidendi, species infinitae.

Dig. 41.2.3.22

Paulus 54 ad ed.

Vel etiam potest dividi possessionis genus in duas species,ut possideatur aut bona fide aut non bona fide.

Dig. 41.2.3.23

Paulus 54 ad ed.

Quod autem quintus mucius inter genera possessionum posuit, si quando iussu magistratus rei servandae causa possidemus, ineptissimum est: nam qui creditorem rei servandae causa vel quia damni infecti non caveatur, mittit in possessionem vel ventris nomine, non possessionem, sed custodiam rerum et observationem concedit: et ideo, cum damni infecti non cavente vicino in possessionem missi sumus, si id longo tempore fiat, etiam possidere nobis et per longam possessionem capere praetor causa cognita permittit.

Dig. 41.2.4

Ulpianus 67 ad ed.

Quidquid filius peculiari nomine adprehenderit, id statim pater eius possidet, quamvis ignoret in sua potestate filium. amplius etiam si filius ab alio tamquam servus possideatur, idem erit probandum.

Dig. 41.2.5

Paulus 63 ad ed.

Si ex stipulatione tibi stichum debeam et non tradam eum, tu autem nanctus fueris possessionem, praedo es: aeque si vendidero nec tradidero rem, si non voluntate mea nanctus sis possessionem, non pro emptore possides, sed praedo es.

Dig. 41.2.6pr.

Ulpianus 70 ad ed.

Clam possidere eum dicimus, qui furtive ingressus est possessionem ignorante eo, quem sibi controversiam facturum suspicabatur et, ne faceret, timebat. is autem qui, cum possideret non clam, se celavit, in ea causa est, ut non videatur clam possidere: non enim ratio optinendae possessionis, sed origo nanciscendae exquirenda est: nec quemquam clam possidere incipere, qui sciente aut volente eo, ad quem ea res pertinet, aut aliqua ratione bonae fidei possessionem nanciscitur. itaque, inquit pomponius, clam nanciscitur possessionem, qui futuram controversiam metuens ignorante eo, quem metuit, furtive in possessionem ingreditur.

Dig. 41.2.6.1

Ulpianus 70 ad ed.

Qui ad nundinas profectus neminem reliquerit et, dum ille a nundinis redit, aliquis occupaverit possessionem, videri eum clam possidere labeo scribit: retinet ergo possessionem is, qui ad nundinas abiit ^ abit^: verum si revertentem dominum non admiserit, vi magis intellegi possidere, non clam.

Dig. 41.2.7

Paulus 54 ad ed.

Sed et si nolit in fundum reverti, quod vim maiorem vereatur, amisisse possessionem videbitur: et ita neratius quoque scribit.

Dig. 41.2.8

Paulus 65 ad ed.

Quemadmodum nulla possessio adquiri nisi animo et corpore potest, ita nulla amittitur, nisi in qua utrumque in contrarium actum est.

Dig. 41.2.9

Gaius 25 ad ed. provinc.

Generaliter quisquis omnino nostro nomine sit in possessione, veluti procurator hospes amicus, nos possidere videmur.

Dig. 41.2.10pr.

Ulpianus 69 ad ed.

Si quis ante conduxit, postea precario rogavit, videbitur discessisse a conductione: quod si ante rogavit, postea conduxit, conduxisse videbitur.

potius enim hoc procedere videtur, quod novissime factum est: et hoc pomponius ait.

Dig. 41.2.10.1

Ulpianus 69 ad ed.

Idem pomponius bellissime temptat dicere, numquid qui conduxerit quidem praedium, precario autem rogavit non ut possideret, sed ut in possessione esset (est autem longe diversum: aliud est enim possidere, longe aliud in possessione esse: denique rei servandae causa, legatorum, damni infecti non possident, sed sunt in possessione custodiae causa): quod si factum est, utrumque procedit.

Dig. 41.2.10.2

Ulpianus 69 ad ed.

Si quis et conduxerit et rogaverit precario, uti possideret, si quidem nummo uno conduxit, nulla dubitatio est, quin ei precarium solum teneat, quia conductio nulla est, quae est in uno nummo: sin vero pretio, tunc distinguendum, quid prius factum est.

Dig. 41.2.11

Paulus 65 ad ed.

Iuste possidet, qui auctore praetore possidet.

Dig. 41.2.12pr.

Ulpianus 70 ad ed.

Naturaliter videtur possidere is qui usum fructum habet.

Dig. 41.2.12.1

Ulpianus 70 ad ed.

Nihil commune habet proprietas cum possessione: et ideo non denegatur ei interdictum uti possidetis, qui coepit rem vindicare: non enim videtur possessioni renuntiasse, qui rem vindicavit.

Dig. 41.2.13pr.

Ulpianus 72 ad ed.

Pomponius refert, cum lapides in tiberim demersi essent naufragio et post tempus extracti, an dominium in integro fuit per id tempus, quo erant mersi. ego dominium me retinere puto, possessionem non puto, nec est simile fugitivo: namque fugitivus idcirco a nobis possideri videtur, ne ipse nos privet possessione: at in lapidibus diversum est.

Dig. 41.2.13.1

Ulpianus 72 ad ed.

Cum quis utitur adminiculo ex persona auctoris, uti debet cum sua causa suisque vitiis: denique addimus in accessione de vi et clam et precario venditoris.

Dig. 41.2.13.2

Ulpianus 72 ad ed.

Praeterea quaeritur, si quis hominem venditori redhibuerit, an accessione uti possit ex persona eius. et sunt qui putent non posse, quia venditionis est resolutio redhibitio: alii emptorem venditoris accessione usurum et venditorem emptoris, quod magis probandum puto.

Dig. 41.2.13.3

Ulpianus 72 ad ed.

Si liber homo vel alienus servus, cum bona fide servirent, comparaverint et alii adquisierint possessionem, neque liberum neque servi dominum debere uti accessione.

Dig. 41.2.13.4

Ulpianus 72 ad ed.

Quaesitum est, si heres prius non possederat, an testatoris possessio ei accedat. et quidem in emptoribus possessio interrumpitur, sed non idem in heredibus plerique probant, quoniam plenius est ius successionis quam emptionis: sed suptilius est quod in emptorem, et in heredem id quoque probari.

Dig. 41.2.13.5

Ulpianus 72 ad ed.

Non autem ea tantum possessio testatoris heredi procedit, quae morti fuit iniuncta, verum ea quoque, quae umquam testatoris fuerit.

Dig. 41.2.13.6

Ulpianus 72 ad ed.

In dote quoque si data res fuerit vel ex dote recepta, accessio dabitur vel marito vel uxori.

Dig. 41.2.13.7

Ulpianus 72 ad ed.

Si is, qui precario concessit, accessione velit uti ex persona eius cui concessit, an possit, quaeritur. ego puto eum, qui precario concessit, quamdiu manet precarium, accessione uti non posse: si tamen receperit possessionem rupto precario, dicendum esse accedere possessionem eius temporis, quo precario possidebatur.

Dig. 41.2.13.8

Ulpianus 72 ad ed.

Ex facto quaeritur, si quis manumissus ex causa peculiari habeat rem non concesso sibi peculio, deinde dominus velit retracta possessione accessione uti, an possit. et placuit non esse dandam hanc accessionem, quae clam habita est.

Dig. 41.2.13.9

Ulpianus 72 ad ed.

Praedone possidente si iussu iudicis res mihi restituta sit, accessionem esse mihi dandam placuit.

Dig. 41.2.13.10

Ulpianus 72 ad ed.

Sed et legatario dandam accessionem eius temporis, quo fuit apud testatorem, sciendum est. an heredis possessio ei accedat, videamus: et puto, sive pure sive sub condicione fuerit relictum, dicendum esse id temporis, quo heres possedit ante existentem condicionem vel restitutionem rei, legatario proficere. testatoris autem semper proderit legatario, si legatum vere fuit vel fideicommissum.

Dig. 41.2.13.11

Ulpianus 72 ad ed.

Sed et is, cui res donata est, accessione utetur ex persona eius qui donavit.

Dig. 41.2.13.12

Ulpianus 72 ad ed.

Accessiones in eorum persona locum habent, qui habent propriam possessionem: ceterum accessio nemini proficit, nisi ei qui ipse possedit.

Dig. 41.2.13.13

Ulpianus 72 ad ed.

Praeterea ne vitiosae quidem possessioni ulla potest accedere: sed nec vitiosa ei, quae vitiosa non est.

Dig. 41.2.14pr.

Paulus 68 ad ed.

Si servus vel filius familias vendiderit, dabitur accessio eius, quod penes me fuit, scilicet si volente me aut de peculio, cuius liberam peculii administrationem habuerunt, vendiderunt.

Dig. 41.2.14.1

Paulus 68 ad ed.

Tutore quoque vel curatore vendente dabitur accessio eius temporis, quo pupillus vel furiosus possedit.

Dig. 41.2.15

Gaius 26 ad ed. provinc.

Rem, quae nobis subrepta est, perinde intellegimur desinere possidere atque eam, quae vi nobis erepta est. sed si is, qui in potestate nostra est, subripuerit, quamdiu apud ipsum sit res, tamdiu non amittimus possessionem, quia per huiusmodi personas adquiritur nobis possessio. et haec ratio est, quare videamur fugitivum possidere, quod is, quemadmodum aliarum rerum possessionem intervertere non potest, ita ne suam quidem potest.

Dig. 41.2.16

Ulpianus 73 ad ed.

Quod uxor viro aut vir uxori donavit, pro possessore possidetur.

Dig. 41.2.17pr.

Ulpianus 76 ad ed.

Si quis vi de possessione deiectus sit, perinde haberi debet ac si possideret, cum interdicto de vi reciperandae possessionis facultatem habeat.

Dig. 41.2.17.1

Ulpianus 76 ad ed.

Differentia inter dominium et possessionem haec est, quod dominium nihilo minus eius manet, qui dominus esse non vult, possessio autem recedit, ut quisque constituit nolle possidere. si quis igitur ea mente possessionem tradidit, ut postea ei restituatur, desinit possidere.

Dig. 41.2.18pr.

Celsus 23 Dig.

Quod meo nomine possideo, possum alieno nomine possidere: nec enim muto mihi causam possessionis, sed desino possidere et alium possessorem ministerio meo facio. nec idem est possidere et alieno nomine possidere: nam possidet, cuius nomine possidetur, procurator alienae possessioni praestat ministerium.

Dig. 41.2.18.1

Celsus 23 Dig.

Si furioso, quem suae mentis esse existimas, eo quod forte in conspectu inumbratae quietis fuit constitutus, rem tradideris, licet ille non erit adeptus possessionem, tu possidere desinis: sufficit quippe dimittere possessionem, etiamsi non transferas. illud enim ridiculum est dicere, quod non aliter vult quis dimittere, quam si transferat: immo vult dimittere, quia existimat se transferre.

Dig. 41.2.18.2

Celsus 23 Dig.

Si venditorem quod emerim deponere in mea domo iusserim, possidere me certum est, quamquam id nemo dum attigerit: aut si vicinum mihi fundum mercato venditor in mea turre demonstret vacuamque se possessionem tradere dicat, non minus possidere coepi, quam si pedem finibus intulissem.

Dig. 41.2.18.3

Celsus 23 Dig.

Si, dum in alia parte fundi sum, alius quis clam animo possessoris intraverit, non desisse ilico possidere existimandus sum, facile expulsurus finibus, simul sciero.

Dig. 41.2.18.4

Celsus 23 Dig.

Rursus si cum magna vi ingressus est exercitus, eam tantummodo partem quam intraverit optinet.

Dig. 41.2.19pr.

Marcellus 17 Dig.

Qui bona fide alienum fundum emit, eundem a domino conduxit: quaero, utrum desinat possidere an non. respondi: in promptu est, ut possidere desierit.

Dig. 41.2.19.1

Marcellus 17 Dig.

Quod scriptum est apud veteres neminem sibi causam possessionis posse mutare, credibile est de eo cogitatum, qui et corpore et animo possessioni incumbens hoc solum statuit, ut alia ex causa id possideret, non si quis dimissa possessione prima eiusdem rei denuo ex alia causa possessionem nancisci velit.

Dig. 41.2.20

Marcellus 19 Dig.

Si quis rem, quam utendam dederat, vendiderit emptorique tradi iusserit nec ille tradiderit, alias videbitur possessione dominum intervertisse, alias contra. nam nec tunc quidem semper dominus amittit possessionem, cum reposcenti ei commodatum non redditur: quid enim si alia quaepiam fuit iusta et rationabilis causa non reddendi, non utique ut possessionem eius interverteret?

Dig. 41.2.21pr.

Iavolenus 7 ex cass.

Interdum eius possessionem, cuius ipsi non habemus, alii tradere possumus, veluti cum is, qui pro herede rem possidebat, antequam dominus fieret, precario ab herede eam rogavit.

Dig. 41.2.21.1

Iavolenus 7 ex cass.

Quod ex naufragio expulsum est, usucapi non potest, quoniam non est in derelicto, sed in deperdito.

Dig. 41.2.21.2

Iavolenus 7 ex cass.

Idem iuris esse existimo in his rebus, quae iactae sunt: quoniam non potest videri id pro derelicto habitum, quod salutis causa interim dimissum est.

Dig. 41.2.21.3

Iavolenus 7 ex cass.

Qui alienam rem precario rogavit, si eandem a domino conduxit, possessio ad dominum revertitur.

Dig. 41.2.22

Iavolenus 13 ex cass.

Non videtur possessionem adeptus is qui ita nactus est, ut eam retinere non possit.

Dig. 41.2.23pr.

Iavolenus 1 epist.

Cum heredes instituti sumus, adita hereditate omnia quidem iura ad nos transeunt, possessio tamen nisi naturaliter comprehensa ad nos non pertinet.

Dig. 41.2.23.1

Iavolenus 1 epist.

In his, qui in hostium potestatem pervenerunt, in retinendo iura rerum suarum singulare ius est: corporaliter tamen possessionem amittunt: neque enim possunt videri aliquid possidere, cum ipsi ab alio possideantur: sequitur ergo, ut reversis his nova possessione opus sit, etiamsi nemo medio tempore res eorum possederit.

Dig. 41.2.23.2

Iavolenus 1 epist.

Item quaero, si vinxero liberum hominem ita, ut eum possideam, an omnia, quae is ^ si^ possidebat, ego possideam per illum. respondit: si vinxeris hominem liberum, eum te possidere non puto: quod cum ita se habeat, multo minus per illum res eius a te possidebuntur: neque enim rerum natura recipit, ut per eum aliquid possidere possimus, quem civiliter in mea potestate non habeo.

Dig. 41.2.24

Iavolenus 14 epist.

Quod servus tuus ignorante te vi possidet, id tu non possides, quoniam is, qui in tua potestate est, ignoranti tibi non corporalem possessionem, sed iustam potest adquirere: sicut id, quod ex peculio ad eum pervenerit, possidet. nam tum per servum dominus quoque possidere dicitur, summa scilicet cum ratione, quia, quod ex iusta causa corporaliter a servo tenetur, id in peculio servi est et peculium, quod servus civiliter quidem possidere non posset, sed naturaliter tenet, dominus creditur possidere. quod vero ex maleficiis adprehenditur, id ad domini possessionem ideo non pertinet, quia nec peculii causam adprehendit.

Dig. 41.2.25pr.

Pomponius 23 ad q. muc.

Si id quod possidemus ita perdiderimus, ut ignoremus, ubi sit, desinimus possidere.

Dig. 41.2.25.1

Pomponius 23 ad q. muc.

Et per colonos et inquilinos aut servos nostros possidemus: et si moriantur aut furere incipiant aut alii locent, intellegimur nos retinere possessionem. nec inter colonum et servum nostrum, per quem possessionem retinemus, quicquam interest.

Dig. 41.2.25.2

Pomponius 23 ad q. muc.

Quod autem solo animo possidemus, quaeritur, utrumne usque eo possideamus, donec alius corpore ingressus sit, ut potior sit illius corporalis possessio, an vero (quod quasi magis probatur) usque eo possideamus, donec revertentes nos aliquis repellat aut nos ita animo desinamus possidere, quod suspicemur repelli nos posse ab eo, qui ingressus sit in possessionem: et videtur utilius esse.

Dig. 41.2.26

Pomponius 26 ad q. muc.

Locus certus ex fundo et possideri et per longam possessionem capi potest et certa pars pro indiviso, quae introducitur vel ex emptione vel ex donatione vel qualibet alia ex causa. incerta autem pars nec tradi nec capi potest, veluti si ita tibi tradam: " quidquid mei iuris in eo fundo est": nam qui ignorat, nec tradere nec accipere id, quod incertum est, potest.

Dig. 41.2.27

Proculus 5 epist.

Si is, qui animo possessionem saltus retineret, furere coepisset, non potest, dum fureret, eius saltus possessionem amittere, quia furiosus non potest desinere animo possidere.

Dig. 41.2.28

Tertullianus 1 quaest.

Si aliquam rem possideam et eandem postea conducam, an amittam possessionem? multum refert in his, quid agatur: primum enim refert, utrum sciam me possidere an ignorem: et utrum quasi non meam rem conducam an quasi meam: et sciens meam esse, utrum quasi proprietatis respectu an possessionis tantum. nam et si rem meam tu possideas et ego emam a te possessionem eius rei vel stipuler, utilis erit et emptio et stipulatio, et sequitur, ut et precarium et conductio specialiter possessionis solius conducendae vel precario rogandae animus interveniat.

Dig. 41.2.29

Ulpianus 30 ad sab.

Possessionem pupillum sine tutoris auctoritate amittere posse constat, non ut animo, sed ut corpore desinat possidere: quod est enim facti, potest amittere. alia causa est, si forte animo possessionem velit amittere: hoc enim non potest.

Dig. 41.2.30pr.

Paulus 15 ad sab.

Qui universas aedes possedit, singulas res, quae in aedificio sunt, non videtur possedisse. idem dici debet et de nave et de armario.

Dig. 41.2.30.1

Paulus 15 ad sab.

Possessionem amittimus multis modis, veluti si mortuum in eum locum intulimus, quem possidebamus: namque locum religiosum aut sacrum non possumus possidere, etsi contemnamus religionem et pro privato eum teneamus, sicut hominem liberum.

Dig. 41.2.30.2

Paulus 15 ad sab.

Item cum praetor idcirco in possessionem rei iussit, quod damni infecti non promittebatur, possessionem invitum dominum amittere labeo ait.

Dig. 41.2.30.3

Paulus 15 ad sab.

Item quod mari aut flumine occupatum sit, possidere nos desinimus, aut si is qui possidet in alterius potestatem pervenit.

Dig. 41.2.30.4

Paulus 15 ad sab.

Item quod mobile est, multis modis desinimus possidere: si aut nolimus, aut servum puta manumittamus, item si quod possidebam in aliam speciem translatum sit, veluti vestimentum ex lana factum.

Dig. 41.2.30.5

Paulus 15 ad sab.

Quod per colonum possideo, heres meus nisi ipse nactus possessionem non poterit possidere: retinere enim animo possessionem possumus, apisci non possumus. sed quod pro emptore possideo per colonum etiam, usucapiet etiam heres meus.

Dig. 41.2.30.6

Paulus 15 ad sab.

Si ego tibi commodavero, tu titio, qui putet tuum esse, nihilo minus ego id possidebo. et idem erit, si colonus meus fundum locaverit aut is, apud quem deposueram, apud alium rursus deposuerit. et id quamlibet per plurium personam factum observandum ita erit.

Dig. 41.2.31

Pomponius 32 ad sab.

Si colonus non deserendae possessionis causa exisset de fundo et eo redisset, eundem locatorem possidere placet.

Dig. 41.2.32pr.

Paulus 15 ad sab.

Quamvis pupillus sine tutoris auctoritate non obligetur, possessionem tamen per eum retinemus.

Dig. 41.2.32.1

Paulus 15 ad sab.

Si conductor rem vendidit et eam ab emptore conduxit et utrique mercedes praestitit, prior locator possessionem per conductorem rectissime retinet.

Dig. 41.2.32.2

Paulus 15 ad sab.

Infans possidere recte potest, si tutore auctore coepit, nam iudicium infantis suppletur auctoritate tutoris: utilitatis enim causa hoc receptum est, nam alioquin nullus sensus est infantis accipiendi possessionem. pupillus tamen etiam sine tutoris auctoritate possessionem nancisci potest. item infans peculiari nomine per servum possidere potest.

Dig. 41.2.33

Pomponius 32 ad sab.

Fundi venditor etiamsi mandaverit alicui, ut emptorem in vacuam possessionem induceret, priusquam id fieret, non recte emptor per se in possessionem veniet. item si amicus venditoris mortuo eo, priusquam id sciret, aut non prohibentibus heredibus id fecerit, recte possessio tradita erit. sed si id fecerit, cum sciret dominum mortuum aut cum sciret heredes id facere nolle, contra erit.

Dig. 41.2.34pr.

Ulpianus 7 disp.

Si me in vacuam possessionem fundi corneliani miseris, ego putarem me in fundum sempronianum missum et in cornelianum iero, non adquiram possessionem, nisi forte in nomine tantum erraverimus, in corpore consenserimus. quoniam autem in corpore consenserimus, an a te tamen recedet possessio, quia animo deponere et mutare nos possessionem posse et celsus et Marcellus scribunt, dubitari potest: et si animo adquiri possessio potest, numquid etiam adquisita est? sed non puto errantem adquirere: ergo nec amittet possessionem, qui quodammodo sub condicione recessit de possessione.

Dig. 41.2.34.1

Ulpianus 7 disp.

Sed si non mihi, sed procuratori meo possessionem tradas, videndum est, si ego errem, procurator meus non erret, an mihi possessio adquiratur. et cum placeat ignoranti adquiri, poterit et erranti. sed si procurator meus erret, ego non errem, magis est, ut adquiram possessionem.

Dig. 41.2.34.2

Ulpianus 7 disp.

Servus quoque meus ignoranti mihi adquiret possessionem. nam et servus alienus, ut celsus scribit, sive a me sive a nemine possideatur, potest mihi adquirere possessionem, si nomine meo eam adipiscatur: quod et ipsum admittendum est.

Dig. 41.2.35

Ulpianus 5 de omn. trib.

Exitus controversiae possessionis hic est tantum, ut prius pronuntiet iudex, uter possideat: ita enim fiet, ut is, qui victus est de possessione, petitoris partibus fungatur et tunc de dominio quaeratur.

Dig. 41.2.36

Iulianus 13 Dig.

Qui pignoris causa fundum creditori tradit, intellegitur possidere. sed et si eundem precario rogaverit, aeque per diutinam possessionem capiet: nam cum possessio creditoris non impediat capionem, longe minus precarii rogatio impedimento esse non debet, cum plus iuris in possessione habeat qui precario rogaverit quam qui omnino non possidet.

Dig. 41.2.37

Marcianus l.S. ad form. hypoth.

Re pignoris nomine data et possessione tradita, deinde a creditore conducta convenit, ut is, qui hypothecam dedisset, pro colono in agro, aedibus autem pro inquilino sit: per eos creditor possidere videtur.

Dig. 41.2.38pr.

Iulianus 44 Dig.

Qui absenti servo scribit, ut in libertate moretur, non eam mentem habet, ut statim velit servi possessionem dimittere, sed magis destinationem in id tempus conferre, quo servus certior factus fuerit.

Dig. 41.2.38.1

Iulianus 44 Dig.

Si quis possessionem fundi ita tradiderit, ut ita demum cedere ea dicat, si ipsius fundus esset, non videtur possessio tradita, si fundus alienus sit. hoc amplius existimandum est possessiones sub condicione tradi posse, sicut res sub condicione traduntur neque aliter accipientis fiunt, quam condicio exstiterit.

Dig. 41.2.38.2

Iulianus 44 Dig.

Si is, qui titio servum vendiderat, heredi eius eum tradiderit, poterit heres rerum hereditariarum possessionem per eum adprehendere, quia non servus iure hereditario, sed actio ex empto ad eum pervenit: nam et si ex stipulatu vel ex testamento servus testatori debitus fuisset et heres eum accepisset, non prohiberetur rerum hereditariarum possessionem per eundem adquirere.

Dig. 41.2.39

Iulianus 2 ex minic.

Interesse puto, qua mente apud sequestrum deponitur res. nam si omittendae possessionis causa et hoc aperte fuerit approbatum, ad usucapionem possessio eius partibus non procederet: at si custodiae causa deponatur, ad usucapionem eam possessionem victori procedere constat.

Dig. 41.2.40pr.

Africanus 7 quaest.

Si de eo fundo, quem, cum possiderem, pignori tibi dedi, servus tuus te deiciat, adhuc te possidere ait, quoniam nihilo minus per ipsum servum possessionem retineas.

Dig. 41.2.40.1

Africanus 7 quaest.

Si forte colonus, per quem dominus possideret, decessisset, propter utilitatem receptum est, ut per colonum possessio et retineretur et contineretur: quo mortuo non statim dicendum eam interpellari, sed tunc demum, cum dominus possessionem apisci neglexerit. aliud existimandum ait, si colonus sponte possessione discesserit. sed haec ita esse vera, si nemo extraneus eam rem interim possiderit, sed semper in hereditate coloni manserit.

Dig. 41.2.40.2

Africanus 7 quaest.

Servum tuum a titio bona fide emi et traditum possedi, deinde cum comperissem tuum esse, ne eum peteres, celare coepi. non ideo magis hoc tempore clam possidere videri me ait: nam retro quoque, si sciens tuum servum non a domino emerim et, cum clam eum possidere coepissem, postea certiorem te fecerim, non ideo desinere me clam possidere.

Dig. 41.2.40.3

Africanus 7 quaest.

Si servum meum bonae fidei emptori clam abduxerim, respondit non videri me clam possidere, quia neque precarii rogatione neque conductione suae rei dominum teneri et non posse causam clandestinae possessionis ab his duabus causis separari.

Dig. 41.2.41

Paulus 1 inst.

Qui iure familiaritatis amici fundum ingreditur, non videtur possidere, quia non eo animo ingressus est, ut possideat, licet corpore in fundo sit.

Dig. 41.2.42pr.

Ulpianus 4 reg.

Communis servus etiamsi ab uno ex dominis omnium nomine possideatur, ab omnibus possideri intellegitur.

Dig. 41.2.42.1

Ulpianus 4 reg.

Procurator si quidem mandante domino rem emerit, protinus illi adquirit possessionem: quod si sua sponte emerit, non nisi ratam habuerit dominus emptionem.

Dig. 41.2.43pr.

Marcianus 3 reg.

Si quis fundum emerit, cuius particulam sciebat esse alienam, iulianus ait, si pro diviso sciat alienam esse, posse eum reliquas partes longa possessione capere: sed si pro indiviso licet ignoret quis sit locus, aeque eum capere posse, quod sine ullius damno pars, quae putatur esse vendentis, per longam possessionem ad emptorem transit.

Dig. 41.2.43.1

Marcianus 3 reg.

Sed et pomponius scripsit libro quinto variarum lectionum, si sciat vel putet alienum esse usum fructum, bona fide diutina possessione capere posse.

Dig. 41.2.43.2

Marcianus 3 reg.

Idem, inquit, et si emero rem, quam sciam pignori obligatam.

Dig. 41.2.44pr.

Papinianus 23 quaest.

Peregre profecturus pecuniam in terra custodiae causa condiderat: cum reversus locum thensauri memoria non repeteret, an desisset pecuniam possidere, vel, si postea recognovisset locum, an confestim possidere inciperet, quaesitum est. dixi, quoniam custodiae causa pecunia condita proponeretur, ius possessionis ei, qui condidisset, non videri peremptum, nec infirmitatem memoriae damnum adferre possessionis, quam alius non invasit: alioquin responsuros per momenta servorum, quos non viderimus, interire possessionem. et nihil interest, pecuniam in meo an in alieno condidissem, cum, si alius in meo condidisset, non alias possiderem, quam si ipsius rei possessionem supra terram adeptus fuissem. itaque nec alienus locus meam propriam aufert possessionem, cum, supra terram an infra terram possideam, nihil intersit.

Dig. 41.2.44.1

Papinianus 23 quaest.

Quaesitum est, cur ex peculii causa per servum ignorantibus possessio quaereretur. dixi utilitatis causa iure singulari receptum, ne cogerentur domini per momenta species et causas peculiorum inquirere. nec tamen eo pertinere speciem istam, ut animo videatur adquiri possessio: nam si non ex causa peculiari quaeratur aliquid, scientiam quidem domini esse necessariam, sed corpore servi quaeri possessionem.

Dig. 41.2.44.2

Papinianus 23 quaest.

Quibus explicitis, cum de amittenda possessione quaeratur, multum interesse dicam, per nosmet ipsos an per alios possideremus: nam eius quidem, quod corpore nostro teneremus, possessionem amitti vel animo vel etiam corpore, si modo eo animo inde digressi fuissemus, ne possideremus: eius vero, quod servi vel etiam coloni corpore possidetur, non aliter amitti possessionem, quam eam alius ingressus fuisset, eamque amitti nobis quoque ignorantibus. illa quoque possessionis amittendae separatio est. nam saltus hibernos et aestivos, quorum possessio retinetur animo,

Dig. 41.2.45

Papinianus 2 def.

Licet neque servum neque colonum ibi habeamus,

Dig. 41.2.46

Papinianus 23 quaest.

Quamvis saltus proposito possidendi fuerit alius ingressus, tamdiu priorem possidere dictum est, quamdiu possessionem ab alio occupatam ignoraret. ut enim eodem modo vinculum obligationum solvitur, quo quaeri adsolet, ita non debet ignoranti tolli possessio quae solo animo tenetur.

Dig. 41.2.47

Papinianus 26 quaest.

Si rem mobilem apud te depositam aut ex commodato tibi, possidere neque reddere constitueris, confestim amisisse me possessionem vel ignorantem responsum est. cuius rei forsitan illa ratio est, quod rerum mobilium neglecta atque omissa custodia, quamvis eas nemo alius invaserit, veteris possessionis damnum adferre consuevit: idque nerva filius libris de usucapionibus rettulit. idem scribit aliam causam esse hominis commodati omissa custodia: nam possessionem tamdiu veterem fieri, quamdiu nemo alius eum possidere coeperit, videlicet ideo, quia potest homo proposito redeundi domino possessionem sui conservare, cuius corpore ceteras quoque res possumus possidere. igitur earum quidem rerum, quae ratione vel anima carent, confestim amittitur possessio, homines autem retinentur, si revertendi animum haberent.

Dig. 41.2.48

Papinianus 10 resp.

Praedia cum servis donavit eorumque se tradidisse possessionem litteris declaravit. si vel unus ex servis, qui simul cum praediis donatus est, ad eum, qui donum accepit, pervenit, mox in praedia remissus est, per servum praediorum possessionem quaesitam ceterorumque servorum constabit.

Dig. 41.2.49pr.

Papinianus 2 def.

Possessio quoque per servum, cuius usus fructus meus est, ex re mea vel ex operis servi adquiritur mihi, cum et naturaliter a fructuario teneatur et plurimum ex iure possessio mutuetur.

Dig. 41.2.49.1

Papinianus 2 def.

Qui in aliena potestate sunt, rem peculiarem tenere possunt, habere possidere non possunt, quia possessio non tantum corporis, sed et iuris est.

Dig. 41.2.49.2

Papinianus 2 def.

Etsi possessio per procuratorem ignoranti quaeritur, usucapio vero scienti competit, tamen evictionis actio domino contra venditorem invito procuratore non datur, sed per actionem mandati ea cedere cogitur.

Dig. 41.2.50pr.

Hermogenianus 5 iuris epit.

Per eum, quem iusto ductus errore filium meum et in mea potestate esse existimo, neque possessio neque dominium nec quicquam aliud ex re mea mihi quaeritur.

Dig. 41.2.50.1

Hermogenianus 5 iuris epit.

Per servum in fuga agentem, si neque ab alio possideatur neque se liberum esse credat, possessio nobis adquiritur.

Dig. 41.2.51

Iavolenus 5 ex post. lab.

Quarundam rerum animo possessionem apisci nos ait labeo: veluti si acervum lignorum emero et eum venditor tollere me iusserit, simul atque custodiam posuissem, traditus mihi videtur. idem iuris esse vino vendito, cum universae amphorae vini simul essent. sed videamus, inquit, ne haec ipsa corporis traditio sit, quia nihil interest, utrum mihi an et cuilibet iusserim custodia tradatur. in eo puto hanc quaestionem consistere, an, etiamsi corpore acervus aut amphorae adprehensae non sunt, nihilo minus traditae videantur: nihil video interesse, utrum ipse acervum an mandato meo aliquis custodiat: utrubique animi quodam genere possessio erit aestimanda.

Dig. 41.2.52pr.

Venonius 1 interd.

Permisceri causas possessionis et usus fructus non oportet, quemadmodum nec possessio et proprietas misceri debent: nam neque impediri possessionem, si alius fruatur, neque alterius fructum amputari, si alter possideat.

Dig. 41.2.52.1

Venonius 1 interd.

Eum, qui aedificare prohibeatur, possidere quoque prohiberi manifestum est.

Dig. 41.2.52.2

Venonius 1 interd.

Species inducendi in possessionem alicuius rei est prohibere ingredienti vim fieri: statim enim cedere adversarium et vacuam relinquere possessionem iubet, quod multo plus est quam restituere.

Dig. 41.2.53

Venonius 5 interd.

Adversus extraneos vitiosa possessio prodesse solet.

Dig. 41.3.0. De usurpationibus et usucapionibus.

Dig. 41.3.1

Gaius 21 ad ed. provinc.

Bono publico usucapio introducta est, ne scilicet quarundam rerum diu et fere semper incerta dominia essent, cum sufficeret dominis ad inquirendas res suas statuti temporis spatium.

Dig. 41.3.2

Paulus 54 ad ed.

Usurpatio est usucapionis interruptio: oratores autem usurpationem frequentem usum vocant.

Dig. 41.3.3

Modestinus 5 pand.

Usucapio est adiectio dominii per continuationem possessionis temporis lege definiti.

Dig. 41.3.4pr.

Paulus 54 ad ed.

Sequitur de usucapione dicere. et hoc ordine eundum est, ut videamus, quis potest usucapere et quas res et quanto tempore.

Dig. 41.3.4.1

Paulus 54 ad ed.

Usucapere potest scilicet pater familias. filius familias et maxime miles in castris adquisitum usucapiet.

Dig. 41.3.4.2

Paulus 54 ad ed.

Pupillus si tutore auctore coeperit possidere, usucapit: si non tutore auctore possideat et animum possidendi habeat, dicemus posse eum usucapere.

Dig. 41.3.4.3

Paulus 54 ad ed.

Furiosus quod ante furorem possidere coepit, usucapit. sed haec persona ita demum usucapere potest, si ex ea causa possideat, ex qua usucapio sequitur.

Dig. 41.3.4.4

Paulus 54 ad ed.

Servus pro herede possidere non potest.

Dig. 41.3.4.5

Paulus 54 ad ed.

Fructus et partus ancillarum et fetus pecorum, si defuncti non fuerunt, usucapi possunt.

Dig. 41.3.4.6

Paulus 54 ad ed.

Quod autem dicit lex atinia, ut res furtiva non usucapiatur, nisi in potestatem eius, cui subrepta est, revertatur, sic acceptum est, ut in domini potestatem debeat reverti, non in eius utique, cui subreptum est. igitur creditori subrepta et ei, cui commodata est, in potestatem domini redire debet.

Dig. 41.3.4.7

Paulus 54 ad ed.

Labeo quoque ait, si res peculiaris servi mei subrepta sit me ignorante, deinde eam nanctus sit, videri in potestatem meam redisse: commodius dicitur, etiamsi sciero, redisse eam in meam potestatem (nec enim sufficit, si eam rem, quam perdidit ignorante me, servus adprehendat): si modo in peculio eam esse volui: nam si nolui, tunc exigendum est, ut ego facultatem eius nactus sim.

Dig. 41.3.4.8

Paulus 54 ad ed.

Ideoque et si servus meus rem mihi subripuerit, deinde eandem loco suo reponat, poterit usucapi, quasi in potestatem meam redierit, utique si nescii: nam si scivi, exigimus, ut redisse sciam in meam potestatem.

Dig. 41.3.4.9

Paulus 54 ad ed.

Item si eam rem, quam servus subripuerit, peculiari nomine teneat, non videri in potestatem meam reversam pomponius ait, nisi ita habere coeperimus, quemadmodum habuimus, antequam subriperetur, aut, cum rescissemus, in peculio eum habere concessimus: item labeo.

Dig. 41.3.4.10

Paulus 54 ad ed.

Si rem, quam apud te deposueram, lucri faciendi causa vendideris, deinde ex paenitentia redemeris et eodem statu habeas: sive ignorante me sive sciente ea gesta sint, videri in potestatem meam redisse secundum proculi sententiam, quae et vera est.

Dig. 41.3.4.11

Paulus 54 ad ed.

Si pupilli res subrepta sit, sufficere dicendum est, si tutor eius sciat redisse eam in domum pupilli: et si furioso, sufficere curatores scire.

Dig. 41.3.4.12

Paulus 54 ad ed.

Tunc in potestatem domini redisse dicendum est, cum possessionem eius nactus sit iuste, ut avelli non possit, sed et tamquam suae rei: nam si ignorans rem mihi subreptam emam, non videri in potestatem meam reversam.

Dig. 41.3.4.13

Paulus 54 ad ed.

Sed et si vindicavero rem mihi subreptam et litis aestimationem accepero, licet corporaliter eius non sim nactus possessionem, usucapietur.

Dig. 41.3.4.14

Paulus 54 ad ed.

Idem dicendum est etiam, si voluntate mea alii tradita sit.

Dig. 41.3.4.15

Paulus 54 ad ed.

Heres, qui in ius defuncti succedit, licet apud eum ignorantem ancillam furtivam esse conceperit ea et pepererit, non tamen usucapiet.

Dig. 41.3.4.16

Paulus 54 ad ed.

De illo quaeritur, si servus meus ancillam, quam subripuit, pro libertate sua mihi dederit, an partum apud me conceptum usucapere possim. sabinus et cassius non putant, quia possessio, quam servus vitiose nanctus sit, domino noceret, et hoc verum est.

Dig. 41.3.4.17

Paulus 54 ad ed.

Sed et si, ut servum meum manumitterem, alius mihi furtivam ancillam dederit eaque apud me conceperit et pepererit, usu me non capturum. idemque fore etiam, si quis eam ancillam mecum permutasset aut in solutum dedisset, item si donasset.

Dig. 41.3.4.18

Paulus 54 ad ed.

Si antequam pariat, alienam esse rescierit emptor, diximus non posse eum usucapere: quod si nescierit, posse. quod si, cum iam usucaperet, cognoverit alienam esse, initium usucapionis intueri debemus, sicut in emptis rebus placuit.

Dig. 41.3.4.19

Paulus 54 ad ed.

Lana ovium furtivarum si quidem apud furem detonsa est, usucapi non potest, si vero apud bonae fidei emptorem, contra: quoniam in fructu est, nec usucapi debet, sed statim emptoris fit. idem in agnis dicendum, si consumpti sint, quod verum est.

Dig. 41.3.4.20

Paulus 54 ad ed.

Si ex lana furtiva vestimentum feceris, verius est, ut substantiam spectemus, et ideo vestis furtiva erit.

Dig. 41.3.4.21

Paulus 54 ad ed.

Si rem pignori datam debitor subripuerit et vendiderit, usucapi eam posse cassius scribit, quia in potestatem domini videtur pervenisse, qui pignori dederit, quamvis cum eo furti agi potest: quod puto rectius dici.

Dig. 41.3.4.22

Paulus 54 ad ed.

Si tu me vi expuleris de fundi possessione nec adprehenderis possessionem, sed titius in vacuam possessionem intraverit, potest longo tempore capi res: quamvis enim interdictum unde vi locum habeat, quia verum est vi me deiectum, non tamen verum est et vi possessum.

Dig. 41.3.4.23

Paulus 54 ad ed.

Ceterum etiamsi mala fide fundum me possidentem deieceris et vendideris, non poterit capi, quoniam verum est vi possessum esse licet non a domino.

Dig. 41.3.4.24

Paulus 54 ad ed.

Idem dicendum est in eo, qui eum expulit qui pro herede possidebat, quamvis sciat esse hereditarium, quoniam vi possidet.

Dig. 41.3.4.25

Paulus 54 ad ed.

Si dominus fundi possessorem vi deiecerit, cassius ait non videri in potestatem eius redisse, quando interdicto unde vi restituturus sit possessionem.

Dig. 41.3.4.26

Paulus 54 ad ed.

Si viam habeam per tuum fundum et tu me ab ea vi expuleris, per longum tempus non utendo amittam viam, quia nec possideri intellegitur ius incorporale nec de via quis (id est mero iure) detruditur.

Dig. 41.3.4.27

Paulus 54 ad ed.

Item si occupaveris vacuam possessionem, deinde venientem dominum prohibueris, non videberis vi possedisse.

Dig. 41.3.4.28

Paulus 54 ad ed.

Libertatem servitutium usucapi posse verius est, quia eam usucapionem sustulit lex scribonia, quae servitutem constituebat, non etiam eam, quae libertatem praestat sublata servitute. itaque si, cum tibi servitutem deberem, ne mihi puta liceret altius aedificare, et per statutum tempus altius aedificatum habuero, sublata erit servitus.

Dig. 41.3.5

Gaius 21 ad ed. provinc.

Naturaliter interrumpitur possessio, cum quis de possessione vi deicitur vel alicui res eripitur. quo casu non adversus eum tantum, qui eripit, interrumpitur possessio, sed adversus omnes. nec eo casu quicquam interest, is qui usurpaverit dominus sit nec ne: ac ne illud quidem interest, pro suo quisque possideat an ex lucrativa causa.

Dig. 41.3.6

Ulpianus 11 ad ed.

In usucapionibus non a momento ad momentum, sed totum postremum diem computamus.

Dig. 41.3.7

Ulpianus 27 ad sab.

Ideoque qui hora sexta diei kalendarum ianuariarum possidere coepit, hora sexta noctis pridie kalendas ianuarias implet usucapionem.

Dig. 41.3.8pr.

Paulus 12 ad ed.

Labeo neratius responderunt ea, quae servi peculiariter nancti sunt, usucapi posse, quia haec etiam ignorantes domini usucapiunt: idem iulianus scribit.

Dig. 41.3.8.1

Paulus 12 ad ed.

Sed eum, qui suo nomine nihil usucapere potest, ne per servum quidem posse pedius scribit.

Dig. 41.3.9

Gaius 4 ad ed. provinc.

Usucapionem recipiunt maxime res corporales, exceptis rebus sacris, sanctis, publicis populi romani et civitatium, item liberis hominibus.

Dig. 41.3.10pr.

Ulpianus 16 ad ed.

Si aliena res bona fide empta sit, quaeritur, ut usucapio currat, utrum emptionis initium ut bonam fidem habeat exigimus, an traditionis. et optinuit sabini et cassii sententia traditionis initium spectandum.

Dig. 41.3.10.1

Ulpianus 16 ad ed.

Hoc iure utimur, ut servitutes per se nusquam longo tempore capi possint, cum aedificiis possint.

Dig. 41.3.10.2

Ulpianus 16 ad ed.

Scaevola libro undecimo quaestionum scribit Marcellum existimasse, si bos apud furem concepit vel apud furis heredem pariatque apud furis heredem, usucapi ab herede distractum iuvencum non posse: sic, inquit, quemadmodum nec ancillae partus. scaevola autem scribit se putare usucapere posse et partum: nec enim esse partum rei furtivae partem. ceterum si esset pars, nec si apud bonae fidei emptorem peperisset, usucapi poterat.

Dig. 41.3.11

Paulus 19 ad ed.

Neque servus neque per servum dominus, qui apud hostes est, possidet.

Dig. 41.3.12

Paulus 21 ad ed.

Si ab eo emas, quem praetor vetuit alienare, idque tu scias, usucapere non potes.

Dig. 41.3.13pr.

Paulus 5 ad plaut.

Pignori rem acceptam usu non capimus, quia pro alieno possidemus.

Dig. 41.3.13.1

Paulus 5 ad plaut.

Eum, qui a furioso bona fide emit, usucapere posse responsum est.

Dig. 41.3.13.2

Paulus 5 ad plaut.

Si mandavero tibi, ut fundum emas, ex ea causa traditum tibi diutina possessione capis, quamvis possis videri non pro tuo possidere, cum nihil intersit, quod mandati iudicio tenearis.

Dig. 41.3.14pr.

Paulus 13 ad plaut.

Id tempus venditoris prodest emptori, quo antequam venderet possedit: nam si postea nactus est possessionem venditor, haec possessio emptori non proficiet.

Dig. 41.3.14.1

Paulus 13 ad plaut.

In re legata in accessione temporis, quo testator possedit, legatarius quodammodo quasi heres est.

Dig. 41.3.15pr.

Paulus 15 ad plaut.

Si is, qui pro emptore possidebat, ante usucapionem ab hostibus captus sit, videndum est, an heredi eius procedat usucapio: nam interrumpitur usucapio, et si ipsi reverso non prodest, quemadmodum heredi eius proderit? sed verum est eum in sua vita desisse possidere, ideoque nec postliminium ei prodest, ut videatur usucepisse. quod si servus eius, qui in hostium potestate est, emerit, in pendenti esse usucapionem iulianus ait: nam si dominus reversus fuerit, intellegi usucaptum: si ibi decesserit, dubitari, an per legem corneliam ad successores eius pertineat. Marcellus posse plenius fictionem legis accipi, quemadmodum enim postliminio reversus plus iuris habere potest in his, quae servi egerunt, quam his, quae per se vel per servum possidebat, cum ad hostes pervenit. nam hereditatem in quibusdam vice personae fungi receptum est. ideoque in successoribus locum non habere usucapionem.

Dig. 41.3.15.1

Paulus 15 ad plaut.

Si servus, quem possidebam, fugerit, si pro libero se gerat, videbitur a domino possideri: sed hoc tunc intellegendum est, cum, si adprehensus fuerit, non sit paratus pro sua libertate litigare: nam si paratus sit litigare, non videbitur a domino possideri, cui se adversarium praeparavit.

Dig. 41.3.15.2

Paulus 15 ad plaut.

Si quis bona fide possidens ante usucapionem amissa possessione cognoverit esse rem alienam et iterum nanciscatur possessionem, non capiet usu, quia initium secundae possessionis vitiosum est.

Dig. 41.3.15.3

Paulus 15 ad plaut.

Si ex testamento vel ex stipulatu res debita nobis tradatur, eius temporis existimationem nostram intuendam, quo traditur, quia concessum est stipulari rem etiam quae promissoris non sit.

Dig. 41.3.16

Iavolenus 4 ex plaut.

Servi nomine, qui pignori datus est, ad exhibendum cum creditore, non cum debitore agendum est, quia qui pignori dedit, ad usucapionem tantum possidet, quod ad reliquas omnes causas pertinet, qui accepit possidet, adeo ut adici possit et possessio eius qui pignori dedit.

Dig. 41.3.17

Marcellus 17 Dig.

Si per errorem de alienis fundis quasi de communibus iudicio communi dividundo accepto ex adiudicatione possidere coeperim, longo tempore capere possum.

Dig. 41.3.18

Modestinus 5 reg.

Quamvis adversus fiscum usucapio non procedat, tamen ex bonis vacantibus, nondum tamen nuntiatis, emptor praedii ex isdem bonis exstiterit, recte diutina possessione capiet: idque constitutum est.

Dig. 41.3.19

Iavolenus 1 epist.

Si hominem emisti, ut, si aliqua condicio extitisset, inemptus fieret, et is tibi traditus est et postea condicio emptionem resolvit: tempus, quo apud emptorem fuit, accedere venditori debere existimo, quoniam eo genere retro acta venditio esset redhibitioni similis, in qua non dubito tempus eius qui redhibuerit venditori accessurum, quoniam ea venditio proprie dici non potest.

Dig. 41.3.20

Iavolenus 4 epist.

Possessio testatoris ita heredi procedit, si medio tempore a nullo possessa est.

Dig. 41.3.21

Iavolenus 6 epist.

Ei, a quo fundum pro herede diutius possidendo capturus eram, locavi eum: an ullius momenti eam locationem existimes, quaero: quod si nullius momenti existimas, an durare nihilo minus usucapionem eius fundi putes. item quaero, si eidem vendidero eum fundum, quid de his causis, de quibus supra quaesii, existimes. respondit: si is, qui pro herede fundum possidebat, domino eum locavit, nullius momenti locatio est, quia dominus suam rem conduxisset: sequitur ergo, ut ne possessionem quidem locator retinuerit, ideoque longi temporis praescriptio non duravit. in venditione idem iuris est, quod in locatione, ut emptio suae rei consistere non possit.

Dig. 41.3.22

Iavolenus 7 epist.

Heres et hereditas tametsi duas appellationes recipiunt, unius personae tamen vice funguntur.

Dig. 41.3.23pr.

Iavolenus 9 epist.

Eum, qui aedes mercatus est, non puto aliud quam ipsas aedes possidere: nam si singulas res possidere intellegetur, ipsas non possidebit: separatis enim corporibus, ex quibus aedes constant, universitas aedium intellegi non poterit. accedit eo, quod, si quis singulas res possidere dixerit, necesse erit dicat possessione superficiei tempori de mobilibus statuto locum esse, solum se capturum esse ampliori: quod absurdum et minime iuri civili conveniens est, ut una res diversis temporibus capiatur, ut puta cum aedes ex duabus rebus constant, ex solo et superficie, et universitas earum possessionem temporis immobilium rerum omnium mutet.

Dig. 41.3.23.1

Iavolenus 9 epist.

Si autem columna evicta fuerit, puto te ex empto cum venditore recte acturum et eo genere rem salvam habiturum.

Dig. 41.3.23.2

Iavolenus 9 epist.

Si autem demolita domus est, ex integro res mobiles possidendae sunt, ut tempore, quod in usucapione rerum mobilium constitutum est, usucapiantur. et non potes recte uti eo tempore, quo in aedificio fuerunt: nam quemadmodum eas solas et separatas ab aedificio non possedisti, sic nec penes te singulae aut separatae fuerunt et cohaerentibus his in aedificio, depositis aedibus, quae hoc quoque ipsum continent. neque enim recipi potest, ut eadem res et ut res soli et tamquam mobilis sit possessa.

Dig. 41.3.24pr.

Pomponius 24 ad q. muc.

Ubi lex inhibet usucapionem, bona fides possidenti nihil prodest.

Dig. 41.3.24.1

Pomponius 24 ad q. muc.

Interdum etiamsi non fuerit inchoata usucapio a defuncto, procedit heredi eius: veluti si vitium, quod obstabat non ex persona, sed ex re, purgatum fuerit, ut puta si fisci res esse desierit aut furtiva aut vi possessa.

Dig. 41.3.25

Licinius 1 reg.

Sine possessione usucapio contingere non potest.

Dig. 41.3.26

Ulpianus 29 ad sab.

Numquam superficies sine solo capi longo ^ longe^ tempore potest.

Dig. 41.3.27

Ulpianus 31 ad sab.

Celsus libro trigensimo quarto errare eos ait, qui existimarent, cuius rei quisque bona fide adeptus sit possessionem, pro suo usucapere eum posse nihil referre, emerit nec ne, donatum sit nec ne, si modo emptum vel donatum sibi existimaverit, quia neque pro legato neque pro donato neque pro dote usucapio valeat, si nulla donatio, nulla dos, nullum legatum sit, idem et in litis aestimatione placet, ut, nisi vere quis litis aestimationem subierit, usucapere non possit.

Dig. 41.3.28

Pomponius 17 ad sab.

Si servo furiosi vel infantis res tradita sit, usu per eum eas personas capere posse constat.

Dig. 41.3.29

Pomponius 22 ad sab.

Cum solus heres essem, existimarem autem te quoque pro parte heredem esse, res hereditarias pro parte tibi tradidi. propius est, ut usu eas capere non possis, quia nec pro herede usucapi potest quod ab herede possessum est neque aliam ullam habes causam possidendi. ita tamen hoc verum est, si non ex transactione id factum fuerit. idem dicimus, si tu quoque existimes te heredem esse: nam hic quoque possessio veri heredis obstabit tibi.

Dig. 41.3.30pr.

Pomponius 30 ad sab.

Rerum mixtura facta an usucapionem cuiusque praecedentem interrumpit, quaeritur. tria autem genera sunt corporum, unum, quod continetur uno spiritu et graece hynwmenon vocatur, ut homo tignum lapis et similia: alterum, quod ex contingentibus, hoc est pluribus inter se cohaerentibus constat, quod sunymmenon vocatur, ut aedificium navis armarium: tertium, quod ex distantibus constat, ut corpora plura non soluta, sed uni nomini subiecta, veluti populus legio grex. primum genus usucapione quaestionem non habet, secundum et tertium habet.

Dig. 41.3.30.1

Pomponius 30 ad sab.

Labeo libris epistularum ait, si is, cui ad tegularum vel columnarum usucapionem decem dies superessent, in aedificium eas coniecisset, nihilo minus eum usucapturum, si aedificium possedisset. quid ergo in his, quae non quidem implicantur rebus soli, sed mobilia permanent, ut in anulo gemma? in quo verum est et aurum et gemmam possideri et usucapi, cum utrumque maneat integrum.

Dig. 41.3.30.2

Pomponius 30 ad sab.

De tertio genere corporum videndum est. non autem grex universus sic capitur usu quomodo singulae res, nec sic quomodo cohaerentes. quid ergo est? etsi ea natura eius est, ut adiectionibus corporum maneat, non item tamen universi gregis ulla est usucapio, sed singulorum animalium sicuti possessio, ita et usucapio. nec si quid emptum immixtum fuerit gregi augendi eius gratia, idcirco possessionis causa mutabitur, ut, si reliquus grex dominii mei sit, haec quoque ovis, sed singulae suam causam habebunt, ita ut, si quae furtivae erunt, sint quidem ex grege, non tamen usucapiantur.

Dig. 41.3.31pr.

Paulus 32 ad sab.

Numquam in usucapionibus iuris error possessori prodest: et ideo proculus ait, si per errorem initio venditionis tutor pupillo auctor factus sit vel post longum tempus venditionis peractum, usucapi non posse, quia iuris error est.

Dig. 41.3.31.1

Paulus 32 ad sab.

In usucapionibus mobilium continuum tempus numeratur.

Dig. 41.3.31.2

Paulus 32 ad sab.

Servus licet in libertate moretur, nihil possidet nec per eum alius. atquin si nomine alicuius, dum in libertate moratur, nactus fuerit possessionem, adquiret ei, cuius nomine nactus fuerit.

Dig. 41.3.31.3

Paulus 32 ad sab.

Si servus meus vel filius peculiari vel etiam meo nomine quid tenet, ut ego per eum ignorans possideam vel etiam usucapiam: si is furere coeperit, donec in eadem causa res fuerit, intellegendum est et possessionem apud me remanere et usucapionem procedere, sicuti per dormientes quoque eos idem nobis contingeret. idemque in colono et inquilino, per quos possidemus, dicendum est.

Dig. 41.3.31.4

Paulus 32 ad sab.

Si vi aut clam aut precario possessionem nactus quis postea furere coeperit, et possessio et causa eadem durat de hoc, quod precario furiosus habet, quemadmodum interdicto quoque uti possidetis furiosi nomine recte experimur eius possessionis nomine, quam ante furorem per se vel post furorem per alium nactus est.

Dig. 41.3.31.5

Paulus 32 ad sab.

Vacuum tempus, quod ante aditam hereditatem vel post aditam intercessit, ad usucapionem heredi procedit.

Dig. 41.3.31.6

Paulus 32 ad sab.

Si defunctus emit, heres autem putat eum ex donationis causa possedisse, usu eum capturum iulianus ait.

Dig. 41.3.32pr.

Pomponius 32 ad sab.

Si fur rem furtivam a domino emerit et pro tradita habuerit, desinet eam pro furtiva possidere et incipiet pro suo possidere.

Dig. 41.3.32.1

Pomponius 32 ad sab.

Si quis id, quod possidet, non putat sibi per leges licere usucapere, dicendum est, etiamsi erret, non procedere tamen eius usucapionem, vel quia non bona fide videatur possidere vel quia in iure erranti non procedat usucapio.

Dig. 41.3.32.2

Pomponius 32 ad sab.

Incertam partem possidere nemo potest: ideo si plures sint in fundo, qui ignorent, quotam quisque partem possideat, neminem eorum mera suptilitate possidere labeo scribit.

Dig. 41.3.33pr.

Iulianus 44 Dig.

Non solum bonae fidei emptores, sed et omnes, qui possident ex ea causa, quam usucapio sequi solet, partum ancillae furtivae usu suum faciunt, idque ratione iuris introductum arbitror: nam ex qua causa quis ancillam usucaperet, nisi lex duodecim tabularum vel atinia obstaret, ex ea causa necesse est partum usucapi, si apud eum conceptus et editus eo tempore fuerit, quo furtivam esse matrem eius ignorabat.

Dig. 41.3.33.1

Iulianus 44 Dig.

Quod vulgo respondetur ipsum sibi causam possessionis mutare non posse, totiens verum est, quotiens quis scieret se bona fide non possidere et lucri faciendi causa inciperet possidere: idque per haec probari posse. si quis emerit fundum sciens ab eo, cuius non erat, possidebit pro possessore: sed si eundem a domino emerit, incipiet pro emptore possidere, nec videbitur sibi ipse causam possessionis mutasse. idemque iuris erit etiam, si a non domino emerit, cum existimaret eum dominum esse. idem hic si a domino heres institutus fuerit vel bonorum eius possessionem acceperit, incipiet fundum pro herede possidere. hoc amplius si iustam causam habuerit existimandi se heredem vel bonorum possessorem domino extitisse, fundum pro herede possidebit nec causam possessionis sibi mutare videbitur. cum haec igitur recipiantur in eius persona, qui possessionem habet, quanto magis in colono recipienda sunt, qui nec vivo nec mortuo domino ullam possessionem habet? et certe si colonus mortuo domino emerit fundum ab eo, qui existimabat se heredem eius vel bonorum possessorem esse, incipiet pro emptore possidere.

Dig. 41.3.33.2

Iulianus 44 Dig.

Si dominus fundi homines armatos venientes existimaverit atque ita profugerit, quamvis nemo eorum fundum ingressus fuerit, vi deiectus videtur: sed nihilo minus id praedium, etiam antequam in potestate domini redeat, a bonae fidei possessore usucapitur, quia lex plautia et iulia ea demum vetuit longa possessione capi, quae vi possessa fuissent, non etiam ex quibus vi quis deiectus fuisset.

Dig. 41.3.33.3

Iulianus 44 Dig.

Si mihi titius, a quo fundum petere volebam, possessione cesserit, usucapionis causam iustam habebo. sed et is, a quo ex stipulatu fundum petere volebam, cedendo mihi possessione, si solvendi causa id fecerit, eo ipso efficiet, ut fundum longo tempore capiam.

Dig. 41.3.33.4

Iulianus 44 Dig.

Qui pignori rem dat, usucapit, quamdiu res apud creditorem est: si creditor eius possessionem alii tradiderit, interpellabitur usucapio: et quantum ad usucapionem attinet, similis est ei qui quid deposuit vel commodavit, quos palam est desinere usucapere, si commodata vel deposita res alii tradita fuerit ab eo, qui commodatum vel depositum accepit. plane si creditor nuda conventione hypothecam contraxerit, usucapere debitor perseverabit.

Dig. 41.3.33.5

Iulianus 44 Dig.

Si rem tuam, cum bona fide possiderem, pignori tibi dem ignoranti tuam esse, desino usucapere, quia non intellegitur quis suae rei pignus contrahere. at si nuda conventione pignus contractum fuerit, nihilo minus usucapiam, quia hoc quoque modo nullum pignus contractum videtur.

Dig. 41.3.33.6

Iulianus 44 Dig.

Si rem pignori datam creditoris servus subripuerit, cum eam creditor possideret, non interpellabitur usucapio debitoris, quia servus dominum suum possessione non subvertit. sed et si debitoris servus subripuerit, quamvis creditor possidere desinat, tamen debitori usucapio durat, non secus ac si eam creditor debitori tradidisset: nam quantum ad usucapiones attinet, servi subtrahendo res non faciunt deteriorem dominorum condicionum. facilius optinebitur, si precario possidente debitore servus eius subripuerit. nam conductio idem praestat, quod si apud creditorem res esset: possidet enim hoc casu creditor. sed et si utrumque intercesserit et precarii rogatio et conductio, intellegitur creditor possidere et precarii rogatio non in hoc interponitur ut debitor possessionem habeat, sed ut ei tenere rem liceat.

Dig. 41.3.34

Alfenus 1 Dig. a paulo epit.

Si servus insciente domino rem peculiarem vendidisset, emptorem usucapere posse.

Dig. 41.3.35

Iulianus 3 ad urs. ferocem.

Si homo, cuius usus fructus legatus erat, ab herede numquam possessus subreptus fuisset, quaesitum est, quia heres furti actionem non haberet, an usucapi possit. sabinus respondit nullam eius rei usucapionem esse, cuius nomine furti agi possit, agere autem furti eum, qui frui deberet, posse. quod si accipiendum est, ut fructuarius poterit uti frui: aliter enim homo in causa non perduceretur. sed si utenti iam et fruenti abductus homo fuerit, non solum ipse, sed etiam heres furti agere poterit.

Dig. 41.3.36pr.

Gaius 2 rer. cott.

Potest pluribus modis accidere, ut quis rem alienam aliquo errore deceptus tamquam suam vendat forte aut donet et ob id a bonae fidei possessore res usucapi possit: veluti si heres rem defuncto commodatam aut locatam vel apud eum depositam existimans hereditariam esse alienaverit.

Dig. 41.3.36.1

Gaius 2 rer. cott.

Item si quis aliqua existimatione deceptus crediderit ad se hereditatem pertinere, quae ad eum non pertineat, et rem hereditariam alienaverit, aut si is, ad quem usus fructus ancillae pertinet, partum eius existimans suum esse, quia et fetus pecudum ad fructuarium pertinet, alienaverit,

Dig. 41.3.37pr.

Gaius 2 inst.

Furtum non committit: furtum enim sine affectu furandi non committitur.

Dig. 41.3.37.1

Gaius 2 inst.

Fundi quoque alieni potest aliquis sine vi nancisci possessionem, quae vel ex neglegentia domini vacet vel quia dominus sine successore decesserit vel longo tempore afuerit.

Dig. 41.3.38

Gaius 2 rer. cott.

Quam rem ipse quidem non potest usucapere, quia intellegit alienum se possidere et ob id mala fide possidet. sed si alii bona fide accipienti tradiderit, poterit is usucapere, quia neque vi possessum neque furtivum possidet: abolita est enim quorundam veterum sententia existimantium etiam fundi locive furtum fieri.

Dig. 41.3.39

Marcianus 3 inst.

Si solum usucapi non poterit, nec superficies usucapietur.

Dig. 41.3.40

Nerva 5 reg.

Coeptam usucapionem a defuncto posse et ante aditam hereditatem impleri constitutum est.

Dig. 41.3.41

Nerva 7 membr.

Si rem subreptam mihi procurator meus adprehendit, quamvis per procuratorem possessionem apisci nos iam fere conveniat, nihilo magis eam in potestatem meam redisse usuque capi posse existimandum est, quia contra statui captiosum erit.

Dig. 41.3.42

Papinianus 3 quaest.

Cum vir praedium dotale vendidit scienti vel ignoranti rem dotis esse, venditio non valet. quam defuncta postea muliere in matrimonio confirmari convenit, si tota dos lucro mariti cessit. idem iuris est, cum is, qui rem furtivam vendidit, postea domino heres exstitit.

Dig. 41.3.43pr.

Papinianus 22 quaest.

Heres eius, qui bona fide rem emit, usu non capiet sciens alienum, si modo ipsi possessio tradita sit: continuatio vero non impedietur heredis scientia.

Dig. 41.3.43.1

Papinianus 22 quaest.

Patrem usu non capturum, quod filius emit, propter suam vel filii scientiam certum est.

Dig. 41.3.44pr.

Papinianus 23 quaest.

Iusto errore ductus titium filium meum et in mea potestate esse existimavi, cum adrogatio non iure intervenisset: eum ex re mea quaerere mihi non existimo. non enim constitutum est in hoc, quod in homine libero qui bona fide servit placuit: ibi propter adsiduam et cottidianam comparationem servorum ita constitui publice interfuit, nam frequenter ignorantia liberos emimus, non autem tam facilis frequens adoptio vel adrogatio filiorum est.

Dig. 41.3.44.1

Papinianus 23 quaest.

Constat, si rem alienam scienti mihi vendas, tradas autem eo tempore, quo dominus ratum habet, traditionis tempus inspiciendum remque meam fieri.

Dig. 41.3.44.2

Papinianus 23 quaest.

Etsi possessionis, non contractus initium, quod ad usucapionem pertinet, inspici placet, nonnumquam tamen evenit, ut non initium praesentis possessionis, sed causam antiquiorem traditionis, quae bonam fidem habuit, inspiciamus, veluti circa partum eius mulieris, quam bona fide coepit possidere: non enim ideo minus capietur usu puer, quod alienam matrem, priusquam eniteretur, esse cognovit. idem in servo postliminio reverso dictum est.

Dig. 41.3.44.3

Papinianus 23 quaest.

Nondum aditae hereditatis tempus usucapioni datum est, sive servus hereditarius aliquid comparat, sive defunctus usucapere coeperat: sed haec iure singulari recepta sunt.

Dig. 41.3.44.4

Papinianus 23 quaest.

Filius familias emptor alienae rei, cum patrem familias se factum ignoret, coepit rem sibi traditam possidere: cur non capiat usu, cum bona fides initio possessionis adsit, quamvis eum se per errorem esse arbitretur, qui rem ex causa peculiari quaesitam nec possidere possit? idem dicendum erit et si ex patris hereditate ad se pervenisse rem emptam non levi praesumptione credat.

Dig. 41.3.44.5

Papinianus 23 quaest.

Non mutat usucapio superveniens pro emptore vel pro herede, quo minus pignoris persecutio salva sit: ut enim usus fructus usucapi non potest, ita persecutio pignoris, quae nulla societate dominii coniungitur, sed sola conventione constituitur, usucapione rei non peremitur.

Dig. 41.3.44.6

Papinianus 23 quaest.

Eum, qui postea quam usucapere coepit in furorem incidit, utilitate suadente relictum est, ne languor animi damnum etiam in bonis adferat, ex omni causa implere usucapionem.

Dig. 41.3.44.7

Papinianus 23 quaest.

Si, cum apud hostes dominus aut pater agat, servus aut filius emat, an et tenere incipiat? si quidem ex causa peculii possedit, usucapionem inchoari nec impedimento domini captivitatem esse, cuius scientia non esset in civitate necessaria. si vero non ex causa peculii comparetur, usu non capi nec iure postliminii quaesitum intellegi, cum prius esset, ut, quod usucaptum diceretur, possessum foret. sin autem pater ibi decesserit, quia tempora captivitatis ex die quo capitur morti iungerentur, potest filium dici et possedisse sibi et usucepisse intellegi.

Dig. 41.3.45pr.

Papinianus 10 resp.

Praescriptio longae possessionis ad optinenda loca iuris gentium publica concedi non solet. quod ita procedit, si quis, aedificio funditus diruto quod in litore posuerat (forte quod aut deposuerat aut dereliquerat aedificium), alterius postea eodem loco extructo, occupantis datam exceptionem opponat, vel si quis, quod in fluminis publici deverticulo solus pluribus annis piscatus sit, alterum eodem iure prohibeat.

Dig. 41.3.45.1

Papinianus 10 resp.

Post mortem domini servus hereditarius peculii nomine rem coepit tenere, usucapionis primordium erit tempus hereditatis aditae: quemadmodum etenim usucapietur, quod ante defunctus non possederat?

Dig. 41.3.46

Hermogenianus 5 iuris epit.

Pro soluto usucapit, qui rem debiti causa recipit: et non tantum quod debetur, sed et quodlibet pro debito solutum hoc titulo usucapi potest.

Dig. 41.3.47

Paulus 3 ad ner.

Si emptam rem mihi procurator ignorante me meo nomine adprehenderit, quamvis possideam, eam non usucapiam, quia ut ignorantes usuceperimus, in peculiaribus tantum rebus receptum est.

Dig. 41.3.48

Paulus 2 manual.

Si existimans debere tibi tradam, ita demum usucapio sequitur, si et tu putes debitum esse. aliud, si putem me ex causa venditi teneri et ideo tradam: hic enim nisi emptio praecedat, pro emptore usucapio locum non habet.

diversitatis causa in illo est, quod in ceteris causis solutionis tempus inspicitur neque interest, cum stipulor, sciam alienum esse nec ne: sufficit enim me putare tuum esse, cum solvis: in emptione autem et contractus tempus inspicitur et quo solvitur: nec potest pro emptore usucapere, qui non emit, nec pro soluto, sicut in ceteris contractibus.

Dig. 41.3.49

Labeo 5 pith. a paulo epit.

Si quid est subreptum, id usucapi non potest, antequam in domini potestatem pervenerit. paulus: immo forsitan et contra: nam si id, quod mihi pignori dederis, subripueris, erit ea res furtiva facta: sed simul atque in meam potestatem venerit, usucapi poterit.

Dig. 41.4.0. Pro emptore.

Dig. 41.4.1

Gaius 6 ad ed. provinc.

Possessor, qui litis aestimationem optulit, pro emptore incipit possidere.

Dig. 41.4.2pr.

Paulus 54 ad ed.

Pro emptore possidet, qui re vera emit, nec sufficit tantum in ea opinione esse eum, ut putet se pro emptore possidere, sed debet etiam subesse causa emptionis. si tamen existimans me debere tibi ignoranti tradam, usucapies. quare ergo et si putem me vendidisse et tradam, non capies usu? scilicet quia in ceteris contractibus sufficit traditionis tempus, sic denique si sciens stipuler rem alienam, usucapiam, si, cum traditur mihi, existimem illius esse: at in emptione et illud tempus inspicitur, quo contrahitur: igitur et bona fide emisse debet et possessionem bona fide adeptus esse.

Dig. 41.4.2.1

Paulus 54 ad ed.

Separata est causa possessionis et usucapionis: nam vere dicitur quis emisse, sed mala fide: quemadmodum qui sciens alienam rem emit, pro emptore possidet, licet usu non capiat.

Dig. 41.4.2.2

Paulus 54 ad ed.

Si sub condicione emptio facta sit, pendente condicione emptor usu non capiat. idemque est et si putet condicionem extitisse, quae nondum exstitit: similis est enim ei, qui putat se emisse. contra si exstitit et ignoret, potest dici secundum sabinum, qui potius substantiam intuetur quam opinionem, usucapere eum. est tamen nonnulla diversitas, quod ibi, cum rem putat alienam, quae sit venditoris, affectionem emptoris habeat, at cum nondum putat condicionem exstitisse, quasi nondum putat sibi emisse. quod apertius quaeri potest, si, cum defunctus emisset, heredi eius tradatur, qui nesciat defunctum emisse, sed ex alia causa sibi tradi, an usucapio cesset.

Dig. 41.4.2.3

Paulus 54 ad ed.

Sabinus, si sic empta sit, ut, nisi pecunia intra diem certum soluta esset, inempta res fieret, non usucapturum nisi persoluta pecunia. sed videamus, utrum condicio sit hoc an conventio: si conventio est, magis resolvetur quam implebitur.

Dig. 41.4.2.4

Paulus 54 ad ed.

Si in diem addictio facta sit, id est nisi si quis meliorem condicionem attulerit, perfectam esse emptionem et fructus emptoris effici et usucapionem procedere iulianus putabat: alii et hanc sub condicione esse contractam, ille non contrahi, sed resolvi dicebat, quae sententia vera est.

Dig. 41.4.2.5

Paulus 54 ad ed.

Sed et illa emptio pura est, ubi convenit, ut, si displicuerit intra diem certum, inempta sit.

Dig. 41.4.2.6

Paulus 54 ad ed.

Cum stichum emissem, dama per ignorantiam mihi pro eo traditus est. priscus ait usu me eum non capturum, quia id, quod emptum non sit, pro emptore usucapi non potest: sed si fundus emptus sit et ampliores fines possessi sint, totum longo tempore capi, quoniam universitas eius possideatur, non singulae partes.

Dig. 41.4.2.7

Paulus 54 ad ed.

Eius bona emisti, apud quem mancipia deposita erant: trebatius ait usu te non capturum, quia empta non sint.

Dig. 41.4.2.8

Paulus 54 ad ed.

Tutor ex pupilli auctione rem, quam eius putabat esse, emit. servius ait posse eum usucapere: in cuius opinionem decursum est eo, quod deterior causa pupilli non fit, si propius habeat emptorem, et, si minoris emerit, tutelae iudicio tenebitur ac si alii minoris addixisset: idque et a divo traiano constitutum dicitur.

Dig. 41.4.2.9

Paulus 54 ad ed.

Procuratorem quoque, qui ex auctione, quam mandatu domini facit, emerit, plerique putant utilitatis causa pro emptore usucapturum. idem potest dici et si negotia domini gerens ignorantis emerit propter eandem utilitatem.

Dig. 41.4.2.10

Paulus 54 ad ed.

Si servus tuus peculiari nomine emat rem, quam scit alienam, licet tu ignores alienam esse, tamen usu non capies.

Dig. 41.4.2.11

Paulus 54 ad ed.

Celsus scribit, si servus meus peculiari nomine apiscatur possessionem, id etiam ignorantem me usucapere: quod si non peculiari nomine, non nisi scientem me: et si vitiose coeperit possidere, meam vitiosam esse possessionem.

Dig. 41.4.2.12

Paulus 54 ad ed.

Pomponius quoque in his, quae nomine domini possideantur, domini potius quam servi voluntatem spectandam ait: quod si peculiari, tunc mentem servi quaerendam. et si servus mala fide possideat eaque dominus nanctus sit, ut suo nomine possideat, adempto puta peculio, dicendum est, ut eadem causa sit possessionis et ideo usucapio ei non magis procedat.

Dig. 41.4.2.13

Paulus 54 ad ed.

Si servus bona fide emerit peculiari nomine, ego ubi primum cognovi sciam alienam, processuram usucapionem celsus ait: initium enim possessionis sine vitio fuisse: sed si eo tempore quo emit, quamquam id bona fide faciat, ego alienam rem esse sciam, usu me non capturum.

Dig. 41.4.2.14

Paulus 54 ad ed.

Et si quod non bona fide servus meus emerit, in pactionem libertatis mihi dederit, non ideo me magis usucapturum: durare enim primam causam possessionis idem celsus ait.

Dig. 41.4.2.15

Paulus 54 ad ed.

Si a pupillo emero sine tutoris auctoritate, quem puberem esse putem, dicimus usucapionem sequi, ut hic plus sit in re quam in existimatione: quod si scias pupillum esse, putes tamen pupillis licere res suas sine tutoris auctoritate administrare, non capies usu, quia iuris error nulli prodest.

Dig. 41.4.2.16

Paulus 54 ad ed.

Si a furioso, quem putem sanae mentis, emero, constitit usucapere utilitatis causa me posse, quamvis nulla esset emptio et ideo neque de evictione actio nascitur mihi nec publiciana competit nec accessio possessionis.

Dig. 41.4.2.17

Paulus 54 ad ed.

Si eam rem, quam pro emptore usucapiebas, scienti mihi alienam esse vendideris, non capiam usu.

Dig. 41.4.2.18

Paulus 54 ad ed.

Etiam heredi ulteriori defuncti possessio proderit, quamvis medius heres possessionem eius nanctus non sit.

Dig. 41.4.2.19

Paulus 54 ad ed.

Si defunctus bona fide emerit, usucapietur res, quamvis heres scit alienam esse. hoc et in bonorum possessore et in fideicommissariis, quibus ex trebelliano restituitur hereditas, ceterisque praetoriis successoribus observatum est.

Dig. 41.4.2.20

Paulus 54 ad ed.

Emptori tempus venditoris ad usucapionem procedit.

Dig. 41.4.2.21

Paulus 54 ad ed.

Si rem alienam emero et, cum usucaperem, eandem rem dominus a me petierit, non interpellari usucapionem meam litis contestatione. sed si litis aestimationem sufferre maluerim, ait iulianus causam possessionis mutari ei, qui litis aestimationem sustulerit, idemque esse, si dominus ei, qui rem emisset a non domino, donasset: eaque sententia vera est.

Dig. 41.4.3

Ulpianus 75 ad ed.

Litis aestimatio similis est emptioni.

Dig. 41.4.4pr.

Iavolenus 2 ex plaut.

Emptor fundi partem eius alienam esse non ignoraverat: responsum est nihil eum ex eo fundo longa possessione capturum. quod ita verum esse existimo, si, quae pars aliena esset in eo fundo, emptor ignoraverat: quod si certum locum esse sciret, reliquas partes longa possessione capi posse non dubito.

Dig. 41.4.4.1

Iavolenus 2 ex plaut.

Idem iuris est, si is, qui totum fundum emebat, pro indiviso partem aliquam alienam esse scit: eam enim dumtaxat non capiet, ceterarum partium non impedietur longa possessione capio.

Dig. 41.4.5

Modestinus 10 pand.

Si rem, quam tibi pigneravi, subripuero, eamque distraxero, de usucapione dubitatum est: et verius est utiliter cedere tempora usucapionis.

Dig. 41.4.6pr.

Pomponius 32 ad sab.

Qui, cum pro herede vel pro emptore usucaperet, precario rogavit, usucapere non potest: quid porro inter eas res interest, cum utrubique desinat ex prima causa possidere, qui precario vult habere?

Dig. 41.4.6.1

Pomponius 32 ad sab.

Si ex decem servis, quos emerim, aliquos putem alienos et qui sint sciam, reliquos usucapiam: quod si ignorem, qui sint alieni, neminem usucapere possum.

Dig. 41.4.6.2

Pomponius 32 ad sab.

Post mortem eius, qui hominem emerit, expleto tempore, quod defuisset ad usucapionem, quamvis eum hominem heres possidere non coepisset, fiet tamen eius: sed ita hoc, si nemo eum possedisset.

Dig. 41.4.7pr.

Iulianus 44 Dig.

Qui fundum pro emptore possidebat, antequam diutinam possessionem impleret, decessit: servi, qui in possessionem relicti fuerant, discesserunt relinquendae eius gratia: quaesitum est, an nihilo minus heredi tempus longae possessionis procedere potest. respondit etiam discedentibus servis hoc tempus heredi procedere.

Dig. 41.4.7.1

Iulianus 44 Dig.

Si fundum cornelianum pro emptore longa possessione capiam et partem ex vicini fundo ei adiciam, utrum eam quoque partem reliquo tempore pro emptore capiam an integro statuto tempore? respondi: partes, quae emptioni fundi adiciuntur, propriam ac separatam condicionem habent, et ideo possessionem quoque earum separatim nancisci oportere et longam possessionem earum integro statuto tempore impleri.

Dig. 41.4.7.2

Iulianus 44 Dig.

Servus meus titio mandavit, ut fundum ei emeret, eique manumisso titius possessionem tradidit: quaesitum est, an longa possessione caperet. respondit, si servus meus mandaverit titio, ut fundum emeret, et manumisso ei titius fundum tradiderit, cum putaret peculium ei concessum esse vel etiam cum ignoraret peculium concessum non esse, nihilo minus servum diutina possessione capere, quia aut scit servus peculium sibi concessum non esse aut scire debet et per hoc similis est ei, qui se creditorem esse simulat. quod si scierit titius peculium manumisso concessum non esse, donare potius quam indebitum fundum solvere intellegendus est.

Dig. 41.4.7.3

Iulianus 44 Dig.

Si tutor rem pupilli subripuerit et vendiderit, usucapio non contingit, priusquam res in potestatem pupilli redeat: nam tutor in re pupilli tunc domini loco habetur, cum tutelam administrat, non cum pupillum spoliat.

Dig. 41.4.7.4

Iulianus 44 Dig.

Qui bona fide alienum fundum emit et possessionem eius amisit, deinde eo tempore adprehendisset, quo scit rem alienam esse, non capiet longo tempore, quia initium secundae possessionis vitio non carebit, nec similis est ei, qui emptionis quidem tempore putat fundum vendentis esse, sed cum traditur, scit alienum esse: cum enim semel amissa fuerit possessio, initium rursus reciperatae possessionis spectari oportet. quare si eo tempore redhibeatur homo, quo emptor scit alienum esse, usucapio non contingit, quamvis antequam venderet, in ea causa fuerit, ut usucaperet. idem iuris est in eo, qui de fundo deiectus possessionem per interdictum reciperavit sciens iam alienum esse.

Dig. 41.4.7.5

Iulianus 44 Dig.

Qui sciens emit ab eo, quem praetor ut suspectum heredem deminuere vetuit, usu non capiet.

Dig. 41.4.7.6

Iulianus 44 Dig.

Procurator tuus si fundum, quem centum aureis vendere poterat, addixerit triginta aureis in hoc solum, ut te damno adficeret, ignorante emptore, dubitari non oportet, quin emptor longo tempore capiat: nam et cum sciens quis alienum fundum vendidit ignoranti, non interpellatur longa possessio. quod si emptor cum procuratore collusit et eum praemio corrupit, quo vilius mercaretur, non intellegetur bonae fidei emptor nec longo tempore capiet: et si adversus petentem dominum uti coeperit exceptione rei voluntate eius venditae, replicationem doli utilem futuram esse.

Dig. 41.4.7.7

Iulianus 44 Dig.

Furtiva res non intellegitur redisse in domini potestatem, quamvis possideret eam, si modo ignoraverit subreptam sibi esse: si igitur servum, qui tibi subreptus erat, ignoranti tibi tuum esse pignori dedero et soluta pecunia eum titio vendidero, titius usucapere non poterit.

Dig. 41.4.7.8

Iulianus 44 Dig.

Liber homo, qui bona fide nobis servit, isdem modis ex re nostra adquirit nobis, quibus per servum nostrum adquirere solemus: quare sicut traditione, ita usucapione rem nostram faciemus interveniente libera persona, et si peculii nomine, quod nos sequi debet, emptio contracta fuerit, etiam ignorantes usucapiemus.

Dig. 41.4.8

Iulianus 2 ex minic.

Si quis, cum sciret venditorem pecuniam statim consumpturum, servos ab eo emisset, plerique responderunt eum nihilo minus bona fide emptorem esse, idque verius est: quomodo enim mala fide emisse videtur, qui a domino emit? nisi forte et is, qui a luxurioso et protinus scorto daturo pecuniam servos emit, non usucapiet.

Dig. 41.4.9

Iulianus 3 ad urs. ferocem.

Qui ob pactionem libertatis ancillam furtivam a servo accepit, potest partum eius quasi emptor usucapere.

Dig. 41.4.10

Iulianus 2 ad minic.

Servus domino ancillam, quam subripuerat, pro capite suo dedit: ea concepit: quaesitum est, an dominus eum partum usucapere possit. respondit: hic dominus quasi emptor partum usucapere potest, namque res ei abest pro hac muliere et genere quodammodo venditio inter servum et dominum contracta est.

Dig. 41.4.11

Africanus 7 quaest.

Quod volgo traditum est eum, qui existimat se quid emisse nec emerit, non posse pro emptore usucapere, hactenus verum esse ait, si nullam iustam causam eius erroris emptor habeat: nam si forte servus vel procurator, cui emendam rem mandasset, persuaserit ei se emisse atque ita tradiderit, magis esse, ut usucapio sequatur.

Dig. 41.4.12

Papinianus 10 resp.

Misso legatario in possessionem res pro emptore usucapiuntur salva praetorii pignoris causa.

Dig. 41.4.13

Scaevola 5 resp.

Alienam aream bona fide emit et ante impletam diutinam possessionem aedificare coepit: ei denuntiante domino soli intra tempora diutinae possessionis, perseveravit: quaero, utrum interpellata sit an coepta duraverit. respondit secundum ea quae proponerentur non esse interpellatam.

Dig. 41.4.14

Scaevola 25 Dig.

Intestatae sororis hereditas obvenit duobus fratribus, quorum alter absens erat, alter praesens: praesens etiam absentis causam agebat, ex qua hereditate suo et fratris sui nomine fundum in solidum vendidit lucio titio bona fide ementi: quaesitum est, cum scierit partem fundi absentis esse, an totum fundum longa possessione ceperit. respondit, si credidisset mandatu fratris venisse, per longum tempus cepisse.

Dig. 41.5.0. Pro herede vel pro possessore.

Dig. 41.5.1

Pomponius 32 ad sab.

Pro herede ex vivi bonis nihil usucapi potest, etiamsi possessor mortui rem fuisse existimaverit.

Dig. 41.5.2pr.

Iulianus 44 Dig.

Qui legatorum servandorum causa in possessionem mittitur, non interpellat possessionem eius, qui pro herede usucapit: custodiae enim causa rem tenet. quid ergo est? etiam impleta usucapione ius pignoris retinebit, ut non prius discedat, quam si solutum ei legatum fuerit aut eo nomine satisdatum.

Dig. 41.5.2.1

Iulianus 44 Dig.

Quod volgo respondetur causam possessionis neminem sibi mutare posse, sic accipiendum est, ut possessio non solum civilis, sed etiam naturalis intellegatur. et propterea responsum est neque colonum neque eum, apud quem res deposita aut cui commodata est, lucri faciendi causa pro herede usucapere posse.

Dig. 41.5.2.2

Iulianus 44 Dig.

Filium quoque donatam rem a patre pro herede negavit usucapere servius, scilicet qui existimabat naturalem possessionem penes eum fuisse vivo patre. cui consequens est, ut filius a patre heres institutus res hereditarias a patre sibi donatas pro parte coheredum usucapere non possit.

Dig. 41.5.3

Pomponius 23 ad q. muc.

Plerique putaverunt, si heres sim et putem rem aliquam ex hereditate esse quae non sit, posse me usucapere.

Dig. 41.5.4

Paulus 5 ad l. iul. et pap.

Constat eum, qui testamenti factionem habet, pro herede usucapere posse.

Dig. 41.6.0. Pro donato.

Dig. 41.6.1pr.

Paulus 54 ad ed.

Pro donato is usucapit, cui donationis causa res tradita est: nec sufficit opinari, sed et donatum esse oportet.

Dig. 41.6.1.1

Paulus 54 ad ed.

Si pater filio quem in potestate habet donet, deinde decedat, filius pro donato non capiet usu, quoniam nulla donatio fuit.

Dig. 41.6.1.2

Paulus 54 ad ed.

Si inter virum et uxorem donatio facta sit, cessat usucapio. item si vir uxori rem donaverit et divortium intercesserit, cessare usucapionem cassius respondit, quoniam non possit causam possessionis sibi ipsa mutare: alias ait post divortium ita usucapturam, si eam maritus concesserit, quasi nunc donasse intellegatur. possidere autem uxorem rem a viro donatam iulianus putat.

Dig. 41.6.2

Marcellus 22 Dig.

Si is, qui alienam rem donaverit, revocare constituerit donationem, etiamsi iudicium ediderit remque coeperit vindicare, curret usucapio.

Dig. 41.6.3

Pomponius 24 ad q. muc.

Si vir uxori vel uxor viro donaverit, si aliena res donata fuerit, verum est, quod trebatius putabat, si pauperior is qui donasset non fieret, usucapionem possidenti procedere.

Dig. 41.6.4

Pomponius 32 ad sab.

Si pater filiae donaverit, quae in potestate eius erat, et eam exheredaverit: si id heres eius ratum habeat, exinde ea usucapiet donationem, qua ex die ratam heres donationem habuerit.

Dig. 41.6.5

Scaevola 5 resp.

Qui pro donato coeperat usucapere, manumittendo nihil egit, quia nec dominium nanctus fuerit: quaesitum est, an usucapere desierit. respondi eum de quo quaeritur omisisse videri possessionem et ideo usucapionem interruptam.

Dig. 41.6.6

Hermogenianus 2 iuris epit.

Donationis causa facta venditione non pro emptore, sed pro donato res tradita usucapitur.

Dig. 41.7.0. Pro derelicto.

Dig. 41.7.1

Ulpianus 12 ad ed.

Si res pro derelicto habita sit, statim nostra esse desinit et occupantis statim fit, quia isdem modis res desinunt esse nostrae, quibus adquiruntur.

Dig. 41.7.2pr.

Paulus 54 ad ed.

Pro derelicto rem a domino habitam si sciamus, possumus adquirere.

Dig. 41.7.2.1

Paulus 54 ad ed.

Sed proculus non desinere eam rem domini esse, nisi ab alio possessa fuerit: iulianus desinere quidem omittentis esse, non fieri autem alterius, nisi possessa fuerit, et recte.

Dig. 41.7.3

Modestinus 6 diff.

An pars pro derelicto haberi possit, quaeri solet. et quidem si in re communi socius partem suam reliquerit, eius esse desinit, ut hoc sit in parte, quod in toto: atquin totius rei dominus efficere non potest, ut partem retineat, partem pro derelicto habeat.

Dig. 41.7.4

Paulus 15 ad sab.

Id, quod pro derelicto habitum est et haberi putamus, usucapere possumus, etiam si ignoramus, a quo derelictum sit.

Dig. 41.7.5pr.

Pomponius 32 ad sab.

Si id, quod pro derelicto habitum possidebas, ego sciens in ea causa esse abs te emerim, me usucapturum constat nec obstare, quod in bonis tuis non fuerit: nam et si tibi rem ab uxore donatam sciens emero, quia quasi volente et concedente domino id faceres, idem iuris est.

Dig. 41.7.5.1

Pomponius 32 ad sab.

Id, quod quis pro derelicto habuerit, continuo meum fit: sicuti cum quis aes sparserit aut aves amiserit, quamvis incertae personae voluerit eas esse, tamen eius fierent, cui casus tulerit ea, quae, cum quis pro derelicto habeat, simul intellegitur voluisse alicuius fieri.

Dig. 41.7.6

Iulianus 3 ad urs. ferocem.

Nemo potest pro derelicto usucapere, qui falso existimaverit rem pro derelicto habitam esse.

Dig. 41.7.7

Iulianus 2 ex minic.

Si quis merces ex nave iactatas invenisset, num ideo usucapere non possit, quia non viderentur derelictae, quaeritur. sed verius est eum pro derelicto usucapere non posse.

Dig. 41.7.8

Paulus 18 resp.

Sempronius thetidi status quaestionem facere temptabat, quasi de serva sua nata sit. qui iam testato conventus a procula nutrice thetidis in solvendis alimentis respondit non se habere, unde alimenta eiusdem exsolvat, sed debere eam patri suo restituere lucio titio: idque ex illa in testationem redegisset, ut postea nullam quaestionem pateretur ab eodem sempronio, lucius titius seiae proculae solutis alimentis puellam vindicta manumisit: quaero, an possit rescindi libertas thetidis. paulus respondit, quoniam dominus ancillae, ex qua thetis nata est, thetidem pro derelicto habuisse videtur, potuisse eam a lucio titio ad libertatem perduci.

Dig. 41.8.0. Pro legato.

Dig. 41.8.1

Ulpianus 6 disp.

Legatorum nomine is videtur possidere cui legatum est: pro legato enim possessio et usucapio nulli alii, quam cui legatum est, competit.

Dig. 41.8.2

Paulus 54 ad ed.

Si possideam aliquam rem, quam putabam mihi legatam, cum non esset, pro legato non usucapiam:

Dig. 41.8.3

Papinianus 23 quaest.

Non magis quam si quis emptum existimet, quod non emerit.

Dig. 41.8.4

Paulus 54 ad ed.

Pro legato potest usucapi, si res aliena legata sit aut testatoris quidem sit, sed adempta codicillis ignoratur: in horum enim persona subest iusta causa, quae sufficit ad usucapionem. idem potest dici et si in nomine erit dubitatio, veluti si titio legatum sit, cum sint duo titii, ut alter eorum de se cogitatum existimaverit.

Dig. 41.8.5

Iavolenus 7 ex cass.

Ea res, quae legati nomine tradita est, quamvis dominus eius vivat, legatorum tamen nomine usucapietur,

Dig. 41.8.6

Pomponius 32 ad sab.

Si is, cui tradita est, mortui esse existimaverit.

Dig. 41.8.7

Iavolenus 7 ex cass.

Nemo potest legatorum nomine usucapere nisi is, cum quo testamenti factio est, quia ea possessio ex iure testamenti proficiscitur.

Dig. 41.8.8

Papinianus 23 quaest.

Si non traditam possessionem ingrediatur sine vitio legatarius, legatae rei usucapio competit.

Dig. 41.8.9

Hermogenianus 5 iuris epit.

Pro legato usucapit, cui recte legatum relictum est: sed et si non iure legatum relinquatur vel legatum ademptum est, pro legato usucapi post magnas varietates optinuit.

Dig. 41.9.0. Pro dote.

Dig. 41.9.1pr.

Ulpianus 31 ad sab.

Titulus est usucapionis et quidem iustissimus, qui appellatur pro dote, ut, qui in dotem rem accipiat, usucapere possit spatio sollemni, quo solent, qui pro emptore usucapiunt.

Dig. 41.9.1.1

Ulpianus 31 ad sab.

Et nihil refert, singulae res an pariter universae in dotem darentur.

Dig. 41.9.1.2

Ulpianus 31 ad sab.

Et primum de tempore videamus, quando pro dote quis usucapere possit, utrum post tempora nuptiarum an vero et ante nuptias. est quaestio volgata, an sponsus possit (hoc est qui nondum maritus est) rem pro dote usucapere. et iulianus inquit, si sponsa sponso ea mente tradiderit res, ut non ante eius fieri vellet, quam nuptiae secutae sint, usu quoque capio cessabit: si tamen non evidenter id actum fuerit, credendum esse id agi iulianus ait, ut statim res eius fiant et, si alienae sint, usucapi possint: quae sententia mihi probabilis videtur. ante nuptias autem non pro dote usucapit, sed pro suo.

Dig. 41.9.1.3

Ulpianus 31 ad sab.

Constante autem matrimonio pro dote usucapio inter eos locum habet, inter quos est matrimonium: ceterum si cesset matrimonium, cassius ait cessare usucapionem, quia et dos nulla sit.

Dig. 41.9.1.4

Ulpianus 31 ad sab.

Idem scribit et si putavit maritus esse sibi matrimonium, cum non esset, usucapere eum non posse, quia nulla dos sit: quae sententia habet rationem.

Dig. 41.9.2

Paulus 54 ad ed.

Si aestimata res ante nuptias tradita sit, nec pro emptore nec pro suo ante nuptias usucapietur.

Dig. 41.9.3

Scaevola 25 Dig.

Duae filiae intestato patri heredes exstiterunt et mancipia communia singulae in dotem dederunt et post aliquot annos morte patris familiae herciscundae iudicium inter eas dictatum est. quaesitum est, cum mariti bona fide mancipia in dotem accepta ut dotalia multis annis possederunt, an usucepisse videantur, si qui accipiebant, dantis credidissent esse. respondit nihil proponi, cur non usucepissent.

Dig. 41.10.0. Pro suo.

Dig. 41.10.1pr.

Ulpianus 15 ad ed.

Pro suo possessio talis est. cum dominium nobis adquiri putamus, et ex ea causa possidemus, ex qua adquiritur, et praeterea pro suo: ut puta ex causa emptionis et pro emptore et pro suo possideo, item donata vel legata vel pro donato vel pro legato etiam pro suo possideo.

Dig. 41.10.1.1

Ulpianus 15 ad ed.

Sed si res mihi ex causa iusta puta emptionis tradita sit et usucapiam, incipio quidem et ante usucapionem pro meo possidere. sed an desinam ex causa emptionis post usucapionem, dubitatur: et mauricianus dicitur existimasse non desinere.

Dig. 41.10.2

Paulus 54 ad ed.

Est species possessionis, quae vocatur pro suo. hoc enim modo possidemus omnia, quae mari terra caelo capimus aut quae alluvione fluminum nostra fiunt. item quae ex rebus alieno nomine possessis nata possidemus, veluti partum hereditariae aut emptae ancillae, pro nostro possidemus: similiter fructus rei emptae aut donatae aut quae in hereditate inventa est.

Dig. 41.10.3

Pomponius 22 ad sab.

Hominem, quem ex stipulatione te mihi debere falso existimabas, tradidisti mihi: si scissem mihi nihil debere, usu eum non capiam: quod si nescio, verius est, ut usucapiam, quia ipsa traditio ex causa, quam veram esse existimo, sufficit ad efficiendum, ut id quod mihi traditum est pro meo possideam. et ita neratius scripsit idque verum puto.

Dig. 41.10.4pr.

Pomponius 32 ad sab.

Si ancillam furtivam emisti fide bona ex ea natum et apud te conceptum est ita possedisti, ut intra constitutum usucapioni tempus cognosceres matrem eius furtivam esse, trebatius omni modo, quod ita possessum esset, usucaptum esse. ego sic puto distinguendum, ut, si nescieris intra statutum tempus, cuius id mancipium esset, aut si scieris neque potueris certiorem dominum facere, aut si potueris quoque et feceris certiorem, usucaperes: sin vero, cum scires et posses, non feceris certiorem, contra esse: tum enim clam possedisse videberis, neque idem et pro suo et clam possidere potest.

Dig. 41.10.4.1

Pomponius 32 ad sab.

Si pater cum filiis bona quae habebat partitus sit ex ea causa post mortem patris ea teneant, quod inter eos conveniret, ut ea divisio rata esset: usucapio his procedet pro suo in his rebus, quae alienae in bonis patris inveniuntur.

Dig. 41.10.4.2

Pomponius 32 ad sab.

Quod legatum non sit, ab herede tamen perperam traditum sit, placet a legatario usucapi, quia pro suo possidet.

Dig. 41.10.5pr.

Nerva 5 membr.

Usucapio rerum, etiam ex aliis causis concessa interim, propter ea, quae nostra existimantes possideremus, constituta est, ut aliquis litium finis esset.

Dig. 41.10.5.1

Nerva 5 membr.

Sed id, quod quis, cum suum esse existimaret, possederit, usucapiet, etiamsi falsa fuerit eius existimatio. quod tamen ita interpretandum est, ut probabilis error possidentis usucapioni non obstet, veluti si ob id aliquid possideam, quod servum meum aut eius, cuius in locum hereditario iure successi, emisse id falso existimem, quia in alieni facti ignorantia tolerabilis error est.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER DUO-ET-QUADRAGESIMUS

Dig. 42.1.0. De re iudicata et de effectu sententiarum et de interlocutionibus.
Dig. 42.2.0. De confessis.
Dig. 42.3.0. De cessione bonorum.
Dig. 42.4.0. Quibus ex causis in possessionem eatur.
Dig. 42.5.0. De rebus auctoritate iudicis possidendis seu vendundis.
Dig. 42.6.0. De separationibus.
Dig. 42.7.0. De curatore bonis dando.
Dig. 42.8.0. Quae in fraudem creditorum facta sunt ut restituantur.

Dig. 42.1.0. De re iudicata et de effectu sententiarum et de interlocutionibus.

Dig. 42.1.1

Modestinus 7 pand.

Res iudicata dicitur, quae finem controversiarum pronuntiatione iudicis accipit: quod vel condemnatione vel absolutione contingit.

Dig. 42.1.2

Ulpianus 6 ad ed.

Qui pro tribunali cognoscit, non semper tempus iudicati servat, sed nonnumquam artat, nonnumquam prorogat pro causae qualitate et quantitate vel personarum obsequio vel contumacia. sed perraro intra statutum tempus sententiae exsequentur, veluti si alimenta constituantur vel minori viginti quinque annis subvenitur.

Dig. 42.1.3

Paulus 17 ad ed.

Qui damnare potest, is absolvendi quoque potestatem habet.

Dig. 42.1.4pr.

Ulpianus 58 ad ed.

Si se non optulit procurator, iudicati actio in eum denegabitur et in dominum dabitur: si se optulit, in ipsum dabitur. optulisse autem se liti videtur non is, qui in rem suam procurator datus sit: nam hic alia ratione recusare iudicati actionem non potest, quia hic non in alienam, sed in suam rem procurator factus est.

Dig. 42.1.4.1

Ulpianus 58 ad ed.

Tutor quoque vel curator in ea condicione sunt, ut non debeant videri se liti optulisse, idcircoque debet denegari in eos iudicati actio.

Dig. 42.1.4.2

Ulpianus 58 ad ed.

Actor municipum potest rem iudicatam recusare: in municipes enim iudicati actio dabitur.

Dig. 42.1.4.3

Ulpianus 58 ad ed.

Ait praetor: " condemnatus ut pecuniam solvat". a iudicato ergo hoc exigitur, ut pecuniam solvat. quid ergo, si solvere quidem paratus non sit, satisfacere autem paratus sit, quid dicimus? et ait labeo debuisse hoc quoque adici " neque eo nomine satisfaciat": fieri enim posse, ut idoneum expromissorem habeat. sed ratio pecuniae exigendae haec fuit, quod noluerit praetor obligationes ex obligationibus fieri: idcirco ait " ut pecunia solvatur". ex magna tamen et idoneo causa accedendum erit ad labeonis sententiam.

Dig. 42.1.4.4

Ulpianus 58 ad ed.

Si ex conventione litigantium cautum sit post rem iudicatam ei, cui quis condemnatus est, eveniet, ut hic et retendatur, si modo novatio intercessit: ceterum si non novandi causa id factum est, manebit ordo exsecutionis. sed et si pignora accepta sint vel fideiussores in rem iudicatam, consequens erit dicere non cessare exsecutionem, quippe cum accesserit aliquid rei iudicatae, non sit a re iudicata recessum. idem observandum est in eo, cuius procurator condemnatus est.

Dig. 42.1.4.5

Ulpianus 58 ad ed.

Si quis condemnatus sit, ut intra certos dies solvat, unde ei tempus iudicati actionis computamus, utrum ex quo sententia prolata est an vero ex eo, ex quo dies statutus praeteriit? sed si quidem minorem diem statuerit iudex tempore legitimo, repletur ex lege, quod sententiae iudicis deest: sin autem ampliorem numerum dierum sua definitione iudex amplexus est, computabitur reo et legitimum tempus et quod supra id iudex praestitit.

Dig. 42.1.4.6

Ulpianus 58 ad ed.

Condemnatum accipere debemus eum, qui rite condemnatus est, ut sententia valeat: ceterum si aliqua ratione sententia nullius momenti sit, dicendum est condemnationis verbum non tenere.

Dig. 42.1.4.7

Ulpianus 58 ad ed.

Solvisse accipere debemus non tantum eum, qui solvit, verum omnem omnino, qui ea obligatione liberatus est, quae ex causa iudicati descendit.

Dig. 42.1.4.8

Ulpianus 58 ad ed.

Celsus scribit, si noxali condemnatus eum servum, in quo usus fructus alienus est, noxae dedisti, posse tecum adhuc agi iudicati: sed si usus fructus interierit, liberari ait.

Dig. 42.1.5pr.

Ulpianus 59 ad ed.

Ait praetor: " cuius de ea re iurisdictio est". melius scripsisset: " cuius de ea re notio est": etenim notionis nomen etiam ad eos pertineret, qui iurisdictionem non habent, sed habent de quavis alia causa notionem.

Dig. 42.1.5.1

Ulpianus 59 ad ed.

Si iudex aliquem sic condemnet, ut, quod habet ex testamento vel codicillis maevii, restitueret titio, sic accipiendum est, quasi quantitatem nominavit, quae testamento vel codicillis relicta est. sed et si fideicommissum sine scriptura pronuntiatum, idem erit probandum.

Dig. 42.1.6pr.

Ulpianus 66 ad ed.

Miles, qui sub armata militia stipendia meruit, condemnatus eatenus, qua facere potest, cogitur solvere.

Dig. 42.1.6.1

Ulpianus 66 ad ed.

Decem aut noxae dedere condemnatus iudicati in decem tenetur: facultatem enim noxae dedendae ex lege accipit. at is, qui stipulatus est decem aut noxae dedere, non potest decem petere, quia in stipulatione singula per se veniunt ea, quae singula separatim stipulari possumus: at iudicium solius noxae deditionis nullum est, sed pecuniariam condemnationem sequitur. et ideo iudicati decem agitur, his enim solis condemnatur: noxae deditio in solutione est, quae e lege tribuitur.

Dig. 42.1.6.2

Ulpianus 66 ad ed.

Qui iudicati bona auctoritate sua distraxit, furti actione et vi bonorum raptorum ei tenetur.

Dig. 42.1.6.3

Ulpianus 66 ad ed.

Iudicati actio perpetua est et rei persecutionem continet: item heredi et in heredem competit.

Dig. 42.1.7

Gaius ad ed. pu. de re iud.

Intra dies constitutos, quamvis iudicati agi non possit, multis tamen modis iudicatum liberari posse hodie non dubitatur, quia constitutorum dierum spatium pro iudicato, non contra iudicatum per legem constitutum est.

Dig. 42.1.8

Paulus 5 ad plaut.

Si homo ex stipulatu petitus post litem contestatam decesserit, absolutionem non faciendam et fructuum rationem habendam placet.

Dig. 42.1.9

Pomponius 5 ex plaut.

Furioso sententia a iudice vel ab arbitro dici non potest.

Dig. 42.1.10

Marcellus 2 Dig.

Qui, cum se pro patre familias fingeret, mutuam pecuniam accepit et exheres a patre vel emancipatus sit, quamvis facere non possit, debet condemnari.

Dig. 42.1.11

Celsus 5 Dig.

Si kalendis fieri aliquid stipulatus sum, nempe quandocumque post kalendas accepto iudicio tanti tamen aestimanda lis est, quanti interfuit mea kalendis id fieri: ex eo enim tempore quidque aestimatur, quod novissime solvi poterit.

Dig. 42.1.12

Marcellus 4 Dig.

In depositi vel commodati iudicio, quamquam dolo adversarii res absit, condemnato succurri solet, ut ei actionibus suis dominus cedat.

Dig. 42.1.13pr.

Celsus 6 Dig.

Si quis ab alio decem, ab alio satisdari stipulatus est, aestimandum erit, quantum stipulatoris intersit satisdari, idque aut tantundem erit aut minus aut interdum etiam nihil: neque enim vani timoris ulla aestimatio est. verum sorte soluta nullum iam pretium aestimationis est, aut quantum ex sorte fuerit solutum, tantundem ex aestimatione decedet.

Dig. 42.1.13.1

Celsus 6 Dig.

Si quis promiserit prohibere se, ut aliquid damnum stipulator patiatur, et faciat ne quod ex ea re damnum ita habeatur, facit quod promisit: si minus, quia non facit quod promisit, in pecuniam numeratam condemnatur, sicut evenit in omnibus faciendi obligationibus.

Dig. 42.1.14

Celsus 25 Dig.

Quod iussit vetuitve praetor, contrario imperio tollere et remittere licet: de sententiis contra.

Dig. 42.1.15pr.

Ulpianus 3 de off. cons.

A divo pio rescriptum est magistratibus populi romani, ut iudicum a se datorum vel arbitrorum sententiam exsequantur hi qui eos dederunt.

Dig. 42.1.15.1

Ulpianus 3 de off. cons.

Sententiam romae dictam etiam in provinciis posse praesides, si hoc iussi fuerint, ad finem persequi imperator noster cum patre rescripsit.

Dig. 42.1.15.2

Ulpianus 3 de off. cons.

In venditione itaque pignorum captorum facienda ^ faciendo^ primo quidem res mobiles et animales pignori capi iubent, mox distrahi: quarum pretium si suffecerit, bene est, si non suffecerit, etiam soli pignora capi iubent et distrahi. quod si nulla moventia sint, a pignoribus soli initium faciunt: sic denique interloqui solent, si moventia non sint, ut soli quoque capiantur: nam a pignoribus soli initium faciendum non est. quod si nec quae soli sunt sufficiant vel nulla sint soli pignora, tunc pervenietur etiam ad iura. exsequuntur itaque rem iudicatam praesides isto modo.

Dig. 42.1.15.3

Ulpianus 3 de off. cons.

Si pignora, quae capta sunt, emptorem non inveniant, rescriptum est ab imperatore nostro et divo patre eius, ut addicantur ipsi, cui quis condemnatus est, addicantur autem utique ea quantitate quae debetur. nam si creditor maluerit pignora in creditum possidere isque esse contentus, rescriptum est non posse eum quod amplius sibi debetur petere, quia velut pacto transegisse de credito videtur, qui contentus fuit pignora possidere, nec posse eum in quantitatem certam pignora tenere et superfluum petere.

Dig. 42.1.15.4

Ulpianus 3 de off. cons.

Si rerum, quae pignoris iure captae sunt, controversia fiat, constitutum est ab imperatore nostro ipsos, qui rem iudicatam exsequuntur, cognoscere debere de proprietate: et si cognoverint eius fuisse qui condemnatus est, rem iudicatam exsequentur. sed sciendum est summatim eos cognoscere debere nec sententiam eorum posse debitori praeiudicare, si forte hi dimittendam eam rem putaverint, quasi eius sit, qui controversiam movit, non eius, cuius nomine capta est: nec eum, cui restituta est, statim habere per sententiam debere, si forte iure ordinario coeperit ab eo res peti. sic evenit, ut omnibus integris tantum capioni res iudicata proficiat. sed illud debet dici, ubi controversia est de pignore, id dimitti debere et capi aliud, si quod est sine controversia.

Dig. 42.1.15.5

Ulpianus 3 de off. cons.

Quod si res sit pignerata, quae pignori capta est, videndum est, an sic distrahi possit, ut dimisso creditore superfluum in causam iudicati convertatur. et quamquam non cogatur creditor rem, quam pignori accepit, distrahere: tamen in iudicati exsecutione servatur, ut, si emptorem invenerit res quae capta est, qui dimisso priore creditore superfluum solvere sit paratus, admittenda sit huius quoque rei distractio. nec videtur deterior condicio creditoris fieri suum consecuturi nec prius ius pignoris dimissuri, quam si ei fuerit satisfactum.

Dig. 42.1.15.6

Ulpianus 3 de off. cons.

Si post addictum pignus aliqua controversia emptori moveatur, an sit cognitio eiusdem iudicis, qui sententiam exsecutus fuerit, videndum est. et cum semel emptio perfecta sit eiusque qui comparavit periculum vertatur, non puto locum esse cognitioni: certe posteaquam inductus est emptor in possessionem, nonne cessabunt partes eorundem iudicum? idemque et si ipsi, cui quis iudicatus est, res fuerit addicta.

Dig. 42.1.15.7

Ulpianus 3 de off. cons.

Sed si emptor, cui pignora sunt addicta exsequente iudice, pretium non solvat, utrum adversus emptorem porrigere manus debeant idem iudices, qui sententiam exsequuntur, videndum est. et non puto eos ultra procedere: ceterum longe res abibit. quid enim dicemus? condemnabunt emptorem et sic exsequentur adversus eum sententiam, an statim pro iudicato habebunt? et quid si neget se emisse aut exsolvisse contendat? melius igitur erit, si non se interponant, maxime cum nec habeat actionem adversus eum is, cui iudicatum fieri desideratur. nec iniuria adficietur: oportet enim res captas pignori et distractas praesenti pecunia distrahi, non sic, ut post tempus pecunia solvatur. certe si se interponant, hactenus debebunt intervenire, ut ipsam rem addictam capiant et distrahant, quasi nondum vinculo pignoris liberatam.

Dig. 42.1.15.8

Ulpianus 3 de off. cons.

Sic quoque iudices exsequentur iudicatum, ut nomina iure pignoris capiant, si nihil aliud sit quod capi possit: posse enim nomen iure pignoris capi imperator noster rescripsit.

Dig. 42.1.15.9

Ulpianus 3 de off. cons.

Sed utrum confessum nomen tantum capi possit an etiam si neget quis se debere, videamus. et magis est, ut id dumtaxat capiatur, quod confitetur: ceterum si negetur, aequissimum erit discedi a nomine, nisi forte quis exemplum secutus corporalium pignerum ultra processerit dixeritque ipsos debere iudices de nomine cognoscere, ut cognoscunt de proprietate: sed contra rescriptum est.

Dig. 42.1.15.10

Ulpianus 3 de off. cons.

Item quid dicemus? utrum ipsi iudices convenient nomen exigentque id quod debetur et in causam iudicati convertent, an vero vendent nomen, ut pignora corporalia solent? et necesse est, ut quod eis facilius videatur ad rem exsequendam, hoc faciant.

Dig. 42.1.15.11

Ulpianus 3 de off. cons.

Sed et si pecunia penes argentarios sit, aeque capi solet. hoc amplius et si penes alium quem, destinata tamen ei, qui condemnatus est, solet pignoris iure capi et converti in causam iudicati.

Dig. 42.1.15.12

Ulpianus 3 de off. cons.

Praeterea pecuniam quoque depositam nomine condemnati vel in arcam reclusam solent capere, ut iudicato satisfiat. hoc amplius et si pupillaris pecunia in arcam reposita sit ad praediorum comparationem, et citra permissum praetoris ab eo, qui exsequitur iudicatum, solet capi et in causam iudicati converti.

Dig. 42.1.16

Ulpianus 63 ad ed.

Sunt qui in id quod facere possunt conveniuntur, id est non deducto aere alieno. et quidem sunt hi fere, qui pro socio conveniuntur (socium autem omnium bonorum accipiendum est): item parens:

Dig. 42.1.17

Ulpianus 10 ad ed.

Patronus patrona liberique eorum et parentes: item maritus de dote in id quod facere potest convenitur:

Dig. 42.1.18

Ulpianus 66 ad ed.

Item miles, qui sub armata militia stipendia meruit, condemnatus eatenus, quatenus facere potest, cogitur solvere.

Dig. 42.1.19pr.

Paulus 6 ad plaut.

Inter eos, quibus ex eadem causa debetur, occupantis melior condicio est nec deducitur, quod eiusdem condicionis hominibus debetur, sicuti fit in de peculio actione: nam et hic occupantis melior est causa. sed et si cum patre patronove agetur, non est deducendum aes alienum, maxime quod eiusdem condicionis personis debebitur, ut liberis libertis.

Dig. 42.1.19.1

Paulus 6 ad plaut.

Is quoque, qui ex causa donationis convenitur, in quantum facere potest condemnatur et quidem is solus deducto aere alieno: et inter eos, quibus ex simili causa pecunia debetur, occupantis potior erit causa. immo nec totum quod habet extorquendum ei puto: sed et ipsius ratio habenda est, ne egeat.

Dig. 42.1.20

Modestinus 2 diff.

Non tantum dotis nomine maritus in quantum facere possit condemnatur, sed ex aliis quoque contractibus ab uxore iudicio conventus in quantum facere potest, condemnandus est ex divi pii constitutione. quod et in persona mulieris aequa lance servari aequitatis suggerit ratio.

Dig. 42.1.21

Paulus 6 ad plaut.

Sicut autem cum marito agitur, ita et cum socero, ut non ultra facultates damnetur. an si cum socero ex promissione dotis agatur, in id quod facere potest, damnandus sit? quod et id aequum esse videtur: sed alio iure utimur, ut et neratius scribit.

Dig. 42.1.22pr.

Pomponius 21 ad q. muc.

Sed hoc ita accipiendum est, si a socero dos ex promissione petatur soluto matrimonio: verum si manente matrimonio dos ab eo petatur, succurrendum utique est, ut ne maioris summae condemnetur, quam quantum facere potest.

Dig. 42.1.22.1

Pomponius 21 ad q. muc.

Quod autem de sociis dictum est, ut et hi in quantum facere possint condemnentur, causa cognita se facturum praetor edicit. causae cognitio autem in hoc erit, ut neganti se socium esse aut ex doli clausula obligato non succurratur.

Dig. 42.1.23

Paulus 6 ad plaut.

Si cum procuratore mariti de dote actum fuerit, si quidem vivo marito condemnatio fiet, in quantum facere potest fiet damnatio (nam et defensor mariti in id quod ille facere potest damnatur), mortuo vero marito in solidum.

Dig. 42.1.24pr.

Pomponius 4 ex plaut.

Et si fideiussor acceptus sit rei vel actionis, non proderit, si persona, pro qua fideiussit, in quantum facere potest, condemnanda est.

Dig. 42.1.24.1

Pomponius 4 ex plaut.

Si maritus solvendo non fuerit, licet ipsi marito prosit, quod facere non possit (id enim personae mariti praestatur), heredi eius hoc non prodest.

Dig. 42.1.25

Paulus 60 ad ed.

Sciendum est heredes earum personarum non in id, quod facere possunt, sed in integrum teneri.

Dig. 42.1.26

Ulpianus 77 ad ed.

Si convenerit inter litigatores, quid pronuntietur, non ab re erit iudicem huiusmodi sententiam proferre.

Dig. 42.1.27

Modestinus 1 resp.

Praeses provinciae usuras usurarum condemnavit contra leges et sacras constitutiones ideoque lucius titius contra prolatam sententiam iniustam praesidis appellavit: quaero, cum non secundum legem titius provocasset, an exigi possit pecunia secundum condemnationem. modestinus respondit, si sententiae certa quantitas continetur, nihil proponi, cur iudicati agi non possit.

Dig. 42.1.28

Modestinus 12 resp.

Duo iudices dati diversas sententias dederunt. modestinus respondit utramque sententiam in pendenti esse, donec competens iudex unam earum confirmaverit.

Dig. 42.1.29

Modestinus 7 pand.

Tempus, quod datur iudicato, etiam heredibus eius ceterisque qui in locum eius succedunt tribuitur (videlicet quod ex tempore deest), quia causae magis quam personae beneficium praestituitur.

Dig. 42.1.30

Pomponius 7 var. lect.

Cum ex causa donationis promissa pecunia est, si dubium sit, an ea res eo usque donatoris facultates exhaurire possit, ut vix quicquam ei in bonis relictum sit, actio in id quod facere possit danda est, ita ut et ipsi donatori aliquid sufficiens relinquatur. quod maxime inter liberos et parentes observandum est.

Dig. 42.1.31

Callistratus 2 cogn.

Debitoribus non tantum petentibus dies ad solvendum dandi sunt, sed et prorogandi, si res exigat: si qui tamen per contumaciam magis, quam quia non possint explicare pecuniam, differant solutionem, pignoribus captis compellendi sunt ad satisfaciendum ex forma, quam cassio proconsuli divus pius in haec verba rescripsit: " his, qui fatebuntur debere aut ex re iudicata necesse habebunt reddere, tempus ad solvendum detur, quod sufficere pro facultate cuiusque videbitur: eorum, qui intra diem vel ab initio datum vel ex ea causa postea prorogatum sibi non reddiderint, pignora capi eaque, si intra duos menses non solverint, vendantur: si quid ex pretiis supersit, reddatur ei, cuius pignora vendita erant".

Dig. 42.1.32

Callistratus 3 cogn.

Cum prolatis constitutionibus contra eas pronuntiat iudex, eo quod non existimat causam, de qua iudicat, per eas iuvari, non videtur contra constitutiones sententiam dedisse. ideoque ab eiusmodi sententia appellandum est: alioquin rei iudicatae stabitur.

Dig. 42.1.33

Callistratus 5 cogn.

Divus hadrianus, aditus per libellum a iulio tarentino et indicante eo falsis testimoniis, conspiratione adversariorum testibus pecunia corruptis, religionem iudicis circumventam esse, in integrum causam restituendam in haec verba rescripsit: " exemplum libelli dati mihi a iulio tarentino mitti tibi iussi: tu, si tibi probaverit conspiratione adversariorum et testibus pecunia corruptis oppressum se, et rem severe vindica et, si qua a iudice tam malo exemplo circumscripto iudicata sunt, in integrum restitue".

Dig. 42.1.34

Licinius 13 reg.

Si victum vel stratum inferri quis iudicato non patiatur, utilis in eum poenalis actio danda est vel, ut quidam putant, iniuriarum cum eo agi poterit.

Dig. 42.1.35

Papirius 2 const.

Imperatores antoninus et verus rescripserunt, quamquam sub obtentu novorum instrumentorum restitui negotia minime oporteat, tamen in negotio publico ex causa permittere se huiusmodi instrumentis uti.

Dig. 42.1.36

Paulus 17 ad ed.

Pomponius libro trigensimo septimo ad edictum scribit, si uni ex pluribus iudicibus de liberali causa cognoscenti de re non liqueat, ceteri autem consentiant, si is iuraverit sibi non liquere, eo quiescente ceteros, qui consentiant, sententiam proferre, quia, etsi dissentiret, plurium sententia optineret.

Dig. 42.1.37

Marcellus 3 Dig.

Tunc autem universi iudices intelleguntur iudicare, cum omnes adsunt.

Dig. 42.1.38pr.

Paulus 17 ad ed.

Inter pares numero iudices si dissonae sententiae proferantur, in liberalibus quidem causis, secundum quod a divo pio constitutum est, pro libertate statutum optinet, in aliis autem causis pro reo. quod et in iudiciis publicis optinere oportet.

Dig. 42.1.38.1

Paulus 17 ad ed.

Si diversis summis condemnent iudices, minimam spectandam esse iulianus scribit.

Dig. 42.1.39

Celsus 3 Dig.

Duo ex tribus iudicibus uno absente iudicare non possunt, quippe omnes iudicare iussi sunt. sed si adsit et contra sentiat, statur duorum sententiae: quid enim minus verum est omnes iudicasse?

Dig. 42.1.40

Papinianus 10 resp.

Commodis praemiorum, quae propter coronas sacras praestantur, condemnato placuit interdici et eam pecuniam iure pignoris in causam iudicati capi.

Dig. 42.1.41pr.

Paulus 14 quaest.

Nesennius apollinaris: si te donaturum mihi delegavero creditori meo, an in solidum conveniendus sis? et si in solidum conveniendus, an diversum putes, si non creditori meo, sed ei, cui donare volebam, te delegavero? et quid de eo, qui pro muliere, cui donare volebat, marito eius dotem promiserit? respondit: nulla creditor exceptione summoveretur, licet is, qui ei delegatus est, poterit uti adversus eum, cuius nomine promisit: cui similis est maritus, maxime si constante matrimonio petat. et sicut heres donatoris in solidum condemnatur et ipse fideiussor, quem in donando adhibuit, ita et ei, cui non donavit, in solidum condemnatur.

Dig. 42.1.41.1

Paulus 14 quaest.

Fundum quis donavit: si non restituat, ut quivis possessor damnandus est: si autem fundum restituit, fructuum nomine, si non eos consumpsit, in solidum condemnandus est: potuit enim non periclitari, si statim restituisset: si dolo desiit possidere, in litem iurabitur et tanti sequetur condemnatio.

Dig. 42.1.41.2

Paulus 14 quaest.

In solidum condemnatus donator actione iudicati, nisi in quantum facere potest, non tenetur beneficio constitutionis.

Dig. 42.1.42

Paulus 3 resp.

Paulus responsit rescindere quidem sententiam suam praecedentem praetorem non posse, reliqua autem, quae ad consequentiam quidem iam statutorum pertinent, priori tamen sententiae desunt, circa condemnandum reum vel absolvendum debere supplere, scilicet eodem die.

Dig. 42.1.43

Paulus 16 resp.

Paulus respondit eos, qui una sententia in unam quantitatem condemnati sunt, pro portione virili ex causa iudicati conveniri, et si ex sententia adversus tres dicta titius portionem sibi competentem exsolvit, ex persona ceterorum ex eadem sententia conveniri eum non posse.

Dig. 42.1.44

Scaevola 5 resp.

Ex contractu paterno actum est cum pupilla tutore auctore et condemnata est: postea tutores abstinuerunt eam bonis paternis et ita bona defuncti ad substitutum vel ad coheredes pervenerunt: quaeritur, an hi ex causa iudicati teneantur. rescripsit dandam in eos actionem, nisi culpa tutorum pupilla condemnata est.

Dig. 42.1.45pr.

Paulus 1 sent.

Acta apud se habita, si partes consentiant et iudex hoc permiserit, potest iubere ea die circumduci, nisi vel negotium vel lis terminata est.

Dig. 42.1.45.1

Paulus 1 sent.

De amplianda vel minuenda poena damnatorum post sententiam dictam sine principali auctoritate nihil est statuendum.

Dig. 42.1.45.2

Paulus 1 sent.

Contra indefensos minores tutorem vel curatorem non habentes nulla sententia proferenda est.

Dig. 42.1.46

Hermogenianus 2 iuris epit.

Actorum verba emendare tenore sententiae perseverante non est prohibitum.

Dig. 42.1.47pr.

Paulus 5 sent.

De unoquoque negotio praesentibus omnibus, quos causa contingit, iudicari oportet: aliter enim iudicatum tantum inter praesentes tenet.

Dig. 42.1.47.1

Paulus 5 sent.

Qui apud fiscum causam defendere saepius conventi neglexerint, rebus iudicatis subiciendi sunt. quod eo apparet, si saepe conventi praesentiam suam facere noluerint.

Dig. 42.1.48

Tryphonus 2 disp.

Decreta a praetoribus latine interponi debent.

Dig. 42.1.49

Paulus 2 manual.

Et exheredatum vel eum, qui se paterna hereditate abstinuit, nec ex ipsius contractu nisi id quod facere potest condemnandum. quemadmodum autem facere posse credatur, videndum est, utrum deducto omni aere alieno, ut is, qui ex donatione convenitur, an ut maritus et patronus nullo deducto aere alieno. et indubitati iuris est ad similitudinem viri et patroni eum detrahendum: pinguius enim donatori succurrere debemus quam ei, qui verum debitum persolvere compellitur,

Dig. 42.1.50

Tryphonus 12 disp.

Ne liberalitate sua inops fieri periclitetur.

Dig. 42.1.51pr.

Paulus 2 manual.

Si quis dolo fecerit, ut bona eius venirent, in solidum tenetur.

Dig. 42.1.51.1

Paulus 2 manual.

Si quis creditorem missum in possessionem rei servandae causa non admiserit, si venditor praestiterit creditori, quanti eius interfuerit, quaesitum est an debitor liberetur. et puto improbum esse eum, qui velit iterum consequi quod accepit.

Dig. 42.1.52

Tryphonus 12 disp.

Si rerum amotarum cum viro agatur, quamquam videatur ea quoque actio praecedentis societatis vitae causam habuisse, in solidum condemnari debet, quoniam ex male contractu et delicto oritur.

Dig. 42.1.53pr.

Hermogenianus 1 iuris epit.

Contumacia eorum, qui ius dicenti non obtemperant, litis damno coercetur.

Dig. 42.1.53.1

Hermogenianus 1 iuris epit.

Contumax est, qui tribus edictis propositis vel uno pro tribus, quod vulgo peremptorium appellatur. litteris evocatus praesentiam sui facere contemnet.

Dig. 42.1.53.2

Hermogenianus 1 iuris epit.

Poenam contumacis non patitur, quem adversa valetudo vel maioris causae occupatio defendit.

Dig. 42.1.53.3

Hermogenianus 1 iuris epit.

Contumaces non videntur, nisi qui, cum oboedire deberent, non obsequuntur, id est qui ad iurisdictionem eius, cui negant obsequi, pertinent.

Dig. 42.1.54pr.

Paulus 1 sent.

Contra pupillum indefensum eumque, qui rei publicae causa abest, vel minorem viginti quinque annis propositum peremptorium nihil momenti habet.

Dig. 42.1.54.1

Paulus 1 sent.

Is, qui ^ quid^ ad maius auditorium vocatus est, si litem inchoatam deseruit, contumax non videtur.

Dig. 42.1.55

Ulpianus 51 ad sab.

Iudex posteaquam semel sententiam dixit, postea iudex esse desinit: et hoc iure utimur, ut iudex, qui semel vel pluris vel minoris condemnavit, amplius corrigere sententiam suam non possit: semel enim male seu bene officio functus est.

Dig. 42.1.56

Ulpianus 27 ad ed.

Post rem iudicatam vel iureiurando decisam vel confessionem in iure factam nihil quaeritur post orationem divi marci, quia in iure confessi pro iudicatis habentur.

Dig. 42.1.57

Ulpianus 2 disp.

Quidam consulebat, an valeret sententia a minore viginti quinque annis iudice data. et aequissimum est tueri sententiam ab eo dictam, nisi minor decem et octo annis sit. certe si magistratum minor gerit, dicendum est iurisdictionem eius non improbari. et si forte ex consensu iudex minor datus sit scientibus his, qui in eum consentiebant, rectissime dicitur valere sententiam. proinde si minor praetor, si consul ius dixerit sententiamve protulerit, valebit: princeps enim, qui ei magistratum dedit, omnia gerere decrevit.

Dig. 42.1.58

Ulpianus 7 disp.

Si, cum nulla sententia praecessisset, capta sunt et distracta pignora, possunt revocari.

Dig. 42.1.59pr.

Ulpianus 4 de omn. trib.

In summa sufficiet, si expresserit iudex summam in sententia solvique iusserit vel praestari vel quo alio verbo hoc significaverit.

Dig. 42.1.59.1

Ulpianus 4 de omn. trib.

Amplius est rescriptum, etsi in sententia non sit summa adiecta, si tamen is qui petit summam expresserit et iudex ait: " solve, quod petitum est" vel " quantum petitum est", valere sententiam.

Dig. 42.1.59.2

Ulpianus 4 de omn. trib.

Qui sortis quidem condemnationem faciunt, de usuris autem ita pronuntiant " usurae si quae competunt" vel " quae competunt, ut praestentur", non recte pronuntiant: debent enim de usuris quoque cognoscere et certam facere condemnationem.

Dig. 42.1.59.3

Ulpianus 4 de omn. trib.

Si quis ex edicto peremptorio post mortem sit condemnatus, non valet sententia, quia morte rei peremptorium solvitur. ideoque, ut in re integra, de causa notio praestabitur et quod optimum patuerit, statuetur.

Dig. 42.1.60

Iulianus 5 Dig.

Quaesitum est, cum alter ex litigatoribus febricitans discessisset et iudex absente eo pronuntiasset, an iure videretur pronuntiasse. respondit: morbus sonticus etiam invitis litigatoribus ac iudice diem differt. sonticus autem existimandus est, qui cuiusque rei agendae impedimento est. litiganti porro quid magis impedimento est, quam motus corporis contra naturam, quem febrem appellant? igitur si rei iudicandae tempore alter ex litigatoribus febrem habuit, res non videtur iudicata. potest tamen dici esse aliquam et febrium differentiam: nam si quis sanus alias ac robustus tempore iudicandi levissima febre correptus fuerit, aut si quis tam veterem quartanam habeat, ut in ea omnibus negotiis superesse soleat, poterit dici morbum sonticum non habere.

Dig. 42.1.61

Iulianus 45 Dig.

In iudicati actione non prius ratio haberi debet eius, cui prior reus condemnatus fuerit.

Dig. 42.1.62

Alfenus 6 Dig. a paulo epit.

Cum quaerebatur, iudex, si perperam iudicasset, an posset eodem die iterum iudicare, respondit non posse.

Dig. 42.1.63

Macer 2 de appellat.

Saepe constitutum est res inter alios iudicatas aliis non praeiudicare. quod tamen quandam distinctionem habet: nam sententia inter alios dicta aliis quibusdam etiam scientibus obest, quibusdam vero, etiamsi contra ipsos iudicatum sit, nihil nocet. nam scientibus nihil praeiudicat, veluti si ex duobus heredibus debitoris alter condemnatur: nam alteri integra defensio est, etiamsi cum coherede suo agi scierit. item si ex duobus petitoribus alter victus adquieverit, alterius petitioni non praeiudicatur: idque ita rescriptum est. scientibus sententia, quae inter alios data est, obest, cum quis de ea re, cuius actio vel defensio primum sibi competit, sequentem agere patiatur, veluti si creditor experiri passus sit debitorem de proprietate pignoris, aut maritus socerum vel uxorem de proprietate rei in dote acceptae, aut possessor venditorem de proprietate rei emptae: et haec ita ex multis constitutionibus intellegenda sunt. cur autem his quidem scientia nocet, superioribus vero non nocet, illa ratio est, quod qui scit coheredem suum agere, prohibere eum, quo minus uti velit propria actione vel defensione utatur, non potest: is vero, qui priorem dominum defendere causam patitur, ideo propter scientiam praescriptione rei quamvis inter alios iudicatae summovetur, quia ex voluntate eius de iure, quod ex persona agentis habuit, iudicatum est. nam et si libertus meus me interveniente servus vel libertus alterius iudicetur, mihi praeiudicatur. diversa causa est, si fundum a te titius petierit, quem ego quoque, sed non ex persona titii ad me pertinere dico: nam quamvis contra titium me sciente iudicatum sit, nullum tamen praeiudicium patior, quia neque ex eo iure, quo titius victus est, vindico, neque potui titio intercedere, quo minus iure suo utatur, sicuti et de coherede supra diximus.

Dig. 42.1.64

Scaevola 25 Dig.

Negotiorum gestorum condemnatus appellavit et diu negotium tractum est: quaesitum est appellatione eius iniusta pronuntiata, an, quo tardius iudicatum sit, usurae pecuniae in condemnatum deductae medii temporis debeantur. respondit secundum ea quae proponentur dandam utilem actionem.

Dig. 42.2.0. De confessis.

Dig. 42.2.1

Paulus 56 ad ed.

Confessus pro iudicato est, qui quodammodo sua sententia damnatur.

Dig. 42.2.2

Ulpianus 58 ad ed.

Non fatetur qui errat, nisi ius ignoravit.

Dig. 42.2.3

Paulus 9 ad plaut.

Iulianus ait confessum certum se debere legatum omnimodo damnandum, etiam si in rerum natura non fuisset et si iam a natura recessit, ita tamen, ut in aestimationem eius damnetur: quia confessus pro iudicato habetur.

Dig. 42.2.4

Paulus 15 ad plaut.

Si is, cum quo lege aquilia agitur, confessus est servum occidisse, licet non occiderit, si tamen occisus sit homo, ex confesso tenetur.

Dig. 42.2.5

Ulpianus 27 ad ed.

Qui stichum debere se confessus est, sive mortuus iam stichus erat sive post litis contestationem decesserit, condemnandus est.

Dig. 42.2.6pr.

Ulpianus 5 de omn. trib.

Certum confessus pro iudicato erit, incertum non erit.

Dig. 42.2.6.1

Ulpianus 5 de omn. trib.

Si quis incertum confiteatur vel corpus sit confessus stichum vel fundum dare se oportere, urgueri debet, ut certum confiteatur: item eum, qui rem confessus est, ut certam quantitatem fateatur.

Dig. 42.2.6.2

Ulpianus 5 de omn. trib.

Sed et si fundum vindicem meum esse tuque confessus sis, perinde habeberis, atque si dominii mei fundum esse pronuntiatum esset. et si alia quacumque actione civili vel honoraria vel interdicto exhibitorio vel restitutorio vel prohibitorio dum quis convenitur, confiteatur, dici potest in his omnibus subsequi praetorem voluntatem orationis divi marci debere et omne omnino, quod quis confessus est, pro iudicato habere. dabitur igitur ex his actionibus, ex quibus dies datur ad restituendam rem, confesso tempus ad restitutionem et, si non restituatur, lis aestimabitur.

Dig. 42.2.6.3

Ulpianus 5 de omn. trib.

Si quis absente adversario confessus sit, videndum, numquid non debeat pro iudicato haberi, quia nec qui iurat de operis, obligatur nec soleat quis absenti condemnari. certe procuratorem, tutorem curatoremve praesentem esse sufficit.

Dig. 42.2.6.4

Ulpianus 5 de omn. trib.

Sed an et ipsos procuratores vel tutores vel curatores fateri sufficiat, videamus: et non puto sufficere.

Dig. 42.2.6.5

Ulpianus 5 de omn. trib.

In pupillo tutoris auctoritatem exigimus.

Dig. 42.2.6.6

Ulpianus 5 de omn. trib.

Minorem a confessione sua restituemus.

Dig. 42.2.6.7

Ulpianus 5 de omn. trib.

Confessi utique post confessionem tempora quasi ex causa iudicati habebunt.

Dig. 42.2.7

Africanus 5 quaest.

Cum fideicommissum peteretur, heres confessus est debere: arbiter ad restituendum datus comperit nihil deberi: quaesitum est, an possit absolvere. respondi posse interesse, qua ex causa nihil debeatur. nam si ob id, quod nullum fideicommissum fuerit, non debere eum absolvere: si vero quia testator forte solvendo non erat aut quod heres omne solutum esse apud praetorem dixerat et, cum controversia et computatio difficilior esset, arbiter datus fuerit, salvo officio eum absoluturum: has enim partes eius esse, ut, si in computatione nihil inveniatur, possit absolvere. sed et ex superiore casu ad praetorem remittere debet, ut absolvatur.

Dig. 42.2.8

Paulus 4 ad sab.

Non omnimodo confessus condemnari debet rei nomine, quae, an in rerum natura esset, incertum sit.

Dig. 42.3.0. De cessione bonorum.

Dig. 42.3.1

Ulpianus 17 ad ed.

Creditori, qui ob restitutionem aedificiorum crediderit, privilegium exigendi datur.

Dig. 42.3.2

Ulpianus 21 ad ed.

In personalibus actionibus qui postea quidem contraxerunt, verum ut pecunia eorum ad priores creditores perveniat, in locum eorum succedunt.

Dig. 42.3.3

Ulpianus 58 ad ed.

Is, qui bonis cessit, ante rerum venditionem utique bonis suis non caret: quare si paratus fuerit se defendere, bona eius non veneunt.

Dig. 42.3.4pr.

Ulpianus 59 ad ed.

Is qui bonis cessit si quid postea adquisierit, in quantum facere potest convenitur.

Dig. 42.3.4.1

Ulpianus 59 ad ed.

Sabinus et cassius putabant eum qui bonis cessit ne quidem ab aliis, quibus debet, posse inquietari.

Dig. 42.3.5

Paulus 56 ad ed.

Quem paenitet bonis cessisse, potest defendendo se consequi, ne bona eius veneant.

Dig. 42.3.6

Ulpianus 64 ad ed.

Qui bonis suis cessit, si modicum aliquid post bona sua vendita adquisivit, iterum bona eius non veneunt. unde ergo modum hunc aestimabimus, utrum ex quantitate eius quod adquisitum est an vero ex qualitate? et putem ex quantitate id aestimandum esse eius quod quaesiit, dummodo illud sciamus, si quid misericordiae causa ei fuerit relictum, puta menstruum vel annuum alimentorum nomine, non oportere propter hoc bona eius iterato venundari: nec enim fraudandus est alimentis cottidianis. idem et si usus fructus ei sit concessus vel legatus, ex quo tantum percipitur, quantum ei alimentorum nomine satis est.

Dig. 42.3.7

Modestinus 2 pand.

Si debitoris bona venierint, postulantibus creditoribus permittitur rursum eiusdem debitoris bona distrahi, donec suum consequantur, si tales tamen facultates adquisitae sunt debitori, quibus praetor moveri possit.

Dig. 42.3.8

Ulpianus 26 ad ed.

Qui cedit bonis, antequam debitum adgnoscat, condemnetur vel in ius confiteatur, audiri non debet.

Dig. 42.3.9

Marcianus 15 inst.

Bonis cedi non tantum in iure, sed etiam extra ius potest. et sufficit et per nuntium vel per epistulam id declarari.

Dig. 42.4.0. Quibus ex causis in possessionem eatur.

Dig. 42.4.1

Ulpianus 12 ad ed.

Tres fere causae sunt, ex quibus in possessionem mitti solet: rei servandae causa, item legatorum servandorum gratia et ventris nomine. damni enim infecti nomine si non caveatur, non in universorum nomine fit missio, sed rei tantum, de qua damnum timetur.

Dig. 42.4.2pr.

Ulpianus 5 ad ed.

Praetor ait: " in bona eius, qui iudicio sistendi causa fideiussorem dedit, si neque potestatem sui faciet neque defenderetur, iri iubebo".

Dig. 42.4.2.1

Ulpianus 5 ad ed.

Potestatem autem sui non facit, qui id agit, ne adversarius eius copiam sui habeat: ergo latitantis bona iubet possideri.

Dig. 42.4.2.2

Ulpianus 5 ad ed.

Quid si non latitet, sed absens non defendatur? nonne videtur potestatem sui non facere?

Dig. 42.4.2.3

Ulpianus 5 ad ed.

Defendi autem videtur, qui per absentiam suam in nullo deteriorem causam adversarii faciat.

Dig. 42.4.2.4

Ulpianus 5 ad ed.

Haec verba " defenderetur" paratatikws scripta sunt, ut neque sufficiat umquam defendisse, si non duret defensio, neque obsit, si nunc offeratur.

Dig. 42.4.3pr.

Ulpianus 59 ad ed.

Apud iulianum quaeritur, si communem rem cum titio pater pupilli habuerit et communi dividundo iudicio pupillus non defendatur nihilque erit, cuius nomine propter personam patris condemnatio fieri debeat: utrum venire bona patris oporteat an vero rei servandae causa possideantur. et ait iulianus, si quidem pater aliquos fructus percepit aut fecerit rem deteriorem, bona eius venire possunt: si vero nihil sit, propter quod patris bona veneant, pupilli possideri. Marcellus autem notat perquam iniquum esse eum, qui nihil cum pupillo contraxit, expectare eius pubertatem. quae sententia habet rationem: ideoque cum contractus ex persona patris descendat, dicendum erit non esse exspectandam pupilli pubertatem.

Dig. 42.4.3.1

Ulpianus 59 ad ed.

Contractum cum pupillo potest dici et si cum servo eius contractum sit: competit enim adversus eum de peculio actio. unde probandum est ex omnibus causis, ex quibus adversus pupillum actio datur, hoc idem servandum. et facilius erit hoc probandum in servo, qui in rem domini vertit aut iussu eius aut si institoria cum eo agi possit.

Dig. 42.4.3.2

Ulpianus 59 ad ed.

Ego puto: et si cum tutore eius contractum est, ex qua causa actio in pupillum datur, magis est, ut edicto locus sit, quasi cum eo contractum sit.

Dig. 42.4.3.3

Ulpianus 59 ad ed.

Si pupillus heres extiterit alicui exque ea causa legata debeat, videndum est, an huic edicto locus sit: magisque est, ut Marcellus scribit, etiam pupilli posse bona possideri esseque in arbitrio hereditariorum creditorum, quid potius eligant: etenim videtur impubes contrahere, cum adiit hereditatem.

Dig. 42.4.4

Paulus 58 ad ed.

Sed et is, qui miscuit se, contrahere videtur.

Dig. 42.4.5pr.

Ulpianus 59 ad ed.

Haec autem locum habent, quotiens pupillus non defendatur a quocumque, sive a tutore vel curatore, sive habeat tutorem pupillus sive non habeat: ceterum si existat aliquis, qui defendere sit paratus, cessabit rei servandae causa possessio.

Dig. 42.4.5.1

Ulpianus 59 ad ed.

Non defendi pupillum constare debet liquereque praetori, ut sic permittat bonorum possessionem. hoc autem constare debet sic: evocandi sunt ad praetorem tutores pupilli, ut defendant: si autem non habet tutores, requirendi cognati vel adfines et si qui alii forte sunt, quos verisimile est defensionem pupilli pupillae non omissuros vel propter necessitudinem vel propter caritatem vel qua alia ratione: liberti etiam si qui sunt idonei, evocandi exquirendaque defensio. si aut negent se defendere aut non negent, sed taceant, tunc praetor possessionem dabit, tamdiu scilicet, quoad non defendatur: si defendi coeperit pupillus vel pupilla, desinet possideri. idem est et in furioso.

Dig. 42.4.5.2

Ulpianus 59 ad ed.

Ait praetor: " si is pupillus in suam tutelam venerit eave pupilla viripotens fuerit et recte defendetur: eos, qui bona possident, de possessione decedere iubebo".

Dig. 42.4.5.3

Ulpianus 59 ad ed.

Recte defendi quid sit, videamus, utrum tantum copiam sui facere et ad suscipiendum iudicium paratum esse an vero et satisdare omnimodo. et quidem non solum ipsis se defendere volentibus hoc edictum scriptum est, sed in rem: et " recte defendetur" hoc est vel a se vel ab alio quocumque. sed si alius defendat, erit necessaria satisdatio, si ipse, non puto necessariam satisdationem. ergo oblata defensione deici poterit interdicto reddito.

Dig. 42.4.6pr.

Paulus 57 ad ed.

In possessionem mitti solet creditor et si sub condicione ei pecunia promissa sit.

Dig. 42.4.6.1

Paulus 57 ad ed.

Cum dicitur: " et eius, cuius bona possessa sunt a creditoribus, veneant, praeterquam pupilli et eius, qui rei publicae causa sine dolo malo afuit", intellegimus eius, qui dolo malo afuerit, posse venire.

Dig. 42.4.6.2

Paulus 57 ad ed.

Si ab hostibus quis captus sit, creditores eius in possessionem mittendi sunt, ut tamen non statim bonorum venditio permittatur, sed interim bonis curator detur.

Dig. 42.4.7pr.

Ulpianus 59 ad ed.

Fulcinius existimat creditores rei servandae causa missos in possessionem ex his rebus ali non debere.

Dig. 42.4.7.1

Ulpianus 59 ad ed.

Praetor ait: " qui fraudationis causa latitabit, si boni viri arbitratu non defendetur, eius bona possideri vendique iubebo".

Dig. 42.4.7.2

Ulpianus 59 ad ed.

Cum hoc edictum locum habeat, non sufficit latitare, sed et necesse est fraudationis causa id fieri: neque quod fraudationis causa sine latitatione fit, satis est ad possessionem et venditionem, sed oportet fraudationis causa latitare. et est frequentissima haec causa possessionis: nam in usu latitantium bona possidentur.

Dig. 42.4.7.3

Ulpianus 59 ad ed.

Si quis possederit bona alicuius quasi latitantis, qui non latitabat, et vendiderit, consequens erit dicere venditionem bonorum secutam nullius momenti esse.

Dig. 42.4.7.4

Ulpianus 59 ad ed.

Quid sit autem latitare, videamus. latitare est non, ut cicero definit, turpis occultatio sui: potest enim quis latitare non turpi de causa, veluti qui tyranni crudelitatem timet aut vim hostium aut domesticas seditiones.

Dig. 42.4.7.5

Ulpianus 59 ad ed.

Sed is, qui fraudationis causa latitet, non tamen propter creditores, etsi haec latitatio creditores fraudet, in ea tamen erit causa, ne hinc possideri bona eius possint, quia non hoc animo latitet, ut fraudet creditores: animus enim latitantis quaeritur, quo animo latitet, ut fraudet creditores an alia ex causa.

Dig. 42.4.7.6

Ulpianus 59 ad ed.

Quid ergo, si duas causas latitandi habuit vel plures, inter quas etiam fraudandi creditores? an venditio recte procedat? et puto probandum, si plures causae sint latitationis, inter quas est et fraudationis causa, nocere debere posseque hinc bona vendi.

Dig. 42.4.7.7

Ulpianus 59 ad ed.

Quid si adversus quosdam occultare se consilium non est, adversus quosdam est, quid dicemus? et rectissime pomponius scribit non adversus omnes latitationem exigendam, sed adversus eum, quem quis decipere et fraudare latitatione destinat. utrum ergo omnes bona eius vendere possunt, quia latitat, hoc est etiam hi, adversus quos non latitat, quia verum est eum latitare, an vero is solus, adversus quem latitat? et quidem verum est eum latitare et fraudationis causa latitare, etsi non adversus me latitet: sed illud spectandum pomponius putat, an adversus me, eumque solum posse hinc venditionem impetrare, adversus quem latitetur.

Dig. 42.4.7.8

Ulpianus 59 ad ed.

Latitare autem est cum tractu aliquo latere, quemadmodum factitare frequenter facere.

Dig. 42.4.7.9

Ulpianus 59 ad ed.

Adeo autem latitatio animum et affectum occultantis se desiderat, ut recte dictum sit furiosum hinc venditionem pati non posse, quia non se occultat, qui suus non est.

Dig. 42.4.7.10

Ulpianus 59 ad ed.

Plane si non defendatur furiosus, curatorem ei dandum, aut bona eius ut possideantur, nominatim permittendum est. labeo autem scribit, si non inveniatur curator vel defensor furiosi, sed et si curator datus eum non defendat, tunc removendum eum et oportere praetorem dare curatorem aliquem ex creditoribus, ut non amplius, quam necesse est, ex bonis furiosi veneat: eaque servanda labeo ait, quae solent servari, cum venter in possessionem mittitur.

Dig. 42.4.7.11

Ulpianus 59 ad ed.

Plane interdum bona eius causa cognita vendenda erunt, si urgueat aes alienum et dilatio damnum sit allatura creditoribus, ita autem vendenda, ut quod supersit, furioso detur, quia dominis eius status et habitus a pupilli condicione non multum abhorret: quod quidem non est sine ratione.

Dig. 42.4.7.12

Ulpianus 59 ad ed.

Idemque et in prodigo dicendum est ceterisque, qui curatorem ope iuvantur: nec enim quisquam proprie latitare eos dixerit.

Dig. 42.4.7.13

Ulpianus 59 ad ed.

Illud sciendum est posse quem in eadem civitate esse et latitare, et in alia civitate et non latitare. etenim qui in alia civitate sit copiamque sui faciat in publico ibique pareat, an latitet, videamus. et hodie hoc iure utimur, ut sive quis eodem loci agat sive peregre agat, si tamen occursum creditoris evitet, latitare videatur. denique eum quoque, qui in foro eodem agat, si circa columnas aut stationes se occultet, videri latitare veteres responderunt, et posse quem adversus alterum latitare, adversus alterum non. constat autem, ut ipse eius possit bona vendere, adversus quem latitat.

Dig. 42.4.7.14

Ulpianus 59 ad ed.

Si in diem vel sub condicione debitor latitet, antequam dies vel condicio veniat, non possunt bona eius venire: quid enim interest, debitor quis non sit an nondum conveniri possit? nam et si non sit debitor, idem dicemus. idem erit dicendum et si quis habeat quidem actionem, sed talem, quae per exceptionem repellitur.

Dig. 42.4.7.15

Ulpianus 59 ad ed.

Si quis actione de peculio filii vel servi nomine conveniri possit, si latitet, eo iure utimur, ut possint bona eius possideri et venire, tametsi nihil fuerit in peculio, quia esse potest et rei iudicatae tempus spectamus, utrum sit an non sit, et quod teneat actio, etiam si nihil in peculio fuerit.

Dig. 42.4.7.16

Ulpianus 59 ad ed.

Item videamus, si quis adversus in rem actionem latitet, an bona eius possideri venumque dari possint. extat neratii sententia existimantis bona esse vendenda: et hoc rescripto hadriani continetur, quo iure utimur.

Dig. 42.4.7.17

Ulpianus 59 ad ed.

Celsus autem sexto respondit, si fundum, quem petere volo, titius possideat neque absens defendatur, commodius se existimare in fundi possessionem mittendum quam bona eius possideri. hoc adnotandum est celsum consultum non de latitante, sed de absente.

Dig. 42.4.7.18

Ulpianus 59 ad ed.

Idem celsus existimat, si is, a quo hereditatem petere velim, latitat, commodissime fieri posse, ut in possessionem mittar rerum, quas pro herede vel pro possessore possidet: sed si dolo fecit, quo minus possideret, bona eius possidenda et vendenda sunt.

Dig. 42.4.7.19

Ulpianus 59 ad ed.

Divus quoque pius in persona eius, qui hereditatem possidens copiam sui non faciebat, rescripsit in possessionem rerum hereditariarum adversarium inducendum: in quo rescripto et fructum percipere iussit eum, qui per nimiam contumaciam possessoris hereditatis, ut lucro eius cedat, in possessionem inductus est rerum hereditariarum.

Dig. 42.4.8

Ulpianus 60 ad ed.

Si diu incertum sit, heres extaturus nec ne sit, causa cognita permitti oportebit bona rei servandae causa possidere, et, si ita res urgueat vel condicio bonorum, etiam hoc erit concedendum, ut curator constituatur.

Dig. 42.4.9pr.

Paulus 57 ad ed.

Unus ex creditoribus.

Dig. 42.4.9.1

Paulus 57 ad ed.

Si alter ex heredibus intra tempora sibi praestituta deliberet adire hereditatem, alter vero neget se aditurum, videndum est, quid creditoribus agendum sit. et placet interim eos in possessionem mittendos custodiae causa, donec appareat, is qui deliberat utrum adgnoscat partem suam an non adgnoscat.

Dig. 42.4.10

Ulpianus 81 ad ed.

Si pupillus praesens sit, tutorem autem non habeat, pro absente habendus est.

Dig. 42.4.11

Paulus 8 ad plaut.

Si filio familias legatum vel fideicommissum sub condicione relictum sit, dicendum est tam ipsum quam patrem in possessionem mittendos esse, quia ambo spem commodi habent.

Dig. 42.4.12

Pomponius 23 ad q. muc.

Cum legatorum vel fideicommissi servandi causa, vel quia damni infecti nobis non caveatur, bona possidere praetor permittit, vel ventris nomine in possessionem nos mittit, non possidemus, sed magis custodiam rerum et observationem nobis concedit.

Dig. 42.4.13

Papinianus 14 resp.

Ad cognitionem imperatorum a praeside provinciae remissus etsi in ceteris litibus romae defendere se non cogitur, tamen in provincia defendendus est: nam et exilio temporario puniti, si defensor non existat, bona veneunt.

Dig. 42.4.14pr.

Paulus 2 quaest.

Si quis creditorem prohibuerit bona debitoris ingredi, datur in eum actio, quanti ea res sit.

Dig. 42.4.14.1

Paulus 2 quaest.

Sed et si quis legatorum servandorum causa missus in possessionem admissus non est, si legati condicio pendeat, licet possit deficere, aestimatur tamen id quod legatum est, quia interest eius cautum habere.

Dig. 42.4.14.2

Paulus 2 quaest.

Creditor autem condicionalis in possessionem non mittitur, quia is mittitur, qui potest bona ex edicto vendere.

Dig. 42.4.15

Ulpianus 6 fideic.

Is, qui rem permutatam accepit, emptori similis est: item is, qui rem in solutum accepit vel qui lite aestimata retinuit vel ex causa stipulationis non ob liberalitatem est consecutus.

Dig. 42.5.0. De rebus auctoritate iudicis possidendis seu vendundis.

Dig. 42.5.1

Gaius 23 ad ed. provinc.

Venire bona ibi oportet, ubi quisque defendi debet, id est.

Dig. 42.5.2

Paulus 54 ad ed.

Ubi domicilium habet,

Dig. 42.5.3

Gaius 23 ad ed. provinc.

Aut ubi quisque contraxerit. contractum autem non utique eo loco intellegitur, quo negotium gestum sit, sed quo solvenda est pecunia.

Dig. 42.5.4

Paulus 57 ad ed.

Si servus sub condicione heres institutus sit aut dubium sit, an is heres liberque futurus sit, non est iniquum postulantibus creditoribus ita decerni, ut, si ante certum tempus is heres non extiterit, perinde omnia observentur, ac si is heres ita institutus non esset: quod plerumque accideret, si sub condicione dandae alicui pecuniae heres institutus sit nec dies adpositus sit. sed hoc quantum ad bona ita observandum: ceterum libertas ei quandoque competet et a praetore conservanda est, etiamsi certum sit neque heredem neque bonorum possessorem futurum. si quis tamen heredem se spondendo vel actiones patiendo defunctum defendat, bona defuncti venire non poterunt.

Dig. 42.5.5

Ulpianus 60 ad ed.

Si minor viginti quinque annis, qui habet curatores, a curatoribus non defendatur nec alium defensorem inveniat, bonorum venditionem patitur, etsi non latitet, licet non fraudationis causa latitare videtur, qui sui non est idoneus defensor.

Dig. 42.5.6pr.

Paulus 58 ad ed.

Si non expedierit pupillo hereditatem parentis retinere, praetor bona defuncti venire permittit, ut quod superaverit pupillo restituatur.

Dig. 42.5.6.1

Paulus 58 ad ed.

Si pupillus, antequam abstineret, aliquid gesserit, servandum est, utique si bona fide gessit.

Dig. 42.5.6.2

Paulus 58 ad ed.

Quid ergo, si quibusdam creditoribus solvit, deinde bona venierint? si quaeritur, an repetitio sit, ex causa id statuendum iulianus ait, ne alterius aut neglegentia aut cupiditas huic, qui diligens fuit, noceat. quod si utroque instante tibi gratificatus tutor solvit, aequum esse aut prius eandem portionem mihi quaeri aut communicandum quod accepisti: et hoc iulianus ait. apparet autem loqui eum, si ex bonis paternis solutum sit. quid ergo, si aliunde pupillus solverit? reddi ei debebit nec ne? et utrum a creditore an ex hereditate? scaevola noster ait, si aliquid sit in bonis, deducendum ex hereditate solidum exemplo eius, qui gessit negotia: sed si nihil sit in bonis, non esse iniquum adversus creditorem dandam repetitionem quasi indebiti soluti.

Dig. 42.5.7

Gaius 23 ad ed. provinc.

Hereditarium aes alienum intellegitur etiam id, de quo cum defuncto agi non potuit, veluti quod is cum moreretur daturum se promisisset, item quod is, qui pro defuncto fideiussit, post mortem eius solvit.

Dig. 42.5.8pr.

Ulpianus 61 ad ed.

In venditionem bonorum etiam usus fructus venit, quia appellatione domini fructuarius quoque continetur.

Dig. 42.5.8.1

Ulpianus 61 ad ed.

Si quis fructus ex praedio debitoris capi poterit, hunc creditor, qui in possessionem praedii missus est, vendere vel locare debet: sed hoc ita demum, si ante neque venierit neque locatus erit. nam si iam a debitore vel locatus erat vel venierat, servabit praetor venditionem et locationem a debitore factam, etsi minoris distractum est vel locatum, nisi si in fraudem creditorum hoc fiat: tunc enim praetor arbitrium dat creditoribus, ut ex integro locationem vel venditionem faciant.

Dig. 42.5.8.2

Ulpianus 61 ad ed.

De ceterarum quoque rerum fructibus idem erit dicendum, ut, si qui locari possint, locentur, puta mercedes servorum vel iumentorum ceterorumque, quae possunt locari.

Dig. 42.5.8.3

Ulpianus 61 ad ed.

De tempore locationis nihil praetor locutus est et ideo liberum arbitrium creditoribus datum videtur, quanto tempore locent, quemadmodum illud est in arbitrio eorum, vendant vel locent, scilicet sine dolo malo: ex culpa autem rei non fiunt.

Dig. 42.5.8.4

Ulpianus 61 ad ed.

Si unus sit, qui possideat bona, expeditum erit de locatione: quod si non unus, sed plures sint, quis eorum debeat locare vel vendere, quaeritur. et si quidem convenit inter eos, expeditissimum est: nam et omnes possunt locare et uni hoc negotium dare: si vero non convenit, tunc dicendum est praetorem causa cognita eligere debere, qui locet vel vendat.

Dig. 42.5.9pr.

Ulpianus 62 ad ed.

Praetor ait: " si quis, cum in possessione bonorum esset, quod eo nomine fructus ceperit, ei, ad quem ea res pertinet, non restituat: sive, quod impensae sine dolo malo fecerit, ei non praestabitur: sive dolo malo eius deterior causa possessionis facta esse dicetur, de ea re iudicium in factum dabo".

Dig. 42.5.9.1

Ulpianus 62 ad ed.

Quod de fructibus ait, etiam de ceteris, quaecumque ex re debitoris pervenerunt, intellegendum est. et sane debuit hoc ita esse: quid enim, si ex compromisso vel alio casu poenam consecutus est? nam eam poenam, quam consecutus est, praestare debet.

Dig. 42.5.9.2

Ulpianus 62 ad ed.

Quod ait praetor " sive quod impensae nomine sine dolo fecit, ei non praestabitur", hoc eo spectat, ut, si quid ipse erogavit creditor, si modo sine dolo malo erogavit, hoc ei praestetur: sufficit igitur sine dolo erogasse, etiamsi nihil profuit erogatio eius rei debitori.

Dig. 42.5.9.3

Ulpianus 62 ad ed.

His verbis " ad quem ea res pertinet" etiam curator bonis distrahendis datus continebitur et ipse debitor, si contigerit, ne bona eius veneant. et ipsi itaque creditori adversus hos dabitur actio, quos enumeravimus, sive quid in fructibus percipiendis erogavit sive in familia alenda curandave praediis fulciendis vel reficiendis vel damno infecto promittendo vel servo noxali iudicio defenso, si modo non magis eum expedit dedere quam retinere: quod si dedere expedit, consequens erit repetere eum non debere.

Dig. 42.5.9.4

Ulpianus 62 ad ed.

Generaliter etiam dicendum est, quidquid impendit in rem, si modo sine dolo malo impendit, repetere eum posse: nam negotiorum gestorum agere non magis potest quam si socius commune aedificium fulsit, quia hic quoque creditor commune, non alienum negotium gessisse videtur.

Dig. 42.5.9.5

Ulpianus 62 ad ed.

Est praeterea quaesitum, si deteriora praedia facta fuerint sine dolo malo creditoris vel iura eorum amissa vel aedificia diruta vel exusta, item familiae pecorumque acta cura non sit aut possessio alii tradita, sine dolo tamen malo, an teneatur. et apparet eum non teneri, quia dolo malo caret, eritque melior eius condicio quam in pignore creditoris, qui non tantum dolum malum, verum culpam quoque debet. eadem causa est curatoris bonorum: nam et is tenetur ut creditores.

Dig. 42.5.9.6

Ulpianus 62 ad ed.

In eum quoque, qui neque locavit fructum praedii neque vendidit, in factum actionem dat praetor et in hoc condemnabitur, quanto minus propter hoc perceptum est, quia neque vendidit neque locavit. ceterum si tantum perceptum est, quantum perciperetur, si locatus vel distractus fructus esset, nihil ei imputabitur. praestat autem per id tantum temporis, quo in possessionem fuit vel ipse vel iussu eius alius, quoad inde de possessione discessum est: nam neque hoc imputatur creditori, cur in possessionem non venerit, neque illud, cur de possessione decesserit, cum voluntarium et suum potius negotium creditor gerat. aestimatio autem fit, quantum interest eius qui experitur.

Dig. 42.5.9.7

Ulpianus 62 ad ed.

Hae actiones neque temporariae sunt et tam heredibus quam in heredes dabuntur ceterosque successores.

Dig. 42.5.9.8

Ulpianus 62 ad ed.

Si possessionis causa deterior facta esse dicetur dolo eius, qui in possessionem missus sit, actio in eum ex dolo datur, quae neque post annum neque in heredes ceterosque successores dabitur, cum ex delicto oriatur poenaeque nomine concipiatur,

Dig. 42.5.10

Paulus 59 ad ed.

Nisi quatenus ad eum pervenit.

Dig. 42.5.11

Ulpianus 62 ad ed.

Heredi autem dabitur, quia et rei continet persecutionem.

Dig. 42.5.12pr.

Paulus 59 ad ed.

Cum unus ex creditoribus postulat in bona debitoris se mitti, quaeritur, utrum solus is qui petit possidere potest, an, cum unus petit et praetor permisit, omnibus creditoribus aditus sit. et commodius dicitur, cum praetor permiserit, non tam personae solius petentis, quam creditoribus et in rem permissum videri: quod et labeo putat. nec videbitur libera persona adquirere alii, quia nec sibi quicquam adquirit, cui praetor permittit, sed aliquid ex ordine facit: et ideo ceteris quoque prodest. plane si is postulaverit, qui creditor non est, minime dicendum est vel eum, qui creditor est, possidere posse, quia nihil egit talis postulatio: aliter atque si creditor, cui permissum est possidere, postea recepit debitum suum: ceteri enim poterunt peragere bonorum venditionem.

Dig. 42.5.12.1

Paulus 59 ad ed.

Is, qui possidere iubetur, eo loco iussus videtur, cuius cura ad iubentem pertinet.

Dig. 42.5.12.2

Paulus 59 ad ed.

Si propter naturam rei (veluti si praedium inundatum sit) aut propter latronum potentiam non potest possidere, recte dicitur non esse quod possideatur.

Dig. 42.5.13

Gaius 23 ad ed. provinc.

Quamvis possessa non sint bona, quia forte nihil fuerit, quod possideatur, aut sine controversia non possideatur creditor qui in possessionem missus est, perinde habetur, ac si etiam possessa bona fuissent.

Dig. 42.5.14pr.

Paulus 59 ad ed.

Creditore in possessionem rerum debitoris misso curator constitui debet, si quaedam actiones periturae sunt.

Dig. 42.5.14.1

Paulus 59 ad ed.

Datur in creditorem actio, qui in possessionem missus est, de eo quod ex bonis debitoris ad eum pervenit: si nondum sit aliquid consecutus, actiones suas praestabit. datur autem in factum actio adversus eum et omne, quod in actionem negotiorum gestorum veniret, si posset agi, restituendum a creditore.

Dig. 42.5.15pr.

Ulpianus 62 ad ed.

Cum plures creditores in possessionem rerum debitoris mittantur, ne corrumpantur rationes, uni hoc negotium a creditoribus esse dandum, quem maior pars creditorum elegerit. ego puto creditoribus instrumentorum etiam anagrafyn facere, non ut describant ipsa corpora instrumentorum, sed quot sint, de qua re sint, subnotent sibi et quasi inventarium faciant: quod etiam universorum facere eis erit permittendum. praeterea nonnumquam praetor causa cognita etiam describere aliquid ex instrumentis creditoribus debebit permittere, si qua idonea causa interveniat.

Dig. 42.5.15.1

Ulpianus 62 ad ed.

Utrum semel an etiam saepius recognitio et dispunctio concedenda sit creditoribus, videamus. et ait labeo amplius quam semel non esse concedendam: si quis tamen, inquit, iuraverit non calumniae causa se postulare neque habere quae dispunxerit, iterum ei faciendam potestatem ait nec amplius quam bis.

Dig. 42.5.16

Gaius 24 ad ed. provinc.

Cum bona veneunt debitoris, in comparatione extranei et eius, qui creditor cognatusve sit, potior habetur creditor cognatusve, magis tamen creditor quam cognatus, et inter creditores potior is, cui maior pecunia debebitur.

Dig. 42.5.17pr.

Ulpianus 63 ad ed.

Quaesitum est, utrum ita demum privilegium habet funeraria, si is cuius bona veneunt funeratus sit, an etiam si proponas alium esse funeratum. et hoc iure utimur, ut quicumque sit funeratus, id est sive is, cuius de bonis agitur, sive quid is debuit, quod reddere eum, si viveret, funeraria actione cogi oporteret, privilegio locus sit parvique referre dicamus, qua actione hic sumptus repetatur, funeraria an familiae erciscundae an qua alia, dummodo sumptus funeris causa factus sit. quacumque igitur actione ob funeris sumptum utatur, etiam funerariam ei competere. quare si in stipulatum funeris impensa deducta est, dicendum est locum esse privilegio, si modo quis non abiciendi privilegii causa stipulatus est.

Dig. 42.5.17.1

Ulpianus 63 ad ed.

Si sponsa dedit dotem et nuptiis renuntiatum est, tametsi ipsa dotem condicit, tamen aequum est hanc ad privilegium admitti, licet nullum matrimonium contractum est: idem puto dicendum etiam, si minor duodecim annis in domum quasi uxor deducta sit, licet nondum uxor sit:

Dig. 42.5.18

Paulus 60 ad ed.

(interest enim rei publicae et hanc solidum consequi, ut aetate permittente nubere possit)

Dig. 42.5.19pr.

Ulpianus 63 ad ed.

Dabimusque ex his causis ipsi mulieri privilegium.

Dig. 42.5.19.1

Ulpianus 63 ad ed.

Si quis, cum tutor non esset, pro tutore negotia gessit, privilegio locum esse manifestum est: nec interest, ipse debeat qui gessit sive heres eius ceterique successores. ipse autem pupillus habet privilegium, sed eius successores non habent. sed aequissimum erit ceteros quoque, quibus curatores quasi debilibus vel prodigis dantur,

Dig. 42.5.20

Paulus 60 ad ed.

Vel surdo muto,

Dig. 42.5.21

Gaius 24 ad ed. provinc.

Vel fatuo.

Dig. 42.5.22pr.

Ulpianus 63 ad ed.

Idem privilegium competere.

Dig. 42.5.22.1

Ulpianus 63 ad ed.

Sed si bonis curator datus sit vel absentis vel ab hostibus capti vel dum deliberant scripti heredes de adeunda hereditate, non oportebit privilegium dari: non enim in eadem causa est.

Dig. 42.5.23

Paulus 60 ad ed.

Si negotium impuberis aliquis ex officio amicitiae gesserit, debet bonis eius venditis privilegium pupillo conservari: et ita accepi.

Dig. 42.5.24pr.

Ulpianus 63 ad ed.

Si ventri curator datus sit nec partus editus, privilegium cessabit.

Dig. 42.5.24.1

Ulpianus 63 ad ed.

Divus marcus ita edixit: " creditor, qui ob restitutionem aedificiorum crediderit, in pecunia, quae credita erit, privilegium exigendi habebit". quod ad eum quoque pertinet, qui redemptori domino mandante pecuniam subministravit.

Dig. 42.5.24.2

Ulpianus 63 ad ed.

In bonis mensularii vendundis post privilegia potiorem eorum causam esse placuit, qui pecunias apud mensam fidem publicam secuti deposuerunt. sed enim qui depositis nummis usuras a mensulariis acceperunt a ceteris creditoribus non separantur, et merito: aliud est enim credere, aliud deponere. si tamen nummi exstent, vindicari eos posse puto a depositariis et futurum eum qui vindicat ante privilegia.

Dig. 42.5.24.3

Ulpianus 63 ad ed.

Eorum ratio prior est creditorum, quorum pecunia ad creditores privilegiarios pervenit. pervenisse autem quemadmodum accipimus, utrum si statim profecta est ab inferioribus ad privilegiarios an vero et si per debitoris personam, hoc est si ante ei numerata sit et sic debitoris facta creditori privilegiario numerata est? quod quidem potest benigne dici, si modo non post aliquod intervallum id factum sit.

Dig. 42.5.25

Ulpianus 64 ad ed.

Ait praetor: " quod postea contractum erit, quam is, cuius bona venierint, consilium receperit fraudare, sciente eo qui contraxerit, ne actio eo nomine detur".

Dig. 42.5.26

Paulus 16 brev. edicti.

Qui in navem exstruendam vel instruendam credidit vel etiam emendam, privilegium habet.

Dig. 42.5.27

Ulpianus 1 de off. cons.

Si magistratus fideicommissi servandi causa in possessionem miserint, dare arbitrum possunt ad ea distrahenda, quae mora deteriora futura sunt, ita ut pretium ex his redactum apud fideicommissarium in causa depositi sit, donec de fideicommisso quod ei debetur constet.

Dig. 42.5.28

Iavolenus 1 epist.

Pater familias impuberi filio, si ante pubertatem decessisset, substituit heredem: is filius paterna hereditate se abstinuit ideoque bona patris venierunt: postea filio hereditas obvenit, qua adita decessit. quaero, cum praetor in ipsum pupillum, quamvis postea hereditas obvenisset, creditoribus tamen patris actionem non daret, an in substitutum creditoribus patris danda sit actio, cum ex bonis paternis, quae scilicet ad creditores missos in bona pertinent, nihil adquirat et cum creditores nihil iuris in bonis pupilli habuerint eorumque nihil interfuerit, adiretur necne pupilli hereditas, cum ea bona omissa a substituto hereditate ad creditores non pertinebant. me illud maxime movet, quod praeceptoribus tuis placet unum esse testamentum. respondit: quod praetor filio, qui a paterna hereditate se abstinet, praestat, ne bonis patris eius venditis in eum actio detur, tametsi postea ei hereditas obvenit, creditoribus non reddat, idem in substituto filio herede servandum non est, quoniam filii pudori parcitur, ut potius patris quam eius bona veneant, itaque in id, quod postea ei obvenit, actio creditoribus denegatur, quia id ex adventicio adquisitum est, non per patrem ad eum pervenit. at cum substitutus filio hereditatem adiit, postquam pupillus se paternae miscuerit hereditati, tunc hereditas et patris et filii una est et in omni aere alieno, quod aut patris aut filii fuerit, etiam invitus heres obligatur: et quemadmodum liberum ei non est obligationem, ut non omnimodo, si non defenditur, ipsius bona veneant, ita ne separare quidem aes alienum patris et filii poterit: quo casu efficietur, ut creditoribus in eum actio dari debeat. quod si substitutus heres hereditatem non adierit, creditoribus patris in id, quod pupillus reliquit, actio dari non debet, quoniam neque pupilli bona venire debent propter aes alienum patris neque in bonis patris est quod pupillus adquisiit.

Dig. 42.5.29

Paulus 5 ad l. iul. et pap.

Fufidius refert statuas in publico positas bonis distractis eius, cuius in honorem positae sunt, non esse emptoris bonorum eius, sed aut publicas, si ornandi municipii causa positae sint, aut eius, cuius in honorem positae sint: et nullo modo eas detrahi posse.

Dig. 42.5.30

Papirius 1 de const.

Imperatores antoninus et verus augusti rescripserunt eos, qui bona sua negant iure venisse, praeiudicio experiri debere et frustra principem desiderare rescindi venditionem.

Dig. 42.5.31pr.

Ulpianus 2 de omn. trib.

Si creditores heredem suspectum putent, satisdationem exigere possunt pro suo debito reddendo. cuius rei gratia cognoscere praetorem oportet nec statim eum satisdationis necessitati subicere debet, nisi causa cognita constiterit prospici debere his, qui suspectum eum postulaverunt.

Dig. 42.5.31.1

Ulpianus 2 de omn. trib.

Sed suspectus heres non isdem modis, quibus suspectus tutor aestimatur: siquidem tutorem non facultates, sed fraudulenta in rebus pupillaribus et callida conversatio suspectum commendet, heredem vero solae facultates.

Dig. 42.5.31.2

Ulpianus 2 de omn. trib.

Plane in recenti aditae hereditatis audiendi erunt, qui suspectum postulant: ceterum si probentur passi eum in hereditate morari nec quicquam possint obicere criminis quasi dolose versato eo, non debebit post multum temporis ad hanc necessitatem compelli.

Dig. 42.5.31.3

Ulpianus 2 de omn. trib.

Quod si suspectus satisdare iussus decreto praetoris non obtemperaverit, tunc bona hereditatis possideri venumque dari ex edicto suo permittere iubebit.

Dig. 42.5.31.4

Ulpianus 2 de omn. trib.

Plane si doceatur nihil ex bonis alienasse nec sit quod ei iuste praeter paupertatem obiciatur, contentus esse praetor debet, ut iubeat eum nihil minuere.

Dig. 42.5.31.5

Ulpianus 2 de omn. trib.

Quod si nec inopia laborantem eum creditores ostendere potuerint, iniuriarum actione ei tenebuntur.

Dig. 42.5.32

Paulus l.S. reg.

Privilegia non ex tempore aestimantur, sed ex causa, et si eiusdem tituli fuerunt, concurrunt, licet diversitates temporis in his fuerint.

Dig. 42.5.33pr.

Ulpianus 3 reg.

Si pupillus ex contractu suo non defendatur ideoque bona eius creditores possidere coeperint, deminutio ex his bonis fieri debet vescendi pupilli causa.

Dig. 42.5.33.1

Ulpianus 3 reg.

Defendere debitorem sicut ante, quam bona eius possiderentur, licet, ita post bonorum quoque possessionem eius, sive ipse sui, sive alius defensionem eius suscipiat, debet satisdare, ut satisdatione interposita iudicium accipiatur et a possessione discedatur.

Dig. 42.5.34

Marcianus 5 reg.

Quod quis navis fabricandae vel emendae vel armandae vel instruendae causa vel quoquo modo crediderit vel ob navem venditam petat, habet privilegium post fiscum.

Dig. 42.5.35

Marcianus l.S. ad form. hypoth.

Eum, qui in possessionem missus sit eius, qui rei publicae causa afuit, si apparuerit eum dolo malo rei publicae causa abesse, iure in possessione esse placet, donec solidum solvatur: eum autem, qui rerum eius, qui sine dolo malo rei publicae causa afuit, in possessionem missus sit, pignus non contrahere et ideo discedere oportere de possessione.

Dig. 42.5.36

Ulpianus 45 ad sab.

Eum, qui circa columnas se occultet, ut creditorem evitet, latitare placet: nam et eum, qui recedit, hoc est qui supterfugit, ne secum aliqua actio moveatur, latitare placet: tam et qui urbe profugit, utique fraudandi causa: nec enim interest, quod attinet ad latitandum, utrum quis profugerit an vero romae agens copiam sui non facit.

Dig. 42.5.37

Papinianus 10 resp.

Antiochensium coelae syriae civitati, quod lege sua privilegium in bonis defuncti debitoris accepit, ius persequendi pignoris durare constitit.

Dig. 42.5.38pr.

Paulus 1 sent.

Bonis venditis excipiuntur concubina et liberi naturales.

Dig. 42.5.38.1

Paulus 1 sent.

Res publica creditrix omnibus chirographariis creditoribus praefertur.

Dig. 42.5.39pr.

Paulus 5 sent.

Pupillus si non defendatur, in possessione creditoribus constitutis minoribus, ex his usque ad pubertatem alimenta praestanda sunt.

Dig. 42.5.39.1

Paulus 5 sent.

Eius, qui ab hostibus captus est, bona venire non possunt, quamdiu revertatur.

Dig. 42.6.0. De separationibus.

Dig. 42.6.1pr.

Ulpianus 64 ad ed.

Sciendum est separationem solere impetrari decreto praetoris.

Dig. 42.6.1.1

Ulpianus 64 ad ed.

Solet autem separatio permitti creditoribus ex his causis: ut puta debitorem quis seium habuit: hic decessit: heres ei extitit titius: hic non est solvendo: patitur bonorum venditionem: creditores seii dicunt bona seii sufficere sibi, creditores titii contentos esse debere bonis titii et sic quasi duorum fieri bonorum venditionem. fieri enim potest, ut seius quidem solvendo fuerit potueritque satis creditoribus suis vel ita semel, etsi non in assem, in aliquid tamen satisfacere, admissis autem commixtisque creditoribus titii minus sint consecuturi, quia ille non est solvendo aut minus consequantur, quia plures sunt hic. est igitur aequissimum creditores seii desiderantes separationem audiri impetrareque a praetore, ut separatim quantum cuiusque creditoribus praestetur.

Dig. 42.6.1.2

Ulpianus 64 ad ed.

Ex contrario autem creditores titii non impetrabunt separationem: nam licet alicui adiciendo sibi creditorem creditoris sui facere deteriorem condicionem. atqui igitur adiit hereditatem debitoris mei, non faciet meam deteriorem condicionem adeundo, quia licet mihi separationem impetrare, suos vero creditores oneravit, dum adiit hereditatem quae solvendo non est, nec poterunt creditores eius separationem impetrare.

Dig. 42.6.1.3

Ulpianus 64 ad ed.

Sciendum est autem, etiamsi obligata res esse proponatur ab herede iure pignoris vel hypothecae, attamen, si hereditaria fuit, iure separationis hypothecario creditori potiorem esse eum, qui separationem impetravit: et ita severus et antoninus rescripserunt.

Dig. 42.6.1.4

Ulpianus 64 ad ed.

Sed etiam adversus fiscum et municipes impetraretur separatio.

Dig. 42.6.1.5

Ulpianus 64 ad ed.

Quaesitum est, an interdum etiam heredis creditores possunt separationem impetrare, si forte ille in fraudem ipsorum adierit hereditatem. sed nullum remedium est proditum: sibi enim imputent, qui cum tali contraxerunt: nisi si extra ordinem putamus praetorem adversus calliditatem eius subvenire, qui talem fraudem commentus est: quod non facile admissum est.

Dig. 42.6.1.6

Ulpianus 64 ad ed.

Sed si quis suspectam hereditatem dicens compulsus fuerit adire et restituere hereditatem, deinde non sit cui restituat, ex quibus casibus solet hoc evenire. et ipsi quidem desideranti succurri sibi adversus creditores hereditarios subveniemus: hoc et divus pius rescripsit, ut perinde testatoris bona venirent, atque si adita hereditas non fuisset, creditoribus quoque huiusmodi heredis desiderantibus hoc idem praestandum puto, licet ipse non desideravit, ut quasi separatio quaedam praestetur.

Dig. 42.6.1.7

Ulpianus 64 ad ed.

Item videamus, si quis heres parenti extiterit, cum esset impubes, deinde intra pubertatem decesserit et substituti bona veneant, qui impuberis hereditatem adiit, an patris creditores possint separationem impetrare. et puto posse: hoc amplius puto etiam impuberis creditores posse separationem adversus creditores heredis eius impetrare.

Dig. 42.6.1.8

Ulpianus 64 ad ed.

Secundum haec videamus, si primus secundum heredem scripserit, secundus tertium et tertii bona veneant, qui creditores possint separationem impetrare. et putem, si quidem primi creditores petant, utique audiendos et adversus secundi et adversus tertii creditores: si vero secundi creditores petant, adversus tertii utique eos impetrare posse, adversus primi autem non posse. in summa primi quidem creditores adversus omnes impetrare possunt separationem, secundi creditores adversus primi non possunt, adversus tertii possunt.

Dig. 42.6.1.9

Ulpianus 64 ad ed.

Si filii familias bona veneant, qui castrense peculium habet, an separatio fiat inter castrenses creditores ceterosque, videamus. simul ergo admittentur, dummodo, si qui cum eo contraxerunt, antequam militaret, fortasse debeant separari: quod puto probandum. ergo qui ante contraxerunt, si bona castrensia distrahantur, non possunt venire cum castrensibus creditoribus. item si quid in rem patris versum est, forte poterit et creditori contradici, ne castrense peculium inquietet, cum possit potius cum patre experiri.

Dig. 42.6.1.10

Ulpianus 64 ad ed.

Illud sciendum est eos demum creditores posse impetrare separationem, qui non novandi animo ab herede stipulati sunt. ceterum si eum hoc animo secuti sunt, amiserunt separationis commodum (quippe cum secuti sunt nomen heredis) nec possunt iam se ab eo separare, qui quodammodo eum elegerunt. sed et si usuras ab eo ea mente quasi eum eligendo exegerunt, idem erit probandum.

Dig. 42.6.1.11

Ulpianus 64 ad ed.

Item quaeritur, si satis acceperunt ab eo, an impetrent separationem. et non puto: hi enim secuti sunt eum. forte quem movebit: quid ergo, si satis non idoneum acceperunt? et sibi imputent, cur minus idoneos fideiussores accipiebant.

Dig. 42.6.1.12

Ulpianus 64 ad ed.

Praeterea sciendum est, posteaquam bona hereditaria bonis heredis mixta sunt, non posse impetrari separationem: confusis enim bonis et unitis separatio impetrari non poterit. quid ergo si praedia extent vel mancipia vel pecora, vel aliud quod separari potest? hic utique poterit impetrari separatio nec ferendus est, qui causatur bona contributa, cum praedia contribui non possint, nisi ita coniunctae possessiones et permixtae propriis, ut impossibilem separationem effecerint: quod quidem perraro contingere potest.

Dig. 42.6.1.13

Ulpianus 64 ad ed.

Quod dicitur post multum temporis separationem impetrari non posse, ita erit accipiendum, ut ultra quinquennium post aditionem numerandum separatio non postuletur.

Dig. 42.6.1.14

Ulpianus 64 ad ed.

De his autem omnibus, an admittenda separatio sit nec ne, praetoris erit vel praesidis notio, nullius alterius, hoc est eius, qui separationem indulturus est.

Dig. 42.6.1.15

Ulpianus 64 ad ed.

Si quis pignus ab herede acceperit, non est ei concedenda separatio, quasi eum secutus sit: neque enim ferendus est, qui qualiterqualiter, eligentis tamen mente, heredis personam secutus est.

Dig. 42.6.1.16

Ulpianus 64 ad ed.

Quaesitum est, si forte sint plures creditores, quidam secuti heredem, quidam non secuti, et hi, qui heredem secuti non sunt, impetraverint separationem, an eos secum admittant, qui secuti sunt. et putem nihil eis prodesse: hos enim cum creditoribus heredis numerandos.

Dig. 42.6.1.17

Ulpianus 64 ad ed.

Item sciendum est vulgo placere creditores quidem heredis, si quid superfuerit ex bonis testatoris, posse habere in suum debitum, creditores vero testatoris ex bonis heredis nihil. cuius rei ratio illa est, quod qui impetravit separationem, sibi debet imputare suam facilitatem, si, cum essent bona idonea heredis, illi maluerint bona potius defuncti sibi separari, heredis autem creditoribus hoc imputari non possit. at si creditores defuncti desiderent, ut etiam in bonis heredis substituantur, non sunt audiendi: separatio enim, quam ipsi petierunt, eos ab istis bonis separavit. si tamen temere separationem petierunt creditores defuncti, impetrare veniam possunt, iustissima scilicet ignorantiae causa allegata.

Dig. 42.6.1.18

Ulpianus 64 ad ed.

Item sciendum est necessarium heredem servum cum libertate institutum impetrare posse separationem, scilicet ut, si non attigerit bona patroni, in ea causa sit, ut ei quidquid postea adquisierit separetur: sed et si quid ei a testatore debetur.

Dig. 42.6.2

Papinianus 25 quaest.

Ab herede vendita hereditate separatio frustra desiderabitur, utique si nulla fraudis incurrat suspicio: nam quae bona fide medio tempore per heredem gesta sunt, rata conservari solent.

Dig. 42.6.3pr.

Papinianus 27 quaest.

Debitor fideiussori heres extitit eiusque bona venierunt: quamvis obligatio fideiussionis extincta sit, nihilo minus separatio impetrabitur petente eo, cui fideiussor fuerat obligatus, sive solus sit hereditarius creditor sive plures. neque enim ratio iuris, quae causam fideiussionis propter principalem obligationem, quae maior fuit, exclusit, damno debet adficere creditorem, qui sibi diligenter prospexerat.

Dig. 42.6.3.1

Papinianus 27 quaest.

Quid ergo, si bonis fideiussoris separatis solidum ex hereditate stipulator consequi non possit? utrum portio cum ceteris heredis creditoribus ei quaerenda erit an contentus esse debebit bonis, quae separari maluit? sed cum stipulator iste non adita fideiussoris a reo hereditate bonis fideiussoris venditis in residuum pro misceri debitoris creditoribus potuerit, ratio non patitur eum in proposito summoveri.

Dig. 42.6.3.2

Papinianus 27 quaest.

Sed in quolibet alio creditore, qui separationem impetravit, probari commodius est, ut, si solidum ex hereditate servari non possit, ita demum aliquid ex bonis heredis ferat, si proprii creditores heredis fuerint dimissi. quod sine dubio admittendum est circa creditores heredis dimissis hereditariis.

Dig. 42.6.4pr.

Papinianus 12 resp.

Creditoribus, qui ex die vel sub condicione debentur et propter hoc nondum pecuniam petere possunt, aeque separatio dabitur, quoniam et ipsis cautione communi consuletur.

Dig. 42.6.4.1

Papinianus 12 resp.

Legatarios autem in ea tantum parte, quae de bonis servari potuit, habere pignoris causam convenit.

Dig. 42.6.5

Paulus 13 quaest.

Si creditores hereditarii separationem bonorum impetraverunt et inveniatur non idonea hereditas, heres autem idoneus: non poterunt reverti ad heredem, sed eo, quod semel postulaverunt, stare debent. sed si post impetratam separationem aliquid heres adquisierit, si quidem ex hereditate, admitti debebunt ad id quod adquisitum est illi qui separationem impetraverunt: sed si illis satisfactum fuerit, quod superest tribuetur propriis heredis creditoribus. at si ex alia causa heres adquisierit, non admittentur hereditarii creditores. quod si proprii ad solidum pervenerunt, id quod supererit tribuendum hereditariis quidam putant: mihi autem id non videtur: cum enim separationem petierunt, recesserunt a persona heredis et bona secuti sunt et quasi defuncti bona vendiderunt, quae augmenta non possunt recipere. idemque existimo dicendum, etiamsi circa separationem bonorum decepti minus consecuti sunt quam proprii heredis creditores. proprii autem heredis creditores habent propria eius bona et personam, quae potest donec vivit adquirere.

Dig. 42.6.6pr.

Iulianus 46 Dig.

Quotiens heredis bona solvendo non sunt, non solum creditores testatoris, sed etiam eos, quibus legatum fuerit, impetrare bonorum separationem aequum est, ita ut, cum in creditoribus solidum adquisitum fuerit, legatariis vel solidum vel portio quaeratur.

Dig. 42.6.6.1

Iulianus 46 Dig.

Si liberta heres instituta bonorum possessionem secundum tabulas petisset eius, qui solvendo non erat, quaesitum est, an bona eius separari ab hereditariis debent. respondit: non est iniquum succurri patrono, ne oneraretur aere alieno, quod liberta petendo bonorum possessionem secundum tabulas contraxerit.

Dig. 42.6.7

Marcianus 2 reg.

Qui iudicium dictaverunt heredi, separationem quasi hereditarii possunt impetrare, quia ex necessitate hoc fecerunt.

Dig. 42.7.0. De curatore bonis dando.

Dig. 42.7.1pr.

Paulus 57 ad ed.

Si quis sub condicione heres institutus est, cogendus est condicioni parere, si potest, aut, si responderit se non aditurum, etiamsi condicio extiterit, vendenda erunt bona defuncti.

Dig. 42.7.1.1

Paulus 57 ad ed.

Quod si nihil facere potest, curator bonis constituendus erit aut bona vendenda.

Dig. 42.7.1.2

Paulus 57 ad ed.

Sed si grave aes alienum sit, quod ex poena crescat, per curatorem solvendum aes alienum, sicuti cum venter in possessione sit aut pupillus heres tutorem non habeat, decerni solet.

Dig. 42.7.2pr.

Ulpianus 65 ad ed.

De curatore constituendo hoc iure utimur, ut praetor adeatur isque curatorem curatoresque constituat ex consensu maioris partis creditorum, vel praeses provinciae, si bona distrahenda in provincia sunt:

Dig. 42.7.2.1

Ulpianus 65 ad ed.

Quaeque per eum eosve, qui ita creatus creative essent, acta facta gestaque sunt, rata habebuntur: eisque actiones et in eos utiles competunt: et si quem curatores mitterent ad agendum vel defendendum, uti ius esset: nec ab eo satis, neque de rato neque iudicatum solvi, nomine eius cuius bona veneant exigetur, sed nomine ipsius curatoris qui eum misit.

Dig. 42.7.2.2

Ulpianus 65 ad ed.

Si plures autem constituantur curatores, celsus ait in solidum eos et agere et conveniri, non pro portionibus. quod si per regiones fuerint constituti curatores, unus forte rei italicae, alius in provincia, puto regiones eos suas conservare debere.

Dig. 42.7.2.3

Ulpianus 65 ad ed.

Quaeritur, an invitus curator fieri potest: et cassius scribit neminem invitum cogendum fieri bonorum curatorem, quod verius est. voluntarius itaque quaerendus est, nisi et magna necessitate et imperatoris arbitrio hoc procedat, ut et invitus crearetur.

Dig. 42.7.2.4

Ulpianus 65 ad ed.

Nec omnimodo creditorem esse oportet eum, qui curator constituitur, sed possunt et non creditores.

Dig. 42.7.2.5

Ulpianus 65 ad ed.

Si tres curatores fuerint et unus ex his nihil attigerit, an in eum, qui nihil tetigit, actio danda est? et cassius existimat modum actori non debere constitui posseque eum cum quo vult experiri. puto cassii sententiam veriorem: spectandum enim, quid redactum est, non quid ad curatorem unum pervenerit, et ita utimur, nisi invitus factus est: nam si ita est, dicendum non eum conveniendum.

Dig. 42.7.3

Celsus 24 Dig.

Si plures eiusdem bonorum curatores facti sunt, in quem eorum vult actor, in solidum ei datur actio tam quam quivis eorum in solidum aget.

Dig. 42.7.4

Papirius 1 de const.

Imperatores antoninus et verus augusti rescripserunt bonis per curatorem ex senatus consulto distractis nullam actionem ex ante gesto fraudatori competere.

Dig. 42.7.5

Iulianus 47 Dig.

Si debitor foro cesserit et creditores privato consilio coierint et elegerint unum, per quem bona distrahantur et portio ipsis, quae ex redacto fieret, solveretur, mox exstiterit alius, qui se creditorem dicat: nullam quidem actionem adversus curatorem habebit, sed bona debitoris una cum curatore vendere poterit, ita ut, quae a curatore et a creditore ex bonis contrahantur, omnibus pro portione praestarentur.

Dig. 42.8.0. Quae in fraudem creditorum facta sunt ut restituantur.

Dig. 42.8.1pr.

Ulpianus 66 ad ed.

Ait praetor: " quae fraudationis causa gesta erunt cum eo, qui fraudem non ignoraverit, de his curatori bonorum vel ei, cui de ea re actionem dare oportebit, intra annum, quo experiundi potestas fuerit, actionem dabo. idque etiam adversus ipsum, qui fraudem fecit, servabo".

Dig. 42.8.1.1

Ulpianus 66 ad ed.

Necessario praetor hoc edictum proposuit, quo edicto consuluit creditoribus revocando ea, quaecumque in fraudem eorum alienata sunt.

Dig. 42.8.1.2

Ulpianus 66 ad ed.

Ait ergo praetor " quae fraudationis causa gesta erunt". haec verba generalia sunt et continent in se omnem omnino in fraudem factam vel alienationem vel quemcumque contractum. quodcumque igitur fraudis causa factum est, videtur his verbis revocari, qualecumque fuerit: nam late ista verba patent. sive ergo rem alienavit sive acceptilatione vel pacto aliquem liberavit,

Dig. 42.8.2

Ulpianus 73 ad ed.

Idem erit probandum: et si pignora liberet vel quem alium in fraudem creditorum praeponat.

Dig. 42.8.3pr.

Ulpianus 66 ad ed.

Vel ei praebuit exceptionem sive se obligavit fraudandorum creditorum causa sive numeravit pecuniam vel quodcumque aliud fecit in fraudem creditorum, palam est edictum locum habere.

Dig. 42.8.3.1

Ulpianus 66 ad ed.

Gesta fraudationis causa accipere debemus non solum ea, quae contrahens gesserit aliquis, verum etiam si forte data opera ad iudicium non adfuit vel litem mori patiatur vel a debitore non petit, ut tempore liberetur, aut usum fructum vel servitutem amittit.

Dig. 42.8.3.2

Ulpianus 66 ad ed.

Et qui aliquid fecit, ut desinat habere quod habet, ad hoc edictum pertinet.

Dig. 42.8.4

Paulus 68 ad ed.

In fraudem facere videri etiam eum, qui non facit quod debet facere, intellegendum est, id est si non utatur servitutibus:

Dig. 42.8.5

Gaius 26 ad ed. provinc.

Sed et si rem suam pro derelicto habuerit, ut quis eam suam faciat.

Dig. 42.8.6pr.

Ulpianus 66 ad ed.

Quod autem, cum possit aliquid quaerere, non id agit, ut adquirat, ad hoc edictum non pertinet: pertinet enim edictum ad deminuentes patrimonium suum, non ad eos, qui id agunt, ne locupletentur.

Dig. 42.8.6.1

Ulpianus 66 ad ed.

Unde si quis ideo condicioni non paret, ne committatur stipulatio, in ea condicione est, ne faciat huic edicto locum.

Dig. 42.8.6.2

Ulpianus 66 ad ed.

Proinde et qui repudiavit hereditatem vel legitimam vel testamentariam, non est in ea causa, ut huic edicto locum faciat: noluit enim adquirere, non suum proprium patrimonium deminuit.

Dig. 42.8.6.3

Ulpianus 66 ad ed.

Simili modo dicendum est et si filium suum emancipavit, ut suo arbitrio adeat hereditatem, cessare hoc edictum.

Dig. 42.8.6.4

Ulpianus 66 ad ed.

Sed et illud probandum, si legatum repudiavit, cessare edictum, quod iulianus quoque scribit.

Dig. 42.8.6.5

Ulpianus 66 ad ed.

Si servum suum heredem institutum alienavit, ut iussu emptoris adeat, si quidem in venditione nulla fraus est, sed in hereditate sit, cessat edictum, quia licuit ei etiam repudiare hereditatem: at si in ipsa servi alienatione fraus est, revocabitur, quemadmodum si eum in fraudem manumisisset.

Dig. 42.8.6.6

Ulpianus 66 ad ed.

Apud labeonem scriptum est eum, qui suum recipiat, nullam videri fraudem facere, hoc est eum, qui quod sibi debetur receperat: eum enim, quem praeses invitum solvere cogat, impune non solvere iniquum esse: totum enim hoc edictum ad contractus pertinere, in quibus se praetor non interponit, ut puta pignora venditionesque.

Dig. 42.8.6.7

Ulpianus 66 ad ed.

Sciendum iulianum scribere eoque iure nos uti, ut, qui debitam pecuniam recepit ante, quam bona debitoris possideantur, quamvis sciens prudensque solvendo non esse recipiat, non timere hoc edictum: sibi enim vigilavit. qui vero post bona possessa debitum suum recepit, hunc in portionem vocandum exaequandumque ceteris creditoribus: neque enim debuit praeripere ceteris post bona possessa, cum iam par condicio omnium creditorum facta esset.

Dig. 42.8.6.8

Ulpianus 66 ad ed.

Hoc edictum eum coercet, qui sciens eum in fraudem creditorum hoc facere suscepit, quod in fraudem creditorum fiebat: quare si quid in fraudem creditorum factum sit, si tamen is qui cepit ignoravit, cessare videntur verba edicti.

Dig. 42.8.6.9

Ulpianus 66 ad ed.

Praeterea illud sciendum est eum, qui consentientibus creditoribus aliquid a fraudatore vel emit vel stipulatus est vel quid aliud contraxit, non videri in fraudem creditorum fecisse: nemo enim videtur fraudare eos, qui sciunt et consentiunt.

Dig. 42.8.6.10

Ulpianus 66 ad ed.

Si quid cum pupillo gestum sit in fraudem creditorum, labeo ait omnimodo revocandum, si fraudati sint creditores, quia pupilli ignorantia, quae per aetatem contingit, non debet esse captiosa creditoribus et ipsi lucrosa: eoque iure utimur.

Dig. 42.8.6.11

Ulpianus 66 ad ed.

Simili modo dicimus et si cui donatum est, non esse quaerendum, an sciente eo, cui donatum, gestum sit, sed hoc tantum, an fraudentur creditores: nec videtur iniuria adfici is qui ignoravit, cum lucrum extorqueatur, non damnum infligatur. in hos tamen, qui ignorantes ab eo qui solvendo non sit liberalitatem acceperunt, hactenus actio erit danda, quatenus locupletiores facti sunt, ultra non.

Dig. 42.8.6.12

Ulpianus 66 ad ed.

Simili modo quaeritur, si servus ab eo, qui solvendo non sit, ignorante domino ipse sciens rem acceperit, an dominus teneretur. et ait labeo hactenus eum teneri, ut restituat quod ad se pervenit aut dumtaxat de peculio damnetur vel si quid in rem eius versum est. eadem in filio familias probanda sunt. sed si dominus scit, suo nomine convenietur.

Dig. 42.8.6.13

Ulpianus 66 ad ed.

Item si necessarius heres legata praestiterit, deinde eius bona venierint, proculus ait, etiamsi ignoraverint legatarii, tamen utilem actionem dandam: quod nequaquam dubium est:

Dig. 42.8.6.14

Ulpianus 66 ad ed.

Huius actionis annum computamus utilem, quo experiundi potestas fuit, ex die factae venditionis.

Dig. 42.8.7

Paulus 62 ad ed.

Si debitor in fraudem creditorum minore pretio fundum scienti emptori vendiderit, deinde hi, quibus de revocando eo actio datur, eum petant, quaesitum est, an pretium restituere debent. proculus existimat omnimodo restituendum esse fundum, etiamsi pretium non solvatur: et rescriptum est secundum proculi sententiam.

Dig. 42.8.8

Venonius 6 interd.

Ex his colligi potest ne quidem portionem emptori reddendam ex pretio: posse tamen dici eam rem apud arbitrum ex causa animadvertendam, ut, si nummi soluti in bonis exstent, iubeat eos reddi, quia ea ratione nemo fraudetur.

Dig. 42.8.9

Paulus 62 ad ed.

Is, qui a debitore, cuius bona possessa sunt, sciens rem emit, iterum alii bona fide ementi vendidit: quaesitum est, an secundus emptor conveniri potest. sed verior est sabini sententia bona fide emptorem non teneri, quia dolus ei dumtaxat nocere debeat, qui eum admisit, quemadmodum diximus non teneri eum, si ab ipso debitore ignorans emerit: is autem, qui dolo malo emit, bona fide autem ementi vendidit, in solidum pretium rei, quod accepit, tenebitur.

Dig. 42.8.10pr.

Ulpianus 73 ad ed.

Ait praetor: " quae lucius titius fraudandi causa sciente te in bonis, quibus de ea re agitur, fecit: ea illis, si eo nomine, quo de agitur, actio ei ex edicto meo competere esseve oportet, ei, si non plus quam annus est, cum de ea re, qua de agitur, experiundi potestas est, restituas. interdum causa cognita et si scientia non sit, in factum actionem permittam".

Dig. 42.8.10.1

Ulpianus 73 ad ed.

Ita demum revocatur, quod fraudandorum creditorum causa factum est, si eventum fraus habuit, scilicet si hi creditores, quorum fraudandorum causa fecit, bona ipsius vendiderunt. ceterum si illos dimisit, quorum fraudandorum causa fecit, et alios sortitus est, si quidem simpliciter dimissis prioribus, quos fraudare voluit, alios postea sortitus est, cessat revocatio: si autem horum pecunia, quos fraudare noluit, priores dimisit, quos fraudare voluit, Marcellus dicit revocationi locum fore. secundum hanc distinctionem et ab imperatore severo et antonino rescriptum est eoque iure utimur.

Dig. 42.8.10.2

Ulpianus 73 ad ed.

Quod ait praetor " sciente", sic accipimus " te consocio et fraudem participante": non enim si simpliciter scio illum creditores habere, hoc sufficit ad contendendum teneri eum in factum actione, sed si particeps fraudis est.

Dig. 42.8.10.3

Ulpianus 73 ad ed.

Si quis particeps quidem fraudis non fuit, verumtamen vendente debitore testato conventus est a creditoribus, ne emeret, an in factum actione teneatur, si comparaverit? et magis est, ut teneri debeat: non enim caret fraude, qui conventus testato perseverat.

Dig. 42.8.10.4

Ulpianus 73 ad ed.

Alias autem qui scit aliquem creditores habere, si cum eo contrahat simpliciter sine fraudis conscientia, non videtur hac actione teneri.

Dig. 42.8.10.5

Ulpianus 73 ad ed.

Ait praetor " sciente te", id est eo, qui convenietur hac actione. quid ergo, si forte tutor pupilli scit, ipse pupillus ignoravit? videamus, an actioni locus sit, ut scientia tutoris noceat: idem et in curatore furiosi et adulescentis. et putem hactenus istis nocere conscientiam tutorum sive curatorum, quatenus quid ad eos pervenit.

Dig. 42.8.10.6

Ulpianus 73 ad ed.

Praeterea sciendum est posse quaeri, quod dicitur in fraudem creditorum alienatum revocari posse, si idem sint creditores: et si unus creditor sit ex illis, qui fraudati sunt, sive solus tunc fuit sive, cum ceteris satisfactum est, hic solus remansit, probandum esse adhuc actioni fore locum.

Dig. 42.8.10.7

Ulpianus 73 ad ed.

Illud certe sufficit, et si unum scit creditorem fraudari, ceteros ignoravit, fore locum actioni.

Dig. 42.8.10.8

Ulpianus 73 ad ed.

Quid ergo, si ei, quem quis scit, satisfactum est? numquid deficiat actio, quia qui supersunt, non sunt fraudati? et hoc puto probandum: non tamen si dicat aliquis: " offero, quod debetur ei, quem scio creditorem", audiendus erit, ut actionem eludat.

Dig. 42.8.10.9

Ulpianus 73 ad ed.

Si fraudator heredem habuit et heredis bona venierint, non est in bonis quibus de agitur factum et ideo cessat haec actio.

Dig. 42.8.10.10

Ulpianus 73 ad ed.

Si quid in fraudem creditorum fecerit filius, qui se poterat abstinere, et in integrum sit restitutus, quod se miscuerat, vel si quis fecit voluntarius etiam vel per aetatem vel quam aliam causam iustam in integrum meruit restitutionem, dicendum erit utilem actionem competere. idem et in servo necessario. sane cum illa distinctione hoc admittendum esse labeo scribit, ut, si quidem protinus bona vendiderunt creditores vel absentibus vel paciscentibus creditoribus se necessarius miscuit, utriusque fraus revocetur, id est testatoris et ipsius: si vero passi sunt necessarium creditores et quasi in creditum habuerunt nomen eius vel dulcitudine usurarum vel qua alia ratione secuti sunt, dicendum est nihil revocari ex his, quae testator alienavit.

Dig. 42.8.10.11

Ulpianus 73 ad ed.

Si impubes patri heres extiterit eiusque mortui bona veneant, separatione impetrata utriusque fraus erit revocanda, pupilli vel etiam tutoris, item curatoris.

Dig. 42.8.10.12

Ulpianus 73 ad ed.

Si, cum in diem deberetur, fraudator praesens solverit, dicendum erit in eo, quod sensi commodum in repraesentatione, in factum actioni locum fore: nam praetor fraudem intellegit etiam in tempore fieri.

Dig. 42.8.10.13

Ulpianus 73 ad ed.

Si cui solutum quidem non fuerit, sed in vetus creditum pignus acceperit, hac actione tenebitur, ut est saepissime constitutum.

Dig. 42.8.10.14

Ulpianus 73 ad ed.

Si, cum mulier fraudandorum creditorum consilium inisset, marito suo eidemque debitori in fraudem creditorum acceptum debitum fecerit dotis constituendae causa, locum habet haec actio et per hanc omnis pecunia, quam maritus debuerat, exigitur nec mulier de dote habet actionem: neque enim dos in fraudem creditorum constituenda est: et hoc certo certius est et saepissime constitutum. exitus autem actionis erit, ut stipulatio, quae accepta facta fuerat, ex integro interponatur.

Dig. 42.8.10.15

Ulpianus 73 ad ed.

Per hanc actionem et usus fructus et huiusmodi stipulatio: " in annos singulos dena dari spondes?" exigi potest.

Dig. 42.8.10.16

Ulpianus 73 ad ed.

Si debitorem meum et complurium creditorum consecutus essem fugientem secum ferentem pecuniam et abstulissem ei id quod mihi debeatur, placet iuliani sententia dicentis multum interesse, antequam in possessionem bonorum eius creditores mittantur, hoc factum sit an postea: si ante, cessare in factum actionem, si postea, huic locum fore.

Dig. 42.8.10.17

Ulpianus 73 ad ed.

Si ex constitutione divi marci bona sint addicta alicui libertatium conservandarum causa, dicendum erit actionem cessare: ita enim succedunt, ut rata sint, quae pater familias gesserat.

Dig. 42.8.10.18

Ulpianus 73 ad ed.

Annus huius in factum actionis computabitur ex die venditionis bonorum.

Dig. 42.8.10.19

Ulpianus 73 ad ed.

Per hanc actionem res restitui debet cum sua scilicet causa.

Dig. 42.8.10.20

Ulpianus 73 ad ed.

Et fructus, non tantum qui percepti sunt, verum etiam hi, qui percipi potuerunt a fraudatore, veniunt, sed cum aliquo modo, scilicet ut sumptus facti deducantur: nam arbitrio iudicis non prius cogendus est rem restituere, quam si impensas necessarias consequatur: idemque erit probandum et si quis alios sumptus ex voluntate fideiussorum creditorumque fecerit.

Dig. 42.8.10.21

Ulpianus 73 ad ed.

Partum quoque in hanc actionem venire puto verius esse.

Dig. 42.8.10.22

Ulpianus 73 ad ed.

Praeterea generaliter sciendum est ex hac actione restitutionem fieri oportere in pristinum statum, sive res fuerunt sive obligationes, ut perinde omnia revocentur, ac si liberatio facta non esset. propter quod etiam medii temporis commodum, quod quis consequeretur liberatione non facta, praestandum erit, dum usurae non praestentur, si in stipulatum deductae non fuerunt, aut si talis contractus fuit, in quo usurae deberi potuerunt etiam non deductae.

Dig. 42.8.10.23

Ulpianus 73 ad ed.

Si condicionalis fuit obligatio, cum sua condicione, si in diem, cum sua die restauranda est. si tamen ea erat, cuius dies finitur, potest dici restitutionem intra id tempus posse postulari, quod tempus supererat obligationi, non utique intra annum.

Dig. 42.8.10.24

Ulpianus 73 ad ed.

Haec actio post annum de eo, quod ad eum pervenit, adversus quem actio movetur, competit: iniquum enim praetor putavit in lucro morari eum, qui lucrum sensit ex fraude: idcirco lucrum ei extorquendum putavit. sive igitur ipse fraudator sit, ad quem pervenit, sive alius quivis, competit actio in id quod ad eum pervenit dolove malo eius factum est, quo minus perveniret.

Dig. 42.8.10.25

Ulpianus 73 ad ed.

Haec actio heredi ceterisque successoribus competit: sed et in heredes similesque personas datur.

Dig. 42.8.11

Venonius 6 interd.

Cassius actionem introduxit in id quod ad heredem pervenit.

Dig. 42.8.12

Marcellus 18 Dig.

Si pater filio familias liberam peculii administrationem dederit, non videtur ei et hoc concessisse, ut in fraudem creditorum alienaret: talem enim alienationem non habet. at si hoc quoque concessit filio pater, ut vel in fraudem creditorum facere possit, videbitur ipse fecisse et sufficient competentes adversus eum actiones. etenim filii creditores etiam patris sunt creditores, cum eius generis videlicet habebunt actionem, ut his de peculio praestari necesse sit.

Dig. 42.8.13

Paulus 68 ad ed.

Illud constat eum qui pignus tenet hac actione non teneri: suo enim iure et ut pignus, non rei servandae causa possidet.

Dig. 42.8.14

Ulpianus 6 disp.

Hac in factum actione non solum dominia revocantur, verum etiam actiones restaurantur. ea propter competit haec actio et adversus eos, qui res non possident, ut restituant, et adversus eos, quibus actio competit, ut actione cedant. proinde si interposuerit quis personam titii, ut ei fraudator res tradat, actione mandati cedere debet. ergo et si fraudator pro filia sua dotem dedisset sciente fraudari creditores, filia tenetur, ut cedat actione de dote adversus maritum.

Dig. 42.8.15

Iulianus 49 Dig.

Si quis, cum haberet titium creditorem et sciret se solvendo non esse, libertates dederit testamento, deinde dimisso titio postea sempronium creditorem habere coeperit et eodem testamento manente decesserit: libertates datae ratae esse debent, etsi hereditas solvendo non sit, quia, libertates ut rescindantur, utrumque in eorumdem persona exigimus et consilium et eventum et, si quidem creditor, cuius fraudandi consilium initum erat, non fraudatur, adversus eum qui fraudatur consilium initum non est. libertates itaque ratae sunt,

Dig. 42.8.16

Paulus 5 resp. papiniani.

Nisi priores pecunia posteriorum dimissi probentur.

Dig. 42.8.17pr.

Iulianus 49 Dig.

Omnes debitores, qui in fraudem creditorum liberantur, per hanc actionem revocantur in pristinam obligationem.

Dig. 42.8.17.1

Iulianus 49 Dig.

Lucius titius cum haberet creditores, libertis suis isdemque filiis naturalibus universas res suas tradidit. respondit: quamvis non proponatur consilium fraudandi habuisse, tamen qui creditores habere se scit et universa bona sua alienavit, intellegendus est fraudandorum creditorum consilium habuisse: ideoque et si filii eius ignoraverunt hanc mentem patris sui fuisse, hac actione tenentur.

Dig. 42.8.17.2

Iulianus 49 Dig.

Si vir uxori, cum creditores suos fraudare vellet, soluto matrimonio praesentem dotem reddidisset, quam statuto tempore reddere debuit, hac actione mulier tantum praestabit, quanti creditorum intererat dotem suo tempore reddi: nam praetor fraudem etiam in tempore fieri intellegit.

Dig. 42.8.18

Papinianus 26 quaest.

Etsi pignus vir uxori vel uxor viro remiserit, verior sententia est nullam fieri donationem existimantium. quod sine dubio, si in fraudem creditorum fiat, actione utili revocabitur. idemque est et si quivis debitor in fraudem creditorum pignus omiserit.

Dig. 42.8.19

Papinianus 11 resp.

Patrem, qui non exspectata morte sua fideicommissum hereditatis maternae filio soluto potestate restituit omissa ratione falcidiae, plenam fidem ac debitam pietatem secutus exhibitionis, respondi non creditores fraudasse.

Dig. 42.8.20

Callistratus 2 quaest.

Debitorem, qui ex senatus consulto trebelliano totam hereditatem restituit, placet non videri in fraudem creditorum alienasse portionem, quam retinere potuisset, sed magis fideliter facere.

Dig. 42.8.21

Scaevola 1 resp.

Debitor in fraudem creditoris cum vicino de finibus pignori dati fundi pactus est: quaesitum, an is, qui a creditore emit, de finibus agere possit. respondit secundum ea quae proponerentur non idcirco minus agere posse, quod debitor ignorante creditore pactus esset.

Dig. 42.8.22

Scaevola 5 resp.

Cum in vetus creditum unus creditor pignora accepisset, quaero, an in fraudem ceterorum creditorum factum nullius momenti esset. respondit creditorem non idcirco prohibendum a persecutione pignorum, quod, in vetus creditum ut obligaretur, pactus esset, nisi id in fraudem ceterorum creditorum factum sit et ea via iuris occurratur, qua creditorum fraudes rescindi solent.

Dig. 42.8.23

Scaevola 32 Dig.

Primo gradu scripti heredes cum animadverterent bona defuncti vix ad quartam partem aeris alieni sufficere, famae defuncti conservandae gratia ex consensu creditorum auctoritate praesidis provinciae secundum constitutionem ea condicione adierunt hereditatem, ut creditoribus dumtaxat partem praestarent: quaesitum est, an manumissi testamento et libertates et alimenta consequi possint. respondit libertates quidem, si in fraudem creditorum datae non essent, competere, legata vero, si solvendo hereditas non esset, non deberi.

Dig. 42.8.24

Scaevola l.S. quaest. publ. tract.

Pupillus patri heres extitit et uni creditorum solvit: mox abstinuit hereditate paterna: bona patris veneunt: an id quod accepit creditor revocandum sit, ne melioris condicionis sit quam ceteri creditores? an distinguimus, per gratificationem acceperit an non, ut, si per gratificationem tutorum, revocetur ad eandem portionem, quam ceteri creditores fuerint laturi: sin vero iuste exegerit, ceteri creditores neglexerint exactionem, interea res deterior facta sit, vel mortalitate vel subductis rebus mobilibus vel rebus soli ad irritum perductis, id quod acceperit creditor revocari nullo pacto potest, quoniam alii creditores suae neglegentiae expensum ferre debeant. quid ergo, si, cum in eo essent, ut bona debitoris mei venirent, solverit mihi pecuniam, an actione revocari ea possit a me? an distinguendum est, is optulerit mihi an ego illi extorserim invito et ^ ,ut^ si extorserim invito, revocetur, si non extorseim, non revocetur? sed vigilavi, meliorem meam condicionem feci, ius civile vigilantibus scriptum est: ideoque non revocatur id quod percepi.

Dig. 42.8.25pr.

Venonius 6 interd.

Si fraudator fideiussori suo scienti acceptum tulerit, si et reus non ignoraverit, uterque tenebitur, si minus, is qui scierit. si tamen ille, cui acceptum factum est, solvendo non sit, videndum est, an in reum, etiamsi ignoraverit, actio danda sit, quia ex donatione capit. contra si reo scienti acceptum latum sit, fideiussor quoque, si et ipse scierit, tenebitur: si vero ignoraverit, numquid non aeque actio in eum dari debeat, quoniam magis detrimentum non patitur, quam lucrum faciat? in duobus autem reis par utriusque causa est.

Dig. 42.8.25.1

Venonius 6 interd.

Si a socero fraudatore sciens gener accepit dotem, tenebitur hac actione et, si restituerit eam, desinit dotem habere: nec quicquam emancipatae divortio facto restituturum labeo ait, quia haec actio rei restituendae gratia, non poenae nomine daretur ideoque absolvi solet reus, si restituerit. sed si priusquam creditores cum eo experirentur, reddiderit filiae dotem iudicio dotis nomine conventus, nihilo minus eum hac actione teneri labeo ait nec ullum regressum habiturum ad mulierem: sin vero sine iudice, videndum, an ulla repetitio competat ei. quod si is ignoraverit, filia autem scierit, tenebitur filia: si vero uterque scierit, uterque tenebitur. at si neuter scierit, quidam existimant nihilo minus in filiam dandam actionem, quia intellegitur quasi ex donatione aliquid ad eam pervenisse, aut certe cavere eam debere, quod consecuta fuerit se restituturam: in maritum autem, qui ignoraverit, non dandam actionem, non magis quam in creditorem, qui a fraudatore quod ei deberetur acceperit, cum is indotatam uxorem ducturus non fuerit.

Dig. 42.8.25.2

Venonius 6 interd.

Item si extraneus filiae familiae nomine fraudandi causa dotem dederit, tenebitur maritus, si scierit: aeque mulier: nec minus et pater, si non ignoraverit, ita ut caveat, si ad se dos pervenerit, restitui eam.

Dig. 42.8.25.3

Venonius 6 interd.

Si procurator ignorante domino, cum sciret debitorem eius fraudandi cepisse consilium, iussit servo ab eo accipere, hac actione ipse tenebitur, non dominus.

Dig. 42.8.25.4

Venonius 6 interd.

Non solum autem ipsam rem alienatam restitui oportet, sed et fructus, qui alienationis tempore terrae cohaerent, quia in bonis fraudatoris fuerunt, item eos, qui post inchoatum iudicium recepti sint: medio autem tempore perceptos in restitutionem non venire. item partum ancillae per fraudem alienatae medio tempore editum in restitutionem non venire, quia in bonis non fuerit.

Dig. 42.8.25.5

Venonius 6 interd.

Proculus ait, si mulier post alienationem conceperit et antequam ageretur, pepererit, nullam esse dubitationem, quin partus restitui non debeat: si vero, cum alienaretur, praegnas fuerit, posse dici partum quoque restitui oportere.

Dig. 42.8.25.6

Venonius 6 interd.

Fructus autem fundo cohaesisse non satis intellegere se labeo ait, utrum dumtaxat qui maturi an etiam qui inmaturi fuerint, praetor significet: ceterum etiamsi de his senserit, qui maturi fuerint, nihilo magis possessionem restitui oportere. nam cum fundus alienaretur, quod ad eum fructusque eius attineret, unam quandam rem fuisse, id est fundum, cuius omnis generis alienationem fructus sequi: nec eum, qui hiberno habuerit fundum centum, si sub tempus messis vindemiaeve fructus eius vendere possit decem, idcirco duas res, id est fundum centum et fructus decem eum habere intellegendum, sed unam, id est fundum centum, sicut is quoque unam rem haberet, qui separatim solum aedium vendere possit.

Dig. 42.8.25.7

Venonius 6 interd.

Haec actio etiam in ipsum fraudatorem datur, licet mela non putabat in fraudatorem eam dandam, quia nulla actio in eum ex ante gesto post bonorum venditionem daretur et iniquum esset actionem dari in eum, cui bona ablata essent. si vero quaedam disperdidisset, si nulla ratione reciperari possent, nihilo minus actio in eum dabitur et praetor non tam emolumentum actionis intueri videtur in eo, qui exutus est bonis, quam poenam.

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Dig. 43.3.0. Quod legatorum.
Dig. 43.4.0. Ne vis fiat ei, qui in possessionem missus erit.
Dig. 43.5.0. De tabulis exhibendis.
Dig. 43.6.0. Ne quid in loco sacro fiat.
Dig. 43.7.0. De locis et itineribus publicis.
Dig. 43.8.0. Ne quid in loco publico vel itinere fiat.
Dig. 43.9.0. De loco publico fruendo.
Dig. 43.10.0. De via publica et si quid in ea factum esse dicatur.
Dig. 43.11.0. De via publica et itinere publico reficiendo.

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Dig. 43.1.0. De interdictis sive extraordinariis actionibus, quae pro his competunt.
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Dig. 43.1.0. De interdictis sive extraordinariis actionibus, quae pro his competunt.

Dig. 43.1.1pr.

Ulpianus 67 ad ed.

Videamus, de quibus rebus interdicta competunt. et sciendum est interdicta aut de divinis rebus aut de humanis competere. divinis, ut de locis sacris vel de locis religiosis. de rebus hominum interdicta redduntur aut de his, quae sunt alicuius, aut de his, quae nullius sunt. quae sunt nullius, haec sunt: liberae personae, de quibus exhibendis ducendis interdicta competunt. quae sunt alicuius, haec sunt aut publica aut singulorum. publica: de locis publicis, de viis deque fluminibus publicis. quae autem singulorum sunt, aut ad universitatem pertinent, ut interdictum quorum bonorum, aut ad singulas res, ut est interdictum uti possidetis, de itinere actuque.

Dig. 43.1.1.1

Ulpianus 67 ad ed.

Interdictorum autem tres species sunt, exhibitoria prohibitoria restitutoria: sunt tamen quaedam interdicta et mixta, quae et prohibitoria sunt et exhibitoria.

Dig. 43.1.1.2

Ulpianus 67 ad ed.

Interdictorum quaedam in praesens, quaedam in praeteritum referuntur: in praesens, ut uti possidetis: in praeteritum, ut de itinere actuque, de aqua aestiva.

Dig. 43.1.1.3

Ulpianus 67 ad ed.

Interdicta omnia licet in rem videantur concepta, vi tamen ipsa personalia sunt.

Dig. 43.1.1.4

Ulpianus 67 ad ed.

Interdictorum quaedam annalia sunt, quaedam perpetua.

Dig. 43.1.2pr.

Paulus 63 ad ed.

Interdictorum quaedam duplicia sunt, quaedam simplicia. duplicia dicuntur, ut uti possidetis, simplicia sunt ea, veluti exhibitoria et restitutoria, item prohibitoria de arboribus caedendis et de itinere actuque.

Dig. 43.1.2.1

Paulus 63 ad ed.

Interdicta autem competunt vel hominum causa vel divini iuris aut de religione, sicut est " ne quid in loco sacro fiat" vel " quod factum est restituatur" et de mortuo inferendo vel sepulchro aedificando. hominum causa competunt vel ad publicam utilitatem pertinentia vel sui iuris tuendi causa vel officii tuendi causa vel rei familiaris. publicae utilitatis causa competit interdictum " ut via publica uti liceat" et " flumine publico" et " ne quid fiat in via publica": iuris sui tuendi causa de liberis exhibendis, item de liberto exhibendo: officii causa de homine libero exhibendo: reliqua interdicta rei familiaris causa dantur.

Dig. 43.1.2.2

Paulus 63 ad ed.

Quaedam interdicta rei persecutionem continent, veluti de itinere actuque privato: nam proprietatis causam continet hoc interdictum. sed et illa interdicta, quae de locis sacris et de religiosis proponuntur, veluti proprietatis causam continent, item illa de liberis exhibendis, quae iuris tuendi causa diximus competere, ut non sit mirum, si, quae interdicta ad rem familiarem pertinent, proprietatis, non possessionis causam habeant.

Dig. 43.1.2.3

Paulus 63 ad ed.

Haec autem interdicta, quae ad rem familiarem spectant, aut apiscendae sunt possessionis aut reciperandae aut retinendae. apiscendae possessionis sunt interdicta, quae competunt his, qui ante non sunt nancti possessionem. sunt autem interdicta apiscendae possessionis " quorum bonorum": salvianum quoque interdictum, quod est de pignoribus, ex hoc genere est: et " quo itinere venditor usus est, quo minus emptor utatur, vim fieri veto". reciperandae possessionis causa proponuntur sub rubrica unde vi: aliqua enim sub hoc titulo interdicta sunt. retinendae possessionis sunt interdicta uti possidetis. sunt interdicta ut diximus, duplicia tam reciperandae quam apiscendae possessionis.

Dig. 43.1.3

Ulpianus 69 ad ed.

In interdictis exinde ratio habetur fructuum, ex quo edita sunt, non retro.

Dig. 43.1.4

Paulus 67 ad ed.

Ex quibus causis annua interdicta sunt, ex his de eo, quod ad eum cum quo agitur pervenit, post annum iudicium dandum sabinus respondit.

Dig. 43.1.5

Paulus 13 ad sab.

Interdicta noxalia ea sunt, quae ob delictum eorum, quos in potestate habemus, dantur, veluti cum vi deiecerunt aut vi aut clam opus fecerunt. sed officio iudicis continetur, ut dominum sua impensa opus restituentem absolvat: patientiam tollendo operi praestantem noxae dedere iubeat et absolvat, si non dedat, quantum impensae in tollendo opere erogatum sit, tanti condemnet: si neque patientiam praestet neque ipse tollat, cum possit, in tantum condemnet, in quantum iudex aestimaverit, atque si ipse fecisset.

Dig. 43.2.0. Quorum bonorum.

Dig. 43.2.1pr.

Ulpianus 67 ad ed.

Ait praetor: " quorum bonorum ex edicto meo illi possessio data est, quod de his bonis pro herede aut pro possessore possides possideresve, si nihil usucaptum esset, quod quidem dolo malo fecisti, uti desineres possidere, id illi restituas".

Dig. 43.2.1.1

Ulpianus 67 ad ed.

Hoc interdictum restitutorium est et ad universitatem bonorum, non ad singulas res pertinet et appellatur " quorum bonorum" et est apiscendae possessionis universorum bonorum.

Dig. 43.2.2

Paulus 20 ad ed.

Interdicto quorum bonorum debitores hereditarii non tenentur, sed tantum corporum possessores.

Dig. 43.3.0. Quod legatorum.

Dig. 43.3.1pr.

Ulpianus 67 ad ed.

Dig. 43.3.1.1

Ulpianus 67 ad ed.

Hoc interdictum volgo " quod legatorum" appellatur.

Dig. 43.3.1.2

Ulpianus 67 ad ed.

Est autem et ipsum apiscendae possessionis et continet hanc causam, ut, quod quis legatorum nomine non ex voluntate heredis occupavit, id restituat heredi. etenim aequissimum praetori visum est unumquemque non sibi ipsum ius dicere occupatis legatis, sed ab herede petere: redigit igitur ad heredes per hoc interdictum ea, quae legatorum nomine possidentur, ut perinde legatarii possint eum convenire.

Dig. 43.3.1.3

Ulpianus 67 ad ed.

Hoc interdictum et heredem heredis bonorumque possessoris habere propter utilitatem huius dicendum est, nec non ceteros quoque successores.

Dig. 43.3.1.4

Ulpianus 67 ad ed.

Quia autem nonnumquam incertum est, utrum quis pro legato an pro herede vel pro possessore possideat, bellissime arrianus scribit hereditatis petitionem instituendam et hoc interdictum reddendum, ut, sive quis pro herede vel pro possessore sive pro legato possideat, hoc interdicto teneatur: quemadmodum solemus facere, quotiens incertum est, quae potius actio teneat: nam duas dictamus protestati ex altera nos velle consequi quod nos contingit.

Dig. 43.3.1.5

Ulpianus 67 ad ed.

Si quis ex mortis causa donatione possideat, utique cessabit interdictum, quia portio legis falcidiae apud heredem ipso iure remanet, etsi corporaliter res in solidum translatae sunt:

Dig. 43.3.1.6

Ulpianus 67 ad ed.

Qui vero ex causa praeceptionis, utique tenetur hoc interdicto, sed pro ea scilicet parte, quam iure legati habet, non etiam pro ea, quam quasi heres habet. idemque erit dicendum et si alio genere legati uni ex heredibus legatum sit: nam et hic dicendum est pro ea parte, qua heres est, cessare interdictum.

Dig. 43.3.1.7

Ulpianus 67 ad ed.

Quod ait praetor " aut dolo desiit possidere", sic accipere debemus " desiit facultatem habere restituendi".

Dig. 43.3.1.8

Ulpianus 67 ad ed.

Unde est quaesitum, si usus fructus vel usus fuerit alicui relictus eumque occupaverit, an hoc interdicto restituere sit compellendus. movet, quod neque usus fructus neque usus possidetur, sed magis tenetur: potest tamen defendi competere interdictum. idem dicendum est et in servitute relicta.

Dig. 43.3.1.9

Ulpianus 67 ad ed.

Quaesitum est, si quis legatorum servandorum causa missus sit in possessionem, an hoc interdicto teneatur ad restitutionem. movet illud primum, quod non possidet is qui missus est in possessionem legatorum causa, sed potius custodit, deinde quod praetorem habet huius rei auctorem. tutius tamen erit dicendum hoc interdictum competere, maxime si satisdatum sit iam legatorum nomine nec recedat: tunc enim etiam possidere videtur.

Dig. 43.3.1.10

Ulpianus 67 ad ed.

Legatorum nomine non tantum ipsum possidere dicemus cui legatum est, verum heredem quoque eius ceterosque successores.

Dig. 43.3.1.11

Ulpianus 67 ad ed.

Quod ait praetor " voluntate eius, ad quem ea res pertinet", ita erit interpretandum, ut, si post aditam hereditatem vel bonorum possessionem adgnitam voluntas accommodata est legatario, ut possideret, interdictum cesset: quod si ante aditam hereditatem bonorumve possessionem adgnitam hoc factum est, rectius dicetur eam voluntatem non nocere debere.

Dig. 43.3.1.12

Ulpianus 67 ad ed.

Si duae res legatae sint, altera ex voluntate occupata, altera non ex voluntate eveniet, ut altera revocari possit, altera non. idemque erit probandum et in una re, cuius pars ex voluntate, altera pars non ex voluntate occupata est: nam pars sola per interdictum auferetur.

Dig. 43.3.1.13

Ulpianus 67 ad ed.

Illud tenendum, sive a te sive ab eo, in cuius locum successisti, possideri aliquid coeptum est, interdicto huic locum fore. in locum successisse accipimus, sive per universitatem sive in rem sit successum.

Dig. 43.3.1.14

Ulpianus 67 ad ed.

Prodest autem possedisse, quotiens voluntate eius, ad quem ea res pertinet, possideri coeptum est: sed et si postea voluntas accessit eius, ad quem ea res pertinebat, tamen prodesse possessori debere. unde si quis coepit quidem ex voluntate eius, ad quem ea res pertinet, possidere, postea vero voluntas non perseverat, nihil nocet, quia semel possideri coepit ex voluntate.

Dig. 43.3.1.15

Ulpianus 67 ad ed.

Si alter ex heredibus iisve, ad quos ea res pertinet, voluerit rem a legatario possideri, alter non, ei, qui noluit, interdictum competet: ei, qui voluit, non competere palam est.

Dig. 43.3.1.16

Ulpianus 67 ad ed.

Quod ait praetor " nisi satisdatum sit", accipere debemus " si perseveret satisdatum", scilicet ut, si non perseveret cautum, mittatur in possessionem legatorum servandorum causa.

Dig. 43.3.1.17

Ulpianus 67 ad ed.

Satisdatum sic arbitror, si sic satisdatum sit, ut legatario vel ipso iure adquisita sit idonea cautio vel per mandati actionem adquiri possit, et tunc interdicto locum fore.

Dig. 43.3.1.18

Ulpianus 67 ad ed.

Si quarundam rerum nomine satisdatum sit, quarundam non sit satisdatum, earum rerum nomine sine impedimento agi poterit, de quibus satisdatum est, ceterarum non poterit.

Dig. 43.3.2pr.

Paulus 63 ad ed.

Diversum est, si postea pars legato adcreverit: nam hoc nomine tenentur fideiussores in totum.

Dig. 43.3.2.1

Paulus 63 ad ed.

Quod ait praetor " si per bonorum possessorem non stat, ut satisdetur", sic accipimus, si paratus sit satisdare: non ergo offerre debet satisdationem, sed petenti satis moram non facere.

Dig. 43.3.2.2

Paulus 63 ad ed.

Ex hoc interdicto qui non restituit, in id quod interest debet condemnari.

Dig. 43.3.2.3

Paulus 63 ad ed.

Si legatarius repromissione contentus fuit, dandum est interdictum. idem dicendum est, si legatarius pignoribus noluit sibi caveri.

Dig. 43.3.2.4

Paulus 63 ad ed.

Si per legatarium factum sit, quo minus satisdetur, licet cautum non sit, tenetur interdicto. sed si forte factum sit per legatarium, quo minus satisdetur, eo autem tempore, quo editur interdictum, satis accipere paratus sit, non competit interdictum, nisi satisdatum sit. item si per bonorum possessorem stetit, quo minus satisdaret, sed modo paratus est cavere, tenet interdictum: illud enim tempus inspicitur, quo interdictum editur.

Dig. 43.4.0. Ne vis fiat ei, qui in possessionem missus erit.

Dig. 43.4.1pr.

Ulpianus 72 ad ed.

Ait praetor: " si quis dolo malo fecerit, quo minus quis permissu meo eiusve, cuius ea iurisdictio fuit, in possessionem bonorum sit, in eum in factum iudicium, quanti ea res fuit, ob quam in possessionem missus erit, dabo".

Dig. 43.4.1.1

Ulpianus 72 ad ed.

Hoc edictum summa providentia praetor proposuit: frustra enim in possessionem mitteret rei servandae causa, nisi missos tueretur et prohibentes venire in possessionem coerceret.

Dig. 43.4.1.2

Ulpianus 72 ad ed.

Est autem generale hoc edictum: pertinet enim ad omnes, qui in possessionem a praetore missi sunt: convenit enim praetori omnes, quos ipse in possessionem misit, tueri. sed sive rei servandae causa sive legatorum aut ventris nomine in possessionem missi fuerint, habent ex hoc edicto in factum actionem, sive doli sive aliter prohibuerint.

Dig. 43.4.1.3

Ulpianus 72 ad ed.

Haec actio non tantum eum tenet, qui prohibuit quem venire in possessionem, sed etiam eum, qui possessione pulsus est, cum venisset in possessionem: nec exigitur, ut vi fecerit qui prohibuit.

Dig. 43.4.1.4

Ulpianus 72 ad ed.

Si quis ideo possessione arcuerit, quia rem suam putabat vel sibi nexam vel certe non esse debitoris, consequens est, ut hoc edicto non teneatur.

Dig. 43.4.1.5

Ulpianus 72 ad ed.

Haec verba " quanti ea res erit, ob quam in possessionem missus erit" continent utilitatem creditoris, ut quantum eius interest possessionem habere, tantum ei qui prohibuit condemnetur. proinde si ob falsum creditum vel ob falsam petitionem missus est in possessionem vel si exceptione summoveri potuit, nihil ei debet prodesse hoc edictum, quia propter nullam causam in possessionem missus est.

Dig. 43.4.1.6

Ulpianus 72 ad ed.

Hoc edicto neque pupillum neque furiosum teneri constat, quia affectu carent. sed pupillum eum debemus accipere, qui doli capax non est: ceterum si iam doli capax sit, contra erit dicendum. ergo et si tutor dolo fecerit, in pupillum dabimus actionem, si modo solvendo sit tutor: sed et ipsum tutorem posse conveniri iulianus scribit.

Dig. 43.4.1.7

Ulpianus 72 ad ed.

Si domini vel patris voluntate prohibitus quis sit a possessione, in ipsos dabitur actio, quasi per alios hoc fecerint.

Dig. 43.4.1.8

Ulpianus 72 ad ed.

Hanc actionem excepta legatorum missione intra annum competere et non postea sciendum est, cum sit poenalis, nec in heredes similesque personas dabitur, nisi in id quod ad eas pervenit: sed heredi similibusque personis dabitur. nam cum prohibitus quis est legatorum vel fideicommissorum causa possessionem adipisci, tunc actio et perpetua est et in heredem dabitur, quia est in potestate successorum evitare interdictum satisdatione oblata.

Dig. 43.4.2pr.

Paulus 59 ad ed.

Suo quis an alieno nomine prohibitus sit, nihil interest: haec enim verba " quanti ea res est" referenda sunt ad personam domini.

Dig. 43.4.2.1

Paulus 59 ad ed.

Item tam is tenetur, qui suo nomine, quam qui alieno nomine prohibuit.

Dig. 43.4.3pr.

Ulpianus 68 ad ed.

Si quis missus fuerit in possessionem fideicommissi servandi causa et non admittatur, potestate eius inducendus est in possessionem, qui eum misit, aut si quis volet uti interdicto, consequens erit dicere interdictum locum habere. sed melius erit dicere extra ordinem ipsos iure suae potestatis exsequi oportere decretum suum, nonnumquam etiam per manum militarem.

Dig. 43.4.3.1

Ulpianus 68 ad ed.

Constitutum est ab antonino, ut etiam in bona heredis quis admittatur certis modis. si quis igitur in his bonis non admittatur, dicendum est actionem hanc utilem competere: ceterum poterit uti et extraordinaria exsecutione.

Dig. 43.4.3.2

Ulpianus 68 ad ed.

Praetor ventrem in possessionem mittit, et hoc interdictum prohibitorium et restitutorium est. sed si mulier velit in factum actione uti ad exemplum creditorum magis quam interdicto, posse eam experiri sciendum est.

Dig. 43.4.3.3

Ulpianus 68 ad ed.

Si mulier dicatur calumniae causa in possessionem venisse, quod non sit praegnas vel non ex eo praegnas, vel si de statu mulieris aliquid dicatur: ex epistula divi hadriani ad exemplum praesumptionis carboniani edicti ventri praetor pollicetur possessionem.

Dig. 43.4.4pr.

Ulpianus 69 ad ed.

Per interdictum etiam ei subvenit praetor, qui damni infecti ab eo in possessionem missus est, ne ei vis fiat.

Dig. 43.4.4.1

Ulpianus 69 ad ed.

Poena autem eius, qui non promittit vel satis non dat, haec est, ut in possessionem mittatur adversarius. sive ergo promittat, sive per eum non fiat, quo minus promittat, non tenebit interdictum repulso per exceptionem eo qui experitur.

Dig. 43.4.4.2

Ulpianus 69 ad ed.

Praetor in eum, qui neque cavit neque possidere passus est eum qui missus est, iudicium pollicetur in tantum, quantum praestare eum oporteret, si de ea re cautum fuerat.

Dig. 43.4.4.3

Ulpianus 69 ad ed.

Sed et ex alia causa hoc iudicium proposuit, si eo tempore, quo in possessionem mitti desiderabat, praetoris adeundi potestas non fuerit, scilicet ut, si, cum potestas praetoris adeundi non esset, damnum interim datum est, haberet iudicium qui damnum passus est.

Dig. 43.4.4.4

Ulpianus 69 ad ed.

Item subiectum, si ex alia causa in possessionem missus prohibitus esse dicetur, habere in factum actionem.

Dig. 43.5.0. De tabulis exhibendis.

Dig. 43.5.1pr.

Ulpianus 68 ad ed.

Praetor ait: " quas tabulas lucius titius ad causam testamenti sui pertinentes reliquisse dicetur, si hae penes te sunt aut dolo malo tuo factum est, ut desinerent esse, ita eas illi exhibeas. item si libellus aliudve quid relictum esse dicetur, decreto comprehendam".

Dig. 43.5.1.1

Ulpianus 68 ad ed.

Si quis forte confiteatur penes se esse testamentum, iubendus est exhibere, et tempus ei dandum est, ut exhibeat, si non potest in praesentiarum exhibere. sed si neget se exhibere posse vel oportere, interdictum hoc competit.

Dig. 43.5.1.2

Ulpianus 68 ad ed.

Hoc interdictum pertinet non tantum ad testamenti tabulas, verum ad omnia, quae ad causam testamenti pertinent: ut puta et ad codicillos pertinet.

Dig. 43.5.1.3

Ulpianus 68 ad ed.

Sive autem valet testamentum sive non, vel quod ab initio inutiliter factum est, sive ruptum sit vel in quo alio vitio, sed etiam si falsum esse dicatur vel ab eo factum qui testamenti factionem non habuerit: dicendum est interdictum valere.

Dig. 43.5.1.4

Ulpianus 68 ad ed.

Sive supremae tabulae sint sive non sint, sed priores, dicendum interdictum hoc locum habere.

Dig. 43.5.1.5

Ulpianus 68 ad ed.

Itaque dicendum est ad omnem omnino scripturam testamenti, sive perfectam sive imperfectam, interdictum hoc pertinere.

Dig. 43.5.1.6

Ulpianus 68 ad ed.

Proinde et si plures tabulae sint testamenti, quia saepius fecerat, dicendum est interdicto locum fore: est enim quod ad causam testamenti pertineat, quidquid quoquo tempore factum exhiberi debeat.

Dig. 43.5.1.7

Ulpianus 68 ad ed.

Sed et si de statu disceptetur, si testator filius familias vel servus hoc fecisse dicatur, et hoc exhibebitur.

Dig. 43.5.1.8

Ulpianus 68 ad ed.

Item si filius familias fecerit testamentum, qui de castrensi peculio testabatur, habet locum interdictum.

Dig. 43.5.1.9

Ulpianus 68 ad ed.

Idem est et si is, qui testamentum fecit, apud hostes decessit.

Dig. 43.5.1.10

Ulpianus 68 ad ed.

Hoc interdictum ad vivi tabulas non pertinet, quia verba praetoris " reliquerit" fecerunt mentionem.

Dig. 43.5.1.11

Ulpianus 68 ad ed.

Sed et si deletum sine dolo sit testamentum.

Dig. 43.5.2

Paulus 64 ad ed.

Vel totum vel pars eius,

Dig. 43.5.3pr.

Ulpianus 68 ad ed.

Locum habet hoc interdictum.

Dig. 43.5.3.1

Ulpianus 68 ad ed.

Si tabulae in pluribus codicibus scriptae sint, omnes interdicto isto continentur, quia unum testamentum est.

Dig. 43.5.3.2

Ulpianus 68 ad ed.

Si tabulae testamenti apud aliquem depositae sunt a titio, hoc interdicto agendum est et cum eo qui detinet et cum eo qui deposuit.

Dig. 43.5.3.3

Ulpianus 68 ad ed.

Proinde et si custodiam tabularum aedituus vel tabularius suscepit, dicendum est teneri eum interdicto.

Dig. 43.5.3.4

Ulpianus 68 ad ed.

Si penes servum tabulae fuerint, dominus interdicto tenebitur.

Dig. 43.5.3.5

Ulpianus 68 ad ed.

Si ipse testator, dum vivit, tabulas suas esse dicat et exhiberi desideret, interdictum hoc locum non habebit, sed ad exhibendum erit agendum, ut exhibitas vindicet. quod in omnibus, qui corpora sua esse dicunt instrumentorum, probandum est.

Dig. 43.5.3.6

Ulpianus 68 ad ed.

Si quis dolo malo fecerit, quo minus penes eum tabulae essent, nihilo minus hoc interdicto tenebitur, nec praeiudicatur aliquid legi corneliae testamentariae, quasi dolo malo testamentum suppresserit. nemo enim ideo impune retinet tabulas, quod maius facinus admisit, cum exhibitis tabulis admissum eius magis manifestetur. et posse aliquem dolo malo facere, ut in eam legem non incidat, ut puta si neque amoverit neque celaverit tabulas, sed idcirco alii tradiderit, ne eas interdicenti exhiberet, hoc est si non supprimendi animo vel consilio fecit, sed ne huic exhiberet.

Dig. 43.5.3.7

Ulpianus 68 ad ed.

Hoc interdictum exhibitorium est.

Dig. 43.5.3.8

Ulpianus 68 ad ed.

Quid sit exhibere, videamus. exhibere hoc est materiae ipsius adprehendendae copiam facere.

Dig. 43.5.3.9

Ulpianus 68 ad ed.

Exhibere autem apud praetorem oportet, ut ex auctoritate eius signatores admoniti venirent ad recognoscenda signa: et si forte non optemperent testes, labeo scribit coerceri eos a praetore debere.

Dig. 43.5.3.10

Ulpianus 68 ad ed.

Solent autem exhiberi tabulas desiderare omnes omnino, qui quid in testamento adscriptum habent.

Dig. 43.5.3.11

Ulpianus 68 ad ed.

Condemnatio autem huius iudicii quanti interfuit aestimari debet.

Dig. 43.5.3.12

Ulpianus 68 ad ed.

Quare si heres scriptus hoc interdicto experiatur, ad hereditatem referenda est aestimatio:

Dig. 43.5.3.13

Ulpianus 68 ad ed.

Et si legatum sit, tantum venit in aestimationem, quantum sit in legato:

Dig. 43.5.3.14

Ulpianus 68 ad ed.

Et si sub condicione legatum sit, quasi condicione existente sic aestimandum est, nec compelli debebit ad cavendum, ut se restituturum caveat, quidquid consecutus est, si condicio defecerit, quia poena contumaciae praestatur ab eo qui non exhibet.

Dig. 43.5.3.15

Ulpianus 68 ad ed.

Inde quaeritur, si hinc consecutus aestimationem legatarius postea legatum petat, an sit audiendus. et putem, si heres idem praestitit, exceptione doli repellendum, si alius, repelli non oportere. et ideo et si heres sit, qui interdicto usus est aestimationem consecutus, eadem est distinctio.

Dig. 43.5.3.16

Ulpianus 68 ad ed.

Interdictum hoc et post annum competere constat. sed et heredi ceterisque successoribus competit.

Dig. 43.5.4

Paulus 69 ad ed.

Si sint tabulae apud pupillum et dolo tutoris desierint esse, in ipsum tutorem competit interdictum: aequum enim est ipsum ex delicto suo teneri, non pupillum.

Dig. 43.5.5

Iavolenus 13 ex cass.

De tabulis proferendis interdictum competere non oportet, si hereditatis controversia ex his pendet aut si ad publicam quaestionem pertinet: itaque in aede sacra interim deponendae sunt aut apud virum idoneum.

Dig. 43.6.0. Ne quid in loco sacro fiat.

Dig. 43.6.1pr.

Ulpianus 68 ad ed.

Ait praetor: " in loco sacro facere inve eum immittere quid veto".

Dig. 43.6.1.1

Ulpianus 68 ad ed.

Hoc interdictum de sacro loco, non de sacrario competit.

Dig. 43.6.1.2

Ulpianus 68 ad ed.

Quod ait praetor, ne quid in loco sacro fiat, non ad hoc pertinet, quod ornamenti causa fit, sed quod deformitatis vel incommodi.

Dig. 43.6.1.3

Ulpianus 68 ad ed.

Sed et cura aedium locorumque sacrorum mandata est his, qui aedes sacras curant.

Dig. 43.6.2

Hermogenianus 3 iuris epit.

In muris itemque portis et aliis sanctis locis aliquid facere, ex quo damnum aut incommodum irrogetur, non permittitur.

Dig. 43.6.3

Paulus 5 sent.

Neque muri neque portae habitari sine permissu principis propter fortuita incendia possunt.

Dig. 43.7.0. De locis et itineribus publicis.

Dig. 43.7.1

Pomponius 30 ad sab.

Cuilibet in publicum petere permittendum est id, quod ad usum omnium pertineat, veluti vias publicas, itinera publica: et ideo quolibet postulante de his interdicitur.

Dig. 43.7.2

Iulianus 48 Dig.

Nemini licet in via publica monumentum exstruere.

Dig. 43.7.3pr.

Ulpianus 33 ad sab.

Viae vicinales, quae ex agris privatorum collatis factae sunt, quarum memoria non exstat, publicarum viarum numero sunt.

Dig. 43.7.3.1

Ulpianus 33 ad sab.

Sed inter eas et ceteras vias militares hoc interest, quod viae militares exitum ad mare aut in urbes aut in flumina publica aut ad aliam viam militarem habent, harum autem vicinalium viarum dissimilis condicio est: nam pars earum in militares vias exitum habent, pars sine ullo exitu intermoriuntur.

Dig. 43.8.0. Ne quid in loco publico vel itinere fiat.

Dig. 43.8.1

Paulus 64 ad ed.

In loco publico praetor prohibet aedificare et interdictum proponit.

Dig. 43.8.2pr.

Ulpianus 68 ad ed.

Praetor ait: " ne quid in loco publico facias inve eum locum immittas, qua ex re quid illi damni detur, praeterquam quod lege senatus consulto edicto decretove principum tibi concessum est. de eo, quod factum erit, interdictum non dabo".

Dig. 43.8.2.1

Ulpianus 68 ad ed.

Hoc interdictum prohibitorium est.

Dig. 43.8.2.2

Ulpianus 68 ad ed.

Et tam publicis utilitatibus quam privatorum per hoc prospicitur. loca enim publica utique privatorum usibus deserviunt, iure scilicet civitatis, non quasi propria cuiusque, et tantum iuris habemus ad optinendum, quantum quilibet ex populo ad prohibendum habet. propter quod si quod forte opus in publico fiet, quod ad privati damnum redundet, prohibitorio interdicto potest conveniri, propter quam rem hoc interdictum propositum est.

Dig. 43.8.2.3

Ulpianus 68 ad ed.

Publici loci appellatio quemadmodum accipiatur, labeo definit, ut et ad areas et ad insulas et ad agros et ad vias publicas itineraque publica pertineat.

Dig. 43.8.2.4

Ulpianus 68 ad ed.

Hoc interdictum ad ea loca, quae sunt in fisci patrimonio, non puto pertinere: in his enim neque facere quicquam neque prohibere privatus potest: res enim fiscales quasi propriae et privatae principis sunt. igitur si quis in his aliquid faciat, nequaquam hoc interdictum locum habebit: sed si forte de his sit controversia, praefecti eorum iudices sunt.

Dig. 43.8.2.5

Ulpianus 68 ad ed.

Ad ea igitur loca hoc interdictum pertinet, quae publico usui destinata sunt, ut, si quid illic fiat, quod privato noceret, praetor intercederet interdicto suo.

Dig. 43.8.2.6

Ulpianus 68 ad ed.

Cum quidam velum in maeniano immissum haberet, qui vicini luminibus officiebat, utile interdictum competit: " ne quid in publico immittas, qua ex re luminibus gaii seii officias".

Dig. 43.8.2.7

Ulpianus 68 ad ed.

Si quis quod in publico loco positum habuit, reficere voluit, hoc interdicto locum esse aristo ait ad prohibendum eum reficere.

Dig. 43.8.2.8

Ulpianus 68 ad ed.

Adversus eum, qui molem in mare proiecit, interdictum utile competit ei, cui forte haec res nocitura sit: si autem nemo damnum sentit, tuendus est is, qui in litore aedificat vel molem in mare iacit.

Dig. 43.8.2.9

Ulpianus 68 ad ed.

Si quis in mari piscari aut navigare prohibeatur, non habebit interdictum, quemadmodum nec is, qui in campo publico ludere vel in publico balineo lavare aut in theatro spectare arceatur: sed in omnibus his casibus iniuriarum actione utendum est.

Dig. 43.8.2.10

Ulpianus 68 ad ed.

Merito ait praetor " qua ex re quid illi damni detur": nam quotiensque aliquid in publico fieri permittitur, ita oportet permitti, ut sine iniuria cuiusquam fiat. et ita solet princeps, quotiens aliquid novi operis instituendum petitur, permittere.

Dig. 43.8.2.11

Ulpianus 68 ad ed.

Damnum autem pati videtur, qui commodum amittit, quod ex publico consequebatur, qualequale sit.

Dig. 43.8.2.12

Ulpianus 68 ad ed.

Proinde si cui prospectus, si cui aditus sit deterior aut angustior, interdicto opus est.

Dig. 43.8.2.13

Ulpianus 68 ad ed.

Si quid in loco publico aedificavero, ut ea, quae ex meo ad te nullo iure defluebant, desinant fluere, interdicto me non teneri labeo putat.

Dig. 43.8.2.14

Ulpianus 68 ad ed.

Plane si aedificium hoc effecerit, ut minus luminis insula tua habeat, interdictum hoc competit.

Dig. 43.8.2.15

Ulpianus 68 ad ed.

Idem ait, si in publico aedificem, deinde hoc aedificium ei obstet, quod tu in publico aedificaveras, cessare hoc interdictum, cum tu quoque illicite aedificaveris, nisi forte tu iure tibi concesso aedificaveras.

Dig. 43.8.2.16

Ulpianus 68 ad ed.

Si quis a principe simpliciter impetraverit, ut in publico loco aedificet, non est credendus sic aedificare, ut cum incommodo alicuius id fiat, neque sic conceditur: nisi forte quis hoc impetraverit.

Dig. 43.8.2.17

Ulpianus 68 ad ed.

Si quis nemine prohibente in publico aedificaverit, non esse eum cogendum tollere, ne ruinis urbs deformetur, et quia prohibitorium est interdictum, non restitutorium. si tamen obstet id aedificium publico usui, utique is, qui operibus publicis procurat, debebit id deponere, aut si non obstet, solarium ei imponere: vectigal enim hoc sic appellatur solarium ex eo, quod pro solo pendatur.

Dig. 43.8.2.18

Ulpianus 68 ad ed.

Si tamen adhuc nullum opus factum fuerit, officio iudicis continetur, uti caveatur non fieri: et ea omnia etiam in persona heredum ceterorumque successorum erunt cavenda.

Dig. 43.8.2.19

Ulpianus 68 ad ed.

Locorum sacrorum diversa causa est: in loco enim sacro non solum facere vetamur, sed et factum restituere iubemur: hoc propter religionem.

Dig. 43.8.2.20

Ulpianus 68 ad ed.

Ait praetor: " in via publica itinereve publico facere immittere quid, quo ea via idve iter deterius sit fiat, veto".

Dig. 43.8.2.21

Ulpianus 68 ad ed.

Viam publicam eam dicimus, cuius etiam solum publicum est: non enim sicuti in privata via, ita et in publica accipimus: viae privatae solum alienum est, ius tantum eundi et agendi nobis competit: viae autem publicae solum publicum est, relictum ad directum certis finibus latitudinis ab eo, qui ius publicandi habuit, ut ea publice iretur commearetur.

Dig. 43.8.2.22

Ulpianus 68 ad ed.

Viarum quaedam publicae sunt, quaedam privatae, quaedam vicinales. publicas vias dicimus, quas graeci basilikas, nostri praetorias, alii consulares vias appellant. privatae sunt, quas agrarias quidam dicunt. vicinales sunt viae, quae in vicis sunt vel quae in vicos ducunt: has quoque publicas esse quidam dicunt: quod ita verum est, si non ex collatione privatorum hoc iter constitutum est. aliter atque si ex collatione privatorum reficiatur: nam si ex collatione privatorum reficiatur, non utique privata est: refectio enim idcirco de communi fit, quia usum utilitatemque communem habet.

Dig. 43.8.2.23

Ulpianus 68 ad ed.

Privatae viae dupliciter accipi possunt, vel hae, quae sunt in agris, quibus imposita est servitus, ut ad agrum alterius ducant, vel hae, quae ad agros ducunt, per quas omnibus commeare liceat, in quas exitur de via consulari et sic post illam excipit via vel iter vel actus ad villam ducens. has ergo, quae post consularem excipiunt in villas vel in alias colonias ducentes, putem etiam ipsas publicas esse.

Dig. 43.8.2.24

Ulpianus 68 ad ed.

Hoc interdictum tantum ad vias rusticas pertinet, ad urbicas vero non: harum enim cura pertinet ad magistratus.

Dig. 43.8.2.25

Ulpianus 68 ad ed.

Si viae publicae exemptus commeatus sit vel via coartata, interveniunt magistratus.

Dig. 43.8.2.26

Ulpianus 68 ad ed.

Si quis cloacam in viam publicam immitteret exque ea re minus habilis via per cloacam fiat, teneri eum labeo scribit: immisisse enim eum videri.

Dig. 43.8.2.27

Ulpianus 68 ad ed.

Proinde et si fossam quis in fundo suo fecerit, ut ibi aqua collecta in viam decurrat, hoc interdicto tenebitur: immissum enim habere etiam hunc videri.

Dig. 43.8.2.28

Ulpianus 68 ad ed.

Idem labeo scribit, si quis in suo ita aedificaverit, ut aqua in via collecta restagnet, non teneri eum interdicto, quia non immittat aquam, sed non recipit: nerva autem melius scribit utrumque teneri. plane si fundus viam publicam contingat et ex eo aqua derivata deteriorem viam faciat, quae tamen aqua ex vicini fundo in tuum veniat: si quidem necesse habeas eam aquam recipere, interdictum locum habebit adversus vicinum tuum: si autem necesse non sit, non teneri vicinum tuum, te tamen teneri: eum enim videri factum habere, qui usum eius aquae habeat. idem nerva scribit, si tecum interdicto agatur, nihil ultra te facere cogendum, quam ut arbitratu eius qui tecum experitur cum vicino experiaris: ceterum aliter observantibus futurum, ut tenearis etiam, si iam bona fide cum vicino egeris neque per te stet, quo minus arbitratu actoris cum vicino experiaris.

Dig. 43.8.2.29

Ulpianus 68 ad ed.

Idem ait, si odore solo locus pestilentiosus fiat, non esse ab re de re ea interdicto uti.

Dig. 43.8.2.30

Ulpianus 68 ad ed.

Hoc interdictum etiam ad ea, quae pascuntur in via publica itinereve publico et deteriorem faciant viam, locum habet.

Dig. 43.8.2.31

Ulpianus 68 ad ed.

Deinde ait praetor: " quo ea via idque iter deterius sit fiat". hoc sive statim deterior via sit, sive postea: ad hoc enim pertinent haec verba " sic fiat": etenim quaedam sunt talia, ut statim facto suo noceant, quaedam talia, ut in praesentiarum quidem nihil noceant, in futurum autem nocere debeant.

Dig. 43.8.2.32

Ulpianus 68 ad ed.

Deteriorem autem viam fieri sic accipiendum est, si usus eius ad commeandum corrumpatur, hoc est ad eundum vel agendum, ut, cum plane fuerit, clivosa fiat vel ex molli aspera aut angustior ex latiore aut palustris ex sicca.

Dig. 43.8.2.33

Ulpianus 68 ad ed.

Scio tractatum, an permittendum sit specus et pontem per viam publicam facere: et plerique probant interdicto eum teneri: non enim oportere eum deteriorem viam facere.

Dig. 43.8.2.34

Ulpianus 68 ad ed.

Hoc interdictum perpetuum et populare est condemnatioque ex eo facienda est, quanti actoris intersit.

Dig. 43.8.2.35

Ulpianus 68 ad ed.

Praetor ait: " quod in via publica itinereve publico factum immissum habes, quo ea via idve iter deterius sit fiat, restituas".

Dig. 43.8.2.36

Ulpianus 68 ad ed.

Hoc interdictum ex eadem causa proficiscitur, ex qua et superius: et tantum interest, quod hoc restitutorium, illud prohibitorium est.

Dig. 43.8.2.37

Ulpianus 68 ad ed.

Hoc interdicto non is tenetur, qui in via publica aliquid fecit, sed is, qui factum habet. proinde si alius fecit, alius factum habet, is tenetur, qui factum habet: et est hoc utilius, quia is potest restituere, qui factum immissum habet.

Dig. 43.8.2.38

Ulpianus 68 ad ed.

Habere eum dicimus, qui utitur et iure possessionis fruitur, sive ipse opus fecit sive ex causa emptionis vel conductionis vel legato vel hereditate vel quo alio modo adquisiit.

Dig. 43.8.2.39

Ulpianus 68 ad ed.

Unde ofilius putat eum, qui pro derelicto reliquit id opus quod fecit, si viam publicam corrupit et reliquit, non teneri hoc interdicto: non enim habet quod fecit. sed an in eum actio debeat dari, videbimus. et puto utile interdictum competere, ut, quod in via publica aedificavit, restituat.

Dig. 43.8.2.40

Ulpianus 68 ad ed.

Si ex fundo tuo arbor in viam publicam sic ceciderit, ut itineri sit impedimento, eamque pro derelicto habeas, non teneri labeo scribit: si tamen, inquit, actor sua impensa arborem tollere paratus fuerit, recte tecum acturum interdicto de via publica reficienda. sed si pro derelicto non habeas, recte tecum agi hoc interdicto.

Dig. 43.8.2.41

Ulpianus 68 ad ed.

Idem labeo scribit, si vicinus meus viam opere corruperit, quamvis opus, quod fecit, tam mihi quam ipsi utile sit, tamen si is vicinus fundi sui causa id fecerit, me tamen non posse hoc interdicto conveniri: si autem communiter hoc opus fieri curaverimus, utrumque nostrum teneri.

Dig. 43.8.2.42

Ulpianus 68 ad ed.

Hoc interdictum locum habet etiam adversus eum, qui dolo malo fecit, quo minus possideret vel haberet: etenim parem esse condicionem oportet eius, qui quid possideat vel habeat, atque eius, cuius dolo malo factum sit, quo minus possideret vel haberet: et mihi videtur vera labeonis sententia.

Dig. 43.8.2.43

Ulpianus 68 ad ed.

" restituas" inquit. restituere videtur, qui in pristinum statum reducit: quod fit, sive quis tollit id quod factum est vel reponat quod sublatum est. et interdum suo sumptu: nam si ipse, quo qui interdixit, fecerit, vel iussu eius alius, aut ratum habitum sit quod fecit, ipse suis sumptibus debet restituere: si vero nihil horum intervenit, sed habet factum, tunc dicemus patientiam solam eum praestare debere.

Dig. 43.8.2.44

Ulpianus 68 ad ed.

Interdictum hoc non esse temporarium sciendum est: pertinet enim ad publicam utilitatem: condemnatioque ex eo facienda est, quanti actoris intersit tolli quod factum est.

Dig. 43.8.2.45

Ulpianus 68 ad ed.

Praetor ait: " quo minus illi via publica itinereve publico ire agere liceat, vim fieri veto".

Dig. 43.8.3pr.

Celsus 39 Dig.

Litora, in quae populus romanus imperium habet, populi romani esse arbitror:

Dig. 43.8.3.1

Celsus 39 Dig.

Maris communem usum omnibus hominibus, ut aeris, iactasque in id pilas eius esse qui iecerit: sed id concedendum non esse, si deterior litoris marisve usus eo modo futurus sit.

Dig. 43.8.4

Scaevola 5 resp.

Respondit in litore iure gentium aedificare licere, nisi usus publicus impediretur.

Dig. 43.8.5

Paulus 16 ad sab.

Si per publicum locum rivus aquae ductus privato nocebit, erit actio privato ex lege duodecim tabularum, ut noxa domino sarciatur.

Dig. 43.8.6

Iulianus 43 Dig.

Ei, qui hoc interdicto experitur " ne quid in loco publico fiat, quo damnum privato detur", quamvis de loco publico interdicat, nihilo minus procuratoris dandi facultas est.

Dig. 43.8.7

Iulianus 48 Dig.

Sicut is, qui nullo prohibente in loco publico aedificaverat, cogendus non est demolire, ne ruinis urbs deformetur, ita qui adversus edictum praetoris aedificaverit, tollere aedificium debet: alioqui inane et lusorium praetoris imperium erit.

Dig. 43.9.0. De loco publico fruendo.

Dig. 43.9.1pr.

Ulpianus 68 ad ed.

Praetor ait: " quo minus loco publico, quem is, cui locandi ius fuerit, fruendum alicui locavit, ei qui conduxit sociove eius e lege locationis frui liceat, vim fieri veto".

Dig. 43.9.1.1

Ulpianus 68 ad ed.

Interdictum hoc publicae utilitatis causa proponi palam est: tuetur enim vectigalia publica, dum prohibetur quis vim facere ei, qui id fruendum conduxit.

Dig. 43.9.1.2

Ulpianus 68 ad ed.

Sed si simul veniant ad interdictum movendum ipse qui conduxerit et socius eius, magis est, ut ipse conductor praeferatur.

Dig. 43.9.1.3

Ulpianus 68 ad ed.

Ait praetor " quo minus e lege locationis frui liceat". merito ait " e lege locationis": ultra legem enim vel contra legem non debet audiri, qui frui desiderat.

Dig. 43.9.2

Paulus 5 sent.

Concedi solet, ut imagines et statuae, quae ornamenta rei publicae sunt futurae, in publicum ponantur.

Dig. 43.10.0. De via publica et si quid in ea factum esse dicatur.

Dig. 43.10.1pr.

Papinianus lib. de cura urb.

Ohi astunomikoi epimeleisvwsan twn kata tyn polin hodwn, hopws an homalisvwsin kai ta hreumata my blapty tas oikias kai gefurai wsin ohu an dey.

Dig. 43.10.1.1

Papinianus lib. de cura urb.

Epimeleisvwsan de hopws ohi idioi toixoi y twn allwn y twn peri tas oikias ha eis tyn hodon ferei my sfalera y, hina hws dei kavairwsin ohi despotai twn oikiwn kai episkeuazwsin. ean de my kavairwsin myde episkeuazwsin, zymioutwsan autous, hews an asfaly poiyswsin.

Dig. 43.10.1.2

Papinianus lib. de cura urb.

Epimeleisvwsan de hopws mydeis orussy tas hodous myde xwnnuy myde ktisy eis tas hodous myden: ei de my, ho men doulos hupo tou entuxontos mastigousvw, ho de eleuveros endeiknusvw tois astunomois, ohi de astunomoi zymioutwsan kata ton nomon kai to gegonos kataluetwsan.

Dig. 43.10.1.3

Papinianus lib. de cura urb.

Episkeuazein de tas hodous tas dymosias kata tyn heautou oikian hekaston kai tas hudrorroas ekkavairein tas ek tou hupaivriou kai episkeuazein ohutws, hws an my kwluy hamacan epienai. hosoi de misvwsamenoi oikousin, ean my episkeuasy ho despotys, autoi episkeuasantes hupologizesvwsan to analwma kata ton misvon.

Dig. 43.10.1.4

Papinianus lib. de cura urb.

Epimeleisvwsan de kai hopws pro twn ergastyriwn myden prokeimenon y, plyn ean knafeus himatia qugy y tektwn troxous ecw tivy: tivesvwsan de kai ohutoi, hwste my kwluein hamacan badizein.

Dig. 43.10.1.5

Papinianus lib. de cura urb.

My eatwsan de myde maxesvai en tais hodois myde kopron ekballein myde nekra myde dermata hriptein.

Dig. 43.11.0. De via publica et itinere publico reficiendo.

Dig. 43.11.1pr.

Ulpianus 68 ad ed.

Praetor ait: " quo minus illi viam publicam iterve publicum aperire reficere liceat, dum ne ea via idve iter deterius fiat, vim fieri veto".

Dig. 43.11.1.1

Ulpianus 68 ad ed.

Viam aperire est ad veterem altitudinem latitudinemque restituere. sed et purgare refectionis portio est: purgare autem proprie dicitur ad libramentum proprium redigere sublato eo quod super eam esset. reficit enim et qui aperit et qui purgat et omnes omnino, qui in pristinum statum reducunt.

Dig. 43.11.1.2

Ulpianus 68 ad ed.

Si quis in specie refectionis deteriorem viam facit, impune vim patietur. propter quod neque latiorem neque longiorem neque altiorem neque humiliorem viam sub nomine refectionis is qui intercidit potest facere, vel in viam terrenam glaream inicere aut sternere viam lapide quae terrena sit, vel contra lapide stratam terrenam facere.

Dig. 43.11.1.3

Ulpianus 68 ad ed.

Interdictum hoc perpetuo dabitur et omnibus et in omnes, et habet condemnationem in id quod actoris intererit.

Dig. 43.11.2

Iavolenus 10 ex cass.

Viam publicam populus non utendo amittere non potest.

Dig. 43.11.3pr.

Paulus 1 sent.

Si in agrum vicini viam publicam quis reiecerit, tantum in eum viae receptae actio dabitur, quanti eius interest, cuius fundo iniuria irrogata est.

Dig. 43.11.3.1

Paulus 1 sent.

Qui viam publicam exaraverit, ad munitionem eius solus compellitur.

Dig. 43.12.0. De fluminibus. ne quid in flumine publico ripave eius fiat, quo peius navigetur.

Dig. 43.12.1pr.

Ulpianus 68 ad ed.

Ait praetor: " ne quid in flumine publico ripave eius facias neve quid in flumine publico neve in ripa eius immittas, quo statio iterve navigio deterior sit fiat".

Dig. 43.12.1.1

Ulpianus 68 ad ed.

Flumen a rivo magnitudine discernendum est aut existimatione circumcolentium.

Dig. 43.12.1.2

Ulpianus 68 ad ed.

Item fluminum quaedam sunt perennia, quaedam torrentia. perenne est, quod semper fluat, aenaos, torrens ho xeimarrous: si tamen aliqua aestate exaruerit, quod alioquin perenne fluebat, non ideo minus perenne est.

Dig. 43.12.1.3

Ulpianus 68 ad ed.

Fluminum quaedam publica sunt, quaedam non. publicum flumen esse cassius definit, quod perenne sit: haec sententia cassii, quam et celsus probat, videtur esse probabilis.

Dig. 43.12.1.4

Ulpianus 68 ad ed.

Hoc interdictum ad flumina publica pertinet: si autem flumen privatum sit, cessabit interdictum: nihil enim differt a ceteris locis privatis flumen privatum.

Dig. 43.12.1.5

Ulpianus 68 ad ed.

Ripa autem ita recte definietur id, quod flumen continet naturalem rigorem cursus sui tenens: ceterum si quando vel imbribus vel mari vel qua alia ratione ad tempus excrevit, ripas non mutat: nemo denique dixit nilum, qui incremento suo aegyptum operit, ripas suas mutare vel ampliare. nam cum ad perpetuam sui mensuram redierit, ripae alvei eius muniendae sunt. si tamen naturaliter creverit, ut perpetuum incrementum nanctus sit, vel alio flumine admixto vel qua alia ratione, dubio procul dicendum est ripas quoque eum mutasse, quemadmodum si alveo mutato alia coepit currere.

Dig. 43.12.1.6

Ulpianus 68 ad ed.

Si insula in publico flumine fuerit nata inque ea aliquid fiat, non videtur in publico fieri. illa enim insula aut occupantis est, si limitati agri fuerunt, aut eius cuius ripam contingit, aut, si in medio alveo nata est, eorum est qui prope utrasque ripas possident.

Dig. 43.12.1.7

Ulpianus 68 ad ed.

Simili modo et si flumen alveum suum reliquit et alia fluere coeperit, quidquid in veteri alveo factum est, ad hoc interdictum non pertinet: non enim in flumine publico factum erit, quod est utriusque vicini aut, si limitatus est ager, occupantis alveus fiet: certe desinit esse publicus. ille etiam alveus, quem sibi flumen fecit, etsi privatus ante fuit, incipit tamen esse publicus, quia impossibile est, ut alveus fluminis publici non sit publicus.

Dig. 43.12.1.8

Ulpianus 68 ad ed.

Si fossa manu facta sit, per quam fluit publicum flumen, nihilo minus publica fit: et ideo si quid ibi fiat, in flumine publico factum videtur.

Dig. 43.12.1.9

Ulpianus 68 ad ed.

Aliter atque si flumen aliquam terram inundaverit, non alveum sibi fecerit: tunc enim non fit publicum, quod aqua opertum est.

Dig. 43.12.1.10

Ulpianus 68 ad ed.

Item si amnis aliquid circumeat, sciendum est eius manere cuius fuit: si quid igitur illic factum est, non est factum in publico flumine. nec pertinet ad hoc interdictum, si quid in privato factum sit, ne quidem si in privato flumine fiat: nam quod fit in privato flumine, perinde est, atque si in alio privato loco fiat.

Dig. 43.12.1.11

Ulpianus 68 ad ed.

In flumine publico factum accipere debemus, quidquid in aqua fiat: nam si quid extra factum sit, non est in flumine factum: et quod in ripa fiat, non videtur in flumine factum.

Dig. 43.12.1.12

Ulpianus 68 ad ed.

Non autem omne, quod in flumine publico ripave fit, coercet praetor, sed si quid fiat, quo deterior statio et navigatio fiat. ergo hoc interdictum ad ea tantum flumina publica pertinet, quae sunt navigabilia, ad cetera non pertinet. sed labeo scribit non esse iniquum etiam si quid in eo flumine, quod navigabile non sit, fiat, ut exarescat vel aquae cursus impediatur, utile interdictum competere " ne vis ei fiat, quo minus id opus, quod in alveo fluminis ripave ita factum sit, ut iter cursus fluminis deterior sit fiat, tollere demoliri purgare restituere viri boni arbitratu possit".

Dig. 43.12.1.13

Ulpianus 68 ad ed.

Stationem dicimus a stando: is igitur locus demonstratur, ubicumque naves tuto stare possunt.

Dig. 43.12.1.14

Ulpianus 68 ad ed.

Ait praetor: " iterque navigii deterius fiat". hoc pro navigatione positum est: immo navigium solemus dicere etiam ipsam navem, iter ergo navigio potest et sic accipi " iter navi deterius fiat". navigii appellatione etiam rates continentur, quia plerumque et ratum usus necessarius est. si pedestre iter impediatur, non ideo minus iter navigio deterius fit.

Dig. 43.12.1.15

Ulpianus 68 ad ed.

Deterior statio itemque iter navigio fieri videtur, si usus eius corrumpatur vel difficilior fiat aut minor vel rarior aut si in totum auferatur. proinde sive derivetur aqua, ut exiguior facta minus sit navigabilis, vel si dilatetur, aut diffusa brevem aquam faciat, vel contra sic coangustetur, et rapidius flumen faciat, vel si quid aliud fiat quod navigationem incommodet difficilioremve faciat vel prorsus impediat, interdicto locus erit.

Dig. 43.12.1.16

Ulpianus 68 ad ed.

Labeo scribit non esse dandam exceptionem ei, qui interdicto convenitur: " aut nisi ripae tuendae causa factum sit", sed ita excipiendum ait: " extra quam si quid ita factum sit, uti de lege fieri licuit".

Dig. 43.12.1.17

Ulpianus 68 ad ed.

Si in mari aliquid fiat, labeo competere tale interdictum: " ne quid in mari inve litore" " quo portus, statio iterve navigio deterius fiat".

Dig. 43.12.1.18

Ulpianus 68 ad ed.

Sed et si in flumine publico, non tamen navigabili fiat, idem putat.

Dig. 43.12.1.19

Ulpianus 68 ad ed.

Deinde ait praetor: " quod in flumine publico ripave eius fiat sive quid in id flumen ripamve eius immissum habes, quo statio iterve navigio deterior sit fiat, restituas".

Dig. 43.12.1.20

Ulpianus 68 ad ed.

Superius interdictum prohibitorium est, hoc restitutorium, ad eandem causam pertinens.

Dig. 43.12.1.21

Ulpianus 68 ad ed.

Iubetur autem is, qui factum vel immissum habet, restituere quod habet, si modo id quod habet stationem vel navigium deterius faciat.

Dig. 43.12.1.22

Ulpianus 68 ad ed.

Haec verba " factum habes" vel " immissum habes" ostendunt non eum teneri, qui fecit vel immisit, sed qui factum immissum habet. denique labeo scribit, si auctor tuus aquam derivaverit, et hoc interdicto, si ea tu utaris.

Dig. 43.12.2

Pomponius 34 ad sab.

Quominus ex publico flumine ducatur aqua, nihil impedit (nisi imperator aut senatus vetet), si modo ea aqua in usu publico non erit: sed si aut navigabile est aut ex eo aliud navigabile fit, non permittitur id facere.

Dig. 43.12.3pr.

Paulus 16 ad sab.

Flumina publica quae fluunt ripaeque eorum publicae sunt.

Dig. 43.12.3.1

Paulus 16 ad sab.

Ripa ea putatur esse, quae plenissimum flumen continet.

Dig. 43.12.3.2

Paulus 16 ad sab.

Secundum ripas fluminum loca non omnia publica sunt, cum ripae cedant, ex quo primum a plano vergere incipit usque ad aquam.

Dig. 43.12.4

Scaevola 5 resp.

Quaesitum est, an is, qui in utraque ripa fluminis publici domus habeat, pontem privati iuris facere potest. respondit non posse.

Dig. 43.13.0. Ne quid in flumine publico fiat, quo aliter aqua fluat, atque uti priore aestate fluxit.

Dig. 43.13.1pr.

Ulpianus 68 ad ed.

Ait praetor: " in flumine publico inve ripa eius facere aut in id flumen ripamve eius immittere, quo aliter aqua fluat, quam priore aestate fluxit, veto".

Dig. 43.13.1.1

Ulpianus 68 ad ed.

Hoc interdicto prospexit praetor, ne derivationibus minus concessis flumina excrescant vel mutatus alveus vicinis iniuriam aliquam adferat.

Dig. 43.13.1.2

Ulpianus 68 ad ed.

Pertinet autem ad flumina publica, sive navigabilia sunt sive non sunt.

Dig. 43.13.1.3

Ulpianus 68 ad ed.

Ait praetor: " quo aliter aqua fluat, quam priore aestate fluxit": non omnis ergo, qui immisit vel qui fecit, tenetur, sed qui faciendo vel immittendo efficit aliter, quam priore aestate fluxit, aquam fluere. quod autem ait " aliter fluat", non ad quantitatem aquae fluentis pertinet, sed ad modum et ad rigorem cursus aquae referendum est. et generaliter dicendum est ita demum interdicto quem teneri, si mutetur aquae cursus per hoc quod factum est, dum vel depressior vel artior fiat aqua ac per hoc rapidior fit cum incommodo accolentium: et si quod aliud vitii accolae ex facto eius qui convenitur sentient, interdicto locus erit.

Dig. 43.13.1.4

Ulpianus 68 ad ed.

Si quis ex rivo tecto per apertum ducere velit vel contra qui ante aperto duxit, nunc operto velit, interdicto teneri placuit, si modo hoc factum eius incommodum circa colentibus adferat.

Dig. 43.13.1.5

Ulpianus 68 ad ed.

Simili modo et si incile ducat aut alio loco faciat aut si alveum fluminis mutet, hoc interdicto tenebitur.

Dig. 43.13.1.6

Ulpianus 68 ad ed.

Sunt qui putent excipiendum hoc interdicto " quod eius ripae muniendae causa non fiet", scilicet ut, si quid fiat, quo aliter aqua fluat, si tamen muniendae ripae causa fiat, interdicto locus non sit. sed nec hoc quibusdam placet: neque enim ripae cum incommodo accolentium muniendae sunt. hoc tamen iure utimur, ut praetor ex causa aestimet, an hanc exceptionem dare debeat: plerumque enim utilitas suadet exceptionem istam dari.

Dig. 43.13.1.7

Ulpianus 68 ad ed.

Sed et si alia utilitas vertatur eius, qui quid in flumine publico fecit (pone enim grande damnum flumen ei dare solitum, praedia eius depopulari), si forte aggeres vel quam aliam munitionem adhibuit, ut agrum suum tueretur eaque res cursum fluminis ad aliquid immutavit, cur ei non consulatur? plerosque scio prorsus flumina avertisse alveosque mutasse, dum praediis suis consulunt. oportet enim in huiusmodi rebus utilitatem et tutelam facientis spectari, sine iniuria utique accolarum.

Dig. 43.13.1.8

Ulpianus 68 ad ed.

Is autem hoc interdicto tenetur, qui aliter fecit fluere, quam priore aestate fluxit. et idcirco aiunt praetorem priorem aestatem comprehendisse, quia semper certior est naturalis cursus fluminum aestate potius quam hieme. nec ad instantem aestatem, sed ad priorem interdictum hoc refertur, quia illius aestatis fluxus indubitatior est. aestas ad aequinoctium autumnale refertur. et si forte aestate interdicetur, proxima superior aestas erit intuenda: si vero hieme, tunc non proxima hieme aestas, sed superior erit inspicienda.

Dig. 43.13.1.9

Ulpianus 68 ad ed.

Hoc interdictum cuivis ex populo competit, sed non adversus omnes, verum adversus eum, qui deneget, ut aliter aqua flueret, cum ius non haberet.

Dig. 43.13.1.10

Ulpianus 68 ad ed.

Hoc interdictum et in heredes competit.

Dig. 43.13.1.11

Ulpianus 68 ad ed.

Deinde ait praetor: " quod in flumine publico ripave eius factum sive quid in flumen ripamve eius immissum habes, si ob id aliter aqua fluit atque uti priore aestate fluxit, restituas".

Dig. 43.13.1.12

Ulpianus 68 ad ed.

Hoc interdictum restitutorium proponitur: superius enim prohibitorium est et pertinet ad ea, quae nondum facta sunt. si quid igitur iam factum est, per hoc interdictum restituetur: si quid ne fiat prospicitur, superiore interdicto erit utendum, et si quid post interdictum redditum fuerit factum, coercebitur.

Dig. 43.13.1.13

Ulpianus 68 ad ed.

In hoc interdicto restitutorio non est iniquum, ut labeo ait, venire etiam, quod dolo factum est quo minus haberes.

Dig. 43.14.0. Ut in flumine publico navigare liceat.

Dig. 43.14.1pr.

Ulpianus 68 ad ed.

Praetor ait: " quo minus illi in flumine publico navem ratem agere quove minus per ripam onerare exonerare liceat, vim fieri veto. item ut per lacum fossam stagnum publicum navigare liceat, interdicam".

Dig. 43.14.1.1

Ulpianus 68 ad ed.

Hoc interdicto prospicitur, ne quis flumine publico navigare prohibeatur: sicuti enim ei, qui via publica uti prohibeatur, interdictum supra propositum est, ita hoc quoque proponendum praetor putavit.

Dig. 43.14.1.2

Ulpianus 68 ad ed.

Si privata sunt supra scripta, interdictum cessat.

Dig. 43.14.1.3

Ulpianus 68 ad ed.

Lacus est, quod perpetuam habet aquam.

Dig. 43.14.1.4

Ulpianus 68 ad ed.

Stagnum est, quod temporalem contineat aquam ibidem stagnantem, quae quidem aqua plerumque hieme cogitur.

Dig. 43.14.1.5

Ulpianus 68 ad ed.

Fossa est receptaculum aquae manu facta.

Dig. 43.14.1.6

Ulpianus 68 ad ed.

Possunt autem etiam haec esse publica.

Dig. 43.14.1.7

Ulpianus 68 ad ed.

Publicano plane, qui lacum vel stagnum conduxit, si piscari prohibeatur, utile interdictum competere sabinus consentit: et ita labeo. ergo et si a municipibus conductum habeat, aequissimum erit ob vectigalis favorem interdicto eum tueri.

Dig. 43.14.1.8

Ulpianus 68 ad ed.

Si quis velit interdictum tale movere, ut locus deprimatur pecoris appellendi gratia, non debet audiri: et ita mela scribit.

Dig. 43.14.1.9

Ulpianus 68 ad ed.

Idem ait tale interdictum competere, ne cui vis fiat, quo minus pecus ad flumen publicum ripamve fluminis publici appellatur.

Dig. 43.15.0. De ripa munienda.

Dig. 43.15.1pr.

Ulpianus 68 ad ed.

Praetor ait: " quo minus illi in flumine publico ripave eius opus facere ripae agrive qui circa ripam est tuendi causa liceat, dum ne ob id navigatio deterior fiat, si tibi damni infecti in annos decem viri boni arbitratu vel cautum vel satisdatum est aut per illum non stat, quo minus viri boni arbitratu caveatur vel satisdetur, vim fieri veto".

Dig. 43.15.1.1

Ulpianus 68 ad ed.

Ripas fluminum publicorum reficere munire utilissimum est. sicuti igitur de via publica reficienda interdictum propositum est, ita etiam de ripa fluminis munienda proponendum fuit.

Dig. 43.15.1.2

Ulpianus 68 ad ed.

Merito adicit " dum ne ob id navigatio deterior fiat": illa enim sola refectio toleranda est, quae navigio non est impedimento.

Dig. 43.15.1.3

Ulpianus 68 ad ed.

Is autem, qui ripam vult munire, de damno futuro debet vel cavere vel satisdare secundum qualitatem personae: et hoc interdicto expressum est, ut damni infecti in annos decem viri boni arbitratu vel caveatur vel satisdetur.

Dig. 43.15.1.4

Ulpianus 68 ad ed.

Dabitur autem satis vicinis: sed et his, qui trans flumen possidebunt.

Dig. 43.15.1.5

Ulpianus 68 ad ed.

Etenim curandum fuit, ut eis ante opus factum caveretur: nam post opus factum persequendi hoc interdicto nulla facultas superest, etiamsi quid damni postea datum fuerit, sed lege aquilia experiendum est.

Dig. 43.15.1.6

Ulpianus 68 ad ed.

Illud notandum est, quod ripae lacus fossae stagni muniendi nihil praetor hic cavit: sed idem erit observandum, quod in ripa fluminis munienda.

Dig. 43.16.0. De vi et de vi armata.

Dig. 43.16.1pr.

Ulpianus 69 ad ed.

Praetor ait: " unde tu illum vi deiecisti aut familia tua deiecit, de eo quaeque ille tunc ibi habuit tantummodo intra annum, post annum de eo, quod ad eum qui vi deiecit pervenerit, iudicium dabo".

Dig. 43.16.1.1

Ulpianus 69 ad ed.

Hoc interdictum proponitur ei, qui vi deiectus est: etenim fuit aequissimum vi deiecto subvenire: propter quod ad reciperandam possessionem interdictum hoc proponitur.

Dig. 43.16.1.2

Ulpianus 69 ad ed.

Ne quid autem per vim admittatur, etiam legibus iuliis prospicitur publicorum et privatorum nec non et constitutionibus principum.

Dig. 43.16.1.3

Ulpianus 69 ad ed.

Hoc interdictum non ad omnem vim pertinet, verum ad eos, qui de possessione deiciuntur. ad solam autem atrocem vim pertinet hoc interdictum, et ad eos tantum, qui de solo deiciuntur, ut puta de fundo sive aedificio: ad alium autem non pertinet.

Dig. 43.16.1.4

Ulpianus 69 ad ed.

Et si quis de area deiectus sit, sine dubio interdicto locus est: et generaliter ad omnes hoc pertinet interdictum, qui de re solo cohaerenti deiciuntur: qualisqualis enim fuerit locus, unde quis vi deiectus est, interdicto locus erit.

Dig. 43.16.1.5

Ulpianus 69 ad ed.

Proinde et si superficiaria insula fuerit, qua quis deiectus est, apparet interdicto fore locum.

Dig. 43.16.1.6

Ulpianus 69 ad ed.

Illud utique in dubium non venit interdictum hoc ad res mobiles non pertinere: nam ex causa furti vel vi bonorum raptorum actio competit: potest et ad exhibendum agi. plane si quae res sint in fundo vel in aedibus, unde quis deiectus est, etiam earum nomine interdictum competere non est ambigendum.

Dig. 43.16.1.7

Ulpianus 69 ad ed.

Si quis de nave vi deiectus est, hoc interdicto locus non est, argumento eius, qui de vehiculo detractus est, quem nemo dixit interdicto hoc uti posse.

Dig. 43.16.1.8

Ulpianus 69 ad ed.

Plane si quis de ligneis aedibus deiectus fuerit, nemo ambigit interdicto locum fore, quia qualequale sit quod solo cohaereat, inde qui vi deiectus est habet interdictum.

Dig. 43.16.1.9

Ulpianus 69 ad ed.

Deicitur is qui possidet, sive civiliter sive naturaliter possideat: nam et naturalis possessio ad hoc interdictum pertinet.

Dig. 43.16.1.10

Ulpianus 69 ad ed.

Denique et si maritus uxori donavit eaque deiecta sit, poterit interdicto uti: non tamen si colonus.

Dig. 43.16.1.11

Ulpianus 69 ad ed.

Ait praetor: " deiecisti aut familia deiecit". merito familiae mentio habita: nam cum " deiecisti" verbum refertur ad personam eius qui deiecit nec pertineat ad eum, cuius familia deiecit (nec enim ego videor deiecisse, si familia mea deiecerit), consequens fuit addere " aut familia tua deiecit".

Dig. 43.16.1.12

Ulpianus 69 ad ed.

Deiecisse autem etiam is videtur, qui mandavit vel iussit, ut aliquis deieceretur: parvi enim referre visum est, suis manibus quis deiciat an vero per alium: quare et si familia mea ex voluntate mea deiecerit, ego videor deiecisse.

Dig. 43.16.1.13

Ulpianus 69 ad ed.

Quotiens verus procurator deiecerit, cum utrolibet eorum, id est sive domino sive procuratore, agi posse sabinus ait et alterius nomine alteri eximi, sic tamen, si ab altero eorum litis aestimatio fuerit praestita (non enim excusatus est, qui iussu alicuius deiecit, non magis quam si iussu alicuius occidit): cum autem falsus est procurator, cum ipso tantum procuratore interdici debere. sabini sententia vera est.

Dig. 43.16.1.14

Ulpianus 69 ad ed.

Sed et si quod alius deiecit, ratum habuero, sunt qui putent secundum sabinum et cassium, qui ratihabitionem mandato comparant, me videri deiecisse interdictoque isto teneri, et hoc verum est: rectius enim dicitur in maleficio ratihabitionem mandato comparari.

Dig. 43.16.1.15

Ulpianus 69 ad ed.

Quod igitur additur " aut familia tua deiecit", merito scriptum est in eum casum, in quem familia mea vi deiecit. ceterum si iussit, ipse deiecit, nec gravari debet dominus qui non iussit, si servorum suorum factum praestaret, etsi non iussu eius deiecerunt: nam non gravabitur hoc nomine, quippe cum aut pervenit ad eum aliquid et restitueret, aut non pervenit et ipsos servos maleficii causa noxae dedendo indemnis erit: quod enim noxae dedere compellitur, in damno non debet reputare, cum servus hoc possit domini deteriorem condicionem facere.

Dig. 43.16.1.16

Ulpianus 69 ad ed.

Familiae autem appellatio servos continet:

Dig. 43.16.1.17

Ulpianus 69 ad ed.

Sed quaeritur, quem numerum servorum contineat, utrum plurium an vero et duum vel trium. sed verius est in hoc interdicto, etiamsi unus servus vi deiecerit, familiam videri deiecisse.

Dig. 43.16.1.18

Ulpianus 69 ad ed.

Familiae appellatione et eos, quos loco servorum habemus, contineri oportere dicendum est.

Dig. 43.16.1.19

Ulpianus 69 ad ed.

Si quis tamen neget se servum vel familiam defendere, cogendus est pati hoc interdictum, ad hoc scilicet, ut quod ad eum pervenit restituat.

Dig. 43.16.1.20

Ulpianus 69 ad ed.

Si filius familias vel mercennarius vi deiecerit, utile interdictum competit.

Dig. 43.16.1.21

Ulpianus 69 ad ed.

Si adversus eum, qui in libertatem ex servitute vel contra petitur, post inchoatum liberale iudicium utar interdicto et liber iudicatus fuerit et apparuerit ignorante eo a servis eius vi me deiectum, in possessionem restituar.

Dig. 43.16.1.22

Ulpianus 69 ad ed.

Quod servus vel procurator vel colonus tenent, dominus videtur possidere, et ideo his deiectis ipse deici de possessione videtur, etiamsi ignoret eos deiectos, per quos possidebat. et si quis igitur alius, per quem possidebam, deiectus fuerit, mihi competere interdictum nemini dubium est.

Dig. 43.16.1.23

Ulpianus 69 ad ed.

Interdictum autem hoc nulli competit nisi ei, qui tunc cum deiceretur possidebat, nec alius deici visus est quam qui possidet.

Dig. 43.16.1.24

Ulpianus 69 ad ed.

Sive autem corpore sive animo possidens quis deiectus est, palam est eum vi deiectum videri. idcircoque si quis de agro suo vel de domo processisset nemine suorum relicto, mox revertens prohibitus sit ingredi vel ipsum praedium, vel si quis eum in medio itinere detinuerit et ipse possederit, vi deiectus videtur: ademisti enim ei possessionem, quam animo retinebat, etsi non corpore.

Dig. 43.16.1.25

Ulpianus 69 ad ed.

Quod volgo dicitur aestivorum hibernorumque saltuum nos possessiones animo retinere, id exempli causa didici proculum dicere: nam ex omnibus praediis, ex quibus non hac mente recedemus, ut omisisse possessionem vellemus, idem est.

Dig. 43.16.1.26

Ulpianus 69 ad ed.

Eum, qui neque animo neque corpore possidebat, ingredi autem et incipere possidere prohibeatur, non videri deiectum verius est: deicitur enim qui amittit possessionem, non qui non accipitur.

Dig. 43.16.1.27

Ulpianus 69 ad ed.

Vim vi repellere licere cassius scribit idque ius natura comparatur: apparet autem, inquit, ex eo arma armis repellere licere.

Dig. 43.16.1.28

Ulpianus 69 ad ed.

Vi possidere eum definiendum est, qui expulso vetere possessore adquisitam per vim possessionem optinet aut qui in hoc ipsum aptatus et praeparatus venit ut contra bonos mores auxilio, ne prohiberi possit ingrediens in possessionem, facit. sed qui per vim possessionem suam retinuerit, labeo ait non vi possidere.

Dig. 43.16.1.29

Ulpianus 69 ad ed.

Idem labeo ait eum, qui metu turbae perterritus fugerit, vi videri deiectum. sed pomponius ait vim sine corporali vi locum non habere, ergo etiam eum, qui fugatus est supervenientibus quibusdam, si illi vi occupaverunt possessionem, videri vi deiectum.

Dig. 43.16.1.30

Ulpianus 69 ad ed.

Qui a me vi possidebat, si ab alio deiciatur, habet interdictum.

Dig. 43.16.1.31

Ulpianus 69 ad ed.

Qui vi deiectus est, quidquid damni senserit ob hoc quod deiectus est, reciperare debet: pristina enim causa restitui debet, quam habiturus erat, si non fuisset deiectus.

Dig. 43.16.1.32

Ulpianus 69 ad ed.

Si fundus, a quo vi expulsus sim, mihi restitutus esset, ceterae vero res, quae vi ablatae sunt, non restituantur, hic dicendum est interdictum nihilo minus tenere, quia verum est vi esse deiectum. plane si quis velit de possessione quidem rei soli per hoc interdictum experiri, de rebus vero mobilibus ad exhibendum actione, potest hoc suo arbitrio habere, et ita iulianus scribit: idem scribit et si quis vi bonorum raptorum de huiusmodi rebus velit experiri.

Dig. 43.16.1.33

Ulpianus 69 ad ed.

Quod autem ait praetor: " quaeque ibi habuit", sic accipimus, ut omnes res contineantur, non solum quae propriae ipsius fuerunt, verum etiam si quae apud eum depositae vel ei commodatae vel pigneratae, quarumque usum vel usum fructum vel custodiam habuit, vel si quae ei locatae sunt: cum enim dicat praetor " habuit", omnia haec habendi verbo continentur.

Dig. 43.16.1.34

Ulpianus 69 ad ed.

Rectissime autem praetor addidit " tunc ibi habuit". " tunc" sic accipimus " cum deiceretur": et ideo et si quid postea desiit illic esse, dicendum erit in interdictum venire. sic fit, ut, etiamsi homines vel pecora demortua sint post deiectionem, interdicto locus sit.

Dig. 43.16.1.35

Ulpianus 69 ad ed.

Denique scribit iulianus eum, qui vi deiecit ex eo praedio, in quo homines fuerant, propius esse, ut etiam sine culpa eius mortuis hominibus aestimationem eorum per interdictum restituere debeat, sicuti fur hominis etiam mortuo eo tenetur. huic consequens esse ait, ut villae quoque et aedium incendio consumptarum pretium restituere cogatur: ubi enim quis, inquit, deiecit, per eum stetisse videtur, quo minus restitueret.

Dig. 43.16.1.36

Ulpianus 69 ad ed.

Idcirco constare ait eum, qui vi deiecit quique vi sine dolo malo desierit possidere, interdicto teneri.

Dig. 43.16.1.37

Ulpianus 69 ad ed.

" ibi" autem ait praetor, ut ne quis et quae illic non habuit, complectatur.

Dig. 43.16.1.38

Ulpianus 69 ad ed.

Sane quod ait praetor " ibi", quomodo accipimus? utrum in eo loco, unde quis vi deiectus est, an vero in omni possessione? et melius dicetur non ad angulum referendum vel locum, in quo fuerit, verum etiam ad omnem partem possessionis, qua quis caruit, cum deicitur.

Dig. 43.16.1.39

Ulpianus 69 ad ed.

Annus in hoc interdicto utilis est.

Dig. 43.16.1.40

Ulpianus 69 ad ed.

Ex die, quo quis deiectus est, fructuum ratio habetur, quamvis in ceteris interdictis ex quo edita sunt, non retro, computantur. idem est et in rebus mobilibus, quae ibi erant: nam et earum fructus computandi sunt, ex quo quis vi deiectus est.

Dig. 43.16.1.41

Ulpianus 69 ad ed.

Non solum autem fructuum ratio in hoc interdicto habetur, verum ceterarum etiam utilitatium habenda est: nam vivianus refert in hoc interdicto omnia, quaecumque habiturus vel adsecuturus erat is qui deiectus est, si vi deiectus non esset, restitui aut eorum litem a iudice aestimari debere eumque tantum consecuturum, quanti sua interesset se vi deiectum non esse.

Dig. 43.16.1.42

Ulpianus 69 ad ed.

Ex interdicto unde vi etiam is qui non possidet restituere cogetur.

Dig. 43.16.1.43

Ulpianus 69 ad ed.

Interdictum hoc quia atrocitatem facinoris in se habet, quaesitum est, an liberto in patronum vel liberis adversus parentes competit. et verius est nec liberto in patronum nec in parentes liberis dandum esse meliusque erit in factum actionem his competere. aliter atque si vi armata usus sit adversus libertum patronus vel adversus liberos parens: nam hic interdictum competit.

Dig. 43.16.1.44

Ulpianus 69 ad ed.

Hoc interdictum et heredi et ceteris successoribus competit.

Dig. 43.16.1.45

Ulpianus 69 ad ed.

Non alii autem, quam ei qui possidet, interdictum unde vi competere argumentum praebet, quod apud vivianum relatum est, si quis me vi deiecerit, meos non deiecerit, non posse me hoc interdicto experiri, quia per eos retineo possessionem, qui deiecti non sunt.

Dig. 43.16.1.46

Ulpianus 69 ad ed.

Idem vivianus refert: servos quosdam vi depulit, alios retinuit et vinxit aut etiam eis imperavit: vi te deiectum intellegi: desisse enim possidere, cum servi ab alio possideantur. et quod in parte servorum dictum est, idem in omnibus dici ait, si forte nemo depulsus esset, sed possideri ab eo coepissent, qui ingressus in possessionem esset.

Dig. 43.16.1.47

Ulpianus 69 ad ed.

Quid dicturi essemus, tractat, si aliquo possidente ego quoque ingressus sum in possessionem et non deiciam possessorem, sed vinctum opus facere cogam: quatenus res, inquit, esset? ego verius puto eum quoque deiectum videri, qui illic vinctus est.

Dig. 43.16.1.48

Ulpianus 69 ad ed.

Ex causa huius interdicti in heredem et bonorum possessorem ceterosque successores in factum actio competit in id quod ad eos pervenit.

Dig. 43.16.2

Paulus 65 ad ed.

Dolove malo eorum factum est, quo minus perveniret.

Dig. 43.16.3pr.

Ulpianus 69 ad ed.

Quod est et si quis armis deiectus est, quia ex facinoribus defunctorum de eo, quod ad heredem pervenit, actio datur: sufficit enim non in lucro versari eum heredem, non etiam damnum subire.

Dig. 43.16.3.1

Ulpianus 69 ad ed.

Haec actio, quae adversus heredem ceterosque successores pertinet, perpetuo competit, quia in ea rei persecutio continetur.

Dig. 43.16.3.2

Ulpianus 69 ad ed.

Armis deiectum quomodo accipimus? arma sunt omnia tela, hoc est et fustes et lapides, non solum gladii hastae frameae, id est rhomphaeae.

Dig. 43.16.3.3

Ulpianus 69 ad ed.

Plane et si unus vel alter fustem vel gladium tenuit, armis deiectus possessor videtur.

Dig. 43.16.3.4

Ulpianus 69 ad ed.

Plus dicitur, et si inermes venerant, si in ipsa concertatione qui inermes venerant eo processerunt, ut fustes aut lapides sumerent, vis erit armata.

Dig. 43.16.3.5

Ulpianus 69 ad ed.

Qui armati venerunt et si armis non sunt usi ad deiciendum, sed deiecerunt, armata vis facta esse videtur: sufficit enim terror armorum, ut videantur armis deiecisse.

Dig. 43.16.3.6

Ulpianus 69 ad ed.

Si quis autem visis armatis, qui alibi tendebant, metu hoc deterritus profugerit, non videtur deiectus, quia non hoc animo fuerunt qui armati erant, sed alio tendebant.

Dig. 43.16.3.7

Ulpianus 69 ad ed.

Proinde et si, cum armatos audisset venire, metu decesserit de possessione, sive verum sive falsum audisset, dicendum est non esse eum armis deiectum, nisi possessio ab his fuerit occupata.

Dig. 43.16.3.8

Ulpianus 69 ad ed.

Si autem, cum dominus veniret in possessionem, armati eum prohibuerunt qui invaserant possessionem, videri eum armis deiectum.

Dig. 43.16.3.9

Ulpianus 69 ad ed.

Eum igitur, qui cum armis venit, possumus armis repellere, sed hoc confestim, non ex intervallo, dummodo sciamus non solum resistere permissum, ne deiciatur, sed et si deiectus quis fuerit, eundem deicere non ex intervallo, sed ex continenti.

Dig. 43.16.3.10

Ulpianus 69 ad ed.

Cum procurator armatus venit, et ipse dominus deiecisse videtur, sive mandavit sive, ut iulianus ait, ratum habuit.

Dig. 43.16.3.11

Ulpianus 69 ad ed.

Hoc et in familia dicendum est: nam cum familia sine me armata venit, ego non videor venisse, sed familia, nisi iussi vel ratum habui.

Dig. 43.16.3.12

Ulpianus 69 ad ed.

Hoc interdictum etiam adversus eum proponitur, qui dolo malo fecit, quo quis armis deiceretur: et post annum reddetur in id, quod pervenit ad eum qui prohibuit unde vi.

Dig. 43.16.3.13

Ulpianus 69 ad ed.

Interdictum necessarium fuisse fructuario apparet " si prohibeatur uti frui usu fructu fundi".

Dig. 43.16.3.14

Ulpianus 69 ad ed.

Uti frui autem prohibuisse is videtur, qui vi deiecit utentem et fruentem aut non admisit, cum ex fundo exisset non usus fructus deserendi causa. ceterum si quis ab initio volentem incipere uti frui prohibuit, hoc interdictum locum non habet. quid ergo est? debet fructuarius usum fructum vindicare.

Dig. 43.16.3.15

Ulpianus 69 ad ed.

Pertinet autem hoc interdictum ad eum, qui fundo uti frui prohibitus est: sed pertinebit etiam ad eum, qui aedificiis uti frui prohibetur. consequenter autem dicemus ad res mobiles hoc interdictum non pertinere, si quis uti frui prohibitus est re mobili, nisi si rei soli accedebant res mobiles: si igitur ibi fuerunt, dicendum est etiam ad eas referri hoc interdictum debere.

Dig. 43.16.3.16

Ulpianus 69 ad ed.

Item si non usus fructus, sed usus sit relictus, competit hoc interdictum. ex quacumque enim causa constitutus est usus fructus vel usus, hoc interdictum locum habebit.

Dig. 43.16.3.17

Ulpianus 69 ad ed.

Qui usus fructus nomine qualiterqualiter fuit quasi in possessione, utetur hoc interdicto. sed si quis, posteaquam prohibitus est, capite minutus sit vel mortuus, recte dicitur heredibus et successoribus competere hoc interdictum, non ut in futurum constituatur usus fructus, sed ut praeterita causa et damnum praeteritum sarciatur.

Dig. 43.16.3.18

Ulpianus 69 ad ed.

Heres quoque simili modo debebit in factum actionem suscipere in id quod ad se pervenit.

Dig. 43.16.4

Ulpianus 10 ad ed.

Si vi me deiecerit quis nomine municipum, in municipes mihi interdictum reddendum pomponius scribit, si quid ad eos pervenit.

Dig. 43.16.5

Ulpianus 11 ad ed.

Si per vim tibi possessionem tradidero, dicit pomponius unde vi interdictum cessare, quoniam non est deiectus, qui compulsus est in possessionem inducere.

Dig. 43.16.6

Paulus 17 ad ed.

In interdicto unde vi tanti condemnatio facienda est, quanti intersit possidere: et hoc iure nos uti pomponius scribit, id est tanti rem videri, quanti actoris intersit: quod alias minus esse, alias plus: nam saepe actoris pluris interesse hominem retinere, quam quanti is est, veluti cum quaestionis habendae aut rei probandae gratia aut hereditatis adeundae intersit eius eum possideri.

Dig. 43.16.7

Paulus 24 ad ed.

Cum a te vi deiectus sim, si titius eandem rem possidere coeperit, non possum cum alio quam tecum interdicto experiri.

Dig. 43.16.8

Paulus 54 ad ed.

Fulcinius dicebat vi possideri, quotiens vel non dominus, cum tamen possideret, vi deiectus est.

Dig. 43.16.9pr.

Paulus 65 ad ed.

Si plures heredes sunt, unusquisque non in amplius, quam ad eum pervenerit, tenetur. qua de causa interdum in solidum tenebitur is ad quem totum pervenerit, quamvis ex parte heres sit.

Dig. 43.16.9.1

Paulus 65 ad ed.

Deiectum ab usu fructu in eandem causam praetor restitui iubet, id est in qua futurus esset, si deiectus non esset. itaque si tempore usus fructus finitus fuerit, postquam deiectus est a domino, nihilo minus cogendus erit restituere, id est usum fructum iterum constituere.

Dig. 43.16.10

Gaius 2 ad ed. pu. de liberali c.

Si de fundo proprietarium et fructuarium praedo expulerit atque ob id fructuarius constituto tempore non usus perdiderit ius suum, nemo dubitat, quin dominus, sive experiatur cum fructuario adversus praedonem sive non experiatur, retinere debeat reversum ad se usum fructum et, quod fructuarius perdidit, id ad damnum eius pertineat, cuius facto periit.

Dig. 43.16.11

Pomponius 6 ex plaut.

Vim facit, qui non sinit possidentem eo, quod possidebit, uti arbitrio suo, sive inserendo sive fodiendo sive arando sive quid aedificando sive quid omnino faciendo, per quod liberam possessionem adversarii non relinquit.

Dig. 43.16.12

Marcellus 19 Dig.

Colonus eum, cui locator fundum vendiderat, cum is in possessionem missus esset, non admisit: deinde colonus vi ab alio deiectus est: quaerebatur, quis haberet interdictum unde vi. dixi nihil interesse, colonus dominum ingredi volentem prohibuisset an emptorem, cui iussisset dominus tradi possessionem, non admisit. igitur interdictum unde vi colono competiturum ipsumque simili interdicto locatori obstrictum fore, quem deiecisse tunc videretur, cum emptori possessionem non tradidit, nisi forte propter iustam et probabilem causam id fecisset.

Dig. 43.16.13

Ulpianus 8 ad sab.

Neque unde vi neque aliud interdictum famosum est.

Dig. 43.16.14

Pomponius 29 ad sab.

Sed si vi armata deiectus es, sicut ipsum fundum recipis, etiamsi vi aut clam aut precario eum possideres, ita res quoque mobiles omnimodo recipies.

Dig. 43.16.15

Paulus 13 ad sab.

Si vi me deieceris vel vi aut clam feceris, quamvis sine dolo et culpa amiseris possessionem, tamen damnandus es, quanti mea intersit, quia in eo ipso culpa tua praecessit, quod omnino vi deiecisti aut vi aut clam fecisti.

Dig. 43.16.16

Ulpianus 29 ad ed.

In interdicto unde vi dicendum est, ut eius causa, quod ad patrem pervenit, ipse teneatur.

Dig. 43.16.17

Iulianus 48 Dig.

Qui possessionem vi ereptam vi in ipso congressu reciperat, in pristinam causam reverti potius quam vi possidere intellegendus est: ideoque si te deiecero, ilico tu me, deinde ego te, unde vi interdictum tibi utile erit.

Dig. 43.16.18pr.

Papinianus 26 quaest.

Cum fundum qui locaverat vendidisset, iussit emptorem in vacuam possessionem ire, quem colonus intrare prohibuit: postea emptor vi colonum expulit: de interdictis unde vi quaesitum est. placebat colonum interdicto venditori teneri, quia nihil interesset, ipsum an alium ex voluntate eius missum intrare prohibuerit: neque enim ante omissam possessionem videri, quam si tradita fuisset emptori, quia nemo eo animo esset, ut possessionem omitteret propter emptorem, quam emptor adeptus non fuisset. emptorem quoque, qui postea vim adhibuit, et ipsum interdicto colono teneri: non enim ab ipso, sed a venditore per vim fundum esse possessum, cui possessio esset ablata. quaesitum est, an emptori succurri debeat, si voluntate venditoris colonum postea vi expulisset. dixi non esse iuvandum, qui mandatum illicitum susceperit.

Dig. 43.16.18.1

Papinianus 26 quaest.

Eum, qui fundum vindicavit ab eo, cum quo interdicto unde vi potuit experiri, pendente iudicio nihilo minus interdicto recte agere placuit.

Dig. 43.16.19

Tryphonus 15 disp.

Merito iulianus respondit, si me de fundo vi deieceris, in quo res moventes fuerunt, cum mihi interdicto unde vi restituere debeas non solum possessionem soli, sed et ea quae ibi fuerunt, quamquam ego moram fecero, quo minus interdicto te convenirem, subtractis tamen mortalitate servis aut pecoribus aliisve rebus casu intercidentibus tuum tamen onus nihilo minus in eis restituendis esse, quia ex ipso tempore delicti plus quam frustrator debitor constitutus es.

Dig. 43.16.20

Labeo 3 pith. a paulo epit.

Si colonus tuus vi deiectus est, ages unde vi interdicto. idem si inquilinus tuus vi deiectus fuerit. paulus: idem dici potest de coloni colono, item inquilini inquilino.

Dig. 43.17.0. Uti possidetis.

Dig. 43.17.1pr.

Ulpianus 69 ad ed.

Ait praetor: " uti eas aedes, quibus de agitur, nec vi nec clam nec precario alter ab altero possidetis, quo minus ita possideatis, vim fieri veto. de cloacis hoc interdictum non dabo. neque pluris, quam quanti res erit: intra annum, quo primum experiundi potestas fuerit, agere permittam".

Dig. 43.17.1.1

Ulpianus 69 ad ed.

Hoc interdictum de soli possessore scriptum est, quem potiorem praetor in soli possessione habeat, et est prohibitorium ad retinendam possessionem.

Dig. 43.17.1.2

Ulpianus 69 ad ed.

Huius autem interdicti proponendi causa haec fuit, quod separata esse debet possessio a proprietate: fieri etenim potest, ut alter possessor sit, dominus non sit, alter dominus quidem sit, possessor vero non sit: fieri potest, ut et possessor idem et dominus sit.

Dig. 43.17.1.3

Ulpianus 69 ad ed.

Inter litigatores ergo quotiens est proprietatis controversia, aut convenit inter litigatores, uter possessor sit, uter petitor, aut non convenit. si convenit, absolutum est: ille possessoris commodo, quem convenit possidere, ille petitoris onere fungetur. sed si inter ipsos contendatur, uter possideat, quia alteruter se magis possidere adfirmat, tunc, si res soli sit, in cuius possessione contenditur, ad hoc interdictum remittentur.

Dig. 43.17.1.4

Ulpianus 69 ad ed.

Est igitur hoc interdictum, quod volgo uti possidetis appellatur, retinendae possessionis (nam huius rei causa redditur, ne vis fiat ei qui possidet) et consequenter proponitur post interdictum unde vi. illud enim restituit vi amissam possessionem, hoc interdictum tuetur, ne amittatur possessio, denique praetor possidenti vim fieri vetat: et illud quidem interdictum obpugnat possessorem, hoc tuetur. et ut pedius ait, omnis de possessione controversia aut eo pertinet, ut, quod non possidemus, nobis restituatur, aut ad hoc, ut retinere nobis liceat quod possidemus. restitutae possessionis ordo aut interdicto expeditur aut per actionem: retinendae itaque possessionis duplex via est, aut exceptio aut interdictum. exceptio datur ex multis causis ei qui possidet.

Dig. 43.17.1.5

Ulpianus 69 ad ed.

Perpetuo autem hoc interdicto insunt haec: " quod nec vi nec clam nec precario ab illo possides".

Dig. 43.17.1.6

Ulpianus 69 ad ed.

Interdictum autem possessorem praedii tuetur, quod est uti possidetis. actio enim numquam ultro possessori datur, quippe sufficit ei quod possideat.

Dig. 43.17.1.7

Ulpianus 69 ad ed.

Hoc interdictum locum habet, sive quis totum fundum possidere se dicat, sive pro certa parte, sive pro indiviso possideat.

Dig. 43.17.1.8

Ulpianus 69 ad ed.

Hoc interdictum in omnibus etiam possessionibus, quae sunt soli, sine dubio locum habebit, dummodo possideri possit.

Dig. 43.17.1.9

Ulpianus 69 ad ed.

Quod ait praetor in interdicto: " nec vi nec clam nec precario alter ab altero possidetis", hoc eo pertinet, ut, si quis possidet vi aut clam aut precario, si quidem ab alio, prosit ei possessio, si vero ab adversario suo, non debeat eum propter hoc quod ab eo possidet vincere: has enim possessiones non debere proficere palam est.

Dig. 43.17.2

Paulus 65 ad ed.

Usta enim an iniusta adversus ceteros possessio sit, in hoc interdicto nihil refert: qualiscumque enim possessor hoc ipso, quod possessor est, plus iuris habet quam ille qui non possidet.

Dig. 43.17.3pr.

Ulpianus 69 ad ed.

Si duo possideant in solidum, videamus, quid sit dicendum. quod qualiter procedat, tractemus, si quis proponeret possessionem iustam et iniustam. ego possideo ex iusta causa, tu vi aut clam: si a me possides, superior sum interdicto, si vero non a me, neuter nostrum vincetur: nam et tu possides et ego.

Dig. 43.17.3.1

Ulpianus 69 ad ed.

Hoc interdictum duplex est et hi, quibus competit, et actores et rei sunt.

Dig. 43.17.3.2

Ulpianus 69 ad ed.

Hoc interdictum sufficit ei, qui aedificare in suo prohibetur: etenim videris mihi possessionis controversiam facere, qui prohibes me uti mea possessione.

Dig. 43.17.3.3

Ulpianus 69 ad ed.

Cum inquilinus dominum aedes reficere volentem prohiberet, aeque competere interdictum uti possidetis placuit testarique dominum non prohibere inquilinum, ne habitaret, sed ne possideret.

Dig. 43.17.3.4

Ulpianus 69 ad ed.

Item videamus, si auctor vicini tui ex fundo tuo vites in suas arbores transduxit, quid iuris sit. et ait pomponius posse te ei denuntiare et vites praecidere, idque et labeo scribit, aut uti eum debere interdicto uti possidetis de eo loco, quo radices continentur vitium: nam si tibi vim fecerit, quo minus eas vites vel praecidas vel transducas, vim tibi facere videtur, quo minus possideas: etenim qui colere fundum prohibetur, possidere prohibetur, inquit pomponius.

Dig. 43.17.3.5

Ulpianus 69 ad ed.

Item videamus, si proiectio supra vicini solum non iure haberi dicatur, an interdictum uti possidetis sit utile alteri adversus alterum. et est apud cassium relatum utrique esse inutile, quia alter solum possidet, alter cum aedibus superficiem.

Dig. 43.17.3.6

Ulpianus 69 ad ed.

Labeo quoque scribit: ex aedibus meis in aedes tuas proiectum habeo: interdicis mecum, si eum locum possideamus, qui proiecto tegetur. an, quo facilius possim retinere possessionem eius proiectionis, interdico tecum sic " uti nunc possidetis eas aedes, ex quibus proiectus est?"

Dig. 43.17.3.7

Ulpianus 69 ad ed.

Sed si supra aedes, quas possideo, cenaculum sit, in quo alius quasi dominus moretur, interdicto uti possidetis me uti posse labeo ait, non eum qui in cenaculo moretur: semper enim superficiem solo cedere. plane si cenaculum ex publico aditum habeat, ait labeo videri non ab eo aedes possideri, qui kruptas possideret, sed ab eo, cuius aedes supra kruptas essent. verum est hoc in eo, qui aditum ex publico habuit: ceterum superficiarii proprio interdicto et actionibus a praetore utetur. dominus autem soli tam adversus alium quam adversus superficiarium potior erit interdicto uti possidetis: sed praetor superficiarium tuebitur secundum legem locationis: et ita pomponius quoque probat.

Dig. 43.17.3.8

Ulpianus 69 ad ed.

Creditores missos in possessionem rei servandae causa interdicto uti possidetis uti non posse, et merito, quia non possident: idemque et in ceteris omnibus, qui custodiae causa missi sunt in possessionem, dicendum est.

Dig. 43.17.3.9

Ulpianus 69 ad ed.

Si vicinus meus in parte in pariete meo tectoria habeat et in parte sua, " uti possidetis" mihi efficax est ut ea tollere compellatur.

Dig. 43.17.3.10

Ulpianus 69 ad ed.

Non videor vi possidere, qui ab eo, quem scirem vi in possessionem esse, fundum accipiam.

Dig. 43.17.3.11

Ulpianus 69 ad ed.

In hoc interdicto condemnationis summa refertur ad rei ipsius aestimationem. " quanti res est" sic accipimus " quanti uniuscuiusque interest possessionem retinere". servii autem sententia est existimantis tanti possessionem aestimandam, quanti ipsa res est: sed hoc nequaquam opinandum est: longe enim aliud est rei pretium, aliud possessionis.

Dig. 43.17.4

Ulpianus 70 ad ed.

In summa puto dicendum et inter fructuarios hoc interdictum reddendum: et si alter usum fructum, alter possessionem sibi defendat. idem erit probandum et si usus fructus quis sibi defendat possessionem, et ita pomponius scribit. perinde et si alter usum, alter fructum sibi tueatur, et his interdictum erit dandum.

Dig. 43.18.0. De superficiebus.

Dig. 43.18.1pr.

Ulpianus 70 ad ed.

Ait praetor: " uti ex lege locationis sive conductionis superficie, qua de agitur, nec vi nec clam nec precario alter ab altero fruamini, quo minus fruamini, vim fieri veto. si qua alia actio de superficie postulabitur, causa cognita dabo".

Dig. 43.18.1.1

Ulpianus 70 ad ed.

Qui superficiem in alieno solo habet, civili actione subnixus est: nam si conduxit superficium, ex conducto, si emit, ex empto agere cum domino soli potest. enim si ipse eum prohibeat, quod interest agendo consequetur: sin autem ab alio prohibeatur, praestare ei actiones suas debet dominus et cedere. sed longe utile visum est, quia et incertum erat, an locati existeret, et quia melius est possidere potius quam in personam experiri, hoc interdictum proponere et quasi in rem actionem polliceri.

Dig. 43.18.1.2

Ulpianus 70 ad ed.

Proponitur autem interdictum duplex exemplo interdicti uti possidetis. tuetur itaque praetor eum, qui superficiem petit, veluti uti possidetis interdicto, neque exigit ab eo, quam causam possidendi habeat: unum tantum requirit, num forte vi clam precario ab adversario possideat. omnia quoque, quae in uti possidetis interdicto servantur, hic quoque servabuntur.

Dig. 43.18.1.3

Ulpianus 70 ad ed.

Quod ait praetor " si actio de superficie postulabitur, causa cognita dabo", sic intellegendum est, ut, si ad tempus quis superficiem conduxerit, negetur ei in rem actio. et sane causa cognita ei, qui non ad modicum tempus conduxit superficiem, in rem actio competet.

Dig. 43.18.1.4

Ulpianus 70 ad ed.

Is autem, in cuius solo superficies est, utique non indiget utili actione, sed habet in rem, qualem habet de solo. plane si adversus superficiarium velit vindicare, dicendum est exceptione utendum in factum data: nam cui damus actionem, eidem et exceptionem competere multo magis quis dixerit.

Dig. 43.18.1.5

Ulpianus 70 ad ed.

Si soli possessori superficies evincatur, aequissimum erit subvenire ei vel ex stipulatu de evictione vel certe ex empto actione.

Dig. 43.18.1.6

Ulpianus 70 ad ed.

Quia autem etiam in rem actio de superficie dabitur, petitori quoque in superficiem dari et quasi usum fructum sive usum quendam eius esse et constitui posse per utiles actiones credendum est.

Dig. 43.18.1.7

Ulpianus 70 ad ed.

Sed et tradi posse intellegendum est, ut et legari et donari possit.

Dig. 43.18.1.8

Ulpianus 70 ad ed.

Et si duobus sit communis, etiam utile communi dividundo iudicium dabimus.

Dig. 43.18.1.9

Ulpianus 70 ad ed.

Servitutes quoque praetorio iure constituentur et ipsae ad exemplum earum, quae ipso iure constitutae sunt, utilibus actionibus petentur: sed et interdictum de his utile competit.

Dig. 43.18.2

Gaius 25 ad ed. provinc.

Superficiarias aedes appellamus, quae in conducto solo positae sunt: quarum proprietas et civili et naturali iure eius est, cuius et solum.

Dig. 43.19.0. De itinere actuque privato.

Dig. 43.19.1pr.

Ulpianus 70 ad ed.

Praetor ait: " quo itinere actuque privato, quo de agitur, vel via hoc anno nec vi nec clam nec precario ab illo usus es, quo minus ita utaris, vim fieri veto".

Dig. 43.19.1.1

Ulpianus 70 ad ed.

Hoc interdictum prohibitorium est, pertinens ad tuendas rusticas tantummodo servitutes.

Dig. 43.19.1.2

Ulpianus 70 ad ed.

Hoc interdicto praetor non inquirit, utrum habuit iure servitutem impositam an non, sed hoc tantum, an itinere actuque hoc anno usus sit non vi non clam non precario, et tuetur eum, licet eo tempore, quo interdictum redditur, usus non sit. sive igitur habuit ius viae sive non habuit, in ea condicione est, ut ad tuitionem praetoris pertineat, si modo anno usus est vel modico tempore, id est non minus quam triginta diebus. neque ad praesens tempus refertur usus, quia plerumque itineribus vel via non semper utimur, nisi cum usus exegerit ita.

Dig. 43.19.1.3

Ulpianus 70 ad ed.

Annui temporis spatio conclusit usum. annum ex die interdicti retrorsum computare debemus.

Dig. 43.19.1.4

Ulpianus 70 ad ed.

Si quis hoc interdicto utatur, sufficit alterutrum probare vel iter vel actum in usu habuisse.

Dig. 43.19.1.5

Ulpianus 70 ad ed.

Iulianus ait, quoad usque ingressus est, eo usque ei interdictum competere: quod verum est.

Dig. 43.19.1.6

Ulpianus 70 ad ed.

Vivianus recte ait eum, qui propter incommoditatem rivi aut propterea, quia via publica interrupta erat, per proximi vicini agrum iter fecerit, quamvis id frequenter fecit, non videri omnino usum, itaque inutile esse interdictum, non quasi precario usum, sed quasi nec usum. ergo secundum hoc neutro usus videtur: multo enim minus illo usus est, per quem non ivit propter incommoditatem rivi aut propterea, quia via praerupta erat. idem erit dicendum et si non erat via publica, sed iter privatum: nam et hic eadem quaestio est.

Dig. 43.19.1.7

Ulpianus 70 ad ed.

Is, cuius colonus aut hospes aut quis alius iter ad fundum fecit, usus videtur itinere vel actu vel via, et idcirco interdictum habebit: et haec ita pedius scribit et adicit etiamsi ignoravit, cuius fundus esset, per quem iret, retinere eum servitutem.

Dig. 43.19.1.8

Ulpianus 70 ad ed.

Si quis autem, cum putaret fundum ad se pertinere, suo nomine iter fecerit amicus meus, utique sibi, non mihi interdictum adquisisse intellegitur.

Dig. 43.19.1.9

Ulpianus 70 ad ed.

Si quis propter inundationem usus non sit itinere actuque hoc anno, cum superiore usus sit, potest repetita die hoc interdicto uti per in integrum restitutionem ex illa parte " si qua mihi iusta causa esse videbitur". sed et si per vim hoc ei contigerit, in integrum eum restitui oportere Marcellus probat. praeterea et aliis casibus interdictum repetita die competit, ex quibus in integrum quis restitutionem impetrare solet.

Dig. 43.19.1.10

Ulpianus 70 ad ed.

Praeterea sciendum est, si dilatione data adversario futurum est, ut causa interdicti mei deterior fiat, aequissimum esse repetita die reddi interdictum.

Dig. 43.19.1.11

Ulpianus 70 ad ed.

Si tibi fundum precario concessero, cui via debebatur, deinde tu a domino fundi precario rogaveris, ut ea via ad eum fundum utaris: an noceat tibi exceptio, si adversus eum velis interdicere, a quo precario viam rogasti? et magis est, ut noceat, idque colligi potest ex eo, quod iulianus scribit in specie huiusmodi. quaerit enim, si ego tibi fundum precario dedero, cui via debebatur, et tu rogaveris precario, ut ea via utaris: nihilo minus utile interdictum mihi esse, quia, sicuti me precarium rei meae non tenet, ita nec per te precario possidere intellegor: quotiens enim colonus meus aut is, cui precario fundum dedi, via utitur, ego ire intellegor, propter quod et recte dico me itinere usum. quae ratio, inquit, efficit, ut et, si ego viam precario rogavero et tibi fundum precario dedero, quamvis hac mente ieris, quasi fundo meo deberetur, inutile esset interdictum et precario eo itinere usus esse videar, non immerito: non enim opinio tua, sed mea quaerenda est. tu tamen, credo, poteris interdicto uti, etsi de hoc nihil scribat iulianus.

Dig. 43.19.1.12

Ulpianus 70 ad ed.

Si quis supra dicto tempore anni non vi non clam non precario itinere usus sit, verum postea non sit usus, sed clam precariove, videndum est, an ei noceat. et magis est, ut nihil ei noceat, quod attinet ad interdictum:

Dig. 43.19.2

Paulus 66 ad ed.

Nec enim corrumpi aut mutari, quod recte transactum est, superveniente delicto potest.

Dig. 43.19.3pr.

Ulpianus 70 ad ed.

Inde etiam illud labeo scribit: si, cum a me recte via utebaris, fundum vendidero, per quem utebaris, deinde emptor te prohibuit: licet clam videaris ab eo uti (nam qui prohibitus utitur, clam utitur), tamen interdictum tibi competere intra annum, quia hoc anno non vi non clam non precario usus es.

Dig. 43.19.3.1

Ulpianus 70 ad ed.

Item sciendum est non tantum eum clam via uti, qui ipse prohibitus utitur, verum eum quoque, per quem quis id ius retinebat, si eo prohibito, per quem retinebat, utatur. plane si ignoravi prohibitum et persevero uti, nihil mihi nocere dicendum est.

Dig. 43.19.3.2

Ulpianus 70 ad ed.

Si quis ab auctore meo vi aut clam aut precario usus est, recte a me via uti prohibetur et interdictum ei inutile est, quia a me videtur vi vel clam vel precario possidere, qui ab auctore meo vitiose possidet. nam et pedius scribit, si vi aut clam aut precario ab eo sit usus, in cuius locum hereditate vel emptione aliove quo iure successi, idem esse dicendum: cum enim successerit quis in locum eorum, aequum non est nos noceri hoc, quod adversus eum non nocuit, in cuius locum successimus.

Dig. 43.19.3.3

Ulpianus 70 ad ed.

In hoc interdicto examinatur, quanti eius interesset via non prohiberi sive itinere.

Dig. 43.19.3.4

Ulpianus 70 ad ed.

Uti videmur servitutibus etiam per servos vel colonos vel amicos vel etiam hospites et fere per eos omnes, qui nobis retinent servitutes: sed enim per fructuarium quidem servitus retinetur, per fructuarium autem interdictum hoc domino non competere iulianus ait.

Dig. 43.19.3.5

Ulpianus 70 ad ed.

Idem iulianus scribit, si meus usus fructus in fundo tuo, proprietas vero tua fuerit et uterque nostrum per vicini fundum ierit, utile interdictum de itinere nos habere: et sive forte ab extraneo fructuarius prohibeatur, sive etiam a domino, sed et si dominus a fructuario, competet: nam et si quilibet prohibeat ire, interdictum adversus eum competit.

Dig. 43.19.3.6

Ulpianus 70 ad ed.

Hoc interdictum et ei competit, qui donationis causa fundi vacuam possessionem adeptus est.

Dig. 43.19.3.7

Ulpianus 70 ad ed.

Si quis ex mandatu meo fundum emerit, aequissimum est mihi hoc interdictum dari " ut ille usus est" qui mandatu meo emit.

Dig. 43.19.3.8

Ulpianus 70 ad ed.

Sed et si quis usum fructum emit vel usum vel cui legatus est et traditus, uti hoc interdicto poterit.

Dig. 43.19.3.9

Ulpianus 70 ad ed.

Hoc amplius et is, cui dotis causa fundus traditus est, experiri hoc interdicto poterit.

Dig. 43.19.3.10

Ulpianus 70 ad ed.

Et generaliter ex omnibus causis, quae instar habent venditionis vel alterius contractus, dicendum est hoc interdicto locum fore.

Dig. 43.19.3.11

Ulpianus 70 ad ed.

Ait praetor: " quo itinere actuque hoc anno non vi non clam non precario ab alio usus es, quo minus id iter actumque, ut tibi ius esset, reficias, vim fieri veto. qui hoc interdicto uti volet, is adversario damni infecti, quod per eius vitium datum sit, caveat".

Dig. 43.19.3.12

Ulpianus 70 ad ed.

Utilitas suasit hoc quoque interdictum proponere: namque consequens erat eum qui itinere utitur interdictum proponere, ut refici iter possit:

quemadmodum enim alias uti potest itinere vel actu commode, quam si refecerit? corrupto enim itinere minus commode frui aut agi potest.

Dig. 43.19.3.13

Ulpianus 70 ad ed.

Hoc autem a superiori distat, quod illo quidem interdicto omnes uti possunt, qui hoc anno usi sunt: hoc autem interdicto eum demum uti posse, qui hoc anno usus est et ius sibi esse reficiendi oporteat. ius autem esse videtur ei, cui servitus debetur. itaque qui hoc interdicto utitur, duas res debet docere, et hoc anno se usum et ei servitutem competere: ceterum si desit alterutrum, deficit interdictum, nec immerito. qui enim vult ire agere, tantisper, quoad de servitute constet, non debet de iure suo docere: quid enim perdit, qui eum patitur hoc facere qui hoc anno fecit? enimvero qui vult reficere, aliquid novi facit neque debet ei in alieno permitti id moliri, nisi vere habet servitutem.

Dig. 43.19.3.14

Ulpianus 70 ad ed.

Fieri autem potest, ut qui ius eundi habeat et agendi, reficiendi ius non habeat, quia in servitute constituenda cautum sit, ne ei reficiendi ius sit, aut sic, ut, si velit reficere, usque ad certum modum reficiendi ius sit: merito ergo ad refectionem se praetor rettulit: " ut tibi", inquit, " ius est, reficias". " uti ius est" hoc est sic uti per servitutem impositam licet.

Dig. 43.19.3.15

Ulpianus 70 ad ed.

Reficere sic accipimus ad pristinam formam iter et actum reducere, hoc est ne quis dilatet aut producat aut deprimat aut exaggeret: aliud est enim reficere, longe aliud facere.

Dig. 43.19.3.16

Ulpianus 70 ad ed.

Apud labeonem quaeritur, si pontem quis novum velit facere viae muniendae causa, an ei permittatur: et ait permittendum, quasi pars sit refectionis huiusmodi munitio. et ego puto veram labeonis sententiam, si modo sine hoc commeari non possit.

Dig. 43.19.4pr.

Venonius 1 interd.

Veteres nominatim adiciebant, ut ea quoque, quae ad refectionem utilia essent, adportanti vis non fieret: quod supervacuum est, quoniam qui adportari non patitur ea, sine quibus refici iter non possit, vim facere videtur, quo minus reficiatur.

Dig. 43.19.4.1

Venonius 1 interd.

Si quis autem, cum posset compendiaria adportare, quae refectioni necessaria sunt longiori itinere velit adportare, ut deteriorem causam eundi faciat, impune ei vis fiet, quia ipse sibi impedimento sit, quo minus reficiat.

Dig. 43.19.5pr.

Ulpianus 20 ad ed.

Apparet ergo eum, qui non patitur haec congeri, vim facere, quo minus quis perficiat.

Dig. 43.19.5.1

Ulpianus 20 ad ed.

Plane si quis, cum posset alia parte agri sine incommodo domini fundi impensam adportare, id egit, ut alia parte adportet, impune ei vim fieri recte placuit.

Dig. 43.19.5.2

Ulpianus 20 ad ed.

Hoc interdictum non solum ipsi, verum successoribus quoque esse dandum non est ambigendum: emptori quoque dabitur et in emptorem.

Dig. 43.19.5.3

Ulpianus 20 ad ed.

Si quis servitutem iure impositam non habeat, habeat autem velut longae possessionis praerogativam ex eo, quod diu usus est servitute, interdicto hoc uti potest.

Dig. 43.19.5.4

Ulpianus 20 ad ed.

Qui hoc interdicto usurus est, de vitio operis cavere adversario debet.

Dig. 43.19.6

Paulus 66 ad ed.

Sicut non nocet ei, qui sine vitio usus est, quod eodem anno vitiose usus est, ita emptori heredique non nocebit, quod ipsi vitiose usi sunt, si testator venditorve recte usi sunt.

Dig. 43.19.7

Celsus 25 Dig.

Si per fundum tuum nec vi nec clam nec precario commeavit aliquis, non tamen tamquam id suo iure faceret, sed, si prohiberetur, non facturus, inutile est ei interdictum de itinere actuque: nam ut hoc interdictum competat, ius fundi possedisse oportet.

Dig. 43.20.0. De aqua cottidiana et aestiva.

Dig. 43.20.1pr.

Ulpianus 70 ad ed.

Ait praetor: " uti hoc anno aquam, qua de agitur, non vi non clam non precario ab illo duxisti, quo minus ita ducas, vim fieri veto".

Dig. 43.20.1.1

Ulpianus 70 ad ed.

Hoc interdictum prohibitorium et interdum restitutorium est et pertinet ad aquam cottidianam.

Dig. 43.20.1.2

Ulpianus 70 ad ed.

Cottidiana autem aqua non illa est, quae cottidie ducitur, sed ea, qua quis cottidie uti, si vellet: quamquam cottidianam interdum hieme ducere non expediat, etsi possit duci.

Dig. 43.20.1.3

Ulpianus 70 ad ed.

Duo autem genera sunt aquarum: est cottidiana, est et aestiva. cottidiana ab aestiva usu differt, non iure. cottidiana ea est, quae duci adsidue solet vel aestivo tempore vel hiberno, etiamsi aliquando ducta non est: ea quoque dicitur cottidiana, cuius servitus intermissione temporis divisa est. aestiva autem ea est, qua aestate sola uti expedit, sicuti dicimus vestimenta aestiva, saltus aestivos, castra aestiva, quibus interdum etiam hieme, plerumque autem aestate utamur. ego puto probandum ex proposito utentis et ex natura locorum aquam aestivam a cottidiana discerni: nam si sit ea aqua, quae perpetuo duci possit, ego tamen aestate sola ea utar, dicendum est hanc aquam esse aestivam: rursum si ea sit aqua, quae non nisi aestate duci possit, aestiva dicetur: et si ea sint loca, quae natura non admittant aquam nisi aestate, dicendum erit recte aestivam dici.

Dig. 43.20.1.4

Ulpianus 70 ad ed.

Quod autem scriptum est in interdicto: " uti hoc anno aquam duxisti" hoc est: non cottidie, sed hoc anno vel una die vel nocte. ergo cottidiana quidem aqua alia est, quae cottidie duci possit, vel hieme vel aestate, etsi aliquo momento temporis ducta sit, aestiva ea, quae cottidie quidem duci possit, vel sola aestate, ducatur autem aestate tantum, non et hieme, non quia non possit et hieme, sed quia non solet.

Dig. 43.20.1.5

Ulpianus 70 ad ed.

Loquitur autem praetor in hoc interdicto de ea aqua sola, quae perennis est: nulla enim alia aqua duci potest, nisi quae perennis est.

Dig. 43.20.1.6

Ulpianus 70 ad ed.

Quamquam ad perennes aquas dixerimus hoc interdictum pertinere, ad eas tamen perennes pertinet, quae duci possunt. ceterum sunt quaedam, quae, etsi perennes sunt, duci tamen non possunt, ut puta puteales et quae ita sunt summersae, ut defluere extra terram et usui esse non possint. sed huiusmodi aquis, quae duci non possint, haustus servitus imponi potest.

Dig. 43.20.1.7

Ulpianus 70 ad ed.

Haec interdicta de aqua, item de fonte ad eam aquam pertinere videntur, quae a capite ducitur, non aliunde: harum enim aquarum etiam servitus iure civili constitui potest.

Dig. 43.20.1.8

Ulpianus 70 ad ed.

Caput aquae illud est, unde aqua nascitur: si ex fonte nascatur, ipse fons: si ex flumine vel lacu, prima incilia vel principia fossarum, quibus aquae ex flumine vel ex lacu in primum rivum compelli solent. plane si aqua sudoribus manando in aliquem primum locum effluere atque ibi apparere incipit, eius hoc caput dicemus, ubi primum emergit.

Dig. 43.20.1.9

Ulpianus 70 ad ed.

Et qualiter sit constitutum ius aquae, dicendum est hoc interdictum locum habere.

Dig. 43.20.1.10

Ulpianus 70 ad ed.

Sed etsi iure aqua non debetur alicui, si tamen iure ducere se putavit, cum non in iure, sed in facto erravit, dicendum est eoque iure utimur, ut interdicto hoc uti possit: sufficit enim, si iure se ducere putavit nec vi nec clam nec precario duxit.

Dig. 43.20.1.11

Ulpianus 70 ad ed.

Illud quaeritur, utrum ea tantum aqua his interdictis contineatur, quae ad agrum irrigandum pertinet, an vero omnis, etiam ea, quae ad usum quoque et commodum nostrum. et hoc iure utimur, ut haec quoque contineatur. propter quod etiam si in urbana praedia quis aquam ducere velit, hoc interdictum locum habere potest.

Dig. 43.20.1.12

Ulpianus 70 ad ed.

Praeterea labeo scribit, etsi quidam ductus aquarum non sit fundi, quia quocumque duci possint, tamen ad hoc interdictum pertinere.

Dig. 43.20.1.13

Ulpianus 70 ad ed.

Idem labeo scribit, etiamsi praetor hoc interdicto de aquis frigidis sentiat, tamen de calidis aquis interdicta non esse deneganda: namque harum quoque aquarum usum esse necessarium: nonnumquam enim refrigeratae usum irrigandis agris praestant. his accedit, quod in quibusdam locis et cum calidae sunt, irrigandis tamen agris necessariae sunt, ut hierapoli: constat enim apud hierapolitanos in asia agrum aqua calida rigari. et quamvis ea sit aqua, quae ad rigandos non sit necessaria, tamen nemo ambiget his interdictis locum fore.

Dig. 43.20.1.14

Ulpianus 70 ad ed.

Sive autem intra urbem sit aqua sive extra urbem, hoc interdicto locus erit.

Dig. 43.20.1.15

Ulpianus 70 ad ed.

Illud tamen hic intellegendum est eodem modo praetorem duci aquam iussisse, quo ducta est hoc anno. proinde neque amplioris modi, neque alia permisisse potest videri. quare si alia aqua sit, quam quis velit ducere, quam hoc anno duxit, vel eadem, per aliam tamen regionem velit ducere, impune ei vis fiet.

Dig. 43.20.1.16

Ulpianus 70 ad ed.

Illud labeo dicit omnes partes illius fundi, in quem loci aqua ducitur, eiusdem numero esse. ergo et si forte actor confinem agrum emerit et ex agro, in quem hoc anno aquam duxerit, postea fundi empti nomine velit aquam ducere, ita demum eum recte hoc interdicto (ut de itinere actuque) uti putant, ut semel in suum ingressus inde egredi qua velit possit, nisi ei nocitum sit, ex quo aquam ducit.

Dig. 43.20.1.17

Ulpianus 70 ad ed.

Item quaeritur, si quis aquae, quam hoc anno ducebat, aliam aquam admiscuerit, an impune prohibeatur. et extat ofilii sententia existimantis recte eum prohiberi, sed eo loci, in quo primum aquam aliam in rivum admittit: et ofilius in tota aqua recte eum prohiberi ait. ego ofilio adsentio non posse dividi, quia non potest ita in parte vis fieri, ut non in tota aqua fiat.

Dig. 43.20.1.18

Ulpianus 70 ad ed.

Trebatius, cum amplior numerus pecoris ad aquam appelletur, quam debet appelli, posse universum pecus impune prohiberi, quia iunctum pecus ei pecori, cui adpulsus debeatur, totum corrumpat pecoris adpulsum. Marcellus autem ait, si quis ius habens pecoris ad aquam appellendi plura pecora adpulserit, non in omnibus pecoribus eum prohibendum: quod est verum, quia pecora separari possunt.

Dig. 43.20.1.19

Ulpianus 70 ad ed.

Aristo putat eum demum interdictum hoc habere, qui se putat suo iure uti, non eum, qui scit se nullum ius habere et utitur.

Dig. 43.20.1.20

Ulpianus 70 ad ed.

Idem ait eum, qui hoc anno aquam duxerit nec vi nec clam nec precario et eodem anno vitiose usus est, recte tamen hoc interdicto usurum: quod referri ad id tempus, quod sine vitio fuerit: esse enim verum hoc anno non vi non clam non precario usum.

Dig. 43.20.1.21

Ulpianus 70 ad ed.

Quaesitum est, si quis ante annum aquam duxit, deinde sequenti tempore, hoc est intra annum, aqua influxerit ipsa sibi me non ducente, an hoc interdicto locus sit. et refert severus valerius competere ei hoc interdictum, quasi duxisse videatur, licet penitus prospicientibus non videtur iste duxisse.

Dig. 43.20.1.22

Ulpianus 70 ad ed.

Item quaesitum est, si quis, dum putat tertio quoque die habere se ius aquae ducendae, duxerit una die, an recte et sine captione possessoris recte duxisse videatur, ut hoc interdictum habeat: ait enim praetor: " uti hoc anno aquam duxisti" id est alternis diebus. illud autem nihil interest, utrum quinto die aqua debeatur an alternis diebus an cottidie ei, qui hoc interdicto uti velit: nam cum sufficiat vel uno die hoc anno aquam duxisse, nihil refert, qualem aquae ductum habens duxerit: dum, si quis, cum quinto quoque die uteretur, quasi alternis diebus ducens interdixerit, nihil ei prodesse videtur.

Dig. 43.20.1.23

Ulpianus 70 ad ed.

Praeterea illud sciendum est, si, cum aquam duxisses, adversarius te prohibuerit, deinde tu interim ius aquae ducendae amiseris, in restitutionem hoc venire, ut tibi praestetur per hoc interdictum quod amisisti: et hoc verum puto.

Dig. 43.20.1.24

Ulpianus 70 ad ed.

Si fundum, ad quem aquam ducebas, vendideris et tradideris, nihilo minus interdictum tibi utile est.

Dig. 43.20.1.25

Ulpianus 70 ad ed.

Competit hoc interdictum adversus eum, qui prohibet me aquam ducere, et nihil interest, utrum quis dominium fundi habeat an non. idcircoque is tenetur interdicto: nam et si servitus coepit adversus quemvis posse vindicari.

Dig. 43.20.1.26

Ulpianus 70 ad ed.

Si inter rivales, id est qui per eundem rivum aquam ducunt, sit contentio de aquae usu, utroque suum usum esse contendente, duplex interdictum utrique competit.

Dig. 43.20.1.27

Ulpianus 70 ad ed.

Labeo putat per hoc interdictum prohiberi quem, ne quid in illo fundo faciat fodiat serat succidat putet aedificet, quare ex re ea aqua, quam ille hoc anno per fundum tuum sine vitio duxit, inquinetur vitietur corrumpatur deteriorve fiat: et similiter de aestiva aqua debere interdici ait.

Dig. 43.20.1.28

Ulpianus 70 ad ed.

Si quis hoc cesserit, ne liceat sibi aquam quaerere, ea cessio valet.

Dig. 43.20.1.29

Ulpianus 70 ad ed.

Deinde ait praetor: " uti priore aestate aquam, qua de agitur, nec vi nec clam nec precario ab illo duxisti, quo minus ita ducas, vim fieri veto. inter heredes emptores et bonorum possessores interdicam".

Dig. 43.20.1.30

Ulpianus 70 ad ed.

Hoc interdictum de aqua aestiva proponitur.

Dig. 43.20.1.31

Ulpianus 70 ad ed.

Quia autem diximus aestivam aquam aliquo distare ab aqua cottidiana, sciendum est etiam interdictis distare, quod qui de aqua cottidiana interdicit, ita interdicit: " uti hoc anno aquam duxisti", at qui de aestiva, sic: " uti priore aestate", nec immerito: nam quia hieme non utitur, referre se non ad praesentem aestatem, sed ad priorem debuit.

Dig. 43.20.1.32

Ulpianus 70 ad ed.

Aestatem incipere (sic peritiores tradiderunt) ab aequinoctio verno et finiri aequinoctio autumnali: et ita senis mensibus aestas atque hiems dividitur.

Dig. 43.20.1.33

Ulpianus 70 ad ed.

Priorem aestatem ex comparatione duarum aestatium accipi.

Dig. 43.20.1.34

Ulpianus 70 ad ed.

Propter hoc, si aestate interdicatur, nonnumquam annum et sex menses continere: quod ita contingit, si initio verni aequinoctii ducta sit aqua et sequenti aestate pridie aequinoctium autumnale interdicatur: et proinde, si hieme interdicatur, etiam in biennium haec res extendetur.

Dig. 43.20.1.35

Ulpianus 70 ad ed.

Si quis hieme tantum aquam solitus fuit ducere, aestate non fuit solitus, utile interdictum ei competit.

Dig. 43.20.1.36

Ulpianus 70 ad ed.

Qui hac aestate duxit, non superiore, utile interdictum habet.

Dig. 43.20.1.37

Ulpianus 70 ad ed.

Ait praetor: " inter heredes et emptores et bonorum possessores interdicam". haec verba non solum ad aestivam aquam, verum etiam ad cottidianam quoque referenda esse sciendum est: nam sicuti de itinere actuque et successoribus dantur interdicta et emptori, ita haec quoque danda praetor putavit.

Dig. 43.20.1.38

Ulpianus 70 ad ed.

Ait praetor: " quo ex castello illi aquam ducere ab eo, cui eius rei ius fuit, permissum est, quo minus ita uti permissum est ducat, vim fieri veto. quandoque de opere faciendo interdictum erit, damni infecti caveri iubebo".

Dig. 43.20.1.39

Ulpianus 70 ad ed.

Hoc interdictum necessario propositum est. namque superiora interdicta ad eos pertinent, qui a capite ducunt vel imposita servitute vel quia putant impositam: aequissimum visum est ei quoque, qui ex castello ducit, interdictum dari. id est ex eo receptaculo, quod aquam publicam suscipit. castellum accipe.

Dig. 43.20.1.40

Ulpianus 70 ad ed.

Si ex castello permissum est, dandum erit interdictum:

Dig. 43.20.1.41

Ulpianus 70 ad ed.

Permittitur autem aquam ex castello vel ex rivo vel ex quo alio loco publico ducere.

Dig. 43.20.1.42

Ulpianus 70 ad ed.

Idque a principe conceditur: alii nulli competit ius aquae dandae.

Dig. 43.20.1.43

Ulpianus 70 ad ed.

Et datur interdum praediis, interdum personis. quod praediis datur, persona extincta non extinguitur: quod datur personis, cum personis amittitur ideoque neque ad alium dominum praediorum neque ad heredem vel qualemcumque successorem transit. plane ei, ad quem dominium transit, impetrabile est: nam si docuerit praediis suis aquam debitam, etsi nomine eius fluxisse, a quo dominium ad se transiit, indubitate impetrat ius aquae ducendae, nec est hoc beneficium, sed iniuria, si quis forte non impetraverit.

Dig. 43.20.1.44

Ulpianus 70 ad ed.

Meminisse autem debemus in hoc interdicto totam quaestionem finiri adsignationis: non enim praeparat hoc interdictum causam, ut superiora interdicta, nec ad possessionem temporariam pertinet, sed aut habet ius adsignatum sibi aut non habet, et interdictum totum finitur.

Dig. 43.20.2

Pomponius 32 ad sab.

Si diurnarum aut nocturnarum horarum aquae ductum habeam, non possum alia hora ducere, quam qua ius habeam ducendi.

Dig. 43.20.3pr.

Pomponius 34 ad sab.

Hoc iure utimur, ut etiam non ad irrigandum, sed pecoris causa vel amoenitatis aqua duci possit.

Dig. 43.20.3.1

Pomponius 34 ad sab.

Ex flumine aquam ducere plures possunt, ita tamen, ut vicinis non noceant, vel, si angustus amnis sit, etiam ei, qui in alia ripa sit.

Dig. 43.20.3.2

Pomponius 34 ad sab.

Si aquam ex flumine publico duxeris et flumen recesserit, non potes subsequi flumen, quia ei loco servitus imposita non sit, quamvis is locus meus sit. sed si alluvione paulatim accesserit fundo tuo, subsequi potes, quia locus totus fluminis serviat ductioni. sed si circumfluere coeperit mutato alveo, non potes, quia medius locus non serviat interruptaque sit servitus.

Dig. 43.20.3.3

Pomponius 34 ad sab.

Aqua, quae in rivo nascitur, tacite lucri fit ab eo qui ducit.

Dig. 43.20.3.4

Pomponius 34 ad sab.

Ductus aquae, cuius origo memoriam excessit, iure constituti loco habetur.

Dig. 43.20.3.5

Pomponius 34 ad sab.

Is, qui aquae cottidianae ius habet, vel fistulam in rivo ponere vel aliud quodlibet facere potest, dummodo ne fundum domino aut aquagium rivalibus deterius faciat.

Dig. 43.20.3.6

Pomponius 34 ad sab.

Si aqua ducatur, supra eam alia aqua per pontem, qui supra rivum factus sit, iure ducitur, dum inferiori rivo non noceatur.

Dig. 43.20.4

Iulianus 41 Dig.

Lucio titio ex fonte meo ut aquam duceret, cessi: quaesitum est, an et maevio cedere possim, ut per eundem aquae ductum aquam ducat: et si putaveris posse cedi per eundem aquae ductum duobus, quemadmodum uti debeant. respondit: sicut iter actus via pluribus cedi vel simul vel separatim potest, ita aquae ducendae ius recte cedetur. sed si inter eos, quibus aqua cessa est, non convenit, quemadmodum utantur, non erit iniquum utile iudicium reddi, sicut inter eos, ad quos usus fructus pertinet, utile communi dividundo iudicium reddi plerisque placuit.

Dig. 43.20.5pr.

Iulianus 4 ex minic.

Cum constet non solum temporibus, sed etiam mensuris posse aquam dividi, potest eodem tempore alius cottidianam, alius aestivam aquam ducere, ita ut aestate dividatur inter eos aqua, hieme solus ducat is qui cottidianae ius habeat.

Dig. 43.20.5.1

Iulianus 4 ex minic.

Inter duos, qui eodem rivo aquam certis horis separatim ducebant, convenit, ut permutatis inter se temporibus aqua uterentur: quaero, cum amplius tempore servitutibus praefinito ita duxissent, ut neuter eorum suo tempore usus esset, num ius utendi amisissent. negavit amisisse.

Dig. 43.20.6

Nerva 3 membr.

De interdicto de aqua aestiva, item cottidiana quaerentes primum constituendum existimabamus, quae esset aqua aestiva, de qua proprium interdictum ad prioris aestatis tempus relatum reddi solet, hoc est aestiva aqua utrumne ex iure aestivo dumtaxat tempore utendi diceretur, an ex mente propositoque ducentis, quod aestate eam ducendi consilium haberet, an ex natura ipsius aquae, quod aestate tantum duci potest, an ex utilitate locorum, in quae duceretur. placebat igitur aquam ob has duas res, naturam suam utilitatemque locorum in quae deducitur, proprie appellari, ita ut, sive eius natura erit, ut nisi aestate duci non possit, etiamsi hieme quoque desideraretur, sive omni tempore anni duci eam ipsius natura permitteret, si utilitas personis, in quam ducitur, aestate dumtaxat usum eius exigeret, aestiva recte diceretur.

Dig. 43.20.7

Paulus 5 sent.

Si de via itinere actu aquae ductu agatur, huiusmodi cautio praestanda est, quamdiu quis de iure suo doceat, non se impediturum agentem et aquam ducentem et iter facientem. quod si neget ius esse adversario agendi aquae ducendae, cavere sine praeiudicio amittendae servitutis debebit, donec quaestio finietur, non se usurum.

Dig. 43.20.8

Scaevola l.S. horoi

Cui per fundum iter aquae debetur, quacumque vult in eo rivum licet faciat, dum ne aquae ductum interverteret.

Dig. 43.21.0. De rivis.

Dig. 43.21.1pr.

Ulpianus 70 ad ed.

Praetor ait: " rivos specus septa reficere purgare aquae ducendae causa quo minus liceat illi, dum ne aliter aquam ducat, quam uti priore aestate non vi non clam non precario a te duxit, vim fieri veto".

Dig. 43.21.1.1

Ulpianus 70 ad ed.

Hoc interdictum utilissimum est: nam nisi permittatur alicui reficere, alia ratione usu incommodabitur.

Dig. 43.21.1.2

Ulpianus 70 ad ed.

Ait ergo praetor " rivum specus". rivus est locus per longitudinem depressus, quo aqua decurrat, cui nomen est apo tou hrein.

Dig. 43.21.1.3

Ulpianus 70 ad ed.

Specus autem est locus, ex quo despicitur: inde spectacula sunt dicta.

Dig. 43.21.1.4

Ulpianus 70 ad ed.

Septa sunt, quae ad incile opponuntur aquae derivandae compellendaeve ex flumine causa, sive ea lignea sunt sive lapidea sive qualibet alia materia sint, ad continendam transmittendamque aquam excogitata.

Dig. 43.21.1.5

Ulpianus 70 ad ed.

Incile est autem locus depressus ad latus fluminis, ex eo dictus, quod incidatur: inciditur enim vel lapis vel terra, unde primum aqua ex flumine agi possit. sed et fossae et putei hoc interdicto continentur.

Dig. 43.21.1.6

Ulpianus 70 ad ed.

Deinde ait praetor " reficere purgare". reficere est quod corruptum est in pristinum statum restaurare. verbo reficiendi tegere substruere sarcire aedificare, item advehere adportareque ea, quae ad eandem rem opus essent. continentur.

Dig. 43.21.1.7

Ulpianus 70 ad ed.

Purgandi verbum plerique quidem putant ad eum rivum pertinere, qui integer est: et palam est et ad eum pertinere, qui refectione indiget: plerumque enim ut refectione, et purgatione indiget.

Dig. 43.21.1.8

Ulpianus 70 ad ed.

" aquae", inquit, " ducendae causa". merito hoc additur, ut ei demum permittatur et reficere et purgare rivum, qui aquae ducendae causa id fecit.

Dig. 43.21.1.9

Ulpianus 70 ad ed.

Hoc interdictum competit etiam ei, qui ius aquae ducendae non habet, si modo aut priore aestate aut eodem anno aquam duxerit, cum sufficiat non vi non clam non precario duxisse.

Dig. 43.21.1.10

Ulpianus 70 ad ed.

Si quis terrenum rivum signinum, id est lapideum facere velit, videri eum non recte hoc interdicto uti: non enim reficit qui hoc facit: et ita ofilio videtur.

Dig. 43.21.1.11

Ulpianus 70 ad ed.

Proinde et si per alium locum velit ducere, impune prohibetur: sed et si eundem rivum deprimat vel adtollat aut dilatet vel extendat vel operiat apertum vel contra. ego ceteros quidem impune prohiberi puto: at enim eum, qui operiat apertum vel contra, eum non puto prohibendum, nisi si quam maiorem utilitatem suam adversarius ostendat.

Dig. 43.21.2

Paulus 66 ad ed.

Labeo non posse ait ex aperto rivo terrenum fieri, quia commodum domino soli auferetur appellendi pecus vel hauriendi aquam: quod sibi non placere pomponius ait, quia id domino magis ex occasione quam ex iure contingeret, nisi si ab initio in imponenda servitute id actum esset.

Dig. 43.21.3pr.

Ulpianus 70 ad ed.

Servius autem scribit aliter duci aquam, quae ante per specus ducta est, si nunc per apertum ducatur: nam si operis aliquid faciat quis, quo magis aquam conservet vel contineat, non impune prohiberi. ego et in specu contra, si non maior utilitas versetur adversarii.

Dig. 43.21.3.1

Ulpianus 70 ad ed.

Servius et labeo scribunt, si rivum, qui ab initio terrenus fuit, quia aquam non continebat, cementicium velit facere, audiendum esse: sed et si eum rivum, qui structilis fuit, postea terrenum faciat aut partem rivi, aeque non esse prohibendum. mihi videtur urguens et necessaria refectio esse admittenda.

Dig. 43.21.3.2

Ulpianus 70 ad ed.

Si quis novum canalem vel fistulas in rivo velit collocare, cum id numquam habuerit, utile ei hoc interdictum futurum labeo ait. nos et hic opinamur utilitatem eius qui ducit sine incommoditate eius cuius ager est spectandam.

Dig. 43.21.3.3

Ulpianus 70 ad ed.

Si aqua in unum lacum conducatur et inde per plures ductus ducatur, hoc interdictum utile erit volenti reficere ipsum lacum.

Dig. 43.21.3.4

Ulpianus 70 ad ed.

Hoc interdictum ad omnes rivos pertinet, sive in publico sive in privato sint constituti.

Dig. 43.21.3.5

Ulpianus 70 ad ed.

Sed et si calidae aquae rivus sit, de hoc reficiendo competit interdictum.

Dig. 43.21.3.6

Ulpianus 70 ad ed.

Aristo et de cuniculo restituendo per quem vapor trahitur, in balnearis vaporibus putat utilem actionem competere: et erit dicendum utile interdictum ex hac causa competere.

Dig. 43.21.3.7

Ulpianus 70 ad ed.

Isdem autem personis et in easdem interdictum hoc datur, quibus et in quas et de aqua interdicta redduntur, quae supra sunt enumerata.

Dig. 43.21.3.8

Ulpianus 70 ad ed.

Si quis rivum reficienti opus novum nuntiat, belle dictum est posse contemni operis novi nuntiationem: cum enim praetor ei vim fieri vetet, absurdum est per operis novi nuntiationem eum impediri. plane per in rem actionem dicendum est posse: adversus eum vindicari " ius ei non esse" dubium non est.

Dig. 43.21.3.9

Ulpianus 70 ad ed.

De damno quoque infecto cavere eum debere minime dubitari oportet.

Dig. 43.21.3.10

Ulpianus 70 ad ed.

Si quis eum exportare vehere, quae refectioni necessaria sunt, prohibeat, hoc interdictum ei competere ofilius putat, quod est verum.

Dig. 43.21.4

Venonius 1 interd.

De rivis reficiendis ita interdicetur, ut non quaeratur, an aquam ducere actori liceret: non enim tam necessariam refectionem itinerum quam rivorum esse, quando non refectis rivis omnis usus aquae auferretur et homines siti necarentur. et sane aqua pervenire nisi refecto rivo non potest: at non refecto itinere difficultas tantum eundi agendique fieret, quae temporibus aestivis levior esset.

Dig. 43.22.0. De fonte.

Dig. 43.22.1pr.

Ulpianus 70 ad ed.

Praetor ait: " uti de eo fonte, quo de agitur, hoc anno aqua nec vi nec clam nec precario ab illo usus es, quo minus ita utaris, vim fieri veto. de lacu puteo piscina item interdicam".

Dig. 43.22.1.1

Ulpianus 70 ad ed.

Hoc interdictum proponitur ei, qui fontana aqua uti prohibetur: servitutes enim non tantum aquae ducendae esse solent, verum etiam hauriendae, et sicut discretae sunt servitutes ductus aquae et haustus aquae, ita interdicta separatim redduntur.

Dig. 43.22.1.2

Ulpianus 70 ad ed.

Hoc autem interdictum locum habet, si quis uti prohibeatur aqua, hoc est sive haurire prohibeatur sive etiam pecus ad aquam appellere.

Dig. 43.22.1.3

Ulpianus 70 ad ed.

Et eadem sunt hic dicenda, quae ad personam attinent, quaecumque in superioribus interdictis diximus.

Dig. 43.22.1.4

Ulpianus 70 ad ed.

Hoc interdictum de cisterna non competit: nam cisterna non habet perpetuam causam nec vivam aquam. ex quo apparet in his omnibus exigendum, ut viva aqua sit: cisternae autem imbribus concipiuntur. denique constat interdictum cessare, si lacus piscina puteus vivam aquam non habeat.

Dig. 43.22.1.5

Ulpianus 70 ad ed.

Plane si quis ire ad haustum prohibeatur, aeque interdictum sufficiet.

Dig. 43.22.1.6

Ulpianus 70 ad ed.

Deinde ait praetor: " quo minus fontem, quo de agitur, purges reficias, ut aquam coercere utique ea possis, dum ne aliter utaris, atque uti hoc anno non vi non clam non precario ab illo usus es, vim fieri veto".

Dig. 43.22.1.7

Ulpianus 70 ad ed.

Hoc interdictum eandem habet utilitatem, quam habet interdictum de rivis reficiendis: nisi enim purgare et reficere fontem licuerit, nullus usus eius erit.

Dig. 43.22.1.8

Ulpianus 70 ad ed.

Purgandus autem et reficiendus est ad aquam coercendam, ut uti quis aqua possit, dummodo non aliter utatur, quam sic uti hoc anno usus est.

Dig. 43.22.1.9

Ulpianus 70 ad ed.

Coercere aquam est continere sic, ne diffluat, ne dilabatur, dummodo non permittatur cui novas quaerere vel aperire: hic enim innovat aliquid praeter id, quam praecedenti anno usus est.

Dig. 43.22.1.10

Ulpianus 70 ad ed.

Sed et de lacu puteo piscina reficiendis purgandis interdictum competit.

Dig. 43.22.1.11

Ulpianus 70 ad ed.

Et omnibus personis dabitur, quibus permittitur interdictum de aqua aestiva.

Dig. 43.23.0. De cloacis.

Dig. 43.23.1pr.

Ulpianus 71 ad ed.

Praetor ait: " quo minus illi cloacam quae ex aedibus eius in tuas pertinet, qua de agitur, purgare reficere liceat, vim fieri veto. damni infecti, quod operis vitio factum sit, caveri iubebo".

Dig. 43.23.1.1

Ulpianus 71 ad ed.

Sub hoc titulo duo interdicta praetor subiecit, unum prohibitorium, alterum restitutorium: et primum prohibitorium.

Dig. 43.23.1.2

Ulpianus 71 ad ed.

Curavit autem praetor per haec interdicta, ut cloacae et purgentur et reficiantur, quorum utrumque et ad salubritatem civitatium et ad tutelam pertinet: nam et caelum pestilens et ruinas minantur immunditiae cloacarum, si non reficiantur.

Dig. 43.23.1.3

Ulpianus 71 ad ed.

Hoc autem interdictum propositum est de cloacis privatis: publicae enim cloacae publicam curam merentur.

Dig. 43.23.1.4

Ulpianus 71 ad ed.

Cloaca autem est locus cavus, per quem colluvies quaedam fluat.

Dig. 43.23.1.5

Ulpianus 71 ad ed.

Hoc interdictum, quod primum proponitur, prohibitorium est, quo prohibetur vicinus vim facere, quo minus cloaca purgetur et reficiatur.

Dig. 43.23.1.6

Ulpianus 71 ad ed.

Cloacae appellatione et tubus et fistula continetur.

Dig. 43.23.1.7

Ulpianus 71 ad ed.

Quia autem cloacarum refectio et purgatio ad publicam utilitatem spectare videtur, idcirco placuit non esse in interdicto addendum " quod non vi non clam non precario ab illo usus", ut, etiamsi quis talem usum habuerit, tamen non prohibeatur volens cloacam reficere vel purgare.

Dig. 43.23.1.8

Ulpianus 71 ad ed.

Deinde ait praetor " quae ex aedibus eius in tuas pertinet". aedes hic accipere debes pro omni aedificio, hoc est ex aedificio eius in tuum aedificium. hoc amplius labeo putabat hoc interdicto locum esse et si area ab utralibet parte aedium sit et si forte, inquit, cloaca ducta sit ex urbano aedificio in proximum agrum.

Dig. 43.23.1.9

Ulpianus 71 ad ed.

Idem labeo etiam eum, qui privatam cloacam in publicam immittere velit, tuendum, ne ei vis fiat. sed et si quis velit talem cloacam facere, ut exitum habeat in publicam cloacam, non esse eum impediendum pomponius scribit.

Dig. 43.23.1.10

Ulpianus 71 ad ed.

Quod ait praetor " pertinet" hoc significat, quod ex aedibus eius in tuas pertinet, hoc est " derigitur, extenditur, pervenit".

Dig. 43.23.1.11

Ulpianus 71 ad ed.

Et tam ad proximum vicinum hoc interdictum pertinet quam adversus ulteriores, per quorum aedes cloaca currit.

Dig. 43.23.1.12

Ulpianus 71 ad ed.

Unde fabius mela scribit competere hoc interdictum, ut in vicini aedes veniat et rescindat pavimenta purgandae cloacae gratia. verendum tamen esse pomponius scribit, ne eo casu damni infecti stipulatio committatur. sed haec stipulatio non committitur, si paratus sit restaurare id, quod ex necessitate reficiendae cloacae causa resciderat.

Dig. 43.23.1.13

Ulpianus 71 ad ed.

Si quis purganti mihi cloacam vel reficienti opus novum nuntiaverit, rectissime dicetur contempta nuntiatione me posse reficere id quod institueram.

Dig. 43.23.1.14

Ulpianus 71 ad ed.

Sed et damni infecti cautionem pollicetur, si quid operis vitio factum est: nam sicuti reficere cloacas et purgare permittendum fuit, ita dicendum, ne damnum aedibus alienis detur.

Dig. 43.23.1.15

Ulpianus 71 ad ed.

Deinde ait praetor: " quod in cloaca publica factum sive ea immissum habes, quo usus eius deterior sit fiat, restituas. item ne quid fiat immittaturve, interdicam".

Dig. 43.23.1.16

Ulpianus 71 ad ed.

Hoc interdictum ad publicas cloacas pertinet, ne quid ad cloacam immittas neve facias, quo usus deterior sit neve fiat.

Dig. 43.23.2

Venonius 1 interd.

Quamquam de reficienda cloaca, non etiam de nova facienda hoc interdicto comprehendatur, tamen aeque interdicendum labeo ait, ne facienti cloacam vis fiat, quia eadem utilitas sit: praetorem enim sic interdixisse, ne vis fieret, quo minus cloacam in publico facere liceret: idque ofilio et trebatio placuisse. ipse dicendum ait, ut ne factam cloacam purgare et restituere permittendum sit per interdictum, novam vero facere is demum concedere debeat, cui viarum publicarum cura sit.

Dig. 43.24.0. Quod vi aut clam.

Dig. 43.24.1pr.

Ulpianus 71 ad ed.

Praetor ait: " quod vi aut clam factum est, qua de re agitur, id cum experiendi potestas est, restituas".

Dig. 43.24.1.1

Ulpianus 71 ad ed.

Hoc interdictum restitutorium est et per hoc occursum est calliditati eorum, qui vi aut clam quaedam moliuntur: iubentur enim ea restituere.

Dig. 43.24.1.2

Ulpianus 71 ad ed.

Et parvi refert, utrum ius habuerit faciendi, an non: sive enim ius habuit sive non, tamen tenetur interdicto, propter quod vi aut clam fecit: tueri enim ius suum debuit, non iniuriam comminisci.

Dig. 43.24.1.3

Ulpianus 71 ad ed.

Denique est quaesitum, an hoc interdicto utenti exceptionem possit obicere: " quod non iure meo receperim". et magis est, ne possit: nam adversus vim vel quod clam factum est nulla iusta exceptione se tueri potest.

Dig. 43.24.1.4

Ulpianus 71 ad ed.

Hoc interdictum ad ea sola opera pertinet, quaecumque in solo vi aut clam fiunt.

Dig. 43.24.1.5

Ulpianus 71 ad ed.

Quid sit vi factum vel clam factum, videamus. vi factum videri quintus mucius scripsit, si quis contra quam prohiberetur fecerit: et mihi videtur plena esse quinti mucii definitio.

Dig. 43.24.1.6

Ulpianus 71 ad ed.

Sed et si quis iactu vel minimi lapilli prohibitus facere perseveravit facere, hunc quoque vi fecisse videri pedius et pomponius scribunt, eoque iure utimur.

Dig. 43.24.1.7

Ulpianus 71 ad ed.

Sed et si contra testationem denuntiationemque fecerit, idem esse cascellius et trebatius putant: quod verum est.

Dig. 43.24.1.8

Ulpianus 71 ad ed.

Sed et aristo ait eum quoque vi facere, qui, cum sciret se prohibitum iri, per vim molitus est, ne prohiberi possit.

Dig. 43.24.1.9

Ulpianus 71 ad ed.

Item labeo dicit, si quem facientem prohibuero isque destiterit in praesentiarum rursusque postea facere coeperit, vi eum videri fecisse, nisi permissu meo facere coeperit vel qua alia iusta causa accedente.

Dig. 43.24.1.10

Ulpianus 71 ad ed.

Si quis tamen inbecillitate impeditur vel etiam, ne offenderet vel te vel eum, qui te magni faciebat, ideo non venerit ad prohibendum, non videbitur adversarius vi fecisse: et ita labeo scribit.

Dig. 43.24.1.11

Ulpianus 71 ad ed.

Idem ait et si te volentem ad prohibendum venire deterruerit aliquis (armis forte) sine ullo dolo malo meo ac propter hoc non veneris, non videri me vim fecisse,

Dig. 43.24.2

Venonius 2 interd.

Ne in aliena potestate sit condicionem meam nihil delinquentis deteriorem facere.

Dig. 43.24.3pr.

Ulpianus 71 ad ed.

Prohibere autem non utique per semet ipsum necesse est, sed et si quis per servum suum vel procuratorem prohibuerit, recte videtur prohibuisse. idem etiam si mercennarius meus prohibuerit. nec quem moveat, quod per liberam personam actio adquiri non solet: nam prohibitio haec demonstrat vi te facere, quid mirum, cum et si clam tu me feceris, habeam actionem? ergo facto magis tuo delinquentis quam alieno adquiritur mihi actio.

Dig. 43.24.3.1

Ulpianus 71 ad ed.

Illud sciendum est non omnibus momentis vim esse faciendam, sed semel inter initia facta perseverat.

Dig. 43.24.3.2

Ulpianus 71 ad ed.

Sed si permiserit, adversus eum, qui utatur interdicto, exceptio erit necessaria.

Dig. 43.24.3.3

Ulpianus 71 ad ed.

Non tantum autem si ego permisero, sed et si procurator meus vel tutor qui tutelam administrat vel curator pupilli furiosi sive adulescentis, dicendum erit exceptioni locum fore.

Dig. 43.24.3.4

Ulpianus 71 ad ed.

Plane si praeses vel curator rei publicae permiserit in publico facere, nerva scribit exceptionem locum non habere, quia etsi ei locorum, inquit, publicorum procuratio data est, concessio tamen data non est. hoc ita verum est, si non lex municipalis curatori rei publicae amplius concedat. sed et si a principe vel ab eo, cui princeps hoc ius concedendi dederit idem erit probandum.

Dig. 43.24.3.5

Ulpianus 71 ad ed.

Si quis paratus sit se iudicio defendere adversus eos, qui interdicendum putant, ne opus fiat: an videatur desinere vi facere? et magis est, ut desinat, si modo satis offerat et defendere paratus est, si quis agat: et ita sabinus scribit.

Dig. 43.24.3.6

Ulpianus 71 ad ed.

Sed et si quis damni infecti paratus sit cavere, cum propter hoc tantum esset prohibitus, vel quia non defendebat vel damni infecti non repromittebat, consequens est dicere desinere eum vi facere.

Dig. 43.24.3.7

Ulpianus 71 ad ed.

Clam facere videri cassius scribit eum, qui celavit adversarium neque ei denuntiavit, si modo timuit eius controversiam aut debuit timere.

Dig. 43.24.3.8

Ulpianus 71 ad ed.

Idem aristo putat eum quoque clam facere, qui celandi animo habet eum, quem prohibiturum se intellexerit et id existimat aut existimare debet se prohibitum iri.

Dig. 43.24.4

Venonius 2 interd.

Servius etiam eum clam facere, qui existimare debeat sibi controversiam futuram, quia non opinionem cuius et resupinam existimationem esse oporteat, ne melioris condicionis sint stulti quam periti.

Dig. 43.24.5pr.

Ulpianus 70 ad ed.

Aut qui aliter fecit, quam denuntiavit: vel qui decepto facit eo, ad quem pertinuit non facere: vel consulto tum denuntiat adversario, cum eum scit non posse prohibere: vel tam sero pronuntiat, ut venire prohibiturus, prius quam fiat, non possit. et haec ita labeonem probare aristo ait.

Dig. 43.24.5.1

Ulpianus 70 ad ed.

Si quis se denuntiaverit opus facturum, non semper non videtur clam fecisse, si post denuntiationem fecerit: debebit enim (et ita labeo) et diem et horam denuntiatione complecti et ubi et quod opus futurum sit: neque perfusorie aut obscure dicere aut denuntiare: neque tam artare adversarium, ut intra diem occurrere ad prohibendum non possit.

Dig. 43.24.5.2

Ulpianus 70 ad ed.

Et si forte non sit, cui denuntietur, neque dolo malo factum sit ne sit, amicis denique aut procuratori aut ad domum denuntiandum est.

Dig. 43.24.5.3

Ulpianus 70 ad ed.

Sed et servius recte ait sufficere feminae viro notum facere opus se facturum: vel denique sciente eo facere: quamquam etiam illud sufficiat celandi animum non habere.

Dig. 43.24.5.4

Ulpianus 70 ad ed.

Item ait, si quis in publico municipii velit facere, sufficere ei, si curatori rei publicae denuntiet.

Dig. 43.24.5.5

Ulpianus 70 ad ed.

Si quis, dum putat locum tuum esse, qui est meus, celandi tui, non mei causa fecerit, mihi interdictum competere.

Dig. 43.24.5.6

Ulpianus 70 ad ed.

Idem dicit et si servi mei vel procuratoris celandi causa factum sit, mihi interdictum competere.

Dig. 43.24.5.7

Ulpianus 70 ad ed.

Si quis, cum non denuntiasset opus se facturum eique denuntiatum esset ne faceret, fecerit, utilius puto probandum vi eum fecisse.

Dig. 43.24.5.8

Ulpianus 70 ad ed.

Haec verba " quod vi aut clam factum est" ait mucius ita esse " quod tu aut tuorum quis aut tuo iussu factum est".

Dig. 43.24.5.9

Ulpianus 70 ad ed.

Labeo autem ait plures personas contineri his verbis. nam ecce primum heredes eorum, quos enumerat mucius, contineri putat.

Dig. 43.24.5.10

Ulpianus 70 ad ed.

Idem ait et adversus procuratorem tutorem curatorem municipumve syndicum alieno nomine interdici posse.

Dig. 43.24.5.11

Ulpianus 70 ad ed.

Si quid servus meus fecit, non ob id mecum actio est, sed si id meo nomine aut suo fecit: nam si tuum servum mercennarium habuero, quidquid ab eo factum fuerit meo nomine, ob id non tecum, sed mecum, cuius iussu aut nomine id opus a servo tuo factum fuerit, agendum erit hoc interdicto.

Dig. 43.24.5.12

Ulpianus 70 ad ed.

Similiter quod iussu cuius factum erit, ob id non cum eo, sed cuius nomine iusserit, haec actio est. nam si procurator tutor curator duumvir municipii, quod eius nomine ageret, cuius negotium procuraret, fieri iusserit, ob id agendum erit cum eo, cuius nomine factum quid erit, non cum eo, qui ita iusserit. et si tibi mandavero, ut opus fieri iuberes et in ea re mihi parueris, mecum, inquit, non tecum erit actio.

Dig. 43.24.5.13

Ulpianus 70 ad ed.

Et cum interdictum sic sit scriptum " quod vi aut clam factum est", non ita " quod vi aut clam fecisti", latius porrigi quam ad has personas, quas supra numeravimus, labeo putat.

Dig. 43.24.5.14

Ulpianus 70 ad ed.

Et hoc iure utimur, ut, sive ego fecissem dive fieri iussi, interdicto quod vi aut clam tenear.

Dig. 43.24.6

Paulus 67 ad ed.

Si ego tibi mandavero opus novum facere, tu alii, non potest videri meo iussu factum: teneberis ergo tu et ille: an et ego tenear, videamus. et magis est et me, qui initium rei praestiterim, teneri: sed uno ex his satisfaciente ceteri liberantur.

Dig. 43.24.7pr.

Ulpianus 71 ad ed.

Si alius fecerit me invito, tenebor ad hoc, ut patientiam praestem.

Dig. 43.24.7.1

Ulpianus 71 ad ed.

Neratius quoque scribit eum, cuius servus vi aut clam fecit, aut sua impensa ex interdicto opus restituere debere aut patientiam restituendi praestare et servum noxae dedere: plane si mortuo alienatove servo interdiceretur, patientiam dumtaxat praestare debere ait, ita ut et emptor eo interdicto possit conveniri, ut impensam praestet aut noxam det: dominoque operis sua impensa restituente aut damnato, quia non restitueret, emptorem liberari. eadem et si contra dominus servi vel opus restituisset vel litis aestimatione damnatus esset: quod si tantum noxae dedisset, adversus dominum operis utiliter interdici.

Dig. 43.24.7.2

Ulpianus 71 ad ed.

Ait iulianus: qui ante remissionem nuntiationis, contra quam prohibitus fuerit, opus fecerit, duobus interdictis tenebitur, uno, quod ex operis novi nuntiatione competit, altero quod vi aut clam. remissione autem facta intellegendus non erit vi aut clam facere, quamvis prohibeatur: licere enim debet aedificare ei, qui satisdederit, cum possessor hoc ipso constituatur: clamque facere nec ante remissionem nec postea existimandus est, cum is, qui opus novum nuntiat, non possit videri celatus et praeoccupatus, antequam controversiam faceret.

Dig. 43.24.7.3

Ulpianus 71 ad ed.

Bellissime apud iulianum quaeritur, an haec exceptio noceat in hoc interdicto " quod non tu vi aut clam feceris?" ut puta utor adversus te interdicto quod vi aut clam, an possis obicere mihi eandem exceptionem: " quod non tu vi aut clam fecisti?" et ait iulianus aequissimum esse hanc exceptionem dare: nam si tu, inquit, aedificaveris vi aut clam, ego idem demolitus fuero vi aut clam et utaris adversus me interdicto, hanc exceptionem profuturam. quod non aliter procedere debet, nisi ex magna et satis necessaria causa: alioquin haec omnia officio iudicis celebrari oportet.

Dig. 43.24.7.4

Ulpianus 71 ad ed.

Est et alia exceptio, de qua celsus dubitat, an sit obicienda: ut puta si incendii arcendi causa vicini aedes intercidi et quod vi aut clam mecum agatur aut damni iniuria. gallus enim dubitat, an excipi oporteret: " quod incendii defendendi causa factum non sit?" servius autem ait, si id magistratus fecisset, dandam esse, privato non esse idem concedendum: si tamen quid vi aut clam factum sit neque ignis usque eo pervenisset, simpli litem aestimandam: si pervenisset, absolvi eum oportere. idem ait esse, si damni iniuria actum foret, quoniam nullam iniuriam aut damnum dare videtur aeque perituris aedibus. quod si nullo incendio id feceris, deinde postea incendium ortum fuerit, non idem erit dicendum, quia non ex post facto, sed ex praesenti statu, damnum factum sit nec ne, aestimari oportere labeo ait.

Dig. 43.24.7.5

Ulpianus 71 ad ed.

Notavimus supra, quod, quamvis verba interdicti late pateant, tamen ad ea sola opera pertinere interdictum placere, quaecumque fiant in solo. eum enim, qui fructum tangit, non teneri interdicto quod vi aut clam: nullum enim opus in solo facit. at qui arbores succidit, utique tenebitur, et qui harundinem et qui salictum: terrae enim et quodammodo solo ipsi corrumpendo manus infert. idem et in vineis succisis. ceterum qui fructum aufert, furti debet conveniri. itaque si quid operis in solo fiat, interdictum locum habet. in solo fieri accipimus et si quid circa arbores fiat, non si quid circa fructum arborum.

Dig. 43.24.7.6

Ulpianus 71 ad ed.

Si quis acervum stercoris circa agrum pinguem disiecerit, cum eo " quod vi aut clam factum est" agi potest: et hoc verum est, quia solo vitium adhibitum sit.

Dig. 43.24.7.7

Ulpianus 71 ad ed.

Plane si quid agri colendi causa factum sit, interdictum quod vi aut clam locum non habet, si melior causa facta sit agri, quamvis prohibitus quis vi vel clam fecerit.

Dig. 43.24.7.8

Ulpianus 71 ad ed.

Praeterea si fossam feceris in silva publica et bos meus in eam inciderit, agere possum hoc interdicto, quia in publico factum est.

Dig. 43.24.7.9

Ulpianus 71 ad ed.

Si quis aedificium demolitus fuerit, quamvis non usque ad solum, quin interdicto teneatur, dubitari desiit.

Dig. 43.24.7.10

Ulpianus 71 ad ed.

Proinde et si tegulas de aedificio sustulerit, magis est, ut interdicto teneatur,

Dig. 43.24.8

Venonius 2 interd.

Nam origo huius rei a solo proficiscitur. ceterum per se tegulae non possidentur, sed cum universitate aedificii, nec ad rem pertinet, adfixae sunt an tantum positae.

Dig. 43.24.9pr.

Ulpianus 71 ad ed.

Nam et si ramos quis de arboribus abstulerit, adhuc interdictum hoc admittimus. haec ita, si de aedificio tegulas sustulerit: ceterum si non de aedificio, sed seorsum positas, cessat hoc interdictum.

Dig. 43.24.9.1

Ulpianus 71 ad ed.

Si tamen sera vel clavis vel cancellus vel specularium sit ablatum, quod vi aut clam agi non poterit.

Dig. 43.24.9.2

Ulpianus 71 ad ed.

Sed si quis aliquid aedibus adfixum evellerit, statuam forte vel quid aliud, quod vi aut clam interdicto tenebitur.

Dig. 43.24.9.3

Ulpianus 71 ad ed.

Si quis clam aut vi agrum intraverit vel fossam fecerit, hoc interdicto tenebitur. et si acervum succenderit vel disperserit sic, ut non ad usum agri convertat, interdicto locus non erit,

Dig. 43.24.10

Venonius 2 interd.

Quia acervus solo non cohaeret, sed terra sustinetur, aedificia autem solo cohaerent.

Dig. 43.24.11pr.

Ulpianus 71 ad ed.

Is qui in puteum vicini aliquid effuderit, ut hoc facto aquam corrumperet, ait labeo interdicto quod vi aut clam eum teneri: portio enim agri videtur aqua viva, quemadmodum si quid operis in aqua fecisset.

Dig. 43.24.11.1

Ulpianus 71 ad ed.

Quaesitum est, si statuam in municipio ex loco publico quis sustulerit vel vi vel clam, an hoc interdicto teneatur. et exstat cassii sententia eum, cuius statua in loco publico in municipio posita sit, quod vi aut clam agere posse, quia interfuerit eius eam non tolli: municipes autem etiam furti acturos, quia res eorum sit quasi publicata: si tamen deciderit, ipsi eam detrahunt: et haec sententia vera est.

Dig. 43.24.11.2

Ulpianus 71 ad ed.

Si quis de monumento statuam sustulerit, an ei, ad quem ius sepulchri pertineret, agere permittitur? et placet et in his interdicto locum esse. et sane dicendum est, si qua sepulchri ornandi causa adposita sint, sepulchri esse videri. idem est et si ostium avellat vel effringat.

Dig. 43.24.11.3

Ulpianus 71 ad ed.

Si quis in vineas meas venerit et inde ridicas abstulerit, hoc interdicto tenebitur.

Dig. 43.24.11.4

Ulpianus 71 ad ed.

Quod ait praetor: " quod vi aut clam factum est", ad quod tempus referatur, videamus, utrum ad praeteritum an ad praesens. quae species apud iulianum exposita est: ait enim in hoc interdicto praesentis temporis significationem accipi debere. si tamen, inquit, ex opere damnum datum fuerit aut dominus aut is, cuius fundo nocitum erit, sua impensa id sustulerit, utilius probari, quod iulianus temptat, ut et damnum sarciatur et impendia restituantur.

Dig. 43.24.11.5

Ulpianus 71 ad ed.

Interdictum complectitur id, quodcumque aut vi aut clam factum est. sed interdum evenit, ut quid et vi et clam fiat, partim et partim, in eodem opere. ut puta cum prohiberem, fundamenta posuisti: postea cum convenissem, ne reliquum opus fieret, absente et ignorante me reliquum opus perfecisti: vel contra fundamenta clam iecisti, deinde cetera prohibente me aedificasti. hoc iure utimur, ut et si vi et clam factum sit, interdictum hoc sufficiat.

Dig. 43.24.11.6

Ulpianus 71 ad ed.

Si tutoris iussu aut curatoris factum sit, cum placeat, quod cassius probat, ex dolo tutoris vel curatoris pupillum vel furiosum non teneri, eveniet, ut in ipsum tutorem curatoremque aut utilis actio competat aut etiam utile interdictum. certe ad patientiam tollendi operis utique tenebuntur pupillus et furiosus et ad noxam.

Dig. 43.24.11.7

Ulpianus 71 ad ed.

An ignoscitur servo, qui obtemperavit tutori aut curatori? nam ad quaedam, quae non habent atrocitatem facinoris vel sceleris, ignoscitur servis, si vel dominis vel his, qui vice dominorum sunt, obtemperaverint. quod et in hoc casu admittendum est.

Dig. 43.24.11.8

Ulpianus 71 ad ed.

Si postea, quam vi aut clam factum est, venierit fundus, an venditor nihilo minus hoc interdicto experiri possit, videamus. et extat sententia existimantium nihilo minus competere ei interdictum nec finiri venditione: sed nec ex empto actione quicquam ei praestandum emptori ex eo opere, quod ante venditionem factum est: satis enim esse, quod utique propter hoc opus viliori praedium distraxerit. certe etsi non viliori vendidit, idem erit probandum.

Dig. 43.24.11.9

Ulpianus 71 ad ed.

Plane si post venditionem fundi opus factum est, etsi ipse experiatur venditor, quia nondum traditio facta est, tamen ex empto actione emptori tenebitur: omne enim et commodum et incommodum ad emptorem pertinere debet.

Dig. 43.24.11.10

Ulpianus 71 ad ed.

Si fundus in diem addictus sit, cui competat interdictum? et ait iulianus interdictum quod vi aut clam ei competere, cuius interfuit opus non fieri: fundo enim in diem addicto et commodum et incommodum omne ad emptorem, inquit, pertinet, antequam venditio transferatur, et ideo, si quid tunc vi aut clam factum est, quamvis melior condicio allata fuerit, ipse utile interdictum habebit: sed eam actionem sicut fructus medio tempore perceptos venditi iudicio praestare cogendum ait.

Dig. 43.24.11.11

Ulpianus 71 ad ed.

Aristo autem scribit non possessori esse denuntiandum: nam si quis, inquit, fundum mihi vendiderit et necdum tradiderit et vicinus, cum opus facere vellet et sciret me emisse et in fundo morari, mihi denuntiaverit, esse eum tutum futurum, quod ad suspicionem clam facti operis pertineret: quod sane verum est.

Dig. 43.24.11.12

Ulpianus 71 ad ed.

Ego, si post in diem addictionem factam fundus precario traditus sit, putem emptorem interdictum quod vi aut clam habere. si vero aut nondum traditio facta est aut etiam facta est precarii rogatio, non puto dubitandum, quin venditor interdictum habeat: ei enim competere debet, etsi res ipsius periculo non sit, nec multum facit, quod res emptoris periculo est: nam et statim post venditionem contractam periculum ad emptorem spectat et tamen antequam ulla traditio fiat, nemo dixit interdictum ei competere. si tamen precario sit in possessione, videamus, ne, quia interest ipsius, qualiter qualiter possidet, iam interdicto uti possit. ergo et si conduxit, multo magis: nam et colonum posse interdicto experiri in dubium non venit. plane si postea, quam melior condicio allata est, aliquid operis vi aut clam factum sit, nec iulianus dubitaret interdictum venditori competere: nam inter cassium et iulianum de illo, quod medio tempore accidit, quaestio est, non de eo opere, quod postea contigit.

Dig. 43.24.11.13

Ulpianus 71 ad ed.

Si ita praedium venierit, ut, si displicuisset, inemptum esset, facilius admittimus interdictum emptorem habere, si modo est in possessione: et si rescissio emptionis in alterius arbitrium conferatur, idem erit probandum: idemque et si ita venisset, ut, si aliquid evenisset, inemptum esset praedium: et si forte commissoria venierit, idem dicendum est.

Dig. 43.24.11.14

Ulpianus 71 ad ed.

Idem iulianus scribit interdictum hoc non solum domino praedii, sed etiam his, quorum interest opus factum non esse, competere.

Dig. 43.24.12

Venonius 2 interd.

Quamquam autem colonus et fructuarius fructuum nomine in hoc interdictum admittantur, tamen et domino id competet, si quid praeterea eius intersit.

Dig. 43.24.13pr.

Ulpianus 71 ad ed.

Denique si arbores in fundo, cuius usus fructus ad titium pertinet, ab extraneo vel a proprietario succisae fuerint, titius et lege aquilia et interdicto quod vi aut clam cum utroque eorum recte experietur.

Dig. 43.24.13.1

Ulpianus 71 ad ed.

Labeo scribit, si filio prohibente opus factum sit, et te habere interdictum, ac si te prohibente opus factum est, et filium tuum nihilo minus.

Dig. 43.24.13.2

Ulpianus 71 ad ed.

Idem ait adversus filium familias in re peculiari neminem clam videri fecisse: namque, si scit eum filium familias esse, non videtur eius celandi gratia fecisse, quem certus est nullam secum actionem habere.

Dig. 43.24.13.3

Ulpianus 71 ad ed.

Si ex sociis communis fundi unus arbores succiderit, socius cum eo hoc interdicto experiri potest, cum ei competat, cuius interest.

Dig. 43.24.13.4

Ulpianus 71 ad ed.

Unde apud servium amplius relatum est, si mihi concesseris, ut ex fundo tuo arbores caedam, deinde eas alius vi aut clam ceciderit, mihi hoc interdictum competere, quia ego sim cuius interest: quod facilius erit admittendum, si a te emi vel ex aliquo contractu hoc consecutus sim, ut mihi caedere liceat.

Dig. 43.24.13.5

Ulpianus 71 ad ed.

Quaesitum est, si, cum praedium interim nullius esset, aliquid vi aut clam factum sit, an postea dominio ad aliquem devoluto interdicto locus sit: ut puta hereditas iacebat, postea adiit hereditatem titius, an ei interdictum competat? et est apud vivianum saepissime relatum heredi competere hoc interdictum eius, quod ante aditam hereditatem factum sit, nec referre labeo ait, quod non scierit, qui heredes futuri essent: hoc enim posse quem causari etiam post aditam hereditatem. ne illud quidem obstare labeo ait, quod eo tempore nemo dominus fuerit: nam et sepulchri nemo dominus fuit et tamen, si quid in eo fiat, experiri possum quod vi aut clam. accedit his, quod hereditas dominae locum optinet. et recte dicetur heredi quoque competere et ceteris successoribus, sive ante, quam successerit, sive postea aliquid sit vi aut clam admissum.

Dig. 43.24.13.6

Ulpianus 71 ad ed.

Si colonus meus opus fecerit, si quidem me volente vel ratum habente, perinde est atque si procurator meus fecisset, in quo placet, sive ex voluntate mea fecerit, teneri me, sive ratum habuero, quod procurator fecit.

Dig. 43.24.13.7

Ulpianus 71 ad ed.

Iulianus ait: si colonus arborem, de qua controversia erat, succiderat vel quid aliud opus fecerit, si quidem iussu domini id factum sit, ambo tenebuntur, non ut patientiam praestent, sed ut impensam quoque ad restituendum praebeant:

si autem dominus non iusserit, colonus quidem tenebitur, ut patientiam et impensam praestet, dominus vero nihil amplius quam patientiam praestare cogendus erit.

Dig. 43.24.14

Iulianus 68 Dig.

Nam et si servus meus ignorante me opus fecerit eumque vendidero vel manumisero, mecum in hoc solum agi poterit, ut patiar opus tolli, cum emptore autem servi, ut aut noxae dedat aut impensam, quae in restitutione facta fuerit, praestet: sed et cum ipso manumisso recte agi poterit.

Dig. 43.24.15pr.

Ulpianus 71 ad ed.

Semper adversus possessorem operis hoc interdictum competit, idcircoque, si quilibet inscio vel etiam invito me opus in fundo meo fecerit, interdicto locus erit.

Dig. 43.24.15.1

Ulpianus 71 ad ed.

Is, cui fundum pastinandum locaveras, lapides sustulit et in vicini proiecit praedium. ait labeo te vi aut clam non teneri, nisi iussu tuo id factum sit: ego puto conductorem teneri, locatorem autem non alias, nisi aut patientiam praestare possit aut aliquam actionem habeat, quam praestet: ceterum teneri non oportere.

Dig. 43.24.15.2

Ulpianus 71 ad ed.

Si in sepulchro alieno terra congesta fuerit iussu meo, agendum esse quod vi aut clam mecum labeo scribit. et si communi consilio plurium id factum sit, licere vel cum uno vel cum singulis experiri: opus enim, quod a pluribus pro indiviso factum est, singulos in solidum obligare. si tamen proprio quis eorum consilio hoc fecerit, cum omnibus esse agendum, scilicet in solidum: itaque alter conventus alterum non liberabit, quin immo perceptio ab altero: superiore etenim casu alterius conventio alterum liberat. praeterea sepulchri quoque violati agi potest.

Dig. 43.24.15.3

Ulpianus 71 ad ed.

Hoc interdictum in heredem ceterosque successores datur in id quod ad eos pervenit.

Dig. 43.24.15.4

Ulpianus 71 ad ed.

Et post annum non competit. annus autem cedere incipit, ex quo id opus factum perfectum est aut fieri desiit, licet perfectum non sit: alioquin si a principio operis coepti annum quis numeret, necesse est cum his, qui opus tardissime facerent, saepius agi.

Dig. 43.24.15.5

Ulpianus 71 ad ed.

Sed si is sit locus, in quo opus factum est, qui facile non adiretur, ut puta in sepulchro vi aut clam factum est vel in abdito alio loco, sed et si sub terra fieret opus vel sub aqua, vel cloaca aliquid factum sit, etiam post annum causa cognita competit interdictum de eo quod factum est: nam causa cognita annuam exceptionem remittendam, hoc est magna et iusta causa ignorantiae interveniente.

Dig. 43.24.15.6

Ulpianus 71 ad ed.

Si quis rei publicae causa afuisset, deinde reversus interdicto quod vi aut clam uti vellet, verius est non excludi anno eum, sed reversum annum habere. nam et si minor viginti quinque annis rei publicae causa abesse coepisset, deinde maior effectus sit, dum abest rei publicae causa, futurum, ut ex quo redit annus ei computetur, non ex quo implevit vicensimum quintum annum: et ita divus pius et deinceps omnes principes rescripserunt.

Dig. 43.24.15.7

Ulpianus 71 ad ed.

Hoc interdicto tanti lis aestimatur, quanti actoris interest id opus factum esse. officio autem iudicis ita oportere fieri restitutionem iudicandum est, ut in omni causa eadem condicio sit actoris, quae futura esset, si id opus, de quo actum est, neque vi neque clam factum esset.

Dig. 43.24.15.8

Ulpianus 71 ad ed.

Ergo nonnumquam etiam dominii ratio habenda est, ut puta si propter hoc opus, quod factum est, servitutes amittantur aut usus fructus intereat. quod non tantum tunc eveniet, cum quis opus aedificaverit, verum etiam si diruisse opus proponatur et deteriorem condicionem fecisse vel servitutium vel usus fructus vel ipsius proprietatis.

Dig. 43.24.15.9

Ulpianus 71 ad ed.

Sed quod interfuit, aut per iusiurandum, quod in litem actor iuraverit, aut, si iurare non possit, iudicis officio aestimandum est.

Dig. 43.24.15.10

Ulpianus 71 ad ed.

Eum autem, qui dolo malo fecerit, quo minus possit restituere, perinde habendum, ac si posset.

Dig. 43.24.15.11

Ulpianus 71 ad ed.

Culpam quoque in hoc interdicto venire erit probandum: quae tamen arbitrio iudicis aestimanda erit.

Dig. 43.24.15.12

Ulpianus 71 ad ed.

Quia autem hoc interdictum id quod interest continet, si quis alia actione fuerit consecutus id quod interfuit opus non esse factum, consequens erit dicere ex interdicto nihil eum consequi oportere.

Dig. 43.24.16pr.

Paulus 67 ad ed.

Competit hoc interdictum etiam his qui non possident, si modo eorum interest.

Dig. 43.24.16.1

Paulus 67 ad ed.

Si quis vi aut clam arbores non frugiferas ceciderit, veluti cupressos, domino dumtaxat competit interdictum. sed si amoenitas quaedam ex huiusmodi arboribus praestetur, potest dici et fructuarii interesse propter voluptatem et gestationem et esse huic interdicto locum.

Dig. 43.24.16.2

Paulus 67 ad ed.

In summa qui vi aut clam fecit, si possidet, patientiam et impensam tollendi operis: qui fecit nec possidet, impensam: qui possidet nec fecit, patientiam tantum debet.

Dig. 43.24.17

Paulus 69 ad ed.

Interdictum quod vi aut clam per quemvis domino adquiritur, licet per inquilinum.

Dig. 43.24.18pr.

Celsus 25 Dig.

Si inmaturam silvam caeduam cecidit quis, interdicto quod vi aut clam tenetur: si maturam similiter caeduam neque damno dominus adfectus est, nihil praestabit.

Dig. 43.24.18.1

Celsus 25 Dig.

Non absurde responsum est: si magistratum rogasses, ut adversarium tuum adesse ad iudicium iuberet, ne opus novum tibi nuntiaret, clam videris opus fecisse, quod interim feceris.

Dig. 43.24.19

Ulpianus 57 ad ed.

Interdictum quod vi aut clam competere filio familias colono arboribus succisis sabinus ait.

Dig. 43.24.20pr.

Paulus 13 ad sab.

Vi facit tam is qui prohibitus fecit quam is qui, quo minus prohibeatur, consecutus est periculo puta adversario denuntiato aut ianua puta praeclusa.

Dig. 43.24.20.1

Paulus 13 ad sab.

Prohibitus autem intellegitur quolibet prohibentis actu, id est vel dicentis se prohibere vel manum opponentis lapillumve iactantis prohibendi gratia.

Dig. 43.24.20.2

Paulus 13 ad sab.

Tamdiu autem vi facit prohibitus, quamdiu res in eodem statu permanebit: nam si postea convenerit cum adversario, desinit vi facere.

Dig. 43.24.20.3

Paulus 13 ad sab.

Item si prohibiti heres vel is, qui ab eo emerit, ignorans causam praecedentem fecerit, dicendum esse pomponius ait non incidere eum in interdictum.

Dig. 43.24.20.4

Paulus 13 ad sab.

Quod in nave fit vel in alia qualibet re vel amplissima, mobili tamen, non continetur hoc interdicto.

Dig. 43.24.20.5

Paulus 13 ad sab.

Sive in privato sive in publico opus fiat sive in loco sacro sive in religioso, interdictum competit.

Dig. 43.24.21pr.

Pomponius 29 ad sab.

Si opus, quod quis iussus est a iudice, qui ex hoc interdicto sumptus esset, restituere, alius quis vi aut clam sustulisset, nihilo minus idem ille omnimodo iubetur opus restituere.

Dig. 43.24.21.1

Pomponius 29 ad sab.

Si iussero servum meum opus facere, cum, quantum ad me pertinet, in clandestini suspicionem non veniret, servus autem meus putaverit, si rescisset adversarius, prohibiturum eum, an tenear? et non puto, cum mea persona sit intuenda.

Dig. 43.24.21.2

Pomponius 29 ad sab.

In opere novo tam soli quam caeli mensura facienda est.

Dig. 43.24.21.3

Pomponius 29 ad sab.

Si quis propter opus factum ius aliquod praedii amisit, id restitui ex hoc interdicto debet.

Dig. 43.24.22pr.

Venonius 2 interd.

Si vitem meam ex fundo meo in fundum tuum deprehenderis eaque in fundo tuo coaluerit, utile est interdictum quod vi aut clam intra annum: sed si annus praeterierit, nullam remanere actionem radices, quae in fundo meo sint, tuas fieri, quia his accessiones sint.

Dig. 43.24.22.1

Venonius 2 interd.

Si quis vi aut clam araverit, puto eum teneri hoc interdicto perinde atque si fossam fecisset: non enim ex qualitate operis huic interdicto locus est, sed ex opere facto, quod cohaeret solo.

Dig. 43.24.22.2

Venonius 2 interd.

Si ad ianuam meam tabulas fixeris et ego eas, priusquam tibi denuntiarem, refixero, deinde invicem interdicto quod vi aut clam egerimus: nisi remittas mihi, ut absolvar, condemnandum te, quasi rem non restituas, quanti mea intersit, aut certe exceptionem mihi profuturam " si non vi nec clam nec precario feceris".

Dig. 43.24.22.3

Venonius 2 interd.

Si stercus per fundum meum tuleris, cum id te facere vetuissem, quamquam nihil damni feceris mihi nec fundi mei mutaveris, tamen teneri te quod vi aut clam trebatius ait. labeo contra, ne etiam is, qui dumtaxat iter per fundum meum fecerit aut avem egerit venatusve fuerit sine ullo opere, hoc interdicto teneatur.

Dig. 43.24.22.4

Venonius 2 interd.

Si quis proiectum aut stillicidium in sepulchrum immiserit, etiamsi ipsum monumentum non tangeret, recte cum eo agi, quod in sepulchro vi aut clam factum sit, quia sepulchri sit non solum is locus, qui recipiat humationem, sed omne etiam supra id caelum: eoque nomine etiam sepulchri violati agi posse.

Dig. 43.24.22.5

Venonius 2 interd.

Si is, qui denuntiaverit se opus facturum, confestim opus fecerit, clam fecisse non intellegitur: nam si post tempus, videbitur clam fecisse.

Dig. 43.25.0. De remissionibus.

Dig. 43.25.1pr.

Ulpianus 71 ad ed.

Ait praetor: " quod ius sit illi prohibere, ne se invito fiat, in eo nuntiatio teneat: ceterum nuntiationem missam facio".

Dig. 43.25.1.1

Ulpianus 71 ad ed.

Sub hoc titulo remissiones proponuntur.

Dig. 43.25.1.2

Ulpianus 71 ad ed.

Et verba praetoris ostendunt remissionem ibi demum factam, ubi nuntiatio non tenet, et nuntiationem ibi demum voluisse praetorem tenere, ubi ius est nuntianti prohibere, ne se invito fiat. ceterum sive satisdatio interveniat sive non, remissio facta hoc tantum remittit, in quo non tenuit nuntiatio. plane si satisdatum est, exinde remissio facta est, non est necessaria remissio.

Dig. 43.25.1.3

Ulpianus 71 ad ed.

Ius habet opus novum nuntiandi, qui aut dominium aut servitutem habet.

Dig. 43.25.1.4

Ulpianus 71 ad ed.

Item iuliano placet fructuario vindicandarum servitutium ius esse: secundum quod opus novum nuntiare poterit vicino et remissio utilis erit. ipsi autem domino praedii si nuntiaverit, remissio inutilis erit: neque sicut adversus vicinum, ita adversus dominum agere potest ius ei non esse invito se altius aedificare. sed si hoc facto usus fructus deterior fiat, petere usum fructum debebit. idem iulianus dicit de ceteris, quibus aliqua servitus a vicino debetur.

Dig. 43.25.1.5

Ulpianus 71 ad ed.

Ei quoque, qui pignori fundum acceperit, scribit iulianus non esse iniquum detentionem servitutis dari.

Dig. 43.26.0. De precario.

Dig. 43.26.1pr.

Ulpianus 1 inst.

Precarium est, quod precibus petenti utendum conceditur tamdiu, quamdiu is qui concessit patitur.

Dig. 43.26.1.1

Ulpianus 1 inst.

Quod genus liberalitatis ex iure gentium descendit.

Dig. 43.26.1.2

Ulpianus 1 inst.

Et distat a donatione eo, quod qui donat, sic dat, ne recipiat, at qui precario concedit, sic dat quasi tunc recepturus, cum sibi libuerit precarium solvere.

Dig. 43.26.1.3

Ulpianus 1 inst.

Et est simile commodato: nam et qui commodat rem, sic commodat, ut non faciat rem accipientis, sed ut ei uti re commodata permittat.

Dig. 43.26.2pr.

Ulpianus 71 ad ed.

Ait praetor: " quod precario ab illo habes aut dolo malo fecisti, ut desineres habere, qua de re agitur, id illi restituas".

Dig. 43.26.2.1

Ulpianus 71 ad ed.

Hoc interdictum restitutorium est.

Dig. 43.26.2.2

Ulpianus 71 ad ed.

Et naturalem habet in se aequitatem, namque precarium revocare volenti competit: est enim natura aequum tamdiu te liberalitate mea uti, quamdiu ego velim, et ut possim revocare, cum mutavero voluntatem. itaque cum quid precario rogatum est, non solum hoc interdicto uti possumus, sed etiam praescriptis verbis actione, quae ex bona fide oritur.

Dig. 43.26.2.3

Ulpianus 71 ad ed.

Habere precario videtur, qui possessionem vel corporis vel iuris adeptus est ex hac solummodo causa, quod preces adhibuit et impetravit, ut sibi possidere aut uti liceat:

Dig. 43.26.3

Gaius 25 ad ed. provinc.

Veluti si me precario rogaveris, ut per fundum meum ire vel agere tibi liceat vel ut in tectum vel in aream aedium mearum stillicidium vel tignum in parietem immissum habeas.

Dig. 43.26.4pr.

Ulpianus 71 ad ed.

In rebus etiam mobilibus precarii rogatio constitit.

Dig. 43.26.4.1

Ulpianus 71 ad ed.

Meminisse autem nos oportet eum, qui precario habet, etiam possidere.

Dig. 43.26.4.2

Ulpianus 71 ad ed.

Tenetur hoc interdicto non utique ille, qui precario rogavit, sed qui precario habet: etenim fieri potest, ut quis non rogaverit, sed habeat precario. ut puta servus meus rogavit: mihi adquisiit precarium: vel quis alius, qui iuri meo subiectus est.

Dig. 43.26.4.3

Ulpianus 71 ad ed.

Item si rem meam precario rogavero, rogavi quidem precario, sed non habeo precario idcirco, quia receptum est rei suae precarium non esse.

Dig. 43.26.4.4

Ulpianus 71 ad ed.

Item qui precario ad tempus rogavit, finito tempore, etiamsi ad hoc temporis non rogavit, tamen precario possidere videtur: intellegitur enim dominus, cum patitur eum qui precario rogaverit possidere, rursus precario concedere.

Dig. 43.26.5

Pomponius 29 ad sab.

Sed si manente adhuc precario tu in ulterius tempus rogasti, prorogatur precarium: nam nec mutatur causa possessionis et non constituitur eo modo precarium, sed in longius tempus profertur. si vero praeterita die rogas, propius est, ut soluta iam causa precarii non redintegretur, sed nova constituatur.

Dig. 43.26.6pr.

Ulpianus 71 ad ed.

Certe si interim dominus furere coeperit vel decesserit, fieri non posse Marcellus ait, ut precarium redintegretur, et hoc verum est.

Dig. 43.26.6.1

Ulpianus 71 ad ed.

Si procurator meus me mandante vel ratum habente precario rogaverit, ego precario habere proprie dicor.

Dig. 43.26.6.2

Ulpianus 71 ad ed.

Is qui rogavit, ut precario in fundo moretur, non possidet, sed possessio apud eum qui concessit remanet: nam et fructuarius, inquit, et colonus et inquilinus sunt in praedio et tamen non possident.

Dig. 43.26.6.3

Ulpianus 71 ad ed.

Iulianus ait eum, qui vi alterum deiecit et ab eodem precario rogavit, desinere vi possidere et incipere precario, neque existimare sibi ipsum causam possessionis mutare, cum voluntate eius quem deiecit coeperit precario possidere: nam si ab eodem emisset, incipere etiam pro emptore posse dominium capere.

Dig. 43.26.6.4

Ulpianus 71 ad ed.

Quaesitum est, si quis rem suam pignori mihi dederit et precario rogaverit, an hoc interdictum locum habeat. quaestio in eo est, ut precarium consistere rei suae possit. mihi videtur verius precarium consistere in pignore, cum possessionis rogetur, non proprietatis, et est haec sententia etiam utilissima:

cottidie enim precario rogantur creditores ab his, qui pignori dederunt, et debet consistere precarium.

Dig. 43.26.7

Venonius 3 interd.

Sed et si eam rem, cuius possessionem per interdictum uti possidetis retinere possim, quamvis futurum esset, ut tenear de proprietate, precario tibi concesserim, teneberis hoc interdicto.

Dig. 43.26.8pr.

Ulpianus 71 ad ed.

Quaesitum est, si titius me rogaverit, ut re sempronii utatur, deinde ego sempronium rogavero, ut concederet, et ille, dum mihi vult praestitum, concesserit. titius a me habet precario et ego cum eo agam interdicto de precario: sempronius autem non aget cum eo, quia haec verba " ab illo precario habes" ostendunt ei demum competere interdictum, a quo quis precario rogavit, non cuius res est, an tamen sempronius mecum, quasi a me rogatus, interdictum habeat? et magis est, ne habeat, quia non habeo precario, cum non mihi, sed alii impetravi. mandati tamen actionem potest adversus me habere, quia me mandante dedit tibi: aut si quis dixerit non mandatu meo, sed magis mihi credentem hoc fecisse, dicendum est in factum dandam actionem et adversus me.

Dig. 43.26.8.1

Ulpianus 71 ad ed.

Quod a titio precario quis rogavit, id etiam ab herede eius precario habere videtur: et ita et sabinus et celsus scribunt eoque iure utimur. ergo et a ceteris successoribus habere quis precario videtur. idem et labeo probat et adicit, etiamsi ignoret quis heredem, tamen videri eum ab herede precario habere.

Dig. 43.26.8.2

Ulpianus 71 ad ed.

Illud tamen videamus quale sit, si a me precario rogaveris et ego eam rem alienavero, an precarium duret re ad alium translata. et magis est, ut, si ille non revocet, posse interdicere quasi ab illo precario habeas, non quasi a me: et si passus est aliquo tempore a se precario habere, recte interdicet, quasi a se precario habeas.

Dig. 43.26.8.3

Ulpianus 71 ad ed.

Eum quoque precario teneri voluit praetor, qui dolo fecit, ut habere desineret. illud adnotatur, quod culpam non praestat is qui precario rogavit, sed solum dolum praestat, quamquam is, qui commodatum suscepit, non tantum dolum, sed etiam culpam praestat. nec immerito dolum solum praestat is qui precario rogavit, cum totum ex liberalitate descendat eius qui precario concessit et satis sit, si dolus tantum praestetur. culpam tamen dolo proximam contineri quis merito dixerit.

Dig. 43.26.8.4

Ulpianus 71 ad ed.

Ex hoc interdicto restitui debet in pristinam causam: quod si non fuerit factum, condemnatio in tantum fiet, quanti interfuit actoris ei rem restitui ex eo tempore, ex quo interdictum editum est: ergo et fructus ex die interdicti editi praestabuntur.

Dig. 43.26.8.5

Ulpianus 71 ad ed.

Si servitute usus non fuit is qui precario rogavit ac per hoc amissa sit, videamus, an interdicto teneatur. ego arbitror non alias, quam si dolo fecerit.

Dig. 43.26.8.6

Ulpianus 71 ad ed.

Et generaliter erit dicendum in restitutionem venire dolum et culpam latam dumtaxat, cetera non venire. plane post interdictum editum oportebit et dolum et culpam et omnem causam venire: nam ubi moram quis fecit precario, omnem causam debebit constituere.

Dig. 43.26.8.7

Ulpianus 71 ad ed.

Interdictum hoc et post annum competere labeo scribit eoque iure utimur: cum enim nonnumquam in longum tempus precarium concedatur, absurdum est dicere interdictum locum non habere post annum.

Dig. 43.26.8.8

Ulpianus 71 ad ed.

Hoc interdicto heres eius qui precario rogavit tenetur quemadmodum ipse, ut, sive habet sive dolo fecit quo minus haberet vel ad se perveniret, teneatur: ex dolo autem defuncti hactenus, quatenus ad eum pervenit.

Dig. 43.26.9

Gaius 26 ad ed. provinc.

Precario possessio consisti potest vel inter praesentes vel inter absentes, veluti per epistulam vel per nuntium.

Dig. 43.26.10

Pomponius 5 ex plaut.

Quamvis ancillam quis precario rogaverit, id actum videtur, ut etiam quod ex ancilla natum esset in eadem causa haberetur.

Dig. 43.26.11

Celsus 7 Dig.

Si debitor rem pigneratam precario rogaverit, soluta pecunia precarium solvitur: quippe id actum est, ut usque eo precarium teneret.

Dig. 43.26.12pr.

Celsus 25 Dig.

Cum precario aliquid datur, si convenit, ut in kalendas iulias precario possideat, numquid exceptione adiuvandus est, ne ante ei possessio auferatur? sed nulla vis est huius conventionis, ut rem alienam domino invito possidere liceat.

Dig. 43.26.12.1

Celsus 25 Dig.

Precario rogatio et ad heredem eius qui concessit transit: ad heredem autem eius qui precario rogavit non transit, quippe ipsi dumtaxat, non etiam heredi concessa possessio est.

Dig. 43.26.13

Pomponius 33 ad q. muc.

Si servus tuus tuo mandato precario rogaverit vel ratum habueris quod ille rogavit tuo nomine, teneberis, quasi precario habeas. sed si te ignorante suo nomine vel servus vel filius rogaverit, non videris tu precario habere, sed illi erit actio de peculio vel de in rem verso.

Dig. 43.26.14

Paulus 13 ad sab.

Interdictum de precariis merito introductum est, quia nulla eo nomine iuris civilis actio esset: magis enim ad donationes et beneficii causam, quam ad negotii contracti spectat precarii condicio.

Dig. 43.26.15pr.

Pomponius 29 ad sab.

Et habet summam aequitatem, ut eatenus quisque nostro utatur, quatenus ei tribuere velimus.

Dig. 43.26.15.1

Pomponius 29 ad sab.

Hospites et qui gratuitam habitationem accipiunt non intelleguntur precario habitare.

Dig. 43.26.15.2

Pomponius 29 ad sab.

Precario habere etiam ea quae in iure consistunt possumus, ut immissa vel protecta.

Dig. 43.26.15.3

Pomponius 29 ad sab.

Cum quis de re sibi restituenda cautum habet, precarium interdictum ei non competit.

Dig. 43.26.15.4

Pomponius 29 ad sab.

Eum, qui precario rogaverit, ut sibi possidere liceat, nancisci possessionem non est dubium: an is quoque possideat, qui rogatus sit, dubitatum est. placet autem penes utrumque esse eum hominem, qui precario datus esset, penes eum qui rogasset, quia possideat corpore, penes dominum, quia non discesserit animo possessione.

Dig. 43.26.15.5

Pomponius 29 ad sab.

Quo quis loco precario aut possideat aut coeperit possidere, nihil refert, quod ad hoc interdictum pertinet.

Dig. 43.26.16

Pomponius 32 ad sab.

Si adoptavero eum, qui precario rogaverit, ego quoque precario possidebo.

Dig. 43.26.17

Pomponius 23 ad sab.

Qui precario fundum possidet, is interdicto uti possidetis adversus omnes praeter eum, quem rogavit, uti potest.

Dig. 43.26.18

Iulianus 13 Dig.

Unusquisque potest rem suam, quamvis non possideat, precario dare ei qui possideat.

Dig. 43.26.19pr.

Iulianus 49 Dig.

Duo in solidum precario habere non magis possunt, quam duo in solidum vi possidere aut clam: nam neque iustae neque iniustae possessiones duae concurrere possunt.

Dig. 43.26.19.1

Iulianus 49 Dig.

Qui servum meum precario rogat, videtur a me precario habere, si hoc ratum habuero, et ideo precario interdicto mihi tenebitur.

Dig. 43.26.19.2

Iulianus 49 Dig.

Cum quid precario rogatum est, non solum interdicto uti possumus, sed et incerti condictione, id est praescriptis verbis.

Dig. 43.26.20

Ulpianus 2 resp.

Ea, quae distracta sunt, ut precario penes emptorem essent, quoad pretium universum persolveretur: si per emptorem stetit, quo minus persolveretur, venditorem posse consequi.

Dig. 43.26.21

Venonius 4 act.

Cum precario quis rogat, ut ipsi in eo fundo morari liceat, supervacuum est adici " ipsi suisque": nam per ipsum suis quoque permissum uti videtur.

Dig. 43.26.22pr.

Venonius 3 interd.

Si is, qui pro possessore possideret, precario dominum rogaverit, ut sibi retinere rem liceret, vel is, qui alienam rem emisset, dominum rogaverit: apparet eos precario possidere. nec existimandos mutare sibi causam possessionis, quibus a domino concedatur precario possidere: nam et si id quod possideas alium precario rogaveris, videri te desinere ex prima causa possidere et incipere ex precario habere: et contra si possessorem precario rogaverit qui rem avocare ei posset, teneri eum precario, quoniam aliquid ad eum per hanc precarii rogationem pervenit, id est possessio, quae aliena sit.

Dig. 43.26.22.1

Venonius 3 interd.

Si pupillus sine tutoris auctoritate precario rogaverit, labeo ait habere eum precariam possessionem et hoc interdicto teneri. nam quo magis naturaliter possideretur, nullum locum esse tutoris auctoritati: recteque dici " quod precario habes", quia quod possideat ex ea causa possideat, ex qua rogaverit:

nihilque novi per praetorem constituendum, quoniam, sive habeat rem, officio iudicis teneretur, sive non habeat, non teneatur.

Dig. 43.27.0. De arboribus caedendis.

Dig. 43.27.1pr.

Ulpianus 71 ad ed.

Ait praetor: " quae arbor ex aedibus tuis in aedes illius impendet, si per te stat, quo minus eam adimas, tunc, quo minus illi eam arborem adimere sibique habere liceat, vim fieri veto".

Dig. 43.27.1.1

Ulpianus 71 ad ed.

Hoc interdictum prohibitorium est.

Dig. 43.27.1.2

Ulpianus 71 ad ed.

Si arbor aedibus alienis impendeat, utrum totam arborem iubeat praetor adimi an vero id solum, quod superexcurrit, quaeritur. et rutilius ait a stirpe excidendam idque plerisque videtur verius: et nisi adimet dominus arborem, labeo ait permitti ei, cui arbor officeret, ut si vellet succideret eam lignaque tolleret.

Dig. 43.27.1.3

Ulpianus 71 ad ed.

Arboris appellatione etiam vites continentur.

Dig. 43.27.1.4

Ulpianus 71 ad ed.

Non solum autem domino aedium, sed etiam ei qui usumfructum habet competit hoc interdictum, quia et ipsius interest arborem istam non impendere.

Dig. 43.27.1.5

Ulpianus 71 ad ed.

Praeterea probandum est, si arbor communibus aedibus impendeat, singulos dominos habere hoc interdictum et quidem in solidum, quia et servitutium vindicationem singuli habeant.

Dig. 43.27.1.6

Ulpianus 71 ad ed.

Ait praetor: " si per te stat, quo minus eam adimas, quo minus illi eam arborem adimere liceat, vim fieri veto". prius itaque tibi datur adimendi facultas: si tu non facias, tunc vicino prohibet vim fieri adimere volenti.

Dig. 43.27.1.7

Ulpianus 71 ad ed.

Deinde ait praetor: " quae arbor ex agro tuo in agrum illius impendet, si per te stat, quo minus pedes quindecim a terra eam altius coerceas, tunc, quo minus illi ita coercere lignaque sibi habere liceat, vim fieri veto".

Dig. 43.27.1.8

Ulpianus 71 ad ed.

Quod ait praetor, et lex duodecim tabularum efficere voluit, ut quindecim pedes altius rami arboris circumcidantur: et hoc idcirco effectum est, ne umbra arboris vicino praedio noceret.

Dig. 43.27.1.9

Ulpianus 71 ad ed.

Differentia duorum capitum interdicti haec est: si quidem arbor aedibus impendeat, succidi eam praecipitur, si vero agro impendeat, tantum usque ad quindecim pedes a terra coerceri.

Dig. 43.27.2

Pomponius 34 ad sab.

Si arbor ex vicini fundo vento inclinata in tuum fundum sit, ex lege duodecim tabularum de adimenda ea recte agere potes ius ei non esse ita arborem habere.

Dig. 43.28.0. De glande legenda.

Dig. 43.28.1pr.

Ulpianus 71 ad ed.

Ait praetor: " glandem, quae ex illius agro in tuum cadat, quo minus illi tertio quoque die legere auferre liceat, vim fieri veto".

Dig. 43.28.1.1

Ulpianus 71 ad ed.

Glandis nomine omnes fructus continentur.

Dig. 43.29.0. De homine libero exhibendo.

Dig. 43.29.1pr.

Ulpianus 71 ad ed.

Ait praetor: " quem liberum dolo malo retines, exhibeas".

Dig. 43.29.1.1

Ulpianus 71 ad ed.

Hoc interdictum proponitur tuendae libertatis causa, videlicet ne homines liberi retineantur a quoquam:

Dig. 43.29.2

Venonius 4 interd.

(nihil enim multum a specie servientium differunt, quibus facultas non datur recedendi):

Dig. 43.29.3pr.

Ulpianus 71 ad ed.

Quod et lex fabia prospexit. neque hoc interdictum aufert legis fabiae exsecutionem: nam et hoc interdicto agi poterit et nihilo minus accusatio legis fabiae institui: et versa vice qui egit fabia, poterit nihilo minus etiam hoc interdictum habere, praesertim cum alius interdictum, alius fabiae actionem habere possit.

Dig. 43.29.3.1

Ulpianus 71 ad ed.

Haec verba " quem liberum" ad omnem liberum pertinent, sive pubes sit sive impubes, sive masculus sive femina, sive unus sive plures, sive sui iuris sit sive alieni: hoc enim tantum spectamus, an liber sit.

Dig. 43.29.3.2

Ulpianus 71 ad ed.

Is tamen, qui in potestate habet, hoc interdicto non tenebitur, quia dolo malo non videtur habere qui suo iure utitur.

Dig. 43.29.3.3

Ulpianus 71 ad ed.

Si quis eum, quem ab hostibus redemit, retineat, in ea causa est, ut interdicto non teneatur: non enim dolo malo facit. plane si offertur pretium, interdictum locum habet. sed et si eum remisit pretio non accepto, dicendum est interdicto locum fore, si, posteaquam semel remisit, velit retinere.

Dig. 43.29.3.4

Ulpianus 71 ad ed.

Si eum quis retineat filium, quem non habet in potestate, plerumque sine dolo malo facere videbitur: pietas enim genuina efficit sine dolo malo retineri, nisi si evidens dolus malus intercedat. proinde et si libertum suum vel alumnum vel noxae deditum adhuc impuberem, idem erit dicendum. et generaliter qui iustam causam habet hominis liberi apud se retinendi, non videtur dolo malo facere.

Dig. 43.29.3.5

Ulpianus 71 ad ed.

Si quis volentem retineat, non videtur dolo malo retinere. sed quid si volentem quidem retineat, non tamen sine calliditate circumventum vel seductum vel sollicitatum, neque bona vel probabili ratione hoc facit? recte dicetur dolo malo retinere.

Dig. 43.29.3.6

Ulpianus 71 ad ed.

Is, qui nescit apud se esse hominem liberum, dolo malo caret; sed ubi certioratus retinet, dolo malo non caret.

Dig. 43.29.3.7

Ulpianus 71 ad ed.

Plane si dubitat, utrum liber an servus sit, vel facit status controversiam, recedendum erit ab hoc interdicto et agenda causa libertatis. etenim recte placuit tunc demum hoc interdictum locum habere, quotiens quis pro certo liber est: ceterum si quaeratur de statu, non oportet praeiudicium fieri alienae cognitioni.

Dig. 43.29.3.8

Ulpianus 71 ad ed.

Ait praetor " exhibeas". exhibere est in publicum producere et videndi tangendique hominis facultatem praebere: proprie autem exhibere est extra secretum habere.

Dig. 43.29.3.9

Ulpianus 71 ad ed.

Hoc interdictum omnibus competit: nemo enim prohibendus est libertati favere.

Dig. 43.29.3.10

Ulpianus 71 ad ed.

Plane ex causa suspectae personae removendae sunt, si forte talis persona sit, quam verisimile est colludere vel calumniari.

Dig. 43.29.3.11

Ulpianus 71 ad ed.

Sed et si mulier vel pupillus hoc interdictum desiderent pro cognato vel parente vel adfine suo solliciti, dandum esse eis interdictum dicendum est: nam et publico iudicio reos facere possunt, dum suas suorumque iniurias exsequuntur.

Dig. 43.29.3.12

Ulpianus 71 ad ed.

Si tamen plures sunt, qui experiri volent, eligendus est a praetore, ad quem maxime res pertinet vel is qui idoneior est: et est optimum ex coniunctione, ex fide, ex dignitate actorem hoc interdicto eligendum.

Dig. 43.29.3.13

Ulpianus 71 ad ed.

Si tamen, posteaquam hoc interdicto actum est, alius hoc interdicto agere desideret, palam erit postea alii non facile dandum, nisi si de perfidia prioris potuerit aliquid dici. itaque causa cognita amplius quam semel interdictum hoc erit movendum. nam nec in publicis iudiciis permittitur amplius agi quam semel actum est quam si praevaricationis fuerit damnatus prior accusator. si tamen reus condemnatus malit litis aestimationem sufferre quam hominem exhibere, non est iniquum saepius in eum interdicto experiri vel eidem sine exceptione vel alii.

Dig. 43.29.3.14

Ulpianus 71 ad ed.

Hoc interdictum et in absentem esse rogandum labeo scribit, sed si non defendatur, in bona eius eundum ait.

Dig. 43.29.3.15

Ulpianus 71 ad ed.

Hoc interdictum perpetuum est.

Dig. 43.29.4pr.

Venonius 4 interd.

Si quis liberum hominem ignorantem suum statum retineat, tamen si dolo malo retinet, cogitur exhibere.

Dig. 43.29.4.1

Venonius 4 interd.

Trebatius quoque ait non teneri eum, qui liberum hominem pro servo bona fide emerit et retineat.

Dig. 43.29.4.2

Venonius 4 interd.

Nullo tempore dolo malo retineri homo liber debet, adeo ut quidam putaverint nec modicum tempus ad eum exhibendum dandum, quoniam praeteriti facti poena praestanda est.

Dig. 43.29.4.3

Venonius 4 interd.

Creditori non competit interdictum, ut debitor exhiberetur: nec enim debitorem latitantem exhibere quisquam cogitur, sed in bona eius ex edicto praetoris itur.

Dig. 43.30.0. De liberis exhibendis, item ducendis.

Dig. 43.30.1pr.

Ulpianus 71 ad ed.

Ait praetor: " qui quaeve in potestate lucii titii est, si is eave apud te est dolove malo tuo factum est, quo minus apud te esset, ita eum eamve exhibeas".

Dig. 43.30.1.1

Ulpianus 71 ad ed.

Hoc interdictum proponitur adversus eum, quem quis exhibere desiderat eum, quem in potestate sua esse dicit. et ex verbis apparet ei, cuius in potestate est, hoc interdictum competere.

Dig. 43.30.1.2

Ulpianus 71 ad ed.

In hoc interdicto praetor non admittit causam, cur apud eum sit is, qui exhiberi debet, quemadmodum in superiore interdicto, sed omnimodo restituendum putavit, si in potestate est.

Dig. 43.30.1.3

Ulpianus 71 ad ed.

Si vero mater sit, quae retinet, apud quam interdum magis quam apud patrem morari filium debere (ex iustissima scilicet causa) et divus pius decrevit et a marco et a severo rescriptum est, aeque subveniendum ei erit per exceptionem.

Dig. 43.30.1.4

Ulpianus 71 ad ed.

Pari modo si iudicatum fuerit non esse eum in potestate, etsi per iniuriam iudicatum sit, agenti hoc interdicto obicienda erit exceptio rei iudicatae, ne de hoc quaeratur, an sit in potestate, sed an sit iudicatum.

Dig. 43.30.1.5

Ulpianus 71 ad ed.

Si quis filiam suam, quae mihi nupta sit, velit abducere vel exhiberi sibi desideret, an adversus interdictum exceptio danda sit, si forte pater concordans matrimonium, forte et liberis subnixum, velit dissolvere? et certo iure utimur, ne bene concordantia matrimonia iure patriae potestatis turbentur. quod tamen sic erit adhibendum, ut patri persuadeatur, ne acerbe patriam potestatem exerceat.

Dig. 43.30.2

Hermogenianus 6 iuris epit.

Immo magis de uxore exhibenda ac ducenda pater, etiam qui filiam in potestate habet, a marito recte convenitur.

Dig. 43.30.3pr.

Ulpianus 71 ad ed.

Deinde ait praetor: " si lucius titius in potestate lucii titii est, quo minus eum lucio titio ducere liceat, vim fieri veto".

Dig. 43.30.3.1

Ulpianus 71 ad ed.

Superiora interdicta exhibitoria sunt, hoc est pertinent ad exhibitionem liberorum ceterorumque, de quibus supra diximus: hoc autem interdictum pertinet ad ductionem, ut ducere quis possit eos, in quos habet ius ductionis.

itaque prius interdictum, quod est de liberis exhibendis, praeparatorium est huius interdicti: quo magis enim quis duci possit, exhibendus fuit.

Dig. 43.30.3.2

Ulpianus 71 ad ed.

Ex iisdem causis hoc interdictum tribuendum est, ex quibus causis de exhibendis liberis competere diximus: itaque quaecumque ibi diximus, eadem hic quoque dicta accipienda sunt.

Dig. 43.30.3.3

Ulpianus 71 ad ed.

Hoc autem interdictum competit non adversus ipsum filium, quem quis ducere vult, sed utique esse debet is qui eum interdicto defendat: ceterum cessat interdictum, et succedere poterit notio praetoris, ut apud eum disceptetur, utrum quis in potestate sit an non sit.

Dig. 43.30.3.4

Ulpianus 71 ad ed.

Iulianus ait, quotiens id interdictum movetur de filio ducendo vel cognitio et is de quo agitur impubes est, alias differri oportere rem in tempus pubertatis, alias repraesentari: idque ex persona eorum, inter quos controversia erit, et ex genere causae constituendum est. nam si is, qui se patrem dicit, auctoritatis prudentiae fidei exploratae esset, usque in diem litis impuberem apud se habebit: is vero, qui controversiam facit, humilis calumniator notae nequitiae, repraesentanda cognitio est. item si is, qui impuberem negat in aliena potestate esse, vir omnibus modis probatus, tutor vel testamento vel a praetore datus pupillum, quem in diem litis apud se habuit, tuetur, is vero, qui patrem se dicit, suspectus est quasi calumniator, differri litem non oportebit. si vero utraque persona suspecta est aut tamquam infirma aut tamquam turpis, non erit alienum, inquit, disponi, apud quem interim puer educeretur et controversiam in tempus pubertatis differri, ne per collusionem vel imperitiam alterutrius contendentium aut alienae potestati pater familias addicatur aut filius alienus patris familiae loco constituatur.

Dig. 43.30.3.5

Ulpianus 71 ad ed.

Etiamsi maxime autem probet filium pater in sua potestate esse, tamen causa cognita mater in retinendo eo potior erit, idque decretis divi pii quibusdam continetur: optinuit enim mater ob nequitiam patris, ut sine deminutione patriae potestatis apud eam filius moretur.

Dig. 43.30.3.6

Ulpianus 71 ad ed.

In hoc interdicto, donec res iudicetur, feminam, praetextatum eumque, qui proxime praetextati aetatem accedet, interim apud matrem familias deponi praetor iubet. proxime aetatem praetextati accedere eum dicimus, qui puberem aetatem nunc ingressus est. cum audis matrem familias, accipe notae auctoritatis feminam.

Dig. 43.30.4

Africanus 4 quaest.

Si eum, qui se patrem familias dicat, ego in mea potestate esse et iussu meo adisse hereditatem dicam, tam de hereditate agi oportere quam ad interdictum de filio ducendo iri debere ait.

Dig. 43.30.5

Venonius 4 interd.

Si filius sua sponte apud aliquem est, inutile hoc interdictum erit, quia filius magis apud se quam apud eum est, in quem interdicetur, cum liberam facultatem abeundi vel remanendi haberet: nisi si inter duos, qui se patres dicerent, controversia esset et alter ab altero exhiberi eum desideraret.

Dig. 43.31.0. Utrubi.

Dig. 43.31.1pr.

Ulpianus 72 ad ed.

Praetor ait: " utrubi hic homo, quo de agitur, maiore parte huiusce anni fuit, quo minus is eum ducat, vim fieri veto".

Dig. 43.31.1.1

Ulpianus 72 ad ed.

Hoc interdictum de possessione rerum mobilium locum habet: sed optinuit vim eius exaequatam fuisse uti possidetis interdicto, quod de rebus soli competit, ut is et in hoc interdicto vincat, qui nec vi nec clam nec precario, dum super hoc ab adversario inquietatur, possessionem habet.

Dig. 43.32.0. De migrando.

Dig. 43.32.1pr.

Ulpianus 73 ad ed.

Praetor ait: " si is homo, quo de agitur, non est ex his rebus, de quibus inter te et actorem convenit, ut, quae in eam habitationem qua de agitur introducta importata ibi nata factave essent, ea pignori tibi pro mercede eius habitationis essent, sive ex his rebus est et ea merces tibi soluta eove nomine satisfactum est aut per te stat, quo minus solvatur: ita, quo minus ei, qui eum pignoris nomine induxit, inde abducere liceat, vim fieri veto".

Dig. 43.32.1.1

Ulpianus 73 ad ed.

Hoc interdictum proponitur inquilino, qui soluta pensione vult migrare: nam colono non competit.

Dig. 43.32.1.2

Ulpianus 73 ad ed.

Cui rei etiam extra ordinem subveniri potest: ergo infrequens est hoc interdictum.

Dig. 43.32.1.3

Ulpianus 73 ad ed.

Si tamen gratuitam quis habitationem habeat, hoc interdictum utile ei competet.

Dig. 43.32.1.4

Ulpianus 73 ad ed.

Si pensio nondum debeatur, ait labeo interdictum hoc cessare, nisi paratus sit eam pensionem solvere. proinde si semenstrem solvit, sexmenstris debeatur, inutiliter interdicet, nisi solverit et sequentis sexmenstris, ita tamen, si conventio specialis facta est in conductione domus, ut non liceat ante finitum annum vel certum tempus migrare. idem est et si quis in plures annos conduxerit et nondum praeterierit tempus. nam cum in universam conductionem pignora sunt obligata, consequens erit dicere interdicto locum non fore, nisi liberata fuerint.

Dig. 43.32.1.5

Ulpianus 73 ad ed.

Illud notandum est praetorem hic non exegisse, ut in bonis fuerit conductoris, nec ut esset pignori res illata, sed si pignoris nomine inducta sit. proinde et si aliena sint et si talia, quae pignoris nomine teneri non potuerint, pignoris tamen nomine introducta sint, interdicto hoc locus erit: quod si nec pignoris nomine inducta sint, nec retineri poterunt a locatore.

Dig. 43.32.1.6

Ulpianus 73 ad ed.

Hoc interdictum perpetuum est et in successores et successoribus dabitur.

Dig. 43.32.2

Gaius 26 ad ed. provinc.

Hoc interdictum inquilino etiam de his rebus, quae non ipsius sint, sed forte commodatae ei vel locatae vel apud eum depositae sunt, utile esse non dubitatur.

Dig. 43.33.0. De salviano interdicto.

Dig. 43.33.1pr.

Iulianus 49 Dig.

Si colonus ancillam in fundo pignoris nomine duxerit et eam vendiderit, quod apud emptorem ex ea natum est, eius adprehendendi gratia utile interdictum reddi oportet.

Dig. 43.33.1.1

Iulianus 49 Dig.

Si colonus res in fundum duorum pignoris nomine intulerit, ita ut utrique in solidum obligatae essent, singuli adversus extraneum salviano interdicto recte experientur: inter ipsos vero si reddatur hoc interdictum, possidentis condicio melior erit. at si id actum fuerit, ut pro partibus res obligaretur, utilis actio et adversus extraneos et inter ipsos dari debebit, per quam dimidias partes possessionis singuli adprehendent.

Dig. 43.33.1.2

Iulianus 49 Dig.

Idem servari conveniet et si colonus rem, quam cum alio communem habebat, pignoris nomine induxerit, scilicet ut pro parte dimidia pignoris persecutio detur.

Dig. 43.33.2

Ulpianus 70 ad ed.

In salviano interdicto, si in fundum communem duorum pignera sint ab aliquo invecta, possessor vincet et erit eis descendendum ad servianum iudicium.

Dig. 43.1.0. De interdictis sive extraordinariis actionibus, quae pro his competunt.

Dig. 43.1.1pr.

Ulpianus 67 ad ed.

Videamus, de quibus rebus interdicta competunt. et sciendum est interdicta aut de divinis rebus aut de humanis competere. divinis, ut de locis sacris vel de locis religiosis. de rebus hominum interdicta redduntur aut de his, quae sunt alicuius, aut de his, quae nullius sunt. quae sunt nullius, haec sunt: liberae personae, de quibus exhibendis ducendis interdicta competunt. quae sunt alicuius, haec sunt aut publica aut singulorum. publica: de locis publicis, de viis deque fluminibus publicis. quae autem singulorum sunt, aut ad universitatem pertinent, ut interdictum quorum bonorum, aut ad singulas res, ut est interdictum uti possidetis, de itinere actuque.

Dig. 43.1.1.1

Ulpianus 67 ad ed.

Interdictorum autem tres species sunt, exhibitoria prohibitoria restitutoria: sunt tamen quaedam interdicta et mixta, quae et prohibitoria sunt et exhibitoria.

Dig. 43.1.1.2

Ulpianus 67 ad ed.

Interdictorum quaedam in praesens, quaedam in praeteritum referuntur: in praesens, ut uti possidetis: in praeteritum, ut de itinere actuque, de aqua aestiva.

Dig. 43.1.1.3

Ulpianus 67 ad ed.

Interdicta omnia licet in rem videantur concepta, vi tamen ipsa personalia sunt.

Dig. 43.1.1.4

Ulpianus 67 ad ed.

Interdictorum quaedam annalia sunt, quaedam perpetua.

Dig. 43.1.2pr.

Paulus 63 ad ed.

Interdictorum quaedam duplicia sunt, quaedam simplicia. duplicia dicuntur, ut uti possidetis, simplicia sunt ea, veluti exhibitoria et restitutoria, item prohibitoria de arboribus caedendis et de itinere actuque.

Dig. 43.1.2.1

Paulus 63 ad ed.

Interdicta autem competunt vel hominum causa vel divini iuris aut de religione, sicut est " ne quid in loco sacro fiat" vel " quod factum est restituatur" et de mortuo inferendo vel sepulchro aedificando. hominum causa competunt vel ad publicam utilitatem pertinentia vel sui iuris tuendi causa vel officii tuendi causa vel rei familiaris. publicae utilitatis causa competit interdictum " ut via publica uti liceat" et " flumine publico" et " ne quid fiat in via publica": iuris sui tuendi causa de liberis exhibendis, item de liberto exhibendo: officii causa de homine libero exhibendo: reliqua interdicta rei familiaris causa dantur.

Dig. 43.1.2.2

Paulus 63 ad ed.

Quaedam interdicta rei persecutionem continent, veluti de itinere actuque privato: nam proprietatis causam continet hoc interdictum. sed et illa interdicta, quae de locis sacris et de religiosis proponuntur, veluti proprietatis causam continent, item illa de liberis exhibendis, quae iuris tuendi causa diximus competere, ut non sit mirum, si, quae interdicta ad rem familiarem pertinent, proprietatis, non possessionis causam habeant.

Dig. 43.1.2.3

Paulus 63 ad ed.

Haec autem interdicta, quae ad rem familiarem spectant, aut apiscendae sunt possessionis aut reciperandae aut retinendae. apiscendae possessionis sunt interdicta, quae competunt his, qui ante non sunt nancti possessionem. sunt autem interdicta apiscendae possessionis " quorum bonorum": salvianum quoque interdictum, quod est de pignoribus, ex hoc genere est: et " quo itinere venditor usus est, quo minus emptor utatur, vim fieri veto". reciperandae possessionis causa proponuntur sub rubrica unde vi: aliqua enim sub hoc titulo interdicta sunt. retinendae possessionis sunt interdicta uti possidetis. sunt interdicta ut diximus, duplicia tam reciperandae quam apiscendae possessionis.

Dig. 43.1.3

Ulpianus 69 ad ed.

In interdictis exinde ratio habetur fructuum, ex quo edita sunt, non retro.

Dig. 43.1.4

Paulus 67 ad ed.

Ex quibus causis annua interdicta sunt, ex his de eo, quod ad eum cum quo agitur pervenit, post annum iudicium dandum sabinus respondit.

Dig. 43.1.5

Paulus 13 ad sab.

Interdicta noxalia ea sunt, quae ob delictum eorum, quos in potestate habemus, dantur, veluti cum vi deiecerunt aut vi aut clam opus fecerunt. sed officio iudicis continetur, ut dominum sua impensa opus restituentem absolvat: patientiam tollendo operi praestantem noxae dedere iubeat et absolvat, si non dedat, quantum impensae in tollendo opere erogatum sit, tanti condemnet: si neque patientiam praestet neque ipse tollat, cum possit, in tantum condemnet, in quantum iudex aestimaverit, atque si ipse fecisset.

Dig. 43.2.0. Quorum bonorum.

Dig. 43.2.1pr.

Ulpianus 67 ad ed.

Ait praetor: " quorum bonorum ex edicto meo illi possessio data est, quod de his bonis pro herede aut pro possessore possides possideresve, si nihil usucaptum esset, quod quidem dolo malo fecisti, uti desineres possidere, id illi restituas".

Dig. 43.2.1.1

Ulpianus 67 ad ed.

Hoc interdictum restitutorium est et ad universitatem bonorum, non ad singulas res pertinet et appellatur " quorum bonorum" et est apiscendae possessionis universorum bonorum.

Dig. 43.2.2

Paulus 20 ad ed.

Interdicto quorum bonorum debitores hereditarii non tenentur, sed tantum corporum possessores.

Dig. 43.3.0. Quod legatorum.

Dig. 43.3.1pr.

Ulpianus 67 ad ed.

Dig. 43.3.1.1

Ulpianus 67 ad ed.

Hoc interdictum volgo " quod legatorum" appellatur.

Dig. 43.3.1.2

Ulpianus 67 ad ed.

Est autem et ipsum apiscendae possessionis et continet hanc causam, ut, quod quis legatorum nomine non ex voluntate heredis occupavit, id restituat heredi. etenim aequissimum praetori visum est unumquemque non sibi ipsum ius dicere occupatis legatis, sed ab herede petere: redigit igitur ad heredes per hoc interdictum ea, quae legatorum nomine possidentur, ut perinde legatarii possint eum convenire.

Dig. 43.3.1.3

Ulpianus 67 ad ed.

Hoc interdictum et heredem heredis bonorumque possessoris habere propter utilitatem huius dicendum est, nec non ceteros quoque successores.

Dig. 43.3.1.4

Ulpianus 67 ad ed.

Quia autem nonnumquam incertum est, utrum quis pro legato an pro herede vel pro possessore possideat, bellissime arrianus scribit hereditatis petitionem instituendam et hoc interdictum reddendum, ut, sive quis pro herede vel pro possessore sive pro legato possideat, hoc interdicto teneatur: quemadmodum solemus facere, quotiens incertum est, quae potius actio teneat: nam duas dictamus protestati ex altera nos velle consequi quod nos contingit.

Dig. 43.3.1.5

Ulpianus 67 ad ed.

Si quis ex mortis causa donatione possideat, utique cessabit interdictum, quia portio legis falcidiae apud heredem ipso iure remanet, etsi corporaliter res in solidum translatae sunt:

Dig. 43.3.1.6

Ulpianus 67 ad ed.

Qui vero ex causa praeceptionis, utique tenetur hoc interdicto, sed pro ea scilicet parte, quam iure legati habet, non etiam pro ea, quam quasi heres habet. idemque erit dicendum et si alio genere legati uni ex heredibus legatum sit: nam et hic dicendum est pro ea parte, qua heres est, cessare interdictum.

Dig. 43.3.1.7

Ulpianus 67 ad ed.

Quod ait praetor " aut dolo desiit possidere", sic accipere debemus " desiit facultatem habere restituendi".

Dig. 43.3.1.8

Ulpianus 67 ad ed.

Unde est quaesitum, si usus fructus vel usus fuerit alicui relictus eumque occupaverit, an hoc interdicto restituere sit compellendus. movet, quod neque usus fructus neque usus possidetur, sed magis tenetur: potest tamen defendi competere interdictum. idem dicendum est et in servitute relicta.

Dig. 43.3.1.9

Ulpianus 67 ad ed.

Quaesitum est, si quis legatorum servandorum causa missus sit in possessionem, an hoc interdicto teneatur ad restitutionem. movet illud primum, quod non possidet is qui missus est in possessionem legatorum causa, sed potius custodit, deinde quod praetorem habet huius rei auctorem. tutius tamen erit dicendum hoc interdictum competere, maxime si satisdatum sit iam legatorum nomine nec recedat: tunc enim etiam possidere videtur.

Dig. 43.3.1.10

Ulpianus 67 ad ed.

Legatorum nomine non tantum ipsum possidere dicemus cui legatum est, verum heredem quoque eius ceterosque successores.

Dig. 43.3.1.11

Ulpianus 67 ad ed.

Quod ait praetor " voluntate eius, ad quem ea res pertinet", ita erit interpretandum, ut, si post aditam hereditatem vel bonorum possessionem adgnitam voluntas accommodata est legatario, ut possideret, interdictum cesset: quod si ante aditam hereditatem bonorumve possessionem adgnitam hoc factum est, rectius dicetur eam voluntatem non nocere debere.

Dig. 43.3.1.12

Ulpianus 67 ad ed.

Si duae res legatae sint, altera ex voluntate occupata, altera non ex voluntate eveniet, ut altera revocari possit, altera non. idemque erit probandum et in una re, cuius pars ex voluntate, altera pars non ex voluntate occupata est: nam pars sola per interdictum auferetur.

Dig. 43.3.1.13

Ulpianus 67 ad ed.

Illud tenendum, sive a te sive ab eo, in cuius locum successisti, possideri aliquid coeptum est, interdicto huic locum fore. in locum successisse accipimus, sive per universitatem sive in rem sit successum.

Dig. 43.3.1.14

Ulpianus 67 ad ed.

Prodest autem possedisse, quotiens voluntate eius, ad quem ea res pertinet, possideri coeptum est: sed et si postea voluntas accessit eius, ad quem ea res pertinebat, tamen prodesse possessori debere. unde si quis coepit quidem ex voluntate eius, ad quem ea res pertinet, possidere, postea vero voluntas non perseverat, nihil nocet, quia semel possideri coepit ex voluntate.

Dig. 43.3.1.15

Ulpianus 67 ad ed.

Si alter ex heredibus iisve, ad quos ea res pertinet, voluerit rem a legatario possideri, alter non, ei, qui noluit, interdictum competet: ei, qui voluit, non competere palam est.

Dig. 43.3.1.16

Ulpianus 67 ad ed.

Quod ait praetor " nisi satisdatum sit", accipere debemus " si perseveret satisdatum", scilicet ut, si non perseveret cautum, mittatur in possessionem legatorum servandorum causa.

Dig. 43.3.1.17

Ulpianus 67 ad ed.

Satisdatum sic arbitror, si sic satisdatum sit, ut legatario vel ipso iure adquisita sit idonea cautio vel per mandati actionem adquiri possit, et tunc interdicto locum fore.

Dig. 43.3.1.18

Ulpianus 67 ad ed.

Si quarundam rerum nomine satisdatum sit, quarundam non sit satisdatum, earum rerum nomine sine impedimento agi poterit, de quibus satisdatum est, ceterarum non poterit.

Dig. 43.3.2pr.

Paulus 63 ad ed.

Diversum est, si postea pars legato adcreverit: nam hoc nomine tenentur fideiussores in totum.

Dig. 43.3.2.1

Paulus 63 ad ed.

Quod ait praetor " si per bonorum possessorem non stat, ut satisdetur", sic accipimus, si paratus sit satisdare: non ergo offerre debet satisdationem, sed petenti satis moram non facere.

Dig. 43.3.2.2

Paulus 63 ad ed.

Ex hoc interdicto qui non restituit, in id quod interest debet condemnari.

Dig. 43.3.2.3

Paulus 63 ad ed.

Si legatarius repromissione contentus fuit, dandum est interdictum. idem dicendum est, si legatarius pignoribus noluit sibi caveri.

Dig. 43.3.2.4

Paulus 63 ad ed.

Si per legatarium factum sit, quo minus satisdetur, licet cautum non sit, tenetur interdicto. sed si forte factum sit per legatarium, quo minus satisdetur, eo autem tempore, quo editur interdictum, satis accipere paratus sit, non competit interdictum, nisi satisdatum sit. item si per bonorum possessorem stetit, quo minus satisdaret, sed modo paratus est cavere, tenet interdictum: illud enim tempus inspicitur, quo interdictum editur.

Dig. 43.4.0. Ne vis fiat ei, qui in possessionem missus erit.

Dig. 43.4.1pr.

Ulpianus 72 ad ed.

Ait praetor: " si quis dolo malo fecerit, quo minus quis permissu meo eiusve, cuius ea iurisdictio fuit, in possessionem bonorum sit, in eum in factum iudicium, quanti ea res fuit, ob quam in possessionem missus erit, dabo".

Dig. 43.4.1.1

Ulpianus 72 ad ed.

Hoc edictum summa providentia praetor proposuit: frustra enim in possessionem mitteret rei servandae causa, nisi missos tueretur et prohibentes venire in possessionem coerceret.

Dig. 43.4.1.2

Ulpianus 72 ad ed.

Est autem generale hoc edictum: pertinet enim ad omnes, qui in possessionem a praetore missi sunt: convenit enim praetori omnes, quos ipse in possessionem misit, tueri. sed sive rei servandae causa sive legatorum aut ventris nomine in possessionem missi fuerint, habent ex hoc edicto in factum actionem, sive doli sive aliter prohibuerint.

Dig. 43.4.1.3

Ulpianus 72 ad ed.

Haec actio non tantum eum tenet, qui prohibuit quem venire in possessionem, sed etiam eum, qui possessione pulsus est, cum venisset in possessionem: nec exigitur, ut vi fecerit qui prohibuit.

Dig. 43.4.1.4

Ulpianus 72 ad ed.

Si quis ideo possessione arcuerit, quia rem suam putabat vel sibi nexam vel certe non esse debitoris, consequens est, ut hoc edicto non teneatur.

Dig. 43.4.1.5

Ulpianus 72 ad ed.

Haec verba " quanti ea res erit, ob quam in possessionem missus erit" continent utilitatem creditoris, ut quantum eius interest possessionem habere, tantum ei qui prohibuit condemnetur. proinde si ob falsum creditum vel ob falsam petitionem missus est in possessionem vel si exceptione summoveri potuit, nihil ei debet prodesse hoc edictum, quia propter nullam causam in possessionem missus est.

Dig. 43.4.1.6

Ulpianus 72 ad ed.

Hoc edicto neque pupillum neque furiosum teneri constat, quia affectu carent. sed pupillum eum debemus accipere, qui doli capax non est: ceterum si iam doli capax sit, contra erit dicendum. ergo et si tutor dolo fecerit, in pupillum dabimus actionem, si modo solvendo sit tutor: sed et ipsum tutorem posse conveniri iulianus scribit.

Dig. 43.4.1.7

Ulpianus 72 ad ed.

Si domini vel patris voluntate prohibitus quis sit a possessione, in ipsos dabitur actio, quasi per alios hoc fecerint.

Dig. 43.4.1.8

Ulpianus 72 ad ed.

Hanc actionem excepta legatorum missione intra annum competere et non postea sciendum est, cum sit poenalis, nec in heredes similesque personas dabitur, nisi in id quod ad eas pervenit: sed heredi similibusque personis dabitur. nam cum prohibitus quis est legatorum vel fideicommissorum causa possessionem adipisci, tunc actio et perpetua est et in heredem dabitur, quia est in potestate successorum evitare interdictum satisdatione oblata.

Dig. 43.4.2pr.

Paulus 59 ad ed.

Suo quis an alieno nomine prohibitus sit, nihil interest: haec enim verba " quanti ea res est" referenda sunt ad personam domini.

Dig. 43.4.2.1

Paulus 59 ad ed.

Item tam is tenetur, qui suo nomine, quam qui alieno nomine prohibuit.

Dig. 43.4.3pr.

Ulpianus 68 ad ed.

Si quis missus fuerit in possessionem fideicommissi servandi causa et non admittatur, potestate eius inducendus est in possessionem, qui eum misit, aut si quis volet uti interdicto, consequens erit dicere interdictum locum habere. sed melius erit dicere extra ordinem ipsos iure suae potestatis exsequi oportere decretum suum, nonnumquam etiam per manum militarem.

Dig. 43.4.3.1

Ulpianus 68 ad ed.

Constitutum est ab antonino, ut etiam in bona heredis quis admittatur certis modis. si quis igitur in his bonis non admittatur, dicendum est actionem hanc utilem competere: ceterum poterit uti et extraordinaria exsecutione.

Dig. 43.4.3.2

Ulpianus 68 ad ed.

Praetor ventrem in possessionem mittit, et hoc interdictum prohibitorium et restitutorium est. sed si mulier velit in factum actione uti ad exemplum creditorum magis quam interdicto, posse eam experiri sciendum est.

Dig. 43.4.3.3

Ulpianus 68 ad ed.

Si mulier dicatur calumniae causa in possessionem venisse, quod non sit praegnas vel non ex eo praegnas, vel si de statu mulieris aliquid dicatur: ex epistula divi hadriani ad exemplum praesumptionis carboniani edicti ventri praetor pollicetur possessionem.

Dig. 43.4.4pr.

Ulpianus 69 ad ed.

Per interdictum etiam ei subvenit praetor, qui damni infecti ab eo in possessionem missus est, ne ei vis fiat.

Dig. 43.4.4.1

Ulpianus 69 ad ed.

Poena autem eius, qui non promittit vel satis non dat, haec est, ut in possessionem mittatur adversarius. sive ergo promittat, sive per eum non fiat, quo minus promittat, non tenebit interdictum repulso per exceptionem eo qui experitur.

Dig. 43.4.4.2

Ulpianus 69 ad ed.

Praetor in eum, qui neque cavit neque possidere passus est eum qui missus est, iudicium pollicetur in tantum, quantum praestare eum oporteret, si de ea re cautum fuerat.

Dig. 43.4.4.3

Ulpianus 69 ad ed.

Sed et ex alia causa hoc iudicium proposuit, si eo tempore, quo in possessionem mitti desiderabat, praetoris adeundi potestas non fuerit, scilicet ut, si, cum potestas praetoris adeundi non esset, damnum interim datum est, haberet iudicium qui damnum passus est.

Dig. 43.4.4.4

Ulpianus 69 ad ed.

Item subiectum, si ex alia causa in possessionem missus prohibitus esse dicetur, habere in factum actionem.

Dig. 43.5.0. De tabulis exhibendis.

Dig. 43.5.1pr.

Ulpianus 68 ad ed.

Praetor ait: " quas tabulas lucius titius ad causam testamenti sui pertinentes reliquisse dicetur, si hae penes te sunt aut dolo malo tuo factum est, ut desinerent esse, ita eas illi exhibeas. item si libellus aliudve quid relictum esse dicetur, decreto comprehendam".

Dig. 43.5.1.1

Ulpianus 68 ad ed.

Si quis forte confiteatur penes se esse testamentum, iubendus est exhibere, et tempus ei dandum est, ut exhibeat, si non potest in praesentiarum exhibere. sed si neget se exhibere posse vel oportere, interdictum hoc competit.

Dig. 43.5.1.2

Ulpianus 68 ad ed.

Hoc interdictum pertinet non tantum ad testamenti tabulas, verum ad omnia, quae ad causam testamenti pertinent: ut puta et ad codicillos pertinet.

Dig. 43.5.1.3

Ulpianus 68 ad ed.

Sive autem valet testamentum sive non, vel quod ab initio inutiliter factum est, sive ruptum sit vel in quo alio vitio, sed etiam si falsum esse dicatur vel ab eo factum qui testamenti factionem non habuerit: dicendum est interdictum valere.

Dig. 43.5.1.4

Ulpianus 68 ad ed.

Sive supremae tabulae sint sive non sint, sed priores, dicendum interdictum hoc locum habere.

Dig. 43.5.1.5

Ulpianus 68 ad ed.

Itaque dicendum est ad omnem omnino scripturam testamenti, sive perfectam sive imperfectam, interdictum hoc pertinere.

Dig. 43.5.1.6

Ulpianus 68 ad ed.

Proinde et si plures tabulae sint testamenti, quia saepius fecerat, dicendum est interdicto locum fore: est enim quod ad causam testamenti pertineat, quidquid quoquo tempore factum exhiberi debeat.

Dig. 43.5.1.7

Ulpianus 68 ad ed.

Sed et si de statu disceptetur, si testator filius familias vel servus hoc fecisse dicatur, et hoc exhibebitur.

Dig. 43.5.1.8

Ulpianus 68 ad ed.

Item si filius familias fecerit testamentum, qui de castrensi peculio testabatur, habet locum interdictum.

Dig. 43.5.1.9

Ulpianus 68 ad ed.

Idem est et si is, qui testamentum fecit, apud hostes decessit.

Dig. 43.5.1.10

Ulpianus 68 ad ed.

Hoc interdictum ad vivi tabulas non pertinet, quia verba praetoris " reliquerit" fecerunt mentionem.

Dig. 43.5.1.11

Ulpianus 68 ad ed.

Sed et si deletum sine dolo sit testamentum.

Dig. 43.5.2

Paulus 64 ad ed.

Vel totum vel pars eius,

Dig. 43.5.3pr.

Ulpianus 68 ad ed.

Locum habet hoc interdictum.

Dig. 43.5.3.1

Ulpianus 68 ad ed.

Si tabulae in pluribus codicibus scriptae sint, omnes interdicto isto continentur, quia unum testamentum est.

Dig. 43.5.3.2

Ulpianus 68 ad ed.

Si tabulae testamenti apud aliquem depositae sunt a titio, hoc interdicto agendum est et cum eo qui detinet et cum eo qui deposuit.

Dig. 43.5.3.3

Ulpianus 68 ad ed.

Proinde et si custodiam tabularum aedituus vel tabularius suscepit, dicendum est teneri eum interdicto.

Dig. 43.5.3.4

Ulpianus 68 ad ed.

Si penes servum tabulae fuerint, dominus interdicto tenebitur.

Dig. 43.5.3.5

Ulpianus 68 ad ed.

Si ipse testator, dum vivit, tabulas suas esse dicat et exhiberi desideret, interdictum hoc locum non habebit, sed ad exhibendum erit agendum, ut exhibitas vindicet. quod in omnibus, qui corpora sua esse dicunt instrumentorum, probandum est.

Dig. 43.5.3.6

Ulpianus 68 ad ed.

Si quis dolo malo fecerit, quo minus penes eum tabulae essent, nihilo minus hoc interdicto tenebitur, nec praeiudicatur aliquid legi corneliae testamentariae, quasi dolo malo testamentum suppresserit. nemo enim ideo impune retinet tabulas, quod maius facinus admisit, cum exhibitis tabulis admissum eius magis manifestetur. et posse aliquem dolo malo facere, ut in eam legem non incidat, ut puta si neque amoverit neque celaverit tabulas, sed idcirco alii tradiderit, ne eas interdicenti exhiberet, hoc est si non supprimendi animo vel consilio fecit, sed ne huic exhiberet.

Dig. 43.5.3.7

Ulpianus 68 ad ed.

Hoc interdictum exhibitorium est.

Dig. 43.5.3.8

Ulpianus 68 ad ed.

Quid sit exhibere, videamus. exhibere hoc est materiae ipsius adprehendendae copiam facere.

Dig. 43.5.3.9

Ulpianus 68 ad ed.

Exhibere autem apud praetorem oportet, ut ex auctoritate eius signatores admoniti venirent ad recognoscenda signa: et si forte non optemperent testes, labeo scribit coerceri eos a praetore debere.

Dig. 43.5.3.10

Ulpianus 68 ad ed.

Solent autem exhiberi tabulas desiderare omnes omnino, qui quid in testamento adscriptum habent.

Dig. 43.5.3.11

Ulpianus 68 ad ed.

Condemnatio autem huius iudicii quanti interfuit aestimari debet.

Dig. 43.5.3.12

Ulpianus 68 ad ed.

Quare si heres scriptus hoc interdicto experiatur, ad hereditatem referenda est aestimatio:

Dig. 43.5.3.13

Ulpianus 68 ad ed.

Et si legatum sit, tantum venit in aestimationem, quantum sit in legato:

Dig. 43.5.3.14

Ulpianus 68 ad ed.

Et si sub condicione legatum sit, quasi condicione existente sic aestimandum est, nec compelli debebit ad cavendum, ut se restituturum caveat, quidquid consecutus est, si condicio defecerit, quia poena contumaciae praestatur ab eo qui non exhibet.

Dig. 43.5.3.15

Ulpianus 68 ad ed.

Inde quaeritur, si hinc consecutus aestimationem legatarius postea legatum petat, an sit audiendus. et putem, si heres idem praestitit, exceptione doli repellendum, si alius, repelli non oportere. et ideo et si heres sit, qui interdicto usus est aestimationem consecutus, eadem est distinctio.

Dig. 43.5.3.16

Ulpianus 68 ad ed.

Interdictum hoc et post annum competere constat. sed et heredi ceterisque successoribus competit.

Dig. 43.5.4

Paulus 69 ad ed.

Si sint tabulae apud pupillum et dolo tutoris desierint esse, in ipsum tutorem competit interdictum: aequum enim est ipsum ex delicto suo teneri, non pupillum.

Dig. 43.5.5

Iavolenus 13 ex cass.

De tabulis proferendis interdictum competere non oportet, si hereditatis controversia ex his pendet aut si ad publicam quaestionem pertinet: itaque in aede sacra interim deponendae sunt aut apud virum idoneum.

Dig. 43.6.0. Ne quid in loco sacro fiat.

Dig. 43.6.1pr.

Ulpianus 68 ad ed.

Ait praetor: " in loco sacro facere inve eum immittere quid veto".

Dig. 43.6.1.1

Ulpianus 68 ad ed.

Hoc interdictum de sacro loco, non de sacrario competit.

Dig. 43.6.1.2

Ulpianus 68 ad ed.

Quod ait praetor, ne quid in loco sacro fiat, non ad hoc pertinet, quod ornamenti causa fit, sed quod deformitatis vel incommodi.

Dig. 43.6.1.3

Ulpianus 68 ad ed.

Sed et cura aedium locorumque sacrorum mandata est his, qui aedes sacras curant.

Dig. 43.6.2

Hermogenianus 3 iuris epit.

In muris itemque portis et aliis sanctis locis aliquid facere, ex quo damnum aut incommodum irrogetur, non permittitur.

Dig. 43.6.3

Paulus 5 sent.

Neque muri neque portae habitari sine permissu principis propter fortuita incendia possunt.

Dig. 43.7.0. De locis et itineribus publicis.

Dig. 43.7.1

Pomponius 30 ad sab.

Cuilibet in publicum petere permittendum est id, quod ad usum omnium pertineat, veluti vias publicas, itinera publica: et ideo quolibet postulante de his interdicitur.

Dig. 43.7.2

Iulianus 48 Dig.

Nemini licet in via publica monumentum exstruere.

Dig. 43.7.3pr.

Ulpianus 33 ad sab.

Viae vicinales, quae ex agris privatorum collatis factae sunt, quarum memoria non exstat, publicarum viarum numero sunt.

Dig. 43.7.3.1

Ulpianus 33 ad sab.

Sed inter eas et ceteras vias militares hoc interest, quod viae militares exitum ad mare aut in urbes aut in flumina publica aut ad aliam viam militarem habent, harum autem vicinalium viarum dissimilis condicio est: nam pars earum in militares vias exitum habent, pars sine ullo exitu intermoriuntur.

Dig. 43.8.0. Ne quid in loco publico vel itinere fiat.

Dig. 43.8.1

Paulus 64 ad ed.

In loco publico praetor prohibet aedificare et interdictum proponit.

Dig. 43.8.2pr.

Ulpianus 68 ad ed.

Praetor ait: " ne quid in loco publico facias inve eum locum immittas, qua ex re quid illi damni detur, praeterquam quod lege senatus consulto edicto decretove principum tibi concessum est. de eo, quod factum erit, interdictum non dabo".

Dig. 43.8.2.1

Ulpianus 68 ad ed.

Hoc interdictum prohibitorium est.

Dig. 43.8.2.2

Ulpianus 68 ad ed.

Et tam publicis utilitatibus quam privatorum per hoc prospicitur. loca enim publica utique privatorum usibus deserviunt, iure scilicet civitatis, non quasi propria cuiusque, et tantum iuris habemus ad optinendum, quantum quilibet ex populo ad prohibendum habet. propter quod si quod forte opus in publico fiet, quod ad privati damnum redundet, prohibitorio interdicto potest conveniri, propter quam rem hoc interdictum propositum est.

Dig. 43.8.2.3

Ulpianus 68 ad ed.

Publici loci appellatio quemadmodum accipiatur, labeo definit, ut et ad areas et ad insulas et ad agros et ad vias publicas itineraque publica pertineat.

Dig. 43.8.2.4

Ulpianus 68 ad ed.

Hoc interdictum ad ea loca, quae sunt in fisci patrimonio, non puto pertinere: in his enim neque facere quicquam neque prohibere privatus potest: res enim fiscales quasi propriae et privatae principis sunt. igitur si quis in his aliquid faciat, nequaquam hoc interdictum locum habebit: sed si forte de his sit controversia, praefecti eorum iudices sunt.

Dig. 43.8.2.5

Ulpianus 68 ad ed.

Ad ea igitur loca hoc interdictum pertinet, quae publico usui destinata sunt, ut, si quid illic fiat, quod privato noceret, praetor intercederet interdicto suo.

Dig. 43.8.2.6

Ulpianus 68 ad ed.

Cum quidam velum in maeniano immissum haberet, qui vicini luminibus officiebat, utile interdictum competit: " ne quid in publico immittas, qua ex re luminibus gaii seii officias".

Dig. 43.8.2.7

Ulpianus 68 ad ed.

Si quis quod in publico loco positum habuit, reficere voluit, hoc interdicto locum esse aristo ait ad prohibendum eum reficere.

Dig. 43.8.2.8

Ulpianus 68 ad ed.

Adversus eum, qui molem in mare proiecit, interdictum utile competit ei, cui forte haec res nocitura sit: si autem nemo damnum sentit, tuendus est is, qui in litore aedificat vel molem in mare iacit.

Dig. 43.8.2.9

Ulpianus 68 ad ed.

Si quis in mari piscari aut navigare prohibeatur, non habebit interdictum, quemadmodum nec is, qui in campo publico ludere vel in publico balineo lavare aut in theatro spectare arceatur: sed in omnibus his casibus iniuriarum actione utendum est.

Dig. 43.8.2.10

Ulpianus 68 ad ed.

Merito ait praetor " qua ex re quid illi damni detur": nam quotiensque aliquid in publico fieri permittitur, ita oportet permitti, ut sine iniuria cuiusquam fiat. et ita solet princeps, quotiens aliquid novi operis instituendum petitur, permittere.

Dig. 43.8.2.11

Ulpianus 68 ad ed.

Damnum autem pati videtur, qui commodum amittit, quod ex publico consequebatur, qualequale sit.

Dig. 43.8.2.12

Ulpianus 68 ad ed.

Proinde si cui prospectus, si cui aditus sit deterior aut angustior, interdicto opus est.

Dig. 43.8.2.13

Ulpianus 68 ad ed.

Si quid in loco publico aedificavero, ut ea, quae ex meo ad te nullo iure defluebant, desinant fluere, interdicto me non teneri labeo putat.

Dig. 43.8.2.14

Ulpianus 68 ad ed.

Plane si aedificium hoc effecerit, ut minus luminis insula tua habeat, interdictum hoc competit.

Dig. 43.8.2.15

Ulpianus 68 ad ed.

Idem ait, si in publico aedificem, deinde hoc aedificium ei obstet, quod tu in publico aedificaveras, cessare hoc interdictum, cum tu quoque illicite aedificaveris, nisi forte tu iure tibi concesso aedificaveras.

Dig. 43.8.2.16

Ulpianus 68 ad ed.

Si quis a principe simpliciter impetraverit, ut in publico loco aedificet, non est credendus sic aedificare, ut cum incommodo alicuius id fiat, neque sic conceditur: nisi forte quis hoc impetraverit.

Dig. 43.8.2.17

Ulpianus 68 ad ed.

Si quis nemine prohibente in publico aedificaverit, non esse eum cogendum tollere, ne ruinis urbs deformetur, et quia prohibitorium est interdictum, non restitutorium. si tamen obstet id aedificium publico usui, utique is, qui operibus publicis procurat, debebit id deponere, aut si non obstet, solarium ei imponere: vectigal enim hoc sic appellatur solarium ex eo, quod pro solo pendatur.

Dig. 43.8.2.18

Ulpianus 68 ad ed.

Si tamen adhuc nullum opus factum fuerit, officio iudicis continetur, uti caveatur non fieri: et ea omnia etiam in persona heredum ceterorumque successorum erunt cavenda.

Dig. 43.8.2.19

Ulpianus 68 ad ed.

Locorum sacrorum diversa causa est: in loco enim sacro non solum facere vetamur, sed et factum restituere iubemur: hoc propter religionem.

Dig. 43.8.2.20

Ulpianus 68 ad ed.

Ait praetor: " in via publica itinereve publico facere immittere quid, quo ea via idve iter deterius sit fiat, veto".

Dig. 43.8.2.21

Ulpianus 68 ad ed.

Viam publicam eam dicimus, cuius etiam solum publicum est: non enim sicuti in privata via, ita et in publica accipimus: viae privatae solum alienum est, ius tantum eundi et agendi nobis competit: viae autem publicae solum publicum est, relictum ad directum certis finibus latitudinis ab eo, qui ius publicandi habuit, ut ea publice iretur commearetur.

Dig. 43.8.2.22

Ulpianus 68 ad ed.

Viarum quaedam publicae sunt, quaedam privatae, quaedam vicinales. publicas vias dicimus, quas graeci basilikas, nostri praetorias, alii consulares vias appellant. privatae sunt, quas agrarias quidam dicunt. vicinales sunt viae, quae in vicis sunt vel quae in vicos ducunt: has quoque publicas esse quidam dicunt: quod ita verum est, si non ex collatione privatorum hoc iter constitutum est. aliter atque si ex collatione privatorum reficiatur: nam si ex collatione privatorum reficiatur, non utique privata est: refectio enim idcirco de communi fit, quia usum utilitatemque communem habet.

Dig. 43.8.2.23

Ulpianus 68 ad ed.

Privatae viae dupliciter accipi possunt, vel hae, quae sunt in agris, quibus imposita est servitus, ut ad agrum alterius ducant, vel hae, quae ad agros ducunt, per quas omnibus commeare liceat, in quas exitur de via consulari et sic post illam excipit via vel iter vel actus ad villam ducens. has ergo, quae post consularem excipiunt in villas vel in alias colonias ducentes, putem etiam ipsas publicas esse.

Dig. 43.8.2.24

Ulpianus 68 ad ed.

Hoc interdictum tantum ad vias rusticas pertinet, ad urbicas vero non: harum enim cura pertinet ad magistratus.

Dig. 43.8.2.25

Ulpianus 68 ad ed.

Si viae publicae exemptus commeatus sit vel via coartata, interveniunt magistratus.

Dig. 43.8.2.26

Ulpianus 68 ad ed.

Si quis cloacam in viam publicam immitteret exque ea re minus habilis via per cloacam fiat, teneri eum labeo scribit: immisisse enim eum videri.

Dig. 43.8.2.27

Ulpianus 68 ad ed.

Proinde et si fossam quis in fundo suo fecerit, ut ibi aqua collecta in viam decurrat, hoc interdicto tenebitur: immissum enim habere etiam hunc videri.

Dig. 43.8.2.28

Ulpianus 68 ad ed.

Idem labeo scribit, si quis in suo ita aedificaverit, ut aqua in via collecta restagnet, non teneri eum interdicto, quia non immittat aquam, sed non recipit: nerva autem melius scribit utrumque teneri. plane si fundus viam publicam contingat et ex eo aqua derivata deteriorem viam faciat, quae tamen aqua ex vicini fundo in tuum veniat: si quidem necesse habeas eam aquam recipere, interdictum locum habebit adversus vicinum tuum: si autem necesse non sit, non teneri vicinum tuum, te tamen teneri: eum enim videri factum habere, qui usum eius aquae habeat. idem nerva scribit, si tecum interdicto agatur, nihil ultra te facere cogendum, quam ut arbitratu eius qui tecum experitur cum vicino experiaris: ceterum aliter observantibus futurum, ut tenearis etiam, si iam bona fide cum vicino egeris neque per te stet, quo minus arbitratu actoris cum vicino experiaris.

Dig. 43.8.2.29

Ulpianus 68 ad ed.

Idem ait, si odore solo locus pestilentiosus fiat, non esse ab re de re ea interdicto uti.

Dig. 43.8.2.30

Ulpianus 68 ad ed.

Hoc interdictum etiam ad ea, quae pascuntur in via publica itinereve publico et deteriorem faciant viam, locum habet.

Dig. 43.8.2.31

Ulpianus 68 ad ed.

Deinde ait praetor: " quo ea via idque iter deterius sit fiat". hoc sive statim deterior via sit, sive postea: ad hoc enim pertinent haec verba " sic fiat": etenim quaedam sunt talia, ut statim facto suo noceant, quaedam talia, ut in praesentiarum quidem nihil noceant, in futurum autem nocere debeant.

Dig. 43.8.2.32

Ulpianus 68 ad ed.

Deteriorem autem viam fieri sic accipiendum est, si usus eius ad commeandum corrumpatur, hoc est ad eundum vel agendum, ut, cum plane fuerit, clivosa fiat vel ex molli aspera aut angustior ex latiore aut palustris ex sicca.

Dig. 43.8.2.33

Ulpianus 68 ad ed.

Scio tractatum, an permittendum sit specus et pontem per viam publicam facere: et plerique probant interdicto eum teneri: non enim oportere eum deteriorem viam facere.

Dig. 43.8.2.34

Ulpianus 68 ad ed.

Hoc interdictum perpetuum et populare est condemnatioque ex eo facienda est, quanti actoris intersit.

Dig. 43.8.2.35

Ulpianus 68 ad ed.

Praetor ait: " quod in via publica itinereve publico factum immissum habes, quo ea via idve iter deterius sit fiat, restituas".

Dig. 43.8.2.36

Ulpianus 68 ad ed.

Hoc interdictum ex eadem causa proficiscitur, ex qua et superius: et tantum interest, quod hoc restitutorium, illud prohibitorium est.

Dig. 43.8.2.37

Ulpianus 68 ad ed.

Hoc interdicto non is tenetur, qui in via publica aliquid fecit, sed is, qui factum habet. proinde si alius fecit, alius factum habet, is tenetur, qui factum habet: et est hoc utilius, quia is potest restituere, qui factum immissum habet.

Dig. 43.8.2.38

Ulpianus 68 ad ed.

Habere eum dicimus, qui utitur et iure possessionis fruitur, sive ipse opus fecit sive ex causa emptionis vel conductionis vel legato vel hereditate vel quo alio modo adquisiit.

Dig. 43.8.2.39

Ulpianus 68 ad ed.

Unde ofilius putat eum, qui pro derelicto reliquit id opus quod fecit, si viam publicam corrupit et reliquit, non teneri hoc interdicto: non enim habet quod fecit. sed an in eum actio debeat dari, videbimus. et puto utile interdictum competere, ut, quod in via publica aedificavit, restituat.

Dig. 43.8.2.40

Ulpianus 68 ad ed.

Si ex fundo tuo arbor in viam publicam sic ceciderit, ut itineri sit impedimento, eamque pro derelicto habeas, non teneri labeo scribit: si tamen, inquit, actor sua impensa arborem tollere paratus fuerit, recte tecum acturum interdicto de via publica reficienda. sed si pro derelicto non habeas, recte tecum agi hoc interdicto.

Dig. 43.8.2.41

Ulpianus 68 ad ed.

Idem labeo scribit, si vicinus meus viam opere corruperit, quamvis opus, quod fecit, tam mihi quam ipsi utile sit, tamen si is vicinus fundi sui causa id fecerit, me tamen non posse hoc interdicto conveniri: si autem communiter hoc opus fieri curaverimus, utrumque nostrum teneri.

Dig. 43.8.2.42

Ulpianus 68 ad ed.

Hoc interdictum locum habet etiam adversus eum, qui dolo malo fecit, quo minus possideret vel haberet: etenim parem esse condicionem oportet eius, qui quid possideat vel habeat, atque eius, cuius dolo malo factum sit, quo minus possideret vel haberet: et mihi videtur vera labeonis sententia.

Dig. 43.8.2.43

Ulpianus 68 ad ed.

" restituas" inquit. restituere videtur, qui in pristinum statum reducit: quod fit, sive quis tollit id quod factum est vel reponat quod sublatum est. et interdum suo sumptu: nam si ipse, quo qui interdixit, fecerit, vel iussu eius alius, aut ratum habitum sit quod fecit, ipse suis sumptibus debet restituere: si vero nihil horum intervenit, sed habet factum, tunc dicemus patientiam solam eum praestare debere.

Dig. 43.8.2.44

Ulpianus 68 ad ed.

Interdictum hoc non esse temporarium sciendum est: pertinet enim ad publicam utilitatem: condemnatioque ex eo facienda est, quanti actoris intersit tolli quod factum est.

Dig. 43.8.2.45

Ulpianus 68 ad ed.

Praetor ait: " quo minus illi via publica itinereve publico ire agere liceat, vim fieri veto".

Dig. 43.8.3pr.

Celsus 39 Dig.

Litora, in quae populus romanus imperium habet, populi romani esse arbitror:

Dig. 43.8.3.1

Celsus 39 Dig.

Maris communem usum omnibus hominibus, ut aeris, iactasque in id pilas eius esse qui iecerit: sed id concedendum non esse, si deterior litoris marisve usus eo modo futurus sit.

Dig. 43.8.4

Scaevola 5 resp.

Respondit in litore iure gentium aedificare licere, nisi usus publicus impediretur.

Dig. 43.8.5

Paulus 16 ad sab.

Si per publicum locum rivus aquae ductus privato nocebit, erit actio privato ex lege duodecim tabularum, ut noxa domino sarciatur.

Dig. 43.8.6

Iulianus 43 Dig.

Ei, qui hoc interdicto experitur " ne quid in loco publico fiat, quo damnum privato detur", quamvis de loco publico interdicat, nihilo minus procuratoris dandi facultas est.

Dig. 43.8.7

Iulianus 48 Dig.

Sicut is, qui nullo prohibente in loco publico aedificaverat, cogendus non est demolire, ne ruinis urbs deformetur, ita qui adversus edictum praetoris aedificaverit, tollere aedificium debet: alioqui inane et lusorium praetoris imperium erit.

Dig. 43.9.0. De loco publico fruendo.

Dig. 43.9.1pr.

Ulpianus 68 ad ed.

Praetor ait: " quo minus loco publico, quem is, cui locandi ius fuerit, fruendum alicui locavit, ei qui conduxit sociove eius e lege locationis frui liceat, vim fieri veto".

Dig. 43.9.1.1

Ulpianus 68 ad ed.

Interdictum hoc publicae utilitatis causa proponi palam est: tuetur enim vectigalia publica, dum prohibetur quis vim facere ei, qui id fruendum conduxit.

Dig. 43.9.1.2

Ulpianus 68 ad ed.

Sed si simul veniant ad interdictum movendum ipse qui conduxerit et socius eius, magis est, ut ipse conductor praeferatur.

Dig. 43.9.1.3

Ulpianus 68 ad ed.

Ait praetor " quo minus e lege locationis frui liceat". merito ait " e lege locationis": ultra legem enim vel contra legem non debet audiri, qui frui desiderat.

Dig. 43.9.2

Paulus 5 sent.

Concedi solet, ut imagines et statuae, quae ornamenta rei publicae sunt futurae, in publicum ponantur.

Dig. 43.10.0. De via publica et si quid in ea factum esse dicatur.

Dig. 43.10.1pr.

Papinianus lib. de cura urb.

Ohi astunomikoi epimeleisvwsan twn kata tyn polin hodwn, hopws an homalisvwsin kai ta hreumata my blapty tas oikias kai gefurai wsin ohu an dey.

Dig. 43.10.1.1

Papinianus lib. de cura urb.

Epimeleisvwsan de hopws ohi idioi toixoi y twn allwn y twn peri tas oikias ha eis tyn hodon ferei my sfalera y, hina hws dei kavairwsin ohi despotai twn oikiwn kai episkeuazwsin. ean de my kavairwsin myde episkeuazwsin, zymioutwsan autous, hews an asfaly poiyswsin.

Dig. 43.10.1.2

Papinianus lib. de cura urb.

Epimeleisvwsan de hopws mydeis orussy tas hodous myde xwnnuy myde ktisy eis tas hodous myden: ei de my, ho men doulos hupo tou entuxontos mastigousvw, ho de eleuveros endeiknusvw tois astunomois, ohi de astunomoi zymioutwsan kata ton nomon kai to gegonos kataluetwsan.

Dig. 43.10.1.3

Papinianus lib. de cura urb.

Episkeuazein de tas hodous tas dymosias kata tyn heautou oikian hekaston kai tas hudrorroas ekkavairein tas ek tou hupaivriou kai episkeuazein ohutws, hws an my kwluy hamacan epienai. hosoi de misvwsamenoi oikousin, ean my episkeuasy ho despotys, autoi episkeuasantes hupologizesvwsan to analwma kata ton misvon.

Dig. 43.10.1.4

Papinianus lib. de cura urb.

Epimeleisvwsan de kai hopws pro twn ergastyriwn myden prokeimenon y, plyn ean knafeus himatia qugy y tektwn troxous ecw tivy: tivesvwsan de kai ohutoi, hwste my kwluein hamacan badizein.

Dig. 43.10.1.5

Papinianus lib. de cura urb.

My eatwsan de myde maxesvai en tais hodois myde kopron ekballein myde nekra myde dermata hriptein.

Dig. 43.11.0. De via publica et itinere publico reficiendo.

Dig. 43.11.1pr.

Ulpianus 68 ad ed.

Praetor ait: " quo minus illi viam publicam iterve publicum aperire reficere liceat, dum ne ea via idve iter deterius fiat, vim fieri veto".

Dig. 43.11.1.1

Ulpianus 68 ad ed.

Viam aperire est ad veterem altitudinem latitudinemque restituere. sed et purgare refectionis portio est: purgare autem proprie dicitur ad libramentum proprium redigere sublato eo quod super eam esset. reficit enim et qui aperit et qui purgat et omnes omnino, qui in pristinum statum reducunt.

Dig. 43.11.1.2

Ulpianus 68 ad ed.

Si quis in specie refectionis deteriorem viam facit, impune vim patietur. propter quod neque latiorem neque longiorem neque altiorem neque humiliorem viam sub nomine refectionis is qui intercidit potest facere, vel in viam terrenam glaream inicere aut sternere viam lapide quae terrena sit, vel contra lapide stratam terrenam facere.

Dig. 43.11.1.3

Ulpianus 68 ad ed.

Interdictum hoc perpetuo dabitur et omnibus et in omnes, et habet condemnationem in id quod actoris intererit.

Dig. 43.11.2

Iavolenus 10 ex cass.

Viam publicam populus non utendo amittere non potest.

Dig. 43.11.3pr.

Paulus 1 sent.

Si in agrum vicini viam publicam quis reiecerit, tantum in eum viae receptae actio dabitur, quanti eius interest, cuius fundo iniuria irrogata est.

Dig. 43.11.3.1

Paulus 1 sent.

Qui viam publicam exaraverit, ad munitionem eius solus compellitur.

Dig. 43.12.0. De fluminibus. ne quid in flumine publico ripave eius fiat, quo peius navigetur.

Dig. 43.12.1pr.

Ulpianus 68 ad ed.

Ait praetor: " ne quid in flumine publico ripave eius facias neve quid in flumine publico neve in ripa eius immittas, quo statio iterve navigio deterior sit fiat".

Dig. 43.12.1.1

Ulpianus 68 ad ed.

Flumen a rivo magnitudine discernendum est aut existimatione circumcolentium.

Dig. 43.12.1.2

Ulpianus 68 ad ed.

Item fluminum quaedam sunt perennia, quaedam torrentia. perenne est, quod semper fluat, aenaos, torrens ho xeimarrous: si tamen aliqua aestate exaruerit, quod alioquin perenne fluebat, non ideo minus perenne est.

Dig. 43.12.1.3

Ulpianus 68 ad ed.

Fluminum quaedam publica sunt, quaedam non. publicum flumen esse cassius definit, quod perenne sit: haec sententia cassii, quam et celsus probat, videtur esse probabilis.

Dig. 43.12.1.4

Ulpianus 68 ad ed.

Hoc interdictum ad flumina publica pertinet: si autem flumen privatum sit, cessabit interdictum: nihil enim differt a ceteris locis privatis flumen privatum.

Dig. 43.12.1.5

Ulpianus 68 ad ed.

Ripa autem ita recte definietur id, quod flumen continet naturalem rigorem cursus sui tenens: ceterum si quando vel imbribus vel mari vel qua alia ratione ad tempus excrevit, ripas non mutat: nemo denique dixit nilum, qui incremento suo aegyptum operit, ripas suas mutare vel ampliare. nam cum ad perpetuam sui mensuram redierit, ripae alvei eius muniendae sunt. si tamen naturaliter creverit, ut perpetuum incrementum nanctus sit, vel alio flumine admixto vel qua alia ratione, dubio procul dicendum est ripas quoque eum mutasse, quemadmodum si alveo mutato alia coepit currere.

Dig. 43.12.1.6

Ulpianus 68 ad ed.

Si insula in publico flumine fuerit nata inque ea aliquid fiat, non videtur in publico fieri. illa enim insula aut occupantis est, si limitati agri fuerunt, aut eius cuius ripam contingit, aut, si in medio alveo nata est, eorum est qui prope utrasque ripas possident.

Dig. 43.12.1.7

Ulpianus 68 ad ed.

Simili modo et si flumen alveum suum reliquit et alia fluere coeperit, quidquid in veteri alveo factum est, ad hoc interdictum non pertinet: non enim in flumine publico factum erit, quod est utriusque vicini aut, si limitatus est ager, occupantis alveus fiet: certe desinit esse publicus. ille etiam alveus, quem sibi flumen fecit, etsi privatus ante fuit, incipit tamen esse publicus, quia impossibile est, ut alveus fluminis publici non sit publicus.

Dig. 43.12.1.8

Ulpianus 68 ad ed.

Si fossa manu facta sit, per quam fluit publicum flumen, nihilo minus publica fit: et ideo si quid ibi fiat, in flumine publico factum videtur.

Dig. 43.12.1.9

Ulpianus 68 ad ed.

Aliter atque si flumen aliquam terram inundaverit, non alveum sibi fecerit: tunc enim non fit publicum, quod aqua opertum est.

Dig. 43.12.1.10

Ulpianus 68 ad ed.

Item si amnis aliquid circumeat, sciendum est eius manere cuius fuit: si quid igitur illic factum est, non est factum in publico flumine. nec pertinet ad hoc interdictum, si quid in privato factum sit, ne quidem si in privato flumine fiat: nam quod fit in privato flumine, perinde est, atque si in alio privato loco fiat.

Dig. 43.12.1.11

Ulpianus 68 ad ed.

In flumine publico factum accipere debemus, quidquid in aqua fiat: nam si quid extra factum sit, non est in flumine factum: et quod in ripa fiat, non videtur in flumine factum.

Dig. 43.12.1.12

Ulpianus 68 ad ed.

Non autem omne, quod in flumine publico ripave fit, coercet praetor, sed si quid fiat, quo deterior statio et navigatio fiat. ergo hoc interdictum ad ea tantum flumina publica pertinet, quae sunt navigabilia, ad cetera non pertinet. sed labeo scribit non esse iniquum etiam si quid in eo flumine, quod navigabile non sit, fiat, ut exarescat vel aquae cursus impediatur, utile interdictum competere " ne vis ei fiat, quo minus id opus, quod in alveo fluminis ripave ita factum sit, ut iter cursus fluminis deterior sit fiat, tollere demoliri purgare restituere viri boni arbitratu possit".

Dig. 43.12.1.13

Ulpianus 68 ad ed.

Stationem dicimus a stando: is igitur locus demonstratur, ubicumque naves tuto stare possunt.

Dig. 43.12.1.14

Ulpianus 68 ad ed.

Ait praetor: " iterque navigii deterius fiat". hoc pro navigatione positum est: immo navigium solemus dicere etiam ipsam navem, iter ergo navigio potest et sic accipi " iter navi deterius fiat". navigii appellatione etiam rates continentur, quia plerumque et ratum usus necessarius est. si pedestre iter impediatur, non ideo minus iter navigio deterius fit.

Dig. 43.12.1.15

Ulpianus 68 ad ed.

Deterior statio itemque iter navigio fieri videtur, si usus eius corrumpatur vel difficilior fiat aut minor vel rarior aut si in totum auferatur. proinde sive derivetur aqua, ut exiguior facta minus sit navigabilis, vel si dilatetur, aut diffusa brevem aquam faciat, vel contra sic coangustetur, et rapidius flumen faciat, vel si quid aliud fiat quod navigationem incommodet difficilioremve faciat vel prorsus impediat, interdicto locus erit.

Dig. 43.12.1.16

Ulpianus 68 ad ed.

Labeo scribit non esse dandam exceptionem ei, qui interdicto convenitur: " aut nisi ripae tuendae causa factum sit", sed ita excipiendum ait: " extra quam si quid ita factum sit, uti de lege fieri licuit".

Dig. 43.12.1.17

Ulpianus 68 ad ed.

Si in mari aliquid fiat, labeo competere tale interdictum: " ne quid in mari inve litore" " quo portus, statio iterve navigio deterius fiat".

Dig. 43.12.1.18

Ulpianus 68 ad ed.

Sed et si in flumine publico, non tamen navigabili fiat, idem putat.

Dig. 43.12.1.19

Ulpianus 68 ad ed.

Deinde ait praetor: " quod in flumine publico ripave eius fiat sive quid in id flumen ripamve eius immissum habes, quo statio iterve navigio deterior sit fiat, restituas".

Dig. 43.12.1.20

Ulpianus 68 ad ed.

Superius interdictum prohibitorium est, hoc restitutorium, ad eandem causam pertinens.

Dig. 43.12.1.21

Ulpianus 68 ad ed.

Iubetur autem is, qui factum vel immissum habet, restituere quod habet, si modo id quod habet stationem vel navigium deterius faciat.

Dig. 43.12.1.22

Ulpianus 68 ad ed.

Haec verba " factum habes" vel " immissum habes" ostendunt non eum teneri, qui fecit vel immisit, sed qui factum immissum habet. denique labeo scribit, si auctor tuus aquam derivaverit, et hoc interdicto, si ea tu utaris.

Dig. 43.12.2

Pomponius 34 ad sab.

Quominus ex publico flumine ducatur aqua, nihil impedit (nisi imperator aut senatus vetet), si modo ea aqua in usu publico non erit: sed si aut navigabile est aut ex eo aliud navigabile fit, non permittitur id facere.

Dig. 43.12.3pr.

Paulus 16 ad sab.

Flumina publica quae fluunt ripaeque eorum publicae sunt.

Dig. 43.12.3.1

Paulus 16 ad sab.

Ripa ea putatur esse, quae plenissimum flumen continet.

Dig. 43.12.3.2

Paulus 16 ad sab.

Secundum ripas fluminum loca non omnia publica sunt, cum ripae cedant, ex quo primum a plano vergere incipit usque ad aquam.

Dig. 43.12.4

Scaevola 5 resp.

Quaesitum est, an is, qui in utraque ripa fluminis publici domus habeat, pontem privati iuris facere potest. respondit non posse.

Dig. 43.13.0. Ne quid in flumine publico fiat, quo aliter aqua fluat, atque uti priore aestate fluxit.

Dig. 43.13.1pr.

Ulpianus 68 ad ed.

Ait praetor: " in flumine publico inve ripa eius facere aut in id flumen ripamve eius immittere, quo aliter aqua fluat, quam priore aestate fluxit, veto".

Dig. 43.13.1.1

Ulpianus 68 ad ed.

Hoc interdicto prospexit praetor, ne derivationibus minus concessis flumina excrescant vel mutatus alveus vicinis iniuriam aliquam adferat.

Dig. 43.13.1.2

Ulpianus 68 ad ed.

Pertinet autem ad flumina publica, sive navigabilia sunt sive non sunt.

Dig. 43.13.1.3

Ulpianus 68 ad ed.

Ait praetor: " quo aliter aqua fluat, quam priore aestate fluxit": non omnis ergo, qui immisit vel qui fecit, tenetur, sed qui faciendo vel immittendo efficit aliter, quam priore aestate fluxit, aquam fluere. quod autem ait " aliter fluat", non ad quantitatem aquae fluentis pertinet, sed ad modum et ad rigorem cursus aquae referendum est. et generaliter dicendum est ita demum interdicto quem teneri, si mutetur aquae cursus per hoc quod factum est, dum vel depressior vel artior fiat aqua ac per hoc rapidior fit cum incommodo accolentium: et si quod aliud vitii accolae ex facto eius qui convenitur sentient, interdicto locus erit.

Dig. 43.13.1.4

Ulpianus 68 ad ed.

Si quis ex rivo tecto per apertum ducere velit vel contra qui ante aperto duxit, nunc operto velit, interdicto teneri placuit, si modo hoc factum eius incommodum circa colentibus adferat.

Dig. 43.13.1.5

Ulpianus 68 ad ed.

Simili modo et si incile ducat aut alio loco faciat aut si alveum fluminis mutet, hoc interdicto tenebitur.

Dig. 43.13.1.6

Ulpianus 68 ad ed.

Sunt qui putent excipiendum hoc interdicto " quod eius ripae muniendae causa non fiet", scilicet ut, si quid fiat, quo aliter aqua fluat, si tamen muniendae ripae causa fiat, interdicto locus non sit. sed nec hoc quibusdam placet: neque enim ripae cum incommodo accolentium muniendae sunt. hoc tamen iure utimur, ut praetor ex causa aestimet, an hanc exceptionem dare debeat: plerumque enim utilitas suadet exceptionem istam dari.

Dig. 43.13.1.7

Ulpianus 68 ad ed.

Sed et si alia utilitas vertatur eius, qui quid in flumine publico fecit (pone enim grande damnum flumen ei dare solitum, praedia eius depopulari), si forte aggeres vel quam aliam munitionem adhibuit, ut agrum suum tueretur eaque res cursum fluminis ad aliquid immutavit, cur ei non consulatur? plerosque scio prorsus flumina avertisse alveosque mutasse, dum praediis suis consulunt. oportet enim in huiusmodi rebus utilitatem et tutelam facientis spectari, sine iniuria utique accolarum.

Dig. 43.13.1.8

Ulpianus 68 ad ed.

Is autem hoc interdicto tenetur, qui aliter fecit fluere, quam priore aestate fluxit. et idcirco aiunt praetorem priorem aestatem comprehendisse, quia semper certior est naturalis cursus fluminum aestate potius quam hieme. nec ad instantem aestatem, sed ad priorem interdictum hoc refertur, quia illius aestatis fluxus indubitatior est. aestas ad aequinoctium autumnale refertur. et si forte aestate interdicetur, proxima superior aestas erit intuenda: si vero hieme, tunc non proxima hieme aestas, sed superior erit inspicienda.

Dig. 43.13.1.9

Ulpianus 68 ad ed.

Hoc interdictum cuivis ex populo competit, sed non adversus omnes, verum adversus eum, qui deneget, ut aliter aqua flueret, cum ius non haberet.

Dig. 43.13.1.10

Ulpianus 68 ad ed.

Hoc interdictum et in heredes competit.

Dig. 43.13.1.11

Ulpianus 68 ad ed.

Deinde ait praetor: " quod in flumine publico ripave eius factum sive quid in flumen ripamve eius immissum habes, si ob id aliter aqua fluit atque uti priore aestate fluxit, restituas".

Dig. 43.13.1.12

Ulpianus 68 ad ed.

Hoc interdictum restitutorium proponitur: superius enim prohibitorium est et pertinet ad ea, quae nondum facta sunt. si quid igitur iam factum est, per hoc interdictum restituetur: si quid ne fiat prospicitur, superiore interdicto erit utendum, et si quid post interdictum redditum fuerit factum, coercebitur.

Dig. 43.13.1.13

Ulpianus 68 ad ed.

In hoc interdicto restitutorio non est iniquum, ut labeo ait, venire etiam, quod dolo factum est quo minus haberes.

Dig. 43.14.0. Ut in flumine publico navigare liceat.

Dig. 43.14.1pr.

Ulpianus 68 ad ed.

Praetor ait: " quo minus illi in flumine publico navem ratem agere quove minus per ripam onerare exonerare liceat, vim fieri veto. item ut per lacum fossam stagnum publicum navigare liceat, interdicam".

Dig. 43.14.1.1

Ulpianus 68 ad ed.

Hoc interdicto prospicitur, ne quis flumine publico navigare prohibeatur: sicuti enim ei, qui via publica uti prohibeatur, interdictum supra propositum est, ita hoc quoque proponendum praetor putavit.

Dig. 43.14.1.2

Ulpianus 68 ad ed.

Si privata sunt supra scripta, interdictum cessat.

Dig. 43.14.1.3

Ulpianus 68 ad ed.

Lacus est, quod perpetuam habet aquam.

Dig. 43.14.1.4

Ulpianus 68 ad ed.

Stagnum est, quod temporalem contineat aquam ibidem stagnantem, quae quidem aqua plerumque hieme cogitur.

Dig. 43.14.1.5

Ulpianus 68 ad ed.

Fossa est receptaculum aquae manu facta.

Dig. 43.14.1.6

Ulpianus 68 ad ed.

Possunt autem etiam haec esse publica.

Dig. 43.14.1.7

Ulpianus 68 ad ed.

Publicano plane, qui lacum vel stagnum conduxit, si piscari prohibeatur, utile interdictum competere sabinus consentit: et ita labeo. ergo et si a municipibus conductum habeat, aequissimum erit ob vectigalis favorem interdicto eum tueri.

Dig. 43.14.1.8

Ulpianus 68 ad ed.

Si quis velit interdictum tale movere, ut locus deprimatur pecoris appellendi gratia, non debet audiri: et ita mela scribit.

Dig. 43.14.1.9

Ulpianus 68 ad ed.

Idem ait tale interdictum competere, ne cui vis fiat, quo minus pecus ad flumen publicum ripamve fluminis publici appellatur.

Dig. 43.15.0. De ripa munienda.

Dig. 43.15.1pr.

Ulpianus 68 ad ed.

Praetor ait: " quo minus illi in flumine publico ripave eius opus facere ripae agrive qui circa ripam est tuendi causa liceat, dum ne ob id navigatio deterior fiat, si tibi damni infecti in annos decem viri boni arbitratu vel cautum vel satisdatum est aut per illum non stat, quo minus viri boni arbitratu caveatur vel satisdetur, vim fieri veto".

Dig. 43.15.1.1

Ulpianus 68 ad ed.

Ripas fluminum publicorum reficere munire utilissimum est. sicuti igitur de via publica reficienda interdictum propositum est, ita etiam de ripa fluminis munienda proponendum fuit.

Dig. 43.15.1.2

Ulpianus 68 ad ed.

Merito adicit " dum ne ob id navigatio deterior fiat": illa enim sola refectio toleranda est, quae navigio non est impedimento.

Dig. 43.15.1.3

Ulpianus 68 ad ed.

Is autem, qui ripam vult munire, de damno futuro debet vel cavere vel satisdare secundum qualitatem personae: et hoc interdicto expressum est, ut damni infecti in annos decem viri boni arbitratu vel caveatur vel satisdetur.

Dig. 43.15.1.4

Ulpianus 68 ad ed.

Dabitur autem satis vicinis: sed et his, qui trans flumen possidebunt.

Dig. 43.15.1.5

Ulpianus 68 ad ed.

Etenim curandum fuit, ut eis ante opus factum caveretur: nam post opus factum persequendi hoc interdicto nulla facultas superest, etiamsi quid damni postea datum fuerit, sed lege aquilia experiendum est.

Dig. 43.15.1.6

Ulpianus 68 ad ed.

Illud notandum est, quod ripae lacus fossae stagni muniendi nihil praetor hic cavit: sed idem erit observandum, quod in ripa fluminis munienda.

Dig. 43.16.0. De vi et de vi armata.

Dig. 43.16.1pr.

Ulpianus 69 ad ed.

Praetor ait: " unde tu illum vi deiecisti aut familia tua deiecit, de eo quaeque ille tunc ibi habuit tantummodo intra annum, post annum de eo, quod ad eum qui vi deiecit pervenerit, iudicium dabo".

Dig. 43.16.1.1

Ulpianus 69 ad ed.

Hoc interdictum proponitur ei, qui vi deiectus est: etenim fuit aequissimum vi deiecto subvenire: propter quod ad reciperandam possessionem interdictum hoc proponitur.

Dig. 43.16.1.2

Ulpianus 69 ad ed.

Ne quid autem per vim admittatur, etiam legibus iuliis prospicitur publicorum et privatorum nec non et constitutionibus principum.

Dig. 43.16.1.3

Ulpianus 69 ad ed.

Hoc interdictum non ad omnem vim pertinet, verum ad eos, qui de possessione deiciuntur. ad solam autem atrocem vim pertinet hoc interdictum, et ad eos tantum, qui de solo deiciuntur, ut puta de fundo sive aedificio: ad alium autem non pertinet.

Dig. 43.16.1.4

Ulpianus 69 ad ed.

Et si quis de area deiectus sit, sine dubio interdicto locus est: et generaliter ad omnes hoc pertinet interdictum, qui de re solo cohaerenti deiciuntur: qualisqualis enim fuerit locus, unde quis vi deiectus est, interdicto locus erit.

Dig. 43.16.1.5

Ulpianus 69 ad ed.

Proinde et si superficiaria insula fuerit, qua quis deiectus est, apparet interdicto fore locum.

Dig. 43.16.1.6

Ulpianus 69 ad ed.

Illud utique in dubium non venit interdictum hoc ad res mobiles non pertinere: nam ex causa furti vel vi bonorum raptorum actio competit: potest et ad exhibendum agi. plane si quae res sint in fundo vel in aedibus, unde quis deiectus est, etiam earum nomine interdictum competere non est ambigendum.

Dig. 43.16.1.7

Ulpianus 69 ad ed.

Si quis de nave vi deiectus est, hoc interdicto locus non est, argumento eius, qui de vehiculo detractus est, quem nemo dixit interdicto hoc uti posse.

Dig. 43.16.1.8

Ulpianus 69 ad ed.

Plane si quis de ligneis aedibus deiectus fuerit, nemo ambigit interdicto locum fore, quia qualequale sit quod solo cohaereat, inde qui vi deiectus est habet interdictum.

Dig. 43.16.1.9

Ulpianus 69 ad ed.

Deicitur is qui possidet, sive civiliter sive naturaliter possideat: nam et naturalis possessio ad hoc interdictum pertinet.

Dig. 43.16.1.10

Ulpianus 69 ad ed.

Denique et si maritus uxori donavit eaque deiecta sit, poterit interdicto uti: non tamen si colonus.

Dig. 43.16.1.11

Ulpianus 69 ad ed.

Ait praetor: " deiecisti aut familia deiecit". merito familiae mentio habita: nam cum " deiecisti" verbum refertur ad personam eius qui deiecit nec pertineat ad eum, cuius familia deiecit (nec enim ego videor deiecisse, si familia mea deiecerit), consequens fuit addere " aut familia tua deiecit".

Dig. 43.16.1.12

Ulpianus 69 ad ed.

Deiecisse autem etiam is videtur, qui mandavit vel iussit, ut aliquis deiceretur: parvi enim referre visum est, suis manibus quis deiciat an vero per alium: quare et si familia mea ex voluntate mea deiecerit, ego videor deiecisse.

Dig. 43.16.1.13

Ulpianus 69 ad ed.

Quotiens verus procurator deiecerit, cum utrolibet eorum, id est sive domino sive procuratore, agi posse sabinus ait et alterius nomine alteri eximi, sic tamen, si ab altero eorum litis aestimatio fuerit praestita (non enim excusatus est, qui iussu alicuius deiecit, non magis quam si iussu alicuius occidit): cum autem falsus est procurator, cum ipso tantum procuratore interdici debere. sabini sententia vera est.

Dig. 43.16.1.14

Ulpianus 69 ad ed.

Sed et si quod alius deiecit, ratum habuero, sunt qui putent secundum sabinum et cassium, qui ratihabitionem mandato comparant, me videri deiecisse interdictoque isto teneri, et hoc verum est: rectius enim dicitur in maleficio ratihabitionem mandato comparari.

Dig. 43.16.1.15

Ulpianus 69 ad ed.

Quod igitur additur " aut familia tua deiecit", merito scriptum est in eum casum, in quem familia mea vi deiecit. ceterum si iussit, ipse deiecit, nec gravari debet dominus qui non iussit, si servorum suorum factum praestaret, etsi non iussu eius deiecerunt: nam non gravabitur hoc nomine, quippe cum aut pervenit ad eum aliquid et restitueret, aut non pervenit et ipsos servos maleficii causa noxae dedendo indemnis erit: quod enim noxae dedere compellitur, in damno non debet reputare, cum servus hoc possit domini deteriorem condicionem facere.

Dig. 43.16.1.16

Ulpianus 69 ad ed.

Familiae autem appellatio servos continet:

Dig. 43.16.1.17

Ulpianus 69 ad ed.

Sed quaeritur, quem numerum servorum contineat, utrum plurium an vero et duum vel trium. sed verius est in hoc interdicto, etiamsi unus servus vi deiecerit, familiam videri deiecisse.

Dig. 43.16.1.18

Ulpianus 69 ad ed.

Familiae appellatione et eos, quos loco servorum habemus, contineri oportere dicendum est.

Dig. 43.16.1.19

Ulpianus 69 ad ed.

Si quis tamen neget se servum vel familiam defendere, cogendus est pati hoc interdictum, ad hoc scilicet, ut quod ad eum pervenit restituat.

Dig. 43.16.1.20

Ulpianus 69 ad ed.

Si filius familias vel mercennarius vi deiecerit, utile interdictum competit.

Dig. 43.16.1.21

Ulpianus 69 ad ed.

Si adversus eum, qui in libertatem ex servitute vel contra petitur, post inchoatum liberale iudicium utar interdicto et liber iudicatus fuerit et apparuerit ignorante eo a servis eius vi me deiectum, in possessionem restituar.

Dig. 43.16.1.22

Ulpianus 69 ad ed.

Quod servus vel procurator vel colonus tenent, dominus videtur possidere, et ideo his deiectis ipse deici de possessione videtur, etiamsi ignoret eos deiectos, per quos possidebat. et si quis igitur alius, per quem possidebam, deiectus fuerit, mihi competere interdictum nemini dubium est.

Dig. 43.16.1.23

Ulpianus 69 ad ed.

Interdictum autem hoc nulli competit nisi ei, qui tunc cum deiceretur possidebat, nec alius deici visus est quam qui possidet.

Dig. 43.16.1.24

Ulpianus 69 ad ed.

Sive autem corpore sive animo possidens quis deiectus est, palam est eum vi deiectum videri. idcircoque si quis de agro suo vel de domo processisset nemine suorum relicto, mox revertens prohibitus sit ingredi vel ipsum praedium, vel si quis eum in medio itinere detinuerit et ipse possederit, vi deiectus videtur: ademisti enim ei possessionem, quam animo retinebat, etsi non corpore.

Dig. 43.16.1.25

Ulpianus 69 ad ed.

Quod volgo dicitur aestivorum hibernorumque saltuum nos possessiones animo retinere, id exempli causa didici proculum dicere: nam ex omnibus praediis, ex quibus non hac mente recedemus, ut omisisse possessionem vellemus, idem est.

Dig. 43.16.1.26

Ulpianus 69 ad ed.

Eum, qui neque animo neque corpore possidebat, ingredi autem et incipere possidere prohibeatur, non videri deiectum verius est: deicitur enim qui amittit possessionem, non qui non accipitur.

Dig. 43.16.1.27

Ulpianus 69 ad ed.

Vim vi repellere licere cassius scribit idque ius natura comparatur: apparet autem, inquit, ex eo arma armis repellere licere.

Dig. 43.16.1.28

Ulpianus 69 ad ed.

Vi possidere eum definiendum est, qui expulso vetere possessore adquisitam per vim possessionem optinet aut qui in hoc ipsum aptatus et praeparatus venit ut contra bonos mores auxilio, ne prohiberi possit ingrediens in possessionem, facit. sed qui per vim possessionem suam retinuerit, labeo ait non vi possidere.

Dig. 43.16.1.29

Ulpianus 69 ad ed.

Idem labeo ait eum, qui metu turbae perterritus fugerit, vi videri deiectum. sed pomponius ait vim sine corporali vi locum non habere, ergo etiam eum, qui fugatus est supervenientibus quibusdam, si illi vi occupaverunt possessionem, videri vi deiectum.

Dig. 43.16.1.30

Ulpianus 69 ad ed.

Qui a me vi possidebat, si ab alio deiciatur, habet interdictum.

Dig. 43.16.1.31

Ulpianus 69 ad ed.

Qui vi deiectus est, quidquid damni senserit ob hoc quod deiectus est, reciperare debet: pristina enim causa restitui debet, quam habiturus erat, si non fuisset deiectus.

Dig. 43.16.1.32

Ulpianus 69 ad ed.

Si fundus, a quo vi expulsus sim, mihi restitutus esset, ceterae vero res, quae vi ablatae sunt, non restituantur, hic dicendum est interdictum nihilo minus tenere, quia verum est vi esse deiectum. plane si quis velit de possessione quidem rei soli per hoc interdictum experiri, de rebus vero mobilibus ad exhibendum actione, potest hoc suo arbitrio habere, et ita iulianus scribit: idem scribit et si quis vi bonorum raptorum de huiusmodi rebus velit experiri.

Dig. 43.16.1.33

Ulpianus 69 ad ed.

Quod autem ait praetor: " quaeque ibi habuit", sic accipimus, ut omnes res contineantur, non solum quae propriae ipsius fuerunt, verum etiam si quae apud eum depositae vel ei commodatae vel pigneratae, quarumque usum vel usum fructum vel custodiam habuit, vel si quae ei locatae sunt: cum enim dicat praetor " habuit", omnia haec habendi verbo continentur.

Dig. 43.16.1.34

Ulpianus 69 ad ed.

Rectissime autem praetor addidit " tunc ibi habuit". " tunc" sic accipimus " cum deiceretur": et ideo et si quid postea desiit illic esse, dicendum erit in interdictum venire. sic fit, ut, etiamsi homines vel pecora demortua sint post deiectionem, interdicto locus sit.

Dig. 43.16.1.35

Ulpianus 69 ad ed.

Denique scribit iulianus eum, qui vi deiecit ex eo praedio, in quo homines fuerant, propius esse, ut etiam sine culpa eius mortuis hominibus aestimationem eorum per interdictum restituere debeat, sicuti fur hominis etiam mortuo eo tenetur. huic consequens esse ait, ut villae quoque et aedium incendio consumptarum pretium restituere cogatur: ubi enim quis, inquit, deiecit, per eum stetisse videtur, quo minus restitueret.

Dig. 43.16.1.36

Ulpianus 69 ad ed.

Idcirco constare ait eum, qui vi deiecit quique vi sine dolo malo desierit possidere, interdicto teneri.

Dig. 43.16.1.37

Ulpianus 69 ad ed.

" ibi" autem ait praetor, ut ne quis et quae illic non habuit, complectatur.

Dig. 43.16.1.38

Ulpianus 69 ad ed.

Sane quod ait praetor " ibi", quomodo accipimus? utrum in eo loco, unde quis vi deiectus est, an vero in omni possessione? et melius dicetur non ad angulum referendum vel locum, in quo fuerit, verum etiam ad omnem partem possessionis, qua quis caruit, cum deicitur.

Dig. 43.16.1.39

Ulpianus 69 ad ed.

Annus in hoc interdicto utilis est.

Dig. 43.16.1.40

Ulpianus 69 ad ed.

Ex die, quo quis deiectus est, fructuum ratio habetur, quamvis in ceteris interdictis ex quo edita sunt, non retro, computantur. idem est et in rebus mobilibus, quae ibi erant: nam et earum fructus computandi sunt, ex quo quis vi deiectus est.

Dig. 43.16.1.41

Ulpianus 69 ad ed.

Non solum autem fructuum ratio in hoc interdicto habetur, verum ceterarum etiam utilitatium habenda est: nam vivianus refert in hoc interdicto omnia, quaecumque habiturus vel adsecuturus erat is qui deiectus est, si vi deiectus non esset, restitui aut eorum litem a iudice aestimari debere eumque tantum consecuturum, quanti sua interesset se vi deiectum non esse.

Dig. 43.16.1.42

Ulpianus 69 ad ed.

Ex interdicto unde vi etiam is qui non possidet restituere cogetur.

Dig. 43.16.1.43

Ulpianus 69 ad ed.

Interdictum hoc quia atrocitatem facinoris in se habet, quaesitum est, an liberto in patronum vel liberis adversus parentes competit. et verius est nec liberto in patronum nec in parentes liberis dandum esse meliusque erit in factum actionem his competere. aliter atque si vi armata usus sit adversus libertum patronus vel adversus liberos parens: nam hic interdictum competit.

Dig. 43.16.1.44

Ulpianus 69 ad ed.

Hoc interdictum et heredi et ceteris successoribus competit.

Dig. 43.16.1.45

Ulpianus 69 ad ed.

Non alii autem, quam ei qui possidet, interdictum unde vi competere argumentum praebet, quod apud vivianum relatum est, si quis me vi deiecerit, meos non deiecerit, non posse me hoc interdicto experiri, quia per eos retineo possessionem, qui deiecti non sunt.

Dig. 43.16.1.46

Ulpianus 69 ad ed.

Idem vivianus refert: servos quosdam vi depulit, alios retinuit et vinxit aut etiam eis imperavit: vi te deiectum intellegi: desisse enim possidere, cum servi ab alio possideantur. et quod in parte servorum dictum est, idem in omnibus dici ait, si forte nemo depulsus esset, sed possideri ab eo coepissent, qui ingressus in possessionem esset.

Dig. 43.16.1.47

Ulpianus 69 ad ed.

Quid dicturi essemus, tractat, si aliquo possidente ego quoque ingressus sum in possessionem et non deiciam possessorem, sed vinctum opus facere cogam: quatenus res, inquit, esset? ego verius puto eum quoque deiectum videri, qui illic vinctus est.

Dig. 43.16.1.48

Ulpianus 69 ad ed.

Ex causa huius interdicti in heredem et bonorum possessorem ceterosque successores in factum actio competit in id quod ad eos pervenit.

Dig. 43.16.2

Paulus 65 ad ed.

Dolove malo eorum factum est, quo minus perveniret.

Dig. 43.16.3pr.

Ulpianus 69 ad ed.

Quod est et si quis armis deiectus est, quia ex facinoribus defunctorum de eo, quod ad heredem pervenit, actio datur: sufficit enim non in lucro versari eum heredem, non etiam damnum subire.

Dig. 43.16.3.1

Ulpianus 69 ad ed.

Haec actio, quae adversus heredem ceterosque successores pertinet, perpetuo competit, quia in ea rei persecutio continetur.

Dig. 43.16.3.2

Ulpianus 69 ad ed.

Armis deiectum quomodo accipimus? arma sunt omnia tela, hoc est et fustes et lapides, non solum gladii hastae frameae, id est rhomphaeae.

Dig. 43.16.3.3

Ulpianus 69 ad ed.

Plane et si unus vel alter fustem vel gladium tenuit, armis deiectus possessor videtur.

Dig. 43.16.3.4

Ulpianus 69 ad ed.

Plus dicitur, et si inermes venerant, si in ipsa concertatione qui inermes venerant eo processerunt, ut fustes aut lapides sumerent, vis erit armata.

Dig. 43.16.3.5

Ulpianus 69 ad ed.

Qui armati venerunt et si armis non sunt usi ad deiciendum, sed deiecerunt, armata vis facta esse videtur: sufficit enim terror armorum, ut videantur armis deiecisse.

Dig. 43.16.3.6

Ulpianus 69 ad ed.

Si quis autem visis armatis, qui alibi tendebant, metu hoc deterritus profugerit, non videtur deiectus, quia non hoc animo fuerunt qui armati erant, sed alio tendebant.

Dig. 43.16.3.7

Ulpianus 69 ad ed.

Proinde et si, cum armatos audisset venire, metu decesserit de possessione, sive verum sive falsum audisset, dicendum est non esse eum armis deiectum, nisi possessio ab his fuerit occupata.

Dig. 43.16.3.8

Ulpianus 69 ad ed.

Si autem, cum dominus veniret in possessionem, armati eum prohibuerunt qui invaserant possessionem, videri eum armis deiectum.

Dig. 43.16.3.9

Ulpianus 69 ad ed.

Eum igitur, qui cum armis venit, possumus armis repellere, sed hoc confestim, non ex intervallo, dummodo sciamus non solum resistere permissum, ne deiciatur, sed et si deiectus quis fuerit, eundem deicere non ex intervallo, sed ex continenti.

Dig. 43.16.3.10

Ulpianus 69 ad ed.

Cum procurator armatus venit, et ipse dominus deiecisse videtur, sive mandavit sive, ut iulianus ait, ratum habuit.

Dig. 43.16.3.11

Ulpianus 69 ad ed.

Hoc et in familia dicendum est: nam cum familia sine me armata venit, ego non videor venisse, sed familia, nisi iussi vel ratum habui.

Dig. 43.16.3.12

Ulpianus 69 ad ed.

Hoc interdictum etiam adversus eum proponitur, qui dolo malo fecit, quo quis armis deiceretur: et post annum reddetur in id, quod pervenit ad eum qui prohibuit unde vi.

Dig. 43.16.3.13

Ulpianus 69 ad ed.

Interdictum necessarium fuisse fructuario apparet " si prohibeatur uti frui usu fructu fundi".

Dig. 43.16.3.14

Ulpianus 69 ad ed.

Uti frui autem prohibuisse is videtur, qui vi deiecit utentem et fruentem aut non admisit, cum ex fundo exisset non usus fructus deserendi causa. ceterum si quis ab initio volentem incipere uti frui prohibuit, hoc interdictum locum non habet. quid ergo est? debet fructuarius usum fructum vindicare.

Dig. 43.16.3.15

Ulpianus 69 ad ed.

Pertinet autem hoc interdictum ad eum, qui fundo uti frui prohibitus est: sed pertinebit etiam ad eum, qui aedificiis uti frui prohibetur. consequenter autem dicemus ad res mobiles hoc interdictum non pertinere, si quis uti frui prohibitus est re mobili, nisi si rei soli accedebant res mobiles: si igitur ibi fuerunt, dicendum est etiam ad eas referri hoc interdictum debere.

Dig. 43.16.3.16

Ulpianus 69 ad ed.

Item si non usus fructus, sed usus sit relictus, competit hoc interdictum. ex quacumque enim causa constitutus est usus fructus vel usus, hoc interdictum locum habebit.

Dig. 43.16.3.17

Ulpianus 69 ad ed.

Qui usus fructus nomine qualiterqualiter fuit quasi in possessione, utetur hoc interdicto. sed si quis, posteaquam prohibitus est, capite minutus sit vel mortuus, recte dicitur heredibus et successoribus competere hoc interdictum, non ut in futurum constituatur usus fructus, sed ut praeterita causa et damnum praeteritum sarciatur.

Dig. 43.16.3.18

Ulpianus 69 ad ed.

Heres quoque simili modo debebit in factum actionem suscipere in id quod ad se pervenit.

Dig. 43.16.4

Ulpianus 10 ad ed.

Si vi me deiecerit quis nomine municipum, in municipes mihi interdictum reddendum pomponius scribit, si quid ad eos pervenit.

Dig. 43.16.5

Ulpianus 11 ad ed.

Si per vim tibi possessionem tradidero, dicit pomponius unde vi interdictum cessare, quoniam non est deiectus, qui compulsus est in possessionem inducere.

Dig. 43.16.6

Paulus 17 ad ed.

In interdicto unde vi tanti condemnatio facienda est, quanti intersit possidere: et hoc iure nos uti pomponius scribit, id est tanti rem videri, quanti actoris intersit: quod alias minus esse, alias plus: nam saepe actoris pluris interesse hominem retinere, quam quanti is est, veluti cum quaestionis habendae aut rei probandae gratia aut hereditatis adeundae intersit eius eum possideri.

Dig. 43.16.7

Paulus 24 ad ed.

Cum a te vi deiectus sim, si titius eandem rem possidere coeperit, non possum cum alio quam tecum interdicto experiri.

Dig. 43.16.8

Paulus 54 ad ed.

Fulcinius dicebat vi possideri, quotiens vel non dominus, cum tamen possideret, vi deiectus est.

Dig. 43.16.9pr.

Paulus 65 ad ed.

Si plures heredes sunt, unusquisque non in amplius, quam ad eum pervenerit, tenetur. qua de causa interdum in solidum tenebitur is ad quem totum pervenerit, quamvis ex parte heres sit.

Dig. 43.16.9.1

Paulus 65 ad ed.

Deiectum ab usu fructu in eandem causam praetor restitui iubet, id est in qua futurus esset, si deiectus non esset. itaque si tempore usus fructus finitus fuerit, postquam deiectus est a domino, nihilo minus cogendus erit restituere, id est usum fructum iterum constituere.

Dig. 43.16.10

Gaius 2 ad ed. pu. de liberali c.

Si de fundo proprietarium et fructuarium praedo expulerit atque ob id fructuarius constituto tempore non usus perdiderit ius suum, nemo dubitat, quin dominus, sive experiatur cum fructuario adversus praedonem sive non experiatur, retinere debeat reversum ad se usum fructum et, quod fructuarius perdidit, id ad damnum eius pertineat, cuius facto periit.

Dig. 43.16.11

Pomponius 6 ex plaut.

Vim facit, qui non sinit possidentem eo, quod possidebit, uti arbitrio suo, sive inserendo sive fodiendo sive arando sive quid aedificando sive quid omnino faciendo, per quod liberam possessionem adversarii non relinquit.

Dig. 43.16.12

Marcellus 19 Dig.

Colonus eum, cui locator fundum vendiderat, cum is in possessionem missus esset, non admisit: deinde colonus vi ab alio deiectus est: quaerebatur, quis haberet interdictum unde vi. dixi nihil interesse, colonus dominum ingredi volentem prohibuisset an emptorem, cui iussisset dominus tradi possessionem, non admisit. igitur interdictum unde vi colono competiturum ipsumque simili interdicto locatori obstrictum fore, quem deiecisse tunc videretur, cum emptori possessionem non tradidit, nisi forte propter iustam et probabilem causam id fecisset.

Dig. 43.16.13

Ulpianus 8 ad sab.

Neque unde vi neque aliud interdictum famosum est.

Dig. 43.16.14

Pomponius 29 ad sab.

Sed si vi armata deiectus es, sicut ipsum fundum recipis, etiamsi vi aut clam aut precario eum possideres, ita res quoque mobiles omnimodo recipies.

Dig. 43.16.15

Paulus 13 ad sab.

Si vi me deieceris vel vi aut clam feceris, quamvis sine dolo et culpa amiseris possessionem, tamen damnandus es, quanti mea intersit, quia in eo ipso culpa tua praecessit, quod omnino vi deiecisti aut vi aut clam fecisti.

Dig. 43.16.16

Ulpianus 29 ad ed.

In interdicto unde vi dicendum est, ut eius causa, quod ad patrem pervenit, ipse teneatur.

Dig. 43.16.17

Iulianus 48 Dig.

Qui possessionem vi ereptam vi in ipso congressu reciperat, in pristinam causam reverti potius quam vi possidere intellegendus est: ideoque si te deiecero, ilico tu me, deinde ego te, unde vi interdictum tibi utile erit.

Dig. 43.16.18pr.

Papinianus 26 quaest.

Cum fundum qui locaverat vendidisset, iussit emptorem in vacuam possessionem ire, quem colonus intrare prohibuit: postea emptor vi colonum expulit: de interdictis unde vi quaesitum est. placebat colonum interdicto venditori teneri, quia nihil interesset, ipsum an alium ex voluntate eius missum intrare prohibuerit: neque enim ante omissam possessionem videri, quam si tradita fuisset emptori, quia nemo eo animo esset, ut possessionem omitteret propter emptorem, quam emptor adeptus non fuisset. emptorem quoque, qui postea vim adhibuit, et ipsum interdicto colono teneri: non enim ab ipso, sed a venditore per vim fundum esse possessum, cui possessio esset ablata. quaesitum est, an emptori succurri debeat, si voluntate venditoris colonum postea vi expulisset. dixi non esse iuvandum, qui mandatum illicitum susceperit.

Dig. 43.16.18.1

Papinianus 26 quaest.

Eum, qui fundum vindicavit ab eo, cum quo interdicto unde vi potuit experiri, pendente iudicio nihilo minus interdicto recte agere placuit.

Dig. 43.16.19

Tryphonus 15 disp.

Merito iulianus respondit, si me de fundo vi deieceris, in quo res moventes fuerunt, cum mihi interdicto unde vi restituere debeas non solum possessionem soli, sed et ea quae ibi fuerunt, quamquam ego moram fecero, quo minus interdicto te convenirem, subtractis tamen mortalitate servis aut pecoribus aliisve rebus casu intercidentibus tuum tamen onus nihilo minus in eis restituendis esse, quia ex ipso tempore delicti plus quam frustrator debitor constitutus es.

Dig. 43.16.20

Labeo 3 pith. a paulo epit.

Si colonus tuus vi deiectus est, ages unde vi interdicto. idem si inquilinus tuus vi deiectus fuerit. paulus: idem dici potest de coloni colono, item inquilini inquilino.

Dig. 43.17.0. Uti possidetis.

Dig. 43.17.1pr.

Ulpianus 69 ad ed.

Ait praetor: " uti eas aedes, quibus de agitur, nec vi nec clam nec precario alter ab altero possidetis, quo minus ita possideatis, vim fieri veto. de cloacis hoc interdictum non dabo. neque pluris, quam quanti res erit: intra annum, quo primum experiundi potestas fuerit, agere permittam".

Dig. 43.17.1.1

Ulpianus 69 ad ed.

Hoc interdictum de soli possessore scriptum est, quem potiorem praetor in soli possessione habeat, et est prohibitorium ad retinendam possessionem.

Dig. 43.17.1.2

Ulpianus 69 ad ed.

Huius autem interdicti proponendi causa haec fuit, quod separata esse debet possessio a proprietate: fieri etenim potest, ut alter possessor sit, dominus non sit, alter dominus quidem sit, possessor vero non sit: fieri potest, ut et possessor idem et dominus sit.

Dig. 43.17.1.3

Ulpianus 69 ad ed.

Inter litigatores ergo quotiens est proprietatis controversia, aut convenit inter litigatores, uter possessor sit, uter petitor, aut non convenit. si convenit, absolutum est: ille possessoris commodo, quem convenit possidere, ille petitoris onere fungetur. sed si inter ipsos contendatur, uter possideat, quia alteruter se magis possidere adfirmat, tunc, si res soli sit, in cuius possessione contenditur, ad hoc interdictum remittentur.

Dig. 43.17.1.4

Ulpianus 69 ad ed.

Est igitur hoc interdictum, quod volgo uti possidetis appellatur, retinendae possessionis (nam huius rei causa redditur, ne vis fiat ei qui possidet) et consequenter proponitur post interdictum unde vi. illud enim restituit vi amissam possessionem, hoc interdictum tuetur, ne amittatur possessio, denique praetor possidenti vim fieri vetat: et illud quidem interdictum obpugnat possessorem, hoc tuetur. et ut pedius ait, omnis de possessione controversia aut eo pertinet, ut, quod non possidemus, nobis restituatur, aut ad hoc, ut retinere nobis liceat quod possidemus. restitutae possessionis ordo aut interdicto expeditur aut per actionem: retinendae itaque possessionis duplex via est, aut exceptio aut interdictum. exceptio datur ex multis causis ei qui possidet.

Dig. 43.17.1.5

Ulpianus 69 ad ed.

Perpetuo autem hoc interdicto insunt haec: " quod nec vi nec clam nec precario ab illo possides".

Dig. 43.17.1.6

Ulpianus 69 ad ed.

Interdictum autem possessorem praedii tuetur, quod est uti possidetis. actio enim numquam ultro possessori datur, quippe sufficit ei quod possideat.

Dig. 43.17.1.7

Ulpianus 69 ad ed.

Hoc interdictum locum habet, sive quis totum fundum possidere se dicat, sive pro certa parte, sive pro indiviso possideat.

Dig. 43.17.1.8

Ulpianus 69 ad ed.

Hoc interdictum in omnibus etiam possessionibus, quae sunt soli, sine dubio locum habebit, dummodo possideri possit.

Dig. 43.17.1.9

Ulpianus 69 ad ed.

Quod ait praetor in interdicto: " nec vi nec clam nec precario alter ab altero possidetis", hoc eo pertinet, ut, si quis possidet vi aut clam aut precario, si quidem ab alio, prosit ei possessio, si vero ab adversario suo, non debeat eum propter hoc quod ab eo possidet vincere: has enim possessiones non debere proficere palam est.

Dig. 43.17.2

Paulus 65 ad ed.

Usta enim an iniusta adversus ceteros possessio sit, in hoc interdicto nihil refert: qualiscumque enim possessor hoc ipso, quod possessor est, plus iuris habet quam ille qui non possidet.

Dig. 43.17.3pr.

Ulpianus 69 ad ed.

Si duo possideant in solidum, videamus, quid sit dicendum. quod qualiter procedat, tractemus, si quis proponeret possessionem iustam et iniustam. ego possideo ex iusta causa, tu vi aut clam: si a me possides, superior sum interdicto, si vero non a me, neuter nostrum vincetur: nam et tu possides et ego.

Dig. 43.17.3.1

Ulpianus 69 ad ed.

Hoc interdictum duplex est et hi, quibus competit, et actores et rei sunt.

Dig. 43.17.3.2

Ulpianus 69 ad ed.

Hoc interdictum sufficit ei, qui aedificare in suo prohibetur: etenim videris mihi possessionis controversiam facere, qui prohibes me uti mea possessione.

Dig. 43.17.3.3

Ulpianus 69 ad ed.

Cum inquilinus dominum aedes reficere volentem prohiberet, aeque competere interdictum uti possidetis placuit testarique dominum non prohibere inquilinum, ne habitaret, sed ne possideret.

Dig. 43.17.3.4

Ulpianus 69 ad ed.

Item videamus, si auctor vicini tui ex fundo tuo vites in suas arbores transduxit, quid iuris sit. et ait pomponius posse te ei denuntiare et vites praecidere, idque et labeo scribit, aut uti eum debere interdicto uti possidetis de eo loco, quo radices continentur vitium: nam si tibi vim fecerit, quo minus eas vites vel praecidas vel transducas, vim tibi facere videtur, quo minus possideas: etenim qui colere fundum prohibetur, possidere prohibetur, inquit pomponius.

Dig. 43.17.3.5

Ulpianus 69 ad ed.

Item videamus, si proiectio supra vicini solum non iure haberi dicatur, an interdictum uti possidetis sit utile alteri adversus alterum. et est apud cassium relatum utrique esse inutile, quia alter solum possidet, alter cum aedibus superficiem.

Dig. 43.17.3.6

Ulpianus 69 ad ed.

Labeo quoque scribit: ex aedibus meis in aedes tuas proiectum habeo: interdicis mecum, si eum locum possideamus, qui proiecto tegetur. an, quo facilius possim retinere possessionem eius proiectionis, interdico tecum sic " uti nunc possidetis eas aedes, ex quibus proiectus est?"

Dig. 43.17.3.7

Ulpianus 69 ad ed.

Sed si supra aedes, quas possideo, cenaculum sit, in quo alius quasi dominus moretur, interdicto uti possidetis me uti posse labeo ait, non eum qui in cenaculo moretur: semper enim superficiem solo cedere. plane si cenaculum ex publico aditum habeat, ait labeo videri non ab eo aedes possideri, qui kruptas possideret, sed ab eo, cuius aedes supra kruptas essent. verum est hoc in eo, qui aditum ex publico habuit: ceterum superficiarii proprio interdicto et actionibus a praetore utetur. dominus autem soli tam adversus alium quam adversus superficiarium potior erit interdicto uti possidetis: sed praetor superficiarium tuebitur secundum legem locationis: et ita pomponius quoque probat.

Dig. 43.17.3.8

Ulpianus 69 ad ed.

Creditores missos in possessionem rei servandae causa interdicto uti possidetis uti non posse, et merito, quia non possident: idemque et in ceteris omnibus, qui custodiae causa missi sunt in possessionem, dicendum est.

Dig. 43.17.3.9

Ulpianus 69 ad ed.

Si vicinus meus in parte in pariete meo tectoria habeat et in parte sua, " uti possidetis" mihi efficax est ut ea tollere compellatur.

Dig. 43.17.3.10

Ulpianus 69 ad ed.

Non videor vi possidere, qui ab eo, quem scirem vi in possessionem esse, fundum accipiam.

Dig. 43.17.3.11

Ulpianus 69 ad ed.

In hoc interdicto condemnationis summa refertur ad rei ipsius aestimationem. " quanti res est" sic accipimus " quanti uniuscuiusque interest possessionem retinere". servii autem sententia est existimantis tanti possessionem aestimandam, quanti ipsa res est: sed hoc nequaquam opinandum est: longe enim aliud est rei pretium, aliud possessionis.

Dig. 43.17.4

Ulpianus 70 ad ed.

In summa puto dicendum et inter fructuarios hoc interdictum reddendum: et si alter usum fructum, alter possessionem sibi defendat. idem erit probandum et si usus fructus quis sibi defendat possessionem, et ita pomponius scribit. perinde et si alter usum, alter fructum sibi tueatur, et his interdictum erit dandum.

Dig. 43.18.0. De superficiebus.

Dig. 43.18.1pr.

Ulpianus 70 ad ed.

Ait praetor: " uti ex lege locationis sive conductionis superficie, qua de agitur, nec vi nec clam nec precario alter ab altero fruamini, quo minus fruamini, vim fieri veto. si qua alia actio de superficie postulabitur, causa cognita dabo".

Dig. 43.18.1.1

Ulpianus 70 ad ed.

Qui superficiem in alieno solo habet, civili actione subnixus est: nam si conduxit superficium, ex conducto, si emit, ex empto agere cum domino soli potest. enim si ipse eum prohibeat, quod interest agendo consequetur: sin autem ab alio prohibeatur, praestare ei actiones suas debet dominus et cedere. sed longe utile visum est, quia et incertum erat, an locati existeret, et quia melius est possidere potius quam in personam experiri, hoc interdictum proponere et quasi in rem actionem polliceri.

Dig. 43.18.1.2

Ulpianus 70 ad ed.

Proponitur autem interdictum duplex exemplo interdicti uti possidetis. tuetur itaque praetor eum, qui superficiem petit, veluti uti possidetis interdicto, neque exigit ab eo, quam causam possidendi habeat: unum tantum requirit, num forte vi clam precario ab adversario possideat. omnia quoque, quae in uti possidetis interdicto servantur, hic quoque servabuntur.

Dig. 43.18.1.3

Ulpianus 70 ad ed.

Quod ait praetor " si actio de superficie postulabitur, causa cognita dabo", sic intellegendum est, ut, si ad tempus quis superficiem conduxerit, negetur ei in rem actio. et sane causa cognita ei, qui non ad modicum tempus conduxit superficiem, in rem actio competet.

Dig. 43.18.1.4

Ulpianus 70 ad ed.

Is autem, in cuius solo superficies est, utique non indiget utili actione, sed habet in rem, qualem habet de solo. plane si adversus superficiarium velit vindicare, dicendum est exceptione utendum in factum data: nam cui damus actionem, eidem et exceptionem competere multo magis quis dixerit.

Dig. 43.18.1.5

Ulpianus 70 ad ed.

Si soli possessori superficies evincatur, aequissimum erit subvenire ei vel ex stipulatu de evictione vel certe ex empto actione.

Dig. 43.18.1.6

Ulpianus 70 ad ed.

Quia autem etiam in rem actio de superficie dabitur, petitori quoque in superficiem dari et quasi usum fructum sive usum quendam eius esse et constitui posse per utiles actiones credendum est.

Dig. 43.18.1.7

Ulpianus 70 ad ed.

Sed et tradi posse intellegendum est, ut et legari et donari possit.

Dig. 43.18.1.8

Ulpianus 70 ad ed.

Et si duobus sit communis, etiam utile communi dividundo iudicium dabimus.

Dig. 43.18.1.9

Ulpianus 70 ad ed.

Servitutes quoque praetorio iure constituentur et ipsae ad exemplum earum, quae ipso iure constitutae sunt, utilibus actionibus petentur: sed et interdictum de his utile competit.

Dig. 43.18.2

Gaius 25 ad ed. provinc.

Superficiarias aedes appellamus, quae in conducto solo positae sunt: quarum proprietas et civili et naturali iure eius est, cuius et solum.

Dig. 43.19.0. De itinere actuque privato.

Dig. 43.19.1pr.

Ulpianus 70 ad ed.

Praetor ait: " quo itinere actuque privato, quo de agitur, vel via hoc anno nec vi nec clam nec precario ab illo usus es, quo minus ita utaris, vim fieri veto".

Dig. 43.19.1.1

Ulpianus 70 ad ed.

Hoc interdictum prohibitorium est, pertinens ad tuendas rusticas tantummodo servitutes.

Dig. 43.19.1.2

Ulpianus 70 ad ed.

Hoc interdicto praetor non inquirit, utrum habuit iure servitutem impositam an non, sed hoc tantum, an itinere actuque hoc anno usus sit non vi non clam non precario, et tuetur eum, licet eo tempore, quo interdictum redditur, usus non sit. sive igitur habuit ius viae sive non habuit, in ea condicione est, ut ad tuitionem praetoris pertineat, si modo anno usus est vel modico tempore, id est non minus quam triginta diebus. neque ad praesens tempus refertur usus, quia plerumque itineribus vel via non semper utimur, nisi cum usus exegerit ita.

Dig. 43.19.1.3

Ulpianus 70 ad ed.

Annui temporis spatio conclusit usum. annum ex die interdicti retrorsum computare debemus.

Dig. 43.19.1.4

Ulpianus 70 ad ed.

Si quis hoc interdicto utatur, sufficit alterutrum probare vel iter vel actum in usu habuisse.

Dig. 43.19.1.5

Ulpianus 70 ad ed.

Iulianus ait, quoad usque ingressus est, eo usque ei interdictum competere: quod verum est.

Dig. 43.19.1.6

Ulpianus 70 ad ed.

Vivianus recte ait eum, qui propter incommoditatem rivi aut propterea, quia via publica interrupta erat, per proximi vicini agrum iter fecerit, quamvis id frequenter fecit, non videri omnino usum, itaque inutile esse interdictum, non quasi precario usum, sed quasi nec usum. ergo secundum hoc neutro usus videtur: multo enim minus illo usus est, per quem non ivit propter incommoditatem rivi aut propterea, quia via praerupta erat. idem erit dicendum et si non erat via publica, sed iter privatum: nam et hic eadem quaestio est.

Dig. 43.19.1.7

Ulpianus 70 ad ed.

Is, cuius colonus aut hospes aut quis alius iter ad fundum fecit, usus videtur itinere vel actu vel via, et idcirco interdictum habebit: et haec ita pedius scribit et adicit etiamsi ignoravit, cuius fundus esset, per quem iret, retinere eum servitutem.

Dig. 43.19.1.8

Ulpianus 70 ad ed.

Si quis autem, cum putaret fundum ad se pertinere, suo nomine iter fecerit amicus meus, utique sibi, non mihi interdictum adquisisse intellegitur.

Dig. 43.19.1.9

Ulpianus 70 ad ed.

Si quis propter inundationem usus non sit itinere actuque hoc anno, cum superiore usus sit, potest repetita die hoc interdicto uti per in integrum restitutionem ex illa parte " si qua mihi iusta causa esse videbitur". sed et si per vim hoc ei contigerit, in integrum eum restitui oportere Marcellus probat. praeterea et aliis casibus interdictum repetita die competit, ex quibus in integrum quis restitutionem impetrare solet.

Dig. 43.19.1.10

Ulpianus 70 ad ed.

Praeterea sciendum est, si dilatione data adversario futurum est, ut causa interdicti mei deterior fiat, aequissimum esse repetita die reddi interdictum.

Dig. 43.19.1.11

Ulpianus 70 ad ed.

Si tibi fundum precario concessero, cui via debebatur, deinde tu a domino fundi precario rogaveris, ut ea via ad eum fundum utaris: an noceat tibi exceptio, si adversus eum velis interdicere, a quo precario viam rogasti? et magis est, ut noceat, idque colligi potest ex eo, quod iulianus scribit in specie huiusmodi. quaerit enim, si ego tibi fundum precario dedero, cui via debebatur, et tu rogaveris precario, ut ea via utaris: nihilo minus utile interdictum mihi esse, quia, sicuti me precarium rei meae non tenet, ita nec per te precario possidere intellegor: quotiens enim colonus meus aut is, cui precario fundum dedi, via utitur, ego ire intellegor, propter quod et recte dico me itinere usum. quae ratio, inquit, efficit, ut et, si ego viam precario rogavero et tibi fundum precario dedero, quamvis hac mente ieris, quasi fundo meo deberetur, inutile esset interdictum et precario eo itinere usus esse videar, non immerito: non enim opinio tua, sed mea quaerenda est. tu tamen, credo, poteris interdicto uti, etsi de hoc nihil scribat iulianus.

Dig. 43.19.1.12

Ulpianus 70 ad ed.

Si quis supra dicto tempore anni non vi non clam non precario itinere usus sit, verum postea non sit usus, sed clam precariove, videndum est, an ei noceat. et magis est, ut nihil ei noceat, quod attinet ad interdictum:

Dig. 43.19.2

Paulus 66 ad ed.

Nec enim corrumpi aut mutari, quod recte transactum est, superveniente delicto potest.

Dig. 43.19.3pr.

Ulpianus 70 ad ed.

Inde etiam illud labeo scribit: si, cum a me recte via utebaris, fundum vendidero, per quem utebaris, deinde emptor te prohibuit: licet clam videaris ab eo uti (nam qui prohibitus utitur, clam utitur), tamen interdictum tibi competere intra annum, quia hoc anno non vi non clam non precario usus es.

Dig. 43.19.3.1

Ulpianus 70 ad ed.

Item sciendum est non tantum eum clam via uti, qui ipse prohibitus utitur, verum eum quoque, per quem quis id ius retinebat, si eo prohibito, per quem retinebat, utatur. plane si ignoravi prohibitum et persevero uti, nihil mihi nocere dicendum est.

Dig. 43.19.3.2

Ulpianus 70 ad ed.

Si quis ab auctore meo vi aut clam aut precario usus est, recte a me via uti prohibetur et interdictum ei inutile est, quia a me videtur vi vel clam vel precario possidere, qui ab auctore meo vitiose possidet. nam et pedius scribit, si vi aut clam aut precario ab eo sit usus, in cuius locum hereditate vel emptione aliove quo iure successi, idem esse dicendum: cum enim successerit quis in locum eorum, aequum non est nos noceri hoc, quod adversus eum non nocuit, in cuius locum successimus.

Dig. 43.19.3.3

Ulpianus 70 ad ed.

In hoc interdicto examinatur, quanti eius interesset via non prohiberi sive itinere.

Dig. 43.19.3.4

Ulpianus 70 ad ed.

Uti videmur servitutibus etiam per servos vel colonos vel amicos vel etiam hospites et fere per eos omnes, qui nobis retinent servitutes: sed enim per fructuarium quidem servitus retinetur, per fructuarium autem interdictum hoc domino non competere iulianus ait.

Dig. 43.19.3.5

Ulpianus 70 ad ed.

Idem iulianus scribit, si meus usus fructus in fundo tuo, proprietas vero tua fuerit et uterque nostrum per vicini fundum ierit, utile interdictum de itinere nos habere: et sive forte ab extraneo fructuarius prohibeatur, sive etiam a domino, sed et si dominus a fructuario, competet: nam et si quilibet prohibeat ire, interdictum adversus eum competit.

Dig. 43.19.3.6

Ulpianus 70 ad ed.

Hoc interdictum et ei competit, qui donationis causa fundi vacuam possessionem adeptus est.

Dig. 43.19.3.7

Ulpianus 70 ad ed.

Si quis ex mandatu meo fundum emerit, aequissimum est mihi hoc interdictum dari " ut ille usus est" qui mandatu meo emit.

Dig. 43.19.3.8

Ulpianus 70 ad ed.

Sed et si quis usum fructum emit vel usum vel cui legatus est et traditus, uti hoc interdicto poterit.

Dig. 43.19.3.9

Ulpianus 70 ad ed.

Hoc amplius et is, cui dotis causa fundus traditus est, experiri hoc interdicto poterit.

Dig. 43.19.3.10

Ulpianus 70 ad ed.

Et generaliter ex omnibus causis, quae instar habent venditionis vel alterius contractus, dicendum est hoc interdicto locum fore.

Dig. 43.19.3.11

Ulpianus 70 ad ed.

Ait praetor: " quo itinere actuque hoc anno non vi non clam non precario ab alio usus es, quo minus id iter actumque, ut tibi ius esset, reficias, vim fieri veto. qui hoc interdicto uti volet, is adversario damni infecti, quod per eius vitium datum sit, caveat".

Dig. 43.19.3.12

Ulpianus 70 ad ed.

Utilitas suasit hoc quoque interdictum proponere: namque consequens erat eum qui itinere utitur interdictum proponere, ut refici iter possit:

quemadmodum enim alias uti potest itinere vel actu commode, quam si refecerit? corrupto enim itinere minus commode frui aut agi potest.

Dig. 43.19.3.13

Ulpianus 70 ad ed.

Hoc autem a superiori distat, quod illo quidem interdicto omnes uti possunt, qui hoc anno usi sunt: hoc autem interdicto eum demum uti posse, qui hoc anno usus est et ius sibi esse reficiendi oporteat. ius autem esse videtur ei, cui servitus debetur. itaque qui hoc interdicto utitur, duas res debet docere, et hoc anno se usum et ei servitutem competere: ceterum si desit alterutrum, deficit interdictum, nec immerito. qui enim vult ire agere, tantisper, quoad de servitute constet, non debet de iure suo docere: quid enim perdit, qui eum patitur hoc facere qui hoc anno fecit? enimvero qui vult reficere, aliquid novi facit neque debet ei in alieno permitti id moliri, nisi vere habet servitutem.

Dig. 43.19.3.14

Ulpianus 70 ad ed.

Fieri autem potest, ut qui ius eundi habeat et agendi, reficiendi ius non habeat, quia in servitute constituenda cautum sit, ne ei reficiendi ius sit, aut sic, ut, si velit reficere, usque ad certum modum reficiendi ius sit: merito ergo ad refectionem se praetor rettulit: " ut tibi", inquit, " ius est, reficias". " uti ius est" hoc est sic uti per servitutem impositam licet.

Dig. 43.19.3.15

Ulpianus 70 ad ed.

Reficere sic accipimus ad pristinam formam iter et actum reducere, hoc est ne quis dilatet aut producat aut deprimat aut exaggeret: aliud est enim reficere, longe aliud facere.

Dig. 43.19.3.16

Ulpianus 70 ad ed.

Apud labeonem quaeritur, si pontem quis novum velit facere viae muniendae causa, an ei permittatur: et ait permittendum, quasi pars sit refectionis huiusmodi munitio. et ego puto veram labeonis sententiam, si modo sine hoc commeari non possit.

Dig. 43.19.4pr.

Venonius 1 interd.

Veteres nominatim adiciebant, ut ea quoque, quae ad refectionem utilia essent, adportanti vis non fieret: quod supervacuum est, quoniam qui adportari non patitur ea, sine quibus refici iter non possit, vim facere videtur, quo minus reficiatur.

Dig. 43.19.4.1

Venonius 1 interd.

Si quis autem, cum posset compendiaria adportare, quae refectioni necessaria sunt longiori itinere velit adportare, ut deteriorem causam eundi faciat, impune ei vis fiet, quia ipse sibi impedimento sit, quo minus reficiat.

Dig. 43.19.5pr.

Ulpianus 20 ad ed.

Apparet ergo eum, qui non patitur haec congeri, vim facere, quo minus quis perficiat.

Dig. 43.19.5.1

Ulpianus 20 ad ed.

Plane si quis, cum posset alia parte agri sine incommodo domini fundi impensam adportare, id egit, ut alia parte adportet, impune ei vim fieri recte placuit.

Dig. 43.19.5.2

Ulpianus 20 ad ed.

Hoc interdictum non solum ipsi, verum successoribus quoque esse dandum non est ambigendum: emptori quoque dabitur et in emptorem.

Dig. 43.19.5.3

Ulpianus 20 ad ed.

Si quis servitutem iure impositam non habeat, habeat autem velut longae possessionis praerogativam ex eo, quod diu usus est servitute, interdicto hoc uti potest.

Dig. 43.19.5.4

Ulpianus 20 ad ed.

Qui hoc interdicto usurus est, de vitio operis cavere adversario debet.

Dig. 43.19.6

Paulus 66 ad ed.

Sicut non nocet ei, qui sine vitio usus est, quod eodem anno vitiose usus est, ita emptori heredique non nocebit, quod ipsi vitiose usi sunt, si testator venditorve recte usi sunt.

Dig. 43.19.7

Celsus 25 Dig.

Si per fundum tuum nec vi nec clam nec precario commeavit aliquis, non tamen tamquam id suo iure faceret, sed, si prohiberetur, non facturus, inutile est ei interdictum de itinere actuque: nam ut hoc interdictum competat, ius fundi possedisse oportet.

Dig. 43.20.0. De aqua cottidiana et aestiva.

Dig. 43.20.1pr.

Ulpianus 70 ad ed.

Ait praetor: " uti hoc anno aquam, qua de agitur, non vi non clam non precario ab illo duxisti, quo minus ita ducas, vim fieri veto".

Dig. 43.20.1.1

Ulpianus 70 ad ed.

Hoc interdictum prohibitorium et interdum restitutorium est et pertinet ad aquam cottidianam.

Dig. 43.20.1.2

Ulpianus 70 ad ed.

Cottidiana autem aqua non illa est, quae cottidie ducitur, sed ea, qua quis cottidie uti, si vellet: quamquam cottidianam interdum hieme ducere non expediat, etsi possit duci.

Dig. 43.20.1.3

Ulpianus 70 ad ed.

Duo autem genera sunt aquarum: est cottidiana, est et aestiva. cottidiana ab aestiva usu differt, non iure. cottidiana ea est, quae duci adsidue solet vel aestivo tempore vel hiberno, etiamsi aliquando ducta non est: ea quoque dicitur cottidiana, cuius servitus intermissione temporis divisa est. aestiva autem ea est, qua aestate sola uti expedit, sicuti dicimus vestimenta aestiva, saltus aestivos, castra aestiva, quibus interdum etiam hieme, plerumque autem aestate utamur. ego puto probandum ex proposito utentis et ex natura locorum aquam aestivam a cottidiana discerni: nam si sit ea aqua, quae perpetuo duci possit, ego tamen aestate sola ea utar, dicendum est hanc aquam esse aestivam: rursum si ea sit aqua, quae non nisi aestate duci possit, aestiva dicetur: et si ea sint loca, quae natura non admittant aquam nisi aestate, dicendum erit recte aestivam dici.

Dig. 43.20.1.4

Ulpianus 70 ad ed.

Quod autem scriptum est in interdicto: " uti hoc anno aquam duxisti" hoc est: non cottidie, sed hoc anno vel una die vel nocte. ergo cottidiana quidem aqua alia est, quae cottidie duci possit, vel hieme vel aestate, etsi aliquo momento temporis ducta sit, aestiva ea, quae cottidie quidem duci possit, vel sola aestate, ducatur autem aestate tantum, non et hieme, non quia non possit et hieme, sed quia non solet.

Dig. 43.20.1.5

Ulpianus 70 ad ed.

Loquitur autem praetor in hoc interdicto de ea aqua sola, quae perennis est: nulla enim alia aqua duci potest, nisi quae perennis est.

Dig. 43.20.1.6

Ulpianus 70 ad ed.

Quamquam ad perennes aquas dixerimus hoc interdictum pertinere, ad eas tamen perennes pertinet, quae duci possunt. ceterum sunt quaedam, quae, etsi perennes sunt, duci tamen non possunt, ut puta puteales et quae ita sunt summersae, ut defluere extra terram et usui esse non possint. sed huiusmodi aquis, quae duci non possint, haustus servitus imponi potest.

Dig. 43.20.1.7

Ulpianus 70 ad ed.

Haec interdicta de aqua, item de fonte ad eam aquam pertinere videntur, quae a capite ducitur, non aliunde: harum enim aquarum etiam servitus iure civili constitui potest.

Dig. 43.20.1.8

Ulpianus 70 ad ed.

Caput aquae illud est, unde aqua nascitur: si ex fonte nascatur, ipse fons: si ex flumine vel lacu, prima incilia vel principia fossarum, quibus aquae ex flumine vel ex lacu in primum rivum compelli solent. plane si aqua sudoribus manando in aliquem primum locum effluere atque ibi apparere incipit, eius hoc caput dicemus, ubi primum emergit.

Dig. 43.20.1.9

Ulpianus 70 ad ed.

Et qualiter sit constitutum ius aquae, dicendum est hoc interdictum locum habere.

Dig. 43.20.1.10

Ulpianus 70 ad ed.

Sed etsi iure aqua non debetur alicui, si tamen iure ducere se putavit, cum non in iure, sed in facto erravit, dicendum est eoque iure utimur, ut interdicto hoc uti possit: sufficit enim, si iure se ducere putavit nec vi nec clam nec precario duxit.

Dig. 43.20.1.11

Ulpianus 70 ad ed.

Illud quaeritur, utrum ea tantum aqua his interdictis contineatur, quae ad agrum irrigandum pertinet, an vero omnis, etiam ea, quae ad usum quoque et commodum nostrum. et hoc iure utimur, ut haec quoque contineatur. propter quod etiam si in urbana praedia quis aquam ducere velit, hoc interdictum locum habere potest.

Dig. 43.20.1.12

Ulpianus 70 ad ed.

Praeterea labeo scribit, etsi quidam ductus aquarum non sit fundi, quia quocumque duci possint, tamen ad hoc interdictum pertinere.

Dig. 43.20.1.13

Ulpianus 70 ad ed.

Idem labeo scribit, etiamsi praetor hoc interdicto de aquis frigidis sentiat, tamen de calidis aquis interdicta non esse deneganda: namque harum quoque aquarum usum esse necessarium: nonnumquam enim refrigeratae usum irrigandis agris praestant. his accedit, quod in quibusdam locis et cum calidae sunt, irrigandis tamen agris necessariae sunt, ut hierapoli: constat enim apud hierapolitanos in asia agrum aqua calida rigari. et quamvis ea sit aqua, quae ad rigandos non sit necessaria, tamen nemo ambiget his interdictis locum fore.

Dig. 43.20.1.14

Ulpianus 70 ad ed.

Sive autem intra urbem sit aqua sive extra urbem, hoc interdicto locus erit.

Dig. 43.20.1.15

Ulpianus 70 ad ed.

Illud tamen hic intellegendum est eodem modo praetorem duci aquam iussisse, quo ducta est hoc anno. proinde neque amplioris modi, neque alia permisisse potest videri. quare si alia aqua sit, quam quis velit ducere, quam hoc anno duxit, vel eadem, per aliam tamen regionem velit ducere, impune ei vis fiet.

Dig. 43.20.1.16

Ulpianus 70 ad ed.

Illud labeo dicit omnes partes illius fundi, in quem loci aqua ducitur, eiusdem numero esse. ergo et si forte actor confinem agrum emerit et ex agro, in quem hoc anno aquam duxerit, postea fundi empti nomine velit aquam ducere, ita demum eum recte hoc interdicto (ut de itinere actuque) uti putant, ut semel in suum ingressus inde egredi qua velit possit, nisi ei nocitum sit, ex quo aquam ducit.

Dig. 43.20.1.17

Ulpianus 70 ad ed.

Item quaeritur, si quis aquae, quam hoc anno ducebat, aliam aquam admiscuerit, an impune prohibeatur. et extat ofilii sententia existimantis recte eum prohiberi, sed eo loci, in quo primum aquam aliam in rivum admittit: et ofilius in tota aqua recte eum prohiberi ait. ego ofilio adsentio non posse dividi, quia non potest ita in parte vis fieri, ut non in tota aqua fiat.

Dig. 43.20.1.18

Ulpianus 70 ad ed.

Trebatius, cum amplior numerus pecoris ad aquam appelletur, quam debet appelli, posse universum pecus impune prohiberi, quia iunctum pecus ei pecori, cui adpulsus debeatur, totum corrumpat pecoris adpulsum. Marcellus autem ait, si quis ius habens pecoris ad aquam appellendi plura pecora adpulserit, non in omnibus pecoribus eum prohibendum: quod est verum, quia pecora separari possunt.

Dig. 43.20.1.19

Ulpianus 70 ad ed.

Aristo putat eum demum interdictum hoc habere, qui se putat suo iure uti, non eum, qui scit se nullum ius habere et utitur.

Dig. 43.20.1.20

Ulpianus 70 ad ed.

Idem ait eum, qui hoc anno aquam duxerit nec vi nec clam nec precario et eodem anno vitiose usus est, recte tamen hoc interdicto usurum: quod referri ad id tempus, quod sine vitio fuerit: esse enim verum hoc anno non vi non clam non precario usum.

Dig. 43.20.1.21

Ulpianus 70 ad ed.

Quaesitum est, si quis ante annum aquam duxit, deinde sequenti tempore, hoc est intra annum, aqua influxerit ipsa sibi me non ducente, an hoc interdicto locus sit. et refert severus valerius competere ei hoc interdictum, quasi duxisse videatur, licet penitus prospicientibus non videtur iste duxisse.

Dig. 43.20.1.22

Ulpianus 70 ad ed.

Item quaesitum est, si quis, dum putat tertio quoque die habere se ius aquae ducendae, duxerit una die, an recte et sine captione possessoris recte duxisse videatur, ut hoc interdictum habeat: ait enim praetor: " uti hoc anno aquam duxisti" id est alternis diebus. illud autem nihil interest, utrum quinto die aqua debeatur an alternis diebus an cottidie ei, qui hoc interdicto uti velit: nam cum sufficiat vel uno die hoc anno aquam duxisse, nihil refert, qualem aquae ductum habens duxerit: dum, si quis, cum quinto quoque die uteretur, quasi alternis diebus ducens interdixerit, nihil ei prodesse videtur.

Dig. 43.20.1.23

Ulpianus 70 ad ed.

Praeterea illud sciendum est, si, cum aquam duxisses, adversarius te prohibuerit, deinde tu interim ius aquae ducendae amiseris, in restitutionem hoc venire, ut tibi praestetur per hoc interdictum quod amisisti: et hoc verum puto.

Dig. 43.20.1.24

Ulpianus 70 ad ed.

Si fundum, ad quem aquam ducebas, vendideris et tradideris, nihilo minus interdictum tibi utile est.

Dig. 43.20.1.25

Ulpianus 70 ad ed.

Competit hoc interdictum adversus eum, qui prohibet me aquam ducere, et nihil interest, utrum quis dominium fundi habeat an non. idcircoque is tenetur interdicto: nam et si servitus coepit adversus quemvis posse vindicari.

Dig. 43.20.1.26

Ulpianus 70 ad ed.

Si inter rivales, id est qui per eundem rivum aquam ducunt, sit contentio de aquae usu, utroque suum usum esse contendente, duplex interdictum utrique competit.

Dig. 43.20.1.27

Ulpianus 70 ad ed.

Labeo putat per hoc interdictum prohiberi quem, ne quid in illo fundo faciat fodiat serat succidat putet aedificet, quare ex re ea aqua, quam ille hoc anno per fundum tuum sine vitio duxit, inquinetur vitietur corrumpatur deteriorve fiat: et similiter de aestiva aqua debere interdici ait.

Dig. 43.20.1.28

Ulpianus 70 ad ed.

Si quis hoc cesserit, ne liceat sibi aquam quaerere, ea cessio valet.

Dig. 43.20.1.29

Ulpianus 70 ad ed.

Deinde ait praetor: " uti priore aestate aquam, qua de agitur, nec vi nec clam nec precario ab illo duxisti, quo minus ita ducas, vim fieri veto. inter heredes emptores et bonorum possessores interdicam".

Dig. 43.20.1.30

Ulpianus 70 ad ed.

Hoc interdictum de aqua aestiva proponitur.

Dig. 43.20.1.31

Ulpianus 70 ad ed.

Quia autem diximus aestivam aquam aliquo distare ab aqua cottidiana, sciendum est etiam interdictis distare, quod qui de aqua cottidiana interdicit, ita interdicit: " uti hoc anno aquam duxisti", at qui de aestiva, sic: " uti priore aestate", nec immerito: nam quia hieme non utitur, referre se non ad praesentem aestatem, sed ad priorem debuit.

Dig. 43.20.1.32

Ulpianus 70 ad ed.

Aestatem incipere (sic peritiores tradiderunt) ab aequinoctio verno et finiri aequinoctio autumnali: et ita senis mensibus aestas atque hiems dividitur.

Dig. 43.20.1.33

Ulpianus 70 ad ed.

Priorem aestatem ex comparatione duarum aestatium accipi.

Dig. 43.20.1.34

Ulpianus 70 ad ed.

Propter hoc, si aestate interdicatur, nonnumquam annum et sex menses continere: quod ita contingit, si initio verni aequinoctii ducta sit aqua et sequenti aestate pridie aequinoctium autumnale interdicatur: et proinde, si hieme interdicatur, etiam in biennium haec res extendetur.

Dig. 43.20.1.35

Ulpianus 70 ad ed.

Si quis hieme tantum aquam solitus fuit ducere, aestate non fuit solitus, utile interdictum ei competit.

Dig. 43.20.1.36

Ulpianus 70 ad ed.

Qui hac aestate duxit, non superiore, utile interdictum habet.

Dig. 43.20.1.37

Ulpianus 70 ad ed.

Ait praetor: " inter heredes et emptores et bonorum possessores interdicam". haec verba non solum ad aestivam aquam, verum etiam ad cottidianam quoque referenda esse sciendum est: nam sicuti de itinere actuque et successoribus dantur interdicta et emptori, ita haec quoque danda praetor putavit.

Dig. 43.20.1.38

Ulpianus 70 ad ed.

Ait praetor: " quo ex castello illi aquam ducere ab eo, cui eius rei ius fuit, permissum est, quo minus ita uti permissum est ducat, vim fieri veto. quandoque de opere faciendo interdictum erit, damni infecti caveri iubebo".

Dig. 43.20.1.39

Ulpianus 70 ad ed.

Hoc interdictum necessario propositum est. namque superiora interdicta ad eos pertinent, qui a capite ducunt vel imposita servitute vel quia putant impositam: aequissimum visum est ei quoque, qui ex castello ducit, interdictum dari. id est ex eo receptaculo, quod aquam publicam suscipit. castellum accipe.

Dig. 43.20.1.40

Ulpianus 70 ad ed.

Si ex castello permissum est, dandum erit interdictum:

Dig. 43.20.1.41

Ulpianus 70 ad ed.

Permittitur autem aquam ex castello vel ex rivo vel ex quo alio loco publico ducere.

Dig. 43.20.1.42

Ulpianus 70 ad ed.

Idque a principe conceditur: alii nulli competit ius aquae dandae.

Dig. 43.20.1.43

Ulpianus 70 ad ed.

Et datur interdum praediis, interdum personis. quod praediis datur, persona extincta non extinguitur: quod datur personis, cum personis amittitur ideoque neque ad alium dominum praediorum neque ad heredem vel qualemcumque successorem transit. plane ei, ad quem dominium transit, impetrabile est: nam si docuerit praediis suis aquam debitam, etsi nomine eius fluxisse, a quo dominium ad se transiit, indubitate impetrat ius aquae ducendae, nec est hoc beneficium, sed iniuria, si quis forte non impetraverit.

Dig. 43.20.1.44

Ulpianus 70 ad ed.

Meminisse autem debemus in hoc interdicto totam quaestionem finiri adsignationis: non enim praeparat hoc interdictum causam, ut superiora interdicta, nec ad possessionem temporariam pertinet, sed aut habet ius adsignatum sibi aut non habet, et interdictum totum finitur.

Dig. 43.20.2

Pomponius 32 ad sab.

Si diurnarum aut nocturnarum horarum aquae ductum habeam, non possum alia hora ducere, quam qua ius habeam ducendi.

Dig. 43.20.3pr.

Pomponius 34 ad sab.

Hoc iure utimur, ut etiam non ad irrigandum, sed pecoris causa vel amoenitatis aqua duci possit.

Dig. 43.20.3.1

Pomponius 34 ad sab.

Ex flumine aquam ducere plures possunt, ita tamen, ut vicinis non noceant, vel, si angustus amnis sit, etiam ei, qui in alia ripa sit.

Dig. 43.20.3.2

Pomponius 34 ad sab.

Si aquam ex flumine publico duxeris et flumen recesserit, non potes subsequi flumen, quia ei loco servitus imposita non sit, quamvis is locus meus sit. sed si alluvione paulatim accesserit fundo tuo, subsequi potes, quia locus totus fluminis serviat ductioni. sed si circumfluere coeperit mutato alveo, non potes, quia medius locus non serviat interruptaque sit servitus.

Dig. 43.20.3.3

Pomponius 34 ad sab.

Aqua, quae in rivo nascitur, tacite lucri fit ab eo qui ducit.

Dig. 43.20.3.4

Pomponius 34 ad sab.

Ductus aquae, cuius origo memoriam excessit, iure constituti loco habetur.

Dig. 43.20.3.5

Pomponius 34 ad sab.

Is, qui aquae cottidianae ius habet, vel fistulam in rivo ponere vel aliud quodlibet facere potest, dummodo ne fundum domino aut aquagium rivalibus deterius faciat.

Dig. 43.20.3.6

Pomponius 34 ad sab.

Si aqua ducatur, supra eam alia aqua per pontem, qui supra rivum factus sit, iure ducitur, dum inferiori rivo non noceatur.

Dig. 43.20.4

Iulianus 41 Dig.

Lucio titio ex fonte meo ut aquam duceret, cessi: quaesitum est, an et maevio cedere possim, ut per eundem aquae ductum aquam ducat: et si putaveris posse cedi per eundem aquae ductum duobus, quemadmodum uti debeant. respondit: sicut iter actus via pluribus cedi vel simul vel separatim potest, ita aquae ducendae ius recte cedetur. sed si inter eos, quibus aqua cessa est, non convenit, quemadmodum utantur, non erit iniquum utile iudicium reddi, sicut inter eos, ad quos usus fructus pertinet, utile communi dividundo iudicium reddi plerisque placuit.

Dig. 43.20.5pr.

Iulianus 4 ex minic.

Cum constet non solum temporibus, sed etiam mensuris posse aquam dividi, potest eodem tempore alius cottidianam, alius aestivam aquam ducere, ita ut aestate dividatur inter eos aqua, hieme solus ducat is qui cottidianae ius habeat.

Dig. 43.20.5.1

Iulianus 4 ex minic.

Inter duos, qui eodem rivo aquam certis horis separatim ducebant, convenit, ut permutatis inter se temporibus aqua uterentur: quaero, cum amplius tempore servitutibus praefinito ita duxissent, ut neuter eorum suo tempore usus esset, num ius utendi amisissent. negavit amisisse.

Dig. 43.20.6

Nerva 3 membr.

De interdicto de aqua aestiva, item cottidiana quaerentes primum constituendum existimabamus, quae esset aqua aestiva, de qua proprium interdictum ad prioris aestatis tempus relatum reddi solet, hoc est aestiva aqua utrumne ex iure aestivo dumtaxat tempore utendi diceretur, an ex mente propositoque ducentis, quod aestate eam ducendi consilium haberet, an ex natura ipsius aquae, quod aestate tantum duci potest, an ex utilitate locorum, in quae duceretur. placebat igitur aquam ob has duas res, naturam suam utilitatemque locorum in quae deducitur, proprie appellari, ita ut, sive eius natura erit, ut nisi aestate duci non possit, etiamsi hieme quoque desideraretur, sive omni tempore anni duci eam ipsius natura permitteret, si utilitas personis, in quam ducitur, aestate dumtaxat usum eius exigeret, aestiva recte diceretur.

Dig. 43.20.7

Paulus 5 sent.

Si de via itinere actu aquae ductu agatur, huiusmodi cautio praestanda est, quamdiu quis de iure suo doceat, non se impediturum agentem et aquam ducentem et iter facientem. quod si neget ius esse adversario agendi aquae ducendae, cavere sine praeiudicio amittendae servitutis debebit, donec quaestio finietur, non se usurum.

Dig. 43.20.8

Scaevola l.S. horoi

Cui per fundum iter aquae debetur, quacumque vult in eo rivum licet faciat, dum ne aquae ductum interverteret.

Dig. 43.21.0. De rivis.

Dig. 43.21.1pr.

Ulpianus 70 ad ed.

Praetor ait: " rivos specus septa reficere purgare aquae ducendae causa quo minus liceat illi, dum ne aliter aquam ducat, quam uti priore aestate non vi non clam non precario a te duxit, vim fieri veto".

Dig. 43.21.1.1

Ulpianus 70 ad ed.

Hoc interdictum utilissimum est: nam nisi permittatur alicui reficere, alia ratione usu incommodabitur.

Dig. 43.21.1.2

Ulpianus 70 ad ed.

Ait ergo praetor " rivum specus". rivus est locus per longitudinem depressus, quo aqua decurrat, cui nomen est apo tou hrein.

Dig. 43.21.1.3

Ulpianus 70 ad ed.

Specus autem est locus, ex quo despicitur: inde spectacula sunt dicta.

Dig. 43.21.1.4

Ulpianus 70 ad ed.

Septa sunt, quae ad incile opponuntur aquae derivandae compellendaeve ex flumine causa, sive ea lignea sunt sive lapidea sive qualibet alia materia sint, ad continendam transmittendamque aquam excogitata.

Dig. 43.21.1.5

Ulpianus 70 ad ed.

Incile est autem locus depressus ad latus fluminis, ex eo dictus, quod incidatur: inciditur enim vel lapis vel terra, unde primum aqua ex flumine agi possit. sed et fossae et putei hoc interdicto continentur.

Dig. 43.21.1.6

Ulpianus 70 ad ed.

Deinde ait praetor " reficere purgare". reficere est quod corruptum est in pristinum statum restaurare. verbo reficiendi tegere substruere sarcire aedificare, item advehere adportareque ea, quae ad eandem rem opus essent. continentur.

Dig. 43.21.1.7

Ulpianus 70 ad ed.

Purgandi verbum plerique quidem putant ad eum rivum pertinere, qui integer est: et palam est et ad eum pertinere, qui refectione indiget: plerumque enim ut refectione, et purgatione indiget.

Dig. 43.21.1.8

Ulpianus 70 ad ed.

" aquae", inquit, " ducendae causa". merito hoc additur, ut ei demum permittatur et reficere et purgare rivum, qui aquae ducendae causa id fecit.

Dig. 43.21.1.9

Ulpianus 70 ad ed.

Hoc interdictum competit etiam ei, qui ius aquae ducendae non habet, si modo aut priore aestate aut eodem anno aquam duxerit, cum sufficiat non vi non clam non precario duxisse.

Dig. 43.21.1.10

Ulpianus 70 ad ed.

Si quis terrenum rivum signinum, id est lapideum facere velit, videri eum non recte hoc interdicto uti: non enim reficit qui hoc facit: et ita ofilio videtur.

Dig. 43.21.1.11

Ulpianus 70 ad ed.

Proinde et si per alium locum velit ducere, impune prohibetur: sed et si eundem rivum deprimat vel adtollat aut dilatet vel extendat vel operiat apertum vel contra. ego ceteros quidem impune prohiberi puto: at enim eum, qui operiat apertum vel contra, eum non puto prohibendum, nisi si quam maiorem utilitatem suam adversarius ostendat.

Dig. 43.21.2

Paulus 66 ad ed.

Labeo non posse ait ex aperto rivo terrenum fieri, quia commodum domino soli auferetur appellendi pecus vel hauriendi aquam: quod sibi non placere pomponius ait, quia id domino magis ex occasione quam ex iure contingeret, nisi si ab initio in imponenda servitute id actum esset.

Dig. 43.21.3pr.

Ulpianus 70 ad ed.

Servius autem scribit aliter duci aquam, quae ante per specus ducta est, si nunc per apertum ducatur: nam si operis aliquid faciat quis, quo magis aquam conservet vel contineat, non impune prohiberi. ego et in specu contra, si non maior utilitas versetur adversarii.

Dig. 43.21.3.1

Ulpianus 70 ad ed.

Servius et labeo scribunt, si rivum, qui ab initio terrenus fuit, quia aquam non continebat, cementicium velit facere, audiendum esse: sed et si eum rivum, qui structilis fuit, postea terrenum faciat aut partem rivi, aeque non esse prohibendum. mihi videtur urguens et necessaria refectio esse admittenda.

Dig. 43.21.3.2

Ulpianus 70 ad ed.

Si quis novum canalem vel fistulas in rivo velit collocare, cum id numquam habuerit, utile ei hoc interdictum futurum labeo ait. nos et hic opinamur utilitatem eius qui ducit sine incommoditate eius cuius ager est spectandam.

Dig. 43.21.3.3

Ulpianus 70 ad ed.

Si aqua in unum lacum conducatur et inde per plures ductus ducatur, hoc interdictum utile erit volenti reficere ipsum lacum.

Dig. 43.21.3.4

Ulpianus 70 ad ed.

Hoc interdictum ad omnes rivos pertinet, sive in publico sive in privato sint constituti.

Dig. 43.21.3.5

Ulpianus 70 ad ed.

Sed et si calidae aquae rivus sit, de hoc reficiendo competit interdictum.

Dig. 43.21.3.6

Ulpianus 70 ad ed.

Aristo et de cuniculo restituendo per quem vapor trahitur, in balnearis vaporibus putat utilem actionem competere: et erit dicendum utile interdictum ex hac causa competere.

Dig. 43.21.3.7

Ulpianus 70 ad ed.

Isdem autem personis et in easdem interdictum hoc datur, quibus et in quas et de aqua interdicta redduntur, quae supra sunt enumerata.

Dig. 43.21.3.8

Ulpianus 70 ad ed.

Si quis rivum reficienti opus novum nuntiat, belle dictum est posse contemni operis novi nuntiationem: cum enim praetor ei vim fieri vetet, absurdum est per operis novi nuntiationem eum impediri. plane per in rem actionem dicendum est posse: adversus eum vindicari " ius ei non esse" dubium non est.

Dig. 43.21.3.9

Ulpianus 70 ad ed.

De damno quoque infecto cavere eum debere minime dubitari oportet.

Dig. 43.21.3.10

Ulpianus 70 ad ed.

Si quis eum exportare vehere, quae refectioni necessaria sunt, prohibeat, hoc interdictum ei competere ofilius putat, quod est verum.

Dig. 43.21.4

Venonius 1 interd.

De rivis reficiendis ita interdicetur, ut non quaeratur, an aquam ducere actori liceret: non enim tam necessariam refectionem itinerum quam rivorum esse, quando non refectis rivis omnis usus aquae auferretur et homines siti necarentur. et sane aqua pervenire nisi refecto rivo non potest: at non refecto itinere difficultas tantum eundi agendique fieret, quae temporibus aestivis levior esset.

Dig. 43.22.0. De fonte.

Dig. 43.22.1pr.

Ulpianus 70 ad ed.

Praetor ait: " uti de eo fonte, quo de agitur, hoc anno aqua nec vi nec clam nec precario ab illo usus es, quo minus ita utaris, vim fieri veto. de lacu puteo piscina item interdicam".

Dig. 43.22.1.1

Ulpianus 70 ad ed.

Hoc interdictum proponitur ei, qui fontana aqua uti prohibetur: servitutes enim non tantum aquae ducendae esse solent, verum etiam hauriendae, et sicut discretae sunt servitutes ductus aquae et haustus aquae, ita interdicta separatim redduntur.

Dig. 43.22.1.2

Ulpianus 70 ad ed.

Hoc autem interdictum locum habet, si quis uti prohibeatur aqua, hoc est sive haurire prohibeatur sive etiam pecus ad aquam appellere.

Dig. 43.22.1.3

Ulpianus 70 ad ed.

Et eadem sunt hic dicenda, quae ad personam attinent, quaecumque in superioribus interdictis diximus.

Dig. 43.22.1.4

Ulpianus 70 ad ed.

Hoc interdictum de cisterna non competit: nam cisterna non habet perpetuam causam nec vivam aquam. ex quo apparet in his omnibus exigendum, ut viva aqua sit: cisternae autem imbribus concipiuntur. denique constat interdictum cessare, si lacus piscina puteus vivam aquam non habeat.

Dig. 43.22.1.5

Ulpianus 70 ad ed.

Plane si quis ire ad haustum prohibeatur, aeque interdictum sufficiet.

Dig. 43.22.1.6

Ulpianus 70 ad ed.

Deinde ait praetor: " quo minus fontem, quo de agitur, purges reficias, ut aquam coercere utique ea possis, dum ne aliter utaris, atque uti hoc anno non vi non clam non precario ab illo usus es, vim fieri veto".

Dig. 43.22.1.7

Ulpianus 70 ad ed.

Hoc interdictum eandem habet utilitatem, quam habet interdictum de rivis reficiendis: nisi enim purgare et reficere fontem licuerit, nullus usus eius erit.

Dig. 43.22.1.8

Ulpianus 70 ad ed.

Purgandus autem et reficiendus est ad aquam coercendam, ut uti quis aqua possit, dummodo non aliter utatur, quam sic uti hoc anno usus est.

Dig. 43.22.1.9

Ulpianus 70 ad ed.

Coercere aquam est continere sic, ne diffluat, ne dilabatur, dummodo non permittatur cui novas quaerere vel aperire: hic enim innovat aliquid praeter id, quam praecedenti anno usus est.

Dig. 43.22.1.10

Ulpianus 70 ad ed.

Sed et de lacu puteo piscina reficiendis purgandis interdictum competit.

Dig. 43.22.1.11

Ulpianus 70 ad ed.

Et omnibus personis dabitur, quibus permittitur interdictum de aqua aestiva.

Dig. 43.23.0. De cloacis.

Dig. 43.23.1pr.

Ulpianus 71 ad ed.

Praetor ait: " quo minus illi cloacam quae ex aedibus eius in tuas pertinet, qua de agitur, purgare reficere liceat, vim fieri veto. damni infecti, quod operis vitio factum sit, caveri iubebo".

Dig. 43.23.1.1

Ulpianus 71 ad ed.

Sub hoc titulo duo interdicta praetor subiecit, unum prohibitorium, alterum restitutorium: et primum prohibitorium.

Dig. 43.23.1.2

Ulpianus 71 ad ed.

Curavit autem praetor per haec interdicta, ut cloacae et purgentur et reficiantur, quorum utrumque et ad salubritatem civitatium et ad tutelam pertinet: nam et caelum pestilens et ruinas minantur immunditiae cloacarum, si non reficiantur.

Dig. 43.23.1.3

Ulpianus 71 ad ed.

Hoc autem interdictum propositum est de cloacis privatis: publicae enim cloacae publicam curam merentur.

Dig. 43.23.1.4

Ulpianus 71 ad ed.

Cloaca autem est locus cavus, per quem colluvies quaedam fluat.

Dig. 43.23.1.5

Ulpianus 71 ad ed.

Hoc interdictum, quod primum proponitur, prohibitorium est, quo prohibetur vicinus vim facere, quo minus cloaca purgetur et reficiatur.

Dig. 43.23.1.6

Ulpianus 71 ad ed.

Cloacae appellatione et tubus et fistula continetur.

Dig. 43.23.1.7

Ulpianus 71 ad ed.

Quia autem cloacarum refectio et purgatio ad publicam utilitatem spectare videtur, idcirco placuit non esse in interdicto addendum " quod non vi non clam non precario ab illo usus", ut, etiamsi quis talem usum habuerit, tamen non prohibeatur volens cloacam reficere vel purgare.

Dig. 43.23.1.8

Ulpianus 71 ad ed.

Deinde ait praetor " quae ex aedibus eius in tuas pertinet". aedes hic accipere debes pro omni aedificio, hoc est ex aedificio eius in tuum aedificium. hoc amplius labeo putabat hoc interdicto locum esse et si area ab utralibet parte aedium sit et si forte, inquit, cloaca ducta sit ex urbano aedificio in proximum agrum.

Dig. 43.23.1.9

Ulpianus 71 ad ed.

Idem labeo etiam eum, qui privatam cloacam in publicam immittere velit, tuendum, ne ei vis fiat. sed et si quis velit talem cloacam facere, ut exitum habeat in publicam cloacam, non esse eum impediendum pomponius scribit.

Dig. 43.23.1.10

Ulpianus 71 ad ed.

Quod ait praetor " pertinet" hoc significat, quod ex aedibus eius in tuas pertinet, hoc est " derigitur, extenditur, pervenit".

Dig. 43.23.1.11

Ulpianus 71 ad ed.

Et tam ad proximum vicinum hoc interdictum pertinet quam adversus ulteriores, per quorum aedes cloaca currit.

Dig. 43.23.1.12

Ulpianus 71 ad ed.

Unde fabius mela scribit competere hoc interdictum, ut in vicini aedes veniat et rescindat pavimenta purgandae cloacae gratia. verendum tamen esse pomponius scribit, ne eo casu damni infecti stipulatio committatur. sed haec stipulatio non committitur, si paratus sit restaurare id, quod ex necessitate reficiendae cloacae causa resciderat.

Dig. 43.23.1.13

Ulpianus 71 ad ed.

Si quis purganti mihi cloacam vel reficienti opus novum nuntiaverit, rectissime dicetur contempta nuntiatione me posse reficere id quod institueram.

Dig. 43.23.1.14

Ulpianus 71 ad ed.

Sed et damni infecti cautionem pollicetur, si quid operis vitio factum est: nam sicuti reficere cloacas et purgare permittendum fuit, ita dicendum, ne damnum aedibus alienis detur.

Dig. 43.23.1.15

Ulpianus 71 ad ed.

Deinde ait praetor: " quod in cloaca publica factum sive ea immissum habes, quo usus eius deterior sit fiat, restituas. item ne quid fiat immittaturve, interdicam".

Dig. 43.23.1.16

Ulpianus 71 ad ed.

Hoc interdictum ad publicas cloacas pertinet, ne quid ad cloacam immittas neve facias, quo usus deterior sit neve fiat.

Dig. 43.23.2

Venonius 1 interd.

Quamquam de reficienda cloaca, non etiam de nova facienda hoc interdicto comprehendatur, tamen aeque interdicendum labeo ait, ne facienti cloacam vis fiat, quia eadem utilitas sit: praetorem enim sic interdixisse, ne vis fieret, quo minus cloacam in publico facere liceret: idque ofilio et trebatio placuisse. ipse dicendum ait, ut ne factam cloacam purgare et restituere permittendum sit per interdictum, novam vero facere is demum concedere debeat, cui viarum publicarum cura sit.

Dig. 43.24.0. Quod vi aut clam.

Dig. 43.24.1pr.

Ulpianus 71 ad ed.

Praetor ait: " quod vi aut clam factum est, qua de re agitur, id cum experiendi potestas est, restituas".

Dig. 43.24.1.1

Ulpianus 71 ad ed.

Hoc interdictum restitutorium est et per hoc occursum est calliditati eorum, qui vi aut clam quaedam moliuntur: iubentur enim ea restituere.

Dig. 43.24.1.2

Ulpianus 71 ad ed.

Et parvi refert, utrum ius habuerit faciendi, an non: sive enim ius habuit sive non, tamen tenetur interdicto, propter quod vi aut clam fecit: tueri enim ius suum debuit, non iniuriam comminisci.

Dig. 43.24.1.3

Ulpianus 71 ad ed.

Denique est quaesitum, an hoc interdicto utenti exceptionem possit obicere: " quod non iure meo receperim". et magis est, ne possit: nam adversus vim vel quod clam factum est nulla iusta exceptione se tueri potest.

Dig. 43.24.1.4

Ulpianus 71 ad ed.

Hoc interdictum ad ea sola opera pertinet, quaecumque in solo vi aut clam fiunt.

Dig. 43.24.1.5

Ulpianus 71 ad ed.

Quid sit vi factum vel clam factum, videamus. vi factum videri quintus mucius scripsit, si quis contra quam prohiberetur fecerit: et mihi videtur plena esse quinti mucii definitio.

Dig. 43.24.1.6

Ulpianus 71 ad ed.

Sed et si quis iactu vel minimi lapilli prohibitus facere perseveravit facere, hunc quoque vi fecisse videri pedius et pomponius scribunt, eoque iure utimur.

Dig. 43.24.1.7

Ulpianus 71 ad ed.

Sed et si contra testationem denuntiationemque fecerit, idem esse cascellius et trebatius putant: quod verum est.

Dig. 43.24.1.8

Ulpianus 71 ad ed.

Sed et aristo ait eum quoque vi facere, qui, cum sciret se prohibitum iri, per vim molitus est, ne prohiberi possit.

Dig. 43.24.1.9

Ulpianus 71 ad ed.

Item labeo dicit, si quem facientem prohibuero isque destiterit in praesentiarum rursusque postea facere coeperit, vi eum videri fecisse, nisi permissu meo facere coeperit vel qua alia iusta causa accedente.

Dig. 43.24.1.10

Ulpianus 71 ad ed.

Si quis tamen inbecillitate impeditur vel etiam, ne offenderet vel te vel eum, qui te magni faciebat, ideo non venerit ad prohibendum, non videbitur adversarius vi fecisse: et ita labeo scribit.

Dig. 43.24.1.11

Ulpianus 71 ad ed.

Idem ait et si te volentem ad prohibendum venire deterruerit aliquis (armis forte) sine ullo dolo malo meo ac propter hoc non veneris, non videri me vim fecisse,

Dig. 43.24.2

Venonius 2 interd.

Ne in aliena potestate sit condicionem meam nihil delinquentis deteriorem facere.

Dig. 43.24.3pr.

Ulpianus 71 ad ed.

Prohibere autem non utique per semet ipsum necesse est, sed et si quis per servum suum vel procuratorem prohibuerit, recte videtur prohibuisse. idem etiam si mercennarius meus prohibuerit. nec quem moveat, quod per liberam personam actio adquiri non solet: nam prohibitio haec demonstrat vi te facere, quid mirum, cum et si clam tu me feceris, habeam actionem? ergo facto magis tuo delinquentis quam alieno adquiritur mihi actio.

Dig. 43.24.3.1

Ulpianus 71 ad ed.

Illud sciendum est non omnibus momentis vim esse faciendam, sed semel inter initia facta perseverat.

Dig. 43.24.3.2

Ulpianus 71 ad ed.

Sed si permiserit, adversus eum, qui utatur interdicto, exceptio erit necessaria.

Dig. 43.24.3.3

Ulpianus 71 ad ed.

Non tantum autem si ego permisero, sed et si procurator meus vel tutor qui tutelam administrat vel curator pupilli furiosi sive adulescentis, dicendum erit exceptioni locum fore.

Dig. 43.24.3.4

Ulpianus 71 ad ed.

Plane si praeses vel curator rei publicae permiserit in publico facere, nerva scribit exceptionem locum non habere, quia etsi ei locorum, inquit, publicorum procuratio data est, concessio tamen data non est. hoc ita verum est, si non lex municipalis curatori rei publicae amplius concedat. sed et si a principe vel ab eo, cui princeps hoc ius concedendi dederit idem erit probandum.

Dig. 43.24.3.5

Ulpianus 71 ad ed.

Si quis paratus sit se iudicio defendere adversus eos, qui interdicendum putant, ne opus fiat: an videatur desinere vi facere? et magis est, ut desinat, si modo satis offerat et defendere paratus est, si quis agat: et ita sabinus scribit.

Dig. 43.24.3.6

Ulpianus 71 ad ed.

Sed et si quis damni infecti paratus sit cavere, cum propter hoc tantum esset prohibitus, vel quia non defendebat vel damni infecti non repromittebat, consequens est dicere desinere eum vi facere.

Dig. 43.24.3.7

Ulpianus 71 ad ed.

Clam facere videri cassius scribit eum, qui celavit adversarium neque ei denuntiavit, si modo timuit eius controversiam aut debuit timere.

Dig. 43.24.3.8

Ulpianus 71 ad ed.

Idem aristo putat eum quoque clam facere, qui celandi animo habet eum, quem prohibiturum se intellexerit et id existimat aut existimare debet se prohibitum iri.

Dig. 43.24.4

Venonius 2 interd.

Servius etiam eum clam facere, qui existimare debeat sibi controversiam futuram, quia non opinionem cuius et resupinam existimationem esse oporteat, ne melioris condicionis sint stulti quam periti.

Dig. 43.24.5pr.

Ulpianus 70 ad ed.

Aut qui aliter fecit, quam denuntiavit: vel qui decepto facit eo, ad quem pertinuit non facere: vel consulto tum denuntiat adversario, cum eum scit non posse prohibere: vel tam sero pronuntiat, ut venire prohibiturus, prius quam fiat, non possit. et haec ita labeonem probare aristo ait.

Dig. 43.24.5.1

Ulpianus 70 ad ed.

Si quis se denuntiaverit opus facturum, non semper non videtur clam fecisse, si post denuntiationem fecerit: debebit enim (et ita labeo) et diem et horam denuntiatione complecti et ubi et quod opus futurum sit: neque perfusorie aut obscure dicere aut denuntiare: neque tam artare adversarium, ut intra diem occurrere ad prohibendum non possit.

Dig. 43.24.5.2

Ulpianus 70 ad ed.

Et si forte non sit, cui denuntietur, neque dolo malo factum sit ne sit, amicis denique aut procuratori aut ad domum denuntiandum est.

Dig. 43.24.5.3

Ulpianus 70 ad ed.

Sed et servius recte ait sufficere feminae viro notum facere opus se facturum: vel denique sciente eo facere: quamquam etiam illud sufficiat celandi animum non habere.

Dig. 43.24.5.4

Ulpianus 70 ad ed.

Item ait, si quis in publico municipii velit facere, sufficere ei, si curatori rei publicae denuntiet.

Dig. 43.24.5.5

Ulpianus 70 ad ed.

Si quis, dum putat locum tuum esse, qui est meus, celandi tui, non mei causa fecerit, mihi interdictum competere.

Dig. 43.24.5.6

Ulpianus 70 ad ed.

Idem dicit et si servi mei vel procuratoris celandi causa factum sit, mihi interdictum competere.

Dig. 43.24.5.7

Ulpianus 70 ad ed.

Si quis, cum non denuntiasset opus se facturum eique denuntiatum esset ne faceret, fecerit, utilius puto probandum vi eum fecisse.

Dig. 43.24.5.8

Ulpianus 70 ad ed.

Haec verba " quod vi aut clam factum est" ait mucius ita esse " quod tu aut tuorum quis aut tuo iussu factum est".

Dig. 43.24.5.9

Ulpianus 70 ad ed.

Labeo autem ait plures personas contineri his verbis. nam ecce primum heredes eorum, quos enumerat mucius, contineri putat.

Dig. 43.24.5.10

Ulpianus 70 ad ed.

Idem ait et adversus procuratorem tutorem curatorem municipumve syndicum alieno nomine interdici posse.

Dig. 43.24.5.11

Ulpianus 70 ad ed.

Si quid servus meus fecit, non ob id mecum actio est, sed si id meo nomine aut suo fecit: nam si tuum servum mercennarium habuero, quidquid ab eo factum fuerit meo nomine, ob id non tecum, sed mecum, cuius iussu aut nomine id opus a servo tuo factum fuerit, agendum erit hoc interdicto.

Dig. 43.24.5.12

Ulpianus 70 ad ed.

Similiter quod iussu cuius factum erit, ob id non cum eo, sed cuius nomine iusserit, haec actio est. nam si procurator tutor curator duumvir municipii, quod eius nomine ageret, cuius negotium procuraret, fieri iusserit, ob id agendum erit cum eo, cuius nomine factum quid erit, non cum eo, qui ita iusserit. et si tibi mandavero, ut opus fieri iuberes et in ea re mihi parueris, mecum, inquit, non tecum erit actio.

Dig. 43.24.5.13

Ulpianus 70 ad ed.

Et cum interdictum sic sit scriptum " quod vi aut clam factum est", non ita " quod vi aut clam fecisti", latius porrigi quam ad has personas, quas supra numeravimus, labeo putat.

Dig. 43.24.5.14

Ulpianus 70 ad ed.

Et hoc iure utimur, ut, sive ego fecissem dive fieri iussi, interdicto quod vi aut clam tenear.

Dig. 43.24.6

Paulus 67 ad ed.

Si ego tibi mandavero opus novum facere, tu alii, non potest videri meo iussu factum: teneberis ergo tu et ille: an et ego tenear, videamus. et magis est et me, qui initium rei praestiterim, teneri: sed uno ex his satisfaciente ceteri liberantur.

Dig. 43.24.7pr.

Ulpianus 71 ad ed.

Si alius fecerit me invito, tenebor ad hoc, ut patientiam praestem.

Dig. 43.24.7.1

Ulpianus 71 ad ed.

Neratius quoque scribit eum, cuius servus vi aut clam fecit, aut sua impensa ex interdicto opus restituere debere aut patientiam restituendi praestare et servum noxae dedere: plane si mortuo alienatove servo interdiceretur, patientiam dumtaxat praestare debere ait, ita ut et emptor eo interdicto possit conveniri, ut impensam praestet aut noxam det: dominoque operis sua impensa restituente aut damnato, quia non restitueret, emptorem liberari. eadem et si contra dominus servi vel opus restituisset vel litis aestimatione damnatus esset: quod si tantum noxae dedisset, adversus dominum operis utiliter interdici.

Dig. 43.24.7.2

Ulpianus 71 ad ed.

Ait iulianus: qui ante remissionem nuntiationis, contra quam prohibitus fuerit, opus fecerit, duobus interdictis tenebitur, uno, quod ex operis novi nuntiatione competit, altero quod vi aut clam. remissione autem facta intellegendus non erit vi aut clam facere, quamvis prohibeatur: licere enim debet aedificare ei, qui satisdederit, cum possessor hoc ipso constituatur: clamque facere nec ante remissionem nec postea existimandus est, cum is, qui opus novum nuntiat, non possit videri celatus et praeoccupatus, antequam controversiam faceret.

Dig. 43.24.7.3

Ulpianus 71 ad ed.

Bellissime apud iulianum quaeritur, an haec exceptio noceat in hoc interdicto " quod non tu vi aut clam feceris?" ut puta utor adversus te interdicto quod vi aut clam, an possis obicere mihi eandem exceptionem: " quod non tu vi aut clam fecisti?" et ait iulianus aequissimum esse hanc exceptionem dare: nam si tu, inquit, aedificaveris vi aut clam, ego idem demolitus fuero vi aut clam et utaris adversus me interdicto, hanc exceptionem profuturam. quod non aliter procedere debet, nisi ex magna et satis necessaria causa: alioquin haec omnia officio iudicis celebrari oportet.

Dig. 43.24.7.4

Ulpianus 71 ad ed.

Est et alia exceptio, de qua celsus dubitat, an sit obicienda: ut puta si incendii arcendi causa vicini aedes intercidi et quod vi aut clam mecum agatur aut damni iniuria. gallus enim dubitat, an excipi oporteret: " quod incendii defendendi causa factum non sit?" servius autem ait, si id magistratus fecisset, dandam esse, privato non esse idem concedendum: si tamen quid vi aut clam factum sit neque ignis usque eo pervenisset, simpli litem aestimandam: si pervenisset, absolvi eum oportere. idem ait esse, si damni iniuria actum foret, quoniam nullam iniuriam aut damnum dare videtur aeque perituris aedibus. quod si nullo incendio id feceris, deinde postea incendium ortum fuerit, non idem erit dicendum, quia non ex post facto, sed ex praesenti statu, damnum factum sit nec ne, aestimari oportere labeo ait.

Dig. 43.24.7.5

Ulpianus 71 ad ed.

Notavimus supra, quod, quamvis verba interdicti late pateant, tamen ad ea sola opera pertinere interdictum placere, quaecumque fiant in solo. eum enim, qui fructum tangit, non teneri interdicto quod vi aut clam: nullum enim opus in solo facit. at qui arbores succidit, utique tenebitur, et qui harundinem et qui salictum: terrae enim et quodammodo solo ipsi corrumpendo manus infert. idem et in vineis succisis. ceterum qui fructum aufert, furti debet conveniri. itaque si quid operis in solo fiat, interdictum locum habet. in solo fieri accipimus et si quid circa arbores fiat, non si quid circa fructum arborum.

Dig. 43.24.7.6

Ulpianus 71 ad ed.

Si quis acervum stercoris circa agrum pinguem disiecerit, cum eo " quod vi aut clam factum est" agi potest: et hoc verum est, quia solo vitium adhibitum sit.

Dig. 43.24.7.7

Ulpianus 71 ad ed.

Plane si quid agri colendi causa factum sit, interdictum quod vi aut clam locum non habet, si melior causa facta sit agri, quamvis prohibitus quis vi vel clam fecerit.

Dig. 43.24.7.8

Ulpianus 71 ad ed.

Praeterea si fossam feceris in silva publica et bos meus in eam inciderit, agere possum hoc interdicto, quia in publico factum est.

Dig. 43.24.7.9

Ulpianus 71 ad ed.

Si quis aedificium demolitus fuerit, quamvis non usque ad solum, quin interdicto teneatur, dubitari desiit.

Dig. 43.24.7.10

Ulpianus 71 ad ed.

Proinde et si tegulas de aedificio sustulerit, magis est, ut interdicto teneatur,

Dig. 43.24.8

Venonius 2 interd.

Nam origo huius rei a solo proficiscitur. ceterum per se tegulae non possidentur, sed cum universitate aedificii, nec ad rem pertinet, adfixae sunt an tantum positae.

Dig. 43.24.9pr.

Ulpianus 71 ad ed.

Nam et si ramos quis de arboribus abstulerit, adhuc interdictum hoc admittimus. haec ita, si de aedificio tegulas sustulerit: ceterum si non de aedificio, sed seorsum positas, cessat hoc interdictum.

Dig. 43.24.9.1

Ulpianus 71 ad ed.

Si tamen sera vel clavis vel cancellus vel specularium sit ablatum, quod vi aut clam agi non poterit.

Dig. 43.24.9.2

Ulpianus 71 ad ed.

Sed si quis aliquid aedibus adfixum evellerit, statuam forte vel quid aliud, quod vi aut clam interdicto tenebitur.

Dig. 43.24.9.3

Ulpianus 71 ad ed.

Si quis clam aut vi agrum intraverit vel fossam fecerit, hoc interdicto tenebitur. et si acervum succenderit vel disperserit sic, ut non ad usum agri convertat, interdicto locus non erit,

Dig. 43.24.10

Venonius 2 interd.

Quia acervus solo non cohaeret, sed terra sustinetur, aedificia autem solo cohaerent.

Dig. 43.24.11pr.

Ulpianus 71 ad ed.

Is qui in puteum vicini aliquid effuderit, ut hoc facto aquam corrumperet, ait labeo interdicto quod vi aut clam eum teneri: portio enim agri videtur aqua viva, quemadmodum si quid operis in aqua fecisset.

Dig. 43.24.11.1

Ulpianus 71 ad ed.

Quaesitum est, si statuam in municipio ex loco publico quis sustulerit vel vi vel clam, an hoc interdicto teneatur. et exstat cassii sententia eum, cuius statua in loco publico in municipio posita sit, quod vi aut clam agere posse, quia interfuerit eius eam non tolli: municipes autem etiam furti acturos, quia res eorum sit quasi publicata: si tamen deciderit, ipsi eam detrahunt: et haec sententia vera est.

Dig. 43.24.11.2

Ulpianus 71 ad ed.

Si quis de monumento statuam sustulerit, an ei, ad quem ius sepulchri pertineret, agere permittitur? et placet et in his interdicto locum esse. et sane dicendum est, si qua sepulchri ornandi causa adposita sint, sepulchri esse videri. idem est et si ostium avellat vel effringat.

Dig. 43.24.11.3

Ulpianus 71 ad ed.

Si quis in vineas meas venerit et inde ridicas abstulerit, hoc interdicto tenebitur.

Dig. 43.24.11.4

Ulpianus 71 ad ed.

Quod ait praetor: " quod vi aut clam factum est", ad quod tempus referatur, videamus, utrum ad praeteritum an ad praesens. quae species apud iulianum exposita est: ait enim in hoc interdicto praesentis temporis significationem accipi debere. si tamen, inquit, ex opere damnum datum fuerit aut dominus aut is, cuius fundo nocitum erit, sua impensa id sustulerit, utilius probari, quod iulianus temptat, ut et damnum sarciatur et impendia restituantur.

Dig. 43.24.11.5

Ulpianus 71 ad ed.

Interdictum complectitur id, quodcumque aut vi aut clam factum est. sed interdum evenit, ut quid et vi et clam fiat, partim et partim, in eodem opere. ut puta cum prohiberem, fundamenta posuisti: postea cum convenissem, ne reliquum opus fieret, absente et ignorante me reliquum opus perfecisti: vel contra fundamenta clam iecisti, deinde cetera prohibente me aedificasti. hoc iure utimur, ut et si vi et clam factum sit, interdictum hoc sufficiat.

Dig. 43.24.11.6

Ulpianus 71 ad ed.

Si tutoris iussu aut curatoris factum sit, cum placeat, quod cassius probat, ex dolo tutoris vel curatoris pupillum vel furiosum non teneri, eveniet, ut in ipsum tutorem curatoremque aut utilis actio competat aut etiam utile interdictum. certe ad patientiam tollendi operis utique tenebuntur pupillus et furiosus et ad noxam.

Dig. 43.24.11.7

Ulpianus 71 ad ed.

An ignoscitur servo, qui obtemperavit tutori aut curatori? nam ad quaedam, quae non habent atrocitatem facinoris vel sceleris, ignoscitur servis, si vel dominis vel his, qui vice dominorum sunt, obtemperaverint. quod et in hoc casu admittendum est.

Dig. 43.24.11.8

Ulpianus 71 ad ed.

Si postea, quam vi aut clam factum est, venierit fundus, an venditor nihilo minus hoc interdicto experiri possit, videamus. et extat sententia existimantium nihilo minus competere ei interdictum nec finiri venditione: sed nec ex empto actione quicquam ei praestandum emptori ex eo opere, quod ante venditionem factum est: satis enim esse, quod utique propter hoc opus viliori praedium distraxerit. certe etsi non viliori vendidit, idem erit probandum.

Dig. 43.24.11.9

Ulpianus 71 ad ed.

Plane si post venditionem fundi opus factum est, etsi ipse experiatur venditor, quia nondum traditio facta est, tamen ex empto actione emptori tenebitur: omne enim et commodum et incommodum ad emptorem pertinere debet.

Dig. 43.24.11.10

Ulpianus 71 ad ed.

Si fundus in diem addictus sit, cui competat interdictum? et ait iulianus interdictum quod vi aut clam ei competere, cuius interfuit opus non fieri: fundo enim in diem addicto et commodum et incommodum omne ad emptorem, inquit, pertinet, antequam venditio transferatur, et ideo, si quid tunc vi aut clam factum est, quamvis melior condicio allata fuerit, ipse utile interdictum habebit: sed eam actionem sicut fructus medio tempore perceptos venditi iudicio praestare cogendum ait.

Dig. 43.24.11.11

Ulpianus 71 ad ed.

Aristo autem scribit non possessori esse denuntiandum: nam si quis, inquit, fundum mihi vendiderit et necdum tradiderit et vicinus, cum opus facere vellet et sciret me emisse et in fundo morari, mihi denuntiaverit, esse eum tutum futurum, quod ad suspicionem clam facti operis pertineret: quod sane verum est.

Dig. 43.24.11.12

Ulpianus 71 ad ed.

Ego, si post in diem addictionem factam fundus precario traditus sit, putem emptorem interdictum quod vi aut clam habere. si vero aut nondum traditio facta est aut etiam facta est precarii rogatio, non puto dubitandum, quin venditor interdictum habeat: ei enim competere debet, etsi res ipsius periculo non sit, nec multum facit, quod res emptoris periculo est: nam et statim post venditionem contractam periculum ad emptorem spectat et tamen antequam ulla traditio fiat, nemo dixit interdictum ei competere. si tamen precario sit in possessione, videamus, ne, quia interest ipsius, qualiter qualiter possidet, iam interdicto uti possit. ergo et si conduxit, multo magis: nam et colonum posse interdicto experiri in dubium non venit. plane si postea, quam melior condicio allata est, aliquid operis vi aut clam factum sit, nec iulianus dubitaret interdictum venditori competere: nam inter cassium et iulianum de illo, quod medio tempore accidit, quaestio est, non de eo opere, quod postea contigit.

Dig. 43.24.11.13

Ulpianus 71 ad ed.

Si ita praedium venierit, ut, si displicuisset, inemptum esset, facilius admittimus interdictum emptorem habere, si modo est in possessione: et si rescissio emptionis in alterius arbitrium conferatur, idem erit probandum: idemque et si ita venisset, ut, si aliquid evenisset, inemptum esset praedium: et si forte commissoria venierit, idem dicendum est.

Dig. 43.24.11.14

Ulpianus 71 ad ed.

Idem iulianus scribit interdictum hoc non solum domino praedii, sed etiam his, quorum interest opus factum non esse, competere.

Dig. 43.24.12

Venonius 2 interd.

Quamquam autem colonus et fructuarius fructuum nomine in hoc interdictum admittantur, tamen et domino id competet, si quid praeterea eius intersit.

Dig. 43.24.13pr.

Ulpianus 71 ad ed.

Denique si arbores in fundo, cuius usus fructus ad titium pertinet, ab extraneo vel a proprietario succisae fuerint, titius et lege aquilia et interdicto quod vi aut clam cum utroque eorum recte experietur.

Dig. 43.24.13.1

Ulpianus 71 ad ed.

Labeo scribit, si filio prohibente opus factum sit, et te habere interdictum, ac si te prohibente opus factum est, et filium tuum nihilo minus.

Dig. 43.24.13.2

Ulpianus 71 ad ed.

Idem ait adversus filium familias in re peculiari neminem clam videri fecisse: namque, si scit eum filium familias esse, non videtur eius celandi gratia fecisse, quem certus est nullam secum actionem habere.

Dig. 43.24.13.3

Ulpianus 71 ad ed.

Si ex sociis communis fundi unus arbores succiderit, socius cum eo hoc interdicto experiri potest, cum ei competat, cuius interest.

Dig. 43.24.13.4

Ulpianus 71 ad ed.

Unde apud servium amplius relatum est, si mihi concesseris, ut ex fundo tuo arbores caedam, deinde eas alius vi aut clam ceciderit, mihi hoc interdictum competere, quia ego sim cuius interest: quod facilius erit admittendum, si a te emi vel ex aliquo contractu hoc consecutus sim, ut mihi caedere liceat.

Dig. 43.24.13.5

Ulpianus 71 ad ed.

Quaesitum est, si, cum praedium interim nullius esset, aliquid vi aut clam factum sit, an postea dominio ad aliquem devoluto interdicto locus sit: ut puta hereditas iacebat, postea adiit hereditatem titius, an ei interdictum competat? et est apud vivianum saepissime relatum heredi competere hoc interdictum eius, quod ante aditam hereditatem factum sit, nec referre labeo ait, quod non scierit, qui heredes futuri essent: hoc enim posse quem causari etiam post aditam hereditatem. ne illud quidem obstare labeo ait, quod eo tempore nemo dominus fuerit: nam et sepulchri nemo dominus fuit et tamen, si quid in eo fiat, experiri possum quod vi aut clam. accedit his, quod hereditas dominae locum optinet. et recte dicetur heredi quoque competere et ceteris successoribus, sive ante, quam successerit, sive postea aliquid sit vi aut clam admissum.

Dig. 43.24.13.6

Ulpianus 71 ad ed.

Si colonus meus opus fecerit, si quidem me volente vel ratum habente, perinde est atque si procurator meus fecisset, in quo placet, sive ex voluntate mea fecerit, teneri me, sive ratum habuero, quod procurator fecit.

Dig. 43.24.13.7

Ulpianus 71 ad ed.

Iulianus ait: si colonus arborem, de qua controversia erat, succiderat vel quid aliud opus fecerit, si quidem iussu domini id factum sit, ambo tenebuntur, non ut patientiam praestent, sed ut impensam quoque ad restituendum praebeant:

si autem dominus non iusserit, colonus quidem tenebitur, ut patientiam et impensam praestet, dominus vero nihil amplius quam patientiam praestare cogendus erit.

Dig. 43.24.14

Iulianus 68 Dig.

Nam et si servus meus ignorante me opus fecerit eumque vendidero vel manumisero, mecum in hoc solum agi poterit, ut patiar opus tolli, cum emptore autem servi, ut aut noxae dedat aut impensam, quae in restitutione facta fuerit, praestet: sed et cum ipso manumisso recte agi poterit.

Dig. 43.24.15pr.

Ulpianus 71 ad ed.

Semper adversus possessorem operis hoc interdictum competit, idcircoque, si quilibet inscio vel etiam invito me opus in fundo meo fecerit, interdicto locus erit.

Dig. 43.24.15.1

Ulpianus 71 ad ed.

Is, cui fundum pastinandum locaveras, lapides sustulit et in vicini proiecit praedium. ait labeo te vi aut clam non teneri, nisi iussu tuo id factum sit: ego puto conductorem teneri, locatorem autem non alias, nisi aut patientiam praestare possit aut aliquam actionem habeat, quam praestet: ceterum teneri non oportere.

Dig. 43.24.15.2

Ulpianus 71 ad ed.

Si in sepulchro alieno terra congesta fuerit iussu meo, agendum esse quod vi aut clam mecum labeo scribit. et si communi consilio plurium id factum sit, licere vel cum uno vel cum singulis experiri: opus enim, quod a pluribus pro indiviso factum est, singulos in solidum obligare. si tamen proprio quis eorum consilio hoc fecerit, cum omnibus esse agendum, scilicet in solidum: itaque alter conventus alterum non liberabit, quin immo perceptio ab altero: superiore etenim casu alterius conventio alterum liberat. praeterea sepulchri quoque violati agi potest.

Dig. 43.24.15.3

Ulpianus 71 ad ed.

Hoc interdictum in heredem ceterosque successores datur in id quod ad eos pervenit.

Dig. 43.24.15.4

Ulpianus 71 ad ed.

Et post annum non competit. annus autem cedere incipit, ex quo id opus factum perfectum est aut fieri desiit, licet perfectum non sit: alioquin si a principio operis coepti annum quis numeret, necesse est cum his, qui opus tardissime facerent, saepius agi.

Dig. 43.24.15.5

Ulpianus 71 ad ed.

Sed si is sit locus, in quo opus factum est, qui facile non adiretur, ut puta in sepulchro vi aut clam factum est vel in abdito alio loco, sed et si sub terra fieret opus vel sub aqua, vel cloaca aliquid factum sit, etiam post annum causa cognita competit interdictum de eo quod factum est: nam causa cognita annuam exceptionem remittendam, hoc est magna et iusta causa ignorantiae interveniente.

Dig. 43.24.15.6

Ulpianus 71 ad ed.

Si quis rei publicae causa afuisset, deinde reversus interdicto quod vi aut clam uti vellet, verius est non excludi anno eum, sed reversum annum habere. nam et si minor viginti quinque annis rei publicae causa abesse coepisset, deinde maior effectus sit, dum abest rei publicae causa, futurum, ut ex quo redit annus ei computetur, non ex quo implevit vicensimum quintum annum: et ita divus pius et deinceps omnes principes rescripserunt.

Dig. 43.24.15.7

Ulpianus 71 ad ed.

Hoc interdicto tanti lis aestimatur, quanti actoris interest id opus factum esse. officio autem iudicis ita oportere fieri restitutionem iudicandum est, ut in omni causa eadem condicio sit actoris, quae futura esset, si id opus, de quo actum est, neque vi neque clam factum esset.

Dig. 43.24.15.8

Ulpianus 71 ad ed.

Ergo nonnumquam etiam dominii ratio habenda est, ut puta si propter hoc opus, quod factum est, servitutes amittantur aut usus fructus intereat. quod non tantum tunc eveniet, cum quis opus aedificaverit, verum etiam si diruisse opus proponatur et deteriorem condicionem fecisse vel servitutium vel usus fructus vel ipsius proprietatis.

Dig. 43.24.15.9

Ulpianus 71 ad ed.

Sed quod interfuit, aut per iusiurandum, quod in litem actor iuraverit, aut, si iurare non possit, iudicis officio aestimandum est.

Dig. 43.24.15.10

Ulpianus 71 ad ed.

Eum autem, qui dolo malo fecerit, quo minus possit restituere, perinde habendum, ac si posset.

Dig. 43.24.15.11

Ulpianus 71 ad ed.

Culpam quoque in hoc interdicto venire erit probandum: quae tamen arbitrio iudicis aestimanda erit.

Dig. 43.24.15.12

Ulpianus 71 ad ed.

Quia autem hoc interdictum id quod interest continet, si quis alia actione fuerit consecutus id quod interfuit opus non esse factum, consequens erit dicere ex interdicto nihil eum consequi oportere.

Dig. 43.24.16pr.

Paulus 67 ad ed.

Competit hoc interdictum etiam his qui non possident, si modo eorum interest.

Dig. 43.24.16.1

Paulus 67 ad ed.

Si quis vi aut clam arbores non frugiferas ciciderit, veluti cupressos, domino dumtaxat competit interdictum. sed si amoenitas quaedam ex huiusmodi arboribus praestetur, potest dici et fructuarii interesse propter voluptatem et gestationem et esse huic interdicto locum.

Dig. 43.24.16.2

Paulus 67 ad ed.

In summa qui vi aut clam fecit, si possidet, patientiam et impensam tollendi operis: qui fecit nec possidet, impensam: qui possidet nec fecit, patientiam tantum debet.

Dig. 43.24.17

Paulus 69 ad ed.

Interdictum quod vi aut clam per quemvis domino adquiritur, licet per inquilinum.

Dig. 43.24.18pr.

Celsus 25 Dig.

Si inmaturam silvam caeduam cecidit quis, interdicto quod vi aut clam tenetur: si maturam similiter caeduam neque damno dominus adfectus est, nihil praestabit.

Dig. 43.24.18.1

Celsus 25 Dig.

Non absurde responsum est: si magistratum rogasses, ut adversarium tuum adesse ad iudicium iuberet, ne opus novum tibi nuntiaret, clam videris opus fecisse, quod interim feceris.

Dig. 43.24.19

Ulpianus 57 ad ed.

Interdictum quod vi aut clam competere filio familias colono arboribus succisis sabinus ait.

Dig. 43.24.20pr.

Paulus 13 ad sab.

Vi facit tam is qui prohibitus fecit quam is qui, quo minus prohibeatur, consecutus est periculo puta adversario denuntiato aut ianua puta praeclusa.

Dig. 43.24.20.1

Paulus 13 ad sab.

Prohibitus autem intellegitur quolibet prohibentis actu, id est vel dicentis se prohibere vel manum opponentis lapillumve iactantis prohibendi gratia.

Dig. 43.24.20.2

Paulus 13 ad sab.

Tamdiu autem vi facit prohibitus, quamdiu res in eodem statu permanebit: nam si postea convenerit cum adversario, desinit vi facere.

Dig. 43.24.20.3

Paulus 13 ad sab.

Item si prohibiti heres vel is, qui ab eo emerit, ignorans causam praecedentem fecerit, dicendum esse pomponius ait non incidere eum in interdictum.

Dig. 43.24.20.4

Paulus 13 ad sab.

Quod in nave fit vel in alia qualibet re vel amplissima, mobili tamen, non continetur hoc interdicto.

Dig. 43.24.20.5

Paulus 13 ad sab.

Sive in privato sive in publico opus fiat sive in loco sacro sive in religioso, interdictum competit.

Dig. 43.24.21pr.

Pomponius 29 ad sab.

Si opus, quod quis iussus est a iudice, qui ex hoc interdicto sumptus esset, restituere, alius quis vi aut clam sustulisset, nihilo minus idem ille omnimodo iubetur opus restituere.

Dig. 43.24.21.1

Pomponius 29 ad sab.

Si iussero servum meum opus facere, cum, quantum ad me pertinet, in clandestini suspicionem non veniret, servus autem meus putaverit, si rescisset adversarius, prohibiturum eum, an tenear? et non puto, cum mea persona sit intuenda.

Dig. 43.24.21.2

Pomponius 29 ad sab.

In opere novo tam soli quam caeli mensura facienda est.

Dig. 43.24.21.3

Pomponius 29 ad sab.

Si quis propter opus factum ius aliquod praedii amisit, id restitui ex hoc interdicto debet.

Dig. 43.24.22pr.

Venonius 2 interd.

Si vitem meam ex fundo meo in fundum tuum deprehenderis eaque in fundo tuo coaluerit, utile est interdictum quod vi aut clam intra annum: sed si annus praeterierit, nullam remanere actionem radices, quae in fundo meo sint, tuas fieri, quia his accessiones sint.

Dig. 43.24.22.1

Venonius 2 interd.

Si quis vi aut clam araverit, puto eum teneri hoc interdicto perinde atque si fossam fecisset: non enim ex qualitate operis huic interdicto locus est, sed ex opere facto, quod cohaeret solo.

Dig. 43.24.22.2

Venonius 2 interd.

Si ad ianuam meam tabulas fixeris et ego eas, priusquam tibi denuntiarem, refixero, deinde invicem interdicto quod vi aut clam egerimus: nisi remittas mihi, ut absolvar, condemnandum te, quasi rem non restituas, quanti mea intersit, aut certe exceptionem mihi profuturam " si non vi nec clam nec precario feceris".

Dig. 43.24.22.3

Venonius 2 interd.

Si stercus per fundum meum tuleris, cum id te facere vetuissem, quamquam nihil damni feceris mihi nec fundi mei mutaveris, tamen teneri te quod vi aut clam trebatius ait. labeo contra, ne etiam is, qui dumtaxat iter per fundum meum fecerit aut avem egerit venatusve fuerit sine ullo opere, hoc interdicto teneatur.

Dig. 43.24.22.4

Venonius 2 interd.

Si quis proiectum aut stillicidium in sepulchrum immiserit, etiamsi ipsum monumentum non tangeret, recte cum eo agi, quod in sepulchro vi aut clam factum sit, quia sepulchri sit non solum is locus, qui recipiat humationem, sed omne etiam supra id caelum: eoque nomine etiam sepulchri violati agi posse.

Dig. 43.24.22.5

Venonius 2 interd.

Si is, qui denuntiaverit se opus facturum, confestim opus fecerit, clam fecisse non intellegitur: nam si post tempus, videbitur clam fecisse.

Dig. 43.25.0. De remissionibus.

Dig. 43.25.1pr.

Ulpianus 71 ad ed.

Ait praetor: " quod ius sit illi prohibere, ne se invito fiat, in eo nuntiatio teneat: ceterum nuntiationem missam facio".

Dig. 43.25.1.1

Ulpianus 71 ad ed.

Sub hoc titulo remissiones proponuntur.

Dig. 43.25.1.2

Ulpianus 71 ad ed.

Et verba praetoris ostendunt remissionem ibi demum factam, ubi nuntiatio non tenet, et nuntiationem ibi demum voluisse praetorem tenere, ubi ius est nuntianti prohibere, ne se invito fiat. ceterum sive satisdatio interveniat sive non, remissio facta hoc tantum remittit, in quo non tenuit nuntiatio. plane si satisdatum est, exinde remissio facta est, non est necessaria remissio.

Dig. 43.25.1.3

Ulpianus 71 ad ed.

Ius habet opus novum nuntiandi, qui aut dominium aut servitutem habet.

Dig. 43.25.1.4

Ulpianus 71 ad ed.

Item iuliano placet fructuario vindicandarum servitutium ius esse: secundum quod opus novum nuntiare poterit vicino et remissio utilis erit. ipsi autem domino praedii si nuntiaverit, remissio inutilis erit: neque sicut adversus vicinum, ita adversus dominum agere potest ius ei non esse invito se altius aedificare. sed si hoc facto usus fructus deterior fiat, petere usum fructum debebit. idem iulianus dicit de ceteris, quibus aliqua servitus a vicino debetur.

Dig. 43.25.1.5

Ulpianus 71 ad ed.

Ei quoque, qui pignori fundum acceperit, scribit iulianus non esse iniquum detentionem servitutis dari.

Dig. 43.26.0. De precario.

Dig. 43.26.1pr.

Ulpianus 1 inst.

Precarium est, quod precibus petenti utendum conceditur tamdiu, quamdiu is qui concessit patitur.

Dig. 43.26.1.1

Ulpianus 1 inst.

Quod genus liberalitatis ex iure gentium descendit.

Dig. 43.26.1.2

Ulpianus 1 inst.

Et distat a donatione eo, quod qui donat, sic dat, ne recipiat, at qui precario concedit, sic dat quasi tunc recepturus, cum sibi libuerit precarium solvere.

Dig. 43.26.1.3

Ulpianus 1 inst.

Et est simile commodato: nam et qui commodat rem, sic commodat, ut non faciat rem accipientis, sed ut ei uti re commodata permittat.

Dig. 43.26.2pr.

Ulpianus 71 ad ed.

Ait praetor: " quod precario ab illo habes aut dolo malo fecisti, ut desineres habere, qua de re agitur, id illi restituas".

Dig. 43.26.2.1

Ulpianus 71 ad ed.

Hoc interdictum restitutorium est.

Dig. 43.26.2.2

Ulpianus 71 ad ed.

Et naturalem habet in se aequitatem, namque precarium revocare volenti competit: est enim natura aequum tamdiu te liberalitate mea uti, quamdiu ego velim, et ut possim revocare, cum mutavero voluntatem. itaque cum quid precario rogatum est, non solum hoc interdicto uti possumus, sed etiam praescriptis verbis actione, quae ex bona fide oritur.

Dig. 43.26.2.3

Ulpianus 71 ad ed.

Habere precario videtur, qui possessionem vel corporis vel iuris adeptus est ex hac solummodo causa, quod preces adhibuit et impetravit, ut sibi possidere aut uti liceat:

Dig. 43.26.3

Gaius 25 ad ed. provinc.

Veluti si me precario rogaveris, ut per fundum meum ire vel agere tibi liceat vel ut in tectum vel in aream aedium mearum stillicidium vel tignum in parietem immissum habeas.

Dig. 43.26.4pr.

Ulpianus 71 ad ed.

In rebus etiam mobilibus precarii rogatio constitit.

Dig. 43.26.4.1

Ulpianus 71 ad ed.

Meminisse autem nos oportet eum, qui precario habet, etiam possidere.

Dig. 43.26.4.2

Ulpianus 71 ad ed.

Tenetur hoc interdicto non utique ille, qui precario rogavit, sed qui precario habet: etenim fieri potest, ut quis non rogaverit, sed habeat precario. ut puta servus meus rogavit: mihi adquisiit precarium: vel quis alius, qui iuri meo subiectus est.

Dig. 43.26.4.3

Ulpianus 71 ad ed.

Item si rem meam precario rogavero, rogavi quidem precario, sed non habeo precario idcirco, quia receptum est rei suae precarium non esse.

Dig. 43.26.4.4

Ulpianus 71 ad ed.

Item qui precario ad tempus rogavit, finito tempore, etiamsi ad hoc temporis non rogavit, tamen precario possidere videtur: intellegitur enim dominus, cum patitur eum qui precario rogaverit possidere, rursus precario concedere.

Dig. 43.26.5

Pomponius 29 ad sab.

Sed si manente adhuc precario tu in ulterius tempus rogasti, prorogatur precarium: nam nec mutatur causa possessionis et non constituitur eo modo precarium, sed in longius tempus profertur. si vero praeterita die rogas, propius est, ut soluta iam causa precarii non redintegretur, sed nova constituatur.

Dig. 43.26.6pr.

Ulpianus 71 ad ed.

Certe si interim dominus furere coeperit vel decesserit, fieri non posse Marcellus ait, ut precarium redintegretur, et hoc verum est.

Dig. 43.26.6.1

Ulpianus 71 ad ed.

Si procurator meus me mandante vel ratum habente precario rogaverit, ego precario habere proprie dicor.

Dig. 43.26.6.2

Ulpianus 71 ad ed.

Is qui rogavit, ut precario in fundo moretur, non possidet, sed possessio apud eum qui concessit remanet: nam et fructuarius, inquit, et colonus et inquilinus sunt in praedio et tamen non possident.

Dig. 43.26.6.3

Ulpianus 71 ad ed.

Iulianus ait eum, qui vi alterum deiecit et ab eodem precario rogavit, desinere vi possidere et incipere precario, neque existimare sibi ipsum causam possessionis mutare, cum voluntate eius quem deiecit coeperit precario possidere: nam si ab eodem emisset, incipere etiam pro emptore posse dominium capere.

Dig. 43.26.6.4

Ulpianus 71 ad ed.

Quaesitum est, si quis rem suam pignori mihi dederit et precario rogaverit, an hoc interdictum locum habeat. quaestio in eo est, ut precarium consistere rei suae possit. mihi videtur verius precarium consistere in pignore, cum possessionis rogetur, non proprietatis, et est haec sententia etiam utilissima:

cottidie enim precario rogantur creditores ab his, qui pignori dederunt, et debet consistere precarium.

Dig. 43.26.7

Venonius 3 interd.

Sed et si eam rem, cuius possessionem per interdictum uti possidetis retinere possim, quamvis futurum esset, ut tenear de proprietate, precario tibi concesserim, teneberis hoc interdicto.

Dig. 43.26.8pr.

Ulpianus 71 ad ed.

Quaesitum est, si titius me rogaverit, ut re sempronii utatur, deinde ego sempronium rogavero, ut concederet, et ille, dum mihi vult praestitum, concesserit. titius a me habet precario et ego cum eo agam interdicto de precario: sempronius autem non aget cum eo, quia haec verba " ab illo precario habes" ostendunt ei demum competere interdictum, a quo quis precario rogavit, non cuius res est, an tamen sempronius mecum, quasi a me rogatus, interdictum habeat? et magis est, ne habeat, quia non habeo precario, cum non mihi, sed alii impetravi. mandati tamen actionem potest adversus me habere, quia me mandante dedit tibi: aut si quis dixerit non mandatu meo, sed magis mihi credentem hoc fecisse, dicendum est in factum dandam actionem et adversus me.

Dig. 43.26.8.1

Ulpianus 71 ad ed.

Quod a titio precario quis rogavit, id etiam ab herede eius precario habere videtur: et ita et sabinus et celsus scribunt eoque iure utimur. ergo et a ceteris successoribus habere quis precario videtur. idem et labeo probat et adicit, etiamsi ignoret quis heredem, tamen videri eum ab herede precario habere.

Dig. 43.26.8.2

Ulpianus 71 ad ed.

Illud tamen videamus quale sit, si a me precario rogaveris et ego eam rem alienavero, an precarium duret re ad alium translata. et magis est, ut, si ille non revocet, posse interdicere quasi ab illo precario habeas, non quasi a me: et si passus est aliquo tempore a se precario habere, recte interdicet, quasi a se precario habeas.

Dig. 43.26.8.3

Ulpianus 71 ad ed.

Eum quoque precario teneri voluit praetor, qui dolo fecit, ut habere desineret. illud adnotatur, quod culpam non praestat is qui precario rogavit, sed solum dolum praestat, quamquam is, qui commodatum suscepit, non tantum dolum, sed etiam culpam praestat. nec immerito dolum solum praestat is qui precario rogavit, cum totum ex liberalitate descendat eius qui precario concessit et satis sit, si dolus tantum praestetur. culpam tamen dolo proximam contineri quis merito dixerit.

Dig. 43.26.8.4

Ulpianus 71 ad ed.

Ex hoc interdicto restitui debet in pristinam causam: quod si non fuerit factum, condemnatio in tantum fiet, quanti interfuit actoris ei rem restitui ex eo tempore, ex quo interdictum editum est: ergo et fructus ex die interdicti editi praestabuntur.

Dig. 43.26.8.5

Ulpianus 71 ad ed.

Si servitute usus non fuit is qui precario rogavit ac per hoc amissa sit, videamus, an interdicto teneatur. ego arbitror non alias, quam si dolo fecerit.

Dig. 43.26.8.6

Ulpianus 71 ad ed.

Et generaliter erit dicendum in restitutionem venire dolum et culpam latam dumtaxat, cetera non venire. plane post interdictum editum oportebit et dolum et culpam et omnem causam venire: nam ubi moram quis fecit precario, omnem causam debebit constituere.

Dig. 43.26.8.7

Ulpianus 71 ad ed.

Interdictum hoc et post annum competere labeo scribit eoque iure utimur: cum enim nonnumquam in longum tempus precarium concedatur, absurdum est dicere interdictum locum non habere post annum.

Dig. 43.26.8.8

Ulpianus 71 ad ed.

Hoc interdicto heres eius qui precario rogavit tenetur quemadmodum ipse, ut, sive habet sive dolo fecit quo minus haberet vel ad se perveniret, teneatur: ex dolo autem defuncti hactenus, quatenus ad eum pervenit.

Dig. 43.26.9

Gaius 26 ad ed. provinc.

Precario possessio consisti potest vel inter praesentes vel inter absentes, veluti per epistulam vel per nuntium.

Dig. 43.26.10

Pomponius 5 ex plaut.

Quamvis ancillam quis precario rogaverit, id actum videtur, ut etiam quod ex ancilla natum esset in eadem causa haberetur.

Dig. 43.26.11

Celsus 7 Dig.

Si debitor rem pigneratam precario rogaverit, soluta pecunia precarium solvitur: quippe id actum est, ut usque eo precarium teneret.

Dig. 43.26.12pr.

Celsus 25 Dig.

Cum precario aliquid datur, si convenit, ut in kalendas iulias precario possideat, numquid exceptione adiuvandus est, ne ante ei possessio auferatur? sed nulla vis est huius conventionis, ut rem alienam domino invito possidere liceat.

Dig. 43.26.12.1

Celsus 25 Dig.

Precario rogatio et ad heredem eius qui concessit transit: ad heredem autem eius qui precario rogavit non transit, quippe ipsi dumtaxat, non etiam heredi concessa possessio est.

Dig. 43.26.13

Pomponius 33 ad q. muc.

Si servus tuus tuo mandato precario rogaverit vel ratum habueris quod ille rogavit tuo nomine, teneberis, quasi precario habeas. sed si te ignorante suo nomine vel servus vel filius rogaverit, non videris tu precario habere, sed illi erit actio de peculio vel de in rem verso.

Dig. 43.26.14

Paulus 13 ad sab.

Interdictum de precariis merito introductum est, quia nulla eo nomine iuris civilis actio esset: magis enim ad donationes et beneficii causam, quam ad negotii contracti spectat precarii condicio.

Dig. 43.26.15pr.

Pomponius 29 ad sab.

Et habet summam aequitatem, ut eatenus quisque nostro utatur, quatenus ei tribuere velimus.

Dig. 43.26.15.1

Pomponius 29 ad sab.

Hospites et qui gratuitam habitationem accipiunt non intelleguntur precario habitare.

Dig. 43.26.15.2

Pomponius 29 ad sab.

Precario habere etiam ea quae in iure consistunt possumus, ut immissa vel protecta.

Dig. 43.26.15.3

Pomponius 29 ad sab.

Cum quis de re sibi restituenda cautum habet, precarium interdictum ei non competit.

Dig. 43.26.15.4

Pomponius 29 ad sab.

Eum, qui precario rogaverit, ut sibi possidere liceat, nancisci possessionem non est dubium: an is quoque possideat, qui rogatus sit, dubitatum est. placet autem penes utrumque esse eum hominem, qui precario datus esset, penes eum qui rogasset, quia possideat corpore, penes dominum, quia non discesserit animo possessione.

Dig. 43.26.15.5

Pomponius 29 ad sab.

Quo quis loco precario aut possideat aut coeperit possidere, nihil refert, quod ad hoc interdictum pertinet.

Dig. 43.26.16

Pomponius 32 ad sab.

Si adoptavero eum, qui precario rogaverit, ego quoque precario possidebo.

Dig. 43.26.17

Pomponius 23 ad sab.

Qui precario fundum possidet, is interdicto uti possidetis adversus omnes praeter eum, quem rogavit, uti potest.

Dig. 43.26.18

Iulianus 13 Dig.

Unusquisque potest rem suam, quamvis non possideat, precario dare ei qui possideat.

Dig. 43.26.19pr.

Iulianus 49 Dig.

Duo in solidum precario habere non magis possunt, quam duo in solidum vi possidere aut clam: nam neque iustae neque iniustae possessiones duae concurrere possunt.

Dig. 43.26.19.1

Iulianus 49 Dig.

Qui servum meum precario rogat, videtur a me precario habere, si hoc ratum habuero, et ideo precario interdicto mihi tenebitur.

Dig. 43.26.19.2

Iulianus 49 Dig.

Cum quid precario rogatum est, non solum interdicto uti possumus, sed et incerti condictione, id est praescriptis verbis.

Dig. 43.26.20

Ulpianus 2 resp.

Ea, quae distracta sunt, ut precario penes emptorem essent, quoad pretium universum persolveretur: si per emptorem stetit, quo minus persolveretur, venditorem posse consequi.

Dig. 43.26.21

Venonius 4 act.

Cum precario quis rogat, ut ipsi in eo fundo morari liceat, supervacuum est adici " ipsi suisque": nam per ipsum suis quoque permissum uti videtur.

Dig. 43.26.22pr.

Venonius 3 interd.

Si is, qui pro possessore possideret, precario dominum rogaverit, ut sibi retinere rem liceret, vel is, qui alienam rem emisset, dominum rogaverit: apparet eos precario possidere. nec existimandos mutare sibi causam possessionis, quibus a domino concedatur precario possidere: nam et si id quod possideas alium precario rogaveris, videri te desinere ex prima causa possidere et incipere ex precario habere: et contra si possessorem precario rogaverit qui rem avocare ei posset, teneri eum precario, quoniam aliquid ad eum per hanc precarii rogationem pervenit, id est possessio, quae aliena sit.

Dig. 43.26.22.1

Venonius 3 interd.

Si pupillus sine tutoris auctoritate precario rogaverit, labeo ait habere eum precariam possessionem et hoc interdicto teneri. nam quo magis naturaliter possideretur, nullum locum esse tutoris auctoritati: recteque dici " quod precario habes", quia quod possideat ex ea causa possideat, ex qua rogaverit:

nihilque novi per praetorem constituendum, quoniam, sive habeat rem, officio iudicis teneretur, sive non habeat, non teneatur.

Dig. 43.27.0. De arboribus caedendis.

Dig. 43.27.1pr.

Ulpianus 71 ad ed.

Ait praetor: " quae arbor ex aedibus tuis in aedes illius impendet, si per te stat, quo minus eam adimas, tunc, quo minus illi eam arborem adimere sibique habere liceat, vim fieri veto".

Dig. 43.27.1.1

Ulpianus 71 ad ed.

Hoc interdictum prohibitorium est.

Dig. 43.27.1.2

Ulpianus 71 ad ed.

Si arbor aedibus alienis impendeat, utrum totam arborem iubeat praetor adimi an vero id solum, quod superexcurrit, quaeritur. et rutilius ait a stirpe excidendam idque plerisque videtur verius: et nisi adimet dominus arborem, labeo ait permitti ei, cui arbor officeret, ut si vellet succideret eam lignaque tolleret.

Dig. 43.27.1.3

Ulpianus 71 ad ed.

Arboris appellatione etiam vites continentur.

Dig. 43.27.1.4

Ulpianus 71 ad ed.

Non solum autem domino aedium, sed etiam ei qui usumfructum habet competit hoc interdictum, quia et ipsius interest arborem istam non impendere.

Dig. 43.27.1.5

Ulpianus 71 ad ed.

Praeterea probandum est, si arbor communibus aedibus impendeat, singulos dominos habere hoc interdictum et quidem in solidum, quia et servitutium vindicationem singuli habeant.

Dig. 43.27.1.6

Ulpianus 71 ad ed.

Ait praetor: " si per te stat, quo minus eam adimas, quo minus illi eam arborem adimere liceat, vim fieri veto". prius itaque tibi datur adimendi facultas: si tu non facias, tunc vicino prohibet vim fieri adimere volenti.

Dig. 43.27.1.7

Ulpianus 71 ad ed.

Deinde ait praetor: " quae arbor ex agro tuo in agrum illius impendet, si per te stat, quo minus pedes quindecim a terra eam altius coerceas, tunc, quo minus illi ita coercere lignaque sibi habere liceat, vim fieri veto".

Dig. 43.27.1.8

Ulpianus 71 ad ed.

Quod ait praetor, et lex duodecim tabularum efficere voluit, ut quindecim pedes altius rami arboris circumcidantur: et hoc idcirco effectum est, ne umbra arboris vicino praedio noceret.

Dig. 43.27.1.9

Ulpianus 71 ad ed.

Differentia duorum capitum interdicti haec est: si quidem arbor aedibus impendeat, succidi eam praecipitur, si vero agro impendeat, tantum usque ad quindecim pedes a terra coerceri.

Dig. 43.27.2

Pomponius 34 ad sab.

Si arbor ex vicini fundo vento inclinata in tuum fundum sit, ex lege duodecim tabularum de adimenda ea recte agere potes ius ei non esse ita arborem habere.

Dig. 43.28.0. De glande legenda.

Dig. 43.28.1pr.

Ulpianus 71 ad ed.

Ait praetor: " glandem, quae ex illius agro in tuum cadat, quo minus illi tertio quoque die legere auferre liceat, vim fieri veto".

Dig. 43.28.1.1

Ulpianus 71 ad ed.

Glandis nomine omnes fructus continentur.

Dig. 43.29.0. De homine libero exhibendo.

Dig. 43.29.1pr.

Ulpianus 71 ad ed.

Ait praetor: " quem liberum dolo malo retines, exhibeas".

Dig. 43.29.1.1

Ulpianus 71 ad ed.

Hoc interdictum proponitur tuendae libertatis causa, videlicet ne homines liberi retineantur a quoquam:

Dig. 43.29.2

Venonius 4 interd.

(nihil enim multum a specie servientium differunt, quibus facultas non datur recedendi):

Dig. 43.29.3pr.

Ulpianus 71 ad ed.

Quod et lex fabia prospexit. neque hoc interdictum aufert legis fabiae exsecutionem: nam et hoc interdicto agi poterit et nihilo minus accusatio legis fabiae institui: et versa vice qui egit fabia, poterit nihilo minus etiam hoc interdictum habere, praesertim cum alius interdictum, alius fabiae actionem habere possit.

Dig. 43.29.3.1

Ulpianus 71 ad ed.

Haec verba " quem liberum" ad omnem liberum pertinent, sive pubes sit sive impubes, sive masculus sive femina, sive unus sive plures, sive sui iuris sit sive alieni: hoc enim tantum spectamus, an liber sit.

Dig. 43.29.3.2

Ulpianus 71 ad ed.

Is tamen, qui in potestate habet, hoc interdicto non tenebitur, quia dolo malo non videtur habere qui suo iure utitur.

Dig. 43.29.3.3

Ulpianus 71 ad ed.

Si quis eum, quem ab hostibus redemit, retineat, in ea causa est, ut interdicto non teneatur: non enim dolo malo facit. plane si offertur pretium, interdictum locum habet. sed et si eum remisit pretio non accepto, dicendum est interdicto locum fore, si, posteaquam semel remisit, velit retinere.

Dig. 43.29.3.4

Ulpianus 71 ad ed.

Si eum quis retineat filium, quem non habet in potestate, plerumque sine dolo malo facere videbitur: pietas enim genuina efficit sine dolo malo retineri, nisi si evidens dolus malus intercedat. proinde et si libertum suum vel alumnum vel noxae deditum adhuc impuberem, idem erit dicendum. et generaliter qui iustam causam habet hominis liberi apud se retinendi, non videtur dolo malo facere.

Dig. 43.29.3.5

Ulpianus 71 ad ed.

Si quis volentem retineat, non videtur dolo malo retinere. sed quid si volentem quidem retineat, non tamen sine calliditate circumventum vel seductum vel sollicitatum, neque bona vel probabili ratione hoc facit? recte dicetur dolo malo retinere.

Dig. 43.29.3.6

Ulpianus 71 ad ed.

Is, qui nescit apud se esse hominem liberum, dolo malo caret; sed ubi certioratus retinet, dolo malo non caret.

Dig. 43.29.3.7

Ulpianus 71 ad ed.

Plane si dubitat, utrum liber an servus sit, vel facit status controversiam, recedendum erit ab hoc interdicto et agenda causa libertatis. etenim recte placuit tunc demum hoc interdictum locum habere, quotiens quis pro certo liber est: ceterum si quaeratur de statu, non oportet praeiudicium fieri alienae cognitioni.

Dig. 43.29.3.8

Ulpianus 71 ad ed.

Ait praetor " exhibeas". exhibere est in publicum producere et videndi tangendique hominis facultatem praebere: proprie autem exhibere est extra secretum habere.

Dig. 43.29.3.9

Ulpianus 71 ad ed.

Hoc interdictum omnibus competit: nemo enim prohibendus est libertati favere.

Dig. 43.29.3.10

Ulpianus 71 ad ed.

Plane ex causa suspectae personae removendae sunt, si forte talis persona sit, quam verisimile est colludere vel calumniari.

Dig. 43.29.3.11

Ulpianus 71 ad ed.

Sed et si mulier vel pupillus hoc interdictum desiderent pro cognato vel parente vel adfine suo solliciti, dandum esse eis interdictum dicendum est: nam et publico iudicio reos facere possunt, dum suas suorumque iniurias exsequuntur.

Dig. 43.29.3.12

Ulpianus 71 ad ed.

Si tamen plures sunt, qui experiri volent, eligendus est a praetore, ad quem maxime res pertinet vel is qui idoneior est: et est optimum ex coniunctione, ex fide, ex dignitate actorem hoc interdicto eligendum.

Dig. 43.29.3.13

Ulpianus 71 ad ed.

Si tamen, posteaquam hoc interdicto actum est, alius hoc interdicto agere desideret, palam erit postea alii non facile dandum, nisi si de perfidia prioris potuerit aliquid dici. itaque causa cognita amplius quam semel interdictum hoc erit movendum. nam nec in publicis iudiciis permittitur amplius agi quam semel actum est quam si praevaricationis fuerit damnatus prior accusator. si tamen reus condemnatus malit litis aestimationem sufferre quam hominem exhibere, non est iniquum saepius in eum interdicto experiri vel eidem sine exceptione vel alii.

Dig. 43.29.3.14

Ulpianus 71 ad ed.

Hoc interdictum et in absentem esse rogandum labeo scribit, sed si non defendatur, in bona eius eundum ait.

Dig. 43.29.3.15

Ulpianus 71 ad ed.

Hoc interdictum perpetuum est.

Dig. 43.29.4pr.

Venonius 4 interd.

Si quis liberum hominem ignorantem suum statum retineat, tamen si dolo malo retinet, cogitur exhibere.

Dig. 43.29.4.1

Venonius 4 interd.

Trebatius quoque ait non teneri eum, qui liberum hominem pro servo bona fide emerit et retineat.

Dig. 43.29.4.2

Venonius 4 interd.

Nullo tempore dolo malo retineri homo liber debet, adeo ut quidam putaverint nec modicum tempus ad eum exhibendum dandum, quoniam praeteriti facti poena praestanda est.

Dig. 43.29.4.3

Venonius 4 interd.

Creditori non competit interdictum, ut debitor exhiberetur: nec enim debitorem latitantem exhibere quisquam cogitur, sed in bona eius ex edicto praetoris itur.

Dig. 43.30.0. De liberis exhibendis, item ducendis.

Dig. 43.30.1pr.

Ulpianus 71 ad ed.

Ait praetor: " qui quaeve in potestate lucii titii est, si is eave apud te est dolove malo tuo factum est, quo minus apud te esset, ita eum eamve exhibeas".

Dig. 43.30.1.1

Ulpianus 71 ad ed.

Hoc interdictum proponitur adversus eum, quem quis exhibere desiderat eum, quem in potestate sua esse dicit. et ex verbis apparet ei, cuius in potestate est, hoc interdictum competere.

Dig. 43.30.1.2

Ulpianus 71 ad ed.

In hoc interdicto praetor non admittit causam, cur apud eum sit is, qui exhiberi debet, quemadmodum in superiore interdicto, sed omnimodo restituendum putavit, si in potestate est.

Dig. 43.30.1.3

Ulpianus 71 ad ed.

Si vero mater sit, quae retinet, apud quam interdum magis quam apud patrem morari filium debere (ex iustissima scilicet causa) et divus pius decrevit et a marco et a severo rescriptum est, aeque subveniendum ei erit per exceptionem.

Dig. 43.30.1.4

Ulpianus 71 ad ed.

Pari modo si iudicatum fuerit non esse eum in potestate, etsi per iniuriam iudicatum sit, agenti hoc interdicto obicienda erit exceptio rei iudicatae, ne de hoc quaeratur, an sit in potestate, sed an sit iudicatum.

Dig. 43.30.1.5

Ulpianus 71 ad ed.

Si quis filiam suam, quae mihi nupta sit, velit abducere vel exhiberi sibi desideret, an adversus interdictum exceptio danda sit, si forte pater concordans matrimonium, forte et liberis subnixum, velit dissolvere? et certo iure utimur, ne bene concordantia matrimonia iure patriae potestatis turbentur. quod tamen sic erit adhibendum, ut patri persuadeatur, ne acerbe patriam potestatem exerceat.

Dig. 43.30.2

Hermogenianus 6 iuris epit.

Immo magis de uxore exhibenda ac ducenda pater, etiam qui filiam in potestate habet, a marito recte convenitur.

Dig. 43.30.3pr.

Ulpianus 71 ad ed.

Deinde ait praetor: " si lucius titius in potestate lucii titii est, quo minus eum lucio titio ducere liceat, vim fieri veto".

Dig. 43.30.3.1

Ulpianus 71 ad ed.

Superiora interdicta exhibitoria sunt, hoc est pertinent ad exhibitionem liberorum ceterorumque, de quibus supra diximus: hoc autem interdictum pertinet ad ductionem, ut ducere quis possit eos, in quos habet ius ductionis.

itaque prius interdictum, quod est de liberis exhibendis, praeparatorium est huius interdicti: quo magis enim quis duci possit, exhibendus fuit.

Dig. 43.30.3.2

Ulpianus 71 ad ed.

Ex iisdem causis hoc interdictum tribuendum est, ex quibus causis de exhibendis liberis competere diximus: itaque quaecumque ibi diximus, eadem hic quoque dicta accipienda sunt.

Dig. 43.30.3.3

Ulpianus 71 ad ed.

Hoc autem interdictum competit non adversus ipsum filium, quem quis ducere vult, sed utique esse debet is qui eum interdicto defendat: ceterum cessat interdictum, et succedere poterit notio praetoris, ut apud eum disceptetur, utrum quis in potestate sit an non sit.

Dig. 43.30.3.4

Ulpianus 71 ad ed.

Iulianus ait, quotiens id interdictum movetur de filio ducendo vel cognitio et is de quo agitur impubes est, alias differri oportere rem in tempus pubertatis, alias repraesentari: idque ex persona eorum, inter quos controversia erit, et ex genere causae constituendum est. nam si is, qui se patrem dicit, auctoritatis prudentiae fidei exploratae esset, usque in diem litis impuberem apud se habebit: is vero, qui controversiam facit, humilis calumniator notae nequitiae, repraesentanda cognitio est. item si is, qui impuberem negat in aliena potestate esse, vir omnibus modis probatus, tutor vel testamento vel a praetore datus pupillum, quem in diem litis apud se habuit, tuetur, is vero, qui patrem se dicit, suspectus est quasi calumniator, differri litem non oportebit. si vero utraque persona suspecta est aut tamquam infirma aut tamquam turpis, non erit alienum, inquit, disponi, apud quem interim puer educeretur et controversiam in tempus pubertatis differri, ne per collusionem vel imperitiam alterutrius contendentium aut alienae potestati pater familias addicatur aut filius alienus patris familiae loco constituatur.

Dig. 43.30.3.5

Ulpianus 71 ad ed.

Etiamsi maxime autem probet filium pater in sua potestate esse, tamen causa cognita mater in retinendo eo potior erit, idque decretis divi pii quibusdam continetur: optinuit enim mater ob nequitiam patris, ut sine deminutione patriae potestatis apud eam filius moretur.

Dig. 43.30.3.6

Ulpianus 71 ad ed.

In hoc interdicto, donec res iudicetur, feminam, praetextatum eumque, qui proxime praetextati aetatem accedet, interim apud matrem familias deponi praetor iubet. proxime aetatem praetextati accedere eum dicimus, qui puberem aetatem nunc ingressus est. cum audis matrem familias, accipe notae auctoritatis feminam.

Dig. 43.30.4

Africanus 4 quaest.

Si eum, qui se patrem familias dicat, ego in mea potestate esse et iussu meo adisse hereditatem dicam, tam de hereditate agi oportere quam ad interdictum de filio ducendo iri debere ait.

Dig. 43.30.5

Venonius 4 interd.

Si filius sua sponte apud aliquem est, inutile hoc interdictum erit, quia filius magis apud se quam apud eum est, in quem interdicetur, cum liberam facultatem abeundi vel remanendi haberet: nisi si inter duos, qui se patres dicerent, controversia esset et alter ab altero exhiberi eum desideraret.

Dig. 43.31.0. Utrubi.

Dig. 43.31.1pr.

Ulpianus 72 ad ed.

Praetor ait: " utrubi hic homo, quo de agitur, maiore parte huiusce anni fuit, quo minus is eum ducat, vim fieri veto".

Dig. 43.31.1.1

Ulpianus 72 ad ed.

Hoc interdictum de possessione rerum mobilium locum habet: sed optinuit vim eius exaequatam fuisse uti possidetis interdicto, quod de rebus soli competit, ut is et in hoc interdicto vincat, qui nec vi nec clam nec precario, dum super hoc ab adversario inquietatur, possessionem habet.

Dig. 43.32.0. De migrando.

Dig. 43.32.1pr.

Ulpianus 73 ad ed.

Praetor ait: " si is homo, quo de agitur, non est ex his rebus, de quibus inter te et actorem convenit, ut, quae in eam habitationem qua de agitur introducta importata ibi nata factave essent, ea pignori tibi pro mercede eius habitationis essent, sive ex his rebus est et ea merces tibi soluta eove nomine satisfactum est aut per te stat, quo minus solvatur: ita, quo minus ei, qui eum pignoris nomine induxit, inde abducere liceat, vim fieri veto".

Dig. 43.32.1.1

Ulpianus 73 ad ed.

Hoc interdictum proponitur inquilino, qui soluta pensione vult migrare: nam colono non competit.

Dig. 43.32.1.2

Ulpianus 73 ad ed.

Cui rei etiam extra ordinem subveniri potest: ergo infrequens est hoc interdictum.

Dig. 43.32.1.3

Ulpianus 73 ad ed.

Si tamen gratuitam quis habitationem habeat, hoc interdictum utile ei competet.

Dig. 43.32.1.4

Ulpianus 73 ad ed.

Si pensio nondum debeatur, ait labeo interdictum hoc cessare, nisi paratus sit eam pensionem solvere. proinde si semenstrem solvit, sexmenstris debeatur, inutiliter interdicet, nisi solverit et sequentis sexmenstris, ita tamen, si conventio specialis facta est in conductione domus, ut non liceat ante finitum annum vel certum tempus migrare. idem est et si quis in plures annos conduxerit et nondum praeterierit tempus. nam cum in universam conductionem pignora sunt obligata, consequens erit dicere interdicto locum non fore, nisi liberata fuerint.

Dig. 43.32.1.5

Ulpianus 73 ad ed.

Illud notandum est praetorem hic non exegisse, ut in bonis fuerit conductoris, nec ut esset pignori res illata, sed si pignoris nomine inducta sit. proinde et si aliena sint et si talia, quae pignoris nomine teneri non potuerint, pignoris tamen nomine introducta sint, interdicto hoc locus erit: quod si nec pignoris nomine inducta sint, nec retineri poterunt a locatore.

Dig. 43.32.1.6

Ulpianus 73 ad ed.

Hoc interdictum perpetuum est et in successores et successoribus dabitur.

Dig. 43.32.2

Gaius 26 ad ed. provinc.

Hoc interdictum inquilino etiam de his rebus, quae non ipsius sint, sed forte commodatae ei vel locatae vel apud eum depositae sunt, utile esse non dubitatur.

Dig. 43.33.0. De salviano interdicto.

Dig. 43.33.1pr.

Iulianus 49 Dig.

Si colonus ancillam in fundo pignoris nomine duxerit et eam vendiderit, quod apud emptorem ex ea natum est, eius adprehendendi gratia utile interdictum reddi oportet.

Dig. 43.33.1.1

Iulianus 49 Dig.

Si colonus res in fundum duorum pignoris nomine intulerit, ita ut utrique in solidum obligatae essent, singuli adversus extraneum salviano interdicto recte experientur: inter ipsos vero si reddatur hoc interdictum, possidentis condicio melior erit. at si id actum fuerit, ut pro partibus res obligaretur, utilis actio et adversus extraneos et inter ipsos dari debebit, per quam dimidias partes possessionis singuli adprehendent.

Dig. 43.33.1.2

Iulianus 49 Dig.

Idem servari conveniet et si colonus rem, quam cum alio communem habebat, pignoris nomine induxerit, scilicet ut pro parte dimidia pignoris persecutio detur.

Dig. 43.33.2

Ulpianus 70 ad ed.

In salviano interdicto, si in fundum communem duorum pignera sint ab aliquo invecta, possessor vincet et erit eis descendendum ad servianum iudicium.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER QUARTUS-QUADRAGESIMUS

Dig. 44.1.0. De exceptionibus praescriptionibus et praeiudiciis.
Dig. 44.2.0. De exceptione rei iudicatae.
Dig. 44.3.0. De diversis temporalibus praescriptionibus et de accessionibus possessionum.
Dig. 44.4.0. De doli mali et metus exceptione.
Dig. 44.5.0. Quarum rerum actio non datur.
Dig. 44.6.0. De litigiosis.
Dig. 44.7.0. De obligationibus et actionibus.

Dig. 44.1.0. De exceptionibus praescriptionibus et praeiudiciis.

Dig. 44.1.1

Ulpianus 4 ad ed.

Agere etiam is videtur, qui exceptione utitur: nam reus in exceptione actor est.

Dig. 44.1.2pr.

Ulpianus 74 ad ed.

Exceptio dicta est quasi quaedam exclusio, quae opponi actioni cuiusque rei solet ad excludendum id, quod in intentionem condemnationemve deductum est.

Dig. 44.1.2.1

Ulpianus 74 ad ed.

Replicationes nihil aliud sunt quam exceptiones, et a parte actoris veniunt: quae quidem ideo necessariae sunt, ut exceptiones excludant: semper enim replicatio idcirco obicitur, ut exceptionem oppugnet.

Dig. 44.1.2.2

Ulpianus 74 ad ed.

Illud tenendum est omnem exceptionem vel replicationem exclusoriam esse: exceptio actorem excludit, replicatio reum.

Dig. 44.1.2.3

Ulpianus 74 ad ed.

Sed et contra replicationem solet dari triplicatio, et contra triplicationem rursus et deinceps multiplicantur nomina, dum aut reus aut actor obicit.

Dig. 44.1.2.4

Ulpianus 74 ad ed.

Sane solemus dicere quasdam exceptiones esse dilatorias, quasdam peremptorias: ut puta dilatoria est exceptio, quae differt actionem, veluti procuratoria exceptio dilatoria est: nam qui dicit non licere procuratorio nomine agi, non prorsus litem infitiatur, sed personam evitat.

Dig. 44.1.3

Gaius 1 ad ed. provinc.

Exceptiones aut perpetuae et peremptoriae sunt aut temporales et dilatoriae. perpetuae atque peremptoriae sunt, quae semper locum habent nec evitari possunt, qualis est doli mali et rei iudicatae et si quid contra legem senatusve consultum factum esse dicetur, item pacti conventi perpetui, id est ne omnino pecunia petatur. temporales atque dilatoriae sunt, quae non semper locum habent, sed evitari possunt, qualis est pacti conventi temporalis, id est ne forte intra quinquennium ageretur: procuratoriae quoque exceptiones dilatoriae sunt, quae evitari possunt.

Dig. 44.1.4

Paulus 20 ad ed.

In pupillo, cui soluta est debita pecunia sine tutoris auctoritate, si quaeratur, an doli exceptione summoveri debeat, illud tempus inspicitur, an pecuniam vel ex ea aliquid habeat, quo petit.

Dig. 44.1.5

Paulus 18 ad ed.

Is, qui dicit ^ dicet^ se iurasse, potest et aliis exceptionibus uti cum exceptione iurisiurandi vel aliis solis: pluribus enim defensionibus uti permittitur.

Dig. 44.1.6

Paulus 71 ad ed.

Si rem legatam petat legatarius, de dolo testatoris excipitur: nam sicut heres, qui in universum ius succedit, summovetur exceptione, ita et legatarius debet summoveri quasi unius rei successor.

Dig. 44.1.7pr.

Paulus 3 ad plaut.

Exceptiones, quae personae cuiusque cohaerent, non transeunt ad alios, veluti ea quam socius habet exceptionem " quod facere possit", vel parens patronusve, non competit fideiussori: sic mariti fideiussor post solutum matrimonium datus in solidum dotis nomine condemnatur.

Dig. 44.1.7.1

Paulus 3 ad plaut.

Rei autem cohaerentes exceptiones etiam fideiussoribus competunt, ut rei iudicatae, doli mali, iurisiurandi, quod metus causa factum est. igitur et si reus pactus sit in rem, omnimodo competit exceptio fideiussori. intercessionis quoque exceptio, item quod libertatis onerandae causa petitur, etiam fideiussori competit. idem dicitur et si pro filio familias contra senatus consultum quis fideiusserit, aut pro minore viginti quinque annis circumscripto: quod si deceptus sit in re, tunc nec ipse ante habet auxilium, quam restitutus fuerit, nec fideiussori danda est exceptio.

Dig. 44.1.8

Paulus 14 ad plaut.

Nemo prohibetur pluribus exceptionibus uti, quamvis diversae sunt.

Dig. 44.1.9

Marcellus 3 Dig.

Non utique existimatur confiteri de intentione adversarii is quocum agitur, quia exceptione utitur.

Dig. 44.1.10

Modestinus 12 resp.

Modestinus respondit: res inter alios iudicata aliis non obest, nec si is, contra quem iudicatum est, heres exstiterit ei, contra quem nihil pronuntiatum est, hereditariam ^ hereditarium^ ei litem inferenti praescribi ex ea sententia posse, quam proprio nomine disceptans, antequam heres exstiterit, excepit.

Dig. 44.1.11

Modestinus 13 resp.

Qui adgnitis instrumentis, quasi vera essent, solvit post sententiam iudicis, quaero, si postea cognita rei veritate et repertis falsis instrumentis accusare velit et probare falsa esse instrumenta, ex quibus conveniebatur, cum instrumentis subscripserat ex praecepto sive interlocutione iudicis, an praescriptio ei opponi possit? cum et principalibus constitutionibus manifeste cavetur, etsi res iudicata esset ex falsis instrumentis, si postea falsa inveniantur, nec rei iudicatae praescriptionem opponi. modestinus respondit ob hoc, quod per errorem solutio facta est vel cautio de solvendo interposita proponitur ex his instrumentis, quae nunc falsa dicuntur, praescriptioni locum non esse.

Dig. 44.1.12

Ulpianus 38 ad ed.

Generaliter in praeiudiciis is actoris partes sustinet, qui habet intentionem secundum id quod intendit.

Dig. 44.1.13

Iulianus 50 Dig.

Si post litem de hereditate contestatam res singulae petantur, placet non obstare exceptionem " quod praeiudicium hereditati non fiat " : futuri enim iudicii, non facti nomine huiusmodi exceptiones comparatae sunt.

Dig. 44.1.14

Alfenus 2 Dig.

Filius familias peculiarem servum vendidit, pretium stipulatus est: is homo redhibitus et postea mortuus est. et pater eius pecuniam ab emptore petebat, quam filius stipulatus erat. placuit aequum esse in factum exceptionem eum obicere: " quod pecunia ob hominem illum expromissa est, qui redhibitus est".

Dig. 44.1.15

Iulianus 4 ad urs. ferocem.

Adversus exceptionem iurisiurandi replicatio doli mali non debet dari, cum praetor id agere debet, ne de iureiurando cuiusquam quaeratur.

Dig. 44.1.16

Africanus 9 quaest.

Fundum titianum possides, de cuius proprietate inter me et te controversia est, et dico praeterea viam ad eum per fundum sempronianum, quem tuum esse constat, deberi. si viam petam, exceptionem " quod praeiudicium praedio non fiat" utilem tibi fore putavit, videlicet quod non aliter viam mihi deberi probaturus sim, quam prius probaverim fundum titianum meum esse.

Dig. 44.1.17

Paulus 70 ad ed.

Sed si ante viam, deinde fundum titianum petat, quia et diversa corpora sunt et causae restitutionum dispares, non nocebit exceptio.

Dig. 44.1.18

Africanus 9 quaest.

Fundi, quem tu proprium tuum esse dicis, partem a te peto et volo simul iudicio quoque communi dividundo agere sub eodem iudice: item si eius fundi, quem tu possideas et ego proprium meum esse dicam, fructus condicere tibi velim: quaesitum est an exceptio " quod praeiudicium fundo partive eius non fiat" obstet an deneganda sit. et utrubique putat intervenire praetorem debere nec permittere petitori, priusquam de proprietate constet, huiusmodi iudiciis experiri.

Dig. 44.1.19

Marcianus 13 inst.

Omnes exceptiones, quae reo competunt, fideiussori quoque etiam invito reo competunt.

Dig. 44.1.20

Paulus l.S. de concept. form.

Exceptiones opponuntur aut quia factum sit quod fieri oportet aut quia factum sit quod fieri non oportuit, aut quia factum non sit quod fieri debuerat. quia factum est, quod fieri oportuit, datur exceptio rei venditae et traditae et rei iudicatae: quia factum est, quod fieri non oportuit, datur exceptio doli mali: quia non factum est, quod fieri debuit, ut bonorum possessionis non datae.

Dig. 44.1.21

Nerva 4 membr.

Rei maioris pecuniae praeiudicium fieri videtur, cum ea quaestio in iudicium deducitur, quae vel tota vel ex aliqua parte communis est quaestioni de re maiori.

Dig. 44.1.22pr.

Paulus l.S. de var. lect.

Exceptio est condicio, quae modo eximit reum damnatione, modo minuit damnationem.

Dig. 44.1.22.1

Paulus l.S. de var. lect.

Replicatio est contraria exceptio, quasi exceptionis exceptio.

Dig. 44.1.23

Labeo 6 pith. a paulo epit.

Paulus: si quis statuam in municipio ea mente posuit, ut ea municipii esset, et eam petere vult, excludi eum oportet praescriptione in factum data.

Dig. 44.1.24

Hermogenianus 6 iuris epit.

Filius familias exceptionem iurisiurandi patri quaerit, si eum dare non oportere iuraverit.

Dig. 44.2.0. De exceptione rei iudicatae.

Dig. 44.2.1

Ulpianus 2 ad ed.

Cum res inter alios iudicatae nullum aliis praeiudicium faciant, ex eo testamento, ubi libertas data est vel legato agi potest, licet ruptum, vel irritum aut non iustum dicatur testamentum: nec si superatus fuerit legatarius, praeiudicium libertati fit.

Dig. 44.2.2

Ulpianus 13 ad ed.

Qui cum herede eius egit, qui filium praeterierat, et exceptione summotus est " ac si non in ea causa sint tabulae testamenti, ut contra eas bonorum possessio dari possit": omittente emancipato filio bonorum possessionem non inique restituetur, ut agat cum herede: et ita iulianus libro quarto digestorum scripsit.

Dig. 44.2.3

Ulpianus 15 ad ed.

Iulianus libro tertio digestorum respondit exceptionem rei iudicatae obstare, quotiens eadem quaestio inter easdem personas revocatur: et ideo et si singulis rebus petitis hereditatem petat vel contra, exceptione summovebitur.

Dig. 44.2.4

Ulpianus 72 ad ed.

Rei iudicatae exceptio tacite continere videtur omnes personas, quae rem in iudicium deducere solent.

Dig. 44.2.5

Ulpianus 74 ad ed.

De eadem re agere videtur et qui non eadem actione agat, qua ab initio agebat, sed etiam si alia experiatur, de eadem tamen re: ut puta si quis mandati acturus, cum ei adversarius iudicio sistendi causa promisisset, propter eandem rem agat negotiorum gestorum vel condicat, de eadem re agit. recteque ita definietur eum demum " de ea re" non agere, qui prorsus rem ipsam non persequitur: ceterum cum quis actionem mutat et experitur, dummodo de eadem re experiatur, etsi diverso genere actionis quam instituit, videtur " de ea re" agere.

Dig. 44.2.6

Paulus 70 ad ed.

Singulis controversiis singulas actiones unumque iudicati finem sufficere probabili ratione placuit, ne aliter modus litium multiplicatus summam atque inexplicabilem faciat difficultatem, maxime si diversa pronuntiarentur. parere ergo exceptionem rei iudicatae frequens est.

Dig. 44.2.7pr.

Ulpianus 75 ad ed.

Si quis, cum totum petisset, partem petat, exceptio rei iudicatae nocet, nam pars in toto est: eadem enim res accipitur et si pars petatur eius, quod totum petitum est. nec interest, utrum in corpore hoc quaeratur an in quantitate vel in iure. proinde si quis fundum petierit, deinde partem petat vel pro diviso vel pro indiviso, dicendum erit exceptionem obstare. proinde et si proponas mihi certum locum me petere ex eo fundo, quem peti, obstabit exceptio. idem erit probandum et si duo corpora fuerint petita, mox alterutrum corpus petatur: nam nocebit exceptio. item si quis fundum petierit, mox arbores excisas ex eo fundo petat, aut insulam petierit, deinde aream petat, vel tigna vel lapides petat: item si navem petiero, postea singulas tabulas vindicem: si ancillam praegnatem petiero et post litem contestatam conceperit et pepererit, mox partum eius petam: utrum idem petere videor an aliud, magnae quaestionis est. et quidem ita definiri potest totiens eandem rem agi, quotiens apud iudicem posteriorem id quaeritur, quod apud priorem quaesitum est.

Dig. 44.2.7.1

Ulpianus 75 ad ed.

In his igitur fere omnibus exceptio nocet: sed in cementis et tignis diversum est: nam is, qui insulam petit, si cementa vel tigna vel quid aliud suum petat, in ea condicione est, ut videatur aliud petere: etenim cuius insula est, non utique et cementa sunt: denique ea, quae iuncta sunt aedibus alienis, separata dominus vindicare potest.

Dig. 44.2.7.2

Ulpianus 75 ad ed.

De fructibus eadem quaestio est et de partu: haec enim nondum erant in rebus humanis, sed ex ea re sunt, quae petita est: magisque est, ut ista exceptio non noceat. plane si in restitutionem vel fructus vel etiam partus venerunt aestimatique sunt, consequens erit dicere exceptionem obiciendam.

Dig. 44.2.7.3

Ulpianus 75 ad ed.

Et generaliter, ut iulianus definit, exceptio rei iudicatae obstat, quotiens inter easdem personas eadem quaestio revocatur vel alio genere iudicii. et ideo si hereditate petita singulas res petat vel singulis rebus petitis hereditatem petat, exceptione summovebitur.

Dig. 44.2.7.4

Ulpianus 75 ad ed.

Idem erit probandum et si quis debitum petierit a debitore hereditario, deinde hereditatem petat, vel contra si ante hereditatem petierit et postea debitum petat: nam et hic obstabit exceptio: nam cum hereditatem peto, et corpora et actiones omnes, quae in hereditate sunt, videntur in petitionem deduci.

Dig. 44.2.8

Iulianus 51 Dig.

Item parte fundi petita si familiae herciscundae vel communi dividundo agit, aeque exceptione submovebitur.

Dig. 44.2.9pr.

Ulpianus 75 ad ed.

Si a te hereditatem petam, cum nihil possideres, deinde, ubi coeperis aliquid possidere, hereditatem petam, an noceat exceptio ista? et putem, sive fuit iudicatum hereditatem meam esse, sive adversarius, quia nihil possidebat, absolutus est, non nocere exceptionem.

Dig. 44.2.9.1

Ulpianus 75 ad ed.

Si quis fundum, quem putabat se possidere, defenderit, mox emerit: re secundum petitorem iudicata an restituere cogatur? et ait neratius, si actori iterum petenti obiciatur exceptio rei iudicatae, replicare eum oportere de re secundum se iudicata.

Dig. 44.2.9.2

Ulpianus 75 ad ed.

Iulianus scribit exceptionem rei iudicatae a persona auctoris ad emptorem transire solere, retro autem ab emptore ad auctorem reverti non debere. quare si hereditariam rem vendideris, ego eandem ab emptore petiero et vicero, petenti tibi non opponam exceptionem " at si ea res iudicata non sit inter me et eum, cui vendidisti".

Dig. 44.2.10

Iulianus 51 Dig.

Item si victus fuero, tu adversus me exceptionem non habebis.

Dig. 44.2.11pr.

Ulpianus 75 ad ed.

Si mater filii impuberis defuncti ex senatus consulto bona vindicaverit idcirco, quia putabat rupto patris eius testamento neminem esse substitutum, victaque fuerit, quia testamentum patris ruptum non erat, postea autem apertis pupillaribus tabulis apparuit non esse ei substitutum: si peteret rursus hereditatem, obstaturam exceptionem rei iudicatae neratius ait. ego exceptionem obesse ei rei iudicatae non dubito: sed ex causa succurrendum erit ei, quae unam tantum causam egit rupti testamenti.

Dig. 44.2.11.1

Ulpianus 75 ad ed.

Denique et celsus scribit, si hominem petiero, quem ob eam rem meum esse existimavi, quod mihi traditus ab alio est, cum is ex hereditaria causa meus esset, rursus petenti mihi obstaturam exceptionem.

Dig. 44.2.11.2

Ulpianus 75 ad ed.

Si quis autem petat fundum suum esse eo, quod titius eum sibi tradiderit, si postea alia ex causa petat causa adiecta, non debet summoveri exceptione.

Dig. 44.2.11.3

Ulpianus 75 ad ed.

Item iulianus scribit: cum ego et tu heredes titio exstitissemus, si tu partem fundi, quem totum hereditarium dicebas, a sempronio petieris et victus fueris, mox eandem partem a sempronio emero, agenti tibi mecum familiae erciscundae exceptio obstabit, quia res iudicata sit inter te et venditorem meum: nam et si ante eandem partem petissem et agerem familiae erciscundae, obstaret exceptio " quod res iudicata sit inter me et te"

Dig. 44.2.11.4

Ulpianus 75 ad ed.

Eandem causam facit etiam origo petitionis. ceterum si forte petiero fundum vel hominem, mox alia causa nova post petitionem mihi accesserit, quae mihi dominium tribuat, non me repellet ista exceptio, nisi forte intermissum dominium in medio tempore rediit quodam postliminio. quid enim, si homo, quem petieram, ab hostibus fuerit captus, mox postliminio receptus? hic exceptione summovebor, quia eadem res esse intellegitur. at si ex alia causa dominium fuerim nactus, non nocebit exceptio: et ideo si forte sub condicione res legata mihi fuerit, deinde medio tempore adquisito dominio petam, mox existente condicione legati rursus petam, putem exceptionem non obstare: alia enim causa fuit prioris dominii, haec nova nunc accessit.

Dig. 44.2.11.5

Ulpianus 75 ad ed.

Itaque adquisitum quidem postea dominium aliam causam facit. mutata autem opinio petitoris non facit. ut puta opinabatur ex causa hereditaria se dominium habere: mutavit opinionem et coepit putare ex causa donationis: haec res non parit petitionem novam: nam qualecumque et undecumque dominium adquisitum habuit, vindicatione prima in iudicium deduxit.

Dig. 44.2.11.6

Ulpianus 75 ad ed.

Si quis iter petierit, deinde actum petat, puto fortius defendendum aliud videri tunc petitum, aliud nunc, atque ideo exceptionem rei iudicatae cessare.

Dig. 44.2.11.7

Ulpianus 75 ad ed.

Hoc iure utimur, ut ex parte actoris in exceptione rei iudicatae hae personae continerentur, quae rem in iudicium deducunt: inter hos erunt procurator, cui mandatum est, tutor, curator furiosi vel pupilli, actor municipum: ex persona autem rei etiam defensor numerabitur, quia adversus defensorem qui agit, litem in iudicium deducit.

Dig. 44.2.11.8

Ulpianus 75 ad ed.

Si quis hominem a filio familias petierit, deinde eundem a patre petat, locum habet haec exceptio.

Dig. 44.2.11.9

Ulpianus 75 ad ed.

Si egero cum vicino aquae pluviae arcendae, deinde alteruter nostrum praedium vendiderit et emptor agat vel cum eo agatur, haec exceptio nocet, sed de eo opere, quod iam erat factum, cum iudicium acciperetur.

Dig. 44.2.11.10

Ulpianus 75 ad ed.

Item si rem, quam a te petierat, titius pignori seio dederit, deinde seius pigneraticia adversus te utatur, distinguendum erit, quando pignori dedit titius: et si quidem antequam peteret, non oportet ei nocere exceptionem: nam et ille petere debuit et ego salvam habere debeo pigneraticiam actionem. sed si posteaquam petit, pignori dedit, magis est, ut noceat exceptio rei iudicatae.

Dig. 44.2.12

Paulus 70 ad ed.

Cum quaeritur, haec exceptio noceat nec ne, inspiciendum est, an idem corpus sit,

Dig. 44.2.13

Ulpianus 75 ad ed.

Quantitas eadem, idem ius,

Dig. 44.2.14pr.

Paulus 70 ad ed.

Et an eadem causa petendi et eadem condicio personarum: quae nisi omnia concurrunt, alia res est. idem corpus in hac exceptione non utique omni pristina qualitate vel quantitate servata, nulla adiectione deminutioneve facta, sed pinguius pro communi utilitate accipitur.

Dig. 44.2.14.1

Paulus 70 ad ed.

Qui, cum partem usus fructus haberet, totum petit, si postea partem adcrescentem petat, non summovetur exceptione, quia usus fructus non portioni, sed homini adcrescit.

Dig. 44.2.14.2

Paulus 70 ad ed.

Actiones in personam ab actionibus in rem hoc differunt, quod, cum eadem res ab eodem mihi debeatur, singulas obligationes singulae causae sequuntur nec ulla earum alterius petitione vitiatur: at cum in rem ago non expressa causa, ex qua rem meam esse dico, omnes causae una petitione adprehenduntur. neque enim amplius quam semel res mea esse potest, saepius autem deberi potest.

Dig. 44.2.14.3

Paulus 70 ad ed.

Si quis interdicto egerit de possessione, postea in rem agens non repellitur per exceptionem, quoniam in interdicto possessio, in actione proprietas vertitur.

Dig. 44.2.15

Gaius 30 ad ed. provinc.

Si inter me et te controversia de hereditate sit et quasdam res ex eadem tu possides, quasdam ego: nihil vetat et me a te et invicem te a me hereditatem petere. quod si post rem iudicatam a me petere coeperis, interest, utrum meam esse hereditatem pronuntiatum sit an contra: si meam esse, nocebit tibi rei iudicatae exceptio, quia eo ipso, quod meam esse pronuntiatum est, ex diverso pronuntiatum videtur tuam non esse: si vero meam non esse, nihil de tuo iure iudicatum intellegitur, quia potest nec mea hereditas esse nec tua.

Dig. 44.2.16

Iulianus 51 Dig.

Evidenter enim iniquissimum est proficere rei iudicatae exceptionem ei, contra quem iudicatum est.

Dig. 44.2.17

Gaius 30 ad ed. provinc.

Si rem meam a te petiero, tu autem ideo fueris absolutus, quod probaveris sine dolo malo te desisse possidere, deinde postea coeperis possidere et ego a te petam: non nocebit mihi exceptio rei iudicatae.

Dig. 44.2.18

Ulpianus 80 ad ed.

Si quis ad exhibendum egerit, deinde absolutus fuerit adversarius, quia non possidebat, et dominus iterum agat nancto eo possessionem: rei iudicatae exceptio locum non habebit, quia alia res est.

Dig. 44.2.19

Marcellus 19 Dig.

Duobus diversis temporibus eandem rem pignori dedit: egit posterior cum priore pigneraticia et optinuit: mox ille agere simili actione instituit: quaesitum est, an exceptio rei iudicatae obstaret. si opposuerat exceptionem rei sibi ante pigneratae et nihil aliud novum et validum adiecerit, sine dubio obstabit: eandem enim quaestionem revocat in iudicium.

Dig. 44.2.20

Pomponius 16 ad sab.

Si ex testamento actum sit cum herede ab eo, qui, cum totum argentum ei legatum erat, mensas dumtaxat sibi legatas putaret earumque dumtaxat aestimationem in iudicio fecisset: postea eundem petiturum de argento quoque legato trebatius ait nec obstaturam ei exceptionem, quod non sit petitum, quod nec actor petere putasset nec iudex in iudicio sensisset.

Dig. 44.2.21pr.

Pomponius 31 ad sab.

Si, cum argentum mihi testamento legatum esset, egerim cum herede et postea codicillis prolatis vestem quoque mihi legatam esse appareat, non est deducta in superius iudicium vestis causa, quia neque litigatores neque iudex de alio quam de argento actum intellegant.

Dig. 44.2.21.1

Pomponius 31 ad sab.

Si petiero gregem et vel aucto vel minuto numero gregis iterum eundem gregem petam, obstabit mihi exceptio. sed et si speciale corpus ex grege petam, si adfuit in eo grege, puto obstaturam exceptionem.

Dig. 44.2.21.2

Pomponius 31 ad sab.

Si stichum et pamphilum tuos esse petieris et absoluto adversario stichum tuum esse petas ab eodem, exceptionem obstare tibi constat.

Dig. 44.2.21.3

Pomponius 31 ad sab.

Si fundum meum esse petiero, deinde postea usum fructum eiusdem fundi petam, qui ex illa causa, ex qua fundus meus erat, meus sit: exceptio mihi obstabit, quia qui fundum habet, usum fructum suum vindicare non potest. sed si usum fructum, cum meus esset, vindicavi, deinde proprietatem nanctus iterum de usu fructu experiar, potest dici alia res esse, quoniam postquam nanctus sum proprietatem fundi, desinit meus esse prior usus fructus et iure proprietatis quasi ex nova causa rursus meus esse coepit.

Dig. 44.2.21.4

Pomponius 31 ad sab.

Si pro servo meo fideiusseris et mecum de peculio actum sit, si postea tecum eo nomine agatur, excipiendum est de re iudicata.

Dig. 44.2.22

Paulus 31 ad ed.

Si cum uno herede depositi actum sit, tamen et cum ceteris heredibus recte agetur nec exceptio rei iudicatae eis proderit: nam etsi eadem quaestio in omnibus iudiciis vertitur, tamen personarum mutatio, cum quibus singulis suo nomine agitur, aliam atque aliam rem facit. et si actum sit cum herede de dolo defuncti, deinde de dolo heredis ageretur, exceptio rei iudicatae non nocebit, quia de alia re agitur.

Dig. 44.2.23

Ulpianus 3 disp.

Si in iudicio actum sit usuraeque solae petitae sint, non est verendum, ne noceat rei iudicatae exceptio circa sortis petitionem: quia enim non competit, nec opposita nocet. eadem erunt et si quis ex bonae fidei iudicio velit usuras tantum persequi: nam nihilo minus futuri temporis cedunt usurae: quamdiu enim manet contractus bonae fidei, current usurae.

Dig. 44.2.24

Iulianus 9 Dig.

Si quis rem a non domino emerit, mox petente domino absolutus sit, deinde possessionem amiserit et a domino petierit, adversus exceptionem " si non eius sit res" replicatione hac adiuvabitur " at si res iudicata non sit".

Dig. 44.2.25pr.

Iulianus 51 Dig.

Si is, qui heres non erat, hereditatem petierit et postea heres factus eandem hereditatem petet, exceptione rei iudicatae non summovebitur.

Dig. 44.2.25.1

Iulianus 51 Dig.

Est in potestate emptoris intra sex menses, redhibitoria agere mallet an ea quae datur, quanti minoris homo cum veniret fuerit. nam posterior actio etiam redhibitionem continet, si tale vitium in homine est, ut eum ob id actor empturus non fuerit: quare vere dicetur eum, qui alterutra earum egerit, si altera postea agat, rei iudicatae exceptione summoveri.

Dig. 44.2.25.2

Iulianus 51 Dig.

Si te negotiis meis optuleris et fundum nomine meo petieris, deinde ego hanc petitionem tuam ratam non habuero, sed mandavero tibi, ut ex integro eundem fundum peteres, exceptio rei iudicatae non obstabit: alia enim res facta est interveniente mandatu. idem est, si non in rem, sed in personam actum fuerit.

Dig. 44.2.26pr.

Africanus 9 quaest.

Egi tecum ius mihi esse aedes meas usque ad decem pedes altius tollere: post ago ius mihi esse usque ad viginti pedes altius tollere: exceptio rei iudicatae procul dubio obstabit. sed et si rursus ita agam ius mihi esse altius ad alios decem pedes tollere, obstabit exceptio, cum aliter superior pars iure haberi non possit, quam si inferior quoque iure habeatur.

Dig. 44.2.26.1

Africanus 9 quaest.

Item si fundo petito postea insula, quae e regione eius in flumine nata erit, petatur, exceptio obstatura est.

Dig. 44.2.27

Nerva 7 membr.

Cum de hoc, an eadem res est, quaeritur, haec spectanda sunt: personae, id ipsum de quo agitur, causa proxima actionis. nec iam interest, qua ratione quis eam causam actionis competere sibi existimasset, perinde ac si quis, posteaquam contra eum iudicatum esset, nova instrumenta causae suae repperisset.

Dig. 44.2.28

Papinianus 27 quaest.

Exceptio rei iudicatae nocebit ei, qui in dominium successit eius qui iudicio expertus est.

Dig. 44.2.29pr.

Papinianus 11 resp.

Iudicatae quidem rei praescriptio coheredi, qui non litigavit, obstare non potest, nec in servitutem videtur peti post rem pro libertate iudicatam nondum ex causa fideicommissi manumissus: sed praetoris oportet in ea re sententiam servari, quam pro parte victi praestari non potest: nam et cum alterum ex coheredibus inofficiosi quaestio tenuit aut etiam duobus separatim agentibus alter optinuit, libertates competere placuit, ita tamen, ut officio iudicis indemnitati victoris futurique manumissoris consulatur.

Dig. 44.2.29.1

Papinianus 11 resp.

Si debitor de dominio rei, quam pignori dedit, non admonito creditore causam egerit et contrariam sententiam acceperit, creditor in locum victi successisse non videbitur, cum pignoris conventio sententiam praecesserit.

Dig. 44.2.30pr.

Paulus 14 quaest.

Ex sextante heres institutus, qui intestato legitimus heres esse potest, cum de iure testamenti faceret quaestionem, ab uno ex institutis dimidiam partem hereditatis petiit nec optinuit. videtur in illa petitione etiam partem sextantis vindicasse et ideo, si coeperit ab eodem ex testamento eandem portionem petere, obstabit ei exceptio rei iudicatae.

Dig. 44.2.30.1

Paulus 14 quaest.

Latinus largus: cum de hereditate inter maevium, ad quem pertinebat, et titium, qui controversiam moverat, transigeretur, traditio rerum hereditariarum maevio heredi a titio facta est, in qua traditione etiam fundum ei suum proprium, quem ante multos annos avo eiusdem maevii heredis obligaverat quemque alii postea in obligationem deduxerat, ex causa pacti tradidit. his gestis posterior titii creditor ius suum persecutus est et optinuit. post hoc iudicium maevius heres repperit in rebus avitis chirographum eiusdem titii ante multos annos conscriptum, per quod apparuit eum fundum, qui in causam transactionis venerat, etiam avo suo ab eodem titio fuisse obligatum. cum ergo constet prius avo maevii heredis in obligationem eundem fundum datum, de quo maevius superatus est, quaero, an ius avi sui, quod tunc, cum de eodem fundo ageretur, ignorabat, nulla exceptione opposita exsequi possit. respondi:

si de proprietate fundi litigatur et secundum actorem pronuntiatum fuisset, diceremus petenti ei, qui in priore iudicio victus est, obstaturam rei iudicatae exceptionem, quoniam de eius quoque iure quaesitum videtur, cum actor petitionem implet. quod si possessor absolutus amissa possessione eundem ab eodem, qui prius non optinuit, peteret, non obesset ei exceptio: nihil enim in suo iudicio de iure eius statutum videretur. cum autem pigneraticia actum est adversus priorem creditorem, potest fieri, ut de iure possessoris non sit quaesitum, quia non, ut in proprietatis quaestione quod meum est alterius non est, ita in obligatione utique consequens est, ut non sit alii obligatum, quod hic probabit sibi teneri. et probabilius dicitur non obstare exceptionem, quoniam de iure possessoris quaesitum non est, sed de sola obligatione. in proposita autem quaestione magis me illud movet, numquid pignoris ius extinctum sit dominio adquisito: neque enim potest pignus perseverare domino constituto creditore. actio tamen pigneraticia competit: verum est enim et pigneri datum et satisfactum non esse, quare puto non obstare rei iudicatae exceptionem.

Dig. 44.2.31

Paulus 3 resp.

Paulus respondit ei, qui in rem egisset nec tenuisset, postea condicenti non obstare exceptionem rei iudicatae.

Dig. 44.3.0. De diversis temporalibus praescriptionibus et de accessionibus possessionum.

Dig. 44.3.1

Ulpianus 74 ad ed.

Quia tractatus de utilibus diebus frequens est, videamus, quid sit experiundi potestatem habere. et quidem in primis exigendum est, ut sit facultas agendi. neque sufficit reo experiundi secum facere potestatem, vel habere eum qui se idonee defendat, nisi actor quoque nulla idonea causa impediatur experiri. proinde sive apud hostes sit sive rei publicae causa absit sive in vinculis sit aut si tempestate in loco aliquo vel in regione detineatur, ut neque experiri neque mandare possit, experiundi potestatem non habet. plane is, qui valetudine impeditur, ut mandare possit, in ea causa est, ut experiundi habeat potestatem. illud utique neminem fugit experiundi potestatem non habere eum, qui praetoris copiam non habuit: proinde hi dies cedunt, quibus ius praetor reddit.

Dig. 44.3.2

Marcellus 6 Dig.

In tempore constituto iudicatis an intercalaris dies proficere iudicato nec ne debeat, quaeritur. item de tempore, quo lis perit, sic sine dubio existimandum est, ut auctum litis tempus intercalari die existimetur, veluti si de usucapione sit quaestio, quae tempore constituto expleri solet, aut de actionibus, quae certo tempore finiuntur, ut aediliciae pleraeque actiones. et si quis fundum ea lege vendiderit, ut, nisi in diebus triginta pretium esset solutum, inemptus esset fundus, dies intercalaris proficiet emptori. mihi contra videtur.

Dig. 44.3.3

Modestinus 6 diff.

Longae possessionis praescriptionem tam in praediis quam in mancipiis locum habere manifestum est.

Dig. 44.3.4

Iavolenus 7 epist.

Si servus hereditarius aut eius, qui in hostium potestate sit, satis acceperit, continuo dies satisdationis cedere incipiet: intueri enim debemus, an experiundi potestas fuerit adversus eum, qui obligatus est, non an is agere potuerit, qui rem in obligationem deduxerit: alioquin erit iniquissimum ex condicione actorum obligationes reorum extendi, per quos nihil factum erit, quo minus cum his agi possit.

Dig. 44.3.5pr.

Ulpianus 3 disp.

An vitium auctoris vel donatoris eiusve qui mihi rem legavit mihi noceat, si forte auctor meus iustum initium possidendi non habuit, videndum est. et puto neque nocere neque prodesse: nam denique et usucapere possum, quod auctor meus usucapere non potuit.

Dig. 44.3.5.1

Ulpianus 3 disp.

Ex facto propositum est quendam, cum rem pignori dedisset, eandem distraxisse heredemque eius redemisse: quaeritur, an heres adversus pignoris persecutionem exceptione longae possessionis uti possit. dicebam hunc heredem, qui pignus ab extraneo redemit, posse exceptione uti, quia in extranei locum successit, non in eius qui pignori dederat, quemadmodum si ante redemisset, sic deinde heres exstitisset.

Dig. 44.3.6pr.

Africanus 9 quaest.

Si duobus eandem rem separatim vendiderim, ea possessio, quae utramque venditionem praecesserit, soli priori emptori, cui et tradita sit, proficit. denique et si, quam rem tibi vendiderim, rursus a te emam et titio vendam, et meam omnem et tuam possessionem titio accessuram, videlicet quod et tu mihi et ego ei possessionem praestare debeamus.

Dig. 44.3.6.1

Africanus 9 quaest.

Vendidi tibi servum et convenit, ut, nisi certa die pecunia soluta esset, inemptus esset: quod cum evenerit, quaesitum est, quid de accessione tui temporis putares. respondit id quod servetur, cum redhibitio sit facta: hunc enim perinde haberi ac si retrorsus homo mihi venisset, ut scilicet, si venditor possessionem postea nactus sit, et hoc ipsum tempus et quod venditionem praecesserit et amplius accessio haec ei detur cum eo, quod apud eum fuit, a quo homo redhibitus sit.

Dig. 44.3.7

Marcianus 3 inst.

Si quisquam in fluminis publici deverticulo solus pluribus annis piscatus sit, alterum eodem iure uti prohibet.

Dig. 44.3.8

Ulpianus 1 reg.

In accessione temporis et id tempus, quo in fuga sit servus, domino eius procedere verum est.

Dig. 44.3.9

Marcianus 5 reg.

Rescriptis quibusdam divi magni antonini cavetur, ut in rebus mobilibus locus sit praescriptioni diutinae possessionis.

Dig. 44.3.10pr.

Papinianus 13 resp.

Intra quattuor annos vacantium bonorum delator facta denuntiatione destitit: post quattuor annos secundo delatori venienti prior nuntiatio, quo minus praescriptione temporis summoveatur, non proderit, nisi prioris praevaricatio detegetur: quo declarato praescriptio, sed et negotii quaestio peremetur.

Dig. 44.3.10.1

Papinianus 13 resp.

Quadriennii tempus, quod bonis vacantibus nuntiandis praescriptum est, non ex opinione hominum, sed de substantia vacantium bonorum dinumeratur. quattuor autem anni post irritum testamentum factum et intestati possessionem ab omnibus repudiatam, qui gradatim petere potuerunt, vel temporis finem, quod singulis praestitutum est, computabuntur.

Dig. 44.3.11

Papinianus 2 def.

Cum heres in ius omne defuncti succedit, ignoratione sua defuncti vitia non excludit, veluti cum sciens alienum illum illo vel precario possedit: quamvis enim precarium heredem ignorantem non teneat nec interdicto recte conveniatur, tamen usucapere non poterit, quod defunctus non potuit. idem iuris est, cum de longa possessione quaeritur: neque enim recte defendetur, cum exordium ei bonae fidei ratio non tueatur.

Dig. 44.3.12

Paulus 16 resp.

Creditor, qui praescriptione longae possessionis a possessore pignoris summoveri possit, pignus distraxit: quaero, an possessori salva sit exceptio adversus emptorem. paulus respondit etiam adversus emptorem eandem exceptionem competere.

Dig. 44.3.13pr.

Hermogenianus 6 iuris epit.

In omnibus fisci quaestionibus exceptis causis, in quibus minora tempora servari specialiter constitutum est, viginti annorum praescriptio custoditur.

Dig. 44.3.13.1

Hermogenianus 6 iuris epit.

Rei publicae rationes subscriptae et expunctae adversus eum quidem, qui administravit, ultra viginti, adversus heredem vero ultra decem annos retractari non possunt.

Dig. 44.3.14pr.

Scaevola l.S. quaest. publ. tract.

De accessionibus possessionum nihil in perpetuum neque generaliter definire possumus: consistunt enim in sola aequitate.

Dig. 44.3.14.1

Scaevola l.S. quaest. publ. tract.

Plane tribuuntur his, qui in locum aliorum succedunt sive ex contractu sive voluntate: heredibus enim et his, qui successorum loco habentur, datur accessio testatoris.

Dig. 44.3.14.2

Scaevola l.S. quaest. publ. tract.

Itaque si mihi vendideris servum, utar accessione tua.

Dig. 44.3.14.3

Scaevola l.S. quaest. publ. tract.

Et si mihi pignori dederis et ego eandem rem alii pigneravi, meus creditor utetur accessione tui temporis tam adversus extraneum quam adversus te ipsum, quamdiu pecuniam mihi non exsolveris: nam qui me potior est, cum ego te superaturus sim, multo magis adversus te optinere debet. sed si pecuniam mihi solveris, hoc casu accessione tua non utetur.

Dig. 44.3.14.4

Scaevola l.S. quaest. publ. tract.

Item si absente te is, qui negotia tua videbatur administrare, servum mihi vendiderit tuque reversus ratum habueris, omnimodo accessione utar.

Dig. 44.3.14.5

Scaevola l.S. quaest. publ. tract.

Item si mihi pignori dederis et convenerit, nisi pecuniam solvisses, licere ex pacto pignus vendere idque vendiderim, emptori accessio tui temporis dari debebit, licet invito te pignora distracta sint: iam enim illo in tempore, quo contrahebas, videri concessisse venditioni, si pecuniam non intulisses.

Dig. 44.3.15pr.

Venonius 5 interd.

In usucapione ita servatur, ut, etiamsi minimo momento novissimi diei possessa sit res, nihilo minus repleatur usucapio, nec totus dies exigitur ad explendum constitutum tempus.

Dig. 44.3.15.1

Venonius 5 interd.

Accessio possessionis fit non solum temporis, quod apud eum fuit, unde is emit, sed et qui ei vendidit, unde tu emisti. sed si medius aliquis ex auctoribus non possederit, praecedentium auctorum possessio non proderit, quia coniuncta non est, sicut nec ei, qui non possidet, auctoris possessio accedere potest.

Dig. 44.3.15.2

Venonius 5 interd.

Item adiciendum est, unde emisti, aut unde is emit, cui tu emendum mandaveras, et quod apud eum, qui vendendum mandavit. quod si is quoque, cui mandatum erat, alii vendendum mandaverit, non aliter huius, qui postea mandaverat, dandam accessionem labeo ait, quam si id ipsum dominus ei permiserit.

Dig. 44.3.15.3

Venonius 5 interd.

Sed et si a filio vel servo rem emero, accessio temporis et quo apud patrem aut dominum fuit ita danda est mihi, si aut voluntate patris dominive aut cum administrationem peculii haberet vendidit.

Dig. 44.3.15.4

Venonius 5 interd.

Item danda est accessio cum eo, quod apud pupillum fuit, a cuius tutore, cum is tutelam eius administraret, emisti. idemque in eo, qui a curatore pupilli furiosive emerit, servandum est: et si ventris nomine aut eius, quae rei servandae causa in possessione esset dotis suae nomine, deminutio facta sit: nam id quoque temporis accedit.

Dig. 44.3.15.5

Venonius 5 interd.

Hae autem accessiones non tam late accipiendae sunt quam verba earum patent, ut etiam, si post venditionem traditionemque rei traditae apud venditorem res fuerit, proficiat id tempus emptori, sed illud solum quod ante fuit, licet venditionis tempore eam rem venditor non habuerat.

Dig. 44.3.15.6

Venonius 5 interd.

Ei, cui heres rem hereditariam vendidit, et heredis tempus et defuncti debet accedere.

Dig. 44.3.16

Paulus 3 ad sab.

Accessio sine nostro tempore nobis prodesse non potest.

Dig. 44.4.0. De doli mali et metus exceptione.

Dig. 44.4.1pr.

Paulus 71 ad ed.

Quo lucidius intellegi possit haec exceptio, prius de causa videamus, quare proposita sit, deinde, quemadmodum dolo fiat, per quae intellegemus, quando obstet exceptio: deinde adversus quas personas locum habeat. novissime inspiciemus, intra quae tempora competit exceptio.

Dig. 44.4.1.1

Paulus 71 ad ed.

Ideo autem hanc exceptionem praetor proposuit, ne cui dolus suus per occasionem iuris civilis contra naturalem aequitatem prosit.

Dig. 44.4.1.2

Paulus 71 ad ed.

Sed an dolo quid factum sit, ex facto intellegitur.

Dig. 44.4.1.3

Paulus 71 ad ed.

Et quidem dolo fit tam in contractibus quam in testamentis quam in legibus.

Dig. 44.4.2pr.

Ulpianus 76 ad ed.

Palam est autem hanc exceptionem ex eadem causa propositam, ex qua causa proposita est de dolo malo actio.

Dig. 44.4.2.1

Ulpianus 76 ad ed.

Sequitur, ut videamus, in quibus causis locum habeat exceptio et quibus personis obiciatur. et quidem illud adnotandum est, quod specialiter exprimendum est, de cuius dolo quis queratur, non in rem " si in ea re nihil dolo malo factum est", sed sic " si in ea re nihil dolo malo actoris factum est". docere igitur debet is, qui obicit exceptionem, dolo malo actoris factum, nec sufficiet ei ostendere in re esse dolum: aut si alterius dicat dolo factum, eorum personas specialiter debebit enumerare, dummodo hae sint, quarum dolus noceat.

Dig. 44.4.2.2

Ulpianus 76 ad ed.

Plane ex persona eius, qui exceptionem obicit, in rem opponitur exceptio: neque enim quaeritur, adversus quem commissus sit dolus, sed an in ea re dolo malo factum sit a parte actoris.

Dig. 44.4.2.3

Ulpianus 76 ad ed.

Circa primam speciem, quibus ex causis exceptio haec locum habeat, haec sunt, quae tractari possunt. si quis sine causa ab aliquo fuerit stipulatus, deinde ex ea stipulatione experiatur, exceptio utique doli mali ei nocebit: licet enim eo tempore, quo stipulabatur, nihil dolo malo admiserit, tamen dicendum est eum, cum litem contestatur, dolo facere, qui perseveret ex ea stipulatione petere: et si cum interponeretur, iustam causam habuit, tamen nunc nullam idoneam causam habere videtur. proinde et si crediturus pecuniam stipulatus est nec credidit et si certa fuit causa stipulationis, quae tamen aut non est secuta aut finita est, dicendum erit nocere exceptionem.

Dig. 44.4.2.4

Ulpianus 76 ad ed.

Item quaeritur, si quis pure stipulatus sit certam quantitatem, quia hoc actum sit, sed post stipulationem interpositam pactus sit, ne interim pecunia usque ad certum diem petatur, an noceat exceptio doli. et quidem et de pacto convento excipi posse nequaquam ambigendum est: sed et si hac quis exceptione uti velit, nihilo minus poterit: dolo enim facere eum, qui contra pactum petat, negari non potest.

Dig. 44.4.2.5

Ulpianus 76 ad ed.

Et generaliter sciendum est ex omnibus in factum exceptionibus doli oriri exceptionem, quia dolo facit, quicumque id, quod quaqua exceptione elidi potest, petit: nam et si inter initia nihil dolo malo facit, attamen nunc petendo facit dolose, nisi si talis sit ignorantia in eo, ut dolo careat.

Dig. 44.4.2.6

Ulpianus 76 ad ed.

Non male dictum est, si creditor usuras in futurum acceperit, deinde pecuniam nihilo minus petat, antequam id tempus praetereat, cuius temporis usuras accepit, an doli exceptione repellatur. et potest dici dolo eum facere: accipiendo enim usuras distulisse videtur petitionem in id tempus, quod est post diem usurarum praestitarum, et tacite convenisse interim se non petiturum.

Dig. 44.4.2.7

Ulpianus 76 ad ed.

Item quaeritur: si statuliberum mercatus quis fuerit iussum decem dare, cum hoc ignoraret, et duplam stipulatus fuerit, deinde decem acceperit evicto eo in libertatem agere ex duplae stipulatione potest, sed nisi decem, quae implendae condicionis causa acceperit, deduxerit, exceptione summovendus erit: et haec ita iulianus quoque scripsit. si tamen ex re emptoris vel ex peculio, quod ad emptorem pertinebat, pecuniam dederit statuliber, potest dici exceptionem non nocere, quia dolo non faceret.

Dig. 44.4.3

Paulus 71 ad ed.

Item si ob id, quod, antequam dominium ad me transferatur, venditori dederit decem, agam ex empto, ut decem recipiam, ita puto competere mihi actionem, si paratus sim ex duplae stipulatione eum liberare.

Dig. 44.4.4pr.

Ulpianus 76 ad ed.

Apud celsum quaeritur, si, cum titio mandassent creditores hereditarii, ut adiret hereditatem, unus non mandasset decipiendi eius causa, mandaturus alioquin, si non foret hic aditurus, deinde agat, an exceptione repellatur: et ait celsus doli eum exceptione repellendum.

Dig. 44.4.4.1

Ulpianus 76 ad ed.

Iulianus scripsit, si quis, cum aeger esset, centum aureos uxoris suae consobrino spopondisset, volens scilicet eam pecuniam ad mulierem pervenire, deinde convaluerit, an exceptione uti possit, si conveniatur. et refert labeoni placuisse doli mali uti eum posse.

Dig. 44.4.4.2

Ulpianus 76 ad ed.

Si in arbitrum compromiserimus, deinde cum non stetissem ob adversam valitudinem, poena commissa est, an uti possim doli exceptione? et ait pomponius prodesse mihi doli exceptionem.

Dig. 44.4.4.3

Ulpianus 76 ad ed.

Item quaeritur, si cum eo, a quo tibi sexaginta deberentur, compromiseris, deinde per imprudentiam poenam centum stipulatus fueris. labeo putat convenire officio arbitri iubere tantum tibi dari, quantum re vera debeatur, et, si non fiat, non vetare, ne quid amplius petatur: sed etiamsi id omissum fuerit, peti posse quod debetur labeo dicit, et si forte poena petatur, doli mali exceptionem profuturam.

Dig. 44.4.4.4

Ulpianus 76 ad ed.

Si quis pupillo solverit sine tutoris auctoritate id quod debuit exque ea solutione locupletior factus sit pupillus, rectissime dicitur exceptionem petentibus nocere: nam et si mutuam acceperit pecuniam vel ex quo alio contractu locupletior factus sit, dandam esse exceptionem. idemque et in ceteris erit dicendum, quibus non recte solvitur: nam si facti sint locupletiores, exceptio locum habebit.

Dig. 44.4.4.5

Ulpianus 76 ad ed.

Item labeo scribit, si quis fugitivum esse sciens emerit servum et si stipulatus fuerit fugitivum non esse, deinde agat ex stipulatu, non esse eum exceptione repellendum, quoniam hoc convenit (quamvis ex empto actionem non haberet): sed, si non convenisset, exceptione repelletur.

Dig. 44.4.4.6

Ulpianus 76 ad ed.

Quod si is, cui pecunia debeatur, cum debitore decidit et nomen eius vendidit seio, cui debitor mandaverat, ut nomen emeret, deque ea re emptor stipulatus est, deinde creditor eam pecuniam retinet, quam per iudicem abstulit, an emptor ex stipulatu possit experiri? et ofilius putat, si venditor nominis paratus non sit reddere, quantum ab emptore acceperit, non nocituram exceptionem doli mali: et puto sententiam ofilii veram.

Dig. 44.4.4.7

Ulpianus 76 ad ed.

Labeo ait, si de homine petitio secundum actorem fuerit iudicatum et iussu iudicis satisdatum sit hominem intra certum diem tradi, et, si traditus non fuisset, poenam stipulatus sit, petitorem, qui et hominem vindicat et poenam petit, exceptione esse repellendum: iniquum enim esse et hominem possidere et poenam exigere.

Dig. 44.4.4.8

Ulpianus 76 ad ed.

Item quaeritur, si uniones tibi pignori dedero et convenerit, ut soluta pecunia redderentur, et hi uniones culpa tua perierint et pecuniam petas. exstat nervae et atilicini sententia dicentium ita esse excipiendum: " si inter me et te non convenit, ut soluta pecunia uniones mihi reddantur": sed est verius exceptionem doli mali nocere debere.

Dig. 44.4.4.9

Ulpianus 76 ad ed.

Si minor mihi infantem donaverit, deinde eum vindicet, exceptione doli mali repellendus est, nisi alimenta reddat et si quis alius sumptus probabilis in eum factus sit.

Dig. 44.4.4.10

Ulpianus 76 ad ed.

Praeterea sciendum est, si quis quid ex testamento contra voluntatem petat, exceptione eum doli mali repelli solere: et ideo heres, qui non habet voluntatem, per exceptionem doli repellitur.

Dig. 44.4.4.11

Ulpianus 76 ad ed.

Si quis ex uncia heres sit scriptus, ex qua ducenta consequi potuit, deinde propter hoc legatum, in quo centum erant, praetulit, ne molestiis hereditariis implicaretur: an, si legatum petat, exceptione doli mali summoveatur? et ait iulianus non esse eum summovendum. quod si a substituto pretium accepit vel quod pretii loco haberi posset, ne adeat hereditatem, petens legatum dolo, inquit, facere intellegetur ac per hoc doli exceptione repelletur.

Dig. 44.4.4.12

Ulpianus 76 ad ed.

Quaesitum est, si, cum fundi usum fructum haberem, eum fundum volente me vendideris, an vindicanti mihi usum fructum exceptio sit obicienda. et hoc iure utimur, ut exceptio doli noceat.

Dig. 44.4.4.13

Ulpianus 76 ad ed.

Marcellus ait adversus doli exceptionem non dari replicationem doli. labeo quoque in eadem opinione est: ait enim iniquum esse communem malitiam petitori quidem praemio esse, ei vero, cum quo ageretur, poenae esse, cum longe aequum sit ex eo, quod perfide gestum est, actorem nihil consequi.

Dig. 44.4.4.14

Ulpianus 76 ad ed.

Contra senatus consulti quoque macedoniani exceptionem de dolo dandam replicationem ambigendum non esse eamque nocere debere etiam constitutionibus et sententiis auctorum cavetur.

Dig. 44.4.4.15

Ulpianus 76 ad ed.

Labeo et si ex stipulatu actio competat propter doli clausulam, tamen nocere doli exceptionem ait, si adversus ea inquit, factum erit: posse enim petitorem, antequam stipulatio committatur, nihil dolo malo fecisse et tunc facere cum petat: propter quod exceptionem esse necessariam.

Dig. 44.4.4.16

Ulpianus 76 ad ed.

Adversus parentes patronosque neque doli exceptio neque alia quidem, quae patroni parentisve opinionem apud bonos mores suggillet, competere potest: in factum tamen erit excipiendum, ut, si forte pecunia non numerata dicatur, obiciatur exceptio pecuniae non numeratae. nihil autem interest, utrum patronus ex suo contractu an vero ex alieno conveniatur: semper enim reverentia ei exhibenda est tam vivo quam defuncto. si autem cum herede liberti patronus agat, puto excipere debere de dolo patroni heredem liberti. libertum autem de dolo patroni, etsi ab herede eius conveniatur, minime exceptionem obiecturum: namque convenit tam vivo quam mortuo patrono a liberto honorem exhiberi. in stipulatione plane doli clausula non erit detrahenda, quia ex doli clausula non de dolo actio intenditur, sed ex stipulatu.

Dig. 44.4.4.17

Ulpianus 76 ad ed.

In hac exceptione et de dolo servi vel alterius personae iuri nostro subiectae excipere possumus et de eorum dolo, quibus adquiritur. sed de servorum et filiorum dolo, si quidem ex peculiari eorum negotio actio intendatur, in infinitum exceptio obicienda est: si autem non ex peculiari causa, tum de eo dumtaxat excipi oportet, qui admissus sit in ipso negotio quod geritur, non etiam si postea aliquis dolus intervenisset: neque enim esse aequum servi dolum amplius domino nocere, quam in quo opera eius esset usus.

Dig. 44.4.4.18

Ulpianus 76 ad ed.

Quaesitum est, an de procuratoris dolo, qui ad agendum tantum datus est, excipi possit. et puto recte defendi, si quidem in rem suam procurator datus sit, etiam de praeterito eius dolo, hoc est si ante acceptum iudicium dolo quid fecerit, esse excipiendum, si vero non in rem suam, dolum praesentem in exceptionem conferendum. si autem is procurator sit, cui omnium rerum administratio concessa est, tunc de omni dolo eius excipi posse neratius scribit.

Dig. 44.4.4.19

Ulpianus 76 ad ed.

Mandavi titio, ut a te stipularetur, deinde titius seio, et stipulatus a te seius est et iudicium edidit: ait labeo excipiendum esse tam de meo quam et seii dolo.

Dig. 44.4.4.20

Ulpianus 76 ad ed.

Item quaeritur, si debitor meus te circumveniebat teque mihi reum dederit egoque abs te stipulatus fuero, deinde petam, an doli mali exceptio obstet. et magis est, ut non tibi permittatur de dolo debitoris mei adversus me excipere, cum non ego te circumvenerim: adversus ipsum autem debitorem meum poteris experiri.

Dig. 44.4.4.21

Ulpianus 76 ad ed.

Sed et si mulier post admissum dolum debitorem suum marito in dotem delegaverit, idem probandum erit de dolo mulieris non esse permittendum excipere, ne indotata fiat.

Dig. 44.4.4.22

Ulpianus 76 ad ed.

Apud iulianum quaesitum est, si heres soceri, a quo dos peteretur, exciperet de dolo mariti et mulieris, cui pecunia quaereretur, an obstatura esset exceptio ex persona mulieris. et ait iulianus, si maritus ex promissione dotis ab herede soceri petat et heres excipiat de dolo filiae, cui ea pecunia adquireretur, exceptionem obstare: dos enim, quam maritus ab herede soceri petit, intellegitur, inquit, filiae adquiri, cum per hoc dotem sit habitura. illud non explicat iulianus, an et de dolo mariti excipi possit: puto autem eum hoc sentire, ut etiam de dolo mariti noceat exceptio, licet videatur nulla dos filiae, ut ait, quaeri.

Dig. 44.4.4.23

Ulpianus 76 ad ed.

Illa etiam quaestio ventilata est apud plerosque, an de dolo tutoris exceptio pupillo experienti nocere debeat. et ego puto utilius, etsi per eas personas pupillis favetur, tamen dicendum esse, sive quis emerit a tutore rem pupilli sive contractum sit cum eo in rem pupilli, sive dolo quid tutor fecerit et ex eo pupillus locupletior factus est, pupillo nocere debere, nec illud esse distinguendum, cautum sit ei an non, solvendo sit an non tutor, dummodo rem administret: unde enim divinat is, qui cum tutore contrahit? plane si mihi proponas collusisse aliquem cum tutore, factum suum ei nocebit.

Dig. 44.4.4.24

Ulpianus 76 ad ed.

Si quis non tutor, sed pro tutore negotia gerat, an dolus ipsius noceat pupillo, videamus. et putem non nocere: nam si is, qui pro tutore negotia gerebat, rem vendiderit et usucapta sit, exceptionem non nocere pupillo rem suam persequenti, etiamsi ei cautum sit, quia huic rerum pupilli administratio concessa non fuit.

Dig. 44.4.4.24a

Ulpianus 76 ad ed.

Secundum haec magis opinor de dolo tutoris exceptionem pupillo esse obiciendam.

Dig. 44.4.4.25

Ulpianus 76 ad ed.

Quae in tutore diximus, eadem in curatore quoque furiosi dicenda erunt, sed et ^ ^ in prodigi vel minoris viginti quinque annis.

Dig. 44.4.4.26

Ulpianus 76 ad ed.

De dolo autem ipsius minoris viginti quinque annis exceptio utique locum habebit: nam et de pupilli dolo interdum esse excipiendum nequaquam ambigendum, est ex ea aetate, quae dolo non careat. denique iulianus quoque saepissime scripsit doli pupillos, qui prope pubertatem sunt, capaces esse. quid enim, si debitor ex delegatu pupilli pecuniam creditori eius solvit? fingendus est, inquit, pubes esse, ne propter malitiae ignorantiam bis eandem pecuniam consequatur. idem servandum in furioso ait, si, cum existimaretur compos mentis esse, iusserit debitorem creditori solvere, vel si quod exegit, domi habeat.

Dig. 44.4.4.27

Ulpianus 76 ad ed.

De auctoris dolo exceptio emptori non obicitur. si autem accessione auctoris utitur, aequissimum visum est ei, qui ex persona auctoris utitur accessione, pati dolum auctoris: et peraeque traditur rei quidem cohaerentem exceptionem etiam emptori nocere, eam autem, quae ex delicto personae oriatur, nocere non oportere.

Dig. 44.4.4.28

Ulpianus 76 ad ed.

Si, cum legitima hereditas gaii seii ad te perveniret et ego essem heres institutus, persuaseris mihi per dolum malum, ne adeam hereditatem, et posteaquam ego repudiavi hereditatem, tu eam sempronio cesseris pretio accepto isque a me petat hereditatem: exceptionem doli mali eius, qui ei cessit, non potest pati.

Dig. 44.4.4.29

Ulpianus 76 ad ed.

Si quis autem ex causa legati vindicet aut is, cui ex causa donationis res praestita est, vindicet, an de dolo exceptionem patiatur ex causa eius, in cuius locum successerit? et magis putat pomponius summovendum: et ego puto exceptione eos esse repellendos, cum lucrativam causam sint nancti: aliud est enim emere, aliud ex his causis succedere.

Dig. 44.4.4.30

Ulpianus 76 ad ed.

Idem tractat pomponius et in eum, qui pigneri accepit, si serviana vel hypothecaria actione experiatur: nam et hunc putat pomponius summovendum, quia res ad eum qui dolo fecit reversura est.

Dig. 44.4.4.31

Ulpianus 76 ad ed.

Auctoris autem dolus, sicut diximus, emptori non obicitur. sed hoc in emptore solo servabimus: item in eo, qui permutaverit vel in solutum accepit: item in similibus, qui vicem emptorum continent. ceterum si noxae deditus quis sit, pomponius putat passurum exceptionem, quam ille pateretur, qui noxae dedit. proinde ex quacumque alia causa, quae prope lucrativam habet adquisitionem, quaesisse quis videatur, patietur exceptionem doli ex persona eius, in cuius locum successit: sufficit enim, si is, qui pretium dedit vel vice pretii, cum sit bona fide emptor, ut non patiatur doli exceptionem ex persona auctoris, utique si ipse dolo caret. ceterum si ipse dolo non careat, pervenietur ad doli exceptionem et patietur de dolo suo exceptionem.

Dig. 44.4.4.32

Ulpianus 76 ad ed.

Si a titio fundum emeris qui sempronii erat isque tibi traditus fuerit pretio soluto, deinde titius sempronio heres extiterit et eundem fundum maevio vendiderit et tradiderit: iulianus ait aequius esse praetorem te tueri, quia et, si ipse titius fundum a te peteret, exceptione in factum comparata vel doli mali summoveretur et, si ipse eum possideret et publiciana peteres, adversus excipientem " si non suus esset" replicatione utereris, ac per hoc intellegeretur eum fundum rursum vendidisse, quem in bonis non haberet.

Dig. 44.4.4.33

Ulpianus 76 ad ed.

Metus causa exceptionem cassius non proposuerat contentus doli exceptione, quae est generalis: sed utilius visum est etiam de metu opponere exceptionem. etenim distat aliquid doli exceptione, quod exceptio doli personam complectitur eius, qui dolo fecit: enimvero metus causa exceptio in rem scripta est " si in ea re nihil metus causa factum est", ut non inspiciamus, an is qui agit metus causa fecit aliquid, sed an omnino metus causa factum est in hac re a quocumque, non tantum ab eo qui agit. et quamvis de dolo auctoris exceptio non obiciatur, verumtamen hoc iure utimur, ut de metu non tantum ab auctore, verum a quocumque adhibito exceptio obici possit.

Dig. 44.4.4.34

Ulpianus 76 ad ed.

Illud sciendum est hanc exceptionem de metu eum obicere debere, qui metum non a parente passus est, in cuius fuit potestate: ceterum parenti licere deteriorem condicionem liberorum in rebus peculiariis facere. sed si se abstinuerit hereditate paterna, succurrendum ei erit, ut alioquin succurritur.

Dig. 44.4.5pr.

Paulus 71 ad ed.

Pure mihi debes decem: ea tibi sub condicione legavi. interim heres si petat, doli exceptione non est summovendus, cum possit etiam deficere condicio: itaque legatorum stipulationem interponere debebit. sed si non caveat heres, doli exceptione summovebitur: expedit enim legatario retinere summam, quam mitti in possessionem rerum hereditariarum.

Dig. 44.4.5.1

Paulus 71 ad ed.

Si cui legata sit via et is lege falcidia locum habente totam eam vindicet non oblata aestimatione quartae partis, summoveri eum doli exceptione Marcellus ait, quoniam suo commodo heres consulit.

Dig. 44.4.5.2

Paulus 71 ad ed.

Si donavi alicui rem nec tradidero, et ille cui donavi non tradita possessione in eo loco aedificaverit me sciente, et cum aedificaverit, nanctus sim ego possessionem, et petat a me rem donatam, et ego excipiam, quod supra legitimum modum facta est: an de dolo replicandum est? dolo enim feci, qui passus sum eum aedificare et non reddo impensas.

Dig. 44.4.5.3

Paulus 71 ad ed.

Actoris, qui exigendis pecuniis praepositus est, etiam posterior dolus domino nocet.

Dig. 44.4.5.4

Paulus 71 ad ed.

Si servus veniit ab eo, cui hoc dominus permisit, et redhibitus sit domino: agenti venditori de pretio exceptio opponitur redhibitionis, licet iam is qui vendidit domino pretium solverit (etiam mercis non traditae exceptione summovetur et qui pecuniam domino iam solvit) et ideo is qui vendidit agit adversus dominum. eandem causam esse pedius ait eius, qui negotium nostrum gerens vendidit.

Dig. 44.4.5.5

Paulus 71 ad ed.

Si eum, qui volebat mihi donare supra legitimum modum, delegavero creditori meo, non poterit adversus petentem uti exceptione, quoniam creditor suum petit. in eadem causa est maritus: nec hic enim debet exceptione summoveri, qui suo nomine agit. numquid ergo nec de dolo mulieris excipiendum sit adversus maritum, qui dotem petit, non ducturus uxorem, nisi dotem accepisset ^ accepissit^? nisi iam divertit. itaque condictione tenetur debitor qui delegavit vel mulier, ut vel liberet debitorem vel, si solvit, ut pecunia ei reddatur.

Dig. 44.4.5.6

Paulus 71 ad ed.

Non sicut de dolo actio certo tempore finitur, ita etiam exceptio eodem tempore danda est: nam haec perpetuo competit, cum actor quidem in sua potestate habeat, quando utatur suo iure, is autem cum quo agitur non habeat potestatem, quando conveniatur.

Dig. 44.4.6

Gaius 30 ad ed. provinc.

Si opera creditoris acciderit, ut debitor pecuniam, quam soluturus erat, perderet, exceptione doli mali creditor removebitur. idem est et si creditori eius numeratam pecuniam ratam creditor non habeat.

Dig. 44.4.7pr.

Ulpianus 76 ad ed.

Iulianus ait: si pecuniam, quam me tibi debere existimabam, iussu tuo spoponderim ei cui donare volebas, exceptione doli mali potero me tueri et praeterea condictio mihi adversus stipulatorem competit, ut me liberet.

Dig. 44.4.7.1

Ulpianus 76 ad ed.

Idem iulianus ait, si ei, quem creditorem tuum putabas, iussu tuo pecuniam, quam me tibi debere existimabam, promisero, petentem doli mali exceptione summoveri debere, et amplius agendo cum stipulatore consequar, ut mihi acceptam faciat stipulationem. et habet haec sententia iuliani humanitatem, ut etiam adversus hunc utar exceptione et condictione, cui sum obligatus.

Dig. 44.4.8pr.

Paulus 6 ad plaut.

Dolo facit, qui petit quod redditurus est.

Dig. 44.4.8.1

Paulus 6 ad plaut.

Sic, si heres damnatus sit non petere a debitore, potest uti exceptione doli mali debitor et agere ex testamento.

Dig. 44.4.9

Paulus 32 ad ed.

Si procurator rei pecunia accepta damnari se passus sit et cum domino iudicati agatur, tuebitur se doli mali exceptione. nec hoc, quod acceperit procurator, auferri ab eo potest: nam turpiter accepta pecunia iustius penes eum est qui deceptus sit quam qui decepit.

Dig. 44.4.10

Marcianus 3 reg.

Cum vir aut uxor in area sibi donata aliquid aedificasset, plerisque placet doli mali exceptione posita rem servari posse.

Dig. 44.4.11pr.

Nerva 4 membr.

Si procurator agit, de dolo eius excipi non debet, quia aliena lis est isque rei extraneus, neque alienus dolus nocere alteri debet. si post litem contestatam dolo quid fecerit, an exceptio eo nomine in iudicium obicienda sit, dubitari potest, quia litis contestatione res procuratoris fit eamque suo iam quodammodo nomine exequitur. et placet de procuratoris dolo excipiendum esse. idem de tutore, qui pupilli nomine aget, dicendum est.

Dig. 44.4.11.1

Nerva 4 membr.

In universum autem haec in ea re regula sequenda est, ut dolus omnimodo puniatur, etsi non ali cui, sed ipsi, qui eum admisit, damnosus futurus erit.

Dig. 44.4.12

Papinianus 3 quaest.

Qui aequitate defensionis infringere actionem potest, doli exceptione tutus est.

Dig. 44.4.13

Paulus 14 quaest.

Liberis exheredatis, qui nihil ex patris iudicio meruerunt, rupto testamento ius suum conservandum est, nec opponetur doli mali exceptio. quod non solum in persona eorum, sed in heredibus in persona liberorum quoque eorum optinendum est.

Dig. 44.4.14

Paulus 3 resp.

Paulus respondit eum, qui in alieno solo aedificium extruxerit, non alias sumptus consequi posse, quam possideat et ab eo dominus soli rem vindicet, scilicet opposita doli mali exceptione.

Dig. 44.4.15

Scaevola 5 resp.

Fideiussor evictionis nomine condemnatus id praedium, quod evictum est, et omnia praestare paratus est, quae iure empti continentur: quaero, an agentem emptorem exceptione ex causa iudicati doli mali summovere potest. respondit exceptionem quidem opponi posse, iudicem autem aestimaturum, ut pro damnis emptori satisfiat.

Dig. 44.4.16

Hermogenianus 6 iuris epit.

Si debitor a furioso delegatus creditori eius solvat, quem compotem mentis esse existimabat, et ita cum eo agatur: exceptione doli in id, quod in rem furiosi processit, defenditur.

Dig. 44.4.17pr.

Scaevola 27 Dig.

Pater pro filia dotem promiserat et pactus erat, ut ipse aleret filiam suam eiusque omnes: idem homo rusticanus genero scripsit quasi usuras praeteritas ex dotis promissione: quaesitum est, cum ipse filiam suam exhibuerit et maritus nullam impensam fecerit, an ex chirographo ex stipulatu agenti genero exceptio obstare debeat. respondit, si, ut proponatur, pater, cum exhiberet, per errorem promisisset, locum fore doli mali exceptioni.

Dig. 44.4.17.1

Scaevola 27 Dig.

Avus nepotibus ex filia legavit singulis centena et adiecit haec verba: " ignoscite, nam potueram vobis amplius relinquere, nisi me fronto pater vester male accepisset, cui dederam mutua quindecim, quae ab eo recipere non potui: postremo hostes, qui mihi fere omnem substantiam abstulerunt". quaesitum est, an, si avi heres ab his nepotibus patris sui heredibus petat quindecim, contra voluntatem defuncti facere videatur et doli mali exceptione summoveatur. respondit exceptionem obstaturam.

Dig. 44.4.17.2

Scaevola 27 Dig.

Ex quadrante heres scriptus a coherede ex dodrante instituto emit portionem certa quantitate, ex qua aliquam summam in nominibus ex kalendario uti daret, stipulanti spopondit: defuncto venditore hereditatis falsum testamentum septicius accusare coepit et hereditatem ab emptore petit et ne quid ex ea minueret, impetravit: quaesitum est, cognitione falsi pendente an heredes ex stipulatu petentes doli exceptione summoventur. respondit heredes venditoris, si ante eventum cognitionis pergant petere, exceptione doli mali posse summoveri.

Dig. 44.4.17.3

Scaevola 27 Dig.

Marito et filio communi ex parte dimidia scriptis heredibus filiam suam ex priore matrimonio ita heredem instituit: " maevia filia mea ex sex unciis heres mihi esto, si cum coheredibus tuis parem rationem feceris pro mea portione in diem mortis meae eius actus, qui pendet ex tutela tua, quam titius pater meus, avus tuus administravit". quaesitum est, an, quia sub condicione instituta filia esset, si omitteret hereditatem, uti salvam tutelae actionem haberet, legata sibi a matre data consequi possit. respondit secundum ea quae proponerentur eam, de qua quaereretur, contra voluntatem petere et ideo exceptionem doli obstaturam.

Dig. 44.5.0. Quarum rerum actio non datur.

Dig. 44.5.1pr.

Ulpianus 76 ad ed.

Iusiurandum vicem rei iudicatae optinet non immerito, cum ipse quis iudicem adversarium suum de causa sua fecerit deferendo ei iusiurandum.

Dig. 44.5.1.1

Ulpianus 76 ad ed.

Si pupillus sine tutoris auctoritate detulerit iusiurandum, dicemus non obstare exceptionem istam, nisi tutore auctore in iudicio delatio facta sit.

Dig. 44.5.1.2

Ulpianus 76 ad ed.

Si petitor fundi iusiurandum detulerit adversario, ut, si auctor eius iurasset suum fundum se tradidisse, ab ea controversia discessurum se, exceptio possessori fundi dabitur.

Dig. 44.5.1.3

Ulpianus 76 ad ed.

Si fideiussor iuravit, si quidem de sua persona tantum iuravit, quasi se non esse obligatum, nihil reo proderit: si vero in rem iuravit, dabitur exceptio reo quoque.

Dig. 44.5.1.4

Ulpianus 76 ad ed.

Si manumisero eum servum, qui negotia mea gesserat in servitute, deinde stipulatus ab eo fuero, quod negotia mea gesserit, quidquid ob eam rem, si tunc liber fuisset, eum mihi dare oporteret, id dari, deinde ex stipulatu agam, non summoveri me exceptione: neque enim oneratum se hoc nomine potest queri libertus, si lucrum abruptum ex re patroni non faciat.

Dig. 44.5.1.5

Ulpianus 76 ad ed.

Quae onerandae libertatis causa stipulatus sum, a liberto exigere non possum. onerandae autem libertatis causa facta bellissime ita definiuntur, quae ita imponuntur, ut, si patronum libertus offenderit, petantur ab eo semperque sit metu exactionis ei subiectus, propter quem metum quodvis sustineat patrono praecipiente.

Dig. 44.5.1.6

Ulpianus 76 ad ed.

In summa si in continenti impositum quid sit liberto, quod epaiwroumenon oneret eius libertatem, dicendum est exceptioni locum facere. sed si post intervallum, habet quidem dubitationem, quia nemo eum cogebat hoc promittere: sed idem erit probandum et hic, tamen causa cognita, si liquido appareat libertum metu solo vel nimia patrono reverentia ita se subiecisse, ut vel poenali quadam stipulatione se subiceret.

Dig. 44.5.1.7

Ulpianus 76 ad ed.

Si libertatis causa societatem libertus cum patrono coierit et patronus cum liberto pro socio agat, an haec exceptio sit necessaria? et puto ipso iure tutum esse libertum adversus exactionem patroni.

Dig. 44.5.1.8

Ulpianus 76 ad ed.

Exceptionem onerandae libertatis causa, sicut et ceteras fideiussori non esse denegandas sciendum est, nec ei quidem, qui rogatu liberti reus factus est: sed et ipsi liberto, sive procurator ad defendendum a reo datus fuerit sive heres ei exstiterit. cum enim propositum sit praetori in huiusmodi obligationibus reo succurrere, non servaturum propositum suum, nisi fideiussorem quoque et eum, qui rogatu liberti reus factus fuerit, adversus patronum defenderit:

etenim parvi refert, protinus libertus patrono cogatur dare an per interpositam fideiussoris vel rei personam.

Dig. 44.5.1.9

Ulpianus 76 ad ed.

Sive autem ipsi patrono sit promissum sive alii voluntate patroni, onerandae libertatis causa videtur factum et ideo haec exceptio locum habebit.

Dig. 44.5.1.10

Ulpianus 76 ad ed.

Quod si patronus libertum suum delegaverit creditori, an adversus creditorem, cui delegatus promisit libertatis causa onerandae, exceptione ista uti possit, videamus. et cassius existimasse urseium refert creditorem quidem minime esse submovendum exceptione, quia suum recepit: verumtamen libertum patrono posse condicere, si non transigendae controversiae gratia id fecit.

Dig. 44.5.1.11

Ulpianus 76 ad ed.

Item si libertus debitorem suum patrono delegaverit, nulla exceptione summovendus est patronus, sed libertus a patrono per condictionem hoc repetet.

Dig. 44.5.1.12

Ulpianus 76 ad ed.

Haec exceptio non tantum ipsi liberto, verum successoribus quoque liberti danda est: et versa vice heredem patroni summovendum, si haec persequatur, sciendum est.

Dig. 44.5.2pr.

Paulus 71 ad ed.

Si filio familias delatum sit iusiurandum et iuraverit patrem suum dare non oportere, danda est patri exceptio.

Dig. 44.5.2.1

Paulus 71 ad ed.

Si in alea rem vendam, ut ludam, et evicta re conveniar, exceptione summovebitur emptor.

Dig. 44.5.2.2

Paulus 71 ad ed.

Si servus promittat domino pecuniam, ut manumittatur, cum alias non esset manumissurus dominus, eamque liber factus spondeat: dicitur non obstare exceptionem patrono, si eam petat: non enim onerandae libertatis causa haec pecunia promissa est. alioquin iniquum est, dominum et servo carere et pretio eius. totiens ergo onerandae libertatis causa pecunia videtur promitti, quotiens sua sponte dominus manumisit et propterea velit libertum pecuniam promittere, ut non exigat eam, sed ut libertus eum timeat et obtemperet ei.

Dig. 44.6.0. De litigiosis.

Dig. 44.6.1pr.

Ulpianus 76 ad ed.

Litigiosam rem non facit denuntiatio, quae impediendae venditionis causa fit.

Dig. 44.6.1.1

Ulpianus 76 ad ed.

Si inter primum et secundum sit lis contestata et ego a tertio emero, qui nullam controversiam patiebatur, videamus, an exceptioni locus sit. et putem subveniendum mihi, quia is, qui mihi vendidit, nullam litem habuit et quod fieri potest, ut duo in necem eius litem inter se iungant, qui cum ipso litigare non poterant. si tamen cum procuratore tutore curatoreve alicuius iudicium acceptum sit, consequens erit dicere, quasi cum ipso litigetur, ita eum ad exceptionem pertinere.

Dig. 44.6.2

Ulpianus 6 fideic.

Si servus cum emerit scit, ignoravit autem dominus, vel contra, videndum est, cuius potius spectanda sit scientia. et magis est, ut scientia inspicienda sit eius qui comparavit, non eius, cui adquiretur, et ideo poena litigiosi competit, sic tamen, si non mandatu domini emit: nam si mandatu, etiamsi scit servus, dominus autem ignoravit, scientia non nocet: et ita iulianus in re litigiosa scribit.

Dig. 44.6.3

Gaius 6 ad l. xii tab.

Rem de qua controversia est prohibemur in sacrum dedicare: alioquin dupli poenam patimur, nec immerito, ne liceat eo modo duriorem adversarii condicionem facere. sed duplum utrum fisco an adversario praestandum sit, nihil exprimitur: fortassis autem magis adversario, ut id veluti solacium habeat pro eo, quod potentiori adversario traditus est.

Dig. 44.7.0. De obligationibus et actionibus.

Dig. 44.7.1pr.

Gaius 2 aur.

Obligationes aut ex contractu nascuntur aut ex maleficio aut proprio quodam iure ex variis causarum figuris.

Dig. 44.7.1.1

Gaius 2 aur.

Obligationes ex contractu aut re contrahuntur aut verbis aut consensu.

Dig. 44.7.1.2

Gaius 2 aur.

Re contrahitur obligatio mutui datione. mutui autem datio consistit in his rebus, quae pondere numero mensurave constant, veluti vino oleo frumento pecunia numerata, quas res in hoc damus, ut fiant accipientis, postea alias recepturi eiusdem generis et qualitatis.

Dig. 44.7.1.3

Gaius 2 aur.

Is quoque, cui rem aliquam commodamus, re nobis obligatur, sed is de ea ipsa re quam acceperit restituenda tenetur.

Dig. 44.7.1.4

Gaius 2 aur.

Et ille quidem qui mutuum accepit, si quolibet casu quod accepit amiserit, nihilo minus obligatus permanet: is vero qui utendum accepit, si maiore casu, cui humana infirmitas resistere non potest, veluti incendio ruina naufragio, rem quam accepit amiserit, securus est. alias tamen exactissimam diligentiam custodiendae rei praestare compellitur, nec sufficit ei eandem diligentiam adhibere, quam suis rebus adhibet, si alius diligentior custodire poterit. sed et in maioribus casibus, si culpa eius interveniat, tenetur, veluti si quasi amicos ad cenam invitaturus argentum, quod in eam rem utendum acceperit, peregre proficiscens secum portare voluerit et id aut naufragio aut praedonum hostiumve incursu amiserit.

Dig. 44.7.1.5

Gaius 2 aur.

Is quoque, apud quem rem aliquam deponimus, re nobis tenetur: qui et ipse de ea re quam acceperit restituenda tenetur. sed is etiamsi neglegenter rem custoditam amiserit, securus est: quia enim non sua gratia accipit, sed eius a quo accipit, in eo solo tenetur, si quid dolo perierit: neglegentiae vero nomine ideo non tenetur, quia qui neglegenti amico rem custodiendam committit, de se queri debet. magnam tamen neglegentiam placuit in doli crimine cadere.

Dig. 44.7.1.6

Gaius 2 aur.

Creditor quoque, qui pignus accepit, re tenetur: qui et ipse de ea ipsa re quam accepit restituenda tenetur.

Dig. 44.7.1.7

Gaius 2 aur.

Verbis obligatio contrahitur ex interrogatione et responsu, cum quid dari fierive nobis stipulemur.

Dig. 44.7.1.8

Gaius 2 aur.

Sed aut proprio nomine quisque obligatur aut alieno: qui autem alieno nomine obligatur, fideiussor vocatur. et plerumque ab eo, quem proprio nomine obligamus, alios accipimus, qui eadem obligatione teneantur, dum curamus, ut quod in obligationem deduximus, tutius nobis debeatur.

Dig. 44.7.1.9

Gaius 2 aur.

Si id, quod dari stipulemur, tale sit, ut dari non possit, palam est naturali ratione inutilem esse stipulationem, veluti si de homine libero vel iam mortuo vel aedibus deustis facta sit stipulatio inter eos, qui ignoraverint eum hominem liberum esse vel mortuum esse vel aedes deustas esse. idem iuris est, si quis locum sacrum aut religiosum dari sibi stipulatus fuerit.

Dig. 44.7.1.10

Gaius 2 aur.

Nec minus inutilis est stipulatio, si quis rem suam ignorans suam esse stipulatus fuerit.

Dig. 44.7.1.11

Gaius 2 aur.

Item sub impossibili condicione factam stipulationem constat inutilem esse.

Dig. 44.7.1.12

Gaius 2 aur.

Furiosum, sive stipulatur sive promittat, nihil agere natura manifestum est.

Dig. 44.7.1.13

Gaius 2 aur.

Huic proximus est, qui eius aetatis est, ut nondum intellegat, quid agatur: sed quod ad hunc benignius acceptum est: nam qui loqui potest, creditur et stipulari et promittere recte posse.

Dig. 44.7.1.14

Gaius 2 aur.

Mutum nihil pertinere ad obligationem verborum natura manifestum est.

Dig. 44.7.1.15

Gaius 2 aur.

Sed et de surdo idem dicitur, quia, etiamsi loqui possit, sive promittit, verba stipulantis exaudire debet, sive stipuletur. debet exaudire verba promittentis. unde apparet non de eo nos loqui, qui tardius exaudit, sed qui omnino non exaudit.

Dig. 44.7.2pr.

Gaius 3 inst.

Consensu fiunt obligationes in emptionibus venditionibus, locationibus conductionibus, societatibus, mandatis.

Dig. 44.7.2.1

Gaius 3 inst.

Ideo autem istis modis consensu dicimus obligationem contrahi, quia neque verborum neque scripturae ulla proprietas desideratur, sed sufficit eos, qui negotia gerunt, consentire.

Dig. 44.7.2.2

Gaius 3 inst.

Unde inter absentes quoque talia negotia contrahuntur, veluti per epistulam vel per nuntium.

Dig. 44.7.2.3

Gaius 3 inst.

Item in his contractibus alter alteri obligatur de eo, quod alterum alteri ex bono et aequo praestare oportet.

Dig. 44.7.3pr.

Paulus 2 inst.

Obligationum substantia non in eo consistit, ut aliquod corpus nostrum aut servitutem nostram faciat, sed ut alium nobis obstringat ad dandum aliquid vel faciendum vel praestandum.

Dig. 44.7.3.1

Paulus 2 inst.

Non satis autem est dantis esse nummos et fieri accipientis, ut obligatio nascatur, sed etiam hoc animo dari et accipi, ut obligatio constituatur. itaque si quis pecuniam suam donandi causa dederit mihi, quamquam et donantis fuerit et mea fiat, tamen non obligabor ei, quia non hoc inter nos actum est.

Dig. 44.7.3.2

Paulus 2 inst.

Verborum quoque obligatio constat, si inter contrahentes id agatur: nec enim si per iocum puta vel demonstrandi intellectus causa ego tibi dixero " spondes ?" et tu responderis " spondeo " , nascetur obligatio.

Dig. 44.7.4

Gaius 3 aur.

Ex maleficio nascuntur obligationes, veluti ex furto, ex damno, ex rapina, ex iniuria. quae omnia unius generis sunt: nam hae re tantum consistunt, id est ipso maleficio, cum alioquin ex contractu obligationes non tantum re consistant, sed etiam verbis et consensu.

Dig. 44.7.5pr.

Gaius 3 aur.

Si quis absentis negotia gesserit, si quidem ex mandatu, palam est ex contractu nasci inter eos actiones mandati, quibus invicem experiri possunt de eo, quod alterum alteri ex bona fide praestare oportet: si vero sine mandatu, placuit quidem sane eos invicem obligari eoque nomine proditae sunt actiones, quas appellamus negotiorum gestorum, quibus aeque invicem experiri possunt de eo, quod ex bona fide alterum alteri praestare oportet. sed neque ex contractu neque ex maleficio actiones nascuntur: neque enim is qui gessit cum absente creditur ante contraxisse, neque ullum maleficium est sine mandatu suscipere negotiorum administrationem: longe magis is, cuius negotia gesta sunt, ignorans aut contraxisse aut deliquisse intellegi potest: sed utilitatis causa receptum est invicem eos obligari. ideo autem id ita receptum est, quia plerumque homines eo animo peregre proficiscuntur quasi statim redituri nec ob id ulli curam negotiorum suorum mandant, deinde novis causis intervenientibus ex necessitate diutius absunt: quorum negotia disperire iniquum erat, quae sane disperirent, si vel is, qui obtulisset se negotiis gerundis, nullam habiturus esset actionem de eo, quod utiliter de suo impendisset, vel is, cuius gesta essent, adversus eum, qui invasisset negotia eius, nullo iure agere posset.

Dig. 44.7.5.1

Gaius 3 aur.

Tutelae quoque iudicio qui tenentur, non proprie ex contractu obligati intelleguntur (nullum enim negotium inter tutorem et pupillum contrahitur): sed quia sane non ex maleficio tenentur, quasi ex contractu teneri videntur. et hoc autem casu mutuae sunt actiones: non tantum enim pupillus cum tutore, sed et contra tutor cum pupillo habet actionem, si vel impenderit aliquid in rem pupilli vel pro eo fuerit obligatus aut rem suam creditori eius obligaverit.

Dig. 44.7.5.2

Gaius 3 aur.

Heres quoque, qui legatum debet, neque ex contractu neque ex maleficio obligatus esse intellegitur: nam neque cum defuncto neque cum herede contraxisse quicquam legatarius intellegitur: maleficium autem nullum in ea re esse plus quam manifestum est.

Dig. 44.7.5.3

Gaius 3 aur.

Is quoque, qui non debitum accipit per errorem solventis, obligatur quidem quasi ex mutui datione et eadem actione tenetur, qua debitores creditoribus: sed non potest intellegi is, qui ex ea causa tenetur, ex contractu obligatus esse: qui enim solvit per errorem, magis distrahendae obligationis animo quam contrahendae dare videtur.

Dig. 44.7.5.4

Gaius 3 aur.

Si iudex litem suam fecerit, non proprie ex maleficio obligatus videtur, sed quia neque ex contractu obligatus est utique peccasse aliquid intellegitur, licet per imprudentiam, ideo videtur quasi ex maleficio teneri.

Dig. 44.7.5.5

Gaius 3 aur.

Is quoque, ex cuius cenaculo (vel proprio ipsius vel conducto vel in quo gratis habitabat) deiectum effusumve aliquid est ita, ut alicui noceret, quasi ex maleficio teneri videtur: ideo autem non proprie ex maleficio obligatus intellegitur, quia plerumque ob alterius culpam tenetur ut servi aut liberi. cui similis est is, qui ea parte, qua volgo iter fieri solet, id positum aut suspensum habet, quod potest, si ceciderit, alicui nocere. ideo si filius familias seorsum a patre habitaverit et quid ex cenaculo eius deiectum effusumve sit sive quid positum suspensumve habuerit, cuius casus periculosus est, iuliano placuit in patrem neque de peculio neque noxalem dandam esse actionem, sed cum ipso filio agendum.

Dig. 44.7.5.6

Gaius 3 aur.

Item exercitor navis aut cauponae aut stabuli de damno aut furto, quod in nave aut caupona aut stabulo factum sit, quasi ex maleficio teneri videtur, si modo ipsius nullum est maleficium, sed alicuius eorum, quorum opera navem aut cauponam aut stabulum exerceret: cum enim neque ex contractu sit adversus eum constituta haec actio et aliquatenus culpae reus est, quod opera malorum hominum uteretur, ideo quasi ex maleficio teneri videtur.

Dig. 44.7.6

Paulus 4 ad sab.

In omnibus temporalibus actionibus nisi novissimus totus dies compleatur, non finit obligationem.

Dig. 44.7.7

Pomponius 15 ad sab.

Actiones adversus patrem filio praestari non possunt, dum in potestate eius est filius.

Dig. 44.7.8

Pomponius 16 ad sab.

Sub hac condicione " si volam" nulla fit obligatio: pro non dicto enim est, quod dare nisi velis cogi non possis: nam nec heres promissoris eius, qui numquam dare voluerit, tenetur, quia haec condicio in ipsum promissorem numquam exstitit.

Dig. 44.7.9

Paulus 9 ad sab.

Filius familias suo nomine nullam actionem habet, nisi iniuriarum et quod vi aut clam et depositi et commodati, ut iulianus putat.

Dig. 44.7.10

Ulpianus 47 ad sab.

Naturales obligationes non eo solo aestimantur, si actio aliqua eorum nomine competit, verum etiam eo, si soluta pecunia repeti non possit.

Dig. 44.7.11

Paulus 12 ad sab.

Quaecumque gerimus, cum ex nostro contractu originem trahunt, nisi ex nostra persona obligationis initium sumant, inanem actum nostrum efficiunt: et ideo neque stipulari neque emere vendere contrahere, ut alter suo nomine recte agat, possumus.

Dig. 44.7.12

Pomponius 29 ad sab.

Ex depositi et commodati et mandati et tutelae et negotiorum gestorum ob dolum malum defuncti heres in solidum tenetur.

Dig. 44.7.13

Ulpianus 1 disp.

In factum actiones etiam filii familiarum possunt exercere.

Dig. 44.7.14

Ulpianus 7 disp.

Servi ex delictis quidem obligantur et, si manumittantur, obligati remanent: ex contractibus autem civiliter quidem non obligantur, sed naturaliter et obligantur et obligant. denique si servo, qui mihi mutuam pecuniam dederat, manumisso solvam, liberor.

Dig. 44.7.15

Iulianus 4 Dig.

Qui cum herede egit, exceptione summotus est hac: " si non in ea causa tabulae testamenti sint, ut contra eas emancipato bonorum possessio dari possit " . emancipato omittente bonorum possessionem non inique postulabit creditor restitui sibi actionem adversus scriptum heredem: nam quamdiu bonorum possessio contra tabulas filio dari potest, heres quodammodo debitor non est.

Dig. 44.7.16

Iulianus 13 Dig.

Qui a servo herditario mutuam pecuniam accepit et fundum vel hominem pignoris causa ei tradiderat et precario rogavit, precario possidet: nam servus hereditarius sicuti per traditionem accipiendo proprietatem hereditati adquirit, ita precario dando efficit, ne res usucapi possit. nam et si commodaverit vel deposuerit rem peculiarem, commodati et depositi actionem hereditati adquiret. haec ita, si peculiare negotium contractum est: nam ex hac causa etiam possessio adquisita intellegi debet.

Dig. 44.7.17

Iulianus 33 Dig.

Omnes debitores, qui speciem ex causa lucrativa debent, liberantur, cum ea species ex causa lucrativa ad creditores pervenisset.

Dig. 44.7.18

Iulianus 54 Dig.

Si is, qui stichum dari stipulatus fuerat, heres exstiterit ei, cui ex testamento idem stichus debebatur: si ex testamento stichum petierit, non consumet stipulationem, et contra si ex stipulatu stichum petierit, actionem ex testamento salvam habebit, quia initio ita constiterint hae duae obligationes, ut altera in iudicium deducta altera nihilo minus integra remaneret.

Dig. 44.7.19

Iulianus 73 Dig.

Ex promissione dotis: non videtur lucrativa causa esse, sed quodammodo creditor aut emptor intellegitur, qui dotem petit. porro cum creditor vel emptor ex lucrativa causa rem habere coeperit, nihilo minus integras actiones retinent, sicut ex contrario qui non ex causa lucrativa rem habere coepit, eandem non prohibetur ex lucrativa causa petere.

Dig. 44.7.20

Alfenus 2 Dig.

Servus non in omnibus rebus sine poena domino dicto audiens esse solet, sicuti si dominus hominem occidere aut furtum alicui facere servum iussisset. quare quamvis domini iussu servus piraticam fecisset, iudicium in eum post libertatem reddi oportet. et quodcumque vi fecisset, quae vis a maleficio non abesset, ita oportet poenas eum pendere. sed si aliqua rixa ex litibus et contentione nata esset aut aliqua vis iuris retinendi causa facta esset et ab his rebus facinus abesset, tum non convenit praetorem, quod servus iussu domini fecisset, de ea re in liberum iudicium dare.

Dig. 44.7.21

Iulianus 3 ex minic.

Contraxisse unusquisque in eo loco intellegitur, in quo ut solveret se obligavit.

Dig. 44.7.22

Africanus 3 quaest.

Cum quis in diem mercem stipulatus fideiussorem accepit, eius temporis aestimatio spectanda est, quo satis acceperit.

Dig. 44.7.23

Africanus 7 quaest.

Traiecticiae pecuniae nomine, si ad diem soluta non esset, poena (uti adsolet) ob operas eius qui eam pecuniam peteret in stipulationem erat deducta: is qui eam pecuniam petebat parte exacta petere desierat, deinde interposito tempore interpellare instituerat. consultus respondit eius quoque temporis, quo interpellatus non esset, poenam peti posse: amplius etiamsi omnino interpellatus non esset: nec aliter non committi stipulationem, quam si per debitorem non stetisset, quo minus solveret: alioquin dicendum et si is, qui interpellare coepisset, valetudine impeditus interpellare desisset, poenam non committi. de illo sane potest dubitari, si interpellatus ipse moram fecerit, an, quamvis pecuniam postea offerat, nihilo minus poena committatur: et hoc rectius dicitur. nam et si arbiter ex compromisso pecuniam certo die dare iusserit neque per eum, qui dare iussus sit, steterit, non committi poenam respondit: adeo ut et illud servius rectissime existimaverit, si quando dies, qua pecunia daretur, sententia arbitri comprehensa non esset, modicum spatium datum videri. hoc idem dicendum et cum quid ea lege venierit, ut, nisi ad diem pretium solutum fuerit, inempta res fiat.

Dig. 44.7.24pr.

Pomponius l.S. reg.

Si a furioso, cum eum compotem mentis esse putarem, pecuniam quasi mutuam acceperim eaque in rem meam versa fuerit, condictio furioso adquiritur: nam ex quibus causis ignorantibus nobis actiones adquiruntur, ex isdem etiam furiosi nomine incipit agi posse: veluti cum servus eius stipulatur, cum furtum ei fit, aut damnum ei dando in legem aquiliam committitur, aut si forte, cum creditor fuerat, fraudandi eius causa debitor alicui rem tradiderit. idemque erit, si legetur ei vel fideicommissum ei relinquatur.

Dig. 44.7.24.1

Pomponius l.S. reg.

Item si is, qui servo alieno crediderat, furere coeperit, deinde servus in rem domini id quod mutuum acceperat verterit, furioso condictio adquiritur.

Dig. 44.7.24.2

Pomponius l.S. reg.

Item si alienam pecuniam credendi causa quis dederit, deinde compos mentis esse desierit, postea consumpta ea furioso condictio adquiritur.

Dig. 44.7.24.3

Pomponius l.S. reg.

Et qui negotia furiosi gesserit, negotiorum gestorum ei obligatur.

Dig. 44.7.25pr.

Ulpianus l.S. reg.

Actionum genera sunt duo, in rem, quae dicitur vindicatio, et in personam, quae condictio appellatur. in rem actio est, per quam rem nostram, quae ab alio possidetur, petimus: et semper adversus eum est qui rem possidet. in personam actio est, qua cum eo agimus, qui obligatus est nobis ad faciendum aliquid vel dandum: et semper adversus eundem locum habet.

Dig. 44.7.25.1

Ulpianus l.S. reg.

Actionum autem quaedam ex contractu, quaedam ex facto, quaedam in factum sunt. ex contractu actio est, quotiens quis sui lucri causa cum aliquo contrahit, veluti emendo vendendo locando conducendo et ceteris similibus. ex facto actio est, quotiens ex eo teneri quis incipit, quod ipse admisit, veluti furtum vel iniuriam commisit vel damnum dedit. in factum actio dicitur, qualis est exempli gratia actio, quae datur patrono adversus libertum, a quo contra edictum praetoris in ius vocatus est.

Dig. 44.7.25.2

Ulpianus l.S. reg.

Omnes autem actiones aut civiles dicuntur aut honorariae.

Dig. 44.7.26

Ulpianus 5 de cens.

Omnes poenales actiones post litem inchoatam et ad heredes transeunt.

Dig. 44.7.27

Papinianus 27 quaest.

Obligationes, quae non propriis viribus consistunt, neque officio iudicis neque praetoris imperio neque legis potestate confirmantur.

Dig. 44.7.28

Papinianus 1 def.

Actio in personam infertur: petitio in rem: persecutio in rem vel in personam rei persequendae gratia.

Dig. 44.7.29

Paulus 4 resp.

Lucio titio cum ex causa iudicati pecunia deberetur et eidem debitori aliam pecuniam crederet, in cautione pecuniae creditae non adiecit sibi praeter eam pecuniam debitam sibi ex causa iudicati: quaero, an integrae sint utraeque lucio titio petitiones. paulus respondit nihil proponi, cur non sint integrae.

Dig. 44.7.30

Scaevola 1 resp.

Servus effectus non idcirco, quod postea indulgentia principali libertatem consecutus est, redisse dicitur in obligationem creditorum.

Dig. 44.7.31

Maecenatus 2 fideic.

Non solum stipulationes impossibili condicioni applicatae nullius momenti sunt, sed etiam ceteri quoque contractus, veluti emptiones locationes, impossibili condicione interposita aeque nullius momenti sunt, quia in ea re, quae ex duorum pluriumve consensu agitur, omnium voluntas spectetur, quorum procul dubio in huiusmodi actu talis cogitatio est, ut nihil agi existiment adposita ea condicione, quam sciant esse impossibilem.

Dig. 44.7.32

Hermogenianus 2 iuris epit.

Cum ex uno delicto plures nascuntur actiones, sicut evenit, cum arbores furtim caesae dicuntur, omnibus experiri permitti post magnas varietates optinuit.

Dig. 44.7.33

Paulus 3 decr.

Constitutionibus, quibus ostenditur heredes poena non teneri, placuit, si vivus conventus fuerat, etiam poenae persecutionem transmissam videri, quasi lite contestata cum mortuo.

Dig. 44.7.34pr.

Paulus l.S. de concurr. act.

Qui servum alienum iniuriose verberat, ex uno facto incidit et in aquiliam et in actionem iniuriarum: iniuria enim ex affectu fit, damnum ex culpa et ideo possunt utraeque competere. sed quidam altera electa alteram consumi. alii per legis aquiliae actionem iniuriarum consumi, quoniam desiit bonum et aequum esse condemnari eum, qui aestimationem praestitit: sed si ante iniuriarum actum esset, teneri eum ex lege aquilia. sed et haec sententia per praetorem inhibenda est, nisi in id, quod amplius ex lege aquilia competit, agatur. rationabilius itaque est eam admitti sententiam, ut liceat ei quam voluerit actionem prius exercere, quod autem amplius in altera est, etiam hoc exsequi.

Dig. 44.7.34.1

Paulus l.S. de concurr. act.

Si is, cui rem commodavero, eam subripuerit, tenebitur quidem et commodati actione et condictione, sed altera actio alteram peremit aut ipso iure aut per exceptionem, quod est tutius.

Dig. 44.7.34.2

Paulus l.S. de concurr. act.

Hinc de colono responsum est, si aliquid ex fundo subtraxerit, teneri eum condictione et furti, quin etiam ex locato: et poena quidem furti non confunditur, illae autem inter se miscentur. et hoc in legis aquiliae actione dicitur, si tibi commodavero vestimenta et tu ea ruperis: utraeque enim actiones rei persecutionem continent. et quidem post legis aquiliae actionem utique commodati finietur: post commodati an aquiliae remaneat in eo, quod in repetitione triginta dierum amplius est, dubitatur: sed verius est remanere, quia simplo accedit: et simplo subducto locum non habet.

Dig. 44.7.35pr.

Paulus 1 ad ed. praet.

In honorariis actionibus sic esse definiendum cassius ait, ut quae rei persecutionem habeant, hae etiam post annum darentur, ceterae intra annum. honorariae autem, quae post annum non dantur, nec in heredem dandae sunt, ut tamen lucrum ei extorqueatur, sicut fit in actione doli mali et interdicto unde vi et similibus. illae autem rei persecutionem continent, quibus persequimur quod ex patrimonio nobis abest, ut cum agimus cum bonorum possessore debitoris nostri, item publiciana, quae ad exemplum vindicationis datur. sed cum rescissa usucapione redditur, anno finitur, quia contra ius civile datur.

Dig. 44.7.35.1

Paulus 1 ad ed. praet.

In duumviros et rem publicam etiam post annum actio datur ex contractu magistratuum municipalium.

Dig. 44.7.36

Ulpianus 2 ad ed.

Cessat ignominia in condictionibus, quamvis ex famosis causis pendeant.

Dig. 44.7.37pr.

Ulpianus 4 ad ed. praet.

Actionis verbo continetur in rem, in personam: directa, utilis: praeiudicium, sicut ait pomponius: stipulationes etiam, quae praetoriae sunt, quia actionum instar obtinent, ut damni infecti, legatorum et si quae similes sunt. interdicta quoque actionis verbo continentur.

Dig. 44.7.37.1

Ulpianus 4 ad ed. praet.

Mixtae sunt actiones, in quibus uterque actor est, ut puta finium regundorum, familiae erciscundae, communi dividundo, interdictum uti possidetis, utrubi.

Dig. 44.7.38

Paulus 3 ad ed.

Non figura litterarum, sed oratione, quam exprimunt litterae, obligamur, quatenus placuit non minus valere, quod scriptura, quam quod vocibus lingua figuratis significaretur.

Dig. 44.7.39

Gaius 3 ad ed. provinc.

Filius familias ex omnibus causis tamquam pater familias obligatur et ob id agi cum eo tamquam cum patre familias potest.

Dig. 44.7.40

Paulus 11 ad ed.

Hereditariarum actionum loco habentur et legata, quamvis ab herede coeperint.

Dig. 44.7.41pr.

Paulus 22 ad ed.

Quotiens lex obligationem introducit, nisi si nominatim caverit, ut sola ea actione utamur, etiam veteres eo nomine actiones competere.

Dig. 44.7.41.1

Paulus 22 ad ed.

Si ex eodem facto duae competant actiones, postea iudicis potius partes esse, ut quo plus sit in reliqua actione, id actor ferat, si tantundem aut minus, id consequatur.

Dig. 44.7.42pr.

Ulpianus 21 ad ed.

Is, cui sub condicione legatum est, pendente condicione non est creditor, sed tunc, cum exstiterit condicio, quamvis eum, qui stipulatus est sub condicione, placet etiam pendente condicione creditorem esse.

Dig. 44.7.42.1

Ulpianus 21 ad ed.

Creditores eos accipere debemus, qui aliquam actionem vel civilem habent, sic tamen, ne exceptione submoveantur, vel honorariam actionem, vel in factum.

Dig. 44.7.43

Paulus 72 ad ed.

Obligari potest pater familias suae potestatis pubes compos mentis: pupillus sine tutoris auctoritate non obligatur iure civili: servus autem ex contractibus non obligatur.

Dig. 44.7.44pr.

Paulus 74 ad ed. praet.

Obligationum fere quattuor causae sunt: aut enim dies in iis est aut condicio aut modus aut accessio.

Dig. 44.7.44.1

Paulus 74 ad ed. praet.

Circa diem duplex inspectio est: nam vel ex die incipit obligatio aut confertur in diem. ex die veluti " kalendis martiis dare spondes?" cuius natura haec est, ut ante diem non exigatur. ad diem autem " usque ad kalendas dare spondes?" placet autem ad tempus obligationem constitui non posse non magis quam legatum: nam quod alicui deberi coepit, certis modis desinit deberi. plane post tempus stipulator vel pacti conventi vel doli mali exceptione summoveri poterit. sic et in tradendo si quis dixerit se solum sine superficie tradere, nihil proficit, quo minus et superficies transeat, quae natura solo cohaeret.

Dig. 44.7.44.2

Paulus 74 ad ed. praet.

Condicio vero efficax est, quae in constituenda obligatione inseritur, non quae post perfectam eam ponitur, veluti " centum dare spondes, nisi navis ex asia venerit?" sed hoc casu existente condicione locus erit exceptioni pacti conventi vel doli mali.

Dig. 44.7.44.3

Paulus 74 ad ed. praet.

Modus obligationis est, cum stipulamur decem aut hominem: nam alterius solutio totam obligationem interemit nec alter peti potest, utique quamdiu utrumque est.

Dig. 44.7.44.4

Paulus 74 ad ed. praet.

Accessio vero in obligatione aut personae aut rei fit. personae, cum mihi aut titio stipulor. rei, cum mihi decem aut titio hominem stipulor: ubi quaeritur, an ipso iure fiat liberatio homine soluto titio.

Dig. 44.7.44.5

Paulus 74 ad ed. praet.

Si ita stipulatus sim: " si fundum non dederis, centum dare spondes?" sola centum in stipulatione sunt, in exsolutione fundus.

Dig. 44.7.44.6

Paulus 74 ad ed. praet.

Sed si navem fieri stipulatus sum et, si non feceris, centum, videndum, utrum duae stipulationes sint, pura et condicionalis, et existens sequentis condicio non tollat priorem? an vero transferat in se et quasi novatio prioris fiat? quod magis verum est.

Dig. 44.7.45

Paulus 5 ad plaut.

Is, qui ex stipulatu stichum debeat, si eum ante moram manumiserit et is, priusquam super eo promissor conveniretur, decesserit, non tenetur: non enim per eum stetisse videtur, quo minus eum praestaret.

Dig. 44.7.46

Paulus 7 ad plaut.

Furiosus et pupillus, ubi ex re actio venit, obligantur etiam sine curatore vel tutoris auctoritate, veluti si communem fundum habeo cum his et aliquid in eum impendero vel damnum in eo pupillus dederit: nam iudicio communi dividundo obligabuntur.

Dig. 44.7.47

Paulus ex 14 ad plaut.

Arrianus ait multum interesse, quaeras, utrum aliquis obligetur an aliquis liberetur: ubi de obligando quaeritur, propensiores esse debere nos, si habeamus occasionem, ad negandum: ubi de liberando, ex diverso, ut facilior sis ad liberationem.

Dig. 44.7.48

Paulus 16 ad plaut.

In quibuscumque negotiis sermone opus non est sufficiente consensu, iis etiam surdus intervenire potest, quia potest intellegere et consentire, veluti in locationibus conductionibus, emptionibus et ceteris.

Dig. 44.7.49

Paulus 18 ad plaut.

Ex contractibus venientes actiones in heredes dantur, licet delictum quoque versetur, veluti cum tutor in tutela gerenda dolo fecerit aut is apud quem depositum est: quo casu etiam cum filius familias aut servus quid tale commisit, de peculio actio datur, non noxalis.

Dig. 44.7.50

Pomponius 7 ex plaut.

Quod quis aliquo anno dare promittit aut dare damnatur, ei potestas est quolibet eius anni die dandi.

Dig. 44.7.51

Celsus 3 Dig.

Nihil aliud est actio quam ius quod sibi debeatur, iudicio persequendi.

Dig. 44.7.52pr.

Modestinus 2 reg.

Obligamur aut re aut verbis aut simul utroque aut consensu aut lege aut iure honorario aut necessitate aut ex peccato.

Dig. 44.7.52.1

Modestinus 2 reg.

Re obligamur, cum res ipsa intercedit.

Dig. 44.7.52.2

Modestinus 2 reg.

Verbis, cum praecedit interrogatio et sequitur congruens responsio.

Dig. 44.7.52.3

Modestinus 2 reg.

Re et verbis pariter obligamur, cum et res interrogationi intercedit, consentientes in aliquam rem.

Dig. 44.7.52.4

Modestinus 2 reg.

Ex consensu obligari necessario ex voluntate nostra videmur.

Dig. 44.7.52.5

Modestinus 2 reg.

Lege obligamur, cum obtemperantes legibus aliquid secundum praeceptum legis aut contra facimus.

Dig. 44.7.52.6

Modestinus 2 reg.

Iure honorario obligamur ex his, quae edicto perpetuo vel magistratu fieri praecipiuntur vel fieri prohibentur.

Dig. 44.7.52.7

Modestinus 2 reg.

Necessitate obligantur, quibus non licet aliud facere quam quod praeceptum est: quod evenit in necessario herede.

Dig. 44.7.52.8

Modestinus 2 reg.

Ex peccato obligamur, cum in facto quaestionis summa constitit.

Dig. 44.7.52.9

Modestinus 2 reg.

Etiam nudus consensus sufficit obligationi, quamvis verbis hoc exprimi possit.

Dig. 44.7.52.10

Modestinus 2 reg.

Sed et nutu solo pleraque consistunt.

Dig. 44.7.53pr.

Modestinus 3 reg.

Plura delicta in una re plures admittunt actiones, sed non posse omnibus uti probatum est: nam si ex una obligatione plures actiones nascantur, una tantummodo, non omnibus utendum est.

Dig. 44.7.53.1

Modestinus 3 reg.

Cum generaliter adicimus " eive, ad quem ea res pertinebit", et adrogantis et eorum, qui iure nobis succedunt, personas comprehendimus.

Dig. 44.7.54

Modestinus 5 reg.

Contractus imaginarii etiam in emptionibus iuris vinculum non optinent, cum fides facti simulatur non intercedente veritate.

Dig. 44.7.55

Iavolenus 12 epist.

In omnibus rebus, quae dominium transferunt, concurrat oportet affectus ex utraque parte contrahentium: nam sive ea venditio sive donatio sive conductio sive quaelibet alia causa contrahendi fuit, nisi animus utriusque consentit, perduci ad effectum id quod inchoatur non potest.

Dig. 44.7.56

Pomponius 20 ad q. muc.

Quaecumque actiones servi mei nomine mihi coeperunt competere vel ex duodecim tabulis vel ex lege aquilia vel iniuriarum vel furti, eaedem durant, etiamsi servus postea vel manumissus vel alienatus vel mortuus fuerit. sed et condictio ex furtiva causa competit, nisi si nactus possessionem servi aut alienavero aut manumisero eum.

Dig. 44.7.57

Pomponius 36 ad q. muc.

In omnibus negotiis contrahendis, sive bona fide sint sive non sint, si error aliquis intervenit, ut aliud sentiat puta qui emit aut qui conducit, aliud qui cum his contrahit, nihil valet quod acti sit. et idem in societate quoque coeunda respondendum est, ut, si dissentiant aliud alio existimante, nihil valet ea societas, quae in consensu consistit.

Dig. 44.7.58

Licinius 8 reg.

Pupillus mutuam pecuniam accipiendo ne quidem iure naturali obligatur.

Dig. 44.7.59

Callistratus 1 ed. monit.

Sciendum est ex omnibus causis lites contestatas et in heredem similesque personas transire.

Dig. 44.7.60

Ulpianus 17 ad ed.

Numquam actiones poenales de eadem pecunia concurrentes alia aliam consumit.

Dig. 44.7.61pr.

Scaevola 28 Dig.

Procurator seii admisit subscriptionem ad argentarium vascularium in verba infra scripta: loukios kalandios epegnwn, kavws progegraptai: estin loipa par' hymin, ofeilomena tw deini, tosa : quaero, an gaium seium obligare potuit. respondit seium, si alioquin obligatus non esset, non propter quod ea scriptura quae proponeretur interposita sit, obligatum esse.

Dig. 44.7.61.1

Scaevola 28 Dig.

Seia, cum salarium constituere vellet, ita epistulam emisit: " lucio titio salutem. si in eodem animo et eadem affectione circa me es, quo semper fuisti, ex continenti acceptis litteris meis distracta re tua veni hoc: tibi quamdiu vivam praestabo annuos decem. scio enim quia valde me bene ames". quaero, cum et rem suam distraxerit lucius titius et ad eam profectus sit et ex eo cum ea sit, an ei ex his epistulis salarium annuum debeatur. respondit ex personis causisque eum cuius notio sit aestimaturum, an actio danda sit.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER QUINTUS-QUADRAGESIMUS

Dig. 45.1.0. De verborum obligationibus.
Dig. 45.2.0. De duobus reis constituendis.
Dig. 45.3.0. De stipulatione servorum.

Dig. 45.1.0.R rubrica: de verborum obligationibus.

Dig. 45.1.1pr.

Ulpianus 48 ad sab.

Stipulatio non potest confici nisi utroque loquente: et ideo neque mutus neque surdus neque infans stipulationem contrahere possunt: nec absens quidem, quoniam exaudire invicem debent. si quis igitur ex his vult stipulari, per servum praesentem stipuletur, et adquiret ei ex stipulatu actionem. item si quis obligari velit, iubeat et erit quod iussu obligatus.

Dig. 45.1.1.1

Ulpianus 48 ad sab.

Qui praesens interrogavit, si antequam sibi responderetur discessit, inutilem efficit stipulationem: sin vero praesens interrogavit, mox discessit et reverso responsum est, obligat: intervallum enim medium non vitiavit obligationem.

Dig. 45.1.1.2

Ulpianus 48 ad sab.

Si quis ita interroget " dabis?" responderit " quid ni?", et is utique in ea causa est, ut obligetur: contra si sine verbis adnuisset. non tantum autem civiliter, sed nec naturaliter obligatur, qui ita adnuit: et ideo recte dictum est non obligari pro eo nec fideiussorem quidem.

Dig. 45.1.1.3

Ulpianus 48 ad sab.

Si quis simpliciter interrogatus responderit: " si illud factum erit, dabo", non obligari eum constat: aut si ita interrogatus: " intra kalendas quintas?" responderit: " dabo idibus", aeque non obligatur: non enim sic respondit, ut interrogatus est. et versa vice si interrogatus fuerit sub condicione, responderit pure, dicendum erit eum non obligari. cum adicit aliquid vel detrahit obligationi, semper probandum est vitiatam esse obligationem, nisi stipulatori diversitas responsionis ilico placuerit: tunc enim alia stipulatio contracta esse videtur.

Dig. 45.1.1.4

Ulpianus 48 ad sab.

Si stipulanti mihi " decem" tu " viginti" respondeas, non esse contractam obligationem nisi in decem constat. ex contrario quoque si me " viginti" interrogante tu " decem" respondeas, obligatio nisi in decem non erit contracta: licet enim oportet congruere summam, attamen manifestissimum est viginti et decem inesse.

Dig. 45.1.1.5

Ulpianus 48 ad sab.

Sed si mihi pamphilum stipulanti tu pamphilum et stichum spoponderis, stichi adiectionem pro supervacuo habendam puto: nam si tot sunt stipulationes, quot corpora, duae sunt quodammodo stipulationes, una utilis, alia inutilis, neque vitiatur utilis per hanc inutilem.

Dig. 45.1.1.6

Ulpianus 48 ad sab.

Eadem an alia lingua respondeatur, nihil interest. proinde si quis latine interrogaverit, respondeatur ei graece, dummodo congruenter respondeatur, obligatio constituta est: idem per contrarium. sed utrum hoc usque ad graecum sermonem tantum protrahimus an vero et ad alium, poenum forte vel assyrium vel cuius alterius linguae, dubitari potest. et scriptura sabini, sed et verum patitur, ut omnis sermo contineat verborum obligationem, ita tamen, ut uterque alterius linguam intellegat sive per se sive per verum interpretem.

Dig. 45.1.2pr.

Paulus 12 ad sab.

Stipulationum quaedam in dando, quaedam in faciendo consistunt.

Dig. 45.1.2.1

Paulus 12 ad sab.

Et harum omnium quaedam partium praestationem recipiunt, veluti cum decem dari stipulamur: quaedam non recipiunt, ut in his, quae natura divisionem non admittunt, veluti cum viam iter actum stipulamur: quaedam partis quidem dationem natura recipiunt, sed nisi tota dantur, stipulationi satis non fit, veluti cum hominem generaliter stipulor aut lancem aut quodlibet vas: nam si stichi pars soluta sit, nondum in ulla parte stipulationis liberatio nata est, sed aut statim repeti potest aut in pendenti est, donec alius detur. eiusdem condicionis est haec stipulatio: " stichum aut pamphilum dari?"

Dig. 45.1.2.2

Paulus 12 ad sab.

Ex his igitur stipulationibus ne heredes quidem pro parte solvendo liberari possunt, quamdiu non eandem rem omnes dederint: non enim ex persona heredum condicio obligationis immutatur. et ideo si divisionem res promissa non recipit, veluti via, heredes promissoris singuli in solidum tenentur: sed quo casu unus ex heredibus solidum praestiterit, repetitionem habebit a coherede familiae erciscundae iudicio. ex quo quidem accidere pomponius ait, ut et stipulatoris viae vel itineris heredes singuli in solidum habeant actionem: sed quidam hoc casu extingui stipulationem putant, quia per singulos adquiri servitus non potest: sed non facit inutilem stipulationem difficultas praestationis.

Dig. 45.1.2.3

Paulus 12 ad sab.

Si tamen hominem stipulatus cum uno ex heredibus promissoris egero, pars dumtaxat ceterorum obligationi supererit, ut et solvi potest. idemque est, si uni ex heredibus accepto latum sit.

Dig. 45.1.2.4

Paulus 12 ad sab.

Idemque est in ipso promissore et fideiussoribus eius, quod diximus in heredibus.

Dig. 45.1.2.5

Paulus 12 ad sab.

Item si in facto sit stipulatio, veluti si ita stipulatus fuero: " per te non fieri neque per heredem tuum, quo minus mihi ire agere liceat?" et unus ex pluribus heredibus prohibuerit, tenentur quidem et coheredes eius, sed familiae erciscundae iudicio ab eo repetent quod praestiterint. hoc et iulianus et pomponius probant.

Dig. 45.1.2.6

Paulus 12 ad sab.

Contra autem si stipulator decesserit, qui stipulatus erat sibi heredique suo agere licere, et unus ex heredibus eius prohibeatur, interesse dicemus, utrum in solidum committatur stipulatio an pro parte eius, qui prohibitus est. nam si poena stipulationi adiecta sit, in solidum committetur, sed qui non sunt prohibiti, doli mali exceptione summovebuntur: si vero poena nulla posita sit, tunc pro parte eius tantum qui prohibitus est committetur stipulatio.

Dig. 45.1.3pr.

Ulpianus 49 ad sab.

Idem iuris est et in illa stipulatione: " mihi heredique meo habere licere?"

Dig. 45.1.3.1

Ulpianus 49 ad sab.

Sed haec differentia illam habet rationem, quod, ubi unus ex heredibus prohibetur, non potest coheres ex stipulatu agere, cuius nihil interest, nisi poena subiecta sit: nam poena subiecta efficit, ut omnibus committatur, quia hic non quaerimus, cuius intersit. enimvero ubi unus ex heredibus prohibet, omnes tenentur heredes: interest enim prohibiti a nemine prohiberi.

Dig. 45.1.4pr.

Paulus 12 ad sab.

Eadem dicemus et si dolum abesse a te heredeque tuo stipulatus sim et aut promissor aut stipulator pluribus heredibus relictis decesserit.

Dig. 45.1.4.1

Paulus 12 ad sab.

Cato libro quinto decimo scribit poena certae pecuniae promissa, si quid aliter factum sit, mortuo promissore si ex pluribus heredibus unus contra quam cautum sit fecerit, aut ab omnibus heredibus poenam committi pro portione hereditaria aut ab uno pro portione sua: ab omnibus, si id factum, de quo cautum est, individuum sit, veluti " iter fieri", quia quod in partes dividi non potest, ab omnibus quodammodo factum videretur: at si de eo cautum sit, quod divisionem recipiat, veluti " amplius non agi", tum eum heredem, qui adversus ea fecit, pro portione sua solum poenam committere. differentiae hanc esse rationem, quod in priore casu omnes commisisse videntur, quod nisi in solidum peccari non poterit, illam stipulationem " per te non fieri, quo minus mihi ire agere liceat?" sed videamus, ne non idem hic sit, sed magis idem, quod in illa stipulatione " titium heredemque eius ratum habiturum": nam hac stipulatione et solus tenebitur, qui non habuerit ratum, et solus aget, a quo fuerit petitum: idque et Marcello videtur, quamvis ipse dominus pro parte ratum habere non potest.

Dig. 45.1.4.2

Paulus 12 ad sab.

Si is, qui duplam stipulatus est, decesserit pluribus heredibus relictis, unusquisque ob evictionem suae partis pro portione sua habebit actionem. idemque est in stipulatione quoque fructuaria et damni infecti et ex operis novi nuntiatione: restitui tamen opus ex operis novi nuntiatione pro parte non potest. haec utilitatis causa ex parte stipulatorum recepta sunt: ipsi autem promissori pro parte neque restitutio neque defensio contingere potest.

Dig. 45.1.5pr.

Pomponius 26 ad sab.

Stipulationum aliae iudiciales sunt, aliae praetoriae, aliae conventionales, aliae communes praetoriae et iudiciales. iudiciales sunt dumtaxat, quae a mero iudicis officio proficiscuntur, veluti de dolo cautio: praetoriae, quae a mero praetoris officio proficiscuntur, veluti damni infecti. praetorias autem stipulationes sic audiri oportet, ut in his contineantur etiam aediliciae: nam et hae ab iurisdictione veniunt. conventionales sunt, quae ex conventione reorum fiunt, quarum totidem genera sunt, quot paene dixerim rerum contrahendarum: nam et ob ipsam verborum obligationem fiunt et pendent ex negotio contracto. communes sunt stipulationes veluti rem salvam fore pupilli: nam et praetor iubet rem salvam fore pupillo caveri et interdum iudex, si aliter expediri haec res non potest: item duplae stipulatio venit ab iudice aut ab aedilis edicto.

Dig. 45.1.5.1

Pomponius 26 ad sab.

Stipulatio autem est verborum conceptio, quibus is qui interrogatur daturum facturumve se quod interrogatus est responderit.

Dig. 45.1.5.2

Pomponius 26 ad sab.

Satis acceptio est stipulatio, quae ita obligat promissorem, ut adpromissores quoque ab eo accipiantur, id est qui idem promittunt.

Dig. 45.1.5.3

Pomponius 26 ad sab.

Satis autem accipere dictum est eodem modo, quo satis facere: nam quia id, quo quis contentus erat, ei praestabatur, satis fieri dictum est: et similiter quia tales, quibus contentus quis futurus esset, ita dabantur, ut verbis obligarentur, satis accipi dictum est.

Dig. 45.1.5.3a

Pomponius 26 ad sab.

Si sortem promiseris et, si ea soluta non esset, poenam: etiamsi unus ex heredibus tuis portionem suam ex sorte solverit, nihilo minus poenam committet, donec portio coheredis solvatur.

Dig. 45.1.5.4

Pomponius 26 ad sab.

Idemque est de poena ex compromisso, si unus paruerit, alter non paruerit sententiae iudicis: sed a coherede ei satisfieri debet. nec enim aliud in his stipulationibus sine iniuria stipulatoris constitui potest.

Dig. 45.1.6

Ulpianus 1 ad sab.

Is, cui bonis interdictum est, stipulando sibi adquirit, tradere vero non potest vel promittendo obligari: et ideo nec fideiussor pro eo intervenire poterit, sicut nec pro furioso.

Dig. 45.1.7

Ulpianus 6 ad sab.

Impossibilis condicio cum in faciendum concipitur, stipulationibus obstat: aliter atque si talis condicio inseratur stipulationi " si in caelum non ascenderit": nam utilis et praesens est et pecuniam creditam continet.

Dig. 45.1.8

Paulus 2 ad sab.

In illa stipulatione: " si kalendis stichum non dederis, decem dare spondes?" mortuo homine quaeritur, an statim ante kalendas agi possit. sabinus proculus exspectandum diem actori putant, quod est verius: tota enim obligatio sub condicione et in diem collata est et licet ad condicionem committi videatur, dies tamen superest. sed cum eo, qui ita promisit: " si intra kalendas digito caelum non tetigerit", agi protinus potest. haec et Marcellus probat.

Dig. 45.1.9

Pomponius 2 ad sab.

Si titius et seius separatim ita stipulati essent: " fundum illum, si illi non dederis, mihi dare spondes?", finem dandi alteri fore, quoad iudicium acciperetur, et ideo occupantis fore actionem.

Dig. 45.1.10

Pomponius 3 ad sab.

Hoc iure utimur, ut ex hac stipulatione: " si lucius titius ante kalendas maias in italiam non venerit, decem dare spondes?" non ante peti quicquam possit, quam exploratum sit ante eam diem in italiam venire titium non posse neque venisse, sive vivo sive mortuo id acciderit.

Dig. 45.1.11

Paulus 2 ad sab.

Filius dum in civitate est si stipuletur, patri reverso ab hostibus videtur adquisisse.

Dig. 45.1.12

Pomponius 5 ad sab.

Si ita stipulatus fuero: " decem aut quinque dari spondes?", quinque debentur: et si ita: " kalendis ianuariis vel februariis dari spondes?", perinde est, quasi " kalendis februariis" stipulatus sim.

Dig. 45.1.13

Ulpianus 19 ad sab.

Qui " ante kalendas proximas " stipuletur, similis est ei, qui " kalendis " stipulatur.

Dig. 45.1.14

Pomponius 5 ad sab.

Si ita stipulatus essem abs te " domum aedificari ? " vel heredem meum damnavero insulam aedificare, celso placet non ante agi posse ex ea causa, quam tempus praeterisset, quo insula aedificari posset: nec fideiussores dati ante diem tenebuntur:

Dig. 45.1.15

Pomponius 27 ad sab.

Et ideo haesitatur, si aliqua pars insulae facta sit, deinde incendio consumpta sit, an integrum tempus computandum sit rursus ad aedificandam insulam an vero reliquum dumtaxat exspectandum quod deerat. et verius est, ut integrum ei detur.

Dig. 45.1.16pr.

Pomponius 6 ad sab.

Si stichum aut pamphilum mihi debeas et alter ex eis meus factus sit ex aliqua causa, reliquum debetur mihi a te.

Dig. 45.1.16.1

Pomponius 6 ad sab.

Stipulatio huiusmodi " in annos singulos" una est et incerta et perpetua, non quemadmodum simile legatum morte legatarii finiretur.

Dig. 45.1.17

Ulpianus 28 ad sab.

Stipulatio non valet in rei promittendi arbitrium collata condicione.

Dig. 45.1.18

Pomponius 10 ad sab.

Qui bis idem promittit, ipso iure amplius quam semel non tenetur.

Dig. 45.1.19

Pomponius 15 ad sab.

Si stipulatio facta fuerit: " si culpa tua divortium factum fuerit, dari?", nulla stipulatio est, quia contenti esse debemus poenis legum comprehensis: nisi si et stipulatio tantundem habeat poenae, quanta lege sit comprehensa.

Dig. 45.1.20

Ulpianus 34 ad sab.

Huiusmodi stipulationes non sunt inutiles: " quod tibi titius debet, cum debitor esse desierit, dare spondes?" nam valet stipulatio quasi sub quavis alia condicione concepta.

Dig. 45.1.21

Pomponius 15 ad sab.

Si divortio facto ea, quae nihil in dote habeat, dotis nomine centum dari stipuletur, vel quae centum dumtaxat habeat, ducenta dotis nomine dari stipuletur: proculus ait, si ducenta stipuletur quae centum habeat, sine dubio centum quidem in obligationem venire, alia autem centum actione de dote deberi. dicendum itaque est, etiamsi nihil sit in dote, centum tamen venire in stipulationem, sicuti, cum filiae vel matri vel sorori vel alii cuilibet dotis nomine legaretur, utile legatum esset.

Dig. 45.1.22

Paulus 9 ad sab.

Si id quod aurum putabam, cum aes esset, stipulatus de te fuero, teneberis mihi huius aeris nomine, quoniam in corpore consenserimus: sed ex doli mali clausula tecum agam, si sciens me fefelleris.

Dig. 45.1.23

Pomponius 9 ad sab.

Si ex legati causa aut ex stipulatu hominem certum mihi debeas, non aliter post mortem eius tenearis mihi, quam si per te steterit, quo minus vivo eo eum mihi dares: quod ita fit, si aut interpellatus non dedisti aut occidisti eum.

Dig. 45.1.24

Paulus 9 ad sab.

Sed si ex stipulatu stichum debeat pupillus, non videbitur per eum mora fieri, ut mortuo eo teneatur, nisi si tutore auctore aut solus tutor interpelletur.

Dig. 45.1.25

Pomponius 20 ad sab.

Si dari stipuler id quod mihi iam ex stipulatu debeatur, cuius stipulationis nomine exceptione tutus sit promissor, obligabitur ex posteriore stipulatione, quia superior quasi nulla sit exceptione obstante.

Dig. 45.1.26

Ulpianus 42 ad sab.

Generaliter novimus turpes stipulationes nullius esse momenti:

Dig. 45.1.27pr.

Pomponius 22 ad sab.

Veluti si quis homicidium vel sacrilegium se facturum promittat. sed et officio quoque praetoris continetur ex huiusmodi obligationibus actionem denegari.

Dig. 45.1.27.1

Pomponius 22 ad sab.

Si stipulatus hoc modo fuero: " si intra biennium capitolium non ascenderis, dari?", non nisi praeterito biennio recte petam.

Dig. 45.1.28

Paulus 10 ad sab.

Si rem tradi stipulamur, non intellegimur proprietatem eius dari stipulatori, sed tantum tradi.

Dig. 45.1.29pr.

Ulpianus 46 ad sab.

Scire debemus in stipulationibus tot esse stipulationes, quot summae sunt, totque esse stipulationes, quot species sunt. secundum quod evenit, ut mixta una summa vel specie, quae non fuit in praecedenti stipulatione, non fiat novatio, sed efficit duas esse stipulationes. quamvis autem placuerit tot esse stipulationes, quot summae, totque esse stipulationes quot res: tamen si pecuniam quis, quae in conspectu est, stipulatus sit, vel acervum pecuniae, non tot sunt stipulationes, quot nummorum corpora, sed una stipulatio: nam per singulos denarios singulas esse stipulationes absurdum est. stipulationem quoque legatorum constat unam esse, quamvis plura corpora sint vel plura legata. sed et familiae vel omnium servorum stipulatio una est. itemque quadrigae aut lecticariorum stipulatio una est. at si quis illud et illud stipulatus sit, tot stipulationes sunt, quot corpora.

Dig. 45.1.29.1

Ulpianus 46 ad sab.

Si a fure hominem sim stipulatus, quaesitum est, an stipulatio valeat. movet quaestionem, quod stipulatus hominem plerumque meum videor: non valet autem huiusmodi stipulatio, ubi quis rem suam stipulatus est. et constat, si quidem ita stipulatus sim: " quod ex causa condictionis dare facere oportet?", stipulationem valere: si vero hominem dari stipulatus fuero, nullius momenti esse stipulationem. quod si postea sine mora decessisse proponatur servus, non teneri furem condictione Marcellus ait: quamdiu enim vivit, condici poterit, at si decessisse proponatur, in ea condicione est, ut evanescat condictio propter stipulationem.

Dig. 45.1.30

Ulpianus 47 ad sab.

Sciendum est generaliter, quod si quis se scripserit fideiussisse, videri omnia sollemniter acta.

Dig. 45.1.31

Pomponius 24 ad sab.

Si rem meam sub condicione stipuler, utilis est stipulatio, si condicionis existentis tempore mea non sit.

Dig. 45.1.32

Ulpianus 47 ad sab.

Si in nomine servi, quem stipularemur dari, erratum fuisset, cum de corpore constitisset, placet stipulationem valere.

Dig. 45.1.33

Pomponius 25 ad sab.

Si stichus certo die dari promissus ante diem moriatur, non tenetur promissor.

Dig. 45.1.34

Ulpianus 48 ad sab.

Multum interest, utrum ego stipuler rem, cuius commercium habere non possum, an quis promittat: si stipuler rem, cuius commercium non habeo, inutilem esse stipulationem placet: si quis promittat, cuius non commercium habet, ipsi nocere, non mihi.

Dig. 45.1.35pr.

Paulus 12 ad sab.

Si stipulor, ut id fiat, quod natura fieri non concedit, non magis obligatio consistit, quam cum stipulor ut detur quod dari non potest: nisi per quem stetit, quo minus facere id possit.

Dig. 45.1.35.1

Paulus 12 ad sab.

Item quod leges fieri prohibent, si perpetuam causam servaturum est, cessat obligatio, veluti si sororem nupturam sibi aliquis stipuletur: quamquam etiamsi non sit perpetua causa, ut reccidit in sorore adoptiva, idem dicendum sit, quia statim contra mores sit.

Dig. 45.1.35.2

Paulus 12 ad sab.

Si in locando conducendo, vendendo emendo ad interrogationem quis non responderit, si tamen consentitur in id, quod responsum est, valet quod actum est, quia hi contractus non tam verbis quam consensu confirmantur.

Dig. 45.1.36

Ulpianus 48 ad sab.

Si quis, cum aliter eum convenisset obligari, aliter per machinationem obligatus est, erit quidem suptilitate iuris obstrictus, sed doli exceptione uti potest: quia enim per dolum obligatus est, competit ei exceptio. idem est et si nullus dolus intercessit stipulantis, sed ipsa res in se dolum habet: cum enim quis petat ex ea stipulatione, hoc ipso dolo facit, quod petit.

Dig. 45.1.37

Paulus 12 ad sab.

Si certos nummos, puta qui in arca sint, stipulatus sim et hi sine culpa promissoris perierint, nihil nobis debetur.

Dig. 45.1.38pr.

Ulpianus 49 ad sab.

Stipulatio ista: " habere licere spondes?" hoc continet, ut liceat habere, nec per quemquam omnino fieri, quo minus nobis habere liceat. quae res facit, ut videatur reus promisisse per omnes futurum, ut tibi habere liceat: videtur igitur alienum factum promisisse, nemo autem alienum factum promittendo obligatur, et ita utimur. sed se obligat, ne ipse faciat, quo minus habere liceat: obligatur etiam, ne heres suus faciat vel quis ceterorum successorum efficiat, ne habere liceat.

Dig. 45.1.38.1

Ulpianus 49 ad sab.

Sed si quis promittat per alium non fieri, praeter heredem suum dicendum est inutiliter eum promittere factum alienum.

Dig. 45.1.38.2

Ulpianus 49 ad sab.

At si quis velit factum alienum promittere, poenam vel quanti ea res sit potest promittere. sed quatenus habere licere videbitur? si nemo controversiam faciat, hoc est neque ipse reus, neque heredes eius heredumve successores.

Dig. 45.1.38.3

Ulpianus 49 ad sab.

Si quis forte non de proprietate, sed de possessione nuda controversiam fecerit vel de usu fructu vel de usu vel de quo alio iure eius, quod distractum est, palam est committi stipulationem: habere enim non licet ei, cui aliquid minuitur ex iure quod habuit.

Dig. 45.1.38.4

Ulpianus 49 ad sab.

Quaesitum est, utrum propriam demum rem an et alienam promittere possit habere licere. et magis est, ut et aliena promitti possit: quae res ita effectum habebit, si propria esse promissoris coeperit. quare si perseveraverit aliena, dicendum erit stipulationem non committi, nisi poena adiecta sit, cum neque per eum neque per successorem eius quicquam factum sit.

Dig. 45.1.38.5

Ulpianus 49 ad sab.

Sicut autem ex parte rei successores eius cum ipso tenentur, ita etiam ex parte actoris committitur stipulatio ipsi stipulatori ceterisque, quicumque ei succedunt, scilicet si rem ipsi habere non licuerit. ceterum si alii habere non licuit, certo certius est non committi stipulationem, et nihil intererit, utrum ita stipuler " habere licere" an " mihi habere licere".

Dig. 45.1.38.6

Ulpianus 49 ad sab.

Hi, qui sunt in aliena potestate, his, in quorum sunt potestate, habere licere stipulari possunt ea ratione, qua cetera quoque his possunt stipulari. sed si servus fuerit stipulatus sibi habere, quaesitum est, an recte stipulatus videatur. et ait iulianus libro quinquagensimo secundo digestorum, si servus stipuletur sibi habere licere aut per se non fieri, quo minus habere stipulatori liceat, promittat: stipulatio, inquit, non committitur, quamvis auferri res ei et ipse auferre eandem possit: non enim factum, sed ius in hac stipulatione vertitur. cum vero stipulatur per promissorem non fieri, quo minus sibi ire agere liceat, non ius stipulationis, inquit, sed factum versatur. sed videtur mihi, licet iuris verba contineat haec stipulatio " habere licere", tamen sic esse accipiendam, ut in servo et in filio familias videatur actum esse de possessione retinenda aut non auferenda et vires habeat stipulatio.

Dig. 45.1.38.7

Ulpianus 49 ad sab.

Haec quoque stipulatio: " possidere mihi licere spondes?" utilis est: quam stipulationem servus an possit utiliter in suam personam concipere, videamus. sed quamvis civili iure servus non possideat, tamen ad possessionem naturalem hoc referendum est, et ideo dubitari non oportet, quin et servus recte ita stipuletur.

Dig. 45.1.38.8

Ulpianus 49 ad sab.

Plane si " tenere sibi licere" stipulatus sit servus, utilem esse stipulationem convenit: licet enim possidere civiliter non possint, tenere tamen eos nemo dubitat.

Dig. 45.1.38.9

Ulpianus 49 ad sab.

" habere" dupliciter accipitur: nam et eum habere dicimus, qui rei dominus est et eum, qui dominus quidem non est, sed tenet: denique habere rem apud nos depositam solemus dicere.

Dig. 45.1.38.10

Ulpianus 49 ad sab.

Si quis ita stipulatus fuerit " uti frui sibi licere", ad heredem ista stipulatio non pertinet.

Dig. 45.1.38.11

Ulpianus 49 ad sab.

Sed et si non addiderit " sibi", non puto stipulationem de usu fructu ad heredem transire, eoque iure utimur.

Dig. 45.1.38.12

Ulpianus 49 ad sab.

Sed si quis uti frui licere sibi heredique suo stipulatus sit, videamus, an heres ex stipulatu agere possit. et putem posse, licet diversi sint fructus: nam et si ire agere stipuletur sibi heredique suo licere, idem probaverimus.

Dig. 45.1.38.13

Ulpianus 49 ad sab.

Si quis dolum malum promissoris heredisque eius abesse velit, sufficere " abesse afuturumque esse" stipulari: si vero de plurium dolo cavere velit, necessarium esse adici: " cui rei dolus malus non abest, non afuerit, quanti ea res erit, tantam pecuniam dari spondes?"

Dig. 45.1.38.14

Ulpianus 49 ad sab.

Suae personae adiungere quis heredis personam potest.

Dig. 45.1.38.15

Ulpianus 49 ad sab.

Sed et adoptivi patris persona coniungi poterit.

Dig. 45.1.38.16

Ulpianus 49 ad sab.

Inter incertam certamque diem discrimen esse ex eo quoque apparet, quod certa die promissum vel statim dari potest: totum enim medium tempus ad solvendum liberum promissori relinquitur: at qui promisit " si aliquid factum sit" vel " cum aliquid factum sit", nisi cum id factum fuerit, dederit, non videbitur fecisse quod promisit.

Dig. 45.1.38.17

Ulpianus 49 ad sab.

Alteri stipulari nemo potest, praeterquam si servus domino, filius patri stipuletur: inventae sunt enim huiusmodi obligationes ad hoc, ut unusquisque sibi adquirat quod sua interest: ceterum ut alii detur, nihil interest mea. plane si velim hoc facere, poenam stipulari conveniet, ut, si ita factum non sit, ut comprehensum est, committetur stipulatio etiam ei, cuius nihil interest: poenam enim cum stipulatur quis, non illud inspicitur, quid intersit, sed quae sit quantitas quaeque condicio stipulationis.

Dig. 45.1.38.18

Ulpianus 49 ad sab.

In stipulationibus cum quaeritur, quid actum sit, verba contra stipulatorem interpretanda sunt.

Dig. 45.1.38.19

Ulpianus 49 ad sab.

Eum, qui dicat: " mihi decem et titio decem", eadem decem, non alia decem dicere credendum est.

Dig. 45.1.38.20

Ulpianus 49 ad sab.

Si stipuler alii, cum mea interesset, videamus, an stipulatio committetur. et ait Marcellus stipulationem valere in specie huiusmodi. is, qui pupilli tutelam administrare coeperat, cessit administratione contutori suo et stipulatus est rem pupilli salvam fore. ait Marcellus posse defendi stipulationem valere: interest enim stipulatoris fieri quod stipulatus est, cum obligatus futurus esset pupillo, si aliter res cesserit.

Dig. 45.1.38.21

Ulpianus 49 ad sab.

Si quis insulam faciendam promiserit aut conduxerit, deinde ab aliquo insulam stipulatori fieri stipulatus sit: aut si quis, cum promisisset titio fundum maevium daturum aut, si is non dedisset, poenam se daturum, stipulatus a maevio fuerit fundum titio datu iri: item si quis id locaverit faciendum quod ipse conduxerit: constat habere eum utilem ex locato actionem.

Dig. 45.1.38.22

Ulpianus 49 ad sab.

Si quis ergo stipulatus fuerit, cum sua interesset ei dari, in ea erit causa, ut valeat stipulatio.

Dig. 45.1.38.23

Ulpianus 49 ad sab.

Unde et si procuratori meo dari stipulatus sum, stipulatio vires habebit: et si creditori meo, quia interest mea, ne vel poena committatur vel praedia distrahantur, quae pignori data erant.

Dig. 45.1.38.24

Ulpianus 49 ad sab.

Si quis ita stipulatus fuerit: " illum sistas ?", nulla causa est, cur non obligatio constat.

Dig. 45.1.38.25

Ulpianus 49 ad sab.

Aedem sacram vel locum religiosum aedificari stipulari possumus: alioquin nec ex locato agere possumus.

Dig. 45.1.39

Paulus 12 ad sab.

Dominus servo stipulando sibi adquirit: sed et pater filio, secundum quod leges permittunt.

Dig. 45.1.40

Pomponius 27 ad sab.

Si filius meus servo meo stipuletur, adquiritur mihi.

Dig. 45.1.41pr.

Ulpianus 50 ad sab.

Eum, qui " kalendis ianuariis" stipulatur, si adiciat " primis" vel " proximis", nullam habere dubitationem palam est: sed et si dicat " secundis" vel " tertiis" vel quibus aliis, aeque dirimit quaestionem. si autem non addat quibus ianuariis, facti quaestionem inducere, quid forte senserit, hoc est quid inter eos acti sit (utique enim hoc sequimur quod actum est), easque adsumemus. si autem non appareat, dicendum est quod sabinus, primas kalendas ianuarias spectandas. plane si ipsa die kalendarum quis stipulationem interponat, quid sequemur? et puto actum videri de sequentibus kalendis.

Dig. 45.1.41.1

Ulpianus 50 ad sab.

Quotiens autem in obligationibus dies non ponitur, praesenti die pecunia debetur, nisi si locus adiectus spatium temporis inducat, quo illo possit perveniri. verum dies adiectus efficit, ne praesenti die pecunia debeatur: ex quo apparet diei adiectionem pro reo esse, non pro stipulatore.

Dig. 45.1.41.2

Ulpianus 50 ad sab.

Idem in idibus etiam et nonis probandum est et generaliter in omnibus diebus.

Dig. 45.1.42

Pomponius 27 ad sab.

Qui " hoc anno" aut " hoc mense" dari stipulatus sit, nisi omnibus partibus praeteritis anni vel mensis non recte petet.

Dig. 45.1.43

Ulpianus 50 ad sab.

Si quis arbitratu puta lucii titii restitui sibi stipulatus est, deinde ipse stipulator moram fecerit, quo minus arbitretur titius: promissor quasi moram fecerit, non tenetur. quid ergo si ipse, qui arbitrari debuit, moram fecerit? magis probandum est a persona non esse recedendum eius, cuius arbitrium insertum est.

Dig. 45.1.44

Paulus 12 ad sab.

Et ideo, si omnino non arbitretur, nihil valet stipulatio, adeo ut, etsi poena adiecta sit, ne ipsa quidem committatur.

Dig. 45.1.45pr.

Ulpianus 50 ad sab.

Quodcumque stipulatur is, qui in alterius potestate est, pro eo habetur, ac si ipse esset stipulatus.

Dig. 45.1.45.1

Ulpianus 50 ad sab.

Sicuti cum morietur quis stipulari potest, ita etiam hi, qui subiecti sunt alienae potestati, cum morientur stipulari possunt.

Dig. 45.1.45.2

Ulpianus 50 ad sab.

Si ita quis stipulatus sit: " post mortem meam filiae meae dari?" vel ita: " post mortem filiae meae mihi dari?", utiliter erit stipulatus: sed primo casu filiae utilis actio competit, licet heres ei non existat.

Dig. 45.1.45.3

Ulpianus 50 ad sab.

Non solum ita stipulari possumus: " cum morieris", sed etiam: " si morieris": nam sicuti inter haec nihil interest " cum veneris" aut " si veneris", ita nec ibi interest " si morieris" et " cum morieris".

Dig. 45.1.45.4

Ulpianus 50 ad sab.

Filius patri dari stipulari videtur, etsi hoc non adiciat.

Dig. 45.1.46pr.

Paulus 12 ad sab.

" centensimis kalendis dari" utiliter stipulamur, quia praesens obligatio est, in diem autem dilata solutio.

Dig. 45.1.46.1

Paulus 12 ad sab.

Id autem, quod in facto est, in mortis tempus conferri non potest, veluti: " cum morieris, alexandriam venire spondes?"

Dig. 45.1.46.2

Paulus 12 ad sab.

Si ita stipulatus fuero " cum volueris", quidam inutilem esse stipulationem aiunt, alii ita inutilem, si antequam constituas, morieris, quod verum est.

Dig. 45.1.46.3

Paulus 12 ad sab.

Illam autem stipulationem " si volueris, dari?" inutilem esse constat.

Dig. 45.1.47

Ulpianus 50 ad sab.

Qui sic stipulatur: " quod te mihi illis kalendis dare oportet, id dare spondes?" videtur non hodie stipulari, sed sua die, hoc est kalendis.

Dig. 45.1.48

Ulpianus 26 ad ed.

Si decem " cum petiero" dari fuero stipulatus, admonitionem magis quandam, quo celerius reddantur et quasi sine mora, quam condicionem habet stipulatio: et ideo licet decessero priusquam petiero, non videtur defecisse condicio.

Dig. 45.1.49pr.

Paulus 37 ad ed.

Cum filius familias stichum dari spoponderit et, cum per eum staret, quo minus daret, decessit stichus, datur in patrem de peculio actio, quatenus maneret filius ex stipulatu obligatus. at si pater in mora fuit, non tenebitur filius, sed utilis actio in patrem danda est. quae omnia et in fideiussoris persona dicuntur.

Dig. 45.1.49.1

Paulus 37 ad ed.

Si stipulatus sim " per te non fieri, quo minus mihi ire agere liceat" et fideiussorem accepero: si per fideiussorem steterit, neuter tenetur, si per promissorem, uterque.

Dig. 45.1.49.2

Paulus 37 ad ed.

In hac stipulatione: " neque per te neque per heredem tuum fieri?" per heredem videtur fieri, quamvis absit et ignoret et ideo non facit, quod fieri ex stipulatu oportet. non videtur autem per pupillum stetisse ex huiusmodi stipulatione, si pupillus heres erit.

Dig. 45.1.49.3

Paulus 37 ad ed.

Si promissor hominis ante diem, in quem promiserat, interpellatus sit et servus decesserit, non videtur per eum stetisse.

Dig. 45.1.50pr.

Ulpianus 50 ad ed.

In illa stipulatione: " per te non fieri?" non hoc significatur nihil te facturum, quo minus facere possis, sed curaturum, ut facere possis.

Dig. 45.1.50.1

Ulpianus 50 ad ed.

Item stipulatione emptae hereditatis: " quanta pecunia ad te pervenerit dolove malo tuo factum est eritve, quo minus perveniat" nemo dubitabit quin teneatur, qui id egit, ne quid ad se perveniret.

Dig. 45.1.51

Ulpianus 51 ad ed.

Is, qui alienum servum promisit, perducto eo ad libertatem ex stipulatu actione non tenetur: sufficit enim, si dolo culpave careat.

Dig. 45.1.52pr.

Ulpianus 7 disp.

In conventionalibus stipulationibus contractui formam contrahentes dant. enimvero praetoriae stipulationes legem accipiunt de mente praetoris qui eas proposuit: denique praetoriis stipulationibus nihil immutare licet neque addere neque detrahere.

Dig. 45.1.52.1

Ulpianus 7 disp.

Si quis vacuam possessionem tradi promiserit, non nudum factum haec stipulatio continebit, sed causam bonorum.

Dig. 45.1.53

Iulianus 16 Dig.

Stipulationes commodissimum est ita componere, ut, quaecumque specialiter comprehendi possint, contineantur, doli autem clausula ad ea pertineat, quae in praesentia occurrere non possint et ad incertos casus pertinent.

Dig. 45.1.54pr.

Iulianus 22 Dig.

In stipulationibus alias species, alias genera deducuntur. cum species stipulamur, necesse est inter dominos et inter heredes ita dividi stipulationem, ut partes corporum cuique debebuntur. quotiens autem genera stipulamur, numero fit inter eos divisio: veluti cum stichum et pamphilum quis stipulatus duos heredes aequis partibus reliquit, necesse est utrique partem dimidiam stichi et pamphili deberi: si idem duos homines stipulatus fuisset, singuli homines heredibus eius deberentur.

Dig. 45.1.54.1

Iulianus 22 Dig.

Operarum stipulatio similis est his stipulationibus, in quibus genera comprehenduntur: et ideo divisio eius stipulationis non in partes operarum, sed in numerum cedit. quod si unam operam servus communis stipulatus fuerit, necesse est utrique dominorum partem operae tantam, quantam in servo habuerit, petere. solutio autem eius obligationis expeditissima est, si aestimationem operae malit libertus offerre aut si consentiant patroni, ut is communiter operae edantur.

Dig. 45.1.55

Iulianus 36 Dig.

Cum quis sibi aut titio dari stipulatus est, soli titio, non etiam successoribus eius recte solvitur.

Dig. 45.1.56pr.

Iulianus 52 Dig.

Eum, qui ita stipulatur: " mihi et titio decem dare spondes?" vero similius est semper una decem communiter sibi et titio stipulari, sicuti qui legat titio et sempronio, non aliud intellegitur quam una decem communiter duobus legare.

Dig. 45.1.56.1

Iulianus 52 Dig.

" te et titium heredem tuum decem daturum spondes?" titii persona supervacua comprehensa est: sive enim solus heres exstiterit, in solidum tenebitur, sive pro parte, eodem modo, quo ceteri coheredes eius, obligabitur. et quamvis convenisse videatur, ne ab alio herede quam a titio peteretur, tamen inutile pactum conventum coheredibus eius erit.

Dig. 45.1.56.2

Iulianus 52 Dig.

Qui sibi aut filio suo dari stipulatur, manifeste personam filii in hoc complectitur, ut ei recte solvatur: neque interest, sibi aut extraneo cuilibet, an sibi aut filio suo quis stipuletur: quare vel manenti in potestate vel emancipato filio recte solvitur. neque ad rem pertinet, quod qui filio suo dari stipulatur, sibi adquirit, quia coniuncta sua persona stipulator efficit, ut non adquirendae obligationis gratia, sed solutionis causa personam filii adprehendisse intellegatur.

Dig. 45.1.56.3

Iulianus 52 Dig.

Quod si soli filio suo, qui in potestate sua sit, dari quis stipulatus sit, non recte filio solvetur, quia filii persona obligationi magis quam solutioni applicatur.

Dig. 45.1.56.4

Iulianus 52 Dig.

Qui ita stipulatur: " decem, quoad vivam, dari spondes?", confestim decem recte dari petit: sed heres eius exceptione pacti conventi summovendus est: nam stipulatorem id egisse, ne heres eius peteret, palam est, quemadmodum is, qui usque in kalendas dari stipulatur, potest quidem etiam post kalendas petere, sed exceptione pacti summovetur. nam et heres eius, cui servitus praedii ita concessa est, ut, quoad viveret, ius eundi haberet, pacti conventi exceptione submovebitur.

Dig. 45.1.56.5

Iulianus 52 Dig.

Qui ita stipulatur: " ante kalendas proximas dari spondes?" nihil differt ab eo, qui " kalendis dari" stipulatur.

Dig. 45.1.56.6

Iulianus 52 Dig.

Qui proprietatem sine usu fructu habet, recte usum fructum dari sibi stipulatur: id enim in obligationem deducit, quod non habet, sed habere potest.

Dig. 45.1.56.7

Iulianus 52 Dig.

Si a te stipulatus fuero fundum sempronianum, deinde eundem fundum detracto usu fructu ab alio stipulor, prior stipulatio non novabitur, quia nec solvendo fundum detracto usu fructu liberaberis, sed adhuc a te recte fundi usum fructum peterem. quid ergo est? cum mihi fundum dederis, is quoque liberabitur, a quo detracto usu fructu fundum stipulatus fueram.

Dig. 45.1.56.8

Iulianus 52 Dig.

Si hominem, quem a titio pure stipulatus fueram, seius mihi sub condicione promiserit et is pendente condicione post moram titii decesserit, confestim cum titio agere potero, nec seius existente condicione obligetur: at si titio acceptum fecissem, seius existente condicione obligari potest. idcirco haec tam varie, quod homine mortuo desinit esse res, in quam seius obligaretur: acceptilatione interposita superest homo, quem seius promiserat.

Dig. 45.1.57

Iulianus 53 Dig.

Si quis " si titius consul factus erit, decem dari" spoponderit, quamvis pendente condicione promissor moriatur, relinquet heredem obligatum.

Dig. 45.1.58

Iulianus 54 Dig.

Qui usum fructum fundi stipulatur, deinde fundum, similis est ei, qui partem fundi stipulatur, deinde totum, quia fundus dari non intellegitur, si usus fructus detrahatur. et e contrario qui fundum stipulatus est, deinde usum fructum, similis est ei, qui totum stipulatur, deinde partem. sed qui actum stipulatur, deinde iter, posteriore stipulatione nihil agit, sicuti qui decem, deinde quinque stipulatur, nihil agit. item si quis fructum, deinde usum stipulatus fuerit, nihil agit. nisi in omnibus novandi animo hoc facere specialiter expresserit: tunc enim priore obligatione exspirante ex secunda introducitur petitio et tam iter quam usus nec non quinque exigi possunt.

Dig. 45.1.59

Iulianus 88 Dig.

Quotiens in diem vel sub condicione oleum quis stipulatur, eius aestimationem eo tempore spectari oportet, quo dies obligationis venit: tunc enim ab eo peti potest: alioquin alias rei captio erit.

Dig. 45.1.60

Ulpianus 20 ad ed.

Idem erit et si capuae certum olei pondo dari quis stipulatus sit: nam eius temporis fit aestimatio, cum peti potest: peti autem potest, quo primum in locum perveniri potuit.

Dig. 45.1.61

Iulianus 2 ad urs. ferocem.

Stipulatio hoc modo concepta: " si heredem me non feceris, tantum dare spondes?" inutilis est, quia contra bonos mores est haec stipulatio.

Dig. 45.1.62

Iulianus 2 ex minic.

Servus vetante domino si pecuniam ab alio stipulatus sit, nihilo minus obligat domino promissorem.

Dig. 45.1.63

Africanus 6 quaest.

Si ita quis stipuletur: " sive navis ex asia venerit sive titius consul factus fuerit", utra prius condicio exstitisset, stipulatio committetur et amplius committi non potest. sed enim cum ex duabus disiunctivis condicionibus altera defecerit, necesse est, ut ea, quae exstiterit, stipulationem committat.

Dig. 45.1.64

Africanus 7 quaest.

Huiusmodi stipulatio interposita est: " si titius consul factus fuerit, tum ex hac die in annos singulos dena dari spondes?" post triennium condicio exstitit: an huius temporis nomine agi possit, non immerito dubitabitur. respondit eam stipulationem utilem esse ita, ut in ea eorum quoque annorum, qui ante impletam condicionem intercesserint, praestatio in id tempus collata intellegatur, ut sententia eius sit talis: tunc cum titius consul factus fuerit, in annos singulos, etiam praeteriti temporis habita ratione, dena praestentur.

Dig. 45.1.65pr.

Florus 8 inst.

Quae extrinsecus et nihil ad praesentem actum pertinentia adieceris stipulationi, pro supervacuis habebuntur nec vitiabunt obligationem, veluti si dicas: " arma virumque cano: spondeo", nihilominus valet.

Dig. 45.1.65.1

Florus 8 inst.

Sed et si in rei quae promittitur aut personae appellatione varietur, non obesse placet: nam stipulanti denarios eiusdem quantitatis aureos spondendo obligaberis: et servo stipulanti lucio domino suo, si titio, qui idem sit, daturum te spondeas, obligaberis.

Dig. 45.1.66

Paulus 3 ad l. ael. sent.

Si minor viginti annis a debitore suo stipuletur " servum manumissurum", non est exsecutio stipulationis danda. sed si ipsorum viginti annorum erit, non impedietur manumissio, quia de minore lex loquitur.

Dig. 45.1.67pr.

Ulpianus 2 ad ed.

Illa stipulatio: " decem milia salva fore promittis?" valet.

Dig. 45.1.67.1

Ulpianus 2 ad ed.

Eum, qui " decem dari sibi curari" stipulatus sit, non posse decem petere, quoniam possit promissor reum locupletem dando liberari, labeo ait: idque et celsus libro sexto digestorum refert.

Dig. 45.1.68

Paulus 2 ad ed.

Si poenam stipulatus fuero, si mihi pecuniam non credidisses, certa est et utilis stipulatio. quod si ita stipulatus fuero: " pecuniam te mihi crediturum spondes?", incerta est stipulatio, quia id venit in stipulationem, quod mea interest.

Dig. 45.1.69

Ulpianus 7 ad ed.

Si homo mortuus sit, sisti non potest nec poena rei impossibilis committetur, quemadmodum si quis stichum mortuum dare stipulatus, si datus non esset, poenam stipuletur.

Dig. 45.1.70

Ulpianus 11 ad ed.

Mulier, quae dotem dederat populari meo glabrioni isidoro, fecerat eum promittere dotem, si in matrimonio decessisset, infanti et decesserat constante matrimonio. placebat ex stipulatu actionem non esse, quoniam qui fari non poterat, stipulari non poterat.

Dig. 45.1.71

Ulpianus 13 ad ed.

Cum, quid ut fiat, stipulemur poenam, sic recte concipiemus: " si ita factum non erit": cum quid ne fiat, sic: " si adversus id factum sit".

Dig. 45.1.72pr.

Ulpianus 20 ad ed.

Stipulationes non dividuntur earum rerum, quae divisionem non recipiunt, veluti viae itineris actus aquae ductus ceterarumque servitutium. idem puto et si quis faciendum aliquid stipulatus sit, ut puta fundum tradi vel fossam fodiri vel insulam fabricari, vel operas vel quid his simile: horum enim divisio corrumpit stipulationem. celsus tamen libro trigensimo octavo digestorum refert tuberonem existimasse, ubi quid fieri stipulemur, si non fuerit factum, pecuniam dari oportere ideoque etiam in hoc genere dividi stipulationem: secundum quem celsus ait posse dici iusta aestimatione facti dandam esse petitionem.

Dig. 45.1.72.1

Ulpianus 20 ad ed.

Si quis ita stipulatus sit: " si ante kalendas martias primas opus perfectum non erit, tum quanti id opus erit, tantam pecuniam dari?", diem promissionis cedere non ex quo locatum est opus, sed post kalendas martias, quia nec conveniri ante kalendas martias reus promittendi poterat.

Dig. 45.1.72.2

Ulpianus 20 ad ed.

Plane si " insulam fulciri" quis stipulatus sit, non est exspectandum, ut insula ruat, sic deinde agi possit: nec " insulam fieri", ut tantum temporis praetereat, quanto insula fabricari possit: sed ubi iam coepit mora faciendae insulae fieri, tunc agetur diesque obligationi cedit.

Dig. 45.1.73pr.

Paulus 24 ad ed.

Interdum pura stipulatio ex re ipsa dilationem capit, veluti si id quod in utero sit aut fructus futuros aut domum aedificari stipulatus sit: tunc enim incipit actio, cum ea per rerum naturam praestari potest. sic qui carthagini dari stipulatur, cum romae sit, tacite tempus complecti videtur, quo perveniri carthaginem potest. item si operas a liberto quis stipulatus sit, non ante dies earum cedit, quam indictae fuerint nec sint praestitae.

Dig. 45.1.73.1

Paulus 24 ad ed.

Si servus hereditarius stipulatus sit, nullam vim habitura est stipulatio, nisi adita hereditas sit, quasi condicionem habeat. idem est et in servo eius qui apud hostes est.

Dig. 45.1.73.2

Paulus 24 ad ed.

Stichi promissor post moram offerendo purgat moram: certe enim doli mali exceptio nocebit ei, qui pecuniam oblatam accipere noluit.

Dig. 45.1.74

Gaius 8 ad ed. provinc.

Stipulationum quaedam certae sunt, quaedam incertae. certum est, quod ex ipsa pronuntiatione apparet quid quale quantumque sit, ut ecce aurei decem, fundus tusculanus, homo stichus, tritici africi optimi modii centum, vini campani optimi amphorae centum.

Dig. 45.1.75pr.

Ulpianus 22 ad ed.

Ubi autem non apparet, quid quale quantumque est in stipulatione, incertam esse stipulationem dicendum est.

Dig. 45.1.75.1

Ulpianus 22 ad ed.

Ergo si qui fundum sine propria appellatione vel hominem generaliter sine proprio nomine aut vinum frumentumve sine qualitate dari sibi stipulatur, incertum deducit in obligationem.

Dig. 45.1.75.2

Ulpianus 22 ad ed.

Usque adeo, ut, si quis ita stipulatus sit " tritici africi boni modios centum" " vini campani boni amphoras centum", incertum videatur stipulari, quia bono melius inveniri potest: quo fit, ut boni appellatio non sit certae rei significativa, cum id, quod bono melius sit, ipsum quoque bonum sit. at cum optimum quisque stipulatur, id stipulari intellegitur, cuius bonitas principalem gradum bonitatis habet: quae res efficit, ut ea appellatio certi significativa sit.

Dig. 45.1.75.3

Ulpianus 22 ad ed.

Fundi certi si quis usum fructum stipulatus fuerit, incertum intellegitur in obligationem deduxisse: hoc enim magis iure utimur.

Dig. 45.1.75.4

Ulpianus 22 ad ed.

Illud dubitationem recipit, si quis id, quod ex arethusa ancilla natum erit, aut fructus, qui in fundo tusculano nati erunt, dari sibi stipulatus sit, an certum stipulatus videatur. sed ipsa natura manifestissimum est incerti esse hanc stipulationem.

Dig. 45.1.75.5

Ulpianus 22 ad ed.

Sed qui vinum aut oleum vel triticum, quod in horreo est, stipulatur, certum stipulari intellegitur.

Dig. 45.1.75.6

Ulpianus 22 ad ed.

Qui vero a titio ita stipulatur: " quod mihi seius debet, dare spondes?" et qui ita stipulatur: " quod ex testamento mihi debes, dare spondes?", incertum in obligationem deducit, licet seius certum debeat vel ex testamento certum debeatur. quamvis istae species vix separari possint ab ea, quam proposuimus de vino vel oleo vel tritico, quod in horreo repositum est: et adhuc occurrit, quod fideiussores certum videntur promittere, si modo et is, pro quo obligentur, certum debeat, cum alioquin ita interrogentur: " id fide tua esse iubes?"

Dig. 45.1.75.7

Ulpianus 22 ad ed.

Qui id, quod in faciendo aut non faciendo consistit, stipulatur, incertum stipulari videtur: in faciendo, veluti " fossam fodiri" " domum aedificari" " vacuam possessionem tradi": in non faciendo, veluti " per te non fieri, quo minus mihi per fundum tuum ire agere liceat" " per te non fieri, quo minus mihi hominem erotem habere liceat".

Dig. 45.1.75.8

Ulpianus 22 ad ed.

Qui illud aut illud stipulatur, veluti " decem vel hominem stichum", utrum certum an incertum deducat in obligationem, non immerito quaeritur: nam et res certae designantur et utra earum potius praestanda sit, in incerto est. sed utcumque is, qui sibi electionem constituit adiectis his verbis " utrum ego velim", potest videri certum stipulatus, cum ei liceat vel hominem tantum vel decem tantum intendere sibi dari oportere: qui vero sibi electionem non constituit, incertum stipulatur.

Dig. 45.1.75.9

Ulpianus 22 ad ed.

Qui sortem stipulatur et usuras quascumque, certum et incertum stipulatus videtur et tot stipulationes sunt, quot res sunt.

Dig. 45.1.75.10

Ulpianus 22 ad ed.

Haec stipulatio: " fundum tusculanum dari?" ostendit se certi esse, continetque, ut dominium omnimodo efficiatur stipulatoris quoquo modo.

Dig. 45.1.76pr.

Paulus 18 ad ed.

Si stipulatus fuerim " illud aut illud, quod ego voluero", haec electio personalis est, et ideo servo vel filio talis electio cohaeret: in heredes tamen transit obligatio et ante electionem mortuo stipulatore.

Dig. 45.1.76.1

Paulus 18 ad ed.

Cum stipulamur " quidquid te dare facere oportet", id quod praesenti die dumtaxat debetur in stipulationem deducitur, non (ut in iudiciis) etiam futurum: et ideo in stipulatione adicitur verbum " oportebit" vel ita " praesens in diemve". hoc ideo fit, quia qui stipulatur " quidquid te dare oportet" demonstrat eam pecuniam quae iam debetur: quod si totam demonstrare vult, dicit ^ dici^ " oportebitve" vel ita " praesens in diemve".

Dig. 45.1.77

Paulus 58 ad ed.

Ad diem sub poena pecunia promissa et ante diem mortuo promissore committetur poena, licet non sit hereditas eius adita.

Dig. 45.1.78pr.

Paulus 62 ad ed.

Si filius familias sub condicione stipulatus emancipatus fuerit, deinde exstiterit condicio, patri actio competit, quia in stipulationibus id tempus spectatur quo contrahimus.

Dig. 45.1.78.1

Paulus 62 ad ed.

Cum fundum stipulatus sum, non veniunt fructus, qui stipulationis tempore fuerint.

Dig. 45.1.79

Ulpianus 70 ad ed.

Si procuratori praesentis fuerit cautum, ex stipulatu actionem utilem domino competere nemo ambigit.

Dig. 45.1.80

Ulpianus 74 ad ed.

Quotiens in stipulationibus ambigua oratio est, commodissimum est id accipi, quo res, qua de agitur, in tuto sit.

Dig. 45.1.81pr.

Ulpianus 77 ad ed.

Quotiens quis alium sisti promittit nec adicit poenam, puta vel servum suum vel hominem liberum, quaeritur, an committatur stipulatio. et celsus ait, etsi non est huic stipulationi additum " nisi steterit, poenam dari", in id, quanti interest sisti, contineri. et verum est, quod celsus ait: nam qui alium sisti promittit, hoc promittit id se acturum, ut stet.

Dig. 45.1.81.1

Ulpianus 77 ad ed.

Si procurator sisti aliquem sine poena stipulatus sit, potest defendi non suam, sed eius, cuius negotium gessit, utilitatem in ea re deduxisse: idque fortius dicendum, si " quanti ea res sit" stipulatio proponatur procuratoris.

Dig. 45.1.82pr.

Ulpianus 78 ad ed.

Nemo rem suam utiliter stipulatur, sed pretium rei suae non inutiliter: sane rem meam mihi restitui recte stipulari videor.

Dig. 45.1.82.1

Ulpianus 78 ad ed.

Si post moram promissoris homo decesserit, tenetur nihilo minus, proinde ac si homo viveret.

Dig. 45.1.82.2

Ulpianus 78 ad ed.

Et hic moram videtur fecisse, qui litigare maluit quam restituere.

Dig. 45.1.83pr.

Paulus 72 ad ed.

Inter stipulantem et promittentem negotium contrahitur. itaque alius pro alio promittens daturum facturumve eum non obligatur: nam de se quemque promittere oportet. et qui spondet " dolum malum abesse afuturumque esse", non simplex abnutivum spondet, sed curaturum se, ut dolus malus absit: idemque in illis stipulationibus " habere licere" item " neque per te neque per heredem tuum fieri, quo minus fiat".

Dig. 45.1.83.1

Paulus 72 ad ed.

Si stichum stipulatus de alio sentiam, tu de alio, nihil actum erit. quod et in iudiciis aristo existimavit: sed hic magis est, ut is petitus videatur, de quo actor sensit. nam stipulatio ex utriusque consensu valet, iudicium autem etiam in invitum redditur et ideo actori potius credendum est: alioquin semper negabit reus se consensisse.

Dig. 45.1.83.2

Paulus 72 ad ed.

Si stipulante me stichum aut pamphilum tu unum daturum te spoponderis, constat non teneri te nec ad interrogatum esse responsum.

Dig. 45.1.83.3

Paulus 72 ad ed.

Diversa causa est summarum, veluti " decem aut viginti dari spondes ?" hic enim etsi decem spoponderis, recte responsum est, quia semper in summis id, quod minus est, sponderi videtur.

Dig. 45.1.83.4

Paulus 72 ad ed.

Item si ego plures res stipuler, stichum puta et pamphilum, licet unum spoponderis, teneris: videris enim ad unam ex duabus stipulationibus respondisse.

Dig. 45.1.83.5

Paulus 72 ad ed.

Sacram vel religiosam rem vel usibus publicis in perpetuum relictam (ut forum aut basilicam) aut hominem liberum inutiliter stipulor, quamvis sacra profana fieri et usibus publicis relicta in privatos usus reverti et ex libero servus fieri potest. nam et cum quis rem profanam aut stichum dari promisit, liberatur, si sine facto eius res sacra esse coeperit aut stichus ad libertatem pervenerit, nec revocantur in obligationem, si rursus lege aliqua et res sacra profana esse coeperit et stichus ex libero servus effectus sit. quoniam una atque eadem causa et liberandi et obligandi esset, quod aut dari non possit aut dari possit: nam et si navem, quam spopondit, dominus dissolvit et isdem tabulis compegerit, quia eadem navis esset, inciperet obligari. pro quo et illud dici posse pedius scribit: si stipulatus fuero ex fundo centum amphoras vini, exspectare debeo, donec nascatur: et si natum sine culpa promissoris consumptum sit, rursum exspectare debeam, donec iterum nascatur et dari possit: et per has vices aut cessaturam aut valituram stipulationem. sed haec dissimilia sunt: adeo enim, cum liber homo promissus est, servitutis tempus spectandum non esse, ut ne haec quidem stipulatio de homine libero probanda sit: " illum, cum servus esse coeperit, dare spondes?" item " eum locum, cum ex sacro religiosove profanus esse coeperit, dari?" quia nec praesentis temporis obligationem recipere potest et ea dumtaxat, quae natura sui possibilia sunt, deducuntur in obligationem. vini autem non speciem, sed genus stipulari videmur et tacite in ea tempus continetur: homo liber certa specie continetur. et casum adversamque fortunam spectari hominis liberi neque civile neque naturale est: nam de his rebus negotium recte geremus, quae subici usibus dominioque nostro statim possunt. et navis si hac mente resoluta est, ut in alium usum tabulae destinarentur, licet mutato consilio perficiatur, tamen et perempta prior navis et haec alia dicenda est: sed si reficiendae navis causa omnes tabulae refixae sint, nondum intercidisse navis videtur et compositis rursus eadem esse incipit: sicuti de aedibus deposita tigna ea mente, ut reponantur, aedium sunt, sed si usque ad aream deposita sit, licet eadem materia restituatur, alia erit. hic tractatus etiam ad praetorias stipulationes pertinet, quibus de re restituenda cavetur et an eadem res sit, quaeritur.

Dig. 45.1.83.6

Paulus 72 ad ed.

Si rem, quam ex causa lucrativa stipulatus sum, nactus fuero ex causa lucrativa, evanescit stipulatio. sed si heres exstitero domino, extinguitur stipulatio. si vero a me herede defunctus eam legavit, potest agi ex stipulatu: idemque esse et si sub condicione legata sit, quia et, si ipse debitor rem sub condicione legatam dedisset, non liberaretur: sed si condicione deficiente remanserit, petitio infirmabitur.

Dig. 45.1.83.7

Paulus 72 ad ed.

Stichum, qui decessit, si stipuler, si quidem condici etiam mortuus potuit, ut furi, utiliter me stipulatum sabinus ait: si vero ex aliis causis, inutiliter, quia et si deberetur, morte promissor liberetur. idem ergo diceret et si mora facta defunctum stipularer.

Dig. 45.1.83.8

Paulus 72 ad ed.

Si quis ancillam sistere se in aliquo loco promiserit, quae praegnas erat, etsi sine partu eam sistat, in eadem causa eam sistere intellegitur.

Dig. 45.1.84

Paulus 74 ad ed.

Si insulam fieri stipulatus sim et transierit tempus, quo potueris facere, quamdiu litem contestatus non sim, posse te facientem liberari placet: quod si iam litem contestatus sim, nihil tibi prodesse, si aedifices.

Dig. 45.1.85pr.

Paulus 75 ad ed.

In exsecutione obligationis sciendum est quattuor causas esse: nam interdum est aliquid, quod a singulis heredibus divisum consequi possumus: aliud, quod totum peti necesse est nec divisum praestari potest: aliud quod pro parte petitur, sed solvi nisi totum non potest: aliud, quod solidum petendum est, licet in solutionem admittat secutionem.

Dig. 45.1.85.1

Paulus 75 ad ed.

Prima species pertinet ad promissorem pecuniae certae: nam et petitio et solutio ad portiones hereditarias spectat.

Dig. 45.1.85.2

Paulus 75 ad ed.

Secunda ad opus, quod testator fieri iusserit: nam singuli heredes in solidum tenentur, quia operis effectus in partes scindi non potest.

Dig. 45.1.85.3

Paulus 75 ad ed.

Quod si stipulatus fuero: " per te heredemve tuum non fieri, quo minus eam agam: si adversus ea factum sit, tantum dari?" et unus ex pluribus heredibus promissoris me prohibeat, verior est sententia existimantium unius facto omnes teneri, quoniam, licet ab uno prohibeor, non tamen in partem prohibeor: sed ceteri familiae erciscundae iudicio sarcient damnum.

Dig. 45.1.85.4

Paulus 75 ad ed.

Pro parte autem peti, solvi autem nisi totum non potest, veluti cum stipulatus sum hominem incertum: nam petitio eius scinditur, solvi vero nisi solidus non potest. alioquin in diversis hominibus recte partes solventur: quod non potuit defunctus facere, nec quod stipulatus sum consequar. idem iuris est, et si quis decem milia aut hominem promiserit.

Dig. 45.1.85.5

Paulus 75 ad ed.

In solidum vero agi oportet et partis solutio adfert liberationem, cum ex causa evictionis intendimus: nam auctoris heredes in solidum denuntiandi sunt omnesque debent subsistere et quolibet defugiente omnes tenebuntur, sed unicuique pro parte hereditaria praestatio iniungitur.

Dig. 45.1.85.6

Paulus 75 ad ed.

Item si ita stipulatio facta sit: " si fundus titianus datus non erit, centum dari?", nisi totus detur, poena committitur centum nec prodest partes fundi tradere cessante uno, quemadmodum non prodest ad pignus liberandum partem creditori solvere.

Dig. 45.1.85.7

Paulus 75 ad ed.

Quicumque sub condicione obligatus curaverit, ne condicio exsisteret, nihilo minus obligatur.

Dig. 45.1.86

Ulpianus 79 ad ed.

Quod dicitur tot stipulationes esse quot res, ibi locum habet, ubi res exprimuntur stipulatione: ceterum si non fuerint expressae, una est stipulatio.

Dig. 45.1.87

Paulus 75 ad ed.

Nemo rem suam futuram in eum casum, quo sua fit, utiliter stipulatur.

Dig. 45.1.88

Paulus 6 ad plaut.

Mora rei fideiussori quoque nocet. sed si fideiussor servum obtulit et reus moram fecit, mortuo sticho fideiussori succurrendum est. sed si fideiussor hominem occiderit, reus liberatur, fideiussor autem ex stipulatione conveniri potest.

Dig. 45.1.89

Paulus 9 ad plaut.

Si a colono, cui fundum in quinquennium locaveram, post tres annos ita stipulatus fuero: " quidquid te dare facere oportet?", non amplius in stipulationem deducitur, quam quod iam dari oportet: in stipulationem enim deducitur, quod iam dari oportet. si autem adiciatur " oportebitve", etiam futura obligatio deducitur.

Dig. 45.1.90

Pomponius 3 ex plaut.

Cum stipulati sumus pro usuris legitimis poenam in singulos menses, si sors soluta non sit, etiamsi sortis obligatio in iudicium sit deducta, adhuc tamen poena crescit, quia verum est solutam pecuniam non esse.

Dig. 45.1.91pr.

Paulus 17 ad plaut.

Si servum stipulatus fuero et nulla mora intercedente servus decesserit: si quidem occidat eum promissor, expeditum est. sin autem neglegat infirmum, an teneri debeat promissor, considerantibus, utrum, quemadmodum in vindicatione hominis, si neglectus a possessore fuerit, culpae huius nomine tenetur possessor, ita et cum dari promisit, an culpa, quod ad stipulationem attinet, in faciendo accipienda sit, non in non faciendo? quod magis probandum est, quia qui dari promisit, ad dandum, non faciendum tenetur.

Dig. 45.1.91.1

Paulus 17 ad plaut.

Sed si sit quidem res in rebus humanis, sed dari non possit, ut fundus religiosus puta vel sacer factus vel servus manumissus, vel etiam ab hostibus si capiatur, culpa in hunc modum diiudicatur, ut, si quidem ipsius promissoris res vel tempore stipulationis vel postea fuerit et quid eorum acciderit, nihilo minus teneatur, idemque fiat et si per alium, posteaquam ab hoc alienatus sit, id contigerit. sin autem alienus fuit et ab alio tale quid accidit, non tenetur, quia nihil fecit, nisi si posteaquam moratus est solutionem, aliquid huiusmodi acciderit: quam distinctionem et iulianus sequitur. item si homo, qui fuit promissoris, ex praecedenti causa ablatus ei fuerit, quod statuliber fuit, perinde habendus sit, ac si alienum promisisset, quia sine facto ipsius desiit eius esse.

Dig. 45.1.91.2

Paulus 17 ad plaut.

De illo quaeritur, an et is, qui nesciens se debere occiderit, teneatur: quod iulianus putat in eo, qui, cum nesciret a se petitum codicillis ut restitueret, manumisit.

Dig. 45.1.91.3

Paulus 17 ad plaut.

Sequitur videre de eo, quod veteres constituerunt, quotiens culpa intervenit debitoris, perpetuari obligationem, quemadmodum intellegendum sit. et quidem si effecerit promissor, quo minus solvere possit, expeditum intellectum habet constitutio: si vero moratus sit tantum, haesitatur, an, si postea in mora non fuerit, extinguatur superior mora. et celsus adulescens scribit eum, qui moram fecit in solvendo sticho quem promiserat, posse emendare eam moram postea offerendo: esse enim hanc quaestionem de bono et aequo: in quo genere plerumque sub auctoritate iuris scientiae perniciose, inquit, erratur. et sane probabilis haec sententia est, quam quidem et iulianus sequitur: nam dum quaeritur de damno et par utriusque causa sit, quare non potentior sit qui teneat, quam qui persequitur?

Dig. 45.1.91.4

Paulus 17 ad plaut.

Nunc videamus, in quibus personis haec constitutio locum habeat. quae inspectio duplex est, ut primo quaeramus, quae personae efficiant perpetuam obligationem, deinde quibus eam producant. utique autem principalis debitor perpetuat obligationem: accessiones an perpetuent, dubium est. pomponio perpetuare placet: quare enim facto suo fideiussor suam obligationem tollat? cuius sententia vera est: itaque perpetuatur obligatio tam ipsorum quam successorum eorum. accessionibus quoque suis, id est fideiussoribus, perpetuant obligationem, quia in totam causam spoponderunt.

Dig. 45.1.91.5

Paulus 17 ad plaut.

An filius familias, qui iussu patris promisit, occidendo servum producat patris obligationem, videndum est. pomponius producere putat, scilicet quasi accessionem intellegens eum qui iubeat.

Dig. 45.1.91.6

Paulus 17 ad plaut.

Effectus huius ^ huis^ constitutionis ille est, ut adhuc homo peti possit: sed et acceptum ei posse ferri creditur et fideiussorem accipi eius obligationis nomine. novari autem an possit haec obligatio, dubitationis est, quia neque hominem qui non est neque pecuniam quae non debetur stipulari possumus. ego puto novationem fieri posse, si hoc actum inter partes sit, quod et iuliano placet.

Dig. 45.1.92

Paulus 18 ad plaut.

Si ita stipuler: " per te non fieri, quo minus mihi heredique meo vindemiam tollere liceat?", etiam heredi datur actio.

Dig. 45.1.93

Paulus 3 ad vitell.

Si sic stipulatus fuero: " per te non fieri, quo minus hominem ex his, quos habes, sumam?" electio mea erit.

Dig. 45.1.94

Marcellus 3 Dig.

Triticum dare oportere stipulatus est aliquis: facti quaestio est, non iuris. igitur si de aliquo tritico cogitaverit, id est certi generis certae quantitatis, id habebitur pro expresso: alioquin si, cum destinare genus et modum vellet, non fecit, nihil stipulatus videtur, igitur ne unum quidem modium.

Dig. 45.1.95

Marcellus 5 Dig.

Qui insulam fieri stipulatur, ita demum adquirit obligationem, si apparet, quo in loco fieri insulam voluerit: si et ibi insulam fieri interest eius.

Dig. 45.1.96

Marcellus 12 Dig.

Qui servum mihi ex stipulatu debebat, si in facinore eum deprehenderit, impune eum occidit, nec utilis actio erit in eum constituenda.

Dig. 45.1.97pr.

Celsus 26 Dig.

Si ita stipulatus fuero: " te sisti? nisi steteris, hippocentaurum dari?" proinde erit, atque " te sisti" solummodo stipulatus essem.

Dig. 45.1.97.1

Celsus 26 Dig.

Possum utiliter a te ita stipulari: " titii nomine te soluturum?", neque enim hoc simile est illi " titium daturum?": sed ex ea stipulatione, dum interest mea, agere possum, et ideo, si locuples sit titius, nihil ex hac stipulatione consequi possim: quid enim mea interest id a te fieri, quod si non feceris, aeque salvam pecuniam habiturus sum?

Dig. 45.1.97.2

Celsus 26 Dig.

" si tibi nupsero, decem dari spondes?" causa cognita denegandam actionem puto, nec raro probabilis causa eiusmodi stipulationis est. item si vir a muliere eo modo non in dotem stipulatus est.

Dig. 45.1.98pr.

Marcellus 20 Dig.

Existimo posse id quod meum est sub condicione stipulari, item viam stipulari ad fundum posse, quamquam interim fundus non sit meus: aut, si hoc verum non est et alienum fundum sub condicione stipulatus fuero isque ex lucrativa causa meus esse coeperit, confestim peremeretur stipulatio, et si fundi dominus sub condicione viam stipulatus fuerit, statim fundo alienato evanescit stipulatio, et maxime secundum illorum opinionem, qui etiam ea, quae recte constiterunt, resolvi putant, cum in eum casum recciderunt, a quo non potuissent consistere.

Dig. 45.1.98.1

Marcellus 20 Dig.

Ex hac stipulatione: " insulam fulciri spondes?" quando nascatur actio, quaeritur. et utique non est exspectandum, ut ruat: nec enim nihil stipulatoris interest fultam potius esse, quam non esse: nec tamen recte agetur, si nondum praeterierit temporis tantum, quo fulcire potuerit redemptor.

Dig. 45.1.99pr.

Celsus 38 Dig.

Quidquid adstringendae obligationis est, id nisi palam verbis exprimitur, omissum intellegendum est: ac fere secundum promissorem interpretamur, quia stipulatori liberum fuit verba late concipere. nec rursum promissor ferendus est, si eius intererit de certis potius vasis forte aut hominibus actum.

Dig. 45.1.99.1

Celsus 38 Dig.

Si stipulatus hoc modo fuero: " si intra biennium capitolium non ascenderis, dari?", non nisi praeterito biennio recte petam: nam etsi ambigua verba sunt, sic tamen exaudiuntur, si immutabiliter verum fuit te capitolium non ascendisse.

Dig. 45.1.100

Modestinus 8 reg.

Condicio in praeteritum, non tantum praesens tempus relata statim aut peremit obligationem aut omnino non differt.

Dig. 45.1.101

Modestinus 4 de praescr.

Puberes sine curatoribus suis possunt ex stipulatu obligari.

Dig. 45.1.102

Modestinus 5 resp.

Venditores emptori caverant pro evictione, quanti eius interesset: sed et specialiter adgnituros, si in lite mota sumptus fecisset, emptori stipulanti promiserant. post mortem emptoris unus ex venditoribus ad iudicium vocavit, pretium sibi deberi dicens, heredes eius: qui sumptus in defensione causae factos, cum probarent pretium solutum fuisse, ex stipulatione petebant. modestinus respondit, si in eas impensas venditores promiserunt, quae ob litem de proprietate institutam factae essent, minime ex stipulatu peti posse, quod erogatum est, dum alter ex venditoribus pretium, quod iam fuerat exsolutum, petit.

Dig. 45.1.103

Modestinus 5 pand.

Liber homo in stipulatum deduci non potest, quia nec dari oportere intendi nec aestimatio eius praestari potest, non magis quam si quis dari stipulatus fuerit mortuum hominem aut fundum hostium.

Dig. 45.1.104

Iavolenus 11 ex cass.

Cum servus pecuniam pro libertate pactus est et ob eam rem reum dedit: quamvis servus ab alio manumissus est, reus tamen recte obligabitur, quia non quaeritur, a quo manumittatur, sed ut manumittatur.

Dig. 45.1.105

Iavolenus 2 epist.

Stipulatus sum damam aut erotem servum dari: cum damam dares, ego quo minus acciperem, in mora fui: mortuus est dama: an putes me ex stipulatu actionem habere? respondit: secundum massurii sabini opinionem puto te ex stipulatu agere non posse: nam is recte existimabat, si per debitorem mora non esset, quo minus id quod debebat solveret, continuo eum debito liberari.

Dig. 45.1.106

Iavolenus 6 epist.

Qui ex pluribus fundis, quibus idem nomen impositum fuerat, unum fundum sine ulla nota demonstrationis stipuletur, incertum stipulatur, id est eum fundum stipulatur, quem promissor dare voluerit. tamdiu autem voluntas promissoris in pendenti est, quamdiu id quod promissum est solvatur.

Dig. 45.1.107

Iavolenus 8 epist.

Utrum turpem talem stipulationem putes an non, quaero. pater naturalis filium, quem titius habebat in adoptionem, heredem instituit, si patria potestate liberatus esset: pater eum adoptivus non alias emancipare voluit, quam si ei dedisset, a quo stipularetur certam summam, si eum manumisisset: post emancipationem adiit heres filius: petit nunc pecuniam pater ex stipulatione supra relata. respondit: non puto turpem esse causam stipulationis, utpote cum aliter filium emancipaturus non fuerit: nec potest videri iniusta causa stipulationis, si aliquid adoptivus pater habere voluerit, propter quod a filio post emancipationem magis curaretur.

Dig. 45.1.108pr.

Iavolenus 10 epist.

A titio ita stipulatus sum: " si qua mihi nupserit, decem dotis eius nomine dare spondes?" quaerebatur, an consistat talis stipulatio. respondit: si stipulanti mihi dos ita promissa est: " quamcumque uxorem duxero, dotis eius nomine decem dare spondes?", nihil in causa est, quare ea pecunia condicione expleta non debeatur: nam cum condicio etiam ex incertae personae facto parere obligationem possit, veluti " si quis in capitolium ascenderit, decem dare spondes?" " si quis a me decem petierit, tot dare spondes?", cur non idem et in dote promissa respondeatur, ratio reddi non potest.

Dig. 45.1.108.1

Iavolenus 10 epist.

Nulla promissio potest consistere, quae ex voluntate promittentis statum capit.

Dig. 45.1.109

Pomponius 3 ad q. muc.

Si ita stipulatus fuero: " decem aut quindecim dabis?", decem debentur. item si ita: " post annum aut biennium dabis?", post biennium debentur, quia in stipulationibus id servatur, ut quod minus esset quodque longius, esse videretur in obligationem deductum.

Dig. 45.1.110pr.

Pomponius 4 ad q. muc.

Si mihi et titio, in cuius potestate non sim, stipuler decem, non tota decem, sed sola quinque mihi debentur: pars enim aliena deducitur, ut quod extraneo inutiliter stipulatus sum, non augeat meam partem.

Dig. 45.1.110.1

Pomponius 4 ad q. muc.

Si stipulatus fuero de te: " vestem tuam, quaecumque muliebris est, dare spondes?", magis ad mentem stipulantis quam ad mentem promittentis id referri debet, ut quid in re sit, aestimari debeat, non quid senserit promissor. itaque si solitus fuerat promissor muliebri quadam veste uti, nihilo minus debetur.

Dig. 45.1.111

Pomponius 5 ad q. muc.

Si stipulatus fuero " per te non fieri, quo minus mihi illa domo uti liceat", an etiam, si me non prohibeas, uxorem autem meam prohiberes, vel contra uxore mea stipulata me prohibeas, an committatur stipulatio? et latius est haec verba sic accipi. nam et si stipulatus fuero " per te non fieri, quo minus mihi via itinere actu uti liceat", etsi non me, sed alium nomine meo ingredientem prohibeas, sciendum erit committi stipulationem.

Dig. 45.1.112pr.

Pomponius 15 ad q. muc.

Si quis stipulatus sit stichum aut pamphilum, utrum ipse vellet: quem elegerit, petet et is erit solus in obligatione. an autem mutare voluntatem possit et ad alterius petitionem transire, quaerentibus respiciendus erit sermo stipulationis, utrumne talis sit, " quem voluero" an " quem volam": nam si talis fuerit " quem voluero", cum semel elegerit, mutare voluntatem non poterit: si vero tractum habeat sermo illius et sit talis " quem volam", donec iudicium dictet, mutandi potestatem habebit.

Dig. 45.1.112.1

Pomponius 15 ad q. muc.

Si quis ita stipulatus fuerit: " pro centum aureis satis dabis?" et reum dederit in istam summam: proculus ait semper in satisdationis stipulatione venire, quod interesset stipulantis, ut alias tota sors inesset, veluti si idoneus promissor non sit, alias minus, si in aliquid idoneus esset debitor, alias nihil si tam locuples esset, ut nostra non intersit satis ab eo accipere: nisi quod plerumque idonei non tam patrimonio quam fide quoque aestimarentur.

Dig. 45.1.113pr.

Proculus 2 epist.

Cum stipulatus sim mihi, procule, si opus arbitratu meo ante kalendas iunias effectum non sit, poenam, et protuli diem: putasne vere me posse dicere arbitratu meo opus effectum non esse ante kalendas iunias, cum ipse arbitrio meo aliam diem operi laxiorem dederim? proculus respondit: non sine causa distinguendum est interesse, utrum per promissorem mora non fuisset, quo minus opus ante kalendas iunias ita, uti stipulatione comprehensum erat, perficeretur, an, cum iam opus effici non posset ante kalendas iunias, stipulator diem in kalendis augustis protulisset. nam si tum diem stipulator protulit, cum iam opus ante kalendas iunias effici non poterat, puto poenam esse commissam nec ad rem pertinere, quod aliquod tempus ante kalendas iunias fuit, quo stipulator non desideravit id ante kalendas iunias effici, id est quo non est arbitratus ut fieret quod fieri non poterat. aut si hoc falsum est, etiam si stipulator pridie kalendas iunias mortuus esset, poena commissa non esset, quoniam mortuus arbitrari non potuisset et aliquod tempus post mortem eius operi perficiendo superfuisset. et propemodum etiam si ante kalendas iunias futurum esse coepit opus ante eam diem effici non posse, poena commissa est.

Dig. 45.1.113.1

Proculus 2 epist.

Cum venderet aliquis, promisit emptori fideiussores praestari et rem venditam liberari: quae ut liberetur, nunc desiderat emptor: in mora est is, qui ea stipulatione id futurum promisit: quaero quid iuris sit. proculus respondit: tanti litem aestimari oportet, quanti actoris interest.

Dig. 45.1.114

Ulpianus 17 ad sab.

Si fundum certo die praestari stipuler et per promissorem steterit, quo minus ea die praestetur, consecuturum me, quanti mea intersit moram facti non esse.

Dig. 45.1.115pr.

Papinianus 2 quaest.

Ita stipulatus sum: " te sisti in certo loco: si non steteris, quinquaginta aureos dari spondes?" si dies in stipulatione per errorem omissus fuerit, cum id ageretur, ut certo die sisteres, imperfecta erit stipulatio. non secus ac si quod pondere numero mensura continetur sine adiectione ponderis numeri mensurae stipulatus essem, vel insulam aedificari non demonstrato loco, vel fundum dari non adiecto nomine. quod si ab initio id agebatur, ut quocumque die sisteres et, si non stetisses, pecuniam dares, quasi quaelibet stipulatio sub condicione concepta vires habebit, nec ante committetur, quam fuerit declaratum reum promittendi sisti non posse.

Dig. 45.1.115.1

Papinianus 2 quaest.

Sed et si ita stipulatus fuero: " si in capitolium non ascenderis" vel " alexandriam non ieris, centum dari spondes?" non statim committetur stipulatio, quamvis capitolium ascendere vel alexandriam pervenire potueris, sed cum certum esse coeperit te capitolium ascendere vel alexandriam ire non posse.

Dig. 45.1.115.2

Papinianus 2 quaest.

Item si quis ita stipuletur: " si pamphilum non dederis, centum dari spondes?" pegasus respondit non ante committi stipulationem, quam desisset posse pamphilus dari. sabinus autem existimabat ex sententia contrahentium, postquam homo potuit dari, confestim agendum et tamdiu ex stipulatione non posse agi, quamdiu per promissorem non stetit, quo minus hominem daret, idque defendebat exemplo penus legatae. mucius etenim heredem, si dare potuisset penum nec dedisset, confestim in pecuniam legatam teneri scripsit, idque utilitatis causa receptum est ob defuncti voluntatem et ipsius rei naturam. itaque potest sabini sententia recipi, si stipulatio non a condicione coepit, veluti " si pamphilum non dederis, tantum dare spondes?", sed ita concepta sit stipulatio: " pamphilum dari spondes? si non dederis, tantum dari spondes?" quod sine dubio verum erit, cum id actum probatur, ut, si homo datus non fuerit, et homo et pecunia debeatur. sed et si ita cautum sit, ut sola pecunia non soluto homine debeatur, idem defendendum erit, quoniam fuisse voluntas probatur, ut homo solvatur aut pecunia petatur.

Dig. 45.1.116

Papinianus 4 quaest.

Decem stipulatus a titio postea, quanto minus ab eo consequi posses, si a maevio stipularis, sine dubio maevius universi periculum potest subire. sed et si decem petieris a titio, maevius non erit solutus, nisi iudicatum titius fecerit. paulus notat: non enim sunt duo rei maevius et titius eiusdem obligationis, sed maevius sub condicione debet, si a titio exigi non poterit: igitur nec titio convento maevius liberatur (qui an debiturus sit, incertum est) et solvente titio non liberatur maevius (qui nec tenebatur), cum condicio stipulationis deficit, nec maevius pendente stipulationis condicione recte potest conveniri: a maevio enim ante titium excussum non recte petetur.

Dig. 45.1.117

Papinianus 12 quaest.

Si centum homines, quos ego heresve meus eligerem, stipulatus, antequam eligerem, duos heredes reliquero, numero dividitur stipulatio: diversum erit, si iam electis hominibus successerint.

Dig. 45.1.118pr.

Papinianus 27 quaest.

Liber homo, qui bona fide servit mihi, quod stipulanti mihi promittit, prope est, ut omnimodo sit utile, quamvis ex re mea promittat: nam quid aliud dici potest, quo minus liber homo teneatur? nec tamen ideo si stipulanti eidem ex eadem causa spondeam, tenebor: quemadmodum etenim habebit eius actionem adversus me, quod ab alio stipulatus quaereret mihi? hoc itaque latere fructuario servo vel alieno, qui bona fide servit, comparabitur. servus autem fructuario si promittat ex re ipsius vel alienus, qui bona fide servit, emptori, nulla de peculio dabitur in dominum actio: nam in his causis domini esse intelleguntur.

Dig. 45.1.118.1

Papinianus 27 quaest.

" decem hodie dari spondes?" dixi posse vel eo die pecuniam peti nec videri praematurius agi non finito stipulationis die, quod in aliis temporibus iuris est (nam peti non debet, quod intra tempus comprehensum solvi potest): in proposito enim diem non differendae actionis insertum videri, sed quo praesens ostendatur, esse responsum.

Dig. 45.1.118.2

Papinianus 27 quaest.

" decem mihi aut titio, utrum ego velim, dare spondes?" ex eo, quod mihi dandum est, certi stipulatio est, ex eo, quod illi solvendum, incerti: finge mea interesse titio potius quam mihi solvi, quoniam poenam promiseram, si titio solutum non fuisset.

Dig. 45.1.119

Papinianus 36 quaest.

Doli clausula, quae stipulationibus subicitur, non pertinet ad eas partes stipulationis, de quibus nominatim cavetur.

Dig. 45.1.120

Papinianus 37 quaest.

Si ita stipulatus fuero: " hanc summam centum aureorum dari spondes?", etsi maxime ita exaudiatur ille sermo: " si modo centum aureorum est", non facit condicionem haec adiectio, quoniam si centum non sint, stipulatio nulla est: nec placuit instar habere condicionis sermonem, qui non ad futurum, sed ad praesens tempus refertur, etsi contrahentes rei veritatem ignorant.

Dig. 45.1.121pr.

Papinianus 11 resp.

Ex ea parte cautionis " dolumque malum huic rei promissionique abesse afuturumque esse stipulatus est ille, spopondit ille", incerti agetur.

Dig. 45.1.121.1

Papinianus 11 resp.

Stipulationis utiliter interponendae gratia mulier ab eo, in cuius matrimonium conveniebat, stipulata fuerat ducenta, si concubinae tempore matrimonii consuetudinem repetisset. nihil causae esse respondi, cur ex stipulatu, quae ex bonis moribus concepta fuerat, mulier impleta condicione pecuniam adsequi non possit.

Dig. 45.1.121.2

Papinianus 11 resp.

In insulam deportato reo promittendi stipulatio ita concepta: " cum morieris, dari?" non nisi moriente eo committitur.

Dig. 45.1.121.3

Papinianus 11 resp.

Ex facto rei promittendi doli stipulatio heredem eius tenet, sicut ex ceteris aliis contractibus, veluti mandati depositi.

Dig. 45.1.122pr.

Scaevola 28 Dig.

Qui romae mutuam pecuniam acceperat solvendam in longinqua provincia per menses tres eamque ibi dari stipulanti spopondisset, post paucos dies romae testato creditori dixit paratum se esse romae eam numerare detracta ea summa, quam creditori suo usurarum nomine dederat. quaesitum est, cum in integrum summam, qua stipulatione obligatus est, optulerit, an eo loco, in quo solvenda promissa est, sua die integra peti posset. respondit posse stipulatorem sua die ibi, ubi solvendam stipulatus est, petere.

Dig. 45.1.122.1

Scaevola 28 Dig.

Callimachus mutuam pecuniam nauticam accepit a sticho servo seii in provincia syria civitate beryto usque brentesium: idque creditum esse in omnes navigii dies ducentos, sub pignoribus et hypothecis mercibus a beryto comparatis et brentesium perferendis et quas brentesio empturus esset et per navem beryto invecturus: convenitque inter eos, uti, cum callimachus brentesium pervenisset, inde intra idus septembres, quae tunc proximae futurae essent, aliis mercibus emptis et in navem mercis ipse in syriam per navigium proficiscatur, aut, si intra diem supra scriptam non reparasset merces nec enavigasset de ea civitate, redderet universam continuo pecuniam quasi perfecto navigio et praestaret sumptus omnes prosequentibus eam pecuniam, ut in urbem romam eam deportarent: eaque sic recte dari fieri fide roganti sticho servo lucii titii promisit callimachus. et cum ante idus supra scriptas secundum conventionem mercibus in navem impositis cum erote conservo stichi quasi in provinciam syriam perventurus enavigavit: quaesitum est nave submersa, cum secundum cautionem callimachus merces debito perferendas in nave mansisset eo tempore, quo iam pecuniam brentesio reddere romae perferendam deberet, an nihil prosit erotis consensus, qui cum eo missus erat, cuique nihil amplius de pecunia supra scripta post diem conventionis permissum vel mandatum erat, quam ut eam receptam romam perferret, et nihilo minus actione ex stipulatu callimachus de pecunia domino stichi teneatur. respondit secundum ea quae proponerentur teneri. item quaero, si callimacho post diem supra scriptam naviganti eros supra scriptus servus consenserit, an actionem domino suo semel adquisitam adimere potuerit. respondit non potuisse, sed fore exceptioni locum, si servo arbitrium datum esset eam pecuniam quocumque tempore in quemvis locum reddi.

Dig. 45.1.122.2

Scaevola 28 Dig.

Flavius hermes hominem stichum manumissionis causa donavit et ita de eo stipulatus est: " si hominem stichum, de quo agitur, quem hac die tibi donationis causa manumissionisque dedi, a te heredeque tuo manumissus vindictaque liberatus non erit, quod dolo malo meo non fiat, poenae nomine quinquaginta dari stipulatus est flavius hermes, spopondit claudius". quaero, an flavius hermes claudium de libertate stichi convenire potest. respondit nihil proponi, cur non potest. item quaero, an, si flavii hermetis heres a claudii herede poenam supra scriptam petere voluerit, claudii heres libertatem sticho praestare possit, ut poena liberetur. respondit posse. item quaero, si flavii hermetis heres cum claudii herede ex causa supra scripta nolit agere, an nihilo minus sticho libertas ex conventione, quae fuit inter hermetem et claudium, ut stipulatione supra scripta ostenditur, ab herede claudii praestari debeat. respondit debere.

Dig. 45.1.122.3

Scaevola 28 Dig.

Coheredes cum praedia hereditaria diviserant, unum praedium commune reliquerunt sub hoc pacto, ut, si quis eorum partem suam alienare voluisset, eam vel coheredi suo vel eius successori venderet centum viginti quinque: quod si quis aliter fecisset, poenam centum invicem stipulati sunt: quaero, cum coheres mulier coheredis liberorum tutores saepius testato convenerit et desideraverit, ut secundum conventionem aut emant aut vendant, hique nihil tale fecerint, an, si mulier extero vendiderit, poena ab ea centum exigi possit. respondit secundum ea quae proponerentur obstaturum doli mali exceptionem.

Dig. 45.1.122.4

Scaevola 28 Dig.

Agerius filius familias servo publii maevii stipulanti spopondit se daturum, quidquid patrem suum publio maevio debere constitisset: quaesitum est patre defuncto, antequam constitisset, quid quantumque deberet, an, si adversus heredem eius actum fuisset aliumve successorem et de debito constitisset, agerius teneatur. respondit, si condicio non exstitisset, stipulationem non commissam.

Dig. 45.1.122.5

Scaevola 28 Dig.

Seia heres unius tutoris, cum herede pupillae transactione pacto solo facta, maiorem partem solvit, residuam cavit: sed ilico negavit heres se transactionem servare et apud iudicem tutelae egit et victus provocavit ad competentem iudicem et ab eo quoque ad principem idem provocavit et iniusta haec quoque provocatio eius pronuntiata est. quaesitum est, cum per heredem pupillae mora intercesserit, quo minus pecunia in stipulationem deducta ab herede tutoris solveretur nec umquam petierit, an ei hodie debeantur usurae ab herede tutoris. respondit, si seia non cessasset ex stipulatione pecuniam offerre, iure usuras non deberi.

Dig. 45.1.122.6

Scaevola 28 Dig.

Duo fratres hereditatem inter se diviserunt et caverunt sibi nihil se contra eam divisionem facturos et, si contra quis fecisset, poenam alter alteri promisit: post mortem alterius qui supervixit petit ab heredibus eius hereditatem quasi ex causa fideicommissi sibi a patre relicti debitam et adversus eum pronuntiatum est, quasi de hoc quoque transactum fuisset: quaesitum est, an poena commissa esset. respondit poenam secundum ea quae proponuntur commissam.

Dig. 45.1.123

Papinianus 1 def.

Si flagitii faciendi vel facti causa concepta sit stipulatio, ab initio non valet.

Dig. 45.1.124

Papinianus 2 def.

" insulam intra biennium illo loco aedificari spondes?" ante finem biennii stipulatio non committitur, quamvis reus promittendi non aedificaverit et tantum residui temporis sit, quo aedificium extrui non possit: neque enim stipulationis status, cuius dies certus in exordio fuit, ex post facto mutatur. idque et in stipulatione iudicio sistendi causa facta placuit, scilicet ut ante diem stipulatio non committatur, si certum esse coeperit parere stipulationi residuo tempore non posse.

Dig. 45.1.125

Paulus 2 quaest.

Cum stipulamur " quidquid te dare facere oportet " , nihil aliud in stipulationem deducitur quam quod praesenti die debetur: hoc enim solum haec stipulatio demonstrat.

Dig. 45.1.126pr.

Paulus 3 quaest.

Si ita stipulatus fuero: " si titius consul factus fuerit, tunc ex hac die in annos singulos dena dare spondes?", post triennium condicione existente triginta peti potuerunt.

Dig. 45.1.126.1

Paulus 3 quaest.

Titius a maevio fundum detracto usu fructu stipulatus est et ab eodem eiusdem fundi usum fructum: duae sunt stipulationes et minus est in eo usu fructu, quem per se quis promisit, quam in eo, qui proprietatem comitatur. denique si ille usum fructum dederit eumque stipulator non utendo amiserit, tradendo postea fundum detracto usu fructu liberabitur. non idem contingit ei, qui fundum pleno iure promisit et usum fructum dedit, deinde amisso eo proprietatem sine usu fructu tradidit: ille liberatus est dando usum fructum, hic nulla parte obligationis exoneratur, nisi pleno iure fundum effecerit stipulatoris.

Dig. 45.1.126.2

Paulus 3 quaest.

" chrysogonus flavii candidi servus actor scripsit, coram subscribente et adsignante domino meo, accepisse eum a iulio zosa, rem agente iulii quintilliani absentis, mutua denaria mille. quae dari quintilliano heredive eius, ad quem ea res pertinebit, kalendis novembribus, quae proximae sunt futurae, stipulatus est zosas libertus et rem agens quintilliani, spopondit candidus dominus meus. sub die supra scripta si satis eo nomine factum non erit, tunc quo post solvetur, usurarum nomine denarios octo praestari stipulatus est iulius zosas, spopondit flavius candidus dominus meus". subscripsit dominus. respondi: per liberam personam quae neque iuri nostro subiecta est neque bona fide nobis servit, obligationem nullam adquirere possumus. plane si liber homo nostro nomine pecuniam daret vel suam vel nostram, ut nobis solveretur, obligatio nobis pecuniae creditae adquireretur: sed quod libertus patrono dari stipulatus est, inutile est, ut nec ad solutionem proficiat adiectio absentis, cui principaliter obligatio quaerebatur. superest quaeramus, an ex numeratione ipse qui contraxit pecuniam creditam petere possit: nam quotiens pecuniam mutuam dantes eandem stipulamur, non duae obligationes nascuntur, sed una verborum. plane si praecedat numeratio, sequatur stipulatio, non est dicendum recessum a naturali obligatione. sequens stipulatio, in qua sine adiectione nominis usuras stipulatus est, non eodem vitio laborat (neque enim maligne accipiendum est eidem stipulatum usuras, cui et sortem, videri), ideoque in liberti persona valet stipulatio usurarum et cogitur eam patrono cedere. plerumque enim in stipulationibus verba, ex quibus obligatio oritur, inspicienda sunt: raro inesse tempus vel condicionem ex eo, quod agi apparebit, intellegendum est: numquam personam, nisi expressa sit.

Dig. 45.1.126.3

Paulus 3 quaest.

Si ita stipulatus fuero te sisti et, nisi steteris, aliquid dari, quod promittenti impossibile est: detracta secunda stipulatione prior manet utilis et perinde erit, ac si te sisti stipulatus essem.

Dig. 45.1.127

Scaevola 5 quaest.

Si pupillus sine tutoris auctoritate stichum promittat et fideiussorem dedit, servus autem post moram a pupillo factam decedat, nec fideiussor erit propter pupilli moram obligatus: nulla enim intellegitur mora ibi fieri, ubi nulla petitio est. esse autem fideiussorem obligatum ad hoc, ut vivo homine conveniatur vel ex mora sua postea.

Dig. 45.1.128

Paulus 10 quaest.

Si duo rei stipulandi ita extitissent, ut alter utiliter, alter inutiliter stipularetur, ei, qui non habet promissorem obligatum, non recte solvitur, quia non alterius nomine ei solvitur, sed suae obligationis, quae nulla est. eadem ratione qui stichum aut pamphilum stipulatur, si in unum constiterit obligatio, quia alter stipulatoris erat, etiamsi desierit eius esse, non recte solvitur, quia utraque res ad obligationem ponitur, non ad solutionem.

Dig. 45.1.129

Scaevola 12 quaest.

Si quis ita stipulatus fuerit: " decem aureos das, si navis venit et titius consul factus est?" non alias dabitur, quam si utrumque factum sit. idem in contrarium: " dare spondes, si nec navis venit nec titius consul factus sit?" exigendum erit, ut neutrum factum sit. huic similis scriptura est: " si neque navis venit neque titius consul factus est?" at si sic: " dabis, si navis venit aut titius consul factus sit?" sufficit unum factum. et contra: " dabis, si navis non venit aut titius consul factus non est?" sufficit unum non factum.

Dig. 45.1.130

Paulus 15 quaest.

Quod dicitur patrem filio utiliter stipulari, quasi sibi ille stipularetur, hoc in his verum est, quae iuris sunt quaeque adquiri patri possunt: alioquin si factum conferatur in personam filii, inutilis erit stipulatio, veluti ut tenere ei vel ire agere liceat. contra autem filius etiam ut ire patri liceat stipulando adquiret ei: immo et quod in suam personam conferre non potest, hoc patri adquirat.

Dig. 45.1.131pr.

Scaevola 13 quaest.

Iulianus scripsit, si " neque per te neque per heredem tuum titium fieri, quo minus mihi ire liceat" stipuler, non solum titium teneri, si prohibeat, sed etiam coheredes eius.

Dig. 45.1.131.1

Scaevola 13 quaest.

Qui fundum sibi aut titio dari stipulatur, quamvis fundus titio traditus sit, nihilo minus petere fundum potest, ut sibi de evictione promittatur: nam interest eius, quia mandati actione fundum recepturus sit a titio. sed si donationis causa titium interposuit, dicetur traditione protinus reum liberari.

Dig. 45.1.132pr.

Paulus 15 quaest.

Quidam cum filium alienum susciperet, tradenti promiserat certam pecuniae quantitatem, si eum aliter quam ut filium observasset. quaero, si postmodum domo eum propulerit vel moriens nihil ei testamento reliquerit, an stipulatio committetur, et quid intersit, utrum filius an alumnus vel cognatus agentis fuerit. praeterea quaero, si filium suum quis legitime in adoptionem dederit et ita, ut supra scriptum est, stipulatio intercesserit eumque pater adoptivus exheredaverit vel emancipaverit, an stipulatio committatur. respondi: stipulatio utilis est in utroque casu: igitur, si contra conventionem factum sit, committetur stipulatio. sed videamus primum in eo, qui legitime adoptavit, an possit committi, si eum exheredaverit vel emancipaverit: haec enim pater circa filium solet facere: igitur non aliter eum quam ut filium observavit. ergo exheredatus de inofficioso agat. quid ergo dicemus, si et meruit exheredari? emancipatus plane et hoc remedio carebit. quare sic debuit interponi stipulatio, ut, si eum emancipasset vel exheredasset, certum quid promitteret. quo tamen casu commissa stipulatione potest quaeri, an exheredato permittendum esset dicere de inofficioso? maxime, si patri naturali heres extitisset, an victo deneganda est ex stipulatu actio? sed si ei, qui stipulatus est, non debuit denegari victo filio, nec ipsi deneganda erit debitae pecuniae exsecutio. in eo autem, qui non adoptavit, quem intellectum habeat haec conceptio " si eum aliter quam ut filium observasset", non prospicio: an et hic exigimus exheredationem vel emancipationem, res in extraneo ineptas? sed si is, qui legitime adoptavit, nihil facit contra verba stipulationis, cum utitur patrio iure in eo, qui haec non fecit, dicit supervacuo: dici tamen poterit commissam esse stipulationem.

Dig. 45.1.132.1

Paulus 15 quaest.

Filius familias ita stipulatus est: " quantam pecuniam titio credidero, fide tua esse iubes?" et emancipatus credidit: patri non debebit fideiussor, quia nec reus ei tenetur.

Dig. 45.1.133

Scaevola 13 quaest.

Si sic stipulatus sim: " neque per te neque per heredem tuum vim fieri spondes?" et egi, quod mihi vim feceris, recte remanere factum heredis in stipulatione. nam et ex ipsius posteriore vi potest committi stipulatio: non enim ad unam vim pertinet. nam sicut et ipsius et heredis caput, ita ipsius vis vel saepius facta complectitur, ut condemnetur quanti interest. aut si sic volumus factam esse stipulationem: " neque per te neque per heredem tuum fieri?", ut ad unam vim primam teneat: si vim fecerit, amplius ex heredis committi non poterit: ergo si actum sit quasi ex ipsius vi, tota consumpta sit: quod non est verum.

Dig. 45.1.134pr.

Paulus 15 resp.

Titia, quae ex alio filium habebat, in matrimonium coit gaio seio habente familiam: et tempore matrimonii consenserunt, ut filia gaii seii filio titiae desponderetur, et interpositum est instrumentum et adiecta poena, si quis eorum nuptiis impedimento fuisset: postea gaius seius constante matrimonio diem suum obiit et filia eius noluit nubere: quaero, an gaii seii heredes teneantur ex stipulatione. respondit ex stipulatione, quae proponeretur, cum non secundum bonos mores interposita sit, agenti exceptionem doli mali obstaturam, quia inhonestum visum est vinculo poenae matrimonia obstringi sive futura sive iam contracta.

Dig. 45.1.134.1

Paulus 15 resp.

Idem respondit: plerumque ea, quae praefationibus convenisse concipiuntur, etiam in stipulationibus repetita creduntur, sic tamen, ut non ex ea repetitione inutilis efficiatur stipulatio.

Dig. 45.1.134.2

Paulus 15 resp.

Idem respondit, cum septicius litteris suis praestaturum se caverit pecuniam et usuras eius semisses, quae apud sempronium depositae sint: si inter praesentes actum est, intellegendum etiam a parte lucii titii praecessisse verba stipulationis.

Dig. 45.1.134.3

Paulus 15 resp.

Idem respondit, quotiens pluribus specialiter pactis stipulatio una omnibus subicitur, quamvis una interrogatio et responsum unum subiciatur, tamen proinde haberi, ac si singulae species in stipulationem deductae fuissent.

Dig. 45.1.135pr.

Scaevola 5 resp.

Si ita quis promiserit: " decem tibi dabo, qua die petieris, et eorum usuras in dies triginta", quaero, usurae utrum ex die stipulationis an ex die, qua petita sors fuerit, debeantur. respondit secundum ea quae proponerentur ex die stipulationis deberi, nisi aliud actum manifeste probaretur.

Dig. 45.1.135.1

Scaevola 5 resp.

Item quaesitum est, quando pecuniam reddere debebo " cum primum petierit". respondit verba quae proponerentur ex die, quo stipulatio facta esset, initium capere.

Dig. 45.1.135.2

Scaevola 5 resp.

Seia cavit lucio titio, quo mandante eo hortos emisset, cum pretium omne cum usuris ab eo recepisset, se in eum proprietatem hortorum translaturam: deinde in continenti inter utrumque convenit, ut intra kalendas apriles primas universam summam mandator numeraret et hortos acciperet. quaeritur, cum ante kalendas apriles non omne pretium cum usuris a lucio titio seiae solutum sit, interposito tamen modico tempore reliquum pretium cum usuris seiae titius solvere paratus fuerit neque seia accipere voluit et usque in hodiernum per titium non stet, quo minus reliquum solveret, an nihilo minus lucius titius, si seiae universam pecuniam solvere paratus sit, ex stipulatu agere possit. respondit posse, si non multo post optulisset nec mulieris quicquam propter eam moram interesset: quod omne ad iudicis cognitionem remittendum est.

Dig. 45.1.135.3

Scaevola 5 resp.

Ea lege donatum sibi esse a seia servum et traditum, ut ne ad fratrem eius aut filium aut uxorem aut socrum perveniret, scripsit et haec ita stipulante seia spopondit titius, qui post biennium heredes reliquit seiam et fratrem, cui ne serviret, expressum erat: quaeritur an seia cum fratre et coherede ex stipulatu agere possit. respondit posse in id quod eius interest.

Dig. 45.1.135.4

Scaevola 5 resp.

Filia, quae de inofficioso agere instituit et transegit postea cum heredibus stipulatione interposita et subiecta doli clausula, apud praefectum de falso testamento egit nec probavit: quaero, an ex doli clausula possit conveniri. respondi nihil ad eam stipulationem id, quod postea actum proponeretur, pertinere.

Dig. 45.1.136pr.

Paulus 5 sent.

Si sub una significatione diversis nominibus ea res, quae in stipulationem deducitur, appellatur, non infirmat obligationem, si alter altero verbo utatur.

Dig. 45.1.136.1

Paulus 5 sent.

Si, qui viam ad fundum suum dari stipulatus fuerit, postea fundum partemve eius ante constitutam servitutem alienaverit, evanescit stipulatio.

Dig. 45.1.137pr.

Venonius 1 stipul.

Continuus actus stipulantis et promittentis esse debet (ut tamen aliquod momentum naturae intervenire possit) et comminus responderi stipulanti oportet: ceterum si post interrogationem aliud acceperit, nihil proderit, quamvis eadem die spopondisset.

Dig. 45.1.137.1

Venonius 1 stipul.

Si hominem stipulatus sim et ego de alio sensero, tu de alio, nihil acti erit: nam stipulatio ex utriusque consensu perficitur.

Dig. 45.1.137.2

Venonius 1 stipul.

Cum ita stipulatus sum " ephesi dari?" inest tempus: quod autem accipi debeat, quaeritur. et magis est, ut totam eam rem ad iudicem, id est ad virum bonum remittamus, qui aestimet, quanto tempore diligens pater familias conficere possit, quod facturum se promiserit, ut qui ephesi daturum se spoponderit, neque duplomate diebus ac noctibus et omni tempestate contempta iter continuare cogatur neque tam delicate progredi debeat, ut reprehensione dignus appareat, sed habita ratione temporis aetatis sexus valetudinis, cum id agat, ut mature perveniat, id est eodem tempore, quo plerique eiusdem condicionis homines solent pervenire. eoque transacto, quamvis romae remanserit nec possit ephesi pecuniam dare, nihilo minus ei recte condicetur, vel quia per ipsum steterit, quo minus ephesi daret, vel quoniam per alium ephesi possit dari vel quia ubique potest solvere: nam et quod in diem debetur, ante solvi potest, licet peti non potest. quod si duplomate usus aut felici navigatione maturius quam quisque pervenerit ephesum, confestim obligatus est, quia in eo, quod tempore atque facto finitum est, nullus est coniecturae locus.

Dig. 45.1.137.3

Venonius 1 stipul.

Item qui insulam fieri spopondit, non utique conquisitis undique fabris et plurimis operis adhibitis festinare debet nec rursus utroque aut altero contentus esse, sed modus adhibendus est secundum rationem diligentis aedificatoris et temporum locorumque. item si non inchoetur opus, id tantum aestimetur, quod in illo intervallo effici potuit. transactoque tempore, quo insulam consummare oportuerit, si postea aedificetur, liberetur reus, sicut liberatur, qui se daturum spopondit, si quandoque tradit.

Dig. 45.1.137.4

Venonius 1 stipul.

Illud inspiciendum est, an qui centum dari promisit confestim teneatur an vero cesset obligatio, donec pecuniam conferre possit. quid ergo, si neque domi habet neque inveniat creditorem? sed haec recedunt ab impedimento naturali et respiciunt ad facultatem dandi. est autem facultas personae commodum incommodumque, non rerum quae promittuntur. et alioquin si quis stichum dari spoponderit, quaeremus, ubi sit stichus: aut si non multum referre videatur " ephesi daturum se", an, quod ephesi sit, cum ipse romae sit, dare spondeat: nam hoc quoque ad facultatem dandi pertinet, quia in pecunia et in sticho illud commune est, quod promissor in praesentia dare non potest. et generaliter causa difficultatis ad incommodum promissoris, non ad impedimentum stipulatoris pertinet, ne incipiat dici eum quoque dare non posse, qui alienum servum, quem dominus non vendat, dare promiserit.

Dig. 45.1.137.5

Venonius 1 stipul.

Si ab eo stipulatus sim, qui efficere non possit, cum alio possibile sit, iure factam obligationem sabinus scribit.

Dig. 45.1.137.6

Venonius 1 stipul.

Cum quis sub hac condicione stipulatus sit, si rem sacram aut religiosam titius vendiderit vel forum aut basilicam et huiusmodi res, quae publicis usibus in perpetuum relictae sint: ubi omnino condicio iure impleri non potest vel id facere ei non liceat, nullius momenti fore stipulationem, proinde ac si ea condicio, quae natura impossibilis est, inserta esset. nec ad rem pertinet, quod ius mutari potest et id, quod nunc impossibile est, postea possibile fieri: non enim secundum futuri temporis ius, sed secundum praesentis aestimari debet stipulatio.

Dig. 45.1.137.7

Venonius 1 stipul.

Si ut aliquid fiat stipulemur, et usitatius et elegantius esse labeo ait sic subici poenam: " si ita factum non erit": at cum quid ne fiat stipulemur, tunc hoc modo: " si adversus ea factum erit": et cum alia fieri, alia non fieri coniuncte stipulemur, sic comprehendendum: " si non feceris, si quid adversus ea feceris".

Dig. 45.1.137.8

Venonius 1 stipul.

Praeterea sciendum est, quod dari stipulemur, non posse nos uni ex heredibus adquiri, sed necesse esse omnibus adquiri: at cum quid fieri stipulemur, etiam unius personam recte comprehendi.

Dig. 45.1.138pr.

Venonius 4 stipul.

Eum, qui certarum nundinarum diebus dari stipuletur, primo die petere posse sabinus ait: proculus autem et ceteri diversae scholae auctores, quamdiu vel exiguum tempus ex nundinarum spatio superesset, peti posse existimant. sed ego cum proculo sentio.

Dig. 45.1.138.1

Venonius 4 stipul.

Cum pure stipulatus sum illud aut illud dari, licebit tibi, quotiens voles, mutare voluntatem in eo quod praestaturus sis, quia diversa causa est voluntatis expressae et eius quae inest.

Dig. 45.1.139

Venonius 6 stipul.

Cum ex causa duplae stipulationis aliquid intendimus, venditoris heredes in solidum omnes conveniendi sunt omnesque debent subsistere, et quolibet eorum defugiente ceteris subsistere nihil prodest, quia in solidum defendenda est venditio, cuius indivisa natura est. sed cum uno defugiente omnes defugisse videantur ideoque omnes teneantur, unicuique pro parte hereditaria praestatio incumbit.

Dig. 45.1.140pr.

Paulus 3 ad ner.

Pluribus rebus praepositis, ita stipulatio facta est: " ea omnia, quae supra scripta sunt, dari?" propius est, ut tot stipulationes, quot res sint.

Dig. 45.1.140.1

Paulus 3 ad ner.

De hac stipulatione: " annua bima trima die id argentum quaque die dari?" apud veteres varium fuit. paulus: sed verius et hic tres esse trium summarum stipulationes.

Dig. 45.1.140.2

Paulus 3 ad ner.

Etsi placeat extingui obligationem, si in eum casum inciderit, a quo incipere non potest, non tamen hoc in omnibus verum est. ecce stipulari viam iter actum ad fundum communem socius non potest, et tamen si is, qui stipulatus fuerat, duos heredes reliquerit, non extinguitur stipulatio. et per partem dominorum servitus adquiri non potest, adquisita tamen conservatur et per partem domini: hoc evenit, si pars praedii servientis vel cui servitur alterius domini esse coeperit.

Dig. 45.1.141pr.

Gaius 2 de verb. oblig.

Si servus aut filius familias ita stipulatus sit: " illam rem aut illam, utram ego velim?", non pater dominusve, sed filius servusve destinare de alterutra debet.

Dig. 45.1.141.1

Gaius 2 de verb. oblig.

Extranei quoque persona si comprehensa fuerit, veluti hoc modo: " utram earum titius elegerit", non aliter stipulator alterutrius petendae facultatem habet, quam si titius elegerit.

Dig. 45.1.141.2

Gaius 2 de verb. oblig.

Pupillus licet ex quo fari coeperit, recte stipulari potest, tamen, si in parentis potestate est, ne auctore quidem patre obligatur: pubes vero, qui in potestate est, proinde ac si pater familias obligari solet. quod autem in pupillo dicimus, idem et in filia familias impubere dicendum est.

Dig. 45.1.141.3

Gaius 2 de verb. oblig.

Si ita fuero stipulatus " mihi aut titio?" et tu mihi daturum te spondeas, secundum omnium opinionem ad interrogatum te respondere, quia constat mihi soli adquiri obligationem, titio autem dumtaxat recte solvitur.

Dig. 45.1.141.4

Gaius 2 de verb. oblig.

Si inter eos, qui romae sunt, talis fiat stipulatio: " hodie carthagine dare spondes?", quidam putant non semper videri impossibilem causam stipulationi contineri, quia possit contingere, ut tam stipulator quam promissor ante aliquod tempus suo quisque dispensatori notum fecerit in eum diem futuram stipulationem ac demandasset promissor quidem suo dispensatori, ut daret, stipulator autem suo, ut acciperet: quod si ita factum fuerit, poterit valere stipulatio.

Dig. 45.1.141.5

Gaius 2 de verb. oblig.

Cum " mihi aut titio" stipulor, dicitur aliam quidem rem in personam meam, aliam in titii designari non posse, veluti " mihi decem aut titio hominem": si vero titio ea res soluta sit, quae in eius persona designata fuerit, licet ipso iure non liberetur promissor, per exceptionem tamen defendi possit.

Dig. 45.1.141.6

Gaius 2 de verb. oblig.

Tempora vero diversa designari posse, veluti " mihi kalendis ianuariis aut titio kalendis februariis?" immo etiam citeriorem diem in titii personam conferri posse, veluti " mihi kalendis februariis, titio kalendis ianuariis?" quo casu talem esse stipulationem intellegemus: " si titio kalendis ianuariis non dederis, mihi kalendis februariis dare spondes?"

Dig. 45.1.141.7

Gaius 2 de verb. oblig.

Sed rursus mihi quidem pure aut titio sub condicione stipulari possum. contra vero si mihi sub condicione aut titio pure, inutilis erit tota stipulatio, nisi in meam personam condicio extiterit, scilicet quia, nisi quod ad me vim acceperit obligatio, adiectio nihil potest valere. hoc tamen ita demum tractari potest, si evidenter apparet pure titii persona adiecta: alioquin cum ita stipulor: " si navis ex africa venerit, mihi aut titio dari spondes?" titii quoque persona sub eadem condicione adici videtur.

Dig. 45.1.141.8

Gaius 2 de verb. oblig.

Ex hoc apparet, si diversa condicio in meam personam, diversa in titii posita sit nec in meam personam extiterit condicio, totam stipulationem nullius momenti futuram: exstante vero mea condicione, si quidem titii quoque condicio extiterit, poterit vel titio solvi: si vero in illius persona defecerit, quasi non adiectus habebitur.

Dig. 45.1.141.9

Gaius 2 de verb. oblig.

Ex his omnibus apparet, licet alterius persona non recte adiciatur, non ideo minus in nostra persona utiliter procedere stipulationem.

Dig. 45.2.0. De duobus reis constituendis.

Dig. 45.2.1

Modestinus 2 reg.

Qui stipulatur, reus stipulandi dicitur: qui promittit, reus promittendi habetur.

Dig. 45.2.2

Iavolenus 3 ex plaut.

Cum duo eandem pecuniam aut promiserint aut stipulati sunt, ipso iure et singuli in solidum debentur et singuli debent: ideoque petitione acceptilatione unius tota solvitur obligatio.

Dig. 45.2.3pr.

Ulpianus 47 ad sab.

In duobus reis promittendi frustra timetur novatio: nam licet ante prior responderit posterior etsi ex intervallo accipiatur, consequens est dicere pristinam obligationem durare et sequentem accedere: et parvi refert, simul spondeant an separatim promittant, cum hoc actum inter eos sit, ut duo rei constituantur: neque ulla novatio fiet.

Dig. 45.2.3.1

Ulpianus 47 ad sab.

Ubi duo rei facti sunt, potest vel ab uno eorum solidum peti: hoc est enim duorum reorum, ut unusquisque eorum in solidum sit obligatus possitque ab alterutro peti. et partes autem a singulis peti posse nequaquam dubium est, quemadmodum et a reo et fideiussore petere possumus. utique enim cum una sit obligatio, una et summa est, ut, sive unus solvat, omnes liberentur, sive solvatur, ab altero liberatio contingat.

Dig. 45.2.4

Pomponius 24 ad sab.

Duo rei promittendi sive ita interrogati " spondetis?" respondeant " spondeo" aut " spondemus", sive ita interrogati " spondes?" respondissent " spondemus", recte obligantur.

Dig. 45.2.5

Iulianus 22 Dig.

Nemo est qui nesciat alienas operas promitti posse et fideiussorem adhiberi in ea obligatione. et ideo nihil prohibet duos reos stipulandi constitui vel promittendi, sicuti si ab eodem fabro duo rei stipulandi easdem operas stipulentur: et ex contrario duo fabri eiusdem peritiae easdem operas promittere intelleguntur et duo rei promittendi fieri.

Dig. 45.2.6pr.

Iulianus 52 Dig.

Duos reos promittendi facturus si utrumque interrogavero, sed alter dumtaxat responderit, verius puto eum qui responderit obligari: neque enim sub condicione interrogatio in utriusque persona fit, ut ita demum obligetur, si alter quoque responderit.

Dig. 45.2.6.1

Iulianus 52 Dig.

Duobus autem reis constitutis quin liberum sit stipulatori vel ab utroque vel ab altero dumtaxat fideiussorem accipere, non dubito.

Dig. 45.2.6.2

Iulianus 52 Dig.

Sed si a duobus reis stipulandi interrogatus respondisset uni se spondere, ei soli tenetur.

Dig. 45.2.6.3

Iulianus 52 Dig.

Duo rei sine dubio ita constitui possunt, ut et temporis ratio habeatur, intra quod uterque respondeat: modicum tamen intervallum temporis, item modicus actus, qui modo contrarius obligationi non sit, nihil impedit, quo minus duo rei sunt. fideiussor quoque interrogatus inter duorum reorum responsa si responderit, potest videri non impedire obligationem reorum, quia nec longum spatium interponitur nec is actus, qui contrarius sit obligationi.

Dig. 45.2.7

Florus 8 inst.

Ex duobus reis promittendi alius in diem vel sub condicione obligari potest: nec enim impedimento erit dies aut condicio, quo minus ab eo, qui pure obligatus est, petatur.

Dig. 45.2.8

Ulpianus 1 resp.

His verbis: " eaque praestari stipulanti tibi spopondimus " interesse, quid inter contrahentes actum sit: nam si duo rei facti sint, eum qui absens fuit non teneri, praesentem autem in solidum esse obligatum, aut si minus, in partem fore obstrictum.

Dig. 45.2.9pr.

Papinianus 27 quaest.

Eandem rem apud duos pariter deposui utriusque fidem in solidum secutus, vel eandem rem duobus similiter commodavi: fiunt duo rei promittendi, quia non tantum verbis stipulationis, sed et ceteris contractibus, veluti emptione venditione, locatione conductione, deposito, commodato testamento, ut puta si pluribus heredibus institutis testator dixit: " titius et maevius sempronio decem dato".

Dig. 45.2.9.1

Papinianus 27 quaest.

Sed si quis in deponendo penes duos paciscatur, ut ab altero culpa quoque praestaretur, verius est non esse duos reos, a quibus inpar suscepta est obligatio. non idem probandum est, cum duo quoque culpam promisissent, si alteri postea pacto culpa remissa sit, quia posterior conventio, quae in alterius persona intercessit, statum et naturam obligationis, quae duos initio reos fecit, mutare non potest. quare si socii sint et communis culpa intercessit, etiam alteri pactum cum altero factum proderit.

Dig. 45.2.9.2

Papinianus 27 quaest.

Cum duos reos promittendi facerem ex diversis locis, capuae pecuniam dari stipulatus sim, ex persona cuiusque ratio proprii temporis habebitur: nam etsi maxime parem causam suscipiunt, nihilo minus in cuiusque persona propria singulorum consistit obligatio.

Dig. 45.2.10

Papinianus 37 quaest.

Si duo rei promittendi socii non sint, non proderit alteri, quod stipulator alteri reo pecuniam debet.

Dig. 45.2.11pr.

Papinianus 11 resp.

Reos promittendi vice mutua fideiussores non inutiliter accipi convenit. reus itaque stipulandi actionem suam dividere si velit (neque enim dividere cogendus est), poterit eundem ut principalem reum, item qui fideiussor pro altero exstitit, in partes convenire, non secus ac si duos promittendi reos divisis actionibus conveniret.

Dig. 45.2.11.1

Papinianus 11 resp.

Cum tabulis esset comprehensum " illum et illum centum aureos stipulatos" neque adiectum " ita ut duo rei stipulandi essent", virilem partem singuli stipulati videbantur.

Dig. 45.2.11.2

Papinianus 11 resp.

Et e contrario cum ita cautum inveniretur: " tot aureos recte dari stipulatus est iulius carpus, spopondimus ego antoninus achilleus et cornelius dius", partes viriles deberi, quia non fuerat adiectum singulos in solidum spopondisse, ita ut duo rei promittendi fierent.

Dig. 45.2.12pr.

Venonius 2 stipul.

Si ex duobus, qui promissuri sint, hodie alter, alter postera die responderit, proculus non esse duos reos ac ne obligatum quidem intellegi eum, qui postera die responderat, cum actor ad alia negotia discesserit vel promissor, licet peractis illis rebus responderit.

Dig. 45.2.12.1

Venonius 2 stipul.

Si a titio et pupillo sine tutoris auctoritate stipulatus fuero eadem decem, vel a servo, et quasi duos reos promittendi constitui, obligatum titium solum iulianus scribit, quamquam, si servus spoponderit, in actione de peculio eadem observari debent, ac si liber fuisset.

Dig. 45.2.13

Venonius 3 stipul.

Si reus promittendi altero reo heres extiterit, duas obligationes eum sustinere dicendum est. nam ubi quidem altera differentia obligationum esse possit, ut in fideiussore et reo principali, constitit alteram ab altera perimi: cum vero eiusdem duae potestatis sint, non potest repperiri qua altera potius quam alteram consummari. ideoque et si reus stipulandi heres exstiterit, duas species obligationis eum sustinere.

Dig. 45.2.14

Paulus 2 manual.

Et stipulationum praetoriarum duo rei fieri possunt.

Dig. 45.2.15

Gaius 2 de verb. oblig.

Si id, quod ego et titius stipulamur, in singulis personis proprium intellegatur, non poterimus duo rei stipulandi constitui, veluti cum usum fructum aut dotis nomine dari stipulemur: idque et iulianus scribit. idem ait, et si titius et seius decem aut stichum, qui titii sit, stipulati fuerint, non videri eos duos reos stipulandi, cum titio decem tantum, seio stichus aut decem debeantur: quae sententia eo pertinet, ut, quamvis vel huic vel illi decem solverit vel seio stichum, nihilo minus alteri obligatus manet. sed dicendum est, ut, si decem alteri solverit, ab altero liberetur.

Dig. 45.2.16

Gaius 3 de verb. oblig.

Ex duobus reis stipulandi si semel unus egerit, alteri promissor offerendo pecuniam nihil agit.

Dig. 45.2.17

Paulus 8 ad plaut.

Sive a certis personis heredum nominatim legatum esset, sive ab omnibus excepto aliquo, atilicinus sabinus cassius pro hereditariis partibus totum eos legatum debituros aiunt, quia hereditas eos obligat. idem est, cum omnes heredes nominantur.

Dig. 45.2.18

Pomponius 5 ex plaut.

Ex duobus reis eiusdem stichi promittendi factis alterius factum alteri quoque nocet.

Dig. 45.2.19

Pomponius 37 ad q. muc.

Cum duo eandem pecuniam debent, si unus capitis deminutione exemptus est obligatione, alter non liberatur. multum enim interest, utrum res ipsa solvatur an persona liberetur. cum persona liberatur manente obligatione, alter durat obligatus: et ideo si aqua et igni interdictum est alicuius ^ alicui^ fideiussor postea ab eo datus tenetur.

Dig. 45.3.0. De stipulatione servorum.

Dig. 45.3.1pr.

Iulianus 52 Dig.

Cum servus stipuletur, nihil interest sibi an domino an vero sine alterutra eorum adiectione dari stipuletur.

Dig. 45.3.1.1

Iulianus 52 Dig.

Si servus tuus, qui mihi bona fide serviebat, peculium habuerit, quod ad te pertineat, et ego ex eo pecuniam titio credidero, nummi tui manebunt, stipulando autem mihi servus eandem pecuniam nihil aget: vindicando ergo eam pecuniam tu consequi poteris.

Dig. 45.3.1.2

Iulianus 52 Dig.

Si servus communis meus et tuus ex peculio, quod ad te solum pertinebat, mutuam pecuniam dederit, obligationem tibi adquiret et, si eandem mihi nominatim stipulatus fuerit, debitorem a te non liberabit, sed uterque nostrum habebit actionem, ego ex stipulatu, tu quod pecunia tua numerata sit: debitor tamen me doli mali exceptione summovere poterit.

Dig. 45.3.1.3

Iulianus 52 Dig.

Quod servus meus meo servo dari stipulatur, id perinde haberi debet, ac si mihi stipuletur: item quod tuo servo stipulatur, perinde ac si tibi stipulatus esset, ut altera stipulatio obligationem pariat, altera nullius momenti sit.

Dig. 45.3.1.4

Iulianus 52 Dig.

Communis servus duorum servorum personam sustinet. idcirco si proprius meus servus communi meo et tuo servo stipulatus fuerit, idem iuris erit in hac una conceptione verborum, quod futurum esset, si separatim duae stipulationes conceptae fuissent, altera in personam mei servi, altera in personam tui servi: neque existimare debemus partem dimidiam tantum mihi adquiri, partem nullius esse momenti, quia persona servi communis eius condicionis est, ut in eo, quod alter ex dominis potest adquirere, alter non potest, perinde habeatur, ac si eius solius esset, cui adquirendi facultatem habeat.

Dig. 45.3.1.5

Iulianus 52 Dig.

Si fructuarius servus stipulatus esset fructuario aut proprietario, si quidem ex re fructuarii stipulatus esset, inutilis est stipulatio, quia utrique ex re fructuarii actionem adquirere potuisset: sed si aliud stipulatus fuisset, proprietarium petere posse, et, si promissor fructuario solvisset, liberatur.

Dig. 45.3.1.6

Iulianus 52 Dig.

Cum servus communis titii et maevii stipulatur in hunc modum: " decem kalendis titio dare spondes? si decem kalendis titio non dederis, tunc maevio viginti dare spondes?" duae stipulationes esse videntur, sed si kalendis decem data non fuerint, uterque dominus ex stipulatu agere poterit, sed in secunda obligatione maevio commissa titius exceptione doli summovebitur.

Dig. 45.3.2

Ulpianus 4 ad sab.

Servus communis ipse sibi stipulari non potest, quamvis constaret eum se stipulari domino posse: non enim se domino adquirit, sed de se obligationem.

Dig. 45.3.3

Ulpianus 5 ad sab.

Si servus rei publicae vel municipii vel coloniae stipuletur, puto valere stipulationem.

Dig. 45.3.4

Ulpianus 21 ad sab.

Si servus communis sibi et uni ex dominis stipuletur, perinde est, ac si omnibus dominis et uni ex his stipuletur, veluti titio et maevio, et titio: et probabile est, ut titio dodrans, maevio quadrans debeatur.

Dig. 45.3.5

Ulpianus 48 ad sab.

Servus communis sic omnium est non quasi singulorum totus, sed pro partibus utique indivisis, ut intellectu magis partes habeant quam corpore: et ideo si quid stipulatur vel quaqua alia ratione adquirit, omnibus adquirit pro parte, qua dominium in eo habent. licet autem ei et nominatim alicui ex dominis stipulari vel traditam rem accipere, ut ei soli adquirat. sed si non nominatim domino stipuletur, sed iussu unius dominorum, hoc iure utimur, ut soli ei adquirat, cuius iussu stipulatus est.

Dig. 45.3.6

Pomponius 26 ad sab.

Ofilius recte dicebat et per traditionem accipiendo vel deponendo commodandoque posse soli ei adquiri, qui iussit: quae sententia et cassii et sabini dicitur.

Dig. 45.3.7pr.

Ulpianus 48 ad sab.

Proinde et si quattuor forte dominos habuerit et duorum iussu stipulatus sit, his solis adquiret qui iusserunt, magisque est, ut non aequaliter, sed pro portione dominica totum eis adquiratur. idem puto et si nominatim eis stipulatus esse proponatur: nam et si omnium iussu stipulatus sit vel omnibus nominatim, non dubitaremus omnibus pro dominicis eum portionibus, non pro virilibus adquirere.

Dig. 45.3.7.1

Ulpianus 48 ad sab.

Si servus communis ab uno ex sociis stipulatus sit, si quidem nominatim alteri socio, ei soli debetur: sin autem sine ulla adiectione pure stipulatus sit, reliquas partes is servus ceteris sociis praeter eam partem, ex qua promissor dominus esset, adquiret. sed si iussu unius socii stipulatus est, idem iuris est, quod esset, si eidem illi socio nominatim dari stipulatus esset. interdum etiamsi neque iussu neque nominatim alteri ex dominis stipularetur, ei tamen soli adquirere eum iuliano placuit: ut puta si quid forte stipuletur, quod utrique adquiri non potest. veluti servitutem ad fundum cornelianum stipulatus est, qui fundus sempronii erat alterius ex dominis: ei soli adquirit.

Dig. 45.3.8

Gaius l.S. de cas.

Item si alter ex dominis uxorem ducturus sit et huic servo dos promittatur.

Dig. 45.3.9pr.

Ulpianus 48 ad sab.

Item si servus duorum titii et maevii hominem, qui titii erat, stipulatus fuerit, ei soli adquirit, cuius non fuit. sed si stipulatus sit stichum sibi et " maevio et titio dari spondes?", totum eum maevio adquirit: quod enim alteri ex dominis adquirere non potest, id ad eum, qui ad obligationem admittitur, pertinet.

Dig. 45.3.9.1

Ulpianus 48 ad sab.

Si, cum duos dominos servus haberet, stipulatus fuerit illi aut illi dominis suis, quaesitum est, an consistat stipulatio. cassius inutilem esse stipulationem scripsit et iulianus cassii sententiam probat eoque iure utimur.

Dig. 45.3.10

Iulianus 52 Dig.

Sed et si ita stipuletur: " titio decem aut maevio fundum dare spondes?", quia incertum est, utri eorum adquisierit actionem, idcirco inutilis stipulatio existimanda est.

Dig. 45.3.11

Ulpianus 48 ad sab.

Sed si sibi aut primo aut secundo dominis suis stipulatus sit, et hic tantundem erit probandum, quod iulianus, inutilem esse stipulationem. sed utrum adiectio inutilis est aut tota stipulatio utilis non est? puto adiectionem solam esse inutilem: eo enim quod ait " mihi" omnibus adquisiit ex stipulatu actionem. an ergo in ceterorum persona solutio locum habeat exemplo extraneae personae? et puto vel solvi eis posse, quemadmodum cum ego mihi aut titio stipuler. cur ergo cum primo aut secundo dominis stipulatio non constitit nec solutio est? illa ratio est, quia non invenimus, in cuius persona stipulatio constitit, in cuius solutio.

Dig. 45.3.12

Paulus 10 quaest.

Nam cum uterque obligationis capax sit, non invenimus, quis adiectus sit, quia non est, qui petere possit.

Dig. 45.3.13

Ulpianus 48 ad sab.

Cum enim stipulatur domino aut extraneo servus, utrumque consistet et in domini persona stipulatio et in extranei solutio: at hic to isazon corrumpit stipulationem et solutionem.

Dig. 45.3.14

Iulianus 3 ad urs. ferocem.

Servus meus cum apud furem esset, furi dari stipulatus est: negat furi deberi sabinus, quia eo tempore, quo stipulatus est, ei non serviret: sed nec ego ex ea stipulatione agere potero. sed si detracta furis persona stipulatus est, mihi quidem adquiritur actio, sed furi nec mandati nec alia actio adversus me dari debet.

Dig. 45.3.15

Florus 8 inst.

Sive mihi sive sibi sive conservo suo sive inpersonaliter dari servus ^ servi^ meus stipuletur, mihi adquiret.

Dig. 45.3.16

Paulus 4 reg.

Servus hereditarius futuro heredi nominatim dari stipulatus nihil agit, quia stipulationis tempore heres dominus eius non fuit.

Dig. 45.3.17

Pomponius 9 ad sab.

Si communis servus meus et tuus viam vel iter vel actum stipuletur sine adiectione nominis nostri, cum ego solus fundum vicinum habeam, soli mihi eam adquirit: quod et si tu fundum habeas, mihi quoque in solidum servitus adquiritur.

Dig. 45.3.18pr.

Papinianus 27 quaest.

Si servus communis maevii et castrensis peculii defuncto filio familias milite, antequam adeat institutus hereditatem, stipuletur, socio, qui solus interim dominus invenitur, tota stipulatio quaeretur, quoniam partem non facit hereditas eius quae nondum est. non enim, si quis heredem existere filio familias dixerit, statim et hereditatem eius iam esse consequens erit, cum beneficium principalium constitutionum in eo locum habet, ut filius familias de peculio testari possit: quod privilegium cessat, priusquam testamentum aditione fuerit confirmatum.

Dig. 45.3.18.1

Papinianus 27 quaest.

Si servus titii et maevii partem, quae maevii est, sibi dari stipuletur, nulla stipulatio est, cum, si titio dari stipulatus fuisset, titio adquireretur. quod si simpliciter concepta est stipulatio, veluti: " partem eam, quae maevii est, dare spondes?" non adiecto " mihi", prope est, ut, quia sine vitio concepta est stipulatio, sequatur eius personam, cuius potest.

Dig. 45.3.18.2

Papinianus 27 quaest.

Servus capto domino ab hostibus domino dari stipulatus est. quamvis quae simpliciter stipulatur vel ab alio accepit, etiam ad heredem captivi pertinent aliudque sit iuris in persona filii, quia nec tunc fuit in potestate, cum stipularetur, nec postea deprehenditur (ut servus) in hereditate, tamen in proposito potest quaeri, num ex hac stipulatione nihil adquisitum heredi videtur, quomodo si servus hereditarius defuncto aut etiam heredi futuro stipulatus fuisset. sed in hac specie servus filio exaequabitur: nam et si filius captivi patri suo stipulatus fuerit dari, res in pendenti erit et si pater apud hostes decesserit, nullius momenti videbitur fuisse stipulatio, quoniam alii, non sibi stipulatus est.

Dig. 45.3.18.3

Papinianus 27 quaest.

Cum servus fructuarius operas suas locasset et eo nomine pecuniam in annos singulos dari stipulatus esset, finito fructu domino residui temporis adquiri stipulationem iulianus scriptum reliquit. quae sententia mihi videtur firmissima ratione subnixa: nam si in annos forte quinque locatio facta sit, quoniam incertum est, fructus in quem diem duraturus sit, singulorum annorum initio cuiusque anni pecunia fructuario quaereretur: secundum quae non transit ad alterum stipulatio, sed unicuique tantum adquiritur, quantum ratio iuris permittit. nam et cum idem servus ita stipuletur: " quantam pecuniam tibi intra illum diem dedero, tantam dari spondes?" in pendenti est, quis ex stipulatu sit habiturus actionem: si enim ex re fructuarii vel operis suis pecuniam dedero, fructuario, si vero aliunde, domino stipulatio quaeretur.

Dig. 45.3.19

Scaevola 13 quaest.

Si alienus servus duobus bonae fidei serviens ex unius eorum re adquirat, ratio facit, ut ei ex cuius re adquisiit id totum ei adquirat, sive ei soli sive quasi duobus serviat: nam et in veris dominis quotiens utrique adquiritur, totiens partes adquiri: ceterum si alii non adquiratur, alium solidum habiturum. igitur eadem ratio erit et in proposito, ut hic servus alienus, qui mihi et tibi bona fide servit, mihi solidum ex re mea adquirat, quia tibi non potest adquiri, quia non sit ex re tua.

Dig. 45.3.20pr.

Paulus 15 quaest.

Liber homo bona fide mihi servit: stipulatur ex re mea vel ex operis suis stichum, qui ipsius est: magis est, ut mihi adquirat, quia et si servus esset meus, adquireret mihi: nec enim illud dici debet, quasi ille quoque in peculio eius esset. sed si ex re mea stichum, qui meus est, stipulatur, sibi adquiret.

Dig. 45.3.20.1

Paulus 15 quaest.

Apud labeonem ita scriptum est: filium et filiam in sua potestate pater intestatus reliquit: filia eo animo fuit semper, ut existimaret nihil ad se ex hereditate patris pertinere: deinde frater eius filiam procreavit et eam infantem reliquit: tutores servo avito eius imperaverunt, ut ab eo, cui res avi hereditatis vendiderunt, stipularetur, quanta pecunia ad eum pervenisset: ex ea stipulatione quid pupillae adquisitum sit, peto rescribas. paulus: est quidem verum bona fide possessum servum ex re eius cui servit stipulantem possessori adquirere: sed si res, quae ex hereditate avi communes fuerunt, in venditionem hereditatis venerunt, non videtur ex re pupillae totum pretium stipulari ideoque utrisque adquirit.

Dig. 45.3.21

Venonius 1 stipul.

Si servus communis ita stipuletur: " kalendis ianuariis decem titio aut maevio dominis, uter eorum tunc vivet, dare spondes?", inutilem esse stipulationem iulianus scribit, quia non possit in pendenti esse stipulatio nec apparere, utri eorum sit adquisitum.

Dig. 45.3.22

Nerva 2 resp.

Servum fructuarium ex re domini inutiliter fructuario stipulari, domino ex re fructuarii utiliter stipulari.

Dig. 45.3.23

Paulus 9 ad plaut.

Eadem de eo dicenda sunt, cui usus legatus est.

Dig. 45.3.24

Nerva 2 resp.

Et si duorum usus fructus sit, quod ex operis suis alteri eorum stipulatus sit, pro ea dumtaxat parte, ex qua usus fructus eius sit, adquiri.

Dig. 45.3.25

Venonius 12 stipul.

Si servus hereditarius stipulatus fuerit et fideiussores acceperit posteaque adita fuerit hereditas, dubitatur, utrum ex die interpositae stipulationis tempus cedat an ex adita hereditate: item si servus eius, qui apud hostes sit, fideiussores acceperit. et cassius existimat tempus ex eo computandum, ex quo agi cum eis potuerit, id est ex quo adeatur hereditas aut postliminio dominus revertatur.

Dig. 45.3.26

Paulus 1 manual.

Usus fructus sine persona esse non potest et ideo servus hereditarius inutiliter usum fructum stipulatur. legari autem ei posse usum fructum dicitur, quia dies eius non cedit statim: stipulatio autem pura suspendi non potest. quid ergo, si sub condicione stipuletur? nec hoc casu valeat stipulatio, quia ex praesenti vires accipit stipulatio, quamvis petitio ex ea suspensa sit.

Dig. 45.3.27

Paulus 2 manual.

Servus communis sive emat sive stipuletur, quamvis pecunia ex peculio detur, quod alterum ex dominis sequitur, utrique tamen adquirit. diversa causa est fructuarii servi.

Dig. 45.3.28pr.

Gaius 3 de verb. oblig.

Si ex re domini domino aut fructuario servus stipulatus fuerit, domino quidem adquiri obligationem iulianus scripsit, solvi autem fructuario posse, quasi quolibet adiecto.

Dig. 45.3.28.1

Gaius 3 de verb. oblig.

Si servus communis ex re unius stipulatus erit, magis placuit utrique adquiri, sed eum, cuius ex re facta est stipulatio, cum socio communi dividundo aut societatis iudicium de parte reciperanda recte acturum: idemque esse dicendum et si ex operis suis alteri ex dominis servus adquirit.

Dig. 45.3.28.2

Gaius 3 de verb. oblig.

Si ipsi domini singuli eadem decem servo communi dari fuerint stipulati et semel responsum secutum fuerit, duo rei stipulandi erunt, cum placeat dominum servo dari stipulari posse.

Dig. 45.3.28.3

Gaius 3 de verb. oblig.

Sicuti uni nominatim stipulando ei soli adquirit, ita placet et si rem emat nomine unius ex dominis, ei soli servum adquirere. item si credat pecuniam, ut uni ex dominis solveretur, vel quodlibet aliud negotium gerat, posse eum nominatim exprimere, ut uni ex dominis restituatur aut solvatur.

Dig. 45.3.28.4

Gaius 3 de verb. oblig.

Illud quaesitum est, an heredi futuro servus hereditarius stipulari possit. proculus negavit, quia is eo tempore extraneus est. cassius respondit posse, quia qui postea heres extiterit, videretur ex mortis tempore defuncto successisse: quae ratio illo argumento commendatur, quod heredis familia ex mortis tempore funesta facta intellegitur, licet post aliquod tempus heres extiterit: manifestum igitur est servi stipulationem ei adquiri.

Dig. 45.3.29

Paulus 72 ad ed.

Si communis servus sic stipulatus sit: " decem illi domino, eadem decem alteri dare spondes?", dicemus duos reos esse stipulandi.

Dig. 45.3.30

Paulus 1 ad plaut.

Servus alienus alii nominatim stipulando non adquirit domino.

Dig. 45.3.31

Paulus 8 ad plaut.

Si iussu fructuarii aut bonae fidei possessoris servus stipuletur, ex quibus causis non solet iis adquiri, domino adquirit. non idem dicetur, si nomen ipsorum in stipulatione positum sit.

Dig. 45.3.32

Paulus 9 ad plaut.

Si, cum duorum usus fructus esset in servo, et is servus uni nominatim stipulatus sit ex ea re, quae ad utrosque pertinet, sabinus ait, quoniam soli obligatus esset, videndum esse, quemadmodum alter usuarius partem suam recipere possit, quoniam inter eos nulla communio iuris esset. sed verius est utili communi dividundo iudicio inter eos agi posse.

Dig. 45.3.33pr.

Paulus 14 ad plaut.

Si liber homo vel alienus qui bona fide servit ex re alterius iussu possessoris stipuletur, iulianus ait liberum quidem sibi adquirere, servum vero domino, quia iussum domino cohaereat.

Dig. 45.3.33.1

Paulus 14 ad plaut.

Si duo rei stipulandi usum fructum in servo habeant vel quibus bona fide serviebat et iussu unius a debitore stipuletur, ei soli adquirit.

Dig. 45.3.34

Iavolenus 2 ad plaut.

Si servus testamento manumissus, cum se liberum esse ignoraret et in causa hereditaria maneret, pecuniam heredi stipulatus est, nihil debebitur heredibus, si modo scierint eum testamento manumissum, quia non potest videri iustam servitutem servisse iis, qui illum liberum esse non ignorabant. distat ista causa eius, qui liber emptus bona fide servit, quia in eo et ipsius et emptoris existimatio consentit: ceterum is, qui scit hominem liberum esse, quamvis ille condicionem suam ignoret, ne possidere quidem eum potest videri.

Dig. 45.3.35

Modestinus 7 reg.

Servus hereditarius et heredi futuro et hereditati recte stipulatur.

Dig. 45.3.36

Iavolenus 14 epist.

Quod servus stipulatus est, quem dominus pro derelicto habebat, nullius est momenti, quia qui pro derelicto rem habet, omnimodo a se reiecit nec potest eius operibus uti, quem eo iure ad se pertinere noluit. quod si ab alio adprehensus est, stipulatione ei adquirere poterit: nam et haec genere quodam donatio est. inter hereditarium enim servum et eum, qui pro derelicto habetur, plurimum interest, quoniam alter hereditatis iure retinetur, nec potest relictus videri qui universo hereditatis iure continetur, alter voluntate domini derelictus non potest videri ad usum eius pertinere, a quo relictus est.

Dig. 45.3.37

Pomponius 3 ad q. muc.

Si communis servus ita stipularetur: " lucio titio et gaio seio dari spondes?", qui sunt domini illius, pro virilibus partibus eis ex stipulatione debetur: si vero ita: " dominis meis dare spondes?", pro parte, qua domini essent: si vero ita: " lucio titio et gaio seio dominis meis dare spondes?", dubitaretur, utrumne viriles partes an pro dominica portione eis deberetur. et interesset, quid cuius demonstrandi gratia esset adiectum et quae pars eius stipulationis principalem causam haberet: sed cum ad nomina prius decursum est, rationabilius esse videtur pro virili parte stipulationem eis adquiri, quod dominorum vocabula pro demonstratione habeantur.

Dig. 45.3.38

Pomponius 5 ad q. muc.

Si servus meus a liberto meo " operas sibi dari" stipuletur, inutilem stipulationem esse celsus scribit: aliter atque si non adiecto hoc verbo " sibi" stipulatus fuerit.

Dig. 45.3.39

Pomponius 22 ad q. muc.

Cum servus, in quo usum fructum habemus, proprietatis domino ex re fructuarii vel ex operis eius nominatim stipuletur, adquiritur domino proprietatis: sed qua actione fructuarius reciperare possit a domino proprietatis, requirendum est. item si servus bona fide nobis serviat et id, quod nobis adquirere poterit, nominatim domino suo stipulatus fuerit, ei adquirit: sed qua actione id reciperare possumus, quaeremus. et non sine ratione est, quod gaius noster dixit, condici id in utroque casu posse domino.

Dig. 45.3.40

Pomponius 33 ad q. muc.

Quidquid contraxit servus, dum nobis servit, etiam si stipulationem contulit in alienationem vel manumissionem suam, tamen nobis id adquisitum erit, quia potestas eius tunc, cum id contraheret, nostra fuit. idque est, si filius familias contrahat: namque etiam quod in emancipationis suae tempus contulerit, nobis debebitur, si tamen dolo malo id fecerit.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER SEXTUS-QUADRAGESIMUS

Dig. 46.1.0. De fideiussoribus et mandatoribus.
Dig. 46.2.0. De novationibus et delegationibus.
Dig. 46.3.0. De solutionibus et liberationibus.
Dig. 46.4.0. De acceptilatione.
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Dig. 46.1.0. De fideiussoribus et mandatoribus.

Dig. 46.1.1

Ulpianus 39 ad sab.

Omni obligationi fideiussor accedere potest.

Dig. 46.1.2

Pomponius 22 ad sab.

Et commodati et depositi fideiussor accipi potest et tenetur, etiamsi apud servum vel pupillum depositum commodatumve fuerit, sed ita demum, si aut dolo malo aut culpa hi fecerunt, pro quibus fideiussum est.

Dig. 46.1.3

Ulpianus 43 ad sab.

Qui satisdare promisit, ita demum implesse stipulationem satisdationis videtur, si eum dederit accessionis loco, qui obligari potest et conveniri:

ceterum si dederit servum aut filium familias, ex quibus causis de peculio actio non datur, vel mulierem, quae auxilio senatus consulti utitur, dicendum est non esse impletam satisdationis stipulationem. plane si non idoneum fideiussorem dederit, magis est, ut satisfactum sit, quia qui admisit eum fideiubentem, idoneum esse comprobavit.

Dig. 46.1.4pr.

Ulpianus 45 ad sab.

Potest accipi fideiussor eius actionis, quam habiturus sum adversus eum, pro quo fideiussi, vel mandati vel negotiorum gestorum.

Dig. 46.1.4.1

Ulpianus 45 ad sab.

Fideiussor et ipse obligatur et heredem obligatum relinquit, cum rei locum optineat.

Dig. 46.1.5

Ulpianus 46 ad sab.

Generaliter iulianus ait eum, qui heres exstitit ei, pro quo intervenerat, liberari ex causa accessionis et solummodo quasi heredem rei teneri. denique scripsit, si fideiussor heres extiterit ei, pro quo fideiussit, quasi reum esse obligatum, ex causa fideiussionis liberari: reum vero reo succedentem ex duabus causis esse obligatum. nec enim potest repperiri, quae obligatio quam peremat: at in fideiussore et reo repperitur, quia rei obligatio plenior est. nam ubi aliqua differentia est obligationum, potest constitui alteram per alteram peremi: cum vero duae eiusdem sint potestatis, non potest repperiri, cur altera potius quam altera consumeretur. refert autem haec ad speciem, in qua vult ostendere non esse novum, ut duae obligationes in unius persona concurrant. est autem species talis. si reus promittendi reo promittendi heres exstiterit, duas obligationes sustinet: item si reus stipulandi exstiterit heres rei stipulandi, duas species obligationis sustinebit. plane si ex altera earum egerit, utramque consumet, videlicet quia natura obligationum duarum, quas haberet, ea esset, ut, cum altera earum in iudicium deduceretur, altera consumeretur.

Dig. 46.1.6pr.

Ulpianus 47 ad sab.

Stipulatus sum a reo nec accepi fideiussorem: postea volo adicere fideiussorem: si adiecero, fideiussor obligatur.

Dig. 46.1.6.1

Ulpianus 47 ad sab.

Et parvi refert, utrum pure fideiussorem obligem an ex die an sub condicione.

Dig. 46.1.6.2

Ulpianus 47 ad sab.

Adhiberi autem fideiussor tam futurae quam praecedenti obligationi potest, dummodo sit aliqua vel naturalis futura obligatio.

Dig. 46.1.7

Iulianus 53 Dig.

Quod enim solutum repeti non potest, conveniens est huius naturalis obligationis fideiussorem accipi posse.

Dig. 46.1.8pr.

Ulpianus 47 ad sab.

Graece fideiussor et ita accipitur: ty emy pistei keleuw legw velw sive boulomai: sed et si fymi dixerit, pro eo erit atque si dixerit legw.

Dig. 46.1.8.1

Ulpianus 47 ad sab.

Praeterea sciendum est fideiussorem adhiberi omni obligationi posse, sive re sive verbis sive consensu.

Dig. 46.1.8.2

Ulpianus 47 ad sab.

Pro eo etiam, qui iure honorario obligatus est, posse fideiussorem accipi sciendum est.

Dig. 46.1.8.3

Ulpianus 47 ad sab.

Et post litem contestatam fideiussor accipi potest, quia et civilis et naturalis subest obligatio: et hoc et iulianus admittit eoque iure utimur. an ergo condemnato reo exceptione uti possit, quaeritur: nam ipso iure non liberatur. et si quidem iudicati actionis acceptus non est, sed tantum litis exercitationis, rectissime dicetur uti eum exceptione posse: si vero acceptus fuerit etiam totius causae, cessabit exceptio.

Dig. 46.1.8.4

Ulpianus 47 ad sab.

A tutore, qui testamento datus est, si fuerit fideiussor datus, tenetur.

Dig. 46.1.8.5

Ulpianus 47 ad sab.

Sed et si ex delicto oriatur actio, magis putamus teneri fideiussorem.

Dig. 46.1.8.6

Ulpianus 47 ad sab.

Et generaliter omnium obligationum fideiussorem accipi posse nemini dubium est.

Dig. 46.1.8.7

Ulpianus 47 ad sab.

Illud commune est in universis, qui pro aliis obligantur, quod, si fuerint in duriorem causam adhibiti, placuit eos omnino non obligari: in leviorem plane causam accipi possunt, propter quod in minorem summam recte fideiussor accipietur. item accepto reo pure ipse ex die vel sub condicione accipi potest: enimvero si reus sub condicione sit acceptus, fideiussor pure, non obligabitur.

Dig. 46.1.8.8

Ulpianus 47 ad sab.

Si qui stichum stipulatus fuerit, fideiussorem ita acceperit: " stichum aut decem fide tua iubes?", non obligari fideiussorem iulianus ait, quia durior eius fit condicio, utpote cum futurum sit, ut mortuo sticho teneatur. Marcellus autem notat non ideo tantum non obligari, quia in duriorem condicionem acceptus est, sed quia et in aliam potius obligationem acceptus est: denique pro eo, qui decem promiserit, non poterit fideiussor ita accipi, ut decem aut stichum promittat, quamvis eo casu non fit eius durior condicio.

Dig. 46.1.8.9

Ulpianus 47 ad sab.

Idem iulianus ait: si is, qui hominem aut decem dari stipulatus fuerat, fideiussorem ita acceperit: " hominem aut decem, utrum ego velim?", non obligavit eum, quia durior eius condicio facta est.

Dig. 46.1.8.10

Ulpianus 47 ad sab.

Contra autem si is, qui hominem aut decem, utrum ipse stipulator volet, stipulatus est, recte fideiussorem ita accipiet: " decem aut hominem, utrum tu voles?" fit enim, inquit, hoc modo fideiussoris condicio melior.

Dig. 46.1.8.11

Ulpianus 47 ad sab.

Sed et si reum sic interrogavero " stichum et pamphilum?", fideiussorem " stichum aut pamphilum?", recte interrogem, quia levior fideiussoris condicio est.

Dig. 46.1.8.12

Ulpianus 47 ad sab.

Pro fideiussore fideiussorem accipi nequaquam dubium est.

Dig. 46.1.9

Pomponius 26 ad sab.

Fideiussores et in partem pecuniae et in partem rei recte accipi possunt.

Dig. 46.1.10pr.

Ulpianus 7 disp.

Si dubitet creditor, an fideiussores solvendo sint, et unus ab eo electus paratus sit offerre cautionem, ut suo periculo confideiussores conveniantur, in parte dico audiendum eum esse, ita tamen, et si satisdationes offerat et omnes confideiussores, qui idonei esse dicuntur, praesto sint: nec enim semper facilis est nominis emptio, cum numeratio totius debiti non sit in expedito.

Dig. 46.1.10.1

Ulpianus 7 disp.

Ita demum inter fideiussores dividitur actio, si non infitientur: nam infitiantibus auxilium divisionis non est indulgendum.

Dig. 46.1.10.2

Ulpianus 7 disp.

Filius familias pro patre poterit fideiubere nec erit sine effectu haec fideiussio, primo quidem, quod sui iuris effectus poterit teneri in id quod facere potest, dein quod et, dum in potestate manet, condemnari potest. sed an pater ex hac causa quod iussu teneatur, videamus: et puto ad omnes contractus quod iussu etiam referri. sed si ignorante patre pro eo fideiusserit, cessat ista actio: tamen quasi in rem patris versum sit, potest agi cum patre. plane si emancipatus solverit, utilis ei actio debebit competere: in potestate etiam manenti eadem actio competit, si de peculio castrensi pro patre solverit.

Dig. 46.1.11

Iulianus 12 Dig.

Qui contra senatus consultum filio familias crediderit, mortuo eo fideiussorem a patre accipere non potest, quia neque civilem neque honorariam adversus patrem actionem habet nec est ulla hereditas, cuius nomine fideiussores obligari possent.

Dig. 46.1.12

Iulianus 43 Dig.

Plane eius actionis nomine, quae de peculio adversus eum competit, fideiussor recte accipitur.

Dig. 46.1.13

Iulianus 14 Dig.

Si mandatu meo titio decem credideris et mecum mandati egeris, non liberabitur titius: sed ego tibi non aliter condemnari debebo, quam si actiones, quas adversus titium habes, mihi praestiteris. item si cum titio egeris, ego non liberabor, sed in id dumtaxat tibi obligatus ero, quod a titio servare non potueris.

Dig. 46.1.14

Iulianus 47 Dig.

Cum reus promittendi fideiussori suo heres exstitit, obligatio fideiussoria peremitur. quid ergo est? tamquam a reo debitum petatur et, si exceptione fideiussori competente usus fuerit, in factum replicatio dari debebit aut doli mali proderit.

Dig. 46.1.15pr.

Iulianus 51 Dig.

Si stipulatus esses a me sine causa et fideiussorem dedissem et nollem eum exceptione uti, sed potius solvere, ut mecum mandati iudicio ageret, fideiussori etiam invito me exceptio dari debet: interest enim eius pecuniam retinere potius quam solutam stipulatori a reo repetere.

Dig. 46.1.15.1

Iulianus 51 Dig.

Si ex duobus, qui apud te fideiusserant in viginti, alter, ne ab eo peteres, quinque tibi dederit vel promiserit, nec alter liberabitur et, si ab altero quindecim petere institueris, nulla exceptione summoveris: reliqua autem quinque si a priore fideiussore petere institueris, doli mali exceptione submoveris.

Dig. 46.1.16pr.

Iulianus 53 Dig.

Fideiussor obligari non potest ei, apud quem reus promittendi obligatus non est. quare si servus communis titii et sempronii nominatim titio dari stipulatus fuerit et fideiussorem ita interrogaverit: " titio aut sempronio id dare spondes?", titius quidem petere a fideiussore poterit, sempronii vero persona in hoc solum interposita videbitur, ut solvi ei ante litem contestatam et ignorante vel invito titio possit.

Dig. 46.1.16.1

Iulianus 53 Dig.

Qui certo loco dari promisit, aliquatenus duriori condicioni obligatur, quam si pure interrogatus fuisset: nullo enim loco alio, quam in quem promisit, solvere invito stipulatore potest. quare si reum pure interrogavero et fideiussorem cum adiectione loci accepero, non obligabitur fideiussor.

Dig. 46.1.16.2

Iulianus 53 Dig.

Sed et si reus, romae constitutus, capuae dari promiserit, fideiussor ephesi, perinde non obligabitur fideiussor, ac si reus sub condicione promisisset, fideiussor autem in diem certam vel pure promisisset.

Dig. 46.1.16.3

Iulianus 53 Dig.

Fideiussor accipi potest, quotiens est aliqua obligatio civilis vel naturalis, cui applicetur.

Dig. 46.1.16.4

Iulianus 53 Dig.

Naturales obligationes non eo solo aestimantur, si actio aliqua eorum nomine competit, verum etiam cum soluta pecunia repeti non potest: nam licet minus proprie debere dicantur naturales debitores, per abusionem intellegi possunt debitores et, qui ab his pecuniam recipiunt, debitum sibi recepisse.

Dig. 46.1.16.5

Iulianus 53 Dig.

Stipulatione in diem concepta fideiussor si sub condicione acceptus fuerit, ius eius in pendenti erit, ut, si ante diem condicio impleta fuerit, non obligetur, si concurreret dies et condicio vel etiam diem condicio secuta fuerit, obligetur.

Dig. 46.1.16.6

Iulianus 53 Dig.

Cum fideiussor hoc modo acceptus esset: " si reus quadraginta, quae ei credidi, non solverit, fide tua esse iubes?", verisimile est id actum, ut, cum appellatus reus non solvisset, fideiussor teneretur. sed et si reus, antequam appellaretur, decessisset, fideiussor obligatus erit, quia hoc quoque casu verum est reum non solvisse.

Dig. 46.1.17

Iulianus 89 Dig.

Fideiussoribus succurri solet, ut stipulator compellatur ei, qui solidum solvere paratus est, vendere ceterorum nomina.

Dig. 46.1.18

Iulianus 90 Dig.

Qui debitorem suum delegat, pecuniam dare intellegitur, quanta ei debetur: et ideo si fideiussor debitorem suum delegaverit, quamvis eum, qui solvendo non erat, confestim mandati agere potest.

Dig. 46.1.19

Iulianus 4 ex minic.

Servus inscio domino pro quodam fideiusserat et eo nomine pecuniam solverat: quaerebatur, dominus possetne ab eo, cui soluta esset, repetere. respondit: interest, quo nomine fideiusserit: nam si ex causa peculiari fideiussit, tunc id, quod ex peculio solverit, repetere dominus non poterit, quod ex dominica causa solverit, vindicabitur: si vero extra causam peculii fideiusserit, quod ex pecunia dominica solverit, aeque vindicabitur, quod ex peculio, condici poterit.

Dig. 46.1.20

Iavolenus 13 epist.

Sed et si servi dominus pecuniam solverit, repetere eam non ab eo pro quo fideiussit, sed ab eo cui numeravit poterit, cum servus fideiussionis nomine obligari non possit. sequitur ergo, ut ab eo, pro quo fideiusserat, repeti non possit, cum ipse aere alieno obligatus sit nec solutione liberari eius pecuniae nomine potuerit, cuius obligatio ad servum non pertinuit.

Dig. 46.1.21pr.

Africanus 7 quaest.

Heres a debitore hereditario fideiussorem accepit, deinde hereditatem ex trebelliano restituit: fideiussoris obligationem in suo statu manere ait idemque in hac causa servandum, quod servaretur, cum heres, contra quem emancipatus filius bonorum possessionem accepit, fideiussorem accepit. ideoque in utraque specie transeunt actiones.

Dig. 46.1.21.1

Africanus 7 quaest.

Non est novum, ut fideiussor duabus obligationibus eiusdem pecuniae nomine teneatur: nam si in diem acceptus mox pure accipiatur, ex utraque obligatur, et si fideiussor confideiussori heres exstiterit, idem erit.

Dig. 46.1.21.2

Africanus 7 quaest.

Servo tuo pecuniam credidi: eum tu manumisisti: deinde eundem fideiussorem accepi. si quidem in eam obligationem fideiubeat, quae adversus te intra annum sit, obligari eum ait: sin vero in naturalem suam, potius ut nihil agatur: non enim intellegi posse, ut quis pro se fideiubendo obligetur. quod si hic servus manumissus fideiussori suo heres existat, durare causam fideiussionis putavit et tamen nihilo minus naturalem obligationem mansuram, ut, si obligatio civilis pereat, solutum repetere non possit. nec his contrarium esse, quod, cum reus fideiussori heres existat, fideiussoria obligatio tollatur, quia tunc duplex obligatio civilis cum eodem esse non potest. retro quoque si fideiussor servo manumisso heres exstiterit, eadem adversus eum obligatio manet, quamvis et naturaliter teneatur nec pro se quis fideiubere possit.

Dig. 46.1.21.3

Africanus 7 quaest.

Quod si stipulator reum heredem instituerit, omnimodo fideiussoris obligationem peremit, sive civilis sive tantum naturalis in reum fuisset, quoniam quidem nemo potest apud eundem pro ipso obligatus esse. quod si idem stipulator fideiussorem heredem scripserit, procul dubio solam fideiussoris obligationem peremit. argumentum rei, quod, si possessio rerum debitoris data sit creditori, aeque dicendum est fideiussorem manere obligatum.

Dig. 46.1.21.4

Africanus 7 quaest.

Cum et tu et titius eiusdem pecuniae rei essetis, eum, qui pro te fideiussit, posse et pro titio fideiubere respondit, quamvis eandem pecuniam eidem debiturus sit: nec tamen inanem eam creditori futuram: nonnullis enim casibus emolumentum habituram, veluti si ei, pro quo ante fideiussisset, heres existat: tunc enim confusa prima obligatione posteriorem duraturam.

Dig. 46.1.21.5

Africanus 7 quaest.

Cum fideiussor reo stipulandi heres exstiterit, quaeritur, an, quasi ipse a se exegerit, habeat adversus reum mandati actionem. respondit, cum reus obligatus maneat, non posse intellegi ipsum a se fideiussorem pecuniam exegisse: itaque ex stipulatu potius quam mandati agere debebit.

Dig. 46.1.22

Florus 8 inst.

Mortuo reo promittendi et ante aditam hereditatem fideiussor accipi potest, quia hereditas personae vice fungitur, sicuti municipium et decuria et societas.

Dig. 46.1.23

Marcianus 4 reg.

Si " mihi aut titio decem ?" stipulatus fuerim, titius fideiussorem accipere non potest, quia solutionis tantum causa adiectus est.

Dig. 46.1.24

Marcellus l.S. resp.

Lucius titius cum pro seio fratre suo apud septicium intervenire vellet, epistulam ita emisit: " si petierit a te frater meus, peto des ei nummos fide et periculo meo": post quam epistulam septicius seio pecuniam numeravit: deinde titius inter reliquos et seium fratrem pro tertia parte reliquit heredem. quaero, an, quia adversus seium debitorem septicii confusa sit actio pro tertia parte, qua titio fratri suo heres exstitit, cum coheredibus eius agere in solidum possit. Marcellus respondit cum coherede seii non pro maiore quam hereditaria parte mandati agi posse.

Dig. 46.1.25

Ulpianus 11 ad ed.

Marcellus scribit, si quis pro pupillo sine tutoris auctoritate obligato prodigove vel furioso fideiusserit, magis esse, ut ei non subveniatur, quoniam his mandati actio non competit.

Dig. 46.1.26

Gaius 8 ad ed. provinc.

Inter fideiussores non ipso iure dividitur obligatio ex epistula divi hadriani: et ideo si quis eorum ante exactam a se partem sine herede decesserit vel ad inopiam pervenerit, pars eius ad ceterorum onus respicit.

Dig. 46.1.27pr.

Ulpianus 22 ad ed.

Si plures sint fideiussores, unus pure, alius in diem vel sub condicione acceptus, succurri oportet ei, qui pure acceptus est, dum existere condicio potest, scilicet ut interim in virilem conveniatur. sed si, cum condicio exstitit, non est solvendo qui sub condicione acceptus est, restituendam actionem in pure acceptum pomponius scribit.

Dig. 46.1.27.1

Ulpianus 22 ad ed.

Praeterea si fideiussor exstiterit fideiussori sive plures, aeque hic quoque pertinebit ad eandem causam: in quorum persona aeque locum habebunt ea, quae sunt a divo hadriano constituta.

Dig. 46.1.27.2

Ulpianus 22 ad ed.

Praeterea si quaeratur, an solvendo sit principalis fideiussor, etiam vires sequentis fideiussoris ei adgregandae sunt.

Dig. 46.1.27.3

Ulpianus 22 ad ed.

Sicut ipsi fideiussori, ita heredibus quoque eorum succurrendum pomponius scribit.

Dig. 46.1.27.4

Ulpianus 22 ad ed.

Si fideiussor fuerit principalis et fideiussor fideiussoris, non poterit desiderare fideiussor, ut inter se et eum fideiussorem, pro quo fideiussit, dividatur obligatio: ille enim loco rei est nec potest reus desiderare, ut inter se et fideiussorem dividatur obligatio. proinde si ex duobus alter fideiussorem dederit, adversus eum quidem non dividitur obligatio, pro quo intervenit: adversus confideiussorem magis est ut dividatur.

Dig. 46.1.28

Paulus 25 ad ed.

Si contendat fideiussor ceteros solvendo esse, etiam exceptionem ei dandam " si non et illi solvendo sint".

Dig. 46.1.29

Paulus 18 ad ed.

Si sub impossibili condicione stipulatus sim, fideiussor adhiberi non potest.

Dig. 46.1.30

Gaius 5 ad ed. provinc.

Fideiubere pro alio potest quisque, etiamsi promissor ignoret.

Dig. 46.1.31

Ulpianus 23 ad ed.

Si fideiussor vel quis alius pro reo ante diem creditori solverit, exspectare debebit diem, quo eum solvere oportuit.

Dig. 46.1.32

Ulpianus 76 ad ed.

Ex persona rei et quidem invito reo exceptio (et cetera rei commoda) fideiussori ceterisque accessionibus competere potest.

Dig. 46.1.33

Ulpianus 77 ad ed.

Si eum hominem, quem a titio petieram, pro quo satis de lite acceperam, titius liberum heredemque reliquerit: si quidem re vera ipsius fuit, dicendum est iudicium in eum transferri et, si non patiatur id fieri, committi stipulationem: si autem meus petitoris fuit neque iussu meo hereditatem adierit, fideiussores tenebuntur ob rem non defensam: si autem adierit me iubente, stipulatio evanescit. plane si meus fuerit et idcirco differam aditionem, ut, cum vicero, tunc eum iubeam adire et interim ob rem non defensam agere velim, non committitur stipulatio, quia vir bonus non arbitraretur.

Dig. 46.1.34

Paulus 72 ad ed.

Hi, qui accessionis loco promittunt, in leviorem causam accipi possunt, in deteriorem non possunt. ideo, si a reo mihi stipulatus sim, a fideiussore mihi aut titio, meliorem causam esse fideiussoris iulianus putat, quia potest vel titio solvere. quod si a reo mihi aut titio stipulatus, a fideiussore mihi tantum interrogem, in deteriorem causam acceptum fideiussorem iulianus ait. quid ergo, si a reo stichum aut pamphilum, a fideiussore stichum interrogem? utrum in deteriorem causam acceptus est sublata electione? an in meliorem, quod et verum est, quia mortuo eo liberari potest?

Dig. 46.1.35

Paulus 2 ad plaut.

Cum fideiubeat aliquis pro servo, in solidum tenetur, etiamsi nihil in peculio sit. plane si pro domino fideiubeat, cum quo de peculio est, dumtaxat de peculio tenebitur, quod tunc erit, cum res iudicatur.

Dig. 46.1.36

Paulus 14 ad plaut.

Cum is qui et reum et fideiussores habens ab uno ex fideiussoribus accepta pecunia praestat actiones, poterit quidem dici nullas iam esse, cum suum perceperit et perceptione omnes liberati sunt. sed non ita est: non enim in solutum accipit, sed quodammodo nomen debitoris vendidit, et ideo habet actiones, quia tenetur ad id ipsum, ut praestet actiones.

Dig. 46.1.37

Paulus 17 ad plaut.

Si quis, postquam tempore transacto liberatus est, fideiussorem dederit, fideiussor non tenetur, quoniam erroris fideiussio nulla est.

Dig. 46.1.38pr.

Marcellus 20 Dig.

Si stichum aut pamphilum stipulatus essem, utrum promissor voluisset, non possum fideiussorem ita accipere stichum aut pamphilum, utrum fideiussor vellet, quia futurum esset in eius potestate alium velle, quam reus voluisset.

Dig. 46.1.38.1

Marcellus 20 Dig.

A titio, qui mihi ex testamento sub condicione decem debuit, fideiussorem accepi et ei heres extiti: deinde condicio legati exstitit: quaero, an fideiussor mihi teneatur. respondit, si ei, a quo tibi erat sub condicione legatum, cum ab eo fideiussorem accepisses, heres exstiteris, non poteris habere fideiussorem obligatum, quia nec reus est, pro quo debeat, sed nec res ulla, quae possit deberi.

Dig. 46.1.39

Modestinus 2 reg.

Ut fideiussor adversus confideiussorem suum agat, danda actio non est. ideoque si ex duobus fideiussoribus eiusdem quantitatis cum alter electus a creditore totum exsolvit nec ei cessae sint actiones, alter nec a creditore nec a confideiussore convenietur.

Dig. 46.1.40

Modestinus 3 reg.

Cum duo rei constituti sunt, sive ab utroque sive ab alterutro fideiussor datus fuerit, in solidum recte accipietur.

Dig. 46.1.41pr.

Modestinus 13 resp.

Respondit, si fideiussores in id accepti sunt, quod a curatore servari non possit, et post impletam legitimam aetatem tam ab ipso curatore quam ab heredibus eius solidum servari potuit et cessante eo, qui pupillus fuit, solvendo esse desierit: non temere utilem in fideiussores actionem competere.

Dig. 46.1.41.1

Modestinus 13 resp.

Idem respondit, si in solidum condemnatus est unus ex mandatoribus, cum iudicati conveniri coeperit, posse eum desiderare, ut adversus eos, qui idem mandaverunt, actiones sibi mandentur.

Dig. 46.1.42

Iavolenus 10 epist.

Si ita fideiussorem accepero: " quod ego decem credidi, de ea pecunia mille modios tritici fide tua esse iubes?", non obligatur fideiussor, quia in aliam rem, quam quae credita est, fideiussor obligari non potest, quia non, ut aestimatio rerum quae mercis numero habentur in pecunia numerata fieri potest, ita pecunia quoque merce aestimanda est.

Dig. 46.1.43

Pomponius 7 ex var. lect.

Si a titio stipulatus fideiussorem te acceperim, deinde eandem pecuniam ab alio stipulatus alium fideiussorem accipiam, confideiussores non erunt, quia diversarum stipulationum fideiussores sunt.

Dig. 46.1.44

Iavolenus 11 epist.

Stipulatus es opus arbitratu tuo ante certam diem fieri, quod si effectum non esset, quanti ut efficiatur opus locasses, tanti fideiussores cepisti: et quia opus effectum non erat, alii locasti et, cum posterior conductor satis non daret, ipse opus fecisti: quaero, an fideiussor teneatur. respondit: secundum ea verba stipulationis, quae a te proposita sunt, fideiussores non tenentur. non enim id fecisti, quod in stipulatione convenerat, id est opus alii non locasti, tametsi postea locasti: ea enim locatio, quam secutus es, perinde est, ac si interposita non esset et si statim tu opus facere coepisses.

Dig. 46.1.45

Scaevola 6 Dig.

Fideiussor pro venditore fundorum duorum altero evicto conventus ab emptore condemnatus est certam quantitatem: quaesitum est, an cum herede venditoris ante diem, quo iudicatum facere compelleretur, agere possit. respondit agere quidem posse, sed ex iusta causa ad officium iudicis pertinere quo fideiussor aut defendatur aut liberaretur.

Dig. 46.1.46

Iavolenus 10 ex post. lab.

Cum lex venditionibus occurrere voluerit, fideiussor quoque liberatur, eo magis quod per eiusmodi actionem ad reum pervenitur.

Dig. 46.1.47pr.

Papinianus 9 quaest.

Si debitori deportatio irrogata est, non posse pro eo fideiussorem accipi scribit iulianus, quasi tota obligatio contra eum extincta sit.

Dig. 46.1.47.1

Papinianus 9 quaest.

Si filius in causa peculiari ita fideiussorem acceperit: " quantam pecuniam credidero, fide tua esse iubes?" et emancipatus credat, patri quidem, si non est reus obligatus, non tenebitur, filio vero humanitatis intuitu obnoxius esse debet.

Dig. 46.1.48pr.

Papinianus 10 quaest.

Si titius et seia pro maevio fideiusserint, subducta muliere dabimus in solidum adversus titium actionem, cum scire potuerit aut ignorare non debuerit mulierem frustra intercedere.

Dig. 46.1.48.1

Papinianus 10 quaest.

Huic similis et illa quaestio videri potest, ob aetatem si restituatur in integrum unus fideiussor, an alter onus obligationis integrum excipere debeat. sed ita demum alteri totum irrogandum est, si postea minor intercessit, propter incertum aetatis ac restitutionis. quod si dolo creditoris inductus sit minor, ut fideiubeat, non magis creditori succurrendum erit adversus confideiussorem, quam si facta novatione circumvento minore desideraret in veterem debitorem utilem actionem sibi dari.

Dig. 46.1.49pr.

Papinianus 27 quaest.

Si testamento liberatum debitorem heres omittat, fideiussorem autem eius conveniat, proderit exceptio doli fideiussori propter improbitatem heredis, quae prodesse reo debuerat, si conveniretur.

Dig. 46.1.49.1

Papinianus 27 quaest.

Ex duobus fideiussoris heredibus si per errorem alter solidum exsolvat, quidam putant habere eum condictionem et ideo manere obligatum coheredem: cessante quoque condictione durare obligationem coheredis probant propterea, quod creditor, qui, dum se putat obligatum, partem ei, qui totum dedit, exsolverit, nullam habebit condictionem. quod si duo fideiussores accepti fuerint verbi gratia in viginti et alter ex duobus heredibus alterius fideiussoris totum creditori exsolverit, habebit quidem decem, quae ipso iure non debuit, condictionem: an autem et alia quinque milia repetere possit, si fideiussor alter solvendo est, videndum est: ab initio enim heres fideiussoris sive heredes ut ipse fideiussor audiendi sunt, ut scilicet pro parte singuli fideiussores qui sunt conveniantur. severior et utilior est in utroque casu illa sententia solutionem non indebitae quantitatis non debere revocari, quod etiam epistula divi pii significatur in persona fideiussoris, qui totum exsolverat.

Dig. 46.1.49.2

Papinianus 27 quaest.

Quaesitum est, an fideiussor, qui " capuae pecuniam se daturum" romae promisit, si reus promittendi capuae esset, statim conveniri possit. dixi non magis fideiussorem confestim teneri, quam si ipse capuae spopondisset, cum reus adhuc capuam pervenire non potuisset: nec ad rem pertinere, quod hoc latere nemo dubitet nondum fideiussorem teneri, quia nec ipse reus promittendi teneretur. nam e contrario quoque si quis responderit, quoniam debitor capuae sit, fideiussorem confestim teneri non habita ratione taciti proprii temporis, eventurum, ut eo casu fideiussor conveniatur, quo debitor ipse, si romae fuisset, non conveniretur. itaque nobis placet fideiussoriam obligationem condicionem taciti temporis ex utriusque persona reciperare tam rei promittendi quam ipsius fideiussoris, quoniam aliud respondentibus contra iuris formam in duriorem condicionem acceptus intellegetur.

Dig. 46.1.50

Papinianus 37 quaest.

Debitori creditor pro parte heres extitit accepto coherede fideiussore: quod ad ipsius quidem portionem attinet, obligatio ratione confusionis intercidit aut (quod est verius) solutionis potestate: sed pro parte coheredis obligatio salva est non fideiussoria, sed hereditaria, quoniam maior tollit minorem.

Dig. 46.1.51pr.

Papinianus 3 resp.

Inter eos fideiussores actio dividenda est, qui solidum et partes viriles fide sua esse iusserunt. diversum erit verbis ita conceptis: " solidum aut partem virilem fide tua esse iubes?" tunc enim ab initio non nisi viriles partes singulos debere conveniet.

Dig. 46.1.51.1

Papinianus 3 resp.

Fideiussor, qui partem pecuniae suo nomine vel rei promittendi solvit, quo minus residui divisione facta portionis iudicium accipiat, recusare non debet: eam enim quantitatem inter eos qui solvendo sunt dividi convenit, quam litis tempore singuli debent. sed humanius est, si et alter solvendo sit litis contestationis tempore, per exceptionem ei qui solvit succurri.

Dig. 46.1.51.2

Papinianus 3 resp.

Duo rei promittendi separatim fideiussores dederunt: invitus creditor inter omnes fideiussores actiones dividere non cogitur, sed inter eos dumtaxat, qui pro singulis intervenerunt. plane si velit actionem suam inter omnes dividere, non erit prohibendus, non magis quam si duos reos pro partibus conveniret.

Dig. 46.1.51.3

Papinianus 3 resp.

Creditor pignus distrahere non cogitur, si fideiussorem simpliciter acceptum omisso pignore velit convenire.

Dig. 46.1.51.4

Papinianus 3 resp.

Cum inter fideiussores actione divisa quidam post litem contestatam solvendo esse desierunt, ea res ad onus eius qui solvendo est non pertinet, nec auxilio defendetur aetatis actor: non enim deceptus videtur iure communi usus.

Dig. 46.1.51.5

Papinianus 3 resp.

Bonis damnati fideiussoris fisco vindicatis inter fideiussores actio postea si dividi coeperit, ut heredis, ita fisci rationem haberi oportet.

Dig. 46.1.52pr.

Papinianus 11 resp.

Amissi ruina pignoris damnum tam fideiussoris quam rei promittendi periculum spectat, nec ad rem pertinebit, si fideiussor ita sit acceptus: " quanto minus ex pretio pignoris distracti servari potuerit": istis enim verbis etiam totum contineri convenit.

Dig. 46.1.52.1

Papinianus 11 resp.

Inter fideiussores actione divisa condemnatus si desierit esse solvendo, fraus vel segnitia tutoribus, qui iudicatum persequi potuerunt, damnum dabit: quod si divisam actionem inter eos, qui non erant solvendo, constabit, pupilli nomine restitutionis auxilium implorabitur.

Dig. 46.1.52.2

Papinianus 11 resp.

Fideiussores a colonis datos etiam ob pecuniam dotis praediorum teneri convenit, cum ea quoque species locationis vinculum ad se trahat: nec mutat, confestim an interiecto tempore fidem suam adstrinxerunt.

Dig. 46.1.52.3

Papinianus 11 resp.

Plures eiusdem pecuniae credendae mandatores, si unus iudicio eligatur, absolutione quoque secuta non liberantur, sed omnes liberantur pecunia soluta.

Dig. 46.1.53

Papinianus 15 resp.

Capitis postulati fideiussores ex contractu citra ullam praescriptionem a creditore, qui reum postulavit, recte conveniuntur.

Dig. 46.1.54

Paulus 3 quaest.

Si in pignore contrahendo deceptus sit creditor, qui fideiussorem pro mutuo accepit, agit contraria pigneraticia actione, in quam actionem veniet quod interest creditoris. sed ea actio fideiussorem onerare non poterit: non enim pro pignore, sed pro pecunia mutua fidem suam obligat.

Dig. 46.1.55

Paulus 11 quaest.

Si ita stipulatus a seio fuero: " quantam pecuniam titio quandoque credidero, dare spondes?" et fideiussores accepero, deinde titio saepius credidero: nempe seius in omnes summas obligatus est et per hoc fideiussores quoque, et id, quod ex bonis eius servari potest, omnibus aequo iure proficere debet.

Dig. 46.1.56pr.

Paulus 15 quaest.

Si quis pro eo, qui libertus non esset et operas praestaturum se iurasset, fideiussor erit, non tenebitur.

Dig. 46.1.56.1

Paulus 15 quaest.

Item si filius a patre vel servus a domino stipuletur, nec fideiussor acceptus tenetur, quia non potest pro eodem et eidem esse obligatus. ex diverso ergo patre a filio vel domino a servo stipulato fideiussor acceptus tenetur.

Dig. 46.1.56.2

Paulus 15 quaest.

Si nummos alienos quasi tuos mutuos dederis sine stipulatione, nec fideiussorem teneri pomponius ait. quid ergo, si consumptis nummis nascatur condictio? puto fideiussorem obligatum fore: in omnem enim causam acceptus videtur, quae ex ea numeratione nasci potest.

Dig. 46.1.56.3

Paulus 15 quaest.

Pro furti actione fideiussor accipi potest: item pro eo qui in legem aquiliam commisit. diversa causa est popularium actionum.

Dig. 46.1.57

Scaevola 18 quaest.

Fideiussor, antequam reus debeat, conveniri non potest.

Dig. 46.1.58pr.

Paulus 22 quaest.

Si a colono stipulatus fideiussorem accepi, una stipulatio est plurium pensionum, et ideo in universis pensionibus fideiussor tenetur.

Dig. 46.1.58.1

Paulus 22 quaest.

Cum facto suo reus principalis obligationem perpetuat, etiam fideiussoris durat obligatio, veluti si moram fecit in sticho solvendo et is decessit.

Dig. 46.1.59

Paulus 4 resp.

Paulus respondit fideiussorem, in quem pignora a confideiussoribus data translata sunt, non emptoris loco substitutum videri, sed eius qui pignora accepit, et ideo rationem fructuum et usurarum haberi oportere.

Dig. 46.1.60

Scaevola 1 resp.

Ubicumque reus ita liberatur a creditore, ut natura debitum maneat, teneri fideiussorem respondit: cum vero genere novationis transeat obligatio, fideiussorem aut iure aut exceptione liberandum.

Dig. 46.1.61

Paulus 15 resp.

Si, ut proponitur, cum pecunia mutua daretur, ita convenit, ut in italia solveretur, intellegendum mandatorem quoque simili modo contraxisse.

Dig. 46.1.62

Scaevola 5 resp.

Si fideiussor creditori denuntiaverit, ut debitorem ad solvendam pecuniam compelleret vel pignus distraheret, isque cessaverit, an possit eum fideiussor doli mali exceptione summovere? respondit non posse.

Dig. 46.1.63

Scaevola 6 resp.

Inter creditricem et debitorem pactum intercesserat, ut, si centum, quae mutua dederit, ubi primum petita fuissent, non solverentur, ornamenta pignori data intra certum tempus liceret ei vendere et si quo minoris venissent, quodque sortis vel usurarum nomine deberetur, id creditrici redderetur, et fideiussor acceptus est: quaesitum est, an fideiussor in universam summam obligari potuerit. respondit secundum ea quae proponerentur teneri fideiussorem in id, quod minus ex pignoribus venditis redactum esset.

Dig. 46.1.64

Hermogenianus 2 iuris epit.

Fideiussor, qui minori viginti quinque annis pecuniam optulit et in publico loco metu in integrum restitutionis consignatam deposuit, confestim experiri mandati poterit.

Dig. 46.1.65

Hermogenianus 6 iuris epit.

Sicut reus principalis non alias, quam si de sua persona promittat, obligatur, ita fideiussores non alias tenentur, quam si se quid daturos vel facturos promittant: nam reum principalem daturum vel facturum aliquid frustra promittunt, quia factum alienum inutiliter promittitur.

Dig. 46.1.66

Paulus 1 ad ner.

Si servus alienus pro titio fideiussit et solvit, liberatur titius, si dominus mandati contra eum agere instituit: nam qui mandati agit, ratam habere solutionem videtur.

Dig. 46.1.67

Paulus 3 ad ner.

Exceptione, quae tibi prodesse debebat, usus iniuria iudicis damnatus es: nihil tibi praestabitur iure mandati, quia iniuriam, quae tibi facta est, penes te manere quam ad alium transferri aequius est, scilicet si culpa tua iniustae damnationis causam praebuisti.

Dig. 46.1.68pr.

Paulus 3 decr.

Fideiussores magistratuum in poenam vel multam, quam non spopondissent, non debere conveniri decrevit.

Dig. 46.1.68.1

Paulus 3 decr.

Pro aurelio romulo conductore vectigalis centum annua petronius thallus et alii fideiusserant: bona romuli fiscus ut obligata sibi occupaverat et conveniebat fideiussores tam in sortem quam in usuras: qui deprecabantur. lecta subscriptione fideiussionis, quoniam in sola centum annua se obligaverant, non in omnem conductionem, decrevit fideiussores in usuras non teneri, sed quidquid ex bonis fuisset redactum, prius in usuras cedere, reliquum in sortem, et ita in id quod defuisset fideiussores conveniendos exemplo pignorum a creditore distractorum.

Dig. 46.1.68.2

Paulus 3 decr.

Non possunt conveniri fideiussores liberato reo transactione.

Dig. 46.1.69

Tryphonus 9 disp.

Tutor datus eius filio, cui ex fideiussoria causa obligatus erat, a semet ipso exigere debet, et quamvis tempore liberatus erit, tamen tutelae iudicio eo nomine tenebitur, item heres eius, quia cum eo ob tutelam, non ex fideiussione agitur. et quamvis non quasi fideiussor, sed quasi tutor solverit, etiamsi tempore liberatus est, mandati actionem eum habere adversus reum promittendi dixi. haeret enim in utraque causa adhuc illius debiti persecutio, nam eius solutione liberavit reum promittendi obligatione, in quam pro eo fideiusserat, et non titulus actionis, sed debiti causa respicienda est. licet enim is tutor, qui fideiussor apud pupillum pro reo est obligatus, solvit se auctore pupillo, quia reo promittendi liberato et ipse tutor idemque fideiussor liberabitur, quod sua auctoritate efficere non potest, tamen et si non pro se solvendi animo, sed pro titio fecit, ut maxime eum liberet, habebit cum eo mandati actionem.

Dig. 46.1.70pr.

Gaius 1 de verb. oblig.

Si a reo sub condicione fuero stipulatus, potero fideiussorem et in hanc et in aliam condicionem obligare, si modo eas coniungam: nisi enim utraque exstiterit, non tenebitur, cum reus ex una condicione teneatur. quod si eas disiungam, durior fit condicio fideiussoris nec ob id obligatur: quippe sive communis utriusque condicio extiterit sive alterutra, videatur adprehendi, cum reus non aliter teneatur, quam si communis exstiterit: aut igitur nullo modo tenebitur fideiussor, aut, quod magis est, tenebitur, si prius extiterit communis.

Dig. 46.1.70.1

Gaius 1 de verb. oblig.

Sub diversis quoque condicionibus si fuerint interrogati, interest, utra eorum prior extiterit. si reo iniuncta, tenebitur etiam fideiussor, cum condicio eius exstiterit, tamquam si statim ab initio reus pure, fideiussor sub condicione acceptus esset. ex diverso autem, si fideiussoris condicio prior extiterit, non tenetur, perinde ac si statim ab initio pure acceptus esset reo sub condicione obligato.

Dig. 46.1.70.2

Gaius 1 de verb. oblig.

Si reo in fundum obligato fideiussor in usum fructum accipiatur, quaesitum est, utrum obligetur fideiussor quasi in minus, an non obligetur quasi in aliud. nobis in eo videtur dubitatio esse, usus fructus pars rei sit an proprium quiddam: sed cum usus fructus fundi ius est, incivile est fideiussorem ex sua promissione non teneri.

Dig. 46.1.70.3

Gaius 1 de verb. oblig.

Adeo a servo potest fideiussor accipi, ut ipse quoque dominus in id, quod sibi debetur, fideiussorem ab eo recte accipiat: quem fideiussorem etiam ab eo ipso servo interrogari nihil impedit.

Dig. 46.1.70.4

Gaius 1 de verb. oblig.

Si a furioso stipulatus fueris, non posse te fideiussorem accipere certum est, quia non solum ipsa stipulatio nulla intercessisset, sed ne negotium quidem ullum gestum intellegitur. quod si pro furioso iure obligato fideiussorem accepero, tenetur fideiussor.

Dig. 46.1.70.5

Gaius 1 de verb. oblig.

Id quod volgo dictum est maleficiorum fideiussorem accipi non posse non sic intellegi debet, ut in poenam furti is, cui furtum factum est, fideiussorem accipere non possit (nam poenas ob maleficia solvi magna ratio suadet), sed ita potius, ut qui cum alio cum quo furtum admisit, in partem, quam ex furto sibi restitui desiderat, fideiussorem obligare non possit, et qui alieno hortatu ad furtum faciendum provectus est, ne in furti poena ab eo qui hortatus est fideiussorem accipere possit. in quibus casibus illa ratio impedit fideiussorem obligari, quia scilicet in nullam rationem adhibetur fideiussor, cum flagitiosae rei societas coita nullam vim habet.

Dig. 46.1.71pr.

Paulus 4 quaest.

Granius antoninus pro iulio pollione et iulio rufo pecuniam mutuam accipientibus, ita ut duo rei eiusdem debiti fuerint, apud aurelium palmam mandator exstitit: iulii bona ad fiscum venerunt: similiter et creditori fiscus successerat. mandator allegabat se liberatum iure confusionis, quia fiscus tam creditori quam debitori successerat. et quidem si unus debitor fuisset, non dubitabam sicut fideiussorem, ita et mandatorem liberatum esse: quamvis enim iudicio convento principali debitore mandator non liberetur, tamen ubi successit creditor debitori, veluti solutionis iure sublata obligatione etiam mandator liberatur, vel quia non potest pro eodem apud eundem quis mandator esse. sed cum duo rei promittendi sint et alteri heres extitit ^ exstitit^ creditor, iusta dubitatio est, utrum alter quoque liberatus est, ac si soluta fuisset pecunia, an persona tantum exempta confusa obligatione. et puto aditione hereditatis confusione obligationis eximi personam: sed et accessiones ex eius persona liberari propter illam rationem, quia non possunt pro eodem apud eundem obligati esse, ut quemadmodum incipere alias non possunt, ita nec remaneant. igitur alterum reum eiusdem pecuniae non liberari et per hoc nec fideiussorem vel mandatorem eius. plane quia is mandati iudicio eligere potest vel creditorem, competituram ei exceptionem doli mali, si coeperit conveniri. cum altero autem reo vel in solidum, si non fuerit societas, vel in partem, si socii fuerunt, posse creditorem agere. quod si creditor fideiussori heres fuerit vel fideiussor creditori, puto convenire confusione obligationis non liberari reum.

Dig. 46.1.71.1

Paulus 4 quaest.

Si ponamus unum ex reis promittendi pactum esse, ne a se peteretur, deinde mandatorem solvisse: mandati iudicio convenire potuit etiam eum, cum quo pactum est: non enim pactum creditoris tollit alienam actionem.

Dig. 46.1.71.2

Paulus 4 quaest.

Placet mandatorem teneri etiam si faeneraturo creditori mandet pecuniam credere.

Dig. 46.1.72

Gaius 3 de verb. oblig.

Si fideiussori sub condicione obligato " si navis ex asia venerit", quem sub hoc modo accepi, ut usque ad tempus vitae suae dumtaxat obligaretur, pendente condicione acceptum latum fuerit et is fideiussor adhuc pendente condicione mortuus fuerit: confestim a reo petere possum, quia existens condicio neque obligationem in personam iam mortui efficere neque acceptilationem confirmare possit.

Dig. 46.1.73

Paulus 76 ad ed.

Cum procurator in rem agebat, cautionem dederat ratam rem dominum habiturum: postea victo eo dominus reversus iterum de eadem re agitabat, et cum reus haberet possessionem, et noluit eam restituere et ideo magno condemnatus est: in amplius fideiussores non tenentur: hoc enim non debet imputari fideiussoribus, quod ille propter suam poenam praestitit.

Dig. 46.2.0. De novationibus et delegationibus.

Dig. 46.2.1pr.

Ulpianus 46 ad sab.

Novatio est prioris debiti in aliam obligationem vel civilem vel naturalem transfusio atque translatio, hoc est cum ex praecedenti causa ita nova constituatur, ut prior perematur. novatio enim a novo nomen accepit et a nova obligatione.

Dig. 46.2.1.1

Ulpianus 46 ad sab.

Illud non interest, qualis processit obligatio, utrum naturalis an civilis an honoraria, et utrum verbis an re an consensu: qualiscumque igitur obligatio sit, quae praecessit, novari verbis potest, dummodo sequens obligatio aut civiliter teneat aut naturaliter: ut puta si pupillus sine tutoris auctoritate promiserit.

Dig. 46.2.2

Ulpianus 48 ad sab.

Omnes res transire in novationem possunt: quodcumque enim sive verbis contractum est sive non verbis, novari potest et transire in verborum obligationem ex quacumque obligatione, dummodo sciamus novationem ita demum fieri, si hoc agatur, ut novetur obligatio: ceterum si non hoc agatur, duae erunt obligationes.

Dig. 46.2.3

Pomponius 1 ad sab.

Cui bonis interdictum est, novare obligationem suam non potest, nisi meliorem suam condicionem fecerit.

Dig. 46.2.4

Ulpianus 5 ad sab.

Si usus fructus debitorem meum delegavero tibi, non novatur obligatio mea: quamvis exceptione doli vel in factum tutus debeat esse adversus me is qui delegatus fuerit, et non solum donec manet ei usus fructus cui delegavi, sed etiam post interitum eius: videbimus quia etiam hoc incommodum sentit, si post mortem meam maneat ei usus fructus. et haec eadem dicenda sunt in qualibet obligatione personae cohaerenti.

Dig. 46.2.5

Ulpianus 34 ad sab.

In diem obligatio novari potest et prius quam dies advenerit. et generaliter constat et stipulatione in diem facta novationem contingere, sed non statim ex ea stipulatione agi posse, antequam dies venerit.

Dig. 46.2.6pr.

Ulpianus 46 ad sab.

Si ita fuero stipulatus: " quanto minus a titio debitore exegissem, tantum fideiubes?", non fit novatio, quia non hoc agitur, ut novetur.

Dig. 46.2.6.1

Ulpianus 46 ad sab.

Cum pecuniam mutuam dedit quis sine stipulatione et ex continenti fecit stipulationem, unus contractus est. idem erit dicendum et si ante stipulatio facta est, mox pecunia numerata sit.

Dig. 46.2.7

Pomponius 24 ad sab.

Cum enim pecunia mutua data stipulamur, non puto obligationem numeratione nasci et deinde eam stipulatione novari, quia id agitur, ut sola stipulatio teneat, et magis implendae stipulationis gratia numeratio intellegenda est fieri.

Dig. 46.2.8pr.

Ulpianus 46 ad sab.

Si stichum dari stipulatus fuerim et, cum in mora promissor esset, quo minus daret, rursus eundem stipulatus fuero, desinit periculum ad promissorem pertinere quasi mora purgata.

Dig. 46.2.8.1

Ulpianus 46 ad sab.

Legata vel fideicommissa si in stipulationem fuerint deducta et hoc actum, ut novetur, fiet novatio, si quidem pure vel in diem fuerint relicta, statim, si vero sub condicione, non statim, sed ubi condicio extiterit. nam et alias qui in diem stipulatur, statim novat, si hoc actum est, cum certum sit diem quandoque venturum: at qui sub condicione stipulatur, non statim novat, nisi condicio extiterit.

Dig. 46.2.8.2

Ulpianus 46 ad sab.

Si quis ita stipulatus a seio sit: " quod a titio stipulatus fuero, dare spondes?", an, si postea a titio stipulatus sim, fiat novatio solusque teneatur seius? et ait celsus novationem fieri, si modo id actum sit, ut novetur, id est ut seius debeat quod titius promisit: nam eodem tempore et impleri prioris stipulationis condicionem et novari ait, eoque iure utimur.

Dig. 46.2.8.3

Ulpianus 46 ad sab.

Idem celsus ait iudicatum solvi stipulatione actionem iudicati non novari, merito, quia hoc solum agitur ea stipulatione, ut fideiussoribus cautum sit, non ut ab obligatione iudicati discedatur.

Dig. 46.2.8.4

Ulpianus 46 ad sab.

Si decem, quae mihi titius debet, aut decem, quae seius debet, a tertio stipulatus fuero, putat Marcellus neutrum liberari, sed tertium eligere posse, pro quo decem solvere velit.

Dig. 46.2.8.5

Ulpianus 46 ad sab.

Si ab alio promissam sibi dotem maritus ab uxore dotis nomine stipulatus sit, non duplari dotem, sed fieri novationem placet, si hoc actum est: quid enim interest, ipsa an alius quilibet promittat? quod enim ego debeo si alius promittat, liberare me potest, si novationis causa hoc fiat: si autem non novandi animo hoc intervenit, uterque quidem tenetur, sed altero solvente alter liberatur. non tamen si quis stipuletur quod mihi debetur, aufert mihi actionem, nisi ex voluntate mea stipuletur: liberat autem me is qui quod debeo promittit, etiamsi nolim.

Dig. 46.2.9pr.

Ulpianus 47 ad sab.

Si pupillus sine tutoris auctoritate rem salvam fore stipulatus pubes factus ratam stipulationem habuerit novandi causa, tollitur tutelae actio. si non habuerit ratum, licet tutelae egisset, habet tamen adhuc ex stipulatu actionem:

sed iudex tutelae non aliter condemnare debet, quam si ex stipulatione liberatio fieret.

Dig. 46.2.9.1

Ulpianus 47 ad sab.

Qui sub condicione stipulatur, quae omnimodo exstatura est, pure videtur stipulari.

Dig. 46.2.9.2

Ulpianus 47 ad sab.

Qui actum stipulatur, deinde iter, nihil agit: item usum fructum stipulatus si usum stipuletur, nihil agit. sed qui iter stipulatus actum postea stipuletur, aliud magis stipulatur: aliud est enim iter, aliud actus.

Dig. 46.2.10

Paulus 11 ad sab.

Cui recte solvitur, is etiam novare potest, excepto eo, si mihi aut titio stipulatus sim: nam titius novare non potest, licet recte ei solvitur.

Dig. 46.2.11pr.

Ulpianus 27 ad ed.

Delegare est vice sua alium reum dare creditori vel cui iusserit.

Dig. 46.2.11.1

Ulpianus 27 ad ed.

Fit autem delegatio vel per stipulationem vel per litis contestationem.

Dig. 46.2.12

Paulus 31 ad ed.

Si quis delegaverit debitorem, qui doli mali exceptione tueri se posse sciebat, similis videbitur ei qui donat, quoniam remittere exceptionem videtur. sed si per ignorantiam promiserit creditori, nulla quidem exceptione adversus creditorem uti poterit, quia ille suum recepit: sed is qui delegavit tenetur condictione vel incerti, si non pecunia soluta esset, vel certi, si soluta esset, et ideo, cum ipse praestiterit pecuniam, aget mandati iudicio.

Dig. 46.2.13

Ulpianus 38 ad ed.

Si non debitorem quasi debitorem delegavero creditori meo, exceptio locum non habebit, sed condictio adversus eum qui delegavit competit.

Dig. 46.2.14pr.

Ulpianus 7 disp.

Quotiens quod pure debetur, novandi causa sub condicione promittitur, non statim fit novatio, sed tunc demum, cum condicio extiterit. et ideo si forte stichus fuerit in obligatione et pendente condicione decesserit, nec novatio continget, quia non subest res eo tempore, quo condicio impletur. unde Marcellus et si post moram stichus in condicionalem obligationem deductus sit, purgari moram nec in sequentem deduci obligationem putat.

Dig. 46.2.14.1

Ulpianus 7 disp.

Sed si quod sub condicione debetur, pure quis novandi causa stipuletur, nec nunc quidem statim novat, licet pura stipulatio aliquid egisse videatur, sed tunc novabit, cum exstiterit condicio: etenim existens condicio primam stipulationem committit commissamque in secundam transfert. et ideo si forte persona promissoris pendente condicione fuerit deportata, Marcellus scribit ne quidem existente condicione ullam contingere novationem, quoniam nunc, cum extitit condicio, non est persona quae obligetur.

Dig. 46.2.15

Iulianus 13 Dig.

Si creditor poenam stipulatus fuerat, si ad diem pecunia soluta non esset, novatione facta non committitur stipulatio.

Dig. 46.2.16

Florus 8 inst.

Servus nec peculiarem quidem obligationem citra voluntatem domini novare potest, sed adicit potius obligationem quam pristinam novat.

Dig. 46.2.17

Ulpianus 8 ad ed.

Delegare scriptura vel nutu, ubi fari non potest, debitorem suum quis potest.

Dig. 46.2.18

Paulus 57 ad ed.

Novatione legitime facta liberantur hypothecae et pignus, usurae non currunt.

Dig. 46.2.19

Paulus 69 ad ed.

Doli exceptio, quae poterat deleganti opponi, cessat in persona creditoris, cui quis delegatus est. idemque est et in ceteris similibus exceptionibus, immo et in ea, quae ex senatus consulto filio familias datur: nam adversus creditorem, cui delegatus est ab eo, qui mutuam pecuniam contra senatus consultum dederat, non utetur exceptione, quia nihil in ea promissione contra senatus consultum fit: tanto magis, quod hic nec solutum repetere potest. diversum est in muliere, quae contra senatus consultum promisit: nam et in secunda promissione intercessio est. idemque est in minore, qui circumscriptus delegatur, quia, si etiamnunc minor est, rursum circumvenitur: diversum, si iam excessit aetatem viginti quinque annorum, quamvis adhuc possit restitui adversus priorem creditorem. ideo autem denegantur exceptiones adversus secundum creditorem, quia in privatis contractibus et pactionibus non facile scire petitor potest, quid inter eum qui delegatus est et debitorem actum est aut, etiamsi sciat, dissimulare debet, ne curiosus videatur: et ideo merito denegandum est adversus eum exceptionem ex persona debitoris.

Dig. 46.2.20pr.

Paulus 72 ad ed.

Novare possumus aut ipsi, si sui iuris sumus, aut per alios, qui voluntate nostra stipulantur.

Dig. 46.2.20.1

Paulus 72 ad ed.

Pupillus sine tutoris auctoritate non potest novare: tutor potest, si hoc pupillo expediat: item procurator omnium bonorum.

Dig. 46.2.21

Pomponius 1 ex plaut.

Si debitorem meum iussero tibi solvere, non statim tu etiam stipulando id novare possis, quamvis debitor solvendo tibi liberaretur.

Dig. 46.2.22

Paulus 14 ad plaut.

Si quis absente me a debitore meo stipulatus est novandi animo, ego postea ratum habuero, novo obligationem.

Dig. 46.2.23

Pomponius 3 ex plaut.

Filius patris actionem ignorante eo novare non potest.

Dig. 46.2.24

Pomponius 5 ex plaut.

Novatio non potest contingere ea stipulatione, quae non committitur. nec huic contrarium est, quod, si stipulatus a titio fuero novandi animo sub condicione, quod mihi sempronius debet, et pendente condicione titius decesserit, quamvis ante aditam hereditatem condicio exstiterit, novatio fieret: hic enim morte promissoris non extinguitur stipulatio, sed transit ad heredem cuius personam interim hereditas sustinet.

Dig. 46.2.25

Celsus 1 Dig.

Non ideo novare veterem obligationem quisquam recte potest, quod interdum recte ei solvitur: nam et his, qui in nostra potestate sunt, quod ab his creditum est recte interdum solvitur, cum nemo eorum per se novare priorem obligationem iure possit.

Dig. 46.2.26

Celsus 3 Dig.

Si is, cui decem titius, quindecim seius debebat, ab attio stipulatus est quod ille aut quod ille debeat, dari sibi, novatum utrumque non est, sed in potestate attii est, pro quo velit solvere et eum liberare. fingamus autem ita actum, ut alterutrum daret: nam alioquin utrumque stipulatus videtur et utrumque novatum, si novandi animo hoc fiat.

Dig. 46.2.27

Papinianus 3 resp.

Emptor cum delegante venditore pecuniam ita promittit: " quidquid ex vendito dare facere oportet", novatione secuta usuras neutri post insecuti temporis debet.

Dig. 46.2.28

Papinianus 2 def.

Fundum cornelianum stipulatus quanti fundus est postea stipulor: si non novandi animo secunda stipulatio facta est, cessat novatio: secunda vero stipulatio tenet, ex qua non fundus, sed pecunia debetur. itaque si reus promittendi fundum solvat, secunda stipulatio iure non tollitur, nec si litem actor ex prima contestetur. denique meliore vel deteriore facto sine culpa debitoris postea fundo praesens aestimatio fundo petito recte consideretur, in altera vero ea aestimatio venit, quae secundae stipulationis tempore fuit.

Dig. 46.2.29

Paulus 24 quaest.

Aliam causam esse novationis voluntariae, aliam iudicii accepti multa exempla ostendunt. perit privilegium dotis et tutelae, si post divortium dos in stipulationem deducatur vel post pubertatem tutelae actio novetur, si id specialiter actum est: quod nemo dixit lite contestata: neque enim deteriorem causam nostram facimus actionem exercentes, sed meliorem, ut solet dici in his actionibus, quae tempore vel morte finiri possunt.

Dig. 46.2.30

Paulus 5 resp.

Paulus respondit, si creditor a sempronio novandi animo stipulatus esset ita, ut a prima obligatione in universum discederetur, rursum easdem res a posteriore debitore sine consensu prioris obligari non posse.

Dig. 46.2.31pr.

Venonius 3 stipul.

Si rem aliquam dari stipulatus sum, deinde eandem sub condicione novandi animo ab eodem stipuler, manere oportet rem in rebus humanis, ut novationi locus sit, nisi si per promissorem steterit, quo minus daret. ideoque si hominem mihi dare te oporteat et in mora fueris, quo minus dares, etiam defuncto eo teneris: et si, priusquam decederet, cum iam mora facta sit, eundem a te sub condicione stipulatus fuero et servus postea decesserit, deinde condicio exstiterit, cum iam ex stipulatu obligatus es mihi, novatio quoque fiet.

Dig. 46.2.31.1

Venonius 3 stipul.

Si duo rei stipulandi sint, an alter ius novandi habeat, quaeritur et quid iuris unusquisque sibi adquisierit. fere autem convenit et uni recte solvi et unum iudicium petentem totam rem in litem deducere, item unius acceptilatione peremi utrisque obligationem: ex quibus colligitur unumquemque perinde sibi adquisisse, ac si solus stipulatus esset, excepto eo quod etiam facto eius, cum quo commune ius stipulantis est, amittere debitorem potest. secundum quae si unus ab aliquo stipuletur, novatione quoque liberare eum ab altero poterit, cum id specialiter agit, eo magis cum eam stipulationem similem esse solutioni existimemus. alioquin quid dicemus, si unus delegaverit creditori suo communem debitorem isque ab eo stipulatus fuerit? aut mulier fundum iusserit doti promittere viro, vel nuptura ipsi doti eum promiserit? nam debitor ab utroque liberabitur.

Dig. 46.2.32

Paulus 1 ad ner.

Te hominem et seium decem mihi dare oportet: stipulor ab altero novandi causa ita: " quod te aut seium dare oportet " : utrumque novatur. paulus: merito, quia utrumque in posteriorem deducitur stipulationem.

Dig. 46.2.33

Tryphonus 7 disp.

Si titius donare mihi volens delegatus a me creditori meo stipulanti spopondit, non habebit adversus eum illam exceptionem, ut quatenus facere potest condemnetur: nam adversus me tali defensione merito utebatur, quia donatum ab eo petebam, creditor autem debitum persequitur.

Dig. 46.2.34pr.

Gaius 3 de verb. oblig.

Dubitari non debet, quin filius servusve, cui administratio peculii permissa est, novandi quoque peculiaria debita ius habeat, utique si ipsi stipulentur, maxime si etiam meliorem suam condicionem eo modo faciunt. nam si alium iubeant stipulari, interest, utrum donandi animo alium iubeant stipulari an ut ipsi filio servove negotium gerat: quo nomine etiam mandati actio peculio adquiritur.

Dig. 46.2.34.1

Gaius 3 de verb. oblig.

Adgnatum furiosi aut prodigi curatorem novandi ius habere minime dubitandum est, si hoc furioso vel prodigo expediat.

Dig. 46.2.34.2

Gaius 3 de verb. oblig.

In summa admonendi sumus nihil vetare una stipulatione plures obligationes novari, veluti si ita stipulemur: " quod titium et seium mihi dare oportet, id dari spondes?" licet enim ex diversis causis singuli fuerant obligati, utrique tamen novationis iure liberantur, cum utriusque obligatio in huius personam, a quo nunc stipulemur, confluat.

Dig. 46.3.0. De solutionibus et liberationibus.

Dig. 46.3.1

Ulpianus 43 ad sab.

Quotiens quis debitor ex pluribus causis unum debitum solvit, est in arbitrio solventis dicere, quod potius debitum voluerit solutum, et quod dixerit, id erit solutum: possumus enim certam legem dicere ei quod solvimus. quotiens vero non dicimus, in quod solutum sit, in arbitrio est accipientis, cui potius debito acceptum ferat, dummodo in id constituat solutum, in quod ipse, si deberet, esset soluturus quoque debito se exoneraturus esset, si deberet, id est in id debitum, quod non est in controversia, aut in illud, quod pro alio quis fideiusserat, aut cuius dies nondum venerat: aequissimum enim visum est creditorem ita agere rem debitoris, ut suam ageret. permittitur ergo creditor constituere, in quod velit solutum, dummodo sic constituamus, ut in re sua constitueret, sed constituere in re praesenti, hoc est statim atque solutum est:

Dig. 46.3.2

Florus 8 inst.

Dum in re agenda hoc fiat, ut vel creditori liberum sit non accipere vel debitori non dare, si alio nomine exsolutum quis eorum velit:

Dig. 46.3.3pr.

Ulpianus 43 ad sab.

Ceterum postea non permittitur. haec res efficiet, ut in duriorem causam semper videatur sibi debere accepto ferre: ita enim et in suo constitueret nomine.

Dig. 46.3.3.1

Ulpianus 43 ad sab.

Quod si forte a neutro dictum sit, in his quidem nominibus, quae diem habuerunt, id videtur solutum, cuius dies venit:

Dig. 46.3.4

Pomponius 13 ad q. muc.

Et magis quod meo nomine, quam quod pro alio fideiussorio nomine debeo: et potius quod cum poena, quam quod sine poena debetur: et potius quod satisdato, quam quod sine satisdatione debeo.

Dig. 46.3.5pr.

Ulpianus 43 ad sab.

In his vero, quae praesenti die debentur, constat, quotiens indistincte quid solvitur, in graviorem causam videri solutum, si autem nulla praegravet, id est si omnia nomina similia fuerint, in antiquiorem. gravior videtur, quae et sub satisdatione videtur, quam ea quae pura est.

Dig. 46.3.5.1

Ulpianus 43 ad sab.

Si duos quis dederit fideiussores, potest ita solvere, ut unum liberet.

Dig. 46.3.5.2

Ulpianus 43 ad sab.

Imperator antoninus cum divo patre suo rescripsit, cum distractis pignoribus creditor pecuniam redigit: si sint usurae debitae et aliae indebitae, quod solvitur in usuras, ad utramque causam usurarum tam debitarum quam indebitarum pertinere: puta quaedam earum ex stipulatione, quaedam ex pacto naturaliter debebantur. si vero summa usurarum debitarum et non debitarum non eadem sit, aequaliter ad utramque causam proficit quod solutum est, non pro rata, ut verba rescripti ostendunt. sed si forte usurae non sint debitae et quis simpliciter solverit, quas omnino non erat stipulatus, imperator antoninus cum divo patre suo rescripsit, ut in sortem cedant. eidem autem rescripto ita subicitur: " quod generaliter constitutum est prius in usuras nummum solutum accepto ferendum, ad eas usuras videtur pertinere, quas debitor exsolvere cogitur: et sicut ex pacti conventione datae repeti non possunt, ita proprio titulo non numeratae pro solutis ex arbitrio percipientis non habebuntur".

Dig. 46.3.5.3

Ulpianus 43 ad sab.

Apud Marcellum libro vicensimo digestorum quaeritur, si quis ita caverit debitori " in sortem et usuras se accipere", utrum pro rata et sorti et usuris decedat an vero prius in usuras et, si quid superest, in sortem. sed ego non dubito, quin haec cautio " in sortem et in usuras" prius usuras admittat, tunc deinde, si quid superfuerit, in sortem cedat.

Dig. 46.3.6

Paulus 4 ad plaut.

Nec enim ordo scripturae spectatur, sed potius ex iure sumitur id quod agi videtur.

Dig. 46.3.7

Ulpianus 43 ad sab.

Si quid ex famosa causa et non famosa debeatur, id solutum videtur, quod ex famosa causa debetur. proinde si quid ex causa iudicati et non iudicati debeatur, id putem solutum, quod ex causa iudicati debetur, et ita pomponius probat. ergo si ex causa quae infitiatione crescit vel poenali debetur, dicendum est id solutum videri, quod poenae habet liberationem.

Dig. 46.3.8

Paulus 10 ad sab.

Illud non ineleganter scriptum esse pomponius ait, si par et dierum et contractuum causa sit, ex omnibus summis pro portione videri solutum.

Dig. 46.3.9pr.

Ulpianus 24 ad sab.

Stipulatus sum mihi aut sticho servo sempronii solvi: sempronio solvi non potest, quamvis dominus servi sit.

Dig. 46.3.9.1

Ulpianus 24 ad sab.

Qui decem debet, partem solvendo in parte obligationis liberatur et reliqua quinque sola in obligatione remanent: item qui stichum debet, parte stichi data in reliquam partem tenetur. qui autem hominem debet, partem stichi dando nihilo minus hominem debere non desinit: denique homo adhuc ab eo peti potest. sed si debitor reliquam partem stichi solverit vel per actorem steterit, quo minus accipiat, liberatur.

Dig. 46.3.10

Paulus 4 ad sab.

Quod stipulatus ita sum " mihi aut titio " , titius nec petere nec novare nec acceptum facere potest, tantumque ei solvi potest.

Dig. 46.3.11

Pomponius 8 ad sab.

Si stipulatus fuero " mihi aut pupillo dare ?", promissor, sine tutoris auctoritate solvendo pupillo, liberabitur a me.

Dig. 46.3.12pr.

Ulpianus 30 ad sab.

Vero procuratori recte solvitur. verum autem accipere debemus eum, cui mandatum est vel specialiter vel cui omnium negotiorum administratio mandata est.

Dig. 46.3.12.1

Ulpianus 30 ad sab.

Interdum tamen et non procuratori recte solvitur: ut puta cuius stipulationi nomen insertum est, si quis stipuletur sibi aut titio.

Dig. 46.3.12.2

Ulpianus 30 ad sab.

Sed et si quis mandaverit, ut titio solvam, deinde vetuerit eum accipere: si ignorans prohibitum eum accipere solvam, liberabor, sed si sciero, non liberabor.

Dig. 46.3.12.3

Ulpianus 30 ad sab.

Alia causa est, si mihi proponas stipulatum aliquem sibi aut titio: hic enim etsi prohibeat me titio solvere, solvendo tamen liberabor, quia certam condicionem habuit stipulatio, quam immutare non potuit stipulator.

Dig. 46.3.12.4

Ulpianus 30 ad sab.

Sed et si non vero procuratori solvam, ratum autem habeat dominus quod solutum est, liberatio contingit: rati enim habitio mandato comparatur.

Dig. 46.3.13

Iulianus 54 Dig.

Ratum autem habere dominus debet, cum primum certior factus est. sed hoc en platei et cum quodam spatio temporis accipi debet, sicut in legato, cum de repellendo quaereretur, spatium quoddam temporis adsumitur nec minimum nec maximum et quod magis intellectu percipi quam ex locutione exprimi possit.

Dig. 46.3.14pr.

Ulpianus 30 ad sab.

Quod si forte quis ita solvat, ut, nisi ratum habeatur, condicat: si dominus solutionem ratam non habuerit, condictio ei qui solvit competit.

Dig. 46.3.14.1

Ulpianus 30 ad sab.

Sunt quidam tutores, qui honorarii appellantur: sunt qui rei notitiae gratia dantur: sunt qui ad hoc dantur, ut gerant, et hoc vel pater adicit, ut unus puta gerat, vel voluntate tutorum uni committitur gestus, vel praetor ita decernit. dico igitur, cuicumque ex tutoribus fuerat solutum etsi honorariis (nam et ad hos periculum pertinet), recte solvi, nisi interdicta eis fuerit a praetore administratio: nam si interdicta est, non recte solvitur. idem dico et si quis sciens suspectis postulatis solvat: nam iis interim videtur interdicta administratio.

Dig. 46.3.14.2

Ulpianus 30 ad sab.

Quod si remoto solvit, ei solvit, qui tutor esse desierat, et ideo non liberabitur.

Dig. 46.3.14.3

Ulpianus 30 ad sab.

Quid ergo, si ei solvit, in cuius locum curator erat constituendus, ut puta relegato in perpetuum vel ad tempus? dico, si ante solvit, quam substitueretur curator, oportere liberari.

Dig. 46.3.14.4

Ulpianus 30 ad sab.

Sed et si afuturo rei publicae causa solvit, recte solvit: quin immo et si absenti, si modo non est alius in locum eius substitutus.

Dig. 46.3.14.5

Ulpianus 30 ad sab.

Sive autem legitimi sunt sive testamentarii sive ex inquisitione dati, recte vel uni solvitur.

Dig. 46.3.14.6

Ulpianus 30 ad sab.

Ei, qui notitiae gratia datus est an recte solvatur, videndum est, quia ad instruendos contutores datur. sed cum tutor sit, nisi prohibitum fuerit ei solvi, puto liberationem contingere.

Dig. 46.3.14.7

Ulpianus 30 ad sab.

Curatori quoque furiosi recte solvitur, item curatori sibi non sufficientis vel per aetatem vel per aliam iustam causam. sed et pupilli curatori recte solvi constat.

Dig. 46.3.14.8

Ulpianus 30 ad sab.

Pupillum sine tutoris auctoritate nec solvere posse palam est: sed si dederit nummos, non fient accipientis vindicarique poterunt. plane si fuerint consumpti, liberabitur.

Dig. 46.3.15

Paulus 6 ad sab.

Pupillo solvi sine tutoris auctoritate non potest: sed nec delegare potest, quia nec alienare ullam rem potest. si tamen solverit ei debitor et nummi salvi sint, petentem pupillum doli mali exceptione debitor summovebit.

Dig. 46.3.16

Pomponius 15 ad sab.

Sub condicione debitori si acceptum feratur, postea condicione existente intellegitur iam olim liberatus. et hoc etiam si solutio re fiat, accidere aristo dicebat. scripsit enim, si quis, qui sub condicione pecuniam promisit, dedit eam ea condicione, ut, si condicio exstitisset, in solutum cederet, existente condicione liberari eum nec obstare, quod ante eius pecunia facta est.

Dig. 46.3.17

Pomponius 19 ad sab.

Cassius ait, si cui pecuniam dedi, ut eam creditori meo solveret, si suo nomine dederit, neutrum liberari, me, quia non meo nomine data sit, illum, quia alienam dederit: ceterum mandati eum teneri. sed si creditor eos nummos sine dolo malo consumpsisset, is, qui suo nomine eos solvisset, liberatur, ne, si aliter observaretur, creditor in lucro versaretur.

Dig. 46.3.18

Ulpianus 41 ad sab.

Si quis servo pecuniis exigendis praeposito solvisset post manumissionem, si quidem ex contractu domini, sufficiet, quod ignoraverit manumissum: quod si ex causa peculiari, quamvis scierit manumissum, si tamen ignoraverit ademptum ei peculium, liberatus erit. utroque autem casu manumissus si intervertendi causa id fecerit, furtum domino facit: nam et si debitori meo mandavero, ut titio pecuniam solveret, deinde titium vetuero accipere idque ignorans debitor titio simulanti se procuratorem solverit, et debitor liberabitur et titius furti actione tenebitur.

Dig. 46.3.19

Pomponius 21 ad sab.

Fugitivus meus, cum pro libero se gereret, nummos mihi subreptos credidit tibi: obligari te mihi labeo ait et, si eum liberum existimans solveris ei, liberari te a me, sed si alii solvisses iussu eius vel is ratum habuisset, non liberari, quia priore casu mei nummi facti essent et quasi mihi solutum intellegeretur. et ideo servus meus quod peculiari nomine crediderit, exigendo liberabit debitorem, delegando autem vel novando non idem consequeretur.

Dig. 46.3.20

Pomponius 22 ad sab.

Si rem meam, quae pignoris nomine alii esset obligata, debitam tibi solvero, non liberabor, quia avocari tibi res possit ab eo, qui pignori accepisset.

Dig. 46.3.21

Paulus 10 ad sab.

Si decem stipulatus a titio deinde stipuleris a seio, quanto minus ab illo consecutus sis: etsi decem petieris a titio, non tamen absolvitur seius: quid enim, si condemnatus titius nihil facere potest? sed et si cum seio prius egeris, titius in nullam partem liberatur: incertum quippe est, an omnino seius debiturus sit: denique si totum titius solverit, nec debitor fuisse videbitur seius, quia condicio eius deficit.

Dig. 46.3.22

Ulpianus 45 ad sab.

Filius familias patre invito debitorem eius liberare non potest: adquirere enim obligationem potest, deminuere non potest.

Dig. 46.3.23

Pomponius 24 ad sab.

Solutione vel iudicium pro nobis accipiendo et inviti et ignorantes liberari possumus.

Dig. 46.3.24

Ulpianus 47 ad sab.

Ubi fideiussor pro duobus dena fideiussit, obligatus est in viginti, et sive viginti sive dena solverit, utrumque reum liberabit. sed si quinque solverit, videamus, quem ex reis relevet in quinque? erit ille relevatus, de quo actum est aut, si non appareat, antiquius debitum erit inspiciendum. idem et si quindecim sint soluta: si quidem appareat, quid actum sit, inde decem et aliunde quinque erunt relevata, si vero non apparet, ex antiquiore contractu decem, ex alio quinque erunt relevata.

Dig. 46.3.25

Pomponius 31 ad sab.

Ex parte heres institutus si decem, quae defunctus promiserat, tota solvit, pro parte quidem qua heres est liberabitur, pro parte autem reliqua ea condicet. sed si antequam condicat, ei adcreverit reliqua pars hereditatis, etiam pro ea parte erit obligatus et ideo condicenti indebitum doli mali exceptionem obstare existimo.

Dig. 46.3.26

Pomponius 35 ad sab.

Si creditor fundum pigneraticium vendiderit et quantum ei debebatur, receperit, debitor liberabitur. sed et si acceptum emptori pretium tulisset creditor vel ab eo stipulatus esset, debitor nihilo minus liberatur. sed si servus pigneratus a creditore venierit, quamdiu redhiberi possit, non liberabitur debitor, sicut in quolibet pignore vendito, quamdiu res inempta fieri possit.

Dig. 46.3.27

Ulpianus 28 ad ed.

Etiam circa stipulationem et ex testamento actionem, si res tradita fuerit quae debebatur, quamdiu aliquid iuri rei deest, adhuc tamen ipsa res petenda est: ut puta possum fundum petere, licet mihi traditus sit, si ius quoddam cautionis supererit.

Dig. 46.3.28

Paulus 38 ad ed.

Debitores solvendo ei, qui pro tutore negotia gerit, liberantur, si pecunia in rem pupilli pervenit.

Dig. 46.3.29

Ulpianus 38 ad ed.

Cum stichus et pamphilus communi servo promissi sunt, alteri stichus, alteri pamphilus solvi non potest, sed dimidiae singulorum partes debentur. idemque est, si quis aut duos stichos aut duos pamphilos dari promisit aut communi duorum servo homines decem dare promisit: nam ambigua vox est decem homines, quemadmodum decem denarii: atque utriusque rei dimidium duobus modis intellegi potest. sed in nummis et oleo ac frumento et similibus, quae communi specie continentur, apparet hoc actum, ut numero dividatur obligatio, quatenus et commodius promissori stipulatoribusque est.

Dig. 46.3.30

Ulpianus 51 ad ed.

Si debitor offerret pecuniam, quae peteretur, creditor nollet accipere, praetor ei denegat actiones.

Dig. 46.3.31

Ulpianus 7 disp.

Inter artifices longa differentia est et ingenii et naturae et doctrinae et institutionis. ideo si navem a se fabricandam quis promiserit vel insulam aedificandam fossamve faciendam et hoc specialiter actum est, ut suis operis id perficiat, fideiussor ipse aedificans vel fossam fodiens non consentiente stipulatore non liberabit reum. quare etiam si illis stipulationibus fideiussor accesserit: " per te non fieri, quo minus mihi ire agere liceat?", prohibens ire fideiussor stipulationem non committit et, si patientiam praestet, non efficiet, quo minus committatur stipulatio.

Dig. 46.3.32

Iulianus 13 Dig.

Si servus peculiari nomine crediderit eique debitor, cum ignoraret dominum mortuum esse, ante aditam hereditatem solverit, liberabitur. idem iuris erit et si manumisso servo debitor pecuniam solverit, cum ignoraret ei peculium concessum non esse. neque intererit, vivo an mortuo domino pecunia numerata sit: nam hoc quoque casu debitor liberatur, sicut is, qui iussus est a creditore pecuniam titio solvere, quamvis creditor mortuus fuerit, nihilo minus recte titio solvit, si modo ignoraverit creditorem mortuum esse.

Dig. 46.3.33pr.

Iulianus 52 Dig.

Qui sibi aut titio fundum dari stipulatus est, quamvis fundus titio datus fuerit, tamen, si postea evictus est, habet actionem, quemadmodum si hominem stipulatus esset et promissor statuliberum titio dedisset isque ad libertatem pervenisset.

Dig. 46.3.33.1

Iulianus 52 Dig.

Qui stichum aut pamphilum dari promisit, si stichum vulneraverat, non magis eum dando liberatur, quam si solum stichum promisisset et a se vulneratum daret. item qui hominem dari promisit et vulneratum a se offert, non liberatur. iudicio quoque accepto si hominem is cum quo agetur vulneratum a se offert, condemnari debebit. sed et ab alio vulneratum si det, condemnandus erit, cum possit alium dare.

Dig. 46.3.34pr.

Iulianus 54 Dig.

Qui hominem aut decem tibi aut titio dari promisit, si titio partem hominis tradiderit, mox tibi decem numeraverit, non titio, sed tibi partem hominis condicet, quasi indebitum tua voluntate titio solveret. idemque iuris erit etiam, si mortuo titio decem solverit, ut tibi potius quam heredi titii partem hominis condicat.

Dig. 46.3.34.1

Iulianus 54 Dig.

Si duo rei stipulandi hominem dari stipulati fuerint et promissor utrique partes diversorum hominum dederit, dubium non est, quin non liberetur. sed si eiusdem hominis partes utrique dederit, liberatio contingit, quia obligatio communis efficiet, ut quod duobus solutum est, uni solutum esse videatur. nam ex contrario cum duo fideiussores hominem dari spoponderint, diversorum quidem hominum partes dantes non liberantur: at si eiusdem hominis partes dederint, liberantur.

Dig. 46.3.34.2

Iulianus 54 Dig.

Stipulatus sum decem mihi aut hominem titio dari: si homo titio datus fuisset, promissor a me liberatur et, antequam homo daretur, ego decem petere possum.

Dig. 46.3.34.3

Iulianus 54 Dig.

Si titium omnibus negotiis meis praeposuero, deinde vetuero eum ignorantibus debitoribus administrare negotia mea, debitores ei solvendo liberabuntur: nam is, qui omnibus negotiis suis aliquem proponit, intellegitur etiam debitoribus mandare, ut procuratori solvant.

Dig. 46.3.34.4

Iulianus 54 Dig.

Si nullo mandato intercedente debitor falso existimaverit voluntate mea pecuniam se numerare, non liberabitur. et ideo procuratori, qui se ultro alienis negotiis offert, solvendo nemo liberabitur:

Dig. 46.3.34.5

Iulianus 54 Dig.

Et cum fugitivus, qui pro libero se gerebat, rem vendidisset, responsum est emptores fugitivo solventes a domino liberatos non esse.

Dig. 46.3.34.6

Iulianus 54 Dig.

Si gener socero, ignorante filia, dotem solvisset, non est liberatus, sed condicere socero potest, nisi ratum filia habuisset. et propemodum similis est gener ei, qui absentis procuratori solveret, quia in causam dotis particeps et quasi socia obligationis patri filia esset.

Dig. 46.3.34.7

Iulianus 54 Dig.

Si debitorem meum iussero pecuniam titio dare donaturus ei, quamvis titius ea mente acceperit, ut meos nummos faceret, nihilo minus debitor liberabitur: sed si postea titius eandem pecuniam mihi dedisset, nummi mei fient.

Dig. 46.3.34.8

Iulianus 54 Dig.

Quidam filium familias, a quo fideiussorem acceperat, heredem instituerat: quaesitum est, si iussu patris adisset hereditatem, an pater cum fideiussore agere posset. dixi, quotiens reus satisdandi reo satis accipiendi heres existeret, fideiussores ideo liberari, quia pro eodem apud eundem debere non possent.

Dig. 46.3.34.9

Iulianus 54 Dig.

Si praedo id, quod a debitoribus hereditariis exegerat, petenti hereditatem restituerit, debitores liberabuntur.

Dig. 46.3.34.10

Iulianus 54 Dig.

Si decem aut hominem dari stipulatus fuero et duos fideiussores accepero titium et maevium et titius quinque solverit, non liberabitur, priusquam maevius quoque quinque solvat: quod si maevius partem hominis solverit, uterque obligatus remanebit.

Dig. 46.3.34.11

Iulianus 54 Dig.

Qui perpetua exceptione se tueri potest, solutum repetit et ideo non liberatur. quare si ex duobus reis promittendi alter pepigerit, ne ab eo peteretur, quamvis solverit, nihilo minus alter obligatus manebit.

Dig. 46.3.35

Alfenus 2 Dig. a paulo epit.

Quod servus ex peculio suo credidisset aut deposuisset, id ei, sive venisset sive manumissus esset, recte solvi potest, nisi aliqua causa interciderit, ex qua intellegi possit invito eo, cuius tum is servus fuisset, ei solvi. sed et si quis dominicam pecuniam ab eo faeneratus esset, si permissu domini servus negotium dominicum gessisset, idem iuris est: videtur enim voluntate domini qui cum servo negotium contraheret et ab eo accipere et ei solvere.

Dig. 46.3.36

Iulianus 1 ad urs. ferocem.

Si pater meus praegnate uxore relicta decesserit et ex causa hereditaria totum hoc, quod patri meo debitum fuisset, petissem, nihil me consumpsisse quidam existimant: si nemo natus sit, recte me egisse, quia in rerum natura verum fuisset me solum heredem fuisse. iulianus notat: verius est me eam partem perdidisse, pro qua heres fuissem, antequam certum fuisset neminem nasci, aut quartam partem, quia tres nasci potuerunt, aut sextam, quia quinque: nam et aristoteles scripsit quinque nasci posse, quia vulvae mulierum totidem receptacula habere possunt: et esse mulierem romae alexandrinam ab aegypto, quae quinque simul peperit et tum habebat incolumes, et hoc et in aegypto adfirmatum est mihi.

Dig. 46.3.37

Iulianus 2 ad urs. ferocem.

Quotiens unus ex fideiussoribus suam partem solvisset, tamquam negotium reo gessisset, perinde habendum est, ac si reus ipse unius fideiussoris partem solvisset: sed tamen ut non ex sorte decedat, sed is fideiussor solus liberatur, cuius nomine solutio facta fuerit.

Dig. 46.3.38pr.

Africanus 7 quaest.

Cum quis sibi aut titio dari stipulatus sit, magis esse ait, ut ita demum recte titio solvi dicendum sit, si in eodem statu maneat, quo fuit, cum stipulatio interponeretur: ceterum sive in adoptionem sive in exilium ierit vel aqua et igni ei interdictum vel servus factus sit, non recte ei solvi dicendum: tacite enim inesse haec conventio stipulationi videtur " si in eadem causa maneat".

Dig. 46.3.38.1

Africanus 7 quaest.

Si debitorem meum iusserim titio solvere, deinde titium vetuerim accipere et debitor ignorans solverit, ita eum liberari existimavit, si non ea mente titius nummos acceperit, ut eos lucretur. alioquin, quoniam furtum eorum sit facturus, mansuros eos debitoris et ideo liberationem quidem ipso iure non posse contingere debitori, exceptione tamen ei succurri aequum esse, si paratus sit condictionem furtivam, quam adversus titium habet, mihi praestare: sicuti servatur, cum maritus uxori donaturus debitorem suum iubeat solvere: nam ibi quoque, quia nummi mulieris non fiunt, debitorem non liberari, sed exceptione eum adversus maritum tuendum esse, si condictionem, quam adversus mulierem habet, praestet. furti tamen actionem in proposito mihi post divortium competituram, quando mea intersit interceptos nummos non esse.

Dig. 46.3.38.2

Africanus 7 quaest.

De peculio cum domino actum est: is damnatus solvit. et fideiussores pro servo acceptos liberari respondit: eandem enim pecuniam in plures causas solvi posse argumentum esse, quod, cum iudicatum solvi satisdatum est et damnatus reus solvat, non solum actione iudicati, sed etiam ex stipulatu et ipse et fideiussores liberentur. et magis simile esse, quod, cum possessor hereditatis existimans se heredem esse solverit, heres non liberetur: tunc enim propterea id evenire, quod ille suo nomine indebitam pecuniam dando repetitionem eius haberet.

Dig. 46.3.38.3

Africanus 7 quaest.

Qui hominem promisit si statuliberum solvat, magis puto non esse exspectandam condicionem: sed et creditorem agere posse et illi condictionem competere. quod si interim condicio defecerit, liberatur, perinde atque si quis pendente condicione solvit per errorem et antequam condiceret, condicio exstiterit. illud nullo modo dici conveniet, si mortuo sticho condicio deficiat, liberari debitorem, quamvis, si vivente eo defecerit, liberaretur, quando isto casu nullo tempore perfecte hominem meum feceris: alioquin prope erit, ut etiam, si eum servum, in quo usus fructus alienus est, mihi solveris isque usu fructu manente decesserit, ea solutione liberatus videaris: quod nullo modo probandum est, sicuti si communem solvisses isque decessisset.

Dig. 46.3.38.4

Africanus 7 quaest.

Si quis pro eo reverso fideiusserit, qui, cum rei publicae causa abesset, actione qua liberatus sit, deinde annus praeterierit, an fideiussor liberetur? quod iuliano non placebat, et quidem si cum fideiussore experiundi potestas non fuit: sed hoc casu in ipsum fideiussorem ex edicto actionem restitui debere, quemadmodum in eum fideiussorem, qui hominem promissum occidit.

Dig. 46.3.38.5

Africanus 7 quaest.

Qui pro te apud titium fideiusserat, pignus in suam obligationem dedit: post idem heredem te instituit. quamvis ex fideiussoria causa non tenearis, nihilo minus tamen pignus obligatum manebit. at si idem alium fideiussorem dederit atque ita heredem te instituerit, rectius existimari ait sublata obligatione eius, pro quo fideiussum sit, eum quoque qui fideiusserit liberari.

Dig. 46.3.39

Africanus 8 quaest.

Si, soluturus pecuniam tibi, iussu tuo signatam eam apud nummularium, quoad probaretur, deposuerim, tui periculi eam fore mela libro decimo scribit. quod verum est, cum eo tamen, ut illud maxime spectetur, an per te steterit, quo minus in continenti probaretur: nam tunc perinde habendum erit, ac si parato me solvere tu ex aliqua causa accipere nolles. in qua specie non utique semper tuum periculum erit: quid enim, si inopportuno tempore vel loco optulerim? his consequens esse puto, ut etiam, si et emptor nummos et venditor mercem, quod invicem parum fidei haberent, deposuerint, et nummi emptoris periculo sint (utique si ipse eum, apud quem deponerentur, elegerit) et nihilo minus merx quoque, quia emptio perfecta sit.

Dig. 46.3.40

Marcianus 3 inst.

Si pro me quis solverit creditori meo, licet ignorante me, adquiritur mihi actio pigneraticia. item si quis solverit legata, debent discedere legatarii de possessione: alioquin nascitur heredi interdictum, ut eos deicere possit.

Dig. 46.3.41

Papinianus 1 de adult.

Reo criminis postulato interim nihil prohibet recte pecuniam a debitoribus solvi: alioquin plerique innocentium necessario sumptu egebunt.

Dig. 46.3.42

Paulus 3 de adult.

Sed nec illud prohibitum videtur, ne a reo creditori solvatur.

Dig. 46.3.43

Ulpianus 2 reg.

In omnibus speciebus liberationum etiam accessiones liberantur, puta adpromissores hypothecae pignora, praeterquam quod inter creditorem et adpromissores confusione facta reus non liberatur.

Dig. 46.3.44

Marcianus 2 reg.

In numerationibus aliquando evenit, ut una numeratione duae obligationes tollantur uno momento: veluti si quis pignus pro debito vendiderit creditori: evenit enim, ut et ex vendito tollatur obligatio et debiti. item si pupillo, qui sine tutoris auctoritate mutuam pecuniam accepit, legatum a creditore fuerit sub ea condicione, si eam pecuniam numeraverit, in duas causas videri eum numerasse, et in debitum suum, ut in falcidiam heredi imputetur, et condicionis gratia, ut legatum consequatur. item si usus fructus pecuniae numeratae legatus fuerit, evenit, ut una numeratione et liberetur heres ex testamento et obliget sibi legatarium. tantundem est et si damnatus fuerit alicui vendere vel locare: nam vendendo vel locando et liberatur ex testamento heres et obligat sibi legatarium.

Dig. 46.3.45pr.

Ulpianus 1 resp.

Callippo respondit, quamvis stipulanti uxori vir spoponderit dirempto matrimonio praedia, quae doti erant obligata, in solutum dare, tamen satis esse offerri dotis quantitatem.

Dig. 46.3.45.1

Ulpianus 1 resp.

Idem frontoni respondit perseveranti tutori in tutelae administratione, licet capitis reo, potuisse id, quod pupillo bona fide debetur, exsolvi.

Dig. 46.3.46pr.

Marcianus 3 reg.

Si quis aliam rem pro alia volenti solverit et evicta fuerit res, manet pristina obligatio. etsi pro parte fuerit evicta, tamen pro solido obligatio durat: nam non accepisset re integra creditor, nisi pro solido eius fieret.

Dig. 46.3.46.1

Marcianus 3 reg.

Sed et si duos fundos verbi gratia pro debito dederit, evicto altero fundo remanet integra obligatio. tunc ergo res pro re soluta liberationem praestat, cum pro solido facta est suscipientis.

Dig. 46.3.46.2

Marcianus 3 reg.

Sed et si quis per dolum pluris aestimatum fundum in solutum dederit, non liberatur, nisi id quod deest repleatur.

Dig. 46.3.47pr.

Marcianus 4 reg.

In pupillo, cui sine tutoris auctoritate solutum est, si quaeratur, quo tempore sit locupletior, tempus quo agitur inspicitur: et ut exceptio doli mali posita ei noceat, tempus quo agitur spectatur.

Dig. 46.3.47.1

Marcianus 4 reg.

Plane, ut scaevola aiebat, etiamsi perierit res ante litem contestatam, interdum quasi locupletior factus intellegitur, id est si necessariam sibi rem emit, quam necessario de suo erat empturus: nam hoc ipso, quo non est pauperior factus, locupletior est. sic et in filio familias putabat macedonianum cessare, si in necessarias causas filius mutuam pecuniam acceperit et eam perdiderit.

Dig. 46.3.48

Marcellus l.S. resp.

Titia cum propter dotem bona mariti possideret, omnia pro domina egit, reditus exegit et moventia distraxit: quaero, an ea, quae ex re mariti percepit, in dotem ei reputari debeant. Marcellus respondit reputationem eius quod proponeretur non iniquam videri: pro soluto enim magis habendum est, quod ex ea causa mulier percepit. sed si forte usurarum quoque rationem arbiter dotis reciperandae habere debuerit, ita est computandum, ut, prout quidque ad mulierem pervenit, non ex universa summa decedat, sed prius in eam quantitatem, quam usurarum nomine mulierem consequi oportebat: quod non est iniquum.

Dig. 46.3.49

Marcianus l.S. ad hypoth. form.

Solutam pecuniam intellegimus utique naturaliter, si numerata sit creditori. sed et si iussu eius alii solvatur, vel creditori eius vel futuro debitori vel etiam ei cui donaturus erat, absolvi debet. ratam quoque solutionem si creditor habuerit, idem erit. tutori quoque si soluta sit pecunia vel curatori vel procuratori vel cuilibet successori vel servo actori, proficiet ei solutio. quod si acceptum latum sit, quod stipulationis nomine hypotheca erat obligata vel sine stipulatione accepta sit, solutionis quidem verbum non proficiet, sed satisdationis sufficit.

Dig. 46.3.50

Paulus 10 ad sab.

Si, cum aurum tibi promisissem, ignoranti quasi aurum aes solverim, non liberabor: sed nec repetam hoc quasi indebitum solutum, quod sciens feci. petentem tamen te aurum exceptione summovebo, si non reddas aes quod accepisti.

Dig. 46.3.51

Paulus 9 ad ed.

Dispensatori, qui ignorante debitore remotus est ab actu, recte solvitur: ex voluntate enim domini ei solvitur, quam si nescit mutatam qui solvit liberatur.

Dig. 46.3.52

Ulpianus 14 ad ed.

Satisfactio pro solutione est.

Dig. 46.3.53

Gaius 5 ad ed. provinc.

Solvere pro ignorante et invito cuique licet, cum sit iure civili constitutum licere etiam ignorantis invitique meliorem condicionem facere.

Dig. 46.3.54

Paulus 56 ad ed.

Solutionis verbum pertinet ad omnem liberationem quoquo modo factam magisque ad substantiam obligationis refertur, quam ad nummorum solutionem.

Dig. 46.3.55

Ulpianus 61 ad ed.

Qui sic solvit, ut reciperet, non liberatur, quemadmodum non alienantur nummi, qui sic dantur, ut recipiantur.

Dig. 46.3.56

Paulus 62 ad ed.

Qui mandat solvi, ipse videtur solvere.

Dig. 46.3.57pr.

Ulpianus 77 ad ed.

Si quis stipulatus fuerit " decem in melle", solvi quidem mel potest, antequam ex stipulatu agatur: sed si semel actum sit et petita decem fuerint, amplius mel solvi non potest.

Dig. 46.3.57.1

Ulpianus 77 ad ed.

Item si mihi aut titio stipulatus fuero dari, deinde petam, amplius titio solvi non potest, quamvis ante litem contestatam posset.

Dig. 46.3.58pr.

Ulpianus 80 ad ed.

Si quis offerenti se negotiis alienis bona fide solverit, quando liberetur? et ait iulianus, cum dominus ratum habuerit, tunc liberari. idem ait, antequam dominus haberet ratum, an condici ex ea causa possit? et ait interesse, qua mente solutio facta esset, utrum ut statim debitor liberetur an vero cum dominus ratum habuisset: priore casu confestim posse condici procuratori et tunc demum extingui condictionem, cum dominus ratum habuisset, posteriore tunc demum nasci condictionem, cum dominus ratum non habuisset.

Dig. 46.3.58.1

Ulpianus 80 ad ed.

Si creditor, cuius ignorantis procuratori solutum est, adrogandum se dederit, sive ratum habuit pater, rata solutio est, sive non habuit, repetere debitor potest.

Dig. 46.3.58.2

Ulpianus 80 ad ed.

Et si duo rei stipulandi sunt, quorum alterius absentis procuratori datum, antequam is ratum haberet, interim alteri solutum est, in pendenti est posterior solutio ac prior: quippe incertum est, debitum an indebitum exegerit.

Dig. 46.3.59

Paulus 2 ad plaut.

Si ita stipulatus sim: " mihi aut titio dare spondes?" et debitor constituerit se mihi soluturum, quamvis mihi competat de constituta actio, potest adhuc adiecto solvere. et si a filio familias mihi aut titio stipulatus sim, patrem posse titio solvere quod in peculio est, scilicet si suo, non filii nomine solvere velit: dum enim adiecto solvitur, mihi solvi videtur: et ideo si indebitum adiecto solutum sit, stipulatori posse condici iulianus putat: ut nihil intersit, iubeam te titio solvere an ab initio stipulatio ita concepta sit.

Dig. 46.3.60

Paulus 4 ad plaut.

Is, qui alienum hominem in solutum dedit, usucapto homine liberatur.

Dig. 46.3.61

Paulus 5 ad plaut.

In perpetuum quotiens id, quod tibi debeam, ad te pervenit et tibi nihil absit nec quod solutum est repeti possit, competit liberatio.

Dig. 46.3.62

Paulus 8 ad plaut.

Dispensatorem meum testamento liberum esse iussi et peculium ei legavi: is post mortem meam a debitoribus pecunias exegit: an heres meus retinere ex peculio eius quod exegit possit, quaeritur. et si quidem post aditam hereditatem exegerit pecuniam, dubitari non debet, quin de peculio eo nomine retineri nihil debeat, quia liber factus incipit debere, si liberantur solutione debitores. cum vero ante aditam hereditatem pecuniam accepit dispensator, si quidem liberantur debitores ipsa solutione, non est dubium, quin de peculio id retinendum sit, quia incipit debere hic heredi quasi negotiorum gestorum vel mandati actione. si vero non liberantur, illa quaestio est: cum negotium meum gerens a debitoribus meis acceperis, deinde ego ratum non habuero et mox agere velim negotiorum gestorum actione, an utiliter agam, si caveam te indemnem futurum. quod quidem ego non puto: nam sublata est negotiorum gestorum actio eo, quod ratum non habui: et per hoc debitor mihi constituitur.

Dig. 46.3.63

Paulus 9 ad plaut.

Si debitor sit servi fructuarius, potest is servus per acceptilationem liberare eum: videbitur enim ex re eius adquirere. idem in pacto dicemus.

Dig. 46.3.64

Paulus 14 ad plaut.

Cum iussu meo id, quod mihi debes, solvis creditori meo, et tu a me et ego a creditore meo liberor.

Dig. 46.3.65

Pomponius 1 ex plaut.

Si filia furiosi a viro divorterit, dictum est vel adgnato curatori voluntate filiae vel filiae consentiente adgnato solvi dotem.

Dig. 46.3.66

Pomponius 6 ex plaut.

Si pupilli debitor iubente eo sine tutoris auctoritate pecuniam creditori eius numeravit, pupillum quidem a creditore liberat, sed ipse manet obligatus: sed exceptione se tueri potest. si autem debitor pupilli non fuerat, nec pupillo condicere potest, qui sine tutoris auctoritate non obligatur, nec creditori, cum quo alterius iussu contraxit: sed pupillus in quantum locupletior factus est, utpote debito liberatus, utili actione tenebitur.

Dig. 46.3.67

Marcellus 13 Dig.

Si quis duos homines promiserit et stichum solverit, poterit eiusdem stichi dominium postea consecutus dando liberari. in nummis minor vel prope nulla dubitatio est: nam et apud alfenum servius eum, qui minus a debitore suo accipere et liberare eum vellet, respondit posse saepius aliquos nummos accipiendo ab eo eique retro dando ac rursus accipiendo id efficere: veluti, si centum debitorem decem acceptis liberare creditor velit, ut, cum decem acceperit, eadem ei retro reddat, mox ab eo accipiat ac novissime retineat: etsi in dubitationem a quibusdam hoc male deducatur, quod non possit videri is qui ita accepit, ut ei a quo accepit retro reddat, solvisse potius quam decessisse.

Dig. 46.3.68

Marcellus 16 Dig.

Servus decem dare iussus pupillo et liber esse, si heres sit pupillus sive tantum condicio in eum collata sit, an absente quoque tutore pupillo dando libertatem consequatur? moveris comparatione condicionis, quae constitit in facto, veluti " si pupillo servierit", quae potest impleri citra interventum quoque tutoris. et quid, inquis, si curatorem habeat et si furioso dare iussus sit, an curatori dando liberetur? et finge alicui fundum legatum, si dedisset pupillo furiosove. et sciendum est in omnibus istis casibus tutori quidem vel curatori utiliter dependi, ipsis autem, id est furioso vel pupillo, non recte persolvi, ne datio ex illorum inbecillitate pereat: nec enim hoc egit testator, ut, quoquo modo esset datum, expleta videretur condicio.

Dig. 46.3.69

Celsus 24 Dig.

Si hominem, in quo usus fructus alienus est vel qui erat pignori titio obligatus, noxae dedisti, poterit is, cui condemnatus es, tecum agere iudicati, nec exspectabimus, ut creditor evincat. sed si usus fructus interierit vel dissoluta fuerit pignoris obligatio, existimo processuram liberationem.

Dig. 46.3.70

Celsus 26 Dig.

Quod certa die promissum est, vel statim dari potest: totum enim medium tempus ad solvendum promissori liberum relinqui intellegitur.

Dig. 46.3.71pr.

Celsus 27 Dig.

Cum decem mihi aut titio dari stipulatus quinque accipiam, reliquum promissor recte titio dabit.

Dig. 46.3.71.1

Celsus 27 Dig.

Si fideiussor procuratori creditoris solvit et creditor post tempus, quo liberari fideiussor poterit, ratum habuit, tamen quia fideiussor, cum adhuc ex causa fideiussionis teneretur, solvit, nec repetere potest nec minus agere adversus reum mandati potest, quam si tum praesenti dedisset.

Dig. 46.3.71.2

Celsus 27 Dig.

Item si ignorans creditor procuratori suo solutum servo debitoris filiove acceptum fecerit, postea autem rescierit et ratum habuerit, confirmatur solutio et quod acceptum latum sit, nullius momenti est: et contra, si ratum non habuerit, quod acceptum fecerit, confirmatur.

Dig. 46.3.71.3

Celsus 27 Dig.

Sed si ignorans solutum litem contestatus est, si pendente iudicio ratum habuit, absolvi oportet illum, cum quo actum est, si ratum non habuit, condemnari.

Dig. 46.3.72pr.

Marcellus 20 Dig.

Qui decem debet, si ea optulerit creditori et ille sine iusta causa ea accipere recusavit, deinde debitor ea sine sua culpa perdiderit, doli mali exceptione potest se tueri, quamquam aliquando interpellatus non solverit: etenim non est aequum teneri pecunia amissa, quia non teneretur, si creditor accipere voluisset. quare pro soluto id, in quo creditor accipiendo moram fecit, oportet esse. et sane si servus erat in dote eumque optulit maritus et is servus decessit, aut nummos optulit eosque non accipiente muliere perdiderit, ipso iure desinet teneri.

Dig. 46.3.72.1

Marcellus 20 Dig.

Cum stichum mihi deberes et in solvendo moram fecisses, sub condicione eum promisisti: pendente ea stichus decessit: videamus, an, quia novari prior obligatio non potest, petitio servi competat ea, quae competeret, si non intercessisset stipulatio. sed in promptu contradictio est debitorem, cum stipulanti creditori sub condicione promisit, non videri in solutione hominis cessasse: nam verum est eum, qui interpellatus dare noluit, offerentem postea periculo liberari.

Dig. 46.3.72.2

Marcellus 20 Dig.

Sed quid si ignorante debitore ab alio creditor eum stipulatus est? hic quoque existimandus est periculo debitor liberatus, quemadmodum si quolibet nomine eius servum offerente stipulator accipere noluisset.

Dig. 46.3.72.3

Marcellus 20 Dig.

Idem responsum est, si quis, cum subreptus sibi servus esset, sub condicione stipulatus fuerit quidquid furem dare facere oportet: nam et fur condictione liberatur, si dominus oblatum sibi accipere noluit. si tamen, cum in provincia forte servus esset, intercesserit stipulatio (et finge prius quam facultatem eius nancisceretur fur vel promissor, decessisse servum), non poterit rationi, quam supra reddidimus, locus esse: non enim optulisse eum propter absentiam intellegi potest.

Dig. 46.3.72.4

Marcellus 20 Dig.

Stichum aut pamphilum stipulatus sum, cum esset meus pamphilus: nec si meus esse desierit, liberabitur promissor pamphilum dando: neutrum enim videtur in pamphilo homine constitisse nec obligatio nec solutio. sed ei, qui hominem dari stipulatus est, unum etiam ex his, qui tunc stipulatoris servi erant, dando promissor liberatur: vi quidem ipsa et hic ex his dari stipulatus est, qui eius non erant. fingamus ita stipulatum: " hominem ex his, quos sempronius reliquit, dare spondes?", cum tres sempronius reliquisset, eorumque aliquem stipulatoris fuisse: num mortuis duobus, qui alterius erant, supererit ulla obligatio, videamus. et magis est deficere stipulationem, nisi ante mortem duorum desierit esse reliquus servus stipulatoris.

Dig. 46.3.72.5

Marcellus 20 Dig.

Qui hominem debebat, stichum, cui libertas ex causa fideicommissi praestanda est, solvit: non videtur liberatus: nam vel minus hic servum dedit quam ille, qui servum dedit nondum noxa solutum. num ergo et si vispellionem aut alias turpem dederit hominem, idem sit? et sane datum negare non possumus et differt haec species a prioribus: habet enim servum, qui ei auferri non possit.

Dig. d.46.3.72.6

Marcellus 20 Dig.

Promissor servi eum debet hominem solvere, quem, si velit stipulator, possit ad libertatem perducere.

Dig. 46.3.73

Marcellus 31 Dig.

Ob triginta nummos pecuniae creditae fideiussorem in viginti dedi et pignus: ex venditione autem pignoris creditor decem consecutus est: utrum ex universitate id decedit, ut quidam putant, si in solvendis decem nihil debitor dixisset, an sicut ego puto, in totis decem fideiussori contingit liberatio? quia hoc dicendo potuit hoc efficere debitor, ut, ubi non dixit, id potius soluturum existimetur, quod satisdato debeatur? magis tamen existimo licuisse creditori in id, quod solus debebat reus, accepto referre.

Dig. 46.3.74

Modestinus 3 reg.

Id, quod poenae nomine a debitore exactum est, lucro debet cedere creditoris.

Dig. 46.3.75

Modestinus 8 reg.

Sicut acceptilatio in eum diem praecedentes peremit actiones, ita et confusio: nam si debitor heres creditori exstiterit, confusio hereditatis peremit petitionis actionem.

Dig. 46.3.76

Modestinus 6 resp.

Modestinus respondit, si post solutum sine ullo pacto omne, quod ex causa tutelae debeatur, actiones post aliquod intervallum cessae sint, nihil ea cessione actum, cum nulla actio superfuerit: quod si ante solutionem hoc factum est vel, cum convenisset, ut mandarentur actiones, tunc solutio facta esset mandatum subsecutum est, salvas esse mandatas actiones, cum novissimo quoque casu pretium magis mandatarum actionum solutum quam actio quae fuit perempta videatur.

Dig. 46.3.77

Modestinus 7 pand.

In liberto antiquior contractus operarum esse non potest, sine quo libertas ei data non esset.

Dig. 46.3.78

Iavolenus 11 ex cass.

Si alieni nummi inscio vel invito domino soluti sunt, manent eius cuius fuerunt: si mixti essent, ita ut discerni non possent, eius fieri qui accepit in libris gaii scriptum est, ita ut actio domino cum eo, qui dedisset, furti competeret.

Dig. 46.3.79

Iavolenus 10 epist.

Pecuniam, quam mihi debes, aut aliam rem si in conspectu meo ponere te iubeam, efficitur, ut et tu statim libereris et mea esse incipiat: nam tum, quod a nullo corporaliter eius rei possessio detinetur, adquisita mihi et quodammodo manu longa tradita existimanda est.

Dig. 46.3.80

Pomponius 4 ad q. muc.

Prout quidque contractum est, ita et solvi debet: ut, cum re contraxerimus, re solvi debet: veluti cum mutuum dedimus, ut retro pecuniae tantundem solvi debeat. et cum verbis aliquid contraximus, vel re vel verbis obligatio solvi debet, verbis, veluti cum acceptum promissori fit, re, veluti cum solvit quod promisit. aeque cum emptio vel venditio vel locatio contracta est, quoniam consensu nudo contrahi potest, etiam dissensu contrario dissolvi potest.

Dig. 46.3.81pr.

Pomponius 6 ad q. muc.

Si stipulatus sim mihi aut titio dari, si titius decesserit, heredi eius solvere non poteris.

Dig. 46.3.81.1

Pomponius 6 ad q. muc.

Si lancem deposuerit apud me titius et pluribus heredibus relictis decesserit: si pars heredum me interpellet, optimum quidem esse, si praetor aditus iussisset me parti heredum eam lancem tradere, quo casu depositi me reliquis coheredibus non teneri. sed et si sine praetore sine dolo malo hoc fecero, liberabor aut (quod verius est) non incidam in obligationem. optimum autem est id per magistratum facere.

Dig. 46.3.82

Proculus 5 epist.

Si, cum cornelius fundum suum nomine seiae viro eius doti dedisset nec de eo reddendo quicquam cavisset, fecit, ut inter se vir et seia paciscerentur, ut divortio facto is fundus cornelio redderetur: non puto divortio facto virum vetante seia eum fundum cornelio tuto redditurum esse, sicuti si, cum pactum conventum nullum intercessisset, divortio facto mulier iussit eum fundum cornelio reddi, deinde antequam redderetur, vetuisset, non tuto redderetur. sed si antequam seia vetaret, cornelio eum fundum reddidisset nec causam habuisset existimandi id invita seia facturum esse, nec melius nec aequius esse existimarem eum fundum seiae reddi.

Dig. 46.3.83

Pomponius 14 ex var. lect.

Si tuo servo credidero eumque redemero et is manumissus mihi solverit, non repetet.

Dig. 46.3.84

Proculus 7 epist.

Egisti de peculio servi nomine cum domino: non esse liberatos fideiussores eius respondit. at si idem servus ex peculio suo permissa administratione peculii nummos solvisset, liberatos esse fideiussores eius recte legisti.

Dig. 46.3.85

Callistratus 1 ed. monit.

Solidum non solvitur non minus quantitate quam die.

Dig. 46.3.86

Paulus 8 ad ed.

Hoc iure utimur, ut litis procuratori non recte solvatur: nam et absurdum est, cui iudicati actio non datur, ei ante rem iudicatam solvi posse. si tamen ad hoc datus sit, ut et solvi possit, solvendo eo liberabitur.

Dig. 46.3.87

Celsus 20 Dig.

Quodlibet debitum solutum a procuratore meo non repeto, quoniam, cum quis procuratorem omnium rerum suarum constituit, id quoque mandare videtur, ut creditoribus suis pecuniam solvat neque post ea exspectandum est, ut ratum habeat.

Dig. 46.3.88

Scaevola 5 Dig.

Filiae intestato patri heredis negotia mater gessit et res vendendas per argentarios dedit idque ipsum codice conscriptum est: argentarii universum redactum venditionis solverunt et post solutionem novem fere annis, quidquid agendum erat, nomine pupillae mater egit eamque marito nuptum collocavit et res ei tradidit. quaesitum est, an puella cum argentariis aliquam actionem habet, quando non ipsa stipulata sit pretium rerum, quae in venditionem datae sunt, sed mater. respondit, si de eo quaereretur, an iure ea solutione argentarii liberati essent, responderi iure liberatos. claudius: subest enim illa ex iurisdictione pendens quaestio, an pretia rerum, quae sciebant esse pupillae, bona fide solvisse videantur matri, quae ius administrationis non habebat: ideoque si hoc sciebant, non liberantur, scilicet si mater solvendo non sit.

Dig. 46.3.89pr.

Scaevola 29 Dig.

Ex pluribus causis et chirographis creditor ita cavit: " titius maevius dico me accepisse et habere et accepto tulisse a gaio titio reliquum omne ratione posita eius pecuniae, quam mihi stichus gaii titii servus caverat". quaesitum est, an ex ceteris chirographis, quae non stichus cavit, sed ipse debitor, integra manet actio ex reliquis chirographis per ipsum debitorem cautis. respondit eam solam obligationem dissolutam, ex qua solutum proponeretur.

Dig. 46.3.89.1

Scaevola 29 Dig.

Lucius titius ex duobus chirographis, quibus quadringenta ei a seio debebantur, altero centum, altero trecentum, scripsit seio, ut unius chirographi centum per maevium et septicium sibi mitterentur: quaero, an seius, si maevio et septicio ex trecentum quoque solvisse se dicat, liberatus sit. respondit, si nec mandavit, ut ex trecentum solveretur, nec solutum ratum habuit, non esse liberatum.

Dig. 46.3.89.2

Scaevola 29 Dig.

Lucius titius duabus stipulationibus, una quindecim sub usuris maioribus, altera viginti sub usuris levioribus seium eadem die obligavit, ita ut viginti prius solverentur, id est idibus septembribus: debitor post diem utriusque stipulationis cedentem solvit viginti sex neque dictum est ab altero, pro qua stipulatione solveretur. quaero, an quod solutum est eam stipulationem exoneraverit, cuius dies ante cessit, id est ut viginti sortis videantur et in usuras eorum sex data. respondit magis id accipi ex usu esse.

Dig. 46.3.90

Scaevola 26 Dig.

Filius, qui administrabat ut heres paterna bona, pecuniam ex his sempronio mutuam dedit et eandem particulatim recepit, deinde se abstinuit, quia minor annis erat, ab ea hereditate: quaesitum est, curator bonorum patris constitutus an adversus sempronium utilem actionem habet. respondit nihil proponi, cur non is, qui solvisset id quod mutuum ita acceperat, liberatus esset.

Dig. 46.3.91

Labeo 6 pith. a paulo epit.

Si debitor tuus non vult a te liberari et praesens est, non potest invitus a te solvi. paulus: immo debitorem tuum etiam praesentem etiam invitum liberare ita poteris supponendo, a quo debitum novandi causa stipuleris: quod etiamsi acceptum non feceris, tamen statim, quod ad te attinet, res peribit: nam et petentem te doli mali praescriptio excludet.

Dig. 46.3.92pr.

Pomponius 9 epist.

Si mihi alienum servum dari promiseris aut testamento dare iussus fueris isque servus, antequam per te staret quo minus dares, a domino manumissus sit, haec manumissio morti similis sit: si autem decessisset, non tenearis.

Dig. 46.3.92.1

Pomponius 9 epist.

Sed et si quis servum, quem dari promisit, heres a domino scriptus statuliberum dederit, liberatur.

Dig. 46.3.93pr.

Scaevola l.S. quaest. publ. tract.

Si duo rei sint stipulandi et alter alterum heredem scripsit, videndum, an confundatur obligatio. placet non confundi. quo bonum est hoc dicere? quod, si intendat dari sibi oportere, vel ideo dari oportet ipsi, quod heres exstitit, vel ideo, quod proprio nomine ei deberetur. atquin magna est huius rei differentia: nam si alter ex reis pacti conventi temporali exceptione summoveri poterit, intererit, is qui heres exstitit utrumne suo nomine an hereditario experiatur, ut ita possis animadvertere, exceptioni locus sit nec ne.

Dig. 46.3.93.1

Scaevola l.S. quaest. publ. tract.

Item si duo rei sint promittendi et alter alterum heredem scripsit, confunditur obligatio.

Dig. 46.3.93.2

Scaevola l.S. quaest. publ. tract.

Sed et si reus heredem fideiussorem scripserit, confunditur obligatio. et quasi generale quid retinendum est, ut, ubi ei obligationi, quae sequellae locum optinet, principalis accedit, confusa sit obligatio: quotiens duae sint principales, altera alteri potius adicitur ad actionem, quam confusionem parere.

Dig. 46.3.93.3

Scaevola l.S. quaest. publ. tract.

Quid ergo, si fideiussor reum heredem scripserit ? confundetur obligatio secundum sabini sententiam, licet proculus dissentiat.

Dig. 46.3.94pr.

Papinianus 8 quaest.

Si is, cui nummos debitor solvit alienos, nummis integris pergat petere quod sibi debeatur, nec offerat quod accepit, exceptione doli summovebitur.

Dig. 46.3.94.1

Papinianus 8 quaest.

Sin autem communes nummos credam aut solvam, confestim pro parte mea nascetur et actio et liberatio, sive in singulis nummis communionem pro indiviso quis esse intellegat sive in pecunia non corpora cogitet, sed quantitatem.

Dig. 46.3.94.2

Papinianus 8 quaest.

Sed et si fideiussor alienos nummos in causam fideiussionis dedit, consumptis his mandati agere potest: et ideo si eam pecuniam solvat, quam subripuerat, mandati aget, postquam furti vel ex causa condictionis praestiterit.

Dig. 46.3.94.3

Papinianus 8 quaest.

Fabius ianuarius papiniano salutem. cum titius gaio seio deberet ex causa fideicommissi certam quantitatem et tantundem eidem ex alia causa, quae peti quidem non poterat, ex solutione autem petitionem non praestat, titii servus actor absente domino solvit eam summam, quae efficeret ad quantitatem unius debiti, cautumque est ei solutum ex universo credito: quaero, id quod solutum est in quam causam acceptum videtur. respondi, si quidem titio seius ita cavisset, ut sibi solutum ex universo credito significaret, crediti appellatio solam fideicommissi pecuniam demonstrare videtur, non eam, quae petitionem quidem non habet, solutione autem facta repeti pecunia non potest. cum vero servus titii actor absente domino pecuniam solverit, ne dominium quidem nummorum in eam speciem obligationis, quae habuit auxilium exceptionis, translatum foret, si ex ea causa solutio facta proponeretur, quia non est vero simile dominum ad eam speciem solvendis pecuniis servum praeposuisse, quae solvi non debuerunt, non magis quam ut nummos peculiares ex causa fideiussionis, quam servus non ex utilitate peculii suscepit, solveret.

Dig. 46.3.95pr.

Papinianus 28 quaest.

" stichum aut pamphilum, utrum ego velim, dare spondes?" altero mortuo qui vivit solus petetur, nisi si mora facta sit in eo mortuo, quem petitor elegit: tunc enim perinde solus ille qui decessit praebetur, ac si solus in obligationem deductus fuisset.

Dig. 46.3.95.1

Papinianus 28 quaest.

Quod si promissoris fuerit electio, defuncto altero qui superest aeque peti poterit. enimvero si facto debitoris alter sit mortuus, cum debitoris esset electio, quamvis interim non alius peti possit, quam qui solvi etiam potest, neque defuncti offerri aestimatio potest, si forte longe fuit vilior, quoniam id pro petitore in poenam promissoris constitutum est, tamen, si et alter servus postea sine culpa debitoris moriatur, nullo modo ex stipulatu agi poterit, cum illo in tempore, quo moriebatur, non commiserit stipulationem. sane quoniam impunita non debent esse admissa, doli actio non immerito desiderabitur: aliter quam in persona fideiussoris, qui promissum hominem interfecit, quia tenetur ex stipulatu actione fideiussor, quemadmodum tenebatur, si debitor sine herede decessisset.

Dig. 46.3.95.2

Papinianus 28 quaest.

Aditio hereditatis nonnumquam iure confundit obligationem, veluti si creditor debitoris vel contra debitor creditoris adierit hereditatem. aliquando pro solutione cedit, si forte creditor, qui pupillo sine tutoris auctoritate nummos crediderat, heres ei extitit: non enim quanto locupletior pupillus factus est, consequeretur, sed in solidum creditum suum ex hereditate retinet. aliquando evenit, ut inanis obligatio aditione hereditatis confirmetur. nam si heres, qui restituerit ex trebelliano hereditatem, fideicommissario heres exstiterit, vel mulier, quae pro titio intercesserat, eidem heres extiterit, incipit obligatio civilis propter hereditatem eius, qui iure tenebatur, auxilium exceptionis amittere: etenim inconditum est subvenire sexui mulieris, quae suo nomine periclitetur.

Dig. 46.3.95.3

Papinianus 28 quaest.

Quod volgo iactatur fideiussorem, qui debitori heres extitit, ex causa fideiussionis liberari, totiens verum est, quotiens rei plenior promittendi obligatio invenitur. nam si reus dumtaxat fuit obligatus, fideiussor liberabitur.

e contrario non potest dici non tolli fideiussoris obligationem, si debitor propriam et personalem habuit defensionem: nam si minori viginti quinque annis bonae fidei pecuniam credidit isque nummos acceptos perdidit et intra tempora in integrum restitutionis decessit herede fideiussore, difficile est dicere causam iuris honorarii, quae potuit auxilio minori esse, retinere fideiussoris obligationem, quae principalis fuit et cui fideiussoris accessit sine contemplatione iuris praetorii. auxilium igitur restitutionis fideiussoris qui adulescenti heres extitit, intra constitutum tempus salvum erit.

Dig. 46.3.95.4

Papinianus 28 quaest.

Naturalis obligatio ut pecuniae numeratione, ita iusto pacto vel iureiurando ipso iure tollitur, quod vinculum aequitatis, quo solo sustinebatur, conventionis aequitate dissolvitur: ideoque fideiussor, quem pupillus dedit, ex istis causis liberari dicitur.

Dig. 46.3.95.5

Papinianus 28 quaest.

Quaesitum est, an ita stipulari quis possit: " mihi aut filio meo decem dari?" vel ita: " mihi aut patri?" sed non incommode potest adhiberi distinctio, ut filio quidem stipulante patris tunc adiciatur persona, cum stipulatio ei adquiri non possit: e contrario autem nihil prohibeat patre stipulante filii personam adici, cum totiens, quod pater filio stipulatur, sibi stipulatus intellegitur, cum ipsi sibi stipulatus non est, et in proposito manifestum est non obligationis, sed solutionis gratia filii personam adiectam.

Dig. 46.3.95.6

Papinianus 28 quaest.

Usum fructum mihi aut titio dari stipulatus sum: titio capite deminuto, facultas solvendi titio non intercidit, quia et sic stipulari possumus: " mihi aut titio, cum capite minutus erit, dari?"

Dig. 46.3.95.7

Papinianus 28 quaest.

Nam si furiosi vel pupilli persona adiecta sit, ita tutori vel curatori pecunia recte dabitur, si condicionis quoque implendae causa recte pecunia tutori vel curatori datur. quod quidem labeo et pegasus putaverunt utilitatis causa recipiendum: idque ita recipi potest, si pecunia in rem vel pupilli vel furiosi versa est, quomodo si domino iussus dare servo dedisset, ut domino daret. ceterum qui servo dare iussus est, domino dando non aliter implesse condicionem intellegendus est, quam si ex voluntate servi dedit. idem respondendum est in solutione, si stipulato sempronio sibi aut sticho maevii servo decem dari debitor maevio domino pecuniam solverit.

Dig. 46.3.95.8

Papinianus 28 quaest.

Si creditor debitoris hereditatem ad se non pertinentem possedit et tantum ad eum pervenit, quantum, si quilibet alius bonorum possessor ei solveret, liberaret heredem, non potest dici fideiussores liberari: neque enim ipsum sibi solvisse pecuniam credendum est, a quo hereditas evincitur.

Dig. 46.3.95.9

Papinianus 28 quaest.

Dolo fecisti, quo minus possideres quod ex hereditate ad alium pertinente adprehenderas: si possessor corpus aut litis aestimationem praestitit, ea res tibi proderit, quia nihil petitoris interest: ceterum si tu ante conventus ex praeterito dolo praestiteris, nihil ea res possessori proderit.

Dig. 46.3.95.10

Papinianus 28 quaest.

Si mandatu meo titio pecuniam credidisses, eiusmodi contractus similis est tutori et debitori pupilli: et ideo mandatore convento et damnato, quamquam pecunia soluta sit, non liberari debitorem ratio suadet, sed et praestare debet creditor actiones mandatori adversus debitorem, ut ei satisfiat. et hoc pertinet tutoris et pupilli debitoris non fecisse comparationem: nam cum tutor pupillo tenetur ob id, quod debitorem eius non convenit, neque iudicio cum altero accepto liberatur alter nec, si damnatus tutor solverit, ea res proderit debitori: quin etiam dici solet tutelae contraria actione agendum, ut ei pupillus adversus debitores actionibus cedat.

Dig. 46.3.95.11

Papinianus 28 quaest.

Si creditor a debitore culpa sua causa ceciderit, prope est, ut actione mandati nihil a mandatore consequi debeat, cum ipsius vitio acciderit, ne mandatori possit actionibus cedere.

Dig. 46.3.95.12

Papinianus 28 quaest.

Si inter emptorem et venditorem convenerit, priusquam aliquid ex alterutra parte solveretur, ut ab emptione discedatur, fideiussor eo nomine acceptus soluto contractu liberabitur.

Dig. 46.3.96pr.

Papinianus 11 resp.

Pupilli debitor tutore delegante pecuniam creditori tutoris solvit: liberatio contigit, si non malo consilio cum tutore habito hoc factum esse probetur. sed et interdicto fraudatorio tutoris creditor pupillo tenetur, si eum consilium fraudis participasse constabit.

Dig. 46.3.96.1

Papinianus 11 resp.

Cum pupilla magistratui, qui per fraudem pupillo tutorem dedit, heres extitisset, tutores eius cum adulescente transegerunt: eam transactionem pupilla ratam habere noluit: nihilo minus erit tutorum pecunia liberata nec tutores contra adulescentem actionem nec utilem habebunt, qui suum reciperavit. plane si adulescens pecuniam restituere tutori pupillae maluerit, rescisso quod gestum est actionem utilem in pupillam heredem magistratus accipiet.

Dig. 46.3.96.2

Papinianus 11 resp.

Soror, cui legatum ab herede fratre debebatur, post motam legati quaestionem transegit, ut nomine debitoris contenta legatum non peteret. placuit, quamvis nulla delegatio facta neque liberatio secuta esset, tamen nominis periculum ad eam pertinere itaque, si legatum contra placitum peteret, exceptionem pacti non inutiliter opponi.

Dig. 46.3.96.3

Papinianus 11 resp.

Cum eodem tempore pignora duobus contractibus obligantur, pretium eorum pro modo pecuniae cuiusque contractus creditor accepto facere debet nec in arbitrio eius electio erit, cum debitor pretium pignoris consortioni subiecerit:

quod si temporibus discretis superfluum pignorum obligari placuit, prius debitum pretio pignorum iure solvetur, secundum superfluo compensabitur.

Dig. 46.3.96.4

Papinianus 11 resp.

Cum institutus deliberaret, substituto pecunia per errorem soluta est: ad eum hereditate postea devoluta causa condictionis evanescit: quae ratio facit, ut obligatio debiti solvatur.

Dig. 46.3.97

Papinianus 2 def.

Cum ex pluribus causis debitor pecuniam solvit, utriusque demonstratione cessante potior habebitur causa eius pecuniae, quae sub infamia debetur: mox eius, quae poenam continet: tertio quae sub hypotheca vel pignore contracta est: post hunc ordinem potior habebitur propria quam aliena causa, veluti fideiussoris. quod veteres ideo definierunt, quod verisimile videretur diligentem debitorem admonitum ita negotium suum gesturum fuisse. si nihil eorum interveniat, vetustior contractus ante solvetur. si maior pecunia numerata sit, quam ratio singulorum exposcit, nihilo minus primo contractu soluto, qui potior erit, superfluum ordini secundo vel in totum vel pro parte minuendo videbitur datum.

Dig. 46.3.98pr.

Paulus 15 quaest.

Qui res suas obligavit, postea aliquam possessionem ex his pro filia sua dotem promittendo obligavit et solvit. si ea res a creditore evicta est, dicendum est maritum ex dotis promissione agere posse, ac si statuliberum remve sub condicione legatam dotis nomine pro filia pater solvisset: harum enim rerum solutio non potest nisi ex eventu liberare, scilicet quo casu certum erit remanere eas.

Dig. 46.3.98.1

Paulus 15 quaest.

Diversum respondetur in ea pecunia sive re, quam patronus post mortem liberti per fabianam aufert: haec enim actio cum sit nova, partam liberationem non potest revocare.

Dig. 46.3.98.2

Paulus 15 quaest.

Huic applicatur minor viginti quinque annis, qui a creditore circumscriptus in rem ex causa debiti solutam restituitur.

Dig. 46.3.98.3

Paulus 15 quaest.

Rem autem castrensis peculii solventem patrem perinde accipere debemus, ac si alienam dedisset, quamvis possit residere apud eum, cui soluta est, prius mortuo intestato filio: sed tunc adquisita creditur, cum filius decesserit: et utique cuius fuerit, eventus declaret sitque et hoc ex his, quae post factis, in praeteritum quid fuerit, declarent.

Dig. 46.3.98.4

Paulus 15 quaest.

Mihi dare decem pure aut titio kalendis vel sub condicione, aut mihi kalendis ianuariis, titio februariis utiliter stipulor: quod si mihi kalendis februariis, titio kalendis ianuariis, potest dubitari. sed rectius dicitur utiliter stipulatum: nam cum in diem sit ea quoque obligatio, etiam mihi solvi potest ante februarias: igitur et illi solvi poterit.

Dig. 46.3.98.5

Paulus 15 quaest.

Qui stipulatus " sibi aut titio" si hoc dicit " si titio non solveris" dari sibi, videtur condicionaliter stipulari. et ideo etiam sic facta stipulatione: " mihi decem aut quinque titio dari?" quinque titio solutis liberabitur reus a stipulatore. quod ita potest admitti, si hoc ipsum expressim agebatur, ut quasi poena adiecta sit in persona stipulantis, si titio solutum non esset. at ubi simpliciter " sibi aut titio" stipulatur, solutionis tantum causa adhibetur titius et ideo quinque ei solutis remanebunt reliqua quinque in obligatione. contra si mihi quinque, illi decem stipulatus sim, quinque titio solutis non facit conceptio stipulationis, ut a me liberetur: porro si decem solverit, non quinque repetet, sed mihi per mandati actionem decem debebuntur.

Dig. 46.3.98.6

Paulus 15 quaest.

Mihi romae aut ephesi titio dari stipulor: an solvendo titio ephesi a me liberetur, videamus: nam si diversa facta sunt, ut iulianus putat, diversa res est.

sed cum praevalet causa dandi, liberatur: liberaretur enim et si mihi stichum, illi pamphilum dari stipulatus essem et titio pamphilum solvisset. at ubi merum factum stipulor, puta insulam in meo solo aedificari aut in titii loco, numquid, si in titii loco aedificet, non contingat liberatio? nemo enim dixit facto pro facto soluto liberationem contingere. sed verius est liberationem contingere, quia non factum pro facto solvere videtur, sed electio promissoris completur.

Dig. 46.3.98.7

Paulus 15 quaest.

Si servus fructuarius ex re fructuarii domino proprietatis aut fructuario stipuletur, inutilis est stipulatio: at ex re proprietarii si ipsi domino aut fructuario stipuletur, recte stipulatur: tantum enim solutionis capax est fructuarius hoc casu, non etiam obligationis.

Dig. 46.3.98.8

Paulus 15 quaest.

Aream promisi alienam: in ea dominus insulam aedificavit: an stipulatio extincta sit, quaesitum est. respondi, si alienum hominem promisi et is a domino manumissus est, liberor. nec admissum est, quod celsus ait, si idem rursus lege aliqua servus effectus sit, peti eum posse: in perpetuum enim sublata obligatio restitui non potest, et si servus effectus sit, alius videtur esse. nec simili argumento usus est, ut, si navem, quam tu promisisti, dominus dissolverit, deinde isdem tabulis compegerit, teneri te: hic enim eadem navis est, quam te daturum spopondisti, ut videatur magis obligatio cessare quam extincta esse. homini autem manumisso simile fiet, si ea mente dissolutam esse navem posueris, ut in alios usus converterentur tabulae, deinde mutato consilio easdem compositas: alia enim videbitur esse posterior navis, sicut ille alius homo est. non est his similis area, in qua aedificium positum est: non enim desiit in rerum natura esse. immo et peti potest area et aestimatio eius solvi debebit: pars enim insulae area est et quidem maxima, cui etiam superficies cedit. diversum dicemus, si servus promissus ab hostibus captus sit: hic interim peti non potest quasi ante diem, sed si redierit postliminio, recte tunc petetur: cessavit enim hic obligatio. area autem extat, sicut cetera, ex quibus aedificium constitit. denique lex duodecim tabularum tignum aedibus iunctum vindicari posse scit, sed interim id solvi prohibuit pretiumque eius dari voluit.

Dig. 46.3.99

Paulus 4 resp.

Respondit debitorem non esse cogendum in aliam formam nummos accipere, si ex ea re damnum aliquid passurus sit.

Dig. 46.3.100

Paulus 10 resp.

Quaero, an curatoribus vel tutoribus in provincia datis romae pecunia solvi possit, quae in provincia ita ab his faenerata esset, ut romae solveretur, cum idem curatores vel tutores rerum italicarum administrationem non sustinent, an, si solverit debitor, liberetur. paulus respondit his tutoribus vel curatoribus recte pupillo pecuniam debitam solvi, qui negotia eius administrant: eos autem, qui provincialium rerum curatores vel tutores sunt, italica negotia administrare non solere, nisi specialiter tutores provincialium rerum, ut sibi romae redderetur, promitti curaverunt.

Dig. 46.3.101pr.

Paulus 15 resp.

Paulus respondit non ideo eos, qui virilem portionem ex causa fideicommissi inferre debuerant, liberatos videri, quoniam quidam ex collegis per errorem plus debito intulerunt.

Dig. 46.3.101.1

Paulus 15 resp.

Paulus respondit aliam causam esse debitoris solventis, aliam creditoris pignus distrahentis: nam cum debitor solvit pecuniam, in potestate eius esse commemorare, in quam causam solveret: cum autem creditor pignus distraheret, licere ei pretium in acceptum referre etiam in eam quantitatem, quae natura tantum debebatur, et ideo deducto eo debitum peti posse.

Dig. 46.3.102pr.

Scaevola 5 resp.

Creditor oblatam a debitore pecuniam ut alia die accepturus distulit: mox pecunia, qua illa res publica utebatur, quasi aerosa iussu praesidis sublata est: item pupillaris pecunia, ut possit idoneis nominibus credi servata, ita interempta est: quaesitum est, cuius detrimentum esset. respondi secundum ea quae proponerentur nec creditoris nec tutoris detrimentum esse.

Dig. 46.3.102.1

Scaevola 5 resp.

Cum de sorte debita constaret, de usura litigatum esset, novissime ex appellatione pronuntiatum est solutas quidem usuras non repeti, in futurum vero non deberi: quaero, pecunia data utrum usuris cedere deberet, quod petitor defenderet, an vero sorti proficeret. respondi, si qui dabat, in sortem se dare dixisset, usuris non debere proficere.

Dig. 46.3.102.2

Scaevola 5 resp.

Valerius lucii titii servus scripsit: " accepi a mario marino ex summa maiore tot aureos": quaero, an haec summa in proximum annum ei accepto ferri debeat, cum superioris anni sit reliquator. respondi videri in primam quamque summam liberationem proficere.

Dig. 46.3.102.3

Scaevola 5 resp.

Titius mutuam pecuniam accepit et quincunces usuras spopondit easque paucis annis solvit: postea nullo pacto interveniente per errorem et ignorantiam semisses usuras solvit: quaero, an patefacto errore id, quod amplius usurarum nomine solutum esset quam in stipulatum deductum, sortem minueret. respondit, si errore plus in usuris solvisset quam deberet, habendam rationem in sortem eius quod amplius solutum est.

Dig. 46.3.103

Maecenatus 2 fideic.

Cum ex pluribus causis debitor pecuniam solvit, iulianus elegantissime putat ex ea causa eum solvisse videri debere, ex qua tunc, cum solvebat, compelli poterit ad solutionem.

Dig. 46.3.104

Maecenatus 8 fideic.

Ante restitutam hereditatem solutiones et liberationes factae ab herede ratae habebuntur.

Dig. 46.3.105

Paulus l.S. ad l. falcid.

Quod dicimus in eo herede, qui fideiussori testatoris id, quod ante aditam hereditatem ab eo solutum est, debere statim solvere, cum aliquo scilicet temperamento temporis intellegendum est: nec enim cum sacco adire debet.

Dig. 46.3.106

Gaius 2 de verb. oblig.

Aliud est iure stipulationis titio solvi posse, aliud postea permissu meo id contingere. nam cui iure stipulationis recte solvitur, ei etiam prohibente me recte solvi potest: cui vero alias permisero solvi, ei non recte solvitur, si, priusquam solveretur, denuntiaverim promissori, ne ei solveretur.

Dig. 46.3.107

Pomponius 2 enchir.

Verborum obligatio aut naturaliter resolvitur aut civiliter: naturaliter veluti solutione aut cum res in stipulationem deducta sine culpa promissoris in rebus humanis esse desiit: civiliter veluti acceptilatione vel cum in eandem personam ius stipulantis promittentisque devenit.

Dig. 46.3.108

Paulus 2 manual.

Ei, qui mandatu meo post mortem meam stipulatus est, recte solvitur, quia talis est lex obligationis: ideoque etiam invito me recte ei solvitur. ei autem, cui iussi debitorem meum post mortem meam solvere, non recte solvitur, quia mandatum morte dissolvitur.

Dig. 46.4.0. De acceptilatione.

Dig. 46.4.1

Modestinus 2 reg.

Acceptilatio est liberatio per mutuam interrogationem, qua utriusque contingit ab eodem nexu absolutio.

Dig. 46.4.2

Ulpianus 24 ad sab.

Pupillum per acceptilationem etiam sine tutoris auctoritate liberari posse placet.

Dig. 46.4.3

Paulus 4 ad sab.

Per procuratorem nec liberari nec liberare quisquam acceptilatione sine mandato potest.

Dig. 46.4.4

Pomponius 9 ad sab.

Acceptilatio sub condicione fieri non potest.

Dig. 46.4.5

Ulpianus 34 ad sab.

In diem acceptilatio facta nullius est momenti: nam solutionis exemplo acceptilatio solet liberare.

Dig. 46.4.6

Ulpianus 47 ad sab.

Pluribus stipulationibus factis si promissor ita accepto rogasset: " quod ego tibi promisi, habesne acceptum?", si quidem apparet, quid actum est, id solum per acceptilationem sublatum est: si non apparet, omnes stipulationes solutae sunt: dummodo illud sciamus, si ego aliud accepto tuli, aliud tu rogasti, nihil valere acceptilationem.

Dig. 46.4.7

Ulpianus 50 ad sab.

Sane et sic acceptilatio fieri potest: " accepta facis decem?" ille respondit " facio".

Dig. 46.4.8pr.

Ulpianus 48 ad sab.

An inutilis acceptilatio utile habeat pactum, quaeritur: et nisi in hoc quoque contra sensum est, habet pactum. dicet aliquis: potest ergo non esse consensus? cur non possit? fingamus eum, qui accepto ferebat, scientem prudentemque nullius esse momenti acceptilationem sic accepto tulisse: quis dubitat non esse pactum, cum consensum paciscendi non habuerit?

Dig. 46.4.8.1

Ulpianus 48 ad sab.

Servus communis sicut uni ex dominis stipulari potest, ita etiam acceptum rogare uni ex dominis potest eumque in solidum liberat: et ita octavenus putat.

Dig. 46.4.8.2

Ulpianus 48 ad sab.

Accepto liberare servus communis alterum ex dominis etiam ab altero domino potest: id enim et labeoni placuit. denique libro pithanon scripsit, si a primo domino secundo socio domino suo stipulatus fuerit, posse secundum accepto rogare et per acceptilationem primum liberare, quem ipse obligaverat: sic fieri, ut per unum atque eundem servum et constituatur et tollatur obligatio.

Dig. 46.4.8.3

Ulpianus 48 ad sab.

Acceptum fieri non potest, nisi quod verbis colligatum est: acceptilatio enim verborum obligationem tollit, quia et ipsa verbis fit: neque enim potest verbis tolli, quod non verbis contractum est.

Dig. 46.4.8.4

Ulpianus 48 ad sab.

Filius familias promittendo patrem civiliter non obligat, sed se obligat: propter quod accepto rogare filius familias potest, ut se liberet, quia ipse obligatus est, pater autem acceptum rogando nihil agit, cum non sit ipse obligatus, sed filius. idem erit et in servo dicendum: nam et servus accepto liberari potest, et tolluntur etiam honorariae obligationes, si quae sunt adversus dominum. quia hoc iure utimur, ut iuris gentium sit acceptilatio: et ideo puto et graece posse acceptum fieri, dummodo sic fiat, ut latinis verbis solet: exeis labwn dynaria tosa; exo labwn.

Dig. 46.4.9

Paulus 12 ad sab.

Pars stipulationis accepto fieri potest non tantum, si sic dicat: " ex nummis decem, quos tibi promisi, quinque habesne acceptos ?", sed et si sic: " quod ego tibi promisi, id pro parte dimidia habesne acceptum ?"

Dig. 46.4.10

Pomponius 26 ad sab.

Sed et si non numerata pecunia, sed certum corpus, veluti homo in stipulationem deductus est, potest ex parte acceptilatio fieri: quo modo et uni ex heredibus acceptum fieri potest.

Dig. 46.4.11pr.

Paulus 12 ad sab.

Species adquirendi est liberare dominum obligatione: et ideo fructuarius quoque servus liberare acceptum rogando fructuarium potest, quia ex re eius videtur ei adquirere. sed et si usum tantum habemus, idem fiet. idemque dicemus et in eo, qui bona fide nobis servit, et in ceteris, qui nostro iuri subiecti sunt.

Dig. 46.4.11.1

Paulus 12 ad sab.

Sed et si servo quod ipse mihi promisit acceptum fecero, inutiles mihi erunt adversus dominum honorariae actiones, quae de peculio vel in rem verso dantur.

Dig. 46.4.11.2

Paulus 12 ad sab.

Si servus hereditarius ante aditam hereditatem acceptum roget, quod defunctus promisit, verius puto contingere liberationem, ut per hoc hereditas ipsa liberetur.

Dig. 46.4.11.3

Paulus 12 ad sab.

Sed et si dominus apud hostes sit, dicendum est iure postliminii confirmari acceptilationem: nam et stipulari ei, qui apud hostes est, servus potest.

Dig. 46.4.12

Pomponius 26 ad sab.

Quod in diem vel sub condicione debetur, acceptilatione tolli potest: sed ita id factum apparebit, si condicio stipulationis extiterit vel dies venerit.

Dig. 46.4.13pr.

Ulpianus 50 ad sab.

Et per iusiurandum liberti interpositam operarum obligationem per acceptilationem tolli verius est.

Dig. 46.4.13.1

Ulpianus 50 ad sab.

Si id, quod in stipulationem deductum est, divisionem non recipiat, acceptilatio in partem nullius erit momenti, ut puta si servitus fuit praedii rustici vel urbani. plane si usus fructus sit in stipulatum deductus, puta fundi titiani, poterit pro parte acceptilatio fieri et erit residuae partis fundi usus fructus. si tamen viam quis stipulatus accepto iter vel actum fecerit, acceptilatio nullius erit momenti: hoc idem est probandum, si actus accepto fuerit latus. si autem iter et actus accepto fuerit latus, consequens erit dicere liberatum eum, qui viam promisit.

Dig. 46.4.13.2

Ulpianus 50 ad sab.

Illud certum est eum, qui fundum stipulatus usum fructum vel viam accepto facit, in ea esse causa, ut acceptilatio non valeat: qui enim accepto facit, vel totum vel partem eius, quod stipulatus est, debet accepto facere, hae autem partes non sunt, non magis quam si quis domum stipulatus accepto ferat cementa vel fenestras vel parietem vel diaetam.

Dig. 46.4.13.3

Ulpianus 50 ad sab.

Si quis usum fructum stipulatus usum accepto tulerit, si quidem sic tulerit acceptum quasi usu debito, liberatio non continget: si vero quasi ex usu fructu, cum possit usus sine fructu constitui, dicendum est acceptilationem valere.

Dig. 46.4.13.4

Ulpianus 50 ad sab.

Si is, qui hominem stipulatus est, stichum accepto tulerit, iulianus libro quinquagensimo quarto digestorum scripsit acceptilationem aliquid egisse tolisseque totam obligationem: quod enim invito stipulatori promissor solvere potest, id et acceptum latum liberationem pariet.

Dig. 46.4.13.5

Ulpianus 50 ad sab.

Eum, qui fundum stipulatus est, non posse de dolo malo clausulam acceptum ferre constat: non enim in partem debiti id constitit, et aliud est quod debetur, aliud quod accepto fertur.

Dig. 46.4.13.6

Ulpianus 50 ad sab.

Si stichum aut decem sub condicione stipulatus stichum acceptum fecerit et pendente condicione stichus decesserit, decem in obligatione manebunt, perinde ac si acceptilatio interposita non fuisset.

Dig. 46.4.13.7

Ulpianus 50 ad sab.

Si fideiussori accepto fuerit latum, cum reus re, non verbis fuisset obligatus, an reus quoque liberetur? et hoc iure utimur, ut, licet reus non sit verbis obligatus, tamen acceptilatione per fideiussorem liberetur.

Dig. 46.4.13.8

Ulpianus 50 ad sab.

Si legatorum sub condicione relictorum fideiussori dato accepto latum sit, legata debebuntur postea condicione eorum existente.

Dig. 46.4.13.9

Ulpianus 50 ad sab.

Qui ita stipulatur a fideiussore: " quod titio credidero, fide tua esse iubes?", deinde, antequam crederet, acceptum fecit fideiussori, reus non liberabitur, sed quandoque ei creditum fuerit, tenetur: nam et si fideiussorem non ante liberatum esse credimus, quam cum fuerit creditum reo, non tamen reus antiquiore acceptilatione, quam obligatio eius est, liberari potuit.

Dig. 46.4.13.10

Ulpianus 50 ad sab.

Tutor, curator furiosi acceptum ferre non potuit, nec procurator quidem potest facere acceptum: sed hi omnes debent novare (possunt enim) et sic accepto facere. ne his quidem accepto fieri potest, sed novatione facta potuerunt liberari per acceptilationem. nam et in absentium persona hoc remedio uti solemus: stipulamur ab aliquo id novandi causa, quod nobis absens debet, et ita accepto liberamus, a quo stipulati sumus: ita fiet, ut absens novatione, praesens acceptilatione liberetur.

Dig. 46.4.13.11

Ulpianus 50 ad sab.

Heres quoque et liberare et liberari accepto potest et honorarii successores.

Dig. 46.4.13.12

Ulpianus 50 ad sab.

Ex pluribus reis stipulandi si unus acceptum fecerit, liberatio contingit in solidum.

Dig. 46.4.14

Paulus 12 ad sab.

Nisi consentiat acceptilatio cum obligatione et nisi verum est, quod in acceptilatione demonstratur, imperfecta est liberatio, quia verbis verba ea demum resolvi possunt, quae inter se congruunt.

Dig. 46.4.15

Pomponius 27 ad sab.

Si is qui stichum promisit ita interroget: " quod stichum promisi, stichum et pamphilum habesne acceptos?", puto recte accepto latum et pro supervacuo pamphili mentionem factam, quemadmodum si is qui decem promisit ita interroget: " quod tibi decem promisi, viginti habesne accepta?", etiam decem nomine erit liberatus.

Dig. 46.4.16pr.

Ulpianus 7 disp.

Si ex pluribus obligatis uni accepto feratur, non ipse solus liberatur, sed et hi, qui secum obligantur: nam cum ex duobus pluribusque eiusdem obligationis participibus uni accepto fertur, ceteri quoque liberantur, non quoniam ipsis accepto latum est, sed quoniam velut solvisse videtur is, qui acceptilatione solutus est.

Dig. 46.4.16.1

Ulpianus 7 disp.

Si iudicati fideiussor sit datus acceptus eique accepto latum sit, liberabitur et iudicatus.

Dig. 46.4.17

Iulianus 54 Dig.

Qui hominem aut decem stipulatus est, si quinque accepto fecerit, partem stipulationis peremit et petere quinque aut partem hominis potest.

Dig. 46.4.18pr.

Florus 8 inst.

Et uno ex pluribus contractibus vel certis vel incertis vel, quibusdam exceptis, ceteris et omnibus ex causis una acceptilatio et liberatio fieri potest.

Dig. 46.4.18.1

Florus 8 inst.

Eius rei stipulatio, quam acceptio sequatur, a gallo aquilio talis exposita est: " quidquid te mihi ex quacumque causa dare facere oportet oportebit praesens in diemve, quarumque rerum mihi tecum actio quaeque adversus te petitio vel adversus te persecutio est eritve, quodve tu meum habes tenes possides: quanti quaeque earum rerum res erit, tantam pecuniam dari stipulatus est aulus agerius, spopondit numerius negidius". " quod numerius negidius aulo agerio promisit spopondit, id haberetne a se acceptum, numerius negidius aulum agerium rogavit, aulus agerius numerio negidio acceptum fecit " .

Dig. 46.4.19pr.

Ulpianus 2 reg.

Si accepto latum fuerit ei, qui non verbis, sed re obligatus est, non liberatur quidem, sed exceptione doli mali vel pacti conventi se tueri potest.

Dig. 46.4.19.1

Ulpianus 2 reg.

Inter acceptilationem et apocham hoc interest, quod acceptilatione omni modo liberatio contingit, licet pecunia soluta non sit, apocha non alias, quam si pecunia soluta sit.

Dig. 46.4.20

Ulpianus 77 ad ed.

Si accepto fuerit lata ob rem iudicatam clausula, Marcellus ait ceteras partes stipulationis evanuisse: propter hoc enim tantum interponuntur, ut res iudicari possit.

Dig. 46.4.21

Venonius 11 stipul.

Si sub condicione legatum mihi datum novandi causa stipulatus sum et ante existentem condicionem acceptum fecero, nerva filius ait, etiamsi condicio extiterit, neque ex testamento competituram actionem, quia novatio facta sit, neque ex stipulatu, quae acceptilatione soluta sit.

Dig. 46.4.22

Gaius 3 de verb. oblig.

Servus nec iussu domini acceptum facere potest.

Dig. 46.4.23

Labeo 5 pith. a paulo epit.

Si ego tibi acceptum feci, nihilo magis ego a te liberatus sum. paulus: immo cum locatio conductio, emptio venditio conventione facta est et nondum res intercessit, utrimque per acceptilationem, tametsi ab alterutra parte dumtaxat intercessit, liberantur obligatione.

Dig. 46.5.0. De stipulationibus praetoriis.

Dig. 46.5.1pr.

Ulpianus 70 ad ed.

Praetoriarum stipulationum tres videntur esse species, iudiciales cautionales communes.

Dig. 46.5.1.1

Ulpianus 70 ad ed.

Iudiciales eas dicimus, quae propter iudicium interponuntur ut ratum fiat, ut iudicatum solvi et ex operis novi nuntiatione.

Dig. 46.5.1.2

Ulpianus 70 ad ed.

Cautionales sunt autem, quae instar actionis habent et, ut sit nova actio, intercedunt, ut de legatis stipulationes et de tutela et ratam rem haberi et damni infecti.

Dig. 46.5.1.3

Ulpianus 70 ad ed.

Communes sunt stipulationes, quae fiunt iudicio sistendi causa.

Dig. 46.5.1.4

Ulpianus 70 ad ed.

Et sciendum est omnes stipulationes natura sui cautionales esse: hoc enim agitur in stipulationibus, ut quis cautior sit et securior interposita stipulatione.

Dig. 46.5.1.5

Ulpianus 70 ad ed.

Stipulationum istarum praetoriarum quaedam sunt, quae satisdationem exigunt, quaedam nudam repromissionem: sed perpaucae sunt, quae nudam promissionem habent, quibus enumeratis apparebit ceteras non esse repromissiones, sed satisdationes.

Dig. 46.5.1.6

Ulpianus 70 ad ed.

Stipulatio itaque ex operis novi nuntiatione alias satisdationem, alias repromissionem habet. ex qua operis novi nuntiatione satisdari oporteat, quemadmodum satisdetur. namque de eo opere, quod in privato factum erit, satisdatio est: de eo, quod in publico, repromitti oportet: sed hi quidem, qui suo nomine cavent, repromittunt, qui alieno, satisdant.

Dig. 46.5.1.7

Ulpianus 70 ad ed.

Item ex causa damni infecti interdum repromittitur, interdum satisdatur: nam si quid in flumine publico fiat, satisdatur, de aedibus autem repromittitur.

Dig. 46.5.1.8

Ulpianus 70 ad ed.

Stipulatio duplae repromissio est, nisi si convenerit, ut satisdetur.

Dig. 46.5.1.9

Ulpianus 70 ad ed.

Quod si sit aliqua controversia, ut puta si dicatur per calumniam desiderari, ut stipulatio interponatur, ipse praetor debet super ea re summatim cognoscere et cautum iubere aut denegare.

Dig. 46.5.1.10

Ulpianus 70 ad ed.

Sed et si quid vel addi vel detrahi vel immutari in stipulatione oporteat, praetoriae erit iurisdictionis.

Dig. 46.5.2pr.

Paulus 73 ad ed.

Praetoriae stipulationes aut rei restitutionem continent aut incertam quantitatem.

Dig. 46.5.2.1

Paulus 73 ad ed.

Sicuti stipulatio ex operis novi nuntiatione, qua cavetur, ut opus restituatur: ideoque sive actor sive reus decesserit pluribus heredibus relictis, uno vincente vel victo totum opus restitui debebit: quamdiu enim aliquid superest, tamdiu non potest videri opus restitutum.

Dig. 46.5.2.2

Paulus 73 ad ed.

Incertam quantitatem continet stipulatio iudicatum solvi et rem ratam dominum habiturum et damni infecti et his similes, in quibus respondetur scindi eas in personas heredum, quamvis possit dici ex persona heredum promissoris non posse descendentem a defuncto stipulationem diversam condicionem cuiusque facere. at in contrarium summa ratione fit, ut uno ex heredibus stipulatoris vincente in partem eius committatur stipulatio: hoc enim facere verba stipulationis " quanti ea res est". sed si unus ex heredibus promissoris totam rem possideat, in solidum eum damnandum iulianus scribit: in quantum autem ipse ea stipulatione vel fideiussores an omnino teneantur, dubitari potest: et videndum ait, ne non committatur. sed si lite contestata possessor decesserit, unum ex heredibus non maiore ex parte damnandum, licet totum fundum possideat, quam ex qua heres est.

Dig. 46.5.3

Ulpianus 79 ad ed.

Generaliter in omnibus praetoriis stipulationibus et procuratoribus satisdatur.

Dig. 46.5.4

Paulus 75 ad ed.

Praetoriae stipulationes saepius interponuntur, cum sine culpa stipulatoris cautum esse desiit.

Dig. 46.5.5

Paulus 48 ad ed.

In omnibus praetoriis stipulationibus hoc servandum est, ut, si procurator meus stipuletur, mihi causa cognita ex ea stipulatione actio competat. idem est et cum institor in ea causa esse coepit, ut interposita persona eius dominus mercis rem amissurus sit, veluti bonis eius venditis: succurrere enim domino praetor debet.

Dig. 46.5.6

Paulus 14 ad plaut.

In omnibus praetoriis stipulationibus, in quibus primo fieri aliquid, deinde, si factum non sit, poenam inferimus, poenae nomine stipulatio committitur.

Dig. 46.5.7

Ulpianus 14 ad ed.

Praetoriae satisdationes personas desiderant pro se intervenientium et neque pignoribus quis neque pecuniae vel auri vel argenti depositione in vicem satisdationis fungitur.

Dig. 46.5.8pr.

Papinianus 5 quaest.

Paulus notat: qui sub condicione institutus est, adgnita bonorum possessione cogitur substituto in diem cavere longiorem: praetor enim beneficium suum nemini vult esse captiosum et potest videri calumniose satis petere, quem alius antecedit.

Dig. 46.5.8.1

Papinianus 5 quaest.

Cum sub contrariis condicionibus titio et maevio legatum sit, utrique cavetur, quia uterque ex voluntate defuncti sperat legatum.

Dig. 46.5.9

Venonius 1 stipul.

In praetoriis stipulationibus si ambiguus sermo acciderit, praetoris erit interpretatio: eius enim mens aestimanda est.

Dig. 46.5.10

Ulpianus 1 resp.

Valeriano respondit: si praeses, qui ante in triennium caveri iusserat, postea in longum tempus caveri praecepit: quia a prima stipulatione prorsus discedi voluerat, exceptionem primae stipulationi obligatis peperisse videtur.

Dig. 46.5.11

Venonius 8 act.

In eiusmodi stipulationibus, quae " quanti ea res est" promissionem habent, commodius est certam summam comprehendere, quoniam plerumque difficilis probatio est, quanti cuiusque intersit, et ad exiguam summam deducitur.

Dig. 46.6.0. Rem pupilli vel adulescentis salvam fore.

Dig. 46.6.1

Paulus 24 ad ed.

Cum pupillo rem salvam fore satisdatum sit, agi ex ea tunc potest, cum et tutelae potest.

Dig. 46.6.2

Ulpianus 79 ad ed.

Si pupillus absens sit vel fari non possit, servus eius stipulabitur: si servum non habeat, emendus ei servus est: sed si non sit unde ematur aut non sit expedita emptio, profecto dicemus servum publicum apud praetorem stipulari debere:

Dig. 46.6.3

Ulpianus 35 ad ed.

(aut dare aliquem praetor debet, cui caveatur):

Dig. 46.6.4pr.

Ulpianus 79 ad ed.

Non quasi ipso iure pupillo adquirat (neque enim adquirit), sed ut utilis actio ex stipulatu pupillo detur.

Dig. 46.6.4.1

Ulpianus 79 ad ed.

Cavetur autem pupillo hac stipulatione per satisdationem.

Dig. 46.6.4.2

Ulpianus 79 ad ed.

Illud sciendum est hac stipulatione teneri tam eum, qui tutor est, quam eum, qui pro tutore negotia gessit vel gerat, et fideiussores eorum.

Dig. 46.6.4.3

Ulpianus 79 ad ed.

Sed enim qui non gessit, omnino non tenebitur: nam nec actio tutelae eum qui non gessit tenet, sed utili actione conveniendus est, quia suo periculo cessavit: et tamen ex stipulatu actione neque ipse neque fideiussores eius tenebuntur. compellendus igitur erit ad administrationem propterea, ut stipulatione quoque ista possit teneri.

Dig. 46.6.4.4

Ulpianus 79 ad ed.

Hanc stipulationem placet finita demum tutela committi et fideiussoribus diem exinde incipere cedere. in curatore aliud est: sed et in eo, qui pro tutore negotia gessit, aliud dicendum est. itaque istae stipulationes, si quidem quis tutor fuit, finita demum tutela committentur: si vero pro tutore negotia gessit, conveniens est dicere, statim atque quaeque res salva non esse coepisset, committi stipulationem.

Dig. 46.6.4.5

Ulpianus 79 ad ed.

Si tutor ab hostibus captus sit, an committatur stipulatio, videamus. movet, quia finita tutela est, licet reciperari speretur: et puto posse agi.

Dig. 46.6.4.6

Ulpianus 79 ad ed.

Generaliter sciendum est: ex quibus causis diximus tutelae agi non posse, ex isdem causis ne ex stipulatu rem salvam fore agi posse dicendum est.

Dig. 46.6.4.7

Ulpianus 79 ad ed.

Si quis curator datus non gesserit curam, consequens erit dicere stipulationem non committi: sed eadem hic erunt dicenda, quae in tutore diximus, illo secus, quod haec stipulatio statim, atque quid salvum esse desinit, committitur et fideiussoribus dies cedit: sed in se revolvitur.

Dig. 46.6.4.8

Ulpianus 79 ad ed.

Pertinet autem haec stipulatio ad omnes curatores sive puberibus sive impuberibus datos propter aetatis infirmitatem, sive prodigis vel furiosis vel quibusdam aliis (ut fieri adsolet) dati sint.

Dig. 46.6.5

Paulus 76 ad ed.

Si filius, qui in potestate furiosi erit, rem salvam fore stipuletur, adquirit patri obligationes.

Dig. 46.6.6

Gaius 27 ad ed. provinc.

Servum pupilli stipulari ita necesse est, si pupillus abest aut fari non potest: nam si praesens sit et fari potest, etiamsi eius aetatis erit, ut non intellegat quid agat, tamen propter utilitatem receptum est recte eum stipulari.

Dig. 46.6.7

Modestinus 6 reg.

Dativus vel testamentarius tutor sive curator non petet satis a collega suo, sed offerre ei poterit, utrum satis accipere velit an dare.

Dig. 46.6.8

Ulpianus 2 ad ed.

Et si ad species curator datus sit, rem salvam fore stipulatio interponetur.

Dig. 46.6.9

Pomponius 15 ad sab.

Cum pupillus a tutore stipulatur rem salvam fore, non solum quae in patrimonio habet, sed etiam quae in nominibus sunt ea stipulatione videntur contineri: quod enim in tutelae iudicium venit, hoc et ea stipulatione continetur.

Dig. 46.6.10

Africanus 3 quaest.

Si, posteaquam pupillus ad pubertatem pervenerit, tutor in restituenda tutela aliquamdiu moram fecerit, certum est et fructuum nomine et usurarum medii temporis tam fideiussores eius quam ipsum teneri.

Dig. 46.6.11

Nerva 4 membr.

Cum rem salvam fore pupillo cavetur, committitur stipulatio, si, quod ex tutela dari fieri oportet, non praestetur: nam et si salva ei res sit, ob id non est, quia, quod ex tutela dari fieri oportet, non solvitur.

Dig. 46.6.12

Papinianus 12 quaest.

Si plures fideiussores a tutore pupillo dati sunt, non esse eum distringendum, sed in unum dandam actionem ita, ut ei, qui conveniretur, actiones praestarentur. nec quisquam putaverit ab iure discessum, postquam pro ea parte placuit tutores condemnari, quam administraverunt, et ita demum in solidum, si res a ceteris non servetur et idonea culpa detegatur, quod suspectum facere supersederit: nam aequitas arbitri atque officium viri boni videtur eam formam iuris desiderasse. ceterum fideiussores civiliter in solidum obligati ceteris quidem agentibus, ut dividatur actio, impetrare possunt: pupillo vero agente, qui non ipse contraxit, sed in tutorem incidit et ignorat omnia, beneficium dividendae actionis iniuriam habere visum est, ne ex una tutelae causa plures ac variae quaestiones apud diversos iudices constituerentur.

Dig. 46.7.0. Iudicatum solvi.

Dig. 46.7.1

Paulus 24 ad ed.

In stipulatione iudicatum solvi post rem iudicatam statim dies cedit, sed exactio in tempus reo principali indultum differtur.

Dig. 46.7.2

Paulus 71 ad ed.

Cum lite mortua nulla res sit, ideo constat fideiussores ex stipulatu iudicatum solvi non teneri.

Dig. 46.7.3pr.

Ulpianus 77 ad ed.

Si quis apud aliquem iudicem iturus stipulatus est iudicatum solvi et agit apud alterum, non committitur stipulatio, quia non huius iudicis sententiae fideiussores se subdiderunt.

Dig. 46.7.3.1

Ulpianus 77 ad ed.

Stipulationem iudicatum solvi et procurator et tutor et curator stipulari possunt.

Dig. 46.7.3.2

Ulpianus 77 ad ed.

Procuratorem eum accipere debemus, cui mandatum est, sive huius rei tantum mandatum susceperit sive etiam universorum bonorum. sed et si ratum fuerit habitum, procurator videtur.

Dig. 46.7.3.3

Ulpianus 77 ad ed.

Sed et si forte ex liberis vel parentibus aliquis interveniat vel vir uxoris nomine, a quibus mandatum non exigitur, an committatur stipulatio, quaeritur: magisque erit, ne committi debeat, nisi fuerit ei mandatum vel ratum habitum: quod enim eis agere permittitur edicto praetoris, non facit eos procuratores. itaque si talis persona interveniat, ex integro erit cavendum.

Dig. 46.7.3.4

Ulpianus 77 ad ed.

Sed et quod de tutore diximus, ita accipiendum est, ut, si is fuerit, qui tutelam administrabat, cum tutor non esset, tutoris appellatione eum non contineri.

Dig. 46.7.3.5

Ulpianus 77 ad ed.

Sed et si quidem tutor sit, non tamen quasi tutor negotia administret (vel dum ignorat vel alia ex causa), dicendum erit non committi stipulationem: nam edicto praetoris illi tutori agendi facultas datur, cui a parente maioreve parte tutorum eorumve, cuius ea iurisdictio fuit, tutela permissa erit.

Dig. 46.7.3.6

Ulpianus 77 ad ed.

Sed et curatorem accipiemus furiosi furiosae, item pupilli pupillae, ceterorum quoque curatores, puta adulescentis: vel si alterius cuius curator sit, committi puto stipulationem.

Dig. 46.7.3.7

Ulpianus 77 ad ed.

Si tutor esse proponatur regionis alicuius vel provinciae vel rerum italicarum, consequens erit dicere, stipulationem ita demum committi, si ex ea causa egerint, quae ad administrationem eorum pertinebat.

Dig. 46.7.3.8

Ulpianus 77 ad ed.

Si reus, postquam iudicatum solvi promisit, demens factus sit, an stipulatio committatur ob rem non defensam, quaeritur: magisque est, ut committatur, si nemo eum defendat.

Dig. 46.7.3.9

Ulpianus 77 ad ed.

Ob rem non defensam stipulatio non committitur, quamdiu potest existere qui defendat.

Dig. 46.7.3.10

Ulpianus 77 ad ed.

Si plures fuerint fideiussores, posteaquam cum uno lis contestata est ex clausula ob rem non defensam, ipse reus potest suscipere defensionem:

Dig. 46.7.4

Iulianus 55 Dig.

Is autem, cum quo actum fuit, absolvi debet.

Dig. 46.7.5pr.

Ulpianus 77 ad ed.

Tam tamen fideiussore, qui iudicium acceperat, damnato frustra defensionem reus suscipit: ceterum et si solutum fuerit, posteaquam iudicatum est, repetitionem constituerimus eius quod solutum est.

Dig. 46.7.5.1

Ulpianus 77 ad ed.

Unus ex fideiussoribus vel heredibus pluribus alio cessante suscipere defensionem potest.

Dig. 46.7.5.2

Ulpianus 77 ad ed.

In hac stipulatione quia plures causae sunt una quantitate conclusae, si committeretur statim stipulatio ex uno casu, amplius ex alio committi non potest.

Dig. 46.7.5.3

Ulpianus 77 ad ed.

Nunc videamus, qualis defensio exigatur, ne committatur stipulatio, et quarum personarum. et si quidem ex personis enumeratis in defensionem quis succedat, palam est recte rem defendi nec committi stipulationem. si vero exstrinsecus persona defensoris interveniat, aeque stipulatio non committetur, si modo ille paratus sit rem boni viri arbitratu defendere, hoc est satisdare: sic enim videtur defendere, si satisdet: ceterum si simpliciter paratus sit intervenire nec admittatur, committetur ista stipulatio ob rem non defensam. quod si quis eum vel cum satisdatione vel sine satisdatione admiserit, consequens erit dicere, stipulationis istius nullam partem committi, quia sibi imputare debet, qui talem defensorem admisit.

Dig. 46.7.5.4

Ulpianus 77 ad ed.

Si ex fideiussoribus, qui iudicatum solvi caverant, existat defensor, placuit ob rem iudicatam stipulationem non committi ceteraque eadem esse, atque si extraneus defensor existat.

Dig. 46.7.5.5

Ulpianus 77 ad ed.

In hac stipulatione hoc tractatur, an hi qui fideiusserint, si defensionem omiserint, mandati iudicio teneantur. et est verius non teneri: hi enim in quantitatem intervenerunt et hoc illis fuit mandatum, non in defensione.

Dig. 46.7.5.6

Ulpianus 77 ad ed.

Quid tamen, si et hoc sibi adsumpserint, ut defendant, an mandati possint agere? et si quidem victi sunt, utique quod ob rem iudicatam praestiterunt consequentur: sumptus tamen litis minime petent. si autem optinuerunt, poterunt sumptus litis consequi, quasi iuxta mandatum, etsi non mandatum fecerint.

Dig. 46.7.5.7

Ulpianus 77 ad ed.

Si tamen plures fideiussores defendere fuerint parati, videamus, utrum unum defensorem debent dare, an vero sufficiat, ut unusquisque eorum pro parte sua defendat vel defensorem substituat. et magis est, ut, nisi unum dent procuratorem, desiderante scilicet hoc actore, committatur stipulatio ob rem non defensam: nam et plures heredes rei necesse habebunt unum dare procuratorem, ne defensio per plures scissa incommodo aliquo adficiat actorem. aliud est in heredibus actoris, quibus necessitas non imponitur, ut per unum litigent.

Dig. 46.7.5.8

Ulpianus 77 ad ed.

Illud sciendum est ibi rem esse defendendam, ut recte defendatur, ubi debet agi.

Dig. 46.7.6

Ulpianus 78 ad ed.

Iudicatum solvi stipulatio tres clausulas in unum collatas habet: de re iudicata, de re defendenda, de dolo malo.

Dig. 46.7.7

Gaius 27 ad ed. provinc.

Si ante acceptum iudicium prohibitus fuerit procurator a domino et actor ignorans prohibitum eum esse egerit, an stipulatio committatur? et nihil aliud dici potest quam committi. quod si quis sciens prohibitum esse egerit, iulianus non putat stipulationem committi: nam ut committatur, non sufficere ait cum ea persona acceptum esse iudicium, quae stipulationi comprehensa est, sed oportere etiam causam personae eandem esse, quae stipulationis interponendae tempore fuit. et ideo si is, qui procurator datus est, heres exstiterit domino atque ita acceperit iudicium sive etiam prohibitus acceperit, non committitur stipulatio: nam et alias responsum esse, si quis absentem defendens satisdederit, deinde, vel procurator ab eo datus vel postquam heres ei extitit, iudicium acceperit, fideiussores non teneri.

Dig. 46.7.8

Paulus 74 ad ed.

Si petitor post satisdationem ante iudicium acceptum heres possessori exstiterit, extinguitur stipulatio.

Dig. 46.7.9

Ulpianus 14 ad ed.

Iudicatum solvi stipulatio expeditam habet quantitatem: in tantum enim committitur, in quantum iudex pronuntiaverit.

Dig. 46.7.10

Modestinus 4 pand.

Si ad defendendum procurator datus fuerit, satisdare iubetur iudicatum solvi stipulatione, quae non ab ipso procuratore, sed a domino litis interponitur. quod si procurator aliquem defendat, ipse cogitur satisdare iudicatum solvi stipulatione.

Dig. 46.7.11

Paulus 74 ad ed.

Si servus, qui in rem actione petebatur, lite contestata decesserit, deinde possessor litem deseruerit, quidam fideiussores eius pro lite datos non teneri putant, quia mortuo homine nulla iam res sit: quod falsum est, quoniam expedit de evictione actionis conservandae causa, item fructuum nomine rem iudicari.

Dig. 46.7.12

Pomponius 26 ad sab.

Si reus post iudicatum solvi ab eo datum in magistratu sit nec invitus in ius vocari possit, tamen, nisi res boni viri arbitratu defendatur, fideiussores tenentur.

Dig. 46.7.13pr.

Ulpianus 7 disp.

Cum quaerebatur, si interposita iudicatum solvi stipulatione, cum quis rem non defenderet, postea ex eremodicio sententiam esset passus, an ob rem iudicatam clausula committatur: dicebam unam clausulam in stipulatione iudicatum solvi et ob rem non defensam et ob rem iudicatam in se habere: cum igitur iudicatum solvi stipulatio una cludatur clausula, sive res iudicetur sive res non defendatur, merito quaeritur, si altera causa committatur, an ex altera rursum committi possit. ecce enim si quis stipuletur: " si navis ex asia venerit, aut si titius consul fuerit", constat, sive navis prior venerit sive titius consul ante factus sit, committi stipulationem: sed ubi commissa est ex priore causa, ex altera, licet existat condicio, amplius non committitur: altera causa enim, non utraque inerat stipulationi. proinde videndum, stipulatio ob rem non defensam utrum commissa est re non defensa an non prius creditur commissa, nisi ex stipulatione lis fuerit contestata? quod magis est: et ideo nec fideiussoribus videtur statim dies cedere, ubi res coeperat non defendi. proinde si forte lis finita fuerit, ad quam defensio erat necessaria, vel solutione vel transactione vel acceptilatione vel quo alio modo, consequenter placuit evanescere ob rem non defensam clausulam.

Dig. 46.7.13.1

Ulpianus 7 disp.

Si fuero a fideiussore procuratoris stipulatus iudicatum solvi quasi in rem acturus et postea in personam egero, vel alia actione acturus, aliam autem dictavero actionem, non committitur stipulatio, quia de alia actum videtur, de alia stipulatio interposita.

Dig. 46.7.14pr.

Iulianus 55 Dig.

Si ex duobus fideiussoribus, qui iudicatum solvi spoponderant, alter ob rem non defensam partem suam solverit, nihilo minus res defendi poterit. nec tamen is, qui solverit, repetet: stipulatio enim pro parte eius perempta est, perinde ac si acceptum ei factum fuisset.

Dig. 46.7.14.1

Iulianus 55 Dig.

Quotiens ex stipulatione iudicatum solvi ob rem non defensam agitur cum fideiussoribus, non est iniquum caveri dominum priore iudicio absolvi, quia omissa cautione fideiussores mandati iudicio non consequentur aut certe cogantur dominum priore iudicio defendere.

Dig. 46.7.15

Africanus 6 quaest.

Haec stipulatio " quamdiu res non defendatur", simul atque defendi coeperit aut defendi debere desierit, resolvitur.

Dig. 46.7.16

Nerva 3 membr.

Ex iudicatum solvi stipulatione ob rem non defensam cum uno ex fideiussoribus agere volo: is, quod pro parte eius fit, solvere mihi paratus est: non debet mihi in eum dari iudicium. neque enim aequum est aut iudicio destringi aut ad infitiationem compelli eum, qui sine iudice dare paratus est, quo non amplius adversarius eius per iudicem ab eo consecuturus est.

Dig. 46.7.17

Venonius 6 stipul.

Ex clausula re iudicata, dolo malo, ob rem non defensam in solidum committitur stipulatio: non enim videbitur defensa res boni viri arbitratu, quae non in solidum defensa sit.

Dig. 46.7.18

Venonius 7 disp.

Vir bonus non arbitratur indefensam esse rem, de qua praetor iudicium accipere non cogat.

Dig. 46.7.19pr.

Venonius 9 stipul.

Novissima clausula iudicatum solvi stipulationis " dolum malum abesse afuturumque esse" et in futurum tempus permanens factum demonstrat. itaque et si forte decesserit is, qui dolo fecerit, tenebitur heres eius: verbum enim " afuturumque esse" plenissimum est et ad omne tempus refertur, ut, si aliquo tempore non afuerit dolus, quoniam verum sit non afuisse, committatur haec clausula.

Dig. 46.7.19.1

Venonius 9 stipul.

Si autem adiectum sit: " si huius rei dolus malus non aberit, quanti ea res est, dari spondes?", et ob extranei dolum promissor poena tenebitur.

Dig. 46.7.19.2

Venonius 9 stipul.

Doli autem mali clausula, sicut reliquae stipulationes, in quibus tempus nominatim adiectum non est, ad principium stipulationis refertur.

Dig. 46.7.20

Scaevola 20 Dig.

Cum apud sempronium iudicem datum reus defenderetur, stipulatione cautum est, ut, quod sempronius iudex iudicasset, praestaretur: a cuius sententia petitor appellavit et, cum apud competentem appellationi iudicem res ageretur, defensore condemnato quaesitum est, an stipulatio commissa esset. respondit secundum ea quae proponerentur non esse iure commissam. claudius: ideo stipulatione adicitur: " quive in eius locum substitutus erit".

Dig. 46.7.21

Scaevola l.S. quaest. publ. tract.

Si unus ex fideiussoribus ob rem non defensam conventus sit, deinde postea res defendatur, alter fideiussorum ob rem iudicatam conveniri potest. et si reus promittendi duobus heredibus relictis decesserit, alter rem non defendat, alter defendat: is qui non defendat ob rem non defensam conveniri potest, ille qui defendat ob rem iudicatam, quoniam in unius eiusdemque persona non posse committi has duas clausulas creditur et nos dicimus semper praevalere rei iudicatae clausulam eamque solam committi.

Dig. 46.8.0. Ratam rem haberi et de ratihabitione.

Dig. 46.8.1

Papinianus 28 quaest.

Cum quis de rato stipularetur: quamvis non idem, sed alius a domino conveniretur, qui conveniri non posset, si ratum habuisset, committi stipulationem placuit, veluti si cum fideiussor aut alter ex reis promittendi, qui socius est, convenitur.

Dig. 46.8.2

Papinianus 11 resp.

In stipulatione de rato habendo non est cogitandum rei promittendi vel stipulandi compendium, sed quid interfuerit eius qui stipulatus est ratum haberi quod gestum est.

Dig. 46.8.3pr.

Papinianus 12 resp.

Cum minor viginti quinque annis creditor pecuniam reciperare vellet, interpositus procurator debitori de rato habendo cavit: restitutione in integrum data neque indebiti condictionem neque stipulationem committi constabat. idemque eveniret, si falsi procuratoris actum minor annis ratum habuerit. et ideo ita cavendum erit praecedente mandato: " si ille in integrum restitutus fuerit heresve eius aut is, ad quem ea res, qua de agitur, pertinebit, quanti ea res erit, tantam pecuniam dari". mandato vero non interveniente vulgaribus verbis de rato habendo haec quoque prudentius inter consentientes adstruentur: alioquin si non conveniat nec creditor minus consentiat, actionem dari oportebit.

Dig. 46.8.3.1

Papinianus 12 resp.

Falsus procurator de rato habendo cavit atque ita dominus a sententia iudicis procuratore victo provocavit: stipulationis defecisse condicionem apparuit, cum ad auxilium commune superatus confugisset. quod si dominus, qui ratum non habuit, pecuniam exegerit, stipulatio de rato committetur in eam pecuniam, quam dominus accepit, quamvis nihil procurator acceperit.

Dig. 46.8.4

Scaevola 13 quaest.

Procurator quinquaginta petit: si dominus centum petat, tenebuntur fideiussores, qui de ratihabitione caverunt, in quinquaginta et quanti interfuit differri quinquaginta actionem.

Dig. 46.8.5

Scaevola 5 resp.

Respondit non tantum verbis ratum haberi posse, sed etiam actu: denique si eam litem, quam procurator inchoasset, dominus comprobans persequeretur, non esse commissam stipulationem.

Dig. 46.8.6

Hermogenianus 1 iuris epit.

Tutore suspecto postulato defensor si velit respondere, cautionem ratam rem dominum habiturum cavere compellendus est.

Dig. 46.8.7

Paulus 3 sent.

Si is, cui ignoranti petita est bonorum possessio, decesserit, heres eius intra tempora petitionis ratam eam habere non potest.

Dig. 46.8.8pr.

Venonius 15 stipul.

Procurator ad exhibendum egit et adversarius absolutus est, quia non possidebat: at cum possessionem eiusdem rei nanctus esset, agit cum eo dominus ad exhibendum. sabinus ait fideiussores non teneri, quoniam haec alia res sit: nam et si dominus egisset, mox, absoluto adversario quia non possideret, ex integro ageret, non obstaturam rei iudicatae exceptionem.

Dig. 46.8.8.1

Venonius 15 stipul.

Si procurator a debitore pecuniam exegerit et satisdederit dominum ratam rem habere, mox dominus de eadem pecunia egit et litem amiserit, committi stipulationem: et, si procurator eandem pecuniam domino sine iudice solverit, condicturum. sed cum debitor ex stipulatu agere coeperit, potest dici dominum, si defensionem procuratoris suscipiat, non inutiliter doli mali exceptione adversus debitorem uti, quia naturale debitum manet.

Dig. 46.8.8.2

Venonius 15 stipul.

Si quis a procuratore status controversiam patiatur, satis accipere debet a procuratore, ne impune saepius pro suo statu conveniretur et, si dominus venientesque ab eo personae ratum non habuerunt, quod procurator eum in servitutem petierit vel adversus procuratorem ex servitute in libertatem petitus fuerit, quanti ea res est, ei praestetur, scilicet cum de libertate eius constiterit, id est quanti interfuerit eius de statu suo rursus non periclitari et propter impendia, quae in litem fecerit. sed labeo certam summam comprehendendam existimabat, quia aestimatio libertatis ad infinitum extenderetur. ex quo autem dominus ratum non habuerit, committi videtur stipulatio, sed non ante ex ea agi poterit, quam de libertate iudicatum fuerit, quia, si servus sit iudicatus, inutilis fit stipulatio, cum et, si qua sit actio, eam domino adquisisse intellegitur.

Dig. 46.8.9

Ulpianus 9 ad ed.

Actor a tutore datus omnimodo cavet: actor civitatis nec ipse cavet, nec magister universitatis, nec curator bonis consensu creditorum datus.

Dig. 46.8.10

Ulpianus 80 ad ed.

Interdum ex conventione stipulatio ratam rem interponi solet, ut puta si quid procurator aut vendat aut locet aut si ei solvatur.

Dig. 46.8.11

Hermogenianus 6 iuris epit.

Vel paciscitur vel quodlibet aliud nomine absentis gerit:

Dig. 46.8.12pr.

Ulpianus 80 ad ed.

Quo enim tutiore loco sit, qui contrahit de rato solet stipulari.

Dig. 46.8.12.1

Ulpianus 80 ad ed.

Rem haberi ratam hoc est comprobare adgnoscereque quod actum est a falso procuratore.

Dig. 46.8.12.2

Ulpianus 80 ad ed.

Iulianus ait interesse, quando dominus ratam habere deberet solutionem in procuratorem factam, an tunc demum, cum primum certior factus esset. hoc autem en platei accipiendum et cum quodam spatio temporis nec minimo nec maximo et quod magis intellectu percipi, quam elocutione exprimi possit. quid ergo, si, quod primo ratum non habuit, postea habebit ratum? nihilo magis proficere ad impediendam actionem suam et ob id, quod primo non habuit ratum, actionem salvam habere ait. ideoque si, quod procuratori fuerat solutum, exegerit, agi perinde ex ea stipulatione poterit, ac si ratum habere se postea non dixisset. sed ego puto exceptionem doli mali locum habituram.

Dig. 46.8.12.3

Ulpianus 80 ad ed.

Sive quis petat sive compensatione utatur, committitur statim ratam rem dominum habiturum stipulatio: nam qualiterqualiter quis eundem actum retractet, qui a procuratore actus est, committi stipulationem oportet.

Dig. 46.8.13pr.

Paulus 76 ad ed.

Si commissa est stipulatio ratam rem dominum habiturum, in tantum competit, in quantum mea interfuit, id est quantum mihi abest quantumque lucrari potui.

Dig. 46.8.13.1

Paulus 76 ad ed.

Si sine iudice procuratori legatum solvatur, caveri debere pomponius ait.

Dig. 46.8.14

Paulus 3 ad plaut.

Si quis uni ex reis promiserit rem ratam dominum habiturum aut amplius eam non peti, dicendum est stipulationem committi, si ab eo petatur, qui eiusdem obligationis socius est.

Dig. 46.8.15

Paulus 14 ad plaut.

Amplius non peti verbum labeo ita accipiebat, si iudicio petitum esset. si autem in ius eum vocaverit et satis iudicio sistendi causa acceperit, iudicium tamen coeptum non fuerit, ego puto non committi stipulationem amplius non peti: hic enim non petit, sed petere vult. si vero soluta esset pecunia, licet sine iudicio, committitur stipulatio: nam et si quis adversus petentem compensatione deductioneve usus sit, recte dictum est petisse eum videri et stipulationem committi amplius non peti. nam et heres, qui damnatus non petere, si horum quicquam fecisset, ex testamento tenetur.

Dig. 46.8.16pr.

Pomponius 3 ex plaut.

Si indebitum procuratori solutum sit, agi statim ex hac stipulatione adversus procuratorem potest, ut ratum habeat dominus, ut possit dinosci, utrumne domino condici debeat id quod indebitum solutum sit, si is ratum habeat, an vero procuratori condicendum sit, si dominus ratum non habeat.

Dig. 46.8.16.1

Pomponius 3 ex plaut.

Si procurator fundum petisset et cavisset, uti adsolet, ratam rem dominum habiturum, deinde dominus postea eundem fundum vendidisset eumque emptor peteret, stipulationem ratam rem haberi committi iulianus scribit.

Dig. 46.8.17

Marcellus 21 Dig.

Cum debitore decem creditoris nomine titius egit: partem petitionis ratam habuit dominus. dicendum est obligationis partem consumptam, quemadmodum si decem stipulatus esset aut exegisset creditorque non totum, sed partem gestae rei comprobasset. idcirco si ex stipulatu " decem aut stichum, utrum ego voluero" absente me titius domino quinque petisset, insecuta ratihabitione recte actum videri.

Dig. 46.8.18

Pomponius 26 ad sab.

Si procurator ratam rem dominum heredemve eius habiturum caverit et unus ex heredibus domini ratum habeat, alter non habeat, sine dubio committetur stipulatio pro ea parte, pro qua ratum non habebitur, quia in id committitur, quod stipulatoris intersit. nam et si ipse dominus pro parte ratum habuerit, pro parte non habuerit, non ultra quam in partem committetur stipulatio, quia in id committitur, quod intersit agentis. et ideo saepius ex ea stipulatione agi potest, prout intersit agentis, quod litigat, quod consumit, quod advocat, quod damnatus solvit, sicut in stipulatione damni infecti accidere potest, ut is qui stipulatus sit subinde agat: cavet enim " si quid ibi ruet scindetur fodietur aedificabitur". finge ergo subinde damnum dari: non erit dubium, quin agere possit: nam si toto damno computato tunc agendum est, propemodum non ante aget, quam dies stipulationis praeterierit, intra quem si damnum datum sit, stipulatione cautum erit: quod verum non est.

Dig. 46.8.19

Paulus 13 ad sab.

In stipulatione, qua procurator cavet ratam rem dominum habiturum, id continetur, quod intersit stipulatoris. idemque iuris est in clausulis omnibus de dolo malo.

Dig. 46.8.20

Ulpianus 1 disp.

Non solum in actionibus, quas procurator intendit, verum in stipulationibus quoque, quas interponi desiderat, si vicem repraesentant actionum, cavere eum de rato oportet. quare si duplae stipulationem procurator interponat, de rato cavere debet. sed et si damni infecti stipulatio a procuratore interponatur, de rato debet procurator cavere.

Dig. 46.8.21

Ulpianus 1 opin.

Ne satisdatio ratam rem dominum habiturum exigatur in his quae nomine eius ageret, qui eum se fecisse procuratorem libello principi dato professus est, prodest. quod si iudicatum solvi satis ab eo procuratore postuletur, necesse est, ut iuri manifesto pareatur.

Dig. 46.8.22pr.

Iulianus 56 Dig.

Si sine iudice non debitam pecuniam exegerit procurator et dominus ratam solutionem non habuerit, sed eandem pecuniam petere instituerit: fideiussores tenentur et condictio, qua procurator teneretur, si stipulatio interposita non fuisset, peremitur. quotiens enim procuratori pecunia solvitur et dominus eam solutionem ratam non habet, existimo id agi, ut condictio perematur et sola actio ei, qui indebitum solvit, adversus procuratorem ex stipulatu competat. hoc amplius praestant fideiussores impensas, quae in iudicium factae fuissent. quod si dominus ratam habuisset, fideiussores quidem liberantur, sed ab ipso domino eadem pecunia per condictionem peti potest.

Dig. 46.8.22.1

Iulianus 56 Dig.

Quod si procurator debitam domino pecuniam sine iudice exegisset, idem iuris est, hoc secus, quod, si dominus ratam rem habuisset, nulla eius pecuniae repetitio futura est.

Dig. 46.8.22.2

Iulianus 56 Dig.

Quod si procurator per iudicem non debitam pecuniam exegisset, dici potest, sive ratum dominus habuisset sive non habuisset, fideiussores non teneri, vel quia nulla res esset, quam dominus ratam habere possit, vel quia nihil stipulatoris interest ratum haberi: adficietur ergo iniuria is, qui procuratori solvit. magis tamen est, ut, si dominus ratum non habuerit, fideiussores teneantur.

Dig. 46.8.22.3

Iulianus 56 Dig.

Quod si debitam pecuniam procurator per iudicem, cui nihil mandatum fuerit, petierit, magis est, ut in solidum fideiussores teneantur, si dominus ratum non habuerit.

Dig. 46.8.22.4

Iulianus 56 Dig.

Cum autem procurator recte petit, dominus perperam, non debet procurator praestare, ne iniuria iudicis dominus aliquid consequatur: numquam enim propter iniuriam iudicis fideiussores obligantur. verius tamen est hoc casu fideiussores non nisi in impensas litis teneri.

Dig. 46.8.22.5

Iulianus 56 Dig.

Marcellus: si dominus ratam rem non habuerit, sed lite mota rem amiserit, nihil praeter impendia in stipulationem ratam rem deducitur.

Dig. 46.8.22.6

Iulianus 56 Dig.

Iulianus. si procuratori eius, qui mortuus erat, sine iudice soluta fuerint legata, stipulatio committetur, nisi heres ratum habuerit, utique si debita fuerint: tunc enim non dubie interest stipulatoris ratam solutionem ab herede haberi, ne bis eadem praestet.

Dig. 46.8.22.7

Iulianus 56 Dig.

Si in stipulationem ratam rem haberi hactenus comprehensum fuerit " lucium titium ratum habiturum?",cum id aperte ageretur, ut heredis ceterorumque personae, ad quos ea res pertinet, omitterentur, difficile est existimari doli clausulam committi. sane cum per imprudentiam hae personae omittantur, actio ex doli clausula competit.

Dig. 46.8.22.8

Iulianus 56 Dig.

Si procurator iudicium de hereditate ediderit, deinde dominus fundum ex ea hereditate petierit, stipulatio ratam rem haberi committetur, quia, si verus procurator fuisset, exceptio rei iudicatae dominum summoveret. plerumque autem stipulatio ratam rem haberi his casibus committetur, quibus, si verus procurator egisset, domino aut ipso iure aut propter exceptionem actio inutilis esset.

Dig. 46.8.22.9

Iulianus 56 Dig.

Qui patris nomine iniuriarum agit ob eam rem, quod filius eius verberatus pulsatusve sit, in stipulatione cogendus est filii quoque personam comprehendere, praesertim cum fieri possit, ut pater ante decedat, quam sciret procuratorem suum egisse, et ita iniuriarum actio redeat ad filium.

Dig. 46.8.22.10

Iulianus 56 Dig.

Sed et si nepoti iniuria facta fuerit et procurator avi propter hanc causam iniuriarum aget, non solum filii, sed etiam nepotis persona comprehendenda erit in stipulatione: quid enim prohibet et patrem et filium, antequam scirent procuratorem egisse, decedere ? quo casu iniquum est fideiussores non teneri nepote iniuriarum agente.

Dig. 46.8.23

Iulianus 5 ex minic.

Procurator cum peteret pecuniam, satisdedit amplius non peti: post iudicium acceptum extitit, qui et ipse procuratorio nomine eandem pecuniam peteret: quaesitum est, cum is, qui postea peteret, procurator non esset et propter hoc exceptionibus procuratoriis excludi posset, num fideiussores prioris procuratoris tenerentur. iulianus respondit: verius est non obligari fideiussores: nam in stipulatione cavetur non petiturum eum, cuius de ea re actio petitio persecutio sit, et ratum habituros omnes, ad quos ea res pertinebit: hic autem, qui procurator non est, nec actionem nec petitionem habere intellegendus est.

Dig. 46.8.24pr.

Africanus 5 quaest.

Bonorum possessionem ab alio adgnitam ratam haberi oportere eo tempore, quo adhuc in ea causa sit, ut peti possit: itaque post centensimum diem rata haberi non potest.

Dig. 46.8.24.1

Africanus 5 quaest.

An autem et si mortuus fuisset qui petisset vel furere coeperit, ratum haberi possit, videamus: nam si in universum perinde haberi debet, ac si tunc, cum ratum habeat, per eum bonorum possessionem petat, frustra his casibus ratum habetur. sed illud consequens futurum etiam si paeniteat illum petisse, ratum haberi non posse, quod utique sit absurdum. rectius itaque dicitur neutram eorum causam impedire ratihabitionem.

Dig. 46.8.25pr.

Africanus 6 quaest.

Pater dotem a se datam absente filia petit et ratam rem habituram eam cavit: ea prius quam ratum haberet, mortua est. negavit committi stipulationem, quia et si verum sit ratum eam non habuisse, nihil tamen mariti intersit dotem restitui, cum patri etiam mortua filia salva esse dos debeat.

Dig. 46.8.25.1

Africanus 6 quaest.

Procurator cum ab eo aes alienum exegerat, qui tempore liberaretur, ratam rem dominum habiturum cavit: deinde post tempus liberato iam debitore dominus ratam rem habet. posse debitorem agere cum procuratore existimavit, cum iam debitor liberatus sit: argumentum rei, quod, si nulla stipulatio interposita sit, condictio locum adversus procuratorem habitura sit: in locum autem condictionis interponi stipulationem.

Dig. 46.8.26

. . . .

. . . . si indebitum procurator petit litigatumque de eo est tamquam de debito, stipulatio interposita committitur, cum postea is, cuius nomine procurator egit, id petierit.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER SEPTIMUS-QUADRAGESIMUS

Dig. 47.1.0. De privatis delictis.
Dig. 47.2.0. De furtis.
Dig. 47.3.0. De tigno iuncto.
Dig. 47.4.0. Si is, qui testamento liber esse iussus erit, post mortem domini ante aditam hereditatem subripuisse aut corrupisse quid dicetur.
Dig. 47.5.0. Furti adversus nautas caupones stabularios.
Dig. 47.6.0. Si familia furtum fecisse dicetur.
Dig. 47.7.0. Arborum furtim caesarum.
Dig. 47.8.0. Vi bonorum raptorum et de turba.
Dig. 47.9.0. De incendio ruina naufragio rate nave expugnata.
Dig. 47.10.0. De iniuriis et famosis libellis.
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Dig. 47.23.0. De popularibus actionibus.

Dig. 47.1.0. De privatis delictis.

Dig. 47.1.1pr.

Ulpianus 41 ad sab.

Civilis constitutio est poenalibus actionibus heredes non teneri nec ceteros quidem successores: idcirco nec furti conveniri possunt. sed quamvis furti actione non teneantur, attamen ad exhibendum actione teneri eos oportet, si possideant aut dolo fecerint quo minus possideant: sed enim et vindicatione tenebuntur re exhibita. item condictio adversus eos competit.

Dig. 47.1.1.1

Ulpianus 41 ad sab.

Heredem autem furti agere posse aeque constat: exsecutio enim quorundam delictorum heredibus data est: ita et legis aquiliae actionem heres habet. sed iniuriarum actio heredi non competit.

Dig. 47.1.1.2

Ulpianus 41 ad sab.

Non tantum in furti, verum in ceteris quoque actionibus, quae ex delictis oriuntur, sive civiles sunt sive honorariae, id placet, ut noxa caput sequatur.

Dig. 47.1.2pr.

Ulpianus 43 ad sab.

Numquam plura delicta concurrentia faciunt, ut ullius impunitas detur: neque enim delictum ob aliud delictum minuit poenam.

Dig. 47.1.2.1

Ulpianus 43 ad sab.

Qui igitur hominem subripuit et occidit, quia subripuit, furti, quia occidit, aquilia tenetur, neque altera harum actionum alteram consumit.

Dig. 47.1.2.2

Ulpianus 43 ad sab.

Idem dicendum, si rapuit et occidit: nam et vi bonorum raptorum et aquilia tenebitur.

Dig. 47.1.2.3

Ulpianus 43 ad sab.

Quaesitum est, si condictus fuerit ex causa furtiva, an nihilo minus lege aquilia agi possit. et scripsit pomponius agi posse, quia alterius aestimationis est legis aquiliae actio, alterius condictio ex causa furtiva: namque aquilia eam aestimationem complectitur, quanti eo anno plurimi fuit, condictio autem ex causa furtiva non egreditur retrorsum iudicii accipiendi tempus. sed si servus sit, qui haec admisit, ex quacumque actione noxae fuerit deditus, perempta est altera actio.

Dig. 47.1.2.4

Ulpianus 43 ad sab.

Item si quis subreptum flagello ceciderit, duabus actionibus tenetur furti et iniuriarum: et si forte hunc eundem occiderit, tribus actionibus tenebitur.

Dig. 47.1.2.5

Ulpianus 43 ad sab.

Item si quis ancillam alienam subripuit et flagitaverit, utraque actione tenebitur, nam et servi corrupti agi poterit et furti.

Dig. 47.1.2.6

Ulpianus 43 ad sab.

Item si quis servum vulneravit, quem subripuerat, aeque duae actiones locum habebunt aquiliae et furti.

Dig. 47.1.3

Ulpianus 2 de off. procons.

Si quis actionem, quae ex maleficiis oritur, velit exsequi: si quidem pecuniariter agere velit, ad ius ordinarium remittendus erit nec cogendus erit in crimen subscribere: enimvero si extra ordinem eius rei poenam exerceri velit, tunc subscribere eum in crimen oportebit.

Dig. 47.2.0. De furtis.

Dig. 47.2.1pr.

Paulus 39 ad ed.

Furtum a furvo, id est nigro dictum labeo ait, quod clam et obscuro fiat et plerumque nocte: vel a fraude, ut sabinus ait: vel a ferendo et auferendo: vel a graeco sermone, qui fwras appellant fures: immo et graeci apo tou ferein fwras dixerunt.

Dig. 47.2.1.1

Paulus 39 ad ed.

Inde sola cogitatio furti faciendi non facit furem.

Dig. 47.2.1.2

Paulus 39 ad ed.

Sic is, qui depositum abnegat, non statim etiam furti tenetur, sed ita, si id intercipiendi causa occultaverit.

Dig. 47.2.1.3

Paulus 39 ad ed.

Furtum est contrectatio rei fraudulosa lucri faciendi gratia vel ipsius rei vel etiam usus eius possessionisve. quod lege naturali prohibitum est admittere.

Dig. 47.2.2

Gaius 13 ad ed.

Furtorum genera duo sunt, manifestum et nec manifestum.

Dig. 47.2.3pr.

Ulpianus 41 ad sab.

Fur est manifestus, quem graeci ep' autofwrw appellant, hoc est eum, qui deprehenditur cum furto.

Dig. 47.2.3.1

Ulpianus 41 ad sab.

Et parvi refert, a quo deprehendatur, utrum ab eo cuius res fuit an ab alio.

Dig. 47.2.3.2

Ulpianus 41 ad sab.

Sed utrum ita demum fur sit manifestus, si in faciendo furto deprehendatur, an vero et si alicubi fuerit deprehensus? et magis est, ut et iulianus scripsit, etsi non ibi deprehendatur, ubi furtum fecit, adtamen esse furem manifestum, si cum re furtiva fuerit adprehensus, priusquam eo loci rem pertulerit, quo destinaverat.

Dig. 47.2.4

Paulus 9 ad sab.

" quo destinaverit quis auferre " sic accipiendum est " quo destinaverit eo die manere cum eo furto "

Dig. 47.2.5pr.

Ulpianus 41 ad sab.

Sive igitur in publico sive in privato deprehendatur, antequam ad locum destinatum rem perferret, in ea causa est, ut fur manifestus sit, si cum re furtiva deprehendatur: et ita cassius scripsit.

Dig. 47.2.5.1

Ulpianus 41 ad sab.

Sed si pertulit quo destinavit, tametsi deprehendatur cum re furtiva, non est manifestus fur.

Dig. 47.2.6

Paulus 9 ad sab.

Quamvis enim saepe furtum contrectando fiat, tamen initio, id est faciendi furti tempore, constituere visum est, manifestus nec ne fur esset.

Dig. 47.2.7pr.

Ulpianus 41 ad sab.

Si quis in servitute furtum fecerit et manumissus deprehendatur, an fur manifestus sit, videamus. et ait pomponius libro nono decimo ex sabino non posse eum manifesti conveniri, quia origo furti in servitute facti non fuit manifesti.

Dig. 47.2.7.1

Ulpianus 41 ad sab.

Ibidem pomponius eleganter scripsit deprehensione fieri manifestum furem: ceterum si, cum tibi furtum facerem de domo tua, abscondisti te, ne te occidam, etiamsi vidisti furtum fieri, attamen non est manifestum.

Dig. 47.2.7.2

Ulpianus 41 ad sab.

Sed celsus deprehensioni hoc etiam adicit, si, cum vidisses eum subripientem et ad comprehendendum eum accurrisses, abiecto furto effugit, furem manifestum esse:

Dig. 47.2.7.3

Ulpianus 41 ad sab.

Parvique referre putat, dominus an vicinus an quilibet transiens adprehendat.

Dig. 47.2.8

Gaius 13 ad ed. provinc.

Nec manifestum furtum quid sit, apparet: nam quod manifestum non est, hoc scilicet nec manifestum est.

Dig. 47.2.9pr.

Pomponius 6 ad sab.

Ei, qui furti actionem habet, adsidua contrectatione furis non magis furti actio nasci potest, ne in id quidem, in quod crevisset postea res subrepta.

Dig. 47.2.9.1

Pomponius 6 ad sab.

Sed si eam a fure vindicassem, condictio mihi manebit. sed potest dici officio iudicis, qui de proprietate cognoscit, contineri, ut non aliter iubeat restitui, quam si condictionem petitor remitteret: quod si ex condictione ante damnatus reus litis aestimationem sustulerit, ut aut omnimodo absolvat reum aut (quod magis placet), si paratus esset petitor aestimationem restituere nec restituetur ei homo, quanti in litem iurasset, damnaretur ei possessor.

Dig. 47.2.10

Ulpianus 29 ad sab.

Cuius interfuit non subripi, is actionem furti habet.

Dig. 47.2.11

Paulus 9 ad sab.

Tum is cuius interest furti habet actionem, si honesta causa interest.

Dig. 47.2.12pr.

Ulpianus 29 ad sab.

Itaque fullo, qui curanda poliendave vestimenta accepit, semper agit: praestare enim custodiam debet. si autem solvendo non est, ad dominum actio redit: nam qui non habet quod perdat, eius periculo nihil est.

Dig. 47.2.12.1

Ulpianus 29 ad sab.

Sed furti actio malae fidei possessori non datur, quamvis interest eius rem non subripi, quippe cum res periculo eius sit: sed nemo de improbitate sua consequitur actionem et ideo soli bonae fidei possessori, non etiam malae fidei furti actio datur.

Dig. 47.2.12.2

Ulpianus 29 ad sab.

Sed et si res pignori data sit, creditori quoque damus furti actionem, quamvis in bonis eius res non sit: quin immo non solum adversus extraneum dabimus, verum et contra ipsum quoque dominum furti actionem, et ita iulianus scripsit. nec non et ipsi domino dari placet, et sic fit, ut non teneatur furti et agat. ideo autem datur utrique, quia utriusque interest. sed utrum semper creditoris interest an ita demum, si debitor solvendo non est ? et putat pomponius semper eius interesse pignus habere, quod et papinianus libro duodecimo quaestionum probat: et verius est ubique videri creditoris interesse, et ita et iulianus saepissime scripsit.

Dig. 47.2.13

Paulus 5 ad sab.

Is, cui ex stipulatu res debetur, furti actionem non habet, si ea subrepta sit, cum per debitorem stetisset, quo minus eam daret.

Dig. 47.2.14pr.

Ulpianus 29 ad sab.

Eum qui emit, si non tradita est ei res, furti actionem non habere, sed adhuc venditoris esse hanc actionem celsus scripsit. mandare eum plane oportebit emptori furti actionem et condictionem et vindicationem, et si quid ex his actionibus fuerit consecutus, id praestare eum emptori oportebit: quae sententia vera est, et ita et iulianus. et sane periculum rei ad emptorem pertinet, dummodo custodiam venditor ante traditionem praestet.

Dig. 47.2.14.1

Ulpianus 29 ad sab.

Adeo autem emptor ante traditionem furti non habet actionem, ut sit quaesitum, an ipse subripiendo rem emptor furti teneatur. et iulianus libro vicensimo tertio digestorum scribit: si emptor rem, cuius custodiam venditorem praestare oportebat, soluto pretio subripuerit, furti actione non tenetur. plane si antequam pecuniam solveret, rem subtraxerit, furti actione teneri, perinde ac si pignus subtraxisset.

Dig. 47.2.14.2

Ulpianus 29 ad sab.

Praeterea habent furti actionem coloni, quamvis domini non sint, quia interest eorum.

Dig. 47.2.14.3

Ulpianus 29 ad sab.

Is autem, apud quem res deposita est, videamus, an habeat furti actionem. et cum dolum dumtaxat praestet, merito placet non habere eum furti actionem: quid enim eius interest, si dolo careat? quod si dolo fecit, iam quidem periculum ipsius est, sed non debet ex dolo suo furti quaerere actionem.

Dig. 47.2.14.4

Ulpianus 29 ad sab.

Iulianus quoque libro vicensimo secundo digestorum scribit: quia in omnium furum persona constitutum est, ne eius rei nomine furti agere possint, cuius ipsi fures sunt, non habebit furti actionem is, apud quem res deposita est, quamvis periculo eius esse res coeperit qui eam contrectavit.

Dig. 47.2.14.5

Ulpianus 29 ad sab.

Papinianus tractat, si duos servos ob decem aureos pignori acceperim et alter subripiatur, cum alter quoque, qui sit retentus, non minoris decem valeret: utrum usque ad quinque tantum habeam furti actionem, quia in alio habeo salvos quinque? an vero, quia mori potest, dici debeat in decem fore actionem, etiamsi magni pretii sit is qui retinetur? et ita putat: non enim respicere debemus pignus, quod subreptum non est, sed id quod subtractum est.

Dig. 47.2.14.6

Ulpianus 29 ad sab.

Idem scribit, si, cum mihi decem deberentur, servus pignori datus subtractus sit, si actione furti consecutus fuero decem, non competere mihi furti actionem, si iterum subripiatur, quia desiit mea interesse, cum semel sim consecutus. hoc ita, si sine culpa mea subripiatur: nam si culpa mea, quia interest eo quod teneor pigneraticia actione, agere potero. quod si culpa abest, sine dubio domino competere actio videtur, quae creditori non competit. quam sententiam pomponius quoque libro decimo ad sabinum probat.

Dig. 47.2.14.7

Ulpianus 29 ad sab.

Idem dicunt, et si duo servi subrepti sint simul, competere utriusque nomine furti actionem creditori, sed non in totum, sed pro qua parte, in singulos diviso eo quod ei debetur, eius interest: seperatim autem duobus subreptis, si unius nomine solidum consecutus sit, alterius nihil consequetur.

Dig. 47.2.14.8

Ulpianus 29 ad sab.

Item pomponius libro decimo ex sabino scripsit, si is cui commodavi dolo fecerit circa rem commodatam, agere eum furti non posse.

Dig. 47.2.14.9

Ulpianus 29 ad sab.

Idem pomponius probat et in eo, qui rem mandato alicuius accepit perferendam.

Dig. 47.2.14.10

Ulpianus 29 ad sab.

An pater, cuius filio commodata res est, furti actionem habeat, quaeritur. et iulianus ait patrem hoc nomine agere non posse, quia custodiam praestare non debeat: sicut, inquit, is qui pro eo, cui commodata res est, fideiussit, non habet furti actionem. neque enim, inquit, is, cuiuscumque intererit rem non perire, habet furti actionem, sed qui ob eam rem tenetur, quod ea res culpa eius perierit: quam sententiam celsus quoque libro duodecimo digestorum probat.

Dig. 47.2.14.11

Ulpianus 29 ad sab.

Is qui precario servum rogaverat subrepto eo potest quaeri an habeat furti actionem. et cum non est contra eum civilis actio (quia simile donato precarium est) ideoque et interdictum necessarium visum est, non habebit furti actionem. plane post interdictum redditum puto eum etiam culpam praestare et ideo et furti agere posse.

Dig. 47.2.14.12

Ulpianus 29 ad sab.

Quod si conduxerit quis, habebit furti actionem, si modo culpa eius subrepta sit res.

Dig. 47.2.14.13

Ulpianus 29 ad sab.

Si filius familias subreptus sit, patrem habere furti actionem palam est.

Dig. 47.2.14.14

Ulpianus 29 ad sab.

Si res commodata est et is cui commmodata est decesserit: quamvis hereditati furtum fieri non possit et ideo nec heres eius cui commodata est possit agere, tamen commodator poterit furti agere: idemque et in re pignerata vel in re locata. licet enim hereditati furti actio non adquiratur, tamen alii, cuius interest, adquiritur.

Dig. 47.2.14.15

Ulpianus 29 ad sab.

Non solum autem in re commodata competit ei cui commodata est furti actio, sed etiam in ea, quae ex ea adgnata est, quia et huius custodia ad eum pertinet. nam et si servum tibi commodavero, et vestis eius nomine furti ages, quamvis vestem, qua vestitus est, tibi non commodaverim. item si iumenta tibi commodavero, quorum sequella erat eculeus, puto competere furti actionem etiam eius nomine, quamvis ipse non sit commodatus.

Dig. 47.2.14.16

Ulpianus 29 ad sab.

Qualis ergo furti actio detur ei, cui res commodata est, quaesitum est. et puto omnibus, quorum periculo res alienae sunt, veluti commodati, item locati pignorisve accepti, si hae subreptae sint, omnibus furti actiones competere: condictio autem ei demum competit, qui dominium habet.

Dig. 47.2.14.17

Ulpianus 29 ad sab.

Si epistula, quam ego tibi misi, intercepta sit, quis furti actionem habeat? et primum quaerendum est, cuius sit epistula, utrum eius qui misit, an eius ad quem missa est? et si quidem dedi servo eius, statim ipsi quaesita est, cui misi: si vero procuratori, aeque (quia per liberam personam possessio quaeri potest) ipsius facta est, maxime si eius interfuit eam habere. quod si ita misi epistulam, ut mihi remittatur, dominium meum manet, quia eius nolui amittere vel transferre dominium. quis ergo furti aget? is cuius interfuit eam non subripi, id est ad cuius utilitatem pertinebant ea quae scripta sunt. et ideo quaeri potest, an etiam is, cui data est perferenda, furti agere possit. et si custodia eius ad eum pertineat, potest: sed et si interfuit eius epistulam reddere, furti habebit actionem. finge eam epistulam fuisse, quae continebat, ut ei quid redderetur fieretve: potest habere furti actionem: vel si custodiam eius rei recepit vel mercedem perferendae accipit. et erit in hunc casum similis causa eius et cauponis aut magistri navis: nam his damus furti actionem, si sint solvendo, quoniam periculum rerum ad eos pertinet.

Dig. 47.2.15pr.

Paulus 5 ad sab.

Creditoris, cuius pignus subreptum est, non credito tenus interest, sed omnimodo in solidum furti agere potest: sed et pigneraticia actione id quod debitum excedit debitori praestabit.

Dig. 47.2.15.1

Paulus 5 ad sab.

Dominus, qui rem subripuit, in qua usus fructus alienus est, furti usufructuario tenetur.

Dig. 47.2.15.2

Paulus 5 ad sab.

Sed eum qui tibi commodaverit, si eam rem subripiat, non teneri furti placuisse pomponius scripsit, quoniam nihil tua interesset, utpote cum nec commodati tenearis. ergo si ob aliquas impensas, quas in rem commodatam fecisti, retentionem eius habueris, etiam cum ipso domino, si eam subripiat, habebis furti actionem, quia eo casu quasi pignoris loco ea res fuit.

Dig. 47.2.16

Paulus 7 ad sab.

Ne cum filio familias pater furti agere possit, non iuris constitutio, sed natura rei impedimento est, quod non magis cum his, quos in potestate habemus, quam nobiscum ipsi agere possumus.

Dig. 47.2.17pr.

Ulpianus 39 ad sab.

Servi et filii nostri furtum quidem nobis faciunt, ipsi autem furti non tenentur: neque enim qui potest in furem statuere, necesse habet adversus furem litigare: idcirco nec actio ei a veteribus prodita est.

Dig. 47.2.17.1

Ulpianus 39 ad sab.

Unde est quaesitum, si fuerit alienatus vel manumissus, an furti actione teneatur. et placet non teneri: neque enim actio, quae non fuit ab initio nata, oriri potest adversus hunc furem. plane si manumissus contrectabit, dicendum erit teneri eum furti iudicio, quia hodie furtum fecit.

Dig. 47.2.17.2

Ulpianus 39 ad sab.

Cum autem servus, quem emi traditusque mihi est, a me redhibeatur, non est in ea causa, ut perinde habeatur, atque si meus numquam fuisset, sed et fuit et desiit. idcirco dicit sabinus eum, si furtum fecit, in ea esse causa, ut furti eius nomine is qui redhibuit agere non possit. sed etsi non possit, attamen ratio haberi debet eius quod fecit, cum redhiberi coeperit, idque actione redhibitoria continetur.

Dig. 47.2.17.3

Ulpianus 39 ad sab.

Illud quaesitum est, si, cum in fuga esset servus, furtum domino fecisset, an aeque posset habere actionem adversus eum, qui in potestatem domini non regressum bona fide possidere coeperit. movet quaestionem, quod, quamvis possidere servum eo tempore, quo in fuga est, videor, attamen furti actione non teneor, quasi non sit in mea potestate: quod enim videor possidere, ad usucapionem tantum mihi proficere iulianus scribit. dicit igitur pomponius libro septimo decimo ex sabino competere furti actionem huic domino, cuius servus in fuga fuit.

Dig. 47.2.18

Paulus 9 ad sab.

Quod dicitur noxam caput sequi, tunc verum est, ut quae initio adversus aliquem nata est caput nocentis sequatur: ideoque si servus tuus furtum mihi fecerit et dominus eius effectus eum vendidero, non posse me agere cum emptore cassiani putant.

Dig. 47.2.19pr.

Ulpianus 40 ad sab.

In actione furti sufficit rem demonstrari, ut possit intellegi.

Dig. 47.2.19.1

Ulpianus 40 ad sab.

De pondere autem vasorum non est necesse loqui: sufficiet igitur ita dici " lancem" vel " discum" vel " pateram": sed adscribenda etiam materia est, utrum argentea an aurea an alia quae sit.

Dig. 47.2.19.2

Ulpianus 40 ad sab.

Quod si quis argentum infectum petat, et massam argenteam dicere et pondus debebit ponere.

Dig. 47.2.19.3

Ulpianus 40 ad sab.

Signati argenti numerum debebit complecti, veluti aureos tot pluresve furto ei abesse.

Dig. 47.2.19.4

Ulpianus 40 ad sab.

De veste quaeritur, an color eius dicendus sit. et verum est colorem eius dici oportere ut, quemadmodum in vasis dicitur patera aurea, ita et in veste color dicatur. plane si quis iuret pro certo se colorem dicere non posse, remitti ei huius rei necessitas debet.

Dig. 47.2.19.5

Ulpianus 40 ad sab.

Qui rem pignori dat eamque subripit, furti actione tenetur.

Dig. 47.2.19.6

Ulpianus 40 ad sab.

Furtum autem rei pigneratae dominus non tantum tunc facere videtur, cum possidenti sive tenenti creditori aufert, verum et si eo tempore abstulerit, quo non possidebat, ut puta si rem pigneratam vendidit: nam et hic furtum eum facere constat. et ita et iulianus scripsit.

Dig. 47.2.20pr.

Paulus 9 ad sab.

Cum aes pignori datur, etiamsi aurum esse dicitur, turpiter fit, furtum non fit. sed si datum est aurum, deinde, cum dixisset se ponderare aut obsignare velle, aes subiecit, furtum fecit: rem enim pignori datam intervertit.

Dig. 47.2.20.1

Paulus 9 ad sab.

Si bona fide rem meam emeris eamque ego subripuero, vel etiam tuus usus fructus sit et eam contrectavero, tenebor tibi furti actione, etsi dominus rei sum. sed his casibus usucapio quasi furtivae rei non impedietur, quoniam et si alius subripiat et in meam potestatem reversa res fuerit, usucapiebatur.

Dig. 47.2.21pr.

Paulus 40 ad sab.

Volgaris est quaestio, an is, qui ex acervo frumenti modium sustulit, totius rei furtum faciat an vero eius tantum quod abstulit. ofilius totius acervi furem esse putat: nam et qui aurem alicuius tetigit, inquit trebatius totum eum videri tetigisse: proinde et qui dolium aperuit et inde parvum vini abstulit, non tantum eius quod abstulit, verum totius videtur fur esse. sed verum est in tantum eos furti actione teneri, quantum abstulerunt. nam et si quis armarium, quod tollere non poterat, aperuerit et omnes res, quae in eo erant, contrectaverit atque ita discesserit, deinde reversus unam ex his abstulerit et antequam se reciperet, quo destinaverat, deprehensus fuerit, eiusdem rei et manifestus et nec manifestus fur erit. sed et qui segetem luce secat et contrectat, eius quod secat manifestus et nec manifestus fur est.

Dig. 47.2.21.1

Paulus 40 ad sab.

Si is, qui viginti nummorum saccum deposuisset, alium saccum, in quo scit triginta esse, errante eo qui dabat acceperit, putavit autem illic sua viginti esse, teneri furti decem nomine placet.

Dig. 47.2.21.2

Paulus 40 ad sab.

Si quis aes subripuit, dum aurum se subripere putat, vel contra, ex libro octavo pomponii ad sabinum aut minus esse, cum plus esset: eius quod subripuit, furtum committit: idem ulpianus.

Dig. 47.2.21.3

Paulus 40 ad sab.

Sed et si quis subripuit furto duos sacculos, unum decem alterum viginti, quorum alterum suum putavit, alterum scit alienum: profecto dicemus tantum unius, quem putavit alienum, furtum eum facere, quemadmodum si duo pocula abstulerit, quorum alterum suum putavit, alterum scit alienum: nam et hic unius fit furtum.

Dig. 47.2.21.4

Paulus 40 ad sab.

Sed si ansam in poculo suam putavit vel vere fuit, totius poculi eum furtum facere pomponius scripsit.

Dig. 47.2.21.5

Paulus 40 ad sab.

Sed si de navi onerata furto quis sextarium frumenti tulerit, utrum totius oneris an vero sextarii tantum furtum fecerit? facilius hoc quaeritur in horreo pleno: et durum est dicere totius furtum fieri. et quid si cisterna vini sit, quid dicet? aut aquae cisterna? quid deinde si nave vinaria (ut sunt multae, in quas vinum effunditur), quid dicemus de eo, qui vinum hausit? an totius oneris fur sit? et magis est ^ et^, ut et hic non totius dicamus.

Dig. 47.2.21.6

Paulus 40 ad sab.

Certe si proponas in apotheca amphoras esse vini easque subtractas, singularum furtum fit, non totius apothecae, quemadmodum si ex pluribus rebus moventibus in horreo reclusis unam tulerit.

Dig. 47.2.21.7

Paulus 40 ad sab.

Qui furti faciendi causa conclave intravit, nondum fur est, quamvis furandi causa intravit. quid ergo? qua actione tenebitur? utique iniuriarum: aut de vi accusabitur, si per vim introivit.

Dig. 47.2.21.8

Paulus 40 ad sab.

Item si maioris ponderis quid aperuit aut refregit, quod tollere non possit, non est omnium rerum cum eo furti actio, sed earum tantum quas tulit, quia totum tollere non potuit. proinde si involucrum, quod tollere non potuit, solvit, ut contrectet, deinde contrectavit quasdam res: quamvis singulas res, quae in eo fuerunt, tollere potuerit, si tamen totum involucrum tollere non potuerit, singularum rerum, quas tulerit, fur est, ceterarum non est. quod si totum vas tollere potuit, dicimus eum totius esse furem, licet solverit, ut singulas vel quasdam tolleret: et ita et sabinus ait.

Dig. 47.2.21.9

Paulus 40 ad sab.

Si duo pluresve unum tignum furati sunt, quod singuli tollere non potuerint, dicendum est omnes eos furti in solidum teneri, quamvis id contrectare nec tollere solus posset, et ita utimur: neque enim potest dicere pro parte furtum fecisse singulos, sed totius rei universos: sic fiet singulos furti teneri.

Dig. 47.2.21.10

Paulus 40 ad sab.

Quamvis autem earum quoque rerum, quas quis non abstulit, furti teneatur, attamen condici ei non potest, idcirco quia condici ea res, quae ablata est, potest: et ita et pomponius scribit.

Dig. 47.2.22pr.

Paulus 9 ad sab.

Si quid fur fregerit aut ruperit, quod non etiam furandi causa contrectaverit, eius nomine cum eo furti agere non potest.

Dig. 47.2.22.1

Paulus 9 ad sab.

Si eo consilio arca refracta sit, ut uniones puta tollerentur, hique furti faciendi causa contrectati sint, eorum tantummodo furtum factum videri: quod est verum. nam ceterae res, quae seponuntur, ut ad uniones perveniatur, non furti faciendi causa contrectantur.

Dig. 47.2.22.2

Paulus 9 ad sab.

Qui lancem rasit, totius fur est et furti tenetur ad id, quod domini interest.

Dig. 47.2.23

Ulpianus 41 ad sab.

Impuberem furtum facere posse, si iam doli capax sit, iulianus libro vicensimo secundo digestorum scripsit: item posse cum impubere damni iniuria agi, quia id furtum ab impubere fit. sed modum esse adhibendum ait: nam in infantes id non cadere. non putamus cum impubere culpae capace aquilia agi posse. item verum est, quod labeo ait, nec ope impuberis furto facto teneri eum.

Dig. 47.2.24

Paulus 9 ad sab.

Nec minus etiam condici ei posse iulianus scripsit.

Dig. 47.2.25pr.

Ulpianus 41 ad sab.

Verum est, quod plerique probant, fundi furti agi non posse.

Dig. 47.2.25.1

Ulpianus 41 ad sab.

Unde quaeritur, si quis de fundo vi deiectus sit, an condici ei possit qui deiecit. labeo negat: sed celsus putat posse condici possessionem, quemadmodum potest re mobili subrepta.

Dig. 47.2.25.2

Ulpianus 41 ad sab.

Eorum, quae de fundo tolluntur, ut puta arborum vel lapidum vel harenae vel fructuum, quos quis furandi animo decerpsit, furti agi posse nulla dubitatio est.

Dig. 47.2.26pr.

Paulus 9 ad sab.

Si apes ferae in arbore fundi tui apes fecerint, si quis eas vel favum abstulerit, eum non teneri tibi furti, quia non fuerint tuae: easque constat captarum terra mari caelo numero esse.

Dig. 47.2.26.1

Paulus 9 ad sab.

Item constat colonum, qui nummis colat, cum eo, qui fructus stantes subripuerit, acturum furti, quia, ut primum decerptus esset, eius esse coepisset.

Dig. 47.2.27pr.

Ulpianus 41 ad sab.

Qui tabulas vel cautiones amovet, furti tenetur non tantum pretii ipsarum tabularum, verum eius quod interfuit: quod ad aestimationem refertur eius summae, quae in his tabulis continetur, scilicet si tanti interfuit, ut puta si chirographa aureorum decem tabulae fuerint, dicimus hoc duplicari. quod si iam erant inanes, quia solutum proponebatur, numquid ipsarum tantum tabularum pretii videatur esse aestimatio facienda? quid enim interfuit huius? sed potest dici, quia nonnumquam debitores tabulas sibi restitui petant, quia nonnumquam calumniantur debitores quasi indebito soluto, ab his interesse creditoris tabulas habere, ne forte controversiam super ea re patiatur. et generaliter dicendum est in id quod interest duplari.

Dig. 47.2.27.1

Ulpianus 41 ad sab.

Inde potest quaeri, si quis, cum alias probationes mensaeque scripturam haberet, chirographi furtum passus sit, an aestimari duplo chirographi quantitas debeat. et numquid non, quasi nihil intersit? quantum enim interest, cum possit debitum aliunde probare? quemadmodum si in binis tabulis instrumentum scriptum sit: nam nihil videtur deperdere, si futurum est, ut alio chirographo salvo securior sit creditor.

Dig. 47.2.27.2

Ulpianus 41 ad sab.

Apocha quoque si fuerit subrepta, aeque dicendum est furti actionem in id quod interest locum habere: sed nihil mihi videtur interesse, si sint et aliae probationes solutae pecuniae.

Dig. 47.2.27.3

Ulpianus 41 ad sab.

Sed si quis non amovit huiusmodi instrumenta, sed interlevit, non tantum furti actio locum habet, verum etiam legis aquiliae: nam rupisse videtur qui corrupit.

Dig. 47.2.28

Paulus 9 ad sab.

Sed si subripuit, priusquam deleat, tanto tenetur, quanti domini interfuit non subripi: delendo enim nihil ad poenam adicit.

Dig. 47.2.29

Ulpianus 41 ad sab.

Hoc amplius et ad exhibendum agi potest: et interdicto quorum bonorum agi poterit,

Dig. 47.2.30

Ulpianus 9 ad sab.

Si hereditariae tabulae deletae sint.

Dig. 47.2.31pr.

Ulpianus 41 ad sab.

Sed et si imaginem quis vel librum deleverit, et hic tenetur damno iniuriae, quasi corruperit.

Dig. 47.2.31.1

Ulpianus 41 ad sab.

Si quis tabulas instrumentorum rei publicae municipii alicuius aut subripuerit aut interleverit, labeo ait furti eum teneri: idemque scribit et de ceteris rebus publicis deque societatibus.

Dig. 47.2.32pr.

Paulus 9 ad sab.

Quidam tabularum dumtaxat aestimationem faciendam in furti actione existimant, quia, si iudici, apud quem furti agatur, possit probari, quantum debitum fuerit, possit etiam apud eum iudicem eadem probare, apud quem pecuniam petat: si vero in furti iudicio probare non potest, ne illud quidem posse ostendi, quanti eius intersit. sed potest post furtum factum tabulas nanctus esse actor, ut ex eo probet, quanti sua interfuerit, si tabulas nanctus non esset.

Dig. 47.2.32.1

Paulus 9 ad sab.

De lege aquilia maior quaestio est, quemadmodum possit probari, quanti eius intersit: nam si potest alias probare, non patitur damnum. quid ergo, si forte pecuniam sub condicione credidit et interim testium ei copia est, testimonio quorum probationem habeat, qui possunt mori pendente condicione? aut puta me petisse creditum et, quia testes et signatores, qui rem meminissent, praesentes non haberem, victum rem amisisse: nunc vero, cum furti agam, eorum memoria et praesentia ad fidem creditae pecuniae uti possum.

Dig. 47.2.33

Ulpianus 41 ad sab.

Tutor administrationem quidem rerum pupillarium habet, intercipiendi autem potestas ei non datur: et ideo si quid furandi animo amoverit, furtum facit nec usucapi res potest. sed et furti actione tenetur, quamvis et tutelae agi cum eo possit. quod in tutore scriptum est, idem erit et in curatore adulescentis ceterisque curatoribus.

Dig. 47.2.34

Paulus 9 ad sab.

Is, qui opem furtum facienti fert, numquam manifestus est: itaque accidit, ut is quidem, qui opem tulit, furti nec manifesti, is autem, qui deprehensus est, ob eandem rem manifesti teneatur.

Dig. 47.2.35pr.

Pomponius 19 ad sab.

Si quis perferendum acceperit et scierit furtivum esse, constat, si deprehendatur, ipsum dumtaxat furem manifestum esse, si nescierit, neutrum, hunc, quia fur non sit, furem, quia deprehensus non sit.

Dig. 47.2.35.1

Pomponius 19 ad sab.

Si unus servus tuus hausisset et abstulisset, alter hauriendo deprehensus esset, prioris nomine nec manifesti, alterius manifesti teneberis.

Dig. 47.2.36pr.

Ulpianus 41 ad sab.

Qui servo persuasit, ut fugeret, fur non est: nec enim qui alicui malum consilium dedit, furtum facit, non magis quam si ei persuasit, ut se praecipitet aut manus sibi inferret: haec enim furti non admittunt actionem. sed si alius ei fugam persuaserit, ut ab alio subripiatur, furti tenebitur is qui persuasit, quasi ope consilio eius furtum factum sit. plus pomponius scripsit eum, qui persuasit, quamvis interim furti non teneretur, tunc tamen incipere teneri, cum quis fugitivi fur esse coeperit, quasi videatur ope consilio eius furtum factum.

Dig. 47.2.36.1

Ulpianus 41 ad sab.

Item placuit eum, qui filio vel servo uxori opem fert furtum facientibus, furti teneri, quamvis ipsi furti actione non conveniantur.

Dig. 47.2.36.2

Ulpianus 41 ad sab.

Idem pomponius ait, si cum rebus aufugerit fugitivus, posse furti actione sollicitatorem conveniri rerum nomine, quia opem consilium contrectatori tulit. quod et sabinus significat.

Dig. 47.2.36.3

Ulpianus 41 ad sab.

Si duo servi invicem sibi persuaserunt et ambo simul aufugerunt, alter alterius fur non est. quid ergo, si invicem se celaverunt? fieri enim potest, ut invicem fures sint. et potest dici alterum alterius furem esse, quemadmodum, si alii singulos subripuissent, tenerentur, quasi alter alterius nomine opem tulisset: quemadmodum rerum quoque nomine teneri eos furti sabinus scripsit.

Dig. 47.2.37

Pomponius 19 ad sab.

Si pavonem meum mansuetum, cum de domo mea effugisset, persecutus sis, quoad is perit, agere tecum furti ita potero, si aliquis eum habere coeperit.

Dig. 47.2.38pr.

Paulus 9 ad sab.

Mater filii subrepti furti actionem non habet.

Dig. 47.2.38.1

Paulus 9 ad sab.

Liberarum personarum nomine, licet furti actio sit, condictio tamen nusquam est.

Dig. 47.2.39

Ulpianus 41 ad sab.

Verum est, si meretricem alienam ancillam rapuit quis vel celavit, furtum non esse: nec enim factum quaeritur, sed causa faciendi: causa autem faciendi libido fuit, non furtum. et ideo etiam eum, qui fores meretricis effregit libidinis causa, et fures non ab eo inducti, sed alias ingressi meretricis res egesserunt, furti non teneri. an tamen vel fabia teneatur, qui subpressit scortum libidinis causa? et non puto teneri, et ita etiam ex facto, cum incidisset, dixi: hic enim turpius facit, quam qui subripit, sed secum facti ignominiam compensat, certe fur non est.

Dig. 47.2.40

Paulus 9 ad sab.

Qui iumenta sibi commodata longius duxerit alienave re invito domino usus sit, furtum facit.

Dig. 47.2.41pr.

Ulpianus 41 ad sab.

Si, cum quis in hostium potestate esset, furtum ei factum sit et postliminio redierit, poterit quis dicere eum furti habere actionem.

Dig. 47.2.41.1

Ulpianus 41 ad sab.

Adrogatorem posse furti agere, scilicet eius furti nomine, quod factum est ei quem adrogavit, antequam eum adrogaret, certum est: ceterum si postea, nulla erit dubitatio.

Dig. 47.2.41.2

Ulpianus 41 ad sab.

Quamdiu vivit is qui furtum fecit, non perit furti actio: aut enim sui iuris est is qui furtum fecit, et cum ipso actio est, aut alieni iuris esse coepit, et actio furti cum eo est, cuius potestati subiectus est: et hoc est quod dicitur " noxa caput sequitur".

Dig. 47.2.41.3

Ulpianus 41 ad sab.

Si quis post noxam admissam hostium servus fuerit factus, videndum est, an extinguatur actio. et pomponius scripsit extingui actionem, et si fuerit reversus, postliminio vel quo alio iure renasci eam actionem debere: et ita utimur.

Dig. 47.2.42pr.

Paulus 9 ad sab.

Si servus navem exerceat non voluntate domini, de eo, quod ibi perit, volgaris formula in dominum danda est, ut quod alter admisit " dumtaxat de peculio", quod ipse exercitor, adiciatur " ut noxae dederet". igitur si manumissus sit, persecutio quidem in peculio manebit adversus dominum intra annum, noxalis ipsum sequetur.

Dig. 47.2.42.1

Paulus 9 ad sab.

Interdum et manumissus et qui eum manumisit, ob furtum tenetur, si ideo manumisit, ne furti cum eo agi possit: sed si cum domino actum fuerit, ipso iure manumissum liberari sabinus respondit, quasi decisum sit.

Dig. 47.2.43pr.

Ulpianus 41 ad sab.

Falsus creditor (hoc est is, qui se simulat creditorem) si quid acceperit, furtum facit nec nummi eius fient.

Dig. 47.2.43.1

Ulpianus 41 ad sab.

Falsus procurator furtum quidem facere videtur. sed neratius videndum esse ait, an haec sententia cum distinctione vera sit, ut, si hac mente ei dederit nummos debitor, ut eos creditori perferret, procurator autem eos intercipiat, vera sit: nam et manent nummi debitoris, cum procurator eos non eius nomine accepit, cuius eos debitor fieri vult, et invito domino eos contrectando sine dubio furtum facit. quod si ita det debitor, ut nummi procuratoris fiant, nullo modo eum furtum facere ait voluntate domini eos accipiendo.

Dig. 47.2.43.2

Ulpianus 41 ad sab.

Si is, qui indebitum accipiebat, delegaverit solvendum, non erit furti actio, si eo absente solutum sit: ceterum si praesente, alia causa est et furtum fecit.

Dig. 47.2.43.3

Ulpianus 41 ad sab.

Si quis nihil in persona sua mentitus est, sed verbis fraudem adhibuit, fallax est magis quam furtum facit: ut puta si dixit se locupletem, si in mercem se collocaturum quod accepit, si fideiussores idoneos daturum vel pecuniam confestim se soluturum: nam ex his omnibus magis decepit quam furtum fecit, et ideo furti non tenetur. sed quia dolo fecit, nisi sit alia adversus eum actio, de dolo dabitur.

Dig. 47.2.43.4

Ulpianus 41 ad sab.

Qui alienum quid iacens lucri faciendi causa sustulit, furti obstringitur, sive scit cuius sit sive ignoravit: nihil enim ad furtum minuendum facit, quod cuius sit ignoret.

Dig. 47.2.43.5

Ulpianus 41 ad sab.

Quod si dominus id dereliquit, furtum non fit eius, etiamsi ego furandi animum habuero: nec enim furtum fit, nisi sit cui fiat: in proposito autem nulli fit, quippe cum placeat sabini et cassii sententia existimantium statim nostram esse desinere rem, quam derelinquimus.

Dig. 47.2.43.6

Ulpianus 41 ad sab.

Sed si non fuit derelictum, putavit tamen derelictum, furti non tenetur.

Dig. 47.2.43.7

Ulpianus 41 ad sab.

Sed si neque fuit neque putavit, iacens tamen tulit, non ut lucretur, sed redditurus ei cuius fuit, non tenetur furti.

Dig. 47.2.43.8

Ulpianus 41 ad sab.

Proinde videamus, si nescit cuius esset, sic tamen tulit quasi redditurus ei qui desiderasset vel qui ostendisset rem suam, an furti obligetur. et non puto obligari eum. solent plerique etiam hoc facere, ut libellum proponant continentem invenisse se et redditurum ei qui desideraverit: hi ergo ostendunt non furandi animo se fecisse.

Dig. 47.2.43.9

Ulpianus 41 ad sab.

Quid ergo, si ehuretra quae dicunt petat? nec hic videtur furtum facere, etsi non probe petat aliquid.

Dig. 47.2.43.10

Ulpianus 41 ad sab.

Si quis sponte rem iecit vel iactavit, non quasi pro derelicto habiturus, tuque hanc rem tuleris, an furti tenearis, celsus libro duodecimo digestorum quaerit. et ait: si quidem putasti pro derelicto habitam, non teneris. quod si non putasti, hic dubitari posse ait: et tamen magis defendit non teneri, quia, inquit, res non intervertitur ei, qui eam sponte reiecit.

Dig. 47.2.43.11

Ulpianus 41 ad sab.

Si iactum ex nave factum alius tulerit, an furti teneatur? quaestio in eo est, an pro derelicto habitum sit. et si quidem derelinquentis animo iactavit, quod plerumque credendum est, cum sciat periturum, qui invenit suum fecit nec furti tenetur. si vero non hoc animo, sed hoc, ut, si salvum fuerit, haberet: ei qui invenit auferendum est, et si scit hoc qui invenit et animo furandi tenet, furti tenetur. enimvero si hoc animo, ut salvum faceret domino, furti non tenetur. quod si putans simpliciter iactatum, furti similiter non tenetur.

Dig. 47.2.43.12

Ulpianus 41 ad sab.

Etiamsi partis dimidiae nanciscar dominium in servo, qui mihi antea furtum fecerat, magis est, ut extinguatur actio etiam parte redempta, quia et si ab initio quis partem in servo habebat, furti agere non poterat. plane si usus fructus meus in eo servo esse coeperit, dicendum est furti actionem non extingui, quia fructuarius dominus non est.

Dig. 47.2.44pr.

Pomponius 19 ad sab.

Si iussu debitoris ab alio falsus procurator creditoris accepit, debitori iste tenetur furti et nummi debitoris erunt.

Dig. 47.2.44.1

Pomponius 19 ad sab.

Si rem meam quasi tuam tibi tradidero scienti meam esse, magis est furtum te facere, si lucrandi animo id feceris.

Dig. 47.2.44.2

Pomponius 19 ad sab.

Si servus hereditarius nondum adita hereditate furtum heredi fecerit, qui testamento domini manumissus est, furti actio adversus eum competit, quia nullo tempore heres dominus eius factus est.

Dig. 47.2.45

Ulpianus 41 ad sab.

Si socius communis rei furtum fecerit (potest enim communis rei furtum facere), indubitate dicendum est furti actionem competere.

Dig. 47.2.46pr.

Ulpianus 42 ad sab.

Inter omnes constat, etiamsi exstincta sit res furtiva, attamen furti remanere actionem adversus furem. proinde mortuo quoque homine, quem quis furto abstulit, viget furti actio. sed nec manumissio furti actionem extinguit: nec enim dissimilis est morti manumissio quod ad subtrahendum domino servum. apparet itaque, qualiterqualiter domino sit servus subtractus, attamen superesse adversus furem furti actionem, eoque iure utimur: competit enim actio non ideo, quia nunc abest, sed quia umquam beneficio furis afuit. hoc idem in condictione quoque placet: nam condici furi potest, etiamsi res sit aliqua ratione extincta. hoc idem dicendum, si res in potestatem hostium pervenerit: nam constat posse de ea furti agi. sed et si pro derelicto sit postea a domino habita, furti nihilo minus agi poterit.

Dig. 47.2.46.1

Ulpianus 42 ad sab.

Si servus fructuarius subreptus est, uterque, et qui fruebatur et dominus, actionem furti habet. dividetur igitur actio inter dominum et fructuarium: fructuarius aget de fructibus vel quanti interfuit eius furtum factum non esse eius, dupli: proprietarius vero aget, quod interfuit eius proprietatem non esse subtractam.

Dig. 47.2.46.2

Ulpianus 42 ad sab.

Quod dicimus dupli, sic accipere debemus etiam quadrupli competere actionem, si manifestum furtum sit.

Dig. 47.2.46.3

Ulpianus 42 ad sab.

Haec actio et si sit, qui in eo servo habeat usum tantum, poterit ei competere.

Dig. 47.2.46.4

Ulpianus 42 ad sab.

Et si quis proposuerit hunc servum etiam pigneratum esse, eveniet, ut etiam is qui pignori accepit habeat furti actionem: hoc amplius etiam debitor, si modo plus valeat, quam pro pignore debetur, habet furti actionem.

Dig. 47.2.46.5

Ulpianus 42 ad sab.

Usque adeo autem diversae sunt actiones, quae eis competunt, ut, si quis eorum pro fure damnum deciderit, dici oporteat solummodo actionem sibi competentem amisisse eum, ceteris vero superesse. nam et si proponas communem servum subreptum et alium ex dominis pro fure damnum decidisse, is qui non decidit habebit furti actionem.

Dig. 47.2.46.6

Ulpianus 42 ad sab.

Proprietarius quoque agere adversus fructuarium potest iudicio furti, si quid celandae proprietatis vel subprimendae causa fecit.

Dig. 47.2.46.7

Ulpianus 42 ad sab.

Recte dictum est, qui putavit se domini voluntate rem attingere, non esse furem: quid enim dolo facit, qui putat dominum consensurum fuisse, sive falso id sive vere putet? is ergo solus fur est, qui adtrectavit, quod invito domino se facere scivit.

Dig. 47.2.46.8

Ulpianus 42 ad sab.

Per contrarium quaeritur, si ego me invito domino facere putarem, cum dominus vellet, an furti actio sit. et ait pomponius furtum me facere: verum tamen est, ut, cum ego velim eum uti, licet ignoret, ne furti sit obligatus.

Dig. 47.2.46.9

Ulpianus 42 ad sab.

Si furtiva res ad dominum rediit et iterum contrectata est, competit alia furti actio.

Dig. 47.2.47

Paulus 9 ad sab.

Si dominium rei subreptae quacumque ratione mutatum sit, domino furti actio competit, veluti heredi et bonorum possessori et patri adoptivo et legatario.

Dig. 47.2.48pr.

Ulpianus 42 ad sab.

Qui vas argenteum perdiderat eoque nomine furti egerit: de pondere vasis controversia cum esset et actor maius fuisse diceret, fur vas protulit: id is cuius erat abstulit ei: qui subripuerat dupli nihilo minus condemnatus est. rectissime iudicatum est: nam in actionem poenalem non venit ipsa res quae subrepta est, sive manifesti furti sive nec manifesti agatur.

Dig. 47.2.48.1

Ulpianus 42 ad sab.

Qui furem novit, sive indicet eum sive non indicet, fur non est, cum multum intersit, furem quis celet an non indicet: qui novit, furti non tenetur, qui celat, hoc ipso tenetur.

Dig. 47.2.48.2

Ulpianus 42 ad sab.

Qui ex voluntate domini servum recepit, quin neque fur neque plagiarius sit, plus quam manifestum est: quis enim voluntatem domini habens fur dici potest?

Dig. 47.2.48.3

Ulpianus 42 ad sab.

Quod si dominus vetuit et ille suscepit, si quidem non celandi animo, non est fur, si celavit, tunc fur esse incipit. qui igitur suscepit nec celavit etsi invito domino, fur non est. vetare autem dominum accipimus etiam eum qui ignorat, hoc est eum qui non consensit.

Dig. 47.2.48.4

Ulpianus 42 ad sab.

Si ego tibi poliendum vestimentum locavero, tu vero inscio aut invito me commodaveris titio et titio furtum factum sit: et tibi competit furti actio, quia custodia rei ad te pertinet, et mihi adversus te, quia non debueras rem commodare et id faciendo furtum admiseris: ita erit casus, quo fur furti agere possit.

Dig. 47.2.48.5

Ulpianus 42 ad sab.

Ancilla si subripiatur praegnas vel apud furem concepit, partus furtivus est, sive apud furem edatur sive apud bonae fidei possessorem: sed in hoc posteriore casu furti actio cessat. sed si concepit apud bonae fidei possessorem ibique pepererit, eveniet, ut partus furtivus non sit, verum etiam usucapi possit. idem et in pecudibus servandum est et in fetu eorum, quod in partu.

Dig. 47.2.48.6

Ulpianus 42 ad sab.

Ex furtivis equis nati statim ad bonae fidei emptorem pertinebunt, merito, quia in fructu numerantur: at partus ancillae non numeratur in fructu.

Dig. 47.2.48.7

Ulpianus 42 ad sab.

Cum fur rem furtivam vendidisset eique nummos pretii dominus rei per vim extorsit, furtum eum nummorum fecisse recte responsum est: idem etiam vi bonorum raptorum actione tenebitur. quod enim ex re furtiva redigitur, furtivum non esse nemini dubium est: nummus ergo hic, qui redactus est ex pretio rei furtivae, non est furtivus.

Dig. 47.2.49pr.

Gaius 10 ad ed. provinc.

Interdum accidit, ut non habeat furti actionem is, cuius interest rem salvam esse. ut ecce creditor ob rem debitoris subreptam furti agere non potest, etsi aliunde creditum servare non possit: loquimur autem scilicet de ea re, quae pignoris iure obligata non sit.

Dig. 47.2.49.1

Gaius 10 ad ed. provinc.

Item rei dotalis nomine, quae periculo mulieris est, non mulier furti actionem habet, sed maritus.

Dig. 47.2.50pr.

Ulpianus 37 ad ed.

In furti actione non quod interest quadruplabitur vel duplabitur, sed rei verum pretium. sed et si res in rebus humanis esse desierit, cum iudicatur, nihilo minus condemnatio facienda est. itemque et si nunc deterior sit, aestimatione relata in id tempus, quo furtum factum est. quod si pretiosior facta sit, eius duplum, quanti tunc, cum pretiosior facta est, fuerit, aestimabitur, quia et tunc furtum eius factum esse verius est.

Dig. 47.2.50.1

Ulpianus 37 ad ed.

Ope consilio furtum factum celsus ait non solum, si idcirco fuerit factum, ut socii furarentur, sed et si non, ut socii furarentur, inimicitiarum tamen causa fecerit.

Dig. 47.2.50.2

Ulpianus 37 ad ed.

Recte pedius ait, sicut nemo furtum facit sine dolo malo, ita nec consilium vel opem ferre sine dolo malo posse.

Dig. 47.2.50.3

Ulpianus 37 ad ed.

Consilium autem dare videtur, qui persuadet et impellit atque instruit consilio ad furtum faciendum: opem fert, qui ministerium atque adiutorium ad subripiendas res praebet.

Dig. 47.2.50.4

Ulpianus 37 ad ed.

Cum eo, qui pannum rubrum ostendit fugavitque pecus, ut in fures incideret, si quidem dolo malo fecit, furti actio est: sed et si non furti faciendi causa hoc fecit, non debet impunitus esse lusus tam perniciosus: idcirco labeo scribit in factum dandam actionem.

Dig. 47.2.51

Gaius 13 ad ed. provinc.

Nam et si praecipitata sint pecora, utilis actio damni iniuriae quasi ex lege aquilia dabitur.

Dig. 47.2.52pr.

Ulpianus 37 ad ed.

Si quis uxori res mariti subtrahenti opem consiliumve accommodaverit, furti tenebitur.

Dig. 47.2.52.1

Ulpianus 37 ad ed.

Sed et si furtum cum ea fecit, tenebitur furti, cum ipsa non teneatur.

Dig. 47.2.52.2

Ulpianus 37 ad ed.

Ipsa quoque si opem furi tulit, furti non tenebitur, sed rerum amotarum.

Dig. 47.2.52.3

Ulpianus 37 ad ed.

Servi vero sui nomine furti eam teneri nequaquam ambigendum est.

Dig. 47.2.52.4

Ulpianus 37 ad ed.

Idem dicendum est et in filio familias milite: nam ipse patri furti non tenebitur, servi autem sui nomine castrensis tenebitur, si patri servus furtum fecerit.

Dig. 47.2.52.5

Ulpianus 37 ad ed.

Sed si filius meus, qui habet castrense peculium, furtum mihi fecerit, an possim actione utili adversus eum agere, videndum est, cum habeat, unde satisfaciat. et potest defendi agendum.

Dig. 47.2.52.6

Ulpianus 37 ad ed.

An autem pater filio teneatur, si rem eius castrensis peculii subtraxerit, videamus: et putem teneri: non tantum igitur furtum faciet filio, sed etiam furti tenebitur.

Dig. 47.2.52.7

Ulpianus 37 ad ed.

Eum creditorem, qui post solutam pecuniam pignus non reddat, teneri furti mela ait, si celandi animo retineat: quod verum esse arbitror.

Dig. 47.2.52.8

Ulpianus 37 ad ed.

Si sulpurariae sunt in agro et inde aliquis terram egessisset abstulissetque, dominus furti aget: deinde colonus conducti actione consequetur, ut id ipsum sibi praestaretur.

Dig. 47.2.52.9

Ulpianus 37 ad ed.

Si servus tuus vel filius polienda vestimenta susceperit, an furti actionem habeas, quaeritur. et si quidem peculium servi solvendo sit, potes habere furti actionem, si non fuerit solvendo, dicendum est non competere furti actionem.

Dig. 47.2.52.10

Ulpianus 37 ad ed.

Sed et si rem furtivam imprudens quis emerit et ei subrepta sit, habebit furti actionem.

Dig. 47.2.52.11

Ulpianus 37 ad ed.

Apud labeonem relatum est, si siliginario quis dixerit, ut quisquis nomine eius siliginem petisset, ei daret, et quidam ex transeuntibus cum audisset, petiit eius nomine et accepit: furti actionem adversus eum, qui suppetet, siliginario competere, non mihi: non enim mihi negotium, sed sibi siliginarius gessit.

Dig. 47.2.52.12

Ulpianus 37 ad ed.

Si fugitivum meum quis quasi suum ad duumviro vel ab aliis qui potestatem habent de carcere vel custodia dimitteret, an is furti teneatur? et placet, si fideiussores dedit, in eos domino actionem dandam, ut hi actiones suas mihi mandent: quod si non acceperint fideiussorem, sed tamquam suum accipienti ei tradiderint, dominum furti actionem adversus plagiarium habiturum.

Dig. 47.2.52.13

Ulpianus 37 ad ed.

Si quis de manu alicuius nummos aureos vel argenteos vel aliam rem excusserit, ita furti tenetur, si ideo fecit, ut alius tolleret, isque sustulerit.

Dig. 47.2.52.14

Ulpianus 37 ad ed.

Si quis massam meam argenteam subripuerit et pocula fecerit, possum vel poculorum vel massae furti agere vel condictione. idem est et in uvis et in musto et in vinaceis: nam et uvarum et musti et vinaceorum nomine furti agere potest, sed et condici.

Dig. 47.2.52.15

Ulpianus 37 ad ed.

Servus, qui se liberum adfirmavit, ut sibi pecunia crederetur, furtum non facit: namque hic nihil amplius quam idoneum se debitorem adfirmat. idem est et in eo, qui se patrem familias finxit, cum esset filius familias, ut sibi promptius pecunia crederetur.

Dig. 47.2.52.16

Ulpianus 37 ad ed.

Iulianus libro vicensimo secundo digestorum scripsit, si pecuniam quis a me acceperit, ut creditori meo solvat, deinde, cum tantam pecuniam eidem creditori deberet, suo nomine solverit, furtum eum facere.

Dig. 47.2.52.17

Ulpianus 37 ad ed.

Si titius alienam rem vendidit et ab emptore accepit nummos, non videtur nummorum furtum fecisse.

Dig. 47.2.52.18

Ulpianus 37 ad ed.

Si ex duobus sociis omnium bonorum unus rem pignori acceperit eaque subrepta sit, mela scripsit eum solum furti habere actionem, qui pignori accepit, socium non habere.

Dig. 47.2.52.19

Ulpianus 37 ad ed.

Neque verbo neque scriptura quis furtum facit: hoc enim iure utimur, ut furtum sine contrectatione non fiat. quare et opem ferre vel consilium dare tunc nocet, cum secuta contrectatio est.

Dig. 47.2.52.20

Ulpianus 37 ad ed.

Si quis asinum meum coegisset et in equas suas tys gonys dumtaxat xarin admisisset, furti non tenetur, nisi furandi quoque animum habuit. quod et herennio modestino studioso meo de dalmatia consulenti rescripsi circa equos, quibus eiusdem rei gratia subiecisse quis equas suas proponebatur, furti ita demum teneri, si furandi animo id fecisset, si minus, in factum agendum.

Dig. 47.2.52.21

Ulpianus 37 ad ed.

Cum titio honesto viro pecuniam credere vellem, subiecisti mihi alium titium egenum, quasi ille esset locuples, et nummos acceptos cum eo divisisti: furti tenearis, quasi ope tua consilioque furtum factum sit: sed et titius furti tenebitur.

Dig. 47.2.52.22

Ulpianus 37 ad ed.

Maiora quis pondera tibi commodavit, cum emeres ad pondus: furti eum venditori teneri mela scribit: te quoque, si scisti: nam ^ ^ non ^ enim^ ex voluntate venditoris accipis, cum erret in pondere.

Dig. 47.2.52.23

Ulpianus 37 ad ed.

Si quis servo meo persuaserit, ut nomen suum ex instrumento puta emptionis tolleret, et mela scripsit et ego puto furti agendum.

Dig. 47.2.52.24

Ulpianus 37 ad ed.

Sed si servo persuasum sit, ut tabulas meas describeret, puto, si quidem servo persuasum sit, servi corrupti agendum, si ipse fecit, de dolo actionem dandam.

Dig. 47.2.52.25

Ulpianus 37 ad ed.

Si linea margaritarum subrepta sit, dicendus est numerus. sed et si de vino furti agatur, necesse est dici, quot amphorae subreptae sint. si vasa subrepta sint, numerus erit dicendus.

Dig. 47.2.52.26

Ulpianus 37 ad ed.

Si servus meus, qui habebat peculii administrationem liberam, pactus sit cum eo non donationis causa, qui rem eius peculiarem subripuerat, recte transactum videtur: quamvis enim domino quaeratur furti actio, attamen in peculio servi est. sed et si tota poena furti dupli servo soluta sit, non dubie fur liberabitur. cui consequens est, ut, si forte a fure acceperit servus, quod ei rei satis esse videatur, similiter recte transactum videatur.

Dig. 47.2.52.27

Ulpianus 37 ad ed.

Si quis iuraverit se furtum non fecisse, deinde rem furtivam contrectet, furti quidem actio peremitur, rei tamen persecutio domino servatur.

Dig. 47.2.52.28

Ulpianus 37 ad ed.

Si servus subreptus heres institutus fuerit, furti iudicio actor consequetur etiam pretium hereditatis, si modo servus, antequam iussu domini adeat, mortuus fuerit. condicendo quoque mortuum idem consequetur.

Dig. 47.2.52.29

Ulpianus 37 ad ed.

Si statuliber subreptus sit vel res sub condicione legata, deinde, antequam adeatur, extiterit condicio, furti iam agi non potest, quia desiit interesse heredis: pendente autem condicione tanti aestimandus est, quanti emptorem potest invenire.

Dig. 47.2.53

Ulpianus 38 ad ed.

Si quis ex domo, in qua nemo erat, rapuerit, actione de bonis raptis in quadruplum convenietur, furti non manifesti, videlicet si nemo eum deprehenderit tollentem.

Dig. 47.2.54pr.

Paulus 39 ad ed.

Qui iniuriae causa ianuam effregit, quamvis inde per alios res amotae sint, non tenetur furti: nam maleficia voluntas et propositum delinquentis distinguit.

Dig. 47.2.54.1

Paulus 39 ad ed.

Si servus commodatoris rem subripuerit et solvendo sit is cui subreptum est, sabinus ait posse et commodati agi cum eo et contra dominum furti servi nomine: sed si pecuniam, quam dominus exegit, reddat, evanescere furti actionem: idem et si remittat commodati actionem.

Dig. 47.2.54.2

Paulus 39 ad ed.

Quod si servus tuus rem tibi commodatam subripuerit, furti tecum actio non est, quia tuo periculo res sit, sed tantum commodati.

Dig. 47.2.54.3

Paulus 39 ad ed.

Qui alienis negotiis gerendis se optulit, actionem furti non habet, licet culpa eius res perierit: sed actione negotiorum gestorum ita damnandus est, si dominus actione ei cedat. eadem sunt in eo, qui pro tutore negotia gerit, vel in eo tutore, qui diligentiam praestare debeat, veluti qui ex pluribus tutoribus testamento datis oblata satisdatione solus administrationem suscepit.

Dig. 47.2.54.4

Paulus 39 ad ed.

Si ex donatione alterius rem meam teneas et eam subripiam, ita demum furti te agere mecum posse iulianus ait, si intersit tua retinere possessionem, veluti si hominem donatum noxali iudicio defendisti vel aegrum curaveris, ut adversus vindicantem iustam retentionem habiturus sis.

Dig. 47.2.55pr.

Gaius 13 ad ed. provinc.

Si pignore creditor utatur, furti tenetur.

Dig. 47.2.55.1

Gaius 13 ad ed. provinc.

Eum, qui quod utendum accepit ipse alii commodaverit, furti obligari responsum est. ex quo satis apparet furtum fieri et si quis usum alienae rei in suum lucrum convertat. nec movere quem debet, quasi nihil lucri sui gratia faciat: species enim lucri est ex alieno largiri et beneficii debitorem sibi adquirere. unde et is furti tenetur, qui ideo rem amovet, ut eam alii donet.

Dig. 47.2.55.2

Gaius 13 ad ed. provinc.

Furem interdiu deprehensum non aliter occidere lex duodecim tabularum permisit, quam si telo se defendat. teli autem appellatione et ferrum et fustis et lapis et denique omne, quod nocendi causa habetur, significatur.

Dig. 47.2.55.3

Gaius 13 ad ed. provinc.

Cum furti actio ad poenae persecutionem pertineat, condictio vero et vindicatio ad rei reciperationem, apparet recepta re nihilo minus salvam esse furti actionem, vindicationem vero et condictionem tolli: sicut ex diverso post solutam dupli aut quadrupli poenam salva est vindicatio et condictio.

Dig. 47.2.55.4

Gaius 13 ad ed. provinc.

Qui ferramenta sciens commodaverit ad effringendum ostium vel armarium, vel scalam sciens commodaverit ad ascendendum: licet nullum eius consilium principaliter ad furtum faciendum intervenerit, tamen furti actione tenetur.

Dig. 47.2.55.5

Gaius 13 ad ed. provinc.

Si tutor qui negotia gerit aut curator transegerit cum fure, evanescit furti actio.

Dig. 47.2.56

Ulpianus 3 disp.

Cum creditor rem sibi pigneratam aufert, non videtur contrectare, sed pignori suo incumbere.

Dig. 47.2.57pr.

Iulianus 22 Dig.

Interdum fur etiam manente poenae obligatione in quibusdam casibus rursus obligatur, ut cum eo saepius eiusdem rei nomine furti agi possit. primus casus occurrit, si possessionis causa mutata esset, veluti si res in domini potestatem redisset eandemque idem subriperet vel eidem domino vel ei, cui is commodasset aut vendidisset. sed et si persona domini mutata esset, altera poena obligatur.

Dig. 47.2.57.1

Iulianus 22 Dig.

Qui furem deducit ad praefectum vigilibus vel ad praesidem, existimandus est elegisse viam, qua rem persequeretur: et si negotium ibi terminatum et damnato fure recepta est pecunia sublata in simplum, videtur furti quaestio sublata, maxime si non solum rem furtivam fur restituere iussus fuerit, sed amplius aliquid in eum iudex constituerit. sed et si nihil amplius quam furtivam rem restituere iussus fuerit, ipso, quod in periculum maioris poenae deductus est fur, intellegendum est quaestionem furti sublatam esse.

Dig. 47.2.57.2

Iulianus 22 Dig.

Si res peculiaris subrepta in potestatem servi redierit, solvitur furti vitium et incipit hoc casu in peculio esse et a domino possideri.

Dig. 47.2.57.3

Iulianus 22 Dig.

Cum autem servus rem suam peculiarem furandi consilio amovet, quamdiu eam retinet, condicio eius non mutatur (nihil enim domino abest): sed si alii tradiderit, furtum faciet.

Dig. 47.2.57.4

Iulianus 22 Dig.

Qui tutelam gerit, transigere cum fure potest et, si in potestatem suam redegerit rem furtivam, desinit furtiva esse, quia tutor domini loco habetur. sed et circa curatorem furiosi eadem dicenda sunt, qui adeo personam domini sustinet, ut etiam tradendo rem furiosi alienare existimetur. condicere autem rem furtivam tutor et curator furiosi eorum nomine possunt.

Dig. 47.2.57.5

Iulianus 22 Dig.

Si duo servi tui vestem et argentum subripuerint et alterius nomine tecum de veste actum fuerit, alterius de argento agatur: nulla exceptio dari debebit ob eam rem, quod iam de veste actum fuerit.

Dig. 47.2.58

Alfenus 4 Dig. a paulo epit.

Si cretae fodiundae causa specum quis fecisset et cretam abstulisset, fur est, non quia fodisset, sed quia abstulisset.

Dig. 47.2.59

Iulianus 4 ad urs. ferocem.

Si filio familias furtum factum esset, recte is pater familias factus eo nomine aget. sed et si res ei locata subrepta fuerit, pater familias factus itidem agere poterit.

Dig. 47.2.60

Iulianus 3 ex minic.

Si is, qui rem commodasset, eam rem clam abstulisset, furti cum eo agi non potest, quia suum recepisset et ille commodati liberatus esset. hoc tamen ita accipiendum est, si nullas retinendi causas is cui commodata res erat habuit: nam si impensas necessarias in rem commodatam fecerat, interfuit eius potius per retentionem eas servare quam ultro commodati agere, ideoque furti actionem habebit.

Dig. 47.2.61

Africanus 7 quaest.

Ancilla fugitiva quemadmodum sui furtum facere intellegitur, ita partum quoque contrectando furtivum facit.

Dig. 47.2.62pr.

Africanus 8 quaest.

Si servus communis uni ex dominis furtum fecerit, communi dividundo agi debere placet et arbitrio iudicis contineri, ut aut damnum praestet aut parte cedat. cui consequens videtur esse, ut etiam, si alienaverit suam partem, similiter et cum emptore agi possit, ut quodammodo noxalis actio caput sequatur. quod tamen non eo usque producendum ait, ut etiam, si liber sit factus, cum ipso agi posse dicamus, sicuti non ageretur etiam, si proprius fuisset. ex his igitur apparere et mortuo servo nihil esse, quod actor eo nomine consequi possit, nisi forte quid ex re furtiva ad socium pervenerit.

Dig. 47.2.62.1

Africanus 8 quaest.

His etiam illud consequens esse ait, ut et si is servus, quem mihi pignori dederis, furtum mihi fecerit, agendo contraria pigneraticia consequar, uti similiter aut damnum decidas aut pro noxae deditione hominem relinquas.

Dig. 47.2.62.2

Africanus 8 quaest.

Idem dicendum de eo, quem convenisset in causa redhibitionis esse, uti, quemadmodum accessiones et fructus emptor restituere cogitur, ita et e contrario venditor quoque vel damnum decidere vel pro noxae deditione hominem relinquere cogatur.

Dig. 47.2.62.3

Africanus 8 quaest.

Nisi quod in his amplius sit, quod, si sciens quis ignoranti furem pignori dederit, omni modo damnum praestare cogendus est: id enim bonae fidei convenire:

Dig. 47.2.62.4

Africanus 8 quaest.

Sed in actione empti praecipue spectandum esse, qualem servum venditor repromiserit.

Dig. 47.2.62.5

Africanus 8 quaest.

Quod vero ad mandati actionem attinet, dubitare se ait, num aeque dicendum sit omni modo damnum praestari debere, et quidem hoc amplius quam in superioribus causis servandum, ut, etiamsi ignoraverit is, qui certum hominem emi mandaverit, furem esse, nihilo minus tamen damnum decidere cogatur. iustissime enim procuratorem allegare non fuisse se id damnum passurum, si id mandatum non suscepisset: idque evidentius in causa depositi apparere. nam licet alioquin aequum videatur non oportere cuiquam plus damni per servum evenire, quam quanti ipse servus sit, multo tamen aequius esse nemini officium suum, quod eius, cum quo contraxerit, non etiam sui commodi causa susceperit, damnosum esse, et sicut in superioribus contractibus, venditione locatione pignore, dolum eius, qui sciens reticuerit, puniendum esse dictum sit, ita in his culpam eorum, quorum causa contrahatur, ipsis potius damnosam esse debere. nam certe mandantis culpam esse, qui talem servum emi sibi mandaverit, et similiter eius qui deponat, quod non fuerit diligentior circa monendum, qualem servum deponeret.

Dig. 47.2.62.6

Africanus 8 quaest.

Circa commodatum autem merito aliud existimandum, videlicet quod tunc eius solius commodum, qui utendum rogaverit, versetur. itaque eum qui commodaverit, sicut in locatione, si dolo quid fecerit non ultra pretium servi quid amissurum: quin etiam paulo remissius circa interpretationem doli mali debere nos versari, quoniam, ut dictum sit, nulla utilitas commodantis interveniat.

Dig. 47.2.62.7

Africanus 8 quaest.

Haec ita puto vera esse, si nulla culpa ipsius, qui mandatum vel depositum susceperit, intercedat: ceterum si ipse ultro ei custodiam argenti forte vel nummorum commiserit, cum alioquin nihil umquam dominus tale quid fecisset, aliter existimandum est.

Dig. 47.2.62.8

Africanus 8 quaest.

Locavi tibi fundum, et (ut adsolet) convenit, uti fructus ob mercedem pignori mihi essent. si eos clam deportaveris, furti tecum agere posse aiebat. sed et si tu alii fructus pendentes vendideris et emptor eos deportaverit, consequens erit, ut in furtivam causam eos incidere dicamus. etenim fructus, quamdiu solo cohaereant, fundi esse et ideo colonum, quia voluntate domini eos percipere videatur, suos fructus facere. quod certe in proposito non aeque dicitur: qua enim ratione coloni fieri possint, cum emptor eos suo nomine cogat?

Dig. 47.2.62.9

Africanus 8 quaest.

Statuliberum, qui, si decem dederit, liber esse iussus erat, heres noxali iudicio defenderat: pendente iudicio servus datis decem heredi ad libertatem pervenit: quaeritur, an non aliter absolutio fieri debeat, quam si decem, quae accepisset, heres actori dedisset. referre existimavit, unde ea pecunia data esset, ut, si quidem aliunde quam ex peculio, haec saltem praestet, quoniam quidem si nondum ad libertatem servus pervenisset, noxae deditus ei, cui deditus esset, daturus fuerit: si vero ex peculio, quia nummos heredis dederit, quos utique is passurus eum non fuerit ei dare, contra statuendum.

Dig. 47.2.63

Marcianus 4 reg.

Furtum non committit, qui fugitivo iter monstravit.

Dig. 47.2.64

Macer 2 publ. iudic.

Non poterit praeses provinciae efficere, ut furti damnatum non sequatur infamia.

Dig. 47.2.65

Nerva 1 membr.

A titio herede homo seio legatus ante aditam hereditatem titio furtum fecit. si adita hereditate seius legatum ad se pertinere voluerit, furti eius servi nomine aget cum eo titius, quia neque tunc, cum faceret furtum, eius fuit, et (ut maxime quis existimet, si servus esse coeperit eius, cui furtum fecerat, tolli furti actionem, ut nec si alienatus sit, agi possit eo nomine) ne post aditam quidem hereditatem titii factus est, quia ea, quae legantur, recta via ab eo qui legavit ad eum cui legata sunt transeunt.

Dig. 47.2.66

Ulpianus 1 ad ed. aedil. curul.

Qui ea mente alienum quid contrectavit, ut lucrifaceret, tametsi mutato consilio id domino postea reddidit, fur est: nemo enim tali peccato paenitentia sua nocens esse desinit.

Dig. 47.2.67pr.

Paulus 7 ad plaut.

Si is, qui rem pignori dedit, vendiderit eam: quamvis dominus sit, furtum facit, sive eam tradiderat creditori sive speciali pactione tantum obligaverat: idque et iulianus putat.

Dig. 47.2.67.1

Paulus 7 ad plaut.

Si is, cui res subrepta sit, dum apud furem sit, legaverat eam mihi, an, si postea fur eam contrectet, furti actionem habeam? et secundum octaveni sententiam mihi soli competit furti actio, cum heres suo nomine non habeat, quia, quacumque ratione dominium mutatum sit, domino competere furti actionem constat.

Dig. 47.2.67.2

Paulus 7 ad plaut.

Eum, qui mulionem dolo malo in ius vocasset, si interea mulae perissent, furti teneri veteres responderunt.

Dig. 47.2.67.3

Paulus 7 ad plaut.

Iulianus respondit eum, qui pecuniis exigendis praepositus est, si manumissus exigat, furti teneri. quod ei consequens est dicere et in tutore, cui post pubertatem solutum est.

Dig. 47.2.67.4

Paulus 7 ad plaut.

Si tu titium mihi commendaveris quasi idoneum, cui crederem, et ego in titium inquisii, deinde tu alium adducas quasi titium, furtum facies, quia titium esse hunc credo, scilicet si et ille qui adducitur scit: quod si nesciat, non facies furtum, nec hic qui adduxit opem tulisse potest videri cum furtum factum non sit: sed dabitur actio in factum in eum qui adduxit.

Dig. 47.2.67.5

Paulus 7 ad plaut.

Si stipulatus de te sim " per te non fieri, quo minus homo eros intra kalendas illas mihi detur", quamvis mea interesset eum non subripi (cum subrepto eo ex stipulatu non teneris, si tamen per te factum non sit quo minus mihi daretur), non tamen furti actionem me habere.

Dig. 47.2.68pr.

Celsus 12 Dig.

Infitiando depositum nemo facit furtum (nec enim furtum est ipsa infitiatio, licet prope furtum est): sed si possessionem eius apiscatur intervertendi causa, facit furtum. nec refert, in digito habeat anulum an dactyliotheca quem, cum deposito teneret, habere pro suo destinaverit.

Dig. 47.2.68.1

Celsus 12 Dig.

Si tibi subreptum est, quod nisi die certa dedisses, poenam promisisti, ideoque sufferre eam necesse fuit, furti actione hoc quoque coaestimabitur.

Dig. 47.2.68.2

Celsus 12 Dig.

Infans apud furem adolevit: tam adulescentis furtum fecit ille quam infantis, et unum tamen furtum est: ideoque dupli tenetur, quanti umquam apud eum plurimi fuit. nam quod semel dumtaxat furti agi cum eo potest, quid refert propositae quaestioni? quippe, si subreptus furi foret ac rursus a fure altero eum recuperasset, etiam si duo furta fecisset, non amplius quam semel cum eo furti agi posset. nec dubitaverim, quin adulescentis potius quam infantis aestimationem fieri oporteret. et quid tam ridiculum est quam meliorem furis condicionem esse propter continuationem furti existimare?

Dig. 47.2.68.3

Celsus 12 Dig.

Cum servus inemptus factus sit, non posse emptorem furti agere cum venditore ob id, quod is servus post emptionem, antequam redderetur, subripuisset.

Dig. 47.2.68.4

Celsus 12 Dig.

Quod furi ipsi furtum fecerit furtivus servus, eo nomine actionem cum domino furem habiturum placet, ne facinora talium servorum non solum ipsis impunitatem, sed dominis quoque eorum quaestui erunt: plerumque enim eius generis servorum furtis peculia eorundem augentur.

Dig. 47.2.68.5

Celsus 12 Dig.

Si colonus post lustrum conductionis anno amplius fructus invito domino perceperit, videndum, ne messis et vindemiae furti cum eo agi possit. et mihi dubium non videtur, quin fur et si consumpserit rem subreptam, repeti ea ab eo possit.

Dig. 47.2.69

Marcellus 8 Dig.

Hereditariae rei furtum fieri iulianus negabat, nisi forte pignori dederat defunctus aut commodaverat:

Dig. 47.2.70

Scaevola 4 quaest.

Aut in qua usus fructus alienus est.

Dig. 47.2.71

Marcellus 8 Dig.

His enim casibus putabat hereditariarum rerum fieri furtum et usucapionem impediri idcircoque heredi quoque actionem furti competere posse.

Dig. 47.2.72pr.

Iavolenus 15 ex cass.

Si is, cui commodata res erat, furtum ipsius admisit, agi cum eo et furti et commodati potest: et, si furti actum est, commodati actio exstinguitur, si commodati, actioni furti exceptio obicitur.

Dig. 47.2.72.1

Iavolenus 15 ex cass.

Eius rei, quae pro herede possidetur, furti actio ad possessorem non pertinet, quamvis usucapere quis possit, quia furti agere potest is, cuius interest rem non subripi, interesse autem eius videtur qui damnum passurus est, non eius qui lucrum facturus esset.

Dig. 47.2.73

Modestinus 7 resp.

Sempronia libellos composuit quasi datura centurioni, ut ad officium transmitterentur, sed non dedit: lucius pro tribunali eos recitavit quasi officio traditos: non sunt inventi in officio neque centurioni traditi: quaero, quo crimini subiciatur, qui ausus est libellos de domo subtractos pro tribunali legere, qui non sint dati? modestinus respondit, si clam subtraxit, furtum commissum.

Dig. 47.2.74

Iavolenus 15 ex cass.

Si is, qui pignori rem accepit, cum de vendendo pignore nihil convenisset, vendidit, aut ante, quam dies venditionis veniret pecunia non soluta, id fecit: furti se obligat.

Dig. 47.2.75

Iavolenus 4 epist.

Furtivam ancillam bona fide duorum aureorum emptam cum possiderem, subripuit mihi attius, cum quo et ego et dominus furti agimus: quaero, quanta aestimatio pro utroque fieri debet. respondit: emptori duplo, quanti eius interest, aestimari debet, domino autem duplo, quanti ea mulier fuerit. nec nos movere debet, quod duobus poena furti praestabitur, quippe, cum eiusdem rei nomine praestetur, emptori eius possessionis, domino ipsius proprietatis causa praestanda est.

Dig. 47.2.76

Pomponius 21 ad q. muc.

Si is, qui simulabat se procuratorem esse, effecisset, ut vel sibi vel cui me delegavit promitterem, furti cum eo agere non possum, quoniam nullum corpus intervenisset, quod furandi animo contrectaretur.

Dig. 47.2.77pr.

Pomponius 38 ad q. muc.

Qui re sibi commodata vel apud se deposita usus est aliter atque accepit, si existimavit se non invito domino id facere, furti non tenetur. sed nec depositi ullo modo tenebitur: commodati an teneatur, in culpa aestimatio erit, id est an non debuerit existimare id dominum permissurum.

Dig. 47.2.77.1

Pomponius 38 ad q. muc.

Si quis alteri furtum fecerit et id quod subripuit alius ab eo subripuit, cum posteriore fure dominus eius rei furti agere potest, fur prior non potest, ideo quod domini interfuit, non prioris furis, ut id quod subreptum est salvum esset. haec quintus mucius refert et vera sunt: nam licet intersit furis rem salvam esse, quia condictione tenetur, tamen cum eo is cuius interest furti habet actionem, si honesta ex causa interest. nec utimur servii sententia, qui putabat, si rei subreptae dominus nemo exstaret nec exstaturus esset, furem habere furti actionem: non magis enim tunc eius esse intellegitur, qui lucrum facturus sit. dominus igitur habebit cum utroque furti actionem, ita ut, si cum altero furti actionem inchoat, adversus alterum nihilo minus duret: sed et condictionem, quia ex diversis factis tenentur.

Dig. 47.2.78

Pomponius 13 ex var. lect.

Qui saccum habentem pecuniam subripit, furti etiam sacci nomine tenetur, quamvis non sit ei animus sacci subripiendi.

Dig. 47.2.79

Papinianus 8 quaest.

Rem inspiciendam quis dedit: si periculum spectet eum qui accepit, ipse furti agere potest.

Dig. 47.2.80

Papinianus 9 quaest.

Si debitor pignus subripuit, quod actione furti solvit nullo modo recipit.

Dig. 47.2.81pr.

Papinianus 12 quaest.

Si vendidero neque tradidero servum et is sine culpa mea subripiatur, magis est, ut mihi furti competat actio: et mea videtur interesse, quia dominium apud me fuit vel quoniam ad praestandas actiones teneor.

Dig. 47.2.81.1

Papinianus 12 quaest.

Cum autem iure dominii defertur furti actio, quamvis non alias, nisi nostra intersit, competat, tamen ad aestimationem corporis, si nihil amplius intersit, utilitas mea referenda est, idque et in statuliberis et in legato sub condicione relicto probatur: alioquin diversum probantibus statui facile quantitas non potest. quia itaque tunc sola utilitas aestimationem facit, cum cessante dominio furti actio nascitur, in istis causis ad aestimationem corporis furti actio referri non potest.

Dig. 47.2.81.2

Papinianus 12 quaest.

Si ad exhibendum egissem optaturus servum mihi legatum et unus ex familia servus subreptus, heres furti habebit actionem: eius interest: nihil enim refert, cur praestari custodia debeat.

Dig. 47.2.81.3

Papinianus 12 quaest.

Cum raptor omnimodo furtum facit, manifestus fur existimandus est:

Dig. 47.2.81.4

Papinianus 12 quaest.

Is autem, cuius dolo fuerit raptum, furti quidem non tenebitur, sed vi bonorum raptorum.

Dig. 47.2.81.5

Papinianus 12 quaest.

Si titius, cuius nomine pecuniam perperam falsus procurator accepit, ratum habeat, ipse quidem titius negotiorum gestorum aget, ei vero, qui pecuniam indebitam dedit, adversus titium erit indebiti condictio, adversus falsum procuratorem furtiva durabit: electo titio non inique per doli exceptionem, uti praestetur ei furtiva condictio, desiderabitur. quod si pecunia fuit debita, ratum habente titio furti actio evanescit, quia debitor liberatur.

Dig. 47.2.81.6

Papinianus 12 quaest.

Falsus autem procurator ita demum furtum pecuniae faciet, si nomine quoque veri procuratoris, quem creditor habuit, adsumpto debitorem alienum circumvenerit. quod aeque probatur et in eo, qui sibi deberi pecuniam ut heredi sempronii creditoris adseveravit, cum esset alius.

Dig. 47.2.81.7

Papinianus 12 quaest.

Qui rem titii agebat, eius nomine falso procuratori creditoris solvit et titius ratum habuit: non nascitur ei furti actio, quae statim, cum pecunia soluta est, ei qui dedit nata est, cum titii nummorum dominium non fuerit neque possessio. sed condictionem indebiti quidem titius habebit, furtivam autem qui pecuniam dedit: quae, si negotiorum gestorum actione titius conveniri coeperit, arbitrio iudicis ei praestabitur.

Dig. 47.2.82

Papinianus 1 resp.

Ob pecuniam civitati subtractam actione furti, non crimine peculatus tenetur.

Dig. 47.2.83pr.

Paulus 2 sent.

Fullo et sarcinator, qui polienda vel sarcienda vestimenta accepit, si forte his utatur, ex contrectatione eorum furtum fecisse videtur, quia non in eam causam ab eo videntur accepta.

Dig. 47.2.83.1

Paulus 2 sent.

Frugibus ex fundo subreptis tam colonus quam dominus furti agere possunt, quia utriusque interest rem persequi.

Dig. 47.2.83.2

Paulus 2 sent.

Qui ancillam non meretricem libidinis causa subripuit, furti actione tenebitur et, si subpressit, poena legis fabiae coercetur.

Dig. 47.2.83.3

Paulus 2 sent.

Qui tabulas cautionesve subripuit, in adscriptam summam furti actione tenebitur: nec refert, cancellatae nec ne sint, quia ex his debitum magis solutum esse comprobari potest.

Dig. 47.2.84pr.

Nerva 1 resp.

Si quis ex bonis eius, quem putabat mortuum, qui vivus erat, pro herede res adprehenderit, eum furtum non facere.

Dig. 47.2.84.1

Nerva 1 resp.

Ei, cum quo suo nomine furti actum est, si servi nomine de alia re adversus eum agatur, non dandam exceptionem furti una facti.

Dig. 47.2.85

Paulus 2 ad ner.

Quamvis res furtiva, nisi ad dominum redierit, usucapi non possit, tamen, si eo nomine lis aestimata fuerit vel furi dominus eam vendiderit, non interpellari iam usucapionis ius dicendum est.

Dig. 47.2.86

Paulus 2 manual.

Is, cuius interest non subripi, furti actionem habet, si et rem tenuit domini voluntate, id est veluti is cui res locata est. is autem, qui sua voluntate vel etiam pro tutore negotia gerit, item tutor vel curator ob rem sua culpa subreptam non habet furti actionem. item is, cui ex stipulatu vel ex testamento servus debetur, quamvis intersit eius, non habet furti actionem: sed nec is, qui fideiussit pro colono.

Dig. 47.2.87

Tryphonus 9 disp.

Si ad dominum ignorantem perveniret res furtiva vel vi possessa, non videatur in potestatem domini reversa, ideo nec si post talem domini possessionem bona fide ementi venierit, usucapio sequitur.

Dig. 47.2.88

Paulus 1 decr.

Creditori actio furti in summam pignoris, non debiti competit. sed ubi debitor ipse subtraxisset pignus, contra probatur, ut in summam pecuniae debitae et usurarum eius furti conveniretur.

Dig. 47.2.89

Paulus l.S. de concurr. act.

Si quis egerit vi bonorum raptorum, etiam furti agere non potest: quod si furti elegerit in duplum agere, potest et vi bonorum raptorum agere sic, ut non excederet quadruplum.

Dig. 47.2.90

Paulus l.S. de poen. paganorum.

Si libertus patrono vel cliens, vel mercennarius ei qui eum conduxit, furtum fecerit, furti actio non nascitur.

Dig. 47.2.91pr.

Iavolenus 9 ex post. lab.

Fullo actione locati de domino liberatus est: negat eum furti recte acturum labeo. item si furti egisset, priusquam ex locato cum eo ageretur et, antequam de furto iudicaretur, locati actione liberatus esset, et fur ab eo absolvi debet. quod si nihil eorum ante accidisset, furem ei condemnari oportere. haec idcirco, quoniam furti eatenus habet actionem, quatenus eius interest.

Dig. 47.2.91.1

Iavolenus 9 ex post. lab.

Nemo opem aut consilium alii praestare potest, qui ipse furti faciendi consilium capere non potest.

Dig. 47.2.92

Labeo 2 pith. a paulo epit.

Si quis, cum sciret quid sibi subripi, non prohibuit, non potest furti agere. paulus. immo contra: nam si quis scit sibi rapi et, quia non potest prohibere, quievit, furti agere potest. at si potuit prohibere nec prohibuit, nihilo minus furti aget: et hoc modo patronus quoque liberto et is, cuius magna verecundia ei, quem in praesentia pudor ad resistendum impedit, furtum facere solet.

Dig. 47.2.93

Ulpianus 38 ad ed.

Meminisse oportebit nunc furti plerumque criminaliter agi et eum qui agit in crimen subscribere, non quasi publicum sit iudicium, sed quia visum est temeritatem agentium etiam extraordinaria animadversione coercendam. non ideo tamen minus, si qui velit, poterit civiliter agere.

Dig. 47.3.0. De tigno iuncto.

Dig. 47.3.1pr.

Ulpianus 37 ad ed.

Lex duodecim tabularum neque solvere permittit tignum furtivum aedibus vel vineis iunctum neque vindicare (quod providenter lex effecit, ne vel aedificia sub hoc praetextu diruantur vel vinearum cultura turbetur): sed in eum, qui convictus est iunxisse, in duplum dat actionem.

Dig. 47.3.1.1

Ulpianus 37 ad ed.

Tigni autem appellatione continetur omnis materia, ex qua aedificium constet, vineaeque necessaria. unde quidam aiunt tegulam quoque et lapidem et testam ceteraque, si qua aedificiis sunt utilia (tigna enim a tegendo dicta sunt), hoc amplius et calcem et harenam tignorum appellatione contineri. sed et in vineis tigni appellatione omnia vineis necessaria continentur, ut puta perticae pedamenta.

Dig. 47.3.1.2

Ulpianus 37 ad ed.

Sed et ad exhibendum danda est actio: nec enim parci oportet ei, qui sciens alienam rem aedificio inclusit vinxitve: non enim sic eum convenimus quasi possidentem, sed ita, quasi dolo malo fecerit, quo minus possideat.

Dig. 47.3.2

Ulpianus 42 ad sab.

Sed si proponas tigni furtivi nomine aedibus iuncti actum, deliberari poterit, an extrinsecus sit rei vindicatio. et esse non dubito.

Dig. 47.4.0. Si is, qui testamento liber esse iussus erit, post mortem domini ante aditam hereditatem subripuisse aut corrupisse quid dicetur.

Dig. 47.4.1pr.

Ulpianus 38 ad ed.

Si dolo malo eius, qui liber esse iussus erit, post mortem domini ante aditam hereditatem in bonis, quae eius fuerunt, qui eum liberum esse iusserit, factum esse dicetur, quo minus ex his bonis ad heredem aliquid perveniret: in eum intra annum utilem dupli iudicium datur.

Dig. 47.4.1.1

Ulpianus 38 ad ed.

Haec autem actio, ut labeo scripsit, naturalem potius in se quam civilem habet aequitatem, si quidem civilis deficit actio: sed natura aequum est non esse impunitum eum, qui hac spe audacior factus est, quia neque ut servum se coerceri posse intellegit spe imminentis libertatis, neque ut liberum damnari, quia hereditati furtum fecit, hoc est dominae, dominus autem dominave non possunt habere furti actionem cum servo suo, quamvis postea ad libertatem pervenerit vel alienatus sit, nisi si postea quoque contrectaverit. e re itaque esse praetor putavit calliditatem et protervitatem horum, qui hereditates depopulantur, dupli actione coercere.

Dig. 47.4.1.2

Ulpianus 38 ad ed.

Non alias tenebitur iste libertus, quam si dolo quid dissipasse proponatur. culpa autem neglegentiaque servi post libertatem excusata est, sed culpa dolo proxima dolum repraesentat. proinde si quid damni dedit sine dolo, cessabit ista actio, quamvis alias aquilia tenetur ob hoc, quod damnum qualiterqualiter dederit. habet itaque certum finem ista actio, ut et dolo fecerit iste et post mortem domini et ante aditam hereditatem. ceterum si sine dolo, aut dolo quidem, verum vivo domino, non tenebitur hac actione: quin immo et si post mortem post aditam hereditatem, cessabit actio: nam ubi adita hereditas est, iam quasi liber conveniri potest.

Dig. 47.4.1.3

Ulpianus 38 ad ed.

Quid tamen, si sub condicione accepit libertatem? ecce nondum liber est: sed ut servus potest coerceri: idcirco dicendum est cessare hanc actionem.

Dig. 47.4.1.4

Ulpianus 38 ad ed.

Sed ubi libertas competit continuo, dicendum est posse et debere hanc actionem dari adversus eum, qui pervenit ad libertatem.

Dig. 47.4.1.5

Ulpianus 38 ad ed.

Si servus pure legatus ante aditam hereditatem quid admiserit in hereditate, dicendum est, quia dominium in eo mutatur, huic actioni locum esse.

Dig. 47.4.1.6

Ulpianus 38 ad ed.

Et generaliter dicimus, quo casu in servo dominium vel mutatur vel amittitur vel libertas competit post intervallum modicum aditae hereditatis, eo casu hanc actionem indulgendam.

Dig. 47.4.1.7

Ulpianus 38 ad ed.

Sed si fideicommissaria libertas servo data sit, quidquid in hereditate maleficii admisit, numquid non prius cogatur heres manumittere, quam si satisfecerit? est autem saepissime et a divo marco et ab imperatore nostro cum patre rescriptum non impediri fideicommissariam libertatem, quae pure data est. divus sane marcus rescripsit arbitrum ex continenti dandum, apud quem ratio ponatur: sed hoc rescriptum ad rationem ponendam pertinet actus, quem servus administravit. arbitror igitur et hic posse hanc actionem competere.

Dig. 47.4.1.8

Ulpianus 38 ad ed.

" ante aditam hereditatem" sic accipere debemus " antequam vel ab uno adeatur hereditas": nam ubi vel unus adit, competit libertas.

Dig. 47.4.1.9

Ulpianus 38 ad ed.

Si pupillus heres institutus sit et a substituto eius libertas data medioque tempore quaedam admittantur: si quidem vivo pupillo quid fuerit factum, locum non esse huic actioni: sin vero post mortem, antequam quis pupillo succederet, actionem istam locum habere.

Dig. 47.4.1.10

Ulpianus 38 ad ed.

Haec actio locum habet non tantum in rebus, quae in bonis fuerunt testatoris, sed et si heredis interfuit dolum malum admissum non esse, quo minus ad se perveniret. et ideo scaevola plenius tractat et si eam rem subripuisset servus, quam defunctus pignori acceperat, hanc actionem honorariam locum habere: plenius enim causam bonorum hic accipimus pro utilitate. nam si in locum deficientis furti actionis propter servitutem hanc actionem substituit praetor, verisimile est in omnibus causis eum, in quibus furti agi potuit, substituisse. et in summa probatur hanc actionem et in rebus pigneratis et in rebus alienis bona fide possessis locum habere: idem et de re commodata testatori.

Dig. 47.4.1.11

Ulpianus 38 ad ed.

Item si fructus post mortem testatoris perceptos hic servus, qui libertatem prospicit, contrectaverit, locus erit huic actioni: sed et si partus vel fetus post mortem adgnatos, tantundem erit dicendum.

Dig. 47.4.1.12

Ulpianus 38 ad ed.

Praeterea si impubes post mortem patris quaesierit rei dominium eaque, antequam impuberis hereditas adeatur, subripiatur, locum habere istam actionem dicendum est.

Dig. 47.4.1.13

Ulpianus 38 ad ed.

Sed et in omnibus, quae interfuit heredis non esse aversa, locum habet haec actio.

Dig. 47.4.1.14

Ulpianus 38 ad ed.

Non tantum autem ad sola furta ista actio pertinet, sed etiam ad omnia damna, quaecumque hereditati servus dedit.

Dig. 47.4.1.15

Ulpianus 38 ad ed.

Scaevola ait possessionis furtum fieri: denique si nullus sit possessor, furtum negat fieri: idcirco autem hereditati furtum non fieri, quia possessionem hereditas non habet, quae facti est et animi. sed nec heredis est possessio, antequam possideat, quia hereditas in eum id tantum transfundit, quod est hereditatis, non autem fuit possessio hereditatis.

Dig. 47.4.1.16

Ulpianus 38 ad ed.

Illud verum est, si potest alias heres ad suum pervenire, non esse honorariam hanc actionem tribuendam, cum in id quod intersit condemnatio fiat.

Dig. 47.4.1.17

Ulpianus 38 ad ed.

Praeter hanc actionem esse et vindicationem rei constat, cum haec actio ad similitudinem furti competat.

Dig. 47.4.1.18

Ulpianus 38 ad ed.

Item heredi ceterisque successoribus competere istam actionem dicendum est.

Dig. 47.4.1.19

Ulpianus 38 ad ed.

Si plures servi libertatem acceperunt et dolo malo quid admiserint, singuli convenientur in solidum, hoc est in duplum. et cum ex delicto conveniantur, exemplo furti nullus eorum liberatur, etsi unus conventus praestiterit.

Dig. 47.4.2

Gaius 13 ad ed. provinc.

Si paulo ante, quam statuta libertas optigerit, amoverit aliquid servus aut corruperit, ignorantia domini non introducit hanc actionem: ideoque licet maxime ignoraverit heres a statulibero aut quilibet alius dominus a servo suo amotum aliquid corruptumve esse, non impetrat post libertatem eius ullam actionem, quamvis in pluribus aliis causis iusta ignorantia excusationem mereatur.

Dig. 47.4.3

Ulpianus 13 ad ed.

Labeo putavit sub condicione manumissum res ^ rem^ amoventem, si cito condicio extitit, hac actione conveniendum.

Dig. 47.5.0. Furti adversus nautas caupones stabularios.

Dig. 47.5.1pr.

Ulpianus 38 ad ed.

In eos, qui naves cauponas stabula exercebunt, si quid a quoquo eorum quosve ibi habebunt furtum factum esse dicetur, iudicium datur, sive furtum ope consilio exercitoris factum sit, sive eorum cuius, qui in ea navi navigandi causa esset.

Dig. 47.5.1.1

Ulpianus 38 ad ed.

Navigandi autem causa accipere debemus eos, qui adhibentur, ut navis naviget, hoc est nautas.

Dig. 47.5.1.2

Ulpianus 38 ad ed.

Et est in duplum actio.

Dig. 47.5.1.3

Ulpianus 38 ad ed.

Cum enim in caupona vel in navi res perit, ex edicto praetoris obligatur exercitor navis vel caupo ita, ut in potestate sit eius, cui res subrepta sit, utrum mallet cum exercitore honorario iure an cum fure iure civili experiri.

Dig. 47.5.1.4

Ulpianus 38 ad ed.

Quod si receperit salvum fore caupo vel nauta, furti actionem non dominus rei subreptae, sed ipse habet, quia recipiendo periculum custodiae subit.

Dig. 47.5.1.5

Ulpianus 38 ad ed.

Servi vero sui nomine exercitor noxae dedendo se liberat. cur ergo non exercitor condemnetur, qui servum tam malum in nave admisit? et cur liberi quidem hominis nomine tenetur in solidum, servi vero non tenetur? nisi forte idcirco, quod liberum quidem hominem adhibens statuere debuit de eo, qualis esset, in servo vero suo ignoscendum sit ei quasi in domestico malo, si noxae dedere paratus sit. si autem alienum adhibuit servum, quasi in libero tenebitur.

Dig. 47.5.1.6

Ulpianus 38 ad ed.

Caupo praestat factum eorum, qui in ea caupona eius cauponae exercendae causa ibi sunt, item eorum, qui habitandi causa ibi sunt: viatorum autem factum non praestat. namque viatorem sibi eligere caupo vel stabularius non videtur nec repellere potest iter agentes: inhabitatores vero perpetuos ipse quodammodo elegit, qui non reiecit, quorum factum oportet eum praestare. in navi quoque vectorum factum non praestatur.

Dig. 47.6.0. Si familia furtum fecisse dicetur.

Dig. 47.6.1pr.

Ulpianus 38 ad ed.

Utilissimum id edictum praetor proposuit, quo dominis prospiceret adversus maleficia servorum, videlicet ne, cum plures furtum admittunt, evertant domini patrimonium, si omnes dedere aut pro singulis aestimationem litis offerre cogatur. datur igitur arbitrium hoc edicto, ut, si quidem velit dicere noxios servos, possit omnes dedere, qui participaverunt furtum: enimvero si maluerit aestimationem offerre, tantum offerat, quantum, si unus liber furtum fecisset, et retineat familiam suam.

Dig. 47.6.1.1

Ulpianus 38 ad ed.

Haec autem facultas domino tribuitur totiens, quotiens ignorante eo furtum factum est: ceterum si sciente, facultas ei non erit data: nam et suo nomine et singulorum nomine conveniri potest noxali iudicio, nec una aestimatione, quam homo liber sufferret, defungi poterit: is autem accipitur scire, qui scit et potuit prohibere: scientiam enim spectare debemus, quae habet et voluntatem: ceterum si scit, prohibuit tamen, dicendum est usurum edicti beneficio.

Dig. 47.6.1.2

Ulpianus 38 ad ed.

Si plures servi damnum culpa dederint, aequissimum est eandem facultatem domino dari.

Dig. 47.6.1.3

Ulpianus 38 ad ed.

Cum plures servi eiusdem rei furtum faciunt et unius nomine cum domino lis contestata sit, tamdiu aliorum nomine actio sustineri debebit, quamdiu priore iudicio potest actor consequi, quantum consequeretur, si liber id furtum fecisset,

Dig. 47.6.2

Iulianus 23 Dig.

Id est et poenae nomine duplum et condictionis simplum.

Dig. 47.6.3pr.

Ulpianus 38 ad ed.

Quotiens tantum praestat dominus, quantum praestaretur, si unus liber fecisset, cessat ceterorum nomine actio, non adversus ipsum, verum etiam adversus emptorem dumtaxat, si forte quis eorum, qui simul fecerant, venierit. idemque et si fuerit manumissus. quod si prius fuerit ablatum a manumisso, tunc dabitur adversus dominum familiae nomine: nec enim potest dici, quod a manumisso praestitum est, quasi a familia esse praestitum. plane si emptor praestiterit, puto denegandam in venditorem actionem: quodammodo enim hoc a venditore praestitum est, ad quem nonnumquam regressus est ex hac causa, maxime si furto ^ furtis^ noxaque solutum esse promisit.

Dig. 47.6.3.1

Ulpianus 38 ad ed.

Sed an, si legati servi nomine vel eius, qui donatus est, actum sit cum legatario vel eo, cui donatus est, agi possit etiam cum domino ceterorum, quaeritur: quod admittendum puto.

Dig. 47.6.3.2

Ulpianus 38 ad ed.

Huius edicti levamentum non tantum ei, qui servos possidens condemnatus praestitit tantum, quantum, si unus liber fecisset, datur, verum ei quoque, qui idcirco condemnatus est, quia dolo fecerat quo minus possideret.

Dig. 47.6.4

Iulianus 22 Dig.

Etiam heredibus eius, cui plures eiusdem familiae furtum fecerint, eadem actio competere debet, quae testatori competebat, id est ut omnes non amplius consequantur, quam consequerentur, si id furtum liber fecisset.

Dig. 47.6.5

Marcellus 8 Dig.

Familia communis sciente altero furtum fecit: omnium nomine cum eo qui scit furti agi poterit, cum altero ad eum modum, qui edicto comprehensus est: quod ille praestiterit non totius familiae nomine, ab hoc socio partem consequeretur. et si servus communis alterius iussu damnum dederit, etiam quod praestiterit alter, si modo cum eo quoque ex lege aquilia vel ex duodecim tabulis agi potest, repetat a socio, sicuti cum communi rei nocitum est. si ergo dumtaxat duos habuerim servos communes, cum eo, quo non ignorante factum est, agetur utriusque servi nomine, sed non amplius consequentur a socio, quam si unius nomine praestitisset: quod si cum eo, quo ignorante factum est, agere volet, duplum tantum consequetur. et videamus, an iam in socium alterius servi nomine non sit dandum iudicium, quemadmodum si omnium nomine socius decidisset: nisi forte hoc casu severius a praetore constituendum est nec servorum conscio parcendum est.

Dig. 47.6.6pr.

Scaevola 4 quaest.

Labeo putat, si coheres meus, quod furtum familia cuius fecisset, duplum abstulisset, me non impediri, quo minus dupli agam, eoque modo fraudem edicto fieri esseque iniquum plus heredes nostros ferre, quam ferremus ipsi.

Dig. 47.6.6.1

Scaevola 4 quaest.

Idem, si defunctus minus duplo abstulit, adhuc singulos heredes recte experiri. scaevola respondit: verius puto partes eius heredes persecuturos, sed ut cum eo, quod defunctus abstulit, uterque heres non plus duplo ferat.

Dig. 47.7.0. Arborum furtim caesarum.

Dig. 47.7.1

Paulus 9 ad sab.

Si furtim arbores caesae sint, et ex lege aquilia et ex duodecim tabularum dandam actionem labeo ait: sed trebatius ita utramque dandam, ut iudex in posteriore deducat id quod ex prima consecutus sit et reliquo condemnet.

Dig. 47.7.2

Gaius 1 ad l. xii tab.

Sciendum est autem eos, qui arbores et maxime vites ceciderint, etiam tamquam latrones puniri.

Dig. 47.7.3pr.

Ulpianus 42 ad sab.

Vitem arboris appellatione contineri plerique veterum existimaverunt.

Dig. 47.7.3.1

Ulpianus 42 ad sab.

Ederae quoque et harundines arbores non male dicentur.

Dig. 47.7.3.2

Ulpianus 42 ad sab.

Idem de salicteto dicendum est.

Dig. 47.7.3.3

Ulpianus 42 ad sab.

Sed si quis saligneas virgas instituendi salicti causa defixerit haeque, antequam radices coegerint, succidantur aut evellantur, recte pomponius scripsit non posse agi de arboribus succisis, cum nulla arbor proprie dicatur, quae radicem non conceperit.

Dig. 47.7.3.4

Ulpianus 42 ad sab.

Quod si quis ex seminario, id est stirpitus arborem transtulerit, eam, quamvis nondum comprehenderit terram, arborem tamen videri pomponius libro nono decimo ad sabinum probat.

Dig. 47.7.3.5

Ulpianus 42 ad sab.

Ideo ea quoque arbor esse videtur, cuius radices desinent vivere.

Dig. 47.7.3.5a

Ulpianus 42 ad sab.

Radix autem arboris non videtur arboris appellatione contineri, quamvis adhuc terra contineatur: quam sententiam labeo quoque probat.

Dig. 47.7.3.6

Ulpianus 42 ad sab.

Labeo etiam eam arborem recte dici putat, quae subversa a radicibus etiamnunc reponi potest, aut quae ita translata est, ut poni possit.

Dig. 47.7.3.7

Ulpianus 42 ad sab.

Stirpes oleae arbores esse magis est, sive iam egerunt radices sive nondum.

Dig. 47.7.3.8

Ulpianus 42 ad sab.

Omnium igitur harum arborum, quas enumeravimus, nomine agi poterit.

Dig. 47.7.4

Gaius libro ad l. xii tab.

Certe non dubitatur, si adhuc adeo tenerum sit, ut herbae loco sit, non debere arboris numero haberi.

Dig. 47.7.5pr.

Paulus 9 ad sab.

Caedere est non solum succidere, sed etiam ferire caedendi causa. cingere est deglabrare. subsecare est subsecuisse: non enim poterat cecidisse intellegi, qui serra secuisset.

Dig. 47.7.5.1

Paulus 9 ad sab.

Eius actionis eadem causa est, quae est legis aquiliae.

Dig. 47.7.5.2

Paulus 9 ad sab.

Is, cuius usus fructus est in fundo, hanc actionem non habet: qui autem fundum vectigalem habet, hanc actionem habet, sicut aquae pluviae arcendae actionem et finium regundorum.

Dig. 47.7.6pr.

Pomponius 20 ad sab.

Si plures eandem arborem furtim ceciderint, cum singulis in solidum agetur.

Dig. 47.7.6.1

Pomponius 20 ad sab.

At si eadem arbor plurium fuerit, universis dumtaxat una et semel poena praestabitur.

Dig. 47.7.6.2

Pomponius 20 ad sab.

Si arbor in vicini fundum radices porrexit, recidere eas vicino non licebit, agere autem licebit non esse ei ius (sicuti tignum aut protectum) immissum habere. si radicibus vicini arbor aletur, tamen eius est, in cuius fundo origo eius fuerit.

Dig. 47.7.7pr.

Ulpianus 38 ad ed.

Furtim caesae arbores videntur, quae ignorante domino celandique eius causa caeduntur.

Dig. 47.7.7.1

Ulpianus 38 ad ed.

Nec esse hanc furti actionem scribit pedius, cum et sine furto fieri possit, ut quis arbores furtim caedat.

Dig. 47.7.7.2

Ulpianus 38 ad ed.

Si quis radicitus arborem evellerit vel exstirpaverit, hac actione non tenetur: neque enim vel caedit vel succidit vel subsecuit: aquilia tamen tenetur, quasi ruperit.

Dig. 47.7.7.3

Ulpianus 38 ad ed.

Etiamsi non tota arbor caesa sit, recte tamen agetur quasi caesa.

Dig. 47.7.7.4

Ulpianus 38 ad ed.

Sive autem quis suis manibus, sive dum imperat servo arbores cingi subsecari caedi, hac actione tenetur. idem et si libero imperet.

Dig. 47.7.7.5

Ulpianus 38 ad ed.

Quod si servo suo non praeceperit dominus, sed ipse sua voluntate id amiserit, sabinus ait competere noxale, ut in ceteris maleficiis: quae sententia vera est.

Dig. 47.7.7.6

Ulpianus 38 ad ed.

Haec actio etiamsi poenalis sit, perpetua est. sed adversus heredem non datur: heredi ceterisque successoribus dabitur.

Dig. 47.7.7.7

Ulpianus 38 ad ed.

Condemnatio autem eius duplum continet.

Dig. 47.7.8pr.

Paulus 39 ad ed.

Facienda aestimatione, quanti domini intersit non laedi: ipsarumque arborum pretium deduci oportet et eius quod superest fieri aestimationem.

Dig. 47.7.8.1

Paulus 39 ad ed.

Furtim arborem caedit, qui clam caedit.

Dig. 47.7.8.2

Paulus 39 ad ed.

Igitur si ceciderit et lucri faciendi causa contrectaverit, etiam furti tenebitur lignorum causa et condictione et ad exhibendum.

Dig. 47.7.8.3

Paulus 39 ad ed.

Qui per vim sciente domino caedit, non incidit in hanc actionem.

Dig. 47.7.9

Gaius 13 ad ed. provinc.

Si colonus sit, qui ceciderit arbores, etiam ex locato cum eo agi potest. plane una actione contentus esse debet actor.

Dig. 47.7.10

Iulianus 3 ex minic.

Si gemina arbor esset et supra terram iunctura eius emineret, una arbor videtur esse. sed si id qua iungeretur non exstaret, totidem arbores sunt, quot species earum supra terram essent.

Dig. 47.7.11

Paulus 22 ad ed.

Sed si de arboribus caesis ex lege aquilia actum sit, interdicto quod vi aut clam reddito absolvetur, si satis prima condemnatione gravaverit reum, manente nihilo minus actione ex lege duodecim tabularum.

Dig. 47.7.12

Iavolenus 15 ex cass.

Qui agrum vendidit, nihilo minus furtim arborum caesarum agere potest.

Dig. 47.8.0. Vi bonorum raptorum et de turba.

Dig. 47.8.1

Paulus 22 ad ed.

Qui rem rapuit, et furti nec manifesti tenetur in duplum et vi bonorum raptorum in quadruplum. sed si ante actum sit vi bonorum raptorum, deneganda est furti: si ante furti actum est, non est illa deneganda, ut tamen id quod amplius in ea est consequatur.

Dig. 47.8.2pr.

Ulpianus 56 ad ed.

Praetor ait: " si cui dolo malo hominibus coactis damni quid factum esse dicetur sive cuius bona rapta esse dicentur, in eum, qui id fecisse dicetur, iudicium dabo. item si servus fecisse dicetur, in dominum iudicium noxale dabo".

Dig. 47.8.2.1

Ulpianus 56 ad ed.

Hoc edicto contra ea, quae vi committuntur, consuluit praetor. nam si quis se vim passum docere possit, publico iudicio de vi potest experiri, neque debet publico iudicio privata actione praeiudicari quidam putant: sed utilius visum est, quamvis praeiudicium legi iuliae de vi privata fiat, nihilo minus tamen non esse denegandam actionem eligentibus privatam persecutionem.

Dig. 47.8.2.2

Ulpianus 56 ad ed.

" dolo" autem " malo facere" potest (quod edictum ait) non tantum is qui rapit, sed et qui praecedente consilio ad hoc ipsum homines colligit armatos, ut damnum det bonave rapiat.

Dig. 47.8.2.3

Ulpianus 56 ad ed.

Sive igitur ipse quis cogat homines sive ab alio coactis utitur ad rapiendum, dolo malo facere videtur.

Dig. 47.8.2.4

Ulpianus 56 ad ed.

Homines coactos accipere debemus ad hoc coactos, ut damnum daretur.

Dig. 47.8.2.5

Ulpianus 56 ad ed.

Neque additur, quales homines: qualescumque sive liberos sive servos.

Dig. 47.8.2.6

Ulpianus 56 ad ed.

Sed et si unus homo coactus sit, adhuc dicemus homines coactos.

Dig. 47.8.2.7

Ulpianus 56 ad ed.

Item si proponas solum damnum dedisse, non puto deficere verba: hoc enim, quod ait " hominibus coactis", ut sive solus vim fecerit sive etiam hominibus coactis, sic accipere debemus etiam hominibus coactis vel armatis vel inermibus hoc edicto teneatur.

Dig. 47.8.2.8

Ulpianus 56 ad ed.

Doli mali mentio hic et vim in se habet. nam qui vim facit, dolo malo fecit, non tamen qui dolo malo facit, utique et vi facit. ita dolus habet in se et vim: et sine vi si quid callide admissum est, aeque continebitur.

Dig. 47.8.2.9

Ulpianus 56 ad ed.

" damni" praetor inquit: omnia ergo damna continet et clandestina. sed non puto clandestina, sed ea, quae violentia permixta sunt. etiam quis recte definiet, si quid solus admiserit quis non vi, non contineri hoc edicto, et si quid hominibus coactis, etiamsi sine vi, dummodo dolo sit admissum, ad hoc edictum spectare.

Dig. 47.8.2.10

Ulpianus 56 ad ed.

Ceterum neque furti actio neque legis aquiliae contributae sunt in hoc edicto, licet interdum communes sint cum hoc edicto: nam iulianus scribit eum qui vi rapit furem esse improbiorem, et si quid damni coactis hominibus dederit, utique etiam aquilia poterit teneri.

Dig. 47.8.2.11

Ulpianus 56 ad ed.

" vel cuius bona rapta esse dicuntur". quod ait praetor " bona rapta", sic accipiemus: etiam si una res ex bonis rapta sit.

Dig. 47.8.2.12

Ulpianus 56 ad ed.

Si quis non homines ipse coegerit, sed inter coactos ipse fuerit et quid aut rapuerit aut damni dederit, hac actione tenetur. sed utrum hoc solum contineat edictum, quod dolo malo hominibus a reo coactis damnum datum sit vel raptum, an vero quod dolo malo rei raptum vel damnum datum sit, licet ab alio homines sint coacti, quaeritur. et melius esse dicitur etiam hoc contineri, ut omnia haec contineantur et quod ex coactis ab alio damnum datum sit, ut et is qui coegit et is qui coactus est contineri videatur.

Dig. 47.8.2.13

Ulpianus 56 ad ed.

In hac actione intra annum utilem verum pretium rei quadruplatur, non etiam quod interest.

Dig. 47.8.2.14

Ulpianus 56 ad ed.

Haec actio etiam familiae nomine competit, non imposita necessitate ostendendi, qui sunt ex familia homines qui rapuerunt vel etiam damnum dederunt. familiae autem appellatio servos continet, hoc est eos, qui in ministerio sunt, etiamsi liberi esse proponantur vel alieni bona fide nobis servientes.

Dig. 47.8.2.15

Ulpianus 56 ad ed.

Hac actione non puto posse actorem singulorum servorum nomine agere adversus dominum eorum, quia sufficit dominum semel quadruplum offerre.

Dig. 47.8.2.16

Ulpianus 56 ad ed.

Ex hac actione noxae deditio non totius familiae, sed eorum tantum vel eius, qui dolo fecisse comperietur, fieri debet.

Dig. 47.8.2.17

Ulpianus 56 ad ed.

Haec actio volgo vi bonorum raptorum dicitur.

Dig. 47.8.2.18

Ulpianus 56 ad ed.

Hac actione is demum tenetur, qui dolum malum adhibuit. si quis igitur suam rem rapuit, vi quidem bonorum raptorum non tenebitur, sed aliter multabitur. sed et si quis fugitivum suum, quem bona fide aliquis possidebat, rapuit, aeque hac actione non tenebitur, quia rem suam aufert. quid ergo, si sibi obligatam? debebit teneri.

Dig. 47.8.2.19

Ulpianus 56 ad ed.

Vi bonorum raptorum actio in impuberem, qui doli mali capax non est, non dabitur: nisi servus ipsius vel familia eius admisisse proponantur, et servi et familiae nomine noxali vi bonorum raptorum actione tenetur.

Dig. 47.8.2.20

Ulpianus 56 ad ed.

Si publicanus pecus meum abduxerit, dum putat contra legem vectigalis aliquid a me factum: quamvis erraverit, agi tamen cum eo vi bonorum raptorum non posse labeo ait: sane dolo caret: si tamen ideo inclusit, ne pascatur et ut fame periret, etiam utili lege aquilia.

Dig. 47.8.2.21

Ulpianus 56 ad ed.

Si per vim abductum pecus incluserit quis, utique vi bonorum raptorum conveniri poterit.

Dig. 47.8.2.22

Ulpianus 56 ad ed.

In hac actione non utique spectamus rem in bonis actoris esse: sive in bonis sit sive non sit, si tamen ex bonis sit, locum haec actio habebit. quare sive commodata res sit sive locata sive etiam pignerata proponatur sive deposita apud me sic, ut intersit mea eam non auferri, sive bona fide a me possideatur, sive usum fructum in ea habeam vel quod aliud ius, ut intersit mea non rapi: dicendum est competere mihi hanc actionem, ut non dominium accipiamus, sed illud solum, quod ex bonis meis, hoc est ex substantia mea res ablata esse proponatur.

Dig. 47.8.2.23

Ulpianus 56 ad ed.

Et generaliter dicendum est, ex quibus causis furti mihi actio competit in re clam facta, ex hisdem causis habere me hanc actionem. dicet aliquis: adquin ob rem depositam furti actionem non habemus. sed ideo addidi " si intersit nostra non esse raptam": nam et furti actionem habeo, si in re deposita culpam quoque repromissi vel pretium depositionis non quasi mercedem accepi.

Dig. 47.8.2.24

Ulpianus 56 ad ed.

Utilius dicendum est et si cesset actio furti ob rem depositam, esse tamen vi bonorum raptorum actionem, quia non minima differentia est inter eum qui clam facit et eum qui rapit, cum ille celet suum delictum, hic publicet et crimen etiam publicum admittat. si quis igitur interesse sua vel modice docebit, debet habere vi bonorum raptorum actionem.

Dig. 47.8.2.25

Ulpianus 56 ad ed.

Si fugitivus meus quasdam res instruendi sui causa emerit eaeque raptae sint, quia in bonis meis hae sunt res, possum de his vi bonorum raptorum actione agere.

Dig. 47.8.2.26

Ulpianus 56 ad ed.

Rerum raptarum nomine etiam furti vel damni iniuriae vel condictione agi potest vel certe singulae res vindicari possunt.

Dig. 47.8.2.27

Ulpianus 56 ad ed.

Haec actio heredi ceterisque successoribus dabitur. adversus heredes autem vel ceteros successores non dabitur, quia poenalis actio in eos non datur. an tamen in id, quod locupletiores facti sunt, dari debeat, videamus. et ego puto ideo praetorem non esse pollicitum in heredes in id quod ad eos pervenit, quia putavit sufficere condictionem.

Dig. 47.8.3

Paulus 54 ad ed.

Si servus rapuerit et cum libero agatur, etiam, si cum domino experiundi potestas fuit, non recte cum manumisso post annum agetur, quia cum quocumque experiundi potestas fuerit, excluditur actor. si cum domino intra annum actum sit, deinde cum manumisso agatur, rei iudicatae exceptionem nocere labeo ait.

Dig. 47.8.4pr.

Ulpianus 56 ad ed.

Praetor ait: " cuius dolo malo in turba damnum quid factum esse dicetur, in eum in anno, quo primum de ea re experiundi potestas fuerit, in duplum, post annum in simplum iudicium dabo".

Dig. 47.8.4.1

Ulpianus 56 ad ed.

Hoc edictum de eo damno proponitur, quod quis in turba dedit.

Dig. 47.8.4.2

Ulpianus 56 ad ed.

Turbam autem appellatam labeo ait ex genere tumultus idque verbum ex graeco tractum apo tou vorubein.

Dig. 47.8.4.3

Ulpianus 56 ad ed.

Turbam autem ex quo numero admittimus? si duo rixam commiserint, utique non accipiemus in turba id factum, quia duo turba non proprie dicentur: enimvero si plures fuerunt, decem aut quindecim homines, turba dicetur. quid ergo, si tres aut quattuor? turba utique non erit. et rectissime labeo inter turbam et rixam multum interesse ait: namque turbam multitudinis hominum esse turbationem et coetum, rixam etiam duorum.

Dig. 47.8.4.4

Ulpianus 56 ad ed.

Hoc autem edicto tenetur non solus, qui damnum in turba dedit, sed et is, qui dolo malo fecerit, ut in turba damni quid daretur, sive illo venerit sive non fuerit praesens: dolus enim malus etiam absentis esse potest.

Dig. 47.8.4.5

Ulpianus 56 ad ed.

Hoc edicto dicendum est etiam eum teneri, qui venit et in turba fuit auctor damni dandi, si tamen et ipse inter turbam fuit, cum damnum daretur, et dolo malo fuit: nam et huius dolo malo in turba damni quid factum esse negari non potest.

Dig. 47.8.4.6

Ulpianus 56 ad ed.

Si quis adventu suo turbam concitavit vel contraxit, vel clamore vel facto aliquo vel dum criminatur aliquem vel dum misericordiam provocat: si dolo malo eius damnum datum sit, etiamsi non habuit consilium turbae cogendae, tenetur. verum est enim dolo malo eius in turba damni quid datum: neque enim exigit praetor, ut ab ipso sit turba convocata, sed hoc, ut dolo alicuius in turba damnum datum sit. eritque haec differentia inter hoc edictum et superius, quod ibi de eo damno praetor loquitur, quod dolo malo hominibus coactis datum est vel raptum etiam non coactis hominibus: at hic de eo damno, quod dolo malo in turba datum est, etiamsi non ipse turbam coegit, sed ad clamorem eius vel dicta vel misericordiam turba contracta est, vel si alius contraxit vel ipse ex turba fuit.

Dig. 47.8.4.7

Ulpianus 56 ad ed.

Idcirco illud quidem edictum propter atrocitatem facti quadrupli poenam comminatur, at hoc dupli.

Dig. 47.8.4.8

Ulpianus 56 ad ed.

Sed et hoc et illud intra annum tribuit experiundi facultatem: post annum in simplum competit.

Dig. 47.8.4.9

Ulpianus 56 ad ed.

Loquitur autem hoc edictum de damno dato et de amisso, de rapto non: sed superiori edicto vi bonorum raptorum agi poterit.

Dig. 47.8.4.10

Ulpianus 56 ad ed.

Amissa autem dicuntur ea, quae corrupta alicui relinquuntur, scissa forte vel fracta.

Dig. 47.8.4.11

Ulpianus 56 ad ed.

Haec autem actio in factum est et datur in duplum, quanti ea res erit: quod ad pretium verum rei refertur. et praesentis temporis fit aestimatio: et semper in duplum intra annum est.

Dig. 47.8.4.12

Ulpianus 56 ad ed.

Docereque actor in turba damnum esse datum debet: ceterum si alibi datum sit quam in turba, cessabit haec actio.

Dig. 47.8.4.13

Ulpianus 56 ad ed.

Si, cum servum meum titius pulsaret, turba fuerit collecta isque servus in ea turba aliquid perdiderit, cum eo qui pulsabat agere possum, quippe cum in turba dolo malo damnum datum sit: sic tamen, si, ut damnum daret, ideo coeperat caedere. ceterum si alia causa verberandi fuit, cessat actio.

Dig. 47.8.4.14

Ulpianus 56 ad ed.

Sed et si quis ipse turbam convocasset, ut turba coram servum verberaret iniuriae faciendae causa, non damni dandi consilio, locum habet edictum. verum est enim eum, qui per iniuriam verberat, dolo facere et eum, qui causam praebuit damni dandi, damnum dedisse.

Dig. 47.8.4.15

Ulpianus 56 ad ed.

In servum autem et in familiam praetor dat actionem.

Dig. 47.8.4.16

Ulpianus 56 ad ed.

Quae de heredibus ceterisque successoribus in vi bonorum raptorum actione diximus, et hic erunt repetita.

Dig. 47.8.5

Gaius 21 ad ed. provinc.

Non prodest ei qui vi rapuit ad evitandam poenam, si ante iudicium restituat rem quam rapuit.

Dig. 47.8.6

Venonius 17 stipul.

Quod vi possessum raptumve sit, antequam in potestatem domini heredisve eius perveniat, usucapi lex vetat.

Dig. 47.9.0. De incendio ruina naufragio rate nave expugnata.

Dig. 47.9.1pr.

Ulpianus 56 ad ed.

Praetor ait: " in eum, qui ex incendio ruina naufragio rate nave expugnata quid rapuisse recepisse dolo malo damnive quid in his rebus dedisse dicetur: in quadruplum in anno, quo primum de ea re experiundi potestas fuerit, post annum in simplum iudicium dabo. item in servum et in familiam iudicium dabo".

Dig. 47.9.1.1

Ulpianus 56 ad ed.

Huius edicti utilitas evidens et iustissima severitas est, si quidem publice interest nihil rapi ex huiusmodi casibus. et quamquam sint de his facinoribus etiam criminum executiones, attamen recte praetor fecit, qui forenses quoque actiones criminibus istis praeposuit.

Dig. 47.9.1.2

Ulpianus 56 ad ed.

" ex incendio" quemadmodum accipimus, utrum ex ipso igne an vero ex eo loco, ubi incendium fit? et melius sic accipietur propter incendium, hoc est propter tumultum incendii vel trepidationem incendii, rapit: quemadmodum solemus dicere in bello amissum, quod propter causam belli amittitur. proinde si ex adiacentibus praediis, ubi incendium fiebat, raptum quid sit, dicendum sit edicto locum esse, quia verum est ex incendio rapi.

Dig. 47.9.1.3

Ulpianus 56 ad ed.

Item ruinae appellatio refertus ad id tempus, quo ruina fit, non tantum si ex his quae ruerunt tulerit quis, sed etiam si ex adiacentibus.

Dig. 47.9.1.4

Ulpianus 56 ad ed.

Si suspicio fuit incendii vel ruinae, incendium vel ruina non fuit, videamus, an hoc edictum locum habeat. et magis est, ne habeat, quia neque ex incendio neque ex ruina quid raptum est.

Dig. 47.9.1.5

Ulpianus 56 ad ed.

Item ait praetor: " si quid ex naufragio". hic illud quaeritur, utrum, si quis eo tempore tulerit, quo naufragium fit, an vero et si alio tempore, hoc est post naufragiumque: nam res ex naufragio etiam hae dicuntur, quae in litore post naufragium iacent. et magis est, ut de eo tempore.

Dig. 47.9.2

Gaius 21 ad ed. provinc.

Et loco,

Dig. 47.9.3pr.

Ulpianus 56 ad ed.

Quo naufragium fit vel factum est, si quis rapuerit, incidisse in hoc edictum videatur. qui autem rem in litore iacentem, postea quam naufragium factum est, abstulit, in ea condicione est, ut magis fur sit quam hoc edicto teneatur, quemadmodum is, qui quod de vehiculo excidit tulit. nec rapere videtur, qui in litore iacentem tollit.

Dig. 47.9.3.1

Ulpianus 56 ad ed.

Deinde ait praetor " rate navi expugnata". expugnare videtur, qui in ipso quasi proelio et pugna adversus navem et ratem aliquid rapit, sive expugnet sive praedonibus expugnantibus rapiat.

Dig. 47.9.3.2

Ulpianus 56 ad ed.

Labeo scribit aequum fuisse, ut, sive de domo sive in villa expugnatis aliquid rapiatur, huic edicto locus sit: nec enim minus in mari quam in villa per latrunculos inquietamur vel infestari possumus.

Dig. 47.9.3.3

Ulpianus 56 ad ed.

Non tantum autem qui rapuit, verum is quoque, qui recepit ex causis supra scriptis, tenetur, quia receptores non minus delinquunt quam adgressores. sed enim additum est " dolo malo", quia non omnis qui recipit statim etiam delinquit, sed qui dolo malo recipit. quid enim, si ignarus recipit? aut quid, si ad hoc recepit, ut custodiret salvaque faceret ei qui amiserat? utique non debet teneri.

Dig. 47.9.3.4

Ulpianus 56 ad ed.

Non solum autem qui rapuit, sed et qui abstulit vel amovit vel damnum dedit vel recepit, hac actione tenetur.

Dig. 47.9.3.5

Ulpianus 56 ad ed.

Aliud esse autem rapi, aliud amoveri palam est, si quidem amoveri aliquid etiam sine vi possit: rapi autem sine vi non potest.

Dig. 47.9.3.6

Ulpianus 56 ad ed.

Qui eiecta nave quid rapuit, hoc edicto tenetur. " eiecta" hoc est quod graeci aiunt ecebrasvy.

Dig. 47.9.3.7

Ulpianus 56 ad ed.

Quod ait praetor de damno dato, ita demum locum habet, si dolo damnum datum sit: nam si dolus malus absit, cessat edictum. quemadmodum ergo procedit, quod labeo scribit, si defendendi mei causa vicini aedificium orto incendio dissipaverim, et meo nomine et familiae iudicium in me dandum?

cum enim defendendarum mearum aedium causa fecerim, utique dolo careo. puto igitur non esse verum, quod labeo scribit. an tamen lege aquilia agi cum hoc possit? et non puto agendum: nec enim iniuria hoc fecit, qui se tueri voluit, cum alias non posset. et ita celsus scribit.

Dig. 47.9.3.8

Ulpianus 56 ad ed.

Senatus consultum claudianis temporibus factum est, ut, si quis ex naufragio clavos vel unum ex his abstulerit, omnium rerum nomine teneatur. item alio senatus consulto cavetur eos, quorum fraude aut consilio naufragi suppressi per vim fuissent, ne navi vel ibi periclitantibus opitulentur, legis corneliae, quae de sicariis lata est, poenis adficiendos: eos autem, qui quid ex miserrima naufragorum fortuna rapuissent lucrative fuissent dolo malo, in quantum edicto praetoris actio daretur, tantum et fisco dare debere.

Dig. 47.9.4pr.

Paulus 54 ad ed.

Pedius posse etiam dici ex naufragio rapere, qui, dum naufragium fiat, in illa trepidatione rapiat.

Dig. 47.9.4.1

Paulus 54 ad ed.

Divus antoninus de his, qui praedam ex naufragio diripuissent, ita rescripsit: " quod de naufragiis navis et ratis scripsisti mihi, eo pertinet, ut explores, qua poena adficiendos eos putem, qui diripuisse aliqua ex illo probantur. et facile, ut opinor, constitui potest: nam plurimum interest, peritura collegerint an quae servari possint flagitiose invaserint. ideoque si gravior praeda vi adpetita videbitur, liberos quidem fustibus caesos in triennium relegabis aut, si sordidiores erunt, in opus publicum eiusdem temporis dabis: servos flagellis caesos in metallum damnabis. si non magnae pecuniae res fuerint, liberos fustibus, servos flagellis caesos dimittere poteris". et omnino ut in ceteris, ita huiusmodi causis ex personarum condicione et rerum qualitate diligenter sunt aestimandae, ne quid aut durius aut remissius constituatur, quam causa postulabit.

Dig. 47.9.4.2

Paulus 54 ad ed.

Hae actiones heredibus dantur. in heredes eatenus dandae sunt, quatenus ad eos pervenit.

Dig. 47.9.5

Gaius 21 ad ed. provinc.

Si quis ex naufragio vel ex incendio ruinave servatam rem et alio loco positam subtraxerit aut rapuerit, furti scilicet aut alias vi bonorum raptorum iudicio tenetur, maxime si non intellegebat ex naufragio vel incendio ruinave eam esse. iacentem quoque rem ex naufragio, quae fluctibus expulsa sit, si quis abstulerit, plerique idem putant. quod ita verum est, si aliquod tempus post naufragium intercesserit: alioquin si in ipso naufragii tempore id acciderit, nihil interest, utrum ex ipso mari quisque rapiat an ex naufragiis an ex litore. de eo quoque, quod ex rate nave expugnata raptum sit, eandem interpretationem adhibere debemus.

Dig. 47.9.6

Callistratus 1 ed. monit.

Expugnatur navis, cum spoliatur aut mergitur aut dissolvitur aut pertunditur aut funes eius praeciduntur aut vela conscinduntur aut ancorae involantur de mare.

Dig. 47.9.7

Callistratus 2 quaest.

Ne quid ex naufragiis diripiatur vel quis extraneus interveniat colligendis eis, multifariam prospectum est. nam et divus hadrianus edicto praecepit, ut hi, qui iuxta litora maris possident, scirent, si quando navis vel inficta vel fracta intra fines agri cuiusque fuerit, ne naufragia diripiant, in ipsos iudicia praesides his, qui res suas direptas queruntur, reddituros, ut quidquid probaverint ademptum sibi naufragio, id a possessoribus recipiant. de his autem, quos diripuisse probatum sit, praesidem ut de latronibus gravem sententiam dicere. ut facilior sit probatio huiusmodi admissi, permisit his et quidquid passos se huiusmodi queruntur, adire praefectos et ad eum testari reosque petere, ut pro modo culpae vel vincti vel sub fideiussoribus ad praesidem remittantur. a domino quoque possessionis, in qua id admissum dicatur, satis accipi, ne cognitioni desit, praecipitur. sed nec intervenire naufragiis colligendis aut militem aut privatum aut libertum servumve principis placere sibi ait senatus.

Dig. 47.9.8

Nerva 2 resp.

Ratis vi fluminis in agrum meum delatae non aliter potestatem tibi faciendam, quam si de praeterito quoque damno mihi cavisses.

Dig. 47.9.9

Gaius 4 ad l. xii tab.

Qui aedes acervumve frumenti iuxta domum positum conbusserit, vinctus verberatus igni necari iubetur, si modo sciens prudensque id commiserit. si vero casu, id est neglegentia, aut noxiam sarcire iubetur aut, si minus idoneus sit, levius castigatur. appellatione autem aedium omnes species aedificii continentur.

Dig. 47.9.10

Ulpianus 1 opin.

Ne piscatores nocte lumine ostenso fallant navigantes, quasi in portum aliquem delaturi, eoque modo in periculum naves et qui in eis sunt deducant sibique execrandam praedam parent, praesidis provinciae religiosa constantia efficiat.

Dig. 47.9.11

Marcianus 14 inst.

Si fortuito incendium factum sit, venia indiget, nisi tam lata culpa fuit, ut luxuria aut dolo sit proxima.

Dig. 47.9.12pr.

Ulpianus 8 de off. procons.

Licere unicuique naufragium suum impune colligere constat: idque imperator antoninus cum divo patre suo rescripsit.

Dig. 47.9.12.1

Ulpianus 8 de off. procons.

Qui data opera in civitate incendium fecerint, si humiliore loco sint, bestiis obici solent: si in aliquo gradu id fecerint, capite puniuntur aut certe in insulam deportantur.

Dig. 47.10.0. De iniuriis et famosis libellis.

Dig. 47.10.1pr.

Ulpianus 56 ad ed.

Iniuria ex eo dicta est, quod non iure fiat: omne enim, quod non iure fit, iniuria fieri dicitur. hoc generaliter. specialiter autem iniuria dicitur contumelia. interdum iniuriae appellatione damnum culpa datum significatur, ut in lege aquilia dicere solemus: interdum iniquitatem iniuriam dicimus, nam cum quis inique vel iniuste sententiam dixit, iniuriam ex eo dictam, quod iure et iustitia caret, quasi non iuriam, contumeliam autem a contemnendo.

Dig. 47.10.1.1

Ulpianus 56 ad ed.

Iniuriam autem fieri labeo ait aut re aut verbis: re, quotiens manus inferuntur: verbis autem, quotiens non manus inferuntur, convicium fit.

Dig. 47.10.1.2

Ulpianus 56 ad ed.

Omnemque iniuriam aut in corpus inferri aut ad dignitatem aut ad infamiam pertinere: in corpus fit, cum quis pulsatur: ad dignitatem, cum comes matronae abducitur: ad infamiam, cum pudicitia adtemptatur.

Dig. 47.10.1.3

Ulpianus 56 ad ed.

Item aut per semet ipsum alicui fit iniuria aut per alias personas. per semet, cum directo ipsi cui patri familias vel matri familias fit iniuria: per alias, cum per consequentias fit, cum fit liberis meis vel servis meis vel uxori nuruive: spectat enim ad nos iniuria, quae in his fit, qui vel potestati nostrae vel affectui subiecti sint.

Dig. 47.10.1.4

Ulpianus 56 ad ed.

Et si forte cadaveri defuncti fit iniuria, cui heredes bonorumve possessores exstitimus, iniuriarum nostro nomine habemus actionem: spectat enim ad existimationem nostram, si qua ei fiat iniuria. idemque et si fama eius, cui heredes exstitimus, lacessatur.

Dig. 47.10.1.5

Ulpianus 56 ad ed.

Usque adeo autem iniuria, quae fit liberis nostris, nostrum pudorem pertingit, ut etiamsi volentem filium quis vendiderit, patri suo quidem nomine competit iniuriarum actio, filii vero nomine non competit, quia nulla iniuria est, quae in volentem fiat.

Dig. 47.10.1.6

Ulpianus 56 ad ed.

Quotiens autem funeri testatoris vel cadaveri fit iniuria, si quidem post aditam hereditatem fiat, dicendum est heredi quodammodo factam (semper enim heredis interest defuncti existimationem purgare): quotiens autem ante aditam hereditatem, magis hereditati, et sic heredi per hereditatem adquiri. denique iulianus scribit, si corpus testatoris ante aditam hereditatem detentum est, adquiri hereditati actiones dubium non esse. idemque putat et si ante aditam hereditatem servo hereditario iniuria facta fuerit: nam per hereditatem actio heredi adquiretur.

Dig. 47.10.1.7

Ulpianus 56 ad ed.

Labeo scribit, si quis servum hereditarium testamento manumissum ante aditam hereditatem verberaverit, iniuriarum heredem agere posse: at si post aditam hereditatem verberatus sit, sive scit se liberum sive ignorat, ipsum agere posse.

Dig. 47.10.1.8

Ulpianus 56 ad ed.

Sive autem sciat quis filium meum esse vel uxorem meam, sive ignoraverit, habere me meo nomine actionem neratius scripsit.

Dig. 47.10.1.9

Ulpianus 56 ad ed.

Idem ait neratius ex una iniuria interdum tribus oriri iniuriarum actionem neque ullius actionem per alium consumi. ut puta uxori meae filiae familias iniuria facta est: et mihi et patri eius et ipsi iniuriarum actio incipiet competere.

Dig. 47.10.2

Paulus 50 ad ed.

Quod si viro iniuria facta sit, uxor non agit, quia defendi uxores a viris, non viros ab uxoribus aequum est.

Dig. 47.10.3pr.

Ulpianus 56 ad ed.

Illud relatum peraeque est eos, qui iniuriam pati possunt, et facere posse.

Dig. 47.10.3.1

Ulpianus 56 ad ed.

Sane sunt quidam, qui facere non possunt, ut puta furiosus et impubes, qui doli capax non est: namque hi pati iniuriam solent, non facere. cum enim iniuria ex affectu facientis consistat, consequens erit dicere hos, sive pulsent sive convicium dicant, iniuriam fecisse non videri.

Dig. 47.10.3.2

Ulpianus 56 ad ed.

Itaque pati quis iniuriam, etiamsi non sentiat, potest, facere nemo, nisi qui scit se iniuriam facere, etiamsi nesciat cui faciat.

Dig. 47.10.3.3

Ulpianus 56 ad ed.

Quare si quis per iocum percutiat aut dum certat, iniuriarum non tenetur.

Dig. 47.10.3.4

Ulpianus 56 ad ed.

Si quis hominem liberum ceciderit, dum putat servum suum, in ea causa est, ne iniuriarum teneatur.

Dig. 47.10.4

Paulus 50 ad ed.

Si, cum servo meo pugnum ducere vellem, in proximo te stantem invitus percusserim, iniuriarum non teneor.

Dig. 47.10.5pr.

Ulpianus 56 ad ed.

Lex cornelia de iniuriis competit ei, qui iniuriarum agere volet ob eam rem, quod se pulsatum verberatumve domumve suam vi introitam esse dicat. qua lege cavetur, ut non iudicet, qui ei qui agit gener socer, vitricus privignus, sobrinusve est propiusve eorum quemquem ea cognatione adfinitateve attinget, quive eorum eius parentisve cuius eorum patronus erit. lex itaque cornelia ex tribus causis dedit actionem: quod quis pulsatus verberatusve domusve eius vi introita sit. apparet igitur omnem iniuriam, quae manu fiat, lege cornelia contineri.

Dig. 47.10.5.1

Ulpianus 56 ad ed.

Inter pulsationem et verberationem hoc interest, ut ofilius scribit: verberare est cum dolore caedere, pulsare sine dolore.

Dig. 47.10.5.2

Ulpianus 56 ad ed.

Domum accipere debemus non proprietatem domus, sed domicilium. quare sive in propria domu quis habitaverit sive in conducto vel gratis sive hospitio receptus, haec lex locum habebit.

Dig. 47.10.5.3

Ulpianus 56 ad ed.

Quid si quis in villa habitet vel in hortis? idem erit probandum.

Dig. 47.10.5.4

Ulpianus 56 ad ed.

Et si dominus fundum locaverit inque eum impetus factus sit, colonus aget, non dominus.

Dig. 47.10.5.5

Ulpianus 56 ad ed.

Si tamen in fundum alienum, qui domino colebatur, introitum sit, labeo negat esse actionem domino fundi ex lege cornelia, quia non possit ubique domicilium habere, hoc est per omnes villas suas. ego puto ad omnem habitationem, in qua pater familias habitat, pertinere hanc legem, licet ibi quis domicilium non habeat. ponamus enim studiorum causa romae agere: romae utique domicilium non habet et tamen dicendum est, si vi domus eius introita fuerit, corneliam locum habere. tantum igitur ad meritoria vel stabula non pertinebit: ceterum ad hos pertinebit, qui inhabitant non momenti causa, licet ibi domicilium non habeant.

Dig. 47.10.5.6

Ulpianus 56 ad ed.

Illud quaeritur, an pater filio familias iniuriam passo ex lege cornelia iniuriarum agere possit: et placuit non posse deque ea re inter omnes constat. sed patri quidem praetoria iniuriarum actio competit, filio vero legis corneliae.

Dig. 47.10.5.7

Ulpianus 56 ad ed.

In lege cornelia filius familias agere potest ex omni causa nec cavere debet ratam rem patrem habiturum: nam nec alias agentem filium iniuriarum ad cautionem de rato compellendum iulianus scribit.

Dig. 47.10.5.8

Ulpianus 56 ad ed.

Hac lege permittitur actori ius iurandum deferre, ut reus iuret iniuriam se non fecisse. sed sabinus in adsessorio etiam praetores exemplum legis secuturos ait: et ita res se habet.

Dig. 47.10.5.9

Ulpianus 56 ad ed.

Si quis librum ad infamiam alicuius pertinentem scripserit composuerit ediderit dolove malo fecerit, quo quid eorum fieret, etiamsi alterius nomine ediderit vel sine nomine, uti de ea re agere liceret et, si condemnatus sit qui id fecit, intestabilis ex lege esse iubetur.

Dig. 47.10.5.10

Ulpianus 56 ad ed.

Eadem poena ex senatus consulto tenetur etiam is, qui epigrammata aliudve quid sine scriptura in notam aliquorum produxerit: item qui emendum vendendumve curaverit.

Dig. 47.10.5.11

Ulpianus 56 ad ed.

Et ei, qui indicasset, sive liber sive servus sit, pro modo substantiae accusatae personae aestimatione iudicis praemium constituitur, servo forsitan et libertate praestanda. quid enim si publica utilitas ex hoc emergit?

Dig. 47.10.6

Paulus 55 ad ed.

Quod senatus consultum necessarium est, cum nomen adiectum non est eius, in quem factum est: tunc ei, quia difficilis probatio est, voluit senatus publica quaestione rem vindicari. ceterum si nomen adiectum sit, et iure communi iniuriarum agi poterit: nec enim prohibendus est privato agere iudicio, quod publico iudicio praeiudicatur, quia ad privatam causam pertinet. plane si actum sit publico iudicio, denegandum est privatum: similiter ex diverso.

Dig. 47.10.7pr.

Ulpianus 57 ad ed.

Praetor edixit: " qui agit iniuriarum, certum dicat, quid iniuriae factum sit": quia qui famosam actionem intendit, non debet vagari cum discrimine alienae existimationis, sed designare et certum specialiter dicere, quam se iniuriam passum contendit.

Dig. 47.10.7.1

Ulpianus 57 ad ed.

Si dicatur homo iniuria occisus, numquid non debeat permittere praetor privato iudicio legi corneliae praeiudicari? idemque et si ita quis agere velit " quod tu venenum dedisti hominis occidendi causa?" rectius igitur fecerit, si huiusmodi actionem non dederit. adquin solemus dicere, ex quibus causis publica sunt iudicia, ex his causis non esse nos prohibendos, quo minus et privato agamus. est hoc verum, sed ubi non principaliter de ea re agitur, quae habet publicam exsecutionem. quid ergo de lege aquilia dicimus? nam et ea actio principaliter hoc continet, hominem occisum non principaliter: nam ibi principaliter de damno agitur, quod domino datum est, at in actione iniuriarum de ipsa caede vel veneno ut vindicetur, non ut damnum sarciatur. quid ergo, si quis idcirco velit iniuriarum agere, quod gladio caput eius percussum est? labeo ait non esse prohibendum: neque enim utique hoc, inquit, intenditur, quod publicam habet animadversionem. quod verum non est: cui enim dubium est etiam hunc dici posse cornelia conveniri?

Dig. 47.10.7.2

Ulpianus 57 ad ed.

Praeterea illo spectat dici certum de iniuria, quam passus quis sit, ut ex qualitate iniuriae sciamus, an in patronum liberto reddendum sit iniuriarum iudicium. etenim meminisse oportebit liberto adversus patronum non quidem semper, verum interdum iniuriarum dari iudicium, si atrox sit iniuria quam passus sit, puta servilis. ceterum levem cohercitionem utique patrono adversus libertum dabimus nec patietur eum praetor querentem, quasi iniuriam passus sit, nisi atrocitas eum moverit: nec enim ferre praetor debet heri servum, hodie liberum conquerentem, quod dominus ei convicium dixerit vel quod leviter pulsaverit vel emendaverit. sed si flagris, si verberibus, si vulneravit non mediocriter: aequissimum erit praetorem ei subvenire.

Dig. 47.10.7.3

Ulpianus 57 ad ed.

Sed et si quis ex liberis, qui non sunt in potestate, cum parente velit experiri, non temere iniuriarum actio danda est, nisi atrocitas suaserit. certe his, qui sunt in potestate, prorsus nec competit, etiamsi atrox fuerit.

Dig. 47.10.7.4

Ulpianus 57 ad ed.

Quod autem praetor ait " quid iniuriae factum sit, certum dicat", quemadmodum accipiendum sit? certum eum dicere labeo ait, qui dicat nomen iniuriae, neque sub alternatione, puta illud aut illud, sed illam iniuriam se passum.

Dig. 47.10.7.5

Ulpianus 57 ad ed.

Si mihi plures iniurias feceris, puta turba et coetu facto domum alicuius introeas et hoc facto efficiatur, et simul et convicium patiar et verberer: an possim separatim tecum experiri de singulis iniuriis, quaeritur. et Marcellus secundum neratii sententiam hoc probat cogendum iniurias, quas simul passus est, coniungere.

Dig. 47.10.7.6

Ulpianus 57 ad ed.

Posse hodie de omni iniuria, sed et de atroci civiliter agi imperator noster rescripsit.

Dig. 47.10.7.7

Ulpianus 57 ad ed.

Atrocem iniuriam quasi contumeliosiorem et maiorem accipimus.

Dig. 47.10.7.8

Ulpianus 57 ad ed.

Atrocem autem iniuriam aut persona aut tempore aut re ipsa fieri labeo ait. persona atrocior iniuria fit, ut cum magistratui, cum parenti patrono fiat. tempore, si ludis et in conspectu: nam praetoris in conspectu an in solitudine iniuria facta sit, multum interesse ait, quia atrocior est, quae in conspectu fiat. re atrocem iniuriam haberi labeo ait, ut puta si vulnus illatum vel os alicui percussum.

Dig. 47.10.8

Paulus 55 ad ed.

Vulneris magnitudo atrocitatem facit et nonnumquam locus vulneris, veluti oculo percusso.

Dig. 47.10.9pr.

Ulpianus 57 ad ed.

Sed est quaestionis, quod dicimus re iniuriam atrocem fieri, utrum, si corpori inferatur, atrox sit, an et si non corpori, ut puta vestimentis scissis, comite abducto vel convicio dicto. et ait pomponius etiam sine pulsatione posse dici atrocem iniuriam, persona atrocitatem faciente.

Dig. 47.10.9.1

Ulpianus 57 ad ed.

Sed et si in theatro vel in foro caedit et vulnerat, quamquam non atrociter, atrocem iniuriam facit.

Dig. 47.10.9.2

Ulpianus 57 ad ed.

Parvi autem refert, utrum patri familias an filio familias iniuria facta sit: nam et haec atrox aestimabitur.

Dig. 47.10.9.3

Ulpianus 57 ad ed.

Si atrocem iniuriam servus fecerit, si quidem dominus praesens sit, potest agi de eo: quod si afuerit, praesidi offerendus est, qui eum flagris rumpat.

Dig. 47.10.9.4

Ulpianus 57 ad ed.

Si quis tam feminam quam masculum, sive ingenuos sive libertinos, impudicos facere adtemptavit, iniuriarum tenebitur. sed et si servi pudicitia adtemptata sit, iniuriarum locum habet.

Dig. 47.10.10

Paulus 55 ad ed.

Adtemptari pudicitia dicitur, cum id agitur, ut ex pudico impudicus fiat.

Dig. 47.10.11pr.

Ulpianus 57 ad ed.

Non solum is iniuriarum tenetur, qui fecit iniuriam, hoc est qui percussit, verum ille quoque continetur, qui dolo fecit vel qui curavit, ut cui mala pugno percuteretur.

Dig. 47.10.11.1

Ulpianus 57 ad ed.

Iniuriarum actio ex bono et aequo est et dissimulatione aboletur. si quis enim iniuriam dereliquerit, hoc est statim passus ad animum suum non revocaverit, postea ex paenitentia remissam iniuriam non poterit recolere. secundum haec ergo aequitas actionis omnem metum eius abolere videtur, ubicumque contra aequum quis venit. proinde et si pactum de iniuria intercessit et si transactum et si iusiurandum exactum erit, actio iniuriarum non tenebit.

Dig. 47.10.11.2

Ulpianus 57 ad ed.

Agere quis iniuriarum et per se et per alium potest, ut puta procuratorem tutorem ceterosque, qui pro aliis solent intervenire.

Dig. 47.10.11.3

Ulpianus 57 ad ed.

Si mandatu meo facta sit alicui iniuria, plerique aiunt tam me qui mandavi quam eum qui suscepit iniuriarum teneri.

Dig. 47.10.11.4

Ulpianus 57 ad ed.

Proculus recte ait, si in hoc te conduxerim, ut iniuriam facias, cum utroque nostrum iniuriarum agi posse, quia mea opera facta sit iniuria:

Dig. 47.10.11.5

Ulpianus 57 ad ed.

Idemque ait et si filio meo mandavero, ut tibi iniuriam faciat.

Dig. 47.10.11.6

Ulpianus 57 ad ed.

Atilicinus autem ait et si persuaserim alicui alias nolenti, ut mihi ad iniuriam faciendam oboediret, posse iniuriarum mecum agi.

Dig. 47.10.11.7

Ulpianus 57 ad ed.

Quamquam adversus patronum liberto iniuriarum actio non detur, verum marito libertae nomine cum patrono actio competit: maritus enim uxore sua iniuriam passa suo nomine iniuriarum agere videtur. quod et Marcellus admittit. ego autem apud eum notavi non de omni iniuria hoc esse dicendum me putare: levis enim coercitio etiam in nuptam vel convici non impudici dictio cur patrono denegetur? si autem colliberto nupta esset, diceremus omnino iniuriarum marito adversus patronum cessare actionem, et ita multi sentiunt. ex quibus apparet libertos nostros non tantum eas iniurias adversus nos iniuriarum actione exequi non posse, quaecumque fiunt ipsis, sed ne eas quidem, quae eis fiunt, quos eorum interest iniuriam non pati.

Dig. 47.10.11.8

Ulpianus 57 ad ed.

Plane si forte filius liberti vel uxor velint iniuriarum experiri: quia patri maritove non datur, denegandum non erit, quia suo nomine experiuntur.

Dig. 47.10.11.9

Ulpianus 57 ad ed.

Ei, qui servus dicitur seque adserit in libertatem, iniuriarum actionem adversus dicentem se dominum competere nulla dubitatio est. et hoc verum est, sive ex libertate in servitutem petatur sive ex servitute in libertatem proclamet: nam hoc iure indistincte utimur.

Dig. 47.10.12

Gaius 22 ad ed. provinc.

Si quis de libertate aliquem in servitutem petat, quem sciat liberum esse, neque id propter evictionem, ut eam sibi conservet, faciat: iniuriarum actione tenetur.

Dig. 47.10.13pr.

Ulpianus 57 ad ed.

Iniuriarum actio neque heredi neque in heredem datur. idem est et si in servum meum iniuria facta sit: nam nec hic heredi meo iniuriarum actio datur. semel autem lite contestata hanc actionem etiam ad successores pertinere.

Dig. 47.10.13.1

Ulpianus 57 ad ed.

Is, qui iure publico utitur, non videtur iniuriae faciendae causa hoc facere: iuris enim executio non habet iniuriam.

Dig. 47.10.13.2

Ulpianus 57 ad ed.

Si quis, quod decreto praetoris non obtemperavit, ductus sit, non est in ea causa, ut agat iniuriarum, propter praetoris praeceptum.

Dig. 47.10.13.3

Ulpianus 57 ad ed.

Si quis per iniuriam ad tribunal alicuius me interpellaverit vexandi mei causa, potero iniuriarum experiri.

Dig. 47.10.13.4

Ulpianus 57 ad ed.

Si quis de honoribus decernendis alicuius passus non sit decerni ut puta imaginem alicui vel quid aliud tale: an iniuriarum teneatur? et ait labeo non teneri, quamvis hoc contumeliae causa faciet: etenim multum interest, inquit, contumeliae causa quid fiat an vero fieri quid in honorem alicuius quis non patiatur.

Dig. 47.10.13.5

Ulpianus 57 ad ed.

Idem labeo scribit, si, cum alium contingeret legatio, alii hoc onus duumvir indixerit, non posse agi iniuriarum ob laborem iniunctum: aliud enim esse laborem iniungere, aliud iniuriam facere. idem ergo erit probandum et in ceteris muneribus atque honoribus, quae per iniuriam iniunguntur. ergo si quis per iniuriam sententiam dixerit, idem erit probandum.

Dig. 47.10.13.6

Ulpianus 57 ad ed.

Quae iure potestatis a magistratu fiunt, ad iniuriarum actionem non pertinent.

Dig. 47.10.13.7

Ulpianus 57 ad ed.

Si quis me prohibeat in mari piscari vel everriculum (quod graece sagyny dicitur) ducere, an iniuriarum iudicio possim eum convenire? sunt qui putent iniuriarum me posse agere: et ita pomponius et plerique esse huic similem eum, qui in publicum lavare vel in cavea publica sedere vel in quo alio loco agere sedere conversari non patiatur, aut si quis re mea uti me non permittat: nam et hic iniuriarum conveniri potest. conductori autem veteres interdictum dederunt, si forte publice hoc conduxit: nam vis ei prohibenda est, quo minus conductione sua fruatur. si quem tamen ante aedes meas vel ante praetorium meum piscari prohibeam, quid dicendum est? me iniuriarum iudicio teneri an non? et quidem mare commune omnium est et litora, sicuti aer, et est saepissime rescriptum non posse quem piscari prohiberi: sed nec aucupari, nisi quod ingredi quis agrum alienum prohiberi potest. usurpatum tamen et hoc est, tametsi nullo iure, ut quis prohiberi possit ante aedes meas vel praetorium meum piscari: quare si quis prohibeatur, adhuc iniuriarum agi potest. in lacu tamen, qui mei dominii est, utique piscari aliquem prohibere possum.

Dig. 47.10.14

Paulus 13 ad plaut.

Sane si maris proprium ius ad aliquem pertineat, uti possidetis interdictum ei competit, si prohibeatur ius suum exercere, quoniam ad privatam iam causam pertinet, non ad publicam haec res, utpote cum de iure fruendo agatur, quod ex privata causa contingat, non ex publica. ad privatas enim causas accommodata interdicta sunt, non ad publicas.

Dig. 47.10.15pr.

Ulpianus 77 ad ed.

Item apud labeonem quaeritur, si quis mentem alicuius medicamento aliove quo alienaverit, an iniuriarum actio locum haberet. et ait iniuriarum adversus eum agi posse.

Dig. 47.10.15.1

Ulpianus 77 ad ed.

Si quis pulsatus quidem non est, verum manus adversus eum levatae et saepe territus quasi vapulaturus, non tamen percussit: utili iniuriarum actione tenetur.

Dig. 47.10.15.2

Ulpianus 77 ad ed.

Ait praetor: " qui adversus bonos mores convicium cui fecisse cuiusve opera factum esse dicetur, quo adversus bonos mores convicium fieret: in eum iudicium dabo".

Dig. 47.10.15.3

Ulpianus 77 ad ed.

Convicium iniuriam esse labeo ait.

Dig. 47.10.15.4

Ulpianus 77 ad ed.

Convicium autem dicitur vel a concitatione vel a conventu, hoc est a collatione vocum. cum enim in unum complures voces conferuntur, convicium appellatur quasi convocium.

Dig. 47.10.15.5

Ulpianus 77 ad ed.

Sed quod adicitur a praetore " adversus bonos mores" ostendit non omnem in unum collatam vociferationem praetorem notare, sed eam, quae bonis moribus improbatur quaeque ad infamiam vel invidiam alicuius specatret.

Dig. 47.10.15.6

Ulpianus 77 ad ed.

Idem ait " adversus bonos mores" sic accipiendum non eius qui fecit, sed generaliter accipiendum adversus bonos mores huius civitatis.

Dig. 47.10.15.7

Ulpianus 77 ad ed.

Convicium non tantum praesenti, verum absenti quoque fieri posse labeo scribit. proinde si quis ad domum tuam venerit te absente, convicium factum esse dicitur. idem et si ad stationem vel tabernam ventum sit, probari oportere.

Dig. 47.10.15.8

Ulpianus 77 ad ed.

Fecisse convicium non tantum is videtur, qui vociferatus est, verum is quoque, qui concitavit ad vociferationem alios vel qui summisit ut vociferentur.

Dig. 47.10.15.9

Ulpianus 77 ad ed.

" cui" non sine causa adiectum est: nam si incertae personae convicium fiat, nulla executio est.

Dig. 47.10.15.10

Ulpianus 77 ad ed.

Si curaverit quis convicium alicui fieri, non tamen factum sit, non tenebitur.

Dig. 47.10.15.11

Ulpianus 77 ad ed.

Ex his apparet non omne maledictum convicium esse: sed id solum, quod cum vociferatione dictum est, sive unus sive plures dixerint, quod in coetu dictum est, convicium est: quod autem non in coetu nec vociferatione dicitur, convicium non proprie dicitur, sed infamandi causa dictum.

Dig. 47.10.15.13

Ulpianus 77 ad ed.

Si quis astrologus vel qui aliquam illicitam divinationem pollicetur consultus aliquem furem dixisset, qui non erat, iniuriarum cum eo agi non potest, sed constitutiones eos tenent.

Dig. 47.10.15.14

Ulpianus 77 ad ed.

Iniuriarum, quae ex convicio nascitur, in heredes non est reddenda: sed nec heredi.

Dig. 47.10.15.15

Ulpianus 77 ad ed.

Si quis virgines appellasset, si tamen ancillari veste vestitas, minus peccare videtur: multo minus, si meretricia veste feminae, non matrum familiarum vestitae fuissent. si igitur non matronali habitu femina fuerit et quis eam appellavit vel ei comitem abduxit, iniuriarum tenetur.

Dig. 47.10.15.16

Ulpianus 77 ad ed.

Comitem accipere debemus eum, qui comitetur et sequatur et (ut ait labeo) sive liberum sive servum sive masculum sive feminam: et ita comitem labeo definit " qui frequentandi cuiusque causa ut sequeretur destinatus in publico privatove abductus fuerit". inter comites utique et paedagogi erunt.

Dig. 47.10.15.17

Ulpianus 77 ad ed.

Abduxisse videtur, ut labeo ait, non qui abducere comitem coepit, sed qui perfecit, ut comes cum eo non esset.

Dig. 47.10.15.18

Ulpianus 77 ad ed.

Abduxisse autem non tantum is videtur, qui per vim abduxit, verum is quoque, qui persuasit comiti, ut eam desereret.

Dig. 47.10.15.19

Ulpianus 77 ad ed.

Tenetur hoc edicto non tantum qui comitem abduxit, verum etiam si quis eorum quem appellavisset adsectatusve est.

Dig. 47.10.15.20

Ulpianus 77 ad ed.

Appellare est blanda oratione alterius pudicitiam adtemptare: hoc enim non est convicium, sed adversus bonos mores adtemptare.

Dig. 47.10.15.21

Ulpianus 77 ad ed.

Qui turpibus verbis utitur, non temptat pudicitiam, sed iniuriarum tenetur.

Dig. 47.10.15.22

Ulpianus 77 ad ed.

Aliud est appellare, aliud adsectari: appellat enim, qui sermone pudicitiam adtemptat, adsectatur, qui tacitus frequenter sequitur: adsiduo enim frequentia quasi praebet nonnullam infamiam.

Dig. 47.10.15.23

Ulpianus 77 ad ed.

Meminisse autem oportebit non omnem, qui adsectatus est, nec omnem, qui appellavit, hoc edicto conveniri posse (neque enim si quis colludendi, si quis officii honeste faciendi gratia id facit, statim in edictum incidit), sed qui contra bonos mores hoc facit.

Dig. 47.10.15.24

Ulpianus 77 ad ed.

Sponsum quoque ad iniuriarum actionem admittendum puto: etenim spectat ad contumeliam eius iniuria, quaecumque sponsae eius fiat.

Dig. 47.10.15.25

Ulpianus 77 ad ed.

Ait praetor: " ne quid infamandi causa fiat. si quis adversus ea fecerit, prout quaeque res erit, animadvertam".

Dig. 47.10.15.26

Ulpianus 77 ad ed.

Hoc edictum supervacuum esse labeo ait, quippe cum ex generali iniuriarum agere possumus. sed videtur et ipsi labeoni (et ita se habet) praetorem eandem causam secutum voluisse etiam specialiter de ea re loqui: ea enim, quae notabiliter fiunt, nisi specialiter notentur, videntur quasi neclecta.

Dig. 47.10.15.27

Ulpianus 77 ad ed.

Generaliter vetuit praetor quid ad infamiam alicuius fieri. proinde quodcumque quis fecerit vel dixerit, ut alium infamet, erit actio iniuriarum. haec autem fere sunt, quae ad infamiam alicuius fiunt: ut puta ad invidiam alicuius veste lugubri utitur aut squalida, aut si barbam demittat vel capillos submittat, aut si carmen conscribat vel proponat vel cantet aliquod, quod pudorem alicuius laedat.

Dig. 47.10.15.28

Ulpianus 77 ad ed.

Quod ait praetor: " si quis adversus ea fecerit, prout quaqua re erit, animadvertam", sic intellegendum est, ut plenior esset praetoris animadversio, id est ut quodcumque eum moverit vel in persona eius qui agit iniuriarum actionem vel eius adversus quem agitur vel etiam in re ipsa, in qualitate iniuriae, non audiat eum qui agit.

Dig. 47.10.15.29

Ulpianus 77 ad ed.

Si quis libello dato vel principi vel ali cui famam alienam insectatus fuerit, iniuriarum erit agendum: papinianus ait.

Dig. 47.10.15.30

Ulpianus 77 ad ed.

Idem ait eum, qui eventum sententiae velut daturus pecuniam vendidit, fustibus a praeside ob hoc castigatum iniuriarum damnatum videri: utique autem apparet hunc iniuriam ei fecisse, cuius sententiam venditavit.

Dig. 47.10.15.31

Ulpianus 77 ad ed.

Si quis bona alicuius vel rem unam per iniuriam occupaverit, iniuriarum actione tenetur.

Dig. 47.10.15.32

Ulpianus 77 ad ed.

Item si quis pignus proscripserit venditurus, tamquam a me acceperit, infamandi mei causa, servius ait iniuriarum agi posse.

Dig. 47.10.15.33

Ulpianus 77 ad ed.

Si quis non debitorem quasi debitorem appellaverit iniuriae faciendi causa, iniuriarum tenetur.

Dig. 47.10.15.34

Ulpianus 77 ad ed.

Praetor ait: " qui servum alienum adversus bonos mores verberavisse deve eo iniussu domini quaestionem habuisse dicetur, in eum iudicium dabo. item si quid aliud factum esse dicetur, causa cognita iudicium dabo".

Dig. 47.10.15.35

Ulpianus 77 ad ed.

Si quis sic fecit iniuriam servo, ut domino faceret, video dominum iniuriarum agere posse suo nomine: si vero non ad suggillationem domini id fecit, ipsi servo facta iniuria inulta a praetore relinqui non debuit, maxime si verberibus vel quaestione fieret: hanc enim et servum sentire palam est.

Dig. 47.10.15.36

Ulpianus 77 ad ed.

Si communem quis servum verberaverit, utique hac actione non tenebitur, cum iure domini id fecerit.

Dig. 47.10.15.37

Ulpianus 77 ad ed.

Nec si fructuarius id fecerit, dominus cum eo agit, vel si proprietarius fecerit, fructuarius eum conveniet.

Dig. 47.10.15.38

Ulpianus 77 ad ed.

Adicitur " adversus bonos mores", ut non omnis omnino qui verberavit, sed qui adversus bonos mores verberavit, teneatur: ceterum si quis corrigendi animo aut si quis emendandi, non tenetur.

Dig. 47.10.15.39

Ulpianus 77 ad ed.

Unde quaerit labeo, si magistratus municipalis servum meum loris ruperit, an possim cum eo experiri, quasi adversus bonos mores verberaverit. et ait iudicem debere inquirere, quid facientem servum meum verberaverit: nam si honorem ornamentaque petulanter adtemptantem ceciderit, absolvendum eum.

Dig. 47.10.15.40

Ulpianus 77 ad ed.

" verberasse" dicitur abusive et qui pugnis ceciderit.

Dig. 47.10.15.41

Ulpianus 77 ad ed.

" quaestionem" intellegere debemus tormenta et corporis dolorem ad eruendam veritatem. nuda ergo interrogatio vel levis territio non pertinet ad hoc edictum. quaestionis verbo etiam ea, quam malam mansionem dicunt, continebitur. cum igitur per vim et tormenta habita quaestio est, tunc quaestio intellegitur.

Dig. 47.10.15.42

Ulpianus 77 ad ed.

Sed et si iussu domini quis quaestionem habeat, modum tamen excesserit, teneri eum debere labeo ait.

Dig. 47.10.15.43

Ulpianus 77 ad ed.

Praetor ait: " si quid aliud factum esse dicetur, causa cognita iudicium dabo". proinde si quidem verberatus sit servus vel tormentis de eo quaestio habita est, sine causae cognitione iudicium in eum competit, si vero aliam iniuriam passus sit, non aliter competit quam causa cognita.

Dig. 47.10.15.44

Ulpianus 77 ad ed.

Itaque praetor non ex omni causa iniuriarum iudicium servi nomine promittit: nam si leviter percussus sit vel maledictum ei leviter, non dabit actionem: at si infamatus sit vel facto aliquo vel carmine scripto puto causae cognitionem praetoris porrigendam et ad servi qualitatem: etenim multum interest, qualis servus sit, bonae frugi, ordinarius, dispensator, an vero vulgaris vel mediastinus an qualisqualis. et quid si compeditus vel male notus vel notae extremae? habebit igitur praetor rationem tam iniuriae, quae admissa dicitur, quam personae servi, in quem admissa dicitur, et sic aut permittet aut denegabit actionem.

Dig. 47.10.15.45

Ulpianus 77 ad ed.

Interdum iniuria servo facta ad dominum redundat, interdum non: nam si pro libero se gerentem aut cum eum alterius potius quam meum existimat quis, non caesurus eum, si meum scisset, non posse eum, quasi mihi iniuriam fecerit, sic conveniri mela scribit.

Dig. 47.10.15.46

Ulpianus 77 ad ed.

Si quis servo verberato iniuriarum egerit, deinde postea damni iniuriae agat, labeo scribit eandem rem non esse, quia altera actio ad damnum pertineret culpa datum, altera ad contumeliam.

Dig. 47.10.15.47

Ulpianus 77 ad ed.

Si usum fructum in servo habeam, tu proprietatem isque verberatus sit vel quaestio de eo habita, iniuriarum actio magis proprietario quam mihi competit. idemque probatur et si servum meum, quem bona fide possidebam, cecideris: domino enim magis competit iniuriarum actio.

Dig. 47.10.15.48

Ulpianus 77 ad ed.

Item, si liberum hominem, qui mihi bona fide serviebat, quis ceciderit, distinguendum est, ut, si in contumeliam pulsatus sit, competat mihi iniuriarum actio. idem ergo et si in servo alieno bona fide mihi serviente, ut totiens admittamus iniuriarum actionem, quotiens in meam contumeliam iniuria ei facta sit. nam ipsius quidem servi nomine domino dabimus iniuriarum actionem. si autem me tangat et pulset, iniuriarum mihi quoque est. ergo et in fructuario idem distingui potest.

Dig. 47.10.15.49

Ulpianus 77 ad ed.

Si servum complurium cecidero, competere iniuriarum actionem omnibus plus quam manifestum est:

Dig. 47.10.16

Paulus 45 ad ed.

Sed non esse aequum pro maiore parte, quam pro qua dominus est, damnationem fieri pedius ait: et ideo officio iudicis portiones aestimandae erunt.

Dig. 47.10.17pr.

Ulpianus 57 ad ed.

Sed si unius permissu id fecero, si quidem solius eius esse putavi, nulli competit iniuriarum actio. plane si scii plurium, ei quidem, qui permisit, non competit iniuriarum actio, ceteris competit.

Dig. 47.10.17.1

Ulpianus 57 ad ed.

Si iussu tutoris aut procuratoris vel curatoris quaestio habita sit, consequens erit dicere cessare iniuriarum actionem.

Dig. 47.10.17.2

Ulpianus 57 ad ed.

Servus meus opera vel querella tua flagellis caesus est a magistratu nostro. mela putat dandam mihi iniuriarum adversus te, in quantum ob eam rem aequum iudici videbitur, et si servus decesserit, dominum eius agere posse labeo ait, quia de damno, quod per iniuriam factum est, agatur. et ita trebatio placuit.

Dig. 47.10.17.3

Ulpianus 57 ad ed.

Quaedam iniuriae a liberis hominibus factae leves (non nullius momenti) videntur, enimvero a servis graves sunt: crescit enim contumelia ex persona eius qui contumeliam fecit.

Dig. 47.10.17.4

Ulpianus 57 ad ed.

Cum servus iniuriam facit, maleficium eum admittere palam est: merito igitur sicuti ex ceteris delictis, ita et ex hoc iniuriarum noxalis actio datur. sed in arbitrio domini est, an velit eum verberandum exhibere, ut ita satisfiat ei qui iniuriam passus est: neque erit necesse domino utique eum verberandum praestare, sed dabitur ei facultas praestare ei servum verberandum aut, si de eo verberibus satis non fiat, noxae dedendum vel litis aestimationem sufferendam.

Dig. 47.10.17.5

Ulpianus 57 ad ed.

Ait praetor " arbitratu iudicis": utique quasi viri boni, ut ille modum verberum imponat.

Dig. 47.10.17.6

Ulpianus 57 ad ed.

Si ante iudicem dominus verberandum servum exhibuerit, ut satis verberibus ei fieret, et erit factum arbitratu alicuius, postea actor agere iniuriarum perseverat, non est audiendus: qui enim accepit satisfactionem, iniuriam suam remisit. nam et si nuda voluntate iniuriam remisit, indubitate dicendum est extingui iniuriarum actionem non minus, quam si tempore abolita fuerit iniuria.

Dig. 47.10.17.7

Ulpianus 57 ad ed.

Si iussu domini servus iniuriam fecerit, utique dominus conveniri poterit etiam suo nomine. sed si proponatur servus manumissus, placet labeoni dandam in eum actionem, quia et noxa caput sequitur nec in omnia servus domino parere debet: ceterum et si occiderit iussu domini, cornelia eum eximemus.

Dig. 47.10.17.8

Ulpianus 57 ad ed.

Plane si defendendi domini gratia aliquid fecerit, rationem ei constare apparet, inque eam rem adversus agentem exceptio obicienda erit.

Dig. 47.10.17.9

Ulpianus 57 ad ed.

Si servus, in quo usus fructus meus est, iniuriam mihi fecerit, adversus dominum noxali iudicio experiri potero: neque debeo deterioris condicionis ob hoc esse, quod usum fructum in eo habeo, quam si non haberem. aliter atque si servus communis esset: tunc enim non daremus socio actionem, eapropter, quia et ipse iniuriarum actione tenetur.

Dig. 47.10.17.10

Ulpianus 57 ad ed.

Ait praetor: " si ei, qui in alterius potestate erit, iniuria facta esse dicetur et neque is, cuius in potestate est, praesens erit neque procurator quisquam existat, qui eo nomine agat: causa cognita ipsi, qui iniuriam accepisse dicetur, iudicium dabo".

Dig. 47.10.17.11

Ulpianus 57 ad ed.

Filio familias iniuriam passo, si praesens sit pater, agere tamen non possit propter furorem vel quem alium casum dementiae, puto competere iniuriarum actionem: nam et hic pater eius absentis loco est.

Dig. 47.10.17.12

Ulpianus 57 ad ed.

Plane si praesens agere nolit, vel quia differt vel quia remittit atque donat iniuriam, magis est, ut filio actio non detur: nam et cum abest, idcirco datur filio actio, quia verisimile est patrem, si praesens fuisset, acturum fuisse.

Dig. 47.10.17.13

Ulpianus 57 ad ed.

Interdum tamen putamus et si pater remittat, iniuriarum actionem filio dandam, ut puta si patris persona vilis abiectaque sit, filii honesta: neque enim debet pater vilissimus filii sui contumeliam ad suam vilitatem metiri. ponamus esse eum patrem, cui iure meritoque curator a praetore constitueretur.

Dig. 47.10.17.14

Ulpianus 57 ad ed.

Sed si pater lite contestata coeperit abesse vel etiam neclegere executionem pater vilis, dicendum est causa cognita translationem filio competere. idem et si emancipatus filius esse proponatur.

Dig. 47.10.17.15

Ulpianus 57 ad ed.

Procuratorem patris praetulit praetor ipsis personis, quae iniuriam passae sunt. si tamen procurator aut neglegat aut colludat aut non sufficiat adversus personas, quae iniuriam fecerunt, ipsi potius, qui passus est iniuriam, actio iniuriarum competit.

Dig. 47.10.17.16

Ulpianus 57 ad ed.

Procuratorem autem accipere debemus non utique eum, cui specialiter mandata est procuratio actionis iniuriarum, verum sufficit eum esse, cui omnium rerum administratio mandata est.

Dig. 47.10.17.17

Ulpianus 57 ad ed.

Quod autem ait praetor causa cognita ipsi, qui iniuriam accepisse dicetur, iudicium permitti, ita accipiendum est, ut in cognitione causae hoc versetur, quam longe pater absit et quando superventurus, et numquid is, qui iniuriarum vult actionem movere, segnitior vel inutilis admodum, qui non sufficiat ad rei cuius administrationem ac per hoc nec ad actionem.

Dig. 47.10.17.18

Ulpianus 57 ad ed.

Quod deinde ait " qui iniuriam accepit", interdum ita accipiendum est, ut patri eius competat actio. ut puta nepoti facta iniuria est, pater praesens est, avus abest: scribit iulianus patri potius dandam iniuriarum actionem quam ipsi nepoti: ad cuius, inquit, officium pertinet etiam vivente avo filium suum in omnibus tueri.

Dig. 47.10.17.19

Ulpianus 57 ad ed.

Idem iulianus scribit filium non tantum ipsum agere debere, verum procuratorem dare posse: alioquin, inquit, nisi ei permiserimus procuratorem dare, futurum est, ut, si valetudine impediatur neque sit qui iniuriarum actionem exequatur, impediatur actio.

Dig. 47.10.17.20

Ulpianus 57 ad ed.

Idem ait, et si nepoti facta sit iniuria et nemo sit, qui avi nomine agat, permittendum esse patri experiri, et is procuratorem dabit. omnibus enim, qui suo nomine actionem habent, procuratoris dandi esse potestatem: intellegi autem filium, inquit, familias suo nomine agere, cum patre cessante praetor ei agere permittat.

Dig. 47.10.17.21

Ulpianus 57 ad ed.

Si filius familias iniuriarum egerit, patri actio non competit.

Dig. 47.10.17.22

Ulpianus 57 ad ed.

Idem ait filio familias iniuriarum nomine actionem dari, quotiens nemo est, qui patris nomine experiatur, et hoc casu quasi patrem familiae constitui. quare sive emancipatus sit sive ex parte heres scriptus fuerit vel etiam exheredatus sive paterna hereditate abstinuerit, executionem litis ei dandam: esse enim perabsurdum, quem praetor manente patria potestate ad actionem admittendum probaverit, ei patri familias ultionem iniuriarum suarum eripi et transferri ad patrem, qui eum, quantum in ipso est, omiserit, aut, quod est indignius, ad heredes patris, ad quos non pertinere iniuriam filio familias factam procul dubio est.

Dig. 47.10.18pr.

Paulus 55 ad ed.

Eum, qui nocentem infamavit, non esse bonum aequum ob eam rem condemnari: peccata enim nocentium nota esse et oportere et expedire.

Dig. 47.10.18.1

Paulus 55 ad ed.

Si servus servo fecerit iniuriam, perinde agendum, quasi si domino fecisset.

Dig. 47.10.18.2

Paulus 55 ad ed.

Si nupta filia familiae iniuriam acceperit et vir et pater iniuriarum agant, pomponius recte putat tanti patri condemnandum esse reum, quanti condemnetur, si ea vidua esset, viro tanti, quanti condemnaretur, si ea in nullius potestate esset, quod sua cuiusque iniuria propriam aestimationem haberet. et ideo si nupta in nullius potestate sit, non ideo minus eam iniuriarum agere posse, quod et vir suo nomine agat.

Dig. 47.10.18.3

Paulus 55 ad ed.

Si iniuria mihi fiat ab eo, cui sim ignotus, aut si quis putet me lucium titium esse, cum sim gaius seius: praevalet, quod principale est, iniuriam eum mihi facere velle: nam certus ego sum, licet ille putet me alium esse quam sum, et ideo iniuriarum habeo.

Dig. 47.10.18.4

Paulus 55 ad ed.

At cum aliquis filium familias patrem familias putat, non potest videri iniuriam patri facere, non magis quam viro, si mulierem viduam esse credat, quia neque in personam eorum confertur iniuria nec transferri personae putationem ex persona filiorum ad eos potest, cum affectus iniuriam facientis in hunc tamquam in patrem familias consistat.

Dig. 47.10.18.5

Paulus 55 ad ed.

Quod si scisset filium familias esse, tamen, si nescisset, cuius filius esset, dicerem, inquit, patrem suo nomine iniuriarum agere posse: nec minus virum, si ille nuptam esse sciret: nam qui haec non ignorat, cuicumque patri, cuicumque marito per filium, per uxorem vult facere iniuriam.

Dig. 47.10.19

Gaius 22 ad ed. provinc.

Si creditor meus, cui paratus sum solvere, in iniuriam meam fideiussores meos interpellaverit, iniuriarum tenetur.

Dig. 47.10.20

Modestinus 12 resp.

Si iniuriae faciendae gratia seia domum absentis debitoris signasset sine auctoritate eius, qui concedendi ius potestatemve habuit, iniuriarum actionem intendi posse respondit.

Dig. 47.10.21

Iavolenus 9 epist.

Iniuriarum aestimatio non ad id tempus, quo iudicatur, sed ad id, quo facta est, referri debet.

Dig. 47.10.22

Ulpianus 1 ad ed. praet.

Si liber pro fugitivo adprehensus erit, iniuriarum cum eo agit.

Dig. 47.10.23

Paulus 4 ad ed.

Qui in domum alienam invito domino introiret, quamvis in ius vocat, actionem iniuriarum in eum competere ofilius ait.

Dig. 47.10.24

Ulpianus 15 ad ed. praet.

Si quis proprium servum distrahere prohibetur a quolibet, iniuriarum experiri potest.

Dig. 47.10.25

Ulpianus 18 ad ed.

Si stuprum serva passa sit, iniuriarum actio dabitur: aut, si celavit mancipium vel quid aliud furandi animo fecit, etiam furti: vel, si virginem immaturam stupraverit, etiam legis aquiliae actionem competere quidam putant.

Dig. 47.10.26

Paulus 19 ad ed.

Si quis servum meum vel filium ludibrio habeat licet consentientem, tamen ego iniuriam videor accipere: veluti si in popinam duxerit illum, si alea luserit. sed hoc utcumque tunc locum habere potest, quotiens ille qui suadet animum iniuriae faciendae habet. atquin potest malum consilium dare et qui dominum ignoret: et ideo incipit servi corrupti actio necessaria esse.

Dig. 47.10.27

Paulus 27 ad ed.

Si statua patris tui in monumento posita saxis caesa est, sepulchri violati agi non posse, iniuriarum posse labeo scribit.

Dig. 47.10.28

Ulpianus 34 ad sab.

Iniuriarum actio in bonis nostris non computatur, antequam litem contestemur.

Dig. 47.10.29

Paulus 10 ad sab.

Si servum, cuius nomine iniuriarum actio tibi competit, manumiseris aut alienaveris, superest tibi iniuriarum actio.

Dig. 47.10.30pr.

Ulpianus 42 ad sab.

Servo autem manumisso non competere actionem ob iniuriam, quam in servitute passus est, quis dubitet?

Dig. 47.10.30.1

Ulpianus 42 ad sab.

Si filio iniuria facta sit, cum utrique tam filio quam patri adquisita actio sit, non eadem utique facienda aestimatio est,

Dig. 47.10.31

Paulus 10 ad sab.

Cum possit propter filii dignitatem maior ipsi quam patri iniuria facta esse.

Dig. 47.10.32

Ulpianus 42 ad sab.

Nec magistratibus licet aliquid iniuriose facere. si quid igitur per iniuriam fecerit magistratus vel quasi privatus vel fiducia magistratus, iniuriarum potest conveniri. sed utrum posito magistratu an vero et quamdiu est in magistratu? sed verius est, si is magistratus est, qui sine fraude in ius vocari non potest, exspectandum esse, quoad magistratu abeat. quod et si ex minoribus magistratibus erit, id est qui sine imperio aut potestate sunt magistratus, et in ipso magistratu posse eos conveniri.

Dig. 47.10.33

Paulus 10 ad sab.

Quod rei publicae venerandae causa secundum bonos mores fit, etiamsi ad contumeliam alicuius pertinet, quia tamen non ea mente magistratus facit, ut iniuriam faciat, sed ad vindictam maiestatis publicae respiciat, actione iniuriarum non tenetur.

Dig. 47.10.34

Gaius 13 ad ed. provinc.

Si plures servi simul aliquem ceciderint aut convicium alicui fecerint, singulorum proprium est maleficium et tanto maior iniuria, quanto a pluribus admissa est. immo etiam tot iniuriae sunt, quot et personae iniuriam facientium.

Dig. 47.10.35

Ulpianus 3 de omn. trib.

Si quis iniuriam atrocem fecerit, qui contemnere iniuriarum iudicium possit ob infamiam suam et egestatem, praetor acriter exequi hanc rem debet et eos, qui iniuriam fecerunt, coercere.

Dig. 47.10.36

Iulianus 45 Dig.

Si filii nomine cum patre iniuriarum agere velim et is procuratorem det, non intellegitur filius defendi, nisi iudicatum solvi satisdetur: et ideo actio adversus filium, tamquam a patre non defendatur, danda erit.

Dig. 47.10.37pr.

Marcianus 14 inst.

Constitutionibus principalibus cavetur ea, quae infamandi alterius causa in monumenta publica posita sunt, tolli de medio.

Dig. 47.10.37.1

Marcianus 14 inst.

Etiam ex lege cornelia iniuriarum actio civiliter moveri potest condemnatione aestimatione iudicis facienda.

Dig. 47.10.38

Scaevola 4 reg.

Senatus consulto cavetur, ne quis imaginem imperatoris in invidiam alterius portaret: et qui contra fecerit, in vincula publica mittetur.

Dig. 47.10.39

Venonius 2 publ. iudic.

Vestem sordidam rei nomine in publico habere capillumve summittere nulli licet, nisi ita coniunctus est adfinitati, ut invitus in reum testimonium dicere cogi non possit.

Dig. 47.10.40

Macer 2 publ. iudic.

Divus severus dionysio diogeni ita scripsit: " atrocis iniuriae damnatus in ordine decurionum esse non potest. nec prodesse tibi debet error praesidum aut eius, qui de te aliquid pronuntiavit, aut eorum, qui contra formam iuris mansisse te in ordine decurionum putaverunt".

Dig. 47.10.41

Nerva 5 membr.

Pater, cuius filio facta est iniuria, non est impediendus, quo minus duobus iudiciis et suam iniuriam persequatur et filii.

Dig. 47.10.42

Paulus 5 sent.

Iudici ab appellatoribus convicium fieri non oportet: alioquin infamia notantur.

Dig. 47.10.43

Gaius 3 reg.

Qui iniuriarum actionem per calumniam instituit, extra ordinem damnatur: id est exilium aut relegationem aut ordinis amotionem patiatur.

Dig. 47.10.44

Iavolenus 9 ex post. lab.

Si inferiorum dominus aedium superioris vicini fumigandi causa fumum faceret, aut si superior vicinus in inferiores aedes quid aut proiecerit aut infuderit, negat labeo iniuriarum agi posse: quod falsum puto, si tamen iniuriae faciendae causa immittitur.

Dig. 47.10.45

Hermogenianus 5 epit.

De iniuria nunc extra ordinem ex causa et persona statui solet. et servi quidem flagellis caesi dominis restituuntur, liberi vero humilioris quidem loci fustibus subiciuntur, ceteri autem vel exilio temporali vel interdictione certae rei coercentur.

Dig. 47.11.0. De extraordinariis criminibus.

Dig. 47.11.1pr.

Paulus 5 sent.

Sollicitatores alienarum nuptiarum itemque matrimoniorum interpellatores et si effectu sceleris potiri non possunt, propter voluntatem perniciosae libidinis extra ordinem puniuntur.

Dig. 47.11.1.1

Paulus 5 sent.

Fit iniuria contra bonos mores, veluti si quis fimo corrupto aliquem perfuderit, caeno luto oblinierit, aquas spurcaverit, fistulas lacus quidve aliud ad iniuriam publicam contaminaverit: in quos graviter animadverti solet.

Dig. 47.11.1.2

Paulus 5 sent.

Qui puero stuprum abducto ab eo vel corrupto comite persuaserit aut mulierem puellamve interpellaverit quidve impudicitiae gratia fecerit, domum praebuerit pretiumve, quo is persuadeat, dederit: perfecto flagitio punitur capite, imperfecto in insulam deportatur: corrupti comites summo supplicio adficiuntur.

Dig. 47.11.2

Ulpianus 4 opin.

Sub praetextu religionis vel sub specie solvendi voti coetus illicitos nec a veteranis temptari oportet.

Dig. 47.11.3

Ulpianus 3 de adult.

Stellionatus vel expilatae hereditatis iudicia accusationem quidem habent, sed non sunt publica.

Dig. 47.11.4

Marcianus 1 reg.

Divus severus et antoninus rescripserunt eam, quae data opera abegit, a praeside in temporale exilium dandam: indignum enim videri potest impune eam maritum liberis fraudasse.

Dig. 47.11.5

Ulpianus 5 de off. procons.

In eum, cuius instinctu ad infamandum dominum servus ad statuam confugisse compertus erit, praeter corrupti servi actionem, quae ex edicto perpetuo competit, severe animadvertitur.

Dig. 47.11.6pr.

Ulpianus 8 de off. procons.

Annonam adtemptare et vexare vel maxime dardanarii solent: quorum avaritiae obviam itum est tam mandatis quam constitutionibus. mandatis denique ita cavetur: " praeterea debebis custodire, ne dardanarii ullius mercis sint, ne aut ab his, qui coemptas merces supprimunt, aut a locupletioribus, qui fructus suos aequis pretiis vendere nollent, dum minus uberes proventus exspectant, annona oneretur". poena autem in hos varie statuitur: nam plerumque, si negotiantes sunt, negotiatione eis tantum interdicitur, interdum et relegari solent, humiliores ad opus publicum dari.

Dig. 47.11.6.1

Ulpianus 8 de off. procons.

Onerant annonam etiam staterae adulterinae, de quibus divus traianus edictum proposuit, quo edicto poenam legis corneliae in eos statuit, perinde ac si lege testamentaria, quod testamentum falsum scripsisset signasset recitasset, damnatus esset.

Dig. 47.11.6.2

Ulpianus 8 de off. procons.

Sed et divus hadrianus eum, qui falsas mensuras habuit, in insulam relegavit.

Dig. 47.11.7

Ulpianus 9 de off. procons.

Saccularii, qui vetitas in sacculos artes exercentes partem subducunt, partem subtrahunt, item qui derectarii appellantur, hoc est hi, qui in aliena cenacula se dirigunt furandi animo, plus quam fures puniendi sunt: idcircoque aut ad tempus in opus dantur publicum, aut fustibus castigantur et dimittuntur, aut ad tempus relegantur.

Dig. 47.11.8

Ulpianus 9 de off. procons.

Sunt praeterea crimina, quae ad executionem praesidis pertinent: ut puta si quis instrumenta sua prodita esse dicat: nam huius rei executio praefecto urbis a divis fratribus data est.

Dig. 47.11.9

Ulpianus 9 de off. procons.

Sunt quaedam, quae more provinciarum coercitionem solent admittere: ut puta in provincia arabia skopelismon crimen appellant, cuius rei admissum tale est:

plerique inimicorum solent praedium inimici skopelizein, id est lapides ponere indicio futuros, quod, si quis eum agrum coluisset, malo leto periturus esset insidiis eorum, qui scopulos posuissent: quae res tantum timorem habet, ut nemo ad eum agrum accedere audeat crudelitatem timens eorum qui scopelismon fecerunt. hanc rem praesides exequi solent graviter usque ad poenam capitis, quia et ipsa res mortem comminatur.

Dig. 47.11.10

Ulpianus 9 de off. procons.

In aegypto qui chomata rumpit vel dissolvit (hi sunt aggeres, qui quidem solent aquam niloticam continere), aeque plectitur extra ordinem: et pro condicione sua et pro admissi mensura quidam opere publico, alii autem metallo plectuntur, et metallo quidem secundum suam dignitatem. si quis arborem sycaminonem exciderit, nam et haec res vindicatur extra ordinem non levi poena, idcirco quod hae arbores colligunt aggeres niloticos, per quos incrementa nili dispensantur et coercentur. et deminutiones aeque coercentur: chomata etiam et diacopi, qui in aggeribus fiunt, plecti efficiunt eos, qui id ^ ^ admiserint.

Dig. 47.11.11

Paulus 1 sent.

In circulatores, qui serpentes circumferunt et proponunt, si cui ob eorum metum damnum datum est, pro modo admissi actio dabitur.

Dig. 47.12.0. De sepulchro violato.

Dig. 47.12.1

Ulpianus 2 ad ed. praet.

Sepulchri violati actio infamiam irrogat.

Dig. 47.12.2

Ulpianus 18 ad ed. praet.

Si sepulchrum quis diruit, cessat aquilia: quod vi tamen aut clam agendum erit: et ita de statua de monumento evolsa celsus scribit. idem quaerit, si neque adplumbata fuit neque adfixa, an pars monumenti effecta sit an vero maneat in bonis nostris: et celsus scribit sic esse monumenti ut ossuaria et ideo quod vi aut clam interdicto locum fore.

Dig. 47.12.3pr.

Ulpianus 25 ad ed. praet.

Praetor ait: " cuius dolo malo sepulchrum violatum esse dicetur, in eum in factum iudicium dabo, ut ei, ad quem pertineat, quanti ob eam rem aequum videbitur, condemnetur. si nemo erit, ad quem pertineat, sive agere nolet: quicumque agere volet, ei centum aureorum actionem dabo. si plures agere volent, cuius iustissima causa esse videbitur, ei agendi potestatem faciam. si quis in sepulchro dolo malo habitaverit aedificiumve aliud, quamque sepulchri causa factum sit, habuerit: in eum, si quis eo nomine agere volet, ducentorum aureorum iudicium dabo".

Dig. 47.12.3.1

Ulpianus 25 ad ed. praet.

Prima verba ostendunt eum demum ex hoc plecti, qui dolo malo violavit. si igitur dolus absit, cessabit eiusdem. personae igitur doli non capaces, ut admodum impuberes, item omnes, qui non animo violandi accedunt, excusati sunt.

Dig. 47.12.3.2

Ulpianus 25 ad ed. praet.

Sepulchri autem appellatione omnem sepulturae locum contineri existimandum est.

Dig. 47.12.3.3

Ulpianus 25 ad ed. praet.

Si quis in hereditarium sepulchrum inferat, quamvis heres, tamen potest sepulchri violati teneri, si forte contra voluntatem testatoris intulit: licet enim cavere testatori, ne quis eo inferatur, ut rescripto imperatoris antonini cavetur: servari enim voluntatem eius oportere. ergo et si cavit, ut unus tantum heredum inferret, servabitur, ut solus inferat.

Dig. 47.12.3.4

Ulpianus 25 ad ed. praet.

Non perpetuae sepulturae tradita corpora posse transferri edicto divi severi continetur, quo mandatur, ne corpora detinerentur aut vexarentur aut prohiberentur per territoria oppidorum transferri. divus tamen marcus rescripsit nullam poenam meruisse eos, qui corpus in itinere defuncti per vicos aut oppidum transvexerunt, quamvis talia fieri sine permissu eorum, quibus permittendi ius est, non debeant.

Dig. 47.12.3.5

Ulpianus 25 ad ed. praet.

Divus hadrianus rescripto poenam statuit quadraginta aureorum in eos qui in civitate sepeliunt, quam fisco inferri iussit, et in magistratus eadem qui passi sunt, et locum publicari iussit et corpus transferri. quid tamen, si lex municipalis permittat in civitate sepeliri? post rescripta principalia an ab hoc discessum sit, videbimus, quia generalia sunt rescripta et oportet imperialia statuta suam vim optinere et in omni loco valere.

Dig. 47.12.3.6

Ulpianus 25 ad ed. praet.

Si quis in sepulchro habitasset aedificiumve habuisset, ei qui velit agendi potestas fit.

Dig. 47.12.3.7

Ulpianus 25 ad ed. praet.

Adversus eos, qui cadavera spoliant, praesides severius intervenire, maxime si manu armata adgrediantur, ut, si armati more latronum id egerint, etiam capite plectantur, ut divus severus rescripsit, si sine armis, usque ad poenam metalli procedunt.

Dig. 47.12.3.8

Ulpianus 25 ad ed. praet.

Qui de sepulchri violati actione iudicant, aestimabunt, quatenus intersit, scilicet ex iniuria quae facta est, item ex lucro eius qui violavit, vel ex damno quod contigit, vel ex temeritate eius qui fecit: numquam tamen minoris debent condemnare, quam solent extraneo agente.

Dig. 47.12.3.9

Ulpianus 25 ad ed. praet.

Si ad plures ius sepulchri pertineat, utrum omnibus damus actionem an ei qui occupavit? labeo omnibus dandam dicit recte, quia in id, quod uniuscuiusque interest, agitur.

Dig. 47.12.3.10

Ulpianus 25 ad ed. praet.

Si is cuius interest sepulchri violati agere nollet, potest paenitentia acta, antequam lis ab alio contestetur, dicere velle se agere et audietur.

Dig. 47.12.3.11

Ulpianus 25 ad ed. praet.

Si servus in sepulchro habitat vel aedificavit, noxalis actio cessat et in eum praetor hanc actionem pollicetur. si tamen non habitet, sed domunculam ibi habeat servus, noxale iudicium erit dandum, si modo habere posse videtur.

Dig. 47.12.3.12

Ulpianus 25 ad ed. praet.

Haec actio popularis est.

Dig. 47.12.4

Paulus 27 ad ed. praet.

Sepulchra hostium religiosa nobis non sunt: ideoque lapides inde sublatos in quemlibet usum convertere possumus: non sepulchri violati actio competit.

Dig. 47.12.5

Pomponius 6 ex plaut.

Utimur eo iure, ut dominis fundorum, in quibus sepulchra fecerint, etiam post venditos fundos adeundorum sepulchrorum sit ius. legibus namque praediorum vendundorum cavetur, ut ad sepulchra, quae in fundis sunt, item eius aditus ambitus funeri faciendi sit.

Dig. 47.12.6

Iulianus 10 Dig.

Sepulchri violati actio in primis datur ei, ad quem res pertinet. quo cessante si alius egerit, quamvis rei publicae causa afuerit dominus, non debebit ex integro adversus eum, qui litis aestimationem sustulerit, dari. nec potest videri deterior fieri condicio eius, qui rei publicae causa afuit, cum haec actio non ad rem familiarem eiusdem, magis ad ultionem pertineat.

Dig. 47.12.7

Marcianus 3 inst.

Sepulchri deteriorem condicionem fieri prohibitum est: sed corruptum et lapsum monumentum corporibus non contactis licet reficere.

Dig. 47.12.8

Macer 1 publ.

Sepulchri violati crimen potest dici ad legem iuliam de vi publica pertinere ex illa parte, qua de eo cavetur, qui fecerit quid, quo minus aliquis funeretur sepeliaturve: quia et qui sepulchrum violat, facit, quo quis minus sepultus sit.

Dig. 47.12.9

Macer 2 publ. iudic.

De sepulchro violato actio quoque pecuniaria datur.

Dig. 47.12.10

Papinianus 8 quaest.

Quaesitum est, an ad heredem necessarium, cum se bonis non miscuisset, actio sepulchri violati pertineret. dixi recte eum ea actione experiri, quae in bonum et aequum concepta est: nec tamen si egerit, hereditarios creditores timebit, cum etsi per hereditatem optigit haec actio, nihil tamen ex defuncti capiatur voluntate, neque id capiatur, quod in rei persecutione, sed in sola vindicta sit constitutum.

Dig. 47.12.11

Paulus 5 sent.

Rei sepulchrorum violatorum, si corpora ipsa extraxerint vel ossa eruerint, humilioris quidem fortunae summo supplicio adficiuntur, honestiores in insulam deportantur. alias autem relegantur aut in metallum damnantur.

Dig. 47.13.0. De concussione.

Dig. 47.13.1

Ulpianus 5 opin.

Si simulato praesidis iussu concussio intervenit, ablatum eiusmodi terrore restitui praeses provinciae iubet et delictum coercet.

Dig. 47.13.2

Macer 1 publ. iudic.

Concussionis iudicium publicum non est: sed si ideo pecuniam quis accepit, quod crimen minatus sit, potest iudicium publicum esse ex senatus consultis, quibus poena legis corneliae teneri iubentur, qui in accusationem innocentium coierint quive ob accusandum vel non accusandum, denuntiandum vel non denuntiandum testimonium pecuniam acceperit.

Dig. 47.14.0. De abigeis.

Dig. 47.14.1pr.

Ulpianus 8 de off. procons.

De abigeis puniendis ita divus hadrianus consilio baeticae rescripsit: " abigei cum durissime puniuntur, ad gladium damnari solent. puniuntur autem durissime non ubique, sed ubi frequentius est id genus maleficii: alioquin et in opus et nonnumquam temporarium dantur".

Dig. 47.14.1.1

Ulpianus 8 de off. procons.

Abigei autem proprie hi habentur, qui pecora ex pascuis vel ex armentis subtrahunt et quodammodo depraedantur, et abigendi studium quasi artem exercent, equos de gregibus vel boves de armentis abducentes. ceterum si quis bovem aberrantem vel equos in solitudine relictos abduxerit, non est abigeus, sed fur potius.

Dig. 47.14.1.2

Ulpianus 8 de off. procons.

Sed et qui porcam vel capram vel vervicem abduxit, non tam graviter quam qui maiora animalia abigunt, plecti debent.

Dig. 47.14.1.3

Ulpianus 8 de off. procons.

Quamquam autem hadrianus metalli poenam, item operis vel etiam gladii praestituerit, attamen qui honestiore loco nati sunt, non debent ad hanc poenam pertinere, sed aut relegandi erunt aut movendi ordine. sane qui cum gladio abigunt, non inique bestiis obiciuntur.

Dig. 47.14.1.4

Ulpianus 8 de off. procons.

Qui pecora, de quorum proprietate faciebat controversiam, abegit, ut saturninus quidem scribit, ad examinationem civilem remittendus est. sed hoc ita demum probandum est, si non color abigeatus quaesitus est, sed vere putavit sua iustis rationibus ductus.

Dig. 47.14.2

Macer 1 publ. iudic.

Abigeatus crimen publici iudicii non est, quia furtum magis est. sed quia plerumque abigei et ferro utuntur, si deprehendentur, ideo graviter et puniri eorum admissum solet.

Dig. 47.14.3pr.

Callistratus 6 de cogn.

Oves pro numero abactarum aut furem aut abigeum faciunt. quidam decem oves gregem esse putaverunt: porcos etiam quinque vel quattuor abactos, equum bovem vel unum abigeatus crimen facere.

Dig. 47.14.3.1

Callistratus 6 de cogn.

Eum quoque plenius coercendum, qui a stabulo abegit domitum pecus, non a silva nec grege.

Dig. 47.14.3.2

Callistratus 6 de cogn.

Qui saepius abegerunt, licet semper unum vel alterum pecus subripuerint, tamen abigei sunt.

Dig. 47.14.3.3

Callistratus 6 de cogn.

Receptores abigeorum qua poena plecti debeant, epistula divi traiani ita cavetur, ut extra terram italiam decem annis relegarentur.

Dig. 47.15.0. De praevaricatione.

Dig. 47.15.1pr.

Ulpianus 6 ad ed. praet.

Praevaricator est quasi varicator, qui diversam partem adiuvat prodita causa sua. quod nomen labeo a varia certatione tractum ait: nam qui praevaricatur, ex utraque parte constitit, quin immo ex altera.

Dig. 47.15.1.1

Ulpianus 6 ad ed. praet.

Is autem praevaricator proprie dicitur, qui publico iudicio accusaverit: ceterum advocatus non proprie praevaricator dicitur. quid ergo de eo fiet? sive privato iudicio sive publico praevaricatus sit, hoc est prodiderit causam, hic extra ordinem solet puniri.

Dig. 47.15.2

Ulpianus 9 de off. procons.

Sciendum, quod hodie is, qui praevaricati sunt, poena iniungitur extraordinaria.

Dig. 47.15.3pr.

Macer 1 publ. iudic.

Praevaricationis iudicium aliud publicum, aliud moribus inductum est.

Dig. 47.15.3.1

Macer 1 publ. iudic.

Nam si reus accusatori publico iudicio ideo praescribat, quod dicat se eodem crimine ab alio accusatum et absolutum, cavetur lege iulia publicorum, ut non prius accusetur, quam de prioris accusatoris praevaricatione constiterit et pronuntiatum fuerit. huius ergo praevaricationis pronuntiatio publici iudicii intellegitur.

Dig. 47.15.3.2

Macer 1 publ. iudic.

Quod si advocato praevaricationis crimen intendatur, publicum iudicium non est: nec interest, publico an privato iudicio praevaricatus dicatur.

Dig. 47.15.3.3

Macer 1 publ. iudic.

Si ideo quis accusetur, quod dicatur crimen iudicii publici destituisse, iudicium publicum non est, quia neque lege aliqua de hac re cautum est, neque per senatus consultum, quo poena quinque auri librarum in desistentem statuitur, publica accusatio inducta est.

Dig. 47.15.4

Macer 2 publ. iudic.

Si is, de cuius calumnia agi prohibetur, praevaricator in causa iudicii publici pronuntiatus sit, infamis erit.

Dig. 47.15.5

Venonius 2 publ. iudic.

Accusator in praevaricatione convictus postea ex lege non accusat.

Dig. 47.15.6

Paulus l.S. de iud. publ.

Ab imperatore nostro et patre eius rescriptum est, ut in criminibus, quae extra ordinem obiciuntur, praevaricatores eadem poena adficiantur, qua tenerentur, si ipsi in legem commisissent, qua reus per praevaricationem absolutus est.

Dig. 47.15.7

Ulpianus 4 de cens.

In omnibus causis, praeterquam in sanguine, qui delatorem corrupit, ex senatus consulto pro victo habetur.

Dig. 47.16.0. De receptatoribus.

Dig. 47.16.1

Marcianus 2 publ. iudic.

Pessimum genus est receptatorum, sine quibus nemo latere diu potest: et praecipitur, ut perinde puniantur atque latrones. in pari causa habendi sunt, qui, cum adprehendere latrones possent, pecunia accepta vel subreptorum parte dimiserunt.

Dig. 47.16.2

Paulus l.S. de poen. paganorum.

Eos, apud quos adfinis vel cognatus latro conservatus est, neque absolvendos neque severe admodum puniendos: non enim par est eorum delictum et eorum, qui nihil ad se pertinentes latrones recipiunt.

Dig. 47.17.0. De furibus balneariis.

Dig. 47.17.1

Ulpianus 8 de off. procons.

Fures nocturni extra ordinem audiendi sunt et causa cognita puniendi, dummodo sciamus in poena eorum operis publici temporarii modum non egrediendum. idem et in balneariis furibus. sed si telo se fures defendunt vel effractores vel ceteri his similes nec quemquam percusserunt, metalli poena vel honestiores relegationis adficiendi erunt.

Dig. 47.17.2

Marcianus 2 iudic. publ.

Sed si interdiu furtum fecerunt, ad ius ordinarium remittendi sunt.

Dig. 47.17.3

Paulus l.S. de poen. milit.

Miles, qui in furto balneario adprehensus est, ignominia mitti debet.

Dig. 47.18.0. De effractoribus et expilatoribus.

Dig. 47.18.1pr.

Ulpianus 8 de off. procons.

De his, qui carcere effracto evaserunt, sumendum supplicium divi fratres aemilio tironi rescripserunt. saturninus etiam probat in eos, qui de carcere eruperunt sive effractis foribus sive conspiratione cum ceteris, qui in eadem custodia erant, capite puniendos: quod si per neglegentiam custodum evaserunt, levius puniendos.

Dig. 47.18.1.1

Ulpianus 8 de off. procons.

Expilatores, qui sunt atrociores fures (hoc enim est expilatores), in opus publicum vel perpetuum vel temporarium dari solent, honestiores autem ordine ad tempus moveri vel fines patriae iuberi excedere. quibus nulla specialis poena rescriptis principalibus imposita est: idcirco causa cognita liberum erit arbitrium statuendi ei qui cognoscit.

Dig. 47.18.1.2

Ulpianus 8 de off. procons.

Simili modo et sacculari et derectarii erunt puniendi, item effractores. sed enim divus marcus effractorem equitem romanum, qui effracto perforatoque pariete pecuniam abstulerat, quinquennio abstinere iussit provincia africa, unde erat, et urbe et italia. oportebit autem aeque et in effractores et in ceteros supra scriptos causa cognita statui, prout admissum suggerit, dummodo ne quis in plebeio operis publici poenam vel in honestiore relegationis excedat.

Dig. 47.18.2

Paulus l.S. de off. praef. vig.

Inter effractores varie animadvertitur. atrociores enim sunt nocturni effractores, et ideo hi fustibus caesi in metallum dari solent: diurni vero effractores post fustium castigationem in opus perpetuum vel temporarium dandi sunt.

Dig. 47.19.0. Expilatae hereditatis.

Dig. 47.19.1

Marcianus 3 inst.

Si quis alienam hereditatem expilaverit, extra ordinem solet coerceri per accusationem expilatae hereditatis, sicut et oratione divi marci cavetur.

Dig. 47.19.2pr.

Ulpianus 9 de off. procons.

Si expilatae hereditatis crimen intendatur, praeses provinciae cognitionem suam accommodare debet: cum enim furti agi non potest, solum superest auxilium praesidis.

Dig. 47.19.2.1

Ulpianus 9 de off. procons.

Apparet autem expilatae hereditatis crimen eo casu intendi posse, quo casu furti agi non potest, scilicet ante aditam hereditatem, vel post aditam antequam res ab herede possessae sunt. nam in hunc casum furti actionem non competere palam est: quamvis ad exhibendum agi posse, si qui vindicaturus exhiberi desideret, palam sit.

Dig. 47.19.3

Marcianus 2 publ. iudic.

Divus severus et antoninus rescripserunt electionem esse, utrum quis velit crimen expilatae hereditatis extra ordinem apud praefectum urbi vel apud praesides agere an hereditatem a possessoribus iure ordinario vindicare.

Dig. 47.19.4

Paulus 3 resp.

Res hereditarias omnium heredum fuisse communes, et ideo eum, qui expilatae hereditatis crimen obicit et optinuit, etiam coheredi profuisse videri.

Dig. 47.19.5

Hermogenianus 2 iuris epit.

Uxor expilatae hereditatis crimine idcirco non accusatur, quia nec furti cum ea agitur.

Dig. 47.19.6

Paulus 1 ad ner.

Si rem hereditariam, ignorans in ea causa esse, subripuisti, furtum te facere respondit. paulus: rei hereditariae furtum non fit sicut nec eius, quae sine domino est, et nihil mutat existimatio subripientis.

Dig. 47.20.0. Stellionatus.

Dig. 47.20.1

Papinianus 1 resp.

Actio stellionatus neque publicis iudiciis neque privatis actionibus continetur.

Dig. 47.20.2

Ulpianus 8 ad sab.

Stellionatus iudicium famosum quidem non est, sed coercitionem extraordinariam habet.

Dig. 47.20.3pr.

Ulpianus 8 de off. procons.

Stellionatus accusatio ad praesidis cognitionem spectat.

Dig. 47.20.3.1

Ulpianus 8 de off. procons.

Stellionatum autem obici posse his, qui dolo quid fecerunt, sciendum est, scilicet si aliud crimen non sit quod obiciatur: quod enim in privatis iudiciis est de dolo actio, hoc in criminibus stellionatus persecutio. ubicumque igitur titulus criminis deficit, illic stellionatus obiciemus. maxime autem in his locum habet: si quis forte rem alii obligatam dissimulata obligatione per calliditatem alii distraxerit vel permutaverit vel in solutum dederit: nam hae omnes species stellionatum continent. sed et si quis merces supposuerit vel obligatas averterit vel si corruperit, aeque stellionatus reus erit. item si quis imposturam fecerit vel collusionem in necem alterius, stellionatus poterit postulari. et ut generaliter dixerim, deficiente titulo criminis hoc crimen locum habet, nec est opus species enumerare.

Dig. 47.20.3.2

Ulpianus 8 de off. procons.

Poena autem stellionatus nulla legitima est, cum nec legitimum crimen sit. solent autem ex hoc extra ordinem plecti, dummodo non debeat opus metalli haec poena in plebeis egredi. in his autem, qui sunt in aliquo honore positi, ad tempus relegatio vel ab ordine motio remittenda est.

Dig. 47.20.3.3

Ulpianus 8 de off. procons.

Qui merces suppressit, specialiter hoc crimine postulari potest.

Dig. 47.20.4

Modestinus 3 de poen.

De periurio, si sua pignora esse quis in instrumento iuravit, crimen stellionatus fit, et ideo ad tempus exulat.

Dig. 47.21.0. De termino moto.

Dig. 47.21.1

Modestinus 8 reg.

Terminorum avulsorum non multa pecuniaria est, sed pro condicione admittentium coercitione transigendum.

Dig. 47.21.2

Callistratus 3 de cogn.

Divus hadrianus in haec verba rescripsit: " quin pessimum factum sit eorum, qui terminos finium causa positos propulerunt, dubitari non potest. de poena tamen modus ex condicione personae et mente facientis magis statui potest: nam si splendidiores personae sunt, quae convincuntur, non dubie occupandorum alienorum finium causa id admiserunt, et possunt in tempus, ut cuiusque patiatur aetas, relegari, id est si iuvenior, in longius, si senior, recisius. si vero alii negotium gesserunt et ministerio functi sunt, castigari et ad opus biennio dari. quod si per ignorantiam aut fortuito lapides furati sunt, sufficiet eos verberibus decidere".

Dig. 47.21.3pr.

Callistratus 5 de cogn.

Lege agraria, quam gaius caesar tulit, adversus eos, qui terminos statutos extra suum gradum finesve moverint dolo malo, pecuniaria poena constituta est: nam in terminos singulos, quos eiecerint locove moverint, quinquaginta aureos in publico dari iubet: et eius actionem petitionem ei qui volet esse iubet.

Dig. 47.21.3.1

Callistratus 5 de cogn.

Alia quoque lege agraria, quam divus nerva tulit, cavetur, ut, si servus servave insciente domino dolo malo fecerit, ei capital esse, nisi dominus dominave multam sufferre maluerit.

Dig. 47.21.3.2

Callistratus 5 de cogn.

Hi quoque, qui finalium quaestionum obscurandarum causa faciem locorum convertunt, ut ex arbore arbustum aut ex silva novale aut aliquid eiusmodi faciunt, poena plectendi sunt pro persona et condicione et factorum violentia.

Dig. 47.22.0. De collegiis et corporibus.

Dig. 47.22.1pr.

Marcianus 3 inst.

Mandatis principalibus praecipitur praesidibus provinciarum, ne patiantur esse collegia sodalicia neve milites collegia in castris habeant. sed permittitur tenuioribus stipem menstruam conferre, dum tamen semel in mense coeant, ne sub praetextu huiusmodi illicitum collegium coeat. quod non tantum in urbe, sed et in italia et in provinciis locum habere divus quoque severus rescripsit.

Dig. 47.22.1.1

Marcianus 3 inst.

Sed religionis causa coire non prohibentur, dum tamen per hoc non fiat contra senatus consultum, quo illicita collegia arcentur.

Dig. 47.22.1.2

Marcianus 3 inst.

Non licet autem amplius quam unum collegium licitum habere, ut est constitutum et a divis fratribus: et si quis in duobus fuerit, rescriptum est eligere eum oportere, in quo magis esse velit, accepturum ex eo collegio, a quo recedit, id quod ei competit ex ratione, quae communis fuit.

Dig. 47.22.2

Ulpianus 6 de off. procons.

Quisquis illicitum collegium usurpaverit, ea poena tenetur, qua tenentur, qui hominibus armatis loca publica vel templa occupasse iudicati sunt.

Dig. 47.22.3pr.

Marcianus 2 iudic. publ.

Collegia si qua fuerint illicita, mandatis et constitutionibus et senatus consultis dissolvuntur: sed permittitur eis, cum dissolvuntur, pecunias communes si quas habent dividere pecuniamque inter se partiri.

Dig. 47.22.3.1

Marcianus 2 iudic. publ.

In summa autem, nisi ex senatus consulti auctoritate vel caesaris collegium vel quodcumque tale corpus coierit, contra senatus consultum et mandata et constitutiones collegium celebrat.

Dig. 47.22.3.2

Marcianus 2 iudic. publ.

Servos quoque licet in collegio tenuiorum recipi volentibus dominis, ut curatores horum corporum sciant, ne invito aut ignorante domino in collegium tenuiorum reciperent, et in futurum poena teneantur in singulos homines aureorum centum.

Dig. 47.22.4

Gaius 4 ad l. xii tab.

Sodales sunt, qui eiusdem collegii sunt: quam graeci hetaireian vocant. his autem potestatem facit lex pactionem quam velint sibi ferre, dum ne quid ex publica lege corrumpant. sed haec lex videtur ex lege solonis tralata esse. nam illuc ita est: ean de dymos y fratores y hierwn orgiwn y nautai y sussitoi y homotafoi y viaswtai y epi leian oixomenoi y eis emporian, hoti an toutwn diavwntai pros allylous, kurion einai, ean my apagoreusy dymosia grammata.

Dig. 47.23.0. De popularibus actionibus.

Dig. 47.23.1

Paulus 8 ad ed.

Eam popularem actionem dicimus, quae suum ius populi tuetur.

Dig. 47.23.2

Paulus 1 ad ed.

Si plures simul agant populari actione, praetor eligat idoneiorem.

Dig. 47.23.3pr.

Ulpianus 1 ad ed.

Sed si ex eadem causa saepius agatur ^ agetur^, cum idem factum sit, exceptio vulgaris rei iudicatae opponitur.

Dig. 47.23.3.1

Ulpianus 1 ad ed.

In popularibus actionibus is cuius interest praefertur.

Dig. 47.23.4

Paulus 3 ad ed.

Popularis actio integrae personae permittitur, hoc est cui per edictum postulare licet.

Dig. 47.23.5

Paulus 8 ad ed.

Qui populari actione convenietur, ad defendendum procuratorem dare potest: is autem, qui eam movet, procuratorem dare non potest.

Dig. 47.23.6

Ulpianus 25 ad ed.

Mulieri et pupillo populares actiones non dantur, nisi cum ad eos res pertineat.

Dig. 47.23.7pr.

Paulus 41 ad ed.

Populares actiones non transeunt ad eum, cui restituta est hereditas ex trebelliano senatus consulto.

Dig. 47.23.7.1

Paulus 41 ad ed.

Item qui habet has actiones, non intellegitur esse locupletior.

Dig. 47.23.8

Ulpianus 1 ad ed.

Omnes populares actiones neque in heredes dantur neque supra annum extenduntur.

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Dig. 48.1.0. De publicis iudiciis.

Macer 1 de publ. iudic.

Non omnia iudicia, in quibus crimen vertitur, et publica sunt, sed ea tantum, quae ex legibus iudiciorum publicorum veniunt, ut iulia maiestatis, iulia de adulteriis, cornelia de sicariis et veneficis, pompeia parricidii, iulia peculatus, cornelia de testamentis, iulia de vi privata, iulia de vi publica, iulia ambitus, iulia repetundarum, iulia de annona.

Dig. 48.1.2

Paulus 15 ad ed. praet.

Publicorum iudiciorum quaedam capitalia sunt, quaedam non capitalia. capitalia sunt, ex quibus poena mors aut exilium est, hoc est aquae et ignis interdictio: per has enim poenas eximitur caput de civitate. nam cetera non exilia, sed relegationes proprie dicuntur: tunc enim civitas retinetur. non capitalia sunt, ex quibus pecuniaria aut in corpus aliqua coercitio poena est.

Dig. 48.1.3

Ulpianus 35 ad sab.

Publica accusatio reo vel rea ante defunctis permittitur.

Dig. 48.1.4

Paulus 37 ad ed.

Interdum evenit, ut praeiudicium iudicio publico fiat, sicut in actione legis aquiliae et furti et vi bonorum raptorum et interdicto unde vi et de tabulis testamenti exhibendis: nam in his de re familiari agitur.

Dig. 48.1.5pr.

Ulpianus 8 disp.

Is qui reus factus est purgare se debet nec ante potest accusare, quam fuerit excusatus: constitutionibus enim observatur, ut non relatione criminum, sed innocentia reus purgetur.

Dig. 48.1.5.1

Ulpianus 8 disp.

Illud incertum est, utrum ita demum accusare potest, si fuerit liberatus, an et si poenam subierit: est enim constitutum ab imperatore nostro et divo patre eius post damnationem accusationem quem inchoare non posse. sed hoc puto ad eos demum pertinere, qui vel civitatem vel libertatem amiserunt.

Dig. 48.1.5.2

Ulpianus 8 disp.

Inchoatas plane delationes ante damnationem implere eis et post damnationem permissum est.

Dig. 48.1.6

Marcianus 14 inst.

Defuncto eo, qui reus fuit criminis, et poena extincta in quacumque causa criminis extincti debet is cognoscere, cuius de pecuniaria re cognitio est.

Dig. 48.1.7

Macer 2 iudic. publ.

Infamem non ex omni crimine sententia facit, sed ex eo, quod iudicii publici causam habuit. itaque ex eo crimine, quod iudicii publici non fuit, damnatum infamia non sequetur, nisi id crimen ex ea actione fuit, quae etiam in privato iudicio infamiam condemnato importat, veluti furti, vi bonorum raptorum, iniuriarum.

Dig. 48.1.8

Paulus l.S. de iudic. publ.

Ordo exercendorum publicorum capitalium in usu esse desiit, durante tamen poena legum, cum extra ordinem crimina probantur.

Dig. 48.1.9

Marcianus 1 de iudic. publ.

Sciendum est, si in capitali causa suum servum reum crimine factum quis non defenderit, non eum pro derelicto haberi, et ideo, si absolutus fuerit, non liberum fieri, sed manere domini.

Dig. 48.1.10

Papinianus 2 def.

Inter accusatorem et reum cognitione suscepta excusatio pro absente iustis rationibus admittitur: nec per triduum per singulos dies ter citatus reus damnetur vel de accusatoris absentis praesente reo calumnia pronuntietur.

Dig. 48.1.11

Maecenatus 10 de iudic. publ.

Servus per procuratorem domini aeque ac per dominum defendi potest.

Dig. 48.1.12pr.

Modestinus 3 de poen.

Custodias auditurus tam clarissimos viros quam patronos causarum, si omnes in civitate provinciae quam regit agunt, adhibere debet.

Dig. 48.1.12.1

Modestinus 3 de poen.

Et feriatis diebus custodias audiri posse rescriptum est, ita ut innoxios dimittat et nocentes, qui duriorem animadversionem indigent, differat.

Dig. 48.1.13pr.

Papinianus 15 resp.

Accusatore defuncto res ab alio, iudicante praeside provinciae, peragi potest.

Dig. 48.1.13.1

Papinianus 15 resp.

Ad crimen iudicii publici persequendum frustra procurator intervenit, multoque magis ad defendendum: sed excusationes absentium ex senatus consulto iudicibus allegantur et, si iustam rationem habeant, sententia differtur.

Dig. 48.1.14

Papinianus 16 resp.

Generi servis a socero veneficii accusatis praeses provinciae patrem calumniam intulisse pronuntiaverat. inter infames patrem defunctae non habendum respondi, quoniam et si publicum iudicium inter liberos de morte filiae constitisset, citra periculum pater vindicaretur.

Dig. 48.2.0. De accusationibus et inscriptionibus.

Dig. 48.2.1

Pomponius 1 ad sab.

Non est permissum mulieri publico iudicio quemquam reum facere, nisi scilicet parentium liberorumque et patroni et patronae et eorum filii filiae nepotis neptis mortem exequatur.

Dig. 48.2.2pr.

Papinianus 1 de adult.

Certis ex causis concessa est mulieribus publica accusatio, veluti si mortem exequantur eorum earumque, in quos ex lege testimonium publicorum invitae non dicunt. idem et in lege cornelia testamentaria senatus statuit: sed et de testamento paterni liberti vel materni mulieribus publico iudicio dicere permissum est.

Dig. 48.2.2.1

Papinianus 1 de adult.

Pupillis ex consilio tutorum patris mortem, item pupillae avi sui mortem exequi concessum est. lege autem testamentaria nam de patris quidem testamento pupillis agere divus vespasianus permisit: sed quasi non exhibeantur tabulae, per interdictum possunt experiri.

Dig. 48.2.3pr.

Paulus 3 de adult.

Libellorum inscriptionis conceptio talis est. " consul et dies. apud illum praetorem vel proconsulem lucius titius professus est se maeviam lege iulia de adulteriis ream deferre, quod dicat eam cum gaio seio in civitate illa, domo illius, mense illo, consulibus illis adulterium commisisse". utique enim et locus designandus est, in quo adulterium commissum est, et persona, cum qua admissum dicitur, et mensis: hoc enim lege iulia publicorum cavetur et generaliter praecipitur omnibus, qui reum aliquem deferunt: neque autem diem neque horam invitus comprehendet.

Dig. 48.2.3.1

Paulus 3 de adult.

Quod si libelli inscriptionum legitime ordinati non fuerint, rei nomen aboletur et ex integro repetendi reum potestas fiet.

Dig. 48.2.3.2

Paulus 3 de adult.

Item subscribere debebit is qui dat libellos se professum esse, vel alius pro eo, si litteras nesciat.

Dig. 48.2.3.3

Paulus 3 de adult.

Sed et si aliud crimen obiciat, veluti quod domum suam praebuit, ut stuprum mater familias pateretur, quod adulterum deprehensum dimiserit, quod pretium pro comperto stupro acceperit, et si quid simile, id ipsum libellis comprehendendum erit.

Dig. 48.2.3.4

Paulus 3 de adult.

Si accusator decesserit aliave quae causa ei impedierit, quo minus accusare possit, et si quid simile, nomen rei aboletur postulante reo: idque et lege iulia de vi et senatus consulto cautum est, ita ut liceat alii ex integro repetere reum. sed intra quod tempus, videbimus: et utique triginta dies utiles observandi sunt.

Dig. 48.2.4

Ulpianus 2 de adult.

Is, qui iudicio publico damnatus est, ius accusandi non habet, nisi liberorum vel patronorum suorum mortem eo iudicio vel rem suam exequatur. sed et calumnia notatis ius accusandi ademptum est, item his, qui cum bestiis depugnandi causa in harenam intromissi sunt, quive artem ludicram vel lenocinium fecerint, quive praevaricationis calumniaeve causa quid fecisse iudicio publico pronuntiatus erit, quive ob accusandum negotiumve cui facessendum pecuniam accepisse iudicatus erit.

Dig. 48.2.5

Ulpianus 3 de adult.

Servos quoque adulterii posse accusari nulla dubitatio est: sed qui prohibentur adulterii liberos homines accusare, idem servos quoque prohibebuntur. sed ex rescripto divi marci etiam adversus proprium servum accusationem instituere dominus potest. post hoc igitur rescriptum accusandi necessitas incumbet domino servum suum: ceterum iuste mulier nupta praescriptione utetur.

Dig. 48.2.6

Ulpianus 2 de off. procons.

Levia crimina audire et discutere de plano proconsulem oportet et vel liberare eos, quibus obiciuntur, vel fustibus castigare vel flagellis servos verberare.

Dig. 48.2.7pr.

Ulpianus 7 de off. procons.

Si cui crimen obiciatur, praecedere debet crimen subscriptio. quae res ad id inventa est, ne facile quis prosiliat ad accusationem, cum sciat inultam sibi accusationem non futuram.

Dig. 48.2.7.1

Ulpianus 7 de off. procons.

Cavent itaque singuli, quod crimen obiciant, et praeterea perseveraturos se in crimine usque ad sententiam.

Dig. 48.2.7.2

Ulpianus 7 de off. procons.

Isdem criminibus, quibus quis liberatus est, non debet praeses pati eundem accusari, et ita divus pius salvio valenti rescripsit: sed hoc, utrum ab eodem an nec ab alio accusari possit, videndum est. et putem, quoniam res inter alios iudicatae alii non praeiudicant, si is, qui nunc accusator exstitit, suum dolorem persequatur doceatque ignorasse se accusationem ab alio institutam, magna ex causa admitti eum ad accusationem debere.

Dig. 48.2.7.3

Ulpianus 7 de off. procons.

Si tamen alio crimine postuletur ab eodem, qui in alio crimine eum calumniatus est, puto non facile admittendum eum qui semel calumniatus sit: quamvis filium accusatoris admitti oportere aliam accusationem instituentem adversus eum, quem pater accusaverat divus pius iulio candido rescripsit.

Dig. 48.2.7.4

Ulpianus 7 de off. procons.

Idem imperator rescripsit servos ibi puniendos, ubi deliquisse arguantur, dominumque eorum, si velit eos defendere, non posse revocare in provinciam suam, sed ibi oportere defendere, ubi deliquerint.

Dig. 48.2.7.5

Ulpianus 7 de off. procons.

Cum sacrilegium admissum esset in aliqua provincia, deinde in alia minus crimen, divus pius pontio proculo rescripsit, postquam cognoverit de crimine in sua provincia admisso, ut reum in eam provinciam remitteret, ubi sacrilegium admisit.

Dig. 48.2.8

Macer 2 de publ. iudic.

Qui accusare possunt, intellegemus, si scierimus, qui non possunt. itaque prohibentur accusare alii propter sexum vel aetatem, ut mulier, ut pupillus: alii propter sacramentum, ut qui stipendium merent: alii propter magistratum potestatemve, in qua agentes sine fraude in ius evocari non possunt: alii propter delictum proprium, ut infames: alii propter turpem quaestum, ut qui duo iudicia adversus duos reos subscripta habent nummosve ob accusandum vel non accusandum acceperint: alii propter condicionem suam, ut libertini contra patronos:

Dig. 48.2.9

Paulus 5 sent.

Alii propter suspicionem calumniae, ut illi, qui falsum testimonium subornati dixerunt:

Dig. 48.2.10

Hermogenianus 6 iuris epit.

Nonnulli propter paupertatem, ut sunt qui minus quam quinquaginta aureos habent.

Dig. 48.2.11pr.

Macer 2 de publ. iudic.

Hi tamen omnes, si suam iniuriam exequantur mortemve propinquorum defendent, ab accusatione non excluduntur.

Dig. 48.2.11.1

Macer 2 de publ. iudic.

Liberi libertique non sunt prohibendi suarum rerum defendendarum gratia de facto parentium patronorumve queri, veluti si dicant vi se a possessione ab his expulsos, scilicet non ut crimen vis eis intendant, sed ut possessionem recipiant. nam et filius non quidem prohibitus est de facto matris queri, si dicat suppositum ab ea partum, quo magis coheredem haberet, sed ream eam lege cornelia facere permissum ei non est.

Dig. 48.2.11.2

Macer 2 de publ. iudic.

Ab alio delatum alius deferre non potest: sed eum, qui abolitione publica vel privata interveniente aut desistente accusatore de reis exemptus est, alius deferre non prohibetur.

Dig. 48.2.12pr.

Venonius 2 de iudic. publ.

Hos accusare non licet: legatum imperatoris, id est praesidem provinciae, ex sententia lentuli dicta sulla et trione consulibus: item legatum provincialem eius dumtaxat criminis, quod ante commiserit, quam in legationem venerit: item magistratum populi romani eumve, qui rei publicae causa afuerit, dum non detractandae legis causa abest.

Dig. 48.2.12.1

Venonius 2 de iudic. publ.

Hoc beneficio etiam in reos recepti uti possunt, si abolitione interveniente repeti se non debere contendant, secundum epistulam divi hadriani ad glabrionem consulem scriptam.

Dig. 48.2.12.2

Venonius 2 de iudic. publ.

Lege iulia iudiciorum publicorum cavetur, ne eodem tempore de duobus reis quis quereretur nisi suarum iniuriarum causa.

Dig. 48.2.12.3

Venonius 2 de iudic. publ.

Si servus reus postulabitur, eadem observanda sunt, quae si liber esset, ex senatus consulto cotta et messala consulibus.

Dig. 48.2.12.4

Venonius 2 de iudic. publ.

Omnibus autem legibus servi rei fiunt excepta lege iulia de vi privata, quia ea lege damnati partis tertiae bonorum publicatione puniuntur, quae poena in servum non cadit. idemque dicendum est in ceteris legibus, quibus pecuniaria poena irrogatur vel etiam capitis, quae servorum poenis non convenit, sicuti relegatio. item nec lex pompeia parricidii, quoniam caput primum eos adprehendit, qui parentes cognatosve aut patronos occiderint: quae in servos, quantum ad verba pertinet, non cadunt: sed cum natura communis est, similiter et in eos animadvertetur. item cornelia iniuriarum servum non debere recipi reum cornelius sulla auctor fuit: sed durior ei poena extra ordinem imminebit.

Dig. 48.2.13

Marcianus 1 de publ. iudic.

Mulierem propter publicam utilitatem ad annonam pertinentem audiri a praefecto annonae deferentem divus severus et antoninus rescripserunt. famosi quoque accusantes sine ulla dubitatione admittuntur. milites quoque, qui causas alienas deferre non possunt, qui pro pace excubant, vel magis ad hanc accusationem admittendi sunt. servi quoque deferentes audiuntur.

Dig. 48.2.14

Paulus 2 de off. procons.

Senatus censuit, ne quis ob idem crimen pluribus legibus reus fieret.

Dig. 48.2.15

Ulpianus 56 ad ed.

In eum, cuius dolo malo hominibus coactis damni quid datum esse dicatur, non debet cogi actor omissa actione civili crimen intendere.

Dig. 48.2.16

Ulpianus 2 de off. cons.

Si plures existant, qui eum in publicis iudiciis accusare volunt, iudex eligere debet eum qui accuset, causa scilicet cognita aestimatis accusatorum personis vel de dignitate, vel ex eo quod interest, vel aetate vel moribus vel alia iusta de causa.

Dig. 48.2.17

Modestinus 6 diff.

Si servum dominus in crimine capitali defendat, sistendum satisdato promittere iubetur.

Dig. 48.2.18

Modestinus 17 resp.

Cum titia testamentum gaii fratris sui falsum arguere minaretur et sollemnia accusationis non implevit intra tempus a praeside praefinitum, praeses provinciae iterum pronuntiavit non posse illam amplius de falso testamento dicere: adversus quas sententias titia non provocavit, sed dixit se post finitum tempus de irrito testamento dicere. quaero, an titia, quae non appellavit adversus sententiam praesidis, possit ad falsi accusationem postea reverti.

respondit nihil aperte proponi, propter quod adversus sententiae auctoritatem de falso agens audienda sit.

Dig. 48.2.19pr.

Callistratus 5 de cogn.

Divi fratres rescripserunt non debere cogi heredes accusatorum exequi crimina.

Dig. 48.2.19.1

Callistratus 5 de cogn.

Item non oportere compelli accusatorem plures reos facere divus hadrianus rescripsit.

Dig. 48.2.20

Modestinus 2 de poen.

Ex iudiciorum publicorum admissis non alias transeunt adversus heredes poenae bonorum ademptionis, quam si lis contestata et condemnatio fuerit secuta, excepto repetundarum et maiestatis iudicio, quae etiam mortuis reis, cum quibus nihil actum est, adhuc exerceri placuit, ut bona eorum fisco vindicentur: adeo ut divus severus et antoninus rescripserunt, ex quo quis aliquod ex his causis crimen contraxit, nihil ex bonis suis alienare aut manumittere eum posse. ex ceteris vero delictis poena incipere ab herede ita demum potest, si vivo reo accusatio mota est, licet non fuit condemnatio secuta.

Dig. 48.2.21

Papinianus 15 resp.

Capitis reus suspenso crimine causam fisco deferre non prohibetur.

Dig. 48.2.22

Papinianus 16 resp.

Alterius provinciae reus apud eos accusatur et damnatur, apud quos crimen contractum ostenditur. quod etiam in militibus esse observandum optimi principes nostri generaliter rescripserunt.

Dig. 48.3.0. De custodia et exhibitione reorum.

Dig. 48.3.1

Ulpianus 2 de off. procons.

De custodia reorum proconsul aestimare solet, utrum in carcerem recipienda sit persona an militi tradenda vel fideiussoribus committenda vel etiam sibi. hoc autem vel pro criminis quod obicitur qualitate vel propter honorem aut propter amplissimas facultates vel pro innocentia personae vel pro dignitate eius qui accusatur facere solet.

Dig. 48.3.2pr.

Papinianus 1 de adult.

Si servus capitali crimine postuletur, lege publicorum cavetur, ut sistendum vel a domino vel ab extero satisdato promittatur: quod si non defendatur, in vincula publica coici iubetur, ut ex vinculis causam dicat.

Dig. 48.3.2.1

Papinianus 1 de adult.

Solet itaque tractari, an postea domino permittendum sit oblata satisdatione servum suum vinculis liberare. dubitationem auget edictum domitiani, quo cautum est abolitiones ex senatus consulto factas ad huiusmodi servos non pertinere. nam et lex ipsa prohibet eum absolvi, priusquam de eo iudicetur. sed haec interpretatio perdura, pernimium severa est in eo, cuius dominus absens fuit vel quod per inopiam illo momento temporis satisdationem implere non potuit: neque enim pro indefenso derelictus recte dici potest, qui dominum praesentem non habuit vel habuit paratum defendere, pauperem tamen. quod utique facilius admitti poterit, si non post longum temporis spatium hoc desideretur.

Dig. 48.3.2.2

Papinianus 1 de adult.

Qui exhibendi postulati sunt propter aliam causam, alterius criminis, quod ante admissum est, rei non recipiuntur ex senatus consulto. quod in privatis quoque causis et hominibus sub fideiussore factis observatur, nisi ex hoc temporalis actio in periculum cadat.

Dig. 48.3.3

Ulpianus 7 de off. procons.

Divus pius ad epistulam antiochensium graece rescripsit non esse in vincula coiciendum eum, qui fideiussores dare paratus est, nisi si tam grave scelus admisisse eum constet, ut neque fideiussoribus neque militibus committi debeat, verum hanc ipsam carceris poenam ante supplicium sustinere.

Dig. 48.3.4

Ulpianus 9 de off. procons.

Si quis reum criminis, pro quo satisdedit, non exhibuerit, poena pecuniaria plectitur. puto tamen, si dolo non exhibeat, etiam extra ordinem esse damnandum. sed si neque in cautione neque in decreto praesidis certa quantitas comprehensa est, ac nec consuetudo ostenditur, quae certam formam habet, praeses de modo pecuniae, quae inferri oporteat, statuet.

Dig. 48.3.5

Venonius 2 de iudic. publ.

Si confessus fuerit reus, donec de eo pronuntietur, in vincula publica coiciendus est.

Dig. 48.3.6pr.

Marcianus 2 de iudic. publ.

Divus hadrianus iulio secundo ita rescripsit et alias rescriptum est non esse utique epistulis eorum credendum, qui quasi damnatos ad praesidem remiserint. idem de irenarchis praeceptum est, quia non omnes ex fide bona elogia scribere compertum est.

Dig. 48.3.6.1

Marcianus 2 de iudic. publ.

Sed et caput mandatorum exstat, quod divus pius, cum provinciae asiae praeerat, sub edicto proposuit, ut irenarchae, cum adprehenderint latrones, interrogent eos de sociis et receptatoribus et interrogationes litteris inclusas atque obsignatas ad cognitionem magistratus mittant. igitur qui cum elogio mittuntur, ex integro audiendi sunt, etsi per litteras missi fuerint vel etiam per irenarchas perducti. sic et divus pius et alii principes rescripserunt, ut etiam de his, qui requirendi adnotati sunt, non quasi pro damnatis, sed quasi re integra quaeratur, si quis erit qui eum arguat. et ideo cum quis anakrisin faceret, iuberi oportet venire irenarchen et quod scripserit, exsequi: et si diligenter ac fideliter hoc fecerit, collaudandum eum: si parum prudenter non exquisitis argumentis, simpliciter denotare irenarchen minus rettulisse: sed si quid maligne interrogasse aut non dicta rettulisse pro dictis eum compererit, ut vindicet in exemplum, ne quid et aliud postea tale facere moliatur.

Dig. 48.3.7

Macer 2 de off. praesid.

Solent praesides provinciarum, in quibus delictum est, scribere ad collegas suos, ubi factores agere dicuntur, et desiderare, ut cum prosecutoribus ad se remittantur: et id quoque quibusdam rescriptis declaratur.

Dig. 48.3.8

Paulus l.S. de poen. milit.

Carceri praepositus si pretio corruptus sine vinculis agere custodiam vel ferrum venenumve in carcerem inferri passus est, officio iudicis puniendus est: si nescit, ob neglegentiam removendus est officio.

Dig. 48.3.9

Venonius 1 de off. procons.

De militibus ita servatur, ut ad eum remittantur, si quid deliquerint, sub quo militabunt: is autem, qui exercitum accipit, etiam ius animadvertendi in milites caligatos habet.

Dig. 48.3.10

Venonius 2 de off. procons.

Ne quis receptam custodiam sine causa dimittat, mandatis ita cavetur: " si quos ex his, qui in civitatibus sunt, celeriter et sine causa solutos a magistratibus cognoveris, vinciri iubebis et his, qui solverint, multam dices. nam cum scierint sibi quoque molestiae futurum magistratus, si facile solverint vinctos, non indifferenter de cetero facient".

Dig. 48.3.11pr.

Celsus 37 Dig.

Non est dubium, quin, cuiuscumque est provinciae homo, qui ex custodia producitur, cognoscere debeat is, qui ei provinciae praeest, in qua provincia agitur.

Dig. 48.3.11.1

Celsus 37 Dig.

Illud a quibusdam observari solet, ut, cum cognovit et constituit, remittat illum cum elogio ad eum, qui provinciae praeest, unde is homo est: quod ex causa faciendum est.

Dig. 48.3.12pr.

Callistratus 5 de cogn.

Milites si amiserint custodias, ipsi in periculum deducuntur. nam divus hadrianus statilio secundo legato rescripsit, quotiens custodia militibus evaserit, exquiri oportere, utrum nimia neglegentia militum evaserit an casu, et utrum unus ex pluribus an una plures, et ita demum adficiendos supplicio milites, quibus custodiae evaserint, si culpa eorum nimia deprehendatur: alioquin pro modo culpae in eos statuendum. salvio quoque legato aquitaniae idem princeps rescripsit in eum, qui custodiam dimisit aut ita sciens habuit, ut possit custodia evadere, animadvertendum: si tamen per vinum aut desidiam custodis id evenerit, castigandum eum et in deteriorem militiam dari: si vero fortuito amiserit, nihil in eum statuendum.

Dig. 48.3.12.1

Callistratus 5 de cogn.

Si paganos evaserit custodia, idem puto exquirendum, quod circa militum personas explorandum rettuli.

Dig. 48.3.13

Callistratus 6 de cogn.

In eos, qui, cum recepti essent in carcerem, conspiraverint, ut ruptis vinculis et effracto carcere evadant, amplius, quam causa ex qua recepti sunt reposcit, constituendum est quamvis innocentes inveniantur ex eo crimine, propter quod impacti sunt in carcere, tamen puniendi sunt: eos vero, qui conspirationem eorum detexerint, relevandos.

Dig. 48.3.14pr.

Modestinus 4 de poen.

Non est facile tironi custodia credenda: nam ea prodita is culpae reus est, qui eam ei commisit.

Dig. 48.3.14.1

Modestinus 4 de poen.

Nec uni, sed duobus custodia committenda est.

Dig. 48.3.14.2

Modestinus 4 de poen.

Qui si neglegentia amiserint, pro modo culpae vel castigantur vel militiam mutant: quod si levis persona custodiae fuit, castigati restituuntur. nam si miseratione custodiam quis dimiserit, militiam mutat: fraudulenter autem si fuerit versatus in dimittenda custodia, vel capite punitur vel in extremum gradum militiae datur. interdum venia datur: nam cum custodia cum altero custode simul fugisset, alteri venia data est.

Dig. 48.3.14.3

Modestinus 4 de poen.

Sed si se custodia interfecerit vel praecipitaverit, militi culpae adscribitur, id est castigabitur.

Dig. 48.3.14.4

Modestinus 4 de poen.

Quod si ipse custos custodiam interfecerit, homicidii reus est:

Dig. 48.3.14.5

Modestinus 4 de poen.

Ergo si casu custodia defuncta dicatur, testationibus id probandum est et sic venia dabitur.

Dig. 48.3.14.6

Modestinus 4 de poen.

Solet praeterea amissa culpa custodia, si tamen intersit eam adprehendi, tempus causa cognita militi dari ad eam requirendam, applicito ei alio milite.

Dig. 48.3.14.7

Modestinus 4 de poen.

Quod si fugitivum domino reddendum prodiderit, si facultates habeat, domino pretium reddere iuberi saturninus probat.

Dig. 48.4.0. Ad legem iuliam maiestatis.

Dig. 48.4.1pr.

Ulpianus 7 de off. procons.

Proximum sacrilegio crimen est, quod maiestatis dicitur.

Dig. 48.4.1.1

Ulpianus 7 de off. procons.

Maiestatis autem crimen illud est, quod adversus populum romanum vel adversus securitatem eius committitur. quo tenetur is, cuius opera dolo malo consilium initum erit, quo obsides iniussu principis interciderent: quo armati homines cum telis lapidibusve in urbe sint conveniantve adversus rem publicam, locave occupentur vel templa, quove coetus conventusve fiat hominesve ad seditionem convocentur: cuiusve opera consilio malo consilium initum erit, quo quis magistratus populi romani quive imperium potestatemve habet occidatur: quove quis contra rem publicam arma ferat: quive hostibus populi romani nuntium litterasve miserit signumve dederit feceritve dolo malo, quo hostes populi romani consilio iuventur adversus rem publicam: quive milites sollicitaverit concitaveritve, quo seditio tumultusve adversus rem publicam fiat:

Dig. 48.4.2

Ulpianus 8 disp.

Quive de provincia, cum ei successum esset, non discessit: aut qui exercitum deseruit vel privatus ad hostes perfugit: quive sciens falsum conscripsit vel recitaverit in tabulis publicis: nam et hoc capite primo lege maiestatis enumeratur.

Dig. 48.4.3

Marcianus 14 inst.

Lex duodecim tabularum iubet eum, qui hostem concitaverit quive civem hosti tradiderit, capite puniri. lex autem iulia maiestatis praecipit eum, qui maiestatem publicam laeserit, teneri: qualis est ille, qui in bellis cesserit aut arcem tenuerit aut castra concesserit. eadem lege tenetur et qui iniussu principis bellum gesserit dilectumve habuerit exercitum comparaverit: quive, cum ei in provincia successum esset, exercitum successori non tradidit: quive imperium exercitumve populi romani deseruerit: quive privatus pro potestate magistratuve quid sciens dolo malo gesserit: quive quid eorum, quae supra scripta sunt, facere curaverit:

Dig. 48.4.4pr.

Scaevola 4 reg.

Cuiusque dolo malo iureiurando quis adactus est, quo adversus rem publicam faciat: cuiusve dolo malo exercitus populi romani in insidias deductus hostibusve proditus erit: factumve dolo malo cuius dicitur, quo minus hostes in potestatem populi romani veniant: cuiusve opera dolo malo hostes populi romani commeatu armis telis equis pecunia aliave qua re adiuti erunt: utve ex amicis hostes populi romani fiant: cuiusve dolo malo factum erit, quo rex exterae nationis populo romano minus obtemperet: cuiusve opera dolo malo factum erit, quo magis obsides pecunia iumenta hostibus populi romani dentur adversus rem publicam. item qui confessum in iudicio reum et propter hoc in vincula coniectum emiserit.

Dig. 48.4.4.1

Scaevola 4 reg.

Hoc crimine liberatus est a senatu, qui statuas imperatoris reprobatas conflaverit.

Dig. 48.4.5pr.

Marcianus 5 reg.

Non contrahit crimen maiestatis, qui statuas caesaris vetustate corruptas reficit.

Dig. 48.4.5.1

Marcianus 5 reg.

Nec qui lapide iactato incerto fortuito statuam attigerit, crimen maiestatis commisit: et ita severus et antoninus iulio cassiano rescripserunt.

Dig. 48.4.5.2

Marcianus 5 reg.

Idem pontio rescripsit non videri contra maiestatem fieri ob imagines caesaris nondum consecratas venditas.

Dig. 48.4.6

Venonius 2 de iudic. publ.

Qui statuas aut imagines imperatoris iam consecratas conflaverint aliudve quid simile admiserint, lege iulia maiestatis tenentur.

Dig. 48.4.7pr.

Modestinus 12 pand.

Famosi, qui ius accusandi non habent, sine ulla dubitatione admittuntur ad hanc accusationem.

Dig. 48.4.7.1

Modestinus 12 pand.

Sed et milites, qui causas alias defendere non possunt: nam qui pro pace excubant, magis magisque ad hanc accusationem admittendi sunt.

Dig. 48.4.7.2

Modestinus 12 pand.

Servi quoque deferentes audiuntur et quidem dominos suos: et liberti patronos.

Dig. 48.4.7.3

Modestinus 12 pand.

Hoc tamen crimen iudicibus non in occasione ob principalis maiestatis venerationem habendum est, sed in veritate: nam et personam spectandam esse, an potuerit facere, et an ante quid fecerit et an cogitaverit et an sanae mentis fuerit. nec lubricum linguae ad poenam facile trahendum est: quamquam enim temerarii digni poena sint, tamen ut insanis illis parcendum est, si non tale sit delictum, quod vel ex scriptura legis descendit vel ad exemplum legis vindicandum est.

Dig. 48.4.7.4

Modestinus 12 pand.

Crimen maiestatis facto vel violatis statuis vel imaginibus maxime exacerbatur in milites.

Dig. 48.4.8

Papinianus 13 resp.

In quaestionibus laesae maiestatis etiam mulieres audiuntur. coniurationem denique sergii catilinae iulia mulier detexit et marcum tullium consulem indicium eius instruxit.

Dig. 48.4.9

Hermogenianus 5 iuris epit.

Eorum, qui maiestatis crimine damnati sunt, libertorum bona liberis damnatorum conservari divus severus decrevit et tunc demum fisco vindicari, si nemo damnati liberorum existat.

Dig. 48.4.10

Hermogenianus 6 iuris epit.

Maiestatis crimine accusari potest, cuius ope consilio dolo malo provincia vel civitas hostibus prodita est.

Dig. 48.4.11

Ulpianus 8 disp.

Is, qui in reatu decedit, integri status decedit: extinguitur enim crimen mortalitate. nisi forte quis maiestatis reus fuit: nam hoc crimine nisi a successoribus purgetur, hereditas fisco vindicatur. plane non quisque legis iuliae maiestatis reus est, in eadem condicione est, sed qui perduellionis reus est, hostili animo adversus rem publicam vel principem animatus: ceterum si quis ex alia causa legis iuliae maiestatis reus sit, morte crimine liberatur.

Dig. 48.5.0. Ad legem iuliam de adulteriis coercendis.

Dig. 48.5.1

Ulpianus 1 de adult.

Haec lex lata est a divo augusto.

Dig. 48.5.2pr.

Ulpianus 8 disp.

Ex lege iulia servatur, ut, cui necesse est ab adultero incipere, quia mulier ante denuntiationem nupsit, non alias ad mulierem possit pervenire, nisi reum peregerit. peregisse autem non alias quis videtur, nisi et condemnaverit.

Dig. 48.5.2.1

Ulpianus 8 disp.

Marito iure mariti accusanti illa praescriptio obicitur, si legem prodidisse dicatur ob hoc, quod adgressus accusationem adulterii destitit.

Dig. 48.5.2.2

Ulpianus 8 disp.

Lenocinii quidem crimen lege iulia de adulteris praescriptum est, cum sit in eum maritum poena statuta, qui de adulterio uxoris suae quid ceperit, item in eum, qui in adulterio deprehensam retinuerit.

Dig. 48.5.2.3

Ulpianus 8 disp.

Ceterum qui patitur uxorem suam delinquere matrimoniumque suum contemnit quique contaminationi non indignatur, poena adulterum non infligitur.

Dig. 48.5.2.4

Ulpianus 8 disp.

Qui hoc dicit lenocinio mariti se fecisse, relevare quidem vult crimen suum, sed non est huiusmodi compensatio admissa. ideo si maritum velit reus adulterii lenocinii reum facere, semel delatus non audietur.

Dig. 48.5.2.5

Ulpianus 8 disp.

Si publico iudicio maritus uxorem ream faciat, an lenocinii allegatio repellat maritum ab accusatione? et putem non repellere: lenocinium igitur mariti ipsum onerat, non mulierem excusat.

Dig. 48.5.2.6

Ulpianus 8 disp.

Unde quaeri potest, an is, qui de adulterio cognoscit, statuere in maritum ob lenocinium possit? et puto posse. nam claudius gorgus vir clarissimus uxorem accusans cum detectus est uxorem in adulterio deprehensam retinuisse, et sine accusatore lenocinio damnatus est a divo severo.

Dig. 48.5.2.7

Ulpianus 8 disp.

Extraneus autem nequaquam lenocinium obiciens, posteaquam reus factus est, se relevabit, nec maritum poenae subiciet.

Dig. 48.5.2.8

Ulpianus 8 disp.

Si simul ad accusationem veniant maritus et pater mulieris, quem praeferri oporteat, quaeritur. et magis est, ut maritus praeferatur: nam et propensiore ira et maiore dolore executurum eum accusationem credendum est, in tantum, ut et si pater praevenerit et libellos inscriptionum deposuerit, marito non neglegente nec retardante, sed accusationem parante et probationibus instituente atque muniente, ut facilius iudicantibus de adulterio probetur, idem erit dicendum.

Dig. 48.5.2.9

Ulpianus 8 disp.

Sed et quotiens alii, qui post maritum et patrem accusare possunt, ad accusandum prosiliunt, lege expressum est, ut is, cuius de ea re notio est, de iusto accusatore constituat.

Dig. 48.5.3

Ulpianus 2 de adult.

Nisi igitur pater maritum infamem aut arguat aut doceat colludere magis cum uxore quam ex animo accusare, postponetur marito.

Dig. 48.5.4pr.

Ulpianus 8 disp.

Si maritus praevenerit accusareque instituerit, tempora non cedunt patri, quod accusationem instituere non potest, sic tamen, ut, quoad unus occupet, utrique tempora cedant, ubi vero maritus occupavit, residua tempora ei, qui occupare non potest, non cedant. quod et in eo dici potest, qui ab adultero vel adultera coepit: nam adversus eum, adversus quem non coepit, desinunt ei tempora cedere. haec in maritis et patribus dicta sunt.

Dig. 48.5.4.1

Ulpianus 8 disp.

Extraneis autem, qui accusare possunt, accusandi facultas post maritum et patrem conceditur: nam post sexaginta dies quattuor menses extraneis dantur et ipsi utiles.

Dig. 48.5.4.2

Ulpianus 8 disp.

Si ante extraneus instituerit accusationem, an supervenienti marito permittatur accusatio, quaeritur. et magis arbitror hoc quoque casu maritum audiendum, si non neglegentia praeventus est. et ideo et si accusatione instituta absoluta sit mulier extraneo accusante, tamen marito debet permitti restaurare accusationem, si idoneas causas allegare possit, quibus impeditus non instituit accusationem.

Dig. 48.5.5

Iulianus 86 Dig.

Nuptam mihi adulterii ream postulari posse in priore matrimonio commissi dubium non est, cum aperte lege iulia de adulteriis coercendis caveatur, si quidem vidua sit, de cuius adulterio agetur, ut accusator liberum arbitrium habeat, adulterum an adulteram prius accusare malit: si vero nupta sit, ut prius adulterum peragat, tunc mulierem.

Dig. 48.5.6pr.

Papinianus 1 de adult.

Inter liberas tantum personas adulterium stuprumve passas lex iulia locum habet. quod autem ad servas pertinet, et legis aquiliae actio facile tenebit et iniuriarum quoque competit nec erit deneganda praetoria quoque actio de servo corrupto: nec propter plures actiones parcendum erit in huiusmodi crimine reo.

Dig. 48.5.6.1

Papinianus 1 de adult.

Lex stuprum et adulterium promiscui et kataxrystikwteron appellat. sed proprie adulterium in nupta committitur, propter partum ex altero conceptum composito nomine: stuprum vero in virginem viduamve committitur, quod graeci fvoran appellant.

Dig. 48.5.6.2

Papinianus 1 de adult.

Filius familiae maritus ab eo, qui sui iuris est, in ea lege non separatur. divus quoque hadrianus rosiano gemino rescripsit et invito patre filium hac lege reum facere.

Dig. 48.5.6.3

Papinianus 1 de adult.

Maritus etsi duo reos ex alio crimine habeat, poterit iure viri tertium accusare, quoniam ea causa non cedit in numerum ceterarum.

Dig. 48.5.7

Marcianus 10 inst.

Qui pupillam suam duxit uxorem contra senatus consultum, nec matrimonium est hoc et potest adulterii accusari, qui tutor vel curator fuit et intra vicensimum sextum annum duxit uxorem non a patre desponsam vel destinatam vel testamento denominatam.

Dig. 48.5.8

Marcianus not. in pap. 2 de adult.

Incesti commune crimen adversus duos simul intentari potest.

Dig. 48.5.9pr.

Marcianus 2 de adult.

Qui domum suam, ut stuprum adulteriumve cum aliena matre familias vel cum masculo fieret, sciens praebuerit vel quaestum ex adulterio uxoris suae fecerit: cuiuscumque sit condicionis, quasi adulter punitur.

Dig. 48.5.9.1

Marcianus 2 de adult.

Appellatione domus habitationem quoque significari palam est.

Dig. 48.5.10pr.

Ulpianus 4 de adult.

Et si amici quis domum praebuisset, tenetur.

Dig. 48.5.10.1

Ulpianus 4 de adult.

Sed et si quis in agro balneove stuprum fieri praebuisset, comprehendi debet.

Dig. 48.5.10.2

Ulpianus 4 de adult.

Sed et si in domum aliquam soliti fuerint convenire ad tractandum de adulterio, etsi eo loci nihil fuerit admissum, verum tamen videtur is domum suam, ut stuprum adulteriumve committeretur, praebuisse, quia sine colloquio illo adulterium non committeretur.

Dig. 48.5.11pr.

Papinianus 2 de adult.

Mater autem familias significatur non tantum nupta, sed etiam vidua.

Dig. 48.5.11.1

Papinianus 2 de adult.

Mulieres quoque hoc capite legis, quod domum praebuerunt vel pro comperto stupro aliquid acceperunt, tenentur.

Dig. 48.5.11.2

Papinianus 2 de adult.

Mulier, quae evitandae poenae adulterii gratia lenocinium fecerit aut operas suas in scaenam locavit, adulterii accusari damnarique ex senatus consulto potest.

Dig. 48.5.12pr.

Papinianus l.S. de adult.

Miles, qui cum adultero uxoris suae pactus est, solvi sacramento deportarique debet.

Dig. 48.5.12.1

Papinianus l.S. de adult.

Militem, qui sororis filiam in contubernio habuit, licet non in matrimonium, adulterii poena teneri rectius dicetur.

Dig. 48.5.12.2

Papinianus l.S. de adult.

Ea, quae inter reas adulterii recepta esset, absens defendi non potest.

Dig. 48.5.12.3

Papinianus l.S. de adult.

Socer cum nurum adulterii accusaturum se libellis praesidi datis testatus fuisset, maluit accusatione desistere et lucrum ex dote magis petere. quaeritur, an huiusmodi commentum eius admitti existimes. respondit: turpissimo exemplo is, qui nurum suam accusare instituisset, postea desistere maluit contentus lucrum ex dote retinere tamquam culpa mulieris dirempto matrimonio: quare non inique repelletur, qui commodum dotis vindictae domus suae praeponere non erubuit.

Dig. 48.5.12.4

Papinianus l.S. de adult.

Adulterii reum intra quinque annos continuos a die criminis admissi defuncta quoque muliere postulari posse palam est.

Dig. 48.5.12.5

Papinianus l.S. de adult.

Quidam accusare volebat adulterii mulierem et postulabat, ne sibi computarentur dies, quos in custodiam fecisset: me hoc admittente exstitit qui mihi contradiceret. cuius opinionem an tu probes, rogo maturius mihi scribas.

respondit: opinionem tuam et verba legis et sententia adiuvant, cui placuit utiles dies accusatori computandos esse, id est quibus potuit accusationis sollemnia implere. quare sine dubio dies, quibus quis in custodia fuit, extra computationem utilium dierum existimanti tibi constitutos contradici non debuit.

Dig. 48.5.12.6

Papinianus l.S. de adult.

Sexaginta dies, qui marito accusanti utiles computantur, feriatis quoque diebus, si modo facultatem praesidis adeundi accusator habuit, numerari certum est, quoniam de plano quoque libellus dari potest. quod privilegium si amisit, non prohibetur intra alios quattuor menses querellam suam apud iudicem deferre.

Dig. 48.5.12.7

Papinianus l.S. de adult.

Quaerebatur, an iure mariti possit accusare vir eam feminam, quae, cum ei desponsa fuisset, alii in matrimonium a patre fuisset tradita. respondit: novam rem instituere huiusmodi accusatorem existimo, qui adulterii crimen obicere desiderat propter hoc tantum, quod priori sibi desponsa puella a patre in matrimonium alii fuerit tradita.

Dig. 48.5.12.8

Papinianus l.S. de adult.

Defuncto marito adulterii rea mulier postulatur, quae propter impuberem filium vult dilatationem ab accusatore impetrare: an debeat audiri? respondi: non videtur mihi confugere ea mulier ad iustam defensionem, quae aetatem filii praetendit ad eludendam legitimam accusationem: nam non utique crimen adulterii, quod mulieri obicitur, infanti praeiudicat, cum possit et illa adultera esse et impubes defunctum patrem habuisse.

Dig. 48.5.12.10

Papinianus l.S. de adult.

Volenti mihi ream adulterii postulare eam, quae post commissum adulterium in eodem matrimonio perseveraverit, contradictum est. quaero, an iuste responsum sit. respondit: ignorare non debuisti durante eo matrimonio, in quo adulterium dicitur esse commissum, non posse mulierem ream adulterii fieri: sed nec adulterum interim accusari posse.

Dig. 48.5.12.11

Papinianus l.S. de adult.

Licet ei mulier, qui in suspicionem adulterii incidit, nupsisse dicatur, non ante accusari poterit, quam adulter fuerit convictus: alioquin ad hoc vel maxime viri confugient volentes bene concordatum sequens matrimonium dirimere, ut dicant cum adultero mulierem nuptias contraxisse.

Dig. 48.5.12.12

Papinianus l.S. de adult.

Mulier cum absentem virum audisset vita functum esse, alii se iunxit: mox maritus reversus est. quaero, quid adversus eam mulierem statuendum sit. respondit tam iuris quam facti quaestionem moveri: nam si longo tempore transacto sine ullius stupri probatione falsis rumoribus inducta, quasi soluta priore vinculo, legitimis nuptiis secundis iuncta est, quod verisimile est deceptam eam fuisse nihil vindicta dignum videri potest: quod si ficta mariti mors argumentum faciendis nuptiis probabitur praestitisse, cum hoc facto pudicitia laboretur, vindicari debet pro admissi criminis qualitate.

Dig. 48.5.12.13

Papinianus l.S. de adult.

Ream adulterii uxorem duxi: eam damnatam mox repudiavi. quaero, an causam discidii praestitisse videor. respondit: cum per legem iuliam huiusmodi uxorem retinere prohibearis, non videri causam te discidii praestitisse palam est. quare ita ius tractabitur quasi culpa mulieris facto divortio.

Dig. 48.5.13

Ulpianus 1 de adult.

Haec verba legis " ne quis posthac stuprum adulterium facito sciens dolo malo" et ad eum, qui suasit, et ad eum, qui stuprum vel adulterium intulit, pertinent.

Dig. 48.5.14pr.

Ulpianus 2 de adult.

Si uxor non fuerit in adulterio, concubina tamen fuit, iure quidem mariti accusare eam non poterit, quae uxor non fuit, iure tamen extranei accusationem instituere non prohibebitur, si modo ea sit, quae in concubinatum se dando matronae nomen non amisit, ut puta quae patroni concubina fuit.

Dig. 48.5.14.1

Ulpianus 2 de adult.

Plane sive iusta uxor fuit sive iniusta, accusationem instituere vir poterit: nam et sextus caecilius ait, haec lex ad omnia matrimonia pertinet, et illud homericum adfert: nec enim soli, inquit, atridae uxores suas amant. ou monoi fileous aloxous meropwn anvrwpwn atreidai.

Dig. 48.5.14.2

Ulpianus 2 de adult.

Sed et in ea uxore potest maritus adulterium vindicare, quae volgaris fuerit, quamvis, si vidua esset, impune in ea stuprum committeretur.

Dig. 48.5.14.3

Ulpianus 2 de adult.

Divi severus et antoninus rescripserunt etiam in sponsa hoc idem vindicandum, quia neque matrimonium qualecumque nec spem matrimonii violare permittitur.

Dig. 48.5.14.4

Ulpianus 2 de adult.

Sed et si ea sit mulier, cum qua incestum commissum est, vel ea, quae, quamvis uxoris animo haberetur, uxor tamen esse non potest, dicendum est iure mariti accusare eam non posse, iure extranei posse.

Dig. 48.5.14.5

Ulpianus 2 de adult.

Iudex adulterii ante oculos habere debet in inquirere, an maritus pudice vivens mulieri quoque bonos mores colendi auctor fuerit: periniquum enim videtur esse, ut pudicitiam vir ab uxore exigat, quam ipse non exhibeat: quae res potest et virum damnare, non rem ob compensationem mutui criminis inter utrosque communicare.

Dig. 48.5.14.6

Ulpianus 2 de adult.

Si quis uxorem suam velit accusare dicatque eam adulterium commisisse antequam sibi nuberet, iure viri accusationem instituere non poterit, quia non, cum ei nupta est, adulterium commisit. quod et in concubina dici potest, quam uxorem quis postea habuit, vel in filia familias, cuius coniunctioni pater postea concessit.

Dig. 48.5.14.7

Ulpianus 2 de adult.

Si quis plane uxorem suam, cum apud hostes esset, adulterium commisisse arguat, benignius dicetur posse eum accusare iure viri: sed ita demum adulterium maritus vindicabit, si vim hostium passa non est: ceterum quae vim patitur, non est in ea causa, ut adulterii vel stupri damnetur.

Dig. 48.5.14.8

Ulpianus 2 de adult.

Si minor duodecim annis in domum deducta adulterium commiserit, mox apud eum aetatem excesserit coeperitque esse uxor, non poterit iure viri accusari ex eo adulterio, quod ante aetatem nupta commisit, sed vel quasi sponsa poterit accusari ex rescripto divi severi, quod supra relatum est.

Dig. 48.5.14.9

Ulpianus 2 de adult.

Sed et si qua repudiata, mox reducta sit non quasi eodem matrimonio durante, sed quasi alio interposito, videndum est, an ex delicto, quod in priore matrimonio admisit, accusari possit. et puto non posse: abolevit enim prioris matrimonii delicta reducendo eam.

Dig. 48.5.14.10

Ulpianus 2 de adult.

Idem dicendum est, si stupri velit accusare eam quam postea duxit uxorem: sero enim accusat mores, quos uxorem ducendo probavit.

Dig. 48.5.15pr.

Scaevola 4 reg.

Is, cuius ope consilio dolo malo factum est, ut vir feminave in adulterio deprehensi pecunia aliave qua pactione se redimerent, eadem poena damnatur, quae constituta est in eos, qui lenocinii crimine damnantur.

Dig. 48.5.15.1

Scaevola 4 reg.

Si vir infamandae uxoris suae causa adulterum subiecerit, ut ipse deprehenderet, et vir et mulier adulterii crimine tenentur ex senatus consulto de ea re facto.

Dig. 48.5.15.2

Scaevola 4 reg.

Marito primum, vel patri eam filiam quam in potestate habet, intra dies sexaginta divortii accusare permittitur nec ulli alii intra id tempus agendi potestas datur: ultra eos dies neutrius voluntas exspectatur.

Dig. 48.5.15.3

Scaevola 4 reg.

Iure mariti qui accusant, calumniae periculum non evitant.

Dig. 48.5.16pr.

Ulpianus 2 de adult.

Si maritus sit in magistratu, potest praeveniri a patre: atquin non oportet. et putat pomponius debere dici, quoad maritus magistratum gerit, patris quoque accusationem impediendam, ne praeripiatur marito ius, quod cum eo aequale habet: igitur non cedent sexaginta dies patri, cum accusare non potest.

Dig. 48.5.16.1

Ulpianus 2 de adult.

Legis iuliae de adulteriis capite septimo ita cavetur: " ne quis inter reos referat eum, qui tum sine detrectatione rei publicae causa aberit": neque enim aequum visum est absentem rei publicae causa inter reos referri, dum rei publicae operatur.

Dig. 48.5.16.2

Ulpianus 2 de adult.

Necessario adicitur " sine detrectatione": ceterum si quis evitandi criminis id egit, ut rei publicae causa abesset, nihil illi commentum hoc proficiat.

Dig. 48.5.16.3

Ulpianus 2 de adult.

Quod si quis praesens sit, vice tamen absentis habetur (ut puta qui in vigilibus vel urbanis castris militat), dicendum est deferri hunc posse: neque enim laborare habet, ut se repraesentet.

Dig. 48.5.16.4

Ulpianus 2 de adult.

Et generaliter dicendum est eorum demum absentiam excusatam esse, qui in alia provincia rei publicae causa absunt, quam in ea in qua deferuntur. proinde si quis in provincia, in qua agit, adulterium commiserit, accusari poterit, nisi sit ea persona, quae ad praesidis cognitionem non pertinet.

Dig. 48.5.16.5

Ulpianus 2 de adult.

Si negaverint se pater et maritus accusaturos intra diem sexagensimum, an statim incipiant tempora extraneo cedere? et primus pomponius putat admitti ad accusationem extraneum posse statim atque isti negaverint. cui adsentiendum puto: fortius enim dicitur eum, qui se negaverit acturum, postea non audiendum.

Dig. 48.5.16.6

Ulpianus 2 de adult.

Lex iulia de adulteriis specialiter quosdam adulterii accusare prohibet, ut minorem annis viginti quinque: nec enim visus est idoneus accusator, qui nondum robustae aetatis est. quod ita verum est, si non matrimonii sui iniuriam exequatur: ceterum si suum matrimonium vindicare velit, quamvis iure extranei ad accusationem veniat, tamen audietur: nec enim ulla praescriptio obicitur suam iniuriam vindicanti. sane si iuvenali facilitate ductus vel etiam fervore aetatis accensus ad accusationem prosilit, accusanti ei non facile calumniae poena irrogabitur. minorem viginti quinque annis etiam eum accipimus, qui vicensimum quintum annum aetatis agit.

Dig. 48.5.16.7

Ulpianus 2 de adult.

Praescriptiones, quae obici solent accusantibus adulterii, ante solent tractari, quam quis inter reos recipiatur: ceterum posteaquam semel receptus est, non potest praescriptionem obicere.

Dig. 48.5.16.8

Ulpianus 2 de adult.

Si in viduitate mulier perseverat, in accusatoris est arbitrio, a quo velit incipere, utrum ab adultero an ab adultera.

Dig. 48.5.16.9

Ulpianus 2 de adult.

Si quis et adulterum et adulteram simul detulit, nihil agit poteritque, quasi neutrum detulerit, rursus a quo velit initium facere, quia nihil agit prima delatione.

Dig. 48.5.17

Ulpianus 1 de adult.

Qui uxori repudium miserit, postea denuntiare, ne seio nuberet, et, si denuntiaverit, et ab ea incipere potest.

Dig. 48.5.18pr.

Ulpianus 2 ad l. iul. de adult.

Denuntiasse qualiter accipiamus, utrum ad iudicem an vero simpliciter? ego, etsi non denuntiavit ad iudicem, sufficere credo, si adulterii se acturum denuntiaverit.

Dig. 48.5.18.1

Ulpianus 2 ad l. iul. de adult.

Quid ergo, si non quidem denuntiavit, verum libellos accusatoris dedit, antequam nuberet, eaque, cum id cognovisset, nupsit, vel ignorans? puto non videri ei denuntiatum: idcirco non posse accusatorem ab ea incipere.

Dig. 48.5.18.2

Ulpianus 2 ad l. iul. de adult.

Quid ergo, si tantum denuntiavit, ne nuberet, sed non addidit, quare, num recte nupsisse videatur? sed melius est illud sequi, ut eius denuntiatio videatur electionem accusatori reservare, qui crimen denuntiavit. omnino igitur si fecit adulterii criminis commemorationem in denuntiatione, etsi iudicem non monstravit, magis putamus mulierem, quasi denuntiationem praecesserit, posse accusari.

Dig. 48.5.18.3

Ulpianus 2 ad l. iul. de adult.

Quid tamen si specialiter, cum quo adulterium fecerit, denuntiationi complexus est, mox velit eam ex alterius persona accusare? magis est, ut non debeat audiri: neque enim crimen quod denuntiavit obicit.

Dig. 48.5.18.4

Ulpianus 2 ad l. iul. de adult.

Sed et si per procuratorem denuntiaverit, puto posse eum accusationem si velit instituere sufficereque procuratoris denuntiationem.

Dig. 48.5.18.5

Ulpianus 2 ad l. iul. de adult.

Ergo et si per actores denuntiaverit, id est per servum dominus denuntiaverit, rata erit denuntiatio.

Dig. 48.5.18.6

Ulpianus 2 ad l. iul. de adult.

Quaeritur, an alius adulteram, alius adulterum postulare possit, ut, quamvis ab eodem ambo simul postulari non possint, a diversis tamen singuli possint. sed non ab re est hoc probare diversos accusatores admitti posse, dum, si ante denuntiationem nupserit, prior mulier accusari non possit. exspectabit igitur mulier sententiam de adultero latam: si absolutus fuerit, mulier per eum vincet nec ultra accusari potest: si condemnatus fuerit, mulier non est condemnata, sed aget causam suam, fortassis et optinere vel gratia vel iustitia vel legis auxilio possit. quid enim, si adulter inimicitiis oppressus est vel falsis argumentis testibusque subornatis apud praesidem gravatus, qui aut noluit aut non potuit provocare, mulier vero iudicem religiosum sortita pudicitiam suam defendet?

Dig. 48.5.18.7

Ulpianus 2 ad l. iul. de adult.

Sed si antequam condemnetur.

Dig. 48.5.19

Macer 1 de publ. iudic.

Vel antequam cum eo agi coepit,

Dig. 48.5.20pr.

Ulpianus 2 ad l. iul. de adult.

Adulter diem suum obierit, constitutum est etiam mortuo adultero sine praescriptione mulierem posse accusari.

Dig. 48.5.20.1

Ulpianus 2 ad l. iul. de adult.

Sed et si non mors, sed poena alia reum subtraxerit, adhuc dicimus posse ad mulierem veniri.

Dig. 48.5.20.2

Ulpianus 2 ad l. iul. de adult.

Si eo tempore, quo eligebatur reus, adultera nupta non fuit, quo autem absolvatur, nupta invenitur: dicendum est hanc absoluto quoque adultero posse accusari, quia eo tempore, quo adulter eligebatur, nupta non fuit.

Dig. 48.5.20.3

Ulpianus 2 ad l. iul. de adult.

Nupta non potest accusari, non tantum ab eo, qui adulterum accusavit nec optinuit, sed nec ab alio quidem, si adulter absolutus est. proinde si per collusionem cum adultero constituerit fueritque absolutus, dedit mulieri nuptae adversus omnes securitatem. plane si nupta esse desierit, accusari poterit: neque enim aliam lex tuetur quam eam, quae nupta est, quamdiu nupta erit.

Dig. 48.5.21

Papinianus 1 de adult.

Patri datur ius occidendi adulterum cum filia quam in potestate habet: itaque nemo alius ex patribus idem iure faciet: sed nec filius familias pater:

Dig. 48.5.22

Ulpianus 1 de adult.

(sic eveniet, ut nec pater nec avus possint occidere) nec immerito: in sua enim potestate non videtur habere, qui non est suae potestatis.

Dig. 48.5.23pr.

Papinianus 1 de adult.

Nec in ea lege naturalis ab adoptivo pater separatur.

Dig. 48.5.23.1

Papinianus 1 de adult.

In accusationem viduae filiae non habet pater ius praecipuum.

Dig. 48.5.23.2

Papinianus 1 de adult.

Ius occidendi patri conceditur domi suae, licet ibi filia non habitat, vel in domo generi: sed domus et pro domicilio accipienda est, ut in lege cornelia de iniuriis.

Dig. 48.5.23.3

Papinianus 1 de adult.

Sed qui occidere potest adulterum, multo magis contumelia poterit iure adficere.

Dig. 48.5.23.4

Papinianus 1 de adult.

Ideo autem patri, non marito mulierem et omnem adulterum remissum est occidere, quod plerumque pietas paterni nominis consilium pro liberis capit: ceterum mariti calor et impetus facile decernentis fuit refrenandus.

Dig. 48.5.24pr.

Ulpianus 1 de adult.

Quod ait lex " in filia adulterum deprehenderit", non otiosum videtur: voluit enim ita demum hanc potestatem patri competere, si in ipsa turpitudine filiam de adulterio deprehendat. labeo quoque ita probat, et pomponius scripsit in ipsis rebus veneris deprehensum occidi: et hoc est quod solo et draco dicunt en ergw.

Dig. 48.5.24.1

Ulpianus 1 de adult.

Sufficit patri, si eo tempore habeat in potestate, quo occidit, non quo in matrimonio collocavit: finge enim postea redactam in potestatem.

Dig. 48.5.24.2

Ulpianus 1 de adult.

Quare non, ubicumque deprehenderit pater, permittitur ei occidere, sed domi suae generive sui tantum, illa ratio redditur, quod maiorem iniuriam putavit legislator, quod in domum patris aut mariti ausa fuerit filia adulterum inducere.

Dig. 48.5.24.3

Ulpianus 1 de adult.

Sed si pater alibi habitet, habeat autem et aliam domum, in qua non habitet, deprehensam illo filiam, ubi non habitat, occidere non poterit.

Dig. 48.5.24.4

Ulpianus 1 de adult.

Quod ait lex " in continenti filiam occidat", sic erit accipiendum, ne occiso hodie adultero reservet et post dies filiam occidat, vel contra: debet enim prope uno ictu et uno impetu utrumque occidere, aequali ira adversus utrumque sumpta. quod si non affectavit, sed, dum adulterum occidit, profugit filia et interpositis horis adprehensa est a patre qui persequebatur, in continenti videbitur occidisse.

Dig. 48.5.25pr.

Macer 1 publ.

Marito quoque adulterum uxoris suae occidere permittitur, sed non quemlibet, ut patri: nam hac lege cavetur, ut liceat viro deprehensum domi suae (non etiam soceri) in adulterio uxoris occidere eum, qui leno fuerit quive artem ludicram ante fecerit in scaenam saltandi cantandive causa prodierit iudiciove publico damnatus neque in integrum restitutus erit, quive libertus eius mariti uxorisve, patris matris, filii filiae utrius eorum fuerit (nec interest, proprius cuius eorum an cum alio communis fuerit) quive servus erit.

Dig. 48.5.25.1

Macer 1 publ.

Et praecipitur, ut is maritus, qui horum quem occiderit, uxorem sine mora dimittat.

Dig. 48.5.25.2

Macer 1 publ.

Ceterum sui iuris an filius familias sit maritus, nihil interesse a plerisque dictum est.

Dig. 48.5.25.3

Macer 1 publ.

Illud in utroque ex sententia legis quaeritur, an patri magistratum occidere liceat? item si filia ignominiosa sit aut uxor contra leges nupta, an id ius nihilo minus pater maritusve habeat? et quid, si pater maritus leno vel aliqua ignominia notatus est? et rectius dicetur eos ius occidendi habere, qui iure patris maritive accusare possunt.

Dig. 48.5.26pr.

Ulpianus 2 ad l. iul. de adult.

Capite quinto legis iuliae ita cavetur, ut viro adulterum in uxore sua deprehensum, quem aut nolit aut non liceat occidere, retinere horas diurnas nocturnasque continuas non plus quam viginti testandae eius rei causa sine fraude sua iure liceat.

Dig. 48.5.26.1

Ulpianus 2 ad l. iul. de adult.

Ego arbitror etiam in patre id servandum, quod in marito expressum est.

Dig. 48.5.26.2

Ulpianus 2 ad l. iul. de adult.

Sed et si non in domo sua deprehenderit maritus, poterit retinere.

Dig. 48.5.26.3

Ulpianus 2 ad l. iul. de adult.

Sed semel remissus adulter reduci non potest.

Dig. 48.5.26.4

Ulpianus 2 ad l. iul. de adult.

Quid ergo si evaserit, an reductus custodiri viginti horis possit? et putem hic magis dicendum reductum retineri posse, testandae rei gratia.

Dig. 48.5.26.5

Ulpianus 2 ad l. iul. de adult.

Quod adicitur " testandae eius rei gratia", ad hoc pertinet, ut testes inducat testimonio futuros accusatori deprehensum reum in adulterio.

Dig. 48.5.27pr.

Ulpianus 3 disp.

Constante matrimonio ab iis, qui extra maritum ad accusationem admittuntur, accusari mulier adulterii non potest: probatam enim a marito uxorem et quiescens matrimonium non debet alius turbare atque inquietare, nisi prius lenocinii maritum accusaverit.

Dig. 48.5.27.1

Ulpianus 3 disp.

Derelictam vero a marito accusationem etiam ab alio excitari utile est.

Dig. 48.5.28pr.

Ulpianus 3 de adult.

Si postulaverit accusator, ut quaestio habeatur de servo adulterii accusato, sive voluit ipse interesse sive noluit, iubent iudices eum servum aestimari, et ubi aestimaverint, tantam pecuniam et alterum tantum eum, qui nomen eius servi detulerit, ei ad quem ea res pertinet dare iubebunt.

Dig. 48.5.28.1

Ulpianus 3 de adult.

Sed dispiciamus, cui ista poena praestanda sit, quia lex eum nominavit " ad quem ea res pertinebit". igitur bonae fidei emptorem, quamvis ab eo emerit qui dominus non est, recte dicemus eum esse, ad quem ea res pertinet.

Dig. 48.5.28.2

Ulpianus 3 de adult.

Eum quoque, qui pignori accepit, magis admittimus in eadem causa esse, scilicet quia intererat eius quaestionem non haberi.

Dig. 48.5.28.3

Ulpianus 3 de adult.

Sed et si usus fructus in servo alienus sit, inter dominum et fructuarium dividi debet aestimatio.

Dig. 48.5.28.4

Ulpianus 3 de adult.

Et si communis plurium servus erit, utique inter eos quoque erit aestimatio dividenda.

Dig. 48.5.28.5

Ulpianus 3 de adult.

Si liber homo, dum servus existimatur, tortus sit, quia et ipse condicionem suam ignorat: magis admittit caecilius actionem utilem ipsi dandam adversus eum, qui per calumniam appetit, ne impunita sit calumnia eius ob hoc, quod liberum hominem quasi servum deduxit in quaestionem.

Dig. 48.5.28.6

Ulpianus 3 de adult.

Haberi quaestionem lex iubet de servis ancillisve eius, de quo vel de qua quaereretur, parentisve utriusque eorum, si ea mancipia ad usum ei a parentibus data sint. divus autem hadrianus cornelio latiniano rescripsit et de exteris servis quaestionem haberi.

Dig. 48.5.28.7

Ulpianus 3 de adult.

Quaestioni interesse iubentur reus reave et patroni eorum et qui crimen detulerit, interrogandique facultas datur patronis.

Dig. 48.5.28.8

Ulpianus 3 de adult.

De eo quoque servo, in quo usum fructum reus habuit, magis est, ut quaestio haberi possit: licet enim servus eius non fuerit, in servitute tamen fuisse videtur: nec tam proprietatis causa ad quaestionem quam ministerii pertinet.

Dig. 48.5.28.9

Ulpianus 3 de adult.

Ergo et si bona fide serviat reo servus alienus, admittet quis interrogari eum per quaestionem posse.

Dig. 48.5.28.10

Ulpianus 3 de adult.

Sed et si servus sit, cui fideicommissa libertas debetur vel statuta speratur, torqueri eum posse magis est.

Dig. 48.5.28.11

Ulpianus 3 de adult.

Iubet lex eos homines, de quibus quaestio ita habita est, publicos esse: proinde in communi partem publicamus: in proprio, cuius usus fructus alienus est, nudam proprietatem: in quo tantum usum fructum habuit reus, magis est, ut perceptio usus fructus ad publicum incipiat pertinere: alienum servum utique non publicabimus. ratio autem publicandorum servorum ea est, ut sine ullo metu verum dicant et ne, dum timeant se in reorum potestatem regressuros, obdurent in quaestione.

Dig. 48.5.28.12

Ulpianus 3 de adult.

Non tamen prius publicantur, quam quaestio de illis habita fuerit.

Dig. 48.5.28.13

Ulpianus 3 de adult.

Sed et si negaverint, nihilo minus publicantur: ratio enim adhuc eadem est, ne, dum hi sperant se in potestatem dominorum reversuros si negaverint, spe meriti collocandi in mendacio perseverent.

Dig. 48.5.28.14

Ulpianus 3 de adult.

Sed et servi accusatoris, si de his quaestio habita sit, publicantur: eius enim servi ne mentiantur, merito a dominio eius recedunt. extranei vero non habent cui gratificentur.

Dig. 48.5.28.15

Ulpianus 3 de adult.

Si reus vel rea absoluti fuerint, aestimari per iudices lex damnum voluit, sive mortui fuerint, quantae pecuniae ante quaestionem fuerint, sive vivent, quantae pecuniae in his damnum datum fuerit factumve esset.

Dig. 48.5.28.16

Ulpianus 3 de adult.

Notandum est, quod capite quidem novo cavetur, si servus adulterii accusetur et accusator quaestionem in eo haberi velit, duplum pretium domino praestari lex iubet, at hic simplum.

Dig. 48.5.29

Marcianus 1 de iudic. publ.

Quod ex his causis debetur, per condictionem, quae ex lege descendit, petitur.

Dig. 48.5.30pr.

Ulpianus 4 de adult.

Mariti lenocinium lex coercuit, qui deprehensam uxorem in adulterio retinuit adulterumque dimisit: debuit enim uxori quoque irasci, quae matrimonium eius violavit. tunc autem puniendus est maritus, cum excusare ignorantiam suam non potest vel adumbrare patientiam praetextu incredibilitatis: idcirco enim lex ita locuta est " adulterum in domo deprehensum dimiserit", quod voluerit in ipsa turpitudine prehendentem maritum coercere.

Dig. 48.5.30.1

Ulpianus 4 de adult.

Quod ait lex, adulterii damnatum si quis duxerit uxorem, ea lege teneri, an et ad stuprum referatur, videamus: quod magis est. certe si ob aliam causam ea lege sit condemnata, impune uxor ducetur.

Dig. 48.5.30.2

Ulpianus 4 de adult.

Plectitur et qui pretium pro comperto stupro acceperit: nec interest, utrum maritus sit qui acceperit an alius quilibet: quicumque enim ob conscientiam stupri accepit aliquid, poena erit plectendus. ceterum si gratis quis remisit, ad legem non pertinet.

Dig. 48.5.30.3

Ulpianus 4 de adult.

Qui quaestum ex adulterio uxoris suae fecerit, plectitur: nec enim mediocriter deliquit, qui lenocinium in uxore exercuit.

Dig. 48.5.30.4

Ulpianus 4 de adult.

Quaestum autem ex adulterio uxoris facere videtur, qui quid accepit, ut adulteretur uxor: sive enim saepius sive semel accepit, non est eximendus: quaestum enim de adulterio uxoris facere proprie ille existimandus est, qui aliquid accepit, ut uxorem pateretur adulterari meretricio quodam genere. quod si patiatur uxorem delinquere non ob quaestum, sed neglegentiam vel culpam vel quandam patientiam vel nimiam credulitatem, extra legem positus videtur.

Dig. 48.5.30.5

Ulpianus 4 de adult.

Sex mensuum haec fit separatio, ut in nupta quidem ex die divortii sex menses computentur, in vidua vero ex die commissi criminis: quod significari videtur rescripto ad tertullum et maximum consules. praeterea si ex die divortii sexaginta dies sint, ex die vero commissi criminis quinquennium praeteriit, debuit dici nec mulierem posse accusari, ut, quod dantur sex menses utiles, sic sit accipiendum, ne crimen quinquennio continuo sopitum excitetur.

Dig. 48.5.30.6

Ulpianus 4 de adult.

Hoc quinquennium observari legislator voluit, si reo vel reae stuprum adulterium vel lenocinium obiciatur. quid ergo, si aliud crimen sit quod obiciatur, quod ex lege iulia descendit, ut sunt qui domum suam stupri causa praebuerunt et alii similes? et melius est dicere omnibus admissis ex lege iulia venientibus quinquennium esse praestitutum.

Dig. 48.5.30.7

Ulpianus 4 de adult.

Quinquennium autem ex eo die accipiendum est, ex quo quid admissum est, et ad eum diem, quo quis postulatus postulatave est, et non ad eum diem, quo iudicium de adulteriis exercetur.

Dig. 48.5.30.8

Ulpianus 4 de adult.

Hoc amplius senatus consulto adiectum est, ut, si plures eundem postulaverint, eius, qui perseveraverit reum reamve facere, postulationis dies prima exigatur, scilicet ut qui accusat suos libellos accusatorios exspectet, non alienos.

Dig. 48.5.30.9

Ulpianus 4 de adult.

Eum autem, qui per vim stuprum intulit vel mari vel feminae, sine praefinitione huius temporis accusari posse dubium non est, cum eum publicam vim committere nulla dubitatio est.

Dig. 48.5.31pr.

Paulus 1 de adult.

Pater sine periculo calumniae non potest agere.

Dig. 48.5.31.1

Paulus 1 de adult.

Sexaginta dies a divortio numerantur: in diebus autem sexaginta et ipse sexagensimus est.

Dig. 48.5.32

Paulus 2 de adult.

Quinquennium non utile, sed continuo numerandum est. quid ergo fiet, si prior mulier rea facta sit et ideo adulter eodem tempore reus fieri non potuit et diu tracta lite quinquennium transierit? quid si is, qui intra quinquennium quem postulaverat, non peregerit aut praevaricatus est et alius eundem repetere velit et quinquennium transactum sit? aequum est computationi quinquennii eximi id tempus, quod per postulationem praecedentem consumptum sit.

Dig. 48.5.33pr.

Macer 1 de publ. iudic.

Nihil interest, adulteram filiam prius pater occiderit an non, dum utrumque occidat: nam si alterum occidit, lege cornelia reus erit. quod si altero occiso alter vulneratus fuerit, verbis quidem legis non liberatur: sed divus marcus et commodus rescripserunt impunitatem ei concedi, quia, licet interempto adultero mulier supervixerit post tam gravia vulnera, quae ei pater infixerat, magis fato quam voluntate eius servata est: quia lex parem in eos, qui deprehensi sunt, indignationem exigit et severitatem requirit.

Dig. 48.5.33.1

Macer 1 de publ. iudic.

Cum alterum ex adulteris elegerit maritus, alterum non ante accusare potest, quam prius iudicium finietur, quia duos simul ab eodem accusari non licet. non tamen prohibetur accusator simul cum adultero vel adultera eum quoque accusare, qui domum suam praebuit vel consilio fuit, ut crimen redimeretur.

Dig. 48.5.34pr.

Marcianus 1 de publ. iudic.

Si quis adulterium a servo suo commissum dicat in eam, quam uxorem habuit, divus pius rescripsit accusare potius mulierem eum debere, quam in praeiudicium eius servum suum torquere.

Dig. 48.5.34.1

Marcianus 1 de publ. iudic.

Si quis adulterum non dimiserit, sed retinuerit, forsan filium in noverca vel etiam libertum vel servum in uxore, ex sententia legis tenetur, quamvis verbis non continetur. quae autem retinetur, punitur. sed si dimissam reduxerit, verbis non tenetur: sed tamen dicendum est, ut teneatur, ne fraus fiat.

Dig. 48.5.34.2

Marcianus 1 de publ. iudic.

Si uxor ex adulterio viri praemium acceperit, lege iulia quasi adultera tenetur.

Dig. 48.5.35pr.

Modestinus 1 reg.

Stuprum committit, qui liberam mulierem consuetudinis causa, non matrimonii continet, excepta videlicet concubina.

Dig. 48.5.35.1

Modestinus 1 reg.

Adulterium in nupta admittitur: stuprum in vidua vel virgine vel puero committitur.

Dig. 48.5.36

Modestinus 8 reg.

Accusaturus adulterii si quid circa inscriptionem erraverit, si tempora largiantur, emendare non prohibetur, ne causa aboleatur.

Dig. 48.5.37

Papinianus 3 quaest.

Si minor annis adulterium commiserit, lege iulia tenetur, quoniam tale crimen post pubertatem incipit.

Dig. 48.5.38

Papinianus 5 quaest.

Filium familias publico iudicio adulterium in uxorem sine voluntate patris arguere constitutum est: vindictam enim proprii doloris consequitur.

Dig. 48.5.39pr.

Papinianus 36 quaest.

Si adulterium cum incesto committatur, ut puta cum privigna nuru noverca, mulier similiter quoque punietur: id enim remoto etiam adulterio eveniret.

Dig. 48.5.39.1

Papinianus 36 quaest.

Stuprum in sororis filiam si committatur, an adulterii poena sufficiat mari, considerandum est. occurrit, quod hic duplex admissum est, quia multum interest, errore matrimonium illicite contrahatur an contumacia iuris et sanguinis contumelia concurrant.

Dig. 48.5.39.2

Papinianus 36 quaest.

Quare mulier tunc demum eam poenam, quam mares, sustinebit, cum incestum iure gentium prohibitum admiserit: nam si sola iuris nostri observatio interveniet, mulier ab incesti crimine erit excusata.

Dig. 48.5.39.3

Papinianus 36 quaest.

Nonnumquam tamen et in maribus incesti crimina, quamquam natura graviora sunt, humanius quam adulterii tractari solent: si modo incestum per matrimonium illicitum contractum sit.

Dig. 48.5.39.4

Papinianus 36 quaest.

Fratres denique imperatores claudiae crimen incesti propter aetatem remiserunt, sed distrahi coniunctionem illicitam iusserunt, cum alias adulterii crimen, quod pubertate delinquitur, non excusetur aetate. nam et mulieres in iure errantes incesti crimine non teneri supra dictum est, cum in adulterio commisso nullam habere possint excusationem.

Dig. 48.5.39.5

Papinianus 36 quaest.

Idem imperatores rescripserunt post divortium, quod cum noverca bona fide privignus fecerit, non esse crimen admittendum incesti.

Dig. 48.5.39.6

Papinianus 36 quaest.

Idem pollioni in haec verba rescripserunt: " incestae nuptiae confirmari non solent: et ideo abstinenti tali matrimonio poenam praeteriti delicti, si nondum reus postulatus est, remittimus".

Dig. 48.5.39.7

Papinianus 36 quaest.

Incestum autem, quod per illicitam matrimonii coniunctionem admittitur, excusari solet sexu vel aetate vel etiam puniendi correctione, quae bona fide intervenit, utique si error allegetur, et facilius, si nemo reum postulavit.

Dig. 48.5.39.8

Papinianus 36 quaest.

Imperator marcus antoninus et commodus filius rescripserunt: " si maritus uxorem in adulterio deprehensam impetu tractus doloris interfecerit, non utique legis corneliae de sicariis poenam excipiet". nam et divus pius in haec verba rescripsit apollonio: " ei, qui uxorem suam in adulterio deprehensam occidisse se non negat, ultimum supplicium remitti potest, cum sit difficillimum iustum dolorem temperare et quia plus fecerit, quam quia vindicare se non debuerit, puniendus sit. sufficiet igitur, si humilis loci sit, in opus perpetuum eum tradi, si qui honestior, in insulam relegari".

Dig. 48.5.39.9

Papinianus 36 quaest.

Liberto patroni famam lacessere non facile conceditur: sed si iure mariti velit adulterii accusare, permittendum est, quomodo si atrocem iniuriam passus esset. certe si patronum, qui sit ex eo numero, qui deprehensus ab alio interfici potest, in adulterio uxoris deprehenderit, deliberandum est, an impune possit occidere. quod durum nobis esse videtur: nam cuius famae, multo magis vitae parcendum est.

Dig. 48.5.39.10

Papinianus 36 quaest.

Si quis in honore ministeriove publico sit, reus quidem postulatur, sed differtur eius accusatio et cautionem iudicio sistendi causa promittit in finem honoris. et hoc ita tiberius caesar rescripsit.

Dig. 48.5.40pr.

Papinianus 15 resp.

Vim passam mulierem sententia praesidis provinciae continebatur: in legem iuliam de adulteriis non commisisse respondi, licet iniuriam suam protegendae pudicitiae causa confestim marito renuntiari prohibuit.

Dig. 48.5.40.1

Papinianus 15 resp.

Nupta quoque muliere, tametsi lenocinii vir prior non postuletur, adulterii crimen contra adulterum ab extrario poterit inferri.

Dig. 48.5.40.2

Papinianus 15 resp.

In matrimonio quoque defuncta uxore vir iure adulterum inter reos recipi postulat.

Dig. 48.5.40.3

Papinianus 15 resp.

Nupta, priusquam adulter damnetur, adulterii non postulatur, si nuptias denuntiatio vel ad domum mulieris missa non praecessit.

Dig. 48.5.40.4

Papinianus 15 resp.

Mulierem ob latronum societatem exulare iussam citra poenae metum in matrimonio retineri posse respondi, quia non fuerat adulterii damnata.

Dig. 48.5.40.5

Papinianus 15 resp.

Praescriptione quinque annorum crimen incesti coniunctum adulterio non excluditur.

Dig. 48.5.40.6

Papinianus 15 resp.

Duos quidem adulterii, marem et feminam, propter commune crimen simul non iure nec a viro postulari convenit. cum tamen duobus denuntiatum fuisset ab eo, qui postea desistere volebat, abolitionem esse necessariam in utriusque personam respondi.

Dig. 48.5.40.7

Papinianus 15 resp.

Incesti commune crimen adversus duos simul intentari potest.

Dig. 48.5.40.8

Papinianus 15 resp.

De servis quaestionem in dominos incesti postulatos ita demum habendam respondi, si per adulterium incestum esse contractum dicatur.

Dig. 48.5.41pr.

Paulus 19 resp.

Quaesitum est, an ea, quam maritus adulterii crimine se accusaturum minatus est nec quicquam egit vel iure mariti vel iure publico, nubere possit ei, quem in ea reum adulterii destinavit. paulus respondit nihil impedire, quo minus ei, quem suspectum maritus habuit, ea de qua quaeritur nubere possit.

Dig. 48.5.41.1

Paulus 19 resp.

Item quaeritur, an idem maritus destitisse videatur vel lenocinium commisisse, qui eandem reduxit uxorem. paulus respondit eum, qui post crimen adulteri intentatum eandem uxorem reduxit, destitisse videri et ideo ex eadem lege postea accusandi ei ius non superesse.

Dig. 48.5.42

Paulus 1 sent.

In crimine adulterii nulla danda dilatio est, nisi ut personae exhibeantur, aut iudex ex qualitate negotii motus hoc causa cognita permiserit.

Dig. 48.5.43

Tryphonus 2 disp.

Si is, qui ius anulorum impetravit, adulterium commisit in patroni uxorem aut in patronam suam, aut in eius eive, cuius libertus patris aut matris, filii filiaeve fuit: an ut libertus puniri debeat? et si deprehensus sit in adulterio, an impune occidatur? et magis probo subiciendum poenae libertinorum, quoniam lege iulia de adulteriis coercendis ad tuenda matrimonia pro libertinis eos haberi placuit et deteriorem causam per istud beneficium patronorum haberi non oportet.

Dig. 48.5.44

Gaius 3 ad l. xii tab.

Si ex lege repudium missum non sit et idcirco mulier adhuc nupta esse videatur, tamen si quis eam uxorem duxerit, adulter non erit. idque salvius iulianus respondit, quia adulterium, inquit, sine dolo malo non committitur: quamquam dicendum, ne is, qui sciret eam ex lege repudiatam non esse, dolo malo committat.

Dig. 48.5.45

Papinianus 4 resp.

Defuncta quoque socru gener incesti postulabitur, ut adulter post mortem mulieris.

Dig. 48.6.0. Ad legem iuliam de vi publica.

Dig. 48.6.1

Marcianus 14 inst.

Lege iulia de vi publica tenetur, qui ^ quia^ arma tela domi suae agrove inve villa praeter usum venationis vel itineris vel navigationis coegerit.

Dig. 48.6.2

Scaevola 4 reg.

Excipiuntur autem arma, quae quis promercii causa habuerit hereditateve ei obvenerint.

Dig. 48.6.3pr.

Marcianus 14 inst.

In eadem causa sunt, qui turbae seditionisve faciendae consilium inierint servosve aut liberos homines in armis habuerint.

Dig. 48.6.3.1

Marcianus 14 inst.

Eadem lege tenetur, qui pubes cum telo in publico fuerit.

Dig. 48.6.3.2

Marcianus 14 inst.

In eadem causa sunt, qui pessimo exemplo convocatu seditione villas expugnaverint et cum telis et armis bona rapuerint.

Dig. 48.6.3.3

Marcianus 14 inst.

Item tenetur, qui ex incendio rapuerit aliquid praeter materiam.

Dig. 48.6.3.4

Marcianus 14 inst.

Praeterea punitur huius legis poena, qui puerum vel feminam vel quemquam per vim stupraverit.

Dig. 48.6.3.5

Marcianus 14 inst.

Sed et qui in incendio cum gladio aut telo rapiendi causa fuit vel prohibendi dominum res suas servare, eadem poena tenetur.

Dig. 48.6.3.6

Marcianus 14 inst.

Eadem lege tenetur, qui hominibus armatis possessorem domo agrove suo aut navi sua deiecerit expugnaverit.

Dig. 48.6.4

Ulpianus 59 ad ed.

Utive id staret, homines commodaverit:

Dig. 48.6.5pr.

Marcianus 14 inst.

Qui coetu conversu turba seditione incendium fecerit: quique hominem dolo malo incluserit obsederit: quive fecerit, quo minus sepeliatur, quo magis funus diripiatur distrahatur: quive per vim sibi aliquem obligaverit, nam eam obligationem lex rescindit.

Dig. 48.6.5.1

Marcianus 14 inst.

Si de vi et possessione vel dominio quaeratur, ante cognoscendum de vi quam de proprietate rei divus pius tw koinw twn vessalwn graece rescripsit: sed et decrevit, ut prius de vi quaeratur quam de iure dominii sive possessionis.

Dig. 48.6.5.2

Marcianus 14 inst.

Qui vacantem mulierem rapuit vel nuptam, ultimo supplicio punitur et, si pater iniuriam suam precibus exoratus remiserit, tamen extraneus sine quinquennii praescriptione reum postulare poterit, cum raptus crimen legis iuliae de adulteris potestatem excedit.

Dig. 48.6.6

Ulpianus 7 de off. procons.

Et eum, qui puerum ingenuum rapuit, puniendum divus pius rescripsit in haec verba: " exemplum libelli dati mihi a domitio silvano nomine domitii silvani patrui subici iussi, motus querella eius, qua significavit filium suum ingenuum, iuvenem admodum, raptum atque conclusum, mox verberibus ac tormentis usque ad summum periculum adflictum, gemine carissime: velim audias eum et, si compereris haec ita admissa, rem severe exequaris".

Dig. 48.6.7

Ulpianus 8 de off. procons.

Lege iulia de vi publica tenetur, qui, cum imperium potestatemve haberet, civem romanum adversus provocationem necaverit verberaverit iusseritve quid fieri aut quid in collum iniecerit, ut torqueatur. item quod ad legatos oratores comitesve attinebit, si quis eorum pulsasse et sive iniuriam fecisse arguetur.

Dig. 48.6.8

Maecenatus 5 publ.

Lege iulia de vi publica cavetur, ne quis reum vinciat impediatve, quo minus romae intra certum tempus adsit.

Dig. 48.6.9

Paulus 7 ad ed.

Armatos non utique eos intellegere debemus, qui tela habuerunt, sed etiam quid aliud nocere potest.

Dig. 48.6.10pr.

Ulpianus 68 ad ed.

Qui dolo malo fecerit, quo minus iudicia tuto exerceantur aut iudices ut oportet iudicent vel is, qui potestatem imperiumve habebit, quam ei ius erit, decernat imperet faciat: qui ludos pecuniamve ab aliquo invito polliceri publice privatimve per iniuriam exegerit: item qui cum telo dolo malo in contione fuerit aut ubi iudicium publice exercebitur. exceptus est, qui propter venationem habeat homines, qui cum bestiis pugnent, ministrosque ad ea habere conceditur.

Dig. 48.6.10.1

Ulpianus 68 ad ed.

Hac lege tenetur et qui convocatis hominibus vim fecerit, quo quis verberetur et pulsetur, neque homo occisus sit.

Dig. 48.6.10.2

Ulpianus 68 ad ed.

Damnato de vi publica aqua et igni interdicitur.

Dig. 48.6.11pr.

Paulus 5 sent.

Hi, qui aedes alienas aut villas expilaverint effregerint expugnaverint, si quid in turba cum telis fecerint, capite puniuntur.

Dig. 48.6.11.1

Paulus 5 sent.

Telorum autem appellatione omnia, ex quibus singuli homines nocere possunt, accipiuntur.

Dig. 48.6.11.2

Paulus 5 sent.

Qui telum tutandae salutis suae causa gerunt, non videntur hominis occidendi causa portare.

Dig. 48.6.12

Paulus l.S. ad sc turpill.

Qui nova vectigalia exercent, lege iulia de vi publica tenentur.

Dig. 48.7.0. Ad legem iuliam de vi privata.

Dig. 48.7.1pr.

Marcianus 14 inst.

De vi privata damnati pars tertia bonorum ex lege iulia publicatur et cautum est, ne senator sit, ne decurio, aut ullum honorem capiat, neve in eum ordinem sedeat, neve iudex sit: et videlicet omni honore quasi infamis ex senatus consulto carebit.

Dig. 48.7.1.1

Marcianus 14 inst.

Eadem poena adficiuntur, qui ad poenam legis iuliae de vi privata rediguntur, et si quis ex naufragio dolo malo quid rapuerit.

Dig. 48.7.1.2

Marcianus 14 inst.

Sed et ex constitutionibus principum extra ordinem, qui de naufragiis aliquid diripuerint, puniuntur: nam et divus pius rescripsit nullam vim nautis fieri debere et, si quis fecerit, ut severissime puniatur.

Dig. 48.7.2

Scaevola 4 reg.

Hac lege tenetur, qui convocatis hominibus vim fecerit, quo quis verberetur pulsaretur, neque homo occisus erit:

Dig. 48.7.3pr.

Macer 1 publ.

Nec interest, liberos an servos et suos an alienos quis ad vim faciendam convocaverit.

Dig. 48.7.3.1

Macer 1 publ.

Nec minus hi, qui convocati sunt, eadem lege tenentur.

Dig. 48.7.3.2

Macer 1 publ.

Sed si nulli convocati nullique pulsati sint, per iniuriam tamen ex bonis alienis quid ablatum sit, hac lege teneri eum qui id fecerit.

Dig. 48.7.4pr.

Paulus 55 ad ed.

Legis iuliae de vi privata crimen committitur, cum coetum aliquis et concursum fecisse dicitur, quo minus quis in ius produceretur.

Dig. 48.7.4.1

Paulus 55 ad ed.

Et si quis quaestionem de alterius servo habuisset: et ideo moderatius edicto praetoris de iniuriis utendum esse labeo ait.

Dig. 48.7.5

Ulpianus 69 ad ed.

Si quis aliquem deiecit ex agro suo hominibus congregatis sine armis, vis privatae postulari possit.

Dig. 48.7.6

Modestinus 8 reg.

Ex senatus consulto volusiano, qui improbe coeunt in alienam litem, ut, quidquid ex condemnatione in rem ipsius redactum fuerit, inter eos communicaretur, lege iulia de vi privata tenentur.

Dig. 48.7.7

Callistratus 5 de cogn.

Creditores si adversus debitores suos agant, per iudicem id, quod deberi sibi putant, reposcere debent: alioquin si in rem debitoris sui intraverint id nullo concedente, divus marcus decrevit ius crediti eos non habere. verba decreti haec sunt. " optimum est, ut, si quas putas te habere petitiones, actionibus experiaris: interim ille in possessione debet morari, tu petitor es". et cum marcianus diceret: " vim nullam feci": caesar dixit: " tu vim putas esse solum, si homines vulnerentur? vis est et tunc, quotiens quis id, quod deberi sibi putat, non per iudicem reposcit. non puto autem nec verecundiae nec dignitati nec pietati tuae convenire quicquam non iure facere. quisquis igitur probatus mihi fuerit rem ullam debitoris non ab ipso sibi traditam sine ullo iudice temere possidere, eumque sibi ius in eam rem dixisse, ius crediti non habebit".

Dig. 48.7.8

Modestinus 2 de poen.

Si creditor sine auctoritate iudicis res debitoris occupet, hac lege tenetur et tertia parte bonorum multatur et infamis fit.

Dig. 48.8.0. Ad legem corneliam de siccariis et veneficis.

Dig. 48.8.1pr.

Marcianus 14 inst.

Lege cornelia de sicariis et veneficis tenetur, qui hominem occiderit: cuiusve dolo malo incendium factum erit: quive hominis occidendi furtive faciendi causa cum telo ambulaverit: quive, cum magistratus esset publicove iudicio praeesset, operam dedisset, quo quis falsum iudicium profiteretur, ut quis innocens conveniretur condemnaretur.

Dig. 48.8.1.1

Marcianus 14 inst.

Praeterea tenetur, qui hominis necandi causa venenum confecerit dederit: quive falsum testimonium dolo malo dixerit, quo quis publico iudicio rei capitalis damnaretur: quive magistratus iudexve quaestionis ob capitalem causam pecuniam acceperit ut publica lege reus fieret.

Dig. 48.8.1.2

Marcianus 14 inst.

Et qui hominem occiderit, punitur non habita differentia, cuius condicionis hominem interemit.

Dig. 48.8.1.3

Marcianus 14 inst.

Divus hadrianus rescripsit eum, qui hominem occidit, si non occidendi animo hoc admisit, absolvi posse, et qui hominem non occidit, sed vulneravit, ut occidat, pro homicida damnandum: et ex re constituendum hoc: nam si gladium strinxerit et in eo percusserit, indubitate occidendi animo id eum admisisse: sed si clavi percussit aut cuccuma in rixa, quamvis ferro percusserit, tamen non occidendi animo. leniendam poenam eius, qui in rixa casu magis quam voluntate homicidium admisit.

Dig. 48.8.1.4

Marcianus 14 inst.

Item divus hadrianus rescripsit eum, qui stuprum sibi vel suis per vim inferentem occidit, dimittendum.

Dig. 48.8.1.5

Marcianus 14 inst.

Sed et in eum, qui uxorem deprehensam in adulterio occidit, divus pius leviorem poenam irrogandam esse scripsit, et humiliore loco positum in exilium perpetuum dari iussit, in aliqua dignitate positum ad tempus relegari.

Dig. 48.8.2

Ulpianus 1 de adult.

Inauditum filium pater occidere non potest, sed accusare eum apud praefectum praesidemve provinciae debet.

Dig. 48.8.3pr.

Marcianus 14 inst.

Eiusdem legis corneliae de sicariis et veneficis capite quinto, qui venenum necandi hominis causa fecerit vel vendiderit vel habuerit, plectitur.

Dig. 48.8.3.1

Marcianus 14 inst.

Eiusdem legis poena adficitur, qui in publicum mala medicamenta vendiderit vel hominis necandi causa habuerit.

Dig. 48.8.3.2

Marcianus 14 inst.

Adiectio autem ista " veneni mali" ostendit esse quaedam et non mala venena. ergo nomen medium est et tam id, quod ad sanandum, quam id, quod ad occidendum paratum est, continet, sed et id quod amatorium appellatur: sed hoc solum notatur in ea lege, quod hominis necandi causa habet. sed ex senatus consulto relegari iussa est ea, quae non quidem malo animo, sed malo exemplo medicamentum ad conceptionem dedit, ex quo ea quae acceperat decesserit.

Dig. 48.8.3.3

Marcianus 14 inst.

Alio senatus consulto effectum est, ut pigmentarii, si cui temere cicutam salamandram aconitum pituocampas aut bubrostim mandragoram et id, quod lustramenti causa dederit cantharidas, poena teneantur huius legis.

Dig. 48.8.3.4

Marcianus 14 inst.

Item is, cuius familia sciente eo apiscendae reciperandae possessionis causa arma sumpserit: item qui auctor seditionis fuerit: et qui naufragium suppresserit: et qui falsa indicia confessus fuerit confitendave curaverit, quo quis innocens circumveniretur: et qui hominem libidinis vel promercii causa castraverit, ex senatus consulto poena legis corneliae punitur.

Dig. 48.8.3.5

Marcianus 14 inst.

Legis corneliae de sicariis et veneficis poena insulae deportatio est et omnium bonorum ademptio. sed solent hodie capite puniri, nisi honestiore loco positi fuerint, ut poenam legis sustineant: humiliores enim solent vel bestiis subici, altiores vero deportantur in insulam.

Dig. 48.8.3.6

Marcianus 14 inst.

Transfugas licet, ubicumque inventi fuerint, quasi hostes interficere.

Dig. 48.8.4pr.

Ulpianus 7 de off. procons.

Lege cornelia de sicariis tenetur, qui, cum in magistratu est esset, eorum quid fecerit contra hominis necem, quod legibus permissum non sit.

Dig. 48.8.4.1

Ulpianus 7 de off. procons.

Cum quidam per lasciviam causam mortis praebuisset, comprobatum est factum ignatii taurini proconsulis baeticae a divo hadriano, quod eum in quinquennium relegasset.

Dig. 48.8.4.2

Ulpianus 7 de off. procons.

Idem divus hadrianus rescripsit: " constitutum quidem est, ne spadones fierent, eos autem, qui hoc crimine arguerentur, corneliae legis poena teneri eorumque bona merito fisco meo vindicari debere, sed et in servos, qui spadones fecerint, ultimo supplicio animadvertendum esse: et qui hoc crimine tenentur, si non adfuerint, de absentibus quoque, tamquam lege cornelia teneantur, pronuntiandum esse. plane si ipsi, qui hanc iniuriam passi sunt, proclamaverint, audire eos praeses provinciae debet, qui virilitatem amiserunt: nemo enim liberum servumve invitum sinentemve castrare debet, neve quis se sponte castrandum praebere debet. at si quis adversus edictum meum fecerit, medico quidem, qui exciderit, capitale erit, item ipsi qui se sponte excidendum praebuit".

Dig. 48.8.5

Paulus 2 de off. procons.

Hi quoque, qui thlibias faciunt, ex constitutione divi hadriani ad ninnium hastam in eadem causa sunt, qua hi qui castrant.

Dig. 48.8.6

Venonius 1 de off. procons.

Is, qui servum castrandum tradiderit, pro parte dimidia bonorum multatur ex senatus consulto, quod neratio prisco et annio vero consulibus factum est.

Dig. 48.8.7

Paulus l.S. de publ. iudic.

In lege cornelia dolus pro facto accipitur. neque in hac lege culpa lata pro dolo accipitur. quare si quis alto se praecipitaverit et super alium venerit eumque occiderit, aut putator, ex arbore cum ramum deiceret, non praeclamaverit et praetereuntem occiderit, ad huius legis coercitionem non pertinet.

Dig. 48.8.8

Ulpianus 33 ad ed.

Si mulierem visceribus suis vim intulisse, quo partum abigeret, constiterit, eam in exilium praeses provinciae exiget.

Dig. 48.8.9

Ulpianus 37 ad ed.

Furem nocturnum si quis occiderit, ita demum impune feret, si parcere ei sine periculo suo non potuit.

Dig. 48.8.10

Ulpianus 18 ad ed.

Si quis dolo insulam meam exusserit, capitis poena plectetur quasi incendiarius.

Dig. 48.8.11pr.

Modestinus 6 reg.

Circumcidere iudaeis filios suos tantum rescripto divi pii permittitur: in non eiusdem religionis qui hoc fecerit, castrantis poena irrogatur.

Dig. 48.8.11.1

Modestinus 6 reg.

Servo sine iudice ad bestias dato non solum qui vendidit poena, verum et qui comparavit tenebitur.

Dig. 48.8.11.2

Modestinus 6 reg.

Post legem petroniam et senatus consulta ad eam legem pertinentia dominis potestas ablata est ad bestias depugnandas suo arbitrio servos tradere: oblato tamen iudici servo, si iusta sit domini querella, sic poenae tradetur.

Dig. 48.8.12

Modestinus 8 reg.

Infans vel furiosus si hominem occiderint, lege cornelia non tenentur, cum alterum innocentia consilii tuetur, alterum fati infelicitas excusat.

Dig. 48.8.13

Modestinus 12 pand.

Ex senatus consulto eius legis poena damnari iubetur, qui mala sacrificia fecerit habuerit.

Dig. 48.8.14

Callistratus 6 de cogn.

Divus hadrianus in haec verba rescripsit: " in maleficiis voluntas spectatur, non exitus".

Dig. 48.8.15

Ulpianus 8 ad l. iul. et pap.

Nihil interest, occidat quis an causam mortis praebeat.

Dig. 48.8.16

Modestinus 3 de poen.

Qui caedem admiserunt sponte dolove malo, in honore aliquo positi deportari solent, qui secundo gradu sunt, capite puniuntur. facilius hoc in decuriones fieri potest, sic tamen, ut consulto prius principe et iubente id fiat: nisi forte tumultus aliter sedari non possit.

Dig. 48.8.17

Paulus 5 sent.

Si in rixa percussus homo perierit, ictus unius cuiusque in hoc collectorum contemplari oportet.

Dig. 48.9.0. De lege pompeia de parricidiis.

Dig. 48.9.1

Marcianus 14 inst.

Lege pompeia de parricidiis cavetur, ut, si quis patrem matrem, avum aviam, fratrem sororem patruelem matruelem, patruum avunculum amitam, consobrinum consobrinam, uxorem virum generum socrum, vitricum, privignum privignam, patronum patronam occiderit cuiusve dolo malo id factum erit, ut poena ea teneatur quae est legis corneliae de sicariis. sed et mater, quae filium filiamve occiderit, eius legis poena adficitur, et avus, qui nepotem occiderit: et praeterea qui emit venenum ut patri daret, quamvis non potuerit dare.

Dig. 48.9.2

Scaevola 4 reg.

Frater autem eius, qui cognoverat tantum nec patri indicaverat, relegatus est et medicus supplicio affectus.

Dig. 48.9.3

Marcianus 14 inst.

Sed sciendum est lege pompeia de consobrino comprehendi, sed non etiam eos pariter complecti, qui pari propioreve gradu sunt. sed et novercae et sponsae personae omissae sunt, sententia tamen legis continentur:

Dig. 48.9.4

Marcianus 1 de publ. iudic.

Cum pater et mater sponsi sponsae socerorum, ut liberorum sponsi generorum appellatione continentur.

Dig. 48.9.5

Marcianus 14 inst.

Divus hadrianus fertur, cum in venatione filium suum quidam necaverat, qui novercam adulterabat, in insulam eum deportasse, quod latronis magis quam patris iure eum interfecit: nam patria potestas in pietate debet, non atrocitate consistere.

Dig. 48.9.6

Ulpianus 8 de off. procons.

Utrum qui occiderunt parentes an etiam conscii poena parricidii adficiantur, quaeri potest. et ait maecianus etiam conscios eadem poena adficiendos, non solum parricidas. proinde conscii etiam extranei eadem poena adficiendi sunt.

Dig. 48.9.7

Ulpianus 29 ad ed.

Si sciente creditore ad scelus committendum pecunia sit subministrata, ut puta si ad veneni mali comparationem vel etiam ut latronibus adgressoribusque daretur, qui patrem interficerent: parricidii poena tenebitur, qui quaesierit pecuniam quique eorum ita crediderint aut a quo ita caverint.

Dig. 48.9.8

Ulpianus 8 disp.

Parricidii postulatus si interim decesserit, si quidem sibi mortem conscivit, successorem fiscum habere debebit: si minus, eum quem voluit, si modo testamentum fecit: si intestatus decessit, eos heredes habebit, qui lege vocantur.

Dig. 48.9.9pr.

Modestinus 12 pand.

Poena parricidii more maiorum haec instituta est, ut parricida virgis sanguineis verberatus deinde culleo insuatur cum cane, gallo gallinaceo et vipera et simia: deinde in mare profundum culleus iactatur. hoc ita, si mare proximum sit: alioquin bestiis obicitur secundum divi hadriani constitutionem.

Dig. 48.9.9.1

Modestinus 12 pand.

Qui alias personas occiderint praeter matrem et patrem et avum et aviam (quos more maiorum puniri supra diximus), capitis poena plectentur aut ultimo supplicio mactantur.

Dig. 48.9.9.2

Modestinus 12 pand.

Sane si per furorem aliquis parentem occiderit, impunitus erit, ut divi fratres rescripserunt super eo, qui per furorem matrem necaverat: nam sufficere furore ipso eum puniri, diligentiusque custodiendum esse aut etiam vinculis coercendum.

Dig. 48.9.10

Paulus l.S. de poen. omnium legum.

Eorum, qui parricidii poena teneri possunt, semper accusatio permittitur.

Dig. 48.10.0. De lege cornelia de falsis et de senatus consulto liboniano.

Dig. 48.10.1pr.

Marcianus 14 inst.

Poena legis corneliae irrogatur ei, qui falsas testationes faciendas testimoniave falsa inspicienda dolo malo coiecerit.

Dig. 48.10.1.1

Marcianus 14 inst.

Item ob instruendam advocationem testimoniave pecuniam acceperit pactusve fuerit societatem coierit ad obligationem innocentium, ex senatus consulto coercetur.

Dig. 48.10.1.2

Marcianus 14 inst.

Sed et si quis ob renuntiandum remittendumve testimonium dicendum vel non dicendum pecuniam acceperit, poena legis corneliae adficitur. et qui iudicem corruperit corrumpendumve curaverit.

Dig. 48.10.1.3

Marcianus 14 inst.

Sed et si iudex constitutiones principum neglexerit, punitur.

Dig. 48.10.1.4

Marcianus 14 inst.

Qui in rationibus tabulis cerisve vel alia qua re sine consignatione falsum fecerint vel rem amoverint, perinde ex his causis, atque si erant falsarii, puniuntur. sic et divus severus lege cornelia de falsis damnavit praefectum aegypti, quod instrumentis suis, cum praeerat provinciae, falsum fecit.

Dig. 48.10.1.5

Marcianus 14 inst.

Is, qui aperuerit vivi testamentum, legis corneliae poena tenetur.

Dig. 48.10.1.6

Marcianus 14 inst.

Is, qui deposita instrumenta apud alium ab eo prodita esse adversariis suis dicit, accusare eum falsi potest.

Dig. 48.10.1.7

Marcianus 14 inst.

Ad testamenta militum senatus consultum pertinet, quo lege cornelia tenentur, qui sibi legatum fideicommissumve adscripserint.

Dig. 48.10.1.8

Marcianus 14 inst.

Inter filium et servum et extraneum testamentum scribentes hoc interest, quod in extraneo, si specialiter subscriptio facta est " quod illi dictavi et recognovi", poena cessat et capi potest, in filio vel servo vel generalis subscriptio sufficit et ad poenam evitandam et ad capiendum.

Dig. 48.10.1.9

Marcianus 14 inst.

Ex illa quoque causa falsi poenae quis subicitur (ut divi quoque severus et antoninus constituerunt), ut tutores et curatores et qui officio deposito non restituerunt tutelam vel curationem cum fisco contrahere non possint ac, si quis adversus hanc legem profectus aerario obrepserit, ut perinde puniatur, ac si falsum commisisset.

Dig. 48.10.1.10

Marcianus 14 inst.

Sed ad illos hoc non pertinet (ut idem principes rescripserunt), qui antequam tutelam susciperent haec gesserunt: nec enim excusationes admisisse, sed fraudes exclusisse.

Dig. 48.10.1.11

Marcianus 14 inst.

Idem principes rescripserunt ita demum eum, qui rationem tutelae vel curae nondum reddidit, cum fisco contrahere non debere, si vivat is, cuius tutela administrata est: nam si decesserit, licet nondum heredi eius rationem reddiderit, iure eum contrahere.

Dig. 48.10.1.12

Marcianus 14 inst.

Sed si iure hereditario successerunt in fiscalem contractum tutor vel curator, licet ante rationem redditam: non puto poenam locum habere, licet adhuc vivat is, cuius tutela vel cura administrata est.

Dig. 48.10.1.13

Marcianus 14 inst.

Poena falsi vel quasi falsi deportatio est et omnium bonorum publicatio: et si servus eorum quid admiserit, ultimo supplicio adfici iubetur.

Dig. 48.10.2

Paulus 3 ad sab.

Qui testamentum amoverit celaverit eripuerit deleverit interleverit subiecerit resignaverit quive testamentum falsum scripserit signaverit recitaverit dolo malo cuiusve dolo malo id factum erit, legis corneliae poena damnatur.

Dig. 48.10.3

Ulpianus 4 disp.

Qui ignorans falsum esse testamentum vel hereditatem adiit vel legatum accepit vel quoquo modo adgnovit, falsum testamentum dicere non prohibetur.

Dig. 48.10.4

Ulpianus 8 disp.

Si quis, cum falso sibi legatum adscribi curasset, decesserit, id heredi quoque extorquendum est. inde divus quoque marcus, cum quidam a patre heres institutus codicillos intercidisset et decessisset, fisco tantum esse putavit vindicandum, quantum per codicillos erogari posset, id est usque ad dodrantem.

Dig. 48.10.5

Iulianus 86 Dig.

Senatus poenam remisit ei, qui legata a se testamento data codicillis sua manu scriptis ademerat, sed quia et iussu patris id fecerat et annorum viginti quinque erat: hereditatem quoque ei capere permissum est.

Dig. 48.10.6pr.

Africanus 3 quaest.

Si quis legatum sibi adscripserit, tenetur poena legis corneliae, quamvis inutile legatum sit: nam et eum teneri constat, qui eo testamento, quod postea ruptum vel etiam quod initio non iure fieret, legatum sibi adscripserit. hoc tamen tunc verum est, cum perfectum testamentum erit. ceterum si non signatum fuerit, magis est ut senatus consulto locus non sit, sicuti nec interdictum de tabulis testamenti exhibendis locum habet: prius enim oportet esse aliquod testamentum vel non iure factum, ut senatus consulto locus sit. nam et falsum testamentum id demum recte dicitur, quod, si adulterinum non esset, verum tamen testamentum recte dicetur. similiter igitur et non iure factum testamentum id appellatur, in quo si omnia rite facta essent, iure factum diceretur.

Dig. 48.10.6.1

Africanus 3 quaest.

Si institutus heres exheredationem nominatim filii vel aliarum personarum adscribat, senatus consulto tenetur.

Dig. 48.10.6.2

Africanus 3 quaest.

Similiter et is, qui libertatem sua manu ademit servi testatoris et maxime cui a se legata vel fideicommissa data erant, senatus consulto tenetur.

Dig. 48.10.6.3

Africanus 3 quaest.

Si patronus testamento liberti legatum sibi scripserit et venia impetrata abstinere legato iussus est, an emolumentum bonorum possessionis contra tabulas habere possit? et magis placet non posse. nec tamen huic consequens est, ut et, si uxor dotem vel creditor id, quod in diem sibi deberetur, sibi adscripserit et similiter venia impetrata abstinere se legato iubeantur, aut mulieri dotis aut creditori actio sua denegari debet, ne eorum uterque merito debito careat.

Dig. 48.10.7

Marcianus 2 inst.

Nullo modo servi cum dominis suis consistere possunt, cum ne quidem omnino iure civili neque iure praetorio neque extra ordinem computantur: praeterquam quod favorabiliter divi marcus et commodus rescripserunt, cum servus quereretur, quod tabulae testamenti, quibus ei data erat libertas, subprimerentur, admittendum ad suppressi testamenti accusationem.

Dig. 48.10.8

Ulpianus 7 de off. procons.

Quicumque nummos aureos partim raserint, partim tinxerint vel finxerint: si quidem liberi sunt, ad bestias dari, si servi, summo supplicio adfici debent.

Dig. 48.10.9pr.

Ulpianus 8 de off. procons.

Lege cornelia cavetur, ut, qui in aurum vitii quid addiderit, qui argenteos nummos adulterinos flaverit, falsi crimine teneri.

Dig. 48.10.9.1

Ulpianus 8 de off. procons.

Eadem poena adficitur etiam is qui, cum prohibere tale quid posset, non prohibuit.

Dig. 48.10.9.2

Ulpianus 8 de off. procons.

Eadem lege exprimitur, ne quis nummos stagneos plumbeos emere vendere dolo malo vellet.

Dig. 48.10.9.3

Ulpianus 8 de off. procons.

Poena legis corneliae irrogatur ei, qui quid aliud quam in testamento sciens dolo malo falsum signaverit signarive curaverit, item qui falsas testationes faciendas testimoniave falsa invicem dicenda dolo malo coierint.

Dig. 48.10.9.4

Ulpianus 8 de off. procons.

Qui delatorem summisit in causa pecuniaria, eadem poena tenetur, qua tenentur hi qui ob instruendas lites pecuniam acceperunt.

Dig. 48.10.10pr.

Macer 1 publ.

De eo, qui ei in cuius potestate est eique qui in eadem potestate est adscripserit, nihil senatus consultis cavetur: sed hoc quoque casu committitur in legem, quia huius rei emolumentum ad patrem dominumve pertinet, ad quem pertineret, si filius servusve sibi adscripsissent.

Dig. 48.10.10.1

Macer 1 publ.

Illud constat, si extraneo quis adscripserit legatum, licet postea vivo testatore in potestate eum habere coeperit, senatus consultis locum non esse.

Dig. 48.10.11

Marcianus 1 de iudic. publ.

Si pater filio suo militi, quem habet in potestate, testamento commilitonis filii aliquid adscripserit, quem conmilitonem in militia novit: quia patri non adquiritur, extra poenam est. et cum matri filius adscripserat, divi fratres rescripserunt, cum iussu testatoris hoc scripsit, impunitum eum esse matremque capere posse.

Dig. 48.10.12

Papinianus 13 resp.

Cum falsi reus ante crimen illatum aut sententiam dictam vita decedit, cessante cornelia quod scelere quaesitum est heredi non relinquitur.

Dig. 48.10.13pr.

Papinianus 15 resp.

Falsi nominis vel cognominis adseveratio poena falsi coercetur.

Dig. 48.10.13.1

Papinianus 15 resp.

Ordine decurionum decem annis advocatum motum, qui falsum instrumentum cognoscente praeside recitavit, post finem temporis dignitatem respondi reciperare, quoniam in corneliam falso recitato, non facto non incidit. eadem ratione plebeium ob eandem causam exilio temporario punitum decurionem post reditum recte creari.

Dig. 48.10.14pr.

Paulus 22 quaest.

Filius emancipatus cum scriberet patris testamentum, iussu patris servo communi titii et suo legatum adscripsit: quaero quis exitus quaestionis sit. respondit: plures quaestiones coniunxisti. et quidem quantum ad senatus consultum, quo prohibemur nobis vel his, quos in potestate habemus, adscribere legatum, emancipatus quoque filius eadem poena tenebitur, licet iussu patris scripserit: excusatus enim is videtur qui in potestate est sic ut servus, si tamen iussum ex subscriptione testatoris appareat: sic enim inveni senatum censuisse.

Dig. 48.10.14.1

Paulus 22 quaest.

Sequens quaestio est, an, quoniam placet id quod illicite scriptum est pro non scripto esse, quod servo communi scribentis et alterius adscriptum est, utrum in totum pro non scripto sit an quantum ad eum tantum qui adscripsit, ceterum socio totum debeatur. et inveni Marcellum apud iulianum adnotasse. nam cum iulianus scripsisset, si sibi et titio scripsisset aut servo communi, cum pro non scripto sit, facillime quaeri posse, quantum titio et socio adquiratur ita: adicit iste Marcellus: quemadmodum socio debebitur, si quasi falsum nomen servi subducitur? quod et in praesenti quaestione observandum est.

Dig. 48.10.14.2

Paulus 22 quaest.

Maritus servum dotalem manumisit et in testamento eius legatum sibi adscripsit. quaesitum est, quid mulier ex lege iulia consequi possit. respondi: et patronum incidere in poenam edicti divi claudii dicendum est et filium emancipatum, licet praeteriti possint petere possessionem bonorum. ergo si nihil habet patronus ex bonis liberti, non tenebitur mulieri. an ideo teneri potest, quod adiectum est in lege " aut dolo fecit, quo minus ad eum perveniat?" sed nihil fecit in fraudem mulieris: non enim adversus illam hoc excogitavit. an ideo non denegamus huic actiones, quoniam alii restituturus est? adquin cum is, qui sibi iussu testatoris legatum adscripsit, etiam si fidei suae, similiter iubente testatore, commisisset, ut id alii restitueret, senatus iussit eum nihilo minus legato abstinere idque apud heredem remanere cum onere fideicommissi.

Dig. 48.10.15pr.

Callistratus 1 quaest.

Divus claudius edicto praecepit adiciendum legi corneliae, ut, si quis, cum alterius testamentum vel codicillos scriberet, legatum sibi sua manu scripserit, proinde teneatur ac si commisisset in legem corneliam, et ne vel is venia detur, qui se ignorasse edicti severitatem praetendant. scribere autem sibi legatum videri non solum eum qui manu sua id facit, sed etiam qui per servum suum vel filium, quem in potestatem habet, dictante testatore legato honoratur.

Dig. 48.10.15.1

Callistratus 1 quaest.

Plane constitutionibus principalibus cavetur, ut, si testator specialiter subscriptione sua declaraverit dictasse servo alicuius, ut domino eius legatum ab heredibus suis daretur, id valere, nec generalem subscriptionem testatoris valere adversus senatus consulti auctoritatem et ideo legatum pro non scripto habendum et servo, qui etiam sibi legatum adscripsit, veniam dari. ego tutius esse puto veniam petendam ab imperatore, scilicet eo quod relictum est abstinentibus.

Dig. 48.10.15.2

Callistratus 1 quaest.

Item senatus censuit, ut, si servus domini sui iussu testamento codicillisve libertatem sibi adscripserit, ob eam rem, quod ipsius manu adscriptum est, minus liber sit: sed libertas ei ex fideicommissi causa praestatur: si modo post eam scripturam manu sua testator testamento codicillisve subscripserit.

Dig. 48.10.15.3

Callistratus 1 quaest.

Et quatenus de sola specie fideicommissae libertatis hoc senatus consulto continebatur, divus pius rescripsit sententiam magis sequendam esse huius senatus consulti quam scripturam: nam servos, cum dominis suis parent, necessitate potestatis excusari, si tamen accedat domini auctoritas subscribentis se ea dictasse et recognovisse: videri enim ait ipsius domini manu scripta, cuius voluntate ea scripta sunt. " quod tamen", inquit, " ad liberas personas, in quas nullum ius testator habuerit, extendi non debet: quaeri tamen debet, an aeque subsequendi necessitas et honesta excusatio est non facientibus, quod non sit concessum".

Dig. 48.10.15.4

Callistratus 1 quaest.

Matri quoque, cui per servum suum dictante filio legatum scriptum esset, veniam tribuendam legis corneliae placuit.

Dig. 48.10.15.5

Callistratus 1 quaest.

Idem in filiam, quae dictante matre sua per ignorantiam iuris legatum sibi scripserat, senatus censuit.

Dig. 48.10.15.6

Callistratus 1 quaest.

Si quis duobus heredibus institutis adiecerit, ut, si alteruter heres sine liberis decessisset, ei qui superesset et liberos haberet hereditas redderetur vel, si uterque sine liberis decessisset, hereditas (deinde alia manu) scriptori testamenti restitueretur: placet testamentario poenam legis corneliae remitti.

sed benignius est, ut etiam ea, quae supra scripta sunt, simili modo consequatur.

Dig. 48.10.16pr.

Paulus 3 resp.

Respondit instrumentorum subreptorum crimen non esse publici iudicii, nisi testamentum alicuius subreptum arguatur.

Dig. 48.10.16.1

Paulus 3 resp.

Paulus respondit legis corneliae poena omnes teneri, qui etiam extra testamenta cetera falsa signassent.

Dig. 48.10.16.2

Paulus 3 resp.

Sed et ceteros, qui in rationibus tabulis litteris publicis aliave qua re sine consignatione falsum fecerunt vel, ut verum non appareat, quid celaverunt subripuerunt deleverunt subiecerunt resignaverunt, eadem poena adfici solere dubium non esse.

Dig. 48.10.17

Paulus 3 fideic.

Cum quidam sua manu servum sibi legatum scripsisset et eum manumittere rogatus esset, senatus censuit ab omnibus heredibus eum manumittendum.

Dig. 48.10.18pr.

Paulus 3 sent.

Uxori legatum in alieno testamento scribere non prohibemur.

Dig. 48.10.18.1

Paulus 3 sent.

Qui se filio testatoris impuberi tutorem adscripsit, etsi suspectus esse praesumitur, quod ultro tutelam videbitur affectasse, tamen, si idoneus esse adprobetur, non ex testamento, sed ex decreto tutor dandus est. nec excusatio eius admittetur, quia consensisse videtur voluntati testatoris.

Dig. 48.10.19pr.

Paulus 5 sent.

Qui falsam monetam percusserint, si id totum formare noluerunt, suffragio iustae paenitentiae absolvuntur.

Dig. 48.10.19.1

Paulus 5 sent.

Accusatio suppositi partus nulla temporis praescriptione depellitur, nec interest, decesserit nec ne ea, quae partum subdidisse contenditur.

Dig. 48.10.20

Hermogenianus 6 iuris epit.

Falsi poena coercentur et qui ad litem instruendam advocatione testibus pecuniam acceperunt, obligationem pactionem fecerunt, societatem inierunt, ut aliquid eorum fieret curaverunt.

Dig. 48.10.21

Paulus l.S. ad sc turpill.

Qui duobus in solidum eandem rem diversis contractibus vendidit, poena falsi coercetur, et hoc et divus hadrianus constituit. is adiungitur et is qui iudicem corrumpit. sed remissius puniri solent, ut ad tempus relegentur nec bona illis auferantur.

Dig. 48.10.22pr.

Paulus l.S. ad sc libon.

Impuberem in hoc edictum incidere dicendum non est, quoniam falsi crimine vix possit teneri, cum dolus malus in eam aetatem non cadit.

Dig. 48.10.22.1

Paulus l.S. ad sc libon.

Si ei filio, qui apud hostes est, adscripserit pater legatum, dicendum est reverso eo incidere in poenam senatus consulti: quod si ibi decesserit, innocens pater existimatur.

Dig. 48.10.22.2

Paulus l.S. ad sc libon.

Sed et si emancipato filio adscribit, recte id faciet: item in adoptionem dato.

Dig. 48.10.22.3

Paulus l.S. ad sc libon.

Item si servo, cui moram fecit in fideicommissaria libertate praestanda, adscripserit, dicendum est extra sententiam senatus consulti eum esse, quoniam placet omne, quod per huiusmodi servum adquisitum est, restitui oportere manumisso.

Dig. 48.10.22.4

Paulus l.S. ad sc libon.

Et si ei servo, qui bona fide servit, aliquid adscripsit, quod ad cogitationem animi nocens est, quia ei adscribit, quem suum putat: sed quoniam neque legatum neque hereditas bonae fidei possessori adquiritur, dicamus eum poenae eximendum esse.

Dig. 48.10.22.5

Paulus l.S. ad sc libon.

Si dominus adscripserit servo legatum, cum liber erit, dicimus senatus consulto dominum excusatum esse, qui compendio suo nullo modo prospexerit. eadem et de filio postea emancipato dici potest.

Dig. 48.10.22.6

Paulus l.S. ad sc libon.

Qui codicillos ante testamentum factos, in quibus legatum ei adscriptum erat, confirmat, in senatus consultum incidit: quod et iulianus scribit.

Dig. 48.10.22.7

Paulus l.S. ad sc libon.

Adimendo quoque aliquid incidere in poenam debet, quasi sibi aliquid dederit: veluti si servo legato sibi eodemque manumisso libertatem sua manu ademerit (hoc ita, si voluntate testatoris ademerit: nam si ignorante eo, libertas valet): item si, rogatus restituere legatum sibi adscriptum, fideicommissum ademerit.

Dig. 48.10.22.8

Paulus l.S. ad sc libon.

Qui liberti adsignationem sua manu adscripsit, non verbis, sed sententia senatus consulti tenetur.

Dig. 48.10.22.9

Paulus l.S. ad sc libon.

Item non continetur verbis servus, qui alieno testamento fideicommissam libertatem sibi adscripsit. sed de hoc potest haesitari, quoniam, ut supra diximus, senatus ita demum ei, qui sibi libertatem fideicommissam in testamento domini adscripsit, poenam remisit, si dominus subscripsit. immo magis dicendum est hunc contra senatus consultum facere, quam eum qui legatum sibi adscribit, cum libertas omnimodo ipsi competitura sit, legatum autem domino adquiri possit.

Dig. 48.10.22.10

Paulus l.S. ad sc libon.

Si testamentarius servo suo fideicommissam libertatem dederit, videamus, ne extra poenam sit, quoniam nullum ipsius commodum est: nisi ideo adscripserit, ut servus magno pretio redimatur ab eo et manumittatur.

Dig. 48.10.22.11

Paulus l.S. ad sc libon.

Sed et ille, qui, cum titio fundus legaretur, adiecit sua manu condicionem pecuniae sibi dandae, in voluntatem senatus consulti incidit.

Dig. 48.10.22.12

Paulus l.S. ad sc libon.

Qui autem voluntate patris se exheredat vel legatum sibi adimit, neque verbis senatus consulti neque sententia continetur.

Dig. 48.10.23

Paulus l.S. de poen. paganorum.

Quid sit falsum, quaeritur: et videtur id esse, si quis alienum chirographum imitetur aut libellum vel rationes intercidat vel describat, non qui alias in computatione vel in ratione mentitur.

Dig. 48.10.24

Scaevola 22 Dig.

Aithales servus, cui testamento betiti callinici per fideicommissum libertas et portio hereditatis relicta erat ab his, qui ex undecim portionibus heredes erant instituti, professus est indicium apud maximillam filiam testatoris ex parte duodecima heredem scriptam: se posse probare falsum testamentum betiti callinici. et apud magistratus interrogatus a maximilla professus est probaturum, quemadmodum falsum sit factum testamentum. et cum in crimen falsi subscripsisset maximilla in scriptorem testamenti et proculum coheredem, acta causa praefectus urbi falsum testamentum non esse pronuntiavit et maximillae partem duodecimam a fisco cogi iussit. quaesitum est, an aithaleti libertas et fideicommissum post haec facta debeantur. respondit secundum ea quae proponerentur deberi.

Dig. 48.10.25

Ulpianus 7 ad ed.

Qui nomine praetoris litteras falsas reddidisse edictumve falsum proposuisse dicetur, ex causa actione in factum poenali tenetur, quamquam lege cornelia reus sit.

Dig. 48.10.26

Marcellus 30 Dig.

Si quis patris sui testamentum aboleverit et, quasi intestatus decessisset, pro herede gesserit atque ita diem suum obierit: iustissime tota hereditas paterna heredi eius eripietur.

Dig. 48.10.27pr.

Modestinus 8 reg.

Eos, qui diversa inter se testimonia praebuerunt, quasi falsum fecerint, et praescriptio legis teneri pronuntiat.

Dig. 48.10.27.1

Modestinus 8 reg.

Et eum, qui contra signum suum falsum praebuit testimonium, poena falsi teneri pronuntiatum est. de impudentia eius, qui diversa duobus testimonia praebuit, cuius ita anceps fides vacillat, quod crimine falsi teneatur, nec dubitandum est.

Dig. 48.10.27.2

Modestinus 8 reg.

Qui se pro milite gessit vel illicitis insignibus usus est vel falso duplomate vias commeavit, pro admissi qualitate gravissime puniendus est.

Dig. 48.10.28

Modestinus 4 resp.

Si, a debitore praelato die, pignoris obligatio mentiatur, falsi crimini locus est.

Dig. 48.10.29

Modestinus l.S. de enucl. cas.

Si quis obrepserit praesidi provinciae, tam per acta quam per libelli interpellationem nihil agit. immo si accusatus fuerit, poenam temerari luit: proinde enim punitur, atque si falsum fecerit. sunt enim rescripta de ea re: sufficit autem unum argumenti causa referre, cuius verba haec sunt: " alexander augustus iulio marullo. si libello dato adversarius tuus veritatem in precibus ab eo datis non adiecit, subscriptione uti non potest: immo si accusatus fuerit, et poenam inferre debet".

Dig. 48.10.30pr.

Modestinus 12 pand.

Lege cornelia testamentaria obligatur, qui signum adulterinum fecerit sculpserit.

Dig. 48.10.30.1

Modestinus 12 pand.

De partu supposito soli accusant parentes aut hi, ad quos ea res pertineat: non quilibet ex populo ut publicam accusationem intendat.

Dig. 48.10.31

Callistratus 3 de cogn.

Divus pius claudio rescripsit pro mensura cuiusque delicti constituendum in eos, qui apud iudices instrumenta protulerunt, quae probari non possint: aut si plus meruisse videatur, quam ex forma iurisdictionis pati possint, ut imperatori describatur aestimaturo, quatenus coerceri debeant. sed divus marcus cum fratre suo pro sua humanitate hanc rem temperavit, ut, si (quod plerumque evenit) per errorem huiusmodi instrumenta proferantur, ignoscatur eis, qui tale quicquam protulerint.

Dig. 48.10.32pr.

Modestinus 1 de poen.

Hodie qui edicta proposita dolo malo corrumpunt, falsi poena plectuntur.

Dig. 48.10.32.1

Modestinus 1 de poen.

Si venditor mensuras publice probatas vini, frumenti vel cuiuslibet rei, aut emptor corruperit dolove malo fraudem fecerit: quanti ea res est, eius dupli condemnatur: decretoque divi hadriani praeceptum est in insulam eos relegari, qui pondera aut mensuras falsassent.

Dig. 48.10.33

Modestinus 3 de poen.

Si quis falsis constitutionibus nullo auctore habito utitur, lege cornelia aqua et igni ei interdicitur.

Dig. 48.11.0. De lege iulia repetundarum.

Dig. 48.11.1pr.

Marcianus 14 inst.

Lex iulia repetundarum pertinet ad eas pecunias, quas quis in magistratu potestate curatione legatione vel quo alio officio munere ministeriove publico cepit, vel cum ex cohorte cuius eorum est.

Dig. 48.11.1.1

Marcianus 14 inst.

Excipit lex, a quibus licet accipere: a sobrinis propioreve gradu cognatis suis, uxore.

Dig. 48.11.2

Scaevola 4 reg.

Datur ex hac lege et in heredes actio intra annum dumtaxat a morte eius qui arguebatur.

Dig. 48.11.3

Macer 1 publ.

Lege iulia repetundarum tenetur, qui, cum aliquam potestatem haberet, pecuniam ob iudicandum vel non iudicandum decernendumve acceperit:

Dig. 48.11.4

Venonius 3 publ. iudic.

Vel quo magis aut minus quid ex officio suo faceret.

Dig. 48.11.5

Macer 1 publ.

In comites quoque iudicum ex hac lege iudicium datur.

Dig. 48.11.6pr.

Venonius 3 publ. iudic.

Eadem lege tenentur, qui ob denuntiandum vel non denuntiandum testimonium pecuniam acceperint.

Dig. 48.11.6.1

Venonius 3 publ. iudic.

Hac lege damnatus testimonium publice dicere aut iudex esse postulareve prohibetur.

Dig. 48.11.6.2

Venonius 3 publ. iudic.

Lege iulia repetundarum cavetur, ne quis ob militem legendum mittendumve aes accipiat, neve quis ob sententiam in senatu consiliove publico dicendam pecuniam accipiat, vel ob accusandum vel non accusandum: utque urbani magistratus ob omni sorde se abstineant neve plus doni muneris in anno accipiant, quam quod sit aureorum centum.

Dig. 48.11.7pr.

Macer 1 iudic. publ.

Lex iulia de repetundis praecipit, ne quis ob iudicem arbitrumve dandum mutandum iubendumve ut iudicet: neve ob non dandum non mutandum non iubendum ut iudicet: neve ob hominem in vincula publica coiciendum vinciendum vincirive iubendum exve vinculis dimittendum: neve quis ob hominem condemnandum absolvendumve: neve ob litem aestimandam iudiciumve capitis pecuniaeve faciendum vel non faciendum aliquid acceperit.

Dig. 48.11.7.1

Macer 1 iudic. publ.

Apparet autem, quod lex ab exceptis quidem in infinitum capere permittit, ab his autem, qui hoc capite enumerantur, a nullo neque ullam quantitatem capere permittit.

Dig. 48.11.7.2

Macer 1 iudic. publ.

Illud quoque cavetur, ne in acceptum feratur opus publicum faciendum, frumentum publice dandum praebendum adprehendendum, sarta tecta tuenda, antequam perfecta probata praestita lege erunt.

Dig. 48.11.7.3

Macer 1 iudic. publ.

Hodie ex lege repetundarum extra ordinem puniuntur et plerumque vel exilio puniuntur vel etiam durius, prout admiserint. quid enim, si ob hominem necandum pecuniam acceperint? vel, licet non acceperint, calore tamen inducti interfecerint vel innocentem vel quem punire non debuerant? capite plecti debent vel certe in insulam deportari, ut plerique puniti sunt.

Dig. 48.11.8pr.

Paulus 54 ad ed.

Quod contra legem repetundarum proconsuli vel praetori donatum est, non poterit usu capi.

Dig. 48.11.8.1

Paulus 54 ad ed.

Eadem lex venditiones locationes eius rei causa pluris minorisve factas irritas facit impeditque usucapionem, priusquam in potestatem eius, a quo profecta res sit, heredisve eius veniat.

Dig. 48.11.9

Papinianus 15 resp.

Qui munus publice mandatum accepta pecunia ruperunt, crimine repetundarum postulantur.

Dig. 48.12.0. De lege iulia de annona.

Dig. 48.12.1

Marcianus 2 inst.

Constitit inter servum et dominum iudicium, si annonam publicam fraudasse dicat dominum.

Dig. 48.12.2pr.

Ulpianus 9 de off. procons.

Lege iulia de annona poena statuitur adversus eum, qui contra annonam fecerit societatemve coierit, quo annona carior fiat.

Dig. 48.12.2.1

Ulpianus 9 de off. procons.

Eadem lege continetur, ne quis navem nautamve retineat aut dolo malo faciat, quo magis detineatur:

Dig. 48.12.2.2

Ulpianus 9 de off. procons.

Et poena viginti aureorum statuitur.

Dig. 48.12.3pr.

Papirius 1 de const.

Imperatores antoninus et verus augusti in haec verba rescripserunt: " minime aequum est decuriones civibus suis frumentum vilius quam annona exigit vendere".

Dig. 48.12.3.1

Papirius 1 de const.

Item scripserunt ius non esse ordini cuiusque civitatis pretium grani quod invenitur statuere. item in haec verba rescripserunt: " etsi non solent hoc genus nuntiationis mulieres exercere, tamen quia demonstraturam te quae ad utilitatem annonae pertinent polliceris, praefectum annonae docere potes".

Dig. 48.13.0. Ad legem iuliam peculatus et de sacrilegis et de residuis.

Dig. 48.13.1

Ulpianus 44 ad sab.

Lege iulia peculatus cavetur, ne quis ex pecunia sacra religiosa publicave auferat neve intercipiat neve in rem suam vertat neve faciat, quo quis auferat intercipiat vel in rem suam vertat, nisi cui utique lege licebit: neve quis in aurum argentum aes publicum quid indat neve immisceat neve quo quid indatur immisceatur faciat sciens dolo malo, quo id peius fiat.

Dig. 48.13.2

Paulus 11 ad sab.

Lege iulia de residuis tenetur, qui publicam pecuniam delegatam in usum aliquem retinuit neque in eum consumpsit.

Dig. 48.13.3

Ulpianus 1 de adult.

Peculatus poena aquae et ignis interdictionem, in quam hodie successit deportatio, continet. porro qui in eum statum deducitur, sicut omnia pristina iura, ita et bona amittit.

Dig. 48.13.4pr.

Marcianus 14 inst.

Lege iulia peculatus tenetur, qui pecuniam sacram religiosam abstulerit interceperit.

Dig. 48.13.4.1

Marcianus 14 inst.

Sed et si donatum deo immortali abstulerit, peculatus poena tenetur.

Dig. 48.13.4.2

Marcianus 14 inst.

Mandatis autem cavetur de sacrilegiis, ut praesides sacrilegos latrones plagiarios conquirant et ut, prout quisque deliquerit, in eum animadvertant. et sic constitutionibus cavetur, ut sacrilegi extra ordinem digna poena puniantur.

Dig. 48.13.5pr.

Marcianus 14 inst.

Lege iulia de residuis tenetur is, apud quem ex locatione, emptione, alimentaria ratione, ex pecunia quam accepit aliave qua causa pecunia publica resedit.

Dig. 48.13.5.1

Marcianus 14 inst.

Sed et qui publicam pecuniam in usu aliquo acceptam retinuerit nec erogaverit, hac lege tenetur.

Dig. 48.13.5.2

Marcianus 14 inst.

Qua lege damnatus amplius tertia parte quam debet punitur.

Dig. 48.13.5.3

Marcianus 14 inst.

Non fit locus religiosus, ubi thensaurus invenitur: nam et si in monumento inventus fuerit, non quasi religiosus tollitur. quod enim sepelire quis prohibetur, id religiosum facere non potest: at pecunia sepeliri non potest, ut et mandatis principalibus cavetur.

Dig. 48.13.5.4

Marcianus 14 inst.

Sed et si de re civitatis aliquid subripiat, constitutionibus principum divorum traiani et hadriani cavetur peculatus crimen committi: et hoc iure utimur.

Dig. 48.13.6

Marcianus 5 reg.

Divi severus et antoninus cassio festo rescripserunt, res privatorum si in aedem sacram depositae subreptae fuerint, furti actionem, non sacrilegii esse.

Dig. 48.13.7

Ulpianus 7 de off. procons.

Sacrilegii poenam debebit proconsul pro qualitate personae proque rei condicione et temporis et aetatis et sexus vel severius vel clementius statuere. et scio multos et ad bestias damnasse sacrilegos, nonnullos etiam vivos exussisse, alios vero in furca suspendisse. sed moderanda poena est usque ad bestiarum damnationem eorum, qui manu facta templum effregerunt et dona dei in noctu tulerunt. ceterum si qui interdiu modicum aliquid de templo tulit, poena metalli coercendus est, aut, si honestiore loco natus sit, deportandus in insulam est.

Dig. 48.13.8pr.

Ulpianus 7 de off. procons.

Qui, cum in moneta publica operarentur, extrinsecus sibi signant pecuniam forma publica vel signatam furantur, hi non videntur adulterinam monetam exercuisse, sed furtum publicae monetae fecisse, quod ad peculatus crimen accedit.

Dig. 48.13.8.1

Ulpianus 7 de off. procons.

Si quis ex metallis caesarianis aurum argentumve furatus fuerit, ex edicto divi pii exilio vel metallo, prout dignitas personae, punitur. is autem, qui furanti sinum praebuit, perinde habetur, atque si manifesti furti condemnatus esset, et famosus efficitur. qui autem aurum ex metallo habuerit illicite et conflaverit, in quadruplum condemnatur.

Dig. 48.13.9

Venonius 2 iud. publ.

Peculatus crimen ante quinquennium admissum obici non oportet.

Dig. 48.13.10pr.

Venonius ex 3 iudic. publ.

Qui tabulam aeream legis formamve agrorum aut quid aliud continentem refixerit vel quid inde immutaverit, lege iulia peculatus tenetur.

Dig. 48.13.10.1

Venonius ex 3 iudic. publ.

Eadem lege tenetur, qui quid in tabulis publicis deleverit vel induxerit.

Dig. 48.13.11pr.

Paulus l.S. de iudic. publ.

Sacrilegi capite puniuntur.

Dig. 48.13.11.1

Paulus l.S. de iudic. publ.

Sunt autem sacrilegi, qui publica sacra compilaverunt. at qui privata sacra vel aediculas incustoditas temptaverunt, amplius quam fures, minus quam sacrilegi merentur. quare quod sacrum quodve admissum in sacrilegii crimen cadat, diligenter considerandum est.

Dig. 48.13.11.2

Paulus l.S. de iudic. publ.

Labeo libro trigensimo octavo posteriorum peculatum definit pecuniae publicae aut sacrae furtum non ab eo factum, cuius periculo fuit, et ideo aedituum in his, quae ei tradita sunt, peculatum non admittere.

Dig. 48.13.11.3

Paulus l.S. de iudic. publ.

Eodem capite inferius scribit non solum pecuniam publicam, sed etiam privatam crimen peculatus facere, si quis quod fisco debetur simulans se fisci creditorem accepit, quamvis privatam pecuniam abstulerit.

Dig. 48.13.11.4

Paulus l.S. de iudic. publ.

Is autem, qui pecuniam traiciendam suscepit vel quilibet alius, ad cuius periculum pecunia pertinet, peculatum non committit.

Dig. 48.13.11.5

Paulus l.S. de iudic. publ.

Senatus iussit lege peculatus teneri eos, qui iniussu eius, qui ei rei praeerit, tabularum publicarum inspiciendarum describendarumque potestatem fecerint.

Dig. 48.13.11.6

Paulus l.S. de iudic. publ.

Eum, qui pecuniam publicam in usus aliquos retinuerit nec erogaverit, hac lege teneri labeo libro trigensimo octavo posteriorum scripsit. cum eo autem, qui, cum provincia abiret, pecuniam, quae penes se esset, ad aerarium professus retinuerit, non esse residuae pecuniae actionem, quia eam privatus fisco debeat, et ideo inter debitores eum ferri: eamque ab eo is, qui hoc imperio utitur, exigeret, id est pignus capiendo, corpus retinendo, multam dicendo. sed eam quoque lex iulia residuorum post annum residuam esse iussit.

Dig. 48.13.12pr.

Marcianus 1 iudic. publ.

Hac lege tenetur, qui in tabulis publicis minorem pecuniam, quam quid venierit aut locaverit, scripserit aliudve quid simile commiserit.

Dig. 48.13.12.1

Marcianus 1 iudic. publ.

Divus severus et antoninus quendam clarissimum iuvenem, cum inventus esset arculam in templum ponere ibique hominem includere, qui post clusum templum de arca exiret et de templo multa subtraheret et se in arculam iterum referret, convictum in insulam deportaverunt.

Dig. 48.13.13

Ulpianus 68 ad ed.

Qui perforaverit muros vel inde aliquid abstulerit, peculatus actione tenetur.

Dig. 48.13.14

Marcellus 25 Dig.

Peculatus nequaquam committitur, si exigam ab eo pecuniam, qui et mihi et fisco debet: non enim pecunia fisci intercipitur, quae debitori eius aufertur, scilicet quia manet debitor fisci nihilo minus.

Dig. 48.13.15

Modestinus 2 de poen.

Is, qui praedam ab hostibus captam subripuit, lege peculatus tenetur et in quadruplum damnatur.

Dig. 48.13.16

Papinianus 36 quaest.

Publica iudicia peculatus et de residuis et repetundarum similiter adversus heredem exercentur, nec immerito, cum in his quaestio principalis ablatae pecuniae moveatur.

Dig. 48.14.0. De lege iulia ambitus.

Dig. 48.14.1pr.

Modestinus 2 de poen.

Haec lex in urbe hodie cessat, quia ad curam principis magistratuum creatio pertinet, non ad populi favorem.

Dig. 48.14.1.1

Modestinus 2 de poen.

Quod si in municipio contra hanc legem magistratum aut sacerdotium quis petierit, per senatus consultum centum aureis cum infamia punitur.

Dig. 48.14.1.2

Modestinus 2 de poen.

Qua lege damnatus si alium convicerit, in integrum restituitur, non tamen pecuniam recipit.

Dig. 48.14.1.3

Modestinus 2 de poen.

Item is, qui novum vectigal instituerit, ex senatus consulto hac poena plectitur.

Dig. 48.14.1.4

Modestinus 2 de poen.

Et si qui reus vel accusator domum iudicis ingrediatur, per legem iuliam iudiciariam in legem ambitus committit, id est aureorum centum fisco inferre iubetur.

Dig. 48.15.0. De lege fabia de plagiariis.

Dig. 48.15.1

Ulpianus 1 reg.

Si liberum hominem emptor sciens emerit, capitale crimen adversus eum ex lege fabia de plagio nascitur, quo venditor quoque fit obnoxius, si sciens liberum esse vendiderit.

Dig. 48.15.2pr.

Ulpianus 9 de off. procons.

Sciendum est legem fabiam ad eos non pertinere, qui, cum absentes servos haberent, eos vendiderunt: aliud est enim abesse, aliud in fuga esse.

Dig. 48.15.2.1

Ulpianus 9 de off. procons.

Item non pertinere ad eum, qui mandavit servum fugitivum persequendum et distrahendum: nec enim fugam vendidit.

Dig. 48.15.2.2

Ulpianus 9 de off. procons.

Amplius dicendum est et si quis titio mandaverit servum fugitivum adprehendendum, ut, si adprehendisset, eum emptum haberet, cessare senatus consultum.

Dig. 48.15.2.3

Ulpianus 9 de off. procons.

Hoc autem senatus consulto domini quoque continentur, qui fugam servorum suorum vendiderunt.

Dig. 48.15.3pr.

Marcianus 1 iudic. publ.

Legis fabiae crimine suppressi mancipii bona fide possessor non tenetur, id est qui ignorabat servum alienum, et qui voluntate domini putabat id eum agere. et ita de bona fide possessore ipsa lex scripta est: nam adicitur " si sciens dolo malo hoc fecerit": et saepissime a principibus severo et antonino constitutum est, ne bonae fidei possessores hac lege teneantur.

Dig. 48.15.3.1

Marcianus 1 iudic. publ.

Illud non est omittendum, quod exemplo legis aquiliae, si is, propter quem quis in fabiam commisit, decesserit, adhuc accusatio et poena legis fabiae superest, ut et divus severus et antoninus rescripserunt.

Dig. 48.15.4

Gaius 22 ad ed. provinc.

Lege fabia tenetur, qui sciens liberum hominem donaverit vel in dotem dederit, item qui ex earum qua causa sciens liberum esse acceperit, in eadem causa haberi debeat, qua venditor et emptor habetur. idem et si pro eo res permutata fuerit.

Dig. 48.15.5

Modestinus 17 resp.

Respondit eum, qui fugitivum alienum suscepisse et celasse doceatur, ex eo, quod proprietatis quaestionem referret, crimen, si probetur, evitare minime posse.

Dig. 48.15.6pr.

Callistratus 6 de cogn.

Non statim plagiarium esse, qui furti crimine ob servos alienos interceptos tenetur, divus hadrianus in haec verba rescripsit: " servos alienos qui sollicitaverit aut interceperit, crimine plagii, quod illi intenditur, teneatur nec ne, facit quaestionem: et ideo non me consuli de ea re oportet, sed quod verissimum in re praesenti cognoscitur, sequi iudicem oportet. plane autem scire debet posse aliquem furti crimine ob servos alienos interceptos teneri nec idcirco tamen statim plagiarium esse existimari".

Dig. 48.15.6.1

Callistratus 6 de cogn.

Idem princeps de eadem re in haec verba rescripsit: " apud quem unus aut alter fuerit fugitivus inventus, qui operas suas locaverint ut pascerentur, et utique si idem antea apud alios opus fecerint, hunc suppressorem non iure quis dixerit".

Dig. 48.15.6.2

Callistratus 6 de cogn.

Lege fabia cavetur, ut liber, qui hominem ingenuum vel libertinum invitum celaverit invinctum habuerit emerit sciens dolo malo quive in earum qua re socius erit, quique servo alieno servaeve persuaserit, ut a domino dominave fugiat, vel eum eamve invito vel insciente domino dominave celaverit, invinctum habuerit emerit sciens dolo malo quive in ea re socius erit, eius poena teneatur.

Dig. 48.15.7

Hermogenianus 5 iuris epit.

Poena pecuniaria statuta lege fabia in usu esse desiit: nam in hoc crimine detecti pro delicti modo coercentur et plerumque in metallum damnantur.

Dig. 48.16.0. Ad senatus consultum turpillianum et de abolitionibus criminum.

Dig. 48.16.1pr.

Marcianus l.S. ad sc turpill.

Accusatorum temeritas tribus modis detegitur et tribus poenis subicitur: aut enim calumniantur aut praevaricantur aut tergiversantur.

Dig. 48.16.1.1

Marcianus l.S. ad sc turpill.

Calumniari est falsa crimina intendere, praevaricari vera crimina abscondere, tergiversari in universum ab accusatione desistere.

Dig. 48.16.1.2

Marcianus l.S. ad sc turpill.

Calumniatoribus poena lege remmia irrogatur.

Dig. 48.16.1.3

Marcianus l.S. ad sc turpill.

Sed non utique qui non probat quod intendit protinus calumniari videtur: nam eius rei inquisitio arbitrio cognoscentis committitur, qui reo absoluto de accusatoris incipit consilio quaerere, qua mente ductus ad accusationem processit, et si quidem iustum eius errorem reppererit, absolvit eum, si vero in evidenti calumnia eum deprehenderit, legitimam poenam ei irrogat.

Dig. 48.16.1.4

Marcianus l.S. ad sc turpill.

Quorum alterutrum ipsis verbis pronuntiationis manifestatur. nam si quidem ita pronuntiaverit " non probasti", pepercit ei: sin autem pronuntiavit " calumniatus es", condemnavit eum. et quamvis nihil de poena subiecerit, tamen legis potestas adversus eum exercebitur: nam, ut papinianus respondit, facti quidem quaestio in arbitrio est iudicantis, poenae vero persecutio non eius voluntati mandatur, sed legis auctoritati reservatur.

Dig. 48.16.1.5

Marcianus l.S. ad sc turpill.

Quaeri possit, si ita fuerit interlocutus: " lucius titius temere accusasse videtur", an calumniatorem pronuntiasse videatur. et papinianus temeritatem facilitatis veniam continere et inconsultum calorem calumniae vitio carere et ob id hunc nullam poenam subire oportere.

Dig. 48.16.1.6

Marcianus l.S. ad sc turpill.

Praevaricatorem eum esse ostendimus, qui colludit cum reo et translaticie munere accusandi defungitur, eo quod proprias quidem probationes dissimularet, falsas vero rei excusationes admitteret.

Dig. 48.16.1.7

Marcianus l.S. ad sc turpill.

Si quis autem ab accusatione citra abolitionem destiterit, punitur.

Dig. 48.16.1.8

Marcianus l.S. ad sc turpill.

Abolitio privatim a praesidibus postulari ac impetrari solet, item pro tribunali, non de plano: nec praesens hanc cognitionem alteri demandare potest.

Dig. 48.16.1.9

Marcianus l.S. ad sc turpill.

Si plura crimina idem eidem intulit, singulorum debet abolitionem petere: alioquin prout quid admiserit, eius nomine senatus consulti poenam patietur.

Dig. 48.16.1.10

Marcianus l.S. ad sc turpill.

Accusationem is intulit, qui praescriptione summoveri poterat, ut quilibet adulterii masculo post quinque annos continuos ex die commissi adulterii vel feminae post sex menses utiles ex die divortii: an, si destiterit, hoc senatus consulto plecti debet, belle dubitatur. movet, quod paene nulla erit accusatio, quam temporis spatium aut personae vitium omnimodo removeret reoque securitatem timoris ac periculi promitteret. contra movet, quod qualiscumque accusatio illata cognoscentis auctoritate, non accusantis voluntate aboleri debet maioreque odio dignus existimaretur, qui temere ad tam improbam accusationem processisset. ergo verius est eum quoque de quo loquimur in senatus consultum incidere oportere. adquin papinianus respondit mulierem, quae idcirco ad falsi accusationem non admitteretur, quod suam suorumve iniuriam non persequeretur, desistentem senatus consulto turpilliano non plecti. num ergo et in ceteris idem responsurus sit? quid enim interest, propter sexus infirmitatem an propter status turpitudinem temporisve finem ad accusationem aliquam non admittatur? multoque magis excludendi sunt, quod mulieris quidem accusatio vel propter proprium eius dolorem effectum habere potuit, illorum vero accusatio voce dumtaxat tenus intervenit. adquin idem alias scribit non posse aliquem duos eodem tempore adulterii accusare, marem et feminam, et tamen, si utrique simul denuntiaverit, in utriusque persona abolitionem eum petere debere, ne in hoc senatus consulto incidat. quid porro refert, propter causas supra scriptas accusatio non valuerit an propter numerum personarum non tenuerit? an haec intersint, plenam habuerit aliquis accusandi facultatem, sed propter personarum coniunctionem ab accusatione summoveatur, an vero stricta ratione quibusdam accusandi facultas non competat? merito itaque dicendum est omnes excepta muliere et minore nisi abolitionem petierint, in hoc senatus consulto incidere.

Dig. 48.16.1.11

Marcianus l.S. ad sc turpill.

Suspecti tutoris accusatio pro tribunali tantum examinari potest, et nullus alius de huiusmodi quaestione quam praeses pronuntiare potest: et tamen qui ab ea destitit, senatus consulto non tenetur.

Dig. 48.16.1.12

Marcianus l.S. ad sc turpill.

Item si dicat aliquis in senatus consultum incidisse turpillianum, praesidis est super ea re notio: et tamen contra desertorem senatus consulti non intervenit coercitio: qui autem dicit quem in hoc senatus consulto incidisse, accusator non est.

Dig. 48.16.1.13

Marcianus l.S. ad sc turpill.

Incidit in hoc senatus consulto et qui accusatorem summittit aut instigat, aut qui mandat alicui et instruit eum ad accusationem capitalem dando probationes, allegando accusationes: et merito: nam diffidendo crimini quod movet et eximendo se periculo calumniae vel desertionis merito calumniantis et desistentis poenae subdi debuit, nisi subornatus accusator probaverit crimen quod intendere suscepit. nec interest, per se mandavit accusationem an per alium: verum hunc, qui hoc ministerio usus est ad mandandam accusationem, non ex verbis, sed ex sententia senatus consulti puniri papinianus respondit. summissus enim accusator similiter eodem senatus consulto plectitur, id est propter hoc solum punitur, quod ministerium alieni timoris recepit.

Dig. 48.16.1.14

Marcianus l.S. ad sc turpill.

Reus condemnatus provocavit, deinde accusator destitit: an in hoc senatus consulto incidit? prope est, ut incidisse videatur, quia provocationis remedio condemnationis extinguitur pronuntiatio.

Dig. 48.16.2

Paulus l.S. de poen. omnium legum.

Qui destiterit, agere amplius et accusare prohibetur.

Dig. 48.16.3

Paulus 1 sent.

Et in privatis et in extraordinariis criminibus omnes calumniosi extra ordinem pro qualitate admissi plectuntur.

Dig. 48.16.4pr.

Papinianus 15 resp.

Mulier, quae falsi crimen iniuriae propriae post interpositam denuntiationem desistens omisit, ex senatus consulto turpilliano teneri non videtur.

Dig. 48.16.4.1

Papinianus 15 resp.

Post abolitionem idem crimen ab eodem in eundem instaurari non potest.

Dig. 48.16.5

Paulus 2 resp.

Quaesitum est, an is, qui libello principi dato falsum se obiecturum minatus est, si non obiecisset, turpilliano senatus consulto tenetur. paulus respondit verbis senatus consulti turpilliani eum de quo quaeritur non contineri.

Dig. 48.16.6pr.

Paulus 1 sent.

Ab accusatione destitit, qui cum adversario suo de compositione eius criminis quod intendebat fuerit locutus.

Dig. 48.16.6.1

Paulus 1 sent.

Animo ab accusatione destitit, qui affectum et animum accusandi deposuit.

Dig. 48.16.6.2

Paulus 1 sent.

Destitisse videtur, qui intra praefinitum accusationis a praeside tempus reum suum non peregit.

Dig. 48.16.6.3

Paulus 1 sent.

Nuntiatores, qui per notoriam indicia produnt, notoriis suis adsistere iubentur.

Dig. 48.16.6.4

Paulus 1 sent.

Calumniae causa puniuntur, qui in fraudem alicuius librum vel testimonium aliudve quid conquisisse vel scripsisse vel in iudicium protulisse dicuntur.

Dig. 48.16.7pr.

Ulpianus 8 disp.

Si quis repetere velit crimen publica abolitione interveniente, eo iure repetit, quo accusabat: neque enim possunt praescriptiones ei obici, quae ante reorum abolitionem non sunt obiectae. et ita divus hadrianus rescripsit.

Dig. 48.16.7.1

Ulpianus 8 disp.

Si stellionatum quis obiecerit vel expilatae hereditatis crimen et destitit, poenam senatus consulti turpilliani non subibit, nec si furti vel iniuriarum: sed officio iudicis culpa eius coercebitur.

Dig. 48.16.8

Papinianus 2 de adult.

Abolitio aut publice fit ob diem insignem aut publicam gratulationem.

Dig. 48.16.9

Macer 2 publ.

Vel ob rem prospere gestam.

Dig. 48.16.10pr.

Papinianus 2 de adult.

Aut privatim actore postulante. tertio genere fit ex lege abolitio accusatore mortuo vel ex iusta causa impedito, quo minus accusare possit.

Dig. 48.16.10.1

Papinianus 2 de adult.

Abolitione autem publice facta non retractabitur in iudicio repetendo de mariti iure.

Dig. 48.16.10.2

Papinianus 2 de adult.

Triginta dies repetendi rei divus traianus utiles esse interpretatus est, ex die scilicet, quo feriae finitae sunt. et senatus censuit eas dies cedere, quibus quisque reum suum repetere possit. hoc autem repetendi rei tempus non aliter cedit, quam si accusator quoque potuit adire.

Dig. 48.16.11

Papinianus l.S. de adult.

Quaerebatur, an hi, qui ab accusatione tempore exclusi essent, in senatus consultum turpillianum inciderunt. respondit non oportere dubitari calumnia non puniri eos, qui praescriptione temporis exclusi causam adulterii perferre non potuerunt.

Dig. 48.16.12

Ulpianus 2 de adult.

Si interveniente publica abolitione ex senatus consulto, ut fieri adsolet, vel ob laetitiam aliquam vel honorem domus divinae vel ex aliqua causa, ex qua senatus censuit abolitionem reorum fieri, nec intra dies praestitutos reum repetierit: dicendum est cessare turpillianum senatus consultum. nec enim videtur desistere, qui exemptum reum non defert: eximitur autem reorum abolitione interveniente.

Dig. 48.16.13pr.

Paulus 3 de adult.

Destitisse eum accipiemus, qui in totum animum agendi deposuit, non qui distulit accusationem.

Dig. 48.16.13.1

Paulus 3 de adult.

Sed qui permissu imperatoris ab accusatione destitit, impunitus est.

Dig. 48.16.14

Ulpianus 7 de off. procons.

Divus hadrianus salvio caro proconsuli cretae rescripsit tutorem, qui pupilli causa instituerat accusationem, defuncto pupillo, cuius causa accusare coeperat, non esse cogendum accusationem implere.

Dig. 48.16.15pr.

Macer 2 publ.

In senatus consultum turpillianum incidunt, qui subiecissent accusatores, aut subiecti postulassent nec peregissent reos, aut aliter quam abolitione facta destitissent: quique chirographum ob accusandum dedissent pactionemve aliquam interposuissent. hoc autem verbum " nec peregissent" ad universos supra scriptos pertinere dicendum est.

Dig. 48.16.15.1

Macer 2 publ.

An ad eos, qui hodie de iudiciis publicis extra ordinem cognoscunt, senatus consultum pertineat, quaeritur: sed iam hoc iure ex sacris constitutionibus utimur, ut pertineat ita ex singulis causis singulae poenae irrogentur.

Dig. 48.16.15.2

Macer 2 publ.

Eos, de quorum calumnia agi non permittitur, si destiterint, non incidere in poenam huius senatus consulti constitutionibus cavetur.

Dig. 48.16.15.3

Macer 2 publ.

Si propter mortem rei accusator destiterit, non potest hoc senatus consulto teneri, quia morte rei iudicium solvitur, nisi tale crimen fuit, cuius actio et adversus heredes durat, veluti maiestatis. idem in accusatione repetundarum est, quia haec quoque morte non solvitur.

Dig. 48.16.15.4

Macer 2 publ.

Ceterum si, postea quam accusator destitit, reus decesserit, non ideo magis delictum accusatoris relevatur. nam eum qui semel destitit, si postea accusare paratus sit, non esse audiendum severus et antoninus statuerunt.

Dig. 48.16.15.5

Macer 2 publ.

Qui post inscriptionem ante litem contestatam anno vel biennio agere non potuerint variis praesidum occupationibus vel etiam civilium officiorum necessitatibus districti, in senatus consultum non incident.

Dig. 48.16.15.6

Macer 2 publ.

Quamquam prius reum quis detulerat, et si post abolitionem, antequam reus repeteretur, alia abolitio supervenerit: non ex superiore, sed ex secunda abolitione dies triginta computantur.

Dig. 48.16.16

Paulus l.S. de adult.

Domitianus rescripsit, quod de feriis et abolendis reis dicitur, non pertinere ad servos, qui accusati in vinculis esse iubentur, ne iudicium finiatur.

Dig. 48.16.17

Modestinus 17 resp.

Lucius titius seium reum falsi fecit et priusquam persequeretur, indulgentia reorum crimina abolita sunt. quaero, si postea eum iterato reum non fecerit, an in turpillianum senatus consultum inciderit. herennius modestinus respondit abolitionem reorum, quae publice indulgetur, ad hoc genus criminis non pertinere.

Dig. 48.16.18pr.

Papirius 1 de const.

Imperatores antoninus et verus augusti iulio vero rescripserunt, cum satis diu litem traxisse dicetur, invito adversario non posse eum abolitionem accipere.

Dig. 48.16.18.1

Papirius 1 de const.

Item rescripserunt, nisi evidenter probetur consentire adversarium, abolitionem non dari.

Dig. 48.16.18.2

Papirius 1 de const.

Item rescripserunt, cum in crimine capitali abolitionem ut in re pecuniaria petitam esse diceret, restaurandam esse nihilo minus cognitionem, ita ut, si non probasset hoc quod proponeret, non impune eum laturum.

Dig. 48.17.0. De requirendis vel absentibus damnandis.

Dig. 48.17.1pr.

Marcianus 2 publ.

Divi severi et antonini magni rescriptum est, ne quis absens puniatur: et hoc iure utimur, ne absentes damnentur: neque enim inaudita causa quemquam damnari aequitatis ratio patitur.

Dig. 48.17.1.1

Marcianus 2 publ.

Si autem gravius quis puniatur, puta in opus metalli vel similem poenam sive capitalem: hoc casu non est irroganda in absentem poena, sed absens requirendus adnotatus est, ut copiam sui praestet.

Dig. 48.17.1.2

Marcianus 2 publ.

Praesides autem provinciarum circa requirendos adnotatos hoc debent facere, ut eos quos adnotaverint edictis adesse iubeant, ut possit innotescere eis quod adnotati sunt, sed et litteras ad magistratus, ubi consistunt, mittere, ut per eos possit innotescere requirendos eos esse adnotatos.

Dig. 48.17.1.3

Marcianus 2 publ.

Et ex hoc annus computatur ad se purgandos.

Dig. 48.17.1.4

Marcianus 2 publ.

Sed et papinianus libro sexto decimo responsorum scripsit requirendum adnotatum si provinciae praesidem intra annum adierit et satis obtulerit, non esse locum mandatis, ut bona fisco vindicentur. nam et si intra annum mortuus sit, criminis causa expirat et perit et bona eius ad successores transmittuntur.

Dig. 48.17.2pr.

Macer 2 publ.

Anni spatium ad occupanda bona eius, qui requirendus adnotatus est, pertinet.

Dig. 48.17.2.1

Macer 2 publ.

Sed si per viginti annos fiscus bona non occupaverit, postea praescriptione vel ab ipso reo vel ab heredibus eius submovebitur:

Dig. 48.17.3

Marcianus 2 de publ. iudic.

Quamcumque enim quaestionem apud fiscum, si non alia sit propria praescriptio, viginti annorum silentio praescribi divi principes voluerunt.

Dig. 48.17.4pr.

Macer 2 de publ. iudic.

Annus exinde computandus est, ex quo ea adnotatio quae vel edicto vel litteris ad magistratus factis publice innotuit.

Dig. 48.17.4.1

Macer 2 de publ. iudic.

Ergo et viginti annorum tempus exinde fisco numeratur, ex quo adnotatio publice innotuit.

Dig. 48.17.4.2

Macer 2 de publ. iudic.

In summa sciendum est nulla temporis praescriptione causae defensione summoveri eum, qui requirendus adnotatus est.

Dig. 48.17.5pr.

Modestinus 12 pand.

Mandatis cavetur intra annum requirendorum bona obsignari, ut, si redierint et se purgaverint, integram rem suam habeant: si neque responderint neque qui se defendant habuerint, tunc post annum bona in fiscum coguntur.

Dig. 48.17.5.1

Modestinus 12 pand.

Et intra annum medio tempore moventia si qua sunt, ne aut mora deteriora fiant aut aliquo modo intereant, venire debere pretiumque eorum in deposito esse, divi severus et antoninus sanxerunt.

Dig. 48.17.5.2

Modestinus 12 pand.

Sed et divus traianus inter moventia fructus quoque haberi rescripsit.

Dig. 48.17.5.3

Modestinus 12 pand.

Curandum est autem, ne quid ei qui profugit medio tempore a debitoribus eius solvatur, ne per hoc fuga eius instruatur.

Dig. 48.18.0. De quaestionibus.

Dig. 48.18.1pr.

Ulpianus 8 de off. procons.

In criminibus eruendis quaestio adhiberi solet. sed quando vel quatenus id faciendum sit, videamus. et non esse a tormentis incipiendum et divus augustus constituit neque adeo fidem quaestioni adhibendam, sed et epistula divi hadriani ad sennium sabinum continetur.

Dig. 48.18.1.1

Ulpianus 8 de off. procons.

Verba rescripti ita se habent: " ad tormenta servorum ita demum veniri oportet, cum suspectus est reus et aliis argumentis ita probationi admovetur, ut sola confessio servorum deesse videatur".

Dig. 48.18.1.2

Ulpianus 8 de off. procons.

Idem divus hadrianus claudio quartino rescripsit: quo rescripto illud expressit a suspectissimo incipiendum et a quo facillime posse verum scire iudex crediderit.

Dig. 48.18.1.3

Ulpianus 8 de off. procons.

Ad quaestionem non esse provocandos eos, quos accusator de domo sua produxit, nec facile credendum subiectam eam, quam ambo parentes dicuntur caram filiam habuisse rescripto divorum fratrum ad lucium tiberianum emisso declaratur.

Dig. 48.18.1.4

Ulpianus 8 de off. procons.

Idem cornelio proculo rescripserunt non utique in servi unius quaestione fidem rei constituendam, sed argumentis causam examinandam.

Dig. 48.18.1.5

Ulpianus 8 de off. procons.

Divus antoninus, et divus hadrianus sennio sabino, rescripserunt, cum servi pariter cum domino aurum et argentum exportasse dicerentur, non esse de domino interrogandos: ne quidem, si ultro aliquid dixerint, obesse hoc domino.

Dig. 48.18.1.6

Ulpianus 8 de off. procons.

Divi fratres leliano longino rescripserunt de servo heredum non esse habendam quaestionem in res hereditarias, quamvis suspectum fuisset, quod imaginaria venditione dominium in eo quaesisse heres videretur.

Dig. 48.18.1.7

Ulpianus 8 de off. procons.

Servum municipum posse in caput civium torqueri saepissime rescriptum est, quia non sit illorum servus, sed rei publicae. idemque in ceteris servis corporum dicendum est: nec enim plurium servus videtur, sed corporis.

Dig. 48.18.1.8

Ulpianus 8 de off. procons.

Si servus bona fide mihi serviat, etiamsi dominium in eo non habui, potest dici torqueri eum in caput meum non debere. idem est et in libero homine, qui bona fide servit.

Dig. 48.18.1.9

Ulpianus 8 de off. procons.

Sed nec libertum torqueri in patroni caput constitutum est.

Dig. 48.18.1.10

Ulpianus 8 de off. procons.

Nec fratrem quidem in fratris imperator noster cum divo patre suo rescripsit, addita ratione, quod in eum, in quem quis invitus testimonium dicere non cogitur, in eum nec torqueri debet.

Dig. 48.18.1.11

Ulpianus 8 de off. procons.

Servum mariti in caput uxoris posse torqueri divus traianus sernio quarto rescripsit.

Dig. 48.18.1.12

Ulpianus 8 de off. procons.

Idem mummio lolliano rescripsit damnati servos, quia desierunt esse ipsius, posse in eum torqueri.

Dig. 48.18.1.13

Ulpianus 8 de off. procons.

Si servus ad hoc erit manumissus, ne torqueatur, dummodo in caput domini non torqueatur, posse eum torqueri divus pius rescripsit.

Dig. 48.18.1.14

Ulpianus 8 de off. procons.

Sed et eum, qui cognitionis susceptae tempore alienus fuit, licet postea rei sit effectus, torqueri in caput posse divi fratres rescripserunt.

Dig. 48.18.1.15

Ulpianus 8 de off. procons.

Si quis dicatur nullo iure emptus, non prius torqueri poterit, quam si constiterit venditionem non valuisse: et ita imperator noster cum divo patre suo rescripsit.

Dig. 48.18.1.16

Ulpianus 8 de off. procons.

Item severus spicio antigono ita rescripsit: " cum quaestio de servis contra dominos neque haberi debeat neque, si facta sit, dicturi sententiam consilium instruat: multo minus indicia servorum contra dominos admittenda sunt".

Dig. 48.18.1.17

Ulpianus 8 de off. procons.

Divus severus rescripsit confessiones reorum pro exploratis facinoribus haberi non oportere, si nulla probatio religionem cognoscentis instruat.

Dig. 48.18.1.18

Ulpianus 8 de off. procons.

Cum quidam deponere pretium servi paratus esset, ut servus torqueretur contra dominum, imperator noster cum divo patre suo id non admiserunt.

Dig. 48.18.1.19

Ulpianus 8 de off. procons.

Si servi quasi sceleris participes in se torqueantur deque domino aliquid fuerint confessi apud iudicem: prout causa exegerit, ita pronuntiare eum debere divus traianus rescripsit. quo rescripto ostenditur gravari dominos confessione servorum. sed ab hoc rescripto recessum constitutiones posteriores ostendunt.

Dig. 48.18.1.20

Ulpianus 8 de off. procons.

In causa tributorum, in quibus esse rei publicae nervos nemini dubium est, periculi quoque ratio, quod servo fraudis conscio capitalem poenam denuntiat, eiusdem professionem exstruat.

Dig. 48.18.1.21

Ulpianus 8 de off. procons.

Qui quaestionem habiturus est, non debet specialiter interrogare, an lucius titius homicidium fecerit, sed generaliter, quis id fecerit: alterum enim magis suggerentis quam requirentis videtur. et ita divus traianus rescripsit.

Dig. 48.18.1.22

Ulpianus 8 de off. procons.

Divus hadrianus calpurnio celeriano in haec verba rescripsit: " agricola pompei valentis servus de se potest interrogari. si, dum quaestio habetur, amplius dixerit, rei fuerit indicium, non interrogationis culpa".

Dig. 48.18.1.23

Ulpianus 8 de off. procons.

Quaestioni fidem non semper nec tamen numquam habendam constitutionibus declaratur: etenim res est fragilis et periculosa et quae veritatem fallat. nam plerique patientia sive duritia tormentorum ita tormenta contemnunt, ut exprimi eis veritas nullo modo possit: alii tanta sunt impatientia, ut quodvis mentiri quam pati tormenta velint: ita fit, ut etiam vario modo fateantur, ut non tantum se, verum etiam alios criminentur.

Dig. 48.18.1.24

Ulpianus 8 de off. procons.

Praeterea inimicorum quaestioni fides haberi non debet, quia facile mentiuntur. nec tamen sub praetextu inimicitiarum detrahenda erit fides quaestionis,

Dig. 48.18.1.25

Ulpianus 8 de off. procons.

Causaque cognita habenda fides aut non habenda.

Dig. 48.18.1.26

Ulpianus 8 de off. procons.

Cum quis latrones tradidit, quibusdam rescriptis continetur non debere fidem haberi eis in eos, qui eos tradiderunt: quibusdam vero, quae sunt pleniora, hoc cavetur, ut neque destricte non habeatur, ut in ceterorum persona solet, sed causa cognita aestimetur, habenda fides sit nec ne. plerique enim, dum metuunt, ne forte adpprehensi eos nominent, prodere eos solent, scilicet impunitatem sibi captantes, quia non facile eis indicantibus proditores suos creditur. sed neque passim impunitas eis per huiusmodi proditiones concedenda est, neque transmittenda allegatio dicentium idcirco se oneratos, quod eos ipsi tradidissent: neque enim invalidum argumentum haberi debet mendacii sive calumniae in se instructae.

Dig. 48.18.1.27

Ulpianus 8 de off. procons.

Si quis ultro de maleficio fateatur, non semper ei fides habenda est: nonnumquam enim aut metu aut qua alia de causa in se confitentur. et extat epistula divorum fratrum ad voconium saxam, qua continetur liberandum eum, qui in se fuerat confessus, cuius post damnationem de innocentia constitisset. cuius verba haec sunt: " prudenter et egregia ratione humanitatis, saxa carissime, primitivum servum, qui homicidium in se confingere metu ad dominum revertendi suspectus esset, perseverantem falsa demonstratione damnasti quaesiturus de consciis, quos aeque habere se commentitus fuerat, ut ad certiorem ipsius de se confessionem pervenires. nec frustra fuit tam prudens consilium tuum, cum in tormentis constiterit neque illos ei conscios fuisse et ipsum de se temere commentum. potes itaque decreti gratiam facere et eum per officium distrahi iubere, condicione addita, ne umquam in potestatem domini revertatur, quem pretio recepto certum habemus libenter tali servo cariturum". hac epistula significatur, quasi servus damnatus, si fuisset restitutus, ad eum pertinebit, cuius fuisset, antequam damnetur. sed praeses provinciae eum quem damnavit restituere non potest, cum nec pecuniariam sententiam suam revocare possit. quid igitur? principi eum scribere oportet, si quando ei, qui nocens videbatur, postea ratio innocentiae constitit.

Dig. 48.18.2

Ulpianus 39 ad ed.

Hereditarii servi, quamdiu incertum est ad quem bona pertineant, non possunt videri in caput domini torqueri.

Dig. 48.18.3

Ulpianus 50 ad ed.

Constitutione imperatoris nostri et divi severi placuit plurium servum in nullius caput torqueri posse.

Dig. 48.18.4

Ulpianus 3 disp.

In incesto, ut papinianus respondit et est rescriptum, servorum tormenta cessant, quia et lex iulia cessat de adulteriis.

Dig. 48.18.5

Marcianus 2 inst.

Si quis viduam vel alii nuptam cognatam, cum qua nuptias contrahere non potest, corruperit, in insulam deportandus est, quia duplex crimen est et incestum, quia cognatam violavit contra fas, et adulterium vel stuprum adiungit. denique hoc casu servi in personam domini torquentur.

Dig. 48.18.6pr.

Papinianus 2 de adult.

Patre vel marito de adulterio agente et postulantibus de servis rei ut quaestio habeatur, si vere causa perorata testibus prolatis absolutio secuta fuerit, mancipiorum, quae mortua sunt, aestimatio habetur: secuta vero damnatione quae supersunt publicantur.

Dig. 48.18.6.1

Papinianus 2 de adult.

Cum de falso testamento quaeritur, hereditarii servi possunt torqueri.

Dig. 48.18.7

Ulpianus 3 de adult.

Quaestionis modum magis est iudices arbitrari oportere: itaque quaestionem habere oportet, ut servus salvus sit vel innocentiae vel supplicio.

Dig. 48.18.8pr.

Paulus 2 de adult.

Edictum divi augusti, quod proposuit vibio habito et lucio aproniano consulibus, in hunc modum exstat: " quaestiones neque semper in omni causa et persona desiderari debere arbitror, et, cum capitalia et atrociora maleficia non aliter explorari et investigari possunt quam per servorum quaestiones, efficacissimas eas esse ad requirendam veritatem existimo et habendas censeo".

Dig. 48.18.8.1

Paulus 2 de adult.

Statuliber in adulterio postulari poterit, ut quaestio ex eo habeatur, quod servus heredis est: sed spem suam retinebit.

Dig. 48.18.9pr.

Marcianus 2 de iudic. publ.

Divus pius rescripsit posse de servis haberi quaestionem in pecuniaria causa, si aliter veritas inveniri non possit. quod et aliis rescriptis cavetur. sed hoc ita est, ut non facile in re pecuniaria quaestio habeatur: sed si aliter veritas inveniri non possit nisi per tormenta, licet habere quaestionem, ut et divus severus rescripsit. licet itaque et de servis alienis haberi quaestionem, si ita res suadeat.

Dig. 48.18.9.1

Marcianus 2 de iudic. publ.

Ex quibus causis quaestio de servis adversus dominos haberi non debet, ex his causis ne quidem interrogationem valere: et multo minus indicia servorum contra dominos admittenda sunt.

Dig. 48.18.9.2

Marcianus 2 de iudic. publ.

De eo, qui in insulam deportatus est, quaestio habenda non est, ut divus pius rescripsit.

Dig. 48.18.9.3

Marcianus 2 de iudic. publ.

Sed nec de statulibero in pecuniariis causis quaestio habenda est nisi deficiente condicione.

Dig. 48.18.10pr.

Arcadius l.S. de test.

De minore quattuordecim annis quaestio habenda non est, ut et divus pius caecilio iuventiano rescripsit.

Dig. 48.18.10.1

Arcadius l.S. de test.

Sed omnes omnino in maiestatis crimine, quod ad personas principum attinet, si ad testimonium provocentur, cum res exigit, torquentur.

Dig. 48.18.10.2

Arcadius l.S. de test.

Potest quaeri, an de servis filii castrensis peculii in caput patris quaestio haberi non possit: nam patris non debere torqueri in filium constitutum est. et puto recte dici nec filii servos in caput patris esse interrogandos.

Dig. 48.18.10.3

Arcadius l.S. de test.

Tormenta autem adhibenda sunt, non quanta accusator postulat, sed ut moderatae rationis temperamenta desiderant.

Dig. 48.18.10.4

Arcadius l.S. de test.

Nec debet initium probationum de domo rei accusator sumere, dum aut libertos eius quem accusat aut servos in testimonium vocat.

Dig. 48.18.10.5

Arcadius l.S. de test.

Plurimum quoque in excutienda veritate etiam vox ipsa et cognitionis suptilis diligentia adfert: nam et ex sermone et ex eo, qua quis constantia, qua trepidatione quid diceret, vel cuius existimationis quisque in civitate sua est, quaedam ad inluminandam veritatem in lucem emergunt.

Dig. 48.18.10.6

Arcadius l.S. de test.

In causis quoque liberalibus non oportet per eorum tormenta, de quorum statu quaeritur, veritatem requiri.

Dig. 48.18.11

Paulus 2 de off. procons.

Etiamsi redhibitus fuerit servus, in caput emptoris non torquebitur.

Dig. 48.18.12

Ulpianus 54 ad ed.

Si quis, ne quaestio de eo agatur, liberum se dicat, divus hadrianus rescripsit non esse eum ante torquendum quam liberale iudicium experiatur.

Dig. 48.18.13

Modestinus 5 reg.

Certo pretio servum aestimatum in quaestionem dari interposita stipulatione receptum est.

Dig. 48.18.14

Modestinus 8 reg.

Statuliber in delicto repertus sperandae libertatis praerogativa non ut servus ob ambiguum condicionis, sed ut liber puniendus est.

Dig. 48.18.15pr.

Callistratus 5 de cogn.

Ex libero homine pro testimonio non vacillante quaestionem haberi non oportet.

Dig. 48.18.15.1

Callistratus 5 de cogn.

De minore quoque quattuordecim annis in caput alterius quaestionem habendam non esse divus pius maecilio rescripsit, maxime cum nullis extrinsecus argumentis accusatio impleatur. nec tamen consequens esse, ut etiam sine tormentis eisdem credatur: nam aetas, inquit, quae adversus asperitatem quaestionis eos interim tueri videtur, suspectiores quoque eosdem facit ad mentiendi facilitatem.

Dig. 48.18.15.2

Callistratus 5 de cogn.

Eum, qui vindicanti servum cavit, domini loco habendum et ideo in caput eius servos torqueri non posse divus pius in haec verba rescripsit: " causam tuam aliis probationibus instituere debes: nam de servis quaestio haberi non debet, cum possessor hereditatis, qui petitori satisdedit, interim domini loco habeatur".

Dig. 48.18.16pr.

Modestinus 3 de poen.

Repeti posse quaestionem divi fratres rescripserunt.

Dig. 48.18.16.1

Modestinus 3 de poen.

Is, qui de se confessus est, in caput aliorum non torquebitur, ut divus pius rescripsit.

Dig. 48.18.17pr.

Papinianus 16 resp.

Extrario quoque accusante servos in adulterii quaestione contra dominum interrogari placuit. quod divus marcus ac postea maximus princeps iudicantes secuti sunt.

Dig. 48.18.17.1

Papinianus 16 resp.

Sed et in quaestione stupri servi adversus dominum non torquentur.

Dig. 48.18.17.2

Papinianus 16 resp.

De quaestione suppositi partus, vel si petat hereditatem, quem ceteri filii non esse fratrem suum contendunt, quaestio de servis hereditariis habebitur, quia non contra dominos ceteros filios, sed pro successione domini defuncti quaeritur. quod congruit ei, quod divus hadrianus rescripsit: cum enim in socium caedis socius postularetur, de communi servo habendam quaestionem rescripsit, quod pro domino fore videretur.

Dig. 48.18.17.3

Papinianus 16 resp.

De servo in metallum damnato quaestionem contra eum qui dominus fuit, non esse habendam respondi: nec ad rem pertinere, si ministrum se facinoris fuisse confiteatur.

Dig. 48.18.18pr.

Paulus 5 sent.

Unius facinoris plurimi rei ita audiendi sunt, ut ab eo primum incipiatur, qui timidior est vel tenerae aetatis videtur.

Dig. 48.18.18.1

Paulus 5 sent.

Reus evidentioribus argumentis obpressus repeti in quaestionem potest, maxime si in tormenta animum corpusque duraverit.

Dig. 48.18.18.2

Paulus 5 sent.

In ea causa, in qua nullis reus argumentis urguebatur, tormenta non facile adhibenda sunt, sed instandum accusatori, ut id quod intendat comprobet atque convincat.

Dig. 48.18.18.3

Paulus 5 sent.

Testes torquendi non sunt convincendi mendacii aut veritatis gratia, nisi cum facto intervenisse dicuntur.

Dig. 48.18.18.4

Paulus 5 sent.

Iudex cum de fide generis instrui non potest, poterit de servis hereditariis habere quaestionem.

Dig. 48.18.18.5

Paulus 5 sent.

Servo qui ultro aliquid de domino confitetur, fides non accommodatur: neque enim oportet salutem dominorum servorum arbitrio committi.

Dig. 48.18.18.6

Paulus 5 sent.

Servus in caput eius domini, a quo distractus est cuique aliquando servivit, in memoriam prioris dominii interrogari non potest.

Dig. 48.18.18.7

Paulus 5 sent.

Servus, nec si a domino ad tormenta offeratur, interrogandus est.

Dig. 48.18.18.8

Paulus 5 sent.

Sane quotiens quaeritur, an servi in caput domini interrogandi sint, prius de eorum dominio oportet inquiri.

Dig. 48.18.18.9

Paulus 5 sent.

Cogniturum de criminibus praesidem oportet ante diem palam facere custodias se auditurum, ne hi, qui defendendi sunt, subitis accusatorum criminibus obprimantur: quamvis defensionem quocumque tempore postulante reo negari non oportet, adeo ut propterea et differantur et proferantur custodiae.

Dig. 48.18.18.10

Paulus 5 sent.

Custodiae non solum pro tribunali, sed et de plano audiri possunt atque damnari.

Dig. 48.18.19

Tryphonus 4 disp.

Is, cui fideicommissa libertas debetur, non aliter ut servus quaestioni applicetur, nisi aliorum quaestionibus oneretur.

Dig. 48.18.20

Paulus 3 decr.

Maritus quidam heres uxoris suae petebat a suro pecuniam, quam apud eum deposuisse defunctam se absente dicebat, et in eam rem unum testem liberti sui filium produxerat apud procuratorem: desideraverat et quaestionem haberi de ancilla. surus negabat se accepisse et testimonium non oportere unius hominis admitti nec solere a quaestionibus incipi, etsi aliena esset ancilla. procurator quaestionem de ancilla habuerat. cum ex appellatione cognovisset imperator, pronuntiavit quaestione illicite habita unius testimonio non esse credendum ideoque recte provocatum.

Dig. 48.18.21

Paulus l.S. de poen. paganorum.

Quaestionis habendae causa neminem esse damnandum divus hadrianus rescripsit.

Dig. 48.18.22

Paulus 1 sent.

Qui sine accusatoribus in custodiam recepti sunt, quaestio de his habenda non est, nisi si aliquibus suspicionibus urgueantur.

Dig. 48.19.0. De poenis.

Dig. 48.19.1pr.

Ulpianus 8 disp.

Quotiens de delicto quaeritur, placuit non eam poenam subire quem debere, quam condicio eius admittit eo tempore, quo sententia de eo fertur, sed eam, quam sustineret, si eo tempore esset sententiam passus, cum deliquisset.

Dig. 48.19.1.1

Ulpianus 8 disp.

Proinde si servus crimen commiserit, deinde libertatem consecutus dicetur, eam poenam sustinere debet, quam sustineret, si tunc sententiam passus fuisset, cum deliquisset.

Dig. 48.19.1.2

Ulpianus 8 disp.

Per contrarium quoque si in deteriorem condicionem fuerit redactus, eam poenam subire eum oportebit, quam sustineret, si in condicione priore durasset.

Dig. 48.19.1.3

Ulpianus 8 disp.

Generaliter placet, in legibus publicorum iudiciorum vel privatorum criminum qui extra ordinem cognoscunt praefecti vel praesides ut eis, qui poenam pecuniariam egentes eludunt, coercitionem extraordinariam inducant.

Dig. 48.19.2pr.

Ulpianus 48 ad ed.

Rei capitalis damnatum sic accipere debemus, ex qua causa damnato vel mors vel etiam civitatis amissio vel servitus contingit.

Dig. 48.19.2.1

Ulpianus 48 ad ed.

Constat, postquam deportatio in locum aquae et ignis interdictionis successit, non prius amittere quem civitatem, quam princeps deportatum in insulam statuerit: praesidem enim deportare non posse nulla dubitatio est. sed praefectus urbi ius habet deportandi statimque post sententiam praefecti amisisse civitatem videtur.

Dig. 48.19.2.2

Ulpianus 48 ad ed.

Eum accipiemus damnatum, qui non provocavit: ceterum si provocet, nondum damnatus videtur. sed et si ab eo, qui ius damnandi non habuit rei capitalis, quis damnatus sit, eadem causa erit: damnatus enim ille est ubi damnatio tenuit.

Dig. 48.19.3

Ulpianus 14 ad sab.

Praegnatis mulieris consumendae damnatae poena differtur quoad pariat. ego quidem et ne quaestio de ea habeatur, scio observari, quamdiu praegnas est.

Dig. 48.19.4

Marcianus 13 inst.

Relegati sive in insulam deportati debent locis interdictis abstinere. et hoc iure utimur, ut relegatus interdictis locis non excedat: alioquin in tempus quidem relegato perpetuum exilium, in perpetuum relegato insulae relegationis, in insulam relegato deportationis, in insulam deportato poena capitis adrogatur. et haec ita, sive quis non excesserit in exilium intra tempus intra quod debuit, sive etiam alias exilio non obtemperaverit: nam contumacia eius cumulat poenam. et nemo potest commeatum remeatumve dare exuli, nisi imperator, ex aliqua causa.

Dig. 48.19.5pr.

Ulpianus 7 de off. procons.

Absentem in criminibus damnari non debere divus traianus iulio frontoni rescripsit. sed nec de suspicionibus debere aliquem damnari divus traianus adsidio severo rescripsit: satius enim esse impunitum relinqui facinus nocentis quam innocentem damnari. adversus contumaces vero, qui neque denuntiationibus neque edictis praesidum obtemperassent, etiam absentes pronuntiari oportet secundum morem privatorum iudiciorum. potest quis defendere haec non esse contraria. quid igitur est? melius statuetur in absentes pecuniarias quidem poenas vel eas, quae existimationem contingunt, si saepius admoniti per contumaciam desint, statui posse et usque ad relegationem procedi: verum si quid gravius irrogandum fuisset, puta in metallum vel capitis poenam, non esse absentibus irrogandam.

Dig. 48.19.5.1

Ulpianus 7 de off. procons.

In accusatorem autem absentem nonnumquam gravius statuendum, quam turpilliani senatus consulti poena irrogatur, dicendum est.

Dig. 48.19.5.2

Ulpianus 7 de off. procons.

Refert et in maioribus delictis, consulto aliquid admittatur, an casu. et sane in omnibus criminibus distinctio haec poenam aut iustam elicere debet aut temperamentum admittere.

Dig. 48.19.6pr.

Ulpianus 9 de off. procons.

Si quis forte, ne supplicio adficiatur, dicat se habere quod principi referat salutis ipsius causa, an remittendum sit ad eum, videndum est. et sunt plerique praesidum tam timidi, ut etiam post sententiam de eo dictam poenam sustineant nec quicquam audiant: alii omnino non patiuntur quicquam tale allegantes: nonnulli neque semper neque numquam remittunt, sed inquirunt, quid sit, quod allegare principi velint quidque quod pro salute ipsius habeant dicere, post quae aut sustinent poenam aut non sustinent. quod videtur habere mediam rationem. ceterum, ut mea fert opinio, prorsus eos non debuisse, posteaquam semel damnati sunt, audiri, quidquid allegent. quis enim dubitat eludendae poenae causa ad haec eos decurrere magisque esse puniendos, qui tamdiu conticuerunt, quod pro salute principis habere se dicere iactant? nec enim debebant tam magnam rem tam diu reticere.

Dig. 48.19.6.1

Ulpianus 9 de off. procons.

Si quos comitum vel legati sui reos proconsul invenerit, utrum punire eos debeat an successori servare, quaeri potest. sed multa exstant exempla, quae non tantum officialium suorum nec sub se agentium, verum suos quoque servos poena adfecerunt: quod quidem faciendum est, ut exemplo deterriti minus delinquant.

Dig. 48.19.6.2

Ulpianus 9 de off. procons.

Nunc genera poenarum nobis enumeranda sunt, quibus praesides adficere quemque possint. et sunt poenae, quae aut vitam adimant aut servitutem iniungant aut civitatem auferant aut exilium aut coercitionem corporis contineant:

Dig. 48.19.7

Callistratus 6 de cogn.

(veluti fustium, admonitio: flagellorum, castigatio: vinculorum, verberatio)

Dig. 48.19.8pr.

Ulpianus 9 de off. procons.

Aut damnum cum infamia aut dignitatis aliquam depositionem aut alicuius actus prohibitionem.

Dig. 48.19.8.1

Ulpianus 9 de off. procons.

Vita adimitur, ut puta si damnatur aliquis, ut gladio in eum animadvertatur. sed animadverti gladio oportet, non securi vel telo vel fusti vel laqueo vel quo alio modo. proinde nec liberam mortis facultatem concedendi ius praesides habent. multo enim vel veneno necandi. divi tamen fratres rescripserunt permittentes liberam mortis facultatem.

Dig. 48.19.8.2

Ulpianus 9 de off. procons.

Hostes autem, item transfugae ea poena adficiuntur, ut vivi exurantur.

Dig. 48.19.8.3

Ulpianus 9 de off. procons.

Nec ea quidem poena damnari quem oportet, ut verberibus necetur vel virgis interematur, nec tormentis: quamvis plerique dum torquentur deficere solent.

Dig. 48.19.8.4

Ulpianus 9 de off. procons.

Est poena, quae adimat libertatem: huiusmodi ut puta, si quis in metallum vel in opus metalli damnetur. metalla autem multa numero sunt et quaedam quidem provinciae habent, quaedam non habent: sed quae non habent, in eas provincias mittunt, quae metalla habent.

Dig. 48.19.8.5

Ulpianus 9 de off. procons.

Praefecto plane urbi specialiter competere ius in metallum damnandi ex epistula divi severi ad fabium cilonem exprimitur.

Dig. 48.19.8.6

Ulpianus 9 de off. procons.

Inter eos autem, qui in metallum et eos, qui in opus metalli damnantur, differentia in vinculis tantum est, quod qui in metallum damnantur, gravioribus vinculis premuntur, qui in opus metalli, levioribus, quodque refugae ex opere metalli in metallum dantur, ex metallo gravius coercentur.

Dig. 48.19.8.7

Ulpianus 9 de off. procons.

Quisquis autem in opus publicum damnatus refugit, duplicato tempore damnari solet: sed duplicare eum id temporis oportet, quod ei cum superesset fugit, scilicet ne illud duplicetur, quo adprehensus in carcere fuit. et si in decem annos damnatus sit, aut perpetuari ei debet poena aut in opus metalli transmitti. plane si decennio damnatus fuit et initio statim fugit, videndum est, utrum duplicari ei tempora debeant, an vero perpetuari vel transferri in opus metalli: et magis est, ut transferatur aut perpetuetur. generaliter enim dicitur, quotiens decennium excessura est duplicatio, non esse tempore poenam artandam.

Dig. 48.19.8.8

Ulpianus 9 de off. procons.

In ministerium metallicorum feminae in perpetuum vel ad tempus damnari solent. simili modo et in salinas. et si quidem in perpetuum fuerint damnatae, quasi servae poenae constituuntur: si vero ad tempus damnantur, retinent civitatem.

Dig. 48.19.8.9

Ulpianus 9 de off. procons.

Solent praesides in carcere continendos damnare aut ut in vinculis contineantur: sed id eos facere non oportet. nam huiusmodi poenae interdictae sunt: carcer enim ad continendos homines, non ad puniendos haberi debet.

Dig. 48.19.8.10

Ulpianus 9 de off. procons.

In calcariam quoque vel sulpurariam damnari solent: sed hae poenae metalli magis sunt.

Dig. 48.19.8.11

Ulpianus 9 de off. procons.

Quicumque in ludum venatorium fuerint damnati, videndum est, an servi poenae efficiantur: solent enim iuniores hac poena adfici. utrum ergo servi poenae isti efficiantur an retineant libertatem, videndum est. et magis est, ut hi quoque servi efficiantur: hoc enim distant a ceteris, quod instituuntur venatores aut pyrricharii aut aliam quam voluptatem gesticulandi vel aliter se movendi gratia.

Dig. 48.19.8.12

Ulpianus 9 de off. procons.

Servos in metallum vel in opus metalli, item in ludum venatorium dari solere nulla dubitatio est: et si fuerint dati, servi poenae efficiuntur nec ad eum pertinebunt, cuius fuerint antequam damnarentur. denique cum quidam servus in metallum damnatus beneficio principis esset iam poena liberatus, imperator antoninus rectissime rescripsit, quia semel domini esse desierat servus poenae factus, non esse eum in potestatem domini postea reddendum.

Dig. 48.19.8.13

Ulpianus 9 de off. procons.

Sed sive in perpetua vincula fuerit damnatus servus sive in temporalia, eius remanet, cuius fuit, antequam damnaretur.

Dig. 48.19.9pr.

Ulpianus 10 de off. procons.

Moris est advocationibus quoque praesides interdicere. et nonnumquam in perpetuum interdicunt, nonnumquam ad tempus vel annis metiuntur vel etiam tempore quo provinciam regunt.

Dig. 48.19.9.1

Ulpianus 10 de off. procons.

Nec non ita quoque interdici potest alicui, ne certis personis adsit.

Dig. 48.19.9.2

Ulpianus 10 de off. procons.

Potest et ita interdici cui, ne apud tribunal praesidis postulet, et tamen apud legatum vel procuratorem non prohibetur agere.

Dig. 48.19.9.3

Ulpianus 10 de off. procons.

Si tamen apud legatum prohibitus fuerit postulare, credo per consequentias ne quidem apud praesidem relictam illi postulandi facultatem.

Dig. 48.19.9.4

Ulpianus 10 de off. procons.

Nonnumquam non advocationibus cui interdicitur, sed foro. plus est autem foro quam advocationibus interdicere, si quidem huic omnino forensibus negotiis accommodare se non permittatur. solet autem ita vel iuris studiosis interdici vel advocatis vel tabellionibus sive pragmaticis.

Dig. 48.19.9.5

Ulpianus 10 de off. procons.

Solet et ita interdici, ne instrumenta omnino forment neve libellos concipiant vel testationes consignent.

Dig. 48.19.9.6

Ulpianus 10 de off. procons.

Solet et sic, ne eo loci sedeant, quo in publico instrumenta deponuntur, archio ^ archivo^ forte vel grammatophylacio.

Dig. 48.19.9.7

Ulpianus 10 de off. procons.

Solet et sic, ut testamenta ne ordinent vel scribant vel signent.

Dig. 48.19.9.8

Ulpianus 10 de off. procons.

Erit et illa poena, ne quis negotiis publicis interveniat: hic enim privatis quidem interesse poterit, publicis prohibebitur, ut solent quibus sententia praecipitur dymosiwn apexesvai.

Dig. 48.19.9.9

Ulpianus 10 de off. procons.

Sunt autem et aliae poenae: si negotiatione quis abstinere iubeatur vel ad conductionem eorum quae publice locantur accedere, ut ad vectigalia publica.

Dig. 48.19.9.10

Ulpianus 10 de off. procons.

Interdici autem negotiatione plerumque vel negotiationibus solet: sed damnare, ut quis negotietur, an possit videamus. et sunt quidem hae poenae, si quis generaliter tractare velit, inciviles invitum hominem iubere facere quod facere non potest: sed si quis specialiter tractaverit, potest esse iusta causa compellendi cuius ad negotiationem: quod si fuerit, sequenda erit sententia.

Dig. 48.19.9.11

Ulpianus 10 de off. procons.

Istae fere sunt poenae quae iniungi solent. sed enim sciendum est discrimina esse poenarum neque omnes eadem poena adfici posse. nam in primis decuriones in metallum damnari non possunt nec in opus metalli, nec furcae subici vel vivi exuri. et si forte huiusmodi sententia fuerint affecti, liberandi erunt: sed hoc non potest efficere qui sententiam dixit, verum referre ad principem debet, ut ex auctoritate eius poena aut permutetur aut liberaretur.

Dig. 48.19.9.12

Ulpianus 10 de off. procons.

Parentes quoque et liberi decurionum in eadem causa sunt.

Dig. 48.19.9.13

Ulpianus 10 de off. procons.

Liberos non tantum filios accipere debemus, verum omnes liberos.

Dig. 48.19.9.14

Ulpianus 10 de off. procons.

Sed utrum hi soli, qui post decurionatum suscepti sunt, his poenis non adficiantur, an vero omnes omnino liberi, etiam in plebeia familia suscepti, videndum est: et magis puto omnibus prodesse debere.

Dig. 48.19.9.15

Ulpianus 10 de off. procons.

Plane si parens decurio esse desierit, si quidem iam decurione fuerit editus, proderit ei, ne adficiatur: enimvero si posteaquam plebeius factus est tunc suscipiat filium, quasi plebeio editus ita erit plectendus.

Dig. 48.19.9.16

Ulpianus 10 de off. procons.

Statuliberum quasi liberum iam puniendum divus pius salvio marciano rescripsit.

Dig. 48.19.10pr.

Macer 2 de publ. iudic.

In servorum persona ita observatur, ut exemplo humiliorum puniantur. et ex quibus causis liber fustibus caeditur, ex his servus flagellis caedi et domino reddi iubetur: et ex quibus liber fustibus caesus in opus publicum datur, ex his servus, sub poena vinculorum ad eius temporis spatium, flagellis caesus domino reddi iubetur. si sub poena vinculorum domino reddi iussus non recipiatur, venumdari et, si emptorem non invenerit, in opus publicum et quidem perpetuum tradi iubetur.

Dig. 48.19.10.1

Macer 2 de publ. iudic.

Qui ex causa in metallum dati sunt et post hoc deliquerunt, in eos tamquam metallicos constitui debet, quamvis nondum in eum locum perducti fuerint, in quo operari habent: nam statim ut de is sententia dicta est, condicionem suam permutant.

Dig. 48.19.10.2

Macer 2 de publ. iudic.

In personis tam plebeiorum quam decurionum illud constitutum est, ut qui maiori poena adficitur, quam legibus statuta est, infamis non fiat. ergo et si opere temporario quis multatus sit vel tantum fustibus caesus, licet in actione famosa, veluti furti, dicendum erit infamem non esse, quia et solus fustium ictus gravior est quam pecuniaris damnatio.

Dig. 48.19.11pr.

Marcianus 2 de publ. iudic.

Perspiciendum est iudicanti, ne quid aut durius aut remissius constituatur, quam causa deposcit: nec enim aut severitatis aut clementiae gloria affectanda est, sed perpenso iudicio, prout quaeque res expostulat, statuendum est. plane in levioribus causis proniores ad lenitatem iudices esse debent, in gravioribus poenis severitatem legum cum aliquo temperamento benignitatis subsequi.

Dig. 48.19.11.1

Marcianus 2 de publ. iudic.

Furta domestica si viliora sunt, publice vindicanda non sunt, nec admittenda est huiusmodi accusatio, cum servus a domino vel libertus a patrono, in cuius domo moratur, vel mercennarius ab eo, cui operas suas locaverat, offeratur quaestioni: nam domestica furta vocantur, quae servi dominis vel liberti patronis vel mercennarii apud quos degunt subripiunt.

Dig. 48.19.11.2

Marcianus 2 de publ. iudic.

Delinquitur autem aut proposito aut impetu aut casu. proposito delinquunt latrones, qui factionem habent: impetu autem, cum per ebrietatem ad manus aut ad ferrum venitur: casu vero, cum in venando telum in feram missum hominem interfecit.

Dig. 48.19.11.3

Marcianus 2 de publ. iudic.

Capitis poena est bestiis obici vel alias similes poenas pati vel animadverti.

Dig. 48.19.12

Macer 2 de off. praesid.

Quod ad statum damnatorum pertinet, nihil interest, iudicium publicum fuerit nec ne: nam sola sententia, non genus criminis spectatur. itaque hi, in quos animadverti iubetur quive ad bestias dantur, confestim poenae servi fiunt.

Dig. 48.19.13

Ulpianus 1 de appellat.

Hodie licet ei, qui extra ordinem de crimine cognoscit, quam vult sententiam ferre, vel graviorem vel leviorem, ita tamen ut in utroque moderationem non excedat.

Dig. 48.19.14

Macer 2 de re milit.

Quaedam delicta pagano aut nullam aut leviorem poenam irrogant, militi vero graviorem. nam si miles artem ludicram fecerit vel in servitutem se venire passus est, capite puniendum menander scribit.

Dig. 48.19.15

Venonius 1 de off. procons.

Divus hadrianus eos, qui in numero decurionum essent, capite puniri prohibuit, nisi si qui parentem occidissent: verum poena legis corneliae puniendos mandatis plenissime cautum est.

Dig. 48.19.16pr.

saturn. l.S. de poen. paganorum.

Aut facta puniuntur, ut furta caedesque, aut dicta, ut convicia et infidae advocationes, aut scripta, ut falsa et famosi libelli, aut consilia, ut coniurationes et latronum conscientia quosque alios suadendo iuvisse sceleris est instar.

Dig. 48.19.16.1

saturn. l.S. de poen. paganorum.

Sed haec quattuor genera consideranda sunt septem modis: causa persona loco tempore qualitate quantitate eventu.

Dig. 48.19.16.2

saturn. l.S. de poen. paganorum.

Causa: ut in verberibus, quae impunita sunt a magistro allata vel parente, quoniam emendationis, non iniuriae gratia videntur adhiberi: puniuntur, cum quis per iram ab extraneo pulsatus est.

Dig. 48.19.16.3

saturn. l.S. de poen. paganorum.

Persona dupliciter spectatur, eius qui fecit et eius qui passus est: aliter enim puniuntur ex isdem facinoribus servi quam liberi, et aliter, qui quid in dominum parentemve ausus est quam qui in extraneum, in magistratum vel in privatum. in eius rei consideratione aetatis quoque ratio habeatur.

Dig. 48.19.16.4

saturn. l.S. de poen. paganorum.

Locus facit, ut idem vel furtum vel sacrilegium sit et capite luendum vel minore supplicio.

Dig. 48.19.16.5

saturn. l.S. de poen. paganorum.

Tempus discernit emansorem a fugitivo et effractorem vel furem diurnum a nocturno.

Dig. 48.19.16.6

saturn. l.S. de poen. paganorum.

Qualitate, cum factum vel atrocius vel levius est: ut furta manifesta a nec manifestis discerni solent, rixae a grassaturis, expilationes a furtis, petulantia a violentia. qua de re maximus apud graecos orator demosthenes sic ait: ou gar hy plygy parestyse tyn hubrin, all' hy atimia: oude to tuptesvai tois eleuverois esti deinon, kaiper on deinon, alla to eph' hubrei. polla gar an poiyseien ho tuptwn, w andres avynaioi, hwn ho pavwn enia oud' an apaggeilai dunaito heterw, tw sxymati, tw blemmati, ty fwny, hotan hws hubrizwn, hotan hws exvros huparxwn, hotan kondulois, hotan epi korrys. tauta kinei, tauta ecistysin anvrwpous ahutwn ayveis ontas tou propylakizesvai.

Dig. 48.19.16.7

saturn. l.S. de poen. paganorum.

Quantitas discernit furem ab abigeo: nam qui unum suem subripuerit, ut fur coercebitur, qui gregem, ut abigeus.

Dig. 48.19.16.8

saturn. l.S. de poen. paganorum.

Eventus spectetur, ut a clementissimo quoquo facta: quamquam lex non minus eum, qui occidendi hominis causa cum telo fuerit, quam eum qui occiderit puniat. et ideo apud graecos exilio voluntario fortuiti casus luebantur, ut apud praecipuum poetarum scriptum est: eute me tutvon eonta menoitios ec opoentos ygagen humeterond' androktasiys hupo lugrys, ymati tw hote paida katektanon amfidamantos nypios, ouk evelwn, amf' astragaloisi xolwveis.

Dig. 48.19.16.9

saturn. l.S. de poen. paganorum.

Evenit, ut eadem scelera in quibusdam provinciis gravius plectantur, ut in africa messium incensores, in mysia vitium, ubi metalla sunt adulteratores monetae.

Dig. 48.19.16.10

saturn. l.S. de poen. paganorum.

Nonnumquam evenit, ut aliquorum maleficiorum supplicia exacerbentur, quotiens nimium multis personis grassantibus exemplo opus sit.

Dig. 48.19.17pr.

Marcianus 1 inst.

Sunt quidam servi poenae, ut sunt in metallum dati et in opus metalli: et si quid eis testamento datum fuerit, pro non scriptis est, quasi non caesaris servo datum, sed poenae.

Dig. 48.19.17.1

Marcianus 1 inst.

Item quidam apolides sunt, hoc est sine civitate: ut sunt in opus publicum perpetuo dati et in insulam deportati, ut ea quidem, quae iuris civilis sunt, non habeant, quae vero iuris gentium sunt, habeant.

Dig. 48.19.18

Ulpianus 3 ad ed.

Cogitationis poenam nemo patitur.

Dig. 48.19.19

Ulpianus 57 ad ed.

Si non defendantur servi a dominis, non utique statim ad supplicium deducuntur, sed permittetur eis defendi vel ab alio, et qui cognoscit, debebit de innocentia eorum quaerere.

Dig. 48.19.20

Paulus 18 ad plaut.

Si poena alicui irrogatur, receptum est commenticio iure, ne ad heredes transeat. cuius rei illa ratio videtur, quod poena constituitur in emendationem hominum: quae mortuo eo, in quem constitui videtur, desinit.

Dig. 48.19.21

Celsus 37 Dig.

Ultimum supplicium esse mortem solam interpretamur.

Dig. 48.19.22

Modestinus 1 diff.

In metallum damnati si valetudine aut aetatis infirmitate inutiles operi faciundo deprehendantur, ex rescripto divi pii a praeside dimitti poterunt, qui aestimabit de his dimittendis, si modo vel cognatos vel adfines habeant et non minus decem annis poenae suae functi fuerint.

Dig. 48.19.23

Modestinus 8 reg.

Sine praefinito tempore in metallum dato imperitia dantis decennii tempora praefinita videntur.

Dig. 48.19.24

Modestinus 11 pand.

Eorum, qui relegati vel deportati sunt ex causa maiestatis, statuas detrahendas scire debemus.

Dig. 48.19.25pr.

Modestinus 12 pand.

Si diutino tempore aliquis in reatu fuerit, aliquatenus poena eius sublevanda erit: sic etiam constitutum est non eo modo puniendos eos, qui longo tempore in reatu agunt, quam eos qui in recenti sententiam excipiunt.

Dig. 48.19.25.1

Modestinus 12 pand.

Non potest quis sic damnari, ut de saxo praecipitetur.

Dig. 48.19.26

Callistratus 1 de cogn.

Crimen vel poena paterna nullam maculam filio infligere potest: namque unusquisque ex suo admisso sorti subicitur nec alieni criminis successor constituitur, idque divi fratres hierapolitanis rescripserunt.

Dig. 48.19.27pr.

Callistratus 5 de cogn.

Divi fratres arruntio siloni rescripserunt non solere praesides provinciarum ea quae pronuntiaverunt ipsos rescindere. vetinae quoque italicensi rescripserunt suam mutare sententiam neminem posse idque insolitum esse fieri. si tamen de se quis mentitus fuerit vel, cum non haberet probationum instrumenta, quae postea reppererit, poena adflictus sit, nonnulla exstant principalia rescripta, quibus vel poena eorum minuta est vel in integrum restitutio concessa. sed id dumtaxat a principibus fieri potest.

Dig. 48.19.27.1

Callistratus 5 de cogn.

De decurionibus et principalibus civitatium, qui capitale admiserunt, mandatis cavetur, ut, si quis id admisisse videatur, propter quod relegandus extra provinciam in insulam sit, imperatori scribatur adiecta sententia a praeside.

Dig. 48.19.27.2

Callistratus 5 de cogn.

Alio quoque capite mandatorum in haec verba cavetur: " si qui ex principalibus alicuius civitatis latrocinium fecerint aliudve quod facinus, ut capitalem poenam meruisse videantur, commiserint, vinctos eos custodies et mihi scribes et adicies, quid quisque commiserit " .

Dig. 48.19.28pr.

Callistratus 6 de cogn.

Capitalium poenarum fere isti gradus sunt. summum supplicium esse videtur ad furcam damnatio. item vivi crematio: quod quamquam summi supplicii appellatione merito contineretur, tamen eo, quod postea id genus poenae adinventum est, posterius primo visum est. item capitis amputatio. deinde proxima morti poena metalli coercitio. post deinde in insulam deportatio.

Dig. 48.19.28.1

Callistratus 6 de cogn.

Ceterae poenae ad existimationem, non ad capitis periculum pertinent, veluti relegatio ad tempus, vel in perpetuum, vel in insulam, vel cum in opus quis publicum datur, vel cum fustium ictu subicitur.

Dig. 48.19.28.2

Callistratus 6 de cogn.

Non omnes fustibus caedi solent, sed hi dumtaxat qui liberi sunt et quidem tenuiores homines: honestiores vero fustibus non subiciuntur, idque principalibus rescriptis specialiter exprimitur.

Dig. 48.19.28.3

Callistratus 6 de cogn.

Solent quidam, qui volgo se iuvenes appellant, in quibusdam civitatibus turbulentis se adclamationibus popularium accommodare. qui si amplius nihil admiserint nec ante sint a praeside admoniti, fustibus caesi dimittuntur aut etiam spectaculis eis interdicitur. quod si ita correcti in eisdem deprehendantur, exilio puniendi sunt, nonnumquam capite plectendi, scilicet cum saepius seditiose et turbulente se gesserint et aliquotiens adprehensi tractati clementius in eadem temeritate propositi perseveraverint.

Dig. 48.19.28.4

Callistratus 6 de cogn.

Servi caesi solent dominis reddi.

Dig. 48.19.28.5

Callistratus 6 de cogn.

Et ut generaliter dixerim, omnes, qui fustibus caedi prohibentur, eandem habere honoris reverentiam debent, quam decuriones habent. est enim inconstans dicere eum, quem principales constitutiones fustibus subici prohibuerunt, in metallum dari posse.

Dig. 48.19.28.6

Callistratus 6 de cogn.

Divus hadrianus in haec verba rescripsit: " in opus metalli ad tempus nemo damnari debet. sed qui ad tempus damnatus est, etiamsi faciet metallicum opus, non in metallum damnatus esse intellegi debet: huius enim libertas manet, quamdiu etiam hi, qui in perpetuum opus damnantur". proinde et mulieres hoc modo damnatae liberos pariunt.

Dig. 48.19.28.7

Callistratus 6 de cogn.

Ad statuas confugere vel imagines principum in iniuriam alterius prohibitum est. cum enim leges omnibus hominibus aequaliter securitatem tribuant, merito visum est in iniuriam potius alterius quam sui defensionis gratia ad statuas vel imagines principum confugere: nisi si quis ex vinculis vel custodia detentus a potentioribus ad huiusmodi praesidium confugerit: his enim venia tribuenda est. ne autem ad statuas vel imagines quis confugiat, senatus censuit: eumque, qui imaginem caesaris in invidiam alterius praetulisset, in vincula publica coerceri divus pius rescripsit.

Dig. 48.19.28.8

Callistratus 6 de cogn.

Omnia admissa in patronum patronive filium patrem propinquum maritum uxorem ceterasque necessitudines gravius vindicanda sunt quam in extraneos.

Dig. 48.19.28.9

Callistratus 6 de cogn.

Venenarii capite puniendi sunt aut, si dignitatis respectum agi oportuerit, deportandi.

Dig. 48.19.28.10

Callistratus 6 de cogn.

Grassatores, qui praedae causa id faciunt, proximi latronibus habentur. et si cum ferro adgredi et spoliare instituerunt, capite puniuntur, utique si saepius atque in itineribus hoc admiserunt: ceteri in metallum dantur vel in insulas relegantur.

Dig. 48.19.28.11

Callistratus 6 de cogn.

Igni cremantur plerumque servi, qui saluti dominorum suorum insidiaverint, nonnumquam etiam liberi plebeii et humiles personae.

Dig. 48.19.28.12

Callistratus 6 de cogn.

Incendiarii capite puniuntur, qui ob inimicitias vel praedae causa incenderint intra oppidum: et plerumque vivi exuruntur. qui vero casam aut villam, aliquo lenius. nam fortuita incendia, si, cum vitari possent, per neglegentiam eorum, apud quos orta sunt, damno vicinis fuerunt, civiliter exercentur (ut qui iactura adfectus est, damni disceptet) vel modice vindicaretur.

Dig. 48.19.28.13

Callistratus 6 de cogn.

In exulibus gradus poenarum constituti edicto divi hadriani, ut qui ad tempus relegatus est, si redeat in insulam relegetur, qui relegatus in insulam excesserit, in insulam deportetur, qui deportatus evaserit, capite puniatur.

Dig. 48.19.28.14

Callistratus 6 de cogn.

Ita et in custodiis gradum servandum esse idem princeps rescripsit, id est ut, qui in tempus damnati erant, in perpetuum damnarentur, qui in perpetuum damnati erant, in metallum damnarentur, qui in metallum damnati id admiserint, summo supplicio adficerentur.

Dig. 48.19.28.15

Callistratus 6 de cogn.

Famosos latrones in his locis, ubi grassati sunt, furca figendos compluribus placuit, ut et conspectu deterreantur alii ab isdem facinoribus et solacio sit cognatis et adfinibus interemptorum eodem loco poena reddita, in quo latrones homicidia fecissent: nonnulli etiam ad bestias hos damnaverunt.

Dig. 48.19.28.16

Callistratus 6 de cogn.

Maiores nostri in omni supplicio severius servos quam liberos, famosos quam integrae famae homines punierunt.

Dig. 48.19.29

Gaius 1 ad l. iul. et pap.

Qui ultimo supplicio damnantur, statim et civitatem et libertatem perdunt. itaque praeoccupat hic casus mortem et nonnumquam longum tempus occupat: quod accidit in personis eorum, qui ad bestias damnantur. saepe etiam ideo servari solent post damnationem, ut ex his in alios quaestio habeatur.

Dig. 48.19.30

Modestinus 1 de poen.

Si quis aliquid fecerit, quo leves hominum animi superstitione numinis terrentur, divus marcus huiusmodi homines in insulam relegari rescripsit.

Dig. 48.19.31pr.

Modestinus 3 de poen.

Ad bestias damnatos favore populi praeses dimittere non debet: sed si eius roboris vel artificii sint, ut digne populo romano exhiberi possint, principem consulere debet.

Dig. 48.19.31.1

Modestinus 3 de poen.

Ex provincia autem in provinciam transduci damnatos sine permissu principis non licere divus severus et antoninus rescripserunt.

Dig. 48.19.32

Ulpianus 6 ad ed.

Si praeses vel iudex ita interlocutus sit " vim fecisti", si quidem ex interdicto, non erit notatus nec poena legis iuliae sequetur: si vero ex crimine, aliud est. quid si non distinxerit praeses, utrum iulia publicorum an iulia privatorum? tunc ex crimine erit aestimandum. sed si utriusque legis crimina obiecta sunt, mitior lex, id est privatorum erit sequenda.

Dig. 48.19.33

Papinianus 2 quaest.

Fratres imperatores rescripserunt servos in temporaria vincula damnatos libertatem et hereditatem sive legatum, postquam tempus expleverint, consequi, quia temporaria coercitio, quae descendit ex sententia, poenae est abolitio. si autem beneficium libertatis in vinculis eos inveniat, ratio iuris et verba constitutionis libertati refragantur. plane si testamento libertas data sit et eo tempore, quo aditur hereditas, tempus vinculorum solutum sit, recte manumissus intellegetur, non secus ac si pignori datum servum debitor manumisisset eiusque post liberatum pignus adita fuisset hereditas.

Dig. 48.19.34pr.

Papinianus 16 resp.

Servus in opus publicum perpetuum ac multo magis temporarium non datur. cum igitur per errorem in opus temporarium fuisset datus, expleto tempore domino servum esse reddendum respondi.

Dig. 48.19.34.1

Papinianus 16 resp.

Eos quoque poena delatoris ex sententia senatus consulti teneri respondi, qui per suppositam personam delatori causam dederunt.

Dig. 48.19.35

Callistratus 1 quaest.

Mandatis principalibus, quae praesidibus dantur, cavetur, ne quis perpetuis vinculis damnetur: idque etiam divus hadrianus rescripsit.

Dig. 48.19.36

Hermogenianus 1 iuris epit.

In metallum, sed et in ministerium metallicorum damnati servi efficiuntur, sed poenae.

Dig. 48.19.37

Paulus 1 sent.

In dardanarios propter falsum mensurarum modum ob utilitatem popularis annonae pro modo admissi extra ordinem vindicari placuit.

Dig. 48.19.38pr.

Paulus 5 sent.

Si quis aliquid ex metallo principis vel ex moneta sacra furatus sit, poena metalli et exilii punitur.

Dig. 48.19.38.1

Paulus 5 sent.

Transfugae ad hostes vel consiliorum nostrorum renuntiatores aut vivi exuruntur aut furcae suspenduntur.

Dig. 48.19.38.2

Paulus 5 sent.

Actores seditionis et tumultus populo concitato pro qualitate dignitatis aut in furcam tolluntur aut bestiis obiciuntur aut in insulam deportantur.

Dig. 48.19.38.3

Paulus 5 sent.

Qui nondum viripotentes virgines corrumpunt, humiliores in metallum damnantur, honestiores in insulam relegantur aut in exilium mittuntur.

Dig. 48.19.38.4

Paulus 5 sent.

Qui se suis nummis redemptum non probaverit, libertatem petere non potest: amplius eidem domino sub poena vinculorum redditur vel, si ipse dominus malit, in metallum damnatur.

Dig. 48.19.38.5

Paulus 5 sent.

Qui abortionis aut amatorium poculum dant, etsi dolo non faciant, tamen quia mali exempli res est, humiliores in metallum, honestiores in insulam amissa parte bonorum relegantur. quod si eo mulier aut homo perierit, summo supplicio adficiuntur.

Dig. 48.19.38.6

Paulus 5 sent.

Testamentum, quod nullo iure valet, impune supprimitur: nihil est enim, quod ex eo aut petatur aut consistere possit.

Dig. 48.19.38.7

Paulus 5 sent.

Qui vivi testamentum aperuerit recitaverit resignaverit, poena corneliae tenetur: et plerumque humiliores aut in metallum damnantur aut honestiores in insulam deportantur.

Dig. 48.19.38.8

Paulus 5 sent.

Si quis instrumentum litis suae a procuratore adversario proditum esse convicerit, procurator si humilior sit, in metallum damnatur, si honestior, adempta parte bonorum dimidia in perpetuum relegatur.

Dig. 48.19.38.9

Paulus 5 sent.

Instrumenta penes se deposita quicumque alteri altero absente reddiderit vel adversario prodiderit: prout personae condicio est, aut in metallum damnatur aut in insulam deportatur.

Dig. 48.19.38.10

Paulus 5 sent.

Iudices pedanei si pecunia corrupti dicantur, plerumque a praeside aut curia summoventur aut in exilium mittuntur aut ad tempus relegantur.

Dig. 48.19.38.11

Paulus 5 sent.

Miles, qui ex carcere dato gladio erupit, poena capitis punitur. eadem poena tenetur et qui cum eo, quem custodiebat, deseruit.

Dig. 48.19.38.12

Paulus 5 sent.

Miles, qui sibi manus intulit nec factum peregit, nisi impatientia doloris aut morbi luctusve alicuius vel alia causa fecerit, capite puniendus est: alias cum ignominia mittendus est.

Dig. 48.19.39

Tryphonus 10 disp.

Cicero in oratione pro cluentio habito scripsit milesiam quandam mulierem, cum esset in asia, quod ab heredibus secundis accepta pecunia partum sibi medicamentis ipsa abegisset, rei capitalis esse damnatam. sed et si qua visceribus suis post divortium, quod praegnas fuit, vim intulerit, ne iam inimico marito filium procrearet, ut temporali exilio coerceatur, ab optimis imperatoribus nostris rescriptum est.

Dig. 48.19.40

Paulus 3 decr.

Metrodorum, cum hostem fugientem sciens susceperit, in insulam deportari, philocteten, quod occultari eum non ignorans diu dissimulaverit, in insulam relegari placet.

Dig. 48.19.41

Papinianus 2 def.

Sanctio legum, quae novissime certam poenam irrogat his, qui praeceptis legis non obtemperaverint, ad eas species pertinere non videtur, quibus ipsa lege poena specialiter addita est. nec ambigitur in cetero omni iure speciem generi derogare, nec sane verisimile est delictum unum eadem lege variis aestimationibus coerceri.

Dig. 48.19.42

Hermogenianus 1 epit.

Interpretatione legum poenae molliendae sunt potius quam asperandae.

Dig. 48.19.43pr.

Paulus 1 resp.

Imperator antoninus aurelio atiliano rescripsit: " praeses ultra administrationis suae tempus interdicere alicui arte sua uti non potest".

Dig. 48.19.43.1

Paulus 1 resp.

Idem respondit eum, qui suo admisso decurionum honorem amisit, non posse in poenis evitandis decurionis filii honorem vindicare.

Dig. 48.20.0. De bonis damnatorum.

Dig. 48.20.1pr.

Callistratus 1 d. i. fisci et pop.

Damnatione bona publicantur, cum aut vita adimitur aut civitas, aut servilis condicio irrogatur.

Dig. 48.20.1.1

Callistratus 1 d. i. fisci et pop.

Etiam si qui ante concepti et post damnationem nati sunt, portiones ex bonis patrum damnatorum accipiunt.

Dig. 48.20.1.2

Callistratus 1 d. i. fisci et pop.

Liberis autem ita demum portio tribuitur, si iustis nuptiis nati sint.

Dig. 48.20.1.3

Callistratus 1 d. i. fisci et pop.

Liberis eius, cui pars dimidia dumtaxat bonorum ablata est, partes non dantur: idque et divi fratres rescripserunt.

Dig. 48.20.2

Callistratus 6 de cogn.

Non ut quis in carcerem ductus est, spoliari eum oportet, sed post condemnationem: idque divus hadrianus rescripsit.

Dig. 48.20.3

Ulpianus 33 ad ed.

Quinque legibus damnatae mulieri dos publicatur: maiestatis, vis publicae, parricidii, venefici, de sicariis:

Dig. 48.20.4

Papinianus 2 de adult.

Et omnes omnino maritus salvas actiones contra fiscum habet.

Dig. 48.20.5pr.

Ulpianus 33 ad ed.

Sed si alia lege capitis punita sit, quae lex dotem non publicat, quia prius serva poenae efficitur, verum est dotem mariti lucro cedere, quasi mortua sit.

Dig. 48.20.5.1

Ulpianus 33 ad ed.

Quod si deportata sit filia familias, Marcellus ait, quae sententia et vera est, non utique deportatione dissolvi matrimonium: nam cum libera mulier remaneat, nihil prohibet et virum mariti affectionem et mulierem uxoris animum retinere. si igitur eo animo mulier fuerit, ut discedere a marito velit, ait Marcellus tunc patrem de dote acturum. sed si mater familias sit et interim constante matrimonio fuerit deportata, dotem penes maritum remanere: postea vero dissoluto matrimonio posse eam agere, quasi humanitatis intuitu hodie nata actione.

Dig. 48.20.6

Ulpianus 10 de off. procons.

Divus hadrianus aquilio braduae ita rescripsit: " pannicularíae causa quemadmodum intellegi debeat, ex ipso nomine apparet. non enim bona damnatorum pannicularia significari quis probe dixerit, nec, si zonam circa se habuerit, protinus aliquis sibi vindicare debebit: sed vestem qua is fuerit indutus, aut nummulos in ventralem, quos victus sui causa in promptu habuerit, aut leves anulos, id est quae rem non excedit aureorum quinque. alioquin si quis damnatus digito habuerit aut sardonychica aut aliam gemmam magni pretii vel si quod chirographum magnae pecuniae in sinu habuerit, nullo iure illud in pannicularia ratione retinebitur". pannicularia sunt ea, quae in custodiam receptus secum attulit: spolia, quibus indutus est, cum quis ad supplicium ducitur, ut et ipsa appellatio ostendit. ita neque speculatores ultro sibi vindicent neque optiones ea desiderent, quibus spoliatur, quo momento quis punitus est, hanc rationem non compendio suo debent praesides vertere, sed nec pati optiones sive commentarienses ea pecunia abuti, sed debent ad ea servari, quae iure praesidum solent erogari, ut puta chartiaticum quibusdam officialibus inde subscribere, vel si qui fortiter fecerint milites, inde eis donare: barbaros etiam inde munerari venientes ad se vel legationis vel alterius rei causa. plerumque etiam inde conrasas pecunias praesides ad fiscum transmiserunt: quod perquam nimiae diligentiae est, cum sufficiat, si quis non in usus proprios verterit, sed ad utilitatem officii patiatur deservire.

Dig. 48.20.7pr.

Paulus l.S. de port., q. lib. dam.

Cum ratio naturalis quasi lex quaedam tacita liberis parentium hereditatem addiceret, velut ad debitam successionem eos vocando (propter quod et in iure civili suorum heredum nomen eis indictum est ac ne iudicio quidem parentis nisi meritis de causis summoveri ab ea successione possunt): aequissimum existimatum est eo quoque casu, quo propter poenam parentis aufert bona damnatio, rationem haberi liberorum, ne alieno admisso graviorem poenam luerent, quos nulla contingeret culpa, interdum in summam egestatem devoluti. quod cum aliqua moderatione definiri placuit, ut qui ad universitatem venturi erant iure successionis, ex ea portiones concessas haberent.

Dig. 48.20.7.1

Paulus l.S. de port., q. lib. dam.

Si in libertinum animadversum erit, patrono eius id, quod in bonis illius habiturus esset, si is in quem animadversum est sua morte decessisset, eripiendum non erit: reliqua pars bonorum, quae ad manumissorem non pertinebit, fisco erit vindicanda.

Dig. 48.20.7.2

Paulus l.S. de port., q. lib. dam.

Ex bonis damnatorum portiones adoptivis liberis, si non fraudis causa facta est adoptio, non minus quam naturalibus concedi aequum est. fraudis autem causa adoptio facta videtur, etiamsi non in reatu, sed desperatione rerum per conscientiam, metu imminentis accusationis quis adoptet in hoc, ut ex bonis, quae se amissurum cogitat, portio detrahatur.

Dig. 48.20.7.3

Paulus l.S. de port., q. lib. dam.

Si plures filios damnatus habeat, feruntur exempla, per quae pluribus liberis omnia bona damnati concessa sunt. sed et divus hadrianus in hac sententia rescripsit: " favorabilem apud me causam liberorum albini filiorum numerus facit, cum ampliari imperium hominum adiectione potius quam pecuniarum copia malim: ideoque illis paterna sua concedi volo, quae manifestabunt tot possessores, etiamsi acceperint universa".

Dig. 48.20.7.4

Paulus l.S. de port., q. lib. dam.

Praeterea ex his, quae per flagitium damnatus adquisiit, portiones liberorum non augentur: veluti si cognatum suum interemi curaverit et eius hereditatem adiit vel bonorum possessionem accepit: nam ita divus pius rescripsit. cui consequenter illud idem princeps constituit, cum filia familias veneno necasse convinceretur eum, a quo heres instituta erat: quamvis iussu patris, cuius in potestate erat, hereditatem eam adiisset, tamen fisco eam vindicandam esse.

Dig. 48.20.7.5

Paulus l.S. de port., q. lib. dam.

Quae post condemnationem adquisiit is cuius bona publicata sunt, si relegatus est, ad heredes scriptos ab eo vel ab intestato venientes pertinent: nam in insulam relegatus testamenti factionem habet ut reliqua quoque iura. quod si deportatus est, quoniam, quia civitatem amittit, heredem habere non potest, etiam postea adquisita fiscus capit.

Dig. 48.20.8pr.

Macer libro de publ. iudic.

Liberis quoque patronorum integrum ius patronatus servatur in bonis paterni liberti publicatis. si eius liberti extat patroni filius, fisco locus non est in parte filii patroni.

Dig. 48.20.8.1

Macer libro de publ. iudic.

Si patroni filius excluditur propter liberos quos habet libertus, satius est dicere fisco locum non esse, quoniam patroni filium excludunt liberi liberti, ipse autem fiscum repellit.

Dig. 48.20.8.2

Macer libro de publ. iudic.

Patroni filius etiamsi bonorum possessionem non petat, haud dubie excludit fiscum in parte sibi debita ex bonis liberti paterni.

Dig. 48.20.8.3

Macer libro de publ. iudic.

Relegati bona per sententiam specialem publicari poterunt, nec tamen iura adversus libertos ei auferuntur nisi principis iussu.

Dig. 48.20.8.4

Macer libro de publ. iudic.

Si condemnatur pater, qui dotem pro filia dedit, fisco in eam dotem ius non est, etiamsi postea in matrimonio filia moriatur,

Dig. 48.20.9

Callistratus libro...

. . . . nisi probabitur patrem metu condemnationis liberis prospexisse.

Dig. 48.20.10pr.

Macer libro de publ. iudic.

Etiam si pater, cum pro filia dotem promisisset, condemnatur, vir eam ex bonis eius a fisco petit.

Dig. 48.20.10.1

Macer libro de publ. iudic.

Si post solutum matrimonium filiae pater condemnatur, si quidem postquam filia ei consensit de dote repetenda, fiscus a marito eam repetit: si antequam consentiret ei, condemnatus est, ipsa repetitionem habet.

Dig. 48.20.11pr.

Marcianus libro de publ. iudic.

Si quis damnatus appellaverit et pendente appellatione decesserit, bona eius non publicantur: nam ita posterius quoque testamentum eius ratum est. idem est et si appellatio non recepta est.

Dig. 48.20.11.1

Marcianus libro de publ. iudic.

Qui reus est non maiestatis, bona administrare potest et pecuniam credere debitamque sibi recipere, si bona fide debitores ei solvunt: in fraudem autem quae alienavit, post condemnationem revocantur.

Dig. 48.21.0. De bonis eorum, qui ante sententiam vel mortem sibi consciverunt vel accusatorem corruperunt.

Dig. 48.21.1

Ulpianus 8 disp.

In capitalibus criminibus a principibus decretum est non nocere ei qui adversarium corrupit, sed in his demum, quae poenam mortis continent: nam ignoscendum censuerunt ei, qui sanguinem suum qualiterqualiter redemptum voluit.

Dig. 48.21.2pr.

Macer 2 publ.

" imperatores severus et antoninus iulio iuliano. eos, qui a latronibus nominati corruptis accusatoribus diem suum obierint, ut confessos de crimine non relinquere defensionem heredibus rationis est".

Dig. 48.21.2.1

Macer 2 publ.

Si is, de cuius poena imperatori scriptum est (veluti quod decurio fuerit vel quod in insulam deportari debuerit), antequam rescriberetur decesserit: potest quaeri, num ante sententiam decessisse videatur. argumento est senatus consultum, quod factum est de his, qui romam transmissi ante sententiam decessissent. cuius verba haec sunt: " cum damnatus nemo videri possit in hunc annum, antequam de eo forte iudicium romae redditum et pronuntiatum esset: neque cuiusquam mortui bona, antequam de eo romae pronuntiatum sit, publicata sunt, eaque bona heredes possidere debent".

Dig. 48.21.3pr.

Marcianus l.S. de delator.

Qui rei postulati vel qui in scelere deprehensi metu criminis imminentis mortem sibi consciverunt, heredem non habent. papinianus tamen libro sexto decimo digestorum responsorum ita scripsit, ut qui rei criminis non postulati manus sibi intulerint, bona eorum fisco non vindicentur: non enim facti sceleritatem esse obnoxiam, sed conscientiae metum in reo velut confesso teneri placuit. ergo aut postulati esse debent aut in scelere deprehensi, ut, si se interfecerint, bona eorum confiscentur.

Dig. 48.21.3.1

Marcianus l.S. de delator.

Ut autem divus pius rescripsit, ita demum bona eius, qui in reatu mortem sibi conscivit, fisco vindicanda sunt, si eius criminis reus fuit, ut, si damnaretur, morte aut deportatione adficiendus esset.

Dig. 48.21.3.2

Marcianus l.S. de delator.

Idem rescripsit eum, qui modici furti reus fuisset, licet vitam suspendio finierit, non videri in eadem causa esse, ut bona heredibus adimenda essent, sicuti neque ipsi adimerentur, si compertum in eo furtum fuisset.

Dig. 48.21.3.3

Marcianus l.S. de delator.

Ergo ita demum dicendum est bona eius, qui manus sibi intulit, fisco vindicari, si eo crimine nexus fuit, ut, si convinceretur, bonis careat.

Dig. 48.21.3.4

Marcianus l.S. de delator.

Si quis autem taedio vitae vel impatientia doloris alicuius vel alio modo vitam finierit, successorem habere divus antoninus rescripsit.

Dig. 48.21.3.5

Marcianus l.S. de delator.

Videri autem et patrem, qui sibi manus intulisset, quod diceretur filium suum occidisse, magis dolore filii amissi mortem sibi irrogasse et ideo bona eius non esse publicanda divus hadrianus rescripsit.

Dig. 48.21.3.6

Marcianus l.S. de delator.

Sic autem hoc distinguitur, interesse qua ex causa quis sibi mortem conscivit: sicuti cum quaeritur, an is, qui sibi manus intulit et non perpetravit, debeat puniri, quasi de se sententiam tulit. nam omnimodo puniendus est, nisi taedio vitae vel impatientia alicuius doloris coactus est hoc facere. et merito, si sine causa sibi manus intulit, puniendus est: qui enim sibi non pepercit, multo minus alii parcet.

Dig. 48.21.3.7

Marcianus l.S. de delator.

Si qui autem sub incerto causae eventu in vinculis vel sub fideiussoribus decesserint, horum bona non esse confiscanda mandatis cavetur.

Dig. 48.21.3.8

Marcianus l.S. de delator.

De illo videamus, si quis conscita morte nulla iusta causa praecedente in reatu decesserit, an, si parati fuerint heredes causam suscipere et innocentem defunctum ostendere, audiendi sint nec prius bona in fiscum cogenda sint, quam si de crimine fuerit probatum: an vero omnimodo publicanda sunt. sed divus pius modesto taurino rescripsit, si parati sint heredes defensiones suscipere, non esse bona publicanda, nisi de crimine fuerit probatum.

Dig. 48.22.0. De interdictis et relegatis et deportatis.

Dig. 48.22.1

Pomponius 4 ad sab.

Caput ex rescripto divi traiani ad didium secundum: " scio relegatorum bona avaritia superiorum temporum fisco vindicata. sed aliud clementiae meae convenit, qui inter cetera, quibus innocentiam rationum mearum temporum, hoc quoque remisi exemplum".

Dig. 48.22.2

Marcianus 13 inst.

Manumittere deportatum non posse divus pius rescripsit.

Dig. 48.22.3

Alfenus 1 epit.

Eum, qui civitatem amitteret, nihil aliud iuris adimere liberis, nisi quod ab ipso perventurum esset ad eos, si intestatus in civitate moreretur: hoc est hereditatem eius et libertos et si quid aliud in hoc genere repperiri potest. quae vero non a patre, sed a genere, a civitate, a rerum natura tribuerentur, ea manere eis incolumia. itaque et fratres fratribus fore legitimos heredes et adgnatorum tutelas et hereditates habituros: non enim haec patrem, sed maiores eius eis dedisse.

Dig. 48.22.4

Marcianus 2 inst.

Relegati in insulam in potestate sua liberos retinent, quia et alia omnia iura sua retinent: tantum enim insula eis egredi non licet. et bona quoque sua omnia retinent praeter ea, si qua eis adempta sunt: nam eorum, qui in perpetuum exilium dati sunt vel relegati, potest quis sententia partem bonorum adimere.

Dig. 48.22.5

Marcianus 1 reg.

Exilium triplex est: aut certorum locorum interdictio, aut lata fuga, ut omnium locorum interdicatur praeter certum locum, aut insulae vinculum, id est relegatio in insulam.

Dig. 48.22.6pr.

Ulpianus 9 de off. procons.

Inter poenas est etiam insulae deportatio, quae poena adimit civitatem romanam.

Dig. 48.22.6.1

Ulpianus 9 de off. procons.

Deportandi autem in insulam ius praesidibus provinciae non est datum, licet praefecto urbi detur: hoc enim epistula divi severi ad fabium cilonem praefectum urbi expressum est. praesides itaque provinciae quotiens aliquem in insulam deportandum putent, hoc ipsum adnotare debeant, nomen vero eius scribendum principi, ut in insulam deportetur: sic deinde principi scribere missa plena opinione, ut princeps aestimet, an sequenda sit eius sententia deportarique in insulam debeat. medio ^ modo^ autem tempore, dum scribitur, iubere eum debet in carcere esse.

Dig. 48.22.6.2

Ulpianus 9 de off. procons.

Decuriones civitatium propter capitalia crimina deportandos vel relegandos divi fratres rescripserunt. denique priscum in homicidio et incendio nominatim ante quaestionem confessum in insulam deportari iusserunt.

Dig. 48.22.7pr.

Ulpianus 10 de off. procons.

Relegatorum duo genera: sunt quidam, qui in insulam relegantur, sunt, qui simpliciter, ut provinciis eis interdicatur, non etiam insula adsignetur.

Dig. 48.22.7.1

Ulpianus 10 de off. procons.

In insulam relegare praesides provinciae possunt, sic tamen, ut, si quidem insulam sub se habeant (id est ad eius provinciae formam pertinentem, quam administrant), et eam specialiter insulam adsignare possint inque eam relegare, sin vero non habeant, pronuntient quidem in insulam se relegare, scribant autem imperatori, ut ipse insulam adsignet. ceterum non possunt damnare in eam insulam, quam in ea provincia cui praesunt non habeant. interim quoad imperator insulam adsignet, militi tradendus est relegatus.

Dig. 48.22.7.2

Ulpianus 10 de off. procons.

Haec est differentia inter deportatos et relegatos, quod in insulam relegari et ad tempus et in perpetuum quis potest.

Dig. 48.22.7.3

Ulpianus 10 de off. procons.

Sive ad tempus sive in perpetuum quis fuerit relegatus, et civitatem romanam retinet et testamenti factionem non amittit.

Dig. 48.22.7.4

Ulpianus 10 de off. procons.

Ad tempus relegatis neque tota bona neque partem adimi debere rescriptis quibusdam manifestatur, reprehensaeque sunt sententiae eorum, qui ad tempus relegatis ademerunt partem bonorum vel bona, sic tamen, ut non infirmarentur sententiae quae ita sunt prolatae.

Dig. 48.22.7.5

Ulpianus 10 de off. procons.

Est quoddam genus quasi in insulam relegationis in provincia aegypto in oasin relegare.

Dig. 48.22.7.6

Ulpianus 10 de off. procons.

Sicut autem relegare in insulam quisquam, quae non est sub se, non potest, ita ne in provinciam quidem relegandi ius habet, quae non est sub se: forte praeses syriae in macedoniam non relegabit.

Dig. 48.22.7.7

Ulpianus 10 de off. procons.

Sed extra provinciam suam potest relegare.

Dig. 48.22.7.8

Ulpianus 10 de off. procons.

Item in parte certa provinciae moraturum relegare potest, ut forte non excedat civitatem aliquam vel regionem aliquam non egrediatur.

Dig. 48.22.7.9

Ulpianus 10 de off. procons.

Sed et in eas partes provinciae, quae sunt desertiores, scio praesides solitos relegare.

Dig. 48.22.7.10

Ulpianus 10 de off. procons.

Interdicere autem quis ea provincia potest quam regit, alia non potest: et ita divi fratres rescripserunt. unde eveniebat, ut, qui relegatus esset ab ea provincia, in qua domilium ^ domicilium^ habuit, morari apud orginem suam posset. sed imperator noster cum divo patre suo huic rei providerunt. maecio enim probo praesidi provinciae hispaniae rescripserunt etiam ea provincia interdici, unde quis oriundus est, ab eo qui regit eam provinciam, ubi quis domicilium habet. sed et eos, qui, cum incolae non essent, in ea provincia quid admiserint, aequum est ad rescripti auctoritatem pertinere.

Dig. 48.22.7.11

Ulpianus 10 de off. procons.

Dubitatum est, an interdicere quis alicui possit provincia, in qua oriundus est, cum ipse ei provinciae praesit, quam incolit, dum sua non interdicit, ut solent italia interdicere, qui patria non interdicunt: vel an per consequentias videatur etiam provinciae interdixisse, cui praeest. quod magis erit probandum.

Dig. 48.22.7.12

Ulpianus 10 de off. procons.

Per contrarium autem is, qui originis provinciae praeest, non est nanctus ius interdicendi ea provincia, quam incolit is qui relegatur.

Dig. 48.22.7.13

Ulpianus 10 de off. procons.

Si quis eam sententiam admiserit, ut is, qui in alia provincia commisit, possit relegari ab eo qui ei provinciae praeest: eveniet, ut relegatus iste tribus provinciis praeter italiam debeat abstinere, et in qua deliquit et quam incolit et originis. et si ex diversis provinciis oriri videatur propter condicionem vel suam vel parentis patronorum: vel pluribus provinciis consequenter interdictum ei dicemus.

Dig. 48.22.7.14

Ulpianus 10 de off. procons.

Quibusdam tamen praesidibus, ut multis provinciis interdicere possint, indultum est: ut praesidibus syriarum, sed et daciarum.

Dig. 48.22.7.15

Ulpianus 10 de off. procons.

Constitutum eum, cui patria interdictum est, etiam urbe abstinere debere: contra autem si cui urbe fuerit interdictum, patria sua interdictum non videtur. et ita multis constitutionibus cavetur.

Dig. 48.22.7.16

Ulpianus 10 de off. procons.

Si cui plane non patria sua, sed aliqua civitate interdictum sit, videndum est, an etiam patria sua itemque urbe interdictum dicamus: quod magis est.

Dig. 48.22.7.17

Ulpianus 10 de off. procons.

His, qui relegantur, dies excedendi a praesidibus dari et potest et solet: etenim moris est ita pronuntiari " illum provincia illa insulisque eis relego excedereque debebit intra illum diem".

Dig. 48.22.7.18

Ulpianus 10 de off. procons.

Relegatum plane libellum dare principi posse divi fratres rescripserunt.

Dig. 48.22.7.19

Ulpianus 10 de off. procons.

Solet praeterea interdici sententia quibusdam, ne intra patriae territorium vel muros morentur: ne excedant patriam vel in vicis quibusdam morentur.

Dig. 48.22.7.20

Ulpianus 10 de off. procons.

Solet decurionibus ordine interdici vel ad tempus vel in perpetuum.

Dig. 48.22.7.21

Ulpianus 10 de off. procons.

Item potest alicui poena iniungi, ne honores adipiscatur: nec ea res facit, ut decurio esse desinat, cum fieri possit, ut quis decurio quidem sit, ad honores autem non admittatur. nam et senator quis esse potest et tamen honores non repetere.

Dig. 48.22.7.22

Ulpianus 10 de off. procons.

Potest alicui et unus honor interdici, sic tamen, ut, si cui honore uno interdictum sit, non tantum eum honorem petere non possit, verum ne eos quoque, qui eo honore maiores sunt: est enim perquam ridiculum eum, qui minoribus poenae causa prohibitus sit, ad maiores adspirare. maioribus tamen prohibitus minores petere non prohibetur. sed muneribus si quis poenae causa fuerit prohibitus, nihil valebit sententia: neque enim immunitatem poena tribuere debet. ergo et si honoribus quis in poenam fuerit prohibitus, poterit dici, si honores isti habuerunt mixtam muneris gravem impensam, infamiam illi ad hoc non profuturam:

Dig. 48.22.8

Marcianus 2 publ. iudic.

Sed honore quidem illum arceri puto, ceterum impendia debere praestare.

Dig. 48.22.9

Ulpianus 10 de off. procons.

Potest praeses quendam damnare, ne domo sua procedat:

Dig. 48.22.10

Marcianus 2 publ. iudic.

Nec tamen, ne necessarias impensas faciat.

Dig. 48.22.11

Ulpianus 10 de off. procons.

Interdum pecuniaria poena irrogatur iis qui relegatos suscipiunt: interdum etiam ipsi relegantur, si quidem illi ob magnum crimen relegati sunt.

Dig. 48.22.12

Marcianus libro...

. . . . qui patria relegatus non excedit, ad tempus provincia relegatur.

Dig. 48.22.13

Paulus libro...

. . . . ei qui a relegato manumissus est romae morari non licet, cum ne patrono quidem eius liceat.

Dig. 48.22.14pr.

Ulpianus libro...

. . . . relegatus est is cui interdicitur provincia aut urbe continentibusve in perpetuum vel ad tempus.

Dig. 48.22.14.1

Ulpianus libro...

Et multum interest inter relegationem et deportationem: nam deportatio et civitatem et bona adimit, relegatio utrumque conservat, nisi bona publicentur.

Dig. 48.22.14.2

Ulpianus libro...

Relegare possunt princeps et senatus et praefecti et praesides provinciarum, nec tamen consules.

Dig. 48.22.14.3

Ulpianus libro...

Qui amissa civitate bona habet, a creditore utilibus actionibus convenitur.

Dig. 48.22.15pr.

Marcianus libro...

. . . . deportatus civitatem amittit, libertatem retinet et iure civili caret, gentium vero utitur. itaque emit vendit, locat conducit, permutat, fenus exercet aliaque similia. unde etiam recte obligat, quae post condemnationem quaesivit: quibus in rebus creditores quoque, qui bona fide contraxerunt cum eo, praeferuntur fisco deportatis defunctis succedenti. nam bona, quae condemnationis tempore inveniuntur, deportatus alienare non potest.

Dig. 48.22.15.1

Marcianus libro...

Qui inconsulto principe a praeside deportatur, et heres institui et legata capere potest.

Dig. 48.22.16

Marcianus libro...

. . . . cum ulpianus damascenus ab imperatore petisset, ut matri deportatae ad victum necessaria relinquere sibi permitteretur, item mater per libertum suum petisset, ut quaedam filio deportato relinquere liceret, imperator antoninus ita iis rescripsit. " neque hereditas nec legatum nec fideicommissum contra consuetudinem legemque publicam huiusmodi personis relinqui potest neque earum condicionem mutari convenit: quoniam autem pie rogastis, permitto vobis ultima voluntate relinquere iis, quae ad victum aliosque usus necessarios sufficiant, ut si quid ad eos ex his causis pertinebit, capere iis liceat".

Dig. 48.22.17pr.

Pomponius libro...

. . . . relegatus statuis et imaginibus honorari non prohibetur.

Dig. 48.22.17.1

Pomponius libro...

Relegatus statum suum integrum retinet et bona quae habet et potestatem in liberos, sive ad tempus sive in perpetuum relegatus est.

Dig. 48.22.17.2

Pomponius libro...

Deportatio autem non fit ad tempus.

Dig. 48.22.18pr.

Callistratus libro...

. . . . relegatus morari non potest romae, etsi id sententia comprehensum non est, quia communis patria est: neque in ea civitate, in qua moratur princeps vel per quam transit, iis enim solis permissum est principem intueri, qui romam ingredi possunt, quia princeps pater patriae est.

Dig. 48.22.18.1

Callistratus libro...

Cum adversus homines liberos eiusmodi sententia fertur, per quam bona eorum publicantur, qualis est deportationis in insulam, ea ipsa sententia priorem condicionem amittunt et statim poenis sibi irrogatis per eam traduntur, nisi quid cum maiestate coniunctum requirit, ut poena exacerbetur.

Dig. 48.23.0. De sententiam passis et restitutis.

Dig. 48.23.1pr.

Ulpianus 38 ad ed.

Ad successionem liberti patronus deportatus et restitutus admittitur.

Dig. 48.23.1.1

Ulpianus 38 ad ed.

Sed si in metallum damnatus restituatur, numquid servitus poenae extinguat ius patronatus etiam post restitutionem? et magis est, ut non extinguat servitus ius patronatus.

Dig. 48.23.2

Ulpianus 5 opin.

Si deportatus restitutus dignitatem quidem indulgentia principis reciperavit, in sua autem omnia bona non est restitutus, nec a creditoribus nec publico nomine conveniri potest. sed cum ei facultas oblata esset a principe bona quoque sua reciperandi, maluerit ea derelinquere, actionibus exuere se, quibus ante sententiam subiectus fuerat, non poterit.

Dig. 48.23.3

Papinianus 16 resp.

In insulam deportati bona fiscus poena remissa retinuit: creditores ex ante gesto non habere cum eo qui debitor quondam fuit actiones constitit. quod si bona cum dignitatis restitutione concessa reciperaverit, utiles actiones necessariae non erunt, cum et directae competunt.

Dig. 48.23.4

Paulus 17 quaest.

In metallum damnata mulier eum quem prius conceperat edidit, deinde a principe restituta est. humanius dicetur etiam cognationis iura huic restituta videri.

Dig. 48.24.0. De cadaveribus punitorum.

Dig. 48.24.1

Ulpianus 9 de off. procons.

Corpora eorum qui capite damnantur cognatis ipsorum neganda non sunt: et id se observasse etiam divus augustus libro decimo de vita sua scribit. hodie autem eorum, in quos animadvertitur, corpora non aliter sepeliuntur, quam si fuerit petitum et permissum, et nonnumquam non permittitur, maxime maiestatis causa damnatorum. eorum quoque corpora, qui exurendi damnantur, peti possunt, scilicet ut ossa et cineres collecta sepulturae tradi possint.

Dig. 48.24.2

Marcianus 2 publ.

Si quis in insulam deportatus vel relegatus fuerit, poena etiam post mortem manet, nec licet eum inde transferre aliubi et sepelire inconsulto principe: ut saepissime severus et antoninus rescripserunt et multis petentibus hoc ipsum indulserunt.

Dig. 48.24.3

Paulus 1 sent.

Corpora animadversorum quibuslibet petentibus ad sepulturam danda sunt.

Ius Romanum Justinian The Latin Library The Classics Page

OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER UNDEQUINQUAGESIMUS

Dig. 49.1.0. De appellationibus et relegationibus.
Dig. 49.2.0. A quibus appellari non licet.
Dig. 49.3.0. Quis a quo appelletur.
Dig. 49.4.0. Quando appellandum sit et intra quae tempora.
Dig. 49.5.0. De appellationibus recipiendis vel non.
Dig. 49.6.0. De libellis dimissoriis, qui apostoli dicuntur.
Dig. 49.7.0. Nihil innovari appellatione interposita.
Dig. 49.8.0. Quae sententiae sine appellatione rescindantur.
Dig. 49.9.0. An per alium causae appellationum reddi possunt.
Dig. 49.10.0. Si tutor vel curator magistratusve creatus appellaverit.
Dig. 49.11.0. Eum qui appellaverit in provincia defendi.
Dig. 49.12.0. Apud eum, a quo appellatur, aliam causam agere compellendum.
Dig. 49.13.0. Si pendente appellatione mors intervenerit.
Dig. 49.14.0. De iure fisci.
Dig. 49.15.0. De captivis et de postliminio et redemptis ab hostibus.
Dig. 49.16.0. De re militari.
Dig. 49.17.0. De castrensi peculio.
Dig. 49.18.0. De veteranis.

Dig. 49.1.0. De appellationibus et relegationibus.

Dig. 49.1.1pr.

Ulpianus 1 de appellat.

Appellandi usus quam sit frequens quamque necessarius, nemo est qui nesciat, quippe cum iniquitatem iudicantium vel imperitiam recorrigat: licet nonnumquam bene latas sententias in peius reformet, neque enim utique melius pronuntiat qui novissimus sententiam laturus est.

Dig. 49.1.1.1

Ulpianus 1 de appellat.

Quaesitum est, an adversus rescriptum principis provocari possit, forte si praeses provinciae vel quis alius consulerit et ad consultationem eius fuerit rescriptum: est enim quaesitum, an appellandi ius supersit. quid enim, si in consulendo mentitus est? de qua re extat rescriptum divi pii pros to koinon twn vrakwn, quo ostenditur provocari oportere. verba rescripti ita se habent: " ean episteily tis hymin ha dia kai antigrafwmen hymeis hotioun, huparcei tois boulomenois epikaleisvai pros tyn apofasin. ei gar didacaien y qeudws y oux' ohutws exein ta epestalmena, ouden huf' hymwn einai docy prodiegnwsmenon, twn hws heterws exousin tois grafeisin antepestalkotwn".

Dig. 49.1.1.2

Ulpianus 1 de appellat.

Huic consequenter videtur rescriptum a consultatione iudicis non esse appellandum, si quis forte interlocutus fuit principem se consultaturum, cum possit post rescriptum provocare.

Dig. 49.1.1.3

Ulpianus 1 de appellat.

Si quis in appellatione erraverit, ut puta cum alium appellare deberet, alium appellaverit, videndum, an error ei nihil offuit. et si quidem, cum maiorem iudicem appellare deberet, ita erravit, ut minorem appellet, error ei nocebit: si vero maiorem iudicem provocavit, error ei nihil oberit. et ita multis constitutionibus continetur. denique cum quidam iudicem ex rescripto principis a consulibus accepisset et praefectum urbi appellasset, errori eius subventum est rescripto divorum fratrum, cuius verba haec sunt: " cum per errorem factum dicas, uti a iudice, quem ex rescripto nostro ab amplissimis consulibus acceperas, ad iunium rusticum amicum nostrum praefectum urbi provocares, consules amplissimi perinde cognoscant, atque si ad ipsos facta esset provocatio". si quis ergo vel parem vel maiorem iudicem appellaverit, alium tamen pro alio, in ea causa est, ut error ei non noceat: sed si minorem, nocebit.

Dig. 49.1.1.4

Ulpianus 1 de appellat.

Libelli qui dantur appellatorii ita sunt concipiendi, ut habeant scriptum et a quo dati sint, hoc est qui appellet, et adversus quem et a qua sententia.

Dig. 49.1.2

Macer 1 de appellat.

Sed si apud acta quis appellaverit, satis erit, si dicat " appello".

Dig. 49.1.3pr.

Ulpianus 1 de appellat.

Scio quaesitum, si quis non addiderit in libellis, contra quem adversarium appellet, an praescriptioni subiciatur: et puto nihil oportere praescribi.

Dig. 49.1.3.1

Ulpianus 1 de appellat.

Sed illud cecidit in quaestionem, si plures habuerit adversarios et quorundam nomina libellis sint complexa, quorundam non, an aeque praescribi ei possit ab his, quorum nomina comprehensa non sunt, quasi adversus ipsos adquieverit sententiae. et cum una causa sit, arbitror non esse praescribendum.

Dig. 49.1.3.2

Ulpianus 1 de appellat.

Certe si plures hi sunt, adversus quos pronuntiatur, et quorundam nomina in libellis sint comprehensa, quorundam non, hi soli appellasse videbuntur, quorum nomina libellis sunt comprehensa.

Dig. 49.1.3.3

Ulpianus 1 de appellat.

Quid ergo, si causam appellandi certam dixerit, an liceat ei discedere ab hac et aliam causam allegare? an vero quasi forma quadam obstrictus sit? puto tamen, cum semel provocaverit, esse ei facultatem in agendo etiam aliam causam provocationis reddere persequique provocationem suam quibuscumque modis potuerit.

Dig. 49.1.4pr.

Macer 1 de appellat.

Ab exsecutore sententiae appellare non licet.

Dig. 49.1.4.1

Macer 1 de appellat.

Sed ab eo, qui sententiam male interpretari dicitur, appellare licet, si tamen is interpretandi potestatem habuit, velut praeses provinciae aut procurator caesaris: ita tamen, ut in causis appellationis reddendis hoc solum quaeratur, an iure interpretatum sit: idque etiam divus antoninus rescripsit.

Dig. 49.1.4.2

Macer 1 de appellat.

Alio condemnato is cuius interest appellare potest. qualis est, qui per procuratorem expertus victus est nec procurator suo nomine appellet.

Dig. 49.1.4.3

Macer 1 de appellat.

Item si emptor de proprietate victus est, eo cessante auctor eius appellare poterit: aut si auctor egerit et victus sit, non est deneganda emptori appellandi facultas. quid enim, si venditor, qui appellare noluit, idoneus non est? quin etiam si auctor appellaverit, deinde in causae defensione suspectus visus sit, perinde defensio causae emptori committenda est, atque si ipse appellasset.

Dig. 49.1.4.4

Macer 1 de appellat.

Idque ita constitutum est in persona creditoris, cum debitor victus appellasset nec ex fide causam defenderet. quae constitutio ita accipienda est, si interveniente creditore debitor de pignore victus provocaverit: nam absenti creditori nullum praeiudicium debitor facit, idque statutum est.

Dig. 49.1.4.5

Macer 1 de appellat.

Si procurator, qui iudicio interfuit, victus sit, an ipse quoque per procuratorem appellare possit, videamus, quia constat procuratorem alium procuratorem facere non posse. sed meminisse oportet, quod procurator lite contestata dominus litis efficitur: et ideo et per procuratorem appellare potest.

Dig. 49.1.5pr.

Marcianus 1 de appellat.

A sententia inter alios dicta appellari non potest nisi ex iusta causa, veluti si quis in coheredum praeiudicium se condemnari patitur vel similem huic causam (quamvis et sine appellatione tutus est coheres): item fideiussores pro eo pro quo intervenerunt. igitur et venditoris fideiussor emptore victo appellabit, licet emptor et venditor adquiescant.

Dig. 49.1.5.1

Marcianus 1 de appellat.

Si heres institutus victus fuerit ab eo, qui de inofficioso testamento agebat, legatariis et qui libertatem acceperunt permittendum est appellare, si querantur per collusionem pronuntiatum: sicut divus pius rescripsit.

Dig. 49.1.5.2

Marcianus 1 de appellat.

Idem rescripsit legatarios causam appellationis agere posse.

Dig. 49.1.5.3

Marcianus 1 de appellat.

Sed et si in fraudem suam transactionem factam ab eo qui appellasset dicerent, idem dicendum est. sed et sine appellatione si fuerit transactum, similiter rescriptum est.

Dig. 49.1.5.4

Marcianus 1 de appellat.

Si quis ipso die inter acta voce appellavit, hoc ei sufficit: sin autem hoc non fecerit, ad libellos appellatorios dandos biduum vel triduum computandum est.

Dig. 49.1.6

Ulpianus 2 de appellat.

Non tantum ei, qui ad supplicium ducitur, provocare permittitur, verum alii quoque nomine eius, non tantum si ille mandaverit, verum quisquis alius provocare voluerit. neque distinguitur, utrum necessarius eius sit nec ne: credo enim humanitatis ratione omnem provocantem audiri debere. ergo et si ipse adquiescit sententiae: nec quaerimus, cuius intersit. quid ergo, si resistat qui damnatus est adversus provocationem, nec velit admitti eius appellationem perire festinans? adhuc putem differendum supplicium.

Dig. 49.1.7

Marcianus 1 de appellat.

Cum quidam propter violentiam iudicis non ipsi a quo appellavit dedit libellos, sed publice proposuisset, divus severus veniam ei dedit et permisit ei causas appellationis agere.

Dig. 49.1.8

Ulpianus 4 de appellat.

Illud sciendum est eum qui provocavit non debere conviciari ei a quo appellat: ceterum oportebit eum plecti. et ita divi fratres rescripserunt.

Dig. 49.1.9

Macer 2 de appellat.

Illud sciendum est neque pupillum neque rem publicam, cum pro libertate iudicatur, in integrum restitui posse, sed appellationem esse necessariam. idque ita rescriptum est.

Dig. 49.1.10pr.

Ulpianus 8 disp.

Si qui separatim fuerint condemnati, quamvis ex eadem causa, pluribus eis appellationibus opus est.

Dig. 49.1.10.1

Ulpianus 8 disp.

Si quis, cum una actione ageretur, quae plures species in se habeat, pluribus summis sit condemnatus, quarum singulae notionem principis non faciunt, omnes autem coniunctae faciunt: poterit ad principem appellare.

Dig. 49.1.10.2

Ulpianus 8 disp.

Sed cum adversus plures probatae essent rationes quae eis nocerent, sufficit eis una appellatio, quia uno titulo comprobatarum rationum omnes conveniebantur.

Dig. 49.1.10.3

Ulpianus 8 disp.

Quotiens autem plures in unam summam condemnantur, utrum una sententia est et quasi plures in unam summam rei sint promittendi, ut unusquisque eorum in solidum teneatur, an vero scinditur in personas sententia, quaeritur. et papinianus respondit scindi sententiam in personas atque ideo eos qui condemnati sunt viriles partes debere.

Dig. 49.1.10.4

Ulpianus 8 disp.

Quod est rescriptum in communi causa, quotiens alter appellat, alter non, alterius victoriam ei proficere qui non provocavit, hoc ita demum probandum est, si una eademque causa fuit defensionis: ceterum si diversae, alia causa est. ut in duobus tutoribus procedit, si alter tutelam gesserat, alter non attigerat et is qui non gesserat provocavit: iniquum est enim, qui idcirco adgnoverat sententiam, quoniam gessisse se scit, propter appellationem eius qui non gesserat optinere.

Dig. 49.1.11

Ulpianus 3 de omn. trib.

Cum ex causa iudicati soluta esset pecunia ex necessitate iudicis ab eo, qui appellatione interposita meruerit meliorem sententiam, recipere eum pecuniam quam solvit oportet.

Dig. 49.1.12

Ulpianus 2 opin.

Si constet nullo actu ex lege habito duumvirum creatum, sed tantum vocibus popularium postulatum eisque tunc proconsulem, quod facere non debuit, consensisse: appellatio in re aperta supervacua fuit.

Dig. 49.1.13pr.

Ulpianus 2 resp.

Appellanti nihil obesse, quod in libellis a qua parte sententiae appellaret non significavit.

Dig. 49.1.13.1

Ulpianus 2 resp.

Non solere improbari appellationem eorum, qui vel unam causam appellandi probabilem habuerunt.

Dig. 49.1.14pr.

Ulpianus 14 ad ed.

Si perlusorio iudicio actum sit adversus testamentum, an ius faciat iudex, videndum. et divus pius, cum inter coniunctas personas diceretur per collusionem in necem legatariorum et libertatium actum, appellare eis permisit. et hodie hoc iure utimur, ut possint appellare: sed et agere causam apud ipsum iudicem, qui de testamento cognoscit, si suspicantur non ex fide heredem causam agere.

Dig. 49.1.14.1

Ulpianus 14 ad ed.

Quotiens herede non respondente secundum adversarium sententia datur, rescriptum est nihil nocere neque legatis neque libertatibus. et hoc divorum fratrum epistula continetur ad domitium in haec verba: " quod absente possessore nec quoquam nomine eius respondente pronuntiatum est, non habet rei iudicatae auctoritatem nisi adversus eum solum qui adesse neglexerit. quare his, qui testamento libertates vel legata vel fideicommissa acceperunt, salvae sunt actiones, si quas habuerunt, perinde ac si nihil esset iudicatum: et ideo adversus eum qui vicit permittimus eis agere".

Dig. 49.1.15

Marcellus 1 Dig.

Servi appellare non possunt: sed domini eorum ad opem servo ferendam possunt uti auxilio appellationis, et alius domini nomine id facere potest. sin vero neque dominus neque alius pro domino appellaverit, ipsi ^ ipso^ servo, qui sententiam tristem passus est, auxilium sibi implorare non denegamus.

Dig. 49.1.16

Modestinus 6 diff.

Constitutiones, quae de recipiendis nec non appellationibus loquuntur, ut nihil novi fiat, locum non habent in eorum persona, quos damnatos statim puniri publice interest: ut sunt insignes latrones vel seditionem concitatores vel duces factionum.

Dig. 49.1.17pr.

Modestinus 8 reg.

Cum in una causa separatim duplex sententia divisa datur, veluti una sortis, alia usurarum, duplex appellatio necessaria est, ne alteram adgnovisse, de altera provocasse intellegatur.

Dig. 49.1.17.1

Modestinus 8 reg.

Tutor pupillo datus si provocet, interim pupillo curator dabitur. sed si tutoris auctoritas fuerit necessaria, veluti ad adeundam hereditatem, tutor ei necessario dabitur, quoniam curatoris auctoritas ad hoc inutilis est.

Dig. 49.1.18

Modestinus 17 resp.

Lucius titius pro servo suo, qui ad bestias datus est, provocationem interposuit: quaero, an huiusmodi appellationis causas per procuratorem reddere possit. modestinus respondit posse.

Dig. 49.1.19

Modestinus l.S. de enucl. cas.

Si expressim sententia contra iuris rigorem data fuerit, valere non debet: et ideo et sine appellatione causa denuo induci potest. non iure profertur sententia, si specialiter contra leges vel senatus consultum vel constitutionem fuerit prolata. unde si quis ex hac sententia appellaverit et praescriptione summotus sit, minime confirmatur ex hac praescriptione sententia. unde potest causa ab initio agitari.

Dig. 49.1.20pr.

Modestinus l.S. de praescr.

Qui suspectum tutorem facit et qui de non recipienda tutela excusationem agitat, alieno nomine agere intellegendus est.

Dig. 49.1.20.1

Modestinus l.S. de praescr.

Is vero qui in rem suam procurator datus est, intra biduum appellare debet, quia suam causam agit.

Dig. 49.1.20.2

Modestinus l.S. de praescr.

Militibus appellandi tempora non remittuntur, et victi si non provocaverint et sollemnia fecerint, postea non audiuntur.

Dig. 49.1.21pr.

Papirius 1 de const.

Imperatores antoninus et verus rescripserunt appellationes, quae recto ad principem factae sunt omissis his, ad quos debuerunt fieri ex imo ordine, ad praesides remitti.

Dig. 49.1.21.1

Papirius 1 de const.

Idem rescripserunt ab iudice, quem a praeside provinciae quis acceperat, non recte imperatorem appellatum esse ideoque reverti eum ad praesidem debere.

Dig. 49.1.21.2

Papirius 1 de const.

Si magistratus creatus appellaverit, collegam eius interim utriusque officium sustinere debere: si uterque appellaverit, alium interim in locum eorum creandum: et eum, qui non iuste appellaverit, damnum adgniturum, si quod res publica passa sit: si vero iusta sit appellatio et hoc pronuntietur, eos aestimaturos, cui hoc adscribendum sit. in locum autem curatoris, qui annonam administraturus est, alium interim adsumendum, quoad usque appellatio pendeat.

Dig. 49.1.21.3

Papirius 1 de const.

Idem rescripserunt, quamvis usitatum non sit post appellationem fructus agri, de quo disceptatio sit, deponi, tamen, cum populi traherentur ab adversario, aequum sibi videri fructus apud sequestres deponi.

Dig. 49.1.22

Papinianus 2 resp.

Ad principem remissa cognitio ab eo circumduci potest, qui remisit.

Dig. 49.1.23pr.

Papinianus 19 resp.

Ex consensu litigantium citra compromissum a praeside provinciae iudice dato victus potest provocare.

Dig. 49.1.23.1

Papinianus 19 resp.

Cum procurator caesaris, qui partibus praesidis non fungebatur, in lite privatorum ius dandi iudicis non habuisset, frustra provocatum ab ea sententia constitit, quae non tenebat.

Dig. 49.1.23.2

Papinianus 19 resp.

Filium familias, cum adversus patrem eius de bonis, quae per ipsum poterant adquiri, pronuntiatum esset, respondi non nisi patris nomine potuisse provocare.

Dig. 49.1.23.3

Papinianus 19 resp.

Eum, qui cognovit edictum peremptorium, secundum ordinis causam dati placuit non recte provocasse, cum in eius potestate fuerit ante diem praestitutum pro tribunali respondentem aut defensum edicti denuntiationem rumpere.

Dig. 49.1.24pr.

Scaevola 5 resp.

Negotiorum gestor vel tutor vel curator bona fide condemnati appellaverunt et diu negotium tractum est: quaesitum est appellatione eorum iniusta pronuntiata an, quia tardius iudicatum sit, usurae principalis pecuniae medii temporis debeantur. respondit secundum ea quae proponerentur dandam utilem actionem.

Dig. 49.1.24.1

Scaevola 5 resp.

Curator iuvenis adversus tutoris heredes iudicio expertus appellationem interposuit: cum implesset autem vicensimum quintum annum aetatis iuvenis et in militia ageret, exequi appellationem desiit. quaero, regressus a militia utrum ipse appellationem explicare deberet an vero curatorem in eam rem conveniri oporteret. respondit ipsum militem litem ad se pertinentem exsequi debere secundum ea quae proponerentur.

Dig. 49.1.25

Paulus 20 resp.

Autokratwr alecandros tw koinw twn en bivunia hellynwn. ekkaleisvai men pws an tis kwluoito hupo twn dikazontwn, oux' horw, hopote ecestin tyn heteran hodon trepomenon tauto poiein kai vatton pros me afikneisvai. hubrei de kai bia xrysvai pros tous ekkaloumenous kai frouran stratiwtikyn periistan kai haplws eipein apofrattein autois tyn deuro anodon apagoreuomen tois epitropois kai tois hygoumenois twn evnwn. kai peisvysontai tauty mou ty prorrysei, eidotes hoti tosouton moi melei tys twn arxomenwn eleuverias, hoson kai tys eunoias autwn kai peivous.

Dig. 49.1.26

Hermogenianus 2 iuris epit.

Ad imperatorem causam remissam partibus consentientibus praeses, si ad eius notionem pertinet, audire potest.

Dig. 49.1.27

Hermogenianus 5 iuris epit.

Tutor si in negotio pupilli provocaverit vel curator in adulti, heres eius, antequam reddat rationes, appellationis causam persequi debet: nam post redditas rationes nec ipse tutor nec curator appellationis merita probare cogitur.

Dig. 49.1.28pr.

Scaevola 25 Dig.

Creditor cum fideiussoribus egerat: sed post iudicium acceptum ad agendam causam ipse non adfuit et, cum absoluti essent fideiussores, servus eius appellavit. quaesitum est, an appellatio, quam servus interposuit nomine domini, nullius momenti esset. respondit eiusmodi appellationem non esse observandam.

Dig. 49.1.28.1

Scaevola 25 Dig.

Iussus a iudice exhibere secundum praeceptum praesidis provinciae rationes, quas apud se esse caverat, instrumentorum gratia data dilatione nec postea exhibuit ideoque secundum constitutionem recitatam, quia per contumaciam instrumenta non exhibuerat, cum petitor quanti sua interesset exhiberi iurasset, facta erat condemnatio. quaesitum est, an post iusiurandum appellationem interponere possit. respondit nihil proponi, cur denegandum esset appellationis auxilium.

Dig. 49.1.28.2

Scaevola 25 Dig.

Substituti tutores in locum legitimi tutoris experti cum eo tutelae iudicio, cum arbiter inique condemnavit, quam rei aequitas exigebat, a sententia eius provocaverunt: pendente causa appellationis iuvenes adoleverunt. quaesitum est, cum omnis exsecutio huius ad adultos pertineat et causam ad se pertinentem idonee tueri possunt, an postulatio eorum, contra quos appellatum erat, dicentium illos debuisse causas appellationis reddere, qui primi sunt experti, admittenda non sit. respondit eos, quorum tutela gesta esset, si vellent causam exsequi, non prohibendos. idem et in curatoribus observandum est, si interim adultus ad legitimam aetatem pervenit.

Dig. 49.2.0. A quibus appellari non licet.

Dig. 49.2.1pr.

Ulpianus 1 de appellat.

Tractandum est, a quibus appellare non liceat.

Dig. 49.2.1.1

Ulpianus 1 de appellat.

Et quidem stultum est illud admonere a principe appellare fas non esse, cum ipse sit qui provocatur.

Dig. 49.2.1.2

Ulpianus 1 de appellat.

Sciendum est appellari a senatu non posse principem, idque oratione divi hadriani effectum.

Dig. 49.2.1.3

Ulpianus 1 de appellat.

Si quis ante sententiam professus fuerit se a iudice non provocaturum, indubitate provocandi auxilium perdidit.

Dig. 49.2.1.4

Ulpianus 1 de appellat.

Interdum imperator ita solet iudicem dare, ne liceret ab eo provocare, ut scio saepissime a divo marco iudices datos. an et alius possit ita iudicem dare, videbimus: et puto non posse.

Dig. 49.2.2

Paulus l.S. de appellat.

Quaesitum est, in arbitros, qui ad fideiussores probandos dantur, an appellare liceat: quamvis hoc casu et sine appellatione quidam putent ab eo, qui eum dedit, sententiam eius corrigi posse.

Dig. 49.3.0. Quis a quo appelletur.

Dig. 49.3.1pr.

Ulpianus 1 de appellat.

Quod dicitur eum appellari, qui dedit iudicem, sic accipiendum est, ut et successor eius possit appellari. proinde et si praefectus urbi iudicem dederit vel praetorio, ipse erit provocandus, qui eum dederit iudicem.

Dig. 49.3.1.1

Ulpianus 1 de appellat.

Ab eo, cui quis mandavit iurisdictionem, non ipse provocabitur: nam generaliter is erit provocandus ab eo cui mandata est iurisdictio, qui provocaretur ab eo qui mandavit iurisdictionem.

Dig. 49.3.2

Venonius 2 de off. procons.

Appellari a legatis proconsul potest, et, si multam dixerit, potest de iniquitate eius proconsul cognoscere et quod optimum putaverit statuere.

Dig. 49.3.3

Modestinus 8 reg.

Dato iudice a magistratibus populi romani cuiuscumque ordinis, etiamsi ex auctoritate principis licet nominatim iudicem declarantis dederint, ipsi tamen magistratus appellabuntur.

Dig. 49.4.0. Quando appellandum sit et intra quae tempora.

Dig. 49.4.1pr.

Ulpianus 1 de appellat.

Si quidem in insulam deportandum adnotaverit praeses provinciae et imperatori scripserit, ut deportetur, videamus, quando sit provocandum, utrum cum imperator scripserit an cum ei scribitur? et putem tunc esse appellandum, cum recipi eum praeses iubet sententia prolata imperatori scribendum, ut deportetur. ceterum verendum est, ne sero sit, ut tunc provocetur, cum imperator insulam ei adsignaverit: comprobata enim sententia praesidis tunc solet insulam adsignare. rursus illud verendum est, si mendaciis apud principem oneravit eum, quem deportandum laborabat, intercludi illi viam provocandi. quid ergo est? recte dicetur humanitate suggerente, ut et hoc et illo tempore non frustra provocaretur, quia non adversus principem, sed adversus iudicis calliditatem provocavit. simili modo et in decurione erit probandum, quem punire sibi praeses permittere non debet, sed recipere eum in carcerem et principi scribere de poena eius.

Dig. 49.4.1.1

Ulpianus 1 de appellat.

Si quis tutor datus fuerit vel testamento vel a quo alio, qui ius dandi habet, non oportet eum provocare (hoc enim divus marcus effecit), sed intra tempora praestituta excusationem allegandam habet et, si fuerit repulsa, tunc demum appellare debebit: ceterum ante frustra appellatur.

Dig. 49.4.1.2

Ulpianus 1 de appellat.

Alia causa est eorum, qui ad aliquod munus vel honorem vocantur, cum dicant se habere excusationem: nam non aliter allegare possunt causas immunitatis suae, quam si appellationem interposuerint.

Dig. 49.4.1.3

Ulpianus 1 de appellat.

Solent plerumque praesides remittere ad ordinem nominatum ut gaium seium creent magistratum vel alius quis honor vel munus in eum conferatur. utrum igitur tunc appellandum est, cum ordo decretum interposuerit, an vero a remissione, quam praeses fecerit, appellatio sit interponenda? et magis est, ut tunc sit appellandum, cum ordo decreverit: magis enim consilium dedisse praeses videtur, quis sit creandus, quam ipse constituisse: denique ipse erit appellandus, non ab eo provocandum.

Dig. 49.4.1.4

Ulpianus 1 de appellat.

Sed et si praeses in ordine fuerit (ut fieri adsolet), cum ab ordine crearetur quis, ipse erit provocandus, quasi ab ordine, non ab ipso fiat appellatio.

Dig. 49.4.1.5

Ulpianus 1 de appellat.

Biduum vel triduum appellationis ex die sententiae latae computandum erit. quid ergo, si sententia fuerit sub condicione dicta? utrum ex die sententiae tempus computamus ad appellandum an vero ex die, quo condicio sententiae extitit? sane quidem non est sub condicione sententia dicenda: sed si fuerit dicta, quid fiet? et est utile statim tempora ad appellandum computari debere.

Dig. 49.4.1.6

Ulpianus 1 de appellat.

Quod in sententiis praeceptum est, ut vel altera die vel tertia provocetur, hoc etiam in ceteris observandum, ex quibus sententia quidem non profertur, appellari tamen oportere et posse supra relatum est.

Dig. 49.4.1.7

Ulpianus 1 de appellat.

Dies autem istos, quibus appellandum est, ad aliquid utiles esse oratio divi marci voluit, si forte eius, a quo provocatur, copia non fuerit, ut ei libelli dentur: ait enim: " is dies servabitur, quo primo adeundi facultas erit". quare si forte post sententiam statim ictam copiam sui non fecerit is qui pronuntiavit (ut fieri adsolet), dicendum est nihil nocere appellatori: nam ubi primum copiam eius habuerit, poterit provocare. ergo si statim se subduxit, similiter subveniendum est.

Dig. 49.4.1.8

Ulpianus 1 de appellat.

Quid igitur, si condicio horae effecit, ut se reciperet? si forte dicta sit sententia iam suprema hora? utique non videbitur se subtraxisse.

Dig. 49.4.1.9

Ulpianus 1 de appellat.

Adeundi autem facultatem semper accipimus, si in publico sui copiam fecit: ceterum si non fecit, an imputetur alicui, quod ad domum eius non venerit quodque in hortos non accesserit, et ulterius quod ad villam suburbanam? magisque est, ut non debeat imputari. quare si in publico eius adeundi facultas non fuit, melius dicetur facultatem non fuisse adeundi.

Dig. 49.4.1.10

Ulpianus 1 de appellat.

Si quis ipsius quidem, a quo appellabit, adeundi facultatem non habuit, eius autem, quem appellabit, habeat copiam: videndum est, an ei praescribi possit, quod eum non adierit. et hoc iure utimur, ut, si alterutrius adeundi fuit copia, praescriptio locum habeat.

Dig. 49.4.1.11

Ulpianus 1 de appellat.

In propria causa biduum accipitur. propriam causam ab aliena quemadmodum discernimus? et palam est eam esse propriam causam, cuius emolumentum vel damnum ad aliquem suo nomine pertinet.

Dig. 49.4.1.12

Ulpianus 1 de appellat.

Quare procurator, nisi in suam rem datus est, tertium diem habebit: in suam autem rem datus magis est ut alteram diem observet. at si in partem proprio nomine, in partem pro alieno litigat, ambigi potest, utrum biduum an triduum observetur. et magis est, ut suo nomine biduum, alieno triduum observetur.

Dig. 49.4.1.13

Ulpianus 1 de appellat.

Tutores, item defensores rerum publicarum et curatores adulescentium vel furiosi, tertium diem habere debent, idcirco quia alieno nomine appellant. ex hoc apparet tertio die provocandum defensori, si modo quasi defensor causam egit, non suo nomine, cum optentu alieni nominis suam causam agens tertio die appellare possit.

Dig. 49.4.1.14

Ulpianus 1 de appellat.

Si quis suspectum tutorem faciens non optinuerit, appellare eum intra triduum debere iulianus libro quadragensimo digestorum scripsit, profecto quasi pupilli defensorem.

Dig. 49.4.1.15

Ulpianus 1 de appellat.

Si adversus absentem fuerit pronuntiatum, biduum vel triduum ex quo quis scit computandum est, non ex quo pronuntiatum est. quod autem dicitur absentem posse provocare ex quo scit, sic accipimus, si non in causa per procuratorem defensus est: nam si ille non provocavit, difficile est, ut hic audiatur.

Dig. 49.4.2pr.

Macer 1 de appellat.

Si procuratorio nomine egeris et victus appellaveris, deinde iniusta appellatio tua fuerit pronuntiata, potest dubitari, num secundo die appellare debeas, quia, cum de tua appellatione iniusta pronuntiatum sit, tua interfuisse videtur. sed rectius dicetur tertia die appellare te posse, quia nihilo minus alienam causam defenderis.

Dig. 49.4.2.1

Macer 1 de appellat.

Sed si alius, quam qui iudicio expertus est, appellet, qualis est cuius interest, an etiam tertia die appellare possit, videamus. sed dicendum est secunda die appellare eum debere, quia verum est eum suam causam defendere. contrarium ei est. si dicat idcirco sibi licere intra triduum appellare, quia videtur quasi alieno nomine appellare, quando, si velit causam suam alienam videri, semet ipsum excludit, quia in aliena causa ei, qui iudicio expertus non est, appellare non liceat.

Dig. 49.4.2.2

Macer 1 de appellat.

Si is, qui ex libertinitate in ingenuitatem se defendebat, victus appellare omiserit, an pater eius appellare possit, maxime si dicat eum in potestate sua esse, quaeritur. sed si potest, quod magis probatur, secunda die, ut propria causa, appellare debet.

Dig. d.49.4.2.3

Macer 1 de appellat.

Si pro eo, qui capite puniri iussus est, necessaria persona appellet, an tertia die audiri possit, paulus dubitat. sed dicendum est hanc quoque personam ut in propria causa secunda die appellare debere, quia qui sua interesse dicit, propriam causam defendit.

Dig. 49.4.3

Macer 2 de appellat.

Illud videamus, si, cum imperatori scriberetur, exemplum litterarum litigatori editum sit neque is appellaverit et postea contra eum rescriptum sit, an appellare a litteris pridem sibi editis possit? quia qui tunc non appellavit, vera esse quae scripta sunt consensisse videtur: nec audiendus est, si dicat eventum rescripti sacri se sustinuisse.

Dig. 49.5.0. De appellationibus recipiendis vel non.

Dig. 49.5.1pr.

Ulpianus 29 ad ed.

Non solent audiri appellantes nisi hi, quorum interest vel quibus mandatum est vel qui negotium alienum gerunt, quod mox ratum habetur.

Dig. 49.5.1.1

Ulpianus 29 ad ed.

Sed et cum mater filii rem sententia eversam animadverteret, provocaverit, pietati dandum est et hanc audiri debere: et si litem praeparandam curare maluerit, intercedere non videtur, licet ab initio defendere non potest.

Dig. 49.5.2

Scaevola 4 reg.

Ante sententiam appellari potest, si quaestionem in civili negotio habendam iudex interlocutus sit, vel in criminali, si contra leges hoc faciat.

Dig. 49.5.3

Paulus l.S. reg.

Intra triduum appellare licet ei, qui de suspecto tutore egit victusque appellat.

Dig. 49.5.4

Macer 1 de appellat.

Eius, qui ideo causam agere frustratur, quod dicit se libellum principi dedisse et sacrum rescriptum expectare, audiri desiderium prohibetur: et si ob eam causam provocaverit, appellatio eius recipi sacris constitutionibus vetatur.

Dig. 49.5.5pr.

Ulpianus 4 de appellat.

Ei, cuius appellatio non recipitur, sufficit, si possit dicere appellationem suam non esse receptam: quod quaqua ratione doceat, admittetur eius appellatio.

Dig. 49.5.5.1

Ulpianus 4 de appellat.

Non recepta autem appellatione, si quidem principem appellari oportuit, principi erit supplicandum: sin vero alius appellabatur quam princeps, ille erit adeundus.

Dig. 49.5.5.2

Ulpianus 4 de appellat.

Sed et si quid aliud post receptam appellationem impedimento factum fuerit, eum adire oportet, quem appellare quis debet.

Dig. 49.5.5.3

Ulpianus 4 de appellat.

Plane si appellatione non recepta non ipsum adierit, quem debuit, sed principem, pro eo habebitur, atque si is aditus est, qui adiri debuit: idque rescriptis imperatoris nostri antonini declaratur.

Dig. 49.5.5.4

Ulpianus 4 de appellat.

Plane si alium pro alio adiit non principem, nihil ei hic error proderit, licet non videatur cessasse.

Dig. 49.5.5.5

Ulpianus 4 de appellat.

Intra constituta autem appellatoria tempora debet is, cuius appellatio non est recepta, vel competentem iudicem vel principem adire.

Dig. 49.5.6

Macer 2 de appellat.

Sciendum est, cum appellatio non recipitur, praecipi sacris constitutionibus omnia in eodem statu esse nec quicquam novari, etiamsi contra fiscum appellatum sit: eumque, qui appellationem non receperit, opinionem suam confestim per relationem manifestare et causam, pro qua non recepit appellationem, eiusque exemplum litigatori edere debere mandatis cavetur.

Dig. 49.5.7pr.

Paulus l.S. de appellat.

Si res dilationem non recipiat, non permittitur appellare, velut ne testamentum aperiatur (ut divus hadrianus constituit), ne frumentum in usum militum, in annonae subsidia contrahatur, neve scriptus heres in possessionem inducatur.

Dig. 49.5.7.1

Paulus l.S. de appellat.

Item si ex perpetuo edicto aliquid decernatur, id quo minus fiat, non permittitur appellare.

Dig. 49.5.7.2

Paulus l.S. de appellat.

Item quo minus pignus vendere liceat, appellari non potest.

Dig. 49.6.0. De libellis dimissoriis, qui apostoli dicuntur.

Dig. 49.6.1pr.

Marcianus 2 de appellat.

Post appellationem interpositam litterae dandae sunt ab eo, a quo appellatum est, ad eum, qui de appellatione cogniturus est, sive principem sive quem alium, quas litteras dimissorias sive apostolos appellant.

Dig. 49.6.1.1

Marcianus 2 de appellat.

Sensus autem litterarum talis est: appellasse puta lucium titium a sententia illius, quae inter illos dicta est.

Dig. 49.6.1.2

Marcianus 2 de appellat.

Sufficit autem petisse intra tempus dimissorias instanter et saepius, ut et si non accipiat, id ipsum contestetur: nam instantiam petentis dimissorias constitutiones desiderant. aequum est igitur, si per eum steterit, qui debebat dare litteras, quo minus det, ne hoc accipienti noceat.

Dig. 49.7.0. Nihil innovari appellatione interposita.

Dig. 49.7.1pr.

Ulpianus 4 de appellat.

Appellatione interposita, sive ea recepta sit sive non, medio tempore nihil novari oportet: si quidem fuerit recepta appellatio, quia recepta est: si vero non est recepta, ne praeiudicium fiat, quoad deliberetur, utrum recipienda sit appellatio an non sit.

Dig. 49.7.1.1

Ulpianus 4 de appellat.

Recepta autem appellatione tamdiu nihil erit innovandum, quamdiu de appellatione fuerit pronuntiatum.

Dig. 49.7.1.2

Ulpianus 4 de appellat.

Si quis ergo forte relegatus fuit et appellaverit, non arcebitur neque in italia neque in provincia, qua relegatus est.

Dig. 49.7.1.3

Ulpianus 4 de appellat.

Propter eandem rationem et si quis deportatus fuit ab eo, cui deportandi ius est, vel adnotatus, neque vincula patietur neque ullam aliam iniuriam, quam patitur, qui sententiae non adquieverat: integer enim status esse videtur provocatione interposita.

Dig. 49.7.1.4

Ulpianus 4 de appellat.

Ergo et si abstinere ordine iussus sit et provocaverit, eadem ratione potest coetum participare, cum hoc sit constitutum et sit iuris, ne quid pendente appellatione novetur.

Dig. 49.7.1.5

Ulpianus 4 de appellat.

Si quis ex pluribus facinoribus condemnatus propter quaedam appellavit, propter quaedam non: utrum differenda poena eius sit an non, quaeritur. et si quidem graviora sint crimina, ob quae appellatio interposita est, levius autem id, propter quod non appellavit, recipienda est omnimodo appellatio et differenda poena: si vero graviorem sententiam meruit ex ea specie, ex qua non est appellatum, omnimodo poena imponenda est.

Dig. 49.8.0. Quae sententiae sine appellatione rescindantur.

Dig. 49.8.1pr.

Macer 2 de appellat.

Illud meminerimus: si quaeratur, iudicatum sit nec ne, et huius quaestionis iudex non esse iudicatum pronuntiaverit: licet fuerit iudicatum, rescinditur, si provocatum non fuerit.

Dig. 49.8.1.1

Macer 2 de appellat.

Item si calculi error in sententia esse dicatur, appellare necesse non est: veluti si iudex ita pronuntiaverit: " cum constet titium seio ex illa specie quinquaginta, item ex illa specie viginti quinque debere, idcirco lucium titium seio centum condemno": nam quoniam error computationis est, nec appellare necesse est et citra provocationem corrigitur. sed et si huius quaestionis iudex sententiam centum confirmaverit, si quidem ideo, quod quinquaginta et viginti quinque fieri centum putaverit, adhuc idem error computationis est nec appellare necesse est: si vero ideo, quoniam et alias species viginti quinque fuisse dixerit, appellationi locus est.

Dig. 49.8.1.2

Macer 2 de appellat.

Item cum contra sacras constitutiones iudicatur, appellationis necessitas remittitur. contra constitutiones autem iudicatur, cum de iure constitutionis, non de iure litigatoris pronuntiatur. nam si iudex volenti se ex cura muneris vel tutelae beneficio liberorum vel aetatis aut privilegii excusare, dixerit neque filios neque aetatem aut ullum privilegium ad muneris vel tutelae excusationem prodesse, de iure constituto pronuntiasse intellegitur: quod si de iure suo probantem admiserit, sed idcirco contra eum sententiam dixerit, quod negaverit eum de aetate sua aut de numero liberorum probasse, de iure litigatoris pronuntiasse intellegitur: quo casu appellatio necessaria est.

Dig. 49.8.1.3

Macer 2 de appellat.

Item cum ex edicto peremptorio, quod neque propositum est neque in notitiam pervenit absentis, condemnatio fit, nullius momenti esse sententiam constitutiones demonstrant.

Dig. 49.8.1.4

Macer 2 de appellat.

Si apud eundem iudicem invicem petamus, si et mea et tua petitio sine usuris fuit et iudex me priorem tibi condemnavit, quo magis tu prior me condemnatum habeas: non est mihi necesse pro hac causa appellare, quando secundum sacras constitutiones iudicatum a me petere non possis, priusquam de mea quoque petitione iudicetur. sed magis est, ut appellatio interponatur.

Dig. 49.8.2pr.

Paulus 3 resp.

Paulus respondit eum, qui in rebus humanis non fuit sententiae dictae tempore, inefficaciter condemnatum videri.

Dig. 49.8.2.1

Paulus 3 resp.

Idem respondit adversus eum, qui in rebus humanis non esset, cum iudex datus est, neque iudicis dationem valuisse neque sententiam adversus eum dictam vires habere.

Dig. 49.8.3pr.

Paulus 16 resp.

Paulus respondit impossibile praeceptum iudicis nullius esse momenti.

Dig. 49.8.3.1

Paulus 16 resp.

Idem respondit ab ea sententia, cui pareri rerum natura non potuit, sine causa appellari.

Dig. 49.9.0. An per alium causae appellationum reddi possunt.

Dig. 49.9.1

Ulpianus 4 appellat.

Quaeri solet, an per alium causae appellationis reddi possunt: quae res in rebus pecuniariis et in criminibus agitari consuevit. et in rebus pecuniariis sunt rescripta posse agi. verba rescripti ita se habent: " divi fratres longino. si tibi qui appellavit mandavit, ut eum de appellatione, quam pollia ad eum fecit, defenderes, et res pecuniaria est: nihil prohibet nomine eius te respondere. sin autem non sit pecuniaria causa, sed capitalis, per procuratorem agi non licet. sed et si ea causa sit, ex qua sequi solet poena usque ad relegationem, non oportet per alium causas agi, sed ipsum adesse auditorio debere sciendum est". plane si pecuniaria causa est, ex qua ignominia sequitur, potest et per procuratorem hoc agi. idque erit probandum et in ipso accusatore, si appellaverit vel si adversus eum sit appellatum. et generaliter quae causa per alium agi non potest, eius nec appellationem per alium agi oportet.

Dig. 49.9.2

Macer 2 de appellat.

Si procurator absentis appellaverit, deinde rationes reddiderit, nihilo minus ipse respondere debet. sed an eo cessante dominus litis respondere possit exemplo adulescentis, videamus: magis tamen observatur, ut audiri debeat in causis appellationis reddendis is, cuius absentis procurator appellavit.

Dig. 49.10.0. Si tutor vel curator magistratusve creatus appellaverit.

Dig. 49.10.1

Ulpianus 3 de off. cons.

Si qui ad munera publica nominati appellaverint nec causas probaverint, scient ad periculum suum pertinere, si quid damni per moram appellationis rei publicae acciderit. quod si apparuerit eos necessario provocasse, cui adscribendum sit id damnum, praeses vel princeps aestimabit.

Dig. 49.10.2

Hermogenianus 5 iuris epit.

Tutor vel curator retentus si provocaverit et ante causam actam moriatur, propter periculum medii temporis successores eius causas appellationis necesse habent reddere.

Dig. 49.11.0. Eum qui appellaverit in provincia defendi.

Dig. 49.11.1

Ulpianus 4 de appellat.

Eum, qui appellavit, oportere in provincia defendi in aliis suis causis, etiamsi appellationis causa peregrinetur, divi fratres decimo philoni rescripserunt.

Dig. 49.11.2

Marcianus 2 de appellat.

Hoc enim illis praestatur, ne necesse habeant se defendere, qui rei publicae causa absunt.

Dig. 49.12.0. Apud eum, a quo appellatur, aliam causam agere compellendum.

Dig. 49.12.1

Ulpianus 4 de appellat.

Si quis ex alia causa appellaverit a iudice, an in alia causa eundem iudicem habere necesse habeat, videamus. et hodie hoc iure utimur, et, tametsi appellatio interposita sit, tamen apud eundem iudicem, a quo quis provocavit, compelletur alias causas si quas habet agere: nec utetur hoc praetextu, quasi ad offensum iudicem non debeat experiri, cum possit denuo provocare.

Dig. 49.13.0. Si pendente appellatione mors intervenerit.

Dig. 49.13.1pr.

Macer 2 de appellat.

Appellatore defuncto, si quidem sine herede, cuiuscumque generis appellatio fuit, evanescit. quod si appellatori heres extiterit, si quidem nullius alterius interest causas appellationis reddi, cogendus non est peragere appellationem:

si vero fisci vel alterius, contra quem appellatum est, interest, heres causas appellationis reddere necesse habet. nullius autem interest, veluti cum sine ademptione bonorum relegatus est. nam si ademptis bonis relegatus vel in insulam deportatus vel in metallum datus provocatione interposita decesserit, imperator noster alexander plaetorio militi ita rescripsit: " quamvis pendente appellatione morte rei crimen extinctum sit, data tamen etiam de parte bonorum eius sententia proponitur, adversus quam non aliter is, qui emolumentum successionis habet, optinere potest, quam si in reddendis causis appellationis iniquitatem sententiae detexerit".

Dig. 49.13.1.1

Macer 2 de appellat.

Tutor quoque in negotio pupilli appellatione interposita si decesserit, heredem eius causas appellationis reddere necesse est, etiamsi rationes tutelae heres reddiderit, quia sufficit mortis tempore ad causas appellationis reddendas obligatum fuisse. sed divi severus et antoninus rescripserunt non cogendum tutorem post rationes redditas causas appellationum reddere.

Dig. 49.14.0. De iure fisci.

Dig. 49.14.1pr.

Callistratus 1 d. i. fisci.

Variae causae sunt, ex quibus nuntiatio ad fiscum fieri solet. aut enim se quis, quod tacite relictum est, profitetur capere non posse vel ab alio praeventus defertur: vel quod mors ab heredibus non vindicatur: vel quod indignus quis heres nuntiatur: vel quod princeps heres institutus et testamentum sive codicilli subrepti esse nuntiantur: vel quod dicatur quis thensaurum invenisse: vel magni pretii rem minoris ex fisco comparasse: vel praevaricatione fiscum victum esse: vel eum decessisse, qui in capitali crimine esset: vel etiam post mortem aliquem reum esse: vel domum destructam esse: vel ab accusatione recessum: vel rem litigiosam venumdari: vel poenam fisco ex contractu privato deberi: vel adversus leges commissum factum esse.

Dig. 49.14.1.1

Callistratus 1 d. i. fisci.

An bona, quae solvendo non sint, ipso iure ad fiscum pertineant, quaesitum est. labeo scribit etiam ea, quae solvendo non sint, ipso iure ad fiscum pertinere. sed contra sententiam eius edictum perpetuum scriptum est, quod ita bona veneunt, si ex his fisco adquiri nihil possit.

Dig. 49.14.1.2

Callistratus 1 d. i. fisci.

Divus pius coelio amaranto ita rescripsit vacantium bonorum nuntiationem quadriennio finiri idque tempus ex die, quo certum esse coepit neque heredem neque bonorum possessorem exstare, computari oportere.

Dig. 49.14.1.3

Callistratus 1 d. i. fisci.

Praescriptio autem viginti annorum, quae etiam circa requirendorum adnotatorum bona observatur, ex constitutione divi titi solet ex eo numerari, ex quo quid ad fiscum pertinere potuit.

Dig. 49.14.1.4

Callistratus 1 d. i. fisci.

Causae autem, quae statim motae sunt et tractae ultra vicensimum annum, differri possunt etiam post vicensimum annum.

Dig. 49.14.1.5

Callistratus 1 d. i. fisci.

Illae quoque causae, quae a priore nuntiatore proditae dicantur, etiam post annos, quibus praescribi diximus, fisco nuntiari possunt.

Dig. 49.14.2pr.

Callistratus 2 d. i. fisci.

Ex quibusdam causis delatione suscipientium fama non laeditur, veluti eorum, qui non praemii consequendi, item eorum, qui ulciscendi gratia adversarium suum deferunt, vel quod nomine rei publicae suae quis exsequitur causam: et haec ita observari plurifariam principalibus constitutionibus praecipitur.

Dig. 49.14.2.1

Callistratus 2 d. i. fisci.

Divus hadrianus flavio arriano in haec verba rescripsit: " quin ei, qui instrumenta ad causam fisci pertinentia, cum possit exhibere, non exhibet, nocere debeat, si verum aliter non invenitur, ea subtracta esse credantur, quae nocitura causae eius fuerint, dubitatum non est. sed nec alias dubitari oportet, quin non in aliam rem nocere debeant, quam in eam qua desiderata sunt".

Dig. 49.14.2.2

Callistratus 2 d. i. fisci.

Item divi fratres ad libellum cornelii rufi rescripserunt totiens edenda esse instrumenta, quotiens de iure capiendi vel de iure dominii vel de aliqua causa simili re nummaria quaeratur, non si de capitali causa agatur.

Dig. 49.14.2.3

Callistratus 2 d. i. fisci.

Senatus censuit, ut, si neque delator neque possessor tribus edictis evocati adfuerint, delatoris quidem fideiussores teneantur et ei postea publicam causam deferendi ius adimatur, possessoris autem ius idem esset, quod si delatus omnino non esset.

Dig. 49.14.2.4

Callistratus 2 d. i. fisci.

Quotiens tamen delator adesse iussus cessat nec hoc fraude possessoris factum esse probabitur, divus hadrianus rescripsit secundum possessorem pronuntiari oportere, ita ut sententia comprehendatur etiam delatores edicto id comprehendisse.

Dig. 49.14.2.5

Callistratus 2 d. i. fisci.

Divus pius caecilio maximo rescripsit constitutionem patris sui, qua compelleretur delator edere mandatorem ac, nisi edidisset, ut in vincula deduceretur, eo pertinere, non ut delator poena subduceretur, si mandatorem haberet, sed ut mandator quoque perinde atque si ipse detulisset puniretur.

Dig. 49.14.2.6

Callistratus 2 d. i. fisci.

Imperator noster severus augustus constituit, ne servi delatores dominorum audiantur, sed ut poena coerceantur: libertos quoque causae mandatores contra patronos a praesidibus provinciarum poenae plectendos.

Dig. 49.14.2.7

Callistratus 2 d. i. fisci.

Complura sunt rescripta principalia, quibus cavetur non obesse errorem cuiquam, quod ignotus iuris sui ipse se detulerit. sed extat eorundem principum rescriptum, ex quo videtur posse defendi ita demum non nocere cuiquam se detulisse, si ea persona sit, quae ignorare propter rusticitatem vel propter sexum femininum ius suum possit.

Dig. 49.14.3pr.

Callistratus 3 d. i. fisci.

Non intellegitur fraudem legi fecisse, qui rogatus est palam restituere. sed cum quidam testamento suo ita scripsisset: " vos rogo, ut in eo, quod a vobis peti, fidem praestetis: perque deum, ut faciatis, rogo" et quaereretur, an id palam datum intellegeretur: iulianus respondit non quidem apparere, quid ab heredibus ex huiusmodi verbis petitum est. quaeri autem solere, quando intellegatur quis in fraudem legis fidem suam accommodare: et fere eo iam decursum, ut fraus legi fieri videatur, quotiens quis neque testamento neque codicillis rogaretur, sed domestica cautione et chirographo obligaret se ad praestandum ei qui capere non potest: ideoque dici posse ex supra dictis verbis non esse legi fraudem factam.

Dig. 49.14.3.1

Callistratus 3 d. i. fisci.

Si quis palam rogatus et tacite esset, agitabatur, quid magis praevaleret: utrum id ipsum noceret, quod tacite rogatus esset, an prodesset, quod palam petitum esset. et divus hadrianus rescripsit in eo, quod cuiusque fidei palam commissum est, non esse existimandum fidem suam in fraudem legis accommodasse.

Dig. 49.14.3.2

Callistratus 3 d. i. fisci.

Quando autem fraus interposita videatur, agendum est, id est utrum exitus spectari deberet an consilium: forte si tunc, cum tacite fideicommittebatur, non capiebat is, cui restitui iubebatur, mortis vero tempore capere poterat, vel contra. et placuit exitum esse spectandum.

Dig. 49.14.3.3

Callistratus 3 d. i. fisci.

Tacita autem fideicommissa frequenter sic deteguntur, si proferatur chirographum, quo se cavisset cuius fides eligitur, quod ad eum ex bonis defuncti pervenerit, restituturum. sed et ex aliis probationibus manifestissimis idem fit.

Dig. 49.14.3.4

Callistratus 3 d. i. fisci.

Cum ex causa taciti fideicommissi bona ad fiscum pertinent, omnia, quae in testamento utiliter data sunt, valent: et ita divus pius rescripsit.

Dig. 49.14.3.5

Callistratus 3 d. i. fisci.

Divi fratres rescripserunt in venditionibus fiscalibus fidem et diligentiam a procuratore exigendam et iusta pretia non ex praeterita emptione, sed ex praesenti aestimatione constitui: sicut enim diligenti cultura pretia praediorum ampliantur, ita, si neglegentius habita sint, minui ea necesse est.

Dig. 49.14.3.6

Callistratus 3 d. i. fisci.

Cum quinquennium, in quo quis pro publico conductore se obligavit, excessit, sequentis temporis nomine non tenetur: idque principalibus rescriptis exprimitur. divus etiam hadrianus in haec verba rescripsit: " valde inhumanus mos est iste, quo retinentur conductores vectigalium publicorum et agrorum, si tantidem locari non possint. nam et facilius invenientur conductores, si scierint fore ut, si peracto lustro discedere voluerint, non teneantur".

Dig. 49.14.3.7

Callistratus 3 d. i. fisci.

Si posteriori creditori fiscus successerit, eo iure utitur, quo is usurus erat, cui successit.

Dig. 49.14.3.8

Callistratus 3 d. i. fisci.

Multa principalia sunt rescripta, quibus cavetur non aliter fiscum debitorum suorum debitores convenire, nisi principales debitores defecerint, vel ex ratione fisci nomina facta liquido probentur, vel ex contractu fiscali debitores conveniantur.

Dig. 49.14.3.9

Callistratus 3 d. i. fisci.

Divus hadrianus flavio proculo rescripsit, cum in libertatem proclamat qui ex bonis ad fiscum pertinentibus esse dicitur, iudicium dari praesentibus et agentibus etiam his, qui negotiis fisci solent intervenire: et huiusmodi liberales causae, si non interveniente fisci advocato decisae sint, in integrum restituuntur.

Dig. 49.14.3.10

Callistratus 3 d. i. fisci.

Si in locis fiscalibus vel publicis religiosisve aut in monumentis thensauri reperti fuerint, divi fratres constituerunt, ut dimidia pars ex his fisco vindicaretur. item si in caesaris possessione repertus fuerit, dimidiam aeque partem fisco vindicari.

Dig. 49.14.3.11

Callistratus 3 d. i. fisci.

Deferre autem se nemo cogitur, quod thensaurum invenerit, nisi ex eo thensauro pars fisco debeatur. qui autem, cum in loco fisci thensaurum invenerit, partem ad fiscum pertinentem suppresserit, totum cum altero tanto cogitur solvere.

Dig. 49.14.4

Ulpianus 6 ad ed.

In fisci causis pacti cum delatoribus pro confessis habentur, si modo pretium vel modicum dederunt.

Dig. 49.14.5pr.

Ulpianus 16 ad ed.

Si curator caesaris rem aliquam vendiderit, quamvis duplum vel triplum pro evictione promiserit, tamen fiscus simplum praestabit.

Dig. 49.14.5.1

Ulpianus 16 ad ed.

Si ab eo, cui ius distrahendi res fisci datum est, fuerit distractum quid fisci, statim fit emptoris, pretio tamen soluto.

Dig. 49.14.6pr.

Ulpianus 63 ad ed.

Fiscus cum in privati ius succedit, privati iure pro anterioribus suae successionis temporibus utitur: ceterum posteaquam successit, habebit privilegium suum. sed utrum statim atque coepit ad eum pertinere nomen, an vero posteaquam convenit debitorem, an posteaquam relatum est inter nomina debitorum, quaeritur. et quidem usuras exinde petit fiscales, etsi breviores debeantur, ex quo convenit certum debitorem et confitentem. at in privilegio varie rescriptum est: puto tamen exinde privilegio esse locum, ex quo inter nomina debitorum relatum nomen est.

Dig. 49.14.6.1

Ulpianus 63 ad ed.

Quodcumque privilegii fisco competit, hoc idem et caesaris ratio et augustae habere solet.

Dig. 49.14.7

Ulpianus 54 ad ed.

Si fiscus alicui status controversiam faciat, fisci advocatus adesse debet. quare si sine fisci advocato pronuntiatum sit, divus marcus rescripsit nihil esse actum et ideo ex integro cognosci oportere.

Dig. 49.14.8

Modestinus 5 reg.

Bonorum fisco vindicatorum actores venundari a procuratoribus non possunt, et, si distrahantur, irritam fieri venditionem rescriptum est.

Dig. 49.14.9

Modestinus 17 resp.

Lucius titius fecit heredes sororem suam ex dodrante, uxorem maeviam et socerum ex reliquis portionibus: eius testamentum postumo nato ruptum est, qui postumus brevi et ipse decessit, atque ita omnis hereditas ad matrem postumi devoluta est. soror testatoris maeviam veneficii in lucium titium accusavit: cum non optinuisset, provocavit: interea decessit rea: nihilo minus tamen apostoli redditi sunt. quaero, an putes extincta rea cognitionem appellationis inducendam propter hereditatem quaesitam. modestinus respondit morte reae crimine extincto persecutionem eorum, quae scelere adquisita probari possunt, fisco competere posse.

Dig. 49.14.10

Modestinus l.S. de praescr.

Non puto delinquere eum, qui in dubiis quaestionibus contra fiscum facile responderit.

Dig. 49.14.11

Iavolenus 9 epist.

Non possunt ulla bona ad fiscum pertinere, nisi quae creditoribus superfutura sunt: id enim bonorum cuiusque esse intellegitur, quod aeri alieno superest.

Dig. 49.14.12

Callistratus 6 de cogn.

In metallum damnatis libertas adimitur, cum etiam verberibus servilibus coercentur. sane per huiusmodi personam fisco nihil adquiri divus pius rescripsit: et ideo quod legatum erat ei, qui postea in metallum damnatus erat, ad fiscum non pertinere rescripsit magisque ait poenae eos quam fisci servos esse.

Dig. 49.14.13pr.

Paulus 7 ad l. iul. et pap.

Edicto divi traiani, quod proposui, significatur, ut, si quis, antequam causa eius ad aerarium deferatur, professus esset eam rem quam possideret capere sibi non licere, ex ea partem fisco inferret, partem ipse retineret.

Dig. 49.14.13.1

Paulus 7 ad l. iul. et pap.

Idem postea edicto significavit, ut, quaecumque professa esset vel palam vel tacite relictum sibi quod capere non posset et probasset iam id ad fiscum pertinere: etiamsi id non possideret, ex eo, quod redactum esset a praefectis aerario, partem dimidiam ferat.

Dig. 49.14.13.2

Paulus 7 ad l. iul. et pap.

Nihil autem interest, quae causa impediat ius capiendi.

Dig. 49.14.13.3

Paulus 7 ad l. iul. et pap.

Id autem deferri debet, quod latet, non id quod fisci est.

Dig. 49.14.13.4

Paulus 7 ad l. iul. et pap.

Ad heredes eius, qui se detulerat, non videbatur praemium transire: sed divus hadrianus rescripsit, ut, licet ante decessisset is qui se detulerat, antequam id quod detulerat fisco addiceretur, heredi eius praemium daretur.

Dig. 49.14.13.5

Paulus 7 ad l. iul. et pap.

Exstat eiusdem hadriani epistula, ut, si is qui se deferre poterat morte praeventus fuerit, heres eius, si detulerit, praemium consequatur: " si tamen", inquit, " liquebit defunctum eius animi fuisse, ut se vellet deferre": si vero idcirco dissimulaverit, dum rem occultari sperat, heredem eius ultra vulgare praemium nihil consecuturum.

Dig. 49.14.13.6

Paulus 7 ad l. iul. et pap.

Item divi fratres rescripserunt heredes eorum, quibus tacitum fideicommissum relictum est, ita demum ex beneficio traiani deferre se posse, si is, cui datum fuerat, morte praeventus esset et ideo per angustias temporis deferre se non potuerit.

Dig. 49.14.13.7

Paulus 7 ad l. iul. et pap.

Cum ante apertum testamentum tacitum fideicommissum nuntiatum esset ab his, qui fidem tacitam susceperunt, deinde post apertas a fideicommissario delatum esset, divus antoninus recipi professionem eius iussit: neque enim dignam esse praemio tam praecipitem festinationem prioris, et cum quis se nuntiet non capere, potius confiteri de suo iure quam aliud deferre videtur.

Dig. 49.14.13.8

Paulus 7 ad l. iul. et pap.

Ad eos beneficium traiani pertinet, qui ex defuncti voluntate relictum sibi capere non possunt. ergo nec illud, quod servo meo relictum est, deferre potero.

Dig. 49.14.13.9

Paulus 7 ad l. iul. et pap.

Eos, qui quasi indigni repelluntur, summovendos esse ab eiusmodi praemio: id est eos, qui de inofficioso egerunt vel falsum dixerunt testamentum, qui usque ad finem litis obpugnaverunt testamentum.

Dig. 49.14.13.10

Paulus 7 ad l. iul. et pap.

Ei, qui per errorem se detulit, cum capere solidum posset, non nocere hoc divus hadrianus et divus pius et fratres rescripserunt.

Dig. 49.14.14

Gaius 11 ad l. iul. et pap.

Dicitur, ex asse hereditates ex silaniano cum fiscus vindicasset, ut nec libertates nec legata tueatur. quod aperte nullam habet rationem, cum ex quibuslibet aliis causis fisco vindicatis hereditatibus et libertates et legata maneant.

Dig. 49.14.15pr.

Mauricius 3 ad l. iul. et pap.

Senatus censuit, si delator abolitionem petat, quod errasse se dicat, ut idem iudex cognoscat, an iusta causa abolitionis sit, et si errasse videbitur, det imprudentiae veniam, si autem calumniae, hoc ipsum iudicet eaque causa accusatori perinde cedat, ac si causam egisset et prodidisset.

Dig. 49.14.15.1

Mauricius 3 ad l. iul. et pap.

Si quis delatorem subiecerit, tantum in aerarium deferat, quantum praemii nomine delator consecuturus fuisset, si vincisset.

Dig. 49.14.15.2

Mauricius 3 ad l. iul. et pap.

Divus hadrianus rescripsit eandem poenam delatorem ferre debere, si citatus ad edictum non responderit, qua teneretur, si causam non probasset.

Dig. 49.14.15.3

Mauricius 3 ad l. iul. et pap.

Senatus hadriani temporibus censuit, cum quis se ad aerarium detulerit, quod capere non potuerit, ut totum in aerarium colligatur et ex eo pars dimidia sibi secundum beneficium divi traiani restituatur.

Dig. 49.14.15.4

Mauricius 3 ad l. iul. et pap.

Quod si tribus edictis a praefecto aerario adesse delator iussus venire noluerit, secundum possessorem sit pronuntiandum: sed ab eo, qui ita adesse iussus respondente possessore non adfuerit, tantum exigendum, quantum apud aerarium ex ea causa quam detulerit remaneret, si professionem eam implesset.

Dig. 49.14.15.5

Mauricius 3 ad l. iul. et pap.

Senatus censuit, ut perinde rationes ad aerarium deferat is, a quo tota hereditas fisco evicta est vel universa legata, atque is deferre deberet, a quo pars hereditatis vel legati evicta sit.

Dig. 49.14.15.6

Mauricius 3 ad l. iul. et pap.

Si quis arguetur falsas rationes detulisse, de eo praefectus aerarii cognoscat, quantam fraudem invenerit, ut tantam pecuniam in aerario iubeat inferri.

Dig. 49.14.16

Ulpianus 18 ad l. iul. et pap.

Ait divus traianus: " quicumque professus fuerit". " quicumque" accipere debemus tam masculum quam feminam: nam feminis quoque, quamvis delationibus prohibentur, tamen ex beneficio traiani deferre se permissum est. nec non illud aeque non intererit, cuius aetatis sit is qui se defert, utrum iustae an pupillaris: nam pupillis etiam permittitur deferre se, ex quibus non capiunt.

Dig. 49.14.17

Modestinus 2 de poen.

In summa sciendum est omnium fiscalium poenarum petitionem creditoribus postponi.

Dig. 49.14.18pr.

Marcianus l.S. de delator.

Deferre non possunt mulieres propter sexus infirmitatem, et ita sacris constitutionibus cautum est.

Dig. 49.14.18.1

Marcianus l.S. de delator.

Item clarissimi viri deferre non possunt.

Dig. 49.14.18.2

Marcianus l.S. de delator.

Item damnati deferre non possunt, ut divi fratres de eo rescripserunt, qui fustibus caesus in opus publicum erat datus.

Dig. 49.14.18.3

Marcianus l.S. de delator.

Item constitutionibus principum prohibentur deferre illi, qui in metallum dati sunt. hoc ideo, ne desperati ad delationem facile possint sine causa confugere.

Dig. 49.14.18.4

Marcianus l.S. de delator.

Sed eas causas, quas ante damnationem coeperunt deferre, posse eos etiam post damnationem exequi rescriptum est.

Dig. 49.14.18.5

Marcianus l.S. de delator.

Veterani quoque sacris constitutionibus delatores esse prohibentur propter honorem utique et merita militiae.

Dig. 49.14.18.6

Marcianus l.S. de delator.

Item milites propter honorem stipendiorum quae merent deferre prohibentur.

Dig. 49.14.18.7

Marcianus l.S. de delator.

Sed communem causam sibi cum fisco quivis deferre potest, hoc est vindicare, nec per hoc famosus est, licet in causa sua non optinuerit.

Dig. 49.14.18.8

Marcianus l.S. de delator.

Item eos, qui tutores vel curatores fuerunt, non oportere deferre causas pupillorum vel adulescentium suorum divi severus et antoninus rescripserunt. quod consequens est observari et in eo, qui quasi procurator negotia gessit: et ita idem principes rescripserunt. idem decreverunt nulla constitutione prohibitum esse procuratorem interrogari, sed accusare eum, cuius negotia gessit. et tutorem, qui aut detulit aut mandavit, severissime puniendum rescripserunt.

Dig. 49.14.18.9

Marcianus l.S. de delator.

Sed ne quidem is, qui aliquam vendidit rem, eandem deferre debet vel per se vel per subiectam personam, ne alioquin poenam patiatur dignam suae personae, ut et constitutum esse refertur.

Dig. 49.14.18.10

Marcianus l.S. de delator.

Papinianus tam libro sexto quam undecimo responsorum scribit ita demum publicam auferri pecuniam ei, qui, cum erat creditor, in solutum pecuniam accepit, si aut sciebat, cum accipiebat, publicum quoque esse debitorem, aut postea cognovit, antequam consumeret pecuniam. sed placet omnimodo ei pecuniam auferendam esse, etiamsi ignoravit, cum consumeret: et postea quidam principes directam actionem competere ablata pecunia rescripserunt, ut et Marcellus libro septimo digestorum scribit.

Dig. 49.14.19

Papinianus 10 resp.

Denique non esse praestandas usuras, cum pecunia revocatur, convenit, quoniam res, non persona convenitur.

Dig. 49.14.20

Papinianus 11 resp.

Sed revocata pecunia in fideiussorem liberatum utilis actio dabitur.

Dig. 49.14.21

Paulus 3 quaest.

Titius, qui mihi sub pignoribus pecuniam debebat, cum esset fisci debitor, solvit mihi quae debebat: postea fiscus iure suo usus abstulit mihi pecuniam. quaerebatur, an liberata essent pignora. Marcellus recte existimabat, si id quod mihi solutum est fiscus abstulit, non competere pignorum liberationem. neque differentiam admittendam esse existimo interesse putantium, id ipsum quod solutum est an tantundem repetatur.

Dig. 49.14.22pr.

Marcianus l.S. de delator.

Res, quae in controversia sunt, non debent a procuratore caesaris distrahi, sed differenda est eorum venditio, ut divus quoque severus et antoninus rescripserunt, et defuncto maiestatis reo, parato herede purgare innocentiam mortui, distractionem bonorum suspendi iusserunt, et generaliter prohibuerunt rem distrahi a procuratore, quae esset in controversia.

Dig. 49.14.22.1

Marcianus l.S. de delator.

Res autem nexas pignori distrahere procuratores possunt. sed si ante alii res obligatae sunt iure pignoris, non debet procurator ius creditorum laedere: sed si quidem superfluum est in re, permittitur procuratori vendere ea lege, ut imprimis creditoribus praecedentibus satisfiat et si quid superfluum est, fisco inferatur, aut, si acceperit totum fiscus, solvat ipse: vel simpliciter si vendidit procurator, iubebit pecuniam, quam deberi creditori privato fuerit probatum, exsolvi ei. et ita divus severus et antoninus rescripserunt.

Dig. 49.14.22.2

Marcianus l.S. de delator.

Lites donatas se non suscipere divus pius rescripsit, licet bona relicturum se quis profiteatur: vel partem bonorum donatam non suscipere. et adiecit et illum dignum fuisse puniri pro tam turpi tamque invidioso commento, et nisi durum esse videbatur in ultro venientem poenam statuere.

Dig. 49.14.22.3

Marcianus l.S. de delator.

Sicut nuntiare causam nemo cogitur, ita liberum arbitrium desistendi ei non datur qui detulit: et ita divi severus et antoninus rescripserunt: et idem esse, licet alieno mandato detulisset. plane rescripserunt delatorem audiendum volentem a lite desistere, si sibi mandatorem subtractum queratur.

Dig. 49.14.23

Callistratus 2 d. i. fisci.

De eo delatore, qui causam solus agere instituerat non habita mentione mandatoris, si postea desistat, praetendens mandatorem causae decessisse, puniendum divi fratres rescripserunt.

Dig. 49.14.24

Marcianus l.S. de delator.

Non tantum delator punitur, si non probaverit, sed et mandator: quem exhibere debet delator.

Dig. 49.14.25

Ulpianus 19 ad sab.

Est et decretum ab imperatore severo et constitutum nullo modo exigendum quem probare, unde habeat, circa delationes fiscales, sed delatorem probare debere quod intendit.

Dig. 49.14.26

Ulpianus 31 ad sab.

Cum quidam capitis reus emancipasset filium, ut hereditatem adiret, rescriptum est non videri in fraudem fisci factum, quod adquisitum non est.

Dig. 49.14.27

Ulpianus 34 ad ed.

Cum mortem maritus uxoris necatae non defendit, divus severus rescripsit dotem fisco vindicandam, prout ad maritum pertineat.

Dig. 49.14.28

Ulpianus 3 disp.

Si qui mihi obligaverat quae habet habiturusque esset cum fisco contraxerit, sciendum est in re postea adquisita fiscum potiorem esse debere papinianum respondisse: quod et constitutum est. praevenit enim causam pignoris fiscus.

Dig. 49.14.29pr.

Ulpianus 8 disp.

Eius, qui delatorem corrupit, ea condicio est, ut pro victo habeatur: nam in fiscalibus causis id constitutum est. sed enim haec poena magis est ut adversus ipsum locum habeat, qui delatorem redemit: ceteroquin adversus heredem eius transire non debet. nec enim exinde perit causa, ex quo redempta est, vel actio peremitur vel condemnatio facta videtur, verum oportet constare prius et de crimine pronuntiare. plane si forte de retractanda causa agatur, quae semel iudicata est, per delatoris corruptelam, mortuus corruptor non efficiet, quo minus agi possit atque retractari causa: hic enim non poenae, sed causae restitutio est.

Dig. 49.14.29.1

Ulpianus 8 disp.

Eum, qui falsum testamentum dixit, posse adire hereditatem constat: sed denegatis ei actionibus fisco locus erit.

Dig. 49.14.29.2

Ulpianus 8 disp.

Et obligationes, quas adeundo confudit, non restituuntur: nam et in eo, qui post aditam hereditatem defuncti mortem non defendit, imperator noster cum patre rescripsit obligationes confusas non resuscitari.

Dig. 49.14.30

Marcianus 3 inst.

Ne procuratores caesaris bonorum actores, quae ad fiscum devoluta sunt, alienent, imperatores severus et antoninus rescripserunt: et, si manumissi fuerint, revocantur ad servitutem.

Dig. 49.14.31

Marcianus 4 inst.

Divus commodus rescripsit obsidum bona sicut captivorum omnimodo in fiscum esse cogenda:

Dig. 49.14.32

Marcianus 14 inst.

Sed si accepto usu togae romanae ut cives romani semper egerint, divi fratres procuratoribus hereditatium rescripserunt sine dubitatione ius eorum ab obsidis condicione separatum esse beneficio principali, ideoque idem ius eis servandum, quod habent, si a legitimis civibus romanis heredes instituti fuissent.

Dig. 49.14.33

Ulpianus 1 resp.

Eum, qui debitoris fisci adiit hereditatem, privilegiis fisci coepisse esse subiectum.

Dig. 49.14.34

Macer 2 publ.

Imperatores severus et antoninus asclepiadi ita rescripserunt: " tu, qui defensione omissa redimere sententiam maluisti, cum tibi crimen obiceretur, non immerito quingentos solidos inferre fisco iussus es: omissa enim ipsius causae inquisitione ipse te huic poenae subdidisti. optinendum est enim, ut hi, quibus negotia fiscalia moventur, ad defensiones causae bona fide veniant, non adversarios aut iudices redimere temptent".

Dig. 49.14.35

Pomponius 11 epist.

Apud iulianum scriptum est: si privatus ad se pertinere hereditatem lucii titii dicat, altero eandem hereditatem fisco vindicante: quaeritur, utrum ius fisci ante excutiendum sit et sustinendae actiones ceterorum, an nihilo minus inhibendae petitiones creditorum singulorum, ne publicae causae praeiudicetur. idque senatus consultis expressum est.

Dig. 49.14.36

Papinianus 3 resp.

Praediis a fisco distractis praeteriti temporis tributum eorundem praediorum onus emptorem spectare placuit.

Dig. 49.14.37

Papinianus 10 resp.

Quod placuit fisco non esse poenam petendam, nisi creditores suum reciperaverint, eo pertinet, ut privilegium in poena contra creditores non exerceatur, non ut ius commune privatorum fiscus amittat.

Dig. 49.14.38pr.

Papinianus 13 resp.

Fiscus in quaestione falsi testamenti non optinuit: priusquam autem ea quaestio decideretur, alio nuntiante bona postea vacare constitit. fructus post primam litem absumi non oportuisse respondi: neque enim ad senatus consulti beneficium scriptum heredem pertinere controversia mota.

Dig. 49.14.38.1

Papinianus 13 resp.

Delatoris opera non esse functum respondi, qui fisci pecuniam, quam alius tenebat, ad sui temporis administrationem pertinere, quamvis probare non potuisset, contendit, quoniam propriam causam egerat.

Dig. 49.14.39pr.

Papinianus 16 resp.

Bona fisco citra poenam exilii perpetuam adiudicari sententia non oportet.

Dig. 49.14.39.1

Papinianus 16 resp.

Eum, qui periculum communis condemnationis dividi postulavit, quod participes iudicati solvendo essent revocatis alienationibus quas fraudulenter fecerant, non videri causam pecuniae fisco nuntiasse respondi.

Dig. 49.14.40pr.

Paulus 21 quaest.

Ita fidei heredis commisit: " rogo fundum titio des, de quo te rogavi". si titius capere non possit, non evitabit heres poenam taciti fideicommissi: non enim est palam relinquere, quod ex testamento sciri non potest, cum recitatum est. quemadmodum nec ille palam dat, qui ita scribit: " rogo vos, heredes, in eo, quod a vobis peti, fidem praestetis". immo in priore specie maiorem fraudem excogitasse videtur, qui non tantum legem circumvenire voluit, sed etiam interpretationem legis, quae circa tacitum fideicommissum habetur: quamvis enim fundum nominaverit, non tamen cognosci potest, de quo sit rogatus heres, cum diversitas rerum obscurum faciat legatum.

Dig. 49.14.40.1

Paulus 21 quaest.

Patronus si tacite in fidem suam recipiat, ut ex portione sua praestet, cessare fraudem dicitur, quia de suo largitur.

Dig. 49.14.41

Paulus 21 resp.

Eum, qui bona vacantia a fisco comparavit, debere actionem, quae contra defunctum competebat, excipere.

Dig. 49.14.42pr.

Valens 5 fideic.

Arrianus severus praefectus aerarii, cum eius, qui tacite rogatus fuerat non capienti fideicommissum reddere, bona publicata erant, pronuntiavit nihilo minus ius deferendi ex constitutione divi traiani habere eum cui fideicommissum erat relictum.

Dig. 49.14.42.1

Valens 5 fideic.

Quia autem nonnulli ingrati adversus beneficium divi traiani post professionem quoque de tacito fideicommisso factam cum possessoribus transigunt atque tribus edictis evocati non respondent, placuit senatui tantum ab eo qui id fecisset exigi, quantum apud aerarium ex ea causa quam detulerat remanere oporteret, si professionem suam implesset: et si possessoris quoque fraus apud praefectum convicta fuisset, ab eo quoque quod convictus inferre debuisset exigi.

Dig. 49.14.43

Ulpianus 6 fideic.

Imperator noster rescripsit fiscum in rem habere actiones ex tacito fideicommisso.

Dig. 49.14.44

Paulus 1 sent.

Delator non est, qui protegendae causae suae gratia aliquid ad fiscum nuntiat.

Dig. 49.14.45pr.

Paulus 5 sent.

In fraudem fisci non solum per donationem, sed quocumque modo res alienatae revocantur, idemque iuris est et si non quaeratur: aeque enim in omnibus fraus punitur.

Dig. 49.14.45.1

Paulus 5 sent.

Bona eorum, qui in custodia vel in vinculis vel compedibus decesserunt, heredibus eorum non auferuntur, sive testato sive intestato decesserunt.

Dig. 49.14.45.2

Paulus 5 sent.

Eius bona, qui sibi mortem conscivit, non ante ad fiscum coguntur, quam prius constiterit, cuius criminis gratia manus sibi intulerit. eius bona, qui sibi ob aliquod admissum flagitium mortem conscivit et manus intulit, fisco vindicantur: quod si id taedio vitae aut pudore aeris alieni vel valetudinis alicuius impatientia admisit, non inquietabuntur, sed suae successioni relinquuntur.

Dig. 49.14.45.3

Paulus 5 sent.

A debitore fisci in fraudem datas libertates retrahi placuit: sane ipsum ita ab alio emere mancipium, ut manumittat, non est prohibitum: ergo tunc et libertatem praestare possit.

Dig. 49.14.45.4

Paulus 5 sent.

Ex his bonis, quae ad fiscum delata sunt, instrumenta vel chirographa, acta etiam ad ius privatorum pertinentia restitui postulantibus convenit.

Dig. 49.14.45.5

Paulus 5 sent.

Neque instrumenta neque acta a quoquam adversus fiscum edi oportet.

Dig. 49.14.45.6

Paulus 5 sent.

Ipse autem fiscus actorum suorum exempla hac condicione edit, ut is, cui describendi fit potestas, adversus se vel rem publicam his actis ne utatur: de quo cavere compellitur, ut, si usus is contra interdictum fuerit, causa cadat.

Dig. 49.14.45.7

Paulus 5 sent.

Quotiens apud fiscum agitur, actorum potestas postulanda est, ut merito is uti liceat, eaque manu commentariensis adnotanda sunt. quod si ea aliter proferantur, is qui ita protulerit causa cadit.

Dig. 49.14.45.8

Paulus 5 sent.

Quotiens iterum apud fiscum eadem causa tractatur, priorum actorum, quorum usus non fuerat postulatus, ex officio recitatio iure poscetur.

Dig. 49.14.45.9

Paulus 5 sent.

Qui pro alio a fisco conventus debitum exsolvit, non inique postulat persecutionem bonorum eius pro quo solvit: in quo etiam adiuvari per officium solet.

Dig. 49.14.45.10

Paulus 5 sent.

Fiscalibus debitoribus petentibus ad comparandam pecuniam dilationem negari non placuit. cuius rei aestimatio ita arbitrio iudicantis conceditur, ut in maioribus summis non plus quam tres menses, in minoribus vero non plus quam duo prorogentur: prolixioris autem temporis spatium ab imperatore postulandum est.

Dig. 49.14.45.11

Paulus 5 sent.

Si principalis rei bona ad fiscum devoluta sint, fideiussores liberantur: nisi forte minus idonei sint et in reliquum non exsolutae quantitatis accesserint.

Dig. 49.14.45.12

Paulus 5 sent.

Si plus servatum est ex bonis debitoris a fisco distractis, iure ac merito restitui postulatur.

Dig. 49.14.45.13

Paulus 5 sent.

Conductor ex fundo fiscali nihil transferre potest nec cupressi materiam vendere vel olivae non substitutis aliis ceterasque arbores pomiferas caedere: et facta eius rei aestimatione in quadruplum convenitur.

Dig. 49.14.45.14

Paulus 5 sent.

Minoribus viginti quinque annis neque fundus neque vectigalia locanda sunt, ne adversus ea beneficio aetatis utantur.

Dig. 49.14.46pr.

Hermogenianus 6 iuris epit.

Aufertur ei quasi indigno successio, qui, cum heres institutus esset ut filius, post mortem eius, qui pater dicebatur, suppositus declaratus est.

Dig. 49.14.46.1

Hermogenianus 6 iuris epit.

Qui aliquid sciens in fraudem fisci suscepit, non solum rem, in qua fraudis ministerium suscepit, sed alterum tantum restituere cogitur.

Dig. 49.14.46.2

Hermogenianus 6 iuris epit.

Quod a praeside seu procuratore vel quolibet alio in ea provincia, in qua administrat, licet per suppositam personam comparatum est, infirmato contractu vindicatur et aestimatio eius fisco infertur: nam et navem in eadem provincia, in qua quis administrat, aedificare prohibetur.

Dig. 49.14.46.3

Hermogenianus 6 iuris epit.

Fiscus semper habet ius pignoris.

Dig. 49.14.46.4

Hermogenianus 6 iuris epit.

Qui compensationem opponit fisco, intra duos menses debitum sibi docere debet.

Dig. 49.14.46.5

Hermogenianus 6 iuris epit.

Ut debitoribus fisci quod fiscus debet compensetur, saepe constitutum est: excepta causa tributoria et stipendiorum, item pretio rei a fisco emptae et quod ex causa annonaria debetur.

Dig. 49.14.46.6

Hermogenianus 6 iuris epit.

In reatu constitutus bona sua administrare potest, eique debitor recte bona fide solvit.

Dig. 49.14.46.7

Hermogenianus 6 iuris epit.

Actores, qui aliquod officium gerunt, in bonis quae distrahunt procuratores venundare inconsultis principibus prohibentur, et, si veneant, venditio nullas vires habebit.

Dig. 49.14.46.8

Hermogenianus 6 iuris epit.

Servus caesaris si iussu procuratoris adiit hereditatem, caesari volenti adquirit.

Dig. 49.14.46.9

Hermogenianus 6 iuris epit.

Si multi fisco fraudem fecerint, non ut in actione furti singuli solidum, sed omnes semel quadrupli poenam pro virili portione debent. sane pro non idoneis qui sunt idonei conveniuntur.

Dig. 49.14.47pr.

Paulus 1 decr.

Moschis quaedam, fisci debitrix ex conductione vectigalis, heredes habuerat, a quibus post aditam hereditatem faria senilla et alii praedia emerant. cum convenirentur propter moschidis reliqua et dicebant heredes moschidis idoneos esse et multos alios ex isdem bonis emisse, aequum putavit imperator prius heredes conveniri debere, in reliquum possessorem omnem: et ita pronuntiavit.

Dig. 49.14.47.1

Paulus 1 decr.

Aemilius ptolemaeus conduxerat a fisco possessionem eamque paulatim pluribus locaverat maiore quantitate quam ipse susceperat: conveniebatur a procuratoribus caesaris in eam quantitatem quam ipse perciperet. hoc iniquum et inutile fisco videbatur, ut tamen suo periculo ipse eos quibus locaverat conveniret: ideoque pronuntiavit in eam solam quantitatem eum conveniri debere, qua ipse conductor exstiterat.

Dig. 49.14.48pr.

Paulus 2 decr.

Statius florus testamento scripto heredis sui pompeii tacitae fidei commiserat, ut non capienti fundum et certam pecuniae quantitatem daret, et eo nomine cautionem a pompeio exigi curaverat se restituturum ea, quae ei per praeceptionem dederat. postea idem florus facto secundo testamento et eodem pompeio et faustino heredibus institutis nullas praeceptiones pompeio dederat. haec persona, quae capere non poterat, se detulerat. consulti imperatores a procuratoribus rescripserant, si non probaretur mutatam voluntatem esse, praestandum fideicommissum: atque ita pompeius condemnatus desiderabat onus esse id hereditatis oportere, quia praeceptiones non acceperat, nec posse videri pro parte in prima voluntate testatorem perseverasse, sed in universo. pronuntiavit nec testamentum prius exstare nec, si dedisset in primo testamento, ex posteriore peti potuisse, nisi petitum esset. placuit, quia non probabat sibi datas praeceptiones ex sola sua cautione, solum fideicommissum praestare debere.

Dig. 49.14.48.1

Paulus 2 decr.

Cornelio felici mater scripta heres rogata erat restituere hereditatem post mortem suam. cum heres scripta condemnata esset a fisco et omnia bona mulieris occuparentur, dicebat felix se ante poenam esse (hoc enim constitutum est). sed si nondum dies fideicommissi venisset, quia posset prius ipse mori vel etiam mater alias res adquirere, repulsus est interim a petitione.

Dig. 49.14.49

Paulus l.S. de tac. fideic.

Cum tacitum fideicommissum is cui datum erat capere se nihil posse detulisset, in quaestionem venit, dodrantis an totius assis partem dimidiam ex beneficio divi traiani recipere debeat. de qua re exstat rescriptum imperatoris antonini in haec verba: " imperator antoninus iulio rufo. qui tacitam fidem accommodavit, ut non capienti restitueret hereditatem, si deducta parte quarta restituit, nihil retinere debet. quadrans autem qui heredi imponitur ipsius eripiatur et ad fiscum transferatur". unde dodrantis semissem solum capit qui se detulit.

Dig. 49.14.50

Paulus 3 decr.

Valerius patruinus procurator imperatoris flavio stalticio praedia certo pretio addixerat. deinde facta licitatione idem stalticius recepta ea licitatione optinuerat et in vacuam possessionem inductus erat. de fructibus medio tempore perceptis quaerebatur: patruinus fisci esse volebat. plane si medio tempore inter primam licitationem et sequentem adiectionem percepti fuissent, ad venditorem pertinerent (sicut solet dici, cum in diem addictio facta est, deinde melior condicio allata est) nec moveri deberemus, quod idem fuisset, cui et primo addicta fuerant praedia. sed cum utraque addictio intra tempus vindemiarum facta fuisset, recessum est ab hoc tractatu itaque placebat fructus emptoris esse. papinianus et messius novam sententiam induxerunt, quia sub colono erant praedia, iniquum esse fructus ei auferri universos: sed colonum quidem percipere eos debere, emptorem vero pensionem eius anni accepturum, ne fiscus colono teneretur, quod ei frui non licuisset: atque si hoc ipsum in emendo convenisset. pronuntiavit tamen secundum illorum opinionem, quod quidem domino colerentur, universos fructus habere: si vero sub colono, pensionem accipere. tryphonino suggerente, quid putaret de aridis fructibus, qui ante percepti in praediis fuissent, respondit, si nondum dies pensionis venisset, cum addicta sunt, eos quoque emptorem accepturum.

Dig. 49.15.0. De captivis et de postliminio et redemptis ab hostibus.

Dig. 49.15.1

Marcellus 22 Dig.

Quod servus eius, qui ab hostibus captus est, postea stipulatus est, aut si legatum sit servo eius, posteaquam ille ad hostes pervenit, hoc habebunt heredes eius, quia et si captivitatis tempore decessisset, adquisitum foret heredi.

Dig. 49.15.2pr.

Marcellus 39 Dig.

Navibus longis atque onerariis propter belli usum postliminium est, non piscatoriis aut si quas actuarias voluptatis causa paraverunt.

Dig. 49.15.2.1

Marcellus 39 Dig.

Equus item aut equa freni patiens recipitur postliminio: nam sine culpa equitis proripere se potuerunt.

Dig. 49.15.2.2

Marcellus 39 Dig.

Non idem in armis iuris est, quippe nec sine flagitio amittuntur: arma enim postliminio reverti negatur, quod turpiter amittantur:

Dig. 49.15.3

Pomponius 37 ad q. muc.

Item vestis.

Dig. 49.15.4

Modestinus 3 reg.

Eos, qui ab hostibus capiuntur vel hostibus deduntur, iure postliminii reverti antiquitus placuit. an qui hostibus deditus reversus nec a nobis receptus civis romanus sit, inter brutum et scaevolam varie tractatum est: et consequens est, ut civitatem non adipiscatur.

Dig. 49.15.5pr.

Pomponius 37 ad q. muc.

Postliminii ius competit aut in bello aut in pace.

Dig. 49.15.5.1

Pomponius 37 ad q. muc.

In bello, cum hi, qui nobis hostes sunt, aliquem ex nostris ceperunt et intra praesidia sua perduxerunt: nam si eodem bello is reversus fuerit, postliminium habet, id est perinde omnia restituuntur ei iura, ac si captus ab hostibus non esset. antequam in praesidia perducatur hostium, manet civis. tunc autem reversus intellegitur, si aut ad amicos nostros perveniat aut intra praesidia nostra esse coepit.

Dig. 49.15.5.2

Pomponius 37 ad q. muc.

In pace quoque postliminium datum est: nam si cum gente aliqua neque amicitiam neque hospitium neque foedus amicitiae causa factum habemus, hi hostes quidem non sunt, quod autem ex nostro ad eos pervenit, illorum fit, et liber homo noster ab eis captus servus fit et eorum: idemque est, si ab illis ad nos aliquid perveniat. hoc quoque igitur casu postliminium datum est.

Dig. 49.15.5.3

Pomponius 37 ad q. muc.

Captivus autem si a nobis manumissus fuerit et pervenerit ad suos, ita demum postliminio reversus intellegitur, si malit eos sequi quam in nostra civitate manere. et ideo in atilio regulo, quem carthaginienses romam miserunt, responsum est non esse eum postliminio reversum, quia iuraverat carthaginem reversurum et non habuerat animum romae remanendi. et ideo in quodam interprete menandro, qui posteaquam apud nos manumissus erat, missus est ad suos, non est visa necessaria lex, quae lata est de illo, ut maneret civis romanus: nam sive animus ei fuisset remanendi apud suos, desineret esse civis, sive animus fuisset revertendi, maneret civis, et ideo esset lex supervacua.

Dig. 49.15.6

Pomponius 1 ex var. lect.

Mulier in opus salinarum ob maleficium data et deinde a latrunculis exterae gentis capta et iure commercii vendita ac redempta in causam suam reccidit. cocceio autem firmo centurioni pretium ex fisco reddendum est.

Dig. 49.15.7pr.

Proculus 8 epist.

Non dubito, quin foederati et liberi nobis externi sint, nec inter nos atque eos postliminium esse: etenim quid inter nos atque eos postliminio opus est, cum et illi apud nos et libertatem suam et dominium rerum suarum aeque atque apud se retineant et eadem nobis apud eos contingant?

Dig. 49.15.7.1

Proculus 8 epist.

Liber autem populus est is, qui nullius alterius populi potestati est subiectus: sive is foederatus est item, sive aequo foedere in amicitiam venit sive foedere comprehensum est, ut is populus alterius populi maiestatem comiter conservaret. hoc enim adicitur, ut intellegatur alterum populum superiorem esse, non ut intellegatur alterum non esse liberum: et quemadmodum clientes nostros intellegimus liberos esse, etiamsi neque auctoritate neque dignitate neque viri boni nobis praesunt, sic eos, qui maiestatem nostram comiter conservare debent, liberos esse intellegendum est.

Dig. 49.15.7.2

Proculus 8 epist.

At fiunt apud nos rei ex civitatibus foederatis et in eos damnatos animadvertimus.

Dig. 49.15.8

Paulus 3 ad l. iul. et pap.

Non ut a patre filius, ita uxor a marito iure postliminii recuperari potest, sed tunc, cum et voluerit mulier et adhuc alii post constitutum tempus nupta non est: quod si noluerit nulla causa probabili interveniente, poenis discidii tenebitur.

Dig. 49.15.9

Ulpianus 4 ad l. iul. et pap.

Apud hostes susceptus filius si postliminio redierit, filii iura habet: habere enim eum postliminium nulla dubitatio est post rescriptum imperatoris antonini et divi patris eius ad ovinium tertullum praesidem provinciae mysiae inferioris.

Dig. 49.15.10pr.

Papinianus 29 quaest.

Pater instituto impuberi filio substituerat et ab hostibus captus ibi decessit: postea defuncto impubere legitimum admitti quibusdam videbatur neque tabulas secundas in eius persona locum habere, qui vivo patre sui iuris effectus fuisset. verum huic sententiae refragatur iuris ratio, quoniam, si pater, qui non rediit, iam tunc decessisse intellegitur, ex quo captus est, substitutio suas vires necessario tenet.

Dig. 49.15.10.1

Papinianus 29 quaest.

Si mortuo patre capiatur impubes institutus vel exheredatus, in promptu est dicere legem corneliam de tabulis secundis nihil locutam eius dumtaxat personam demonstrasse, qui testamenti factionem habuisset. plane captivi etiam impuberis legitimam hereditatem per legem corneliam deferri, quoniam verum est ne impuberem quidem factionem testamenti habuisse: et ideo non esse alienum praetorem subsequi non minus patris quam legis voluntatem et utiles actiones in hereditatem substituto dare.

Dig. 49.15.11pr.

Papinianus 31 quaest.

Quod si filius ante moriatur in civitate, nihil est quod de secundis tabulis tractari possit, sive quoniam vivo patre filius familias mori intellegitur, sive quoniam non reverso eo exinde sui iuris videtur fuisse, ex quo pater hostium potitus est.

Dig. 49.15.11.1

Papinianus 31 quaest.

Sed si ambo apud hostes et prior pater decedat, sufficiat lex cornelia substituto non alias, quam si apud hostes patre defuncto postea filius in civitate decessisset.

Dig. 49.15.12pr.

Tryphonus 4 disp.

In bello postliminium est, in pace autem his, qui bello capti erant, de quibus nihil in pactis erat comprehensum. quod ideo placuisse servius scribit, quia spem revertendi civibus in virtute bellica magis quam in pace romani esse voluerunt. verum in pace qui pervenerunt ad alteros, si bellum subito exarsisset, eorum servi efficiuntur, apud quos iam hostes suo facto deprehenduntur. quibus ius postliminii est tam in bello quam in pace, nisi foedere cautum fuerat, ne esset his ius postliminii.

Dig. 49.15.12.1

Tryphonus 4 disp.

Si quis capiatur ab hostibus, hi, quos in potestate habuit, in incerto sunt, utrum sui iuris facti an adhuc pro filiis familiarum computentur: nam defuncto illo apud hostes, ex quo captus est, patres familiarum, reverso numquam non in potestate eius fuisse credentur. ideo et de his, quae medio tempore adquirunt stipulatione traditione legato (nam hereditate non possunt), tractatum est, ubi non est reversus, si forte alii vel in totum (his exheredatis testamento) vel in partem instituti sunt heredes, utrum in hereditate captivi, quae lege cornelia inducitur, an propria ipsorum sint. quod verius est: diversumque in his, quae per servos adquiruntur, merito: quia hi bonorum fuerunt et esse perseverant, hi sui iuris exinde sibique ideo adquisisse intelleguntur.

Dig. 49.15.12.2

Tryphonus 4 disp.

Facti autem causae infectae nulla constitutione fieri possunt. ideo eorum, quae usucapiebat per semet ipsum possidens qui postea captus est, interrumpitur usucapio, quia certum est eum possidere desisse. eorum vero, quae per subiectas iuri suo personas possidebat usuque capiebat, vel si qua postea peculiari nomine comprehenduntur, iulianus scribit credi suo tempore impleri usucapionem remanentibus isdem personis in possessione. Marcellus nihil interesse, ipse possedisset an subiecta ei persona. sed iuliani sententiam sequendum est.

Dig. 49.15.12.3

Tryphonus 4 disp.

Medio tempore filius, quem habuit in potestate captivus, uxorem ducere potest, quamvis consentire nuptiis pater eius non posset: nam utique nec dissentire. susceptus ergo nepos in reversi captivi potestate ut avi erit suusque heres ei quodammodo invito, cum nuptiis non consenserit. non mirum, quia illius temporis condicio necessitasque faciebat et publica nuptiarum utilitas exigebat.

Dig. 49.15.12.4

Tryphonus 4 disp.

Sed captivi uxor, tametsi maxime velit et in domo eius sit, non tamen in matrimonio est.

Dig. 49.15.12.5

Tryphonus 4 disp.

Codicilli, si quos in tempore captivitatis scripserit, non creduntur iure suptili confirmati testamento, quod in civitate fecerat. sed nec fideicommissum ex his peti potest, quia non sunt ab eo facti, qui testamenti factionem habuit. sed quia merum principium eorum in civitate constituto captivo factum est, id est in testamento confirmatio codicillorum, et is postea reversus est et postliminio ius suum recepit, humanitatis rationi congruum est eos codicillos ita suum effectum habere, quasi in medio nulla captivitas intercessisset.

Dig. 49.15.12.6

Tryphonus 4 disp.

Cetera quae in iure sunt, posteaquam postliminio redit pro eo habentur, ac si numquam iste hostium potitus fuisset.

Dig. 49.15.12.7

Tryphonus 4 disp.

Si quis servum captum ab hostibus redemerit, protinus est redimentis, quamvis scientis alienum fuisse: sed oblato ei pretio quod dedit postliminio redisse aut receptus esse servus credetur.

Dig. 49.15.12.8

Tryphonus 4 disp.

Et si ignorans captivum, existimans vendentis esse redemit, an quasi usucepisse videatur, scilicet ne post legitimum tempus offerendi pretii priori domino facultas sit, videamus. nam occurrit, quod constitutio, quae de redemptis lata est, eum redimentis servum facit, et quod meum iam usucapere me intellegi non potest. rursum cum constitutio non deteriorem causam redimentium, sed si quo meliorem effecerit, peremi ius bonae fidei emptoris vetustissimum et iniquum et contra mentem constitutionis est: ideoque transacto tempore, quanto, nisi constitutio eum proprium fecisset, usucapi potuisset, nihil ex constitutione domino superesse recte dicetur.

Dig. 49.15.12.9

Tryphonus 4 disp.

Manumittendo autem utrum desinit tantum dominus esse et relictus ab eo servus in ius prioris domini redit? an et liberum eum facit, ne praestatio libertatis dominii fiat translatio? certe apud hostes manumissus liberatur, et tamen si eum nanctus dominus ipsius vetus intra praesidia nostra fuisset, quamvis non secutum res nostras, sed dum eo consilio venisset, ut ad illos reverteretur, servum retineret iure postliminii. quod in liberis aliter erat: non enim postliminio revertebatur, nisi qui hoc animo ad suos venisset, ut eorum res sequeretur illosque relinqueret, a quibus abisset: quia, ut sabinus scribit, de sua qua civitate cuique constituendi facultas libera est, non de dominii iure. verum hoc non multum onerat praesentem inspectationem, quia hostium iure manumissio obesse civi nostro domino servi non potuit, at is de quo quaeritur lege nostra, quam constitutio fecit, civem romanum dominum habuit, et an ab eo possit libertatem adsequi, tractamus. quid enim, si numquam ille pretium eius offerat? si nec conveniendi eius sit facultas? liber erit servus, qui nullo merito suo poterit a domino libertatem consequi? quod est iniquum et contra institutum a maioribus libertatis favorem. certe et veteri iure si ab hoc, qui sciens alienum esse redemisset, alius bona fide emisset, usucapere ad libertatemque perducere potuit, et isto quoque modo prior dominus, qui ante captivitatem fuerat, ius suum amittebat. quare igitur iste non habet ius manumittendi?

Dig. 49.15.12.10

Tryphonus 4 disp.

Si statuliber fuerit, antequam ab hostibus caperetur, redemptus pendente condicione suam causam retinebit.

Dig. 49.15.12.11

Tryphonus 4 disp.

Quid ergo, si ita libertatem acceperat, si decem milia dederit? quaesitum est, unde dare debebit, quoniam etsi concessum est statulibero de peculio dare, hoc tamen, quod apud hunc qui redemit habet, numquid vice illius sit, quod apud hostes quaesisset? utique, si ex re illius aut ex operis suis quaesitum est: ex alia autem causa parto peculio potest dare, ita ut condicioni benigne eum paruisse credamus.

Dig. 49.15.12.12

Tryphonus 4 disp.

Si pignori servus datus fuerat ante captivitatem, post dimissum redemptorem in veterem obligationem revertitur, et si creditor obtulerit ei qui redemit, quanto redemptus est, habet obligationem et in priorem debiti causam et in eam summam qua eum liberavit, quasi ea obligatione quadam constitutione inducta: ut cum posterior creditor priori satisfacit confirmandi sui pignoris causa: nisi quod in hoc conversa res est et posterior, quia eum servum, ut apud nos esset, efficit, ab eo, qui tempore prior fuit, ut infirmiore dimittendus est.

Dig. 49.15.12.13

Tryphonus 4 disp.

Si plurium servus fuerat et omnium nomine ei qui redemit restitutum pretium erit, in communionem redibit: si unius tantum vel quorundam nec omnium, ad eum eosve qui solverunt pertinebit, ita ut in portione sua pristinum ius optineant et in parte ceterorum ei qui redemit succedant.

Dig. 49.15.12.14

Tryphonus 4 disp.

Si fideicommissa libertas debita captivo fuerit, redemptus nondum eam petere poterit, nisi redemptori satisfecerit.

Dig. 49.15.12.15

Tryphonus 4 disp.

Si deportatum ab insula hostes ceperunt, redemptus quibus casibus redit, in eam causam veniet, in qua futurus esset, si captus non fuisset: deportabitur igitur.

Dig. 49.15.12.16

Tryphonus 4 disp.

Sed si in captivo servo talis praecesserat causa, quae eius vel ad tempus vel in perpetuum libertatem impediret, nec redemptione ab hostibus mutabitur: veluti si in legem faviam commisisse eum constiterat, vel ita venierat ne manumitteretur: habebit autem interim sine poena sua qui redemit.

Dig. 49.15.12.17

Tryphonus 4 disp.

Ergo de metallo captus redemptus in poenam suam revertetur, nec tamen ut transfuga metalli puniendus erit, sed redemptor a fisco pretium recipiet quod etiam constitutum est ab imperatore nostro et divo severo.

Dig. 49.15.12.18

Tryphonus 4 disp.

Si natum ex pamphila legatum tibi fuerit tuque matrem redemeris et ea apud te pepererit, non videri te partum ex causa lucrativa habere, sed officio arbitrioque iudicis aestimandum constituto pretio partus, perinde atque si, quanto mater est empta, simul et partus venisset. quod si iam natum apud hostes, quod eo tempore quo capiebatur utero gerebat, cum matre redimatur ab eodem uno pretio: oblato tanto, quantum ex pretio, quod pro utroque unum datum est, aestimationem contingere partus: et videtur is postliminio reversus. multo magis, si diversi emptores utriusque extiterint vel unius. sed si suo quemque pretio redemerit, id offerri pro singulis oportebit redemptori, quod hosti pro quoque datum est, ut separatim quoque postliminio reverti possint.

Dig. 49.15.13

Paulus 2 ad sab.

Si me tibi adrogandum dedissem, emancipato me reversum ab hostibus filium meum loco nepotis tibi futurum constat.

Dig. 49.15.14pr.

Pomponius 3 ad sab.

Cum duae species postliminii sint, ut aut nos revertamur aut aliquid recipiamus: cum filius revertatur, duplicem in eo causam esse oportet postlimini, et quod pater eum reciperet et ipse ius suum.

Dig. 49.15.14.1

Pomponius 3 ad sab.

Non ut pater filium, ita uxorem maritus iure postliminii recipit: sed consensu redintegratur matrimonium.

Dig. 49.15.15

Ulpianus 12 ad sab.

Si patre redempto et ante luitionem defuncto filius post mortem eius redemptionis quantitatem offerat, dicendum est suum ei posse existere. nisi forte quis suptilius dicat hunc dum moritur, quasi iure pignoris finito, nactum postliminium et sine obligatione debiti obisse, ut potuerit suum habere. quod non sine ratione dicetur.

Dig. 49.15.16

Ulpianus 13 ad sab.

Retro creditur in civitate fuisse, qui ab hostibus advenit.

Dig. 49.15.17

Paulus 2 ad sab.

Postliminio carent, qui armis victi hostibus se dederunt.

Dig. 49.15.18

Ulpianus 35 ad sab.

In omnibus partibus iuris is, qui reversus non est ab hostibus, quasi tunc decessisse videtur, cum captus est.

Dig. 49.15.19pr.

Paulus 16 ad sab.

Postliminium est ius amissae rei recipiendae ab extraneo et in statum pristinum restituendae inter nos ac liberos populos regesque moribus legibus constitutum. nam quod bello amissimus aut etiam citra bellum, hoc si rursus recipiamus, dicimur postliminio recipere. idque naturali aequitate introductum est, ut qui per iniuriam ab extraneis detinebatur, is, ubi in fines suos redisset, pristinum ius suum reciperet.

Dig. 49.15.19.1

Paulus 16 ad sab.

Indutiae sunt, cum in breve et in praesens tempus convenit, ne invicem se lacessant: quo tempore non est postliminium.

Dig. 49.15.19.2

Paulus 16 ad sab.

A piratis aut latronibus capti liberi permanent.

Dig. 49.15.19.3

Paulus 16 ad sab.

Postliminio redisse videtur, cum in fines nostros intraverit, sicuti amittitur, ubi fines nostros excessit. sed et si in civitatem sociam amicamve aut ad regem socium vel amicum venerit, statim postliminio redisse videtur, quia ibi primum nomine publico tutus esse incipiat.

Dig. 49.15.19.4

Paulus 16 ad sab.

Transfugae nullum postliminium est: nam qui malo consilio et proditoris animo patriam reliquit, hostium numero habendus est. sed hoc in libero transfuga iuris est, sive femina sive masculus sit.

Dig. 49.15.19.5

Paulus 16 ad sab.

Si vero servus transfugerit ad hostes, quoniam, et cum casu captus est, dominus in eo postliminium habet, rectissime dicitur etiam ei postliminium esse, scilicet ut dominus in eo pristinum ius recipiat, ne contrarium ius non tam ipsi iniuriosum sit, qui servus semper permanet, quam domino damnosum constituatur.

Dig. 49.15.19.6

Paulus 16 ad sab.

Si statuliber transfuga reversus sit, existente condicione postquam redit, liber efficitur. diversum est, si condicio extitisset, dum apud hostes est: in eo enim casu neque sibi reverti potest, ut liber sit, neque heredi in eo ius postliminii est, quia non potest queri, cum nullum damnum patiatur, libertate iam optingente, si non impediret, quod transfuga factus est.

Dig. 49.15.19.7

Paulus 16 ad sab.

Filius quoque familias transfuga non potest postliminio reverti neque vivo patre, quia pater sic illum amisit, quemadmodum patria, et quia disciplina castrorum antiquior fuit parentibus romanis quam caritas liberorum.

Dig. 49.15.19.8

Paulus 16 ad sab.

Transfuga autem non is solus accipiendus est, qui aut ad hostes aut in bello transfugit, sed et qui per indutiarum tempus aut ad eos, cum quibus nulla amicitia est, fide suscepta transfugit.

Dig. 49.15.19.9

Paulus 16 ad sab.

Si is, qui emat ab hostibus, pluris alii ius pignoris quod in redempto habet cesserit, non eam quantitatem, sed priorem redemptus reddere debet, et emptor habet actionem adversus eum qui vendidit ex empto.

Dig. 49.15.19.10

Paulus 16 ad sab.

Postliminium hominibus est, cuiuscumque sexus condicionisve sint: nec interest, liberi an servi sint. nec enim soli postliminio recipiuntur, qui pugnare possunt, sed omnes homines, quia eius naturae sunt, ut usui esse vel consilio vel aliis modis possint.

Dig. 49.15.20pr.

Pomponius 36 ad sab.

Si captivus, de quo in pace cautum fuerat ut rediret, sua voluntate apud hostes mansit, non est ei postea postliminium.

Dig. 49.15.20.1

Pomponius 36 ad sab.

Verum est expulsis hostibus ex agris quos ceperint dominia eorum ad priores dominos redire nec aut publicari aut praedae loco cedere: publicatur enim ille ager qui ex hostibus captus sit.

Dig. 49.15.20.2

Pomponius 36 ad sab.

Redemptio facultatem redeundi praebet, non ius postliminii mutat.

Dig. 49.15.21pr.

Ulpianus 5 opin.

Si quis ingenuam ab hostibus redemptam eo animo secum habuerit, ut ex ea susciperet liberos, et postea ex se natum sub titulo naturalis filii cum matre manumiserit: ignorantia mariti eiusdemque patris neque statui eorum, quos manumisisse visus est, officere debet, et exinde intellegi oportet remissum matri pignoris vinculum, ex quo de ea suscipere liberos optaverat: ideoque eam, quae postliminio reversa erat libera et ingenua, ingenuum peperisse constat. quod si publice praeda virtute militum reciperata nulli pretium matris pater numeraverit, protinus postliminio reversa non cum domino, sed cum marito fuisse declaratur.

Dig. 49.15.21.1

Ulpianus 5 opin.

In civilibus dissensionibus quamvis saepe per eas res publica laedatur, non tamen in exitium rei publicae contenditur: qui in alterutras partes discedent, vice hostium non sunt eorum, inter quos iura captivitatium aut postliminiorum fuerint. et ideo captos et venumdatos posteaque manumissos placuit supervacuo repetere a principe ingenuitatem, quam nulla captivitate amiserant.

Dig. 49.15.22pr.

Iulianus 62 Dig.

Bona eorum, qui in hostium potestatem pervenerint atque ibi decesserint, sive testamenti factionem habuerint sive non habuerint, ad eos pertinent, ad quos pertinerent, si in potestatem hostium non pervenissent: idemque ius in eadem causa omnium rerum iubetur esse lege cornelia, quae futura esset, si hi, de quorum hereditatibus et tutelis constituebatur, in hostium potestatem non pervenissent.

Dig. 49.15.22.1

Iulianus 62 Dig.

Apparet ergo eadem omnia pertinere ad heredem eius, quae ipse, qui hostium potitus est, habiturus esset, si postliminio revertisset. porro quaecumque servi captivorum stipulantur vel accipient, adquiri dominis intelleguntur, cum postliminio redierint: quare necesse est etiam ad eos pertineant, qui ex lege cornelia hereditatem adierint. quod si nemo ex lege cornelia heres extiterit, bona publica fient. legata quoque servis eorum praesenti die vel sub condicione ad heredes pertinebunt. item si servus ab extero heres institutus fuerit, iussu heredis captivi adire poterit.

Dig. 49.15.22.2

Iulianus 62 Dig.

Quod si filius eius, qui in hostium potestate est, accipit aut stipulatur, id patre priusquam postliminio rediret mortuo ipsi adquisitum intellegitur, etsi vivo patre decesserit, ad heredem patris pertinebit. nam status hominum, quorum patres in hostium potestate sunt, in pendenti est, et reverso quidem patre existimatur nunquam suae potestatis fuisse, mortuo tunc pater familias fuisse, cum pater eius in hostium potestate perveniret.

Dig. 49.15.22.2a

Iulianus 62 Dig.

Pater familias qui habebat filios in potestate duos et ^ in bonis^ viginti milia, ab hostibus captus est: alter ex filiis acceptis decem milibus alia decem milia adquisivit: quaeritur patre apud hostes defuncto quid filii habituri sint. respondit, si reversus esset pater, etiam postea adquisita decem milia eius futura fuisse: at cum in captivitate mortuus sit, communia non fore, sed eius qui adquisivit. viginti autem milia aequaliter dividenda.

Dig. 49.15.22.3

Iulianus 62 Dig.

Quae peculiari nomine servi captivorum possident, in suspenso sunt: nam si domini postliminio redierint, eorum facta intelleguntur, si ibi decesserint, per legem corneliam ad heredes eorum pertinebunt.

Dig. 49.15.22.4

Iulianus 62 Dig.

Si quis, cum praegnatem uxorem haberet, in hostium potestatem pervenerit, nato deinde filio et mortuo, ibi decesserit, eius testamentum nullum est, quia et eorum, qui in civitate manserunt, hoc casu testamenta rumpuntur.

Dig. 49.15.23

Iulianus 69 Dig.

Si quis praegnate uxore relicta in hostium potestatem pervenerit, mox natus filius eius uxore ducta filium vel filiam procreaverit ac tunc postliminio avus reversus fuerit: omnia iura nepotis nomine perinde capiet, ac si filius natus in civitate fuisset.

Dig. 49.15.24

Ulpianus 1 inst.

Hostes sunt, quibus bellum publice populus romanus decrevit vel ipse populo romano: ceteri latrunculi vel praedones appellantur. et ideo qui a latronibus captus est, servus latronum non est, nec postliminium illi necessarium est: ab hostibus autem captus, ut puta a germanis et parthis, et servus est hostium et postliminio statum pristinum recuperat.

Dig. 49.15.25

Marcianus 14 inst.

Divi severus et antoninus rescripserunt, si uxor cum marito ab hostibus capta fuerit et ibidem ex marito enixa sit: si reversi fuerint, iustos esse et parentes et liberos et filium in potestate patris, quemadmodum iure postliminii reversus sit: quod si cum matre sola revertatur, quasi sine marito natus, spurius habebitur.

Dig. 49.15.26

Florus 6 inst.

Nihil interest, quomodo captivus reversus est, utrum dimissus an vi vel fallacia potestatem hostium evaserit, ita tamen, si ea mente venerit, ut non illo reverteretur: nec enim satis est corpore domum quem redisse, si mente alienus est. sed et qui victis hostibus recuperantur, postliminio redisse existimantur.

Dig. 49.15.27

Iavolenus 9 ex post. lab.

Latrones tibi servum eripuerant: postea is servus ad germanos pervenerat: inde in bello victis germanis servus venierat. negant posse usucapi eum ab emptore labeo ofilius trebatius, quia verum esset eum subreptum esse, nec quod hostium fuisset aut postliminio redisset, ei rei impedimento esse.

Dig. 49.15.28

Labeo 4 pith. a paulo epit.

Si quid bello captum est, in praeda est, non postliminio redit. paulus. immo si in bello captus pace facta domum refugit, deinde renovato bello capitur, postliminio redit ad eum, a quo priore bello captus erat, si modo non convenerit in pace, ut captivi redderentur.

Dig. 49.15.29

Labeo 6 pith. a paulo epit.

Si postliminio redisti, nihil, dum in hostium potestate fuisti, usucapere potuisti. paulus. immo si quid servus tuus peculii nomine, dum in eo statu esses, possederit, id eo quoque tempore usucapere poteris, quoniam eas res etiam inscientes usucapere solemus et eo modo etiam hereditas nondum nato postumo aut nondum adita augeri per servum hereditarium solet.

Dig. 49.15.30

Labeo 8 pith. a paulo epit.

Si id, quod nostrum hostes ceperunt, eius generis est, ut postliminio redire possit: simul atque ad nos redeundi causa profugit ab hostibus et intra fines imperii nostri esse coepit, postliminio redisse existimandum est. paulus. immo cum servus civis nostri ab hostibus captus inde aufugit et vel in urbe roma ita est, ut neque in domini sui potestate sit neque ulli serviat, nondum postliminio redisse existimandum est.

Dig. 49.16.0. De re militari.

Dig. 49.16.1

Ulpianus 6 ad ed.

Miles, qui in commeatu agit, non videtur rei publicae causa abesse.

Dig. 49.16.2pr.

Menenius 1 de re milit.

Militum delicta sive admissa aut propria sunt aut cum ceteris communia: unde et persecutio aut propria aut communis est. proprium militare est delictum, quod quis uti miles admittit.

Dig. 49.16.2.1

Menenius 1 de re milit.

Dare se militem, cui non licet, grave crimen habetur: et augetur, ut in ceteris delictis, dignitate gradu specie militiae.

Dig. 49.16.3pr.

Modestinus 4 de poen.

Desertorum auditum ad suum ducem cum elogio praeses mittet, praeterquam si quid gravius ille desertor in ea provincia, in qua repertus est, admiserit: ibi enim eum plecti poena debere, ubi facinus admissum est, divi severus et antoninus rescripserunt.

Dig. 49.16.3.1

Modestinus 4 de poen.

Poenae militum huiuscemodi sunt: castigatio, pecuniaria multa, munerum indictio, militiae mutatio, gradus deiectio, ignominiosa missio. nam in metallum aut in opus metalli non dabuntur nec torquentur.

Dig. 49.16.3.2

Modestinus 4 de poen.

Emansor est, qui diu vagatus ad castra regreditur.

Dig. 49.16.3.3

Modestinus 4 de poen.

Desertor est, qui per prolixum tempus vagatus reducitur.

Dig. 49.16.3.4

Modestinus 4 de poen.

Is, qui exploratione emanet hostibus insistentibus aut qui a fossato recedit, capite puniendus est.

Dig. 49.16.3.5

Modestinus 4 de poen.

Qui stationis munus relinquit, plus quam emansor est: itaque pro modo delicti aut castigatur aut gradu militiae deicitur.

Dig. 49.16.3.6

Modestinus 4 de poen.

Si praesidis vel cuiusvis praepositi ab excubatione quis desistat, peccatum desertionis subibit.

Dig. 49.16.3.7

Modestinus 4 de poen.

Si ad diem commeatus quis non veniat, perinde in eum statuendum est, ac si emansisset vel deseruisset, pro numero temporis, facta prius copia docendi, num forte casibus quibusdam detentus sit, propter quos venia dignus videatur.

Dig. 49.16.3.8

Modestinus 4 de poen.

Qui militiae tempus in desertione implevit, emerito privatur.

Dig. 49.16.3.9

Modestinus 4 de poen.

Si plures simul primo deseruerint, deinde intra certum tempus reversi sint, gradu pulsi in diversa loca distribuendi sunt. sed tironibus parcendum est: qui si iterato hoc admiserint, poena competenti adficiuntur.

Dig. 49.16.3.10

Modestinus 4 de poen.

Is, qui ad hostem confugit et rediit, torquebitur ad bestiasque vel in furcam damnabitur, quamvis milites nihil eorum patiantur.

Dig. 49.16.3.11

Modestinus 4 de poen.

Et is, qui volens transfugere adprehensus est, capite punitur.

Dig. 49.16.3.12

Modestinus 4 de poen.

Sed si ex improviso, dum iter quis facit, capitur ab hostibus, inspecto vitae eius praecedentis actu venia ei dabitur, et, si expleto tempore militiae redeat, ut veteranus restituetur et emerita accipiet.

Dig. 49.16.3.13

Modestinus 4 de poen.

Miles, qui in bello arma amisit vel alienavit, capite punitur: humane militiam mutat.

Dig. 49.16.3.14

Modestinus 4 de poen.

Qui aliena arma subripuit, gradu militiae pellendus est.

Dig. 49.16.3.15

Modestinus 4 de poen.

In bello qui rem a duce prohibitam fecit aut mandata non servavit, capite punitur, etiamsi res bene gesserit.

Dig. 49.16.3.16

Modestinus 4 de poen.

Sed qui agmen excessit, ex causa vel fustibus caeditur vel mutare militiam solet.

Dig. 49.16.3.17

Modestinus 4 de poen.

Nec non et si vallum quis transcendat aut per murum castra ingrediatur, capite punitur.

Dig. 49.16.3.18

Modestinus 4 de poen.

Si vero quis fossam transiluit, militia reicitur.

Dig. 49.16.3.19

Modestinus 4 de poen.

Qui seditionem atrocem militum concitavit, capite punitur:

Dig. 49.16.3.20

Modestinus 4 de poen.

Si intra vociferationem aut levem querellam seditio mota est, tunc gradu militiae deicitur.

Dig. 49.16.3.21

Modestinus 4 de poen.

Et cum multi milites in aliquod flagitium conspirent vel si legio deficiat, avocari militia solent.

Dig. 49.16.3.22

Modestinus 4 de poen.

Qui praepositum suum protegere noluerunt vel deseruerunt, occiso eo capite puniuntur.

Dig. 49.16.4pr.

Menenius 1 de re milit.

Qui cum uno testiculo natus est quive amisit, iure militabit secundum divi traiani rescriptum: nam et duces sulla et cotta memorantur eo habitu fuisse naturae.

Dig. 49.16.4.1

Menenius 1 de re milit.

Ad bestias datus si profugit et militiae se dedit, quandoque inventus capite puniendus est: idemque observandum est in eo, qui legi se passus est.

Dig. 49.16.4.2

Menenius 1 de re milit.

In insulam deportatus si effugiens militiae se dedit lectusve dissimulavit, capite puniendus est.

Dig. 49.16.4.3

Menenius 1 de re milit.

Temporarium exilium voluntario militi insulae relegationem adsignat, dissimulatio perpetuum exilium.

Dig. 49.16.4.4

Menenius 1 de re milit.

Ad tempus relegatus si expleto spatio fugae militem se dedit, causa damnationis quaerenda est, ut, si contineat infamiam perpetuam, idem observetur, si transactum de futuro sit et in ordinem redire potest et honores petere, militiae non prohibetur.

Dig. 49.16.4.5

Menenius 1 de re milit.

Reus capitalis criminis voluntarius miles secundum divi traiani rescriptum capite puniendus est, nec remittendus est eo, ubi reus postulatus est, sed, ut accedente causa militiae, audiendus: si dicta causa sit vel requirendus adnotatus, ignominia missus ad iudicem suum remittendus est nec recipiendus postea volens militare, licet fuerit absolutus.

Dig. 49.16.4.7

Menenius 1 de re milit.

Adulterii vel aliquo iudicio publico damnati inter milites non sunt recipiendi.

Dig. 49.16.4.8

Menenius 1 de re milit.

Non omnis, qui litem habuit et ideo militaverit, exauctorari iubetur, sed qui eo animo militiae se dedit, ut sub optentu militiae pretiosiorem se adversario faceret. nec tamen facile indulgendum, iudicationis qui negotium antehabuerunt: sed si in transactione reccidit, indulgendum est. exauctoratus eo nomine non utique infamis erit nec prohibendus lite finita militiae eiusdem ordinis se dare: alioquin et si relinquat litem vel transigat, retinendus est.

Dig. 49.16.4.9

Menenius 1 de re milit.

Qui post desertionem in aliam militiam nomen dederunt legive passi sunt, imperator noster rescripsit et hos militariter puniendos.

Dig. 49.16.4.10

Menenius 1 de re milit.

Gravius autem delictum est detrectare munus militiae quam adpetere: nam et qui ad dilectum olim non respondebant, ut proditores libertatis in servitutem redigebantur. sed mutato statu militiae recessum a capitis poena est, quia plerumque voluntario milite numeri supplentur.

Dig. 49.16.4.11

Menenius 1 de re milit.

Qui filium suum subtrahit militiae belli tempore, exilio et bonorum parte multandus est: si in pace, fustibus caedi iubetur et requisitus iuvenis vel a patre postea exhibitus in deteriorem militiam dandus est: qui enim se sollicitavit ab alio, veniam non meretur.

Dig. 49.16.4.12

Menenius 1 de re milit.

Eum, qui filium debilitavit dilectu per bellum indicto, ut inhabilis militiae sit, praeceptum divi traiani deportavit.

Dig. 49.16.4.13

Menenius 1 de re milit.

Edicta germanici caesaris militem desertorem faciebant, qui diu afuisset, ut is inter emansores haberetur. sed sive redeat quis et offerat se, sive deprehensus offeratur, poenam desertionis evitat: nec interest, cui se offerat vel a quo deprehendatur.

Dig. 49.16.4.14

Menenius 1 de re milit.

Levius itaque delictum emansionis habetur, ut erronis in servis, desertionis gravius, ut in fugitivis.

Dig. 49.16.4.15

Menenius 1 de re milit.

Examinantur autem causae semper emansionis et cur et ubi fuerit et quid egerit: et datur venia valetudini, affectioni parentium et adfinium, et si servum fugientem persecutus est vel si qua huiusmodi causa sit. sed et ignoranti adhuc disciplinam tironi ignoscitur.

Dig. 49.16.5pr.

Menenius 2 de re milit.

Non omnes desertores similiter puniendi sunt, sed habetur et ordinis stipendiorum ratio, gradus militiae vel loci, muneris deserti et anteactae vitae: sed et numerus, si solus vel cum altero vel cum pluribus deseruit, aliudve quid crimen desertioni adiunxerit: item temporis, quo in desertione fuerit: et eorum, quae postea gesta fuerint. sed et si fuerit ultro reversus, non cum necessitudine, non erit eiusdem sortis.

Dig. 49.16.5.1

Menenius 2 de re milit.

Qui in pace deseruit, eques gradu pellendus est, pedes militiam mutat. in bello idem admissum capite puniendum est.

Dig. 49.16.5.2

Menenius 2 de re milit.

Qui desertioni aliud crimen adiungit, gravius puniendus est: et si furtum factum sit, veluti alia desertio habebitur: ut si plagium factum vel adgressura abigeatus vel quid simile accesserit.

Dig. 49.16.5.3

Menenius 2 de re milit.

Desertor si in urbe inveniatur, capite puniri solet: alibi adprehensus ex prima desertione restitui potest, iterum deserendo capite puniendus est.

Dig. 49.16.5.4

Menenius 2 de re milit.

Qui in desertione fuit, si se optulerit, ex indulgentia imperatoris nostri in insulam deportatus est.

Dig. 49.16.5.5

Menenius 2 de re milit.

Qui captus, cum poterat redire, non rediit, pro transfuga habetur. item eum, qui in praesidio captus est, in eadem condicione esse certum est: si tamen ex improviso, dum iter facit aut epistulam fert, capiatur quis, veniam meretur.

Dig. 49.16.5.6

Menenius 2 de re milit.

A barbaris remissos milites ita restitui oportere hadrianus rescripsit, si probabunt se captos evasisse, non transfugisse. sed hoc licet liquido constare non possit, argumentis tamen cognoscendum est. et si bonus miles antea aestimatus fuit, prope est, ut adfirmationi eius credatur: si remansor aut neglegens suorum aut segnis aut extra contubernium agens, non credetur ei.

Dig. 49.16.5.7

Menenius 2 de re milit.

Si post multum temporis redit qui ab hostibus captus est et captum eum, non transfugisse constiterit: ut veteranus erit restituendus et praemia et emeritum capit.

Dig. 49.16.5.8

Menenius 2 de re milit.

Qui transfugit et postea multos latrones adprehendit et transfugas demonstravit, posse ei parci divus hadrianus rescripsit: ei tamen pollicenti ea nihil permitti oportere.

Dig. 49.16.6pr.

Menenius 3 de re milit.

Omne delictum est militis, quod aliter, quam disciplina communis exigit, committitur: veluti segnitiae crimen vel contumaciae vel desidiae.

Dig. 49.16.6.1

Menenius 3 de re milit.

Qui manus intulit praeposito, capite puniendus est. augetur autem petulantiae crimen dignitate praepositi.

Dig. 49.16.6.2

Menenius 3 de re milit.

Contumacia omnis adversus ducem vel praesidem militis capite punienda est.

Dig. 49.16.6.3

Menenius 3 de re milit.

Qui in acie prior fugam fecit, spectantibus militibus propter exemplum capite puniendus est.

Dig. 49.16.6.4

Menenius 3 de re milit.

Exploratores, qui secreta nuntiaverunt hostibus, proditores sunt et capitis poenas luunt.

Dig. 49.16.6.5

Menenius 3 de re milit.

Sed et caligatus, qui metu hostium languorem simulavit, in pari causa eis ^ eius^ est.

Dig. 49.16.6.6

Menenius 3 de re milit.

Si quis commilitonem vulneravit, si quidem lapide, militia reicitur, si gladio, capital admittit.

Dig. 49.16.6.7

Menenius 3 de re milit.

Qui se vulneravit vel alias mortem sibi conscivit, imperator hadrianus rescripsit, ut modus eius rei statutus sit, ut, si impatientia doloris aut taedio vitae aut morbo aut furore aut pudore mori maluit, non animadvertatur in eum, sed ignominia mittatur, si nihil tale praetendat, capite puniatur. per vinum aut lasciviam lapsis capitalis poena remittenda est et militiae mutatio irroganda.

Dig. 49.16.6.8

Menenius 3 de re milit.

Qui praepositum suum non protexit, cum posset, in pari causa factori habendus est: si resistere non potuit, parcendum ei.

Dig. 49.16.6.9

Menenius 3 de re milit.

Sed et in eos, qui praefectum centuriae a latronibus circumventum deseruerunt, animadverti placuit.

Dig. 49.16.7

Tarruntius 2 de re milit.

Proditores transfugae plerumque capite puniuntur et exauctorati torquentur: nam pro hoste, non pro milite habentur.

Dig. 49.16.8

Ulpianus 8 disp.

Qui status controversiam patiuntur, licet re vera liberi sunt, non debent per id tempus nomen militiae dare, maxime lite ordinata, sive ex libertate in servitutem sive contra petantur. nec hi quidem, qui ingenui bona fide serviunt: sed nec qui ab hostibus redempti sunt, priusquam se luant.

Dig. 49.16.9pr.

Marcianus 3 inst.

Milites prohibentur praedia comparare in his provinciis, in quibus militant, praeterquam si paterna eorum fiscus distrahat: nam hanc speciem severus et antoninus remiserunt. sed et stipendiis impletis emere permittuntur. fisco autem vindicatur praedium illicite comparatum, si delatus fuerit. sed et si nondum delata causa stipendia impleta sint vel missio contigerit, delationi locus non est.

Dig. 49.16.9.1

Marcianus 3 inst.

Milites si heredes extiterint, possidere ibi praedia non prohibentur.

Dig. 49.16.10pr.

Paulus l.S. reg.

Qui excubias palatii deseruerit, capite punitur.

Dig. 49.16.10.1

Paulus l.S. reg.

Sed ex causa desertionis restitutus in militiam non aliter medii temporis stipendium et donativa accipit, nisi hoc liberalitas principalis ei specialiter indulserit.

Dig. 49.16.11

Marcianus 2 reg.

Ab omni militia servi prohibentur: alioquin capite puniuntur.

Dig. 49.16.12pr.

Macer 1 de re milit.

Officium regentis exercitum non tantum in danda, sed etiam in observanda disciplina constitit.

Dig. 49.16.12.1

Macer 1 de re milit.

Paternus quoque scripsit debere eum, qui se meminerit armato praeesse, parcissime commeatum dare, equum militarem extra provinciam duci non permittere, ad opus privatum piscatum venatum militem non mittere. nam in disciplina augusti ita cavetur: " etsi scio fabrilibus operibus exerceri milites non esse alienum, vereor tamen, si quicquam permisero, quod in usum meum aut tuum fiat, ne modus in ea re non adhibeatur, qui mihi sit tolerandus".

Dig. 49.16.12.2

Macer 1 de re milit.

Officium tribunorum est vel eorum, qui exercitui praesunt, milites in castris continere, ad exercitationem producere, claves portarum suscipere, vigilias interdum circumire, frumentationibus commilitonum interesse, frumentum probare, mensorum fraudem coercere, delicta secundum suae auctoritatis modum castigare, principiis frequenter interesse, querellas commilitonum audire, valetudinarios inspicere.

Dig. 49.16.13pr.

Macer 2 de re milit.

Milites agrum comparare prohibentur in ea provincia, in qua bellica opera peragunt, scilicet ne studio culturae militia sua avocentur. et ideo domum comparare non prohibentur. sed et agros in alia provincia comparare possunt. ceterum in ea provincia, in quam propter proelii causam venerunt, ne sub alieno quidem nomine eis agrum comparare licet: alioquin fisco vindicabitur.

Dig. 49.16.13.1

Macer 2 de re milit.

Is autem, qui contra disciplinam agrum comparaverit, si nulla de ea re quaestione mota missionem acceperit, inquietari prohibetur.

Dig. 49.16.13.2

Macer 2 de re milit.

Illud constat huius praescriptionis commodum ad eos, qui ignominiae causa missi sunt, non pertinere, quod praemii loco veteranis concessum intellegitur: et ideo et ad eum, qui causaria missus est, potest dici pertinere, cum huic quoque praemium praestatur.

Dig. 49.16.13.3

Macer 2 de re milit.

Missionum generales causae sunt tres: honesta causaria ignominiosa. honesta est, quae tempore militiae impleto datur: causaria, cum quis vitio animi vel corporis minus idoneus militiae renuntiatur: ignominiosa causa est, cum quis propter delictum sacramento solvitur. et is, qui ignominia missus est, neque romae neque in sacro comitatu agere potest. et si sine ignominiae mentione missi sunt, nihilo minus ignominia missi intelleguntur.

Dig. 49.16.13.4

Macer 2 de re milit.

Inreverens miles non tantum a tribuno vel centurione, sed etiam a principali coercendus est. nam eum, qui centurioni castigare se volenti restiterit, veteres notaverunt: si vitem tenuit, militiam mutat: si ex industria fregit vel manum centurioni intulit, capite punitur.

Dig. 49.16.13.5

Macer 2 de re milit.

Eius fugam, qui, cum sub custodia vel in carcere esset discesserit, in numero desertorum non computandam menander scripsit, quia custodiae refuga, non militiae desertor est. eum tamen, qui carcere effracto fugerit, etiamsi ante non deseruerit, capite puniendum paulus scripsit.

Dig. 49.16.13.6

Macer 2 de re milit.

Desertorem, qui a patre suo fuerat oblatus, in deteriorem militiam divus pius dari iussit, ne videatur, inquit, pater ad supplicium filium optulisse. item divus severus et antoninus eum, qui post quinquennium desertionis se optulit, deportari iusserunt. quod exemplum et in ceteris sequi nos debere menander scripsit.

Dig. 49.16.14pr.

Paulus l.S. de poen. milit.

Qui commeatus spatium excessit, emansoris vel desertoris loco habendus est. habetur tamen ratio dierum, quibus tardius reversus est: item temporis navigationis vel itineris. et si se probet valetudine impeditum vel a latronibus detentum similive casu moram passum, dum non tardius a loco profectum se probet, quam ut occurrere posset intra commeatum, restituendus est.

Dig. 49.16.14.1

Paulus l.S. de poen. milit.

Arma alienasse grave crimen est et ea culpa desertioni exaequatur, utique si tota alienavit: sed et si partem eorum, nisi quod interest. nam si tibiale vel umerale alienavit, castigari verberibus debet, si vero loricam scutum galeam gladium, desertori similis est. tironi in hoc crimine facilius parcetur armorumque custodi plerumque ea culpa imputatur, si arma militi commisit non suo tempore.

Dig. 49.16.15

Papinianus 19 resp.

Ex causa desertionis notatus ac restitutus temporis, quod in desertione fuerit, impendiis expungitur. quod si ratio constiterit neque desertorem fuisse apparuerit, omnia stipendia citra temporis finem redduntur.

Dig. 49.16.16pr.

Paulus 5 sent.

Qui metu criminis, in quo iam reus fuerat postulatus, nomen militiae dedit, statim sacramento solvendus est.

Dig. 49.16.16.1

Paulus 5 sent.

Miles turbator pacis capite punitur.

Dig. 49.17.0. De castrensi peculio.

Dig. 49.17.1

Ulpianus 14 ad ed.

Filii familias militis si peculium apud patrem remansit sine testamento filio defuncto, pater ipsi heres non fit, sed tamen heres is fiet, quibus filius fuit.

Dig. 49.17.2

Ulpianus 67 ad ed.

Si filius familias miles decesserit, si quidem intestatus, bona eius non quasi hereditas, sed quasi peculium patri deferuntur: si autem testamento facto, hic pro hereditate habetur castrense peculium.

Dig. 49.17.3

Ulpianus 8 ad l. iul. et pap.

Si mulier filio viri militi ad castrenses vel militares forte res comparandas reliquerit pecuniam, utique castrense peculio ea quae comparantur adnumerari incipiunt.

Dig. 49.17.4pr.

Tertullianus l.S. de castr. pecul.

Miles praecipua habere debet, quae tulit secum in castra concedente patre.

Dig. 49.17.4.1

Tertullianus l.S. de castr. pecul.

Actionem persecutionemque castrensium rerum semper filius etiam invito patre habet.

Dig. 49.17.4.2

Tertullianus l.S. de castr. pecul.

Si pater familias militiae tempore vel post missionem adrogandum se praebuerit, videndum erit, ne huic quoque permissa intellegatur earum rerum administratio, quas ante adrogationem in castris adquisierit, quamvis constitutiones principales de his loquantur, qui ab initio cum essent filii familias militaverint. quod admittendum est.

Dig. 49.17.5

Ulpianus 6 ad sab.

Miles filius familias a commilitone vel ab eo, quem per militiam cognovit, heres institutus et citra iussum patris suo arbitrio recte pro herede geret.

Dig. 49.17.6

Ulpianus 32 ad sab.

Si militi filio familias uxor servum manumittendi causa donaverit, an suum libertum fecerit, videamus, quia peculiares et servos et libertos potuit habere. et magis est, ut hoc castrensi peculio non adnumeretur, quia uxor ei non propter militiam nota esset. plane si mihi proponas ad castra eunti marito uxorem servos donasse, ut manumittat et habiles ad militiam libertos habeat, potest dici sua voluntate sine patris permissu manumittentem ad libertatem perducere.

Dig. 49.17.7

Ulpianus 33 ad ed.

Si castrense peculium maritus habeat, in quantum facere potest condemnabitur, quia etiam non castrensibus creditoribus ex eo peculio magis est eum cogi respondere.

Dig. 49.17.8

Ulpianus 45 ad ed.

Si forte uxor vel cognatus vel quis alius non ex castris notus filio familias donaverit quid vel legaverit et expresserit nominatim, ut in castrensi peculio habeat: an possit castrensi peculio adgregari? et non puto: veritatem enim spectamus, an vero castrensis notitia vel affectio fuit, non quod quis finxit.

Dig. 49.17.9

Ulpianus 4 disp.

Proponebatur filius familias miles testamento facto extraneum heredem scripsisse, patre deinde superstite decessisse, pater deliberante herede instituto et ipse diem functus, deinde heres institutus repudiasse hereditatem. quaerebatur, ad quem castrense peculium pertineret. dicebam castrense peculium filii familias, si quidem testatus decessit, quasi hereditatem deferri heredi scripto, sive extraneum scripsit heredem sive patrem. sed cum nihil de peculio decernit filius, non nunc obvenisse patri, sed non esse ab eo profectum creditur. denique si servo filii castrensi libertatem pater adscripserit moxque filius vivo patre defunctus sit, non impeditur libertas, cum, si filius patri supervixerit, impediatur libertas. unde Marcellus putat necessarium quoque heredem servum filii peculiarem patri existere posse, si filio pater supervixerit. idem referebam et si rem peculiarem filii pater legaverit: nam eodem casu, quo libertatem competere diximus, legatum quoque vel debebitur vel impedietur. quibus ita praemissis et in proposito dicebam, cum heres non adiit hereditatem, retro peculium patris bonis accessisse: unde posse dici etiam aucta patris bona per hanc repudiationem. nec est novum, ut ex postfacto aliquis successorem habuisse videatur. nam et si filius eius, qui ab hostibus captus est, decesserit patre captivo vivo, si quidem pater regrederetur, quasi filius familias peculium haberet: enimvero si ibidem pater decesserit, quasi pater familias legitimum habebit successorem, et retro habuisse creditor eius successor ea quoque, quae medio tempore filius iste quaesiit, nec heredi patris, sed ipsi filio quaesita videbuntur.

Dig. 49.17.10

Marcellus not. ad pomp. l.S. reg.

Constat nec patribus aliquid ex castrensibus bonis filiorum deberi.

Dig. 49.17.11

Macer 2 de re milit.

Castrense peculium est, quod a parentibus vel cognatis in militia agenti donatum est vel quod ipse filius familias in militia adquisiit, quod, nisi militaret, adquisiturus non fuisset. nam quod erat et sine militia adquisiturus, id peculium eius castrense non est.

Dig. 49.17.12

Papinianus 14 quaest.

Pater, qui dat in adoptionem filium militem, peculium ei auferre non potest, quod semel iure militiae filius tenuit. qua ratione nec emancipando filium peculium ei aufert, quod nec in familia retento potest auferre.

Dig. 49.17.13

Papinianus 16 quaest.

Divus hadrianus rescripsit in eo, quem militantem uxor heredem instituerat filium, extitisse heredem et ab eo servos hereditarios manumissos proprios eius libertos fieri.

Dig. 49.17.14pr.

Papinianus 27 quaest.

Filius familias miles si captus apud hostes vita fungatur, lex cornelia subveniet scriptis heredibus: quibus cessantibus iure pristino peculium pater habebit.

Dig. 49.17.14.1

Papinianus 27 quaest.

Proxima species videtur, ut scriptis heredibus deliberantibus, quod servus interim stipulatus est vel ab alio sibi traditum accepit, quod quidem ad patris personam attinet, si forte peculium apud eum resederit, nullius momenti videatur, cum in illo tempore non fuerit servus patris: quod autem ad scriptos heredes, in suspenso fuisse traditio itemque stipulatio intellegatur: ut enim hereditarius fuisse credatur, post aditam fit hereditatem. sed paterna verecundia nos movet, quatenus et in illa specie, ubi iure pristino apud patrem peculium remanet, etiam adquisitio stipulationis vel rei traditae per servum fiat.

Dig. 49.17.14.2

Papinianus 27 quaest.

Legatum, quod ei servo relictum est, quamvis tunc propter incertum nulli sit adquisitum, omisso testamento patri tunc primum per servum adquiretur, cum, si fuisset exemplo hereditatis peculio adquisitum, ius patris hodie non consideraretur.

Dig. 49.17.15pr.

Papinianus 35 quaest.

Pater militi filio reverso quod donat, castrensis peculii non facit, sed alterius peculii, perinde ac si filius numquam militasset.

Dig. 49.17.15.1

Papinianus 35 quaest.

Si stipulanti filio spondeat, si quidem ex causa peculii castrensis, tenebit stipulatio: ceterum ex qualibet alia causa non tenebit.

Dig. 49.17.15.2

Papinianus 35 quaest.

Si pater a filio stipulatur, eadem distinctio servabitur.

Dig. 49.17.15.3

Papinianus 35 quaest.

Servus peculii, quod ad filium spectat, ab extero si stipuletur aut per traditionem accipiat, sine distinctione causarum res ad filium pertinebit: non enim ut filius duplex ius sustinet patris et filii familias, ita servus, qui peculii castrensis est quique nullo iure, quamdiu filius vivit, patri subiectus est, aliquid adquirere simpliciter stipulando vel accipiendo patri potest. quae ratio suadet, ut, si ab ipso patre servus, qui ad filium pertinet, stipuletur ex quacumque causa vel traditum accipiat, sic adquiratur filio res et stipulatio, quemadmodum si exter promisisset, quoniam persona stipulantis et accipientis ea est, ut sine differentia causarum quod per eum agitur emolumentum filii spectet.

Dig. 49.17.15.4

Papinianus 35 quaest.

Si servi pater usum fructum amiserit, cuius proprietatem in castrensi peculio filius habebat, plenam proprietatem habebit filius.

Dig. 49.17.16pr.

Papinianus 19 resp.

Dotem filio familias datam vel promissam in peculio castrensi non esse respondi. nec ea res contraria videbitur ei, quod divi hadriani temporibus filium familias militem uxori heredem extitisse placuit et hereditatem in castrense peculium habuisse. nam hereditas adventicio iure quaeritur, dos autem matrimonio cohaerens oneribus eius ac liberis communibus, qui sunt in avi familia, confertur.

Dig. 49.17.16.1

Papinianus 19 resp.

Hereditatem castrensi peculio non videri quaesitam respondi, quam frater patruelis in alia provincia stipendia merens fratri patrueli, cum quo numquam militavit, reliquit: sanguinis etenim ratio, non militiae causa meritum hereditatis accipiendae praebuerat.

Dig. 49.17.17pr.

Papinianus 2 def.

Pater, qui castrense peculium intestati filii retinebit, aes alienum intra modum eius et annum utilem iure praetorio solvere cogitur: idem, si testamento scriptus heres extiterit, perpetuo civiliter ut heres convenietur.

Dig. 49.17.17.1

Papinianus 2 def.

Pater a filio milite vel qui militavit heres institutus testamenti causam omisit et castrense peculium possidet: legitimi heredis exemplo cogetur ad finem peculii perpetuo legata praestare. quod si filius post annum quam militare desierat iure communi testamento facto vita decessit, ratione falcidiae retinebitur quarta. ceterum si testamenti causam pater omisit, cum peculium creditoribus solvendo non esset, nihil dolo videbitur fecisse, quamvis temporis incurrat compendium.

Dig. 49.17.18pr.

Maecenatus 1 fideic.

Ex castrensi peculio servus a patre heres institui potest et filium necessarium heredem patri facit.

Dig. 49.17.18.1

Maecenatus 1 fideic.

Et in summa ea res hi actus patris, qui ad praesens alienationem alicuius iuris de castrensi peculio praestant, impediuntur: hi vero, qui non statim quidem, sed postea efficere solent, eo tempore animadvertentur, quo habere effectum consuerunt, ut, si sit filius, cui auferatur, nihil agatur, si ante decesserit, actus patris non impediatur.

Dig. 49.17.18.2

Maecenatus 1 fideic.

Itaque negabimus patrem filio salvo communi dividundo agentem proprietatem alienaturum, exemplo dotalis praedii. sed nec si socius ultro cum eo agat, quicquam agetur, veluti si cum eo ageret, cui bonis interdictum est.

Dig. 49.17.18.3

Maecenatus 1 fideic.

Servos ex eo peculio usu fructu, item praedia tam usu fructu quam ceteris servitutibus pater liberare poterit: sed et servitutes his adquirere. id enim et eum, cui bonis interdictum est, verum est consequi posse. neque autem servis ex eo peculio neque praediis usum fructum vel servitutem imponere pater potest.

Dig. 49.17.18.4

Maecenatus 1 fideic.

Si quando ex eo peculio filius rem alienam bona fide tenebit, an pater eius in rem vel ad exhibendum actionem pati debeat, ut ceterorum nomine, quaeritur. sed verius est, cum hoc peculium a patris bonis separetur, defensionis necessitatem patri non imponendam.

Dig. 49.17.18.5

Maecenatus 1 fideic.

Sed nec cogendus est pater aes alienum, quod filius peculii nomine, quod in castris adquisiit, fecisse dicetur, de peculio actionem pati: et, si sponte patiatur, ut quilibet defensor satisdato filium in solidum, non peculio tenus defendere debet. sed et eius filii nomine non aliter movere actiones potest, quam si satis dederit eum ratam rem habiturum.

Dig. 49.17.19pr.

Tryphonus 18 disp.

De hereditate ab adgnato commilitone data scaevola noster dubitabat, quia potuit et ante notus et amicus dare, potuit et non dare, nisi commilitium caritatem auxisset. nobis ita videtur, si ante commilitium factum sit testamentum, non esse peculii castrensis eam hereditatem, si postea, contra.

Dig. 49.17.19.1

Tryphonus 18 disp.

Sed si servus peculii castrensis a quocumque sit heres scriptus, iussu militis adire debebit hereditatem eaque fiet bonorum castrensis peculii.

Dig. 49.17.19.2

Tryphonus 18 disp.

Filius familias paganus de peculio castrensi fecit testamentum et, dum ignorat patri se suum heredem extitisse, decessit. non potest videri pro castrensibus bonis testatus, pro paternis intestatus decessisse, quamvis id in milite etiamnunc rescriptum sit, quia miles ab initio pro parte testatus, pro parte intestatus potuerat mori, quod ius iste non habuerit, non magis quam sine observatione legum facere testamentum. necessario ergo castrensis peculii heres scriptus universa bona habebit, perinde ac si pauperrimus facto testamento decessisset ignorans se locupletatum per servos alio loco agentes.

Dig. 49.17.19.3

Tryphonus 18 disp.

Pater peculii castrensis filii servum testamento liberum esse iussit: intestato defuncto filio familias, mox patre quaeritur, an libertas servo competat. occurrebat enim non posse dominium apud duos pro solido fuisse: denique filium posse manumittere talis peculii servum hadrianus constituit: et si testamento tam filii quam patris idem servus accepisset libertatem et utrique pariter decessissent, non dubitaretur ex testamento filii liberum eum esse. sed in superiore casu pro libertate a patre data illa dici possunt, numquid, quoad utatur iure concesso filius in castrensi peculio, eousque ius patris cessaverit, quod si intestatus decesserit filius, postliminii cuiusdam similitudine pater antiquo iure habeat peculium retroque videatur habuisse rerum dominia.

Dig. 49.17.19.4

Tryphonus 18 disp.

Non tamen ut heres vivo filio vindictam servo imposuit, dicatur eum post mortem intestati filii ex illa manumissione liberum factum esse.

Dig. 49.17.19.5

Tryphonus 18 disp.

Quid autem, si testamentum fecerit filius et non sit eius adita hereditas? non tam facile est dicere continuatum patri post mortem filii rerum peculii dominium, cum medium tempus, quo deliberant instituti heredes, imaginem successioni praestiterit. alioquin et si adita sit ab instituto hereditas filii, dicetur a patre ad eum transisse proprietatem, quod absurdum est. si in pendenti, ut in aliis, et in hac specie habeamus dominia, ut ex facto retro fuisse aut non fuisse patris credamus? secundum quod difficile erit expedire, si, dum deliberant heredes, dies cesserit legati servo dati istius peculii testamento eius, ex quo pater nihil capere potuisset, an id ad ipsum pertineat, cum utique ad heredem filii pertineret. facilior tamen de libertate servi deliberatio est in specie, in qua intestatus filius decessisse proponitur. non est ergo ratio respondendi competere libertatem eo tempore datam, quo non fuit in dominio patris? favorabilem tamen sententiam contrariam in utroque casu non negamus.

Dig. 49.17.20

Paulus l.S. ad reg. caton.

Sed si ponas filium testamentum fecisse et patrem heredem instituisse: cum utique pater testamento suo servo filii libertatem dedisset, qui ad eum ex testamento filii pertinere coeperit, videndum est, numquid ei comparari debeat, qui, cum manumitteretur, alienus erat, deinde postea adquisitus est. sed favorabile est libertatem a patre relictam admittere: et ab initio patris esse eum videri ex hoc, quod postea contigit, ostenditur.

Dig. 49.18.0. De veteranis.

Dig. 49.18.1

Menenius 3 de re milit.

Veteranorum privilegium inter cetera etiam in delictis habet praerogativam, ut separentur a ceteris in poenis. nec ad bestias itaque veteranus datur nec fustibus caeditur.

Dig. 49.18.2pr.

Ulpianus 3 opin.

Honeste sacramento solutis data immunitas etiam in eis civitatibus, apud quas incolae sunt, valet: nec labefactatur, si quis eorum voluntate sua honorem aut munus susceperit.

Dig. 49.18.2.1

Ulpianus 3 opin.

Vectigalia et patrimoniorum onera sollemnia omnes sustinere oportet.

Dig. 49.18.3

Marcianus 2 reg.

Veteranis et liberis veteranorum idem honor habetur, qui et decurionibus: igitur nec in metallum damnabuntur nec in opus publicum vel ad bestias, nec fustibus caeduntur.

Dig. 49.18.4pr.

Ulpianus 4 de off. procons.

Viae sternendae immunitatem veteranos non habere iulio sossiano veterano rescriptum est. nam nec ab intributionibus, quae possessionibus fiunt, veteranos esse excusatos palam est.

Dig. 49.18.4.1

Ulpianus 4 de off. procons.

Sed et naves eorum angariari posse aelio firmo et antonio claro veteranis rescriptum est.

Dig. 49.18.5pr.

Paulus l.S. de cogn.

Veteranos divus magnus antoninus cum patre suo rescripsit a navium fabrica excusari.

Dig. 49.18.5.1

Paulus l.S. de cogn.

Sed et ab exactione tributorum habent immunitatem, hoc est ne exactores tributorum constituantur.

Dig. 49.18.5.2

Paulus l.S. de cogn.

Sed veterani, qui passi sunt in ordinem legi, muneribus fungi coguntur.

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OMINI NOSTRI SACRATISSIMI PRINCIPIS IUSTINIANI IURIS ENUCLEATI EX OMNI VETERE IURE COLLECTI DIGESTORUM SEU PANDECTARUM

LIBER QUINQUAGESIMUS

Dig. 50.1.0. Ad municipalem et de incolis.
Dig. 50.2.0. De decurionibus et filiis eorum.
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Dig. 50.1.0. Ad municipalem et de incolis.

Ulpianus 2 ad ed.

Municipem aut nativitas facit aut manumissio aut adoptio.

Dig. 50.1.1.1

Ulpianus 2 ad ed.

Et proprie quidem municipes appellantur muneris participes, recepti in civitatem, ut munera nobiscum facerent: sed nunc abusive municipes dicimus suae cuiusque civitatis cives, ut puta campanos, puteolanos.

Dig. 50.1.1.2

Ulpianus 2 ad ed.

Qui ex duobus igitur campanis patentibus natus est, campanus est. sed si ex patre campano, matre puteolana, aeque municeps campanus est, nisi forte privilegio aliquo materna origo censeatur: tunc enim maternae originis erit municeps. ut puta iliensibus concessum est, ut qui matre iliensi est, sit eorum municeps. etiam delphis hoc idem tributum et conservatum est. celsus etiam refert ponticis ex beneficio pompeii magni competere, ut qui pontica matre natus esset, ponticus esset. quod beneficium ad volgo quaesitos solos pertinere quidam putant. quorum sententiam celsus non probat: neque enim debuisse caveri, ut volgo quaesitus matris condicionem sequeretur (quam enim aliam originem hic habet?): sed ad eos, qui ex diversarum civitatium parentibus orerentur.

Dig. 50.1.2pr.

Ulpianus 1 disp.

Quotiens filius familias voluntate patris decurio creatur, universis muneribus, quae decurioni filio iniunguntur, obstrictus est pater quasi fideiussor pro filio. consensisse autem pater decurionatui filii videtur, si praesens nominationi non contradixit. proinde quidquid in re publica filius gessit, pater ut fideiussor praestabit.

Dig. 50.1.2.1

Ulpianus 1 disp.

Gestum autem in re publica accipere debemus pecuniam publicam tractare sive erogandam decernere.

Dig. 50.1.2.2

Ulpianus 1 disp.

Sed et si curatores operum vel cuius alterius rei publicae creavit, tenebitur.

Dig. 50.1.2.3

Ulpianus 1 disp.

Sed et si successorem sibi nominavit, patrem obstringit.

Dig. 50.1.2.4

Ulpianus 1 disp.

Sed et si vectigalia publica locavit, pater erit obstrictus.

Dig. 50.1.2.5

Ulpianus 1 disp.

Sed si filius tutores dare non curaverit vel minus idoneos elegerit nec satis exegerit vel non idoneum acceperit, ipse quidem quin sit obstrictus, nulla dubitatio est: pater vero ita demum obligatur, si et fideiussores solent hoc nomine obligari. sed non solent (hoc enim et relatum et rescriptum est), quia fideiussores rem publicam salvam fore promittunt, rei publicae autem nihil, quod ad rem pecuniariam attinet, interest pupillis tutores dari.

Dig. 50.1.2.6

Ulpianus 1 disp.

Is, qui ultra commeatum abest vel ultra formam commeatui datam, ad munera vocari potest.

Dig. 50.1.3

Ulpianus 25 ad sab.

Placet etiam filios familias domicilium habere posse.

Dig. 50.1.4

Ulpianus 39 ad ed.

Non utique ibi, ubi pater habuit, sed ubicumque ipse domicilium constituit.

Dig. 50.1.5

Paulus 45 ad ed.

Labeo indicat eum, qui pluribus locis ex aequo negotietur, nusquam domicilium habere: quosdam autem dicere refert pluribus locis eum incolam esse aut domicilium habere: quod verius est.

Dig. 50.1.6pr.

Ulpianus 2 opin.

Adsumptio originis, quae non est, veritatem naturae non peremit: errore enim veritas originis non amittitur nec mendacio dicentis se esse, unde non sit, deponitur: neque recusando quis patriam, ex qua oriundus est, neque mentiendo de ea, quam non habet, veritatem mutare potest.

Dig. 50.1.6.1

Ulpianus 2 opin.

Filius civitatem, ex qua pater eius naturalem originem ducit, non domicilium sequitur.

Dig. 50.1.6.2

Ulpianus 2 opin.

Viris prudentibus placuit duobus locis posse aliquem habere domicilium, si utrubique ita se instruxit, ut non ideo minus apud alteros se collocasse videatur.

Dig. 50.1.6.3

Ulpianus 2 opin.

Libertini originem patronorum vel domicilium sequuntur: item qui ex his nascuntur.

Dig. 50.1.7

Ulpianus 5 de off. procons.

Si quis a pluribus manumissus sit, omnium patronorum originem sequitur.

Dig. 50.1.8

Marcianus 1 de iudic. publ.

Non debere cogi decuriones vilius praestare frumentum civibus suis, quam annona exigit, divi fratres rescripserunt, et aliis quoque constitutionibus principalibus id cautum est.

Dig. 50.1.9

Nerva 3 membr.

Eius, qui iustum patrem non habet, prima origo a matre eoque die, quo ex ea editus est, numerari debet.

Dig. 50.1.10

Marcianus l.S. de delator.

Simile privilegium fisco nulla civitas habet in bonis debitoris, nisi nominatim id a principe datum sit.

Dig. 50.1.11pr.

Papinianus 2 quaest.

Imperator titus antoninus lentulo vero rescripsit magistratuum officium individuum ac periculum esse commune. quod sic intellegi oportet, ut ita demum collegae periculum adscribatur, si neque ab ipso qui gessit neque ab his, qui pro eo intervenerunt, res servari possit et solvendo non fuit honore deposito. alioquin si persona vel cautio sit idonea, vel solvendo fuit quo tempore conveniri potuit, unusquisque in id quod administravit tenebitur.

Dig. 50.1.11.1

Papinianus 2 quaest.

Quod si forte is, qui periculo suo nominavit magistratum, solvendo sit, utrum in eum prius actio reddi quasi fideiussorem debeat, an vero non alias, quam si res a collega servari non potuerit? sed placuit fideiussoris exemplo priorem conveniendum qui nominavit, quoniam collega quidem neglegentiae ac poenae causa, qui vero nominavit, fidei ratione convenitur.

Dig. 50.1.12

Papinianus 1 resp.

Et ei contra nominati collegam actionem utilem dari non oportet.

Dig. 50.1.13

Papinianus 2 quaest.

Quid ergo, si alter ex magistratibus toto anno afuerit aut forte praesens per contumaciam sive ignaviam vel aegram valitudinem rei publicae negotia non gesserit et omnia collega solus administraverit, nec tamen tota res ab eo servari possit? talis ordo dabitur, ut in primis qui rei publicae negotia gessit et qui pro eo caverunt in solidum conveniantur, mox peractis omnibus periculum adgnoscat qui non idoneum nominavit, postremo alter ex magistratibus, qui rei publicae negotiis se non immiscuit. nec iuste qui nominavit universi periculum recusabit, cum scire deberet eum, qui nominaretur, individuum officium et commune periculum suscepturum. nam et cum duo gesserunt et ab altero servari quod debetur non potest, qui collegam nominavit, in universum convenitur.

Dig. 50.1.14

Papinianus 15 quaest.

Municipes intelleguntur scire, quod sciant hi, quibus summa rei publicae commissa est.

Dig. 50.1.15pr.

Papinianus 1 resp.

Ordine decurionum ad tempus motus et in ordinem regressus ad honorem, exemplo relegati, tanto tempore non admittitur, quanto dignitate caruit. sed in utroque placuit examinari, quo crimine damnati sententiam eiusmodi meruerunt: durioribus etenim poenis affectos ignominia velut transacto negotio postea liberari, minoribus vero, quam leges permittunt, subiectos nihilo minus inter infames haberi, cum facti quidem quaestio sit in potestate iudicantium, iuris autem auctoritas non sit.

Dig. 50.1.15.1

Papinianus 1 resp.

In eum, qui successorem suo periculo nominavit, si finito magistratu successor idoneus fuit, actionem dari non oportet.

Dig. 50.1.15.2

Papinianus 1 resp.

In fraudem civilium munerum per tacitam fidem praedia translata fisco vindicantur tantumque alterum interdictae rei minister de suis bonis cogitur solvere.

Dig. 50.1.15.3

Papinianus 1 resp.

Ius originis in honoribus obeundis ac muneribus suscipiendis adoptione non mutatur: sed novis quoque muneribus filius per adoptivum patrem adstringitur.

Dig. 50.1.16

Hermogenianus 1 iuris epit.

Sed si emancipatur ab adoptivo patre, non tantum filius, sed etiam civis eius civitatis, cuius per adoptionem fuerat factus, esse desinit.

Dig. 50.1.17pr.

Papinianus 1 resp.

Libertus propter patronum a civilibus muneribus non excusatur, nec ad rem pertinet, an operas patrono vel ministerium capto luminibus exhibeat.

Dig. 50.1.17.1

Papinianus 1 resp.

Liberti vero senatorum, qui negotia patronorum gerunt, a tutela decreto patrum excusantur.

Dig. 50.1.17.2

Papinianus 1 resp.

Filium pater decurionem esse voluit: ante filium ex persona sua res publica debet convenire quam patrem ex persona filii. nec ad rem pertinebit, an filius castrense peculium tantum possideat, cum ante militasset vel postea.

Dig. 50.1.17.3

Papinianus 1 resp.

Praescriptio temporum, quae in honoribus repetundis vel aliis suscipiendis data est, apud eosdem servatur, non apud alios.

Dig. 50.1.17.4

Papinianus 1 resp.

Sed eodem tempore non sunt honores in duabus civitatibus ab eodem gerendi: cum simul igitur utrubique deferuntur, potior est originis causa.

Dig. 50.1.17.5

Papinianus 1 resp.

Sola ratio possessionis civilibus possessori muneribus iniungendis citra privilegium specialiter civitati datum idonea non est.

Dig. 50.1.17.6

Papinianus 1 resp.

Postliminio regressi patriae muneribus obtemperare coguntur, quamvis in alienae civitatis finibus consistant.

Dig. 50.1.17.7

Papinianus 1 resp.

Exigendi tributi munus inter sordida munera non habetur et ideo decurionibus quoque mandatur.

Dig. 50.1.17.8

Papinianus 1 resp.

Ex causa fideicommissi manumissus in muneribus civilibus manumissoris originem sequitur, non eius qui libertatem reliquit.

Dig. 50.1.17.9

Papinianus 1 resp.

In adoptiva familia susceptum exemplo dati muneribus civilibus apud originem avi quoque naturalis respondere divo pio placuit, quamvis in isto fraudis nec suspicio quidem interveniret.

Dig. 50.1.17.10

Papinianus 1 resp.

Error eius, qui se municipem aut colonum existimans munera civilia suscepturum promisit, defensionem iuris non excludit.

Dig. 50.1.17.11

Papinianus 1 resp.

Patris domicilium filium aliorum incolam civilibus muneribus alienae civitatis non adstringit, cum in patris quoque persona domicilii ratio temporaria sit.

Dig. 50.1.17.12

Papinianus 1 resp.

In quaestionibus nominatos capitalium criminum ad novos honores ante causam finitam admitti non oportet: ceterum pristinam interim dignitatem retinent.

Dig. 50.1.17.13

Papinianus 1 resp.

Sola domus possessio, quae in aliena civitate comparatur, domicilium non facit.

Dig. 50.1.17.14

Papinianus 1 resp.

Nominati successoris periculum fideiussorem nominantis non tenet.

Dig. 50.1.17.15

Papinianus 1 resp.

Fideiussores, qui salvam rem publicam fore responderunt, et qui magistratus suo periculo nominant poenalibus actionibus non adstringuntur, in quas inciderunt hi, pro quibus intervenerunt: eos enim damnum rei publicae praestare satis est quod promitti videtur.

Dig. 50.1.18

Paulus 1 quaest.

Divus severus rescripsit intervalla temporum in continuandis oneribus invitis, non etiam volentibus concessa, dum ne quis continuet honorem.

Dig. 50.1.19

Scaevola 1 quaest.

Quod maior pars curiae effecit, pro eo habetur, ac si omnes egerint.

Dig. 50.1.20

Paulus 24 quaest.

Domicilium re et facto transfertur, non nuda contestatione: sicut in his exigitur, qui negant se posse ad munera ut incolas vocari.

Dig. 50.1.21pr.

Paulus 1 resp.

Lucius titius cum esset in patris potestate, a magistratibus inter ceteros frumento comparando invito patre curator constitutus est: cui rei lucius titius neque consensit neque pecuniam accepit neque in eam cavit aut se comparationibus cum ceteris miscuit: et post mortem patris in reliqua collegarum interpellari coepit. quaeritur, an ex ea causa teneri possit. paulus respondit eum, qui iniunctum munus a magistratibus suscipere supersedit, posse conveniri eo nomine propter damnum rei publicae, quamvis eo tempore, quo creatus est, in aliena fuerit potestate.

Dig. 50.1.21.1

Paulus 1 resp.

Paulus respondit eos, qui pro aliis non ex contractu, sed ex officio quod administraverint conveniuntur, in damnum sortis substitui solere, non etiam in usuras.

Dig. 50.1.21.2

Paulus 1 resp.

Idem respondit heredes patris propter munera filii, quae post mortem patris suscepit, iure conveniri non posse. hoc responsum et ad eum pertinet, qui a patre decurio factus post mortem patris munera suscepit.

Dig. 50.1.21.3

Paulus 1 resp.

Idem respondit eum, qui decurionem adoptavit, onera decurionatus eius suscepisse videri exemplo patris, cuius voluntate filius decurio factus est.

Dig. 50.1.21.4

Paulus 1 resp.

Idem respondit constante matrimonio dotem in bonis mariti esse: sed et si ad munera municipalia a certo modo substantiae vocentur, dotem non debere computari.

Dig. 50.1.21.5

Paulus 1 resp.

Idem respondit, si per accusatorem criminum capitalium non stetisset, quo minus crimen intra statutum tempus persequeretur, reum non debuisse medio tempore honorem appetere.

Dig. 50.1.21.6

Paulus 1 resp.

"imperatores severus et antoninus augusti septimio zenoni. pro infante filio, quem decurionem esse voluisti, quamquam fidem tuam in posterum adstrinxeris, tamen interim onera sustinere non cogeris, cum ad ea, quae mandari possunt, voluntatem dedisse videaris".

Dig. 50.1.21.7

Paulus 1 resp.

Idem respondit, si civitas nullam propriam legem habet de adiectionibus admittendis, non posse recedi a locatione vel venditione praediorum publicorum iam perfecta: tempora enim adiectionibus praestituta ad causas fisci pertinent.

Dig. 50.1.22pr.

Paulus 1 sent.

Filii libertorum, libertarumque liberti, paterni et patroni manumissoris domicilium aut originem sequuntur.

Dig. 50.1.22.1

Paulus 1 sent.

Vidua mulier amissi mariti domicilium retinet exemplo clarissimae personae per maritum factae: sed utrumque aliis intervenientibus nuptiis permutatur.

Dig. 50.1.22.2

Paulus 1 sent.

Municipes sunt liberti et in eo loco, ubi ipsi domicilium sua voluntate tulerunt, nec aliquod ex hoc origini patroni faciunt praeiudicium et utrubique muneribus adstringuntur.

Dig. 50.1.22.3

Paulus 1 sent.

Relegatus in eo loco, in quem relegatus est, interim necessarium domicilium habet.

Dig. 50.1.22.4

Paulus 1 sent.

Senator ordine motus ad originalem patriam, nisi hoc specialiter impetraverit, non restituitur.

Dig. 50.1.22.5

Paulus 1 sent.

Senatores et eorum filii filiaeque quoquo tempore nati nataeve, itemque nepotes, pronepotes et proneptes ex filio origini eximuntur, licet municipalem retineant ^ retineat^ dignitatem.

Dig. 50.1.22.6

Paulus 1 sent.

Senatores, qui liberum commeatum, id est ubi velint morandi arbitrium impetraverunt, domicilium in urbe retinent.

Dig. 50.1.22.7

Paulus 1 sent.

Qui faenus exercent, omnibus patrimonii intributionibus fungi debent, etsi possessionem non habeant.

Dig. 50.1.23pr.

Hermogenianus 1 iuris epit.

Municeps esse desinit senatoriam adeptus dignitatem, quantum ad munera: quantum vero ad honorem, retinere creditur originem. denique manumissi ab eo eius municipii efficiuntur municipes, unde originem trahit.

Dig. 50.1.23.1

Hermogenianus 1 iuris epit.

Miles ibi domicilium habere videtur, ubi meret, si nihil in patria possideat.

Dig. 50.1.24

Scaevola 2 Dig.

Constitutionibus principum continetur, ut pecuniae, quae ex detrimento solvitur, usurae non praestentur: et ita imperatores antoninus et verus augusti rescripserunt his verbis: "humanum est reliquorum usuras neque ab ipso, qui ex administratione honoris reliquatus est, neque a fideiussore eius, et multo minus a magistratibus, qui cautionem acceperint, exigi". cui consequens est, ut ne in futurum a forma observata discedatur.

Dig. 50.1.25

Ulpianus 1 ad ed. praet.

Magistratus municipales cum unum magistratum administrent, etiam unius hominis vicem sustinent. et hoc plerumque quidem lege municipali eis datur: verum et si non sit datum, dummodo non denegatum, moribus competit.

Dig. 50.1.26pr.

Paulus 1 ad ed.

Ea, quae magis imperii sunt quam iurisdictionis, magistratus municipalis facere non potest.

Dig. 50.1.26.1

Paulus 1 ad ed.

Magistratibus municipalibus non permittitur in integrum restituere aut bona rei servandae causa iubere possideri aut dotis servandae causa vel legatorum servandorum causa.

Dig. 50.1.27pr.

Ulpianus 2 ad ed.

Eius, qui manumisit, municeps est manumissus, non domicilium eius, sed patriam secutus. et si patronum habeat duarum civitatium municipem, per manumissionem earundem civitatium erit municeps.

Dig. 50.1.27.1

Ulpianus 2 ad ed.

Si quis negotia sua non in colonia, sed in municipio semper agit, in illo vendit emit contrahit, in eo foro balineo spectaculis utitur, ibi festos dies celebrat, omnibus denique municipii commodis, nullis coloniarum fruitur, ibi magis habere domicilium, quam ubi colendi causa deversatur.

Dig. 50.1.27.2

Ulpianus 2 ad ed.

Celsus libro primo digestorum tractat, si quis instructus sit duobus locis aequaliter neque hic quam illic minus frequenter commoretur: ubi domicilium habeat, ex destinatione animi esse accipiendum. ego dubito, si utrubique destinato sit animo, an possit quis duobus locis domicilium habere. et verum est habere, licet difficile est: quemadmodum difficile est sine domicilio esse quemquam. puto autem et hoc procedere posse, si quis domicilio relicto naviget vel iter faciat, quaerens quo se conferat atque ubi constituat: nam hunc puto sine domicilio esse.

Dig. 50.1.27.3

Ulpianus 2 ad ed.

Domicilium autem habere potest et relegatus eo loci, unde arcetur, ut Marcellus scribit.

Dig. 50.1.28

Paulus 1 ad ed.

Inter convenientes et de re maiori apud magistratus municipales agetur.

Dig. 50.1.29

Gaius 1 ad ed. provinc.

Incola et his magistratibus parere debet, apud quos incola est, et illis, apud quos civis est: nec tantum municipali iurisdictioni in utroque municipio subiectus est, verum etiam omnibus publicis muneribus fungi debet.

Dig. 50.1.30

Ulpianus 61 ad ed.

Qui ex vico ortus est, eam patriam intellegitur habere, cui rei publicae vicus ille respondet.

Dig. 50.1.31

Marcellus 1 Dig.

Nihil est impedimento, quo minus quis ubi velit habeat domicilium, quod ei interdictum non sit.

Dig. 50.1.32

Modestinus 4 diff.

Ea, quae desponsa est, ante contractas nuptias suum non mutat domicilium.

Dig. 50.1.33

Modestinus l.S. de manumiss.

Roma communis nostra patria est.

Dig. 50.1.34

Modestinus 3 reg.

Incola iam muneribus publicis destinatus nisi perfecto munere incolatui renuntiare non potest.

Dig. 50.1.35

Modestinus 1 excus.

Eidenai xry hoti ho en agrw katamenwn inkolas ou nomizetai: ho gar ekeinys tys polews ecairetois my xrwmenos ohutws ou nomizetai einai inkolas.

Dig. 50.1.36pr.

Modestinus 1 resp.

Titio, cum esset romae studiorum gratia, epistula missa est a magistratibus patriae suae, ut porrigeret imperatori decretum eiusdem civitatis, quod erat cum ipsa epistula missum. is autem, qui suscepisset litteras restituendas, collusione facta dedit lucio titio, qui et ipse romae morabatur suae rei gratia: sublato titi nomine, cui erat decretum missum, uti per ipsum daretur, suum nomen scripsit et sic imperatori decretum secundum mandata rei publicae dedit. quaero, qui viaticum petere ab ea potuisset? et quid commisisse videtur is, qui non restituit litteras ei, cui restituere mandatum susceperat, et is, qui sublato alieno nomine inscriptoque suo, quasi ipse iussus a patria, decretum imperatori porrexit? herennius modestinus respondit titium quidem viaticum petere non posse: sed eum qui nomen incidisset.

Dig. 50.1.36.1

Modestinus 1 resp.

Titius pro pecunia publica, quam ipse credidit, pignus accepit pacto facto cum debitore, ut non soluto debito sine ulla repromissione distrahatur pignus. succedentes gradus in locum titii nomen et pignus probaverunt usque ad maevium: ex venditione pignoris propter repromissionem a magistratu vendentibus factam de modo fundi demonstrato satis debito factum non est. quaerebatur, quis rei publicae tenetur. herennius modestinus: titium, cum successores eius periculum nominis agnoverint, eo nomine obstrictum non esse respondi: sed nec post magistratus qui vendidisse proponuntur, cum videlicet pluris vendiderunt propter mensurae agri demonstrationem et hoc, qua pluris vendiderunt, restituere minore modo deprehenso iussi sunt. eum igitur, qui novissimus nomen probavit, indemnitati rei publicae satisfacere debere, si nomen ad successorem idoneum transmisisse non doceatur.

Dig. 50.1.37pr.

Callistratus 1 de cogn.

De iure omnium incolarum, quos quaeque civitates sibi vindicant, praesidum provinciarum cognitio est. cum tamen se quis negat incolam esse, apud eum praesidem provinciae agere debet, sub cuius cura est ea civitas, a qua vocatur ad munera, non apud eam, ex qua ipse se dicit oriundum esse: idque divus hadrianus rescripsit.

Dig. 50.1.37.1

Callistratus 1 de cogn.

Mulieris, quae aliunde orta, alibi nupta est, libertos eo loco munus facere debere, unde patrona erit et ubi ipsi domicilium habebunt, placet.

Dig. 50.1.37.2

Callistratus 1 de cogn.

Mulieres, quae in matrimonium se dederint non legitimum, non ibi muneribus fungendas, unde mariti earum sunt, sciendum est, sed unde ipsae ortae sunt: idque divi fratres rescripserunt.

Dig. 50.1.38pr.

Papirius 2 de const.

Imperatores antoninus et verus augusti rescripserunt gratiam se facere iurisiurandi ei, qui iuraverat se ordini non interfuturum et postea duumvir creatus esset.

Dig. 50.1.38.1

Papirius 2 de const.

Item rescripserunt colonos praediorum fisci muneribus fungi sine damno fisci oportere, idque excutere praesidem adhibito procuratore debere.

Dig. 50.1.38.2

Papirius 2 de const.

Imperatores antoninus et verus rescripserunt ad magistratus officium pertinere exactionem pecuniae legatorum, et si cessaverint, ipsos vel heredes conveneri aut, si solvendo non sint, fideiussores eorum qui pro his caverunt.

Dig. 50.1.38.3

Papirius 2 de const.

Item rescripserunt mulierem, quamdiu nupta est, incolam eiusdem civitatis videri, cuius maritus eius est, et ibi, unde originem trahit, non cogi muneribus fungi.

Dig. 50.1.38.4

Papirius 2 de const.

Item rescripserunt patris, qui consulto filium emancipaverat, ne pro magistratu eius caveret, perinde bona teneri atque si fideiussor pro eo extitisset.

Dig. 50.1.38.5

Papirius 2 de const.

Item rescripserunt, cum quaeritur, an municeps quis sit, ex ipsis etiam rebus probationes sumi oportere: nam solam nominis similitudinem ad confirmandam cuiusque originem satis non esse.

Dig. 50.1.38.6

Papirius 2 de const.

Imperatores antoninus et verus rescripserunt non minus eos, qui compulsi magistratu funguntur, cavere debere, quam qui sponte officium adgnoverunt.

Dig. 50.2.0. De decurionibus et filiis eorum.

Dig. 50.2.1

Ulpianus 2 opin.

Decuriones, quos sedibus civitatis, ad quam pertinent, relictis in alia loca transmigrasse probabitur, praeses provinciae in patrium solum revocare et muneribus congruentibus fungi curet.

Dig. 50.2.2pr.

Ulpianus 1 disp.

Qui ad tempus relegatus est, si decurio sit, desinet esse decurio. reversus plane locum suum quidem non optinebit, sed non semper prohibetur decurio fieri. denique in locum suum non restituetur (nam et sublegi in locum eius potest) et si numerus ordinis plenus sit, exspectare eum oportet, donec alius vacet. alia causa est eius, qui ad tempus ordine removetur: hic enim impleto tempore decurio est. sed et in huius locum sublegi poterit: sed et si plenum locum invenerit, exspectet, donec locus vacet.

Dig. 50.2.2.1

Ulpianus 1 disp.

Restitutus tamen in ordinem utrum eum ordinem teneat, quem primum habuit, an vero quem nunc nanctus est, quaeri potest, si forte de ordine sententiarum dicendarum agatur. arbitror tamen eundem ordinem tenere, quem pridem habuit. non idem erit in eo, qui relegatus ad tempus est: nam hic velut novus in ordinem venit.

Dig. 50.2.2.2

Ulpianus 1 disp.

In filiis decurionum quaestio est, utrum is solus decurionis filius esse videatur, qui conceptus et natus est ex decurione, an vero et is, qui ante natus est, quam pater decurio fieret. et quidem quantum pertinet, ne fustibus castigetur et ne in metallum detur, non nocet plebeio patre esse natum, si postea honor decurionis patri eorum accesserit. in avo quoque papinianus idem respondit, ne patris nota filius macularetur.

Dig. 50.2.2.3

Ulpianus 1 disp.

Sed si pater ipsius ordine motus sit, si quidem ante conceptionem eius moveatur, arbitror eum quasi plebei filium in honoribus spectari: quod si post conceptionem pater ipsius dignitatem amiserit, dicendum erit benigne ut decurionis filium intuendum.

Dig. 50.2.2.4

Ulpianus 1 disp.

Proinde hic quoque, qui post patris relegationem natus sit, si quidem ante conceptus est, similis senatoris filio habebitur: si postea, nocebit illi relegatio.

Dig. 50.2.2.5

Ulpianus 1 disp.

Si ad tempus ordine moto patre fuerit natus medioque tempore conceptus et editus, an quasi decurionis filius nascatur, licet pater eius ante obierit, quam in ordinem venerit? quod benigne erit admittendum.

Dig. 50.2.2.6

Ulpianus 1 disp.

Praeterea si conceptus sit a plebeio, mox ante editionem pater eius decurionatum adeptus ante editionem amiserit: non infavorabiliter quis medium tempus illi prodesse veluti iam nato respondebit.

Dig. 50.2.2.7

Ulpianus 1 disp.

Nullum patris delictum innocenti filio poenae est: ideoque nec ordine decurionum aut ceteris honoribus propter eiusmodi causam prohibetur.

Dig. 50.2.2.8

Ulpianus 1 disp.

Maiores annis quinquaginta quinque ad decurionatus honorem inviti vocari constitutionibus prohibentur. sed si ei rei consenserint, etsi maiores annis septuaginta sint, munera quidem civilia obire non coguntur, honores autem gerere debent.

Dig. 50.2.3pr.

Ulpianus 3 de off. procons.

Generaliter id erit defendendum, ut qui clementiorem sententiam passus est ob hoc, quod ad tempus relegatur, boni consulere debeat humanitatis sententiae nec decurionatum recipiat.

Dig. 50.2.3.1

Ulpianus 3 de off. procons.

Sed si quis ob falsam causam vel aliam de gravioribus non ad tempus sit relegatus, sed ad tempus ordine motus, in ea est causa, ut possit in ordinem redire. imperator enim antoninus edicto proposito statuit, ut cuicumque aut quacumque causa ad tempus ordine vel advocationibus vel quo alio officio fuisset interdictum, completo tempore nihilo minus fungi honore vel officio possit. et hoc recte: neque enim exaggeranda fuit sententia, quae modum interdictioni fecerat.

Dig. 50.2.3.2

Ulpianus 3 de off. procons.

Spurios posse in ordinem allegi nulla dubitatio est: sed si habeat competitorem legitime quaesitum, praeferri eum oportet, divi fratres lolliano avito bithyniae praesidi rescripserunt. cessantibus vero his etiam spurii ad decurionatum et re et vita honesta recipientur: quod utique non sordi erit ordini, cum ex utilitate eius sit semper ordinem plenum habere.

Dig. 50.2.3.3

Ulpianus 3 de off. procons.

Eis, qui iudaicam superstitionem sequuntur, divi severus et antoninus honores adipisci permiserunt, sed et necessitates eis imposuerunt, qui superstitionem eorum non laederent.

Dig. 50.2.4

Marcianus 1 de iudic. publ.

Decurio, qui prohibetur conducere quaedam, si iure successerit in conductione, remanet in ea. quod et in omnibus similibus servandum est.

Dig. 50.2.5

Papinianus 2 quaest.

Ad tempus ordine motos ex crimine, quod ignominiam importat, in perpetuum moveri placuit. ad tempus autem exulare iussos ex crimine leviore velut transacto negotio non esse inter infames habendos.

Dig. 50.2.6pr.

Papinianus 1 resp.

Spurii decuriones fiunt: et ideo fieri poterit ex incesto quoque natus: non enim impedienda est dignitas eius qui nihil admisit.

Dig. 50.2.6.1

Papinianus 1 resp.

Minores viginti quinque annorum decuriones facti sportulas decurionum accipiunt: sed interim suffragium inter ceteros ferre non possunt.

Dig. 50.2.6.2

Papinianus 1 resp.

Decurio etiam suae civitatis vectigalia exercere prohibetur.

Dig. 50.2.6.3

Papinianus 1 resp.

Qui iudicii publici quaestionem citra veniam abolitionis deseruerunt, decurionum honore decorari non possunt, cum ex turpilliano senatus consulto notentur ignominia veluti calumniae causa iudicio publico damnati.

Dig. 50.2.6.4

Papinianus 1 resp.

Pater, qui filio decurione creato provocavit, etsi praescriptione temporis exclusus fuerit, si quod gestum est non habuit ratum, muneribus civilibus pro filio non tenebitur.

Dig. 50.2.6.5

Papinianus 1 resp.

Privilegiis cessantibus ceteris eorum causa potior habetur in sententiis ferendis, qui pluribus eodem tempore suffragiis iure decurionis decorati sunt. sed et qui plures liberos habet, in suo collegio primus sententiam rogatur ceterosque honoris ordine praecellit.

Dig. 50.2.7pr.

Paulus 1 sent.

Honores et munera non ordinatione, sed potioribus quibusque iniungenda sunt.

Dig. 50.2.7.1

Paulus 1 sent.

Surdus et mutus si in totum non audiant aut non loquantur, ab honoribus civilibus, non etiam a muneribus excusantur.

Dig. 50.2.7.2

Paulus 1 sent.

Is, qui non sit decurio, duumviratu vel aliis honoribus fungi non potest, quia decurionum honoribus plebeii fungi prohibentur.

Dig. 50.2.7.3

Paulus 1 sent.

Ad decurionatum filii ita demum pater non consentit, si contrariam voluntatem vel apud acta praesidis vel apud ipsum ordinem vel quo alio modo contestatus sit.

Dig. 50.2.8

Hermogenianus 1 iuris epit.

Decurionibus facultatibus lapsis alimenta decerni permissum est, maxime si ob munificentiam in patriam patrimonium exhauserint.

Dig. 50.2.9pr.

Paulus 1 decr.

Severus augustus dixit: "etsi probaretur titius in servitute patris sui natus, tamen, cum ex libera muliere sit procreatus, non prohibetur decurio fieri in sua civitate".

Dig. 50.2.9.1

Paulus 1 decr.

Non esse dubitandum, quin navicularii non debent decuriones creari.

Dig. 50.2.10

Modestinus 1 resp.

Herennius modestinus respondit sola albi proscriptione minime decurionem factum, qui secundum legem decurio creatus non sit.

Dig. 50.2.11

Callistratus 1 cogn.

Non tantum qui tenerae aetatis, sed etiam qui grandes natu sunt decuriones fieri prohibentur. illi quasi inhabiles rem publicam tueri ad tempus excusantur, hi vero in perpetuum amoventur: non alias seniores, ne seniorum excusatione iuniores onerentur ad omnia munera publica suscipienda soli relicti. neque enim minores viginti quinque annis decuriones allegi nisi ex causa possunt, neque hi, qui annum quinquagensimum et quintum excesserunt. nonnumquam etiam longa consuetudo in ea re observata respicienda erit. quod etiam custodiendum principes nostri consulti de allegendis in ordine nicomedensium huius aetatis hominibus rescripserunt.

Dig. 50.2.12

Callistratus 6 cogn.

Eos, qui utensilia negotiantur et vendunt, licet ab aedilibus caeduntur, non oportet quasi viles personas neglegi. denique non sunt prohibiti huiusmodi homines decurionatum vel aliquem honorem in sua patria petere: nec enim infames sunt. sed ne quidem arcentur honoribus, qui ab aedilibus flagellis caesi sunt, quamquam iure suo ita aediles officio isto fungantur. inhonestum tamen puto esse huiusmodi personas flagellorum ictibus subiectas in ordinem recipi, et maxime in eis civitatibus, quae copiam virorum honestorum habeant: nam paucitas eorum, qui muneribus publicis fungi debeant, necessaria etiam hos ad dignitatem municipalem, si facultates habeant, invitat.

Dig. 50.2.13pr.

Papirius 2 de const.

Imperatores antoninus et verus augusti rescripserunt in tempus relegatos et reversos in ordinem allegi sine permissu principis non posse.

Dig. 50.2.13.1

Papirius 2 de const.

Item rescripserunt relegatos non posse tempore finito in ordinem decurionum allegi, nisi eius aetatis fuerint, ut nondum decuriones creari possent, et dignitas certa spem eius honoris id faceret, ut princeps indulgere possit.

Dig. 50.2.13.2

Papirius 2 de const.

Item rescripserunt eum, qui in relegatione natus est, non prohiberi honore decurionatus fungi.

Dig. 50.2.13.3

Papirius 2 de const.

Item rescripserunt non admitti contradicere volentem, quod non recte quis sit creatus decurio, cum initio contradicere debuerit.

Dig. 50.2.14

Paulus 1 quaest.

De decurione damnato non debere quaestionem haberi divus pius rescripsit. unde etiam si desierit decurio esse, deinde damnetur, non esse torquendum in memoriam prioris dignitatis placet.

Dig. 50.3.0. De albo scribendo.

Dig. 50.3.1pr.

Ulpianus 3 de off. procons.

Decuriones in albo ita scriptos esse oportet, ut lege municipali praecipitur: sed si lex cessat, tunc dignitates erunt spectandae, ut scribantur eo ordine, quo quisque eorum maximo honore in municipio functus est: puta qui duumviratum gesserunt, si hic honor praecellat, et inter duumvirales antiquissimus quisque prior: deinde hi, qui secundo post duumviratum honore in re publica functi sunt: post eos qui tertio et deinceps: mox hi qui nullo honore functi sunt, prout quisque eorum in ordinem venit.

Dig. 50.3.1.1

Ulpianus 3 de off. procons.

In sententiis quoque dicendis idem ordo spectandus est, quem in albo scribendo diximus.

Dig. 50.3.2

Ulpianus 2 opin.

In albo decurionum in municipio nomina ante scribi oportet eorum, qui dignitates principis iudicio consecuti sunt, postea eorum, qui tantum municipalibus honoribus functi sunt.

Dig. 50.4.0. De muneribus et honoribus.

Dig. 50.4.1pr.

Hermogenianus 1 epit.

Munerum civilium quaedam sunt patrimonii, alia personarum.

Dig. 50.4.1.1

Hermogenianus 1 epit.

Patrimonii sunt munera rei vehicularis, item navicularis: decemprimatus: ab istis enim periculo ipsorum exactiones sollemnium celebrantur.

Dig. 50.4.1.2

Hermogenianus 1 epit.

Personalia civilia sunt munera defensio civitatis, id est ut syndicus fiat: legatio ad census accipiendum vel patrimonium: scribatus: kamylasia: annonae ac similium cura: praediorumque publicorum: frumenti comparandi: aquae ductus: equorum circensium spectacula: publicae viae munitiones: arcae frumentariae: calefactiones thermarum: annonae divisio et quaecumque aliae curae istis sunt similes. ex his enim, quae rettulimus, cetera etiam per leges cuiusque civitatis ex consuetudine longa intellegi potuerunt.

Dig. 50.4.1.3

Hermogenianus 1 epit.

Illud tenendum est generaliter personale quidem munus esse, quod corporibus labore cum sollicitudine animi ac vigilantia sollemniter extitit, patrimonii vero, in quo sumptus maxime postulatur.

Dig. 50.4.1.4

Hermogenianus 1 epit.

Aeque personale munus est tutela, cura adulti furiosive, item prodigi, muti, etiam ventris, etiam ad exhibendum cibum potum tectum et similia. sed et in bonis, cuius officio usucapiones interpellantur ac, ne debitores liberentur, providetur: item ex carboniano edicto bonorum possessione petita, si satis non detur, custodiendis bonis curator datus personali fungitur munere. his similes sunt bonis dati curatores, quae fuerunt eius, qui ab hostibus captus est et reverti speratur: item custodiendis ab eo relictis, cui necdum quisquam civili vel honorario iure successit, curatores constituti.

Dig. 50.4.2

Ulpianus 21 ad sab.

Quod ad honores pertinet, creditur in potestate filium habere etiam is, qui in patris potestate est.

Dig. 50.4.3pr.

Ulpianus 2 opin.

Et qui originem ab urbe roma habent, si alio loco domicilium constituerunt, munera eius sustinere debent.

Dig. 50.4.3.1

Ulpianus 2 opin.

His, qui castris operam per militiam dant, nullum municipale munus iniungi potest. ceteri autem privati, quamvis militum cognati sunt, legibus patriae suae et provinciae oboedire debent.

Dig. 50.4.3.2

Ulpianus 2 opin.

Si in metallum datus in integrum restitutus sit, perinde ac si nec damnatus fuisset, ad munera vel honores vocatur: nec opponet fortunam et casus tristiores suos ad hoc solum, ne patriae idoneus civis esse videatur.

Dig. 50.4.3.3

Ulpianus 2 opin.

Corporalia munera feminis ipse sexus denegat.

Dig. 50.4.3.4

Ulpianus 2 opin.

Quo minus honores aut munera iniungantur filio, si nullam habet excusationem, intercedere pater, in cuius potestate est, ius non habet.

Dig. 50.4.3.5

Ulpianus 2 opin.

Quod pater non consensit honoribus sive muneribus filii, ne illius patrimonium oneri subiciatur, praestat defensionem, non civem patriae utilitatibus quatenus potest aufert.

Dig. 50.4.3.6

Ulpianus 2 opin.

Quamvis maior annis septuaginta et quinque liberorum incolumium pater sit ideoque a muneribus civilibus excusetur, filii tamen eius suo nomine competentia munera adgnoscere debent: ideo enim proprium praemium immunitatis propter filios patribus datum est, quod illi subibunt.

Dig. 50.4.3.7

Ulpianus 2 opin.

Vitricus onera munerum civilium nomine privigni sui suscipere nulla iuris ratione cogitur.

Dig. 50.4.3.8

Ulpianus 2 opin.

Liberti muneribus fungi debent apud originem patronorum, sed si sua patrimonia habent suffectura oneribus: res enim patronorum muneribus libertinorum subiecta non est.

Dig. 50.4.3.9

Ulpianus 2 opin.

Quod pater in reatu criminis alicuius est, filiis impedimento ad honores esse non debet.

Dig. 50.4.3.10

Ulpianus 2 opin.

Decaprotos etiam minores annis viginti quinque fieri, non militantes tamen, pridem placuit, quia patrimonii magis onus videtur esse.

Dig. 50.4.3.11

Ulpianus 2 opin.

Exactionem tributorum onus patrimonii esse constat.

Dig. 50.4.3.12

Ulpianus 2 opin.

Cura frumenti comparandi munus est, et ab eo aetas septuaginta annorum vel numerus quinque incolumium liberorum excusat.

Dig. 50.4.3.13

Ulpianus 2 opin.

Eos milites, quibus supervenientibus hospitia praeberi in civitate oportet, per vices ab omnibus, quos id munus contingit, suscipi oportet.

Dig. 50.4.3.14

Ulpianus 2 opin.

Munus hospitis in domo recipiendi non personae, sed patrimonii onus est.

Dig. 50.4.3.15

Ulpianus 2 opin.

Praeses provinciae provideat munera et honores in civitatibus aequaliter per vices secundum aetates et dignitates, ut gradus munerum honorumque qui antiquitus statuti sunt, iniungi, ne sine discrimine et frequenter isdem oppressis simul viris et viribus res publicae destituantur.

Dig. 50.4.3.16

Ulpianus 2 opin.

Si duo filii in patris potestate sint, eodem tempore munera eorum pater sustinere non compellitur.

Dig. 50.4.3.17

Ulpianus 2 opin.

Si is, qui duos filios relinquebat, nihil de expediendis muneribus alterius filii ex communi patrimonio supremis suis cavit, propriis sumptibus is et munera et honores, qui ei iniungentur, suscipere debet, quamvis pro altero vivus pater eiusmodi onera expedierit.

Dig. 50.4.4pr.

Ulpianus 3 opin.

Cura exstruendi vel reficiendi operis in civitate munus publicum est, a quo quinque liberorum incolumium pater excusatur: nec si per vim extortum munus fuerit, excusationem, quam habet ab aliis muneribus, auferet.

Dig. 50.4.4.1

Ulpianus 3 opin.

Deficientium facultatibus ad munera vel honores qui indicuntur excusatio non perpetua, sed temporalis est: nam si ex voto honestis rationibus patrimonium incrementum acceperit, suo tempore, an idoneus sit aliquis ad ea, quae creatus fuerit, aestimabitur.

Dig. 50.4.4.2

Ulpianus 3 opin.

Inopes onera patrimonii ipsa non habendi necessitate non sustinent, corpori autem indicta obsequia solvunt.

Dig. 50.4.4.3

Ulpianus 3 opin.

Qui obnoxius muneribus suae civitatis fuit, nomen militiae defugiendi oneris municipalis gratia dedit: deteriorem causam rei publicae facere non potuit.

Dig. 50.4.5

Scaevola 1 reg.

Navicularii et mercatores olearii, qui magnam partem patrimonii ei rei contulerunt, intra quinquennium muneris publici vacationem habent.

Dig. 50.4.6pr.

Ulpianus 4 de off. procons.

Rescripto divorum fratrum ad rutilium lupum ita declaratur: "constitutio, qua cautum est, prout quisque decurio creatus est, ut ita et magistratum apiscatur, totiens servari debet, quotiens idoneos et sufficientes omnes contingit. ceterum si ita quidam tenues et exhausti sunt, ut non modo publicis honoribus pares non sint, sed et vix de suo victum sustinere possint: et minus utile et nequaquam honestum est talibus mandari magistratum, praesertim cum sint qui convenienter ei et suae fortunae et splendori publico possint creari. sciant igitur locupletiores non debere se hoc praetextu legis uti et de tempore, quo quisque in curiam allectus sit, inter eos demum esse quaerendum, qui pro substantia sua capiant honoris dignitatem".

Dig. 50.4.6.1

Ulpianus 4 de off. procons.

Debitores rerum publicarum ad honores invitari non posse certum est, nisi prius in id quod debetur rei publicae satisfecerint. sed eos demum debitores rerum publicarum accipere debemus, qui ex administratione rei publicae reliquantur: ceterum si non ex administratione sint debitores, sed mutuam pecuniam a re publica acceperint, non sunt in ea causa, ut honoribus arceantur. plane vice solutionis sufficit, ut quis aut pignoribus aut fideiussoribus idoneis caveat: et ita divi fratres aufidio herenniano rescripserunt. sed et si ex pollicitatione debeant, quae tamen pollicitatio recusari non potest, in ea sunt condicione, ut honoribus arceantur.

Dig. 50.4.6.2

Ulpianus 4 de off. procons.

Si quis accusatorem non habeat, non debet honoribus prohiberi, quemadmodum non debet is, cuius accusator destiterit. ita enim imperator noster cum divo patre suo rescripsit.

Dig. 50.4.6.3

Ulpianus 4 de off. procons.

Sciendum est quaedam esse munera aut personae aut patrimoniorum, itidem quosdam esse honores.

Dig. 50.4.6.4

Ulpianus 4 de off. procons.

Munera, quae patrimoniis iniunguntur, vel intributiones talia sunt, ut neque aetas ea excuset neque numerus liberorum nec alia praerogativa, quae solet a personalibus muneribus exuere.

Dig. 50.4.6.5

Ulpianus 4 de off. procons.

Sed enim haec munera, quae patrimoniis indicuntur, duplicia sunt: nam quaedam possessoribus iniunguntur, sive municipes sunt sive non sunt, quaedam ^ quadam^ non nisi municipibus vel incolis. intributiones, quae agris fiunt vel aedificiis, possessoribus indicuntur: munera vero, quae patrimoniorum habentur, non aliis quam municipibus vel incolis.

Dig. 50.4.7pr.

Marcianus 2 publ.

Reus delatus etiam ante sententiam honores petere principalibus constitutionibus prohibetur: nec interest, plebeius an decurio fuerit. sed post annum, quam reus delatus est, petere non prohibetur, nisi per ipsum stetit, quo minus causa intra annum expediretur.

Dig. 50.4.7.1

Marcianus 2 publ.

Eum, contra quem propter honores appellatum est, si pendente appellatione honorem usurpaverit, coercendum divus severus rescripsit. ergo et si is, qui honoribus per sententiam uti prohibitus est, appellaverit, abstinere interim petitione honoris debebit.

Dig. 50.4.8

Ulpianus 11 ad ed.

Ad rem publicam administrandam ante vicensimum quintum annum, vel ad munera quae non patrimonii sunt vel honores, admitti minores non oportet. denique nec decuriones creantur vel creati suffragium in curia ferunt. annus autem vicensimus quintus coeptus pro pleno habetur: hoc enim in honoribus favoris causa constitutum est, ut pro plenis inchoatos accipiamus, sed in his honoribus, in quibus rei publicae quid eis non committitur. ceterum cum damno publico honorem ei committi non est dicendum, etiam cum ipsius pernicie minoris.

Dig. 50.4.9

Ulpianus 3 de off. cons.

Si quis magistratus in municipio creatus munere iniuncto fungi detrectet, per praesides munus adgnoscere cogendus est remediis, quibus tutores quoque solent cogi ad munus quod iniunctum est adgnoscendum.

Dig. 50.4.10

Modestinus 5 diff.

Honorem sustinenti munus imponi non potest: munus sustinenti honor deferri potest.

Dig. 50.4.11pr.

Modestinus 11 pand.

Ut gradatim honores deferantur, edicto, et ut a minoribus ad maiores perveniatur, epistula divi pii ad titianum exprimitur.

Dig. 50.4.11.1

Modestinus 11 pand.

Etsi lege municipali caveatur, ut praeferantur in honoribus certae condicionis homines: attamen sciendum est hoc esse observandum, si idonei sint: et ita rescripto divi marci continetur.

Dig. 50.4.11.2

Modestinus 11 pand.

Quotiens penuria est eorum, qui magistratum suscipiunt, immunitas ad aliquid infringitur, sicuti divi fratres rescripserunt.

Dig. 50.4.11.3

Modestinus 11 pand.

Reprobari posse medicum a re publica, quamvis semel probatus sit, divus magnus antoninus cum patre rescripsit.

Dig. 50.4.11.4

Modestinus 11 pand.

Eos, qui primis litteris pueros inducunt, non habere vacationem divus magnus antoninus rescripsit.

Dig. 50.4.12

Iavolenus 6 ex cass.

Cui muneris publici vacatio datur, non remittitur ei, ne magistratus fiat, quia id ad honorem magis quam ad munera pertinet. cetera omnia, quae ad tempus extra ordinem exiguntur, veluti munitio viarum, ab huiusmodi persona exigenda non sunt.

Dig. 50.4.13

Iavolenus 15 ex cass.

Vacatio itemque immunitas, quae liberis et posteris alicuius data est, ad eos dumtaxat pertinet, qui eius familiae sunt.

Dig. 50.4.14pr.

Callistratus 1 de cogn.

Honor municipalis est administratio rei publicae cum dignitatis gradu, sive cum sumptu sive sine erogatione contingens.

Dig. 50.4.14.1

Callistratus 1 de cogn.

Munus aut publicum aut privatum est. publicum munus dicitur, quod in administranda re publica cum sumptu sine titulo dignitatis subimus.

Dig. 50.4.14.2

Callistratus 1 de cogn.

Viarum munitiones, praediorum collationes non personae, sed locorum munera sunt.

Dig. 50.4.14.3

Callistratus 1 de cogn.

De honoribus sive muneribus gerendis cum quaeritur, in primis consideranda persona est eius, cui defertur honor sive muneris administratio: item origo natalium: facultates quoque an sufficere iniuncto muneri possint: item lex, secundum quam muneribus quisque fungi debeat.

Dig. 50.4.14.4

Callistratus 1 de cogn.

Plebeii filii familias periculo eius qui nominaverit tenebuntur, idque imperator noster severus augustus in haec verba rescripsit: "si in numero plebeiorum filius tuus est, quamquam invitus honores ex persona filii suscipere cogi non debeas, tamen resistere, quo minus patriae obsequatur periculo eius qui nominavit, iure patriae potestatis non potes".

Dig. 50.4.14.5

Callistratus 1 de cogn.

Gerendorum honorum non promiscua facultas est, sed ordo certus huic rei adhibitus est. nam neque prius maiorem magistratum quisquam, nisi minorem susceperit, gerere potest, neque ab omni aetate, neque continuare quisque honores potest.

Dig. 50.4.14.6

Callistratus 1 de cogn.

Si alii non sint qui honores gerant, eosdem compellendos, qui gesserint, complurimis constitutionibus cavetur. divus etiam hadrianus de iterandis muneribus rescripsit in haec verba: "illud consentio, ut, si alii non erunt idonei qui hoc munere fungantur, ex his, qui iam functi sunt, creentur".

Dig. 50.4.15

Papinianus 5 resp.

Etsi filium pater decurionem esse voluit, tamen defuncto honores, qui filio decurioni congruentes post mortem patris obtigerunt, ad onus coheredis filii non pertinent, cum ei decurioni sufficientes facultates pater reliquerit.

Dig. 50.4.16pr.

Paulus 1 sent.

Aestimationem honoris aut muneris in pecunia pro administratione offerentes audiendi non sunt.

Dig. 50.4.16.1

Paulus 1 sent.

Qui pro honore pecuniam promisit, si solvere eam coepit, totam praestare operis inchoati exemplo cogendus est.

Dig. 50.4.16.2

Paulus 1 sent.

Invitus filius pro patre rem publicam salvam fore cavere non cogitur.

Dig. 50.4.16.3

Paulus 1 sent.

Defensionem rei publicae amplius quam semel suscipere nemo cogitur, nisi id fieri necessitas postulet.

Dig. 50.4.17pr.

Hermogenianus 1 iuris epit.

Sponte provinciae sacerdotium iterare nemo prohibetur.

Dig. 50.4.17.1

Hermogenianus 1 iuris epit.

Immunis ab honoribus et muneribus civilibus si decurioni creato filio, quem habet in potestate, consentiat, in muneribus et honoribus sumptus subministrare filio compellitur.

Dig. 50.4.18pr.

Arcadius l.S. de mun. civil.

Munerum civilium triplex divisio est: nam quaedam munera personalia sunt, quaedam patrimoniorum dicuntur, alia mixta.

Dig. 50.4.18.1

Arcadius l.S. de mun. civil.

Personalia sunt, quae animi provisione et corporalis laboris intentione sine aliquo gerentis detrimento perpetrantur, veluti tutela vel cura, kalendarii quoque curatio.

Dig. 50.4.18.2

Arcadius l.S. de mun. civil.

Et quaestura in aliqua civitate inter honores non habetur, sed personale munus est.

Dig. 50.4.18.3

Arcadius l.S. de mun. civil.

Tironum sive equorum productio et si qua alia animalia necessario producenda vel res pervehendae sive persequendae sunt vel pecunia fiscalis sive annona vel vestis, personae munus est.

Dig. 50.4.18.4

Arcadius l.S. de mun. civil.

Cursus vehicularis sollicitudo, item angariarum praebitio personale munus est.

Dig. 50.4.18.5

Arcadius l.S. de mun. civil.

Cura quoque emendi frumenti olei (nam harum specierum curatores, quos sitwnas et elaiwnas appellant, creari moris est) inter personalia munera in quibusdam civitatibus numerantur: et calefactio publici balinei, si ex reditibus alicuius civitatis curatori pecunia subministratur.

Dig. 50.4.18.6

Arcadius l.S. de mun. civil.

Sed et cura custodiendi aquae ductus personalibus muneribus adgregatur.

Dig. 50.4.18.7

Arcadius l.S. de mun. civil.

Irenarchae quoque, qui disciplinae publicae et corrigendis moribus praeficiuntur: sed et qui ad faciendas vias eligi solent, cum nihil de proprio patrimonio in hoc munus conferant: item episcopi, qui praesunt pani et ceteris venalibus rebus, quae civitatium populis ad cotidianum victum usui sunt, personalibus muneribus funguntur.

Dig. 50.4.18.8

Arcadius l.S. de mun. civil.

Qui annonam suscipit vel exigit vel erogat, et exactores pecuniae pro capitibus personalis muneris sollicitudinem sustinent.

Dig. 50.4.18.9

Arcadius l.S. de mun. civil.

Sed et curatores, qui ad colligendos civitatium publicos reditus eligi solent, personali munere subiugantur.

Dig. 50.4.18.10

Arcadius l.S. de mun. civil.

Hi quoque, qui custodes aedium vel archeotae vel logographi vel tabularii vel xenoparochi (ut in quibusdam civitatibus) vel limenarchae vel curatores ad extruenda vel reficienda aedificia publica sive palatia sive navalia vel mansiones destinantur, si tamen pecuniam publicam in operis fabricam erogent, et qui faciendis vel reficiendis navibus, ubi usus exigit, praeponuntur, muneribus personalibus adstringuntur.

Dig. 50.4.18.11

Arcadius l.S. de mun. civil.

Camelasia quoque similiter personale munus est: nam ratione habita et alimentorum et camelorum certa pecunia camelariis dari debet, ut solo corporis ministerio obligentur. hos ex albi ordine liberari, nisi sola laesi et inutilis corporis et infirmitate, specialiter sit expressum.

Dig. 50.4.18.12

Arcadius l.S. de mun. civil.

Legati quoque, qui ad sacrarium principis mittuntur, quia viaticum, quod legativum dicitur, interdum solent accipere, sed et nycostrategi et pistrinorum curatores personale munus ineunt.

Dig. 50.4.18.13

Arcadius l.S. de mun. civil.

Defensores quoque, quos graeci syndicos appellant, et qui ad certam causam agendam vel defendendam eliguntur, laborem personalis muneris adgrediuntur.

Dig. 50.4.18.14

Arcadius l.S. de mun. civil.

Iudicandi quoque necessitas inter munera personalia habetur.

Dig. 50.4.18.15

Arcadius l.S. de mun. civil.

Si aliquis fuerit electus, ut compellat eos, qui prope viam publicam possident, sternere viam, personale munus est.

Dig. 50.4.18.16

Arcadius l.S. de mun. civil.

Pari modo qui acceptandis sive suscipiendis censualibus professionibus destinantur, ad personalis muneris sollicitudinem animum intendunt.

Dig. 50.4.18.17

Arcadius l.S. de mun. civil.

Mastigophori quoque, qui agonothetas in certaminibus comitantur, et scribae magistratus personali muneri serviunt.

Dig. 50.4.18.18

Arcadius l.S. de mun. civil.

Patrimoniorum sunt munera, quae sumptibus patrimonii et damnis administrantis expediuntur.

Dig. 50.4.18.19

Arcadius l.S. de mun. civil.

Elemporia et pratura apud alexandrinos patrimonii munus existimatur.

Dig. 50.4.18.20

Arcadius l.S. de mun. civil.

Susceptores quoque vini per provinciam africam patrimonii munus gerunt.

Dig. 50.4.18.21

Arcadius l.S. de mun. civil.

Patrimoniorum autem munera duplicia sunt. nam quaedam ex his muneribus possessionibus sive patrimoniis indicuntur, veluti agminales equi vel mulae et angariae atque veredi.

Dig. 50.4.18.22

Arcadius l.S. de mun. civil.

Huiusmodi igitur obsequia et hi, qui neque municipes neque incolae sunt, adgnoscere coguntur.

Dig. 50.4.18.23

Arcadius l.S. de mun. civil.

Sed et eos, qui faenus exercent, etsi veterani sint, tributiones eiusmodi adgnoscere debere rescriptum est.

Dig. 50.4.18.24

Arcadius l.S. de mun. civil.

Ab huiusmodi muneribus neque primipilaris neque veteranus aut miles aliusve, qui privilegio aliquo subnixus, nec pontifex excusatur.

Dig. 50.4.18.25

Arcadius l.S. de mun. civil.

Praeterea habent quaedam civitates praerogativam, ut hi, qui in territorio earum possident, certum quid frumenti pro mensura agri per singulos annos praebeant: quod genus collationis munus possessionis est.

Dig. 50.4.18.26

Arcadius l.S. de mun. civil.

Mixta munera decaprotiae et icosaprotiae, ut herennius modestinus et notando et disputando bene et optima ratione decrevit: nam decaproti et icosaproti tributa exigentes et corporale ministerium gerunt et pro omnibus defunctorum fiscalia detrimenta resarciunt, ut merito inter mixta hoc munus numerari debeat.

Dig. 50.4.18.27

Arcadius l.S. de mun. civil.

Sed ea, quae supra personalia esse diximus, si hi qui funguntur ex lege civitatis suae vel more etiam de propriis facultatibus impensas faciant vel annonam exigentes desertorum praediorum damna sustineant, mixtorum definitione continebuntur.

Dig. 50.4.18.28

Arcadius l.S. de mun. civil.

Haec omnia munera, quae trifariam divisimus, una significatione comprehenduntur: nam personalia et patrimoniorum et mixta munera civilia seu publica appellantur.

Dig. 50.4.18.29

Arcadius l.S. de mun. civil.

Sive autem personalium dumtaxat sive etiam civilium munerum immunitas alicui concedatur, neque ab annona neque ab angariis neque a veredo neque ab hospite recipiendo neque a nave neque capitatione, exceptis militibus et veteranis, excusari possunt.

Dig. 50.4.18.30

Arcadius l.S. de mun. civil.

Magistris, qui civilium munerum vacationem habent, item grammaticis et oratoribus et medicis et philosophis, ne hospitem reciperent, a principibus fuisse immunitatem indultam et divus vespasianus et divus hadrianus rescripserunt.

Dig. 50.5.0. De vacatione et excusatione munerum.

Dig. 50.5.1pr.

Ulpianus 2 opin.

Omnis excusatio sua aequitate nititur. sed si praetendentibus aliquod sine iudice credatur, aut passim sine temporis praefinitione, prout cuique libuerit, permissum fuerit se excusare, non erunt, qui munera necessaria in rebus publicis obeant. quare et qui liberorum incolumium iure a muneribus civilibus sibi vindicant excusationem, appellationem interponere debent: et qui tempora praefinita in ordine eiusmodi appellationum peragendo non servaverint, merito praescriptione repelluntur.

Dig. 50.5.1.1

Ulpianus 2 opin.

Qui excusatione aliqua utuntur, quotienscumque creati fuerint, etsi iam ante absoluti sunt, necesse habent appellare. sed si per calumniam et saepius idem adversarius vexandi gratia eius, quem scit perpetua vacatione subnixum, id facere probatus erit, sumptus litis exemplo decretorum principalium praestare iubeatur ei, quem sine causa saepius inquietavit.

Dig. 50.5.1.2

Ulpianus 2 opin.

Qui in fraudem ordinis in honoribus gerendis, cum inter eos ad primos honores creari possint qui in civitate munerabantur, evitandorum maiorum onerum gratia ad colonos praediorum se transtulerunt, ut minoribus subiciantur, hanc excusationem sibi non paraverunt.

Dig. 50.5.1.3

Ulpianus 2 opin.

Quamvis sexaginta quinque annorum aliquis sit et tres liberos incolumes habeat, a muneribus tamen civilibus propter has causas non liberatur.

Dig. 50.5.2pr.

Ulpianus 3 opin.

Sextum decimum aetatis annum agentem ad munus sitoniae vocari non oportet: sed si nihil proprie in patria servatur de minoribus quoque annis viginti quinque ad munera sive honores creandi, iusta aetas servanda est.

Dig. 50.5.2.1

Ulpianus 3 opin.

Numerus liberorum aut septuaginta annorum ab honoribus aut muneribus his cohaerentibus excusationem non praestat, sed a muneribus tantum civilibus.

Dig. 50.5.2.2

Ulpianus 3 opin.

Adoptivi filii in numerum non proficiunt eorum liberorum, qui excusare parentes solent.

Dig. 50.5.2.3

Ulpianus 3 opin.

Qui ad munera vocantur, vivorum se liberorum numerum habere tempore, quo propter eos excusari desiderant, probare debent: numerus enim liberorum postea impletus susceptis antea muneribus non liberat.

Dig. 50.5.2.4

Ulpianus 3 opin.

Quae patrimoniorum onera sunt, numero liberorum non excusantur.

Dig. 50.5.2.5

Ulpianus 3 opin.

Incolumes liberi, etiamsi in potestate patri suo desierint esse, excusationem a muneribus civilibus praestant.

Dig. 50.5.2.6

Ulpianus 3 opin.

Minus audiens immunitatem civilium munerum non habet.

Dig. 50.5.2.7

Ulpianus 3 opin.

Quem ita senio et corporis inbecillitate vexari praeses animadverterit, ut muneri perferendae pecuniae non sufficiat, dimittat et alium constituat.

Dig. 50.5.2.7a

Ulpianus 3 opin.

Corporis debilitas eorum munerum excusationem praestat, quae tantum corpore implenda sunt. ceterum quae consilio prudentis viri vel patrimonio sufficientis in homines obiri possunt, nisi certis et receptis probabilibus causis non remittuntur.

Dig. 50.5.2.8

Ulpianus 3 opin.

Qui pueros primas litteras docent, immunitatem a civilibus muneribus non habent: sed ne cui eorum id quod supra vires sit indicatur, ad praesidis religionem pertinet, sive in civitatibus sive in vicis primas litteras magistri doceant.

Dig. 50.5.3

Scaevola 3 reg.

His, qui naves marinas fabricaverunt et ad annonam populi romani praefuerint non minores quinquaginta milium modiorum aut plures singulas non minores decem milium modiorum, donec hae naves navigant aut aliae in earum locum, muneris publici vacatio praestatur ob navem. senatores autem hanc vacationem habere non possunt, quod nec habere illis navem ex lege iulia repetundarum licet.

Dig. 50.5.4

Nerva 1 membr.

Tempus vacationis, quod datur eis qui rei publicae causa afuerunt, non ex eo die numerandum est, quo quis abesse desiit, sed cum quodam laxamento itineris: neque enim minus abesse rei publicae causa intellegendus est, qui ad id negotium vel ab eo revertitur. si quis tamen plus iusto temporis aut itinere aut in alio loco commoratus consumpserit, ita ea interpretanda erit, ut ex eo tempore vacationis dies incipiat ei cedere, quo iter ex commodo peragere potuisset.

Dig. 50.5.5

Macer 2 de off. praesid.

A decurionatu, quamvis hic quoque honor est, ad alium honorem nullam vacationem tribuendam ulpianus respondit.

Dig. 50.5.6

Papinianus 2 quaest.

Hi, qui muneris publici vacationem habent, ad ea, quae extra ordinem imperantur, compelli non solent.

Dig. 50.5.7

Papinianus 36 quaest.

A muneribus, quae non patrimoniis indicuntur, veterani post optimi nostri severi augusti litteras perpetuo excusantur.

Dig. 50.5.8pr.

Papinianus 1 resp.

In honoribus delatis neque maior annis septuaginta neque pater numero quinque liberorum excusatur. sed in asia sacerdotium provinciae suscipere non coguntur numero liberorum quinque subnixi: quod optimus maximusque princeps noster severus augustus decrevit ac postea in ceteris provinciis servandum esse constituit.

Dig. 50.5.8.1

Papinianus 1 resp.

Non alios fisci vectigalium redemptores a muneribus civilibus ac tutelis excusari placuit, quam eos, qui praesentes negotium exercerent.

Dig. 50.5.8.2

Papinianus 1 resp.

Vacationum privilegia non spectant liberos veteranorum.

Dig. 50.5.8.3

Papinianus 1 resp.

Qui muneris publici vacationem habet, per magistratus ex improviso collationes indictas recte recusat: eas vero, quae e lege fiunt, recusare non debet.

Dig. 50.5.8.4

Papinianus 1 resp.

Philosophis, qui se frequentes atque utiles per eandem studiorum sectam contendentibus praebent, tutelas, item munera sordida corporalia remitti placuit, non ea, quae sumptibus expediuntur: etenim vere philosophantes pecuniam contemnunt, cuius retinendae cupidine fictam adseverationem detegunt.

Dig. 50.5.8.5

Papinianus 1 resp.

Qui maximos principes appellavit et causam propriam acturus romam profectus est: quoad cognitio finem accipiat, ab honoribus et civilibus muneribus apud suos excusatur.

Dig. 50.5.9pr.

Paulus 1 resp.

Eos, qui romae profitentur, proinde in patria sua excusari muneribus oportere, ac si in patria sua profiterentur.

Dig. 50.5.9.1

Paulus 1 resp.

Paulus respondit privilegium frumentariis negotiatoribus concessum etiam ad honores excusandos pertinere.

Dig. 50.5.10pr.

Paulus 1 sent.

Ab his oneribus, quae possessionibus vel patrimonio indicuntur, nulla privilegia praestant vacationem.

Dig. 50.5.10.1

Paulus 1 sent.

Corpus mensurarum frumenti iuxta annonam urbis habet vacationem: in provinciis non idem.

Dig. 50.5.10.2

Paulus 1 sent.

Angariorum praestatio et recipiendi hospitis necessitas et militi et liberalium artium professoribus inter cetera remissa sunt.

Dig. 50.5.10.3

Paulus 1 sent.

Auctis post appellationem medio tempore facultatibus paupertatis optentu non excusantur.

Dig. 50.5.10.4

Paulus 1 sent.

Defensores rei publicae ab honoribus et muneribus eodem tempore vacant.

Dig. 50.5.11

Hermogenianus 1 iuris epit.

Sunt munera, quae rei proprie cohaerent, de quibus neque liberi neque aetas nec merita militiae nec ullum aliud privilegium iure tribuit excusationem: ut sit praediorum collatio viae sternendae, angariorumve exhibitio, hospitis suscipiendi munus (nam nec huius quisquam excusationem praeter eos, quibus principali beneficio concessum est, habet) et si qua sunt praeterea alia huiusmodi.

Dig. 50.5.12pr.

Paulus 1 sent.

Legato, qui publicum negotium tuitus sit, intra tempora vacationis praestituta rursum eiusdem negotii defensio mandari non potest.

Dig. 50.5.12.1

Paulus 1 sent.

Comites praesidum et proconsulum procuratorumve caesaris a muneribus vel honoribus et tutelis vacant.

Dig. 50.5.13pr.

Ulpianus 23 ad ed.

Praetor eos, quoscumque intellegit operam dare non posse ad iudicandum, pollicetur se excusaturum: forte quod in perpetuum quis operam dare non potest, quod in eam valetudinem incidit, ut certum sit eum civilia officia subire non posse: aut si alio morbo laboret, ut suis rebus superesse non possit: vel si quid sacerdotium nancti sint, ut discedere ab eo sine religione non possint. nam et hi in perpetuum excusantur.

Dig. 50.5.13.1

Ulpianus 23 ad ed.

Duo genera tribuendae muneris publici vacationis sunt, unum plenius, cum et militiae datur, aliud exiguius, cum nudam muneris vacationem acceperint.

Dig. 50.5.13.2

Ulpianus 23 ad ed.

Qui autem non habet excusationem, etiam invitus iudicare cogitur.

Dig. 50.5.13.3

Ulpianus 23 ad ed.

Si post causam actam coeperit se excusare iudex, si quidem privilegio, quod habuit antequam susciperet iudicium, velit se excusare, nec audiendus est: semel enim adgnoscendo iudicium renuntiat excusationi. quod si postea iusta causa incidit, ut iudex vel ad tempus excusetur, non debet in alium iudicium transferri, si cum captione id futurum est alterutrius. tolerabilius denique est interdum iudicem qui semel cognoverat tantisper exspectare, quam iudici novo rem rursum iudicandam committere.

Dig. 50.5.14pr.

Modestinus 7 reg.

Ad excusationem munerum defunctus filius non prosit, praeterquam in bello amissus.

Dig. 50.5.14.1

Modestinus 7 reg.

Eodem tempore idem duas curas operis non administrabit.

Dig. 50.6.0. De iure immunitatis.

Dig. 50.6.1pr.

Ulpianus 3 opin.

Qui ob hos tantum in navibus sint, ut in eis agendi causa operarentur, nulla constitutione immunitatem a muneribus civilibus habent.

Dig. 50.6.1.1

Ulpianus 3 opin.

Personis datae immunitates heredibus non relinquuntur.

Dig. 50.6.1.2

Ulpianus 3 opin.

Sed et generi posterisque datae custoditaeque ad eos, qui ex feminis nati sunt, non pertinent.

Dig. 50.6.2

Ulpianus 4 de off. procons.

Si qui certa condicione muneribus vel honoribus se adstrinxerunt, cum alias compelli non possent inviti suscipere istum honorem: fides eis servanda est condicioque, qua ad munera sive honores applicare se passi sunt.

Dig. 50.6.3

Ulpianus 4 de off. procons.

Impuberes, quamvis necessitas penuriae hominum cogat, ad honores non esse admittendos rescripto ad venidium rufum legatum ciliciae declaratur.

Dig. 50.6.4

Ulpianus 5 de off. procons.

Maiores septuaginta annis a tutelis et muneribus personalibus vacant. sed qui ingressus est septuagensimum annum, nondum egressus, hac vacatione non utetur, quia non videtur maior esse septuaginta annis qui annum agit septuagensimum.

Dig. 50.6.5

Modestinus 6 reg.

Immunitates generaliter tributae eo iure, ut ad posteros transmitterentur, in perpetuum succedentibus durant.

Dig. 50.6.6pr.

Callistratus 1 de cogn.

Semper in civitate nostra senectus venerabilis fuit: namque maiores nostri paene eundem honorem senibus, quem magistratibus tribuebant. circa munera quoque municipalia subeunda idem honor senectuti tributus est. sed eum, qui in senectute locuples factus est et ante nullo publico munere functus est, dici potest non eximi ab hoc onere privilegio aetatis, maxime si non tam corporis habeat vexationem quam pecuniae erogationem indicti muneris administratio, et ex ea sit civitate, in qua non facile sufficientes viri publicis muneribus inveniantur.

Dig. 50.6.6.1

Callistratus 1 de cogn.

Legem quoque respici cuiusque loci oportet, an, cum aliquas immunitates nominatim complecteretur, etiam de numero annorum in ea conmemoretur. idque etiam colligi potest ex litteris divi pii, quas emisit ad ennium proculum proconsulem provinciae africae.

Dig. 50.6.6.2

Callistratus 1 de cogn.

Demonstratur varie nec abscise numerum liberorum ad excusationem municipalium munerum prodesse ex rescriptis divi helvii pertinacis. namque silvio candido in haec verba rescripsit: "ei kai my paswn leitourgiwn afiysin tous pateras ho twn teknwn arivmos, all' oun epeidy hekkaideka paidas exein dia tou bibliou edylwsas, ouk estin alogon, hwste sugxwrysai sxolazein ty paidotrofia kai anesvai se twn leitourgiwn".

Dig. 50.6.6.3

Callistratus 1 de cogn.

Negotiatores, qui annonam urbis adiuvant, item navicularii, qui annonae urbis serviunt, immunitatem a muneribus publicis consequuntur, quamdiu in eiusmodi actu sunt. nam remuneranda pericula eorum, quin etiam exhortanda praemiis merito placuit, ut qui peregre muneribus et quidem publicis cum periculo et labore fungantur, a domesticis vexationibus et sumptibus liberentur: cum non sit alienum dicere etiam hos rei publicae causa, dum annonae urbis serviunt, abesse.

Dig. 50.6.6.4

Callistratus 1 de cogn.

Immunitati, quae naviculariis praestatur, certa forma data est: quam immunitatem ipsi dumtaxat habent, non etiam liberis aut libertis eorum praestatur: idque principalibus constitutionibus declaratur.

Dig. 50.6.6.5

Callistratus 1 de cogn.

Divus hadrianus rescripsit immunitatem navium maritimarum dumtaxat habere, qui annonae urbis serviunt.

Dig. 50.6.6.6

Callistratus 1 de cogn.

Licet in corpore naviculariorum quis sit, navem tamen vel naves non habeat nec omnia ei congruant, quae principalibus constitutionibus cauta sunt, non poterit privilegio naviculariis indulto uti. idque et divi fratres rescripserunt in haec verba: "ysan kai alloi tines epi profasei twn nauklyrwn kai ton siton kai elaion emporeuomenwn eis tyn agoran tou dymou tou hrwmaikou ontwn atelwn aciountes tas leitourgias diadidraskein, myte epipleontes myte to pleon meros tys ousias en tais nauklyriais kai tais emporiais exontes. afairevytw twn toioutwn hy ateleia".

Dig. 50.6.6.7

Callistratus 1 de cogn.

Hoc circa vacationes dicendum est, ut, si ante quis ad munera municipalia vocatus sit, quam negotiari inciperet, vel antequam in collegium adsumeretur quod immunitatem pariat, vel antequam septuagenarius fieret. vel antequam publice profiteretur, vel antequam liberos susciperet, compellatur ad honorem gerendum.

Dig. 50.6.6.8

Callistratus 1 de cogn.

Negotiatio pro incremento facultatium exercenda est. alioquin si quis maiore pecuniae suae parte negotiationem exercebit, rursus locuples factus in eadem quantitate negotiationis perseveraverit, tenebitur muneribus, sicuti locupletes, qui modica pecunia comparatis navibus muneribus se publicis subtrahere temptant: idque ita observandum epistula divi hadriani scripta est.

Dig. 50.6.6.9

Callistratus 1 de cogn.

Divus quoque pius rescripsit, ut, quotiens de aliquo naviculario quaeratur, illud excutiatur, an effugiendorum munerum causa imaginem navicularii induat.

Dig. 50.6.6.10

Callistratus 1 de cogn.

Conductores etiam vectigalium fisci necessitate subeundorum municipalium munerum non obstringuntur: idque ita observandum divi fratres rescripserunt. ex quo principali rescripto intellegi potest non honori conductorum datum, ne compellantur ad munera municipalia, sed ne extenuentur facultates eorum, quae subsignatae sint fisco. unde subsisti potest, an prohibendi sint a praeside vel procuratore caesaris etiam si ultro se offerant municipalibus muneribus: quod propius est defendere, nisi si paria fisco fecisse dicantur.

Dig. 50.6.6.11

Callistratus 1 de cogn.

Coloni quoque caesaris a muneribus liberantur, ut idoniores praediis fiscalibus habeantur.

Dig. 50.6.6.12

Callistratus 1 de cogn.

Quibusdam collegiis vel corporibus, quibus ius coeundi lege permissum est, immunitas tribuitur: scilicet eis collegiis vel corporibus, in quibus artificii sui causa unusquisque adsumitur, ut fabrorum corpus est et si qua eandem rationem originis habent, id est idcirco instituta sunt, ut necessariam operam publicis utilitatibus exhiberent. nec omnibus promiscue, qui adsumpti sunt in his collegiis, immunitas datur, sed artificibus dumtaxat. nec ab omni aetate allegi possunt, ut divo pio placuit, qui reprobavit prolixae vel inbecillae admodum aetatis homines. sed ne quidem eos, qui augeant facultates et munera civitatium sustinere possunt, privilegiis, quae tenuioribus per collegia distributis concessa sunt, uti posse plurifariam constitutum est.

Dig. 50.6.6.13

Callistratus 1 de cogn.

Eos, qui in corporibus allecti sunt, quae immunitatem praebent naviculariorum, si honorem decurionatus adgnoverint, compellendos subire publica munera accepi: idque etiam confirmatum videtur rescripto divi pertinacis.

Dig. 50.6.7

Tarruntius 1 militarium.

Quibusdam aliquam vacationem munerum graviorum condicio tribuit, ut sunt mensores, optio valetudinarii, medici, capsarii, et artifices et qui fossam faciunt, veterinarii, architectus, gubernatores, naupegi, ballistrarii, specularii, fabri, sagittarii, aerarii, bucularum structores, carpentarii, scandularii, gladiatores, aquilices, tubarii, cornuarii, arcuarii, plumbarii, ferrarii, lapidarii, et hi qui calcem cocunt, et qui silvam infindunt, qui carbonem caedunt ac torrent. in eodem numero haberi solent lani, venatores, victimarii, et optio fabricae, et qui aegris praesto sunt, librarii quoque qui docere possint, et horreorum librarii, et librarii depositorum, et librarii caducorum, et adiutores corniculariorum, et stratores, et polliones, et custodes armorum, et praeco, et bucinator. hi igitur omnes inter immunes habentur.

Dig. 50.7.0. De legationibus.

Dig. 50.7.1

Ulpianus 8 ad sab.

Legatus municipalis si deseruerit legationem, poena adficietur extraordinaria, motus ordine, ut plerumque solet.

Dig. 50.7.2pr.

Ulpianus 2 opin.

Legatus contra rem publicam, cuius legatus est, per alium a principe quid postulare potest.

Dig. 50.7.2.1

Ulpianus 2 opin.

Utrum quis deseruerit legationem an ex necessaria causa moram passus sit, ordini patriae suae probare debet.

Dig. 50.7.2.2

Ulpianus 2 opin.

Cessatio unius legati ei, qui munus ut oportet obiit, non nocet.

Dig. 50.7.3

Ulpianus 2 opin.

His, qui non gratuitam legationem susceperunt, legativum ex forma restituatur.

Dig. 50.7.4

Africanus 3 quaest.

Cum quaeritur, an in eum, qui in legatione sit, actio dari debeat, non tam interest, ubi quis aut crediderit aut dari stipulatus sit, quam illud, an id actum sit, ut legationis tempore solveretur.

Dig. 50.7.5pr.

Marcianus 12 inst.

Sciendum est debitorem rei publicae legatione fungi non posse: et ita divus pius claudio saturnino et faustino rescripsit.

Dig. 50.7.5.1

Marcianus 12 inst.

Sed et eos, quibus ius postulandi non est, legatione fungi non posse et ideo harena missum non iure legatum esse missum divi severus et antoninus rescripserunt.

Dig. 50.7.5.2

Marcianus 12 inst.

Debitores autem fisci non prohibentur legatione fungi.

Dig. 50.7.5.3

Marcianus 12 inst.

Si accusatio alicuius publice instituta sit, non est compellendus accusator ad eum legationem suscipere, qui se amicum vel domesticum dicit eius, qui accusatur: et ita divi fratres aemilio rufo rescripserunt.

Dig. 50.7.5.4

Marcianus 12 inst.

Legati vicarios dare non alios possunt nisi filios suos.

Dig. 50.7.5.5

Marcianus 12 inst.

Ordine unusquisque munere legationis fungi cogitur: et non alias compellendus est munere legationis fungi, quam si priores, qui in curiam lecti sunt, functi sint. sed si legatio de primoribus viris desideret personas et qui ordine vocantur inferiores sint, non esse observandum ordinem divus hadrianus ad clazomenios rescripsit.

Dig. 50.7.5.6

Marcianus 12 inst.

Praecipitur autem edicto divi vespasiani omnibus civitatibus, ne plures quam ternos legatos mittant.

Dig. 50.7.6pr.

Scaevola 1 reg.

Legato tempus prodest, ex quo legatus creatus est, non ex quo romam venit.

Dig. 50.7.6.1

Scaevola 1 reg.

Sed si non constat, legatus sit an non, romae praetor de hoc cognoscit.

Dig. 50.7.7

Ulpianus 4 de off. procons.

Filio propter patrem legationis vacatio ne concedatur, imperator noster cum patre claudio callisto rescripsit in haec verba: "quod desideras, ut propter legationem patris tui a legatione tu vaces, in intervallis honorum, qui sumptum habent, recte observatur: in impendiis legationum, quae solo ministerio obeuntur, diversa causa est".

Dig. 50.7.8

Papinianus 1 resp.

Filius decurio pro patre legationis officium suscepit. ea res filium, quo minus ordine suo legatus proficiscatur, non excusat: pater tamen biennii vacationem vindicare poterit, quia per filium legatione functus videtur.

Dig. 50.7.9pr.

Paulus 1 resp.

Respondit eum, qui legatione functus est, intra tempora vacationis praefinita non oportere compelli rursum ad defendendum publicum negotium, etiamsi de eadem causa litigetur.

Dig. 50.7.9.1

Paulus 1 resp.

"imperatores antoninus et severus augusti germano silvano. legatione functis biennii vacatio conceditur: nec interest, utrum legatio in urbe an in provincia agentibus nobis mandata sit".

Dig. 50.7.9.2

Paulus 1 resp.

Paulus respondit eum, qui legatione fungitur, neque alienis neque propriis negotiis se interponere debere. in qua causa non videri eum quoque contineri, qui cum amico suo praetore gratis consilium participat.

Dig. 50.7.10

Paulus 3 resp.

Paulus respondit de eo damno, quod legationis tempore legatus passus est, posse eum etiam legationis tempore experiri.

Dig. 50.7.11pr.

Paulus 1 sent.

Legatus antequam officio legationis functus sit, in rem suam nihil agere potest, exceptis his quae ad iniuriam eius vel damnum parata sunt.

Dig. 50.7.11.1

Paulus 1 sent.

Si quis in munere legationis, antequam ad patriam revertetur, decessit, sumptus, qui proficiscenti sunt dati, non restituuntur.

Dig. 50.7.12pr.

Paulus l.S. de iure libellorum.

Si absenti iniuncta est legatio eamque gratuitam suscepit, potest quis et per alium legationem mittere.

Dig. 50.7.12.1

Paulus l.S. de iure libellorum.

Qui legationis officio fungitur, licet suum negotium curare non potest, magnus tamen antoninus permisit ei pupillae nomine et instruere et defendere causam, licet legationi, quam suscepit, nondum renuntiaverit, praecipue cum participem officii ipsius absentem esse dicebat.

Dig. 50.7.13

Scaevola 1 Dig.

Legatus creatus a patria sua suscepta legatione in urbem romam venit et nondum perfecta legatione domum, quae erat in ipsius civitate nicopoli, emit. quaesitum est, an in senatus consultum inciderit, quo prohibentur legati ante perfectam legationem negotiis vel privatis rebus obstringi. respondit non videri teneri.

Dig. 50.7.14

Papinianus 1 resp.

Vicarius alieni muneris voluntate sua datus ordine suo legationem suscipere non admissa biennii praescriptione cogetur.

Dig. 50.7.15

Ulpianus 74 ad ed. praet.

Qui libera legatione abest, non videtur rei publicae causa abesse: hic enim non publici commodi causa, sed sui abest.

Dig. 50.7.16

Modestinus 7 reg.

Is, qui legatione fungitur, libellum sine permissu principis de aliis suis negotiis dare non potest.

Dig. 50.7.17pr.

Modestinus 8 reg.

Eundem plures legationes suscipere prohibitum non est praeterea, si et sumptus et itineris compendium suadeat.

Dig. 50.7.17.1

Modestinus 8 reg.

Ante legationem susceptam si cui negotium moveatur, etiam absens defendi debet: suscepta legatione non nisi iniuncto munere fungatur.

Dig. 50.7.18

Pomponius 37 ad q. muc.

Si quis legatum hostium pulsasset, contra ius gentium id commissum esse existimatur, quia sancti habentur legati. et ideo si, cum legati apud nos essent gentis alicuius, bellum cum eis indictum sit, responsum est liberos eos manere: id enim iuri gentium convenit esse. itaque eum, qui legatum pulsasset, quintus mucius dedi hostibus, quorum erant legati, solitus est respondere. quem hostes si non recepissent, quaesitum est, an civis romanus maneret: quibusdam existimantibus manere, aliis contra, quia quem semel populus iussisset dedi, ex civitate expulsisse videretur, sicut faceret, cum aqua et igni interdiceret. in qua sententia videtur publius mucius fuisse. id autem maxime quaesitum est in hostilio mancino, quem numantini sibi deditum non acceperunt: de quo tamen lex postea lata est, ut esset civis romanus, et praeturam quoque gessisse dicitur.

Dig. 50.8.0. De administratione rerum ad civitates pertinentium.

Dig. 50.8.1

Ulpianus 10 disp.

Quod ad certam speciem civitatis relinquitur, in alios usus convertere non licet.

Dig. 50.8.2pr.

Ulpianus 3 opin.

Non utique de exemplo posterioris locationis praeteritarum conductionum, quae suam legem habuerunt, rationem iniri oportet.

Dig. 50.8.2.1

Ulpianus 3 opin.

Quod quis suo nomine exercere prohibetur, id nec per subiectam personam agere debet. et ideo si decurio subiectis aliorum nominibus praedia publica colat, quae decurionibus conducere non licet, secundum legem usurpata revocentur.

Dig. 50.8.2.2

Ulpianus 3 opin.

Quod de frumentaria ratione in alium usum conversum est, sua causa cum incremento debito restituatur: idque etsi contra absentem pronuntiatum est, inanis est querella. ratio tamen administrationis secundum fidem acceptorum et datorum ponatur.

Dig. 50.8.2.3

Ulpianus 3 opin.

Frumentariae pecuniae suo nomine debitor quam primum solvat: necessaria enim omnibus rebus publicis frumentaria pecunia moram solutionis accipere non debet: sed debitores, quos ex eadem causa habet, ad solutionem per praesidem provinciae compellantur.

Dig. 50.8.2.4

Ulpianus 3 opin.

Ad frumenti comparationem pecuniam datam restitui civitati, non compensari in erogata debet. sin autem frumentaria pecunia in alios usus, quam quibus destinata est, conversa fuerit, veluti in opus balneorum publicorum, licet ex bona fide datum probatur, compensari quidem frumentariae pecuniae non oportet, solvi autem a curatore rei publicae iubetur.

Dig. 50.8.2.5

Ulpianus 3 opin.

Si indemnitas debiti frumentariae pecuniae cum suis usuris fit, immodicae et illicitae computationis modus non adhibetur: id est ne commodorum commoda et usurae usurarum incrementum faciant.

Dig. 50.8.2.6

Ulpianus 3 opin.

Grani aestimationem per iniuriam post emptionem ablati, quae rationibus publicis refertur, curator rei publicae domino restitui iubeat.

Dig. 50.8.2.7

Ulpianus 3 opin.

Si eo tempore, quo nominatus est, idoneus, postea lapsus facultatibus damnum debitis rei publicae dederit: quia fortuitos casus nullum humanum consilium providere potest, creator hoc nomine nihil praestare debet.

Dig. 50.8.2.8

Ulpianus 3 opin.

Ius rei publicae pacto mutari non potest, quo minus magistratus collegae quoque nomine conveniantur in his speciebus, in quibus id fieri iure permissum est.

Dig. 50.8.2.9

Ulpianus 3 opin.

Actio autem, quae propter ea in collegam decerni solet, ei qui pro altero dependit ex aequitate competit.

Dig. 50.8.2.10

Ulpianus 3 opin.

Quod depensum pro collega in magistratu probabitur, solvi et ab heredibus eius praeses provinciae iubet.

Dig. 50.8.3pr.

Ulpianus 3 opin.

Conductore perficiendi operis punito fideiussor, qui pro eo intervenerat, idem opus exstruendum alii locaverat: nec a secundo redemptore opere perfecto usurarum praestationem heres fideiussoris recusare non debet, cum et prior causa in bonae fidei contractu in universum fideiussorem obligaverit, et posterior locatio, quia suum periculum agnovit, solidae praestationi rei publicae eum substituerit.

Dig. 50.8.3.1

Ulpianus 3 opin.

Qui fideiusserint pro conductore vectigalis in universam conductionem, in usuras quoque iure conveniuntur, nisi proprie quid in persona eorum verbis obligationis expressum est.

Dig. 50.8.3.2

Ulpianus 3 opin.

Sed si in locatione fundorum pro sterilitate temporis boni viri arbitratu in solvenda pensione cuiusque anni pacto comprehensum est, explorata lege conductionis fides bona sequenda est.

Dig. 50.8.4

Papinianus 1 resp.

Curatores communis officii divisa pecunia, quam omnibus in solidum publice dari placuit, periculo vice mutua non liberantur. ulpianus: prior tamen exemplo tutorum conveniendus est is qui gessit.

Dig. 50.8.5pr.

Papinianus 1 resp.

Praedium publicum in quinque annos idonea cautione non exacta curator rei publicae locavit. ceteris annis colonus si reliqua traxerit et de fructibus praedii mercedesque servari non potuerint, successor qui locavit tenebitur. idem in vectigalibus non ita pridem constitutum est, scilicet ut sui temporis singuli periculum praestarent.

Dig. 50.8.5.1

Papinianus 1 resp.

In eum, qui administrationis tempore creditoribus rei publicae novatione facta pecuniam cavit, post depositum officium actionem denegari non oportet. diversa causa est eius, qui solvi constituit: similis etenim videtur ei, qui publice vendidit aut locavit.

Dig. 50.8.5.2

Papinianus 1 resp.

Filium pro patre curatore rei publicae creato cavere cogi non oportet. nec mutat, quod in eum pater emancipatum, priusquam curator constitueretur, partem bonorum suorum donationis causa contulit.

Dig. 50.8.5.3

Papinianus 1 resp.

Pro magistratu fideiussor interrogatus pignora quoque specialiter dedit. in eum casum pignora videntur data, quo recte convenitur: videlicet postquam res ab eo servari non potuerit, pro quo intercessit.

Dig. 50.8.6

Valens 2 fideic.

Legatam municipio pecuniam in aliam rem quam defunctus voluit convertere citra principis auctoritatem non licet. et ideo si unum opus fieri iusserit, quod falcidiae legis interventu fieri non potest, permittitur summam, quae eo nomine debetur, in id, quod maxime necessarium rei publicae videatur, convertere: sive plures summae in plura opera legantur et legis falcidiae interventu id quod relinquitur omnium operum exstructioni non sufficit, permittitur in unum opus, quod civitas velit, erogari. sed municipio pecuniam legatam, ut ex reditu eius venatio aut spectacula edantur, senatus in eas causas erogare vetuit: et pecuniam eo legatam in id, quod maxime necessarium municipibus videatur, conferre permittitur, ut in eo munificentia eius qui legavit inscriptione notetur.

Dig. 50.8.7pr.

Paulus 1 sent.

Decuriones pretio viliori frumentum, quod annona temporalis est patriae suae, praestare non sunt cogendi.

Dig. 50.8.7.1

Paulus 1 sent.

Nisi ad opus novum pecunia specialiter legata sit, vetera ex hac reficienda sunt.

Dig. 50.8.8

Ulpianus 1 ad ed. praet.

Magistratus rei publicae non dolum solummodo, sed et latam neglegentiam et hoc amplius etiam diligentiam debent.

Dig. 50.8.9

Paulus 1 ad ed. praet.

Si filius familias volente patre magistratum gesserit, iulianus existimavit in solidum patrem teneri in id, quod eius nomine rei publicae abesset.

Dig. 50.8.10pr.

Modestinus 8 reg.

Calculi erroris retractatio etiam post decennii aut vicennii tempora admittetur.

Dig. 50.8.10.1

Modestinus 8 reg.

Sed si gratiose expunctae dicentur, non retractabuntur.

Dig. 50.8.11pr.

Papirius 2 de const.

Imperatores antoninus et verus rescripserunt pecuniae, quae apud curatores remansit, usuras exigendas: eius vero, quae a redemptoribus operum exigi non potest, sortis dumtaxat periculum ad curatores pertinere.

Dig. 50.8.11.1

Papirius 2 de const.

Item rescripserunt operum periculum etiam ad heredes curatorum pertinere.

Dig. 50.8.11.2

Papirius 2 de const.

Item rescripserunt agros rei publicae retrahere curatorem civitatis debere, licet a bona fide emptoribus possideantur, cum possint ad auctores suos recurrere.

Dig. 50.8.12pr.

Papirius 2 de const.

Imperatores antoninus et verus rescripserunt operum exactionem sine cautione non oportere committi.

Dig. 50.8.12.1

Papirius 2 de const.

Item rescripserunt curatores, si neglegenter in distrahendis bonis se gesserint, in simplum teneri, si per fraudem, in duplum: nec ad heredes eorum poenam descendere.

Dig. 50.8.12.2

Papirius 2 de const.

Item rescripserunt pecuniam ad annonam destinatam distractis rebus curatorem exigere debere.

Dig. 50.8.12.3

Papirius 2 de const.

Item rescripserunt sitonas indemnes esse oportere, qui non segniter officio suo functi sunt, secundum litteras hadriani.

Dig. 50.8.12.4

Papirius 2 de const.

Item rescripserunt a curatore kalendarii cautionem exigi non debere, cum a praeside ex inquisitione eligatur.

Dig. 50.8.12.5

Papirius 2 de const.

Item rescripserunt curatorem etiam nomine collegae teneri, si intervenire et prohibere eum potuit.

Dig. 50.8.12.6

Papirius 2 de const.

Item rescripserunt nominum, quae deteriora facta sunt tempore curatoris, periculum ad ipsum pertinere: quia vero antequam curator fieret, idonea non erant, aequum videri periculum ad eum non pertinere.

Dig. 50.8.13

Papirius 2 de const.

Imperatores antoninus et verus rescripserunt eum, qui pecuniam publicam magistratus sui tempore et post non pauco tempore detinuerat, usuras etiam praestare debere, nisi si quid adlegare possit, qua ex causa tardius intulisset.

Dig. 50.9.0. De decretis ab ordine faciendis.

Dig. 50.9.1

Ulpianus 3 opin.

Medicorum intra numerum praefinitum constituendorum arbitrium non praesidi provinciae commissum est, sed ordini et possessoribus cuiusque civitatis, ut certi de probitate morum et peritia artis eligant ipsi, quibus se liberosque suos in aegritudine corporum committant.

Dig. 50.9.2

Marcianus 1 publ.

Illa decreta, quae non legitimo numero decurionum coacto facta sunt, non valent.

Dig. 50.9.3

Ulpianus 3 de appellat.

Lege autem municipali cavetur, ut ordo non aliter habeatur quam duabus partibus adhibitis.

Dig. 50.9.4pr.

Ulpianus l.S. de off. curat. rei p.

Ambitiosa decreta decurionum rescindi debent, sive aliquem debitorem dimiserint sive largiti sunt.

Dig. 50.9.4.1

Ulpianus l.S. de off. curat. rei p.

Proinde, ut solent, sive decreverint de publico alicuius vel praedia vel aedes vel certam quantitatem praestari, nihil valebit huiusmodi decretum.

Dig. 50.9.4.2

Ulpianus l.S. de off. curat. rei p.

Sed et si salarium alicui decuriones decreverint, decretum id nonnumquam ullius erit momenti: ut puta si ob liberalem artem fuerit constitutum vel ob medicinam: ob has enim causas licet constitui salaria.

Dig. 50.9.5

Callistratus 2 de cogn.

Quod semel ordo decrevit, non oportere id rescindi divus hadrianus nicomedensibus rescripsit nisi ex causa: id est si ad publicam utilitatem respiciat rescissio prioris decreti.

Dig. 50.9.6

Scaevola 1 Dig.

Municipii lege ita cautum erat: "ean tis ecw tou sunedriou dikasytai, tou te sunedriou eirgesvw kai prosapotinnutw draxmas xilias". quaesitum est, an poenam sustinere debeat, qui ignorans adversus decretum fecit. respondit et huiusmodi poenas adversus scientes paratas esse.

Dig. 50.10.0. De operibus publicis.

Dig. 50.10.1pr.

Ulpianus 2 opin.

Curator operum creatus praescriptione motus ab excusatione perferenda sicuti cessationis nomine, in qua quoad vivit moratus est, heredes suos obligatos reliquit, ita temporis, quod post mortem eius cessit, nullo onere eos obstrinxit.

Dig. 50.10.1.1

Ulpianus 2 opin.

Curam operis aquae ductus in alio iam munere constitutus postea susceperat. praepostere visus est petere exonerari priore utrisque iam implicitus, quando, si alterum tantum sustinere eum oportuisse, ante probabilius impetrasset propter prius munus a sequenti excusationem.

Dig. 50.10.2pr.

Ulpianus 3 opin.

Qui liberalitate, non necessitate debiti, reditus suos interim ad opera finienda concessit, munificentiae suae fructum de inscriptione nominis sui operibus, si qua fecerit, capere per invidiam non prohibetur.

Dig. 50.10.2.1

Ulpianus 3 opin.

Curatores operum cum redemptoribus negotium habent, res publica autem cum his, quos efficiendo operi praestituit. quatenus ergo et quis et cui obstrictus est, aestimatio praesidis provinciae est.

Dig. 50.10.2.2

Ulpianus 3 opin.

Ne eius nomine, cuius liberalitate opus exstructum est, eraso aliorum nomina inscribantur et propterea revocentur similes civium in patrias liberalitates, praeses provinciae auctoritatem suam interponat.

Dig. 50.10.3pr.

Macer 2 de off. praesid.

Opus novum privato etiam sine principis auctoritate facere licet, praeterquam si ad aemulationem alterius civitatis pertineat vel materiam seditionis praebeat vel circum theatrum vel amphitheatrum sit.

Dig. 50.10.3.1

Macer 2 de off. praesid.

Publico vero sumptu opus novum sine principis auctoritate fieri non licere constitutionibus declaratur.

Dig. 50.10.3.2

Macer 2 de off. praesid.

Inscribi autem nomen operi publico alterius quam principis aut eius, cuius pecunia id opus factum sit, non licet.

Dig. 50.10.4

Modestinus 11 pand.

Nec praesidis quidem nomen licebit superscribere.

Dig. 50.10.5pr.

Ulpianus l.S. de off. curat. rei p.

Si legatum vel fideicommissum fuerit ad opus relictum, usurae quae et quando incipiant deberi, rescripto divi pii ita continetur. "si quidem dies non sit ab his, qui statuas vel imagines ponendas legaverunt, praefinitus, a praeside provinciae tempus statuendum est: et nisi posuerint heredes, usuras leviores intra sex menses, si minus, semisses usuras rei publicae pendant. si vero dies datus est, pecuniam deponant intra diem, si aut non invenire se statuas dixerint aut loco controversiam fecerint: semisses protinus pendant".

Dig. 50.10.5.1

Ulpianus l.S. de off. curat. rei p.

Fines publicos a privatis detineri non oportet. curabit igitur praeses provinciae, si qui publici sunt, a privatis separare et publicos potius reditus augere: si qua loca publica vel aedificia in usus privatorum invenerit, aestimare, utrumne vindicanda in publicum sint an vectigal eis satius sit imponi, et id, quod utilius rei publicae intellexerit, sequi.

Dig. 50.10.6

Modestinus 11 pand.

De operibus, quae in muris vel portis vel rebus publicis fiunt, aut si muri exstruantur, divus marcus rescripsit praesidem aditum consulere principem debere.

Dig. 50.10.7pr.

Callistratus 2 de cogn.

Pecuniam, quae in opera nova legata est, potius in tutelam eorum operum quae sunt convertendam, quam ad inchoandum opus erogandam divus pius rescripsit: scilicet si satis operum civitas habeat et non facile ad reficienda ea pecunia inveniatur.

Dig. 50.10.7.1

Callistratus 2 de cogn.

Si quis opus ab alio factum adornare marmoribus vel alio quo modo ex voluntate populi facturum se pollicitus sit, nominis proprii titulo scribendo: manentibus priorum titulis, qui ea opera fecissent, id fieri debere senatus censuit. quod si privati in opera, quae publica pecunia fiant, aliquam de suo adiecerint summam, ita titulo inscriptionis uti eos debere isdem mandatis cavetur, ut quantam summam contulerint in id opus, inscribant.

Dig. 50.11.0. De nundinis.

Dig. 50.11.1

Modestinus 3 reg.

Nundinis impetratis a principe non utendo qui meruit decennii tempore usum amittit.

Dig. 50.11.2

Callistratus 3 de cogn.

Si quis ipsos cultores agrorum vel piscatores deferre utensilia in civitatem iusserit, ut ipsi ea distrahant, destituetur annonae praebitio, cum avocentur ab opere rustici: qui confestim ubi detulerint mercem, tradere eam et ad opera sua reverti debeant. denique summae prudentiae et auctoritatis apud graecos plato cum institueret, quemadmodum civitas bene beate habitari possit, in primis istos negotiatores necessarios duxit. sic enim libro secundo politeias ait: dei gar pleionwn ara gewrgwn te kai twn allwn dymiourgwn kai twn allwn diakonwn twn ge eisacontwn kai ecacontwn hekasta. ohutoi de eisin emporoi. komisas de ho gewrgos eis tyn agoran ti hwn poiei y tis allos twn dymiourgwn my eis ton auton xronon hyky tois deomenois ta par' autou antallacasvai, argysei tys ahutou dymiourgias kavymenos en agora oudamws, y d' hos, all' eisin ohi touto horwntes heautous epi tyn diakonian tattousi tautyn.

Dig. 50.12.0. De pollicitationibus.

Dig. 50.12.1pr.

Ulpianus l.S. de off. curat. rei p.

Si pollicitus quis fuerit rei publicae opus se facturum vel pecuniam daturum, in usuras non convenietur: sed si moram coeperit facere, usurae accedunt, ut imperator noster cum divo patre suo rescripsit.

Dig. 50.12.1.1

Ulpianus l.S. de off. curat. rei p.

Non semper autem obligari eum, qui pollicitus est, sciendum est. si quidem ob honorem promiserit decretum sibi vel decernendum vel ob aliam iustam causam, tenebitur ex pollicitatione: sin vero sine causa promiserit, non erit obligatus. et ita multis constitutionibus et veteribus et novis continetur.

Dig. 50.12.1.2

Ulpianus l.S. de off. curat. rei p.

Item si sine causa promiserit, coeperit tamen facere, obligatus est qui coepit.

Dig. 50.12.1.3

Ulpianus l.S. de off. curat. rei p.

Coepisse sic accipimus, si fundamenta iecit vel locum purgavit. sed et si locus illi petenti destinatus est, magis est, ut coepisse videatur. item si apparatum sive impensam in publico posuit.

Dig. 50.12.1.4

Ulpianus l.S. de off. curat. rei p.

Sed si non ipse coepit, sed cum certam pecuniam promisisset ad opus rei publicae contemplatione pecuniae coepit opus facere: tenebitur quasi coepto opere.

Dig. 50.12.1.5

Ulpianus l.S. de off. curat. rei p.

Denique cum columnas quidam promisisset, imperator noster cum divo patre suo ita rescripsit: "qui non ex causa pecuniam rei publicae pollicentur, liberalitatem perficere non coguntur. sed si columnas citiensibus promisisti et opus ea ratione sumptibus civitatis vel privatorum inchoatum est, deseri quod gestum est non oportet".

Dig. 50.12.1.6

Ulpianus l.S. de off. curat. rei p.

Si quis opus quod perfecit adsignavit, deinde id fortuito casu aliquid passum sit, periculum ad eum qui fecit non pertinere imperator noster rescripsit.

Dig. 50.12.2pr.

Ulpianus 1 disp.

Si quis rem aliquam voverit, voto obligatur. quae res personam voventis, non rem quae vovetur obligat. res enim, quae vovetur, soluta quidem liberat vota, ipsa vero sacra non efficitur.

Dig. 50.12.2.1

Ulpianus 1 disp.

Voto autem patres familiarum obligantur puberes sui iuris: filius enim familias vel servus sine patris dominive auctoritate voto non obligantur.

Dig. 50.12.2.2

Ulpianus 1 disp.

Si decimam quis bonorum vovit, decima non prius esse in bonis desinit, quam fuerit separata. et si forte qui decimam vovit decesserit ante sepositionem, heres ipsius hereditario nomine decimae obstrictus est: voti enim obligationem ad heredem transire constat.

Dig. 50.12.3pr.

Ulpianus 4 disp.

Pactum est duorum consensus atque conventio, pollicitatio vero offerentis solius promissum. et ideo illud est constitutum, ut, si ob honorem pollicitatio fuerit facta, quasi debitum exigatur. sed et coeptum opus, licet non ob honorem promissum, perficere promissor eo cogetur, et est constitutum.

Dig. 50.12.3.1

Ulpianus 4 disp.

Si quis quam ex pollicitatione tradiderat rem municipibus vindicare velit, repellendus est a petitione: aequissimum est enim huiusmodi voluntates in civitates collatas paenitentia non revocari. sed et si desierint municipes possidere, dicendum erit actionem eis concedendam.

Dig. 50.12.4

Marcianus 3 inst.

Propter incendium vel terrae motum vel aliquam ruinam, quae rei publicae contingit, si quis promiserit, tenetur.

Dig. 50.12.5

Ulpianus 1 resp.

Charidemo respondit ex epistula, quam muneris edendi gratia absens quis emisit, compelli eum ad editionem non posse.

Dig. 50.12.6pr.

Ulpianus 5 de off. procons.

Totiens locum habet deminutio pollicitationis in persona heredis, quotiens non est pollicitatio ob honorem facta. ceterum si ob honorem facta sit, aeris alieni loco habetur et in heredum persona non minuitur.

Dig. 50.12.6.1

Ulpianus 5 de off. procons.

Si quis pecuniam ob honorem promiserit coeperitque solvere, eum debere quasi coepto opere imperator noster antoninus rescripsit.

Dig. 50.12.6.2

Ulpianus 5 de off. procons.

Non tantum masculos, sed etiam feminas, si quid ob honores pollicitatae sunt, debere implere sciendum est: et ita rescripto imperatoris nostri et divi patris eius continetur.

Dig. 50.12.6.3

Ulpianus 5 de off. procons.

Si cui res publica necessitatem imposuerit statuarum principi ponendarum, qui non promisit, non esse ei necesse obtemperare rescriptis imperatoris nostri et divi patris eius continetur.

Dig. 50.12.7

Paulus 1 de off. procons.

Ob casum, quem civitas passa est, si quis promiserit se quid facturum: etsi non inchoaverit, omnimodo tenetur, ut divus severus dioni rescripsit.

Dig. 50.12.8

Ulpianus 3 de off. cons.

De pollicitationibus in civitatem factis iudicum cognitionem esse divi fratres flavio celso in haec verba rescripserunt: "probe faciet statius rufinus, si opus proscaeni, quod se gabinis exstructurum promisit, quod tandem adgressus fuerat, perficiat. nam etsi adversa fortuna usus in triennio a praefecto urbis relegatus esset, tamen gratiam muneris, quod sponte optulit, minuere non debet, cum et absens per amicum perficere opus istud possit. quod si detrectat, actores constituti, qui legitime pro civitate agere possint, nomine publico adire adversus eum iudices poterunt: qui cum primum potuerint, priusquam in exilium proficiscatur, cognoscent et, si opus perfici ab eo debere constituerint, oboedire eum rei publicae ob hanc causam iubebunt, aut prohibebunt distrahi fundum, quem in territorio gabiniorum habet".

Dig. 50.12.9

Modestinus 4 diff.

Ex pollicitatione, quam quis ob honorem apud rem publicam fecit, ipsum quidem omnimodo in solidum teneri: heredem vero eius ob honorem quidem facta promissione in solidum, ob id vero, quod opus promissum coeptum est, si bona liberalitati solvendo non fuerint, extraneum heredem in quintam partem patrimonii defuncti, liberos in decimam teneri divi severus et antoninus rescripserunt. sed et ipsum donatorem pauperem factum ex promissione operis coepti quintam partem patrimonii sui debere divus pius constituit.

Dig. 50.12.10

Modestinus 1 resp.

Septicia certamen patriae suae pollicendo sub hac condicione pollicita est, uti sors apud eam remaneat et ipsa usuras semissales ad praemia certantium resolvat, in haec verba: "filotimoumai kai kavierw agwna tetraetyrikon apo muriadwn triwn, to tou kefalaiou auty katexousa argurion kai asfalizomeny para tois dekaprwtois acioxrews epi tw telein me ton ec evous triwn muriadwn tokon, agwnovetountos kai prokavezomenou tou andros mou, ep' auvis de twn ec emou gennyvysomenwn teknwn. xwrysei de ho tokos eis ta avla twn vumelikwn, kavws an ef' hekastou avlymatos hy bouly horisy" . quaero, an possunt iniuriam pati filii septiciae, quo minus ipsi praesiderent certamini secundum verba condicionemque pollicitationis. herennius modestinus respondit, quo casu certaminis editio licita est, formam pollicitationi datam servandam esse.

Dig. 50.12.11

Modestinus 9 pand.

Si quis ob honorem vel sacerdotium pecuniam promiserit et antequam honorem vel magistratum ineat, decedet, non oportere heredes eius conveniri in pecuniam, quam is ob honorem vel magistratum promiserat, principalibus constitutionibus cavetur, nisi forte ab eo vel ab ipsa re publica eo vivo opus fuerit inchoatum.

Dig. 50.12.12pr.

Modestinus 11 pand.

In privatis operibus invitis his qui fecerunt statuas aliis ponere non possumus, ut rescripto divi severi continetur.

Dig. 50.12.12.1

Modestinus 11 pand.

Cum quidam, ne honoribus fungeretur, opus promisisset: honores subire cogendum quam operis instructionem divus antoninus rescripsit.

Dig. 50.12.13pr.

Papirius 2 de const.

Imperatores antoninus et verus augusti rescripserunt opera exstruere debere eos, qui pro honore polliciti sunt, non pecunias pro his inferre cogi.

Dig. 50.12.13.1

Papirius 2 de const.

Item rescripserunt condiciones donationibus adpositas, quae in rem publicam fiunt, ita demum ratas esse, si utilitatis publicae interest: quod si damnosae sint, observari non debere. et ideo non observandum, quod defunctus certa summa legata vetuit vectigal exerceri. esse enim tolerabilia, quae vetus consuetudo comprobat.

Dig. 50.12.14

Pomponius 6 epist. et var. lect.

Si quis sui alienive honoris causa opus facturum se in aliqua civitate promiserit, ad perficiendum tam ipse quam heres eius ex constitutione divi traiani obligatus est. sed si quis ob honorem opus facturum se civitate aliqua promiserit atque inchoaverit et priusquam perficeret, decesserit: heres eius extraneus quidem necesse habet aut perficere id aut partem quintam patrimonii relicti sibi ab eo, qui id opus facere instituerat, si ita mallet, civitati, in qua id opus fieri coeptum est, dare: is autem, qui ex numero liberorum est, si heres exstitit, non quintae partis, sed decimae concedendae necessitate adficitur. et haec divus antoninus constituit.

Dig. 50.12.15

Ulpianus l.S. de off. curat. rei p.

Inter liberos nepotem quoque ex filia contineri divus pius rescripsit.

Dig. 50.13.0. De variis et extraordinariis cognitionibus et si iudex litem suam fecisse dicetur.

Dig. 50.13.1pr.

Ulpianus 8 de omn. trib.

Praeses provinciae de mercedibus ius dicere solet, sed praeceptoribus tantum studiorum liberalium. liberalia autem studia accipimus, quae graeci eleuveria appellant: rhetores continebuntur, grammatici, geometrae.

Dig. 50.13.1.1

Ulpianus 8 de omn. trib.

Medicorum quoque eadem causa est quae professorum, nisi quod iustior, cum hi salutis hominum, illi studiorum curam agant: et ideo his quoque extra ordinem ius dici debet.

Dig. 50.13.1.2

Ulpianus 8 de omn. trib.

Sed et obstetricem audiant, quae utique medicinam exhibere videtur.

Dig. 50.13.1.3

Ulpianus 8 de omn. trib.

Medicos fortassis quis accipiet etiam eos, qui alicuius partis corporis vel certi doloris sanitatem pollicentur: ut puta si auricularius, si fistulae vel dentium. non tamen si incantavit, si inprecatus est, si, ut vulgari verbo impostorum utar, si exorcizavit: non sunt ista medicinae genera, tametsi sint, qui hos sibi profuisse cum praedicatione adfirment.

Dig. 50.13.1.4

Ulpianus 8 de omn. trib.

An et philosophi professorum numero sint? et non putem, non quia non religiosa res est, sed quia hoc primum profiteri eos oportet mercennariam operam spernere.

Dig. 50.13.1.5

Ulpianus 8 de omn. trib.

Proinde ne iuris quidem civilis professoribus ius dicent: est quidem res sanctissima civilis sapientia, sed quae pretio nummario non sit aestimanda nec dehonestanda, dum in iudicio honor petitur, qui in ingressu sacramenti offerri debuit. quaedam enim tametsi honeste accipiantur, inhoneste tamen petuntur.

Dig. 50.13.1.6

Ulpianus 8 de omn. trib.

Ludi quoque litterarii magistris licet non sint professores, tamen usurpatum est, ut his quoque ius dicatur: iam et librariis et notariis et calculatoribus sive tabulariis.

Dig. 50.13.1.7

Ulpianus 8 de omn. trib.

Sed ceterarum artium opificibus sive artificibus, quae sunt extra litteras vel notas positae, nequaquam extra ordinem ius dicere praeses debebit.

Dig. 50.13.1.8

Ulpianus 8 de omn. trib.

Sed et si comites salarium petant, idem iuris est, quod in professoribus placet.

Dig. 50.13.1.9

Ulpianus 8 de omn. trib.

Sed et adversus ipsos omnes cognoscere praeses debet, quia ut adversus advocatus adeantur, divi fratres rescripserunt.

Dig. 50.13.1.10

Ulpianus 8 de omn. trib.

In honorariis advocatorum ita versari iudex debet, ut pro modo litis proque advocati facundia et fori consuetudine et iudicii, in quo erat acturus, aestimationem adhibeat, dummodo licitum honorarium quantitas non egrediatur: ita enim rescripto imperatoris nostri et patris eius continetur. verba rescripti ita se habent: "si iulius maternus, quem patronum causae tuae esse voluisti, fidem susceptam exhibere paratus est, eam dumtaxat pecuniam, quae modum legitimum egressa est, repetere debes".

Dig. 50.13.1.11

Ulpianus 8 de omn. trib.

Advocatos accipere debemus omnes omnino, qui causis agendis quoquo studio operantur: non tamen qui pro tractatu, non adfuturi causis, accipere quid solent, advocatorum numero erunt.

Dig. 50.13.1.12

Ulpianus 8 de omn. trib.

Si cui cautum est honorarium vel si quis de lite pactus est, videamus, an petere possit. et quidem de pactis ita est rescriptum ab imperatore nostro et divo patre eius: "litis causa malo more pecuniam tibi promissam ipse quoque profiteris. sed hoc ita ius ^ ^ est, si suspensa lite societatem futuri emolumenti cautio pollicetur. si vero post causam actam cauta est honoraria summa, peti poterit usque ad probabilem quantitatem, etsi nomine palmarii cautum sit: sic tamen, ut computetur id quod datum est cum eo quod debetur neutrumque compositum licitam quantitatem excedat. "licita autem quantitas intellegitur pro singulis causis usque ad centum ^ centrum^ aureos.

Dig. 50.13.1.13

Ulpianus 8 de omn. trib.

Divus severus ab heredibus advocati mortuo eo prohibuit mercedem repeti, quia per ipsum non steterat, quo minus causam ageret.

Dig. 50.13.1.14

Ulpianus 8 de omn. trib.

Ad nutricia quoque officium praesidis vel praetoris devenit: namque nutrices ob alimoniam infantium apud praesides quod sibi debetur petunt. sed nutricia eo usque producemus, quoad infantes uberibus aluntur: ceterum post haec cessant partes praetoris vel praesidis.

Dig. 50.13.1.15

Ulpianus 8 de omn. trib.

Haec omnia si apud praesides petantur, videamus an de mutuis petitionibus possunt praesides cognoscere. et putem debere admitti.

Dig. 50.13.2

Ulpianus 1 opin.

De usu aquae, de rivis novis inciviliter institutis, item de equis alienis a sciente possessis fetuque earum, et de damno dato per immissos in praedium suum universos homines eos, qui in plurium praedia distribui debuerunt, si modo id non ex auctoritate eius qui iubere potuit factum est, praesidem provinciae doceri oportere responsum est, ut is secundum rei aequitatem et iurisdictionis ordinem convenientem formam rei det.

Dig. 50.13.3

Ulpianus 5 opin.

Si medicus, cui curandos suos oculos qui eis laborabat commiserat, periculum amittendorum eorum per adversa medicamenta inferendo compulit, ut ei possessiones suas contra fidem bonam aeger venderet: incivile factum praeses provinciae coerceat remque restitui iubeat.

Dig. 50.13.4

Paulus 4 ad plaut.

Divus antoninus pius rescripsit iuris studiosos, qui salaria petebant, haec exigere posse.

Dig. 50.13.5pr.

Callistratus 1 de cogn.

Cognitionum numerus cum ex variis causis descendat, in genera dividi facile non potest, nisi summatim dividatur. numerus ergo cognitionum in quattuor fere genera dividi potest: aut enim de honoribus sive muneribus gerendis agitatur, aut de re pecuniaria disceptatur, aut de existimatione alicuius cognoscitur, aut de capitali crimine quaeritur.

Dig. 50.13.5.1

Callistratus 1 de cogn.

Existimatio est dignitatis illaesae status, legibus ac moribus comprobatus, qui ex delicto nostro auctoritate legum aut minuitur aut consumitur.

Dig. 50.13.5.2

Callistratus 1 de cogn.

Minuitur existimatio, quotiens manente libertate circa statum dignitatis poena plectimur: sicuti cum relegatur quis vel cum ordine movetur vel cum prohibetur honoribus publicis fungi vel cum plebeius fustibus caeditur vel in opus publicum datur vel cum in eam causam quis incidit, quae edicto perpetuo infamiae causa enumeratur.

Dig. 50.13.5.3

Callistratus 1 de cogn.

Consumitur vero, quotiens magna capitis minutio intervenit, id est cum libertas adimitur: veluti cum aqua et igni interdicitur, quae in persona deportatorum evenit, vel cum plebeius in opus metalli vel in metallum datur: nihil enim refert, nec diversa poena est operis et metalli, nisi quod refugae operis non morte, sed poena metalli subiciuntur.

Dig. 50.13.6

Gaius 3 rer. cott. sive aur.

Si iudex litem suam fecerit, non proprie ex maleficio obligatus videtur: sed quia neque ex contractu obligatus est et utique peccasse aliquid intellegitur, licet per imprudentiam, ideo videtur quasi ex maleficio teneri in factum actione, et in quantum de ea re aequum religioni iudicantis visum fuerit, poenam sustinebit.

Dig. 50.14.0. De proxeneticis.

Dig. 50.14.1

Ulpianus 42 ad sab.

Proxenetica iure licito petuntur.

Dig. 50.14.2

Ulpianus 31 ad ed.

Si proxeneta intervenerit faciendi nominis, ut multi solent, videamus an possit quasi mandator teneri. et non puto teneri, quia hic monstrat magis nomen quam mandat, tametsi laudet nomen. idem dico, et si aliquid philanthropi nomine acceperit: nec ex locato conducto erit actio. plane si dolo et calliditate creditorum circumvenerit, de dolo actione tenebitur.

Dig. 50.14.3

Ulpianus 8 de omn. trib.

De proxenetico, quod et sordidum, solent praesides cognoscere: sic tamen, ut et in his modus esse debeat et quantitatis et negotii, in quo operula ista defuncti sunt et ministerium qualequale accommodaverunt. facilius quod graeci hermyneutikon appellant, peti apud eos poterit, si quis forte condicionis vel amicitiae vel adsessurae vel cuius alterius huiuscemodi proxeneta fuit: sunt enim huiusmodi hominum (ut in tam magna civitate) officinae. est enim proxenetarum modus, qui emptionibus venditionibus, commerciis, contractibus licitis utiles non adeo improbabili more se exhibent.

Dig. 50.15.0. De censibus.

Dig. 50.15.1pr.

Ulpianus 1 de cens.

Sciendum est esse quasdam colonias iuris italici, ut est in syria phoenice splendidissima tyriorum colonia, unde mihi origo est, nobilis regionibus, serie saeculorum antiquissima, armipotens, foederis quod cum romanis percussit tenacissima: huic enim divus severus et imperator noster ob egregiam in rem publicam imperiumque romanum insignem fidem ius italicum dedit:

Dig. 50.15.1.1

Ulpianus 1 de cens.

Sed et berytensis colonia in eadem provincia augusti beneficiis gratiosa et (ut divus hadrianus in quadam oratione ait) augustana colonia, quae ius italicum habet.

Dig. 50.15.1.2

Ulpianus 1 de cens.

Est et heliupolitana, quae a divo severo per belli civilis occasionem italicae coloniae rem publicam accepit.

Dig. 50.15.1.3

Ulpianus 1 de cens.

Est et laodicena colonia in syria coele, cui divus severus ius italicum ob belli civilis merita concessit. ptolemaeensium enim colonia, quae inter phoenicen et palaestinam sita est, nihil praeter nomen coloniae habet.

Dig. 50.15.1.4

Ulpianus 1 de cens.

Sed et emisenae civitati phoenices imperator noster ius coloniae dedit iurisque italici eam fecit.

Dig. 50.15.1.5

Ulpianus 1 de cens.

Est et palmyrena civitas in provincia phoenice prope barbaras gentes et nationes collocata.

Dig. 50.15.1.6

Ulpianus 1 de cens.

In palaestina duae fuerunt coloniae, caesariensis et aelia capitolina, sed neutra ius italicum habet.

Dig. 50.15.1.7

Ulpianus 1 de cens.

Divus quoque severus in sebastenam civitatem coloniam deduxit.

Dig. 50.15.1.8

Ulpianus 1 de cens.

In dacia quoque zernensium colonia a divo traiano deducta iuris italici est.

Dig. 50.15.1.9

Ulpianus 1 de cens.

Zarmizegetusa quoque eiusdem iuris est: item napocensis colonia et apulensis et patavissensium vicus, qui a divo severo ius coloniae impetravit.

Dig. 50.15.1.10

Ulpianus 1 de cens.

Est et in bithynia apamena et in ponto sinopensis.

Dig. 50.15.1.11

Ulpianus 1 de cens.

Est et in cilicia selinus et traianopolis.

Dig. 50.15.2

Ulpianus 28 ad sab.

Vitia priorum censuum editis novis professionibus evanescunt.

Dig. 50.15.3pr.

Ulpianus 2 de cens.

Aetatem in censendo significare necesse est, quia quibusdam aetas tribuit, ne tributo onerentur: veluti in syriis a quattuordecim annis masculi, a duodecim feminae usque ad sexagensimum quintum annum tributo capitis obligantur. aetas autem spectatur censendi tempore.

Dig. 50.15.3.1

Ulpianus 2 de cens.

Rebus concessam immunitatem non habere ^ debere^ intercidere rescripto imperatoris nostri ad pelignianum recte expressum est: quippe personis quidem data immunitas cum persona extinguitur, rebus numquam extinguitur.

Dig. 50.15.4pr.

Ulpianus 3 de cens.

Forma censuali cavetur, ut agri sic in censum referantur. nomen fundi cuiusque: et in qua civitate et in quo pago sit: et quos duos vicinos proximos habeat. et arvum, quod in decem annos proximos satum erit, quot iugerum sit: vinea quot vites habeat: olivae quot iugerum et quot arbores habeant: pratum, quod intra decem annos proximos sectum erit, quot iugerum: pascua quot iugerum esse videantur: item silvae caeduae. omnia ipse qui defert aestimet.

Dig. 50.15.4.1

Ulpianus 3 de cens.

Illam aequitatem debet admittere censitor, ut officio eius congruat relevari eum, qui in publicis tabulis delato modo frui certis ex causis non possit. quare et si agri portio chasmate perierit, debebit per censitorem relevari. si vites mortuae sint vel arbores aruerint, iniquum eum numerum inseri censui: quod si exciderit arbores vel vites, nihilo minus eum numerum profiteri iubetur, qui fuit census tempore, nisi causam excidendi censitori probaverit.

Dig. 50.15.4.2

Ulpianus 3 de cens.

Is vero, qui agrum in alia civitate habet, in ea civitate profiteri debet, in qua ager est: agri enim tributum in eam civitatem debet levare, in cuius territorio possidetur.

Dig. 50.15.4.3

Ulpianus 3 de cens.

Quamquam in quibusdam beneficia personis data immunitatis cum persona extinguantur, tamen cum generaliter locis aut cum civitatibus immunitas sic data videtur, ut ad posteros transmittatur.

Dig. 50.15.4.4

Ulpianus 3 de cens.

Si, cum ego fundum possiderem, professus sim, petitor autem eius non fuerit professus, actionem illi manere placet.

Dig. 50.15.4.5

Ulpianus 3 de cens.

In servis deferendis observandum est, ut et nationes eorum et aetates et officia et artificia specialiter deferantur.

Dig. 50.15.4.6

Ulpianus 3 de cens.

Lacus quoque piscatorios et portus in censum dominus debet deferre.

Dig. 50.15.4.7

Ulpianus 3 de cens.

Salinae si ^ sie^ quae sunt in praediis, et ipsae in censum deferendae sunt.

Dig. 50.15.4.8

Ulpianus 3 de cens.

Si quis inquilinum vel colonum non fuerit professus, vinculis censualibus tenetur.

Dig. 50.15.4.9

Ulpianus 3 de cens.

Quae post censum editum nata aut postea quaesita sint, intra finem operis consummati professionibus edi possunt.

Dig. 50.15.4.10

Ulpianus 3 de cens.

Si quis veniam petierit, ut censum sibi emendare permittatur, deinde post hoc impetratum cognoverit se non debuisse hoc petere, quia res emendationem non desiderabat: nullum ei praeiudicium ex eo quod petiit, ut censum emendaret, fore saepissime rescriptum est.

Dig. 50.15.5pr.

Papinianus 19 resp.

Cum possessor unus expediendi negotii causa tributorum iure conveniretur, adversus ceteros, quorum aeque praedia tenentur, ei qui conventus est actiones a fisco praestantur, scilicet ut omnes pro modo praediorum pecuniam tributi conferant. nec inutiliter actiones praestantur, tametsi fiscus pecuniam suam reciperaverit, quia nominum venditorum pretium acceptum videtur.

Dig. 50.15.5.1

Papinianus 19 resp.

Qui non habita ratione tributorum ex causa fideicommissi praedia restituunt, actionem ex divi pii antonini litteris habent, quam legato quoque soluto locum habere voluit.

Dig. 50.15.5.2

Papinianus 19 resp.

Pro pecunia tributi, quod sua die non est redditum, quo minus praedium iure pignoris distrahatur, oblata moratoria cautio non admittitur: nec audietur legatarius contradicens ob tributa praeteriti temporis, quod heres solvendo sit et is, qui tributis recipiendis praepositus fuerat.

Dig. 50.15.6

Celsus 25 Dig.

Colonia philippensis iuris italici est.

Dig. 50.15.7

Gaius 6 ad l. iul. et pap.

Iuris italici sunt trwas byrutos durraxion.

Dig. 50.15.8pr.

Paulus 2 de cens.

In lusitania pacenses et emeritenses iuris italici sunt. idem ius valentini et licitani habent: barcinonenses quoque ibidem immunes sunt.

Dig. 50.15.8.1

Paulus 2 de cens.

Lugdunenses galli, item viennenses in narbonensi iuris italici sunt.

Dig. 50.15.8.2

Paulus 2 de cens.

In germania inferiore agrippinenses iuris italici sunt.

Dig. 50.15.8.3

Paulus 2 de cens.

Laodicia in syria et berytos in phoenice iuris italici sunt et solum earum.

Dig. 50.15.8.4

Paulus 2 de cens.

Eiusdem iuris et tyriorum civitas a divis severo et antonino facta est.

Dig. 50.15.8.5

Paulus 2 de cens.

Divus antoninus antiochenses colonos fecit salvis tributis.

Dig. 50.15.8.6

Paulus 2 de cens.

Imperator noster antoninus civitatem emisenorum coloniam et iuris italici fecit.

Dig. 50.15.8.7

Paulus 2 de cens.

Divus vespasianus caesarienses colonos fecit non adiecto, ut et iuris italici essent, sed tributum his remisit capitis: sed divus titus etiam solum immune factum interpretatus est. similes his capitulenses esse videntur.

Dig. 50.15.8.8

Paulus 2 de cens.

In provincia macedonia dyrracheni, cassandrenses, philippenses, dienses, stobenses iuris italici sunt.

Dig. 50.15.8.9

Paulus 2 de cens.

In provincia asia duae sunt iuris italici, troas et parium.

Dig. 50.15.8.10

Paulus 2 de cens.

In pisidia eiusdem iuris est colonia antiochensium.

Dig. 50.15.8.11

Paulus 2 de cens.

In africa carthago, utica, leptis magna a divis severo et antonino iuris italici factae sunt.

Dig. 50.16.0. De verborum significatione.

Dig. 50.16.1

Ulpianus 1 ad ed.

Verbum hoc "si quis" tam masculos quam feminas complectitur.

Dig. 50.16.2pr.

Paulus 1 ad ed.

"urbis" appellatio muris, "romae" autem continentibus aedificiis finitur, quod latius patet.

Dig. 50.16.2.1

Paulus 1 ad ed.

"cuiusque diei maior pars" est horarum septem primarum diei, non supremarum.

Dig. 50.16.3pr.

Ulpianus 2 ad ed.

"itinere faciendo viginti milia passuum in dies singulos peragenda" sic sunt accipienda, ut, si post hanc dinumerationem minus quam viginti milia supersint, integrum diem occupent. veluti viginti unum milia sunt passus: biduum eis adtribuetur. quae dinumeratio ita demum facienda erit, si de die non conveniat.

Dig. 50.16.3.1

Ulpianus 2 ad ed.

Eius, qui apud hostes decessit, dici hereditas non potest, quia servus decessit.

Dig. 50.16.4

Paulus 1 ad ed.

"nominis" appellatione rem significari proculus ait.

Dig. 50.16.5pr.

Paulus 2 ad ed.

"rei" appellatio latior est quam "pecuniae", quia etiam ea, quae extra computationem patrimonii nostri sunt, continet, cum pecuniae significatio ad ea referatur, quae in patrimonio sunt.

Dig. 50.16.5.1

Paulus 2 ad ed.

"opere locato conducto": his verbis labeo significari ait id opus, quod graeci apotelesma vocant, non ergon, id est ex opere facto corpus aliquod perfectum.

Dig. 50.16.6pr.

Ulpianus 3 ad ed.

"nominis" et "rei" appellatio ad omnem contractum et obligationem pertinet.

Dig. 50.16.6.1

Ulpianus 3 ad ed.

Verbum "ex legibus" sic accipiendum est: tam ex legum sententia quam ex verbis.

Dig. 50.16.7

Paulus 2 ad ed.

"sponsio" appellatur non solum quae per sponsus interrogationem fit, sed omnis stipulatio promissioque.

Dig. 50.16.8pr.

Paulus 3 ad ed.

Verbum "oportebit" tam praesens quam futurum tempus significat.

Dig. 50.16.8.1

Paulus 3 ad ed.

"actionis" verbo non continetur exceptio.

Dig. 50.16.9

Ulpianus 5 ad ed.

Marcellus apud iulianum notat verbo "perisse" et scissum et fractum contineri et vi raptum.

Dig. 50.16.10

Ulpianus 6 ad ed.

"creditores" accipiendos esse constat eos, quibus debetur ex quacumque actione vel persecutione, vel iure civili sine ulla exceptionis perpetuae remotione vel honorario vel extraordinario, sive pure sive in diem vel sub condicione. quod si natura debeatur, non sunt loco creditorum. sed si non sit mutua pecunia, sed contractus, creditores accipiuntur:

Dig. 50.16.11

Gaius 1 ad ed. provinc.

"creditorum appellatione non hi tantum accipiuntur, qui pecuniam crediderunt, sed omnes, quibus ex qualibet causa debetur:

Dig. 50.16.12pr.

Ulpianus 6 ad ed.

Ut si cui ex empto vel ex locato vel ex alio ullo debetur. sed et si ex delicto debeatur, mihi videtur posse creditoris loco accipi. quod si ex populari causa, ante litis contestationem recte dicetur creditoris loco non esse, postea esse.

Dig. 50.16.12.1

Ulpianus 6 ad ed.

Minus solvit, qui tardius solvit: nam et tempore minus solvitur.

Dig. 50.16.13pr.

Ulpianus 7 ad ed.

"mulieris" appellatione etiam virgo viripotens continetur.

Dig. 50.16.13.1

Ulpianus 7 ad ed.

Res "abesse" videntur (ut sabinus ait et pedius probat) etiam hae, quarum corpus manet, forma mutata est: et ideo si corruptae redditae sint vel transfiguratae, videri abesse, quoniam plerumque plus est in manus pretio, quam in re.

Dig. 50.16.13.2

Ulpianus 7 ad ed.

"desinere" autem "abesse" res tunc videtur, cum sic redit in potestatem, ne amittere eius possessionem possimus.

Dig. 50.16.13.3

Ulpianus 7 ad ed.

Ob hoc, quod furto pridem subtracta est, abest et ea res, quae in rebus humanis non est.

Dig. 50.16.14pr.

Paulus 7 ad ed.

Labeo et sabinus existimant, si vestimentum scissum reddatur vel res corrupta reddita sit, veluti scyphi collisi aut tabula rasa pictura, videri rem "abesse", quoniam earum rerum pretium non in substantia, sed in arte sit positum. item si dominus rem, quae furto sibi aberat, ignorans emerit, recte dicitur res abesse, etiamsi postea id ita esse scierit, quia videtur res ei abesse, cui pretium abest.

Dig. 50.16.14.1

Paulus 7 ad ed.

"rem amisisse" videtur, qui adversus nullum eius persequendae actionem habet.

Dig. 50.16.15

Ulpianus 10 ad ed.

Bona civitatis abusive "publica" dicta sunt: sola enim ea publica sunt, quae populi romani sunt.

Dig. 50.16.16

Gaius 3 ad ed. provinc.

Eum qui vectigal populi romani conductum habet, "publicanum" appellamus. nam "publica" appellatio in compluribus causis ad populum romanum respicit: civitates enim privatorum loco habentur.

Dig. 50.16.17pr.

Ulpianus 10 ad ed.

Inter "publica" habemus non sacra nec religiosa nec quae publicis usibus destinata sunt: sed si qua sunt civitatium velut bona. sed peculia servorum civitatium procul dubio publica habentur.

Dig. 50.16.17.1

Ulpianus 10 ad ed.

"publica" vectigalia intellegere debemus, ex quibus vectigal fiscus capit: quale est vectigal portus vel venalium rerum, item salinarum et metallorum et picariarum.

Dig. 50.16.18

Paulus 9 ad ed.

"munus" tribus modis dicitur: uno donum, et inde munera dici dari mittive: altero onus, quod cum remittatur, vacationem militiae munerisque praestat inde immunitatem appellari. tertio officium, unde munera militaria et quosdam milites munificos vocari: igitur municipes dici, quod munera civilia capiant.

Dig. 50.16.19

Ulpianus 11 ad ed.

Labeo libro primo praetoris urbani definit, quod quaedam "agantur", quaedam "gerantur", quaedam "contrahantur": et actum quidem generale verbum esse, sive verbis sive re quid agatur, ut in stipulatione vel numeratione: contractum autem ultro citroque obligationem, quod graeci sunallagma vocant, veluti emptionem venditionem, locationem conductionem, societatem: gestum rem significare sine verbis factam.

Dig. 50.16.20

Ulpianus 12 ad ed.

Verba "contraxerunt" "gesserunt" non pertinent ad testandi ius.

Dig. 50.16.21

Paulus 11 ad ed.

Princeps "bona" concedendo videtur etiam obligationes concedere.

Dig. 50.16.22

Gaius 4 ad ed. provinc.

Plus est in restitutione, quam in exhibitione: nam "exhibere" est praesentiam corporis praebere, "restituere" est etiam possessorem facere fructusque reddere: pleraque praeterea restitutionis verbo continentur.

Dig. 50.16.23

Ulpianus 14 ad ed.

"rei" appellatione et causae et iura continentur.

Dig. 50.16.24

Gaius 6 ad ed. provinc.

Nihil est aliud "hereditas" quam successio in universum ius quod defunctus habuit.

Dig. 50.16.25pr.

Paulus 21 ad ed.

Recte dicimus eum fundum totum nostrum esse, etiam cum usus fructus alienus est, quia usus fructus non dominii pars, sed servitutis sit, ut via et iter: nec falso dici totum meum esse, cuius non potest ulla pars dici alterius esse. hoc et iulianus, et est verius.

Dig. 50.16.25.1

Paulus 21 ad ed.

Quintus mucius ait partis appellatione rem pro indiviso significari: nam quod pro diviso nostrum sit, id non partem, sed totum esse. servius non ineleganter partis appellatione utrumque significari.

Dig. 50.16.26

Ulpianus 16 ad ed.

Partum non esse partem rei furtivae scaevola libro undecimo quaestionum scribit.

Dig. 50.16.27pr.

Ulpianus 17 ad ed.

"ager" est locus, qui sine villa est.

Dig. 50.16.27.1

Ulpianus 17 ad ed.

"stipendium" a stipe appellatum est, quod per stipes, id est modica aera, colligatur. idem hoc etiam "tributum" appellari pomponius ait. et sane appellatur ab intributione tributum vel ex eo quod militibus tribuatur.

Dig. 50.16.28pr.

Paulus 21 ad ed.

"alienationis" verbum etiam usucapionem continet: vix est enim, ut non videatur alienare, qui patitur usucapi. eum quoque alienare dicitur, qui non utendo amisit servitutes. qui occasione adquirendi non utitur, non intellegitur alienare: veluti qui hereditatem omittit aut optionem intra certum tempus datam non amplectitur.

Dig. 50.16.28.1

Paulus 21 ad ed.

Oratio, quae neque coniunctionem neque disiunctionem habet, ex mente pronuntiantis vel disiuncta vel coniuncta accipitur.

Dig. 50.16.29

Paulus 66 ad ed.

Coniunctionem enim nonnumquam pro disiunctione accipi labeo ait: ut in illa stipulatione "mihi heredique meo te heredemque tuum".

Dig. 50.16.30pr.

Gaius 7 ad ed. provinc.

"silva caedua" est, ut quidam putant, quae in hoc habetur, ut caederetur. servius eam esse, quae succisa rursus ex stirpibus aut radicibus renascitur.

Dig. 50.16.30.1

Gaius 7 ad ed. provinc.

"stipula illecta" est spicae in messe deiectae necdum lectae, quas rustici cum vacaverint colligunt.

Dig. 50.16.30.2

Gaius 7 ad ed. provinc.

"novalis" est terra praecisa, quae anno cessavit, quam graeci neasin vocant.

Dig. 50.16.30.3

Gaius 7 ad ed. provinc.

"integra" autem est, in quam nondum dominus pascendi gratia pecus immisit.

Dig. 50.16.30.4

Gaius 7 ad ed. provinc.

"glans caduca" est, quae ex arbore cecidit.

Dig. 50.16.30.5

Gaius 7 ad ed. provinc.

"pascua silva" est, quae pastui pecudum destinata est.

Dig. 50.16.31

Ulpianus 18 ad ed.

"pratum" est, in quo ad fructum percipiendum falce dumtaxat opus est: ex eo dictum, quod paratum sit ad fructum capiendum.

Dig. 50.16.32

Paulus 24 ad ed.

"minus solutum" intellegitur etiam si nihil esset solutum.

Dig. 50.16.33

Ulpianus 21 ad ed.

"palam" est coram pluribus.

Dig. 50.16.34

Paulus 24 ad ed.

"actionis" verbo etiam persecutio continetur.

Dig. 50.16.35

Paulus 17 ad ed.

"restituere" autem is intellegitur, qui simul et causam actori reddit, quam is habiturus esset, si statim iudicii accepti tempore res ei reddita fuisset, id est et usucapionis causam et fructuum.

Dig. 50.16.36

Ulpianus 23 ad ed.

"litis" nomen omnem actionem significat, sive in rem sive in personam sit.

Dig. 50.16.37

Paulus 26 ad ed.

Verbum "oportere" non ad facultatem iudicis pertinet, qui potest vel pluris vel minoris condemnare, sed ad veritatem refertur.

Dig. 50.16.38

Ulpianus 25 ad ed.

"ostentum" labeo definit omne contra naturam cuiusque rei genitum factumque. duo genera autem sunt ostentorum: unum, quotiens quid contra naturam nascitur, tribus manibus forte aut pedibus aut qua alia parte corporis, quae naturae contraria est: alterum, cum quid prodigiosum videtur, quae graeci fantasmata vocant.

Dig. 50.16.39pr.

Paulus 53 ad ed.

"subsignatum" dicitur, quod ab aliquo subscriptum est: nam veteres subsignationis verbo pro adscriptione uti solebant.

Dig. 50.16.39.1

Paulus 53 ad ed.

"bona" intelleguntur cuiusque, quae deducto aere alieno supersunt.

Dig. 50.16.39.2

Paulus 53 ad ed.

"detestari" est absenti denuntiare.

Dig. 50.16.39.3

Paulus 53 ad ed.

"incertus possessor" est, quem ignoramus.

Dig. 50.16.40pr.

Ulpianus 56 ad ed.

"detestatio" est denuntiatio facta cum testatione.

Dig. 50.16.40.1

Ulpianus 56 ad ed.

"servi" appellatio etiam ad ancillam refertur.

Dig. 50.16.40.2

Ulpianus 56 ad ed.

"familiae" appellatione liberi quoque continentur.

Dig. 50.16.40.3

Ulpianus 56 ad ed.

Unicus servus familiae appellatione non continetur: ne duo quidem familiam faciunt.

Dig. 50.16.41

Gaius 21 ad ed. provinc.

"armorum" appellatio non utique scuta et gladios et galeas significat, sed et fustes et lapides.

Dig. 50.16.42

Ulpianus 57 ad ed.

"probrum" et obprobrium idem est. probra quaedam natura turpia sunt, quaedam civiliter et quasi more civitatis. ut puta furtum, adulterium natura turpe est: enimvero tutelae damnari hoc non natura probrum est, sed more civitatis: nec enim natura probrum est, quod potest etiam in hominem idoneum incidere.

Dig. 50.16.43

Ulpianus 58 ad ed.

Verbo "victus" continentur, quae esui potuique cultuique corporis quaeque ad vivendum homini necessaria sunt. vestem quoque victus habere vicem labeo ait:

Dig. 50.16.44

Gaius 22 ad ed. provinc.

Et cetera, quibus tuendi curandive corporis nostri gratia utimur, ea appellatione significantur.

Dig. 50.16.45

Ulpianus 58 ad ed.

In "stratu" omne vestimentum contineri quod iniciatur labeo ait: neque enim dubium est, quin stragula vestis sit omne pallium, peristrwma. in victu ergo vestem accipiemus non stragulam, in stratu omnem stragulam vestem.

Dig. 50.16.46pr.

Ulpianus 59 ad ed.

"pronuntiatum" et "statutum" idem potest: promiscue enim et pronuntiasse et statuisse solemus dicere eos, qui ius habent cognoscendi.

Dig. 50.16.46.1

Ulpianus 59 ad ed.

"matrem familias" accipere debemus eam, quae non inhoneste vixit: matrem enim familias a ceteris feminis mores discernunt atque separant. proinde nihil intererit, nupta sit an vidua, ingenua sit an libertina: nam neque nuptiae neque natales faciunt matrem familias, sed boni mores.

Dig. 50.16.47

Paulus 56 ad ed.

"liberationis" verbum eandem vim habet quam solutionis.

Dig. 50.16.48

Gaius ad ed. pu. q.N.S.N.D.

"solutum" non intellegimus eum, qui, licet vinculis levatus sit, manibus tamen tenetur: ac ne eum quidem intellegimus solutum, qui in publico sine vinculis servatur.

Dig. 50.16.49

Ulpianus 59 ad ed.

"bonorum" appellatio aut naturalis aut civilis est. naturaliter bona ex eo dicuntur, quod beant, hoc est beatos faciunt: beare est prodesse. in bonis autem nostris computari sciendum est non solum, quae dominii nostri sunt, sed et si bona fide a nobis possideantur vel superficiaria sint. aeque bonis adnumerabitur etiam, si quid est in actionibus petitionibus persecutionibus: nam haec omnia in bonis esse videntur.

Dig. 50.16.50

Ulpianus 61 ad ed.

"nurus" appellatio etiam ad pronurum et ultra porrigenda est.

Dig. 50.16.51

Gaius 23 ad ed. provinc.

Appellatione "parentis" non tantum pater, sed etiam avus et proavus et deinceps omnes superiores continentur: sed et mater et avia et proavia.

Dig. 50.16.52

Ulpianus 61 ad ed.

"patroni" appellatione et patrona continetur.

Dig. 50.16.53pr.

Paulus 59 ad ed.

Saepe ita comparatum est, ut coniuncta pro disiunctis accipiantur et disiuncta pro coniunctis, interdum soluta pro separatis. nam cum dicitur apud veteres "adgnatorum gentiliumque", pro separatione accipitur. at cum dicitur "super pecuniae tutelaeve suae", tutor separatim sine pecunia dari non potest: et cum dicimus "quod dedi aut donavi", utraque continemus. cum vero dicimus "quod eum dare facere oportet", quodvis eorum sufficit probare. cum vero dicit praetor, "si donum munus operas redemerit", si omnia imposita sunt, certum est omnia redimenda esse, ex re ergo pro coniunctis habentur:

Dig. 50.16.53.1

Paulus 59 ad ed.

Si quaedam imposita sunt, cetera non desiderabuntur.

Dig. 50.16.53.2

Paulus 59 ad ed.

Item dubitatum, illa verba "ope consilio" quemadmodum accipienda sunt, sententiae coniugentium aut separantium. sed verius est, quod et labeo ait, separatim accipienda, quia aliud factum est eius qui ope, aliud eius qui consilio furtum facit: sic enim alii condici potest, alii non potest. sane post veterum auctoritatem eo perventum est, ut nemo ope videatur fecisse, nisi et consilium malignum habuerit, nec consilium habuisse noceat, nisi et factum secutum fuerit.

Dig. 50.16.54

Ulpianus 62 ad ed.

"condicionales creditores" dicuntur et hi, quibus nondum competit actio, est autem competitura, vel qui spem habent, ut competat.

Dig. 50.16.55

Paulus 16 brev. edicti.

Creditor autem is est, qui exceptione perpetua summoveri non potest: qui autem temporalem exceptionem timet, similis est condicionale creditori.

Dig. 50.16.56pr.

Ulpianus 62 ad ed.

"cognoscere instrumenta" est relegere et recognoscere: "dispungere" est conferre accepta et data.

Dig. 50.16.56.1

Ulpianus 62 ad ed.

"liberorum" appellatione continentur non tantum qui sunt in potestate, sed omnes qui sui iuris sunt, sive virilis sive feminini sexus sunt exve feminini sexus descendentes.

Dig. 50.16.57pr.

Paulus 59 ad ed.

Cui praecipua cura rerum incumbit et qui magis quam ceteri diligentiam et sollicitudinem rebus quibus praesunt debent, hi "magistri" appellantur. quin etiam ipsi magistratus per derivationem a magistris cognominantur. unde etiam cuiuslibet disciplinae praeceptores magistros appellari a monendo vel monstrando.

Dig. 50.16.57.1

Paulus 59 ad ed.

"persequi" videtur et qui satis accepit.

Dig. 50.16.58pr.

Gaius 24 ad ed. provinc.

Licet inter "gesta" et "facta" videtur quaedam esse suptilis differentia, attamen kataxrystikws nihil inter factum et gestum interest.

Dig. 50.16.58.1

Gaius 24 ad ed. provinc.

Paternos libertos recte videmur dicere nostros libertos: liberorum libertos non recte nostros libertos dicimus.

Dig. 50.16.59

Ulpianus 68 ad ed.

"portus" appellatus est conclusus locus, quo importantur merces et inde exportantur: eaque nihilo minus statio est conclusa atque munita. inde "angiportum" dictum est.

Dig. 50.16.60pr.

Ulpianus 69 ad ed.

"locus" est non fundus, sed portio aliqua fundi: "fundus" autem integrum aliquid est. et plerumque sine villa "locum" accipimus: ceterum adeo opinio nostra et constitutio locum a fundo separat, ut et modicus locus possit fundus dici, si fundi animo eum habuimus. non etiam magnitudo locum a fundo separat, sed nostra affectio: et quaelibet portio fundi poterit fundus dici, si iam hoc constituerimus. nec non et fundus locus constitui potest: nam si eum alii adiunxerimus fundo, locus fundi efficietur.

Dig. 50.16.60.1

Ulpianus 69 ad ed.

Loci appellationem non solum ad rustica, verum ad urbana quoque praedia pertinere labeo scribit.

Dig. 50.16.60.2

Ulpianus 69 ad ed.

Sed fundus quidem suos habet fines, locus vero latere potest, quatenus determinetur et definiatur.

Dig. 50.16.61

Paulus 65 ad ed.

"satisdationis "appellatione interdum etiam repromissio continebitur, qua contentus fuit is, cui satisdatio debebatur.

Dig. 50.16.62

Gaius 26 ad ed. provinc.

"tigni" appellatione in lege duodecim tabularum omne genus materiae, ex qua aedificia constant, significatur.

Dig. 50.16.63

Ulpianus 71 ad ed.

"penes te" amplius est quam "apud te": nam apud te est, quod qualiterqualiter a te teneatur, penes te est, quod quodam modo possidetur.

Dig. 50.16.64

Paulus 67 ad ed.

"intestatus" est non tantum qui testamentum non fecit, sed etiam cuius ex testamento hereditas adita non est.

Dig. 50.16.65

Ulpianus 72 ad ed.

"heredis" appellatio non solum ad proximum heredem, sed et ad ulteriores refertur; nam et heredis heres et deinceps heredis appellatione continetur.

Dig. 50.16.66

Ulpianus 74 ad ed.

"mercis" appellatio ad res mobiles tantum pertinet.

Dig. 50.16.67pr.

Ulpianus 76 ad ed.

"alienatum" non proprie dicitur, quod adhuc in dominio venditoris manet: "venditum" tamen recte dicetur.

Dig. 50.16.67.1

Ulpianus 76 ad ed.

"donationis" verbum simpliciter loquendo omnem donationem comprehendisse videtur, sive mortis causa sive non mortis causa fuerit.

Dig. 50.16.68

Ulpianus 77 ad ed.

Illa verba "arbitratu lucii titii fieri" ius significant et in servum non cadunt.

Dig. 50.16.69

Ulpianus 78 ad ed.

Haec verba "cui rei dolus malus aberit afuerit" generaliter comprehendunt omnem dolum, quicumque in hanc rem admissus est, de qua stipulatio est interposita.

Dig. 50.16.70

Paulus 73 ad ed.

Sciendum est heredem etiam per multas successiones accipi. nam paucis speciebus "heredis" appellatio proximum continet, veluti in substitutione impuberis "quisquis mihi heres erit, idem filio heres esto", ubi heredis heres non continetur, quia incertus est. item in lege aelia sentia filius heres proximus potest libertum paternum ut ingratum accusare, non etiam si heredi heres exstiterit. idem dicitur in operarum exactione, ut filius heres exigere possit, non ex successione effectus. verba haec "is ad quem ea res pertinet" sic intelleguntur, ut qui in universum dominium vel iure civili vel iure praetorio succedit, contineatur.

Dig. 50.16.71pr.

Ulpianus 79 ad ed.

Aliud est "capere", aliud "accipere". capere cum effectu accipitur: accipere, et si quis non sic accepit, ut habeat. ideoque non videtur quis capere, quod erit restituturus: sicut pervenisse proprie illud dicitur, quod est remansurum.

Dig. 50.16.71.1

Ulpianus 79 ad ed.

Haec verba "his rebus recte praestari" hoc significant, ne quid periculum vel damnum ex ea re stipulator sentiret.

Dig. 50.16.72

Paulus 76 ad ed.

Appellatione "rei" pars etiam continetur.

Dig. 50.16.73

Ulpianus 80 ad ed.

Haec verba in stipulatione posita "eam rem recte restitui" fructus continent: "recte" enim verbum pro viri boni arbitrio est.

Dig. 50.16.74

Paulus 2 ad ed. aedil. curul.

Signatorius anulus "ornamenti" appellatione non continetur.

Dig. 50.16.75

Paulus 50 ad ed.

"restituere" is videtur, qui id restituit, quod habiturus esset actor, si controversia ei facta non esset.

Dig. 50.16.76

Paulus 51 ad ed.

"dedisse" intellegendus est etiam is, qui permutavit vel compensavit.

Dig. 50.16.77

Paulus 49 ad ed.

"frugem" pro reditu appellari, non solum frumentis aut leguminibus, verum et ex vino, silvis caeduis, cretifodinis, lapidicinis capitur, iulianus scribit. "fruges" omnes esse, quibus homo vescatur, falsum esse: non enim carnem aut aves ferasve aut poma fruges dici. "frumentum" autem id esse, quod arista se teneat, recte gallum definisse: lupinum vero et fabam fruges potius dici, quia non arista, sed siliqua continentur. quae servius apud alfenum in frumento contineri putat.

Dig. 50.16.78

Paulus 3 ad plaut.

Interdum proprietatem quoque verbum "possessionis" significat: sicut in eo, qui possessiones suas legasset, responsum est.

Dig. 50.16.79pr.

Paulus 6 ad plaut.

"impensae necessariae" sunt, quae si factae non sint, res aut peritura aut deterior futura sit.

Dig. 50.16.79.1

Paulus 6 ad plaut.

"utiles impensas" esse fulcinius ait, quae meliorem dotem faciant, non deteriorem esse non sinant, ex quibus reditus mulieri adquiratur: sicuti arbusti pastinationem ultra quam necesse fuerat, item doctrinam puerorum. quorum nomine onerari mulierem ignorantem vel invitam non oportet, ne cogatur fundo aut mancipiis carere. in his impensis et pistrinum et horreum insulae dotali adiectum plerumque dicemus.

Dig. 50.16.79.2

Paulus 6 ad plaut.

"voluptariae" sunt, quae speciem dumtaxat ornant, non etiam fructum augent: ut sint viridia et aquae salientes, incrustationes, loricationes, picturae.

Dig. 50.16.80

Paulus 9 ad plaut.

In generali repetitione legatorum etiam datae libertates continentur ex mente legis duodecim tabularum.

Dig. 50.16.81

Paulus 10 ad plaut.

Cum praetor dicat "ut opus factum restituatur", etiam damnum datum actor consequi debet: nam verbo "restitutionis" omnis utilitas actoris continetur.

Dig. 50.16.82

Paulus 14 ad plaut.

Verbum "amplius" ad eum quoque pertinet, cui nihil debetur: sicuti ex contrario "minus" solutum videtur etiam, si nihil esset exactum.

Dig. 50.16.83

Iavolenus 5 ex plaut.

Proprie "bona" dici non possunt, quae plus incommodi quam commodi habent.

Dig. 50.16.84

Paulus 2 ad vitell.

"filii" appellatione omnes liberos intellegimus.

Dig. 50.16.85

Marcellus 1 Dig.

Neratius priscus tres facere existimat "collegium", et hoc magis sequendum est.

Dig. 50.16.86

Celsus 5 Dig.

Quid aliud sunt "iura praediorum" quam praedia qualiter se habentia: ut bonitas, salubritas, amplitudo?

Dig. 50.16.87

Marcellus 12 Dig.

Ut alfenus ait, "urbs" est "roma", quae muro cingeretur, "roma" est etiam, qua continentia aedificia essent: nam romam non muro tenus existimari ex consuetudine cotidiana posse intellegi, cum diceremus romam nos ire, etiamsi extra urbem habitaremus.

Dig. 50.16.88

Celsus 18 Dig.

Propemodum tantum quisque pecuniae relinquit, quantum ex bonis eius refici potest: sic dicimus centies aureorum habere, qui tantum in praediis ceterisque similibus rebus habeat. non idem est in fundo alieno legato, quamquam is hereditaria pecunia parari potest. neque quisquam eum, qui pecuniam numeratam habet, habere dicit quidquid ex ea parari potest.

Dig. 50.16.89pr.

Pomponius 6 ad sab.

"boves" magis "armentorum" quam "iumentorum" generis appellantur.

Dig. 50.16.89.1

Pomponius 6 ad sab.

Hoc sermone "dum nupta erit" primae nuptiae significantur.

Dig. 50.16.89.2

Pomponius 6 ad sab.

Inter "edere" et "reddi rationes" multum interest: nec is, qui edere iussus sit, reliquum reddere debet: nam et argentarius edere rationem videtur, etiamsi quod reliquum sit apud eum, non solvat.

Dig. 50.16.90

Ulpianus 27 ad sab.

Qui "uti optimae maximaeque sunt" aedes tradit, non hoc dicit servitutem illis debere, sed illud solum ipsas aedes liberas esse, hoc est nulli servire.

Dig. 50.16.91

Paulus 2 fideic.

"meorum" et "tuorum" appellatione actiones quoque contineri dicendum est.

Dig. 50.16.92

Paulus 7 quaest.

"proximus" est, quem nemo antecedit: "supremus" est, quem nemo sequitur.

Dig. 50.16.93

Celsus 19 Dig.

"moventium", item "mobilium" appellatione idem significamus: si tamen apparet defunctum animalia dumtaxat, quia se ipsa moverent, moventia vocasse. quod verum est.

Dig. 50.16.94

Celsus 20 Dig.

Verbum "reddendi" quamquam significatum habet retro dandi, recipit tamen et per se dandi significationem.

Dig. 50.16.95

Marcellus 14 Dig.

Potest "reliquorum" appellatio et universos significare.

Dig. 50.16.96pr.

Celsus 25 Dig.

Litus est, quousque maximus fluctus a mari pervenit: idque marcum tullium aiunt, cum arbiter esset, primum constituisse.

Dig. 50.16.96.1

Celsus 25 Dig.

Praedia dicimus aliquorum esse non utique communiter habentium ea, sed vel alio aliud habente.

Dig. 50.16.97

Celsus 32 Dig.

Cum stipulamur "quanta pecunia ex hereditate titii ad te pervenerit", res ipsas quae pervenerunt, non pretia earum spectare videmur.

Dig. 50.16.98pr.

Celsus 39 Dig.

Cum bisextum kalendis est, nihil refert, utrum priore an posteriore die quis natus sit, et deinceps sextum kalendas eius natalis dies est: nam id biduum pro uno die habetur. sed posterior dies intercalatur, non prior: ideo quo anno intercalatum non est sexto kalendas natus, cum bisextum kalendis est, priorem diem natalem habet.

Dig. 50.16.98.1

Celsus 39 Dig.

Cato putat mensem intercalarem additicium esse: omnesque eius dies pro momento temporis observat extremoque diei mensis februarii adtribuit quintus mucius.

Dig. 50.16.98.2

Celsus 39 Dig.

Mensis autem intercalaris constat ex diebus viginti octo.

Dig. 50.16.99pr.

Ulpianus 1 de off. cons.

"notionem" accipere possumus et cognitionem et iurisdictionem.

Dig. 50.16.99.1

Ulpianus 1 de off. cons.

"continentes provincias" accipere debemus eas, quae italiae iunctae sunt, ut puta galliam: sed et provinciam siciliam magis inter continentes accipere nos oportet, quae modico freto italia dividitur.

Dig. 50.16.99.2

Ulpianus 1 de off. cons.

"instrumentorum" appellatione quae compraehendantur, perquam difficile erit separare: quae enim proprie sint instrumenta, propter quae dilatio danda sit, inde dinoscemus.

Dig. 50.16.99.3

Ulpianus 1 de off. cons.

Si in praesentiam personae, quae instruere possit, dilatio petatur (puta qui actum gessit, licet in servitute, vel qui actor fuit constitutus), putem videri instrumentorum causa peti dilationem.

Dig. 50.16.100

Ulpianus 2 de off. cons.

"speciosas personas" accipere debemus clarissimas personas utriusque sexus, item eorum, quae ornamentis senatoriis utuntur.

Dig. 50.16.101pr.

Modestinus 9 diff.

Inter "stuprum" et "adulterium" hoc interesse quidam putant, quod adulterium in nuptam, stuprum in viduam committitur. sed lex iulia de adulteriis hoc verbo indifferenter utitur.

Dig. 50.16.101.1

Modestinus 9 diff.

"divortium" inter virum et uxorem fieri dicitur, "repudium" vero sponsae remitti videtur. quod et in uxoris personam non absurde cadit.

Dig. 50.16.101.2

Modestinus 9 diff.

Verum est "morbum" esse temporalem corporis inbecillitatem, "vitium" vero perpetuum corporis impedimentum, veluti si talum excussit: nam et luscus utique vitiosus est.

Dig. 50.16.101.3

Modestinus 9 diff.

Servis legatis etiam ancillas deberi quidam putant, quasi commune nomen utrumque sexum contineat.

Dig. 50.16.102

Modestinus 7 reg.

"derogatur" legi aut "abrogatur". derogatur legi, cum pars detrahitur: abrogatur legi, cum prorsus tollitur.

Dig. 50.16.103

Modestinus 8 reg.

Licet "capitalis" latine loquentibus omnis causa existimationis videatur, tamen appellatio capitalis mortis vel amissionis civitatis intellegenda est.

Dig. 50.16.104

Modestinus 2 excus.

Hy twn teknwn prosygoria kai epi tous eggonous ekteinetai.

Dig. 50.16.105

Modestinus 11 resp.

Modestinus respondit his verbis "libertis libertabusque meis" libertum libertae testatoris non contineri.

Dig. 50.16.106

Modestinus l.S. de praescr.

"dimissoriae litterae" dicuntur, quae volgo apostoli dicuntur. dimissoriae autem dictae, quod causa ad eum qui appellatus est dimittitur.

Dig. 50.16.107

Modestinus 3 pand.

"adsignare libertum" hoc est testificari, cuius ex liberis libertum eum esse voluit.

Dig. 50.16.108

Modestinus 4 pand.

"debitor" intellegitur is, a quo invito exigi pecunia potest.

Dig. 50.16.109

Modestinus 5 pand.

"bonae fidei emptor" esse videtur, qui ignoravit eam rem alienam esse, aut putavit eum qui vendidit ius vendendi habere, puta procuratorem aut tutorem esse.

Dig. 50.16.110

Modestinus 6 pand.

"sequester" dicitur, apud quem plures eandem rem, de qua controversia est, deposuerunt: dictus ab eo, quod occurrenti aut quasi sequenti eos qui contendunt committitur.

Dig. 50.16.111

Iavolenus 6 ex cass.

"censere" est constituere et praecipere. unde etiam dicere solemus "censeo hoc facias" et "semet aliquid censuisse ". inde censoris nomen videtur esse tractum.

Dig. 50.16.112

Iavolenus 11 ex cass.

Litus publicum est eatenus, qua maxime fluctus exaestuat. idemque iuris est in lacu, nisi is totus privatus est.

Dig. 50.16.113

Iavolenus 14 ex cass.

"morbus sonticus "est, qui cuique rei nocet.

Dig. 50.16.114

Iavolenus 15 ex cass.

Solvendo esse nemo intellegitur, nisi qui solidum potest solvere.

Dig. 50.16.115

Iavolenus 4 epist.

Quaestio est, fundus a possessione vel agro vel praedio quid distet. "fundus" est omne, quidquid solo tenetur. "ager" est, si species fundi ad usum hominis comparatur. "possessio" ab agro iuris proprietate distat: quidquid enim adprehendimus, cuius proprietas ad nos non pertinet aut nec potest pertinere, hoc possessionem appellamus: possessio ergo usus, ager proprietas loci est. "praedium" utriusque supra scriptae generale nomen est: nam et ager et possessio huius appellationis species sunt.

Dig. 50.16.116

Iavolenus 7 epist.

"quisquis mihi alius filii filiusve heres sit": labeo non videri filiam contineri, proculus contra. mihi labeo videtur verborum figuram sequi, proculus mentem testantis. respondit: non dubito, quin labeonis sententia vera non sit.

Dig. 50.16.117

Iavolenus 9 epist.

Non potest videri "minus solvisse" is, in quem amplioris summae actio non competit.

Dig. 50.16.118

Pomponius 2 ad q. muc.

"hostes" hi sunt, qui nobis aut quibus nos publice bellum decrevimus: ceteri "latrones" aut "praedones" sunt.

Dig. 50.16.119

Pomponius 3 ad q. muc.

"hereditatis" appellatio sine dubio continet etiam damnosam hereditatem: iuris enim nomen est sicuti bonorum possessio.

Dig. 50.16.120

Pomponius 5 ad q. muc.

Verbis legis duodecim tabularum his "uti legassit suae rei, ita ius esto" latissima potestas tributa videtur et heredis instituendi et legata et libertates dandi, tutelas quoque constituendi. sed id interpretatione coangustatum est vel legum vel auctoritate iura constituentium.

Dig. 50.16.121

Pomponius 6 ad q. muc.

Usura pecuniae, quam percipimus, in fructu non est, quia non ex ipso corpore, sed ex alia causa est, id est nova obligatione.

Dig. 50.16.122

Pomponius 8 ad q. muc.

Servius ait, si ita scriptum sit: "filio filiisque meis hosce tutores do", masculis dumtaxat tutores datos, quoniam a singulari casu hoc "filio" ad pluralem videtur transisse continentem eundem sexum, quem singularis prior positus habuisset. sed hoc facti, non iuris habet quaestionem: potest enim fieri, ut singulari casu de filio senserit, deinde plenius omnibus liberis prospexisse in tutore dando voluerit. quod magis rationabile esse videtur.

Dig. 50.16.123

Pomponius 26 ad q. muc.

Verbum "erit" interdum etiam praeteritum nec solum futurum tempus demonstrat. quod est nobis necessarium scire et cum codicilli ita confirmati testamento fuerint: "quod in codicillis scriptum erit", utrumne futuri temporis demonstratio fiat an etiam praeteriti, si ante scriptos codicillos quis relinquat. quod quidem ex voluntate scribentis interpretandum est. quemadmodum autem hoc verbum "est" non solum praesens, sed et praeteritum tempus significat, ita et hoc verbum "erit" non solum futurum, sed interdum etiam praeteritum tempus demonstrat. nam cum dicimus "lucius titius solutus est ab obligatione", et praeteritum et praesens significamus: sicut hoc "lucius titius alligatus est". et idem fit, cum ita loquimur "troia capta est": non enim ad praesentis facti demonstrationem refertur is sermo, sed ad praeteritum.

Dig. 50.16.124

Proculus 2 epist.

Haec verba "ille aut ille" non solum disiunctiva, sed etiam subdisiunctivae orationis sunt. disiunctivum est, veluti cum dicimus "aut dies aut nox est", quorum posito altero necesse est tolli alterum, item sublato altero poni alterum. ita simili figuratione verbum potest esse subdisiunctivum. subdisiunctivi autem genera sunt duo: unum, cum ex propositis finibus ita non potest uterque esse, ut possit neuter esse, veluti cum dicimus "aut sedet aut ambulat": nam ut nemo potest utrumque simul facere, ita aliquis potest neutrum, veluti is qui accumbit. alterius generis est, cum ex propositis finibus ita non potest neuter esse, ut possit utrumque esse, veluti cum dicimus "omne animal aut facit aut patitur": nullum est enim quod nec faciat nec patiatur: at potest simul et facere et pati.

Dig. 50.16.125

Proculus 5 epist.

Nepos proculo suo salutem. ab eo, qui ita dotem promisit: "cum commodum erit, dotis filiae meae tibi erunt aurei centum", putasne protinus nuptiis factis dotem peti posse? quid si ita promisisset: "cum potuero, doti erunt?" quod si aliquam vim habeat posterior obligatio, "possit" verbum quomodo interpretaris, utrum aere alieno deducto an extante? proculus: cum dotem quis ita promisit: "cum potuero, doti tibi erunt centum", existimo ad id quod actum est interpretationem redigendam esse: nam qui ambigue loquitur, id loquitur, quod ex his quae significantur sensit. propius est tamen, ut hoc eum sensisse existimem "deducto aere alieno potero". potest etiam illa accipi significatio "cum salva dignitate mea potero": quae interpretatio eo magis accipienda est, si ita promissum est "cum commodum erit", hoc est "cum sine incommodo meo potero".

Dig. 50.16.126

Proculus 6 epist.

Si, cum fundum tibi darem, legem ita dixi "uti optimus maximusque esset" et adieci "ius fundi deterius factum non esse per dominum, praestabitur", amplius eo praestabitur nihil, etiamsi prior pars, qua scriptum est "ut optimus maximusque sit" liberum esse significat eoque, si posterior pars adiecta non esset, liberum praestare deberem. tamen inferiore parte satis me liberatum puto, quod ad iura attinet, ne quid aliud praestare debeam, quam ius fundi per dominum deterius factum non esse.

Dig. 50.16.127

Callistratus 4 de cogn.

"vestis" appellatione tam virilis quam muliebris et scaenica, etiamsi tragica aut citharoedica sit, continetur.

Dig. 50.16.128

Ulpianus 1 ad l. iul. et pap.

Spadonum generalis appellatio est: quo nomine tam hi, qui natura spadones sunt, item thlibiae thlasiae, sed et si quod aliud genus spadonum est, continentur.

Dig. 50.16.129

Paulus 1 ad l. iul. et pap.

Qui mortui nascuntur, neque nati neque procreati videntur, quia numquam liberi appellari potuerunt.

Dig. 50.16.130

Ulpianus 2 ad l. iul. et pap.

Lege obvenire hereditatem non inproprie quis dixerit et eam, quae ex testamento defertur, quia lege duodecim tabularum testamentariae hereditates confirmantur.

Dig. 50.16.131pr.

Ulpianus 3 ad l. iul. et pap.

Aliud "fraus" est, aliud "poena": fraus enim sine poena esse potest, poena sine fraude esse non potest. poena est noxae vindicta, fraus et ipsa noxa dicitur et quasi poenae quaedam praeparatio.

Dig. 50.16.131.1

Ulpianus 3 ad l. iul. et pap.

Inter "multam" autem et "poenam" multum interest, cum poena generale sit nomen omnium delictorum coercitio, multa specialis peccati, cuius animadversio hodie pecuniaria est: poena autem non tantum pecuniaria, verum capitis et existimationis irrogari solet. et multa quidem ex arbitrio eius venit, qui multam dicit: poena non irrogatur, nisi quae quaque lege vel quo alio iure specialiter huic delicto imposita est: quin immo multa ibi dicitur, ubi specialis poena non est imposita. item multam is dicere potest, cui iudicatio data est: magistratus solos et praesides provinciarum posse multam dicere mandatis permissum est. poenam autem unusquisque inrogare potest, cui huius criminis sive delicti exsecutio competit.

Dig. 50.16.132pr.

Paulus 3 ad l. iul. et pap.

"anniculus" amittitur, qui extremo anni die moritur. et consuetudo loquendi id ita esse declarat: "ante diem decimum kalendarum", "post diem decimum kalendarum": neutro enim sermone undecim dies significantur.

Dig. 50.16.132.1

Paulus 3 ad l. iul. et pap.

Falsum est eam peperisse, cui mortuae filius exsectus est.

Dig. 50.16.133

Ulpianus 4 ad l. iul. et pap.

Si quis sic dixerit "ut intra diem mortis eius aliquid fiat", ipse quoque dies, quo quis mortuus est, numeratur.

Dig. 50.16.134

Paulus 2 ad l. iul. et pap.

"anniculus" non statim ut natus est, sed trecentesimo sexagensimo quinto die dicitur, incipiente plane, non exacto die, quia annum civiliter non ad momenta temporum, sed ad dies numeramus.

Dig. 50.16.135

Ulpianus 4 ad l. iul. et pap.

Quaeret aliquis si portentosum vel monstrosum vel debilem mulier ediderit vel qualem visu vel vagitu novum, non humanae figurae, sed alterius, magis animalis quam hominis, partum, an, quia enixa est, prodesse ei debeat? et magis est, ut haec quoque parentibus prosint: nec enim est quod eis imputetur, quae qualiter potuerunt, statutis obtemperaverunt, neque id quod fataliter accessit, matri damnum iniungere debet.

Dig. 50.16.136

Ulpianus 5 ad l. iul. et pap.

"generi" appellatione et neptis et proneptis tam ex filio quam ex filia editorum ceterarumque maritos contineri manifestum est.

Dig. 50.16.137

Paulus 2 ad l. iul. et pap.

"ter enixa" videtur etiam quae trigeminos pepererit.

Dig. 50.16.138

Paulus 4 ad l. iul. et pap.

"hereditatis" appellatione bonorum quoque possessio continetur.

Dig. 50.16.139pr.

Ulpianus 7 ad l. iul. et pap.

Aedificia "romae" fieri etiam ea videntur, quae in continentibus romae aedificiis fiant.

Dig. 50.16.139.1

Ulpianus 7 ad l. iul. et pap.

"perfecisse" aedificium is videtur, qui ita consummavit, ut iam in usu esse possit.

Dig. 50.16.140

Paulus 6 ad l. iul. et pap.

"cepisse" quis intellegitur, quamvis alii adquisiit.

Dig. 50.16.141

Ulpianus 8 ad l. iul. et pap.

Etiam ea mulier cum moreretur creditur filium habere, quae exciso utero edere possit. nec non etiam alio casu mulier potest habere filium, quem mortis tempore non habuit, ut puta eum qui ab hostibus remeabit.

Dig. 50.16.142

Paulus 6 ad l. iul. et pap.

Triplici modo coniunctio intellegitur: aut enim re per se coniunctio contingit, aut re et verbis, aut verbis tantum. nec dubium est, quin coniuncti sint, quos et nominum et rei complexus iungit, veluti "titius et maevius ex parte dimidia heredes sunto", vel ita "titius maeviusque heredes sunto", vel "titius cum maevio ex parte dimidia heredes sunto". videamus autem, ne etiam si hos articulos detrahas "et" "que" "cum", interdum tamen coniunctos accipi oporteat, veluti "lucius titius, publius maevius ex parte dimidia heredes sunto", vel ita "publius maevius, lucius titius heredes sunto. sempronius ex parte dimidia heres esto", ut titius et maevius veniant in partem dimidiam et re et verbis coniuncti videantur. "lucius titius ex parte dimidia heres esto. seius ex parte, qua lucium titium heredem institui, heres esto. sempronius ex parte dimidia heres esto". iulianus dubitari posse, tres semisses facti sint an titius in eundem semissem cum gaio seio institutus sit. sed eo, quod sempronius quoque ex parte dimidia scriptus est, verisimilius esse in eundem semissem duos coactos et coniunctim heredes scriptos esse.

Dig. 50.16.143

Ulpianus 9 ad l. iul. et pap.

Id "apud se" quis "habere" videtur, de quo habet actionem: habetur enim quod peti potest.

Dig. 50.16.144

Paulus 10 ad l. iul. et pap.

Libro memorialium massurius scribit "pellicem" apud antiquos eam habitam, quae, cum uxor non esset, cum aliquo tamen vivebat: quam nunc vero nomine amicam, paulo honestiore concubinam appellari. granius flaccus in libro de iure papiriano scribit pellicem nunc volgo vocari, quae cum eo, cui uxor sit, corpus misceat: quosdam eam, quae uxoris loco sine nuptiis in domo sit, quam pallakyn graeci vocant.

Dig. 50.16.145

Ulpianus 10 ad l. iul. et pap.

"virilis" appellatione interdum etiam totam hereditatem contineri dicendum est.

Dig. 50.16.146

Clementius 2 ad l. iul. et pap.

"soceri" "socrus" appellatione avum quoque et aviam uxoris vel mariti contineri respondetur.

Dig. 50.16.147

Clementius 3 ad l. iul. et pap.

Qui in continentibus urbis nati sunt, "romae" nati intelleguntur.

Dig. 50.16.148

Gaius 8 ad l. iul. et pap.

Non est sine liberis, cui vel unus filius unave filia est: haec enim enuntiatio "habet liberos" "non habet liberos" semper plurativo numero profertur, sicut et pugillares et codicilli:

Dig. 50.16.149

Gaius 10 ad l. iul. et pap.

Nam quem sine liberis esse dicere non possumus, hunc necesse est dicamus liberos habere.

Dig. 50.16.150

Gaius 9 ad l. iul. et pap.

Si ita a te stipulatus fuero: "quanto minus a titio consecutus fuero, tantum dare spondes ?", non solet dubitari, quin, si nihil a titio fuero consecutus, totum debeas quod titius debuerit.

Dig. 50.16.151

Clementius 5 ad l. iul. et pap.

"delata "hereditas intellegitur, quam quis possit adeundo consequi.

Dig. 50.16.152

Gaius 10 ad l. iul. et pap.

"hominis" appellatione tam feminam quam masculum contineri non dubitatur.

Dig. 50.16.153

Clementius 11 ad l. iul. et pap.

Intellegendus est mortis tempore fuisse, qui in utero relictus est.

Dig. 50.16.154

Macer 1 ad l. vices.

Mille passus non a miliario urbis, sed a continentibus aedificiis numerandi sunt.

Dig. 50.16.155

Licinius 7 reg.

"proximi" appellatione etiam ille continetur, qui solus est.

Dig. 50.16.156

Licinius 10 reg.

"maiore parte anni" possedisse quis intellegitur, etiamsi duobus mensibus possederit, si modo adversarius eius aut paucioribus diebus aut nullis possederit.

Dig. 50.16.157pr.

Gallus 1 de verb. sign.

"paries" est, sive murus sive maceria est.

Dig. 50.16.157.1

Gallus 1 de verb. sign.

Item "via" est, sive semita sive iter est.

Dig. 50.16.158

Celsus 25 Dig.

In usu iuris frequenter uti nos cascellius ait singulari appellatione, cum plura generis eiusdem significare vellemus: nam "multum hominem venisse romam" et "piscem vilem esse" dicimus. item in stipulando satis habemus de herede cavere "si ea res secundum me heredemve meum iudicata erit" et rursus "quod ob eam rem te heredemve tuum": nempe aeque si plures heredes sint, continentur stipulatione.

Dig. 50.16.159

Ulpianus 1 ad sab.

Etiam aureos nummos "aes" dicimus.

Dig. 50.16.160

Ulpianus 2 ad sab.

"ceterorum" et "reliquorum" appellatione etiam omnes continentur, ut Marcellus dixit circa eum, cui optio servi legata est, ceteri sempronio: nam temptat, si non optet, omnes ad sempronium pertinere.

Dig. 50.16.161

Ulpianus 7 ad sab.

Non est "pupillus", qui in utero est.

Dig. 50.16.162pr.

Pomponius 2 ad sab.

In vulgari substitutione, qua ei qui "supremus" morietur heres substituitur, recte substitutus etiam unico intellegitur, exemplo duodecim tabularum, ex quibus "proximus" adgnatus et solus habetur.

Dig. 50.16.162.1

Pomponius 2 ad sab.

Si quis ita in testamento scripserit "si quid filio meo acciderit, dama servus meus liber esto", mortuo filio dama liber erit. licet enim "accidunt" et vivis, sed vulgi sermone etiam mors significatur.

Dig. 50.16.163pr.

Paulus 2 ad sab.

Illa verba "optimus maximusque" vel in eum cadere possunt, qui solus est. sic et circa edictum praetoris "supremae tabulae" habentur et solae.

Dig. 50.16.163.1

Paulus 2 ad sab.

"pueri" appellatione etiam puella significatur: nam et feminas puerperas appellant recentes ex partu et graece paidion communiter appellatur.

Dig. 50.16.164pr.

Ulpianus 15 ad sab.

Nomen "filiarum" et in postumam cadere quaestionis non est, quamvis "postumae" non cadere in eam, quae iam in rebus humanis sit, certum sit.

Dig. 50.16.164.1

Ulpianus 15 ad sab.

"partitionis" nomen non semper dimidium significat, sed prout est adiectum. potest enim iuberi aliquis et maximam partiri: posse et vicensimam et tertiam et prout libuerit. sed si non fuerit portio adiecta, dimidia pars debetur.

Dig. 50.16.164.2

Ulpianus 15 ad sab.

"habere" sicut pervenire ^ pervobire^ cum effectu accipiendum est.

Dig. 50.16.165

Pomponius 5 ad sab.

Venisse ad heredem nihil intellegitur nisi deducto aere alieno.

Dig. 50.16.166pr.

Pomponius 6 ad sab.

"urbana familia" et "rustica" non loco, sed genere distinguitur: potest enim aliquis dispensator non esse servorum urbanorum numero: veluti is, qui rusticarum rerum rationes dispenset ibique habitet. non multum abest a vilico insularius: autem urbanorum numero est. videndum tamen est, ipse dominus quorum loco quemque habuerit: quod ex numero familiae et vicariis apparebit.

Dig. 50.16.166.1

Pomponius 6 ad sab.

"pernoctare extra urbem" intellegendus est, qui nulla parte noctis in urbe est: "per" enim totam noctem significat.

Dig. 50.16.167

Ulpianus 25 ad sab.

"carbonum" appellatione materiam non contineri: sed an "lignorum?" et fortassis quis dicet nec lignorum: non enim lignorum gratia habuit. sed et titiones et alia ligna cocta ne fumum faciant utrum ligno an carboni an suo generi adnumerabimus? et magis est, ut proprium genus habeatur. sulpurata quoque de ligno aeque eandem habebunt definitionem. ad faces quoque parata non erunt lignorum appellatione comprehensa, nisi haec fuit voluntas. idem et de nucleis olivarum, sed et de balanis est, vel si qui alii nuclei. de pinu autem integri strobili ligni appellatione continebuntur.

Dig. 50.16.168

Paulus 4 ad sab.

Pali et perticae in numerum materiae redigendi sunt, et ideo "lignorum" appellatione non continentur.

Dig. 50.16.169

Paulus 5 ad sab.

Non tantum in traditionibus, sed et in emptionibus et stipulationibus et testamentis adiectio haec "uti optimus maximusque est" hoc significat, ut liberum praestetur praedium, non ut etiam servitutes ei debeantur.

Dig. 50.16.170

Ulpianus 33 ad sab.

"heredis" appellatione omnes significari successores credendum est, etsi verbis non sint expressi.

Dig. 50.16.171

Pomponius 16 ad sab.

"pervenisse ad te" recte dicitur, quod per te ad alium pervenerit, ut in hereditate a liberto per patronum filium familias patri eius adoptivo adquisita responsum est.

Dig. 50.16.172

Ulpianus 38 ad sab.

"liberti" appellatione etiam libertam contineri placuit.

Dig. 50.16.173pr.

Ulpianus 39 ad sab.

"collegarum" appellatione hi continentur, qui sunt eiusdem potestatis.

Dig. 50.16.173.1

Ulpianus 39 ad sab.

Qui extra continentia urbis est, "abest": ceterum usque ad continentia non abesse videbitur.

Dig. 50.16.174

Ulpianus 42 ad sab.

Aliud est promittere "furem non esse", aliud "furto noxaque solutum": qui enim dicit furem non esse, de hominis proposito loquitur, qui furtis noxaque solutum, nemini esse furti obligatum promittit.

Dig. 50.16.175

Pomponius 22 ad sab.

"faciendi" verbo reddendi etiam causa continetur.

Dig. 50.16.176

Ulpianus 45 ad sab.

"solutionis" verbo satisfactionem quoque omnem accipiendam placet. "solvere "dicimus eum, qui fecit quod facere promisit.

Dig. 50.16.177

Ulpianus 47 ad sab.

Natura cavillationis, quam graeci swrityn appellaverunt, haec est, ut ab evidenter veris per brevissimas mutationes disputatio ad ea, quae evidenter falsa sunt, perducatur.

Dig. 50.16.178pr.

Ulpianus 49 ad sab.

"pecuniae" verbum non solum numeratam pecuniam complectitur, verum omnem omnino pecuniam, hoc est omnia corpora: nam corpora quoque pecuniae appellatione contineri nemo est qui ambiget.

Dig. 50.16.178.1

Ulpianus 49 ad sab.

"hereditas" iuris nomen est, quod et accessionem et decessionem in se recipit: hereditas autem vel maxime fructibus augetur.

Dig. 50.16.178.2

Ulpianus 49 ad sab.

"actionis" verbum et speciale est et generale. nam omnis actio dicitur, sive in personam sive in rem sit petitio: sed plerumque "actiones" personales solemus dicere. "petitionis" autem verbo in rem actiones significari videntur. "persecutionis" verbo extraordinarias persecutiones puto contineri, ut puta fideicommissorum et si quae aliae sunt, quae non habent iuris ordinarii exsecutionem.

Dig. 50.16.178.3

Ulpianus 49 ad sab.

Hoc verbum "debuit" omnem omnino actionem comprehendere intellegitur, sive civilis sive honoraria sive fideicommissi fuit persecutio.

Dig. 50.16.179

Ulpianus 51 ad sab.

Inter haec verba "quanti ea res erit" vel "quanti eam rem esse paret" nihil interest: in utraque enim clausula placet veram rei aestimationem fieri.

Dig. 50.16.180pr.

Pomponius 30 ad sab.

"tugurii" appellatione omne aedificium, quod rusticae magis custodiae convenit quam urbanis aedibus, significatur.

Dig. 50.16.180.1

Pomponius 30 ad sab.

Ofilius ait tugurium a tecto tamquam tegularium esse dictum, ut toga, quod ea tegamur.

Dig. 50.16.181

Pomponius 35 ad sab.

Verbum illud "pertinere" latissime patet: nam et eis rebus petendis aptum est, quae dominii nostri sint, et eis, quas iure aliquo possideamus, quamvis non sint nostri dominii: pertinere ad nos etiam ea dicimus, quae in nulla eorum causa sint, sed esse possint.

Dig. 50.16.182

Ulpianus 27 ad ed.

Pater familias liber "peculium" non potest habere, quemadmodum nec servus "bona".

Dig. 50.16.183

Ulpianus 28 ad ed.

"tabernae" appellatio declarat ^ delarat^ omne utile ad habitandum aedificium, non ex eo quod tabulis cluditur.

Dig. 50.16.184

Paulus 30 ad ed.

Inde tabernacula et contubernales dicti sunt.

Dig. 50.16.185

Ulpianus 28 ad ed.

"instructam" autem tabernam sic accipiemus, quae et rebus et hominibus ad negotiationem paratis constat.

Dig. 50.16.186

Ulpianus 30 ad ed.

"commendare" nihil aliud est quam deponere.

Dig. 50.16.187

Ulpianus 32 ad ed.

Verbum "exactae pecuniae" non solum ad solutionem referendum est, verum etiam ad delegationem.

Dig. 50.16.188pr.

Paulus 33 ad ed.

"habere" duobus modis dicitur, altero iure dominii, altero optinere sine interpellatione id quod quis emerit.

Dig. 50.16.188.1

Paulus 33 ad ed.

"cautum" intellegitur, sive personis sive rebus cautum sit.

Dig. 50.16.189

Paulus 34 ad ed.

"facere oportere" et hanc significationem habet, ut abstineat quis ab eo facto, quod contra conventionem fieret, et curaret ne fiat.

Dig. 50.16.190

Ulpianus 34 ad ed.

"provinciales" eos accipere debemus, qui in provincia domicilium habent, non eos, qui ex provincia oriundi sunt.

Dig. 50.16.191

Paulus 35 ad ed.

Inter "divortium" et "repudium" hoc interest, quod repudiari etiam futurum matrimonium potest, non recte autem sponsa divortisse dicitur, quod divortium ex eo dictum est, quod in diversas partes eunt qui discedunt.

Dig. 50.16.192

Ulpianus 37 ad ed.

Haec adiectio "plurisve" non infinitam pecuniam continet, sed modicam, ut taxatio haec "solidos decem plurisve" ad minutulam summam referatur.

Dig. 50.16.193

Ulpianus 38 ad ed.

Haec verba "quanti eam rem paret esse" non ad quod interest, sed ad rei aestimationem referuntur.

Dig. 50.16.194

Ulpianus 43 ad ed.

Inter "donum" et "munus" hoc interest, quod inter genus et speciem: nam genus esse donum labeo a donando dictum, munus speciem: nam munus esse donum cum causa, ut puta natalicium, nuptalicium.

Dig. 50.16.195pr.

Ulpianus 46 ad ed.

Pronuntiatio sermonis in sexu masculino ad utrumque sexum plerumque porrigitur.

Dig. 50.16.195.1

Ulpianus 46 ad ed.

"familiae" appellatio qualiter accipiatur, videamus. et quidem varie accepta est: nam et in res et in personas deducitur. in res, ut puta in lege duodecim tabularum his verbis "adgnatus proximus familiam habeto". ad personas autem refertur familiae significatio ita, cum de patrono et liberto loquitur lex: "ex ea familia", inquit, "in eam familiam": et hic de singularibus personis legem loqui constat.

Dig. 50.16.195.2

Ulpianus 46 ad ed.

Familiae appellatio refertur et ad corporis cuiusdam significationem, quod aut iure proprio ipsorum aut communi universae cognationis continetur. iure proprio familiam dicimus plures personas, quae sunt sub unius potestate aut natura aut iure subiectae, ut puta patrem familias, matrem familias, filium familias, filiam familias quique deinceps vicem eorum sequuntur, ut puta nepotes et neptes et deinceps. pater autem familias appellatur, qui in domo dominium habet, recteque hoc nomine appellatur, quamvis filium non habeat: non enim solam personam eius, sed et ius demonstramus: denique et pupillum patrem familias appellamus. et cum pater familias moritur, quotquot capita ei subiecta fuerint, singulas familias incipiunt habere: singuli enim patrum familiarum nomen subeunt. idemque eveniet et in eo qui emancipatus est: nam et hic sui iuris effectus propriam familiam habet. communi iure familiam dicimus omnium adgnatorum: nam etsi patre familias mortuo singuli singulas familias habent, tamen omnes, qui sub unius potestate fuerunt, recte eiusdem familiae appellabuntur, qui ex eadem domo et gente proditi sunt.

Dig. 50.16.195.3

Ulpianus 46 ad ed.

Servitutium quoque solemus appellare familias, ut in edicto praetoris ostendimus sub titulo de furtis, ubi praetor loquitur de familia publicanorum. sed ibi non omnes servi, sed corpus quoddam servorum demonstratur huius rei causa paratum, hoc est vectigalis causa. alia autem parte edicti omnes servi continentur: ut de hominibus coactis et vi bonorum raptorum, item redhibitoria, si deterior res reddatur emptoris opera aut familiae eius, et interdicto unde vi familiae appellatio omnes servos comprehendit. sed et filii continentur.

Dig. 50.16.195.4

Ulpianus 46 ad ed.

Item appellatur familia plurium personarum, quae ab eiusdem ultimi genitoris sanguine proficiscuntur (sicuti dicimus familiam iuliam), quasi a fonte quodam memoriae.

Dig. 50.16.195.5

Ulpianus 46 ad ed.

Mulier autem familiae suae et caput et finis est.

Dig. 50.16.196pr.

Gaius 16 ad ed. provinc.

Familiae appellatione et ipse princeps familiae continetur.

Dig. 50.16.196.1

Gaius 16 ad ed. provinc.

Feminarum liberos in familia earum non esse palam est, quia qui nascuntur, patris familiam sequuntur.

Dig. 50.16.197

Ulpianus 50 ad ed.

"indicasse" est detulisse: "arguisse" accusasse et convicisse.

Dig. 50.16.198

Ulpianus 2 de omn. trib.

"urbana praedia" omnia aedificia accipimus, non solum ea quae sunt in oppidis, sed et si forte stabula sunt vel alia meritoria in villis et in vicis, vel si praetoria voluptati tantum deservientia: quia urbanum praedium non locus facit, sed materia. proinde hortos quoque, si qui sunt in aedificiis constituti, dicendum est urbanorum appellatione contineri. plane si plurimum horti in reditu sunt, vinearii forte vel etiam holitorii, magis haec non sunt urbana.

Dig. 50.16.199pr.

Ulpianus 8 de omn. trib.

"absentem" accipere debemus eum, qui non est eo loci, in quo loco petitur: non enim trans mare absentem desideramus: et si forte extra continentia urbis sit, abest. ceterum usque ad continentia non abesse videbitur, si non latitet.

Dig. 50.16.199.1

Ulpianus 8 de omn. trib.

Abesse non videtur, qui ab hostibus captus est, sed qui a latronibus detinetur.

Dig. 50.16.200

Iulianus 2 Dig.

Haec stipulatio "noxis solutum praestari" non existimatur ad eas noxas pertinere, quae publicam exercitionem et coercitionem capitalem habent.

Dig. 50.16.201

Iulianus 81 Dig.

Iusta interpretatione recipiendum est, ut appellatione "filii", sicuti filiam familias contineri saepe respondebimus, ita et nepos videatur comprehendi, et "patris" nomine avus quoque demonstrari intellegatur.

Dig. 50.16.202

Alfenus 2 Dig.

Cum in testamento scriptum esset, ut heres in funere aut in monumento "dumtaxat aureos centum" consumeret, non licet minus consumere: si amplius vellet, licet neque ob eam rem contra testamentum facere videtur.

Dig. 50.16.203

Alfenus 7 Dig.

In lege censoria portus siciliae ita scriptum erat: "servos, quos domum quis ducet suo usu, pro is portorium ne dato". quaerebatur, si quis a sicilia servos romam mitteret fundi instruendi causa, utrum pro his hominibus portorium dare deberet nec ne. respondit duas esse in hac scriptura quaestiones, primam quid esset "domum ducere", alteram, quid esset "suo usu ducere". igitur quaeri soleret, utrum, ubi quisque habitaret sive in provincia sive in italia, an dumtaxat in sua cuiusque patria domus esse recte dicetur. sed de ea re constitutum esse eam domum unicuique nostrum debere existimari, ubi quisque sedes et tabulas haberet suarumque rerum constitutionem fecisset. quid autem esset "usu suo", magnam habuisse dubitationem. et magis placet, quod victus sui causa paratum est, tantum contineri. itemque de servis eadem ratione quaeri, qui eorum usus sui causa parati essent? utrum dispensatores, insularii, vilici, atrienses, textores, operarii quoque rustici, qui agrorum colendorum causa haberentur, ex quibus agris pater familias fructus caperet, quibus se toleraret, omnes denique servos, quos quisque emisset, ut ipse haberet atque eis ad aliquam rem uteretur, neque ideo emisset, ut venderet? et sibi videri eos demum usus sui causa patrem familias habere, qui ad eius corpus tuendum atque ipsius cultum praepositi destinatique essent, quo in genere iunctores, cubicularii, coci, ministratores atque alii, qui ad eiusmodi usum parati essent, numerarentur.

Dig. 50.16.204

Paulus 2 epit. alf.

"pueri" appellatio tres significationes habet: unam, cum omnes servos pueros appellaremus: alteram, cum puerum contrario nomine puellae diceremus: tertiam, cum aetatem puerilem demonstraremus.

Dig. 50.16.205

Paulus 4 epit. alf.

Qui fundum vendidit, "pomum "recepit: nuces et ficos et uvas dumtaxat duracinas et purpureas et quae eius generis essent, quas non vini causa haberemus, quas graeci trwcimous appellarent, recepta videri.

Dig. 50.16.206

Iulianus 6 ex minic.

"vinaria" vasa proprie vasa torcularia esse placet: dolia autem et serias tamdiu in ea causa esse, quamdiu vinum haberent, cum sine vino esse desinerent, in eo numero non esse, quoniam ad alium usum transferri possent, veluti si frumentum in his addatur. eandem causam amphorarum esse, ut, cum vinum habeant, tum in vasis vinariis, cum inanes sint, tum extra numerum vinariorum sint, quia aliud in his addi possit.

Dig. 50.16.207

Africanus 3 quaest.

"mercis" appellatione homines non contineri mela ait: et ob eam rem mangones non mercatores sed venaliciarios appellari ait, et recte.

Dig. 50.16.208

Africanus 4 quaest.

"bonorum" appellatio, sicut hereditatis, universitatem quandam ac ius successionis et non singulas res demonstrat.

Dig. 50.16.209

Florus 10 inst.

"coram titio" aliquid facere iussus non videtur praesente eo fecisse, nisi is intellegat: itaque si furiosus aut infans sit aut dormiat, non videtur coram eo fecisse. scire autem, non etiam velle is debet: nam et invito eo recte fit quod iussum est.

Dig. 50.16.210

Marcianus 7 inst.

Is, qui natus est ex mancipiis urbanis et missus est in villam nutriendus, in urbanis servis constituetur.

Dig. 50.16.211

Florus 8 inst.

"fundi" appellatione omne aedificium et omnis ager continetur. sed in usu urbana aedificia "aedes", rustica "villae" dicuntur. locus vero sine aedificio in urbe "area", rure autem "ager" appellatur. idemque ager cum aedificio "fundus" dicitur.

Dig. 50.16.212

Ulpianus 1 de adult.

"praevaricatores" eos appellamus, qui causam adversariis suis donant et ex parte actoris in partem rei concedunt: a varicando enim praevaricatores dicti sunt.

Dig. 50.16.213pr.

Ulpianus 1 reg.

"cedere diem" significat incipere deberi pecuniam: "venire diem" significat eum diem venisse, quo pecunia peti possit. ubi pure quis stipulatus fuerit, et cessit et venit dies: ubi in diem, cessit dies, sed nondum venit: ubi sub condicione, neque cessit neque venit dies pendente adhuc condicione.

Dig. 50.16.213.1

Ulpianus 1 reg.

"aes alienum" est, quod nos aliis debemus: "aes suum" est, quod alii nobis debent.

Dig. 50.16.213.2

Ulpianus 1 reg.

"lata culpa" est nimia neglegentia, id est non intellegere quod omnes intellegunt.

Dig. 50.16.214

Marcianus 1 publ. iudic.

"munus" proprie est, quod necessarie obimus lege more imperiove eius, qui iubendi habet potestatem. "dona" autem proprie sunt, quae nulla necessitate iuris officiis et sponte praestantur: quae si non praestentur, nulla repraehensio est et, si praestentur, plerumque laus inest. sed in summa in hoc ventum est, ut non quodcumque munus, id et donum accipiatur, at quod donum fuerit, id munus recte dicatur.

Dig. 50.16.215

Paulus l.S. ad l. fuf. canin.

"potestatis" verbo plura significantur: in persona magistratuum imperium: in persona liberorum patria potestas: in persona servi dominium. at cum agimus de noxae deditione cum eo qui servum non defendit, praesentis corporis copiam facultatemque significamus. in lege atinia in potestatem domini rem furtivam venisse videri, et si eius vindicandae potestatem habuerit, sabinus et cassius aiunt.

Dig. 50.16.216

Ulpianus 1 ad l. ael. sent.

Verum est eum, qui in carcere clusus est, non videri neque "vinctum" neque "in vinculis" esse, nisi corpori eius vincula sint adhibita.

Dig. 50.16.217pr.

Iavolenus 1 ex post. lab.

Inter illam condicionem "cum fari potuerit" et "postquam fari potuerit" multum interest: nam posteriorem scripturam uberiorem esse constat, "cum fari potuerit" artiorem et id tantummodo tempus significari, quo primum fari possit.

Dig. 50.16.217.1

Iavolenus 1 ex post. lab.

Item ita data condicione "illud facito in diebus", si nihil praeterea fuisset adiectum, in biduo condicionem impleri oportet.

Dig. 50.16.218

Papinianus 27 quaest.

Verbum "facere" omnem omnino faciendi causam complectitur dandi, solvendi, numerandi, iudicandi, ambulandi.

Dig. 50.16.219

Papinianus 2 resp.

In conventionibus contrahentium voluntatem potius quam verba spectari placuit. cum igitur ea lege fundum vectigalem municipes locaverint, ut ad heredem eius qui suscepit pertineret, ius heredum ad legatarium quoque transferri potuit.

Dig. 50.16.220pr.

Callistratus 2 quaest.

"liberorum" appellatione nepotes et pronepotes ceterique qui ex his descendunt continentur: hos enim omnes suorum appellatione lex duodecim tabularum comprehendit. totiens enim leges necessariam ducunt cognationem singulorum nominibus uti (veluti filii, nepotes, pronepotis ceterorumve qui ex his descendunt), quotiens non omnibus, qui post eos sunt, praestitum voluerint, sed solis his succurrent, quos nominatim enumerent. at ubi non personis certis, non quibusdam gradibus praestatur, sed omnibus, qui ex eodem genere orti sunt, liberorum appellatione comprehenduntur.

Dig. 50.16.220.1

Callistratus 2 quaest.

Sed et papirius fronto libro tertio responsorum ait praedio cum vilico et contubernali eius et filiis legato nepotes quoque ex filiis contineri, nisi voluntas testatoris aliter habeat: filii enim appellatione saepe et nepotes accipi multifariam placere.

Dig. 50.16.220.2

Callistratus 2 quaest.

Divus quoque marcus rescripsit non videri sine liberis defunctum, qui nepotem suum heredem reliquit.

Dig. 50.16.220.3

Callistratus 2 quaest.

Praeter haec omnia natura nos quoque docet parentes pios, qui liberorum procreandorum animo et voto uxores ducunt, filiorum appellatione omnes qui ex nobis descendunt continere: nec enim dulciore nomine possumus nepotes nostros quam filii appellare. etenim idcirco filios filiasve concipimus atque edimus, ut ex prole eorum earumve diuturnitatis nobis memoriam in aevum relinquamus.

Dig. 50.16.221

Paulus 10 resp.

Paulus respondit falsum tutorem eum vere dici, qui tutor non est, sive habenti tutor datus est sive non: sicut falsum testamentum, quod testamentum non est, et modius iniquus, qui modius non est.

Dig. 50.16.222

Hermogenianus 2 iuris epit.

"pecuniae" nomine non solum numerata pecunia, sed omnes res tam soli quam mobiles et tam corpora quam iura continentur.

Dig. 50.16.223pr.

Paulus 2 sent.

Latae culpae finis est non intellegere id quod omnes intellegunt.

Dig. 50.16.223.1

Paulus 2 sent.

"amicos "appellare debemus non levi notitia coniunctos, sed quibus fuerint in iura cum patre familias honestis familiaritatis quaesita rationibus.

Dig. 50.16.224

Venonius 7 stipul.

"vinculorum" appellatione vel privata vel publica vincula significant, "custodiae" vero tantum publicam custodiam.

Dig. 50.16.225

Tryphonus 1 disp.

"fugitivus" est non is, qui solum consilium fugiendi a domino suscepit, licet id se facturum iactaverit, sed qui ipso facto fugae initium mente deduxerit. nam et furem adulterum aleatorem quamquam aliqua significatione ex animi propositione cuiusque sola quis dicere posset, ut etiam is, qui numquam alienam rem invito domino subtraxerit, numquam alienam matrem familias corruperit, si modo eius mentis sit, ut occasione data id commissurus sit, tamen oportere eadem haec crimina adsumpto actu intellegi. et ideo fugitivum quoque et erronem non secundum propositionem solam, sed cum aliquo actu intellegi constat.

Dig. 50.16.226

Paulus 1 manual.

Magna neglegentia culpa est: magna culpa dolus est.

Dig. 50.16.227pr.

Paulus 2 manual.

Ex illa parte edicti "tum quem ei heredem esse oportet" heredis heredibus bonorum possessio non defertur.

Dig. 50.16.227.1

Paulus 2 manual.

Item in substitutione his verbis "quisquis mihi heres erit" proximus heres tantum significatur: immo non tantum proximus heres, sed etiam scriptus.

Dig. 50.16.228

Paulus l.S. de cogn.

"municipes" intellegendi sunt et qui in eodem municipio nati sunt.

Dig. 50.16.229

Paulus l.S. de tac. fideic.

"transacta finitave" intellegere debemus non solum quibus controversia fuit, sed etiam quae sine controversia sint possessa:

Dig. 50.16.230

Paulus l.S. ad sc orfit.

Ut sunt iudicio terminata, transactione composita, longioris temporis silentio finita.

Dig. 50.16.231

Paulus l.S. ad sc tert.

Quod dicimus eum, qui nasci speratur, pro superstite esse, tunc verum est, cum de ipsius iure quaeritur: aliis autem non prodest nisi natus.

Dig. 50.16.232

Gaius 1 de verb. oblig.

Haec enuntiatio "quae sunt pluris aureorum triginta" simul et quantitatis et aestimationis significativa est.

Dig. 50.16.233pr.

Gaius 1 ad l. xii tab.

"si calvitur": et moretur et frustretur. inde et calumniatores appellati sunt, quia per fraudem et frustrationem alios vexarent litibus: inde et cavillatio dicta est.

Dig. 50.16.233.1

Gaius 1 ad l. xii tab.

Post kalendas ianuarias die tertio pro salute principis vota suscipiuntur.

Dig. 50.16.233.2

Gaius 1 ad l. xii tab.

"telum" volgo quidem id appellatur, quod ab arcu mittitur: sed non minus omne significatur, quod mittitur manu: ita sequitur, ut et lapis et lignum et ferrum hoc nomine contineatur: dictumque ab eo, quod in longinquum mittitur, graeca voce figuratum apo tou tylou. et hanc significationem invenire possumus et in graeco nomine: nam quod nos telum appellamus, illi belos appellant: apo tou ballesvai. admonet nos xenophon, nam ita scribit: kai ta bely homose efereto, logxai toceumata sfendonai, pleistoi de kai livoi . et id, quod ab arcu mittitur, apud graecos quidem proprio nomine toceuma vocatur, apud nos autem communi nomine telum appellatur.

Dig. 50.16.234pr.

Gaius 2 ad l. xii tab.

Quos nos hostes appellamus, eos veteres "perduelles" appellabant, per eam adiectionem indicantes cum quibus bellum esset.

Dig. 50.16.234.1

Gaius 2 ad l. xii tab.

"locuples" est, qui satis idonee habet pro magnitudine rei, quam actor restituendam esse petit.

Dig. 50.16.234.2

Gaius 2 ad l. xii tab.

Verbum "vivere" quidam putant ad cibum pertinere: sed ofilius ad atticum ait his verbis et vestimenta et stramenta contineri, sine his enim vivere neminem posse.

Dig. 50.16.235pr.

Gaius 3 ad l. xii tab.

"ferri" proprie dicimus, quae quis suo corpore baiulat: "portari" ea, quae quis iumento secum ducit: "agi" ea, quae animalia sunt.

Dig. 50.16.235.1

Gaius 3 ad l. xii tab.

"fabros tignarios" dicimus non eos dumtaxat, qui tigna dolarent, sed omnes qui aedificarent.

Dig. 50.16.236pr.

Gaius 4 ad l. xii tab.

Qui "venenum" dicit, adicere debet, utrum malum an bonum: nam et medicamenta venena sunt, quia eo nomine omne continetur, quod adhibitum naturam eius, cui adhibitum esset, mutat. cum id quod nos venenum appellamus, graeci farmakon dicunt, apud illos quoque tam medicamenta quam quae nocent, hoc nomine continentur: unde adiectione alterius nomine distinctio fit. admonet nos summus apud eos poetarum homerus: nam sic ait: farmaka, polla men esvla memigmena, polla de lugra .

Dig. 50.16.236.1

Gaius 4 ad l. xii tab.

"glandis" appellatione omnis fructus continetur, ut iavolenus ait, exemplo graeci sermonis, apud quos omnes arborum species akrodrua appellantur.

Dig. 50.16.237

Gaius 5 ad l. xii tab.

Duobus negativis verbis quasi permittit lex magis quam prohibuit: idque etiam servius animadvertit.

Dig. 50.16.238pr.

Gaius 6 ad l. xii tab.

"plebs" est ceteri cives sine senatoribus.

Dig. 50.16.238.1

Gaius 6 ad l. xii tab.

"detestatum" est testatione denuntiatum.

Dig. 50.16.238.2

Gaius 6 ad l. xii tab.

"pignus" appellatum a pugno, quia res, quae pignori dantur, manu traduntur. unde etiam videri potest verum esse, quod quidam putant, pignus proprie rei mobilis constitui.

Dig. 50.16.238.3

Gaius 6 ad l. xii tab.

"noxiae" appellatione omne delictum continetur.

Dig. 50.16.239pr.

Pomponius l.S. enchir.

"pupillus" est, qui, cum impubes est, desiit in patris potestate esse aut morte aut emancipatione.

Dig. 50.16.239.1

Pomponius l.S. enchir.

"servorum" appellatio ex eo fluxit, quod imperatores nostri captivos vendere ac per hoc servare nec occidere solent.

Dig. 50.16.239.2

Pomponius l.S. enchir.

"incola" est, qui aliqua regione domicilium suum contulit: quem graeci paroikon appellant. nec tantum hi, qui in oppido morantur, incolae sunt, sed etiam qui alicuius oppidi finibus ita agrum habent, ut in eum se quasi in aliquam sedem recipiant.

Dig. 50.16.239.3

Pomponius l.S. enchir.

"munus publicum" est officium privati hominis, ex quo commodum ad singulos universosque cives remque eorum imperio magistratus extraordinarium pervenit.

Dig. 50.16.239.4

Pomponius l.S. enchir.

"advena" est, quem graeci apoikon appellant.

Dig. 50.16.239.5

Pomponius l.S. enchir.

"decuriones" quidam dictos aiunt ex eo, quod initio, cum coloniae deducerentur, decima pars eorum qui ducerentur consilii publici gratia conscribi solita sit.

Dig. 50.16.239.6

Pomponius l.S. enchir.

"urbs" ab urbo appellata est: urbare est aratro definire. et varus ait urbum appellari curvaturam aratri, quod in urbe condenda adhiberi solet.

Dig. 50.16.239.7

Pomponius l.S. enchir.

"oppidum" ab ope dicitur, quod eius rei causa moenia sint constituta.

Dig. 50.16.239.8

Pomponius l.S. enchir.

"territorium" est universitas agrorum intra fines cuiusque civitatis: quod ab eo dictum quidam aiunt, quod magistratus eius loci intra eos fines terrendi, id est summovendi ius habent.

Dig. 50.16.239.9

Pomponius l.S. enchir.

Verbum "suum" ambiguum est, utrum de toto an de parte significat. et ideo qui iuret suum non esse, adicere debet neque sibi communem esse.

Dig. 50.16.240

Paulus 1 imp. sent. i.C.P.

Cum quaerebatur, an verbum "soluto matrimonio dotem reddi" non tantum divortium, sed et mortem contineret, hoc est an de hoc quoque casu contrahentes sentirent, et multi putabant hoc sensisse, et quibusdam aliis contra videbatur: secundum: hoc motus imperator pronuntiavit id actum eo pacto, ut nullo casu remaneret dos apud maritum.

Dig. 50.16.241

Mucius l.S. horwn

In "rutis caesis" ea sunt, quae terra non tenentur quaeque opere structili tectoriove non continentur.

Dig. 50.16.242pr.

Iavolenus 2 ex post. lab.

Malum navis esse partem, artemonem autem non esse labeo ait, quia pleraeque naves sine malo inutiles essent, ideoque pars navis habetur: artemo autem magis adiectamento quam pars navis est.

Dig. 50.16.242.1

Iavolenus 2 ex post. lab.

Inter "proiectum" et "immissum" hoc interesse ait labeo, quod proiectum esset id quod ita proveheretur ut nusquam requiesceret, qualia maeniana et suggrundae essent: immissum autem, quod ita fieret, ut aliquo loco requiesceret, veluti tigna trabes quae immitteretur.

Dig. 50.16.242.2

Iavolenus 2 ex post. lab.

Plumbum, quod tegulis poneretur, aedificii esse ait labeo: sed id, quod hypaethri tegendi causa poneretur, contra esse.

Dig. 50.16.242.3

Iavolenus 2 ex post. lab.

"viduam" non solum eam, quae aliquando nupta fuisset, sed eam quoque mulierem, quae virum non habuisset, appellari ait labeo: quia vidua sic dicta est quasi vecors, vesanus, qui sine corde aut sanitate esset: similiter viduam dictam esse sine duitate.

Dig. 50.16.242.4

Iavolenus 2 ex post. lab.

Straturam loci alicuius ex tabulis factis, quae aestate tollerentur et hieme ponerentur, aedium esse ait labeo, quoniam perpetui usus paratae essent: neque ad rem pertinere, quod interim tollerentur.

Dig. 50.16.243

Scaevola 18 Dig.

Scaevola respondit: semper acceptum est, ut libertorum appellatione etiam hi contineri intellegantur, qui eodem testamento vel posteriore loco manumitterentur, nisi manifeste is, a quo peteretur, contra defuncti voluntatem doceret peti.

Dig. 50.16.244

Labeo 4 pith. a paulo epit.

Si qua poena est, multa est: si qua multa est, poena est. paulus: utrumque eorum falsum est. namque harum rerum dissimilitudo ex hoc quoque apparet, quod de poena provocatio non est: simul atque enim victus quis est eius maleficii, cuius poena est statuta, statim ea debetur. at multae provocatio est, nec ante debetur, quam aut non est provocatum aut provocator victus est: nec aliter quam si is dixit, cui dicere licet. ex hoc quoque earum rerum dissimilitudo apparere poterit, quia poenae certae singulorum peccatorum sunt, multae contra, quia eius iudicis potestas est, quantam dicat, nisi cum lege est constitutum quantam dicat.

Dig. 50.16.245pr.

Pomponius 10 epist.

Statuae adfixae basibus structilibus aut tabulae religatae catenis aut erga parietem adfixae aut si similiter cohaerent lychni, non sunt aedium: ornatus enim aedium causa parantur, non quo aedes perficiantur. idem labeo ait.

Dig. 50.16.245.1

Pomponius 10 epist.

Prothyrum, quod in aedibus iterum qui fieri solet, aedium est.

Dig. 50.16.246pr.

Pomponius 16 epist.

Apud labeonem pithanon ita scriptum est: exhibet, qui praestat eius de quo agitur praesentiam. nam etiam qui sistit, praestat eius de quo agitur praesentiam, nec tamen eum exhibet: et qui mutum aut furiosum aut infantem exhibet, non potest videri eius praestare praesentiam: nemo enim ex eo genere praesens satis apte appellari potest.

Dig. 50.16.246.1

Pomponius 16 epist.

Restituit non tantum, qui solum corpus, sed etiam qui omnem rem condicionemque reddita causa praestet: et tota restitutio iuris est interpretatio.

Dig. 50.17.0. De diversis regulis iuris antiqui.

Dig. 50.17.1

Paulus 16 ad plaut.

Regula est, quae rem quae est breviter enarrat. non ex regula ius sumatur, sed ex iure quod est regula fiat. per regulam igitur brevis rerum narratio traditur, et, ut ait sabinus, quasi causae coniectio est, quae simul cum in aliquo vitiata est, perdit officium suum.

Dig. 50.17.2pr.

Ulpianus 1 ad sab.

Feminae ab omnibus officiis civilibus vel publicis remotae sunt et ideo nec iudices esse possunt nec magistratum gerere nec postulare nec pro alio intervenire nec procuratores existere.

Dig. 50.17.2.1

Ulpianus 1 ad sab.

Item impubes omnibus officiis civilibus debet abstinere.

Dig. 50.17.3

Ulpianus 3 ad sab.

Eius est nolle, qui potest velle.

Dig. 50.17.4

Ulpianus 6 ad sab.

Velle non creditur, qui obsequitur imperio patris vel domini.

Dig. 50.17.5

Paulus 2 ad sab.

In negotiis contrahendis alia causa habita est furiosorum, alia eorum qui fari possunt, quamvis actum rei non intellegerent: nam furiosus nullum negotium contrahere potest, pupillus omnia tutore auctore agere potest.

Dig. 50.17.6

Ulpianus 7 ad sab.

Non vult heres esse, qui ad alium transferre voluit hereditatem.

Dig. 50.17.7

Pomponius 3 ad sab.

Ius nostrum non patitur eundem in paganis et testato et intestato decessisse: earumque rerum naturaliter inter se pugna est "testatus" et "intestatus".

Dig. 50.17.8

Pomponius 4 ad sab.

Iura sanguinis nullo iure civili dirimi possunt.

Dig. 50.17.9

Ulpianus 15 ad sab.

Semper in obscuris quod minimum est sequimur.

Dig. 50.17.10

Paulus 3 ad sab.

Secundum naturam est commoda cuiusque rei eum sequi, quem sequentur incommoda.

Dig. 50.17.11

Pomponius 5 ad sab.

Id quod nostrum est sine facto nostro ad alium transferri non potest.

Dig. 50.17.12

Paulus 3 ad sab.

In testamentis plenius voluntates testantium interpretamur.

Dig. 50.17.13

Ulpianus 19 ad sab.

Non videtur cepisse, qui per exceptionem a petitione removetur.

Dig. 50.17.14

Pomponius 5 ad sab.

In omnibus obligationibus, in quibus dies non ponitur, praesenti die debetur.

Dig. 50.17.15

Paulus 4 ad sab.

Is, qui actionem habet ad rem reciperandam, ipsam rem habere videtur.

Dig. 50.17.16

Ulpianus 21 ad sab.

Imaginaria venditio non est pretio accedente.

Dig. 50.17.17

Ulpianus 23 ad sab.

Cum tempus in testamento adicitur, credendum est pro herede adiectum, nisi alia mens fuerit testatoris: sicuti in stipulationibus promissoris gratia tempus adicitur.

Dig. 50.17.18

Pomponius 6 ad sab.

Quae legata mortuis nobis ad heredem nostrum transeunt, eorum commodum per nos his, quorum in potestate sumus, eodem casu adquirimus: aliter atque quod stipulati sumus. nam et sub condicione stipulantes omnimodo eis adquirimus, etiamsi liberatis nobis potestate domini condicio existat.

Dig. 50.17.19pr.

Ulpianus 24 ad sab.

Qui cum alio contrahit, vel est vel debet esse non ignarus condicionis eius: heredi autem hoc imputari non potest, cum non sponte cum legatariis contrahit.

Dig. 50.17.19.1

Ulpianus 24 ad sab.

Non solet exceptio doli nocere his, quibus voluntas testatoris non refragatur.

Dig. 50.17.20

Pomponius 7 ad sab.

Quotiens dubia interpretatio libertatis est, secundum libertatem respondendum erit.

Dig. 50.17.21

Ulpianus 27 ad sab.

Non debet, cui plus licet, quod minus est non licere.

Dig. 50.17.22pr.

Ulpianus 28 ad sab.

In personam servilem nulla cadit obligatio.

Dig. 50.17.22.1

Ulpianus 28 ad sab.

Generaliter probandum est, ubicumque in bonae fidei iudiciis confertur in arbitrium domini vel procuratoris eius condicio, pro boni viri arbitrio hoc habendum esse.

Dig. 50.17.23

Ulpianus 29 ad sab.

Contractus quidam dolum malum dumtaxat recipiunt, quidam et dolum et culpam. dolum tantum: depositum et precarium. dolum et culpam mandatum, commodatum, venditum, pignori acceptum, locatum, item dotis datio, tutelae, negotia gesta: in his quidem et diligentiam. societas et rerum communio et dolum et culpam recipit. sed haec ita, nisi si quid nominatim convenit (vel plus vel minus) in singulis contractibus: nam hoc servabitur, quod initio convenit (legem enim contractus dedit), excepto eo, quod celsus putat non valere, si convenerit, ne dolus praestetur: hoc enim bonae fidei iudicio contrarium est: et ita utimur. animalium vero casus mortesque, quae sine culpa accidunt, fugae servorum qui custodiri non solent, rapinae, tumultus, incendia, aquarum magnitudines, impetus praedonum a nullo praestantur.

Dig. 50.17.24

Paulus 5 ad sab.

Quatenus cuius intersit, in facto, non in iure consistit.

Dig. 50.17.25

Pomponius 11 ad sab.

Plus cautionis in re est quam in persona.

Dig. 50.17.26

Ulpianus 30 ad sab.

Qui potest invitis alienare, multo magis et ignorantibus et absentibus potest.

Dig. 50.17.27

Pomponius 16 ad sab.

Nec ex praetorio nec ex sollemni iure privatorum conventione quicquam immutandum est, quamvis obligationum causae pactione possint immutari et ipso iure et per pacti conventi exceptionem: quia actionum modus vel lege vel per praetorem introductus privatorum pactionibus non infirmatur, nisi tunc, cum inchoatur actio, inter eos convenit.

Dig. 50.17.28

Ulpianus 36 ad sab.

Divus pius rescripsit eos, qui ex liberalitate conveniuntur, in id quod facere possunt condemnandos.

Dig. 50.17.29

Paulus 8 ad sab.

Quod initio vitiosum est, non potest tractu temporis convalescere.

Dig. 50.17.30

Ulpianus 36 ad sab.

Nuptias non concubitus, sed consensus facit.

Dig. 50.17.31

Ulpianus 42 ad sab.

Verum est neque pacta neque stipulationes factum posse tollere: quod enim impossibile est, neque pacto neque stipulatione potest comprehendi, ut utilem actionem aut factum efficere possit.

Dig. 50.17.32

Ulpianus 43 ad sab.

Quod attinet ad ius civile, servi pro nullis habentur: non tamen et iure naturali, quia, quod ad ius naturale attinet, omnes homines aequales sunt.

Dig. 50.17.33

Pomponius 22 ad sab.

In eo, quod vel is qui petit vel is a quo petitur lucri facturus est, durior causa est petitoris.

Dig. 50.17.34

Ulpianus 45 ad sab.

Semper in stipulationibus et in ceteris contractibus id sequimur, quod actum est: aut, si non pareat quid actum est, erit consequens, ut id sequamur, quod in regione in qua actum est frequentatur. quid ergo, si neque regionis mos appareat, quia varius fuit? ad id, quod minimum est, redigenda summa est.

Dig. 50.17.35

Ulpianus 48 ad sab.

Nihil tam naturale est quam eo genere quidque dissolvere, quo colligatum est. ideo verborum obligatio verbis tollitur: nudi consensus obligatio contrario consensu dissolvitur.

Dig. 50.17.36

Pomponius 27 ad sab.

Culpa est immiscere se rei ad se non pertinenti.

Dig. 50.17.37

Ulpianus 51 ad sab.

Nemo, qui condemnare potest, absolvere non potest.

Dig. 50.17.38

Pomponius 29 ad sab.

Sicuti poena ex delicto defuncti heres teneri non debeat, ita nec lucrum facere, si quid ex ea re ad eum pervenisset.

Dig. 50.17.39

Pomponius 32 ad sab.

In omnibus causis pro facto accipitur id, in quo per alium morae sit, quo minus fiat.

Dig. 50.17.40

Pomponius 34 ad sab.

Furiosi vel eius, cui bonis interdictum sit, nulla voluntas est.

Dig. 50.17.41pr.

Ulpianus 26 ad ed.

Non debet actori licere, quod reo non permittitur.

Dig. 50.17.41.1

Ulpianus 26 ad ed.

In re obscura melius est favere repetitioni quam adventicio lucro.

Dig. 50.17.42

Gaius 9 ad ed. provinc.

Qui in alterius locum succedunt, iustam habent causam ignorantiae, an id quod peteretur deberetur. fideiussores quoque non minus quam heredes iustam ignorantiam possunt allegare. haec ita de herede dicta sunt, si cum eo agetur, non etiam si agat: nam plane qui agit, certus esse debet, cum sit in potestate eius, quando velit experiri, et ante debet rem diligenter explorare et tunc ad agendum procedere.

Dig. 50.17.43pr.

Ulpianus 28 ad ed.

Nemo ex his, qui negant se debere, prohibetur etiam alia defensione uti, nisi lex impedit.

Dig. 50.17.43.1

Ulpianus 28 ad ed.

Quotiens concurrunt plures actiones eiusdem rei nomine, una quis experiri debet.

Dig. 50.17.44

Ulpianus 29 ad ed.

Totiens in heredem damus de eo quod ad eum pervenit, quotiens ex dolo defuncti convenitur, non quotiens ex suo.

Dig. 50.17.45pr.

Ulpianus 30 ad ed.

Neque pignus neque depositum neque precarium neque emptio neque locatio rei suae consistere potest.

Dig. 50.17.45.1

Ulpianus 30 ad ed.

Privatorum conventio iuri publico non derogat.

Dig. 50.17.46

Gaius 10 ad ed. provinc.

Quod a quoquo poenae nomine exactum est, id eidem restituere nemo cogitur.

Dig. 50.17.47pr.

Ulpianus 30 ad ed.

Consilii non fraudulenti nulla obligatio est: ceterum si dolus et calliditas intercessit, de dolo actio competit.

Dig. 50.17.47.1

Ulpianus 30 ad ed.

Socii mei socius meus socius non est.

Dig. 50.17.48

Paulus 35 ad ed.

Quidquid in calore iracundiae vel fit vel dicitur, non prius ratum est, quam si perseverantia apparuit iudicium animi fuisse. ideoque brevi reversa uxor nec divortisse videtur.

Dig. 50.17.49

Ulpianus 35 ad ed.

Alterius circumventio alii non praebet actionem.

Dig. 50.17.50

Paulus 39 ad ed.

Culpa caret qui scit, sed prohibere non potest.

Dig. 50.17.51

Gaius 15 ad ed. provinc.

Non videtur quisquam id capere, quod ei necesse est alii restituere.

Dig. 50.17.52

Ulpianus 44 ad ed.

Non defendere videtur non tantum qui latitat, sed et is qui praesens negat se defendere aut non vult suscipere actionem.

Dig. 50.17.53

Paulus 42 ad ed.

Cuius per errorem dati repetitio est, eius consulto dati donatio est.

Dig. 50.17.54

Ulpianus 46 ad ed.

Nemo plus iuris ad alium transferre potest, quam ipse haberet.

Dig. 50.17.55

Gaius 2 de testam. ad ed. urb.

Nullus videtur dolo facere, qui suo iure utitur.

Dig. 50.17.56

Gaius 3 de legatis ad ed. urb.

Semper in dubiis benigniora praeferenda sunt.

Dig. 50.17.57

Gaius 18 ad ed. provinc.

Bona fides non patitur, ut bis idem exigatur.

Dig. 50.17.58

Ulpianus 2 disp.

Ex poenalibus causis non solet in patrem de peculio actio dari.

Dig. 50.17.59

Ulpianus 3 disp.

Heredem eiusdem potestatis iurisque esse, cuius fuit defunctus, constat.

Dig. 50.17.60

Ulpianus 10 disp.

Semper qui non prohibet pro se intervenire, mandare creditur. sed et si quis ratum habuerit quod gestum est, obstringitur mandati actione.

Dig. 50.17.61

Ulpianus 3 opin.

Domum suam reficere unicuique licet, dum non officiat invito alteri, in quo ius non habet.

Dig. 50.17.62

Iulianus 6 Dig.

Hereditas nihil aliud est, quam successio in universum ius quod defunctus habuerit.

Dig. 50.17.63

Iulianus 17 Dig.

Qui sine dolo malo ad iudicium provocat, non videtur moram facere.

Dig. 50.17.64

Iulianus 29 Dig.

Ea, quae raro accidunt, non temere in agendis negotiis computantur.

Dig. 50.17.65

Iulianus 54 Dig.

Ea est natura cavillationis, quam graeci swrityn appellant, ut ab evidenter veris per brevissimas mutationes disputatio ad ea, quae evidenter falsa sunt, perducatur.

Dig. 50.17.66

Iulianus 60 Dig.

Marcellus. desinit debitor esse is, qui nanctus est exceptionem iustam nec ab aequitate naturali abhorrentem.

Dig. 50.17.67

Iulianus 87 Dig.

Quotiens idem sermo duas sententias exprimit, ea potissimum excipiatur, quae rei gerendae aptior est.

Dig. 50.17.68

Paulus l.S. de dotis repetit.

In omnibus causis id observatur, ut, ubi personae condicio locum facit beneficio, ibi deficiente ea beneficium quoque deficiat, ubi vero genus actionis id desiderat, ibi ad quemvis persecutio eius devenerit, non deficiat ratio auxilii.

Dig. 50.17.69

Paulus l.S. de adsign. libert.

Invito beneficium non datur.

Dig. 50.17.70

Ulpianus 1 de off. procons.

Nemo potest gladii potestatem sibi datam vel cuius alterius coercitionis ad alium transferre.

Dig. 50.17.71

Ulpianus 2 de off. procons.

Omnia, quaecumque causae cognitionem desiderant, per libellum expediri non possunt.

Dig. 50.17.72

Iavolenus 3 ex post. lab.

Fructus rei est vel pignori dare licere.

Dig. 50.17.73pr.

Mucius l.S. horwn

Quo tutela redit, eo et hereditas pervenit, nisi cum feminae heredes intercedunt.

Dig. 50.17.73.1

Mucius l.S. horwn

Nemo potest tutorem dare cuiquam nisi ei, quem in suis heredibus cum moritur habuit habiturusve esset, si vixisset.

Dig. 50.17.73.2

Mucius l.S. horwn

Vi factum id videtur esse, qua de re quis cum prohibetur, fecit: clam, quod quisque, cum controversiam haberet habiturumve se putaret, fecit.

Dig. 50.17.73.3

Mucius l.S. horwn

Quae in testamento ita sunt scripta, ut intellegi non possint, perinde sunt, ac si scripta non essent.

Dig. 50.17.73.4

Mucius l.S. horwn

Nec paciscendo nec legem dicendo nec stipulando quisquam alteri cavere potest.

Dig. 50.17.74

Papinianus 1 quaest.

Non debet alteri per alterum iniqua condicio inferri.

Dig. 50.17.75

Papinianus 3 quaest.

Nemo potest mutare consilium suum in alterius iniuriam.

Dig. 50.17.76

Papinianus 24 quaest.

In totum omnia, quae animi destinatione agenda sunt, non nisi vera et certa scientia perfici possunt.

Dig. 50.17.77

Papinianus 28 quaest.

Mi, qui non recipiunt diem vel condicionem, veluti emancipatio, acceptilatio, hereditatis aditio, servi optio, datio tutoris, in totum vitiantur per temporis vel condicionis adiectionem. nonnumquam tamen actus supra scripti tacite recipiunt, quae aperte comprehensa vitium adferunt. nam si acceptum feratur ei, qui sub condicione promisit, ita demum egisse aliquid acceptilatio intellegitur, si obligationis condicio exstiterit: quae si verbis nominatim acceptilationis comprehendatur, nullius momenti faciet actum.

Dig. 50.17.78

Papinianus 31 quaest.

Generaliter cum de fraude disputatur, non quid non habeat actor, sed quid per adversarium habere non potuerit, considerandum est.

Dig. 50.17.79

Papinianus 32 quaest.

Fraudis interpretatio semper in iure civili non ex eventu dumtaxat, sed ex consilio quoque desideratur.

Dig. 50.17.80

Papinianus 33 quaest.

In toto iure generi per speciem derogatur et illud potissimum habetur, quod ad speciem derectum est.

Dig. 50.17.81

Papinianus 3 resp.

Quae dubitationis tollendae causa contractibus inseruntur, ius commune non laedunt.

Dig. 50.17.82

Papinianus 9 resp.

Donari videtur, quod nullo iure cogente conceditur.

Dig. 50.17.83

Papinianus 2 def.

Non videntur rem amittere, quibus propria non fuit.

Dig. 50.17.84pr.

Paulus 3 quaest.

Cum amplius solutum est quam debebatur, cuius pars non invenitur quae repeti possit, totum esse indebitum intellegitur manente pristina obligatione.

Dig. 50.17.84.1

Paulus 3 quaest.

Is natura debet, quem iure gentium dare oportet, cuius fidem secuti sumus.

Dig. 50.17.85pr.

Paulus 6 quaest.

In ambiguis pro dotibus respondere melius est.

Dig. 50.17.85.1

Paulus 6 quaest.

Non est novum, ut quae semel utiliter constituta sunt, durent, licet ille casus exstiterit, a quo initium capere non potuerunt.

Dig. 50.17.85.2

Paulus 6 quaest.

Quotiens aequitatem desiderii naturalis ratio aut dubitatio iuris moratur, iustis decretis res temperanda est.

Dig. 50.17.86

Paulus 7 quaest.

Non solet deterior condicio fieri eorum, qui litem contestati sunt, quam si non essent, sed plerumque melior:

Dig. 50.17.87

Paulus 13 quaest.

Nemo enim in persequendo deteriorem causam, sed meliorem facit. denique post litem contestatam heredi quoque prospiceretur et heres tenetur ex omnibus causis.

Dig. 50.17.88

Scaevola 5 quaest.

Nulla intellegitur mora ibi fieri, ubi nulla petitio est.

Dig. 50.17.89

Paulus 10 quaest.

Quamdiu possit valere testamentum, tamdiu legitimus non admittitur.

Dig. 50.17.90

Paulus 15 quaest.

In omnibus quidem, maxime tamen in iure aequitas spectanda est.

Dig. 50.17.91

Paulus 17 quaest.

Quotiens duplici iure defertur alicui successio, repudiato novo iure quod ante defertur, supererit vetus.

Dig. 50.17.92

Scaevola 5 resp.

Si librarius in transscribendis stipulationis verbis errasset, nihil nocere, quo minus et reus et fideiussor teneretur.

Dig. 50.17.93

Maecenatus 1 fideic.

Filius familias neque retinere neque reciperare neque apisci possessionem rei peculiaris videtur.

Dig. 50.17.94

Ulpianus 2 fideic.

Non solent quae abundant vitiare scripturas.

Dig. 50.17.95

Ulpianus 6 fideic.

Nemo dubitat solvendo videri eum qui defenditur.

Dig. 50.17.96

Maecenatus 12 fideic.

In ambiguis orationibus maxime sententia spectanda est eius, qui eas protulisset.

Dig. 50.17.97

Hermogenianus 3 iuris epit.

Ea sola deportationis sententia aufert, quae ad fiscum perveniunt.

Dig. 50.17.98

Hermogenianus 4 iuris epit.

Quotiens utriusque causa lucri ratio vertitur, is praeferendus est, cuius in lucrum causa tempore praecedit.

Dig. 50.17.99

Venonius 12 stipul.

Non potest improbus videri, qui ignorat quantum solvere debeat.

Dig. 50.17.100

Gaius 1 reg.

Omnia, quae iure contrahuntur, contrario iure pereunt.

Dig. 50.17.101

Paulus l.S. de cogn.

Ubi lex duorum mensum fecit mentionem, et qui sexagensimo et primo die venerit, audiendus est: ita enim et imperator antoninus cum divo patre suo rescripsit.

Dig. 50.17.102pr.

Ulpianus 1 ad ed.

Qui vetante praetore fecit, hic adversus edictum fecisse proprie dicitur.

Dig. 50.17.102.1

Ulpianus 1 ad ed.

Eius est actionem denegare, qui possit et dare.

Dig. 50.17.103

Paulus 1 ad ed.

Nemo de domo sua extrahi debet.

Dig. 50.17.104

Ulpianus 2 ad ed.

Si in duabus actionibus alibi summa maior, alibi infamia est, praeponenda est causa existimationis. ubi autem aequiperant, famosa iudicia, etsi summam inparem habent, pro paribus accipienda sunt.

Dig. 50.17.105

Paulus 1 ad ed.

Ubicumque causae cognitio est, ibi praetor desideratur.

Dig. 50.17.106

Paulus 2 ad ed.

Libertas inaestimabilis res est.

Dig. 50.17.107

Gaius 1 ad ed. provinc.

Cum servo nulla actio est.

Dig. 50.17.108

Paulus 4 ad ed.

Fere in omnibus poenalibus iudiciis et aetati et imprudentiae succurritur.

Dig. 50.17.109

Paulus 5 ad ed.

Nullum crimen patitur is, qui non prohibet, cum prohibere potest.

Dig. 50.17.110pr.

Paulus 6 ad ed.

In eo, quod plus sit, semper inest et minus.

Dig. 50.17.110.1

Paulus 6 ad ed.

Nemo alienae rei expromissor idoneus videtur, nisi si cum satisdatione.

Dig. 50.17.110.2

Paulus 6 ad ed.

Pupillus pati posse non intellegitur.

Dig. 50.17.110.3

Paulus 6 ad ed.

Ubi verba coniuncta non sunt, sufficit alterutrum esse factum.

Dig. 50.17.110.4

Paulus 6 ad ed.

Mulieribus tunc succurrendum est, cum defendantur, non ut facilius calumnientur.

Dig. 50.17.111pr.

Gaius 2 ad ed. provinc.

Pupillum, qui proximus pubertati sit, capacem esse et furandi et iniuriae faciendae.

Dig. 50.17.111.1

Gaius 2 ad ed. provinc.

In heredem non solent actiones transire, quae poenales sunt ex maleficio, veluti furti, damni iniuriae, vi bonorum raptorum, iniuriarum.

Dig. 50.17.112

Paulus 8 ad ed.

Nihil interest, ipso iure quis actionem non habeat an per exceptionem infirmetur.

Dig. 50.17.113

Gaius 3 ad ed. provinc.

In toto et pars continetur.

Dig. 50.17.114

Paulus 9 ad ed.

In obscuris inspici solere, quod verisimilius est aut quod plerumque fieri solet.

Dig. 50.17.115pr.

Paulus 10 ad ed.

Si quis obligatione liberatus sit, potest videri cepisse.

Dig. 50.17.115.1

Paulus 10 ad ed.

Non potest videri accepisse, qui stipulatus potest exceptione summoveri.

Dig. 50.17.116pr.

Ulpianus 11 ad ed.

Nihil consensui tam contrarium est, qui ac bonae fidei iudicia sustinet, quam vis atque metus: quem comprobare contra bonos mores est.

Dig. 50.17.116.1

Ulpianus 11 ad ed.

Non capitur, qui ius publicum sequitur.

Dig. 50.17.116.2

Ulpianus 11 ad ed.

Non videntur qui errant consentire.

Dig. 50.17.117

Paulus 11 ad ed.

Praetor bonorum possessorem heredis loco in omni causa habet.

Dig. 50.17.118

Ulpianus 11 ad ed.

Qui in servitute est, usucapere non potest: nam cum possideatur, possidere non videtur.

Dig. 50.17.119

Ulpianus 13 ad ed.

Non alienat, qui dumtaxat omittit possessionem.

Dig. 50.17.120

Paulus 12 ad ed.

Nemo plus commodi heredi suo relinquit, quam ipse habuit.

Dig. 50.17.121

Paulus 13 ad ed.

Qui non facit quod facere debet, videtur facere adversus ea, quia non facit: et qui facit quod facere non debet, non videtur facere id quod facere iussus est.

Dig. 50.17.122

Gaius 5 ad ed. provinc.

Libertas omnibus rebus favorabilior est.

Dig. 50.17.123pr.

Ulpianus 14 ad ed.

Nemo alieno nomine lege agere potest.

Dig. 50.17.123.1

Ulpianus 14 ad ed.

Temporaria permutatio ius provinciae non innovat.

Dig. 50.17.124pr.

Paulus 16 ad ed.

Ubi non voce, sed praesentia opus est, mutus, si intellectum habet, potest videri respondere. idem in surdo: hic quidem et respondere potest.

Dig. 50.17.124.1

Paulus 16 ad ed.

Furiosus absentis loco est et ita pomponius libro primo epistularum scribit.

Dig. 50.17.125

Gaius 5 ad ed. provinc.

Favorabiliores rei potius quam actores habentur.

Dig. 50.17.126pr.

Ulpianus 15 ad ed.

Nemo praedo est, qui pretium numeravit.

Dig. 50.17.126.1

Ulpianus 15 ad ed.

Locupletior non est factus, qui libertum adquisierit.

Dig. 50.17.126.2

Ulpianus 15 ad ed.

Cum de lucro duorum quaeratur, melior est causa possidentis.

Dig. 50.17.127

Paulus 20 ad ed.

Cum praetor in heredem dat actionem, quatenus ad eum pervenit, sufficit, si vel momento ad eum pervenit ex dolo defuncti.

Dig. 50.17.128pr.

Paulus 19 ad ed.

In pari causa possessor potior haberi debet.

Dig. 50.17.128.1

Paulus 19 ad ed.

Hi, qui in universum ius succedunt, heredis loco habentur.

Dig. 50.17.129pr.

Paulus 21 ad ed.

Nihil dolo creditor facit, qui suum recipit.

Dig. 50.17.129.1

Paulus 21 ad ed.

Cum principalis causa non consistit, ne ea quidem quae sequuntur locum habent.

Dig. 50.17.130

Ulpianus 18 ad ed.

Numquam actiones, praesertim poenales, de eadem re concurrentes alia aliam consumit.

Dig. 50.17.131

Paulus 22 ad ed.

Qui dolo desierit possidere, pro possidente damnatur, quia pro possessione dolus est.

Dig. 50.17.132

Gaius 7 ad ed. provinc.

Imperitia culpae adnumeratur.

Dig. 50.17.133

Gaius 8 ad ed. provinc.

Melior condicio nostra per servos fieri potest, deterior fieri non potest.

Dig. 50.17.134pr.

Ulpianus 21 ad ed.

Non fraudantur creditores, cum quid non adquiritur a debitore, sed cum quid de bonis deminuitur.

Dig. 50.17.134.1

Ulpianus 21 ad ed.

Nemo ex suo delicto meliorem suam condicionem facere potest.

Dig. 50.17.135

Ulpianus 23 ad ed.

Ea, quae dari impossibilia sunt vel quae in rerum natura non sunt, pro non adiectis habentur.

Dig. 50.17.136

Paulus 18 ad ed.

Bona fides tantundem possidenti praestat, quantum veritas, quotiens lex impedimento non est.

Dig. 50.17.137

Ulpianus 25 ad ed.

Qui auctore iudice comparavit, bonae fidei possessor est.

Dig. 50.17.138pr.

Paulus 27 ad ed.

Omnis hereditas, quamvis postea adeatur, tamen cum tempore mortis continuatur.

Dig. 50.17.138.1

Paulus 27 ad ed.

Numquam crescit ex post facto praeteriti delicti aestimatio.

Dig. 50.17.139pr.

Gaius ad ed. pu.

Omnes actiones, quae morte aut tempore pereunt, semel inclusae iudicio salvae permanent.

Dig. 50.17.139.1

Gaius ad ed. pu.

Non videtur perfecte cuiusque id esse, quod ex casu auferri potest.

Dig. 50.17.140

Ulpianus 56 ad ed.

Absentia eius, qui rei publicae causa abest, neque ei neque alii damnosa esse debet.

Dig. 50.17.141pr.

Paulus 54 ad ed.

Quod contra rationem iuris receptum est, non est producendum ad consequentia.

Dig. 50.17.141.1

Paulus 54 ad ed.

Uni duo pro solido heredes esse non possunt.

Dig. 50.17.142

Paulus 56 ad ed.

Qui tacet, non utique fatetur: sed tamen verum est eum non negare.

Dig. 50.17.143

Ulpianus 62 ad ed.

Quod ipsis qui contraxerunt obstat, et successoribus eorum obstabit.

Dig. 50.17.144pr.

Paulus 62 ad ed.

Non omne quod licet honestum est.

Dig. 50.17.144.1

Paulus 62 ad ed.

In stipulationibus id tempus spectatur, quo contrahimus.

Dig. 50.17.145

Ulpianus 66 ad ed.

Nemo videtur fraudare eos, qui sciunt et consentiunt.

Dig. 50.17.146

Paulus 62 ad ed.

Quod quis dum servus est egit, proficere libero facto non potest.

Dig. 50.17.147

Gaius 24 ad ed. provinc.

Semper specialia generalibus insunt.

Dig. 50.17.148

Paulus 16 brev. edicti.

Cuius effectus omnibus prodest, eius et partes ad omnes pertinent.

Dig. 50.17.149

Ulpianus 67 ad ed.

Ex qua persona quis lucrum capit, eius factum praestare debet.

Dig. 50.17.150

Ulpianus 68 ad ed.

Parem esse condicionem oportet eius, qui quid possideat vel habeat, atque eius, cuius dolo malo factum sit, quo minus possideret vel haberet.

Dig. 50.17.151

Paulus 64 ad ed.

Nemo damnum facit, nisi qui id fecit, quod facere ius non habet.

Dig. 50.17.152pr.

Ulpianus 69 ad ed.

Hoc iure utimur, ut quidquid omnino per vim fiat, aut in vis publicae aut in vis privatae crimen incidat.

Dig. 50.17.152.1

Ulpianus 69 ad ed.

Deicit et qui mandat.

Dig. 50.17.152.2

Ulpianus 69 ad ed.

In maleficio ratihabitio mandato comparatur.

Dig. 50.17.152.3

Ulpianus 69 ad ed.

In contractibus, quibus doli praestatio vel bona fides inest, heres in solidum tenetur.

Dig. 50.17.153

Paulus 65 ad ed.

Fere quibuscumque modis obligamur, isdem in contrarium actis liberamur, cum quibus modis adquirimus, isdem in contrarium actis amittimus. ut igitur nulla possessio adquiri nisi animo et corpore potest, ita nulla amittitur, nisi in qua utrumque in contrarium actum est.

Dig. 50.17.154

Ulpianus 70 ad ed.

Cum par delictum est duorum, semper oneratur petitor et melior habetur possessoris causa. sicut fit, cum de dolo excipitur petitoris: neque enim datur talis replicatio petitori "aut si rei quoque in ea re dolo actum sit". illi debet permitti poenam petere, qui in ipsam non incidit.

Dig. 50.17.155pr.

Paulus 65 ad ed.

Factum cuique suum, non adversario nocere debet.

Dig. 50.17.155.1

Paulus 65 ad ed.

Non videtur vim facere, qui iure suo utitur et ordinaria actione experitur.

Dig. 50.17.155.2

Paulus 65 ad ed.

In poenalibus causis benignius interpretandum est.

Dig. 50.17.156pr.

Ulpianus 70 ad ed.

Invitus nemo rem cogitur defendere.

Dig. 50.17.156.1

Ulpianus 70 ad ed.

Cui damus actiones, eidem et exceptionem competere multo magis quis dixerit.

Dig. 50.17.156.2

Ulpianus 70 ad ed.

Cum quis in alii locum successerit, non est aequum ei nocere hoc, quod adversus eum non nocuit, in cuius locum successit.

Dig. 50.17.156.3

Ulpianus 70 ad ed.

Plerumque emptoris eadem causa esse debet circa petendum ac defendendum, quae fuit auctoris.

Dig. 50.17.156.4

Ulpianus 70 ad ed.

Quod cuique pro eo praestatur, invito non tribuitur.

Dig. 50.17.157pr.

Ulpianus 71 ad ed.

Ad ea, quae non habent atrocitatem facinoris vel sceleris, ignoscitur servis, si vel dominis vel his, qui vice dominorum sunt, veluti tutoribus et curatoribus obtemperaverint.

Dig. 50.17.157.1

Ulpianus 71 ad ed.

Semper qui dolo fecit, quo minus haberet, pro eo habendus est, ac si haberet.

Dig. 50.17.157.2

Ulpianus 71 ad ed.

In contractibus successores ex dolo eorum, quibus successerunt, non tantum in id quod pervenit, verum etiam in solidum tenentur, hoc est unusquisque pro ea parte qua heres est.

Dig. 50.17.158

Gaius 26 ad ed. provinc.

Creditor, qui permittit rem venire, pignus dimittit.

Dig. 50.17.159

Paulus 70 ad ed.

Non ut ex pluribus causis deberi nobis idem potest, ita ex pluribus causis idem possit nostrum esse.

Dig. 50.17.160pr.

Ulpianus 76 ad ed.

Aliud est vendere, aliud vendenti consentire.

Dig. 50.17.160.1

Ulpianus 76 ad ed.

Refertur ad universos, quod publice fit per maiorem partem.

Dig. 50.17.160.2

Ulpianus 76 ad ed.

Absurdum est plus iuris habere eum, cui legatus sit fundus, quam heredem aut ipsum testatorem, si viveret.

Dig. 50.17.161

Ulpianus 77 ad ed.

In iure civili receptum est, quotiens per eum, cuius interest condicionem non impleri, fiat quo minus impleatur, perinde haberi, ac si impleta condicio fuisset. quod ad libertatem et legata et ad heredum institutiones perducitur. quibus exemplis stipulationes quoque committuntur, cum per promissorem factum esset, quo minus stipulator condicioni pareret.

Dig. 50.17.162

Paulus 70 ad ed.

Quae propter necessitatem recepta sunt, non debent in argumentum trahi.

Dig. 50.17.163

Ulpianus 55 ad ed.

Cui ius est donandi, eidem et vendendi et concedendi ius est.

Dig. 50.17.164

Paulus 51 ad ed.

Poenalia iudicia semel accepta in heredes transmitti possunt.

Dig. 50.17.165

Ulpianus 53 ad ed.

Cum quis possit alienare, poterit et consentire alienationi. cui autem donare non conceditur, probandum erit nec, si donationis causa consenserit, ratam eius voluntatem habendam.

Dig. 50.17.166

Paulus 48 ad ed.

Qui rem alienam defendit, numquam locuples habetur.

Dig. 50.17.167pr.

Paulus 49 ad ed.

Non videntur data, quae eo tempore quo dentur accipientis non fiunt.

Dig. 50.17.167.1

Paulus 49 ad ed.

Qui iussu iudicis aliquid facit, non videtur dolo malo facere, qui parere necesse habet.

Dig. 50.17.168pr.

Paulus 1 ad plaut.

Rapienda occasio est, quae praebet benignius responsum.

Dig. 50.17.168.1

Paulus 1 ad plaut.

Quod factum est cum in obscuro sit, ex affectione cuiusque capit interpretationem.

Dig. 50.17.169pr.

Paulus 2 ad plaut.

Is damnum dat, qui iubet dare: eius vero nulla culpa est, cui parere necesse sit.

Dig. 50.17.169.1

Paulus 2 ad plaut.

Quod pendet, non est pro eo, quasi sit.

Dig. 50.17.170

Paulus 3 ad plaut.

Factum a iudice, quod ad officium eius non pertinet, ratum non est.

Dig. 50.17.171

Paulus 4 ad plaut.

Nemi ideo obligatur, quia recepturus est ab alio quod praestiterit.

Dig. 50.17.172pr.

Paulus 5 ad plaut.

In contrahenda venditione ambiguum pactum contra venditorem interpretandum est.

Dig. 50.17.172.1

Paulus 5 ad plaut.

Ambigua autem intentio ita accipienda est, ut res salva actori sit.

Dig. 50.17.173pr.

Paulus 6 ad plaut.

In condemnatione personarum, quae in id quod facere possunt damnantur, non totum quod habent extorquendum est, sed et ipsarum ratio habenda est, ne egeant.

Dig. 50.17.173.1

Paulus 6 ad plaut.

Cum verbum "restituas" lege invenitur, etsi non specialiter de fructibus additum est, tamen etiam fructus sunt restitendi.

Dig. 50.17.173.2

Paulus 6 ad plaut.

Unicuique sua mora nocet. quod et in duobus reis promittendi observatur.

Dig. 50.17.173.3

Paulus 6 ad plaut.

Dolo facit, qui petit quod redditurus est.

Dig. 50.17.174pr.

Paulus 8 ad plaut.

Qui potest facere, ut possit condicioni parere, iam posse videtur.

Dig. 50.17.174.1

Paulus 8 ad plaut.

Quod quis si velit habere non potest, id repudiare non potest.

Dig. 50.17.175pr.

Paulus 11 ad plaut.

In his, quae officium per liberas fieri personas leges desiderant, servus intervenire non potest.

Dig. 50.17.175.1

Paulus 11 ad plaut.

Non debeo melioris condicionis esse, quam auctor meus, a quo ius in me transit.

Dig. 50.17.176pr.

Paulus 13 ad plaut.

Non est singulis concedendum, quod per magistratum publice possit fieri, ne occasio sit maioris tumultus faciendi.

Dig. 50.17.176.1

Paulus 13 ad plaut.

Infinita aestimatio est libertatis et necessitudinis.

Dig. 50.17.177pr.

Paulus 14 ad plaut.

Qui in ius dominiumve alterius succedit, iure eius uti debet.

Dig. 50.17.177.1

Paulus 14 ad plaut.

Nemo videtur dolo exsequi, qui ignorat causam, cur non debeat petere.

Dig. 50.17.178

Paulus 15 ad plaut.

Cum principalis causa non consistat, plerumque ne ea quidem, quae sequuntur, locum habent.

Dig. 50.17.179

Paulus 16 ad plaut.

In obscura voluntate manumittentis favendum est libertati.

Dig. 50.17.180

Paulus 17 ad plaut.

Quod iussu alterius solvitur, pro eo est, quasi ipsi solutum esset.

Dig. 50.17.181

Paulus 1 ad vitell.

Si nemo subiit hereditatem, omnis vis testamenti solvitur.

Dig. 50.17.182

Paulus 3 ad vitell.

Quod nullius esse potest, id ut alicuius fieret, nulla obligatio valet efficere.

Dig. 50.17.183

Marcellus 3 Dig.

Etsi nihil facile mutandum est ex sollemnibus, tamen ubi aequitas evidens poscit, subveniendum est.

Dig. 50.17.184

Celsus 7 Dig.

Vani timoris iusta excusatio non est.

Dig. 50.17.185

Celsus 8 Dig.

Inpossibilium nulla obligatio est.

Dig. 50.17.186

Celsus 12 Dig.

Nihil peti potest ante id tempus, quo per rerum naturam persolvi possit: et cum solvendi tempus obligationi additur, nisi eo praeterito peti non potest.

Dig. 50.17.187

Celsus 16 Dig.

Si quis praegnatem uxorem reliquit, non videtur sine liberis decessisse.

Dig. 50.17.188pr.

Celsus 17 Dig.

Ubi pugnantia inter se in testamento iuberentur, neutrum ratum est.

Dig. 50.17.188.1

Celsus 17 Dig.

Quae rerum natura prohibentur, nulla lege confirmata sunt.

Dig. 50.17.189

Celsus 13 Dig.

Pupillus nec velle nec nolle in ea aetate nisi adposita tutoris auctoritate creditur: nam quod animi iudicio fit, in eo tutoris auctoritas necessaria est.

Dig. 50.17.190

Celsus 24 Dig.

Quod evincitur, in bonis non est.

Dig. 50.17.191

Celsus 33 Dig.

Neratius consultus, an quod beneficium dare se quasi viventi caesar rescripserat, iam defuncto dedisse existimaretur, respondit non videri sibi principem, quod ei, quem vivere existimabat, concessisset, defuncto concessisse: quem tamen modum esse beneficii sui vellet, ipsius aestimationem esse.

Dig. 50.17.192pr.

Marcellus 29 Dig.

Ea, quae in partes dividi non possunt, solida a singulis heredibus debentur.

Dig. 50.17.192.1

Marcellus 29 Dig.

In re dubia benigniorem interpretationem sequi non minus iustius est quam tutius.

Dig. 50.17.193

Celsus 38 Dig.

Omnia fere iura heredum perinde habentur, ac si continuo sub tempus mortis heredes exstitissent.

Dig. 50.17.194

Modestinus 6 diff.

Qui per successionem quamvis longissimam defuncto heredes constiterunt, non minus heredes intelleguntur, quam qui principaliter heredes existunt.

Dig. 50.17.195

Modestinus 7 diff.

Expressa nocent, non expressa non nocent.

Dig. 50.17.196

Modestinus 8 reg.

Privilegia quaedam causae sunt, quaedam personae. et ideo quaedam ad heredem transmittuntur, quae causae sunt: quae personae sunt, ad heredem non transeunt.

Dig. 50.17.197

Modestinus l.S. de ritu nupt.

Semper in coniunctionibus non solum quid liceat considerandum est, sed et quid honestum sit.

Dig. 50.17.198

Iavolenus 13 ex cass.

Neque in interdicto neque in ceteris causis pupillo nocere oportet dolum tutoris, sive solvendo est sive non est.

Dig. 50.17.199

Iavolenus 6 epist.

Non potest dolo carere, qui imperio magistratus non paruit.

Dig. 50.17.200

Iavolenus 7 epist.

Quotiens nihil sine captione investigari potest, eligendum est quod minimum habeat iniquitatis.

Dig. 50.17.201

Iavolenus 10 epist.

Omnia, quae ex testamento proficiscuntur, ita statum eventus capiunt, si initium quoque sine vitio ceperint.

Dig. 50.17.202

Iavolenus 11 epist.

Omnis definitio in iure civili periculosa est: parum est enim, ut non subverti posset.

Dig. 50.17.203

Pomponius 8 ad q. muc.

Quod quis ex culpa sua damnum sentit, non intellegitur damnum sentire.

Dig. 50.17.204

Pomponius 28 ad q. muc.

Minus est actionem habere quam rem.

Dig. 50.17.205

Pomponius 39 ad q. muc.

Plerumque fit, ut etiam ea, quae nobis abire possint, proinde in eo statu sint, atque si non essent eius condicionis, ut abire possent. et ideo quod fisco obligamus, et vindicare interdum et alienare et servitutem in praedio imponere possumus.

Dig. 50.17.206

Pomponius 9 ex var. lect.

Iure naturae aequum est neminem cum alterius detrimento et iniuria fieri locupletiorem.

Dig. 50.17.207

Ulpianus 1 ad l. iul. et pap.

Res iudicata pro veritate accipitur.

Dig. 50.17.208

Paulus 3 ad l. iul. et pap.

Non potest videri desisse habere, qui numquam habuit.

Dig. 50.17.209

Ulpianus 4 ad l. iul. et pap.

Servitutem mortalitati fere comparamus.

Dig. 50.17.210

Licinius 2 reg.

Quae ab initio inutilis fuit institutio, ex postfacto convalescere non potest.

Dig. 50.17.211

Paulus 69 ad ed.

Servus rei publicae causa abesse non potest.

This is a partial **list of Roman laws**. A Roman law (Latin: *lex*) is usually named for the sponsoring legislator and designated by the adjectival form of his *gens* name (*nomen gentilicum*), in the feminine form because the noun *lex* (plural *leges*) is of feminine grammatical gender. When a law is the initiative of the two consuls, it is given the name of both, with the *nomen* of the senior consul first. Sometimes a law is further specified by a short phrase describing the content of the law, to distinguish that law from others sponsored by members of the same *gens*.

Roman laws

[edit]

Name	Date	Passed by	Magistracy held	Description
Lex Regia	759–509 BC		Kings of Rome	Laws enacted by the Roman kings before the Republic.
Lex Valeria	509, 449, & 300 BC	P. Valerius Publicola	Consul	Granted every Roman citizen legal right to appeal against a capital sentence, defined and confirmed the right of appeal (*provocatio*).
Lex Sacrata	494 BC			law after first secession of the plebeians that either affirmed the sacrosanctity of the tribunes or established the plebeians as a sworn confederacy against patricians.
Lex Publilia	471 BC	Volero Publilius	Tribune of the plebs	Transferred the election of the tribunes of the plebs to the *comitia tributa*.
Lex Icilia de Aventino publicando	456 BC	L. Icilius	Tribune of the plebs	Gave land to plebeians.

Name	**Date**	**Passed by**	**Magistracy held**	**Description**
Lex Aternia Tarpeia	454 BC	A. Aternius Varus & S. Tarpeius Montanus Capitolinus	Consuls	Allowed magistrates to fine citizens, but set maximum fines.
Lex Menenia Sestia	452 BC	T. Menenius Lanatus & P. Sestius Capitolinus Vaticanus	Consuls	Scale for fines, 1 ox = 12 sheep = 100 lb. of bronze.
Lex Valeria Horatia	449 BC	L. Valerius Potitus & M. Horatius Barbatus	Consuls	Three laws: (1) *Lex Valeria Horatia de plebiscitis*: established that the resolutions passed by the Plebeian Council were binding on all. (2) *Lex Valeria Horatia de provocatione*: granted the right to appeal to the People of any decision of magistrates. (3) *Lex Valeria Horatia de tribunicia potestate*: restored the *potestas tribunicia*, the powers of the plebeian tribunes.
Lex Trebonia	448 BC	L. Trebonius	Tribune of the plebs	Forbade the cooptation of additional tribunes of the plebs to fill vacant positions.
Lex Canuleia	445 BC	C. Canuleius	Tribune of the plebs	Allowed patricians and plebeians to intermarry.
Lex Aemilia de censoribus	434 BC	Mam. Aemilius Mamercinus	Dictator	Reduced the terms of censors to a year and a half.

Name	Date	Passed by	Magistracy held	Description
Lex Papiria Julia	430 BC	L. Papirius Crassus & L. Julius Iulus	Consuls	Made payment of fines in bronze mandatory.
lex Licinia Sextia	367 BC	C. Licinius Stolo & L. Sextius Lateranus	Tribunes of the plebs	Four laws: (1) *Lex de consule altero ex plebe et de praetore ex patribus creando*: resumed the consulship and opened it to plebeians, and created the praetorship, reserved to patricians.[1] (2) *Lex de aere alieno*: provided that the interest already paid on debts should be deducted from the principal and that the payment of the rest of the principal should be in three equal annual instalments. (3) *Lex de modo agrorum*: restricted individual ownership of public land in excess of 500 iugeras (300 acres) and forbade the grazing of more than 100 cattle on public land. (4) *Lex de Decemviri Sacris Faciundis*: created the *Decemviri sacris faciundis*, a college of ten priests, of whom five had to be plebeians.
Lex Genucia	342 BC	L. Genucius	Tribune of the plebs	Three laws: (1) Abolished interest on loans. (2) Required the election of at least one plebeian consul each year. (3) Prohibited a magistrate from holding two magistracies in the same year, or the same magistracy

Name	Date	Passed by	Magistracy held	Description
				for the next ten years (until 332).[2][1][3]
Lex Publilia	339 BC	Q. Publilius Philo	Consul and dictator	Three laws: (1) Reserved one censorship to plebeians. (2) Made plebiscites binding on all citizens (including patricians). (3) Stated that the Senate had to give its prior approval (the *Auctoritas patrum*) to plebiscites before becoming binding on all citizens (the *lex Valeria Horatia* of 449 had placed this approval after plebiscites).
Lex Poetelia Papiria	326 BC	C. Poetelius Libo & L. Papirius Cursor	Consuls	Abolished the contractual form of Nexum, or debt bondage.
Lex Ovinia	312 BC (before)	Ovinius	Tribune of the plebs	Transferred the right to appoint Senators from the consuls to the censors.
Lex Atilia Marcia	311 BC	L. Atilius & C. Marcius Rutilus Censorinus	Tribunes of the plebs	Empowered the people to elect sixteen military tribunes for each of four legions.
Lex Ogulnia	300 BC	Cn. & Q. Ogulnius	Tribune of the plebs	Created four plebeian pontiffs and five plebeian augurs.
Lex Hortensia	287 BC	Q. Hortensius	Dictator	Plebiscites approved by the Assembly of the People gain the status of law.

Name	**Date**	**Passed by**	**Magistracy held**	**Description**
Lex Aquilia de damno	286 BC (possibly)	Aquilius	Tribune of the plebs	Provided compensation to the owners of property injured by someone's fault.
Lex Maenia	279 BC	Maenius[4]	Tribune of the plebs	Carried the principle of *lex Publilia* to elections (approval of Senate moved before the elections, not after)..
Lex Hieronica	240 BC	Hiero II	King of Sicily	Taxation of Sicily (the legislation of Hiero II was included in Roman law).
Lex Claudia de nave senatoris	218 BC	Q. Claudius	Tribune of the plebs	Prohibited senators from participating in overseas trade, obsolete by the time of Cicero.
Lex Minucia	216 BC	M. Minucius	Tribune of the plebs	Appointment of three finance commissioners.
Lex Oppia	215 BC	C. Oppius	Tribune of the plebs	Limited female adornment.
Lex Cincia de donis et muneribus	204 BC	M. Cincius Alimentus	Tribune of the plebs	Tort reform concerning the payment of lawyers.
Lex Porcia	199 BC	P. Porcius Laeca	Tribune of the plebs	Gave right of appeal (*provocatio*) in capital cases.

Name	**Date**	**Passed by**	**Magistracy held**	**Description**
Lex Porcia de tergo civium	195 BC	Cato the Elder	Consul	Extended the right to *provocatio* against flogging.
Lex Acilia de intercalando	191 BC	M'. Acilius Glabrio	Consul	Adjustment of the calendar, then roughly four months off its Julian equivalent.
Lex Porcia	185 BC	L. Porcius Licinus	Consul	Provided for a very severe sanction (possibly death) against magistrates who refused to grant *provocatio*.
Lex Baebia de Praetoribus	181 BC	M. Baebius Tamphilus	Consul	Set number of praetors to alternate, but was never observed.
Lex Cornelia et Baebia de Ambitu	181 BC	P. Cornelius Cethegus & M. Baebius Tamphilus	Consuls	Against electoral bribery.
Lex Villia Annalis	180 BC	L. Villius Annalis	Tribune of the plebs	Established minimum ages for the *cursus honorum* offices; determined an interval of two years between offices.
Lex Claudia de sociis	177 BC	C. Claudius Pulcher	Consul	Limited immigration of Latin allies to Rome.
Lex Voconia	169 BC	Q. Voconius Saxa	Tribune of the plebs	Disallowed women from being the main heir to a dead man's estate, including

Name	Date	Passed by	Magistracy held	Description
				cases where there were no male relatives alive.
Lex Papiria de dedicationibus	166—155 BC[5]	Papirius	Tribune of the plebs	Forbade consecration of real property without approval of the popular assembly.
Lex Vallia de manus iniectione	160 BC (*circa*?)	(Gaius) Vallius	Tribune of the plebs	Modification or extension of legis actiones.
Lex Aelia et Fufia	150 BC (*circa*?)	Aelius & Fufius[6]	Tribunes of the plebs?	Two laws probably regulating auspices.
Lex Atinia de tribunis plebis in senatum legendis	149 BC[7]	Atinius	Tribune of the plebs	Allowed Plebeian Tribunes to be automatically enrolled in the senate upon election.
Lex Atinia de usucapione	149 BC	Atinius	Tribune of the plebs	Dealing with ownership.
Lex Calpurnia de repetundis	149 BC	L. Calpurnius Piso	Tribune of the plebs	Established a permanent extortion court.
Lex Scantinia	149 BC (*circa*)	M. Scantius or Scantinius[8]	Tribune of the plebs	Regulating some aspects of homosexual behaviour among citizens, primarily protecting freeborn male minors.
Lex provincia	146 BC			Set of laws designed to regulate and organize the administration of Roman provinces.
Lex Gabinia tabellaria	139 BC	A. Gabinius	Tribune of the plebs	Introduced secret votes in election for magistrate offices.

Name	**Date**	**Passed by**	**Magistracy held**	**Description**
Lex Cassia tabellaria	137 BC	L. Cassius Longinus Ravilla	Tribune of the plebs	Introduced secret votes in court jury decisions.
Lex Sempronia agraria	133 BC	Ti. Sempronius Gracchus	Tribune of the plebs	Set of laws that redistributed land among the poor; repealed after his assassination.
Lex Aufeia	123 BC	Aufeius	Tribune of the plebs	Settlement of Asia.
Lex Acilia repetundarum	122 BC[9]	M. Acilius Glabrio (& C. Sempronius Gracchus)	Tribunes of the plebs	*Repetundae* procedures for jurors in courts overseeing senatorial class to prevent corruption abroad.
Lex Rubria	122 BC	C. Rubrius	Tribune of the plebs	Authorised a colony on the ruins of Carthage.
Lex Aebutia de formulis	120–63 BC (*circa*)	Aebutius[10]	Tribune of the plebs (?)	Authorized praetor's discretion to be introduced into the court of the praetor urbanus, praetor able to remodel private law of Rome.
Lex Aebutia de magistratibus extraordinariis	120–63 BC (*circa*)	Aebutius[10]	Tribune of the plebs?	Proposer of extraordinary magistracy cannot hold it.
Lex Servilia Caepio	106 BC	Q. Servilius Caepio	Consul	Some control of the court *de rebus repentundis* was handed back to senators from the *equites*.
Lex Cassia de senatu	104 BC	L. Cassius Longinus	Tribune of the plebs	Required any senator to be expelled from the senate if they had been convicted of a crime, or if their power (*imperium*) had been revoked while serving as a magistrate.
Lex Domitia de sacerdotis	104 BC	Cn. Domitius Ahenobarbus	Tribune of the plebs	Established the election of the *pontifex maximus* and the members of the college

Name	Date	Passed by	Magistracy held	Description
				of priests (chosen by cooptation before).
Lex Appuleia agraria	103–100 BC	Saturninus	Tribune of the plebs	Made provision for public lands taken in Cisalpine Gaul from the Cimbri to be allocated to poor citizens.
Lex Appuleia de maiestate	103–100 BC	Saturninus	Tribune of the plebs	Established an equestrian court to try *maiestas*.
Lex Servilia Glaucia de Repetundis	101 BC	C. Servilius Glaucia[11]	Tribune of the plebs	Made juries in property court composed by *equites* only.
Lex Caecilia Didia	98 BC	Q. Caecilius Metellus Nepos & T. Didius	Consuls	Required laws to proposed at least three market days before any vote. Also forbade omnibus bills, which are bills with a large amount of unrelated material.
Lex Licinia Mucia	95 BC	L. Licinius Crassus & Q. Mucius Scaevola	Consuls	Removed Latin and Italian allies from Rome's citizen-rolls.
Lex Iulia de Civitate Latinis et Sociis Danda	90 BC	Lucius Julius Caesar	Consul	Offered citizenship to all Italians who had not raised arms against Rome in the Social War.
Lex Plautia Judiciaria	89 BC	M. Plautius Silvanus	Tribune of the plebs	Chose jurors from other classes, not just the *Equites*.
Lex Plautia Papiria	89 BC	C. Papirius Carbo & M. Plautius Silvanus	Tribunes of the plebs	Granted citizenship to Roman allies.
Lex Pompeia de Transpadanis	89 BC	Cn. Pompeius Strabo	Consul	Granted Latin Right to the populations of Cisalpine Gaul.
Lex Valeria	82 BC	Lucius Valerius Flaccus	Interrex	Appointed Sulla dictator.

Name	Date	Passed by	Magistracy held	Description
lex Cornelia de hostibus rei publicae	81 BC	Sulla	Dictator	Retroactively legalised Sulla's proscription.[12]
Lex Cornelia annalis	81 BC	Sulla	Dictator	Reordered the *cursus honorum*, superseded the *lex Villia Annalis* of 180 BC.
Lex Cornelia de maiestate	81 BC	Sulla	Dictator	Treason law passed by Sulla to regulate the activities of pro-magistrates in their provinces, especially unapproved war and unauthorised travel.
Lex Cornelia de sicariis et veneficis	81 BC	Sulla	Dictator	Dealing with injuries and deaths obtained by magic.
Lex Aurelia de tribunicia potestate	75 BC	C. Aurelius Cotta	Consul	Former tribunes of the plebs can hold further magistracies (this right had been removed by Sulla).
Lex Cassia Terentia frumentaria	73 BC	C. Cassius Longinus & M. Terentius Varro Lucullus	Consuls	Required the distribution of wheat among the poor citizens.
Lex Terentia Cassia	73 BC	M. Terentius Varro Lucullus & C. Cassius Longinus	Consuls	Safeguarded Rome's grain supply and distributed grain at reduced rates.
Lex Gellia Cornelia	72 BC	L. Gellius Publicola & Cn. Cornelius Lentulus Clodianus	Consuls	Authorised Pompey to confer Roman citizenship to his *clientela* and Spaniards.
Lex Aurelia iudiciaria	70 BC	L. Aurelius Cotta	Praetor	Juries should be chosen from senators, equites and tribuni aerarii.
Lex Plautia de reditu lepidanorum	70 BC	Plautius	Tribune of the plebs	Granted a pardon to Lepidus' former associates.

Name	Date	Passed by	Magistracy held	Description
Lex Antia sumptuaria	68 BC	C. Antius Restio	Tribune of the plebs	Forbade magistrates from attending banquets.[13]
Lex Antonia de Termessibus	68 BC	C. Antonius Hybrida[14]	Tribune of the plebs	Alliance with Termessus.
Lex Acilia Calpurnia	67 BC	C. Calpurnius Piso & M. Acilius Glabrio	Consuls	Permanent exclusion from office in cases of electoral corruption.
Lex Gabinia de piratis persequendis	67 BC	A. Gabinius	Tribune of the plebs	Granted special powers to Pompey in the Mediterranean to fight against pirates
Lex Roscia theatralis	67 BC	L. Roscius Otho	Tribune of the plebs	Allocated a place in Roman theaters to the equestrian order.
Lex Manilia	66 BC	C. Manilius	Tribune of the plebs	Pompey's actions against Mithridates.
Lex Papia de peregrinis	65 BC	C. Papius	Tribune of the plebs	Challenged false claims of citizenship and deported foreigners from Rome.
Lex Ampia	63 BC	T. Ampius Balbus[15]	Tribune of the plebs	Allowed Pompey to wear the crown of bay at the Ludi Circenses.
Lex Tullia	63 BC	Cicero	Consul	Regulated election fraud (see ambitus).
Lex Junia Licinia	62 BC	D. Junius Silanus & L. Licinius Murena	Consuls	A reinforcement law passed to back up the earlier *lex Caecilia Didia* law of 98 BC.
Lex Aufidia de ambitu	61 BC	M. Aufidius Lurco	Tribune of the plebs	If a candidate promised money to a tribe and did not pay it, he should be unpunished; but if he did pay the money, he should further pay to each tribe (annually?) 3000 sesterces as long as he lived.
Lex Pupia	61 BC	M. Pupius Piso Frugi Calpurnianus	Consul	Senate could not meet on Comitiales Dies.

Name	**Date**	**Passed by**	**Magistracy held**	**Description**
Lex Caecilia de vectigalibus	60 BC	Q. Caecilius Metellus Nepos Iunior	Praetor	Released lands and harbors in Italy from the payment of taxes.
Lex Iulia de repetundis	59 BC	Julius Caesar	Consul	Regarding extortion in the provinces.
Lex Vatinia	59 BC	P. Vatinius	Tribune of the plebs	Gave Julius Caesar governorship of Cisalpine Gaul and of Illyricum for five years.
Leges Clodiae	58 BC	P. Clodius Pulcher	Tribune of the plebs	Seven laws: (1) *Lex Clodia de Auspiciis*: repealed the *leges Aeliae et Fufiae*. (2) *Lex Clodia de Censoribus*: prescribed certain rules for the Roman Censors in exercising their functions as inspectors of public morals. (3) *Lex Clodia de Civibus Romanis Interemptis*: threatened punishment for anyone who offered fire and water to those who had executed Roman citizens without a trial. (4) *Lex Clodia Frumentaria*: required the distribution of grain to Rome's poor citizens for free. (5) *Lex Clodia de Sodalitatibus*: declared that certain clubs of a "semi-political nature" (i.e. armed gangs) were lawful. (6) *Lex Clodia de Libertinorum Suffragiis*: attempted to extend freedmen's (i.e. ex-slaves') voting rights. (7) *Lex Clodia de Rege Ptolemaeo et de exsulibus Byzantinis*: pertained to several of Rome's eastern provinces and vassal states.

Name	Date	Passed by	Magistracy held	Description
Lex Licinia Pompeia	55 BC	Pompey and Crassus	Consuls	Caesar's proconsulship in both the Gauls was extended for another 5 years.
Lex Trebonia	55 BC	C. Trebonius	Tribune of the plebs	Granted a five year proconsulship: in Syria to Crassus, in Spain to Pompey.
Lex Caecilia de censoria	52 BC	Q. Caecilius Metellus Pius Scipio	Consul	Repealed the *lex Clodia de Censoribus* passed by the tribune of the plebs Clodius in 58 BC, which had regulated the Censors.
Lex Pompeia de ambitu	52 BC	Pompey	Consul	Expediting trials for electoral corruption, and allowing those convicted to escape punishment by successfully prosecuting others.
Lex Antonia de proscriptorum liberis	49 BC	Mark Antony	Tribune of the plebs	Law removing penalties on the descendants of people proscribed by Sulla, notably access to magistracies.[16]
Lex Roscia	49 BC	L. Roscius Fabatus	Praetor	Caesar proposed full Latin Rights on the people of Transalpine Gaul.
Lex Iulia municipalis	45 BC	Julius Caesar	Dictator and consul	Set regulations for the Italian municipalities.
Leges Antoniae	44 BC	Mark Antony	Consul	Nine laws passed by Mark Antony after the death of Julius Caesar: (1) *lex Antonia de dictatura in perpetuum tollenda*: abolished the dictatorship (2) *lex Antonia de actis Caesaris confirmandis*: confirmed Caesar's deeds (3) *lex antonia de coloniis in agros deducentis*: settled veterans (4) *lex Antonia agraria*: granted lands to Antony's supporters (5) *lex*

Name	Date	Passed by	Magistracy held	Description
				Antonia de provinciis consularibus: gave a 5-year proconsulship to the consuls (6) *lex Antonia de permutatione provinciarum*: gave provincial command of the two Gaul to Antony (7) *lex antonia de mense quintili*: renamed the month of July (8) *lex Antonia de quinto die ludorum romanorum rotondi*: added a 5th day to the Ludi Romani (9) *lex Antonia iudiciaria*: altered the composition of juries.[17]
Lex Cassia	44 BC	L. Cassius Longinus	Tribune of the plebs	Allowed Julius Caesar to add new individuals to the patrician (aristocratic) class.
Lex de permutatione provinciae	44 BC	Mark Antony	Consul	Gave himself a five-year command in Cisalpine and Transalpine Gaul in lieu of Macedon. Also gave authorization to transfer Caesar's legions from Macedon to the new provinces.
Lex Ursonensis	44 BC	Mark Antony	Consul	Foundation charter of the Caesarean *colonia Iulia Genetiva.*
Lex Titia	43 BC	P. Titius	Tribune of the plebs	Gave Octavian, Mark Antony and Lepidus full powers to defeat the assassins of Julius Caesar; legalised the second triumvirate.
Lex Petronia	32 BC (before)[18]	Petronius	Tribune of the plebs	Regulated appointments of municipal prefects.
Lex Iulia de Ambitu	18 BC	Augustus	Emperor	Penalised bribery when acquiring political offices.

Name	Date	Passed by	Magistracy held	Description
Lex Iulia de maritandis ordinibus	18 BC	Augustus	Emperor	Marrying-age celibates and young widows that would not marry were barred from receiving inheritances and from attending public games.
Lex Iulia de adulteriis coercendis	17 BC	Augustus	Emperor	Made conjugal unfaithfulness a public as well as a private offence, with banishment a possible penalty.
Lex Fufia Caninia	2 BC	C. Fufius Geminus & L. Caninius Gallus	Consuls	Limited manumissions.
Lex Aelia Sentia	4 AD	Sex. Aelius Catus & C. Sentius Saturninus	Consuls	Manumissions of slaves.
Lex Iulia de vicesima hereditatum	5 AD	Augustus	Emperor	Instituted a 5 percent tax on testamentary inheritances, exempting close relatives.
Lex Valeria Cornelia	5 AD	L. Valerius Messalla Volesus & Cn. Cornelius Cinna Magnus	Consuls	Regarding voting in the Comitia Centuriata.
Lex Papia Poppaea	9 AD	M. Papius Mutilus & Q. Poppaeus Secundus	Consuls	Regarding marriage.
Lex Junia Norbana	19 AD	M. Junius Silanus Torquatus & L. Norbanus Balbus	Consuls	Regarding status of freedmen.
Lex Visellia	24 CE			Regulated the activities of freedmen
Lex de Imperio Vespasiani [19]	69 AD	Unknown	Consuls?	Conferred powers, privileges and exemptions on the emperor Vespasian.
Lex Manciana	69–96 AD			Dealt with imperial and private cases in North

Name	Date	Passed by	Magistracy held	Description
				Africa, regulated relations between cultivators and the proprietors.
Lex Hadriana	117–138 AD	Hadrian	Emperor	Enabled permanent tenants to develop land, it was an extension of the *lex Manciana*.
Lex citationis	426 AD	Valentinian III	Emperor	During court proceedings, only five Roman lawyers could be cited.

Post-Roman law codes based on Roman legislation

[edit]

- *lex Romana Burgundionum* – one of the law tables for Romans after the fall of the Western Roman Empire
- *lex Romana Visigothorum* (AD 506) – one of the law tables for Romans after the fall of the Western Roman Empire

General denominations

[edit]

- *lex agraria* – A law regulating distribution of public lands
- *lex annalis* – A law regarding qualifications for magistracies, such as age or experience
- *lex ambitus* – A law involving electoral bribery and corruption; see *ambitus*
- *lex curiata* – Any law passed by the *comitia curiata*. These included Roman adoptions, particularly so-called "testamentary adoptions" (famously in 59 BC when the patrician Clodius Pulcher was adopted into a plebeian *gens* in order to run for the office of tribune of the *plebs*) and the *lex curiata de imperio* which granted *imperium* to senior Roman magistrates under the Republic, likely also ratifying the choice of a new king during the monarchy. It was the traditional basis for the later lex de Imperio allowing imperial succession.
- *lex frumentaria* – A law regulating the price of grain
- *lex sumptuaria* – A law regulating the use of luxury items and public manifestations of wealth

Other

[edit]

- *Constitution of the Roman Republic* – Set the separation of powers and checks and balances of the Roman Republic
- *Acceptilatio* – spoken statement of debt or obligation release

- *Constitutio Antoniniana* – granted citizenship to the Empire's freemen
- *Corpus Iuris Civilis* – codification by emperor Justinian
- *Stipulatio* – basic oral contract
- *Twelve Tables* – The first set of Roman laws published by the *Decemviri* in 451 BC, which would be the starting point of the elaborate Roman constitution. The twelve tables covered issues of civil, criminal and military law. Every Roman that went to school was supposed to know them by heart.

IVS ROMANVM:
https://www.thelatinlibrary.com/ius.html
The Law of the Twelve Tables:
https://thelatinlibrary.com/law/12tables.html
THE INSTITUTES OF GAIUS:
https://thelatinlibrary.com/law/gaius.html
The Institutes of Justinian:
https://thelatinlibrary.com/law/institutes.html
Theodosian Code:
https://www.thelatinlibrary.com/theodosius.html
ROMAN LAW & SOCIETY:
https://www.thelatinlibrary.com/law/

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